THE PUBLIC DEFENCE SOLICITORS' OFFICE IN EDINBURGH:

AN INDEPENDENT EVALUATION

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EXECUTIVE SUMMARY

Introduction
The Public Defence Solicitors’ Office (PDSO) was established in Edinburgh on 1 October 1998. The enabling legislation required that it be formally evaluated, and a report presented to Parliament within three years. Research was therefore commissioned to compare criminal defence services delivered through the PDSO with those delivered through private practice solicitors under the legal aid scheme. The comparison was undertaken with reference to four criteria:

- cost-effectiveness;
- the quality of services provided;
- client satisfaction; and
- the contribution of each delivery method to the efficiency of the criminal justice system, including the impact on the courts, the Procurator Fiscal service, the police and the judiciary.

This study was confined to representation in summary proceedings (that is, proceedings without a jury). During the period of the study, the Office did not undertake solemn work, before a judge and jury.

To aid the research and help the PDSO build up a sufficient volume of casework within the timeframe, a sample of clients was "directed" to use the Office. This meant that accused people born in January or February who were facing summary prosecution in Edinburgh Sheriff or District Courts were not eligible for "normal" legal aid through private solicitors. Unless they were granted a waiver, most forms of legal aid were only available to them through the PDSO. Those born at other times of the year had a choice: they could either use the PDSO or a private defence solicitor.

The direction system ran from 1 October 1998 to 1 July 2000. It was then replaced with a system whereby the PDSO took over 60% of the Sheriff Court summary duty solicitor scheme.

The imposition of a three-year statutory deadline meant that the PDSO was evaluated at an early stage in its life, before it had reached maturity.

Method
The research centres around a quantitative study of some 2,600 cases that started in Edinburgh Sheriff or District Courts between 1 April and 31 December 1999 (and finished by November 2000). It compares a sample of directed accused, born in January or February, with a control group of non-directed accused born in November or December. It focuses on how cases proceeded through the courts (particularly plea and stage of resolution), on their outcome (conviction and sentence), and on their cost.

Questionnaires were also sent to a sample of clients who had received summary legal aid.

These quantitative data were supplemented by 48 qualitative interviews with criminal justice actors, including private defence solicitors, public defence solicitors, clients, sheriffs, justices of the peace, procurators fiscal, court clerks and social work agencies.
The System of Direction in Practice

The system of direction proved unpopular with many clients and private criminal defence practitioners, and put considerable strain on the PDSO's working relationships.

It had been suggested that some directed accused (born in January or February) would prefer to appear in court unrepresented, rather than be represented by the PDSO. The research found no evidence of this. Representation rates were similar between the two groups, at 71-72%.

However, many January- and February-born accused used private solicitors rather than the PDSO. Out of represented, directed clients, three fifths (60%) used a private solicitor as either their only representative or for a substantial part of their case. Of those using private solicitors, almost a fifth (18%) obtained a waiver for summary legal aid, and just under a third (30%) used other forms of legal aid, either with or without a waiver. Over half (52%) were represented without legal aid. Although some of these cases may have been paid for privately, solicitors also carried through their stated intentions to retain a number of existing clients by acting on an unpaid basis.

This had two implications for the PDSO. The first was that the number of cases reaching the Office was less than anticipated. This resulted in some over-capacity, especially in the year April 1999 to March 2000, and increased average case costs.

The second implication was that cases reaching the PDSO were not a random selection of all summary cases. PDSO cases were more likely to involve an initial appearance from custody. The PDSO also dealt with more crimes of violence and fewer road-traffic cases. These differences have been controlled for in the research by using multi-variate analysis.

Private solicitors indicated that in deciding whether or not to act without payment for existing clients, they were more likely to represent those who expressed an intention to plead guilty. Therefore cases reaching the PDSO may have been less likely to include clients who wished to make an initial plea of guilty. This suggests a more subtle difference than can be controlled for using case and client characteristics alone. It is difficult to quantify this additional effect but it has been borne in mind in drawing conclusions from the research.

Perceptions of Other Criminal Justice Professionals

Most solicitors employed by the PDSO had practised in Edinburgh and were members of the Edinburgh criminal justice community. The perception of the criminal justice professionals interviewed was that they were much like other defence solicitors. Although the quantitative study revealed differences in the way they processed cases through the court, these should be seen within a context of similarity.

Criminal justice professionals judge defence solicitors largely on the basis of their advocacy. Those interviewed had observed public defence solicitors in court and they thought that the PDSO's quality of advocacy was much the same as that of other solicitor firms.
Outcomes

Stage of resolution
There has been considerable discussion about how far the Scottish system of summary legal aid provides incentives to solicitors to encourage initial pleas of not guilty. The qualitative interviews showed that decisions over plea are complex and are driven by a range of factors. The decision rests with the accused, but is influenced by advice from the defence solicitor who in turn is influenced by the actual or predicted actions of the prosecution and the predicted reaction of the Sheriff. The complexity of the decision gives rise to ethical indeterminacy, where ethical practitioners may genuinely differ over the correct course of action. Without a clear right or wrong answer, there is scope for the financial incentives under which solicitors operate to influence their approach.

The interviews did not reveal substantive differences between private and public defence solicitors in the way that they approached advice on plea. However, they did show differences in tone and emphasis. When in doubt, private solicitors said they would advocate a not guilty plea: one that exercised the accused's right to put the prosecution to proof. PDSO solicitors stressed that they would never pressurise a reluctant client to plead guilty. However, they felt they were more focused on "not messing around" and "not wasting time and money". Arguments can be put for and against both approaches.

These differences in emphasis led to clear differences in the way that cases proceeded through the courts. PDSO cases were more likely to be resolved at the pleading diet or intermediate diet, and less likely to be resolved at a trial diet, either before or after evidence was led. The finding was robust. In the court samples, of cases where the time of resolution was known, 59% of private non-directed cases were resolved at pleading or intermediate diet, compared with 65% of PDSO cases. When one uses multiple regression analysis to control for known variations in cases, the difference widens. The analysis suggests that, had the PDSO dealt with similar cases as private solicitors, over 70% would have been resolved at pleading or intermediate diet. If, as discussed above, PDSO cases were also less likely to include clients who said they wished to plead guilty, the difference would be even greater.

This finding - that the PDSO resolved cases at an earlier stage - is in line with previous Canadian studies, which found that public defenders entered more guilty pleas, at an earlier stage, and spent less time per case than private solicitors.

Detention in custody
PDSO clients were less likely to be held in detention during the course of the case (that is after the first diet and before sentence). There may be several explanations for this, including the fact that PDSO cases involved fewer diets and that the Office had developed good links with the SACRO bail scheme.

Conviction rate
Most accused proceeded against summarily in the Sheriff or District Courts are convicted of at least something. Among privately-represented, non-directed accused, 83% received a conviction of some sort. This was usually through a plea of guilty. Of those convicted, 91% pled guilty, compared with 9% found guilty after trial. Among those not convicted, around two thirds had the case against them abandoned by the prosecution, compared to one third found not guilty after evidence was led. This demonstrates the relatively minor role played by contested trials. Evidence was led in only 13% of cases.
PDSO cases were more likely to conclude with a conviction of some sort. The difference in conviction rate was small but statistically significant. When one controls for variations in case type, around 88% of PDSO clients were convicted, compared with 83% of private, non-directed clients. If (as discussed earlier) there were further biases against guilty pleas in cases reaching the PDSO, the effect would be stronger.

The data showed that the longer an accused persisted with a plea of not guilty, the greater their chances of not being convicted. The chances that the prosecution would be abandoned - almost negligible at the pleading diet - rose at the intermediate diet and became appreciably greater just before the trial started, when the prosecution discovered whether or not witnesses had appeared. The chances of acquittal were highest after evidence had been led. Thus the higher rate of conviction is linked to the PDSO's tendency to resolve cases at an earlier stage. By pleading guilty at the pleading diet or intermediate diet, clients exchange the small but measurable chance of a later acquittal for the certainty of immediate conviction.

This finding differs from several Canadian studies which found that, despite a higher rate of guilty pleas, the overall conviction rate was much the same.

**Negotiated pleas**

Canadian research has suggested that public defenders were more likely to reach negotiated settlements with the prosecution. In Edinburgh, there was no special relationship between the PDSO and the Fiscal service, though the Procurators Fiscal we talked to thought that the Office was somewhat more pro-active and efficient at putting forward mixed pleas (such as guilty to some charges but not others, or guilty to a lesser charge).

The quantitative data suggested that the PDSO may be more likely to conclude a case with a mixed plea, negotiated with the prosecution, rather than through a plea of guilty as libelled. However, statistical testing showed that this finding was not robust. It may well have occurred by chance.

**Sentence**

The data showed few discernible differences in sentence. Both private non-directed and PDSO clients faced the same rate of imprisonment and - when they were imprisoned - similar lengths of sentence. Nor could we find any difference in the rate at which serious sentences (custody or community) were imposed, compared with the less serious sentences of driving disqualification, fines or admonitions. The only possible difference was that PDSO clients may have received slightly lower fines (an average of £170, compared with £203 for private non-directed clients). However, even this effect was not statistically robust.

The similarity in sentencing again differs from the findings of Canadian research, in which more and earlier guilty pleas led to a reduction in the use of custody. Scotland has little tradition of offering sentence discounts for early pleas. In 1987, the High Court held that imposing a discounted sentence to encourage guilty pleas was objectionable. Although the Criminal Procedure (Scotland) Act 1995, section 196 now allows the court to take into account the stage at which an offender indicated an intention to plead guilty, it is couched in discretionary terms.
Research interviews suggested that solicitors could find mitigating factors in both early and late pleas: for early pleas they could stress the client's remorse and cite section 196; for late pleas they could point to the changes that had occurred since the offence. The quantitative data suggest that these largely cancel each other out. When one compares all those born in January and February with all those born in November and December, it appears that (for reasons unconnected with the crime but linked to how their solicitors were paid) January- and February-born accused tended to plead guilty earlier. As a result, they had a slightly higher rate of conviction but, once convicted, no measurable difference in sentences.

**Client Satisfaction**

Criminal clients valued the right to choose their solicitor, and many resented being directed to use the PDSO. This clearly affected their views of public defence solicitors. Although many clients accepted the PDSO in the light of their experience of using it, others did not. When asked whether they would use the firm again, only 46% of directed PDSO clients said that they would, compared with 83% of private practice solicitors' clients.

The levels of trust and satisfaction expressed by directed PDSO clients were consistently lower than those expressed by clients using private practitioners. Directed PDSO clients were less likely to say that their solicitor had done “a very good job” in listening to what they had to say; telling them what was happening; being there when they wanted them; or having enough time for them. They were also less likely to agree strongly that the solicitor had told the court their side of the story or treated them as though they mattered. Of particular concern was the fact that only 39% agreed strongly that their solicitor "had really stood up for their rights", compared with 71% of private solicitor clients.

We supplemented the main study of client satisfaction by sending questionnaires to those who had used the PDSO after direction ended in July 2000. This allowed us to compare the responses of directed and private clients with a small sample of people who had used the PDSO voluntarily. The views expressed by volunteer clients were more positive than those expressed by directed clients, and in many instances they were not significantly different from those of private clients. However, volunteers were significantly less likely than private clients to agree strongly that their lawyer had told the court their side of the story or had treated them as if they mattered, rather than as "a job to be done". Two issues stand out for concern. Volunteers were less likely to agree strongly that the PDSO had really stood up for their rights: only 48% agreed strongly, compared with 71% of private clients. They were also less likely to say that they would use the firm again: 60% said they would, compared with 83% of private clients.

**Legal Aid Costs**

**Average case costs**

The discussion of costs concentrates on "cost to the public purse": that is, on expenditure by the taxpayer rather than on what it cost solicitors to provide the service. It therefore compares the cost of legal aid payments to private solicitors with the cost to the Scottish Legal Aid Board of providing a service through the PDSO.
There are many ways of comparing the average cost of cases, depending on how one calculates the PDSO's hourly rate, how one treats VAT and what provision one makes for private solicitors' unpaid work.

On most assumptions, PDSO and private sector costs were not significantly different. Thus if one uses the PDSO's lower 2000/01 unit costs, or excludes private non-legally-aided work, or includes VAT, or allows for the fact that the PDSO cases may have included an additional bias against guilty pleas, PDSO and private costs were broadly similar.

On only one combination of assumptions did the PDSO's costs work out as significantly different from those of private practitioners acting for non-directed clients. If one takes the 1999/2000 rate, allows for some non-legally-aided work, excludes VAT and makes no allowance for additional guilty pleas, then the PDSO's average case costs exceeded that of private practice by around £65.

The PDSO average case costs were highly sensitive to the amount of work it undertook. By resolving cases at an earlier stage, public defence solicitors have the potential to be cheaper. However, the PDSO would only be able to realise this potential if it secured a greater volume of work. The report suggests that, in order to demonstrate clear reductions in average case cost over private practice, it would need to realise anticipated cost-saving and increase case volumes by 15% on the 2000/01 levels. Alternatively, it would need to reduce solicitor numbers from five to four. We cannot know what effect such increases in workload would have on outcomes, if for example, public defence solicitors had less time to negotiate pleas or prepared cases.

**Breaking down legal aid costs by stage of resolution**

Summary legal aid pays private solicitors through fixed payments, which work on the principle that what solicitors "lose on the swings, they gain on the roundabouts". When one looks at the legal aid system as a whole, and compares legal aid payments with PDSO costs, the least profitable "swings" would appear to be cases resolved at pleading diet or after evidence was led. The more profitable "roundabouts" are cases resolved at intermediate diet.

If one assumes that the PDSO costs are a rough indication of the costs incurred by private practitioners in supplying the service, the least profitable work, from the private practice perspective, was resolving cases at pleading diet under the Advice and Assistance scheme. Private payments averaged £70 to £75, compared with PDSO costs of around £150 to £176. One effect of the Scottish system of criminal legal aid is that private solicitors are faced with financial disincentives to advise initial guilty pleas.

**Impact on the Rest of the Criminal Justice System**

The fact that public defence solicitors resolved cases at an earlier stage had a favourable impact on court and prosecution costs. It is difficult to quantify this effect precisely. Our calculations, based on published cost figures, suggest that PDSO Sheriff Court cases cost the Scottish Court Service at least 11% less to process through the courts. Similarly, they cost the Crown Office at least 5% less in prosecution costs.
The fact that PDSO cases were more likely to be resolved at pleading diet or intermediate diet, and less likely to involve a trial diet, meant that fewer witnesses were inconvenienced by being called to court only to find that their evidence was not required. In broad terms, every 100 privately-represented cases generated 44 cancelled trials, in which a scheduled trial did not take place (usually because of a plea or adjournment). These 44 trials involved some 175 wasted visits for witnesses: around half from police officers and half from civilians. Two or three were children. By contrast, 100 cases handled by the PDSO would produce 31 ineffective trial diets, inconveniencing 123 witnesses of whom one or two would be children.

Conclusion
Public and private defence solicitors share many similarities. However, public defence solicitors tend to resolve cases at an earlier stage in the proceedings. This is the main point of difference between the two delivery methods and has ramifications for both costs and outcomes.

Resolving cases earlier has the potential to save legal aid (and thus the taxpayer) costs - though the PDSO would need to secure further increases in work (or make further reductions to staffing levels) for this potential to be realised. It also reduces court and prosecution costs. Fewer witnesses are inconvenienced. Clients are spared the wait and worry of repeated court diets and are less likely to be held in detention pending the resolution of their case.

On the other hand, earlier resolution also leads to a small but measurable increase in conviction rate. By pleading guilty at the pleading diet or intermediate diet, rather than holding on until the day of the trial, clients substitute the certainty of conviction for the possibility that the prosecution case will collapse. Under the Scottish sentencing system, they are given no clear sentence discount for this behaviour. Clients may also feel less supported by public defenders - that by encouraging earlier resolution, they were not "really standing up for their rights".

Scotland's policy-makers face the responsibility of weighing the findings of the report so as to balance the competing demands of justice.
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CHAPTER 1: INTRODUCTION

1.1 On 1 October 1998, the Public Defence Solicitors' Office (PDSO) was established in Edinburgh. It was intended as a pilot scheme to test the feasibility of providing criminal assistance through solicitors employed directly by the Scottish Legal Aid Board. The enabling legislation (now Legal Aid (Scotland) Act 1986, section 28A)\(^1\) gave the Board authority to set up a single office, employing no more than six solicitors, for an experimental period of five years. The Act also required that the experiment be monitored. Under section 28A(10), the Minister for Justice must lay a report before the Scottish Parliament within three years of the start of the Office, setting out the results of the study.

1.2 In January 1999, following an exploratory study, the authors were commissioned to carry out an independent evaluation of the PDSO. We were asked to compare the delivery of legally-aided criminal legal assistance through the PDSO with delivery through private practitioners in Edinburgh, paid on a case-by-case basis under the legal aid scheme. The comparison was according to four criteria:

- cost-effectiveness;
- the quality of services provided;
- client satisfaction; and
- the contribution of each delivery method to the efficiency of the criminal justice system, including the impact on the courts, the procurator fiscal service, the police and the judiciary.

1.3 During the period of our research, the Office concentrated on representing accused people facing prosecution under summary procedure before Edinburgh District Court and Edinburgh Sheriff Court. Before July 2000, it did not undertake any solemn work, before a judge and jury.

1.4 To aid the research and help the PDSO build up a sufficient volume of casework within the timeframe, the Scottish Legal Aid Board (SLAB) "directed" a random sample of accused people to use the Office. The sample was based on birth month. From 1 October 1998 to 1 July 2000, all January- or February-born people prosecuted before Edinburgh District or Sheriff Courts lost their normal entitlement to summary legal aid through a private solicitor. Instead, they were "directed" to use the PDSO, unless the Office granted them a waiver to obtain legal aid through a private practice solicitor. The PDSO's work was not, however, confined to directed cases. Other members of the public who were eligible for legal aid for an Edinburgh summary case were entitled to use the PDSO if they wished. The way in which both the direction and waiver system worked are described in detail in Chapter 8.

HISTORY OF THE PROPOSAL

1.5 An experimental public defender scheme was first proposed by the (Hughes) Royal Commission on Legal Services in 1980. They observed that such services "operated successfully in other parts of the world" and "might be better value for money than criminal legal aid." (para. 8.81). The Law Society, however, raised strong objections to the idea: public

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\(^1\) As inserted by the Crime and Punishment (Scotland) Act 1997, section 50.
defenders would threaten the independence of the profession, interfere with the normal professional relationship between client and solicitor, and be unacceptable to the public (para 8.77). The Commission suggested a limited experiment to see whether it would be acceptable to potential clients and would offer value for money. Other potential criticisms were that the public defender might work too closely with the prosecutor and put administrative convenience and cheapness before the interests of the accused.

1.6 No steps were taken to act on the Commission's recommendation until 1996. Then the Conservative Government's white paper, *Crime and Punishment*, commented that the rapidly rising cost of summary criminal legal aid "simply cannot be sustained" (Scottish Office 1996, para. 6.11). It proposed several reforms including controlled fees, contracting, quality standards and strengthened measures against fraud and abuse. One suggestion was that "SLAB should employ on fixed salaries a small number of solicitors to provide criminal legal aid on a pilot basis". These solicitors would be restricted to one or two urban areas, and their costs "compared with the costs of traditional private sector provision" (para 6.30). The main advantage of such a scheme was not necessarily that it would be cheaper in itself, but that it would provide an element of competition to private practice. In particular, it would provide a benchmark for what summary criminal legal aid should cost.

1.7 The Hughes Commission declared that the "long standing principle of Scottish criminal justice, namely the right of the accused to decide on his own representative, is vitally important" (para. 8.79). They stressed that nothing within a public defender service should interfere with this. In contrast, the 1996 white paper thought that SLAB may require "powers to direct clients to their own employed solicitors". This would be needed to ensure both a sufficient workload and a sufficiently representative spread of clients for true comparisons of costs to be made (para. 6.31). These proposals were enacted through the Crime and Punishment (Scotland) Act 1997. The legislation highlighted the experimental nature of the scheme by allowing no more than six solicitors at any time, requiring a report within three years, and providing that (in the absence of legislative provision) the Office would cease to have effect after five years.

1.8 Despite originating during a Conservative government, the Public Defence Solicitors' Office was established by a Labour administration in 1998. In opening the Office, the then Home Affairs minister, Henry McLeish MP, described it as "an important part of a drive towards delivering legal aid in Scotland more efficiently and cost-effectively". It would enable "comparisons between public defence and private solicitors in terms of cost, quality, client satisfaction and the wider impact on the criminal justice system".

**PREVIOUS RESEARCH**

1.9 This is the first evaluation of a public defender scheme in Scotland. However, the debate over whether legal aid should be delivered through private practice ("judicare") or salaried staff has caused controversy throughout common law jurisdictions for the past 25 years. Studies have been carried out in several countries (including Australia and the USA), though the most developed research comes from Canada. In 1998, Henry McLeish described the

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experience of Canada as "encouraging". However it was necessary to test the approach in "the special situation of Scotland and Scots Law".³

1.10 The previous literature has been summarised in other reports (Department of Justice 1994, Goriely 1997 and Henry and Fleming 1998).⁴ We do not attempt to repeat those summaries here. We do, however, make comparisons with the Canadian material at various points in the report. The design of the study was influenced by such research, particularly the experimental Burnaby study in British Columbia (Brantingham 1981).

THE TIMETABLE

1.11 The statutory timetable of three years proved to be an extremely short period in which to evaluate a new initiative. The experiment involved four separate stages:

1 Establishment. The Office needed some time to become established and to settle into a mature way of working before being evaluated. The timetable meant that we were only able to allow six months for this process - from October 1998 to April 1999.

2 Building a sample. The evaluation is based mainly on a sample of court cases started between 1 April 1999 and 31 December 1999.

3 Waiting for cases to finish. It is only possible to evaluate the cost and outcome of cases once they are concluded. We waited until 1 November 2000 for cases in our sample to finish.

4 Data collection and analysis. Data collection took place in several sweeps and was completed by December 2000. A major part of the study involved locating records of legal aid payments on these cases, which took until April 2001. The analysis and writing took three months. Discussions with the Research Advisory Committee, publication and printing added a further two months.

1.12 Ideally, more time would have been available for each of these stages. By April 1999, the Office had not yet reached maturity. Considerable changes took place in its working practices throughout 1999 and 2000, which are described in the report. Arguably, full maturity was not reached until 2001, but delaying the evaluation until then was not an option.

1.13 As far as Stage 2 was concerned, we would have preferred to work with a larger sample, based on a full year of PDSO cases. However, the achieved sample of 430 PDSO cases (based on nine months of work) was adequate for our purposes.

1.14 Stage 3 meant that no case lasted for more than 19 months, and those started at the end of December 1999 had only 10 months to finish. Some long-running cases were excluded from the sample. The Sheriff Court figures suggest that at the time our sample closed on 1 November 2000, 16% of cases started between April 1999 and December 1999 were still

³ As above.
⁴ Also, Justice (2001) provides a recent account of public defender schemes in the United States of America.
ongoing. This is unfortunate, but the statutory timetable did not allow us to wait any longer for cases to conclude. In interpreting the results, it should be borne in mind that the sample does not include the 16% of longest-running Sheriff Court cases.

1.15 Finally, the time for analysis, writing and discussion was extremely short. We are grateful to all those in the Project Management Group and wider Research Advisory Group who responded so promptly to our drafts.

THE INTRODUCTION OF FIXED PAYMENTS

1.16 A further complication to the study was that in April 1999 a major reform was introduced to legal aid. Summary criminal legal aid was no longer paid on a "time and line" basis, but through a system of fixed payments (described in Chapter 2). This change, first announced in October 1998, was made in response to the growing cost of summary legal aid. It was intended to save £10 million on a budget of £53 million. 

1.17 Previous literature has highlighted that, over time, solicitors will adapt to any new legal aid payment system. Gray, Fenn and Rickman (1996), for example, discuss how the move to standard fees in England and Wales created new incentive structures. This study was carried out at the very start of the fixed payment system, when solicitors were still feeling their way with it. Although we were able to highlight some of the effects of the scheme, further changes may occur as solicitors grow more used to it.

METHODOLOGY: AN OUTLINE

1.18 The centrepiece of the research was a quantitative study of around 2,600 cases, taken from court records. The aim was to compare a sample of directed cases (where the accused was born in January or February) with a control group of non-directed accused (born in November or December). We gathered information about case characteristics, how cases were processed through the courts and their outcomes (in terms of conviction and sentence). We also searched through PDSO and SLAB records to find all legal aid payments and costs associated with the case. Details are provided in Appendix 1.

1.19 These data allowed us to address the issue of cost-effectiveness (in terms of both the cost and the outcome of the case). We also used case outcomes (conviction and sentence) as important measures of the quality of services provided.

1.20 Client satisfaction was addressed through a postal questionnaire sent to all November- to February-born accused who received summary legal aid for a case in the Edinburgh courts started between April and December 1999. This yielded 250 returned questionnaires: 99 from

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5 As we did not collect data on these cases we cannot tell which representation group they belonged to. Unfortunately, the absence of a computerised system means that we cannot make a similar calculation for the District Court.
7 Within the English context, they predicted that, for example, solicitors might make greater use of Advice and Assistance to provide additional payments on cases, and split cases into two, so as to claim two standard fees. The details of the English and Welsh scheme are somewhat different, however, and one cannot extrapolate from it to the Scottish scheme (Gray, Fenn and Rickman 1996).
PDSO clients and 151 from private clients. To test how far client satisfaction improved following the end of direction, we also sent questionnaires to PDSO clients who had received summary legal aid since July 2000. This yielded a further 66 questionnaires. A full description is provided in Appendix 2.

1.21 In order to assess the impact of the PDSO on the wider criminal justice system, we also considered a small sample of Fiscal files. We wanted to explore the consequences of cancelled trials, particularly for witnesses. We therefore collected data from 180 Fiscal files, identified in the main study as involving at least one trial diet at which no evidence was led: 77 were PDSO cases and 103 were private cases. We looked in particular at the reasons why the trial did not take place and at the number of witnesses inconvenienced as a result.

1.22 These quantitative data were supplemented by 48 in-depth qualitative interviews with a range of criminal justice actors. These included 14 interviews with private solicitors and 17 with clients. We also spoke to public defenders, procurators fiscal, sheriffs, justices of the peace, court clerks and social work agencies. Further details are given in Appendix 3. The main purpose of these interviews was to allow a greater understanding and interpretation of the quantitative data, and we draw on them throughout the report. We were also keen to see how other criminal actors within Edinburgh assessed the quality of the defence lawyers and whether they had any particular concerns about the PDSO. The interviews therefore provide a further perspective on the issue of quality.

1.23 There were two possible research techniques which we considered at length but did not pursue. The first would have been to obtain specific data on the length of time that private solicitors spent per case. One of the main changes brought about by the introduction of fixed fees was that solicitors were no longer required to record how long they spent on cases. Although we explored the possibility of voluntary time recording specifically for this study, it would have involved considerable additional costs and administration. Neither solicitors nor the Scottish Executive proved eager to bear this additional burden. There was little support for undermining one of the main benefits of fixed payments so soon after their introduction.

1.24 The second technique would have been to carry out any reviews of solicitor files. Peer review of the quality of work on files has been often suggested as a quality indicator, and it was successfully used in the civil Advice and Assistance pilot carried out in England and Wales (Moorhead et al. 2001). Although we held discussions with the Edinburgh Bar Association about using a similar approach in this study, the idea proved controversial. We discuss the reasons for this in Chapter 6. We would not have been able to look at files without the consent of private solicitors and their clients, and it soon became clear that such consent would not be forthcoming. A benefit of fixed payments is that less work has to be recorded on files, and files are no longer submitted to the Scottish Legal Aid Board. As with time recording, there was little support for undermining a perceived benefit of fixed payments.

**STRUCTURE OF THE REPORT**

1.25 The report is divided into five parts. The first, Part A, sets out the background to the research. It starts by describing the legal aid scheme, private solicitors and the PDSO. It also reports on how criminal justice actors within Edinburgh judged the quality of criminal defence work, together with their initial assessments of the PDSO.
1.26 Part B draws on the court data to compare both the way that cases proceeded through the courts (court trajectory) and their outcomes, in terms of conviction and sentence. Part C gives the client perspective. It starts by asking how clients judged their solicitors, and then reports the results of the questionnaire study of client views. Part D compares the costs of PDSO and private cases. Finally Part E considers the impact of a public defence solicitor scheme on the rest of the criminal justice system. For those unfamiliar with the terminology of Scottish criminal procedure and legal aid, a glossary is provided after the bibliography.
PART A

The PDSO in Context
CHAPTER 2: THE SYSTEM OF CRIMINAL LEGAL AID

2.1 The next three chapters set out the background to the study. We start with a description of the ways in which legal aid supports advice, assistance and representation in summary cases. We then describe the two methods of delivering the service. Chapter 3 describes private criminal defence services in Edinburgh while Chapter 4 introduces the Public Defence Solicitors' Office.

2.2 The following chapters approach the concept of quality. Chapter 5 sets out what criminal justice professionals in Edinburgh think makes a good criminal defence solicitor. Chapter 6 gives their initial assessments of the PDSO. The section concludes with an outline of our own approach to assessing quality.

SIX TYPES OF LEGAL AID

2.3 One of the central attributes of the Scottish system of legal aid for summary proceedings is the attempt to focus support on not guilty pleas. The main form of legal aid - *summary criminal legal aid* - is only available once an initial not guilty plea has been tendered. Otherwise, clients are expected to rely on the general Advice and Assistance scheme, which provides initial advice over a wide range of matters but does not generally cover representation at court.

2.4 This leaves a gap in provision for representation at court hearings, both at the pleading diet, and (for those pleading guilty) at subsequent sentencing diets. These gaps are partially, but by no means wholly, filled by three smaller schemes:

- a variant of Advice and Assistance that covers court representation in cited cases, known as ‘assistance by way of representation' (or ‘ABWOR');

- the *duty scheme*, (with its variant, the *duty follow-up scheme*); and

- a means by which the court can grant legal aid to those at risk of first custodial offences. This arises under section 23(1)(b) of the Legal Aid (Scotland) Act 1986 and is generally referred as 'section 23(1)(b)'.

Finally, some cases in our sample started as potentially solemn cases under petitions, and were then transferred to summary procedure. They therefore became eligible for *solemn legal aid*.

2.5 The result is considerable complexity. The cases in our sample could be covered by combinations of at least six varieties of legal aid, each with its own rules and payment structure. Here we start by outlining the main characteristics of each of these six schemes, focusing on their use in summary criminal proceedings.
2.6 This is the primary legal aid scheme to cover summary proceedings before the criminal courts. In 1999/2000, Scottish solicitors made 64,818 applications for summary legal aid, resulting in 59,188 grants (SLAB 2000 p.19).

2.7 Solicitors may apply only after the accused has tendered a not guilty plea. Solicitors must normally lodge an application with the Scottish Legal Aid Board within 14 days of a not guilty plea, though the Board may consider late applications if there are special reasons to do so. The Board applies a means test (that the applicant would not be able to meet the expenses of the case without undue hardship) and a merits test (that it is in the interests of justice for legal aid to be granted).

2.8 Much of the discussion about summary legal aid has focused on its cost (see for example Scottish Office 1993a and 1996). Until 1999, legal aid bills were paid on a "time and line" basis, reflecting both the time taken and the number of telephone calls, letters and pages of precognitions generated. During the 1990s, the average case cost rose rapidly. The October 1998 consultation letter on fixed payments described an increase from £16.8 million to £52.6 million over ten years, with a 65% rise in real terms in the average cost per case over that period.

2.9 In April 1999, time and line bills were replaced with fixed payments. Since then solicitors receive a basic payment of £300 + VAT in the District Court and £500 + VAT in the Sheriff Court. This is intended to cover all the work up to the first 30 minutes of a trial or proof in mitigation. Further payments are available after the first 30 minutes, and for deferred sentences, bail appeals and some other matters. One of the major changes is that the fixed fee now includes the cost of taking precognitions. Solicitors are no longer able to claim additional payments for these, though other outlays (such as medical reports) may still be claimed separately.

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8 The Act sets out a list of factors that the Board should take into account, including, among others, 'whether it is likely that the court would impose a sentence which would deprive the accused of his liberty or lead to loss of livelihood'; whether the case would involve 'consideration of a substantial question of law or evidence of a complex or difficult nature'; and whether 'the accused may be unable to understand the proceedings or state his own case because of his age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise': see Legal Aid (Scotland) Act 1986, s.24(3).

9 From 1964 to 1989, fees were subjected to a maximum fee that could only be exceeded in exceptional cases. However, this proved unpopular with the profession and ineffective in controlling costs. For an account of the history of this provision, see Goriely et al. (1997).

10 Time was measured in generous 'minimum' chunks so that a consultation lasting two or three minutes was billed as a minimum 15 minutes.

11 For a definition of this and other technical terms, see Glossary.


13 The regulations specify that the fixed fee should cover professional services provided by the solicitor, together with "the taking, drawing, framing and perusal of precognitions", any work undertaken by other solicitors and photocopying. See Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 para. 4.
The effect of fixed payments

2.10 We received mixed views about the overall effect of fixed payments. While some firms pointed to falls in turnover, others felt that the change had not been nearly as damaging as had been anticipated:

"As a matter of principle, I still object to it, but we could live with fixed fees, because I can see now that the swings and roundabouts argument probably does work." (Private solicitor interview, 2000)

2.11 Some cases were more profitable than others. Among the less profitable were out-of-town cases in rural courts (for which travel time was no longer paid) and those with long waits in court and many adjournments. Solicitors also mentioned fraud cases as unprofitable, because they generated many witnesses. However, some firms felt these problems were offset by the profitable cases:

"A minor road traffic or breach of the peace with two or three witnesses, which gets to trial on the first occasion and is finished by lunchtime." (Private solicitor interview, 2000)

In the Sheriff Court, for such a case, the solicitor would receive £500 plus an additional £100 for the trial. It would more than cover its costs. Furthermore, firms liked the simplicity of the system. As one solicitor put it, "I think you'd probably find that our files are thinner than they would have been." Instead of recording every phone call and attendance, they would "just scribble something down... and stick it in the file". Billing was much less complex.

Precognitions

2.12 The main change introduced by fixed payments was in the way that solicitors approached precognitions. A distinctive feature of Scottish criminal procedure was that the prosecution, instead of sending a bundle of statements, traditionally provided only a list of prosecution witnesses. The defence solicitor would then arrange for prosecution witnesses to be re-interviewed and statements taken. Research in 1998 showed that solicitors valued precognitions as a crucial part of the criminal process. There were, however, concerns about the way that precognition agents were instructed and trained. It was also suggested that the over-use of precognitions led to unnecessary legal aid costs (Christie and Moody 1999).

2.13 All the solicitors we spoke to had re-thought their precognition strategy in the light of the introduction of fixed payments. They were all more selective in obtaining statements. Several firms had renegotiated their arrangements with precognition agents, so that (for example) agents charged a fixed fee per case, or only for successful statements rather than for wasted visits. This meant that agents would spend less time attempting to contact elusive witnesses. Several solicitors said that after two unsuccessful attempts, they would now ask the fiscal service for a copy of the witness's statement, as given to the police. A Procurator Fiscal

14 Technically a precognition differs from a witness statement in that it cannot be put to the witness in the course of a trial. "Whereas a witness statement is essentially an account of what the witness has said, a precognition is a precognoscer's account of the witness's evidence" (Chistie and Moody 1998 p.8). It cannot therefore be used in evidence.
confirmed that this was a major trend: "more and more they are unable to see witnesses and write to us asking for a copy of the police statement".

2.14 Some firms now did more of the work in-house, writing to witnesses and asking them to make contact. Two solicitors described taking precognitions themselves over the telephone. One effect of fixed fees has been to encourage greater agreement of evidence.\textsuperscript{15} Several solicitors mentioned that they welcomed receiving Fiscal statements for agreement.

2.15 The changes received mixed responses. Some solicitors felt that prosecution statements were of a lesser quality than precognitions, especially if they had been taken by the police in the heat of the moment, shortly after the crime. However, there could be benefits in the solicitor taking a statement by telephone because "you get a feel for the witness and how witnesses respond to you". Overall, most solicitors felt that the new arrangements were adequate, reducing costs while giving enough information about what the witnesses would say to prepare for trial.

**Other possible adjustments to fixed payments**

2.16 As mentioned earlier, work in assessing the effect on English standard fees suggests that, as time goes on, solicitors may adapt behaviour so as to maximise income under a fixed payment system (Gray et al. 1996). This would be possible in two ways.

2.17 The first would be through greater use of the Advice and Assistance scheme. While handling a summary case, solicitors may be asked about ancillary matters, such as the possibility of an appeal or breaches of existing orders. While appeals and breach proceedings themselves are outwith summary legal aid, under the time and line system solicitors might have been happy to provide short advice about the subject as part of the main case. Although technically solicitors should probably have made separate claims under the Advice and Assistance scheme, it would be seen as administratively easier to include a few minutes of advice about ancillary matters within the minimum 15 minute period paid for under time and line in any event. Firms concerned about reduced turnover under fixed payments, however, may be more precise in ensuring that each separate matter is covered by a separate Advice and Assistance claim, providing a minimum payment of £25 per claim.

2.18 Secondly, solicitors may be more careful to ensure that each separate case receives a separate summary legal certificate. Under the old system, solicitors differed about how they should deal with cases that were, for example, deserted on a technicality and then restarted. In 1998, before the introduction of fixed payments, we asked solicitors how they would view a case of careless driving that was deserted and immediately restarted so as to include a new charge of driving without insurance. Would they continue to deal with the case under the existing summary grant, or would they make a new legal aid application? Three firms gave three differing replies. One said that they would count it as part of the same case. One said they would definitely make a fresh application, while a third said it was a matter of judgement:

\textsuperscript{15} McCallum and Duff (2000) found an increase in the agreement of evidence after the introduction of compulsory intermediate diets. However, their study was conducted in 1997-8, before the introduction of fixed payments. Solicitors and Procurator's Fiscal in our study reported a further move towards agreed evidence, since April 1999.
"My attitude to that is if the new charge makes a substantial difference to the charges you are facing, so that it could almost be regarded as a different case, maybe a lot more complicated or a lot more serious, then I would think it appropriate to apply for legal aid afresh. If it was a question of adding some relatively minor technical charge, and if it was all subsumed under the same body of evidence, they I would say no... If it turns out a month before trial that you have no insurance, so a new complaint is serviced for careless driving and no insurance, I would probably say, no, don't bother applying for legal aid afresh." (Private solicitor interview, 2000)

Under the fixed payment system, however, there is a greater incentive to ensure that the second application is made, which will result in a second fixed payment.

2.19 We do not suggest that there would be anything improper in making these additional claims. In fact, the use of additional applications is probably more technically correct than the old, more inclusive, practice. However, it would add to costs. It is difficult to estimate the total cost of fixed payments without knowing the extent of the previous, hidden, inclusion of ancillary matters within summary legal aid. The English experience is that adaptation takes time. It may take two or three years for solicitors to understand fully the precise limits of what is included within the fixed payment, and what could or should be claimed for separately.

2.20 From 1999/2000 to 2000/01, the number of accused registered by the summary courts rose by 4%, while the number of summary grants increased by 6% and the number of Advice and Assistance intimations by 8% (SLAB 2001). These increases are consistent with the adaptations described above, though there may be other explanations. It is an issue that requires further monitoring.

ADVICE AND ASSISTANCE

2.21 Advice and Assistance is a wide-ranging scheme that provides advice on "the application of Scots law to any particular circumstances which have arisen in relation to the person seeking advice". This may include help in the police station after arrest or initial consultations about a case in the office or at court. It may also be used after a case has concluded, to provide advice about an appeal, or a means inquiry, or breach of probation or community service. However, it does not include representation at court or taking steps in proceedings.

2.22 The scheme is widely used. In 1999/2000 SLAB received 128,805 intimations for Advice and Assistance in relation to criminal matters.

2.23 Solicitors value the scheme for its administrative simplicity. Solicitors are responsible for assessing eligibility and making the grant, though they must subsequently send a form to the Scottish Legal Aid Board. On the downside, applicants must meet a strict means test, and may be required to make a contribution (though in practice this is rarely collected). The minimum payment is £25; the maximum, without further authorisation, is £80 (though with

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16 Legal Aid (Scotland) Act 1986, s.6(a)(1).
authorisation more is payable). It is intended as an accessible way of providing initial help, but it does not cover the main body of criminal defence work.

ASSISTANCE BY WAY OF REPRESENTATION (ABWOR)

2.24 ABWOR is available for accused in cited cases who wish to plead guilty. It covers the diet at which the plea of guilty was entered and any subsequent diet. It also has a variety of other uses, including pleas of competency that challenge the legality of the proceedings before the main plea has been entered, and breaches of probation or community service. In 1999/2000, SLAB received 22,042 intimations, which means that it is used, though to a lesser extent than the previous two schemes.  

2.25 As with Advice and Assistance, ABWOR is granted by the solicitor. It is therefore administratively simple, though it has been criticised for its limited eligibility, restrictive criteria and low pay rates. The means test is the same as for Advice and Assistance. Again, client contributions are deducted from the solicitor's fee, though rarely collected from the client.

2.26 For the case to qualify, the solicitor must be satisfied either that "it is likely that the court will impose a sentence which would deprive the applicant of his liberty or lead to a loss of his livelihood"; or that "the applicant is unable to understand the proceedings or is unable to make his own plea in mitigation because of his age, inadequate knowledge of English, mental illness, or other mental or physical disability or otherwise." Generally, the solicitor receives £70 for all work up to and including the first diet. If a subsequent diet is set, the solicitor may continue to provide help (on a time and line basis) up to a limit of £150. After that, the solicitor must apply to the Scottish Legal Aid Board (SLAB) for authorisation to exceed the limit.

2.27 Research with defence solicitors in the early 1990s found substantial criticism of ABWOR (Kerner 1996). Solicitors found it too complex, too restrictive and too poorly paid. Since then some of the complexities of the system have been removed, and in our interviews solicitors felt more positively towards the scheme. It was felt to have been under-used in the past, mainly because solicitors did not understand it. Firms are now using it more, and can appreciate its benefits:

"I think that's a good scheme.... £70 up to your first plea is about right - and if something comes up, then you get time and line. So if you are spending the hours for reports and three weeks later [get a] deferral, you get paid for it."

(Private solicitor interview, 2000)

However, it remains true that, compared with summary legal aid cases (with an initial plea of not guilty), cases in which an accused pleads guilty immediately are less well-paid.

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19 The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 1997.
THE DUTY SCHEME

2.28 The duty scheme is intended as the first port of call for those appearing from custody. It is available without a means test and, in 1999/2000, helped around 25,000 accused (SLAB 2000 p.20). SLAB arranges a rota for solicitors to be present in court, paying £44.40 for the session and first case and £6 for each additional case, up to a total of £96.25. These rates were regarded more as a loss leader than as remuneration for the job.

2.29 The duty scheme covers the first hearing. If the accused pleads not guilty, they then become eligible to apply for summary legal aid. If, however, they plead guilty and the case is adjourned to a subsequent sentencing diet, the duty solicitor can be paid (under the 'follow-up' duty scheme) for the subsequent work, up to a total of £108.85. This limit has been subject to considerable criticism in the past. By the time of our study, however, solicitors showed some resignation to it: it was "much like anything else", and "an improvement on other work that you are doing for absolutely nothing".

2.30 Several research studies have pointed out that the duty scheme does not work in the way that policy makers intended. As Samuel states:

"The majority of accused persons making their first appearance from custody in Scotland's Sheriff Courts... dispense with the services of the duty solicitor and nominate their own. Nominated solicitors receive no remuneration for waiting or for representing clients in the custody courts, though they are eligible to receive fees for 15-30 minutes of services rendered under the Advice and Assistance scheme. More than a few solicitors found the work involved in claiming these fees to be hardly worth the effort. Where a plea of not guilty is entered, however, there is the prospect of some future pay-off, and this makes the enterprise attractive. Where a plea of guilty is entered, on the other hand, there are neither future nor present pay-offs for nominated solicitors." (Samuel 1996: 230)

Solicitors in the feasibility study said that they would "never let clients anywhere near the duty solicitor". The fear was:

"the duty solicitor will pinch as many of your clients for himself as he can, or will make a hash of passing the papers on to you, or won't get the legal aid applications filled out." (Private Solicitor interview, 1998)

The duty scheme was used primarily for accused people who did not have an existing relationship with a solicitor. Alternatively, as one solicitor put it, it was "for people with drink or drugs problems who can't remember who represented them last time".

2.31 All the solicitors interviewed said they would represent established clients appearing from custody. Where the client pled not guilty, the expense would be borne from the subsequent summary payment. The worst scenario, from the solicitors' point of view, was the client who pled guilty and whose case was adjourned to a further sentencing diet. Solicitors all said that they would represent their clients at the sentencing diet. They could claim for

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giving advice under the Advice and Assistance scheme, but would not be paid for the court hearings.

SECTION 23(1)(b)

2.32 Section 23(1)(b) is available for pleas of mitigation at sentencing diets for those at risk of a sentence of imprisonment who have not previously been imprisoned. It is granted by the court itself. The use is small: in 1999/2000, the Scottish courts made only 1,472 grants (SLAB 2000 p.20).

2.33 The Legal Aid (Scotland) Act 1986 s.23(1)(b) sets out four conditions:

1. the accused has been convicted in summary proceedings;
2. they have not previously been sentenced to imprisonment;
3. the court is considering a custodial sentence; and
4. the accused cannot afford to pay privately without "undue financial hardship" to themselves or their dependants.

At the time of our study, there was considerable confusion over the appropriate payment for such cases - an issue that is explored further in Part D. It was suggested that solicitors would be paid only £50, irrespective of the number of diets attended, though in fact SLAB usually paid more than this.

2.34 Solicitors pointed out that section 23(1)(b) cases tended to be stressful, as clients faced the fear of their first imprisonment. They were also time-consuming, with many deferred sentencing diets. In the court study, three quarters of such cases had three diets or more, with a third involving five or more diets.

SOLEMN LEGAL AID

2.35 This is granted by the court to all cases brought under the petition procedure that starts solemn (judge and jury) cases. It is automatically available to all those who cannot meet the expenses of the case without undue hardship. Unlike summary legal aid, it does not require an initial plea of not guilty.

2.36 As the evaluation did not include solemn cases, its main relevance for our purposes was in cases started with a petition and later demoted to the summary procedure. Where a case becomes summary, solemn legal aid continues to cover a plea of guilty in the summary court. If the client pleads not guilty, they need to reapply for summary legal aid. However, this particular form of summary legal aid does not receive a fixed payment, but continues to be paid on a time and line basis.

INCENTIVES TO CONTINUE CASES

2.37 Successive Government reviews have criticised the criminal legal aid scheme for setting up perverse incentives to continue cases (Scottish Office 1993a, 1996). The 1996 white paper stated that "the current system provides no incentive to solicitors to address at an early stage
with their clients whether an effort should be made to negotiate a realistic plea with the Crown”. Furthermore, there was little incentive for early preparation. The paper argued that the system encouraged trial adjournments and would stop intermediate diets from being fully effective (para. 6.12).

2.38 The alleged perverse incentives contained within criminal legal aid have been the subject of considerable debate (Warner 1996, Samuel 1996, Stephen 1998). The fixed payment system now removes the financial incentive to adjourn trials. However, the incentive to tender an initial plea of not guilty remains. The confinement of summary legal aid to initial not guilty pleas has been subjected to considerable criticism. Policy-makers fear that it might induce too many late changes of plea (Scottish Office 1993a), while solicitors worry about the lack of support for those pleading guilty, especially in serious cases appearing from custody (Kerner 1996). It is a subject to which we return in Part B.

2.39 Whatever the merits and demerits of the system, there is no doubt that it results in complexity. The use of different schemes is not only complex in itself, but it leads to a mismatch between what solicitors do and what they are paid for doing. Solicitors frequently pointed to the large amount of unpaid work they carried out - in representing clients at pleading diets, in acting for established clients appearing from custody, in forgoing contributions and in advising clients who did not meet the restrictive Advice and Assistance test. Some payments were felt to be too small to be worth collecting. In practice, summary fees not only covered work on cases granted summary legal aid, but were also used to pay for other cases. In costing legal aid, we have needed to be sensitive to the presence of such unpaid work.
CHAPTER 3: PRIVATE CRIMINAL DEFENCE SOLICITORS IN EDINBURGH

THE STRUCTURE OF CRIMINAL DEFENCE PRACTICE

Small specialist firms

3.1 Kerner (1996) commented that, in the early 1990s, criminal legal aid in central Scotland was increasingly concentrated within small specialist firms. 21 This was the case in Edinburgh during the period of the study. In the two years from October 1998 to October 2000, 15 private firms each submitted 250 or more summary legal aid applications for cases in Edinburgh courts. These 15 main firms, together with the PDSO, accounted for 76% of all summary work in Edinburgh. Another 15 firms submitted between 50 and 250 applications, and accounted for a further 15% of the work. After that, the remaining work was distributed among a long tail of other firms, most of whom had little involvement with the Edinburgh courts. The last 9% was spread between a further 228 firms (from Edinburgh and elsewhere). These tended to be occasional players: 84 firms submitting only two to five applications and 95 firms submitted only one. 22

3.2 Out of the 15 main firms, 10 advertised themselves as only conducting criminal work. There was felt to be a greater trend towards such specialisation. As one solicitor in a specialist firm put it:

"I did my traineeship in a firm that at one time did everything but... [now] they just do criminal stuff as well... I wouldn't like to do conveyancing now and equally I see people up at court that I think shouldn't be doing criminal trials." (Private solicitor interview, 2000)

3.3 With one exception, the main firms were small. The exception was a firm that conducted both criminal and civil work and (in 2001) was listed as having 19 solicitors. Of the others, five were listed as employing five to eight solicitors, six employed three or four solicitors and three firms employed only two solicitors. 23

3.4 The next tier of firms (with 50 to 250 summary applications) included seven sole practitioners. The interviews revealed a lively debate about how far sole practice remained a viable way of providing criminal defence services. Partners pointed to the difficulties of controlling one’s diary to cover court hearings while keeping up -to-date with the law and with ever-increasing administrative requirements. On the other hand, sole practitioners were often popular with clients for their individual approach.

21 See also Kerner (1995).
22 Information supplied by SLAB for the purposes of this study.
23 Taken from the Law Society of Scotland website, as of June 2001. As discussed later, staffing levels change rapidly, and these figures would not necessarily apply at other times of the study.
Reliance on legal aid

3.5 Specialist criminal practices were overwhelmingly dependant on the legal aid scheme. Kerner (1996) reports that in the early 1990s, almost half described privately-paid work as accounting for 1% or less of their work. Even among those specialists with the highest level of private work, legal aid still accounted for 70-75% of business.

3.6 It is difficult to obtain reliable information about the amount of privately-paid criminal defence work. In our study, among non-directed cases handled by private solicitors, 16% did not receive legal aid. However, many of these were conducted unpaid, sometimes for clients who had other legally-aided work ongoing. Solicitors told us that privately-paid work was largely confined to the occasional road traffic case. Even this work tended to be poorly paid. Solicitors felt some reluctance among small businessmen and others to pay a realistic sum for criminal defence:

"They won't think anything of paying £1,000 to some conveyancer to buy another shop, but they won't give me £100 to do a plea." (Private solicitor interview, 2000)

The importance of individual solicitors

3.7 The major study of criminal defence work in England and Wales has painted a picture of routinised firms, employing large numbers of paralegal staff. Such firms relied on discontinuous representation, in which clerks were assigned to deal with particular stages of a case rather than seeing it all the way through (McConville et al. 1994). These findings do not apply to Scotland. The only significant form of delegation within Edinburgh was in taking precognitions from prosecution and defence witnesses - a task usually undertaken by self-employed precognition agents. In other respects, Edinburgh firms rarely employed paralegal staff.

3.8 Scottish criminal procedure differs from English procedure in two relevant respects. The first is that defence solicitors have no right to be present during police interviewing. Thus, although solicitors sometimes attended police stations to visit clients, this was not a central part of their job. Visits were usually confined to a short interview - and were often described in terms of moral support, rather than legal input. Unlike their English counterparts, Edinburgh firms did not employ staff to cover long, unsocial hours of police station advice. Secondly, compared with the English system, much less use was made of counsel. Solicitors have rights of audience in Sheriff Court solemn cases and usually use advocates only for High Court work. This contrasts with the situation in English Crown Court trials, where the great bulk of advocacy is performed by barristers, and solicitors employ clerks to instruct counsel and "sit behind" them in court. 24

3.9 This meant that the emphasis of criminal defence work remained on the individual solicitor as court advocate. Part C (the client study) shows that clients attached importance to long-standing relationships with their solicitors. Most expected to be dealt with by the same solicitor throughout the case (and expressed considerable disappointment when this

24 In 1994/5, only 13% of expenditure on Sheriff Court jury trials was paid to counsel, compared with over half the higher court legal aid budget in England and Wales (Goriely et al. 1997).
expectation was breached). Similarly, in Chapter 5, we describe how criminal justice professionals assessed solicitors as individual advocates, rather than as part of a firm.

A tight-knit community

3.10 Edinburgh has only three criminal courts: the District Court, the Sheriff Court and the High Court. In numerical terms, for defence solicitors, the Sheriff Court is by far the most significant. Criminal defence solicitors regarded the Sheriff Court almost as a second home, referring to it colloquially as "up the road". They spent many hours there each week, and complained that far too many of those hours were spent waiting. While waiting, they often watched their colleagues conduct other cases, or chatted in the agents' room or outside court. This meant that all those who appeared regularly in Edinburgh Sheriff Court knew each other, assessed each other and exchanged opinions about each other.

3.11 This, too, differs from the findings of English research. Rock's seminal study of Wood Green Crown Court in London (1993) described a shifting population of barristers, mostly travelling up the Piccadilly Line for a trial or two and then disappearing. Compared to the regulars of the Court - judges and staff - they remained outsiders (p.22-3). By contrast, both the private and public defence solicitors within this evaluation were members of the same small community.

STARTING UP A CRIMINAL DEFENCE PRACTICE

3.12 At the time of the evaluation, the PDSO was a relatively new office. We were interested to explore how criminal defence practices started, and whether they encountered any particular problems within their first few years. Without exception, in all the firms visited, the founding partners had brought clients with them from another firm. Sometimes an individual had left to start on their own; some firms represented a concerted breakaway, in which two or three staff left an existing firm; others were joint ventures in which sole practitioners had joined with staff leaving other firms. In all cases, however, solicitors brought existing clients. Such clients are a crucial capital asset on which the business of criminal defence work depends. This was contrasted with very different start for the PDSO:

"People who put up their plaque on the door and set off on Day 1 with an empty desk - that never happens. In a sense, the PDSO Day 1 was artificial. I just can't see that ever happening in private practice." (Private solicitor interview, 2000)

"You would certainly start small and creep towards appropriate numbers... In the early days of a firm, staff costs being what they are, you wouldn't jump into having as many as six." (Private solicitor interview, 2000)

3.13 McConville et al. (1994) describe how English firms were essentially unstable units, liable to fracture as key staff left (p.27). This was also the case in Edinburgh. Growth tended to be slow. One firm, for example, described how it took four years to grow from two solicitors to four. However, the fact that most clients feel loyal to a solicitor rather than a firm meant that firms were particularly vulnerable to staff defection. Reductions in size could be dramatic, as larger firms suddenly became smaller firms overnight.
A DIFFICULT YEAR

3.14 The main year of this study - 1999 - was a difficult one for criminal defence solicitors in Edinburgh. The first problem was a fall in the number of accused prosecuted through the courts. Figures for Edinburgh Sheriff Court show a 6% reduction in the number of summary accused registered in 1999, compared with 1998. The second was the introduction of fixed payments in April 1999, a change was implemented in the face of strong opposition from the profession. Finally, solicitors faced the loss of their January - and February-born clients to the PDSO.

3.15 In 2000, most firms remarked that their turnover was falling. One firm said that in the financial year 1999-2000, it had suffered a 15% reduction. Another estimated a "10-15%" fall. Solicitors, however, found it difficult to pinpoint the cause:

"I think our turnover is down, though how much of that is attributable to fixed fees it is too early to say. There is a reduction in the rate of prosecution generally. Whether that accounts for it at all I just don't know." (Private solicitor interview, 2000)

"[Turnover has] gone down and gone down and gone down - it's a combination of all these factors." (Private solicitor interview, 2000)

The background to this study is therefore that the private practitioners were small, unstable businesses, facing difficult times.

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25 In 1998, 14,134 accused people were proceeded against summarily in Edinburgh Sheriff Court, compared with 13,336 in 1999. Figures supplied by the Scottish Court Service.
CHAPTER 4: THE PUBLIC DEFENCE SOLICITORS' OFFICE

4.1 On 1 October 1998, the Public Defence Solicitors' Office (PDSO) opened its doors to the public. Based in well-appointed offices in York Place, in Edinburgh's Georgian new town, it was within a few minutes walk of several specialist private practitioners. It employed a Director, five assistant solicitors, an office administrator and three full-time secretaries.

4.2 The Director had been in post since April 1998 and had appointed the assistant solicitors. After receiving a large number of applications, he had decided to employ people "on the way up rather than the way down". The five assistant solicitors were aged between 27 and 30 and each had between two and six years post-qualification experience. Although the Director himself had previously practised in Glasgow, and was a new comer to Edinburgh, the other solicitors had practised within Edinburgh and were members of the Edinburgh criminal justice community.

4.3 For the first 18 months of its existence, the Office's work was confined to summary cases (plus associated appeals, means enquiries and proceedings for breach of orders). It did not undertake any solemn work (before a jury). Nor did it participate in the Sheriff Court duty scheme, which covers both summary and solemn cases. The only duty work it undertook was in the District Court. It did not conduct any privately -paying work, but it could act for 'volunteers' who qualified for legal aid over a summary matter in Edinburgh. In order that the Office should build up a large caseload quickly, a system of direction was put in place. From 1 October 1998, those born in January or February who faced prosecution through the Edinburgh summary courts were generally disqualified from receiving legal aid through private solicitors. Unless they obtained a "waiver" from the direction system, the only publicly-funded help available to them was through the PDSO.

4.4 The direction scheme lasted for 21 months. In July 2000, after negotiations with the Edinburgh Bar Association, it was abandoned in favour of an arrangement in which the PDSO took over 60% of the Edinburgh Sheriff Court summary duty scheme. The Office also started conducting some solemn cases.

FOLLOWING THE LETTER OF LEGAL AID?

4.5 The Office was financed directly by a grant from the Scottish Legal Aid Board and did not submit bills on a case-by-case basis. However, it did submit legal aid applications. It was thought that the PDSO should not decide eligibility for summary legal aid. Instead, SLAB would apply the means and merits test in the normal way.

4.6 One difficult issue facing the PDSO was how far its work should be confined to the limits of the legal aid scheme. As we have seen, private solicitors perform a great deal of work that cannot technically be charged for under legal aid. Should the PDSO only conduct work that would be covered by legal aid, or should it carry out the same sort of additional work that a private solicitor would do on an unpaid basis? Although initially the view was taken that the PDSO should use legal aid only as intended, this was modified in the light of further thought and experience. As time went on, the Office tended to become more like a private practice.
4.7 When we first interviewed the PDSO Director in Spring 1998, he told us that the PDSO would not normally act as a substitute for the duty scheme. Unless a public defence solicitor was already in court that day, most directed clients would be expected to use the duty scheme and visit the PDSO only after an initial plea of not guilty. This policy, however, was changed before the Office opened in October 1998. In practice, public defence solicitors were available at each custody court to represent any directed clients who wished to use them. They also represented cited accused at the initial pleading diet.

4.8 At first the Office decided that, unlike private solicitors, they would attempt to collect contributions under the Advice and Assistance and ABWOR schemes. Although they would never refuse help to those who failed to pay, they would send out bills and reminders. The Director commented that "we worked very hard in the first year to make sure that we asked every single person that was supposed to pay a contribution for their contribution". However this met with little success. By October 1999, they had levied contributions of £1,743 (in 49 cases) and had received only £158 (in 6 cases). The Director explained that because most solicitors did not take contributions, clients had a culture of not expecting to pay, and there were few sanctions that could be imposed. "In the most recent year of business we've really saved ourselves the postage... and made no real effort to gather in contributions".

