

Guide to Responding to Consultation

Below is a guide to responding to the MOJ Consultation on legal aid reform in respect of the tender of duty solicitor slots for criminal legal aid.

The closing date is 15th October 2014 at 11.45am. The MOJ link for the consultation is <https://consult.justice.gov.uk/digital-communications/transforming-legal-aid-crime-duty-contracts>. The address for sending a response both electronically and by post are on this link.

Please respond. Below is only a guide to a response. If every response is the same then the MOJ will only count it as one response. Please amend/delete/add/rewrite as you see fit, but make it personal to you and your organisation.

Additionally the London Criminal Courts Solicitors Association and Criminal Law Solicitors Association have set up a hub for responding, if you wish to respond through this link.

The link is <http://lccsa.us3.list-manage2.com/track/click?u=1f4c5ebc3639796f6e560677e&id=c794f60169&e=b202a17ec8>

DRAFT RESPONSE TO
MOJ CONSULTATION
(FROM NON-CRIMINAL LAWYERS)

1. I make this response on behalf of (*Applicant please complete*). My organisation is committed to (*Please complete*) and represents the interests (*Please complete*).

2. I am deeply concerned about the Ministry of Justice Consultation on legal aid. Although I am not a criminal lawyer many of the people I act for and work with do at times need the services of criminal legal aid solicitors.

3. I understand that the Ministry of Justice have based their proposals on two reports, prepared by KPMG Consulting, and Otterburn. I also understand that there is another report in existence by PA Consulting.

4. It is my understanding that all of these reports show up many concerns and problems about the Government proposals in many areas of the country.

5. I understand from what I have read that these reports suggest that if a firm of solicitors do not get a duty solicitor contract they are unlikely to survive. This could lead to 75% of solicitors' firms going out of business.

6. Even those firms that get duty solicitor contracts will also face a very uncertain future, potentially investing on an uncertain and unknown quantity of work.

7. My main concern though is on behalf of those who we support who as a result of the above proposals will to a very large extent lose the right to choose their own solicitor.

8. I understand, although it sounds ridiculous, that a fundamental part of the proposal is that those solicitors that get duty solicitor contracts will give away 50% of their own client work. This means that many own clients will not be able to choose

their own solicitor. Additionally with the likely consequence of these proposals leading to many firms going out of business again this will substantially affect the right of individuals to choose their own solicitor.

9. Initially the Lord Chancellor was going to remove client choice, but he subsequently changed his mind on this, although it now appears to me that he is trying to do this through the back door.

10. There are many vulnerable clients who will not be able to choose a solicitor of their choice. It seems to me there will be many small firms who serve particular communities and who are used to dealing with those particular communities, who will go out of existence. I greatly fear for criminal justice and I would ask that all of these concerns are taken into account.

Consultation questions

- 1. Do you have any comments on the findings of the Otterburn report including the observations set out at pages 5 to 8 of his report? Please provide evidence to support your views.**

The evidence that I rely on is the actual report from Otterburn himself. Your proposals seem to ignore what he says. He raises a number of problems in his report and it seems to me having read the report that as a resposdee to this Consultation I can rely on this report to say you should not be proceeding.

- 2. Do you have any comments on the assumptions adopted by KPMG? Please provide evidence to support your views.**

In relation to providing evidence I again rely on the actual report itself and the report of Otterburn. I understand that the report is based on a number of assumptions. Although I am not a criminal solicitor I do not understand why a solicitor would give up 50% of their own work if they got a duty contract, because presumably the whole point of doing duty work is to get business. I also do not understand where the presumption that there is 15% latent capacity in any firm. Why would any business

move staff from one profitable area to a less profitable one, and of course, any move must involve retraining?

I also do not understand the evidence for saying that there will be two or four new entrants to the market.

- 3. Do you have any comments on the analysis provided by KPMG? Please provide evidence to support your views.**

I have already set out above that the assumptions do not make sense and the report itself raises a number of question marks about the implementation of these proposals.

- 4. Do you have any views on the MOJ comments set out in this document? Please provide evidence to support your views.**

I quite simply do not understand why the MOJ are proceeding with this. From what I have read in the press work seems to be down and they have already made an 8.75% cut. Also I noticed that in many of their press releases when this all began they were referring to the legal aid spent being £2.1 or £2.2bn, but having lost the Judicial Review they refer to it being as £1.5bn. So haven't they made all the savings that they seek?

- 5. If the assumptions and data on which the KPMG recommendations are based remain appropriate, do you consider there is any reason not to accept the maximum number of contracts possible (525) as the MOJ have done? Please provide evidence to support your views.**

The KPMG report, the Otterburn report and the PA report, as I understand it, all of whom cast huge doubts on whether this system can work, I am very concerned that this Consultation is limited to the number of contracts as opposed to whether this should go ahead at all. In terms of evidence I rely on the three reports that the MOJ have obtained, and I rely on the fact that they are now saying that legal aid spent is down by what seems to be almost 25%.

6. **Do you have any other views we should consider when deciding on a number of contracts? Please provide evidence to support your views.**

I am concerned that if the MOJ continues with its plan to introduce this two tier defence solicitor structure (despite being told that the plans for restructuring and cuts were dangerous and unworkable) this will lead to increased costs and miscarriages of justice. I am concerned that the Government appear to be ignoring a fall in volumes and justifying all of this in the name of austerity which does not seem to be true. This seems to be more about attacking Access to Justice.