

Findings from Joint Survey of LCCSA and CLSA

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Contents

Introduction	2
Merger / Takeover	4
Scaling up	9
Delivery Partnerships	12
Capitalisation	33
Professional Indemnity Insurance	35
SRA Approval.....	36
State of readiness	36
Accessing the LAA's Tender Portal.....	44

Introduction

1. On the 19th February 2015 the London Criminal Courts Solicitors' Association ("LCCSA") and the Criminal Law Solicitors' Association ("CLSA") published a joint online survey at <http://www.criminallawyersunited.com/are-you-ready-for-the-tender>. The survey was live between 17:05 on that day and 16:45 on the 21st February (so just under 48 hours).
2. A total of 661 responded to the survey:
 - 2.1. Of the 123 (19% of 661) respondents who indicated they were members of the independent bar, 120 (98% of 123) felt the reduction of duty solicitor firms by 2 thirds will put counsels' chambers at risk.
 - 2.2. Of the remaining 538 (81% of 661), 415 (77% of 538) confirmed that they were owners of a solicitors firm. Their main offices are spread throughout all regions and CJS areas of England and Wales:
 - 2.2.1. East Midlands: 59 (11% of 538):
 - 2.2.1.1. Derbyshire: 7;
 - 2.2.1.2. Leicestershire :8;
 - 2.2.1.3. Lincolnshire: 2;
 - 2.2.1.4. Northamptonshire: 1;
 - 2.2.1.5. Nottinghamshire: 41.
 - 2.2.2. East of England: 36 (7% of 538):
 - 2.2.2.1. Bedfordshire: 7;
 - 2.2.2.2. Cambridgeshire: 2;
 - 2.2.2.3. Essex: 11;
 - 2.2.2.4. Hertfordshire: 2;
 - 2.2.2.5. Norfolk: 6;
 - 2.2.2.6. Suffolk: 8.
 - 2.2.3. London: 98 (18% of 538):
 - 2.2.3.1. City Of London: 24;
 - 2.2.3.2. Metropolitan: 74.
 - 2.2.4. North East: 69 (13% of 538):
 - 2.2.4.1. Cleveland: 16;

- 2.2.4.2. Durham: 6;
- 2.2.4.3. Northumbria: 47.
- 2.2.5. North West: 117 (22% of 538):
 - 2.2.5.1. Cheshire: 13;
 - 2.2.5.2. Cumbria: 6;
 - 2.2.5.3. Greater Manchester: 65;
 - 2.2.5.4. Lancashire: 3;
 - 2.2.5.5. Merseyside: 28;
 - 2.2.5.6. (blank): 2.
- 2.2.6. South East: 43 (8% of 538):
 - 2.2.6.1. Hampshire: 7;
 - 2.2.6.2. Kent: 10;
 - 2.2.6.3. Surrey: 4;
 - 2.2.6.4. Sussex: 14;
 - 2.2.6.5. Thames Valley: 8.
- 2.2.7. South West: 43 (8% of 538):
 - 2.2.7.1. Avon and Somerset: 10;
 - 2.2.7.2. Devon and Cornwall: 23;
 - 2.2.7.3. Dorset: 7;
 - 2.2.7.4. Gloucestershire: 1;
 - 2.2.7.5. Wiltshire: 2.
- 2.2.8. Wales: 37 (7% of 538):
 - 2.2.8.1. Dyfed-Powys: 10;
 - 2.2.8.2. Gwent: 8;
 - 2.2.8.3. North Wales: 5;
 - 2.2.8.4. South Wales: 14.
- 2.2.9. West Midlands: 49 (9% of 538):

- 2.2.9.1. Staffordshire: 3;
- 2.2.9.2. Warwickshire: 2;
- 2.2.9.3. West Mercia: 11;
- 2.2.9.4. West Midlands: 33.
- 2.2.10. Yorkshire and The Humber: 65 (12% of 538):
 - 2.2.10.1. Humberside: 11;
 - 2.2.10.2. North Yorkshire: 9;
 - 2.2.10.3. South Yorkshire: 12;
 - 2.2.10.4. West Yorkshire: 33.
- 3. The statistics quotes in the rest of this document relate only to the respondents who were not members of the independent Bar.

Merger / Takeover

- 4. 100 (19% of 538) respondents indicated their firm had attempted a merger / takeover within the last 24 months.
- 5. 67 (67% of 100) of these attempts were apparently unsuccessful:
 - 5.1. 34 (51% of 67) of these were because it was not financially viable. Specifically, these respondents commented:
 - 5.1.1. "After careful consideration I decided that it was not sensible for me to take a risk of starting what amounted to a new venture. It was impossible to measure how much income the joint venture would generate and whether in fact it would generate enough income to warrant the increased risk and costs".
 - 5.1.2. "Banks won't lend".
 - 5.1.3. "Dyfed-Powys 2 as a procurement area is not viable - however we looked at it. We tried to create a procurement vehicle that might make it viable but this was not possible due to the relationship between AO and DP and because the simple geography of DP2 make it not viable".
 - 5.1.4. "Facing the 8.75% cut and considering the prospect of a further 8.75% as well as the issue regarding the two tier contract resulted in realistic concerns regarding the financial viability of the business as a whole had the acquisition taken place".
 - 5.1.5. "Finance ridiculous".

- 5.1.6. "Given the uncertainty over the actual award itself and in the event successful award of the contract, the uncertainty as to size. In our particular case, other issues also played a part, not relevant to the contract."
- 5.1.7. "Given the uncertainty the other party requested no consideration for the firm and a payment out of profits generated post merger. We refused to give away our practice."
- 5.1.8. "Having considered the financial aspects of the duty solicitor contract it was simply not viable. It would be commercial suicide to contemplate the contract for a firm of our size."
- 5.1.9. "In order to do so, we had to ensure there was a significant capital available at our disposal. The definition of a two tier contract is at best vague and at worse to wide. It is simply not financially viable expending money for a two tier contract if the Court of Appeal halts the process at a later stage."
- 5.1.10. "It was both the uncertainty over the size of the contract AND financially it was not viable. In addition, general downturn in criminal defence cases coming through the police stations and courts plus legal aid cuts. We believed in Carter - we specialised and looked at getting bigger - but that meant more overheads for less work and less pay so those models became unsustainable."
- 5.1.11. "The financial/administrative burden on the lead contractor is too great to be financially viable considering the risks involved. mergers are very expensive and time consuming and clearly cannot be done under the time constraints proposed by the LAA. To merge 2 or more legal firms is clearly a very large and complex undertaking and is not entered into lightly."
- 5.1.12. "The geographic size of area required to be covered require upscaling in offices staff and technology, the cost of which required additional borrowing. The banks are reluctant to advance monies against an uncertain income stream particularly at times when the income is falling from current level of work - which are also falling."
- 5.1.13. "The banks are aware of the KPMG report and are not supportive of the proposed structure."
- 5.1.14. "The other firms we met with (and there were several) had different liabilities and it was not possible to agree to move forward when one party was in so much more debt than the other. Also the other firm owners had very different ideas of what they expected to take from the new entity making agreement impossible. Further, due to existing commitments such as leases on premises, run off insurance cover and

redundancy payments to long serving staff who would become surplus to requirements etc it would not have been possible to save from the expected economies of scale. Plus lots more reasons”.

5.1.15. “Using the MoJ tables of past figures for contracted firms, together with our own figures, we produced projected figures and compared them with the indicative values of contract for our area. We found that the MoJ indicative contract value was wholly over-optimistic and that our own projected figures presented a picture of being worse off than presently, after factoring in the additional overheads to meet the volume if successful in the tender. This would mean that the criminal defence department would be operating at a loss and have to be carried by the other departments in the firm. We also looked at the possibility of delivery partnerships but rejected this as the same element of loss of income was present but with added risk if a delivery partner decided to pull out and we were left with having to still comply. Such a scenario would have increased overheads to a point of insolvency. At present, we are yet to decide if we will tender or not as a successful tender could be a poisoned chalice.”

5.1.16. “We are a rural firm from Brecon and had talks with a view to merge with a firm from Pembroke. Even then, we would not have been able to have covered the procurement area. Firms from Ceredigion and Montgomeryshire refused to consider a tender because of the lack of financial viability. Because of the huge geographical area we would have to cover, we would not be able to benefit from 'economies of scale' as we would have had to retain all of the offices to comply with the terms of the tender. Our projections showed we would have been operating at a significant loss. As we are from a rural area, we are multi disciplinary practices. As such, other equity partners rejected plans to merge as it would have exposed the rest of the respective firms to unacceptable levels of financial risk.”

5.1.17. “We have no way of knowing the value of the contract and therefore cannot 'scale up' or plan financially. No bank will help in those circumstances. On the figures plucked out of the air by the MoJ we cannot survive.”

5.1.18. "We have taken over one firm, but it has not proved financially viable to date and we will need to up-scale further in this area to meet the contract requirements, which mean a model that is already failing on the basis of the staff cost to profit ratio will now need to have additional staff added to meet the contract requirements. The problem with rural areas is the supervisor/caseworker ratio, each PA requires 1 full time supervisor, we are told in the guidance a supervisor cannot by definition be a caseworker, it seems you need 1 caseworker plus a supervisor as a minimum requirement for each PA,

irrespective of value although I accept that this is not clear, the point was raised in the second set of questions but remains unanswered, it has also been raised at courses but there was no definitive answer."