4.9 There was also a change of policy over police station visits. Although legal aid provides small Advice and Assistance payments for the interview itself, this goes very little way towards covering the travel and waiting involved. In 1998, the Director said that PDSO solicitors would rarely visit clients in the police station as it did not usually aid the defence process. At first, assistant solicitors also saw police station visits as unnecessary from a legal (as opposed to a business development) point of view:

"[In private practice] There was always a danger that if you didn't see him another solicitor would see another client in custody at the police station... And maybe then your client’s annoyed because you haven’t gone and seen him, you don’t care about him, you don’t bother about him.... I’m sure perhaps years ago it started off as a business development for some people, but because that then happened, everyone else had to go along with it... There is nothing you can do for people in police stations when you’re there. You can’t secure their release.... There was only once that I managed to have somebody released on a bail undertaking by the police during the weekend." (PDSO assistant solicitor interview 1, February 1999)

"We won’t automatically go out. There is no need.” (PDSO assistant solicitor interview 2, February 1999)

By November 2000, the Director thought that the PDSO visited the police stations "as much as most firms":

"I still take the view that in summary case work it's very rarely going to achieve terribly much in the legal sense. I do think it's worthwhile from a public relations point of view and its something we do. We do more of it now... substantially more now.” (PDSO Director interview, November 2000)

Before acting as duty solicitor on a Monday morning, a public defence solicitor would visit the police station on Sunday to reassure people and reduce the Monday rush:
"The last time I was out it was seven people who had been arrested, so I went along to St Leonard's [the central custody suite] and saw them... It means come the Monday morning, they know they've got me, they've seen me before and I don't need to see them again. So the two hours that I've spent on Sunday takes two hours off my day on the Monday." (PDSO assistant solicitor interview, November 2000)

LIAISON WITH SOCIAL WORK AGENCIES

4.10 One of the distinctive features of the PDSO was in the links they built with helping agencies. The Director described the office's goal as "by and large... to keep clients out of prison... - not just by doing our best in their cases, which is the primary role of course, but also by... looking at other ways". To this end, he thought it important to build up links with all available sources of help within Edinburgh, both to "acquaint ourselves with the help that's available" and to encourage and steer clients towards appropriate help. This was not always seen as an integral part of the defence agent role:

"It is to my shame that I've been a private practitioner for many, many years with very little insight into what these agencies did or what they could offer my clients... The sad thing is I don't think I was any different from anyone else in private practice." (PDSO Director interview, November 2000)

4.11 In practice, the main links were with SACRO and APEX. SACRO ran several programmes for offenders in Edinburgh, of which the most important was the supervised bail scheme. The PDSO developed a strong relationship with them, visiting them and providing seminars on, for example, human rights. SACRO staff commented that their relationship with the PDSO was not unique: they had good relations with several private practice firms. However the PDSO "has built up the relationship much more quickly and more effectively" than private practice.

4.12 PDSO staff were extremely positive about the SACRO bail scheme, describing it as "very, very good". For a few clients, it was their only hope of getting bail: "for borderline cases, where people are about to go into custody, the one saviour can be acceptance on the SACRO bail scheme". This not only prevented a remand in custody before trial but significantly reduced the chances of an eventual custodial sentence. SACRO provided regular reports, which carried credibility with the court, and would also reduce the chances of custody.

4.13 APEX also ran a series of initiatives, of which the most important (from the PDSO point of view) were training courses aimed at encouraging young unemployed offenders into work. Uniquely, APEX organised monthly sessions at the PDSO offices in which they would meet potential new recruits and tell them about the services on offer. This was not an arrangement they had with any other private firm.

26 SACRO was originally founded as the Scottish Association for the Care and Resettlement of Offenders, but in 1999 it changed its name to Safeguarding Communities - Reducing Offending.
27 APEX describes itself as the Scottish Employment and Training Organisation for Offenders, Ex-Offenders and Young People at Risk.
4.14 Initially, PDSO staff talked in terms of encouraging clients to use such services. However, by 2000, they stressed that their role was in providing information rather than encouragement:

"I think we've quickly realised that you have to be very careful... Even though you're not forcing anyone to take help, you've also got to be careful, I think, not to be seen as part of that help agency yourself. There is a clear separation of roles, and at the end of the day you're the defence lawyer. They've got to realise that's what your job is." (PDSO Director interview, November 2000)

"I think clients resent being pressed too much on anything... It is something you might mention to them. If they want help, or want to follow it up... then we let them know we can do that." (PDSO assistant solicitor interview, November 2000)

If solicitors went further than this, and encouraged clients towards help that they failed to take, clients "could feel embarrassed that they've let you down... on a kind of personal basis". This would interfere with what was essentially a professional relationship. APEX also stressed the separation of roles: the PDSO "were only acting as a referral agency":

"All they do is tell us about the person and now - the system's changed slightly - we send them a letter and we see them for a preliminary meeting at the PDSO's premises up at York Place. We take some basic details and then after that ... send them further letters to start attending here. We meet at the PDSO because they know the PDSO." (APEX interview, 2000)

4.15 The numbers involved were low. APEX was only suitable for a limited range of clients - particularly "young unemployed lads, 16-24". Even among those suited to what APEX had to offer, only a few would show an interest and even fewer would attend an appointment to learn more. APEX told us that each month they would arrange to see three or four people at the PDSO offices, of whom "one or two would probably turn up":

"That is the problem with the client group that we have. They tend to lead lifestyles that are hardly stable. Consequently they find it difficult to attend meetings for one reason or another. So we have a very high drop-out rate." (APEX interview, 2000)

The low numbers make it difficult to reach any quantitative findings on the effect of the relationship with APEX. Whatever the benefits of these arrangements to individuals, they were not on a scale that would lead to statistically significant differences in outcomes across a broad range of cases.

4.16 PDSO staff told us that they also made use of diversion schemes, such as mediation. However, they had done this in private practice, and their use of diversion was similar to when they practised privately:

"Where appropriate, I've always attempted to contact the Fiscal about it. I think the Fiscal's Office is becoming slightly more amenable to considering
diversion than it was in previous years, so it's probably slightly easier now."
(PDSO assistant solicitor interview, November 2000)

REATIONS TO THE PDSO

4.17 As the Canadian Bar Association points out, the choice between salaried defenders or private practitioners is one that raises strong ideological passions:

"... there are few topics which appear to rouse such strong and varying opinions as the choice of delivery model. Ideology and personal experience come together on this topic, allowing most lawyers to hold and advocate positions with great conviction." (Canadian Bar Association 1987, p.19)

In Edinburgh, these strong opinions were exacerbated by the system of direction. As we have seen, private solicitors could no longer be paid for representing around a sixth of their established clients. It hit at what firms regarded as an important capital asset at an already difficult time. An understanding of how the direction system worked is a necessary background to the quantitative study and it is therefore described at length in Chapter 8. Here we are not concerned so much with the system itself but with the effect it had on the relationship between the PDSO and other criminal defence solicitors within Edinburgh.

4.18 When the PDSO opened in 1998, relations between the private profession and the PDSO could only be described as poor. Public and private defence solicitors formed part of the same small community, meeting on a daily basis in the agents' room at court. The atmosphere was frequently cold, characterised by silences and some hostile remarks. Two incidences stand out - though they are of very different types. The first was antagonistic graffiti:

"In the early weeks, there was graffiti written on the notice board in the agents' room with sexual slurs about the two female solicitors here. Now, I was really shocked at that. I didn't for one moment think that we would face that kind of abuse." (PDSO Director interview, November 2000)

This could be dismissed as the work of a vociferous fringe element. However the decision of the Edinburgh Bar Association to exclude public defence solicitors from membership represented a more general consensus from other Edinburgh solicitors. Although such exclusion was not "a day-to-day problem", it carried an unequivocal social message.

4.19 The important issue is what effect this tension had on the work of the PDSO. In February 1999 staff tended to dismiss these problems as minor:

"I've known the majority of solicitors in Edinburgh for a number of years, and I don't feel that this has affected my job. Obviously there has been a great deal of animosity about the whole office from private solicitors, but again, because I've known a lot of them for a number of years, I haven't had any great difficulty... Some of them I think have decided, it's here, let's work with it and co-operate... There are some solicitors who are being a bit awkward about things.... But in general, I haven't had any great difficulty." (PDSO assistant solicitor interview, February 1999)
"There are some firms who are more hostile than others... There are one or two solicitors and some certain firms who don't speak to any of us up at court.... I've known a lot of them before... If you're in court at the very end and there're only one or two others, they'll chat away to you ... because they know that other people won't see them. It doesn't bother me." (PDSO assistant solicitor interview, February 1999)

4.20 By 2000, relationships had improved. As the Director put it, "there was a gradual improvement over the course of time". Fixed fees "turned out not to be doomsday" and people "got use to the idea that we were around". Then, after the end of direction in July 2000, the problem ended. Public defence solicitors were admitted to the Edinburgh Bar Association and relations thawed:

"When we negotiated to get rid of direction, yes, a huge improvement... In fact I would say that some firms probably treat us better than they treat other local private firms, because I think some are very conscious of trying... to repair any broken bridges... I think relations are very, very good." (PDSO Director interview, November 2000)

It was only when the problem ceased that staff were conscious of the previous strain of living in a "goldfish bowl", in which any mistake could have been seized on as evidence of incompetence. Staff talked of the "visible difference" as relationships improved.

"I think in the early days, if this place had run in a slovenly manner or had made mistakes... a lot of people would have seized on that. I was so conscious of everything being a hundred per cent... and I certainly drilled that into those who worked here - that we could not afford little errors or mistakes that might be part of office life in other firms." (PDSO Director interview, November 2000)

It also affected relationships with clients, a subject to which we return in Part C.
CHAPTER 5: APPROACHING THE ISSUE OF QUALITY

5.1 There is no simple way of defining or measuring the quality of criminal defence work. Instead, the literature stresses the complex and multi-faceted nature of the concept (Sherr et al. 1994, Goriely 1994, Sommerlad 1999). Quality can be looked at from many different standpoints, and assessed in a wide variety of ways. The most often-used approaches to assessing the quality of lawyers include measurements of outcomes, client satisfaction, peer review (which relies on professional judgements by other lawyers), model clients (using actors who pose as clients) and audits of structures and work product (Sherr et al. 1994).

5.2 As a starting point to the issue of quality, we asked criminal justice professionals in Edinburgh what they thought made a good criminal defence solicitor. We also inquired whether they had any specific concerns about the quality of service provided by the PDSO. The answers to the first question are reported in this chapter, and the answers to the second in Chapter 6. The material is taken from qualitative interviews, described in Appendix 3. At the end of Chapter 6 we return to the question of quality assessment and explain the approach taken in this evaluation.

THE IMPORTANCE OF THE INDIVIDUAL

5.3 Time and again, it was stressed that the quality of a defence solicitor depended on the individual concerned:

"As in all walks of life some defence agents are better than others. . . no doubt there are views as to which justices of the peace are better than others." (Justice of the Peace interview, 2000)

"It depends on the individual. Their experience as lawyers varies from individual to individual. That must be true of my organisation too." (Procurator Fiscal interview, 2000)

"Generally speaking, there is good and bad y’know. That extends to the public defender service as well... Some are better than others." (Sheriff Court Clerk interview, 2000)

5.4 As explained earlier, the criminal defence community in Edinburgh is small and tight-knit. Most actors know each other. Interviewees frequently stressed that they knew most members of the PDSO staff prior to the office becoming established. It is also a world in which one’s personal reputation is crucial:

"Reputation – that to me is the single most important thing in the job we do. The single most important thing." (Private solicitor interview, 2000)

In the interviews, sheriffs and justices of the peace were understandably reluctant to discuss the reputation of any given individual. However, other respondents showed no such reticence. Most were happy to provide detailed assessments of the abilities of both PDSO and private practice colleagues. Indeed it became clear that such discussions were not only commonplace
but formed the ‘small change’ of social interactions in this particular workplace setting. In explaining how a solicitor’s reputation was created, one solicitor mentioned:

“People coming into the agents’ room and saying, I’ve just had a case where A, B & C happened, what do you think about that?” (Private solicitor interview, 2000)

ADVOCACY

5.5 A defence solicitor’s reputation depends on their performance in court. The court is a very public setting. For sheriffs and magistrates it represents their only contact with defence agents. For others - solicitors, fiscals, court clerks – it represents the main point of contact.

5.6 Speaking in court was also seen as central to what a defence solicitor does. All the solicitors we spoke to mentioned advocacy as an essential skill of the job, and most put it first. Solicitors were keen to hang onto their image as independent advocates, in the face of increasing pressure to become businessmen:

"I consider my skills to be in court – presenting a defence, dealing with clients… I have a romantic notion about court. I have a romantic notion about the law and the importance that we do not dumb down and create a standard way of doing things." (Private solicitor interview, 2000)

Confidence

5.7 The first requirement of advocacy was thought to be confidence in court. When asked what they would look for in a potential employee, a private practice solicitor put it in the following terms:

"A level of confidence in court – can you stand up and properly represent your client? If the Sheriff says boo, do you back down?" (Private solicitor interview, 2000)

There was frequent mention of confidence across all types of respondent:

"Those who’ve had more experience become more confident and become more able." (District Court Clerk interview, 2000)

"A lot of it is experience, I think. And being reasonably confident, articulate, not rambling on too much." (Social worker interview, 2000)

Confidence enables defence solicitors to meet the basic requirements of advocacy: namely that they should speak up and make good points to the court clearly and concisely:

"[If] they can express themselves clearly – both in terms of being audible and expressing the information they want to impart in a clear manner – I think that is the primary requirement." (Justice of the Peace interview, 2000)
Without confidence in court, a criminal defence solicitor would find it difficult to inspire confidence in others. An unconfident solicitor may 'rub the Sheriff up the wrong way':

"You can get the feeling that a Sheriff is taking a particular dislike to a solicitor... Sometimes you can feel a bit of tension or resentment in...the tone of voice and the way he’s speaking to the person." (Sheriff Court Clerk interview, 2000)

It would also affect the way the solicitor was viewed by clients:

"Confidence is important because clients very quickly pick up if... someone's not confident - if a Sheriff pulls them up about something and they don't know how to deal with it... If you are confident with sheriffs, clients see it.... If you get respect from the bench, you'll get respect from the client as well." (Private solicitor interview, 2000)

Credibility

5.8 If the first goal of advocacy is to be understood, the second goal is to be believed. Solicitors stressed that credibility depended on reputation. If one behaved honestly and straightforwardly with others, this would be remembered and would count in one’s favour. Conversely, past exaggeration or economy with the truth would undermine one’s credibility in the future:

"I think it’s dealing with people straight... What you say in that court - if it’s exaggerated, if it’s not based .. on facts, if it’s spurious or vexatious - that will attach to you." (Private solicitor interview, 2000)

5.9 Developing "a good relationship with the bench" was clearly vital. However, credibility with others mattered too. The way one was regarded by fiscals, court clerks and solicitors in other firms was also important.

5.10 The Procurators Fiscal confirmed the importance of a reputation for credibility. This depended not just on honesty but on "realism". Before approaching the prosecution, defence solicitors had to be realistic about the sort of pleas a Fiscal might accept. It would, for example, be counter-productive to offer a plea to a minor charge only, without suggesting any real defence to the major charge:

"Some [defence agents] have lost credibility in my eyes because I have been approached by them with unrealistic pleas – and I have spent some time trying to explain that to them to no avail, and I’m not going to do that twice." (Procurator Fiscal interview, 2000)

It also helped to be "realistic" with other court actors, such as social workers:

"From a social work point of view, I prefer it when solicitors have a realistic view of community disposals… rather than going for probation when it’s not recommended." (Social worker interview 2000)
Procedural knowledge

5.11 The third "must have" for defence solicitors was a good understanding of criminal procedure. What was valued, particularly, was practical knowledge ("an intimate knowledge of your local court") rather than "what you learn at university". This extended to knowledge about people: "particularly in Edinburgh, it is important to know your sheriffs".

5.12 It was pointed out that criminal defence work presents many traps for the unwary. As one solicitor put it, "it is very easy in court to say stupid things". One particular example given was where a client said that they wanted to plead guilty but their explanation was that they did not in fact do anything wrong. For example, a client might plead guilty to an assault but then ask their solicitor to state, in mitigation, that it was just self-defence:

"It is easy enough to get led into that trap. If you are sitting listening and you heard that you would think oh, that's dreadful." (Private solicitor interview, 2000)

5.13 Another difficult situation for an inexperienced solicitor to handle was where a client insisted on going to trial with a very poor defence that simply consisted of accusing all the prosecution witnesses of lying. On the one hand, the solicitor had to give effect to their client’s instructions. On the other hand, it was best not to antagonise the rest of the court unnecessarily. If one could manage the situation without allowing the prosecution to lead evidence of the client’s previous convictions, so much the better.

Brevity

5.14 All four members of the bench interviewed mentioned the importance of brevity:

"Certainly in court it is always helpful if people can be reasonably brief – concise." (Sheriff interview, 2000)

"Generally the older, more experienced advocates are better performers – they tend to miss out the more irrelevant material and be more concise in the presentation of whatever information they convey." (Justice of the Peace interview, 2000)

5.15 One Sheriff provided a list of "don’ts" in the following terms:

"A bad solicitor doesn’t know how to cross-examine witnesses and is meandering in his questioning. A bad solicitor misses obvious points in favour of his client which he ought to take – doesn’t take objection when objectionable evidence is led. A bad solicitor is not familiar with the relevant law. A bad solicitor doesn’t know how to present submissions to the court, either a submission of no case to answer or submissions at the end of the case. And a bad solicitor... is also a solicitor who wastes time." (Sheriff interview, 2000)

The Sheriff hastened to add that based on these criteria there were very few bad solicitors: "the general standard of defence solicitor in this court is quite acceptable".
RELATIONSHIPS WITH CLIENTS

5.16 All the solicitors we spoke to mentioned the importance of "getting on with" clients, though they did so in a range of ways. At one end of the spectrum, some solicitors put this in terms of "empathy" and understanding:

"Empathy... that's probably one of the first things... A lot of our clients have had shocking upbringings or really difficult times, and a lot of people would say, well that's still no excuse for having done x, y or z. But I think when you deal with them on a yearly basis, you see the difficulties that they're having, the messes that they get themselves into, and you understand that they're quite vulnerable...

When I say empathy, I don't mean feeling sorry for them all the time. I just think you have to understand where they're coming from, what motivates them perhaps to be offending, and to understand their offending." (Private solicitor interview, 2000)

5.17 It was, however, unusual for solicitors to say that the job required this level of understanding. At the other end of the spectrum, solicitors some described "getting on" with clients as more a matter of "bedside manner". Several stressed that the job required an ability to get on with a wide range of different people:

"You have to be able to get on with people at varying levels - down from how you cope formally with a Sheriff to how you deal with the punter when he first comes into the office... A lot of our clients mistrust authority... and you've got to go an extra mile to make them feel comfortable." (Private solicitor interview, 2000)

It was not a job for "a shrinking violet", especially as (in the words used by two solicitors) some clients could be "really difficult".

5.18 The interviews revealed some conflict over the exact nature of the appropriate client/solicitor relationship. A Procurator Fiscal thought that some solicitors were too close to their clients - as evidenced by the fact that clients called them by their first name, if not their nickname. This was felt to break down professional distinctions to an unacceptable degree:

"I think that's a terrible thing. It breaks down the - It's like going into hospital and seeing your doctor and calling him Andy." (Procurator Fiscal interview, 2000)

Breaking down barriers was linked to potential danger. Fiscals worried that solicitors might be "led by the nose by their clients" to, for example, help construct defences. No details were given, however, that this had, in fact, occurred.
Perhaps surprisingly, respondents made only occasional references to the quality of preparation. Although judicial and court staff acknowledged that preparation was important, they found it difficult to make judgements about what other people did. Even when the court was faced with examples of poor preparation it may be difficult to allocate blame:

"I think that preparedness is probably the single most important feature and it's sometimes apparent that you have a defence agent ... who's not familiar with either the accused or the circumstances... But that's something that you have to make appropriate allowance for as far as you can... I don't think that's something which is a question of competence – it's more a question of the circumstances." (Justice of the Peace interview, 2000)

The same view was taken of late preparation:

"There can be a delay... Legal aid may not be granted until fairly soon before the actual trial diet or the intermediate diet and defence solicitors will write out for statements etc. and very often, I think, they don't get the co-operation of the Crown witnesses... Whether they could be criticised for this or not, I don't know, because I don't know their time-tabling... [but] I think we have a fairly responsible breed of defence agent in Edinburgh to be honest." (District Court Clerk interview, 2000)

Many defence solicitors discussed preparation only after they had been prompted. Even those who talked spontaneously about the importance of good preparation put it after skill in advocacy and client handling. When they did discuss it, most solicitors accepted that it was important to be organised. One solicitor gave the following list of necessary preparation:

"Preparation of paperwork, firstly, for the legal aid application. Preparation for files, so it's easy for us to present the case. So we've got the information there and we don't have to go to the dock every five minutes to ask how many children do you have... And preparation of a trial, so that when we come to trial we've got the oath statements from the Crown witnesses, defence statements that we need, we've got the accused's position, and we've got the law that we need." (Private solicitor interview, 2000)

Another solicitor, however, put quick thinking above careful preparation:

"It's not so much careful preparation, it's having people who have got the brains to spot the points. It's having people who have got the brains to pick up a summary complaint, look at it and say, 'that's not right'." (Private solicitor interview, 2000)

He thought that good advocacy did not necessarily involve a great deal of preparation: "in the past, and even at present, I've done lots of trials where I don't even have a file in front of me."

Procurators Fiscal were the group most prepared to judge solicitors by the quality of their preparation. They mentioned, in particular, whether firms replied promptly to s.257 letters about the agreement of evidence, whether they offered pleas well in advance and whether they
intimated defence witnesses on time. Without good preparation, solicitors could easily lose direction:

"[Good solicitors] know what the defence is going to be, and they don't waste my time going over every little stone in the case and hope from underneath it will crawl some escape for their client. They know where they are going and they know what their point is. But a lot of them, they don't know what they are looking for and they're hoping something will suddenly dance out, and it seldom does." (Procurator Fiscal interview, 2000)

OTHER SKILLS

5.23 Two other skills were mentioned. First, most solicitors referred to a good knowledge of law. This was felt to have become particularly important since the incorporation of human rights as part of the constitutional changes associated with devolution:

"Particularly with the devolution issues that have been coming up, there has been far more legal argument in court." (Private solicitor interview, 2000)

5.24 Secondly, business skills were thought to be becoming ever more important. When asked what quality a solicitor would look for in taking on an associate, one solicitor replied that they would look for complementary skills that they did not necessarily possess themselves: someone who was "skilled in administration and on the business side".

CONCLUSION

5.25 Those involved with the criminal courts in Edinburgh form a small and tight-knit community, in which people routinely make judgements about the quality of each other’s work. There is an oral tradition. Defence solicitors are judged primarily by how they behave whilst on their feet in court. A strong, confident performance in court inspires confidence in others. Provided that the solicitor also acquires a reputation for straight dealing, their representations will be believed and acted on by others in the system – notably by the prosecution and the bench.

5.26 By contrast, there is little experience of assessing solicitors by the quality of their preparation. On a theoretical level, people accept that good preparation is important. However, they do not know how to judge it. Even when the court is faced with examples of poor preparation or delay in preparation, it is usually put down to circumstances rather than competence. Solicitors tend to be given the benefit of the doubt.
CHAPTER 6: ASSESSMENTS OF THE PDSO

6.1 When respondents were asked to assess the PDSO, the overwhelming verdict was that it was no different to any other firm of criminal defence solicitors in Edinburgh. Both individuals and firms differed substantially, and public defence solicitors fell within the normal range.

THE COURT VIEW

6.2 All the sheriffs, justices of the peace and court clerks that we spoke to felt that there was no real difference between the PDSO and other firms of solicitors:

"I can’t say I’ve seen any difference at all in quality and ability between them and their contemporaries." (Sheriff interview, 2000)

"They’re fine. They are just like the other solicitors." (Sheriff interview, 2000)

"Much the same as any other type of lawyer." (Justice of the Peace interview, 2000)

"In terms of performance there is no perceivable difference." (Justice of the Peace interview, 2000)

"I’m not aware of any difference, really." (District Court Clerk interview, 2000)

"I see them as being virtually the same as the ordinary lawyers, for want of a better expression." (Sheriff Court Clerk interview, 2000)

6.3 Several respondents stressed that PDSO staff did not commit any of the faults outlined in Chapter 5. For example, one Sheriff, after outlining the attributes of a "bad solicitor" added:

"I don’t see any of the Public Defence Solicitors offending in any of the ways I’ve described at all." (Sheriff interview, 2000)

A Justice of the Peace made the same point:

"Of those who, from time to time are not performing at their best in the court from inexperience or for whatever reason, I don’t think any of the PDSOs have fallen into that category... Their level of competence exceeds the lower end of the range" (Justice of the Peace interview, 2000)

A Sheriff Court clerk put it as follows:

"They’re in their late twenties, early thirties... - so they’re not completely naïve. They’re all easy to get on with. They’re all pretty reasonable people..."
There are one or two that are better than others... but that could be the same if you go to any lawyers’ firm." (Sheriff Court Clerk interview, 2000)

THE PRIVATE LAWYER VIEW

6.4 Before the PDSO was set up, some private lawyers suggested that anyone taking a job there would automatically be a poor defence agent:

"I suspect... that the Public Defence Solicitor’s Office will get duds. Nobody with any self-respect, nobody with ability who was obviously making it in the job I do would ever consider joining the PDSO." (Private solicitor interview, 1998)

In the light of actual experience, however, none of the private solicitors interviewed expressed views of this sort. In general, private solicitors agreed with other respondents that there was little difference between the PDSO and other solicitors:

"They're all competent solicitors. I have no difficulty with that whatsoever... They have worked for experienced firms in Edinburgh. They have no doubt been trained by these firms... They have the same level of competence that most people achieve up the road." (Private solicitor interview 2000)

Another solicitor stated that the PDSO was less different than he "had thought":

"When [x, a PDSO solicitor] deals with cases I think he deals with them very similarly to how he dealt with cases before." (Private solicitor interview, 2000)

This view was confirmed by others:

"They are fine and they do the job the way anybody else does it... [Some] have come from firms that I've been at and they do the job in the same way". (Private solicitor interview, 2000)

"From what I observe of the way they do things, it’s pretty much the same as the way I would do it. You see a client, take instructions, you investigate, you turn up for the procedural hearings and then you’re at trial... There may be niceties... about time management and dividing up of the files and so on, but I don’t have any knowledge of that." (Private solicitor interview, 2000)

ADVOCACY

6.5 As discussed in Chapter 5, criminal justice professionals judge solicitors largely on the quality of their advocacy. Overall, the quality of advocacy at the PDSO was deemed much the same as other firms.

6.6 Criminal defence solicitors are usually judged as individuals. Public defence solicitors were no exception, with some being assessed as better than others. Several respondents
mentioned one solicitor as being particularly good: "better than their time qualified would suggest". Good on their feet, they were thought to inspire a high level of confidence from clients and from other court actors, including fiscals.

6.7 Conversely, one or two solicitors where thought of as less good than their colleagues. This was because they were thought to lack the necessary level of confidence in court:

"[x] got roastings from sheriffs from which I don’t think [they have] recovered.... Inaudible in court which is a real problem... I think there are a couple of sheriffs who see [them] as an easy target." (Private solicitor interview, 2000)  

"One of them you can’t hear... and [they are] quite nervous. So the Sheriff [becomes annoyed] which makes [them] quite flustered". (Social worker interview, 2000)

Even those who criticised individuals, however, added that the same criticisms could be made of solicitors in private practice.

6.8 Where general criticisms did emerge, the comparison was with highly experienced solicitors who undertook solemn Sheriff Court and High Court work. One solicitor, for example, pointed out that their own firm had several partners, all of whom had "significant experience of a whole range of things, from High Court down to District Court". In comparison, PDSO staff may not have the right balance: "I didn’t think they had enough experience". Another made much the same point, adding that, compared with their own firm, the PDSO "would be light".

6.9 Given that the PDSO did not undertake High Court work, this did not appear to be a substantial criticism. However, it was pointed out that even within summary work, many complex ethical, legal and procedural issues could arise. It was suggested that PDSO staff did not have the same range of experienced senior partners from which to seek advice: "there must be situations where they don’t have that backup".

6.10 Finally, compared with the very best advocates, PDSO staff were thought to lack "charisma":

"They're a perfectly good, competent bunch of lawyers, and I've heard perfectly good pleas coming from them, and seen perfectly good work being done by them.... There's nobody in the PDSO who stands out as a legal genius - who has got such charisma, such character, such flair that clients are going to be running for them, but they're a competent bunch of guys." (Private solicitor interview, 2000)

6.11 One problem was that, during the period of our evaluation, the Office did not carry out any solemn work. PDSO staff missed the challenge of appearing before a jury:

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28 To preserve anonymity, whenever a specific assistant public defence solicitor is discussed, we have either removed any gender specific words or changed them at random. See Appendix 3.
"If you want to provide the best service and do the best thing that you can for yourself professionally, then you have to do jury trials. One of the best things... is convincing a jury that your client has done this or not done this, he's innocent." (PDSO assistant solicitor interview, 2000)

An assistant solicitor in private practice confirmed that this would have been the factor most likely to discourage him applying for a post at the PDSO:

"I would not have considered working at the PDSO if they did not have solemn, jury work. I think it is a natural progression to want to do the most serious cases." (Private assistant solicitor interview, 2000)

If an organisation wishes to attract and develop the best advocates, it needs to offer the possibility of at least some jury work. Since July 2000, the PDSO has taken on some solemn cases.

RELATIONSHIPS WITH CLIENTS

6.12 Several private solicitors suggested that, in general, public defence solicitors may be less committed to their clients than private practitioners:

"They may not have been quite so keen to go that extra mile for clients... At the end of the day, they have a supply of clients whereas if we haven't done something properly and get a bad result for the client, the client would be off." (Private solicitor interview, 2000)

"Clients in Edinburgh are reasonably demanding as far as their solicitors are concerned. They're wanting a level of ... commitment, involvement and service, which perhaps people who are in a - dare I say it - government-paid situation are perhaps not prepared to provide." (Private solicitor interview, 2000)

However, private solicitors found it impossible to judge whether these fears were realised in practice. They simply did not have the evidence on which to judge: "because you're not sitting in listening to the conversation they're having with clients and you don't see them meeting with clients in their offices".

RELATIONSHIP WITH THE FISCAL SERVICE

6.13 Initially one fear expressed about public defender schemes was that they might develop inappropriately "cosy" relations with the prosecution. Respondents said that this had definitely not happened:

"I can say categorically no, that has not happened. I think that rumours built up in the early days that... there were going to be weekly meetings between the PDSO and the Fiscal to sort out next week’s cases. I’m led to believe that that has never happened." (Private solicitor interview, 2000)
"I don’t think it was anything like the cosy relationship we had been told about beforehand... No organised meetings to discuss cases... That never materialised." (Private solicitor interview, 2000)

"I don't see that the Fiscal's attitude is any different.” (Private solicitor interview, 2000)

6.14 The Fiscal interviews confirmed that their relationship with the PDSO was based on the same ground rules as with any other firm. However, the Procurators Fiscal we spoke to clearly felt positively towards the PDSO. It was thought that, unlike some private firms, their judgement would not be swayed by the need to maximise their legal aid income:

"No different from any other firm... The only real difference is that at the back of my mind... they are not necessarily motivated by money and by legal aid. But, on the other hand, they are motivated to try and make a success of themselves.” (Procurator Fiscal interview, 2000)

They were also felt to be "better organised" than most defence solicitors. This made communications easier:

"Their paperwork is very good in terms of correspondence with this office... intimating defence witnesses at an intermediate diet. Their preparation is very good. Their knowledge of their case is very good." (Procurator Fiscal interview, 2000)

It was thought that the PDSO were particularly good at replying to s.257 letters requesting the agreement of evidence. Furthermore, PDSO solicitors were pro-active in telephoning the office to suggest pleas. On a more mundane level, it was also thought easier to return their telephone calls:

"My experience of telephoning the PDSO is that it is answered right away. A very courteous receptionist, which is not everybody’s experience of phoning here. If the person I’m wanting to speak to is not available, I’ll be asked what case, and if anyone else can help me, and if I’m told that someone will phone me back, someone always phones me back... It is not uncommon to phone a defence solicitor’s office where the receptionists are abrasive and rude because they are used to dealing with criminal clients." (Procurator Fiscal interview, 2000)

THE ASSISTANT SOLICITOR VIEW

6.14 We interviewed two assistant solicitors, and asked them whether they would be prepared to consider taking a job at the PDSO. Both said that they would. The days of natural progression to partnership were thought to be over, and assistant solicitors were more open to job opportunities outside the traditional partnership route:

"If it became a nationwide thing and I was unhappy with where I was, then I wouldn't rule it out. I wouldn't have any conscientious objections to becoming a PDSO solicitor." (Private assistant solicitor interview, 2000)
The main advantage would be the freedom not to have to worry about maximising income:

"The principle difference would be that you're not concerned with income - in terms of not having to worry about what generates income and what doesn't generate income... So to some extent it might be quite nice, because it might give you the luxury to be able to concentrate on cases." (Private assistant solicitor interview, 2000)

It was also thought that the PDSO had good support services:

"I've got friends who work there, and they seem to have a good quality of backup in terms of secretarial staff and computer systems, which makes the routine aspects of their jobs much less than in this practice." (Private assistant solicitor interview, 2000)

6.15 The disadvantages (other than the possible lack of solemn work) were seen to be a "civil service mentality" which might result in "a lack of incentive to do well". Assistant solicitors were also concerned about hostility from colleagues:

"I think most solicitors, because they knew many of the PDSO solicitors... would treat them as professional, but some people don't have that view, and would be hostile towards them. That is not an attractive way to work day to day. You've got to have a thick skin for that. But that alone wouldn't put me off." (Private assistant solicitor interview, 2000)

THE DIRECTION FACTOR

6.16 At first sight, it seems difficult to reconcile the positive views that private solicitors gave about the PDSO with the hostility encountered at court. None of the solicitors we spoke to expressed serious concerns about how the PDSO went about their work. The overwhelming verdict was that they were much the same as any other solicitors' firm. Solicitors said that they knew and respected PDSO staff, who had for the most part been trained in Edinburgh according to Edinburgh ways.

6.17 Respondents all stressed than any hostility was not towards the service itself, but towards the system of direction and waivers:

"The problems have been caused completely by direction – completely and utterly by direction. It has brought conflict on a daily basis between private firms and the PDSO." (Private solicitor interview, 2000)

Solicitors felt upset and angry on a personal level when direction was applied to their own long-standing clients:

"I don't think anyone else properly understands... what it is like to have direction applying to your files. It is something I still feel strongly about." (Private solicitor interview, April 2000)
6.18 An unfortunate aspect of the direction system was that the PDSO Director was personally responsible for granting waivers from direction. The way that such waivers were or were not granted was a running sore over the 21 months during which direction lasted. Decisions were thought to be granted inconsistently, with a few "high profile incidents" over particular decisions:

"Just when you think it’s getting better somebody relates an experience about a refusal of a waiver... Direction drags us back into the mire because it causes a lot of conflicts." (Private solicitor interview, April 2000)

CONCLUSION

6.19 Public discussion of the PDSO was dominated by the debate on direction. The qualitative interviews did not raise any specific concerns about the quality of service actually provided by the PDSO. Most people judged it to be doing much the same job, in much the same way, as other criminal defence firms in Edinburgh.

6.20 Defence solicitors were judged on three main criteria:

1. **Advocacy**

Advocacy is thought to be central to what a defence solicitor does. It is also very public. The criminal justice professionals we spoke to had ample opportunities to judge the quality of PDSO advocacy, as compared with that of other solicitors in Edinburgh. The overwhelming verdict was that it was much the same. As with other firms, PDSO solicitors were thought to have a range of ability. Taken overall they tended to be seen as average – better than the worst, but perhaps not as good as the very best.

This was a strong consensus, based on the views of a range of people, with the knowledge and experience to make a judgement. As researchers, we do not think that we can improve on this view. In numerical terms, contested trials were a rarity. The court sample of 430 PDSO cases contained only 52 cases in which evidence was led. It would be difficult to make any quantitative assessment based on such low numbers. Nor would we have been in a position to substitute our own observations for those of the criminal community. We would accept the views of respondents that the standard of advocacy was similar between public and private defence solicitors.

2. **Client relationships**

Defence solicitors all thought that this was an important aspect of quality. However, it was an area in which other criminal justice actors did not have the evidence to make judgements. It is clearly a subject on which further research was necessary, and it is addressed in detail in Part C.

3. **Preparation**

In the course of the evaluation, the researchers held discussions with the Edinburgh Bar Association and others about whether the study should include a peer review of the quality
of preparation as contained within files. Although peer review of files has been used in other studies (Sherr et al. 1994, Moorhead et al. 2001), it proved a controversial subject.

First, as we have seen, opinions differed on how central preparation was to the quality of defence work. Even where a fragile consensus could be established that preparation was an important part of criminal defence, criminal justice professionals had little experience of judging solicitors by the quality of their files. Sheriffs, magistrates and court clerks never saw solicitors’ files, and even solicitors did not see files outside their own firm. There were no ground rules about what an efficiently prepared file should contain. Given the highly contested nature of the PDSO evaluation, it would have been difficult to establish such generally-agreed criteria within the context of this exercise.

Finally, we would only have been able to look at files with the consent of private solicitors and their clients. By 2000, it was clear that this consent would not be forthcoming. A major benefit of fixed payments was that less work had to be recorded on files, and files were no longer submitted to the Scottish Legal Aid Board. There was little support for undermining one of the main benefits of fixed payments so soon after their introduction.

6.21 As discussed in the introduction, our evaluation of quality relies on a large-scale quantitative study of outcomes and a study of client views. Both are supplemented by in-depth discussions with criminal justice actors.

6.22 We would not claim that these methods capture all the aspects of such a complex, multifaceted concept as "quality". However, we do think that they cover the ground adequately. Conviction-rates, sentencing and client satisfaction are, between them, the most important outcomes of criminal defence work. If a solicitor succeeds in producing good outcomes and happy clients, it is of secondary importance that they have thin, scrappy files. Similarly, it would be difficult to justify poor outcomes and dissatisfied clients on the grounds that the firms' files were works of art.

6.23 It is important to note that none of the criminal justice actors we spoke to assessed criminal defence lawyers through their outcomes. An outcome study is a statistical exercise that looks for relatively small differences - small enough that they only emerge across large numbers of cases. Large-scale quantitative studies of this type pick up differences that would not necessarily be noticeable to the casual observer sitting through a dozen or so cases in court. The next part (Part B) concentrates on these differences. What emerges clearly from Part A, however, is that such differences must be set in the context of similarity. Public and private defence solicitors belonged to a single culture, and approached the same job in a like way.
PART B

Comparing Process and Outcomes
CHAPTER 7: COMPARING PROCESS AND OUTCOMES: AN INTRODUCTION

7.1 A major element of the evaluation was to look at the outcome of cases. We were interested to compare how public defenders and private legal aid solicitors processed cases through the courts and what impact this had on the result, both in terms of conviction and sentence.

7.2 Outcomes are an important indicator of the quality of service provided. Unlike much family work, which is often process-orientated rather than outcome-orientated, criminal clients have a clear interest in the outcome of their cases. As the Canadian Bar Association put it:

"Case outcomes have a real meaning in the criminal context. The process is more formalised, very much more court- and outcome-oriented, and case outcomes have a relatively unambiguous meaning. Not to put too fine a point on it, criminal clients prefer acquittals to convictions and non-jail sentences to jail sentences. The lack of ambiguity of criminal outcomes makes outcomes more 'countable'." (Canadian Bar Association 1987 p.94)

7.3 In this section we rely on the large-scale quantitative study of court records (described in Appendix 1) - though we also draw on interviews with criminal justice professionals to interpret our findings. It is important to note that outcome studies rely on broad, statistical measures. We cannot say whether, in any particular case, the solicitor did or did not achieve a good outcome for their client. Each case is unique and may be influenced by many factors outside the solicitor's control. However, by considering large numbers of cases it becomes possible to even out individual differences so as to reveal underlying patterns. To put the point colloquially, to lose one case is a misfortune, but to lose 90 out of 100 may indicate carelessness.

7.4 Outcomes have been the focus of several Canadian studies comparing staff lawyers with their private legal aid counterparts. The Canadian Department of Justice has summarised their results in the following terms:

"Four evaluations have studied the outcome of cases handled by salaried legal aid staff lawyers and by private lawyers taking legal aid cases on referral. All the evaluations reached the same results:

- staff lawyers spend less time per case than private lawyers;
- staff lawyers tend to plead clients guilty earlier and more often than do private lawyers;
- similar proportions of staff and private lawyer clients are convicted; and
- staff lawyer clients draw fewer jail terms than private lawyer clients."

(Department of Justice 1994)
The four evaluations were:

- The Burnaby evaluation (Brantingham 1981). This was an evaluation of an experimental public defender project established in the outskirts of Vancouver, British Columbia. It received work on a random basis, and was compared with both local private legal aid solicitors and legal aid solicitors throughout British Columbia.

- The British Columbia evaluation (Brantingham and Brantingham 1984) followed up the Burnaby experiment by comparing delivery models in the whole province. The results were similar to those found in Burnaby.

- The Manitoba evaluation (Sloan 1987) was a reasonably sophisticated comparison of staff lawyers and private legal aid practitioners in Manitoba, controlling for differences in prior record and case type.

- The Saskatchewan evaluation (DPA Group 1988) was considerably less sophisticated as it failed to control for differences between the cases referred to private practice and staff lawyers. However, its findings were broadly in line with the other studies.

None of these studies was definitive, and it is possible to attack each one on methodological grounds. However, the fact that four separate studies, carried out in three separate provinces using varying techniques, came to such similar conclusions makes their collective weight difficult to dismiss.

7.5 We were interested to see how far these findings would apply in a Scottish context. We were not able to make direct comparisons in the time private and public solicitors spent per case. With the move to fixed fees, private solicitors no longer kept this information. Instead we focused on an issue that has generated considerable debate within the Scottish criminal justice system: the stage at which cases were resolved. We were able to provide detailed information not only about the rate of guilty pleas but about whether pleas were entered at an earlier stage in the process. We then look at the effect of the way cases were processed on the overall conviction rate and on the sentence imposed.

**STRUCTURE OF PART B**

Part B is divided into five further chapters.

7.6 The next chapter, Chapter 8, considers the system of direction and how it worked in practice. This is a necessary preliminary to understanding the quantitative data and the type of case that the PDSO handled.

7.7 Chapter 9 draws on previous research and interviews with solicitors and others to discuss the factors influencing defence solicitors when they give advice on when and how to plead. We were particularly interested in how a change in the way lawyers were paid might influence the advice given.

7.8 Chapter 10 then uses the quantitative data from court files to look at how far the changes in payment mechanism led to actual, discernible changes in the way that cases proceeded through the courts. It considers the trajectory of cases, concentrating on differences in the
stage at which cases were resolved, the number of diets and the duration of cases. It also looks
at the extent to which clients were detained in custody during the proceedings.

7.9 Chapter 11 compares conviction rates. It looks at the overall result and how it came about - in terms of guilty pleas, prosecution abandonment before trial, and contested trials. We start by comparing cases in which the accused was convicted of at least one offence, compared with not being convicted at all. We then look at the number of "plea bargains", in which the accused was convicted of something, but not all the offences as originally set out in the complaint.

7.10 Chapter 12 compares sentences. It presents material about the range of sentences imposed and compares the rate at which clients received immediate sentences of imprisonment. We also look at the average length of a custodial sentence and the amount of the fine as well as comparing all custodial and community sentences (community service orders and probation) with less serious sentences such as driving disqualification, financial penalties and admonitions.

7.11 Finally, Chapter 13 draws together material from the previous chapters to present a conclusion to this part of the report.

7.12 These substantive chapters draw on further material, contained within 6 appendices:

- Appendix 1: Court data collection – methodology;
- Appendix 4: Characteristics of cases (which considers the extent to which the samples differ);
- Appendix 5: Further analysis of case trajectory and outcomes;
- Appendix 6: Stage of Resolution: assigning cases to broad groups;
- Appendix 7: Sentencing: capturing the range of sentences into broad groups;
- Appendix 8: Multi-variate analysis of stage of resolution and outcomes.
CHAPTER 8: THE SYSTEM OF DIRECTION

8.1 This chapter considers the numbers of directed and non-directed clients in our sample using the PDSO and solicitors in private practice. In order to make sense of these data, however, it is first necessary to describe how the “direction” system operated during the pilot.

THE PRINCIPLE OF DIRECTION

8.2 The basic principle can be stated relatively simply. From October 1998 to July 2000, those facing summary prosecution in Edinburgh District and Sheriff Courts born in January and February were not given a free choice in their use of the PDSO. Instead, they were "directed" to use it. This did not mean that they were forced to use a public defence solicitor, but they lost their normal entitlement to legal aid through a private solicitor. Once served with a complaint, they were not entitled to Advice and Assistance or summary legal aid through a solicitor in private practice unless they were granted a "waiver" by the PDSO.

8.3 This report follows the common terminology by describing those born in January and February as the "directed" sample, while describing those born in November and December as the "non-directed" sample. However, the word "direction" is potentially misleading, as it suggests that some neutral agency (such as SLAB or the courts) physically directed people to the PDSO. This did not happen. Instead the system was enforced only by preventing private practice solicitors from receiving certain forms of legal aid without a waiver.

INFORMING CLIENTS ABOUT DIRECTION

8.4 The way that clients found out about the direction system was important to how it worked. Two efforts were made to inform clients about the PDSO. The first was what the PDSO Director described as a "media splash", coupled with posters in helping agencies and a small amount of direct advertising. 29

8.5 The second was through information attached to the complaint. The back of the form stated that "if your birthday is in either January or February of any year, only the Public Defence Solicitors' Office (PDSO) can provide you with legal aid for Advice and Assistance or representation in Edinburgh Sheriff and District Courts". It then mentioned the possibility of a waiver and gave the PDSO's address and telephone number. As a means of communication with clients, however, it had a low impact: more small print among other small print on the back of an official form. During interviews, solicitors dismissed it on the grounds that "no-one ever reads it". Furthermore, the wording contained no explanation of why January- and February-born people were singled out in this way.

8.6 The client survey suggests that neither means was sufficient to get the message across to clients. For example, none of the four directed PDSO clients we spoke to in the in-depth interviews had heard of the PDSO until they were charged with an offence and approached

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29 This largely consisted of small back-page adverts in the local evening newspaper. The Director commented that "it was done to improve local name awareness and did not specifically mention direction" (personal communication).
another solicitor for help.\textsuperscript{30} Several comments submitted with questionnaires also mentioned people’s shock, dismay and incomprehension on first being told that they would have to use the PDSO.

8.7 It seems that many if not most January/February -born clients contacted a private solicitor first. For clients with initial appearances from custody, this was institutionalised. As discussions with the police in Edinburgh Sheriff Court cells made clear, solicitors were only allowed to see clients if the client had asked for them by name. The police told us that most clients asked for their existing solicitor rather than the PDSO. Those who did not ask for a specific solicitor were given an interview with the duty solicitor.\textsuperscript{31} For the period covered by this research, the PDSO did not participate in the Sheriff Court duty scheme and all the Sheriff Court duty solicitors were in private practice. Thus many clients first found out about the PDSO from a private solicitor - either their own or the duty solicitor. The private solicitor would speak to the client and make a decision whether to act themselves or whether to recommend that the client use the PDSO. They therefore formed the main gatekeepers to the PDSO.

8.8 The way that private solicitors described the PDSO shaped client expectations. One private solicitor admitted "to be fair, in some circumstances, the explanation would perhaps be slightly jaundiced". He elaborated:

"Basically, we say that this has been imposed upon us... The Government have decided that this is the way they want to try things out. And unfortunately, as my partner says, you've got the wrong date of birth." (Private solicitor interview, 2000)

8.9 All the private solicitors we spoke to said that the process of explaining direction was emotionally fraught. Clients were frequently confused and sometimes resentful and angry. One solicitor who was particularly opposed to direction described it in the following terms:

"The concept of direction was frankly, in my view, ludicrous... And you wouldn't believe the number of people who I've had, either people who were first-time involvement with the criminal justice system, or who'd previously been clients of mine, who came to see me in this office or who saw me in the cells - and ... they would listen with astonishment to be told that because they were born in January or February, I was no longer able to be their solicitor... in legal terms. Ninety per cent of them were incredulous at the suggestion. And they usually have to be shown the sheet at the back of their complaint, which said... if you're born in January or February, only the Public Defender's Office can provide legal aid for you. A lot of people were really very, very angry about that. Very angry indeed." (Private solicitor interview, 2000)

\textsuperscript{30} One of the volunteers said that she had not heard of the PDSO either, until recommended to use it by a friend: “I didn’t have a clue who they were. I mean, I thought they were an animal dispensary or something.”

\textsuperscript{31} However, the police did provide the PDSO with a note of the names of all January - or February-born accused held in custody, enabling PDSO staff to "chase up" what was happening in each of these cases.
THE WAIVER SYSTEM

8.10 Private solicitors could obtain legal aid to act for a directed client provided they obtained a waiver from the PDSO. An unfortunate element of the scheme was that this was a discretionary system in which the discretion was exercised by the PDSO Director. This meant that private solicitors tended to blame the Director personally for any unfavourable decisions.

8.11 The grounds for waivers were described in a letter from the PDSO Director to private solicitors sent just before the office opened. The letter set out four grounds:

"(a) conflict of interest,
(b) client resides a substantial distance from Edinburgh,
(c) initially, client has a related matter being handled by his/her solicitors and there is good reason for continuity of representation, and
(d) during the pilot period, client has a solemn case and there is a good reason for unity of representation."


8.12 The waiver system was heavily used. The PDSO’s own statistics show that during the nine months of our research, private solicitors made 427 waiver requests, of which 252 (59%) were granted. By far the most common ground, representing three quarters of requests (187), was (c) - that the client had related outstanding matters. It appears, however, that the PDSO and private solicitors approached this ground differently. For most private solicitors the fact that a client had used them before was in itself good reason for continuity: the PDSO wanted something more. In November 1998 the Director wrote again to explain that:

"Almost every application for a waiver of direction appears to start with a description of how long the client has been with a particular firm. This, on its own, is not a relevant factor in our consideration of whether or not to accede to the request.

Similarly, identifying that the client has outstanding cases does not disclose a relevant factor unless it is brought out that there is a relationship between the instant matter and those other cases which would necessitate unity of representation."

FORMS OF LEGAL AID AVAILABLE WITHOUT A WAIVER

8.13 Even without a waiver, some forms of legal aid were still available to private practice solicitors acting for directed clients. These were:

1. The duty scheme. As discussed above, where a client appearing from custody did not ask for a solicitor by name, they would usually speak first to the duty solicitor. Where a directed client expressed an intention to plead not guilty, they would then be passed to the PDSO. However, if they pled guilty, the duty solicitor would continue to act, and could use the follow-up duty scheme to represent them at subsequent sentencing diets.
2. **Section 23(1)(b)** covers pleas in mitigation at sentencing diets for those at risk of their first custodial sentence. Unlike summary legal aid and Advice and Assistance (which are granted by SLAB), it is granted by the court itself. In 1998, SLAB took the decision not to ask the courts to apply the direction system to section 23(1)(b). It was therefore available to private solicitors representing some directed accused after conviction.

3. **Limited Advice and Assistance.** The direction system only started once a complaint had been served. Before a complaint was served, those born in January or February were entitled to seek general advice about the matter from the solicitor of their choice under the Advice and Assistance scheme (A&A). Pre-complaint advice and assistance might include, for example, seeking advice while being held in the police station.

   Advice and Assistance was also allowed to cover the work of applying for a waiver. SLAB accepted that "the idea of direction and the procedure for seeking a waiver may be quite complicated and require the services of a solicitor". Thus a limited A&A grant could cover the waiver request, but not any advice on the substantive issue. If a waiver was granted, solicitors were told to use a single grant to cover both the substantive matter and the waiver request. In practice, however, we found a few cases in which the substantive matter and the waiver were treated separately, leading to multiple A&A grants for the same case.

4. **Solemn legal aid.** As direction did not apply to solemn cases, there was nothing to prevent a private practice solicitor receiving solemn legal aid for January or February born clients. If the case later became summary, solemn legal aid would continue to cover a plea of guilty in the summary court. If the client pled not guilty, they needed to reapply for summary legal aid but this particular form of summary legal aid did not require a waiver.

   Compared with full summary legal aid, all four elements are relatively minor forms of legal aid. However, they complicated the issues by allowing private solicitors to receive some forms of legal aid for those born in January and February without a waiver. Both duty follow-up and section 23(1)(b) were mainly used by those who pled guilty initially, which suggests that these cases were less likely to be referred to the PDSO.

### UNPAID WORK FOR DIRECTED CLIENTS

#### Before the pilot: intentions expressed in 1998

8.14 The feasibility study carried out before the PDSO opened found widespread discussion among the Edinburgh Bar about how far solicitors should continue to act for directed clients without being paid. A majority of those interviewed said that they would do at least some work for those born in January and February, even if they were not paid for it.

8.15 Solicitors gave three reasons for doing so. First, it was stated to be a matter of principle: they would not let their clients down by forcing them to use an inadequate service. Secondly, firms had spent many years building their client base, and there were good business reasons

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34 See above.
for retaining it – especially if the clients were likely to generate solemn work, or if the direction system was abolished after only a short time. As one solicitor put it:

“If the public defence scheme fizzled out… these are clients we want to have still on our books and coming back to us. Not people who will remember that we didn’t do the work for them.” (Private solicitor interview, 1998)

Thirdly, some solicitors expressed a desire to sabotage the pilot. As one solicitor put it:

"I am doing that on a personal basis, obviously, for my clients, but I am also doing my utmost to muck up the public defender system. I don’t want a public defender system, naturally, it’s totally against my interests. And I’m a businessman… I’ve told everyone at court what I intend to do… I have no qualms. This is a mad government idea they have decided to bring in without any real forethought to it.” (Private solicitor interview, 1998)

8.16 When discussing the type of work they would do, solicitors emphasised that they would do unpaid work for "good clients". By this they meant clients with whom they had a long-standing relationship who appeared regularly before the courts. Clients who generated solemn work were particularly valued.

8.17 Solicitors also suggested that they might send directed clients to the PDSO for the preparation on the understanding that clients would return to them for the trial:

"I will do the trial for nothing, but I won’t do any preparation... They may have to go to court to represent themselves until the trial or they may go to the public defender." (Private solicitor interview, 1998)

"[I will say] ‘if you come to me, you're going to have to pay’ (and the majority can't afford that) ‘so you'll have to go the public defender. Go and see him and do everything you are asked to do, and then come to me the day before the intermediate diet.. and I will get you to sign a mandate'. He will have done all the work... I will present the mandate and get all the papers, and I'll do the trial for nothing." (Private solicitor interview, 1998)

It would seem that trial advocacy is higher profile and carries more kudos with clients that the more labour-intensive preparation.

**Interviews in 2000**

8.18 After the introduction of the PDSO, we spoke to a further nine solicitors in seven firms. All seven firms said that they had continued to act for long-standing January/February-born clients on an unpaid basis in some circumstances. However, they did so to differing extents.

8.19 At one end of the scale, one solicitor said he would give initial advice or act in pleas of guilty: "things that could be disposed of reasonably quickly without the need to prepare and precognose". He explained:
"I didn't represent everybody who pled guilty, it was really a case of presenting the options to the client. Everyone made a fuss, but if some made a particular fuss, but still chose to instruct [us], I was happy to represent them."

(Private solicitor interview, 2000)

However, this particular solicitor could not remember representing any directed clients after an initial plea of not guilty.

8.20 At the other extreme, one solicitor stated that he had represented all January/February-born clients that had come to him (whether pleading guilty or not guilty), with only one exception. The firm had carried out several trials on an unpaid basis. The firm had paid for precognitions out of their own pocket, but only where strictly necessary. They had made greater use of Crown statements, been more selective in the witnesses they visited and had, for example, put off asking for transcripts until they were clearly needed. They claimed, however, that in other ways they had acted in the same way as they would normally have done.

8.21 The other five firms came somewhere between these extremes. They would generally act for established clients who wished to plead guilty, but they had to be selective in the number of not guilty pleas they took on. One firm stressed that they had to be "very circumspect" in not committing themselves to greater expenditure than they could bear:

"If it's a complicated issue and we are going to be hundreds and hundreds out of pocket from having to pay the... agents... and experts, we have to be realistic. If we can obtain the evidence by getting police statements... we'll do it." (Private solicitor interview, 2000)

8.22 Firms did not have hard and fast rules. In one firm where we interviewed two solicitors, for example, we received two quite different accounts. Another firm admitted that they did not apply "consistent criteria" in deciding which case to take without payment. A third firm changed its view as time went on. It originally only took on guilty cases (sending all directed clients pleading not guilty to the PDSO) but in October 1999 it decided to act for long-standing clients irrespective of their initial plea.

8.23 The decision whether to act for free seemed to be based on three factors. First was the complexity of the case. Most firms said they were more likely to keep guilty pleas than not guilty pleas, and simple cases than complex cases. Secondly they were more likely to act for long-standing clients, though the concept of long-standing was interpreted generously. One firm said that it included anyone that they had represented two or three times and, in a few cases, they had acted for clients who had used them only once before. Other firms said that even new clients may be worth keeping if they had influential family and friends. Thirdly, several firms mentioned the ultimate decision depended on the attitude of the client: "there are some clients who are just so animated about it that they couldn’t be persuaded not to have us".
USE OF THE PDSO IN PRACTICE

8.24 Table 8.1 sets out the main representative by birth-month group for the 2,644 cases in our sample.

Table 8.1: Main representative by birth-month group

| Main representative: | Directed | | Non-directed | | All |
|----------------------|----------|----------------------|----------------------|----------------------|
|                      | No. | % | No. | % | No. | % |
| Unrepresented        | 424 | 29 | 320 | 28 | 744 | 28 |
| Private firm         | 576 | 39 | 830 | 72 | 1,406 | 53 |
| PDSO                 | 426 | 29 | 4   | *  | 430 | 16 |
| Both                 | 56  | 4  | 4   | *  | 60  | 2  |
| Unknown              | 4   | *  | 0   | 0  | 4   | *  |
| TOTAL                | 1,486 | 100 | 1,158 | 100 | 2,644 | 100 |

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

8.25 During the feasibility study, solicitors suggested that directed client who refused to use the PDSO would be particularly likely to appear unrepresented. The data do not show any evidence of this. The proportion appearing unrepresented is similar across the two groups.

8.26 What does emerge clearly from the table is that more directed clients used private solicitors than used the PDSO. Out of the 1,062 directed clients who used a solicitor, three fifths (60%) used a private practice firm as either their only representative or for a substantial part of the case.

8.27 Few November/December-born volunteers used the PDSO. Our limited sample of non-directed clients born in November and December did not, of course, include PDSO volunteers born at other times of the year. If one uprated these eight clients to allow for similar numbers born in other months of the year, it would suggest that the PDSO dealt with around 45 volunteers. The PDSO's own figures are higher than this, showing that during these nine months, 153 non-directed clients approached them. This figure, however, is calculated on a different basis and includes work outside our research, such as initial advice, means enquiries, breach of probation and appeals. It would appear that, at the time of our research, the PDSO's impact on the market for non-directed clients was minimal.

8.28 In 60 cases, both the PDSO and private firms had a substantive involvement in the case. By this we mean that the private solicitor did more than just act in the initial diet. Where the case involved an initial not guilty plea, both the private solicitor and the PDSO acted after the initial plea. This suggests that in a few cases private solicitors carried out their intention to act only in the trial, after the PDSO had carried out the initial preparation. However, such cases did not amount to a substantial proportion of the sample.

