

# Lord Carter's Review of Legal Aid Procurement

2005 and 2006 Surveys of Criminal firms

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## **2005 and 2006 Surveys of Criminal firms**

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## **1 Summary**

- 1.1 The purpose of this report is to summarise the work we have undertaken to obtain a better understanding of the cost base and revenues of publicly funded firms of solicitors. The objective of this work had been to establish whether a low cost, sustainable, model currently exists that might form the basis for a new system of publicly funded criminal work.
- 1.2 This report is based on two pieces of research. The first, undertaken by FreshMinds, was a large-scale telephone survey of firms. Difficulties however were encountered in finding firms willing to take part in this research, which, together with the length of the questionnaire, and the fact that the interview was conducted by telephone, means that the financial data from that survey has to be treated with care. The responses to this initial survey were predominantly from smaller firms. The second piece of research, conducted by ourselves, concentrated on larger crime firms and was undertaken to investigate the cost base of these firms in more detail. This second research resulted in a relatively small sample of firms, but represented a good cross-section of larger crime firms.
- 1.3 The analysis of the data from the initial survey suggests that where the calculations are based on a set of assumed hours, the lowest hourly cost of £56 is achieved by the 13-40 fee earner firms. Although the cost base of these firms may be higher than that of smaller firms, they will often have a better infrastructure and may also offer better employment conditions for staff. These firms can often achieve a lower average cost per hour because there are more fee earners over whom to spread the cost.
- 1.4 Care must be exercised in making direct comparison between the two surveys as the samples and methodologies differed, however the subsequent research amongst larger crime firms indicates that these firms were able to achieve an hourly cost of around £53, with a quarter achieving an hourly cost of £40. These low cost firms also appear to be reasonably profitable. The characteristics of these firms are:
- High levels of gearing – a very small number of equity partners
  - Higher levels of unqualified fee earner
  - An expectation of higher chargeable hours
  - A relatively low overhead base
  - A focus on crime

- 1.5 However, some large firms with good gearing, effective systems and strong management are struggling to run their crime departments at a profit. It is not at all clear whether all of these firms will be able to maintain their criminal departments without a changed regime for fees or the adoption of an even lower cost base model. In particular a key factor in achieving low cost would appear to be specialisation. For some of these larger firms, crime is just a part of their business – the lowest cost firms appear to specialise in crime.
  
- 1.6 The variation in cost may also reflect different quality standards on the part of the firms and different standards of client service. We have made no attempt to judge the quality of the work undertaken by the various firms, indeed have assumed the same standards, but in reality there may be differences.

## 2 The Initial research

- 2.1 The initial survey of solicitors' firms undertaken by FreshMinds was carried out by telephone over a four-week period from mid-November to mid-December 2005. In total 854 firms were approached and were sent a copy of the questionnaire. Considerable difficulty was encountered getting firms to take part, in particular due to the resistance of many to the exercise. 227 firms refused to participate. Successful telephone interviews were however completed with 242. In total FreshMinds estimate 4,000 calls had been made.
- 2.2 Of the 242 firms, approximately half gave no or partial financial information. The questionnaire was extremely long, asking around 70 questions, and the telephone interviews must have been fairly lengthy. It is not clear how much data validation took place, or whether firms were subsequently contacted to check financial information that appeared unusual or possibly incorrect. For example some responses gave no payroll information, others suggested low fees for the number of fee earners (18 fee earners with total fees of £165,000 and a loss per partner £500,000), another gave salaries three times fee income of £60,000, etc... In our subsequent analysis of the data, we considered that returns from 86 firms looked broadly reasonable, although doubts remain regarding the reliability of some of the financial data.
- 2.3 Table 1 summarises our analysis of the 86 firms. The table is organised by size according to number of qualified fee earners (equity and salaried partners, qualified and unqualified fee earners and trainees). We have shown the median values in each case. We have not calculated the mean, as these would be especially affected by any unusual or erroneous figures within the data:

**Table 1**

	Number	Total Fee earners	% fee earners qualified	Median			Profit per partner	Criminal Chargeable hours per fee earner	Gearing	Profit per partner		Total fees
				Fees £	Public %	Crime %				Lower quartile	Upper quartile	
1-5	39	4	75	216,000	100	99	43,750	1,633	1	19,167	67,009	10,705,773
6-12	23	11	77	686,375	91	31	56,667	1,380	2	15,750	93,820	19,847,232
13-40	19	27	72	1,700,000	60	20	64,545	1,495	4	48,493	89,226	35,768,181
40+	5	87	61	5,920,000	47	12	138,461	1,334	9	Sample too small		36,742,283
Overall	86	9	72	600,000	94	45	56,738	1,380	2	25,263	84,417	103,063,469

- 2.4 The firms undertook a considerable amount of publicly funded work, in particular crime, although the percentage of this decreases with increased size. The sample is arguably not representative of legal aid firms as a whole due to this over representation of small crime firms. It is also unclear whether the high non-participation rate has any impact on the representativeness of the sample.
- 2.5 The thirty nine 1-5 fee earner firms:
- represented nearly half of the 86 firms but accounted for just 10% of the total fees;
  - were generally small, with median fees of just £200k. 9 were sole practitioners with no other fee earners;
  - were dependent on crime – for 27 of them crime accounted for more than 70% fees – for 22 it represented 100% fees;
  - achieved low profits with a median of £44,000 per partner, and a quarter of firms earning profits of less than £20,000;
  - had seen profits fall since 2003<sup>1</sup>, when median profits for 2-4 solicitor firms were £51,000, although care must be taken when comparing the two different samples;
  - worked high chargeable hours – a median of 1,633 for each criminal solicitor;
  - had low gearing – they have few other fee earners (qualified and unqualified) in addition to each equity partner;
- 2.6 The twenty three 6-12 fee earner firms:
- were larger, with median fees of around £700k;
  - also undertake a considerable amount of publicly funded work;
  - undertook much less crime;
  - achieved better profits - £57,000 per partner;
  - had also apparently seen profits fall from a median of £73,000 in 2003;
  - worked fewer chargeable hours – a median of 1,380;
  - had low gearing.
- 2.7 The nineteen 13-40 fee earner firms:
- were much larger, with a median of 27 fee earners and fees of £1.7m;
  - were less dependent on publicly funded work;
  - undertook relatively little crime;
  - had better profitability at £64,000, but still less than the 2003 median of £86,000;
  - had relatively high chargeable hours;
  - had quite high levels of gearing. The median in the LMS<sup>2</sup> 2004 Benchmarking Survey was 4.8.

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<sup>1</sup> Otterburn Legal Consulting: Department for Constitutional Affairs —Review of Demand, Supply and Purchasing Arrangements – Survey of legal Aid Firms 2003 (the 2003 DCA Survey)

- 2.8 The five 40+ fee earner firms:
- were large firms (in publicly funded terms), with just under 90 fee earners and fees of £6m;
  - achieved profits per partner of £138,000. In 2003 there were six 40+ solicitor firms, and their average profit per partner was £133,000;
  - were less reliant on public funding;
  - did little crime;
  - had high levels of gearing.

- 2.9 Table 2 provides some further characteristics of each size group in terms of:
- salaries – including a notional salary for each equity partner of (say) £60,000 – as a % of total fees
  - overheads as a % of total fees and per fee earner
  - IT spend over the last three years

**Table 2**

	Median				
	Salaries %	Overheads %	Overheads per fee earner	IT spend	Spend per fee earner
	%	%	£	£	£
1-5	78	28	17,250	5,000	1,600
6-12	73	31	18,888	30,000	2,692
13-40	71	33	21,688	100,000	2,564
40+	61	36	24,082	400,000	4,598
Overall	74	31	20,221	19,000	2,000

Overheads includes an allowance for a notional rent where the partners or firm own the freehold, and an allowance for interest on partner capital

- 2.10 It is likely that the increase in overheads with size of firm will be due to the greater amount of private and commercial work undertaken by these larger firms.