- 5.1.19. "In the area in question we would need, on the 83k calculation used by the LAA, less than 1 caseworker to do the work in theory, but have to add 1 full time supervisor. Therefore for a contract worth 74k, I need a caseworker, and a full time supervisor who is also a member of the management team who has sufficient experience to get high enough marks in our application to ensure we get the contract."
- 5.1.20. "The duty scheme only just works as is. These additional high level supervision requirements cannot be met on the basis of the level of work we anticipate. "
- 5.1.21. "We have attempted other mergers in other area but the financials did not work and the schemes were abandoned, we are now having to hire staff to meet the requirements with no guarantee that we will get the contract we are bidding for or if we do could sustain it."
- 5.1.22. "We have taken over one firm, but it has not proved financially viable to date and we will need to up-scale further in this area to meet the contract requirements, which mean a model that is already failing on the basis of the staff cost to profit ratio will now need to have additional staff added to meet the contract requirements. The problem with rural areas is the supervisor/caseworker ratio, each PA requires 1 full time supervisor, we are told in the guidance a supervisor cannot by definition be a caseworker, it seems you need 1 caseworker plus a supervisor as a minimum requirement for each PA, irrespective of value although I accept that this is not clear, the point was raised in the second set of questions but remains unanswered, it has also been raised at courses but there was no definitive answer."
- 5.1.23. "In the area in question we would need, on the 83k calculation used by the LAA, less than 1 caseworker to do the work in theory, but have to have 1 full time supervisor. Therefore for a contract worth 74k, I appear to need a caseworker, and a full time supervisor who is also a member of the management team who has sufficient experience to get high enough marks in our application to ensure we get the contract."
- 5.1.24. "The duty scheme only just works as is. These additional high level supervision requirements cannot be met on the basis of the level of work we anticipate. In an area with 4 current suppliers, already under sustainability issues we may now not bid, I assume others may reach the same conclusions."

- 5.1.25. "We have attempted other mergers in other area but these were financially not viable and the schemes were abandoned, we are now having to upscale to meet the requirements with no guarantee that we will get the contract."
- 5.2. 13 (19% of 67) were because of uncertainty over the size of the contract. Specifically, these respondents commented:
 - 5.2.1. "Conclusion of parties was that the exposure to professional liabilities/financial risks was too great and no lender would provide funding (it's akin to backing someone to play The National Lottery!)"
 - 5.2.2. "Huge costs involved in merging together with economic impact of merger to address the required economies of scale in circumstances where the volume of work is uncertain/number of contracts unclear".
 - 5.2.3. "Thames Valley moved from 4 providers to 9. This meant that the [other?] firms would not have sufficient work from 1/9 of the work rather than 1/4".
 - 5.2.4. "The relevant procurement area is Dyfed Powys 2. Very large geographical area, very small population. Substantial challenges in travel times and costs."
 - 5.2.5. "Even with a merger recruitment was expected to be necessary."
 - 5.2.6. "Significant additional staff and overhead costs anticipated and the likely value and profit margin of the DPW contract was too uncertain to proceed."
 - 5.2.7. "There was so much uncertainty over the number of contracts and consequently size that it was impossible to budget for a merged entity and ultimately negotiations came to an end".
 - 5.2.8. "To merge without knowing the outcome of any proposed tender is potentially devastating. To scale up to tender for something you may not be awarded is an enormous risk that would result in irrevocable damage to a firm."
 - 5.2.9. "Work continues to fall off. There was insufficient Duty work to make the risks of merger worth while".
- 5.3. Other reasons for the failure include:
 - 5.3.1. "There was not enough time to do it after decision made by MOJ".
 - 5.3.2. "Too much uncertainty in the entire process."

- 5.3.3. "Took too much managerial time, distracted from client care, cost too much money".
- 5.3.4. "Uncertainty about the future, lack of necessary expertise".
- 5.3.5. "Uncertainty as to the LAA's ultimate contractual terms and criteria".
- 5.3.6. "Uncertainty as to whether the tender would go ahead".
- 5.3.7. "Uncertainty over contract numbers and financially non viable";
- 5.3.8. "Uncertainty over the size of the contract".
- 5.3.9. "With so much uncertainty in the sector and with profit margins being low or non-existent it was not worth the considerable risk".

Scaling up

- 6. 78 (14% of 538) of the respondents indicated their firm had attempted to "scale up". Only 15 of these (19% of 78) had reached their desired size. The obstacles to scaling up reported by the other 63 (81% of 78) include:

- 6.1. 58 (92% of 63) quoted financial obstacles, commenting:
 - 6.1.1. "Alone we cannot further finance more staff, the work load at present is having financial impacts on the rest of the firms departments as we are paying out wages for solicitors and admin staff that we currently do not really need."
 - 6.1.2. "Can't get funding for extra staff and resources to ensure a better bid".
 - 6.1.3. "cost of offices and additional staff".
 - 6.1.4. "Difficulty in securing business finance. Viability."
 - 6.1.5. "Geographic remit too large to cover on so little finance".
 - 6.1.6. "Having to consider opening offices and hiring additional staff, having to get offices more staff is costly".
 - 6.1.7. "In order to do so, we had to ensure there was a significant capital available at our disposal. The definition of a two tier contract is at best vague and at worse to wide. It is simply not financially viable expending money for a two tier contract if the Court of Appeal halts the process at a later stage."
 - 6.1.8. "Legal aid cut backs and diminishing work. We are duty solicitors on two schemes. There is no longer the work available. To recruit more duty solicitors is financial suicide -

- especially as further pay cuts are coming in. Doing publicly funded criminal defence work is no longer sustainable. We hear regularly of redundancies of long-serving criminal defence lawyers who just wanted a career in helping disadvantaged members of our society and believed all of the lies of Carter and Government. Its heart breaking.”
- 6.1.9. “Not possible to get bank funding: bank nervous about future of solicitors firms doing legal aid work”.
 - 6.1.10. “Obtaining bank finance”.
 - 6.1.11. “Lack of certainty regarding quantity of work and income stream to cover the cost of borrowings.”
 - 6.1.12. “Without financial certainty it is unrealistic to contemplate any type of merger. All costs would be lost if a contract was not secured”.
 - 6.1.13. “The 8.75 % reduction in fees already introduced has hampered attempts to upscale by increasing the number of duty solicitors through cash flow. The proposed further cuts later this year have made it impossible to secure any lending to perform the same task. The whole operation has been a farce from a business planning point of view.”
 - 6.1.14. “The cost of recruiting has exceeded the revenue the fee earners have generated so now I am downsizing ie. the people recruited have now all left.”
 - 6.1.15. “The cost to scale up in the time provided and to the extent required makes the task and objectives of the consultation a pure paper exercise”.
 - 6.1.16. “The costs of employment outstrip the contract worth”.
 - 6.1.17. “The current rates make it difficult for us to invest resources. The proposed changes would make it impossible. We have therefore delayed any plans because it would not be possible to work under the MOJ proposals”.
 - 6.1.18. “The rates of pay and the linked uncertainty means up scaling is not viable”.
 - 6.1.19. “Too much risk to merge and not be awarded a contract. Secondly we are a multi disciplinary practice and many other firms are crime only and this presents it's own problems”.
 - 6.1.20. “Can't assess workload at present “.
 - 6.1.21. “Can't assess how many staff needed”.
 - 6.1.22. “Can't take on new staff until situation clarified”.

- 6.1.23. "Staff not willing to come as matter uncertain".
- 6.1.24. "Volume dropping means insufficient funds to upscale".
- 6.1.25. "We cannot afford to speculate to accumulate. We do not believe at this time that the accumulation will be as stated by the MOJ. It simply does not make sense in our proposed procurement area."
- 6.1.26. "We cannot afford to take on new staff due to the uncertainty of the market and potential outcome of the bid."
- 6.1.27. "We could not expand quickly enough."
- 6.1.28. "we have been unable to secure funding for extra staff /resources to support expansion when the viability of the contract is so uncertain ."
- 6.1.29. "We initially recruited 4 new duty solicitors however there was not sufficient work and we had to make redundancies within a few months. Furthermore it is difficult to anticipate what size we need to be to be awarded a duty provider contract in our area."
- 6.1.30. "The duty work from the duty schemes is very unpredictable, sometimes we pick up only a few cases a months even though we currently have 10 duty solicitors."
- 6.1.31. "Why take on extra staff now, just to make them redundant if we don't secure a contract, or the tender doesn't end up going ahead, we can't afford the luxury of having staff doing nothing. The Labour Party will scrap the tender if elected we have already spent weeks of fee earning time on consultation responses over the last 2 years, I won't even commit to buying a new photocopier when I don't know whether I will be forced to close in September if I fail to secure a contract, please just leave us alone to adapt to market conditions without the sword of Damocles over our heads."
- 6.1.32. "You require money to attract new people. In addition as the 8.75% cut is already in place would have to grow against a background of reducing funds for the same work."
- 6.1.33. "The basis of the two tiered contract is flawed and you cannot grow on the basis that it is reversible. Growth cannot be undone without costs and hardship to someone."
- 6.1.34. "It is difficult to grow a business even in a growing market it is almost impossible in a shrinking market were less people are arrested and charged due to cuts in other part of the justice system."

- 6.1.35. "Also it is anti competition to prevent smaller firms from competing in this sector just because they are the wrong size."
 - 6.1.36. "You cannot change a system that has been built up based on duty solicitors being employed to attract funding as done per head to suddenly basing the granting of contracts on size and capacity at this stage. It is hugely prejudicial to smaller practises which are surviving the cuts already imposed."
 - 6.1.37. "The fact that there is a two tier proposal has been prejudicial to firms of our size as it has actually prevented us from growing because people aren't moving firms as they do not know where to move for the best."
- 6.2. Other reasons for the failure scale up include:
- 6.2.1. "Can only go so far if uncertain as to getting a contract".
 - 6.2.2. "Financial identification of personnel professional and regulatory".
 - 6.2.3. "Finding people to commit to contracts of intended employment changing the nature of their existing relationship with our firm".
 - 6.2.4. "Locating staff with a following to take to reduce the financial risk, and a firm that is prepared to give up its crime contract, bearing in mind the uncertainties".
 - 6.2.5. "Suitability of firms, size of contract area and no firms willing to engage in the expense and mergers required".
 - 6.2.6. "Time and logistics".
 - 6.2.7. "Time and willing partners".
 - 6.2.8. "Time scale and finance".

Delivery Partnerships

- 7. 322 (62% of 538) respondents indicated that they had explored the possibility of entering in to a delivery partnership within the last 24 months. 257 (80% of 322) of these were "unsuccessful".
 - 7.1. 92 (36% of 257) quoted "financial viability" as the main obstacle, specifically commenting:
 - 7.1.1. "Risks of the lead supplier failing".
 - 7.1.2. "Risks to delivery partners failing and uncertainty how the lead contractor would cope".

