

**Providing Criminal Legal Assistance by Means of
Solicitors Directly Employed by the
Scottish Legal Aid Board:
a Report on the Progress of
the Feasibility Study.**

This report is informed by the findings from an exercise undertaken by the Courts and Constitution Analytical Team (CCAT) within Justice Analytical Services (JAS) in the Scottish Government which collated and reported on evidence on key aspects of the operation of the Public Defence Solicitors Office. It also draws on operational data from PDSO and the Scottish Legal Aid Board.

The research exercise consisted of the following elements:

- An on-line survey of PDSO solicitors and paralegals from all seven offices.
- In-depth interviews with a wide range of stakeholders in Inverness and Glasgow, including sheriffs and private defence solicitors.
- Collation and analysis of data collected by PDSO.
- Analysis of a postal-based, self-completion client satisfaction survey commissioned by SLAB on behalf of PDSO to explore client satisfaction with PDSO in the period 2007/08.

SG/2008/259 Laid before the Scottish Parliament by the Scottish Ministers in pursuance of S.28A(9A) of the Legal Aid (Scotland) Act 1986 (December 2008)

INTRODUCTION

1.1 An amendment to the Legal Aid (Scotland) Act in 1997 (by the Crime and Punishment (Scotland) Act 1997) provided for the carrying out of a study into the feasibility of providing publicly funded criminal legal assistance by means of solicitors directly employed by the Scottish Legal Aid Board (SLAB). The study has been carried out by establishing a series of Public Defence Solicitors Offices (PDSO). The first office opened in Edinburgh in 1998 with two further offices being opened in Glasgow and Inverness in 2004. Four more, in Kirkwall, Dundee, Falkirk and Ayr, followed in 2007.

1.2 There is a statutory duty for Scottish Ministers to lay a report on the progress of the feasibility study before Parliament by 31 December 2008. This report discharges that obligation by setting out the key aspects of the provision of services by PDSO. It does not seek to compare the practices, salaries or other administrative costs of PDSO and private sector firms.

1.3 A large scale independent evaluation was commissioned by the then Scottish Executive in 1998. The findings of this evaluation were published in 2001 and informed the subsequent limited further development of the PDSO. The original evaluation suggested that PDSO and private solicitors were similar in many respects, but that PDSO tended to resolve cases at an earlier stage in the proceedings. This difference is particularly pertinent when considering the costs and benefits of PDSO.

2. RUNNING COSTS

Details of expenditure related to the operation of PDSO are published annually in the Scottish Legal Aid Board's Annual Report. The table below shows a summary of the actual costs (the funding provided for PDSO) over the past 10 years.

	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
PDSO costs (£000s)	405	430	390	357	344	376	827 ¹	793	864 ²	1,321 ²

¹ Includes start-up costs for offices in Glasgow and Inverness.

² Includes start-up costs for offices in Kirkwall, Dundee, Falkirk and Ayr.

3. BUSINESS VOLUMES AND COST EFFECTIVENESS

3.1 The volumes of business undertaken by PDSO were measured using numbers of new cases opened, numbers of solemn cases opened and number of appearances by PDSO acting as duty solicitor. Volumes of business are not directly comparable across offices as they depend on a number of factors including: numbers of staff in each office, types of case, time given to each case and travel time for those covering outlying courts.

	1998-99	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Total number of cases	417	1,034	1,202	1,194	1,123	1,196	1,565	1,743	1,491	1,973
Number of solemn cases	0	1	26	34	25	28	54	89	77	75
Number of appearances by PDSO as duty solicitor	–	–	–	–	1,092	930	1,142	1,060	597	1,548

3.2 All of the PDSO offices covered a wide range of solemn and summary cases in the year 2007-08. The three types of case most often covered were Road Traffic Acts, Breach of the Peace and Assault.

3.3 Over the lifetime of PDSO, several changes have been made to the ways in which the Office attracts business. When originally established in Edinburgh, clients were ‘directed’ to PDSO on the basis of their date of birth. This ensured a rapid build up of business to allow for early evaluation, as required by the PDSO’s founding legislation. Once the evaluation requirements had been met, it was decided that direction should be removed. By agreement with the Edinburgh Bar Association, PDSO was allocated a significantly enhanced share of the duty solicitor rota for the Edinburgh courts, with clients free to choose whether to instruct PDSO after their initial appearance from custody. This resulted in PDSO Edinburgh maintaining its caseload in the years following the removal of direction.