8.29 Table 8.2 (below) shows the form of legal aid used by the three main groups in our study: private non-directed, private directed and PDSO. The table does not include the 60 cases (above) in which both the PDSO and a private directed solicitor acted. Nor does it include the four cases where the form of representation was unknown (see Appendix 1).

8.30 It shows that private directed cases were more likely to receive forms of legal aid (solemn, s23(1)(b) and duty) that did not require a waiver. It also suggests substantial use of
the waiver system, with 104 cases granted summary legal aid and a further 91 granted Advice and Assistance. However, just over half the cases were dealt with on an unpaid basis, without any form of legal aid.

Table 8.2: Use of legal aid, by three main solicitor groups

<table>
<thead>
<tr>
<th></th>
<th>Private non-directed</th>
<th>Private directed</th>
<th>PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Solemn legal aid</td>
<td>8</td>
<td>1</td>
<td>16</td>
</tr>
<tr>
<td>Summary LA: but not solemn</td>
<td>442</td>
<td>53</td>
<td>104</td>
</tr>
<tr>
<td>s23(1)(b): but not summary or solemn</td>
<td>26</td>
<td>3</td>
<td>36</td>
</tr>
<tr>
<td>A&amp;A: but not solemn, summary or s23(1)(b)</td>
<td>202</td>
<td>24</td>
<td>91</td>
</tr>
<tr>
<td>Duty only</td>
<td>18</td>
<td>2</td>
<td>27</td>
</tr>
<tr>
<td>No legal aid record</td>
<td>134</td>
<td>16</td>
<td>302</td>
</tr>
<tr>
<td>TOTAL</td>
<td>830</td>
<td>100</td>
<td>576</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

8.31 It is worth looking at the level of unpaid work in more depth. In some cases we may have failed to find records. Out of the 32 PDSO "non-legally -aided" cases, for example, six were cases where the relevant record was missing. In the other 26, however, we found the time record and it showed that no legal aid was received. At first this surprised us, as in theory, the PDSO was only meant to act for legally-aided clients. However, the practicalities of the legal aid scheme meant that it was difficult to follow this to the letter. Some activities, such as representation at the pleading diet, do not qualify for legal aid. In other quick cases, the paperwork involved in applying for Advice and Assistance would be disproportionate.

8.32 The 134 unpaid cases for non-directed cases are likely to include a spread of different types of case. Again, we may have failed to locate some legal aid records. Some cases will be for clients who would, in theory, be eligible for legal aid but where the amount of the payment did not justify the cost of claiming it. Some of the cases would have been paid for privately (though we were not able to collect any data on private payments). A few may have represented genuinely pro bono work outside the parameters of legal aid.

8.33 The level of unpaid work for directed private clients, however, is much greater than one would predict under the "normal" legal aid scheme. It is clear that many firms carried through their stated intention to retain existing clients by acting for them even if they were no longer entitled to claim legal aid for doing so.

CASES REACHING THE PDSO

8.34 The complex way in which private solicitors did or did not pass work to the PDSO means that one cannot assume that cases reaching the Office were the same as those in the comparator sample. Appendix 4 gives the main characteristics of cases handled by the PDSO, compared with both the private non-directed and private directed groups. The main difference is that the PDSO were more likely to handle cases from custody: 34% of PDSO Sheriff Court
cases had initial appearances from custody, compared with 27% of private non-directed cases and 23% of private directed. As we discuss in Chapter 9, custody cases are particularly likely to have initial not guilty pleas and can be burdensome for solicitors to conduct. The PDSO were present in court, and therefore easily available to any directed clients appearing from custody wishing to see them.

8.35 The other main difference was that the PDSO were more likely to handle crimes of violence: 24% of PDSO cases involved violence, compared with 17% of private non-directed and 13% private directed cases. They were correspondingly less likely to handle road traffic offences: only 28% were road traffic, compared with 33% and 37% respectively. The PDSO's greater concentration on crimes of violence reflects their higher proportion of custody cases. Meanwhile, the greater number of road traffic cases handled by private solicitors included some privately-paying work.

8.36 PDSO cases also had slightly more charges: an average of 2.17 per case, compared with 2.12 for non-directed cases and 2.07 for private directed cases. This may reflect solicitors' tendency to refer more complex cases to the PDSO.

8.37 In other respects, however, Appendix 4 shows the cases to be remarkably similar. The PDSO and non-directed sample had the same proportion of District Court cases, and the same balance between men and women.

8.38 The interviews with solicitors suggested that cases passed to the PDSO may be more likely to include first time offenders. Somewhat to our surprise, however, the rate of previous convictions was similar (around 60%) across all three groups.

**A bias towards not guilty pleas**?

8.39 In the discussion that follows we use multi-variate analysis to control for these established differences between the PDSO and other samples. However, the characteristics listed in Appendix 4 do not necessarily reveal more subtle differences. A key issue is whether cases reaching the PDSO were more likely to include cases where the accused had indicated an initial plea of not guilty. Did solicitors vet cases to see what the client intended to plead, and were they more likely to refer cases to the PDSO if the client said they wanted to plead not guilty?

8.40 For custody cases, such bias was institutionalised. Clients without existing solicitors were referred to the duty solicitor, who was meant to represent all guilty pleas (using the duty follow up scheme if necessary). Duty clients were only referred to the PDSO once they had pled not guilty. Solicitors told us that they were also more likely to act for existing clients on quick guilty plea cases, but had to be more cautious in taking on potentially time-consuming not guilty pleas.

8.41 To explore this issue it is necessary to look at Table 8.2 (above) in more depth. It shows that 104 cases (18%) were granted summary legal aid through the waiver system. These all involved a not guilty plea - and to all intents and purposes were pursued under the normal legal aid system. The proportion dealt with in this way, however, is much lower than for either the private non-directed or PDSO group. Further, 1 1% of cases were dealt with under the forms of legal aid normally associated with guilty pleas: the duty scheme and section
The proportions dealt with under these schemes were higher than one would expect for private non-directed cases. The most important difference was in the level of unpaid work (52% for private directed, compared with 16% for private non-directed). Although one firm said they would act for free for all clients, most solicitors said they would be more willing to act for free for a client who pled guilty. This receives some support from the fact that in 41 out of the 430 PDSO cases (10%), the client was represented at the first diet by a private solicitor. The case was only passed to the PDSO once the client had indicated a not guilty plea.

8.42 We think that there was almost certainly some selection bias towards not guilty pleas in cases dealt with by the PDSO, though one cannot quantify its effect. We have, however, borne this possibility in mind in the analysis that follows.

CONCLUSION

8.43 Accused people born in January and February were as likely as those born in November and December to be represented. However, only a minority used the PDSO. Of directed represented clients, 60% used a private solicitor for all or a substantial part of their case. Private solicitors made substantial use of the waiver system, and conducted some other cases using forms of legal aid that did not require a waiver. They also carried out their stated intention to act for clients without payment. Over half the cases handled by private solicitors for directed clients were without any form of legal aid (though some may have involved private payments).

8.44 The high use directed clients made of private solicitors had two major implications for the pilot.

8.45 The first is that the PDSO has not dealt with as many cases as was originally anticipated. As discussed in Chapter 17, this left the PDSO with over-capacity for the level of work that it actually handled.

8.46 The second is that the cases going to the PDSO were not necessarily a representative sample of Edinburgh summary legally-aided business. An analysis of case characteristics shows a few differences. In particular, the PDSO were more likely to handle custody cases, with more violent offences and fewer road traffic cases. We control for these factors in the analysis that follows.

8.47 Based on what solicitors told us about their actions, it is also probable that cases referred to the PDSO cases included more cases in which the client indicated an initial plea of not guilty. They may also have been especially likely to refer cases with greater precognition and outlay costs. It is less easy to control for these factors in quantitative terms, but we have borne them in mind in forming conclusions.

Section 23(1)(b) does not require an initial guilty plea: in theory it can be granted after any plea. However, in practice its most common use is after an initial plea. In the sample, 96% of non-directed and 75% of directed cases granted section 23(1)(b) pled guilty at the pleading diet.
Four levels of analysis

8.48 We have dealt with the possibility of bias in the types of case reaching the PDSO by subjecting our data to four separate levels of analysis:

- First, we have compared all represented directed cases with all represented non-directed cases. Given that these two groups were similar except in the way their solicitors were paid, any difference in outcome between the two groups was almost certainly the result of the different payment mechanisms introduced by the pilot as a whole. One cannot say, however, whether it was caused by the actions of the PDSO or by the actions of private solicitors acting for directed clients.

- Secondly, we have looked at a simple comparison of the PDSO with private solicitors acting for non-directed clients, using the "bare" data. These comparisons describe the data and suggest possible differences. On their own, however, they cannot be regarded as findings because they do not control for differences in the cases that reached the PDSO. They should therefore be treated cautiously.

- Thirdly, we used multi-variate techniques to control for intrinsic differences between the cases (such as court, nature of first appearance, offence, age or sex of offender). This process is summarised in the main report and described in greater detail in Appendix 8. At this level, one is able to compare the actions of the PDSO with that of private solicitors acting for "normal" non-directed clients.

- It is possible that the factors we used to control for differences failed to pick up the fact that private solicitors were more likely to handle cases where the accused expressed an initial intention to plead guilty. We cannot quantify this factor. However, we have considered what effect it might have on the data and have allowed for it in reaching our conclusions.

In general, the four levels of analysis support and strengthen each other. Where they do, the findings are robust. We can be fairly sure that any differences in process or outcomes arise from the way that cases were handled by solicitors acting under different payment mechanisms, rather than from intrinsic differences between cases.

8.49 For the first three levels we subject the findings to significance tests, which test how likely it is that any differences occurred by chance (rather than as a result of real variations between the group). In reports of this type, it is common to require results to be significant at the 95% level: which means that there is no more than a 5% chance that the difference occurred through random fluctuations. In the chapters that follow, rather than give a single cut-off point, we quote three levels of significance. When a result is significant at the 99% level, it is highly significant: the chances that it occurred randomly are only one in a hundred. At the 95% level, it is significant, with the chances of a random result being one in twenty. Occasionally, we describe something as significant only at the 90% level. This is merely indicative, as the chances of a random result are one in ten.
CHAPTER 9: CASE TRAJECTORY: INFLUENCES ON SOLICITORS

9.1 A common criticism made of Scottish summary procedure is that guilty pleas occur too late. The 1993 Review of Criminal Evidence and Criminal Procedure, for example, expressed concern that many accused pled not guilty initially, only to change their plea at the last minute immediately before the trial (Scottish Office 1993b). This caused considerable disruption to both witnesses and the courts. The review recommended greater use of intermediate diets, which were made compulsory in the Criminal Justice (Scotland) Act 1995.

9.2 From 1990 to 1995, the Scottish Office sponsored a research programme into summary legal aid. One of the central questions addressed by the research was how far the legal aid provisions influenced case progression. Did the differential payments between Advice and Assistance and summary legal aid encourage solicitors to advise an initial plea of not guilty, only to advise a change of plea before trial?

9.3 The research studies highlighted how the progress and outcome of cases was affected by a complex interplay of factors (Warner 1996). A major factor was the procedure itself, particularly the use made of intermediate diets. Another was the actions of the police and Procurator Fiscal in bringing cases to court, as cases within an initial appearance from custody were much more likely to result in an initial not guilty plea. Court culture made a substantial difference in, for example, the speed of custody courts and the attention paid to intermediate diets. Furthermore, decisions on plea were ultimately for the accused themselves, and it was unclear how greatly they were influenced by the legal advice they received. These factors, together with the rules on legal aid, were "closely intertwined and interrelate in complex ways" (Warner 1996 p.7).

9.4 The research programme was inconclusive on how far the rules of legal aid encouraged late guilty pleas. Elaine Samuel (1996) argued strongly that most late pleas were driven by system factors rather than by solicitors' attempts to maximise their income. Sue Warner was more cautious, stating simply that the legal aid system was one of four factors influencing case progression and that "it is not possible on the evidence to date to allocate relative weight to them" (1996 p.7). She called for further research and monitoring to assess the impact of new developments (such as the PDSO) on case trajectory and legal aid expenditure.

9.5 This report returns to the vexed question of how far solicitors are influenced in the advice they give by economic incentives contained within the legal aid system. In particular, it considers how far changes in payment structure introduced as a result of the PDSO and the direction system changed the way that cases progressed through the courts. This is a controversial area. For example, when the PDSO Director was reported as saying that "it's a nonsense to believe that professional, dedicated people will moderate their behaviour because of how they are paid" (Bawdon 2001), the remark followed a long tradition of lawyers' beliefs.

9.6 This report does not contend that professional, dedicated people will abandon cherished principles simply for monetary gain. Rather, it suggests that modifications in behaviour will be greatest in areas of ethical indeterminacy: that is where the choice is between two courses of action, both of which have advantages and disadvantages, and where ethical practitioners genuinely differ about which is the better. In making difficult and evenly -balanced judgements, greater weight is placed on the advantages that flow from a course of action that
is in one's own interests. Less weight is placed on those that flow from actions that run contrary to one's interests.

9.7 Furthermore, one should not expect the relationship between payment and behaviour to be simple or direct. Solicitors rely on various forms of social capital to be able to practice - most obviously a client base and credibility with the courts, Fiscal Service and colleagues. They would be loath to jeopardise either clients or credibility. As we saw in the last chapter, firms were prepared to conduct considerable unpaid work to keep clients. One might also expect that the relationship between financial incentive and behaviour would be mediated through values. Solicitors who are paid more, the more work they do, are more likely to take an adversarial stand (whether for better or worse). These adversarial values may, in turn, influence decisions that do not lead to immediate financial gains.

9.8 In this chapter, we draw on previous research and our own qualitative interviews to highlight two of the main decisions on case progression. In exploring the factors that influence the decision, we were interested in areas of ethical indeterminacy, where ethical practitioners may genuinely differ over the correct course of action. These areas would appear to offer the greatest scope for different payment systems to lead to different results.

9.9 For those not entirely familiar with Scottish criminal procedure, we start with a short description of how cases progress through the courts, drawing particularly on recent research into the use of intermediate diets. We then discuss how far decisions of case progression may be malleable in the light of changed economic incentives. We focus on two issues: first, the decision over initial plea, particularly where the accused appears from custody; and second, whether changes of pleas are made at intermediate diets or trial diets.

9.10 The following chapter (Chapter 10) then presents evidence from our court study to see how far the PDSO experiment did in fact result in changes in the way cases progressed through the system.

CASE PROGRESSION THROUGH THE COURTS

9.11 The ordinary summary criminal case starts when the accused is cited by the Procurator Fiscal and served with a complaint. The complaint details the charge and gives the date of an initial court appearance, often termed the "pleading diet". Alternatively, the accused may be arrested and brought to court, making their initial appearance from custody. As summary cases are relatively less serious, the accused will usually be released, often subject to bail conditions.

9.12 At the pleading diet the prosecution may decide to desert the case. If not, the accused has three options. First, they may indicate that they are not yet willing to enter a plea, in which case a continued pleading diet is set. Previous research has found that around one quarter to one third of pleading diets are adjourned in this way, without a plea being submitted (Leverick and Duff 2001).\(^{37}\) Usually, this is either because there has been no response from the accused, or in order for the defence to take (further) instructions. If the accused is at

\(^{37}\) Table 3.1. This figure and the following figures must be treated with some caution. They are derived from research conducted at four Sheriff Courts (not including Edinburgh) and are cited to provide a general backdrop.
liberty, the continued pleading diet must take place within 28 days; if in custody, it must take place within seven days. It is not common for the case to be adjourned again without plea.

9.13 Second, they may enter a guilty plea: either guilty "as libelled" to all the charges on the complaint, or, if the prosecution agrees, to less serious charges. They will then be immediately sentenced, or the case will be adjourned. The main reasons for an adjournment are either for a personal appearance by the accused (where they have pled guilty by letter) or, where they are present, for sentencing reports to be obtained.

9.14 Thirdly, the accused may plead not guilty at the pleading diet. In these circumstances, dates are set for both an intermediate diet and a trial diet.

9.15 In essence, an intermediate diet is a court hearing scheduled to take place shortly before the trial diet in order to confirm that the trial is likely to go ahead on the scheduled date. Intermediate diets in summary criminal procedure were rendered mandatory, as opposed to optional, by the Criminal Justice (Scotland) Act 1995. The legislative change was intended to address two problems identified in the Review of Criminal Evidence and Procedure (Scottish Office 1993b). First, policy-makers were concerned about the number of trials cancelled on or shortly before the day set for trial, usually as a result of the accused changing their plea to guilty. Second, they were worried that trials had to be adjourned, often because of the non-appearance of a key witness. An intermediate diet, which in Edinburgh Sheriff Court is usually set for 14 days before the scheduled date of trial, allows the judge to check that the accused is adhering to his not guilty plea and that all the witnesses have been cited and are available.

9.16 At the intermediate diet, various possibilities can occur. First, the case may be concluded at that stage. Duff and McCallum (2000) found that this happens in around one quarter of cases. Either the accused may plead guilty (sometimes to amended charges) or, alternatively, the Crown may desert the case (see below) or accept a plea of not guilty. Second, the case can simply be continued to the original trial diet. This happens in around one third of cases. Thirdly, there may be a problem with the trial that appears susceptible to speedy resolution. In this case, an extra intermediate diet can be inserted to check that the problem has been resolved without altering the date of the original trial diet (which occurs in 15%-20% of cases). Fourthly, the intermediate diet may reveal that there is no option but to adjourn the trial and set a new date, sometimes with a new intermediate diet beforehand, although this is not compulsory. Around 15% of intermediate diets result in the trial being adjourned. Finally, the accused may not appear at the intermediate diet, in which case a warrant (see below) will usually be issued: this occurs in 10%-15% of cases.

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38 Criminal Procedure (Scotland) Act, section 145.
39 Leverick and Duff (2001) Table 6.1. Less than one third of continued pleading diets are adjourned again without plea.
40 For a detailed discussion and history of intermediate diets, see Duff (1998).
41 The provisions are now consolidated in s 148 of the Criminal Procedure (Scotland) Act 1995.
42 Tables 1 and 2. Again, the figures on intermediate diets should be treated with some caution. They are derived from research carried out at four Sheriff Summary and five District Courts (the latter included Edinburgh). Full details can be found in McCallum and Duff (2000).
43 Duff and McCallum (2000), Tables 1 and 2. In this event, all possibilities remain open at the continued intermediate diet: for example, the accused may plead guilty or the case may be continued to trial.
44 Ibid, Tables 1 and 2
9.17 At the trial diet, there are again various possibilities. First, the case may be concluded without trial. Either the accused may plead guilty (and this happens in around one third of cases). Alternatively, the Crown may accept a not guilty plea or desert the case (in around 5% of cases). Second, the trial may go ahead as planned (in around one third of cases). Third, the trial may be adjourned, usually because an essential witness is missing, or sometimes because there is insufficient court time (in around 20%-25% of cases). Again, the case may be adjourned straight to a new trial diet or a new intermediate diet may be set as well. Finally, the accused may not turn up for his trial, leading to the issue of a warrant, but this happens in less than 5% of cases.

9.18 It is obvious that the introduction of intermediate diets has not been entirely successful in preventing trials from being set and then cancelled on the day. It is not uncommon for more than two trial diets to be set and aborted before a case is ultimately concluded.

9.19 If the accused pleads guilty at any stage, from the initial pleading diet right through to the trial diet, he may be sentenced immediately or the case may be adjourned, usually to obtain sentencing reports. Similarly, an accused found guilty after trial may be sentenced immediately or have their case adjourned for reports. At the next hearing, sentence is usually passed - but around one third of cases have to be further adjourned, often because the requested report or DVLA print-out are absent.

9.20 Two further matters frequently complicate the trajectory of cases. First, as noted above, a case may be deserted by the prosecution. This gives rise to two possibilities. The prosecutor may desert simpliciter, in which event the case is at an end. No further proceedings can be taken and the prosecutor cannot revive the case by serving a fresh complaint based on the same facts. Alternatively, the prosecutor may desert pro loco et tempore. In this event, the complaint again falls but the prosecutor may recommence proceedings on the same grounds by issuing a fresh complaint. If this latter step is taken, the accused will once again be summoned to a pleading diet and the case will start afresh. Thus, where a case is deserted pro loco et tempore, particularly at an early stage, that is not necessarily an end to the matter; the prosecution may be revived.

9.21 Second, again as noted above, the non-appearance of the accused at any stage may result in the court issuing a warrant for their apprehension by the police. Depending on the seriousness of the case and various other factors, this warrant may be implemented immediately or simply left to lie on file until the accused comes to the attention of the police on some other matter. Once the accused has been apprehended, they will be brought to the court the following day and the case will be continued. Usually this means that the next court diet will be arranged, whether it be an intermediate diet, a trial diet, or an adjournment for sentencing. The accused will usually be released from custody, although bail conditions may be imposed and if there is a concern about future non-appearances, they may be remanded in custody. It is worth noting that it is not uncommon for accused, who have hitherto been

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46 Leverick and Duff (2001), Table 5.11.
48 Leverick and Duff (2001), Appendix 1, Table 1.1. This sets out the national statistics on the number of trial diets required to conclude cases.
49 Leverick and Duff (2001), Table 5.16.
50 Leverick and Duff (2001), Table 5.17.
pleading not guilty, to plead guilty upon their appearance on a warrant, in order to increase their chances of release from custody.

9.22 Figure 9.1 summarises the main elements of case trajectory. It highlights the primary path of a not guilty case, through pleading diet; intermediate diet; and trial diet at which evidence is given (leading to a finding of guilty or not guilty). After a finding of guilty, it would be common to adjourn the case to a sentencing diet for reports to be obtained. While this scenario does sometimes take place, it tends to represent an ideal world rather than the world of practice. In reality, the trajectory of such a case is just as likely to resemble some variation on a theme that goes: pleading diet; continued pleading diet; intermediate diet (non-appearance by the accused); appearance on warrant; intermediate diet; continued intermediate diet; trial diet (adjourned for lack of an essential witness); intermediate diet; trial diet (accused convicted and case adjourned for reports to be obtained); sentencing diet (case adjourned because reports not ready); sentencing diet.

9.23 Figure 9.1 shows some of these various loops and sub-routes. However, it simplifies reality for the sake of clarity. The case may be terminated at any stage, whether through a plea or desertion. There may be further complexities: an accused may, for example, fail to appear at a second intermediate diet, to be brought back for a warrant diet on another occasion. There may be three, four or five adjourned trial diets: two cases in our sample had seven trial diets. When one looks at the total number of diets, 37 cases in the survey had ten or more - with the longest two having 14 separate diets.
INITIAL PLEAS

9.24 Much of the discussion about the Scottish criminal legal aid scheme has focused on the incentives that it gives to practitioners to encourage an initial plea of not guilty. The standard legal aid scheme provides solicitors with relatively little remuneration for initial guilty pleas. Comparisons between the costs of private practice and the PDSO show that the PDSO’s costs were significantly greater for such cases than the amounts usually allowed under the Advice and Assistance or Duty scheme (see Chapter 19). The same comparison suggests, however, that cases with an initial not-guilty plea that eventually end in a guilty plea at the intermediate or trial diet were particularly well-remunerated. Private practitioners received more for such cases than the costs under the PDSO scheme.

9.25 Changes of plea, however, depend on more than legal aid incentives. Research has repeatedly shown that where the accused makes their first appearance from custody, they are more likely to plead not guilty than when they are cited to attend court. Elaine Samuel (1996) summarised the results of her own study in the following terms:

"71 per cent of all accused persons pleading from custody in summary cases were found to have pleaded not guilty to some or all of the charges, compared to 44 per cent on all cited cases. Custody courts not only generate a far higher percentage of not guilty pleas but also generate a higher rate of plea changes. Indeed, more than a third (34 per cent) of all accused persons pleading not guilty in the custody courts went on to change their plea to guilty, whereas only 15 per cent of cited persons pleading not guilty went on to change their plea."  

9.26 Samuel described the many pressures on clients and solicitors alike that combine to produce such a high rate of initial not guilty pleas. At custody diets, solicitors work under severe time constraints, often exacerbated by delays in serving prosecution papers on accused. Procurators Fiscal often know little about the case and are not in a position to negotiate. Meanwhile accused people's first priority is to get out of custody. Where bail is unopposed, a not guilty plea offers the certainty of immediate release, to be weighed against the possibility that a guilty plea may produce a custodial sentence. All these factors combine to produce system-driven reasons for initial not guilty pleas that Samuel suggests are as significant, if not more significant, than the economic incentives contained within the legal aid scheme.

52 Samuel (1996). This is based on an unpublished research report by E. Samuel and M. Adler, Criminal Legal Aid and Case Trajectories, 1994.
53 Warner (1996) describes how several studies have highlighted the pressure on custody courts: "All accused held in police custody must appear before the court the next lawful day with the requisite paperwork. This can mean that a hearing follows only a matter of hours after apprehension by the police, and the preparation, compilation and transportation of papers for the court can place a considerable burden on the relevant agencies. Information becomes available very much at the last minute, allowing little time for consideration of the case." (p.9)
Respondent views

9.27 We explored these issues further in our own interviews with practitioners and clients. In the light of Samuel's findings, we focused particularly on initial pleas from custody. What factors influenced plea, and how far did solicitors differ in their preferred approach?

9.28 The decision on initial plea is clearly guided by a variety of factors, many of which have little to do with the guilt or innocence of the accused. Solicitors suggested that bail was a "fundamental issue". Several said that the first question they would ask the fiscal was whether bail was opposed: "once people know what the bail situation is, it's either panic stations or quite relaxed". Where bail was unopposed, clients knew that by pleading not guilty they would gain an immediate release. Often this was their immediate concern: "where people are in custody, they want out". From the solicitors point of view, it also meant that they would take further instructions and give advice on plea in more relaxed surroundings:

"If bail is not opposed then you advise them and get the bare essentials down at that point and tell them that if they want to discuss this in better detail then they should really be coming into the office. Then when they come into the office you can discuss it in a more relaxed atmosphere rather than through a glass screen." (Private solicitor interview, 2000)

On the other hand, if the prosecution opposed bail, then an initial plea of guilty has some advantages. After a guilty plea, the Procurator Fiscal loses the right to address the bench in opposing bail. The decision becomes that of the Sheriff alone. Where, for example, the client was on probation, the Sheriff would be obliged to call for a report before sentencing "and would invariably grant bail pending the preparation of reports". Thus "if bail is opposed, very often you have clients who say to you I'll plead guilty to get out".

9.29 A further factor was the identity of the Sheriff. Some Sheriffs had a harsh reputation for imposing custodial sentences, and it would be rare to see clients pleading in front of them. Others had a soft reputation for rarely giving custodial sentences, which made the prospect of an early sentence more enticing. As one solicitor put it, it is "very much down to who is on the bench at the particular time". A PDSO client described how, at the pleading diet, he was due to appear before a Sheriff with a "soft" reputation. However, the court was busy and it was decided to open a new court before a Sheriff with a particularly harsh reputation:

"When he came on the scene, everyone changed their plea to not guilty or they were going away... Ah, apparently he is a bit of an animal." (PDSO client interview, 1999)

The PDSO solicitor advised him also to change his plea to not guilty. The indeterminacy of the decision is illustrated by the fact that, at the time of the interview, the client was still uncertain about whether this had been the right advice:

"He told me to plead not guilty. If I'd pled guilty that would have been it, over and done with, instead of the three or four months that's happened. So I'm 50/50 undecided about it." (PDSO client interview, 1999)
9.30 The busy, fraught atmosphere of a custody court compounds solicitors' difficulties in giving appropriate advice. Practitioners described similar pressures to those mentioned by Samuel. First, solicitors worked under heavy time pressures. It is impossible to take instructions until the custody van arrives, and difficult to advise until the client has received the complaint showing what they are charged with. Solicitors complained that papers frequently arrived only shortly before the client was due in court:

"What is also unsatisfactory is the fact that the Procurator Fiscal's office in Edinburgh can't seem to produce the papers for custodies until about 12 o'clock every day. And what happens then is that you spend the whole morning sitting around the place. The custodies are all sitting downstairs - there's no papers for any of them. Suddenly... a great torrent of papers arrive and if you happen to have the misfortune to be the duty solicitor, you find that there's suddenly 15 people with papers and there's a message from upstairs saying when are you going to be ready?" (Private solicitor interview, 2000)

The Procurators Fiscal we talked to admitted that there could be delays with both the van and the paperwork, but that it depended on the number of arrests. Monday mornings after "a major football match, or perhaps during the Festival" could cause problems, but many ordinary weekdays were not necessarily rushed.

9.31 Solicitors argued that advising on plea could be complex. It was not enough for a client to say that they were guilty. They may misunderstand the nature of the offence and have an explanation inconsistent with a guilty plea. Or there may be a technical defence of which they were unaware. It was difficult to hold these detailed discussions in the custody suite, where the physical surroundings made communication difficult:

"It's a communal area. One large PVC screen with a dozen bodies on one side and a dozen lawyers on the other, and they recently installed telephones to enable you to better hear. But it's difficult when a client's upset. There are things they can't possibly tell you surrounded by so many people." (Private solicitor interview, 2000)

Several solicitors pointed out that such discussions were not confidential; "You've got all the solicitors together and you can clearly hear because they've got to shout". This discouraged clients from giving all the relevant information: "...and if I'm not properly instructed, then I cannot give proper advice".

9.32 Clients might alternatively wish to tender a mixed plea, which involved discussion and negotiation with the Procurator Fiscal. Solicitors pointed out that fiscals rarely had much grasp of the case at such an early stage, and in any case were too busy to discuss pleas. A Procurator Fiscal admitted that, although they tried their best to make themselves available, it was difficult for both Fiscal and defence agent to be free at the same time:

"My own practice is to make myself available in my custody court at least 15 minutes before my court, which is quite a long time for discussion. But my most common experience with defence agents is that they are meantime in the cells speaking to their client. So it is just unfortunate for me that I'm available and they're not. And by the time they are free and have taken full instructions..."
and want to speak to me, my court's started and I'm doing other cases which might take an hour.” (Procurator Fiscal interview, 2000)

9.33 Finally, solicitors stressed that the decision on plea was that of the client. Their own role was limited to advice. That said, our quantitative survey of clients (described in Chapter 15) suggested that solicitors’ advice was often influential. Of those who recalled being given advice on plea, two fifths said that they had changed their mind about how to plead because of their lawyer’s advice.

9.34 All these problems might suggest that hardly anyone ever pled guilty from custody. This, however, would be misleading. Several solicitors point out first-time offenders were particularly keen to get it over with. In our sample as a whole, a third of those appearing from custody in Edinburgh Sheriff Court made an initial plea of guilty. There were many fine judgements to be made, and many opportunities for different solicitors to make those judgements differently.

The PDSO view

9.35 PDSO staff described similar factors to other solicitors: bail, the identity of the Sheriff and the fraught nature of the court. They were at pains to point out that they would never pressurise a client to plead guilty against their will. However, they were also aware that they did not operate under the same financial incentives as private practice. One PDSO solicitor described a scenario in which a client offered to plead to two out of four charges:

"If I was a private practitioner, if I plead not guilty for him and he gets bail and I go along the next day to sort it out with the Fiscal's Office having got legal aid, I get paid £500. If I sort it out there and then at the custody court I might not get paid anything or I'll probably get paid £25 for filling in a pink form. So I've got a choice - I can get paid £25 or £500. The case will take a couple more days to sort out, the client will be just as happy.” (PDSO solicitor interview, 2000)

A PDSO solicitor had no incentive to obtain summary legal aid and might be able to sort the matter out there and then:

"If I can go upstairs, speak to the Fiscal, plead to two out of the four [charges] and the Fiscal will accept that, then I'll do that there and then in court on the first day. The client will be happy in that situation as well. He'll be no more or no less happy than the client whose lawyer got paid £500." (PDSO solicitor interview, 2000)

Public defenders thought that they were now more focused on getting on with the case:

Interviewer: “Are you encouraging clients to plead guilty earlier”?
Solicitor: ‘I think, on occasion, I am… I am more conscious now and more focused on not messing around and not wasting time and money and - if it is appropriate and if it’s in the client’s best interests - to deal with it earlier on.” (PDSO solicitor interview, February 1999)
This meant that they would try harder to sort matters out that day. They might, in some circumstances, be more likely to advise a guilty plea:

“… if you’re in private practice you’re paid by way of a legal aid certificate, which you obtain by pleading not guilty. If the client says, I don’t know anything about it and I want to plead not guilty, then OK that’s your instructions… But if you then come back and there seems to be a barrage of evidence against this person, and you then present that to them and get their opinions on that, sometimes it can speed things up a bit.” (PDSO solicitor interview, February 1999)

9.36 On the other hand, we found no evidence to suggest that PDSO solicitors put undue pressure on clients to plead guilty (see Chapter 15). None of our interview respondents complained about being pressured to plead guilty. The only criticism made of the PDSO was that they were too neutral; willing to go along with whatever the client decided. This view is consistent with the PDSO's insistence that:

"the one overriding principle is that we would never make someone plead guilty that wanted to plead not guilty. If at the end of the day the client wants to plead not guilty and wants to go to trial, that's his decision." (PDSO solicitor interview, 2000)

If the PDSO did influence their clients to plead guilty more often or to plead guilty earlier, it was through the lack of positive support to maintain a not guilty plea rather than through any direct pressure to plead guilty.

Cited cases

9.37 This section has concentrated on custody cases because they have been highlighted as an area in which accused were particular likely to enter an initial plea of not guilty, only to change plea later. Much of the discussion, however, would also apply to cited cases, albeit less strongly. Warner (1996) summarises previous research in stating that "defence agents... reported a preference for advising an initial not guilty plea in most cited cases" (p.23). Although solicitors do not have to talk to cited clients through glass screens, clients tend to seek legal advice only at the last minute. It remains difficult to contact the fiscal to discuss a plea, and clients may still be loath to plead before a particularly harsh judge. They too may wish to "put off the evil day". Finally, the financial arrangements also favour initial not guilty pleas.

**CHANGING PLEA: INTERMEDIATE DIET OR TRIAL DIET?**

9.38 Many clients who initially plead not guilty will eventually change their plea to guilty. A further issue influencing the way that cases progress through the court is whether the change is made at the intermediate diet or at a trial diet before evidence is led. We have already discussed how the introduction of compulsory intermediate diets has reduced the number of last minute changes of plea but not eliminated them. In Scotland as a whole, around a third of trial diets listed end in a guilty plea of some sort (Duff and McCallum 2000).
What are the factors that influence the change of plea to occur at the trial diet rather than the intermediate diet?

Previous research suggests that the seriousness the court attaches to intermediate diets is crucial. Intermediate diets need to provide sufficient time for solicitors and Procurators Fiscal to negotiate pleas. Sheriffs also need to treat them seriously to focus the minds of defence and prosecution on the trial to come.

During the period of our study, Edinburgh Sheriff Court had a relatively high rate of cancelled trials. Out of 399 trial diets set for non-directed cases in our sample, only 94 (24%) went ahead as planned. It was suggested that intermediate trial diets were too crowded, and sheriffs did not always give them the attention they deserved. One solicitor, for example, remarked that there were more guilty pleas at intermediate diets when they were first introduced: "sheriffs regarded it as a new toy" but it had "now drifted back" to the way it used to be, with more pleas before trial. It was pointed out that "one Fiscal with no backup" was required to handle 50 cases, so that the intermediate diet offered "little opportunity for meaningful discussion".

The Procurators Fiscal we spoke to admitted that the intermediate diet provided few opportunities for discussion:

"The intermediate diet is a busy court: there are 50 cases going on at the intermediate diet, which have got to go through in the morning. It's not really the place where deputes can have plenty of time to think." (Procurator Fiscal Interview, 2000)

In their view, the time to negotiate a plea was before the intermediate diets - either by writing or phoning. Defence solicitors, on the other hand, pointed out that this was easier said than done:

"Writing to fiscals is a waste of time. You can fax letters and you won't get a response because the faxes build up." (Private solicitor interview, 2000)

This solicitor suggested that it was best to phone, but even then it had limited results, because it was difficult to get through to a fiscal who was "allowed the discretion to decide things".

For their part, Procurators Fiscal felt that the criticism might be justified:

"Defence agents say that it is difficult getting access to us, getting us to answer correspondence and things like that, and there is some justification in that criticism. We just don't have the staff members to do what I would like to do. They do get a response but perhaps not as swiftly as they might want." (Procurator Fiscal interview, 2000)

Under the old time and line system of summary legal aid billing, there were some financial advantages in holding out to a trial diet. The time allowed for each activity was governed by convention, and it became conventional to allow up to two hours work to prepare for trial, plus a minimum of 30 minutes for the hearing itself. Under the fixed fee system introduced in April 1999, however, such advantages disappeared. The solicitor receives the same fixed payment irrespective of whether the issue of guilt is resolved at the intermediate or
trial diet. On the other hand, unlike the work involved in an initial guilty plea, the solicitor who waits until the trial diet is unlikely to lose money. A comparison with PDSO costs suggests that solicitors were comparatively well paid for cases that conclude at both intermediate diets and trial diets.

9.44 Private solicitors admitted that they had changed the way they prepared cases to adjust to fixed fees. They now obtained fewer precognitions themselves and placed greater reliance on prosecution statements. All the private firms we spoke to, however, categorically denied that the change had made any difference to their tendency to plead at trial diets rather than intermediate diets. The pressures to leave the change of plea until trial were still the same.

9.45 One reason for changing pleas at trial rather than intermediate diets was late preparation. As a solicitor put it, there is a certain amount of "plead not guilty just now and we'll sort it out later". Another stressed that the precognitions, statements and videos may not have arrived "so you are not in a position to advise a client that there is an overwhelming case against them". It was also suggested that it was easier to persuade a reluctant client of the weaknesses of their case when they faced the immediate prospects of trial:

"It's human nature. It is easier for the client to bite the bullet at that stage [i.e. before trial]... People never face up to things until they have to." (Private solicitor interview, 2000)

The main reason, however, for waiting until the trial diet was that "you get a better deal just before trial". A Procurator Fiscal put this point clearly:

"A case goes through three stages: when you mark it [i.e. at the time of the complaint], you think, well, that'll prove. When you look at it later and cite the witnesses etc. you think, it might prove. And when you read it through at trial you think it will never prove. So it's always easier to [negotiate at the trial diet] and I think most defence agents will tell you that. The time for [the defence agent] to put the screws on to get a good plea is probably... on the morning of the trial." (Procurator Fiscal interview, 2000)

The interviewee was correct. Most defence agents did tell us that busy fiscals, faced with more trials than they could possibly handle, were particularly amenable to lesser pleas immediately before trial.

9.46 There was, however, a downside to pleading guilty immediately before trial when all the prosecution witnesses had been forced to appear. Such strategies may irritate sheriffs. Several solicitors noted that sheriffs did occasionally object to such late changes of plea: "the Sheriff might ask the witnesses into court and go through the lawyer like a dose of salts".

9.47 Most felt, however, that this rarely trumped the benefits of a late plea. In the view of one solicitor, this sometimes amounted to "a bit of foot-stamping that isn't necessarily convincing". Another solicitor agreed:

"The Sheriff still has to look over his back and think, well, I've got to sentence this person on what he did, and justify that to the Court of Appeal - and not lose my rag and say this is ridiculous." (Private solicitor interview, 2000)
9.48 Furthermore, solicitors could use a last minute plea bargain to divert an irate Sheriff. On the day of trial, Procurators Fiscal were often desperate to reduce the number of trials. As a fiscal put it: "we go to trial court with more cases than we can hope to prosecute, so we rely on some dropping out". Thus it was usually possible for a defence agent to secure some reduction in the complaint, even if it was only in deletions of words in the charges. This would be enough to show that the client was not pleading guilty as libelled. As one solicitor put it: "it gives you something to say" so that "you feel you don't have to explain why you didn't plead guilty until the trial diet".

The PDSO view

9.49 When we addressed the same questions to PDSO solicitors, they were somewhat more careful in their approach. They did not, for example, bandy about the same colourful phrases about foot-stamping sheriffs or overburdened fiscals. Instead they stressed that it was important to give the correct advice depending on all the circumstances of the case. However, they felt there were circumstances in which a change of plea at intermediate diet was the most appropriate option:

"[I]f at the intermediate diet, you've got a good Sheriff, and ... you know exactly what the evidence is, and you can negotiate and you think it's best to negotiate at that time, you do it at the intermediate trial." (PDSO solicitor interview, 2000)

Thus, the solicitor suggested, trial diets would mainly be used where the prosecution evidence was weak.

9.50 For their part, Procurators Fiscal suggested that PDSO solicitors were particularly well organised. They would usually have the case prepared before the intermediate diet would be "pro-active" in contacting the fiscal office in good time. Thus they were more likely to be in a position to do a deal at the intermediate diet than some of their more disorganised private counterparts.

CONCLUSION

9.51 Our interviews confirm previous research in demonstrating the complexity of decisions on case trajectory. Decisions are influenced by many factors, several of which may have nothing to do with the guilt or innocence of the accused or the strength of the prosecution case. The decision rests with the accused, but is influenced by advice from the defence solicitor, who is in turn influenced by the actual or predicted actions of the Procurator Fiscal Office, and the predicted reaction of the Sheriff.

9.52 The complexity of the decision-making process gives rise to ethical indeterminacy. In many cases, ethical professionals may reach genuine differences of opinion over which course of action is correct. And even if they agree on the general course of action, they may differ over how vigorously it should be pursued - how strongly to give advice, for example, or how much effort should be put into negotiations over plea. Such indeterminacy provides scope for the financial consequences of a course of action to colour solicitors' views.
9.53 The interviews did not reveal major substantive differences between private and public defence solicitors. They did, however, reveal differences in emphasis and tone. Private solicitors tended to emphasise more adversarial values, focusing on ways to maximise benefits to the client in the court game. When in doubt, they said that they would advocate a not guilty plea - one that put the prosecution to proof. PDSO solicitors, however, felt they focused more on "not messing around" and "not wasting time and money". They tended to see the benefits of a more co-operative approach based, for example, on "going upstairs and speaking to the Fiscal".

9.54 These differences appear to be linked to the way in which people were paid. PDSO solicitors specifically said that had changed their approach since starting with the office because they were no longer reliant on legal aid payments. The link also arises from previous research. Several Canadian studies have shown that staff lawyers spend less time per case, are more likely to plead their clients guilty, enter pleas at an earlier stage in the proceedings and are more likely to reach negotiated settlements with the prosecution.  

9.55 In the next chapter we use quantitative data to explore whether this difference in emphasis led to actual, discernible, differences in behaviour. The presence in our sample of considerable unpaid work by private solicitors for directed clients also gives us an opportunity to consider how far private solicitors maintain their adversarial values in the somewhat extreme circumstances of not being paid at all.

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54 See Department of Justice (1994). It cites the Burnaby study (Brantingham 1981), the BC evaluation (Brantingham and Brantingham 1994) and the Manitoba evaluation (Sloan 1987).
CHAPTER 10: COMPARING CASE TRAJECTORY

10.1 This chapter draws on quantitative data from court files to ask how far the PDSO experiment led to changes in the way that cases proceeded through the court.

10.2 To ensure that we are comparing like with like, we follow the four levels of analysis described in Chapter 8. We begin by comparing all represented directed cases with all represented non-directed cases. Given the random nature of the allocation, we can be reasonably confident that significant differences between these groups are the result of the payment changes made in the course of the pilot. Having established broad differences, we then look at how far they are due to the actions of the PDSO, and how far they result from the way that private solicitors dealt with directed clients. We describe the raw figures for each of the main solicitor groups, before presenting the results of a multi-variate analysis. Finally, we consider what effect any bias against guilty pleas might have on the results.

10.3 We focus particularly on the stage of the court process at which cases were resolved, by which we mean when the issue of guilt or innocence was determined, irrespective of any subsequent sentencing diets. We have assigned cases to four broad groups:

1. **Pleading diet**: that is, all cases resolved at or before the first plea was tendered. It includes cases continued without plea to a further pleading diet that resolved the case - or where the accused failed to appear at a pleading diet and pled guilty at the next warrant diet. None of these cases would qualify for summary legal aid.

2. **Intermediate diet**: This represents all cases resolved after the first plea but before the trial diet. It includes, for example, cases resolved at a warrant diet held after the accused failed to attend the first intermediate diet.

3. **Before trial**: These are cases in which a trial diet was held, but where the issue of guilt was resolved before evidence was led. Thus it includes not only cases resolved at a trial diet before trial, but also those resolved at a warrant diet or intermediate diet following an adjourned trial diet. 55

4. **After evidence led**: These are cases resolved after evidence had been led. Most cases involved a finding by the court, though it also includes cases resolved by a plea taken during the trial.

Appendix 6 gives further details of how cases were assigned to groups.

10.4 We also look at the number of diets per case and the overall duration of the case between first and last diet. Finally, we consider whether the accused was detained in custody during the proceedings.

55 16 cases were resolved at an intermediate diet following a trial diet and 17 were resolved at a warrant diet following a trial diet.
DIRECTED VS NON-DIRECTED CASES

10.5 Here we compare represented directed cases with all represented non-directed cases, irrespective of the type of solicitor used. We postpone, for the moment, discussing how far any difference was due to the PDSO and how far it resulted from the actions of private solicitors.

10.6 As selection by birth-month was on a random basis and the overall the level of representation was very similar, one can assume that directed and non-directed cases had similar characteristics when they started their journey through the courts. They were not, however, dealt with in the same way. Figure 10.1 shows that directed clients were more likely to have their cases resolved at the pleading diet, and less likely to have their cases resolved at a trial diet, either before or after evidence had been left. This finding is highly significant (at the 99% level). This means that the likelihood that the difference occurred by chance was less than one in a hundred. We can say, with a fair degree of certainty, that the direction system as a whole meant that cases were more likely to be resolved at an earlier stage.

10.7 In other words, the variation in legal aid payment arrangements led to a change in the way that cases were processed through the courts.

56 Appendix 4 compares the characteristics of the represented directed and represented non-directed clients to ensure that the randomisation process had worked. These characteristics were: age; gender; type of court; broad category of alleged offence; number of charges; whether the client made their first appearance from custody; whether there was any evidence that at the time of the alleged offence the client was on bail/probation/a community order; the number of co-accused; the time between the alleged offence and the first diet; and the social classification of the area where the client lived. Chi-square and t-tests were performed and no statistically significant differences were found at the p<0.05 level.

57 On a Pearson's Chi-Square, p<0.001.
Figure 10.1: Stage at which cases were resolved: all represented directed cases compared with all represented non-directed cases

![Figure 10.1: Stage at which cases were resolved: all represented directed cases compared with all represented non-directed cases](image)

Base: all cases where the time of resolution is known: directed 1,032; non-directed 807.

10.8 Appendix 5 looks at this finding in more detail. There were relatively few District Court cases in the study,\(^{58}\) and we found no real difference between birth-month groups in the District Court. However, for both Sheriff Court custody and cited cases, the differences were marked. The change in Sheriff Court custody cases was particularly striking. As previous studies have shown, under the normal legal aid system applying to non-directed cases, clients rarely pled guilty at a custody diet: more cases were resolved before trial (39\%) than at pleading diet (27\%). For directed clients, however, this effect was reversed, with more cases resolved at the pleading diet (38\%) than before trial (23\%).

10.9 The difference in stage of resolution also led to significant differences in both the number of diets per case and the duration of cases. Directed cases took an average of 2.85 diets to resolve the issue of guilt, compared with 3.16 diets in non-directed cases. Similarly, directed cases were resolved in an average of 112 days, compared with 132 days in non-directed cases.

DIFFERENCES BETWEEN SOLICITOR GROUPS

10.10 So far we have established differences between all represented directed cases, compared with all represented non-directed cases. How far did these differences result from the work of the PDSO and how far from the actions of private solicitors acting on behalf of directed clients?

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\(^{58}\) Among represented cases, only 327 (17\%) were in the District Court, compared with 1,573 (83\%) in the Sheriff Court.
Here we compare cases handled by private solicitors for non-directed cases under the "normal" legal aid scheme with those handled by private solicitors for directed clients and with those handled by the PDSO. Note that, for the moment, we are looking at bare figures without controlling for variations in case type, which we consider below.

For the purposes of this analysis, we have excluded the 60 cases in which both the PDSO and private solicitors acted in the same case. We also exclude four cases where the type of solicitor is unknown (see Appendix 1). Finally, although most PDSO cases were for directed clients, the group also includes four cases for volunteer clients, born in November and December. For these reasons, the total base in Table 10.1 is slightly different from the base in Figure 10.1.

The PDSO and private solicitors acting for directed clients were both working under economic incentives that were, in many cases quite different from those that apply under the "normal" legal aid scheme. The change was most dramatic for private solicitors acted without a waiver.⁵⁹ Here, an initial not guilty plea no longer provided a £500 fee, but instead presented the prospect of substantial unpaid work, together with possible out-of-pocket expenses on precognitions and other outlays. Meanwhile, the PDSO was funded by a grant from SLAB that arrived irrespective of the way any individual case was processed. If solicitors modify their behaviour in the light of financial arrangements, one would expect changes in the behaviour of both groups - with the most dramatic effects shown in the behaviour of private lawyers.

### Stage of resolution

Table 10.1 shows the stage of resolution for all three groups. Both the PDSO and private directed cases were likely to be resolved sooner, with the difference greatest for private directed cases. Private directed cases were more likely to be resolved at the pleading diet. The PDSO cases were more likely to be resolved at either the pleading diet or the intermediate diet, and less likely to proceed to a trial diet. In all, only 34% of PDSO cases involved a trial diet of some sort, compared with 40% of private non-directed cases. This difference is statistically significant, at the 95% level.⁶⁰ In other words, the likelihood that the difference occurred by chance was less than one in twenty.

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⁵⁹ As discussed in Chapter 8, of private directed cases, around 18% were conducted under waived summary legal aid, 30% under other forms of legal aid, and 52% without legal aid.

⁶⁰ p=0.032.
Table 10.1: Stage at which cases resolved, by each of the main solicitor groups

<table>
<thead>
<tr>
<th>Stage of resolution</th>
<th>Private non-directed</th>
<th>Private directed</th>
<th>PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Pleading diet</td>
<td>284</td>
<td>34</td>
<td>297</td>
</tr>
<tr>
<td>Intermediate diet</td>
<td>189</td>
<td>23</td>
<td>112</td>
</tr>
<tr>
<td>Before trial</td>
<td>220</td>
<td>27</td>
<td>104</td>
</tr>
<tr>
<td>After evidence led</td>
<td>106</td>
<td>13</td>
<td>40</td>
</tr>
<tr>
<td>Time not known</td>
<td>31</td>
<td>4</td>
<td>23</td>
</tr>
<tr>
<td>TOTAL</td>
<td>830</td>
<td>100</td>
<td>576</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Below we give these figures separately for the District Court cases, Sheriff Court custody cases and Sheriff Court cited cases.

10.15 Figure 10.2 shows little difference between PDSO and private non-directed cases in the District Court. Between the two groups, the proportions resolved at pleading diet/intermediate diet (68-69%) compared with before trial/after evidence led (31-32%) is much the same.

Figure 10.2: District Court cases: stage at which cases resolved, by each of the main solicitor groups

10.16 However, there were differences in Sheriff Court cases. Figure 10.3 shows that for Sheriff Court custody cases, the PDSO was more likely to resolve cases at intermediate diet and less likely to resolve cases before trial. This difference was statistically significant at the
95% level. The difference between private directed cases and other groups was particularly striking, with half of all private directed cases resolved at the pleading diet.

Figure 10.3: Sheriff Court cases with an initial appearance from custody: stage at which cases resolved, by each of the main solicitor groups

10.17 Figure 10.4 gives the equivalent figures for Sheriff Court cited cases. Again, private directed cases were particularly likely to be resolved at the pleading diet. PDSO cases were slightly more likely to be resolved at pleading diet or intermediate diet rather than trial diet, but this time the difference was not statistically significant.  

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61 p=0.015.
62 p=0.171.
10.18 The crucial question is why private directed cases were so much more likely to result in an initial guilty plea. Was this a selection effect: did private solicitors select cases that would had pled guilty in any event, while sending initial not guilty cases to the PDSO? Or did they encourage a greater level of initial guilty pleas through the advice they gave? The answer may well include some element of both. That said, the discussion in Chapter 8 suggests that there was almost certainly at least some element of selection. If private solicitors did select cases in this way, the "PDSO effect" would be greater than the bare figures in Table 10.1 suggest.

**Number of diets and duration**

10.19 Compared with normal non-directed cases, PDSO cases resulted in fewer diets and were concluded more quickly.

10.20 The average total number of diets for PDSO cases in our sample was 3.68, compared with 4.01 for private non-directed cases (and 3.51 for private directed). In particular, PDSO cases were less likely to involve a trial diet: 65% of PDSO cases were concluded without a trial diet, compared with 57% of private non-directed cases. Added to this, they were less likely to involve multiple trial diets. Only 6% of PDSO cases had two or more trial diets, compared with 11% of private non-directed cases. The reduction in the number of trial diets

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63 p=0.012.
has consequences for witnesses, which we discuss in Part E (on the impact of the PDSO on the rest of the criminal justice system).

10.21 Finally, the average duration (from first to last diet) was 115 days for PDSO cases, compared with 132 days for private non-directed cases (and only 99 days for private directed cases). The difference between the PDSO and private non-directed sample was significant. 64

**Controlling for differences in cases**

10.22 The differences between PDSO and private non-directed samples cannot be explained by intrinsic differences between the cases. When we used multi-variate analysis to control for such variations, the extent of the differences increased.

10.23 As described in Appendix 8, we used regression analysis to control for a range of factors, including age, gender, type of court, overall category of alleged offence, number of charges and whether the client made their first appearance from custody. We compared cases resolved at pleading diet and intermediate diet compared with those that involved at least one trial diet (whether or not evidence was led). The analysis suggested that violent and public order offences were more likely to include a trial diet, as were cases with multiple charges or multiple accused. Older clients were more likely to hold out until the trial diet while women were more likely to resolve cases at pleading or intermediate diet.

10.24 When one controls for these factors, the analysis shows that, compared with private non-directed clients, PDSO clients were significantly more likely to have their case resolved at an early stage. In technical terms, the odds of an early resolution were 67% higher for the PDSO than for the control group, a difference that was significant at the 99% level. Among private non-directed cases, 59% were resolved at pleading diet or intermediate diet. In practical terms, such an increase in the odds would increase this proportion from 59% to 71%.

10.25 The same was true when one looked at the overall number of diets and length of cases. After controlling for intrinsic case differences, the multi-variate analysis suggests that, on average, PDSO clients had 0.4 fewer diets than private non-directed cases, and spent 19 fewer days between the first and last diet.

10.26 What we could not control for were more subtle differences in initial first plea. The discussion in Chapter 8 suggests that private solicitors may have selected out quick cases where the accused intended to plead guilty at the first diet and passed on cases with an initial plea of not guilty. If this were true, the extent of the differences between the PDSO and private non-directed group would be even greater than the multi-variate analysis suggests.

**DETENTION IN CUSTODY DURING PROCEEDINGS**

10.27 We also considered, briefly, whether the accused had been held in custody during the proceedings (that is, after the initial diet and before sentence was passed). We recorded whether the accused had been held in custody following a court diet. This meant that we excluded cases in which the accused had been brought to court from initial custody (or on a

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64 \( p=0.015 \).
65 \( p=0.002 \).
66 \( p=0.001 \).
warrant) and then immediately released. If the accused had not been held in custody, we recorded whether they were bailed at any stage, or whether they had simply been cited to attend the next hearing without either bail or detention. It did not prove possible, however, to record exactly when or for how long any detention or bail occurred. Thus we know whether there was a detention in custody, but not for how long.

10.28 Table 10.2 compares all represented directed and all non-directed cases. It shows that between 11% and 13% were detained in custody at some stage during the proceedings, following a diet. There were no clear differences between the directed and non-directed groups.

**Table 10.2: Represented directed vs represented non-directed cases: whether held in custody after a court diet during proceedings**

<table>
<thead>
<tr>
<th></th>
<th>Directed</th>
<th></th>
<th>Non-directed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Detained in custody</td>
<td>121</td>
<td>11</td>
<td>111</td>
<td>13</td>
</tr>
<tr>
<td>Bailed</td>
<td>270</td>
<td>25</td>
<td>214</td>
<td>26</td>
</tr>
<tr>
<td>Neither</td>
<td>595</td>
<td>56</td>
<td>443</td>
<td>53</td>
</tr>
<tr>
<td>In custody on another matter</td>
<td>9</td>
<td>1</td>
<td>13</td>
<td>2</td>
</tr>
<tr>
<td>Status not known</td>
<td>67</td>
<td>6</td>
<td>56</td>
<td>7</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>1062</td>
<td>100</td>
<td>837</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

10.29 Table 10.3 looks at the proportion of accused held in custody by the type of representation. Interestingly, the group most likely to be held in custody were those in which both the PDSO and a private representative were involved for a substantial part of the case. The particularly high rate of detention for these 60 cases means that, unlike other analyses, Table 10.3 includes the "both" category as a separate solicitor group.

**Table 10.3: Whether held in custody after a court diet during proceedings, by solicitor groups**

<table>
<thead>
<tr>
<th></th>
<th>Private non-directed</th>
<th></th>
<th>Private directed</th>
<th></th>
<th>PDSO</th>
<th></th>
<th>Both</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Detained in custody</td>
<td>110</td>
<td>13</td>
<td>74</td>
<td>13</td>
<td>35</td>
<td>8</td>
<td>13</td>
<td>22</td>
</tr>
<tr>
<td>Bailed</td>
<td>214</td>
<td>26</td>
<td>117</td>
<td>20</td>
<td>129</td>
<td>30</td>
<td>24</td>
<td>40</td>
</tr>
<tr>
<td>Neither</td>
<td>437</td>
<td>53</td>
<td>349</td>
<td>61</td>
<td>227</td>
<td>53</td>
<td>22</td>
<td>37</td>
</tr>
<tr>
<td>In custody on another matter</td>
<td>13</td>
<td>2</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Status not known</td>
<td>56</td>
<td>7</td>
<td>31</td>
<td>5</td>
<td>36</td>
<td>6</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>830</td>
<td>100</td>
<td>576</td>
<td>100</td>
<td>430</td>
<td>100</td>
<td>60</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Table 10.3 shows that the rate of detention among PDSO clients (at 8%) was less than for other groups. We therefore conducted a multi-variate analysis, to see if the difference was statistically significant once one controlled for differences in case characteristics.
10.30 The results are given in Appendix 8. They show that accused were more likely to be detained if they appeared in the Sheriff Court, if they appeared from custody and if they had been on bail at the time of the alleged offence. Those charged with theft or violence offences were much more likely to be detained than those charged with road traffic offences. Finally, the odds of detention in custody were about 60% lower for PDSO cases than for private non-directed cases, and this difference was highly significant.

10.31 We have considered three possible reasons for this. The first is that there was a selection effect: namely that those held in detention were particularly likely to refuse to use the PDSO. It is probable that detainees were especially demanding of their solicitors, and their over-representation in the "both" category suggests that some may have tried to hang on to their private solicitors as long as possible. Thus there may have been some selection effect, though it is unlikely to be the full story.

10.32 The second possible reason is that PDSO clients were less likely to be held in custody because their cases were resolved earlier, using fewer diets. When we included process variables within the multi-variate analysis (see Appendix 8), it became clear that the more diets during the course of the case, the greater the chances that the accused would be held in custody at some stage. It was the overall number of diets that mattered, rather than any particular type of diet. More warrant diets, more sentencing diets and more other diets all increased the chances of detention.

10.33 Finally, Chapter 4 describes the PDSO's good relationship with the SACRO bail scheme. Public defence solicitors were particularly positive about using the scheme, which they felt in borderline cases could represent their client's only chance of obtaining bail.

10.34 It seems likely that all three reasons were present. There was some selection effect, in which detainees were less likely to use the PDSO as their only or main representative; fewer people were detained because their cases were dealt with in fewer diets; and the PDSO's good links with the SACRO bail scheme increased the chances of bail for some clients.