- 7.1.3. "Volume of Duty work too small when spread between 4 firms".
- 7.1.4. "There a few firms in my area with any enthusiasm for applying for a lead contract and many have indicated they will not bid".
- 7.1.5. "Those that are prepared to consider entering into a delivery partnership have indicated that they would wish to take a percentage of the fees from delivery partners to cover administration costs. With the proposed cuts any further reduction in fees makes it unviable".
- 7.1.6. "A waste of time as gives no real savings. Positive decision made not to bother."
- 7.1.7. "Actually both insufficient time and financial viability, uncertainty over contract size is also a nightmare."
- 7.1.8. "Administration and supervision costs very high. The level of supervision to maintain quality is difficult to ascertain. Unable to reach a satisfactory division of costs to proceed."
- 7.1.9. "All three apply but mainly financial aspect and timing and uncertainty Otis essential for injunction to continue in force".
- 7.1.10. "As a partner I had little control over financial income and control".
- 7.1.11. "The delivery partnership model combined with the absurd procurement area meant it was not viable."
- 7.1.12. "Considering potential value of the contract, it simply was not financially viable on the return which would be anticipated and is also not guaranteed, especially with falling work rates. Practically speaking it is also severely problematic in terms of the main firm (AO) holding the retainer and ultimate responsibility for a file which would be run by another firm."
- 7.1.13. "Contract size in West Yorkshire is not conducive to entering into a delivery partnership arrangement but geographically it is not financially viable to for the firm to serve such a large area."
- 7.1.14. "Delivery partners have no control over the continuation of cases they commence, as legal aid remains with the contractor. The contractor has responsibility for allocation, file review, performance and all administration which will inevitably be charged for, further reducing the already stupidly low fee. The only reason for doing duty work, other than the love of it, is to pick up cases and undertake the work thus generated. A delivery partner will effectively only carry out the uneconomic work at commencement, and any scraps the

contractor does not want. Such elements are not viable in isolation.”

- 7.1.15. “The responsibilities of the contractor are onerous in the extreme, with no way out in the event the contract proves unworkable as it almost certainly will. The cost in administration is not acceptable given the level of fees generated, which will not be compensated for by volume as the increased volume, if achieved will only increase the staffing required to run the contract. Neither position, contractor or delivery partner, can be made to work at a profit.”
- 7.1.16. “Far too onerous requirements in the proposed contract as regards supervision of and responsibility for the delivery partner”.
- 7.1.17. “For me to enter into a DP or to bid for a duty contract as a whole it would mean reducing the amount of work I currently expect to receive from the DS scheme and having to employ more staff to cover a greater geographical area. It is a falsehood that it means more work at slightly less rates but without the need to increase turnover. A contract for my firm means less money coming and more going out just to comply.”
- 7.1.18. “Given the cut in funding we have already had I could not see that any further cuts would be tenable. Indeed given the impact of the current fee levels there would be insufficient "fat" to cover the cost of administration necessary for a delivery partnership.”
- 7.1.19. “Given the extremely vague estimation of likely contract value, and given the general downturn in criminal work, it is clearly not financially viable to divide up the contract between businesses. Viability is already difficult but with clear uncertainty over what the business is likely to receive from the contract, it is impossible to engage with potential Delivery partners with all the add on problems that exist as a result.”
- 7.1.20. “It is being caught between a rock and a hard place, a Delivery Partner would make any bid more palatable to the determining body but if granted a contract the businesses could not actually see any profit because of the limited financial benefit. So we all go out of business as a result!”
- 7.1.21. “Having considered the financial aspects of the duty solicitor contract it was simply not viable. It would be commercial suicide to contemplate the contract for a firm of our size.”
- 7.1.22. “I am not sure the proposed duty contracts are financially viable and am concerned that committing to something I feel is financially flawed is not in the best interests of my firm.”

- 7.1.23. "I have been approached by several firms to head a bid with their firms as delivery partners. I have been approached because my firm is - in numbers - near the top of the pecking order for local 'lower' work in the relevant area and we are 'lean' (we made a loss in our last accounting year) but no firm we spoke to was so confident about the outcome as to commit to disposing of support staff. Several negotiations were with firms we discussed also 'merger' with but under the rules 'merger' does not seem to be an option so, de facto, it was 'take over' to comply with the ridiculously rigid bid rules and those we spoke to were reluctant to discuss loss of sovereignty when the future is so uncertain and when the job for most 'duty solicitors' outside a successful duty bidder to go to."
- 7.1.24. "The MoJ has so screwed up its approach there is nowhere for a 'consolidated' principal to take refuge still within the profession."
- 7.1.25. "I have no idea how big the contract will be, what it will be for or how many people I am going to need to service it. I cannot afford to get in consultants to sort this out for me and no bank will lend money to scale up to meet contract demand or offices etc. without first knowing what the expected returns are likely to be. There is no way of knowing what each contract is actually going to be worth."
- 7.1.26. "Impossible to add the figures up to make a profit. Impossible to deal with the tax implications of Work in Progress or the 60/40 split which if broken would be breach of contract. In order to do so, we had to ensure there was a significant capital available at our disposal. The definition of a two tier contract is at best vague and at worse to wide. It is simply not financially viable expending money for a two tier contract if the Court of Appeal halts the process at a later stage. In addition there is the issue as to how much each firm will expend, which can not be in equals given the differing sizes of the firm. How the work will be reviewed, monitored, audited and regulated both internally and by the SRA. Uncertainty, uncertainty and more uncertainty."
- 7.1.27. "Insufficient income per firm in our area".
- 7.1.28. "Is it worth it for what we may get back-too many proposals in pipeline to predict volume of work and thus the size of the contract - size is based on outdated figures not figures going forward".
- 7.1.29. "Issues over confidentiality, complaints management and delivery".

- 7.1.30. "It is sheer madness for us to cover the area that the contract requires. My firm covers about 30% of a medium sized city with a longstanding own client base. To bid for a contract means entering into a delivery partnership with a firm 20 and 40 miles away respectively in order to 'gain' 8% of duty work."
- 7.1.31. "It will be difficult enough to ensure the Criminal department is sustainable without taking on additional administrative burdens if we were the Lead Partner."
- 7.1.32. "We would not wish to lose the control of the work flow if we were not the lead".
- 7.1.33. "It's a contract that has no regard for the geographical issues of the procurement area. It's a suicidal option that would be entered in to only by the desperate."
- 7.1.34. "Neither were satisfied that the procurement by the MoJ offered any financial stability to deliver on an unknown venture. Plus the timeframe for due diligence was unachievable".
- 7.1.35. "Not cost effective".
- 7.1.36. "On examination, the financial risks of entering in to a delivery partnership far exceeded any potential gains. It became obvious that entering in to such an arrangement at best would be financial suicide for the firm. At worst, it would lead to breach of our SRA obligations."
- 7.1.37. "Our COFA is currently refusing to sign off on the delivery plan. Our sole duty solicitor has been off with a bad back, there are real concerns the crime department could drag the whole firm down if that happened again."
- 7.1.38. "Risks of undertaking such a contract appear to outweigh the benefits."
- 7.1.39. "COLP and COFA issues abundantly need addressing. Not a straight forward exercise."
- 7.1.40. "It is not financially viable in Cornwall for the contracts to work and certainly not on the figures for contract value plucked out of the air by the MoJ. They cannot determine who will need help in the future and therefore the contract value is meaningless. Larger Firms in this area have no chance of succeeding unless their other departments are willing to carry the loss. Why are they going to do that?"
- 7.1.41. "The cost of delivery and scaling up is prohibitive with reference to the value of the contract and the reducing value and volume of work in the criminal justice system. The investment in time, infrastructure and IT is too much. The

- delivery partner model that we have tried to develop is rife with problems. These include IT compatibility; supervisory difficulties; continuity of delivery of the service. Further insurers have indicated an unwillingness to insure for the actions of delivery partners with reference to the liability of the lead contractor to the public; and will not indemnify as between delivery partners in relation to liabilities arising from failures to meet service level agreements between each other and the legal aid agency.”
- 7.1.42. “The costs and complexity involved in drafting Delivery Partner contracts/agreements combined with the uncertainties as to whether to proceed is financially viable”.
 - 7.1.43. “The existing cuts and further proposed cuts do not make this area of work viable on a large scale. A firm needs to be able to react quickly to a changing market and a large organisation cannot do that. Equally no firm can collate a sensible business plan without knowing what any contract may be worth. The government can not even say what the continued work load will be!”
 - 7.1.44. “The extra tier of management necessary to satisfy contract requirements would add a significant cost to the firm. Extra offices would be needed, further cost. Even with the number of bodies from three firms we would be stretched to cover all courts and police stations”.
 - 7.1.45. “The lead bidder felt unable to commit or assume that role given the unilateral nature of the contract. The non criminal partners were not prepared to accept the level of financial risk given the confirmation by the criminal departments that no guarantees of work can be given by the LAA.”
 - 7.1.46. “The level of commitment required to a contract with very unfavourable escape provision in the event of non viability. This involves too much personal financial exposure. “
 - 7.1.47. “This is combined with the potential further cut to fees to a level which does not permit an adequate job to be done on most cases, and leaves a profit level which is not commensurate with the financial risk. Main contractor can only take 3 delivery partners, so unless a firm is one of the 3 largest potential delivery partners, delivery partnership is not sustainable.”
 - 7.1.48. “The mechanisms and expense required to work as a delivery partnership mean that the contract has no certainty of profitability, when it is uncertain anyway”.
 - 7.1.49. “The practicalities in London are impossible ie. PII”.