3.4 Gradual reductions in duty allocations were initially outweighed by a significant increase in non-duty cases i.e. for self-referring or returning clients. A subsequent significant reduction in duty allocations and the departure of several key legal staff combined to result in a reduction in PDSO Edinburgh’s overall caseload, from 1,176 cases (including 333 duty cases) in 2005-06 to 572 cases (146 duty cases) in 2007-08. This was accompanied by a reduction in the number of legal staff and associated running costs.

3.5 On opening, the Glasgow office was given a normal share of the Glasgow duty plan, while the Inverness office served several courts across a wide area of the Highlands and so was allocated duty slots on each of these rotas. With these arrangements in place, PDSO Glasgow business volumes increased slightly over the first three full years of its operation from 198 cases in 2005-06 to 225 cases in 2007-08. By contrast, the volumes of business in PDSO Inverness grew more significantly from 369 cases in 2005-06 to 461 in 2007-08.

3.6 The strategy adopted for the most recent offices (in Ayr, Dundee and Falkirk) mirrored that used in Inverness. By covering a range of courts, each office has become established more quickly through inclusion on several duty rotas. In their first year, the Ayr, Dundee and Falkirk offices opened 176, 160 and 174 new cases respectively.

3.7 The Kirkwall office was established specifically because no local solicitor was willing to act as duty solicitor, meaning that the Office's single solicitor is effectively the only duty solicitor in Kirkwall Sheriff Court. The office opened 139 new cases in its first year.

3.8 The original evaluation and subsequent analysis strongly suggest that the cost-effectiveness of PDSO in terms of its casework activity is sensitive to business volumes. The post-direction experience of the Edinburgh office suggested that variations in business volumes could be managed by appropriate use of duty rotas. Different strategies for use of duty rotas have subsequently been adopted in Edinburgh, Glasgow and Inverness.

3.9 Assessment of the benefits and value for money offered by PDSO has to take into account not only quantifiable benefits such as the number and types of cases in which legal advice and representation is provided and how they are conducted, but also the other important but less easily quantifiable benefits such as the feedback provided to policy makers on the operation of the justice and legal aid systems and the ability of Ministers to direct provision to areas of unmet need.

3.10 Assessing the cost-effectiveness of the PDSO's casework is itself complex. The original evaluation of PDSO recognised that public defenders do not operate in exactly the same way as private solicitors in that they tended to resolve cases at an earlier stage in proceedings. This meant that, compared to a typical private practice, more of their work was undertaken under Advice and Assistance than Criminal Legal Aid. Indicative data gathered since suggests that this difference has been maintained and, indeed, is likely to have become more pronounced. Any attempt to evaluate the work of PDSO, for example in terms of the cost of having the same cases handled by private practice solicitors, would have to account for these differences and their impact on both legal aid expenditure and the costs and operation of the wider justice system. Such evaluation would also have to be undertaken in the context of significant developments in the scope, operation and structure of the PDSO network since the original evaluation was carried out and, more recently, significant changes in the summary justice and summary criminal legal assistance systems, the full impacts of which will not become evident for some time.

4. QUALITY OF SERVICE AND CLIENT SATISFACTION

4.1 Client satisfaction surveys were conducted in 2000 for the Edinburgh PDSO (the only office open at the time) and in 2007-08 for Edinburgh, Glasgow and Inverness PDSOs.

4.2 The results were generally very positive for the survey conducted in 2000 with just over 80% of the 38 respondents considering the service excellent or good and almost 90% rating their PDSO solicitor as excellent or good at giving them enough information, for their performance in court and for preparing their case fully. Fourteen percent thought the service was not very good or poor and six percent of respondents rated their PDSO solicitor as poor at giving them enough information,

9% rated them as poor for preparing their case fully and 12% rated them as poor for their performance in court.

4.3 The survey conducted in 2007-08 also shows positive results with 90% of the 123 respondents rating PDSO as good or very good. High levels of satisfaction were recorded for all aspects of case handling, ranging from 77% of clients satisfied with their solicitors' performance in court to 88% satisfied with the level of information received from their solicitor. Only 4% of clients rated the service as either poor or very poor.