<sup>2</sup> Published by the Law Management Section of the Law society, based on the results of 194 firms, of whom a small number undertook publicly funded work

2.11 Table 3 summarises the hourly cost and hourly fees of the firms based upon two scenarios:

- The actual hours reported by each firm for their criminal solicitors – this has then been applied to all qualified fee earners
- A set of assumed chargeable hours. The questionnaire asked firms to provide an estimate of the number of chargeable hours typically achieved by a criminal solicitor only. Separate figures were not obtained by level of solicitor – equity partner / salaried partner / other solicitor, and firms were not asked for an estimate of the chargeable hours of unqualified fee earners or trainees. Because of this and our overall uncertainty regarding the reliability of the financial data we decided to also provide hourly cost information based on a set of assumed chargeable hours that could be applied to all the firms. This should better enable a like for like comparison.

These assumed figures were taken from the 2003 DCA Survey, where average chargeable hours were calculated from the 137 firms that supplied time recording data. Because the equity partners will also spend part of their time on management, we have made an allowance for that time, and have used a figure of 1,100 hours, a level used by the Law Society in the past as reasonable. The median from the 2003 DCA Survey for equity partners was 1,300. The figures used are:

Assumed chargeable hours:	
Equity partners	1,100
Salaried partners	1,300
Qualified fee earners	1,200
Non qualified fee earners	1,000
Trainees	800

In the absence of information regarding unqualified fee earners and trainees, the figures from the above table of 1,000 and 800 hours have also been used in the calculations based on actual hours.

Appendix C provides a summary of the methodology used in calculating these costs.

**Table 3**

	Based on actual hours		Based on assumed hours		Fees / partner	Fees per fee earner
	Cost / hour	Fees / hour	Cost / hour	Fees / hour		
	£	£	£	£	£	£
1-5	45.10	37.27	58.38	59.09	155,000	64,000
6-12	53.01	48.01	63.22	55.89	213,000	60,526
13-40	51.82	48.89	55.82	59.17	323,960	65,206
40+	60.51	59.74	60.71	60.78	740,000	68,046
Overall	49.71	46.61	59.66	58.35	202,500	63,259

2.12 The table illustrates:

- When looking at the actual hours each firm reported, the smallest firms receive an hourly fee less than their hourly cost (because their actual profits are less than the assumed notional salary of £60,000, or any allowance for rent and finance);
- When the same hours are applied across the firms the lowest average cost per hour was achieved by the 13-40 fee earner firms;
- That cost began to rise amongst the group of 40+ fee earner firms – however the small sample for this group may render the data unreliable;
- That fees per fee earner changed little across the various size groups;
- The key factor that changed was fees per partner (total fees divided by the number of equity partners). This increased substantially with size of firm and will have been a key factor in the higher profits of the larger firms. It reflects the higher gearing in these firms.

It could be argued that our assumption regarding reduced chargeable hours for equity partner management time adversely impacts on small firms by reducing their capacity. If we applied a figure of 1,300 chargeable hours for equity partners the cost per partner based on assumed hours for 1-5 fee earner firms of £58.38 falls to £56.18, and that for 13-40 firms from £55.82 to £54.33.

2.13 Of the 86 firms, 42 were specialist crime firms, with crime representing more than 50% of their fees – in most cases more than 75%. However, there were no 40+ fee earner firms amongst these 42 firms and only three with more than 13 fee earners, so the figures have to be treated with care.

2.14 The results for these 42 firms are summarised in table 4. The three larger firms accounted for 24% of the total fees whereas the 29 1-5 fee earner firms, accounting for 70% of the firms, generated under 38% of the total fees. Medians have not been calculated for the 13-40 size group as the sample is too small, although the three firms have been included in the overall figures:

**Table 4**

	Number	Total Fee earners	% fee earners qualified	Fees	Crime fees	Median		Profit per partner	Criminal Chargeable hours per fee earner	Gearing	Profit per partner		Total fees
						Public %	Crime %				Lower quartile	Upper quartile	
1 - 5	29	3	83	185,000	170,000	100	100	52,500	1,840	1.0	25,100	69,018	7,608,773
6 - 12	10	11	79	648,688	644,746	100	100	56,111	1,380	2.6	28,672	91,307	7,676,463
13 - 40	3		53	Sample too small									4,875,103
Overall	42	6		280,000	230,000	100	100	54,125	1,380	1.6	26,438	79,577	20,160,339

2.15 It is perhaps not surprising that the 42 firms, representing half of the original group, have similar characteristics to the original 86 firms. Profits are slightly lower at £54,000 compared to £57,000, and a quarter once again recorded low average profits per partner of under £26,000. Average chargeable hours amongst the 1-5 fee earner firms was 1,840. A high figure given the low profits they earn.

2.16 The 2003 DCA Survey also included statistics for 66 firms for whom crime accounted for over 50% fees. In that survey the average profit per partner for these crime firms was £76,000. Care once again has to be taken when comparing these two different samples, however this would suggest a deterioration in profitability over the last two years.

2.17 Table 5 shows salaries and overheads %, and IT spend for the 42 firms:

**Table 5**

	Salaries %	Overheads %	Overheads p fee earner	IT spend	Spend per fee earner
	%	%	£	£	£
1 - 5	78	27	14,464	3,500	2,417
6 - 12	74	29	18,614	17,500	3,238
13 - 40					
Overall	77	27	16,494	6,500	2,596

2.18 Table 6 shows the average cost and fee figures for the 42 firms:

**Table 6**

	Based on actual hours		Based on assumed hours		Fees / partner	Fees per fee earner
	Cost / hour	Fees / hour	Cost / hour	Fees / hour		
	£	£	£	£	£	£
1 - 5	38.94	34.79	53.74	59.09	144,018	65,000
6 - 12	52.19	47.29	59.76	56.41	274,396	60,305
13 - 40	Sample too small					
Overall	42.93	37.96	55.31	57.14	157,500	61,263

2.19 This table illustrates:

The low hourly cost achieved by the 1-5 fee earner firms, largely as a result of the long hours worked, but also due to the lower overhead base these firms will have. Cost appears to rise amongst 6-12 fee earner firms however there we have no meaningful figures for firms with more than 13 fee earners.

### 3 The subsequent research amongst larger crime firms

3.1 Since a principal limitation of the initial survey was the low number of larger crime firms that took part, in February 2006 a second survey was undertaken by ourselves of the top 100 criminal firms – those with non-VHCC earnings greater than £850,000.

There was a good response with:

- 38 questionnaires returned;
- replies from 6 of the top 10 firms;
- of the 38 firms, 19 were in London<sup>3</sup>, 19 were Provincial or “National” firms – with offices in London and also Provincial centres;
- the data from the firms appears generally sound although we had to go back to half in order to clarify aspects of the information supplied.

3.2 The firms are summarised in table 7 according to the number of fee earners<sup>4</sup>:

**Table 7**

Fee earners	Number of firms	Total fees £m	Fee earners	% fee earners qualified	Gearing	Fees £'000	Crime fees £'000	Public % %	Crime % %	Solicitor Chargeable hours
<b>13-40</b>	20	34,533								
Median			23	64	4.8	1,510	1,218	99	94	1,500
Mean			22	66	7.7	1,727	1,305	88	81	1,658
<b>40+</b>	18	107,447								
Median			53	56	11.4	4,600	2,703	76	55	1,400
Mean			74	59	17.4	5,969	2,959	67	57	1,680
<b>All</b>	38	141,980								
Median			34	60	9	2,611	1,772	95	86	1,500
Mean			47	63	12	3,736	2,089	78	70	1,668

Note – each table shows both medians and the arithmetic mean or average

This analysis by fee earners is broadly comparable to the Law Society classification by number of solicitors (1-5, 6-12, 13-40, 40+).