- 7.1.50. "The proposed contract is so onerous and the profit margin so slim no one is prepared to sign as main contractor for fear of the repercussions of any breach of contract should it prove unviable".
- 7.1.51. "The risk of forming a delivery partnership with another firm where we would undoubtedly be the lead partner carrying all responsibility and risk and with whom we have no previous business/ commercial history is just too great."
- 7.1.52. "The size of the procurement area, ie South Wales, makes any analysis of financial viability effectively an exercise in guesswork and speculation."
- 7.1.53. "The same applies to the contract size as there is no guarantee of volume or type of work."
- 7.1.54. "The actual tender process is frankly ridiculous and appears to have been quite deliberately prepared to be obstructive, overly complex and contradictory."
- 7.1.55. "There is a real concern as to the amount of bureaucracy involved in a delivery partnership with supervision and reconciliation meetings. This encompasses the uncertainty over what is required and therefore the costs involved in delivering the contract work under a delivery partnership."
- 7.1.56. "There is considerable concern within the firm that the likely return that a Duty Contract would deliver would not justify the investment in terms of both time and resources."
- 7.1.57. "We would have to consider very carefully if our COLP could legitimately certify that this the submission of a bid would not adversely affect the viability of the firm, were the bid to be accepted."
- 7.1.58. "There is uncertainty throughout the criminal justice system. The number of clients is falling and fees are being cut. We cannot be sure that we can sustain a business in the area of criminal legal aid work and as a result we cannot commit to a delivery partnership."
- 7.1.59. "They are legally and financially unviable".
- 7.1.60. "This 2 tier system is not financially viable in Dorset and this firm will not apply for a duty contract even though we are the biggest supplier of Police station advice in Dorset".
- 7.1.61. "Too many variables exist to reach an agreement acceptable to all parties".
- 7.1.62. "Unable to determine costs of supervision, management and administration, particularly due to IT investment required

- which prevented agreement being reached. It is also very debatable that the contract figures are actually accurate as we feel that they are about a third higher than the reality.”
- 7.1.63. “Uncertainty as to lending.”
- 7.1.64. “We are a multi-disciplinary firm. We consider that by engaging in a delivery partnership we would place ourselves at significant risk of breaching our obligations to the SRA in terms of financial stewardship and legal compliance.”
- 7.1.65. “We further believe that the one-sided nature of the proposed contract (which imposes significant obligations upon the lead-contractor, and which cannot be exited) is unfair. And that any firm which enters into the contract will do so only as a measure of last resort, and through hope rather than for reasons of legitimate business planning.”
- 7.1.66. “We are in the West Midlands. It is a huge area. We are in the Black Country and have no desire to be stuck on the M6 for an hour going to Coventry. To make it work, one would need a firm in Birmingham, Coventry and the Black Country. Experienced practitioners do not believe that the figures stack up or that the work is financially viable. Furthermore, with more legal aid cuts the work is no longer attractive. There are also important problems - like mini bombs waiting to go off - with these business models eg. one member goes out of business, payment of SMPs and uncertainty over contract size.”
- 7.1.67. “We are reluctant to work with people we do not really know. The proposed system is open to abuse - we feel that we could be exploited.”
- 7.1.68. “We can't see how these contracts will work. I can't take the risk of being a provider because I lack the skill set and knowledge on how to become one. I don't have sufficient profit left in the business after years of legal aid to hire in an employed member of staff to do it for me, and can't afford to hire in consultants same reason.”
- 7.1.69. “I am too busy dealing with my client list and fire fighting problems caused by the MoJ daily (legal aid means test; late prisoners; CPS on its knees and refusing to prepare its cases timely; court office ditto) to allow time to prepare as a contractor.”
- 7.1.70. “There is no way that I am going to take the risk of hiring in delivery partners given the governments track record of contracts in this sector. Five-year contracts? Huh. Fixed rates? Huh again.”

- 7.1.71. "I have considered becoming a delivery partner, but I am too small a supplier to interest anyone who is a main contractor. I have downsized to suit the income and cut overheads, resulting in a small compact cheap office but one that no one else wants to have as a supplier."
- 7.1.72. "We did not feel that the firm we would have liked to form a partnership with was, on closer inspection, as financially sound as we would have hoped".
- 7.1.73. "We had very informal talks with two other firms within the region however the administrative costs and risks of liability to the Lead Provider meant no-one wished to be lead - indeed we all concluded that none of our 3 firms could in fact fulfil the criteria of a Lead Provider. Even being a delivery partner was unattractive since there would be administrative costs to pay to the Lead Provider which could not be absorbed alongside the current cuts and the proposed cuts. It was very quickly discounted as an option for any of the parties".
- 7.1.74. "We need to form viable entities with others when the key ingredient is trust between you and your delivery partner. These are strategic long term plans that the MoJ has put forward as a possible option when the commercial reality of the situation is far removed from this."
- 7.1.75. "There is no support or solution for one delivery partner if they decide to leave the agreement."
- 7.1.76. "The time frame is far too tight and the issues of costs are often left to individual firms to muddle through."
- 7.2. 82 (32% of 257) complained there was "insufficient time":
 - 7.2.1. "Again, everyone is reluctant to form agreements which ultimately will have little chance of success."
 - 7.2.2. "It is a huge risk. Liability for any failure to deliver due to the sudden lack of solicitors is also worrying."
 - 7.2.3. "We do not think the MOJ is aware of the huge impact the cuts and proposals have already had. Solicitors are leaving or planning to leave, in droves!"
 - 7.2.4. "Although the issue of dual contracts was mooted the specifics weren't known until the tender was opened. We could only guess the levels of business across the county and couldn't make a proper assessment until sample rotas were released. We also found other firms weren't wanting to go any further than initial discussions until they had more detail about the contract. For example how many partners you could have and to do what proportion of work".

- 7.2.5. "At the time of informal discussion we could not know how the rota would work - key to resolving staffing issues. The list on out are of west Yorkshire contain ones inaccuracies."
- 7.2.6. "I have been concerned over my supervisory and financial responsibilities and liabilities of 3ps and have no opportunity to do any form of proper due diligence".
- 7.2.7. "I cannot do financial model without knowing likely volumes and more important the price we will be paid".
- 7.2.8. "Combined with the considerable uncertainty which results from these proposals".
- 7.2.9. "Detailed discussions were impossible with proposed delivery partners to consider the form of the delivery partnership moving forward".
- 7.2.10. "Further the issues of financial viability further compounded the matter".
- 7.2.11. "First considerations changed when the initial procurement areas changed (from all of Sussex to Sussex 1 & 2). Second attempt faltered when criteria released which made proposals unviable, firms would have had to scale down greatly. Third proposal still on the table but we have not had time to conduct thorough due diligence and one of the proposed delivery partners has had financial difficulties and may not be able to remain in the partnership."
- 7.2.12. "The criteria should have been announced many months (a year) before the deadline for own client contracts so that mergers and takeovers could have been adequately and professionally considered and completed."
- 7.2.13. "If the 2 tier contract comes in I will be forced to close. My turnover will no longer cover my fixed costs without duty work. I need time to ready myself for this catastrophic event which could lead to personal bankruptcy. There is no help available on my understanding for firms like mine who will be forced to withdraw from the market on loss of duty work. I have taken a weekend night shift job to attempt to pay off some of my debt to attempt to avoid bankruptcy should the firm close. However this is a very slow process and achieving a low enough level of debt - mostly owed to LAA - before closure will take me well over 18 months. The current time scale is far too short. In a nutshell it is inevitable that I will face bankruptcy if the current time scale is stuck to by MOJ. I have been a committed and dedicated defence practitioner doing all my own call outs for 27 years now. Bankruptcy, striking off and probable loss of my house will be my reward."

- 7.2.14. “In order to discuss how to split the work, how to supervise the work. How to let clients know who and which firm will conduct the work all take a lengthy period of negotiations. This is simply not possible within the period given by the MOJ.”
- 7.2.15. “In order to do so, we had to ensure there was a significant capital available at our disposal. The definition of a two tier contract is at best vague and at worse to wide. It is simply not financially viable expending money for a two tier contract if the Court of Appeal halts the process at a later stage. In addition there is the issue as to how much each firm will expend, which can not be in equals given the differing sizes of the firm. How the work will be reviewed, monitored, audited and regulated both internally and by the SRA. Uncertainty, Uncertainty and more Uncertainty.”
- 7.2.16. “In order to obtain a contract, having now been provided with the final contract sizes in relation to my procurement area I have determined that I would be unlikely to obtain a Duty contract in my own right. Consortium is the only method available at this stage. A Delivery Partnership is arguably unworkable. There are particular problems in relation to the regulatory regime. There are very real problems in relation to indemnity insurance and any negligence by the delivery partner. Tax and work and progress is a major issue. The supervisory aspects are unsatisfactory ie. the lead contractor’s responsibility to supervise the delivery partner. The managerial aspects are time consuming and may be unworkable. These are only a few examples.”
- 7.2.17. “I have instructed an legal expert in consortia law to draft an consortia agreement but the expense is prohibitive and the process of drafting is very time consuming. I have received negative advice in relation to entering into consortia because of the nature of the LAA tender model, which places all the financial risk on the main contractor. Conversely the delivery partner has no security of contract, as in essence they are a glorified agent.”
- 7.2.18. “Ideally I would prefer entering into a joint venture - but there is simply insufficient time to arrange a joint venture. I have taken advice on forming a joint venture several months ago. The advice I have received is that it would take at least 8-12 months. We have considered merger in the past and the process was a very lengthy one.”
- 7.2.19. “The time scale is simply too short. We could not commence any advanced planning because we were unsure of the contract sizes for many months. Our firm is a mixed practice, the criminal department is the largest department (although obviously we could not survive without a duty contract) and

therefore we must be very cautious when entering into a financial arrangement in accordance with SRA duties and COLP.”