4.4 In addition to these client satisfaction surveys, PDSO has been heavily involved in the development of a peer review based system of quality assurance for criminal defence work. Following initial development and testing of criteria for reviewers to use when assessing PDSO case files, three private practice solicitors reviewed a substantial number of PDSO files in 2004. This not only enabled SLAB and the then Director of PDSO to satisfy themselves as to the quality of work carried out by PDSO solicitors, but also established the validity and robustness of a peer review system for criminal work. This has subsequently formed the basis for development of a scheme that will shortly be rolled out to the profession as a whole.

5. POTENTIAL FOR PDSO TO CONTRIBUTE TO DEVELOPMENT OF POLICY AND PRACTICE IN THE LEGAL AID AND JUSTICE SYSTEMS

5.1 Because of the locations of the 7 PDSO offices and the fact that they are managed as a network, the Director of PDSO is in a position to obtain insights from criminal defence solicitors on how the legal aid scheme and the justice system is working in a wide range of sheriffdoms and courts. The Director provides feedback to the Scottish Legal Aid Board, with relevant findings reported to the Scottish Government and other justice agencies either by the Board or directly by PDSO. PDSO solicitors feed into or participate in discussions with key stakeholders from the courts and prosecution, providing direct feedback on how legal aid and the justice system operate in practice, as well as proposals for reform.

5.2 The PDSO also provides the Scottish Legal Aid Board with a test-bed for new developments, such as the peer review system for quality assurance of criminal defence work.

5.3 Scottish Government researchers undertook interviews with PDSO staff and a wide range of stakeholders in Glasgow and Inverness (including Sheriffs and defence solicitors) to ascertain their perceptions. Almost two thirds of PDSO solicitors and paralegals (10 out of 16) and at least one respondent from each PDSO office thought that PDSO solicitors had a significant capacity to provide insights into the justice system.

5.4 All stakeholders perceived that PDSO solicitors are in a position to provide valuable insights into the justice system alongside others e.g. sheriffs, court staff, procurators fiscal, private defence solicitors and so on. However, it was also considered by some that PDSO solicitors, as public servants as well as solicitors with a duty to the courts and to their clients, were different in that they have a

different perspective to other defence solicitors and are also well placed to feed back this information to policy makers.

6. TRAINEESHIPS AND ALTERNATIVE CAREER PATHS

6.1 PDSO has offered and completed 3 traineeships; 2 in Edinburgh and 1 in Glasgow. After completing training with PDSO, two of the trainees moved into private, legally-aided criminal defence practice and one moved to private non legally-aided civil work. One trainee is currently in post in Edinburgh and there are plans to offer one or possibly two traineeships from autumn 2009 in Edinburgh and Glasgow.

6.2 Interviews with PDSO solicitors and paralegals in all offices suggest that, as PDSO employs only a small number of solicitors (14 in total at present), it does not in and of itself offer a significant alternative career path in terms of the number of positions available. However, as part of its wider role in supporting public policy objectives in relation to the development and delivery of publicly funded criminal defence services, PDSO is in a position to offer more traineeships than may be considered feasible by a similarly sized private firm. In this way, PDSO can act as a route into the profession for aspiring criminal defence solicitors who may otherwise experience difficulty finding training positions with firms providing this kind of work.

6.3 Three quarters of interviewees (12 out of 16) felt that their desire to specialise in criminal defence work was an important factor in their decision to work for PDSO with other significant factors (including work life balance, working conditions and the location of the office) as secondary to this. Further factors mentioned included training opportunities and benefits package (holidays and pensions).

6.4 Key amongst the secondary factors mentioned by respondents was a strong desire to provide a service with no overriding business concerns. It should be stressed that interviewees from PDSO were keen to point out that when they worked in private practice they did not work with the motive of maximising income. Rather, they were concerned to earn enough income to cover costs. A further secondary consideration was a healthy work-life balance culture.

6.5 On the other hand, interviews with some private defence solicitors revealed that, in general, they would not consider working for PDSO for two reasons: firstly, they perceived that the salary would be too low and, secondly, the interviewees actually enjoyed the business side of their work and valued the autonomy of their position.