**CONCLUSION**

10.35 We can be confident that when PDSO lawyers said that they would be more likely than solicitors acting under the normal legal aid scheme to dispose of cases early, they were telling the truth. Compared with the normal private non-directed group, PDSO solicitors were more likely to dispose of cases at pleading diet or intermediate diet and less likely to conclude cases before trial. They dealt with cases in fewer diets, and concluded cases more quickly.

10.36 These findings emerge however one looks at the figures. The overall comparison between the directed and non-directed groups shows that people born in January and February were significantly more likely to plead guilty at the pleading diet. Linked to this, their cases were completed more quickly with fewer diets. The change in payment arrangements introduced through the direction experiment clearly led to a substantial change in the way that cases were resolved for both private and PDSO lawyers.
10.37 A simple comparison between PDSO case and normal legal aid handled by private solicitors for non-directed clients shows that the PDSO were more likely to conclude cases at pleading diet or intermediate diet, and less likely to conclude cases before trial or after evidence was led. The PDSO cases also involved fewer diets and took less time from the start to the conclusion of the case.

10.38 When one uses multi-variate analysis to take into account variations in the types of case going to the PDSO, the difference is greater than first appears. The finding that PDSO solicitors were more likely to conclude cases at pleading diet or intermediate diet and less likely to go to a trial diet becomes significant at the 99% level. This means that there is less than one chance in a hundred that the difference reflects random fluctuation.

10.39 If private solicitors were in fact more likely to act for directed clients who expressed an intention to plead guilty (and passed to the PDSO clients who wished to make an initial not guilty plea), then the differences would be even more marked than the multi-variate analysis suggests.

10.40 This finding is in line with the Canadian studies discussed in Chapter 7, which also suggested that salaried lawyers had a tendency to resolve cases more quickly and enter guilty pleas at an earlier stage.

10.41 Finally, PDSO clients were less likely to be held in detention during the course of the case. There are probably several reasons for this, including the fact that PDSO cases were resolved using fewer diets and that they made good use of the SACRO bail scheme.
CHAPTER 11: COMPARING CONVICTION RATES

11.1 The Canadian studies found that cases handled by staff lawyers were more likely to end in a guilty plea than cases handled by private lawyers. Despite this, however, the overall conviction rate of each group was similar. The Manitoba evaluation, for example, found no statistical difference in conviction rate: after controlling for prior record and type of case, the conviction rate for staff clients was 72.0%, compared with 71.9% for private clients (Sloan 1987). Similarly, in the Burnaby experiment, 60% of clients of both the staff office and the local bar were convicted. However, the staff lawyer cases were more likely to end in a plea bargain, negotiated between the prosecution and the staff lawyer (Brantingam 1981). This, together with the discount for early guilty pleas, led to lower sentences.

11.2 This chapter examines whether there was a difference in the rate at which clients were convicted and whether, as in Canada, salaried defenders were more likely to reach negotiated settlements with the prosecution. The next chapter, Chapter 12, compares sentences.

11.3 We collected data on the plea made to each individual charge. For analysis purposes, we assigned cases to three broad groups:

- **Guilty as libelled:** This means that the accused pled guilty or was found guilty of all the charges on the complaint, without any deletions, even of a single word.

- **Not convicted:** The accused was not convicted at all. Either all the charges were deserted, or pleas of not guilty were accepted, or the accused was acquitted of all charges (or a mixture of the three).

- **Mixed outcome:** The accused was convicted, but not of everything on the complaint. They may have pled guilty under deletion to one or more charges, or pled guilty to a lesser charge, or pled guilty to some charges while a plea of not guilty was accepted to others. Alternatively, if the case went to trial, the court may have found them guilty under deletion, or guilty of some charges and not others, or guilty of an alternative charge. This is a broad group ranging from the deletion of a single unimportant word to an acquittal on the main offence.

11.4 We start by giving the overall outcome. We focus on the conviction rate - that is, whether clients were convicted of at least some offence, or whether they were not convicted at all. We then consider guilty pleas, and compare plea bargains (that involved some mixed outcome) with pleas of guilty as libelled.

11.5 As before, we work through four levels of analysis. We start by comparing all directed with all non-directed cases, irrespective of the solicitor used. We then present the "bare" data for different solicitor groups. Thirdly, we control for case differences through multi-variate analysis before considering the effect of any further bias against initial pleas of guilty.
OVERALL OUTCOME: CONVICTED OR NOT CONVICTED?

Directed vs non-directed cases

11.6 We begin by looking for broad differences between represented non-directed cases and directed cases as a whole, irrespective of the solicitor actually used. Here we concentrate on whether the case resulted in some sort of conviction or not. The issue of plea bargains is dealt with in the following section.

11.7 Figure 11.1 shows that directed cases were more likely to end in a conviction of some sort: 17% of non-directed accused avoided conviction altogether, compared with only 13% of those born in January or February. This difference is significant (at the 99% level).

Figure 11.1: Outcome of all represented cases: accused born in January and February (directed) compared with accused born in November and December (non-directed).

![Outcome Graph]

Base: all cases where information available: directed 1,049; non-directed 832.

11.8 Chapter 10 noted that the main difference between directed and non-directed cases in the stage of resolution was to be found in the Sheriff Court. Appendix 5 shows that the main difference in outcomes was also to be found in the Sheriff Court. While in the District Court, any difference in conviction rate was marginal and insignificant, the Sheriff Court difference was significant (at the 95% level).\(^{39}\)

11.9 Table 11.1 looks in more detail at how these outcomes were arrived at. It shows that contested trials play only a minor part in the system. Overwhelmingly convictions occurred

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\(^{39}\) Again, it should be remembered that only 327 cases (17%) were in the District Court, compared with 1,573 (83%) in the Sheriff Court.
through guilty pleas - either through straightforward pleas of guilty as libelled, or as the result of negotiations between the defence and the prosecution over what plea would be acceptable. Only a few cases were concluded by a finding of guilt after evidence was led.

11.10 Similarly, most cases that did not result in a conviction were abandoned without evidence being led. The prosecution either deserted them or accepted a plea of not guilty. Again, the number of acquittals after trial was relatively small.

Table 11.1: Represented directed vs represented non-directed cases: nature of outcome

<table>
<thead>
<tr>
<th></th>
<th>Directed</th>
<th></th>
<th>Non-directed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td><strong>Convictions:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plea of guilty as libelled</td>
<td>418</td>
<td>41</td>
<td>308</td>
<td>38</td>
</tr>
<tr>
<td>Mixed plea: guilty to something</td>
<td>417</td>
<td>41</td>
<td>303</td>
<td>38</td>
</tr>
<tr>
<td>Found guilty (in full or in part)</td>
<td>61</td>
<td>6</td>
<td>60</td>
<td>7</td>
</tr>
<tr>
<td><strong>Not convicted</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case deserted/not guilty plea accepted</td>
<td>95</td>
<td>9</td>
<td>88</td>
<td>11</td>
</tr>
<tr>
<td>Acquitted after evidence led</td>
<td>38</td>
<td>4</td>
<td>47</td>
<td>6</td>
</tr>
<tr>
<td>All cases where outcome and stage of resolution known</td>
<td>1,029</td>
<td>100</td>
<td>806</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

11.11 If one looks only at contested trials, the acquittal rates were similar: among non-directed cases, 44% of cases in which evidence was led resulted in an acquittal, compared to 38% for directed cases. The difference between these two proportions is small and not statistically significant. At most, it resulted in only 6 additional convictions (or 0.6% of the total sample). It does not account for the main difference in conviction rates between the two groups (which amounts to some 39 additional convictions).

11.12 There are two main reasons for the additional conviction rate: directed cases were less likely to proceed to trial and they were less likely to be abandoned. In the sample as a whole, the difference in the rate of trial (9.5% for directed cases and 13.2% for non-directed cases) means that some 38 fewer directed cases proceeded to trial. If one assumes that 38% of these cases would have resulted in findings of not guilty, then this accounts for another 14 additional convictions. The difference in the level of abandoned cases, however, has a slightly greater effect, resulting in some 18 additional convictions.

**Abandoned cases**

11.13 We have seen that directed cases tended to be resolved at an earlier stage in the case, usually through a plea of guilty. They were therefore less likely to be abandoned before trial.

11.14 Table 11.2 shows that the longer the accused maintained a plea of not guilty, the more likely the case was to be abandoned. In the table, Column A shows the number of cases that proceeded to each stage of the process. For example, all cases reached a pleading diet and those not resolved at pleading diet reached an intermediate diet. Column B then looks at the number of cases resulting in a not convicted outcome at each stage. At the pleading diet, intermediate diet and before trial, most cases were deserted by the fiscal service, though in
some cases the Procurator Fiscal accepted a plea of not guilty. Those resolved after evidence was led were findings of not guilty or not proven or cases dismissed after findings of no case to answer.\footnote{Out of total of 212 cases in the study resolved after evidence was led, 28 (13\%) resulted in one or more "not proven" verdicts.} Finally the third column shows the proportion of cases abandoned or found not guilty at each stage.

11.15 Table 11.2 shows little difference between directed and non-directed cases in the proportions abandoned at each stage. However, what the table does show is that the longer a case proceeds, the more likely the fiscal service is to abandon it. Only 2\% of cases were abandoned at the pleading diet, compared to 4-6\% at the intermediate diet and 11-16\% before trial. The greater proportion of abandoned cases in the non-directed sample can be accounted for by their tendency to be resolved at a later stage.

Table 11.2: Represented directed vs represented non-directed cases: number of cases resulting in a not guilty outcome at each stage of the process

<table>
<thead>
<tr>
<th></th>
<th>Directed cases</th>
<th>Non-directed cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A) No. reaching stage</td>
<td>B) No. deserted /NG</td>
</tr>
<tr>
<td>Pleading diet</td>
<td>1,029</td>
<td>24</td>
</tr>
<tr>
<td>Intermediate diet</td>
<td>558</td>
<td>36</td>
</tr>
<tr>
<td>Trial diet (before evidence led)</td>
<td>315</td>
<td>35</td>
</tr>
<tr>
<td>Evidence led</td>
<td>99</td>
<td>38</td>
</tr>
<tr>
<td>All (where stage &amp; outcome known)</td>
<td>1,029</td>
<td>133</td>
</tr>
</tbody>
</table>

11.16 Solicitors were aware that, by holding out until the day of the trial, an accused may be able to take advantage of a lapse in the prosecution case:

"The place [PF Office] is such a shambles. I mean, there are many... many times you go up [to court] and the Procurator Fiscal's Office have simply forgotten to cite the witnesses. ... There'll be no prosecution witnesses, or they'll have been sent away in error... or something like that. So yes, there are definite advantages in [pushing a case to trial]. Definite advantages." (Private solicitor interview, 2000)

A Procurator Fiscal admitted wearily:

"If [defence agents] delay successfully for long enough, we will just give up. Either our witnesses will emigrate or give up. [They'll] say 'with the best will in the world, I've come to court five times and I'm not coming any more'." (Procurator Fiscal interview, 2000)

11.17 Other things being equal, an accused's best means of avoiding conviction is to maintain a not guilty plea, at least until the morning of the trial and preferably beyond. The chance that
the prosecution case will fold is small but real, and contrasts with the certainty of conviction if one pleads guilty.

Differences between solicitor groups

11.18 So far, we have discussed differences between those born in January and February, compared with those born in November and December. We have not considered how far any differences are the result of the behaviour of private solicitors, and how far they are the result of behaviour by the PDSO.

11.19 Figure 11.2 shows the main differences between solicitor groups. As with differences in the time of resolution, both the PDSO and private directed cases were less likely to result in a non-conviction, with the difference greatest for private directed cases. When one compares the conviction rate of PDSO cases with private non-directed cases, the PDSO conviction rate is slightly higher. However, on these bare figures, the difference is not significant. The effect of controlling for differences in cases is considered below.

Figure 11.2: Outcome, by each of the main solicitor groups

11.20 Table 11.3 below shows that private directed trials were particularly unlikely to go to trial. They had a particularly high rate of guilty pleas (84%). The rate of guilty pleas for PDSO cases (78%) is higher than for private non-directed cases (76%) but (without controlling for differences between cases) the difference is marginal (and not significant).

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41 p=0.199
Table 11.3: Nature of outcome, by each of the main solicitor groups

<table>
<thead>
<tr>
<th></th>
<th>Private non-directed</th>
<th>Private directed</th>
<th>PDSO</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td><strong>Convictions:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plea of guilty as libelled</td>
<td>303</td>
<td>38</td>
<td>253</td>
<td>46</td>
</tr>
<tr>
<td>Mixed plea: guilty to something</td>
<td>301</td>
<td>38</td>
<td>213</td>
<td>39</td>
</tr>
<tr>
<td>Found guilty (at least in part)</td>
<td>59</td>
<td>7</td>
<td>23</td>
<td>4</td>
</tr>
<tr>
<td><strong>Not convicted</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Case deserted/not guilty plea accepted</td>
<td>88</td>
<td>11</td>
<td>47</td>
<td>8</td>
</tr>
<tr>
<td>Acquitted after evidence led</td>
<td>47</td>
<td>6</td>
<td>17</td>
<td>3</td>
</tr>
<tr>
<td>All cases where outcome known</td>
<td>798</td>
<td>100</td>
<td>553</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

11.21 Further analysis of conviction rates between solicitor groups is contained in Appendix 5. In particular, the Appendix compares differences in conviction rate between courts. It shows that the difference applies almost exclusively to the Sheriff Court. The PDSO's "success rate" in the District Court was equal to if not better than that of the non-directed group.

Controlling for differences in cases

11.22 Given that the PDSO handled slightly different types of case, it is necessary to control for variations in case and client characteristics.

11.23 Here we consider what factors led to no conviction as opposed to a conviction of some sort (as libelled or partial). Appendix 8 sets out the results of a regression analysis. The factors that were significantly more likely to lead to a conviction were prosecution in the Sheriff Court (as opposed to the District Court) and multiple charges. Compared with road traffic cases, offences of violence were significantly less likely to lead to conviction. Cases with multiple accused were also less likely to result in a conviction. However, most offender characteristics (such as age or sex) did not affect the chances of conviction.

11.24 We compared cases handled by the PDSO with those handled by private solicitors for non-directed cases. Controlling for intrinsic factors, we found that PDSO cases were

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42 For the record, the Appendix contains a table similar to Table 11.2 above, comparing the proportion of cases deserted/found not guilty at each stage. The proportions are similar to Table 11.2 and do not show any significant difference in the proportion of cases deserted/found not guilty at each stage. The main difference would appear to lie in the number of cases resolved at each stage. However, care needs to be taken in interpreting any fine distinctions between solicitor groups. The first problem is that the numbers are small (with only 59 PDSO cases in the sample where the client was not convicted). The second problem is that the samples do not necessarily have identical characteristics. Above, we discuss how earlier resolution is linked to a higher conviction rate. This explanation for the higher conviction rate is based on tendencies within the sample as a whole, and not specifically on comparisons between PDSO and private non-directed cases.

43 Miscellaneous, sexual offences and damage to property were also less likely to lead to conviction, but account for far fewer cases in the study.
significantly more likely to result in a conviction. The model found that the odds of a PDSO client being convicted were 52% higher, a finding that was significant at the 95% level. In practical terms, such an increase means that, according to the model, PDSO representation increased the chances of a client being convicted from around 83% to 88%.

11.25 As before, one also needs to take into account a possible selection effect: that private solicitors were more likely to handle cases where the accused had expressed an intention to enter an immediate plea of guilty. Given this, the difference in conviction rate between the PDSO and private solicitors acting for non-directed clients may be greater than appears from the above statistics.

PLEA BARGAINS

11.26 The Canadian research discussed in Chapter 7 suggests that salaried defenders are more likely to negotiate plea bargains for their clients. The Burnaby study, in particular, found that staff lawyers had better relationships with the prosecution and were thus more likely reach some negotiated outcome to the case.

11.27 When the PDSO was set up, the Canadian findings led to some fears that it might develop inappropriately "cosy" relations with the prosecution. However, private solicitors were unanimous in stating that this had not happened. Procurators Fiscal also stressed that their relationship with the PDSO was based on the same ground rules as with any other firm. However, they felt positively towards the PDSO. It was suggested that, because they were less motivated by money, they may be more trustworthy. They were also thought to be "better organised" than most defence solicitors, which made communications easier:

"[The PDSO is] probably easier to get hold of to be quite honest... It's a small office, and they've started from scratch, so it is probably better organised than some." (Procurator Fiscal interview)

11.28 The Procurators Fiscal suggested that the office was better at agreeing pleas. First they could be "more realistic than other defence solicitors in entering pleas of guilty". Secondly they were more "pro-active" in their approach: "because they are good in terms of their correspondence they will write and offer the plea and they are good in terms of telephoning".

Quantitative data

11.29 The court data also suggested that the PDSO may be somewhat more likely to resolve cases with a plea bargain, though the effect was not strong.

11.30 Figure 11.3 looks only at cases resolved by a plea of guilty. It shows that of private non-directed cases, half (50%) were pleas of guilty as libelled and half were some sort of mixed plea, agreed with the Procurator Fiscal. In comparison, the PDSO was slightly more likely to resolve cases with a mixed plea (55%) and private solicitors acting for directed cases were less likely (46%). However, the difference between the PDSO and private non-directed samples was not statistically significant on these bare figures.
Figure 11.3: All cases resolved by a plea of guilty: whether plea was guilty as libelled or mixed, by main solicitor groups

Base: All cases resolved by a plea of guilty: private non-directed 604; private directed 466; PDSO 327.

11.31 The difference is most marked in the Sheriff Court. Figure 11.4 shows that of Sheriff Court guilty pleas, 61% of PDSO cases were resolved with a mixed plea, compared with 55% of private non-directed cases. This result was significant only at the 90% level.
Controlling for differences in cases

11.32 Appendix 5 considers which cases are particularly likely to end in a mixed outcome. Such outcomes were much more common in the Sheriff Court than the District Court. Also the more charges, the more likely that at least some would be dropped. The chances of a mixed outcome were also significantly greater for offences of violence, theft and public order than for road traffic offences. Given that the PDSO were more likely to handle offences of violence and less likely to handle road traffic cases, the "real" difference may therefore be less than appears from the bare figures alone.

11.33 The regression analysis in Appendix 8 shows that once one controls for these background characteristics, PDSO cases were a third more likely to result in a mixed outcome. However, this finding was significant only at the 90% level. In other words, there was a one in ten possibility that the difference could have occurred by chance.

Timing of plea bargains

11.34 We were asked to consider whether the likelihood that the case would be concluded with a plea bargain increased as the case progressed. Table 11.4 shows the total number of pleas taken at each stage, and considers the number of mixed pleas as a proportion of all pleas. It shows that the later a plea is taken, the greater the probability of a plea bargain.

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44 p=0.092.
While only 26-38% of pleas taken at pleading diet are mixed, 75-78% of pleas taken before trial are mixed. This provides quantitative support for the commonly-held view that "the time to get a good plea is the morning of the trial".

11.35 The rate of mixed pleas rose for both PDSO and private non-directed cases. The main difference between the PDSO and private solicitor would appear to lie in pleas taken at pleading diet. Public defence solicitors told us that, since becoming salaried, they were more prepared to "go upstairs and speak to the Fiscal" at pleading diets. Again, this is supported by the data. However, its effect on the total number of mixed outcomes is partially offset by private solicitors' greater tendency to hold out until the trial diet itself.

Table 11.4: Number of mixed pleas, as a proportion of all pleas, at each stage: private non-directed cases vs PDSO cases

<table>
<thead>
<tr>
<th></th>
<th>Private non-directed</th>
<th></th>
<th>PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A) No. of pleas at each stage</td>
<td>B) No. of mixed pleas</td>
<td>B) as a % of A)</td>
</tr>
<tr>
<td>Pleading diet</td>
<td>270</td>
<td>70</td>
<td>26%</td>
</tr>
<tr>
<td>Intermediate diet</td>
<td>166</td>
<td>100</td>
<td>60%</td>
</tr>
<tr>
<td>Trial diet (before evidence led)</td>
<td>168</td>
<td>131</td>
<td>78%</td>
</tr>
<tr>
<td>ALL PLEAS</td>
<td>604</td>
<td>301</td>
<td>50%</td>
</tr>
</tbody>
</table>

Types of plea bargain

11.36 Plea bargaining in Scotland, unlike some other common law jurisdictions, is a private matter between prosecution and defence. It does not involve judges or any explicit discussion of sentences. As Moody and Tombs (1982) explain in their research into the prosecution process, “the focus is on the particular charge or charges, charge bargaining, which may be invoked in relation to a particular criminal incident”. By tradition, the defence solicitor approaches the Fiscal. The defence may suggest that their client pleads guilty to a lesser charge, or an alternative charge, or to some charges but not others. Often they will suggest that a client plead guilty to the same substantive charge but with some of the words deleted. Moody and Tombs use interviews with Procurators Fiscal to describe this as follows:

"This type of negotiation can only occur with Common Law charges where the style of charge is not regulated by statute. It is particularly common in assault or breach of the peace charged, for example: ‘take the typical public house brawl where a man has been assaulted in a number of ways – punched, kicked, knocked to the ground, head stood on. An agent may approach me and say, ‘My client admits the charge but says he did not stand on the man’s head’.”

(Moody and Tombs 1982 p.107)

11.37 A key question is how far a reduction in charges or words affects the sentence imposed. Moody and Tombs suggest that there may be a considerable degree of “face-saving”. The change may be used to impress the accused that he has “scored some kind of victory, that his
side of the story has been accepted”. Meanwhile, they suggest, both the Procurator Fiscal and defence solicitor may know that it has made no difference to the disposal of the case (p.126).

11.38 In our interviews, solicitors expressed varying views on the difference that would be made to sentence by standard deletions. They all accepted that some deletions were purely token - where, for example, one item was deleted from a long list of stolen property. But when we asked about the effect of removing "kicked" or "spat" from an assault charge, views differed widely. Some suggested that it "would make a massive differences", as to kick or spit was regarded as much more serious offence than to hit. 45 Others, however, were less sure: the Sheriff would see the words that had been deleted and would listen to the evidence of injury. This would, inevitably, colour their judgement: "most of them have been through the mill themselves and know why these things are done". Given the range of individual discretion over sentencing, it was hard to say whether any reduction in charges or charge wording did or did not affect the eventual outcome.

11.39 It is difficult to provide a typology of plea bargains that reflects the subtleties of the process. In our study we classified cases based on the most serious charges on the complaint. We then classified them again at the end of the case, based on the most serious charge of which the client was convicted. This allowed us to see whether the negotiations had reduced the overall character of the offence - by, for example, reducing a serious assault to a simple assault, or reducing a simple assault to breach of the peace. We were also able to distinguish cases that involved conviction on fewer charges, from those that involved the mere deletion of words. The results are given in Table 11.5, which compares the nature of the bargain reached by the three solicitor groups. Where the bargain focused on fewer charges, the average number of charges dropped (1.5) was the same across the three groups.

Table 11.5: All cases resolved through a mixed plea: type of plea bargain reached, by the main solicitor groups

<table>
<thead>
<tr>
<th>Change in overall nature of offence</th>
<th>Private non-directed</th>
<th>Private directed</th>
<th>PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Change in overall nature of offence</td>
<td>79</td>
<td>26</td>
<td>37</td>
</tr>
<tr>
<td>Fewer/lesser charges</td>
<td>191</td>
<td>63</td>
<td>145</td>
</tr>
<tr>
<td>Word deletions only</td>
<td>31</td>
<td>10</td>
<td>31</td>
</tr>
<tr>
<td>TOTAL mixed outcomes</td>
<td>301</td>
<td>100</td>
<td>213</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Table 11.5 shows that, as far as we were able to tell, the nature of the bargains reached by the PDSO were similar to those reached by private solicitors acting for non-directed clients. It suggests, however, that private solicitors acting for directed clients were less successful in making substantial changes to the nature of the offence.

CONCLUSION

11.40 The outcome study highlighted two important elements of Scottish summary procedure. First the vast majority of accused were convicted of at least something: 83% of non-directed

45 Spitting, in particular, raised strong emotions and was felt to be a "disgusting" way of fighting.
clients ended with a conviction. Second, contested trials played only a minor part of the system. The great majority of those who were convicted were convicted through a guilty plea, and the majority of those who were not convicted had the case against them abandoned before it reached trial.

11.41 In such circumstances, the chances of not being convicted depend crucially on how long the accused is prepared to maintain a plea of not guilty. The chances of a non-conviction - almost negligible at pleading diet - rise at the intermediate diet and become appreciably greater just before the trial starts, when the prosecution discovers whether its witnesses have turned up. They are highest after evidence has been led.

11.42 The previous chapter showed that clients born in January and February had their cases resolved at an earlier stage. This increased the chances of conviction. Given how high the chances of conviction were already, the effect was not great (from 83% to 87%) but it was highly significant.

11.43 When one compares PDSO cases with private non-directed cases and controls for differences in cases, the PDSO cases also had a higher chance of conviction (an effect that was significant at the 95% level). In so far as private solicitors selected out initial guilty plea cases, the effect would be greater. It appears that the result of the PDSO's more co-operative approach in resolving cases at pleading diet and intermediate diet rather than just before trial is to increase the chances of conviction by a small but appreciable amount.

11.44 Canadian research has suggested that public defenders are more likely to reach negotiated settlements with the prosecution. In Edinburgh, there was no special relationship between the PDSO and the fiscal service, though the Procurators Fiscal we talked to thought that the office was somewhat more pro-active and efficient at suggesting pleas. The quantitative data suggested that the PDSO may be somewhat more likely to conclude cases with a plea bargain rather than a plea of guilty as libelled, though the effect was not strong. It was significant only at the 90% level.
CHAPTER 12: COMPARING SENTENCES

12.1 As previously discussed, several Canadian studies have highlighted the fact that staff lawyers tend to achieve more favourable sentences for their clients. Four separate studies have compared the proportion of convicted clients imprisoned, and they have all found substantial differences in favour of staff lawyers. Table 12.1 summarises the main findings. It shows that, in the Burnaby experiment, for example, 40% of private lawyer clients were imprisoned, compared with only 30% of staff lawyer clients.

Table 12.1: Summary of findings from four Canadian studies: percentage of convicted clients sentenced to imprisonment, by lawyer type

<table>
<thead>
<tr>
<th>Private lawyer clients</th>
<th>Staff lawyer clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burnaby experiment</td>
<td>40</td>
</tr>
<tr>
<td>BC evaluation</td>
<td>42</td>
</tr>
<tr>
<td>Manitoba evaluation:</td>
<td></td>
</tr>
<tr>
<td>Breaking and entering</td>
<td>35</td>
</tr>
<tr>
<td>Theft</td>
<td>28</td>
</tr>
<tr>
<td>Assault</td>
<td>25</td>
</tr>
<tr>
<td>Overall</td>
<td>23</td>
</tr>
<tr>
<td>Saskatchewan evaluation</td>
<td>32</td>
</tr>
</tbody>
</table>


These differences in sentence reflected the fact that staff lawyer clients were more likely to plead guilty and pled guilty earlier. Staff lawyers were also more likely to resolve cases through negotiated settlements. The Canadian criminal courts give substantial sentencing discounts to those who co-operate in this way.

12.2 The previous chapters have shown that directed clients in general (and PDSO clients in particular) were more likely to plead guilty and to plead guilty earlier. The PDSO may also have had a greater tendency to negotiate pleas with the fiscal service. In this section we examine whether this greater level of co-operation resulted in lower sentences in the Scottish context.

DIRECTED VS NON-DIRECTED CASES

12.3 As before, we start by comparing all represented directed cases with all represented non-directed cases, irrespective of the solicitor used.

12.4 In order to assess sentencing outcomes, we have assigned cases to broad groups. The way that this has been done is described in Appendix 7. The groups run in order of

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46 The four studies are Burnaby (Brantingham 1981); The British Columbia Evaluation (Brantingham and Brantingham 1984); the Manitoba evaluation (Sloan 1987) and the Saskatchewan evaluation. The main problem with studies of this type is to compare like with like. Note, however, that the Burnaby evaluation involved random allocation. The British Columbia evaluation three years later looked at cases throughout the province and came to very similar results. The Manitoba evaluation controlled for such facts as case type and prior records. The final evaluation (Saskatchewan) is less sophisticated and probably overestimates the difference.
punitive ness: custody is the most serious, followed by community sentences (CSO/probation), driving disqualifications and financial penalties. Admonitions etc. is the least serious group.

12.5 Figure 12.1 shows few sentencing differences between the directed and non-directed groups. Although the figures suggest that directed clients were slightly more likely to be imprisoned and slightly less likely to receive a fine, the difference is not statistically significant.

Figure 12.1: Sentence imposed, by broad group: all convicted represented directed cases compared with all convicted represented non-directed cases

Nor is there any evidence that directed clients were given shorter prison sentences. The average sentence for directed clients (at 96 days) was in fact slightly higher than for non-directed clients (86 days). The only slight benefit that we could find in favour of January - and February-born clients was that among those for whom the main penalty was a fine, the amount of that fine was marginally less: an average of £185 for directed clients compared with £201 for non-directed clients (a difference that is not statistically significant).

12.6 From an international perspective, this is a surprising result. As we have seen, for reasons unconnected with the intrinsic nature of the case, directed cases were more likely to plead guilty, and pled guilty at an earlier stage in the proceedings. In other common law jurisdictions, such as Canada or England and Wales, defendants could expect as a matter of policy to be granted sentencing discounts for their greater co-operation with the system.

12.7 Under the English system, the choice between pleading guilty in the Magistrates’ Court and pleading not guilty in the Crown Court makes an immediate and significant difference to the sentence received. One research study found that, for comparable cases, the Crown Court
is three times more likely to impose a custodial sentence than the Magistrates’ Court (Hedderman and Moxon 1992).

12.8 Within the Crown Court, most interest has been focused on the length of custodial sentences. The rules suggest that those pleading guilty before trial can expect a sentencing discount of up to one third.\(^{47}\) Research by Flood-Page and Mackie (1998) found that, in practice, discounts could be even greater, with reductions in prison sentences of up to 40%.\(^{48}\) However, the study concluded that (except for some drugs offences) an earlier plea did not reduce the likelihood of a custodial sentence. Nor did it reduce the length of community service orders or probation.\(^{49}\) It did, however, reduce the amount of a fine.\(^{50}\)

**CRIMINAL PROCEDURE (SCOTLAND) ACT 1995, SECTION 196**

12.9 The Scottish criminal justice scheme has traditionally been wary of the idea of imposing more lenient sentences on those pleading guilty. The High Court decision in *Strawhorn v McLeod* (1987), for example, decreed that imposing a discounted sentence to encourage guilty pleas was "an objectionable practice which should now be stopped".\(^{51}\) Chapter 9 described how the 1993 Review of Criminal Evidence and Procedure expressed concern about the number of unnecessary trial diets, and recommended compulsory intermediate diets. As well as providing a forum that would encourage earlier guilty pleas, the Review also considered the question of motivation. It observed that not much was known about the reasons for late changes of plea but that there was little incentive for an accused to plead guilty at the outset of the process (Scottish Office 1993b para. 25). It suggested a system of generalised sentence discounting, including a reduction in the sentence where there was an early plea of guilty.\(^{52}\) In the subsequent White Paper, the government indicated that it intended through legislation to make it clear that it was within the discretion of the court to impose a reduced sentence as a result of an early guilty plea, thus sweeping aside *Strawhorn v McLeod*.\(^{53}\)

12.10 Consequently, section 196 of the Criminal Procedure (Scotland) Act 1995 states that in sentencing an offender who has pled guilty, the court: "may take into account - (a) the stage in the proceedings ... at which the offender indicated his intention to plead guilty, and (b) the circumstances in which that indication was given". This gives no more than a gentle steer to the courts and clearly provides no guarantee that any discount will be given for an early plea. It contrasts with the relevant English legislation which says "shall" rather than "may" and goes on to stipulate that where a court does impose a less severe punishment as a result, it shall state this in open court.\(^{54}\)

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\(^{48}\) They found that the average custodial sentence for those pleading guilty initially was 22 months, compared to 25 months for those who later change their plea to guilty, and 36 months for those found guilty after trial. For further discussion see Ashworth (1998) pp.277-280 and Hood (1992).

\(^{49}\) Flood-Page and Mackie (1998) p.92. Henham (2001) confirms that judges were much less likely to refer to section 48 when imposing a community sentence than when imposing a custodial sentence.

\(^{50}\) Flood-Page and Mackie (1998). Those pleading guilty were fined £548, compared with £835 for those proceeding to trial (p.92).

\(^{51}\) Scottish Office (1993b), para. 111.

\(^{52}\) Above, para. 29 and Chap 11.


12.11 Although no specific previous research has been carried out upon the impact of this provision in Scotland, the information available seems to indicate that little in the way of sentence discounting does take place, particularly in the summary courts. There appear to be two main barriers: first, on grounds of principle, the reluctance of some members of the judiciary to countenance any system of sentence discounting or plea bargaining; and, second, on a practical level, the difficulty of granting any meaningful sentence discount in most summary cases, where the penalties are usually fairly low - most often a small fine. Thus, the common perception that sentence discounting does not take place on any consistent basis has meant that section 196 appears to have had little impact on increasing the number of early guilty pleas.

Our interviews

12.12 Interviews with professionals within the criminal justice system confirm the limited effect of section 196, at least within summary proceedings. Sheriffs and justices of the peace said that they gave some discount for early pleas, but that the effect was limited. Meanwhile several defence agents and procurators fiscal were sceptical that any discounts were granted for early pleas. It was suggested that, if discounts were granted, their effect was eliminated by the countervailing advantages of delay.

12.13 The two Sheriffs we spoke to both said that section 196 was mentioned frequently in pleas of mitigation: "all defence solicitors now bring it to your attention". They would take an early plea into effect, but not so as to change the character of the sentence. They might, for example, reduce the length of a custodial sentence, but they would not, for example, reduce a term of imprisonment to community service:

"If the only appropriate sentence was one of imprisonment, then the period of imprisonment would be slightly shorter for a plea of guilty. But I certainly wouldn't change the essential character of the sentence for an earlier plea.... I wouldn't give someone community service at an earlier diet and prison at a later diet. I don't think that's appropriate. It would go to the quantum - it might be four months rather than six months." (Sheriff interview, 2000)

"I think if I'd decided a custodial sentence was appropriate, then I might make it slightly shorter. But certainly, the decision 'custody or not-custody' would not depend on that."(Sheriff interview, 2000)

12.14 Again, both Sheriffs said that, if they were imposing a fine, they "might make it slightly smaller". However, one Sheriff was specific that they would not reduce the length of a probation or community service order. Furthermore, an early plea was only one factor among many. It would have to be weighted against many mitigating and aggravating factors, rather than imposed as a specific factor in its own right:

"I wouldn't say I was going to sentence you to so many months, but since you've pled guilty at the first opportunity, it's going to be x months. I wouldn't say that." (Sheriff interview, 2000)
12.15 The Justices of the Peace also stressed the uncertain and limited nature of the discount:

"The level of discount... would depend very much on the facts and circumstances and the seriousness of the case. The justice of the sentence would be the primary consideration... A 10-15% discount [might be considered]." (Justice of the Peace interview, 2000)

"I wouldn't say it has a gross effect on sentence - between 10% and 30% - 10% at an intermediate diet and maybe 30% at a pleading diet. But it's such a qualitative rather than a quantitative process in terms of giving weight to all the relevant factors. [It is difficult to say] 'if you plead guilty at the pleading diet you will get 30% off', because it is difficult to say what you are discounting from." (Justice of the Peace interview, 2000)

12.16 Several defence solicitors suggested that the effect of section 196 was even more limited than these replies would suggest:

"In the main, I don't think sheriffs do give discounts for early pleas. It is always part of somebody's plea when they are pleading at the first available opportunity. OK, the Sheriff might think I would give him six months for this, but I'll give him five, but somebody who pleads at the last minute at trial will get five too... You can always say that this isn't the worst case and get it reduced from." (Private solicitor interview, 2000)

"My general experience is that it makes absolutely no difference whatsoever." (Private solicitor interview, 2000)

In this instance, the views of defence agents coincided with the views of the Procurators Fiscal:

"It is very hard [to know] because sentencing varies so much from individual sheriff to individual sheriff, in a way that is really quite unacceptable... Certain sheriffs are harsh in all circumstances, impervious to any plea in mitigation. And certain sheriffs are harsh in no circumstances, and are amenable to all pleas in mitigation. And that's a given". (Procurator Fiscal interview, 2000)

12.17 Several respondents noted that delay could also be used in mitigation. One solicitor for example, pointed out that a gap between the offence and sentencing might be beneficial: "one can say, well he's been out of trouble for six months". A Procurator Fiscal added a list of all the other mitigating factors that solicitors could use for a late plea:

"Yes - or moved on, or moved out, or moved away, circumstances have changed, they've been rehabilitated from a drug habit, changed a peer group, acquired work, all of that." (Procurator Fiscal interview, 2000)

12.18 When those who pass sentence told us that they make some allowance for an early plea, they were telling the truth as they perceived it. What they could not say was what sentence they would have thought appropriate had they heard the evidence or listened to a plea of mitigation made at a later stage. Mentioning section 196 is clearly a standard part of early
pleas of mitigation. However, solicitors are not short of material to use in late pleas of mitigation. They may, for example, rely on a more favourable negotiated plea, or be able to point to changes in circumstances. The comparison between directed and non-directed accused presented earlier strongly suggests that if any discount is given for early pleas, the effects are counteracted by the advantages of late pleas and delays.

DIFFERENCES BETWEEN SOLICITOR GROUPS

12.19 Figure 12.2 sets out the sentences imposed on the clients of each of the main solicitor groups. It shows little difference between PDSO and private non-directed cases in the rate of custodial sentences (with 16.1% of private non-directed cases imprisoned, compared with 15.4% of PDSO cases).

**Figure 12.2: Sentence imposed, by main solicitor group**

<table>
<thead>
<tr>
<th>Representation Group</th>
<th>Priv: non-directed</th>
<th>Priv: directed</th>
<th>PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custody</td>
<td>16</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Driving disqual</td>
<td>12</td>
<td>2</td>
<td>15</td>
</tr>
<tr>
<td>Admonition etc</td>
<td>21</td>
<td>41</td>
<td>16</td>
</tr>
<tr>
<td>Fine/comp</td>
<td>5</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Base: Convicted cases where sentence is known: private non-directed 682; private directed 504; PDSO 363.

12.20 The average length of a custodial sentence was also very similar: 85 days for private non-directed cases and 87 for PDSO cases. For those whose main sentence was financial, however, there was a small difference in the amount of the fine: the average fine was £178 for PDSO compared with £203 for private non-directed cases. These bare figures, however, are difficult to interpret without controlling for differences between cases.

12.21 We therefore conducted a multi-variate analysis to control for these differences (see Appendix 8). The first, crucial, issue was what factors led to an increased likelihood of a custodial sentence. Unsurprisingly, clients were more likely to be imprisoned if they appeared in the Sheriff Court, if they appeared from custody, if they had previous convictions or if they had received custodial sentences in the past. Theft offences (including housebreaking) were
also significantly more likely to lead to custody, as did multiple offences and offences committed whilst on bail.

12.22 Controlling for such factors, the model found almost no difference between PDSO and private non-directed cases in the rate at which custodial sentences were imposed.  

12.23 We also considered the chances that an accused would receive a serious sentence - that is custody, community service or probation, as opposed to less serious sentences such as driving disqualification, fines or admonitions. Again, there was no significant difference between PDSO and private non-directed clients (see Appendix 8).

12.24 Finally, we focused exclusively on those given a primarily financial penalty, and considered the amount of the fine (Appendix 8). In general, fines were greater for Sheriff Court cases, and for violence, theft and property crimes (compared with road traffic). It also appears that women may be fined less heavily than men. When one controlled for such factors, the difference between the PDSO cases and private non-directed cases was not statistically significant. However, it was close to significance. The reduced model was significant at the 90% level.  

CONCLUSION

12.25 The PDSO pilot offered unique experimental conditions through which to assess the impact of early pleas on sentencing in summary procedure. We have two very similar groups (accused born in January and February compared with those born in November and December). For reasons connected with the way in which their solicitors were paid (and entirely unconnected with the circumstances of the crime), the January /February-born accused pled guilty at an earlier stage. They were significantly more likely to plead guilty at the pleading diet, and significantly less likely to plead guilty just before trial. The result was that they stood a greater chance of being convicted. However, they received no discernible sentence discounts. The sentences handed out to the January/February-born accused were as serious as those handed out to the November/December-born accused.

12.26 The PDSO Director told us that "our goal, by and large, is to keep clients out of prison". The Office did several things that in other jurisdictions have been shown to lead to clear, substantial reductions in the use of custody. They resolved cases at an earlier stage and appeared more likely to reach plea bargains with the prosecution. As described in Chapter 4, they also developed links with social work agencies and tried to make the maximum use of the available rehabilitation schemes. None of these activities, however, appear to have had any measurable effect on the chances that the courts would impose custodial sentences on their clients. Nor did it affect the length of the custodial sentence, nor the prospects of a

\[56\] In the model, the odds of a custodial sentence for PDSO clients were 6% lower. Within the private non-directed group the chances of prison sentence were 16.1%, giving an odds ratio of 0.161:0.839 (0.192). If the odds ratio decreased by 6% to 0.18, the chances of prison would fall to 15.25%. This is a very small difference, and the chances that it happened as a result of random fluctuations are over 80%. It does not begin to approach statistical significance.

\[57\] On the full model, p=0.11 and on the reduced model p=0.06.
fine/driving disqualification rather than a more serious community or custodial sentence. It is possible, however, that PDSO clients received a somewhat reduced fine.
CHAPTER 13: PROCESS AND OUTCOMES: CONCLUSION

13.1 This part of the report reached three key findings:

1. The PDSO was more likely than private solicitors acting for non-directed clients to resolve the case at the pleading diet or intermediate diet, and less likely to go to a trial diet.

2. PDSO cases were more likely to end in a conviction than cases handled by private solicitors for non-directed clients.

3. There was no difference in the rate of custodial sentences imposed on PDSO clients compared with non-directed clients.

13.2 These findings emerge from different levels of analysis. First, we compared all represented directed clients with all represented non-directed clients. The PDSO experiment as a whole changed in the way that solicitors were paid and this led to changes in the way that cases were processed through the courts. Where the accused was born in January or February, the case was resolved at an earlier stage. This, in turn, led to a slight but measurable increase in the conviction rate. By pleading guilty at pleading diet or intermediate diet, clients forwent the small but real possibility that the prosecution case would collapse before or at trial. The Scottish criminal justice system gives little in the way of sentence discounts for earlier pleas in summary cases. Despite their earlier pleas, the sentences given to convicted January and February clients were much the same as those given to those born in November or December.

13.3 When one compares all directed with all non-directed cases, one is looking at the behaviour of both private and PDSO solicitors. If one just looks at PDSO cases and controls for differences in the background characteristics of PDSO cases, a similar picture emerges. PDSO cases were more likely than private non-directed cases to be resolved at pleading diet or intermediate diet, and less likely to involve a trial diet. They were also more likely to result in a conviction. There was no discernible effect on the likelihood that a custodial sentence would be imposed.

13.4 Finally, we have considered the possible effect of a further selection against guilty pleas in cases reaching the PDSO. This, if it occurred, would strengthen the existing findings. We do not, however, rely on this effect in reaching our conclusions.

13.5 Table 13.1 summarises how strongly the data support each of the three main propositions, at each level of analysis:
Table 13.1: Strength of support for main propositions at each level of analysis

<table>
<thead>
<tr>
<th></th>
<th>Directed vs non-directed cases</th>
<th>PDSO vs priv n-d cases: multivariate analysis</th>
<th>Selection effect against guilty pleas</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. More likely to resolve at PD/ID</td>
<td>significant at 99% level</td>
<td>significant at 99% level</td>
<td>effect would be stronger</td>
</tr>
<tr>
<td>2. More likely to be convicted</td>
<td>significant at 99% level</td>
<td>significant at 95% level</td>
<td>effect would be stronger</td>
</tr>
<tr>
<td>3. No difference in rate of custodial sentences</td>
<td>no significant difference</td>
<td>no significant difference</td>
<td>no clear effect</td>
</tr>
</tbody>
</table>

13.6 Alongside these three main conclusions, we reached the following ancillary findings:

- As well as being resolved at an earlier stage, PDSO cases did not take as long and involved fewer diets.

- PDSO clients were less likely to be held in detention during the course of the case. There are probably several explanations for this, including the fact that PDSO cases involved fewer diets and the Office had developed good links with the SACRO bail scheme.

- Public defence solicitors were regarded as more pro-active at agreeing pleas with the prosecution. The data indicate that they may have been more likely to conclude cases with a plea bargain, but this finding is significant only at the 90% level.

- In analysing sentences, we also looked at the length of custodial sentences and compared the likelihood of a serious sentence (custodial or community) with driving disqualifications, fines and lesser sentences. As with the rate of custodial sentences imposed, we found no significant differences - either between directed and non-directed cases, or between PDSO and private non-directed cases. It is possible that PDSO clients were given a reduced fine, though the difference did not reach the 95% significance level normally required in studies of this kind.
PART C

The Client Perspective
CHAPTER 14: HOW CLIENTS JUDGE THEIR SOLICITORS

14.1 In this section we turn our attention to the client perspective. One of the four criteria on which we were asked to evaluate the PDSO was client satisfaction. We see this both as important in its own right and as a crucial ingredient of quality.

14.2 Our primary source of information on client satisfaction was postal questionnaires. (see Appendix 2). Questionnaires are a good means of providing quantitative data to compare different services. On their own, however, they often given little sense of why clients feel the way that they do. To provide greater understanding and interpretation of the results, we carried out 17 client interviews: five pilot interviews in 1999 and 12 in-depth interviews in 2000 (see Appendix 3).

14.3 Chapter 6 discussed how criminal justice professionals judged the quality of criminal defence work. Here we draw on previous literature and our own interviews to look at how clients made these judgements. It forms a necessary background to the main comparison, set out in Chapter 15.

PREVIOUS LITERATURE

The passive client

14.4 Most of the literature on the relationship between criminal defence lawyers and their clients has stressed the passivity of clients (Blumberg 1967, Bottoms and Maclean 1976, Carlen 1976, Ericson and Barenk 1982, McConville et al. 1992). Lawyers are portrayed as processing hopeless, confused people through the system in a routine, ritualised way, often owing greater loyalty to the prosecution and the court than to their clients.

14.5 Blumberg (1967) described the relationship between solicitors and their clients as "transient, ephemeral and often superficial". He suggested that much of what American defence lawyers did was "a confidence game" to part criminals from the spoils of their trade (p.243). The strategies included deliberately lowering the client’s expectations, making extravagant claims of insider knowledge and play-acting dramatic but superficial pleas in mitigation to impress the client.

14.6 McConville et al. (1992) take a similar approach, providing an updated list of tricks in an English legally-aided context. Again, these included reducing expectations, often bemoaning the harshness and inconsistency of magistrates (p.169). It may be done with a false "mateyness", in which solicitors feign a familiarity they do not possess (p.168). The authors also describe staged bail applications and pleas, made to impress the client but with little hope of success (p.180, 201). McConville et al. suggest, however, that the best client managers were not solicitors but the unqualified clerks who carried out most of the preparatory task. By reducing the social distance between themselves and their clients, they succeeded in producing passive, co-operative clients.

14.7 These "tricks" are not unique to criminal work. Studies of civil work also stress the importance lawyers place on managing their image with the client (Rosenthal 1974, Sarat and
Felstiner 1995). However, it is suggested that criminal clients have less social and economic power and are therefore more vulnerable to lawyers’ ploys.

14.8 This school of thought suggests that clients may be in a poor position to judge their solicitors. However, several of these studies (including McConville et al. 1992) looked at lawyers rather than clients. Although they observed solicitor-client interactions, they did not explore what the clients thought.

14.9 One of the largest qualitative studies of clients was carried out by Ericson and Barenek (1982) in an anonymous Canadian city. They described defendants as "dependants" in the criminal process, whose main characteristics were low expectations, forced trust and an inability to judge the service they received. Clients usually trusted their lawyers because they had to, and when asked about it "became somewhat inarticulate" (p.93). Failing any other means to judge the service, clients fell back on outcome as the main evaluative criteria. Where negative feelings were expressed, it was frequently because the outcome did not match their expectations (p.89).

**Judgements based on process**

14.10 The idea that clients judge mainly on outcome, however, has been disputed. Larger-scale quantitative work suggests that process - that is, the way in which clients are treated by the system - is also important. For example, Casper, Tyler and Fisher (1988) analysed data from those convicted of felonies in three US cities. They concluded that clients’ evaluations of their treatment by the criminal justice process did not depend entirely on the sentence received: "rather their sense of fairness – in terms of both procedural and distributive justice – appears to have substantially influenced their evaluations" (p.503). The authors measured "procedural justice" through 16 items, of which six related to the defence lawyer, including whether the lawyer believed them, fought hard for them, listened and gave good advice.

14.11 This emphasis on procedural issues was developed by Tyler in a later book on how people’s everyday experience of law enforcement agencies affected their belief in the legitimacy of the law (1990). Analysing data from Chicago, he found that people valued the opportunity to present their point of view and feel that they were listened to, even if what they said had no direct effect on the decision. Furthermore, "people place great weight on being treated politely and having respect shown for themselves as people" (p.138). This was true not only of the criminal justice system but of many other aspects of life, including encounters in schools, the workplace and politics (p.74). These factors – being listened to and treated with respect – are sometimes referred to as "voice". They have been described as "value-expressive", on the grounds that they relate to people’s sense of underlying values rather than to a purely instrumental view of costs and benefits (p.117). Tyler argues strongly that one should not dismiss the importance of voice. When people had had an encounter where they did not feel they had been treated with respect, their belief in the legitimacy of legal authorities diminished.

14.12 More recently, Sommerlad and Wall (1999) carried out 44 in-depth interviews with legal aid clients in England and Wales, of whom 15 had used a solicitor in connection with a criminal case. Unlike Ericson and Barenek (but like Tyler) they found that clients judged solicitors on a variety of interpersonal and technical criteria, with interpersonal criteria being by far the most important. Support, honesty and communication were all seen as crucial.
Their study echoes research with matrimonial clients (Davis 1988) in suggesting that, unless solicitors established a good rapport with clients, they would fail to elicit enough information to perform a technically competent service.

THE SOLICITOR/CLIENT RELATIONSHIP IN EDINBURGH

14.13 Our own interviews confirmed that criminal accused were often passive spectators in the criminal process. Clients described how stressful the experience was and how little they understood of it. They played only a small part in the process outside the court and were largely silent within it. However, the picture presented by Blumberg, Ericson and others can be overstated, at least within the context of summary cases in Edinburgh. Relationships between solicitors and clients were not necessarily transient. All the solicitors we spoke to and many of the clients stressed the importance of building long-term relationships that subsist over many years.

14.14 Clients could not necessarily judge the technical aspects of what lawyers did. However, they still made judgements. With a couple of exceptions, they showed little of the inarticulateness referred to by Ericson and Barenek. Nor were judgements made primarily on the basis of outcomes. Instead, clients wanted to be treated with respect as people: to be acknowledged as individuals and to have their views listened to. This echoed Tyler's views about the importance of "voice". Clients made judgements based on what their lawyers were like as people – from their demeanour both to themselves and to the court.

We discuss these points in more detail below.

Clients’ experiences of the criminal justice system

14.15 To the professionals involved with criminal justice, the summary cases in our survey often appeared minor. As McBarnett (1981) has remarked, summary courts are enveloped in "an ideology of triviality", in which cases are treated as routine, everyday matters.

14.16 The first observation is that these cases did not appear trivial to those being prosecuted. To most, they were major events. This was true of first-time accused facing "minor" charges of cannabis possession or shoplifting, and more seasoned offenders wondering whether this time they would “get the jail”. Over half the respondents described themselves as “scared”, “nervous” or “worried”. They applied these words to their experiences in the police station, the court cells, during the long wait for trial or the court hearing itself. As one woman facing her first prosecution for shoplifting put it:

“It’s a really daunting thing. My mum and I were like a bag of nerves going up [to court]. We were really worked up and really worried. You know, I hadn’t slept the night before and I was in a real state about it…. It was a big thing for me, it really was.” (Client interview, 2000)

14.17 Furthermore, people felt that they were caught up in a system they did not understand. One person in the main sample and two in the pilot sample were recent immigrants to Scotland and openly admitted that “I don’t understand the Scottish Law system at all”.

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However, some local people also expressed ignorance. Some did not know their rights in the police station; they did not understand the purpose of court diets; they did not know who everyone was in court; and they were sometimes unclear about what the court had decided. In this pervasive atmosphere of worry and ignorance people found it difficult to absorb explanations, often because they could not articulate what they did not know:

“*My mind was in a bit of a turmoil about what was happening. He explained it, I suppose as far as he was required in law. I didn’t ask him any questions because I didn’t know the relevant questions to ask at the time.*” (Client interview, 2000)

“They explained a wee bit. But at the same time, when the whole court was there... with the lawyers and that, it just seemed... I ken who the judge was and my lawyer. Apart from that, I just felt lost.” (Client interview, 1999)

14.18 Allied to these feelings of worry and ignorance was the belief that a criminal prosecution was something taking part around them in which they were not fully involved. Carlen (1976) has described defendants as “dummy players” with little involvement in the process. This was also the experience of our respondents. A private client summarised his preparation for court as “he just said go into the dock and answer your name”. Another client put it as follows:

“I didn’t feel involved. It was like you’re going into court and blah, blah, blah, blah. Right, that’s it.” (Client interview, 2000)

He commented that:

“Even if it’s a trivial offence, in a court of law you need to be represented because it just goes over the top of you.” (Client interview, 2000)

**Establishing long-term relationships**

14.19 The above discussion has tended to confirm the classic picture of accused people as passive participants in the criminal justice system, dependant on their lawyers. It was not true, however, that relationships between clients and lawyers were necessarily transient or ephemeral.

14.20 One major difference between Edinburgh and the Canadian city studied by Ericson and Baranek lies in the statement they quote from a Canadian lawyer: “if you are going to do criminal work the only way to do it is that you assume... you’ll never see that client again” (p.96). By contrast, Edinburgh solicitors stressed the economic necessity of establishing a client base. This meant that they needed long-term clients who return and who recommend others:

“*[We get business] through doing the job well and being known – people who have been represented coming back and people who know these people coming to us.*” (Private solicitor interview, 1998)

Relationships may continue for many years, or even be passed through the generations.
“Some clients I’ve known ten, twelve, fifteen years through a mixture of criminal and civil cases.” (Private solicitor interview, 2000)

“I’ve been practising in Edinburgh for 27 years… It’s just by reputation… over the years. It’s the sons of fathers. I’m waiting for my first grandson… That’s how we get our business.” (Private solicitor interview, 1998)

Several private clients also said that they had long-term relationships with solicitors:

“I’ve been with [lawyer’s first name] for nearly 20 years…. She remembers me, aye.” (Client interview, 2000)

“I’ve been with [my lawyer] since basically when my criminal record started so he kens my background and that.” (Client interview, 2000)

“She’s my father’s lawyer as well. She’s like a family lawyer. It was my Dad who says to get in touch with her.” (Client interview, 2000)

Note that when these clients spoke of their solicitors they referred to an individual, not a firm. Clients expected to be dealt with by the same person throughout the case. When they were represented by other people in the firm, it breached their expectations and was disliked, a point to which we return in the next chapter.

14.21 When we asked private clients in the quantitative study why they had used that lawyer, half said it was because they had used them before and a further 15% said it was because their family and friends had recommended them. Thus it appears that these long-term relationships are not unusual. However, they were not enjoyed by everyone. Those with less personal or family experience of criminal prosecutions had chosen their lawyers in a fairly random manner. One person said they chose their solicitor mainly because “they were like five minutes from where I work so it was quite handy”. Another described their choice as “just chance”. A PDSO volunteer who had not been in trouble before spoke of her isolation in choosing a lawyer. Her close family and friends had no experience of the criminal justice system and she did not want to advertise her troubles more widely:

“All my friends are law-abiding people. The thing is that a lot of people don’t even know about this, like it’s such a shameful thing. Like the family know, and a couple of my good friends know, but nobody at work.” (Client interview, 2000)

Effect of long-term relationships and continuous service

14.22 Unsurprisingly, clients who enjoyed a long-standing relationship with a single lawyer felt that their solicitor knew more about them and gave them a more personal service. They

87 Sommerlad and Wall found that discontinuous contact was also a major source of complaint among criminal clients in England and Wales (1999: 15, 21)
tended to feel comfortable with their solicitor and more satisfied with the service they received:

“She is one of the best in Edinburgh, if not in Scotland… She does her homework on cases. What else can I say? She is a very good lawyer.”
(Client interview, 2000)

One solicitor also confirmed that they would try harder for long-established clients and for those for whom they had provided a continuous service:

“If they are my clients, either because they have [used me before] or because I’ve dealt with their one case right the way through, I try harder, partly because you know them better and you know the case a bit better. If it is someone else’s client, then, you know, you tend to… go through the motions to some extent.” (Private solicitor interview, 2000)

14.23 A problem with the system of direction (discussed in the following chapter) was the extent to which it was perceived as breaking up long-term relationships and offering a discontinuous service.

**Judgements made on outcome or process?**

14.24 Only one of the six private clients we spoke to fitted the picture presented by Ericson and Baranek, in that he found it difficult to make any judgement except one based on outcome. This client said he had chosen his lawyer “by chance”. Although he had used the firm on three separate occasions, he did not feel he had established a personal relationship with the individual.

14.25 The case in question was a driving offence. During the first meeting, his solicitor suggested that he might be acquitted on a technicality. However, by the time the case came to court, the solicitor had changed his mind. The client reported the subsequent (short) conversation at court in the following terms:

“He says there was no chance of getting off and just do whatever he says… Basically, he says to me, we are looking at a ban.” (Client interview, 2000)

When asked about the service he had received, the client hesitated, suggesting that, as “he is really the only lawyer I’ve ever known”, it was difficult to make a judgement. He did not complain about any particular aspect of the service except the result:

“The only criticism I’ve got is that he never got me off.” (Client interview, 2000)

This client therefore corresponded closely to the Ericson and Baranek model. He had little relationship with the lawyer and a low involvement in the process. He found it difficult to articulate judgements, and such judgement as he did make depended on outcome.
14.26 Most clients, on the other hand, were considerably more forthcoming. Although unable to judge the technical aspects of legal work, they made active and definite judgements of their lawyers as people. Judgements were not related to the outcome of the case. Instead they were based on how far people felt listened to and treated with respect as individuals. Clients looked for rapport.

14.27 For example, one client made several specific criticisms of her private solicitor. She thought that he was not always on top of the details of her case, so that during interviews she had to repeat some facts several times. In court he did not have all the details of the case at his fingertips:

“There were times when I kind of questioned that he fully understood and remembered things I’d told him. Like, you know, one of the witnesses said something about … the road being a dual carriageway, which it’s not. And [he] just looked at me to say, is it? And he knew – I’d told him so many times that it wasn’t. That concerned me slightly.” (Client interview, 2000)

She was acquitted on the main charge, but found guilty of a second, lesser charge. The solicitor had not properly advised her of the constituent elements of the second offence, or applied his mind to whether her story amounted to a legal defence to it. However, she showed considerable reluctance to judge her solicitor on these technical faults:

“I don’t know if they were really that relevant. I mean, he’s the professional”. (Client interview, 2000)

Her overall judgement was positive. She would return to the solicitor “because she felt comfortable with him”. In particular, he took time to listen and explain:

“There were several times I phoned up [my solicitor] just asking him, you know, various questions – even things like where exactly do I go when I’m in the court room and what do I do then. And he was always taking the time just to speak to me on the phone. He didn’t say, oh well, just speak to my secretary. He always had the time to speak to me himself… It was good to have a personal touch.” (Client interview, 2000)

14.28 Another client also stressed the importance of personal warmth over technical competence. The following quote summarises this sense that clients could not judge lawyers’ professional competence, but could judge them as people:

“I don’t know if he was a good lawyer or not but I thought he was a good guy basically – looking to help me.” (Client interview, 2000)

This client had seen two different solicitors from the same firm: one he met in the office and one represented him in court. He admitted that the woman who represented him in court had been well-briefed and competent. She “did a good job” and obtained a favourable result. However, he rated the first solicitor more highly because he cared:

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88 This may well reflect a difference in methodology. While Ericson and Barenek interviewed clients in the court building immediately after the case, we interviewed people in their own homes, often several months later. They had had longer to reflect on what had happened and may have felt more relaxed in their familiar surroundings.