- 7.2.20. “It has been difficult to ascertain exactly what a delivery partnership will entail. What kind of relationship it will be. Exactly what the responsibilities to be placed on the actual bidder etc. The IFA is particularly unhelpful and there is a lot of uncertainty surrounding the status of such an entity. The lord chancellor would seem to accept this is the case”.
- 7.2.21. “It is almost certain we could not stay afloat financially even with a contract under the present plans, but we have had no time to sort a delivery partnership as all aspects of the contract are so uncertain that it is simply impossible to agree terms”.
- 7.2.22. “It is an extremely long and complicated process in attempting to form a delivery partnership. Most of the questions which were required to be answered were only touched upon on the Q&A which was published shortly before the tender process was suspended. There are still many points which have been left unanswered. To ensure that a reliable delivery partnership is put in place, both firms coming to an agreement must ensure that processes are in place to satisfy the requirements which have been imposed. In some instances delivery partners will have to split their companies in half - to continue providing a service for own clients and also being able to provide a service to the firm to which they are a delivery partner. It is complex and cannot be rushed through. A great deal of time and therefore money must be dedicated to this process so that it is done properly”.
- 7.2.23. “It is clear from the Tender process that the delivery partnership option is far too restrictive and makes no economic or indeed business sense.”
- 7.2.24. “It is unconscionable to expect a commercial enterprise to properly engage in due diligence required within a 9 week window. It is insufficient to say that we knew what sort of thing was on the horizon as MOJ did not announce the contract until the tender was launched in November 2014. Many early discussions were held around potential delivery partnerships however these were thwarted by the absence of knowledge as to what the eventual beast would look like.”
- 7.2.25. “The timescale allowed has proven to be prohibitive in terms of 1) the conduct of due diligence 2) engaging with the insurance market with regard to PII and 3) in the absence of any guidance from the SRA there are grave concerns as to the proper discharge of COLP and COFA duties.”

- 7.2.26. "Delivery partnerships can only be entered into negligently within the scant time frame allowed."
- 7.2.27. "Ludicrous amount of data to consider and to make a decision in such time constraints".
- 7.2.28. "Multiple efforts made to identify partners and significant time and money spent exploring multiple opportunities to no avail. We are currently in early negotiations with yet another firm at considerable personal expense in time and travel".
- 7.2.29. "Need long term figures and to undertake proper due diligence. Not able to negotiate acceptable contract terms between firms in short space of time. One firm large but relatively new without strong following. Other firm smaller but second generation partners have extensive client base."
- 7.2.30. "Need more time to consider all issues in entering into delivery partnership. Not least will need to draft a partnership agreement covering all aspects required which will satisfy LAA, SRA, PII, and of course potential delivery partner."
- 7.2.31. "Negotiations of this kind are delicate and we have found possible partners reluctant to enter detailed negotiations while the judicial review decision was pending."
- 7.2.32. "Negotiations/approaches have been made but time is needed to: ascertain how the partnership can be delivered if contracts are not awarded in all bid areas, whether to bid also as a DWP with the larger firm as delivery partner - how practical/realistic that might be, how indemnity would cover the arrangement, the drafting of the Delivery partnership agreement and, most importantly, the fact that the larger partner holds the cards because the process is weighted in their favour and appears to be talking in similar terms to a number of other, differently sized firms. Uncertainty over award of all or some contracts creates massive difficulty in making any sensible commercial arrangement or planning for staff/investment etc"
- 7.2.33. "Not enough time to approach other firms and reach a agreement on the who is going to be the lead firm. Not sure if we are going to be able to trust the lead firm if we are going to be a secondary supplier."
- 7.2.34. "Since the initial consultation over 2 years ago the sand has continued to shift, the statistical information provided by the MoJ has been scant and eventually the panacea suggested by the MoJ of gaining a duty contract are false as the volumes are not as great as initially described. Therefore it makes little sense to form a Delivery Partnership. In any event it was not clear until the tender opened how a Delivery Partner would assist the application. In fact it does not as the lead partner

- would need to be of sufficient size and structure to be successful.”
- 7.2.35. “Systems integration, both physical and technical, take time. Bearing in mind that we might not succeed, it would be foolish to commit finances and time to begin this. Once contracts are awarded, integration can start.”
- 7.2.36. “The capital outlay at this stage will be considerable. Perversely it will impact on the viability of the firm more than the fee cuts.”
- 7.2.37. “Taking responsibility for other firms is a huge step”
- 7.2.38. “The contract ignores the complexity of providing a service over a large geographic area with different delivery needs and volumes in different places. The arrangements would mean one firm dependant upon another where there was an entirely disproportionate split of work.”
- 7.2.39. “In the end we realised that the economics of the area as a whole made the partnership difficult to arrange and we could not agree in the time available which firm should take the lead as we are both of similar size in terms of criminal law departments.”
- 7.2.40. “There just isn't enough time to arrange such a complex business arrangement and to fully be alert to the long term consequences and the impact upon our business as a whole where the crime department is just one part of our large practice.”
- 7.2.41. “The detailed tender documentation was only published on 27.11.14, with an 8 week window. We looked at the possibility of a DP but they are untried and untested and fraught with difficulties. Our professional advisors told us to avoid them like the plague.”
- 7.2.42. “The negotiation of this kind of partnership is very complicated and sensitive. To come to terms may well take up to 12 months. The proposed period is woefully inadequate”.
- 7.2.43. “The process of going into this sort of partnership takes time. While it is not a merger there are issues of integration, financial due diligence and uncertainty over the issue of indemnity insurance. There has not been sufficient help or clarity provided by the MOJ with regard to supporting this sort of structure. The final details of how delivery partnerships would work were not given until the tender actually opened, that meant much of the discussion we had were negated and new issues arose. If this is a route that the government thinks

- is not only viable but preferred, more time and guidance need to be provided.”
- 7.2.44. “The costs of going into delivery partnership properly would very high and we have not wanted to take on this cost unless absolutely necessary.”
- 7.2.45. “The requirements are too complicated to address in the short time that was allowed. This is in respect of who was to be the lead contractor and their obligations, the effect of any member within the partnership failing, how to apportion any fee income, liability issues and the limitation on the number permitted to form the partnership.”
- 7.2.46. “The size of the other identified practices may not result in the expertise, size or coverage requirements necessarily being met. There were issues relating to the administration of the delivery partnership, the financial viability of the process in relation to the costs of investigating and drawing up any agreements, and the issues involving allocation of work and clients beyond such agreement.”
- 7.2.47. “There has been insufficient time to properly deal with the application itself, never mind the prospect of doing so after protracted discussions with other providers at a time when new initiatives at court relating to speedy justice, legal aid application processing and the greater demands re progression of cases from the courts themselves, leave little opportunity to deal with the administrative side of this application.”
- 7.2.48. “The proposal itself appears flawed, unnecessary and unhelpful to the smooth running of the Criminal Justice System and it is impossible to accept that there would be any saving of expenditure either in the short or long term.”
- 7.2.49. “The suggested requirements under the new contract regarding supervision, funding, due diligence, contracts etc. are taking much longer than anticipated. The tender application process is over complicated and very time consuming in completing.”
- 7.2.50. “Banks need more time to consider the proposed arrangements before advancing borrowings.”
- 7.2.51. “The tendering requirements are quite complex and we require a lot of professional advice and manpower to adequately prepare responses and agreements for delivery partners”.
- 7.2.52. “The time scales are ludicrously short for any meaningful discussion”.

- 7.2.53. “The time scales provided by the MOJ time table have been consistently too short for anything than the most ad hoc and hurried agreements and procedures to be established, the MOJ time table creates the impression that they wish some or many of the new entities to fail or break up because of the shot-gun marriage nature of the process. If the MOJ wish to create a stable market they should allow a six month period for bids to be formulated and submitted, this might allow MOJ staff sufficient time to familiarize themselves with the requirements of the process so they are in a position to answer at least some of the questions put to them by potential bidders rather than none which is my experience. It is really quite disturbing to learn that we are governed by such a cavalier and incompetent regime it is small wonder that the health service suffers the failures that it does if this is the standard of ministerial competence across government.”
- 7.2.54. “The timescale is fanciful at best and quite frankly ludicrous. Any one with any experience of running a legal aid practice would understand the difficulties in trying to do all that is required in the time allotted. Some may even think the MOJ is setting deliberately impossible targets so as to get rid of the efficient private practices and leave only PDS or other lapdogs who won't hold the MOJ to account for its outrageous behaviour.”
- 7.2.55. “The uncertainty of the tender. The tendering is complex and time consuming [without knowing] whether a DP is in secret talks with other firms”
- 7.2.56. “The whole process is being rushed without any due diligence to see if this system will work. Big firms [like] G4S and Serco do not have to scale up, consolidate, merge or partner with others as they are of a suitable size to go it alone. Most firms in crime are small high street firms who would fail as client care comes first rather than cost considerations. We are being asked to become a different entity in such a short time that there will be wide scale failure. As a small firm we have survived on the basis of a sound financial base with only small profits and no debts. This will be worse with cuts.”
- 7.2.57. “There is considerable uncertainty and we have placed matters on hold until outcome of JR”
- 7.2.58. “These things are much more complex than would at first appear. It is easy to wish for and to say but challenging to deliver due to regulatory issues such as confidentiality and logistical issues including compatibility of it. There are many more obstacles.”

- 7.2.59. "This is an entirely new concept which has been advanced with little opportunity for us to understand all of the implications"
- 7.2.60. "Timely exercise to have up to date accounts produced for all firms, extra costs if not year end. Need several meetings of partners and difficult to find available time when one or more not on call together with geographical difficulties. All office manuals, standard letters, compliance officers to correspond for all firms involved. Enquiries regarding insurances, complaints for lead bidder. Procedures to put into place for supervising delivery partners again visits to offices taking solicitor away from busy schedule, difficult in short time frame. Delivery agreements need drafting and amending and again meetings to discuss etc etc".
- 7.2.61. "To form a Delivery Partnership requires significant investment in time and also professional advice from other lawyers within the firm and accountants. The time to form this DP must be done whilst running a business and small and medium size firms can't simply take a week or two off from fee-earning work to concentrate on this, neither do such businesses have a team or department who can devote their time to the matter. 9 weeks is far too little time, especially when the approval of banks may well be needed for the new enterprise to be viable."
- 7.2.62. "Too busy trying to make enough money to keep providing services on a decreasing return."
- 7.2.63. "Too complicated and firms are yet to formulate as to how to bid. DP will still involve many of the obstacles that firms face when merging - due diligence / capital (funding) / workforce allocation / division of work etc".
- 7.2.64. "Too many issues about control/profit sharing and responsibility to agree without any certainty of the bid being successful and the amount/value of the work"
- 7.2.65. "Uncertainty as to whether a contract and its size is part of the reason but also there isn't enough time. Cuts are already in and therefore to stay a same profit level need to rise by at least 8.75%. That is a huge increase in case numbers."
- 7.2.66. "Also to grow if not already large is almost impossible in the timescales but also it is impossible against all the cuts as that is a force that generally fragments a market. Especially if there are no economies of scale."
- 7.2.67. "Uncertainty over the future of the tender"