<sup>3</sup> “London” includes firms in the Greater London area, and also adjacent Home Counties such as Kent, Hertfordshire, Essex, Surrey and Sussex – i.e. areas influenced by London salary levels

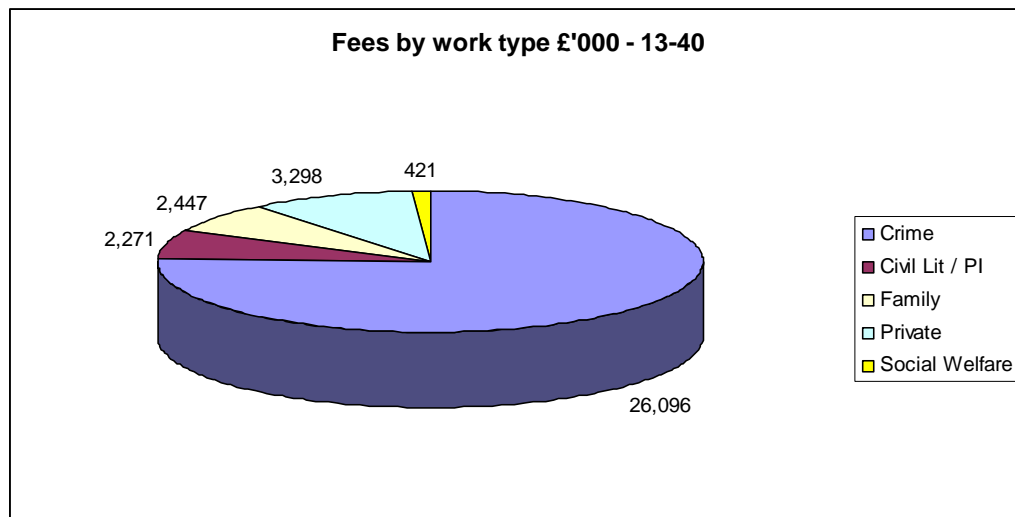
<sup>4</sup> Fee earners comprise equity partners, salaried partners, other solicitors, other qualified fee earners (legal executives and barristers), unqualified fee earners/case workers, outdoor clerks (employed) and trainee solicitors

3.3 The table indicates:

- that the 13-40 fee earner firms were very dependent on legal aid (99%) and crime (94%). Most of the larger 40+ firms were also dependent on legal aid (76%). Crime (55%) was less significant, but still accounted for over half the firms' fees;
- increased gearing with size of firm;
- a fall in the % fee earners who are qualified with size of firm. Amongst the twenty nine 1-5 fee earner specialist crime firms (in table 4) 83% were qualified, whereas this fell to 56% amongst the 40+ firms in table 7. This may be because, for some firms, the key to maintaining profitability in recent years has been for certain work to be undertaken by more junior fee earners.

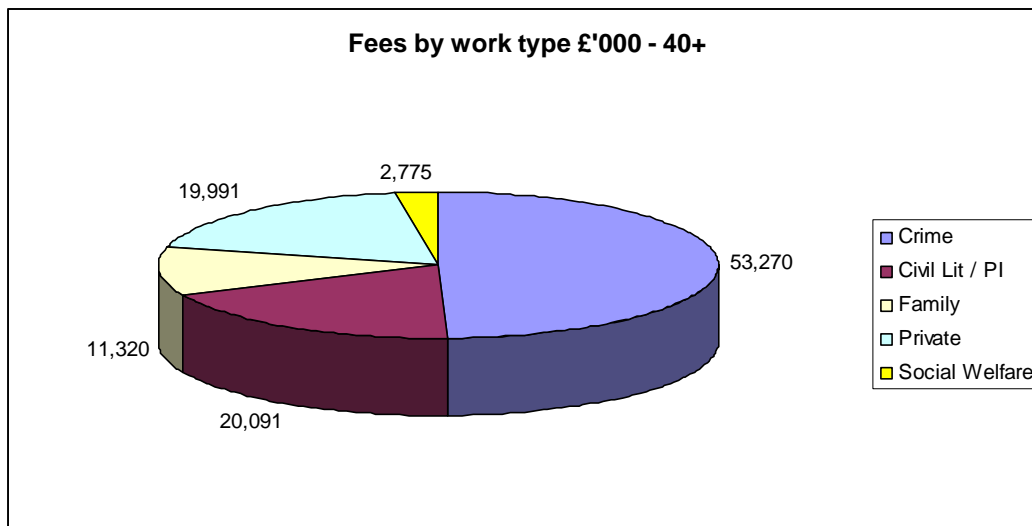
3.4 Charts 1 and 2 show an analysis of the fees of the firms by work type. For the 13-40 fee earner firms total fees were £34m, of which crime accounted for £26m.

**Chart 1**



Total fees of the 40+ firms was £107m, of which crime amounted to £53m.

Chart 2



#### 4 Financial analysis of the larger crime firms

4.1 Table 8 summarises the overall profitability of the 38 firms as shown in their accounts and indicates increased profitability with size of firm. Table 9 summarises the most recent Law Society Business Review, undertaken in 2003 (LS Business Review 2003), and indicates median profits for all sizes of firm of £63,000. The overall median for the 38 firms of £121,000 compares favourably to that figure however when comparison is made by size group they do not perform as well. In that review, median profits for 13-40 solicitor firms were £115,000 compared to £67,000 and those for 41+ solicitors were £174,000, compared to £139,000.

These differences are likely to reflect the greater amounts of commercial and private work undertaken by the firms in the LS Business Review, because that survey was based on the profession as a whole rather than simply legally aided firms.

**Table 8**

Fee earners	Profit per partner Per accounts £'000	Profit per partner (per accounts)	
		Lower quartile £'000	Upper quartile £'000
<b>13-40</b>			
Median	67	50	139
Mean	105		
<b>40+</b>			
Median	139	97	254
Mean	185		
<b>All</b>			
Median	121	62	188
Mean	143		

**Table 9**

Law Society 2003 Business Review						
Profit per equity partner	By number of solicitors					
	All firms	1	2-5	6-12	13-40	41-170
Lower quartile	37,000	33,000	26,000	47,000	83,000	120,000
Median	63,000	53,000	55,000	84,000	115,000	174,000
Upper quartile	108,000	81,000	105,000	143,000	168,000	344,000
% clients legally aided	8	11	29	27	11	4

**Table 10**

Survey of Legal Aid Firms 2003					
Profit per equity partner	All firms	By number of solicitors			
		1	2-5	6-12	13-40
Average	70,720	42,519	64,312	82,497	90,656
Lower quartile	40,872	22,062	36,119	53,758	65,357
Median	63,187	38,366	51,023	73,473	86,646
Upper quartile	95,046	57,925	84,446	102,326	106,462
Number of firms	270	48	106	68	41
Number of equity partners	844	48	200	231	282

4.2 Table 10 shows the profitability of the firms surveyed as shown in the 2003 DCA Survey. This was based on returns from 303 firms, 270 of whom provided financial data. The data was reasonably robust and was subject to a high degree of validation. This also indicated overall median profits of £63,000 a partner. The 41 firms with 13-40 solicitors recorded median profits per partner of £86,000. There were just six firms in that survey with more than 40 solicitors, and the median (and also average) profit per partner for these six firms was £133,000.

4.3 The firms in the 2003 DCA Survey were predominantly legal aid firms – on average they generated 60% of their fees from legally aided work, family and civil in addition to crime. Of the 303 firms, 66 undertook primarily crime and their results are summarised in table 11:

**Table 11**

Survey of Legal Aid Firms 2003				
50% + Crime firms	Overall	By number of solicitors		
		1	2-5	6-12
Number of firms	66	18	26	20
Total fees	33,420,966	1,512,346	8,570,156	18,105,589
Average fees				
Total		84,019	329,621	905,279
Publicly funded		81,408	323,367	868,698
Non - publicly funded		2,611	6,254	36,581
Publicly funded %	97	98	96	96
Crime as a % of total fees	92	97	92	88
Average solicitor chargeable hours	1,988	2,487	1,889	1,740
Average profit per partner	76,208	50,569	76,217	99,822
Fees per fee earner	66,890	72,775	62,765	67,702
Fees per equity partner	258,911	84,019	231,748	418,124
Gearing	3.0	0.2	2.7	5.3
Salaries as a % of fees	64	64	67	62
Overheads as a % of fees	29	34	29	25

In the 2003 DCA Survey there were just two 50%+ crime firms with more than 12 fee earners.

4.4 “Profit” in a set of partnership accounts can be a misleading figure because it does not reflect three important factors that need to be taken into account in order to assess the performance of a firm, and in particular an hourly cost. It is necessary to make allowance for:

- A notional salary for each equity partner in order to provide an approximation of their cost in their capacity as a worker/manager in the firm – as opposed to a proprietor;
- Interest on partner capital;
- A notional rent where the partners own their offices and do not actually pay themselves any rent.

Our questionnaire asked for details of:

- the highest paid employed fee earner;
- total partner capital;
- what the firm paid in rent and whether this was a commercial rent.

This information enables us to make an allowance for these factors.