89 Again, this reflects the findings of Sommerlad and Wall (1999).
“When I actually met him I felt like he cared about me but when I went to court..., I got the impression it was just another day for the ... woman.”  
(Client interview, 2000)

14.29 Other clients also stressed the importance of being treated as an individual and providing enough time:

“I think he’s a good person... It’s no like his clients are just money to him. It’s like they’re real people with real problems... He doesn’t look at them as if to say, ‘Oh, you’re a criminal – you’ve done this, you’ve done that’. I’ve ken a few lawyers who’re no friendly and that, but he’s very friendly.”  
(Client interview, 2000)

"I suppose it was just he way he came over. I instinctively knew he was OK.... He took me right through it and kept in touch. He told me that I could ring him at any time, which I did. Sometimes it was about stupid things I phoned him”  
(Client interview, 2000)

14.30 One client contrasted a previous (bad) solicitor with his current (good) solicitor. The bad solicitor just sat back in his chair, looked “as if he didn’t give two hoots” and was always glancing at his watch. However, his current solicitor:

“...sits you down. She makes sure that you know exactly what’s happening and what’s going on. If there’s any changes in anything she tells you right away. Her whole approach to things is totally different. She seems more alert... She takes more time. She’s not interested in just getting you in and out the door.”  
(Client interview, 2000)

14.31 Two clients spontaneously described a bad lawyer as someone who is more interested in filling out legal aid forms to get paid than in listening to their client:

“Before you go into the room, before you even say a word to them, it’s like ‘sign here, here’s your legal aid form’. [My current lawyer] has never, ever done that at all. It makes you feel a lot ... better that she’s not just ramming stuff down your throat right away.”  
(Client interview, 2000)

Robust advice

14.32 Clients wanted to establish a relationship and make sure that the solicitor understood their point of view. Once this point has been reached, however, they welcomed robust advice. When asked what they would look for in a good solicitor, one client put it in the following terms:

“Their attitude and whether they give you confidence and basically if they just listen to you and if you’re wrong come out and tell you. Don’t just sit back and say that’s OK... As long as you’re on the same communication level where they understand you and know what you want to do – not what
they want, what you want to do. And, if you’re wrong, give you some suggestions or whatever.” (Client interview, 2000)

Another confirmed this point, stressing that a good solicitor should tell you honestly what sentence might be passed:

“I ken a lot of lawyers...[who] are too scared they’ll get sacked if they tell you that you'll get the jail.” (Client interview, 2000)

**Providing clients with a voice in court**

14.33 A major criticism, made by four clients, was that their solicitor had failed to involve them in the court process. These clients were not concerned about the outcome: two had had their cases deserted; the other two accepted their guilt and had received fines that they had paid without undue difficulty. However, they felt that they had not been able to present their side of the story to the court. As one client put it:

“I never got a chance to speak for myself. I told [the solicitor] my story. He never put any questions that I wanted to put.... The police story was totally different from what I told you.... I felt I was guilty but ... I’d like it to be the right story, that’s all. I’m not even saying the outcome would be any different... I walked from there confused. I mean that’s completely different from what happened - that’s what I’m saying to myself. It didn’t matter to anybody else because it was a nothing case ... a nothing case to the lawyer.” (Client interview, 2000)

14.34 Another client felt that her solicitor had allowed her to be mis-portrayed to the court:

“The prosecution... read from a police report saying I was swearing, and like struggling with the police... She made out that I would do this every Saturday night for kicks.” (Client interview, 2000)

She thought that her £400 fine was high but admitted that it had not been difficult to pay. More serious was her sense of “frustration” that she had been falsely portrayed in court:

“I’m normally a law-abiding citizen, but because of the things that happened to me, I went off the rails. And I really felt that that should have been taken into account. I just feel really cheated by it all... I thought the money thing was a bit steep, but ... it was the way I was portrayed. That more than anything.” (Client interview, 2000)

14.35 Involvement is valued for its own sake, even if the case is deserted. This is how one client described his sense that his solicitor had not discussed what would happen in court, but was instead “juggling” with his fate:

“The judge came in after they had all been talking between themselves [and I thought] well, they’ve worked out their game plan but I don’t have a clue what’s going to happen when this judge sits down and they start saying what
they want to judge, because I’m supposed to sit here and say nothing. I felt pretty powerless…

It was just the sense of your life being taken out of your hand – your freedom being taken away, given to somebody else, and this guy [the lawyer] sitting juggling with your freedom in his hand like a stress ball. You don’t know what he is going to do with it, whether he is going to give it a squeeze or let go. That’s what I was worried about. That’s what I was really worried about.” (Client interview, 2000)

People clearly value involvement in the process, even if it makes no difference to the final outcome.

Confidence in court

14.36 Chapter 5 highlighted the importance of confidence in court. Many of those professionally involved with the criminal justice system stressed that solicitors should be confident in court in order to inspire confidence in others. Clients confirmed that they wanted a solicitor who looked confident in the court room and who was able to get their points across to the Sheriff. As one client said admiringly of his lawyer:

“She’s very good. She knows her people, she knows her surroundings and she knows what she’s talking about, which makes her a confident person, and she protrudes [sic] confidence from the minute she walks into court to the minute she leaves it.” (Client interview, 2000)

Another put the same point as follows:

“...a bit of professionalism, and she seems to know what she’s talking about. She doesn’t mumble her words. Somebody who [gives you] a wee bit of confidence.” (Client interview, 2000)

This confidence is clearly necessary if the solicitor is to put the client’s case across effectively.

CONCLUSION

14.37 It is important to understand any criticisms made of the PDSO against this background. When charged with even a minor criminal offence people felt “worried” and “scared”. They did not understand the criminal justice system and relied on their lawyers to see them through it. What they wanted was a personal, long-term relationship with someone who cared about them as individuals. What they did not want was a lawyer who treated them as a stereotype and put more emphasis on getting forms filled in than on listening. Instead they wanted to be supported, listened to and treated with respect. As we shall see, one problem with the PDSO was the extent to which the direction system disrupted previous relationships.

14.38 This emphasis on personal support may well be rational, given the way that summary procedure works. As we have seen, most people plead guilty. If, on the other hand, one resists
the pressure to plead guilty, there is a small but real chance that the prosecution case will collapse. There is no particular sentence discount to plead guilty: such pressures as arise come mainly from the uncertainty and worry caused by delay and repeated court diets. One client described the process as "not very nice":

"You are on bail for x amount of months, and you are waiting and you're wondering what is going to happen to you. It is only for the last four weeks that you really find out where you are going. Whether you are going to prison or is this case being dropped, or are you going to get community service or whatever." (Client interview, 2000)

In these circumstances, having a supportive lawyer may well be the decisive factor in whether a client decides to enter an early guilty plea or whether they see it through to conclusion.
CHAPTER 15: COMPARING THE VIEWS OF PDSO AND PRIVATE CLIENTS

15.1 This chapter is mainly based on a quantitative survey of client views, though it also draws on interviews to illustrate and interpret some of the points made.

15.2 For the main study, we identified all those granted legal aid to defend cases in Edinburgh Sheriff and District Courts between 1 April and 31 December 1999. We sent questionnaires to all PDSO clients, and to all private solicitor clients with a birth date in November, December, January and February. This resulted in 250 returned questionnaires: 99 from PDSO clients and 151 from private clients. Of the PDSO clients, 88 were born in January or February (directed clients) and 11 had used the PDSO on a voluntary basis. Appendix 2 provides further details if the methodology while Appendix 11 contains a copy of the questionnaire.

15.3 One finding from the in-depth interviews was that clients were heavily influenced in their views by the system of direction. Interest was expressed in exploring how views had changed since direction ended in July 2000. We therefore carried out a secondary survey, sending the same questionnaires to all PDSO clients receiving summary legal aid after July 2000 whose cases had ended by June 2001. Where we had telephone numbers, we also completed some questionnaires by telephone. This second exercise yielded a further 66 questionnaires.

15.4 The result is that this chapter is based on a total of 316 questionnaires: 151 from private clients, 88 from PDSO directed clients and 77 from those using the PDSO voluntarily. Given the importance of direction in colouring client views, where we can, we analyse PDSO directed clients and volunteers separately. For some questions, however, based on sub-samples of the whole study, the numbers are too low to allow analysis by three separate groups. For these, we simply compare all PDSO clients with all private clients.

15.5 The response rate to the main survey (23%) was much as anticipated for studies of this kind. Clearly, low response rates raise the possibility of bias, and we have scrutinised the profile of those replying to see how representative they are of the sample as a whole. The results are given in Appendix 2. Those responding to the first survey appeared similar in most characteristics. We found very few differences in terms of court, offence, time of resolution, outcome, sentence, age or social profile of address. It may be the case, however, that respondents were atypical in more subtle ways. They may well have cared more strongly about the service they received. This is not necessarily a weakness. There is an argument that public services should respond to the concerns of those clients who care most about the service they receive, rather than sharing the apathy of the majority of users.

15.6 This chapter is primarily a discussion about how clients feel and should be read in this context. A few questions asked clients for factual information such as whether they had been visited in the police station and whether they had been given advice on plea. The majority of questions, however, were about clients' views and feelings and the information they elicit is

90 Of private clients, 113 were non-directed clients (born in November or December) and 36 were born in January or February. In the remaining two cases, information on date of birth is missing. As all the clients received full summary legal aid (either through the normal system or through a waiver), there is no need to analyse the private non-directed and directed groups separately.
inherently subjective. We carried out the survey because clients’ opinions were thought to be important for their own sake – whether or not they reflected some further, objective, reality.

CHOICE

15.7 The Hughes Commission described the accused's right to chose their lawyer as "a long-standing principle of Scottish criminal justice" (para. 8.79). It appears to be one about which clients feel strongly. When asked "how important do you think it is to be able to choose your own lawyer?", 91% said it was important, and over two-thirds (69%) said it was very important. Only 6 people (2%) said that it was not at all important.

15.8 Figure 15.1 looks separately at the importance placed on choice by the private clients, PDSO directed clients and PDSO volunteers.

**Figure 15.1: How important do you think it is to be able to choose your own lawyer?**

Private practice clients were particularly likely to say that choice was very important to them: among private clients, 84% said that choice was very important, compared to 67% of directed PDSO clients. Having used the PDSO, some clients may have been more prepared to accept reduced choice in the light of the good service they actually received. Interestingly, PDSO volunteers were the least likely to believe in the importance of choice. As discussed below, many volunteers used the PDSO because it was the solicitor they were given, rather than worrying about exercising a specific choice.
Reactions to direction

15.9 Many directed clients first found out about the PDSO from private solicitors. The interviews, together with comments on the questionnaires, suggested that there was widespread confusion and incomprehension about the system of direction.

“I tried to contact my own solicitor, but due to some queer regulation in law – because of when I was born – I couldn’t use my own lawyer… I still don’t understand that one.” (PDSO client interview, 2000)

"At the police station I requested a lawyer of my choice who duly turned up. He told me he could not represent me under the Legal Aid Scheme due to the fact that my birthday fell in February. I found this very disturbing and still do not fully understand this ruling.” (Comment on questionnaire: PDSO)

In so far as clients did understand the system, they resented it – feeling that they were being treated as “lab rats” rather than people:

“[I felt] very, very angry… I felt just because of the day I was born, I’m being herded and taken into an experiment… It’s like a lab-rat setting, to see if this lawyer’s any good, and if he gets a conviction or if he gets [me] off is irrelevant. They’re not bothered. They want to see his performance.” (PDSO client interview, 2000)

Even those who were otherwise very happy with the PDSO expressed some unease at their lack of choice:

“He just said they’d picked two months and it was January and February. And I was a bit disappointed because I thought this is like cancer treatment. I’m going to end up with someone who is totally useless. But it wasn’t the case at all… I don’t think I could have got a better lawyer.” (PDSO client interview, 2000)

"I was made to use the PD because I stayed in Edinburgh and my DOB is [February]. I was not exactly happy with this as before this I had used another firm for 10 years but the PD did his best and I was pleased with the end result." (Comment on questionnaire: PDSO)

"I would have preferred to have my own choice of lawyer but the PD[S]O were very good." (Comment on questionnaire: PDSO)

15.10 For others, however, the lack of choice undermined trust. They found it difficult to accept someone who had been forced on them.

“That’s no due process, that’s no legal or anything like that… If you can’t pick a lawyer and you’re made to pick the Public Defender, you lose the trust… They work for the system.” (PDSO client interview, 2000)

Interviewer: “How important is it to be able to choose somebody?”
Respondent: “Very important... Because with [private lawyer] we had established a loose working relationship – we knew where each other were coming from. I trust the man. Whereas [the public defender] is a total stranger. Having to open your heart out to a total stranger, tell him things you would rather not discuss, was difficult.” (PDSO client interview, 2000)

These comments, taken from in-depth interviews, are mirrored in similar comments written on questionnaires:

"I got stuck with a stupid lawyer I didn’t want. I had the same lawyer, my own, for seven years and never had any problems.” (Comment on questionnaire: PDSO)

"I would be willing to discuss with you any other matters arising from the survey, particularly my feelings on the freedom to choose legal representation for oneself and the perception left to me that lawyers appointed in this matter seemed only to be going through the motions.” (Comment on questionnaire: PDSO)

15.11 We also asked public defence solicitors whether the direction system had led to any problems in establishing trust with clients. In February 1999, solicitors said that, initially, some clients did not want to see them, but that such reluctance could be overcome with a little effort:

"Some of them don't want to be represented by us and don't want to see us, and that's something that you have to overcome... - which I think we're doing, with... maybe just one or two exceptions... We have to put in a wee bit more effort... I've seen people in custody who've said they don't want to speak to me at all..., but when you've engaged him a wee bit more, he'll say OK, what are you going to do.” (PDSO solicitor interview, February 1999)

"Generally... it's not been a great difficulty. One or two, who I think have been well-coached from outside, have come out with comments that you wouldn't expect from clients generally... [But] once it's been explained to clients the reasons for it, and you kind of build up their confidence, I haven't had any difficulty.” (PDSO solicitor interview, February 1999)

15.12 When we returned in November 2000, however, solicitors acknowledged that direction had put a strain on relationships. Although it had not prevented them from doing their job, they had noticed distinct improvements once direction had ended:

Interviewer: How much difference do you think direction made to relationships with clients?
Solicitor: A significant difference. Clients did not come through the door shouting the odds about being made to come here, but undoubtedly clients did not like being directed, clients resent that... Clients were coming in, probably resentful of being directed, having probably been told on occasions to have low expectations..., so I think undoubtedly it affects client relations, but not in an overt way, not in the way that you can't manage the case... Having removed direction it reminds you again... how much better things
are when you're dealing with a client who genuinely wants you to be his lawyer." (PDSO solicitor interview, November 2000)

"One or two [clients] pretty obviously didn't want to be with us, didn't like us and were not confident in anything we did, so... you have to be very, very careful in everything that you say to them and in everything that you do for them, explain to them everything that's going to happen to the case, why it's going to happen... You don't have a good close working relationship with these people because they don't want you, and they are going to get away from you... They didn't trust you and to a certain extent you didn't trust them. [Now direction has ended] that has gone." (PDSO solicitor interview, November 2000)

Exercising choice

15.13 In the last chapter, we discussed variations in choosing lawyers. Although some people had long-standing relationships and others tapped into the knowledge of family and friends, others were on their own, and found it very difficult to exercise an informed choice. In the survey, 70% of private clients thought they had "a lot" or "quite a lot" of choice in picking their solicitor. However, 30% of private clients were either uncertain about their level of choice or felt that in practice they had "not very much choice".

15.14 Table 15.1 sets out the reasons people gave for using their lawyer.

Table 15.1: 'Why did you use that lawyer?': Answers given by lawyer used (more than one answer permitted)

<table>
<thead>
<tr>
<th>Reason</th>
<th>PDSO directed clients</th>
<th>PDSO volunteers</th>
<th>Private practice clients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. % of clients</td>
<td>No. % of clients</td>
<td>No. % of clients</td>
</tr>
<tr>
<td>It was handy</td>
<td>1 1</td>
<td>7 9</td>
<td>11 7</td>
</tr>
<tr>
<td>I had used them before</td>
<td>7 8</td>
<td>8 10</td>
<td>76 50</td>
</tr>
<tr>
<td>I had heard they were good</td>
<td>0 0</td>
<td>4 5</td>
<td>21 14</td>
</tr>
<tr>
<td>I had to use the public defender</td>
<td>66 75</td>
<td>36 47</td>
<td>8 5</td>
</tr>
<tr>
<td>Friends/family recommended them</td>
<td>2 2</td>
<td>5 6</td>
<td>28 19</td>
</tr>
<tr>
<td>No real reason</td>
<td>9 10</td>
<td>9 12</td>
<td>7 5</td>
</tr>
<tr>
<td>Other</td>
<td>4 5</td>
<td>7 9</td>
<td>7 5</td>
</tr>
<tr>
<td>Don’t know/not answered</td>
<td>0 0</td>
<td>1 1</td>
<td>2 1</td>
</tr>
<tr>
<td><strong>Total number of clients</strong></td>
<td><strong>88</strong></td>
<td><strong>77</strong></td>
<td><strong>151</strong></td>
</tr>
<tr>
<td><strong>Total number of reasons given (some gave more than one reason)</strong></td>
<td>89 77</td>
<td>160</td>
<td></td>
</tr>
</tbody>
</table>
private clients chose private lawyers because they were handy, or were unable to give a reason. Surprisingly, eight people using private practice solicitors said they had used that lawyer because "they had to use the public defender". We have considered explanations for this, including the possibility that they were answering for a different case. However, this seems unlikely as seven out of the eight were non-directed clients born in November and December. People may have associated public defender with “publicly-funded” and felt they had to use a “public” lawyer because they could not afford to pay privately and had received legal aid.

15.15 Out of the 88 PDSO directed clients born in January or February, three quarters said they had used the PDSO "because they had to", though a few said it was because "they had used them before".

15.16 More interesting are the reasons why volunteers used the PDSO. A few (9) had been recommended to use the PDSO, a few (8) had used them before, and a few (7) used the PDSO because it was handy. However, over half of volunteers were either unable to give a reason or thought that they were obliged to use the PDSO. As we have seen, PDSO volunteers were the group least concerned with choice. It appears that many of the kept with the duty solicitor, without thinking about whether they could or should make a change.

**HELP IN THE POLICE STATION**

15.17 Interviews with practitioners revealed a range of views on whether solicitors should visit clients in the police station. Some thought it was rarely worth their while, as they were not allowed to see clients until they were charged and then it was too late. Others thought it an important part of client care. They argued that visits were important to reassure clients. Visits also allowed them to spend longer finding out about the case, and enabled bail addresses to be checked. As discussed in Chapter 4, initially PDSO solicitors felt that most police station visits were unnecessary, though as time went on they started to make regular weekend calls.

15.18 Across all three groups, a similar proportion of clients (71-74%) had been held in the police station in the course of the case. We asked them whether their lawyer had visited them in the police station and, if not, whether they would have liked their solicitor to visit them.

15.19 Clients’ responses show that public defence solicitors were less likely than private solicitors to visit clients in the police station. Among the private client group, almost a third of people had been seen in the police station (32 out of 109). In comparison, only three PDSO directed clients (5%) and six PDSO volunteers (11%) reported being visited.

15.20 The qualitative interviews suggested that this was mainly because clients did not ask for the PDSO. While private clients often contacted regular solicitors, many directed clients did not find out about the PDSO until they appeared at court the next morning. No-one criticised the PDSO for failing to visit them. It is therefore unlikely that the PDSO’s policy on police station visiting was a factor contributing to the overall assessment, reported below.

15.21 That said, a majority of clients would have liked to receive a visit from their lawyer while they were held in the police station. Among those held in the police station who had not
seen a lawyer, over half (55%) said they would have liked a visit. Table 15.2 shows that these views were similar across both PDSO and private clients.91

Table 15.2: "Would you have liked your lawyer to have visited you at the police station?"

<table>
<thead>
<tr>
<th></th>
<th>PDSO clients held in police station and not seen</th>
<th>Private practice clients held in police station and not seen</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Yes- I would have like it</td>
<td>59</td>
<td>56</td>
</tr>
<tr>
<td>Not bothered</td>
<td>40</td>
<td>38</td>
</tr>
<tr>
<td>Don’t know/not stated</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>106</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

Base: all those held at the police station and not seen
Percentages do not all add up to 100 due to rounding.

15.22 The interviews confirmed that most clients wanted to be visited, although they were often uncertain about what a solicitor could do for them. For some it was about reassurance:

“I would have liked someone to sort of reassure me... Not essential, but I would have maybe liked it.” (Private client interview, 2000)

“Even if just to put my mind at rest. Because I was left going to court and I didn’t know if there would be anyone there or what they would be like at all.” (PDSO client interview, 2000)

Others felt that it was essential to see a solicitor to find out about their rights and prevent police maltreatment:

“[She] tells you your rights. The police nae give you rights, they just lock you in cell. But she comes and tells you exactly where you stand.” (Private client interview, 2000)

“[A lawyer] should have stopped the bullying tactics of the police; make sure I was given my medication and that. I’m suffering from a severe bowel complaint, that was causing me to pass a lot of blood then. The police refused me my medication.” (PDSO client interview, 2000)

ADVICE ON PLEA

15.23 As we have seen, PDSO clients were more likely to plead guilty at earlier stages of the proceedings. It has been suggested that public defenders might pressurise clients to plead guilty - a criticism that emerged from both the Canadian literature and from private practice solicitors in Edinburgh. Conversely, it could be said that private solicitors pressurise clients to plead not guilty, so as to increase legal aid payments.

91 Numbers are too small to look at PDSO volunteer and directed clients separately.
Bearing these concerns in mind, we asked clients whether their solicitor had advised them on how to plead: almost three quarters (74%) said that they had, a figure that was identical for both PDSO and private clients. There was, however, a significant difference between directed and volunteer clients: only 67% of directed clients reported being advised about how to plead, compared with 82% of volunteers. In the interviews, some directed clients complained that their solicitor had been too neutral: "I got the feeling that he was pleading not guilty solely on my behalf without any input at all." This also links in with solicitors’ perceptions that the direction system meant that they had to be "very, very careful in everything" that they said. Public defence solicitors may have been more prepared to give definite advice once the direction system had ended.

Where clients had been advised on plea, we asked what their lawyer had advised them to do. Their answers are given in Table 15.3 below. As the figures are small, we have looked at all PDSO clients compared with all private clients.

**Table 15.3: Advice given on plea: "what did your lawyer advise you to do?"**

<table>
<thead>
<tr>
<th>PDSO clients</th>
<th>Private practice clients</th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Plead guilty to all charges</td>
<td>16</td>
</tr>
<tr>
<td>Plead not guilty to all charges</td>
<td>54</td>
</tr>
<tr>
<td>Plead guilty to some charges and not guilty to others</td>
<td>33</td>
</tr>
<tr>
<td>Plead guilty to different charges</td>
<td>2</td>
</tr>
<tr>
<td>Plead not guilty at first, and then change to guilty</td>
<td>10</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
</tr>
<tr>
<td>Don’t know/can’t remember</td>
<td>4</td>
</tr>
<tr>
<td><strong>All clients advised on plea</strong></td>
<td><strong>122</strong></td>
</tr>
</tbody>
</table>

Base: all those given advice on plea

Percentages do not all add up to 100 due to rounding.

Our data do not substantiate fears that public defence solicitors apply overt pressure to plead guilty. Instead the results showed a high degree of consistency in the advice given across both types of lawyer.

Solicitors appear to have some influence on how their clients plead. Of those who recall being given advice on plea, over two fifths (42%) said that they had changed their mind about how to plead because of their lawyer’s advice.

**CONTINUOUS REPRESENTATION**

As we have seen, clients value their relationship with an individual solicitor. From the firms’ point of view, however, work might be handled more efficiently if solicitors were allocated tasks rather than clients. It may save time, for example, to have a single member of staff in a court handling all the intermediate diets listed for the day.

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92 \( p=0.031 \).
15.28 Some firms said they tried to deal with the tension between team-working and individual relationships in a flexible way. One solicitor said they usually shared out cases so that "normally one person would do all the intermediate diets". However "at least half of our clients are fussy" about who they get. If clients expressed preferences about who they wanted (or did not want) the firm would attempt to accommodate them.

15.29 In order to explore these tensions, we asked clients whether they had the same lawyer all the way through the case, different lawyers from the same firm or different firms. If they had used different lawyers, we asked them whether they would have preferred to have had only one lawyer.

15.30 Private clients were more likely than PDSO clients to say that they had kept the same lawyer throughout the case. As Figure 15.2 shows, 59% of private practice clients said they had kept the same lawyer compared with 53% of PDSO volunteers and only 41% of PDSO directed clients. The difference between PDSO directed and private clients was significant at the 95% level.  

Figure 15.2: Did you have the same lawyer all the way through this case?

Base: all those answering: directed PDSO – 88; volunteer PDSO - 57; private – 150.

15.31 During discussion, it was suggested that the difference between PDSO and private clients related to the size of the firm rather than to the delivery method. We were able to identify the firm size in 91 private cases. Of these, 65 were classified as large (more than 250 criminal cases in two years) and 26 as small. There was a slight difference between large and small firms: of small firms 16 clients (62%) said they kept the same lawyer, compared with 37 clients (57%) in larger firms. However, with these small numbers the difference does not

93 \( p=0.017. \) Among those using only one firm, it was significant at the 99% level \( (p=0.004). \)
approach statistical significance. Furthermore, the PDSO score seems low, even compared with other larger firms.

15.32 Whatever the reason for discontinuous service, there is no doubt that many clients disliked it. Table 15.4 shows that most people who had dealt with several lawyers in their case would have preferred to have had only one: 57% said that they would "definitely" have preferred to have had only one lawyer. Views were similar across the two groups.

Table 15.4: "Would you have preferred to have had only one lawyer?"

<table>
<thead>
<tr>
<th></th>
<th>PDSO clients</th>
<th>Private clients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Yes – definitely</td>
<td>50</td>
<td>57</td>
</tr>
<tr>
<td>Yes – probably</td>
<td>24</td>
<td>27</td>
</tr>
<tr>
<td>No</td>
<td>13</td>
<td>15</td>
</tr>
<tr>
<td>Not stated</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>All who did not have same lawyer throughout case</td>
<td>88</td>
<td>100</td>
</tr>
</tbody>
</table>

Base: those who did not use same lawyer all the way through case
Percentages do not all add up to 100 due to rounding.

15.33 In the interviews, two PDSO clients and two private clients reported that another solicitor had appeared on their day of trial. All four felt negatively about meeting a new lawyer at court:

"Seeing all these different lawyers, sort of, throws you off balance... If you see one lawyer, it makes you feel secure. You think, right, that person knows my case, knows each step as it's being taken. But when they chop and change lawyers, you thinking, well this lawyer is going to have to read up on my case and find out all about me."

(PDSO client interview, 2000)

"At the start of the case I had my regular lawyer and then I went up for trial and I had his associate... I told him I wasnae happy about that and that I was wanting my normal lawyer. Because basically, if you get a different lawyer you need to explain... what's happened again that you've already explained to your regular lawyer."

(Private client interview, 2000)

The upset and worry associated with discontinuous representation also emerges from comments sent with questionnaires:

"It seems to me that the PDSO feel as though they are at liberty to chop and change clients' representatives as and when they wish. For instance, I had three different ones, two of which had no idea of my case nor had they read my notes... Also on the morning of my trial I was given a different representative as my main lawyer was elsewhere. Chopping and changing like that gives you a sense of worry making you think things are going to go wrong."

(Comment on questionnaire: PDSO)
Clients were particularly distressed when a new solicitor shouted their name outside court. Clients not only find this embarrassing but it also underlines how little relationship they have with their solicitor:

“I had never met this woman. I had never met her until the day I went to court. I didn’t know who she was. I mean she was coming like shouting my name, you know, like she didn’t know who I was either… She didn’t know me from Adam on the day I walked into court. A lawyer and a client should have a bit of rapport… I just felt that there was nothing really. As I said, she was polite enough, but that was her job.” (PDSO client interview, 2000)

BAIL

15.34 We asked clients whether anyone had suggested that they might be refused bail: 36% said yes. We asked people at risk of a bail refusal how helpful they thought their lawyer had been in trying to get them bail.

15.35 The responses are set out in Table 15.5 below. It shows that private practice clients thought their solicitors had been more helpful in obtaining bail. Three-quarters of private practice clients thought that their solicitors had been "very helpful" compared with under half of PDSO clients. Although the figures are small, the difference is sufficiently marked to be statistically significant.

Table 15.5: "How helpful do you think your lawyer was in trying to get you bail?"

<table>
<thead>
<tr>
<th>PDSO clients</th>
<th>Private clients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
</tr>
<tr>
<td>Very helpful</td>
<td>20</td>
</tr>
<tr>
<td>Fairly helpful</td>
<td>12</td>
</tr>
<tr>
<td>Not very helpful</td>
<td>6</td>
</tr>
<tr>
<td>Not at all helpful</td>
<td>4</td>
</tr>
<tr>
<td>Don’t know/ not answered</td>
<td>3</td>
</tr>
<tr>
<td>All cases with a suggestion that bail might be refused</td>
<td>45</td>
</tr>
</tbody>
</table>

Base: cases in which it was suggested that bail might be refused
Percentages do not all add up to 100 due to rounding.

ACCESSIBILITY AND COMMUNICATION SKILLS

15.36 Accessibility and communication are central to the concept of client care. Clients want to feel that they have access to their lawyers and that their lawyers are listening to them. They also need clear information about both process and outcome.

15.37 We tested these issues by asking clients to rate their solicitor according to five criteria. Two were about accessibility: "being there when I wanted them" and "having enough time for
me". One was about listening; "listening to what I had to say" and two were about giving information: "telling me what was happening" and "telling me what would happen at the end".

15.38 The pilot interviews with clients suggested that listening skills were particularly important. When asked how to judge a good lawyer, one client put it this way:

"Make sure he’ll listen to you. Make sure he’ll put your case forward in your best interests." (PDSO client interview, 1999)

The ability to explain the court system was also rated highly. It is easy for professionals to forget how confusing the criminal justice system is to the accused.

15.39 The responses are given in Figure 15.3. Figure 15.3(a), for example, shows that 74% of private practice clients thought that their lawyer did "a very good job" in listening to what they had to say and 21% thought they did "a fairly good job". Only five private practice clients (3%) said that their solicitor did "not a very good job" and two said they did "a very bad job". By contrast, 53% of PDSO directed clients rated their solicitor as doing a very good job, with 32% saying they did a fairly good job. The scores given by PDSO volunteers were between the two: 65% said they did a very good job and 24% said they did a fairly good job.

15.40 The graphs show a consistent pattern of differences. In all five areas, a lower proportion of directed PDSO clients than private clients said their solicitor did "a very good job" and a higher proportion said they did "a very bad job". The differences are statistically significant. They are across the board, rather than concentrated in any one area.

15.41 On all five criteria, the scores given by volunteers were higher than those given by directed clients, but marginally below those given by private clients. None of the differences between volunteer and private scores was statistically significant.

15.42 Looking at both types of solicitor together, Figure 15.3(a)-e) show that clients rate lawyers most highly on "listening to what I had to say" and worst on "being there when I wanted them". They are also perceived as being better at giving information about process ("telling me what was happening") than about outcome ("telling me what would happen at the end").

---

95 When one compares private clients with PDSO directed clients on the percentage stating that their solicitor did a very good job, the differences are significant across all five areas, with p values varying between 0.001 and 0.017.
Figure 15.3: Ratings given to lawyers: how good a job did the lawyer do in:

3a) - listening to what I had to say?

3b) - telling me what was happening?
3c) - being there when I wanted them?

![Bar chart showing the percentage of responses for "being there when I wanted them" across different settings.]

Base: all those answering: directed PDSO – 87; volunteer PDSO - 71; private – 144.

3d) - having enough time for me?

![Bar chart showing the percentage of responses for "having enough time for me" across different settings.]

Base: all those answering: directed PDSO – 86; volunteer PDSO - 72; private – 140.
15.43 The low scores generated by PDSO clients were echoed in the qualitative interviews, which also raised concerns about listening, providing enough time and giving information about the case. We describe these concerns below.

**Listening with empathy**

15.44 Clients generally described their PDSO lawyer as “businesslike” and “polite”. However, some wanted something more. For example, one client described his meeting with the PDSO solicitor in the Sheriff Court cells in the following terms:

“He was businesslike. I suppose I was feeling very vulnerable at the time, and maybe looking for a bit more understanding, whereas he was, as I say, very businesslike, straight to the point. He didn’t do anything wrong, as such, but he could have done a lot better, I think.” (PDSO client interview, 2000)

There was then a further meeting in the office. When asked if the solicitor listened to his side of the story he said:

“Yes, he listened and he took notes. How deeply he was listening I’m not sure, if you understand what I mean there. But he did take notes and anything he didn’t fully understand he questioned me on further. So yes, I suppose he did gain the information required. It is difficult because it is so important to me, but it is what he does every day. I’m not saying he was bored with it, but it’s just what he does every day, so he comes across in a different way.” (PDSO client interview, 2000)
Later he commented:

“\textit{When I came out of the meeting... I didn’t feel he was committed to me – on my side - at all. Almost as if fulfilling a role as far as it went.}” (PDSO client interview, 2000)

15.45 Another client expressed similar ambivalence, accepting that the PDSO was businesslike and polite while also feeling that this was not enough. When describing the meeting he said:

“\textit{He seemed a very professional guy... businesslike, polite. He seemed friendly... I wouldn\textasciitilde{ae} put the guy down. I don’t think he done a bad job. I don’t think he’s done a great job either.}” (PDSO client interview, 2000)

His main reservation was that he was not made to feel that he mattered. Instead he was “just something on a production line”.

**Insufficient time**

15.46 The questionnaire responses reveal some disquiet about whether the PDSO provided clients with enough time. Overall, 20 PDSO directed clients (23%) said that their solicitor did “not a very good job” or a "very bad job" in "having enough time for me".

15.47 In the interviews, one client was seen three times: once in the cells; once in the office; once at court. He contrasted the solicitor he has used previously on a similar matter, who had seen him three times in his office before the court appearance. Furthermore, he complained that he had not been represented at the intermediate diet:

“I didn’t hear from their office for a long, long, time. What I was given was a diet to appear in court for a trial diet to be set. And I was expecting them to represent me there as well. I contacted them and they said I had to appear \textit{but they didn’t need to appear, so I just went up myself.”} (PDSO client interview, 2000)

Another client was seen only at court. The main meeting “was literally minutes at the entrance to the court”, and he felt strongly that “there wasn’t enough time to explain, or for me to ask questions”. Even though he accepted his guilt he would have liked:

“A wee bit more explanation and maybe some kind of guideline book and then you meet the guy... say a week before \textit{[the trial]} to make sure you understand what’s happening and what way you’re going to plead.” (PDSO client interview, 2000)

A third client who had been dealt with by a different solicitor at her trial felt strongly that she should have met her new lawyer first:

“I just feel that they should have seen you first. If \textit{[another solicitor]} was off with long-term ill-health, well, that can’t be helped, I can understand that.
But I think they should have said to me, well, you’ve got this new lawyer and he’d like to see you before you go to court. That for a start would have been a good thing.” (PDSO client interview, 2000)

Explanations

15.48 The literature suggests that clients are mystified by court jargon and frequently fail to understand what the court has decided. One of a solicitor’s tasks is to explain the result to the client. There were some suggestions in our interviews that public defence solicitors had been overly abrupt in their leave-taking:

“He was very polite and that, but when he shook your hand and said goodbye he was about 50 yards away in two seconds.” (PDSO client interview, 2000)

15.49 The phrase “deserted pro loco et tempore” caused particular problems. As one client put it:

“It was three words in Latin. I could hear like the dismissed sort of bit, the ‘d’…” (PDSO client interview, 2000)

However, he did not understand the implications of having a case deserted. Unsatisfied with the PDSO’s explanation, he went to see a private solicitor and was advised what it meant under the Advice and Assistance scheme. Another client, however, was still clearly puzzled:

“He said it’s been suspended, I may hear in the future. But he would also be notified if there was going to be any further action… I think, I don’t know, I imagine that if the situation had recurred, if there had been a similar situation in the future it may have been brought back up. But I still don’t know that, I don’t know.” (PDSO client interview, 2000)

GAINING CLIENT TRUST

15.50 The questionnaire set out five statements and clients were asked to indicate their agreement with each. The first statement was about competence in the system: "They knew the right people to speak to". The next four were about trust, and were designed to elicit whether clients felt that their solicitor had been on their side:

- "They told the court my side of the story";
- "They treated me like I mattered, not just a job to be done";
- "They really stood up for my rights";
- "They seemed too friendly with the Procurator Fiscal and the police".

Clients were asked "thinking about your lawyer in the case, how much do you agree or disagree with each statement". They were given a five-point scale: agree strongly ; agree slightly; neither agree nor disagree; disagree slightly; disagree strongly. There was also a "don’t know" option.
The results are given in Figure 15.4 (next page). The graphs show levels of agreement and disagreement, with the "neither agree not disagree" scores omitted. The strongest views are towards the middle of the graph. Thus on the first graph ("they knew the right people to speak to") 60% of private clients said they agreed strongly with the statement, and 84% indicated some level of agreement (either strongly or slightly). Three clients (2%) said they disagreed strongly, and four disagreed slightly. By contrast, only 67% of PDSO directed clients agreed with the statement.

The first four graphs present a consistent picture. All four statements are positive ones. For each, the level of strong agreement and total agreement from PDSO directed clients is lower than for private clients. Furthermore, the level of strong disagreement is higher. These differences are statistically significant (at the 99% level).

Two issues stand out for particular concern. The first is that only 36% of PDSO directed clients agreed strongly that their solicitor "really stood up for my rights", compared with 71% of private clients. This is a crucial issue that goes to the heart of the solicitor/client relationship. It is therefore worrying that 19 directed clients (24%) felt that their solicitor had not really stood up for their rights.

Secondly, after the pilot interviews, we added the following statement to the questionnaire: "they treated me like I mattered, not just a job to be done". In interviews, a couple of clients, while expressing general satisfaction with the PDSO, felt that they were being given a routine rather than a special service:

"Their attitude was ‘get in, get it over with, let’s do something else’…I think their attitude was: it’s their job, nae their religion… That’s fairly what I expected…” (PDSO client interview, 1999)

Client’s partner: "They treated us like a piece of paperwork to get through the system… We are not special clients… though people were nice, I’m not saying they were unfriendly." (PDSO client interview, 1999)

Only 48% of directed clients agreed strongly that they were treated as if they mattered, compared with 65% of private clients. Again, 15 (17%) felt that the solicitor had not treated them as if they mattered.
Figure 15.4: Level of agreement with trust statements

Base: all expressing a view (‘neither agree nor disagree’ not shown on graphs)
Numbers replying vary from 75-86 for directed PDSO, 56-71 for volunteer PDSO, 126-144 for private
15.55 The volunteer scores were higher than those given by directed clients. However, this time they were significantly lower than those of private clients. PDSO volunteers were less likely to agree strongly that their solicitor knew the right people to speak to, told the court their side of the story, or treated them as if they mattered. The level of strong agreement with the statement that "they really stood up for my rights" was particularly low. Only 48% of PDSO volunteers strongly agreed with this statement, compared with 71% of private clients. The difference was significant at the 99% level.

Relations with the prosecution

15.56 The final graph in Figure 15.4 looks at agreement with the statement "they seemed too friendly with the Procurator Fiscal and police". This was the only one out of the five statements to be phrased on negative terms, which may have confused clients. This may be why it drew a less positive response. Only 42% of private clients and 33% of PDSO clients disagreed with the statement, saying that their lawyer was not too friendly with the other side.

15.57 Unlike the other statements, there was no clear difference between the replies from directed PDSO and private clients. Although directed PDSO clients were slightly less likely to disagree with the statement, they were also slightly less likely to agree with it. Volunteers displayed particular indifference on this issue, with over half neither agreeing nor disagreeing.

15.58 The statement was designed to explore a problem raised by the Hughes Commission: namely that the PDSO might work too closely with the prosecution. The client survey does not provide any evidence that this has happened. As we saw in Part B, criminal justice professionals also denied that this was a problem.

Comparisons with other firms

15.59 We asked clients whether they had ever used another firm of lawyers to defend them in a criminal case. Over half of directed PDSO clients (56%), and just under half of volunteers (46%) and private clients (41%) said that they had.

15.60 We then asked them how their last firm compared with the lawyers they used in this case. Given the low numbers, we compare all PDSO clients with all private clients.

96 p= from 0.011 to 0.016.
97 p=0.001
Table 15.6: How did the last firm of lawyers you used in a criminal case compare with the lawyers you used in this case?

<table>
<thead>
<tr>
<th>Last firm was:</th>
<th>PDSO clients</th>
<th>Private clients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>- much better</td>
<td>23</td>
<td>27</td>
</tr>
<tr>
<td>- a bit better</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>- about the same</td>
<td>28</td>
<td>33</td>
</tr>
<tr>
<td>- a bit worse</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>- much worse</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Don’t know/not answered</td>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>All clients who had previously used another firm</td>
<td>84</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Table 15.6 shows that private clients were more likely than PDSO clients to rate their current firm as better. This is not surprising, given that most private clients chose to make the change while for most PDSO clients it was forced on them. Among PDSO clients, just over a third said their previous firm was better, with over half saying that the old firm was about the same or worse. For private clients a quarter thought the previous firm was better, and two thirds thought that it was the same or worse.

OVERALL ASSESSMENT

Would people use the PDSO again?

15.61 We asked respondents whether, if they had to use a criminal lawyer again, they would use this firm or another firm. Table 15.7 sets out the responses they gave.

Table 15.7: If you had to use a criminal lawyer again, would you use this firm or another firm?

<table>
<thead>
<tr>
<th></th>
<th>PDSO directed clients</th>
<th>PDSO volunteers</th>
<th>Private clients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>This firm</td>
<td>40</td>
<td>46</td>
<td>46</td>
</tr>
<tr>
<td>Another firm</td>
<td>27</td>
<td>31</td>
<td>11</td>
</tr>
<tr>
<td>Don’t know/not stated</td>
<td>21</td>
<td>24</td>
<td>20</td>
</tr>
<tr>
<td>All clients</td>
<td>88</td>
<td>100</td>
<td>77</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

On this crucial measure of client satisfaction, both directed and volunteer PDSO clients were significantly less likely to say that they would use the PDSO again. 98 Directed clients were more likely to say that they would use another firm, while volunteers were more likely to say that they did not know what they would do.

98 In both cases, p=<0.001
Finally, we asked people whether their lawyer made the result of their case better or worse. Their answers are given in Table 15.8 below.

Table 15.8: Do you think your lawyer made the result of this case better or worse, or made no difference?

<table>
<thead>
<tr>
<th></th>
<th>PDSO directed clients</th>
<th>PDSO volunteers</th>
<th>Private clients</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Better</td>
<td>40</td>
<td>45</td>
<td>40</td>
</tr>
<tr>
<td>Worse</td>
<td>12</td>
<td>14</td>
<td>7</td>
</tr>
<tr>
<td>Made no difference</td>
<td>26</td>
<td>30</td>
<td>19</td>
</tr>
<tr>
<td>Don’t know/not answered</td>
<td>10</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>All clients</td>
<td>88</td>
<td>100</td>
<td>77</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Again, responses were most positive for private practice clients and least positive for PDSO directed clients. The difference between the responses of directed and private clients is significant. The difference between volunteers and private clients is not.

It should be noted, however, that even among directed clients, only 12 clients (14%) thought that using the PDSO had affected the result of their case for the worse. It was rare for clients to blame their solicitor for the outcome of their case. Outcome alone cannot account for the third of directed clients who said that next time they would use another solicitor.

CONCLUSION

Clients clearly valued the ability to choose their lawyer and resented being directed to use the PDSO. This does not mean that they were all dissatisfied. Many accepted the PDSO in the light of the actual experience, with 46% stating that they would use the PDSO again. Some went further and gave glowing testimonials to PDSO lawyers:

"I feel I couldn’t have a better lawyer than [x] from the Public Defenders office. I can't praise him highly enough." (Comment on questionnaire)

"He [PDSO lawyer] was better than a hotshot lawyer. More time for me."
(Comment on questionnaire)

However, the levels of trust and satisfaction expressed by directed PDSO clients were consistently lower than those expressed by private practice clients. Of particular note is the fact that only 63% agreed that the PDSO "really stood up for my rights", and only 39% agreed strongly. This compares with 71% of private practice clients who agreed strongly that their solicitor really stood up for their rights.

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99 p=0.003
15.66 We have been able to place the answers to questions on listening, time and explanations in the context of the qualitative interviews. These suggest that PDSO lawyers were perceived as businesslike and efficient, but sometimes at the expense of taking enough time to get to know their clients and build up a rapport.

15.67 Clearly many of the negative views expressed by directed clients resulted from the direction system, which interfered with previous client/solicitor relationships and caused widespread resentment. The views expressed by volunteer clients were consistently more positive than those expressed by directed clients, and in many instances not significantly different from those of private clients. On the other hand, even now that direction has ended, the PDSO cannot afford complacency on its record of client care. Volunteers were significantly less likely to agree strongly that the PDSO had told the court their side of the story or had treated them as if they mattered, rather than as "a job to be done". Two issues stand out for particular concern. Volunteers were less likely to agree strongly that the PDSO had really stood up for their rights. They were also less likely to say that they would use the firm again.
PART D

Legal Aid Costs
CHAPTER 16: COMPARING COST-EFFECTIVENESS

16.1 One of the four criteria against which we were asked to evaluate the PDSO was cost-effectiveness. Economic resources are finite whereas the demand for those resources often seems unlimited. Therefore, whether money is being spent on health care, education or legal services, it is important to ensure that such expenditure is effective.

16.2 By "cost", we mean cost to the public purse. We were interested in expenditure by the taxpayer, rather than in what it cost solicitors to provide the service. This part of the report concentrates on the money spent directly on legal defence in summary criminal proceedings. Part E considers the wider question of costs to other elements of the criminal justice system.

16.3 Technically speaking, the economic cost of a resource is the value of the benefits forgone from not using that resource in its highest-valued alternative use. This is the economist’s concept of "opportunity cost". It is not quite the same as market value. For example, legal actives might impose opportunity costs even when apparently provided free of charge, as with pro bono work. On the other hand, most resources used directly in the provision of a service will have market values: they are bought and sold in markets where the forces of demand and supply interact to set prices, even if imperfectly. Pragmatism dictates that these values are usually the best estimates of opportunity costs likely to be reached (Drummond et al, 1997; Knapp, 1993). We have therefore based our cost figures on the money actually paid by the taxpayer for the service provided.

16.4 In looking at "effectiveness", we need to consider the outcome of the service. Although we start with costs, we return to the issue of outcomes in Chapter 20, to discuss the issue of cost-effectiveness.

CALCULATING COSTS

16.5 We were interested in the cost of cases in our court sample. In broad terms, this consists of cases started in Edinburgh Sheriff and District Courts between 1 April and 31 December 1999 that had finished by 1 November 2000. Fuller details are given in Appendix 1.

16.6 Of necessity, given the organisation of funding, we calculate the cost of cases dealt with by private practice and the PDSO in different ways.

Private cases

16.7 For private cases, we searched through the various databases held by the Scottish Legal Aid Board (SLAB) to find all the payments made to private solicitors in respect of that particular case. This was a complex exercise, described in more detail in Appendix 1. We defined a case by the Procurator Fiscal service's "PF number" (rather than by court reference number), which meant that our definition of a case was somewhat wider than that used by SLAB. A few cases involved two or more summary or Advice and Assistance payments. This is one of the first times that legal aid payments have been considered by case, rather than by scheme, and we hope that the figures will be of interest in their own right.
PDSO

16.8 For the PDSO, SLAB did not make payments on a case-by-case basis. Instead, the office was financed by an annual grant, covering almost all the work carried out. For each case, PDSO solicitors recorded the time spent and the outlays paid. We then divided total expenditure by the number of active hours worked to provide an hourly rate. After various adjustments (described in Chapter 17) we used this hourly rate (plus outlays) to calculate a cost per case.

Value Added Tax

16.9 One reason for the high cost of legal aid is that payments made by SLAB to private solicitors attract VAT at 17.5%. Salaried services, however, do not attract VAT in the same way. Although the PDSO has to pay VAT on its inputs, it is not payable on the cost of solicitor and other staff time.

16.10 This evaluation considers costs net of VAT. It assumes that money spent by SLAB on VAT does not represent a "cost to the public purse", since the tax is paid to back to government and can be put to other uses. It therefore looks at all costs exclusive of VAT. We have removed VAT on the costs paid by SLAB to private solicitors. We have also removed VAT from the PDSO accounts.

16.11 It is worth noting, however, that there are different public purses: legal aid is paid for by the Scottish Executive, while VAT is paid to the Westminster Treasury. If one adds VAT back into the figures, it would increase the cost of payments to private solicitors by 17.1% and the cost of PDSO cases by 5.8%.

STRUCTURE OF PART D

16.12 This part of the report contains four further chapters. Chapter 17 describes how we have costed the PDSO - to arrive first at an hourly rate and then at a cost per case. Chapter 18 compares the overall cost of PDSO cases with those defended by private solicitors. Chapter 19 then breaks these costs down by stage of resolution and type of legal aid, to provide a comparison of how the structure of PDSO costs differs from that of private practice. Finally, Chapter 20 discusses findings on cost in relation to outcome, to look at broader measures of cost-effectiveness.

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100 The amount of money collected in client contributions (£158) was too small to make any difference to the figures.

101 VAT is payable on almost all expenditure except some outlays and a few counsel bills.
CHAPTER 17: PDSO COSTS

A FOUR-STAGE METHOD

17.1 Here we provide details of the methodology that underpinned the costing of the PDSO. Costing salaried defence lawyers is similar to the process of costing other publicly-provided professional services. We therefore drew on work in the field of mental health. Beecham (1995) details a general methodology for costing the service inputs provided by a range of professionals in mental health contexts. She stresses that as well as looking at the "human resource input", it is important to recognise the full range of operating and capital costs, including administrative and other overheads. We used a four-stage building block approach:

• **Stage one: identify and describe the elements of the service.**

  We started with a detailed description of the way in which the PDSO operated. We asked about the number of staff, their various roles, the building and equipment, as well as services provided by other agencies such as SLAB. We also considered the type and level of PDSO activity.

• **Stage two: calculate a constant and relevant service unit to which a cost can be attached.**

  The choice of a unit of measurement is an integral part of any costing exercise. It needs to be relevant to the service and to the objectives of the evaluation, but is often limited by the nature of the available data. As described below, we explored several possible units, before choosing our main unit - the cost per hour of solicitor time spent on casework.

• **Stage three: identify and collect data on the cost implications of all service elements.**

  Most of the relevant information about PDSO costs was held in their annual accounts. Data about solicitor activity was taken from the PDSO computer system, and needed some adjustment for time spent on research and other generic activities.

• **Stage four: calculate the unit cost for the service.**

  Our aim here was to calculate a relevant unit cost of the service which reflects the long-run marginal opportunity cost. This was done by dividing the total cost of the service by the appropriate unit of measurement.

17.2 Below we start by setting out the main data on PDSO costs. Financial information was taken from the PDSO accounts and activity data from the computer system. We then use qualitative interviews with PDSO staff to provide a more considered discussion of changes in costs and activity. We discuss possible unit costs, before producing a range of figures.
COST AND ACTIVITY DATA

17.3 All our cases started in the 1999/2000 financial year. Most (85%) also finished that year, though a few continued into the following year (2000/01). Table 17.1 gives the PDSO's main heads of expenditure for the main year of our study (April 1999 to March 2000) and for the following year (April 2000 to March 2001). The 1999/2000 figures are the best reflection of costs at the time of our study. However, by April 2000 the office had not yet achieved full maturity. The 2000/01 figures provide an indication of how costs changed as the office developed.

17.4 These figures do not include staff set-up costs incurred during the previous year, such as advertising, recruitment or employment of the Director before the PDSO opened. However, they do include equipment costs incurred from 1998-9, which, depending on the type of equipment, have been annuitised over three, five or ten years at 5%.

Table 17.1: Operational costs of the PDSO (all figures in £s).

<table>
<thead>
<tr>
<th></th>
<th>April 1999 to March 2000</th>
<th>April 2000 to March 2001</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Amount</td>
<td>VAT</td>
</tr>
<tr>
<td>Solicitors</td>
<td>194,335</td>
<td>0</td>
</tr>
<tr>
<td>Other staff</td>
<td>70,811</td>
<td>0</td>
</tr>
<tr>
<td>Equipment</td>
<td>39,030</td>
<td>5795</td>
</tr>
<tr>
<td>Rent</td>
<td>52,875</td>
<td>7873</td>
</tr>
<tr>
<td>Rates, heat, light, cleaning</td>
<td>30,438</td>
<td>1336</td>
</tr>
<tr>
<td>Repairs, maintenance</td>
<td>3,239</td>
<td>428</td>
</tr>
<tr>
<td>Outlays</td>
<td>63,813</td>
<td>8,484</td>
</tr>
<tr>
<td>Prof. indemnity insurance</td>
<td>877</td>
<td>131</td>
</tr>
<tr>
<td>Pension allowance</td>
<td>16,673</td>
<td>0</td>
</tr>
<tr>
<td>Other</td>
<td>24,099</td>
<td>3588</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>502,107</strong></td>
<td><strong>27,689</strong></td>
</tr>
<tr>
<td>Total without outlays</td>
<td><strong>413,172</strong></td>
<td><strong>401,522</strong></td>
</tr>
</tbody>
</table>

Note for both years:
"Other" includes training, travel, lunches, security alarm, and print/stationary.
"Other staff" includes £8,444 worth of SLAB support (payroll etc);
"Equipment" includes £2,468 annuitised (5% over 10 years) cost of new equipment bought in 1998/9, £110 annuitised (5% over 5 years) cost of equipment transferred from SLAB in 1998/9 and £29,217 annuitised (5% over 3 years) cost of computer equipment bought in 1998/9;
VAT on outlays has been calculated on the basis that 78% represents precognitions (of which 14.89% if VAT) and 22% are other outlays (of which 7.64% is VAT).

17.5 There are some costs that the PDSO does not bear directly. The most important of these are pensions. PDSO employees pay a contribution into a pension scheme but no contribution is made directly by the employer (SLAB). On retirement, PDSO staff will have their pension paid from central funds. Elsewhere in the Civil Service employers contribute an amount equivalent to between 12% and 18.5% of the employee's salary into a pension scheme, while employees contribute a standard 1.5%. In costing the PDSO, we decided to take the lowest end of this range, on the grounds that staff tended to be quite young and experience overseas suggests that staff mobility may be high. Solicitors are more likely to move back to private
practice, rather than retiring in -post. We therefore included 13.5%, less the 6% contributions made by employees (that is 7.5% of salaries).\footnote{For these purposes, we have taken salaries net of employers’ National Insurance contributions, and without the £8,444 paid for SLAB support. Also, one member of the support staff was not in the pension scheme, and an allowance has been made for this.}

17.6 The PDSO does not pay directly for professional indemnity insurance, but is backed by the Government for any claim. We added a sum representing what the PDSO would have paid had it obtained professional indemnity insurance in the normal way. This, however, adds little to the overall costs.

17.7 Table 17.1 shows that, between 1999/2000 and 2000/01, the PDSO’s expenditure fell slightly. Total costs without outlays and VAT fell by 3% between the two years. This was mainly the result of a reduction in the number of staff, described below.

17.8 As far as activity is concerned, between 1 April 1999 and 31 March 2000, the PDSO computer system recorded a total of 4,626 hours worked. Of these, 377 hours related to non-casework activity - mostly research, pilot management and other significant projects. This partly reflects the time spent on managing the research element of the pilot, and partly the office’s particular brief to provide information on aspects of the criminal justice system. The remaining 4,250 hours were casework-related and are shown in Table 17.2.

| Table 17.2: Hours spent on casework activity: April 1999 to March 2000 and April 2000 to March 2001 |
|-----------------------------------------------|-----------------------------------------------|
| April 1999 to March 2000 | April 2000 to March 2001 |
| Hours | % | Hours | % |
| Casework | 2,984 | 70 | 2,660 | 52 |
| Travel | 328 | 8 | 494 | 10 |
| Dictation | 889 | 21 | 1168 | 23 |
| Duty scheme | 38 | 1 | 771 | 15 |
| Means inquiry | 11 | * | 16 | * |
| TOTAL | 4,250 | 100 | 5,110 | 100 |

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

The casework hours were recorded against a specific case. They represent the case-specific data added to our database, and analysed on a case-by-case basis. The duty scheme and means inquiry categories were not case-specific. However, they do represent a clear additional output. This leaves the travel and dictation categories. At one level, these categories represent work on actual cases. However, because several cases were dealt with at once, it has not been possible to record each minute spent against a separate case. Instead the time has been aggregated and charged to a generic job number. As discussed below, we have allocated this time to cases on a pro-rata basis. Travel and dictation between them amounted to 40% of the other hours worked. This means that the times in our database have been increased by 40%.

17.9 The activity figures for 2000/01 show a substantial increase. However, the time has been used in different ways. The first and most obvious difference is the importance given to the
duty scheme. Since July 2000, the PDSO undertook 60% of the Sheriff Court summary rota. This means that in 2000/01, duty work accounted for 15% of all time. The Office also started to undertake some solemn work. The other difference, which is less easy to account for, is that travel and dictation also increased. Between them they now amount to 48% of other case-related work. Meanwhile, the time spent on standard casework has decreased, both in actual terms and as a proportion of work done. It is not immediately clear why a move to duty work should have led to an increase in time spent in dictation. One possible explanation is that it could represent a different approach to time-recording by members of staff.

A DESCRIPTION OF PDSO COSTS

17.10 As discussed in Chapter 16, the focus of the evaluation was on the cost of each case to the public purse. We did not compare the cost of delivering the service - that is, what it cost to the public and provide sectors to supply each solicitor casework hour. In Australia, Meredith (1983) did compare the costs of delivering the service across sectors and concluded that they were similar. Each solicitor cost much the same in salary, rent and other overheads, whatever type of organisation they worked for. He concluded that the cost of delivering the service was "not a significant issue": there was no theoretical or empirical reason to think that public or private offices cost either more or less to run (Meredith 1983).

17.11 Even if we had wanted to, we would not have been able to make direct comparisons between the private and public sectors in the cost of employing defence solicitors. Private practitioners are understandably protective of releasing information about their salary and overhead costs and would not have been willing to do so for this study. We could not, for example, establish what the average Edinburgh solicitor paid in rent or salaries.

17.12 In the long term, we have no reason to disagree with Meredith's conclusion that public and private costs are probably similar. However, in the short term there may well be additional costs in setting up a pilot office - particularly one, such as the Edinburgh PDSO, that was under the spotlight. Here we use data from interviews with PDSO staff to consider how costs may have been increased by the fact that this was a pilot office, and how they may change in the future.

17.13 The PDSO's main heads of expenditure were the costs of employing the six solicitors, followed by the cost of support staff, rent and equipment. We look at each in turn.

Solicitor costs: the number of solicitors

17.14 The Crime and Punishment (Scotland) Act 1997 allowed the PDSO to employ up to six full-time solicitors. In establishing the PDSO, SLAB faced a choice: employ all six solicitors from Day 1, or allow the office to build up gradually as the work came in. The decision was taken to employ all six solicitors immediately. First, SLAB was mindful of the need to complete the feasibility study within three years. It estimated that direction would produce around 1,500 cases a year, enough to keep six solicitors busy. Second, SLAB thought it important to ensure that the PDSO had sufficient solicitors to cover all the courts in which it worked.