7. RELATIONSHIPS WITH OTHER ORGANISATIONS

7.1 Interviews with PDSO staff and stakeholders in Glasgow and Inverness showed that perceptions of PDSO's relationships with other organisations were for the greater part positive, with only a slight suggestion of negative views. Both PDSO solicitors and private defence solicitors alluded to good professional and productive relationships with each other and an attitude of disregarding any negative views. In Inverness, the research revealed that perceptions are that all working relationships

are excellent. The PDSO solicitors are highly thought of by all stakeholder groups including sheriffs, advocates, and private defence solicitors. The research did, however, find a slight perception that in a number of the newer PDSO offices (Ayr, Dundee and Falkirk) working relationships were not universally positive. However, interviewees expressed a further perception that this may be a feature of these offices being relatively new and unfamiliar, rather than a long-term concern. Indeed, interviews revealed a reluctance to accept PDSO when it was first implemented in Inverness and Glasgow although there is now a perception that working relationships are good to excellent and that early concerns have not materialised.

7.2 Holistic working, or working to address all the needs of clients including those that are not directly associated with the criminal case concerned, is a specific objective of PDSO Glasgow. The overwhelming perception of those interviewed was that working to address the wider needs of clients is a feature of all criminal defence work. However, interviews revealed that there was a perception that PDSO Glasgow solicitors had adopted a more extensive role in this area to address the multiple and complex needs of clients where necessary.

8. GEOGRAPHICALLY SPECIFIC BENEFITS

8.1 The vast majority of stakeholders agreed that there were either too few or no criminal defence solicitors covering many courts in the Highlands and Islands before the PDSO offices in Inverness and Kirkwall were established. In Kirkwall in particular the Board had experienced difficulties in maintaining duty solicitor coverage and so were asked by Ministers to use PDSO to ensure the availability of defence services. PDSO were also asked to join the duty plan in Wick as this too was felt to be vulnerable due to the small number of participating solicitors.

8.2 Although the office there was established to address needs across the wider Highland area rather than Inverness itself, the majority of stakeholders perceived that there either were or would soon have been too few criminal defence solicitors in Inverness.

8.3 More recently, the effective withdrawal of local solicitors from the Stonehaven Sheriff Court duty plan has been addressed by solicitors from the Dundee office while the Edinburgh office has been the sole duty solicitor on the Midlothian District (now JP) Court rota for many years. While it was explicitly recognised when the Glasgow office opened that it would be operating in a saturated market (and that there was therefore no general unmet need for criminal defence services in Glasgow), the Glasgow office also acts to ensure access to services by appearing as alternate duty solicitors for Campbeltown Sheriff Court due to the small number of solicitors willing or able to provide coverage in that location.

8.4 The research revealed a perception that there is a lack of solicitors experienced in solemn work in the Highlands and Islands. Although interviewees did point out that serious crime was rare in these areas, the need does arise at times for a solicitor who is able to take on high-level solemn trial work. The support available across the network, including from in-house solicitor advocates, makes PDSO well placed to do so.

8.5 Interviews suggested that PDSO could appropriately provide representation in unusually complex and time-consuming cases which it may be unreasonable to expect a private defence solicitor to take on or in situations where private defence solicitors refused to act, such as the disruption of the Glasgow custody courts in May 2008. This is made possible by the ability to direct PDSO provision and the fact that its operation as a network provides flexibility to cover that.

9. CONCLUSIONS

9.1 PDSO enables publicly funded criminal legal assistance to be provided by Government through employment of salaried rather than the traditional judicare model where solicitors in private practice are paid on a case by case basis, either for the time spent working on a case or through a series of fixed fees for progress towards the conclusion of a case.

9.2 The PDSO offices have been able to employ suitably qualified staff. They have provided legal advice and representation on a range of criminal matters from driving offences to murder. A substantial majority of clients are satisfied with the quality of the service provided by PDSO solicitors and, in general, relationships with other agencies are positive. Providing criminal legal assistance in this way also enables Scottish Ministers to direct provision of services to areas where there is insufficient provision or market failure.

9.3 The PDSO has demonstrated that the provision of publicly funded criminal legal assistance by means of solicitors directly employed by SLAB is feasible.