4.5 Table 12 indicates the average salaries of the highest paid employed fee earner for the two sizes of firm. An allowance of 12% has been made, an amount equivalent to employer’s NIC, and the resulting figures used as an equity partner notional salary in the calculations.

**Table 12**

<b>Notional salaries</b>			
		13-40	40+
		£	£
Salary of highest paid fee earner (mean)		55,110	61,342
Add employers NIC at (say) 12%	12 %	61,723	68,703

- 4.6 Table 13 summarises the average partner capital of the firms and compares to £113,000 and £251,000 respectively for firms in the DCA 2003 Survey.

**Table 13**

Interest on partner capital			
		13-40	40+
Base rate	4.5 %		
+ say	3 %		
	<b>7.5</b>		
Partner capital (mean)		£'000	£'000
		125	297

- 4.7 Table 14 shows the surplus/deficit per partner after making allowance for partner salaries, interest on partner capital and notional rent where appropriate.

**Table 14**

Fee earners	Adjusted for notional salary, rent and interest				Salaries %	Overheads %	Overheads per fee earner £'000	IT spend last 3 years £'000	IT spend per fee earner £'000
	Surplus/deficit per partner £'000	Margin %	Surplus/deficit Lower quartile £'000	Surplus/deficit Upper quartile £'000					
<b>13-40</b>									
Median	-6	-1.4	-20.7	68.2	74	25	19	73	3
Mean	32	2.2			71	27	22	94	4
<b>40+</b>									
Median	48	6.5	6.5	163.0	65	28	23	189	3
Mean	86	6.1			66	28	23	292	4
<b>All</b>									
Median	39	4.5	-18.5	114.4	69	26	20	110	3
Mean	58	4.0			69	27	23	188	4

The table indicates that some of the 13-40 firms had difficulty recovering all these costs. There is a reasonable difference between the median and mean for this category with the mean substantially larger than the median at £32,000, which would suggest some firms are achieving substantial surpluses. A quarter of firms achieved a surplus in excess of £68,000 and £163,000 for 13-40 and 40+ firms respectively.

- 4.8 To explain these figures further, for the 13-40 firms, the median partner profit per the accounts was £67,000 (table 8). The notional salary for that size of firm is £61,700 (table 12), and the average additional cost for finance and rent is £11,200 per partner. If these are deducted from the accounts profit a deficit of £5,900 results (table 14). The corresponding figures for the 40+ firms are an accounts profit of £139,000, a notional salary of £68,700 and a finance/rent adjustment of £24,300.

4.9 These surplus/deficits are after charging a “salary” for each equity partner set at approximately the level they could earn elsewhere, interest on partner capital and an allowance for rent, where the partners own the offices. Table 14 suggests a margin after these costs of around 4%. An interesting question is what level should firms be aiming for, because most partners will require an additional reward to compensate for the risk of running their own firm. Is 4% sufficient given the risks involved?

4.10 Table 15 shows average fees and cost per hour for the firms and also the upper and lower quartiles:

**Table 15**

Fee earners	Based on the median hours of all the firms				Fees / partner £'000	Fees per fee earner £'000
	Cost / hour Median £	Cost / hour Lower quartile £	Cost / hour Upper quartile £	Fees / hour £		
	<b>13-40</b>					
Median	53.24	43.46	60.24	51.37	532	71
Mean	57.54			58.98	657	81
<b>40+</b>						
Median	52.50	47.14	59.90	57.27	881	79
Mean	55.37			59.46	1,384	82
<b>All</b>						
Median	52.60	45.44	59.90	53.07	740	72
Mean	56.51			59.21	1,001	81

4.11 Table 16 provides these average cost figures for London and Provincial firms:

**Table 16**

Fee earners	Based on the median hours of all the firms				Fees / partner £'000	Fees per fee earner £'000
	Cost / hour Median £	Cost / hour Lower quartile £	Cost / hour Upper quartile £	Fees / hour £		
	<b>London</b>					
Median	55.85	45.61	72.65	60.37	661	82
Mean	62.32			64.89	1058	89
<b>Provincial</b>						
Median	51.97	44.67	53.86	49.75	765	70
Mean	50.69			53.52	945	74
<b>All</b>						
Median	52.60	45.44	59.90	53.07	740	72
Mean	56.51			59.21	1001	81

Appendix A provides an analysis of London as opposed to Provincial firms.

4.12 These average cost figures have been calculated by dividing each firm’s total costs by their “capacity”, measured in terms of total chargeable hours. This has been calculated by multiplying the number of fee earners each firm has of each grade by the average chargeable hours for all the firms for each grade. There was a range in chargeable hours reported by the firms, and indeed some firms said that they did not set chargeable hours targets at all:

*“The expected “annual chargeable hours” is not a concept given very much weight in criminal defence work for a variety of reasons. The fixed fee system does not fit well with it and neither does the fact that much work is out-of-hours. Added to which is the gross inefficiency of most court listing which can make even the best motivated fee-earner appear inefficient.”*

*“Expected annual chargeable hours – please note that this firm does not have target figures in respect of chargeable hours on the basis that this would provide an artificial figure with respect to performance. As you are aware the standard fee system applies in the Magistrates Court. As such it is more realistic to impose targets comprised of actual fee income received by fee earners.”*

In order to try to make a like for like comparison we have taken the median of the figures that were reported and applied these across all the firms. In effect we are assuming that all the firms in the survey will expect their fee earners to work similar patterns. Once again we have made an allowance for management time in respect of the equity partners and have assumed chargeable hours of 1,100. These average figures have been used to calculate an hourly cost rather than the actual hours provided by each firm. Table 17 sets out these figures:

**Table 17**

<b>Criminal firm Survey 2006</b>			
<b>Median chargeable hours</b>	13-40	40+	All firms
Equity partners	1,100	1,100	1,100
Salaried partners	1,500	1,575	1,500
Other solicitors	1,498	1,440	1,495
Other qualified fee earners	1,495	1,430	1,440
Unqualified fee earners	1,408	1,400	1,400
Trainees	1,200	1,163	1,200
Outdoor clerks	1,200	1,123	1,200

Note – the median chargeable hours for equity partners was actually 1,500 and 1,400 for 13-40 and 40+ firms respectively, with an overall median also of 1,500.

As a matter of interest, Table 18 re-calculates the average cost and fees for the 86 firms from the Initial survey, shown previously at table 3 using these same chargeable hours.

**Table 18**

	Based on actual hours		Based on assumed hours		Fees / partner	Fees per fee earner
	Cost / hour	Fees / hour	Cost / hour	Fees / hour		
	£	£	£	£		
1-5	40.76	37.04	50.30	49.26	155,000	64,000
6-12	49.73	43.48	49.80	45.51	213,000	60,526
13-40	45.98	44.85	46.26	46.55	323,960	65,206
40+	53.66	57.24	51.70	49.83	740,000	68,046
Overall	44.92	42.42	48.75	47.90	202,500	63,259

The chargeable hours used in this re-calculation are summarised below.

Assumed chargeable hours:	
Equity partners	1,100
Salaried partners	1,500
Qualified fee earners	1,440
Non qualified fee earners	1,400
Trainees	1,200

Table 18 indicates the same trend as in Table 3, with slightly lower cost being achieved by the larger 13-40 fee earner firms. The average cost for these 13-40 firms from the Initial Survey of £46.26 in table 18 is lower than the equivalent figure for 13-40 large crime firms in table 15 of £53.24, however great care must be exercised in making comparison between two different sample sets. It is always difficult to compare absolute figures between two different surveys, especially when the samples are relatively small - it is the trends within each sample that are often more relevant.

4.13 Table 19 analyses the 13-40 firms in more detail. It illustrates the dependence of these firms on crime.

**Table 19**

13-40 fee earners	Crime	Civil Lit / PI	Family	Private	Social Welfare	Other	Total
Fees	26,096	2,271	2,447	3,298	421	0	34,533
Dept salaries	11,706	1,014	1,275	1,777	181	0	15,953
Sub contract	1,379	5	50	0	20	0	1,454
Counsel	656	0	0	0	0	0	656
Equity partner notional	3,302	370	309	339	62	0	4,382
Gross profit	9,053	882	813	1,182	158		12,088
%	35	39	33	36	38		35
Overheads	6,995	497	789	562	162	0	9,006
Central staff cost	1,453	141	210	238	45	0	2,087
Surplus/defecit	604	244	-185	381	-48	0	995
%	2	11	-8	12	-11		3
Partners	54	6	5	6	1	0	71
Surplus per equity partner	11	41	-37	69	-48		14
Overheads and central staff allocated pro rata total staff in department to all departmental staff							

4.14 Departmental salaries, sub-contractors and Counsel are based on the actual figures in the questionnaires. Equity partner notional salaries are based on the numbers of equity partners in each department. Overheads and central salaries are allocated pro rata to the number of people (fee earners and support staff) in each department.