103 Now Legal Aid (Scotland) Act 1986 section 28A(2).
might be needed. It was felt that, with fewer solicitors, the PDSO might not be able to provide the coverage that was required.

17.15 We asked all the solicitors we spoke to what they thought was an ideal size for a criminal defence firm in Edinburgh. One of the larger firms, with seven solicitors, thought that "between 5 and 7 lawyers" was a good number. Edinburgh Sheriff Court usually had around six courts open each day: three trial courts, a custody court, an intermediate diet court and a sentencing court. The solicitor explained:

"Now obviously you've got the District Court as well, but it's unlikely that you would have trials in every one of the trials courts. For example, this firm had four trials this morning, and three of the trials were in one court".
(Private solicitor interview, 2000)

Thus, he argued, firms with six solicitors would not suffer from problems with double booking.

17.16 Most of the firms we spoke to had fewer than six solicitors. Some survived on two or three. This was "sometimes difficult" and could be "hard work". It caused especial problems during holiday periods or long trials. The smaller firms all said that they would like to be larger, but usually suggested a figure below six. Several suggested that an ideal size would be around four:

"Slightly bigger than ours, maybe four lawyers."

"Three to five, something like that."

"With four, you can cover for each other and help each other out."
(Private solicitor interviews, 2000)

On the other hand, the PDSO Director explained that when they opened in October 1998 they were "operating in a goldfish bowl". They could not afford to make mistakes:

"Everybody, including the media, were very conscious of what we were doing... Plenty of people would have been happy to run to the media if we had been caught short and been unable to cover a court or anything like that. There was a lot of advance criticism that this would be a two-tier system, so it was very important to me that, even if it meant that financially Year 1 of our business was not an efficient year, ... case handling was efficient and we were not going to come a cropper." (PDSO Director interview, 2000)

17.17 Most private solicitors coped with minor clashes by asking colleagues from other firms to cover short uncontested hearings while they were in other courts. However, the PDSO's relations with local private practitioners were such that "there was no way any other solicitor would consider covering a case for us... even for five minutes". Thus, in order to ensure a smooth start to the project, it was felt necessary to employ six solicitors.

17.18 It did, however, lead to over-capacity in the first year. As we have seen, direction failed to provide the PDSO with the anticipated volume of work. Instead, private practitioners made
great use of the waiver system and carried out considerable free work for their directed clients. The PDSO's own figures show 1,034 new cases from April 1999 to March 2000, in lieu of the 1,500 or so anticipated. Over that time period, PDSO solicitors recorded 4,626 hours active work, out of the 8,665 hours nominally available to them. This does not necessarily mean that the PDSO could have taken on 80% more cases. The activity data many include some under-recording, and staff cannot necessarily work every available hour. However they could have handled more work had it come to them. When we spoke to PDSO solicitors in February 1999, they agreed that they were under-employed, though they found it difficult to say by how much.

17.19 At the end of June 2000, one of the solicitors left and the decision was taken not to replace him. From July 2000, the office operated on five solicitors. Hence the reduction in solicitors' salaries. The office was under less external pressure and could participate in the normal scheme of reciprocal help with other solicitors to cover short formal hearings. PDSO solicitors did not think that this had caused problems:

"We just have to juggle one or two things, but it never gives us any problems. If we can't cover all the courts then because some of the Bar [Edinburgh solicitors] like us a lot more than they did, they'll cover stuff for us because we cover stuff for them." (PDSO assistant solicitor interview, 2000)

17.20 At the same time the abolition of direction and its replacement by 60% of the duty scheme led to an increase in recorded hours worked. By November 2000, opinions differed about whether the office was working at capacity. One assistant solicitor thought that it was; another thought that it was not yet "at absolute maximum capacity"; while the Director thought that it could still cope with a sizeable increase:

"We can handle more than we do at the moment, I've no doubt about that... What dictates the number of people we've got in the office to a great extent is the number of courts we've got to cover. But you can just as easily be in court with two or three files as you can with one or two, so an increased number of cases doesn't proportionately increase the amount of work.... There's no formula I can look up to say we could take on another 23% more cases or something like that, but I could safely say we could take on a substantial percentage more... If we were half as busy again, I don't think the place would fall to bits. I think we could manage but we might be pushing it." (PDSO Director interview, 2000)

**Solicitor salaries**

17.21 The public defence solicitor posts were offered at a wide range of salaries, and negotiated individually with applicants based on what they had been earning in their previous posts. The Director explained:

"One of the things from our post-bag of applications that came across very strongly is that there are enormous variances in what people are earning from criminal legal aid practice across Scotland - huge variances from firm to firm but also especially from city to city, town to town.... We had
assistants in city firms ... on £30,000 or more. I had partners from outlying parts of Scotland ... who were taking drawings in the region of £20,000.” (PDSO Director interview, 2000)

The result was that assistant solicitors were paid differing amounts. The figures were confidential and were not disclosed to the researchers.

17.22 Solicitors received the normal SLAB percentage increases. In addition, their salaries were also subject to further individual negotiation, with increases paid in order to retain staff. The PDSO Director suggested that if the network of offices were to expand it might be necessary to formulate a more formal salary structure.

Support staff

17.23 At first, the office employed an experienced office administrator (seconded from SLAB), plus three full-time secretaries. After the first year, this was reduced to a less senior office manager who also carried out secretarial duties, plus two full-time and one part-time secretary. The bill for support staff employed by the PDSO decreased by 7% between 1999/2000 and 2000/01.104

17.24 The decision to employ a full-time senior administrator reflected SLAB’s determination to ensure an efficient and well-run office. However, a private firm may have been reluctant to bear such a cost during the uncertainties of the first year of operation.

17.25 In November 2000, we asked PDSO solicitors how they thought the level of support compared with what they had received in private practice. They commented that they had "better support staff" but not necessarily more support staff. Several outside organisations (including the Fiscal Office and social work agencies) also commented on the high quality of PDSO support staff.

Premises

17.26 The PDSO Director described the office as "absolutely lovely" but much more expensive than he would have chosen had he been setting up in private practice. He felt that costs had been increased by the political pressure to have the office open by 1 October 1998.

17.27 During 1998, central Edinburgh experienced a property boom in anticipation of the Scottish Parliament. With almost no choice of accommodation, the Director had been forced to take premises "far in excess of our needs": "we could safely operate with probably two thirds of the space that we actually have here". The £45,000 rent contrasted with around £28,000 for another office that would have been suitable, but was unfortunately withdrawn from the market part way through negotiations.

17.28 This was an example of the political pressures on pilot offices adding to cost:

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104 This has been calculated after excluding the £8,444 worth of SLAB support.
"[It was] far more expensive than I would have chosen if I didn't have to have something open for the 1st October 1998. If we could have just got the property first and then chosen an opening date that would have been a much more sensible way." (PDSO Director interview, 2000)

At the time of writing, the PDSO Director was making arrangements to hive off the basement part of the premises, which he calculated might save up to £28,000 a year in rent and associated expenditure.

The computer system

17.29 The largest element of the equipment cost was spent on new computer software. This was a necessary research expense, to provide data both for the evaluation and for continued monitoring by SLAB. However, it was also intended as a sophisticated case management system for the PDSO to use internally.

17.30 Staff were unconvinced that the benefits of the computer system to the office justified its costs. Some elements were thought to be useful: "the diary systems on it are a real boon". It was also beneficial to network the office. However, other parts were considered overly complex, with many pro forma letters that they rarely used. The Director commented that the most useful functions could have been replicated more cheaply by off-the-shelf software.

17.31 It was thought that the computer system was mainly a cost of being a pilot office rather than a necessary support to their legal work.

The problems of start-ups

17.32 This discussion suggests that pilot offices tend to have higher costs. While private practitioners often build up gradually (and no doubt suffer teething problems in their first year), pilot offices are born into the glare of publicity. They cannot afford to make mistakes. They are under political pressure to open on the appointed day and hit the ground running. More money is spent on them than solicitors would be prepared to spend out of their own pockets.

We have borne these factors in mind in considering appropriate unit costs.

UNIT COSTS

The relevant year

17.33 The first question to consider was which year we should choose as the basis for calculating costs: 1999/2000 or 2000/01? The increase in activity recorded during 2000/01 means that, per hour worked, costs fell substantially in the second full year of operation.

17.34 The great bulk of all the activity recorded in our survey was incurred in 1999/2000. As discussed above, all the cases started in 1999 and 85% were concluded by April 2000. After July 2000, the nature of the work changed. More PDSO time was devoted to the duty scheme...
and the office also started to take on solemn work. The nature of the evaluation meant that we were not able to collect any information about the comparative cost of solemn work, and we had very little information about the comparative cost of duty work. Such information as we did obtain suggested that private solicitors were paid very little for duty work (and some even regarded it as a loss leader). It is unlikely that the PDSO would be able to show significant savings on the duty scheme alone. Any savings would arise from the PDSO taking duty cases through to conclusion more cheaply, but we do not have figures on how many duty cases were in fact concluded by the PDSO.

17.35 It is possible that the increase in recorded hours in 2000/01 reflected the fact that the PDSO took on different types of work that were time-consuming but not necessarily cost-effective when compared with private practice. The increase in generic hours spent also opens the possibility that the increase in recorded hours reflects more hours recorded per case rather than more cases.

17.36 These considerations led us to conclude that the year 1999/2000 should form the primary basis of the study. However, it is also true that by then the office had not reached full maturity. Its unit costs would almost certainly reduce over time. Thus we have also calculated an hourly rate for 2000/01, to see how far a reasonable increase in caseloads might affect costs for the future. The fact that the unit cost was much reduced is an important piece of information to be considered when interpreting the overall results of the evaluation. We used it alongside other hourly rates, to show the sensitivity of the data to changing assumptions.

17.37 The Scottish Legal Aid Board also asked us to calculate an hourly rate based on what the 1999/2000 costs might have been had the PDSO not been subject to the political pressures on a pilot office to "hit the ground running". The Axiom case management system cost £71,040 (plus VAT), and for the purposes of this exercise we assumed that most of its immediate benefit to the office (as opposed to the research) could have been replicated by an off-the-shelf system costing £25,000 (plus VAT). Annuitised over three years, this would reduce the annual equipment cost by £16,101. We have assumed five solicitors rather that six, which (on an annual salary of £25,000) would reduce the salary, National Insurance and pension bill by £29,025. We also took the lower 2000/01 support staff salary costs, which removes £4,893 from support salaries and pension costs. Finally, we reduced the rent by one third (£15,000). This leaves a total cost (less VAT and outlays) of £348,153. What we cannot know, of course, is the effect such rigorous cost controls would have had on outcomes.

**Three possible units**

17.38 Three types of unit cost have been calculated:

- the cost per hour of available PDSO time;
- the cost per hour spent working on legal cases undertaken by the PDSO;
- the cost per new case started by the PDSO.

The numerator for each of these three unit costs is the total cost of running the PDSO, as shown in Table 17.1. This shows that from April 1999 to March 2000 the total economic cost (less VAT) for the year was £468,501. If one removes the cost of case-related outlays, the relevant figure is £413,172. For some purposes, it is necessary to look at the cost of staff time without outlays, and add outlays in at a later stage.
17.39 The main calculations are as follows:

- **Cost per hour of available solicitor time**

  The total number of hours available to be worked by PDSO solicitors during the year was 8,665. This takes into account annual leave, statutory holidays, training days and expected time off due to sickness. It also takes into account the absence of a solicitor due to illness for three months. Dividing the total cost (less outlays and VAT) by the total available hours produces a unit cost of £48 per solicitor hour.

- **Cost per hour spent on casework**

  We started by making a small allowance for research. In 1999/2000, the PDSO spent 377 hours on pilot-related research and other projects. Costing these at £48 per hour (as above) means that £18,096 was spent on research. Excluding research costs therefore reduces the costs (less VAT and outlays) to £395,076. The number of hours spent on casework by the PDSO during the year was 4,250. Dividing one by the other results in a cost per hour spent on casework of £93.

- **Cost per new case**

  The PDSO started 1,034 new cases during the 1999/2000. For these purposes we have taken total costs, including outlays (but without VAT) - £468,501. If one deducts £18,096 research costs, the cost per case is £436.

Each of these unit costs is informative, but which is most relevant for the purposes of this evaluation? The cost per hour of available PDSO time is perhaps the least useful unit cost because, inevitably, a proportion of the PDSO time would not be spent directly on casework (and this would also be the situation for private solicitors).

17.40 As we discuss in Appendix 1, the definition we have used of a case is not quite the same as that used by the PDSO in its own figures. Furthermore, the 1,034 figure includes some types of work (appeals, means enquiries, breach of probation and community service) which we did not include in our main survey. Thus although the cost per new case is interesting, it does not allow us to make any direct comparisons with equivalent private solicitor cases.

17.41 The main focus of the study is on the cost per hour of solicitor time actually spent on casework: £93 per hour. This is the figure we used to calculate the main cost per case. We started with the number of minutes spent specifically on that case. We then increased the number pro rata, to allow for the time spent on generic activities. In other words, we allocated the 1,212 hours spent on travel and dictation across the remaining 3,033 hours. This increased the number of minutes recorded per case by 40%. We then multiplied the time spent on the case by the £93 hourly rate.

17.42 Finally, we added in the outlays spent on each individual case. Although we do not have overall data on the amount of VAT spent on outlays, staff kindly conducted a small survey of outlay accounts. This showed that precognition costs carried VAT at 17.5%, and we
have deducted this from the figures we were given. Of the other outlays, some included VAT and some did not. In the small sample, 7.64% of other outlay expenditure was VAT, so other outlay costs have been reduced by this amount.

**Sensitivity analysis**

17.43 In addition to calculating a main hourly rate, we also considered how the hourly rate might change, based on varying assumptions about how the office would develop.

17.44 We started by calculating an hourly rate based on costs and activity data for the financial year 2000/01. For that year, the total cost, net of VAT and outlays, was £401,522. If one removes the same level of research costs as for 1999/2000 (£18,096), this leaves £383,426. The number of hours recorded as being spent on casework was 5,110, with a pro rata element of 48%. Rather than adjust the times in our survey to take account of this increased pro-rata element, we have adjusted the hours. Taking the time spent on casework, the duty scheme and means enquiries, and adding 40% to cover generic work, gives a total of 4,826 hours.

This results in a unit cost for 2000/01 of £79 per hour.

17.45 Much the same result is achieved by taking the 1999/2000 figures and removing the "additional expenses" discussed above. If one removes around £16,101 per year from the computer costs, £15,000 from the rent, and £33,918 from the salary and pensions bill, the total becomes £348,153. The research costs (at £40 per hour) amount to £15,080, leaving £333,073. When one divides this sum by the number of casework hours in 1999/2000 (4,250), the hourly rate is £78.  

17.46 We also considered a best case and worst case scenario. The best case assumes only five solicitors for a full year, a further £28,000 reduction in rent, plus a 15% increase in casework hours on 2000/01 levels, without any further increase in overhead costs. This would give an hourly rate of £64 per hour. Much the same effect would be produced if the PDSO were to maintain its hours at the 2000/01 level and reduce the number of solicitors employed from five to four.

17.47 Alternatively, a worst case scenario would be one where expenditure was not adjusted for research time and where all of the set-up costs were apportioned over the life of the PDSO. If one assumes the latter to be five years, then the new level of expenditure per year becomes £440,637 (net of outlay costs). Assuming the level of activity remains at the 4,250 recorded in 1999/2000, the worst case unit cost would be £104.

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105 Given the similarity between the 2000/01 figure and the "adjusted" 1999/2000 rate, the rest of this section quotes only one (£79 per hour). All the conclusions applying to the £79 rate would also apply to the £78 rate.
CONCLUSION

17.48 The costs of the PDSO have been calculated by dividing the costs of running the office by the number of hours solicitors spent on casework (with various adjustments). This gives an hourly rate, which we multiply by the number of hours spent on each case. This plus the outlays spent on each case provides a cost figure for each case in our sample. The next chapter compares the cost of PDSO cases with the amount paid by SLAB for each private solicitor case in the sample.

17.49 The difficulty is that the statutory timetable forced us to evaluate the PDSO in its first full year of operation, before it had achieved a full caseload. There are reasons to suppose that its costs will reduce as time goes on. The second full year of operation (2000/01) does in fact show a decrease in the cost per solicitor casework hour. However, the change in the nature of the work since July 2000 makes this an unreliable figure to use for costing directed cases started in 1999.

17.50 We have overcome these problems by calculating four separate hourly rates. The main rate of £93 per hour reflects the cost of each solicitor casework hour in 1999/2000. The alternative rate of £79 per hour reflects the cost of casework hours recorded for 2000/01. It is also very similar to an "adjusted rate" for 1999/2000, which assumes that there had been tight cost controls for that year, without the additional political pressures on a pilot office.

17.51 For the sake of completeness we also use a best case scenario (assuming some cost reduction and a further 15% increase on the 2000/01 figure) and a worst case scenario (assuming that the office closes after 5 years, with no benefit from its research). The range of £41 between the best and worst case scenarios reflects the sensitivity of PDSO costs to the volume of casework it undertakes.
CHAPTER 18: COMPARING THE OVERALL COST OF PDSO AND PRIVATE CASES

18.1 This chapter provides an overall comparison of the cost of PDSO cases, compared with the cost of private cases for non-directed clients. It is based on the same sample of court records used in Part B and described in Appendix 1.

18.2 We start by comparing cases that were granted some form of legal aid. We first present the "bare" figures, and then control for differences in the type of cases reaching the PDSO and private solicitors using multi-variate analysis.

18.3 The next section considers the effect on costs of including at least some non-legally-aided work within the analysis.

COMPARING CASES GRANTED LEGAL AID

18.4 As an overall measure, we start by comparing all cases granted legal aid through the PDSO with all non-directed cases granted legal aid through a private solicitor.

18.5 This section excludes cases handled by private solicitors for directed clients, on the grounds that these exceptional cases were not typical of legal aid costs overall. Many were conducted without payment, and where a payment was received it was more likely to be under one of the "minor" schemes, such as the duty scheme or section 23(1)(b). It was less likely to be under full summary legal aid. Work for non-directed clients, however, represents the "normal" legal aid scheme.

Private non-directed costs

18.6 In the sample as a whole, there were 830 cases in which a private solicitor was the only or main solicitor acting for a client born in November or December. Out of these, 696 were granted some form of legal aid. The cost of such cases to SLAB averaged out over all 696 cases, was £449.

18.7 Simply because legal aid was granted does not necessarily mean that legal aid was paid. There were 12 cases in which, although legal aid was granted, no account was received. In other cases, some accounts were paid and some were missing. Thus three cases granted summary legal aid did not have a summary account (only Advice and Assistance) and two cases were missing an account under section 23(1)(b). If one averages the total costs over only those cases with an account, the average cost increases to £456. Costs ranged from a mere £11 part-Advice and Assistance payment to £2,089 (for a case with summary legal aid).

PDSO costs

18.8 The sample contained 430 cases that were exclusively or mainly handled by the PDSO. Of these, 399 were granted legal aid of some kind.
18.9 The average cost, spread across these 399 cases was £498. The average time spent per case (including an allowance for travel and dictation) was 281 minutes. Applying an hourly rate of £93, the cost of time was £436, while outlays added another £61.68.

18.10 Table 18.1 considers the effect of using different hourly rates to cost the PDSO time. The first rate of £79 reflects the PDSO's budget for 2000/01, divided by the greater level of activity recorded in that year. We also consider the "best case" scenario, in which the PDSO realised anticipated cost reductions and increased its 2000/01 caseload by a further 15%. These calculations assume that any additional hours would be spent on new cases, rather than on more hours for existing cases.

18.11 Finally, Table 18.1 includes a "worst case" scenario, described in Chapter 17, which assumes that the PDSO is closed after five years with no benefit derived from its research.

### Table 18.1: Effect on PDSO average costs of different hourly rates

<table>
<thead>
<tr>
<th>Hourly rate</th>
<th>Average cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on 2000/01 unit cost</td>
<td>£79</td>
</tr>
<tr>
<td>Best case: further 15% increase in casework</td>
<td>£64</td>
</tr>
<tr>
<td>Worst case: set-up costs over 5 years &amp; no research allowance</td>
<td>£104</td>
</tr>
<tr>
<td>Current position</td>
<td>£93</td>
</tr>
<tr>
<td>Comparable private practice costs</td>
<td>-</td>
</tr>
</tbody>
</table>

**Controlling for case type**

18.12 Before coming to a conclusion on how PDSO costs compare with those of private practitioners, it is necessary to control for differences in the types of case that the PDSO dealt with. This, in turn, involves considering the factors that drive legal aid costs.

**Legal aid cost drivers**

18.13 Any discussion of cost drivers is rendered more complex by the fact that the cost system applying to private practitioners was quite different than that applying to the PDSO. The summary system paid to private practitioners works through a series of fixed payment. The cost of the case depends primarily on the type of legal aid it receives (which in turn depends crucially on whether the client enters an initial not guilty plea). Among summary legal aid costs, more is paid for Sheriff Court cases. As we have seen, the system also pays more for some particular events: for example, the solicitor may receive a second payment if the client challenges a charge of failing to appear. PDSO costs, on the other hand, were not met through fixed payments. The costs were directly related to the number of hours spent on the case and the amount of outlays paid.

18.14 Appendix 9 gives the results of a single regression model (for the whole sample of PDSO and non-directed private clients) as well as two separate regression models, one for the
PDSO and one for private practitioners acting for non-directed clients. It only includes cases granted legal aid in some form (solemn, summary, section 23(1)(b), A&A or duty), as too much unpaid work could have introduced distortions. At this stage, we were interested only in background characteristics that were present in the case when it started, relating to the type of client, the charges or the court.

18.15 For the PDSO, we found that the type of court was a significant cost driver, with cases in the Sheriff Court costing (on average) £185 more than those in the District Court. The most important factor was the type of offence, with violence over £300 more expensive than road traffic cases, and public order cases around £200 more expensive. The presence of co-accused also added to costs. For private practitioners, the type of court was one of the most important factors, with Sheriff Court cases £250 more expensive than District Court cases. Violence, public order and theft cases were also significantly more expensive than road traffic cases, but there was less difference between offences of violence and, for example, public order and theft than was the case for the PDSO. Somewhat to our surprise, costs were also related both to the number of co-accused and the number of charges. What is clear from both models, however, is that the connection between cost on the one hand and client, charge and court characteristics on the other is a weak one. The PDSO model could explain only 17% of the variation, and the private model could explain only 20% of the variation.

The result of multi-variate analysis: £93 per hour

18.16 Costing the PDSO at £93 per hour, and controlling for characteristics present at the start of the case, we found that the average cost difference between the two delivery methods was £34 with the PDSO being more expensive. This, though, was not statistically significant.

18.17 In Part B we discussed the possibility that cases reaching the PDSO may have been atypical in ways that were not necessarily picked up through an analysis based on background characteristics. There was almost certainly some bias against cases in which the accused had indicated an initial intention to plead guilty and which could be resolved by private solicitors at little cost. This suggests that the difference between the two groups may be less than it appears on the multi-variate analysis alone.

18.18 Our conclusion, therefore, is that in comparing all PDSO cases with all private non-directed cases granted legal aid, the costs are within a similar range.

The result of multi-variate analysis: £79 and £64 per hour

18.19 Costing the PDSO at £79 per hour, and controlling for characteristics present at the start of the case, the cost of PDSO cases is £26 less than the cost of private practice. However, this too remains statistically non-significant.

18.20 If the PDSO were to reduce its hourly rate to £64, it would show real cost savings on private practice. This would involve the anticipated cost savings materialising and a 15%

---

106 We did not look at the cost of private directed cases, which made particular use of minor legal aid schemes, and were not typical of the legal aid costs generally.

107 p=0.131

108 p=0.273
increase in cases taken on. At £64 per hour the PDSO would be on average £98 less expensive – a difference that is highly significant.  

WORK WITHIN THE SPIRIT OF LEGAL AID FOR WHICH NO GRANT WAS RECEIVED

18.21 In Chapter 2 we pointed out that solicitors did not always use the legal aid scheme in the way that was intended. They used payments from summary legal aid cases to cover some unpaid cases. These included cases where a client pled guilty from custody; or where a client did not qualify for Advice and Assistance or ABWOR; or where the level of the contribution meant that the Advice and Assistance payment was too low to justify the cost of the paperwork involved. We said that we would need to be sensitive to such unpaid work.

18.22 Although the original intention was that the PDSO should only act where legal aid was granted, public defence solicitors also had problems keeping within the letter of the legal aid scheme. Out of the 430 PDSO cases, there were five cases without either legal aid or a time record and a further 26 cases with a time record but where the PDSO acted without any form of legal aid. Although the proportion of non-legally -aided PDSO cases is smaller than for non-legally-aided private cases, it shows that there are cases in which, on a broad definition, may be within the spirit of the legal aid scheme without any form of legal aid being granted.

18.23 It is unclear why these cases were not legally-aided. The charges do not appear to be less serious than other cases handled by the PDSO; nor do the clients come from noticeably more affluent neighbourhoods. On the other hand most of non-legally -aided PDSO cases were resolved quickly: 15 were resolved at a pleading diet, and 19 involved the PDSO in only one or two appearances. Some, however, were relatively serious: two were resolved before a trial diet and five involved four or more appearances.

18.24 Where such cases are handled by private firms, the costs of such cases to the public purse is zero. Under a salaried scheme, however, they have real costs (though their costs are lower than for other cases). The average cost of the 26 cases with a time record but without legal aid was £149.  

18.25 Meanwhile, the sample on private non-directed cases contained 134 cases where a private solicitor represented the client at court but was not granted any form of legal aid. Of these, 91 were for road traffic offences and 43 for a wide range of other offences, including breach of the peace, assault and shoplifting. They also tended to be quick cases: three -quarters (76%) were resolved at pleading diet and only 4 (3%) went to trial.

18.26 When we consulted solicitors about these cases, they suggested that the non-legally -aided road traffic cases were probably private cases for accused who were above the legal aid means test. We are strengthened in this conclusion by the fact that the accused in these road traffic cases tended to live in more prosperous areas. Only a third (34%) lived in the lowest rated "F" areas compared to 61% of non-directed clients for whom private solicitors received a payment. It was suggested, however, that the remaining 43 non-road traffic cases may well

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109 p<0.001

110 The cost of such cases ranged from £4 to £361. Three took less than 12 minutes, but four took more than two and a half hours, with the longest case lasting for almost four hours. Few involved any outlays, however. None had precognition costs, and only five had other outlays - usually of a minor nature (average £14).
have been conducted unpaid for people who would have been eligible for legal aid. They were quick cases where the solicitors might have felt that the size of the fee did not justify the trouble of making an application (especially if the contribution was high).

18.27 This suggests that the analysis should include the 43 general cases as within the spirit of legal aid, but exclude the 96 road traffic cases. This would lead to a similar proportion of non-legally-aided work (6%) as is found in the PDSO sample (7%).

18.28 An alternative approach would be to distinguish the 134 non-payment cases by the accused's postcode rather than by the offence - including those in the most deprived "F" rated areas but excluding those in more prosperous areas. This produces much the same effect. Out of the 134 non-legally-aided cases, 48 people lived in the most deprived neighbourhoods, compared with 73 in other areas and 13 unknown.

**The effect of including non-legally-aided work within costs**

18.29 For non-directed private cases, if one includes these 43 non-traffic cases in the analysis, and averages the legal aid costs over 739 cases rather than 696, then the average cost falls to £423.

18.30 As far as PDSO costs are concerned, the average cost, spread across all 430 cases was £471. The average time spent per case (including an allowance for travel and dictation) was 267 minutes. Applying an hourly rate of £93, the cost of time was £414, while outlays added another £57.40.

18.31 Table 18.2 considers the effect of using different hourly rates to cost the PDSO time.

**Table 18.2: Average costs across all PDSO cases: effect of different hourly rates**

<table>
<thead>
<tr>
<th>Hourly rate</th>
<th>Average cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on 2000/01 unit cost</td>
<td>£79</td>
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</tr>
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<td>Comparable private practice costs</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>£423</td>
</tr>
</tbody>
</table>

**Controlling for variations in case type**

18.32 We also conducted multi-variate analysis to compare the cost of all PDSO cases with non-directed private cases where legal aid was granted or where the case was for a non-traffic offence.

18.33 At £93 per hour the PDSO comes out at £65 more expensive. This difference is significant at the 95% level. If one assumes, however, that PDSO cases had some further

\[ p=0.014 \]
bias towards more complex cases or not-guilty cases, then this difference may be less than first appears.

18.34 At the £79 per hour level, the costs are almost exactly the same. The PDSO is only £1 less expensive, a difference that (unsurprisingly) is not at all significant. 112

18.35 At £64 per hour, the PDSO would be £73 per case cheaper, a difference that is highly significant. 113

CONCLUSION

18.36 The issue of PDSO costs has generated considerable speculation, with suggestions both that public defence solicitors would be considerably more expensive and considerably cheaper. Neither prediction proved true. PDSO and private costs occupy a similar range, which is why small differences in the type of analysis can make a difference to the result.

18.37 If one takes the cost level applying in 1999/2000 and makes an allowance for some unpaid work through private solicitors, the PDSO costs work out greater than those applying under the normal legal aid system - though they were not much greater. The difference was less than £65 per case (14%). If, however, one allowed for a possible bias against guilty pleas in the cases reaching the PDSO (or treated VAT paid to the Westminster Treasury as a cost to the Scottish purse), then the difference disappears. The costs are also similar if one concentrates on legally-aided work alone.

18.38 If one takes the 2000/01 hourly rate, the costs are almost exactly the same.

18.39 If the PDSO were able to realise anticipated cost reductions and increase its workload by 15%, it would show significant cost savings over private practice. However, the effect that this would have on outcomes cannot be known.

18.40 These findings are similar to those arrived at in the Burnaby study, which evaluated a pilot public defender scheme established in British Columbia (Brantingham 1981). Public defender costs fell within the range set by private practice: they were slightly more than the costs of private solicitors in Burnaby, but slightly less than the private cases in Vancouver. The study found that public defenders spent less time per case but carried relatively small caseloads, which increased their overall costs.

112 p=0.948
113 p=0.001
CHAPTER 19: COMPARING THE STRUCTURE OF PRIVATE AND PDSO CASE COSTS

19.1 So far we have concentrated on overall cost comparisons. This chapter compares private and PDSO costs first by stage of resolution and then by type of legal aid. It considers how the structure of costs varies between the two delivery methods for different types of cases. The 1996 White Paper stated that one of the main purposes of establishing a salaried pilot would be to gather "benchmark" information about what the proper price for summary criminal aid should be (Scottish Office 1996 para. 6.29). We have therefore compared how public and private sector costs differ between types of case, to see if this holds any lessons for the structure of criminal legal aid costs.

A note of caution

19.2 Given that we have calculated the cost of private and PDSO cases in different ways, one can only compare the total figures, not the way that they are made up. Although we have information on the number of minutes the PDSO spends per case, we have no comparable information on the number of minutes spent by private practitioners.

19.3 Furthermore, the "outlays" recorded by private practice are not comparable to the "outlays" recorded by the PDSO. For the PDSO, the outlay figures represent the money paid out to third parties, with precognitions as the largest single component. For private practitioners, the outlay figures represent the additional sums paid by SLAB for outlays not covered by the fixed fee. They do not include the cost of precognitions, which are within the fixed fee.

19.4 Finally, the PDSO time figures consist of the number of minutes recorded as spent on the case, plus a 40% uplift to cover generic time spent in travel and dictation. Although this provides a broad indication of costs, it may be that some types of case take more generic time in relation to other time spent, while others take less. The figures for PDSO cases do not allow highly detailed comparisons.

A COMPARISON OF COSTS BY STAGE OF RESOLUTION

19.5 We first consider costs by the stage at which the case was resolved. As discussed in Part B, cases have been assigned to one of four groups, depending on when the matter of guilt or innocence was resolved: pleading diet; intermediate diet; before trial (at the trial diet without evidence being led) and after evidence was led.

19.6 Here we look at cases handled by private solicitors for non-directed clients where some form of legal aid was granted (though not necessarily paid). For these purposes, we have excluded the eight cases granted solemn legal aid, which can have high costs, and which are not directly comparable to cases handled by the PDSO. Table 19.1 compares the average cost of the remaining 688 private cases with the costs of all 430 PDSO cases.
Table 19.1: Mean case costs of non-directed private cases granted legal aid, compared with all PDSO cases, by stage of resolution.

<table>
<thead>
<tr>
<th>Case resolved at:</th>
<th>Private non-directed cases with a legal aid grant</th>
<th>All cases handled mainly or exclusively by the PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>Mean cost</td>
</tr>
<tr>
<td>Pleading diet</td>
<td>180</td>
<td>£107</td>
</tr>
<tr>
<td>Intermediate diet</td>
<td>172</td>
<td>£528</td>
</tr>
<tr>
<td>Before trial</td>
<td>208</td>
<td>£575</td>
</tr>
<tr>
<td>After evidence led</td>
<td>102</td>
<td>£732</td>
</tr>
<tr>
<td>Stage of resolution not known</td>
<td>26</td>
<td>£78</td>
</tr>
<tr>
<td>All cases</td>
<td>688</td>
<td>£445</td>
</tr>
</tbody>
</table>

Table 19.1 shows a strong link between the stage of resolution and the cost of a case. However, the cost structure differs between the two delivery methods. The PDSO costs were more expensive for both the quick cases (resolved at pleading diet) and for contested trials. They were cheaper, however, for cases resolved at intermediate diets. This remains true whether one takes the £93 or £79 hourly rate. Private cases resolved before trial are slightly cheaper than PDSO cases at the £93 rate, but more expensive at the £79 rate.

19.7 It would appear that, compared with other cases, private solicitors are relatively poorly remunerated for cases resolved at pleading diet. Payments made under the minor forms of legal aid available for initial guilty pleas do not cover the cost of providing the service through the PDSO, even at an hourly rate of £79. Where cases receive summary legal aid, however, the fixed fee system introduces an element of "swings and roundabouts". The losses would seem to be for contested trials, and the main gains for cases resolved at intermediate diet.

19.8 When one looks at PDSO costs at the £79 a hour level it also becomes clear that the main potential for cost saving is not that the PDSO is able to resolve cases at any given level more cheaply, but that it resolves more cases at an earlier stage. We recalculate the average PDSO costs at the £79 an hour level by assuming that the PDSO resolved cases at the same time as private practice. This would raise the average cost from £409 to £459.¹¹⁴ The PDSO’s main advantage, in cost terms, is that it resolves cases at an earlier stage of the proceedings.

¹¹⁴ The calculation excludes the unknown categories, as follows:

27% resolved at PD: 27 x £136 = £3,672
26% resolved at ID: 26 x £407 = £10,582
31% resolved BT: 31 x £514 = £15,934
15% resolved after EL: 15 x £1,020 = £15,300
TOTAL: £45,488/99 = £459

It has been put to us that most of the private cases where the stage of resolution was unknown were probably resolved at pleading diet. If one assumes that all the unknown cases were resolved at pleading diet, the total reduces to £449, still higher than the private total.
COST BREAKDOWN BY LEGAL AID TYPE

19.9 This section considers the cost of cases by the type of legal aid. It includes both directed and non-directed clients, comparing the cost of different forms of legal aid through private solicitors and the PDSO. It assumes that once a waiver has been granted for a particular form of legal aid, the costs are broadly similar to other legal aid costs, and including directed cases provides a larger sample.

19.10 The section looks at cases granted summary legal aid, those granted legal aid under section 23(1)(b), those granted Advice and Assistance only, and those dealt with under the duty scheme. It excludes the 24 private cases granted solemn legal aid, as these are not directly comparable with cases handled by the PDSO.

CASES GRANTED SUMMARY LEGAL AID

Summary legal aid through private solicitors

19.11 In total, the sample contained 585 cases in which summary legal aid had been granted to a private solicitor. However, we have excluded from further analysis seven cases in which legal aid was granted to both a private solicitor and the PDSO and 15 cases that also received solemn legal aid. This leaves 563 non-solemn cases, in which summary legal aid was granted only to a private solicitor.

19.12 In 550 of these cases a full summary legal aid account was submitted. The remainder included 12 cases where we could find no trace of an account. In the final one case the solicitor was not paid a fee, with the account confined to a single outlay of £1.90.

19.13 Below we look in more detail at the 550 cases in which a summary fee was paid. Their average cost was £641.

19.14 If one assumes that the cases with a missing account will not result in any further claim on the fund, the cost across all 563 non-solemn cases in which summary legal aid was granted to a private solicitor alone was £627.

19.15 Table 19.2 breaks this figure down by different items, showing the number of cases in which a payment arose and the average payment for each case in which a payment was made. The table reveals the complexity of the current system in which payments can be made for the same case under a variety of different schemes, including the summary legal aid scheme, the Advice and Assistance scheme, the duty scheme and even section 23(1)(b). As discussed in Appendix 1, our definition of ‘case’ (by PF number) is wider than that used by SLAB. In particular, it included treated desertions and restarts as a single case, and merged offences of failing to appear with the original charges. This means that some of the cases in our sample received multiple grants of summary legal aid for the same case. There were 27 cases in which accounts were paid for at least two grants, and two cases in which an account was paid for three grants.

19.16 Our sample included three cases where only half or less of the normal fixed fee had been paid. These cases have probably been transferred between solicitors and it may be that in time, an additional payment will be made. However, this has little effect on the average cost.
Table 19.2: Cases granted summary legal aid through private solicitors: number of cases with heads of expenditure, and mean payment made

<table>
<thead>
<tr>
<th></th>
<th>No. of cases with a payment</th>
<th>Mean for cases in which payment made</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>First summary fee</td>
<td>550</td>
<td>£551.43</td>
<td>£150-£1,600</td>
</tr>
<tr>
<td>Counsel fee on 1st account</td>
<td>55</td>
<td>£  29.48</td>
<td>£23.50-£70.50</td>
</tr>
<tr>
<td>Outlays on 1st account</td>
<td>141</td>
<td>£  46.91</td>
<td>£1.09-£591.35</td>
</tr>
<tr>
<td>Second summary fee</td>
<td>27</td>
<td>£537.73</td>
<td>£368.76-£700</td>
</tr>
<tr>
<td>Counsel fee on 2nd account</td>
<td>5</td>
<td>£  23.50</td>
<td>£23.50</td>
</tr>
<tr>
<td>Outlays on 2nd account</td>
<td>4</td>
<td>£  22.71</td>
<td>£1.32-£80</td>
</tr>
<tr>
<td>Third summary fee</td>
<td>2</td>
<td>£442.58</td>
<td>£385.15-£500</td>
</tr>
<tr>
<td>S23(1)(b) payment</td>
<td>1</td>
<td>£  73.50</td>
<td>£73.50</td>
</tr>
<tr>
<td>A&amp;A payment</td>
<td>391</td>
<td>£  63.19</td>
<td>£13.30-£294.15</td>
</tr>
<tr>
<td>Duty solicitor payment</td>
<td>32</td>
<td>£  26.55</td>
<td>£26.55</td>
</tr>
<tr>
<td>All</td>
<td>550</td>
<td>£641.48</td>
<td>£150-£2,089.11</td>
</tr>
</tbody>
</table>

Note: All costs are quoted exclusive of VAT.
1 Includes payments to solicitor advocates.
2 Case-based information on duty solicitor costs is not available. However, we know that the average cost per case in which the duty solicitor acted in a single diet is £26.55, and this sum has been added to all cases where it applies.

19.17 Table 19.3 gives the contribution to mean costs made by each head of expenditure, spread across the 550 cases as a whole. The largest contribution came from the summary fee itself, though the Advice and Assistance fee contributed around £45 and "duplicate" summary fees contributed an average of £28. Outlays and counsel fees were paid only in a minority of cases and add relatively little to the total costs.

Table 19.3: Cases granted summary legal aid through private solicitors: mean costs across all cases in which summary legal aid granted

<table>
<thead>
<tr>
<th></th>
<th>Mean payment across 550 cases in which summary fee paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summary fee</td>
<td>£551.43</td>
</tr>
<tr>
<td>Counsel fees on first payment</td>
<td>£  2.95</td>
</tr>
<tr>
<td>Outlays on first payment</td>
<td>£  12.03</td>
</tr>
<tr>
<td>Second or third summary payment (fee, outlay and counsel)</td>
<td>£  28.49</td>
</tr>
<tr>
<td>A&amp;A payment</td>
<td>£  44.91</td>
</tr>
<tr>
<td>Duty solicitor payment</td>
<td>£  1.54</td>
</tr>
<tr>
<td>s23(1)(b) payment</td>
<td>£  0.13</td>
</tr>
<tr>
<td><strong>Total mean payment</strong></td>
<td><strong>£641.48</strong></td>
</tr>
</tbody>
</table>

Table 19.3 shows that, if one simply takes costs paid under the first summary account (solicitors' fee, counsel fee and outlays) the average cost is £566. This is more than the average summary account paid under the fixed payment system in Scotland as a whole. The Scottish Legal Aid Board's Annual Report shows that in 1999/2000 the average payment (less
VAT) was £512.\(^\text{115}\) It is, however, considerably less than the payments made under the previous time and line system, which in 1998/9 averaged £700.\(^\text{116}\)

**Summary legal aid through the PDSO**

19.18 The sample contained 215 cases granted summary legal aid though the PDSO, where the PDSO was the only or main representative. Costing PDSO time at £93 per hour, these average **£759** per case. Table 19.4 shows that, without a system of fixed fees, there is a wide range of different costs. Looking at the costs of time alone, costs ranged from £33 (for a case lasting 21 minutes), to £3,546 (for a case lasting over 38 hours). Most cases included both precognitions and other outlays – which averaged £109 across the 215 cases. The bulk of outlay expenditure (£86 per case) was for precognitions. Note that we have no equivalent figure for private solicitors, because precognitions are no longer paid for separately, but included within the fixed fee.

Table 19.4: Cases granted summary legal aid through PDSO: breakdown of costs between time and outlays

<table>
<thead>
<tr>
<th>Time spent in minutes</th>
<th>No. of cases</th>
<th>Mean where cost applies</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>215</td>
<td>419 minutes</td>
<td>21 – 2,288 minutes</td>
</tr>
<tr>
<td>Cost of time (at £93 per hour)</td>
<td>215</td>
<td>£649.81</td>
<td>£33-£3,546</td>
</tr>
<tr>
<td>Precognitions</td>
<td>195</td>
<td>£94.91</td>
<td>£4-£393</td>
</tr>
<tr>
<td>Other outlays</td>
<td>126</td>
<td>£39.70</td>
<td>£1-£251</td>
</tr>
<tr>
<td><strong>Overall cost</strong></td>
<td><strong>215</strong></td>
<td><strong>£759.16</strong></td>
<td><strong>£64-£3,693</strong></td>
</tr>
</tbody>
</table>

19.19 Again, we have considered the effect of increases in caseload and "best" and "worst" case scenarios on the cost of summary cases dealt with by the PDSO, shown in Table 19.5 below. The PDSO’s summary cases would show savings on the basis of a £64 hourly rate.

Table 19.5: Cases granted summary legal aid through PDSO: effect on cost of increases in casework and of best and worst case scenario

<table>
<thead>
<tr>
<th></th>
<th>Hourly rate</th>
<th>Average cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on 2000/01 unit cost</td>
<td>£79</td>
<td>£661</td>
</tr>
<tr>
<td>Best case: further 15% increase in casework</td>
<td>£64</td>
<td>£557</td>
</tr>
<tr>
<td>Worst case: set-up costs over 5 years and no allowance for research</td>
<td>£104</td>
<td>£834</td>
</tr>
<tr>
<td>Current PDSO position</td>
<td>£93</td>
<td>£759</td>
</tr>
<tr>
<td>Comparable private practice costs</td>
<td>-</td>
<td>£627-£641</td>
</tr>
</tbody>
</table>

\(^\text{115}\) Based on a reworking of Table 3(ix), p. 21.

\(^\text{116}\) Scottish Legal Aid Board Annual Report 1998/9, based on a reworking of Table 3(viii), p.21. Figure quoted net of VAT.
Section 23(1)(b)

19.20 Private solicitors were granted legal aid under section 23(1)(b) in 64 cases. However, an account was submitted in only 58 of these cases.\footnote{In one case, only an Advice and Assistance account was received, and in two cases no payment was made.}

19.21 One of these payments was in addition to a grant of solemn legal aid, and has therefore been excluded from the analysis. One was in addition to a grant of summary legal aid, and is mentioned in the previous section. Here we look in more detail at the 56 section 23(1)(b) cases which involved neither solemn nor summary legal aid and in which an account was received.

19.22 Although the position has now been clarified, at the time of the survey, there was some confusion over the payment structure for section 23(1)(b) cases. Solicitors expressed disquiet that a form of legal aid which had traditionally been paid on a time and line basis was now subject to a fixed fee of only £50. Solicitors worried that the £50 limit would apply however many diets they were required to attend:

> “Unfortunately now [s.23(1)(b)] doesn’t pay you for each and every diet. It only pays you one block fee of £50, which doesn’t cover for what you have to do. We might have to obtain our own report… references… or confirmation of a person’s employment details. We might attend court and find ourselves having to wait until 12 o’clock.” [Private solicitor interview, April 2000]

One solicitor commented that “you can almost guarantee at least one deferral” and there might be as many as eight – but “however many appearances, you are only going to get £50”.

19.23 In practice, however, it appears that SLAB had been making additional payments for additional appearances. Out of 56 fees, only 28 were for £50. Nine were for £200 or more, and two were for £400 or more. The mean fee was £114.

19.24 Table 19.6 shows that one case involved a fee to counsel. More importantly, 20 also included an Advice and Assistance payment. Of these, 17 cases were paid for one Advice and Assistance account, and three were paid for two.

19.25 In addition, there were three cases in which the first diet was covered by the duty solicitor scheme, for which we have added a notional fee of £26.55.

19.26 This means that the average cost of these 56 cases covered by section 23(1)(b) was £131. If one looks at the average payment for all cases in which section 23(1)(b) was granted (without solemn or summary legal aid), irrespective of whether an account was submitted, the figure is £123.
Table 19.6: Cases in which an account for legal aid under section 23(1)(b) was submitted: number of cases and mean payment made

<table>
<thead>
<tr>
<th></th>
<th>No of cases with a payment</th>
<th>Mean for cases in which payment made</th>
<th>Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>S.23(1)(b) solicitor's fee</td>
<td>56</td>
<td>£114.05</td>
<td>£50 - £413.50</td>
</tr>
<tr>
<td>Counsel's fee</td>
<td>1</td>
<td>£23.50</td>
<td>£23.50</td>
</tr>
<tr>
<td>Advice and Assistance</td>
<td>20</td>
<td>£42.66</td>
<td>£18 - £238.60</td>
</tr>
<tr>
<td>Duty solicitor payment</td>
<td>3</td>
<td>£26.55</td>
<td>£26.55</td>
</tr>
<tr>
<td><strong>Total cost for cases with a s.23(1)(b) payment</strong></td>
<td><strong>56</strong></td>
<td><strong>£131.12</strong></td>
<td><strong>£50 - £462</strong></td>
</tr>
</tbody>
</table>

19.27 Solicitors are correct when they say that section 23(1)(b) cases nearly always involve at least one deferral and may involve many such deferrals. All but one of the cases had two or more diets, and three quarters (42) had three diets or more. A third (19) involved five or more diets, with the longest case involving the solicitor in 12 separate appearances at court.

**PDSO cases**

19.28 The PDSO dealt with only two cases in which legal aid was granted under 23(1)(b). The first case had only two diets, and took 111 minutes. The second had five diets and took 312 minutes, plus outlays of £1. This gave an average cost across the two cases of £328. The sample is too small to withstand further analysis.

**ADVICE AND ASSISTANCE ONLY**

**Advice and Assistance through private solicitors**

19.29 Here we look at those cases handled solely or mainly through a private solicitor, that were granted Advice and Assistance but not one of the other forms of legal aid discussed above. We have excluded cases that were granted solemn or summary legal aid or where a section 23(1)(b) account was submitted.

19.30 Overall, there were 297 grants of Advice and Assistance in such cases. This included 279 cases in which an account was submitted, and 18 with no account. The average cost paid by SLAB, spread across the 297 cases as a whole, was £70.

19.31 The 279 cases with an account averaged £75. Costs ranged from £11 to £782.

19.32 Cases under ABWOR (advice by way of representation) were considerably more expensive than those that only involved simple Advice and Assistance. Almost a third (88) involved ABWOR, and these averaged £108 each.

19.33 Out of the 279 cases, 24 (9%) involved more than one Advice and Assistance account: 20 had two accounts and four had three accounts. Cases with just one account averaged £72
and those with two or three averaged £98. Seven cases also included an appearance under the duty scheme. These, however, were quite cheap, with a mean cost of £65.

**Advice and Assistance through the PDSO**

19.34 The sample contained 172 cases in which Advice and Assistance (but no other form of legal aid) was granted through the PDSO. However, it appears that the PDSO often used the Advice and Assistance as a substitute for full summary legal aid. The sample included 42 cases in which a case had proceeded to intermediate diet, trial diet or trial without receiving any other form of legal aid. In a further three cases, the time of resolution was unknown.

19.35 In order to compare like with like, we concentrate here on the 127 PDSO cases resolved at pleading diet using Advice and Assistance only. The average cost of such cases was **£176**.

19.36 The average time spent on cases was just under two hours (110 minutes). There was a wide spread of times, with six cases taking under 10 minutes, and seven involving over five hours work. The longest case took over 17 hours and cost £1,610. Removing this atypical case reduces the average for the group to £164.

19.37 Only two cases included precognition costs and 19 included some other outlays. Spread over the 127 cases, precognitions and outlays add only £5.15 to average costs.

19.38 Table 19.7 shows that even on the best case scenario, Advice and Assistance-only cases would remain cheaper through private solicitors. This suggests that the legal aid scheme under-remunerates this work.

**Table 19.7: PDSO Cases dealt with under Advice and Assistance scheme: effect on cost of increases in casework and of best and worst case scenario**

<table>
<thead>
<tr>
<th></th>
<th>Hourly rate</th>
<th>Average cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Based on 2000/01 unit cost</td>
<td>£79</td>
<td>£150</td>
</tr>
<tr>
<td>Best case: further 15% increase in casework</td>
<td>£64</td>
<td>£123</td>
</tr>
<tr>
<td>Worst case: set-up costs over 5 years and no allowance for research</td>
<td>£104</td>
<td>£195</td>
</tr>
<tr>
<td>Current PDSO position</td>
<td>£93</td>
<td>£176</td>
</tr>
<tr>
<td>Comparable private practice costs (where account submitted)</td>
<td>-</td>
<td>£70-£75</td>
</tr>
</tbody>
</table>

19.39 It has been suggested that adding travel and dictation time on a pro rata basis may misrepresent the cost of PDSO Advice and Assistance cases, on the grounds that they involve less travel and dictation. On the other hand, they clearly involve some. Before adding the 40% of pro rata time, two cases were recorded as taking two minutes, two as five minutes, one as six and one as seven. A five-minute case probably does take two minutes to submit the legal aid form and carry out basic filing and administration on return to the office. At the other end of the scale, eleven cases took over three hours. In these longer case, public defence solicitors told us that they welcomed the opportunity to sort out ancillary matters by letter and phone, suggesting that there may be considerable dictation involved. Even if one were to assume that Advice and Assistance cases resolved at pleading diet took only 25% (rather than 40%) in
generic time, the cost (at £93 per hour) becomes £160. At £64 per hour, it becomes £112. It is still higher than the average paid to private practice solicitors in Advice and Assistance.

19.40 We also looked at the 42 cases dealt with under Advice and Assistance but known to be resolved after the pleading diet. They were more expensive than those resolved at the pleading diet, but less expensive than those using summary legal aid. Their average cost was £275. Their average length was 171 minutes, and outlays added a mere £9.56.

**Duty scheme**

*Private practice*

19.41 The sample included 92 duty solicitor cases handled by solicitors in private practice: 84 in the Sheriff Court and 8 in the District Court. \(^{118}\) SLAB does not hold records of the cost of individual cases - only of the session as a whole. Where only one hearing was held under the duty scheme, we have costed this as at £26.55 (which represents the average initial Sheriff Court duty cost for Scotland as a whole in 1999/2000).

19.42 In 40 cases, the duty scheme was used alongside other types of legal aid. In 37 it led to a grant of summary legal aid (32 to private practice, four to the PDSO and one to both). In three it led to a grant under section 23(1)(b). This leaves 52 cases that were dealt with under the initial duty scheme without receiving any other form of legal aid.

19.43 In 21 cases, it appears that work was done under the follow-up scheme. \(^{119}\) These cases have been costed at £26.55 for the initial appearance, plus £76.55 for the follow up work (which represents the average Sheriff Court duty follow-up cost for Scotland as a whole in 1999/2000). In these 21 cases, no other payment was made. This gives an average cost of £103.10.

19.44 Most follow-up cases (16) involved representation at only one additional diet. However, five involved more diets, with the longest cases involving six separate sentencing and warrant diets.

*PDSO*

19.45 The sample contained 10 cases without a specific PDSO time record, where the PDSO appears to have acted under the District Court duty solicitor scheme. At the time of the survey (April to December 1999), the PDSO did not take part in the Sheriff Court duty scheme.

19.46 The PDSO activity data show that in 1999/2000, staff spent a total of 38 hours, covering 46 District Court sessions. Although full records are not available, both the private and PDSO data suggest an average of two cases per session, resulting in an average time per case of 24 minutes. Each case has therefore been costed at £37.20.

19.47 If one were to apply the £79 hourly rate, the cost falls to £31.60.

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\(^{118}\) It is likely that we missed a number of district duty cases - partly because court records were missing, and partly because the court did not always record whether a solicitor was acting under the duty scheme.

\(^{119}\) We do not have case-by-case details of follow-up payments. Instead we have identified all duty cases with an initial plea of guilty (and no other form of legal aid) that involved the firm in representing at more than one diet.
CONCLUSION

19.48 The chapter shows that private solicitors are remunerated more generously for initial not guilty pleas than for guilty plea cases. When one compares the payments made to private solicitors with the cost of cases undertaken by the PDSO, payments to private solicitors for cases resolved at pleading diet are low. This is particularly true of cases using Advice and Assistance only. Even on the best case scenario, in which PDSO time was costed at only £64 per hour, its cost for Advice and Assistance-only cases resolved at pleading diet were still substantially more than those paid to private solicitors.

19.49 There has been much discussion about whether the legal aid scheme places incentives on initial pleas of not guilty. This chapter confirms that it does, not just in terms of turnover but also in terms of profitability. In Part B we saw that private solicitors responded to such incentives by advising more initial not guilty pleas.

19.50 Fixed payments under summary legal aid also introduce an element of "swings and roundabouts" into initial not guilty cases. The profitable "swings" are those resolved at intermediate diet while the less profitable "roundabouts" are full trials. For cases resolved just before trial, PDSO cost and private payments are broadly similar.

19.51 It should be remembered, however, that this study gathered data immediately after the introduction of fixed fees, before the scheme had fully bedded-down. As discussed in Chapter 2, it may be that, in time, further ancillary matters will be disaggregated from work done under fixed payments, so as to lead to additional Advice and Assistance intimations or secondary summary applications. This may increase costs in the future.
CHAPTER 20: COST-EFFECTIVENESS - CONCLUSION

THE PROBLEM OF OVER-CAPACITY

20.1 Public defender schemes enjoy some factors that give them the potential to be cheaper than private practice. Part B shows that they resolve cases at an earlier stage of the proceedings, over fewer months, using a smaller number of diets. The Canadian research suggests that they also spend less time in terms of hours worked per case. Although we were not able to make a direct comparison between private and public defence solicitors in terms of hours worked per case, the evidence that we have is consistent with this general picture.

20.2 The problem lies in ensuring that a new public defender scheme handles a sufficient caseload to justify its staffing level. The experience of setting up the PDSO shows how difficult it is to introduce a new public defender service into a crowded market place, where existing private firms already compete for clients. Even with the element of compulsion contained in the direction system, the PDSO was not able to build up a sufficient caseload from April 1999 to March 2000 to show cost savings. Although the number of recorded hours increased from April 2000 to March 2001, its caseload was still not at a level where the Office could demonstrate that it was significantly cheaper than private practice.

20.3 When private criminal defence solicitors start a new firm, they bring clients with them. They tend to start small and take on new staff only when case levels justify it. Public defence solicitors, however, start from scratch. They are under public scrutiny and feel they cannot afford to risk making mistakes by employing too few staff. They are therefore especially vulnerable to the problem of over-capacity. In other words, they run the constant risk of not attracting sufficient new business to keep their staff working at an appropriate level.

20.4 In order to show significant savings, the PDSO would need to continue its existing programme of cost savings and increase its casework by 15%. Alternatively, the Office would need to introduce further cost savings, probably reducing the number of solicitors from five to four. Only time will tell whether the Office succeeds in attracting sufficient casework such that its average case cost shows savings over private practice. Furthermore, it is difficult to judge what effect such additional work would have on case outcomes.

COST-EFFECTIVENESS

20.5 On 1999/2000 figures, it would appear that the PDSO had similar costs but a slightly higher rate of conviction than private practice. At first sight this would suggest that - from the clients’ point of view - the PDSO was less cost-effective than private practice operating under the normal legal aid scheme. However, this is only one element of cost-effectiveness: there are other perspectives to consider.

20.6 When we tested the effect of using other hourly rates, the analysis suggested that public defenders have the potential to be cheaper than private practice if they can succeed in attracting a sufficient volume of work. This is not because we have any reason to think that it is cheaper to employ a solicitor in the public rather than the private sector. It is because public defenders resolve their cases at an earlier stage, over less time, with fewer court hearings and less effort.
20.7 The tendency to resolve cases at an earlier stage is the main point of difference between public and private solicitors. It has ramifications for both costs and outcomes.

20.8 On the positive side, the earlier cases are resolved the less expensive they are, not only for the legal aid scheme but (as we discuss in Part E) for the criminal justice system more generally. Fewer witnesses are inconvenienced. Clients are spared the wait and worry of repeated court diets and are less likely to be held in custody pending trial.

20.9 On the negative side, earlier resolution leads to a small but measurable increase in conviction rate. By pleading guilty at the pleading diet or intermediate diet, rather than holding on until the day of the trial, clients substitute the certainty of conviction for the possibility that the prosecution case will collapse. Under the Scottish sentencing system, they will be given no clear sentence discount for this behaviour. Clients may also feel less supported by public defenders - that by encouraging earlier resolution, such solicitors were not "really standing up for" clients' rights.

20.10 Thus the potential for cost savings carries with it other consequences, both positive and negative, that go to the question of effectiveness in a criminal defence service. The weightings that people place on these consequences will differ depending on their ideological standpoint. Those with a strong adversarial perspective will see the accused's right to put the prosecution to proof as a fundamental right. They will therefore perceive the reduction of the tendency to exercise this right, and the accompanying increase in convictions, in a wholly negative light. At the other extreme, those who believe that the first purpose of a criminal justice system is to control crime would regard an increase in the number of guilty pleas as a benefit to society.

20.11 It is not possible to assign clear economic values to one consequence or another so as to produce a simple indicator of cost-effectiveness. Policy-makers face the responsibility of weighing advantages and disadvantages so as to balance cost with overall effectiveness.
PART E

Impact on the criminal justice system
CHAPTER 21: IMPACT ON COURT AND PROSECUTION COSTS

21.1 One of the four criteria by which we were asked to evaluate the Public Defence Solicitors' Office was its contribution to the efficiency of the criminal justice system, including its impact on the courts, the Procurator Fiscal service, the police and the judiciary.

21.2 As we have seen, one of the main differences between the PDSO and private solicitors working under the normal legal aid scheme was that the PDSO were more likely to resolve cases earlier, without a trial diet. This meant that, overall, PDSO cases took fewer resources in terms of court and prosecution time (an issue we consider in this chapter). Their lower tendency to resolve cases before trial also meant less disruption for witnesses in unnecessary attendance at court (which we examine in Chapter 22).