- 7.2.68. “We are a relatively large practice in a major city. We went through a merger in 2009 which was 2 years in the planning. To identify, negotiate with and set up systems with delivery partners in such a short space of time where there are clearly insufficient finances is quite frankly ludicrous. The terms of the contract with LAA would make a lead partner liable for shortcomings of delivery partner which is extremely onerous especially when the arrangements would by necessity be rushed.”
- 7.2.69. “We did not understand the nature of the relationship until the FAQ were released and even then the nature is unclear. Uncertainty prevents the reasonably significant spending (legal documents, IT alignment) that is the minimum requirements for potentially making it work.”
- 7.2.70. “We didn't have enough information about the requirements until the publication of the tender and the various requirements together with the difficult contract issues via a vis the relationship between firms are impossible to resolve in the artificially truncated period allowed to us. Additionally, the cuts and reduction in work mean that the inevitable expense and time involved in such preparation are not things which we would expend unless we had to as we are far from convinced that in the normal market circumstances it would be of benefit to either party.”
- 7.2.71. “We have had preliminary talks but this is such an enormous step and the potential consequences so long reaching and serious it needs a good deal of time probably 12 months to put into place”
- 7.3. 43 (17% of 257) complained of uncertainty of contract size:
- 7.3.1. “Anticipating volume increase and with it the staffing levels required is proving virtually impossible in the current climate and with the data available. Too small as a joint venture and you risk contract rejection: too large and you risk rapid bankruptcy - at least for those businesses whose overwhelming activity is criminal defence work (the specialists) - those who can move lowly paid paralegals around various departments as and when the need arises are of course much better positioned.”
- 7.3.2. “Firms who over the years have developed their own cultures and differing delivery methods (all welcomed by the LSC who simply fed off the ideas) do not need this uncertainty as they tentatively put their toes into, and then out of, the dangerous waters that are DPs.”
- 7.3.3. “Time and money are equally significant obstacles. We fear a removal of the injunction before a decision on the Appeal will

- result in market panic, forced marriages and predictable disasters. The uncertainty has lasted months, with many simply wanting it all to go away. Once the uncertainty has been removed it needs at least four months for most firms to manoeuvre into a position to make sustainable proposals.”
- 7.3.4. “Clear uncertainty of the size of the contract to be awarded and whether the delivery partnership would be able to meet the demands.”
 - 7.3.5. “Difficult to plan and commit resources when outcome so uncertain and further cuts planned. Running faster to keep up as is and big is not always better or more economic for us or the criminal justice system”.
 - 7.3.6. “Difficult to predict how many employees would be needed.”
 - 7.3.7. “Cannot be certain of volumes of work .”
 - 7.3.8. “Cannot commit to mergers in the absence of better details”.
 - 7.3.9. “Due to uncertainty over contract size and award of contract we are unable to determine financial viability.”
 - 7.3.10. “General uncertainty about the whole duty contract proposals. Frankly nobody wants to commit to a scheme which is destined to fail. There has been insufficient time to consider the realities of delivery partnership. There little if any incentive to be a delivery partner and even less to be a duty provider.”
 - 7.3.11. “Insufficient information disclosed by MOJ. Long delays in disclosure and very piecemeal. Figures don't add up at all. No information about funding available. No information about delivery partnerships and how they can work in practice. Never been tested and fraught with issues re liability, confidentiality etc. The report from KPMG is not based upon any reality in practice that I've seen. Simply not workable. The uncertainty about contract size means no realistic business plan is possible. Cannot approach the banks and some areas such as West Midlands are just not economically viable. Not able to predict future adequately with court closures and changes to police custody suites. The suggestion that demand remains the same is quite simply absurd...cuts to the police and CPS have resulted in lower charge rates. The prosecution of crime is diminishing not crime itself!”
 - 7.3.12. “It is an unworkable model, insurance is uncertain, impossible for COFA to sign off, insufficient profit to merit risk to all involved.”

- 7.3.13. "It is difficult to tell at this stage how much more work the new contract would entail as the guidance provided is limited in this respect."
- 7.3.14. "It is impossible to get ready for something that you are not sure of. ie volume of work, prices, sustainability etc."
- 7.3.15. "No clarity as to what the contract size would be or whether it would be sustainable."
- 7.3.16. "Nothing was certain re work available and likely if a partnership formed would in fact be for less work than we were currently undertaking".
- 7.3.17. "Only considered because of government proposals and not really wanted".
- 7.3.18. "Financially not viable either and uncertainty as to payment per case or whether total figure per annum."
- 7.3.19. "The main provider was wanting too larger a slice of the pie!"
- 7.3.20. "There is no certainty in our area of the country regarding how many firms may tender, which in itself has prevented us from exploring any further than a partnership agreement with 2 other firms within the county."
- 7.3.21. "There is not certainty in contract size and therefore no certainty of income against salaries. There is also the issue of the lead delivery partner and the entire responsibility even if a delivery partner is the reason for the failure and not the lead."
- 7.3.22. "There were too many variables involved in working with a delivery partner. We were concerned about the unevenness of the contractual relationship and considered that there was too much uncertainty about the amount of new work required to ensure that the partnership worked successfully."
- 7.3.23. "We are unable to enter into an agreement with a delivery partner when the scale, volume & geographical area remains uncertain, & the arbitrary cap on the proportion of work that can be done by a delivery partner makes the scheme unworkable & cannot be accurately projected."

7.4. Other reasons quoted include:

- 7.4.1. "Admin and regulatory concerns - initial discussions only".
- 7.4.2. "The complex nature of this type of arrangement".
- 7.4.3. "Uncertainty: the other firm backed out at the last minute".

- 7.4.4. "Contractual Uncertainty... Terms are still draft, ambiguous and unworkable in current format."
- 7.4.5. "Control/Insurance".
- 7.4.6. "Delivery partner was similar in size and type to ours. Shortness of time to consider the nature of the partnerships as designed by the MOJ led to proposed delivery partner withdrawing when they and we realised implications of the obligations imposed. Merger may have been better but no time now. Proposed partner now not tendering for duty contract".
- 7.4.7. "Demise of one firm we were talking to and the other did a deal with a much larger regional firm."
- 7.4.8. "Disadvantages outweigh benefits".
- 7.4.9. "Indemnity insurance".
- 7.4.10. "Not a suitable vehicle".
- 7.4.11. "Proposed main contractor not willing to take the risk of losing the contract bid in the event of me ceasing business in the period between the time limit for submitting the bid and the start when the contract starts."
- 7.4.12. "Responsibility over something you have no control over."
- 7.4.13. "The law society meeting outlining all of the concerns in relation to the burdens on the applicant organisation. Too onerous hard to manage, WIP concerns, KIP indicators, can't get out of contract, management if contract. Ensuring app org has the majority of the work on a rolling period ... The list is endless".
- 7.4.14. "The main obstacle to a delivery partnership was the concern over risk. The proposed lead contractor was fearful of being held accountable for other firms financial position and vice versa."
- 7.4.15. "the whole concept of delivery partnership is fatally flawed- simply on detailed examination unworkable".
- 7.4.16. "There is insufficient time and information to create complex contractual requirements between a number of firms to try and comply with the rules."
- 7.4.17. "Too much uncertainty".
- 7.4.18. "Uncertainly about the nature of the relationship and feasibility."

- 7.4.19. "Uncertainty as to LAA's ultimate Contractual Terms & Criteria".
- 7.4.20. "Uncertainty over contract number, plus insurmountable problems in agreeing a workable agreement, and overcoming problems with PII".
- 7.4.21. "Uncertainty over contract size".
- 7.4.22. "Uncertainty over whether changes coming in or not".
- 7.4.23. "Uncertainty that any scheme will actually be implemented".
- 7.4.24. "Very difficult to have a proper relationship due to various uncertainties and a combination of viability and insufficient time - Inability to obtain funds".
- 7.4.25. "Very difficult to see it work for both parties".
- 7.4.26. "Waiting for decision from Court to see if scheme goes ahead."
- 7.4.27. "We are still trying but late changes to guidance from the LAA put things back by months".

Capitalisation

- 8. 40 (7% of 538) firms indicated they had attempted to borrow money to achieve the restructuring required to mount a successful bid. Only 5 (13% of 40) of these were successful. Of the remaining 35 (88% of 40):
 - 8.1. 33 (94% of 35) blamed Financial uncertainty, commenting:
 - 8.1.1. "5 banks approached. All refused".
 - 8.1.2. "Banks and other lenders not interested".
 - 8.1.3. "Funding offered but wanted family home mortgaged as guarantee".
 - 8.1.4. "Not willing to risk family homelessness until more information confirmed".
 - 8.1.5. "Have excellent credit record and firm currently profitable".
 - 8.1.6. "Have been with same bank and in past supportive yet bank doesn't like uncertainty any more than I do".
 - 8.1.7. "In order to do so, we had to ensure there was a significant capital available at our disposal. The definition of a two tier contract is at best vague and at worse to wide. It is simply not financially viable expending money for a two tier contract if

- the Court of Appeal halts the process at a later stage, lenders are worried that they may not see any returns.”
- 8.1.8. “It is quite evident that the high street banks have little or no appetite for the uncertainty surrounding the tender process, and the lack of profitability that may ensue.”
 - 8.1.9. “My firm has actually expanded because a large local firm has collapsed and I have taken on several staff on a sub-contract basis dependent of them bringing files (I am not mad) but my firm made a loss in its last audited accounts and despite a positive cashflow projection given the prospect of another 8.75% cut the bank managing advised she could not 'sell' the loan without me rejigging my loss making accounts to show a profit.”
 - 8.1.10. “My accountants advised me doing that was likely to invoke a further tax demand whereas I am due a tax rebate with which I could probably pay off the rest of my mortgage; given the Government's attitude I cannot think of a single reason why I should take that risk.”
 - 8.1.11. “Our bank and other banks are sceptical and required detailed cash flow forecasts which we cannot provide due to unknown work levels even if tender is accepted + with further rate reductions value of contract is even more uncertain”
 - 8.1.12. “Our Bankers, Barclays Bank have indicated to us that, although we have an excellent record with them over 20 years, they considered legal aid to be a high risk area and would require security such as a charge over the partners homes to secure any borrowing.”
 - 8.1.13. “The contract size and return is uncertain. Banks not prepared to loan against such uncertainty. They need time to consider new structures and conduct due diligence of delivery partnership arrangements.”
 - 8.1.14. “The banks are well aware of the historic reduction in publicly funded work (eg reductions in scope) and the reductions in rates experienced over recent years, as a result no further borrowings are possible without sufficient assets . No prudent business would entertain the contract as presently tendered without detailed in depth analysis. The financial arena is aware of the reports already submitted regarding the financial efficacy of the contract see Otterburn and KPMG reports with comments attached thereto. The firm COLP & COFA also are not in a position without substantially more information to support an application for borrowing.”
 - 8.1.15. “The uncertainty that the lenders will actually be repaid given the unworkability of the dual contracts. The banks seem to be

at loss as why the dual contract will work and how it actually effects the 'economies of scale'. They cant seem to understand why the MOJ is intervening and using the phrase 'too many providers chasing too little work', as to them, that is Economics 101. Firms who can not sustain themselves will stop the trade, so why introduce dual contracts.”