4.15 The table indicates a small 2% profit margin for crime – a profit of £604k on fees of £26m. It indicates the importance of the small amount of other work undertaken to the overall profitability of the firms. Personal injury and private work represented just £5 ½ m fees (of which £3 ½ m was from just two firms), yet generated £625k profit.

The small amount of family and social welfare work undertaken generated losses. One figure that stands out in the table in respect of family is the high allocation of overheads, compared to PI and Private work. This reflects the relatively large number of people in the family departments – 50 (producing fees of £2.5m), compared to private – 41 (producing fees of £3.3m), and just 31 in PI.

4.16 Table 20 shows the same analysis for 40+ firms. Crime accounts for around 50% fees and is more profitable than amongst the 13-40 firms. A gross profit percentage of 38% was achieved compared to 35%. As indicated earlier, for the 40+ firms in this table, crime only represents approximately half of their fees. Appendix B provides a similar analysis for those firms for whom crime represents a larger proportion of their work, and indicates that these firms achieve a much better level of profitability. This is driven by the lower overhead and central staff costs of these firms.

**Table 20**

40+ fee earners	Crime	Civil Lit / PI	Family	Private	Social Welfare	Other	Total
Fees	53,270	20,091	11,320	19,991	2,775	0	107,447
Dept salaries	27,116	6,706	4,963	8,237	1,332	0	48,354
Sub contract	1,924	25	75	85	46	0	2,155
Counsel	287	0	0	0	0	0	287
Equity partner notional	3,950	1,511	687	2,095	137	0	8,382
Gross profit	19,993	11,849	5,595	9,574	1,260		48,269
%	38	59	49	48	45		45
Overheads	14,797	4,749	3,479	6,755	1,011	0	30,790
Central staff cost	4,656	1,747	1,169	2,194	191	0	9,957
Surplus/defecit	540	5,353	947	625	57	0	7,522
%	1	27	8	3	2		7
Partners	58	22	10	31	2	0	122
Surplus per equity partner	9	243	95	20	29		62
Overheads and central staff allocated pro rata total staff in department to all departmental staff							

Many respondents expressed concern that crime was not profitable, as illustrated by comments from two of these 40+ firms with crime fees of £2m and £3m respectively:

*“As you know, legal aid rates for most of our criminal work have not been increased since about 1993. In the intervening 13 years, there has been a considerable increase in all our overheads, in particular salaries, indemnity insurance, rent, rates, telephone and printing costs. In the last 2 years, rates for serious fraud work have been reduced. It was remuneration for that work which was subsidising the loss making routine work and for the last two years we have been running our Criminal Department at a loss.*

*In the year ending 30th April 2004, the fees earned by our Criminal Department came to £1,826,593 and the cost of its staff and overheads were £1,795,906. This does not*

*include a notional salary for the Equity Partners. The figures for the year ending 30th April 2005 are fees earned £1,925,719, staff and overheads £1,940,779. When adding in a notional salary for the Equity Partner of £60,000 you will see that the department made a loss for each of these years.*

*There has also been no allowance in these figures for interest on invested capital to run the practice. The amount of capital apportioned to our crime team is about £600,000. The cost of this at 6% = £36,000 per annum.”*

*“We have developed a business model based around high volumes and low margins. We have put in place a strong pyramid structure, developed processes and working methods, invested in IT and have cut support staff ratios. We have developed a quality volume crime department. Despite these efforts and a serious investment in volume over the last three years margins have been steadily squeezed. The main problem has been the freeze in rates paid since 1993, combined with some wages pressure. There is realism amongst fee earners that they will not achieve partnership in crime, however salaries for 5-10 year PQE solicitors are still around £35,000-40,000. It is difficult to use newly qualified or inexperienced solicitors.*

*We analyse departmental profitability by taking fees less direct salary cost and direct attributable overheads. The crime contribution is now around 20%. All other departments achieve margins of 45% to low 50's%. After an allocation of central overheads the result is a departmental loss of approximately £700k – a figure that leaps out compared to other departments. The worst seen elsewhere, in its worst year is a one off loss of £100,000.”*

It should be noted that for both of these firms crime does not represent the major part of their business.

- 4.17 Personal injury was clearly important for some of the 40+ firms. The better profitability of family may be because the 40+ firms are able to undertake more private family work and more care work.

## 5 The more profitable firms

5.1 In this section the 38 larger crime firms are analysed as one group according to their profitability (measured by surplus/deficit per partner:

The firms that were more profitable:	Least profitable	Most profitable
▪ Had much higher gearing (the number of other fee earners in addition to each equity partner)	9	23
▪ Were larger – with more fee earners and higher total fees	29 fee earners £2.0m fees	56 fee earners £4.8m fees
▪ Had more qualified fee earners	56%	69%
▪ Undertook more crime	£1.7m	£3.1m
▪ Expected higher chargeable hours	1,533	1,869
▪ Achieved lower levels of salaries v fees	78%	66%
▪ Achieved lower overhead levels v fees	29%	22%
▪ Achieved higher fees per hour	£50	£61
▪ Achieved higher fees per fee earner	£68k	£86K
▪ Had higher levels of partner capital	£154k	£466k
▪ Achieved higher profits per partner	49,000	293,000
▪ Achieved a better surplus after notional salary etc...	-£33,000	£195,000
▪ Achieved a better margin	-7%	13%

Note these figures are the means for the 25% least/most profitable firms

**Tables 21 & 22**

Profit per partner	Number of firms	Average Cost £p	Total Fee earners	% fee earners qualified	Fees £'000	Crime fees £'000	Public %	Crime %	Profit per partner Per accounts £'000	Solicitor Chargeable hours	Gearing
<b>Below Lower Quartile profit per partner</b>	10										
Median		52.23	29	55	1824	1297	99	95	50	1500	9
Mean		52.99	29	56	1977	1682	90	85	49	1533	9
<b>Below Median profit per partner</b>	9										
Median		59.25	37	64	2500	1235	92	62	85	1400	5
Mean		65.70	44	65	3542	1518	78	63	83	1512	6
<b>Above median profit per partner</b>	9										
Median		46.75	36	54	4003	2000	90	65	138	1833	7
Mean		54.97	59	62	4745	1990	67	63	140	1669	10
<b>Above upper quartile profit per partner</b>	10										
Median		52.50	49	67	4043	2147	96	81	282	1576	22
Mean		53.13	56	69	4762	3098	78	68	293	1869	23
<b>All</b>	38										
Median		52.60	34	60	2611	1772	95	86	121	1500	9
Mean		56.51	47	63	3736	2089	78	70	143	1668	12

Profit per partner	Adjusted for notional salary, rent and interest					IT spend last 3 years £'000	IT spend per fee earner £'000	Fees / hour £	Fees / partner £'000	Fees per fee earner £'000	Capital per Equity partner £'000
	Surplus/deficit per partner £'000	Margin %	Salaries %	Overheads %	Overheads per fee earner £'000						
<b>Below Lower Quartile profit per partner</b>											
Median	-23	-6	79	27	20	98	4	48	585	66	104
Mean	-33	-7	78	29	19	122	4	50	678	68	154
<b>Below Median profit per partner</b>											
Median	-1	0	72	30	27	150	4	62	483	84	67
Mean	3	0	69	31	30	161	4	66	521	88	99
<b>Above median profit per partner</b>											
Median	53	9	62	27	19	121	4	53	614	71	126
Mean	60	10	62	28	22	299	5	61	839	84	149
<b>Above upper quartile profit per partner</b>											
Median	191	11	64	19	15	100	3	60	1642	83	457
Mean	195	13	66	22	20	178	3	61	1903	86	466
<b>All</b>											
Median	39	4	69	26	20	110	3	53	740	72	111
Mean	58	4	69	27	23	188	4	59	1001	81	205