21.3 There are, however, many aspects of the criminal justice system which would be unaffected by a switch from private practitioners to public defenders. As we discussed in Part A, there were more points of similarity than differences between the PDSO and other criminal defence practitioners in Edinburgh. For example, we found no discernible differences in sentencing. The rate of use of social enquiry reports was similar: 20% of all PDSO cases had a social enquiry report, as did 18% of private non-directed cases. Among cases where evidence was led we found similar uses of joint minutes of evidence: 17% of private non-directed cases had such a minute, as did 16% of PDSO cases.

THE COST OF COURT TIME

21.4 Information is readily available on the cost of processing cases through the Sheriff Court. Under section 306 of the Criminal Procedure (Scotland) Act 1995, ministers are required to publish such data, and it is produced on an annual basis (Scottish Executive 2001). It shows that court costs are strongly linked to stage of resolution. Table 21.1 sets out the costs for each stage under Sheriff Court summary procedure for 1999/2000.

<table>
<thead>
<tr>
<th>Stage Description</th>
<th>Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plea at first diet</td>
<td>£62</td>
</tr>
<tr>
<td>Plea at first diet/continued first diet &amp; one adjournment for reports</td>
<td>£93</td>
</tr>
<tr>
<td>Plea at intermediate diet</td>
<td>£93</td>
</tr>
<tr>
<td>Plea at trial diet</td>
<td>£155</td>
</tr>
<tr>
<td>Case concluded after evidence led</td>
<td>£868</td>
</tr>
</tbody>
</table>

Source: Scottish Executive (2001), Costs, Sentencing Profiles etc.

The fact that the PDSO was more likely to resolve cases at pleading diet and intermediate diet, and less likely to go to a trial diet, would therefore produce savings for the court system. If one applies these figures to the profile of private non-directed legally-aided cases, the average Sheriff Court costs amount to £236 per case. Applying them to PDSO Sheriff

Excluding the four cases where time of resolution is unknown, there were 31 Sheriff Court cases (5%) resolved at first diet, 262 cases (46%) at the £93 level, 186 (33%) cases resolved before trial, and 91 (16%) where evidence was led.
cases, the average is £211.\textsuperscript{121} This suggests a reduction in Sheriff Court costs of around 11%. Allowing for differences in the types of case and a possible bias against guilty pleas, the true effect may be somewhat greater.

21.5 No cost figures are available for the District Court. As discussed in Chapter 10, however, there was no significant difference between the PDSO and private solicitors in stage of resolution in the District Court.

**PROSECUTION COSTS**

21.6 Similar reductions occur in prosecution costs. Again, we concentrate on the Sheriff Court, where the largest differences in stage of resolution occurred. Table 21.2 shows how prosecution costs differ for each stage.

<table>
<thead>
<tr>
<th>Stage</th>
<th>Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plea at first diet</td>
<td>110</td>
</tr>
<tr>
<td>Plea at intermediate diet</td>
<td>279</td>
</tr>
<tr>
<td>Plea at trial diet</td>
<td>323</td>
</tr>
<tr>
<td>Case concluded after evidence led</td>
<td>466</td>
</tr>
</tbody>
</table>

Source: Scottish Executive (2001), *Costs, Sentencing Profiles etc*.

Applying these figures, the average private non-directed Sheriff Court case cost the Fiscal Service £291.\textsuperscript{122} In contrast, the average PDSO Sheriff Court case cost £275.\textsuperscript{123} This suggests saving in prosecution costs of at least 5%. When one allows for a possible selection in guilty pleas, the saving may be greater.

**CONCLUSION**

21.7 The fact that public defence solicitors resolved cases at an earlier stage of the process has implications for court and prosecution costs.

21.8 Although it is difficult to quantify this effect precisely, our figures suggest that PDSO Sheriff Court cases cost the Scottish Court Service at least 11% less to process through the courts. Similarly, they cost the Crown Office at least 5% less in prosecution costs. However, the criminal justice system is likely to be “capacity-constrained”. This means that, in the short-run, savings may not be realised, as any freed-up resources will be used to process cases waiting to be heard.

\textsuperscript{121} Excluding 4 cases where the time of resolution is unknown, there were 37 cases (11%) resolved in only one diet, 188 (54%) at the £93 level, 74 (21%) before trial and 48 (14%) after evidence was led.
\textsuperscript{122} There were 106 cases (19%) resolved at the first diet, and 187 cases (33%) resolved at a continued pleading diet or intermediate diet. Unlike court costs, we have applied lower level costs to cases resolved at the first diet, irrespective of any subsequent sentencing diet.
\textsuperscript{123} 83 cases (24%) were resolved at the first diet, and 142 cases (41%) resolved at a continued pleading diet or intermediate diet.
CHAPTER 22: CANCELLED TRIALS AND THE IMPACT ON WITNESSES

22.1 Much concern has centred around the issue of cancelled and abortive trial diets. In 1993, the Review of Criminal Evidence and Procedure drew particular attention to the "very high number of trial diets which are fixed, when only a small proportion go ahead" (p.5). This resulted in the time of witnesses, prosecutors and courts being wasted. Furthermore, the Review commented that "it was not only wasteful: it diminishes the reputation of the system itself and reduces its standing in the eyes of the public" (p.5). At its worse, the experience of attending court without being called to give evidence could discourage witnesses from acting as witnesses in the future.

22.2 The Review pointed out that cancelled trials were a problem throughout the criminal justice system. However, most trials were summary trials. Therefore, summary trials (particularly in the Sheriff Court) offered the greatest scope for saving wasted time and expense.

22.3 By a cancelled trial diet, we mean a listed trial diet that is not vacated in advance but where no evidence is led on the scheduled date. As discussed below, this commonly occurs where the accused pleads guilty on the day of trial, or where the trial is adjourned. In Chapter 9, we discussed the introduction of mandatory intermediate diets in 1995, which went some way to alleviating the problem. It is clear, however, that abortive trial diets have been reduced, not eliminated (McCallum and Duff 2001).

22.4 The court data show that private non-directed cases were more likely than PDSO cases to include a cancelled trial diet. The figures are given in Table 22.1. Overall, 31% of all private non-directed cases involved a cancelled trial diet, and 7% involved more than one. The average number of cancelled trial diets (spread across all cases where data is available) was 0.44. By contrast, 24% of all PDSO cases involved at least one cancelled diet and 3% involved more than one. The average number per case was 0.31.

Table 22.1: Number of cancelled trial diets, by each of the main solicitor groups

<table>
<thead>
<tr>
<th>Number of cancelled trials</th>
<th>Private non-directed</th>
<th>Private directed</th>
<th>PDSO</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>0</td>
<td>508</td>
<td>61</td>
<td>425</td>
</tr>
<tr>
<td>1</td>
<td>197</td>
<td>24</td>
<td>87</td>
</tr>
<tr>
<td>2</td>
<td>38</td>
<td>5</td>
<td>23</td>
</tr>
<tr>
<td>3</td>
<td>14</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>5</td>
<td>1</td>
<td>*</td>
<td>0</td>
</tr>
<tr>
<td>6</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Not known</td>
<td>68</td>
<td>8</td>
<td>36</td>
</tr>
<tr>
<td>TOTAL</td>
<td>830</td>
<td>100</td>
<td>576</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.
The main reason why the PDSO had fewer cancelled trial diets is that more cases were resolved at pleading diet or intermediate diet, and so did not involve a trial diet of any sort. When one looks at cancelled trial diets as a proportion of all trial diets, the PDSO proportion (70%) was only slightly lower than that of private non-directed cases (76%).

**A SMALL STUDY OF FISCAL FILES**

22.5 We were keen to find out more about the reasons why so many trial diets were cancelled, and the effect this had on witnesses. We therefore carried out a small exercise examining Fiscal files. The intention was to gather information from around 100 private and 100 PDSO Fiscal files that included at least one cancelled trial diet.

22.6 We first drew a sample of cases from our court database, including only cases that had received full summary legal aid. This meant that we did not need to distinguish between private directed and non-directed cases. We then sent details of the case to the Procurator Fiscal's Office in Edinburgh and asked to read the file. In the event, we were able to read 103 files in which the accused had been represented by a private solicitor and 77 files where they had been represented by the PDSO. These 180 files included, between them, 209 cancelled trial diets (84 in PDSO cases and 125 in private cases).

22.7 Table 22.2 shows the main reason why trial diets failed to go ahead. By far the most important reason - applying to two thirds of diets in the sample - was that the accused pled guilty. This was usually a mixed plea, though some accused pled guilty as libelled. The second most important reason was that the case was adjourned, followed by desertions by the prosecution.

<table>
<thead>
<tr>
<th>Reason for cancelled diets</th>
<th>PDSO</th>
<th>Private</th>
<th>Both</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Plea of guilty as libelled</td>
<td>16</td>
<td>19</td>
<td>14</td>
</tr>
<tr>
<td>Mixed plea</td>
<td>45</td>
<td>53</td>
<td>61</td>
</tr>
<tr>
<td>Desertion</td>
<td>10</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Adjournment</td>
<td>13</td>
<td>15</td>
<td>40</td>
</tr>
<tr>
<td>TOTAL No. of DIETS</td>
<td>84</td>
<td>100</td>
<td>125</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.
Source: Fiscal file data

22.8 One of the concerns has been the extent to which pleas and adjournments are notified in advance, so that witnesses can be "countermanded" (or told that they will not be needed). Even if a case proceeds past the intermediate diet, it is still possible for guilty pleas and adjournments to be discussed between prosecution and defence before the day of trial, so that witnesses can be notified that they are no longer needed. In practice, however, we found that such post-intermediate diet/pre-trial diet discussions were quite rare. As discussed below, in 70% of cases, no countermands were issued.

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124 Given the relatively small numbers of PDSO cases involving an ineffective diet (102 in all), we were not able to achieve a full sample of 100 PDSO cases.
22.9 We explored, in particular, how far plea bargains were discussed in advance. Most plea bargains were left until the day of trial. Out of 106 cases concluded with a mixed plea, the defence offered a plea before the trial diet in only 38 cases (at least according the Fiscal file). The prosecution accepted the offer in 23 cases, and rejected it in 12. In Part B, we suggest that there is some indication in the data that the PDSO was more likely to enter into plea discussions with the Procurator Fiscal, but that the effect was not statistically significant. The same is true here. There is a slight suggestion that that the PDSO may be more likely to offer a plea in advance: PDSO solicitors made an offer in 19 cases (44% of mixed plea cases) compared with 19 (31%) for private solicitors. However, the figures are extremely small and no great reliance can be put on them.

22.10 Unlike some civil cases - where cases are negotiated through repeated offers and counter-offers - negotiations in criminal cases are brief. In only three cases (all PDSO) did the solicitor put forward a second offer once the first offer had been rejected. Nor does it seem that the defence should worry unduly if their offer is rejected. In most cases where the Procurator Fiscal initially rejected the first offer (12), they eventually accepted it at court (9).

22.11 Table 22.2 suggests that private cases may be more likely to be adjourned. However, these figures are extremely small and should be treated cautiously. When we looked in detail at the reasons for adjournments (Table 22.3), the difference was mainly accounted for by an increase in adjournments asked for by the prosecution. Adjournments at the request of the defence were quite rare, and we have no evidence to suggest that either private or public defence solicitors were more likely to ask for them.

Table 22.3: Reason for adjournments, by type of solicitor

<table>
<thead>
<tr>
<th>Reason</th>
<th>PDSO</th>
<th>Private</th>
<th>Both</th>
</tr>
</thead>
<tbody>
<tr>
<td>At the behest of prosecution</td>
<td>5</td>
<td>18</td>
<td>23</td>
</tr>
<tr>
<td>At the behest of defence</td>
<td>3</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>For reasons connected with court</td>
<td>3</td>
<td>5</td>
<td>8</td>
</tr>
<tr>
<td>Other/not known</td>
<td>2</td>
<td>14</td>
<td>16</td>
</tr>
<tr>
<td><strong>TOTAL No. of ADJOURNMENTS</strong></td>
<td>13</td>
<td>40</td>
<td>53</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.
Source: Fiscal file data

**WITNESSES INCONVENIENCED**

22.12 The key question is how far witnesses are inconvenienced by cancelled trials. We read through Fiscal files to find out how many prosecution witnesses had been cited. We then looked at whether they had been countermanded, because the Procurator Fiscal realised that the trial would be cancelled. We also noted any record on the file that a witness had failed to appear. We then deducted the number of witnesses countermanded and failing to appear from the number cited, to give a total number of prosecution witnesses inconvenienced. This slightly exaggerates the number of witnesses whose time was wasted. Fiscal files usually only record witnesses as failing to appear when it is germane to the case. Witnesses quite often fail to turn up, and it is likely that some were absent in guilty plea cases without the Procurator...
Fiscal noting the fact. The figure does, however, produce a rough-and-ready estimate of the effect on prosecution witnesses of cancelled diets.\textsuperscript{125}

22.13 Note that we were unable to gather data on defence witnesses. Our impression is that cases involved relatively few defence witnesses other than the accused, but figures are not available.

22.14 The first thing to be said is that most witnesses were \textit{not} countermanded in time, usually because a plea or problem was not notified in advance. Out of the 209 cancelled trials we investigated, there were only 32 diets at which all the witnesses were countermanded, compared with 147 diets (70\%) at which none of the witnesses were countermanded. This leaves 30 cases in which countermands were sent to some but not all witnesses.\textsuperscript{126} There was no great difference in the rate at which witnesses were countermanded in private and PDSO cases: no countermand was issued in 57 PDSO cases (68\%) and 90 private cases (72\%).

22.15 The result was that, despite the many efforts made to ease the path of witnesses within the criminal justice system, they are still regularly put to the inconvenience of appearing at cancelled trials. Witnesses appeared unnecessarily at 165 diets (79\% of diets in the sample). When witnesses appeared, an average of five people were inconvenienced. Looked at across all cancelled trial diets, the average was four per case.\textsuperscript{127}

22.16 We were not able to record how many were police witnesses and how many civilian witnesses. The 1993 Review found that the numbers were "roughly equal" and Leverick and Duff (2001) suggest that the proportions remained at around half-and-half throughout the 1990s. This would mean that for every cancelled trial, two police and two civilian witnesses appeared unnecessarily.

22.17 Particular concern has been expressed about requiring children to attend court unnecessarily, and the Fiscal files were careful to note the presence of children. The sample contained 12 cases in which children appeared at court unnecessarily: in 9 cases, there was only one child witness; in two cases there were two child witnesses; and in one case there were three. There was no difference between PDSO and private cases in the extent to which child witnesses appeared in court at cancelled diets. Out of the 12 cases, 5 were PDSO cases and 7 were private.

22.18 In conclusion, therefore, although we found no great difference in the nature of cancelled diets between PDSO and private cases, the fact that private cases were more likely to generate cancelled diets had significant implications for witnesses. In very broad terms, every 100 privately-represented cases generated 44 cancelled trials. These inconvenienced some 175 witness, of whom around half were police officers and half civilians. Two or three were children.

22.19 By contrast, 100 cases handled by the PDSO would produce 31 cancelled trial diets, inconveniencing 123 witnesses, of whom one or two would be children.

\textsuperscript{125} We did not include witnesses known to be placed on "standby": i.e. those asked to remain at a nearby location, waiting for a call from the court.

\textsuperscript{126} These figures are similar to those found by Leverick and Duff (2001). Their Scotland-wide survey, found that in 72\% of cases, at least one witness was not countermanded.

\textsuperscript{127} The average spread across the 165 diets with a problem was 5.03; spread across all 209 diets, it was 3.97. This is not dissimilar to the Leverick and Duff figure of 4.36 witnesses per adjourned trial.
22.20 It is extremely difficult to put costs on the waste of witnesses' time. No attempt has been made to cost the time of civilian witnesses, though two previous studies have looked at the cost of police witness duty (Accounts Commission 1992; Anderson 1998).

22.21 Neither study attempted to cost the time and general disruption to the police caused by witness duty. Instead, they focused specifically on the additional costs in overtime, time off in lieu and expenses. Anderson (1998) found that the amount of overtime was not directly related to the number of unnecessary attendances. Instead, it depended heavily on how soon in advance the citation was received. If the citation required the police officer to cancel a rest day (or move from night shift to day shift) at less than 15 days’ notice, overtime became payable. If, on the hand, the officer received notice earlier, they became entitled to time off in lieu (in the form of a re-rostered rest day) rather than to overtime.

22.22 The same 15-day trigger also applies to countermands. If having become entitled to overtime or time off in lieu, the citation is then countermanded, officers may choose whether they wish to take the original rest day or work as notified. Anderson comments that:

"Many will choose the latter option with two main consequences: first they will have to be paid overtime at an enhanced rate; and secondly they may well have to join a different shift for the day, contributing to a surplus of staffing on the day shift and a shortage on the late or night shifts."

(Anderson 1998 p.17)

This means that the amount of police overtime paid relates to the time of citation, not to the countermand. Similarly, a countermand immediately following a plea of guilty at the intermediate diet (which in Edinburgh is usually held 14 days before the trial), does not necessarily ease any disruption to shift patterns. Given these complexities, we were not able to identify any specific cost savings to the police in moving to a public defender scheme. However, insofar as (following resolution at intermediate diet) the police witnesses were able to spend their time more productively than attending court, there may be some more general benefit.

CONCLUSION

22.23 The fact that PDSO cases were less likely to include a cancelled trial diet meant that fewer witnesses were inconvenienced by coming to court to give evidence only to find that they were not needed. In broad terms, PDSO cases generated around 30% fewer wasted witness visits. We were not able to show, however, any specific savings for the police in terms of overtime or expenses.
CONCLUSION
CHAPTER 23: CONCLUSION

23.1 We were asked to evaluate the PDSO according to four criteria:
- cost-effectiveness;
- client satisfaction;
- the quality of services provided; and
- the contribution of each delivery method to the efficiency of the criminal justice system.

Below we summarise the conclusions reached on each of these four criteria.

COST-EFFECTIVENESS

23.2 The effectiveness of the office was measured through a large-scale quantitative study of process and outcomes. It reached three key findings:

- The PDSO was more likely than private solicitors acting for non-directed clients to resolve the case at the pleading diet or intermediate diet, and less likely to go to a trial diet.

- PDSO cases were somewhat more likely to end in a conviction than cases handled by private solicitors for non-directed clients. The multi-variate analysis suggested that PDSO representation increased the rate of conviction from around 83% to 88%.

- PDSO and private non-directed clients were equally likely to receive a custodial sentence.

23.3 As discussed in Chapter 13, these were robust findings, supported at different levels of analysis. Alongside these three main conclusions, the following ancillary findings emerged:

- As well as being resolved at an earlier stage, PDSO cases were also faster and involved fewer diets.

- PDSO clients were less likely to be held in detention during the course of the case. There may be several explanations for this, including the fact that PDSO cases involved fewer diets and the Office had developed good links with the SACRO bail scheme.

- Procurators Fiscal regarded public defence solicitors as more pro-active in suggesting and agreeing pleas with them. The data indicate that they may have been more likely to conclude cases with a plea bargain, but this finding is significant only at the 90% level.

- In analysing sentences, we also looked at the length of custodial sentences and compared the likelihood of a serious sentence (custodial or community) with driving disqualifications, fines and lesser sentences. As with the rate of custodial sentences imposed, we found no significant differences - either between directed and non-directed cases, or between PDSO and private non-directed cases. It is possible that PDSO clients were given a reduced fine, though the difference did not reach the 95% significance level normally required in studies of this kind.
23.4 On the issue of cost, we found that PDSO and private costs occupied a similar range.

23.5 Costs can be analysed in different ways, depending on how one treats non-legally-aided work or VAT, whether one takes the 1999/2000 or 2000/01 figures, and whether any allowance is made for possible further bias against guilty pleas. On most assumptions, the PDSO and private costs were not significantly different.

23.6 On only one combination of assumptions did the PDSO's costs work out as significantly different from those of private practitioners acting for non-directed clients. If one takes the 1999/2000 rate, allows for some non-legally-aided work, excludes VAT and makes no allowance for additional guilty pleas, then the PDSO's average case costs exceeded that of private practice by around £65.

23.7 In order for the PDSO to have costs that were significantly cheaper than those of private practice, it would need to continue its existing programme of cost saving and increase its caseload by around 15% above 2000/01 levels. We cannot say what effect such an increase in caseload would have on outcomes.

**CLIENT SATISFACTION**

23.8 Clients clearly valued the ability to choose their lawyer and resented being directed to use the PDSO. The levels of trust and satisfaction expressed by directed PDSO clients were consistently lower than those expressed by private practice clients. PDSO lawyers were perceived as businesslike and efficient, but sometimes at the expense of taking enough time to get to know their clients and build up a rapport. Of particular concern was the fact that only 39% agreed strongly that the PDSO "really stood up for my rights", compared with 71% of private clients.

23.9 The views expressed by volunteer clients were more positive than those expressed by directed clients, and in many instances they were not significantly different from those of private clients. However, volunteers were significantly less likely than private clients to agree strongly that their lawyer had told the court their side of the story or had treated them as if they mattered, rather than as "a job to be done". Two issues stand out for concern. Volunteers were less likely to agree strongly that the PDSO had really stood up for their rights (only 48% did so). They were also less likely to say that they would use the firm again: 60% said they would, compared with 83% of private clients.

**QUALITY**

23.10 Quality is a multifaceted concept that can be measured in a variety of ways. For the purposes of this study, the emphasis was on outcomes and client satisfaction (described above).

23.11 We also spoke to sheriffs, justices of the peace, solicitors, fiscals and court staff about how they judged the quality of criminal defence work. In practice, most criminal justice professionals assessed defence solicitors by the quality of their advocacy. They had ample
opportunities to judge the quality of PDSO advocacy, as compared with that of other solicitors in Edinburgh. The overwhelming verdict was that it was much the same. As with other firms, PDSO solicitors were thought to have a range of ability. Taken overall they tended to be seen as average: better than the worst, but perhaps not as good as the very best.

**IMPACT ON THE REST OF THE CRIMINAL JUSTICE SYSTEM**

23.12 The fact that public defence solicitors resolved cases at an earlier stage of the process has implications for court and prosecution costs. Although it is difficult to quantify this effect precisely, our figures suggest that PDSO Sheriff Court cases cost the Scottish Court Service at least 11% less to process through the courts. Similarly, they cost the Crown Office at least 5% less in prosecution costs. This does not mean, however, that there will necessarily be direct savings to the tax-payer. The criminal justice system is likely to be "capacity-constrained", which means that, in the short-term, freed-up resources are more likely to be used to process other cases than to be returned to the Scottish Executive.

23.13 The fact that PDSO cases were less likely to generate cancelled diets meant that fewer witnesses were inconvenienced by being called to court only to find they were not required to give evidence. In very broad terms, every 100 privately-represented cases generated 44 cancelled trials. These inconvenienced some 175 witness, of whom around half were police officers and half civilians. Two or three were children. By contrast, 100 cases handled by the PDSO would produce 31 cancelled trial diets, inconveniencing 123 witnesses, of whom one or two would be children.

**OVERALL ASSESSMENT**

23.14 The first two years (when this assessment largely took place) were difficult ones for the PDSO. The direction system generated considerable resentment among clients and did not generate as much work as anticipated. Meanwhile, the Office incurred some high costs, several of which appear to have been related to its status as a pilot project.

23.15 In many ways, public and private defence solicitors were similar. As interviews with criminal justice professionals made clear, PDSO staff were members of the same small Edinburgh criminal defence community, and they approached their work in much the same way as their private colleagues.

23.16 In the long-term, the main point of difference between the two systems is that the PDSO have a tendency to resolve cases at an earlier stage of the proceedings - at pleading diet and intermediate diet, rather than at a trial diet. This has ramifications for both costs and outcomes.

23.17 The earlier cases are resolved the less expensive they are for the criminal justice system generally. Earlier resolution also provides the potential for savings in legal aid costs, though this potential has yet to be realised. Meanwhile, fewer witnesses are inconvenienced. Clients are spared the wait and worry of repeated court diets and are less likely to be held in custody pending trial.
23.18 However, earlier resolution leads to a small but measurable increase in conviction rate. By pleading guilty at the pleading diet or intermediate diet, rather than holding on until the day of the trial, clients substitute the certainty of conviction for the possibility that the prosecution case will collapse. Under the Scottish sentencing system, they will be given no clear sentence discount for this behaviour. Clients may also feel less supported by public defenders - that by encouraging earlier resolution, such solicitors were not "really standing up for" clients' rights.

23.19 Thus the potential for cost savings carries with it other consequences, both positive and negative. The weightings that people place on these consequences will differ depending on their ideological standpoint. Those with a strong adversarial perspective will see the accused's right to put the prosecution to proof as a fundamental right. They will therefore perceive the reduction of the tendency to exercise this right, and the accompanying increase in convictions, in a wholly negative light. At the other extreme, those who believe that the first purpose of a criminal justice system is to control crime would regard an increase in the number of guilty pleas as a benefit to society. Policy-makers face the responsibility of weighing these advantages and disadvantages so as to balance cost with overall quality and effectiveness.
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GLOSSARY

ABWOR Assistance by Way of Representation - type of legal aid. One of its main uses is in cited cases where the accused intends to enter an initial plea of not guilty. See Chapter 1 for further details.

Admonition A sentence, which comprises a warning or ‘telling-off’, with no other penalty attached. An admonition counts as a criminal conviction.

Complaint A document served on the accused in summary procedure which sets out the charges.

Diet Court hearing or appearance. For example, the ‘trial diet’ is simply the hearing scheduled for the trial to take place.

District Court The lowest in the hierarchy of criminal courts where cases are heard by one or more lay Justices. The maximum penalty is 60 days imprisonment.

Edinburgh Bar Association An association of Edinburgh solicitors.

Fiscal Prosecutor. See Procurator Fiscal

High Court The highest in the hierarchy of criminal courts, where cases are always heard under solemn procedure by a judge sitting with a jury. Its powers of sentencing are unlimited.

Indictment A document served on the accused in solemn procedure that sets out the final version of the charges.

Intermediate diet A hearing which takes place shortly before the trial diet in order to ascertain: whether the accused is adhering to a previous plea of not guilty; that the witnesses are all available for the trial; and whether any evidence can be agreed before the trial.

Petition A document which is served upon the accused at the first calling of a case in solemn procedure, containing a preliminary draft of the charges.

Pleading diet Initial hearing at which the accused will be asked to tender his plea: guilty or not guilty. Sometimes the accused will not yet have determined his position and the case will be ‘continued without plea’ to a further pleading diet.
Precognition A statement taken from a witness by the prosecution or defence, sometimes taken by a qualified lawyer and sometimes taken by an unqualified agent. A precognition differs from a statement in that its contents cannot be put to a witness in court because it is regarded as the precognoscer’s account of what the witness will say (and thus may be the product of wishful thinking) rather than the account of the witness himself.

Procurator Fiscal Under the authority of the Lord Advocate, the Crown Office and Procurator Fiscal Services provides the sole public prosecution service in Scotland. Procurator Fiscals are representatives of the Lord Advocate at local levels. Procurator Fiscals are assisted by Procurator Fiscal Deputes, who are legally qualified staff who conduct prosecutions in the Sheriff and District Courts. Procurator Fiscals and their deputes are generally referred to as Fiscals.

Section 23(1)(b) Type of legal aid granted by the Court to convicted offenders facing the possibility of their first sentence of imprisonment. See Chapter 1 for further details.

Sheriff A Sheriff is a judge in the Sheriff Court. Sheriffs are appointed from experienced legal practitioners. Sheriffs have both summary and solemn jurisdiction, sitting alone in the former procedure and with a jury in the latter.

Sheriff Court The middle-ranking criminal court, where cases may be heard either under summary procedure, by a Sheriff sitting alone, or under solemn procedure, by a Sheriff sitting with a jury. The maximum penalties are: summary procedure – 3, or in certain circumstances 6, months’ imprisonment; solemn procedure – 3 years’ imprisonment.

SLAB Scottish Legal Aid Board

Solemn procedure Procedure which involves a jury (if the case goes to trial). Solemn procedure is generally started with a petition. The trials will be heard either in the Sheriff Court by a Sheriff sitting with a jury, or in the High Court by a judge sitting with a jury. Notification of the charges is contained in the indictment, which runs in the name of the Lord Advocate.

Summary procedure Procedure which does not involve a jury. Summary trials, in which the accused receives a complaint setting out the charges, are heard either in the District Court before one or more lay Justices or in the Sheriff Court by a Sheriff sitting without a jury.
APPENDICES
APPENDIX 1: COURT DATA COLLECTION - METHODOLOGY

THE SAMPLE

This element of the evaluation is based on data collected from court records for summary cases held by Edinburgh Sheriff and District Courts. The aim was to compare the records of "directed" accused (i.e. those born in January and February) with a similar sample of "non-directed" accused, born in November and December. The sample consisted of cases brought against accused people with the relevant birth-months started in the nine months between 1 April 1999 and 31 December 1999 which had finished by 1 November 2000.

Data was collected from the courts in two tranches: one in November/December 1999 and one in October-December 2000.

Our starting point was to look at all cases. However, following a pilot in summer 1999, some reductions were made to the sample:

1. The control group of November/December-born accused was reduced by approximately one sixth, by excluding those born in the first 10 days of November. Thus the ‘non-directed’ sample covers those born between 11 November and 31 December.

2. We excluded Sheriff Court cases brought under the Companies Act 1985. The pilot revealed that these mainly concerned a failure to register company accounts. The registrar is in Edinburgh, which means that technically the offence is committed in Edinburgh, though most of the companies were based elsewhere in Scotland. In any event, these cases would be unlikely to qualify for legal aid.

3. We also excluded a limited number of District Court offences that were too minor to qualify for legal aid. A case was excluded if it consisted only of one or more of the following:
   - seat belt offences;
   - parking/obstruction;
   - not having a TV license, contrary to the Wireless Telegraphy Act 1949.

DEFINING A "CASE"

In this research, we regarded each occasion on which an individual was pursued through the courts as a separate case. Thus two co-accused, each with relevant birth-months, were counted as two separate cases. Similarly, an individual brought to court on two separate occasions for two separate offences was counted as two cases.

Within broad principles, each agency defines the concept of a criminal "case" in its own way to meet its own needs. The feasibility study and pilot revealed subtle differences in the way that the Fiscal Service, courts, Scottish Legal Aid Board and solicitors defined a case.

Our main concern was to adopt a consistent definition that would not differ between the PDSO and private solicitors. Our choices were between:
• using the Fiscal definition, as evidenced by the “PF number”;
• using the court definition, as evidenced by the court reference number.

The Fiscal and court approaches differed in three main ways:

1. **Offences of failing to appear.** An accused who fails to attend a court diet may be charged under the Criminal Procedure (Scotland) Act 1995 section 27(1) or section 150(8). For practical purposes, this new charge will be dealt with alongside the substantive charge at the same diets. The Fiscal Service treats the failure to appear as a continuation of the original case and uses the original PF number on the new complaint. The court service, however, assigns the new charge a new court reference number.

2. **Re-raised cases.** Occasionally, the Fiscal Service deserts a case and then re-raises it. The PF number is the same for both the old and new cases. The court, however, assigns the re-raised case a new number.

3. **Offences that disclose a previous conviction.** This is a particular issue for offences of driving whilst disqualified. If an accused drives whilst disqualified and commits another offence at the same time (such as drink-driving) the two offences will be dealt with in separate complaints. Although both offences arise out of the same circumstance, they cannot be dealt with at the same trial: the accused might be prejudiced in the drink-driving offence by the disclosure that he had previous convictions for which he had already been disqualified. The preliminary diets (such as pleading and intermediate diets) would be held at the same time, but the trials would be separated. Again, the Fiscal Service assigns both complaints the same number; the court assigns them different numbers.

After some investigation it was decided to adopt the Fiscal definition. For the purposes of this study, one accused with one PF number represents one case. We made this decision for four reasons:

1. The PF number is used as a key identifier by many different agencies. It was, for example, the main way by which we matched court records with SLAB records.

2. Separate court files for offences of failing to appear contain very little information. To find the data we required we had to match the failure to appear with the substantive case.

3. Practically speaking, solicitors will usually deal with complaints bearing the same PF numbers together, either at the same court diets, or as part of the same preparation.

4. When a case is deserted and re-raised and eventually leads to a conviction, it is more realistic to see this as a single convicted case rather than as two cases, one convicted and one not convicted.

The definition we used was a broad one. It may, in some circumstances, result in two or more grants of summary legal aid to the same "case". The sample contained 27 cases in which accounts were paid for at least two grants, and two cases in which an account was paid for three grants. We would stress that there is nothing mistaken or improper about such multiple grants.
It also means that our sample was assembled on a different basis from the PDSO's internal record keeping (which follows the court rather than the Fiscal definition of the case). Considerable care should be taken in comparing the PDSO's internal statistics with the sample data.

THE SHERIFF COURT SAMPLE

The data were drawn from court case papers. The process of locating the papers differed between the two courts.

The Sheriff Court was computerised, which meant that the Scottish Court Service (SCS) were able to draw a sample from their computer records and provide us with the reference numbers of all cases that appeared to meet our sample criteria. They drew a sample of closed cases (which did not include cases where a warrant or deferred sentence was still outstanding).

SCS drew the sample in four stages:

- For the first tranche of data collection, they drew a sample of all cases started from 1 April 1999 to 30 September 1999, that had finished by 30 September 1999 and included an accused with the relevant date of birth.

- The second stage searched for cases in which the accused was born between November and February that started between 1 April and 31 December 1999, and that finished between 1 October 99 and 31 August 2000 (when the second tranche was drawn).

- The third stage searched for cases started after 31 December 1999 that had the same accused and PF number as a case already in our sample. This allowed us to pick up instances in which a case started in 1999 had been deserted and restarted in 2000, or where a case continuing in 2000 had had a charge of failing to appear added to it.

- Finally, we were concerned that we might be missing long-running cases. The SCS figures showed that between April and December 1999, 3,096 cases were started against accused born in November, December, January or February. Of these, only 2,537 had finished by the end of August 2000. Therefore in November, SCS identified a further list of cases started in our sample period that ended in September or October 2000. This yielded another 75 cases.

Drawing samples involved the SCS in considerable work. We are very grateful to Robert Gordon for his unfailing efficiency, helpfulness and good humour in this time-consuming task.

After removing accused born from 1-10 November, the sample provided by SCS included 2,290 cases. This eventually yielded 1,168 useable Sheriff Court cases within the sample.

There are several reasons for the discrepancy:
• we "wrapped up" additional charges of failing to appear and re-raised cases with the main case. In all there were 239 cases involving a failure to appear and 124 cases that were deserted and re-raised;
• we excluded cases of failing to appear in substantive cases that started before 1 April 1999;
• we excluded cases brought under the Companies Act 1985;
• some case papers were missing;
• some cases appeared not to be eligible for inclusion because, for example, the date of birth had been incorrectly entered onto the SCS sample or because they were duplicates.

THE DISTRICT COURT SAMPLE

The District Court did not have computerised records. Instead case papers were filed on the date they were concluded.

We went through the files for each court day between 1 April 1999 and 1 November 2000 and collected details about every case that met our sample definition. The day’s business was also recorded on a court sheet, which allowed us to see if any other cases had concluded without having their papers filed in the relevant folder. Where the case papers were missing, we were able to fill in much of the necessary information from the court sheet. However, it also led to some gaps in information, especially about previous diets.

The first tranche of data collection in October 1999 went relatively smoothly. However, when we returned in November 2000, the Court had recently moved to new premises and was experiencing industrial action. This led to some administrative difficulties, particularly in unpacking old papers. We are very grateful to court staff for putting up with us at this difficult time.

In all, we collected details of 875 District Court cases. Unfortunately, the administrative problems meant that in 318 cases, the case papers were missing and we had to complete the records from the sketchier details contained on the court sheet. This, however, proved to be less of a problem than it first appeared. Of these 318 cases, 196 were unrepresented, and therefore of only minor interest to the study. Where the missing case was represented and received summary legal aid, we were often able to fill in the missing details from the Account Synopsis forms submitted to SLAB or from the template details held on the PDSO computer system. This kept the level of missing data within manageable proportions. The sample contains 49 District Court represented cases where we do not know the time of resolution, and 6 where we do not know the outcome.

UNFINISHED CASES

The Sheriff Court figures suggest that at the time our sample closed on 1 November 2000, 484 cases (or 16% of the total sample) had not yet finished. Unfortunately, the statutory timetable imposed by Parliament did not allow us to wait any longer for cases to finish.

This places a caveat on the study. In interpreting the results, one should bear in mind that the sample does not include the 16% of longest-running Sheriff Court cases.
The lack of computerised records means that we cannot make similar estimates for the District Court.

DATA COLLECTION

We developed and piloted an initial version of the data collection form in summer 1999. In September 1999 we consulted widely, sending a short paper to criminal justice organisations and academics asking for views on the main issues. We then finalised a paper version of the form. A copy is provided in Appendix 10.

The data was collected on laptop computers using the CAPI system. The CAPI script followed the paper collection form.

Data was collected by graduate students specifically employed by System Three for this exercise. They all had an understanding of the Scottish criminal justice system, either through criminology or law degrees. They were given one day’s off-site and two days’ on-site training by members of the research team. Thereafter, team members regularly attended the courts to deal with queries or problems and back-checked 10% of cases against the original court files.

MERGING SLAB DATA TO CASES WITHIN THE SAMPLE

The evaluation involved matching the details from court records to information held about the case on SLAB’s various databases. This was a complex and laborious process that entailed searching for data on at least five separate systems, including:

1. summary legal aid applications;
2. Advice and Assistance applications;
3. solemn legal aid applications (for section 23(1)(b) applications and for cases that started with a petition and were later dealt with under summary procedure);
4. SLAB’s account systems (AR&T and the VAT voucher systems);
5. the PDSO’s computerised records.

We are especially grateful to SLAB for the hard work and effort they put into this difficult task.

Summary cases were identified by a combination of the accused’s name, date of birth and PF number, making allowance for some variations in name (Allen/Allan, Macdonald/McDonald), and for minor mistakes in date of birth. Most summary cases matched on PF numbers, though we had to make allowance for some 25 or so cases where the PF number was invalid or was one or two digits out.

Again, most solemn and section 23(1)(b) applications matched on PF number, after making some allowance for one or two digit discrepancies.

The Advice and Assistance applications were more of a problem. We found 1,113 cases that matched completely on surname, date of birth and PF number and a further 174 that matched with some discrepancies.
The problem came where the Advice and Assistance application had been submitted without a PF number. The SLAB data base revealed 616 Edinburgh cases that matched people in our sample (more or less closely), but without a PF number. On closer inspection, it appeared that 481 related to people within our sample, but it was much less clear whether the assistance had been given about this particular case or about another case. Of these, we finally included 51 cases. In all 51 cases the offences were the same. In 27 cases, the offence dates either matched or were within a few days of each other. In 24 cases, the SLAB details did not include an offence date but the advice had been sought within a week of the pleading diet, the warrant diet or the first diet at which the solicitor became involved.

Finally, in Scotland as a whole, there were 134,655 Advice and Assistance applications without either a PF number or a court location. Of these, 2,604 appeared to match people in our sample. Having gone through these cases, we finally included 102. We did this on the grounds that the offences were the same, and that the offence dates either matched or were within a few days of each other. Alternatively, if the offence date was missing, the advice had been sought within a week of the relevant diet.

We have done the best we can in the circumstances to find the relevant accounts. However, there may be some inaccuracies. When we double-checked the legal aid granted to PDSO clients from the PDSO database, we found a few cases that we had failed to identify from SLAB records. However, there was no systematic reason for this - only a series of minor administrative difficulties.

Note that legal aid payments relate only to the case until sentence. We did not include payments or PDSO time records relating to appeals, means enquiries or breaches of probation or community service.

ASSIGNING CASES TO SOLICITOR GROUPS

We had two sources of information about the solicitor involved in the case. The first came from court diet sheets on which the court clerk had written the name of the individual solicitor appearing at that diet. The second was from SLAB records and PDSO records, showing the firm to which legal aid had been granted. We assigned cases to groups based on a combination of the two.

PDSO cases

This group contained 430 cases (426 directed, 4 non-directed) in which the PDSO was either the only or main representative. The PDSO was the only representative in 389 cases. In the remaining 41 it was the main representative. By this we mean that the PDSO represented after an initial not guilty plea and has a time record for the case. The private representation was at a pleading diet only, and the private solicitor was unpaid or granted A&A only. It does not include any cases in which a private solicitor represented after the initial plea or was granted summary legal aid.

We have PDSO time records for 414 cases. In another 10 cases, the PDSO acted as the District Court duty solicitor. In the remaining six cases, the records were missing.
Private non-directed cases

This included 830 cases. These were all exclusively private cases for non-directed clients. The PDSO was not involved in any of them. In all but three cases, the solicitor represented the client in court before at least one diet. In the remaining three cases, the solicitor received Advice and Assistance and sent a letter only.

Private solicitors received a legal aid payment in 682 of these cases. This left 146 private solicitor cases without a payment (of which 96 were motoring cases and 50 were non-motoring cases). There are several possible explanations for why no legal aid was paid. One possibility is that the clients would have been eligible for legal aid but the solicitor failed to make a claim. Alternatively they may have been outside the legal aid means-test, who either paid privately, or were granted pro bono help.

Private directed cases

These comprised 576 cases. In 573, the private solicitor was the only representative. In the remaining three the private solicitor was the main representative. As explained above, the private solicitor represented after an initial plea of not guilty and was paid for the case. The PDSO representation was at a pleading diet only, and the PDSO was not granted summary legal aid.

As discussed in the text, 302 of these cases had no legal aid record.

Both

This group contained 60 cases (56 directed and 4 non-directed), where both a PDSO and private representative had a substantive input to the case. In 21 cases, we found payment records for both the PDSO and private solicitor; in 32 cases we found a payment record for the PDSO only; in four there was a payment record for a private solicitor only; and in the remaining three there were no payment records at all.

Unrepresented

This category contained 744 cases (424 directed and 320 non-directed) in which the accused appeared in court unrepresented.

All but five involved no payment record. In the remaining five, the solicitor received Advice and Assistance for initial advice only, but did not have any involvement with the court. In theory, there would appear to be many circumstances in which legal aid pays for advice but not representation. In practice, however, it appears that solicitors are very reluctant to allow clients to appear unrepresented, and this only happens under rare circumstances.

Representation unknown
One PDSO solicitor had a surname that was similar to the name of a private practice solicitor regularly acting in the Edinburgh courts. There were 4 cases where no payment record was found and the court record could have referred to either solicitor. We were therefore unable to assign these four cases to either the PDSO or private groups.
APPENDIX 2: THE CLIENT SURVEY - METHODOLOGY

This was essentially a quantitative exercise, based on a questionnaire survey of clients who received summary legal aid, which we describe below. The quantitative data were supplemented by 17 interviews with clients (5 pilot and 12 in-depth), which are described in Appendix 3. Appendix 11 contains a copy of the questionnaire itself.

THE SAMPLE

The main sample was those granted summary legal aid to defend cases in Edinburgh Sheriff and District court between 1 April and 31 December 1999. Postal questionnaires were sent to all PDSO clients, and to all private solicitor clients who had a birth date in November, December, January and February.

Questionnaires were sent out each month to those whose cases had recently closed, followed by two reminders. Information about private solicitor clients was taken from the SLAB accounts system; information about PDSO clients from the PDSO computer. We sent the first questionnaires at the beginning of July 1999 and the final questionnaires in November 2000. The last reply was received in February 2001.

This exercise resulted in 250 returned questionnaires: 99 from PDSO clients and 151 from private clients. Of the 99 PDSO questionnaires, 88 were from directed clients (born in January or February) and 11 were from volunteers, born in other months of the year.

One finding from the in-depth interviews was the extent to which client views were influenced by the system of direction. Interest was expressed in exploring how far client views changed after the direction system ended in July 2000. We therefore sent the same questionnaire to a new sample of PDSO clients who used the Office voluntarily after July 2000. Between July 2000 and June 2001, we identified all PDSO clients who received summary legal aid after July 2000 and whose cases had closed. Wherever we had a telephone number, we telephoned the client to see if we could complete the questionnaire by telephone. Where we did not have a telephone number, or telephone contact proved ineffective, clients were sent a postal questionnaire and up to two reminders. Between them, the telephone and postal approaches yielded a further 66 questionnaires. The timetable of this secondary study meant that only relatively short-running cases were included. All the cases sampled had finished within a year.

Each questionnaire was accompanied by a covering letter which specified the type of representative, the court, the date of the pleading diet and the charges, and asked the client to complete the form for that particular case. However, the qualitative interviews with clients indicated that they may have been confused about which case was which. In practice they

128 In most cases, we have classified the type of solicitor used by the sample from which the case was drawn: that is, cases drawn from the PDSO computer have been classified as PDSO cases while those drawn from SLAB account records have been classified as private cases. This does not always correspond to the type of solicitor clients said they had used. However, some teething problems with record keeping in the initial stages of the research mean that in four cases we do not know the sample from which the questionnaire was drawn. We have therefore allocated the case on the basis of the type of solicitor the client said they used. Two said they used the PDSO and two said they used private solicitors.
might have completed a form for the case that was ‘top-of-mind’ rather than the one specified in the letter. Where a client had two similar cases completed within the same month, or two or more cases with the same pleading diet date, they were sent a questionnaire for only one case.

DEVELOPING THE QUESTIONNAIRE

We produced a first draft of the questionnaire in April 1999, based on a simplified version of the questionnaire used in the feasibility study. We then sought comments on the draft by:

- circulating it to Research Advisory Group members; and
- holding pilot interviews with clients.

Five RAG members replied and we are very grateful for their comments.

For the pilot interviews, we visited five clients in their homes. Four had used the PDSO and one had used a private solicitor. Although the main purpose was to test the questionnaire, it also gave us an opportunity to explore issues in more depth.

In the light of the comments received, the questionnaire was considerably shortened and simplified. The final version is attached in Appendix 11.

RESPONSE RATE

The main problem with sending postal questionnaires to criminal clients is that the response rate tends to be low. Clients in criminal cases move frequently, often without leaving forwarding addresses. They tend to be suspicious of official communications and have low levels of literacy.

We predicted that even with two reminders we might not obtain a response rate of more than 20%, and the prediction turned out to be substantially accurate. For the main study, we had dispatched 1,080 questionnaires, 302 to PDSO clients and 778 to private clients. This gave an overall response rate of 23%. The response rate was substantially better for PDSO clients (33%) than for private clients (19%).

For the secondary study of volunteers, we approached 177 clients, giving an overall response rate of 37%.

COMPARING RESPONDENTS WITH NON-RESPONDENTS

A potential problem with such low response rates is that those replying to the questionnaire may be unrepresentative of clients as a whole. Fears were expressed that the clients who responded may be more "respectable" than the average criminal client - that, for example, they were more likely to be middle-aged or middle-class, or to have been charged with a road traffic offence rather than an offence of violence.

The questionnaire itself was kept as short and simple as possible. It focused on client views and did not include factual questions about the offence or client. However, out of the 250
questionnaires for cases started in 1999, we were able to link 160 back to the main database. This enabled us to test how far those respondents were representative of all clients receiving summary legal aid. In fact we found very few differences between the profiles of respondents and those of summary legal aid clients generally. When we looked at the type of court, whether the initial appearance was from custody, the time of resolution and the outcome of the case, any differences were within four percentage points and such as one might expect to occur by chance. There was no evidence that the PDSO respondents were more middle-class or middle-aged than PDSO clients generally. Our best indicator of class was the ACORN category, which provides a socio-demographic indicator of the client's postcode. Overall, 53% of PDSO clients lived in the poorest "F" rated areas, as did 53% of respondents; 43% of PDSO clients were aged under 25, as were 44% of respondents; 9% were charged with a road traffic offence, as were 10% of respondents. The main difference in PDSO respondents was that women were slightly more likely to respond to the questionnaire: 22% of respondents were women, compared with 14% generally. This is not a great difference, however, and probably occurred by chance. Private clients charged with road traffic offences were slightly more likely to reply: they formed 23% of respondents, compared with 16% of clients generally. With this came a very slight bias towards higher income addresses and older clients: while 60% of private clients lived in F rated areas, 55% of respondents did so; and while 50% of private summary clients generally were aged under 25, 44% of respondents were. These differences, however, are extremely small, and we do not think that they affect the results. In general, we found little evidence to suggest that respondents were biased towards any particular age-range, offence-type or social class.

**CLIENTS RECEIVING CUSTODIAL SENTENCES**

In the main court study, 17% of those granted summary legal aid received custodial sentences. Initially we explored the possibility of tracing clients through the prison system, and sending them a questionnaire in jail. This, however, proved highly administratively complex. Furthermore, most custodial sentences are short, and by the time the questionnaires were dispatched many clients would have finished their sentences. We therefore simply sent questionnaires to the address on the legal aid records. In some cases this was a prison address, and in others it was a home address, awaiting their return. One might predict that this would under-sample those who received prison sentences. In fact, when we merged returned questionnaires in with the main dataset, we found that 15% of those replying to the survey had received a custodial sentence. There may be a slight under-sampling of those with longer prison sentences, but it is not one that is either large or significant.

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129 The samples were drawn in different ways, so that there was not a full match between the client sample and the court sample. For example, the client sample included the PDSO volunteers and those born in the first 10 days of November. Problems in record keeping and missing case papers also accounted for other discrepancies.
APPENDIX 3: QUALITATIVE INTERVIEWS - METHODOLOGY

The evaluation supplemented quantitative data with 48 qualitative interviews. These were intended to guide the quantitative analysis and to identify other quality concerns about the PDSO, private practice and the legal aid scheme.

Interviews were held with a range of criminal justice actors in Edinburgh:

- Private solicitors: 14
- PDSO solicitors: 6
- Sheriffs: 2
- Justices of the Peace: 2
- Sheriff Court clerk: 1
- District Court clerk: 1
- Social work agencies: 3
- Procurators Fiscal: 2
- Clients: 17
- **Total**: 48

The interviews lasted from between 20 minutes to two hours. All but three interviews (held during the feasibility stage) were tape-recorded. Of the 48 interviews, 39 were carried out by the project manager. The project manager also spent a day observing PDSO staff at work on 7 March 2000.

The interviews were held at different stages (as described below).

**Private practice solicitors**

Five interviews were conducted as part of the feasibility study in 1998, and explored reactions to the PDSO before it opened. They were with partners specialising in criminal defence work in Edinburgh.

In April 2000, we spoke to three solicitors nominated by the Edinburgh Bar Association (EBA). They were all experienced criminal defence partners and active members of the EBA. However, they were interviewed as individuals rather than as spokesmen for the organisation.

In August 2000, we interviewed a further six solicitors in four separate firms. The firms were chosen to be representative of the 15 firms that are responsible for the majority of criminal defence work in Edinburgh. We asked to speak to both a partner and an assistant solicitor (if one was employed). Two of the firms employed an assistant solicitor, so we interviewed four partners and two assistants.

**PDSO solicitors**

The first interview with the PDSO director was held during the feasibility stage in 1998, before the Office opened.
In February 1999, we interviewed two assistant solicitors. We were keen to talk to them early in the life of the PDSO to explore their expectations and initial reactions.

In November 2000 we returned to interview the PDSO director and the same two assistant solicitors.

Social work agencies

We interviewed one court-based social worker in April 2000. At the request of the PDSO, we also talked to representatives of SACRO and APEX about their relationship with the PDSO. These interviews took place in May and June 2000.

Other criminal justice professionals

Respondents were nominated by their organisations. Interviews mostly took place in April 2000. However, one Procurator Fiscal had been on holiday at the time of the original interviews and was interviewed in August 2000.

Clients

In April 1999, we piloted the client satisfaction questionnaire by interviewing five clients in their homes: four were PDSO clients and one was a private client. They were recruited from SLAB records of those who had recently completed a summary legal aid cases and who had provided telephone numbers. Clients were taken through the draft questionnaire. They were asked to expand on their answers and to comment on what was of particular importance to them. Interviews lasted from 25 to 40 minutes and were tape recorded.

In August 2000, we carried out a further 12 interviews with clients, talking to them in depth about their experiences. Clients were recruited from those who had returned questionnaires and expressed a willingness to be interviewed.

We did not attempt to select clients, but wrote to all 152 clients with a current Edinburgh address who had returned a questionnaire, offering £20 as an incentive to be interviewed. Two weeks later, we had received 26 replies: 14 from private clients and 12 from PDSO clients. Interviews were arranged with six PDSO and six private clients without making any further attempt to select particular categories of client. All those agreeing to be interviewed were spoken to.

In the event, nine of those interviewed were men and three were women. Out of the six PDSO clients who replied, four were directed and two were volunteers. Four were dissatisfied and said they would not use the PDSO again, while two were broadly satisfied. The six private clients all said that would at least consider using the same lawyer again, though three expressed some reservations about at least one aspect of the service they were given.
DIRECT QUOTATIONS ABOUT SPECIFIC ASSISTANT PUBLIC DEFENCE SOLICITORS

Respondents frequently discussed specific assistant public defence solicitors - either for praise or criticism. Where such comments are particularly apt, we have quoted them in the report. In order to preserve the anonymity of the individuals concerned, however, we have either removed any gender specific words or changed them at random. Thus the use of he or she in the quotations does not give any clue to the identity of an assistant public defence solicitor.

Private solicitors and clients, however, were drawn from a much large pool, and are unlikely to be identified through such quotations. We have therefore removed names but preserved the pronouns used in the original comments.
APPENDIX 4: CHARACTERISTICS OF CASES

It is clearly important to ensure that we are comparing like with like. Here we examine the main characteristics of cases to see whether there are significant differences between samples. We start by comparing all the directed cases with all the non-directed cases. We then compare the caseloads of the PDSO with private non-directed cases and private directed cases.

REPRESENTED DIRECTED VS REPRESENTED NON-DIRECTED CASES

Given the random nature of the allocation, one would expect these to be broadly similar - though some variations might occur by chance. For the record, we set out the main characteristics of each group. Table A4.1 summarises the main court-based/charge characteristics, while Table A4.2 looks at the characteristics of the accused.

Table A4.1: Represented directed vs represented non-directed cases: key characteristics of court/charges

<table>
<thead>
<tr>
<th></th>
<th>Directed</th>
<th></th>
<th>Non-directed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>890</td>
<td>84</td>
<td>683</td>
<td>82</td>
</tr>
<tr>
<td>District Court</td>
<td>172</td>
<td>16</td>
<td>155</td>
<td>18</td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td>270</td>
<td>25</td>
<td>198</td>
<td>24</td>
</tr>
<tr>
<td>Average number of charges</td>
<td>-</td>
<td>2.14</td>
<td>-</td>
<td>2.12</td>
</tr>
<tr>
<td>Violence/weapons</td>
<td>197</td>
<td>19</td>
<td>144</td>
<td>17</td>
</tr>
<tr>
<td>Public order</td>
<td>130</td>
<td>12</td>
<td>128</td>
<td>15</td>
</tr>
<tr>
<td>Theft/dishonesty</td>
<td>291</td>
<td>27</td>
<td>218</td>
<td>26</td>
</tr>
<tr>
<td>Road traffic</td>
<td>350</td>
<td>33</td>
<td>282</td>
<td>34</td>
</tr>
<tr>
<td>Other</td>
<td>94</td>
<td>9</td>
<td>66</td>
<td>8</td>
</tr>
<tr>
<td>BASE</td>
<td>1,062</td>
<td>100</td>
<td>838</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.
Table A4.2: Represented directed vs represented non-directed cases: key characteristics of accused

<table>
<thead>
<tr>
<th></th>
<th>Directed</th>
<th></th>
<th>Non-Directed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Male</td>
<td>907</td>
<td>85</td>
<td>727</td>
<td>87</td>
</tr>
<tr>
<td>Female</td>
<td>151</td>
<td>14</td>
<td>110</td>
<td>13</td>
</tr>
<tr>
<td>Gender unknown</td>
<td>4</td>
<td>*</td>
<td>1</td>
<td>*</td>
</tr>
<tr>
<td>Aged under 25</td>
<td>430</td>
<td>40</td>
<td>369</td>
<td>44</td>
</tr>
<tr>
<td>Aged 25-34</td>
<td>361</td>
<td>34</td>
<td>265</td>
<td>32</td>
</tr>
<tr>
<td>Aged 35-44</td>
<td>179</td>
<td>17</td>
<td>140</td>
<td>17</td>
</tr>
<tr>
<td>Aged 45-54</td>
<td>64</td>
<td>7</td>
<td>47</td>
<td>6</td>
</tr>
<tr>
<td>Aged 55-64</td>
<td>25</td>
<td>2</td>
<td>14</td>
<td>2</td>
</tr>
<tr>
<td>Aged 65+</td>
<td>3</td>
<td>*</td>
<td>3</td>
<td>*</td>
</tr>
<tr>
<td>Known to have previous criminal conviction</td>
<td>541</td>
<td>51</td>
<td>418</td>
<td>50</td>
</tr>
<tr>
<td>BASE</td>
<td>1,062</td>
<td>100</td>
<td>838</td>
<td>100</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

To ensure that the randomisation process had worked, we carried out statistical tests to compare represented directed and represented non-directed clients on a range of key characteristics. These were: age; gender; type of court; overall category of alleged offence; number of charges; whether the client made their first appearance from custody; whether there was any evidence that at the time of the alleged offence the client was on bail/probation/a community order; the number of co-accused; the time between the alleged offence and the first diet; and the social classification of the area where the client lived. Chi-square and t-tests were performed and no statistically significant differences were found at the p<0.05 level.

**PDSO CLIENTS**

Given that actual use of the PDSO was not random, one might expect greater variation in those using who used it, when compared with either the private non-directed or private directed cases. We will therefore consider each factor separately.

**Gender**

Table A4.3. shows that most clients were male. There was no difference between the PDSO and the private non-directed sample, though the private directed sample contained a few more women - possibly reflecting their higher concentration in road traffic cases.
Table A4.3: Gender of accused

<table>
<thead>
<tr>
<th></th>
<th>PDO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Male</td>
<td>373</td>
<td>87</td>
<td>719</td>
</tr>
<tr>
<td>Female</td>
<td>56</td>
<td>13</td>
<td>110</td>
</tr>
<tr>
<td>Not known</td>
<td>1</td>
<td>*</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL</td>
<td>430</td>
<td>100</td>
<td>830</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

Age

Figure A4.1 shows that PDO clients were slightly less likely to be aged under 25 and more likely to be aged 25 to 35. Overall, however, the difference in ages is not statistically significant.

Figure A4.1: Age of accused by representation group

Court

Table A4.4 sets out the proportion of number of cases in each court. It shows that most of the cases in our sample were in Edinburgh Sheriff Court. There was no difference between PDO and private non-directed cases in the proportion in each court.
Table A4.4: Court in which case brought

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>351</td>
<td>82</td>
<td>681</td>
</tr>
<tr>
<td>District Court</td>
<td>79</td>
<td>18</td>
<td>149</td>
</tr>
<tr>
<td>TOTAL</td>
<td>430</td>
<td>100</td>
<td>830</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Initial appearance

Table A4.5 looks only at Sheriff Court cases, distinguishing between cited cases and those with an initial appearance from custody. It shows that, compared with private cases, the PDSO were more likely to handle cases in which the initial appearance was from custody.

Table A4.5: Sheriff Court cases: whether initial appearance was from custody

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>From custody</td>
<td>121</td>
<td>34</td>
<td>185</td>
</tr>
<tr>
<td>Cited</td>
<td>230</td>
<td>66</td>
<td>493</td>
</tr>
<tr>
<td>Not known</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>TOTAL</td>
<td>351</td>
<td>100</td>
<td>681</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

Previous convictions

Information on previous convictions was taken from court files. The court only heard about an accused's previous record after they had been convicted in the case; if they were acquitted for any reason, the court file contained no information about any previous convictions. Thus Table A4.6 below is based only on convicted cases.