- 8.1.16. “There is a huge uncertainty that the lenders will actually be repaid given the unworkability of the dual contracts. The banks seem to be at loss as why the dual contract will work and how it actually effects the 'economies of scale'. They cant seem to understand why the MOJ is intervening and using the phrase 'too many providers chasing too little work', as to them, that is Economics 101. Firms who can not sustain themselves will stop the trade, so why introduce dual contracts.”
- 8.1.17. “To be fair we didn’t try to fund a merger or new contract, we just sought some general funding and we were refused everywhere we went as soon as we disclosed that we did criminal legal aid. In fact our own bank came to see us at their behest to make sure we were Ok”.
- 8.1.18. “What happens if you fail to get a contract”.
- 8.1.19. “With ever decreasing workload and payments we were far too much of a risk”.

Professional Indemnity Insurance

- 9. 31 (6% of 538) respondents indicated they had attempted to obtain PII for their new entity; only 13 (42% of 31) were successful. Of the 15 (48% of 31) that failed:
 - 9.1. 11 (73% of 15) cited financial viability as the main obstacle, commenting:
 - 9.1.1. “Currently the insurers are not willing to provide indemnity yet, due to the uncertainty of regulation by the SRA and uncertainty of the delivery mechanics between the 'merged' firms.”
 - 9.1.2. “Not willing to provide indemnity yet, due to the uncertainty of regulation by the SRA and uncertainty of the delivery mechanics between the 'merged' firms.”
 - 9.1.3. “The uncertainty of regulation by the SRA and uncertainty of the delivery mechanics between the 'merged' firms.”
 - 9.2. Other reasons stated were:
 - 9.2.1. “Insurers still unsure of how a DP will work, they were sent details of the definition of a DP from the LAA two months ago

and have still to respond to us, the impression is they don't know what they are dealing with!"

9.2.2. "My broker could not find an underwriter who would agree to cover a firm in a DP"

9.2.3. "Our brokers could not progress without a delivery partnership agreement in acceptable terms and that could not be resolved".

SRA Approval

10. 34 (6% of 538) respondents sought approval from the SRA for their new venture. Only 13 (38% of 34) were successful. Of the remaining 19 (56% of 34), 13 (68% of 19) complained that the exercise was expensive and cited the following reasons for failure:

10.1. "Not enough clarity within the time allowed as to the contractual arrangements for the new venture."

10.2. "The general uncertainty, in as much as this was not about a simple merger or consortia, but some uniquely and unnecessary complicated delivery partnership".

10.3. "The SRA sat on the fence. They can not make decisions based on hypothetical situations".

10.4. "There seems to be no answer from the SRA and the only advise from the SRA is to seek advise before doing so!".

10.5. "We had not finalised the Delivery Partnership and so couldn't proceed with this."

State of readiness

11. 399 (74% of 538) respondents indicated their firm anticipated having to expend time and / or money on scaling up / merging / forming delivery partnerships before the tender submission deadline. Of these:

11.1. 147 (37% of 399) said they would be "starting from scratch";

11.2. 240 (60% of 399) indicated that they had already started the process but "there is a lot of work yet to be done".

12. When asked whether the additional time the injunction had provided had proved useful:

12.1. 358 (67% of 538) said that it had;

12.2. 170 (32% of 538) said that it had not.

13. 86 respondents (16% of 538) quoted financial viability as the main obstacle to getting ready, commenting:

- 13.1. "There are insurmountable obstacles to the formation of delivery partnerships within time-scale set by the Government".
- 13.2. "The entire criminal defence sector is financially non-viable due to the cuts already imposed."
- 13.3. "As a sole practitioner I am simply unable to apply for a ""Duty"" contract due to size of my firm and area to be covered (rural area - Cumbria). If two tier contracts are introduced then my firm closes. It is as simple and as stark as that."
- 13.4. "I am in talks with a larger firm which does not have an office in my town, to merge."
- 13.5. "I hope that this will enable me to continue to practice for maybe another 12 months. I firmly believe that in Cumbria the contract size is simply not viable. In addition, at the same time, the Court is changing its sitting plan and introducing ""Transforming Summary Justice"". The overall effect is that people are tendering for a contract for Courts which are closing, for work that will be done many miles away in another town and I honestly cannot see that this will be viable for anyone."
- 13.6. "As stated above, there is too little work at too low a rate of pay to make a new contract viable. It is hard enough ready working on such small margins. As a firm owner I cannot sign a personal guarantee to get a contract I expect to fail. I can't risk the regulatory issues of failure so I am out I'm afraid".
- 13.7. "At this stage we do not know if we are going to be successful in the applicant organisation obtaining a contract. Even if successful it is not clear how much work there will actually be from the contract. We do not know how many clients we will represent due to the downturn of business and the competition from other firms. It is not clear that having a contract will be financially viable."
- 13.8. "Cannot see how this is going to work".
- 13.9. "Despite the additional time, there is still the issue of finances and the uncertainty of actually being awarded a contract, the fact that the awarded duty contract will actually work or that the MOJ will shelf the entire idea at the eleventh hour!".
- 13.10. "Details do not seem accurate."
- 13.11. "Expansion is not viable without an increase in budget to do so, in a rural area this is not feasible."
- 13.12. "Financial viability. There is no guarantee of volumes of work, there is a pay cut coming in and the West Midlands is too big an area. We would have been happier tendering for the Black Country or even Birmingham - but not Coventry as well."

- 13.13. "In addition, on due diligence checks with our prospective partners, firms which appeared to be doing well were all suffering prolonged legal aid cuts and the credit checks of partners/directors told their own story."
- 13.14. "In short, we believe this whole procedure is a disaster waiting to happen."
- 13.15. "Given the 2 x 8.75 cuts, the falling workload, digitalisation and online legal aid submission. These changes will hugely affect profitability to an extent where our business may no longer be viable."
- 13.16. "Having made some early steps, it is clear that a significant amount of time (and money) will need to be expended in order to put together a tender proposal. It is very difficult to justify that time (instead of fee earning work) when so much remains up in the air."
- 13.17. "A tender proposal will take a vast amount of time from the Partners and Practice manager, and it is not justifiable to say this should be done whilst the proposals are being questioned, and with the limited information being provided."
- 13.18. "The MoJ have not thought through the delivery partnership arrangement, which appears on many levels to be unworkable. As a result there is a real lack of information".
- 13.19. "I am a sole practitioner. I am now over 60 years of age. I am disabled with cerebral palsy and use a wheel chair. I have been self-employed for over 20 years as it has always been difficult to find secure employment with other firms. My income has always been used to support myself and my mother. I do not have a partner to support me. Therefore I do not have savings".
- 13.20. "I do not have the resources which would enable me to apply for a duty contract I could not even afford to employ the consultants which I would require to assist me in meeting the tender. Because of my circumstances the banks would not support me. I would not be able to employ the members of staff required to expand the business for the same reason. I will not take the risk of hiring in delivery partners particularly in light of falling rates".
- 13.21. "I am always busy dealing with problems created by the MoJ (legal aid means tests, problems with interpreters and cuts to the CPS and court administration, to allow time to prepare for a contract".
- 13.22. "I do not believe that the figures are accurate."
- 13.23. "Instead of making preparation for a ludicrously onerous and commercially unsound bid, we have taken the view that legal aid crime is no longer viable. Given the fee cuts, the restructuring required, the unpaid time involved in simply drafting the bid paperwork, the risk to contracted parties, the extra management time involved in supervision by / of partner firms throughout the contract and the significantly increase in personal commitment of our staff in servicing a larger share of work for less money, we can find nothing to recommend the duty contract to us and will be

closing our criminal department as we cannot exist on own client work alone. Arrangements have already been made for this to happen.”

- 13.24. “It is economically disastrous for us to even considering tendering in the area that we are in! It is just not possible!”
- 13.25. “It is impossible to know whether this is a viable contract bearing in mind we do not know what the actual contract value will be. How can we know what to expend or what staff to take on if we do not know and never tell whether it will be profitable. What bank will lend to us in those circumstances? How many partners do we need? By the time all these questions are answered the tender will be over and those that have contracts will be a rudderless ship.”
- 13.26. “Obtaining any finance for less work than we have now, to cover a larger area, needing more staff, for 8.75% less has made any business plan required for finance unattractive”
- 13.27. “Our firm in Cornwall consists of 5 people with over a century of experience. We are all fully occupied in trying to make a living from publicly funded criminal defence work. In order to bid for a duty contract, we would have to hire a dedicated body to liaise with other practises, perform due diligence, consider insurance and audit issues, calculate financial viability etc. We have not got the money to so expend and, on a daily basis, have to expend efforts/salaries on dealing with the MOJ's inefficiencies of prosecution inadequacy, late prisoners etc.”
- 13.28. “We cannot possibly bid for a Duty Contract because we do not have the time, expertise, resources, experience or expertise to do so.”
- 13.29. “Our firm is a two partner firm based in South London. We specialise in Criminal work and do not practice any other areas of law. The firm was set up in 2010. The firm does not have the financial resources to "scale up" in the way sought by the MOJ. The whole process is biased in favour of long established very large firms, who already employ a large number of solicitors, have several offices, have the necessary cash reserves to meet the cost of scaling up and preparing for this tender. However with the proposed cuts and those we anticipate shall be introduced in the future, we feel it is unlikely that even the "winners" of the proposed tender will find the practice of criminal law viable in the future.”
- 13.30. “Shortness of time to do it all”.
- 13.31. “All the risk is ours, no risk for the government. Even in its own work it reserves the right to throw the whole contract away in some areas when it fails.”
- 13.32. “The figures don't add up.”
- 13.33. “See answer above. To bid for less local work - with uncertainty as to charging rates and throughout - with increased overheads (travelling, management time) and reduced fees (8.75% already with more to come) is commercial suicide”.