## 6 The firms achieving the lowest average cost

6.1 Tables 23 and 24 also analyse the 38 firms as one group according to average cost per hour, and indicate that in a quarter of firms the average cost per hour averaged £41 compared to £76 in the highest quarter:

The firms with the lowest cost per hour:	Lowest cost	Highest cost
▪ Had higher gearing	16	7
▪ Had fewer qualified fee earners	60%	76%
▪ Did more publicly funded work	94%	55%
▪ Did more crime	84%	38%
▪ Expected higher chargeable hours	1,907	1,432
▪ Achieved better partner profits		
○ Per accounts	£174k	£136k
○ After notional salary etc...	£87k	£54k
▪ Achieved a better margin	9.3%	4.7%
▪ Were similar size in terms of number of fee earners, but had higher total fees (this may be because the higher cost firms undertook more private work)	39 fee earners £2.3m fees	40 fee earners £4.4m fees
▪ Undertook similar amounts of crime	£1.8m	£1.7m
▪ Achieved similar levels of salaries v fees	68%	64%
▪ Achieved lower overhead levels v fees	23%	31%
▪ Had lower overheads per fee earner	£14k	£36k
▪ Were mainly Provincial	5 out of 10	1 out of 10

Note these figures are the means for the 25% firms achieving lowest/highest cost

- 6.2 Three of the most profitable firms were also in the group of lowest cost firms.
- 6.3 Although the firms with a lower average cost had fewer qualified fee earners, the following comment is of interest:

*“The so-called "unqualified fee earners / case workers" are anything but "unqualified". No-one working as a fee-earner in criminal defence these days can remain "unqualified" for very long. Of the fee-earners shown, 4 are law graduates and are hoping to be next-in-line for a training contract. 14 of them, including the graduates, hold the Police Station Representatives Accreditation Diploma. It should be recognised that criminal defence work is probably the most qualification regulated of all branches of law. All our solicitors are required to be, or be studying for, Duty Solicitor status.”*

### Tables 23 & 24

Cost per hour	Number of firms	Average Cost £p	Total Fee earners	% fee earners qualified	Fees £'000	Crime fees £'000	Public %	Crime %	Profit per partner Per accounts £'000	Solicitor Chargeable hours	Gearing
<b>Below Lower Quartile cost per hour</b>	10										
Median		40.81	29	57	1,772	1,649	100	98	128	1,833	9.4
Mean		40.20	39	60	2,302	1,835	94	84	174	1,907	16.0
<b>Below Median cost per hour</b>	9										
Median		48.30	37	54	2,700	2,700	98	98	89	1,550	11.3
Mean		48.75	51	56	3,585	2,899	88	84	132	1,739	16.5
<b>Above median cost per hour</b>	9										
Median		55.81	28	60	2,300	2,000	99	90	122	1,500	7.1
Mean		55.80	59	59	4,799	1,979	78	75	126	1,653	9.8
<b>Above upper quartile cost per hour</b>	10										
Median		75.76	33	75	3,944	1,408	57	35	110	1,350	4.6
Mean		80.44	40	76	4,351	1,711	55	38	136	1,432	7.2
<b>All</b>	38										
Median		52.60	34	60	2,611	1,772	95	86	121	1,500	8.5
Mean		56.51	47	63	3,736	2,089	78	70	143	1,668	12.3

Note - the actual chargeable hours supplied by each firm were not used to calculate the average cost for that firm. They were used to calculate averages which were applied across all firms.

Cost per hour	Adjusted for notional salary, rent and interest					IT spend last 3 years £'000	IT spend per fee earner £'000	Fees / hour £	Fees / partner £'000	Fees per fee earner £'000	Capital per Equity partner £'000
	Surplus/deficit per partner £'000	Margin %	Salaries %	Overheads %	Overheads per fee earner £'000						
<b>Below Lower Quartile cost per hour</b>											
Median	47	7.4	69	20	13	96	3	41.59	707	59	60
Mean	87	9.3	68	23	14	100	3	45.04	1,018	63	198
<b>Below Median cost per hour</b>											
Median	-12	-1.4	68	29	20	182	3	49.07	863	69	103
Mean	41	0.7	70	30	20	188	4	49.22	1,253	68	148
<b>Above median cost per hour</b>											
Median	33	4.3	74	25	17	62	3	58.64	714	81	175
Mean	46	0.8	74	26	20	250	3	56.72	863	77	257
<b>Above upper quartile cost per hour</b>											
Median	28	4.5	64	32	29	161	5	80.60	637	113	134
Mean	54	4.7	64	31	36	220	5	84.60	883	115	210
<b>All</b>											
Median	39	4.5	69	26	20	110	3	53.07	740	72	111
Mean	58	4.0	69	27	23	188	4	59.21	1,001	81	205

## 7 Analysis within crime

7.1 The firms were asked to analyse their crime fees in more detail, and to try to assess the profitability of each aspect of crime. 33 firms provided this breakdown of fees as set out in table 25. It indicates the significance of Magistrates Court work amongst the firms:

**Table 25**

Fee earners	Police Station £'000	Magistrates Court £'000	Crown Court £'000	VHCC £'000	Other £'000	Total £'000
<b>13-40</b>	5,733	8,648	5,936	3,103	596	24,016
%	24	36	25	13	2	100
<b>40+</b>	8,396	14,648	9,412	5,826	3,316	41,598
%	20	35	23	14	8	100
<b>All</b>	14,129	23,296	15,348	8,929	3,912	65,614
%	22	36	23	14	6	100

7.2 Firms were also asked to analyse the cost of the different areas of crime in terms of salaries, sub-contractors etc... Only half the firms were able to provide this breakdown – in many cases these distinctions were not meaningful because fee earners worked across these categories, in the police station, the magistrates court etc... or the firms operated a different structure within crime that would have made it difficult for them to provide the figures we were asking for. For those that did provide the information the results must be treated with some caution as the figures may have been based on estimates.

7.3 Tables 26 and 27 show the profitability of the different areas of work within crime for these 19 firms:

**Table 26**

13-40 fee earners						
Firms: 10	Police Station £'000	Magistrates Court £'000	Crown Court £'000	VHCC £'000	Other £'000	Total £'000
Fees	3,819	6,041	3,862	1,655	226	15,603
Dept salaries	1,644	3,281	1,653	767	172	7,517
Sub contract	677	244	113	-	-	1,034
Counsel	-	365	86	-	-	451
Equity partner notional	289	601	370	129	31	1,420
Gross profit	1,209	1,550	1,640	759	23	5,181
Gross profit %	32	26	42	46	10	33

**Table 27**

40+ fee earners						
Firms: 9	Police Station £'000	Magistrates Court £'000	Crown Court £'000	VHCC £'000	Other £'000	Total £'000
Fees	5,410	8,626	6,837	5,032	2,916	28,821
Dept salaries	2,882	4,541	3,723	1,715	1,638	14,499
Sub contract	440	278	159	371	194	1,442
Counsel	20	109	64	-	-	193
Equity partner notional	421	656	524	248	75	1,924
Gross profit	1,647	3,042	2,367	2,698	1,009	10,763
Gross profit %	30	35	35	54	35	37

7.4 The tables indicate the higher profitability, as would be expected, of VHCC and Crown Court work. They also show interesting variations in the profitability of other areas. For example, amongst the 13-40 firms, Magistrates Court is the least

profitable area of work. This may reflect the fixed fees firms are paid for that work, and could also be related to the level of fee earner that may work in the magistrates court compared to the police station. The former requires a solicitor whereas in the police station accredited representatives who are not solicitors can be used, and their salary is likely to be less. The 40+ firms appear to achieve better levels of profitability and that may reflect the higher volumes these firms may achieve in the magistrates court.

7.5 It should be noted that these profit figures show the “gross profit” of the various areas, in other words they are before any allocation of central support staff or overheads. The firms were not asked to estimate an allocation of partner time within the different areas so the cost of the partners in the crime departments have been allocated pro rata to the salaries cost of each area.

7.6 Funding is also a problem for many firms:

*“We would like to point out that in addition to the ridiculously tight margins to which we are subject, we are now in a situation where trials in the East Berkshire area are now being listed well over a year hence, i.e. March 2007. This means that we are expected to fund these cases for approximately 18 months without payment. As there is no system in place to pay interim payments on these matters cash flow is likely to become critical within the next three months.”*

7.7 Some firms are achieving better levels of departmental profitability. Table 28 looks at all 19 firms and indicates that whilst the median was 35% some firms were achieving slightly higher levels.

**Table 28**

All the firms						
Firms: 19	Police Station %	Magistrates Court %	Crown Court %	VHCC %	Other %	Total %
Median	30	26	47	51	47	35
Lower quartile	13	15	28	39	32	29
Upper quartile	43	35	52	66	66	40

## 8 Conclusions

- 8.1 The purpose of this research has been to obtain a better understanding of the cost base and revenues of publicly funded firms with a view to establishing whether a low cost, sustainable, model currently exists that might form the basis for a new system of publicly funded criminal work.
- 8.2 The difficulties encountered by FreshMinds in finding firms willing to take part in their research, together with the length of the questionnaire, and the fact that the interview was conducted by telephone, mean that the financial data from that survey has to be treated with care. Our analysis of the 86 firms however does appear to be broadly in line with the DCA 2003 Survey, which was based on reasonably reliable data that had been extensively validated. The subsequent research amongst larger crime firms resulted in a relatively small sample of 38 firms, but represented a good cross-section of these larger firms. That data appears fairly robust and once again was subject to extensive verification.
- 8.3 The analysis of the initial sample of 86 firms indicates that when the actual hours worked by each firm are used, the lowest average hourly cost of £45 (Table 3) is being achieved by the smallest firms, those with under five fee earners. This is likely to be due to the low overhead and staff costs of these firms and the long hours worked. As well as being low cost, and arguably therefore good value, such firms often appear to provide a high standard of client service and appear to be well regarded by their clients because:
- they will be often be local – the client will not have far to travel;
  - the fee earners are frequently very experienced, indeed will often be partners;
  - there is more likely to be continuity of the fee earner running the case, and the same person may also appear in court, although this will be the case less in London where greater use is made of Counsel to present the case in court.

However, these firms were also the least profitable in the survey. It is difficult to see how they could represent a sustainable long-term model. In particular the comments made in the various surveys would suggest that:

- the average age of many of these practitioners, in particular in crime, is increasing;
- they have greater difficulty recruiting staff – young solicitors are often not attracted due to the long hours expected, poor pay, lack of security and poor public profile;

- they have difficulty developing the team structures that appear to be key to cost effective working in crime. This will be due in part to recruitment difficulties but may also reflect a lack of management skill/inclination on the part of the partners;
- it is difficult for firms of this size to develop the necessary systems and procedures, or have the necessary capital base to invest in IT;
- small firms achieving low profits can be vulnerable to unexpected blows such as the loss of a key fee earner or sudden unexpected expenditure. They lack resilience.

8.4 The calculations based on the assumed hours – the like for like comparison in terms of chargeable hours, indicates that the lowest hourly cost of £56 (Table 3) is achieved by the 13-40 fee earner firms, although it should be noted that only three of the nineteen firms in this group were specialist crime firms. Although the cost base of these firms may be higher – they will often have a better infrastructure and may also offer better employment conditions for staff – these firms can often achieve a lower average cost per hour because there are more fee earners to spread this cost over. They are also better able to develop team structures which allow work to be done at the correct level.

8.5 The subsequent research amongst larger crime firms indicates that the 40+ firms were able to achieve a cost per hour of £53 (Table 15) with a quarter achieving an average hourly cost £40 (table 23). It should be noted that a similar lower quartile figure has not been calculated for the firms in the initial Survey because of concerns about the reliability of the financial data in that Survey.

Care must be taken in making direct comparison between the two surveys because the samples, methodology and assumptions used in both are different, in particular with regard to chargeable hours. The composition of the two samples was also very different – in the initial survey, for example, the 13-40 firms undertook relatively little crime – 20%, whereas in the second survey crime represented 94% of the fees of these firms.

In my experience larger firms are often able to overcome some of the problems of the very small publicly funded firms:

- Recruitment of certain levels of staff can be easier. These firms are large in publicly funded terms and are often well known. They are often regarded as providing good training, and for young solicitors who wish to pursue a career in publicly funded work, can be good to have on their CVs;

- They are large enough to be able to attract and justify the cost of specialist HR and IT staff;
- They are more likely to have the necessary resources and management structures to develop effective procedures and systems;
- Succession<sup>5</sup> is often easier – there is a bigger pool of younger solicitors, and if the firms are profitable they are attractive to these people;
- They are likely to be able to offer a wider range of services – family, housing, debt, crime, rather than the narrower areas of work that many smaller firms will be able to offer.

8.6 These larger firms will suffer the general recruitment difficulties faced by legal aid firms, especially for experienced solicitors, but not to the same degree. In particular, comments by participants suggest that the lack of security referred to above has been heightened in recent months amongst crime firms by the threat of competitive tendering, and in recent years amongst legal aid firms in general as a result of pressure on profitability and negative press:

*“We work in Brighton where property prices are similar to London and recruitment is a problem. In addition, the population of criminal defence solicitors is ageing and as a branch of the law it is now deeply unappealing with long hours, high stress levels and poor rates of remuneration compared to other areas of law. Compare our legal aid rates to civil legal aid rates. Give it another ten years and my predication is that there will be no-one left to do criminal defence work. I understand the average age of a criminal defence solicitor is now 50 years old.”*

8.7 The research amongst the larger firms indicates a range of profitability. Some firms are doing well – the larger 40+ firms and some of the 13-40 firms, but others are struggling – and these firms are amongst the top 100 crime firms in the Country.

8.8 The characteristics of the firms achieving lower cost and reasonable profits appear to be:

- High levels of gearing – a very small number of equity partners
- Higher levels of unqualified fee earner
- An expectation of higher chargeable hours
- A relatively low overhead base
- A focus on crime

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<sup>5</sup> “Succession” in a partnership is identifying future equity partners able to continue to provide leadership, management and funding to the practice.

*“Having looked at the preliminary report yesterday, I believe that the future lies in local specialist firms. I would propose that this firm is now in a position to offer two fee earners each day to our local courts. I could then effectively not charge for travel. Waiting time would be reduced or possibly eliminated on the basis of an increased caseload. Quality would be ensured by our strength in depth. We also have access to our clients in prison via a video link. We have a separate Police Station team running their own diary and work allocations. During current office hours we have access to at least five fee earners to cover police station work with access to more as the need arises.”*

These firms also however have relatively high capital per partner – a function of the high gearing – and this can have implications for partner succession. In order to continue to attract new partners these firms need security of both income and work flow. The need for security of work flow becomes ever more important with size as some commitments, in particular property leases, can be for many years.

- 8.9 This structure of firm seem to offer a low cost to the taxpayer and a reasonable return for the equity partners. As indicated in section four however, some large firms with good gearing, effective systems and strong management are struggling to run their crime departments at a profit. Both of the firms that are quoted in section 4 are leading firms with national reputations, which, despite having established relatively low cost business models are unable to make crime pay. Some of the other firms reporting a relatively high average cost per hour are also well-regarded firms. It is not at all clear whether all of these firms will be able to maintain their criminal departments without a changed regime for fees or the adoption of an even lower cost base model. A key factor in achieving low cost would appear to be specialisation. For some of these larger firms, crime is just a part of their business – the lowest cost firms appear to specialise in crime.
- 8.10 The variation in cost may also reflect different quality standards on the part of the firms and different standards of client service. We have made no attempt to judge the quality of the work undertaken by the various firms, indeed have assumed the same standards, but in reality there may be differences.
- 8.11 I would like to thank the firms that took the time to participate in both these surveys. I would also like to thank Vicky Ling for her assistance during this project.