- 13.34. "The contract is so one sided that no right minded business person would agree to become a signatory to it. It's a turkeys praying for Christmas scenario".
- 13.35. "The contract size and business needed to service it is just not properly defined Allowing proper financial analysis to take place".
- 13.36. "The duty contracts are hardly worth attempting to scale up for."
- 13.37. "Far too much irrelevant information is required for such a small contract size."
- 13.38. "The figures just don't add up and it is impossible to plan against the background of uncertainty".
- 13.39. "The lack of money available and additional staff numbers required make the prospect of upscaling and the attendant costs involved difficult to predict, especially with a further reduction in fees imminent."
- 13.40. "The preparation of any tender involves significant expenditure, either through external professional fees or fee earning time lost in preparation of the tender. The current levels of anticipated fee income render the proposed duty contracts questionable in terms of their viability, which renders the prospect of financial investment in the tender process unattractive. The position of professional indemnity insurers and regulators such as Lexcel, is still uncertain in relation to the operation of delivery partners in the event of a successful tender. All of these combined issues, and the requirement to diligently represent current clients, mean that the prospect of submitting a meaningful and accurate tender within a period of 5 weeks is almost impossible for any practice which is unable to dedicate staff to its preparation. It did not make any sense financially to continue preparation of a tender during the currency of the injunction as, in addition to the issues identified above, it was not clear whether the tender process would continue at all and any sums invested in the process would simply have been lost."
- 13.41. "The proposals by thee MOJ will destroy our criminal department. The suggestion that firms want the proposals to be implemented more quickly is frankly preposterous. It would be like turkeys asking for Christmas to be brought forward to October. The proposal will decimate the profession why would we therefore want it to happen more quickly?"
- 13.42. "The risk of scaling up is too great at a time when volumes are dropping, therefore income, and the effect of the cuts so far and the ones to come."
- 13.43. "This is simply not the way forward."
- 13.44. "There are too many unknown variables. We are a mixed practice and we cannot give sufficient information to our bank or accountants to assess the impact of this contract on our practice as a whole - particularly if we employ more staff which would imbalance our business. We are concerned about PII and COLP/COFA regulatory matters of being in a delivery partnership. We have seen no authoritative advice concerning these issues."

The timeframe would make merger practically impossible as these are decisions of significant importance with implication well beyond the criminal contract. It seems to us that no thought has been given to this by the MoJ in this procurement exercise.”

- 13.45. “There has been little point in wasting valuable time preparing a bid only to see all that time go to waste, despite advice to carry on preparing. In a small legal aid practice, we simply do not have the time, and would only make the extra time if there is no other choice.”
- 13.46. “That is why I suspect most firms will have put any plans in respect of delivery partnership bids on hold, as we have.”
- 13.47. “There is no certainty that the whole process is at all viable at all even if you were to receive a contract”.
- 13.48. “There is too little time to enter into a partnership with another firm and carry out the necessary financial checks. With the uncertainty we put on hold the consultant's work because we did not wish to spend money on something that maybe altered.”
- 13.49. “Lawyers are not used to this process. To do it own is financial suicide.”
- 13.50. “This is a costly process , requiring significant investment in terms of finance and time . We are not going to invest as such with so much uncertainty over the viability of these contracts or indeed whether they are going to happen at all.”
- 13.51. “We are a small criminal defence firm based in Warwickshire. For 25 years we have provided a first class service to the people of Warwickshire. We have achieved Lexcel and are proud of the service we offer. Over the past two years the work going through our local courts has significantly reduced as a consequence so have our costs. We have managed to absorb fairly efficiently the first 8.5% cut but we will not survive a second!! We are a rural area and have been able to claim travel and wait. This of course will go IF the MoJ introduce this ridiculous scheme. The contract size in Warwickshire is so small that NO FIRM will survive longer than 18 months. There is huge risk involved in obtaining a contract that only the foolhardy and those who just see the end figure will bid. Having properly done the sums and factored in significant further cost cuts we cannot financially justify bidding as the risk is too great. This is a travesty for the people in Warwickshire who will not be able to access a local lawyer. The successful firms will base themselves near a court centre which will leave the most vulnerable and those at real risk u represented.”
- 13.52. “We are not applying as we have no partner(s) to assist and arguably we could find ourselves in a financially dangerous situation, not being able to deliver as required with the various sanctions as a consequence. We have applied for client only.”
- 13.53. “We are staring into space and do not know the answers. There is no certainty in a duty contract and it is unknown how such charged will

change the market and the way in which work is attracted will become more aggressive especially from unsuccessful applicants.”

- 13.54. “We believe with falling volumes of work, reduced fees and no guarantee of future work any tender would be commercial suicide. To be in a position to properly cover a huge area of Yorkshire would require significant recruitment of staff with no prospect of profitability. Contrary to the opinion of some, we would not consider it safe, or prudent, to operate on a projected profit of 0.1%. No sensible business would.”
- 13.55. “We can not see how the contracts are a viable financial option at all. The figures do not make sense and there are too many unknown variables.”
- 13.56. “We can't waste time and money preparing for a scheme that has yet to be confirmed as any changes made would mean that the preparation and cost analysis would have to be started again from scratch.”
- 13.57. “We do not believe that a contract in any terms is financially viable and we are not applying”.
- 13.58. “We do not view ourselves as being viable contenders for a Duty Contract, given the size and profile of our firm. In any event we feel that the Scheme proposed is fraught with difficulties, in that the contracts envisaged appear near impossible to fulfil in terms of coverage, and where partnerships are forged in the form of consortia, they are prone to pave the way to unhealthy in-fighting over whose client is whose. We find the proposal inconceivable from the outset, and do not understand the common-sense. The LAA will still have to pay for the same amount of clients at police stations being serviced, but now want to add an extra layer of bureaucracy to this by increasing the amount of contracts and splitting these into 2 types - Duty and Non-Duty. If we are wrong, and there is a cost saving (but we do not see how), surely this has been achieved through the cuts already implemented and the reduction in numbers going through the courts. Lastly, we feel sadly let down by an organisation, which always impressed on us the importance of being Duty Solicitors - how this was the key to holding Supervisor status - is now doing a U-turn, and divorcing something it preached as being so intrinsic to holding a contract and making 'Duty Solicitorship' something exclusive and separate.”
- 13.59. “We don't actually believe the dual contract system is viable in this area but we have to explore the possibility. Don't believe there's going to be enough work to justify the cost of scaling to cover a vast geographical rural area and a conurbation.”
- 13.60. “We have a guide to survive with current work. The position of having to concentrate on duty over own client work means that the client has no loyalty similar to the current London based duty schemes, where reliance on duty work is the priority”.
- 13.61. “We just cannot see that there is sufficient guarantee of profitability during the life of the contract. A cut in rates followed by who knows what? The uncertainty is enormous and when added to the current marginal

profitability, the prospect of no increase for 5 years, even with very low inflation rates, is likely to render the contract uneconomic long before it expires”.

13.62. “We simply can't afford to implement the changes.”

14. Other reasons given include:

14.1. “Because it's ludicrous”.

14.2. “Reluctance of delivery partners to finance the continuation of preparations whilst potential for process to be stopped.”

14.3. “Due diligence/compliance”.

14.4. “How stupid would we have to be to bid for an unspecified contract with no guarantee of volume at a derisory rate of remuneration. Any lawyer knows that a contract which is uncertain is not a contract. What fool would enter into such a one sided ill thought out enterprise”.

14.5. “It is particularly difficult to expend time on an uncertain process when one is trying to undertake a full fee earning role as well”.

14.6. “Our reluctance to pour energy and resources into something as uncertain, unpredictable and complex as this”.

14.7. “Resolving new contracts for duty solicitors on the payroll and answering the very complex questions at the end of the tendering document”.

14.8. “The Delivery partner has not progressed matters whilst awaiting outcome of the JR”.

14.9. “The injunction has been an obstacle due to uncertainty it has created about whether the process will proceed or not. I would prefer the suspension to be lifted, the tender process to begin at soon as possible so that we can get on with planning and attempting to grow our business”.

14.10. “Time required and uncertainty over accuracy of the figures provided given recent changes in SW London”.

14.11. “Too much uncertainty generally”.

14.12. “Uncertainty / lack of time”.

14.13. “Uncertainty about whether it will happen”.

14.14. “Uncertainty over contract numbers”.

14.15. “Uncertainty over viability”.

14.16. “Uncertainty over whether tender proceeding due to JR.”

14.17. “Unprofitability of duty contract”

- 14.18. “Until the outcome is know we are not prepared to spend further time and money nor do we want to negotiate with others and give our strategy away to any potential delivery partner until the contracts are definitely 100 % going ahead we would be mad to put our head of the parapet until then in our market area”.
- 14.19. “Whether the reduction in our duty allocation in the procurement area will be offset by the expansion opportunities for own client work in time- give the overall cut of 17.5% in rates as a result of this exercise. Or put simply: is it worth it.”

Accessing the LAA’s Tender Portal

15. 399 (74% of 538) respondents had accessed the LAA’s tender portal and 316 (79% of 399) of these said they had paused the process upon the injunction being granted. Of these, only 89 (28% of 316) had actually commenced any stages of the intention to tender, and only 6 (7% of 89) of these had completed the qualification and technical envelopes for 1 or more areas.