Andrew Otterburn  
June 2006

## Appendix A

### Analysis of London v Provincial firms

Fee earners	Number of firms	Total fees £m	Fee earners % fee earners qualified	Gearing	Fees £'000	Crime fees £'000	Public % %	Crime % %	Solicitor Chargeable hours
<b>London</b>	19	58,027	26	9	2,300	1,416	95	85	1,377
Median			34	12	3,054	1,600	83	71	1,487
<b>Provincial</b>	19	83,953	43	9	2,736	2,500	92	86	1,613
Median			59	12	4,419	2,577	74	69	1,808
<b>All</b>	38	141,980	34	9	2,611	1,772	95	86	1,500
Median			47	12	3,736	2,089	78	70	1,668

Fee earners	Profit per partner Per accounts £'000	Profit per partner (per accounts)	
		Lower quartile £'000	Upper quartile £'000
<b>London</b>			
Median	97	60	196
Mean	134		
<b>Provincial</b>			
Median	122	76	179
Mean	152		
<b>All</b>			
Median	121	62	188
Mean	143		

Fee earners	Adjusted for notional salary, rent and interest				Salaries %	Overheads %	% Overheads per fee earner £'000	IT spend last 3 years £'000	IT spend per fee earner £'000
	Surplus/defecit per partner £'000	Margin %	Surplus/defecit Lower quartile £'000	Surplus/defecit Upper quartile £'000					
<b>London</b>									
Median	22	2	-16.2	115.2	73	24	17	110	3
Mean	53	4			71	25	23	167	5
<b>Provincial</b>									
Median	46	6	-11.4	97.8	66	30	21	110	3
Mean	62	4			66	29	22	209	3
<b>All</b>									
Median	39	4	-12.3	114.4	69	26	20	110	3
Mean	58	4			69	27	23	188	4

## Appendix B

### Analysis with eleven firms excluded – for whom crime represented under 50% fees

Fee earners	Number of firms	Total fees £m	Fee earners % qualified	% fee earners qualified	Gearing	Fees £'000	Crime fees £'000	Public % %	Crime % %	Solicitor Chargeable hours
<b>13-40</b>	18	27,123								
Median			22	62	6.2	1,459	1,206	99	98	1,553
Mean			21	65	8.1	1,507	1,305	93	87	1,709
<b>40+</b>	9	37,352								
Median			49	54	22.0	3,450	2,859	98	95	1,900
Mean			60	54	26.2	4,150	3,650	96	89	2,044
<b>All</b>	27	64,475								
Median			26	57	10	1,800	1,600	99	98	1,688
Mean			34	61	14	2,388	2,087	94	88	1,815

Fee earners	Profit per partner Per accounts £'000	Profit per partner (per accounts)	
		Lower quartile £'000	Upper quartile £'000
<b>13-40</b>			
Median	65	50	142
Mean	106		
<b>40+</b>			
Median	138	85	304
Mean	197		
<b>All</b>			
Median	89	58	178
Mean	136		

Fee earners	Adjusted for notional salary, rent and interest				Salaries %	Overheads %	% Overheads per fee earner	IT spend last 3 years £'000	IT spend per fee earner £'000
	Surplus/defecit per partner £'000	Margin %	Surplus/defecit Lower quartile £'000	Surplus/defecit Upper quartile £'000					
<b>13-40</b>									
Median	-7	-1.7	-22.1	69.8	74	25	18	61	3
Mean	32	1.9			71	27	21	80	4
<b>40+</b>									
Median	31	1.2	-27.8	197.7	70	20	17	110	2
Mean	75	2.9			73	25	17	151	3
<b>All</b>									
Median	-2	-0.3	-18.5	114.4	73	25	17	86	3
Mean	46	2.2			72	26	20	103	3

Fee earners	Based on the median hours of all the firms				Fees / partner £'000	Fees per fee earner £'000
	Cost / hour Median £	Cost / hour Lower quartile £	Cost / hour Upper quartile £	Fees / hour £		
	<b>13-40</b>					
Median	48.98	42.92	56.51	49.16	532	70
Mean	54.63			55.66	671	77
<b>40+</b>						
Median	41.20	37.46	44.00	39.49	1,581	69
Mean	39.25			40.59	1,865	69
<b>All</b>						
Median	44.27	40.60	54.71	47.58	833	69
Mean	49.51			50.63	1,069	74

<b>Criminal firm Survey 2006</b>			
<b>Median chargeable hours</b>	13-40	40+	All firms
Equity partners	1,100	1,100	1,100
Salaried partners	1,500	1,850	1,805
Other solicitors	1,500	1,850	1,500
Other qualified fee earners	1,500	1,800	1,500
Unqualified fee earners	1,435	1,750	1,440
Trainees	1,200	1,260	1,200
Outdoor clerks	750	1,035	1,035

13-40 fee earners	Crime	Civil Lit / PI	Family	Private	Social Welfare	Other	Total
Fees	23,496	911	1,547	1,098	71	0	27,123
Dept salaries	10,506	249	915	407	45	0	12,122
Sub contract	1,274	0	0	0	0	0	1,274
Counsel	639	0	0	0	0	0	639
Equity partner notional	3,032	190	190	190	0	0	3,601
Gross profit	8,045	472	442	501	26		9,487
%	34	52	29	46	37		35
Overheads	6,404	225	462	244	31	0	7,367
Central staff cost	1,259	36	120	57	9	0	1,480
Surplus/defecit	382	212	-139	200	-14	0	640
%	2	23	-9	18	-20		2
Partners	48	3	3	3	0	0	57
Surplus per equity partner	8	71	-46	67			11
Overheads and central staff allocated pro rota total staff in department to all departmental staff							

40+ fee earners	Crime	Civil Lit / PI	Family	Private	Social Welfare	Other	Total
Fees	32,854	659	2,397	142	1,300	0	37,352
Dept salaries	18,201	412	1,240	118	628	0	20,599
Sub contract	1,447	11	38	0	0	0	1,496
Counsel	218	0	0	0	0	0	218
Equity partner notional	2,053	0	0	0	0	0	2,053
Gross profit	10,935	236	1,119	24	672		12,986
%	33	36	47	17	52		35
Overheads	7,814	125	324	34	554	0	8,851
Central staff cost	2,366	37	104	7	48	0	2,561
Surplus/defecit	755	74	691	-17	70	0	1,574
%	2	11	29	-12	5		4
Partners	26	0	0	0	0	0	26
Surplus per equity partner	29						61
Overheads and central staff allocated pro rata total staff in department to all departmental staff							

## Appendix C

### Methodology and definitions

1. The methodology in this report for calculating average cost is based upon the Law Society's "Expense of Time", originally published in 1986. The Law Society of Scotland use a similar approach in their annual "Cost of Time" survey<sup>6</sup> and publish average hourly costs for firms of different sizes based in various locations across Scotland. The Law Society of England & Wales does not publish a similar survey although in the past local Law Societies have gathered the data within their areas.
2. One of the difficult areas in calculating hourly cost is determining a figure for chargeable hours. The Law Society of England & Wales suggests 1,100 hours in the Expense of Time. The Law Society of Scotland of Scotland use 1,000 hours for partners, 800 hours for trainees and 1,200 for all other fee earners. The 2003 DCA Survey suggested that at that time legal aid firms expected higher levels of chargeable hours – around 1,300 hours a year. These figures were used in calculating the average costs for the initial Survey as set out in section two to this report. The subsequent survey of larger crime firms uses the averages for those firms as they appear a better indication of current expectations. These averages were applied across the firms in order to assist comparison..
3. The Expense of Time defines a notional salary as *"a figure approximating to the salary that would be paid to an assistant solicitor whose experience would enable him or her to do the more straightforward work done by the principal. It cannot, of course, be lower than the gross salary paid currently to the firm's highest paid associate, and this salary should be used if it exceeds recommendations on notional salaries."* The Law Society publishes suggested notional salaries in each week's Law Society Gazette, and In June 2006 the suggested figures were £41,450 for firms in London and £31,500 for firms elsewhere. As indicated in Table 12, the average salary paid to the firms in the second Survey was £55,000 and £61,000 for 13-40 and 40+ firms respectively and these have therefore been used together with an allowance for National Insurance so as to reflect the total equivalent cost of employment. As a matter of interest, this year's Law Society of Scotland of Scotland Survey uses a notional salary of £59,500.
4. The Expense of Time also recommends the use of a notional market rent where the partners own their offices and also a notional interest on partner capital account.
5. The traditional method of assessing the profitability of a firm of solicitors is "profit per equity partner", although some firms are also starting to calculate the surplus/deficit after allowing a notional salary and interest on partner capital, as this can provide a better indication of profitability. This will be especially relevant in a post-Clementi legal environment. Both measures have been used in this report.

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<sup>6</sup> Law Society of Scotland – Benchmarks and the Cost of Time