At first sight there appeared to be little difference between the three groups in the proportion of clients without previous convictions. Table A4.6 shows that, taken overall, around 60% of clients had previous convictions.
Private solicitors told us that they were more likely to act for directed clients with whom they had a previous relationship. Therefore one might have expected the PDSO to have a higher proportion of first time offenders. We considered whether the apparent similarity in Table A4.6 masked differences between cited and custody cases. Accused people who initially appeared before the courts from custody were much more likely to have previous convictions. Perhaps the PDSO had a relatively high number of clients with previous convictions because it dealt with a relatively high proportion of cases with an initial appearance from custody? Table A4.7 shows that for cases with an initial appearance from custody, the PDSO has slightly fewer clients with previous convictions: 80% of PDSO clients had previous convictions, compared with 86% of private non-directed clients. However, for cited cases (Table A4.8), the proportions were the same.

### Table A4.7: Sheriff Court cases with initial appearance from custody: Whether client had previous convictions

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Previous convictions</td>
<td>82</td>
<td>80</td>
<td>143</td>
</tr>
<tr>
<td>No previous convictions</td>
<td>19</td>
<td>18</td>
<td>20</td>
</tr>
<tr>
<td>Not known</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>103</td>
<td>100</td>
<td>167</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.
Base: Sheriff Court cases with an initial appearance from custody where client convicted.

### Table A4.8: Sheriff Court cited cases: Whether client had previous convictions

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Previous convictions</td>
<td>116</td>
<td>57</td>
<td>236</td>
</tr>
<tr>
<td>No previous convictions</td>
<td>72</td>
<td>35</td>
<td>140</td>
</tr>
<tr>
<td>Not known</td>
<td>16</td>
<td>8</td>
<td>33</td>
</tr>
<tr>
<td>TOTAL</td>
<td>204</td>
<td>100</td>
<td>409</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.
Base: Sheriff Court cited cases where client convicted.
**Offence type**

Table A4.9 considers the main type of offence. The PDSO handled more offences of violence and fewer road traffic cases. The private directed cases, on the other hand, were particularly likely to be road traffic cases (some of which may well have been paid for privately).

Table A4.9: Overall category of offence at start of case

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Violence/Weapons</td>
<td>102</td>
<td>24</td>
<td>143</td>
</tr>
<tr>
<td>Public order</td>
<td>61</td>
<td>14</td>
<td>126</td>
</tr>
<tr>
<td>Theft/financial dishonesty</td>
<td>113</td>
<td>26</td>
<td>217</td>
</tr>
<tr>
<td>Damage to property</td>
<td>8</td>
<td>2</td>
<td>21</td>
</tr>
<tr>
<td>Road traffic</td>
<td>119</td>
<td>28</td>
<td>278</td>
</tr>
<tr>
<td>Drugs</td>
<td>18</td>
<td>4</td>
<td>27</td>
</tr>
<tr>
<td>Sexual offences</td>
<td>1</td>
<td>*</td>
<td>4</td>
</tr>
<tr>
<td>Other</td>
<td>8</td>
<td>2</td>
<td>14</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>430</td>
<td>100</td>
<td>830</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

As well as considering the overall category, we also recorded more detailed information about the type of offence within each category. Tables A4.10 to A4.12 give the types of offence for the three main categories: road traffic, theft and violence and public order.

It is inevitable that, with so many fine distinctions, the tables will reveal differences in some categories. However, there are few systematic variations. One cannot, for example, say that PDSO cases are either more serious or less serious than those handled by private solicitors. The only clear bias is in the number of drink-driving offences. Accused born in January and February who were charged with drink-driving were more likely to use private solicitors (and correspondingly less likely to use the PDSO) than those charged with other driving offences. It would appear likely that many of those facing charges of drink-driving paid privately for their representation.
Table A4.10: Road traffic offences: types of offence at start of case

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Driving whilst disqualified</td>
<td>13</td>
<td>11%</td>
<td>29</td>
</tr>
<tr>
<td>TWOC (RTA s.178)</td>
<td>6</td>
<td>5%</td>
<td>17</td>
</tr>
<tr>
<td>Drink-driving</td>
<td>19</td>
<td>16%</td>
<td>58</td>
</tr>
<tr>
<td>Dangerous driving</td>
<td>2</td>
<td>2%</td>
<td>6</td>
</tr>
<tr>
<td>Driving w/out insurance/MOT/license</td>
<td>43</td>
<td>36%</td>
<td>98</td>
</tr>
<tr>
<td>Failing to stop or report accident</td>
<td>3</td>
<td>3%</td>
<td>8</td>
</tr>
<tr>
<td>Careless or inconsiderate driving</td>
<td>1</td>
<td>1%</td>
<td>5</td>
</tr>
<tr>
<td>Speeding</td>
<td>3</td>
<td>3%</td>
<td>19</td>
</tr>
<tr>
<td>Failing to abide by a traffic sign</td>
<td>1</td>
<td>1%</td>
<td>3</td>
</tr>
<tr>
<td>Vehicle excise offence</td>
<td>17</td>
<td>14%</td>
<td>21</td>
</tr>
<tr>
<td>Vehicle defect</td>
<td>0</td>
<td>0%</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>11</td>
<td>9%</td>
<td>11</td>
</tr>
<tr>
<td>TOTAL</td>
<td>119</td>
<td>100%</td>
<td>278</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

Table A4.11: Theft and other financial dishonesty: types of offence at start of case

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Embezzlement/theft with breach of trust</td>
<td>2</td>
<td>2%</td>
<td>4</td>
</tr>
<tr>
<td>Housebreaking</td>
<td>9</td>
<td>8%</td>
<td>24</td>
</tr>
<tr>
<td>Reset/fraud/uttering over £500</td>
<td>11</td>
<td>10%</td>
<td>24</td>
</tr>
<tr>
<td>Rest/fraud/uttering under £500</td>
<td>10</td>
<td>9%</td>
<td>21</td>
</tr>
<tr>
<td>Serious theft (e.g. over £500, opening lock fast place, victim vulnerable)</td>
<td>19</td>
<td>17%</td>
<td>21</td>
</tr>
<tr>
<td>Less serious theft</td>
<td>10</td>
<td>9%</td>
<td>23</td>
</tr>
<tr>
<td>Shoplifting £75 to £500</td>
<td>13</td>
<td>12%</td>
<td>23</td>
</tr>
<tr>
<td>Shoplifting under £75</td>
<td>27</td>
<td>24%</td>
<td>58</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>11%</td>
<td>29</td>
</tr>
<tr>
<td>TOTAL</td>
<td>113</td>
<td>100%</td>
<td>217</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.
Table A4.12: Violence: types of offence at start of case

<table>
<thead>
<tr>
<th></th>
<th>PDSO No.</th>
<th>PDSO %</th>
<th>Private non-directed No.</th>
<th>Private non-directed %</th>
<th>Private directed No.</th>
<th>Private directed %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Serious non-domestic assault</td>
<td>22</td>
<td>22</td>
<td>31</td>
<td>22</td>
<td>19</td>
<td>25</td>
</tr>
<tr>
<td>Simple assault on police</td>
<td>13</td>
<td>13</td>
<td>16</td>
<td>11</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Simple non-domestic assault (not police)</td>
<td>38</td>
<td>37</td>
<td>47</td>
<td>33</td>
<td>28</td>
<td>36</td>
</tr>
<tr>
<td>Serious domestic assault</td>
<td>5</td>
<td>5</td>
<td>11</td>
<td>8</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Simple domestic assault</td>
<td>11</td>
<td>11</td>
<td>19</td>
<td>13</td>
<td>13</td>
<td>17</td>
</tr>
<tr>
<td>Carrying offensive weapon</td>
<td>8</td>
<td>8</td>
<td>15</td>
<td>10</td>
<td>8</td>
<td>10</td>
</tr>
<tr>
<td>Firearms offence</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Other</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>102</td>
<td>100</td>
<td>143</td>
<td>100</td>
<td>77</td>
<td>100</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

PDSO cases had slightly more charges per case: an average 2.17 compared with 2.12 for private non-directed and 2.07 for private directed.

Social class

Social class can be an important definer, but it is a difficult one to quantify, especially where one has no information about the client's occupation. The best proxy for social class that we were able to obtain was the client's postcode. We recorded this from court records and asked CACI Information Services to classify each postcode according to their ACORN system. ACORN divides Britain into 150,000 small geographical units and assigns each one a social position based on data in the 1991 census. It looks at 79 separate issues including, for example, the size and tenure of houses, family composition, economic position, educational attainment and car ownership. It assigns each area to one of 54 ‘types’, which in turn are amalgamated into 17 groups and six broad categories. These six categories run from A (the wealthiest areas) to F (the most disadvantaged).

Table A4.13 shows that criminal clients were disproportionately drawn from the most disadvantaged areas. Around 60% of people in our survey came from Category F neighbourhoods, in which 23% of the British population live. The PDSO was slightly less likely to draw clients from the wealthiest areas - reflecting the fact that they did not take privately-paying work and were less likely to conduct road traffic cases - and was slightly more likely to draw people from the middle, mixed neighbourhoods that characterise much of central Edinburgh. However, these differences were small. Generally speaking, the spread of neighbourhoods from which clients were drawn was fairly similar across the three groups.

In all three groups, 57% of clients lived on council estates. Before the study, it had been suggested that the residents of some estates would remain particularly loyal to particular solicitors. In fact, we found few differences in the social profile of the estates from which clients were drawn.
Table A4.13: Socio-demographic profile of neighbourhoods in which clients lived

<table>
<thead>
<tr>
<th></th>
<th>PDSO</th>
<th>Private non-directed</th>
<th>Private directed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
</tr>
<tr>
<td>Wealthy areas (A&amp;B)</td>
<td>33</td>
<td>9</td>
<td>96</td>
</tr>
<tr>
<td>Middle areas (C,D&amp;E)</td>
<td>119</td>
<td>32</td>
<td>183</td>
</tr>
<tr>
<td>Most disadvantaged areas (F)</td>
<td>220</td>
<td>59</td>
<td>435</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-: Cat F, Group 14:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Better-off council estates</td>
<td>75</td>
<td>20</td>
<td>152</td>
</tr>
<tr>
<td>-Cat F, Group 15: council</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>estates, high unemployment</td>
<td>80</td>
<td>22</td>
<td>152</td>
</tr>
<tr>
<td>-Cat F, Group 16: council</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>estates, greatest hardship</td>
<td>54</td>
<td>15</td>
<td>105</td>
</tr>
<tr>
<td>TOTAL (where postcode known)</td>
<td>372</td>
<td>100</td>
<td>714</td>
</tr>
</tbody>
</table>

Percentages do not all add up to 100 due to rounding.

We also mapped the areas from which PDSO and private directed clients were drawn. Directed clients living outside Edinburgh were more likely to use private solicitors, as residing a substantial distance from Edinburgh was a ground for a waiver. However, the effect was by no means clear-cut: several Glasgow residents did in fact use the PDSO. When we looked at locations within Edinburgh, we could find no differences based on geography.

**Significant differences**

We looked to see how many of these differences between the three main groups were statistically significant. Only a few were. PDSO clients were significantly more likely (p<0.001) to have an alleged offence of ‘violence’ (24%) than private non-directed clients (17%) or private directed clients (13%), and statistically less likely (p=0.006) to have alleged road traffic offences (28%) compared to the private non-directed (33%) and private directed clients (37%). They were also significantly more likely (p<0.001) to have made their initial appearance from custody (33%) than either the private non-directed (25%) or private directed (21%) clients.
APPENDIX 5: FURTHER ANALYSIS OF CASE TRAJECTORY AND OUTCOMES

This appendix provides further analyses of case trajectory and outcomes, to be read alongside the main analysis contained in Part B. We start with case trajectory, providing further information on differences between the directed and non-directed samples (irrespective of solicitor used). We then consider the conviction rate, first comparing directed and non-directed cases, and then providing further tables and figures on differences between solicitor groups.

CASE TRAJECTORY

This section compares all represented clients born in January and February (the directed sample) with clients born in November and December (the non-directed control group). It does so irrespective of the type of solicitor actually used.

Chapter 10 (Figure 10.1) shows that directed cases were significantly more likely to be resolved at the pleading diet and less likely to have their cases resolved at a trial diet, either before or after evidence was led.

Here we look at this effect in more detail. Further analysis shows that the difference was more marked in the Sheriff Court than in the District Court. Figure A5.1 reveals only minor differences between the two District Court samples which, given the low numbers of represented District Court cases, were not significant.\(^{130}\)

\(^{130}\) p=0.865.
Figure A5.1: District Court cases: stage at which cases were resolved: all represented directed cases compared with all represented non-directed cases

![Bar chart showing stage of resolution for directed and non-directed cases]

Base: all District Court cases where the time of resolution is known: directed 150; non-directed 128.

In the Sheriff Court, however, substantial differences arose for both custody and cited cases. Figure A5.2 confirms previous research in showing that Sheriff Court custody cases had a particularly low rate of resolution at pleading diet. The most common time for non-directed cases to be resolved was before trial. By comparison, the directed cases were significantly more likely to be resolved at pleading diet or intermediate diet.

All but one of the custody cases resolved at the pleading diet involved a plea of guilty (to either all or some of the charges). It was very rare for custody cases to be deserted at the initial hearing.

---

131 For the Sheriff Court as a whole, the difference between directed and non-directed cases is highly significant: p=<0.001.
132 For Sheriff Court custody cases, p=0.001.
Figure A5.2: Sheriff Court cases with an initial appearance from custody: Stage at which cases were resolved: all represented directed cases compared with all represented non-directed cases

![Bar chart showing time of resolution for directed and non-directed cases.]

Base: all Sheriff Court cases known to have an initial appearance from custody where the time of resolution is also known: directed 250; non-directed 185.

Figure A5.3 gives comparable information for cited cases. Again, the graph shows significant differences between the directed and non-directed sample. The cited cases resolved at pleading diet include some desertions, but only a handful (16, or 3%). As with custody cases, the vast majority of cases resolved at pleading diet involve a plea of guilty.

133 For Sheriff Court cited case, p=<0.001.
Figure A5.3: Sheriff Court cited cases: Stage at which cases were resolved: all represented directed cases compared with all represented non-directed cases

<table>
<thead>
<tr>
<th>Time of resolution</th>
<th>Directed</th>
<th>Non-directed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pleading diet</td>
<td>48</td>
<td>36</td>
</tr>
<tr>
<td>Intermediate diet</td>
<td>23</td>
<td>27</td>
</tr>
<tr>
<td>Before trial</td>
<td>27</td>
<td>24</td>
</tr>
<tr>
<td>After evidence led</td>
<td>13</td>
<td>8</td>
</tr>
</tbody>
</table>

Base: all Sheriff Court cases known not to involve an initial appearance from custody where the time of resolution is known: directed 632; non-directed 491.

Number of diets

The fact that directed cases were resolved at an earlier stage does not necessarily mean that they involved fewer diets. In terms of court time, a case postponed to a continued pleading diet may involve as much work as a case resolved at the intermediate diet. Similarly, the number of warrant diets and sentencing diets all add to court costs.

Directed cases were more likely to involve a continuation without plea, but the difference was extremely small and not statistically significant: 21% of represented directed cases included a continued pleading diet, compared with 18% of non-directed cases. There was little difference in the average number of continued pleading diets. Among cases with a second or subsequent pleading diet, represented directed cases had an average of 1.45 continued pleading diets (that is, 2.45 pleading diets in all), compared with 1.38 for represented non-directed cases.

During the feasibility study, it was suggested that directed clients would be less likely to co-operate with their solicitors and that this would affect their co-operation with the court system as a whole. If this were true, one might predict that directed cases would have a higher rate of non-appearance and hence a larger number of warrant diets. We found no evidence of this. The number of cases with warrant diets was similar across the two samples (24% of represented directed cases involved such a diet, as did 26% of represented non-directed cases). So was the average number of warrant diets per case (0.31 for represented directed, compared with 0.32 for represented non-directed).
We found that the difference in the way that directed cases were processed through the court had no effect on the number of sentencing diets. Across both samples, 51% of convicted cases involved a separate sentencing diet. The average number of such diets (in each case in which they were held) was 1.73 for directed cases and 1.83 for non-directed cases.

However, the earlier stage at which directed cases were resolved did mean that they involved fewer diets overall. Figure A5.4 gives the total number of diets for directed and non-directed cases. It shows that directed cases were more likely to be resolved in one or two diets, while non-directed cases were more likely to involve four or more diets.

**Figure A5.4: Total number of diets: all represented directed cases compared with all represented non-directed cases**

![Bar chart showing the comparison of total number of diets between directed and non-directed cases.]

Base: all cases where the number of diets is known: directed 985; non-directed 769.

The differences were most marked in the number of pre-sentence diets: that is those that occurred before the issue of guilt or innocence was resolved. As Figure A5.5 shows, directed cases were more likely to be resolved at the first diet, and less likely to require three or more diets. The average number of such pre-sentence diets was 2.85 for directed cases compared with 3.16 for non-directed cases. Again, this is a significant difference.  

\[ p = \leq 0.001. \]
Figure A5.5: Number of diets until the issue of guilt or innocence was determined: all represented directed cases compared with all represented non-directed cases

Base: all cases where number of diets is known: directed 985; non-directed 769

Duration

Directed cases were also resolved more quickly. As Figure A5.6 shows, they were more likely to be resolved within three months, and less likely to take over six months. The average time between the first and last diet was 112 days for directed cases and 132 days for non-directed cases, representing a significant difference.\textsuperscript{135}

\textsuperscript{135} p<0.001.
Figure A5.6: Time from first to last diet: all represented directed cases compared with all represented non-directed cases

![Bar chart showing time from first to last diet for directed and non-directed cases.]

OUTCOME

All represented directed vs all represented non-directed cases: differences between court

As shown in Chapter 11 (Figure 11.1) directed clients were more likely to have been convicted: 87% of represented directed cases resulted in some conviction (in whole or in part) compared with 83% for non-directed cases.

Here we compare birth-month groups, irrespective of solicitor used, concentrating on differences between courts. We have already noted that the main difference between directed and non-directed cases in the stage of resolution was to be found in the Sheriff Court. Any difference in the District Court was marginal and insignificant. The difference in outcomes was also to be found in the Sheriff Court, providing a further link between stage of resolution and outcome.

Figure A5.7 shows that in the District Court, the proportion of not convicted cases was similar between the two groups.\(^\text{136}\) In the Sheriff Court, however, (Figure A5.8) there was a four per cent difference between the two samples.\(^\text{137}\)

---

\(^{136}\) The difference between District Court samples was not significant (p=0.237).

\(^{137}\) This is significant at the 95% level (p=0.046).
Figure A5.7: District Court: outcome of all represented directed cases with cases compared with represented non-directed cases

Base: all represented District Court cases, where the outcome is known: directed 169; non-directed 152.
Figure A5.8: Sheriff Court: outcome of all represented directed cases with cases compared with represented non-directed cases

Differences between solicitor groups

This section provides further comparisons between solicitor groups, starting with the timing of non-convictions, and then looking at differences between courts.

Table 11.2 in the main study shows that, when one compares directed and non-directed birth- groups, similar proportions of case were abandoned at each stage of the process. The difference in conviction rate arose mainly from the fact that directed cases were resolved at a later stage (when the chance of an abandonment/acquittal was higher). For the record, Table A5.1 below provides similar figures, comparing figures of PDSO cases with non-directed cases represented by private solicitors.

Care is needed in interpreting this table. First, the numbers are small: the study contained only 59 PDSO cases that did not result in a conviction. Secondly, it does not control for differences in case-type between the two groups. However, it does not reveal any significant differences in the rate of non-conviction at each stage: the more important differences arose from the number of cases reaching each stage.
Table A5.1: Private non-directed cases vs PDSO cases: number of cases resulting in a not guilty outcome at each state of the process

<table>
<thead>
<tr>
<th></th>
<th>PDSO cases</th>
<th>Private non-directed cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A) No.</td>
<td>B) No.</td>
</tr>
<tr>
<td>reaching stage</td>
<td>420</td>
<td>9</td>
</tr>
<tr>
<td>deserted /NG</td>
<td>266</td>
<td>15</td>
</tr>
<tr>
<td>Trial diet (before evidence led)</td>
<td>146  17</td>
<td>12</td>
</tr>
<tr>
<td>Evidence led</td>
<td>52</td>
<td>18</td>
</tr>
<tr>
<td>All (where stage &amp; outcome known)</td>
<td>420</td>
<td>59</td>
</tr>
</tbody>
</table>

We have already noted that the difference in conviction rate applied almost exclusively to the Sheriff Court. Figure A5.9 shows that in the District Court, PDSO outcomes were as good as (if not better than) those of the private non-directed solicitors. 30% of PDSO cases did not end in a conviction, compared with 28% of private non-directed cases, a difference that is not statistically significant.

Figure A5.9: District Court cases: outcome, by each of the main solicitor groups

Base: District Court cases where outcome known: private non-directed 146; private directed 88; PDSO 79.
Figure A5.10 shows that in the Sheriff Court, the level of non-convictions achieved by PDSO solicitors was lower than that achieved by the private non-directed group. On the bare figures, however, this difference was significant only at the 90% level. \(^{138}\)

**Figure A5.10: Sheriff Court cases: outcome, by each of the main solicitor groups**

- **Not convicted**: Priv: non-directed 11, Priv: directed 43, PDSO 53
- **Guilty as libelled**: Priv: non-directed 46, Priv: directed 46, PDSO 46
- **Mixed**: Priv: non-directed 36, Priv: directed 39, PDSO 15

Base: Sheriff Court cases where outcome known: private non-directed 678; private directed 482; PDSO 344.

\(^{138}\) p=0.077.
APPENDIX 6: STAGE OF RESOLUTION: ASSIGNING CASES TO BROAD GROUPS

DIET AT WHICH FIRST CHARGE RESOLVED

For each charge, we collected information on the type of diet at which the matter was resolved. By ‘resolved’ we mean when the issue of guilt or innocence was decided, not necessarily when sentence was passed. Thus, if an accused pled guilty at the pleading diet and was remanded to a sentencing diet, the charge would be treated as having been ‘resolved’ at the pleading diet.

However, to assign cases to groups it is necessary to consider:

1) whether other charges were resolved at different times; and
2) the stage at which the diet was held. A warrant diet might be held, for example, after a pleading diet or after a trial diet. Similarly, although most intermediate diets are held immediately after the pleading diet, if a trial diet is adjourned, a case may be listed for a second intermediate diet.

WERE ALL CHARGES RESOLVED AT THE SAME TIME?

In the Sheriff Court, it is usual for all the charges in a case to be resolved at the same time. Thus out of 1,769 cases, only 94 cases involved different charges being resolved at different diets.

Out of these 94 cases, 47 involved a charge of failing to appear. The most common scenario was that the accused pled guilty to the substantive charges at the pleading diet, and the case was then continued to a sentencing diet. The accused then failed to appear at the sentencing diet and was brought to court on a warrant, where they answered to the further charge of failing to appear. These cases have been classified as resolved at pleading diet. This best sums up the way the accused reacted to the charges, which was to deal with them at the earliest opportunity.

In another 27 cases, some matters were resolved immediately before the trial (either because the accused pled guilty or the prosecution was dropped). Evidence was then called on the remaining disputed charge(s). We have classified these as resolved after evidence led.

This leaves a sprinkling of other cases, in which some charges were resolved at the intermediate diet and some at the trial diet; or some were resolved at the pleading diet and some at the intermediate diet; or some resolved at pleading diet and some at trial. In all these instances, we have treated the cases as resolved only when the latest charge was resolved.

ASSIGNING CASES TO GROUPS

To analyse the data, we have assigned cases to one of four broad groups. These are:
5. **Pleading diet**: This represents all cases resolved at or before the first plea. It includes all cases resolved at the pleading diet or at a diet continued without plea. It also includes all cases where the accused failed to appear at a pleading diet or continued pleading diet and had their cases resolved at the next warrant diet. None of these cases would qualify for summary legal aid.

6. **Intermediate diet**: This represents all cases resolved after the first plea but before the trial diet. It includes cases resolved at an accelerated diet or at a warrant diet held after the accused failed to attend the first intermediate diet.

7. **Before trial**: This represents cases in which a trial diet was held, but where the issue of guilt was resolved before evidence was led. This includes not only cases resolved at a trial diet before trial, but also those resolved at a warrant diet or intermediate diet following a trial diet.\(^\text{139}\)

8. **After evidence led**: This represents all cases resolved after evidence had been led. Most cases involved a finding by the court, though the category also includes cases resolved by a plea taken during the trial.

\(^{139}\) 16 cases were resolved at an intermediate diet following a trial diet and 17 were resolved at a warrant diet following a trial diet.
APPENDIX 7: SENTENCING: CAPTURING THE RANGE OF SENTENCES INTO BROAD GROUPS

Summary courts have a wide variety of sentences at their disposal, not all of which are regularly used. In this Appendix we look first at the range of sentences that could be imposed on convicted accused in our sample.

We then examine the sentencing information on our survey. We collected this information in two ways. First we recorded the sentence imposed for each charge. Second, we looked at the main sentence for the case as a whole.

For analysis purposes we have reduced the range of main sentences into five broad categories (plus a small "other" category). In interviews, we asked respondents to rate sentences in order of punitiveness, and the five categories reflect the views that were stated. They run in order of seriousness, with custodial sentences as the most serious, and admonitions as the least serious.

THE RANGE OF SUMMARY SENTENCES

Imprisonment

The length of imprisonment that may be imposed depends on the court in which the case is heard. The Sheriff Court, as a court of summary jurisdiction, may impose a maximum penalty of three months' imprisonment, but not less than five days'. However, the court may impose six months' imprisonment where the accused is convicted of either a second or subsequent offence inferring dishonest appropriation of property or attempt theft, or a second or subsequent offence inferring personal violence. In practice, it is not atypical that cases may fall into at least one of these broadly-phrased "exceptions".

A provision to increase these maximum periods of imprisonment from three to six months and six to twelve months, respectively, under the Crime and Punishment (Scotland) Act 1997 has not (at the time of writing) been brought into force.

The Sheriff has power to impose a fine up to level 5 of the standard scale (£5,000 at the time of writing).

Edinburgh District Court consists of lay justices who may impose a maximum sentence of 60 days' imprisonment, or a fine of up to level 4 of the standard scale (at the time of writing £2,500).

Special restrictions apply to both courts when the offender is aged under 21. For those aged 16 to 21, the only custodial sentence which a court may impose is detention in a Young Offenders’ Institution. Detention may not be imposed unless the court considers that there is no other method of dealing with the young offender and only after the Court has obtained information from the local authority (normally a social enquiry report). The court must also

140 Criminal Procedure (Scotland) Act 1995 s.206(1)
141 Criminal Procedure (Scotland) Act 1995 s.5(3).
142 Criminal Procedure (Scotland) Act 1995 s207(3)
take account of any information before it about the offender’s mental and physical condition.\textsuperscript{143}

Similarly, there are restrictions where the accused faces imprisonment for the first time. A person of or over 21 years of age who has not been previously sentenced to imprisonment may not receive a sentence of imprisonment unless the court considers that no other method of dealing with them is appropriate. To assist the court in its decision, background information must be obtained from the local authority (normally in the form of a social enquiry report written by a social worker). If such an offender is not legally represented, a sentence of imprisonment cannot be imposed unless they have either applied for legal aid and (most unusually) had the application refused on financial grounds; or, having been informed of their right to apply, have not done so.

A custodial sentence may run from the date of imposition by the court or be backdated to cover the whole or part of a period of time spent on remand awaiting trial or sentence.\textsuperscript{144} There has been considerable discussion about the proper practice of backdating. Nonetheless, it is required that if a court does not backdate a sentence the reason for doing so must be stated.\textsuperscript{145} However, it appears that even partial backdating means that the court does not need to state its reason for not backdating to the time when the person was taken into custody.

**Community sentences**

*Community service*

Where the offender is 16 years or over, a community service order (CSO) may be imposed as a substitute for imprisonment. Under summary procedure, the maximum number of hours that may be imposed is 240 and the minimum is 80. The court must first consider a social enquiry report and be satisfied that the offender is a suitable person to perform work under the order.

A CSO may be imposed alongside a probation order. The probation order may also have a requirement to perform unpaid work, so long as overall, the offender is not obliged to work for more than 240 hours.

Failure to perform the work satisfactorily constitutes a breach of the order. If this is proved, the court may impose a fine up to £1,000 and continue the order. Alternatively, it may revoke the order and impose a new sentence.

*Probation order*

Probation orders are usually imposed where the court feels that the offender is in need of advice or guidance. Before imposing an order, the court must first obtain a social enquiry report. Unlike the CSO, there are no maximum or minimum periods.

The offender is supervised by a social worker. As a condition of the order (where the offence is punishable by a custodial sentence), the offender may be required to perform a number of hours (between 80 and 240) of unpaid work, similar to a CSO. An offender may also be required, as a condition of probation, to pay compensation. Other possible conditions include

\textsuperscript{143} Criminal Procedure (Scotland) Act 1995 s207 (4)
\textsuperscript{144} Criminal Procedure (Scotland) Act 1995 s210(1)(a)
\textsuperscript{145} Criminal Procedure (Scotland) Act 1995 s210 (1)(c)
medical treatment for a mental disorder, or attendance for alcohol or drugs counselling. In practice, such conditions depend on local availability.

If the failure to comply with the Probation Order is proved or admitted, the court has a choice. It may impose a fine of up to £1,000; it may sentence the offender for the original offence (in effect a revocation of the order); it may vary or extend the order; or it may impose a CSO (possibly combined with probation).

Financial sentences

Compensation Order
Instead of or in addition to any other sentence, the court may make a compensation order for any personal injury, loss or damage caused directly or indirectly by the commission of the offence. There are five exceptions where: the court orders absolute discharge of the offender; the court makes a Probation Order; loss is suffered as a result of the death of a person; the court defers sentence; or injury, loss or damage is due to a road traffic accident.  

Fine
The maximum fine on conviction under summary procedure of a common law offence is £2,500 in the non-stipendiary District Court and £5,000 in the Sheriff Court. The court may refuse time to pay if the offender appears to have sufficient means to pay immediately, or does not ask for time to pay, or fails to satisfy the court that he has a fixed abode, or any other special reason. The sanction for default of payment is a custodial sentence (see above) or a supervised attendance order. A person is in default if he fails to pay any instalment timeously or fails to pay the whole fine within the time allowed.

Driving disqualification

Where a person is convicted summarily or on indictment of an indictable offence and the court is satisfied that a motor vehicle was used, the court may disqualify him from holding a driving licence.

Admonition

The court may dismiss with an admonition any person convicted of an offence (except where there is a mandatory sentence, e.g. murder).

Absolute discharge

Instead of sentencing the offender, the court may make an order discharging him absolutely (other than for an offence where the sentence is fixed by law).

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146 Except where the offence involves unlawful taking of a motor vehicle.
147 A supervised attendance order requires an offender to attend a place of supervision for a period specified in the order. The period will be of at least 10 hours and not more than 100 hours. The offender carries out the instructions of a supervising officer at a place determined by the supervising officer.
148 Criminal Procedure (Scotland) Act 1995 s219
OVERALL SENTENCES

When categorising the overall sentence, we concentrated on the most serious sentence. For example, where an accused was disqualified from driving and fined, the overall sentence was classified as disqualified from driving. Table A7.1 shows the numbers of each sentence imposed on the case as a whole for represented cases in the survey.

Table A7.1: Sentence imposed for case as a whole: directed represented cases compared with non-directed cases

<table>
<thead>
<tr>
<th>Sentence Description</th>
<th>Directed</th>
<th>No.</th>
<th></th>
<th>%</th>
<th>Non-directed</th>
<th>No.</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Custody: imprisonment or YOI</td>
<td>165</td>
<td>18</td>
<td>111</td>
<td>16</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hospital order</td>
<td>1</td>
<td>*</td>
<td>4</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSO with probation</td>
<td>12</td>
<td>1</td>
<td>10</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CSO</td>
<td>55</td>
<td>6</td>
<td>37</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation and/or attendance order</td>
<td>60</td>
<td>7</td>
<td>35</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Driving disqualification</td>
<td>166</td>
<td>18</td>
<td>127</td>
<td>18</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine and endorsement</td>
<td>79</td>
<td>7</td>
<td>64</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine and compensation order</td>
<td>30</td>
<td>3</td>
<td>24</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fine only</td>
<td>280</td>
<td>31</td>
<td>234</td>
<td>34</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compensation order only</td>
<td>8</td>
<td>1</td>
<td>9</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Endorsement of driving license only</td>
<td>7</td>
<td>1</td>
<td>2</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Admonition</td>
<td>46</td>
<td>5</td>
<td>33</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Absolute discharge</td>
<td>1</td>
<td>*</td>
<td>1</td>
<td>*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>*</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not known</td>
<td>2</td>
<td>*</td>
<td>0</td>
<td>0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td>914</td>
<td>100</td>
<td>691</td>
<td>100</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

For the record, Table A7.2 provides details of all sentences for both PDSO and private non-directed cases.
Table A7.2: Sentence imposed for case as a whole: directed represented cases compared with non-directed cases

<table>
<thead>
<tr>
<th>Sentence Imposed</th>
<th>PDSO</th>
<th></th>
<th>Private non-directed</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
<td>%</td>
<td>No.</td>
<td>%</td>
</tr>
<tr>
<td>Custody: imprisonment or YOI</td>
<td>56</td>
<td>15</td>
<td>110</td>
<td>16</td>
</tr>
<tr>
<td>Hospital order</td>
<td>1</td>
<td>*</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>CSO with probation</td>
<td>5</td>
<td>1</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>CSO</td>
<td>27</td>
<td>7</td>
<td>37</td>
<td>5</td>
</tr>
<tr>
<td>Probation and/or attendance order</td>
<td>23</td>
<td>6</td>
<td>35</td>
<td>5</td>
</tr>
<tr>
<td>Driving disqualification</td>
<td>51</td>
<td>14</td>
<td>127</td>
<td>19</td>
</tr>
<tr>
<td>Fine and endorsement</td>
<td>24</td>
<td>7</td>
<td>62</td>
<td>9</td>
</tr>
<tr>
<td>Fine and compensation order</td>
<td>11</td>
<td>3</td>
<td>24</td>
<td>4</td>
</tr>
<tr>
<td>Fine only</td>
<td>139</td>
<td>38</td>
<td>231</td>
<td>34</td>
</tr>
<tr>
<td>Compensation order only</td>
<td>5</td>
<td>1</td>
<td>7</td>
<td>1</td>
</tr>
<tr>
<td>Endorsement of driving license only</td>
<td>1</td>
<td>*</td>
<td>2</td>
<td>*</td>
</tr>
<tr>
<td>Admonition</td>
<td>19</td>
<td>5</td>
<td>33</td>
<td>5</td>
</tr>
<tr>
<td>Absolute discharge</td>
<td>1</td>
<td>*</td>
<td>1</td>
<td>*</td>
</tr>
<tr>
<td>Other</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Not known</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>TOTAL</td>
<td>363</td>
<td>100</td>
<td>683</td>
<td>100</td>
</tr>
</tbody>
</table>

* denotes less than 0.5%. Percentages do not all add up to 100 due to rounding.

In considering custodial sentences, it proved to be impracticable to determine from court records the precise extent of any backdating. Nor does it seem possible to say with any objectivity that it is more or less punitive to serve time in custody before or after sentence. We therefore simply recorded the sentence imposed, without distinguishing between those that were backdated and those that ran only from the day of sentence. As discussed in Chapter 10, PDSO clients were less likely to be detained in custody before sentence. Of private non-directed clients given custodial sentences, 48% had previously been detained in custody. Of PDSO clients given custodial sentences, only 38% had previously been detained in custody. This means that PDSO clients were less likely to be given backdated sentences.

**THE FIVE BROAD GROUPS**

For the purposes of analysis, we have classified these various sentences into five broad groups:

1. **Custody**: This includes all cases where a term of imprisonment or youth custody was imposed.

2. **Community service/probation**: This includes cases without a custodial sentence that involved a community service order, probation, or a community service order with probation.

3. **Driving disqualification**: This covers cases without a custodial sentence or community sentence (as above), but where the accused was disqualified from driving.
4. *Fine/compensation:* This covers cases in which the accused was fined or ordered to pay compensation without any more serious sentence (such as custody, community service, probation, or driving disqualification). It is a broad category that includes fines imposed alongside license endorsements as well as fines imposed without a license endorsement.

5. *Admonition/License endorsement/Absolute discharge:* Any case resulting in an admonition, license endorsement or absolute discharge, but without a fine or more serious sentence.

A few miscellaneous sentences (such as hospital orders) were classified as *other.*
APPENDIX 8: MULTI-VARIATE ANALYSES: STAGE OF RESOLUTION AND OUTCOMES

A number of multi-variate analyses were undertaken to identify factors that could explain:

- which clients were convicted;
- whether cases were resolved early or late;
- whether clients were held in custody pending trial;
- what sentences were passed for those convicted;
- the amount of any fines imposed on clients;
- whether cases would conclude with a plea bargain; and
- variations in costs.

There were two key reasons for undertaking such analyses. First, we felt that identifying factors that could explain how cases progressed through the Scottish legal system would aid future policy making and evaluation. Second, although this study aimed to compare like with like by using a randomised design (direction), this design was compromised (by, for example, the high proportion of unpaid work undertaken by private solicitors). Therefore there were potential differences between the sample of clients who were served by the PDSO and those who were served by private solicitors. The use of multi-variate analysis allowed us to examine the impact that the type of representation had on cases after controlling for possible differences in client characteristics.

Logistic regression was used in the analysis of convictions, stages of resolution, sentences, being held in custody during proceedings and the occurrence of plea bargains. This required a dependent variable that could take two values (zero and one) and a number of independent (predictor) variables. For convictions the dependent variable took the value of zero if the client was acquitted of all charges, and one if they were found guilty of some or all charges. For the analysis of the stage of resolution the dependent variable scored one if the case was resolved at pleading diet or intermediate diet, and zero if it was resolved at a later stage. For sentencing, two dependent variables were used in turn. The first scored one if the client received a custodial sentence and zero if they received a lesser sentence. The second scored one if the client received a custodial sentence or a community service/probation order and zero otherwise. To analyse the cost data we used a linear regression model which requires the dependent variable to be continuous rather than categorical. This cost analysis is discussed in Appendix 9.

The initial models contained variables that described the client, the alleged offences and the court. The background variables used were:

- type of representation (PDSO or private solicitor);
- age;
- gender;
- the type of court where the case was heard (Sheriff or District);
- number of charges;
- the number of charges squared (to test for a non-linear effect);
- main charge (coded as one of the following: violence, public order, theft, property offence, road traffic offence, drugs and miscellaneous offences);
• whether the initial appearance in court was from custody;
• number of co-accused;
• whether there was any evidence that at the time of the alleged offence the client was on bail;
• the amount of time between the alleged offence and the first diet;
• number of previous convictions;*
• number of previous convictions following a solemn hearing;*
• number of analogous offences during the past five years;*
• whether the client had ever received a custodial sentence;*
• whether the client had ever received a community sentence;*

* information on these variables was only available if the client was convicted in the current case and therefore they could only be used in the analyses of sentencing.

Cases were only included if they were represented by the PDSO or were non-directed cases represented by private solicitors. Therefore, unrepresented cases, directed private cases and those represented by both the PDSO and private solicitors were excluded. This was to aid the interpretation of the results by focusing on the two main comparator groups.

In the analyses that follow we have reported the ‘odds ratios’ associated with the background variables, along with the ‘p value’ which indicates the statistical significance of the odds ratio, after taking all other factors in the model into account. The odds of an event happening are defined as the probability that it will happen divided by the probability that it will not. For example, the odds of tossing a coin and it landing on heads is 1 (0.5 divided by 0.5). In our analyses the odds ratio shows by what factor the odds of a conviction etc. are affected by a change in the independent variable. An odds ratio of one means that the odds of a conviction etc. are unaffected by a unit change in the variable. With regard to statistical significance we have followed convention and described effects as being statistically significant if the p value is below 0.05 (i.e. we are 95% confident that similar effects would be observed in another sample from the same population). However, we have reported all p values so that the relative strength of an individual variable’s effect can be determined.

A. FACTORS THAT PREDICT CONVICTIONS

Model A in Table A8.1 examines the impact that the background variables have on outcome. The OR (odds ratio) figures are the relative odds of the client being convicted. The model shows that compared to private non-directed clients, the odds of PDSO clients being convicted were 52% higher. If the client was dealt with in the Sheriff Court then the odds of being convicted were 229% higher than if they were dealt with in the District Court. The odds of being convicted increased with the number of charges. Compared to road traffic offences, alleged violent and miscellaneous offences were significantly more likely to result in the client not being convicted. The greater the number of accused persons in a particular case, the lower the odds of being convicted. Odds were also lower the longer the duration between the alleged offence and the first diet. The ‘Pseudo $R^2$’ shows that around 14% of the variation in the rate of conviction could be explained by the model.
B. FACTORS THAT PREDICT STAGE OF RESOLUTION

Model B in Table A8.1 shows the impact that background characteristics had on the time of resolution. An early resolution (pleading or intermediate diet) was significantly more likely if the client was represented by the PDSO than if they were represented by a private solicitor. The more the number of charges, the lower the odds of an early resolution. The squared term indicates that the decrease in odds diminishes but not significantly. Charges of violence, public order offences, theft and drug offences were each less likely to result in an early resolution than were road traffic charges. The more accused there were the lower were the odds of an early resolution, and this was also the case for older clients and men. Model B could explain around 13% of the variation in the stage of resolution.

C. RELATIONSHIP BETWEEN MODELS A AND B

Model A revealed that the clients represented by the PDSO were significantly more likely to be convicted than were non-directed clients represented by private solicitors. Model B showed that PDSO clients were also more likely to have their cases resolved at an early stage. The two models have up to now been treated independently, but in reality it is probable that there is a link between stage of resolution and likelihood of conviction. If the stage of resolution variable is entered into Model A (“the combined model”), the amount of variation explained in rates of conviction increases from 14% to 22%. However, the odds ratio for the group (PDSO or private) variable falls from 1.52 to 1.34 and becomes non-significant (p=0.168). The odds ratio for the early resolution variable is 5.72 (p<0.001), which shows that early resolutions are far more likely to result in convictions than later resolutions.

The combined model suggests a strong link between type of representation and stage of resolution, as witnessed by the change in the odds ratio for the group variable following the introduction of the stage of resolution variable. The models show that PDSO clients are more likely to be convicted, but this is at least in part due to the fact that PDSO clients are also more likely have cases resolved early.

The residuals obtained from Models A and B were also correlated (r=0.235) which indicates that there may be some common variables that are omitted from both models. Such common variables might include, for example, the strength of the evidence or the clients’ willingness to admit guilty, which we were not able to obtain from the data collection exercise.

D. DETENTION IN CUSTODY BEFORE SENTENCE

We tested whether clients were less likely to be detained in custody at any stage before sentence. Around one third of variation in the rate of detention in custody could be explained by the models in Table A8.2. We started by looking only at background characteristics (Model C). This found that representation by the PDSO resulted in odds of detention that were 62% lower than those for private non-directed clients. Hearings in the Sheriff Court were significantly associated with detention. Compared with road traffic charges, charges of violence, public order and theft all resulted in higher odds of detention. If the initial appearance was from custody and if there was evidence of bail at the time of the alleged
offence then the odds of detention were significantly increased. Finally, women had significantly lower odds of detention than men.

The next Model (Model D) includes process variables alongside background characteristics, to see if detention in custody was linked to the way in which cases were processed through the court. The same background characteristics were significant with two exceptions: gender was no longer statistically significant, whereas being charged with drugs offences was. In addition, the more diets there were, the higher were the odds of a detention. The similarity of the odds ratios for the different types of diet indicates that it was the overall amount that mattered.

On the other hand, cases with a detention in custody were dealt with more quickly. Although they included more diets, the overall number of days between complaint and resolution was reduced. In Model D the odds of a detention were 60% lower if the client was represented by the PDSO compared to representation by a private solicitor.

E. FACTORS THAT PREDICT SERIOUSNESS OF SENTENCES

The models in Table A8.3 reveal which background variables had a statistically significant impact on whether a client received a custodial sentence and which received a custodial sentence/community sentence. It is important to note that the sample for these models only consisted of those clients who were convicted and received either a custodial sentence, a community service order/probation order, were disqualified from driving, received a fine or were ordered to pay compensation, or received an admonition. A small number of clients received other sentences, such as hospital orders, and these were excluded from these analyses. Clients who were not convicted were also excluded.

**Custodial sentences**

Model E shows that the type of representation did not have a significant impact on whether or not a client received a custodial sentence. The odds of a custodial sentence were higher if the client was tried in the Sheriff Court rather than the District Court, and if they were charged with theft, property offences or miscellaneous offences rather than with traffic offences. The odds of a custodial sentence were also higher if the client made their initial court appearance from custody, if there was evidence that they were on bail at the time of the alleged offence, the more analogous offences they had committed during the previous five years, and if they had previously received a custodial sentence. Model E could explain around 42% of variation in the rate of custodial sentences.

**Custodial sentences and community service/probation orders**

Model F could explain around 35% of variation in the rate of custodial/community sentences. Again, the type of representation did not have a significant impact on sentencing. There is a substantial overlap between this model and Model E, and therefore some of the relationships are similar. For example, being tried in the Sheriff Court rather than the District Court, there being evidence of bail at the time of the alleged offence, having had a previous custodial sentence and having committed analogous offences during the previous five years all served to increase the odds of a custodial/community sentence. Alleged violent and public order
offences also increased the odds of such sentences. In addition, there was a significant age effect with older clients less likely to receive a custodial/community sentence.

The variable which indicates whether a case was resolved early was subsequently entered into Models E and F. This had no major effect on the model. We were unable to establish any link between an early plea and a lighter sentence.

**Amount of the fine**

Around half the PDSO and private non-directed samples received a primarily financial penalty of a fine or compensation order (with or without penalty points and admonitions). We therefore tested whether representation by the PDSO resulted in a lower overall total fine/compensation order.

Table A8.4 shows that representation by the PDSO resulted in fines (where given) that were on average £33 lower than those imposed on non-directed private clients. This difference was not statistically significant, but the reduced model shows that statistical significance was almost reached. Fines were significantly higher for clients dealt with in the Sheriff Court than in the District Court and were also higher for charges of violence, theft and property crime compared with road traffic offences. The reduced model shows that fines were significantly lower for women than for men. After bootstrapping the full model, being charged with a public order offence became significant as did the number of accused and gender, whilst being charged with property offences became non-significant. The bootstrapped reduced model (see Appendix 9 for a definition) also revealed that being charged with a property offence was not statistically significant.

**F. FACTORS THAT PREDICT WHETHER THE CASE WILL BE CONCLUDED WITH PLEA BARGAINING**

From Table A8.5 it can be seen that the odds of a plea bargain were 34% higher if the case was represented by the PDSO than if it was a non-directed case represented by a private solicitor. However, this difference was marginally non-significant if we use the 95% (p<0.05) level. Cases heard in the Sheriff Court were significantly more likely to result in a plea bargain, as were alleged violent offences, public order offences and theft, when compared with alleged road traffic offences. The more charges there were the greater the odds of a plea bargain, and the squared term indicates that the odds rose at an increasing rate. Plea bargains were less likely the more accused there were, and were more likely if there was evidence that at the time of the offence the client was on bail. Overall around one third of the variation in the rate of plea bargains could be explained by this model.
Table A8.1: Background variables predictive of whether client convicted and stage of resolution

Dependent variable = 1 if client convicted, 0 if not convicted
1 if case resolved at pleading diet or intermediate diet, 0 if at trial (whether before evidence is led)

<table>
<thead>
<tr>
<th></th>
<th>Model A Convicted (n=1080)</th>
<th>Model B Early resolution (n=1079)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representation by PDSO</td>
<td>1.52 0.036</td>
<td>1.67 0.001</td>
</tr>
<tr>
<td>Sheriff court</td>
<td>3.29 &lt;0.001</td>
<td>1.15 0.533</td>
</tr>
<tr>
<td>Number of charges (^c)</td>
<td>1.70 0.010</td>
<td>0.73 0.021</td>
</tr>
<tr>
<td>Number of charges squared (^c)</td>
<td>0.97 0.222</td>
<td>1.03 0.070</td>
</tr>
<tr>
<td>Main category (RC = road traffic)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>0.31 &lt;0.001</td>
<td>0.13 &lt;0.001</td>
</tr>
<tr>
<td>Public order</td>
<td>0.74 0.355</td>
<td>0.29 &lt;0.001</td>
</tr>
<tr>
<td>Theft</td>
<td>0.61 0.082</td>
<td>0.58 0.013</td>
</tr>
<tr>
<td>Damage to property</td>
<td>0.34 0.063</td>
<td>0.52 0.224</td>
</tr>
<tr>
<td>Drugs</td>
<td>0.98 0.971</td>
<td>0.40 0.010</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>0.24 0.004</td>
<td>0.64 0.349</td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td>1.08 0.790</td>
<td>1.02 0.937</td>
</tr>
<tr>
<td>Number of co-acused (^c)</td>
<td>0.34 &lt;0.001</td>
<td>0.37 &lt;0.001</td>
</tr>
<tr>
<td>Evidence of bail at time of offence</td>
<td>1.22 0.482</td>
<td>1.14 0.538</td>
</tr>
<tr>
<td>Age (^c)</td>
<td>1.00 0.958</td>
<td>0.98 0.018</td>
</tr>
<tr>
<td>Female</td>
<td>1.11 0.694</td>
<td>1.75 0.009</td>
</tr>
<tr>
<td>Days before first diet (^c)</td>
<td>0.998 0.046</td>
<td>0.999 0.419</td>
</tr>
</tbody>
</table>

\[^c\] Continuous variables; all others are dichotomous, taking the value of 1 if the condition is met and 0 otherwise

Figures in bold represent statistically significant (p<0.05) predictors of outcome

n = number of cases in model
OR = odds ratio
P = p value
RC = reference category

Pseudo R²=0.141
Pseudo R²=0.134
### Table A8.2. Impact of background (client, court, offence) and process characteristics on detention in custody

Dependent variable = 1 if detained, 0 if not detained

<table>
<thead>
<tr>
<th>Representation by PDSO</th>
<th>Model C (n=1088)</th>
<th>OR</th>
<th>P</th>
<th>Model D (n=1088)</th>
<th>OR</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff court</td>
<td>6.15</td>
<td>0.017</td>
<td>4.68</td>
<td>0.046</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of charges c</td>
<td>1.20</td>
<td>0.395</td>
<td>0.92</td>
<td>0.725</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of charges squared c</td>
<td>0.99</td>
<td>0.758</td>
<td>1.02</td>
<td>0.579</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main category (RC = road traffic)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>5.18</td>
<td>&lt;0.001</td>
<td>4.67</td>
<td>0.002</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public order</td>
<td>3.64</td>
<td>0.008</td>
<td>3.79</td>
<td>0.011</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft</td>
<td>6.40</td>
<td>&lt;0.001</td>
<td>6.77</td>
<td>&lt;0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Damage to property</td>
<td>2.84</td>
<td>0.278</td>
<td>3.35</td>
<td>0.234</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drugs</td>
<td>4.22</td>
<td>0.062</td>
<td>5.18</td>
<td>0.038</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>0.57</td>
<td>0.626</td>
<td>0.23</td>
<td>0.258</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td>4.77</td>
<td>&lt;0.001</td>
<td>3.70</td>
<td>&lt;0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of co-accused c</td>
<td>0.81</td>
<td>0.399</td>
<td>0.71</td>
<td>0.190</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence of bail at time of offence</td>
<td>5.45</td>
<td>&lt;0.001</td>
<td>4.25</td>
<td>&lt;0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age c</td>
<td>0.99</td>
<td>0.276</td>
<td>0.99</td>
<td>0.510</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>0.32</td>
<td>0.038</td>
<td>0.43</td>
<td>0.137</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days before first diet c</td>
<td>1.00</td>
<td>0.750</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stage of resolution (RC = pleading diet)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intermediate diet</td>
<td>-</td>
<td>-</td>
<td>1.67</td>
<td>0.185</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Before trial</td>
<td>-</td>
<td>-</td>
<td>1.27</td>
<td>0.599</td>
<td></td>
<td></td>
</tr>
<tr>
<td>After evidence led</td>
<td>-</td>
<td>-</td>
<td>0.92</td>
<td>0.873</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal aid granted</td>
<td>-</td>
<td>-</td>
<td>1.16</td>
<td>0.800</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure to appear</td>
<td>-</td>
<td>-</td>
<td>1.51</td>
<td>0.305</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of sentencing diets c</td>
<td>-</td>
<td>-</td>
<td>1.89</td>
<td>&lt;0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of warrant diets c</td>
<td>-</td>
<td>-</td>
<td>2.07</td>
<td>0.005</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of pre-sentencing diets c</td>
<td>-</td>
<td>-</td>
<td>2.01</td>
<td>&lt;0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Days between complaint and last diet c</td>
<td>-</td>
<td>-</td>
<td>0.99</td>
<td>&lt;0.001</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Pseudo $R^2 = 0.318$  Pseudo $R^2 = 0.396$

n = number of cases in model
OR = odds ratio
P = p value
RC = reference category
c Continuous variables; all others are dichotomous, taking the value of 1 if the condition is met and 0 otherwise
Figures in bold represent statistically significant (p<0.05) predictors of outcome
Table A8.3: Background variables predictive of a custodial sentence or custodial/community sentence

<table>
<thead>
<tr>
<th>Variable</th>
<th>Model E Custodial (n=847)</th>
<th>Model F Custodial/community (n=847)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>OR</td>
<td>P</td>
</tr>
<tr>
<td>Representation by PDSO</td>
<td>0.94</td>
<td>0.824</td>
</tr>
<tr>
<td>Sheriff court</td>
<td><strong>16.55</strong></td>
<td><strong>0.012</strong></td>
</tr>
<tr>
<td>Number of charges</td>
<td>1.26</td>
<td>0.366</td>
</tr>
<tr>
<td>Number of charges squared</td>
<td>0.98</td>
<td>0.607</td>
</tr>
<tr>
<td>Main category (RC = road traffic)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>2.45</td>
<td>0.064</td>
</tr>
<tr>
<td>Public order</td>
<td>2.46</td>
<td>0.078</td>
</tr>
<tr>
<td>Theft</td>
<td><strong>4.21</strong></td>
<td><strong>0.004</strong></td>
</tr>
<tr>
<td>Damage to property</td>
<td><strong>7.28</strong></td>
<td><strong>0.042</strong></td>
</tr>
<tr>
<td>Drugs</td>
<td>2.51</td>
<td>0.299</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td><strong>14.79</strong></td>
<td><strong>0.001</strong></td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td><strong>2.55</strong></td>
<td><strong>0.011</strong></td>
</tr>
<tr>
<td>Number of co-accused</td>
<td>0.89</td>
<td>0.727</td>
</tr>
<tr>
<td>Evidence of bail at time of offence</td>
<td><strong>2.29</strong></td>
<td><strong>0.005</strong></td>
</tr>
<tr>
<td>Age</td>
<td>1.00</td>
<td>0.879</td>
</tr>
<tr>
<td>Female</td>
<td>0.30</td>
<td>0.118</td>
</tr>
<tr>
<td>Days before first diet</td>
<td>1.00</td>
<td>0.849</td>
</tr>
<tr>
<td>Number of previous convictions</td>
<td>1.02</td>
<td>0.136</td>
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<tr>
<td>Number of previous solemn convictions</td>
<td>1.00</td>
<td>0.964</td>
</tr>
<tr>
<td>Number of analogous offences</td>
<td><strong>1.08</strong></td>
<td><strong>0.002</strong></td>
</tr>
<tr>
<td>Any past custodial sentences</td>
<td><strong>3.41</strong></td>
<td><strong>0.001</strong></td>
</tr>
<tr>
<td>Any past community sentences</td>
<td>1.62</td>
<td>0.130</td>
</tr>
</tbody>
</table>

Pseudo $R^2$ = 0.424  Pseudo $R^2$ = 0.353

n = number of cases in model
OR = odds ratio
P = p value
RC = reference category
- indicates that the variable is not included in the particular model

Continuous variables: all others are dichotomous, taking the value of 1 if the condition is met and 0 otherwise.

Figures in bold represent statistically significant (p<0.05) predictors of outcome.
Table A8.4. Impact of background variables on the amount of fine/compensation order

<table>
<thead>
<tr>
<th></th>
<th>Model G (n=415)</th>
<th></th>
<th>Model H (n=502)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full Model</td>
<td>Reduced Model</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coeff.  P</td>
<td>Coeff.  P</td>
<td></td>
<td>Coeff.  P</td>
</tr>
<tr>
<td>PDSO</td>
<td>-33 0.110</td>
<td>-34 0.060</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>142 &lt;0.001</td>
<td>143 &lt;0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Main charge (RC = road traffic)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>78 0.013</td>
<td>49 0.032</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public order</td>
<td>54 0.112</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Theft</td>
<td>85 0.008</td>
<td>45 0.033</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property</td>
<td>248 0.001</td>
<td>142 0.003</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drugs</td>
<td>40 0.356</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>131 0.081</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of charges c</td>
<td>35 0.148</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of charges squared c</td>
<td>-4 0.206</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td>33 0.331</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of co-accused c</td>
<td>-41 0.057</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Evidence of bail at time of offence</td>
<td>-52 0.193</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Female</td>
<td>-56 0.052</td>
<td>-56 0.022</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age c</td>
<td>1.1 0.289</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Time between offence and first diet c</td>
<td>0.2 0.294</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal aid granted</td>
<td>1.99 0.949</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>-42 0.573</td>
<td>86 &lt;0.001</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\[ R^2 = 0.149 \]
\[ \text{Adjusted } R^2 = 0.113 \]

\[ R^2 = 0.194 \]
\[ \text{Adjusted } R^2 = 0.191 \]

n = number of cases in model
Coeff. = coefficient which indicates the amount that the fine changes, given a unit change in the independent variable, with others held constant.
P = p value
RC = reference category
- indicates that the variable is not included in the particular model
* Continuous variables; all others are dichotomous, taking the value of 1 if the condition is met and 0 otherwise
Table A8.5: Background characteristics that are predictive of a mixed outcome (plea bargain)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Odds ratio</th>
<th>P value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Representation by PDSO</td>
<td>1.34</td>
<td>0.082</td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>3.52</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Main charge (RC = road traffic)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>3.44</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Public order</td>
<td>2.47</td>
<td>0.002</td>
</tr>
<tr>
<td>Theft</td>
<td>3.31</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Property</td>
<td>1.19</td>
<td>0.845</td>
</tr>
<tr>
<td>Theft</td>
<td>2.21</td>
<td>0.061</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>1.92</td>
<td>0.273</td>
</tr>
<tr>
<td>Number of charges</td>
<td>11.00</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Number of charges squared</td>
<td>0.82</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td>0.81</td>
<td>0.384</td>
</tr>
<tr>
<td>Number of co-accused</td>
<td>0.67</td>
<td>0.019</td>
</tr>
<tr>
<td>Evidence of bail at time of offence</td>
<td>2.21</td>
<td>0.001</td>
</tr>
<tr>
<td>Female</td>
<td>0.94</td>
<td>0.808</td>
</tr>
<tr>
<td>Age</td>
<td>1.01</td>
<td>0.201</td>
</tr>
<tr>
<td>Time between alleged offence and first diet</td>
<td>1.00</td>
<td>0.296</td>
</tr>
</tbody>
</table>

Pseudo $R^2 = 0.344$

n = 1080

n = number of cases in model
RC = reference category

^ Continuous variables; all others dichotomous, taking the value of 1 if the condition is met and 0 otherwise
APPENDIX 9: MULTI-VARIATE ANALYSES: COSTS

The rationale for conducting multi-variate analyses is given in detail in Appendix 8. The multi-variate analysis of the cost data involved the following stages:

Stage 1. A single linear regression model (Model A) was constructed which took the cost to SLAB as the dependent variable and a range of client, court and offence characteristics as the independent (or predictor) variables. (Appendix 8 contains full details of the variables used.)

Stage 2. A reduced model (Model B) was constructed by sequentially removing variables with the highest p-values from the model produced in Stage 1.

Stage 3. Two separate models were constructed to identify predictors of costs for the two groups. Model C focused on the PDSO sample whilst Model D focused on the privately represented non-directed sample.

In all the analyses, cases were included in the multi-variate analyses if legal aid had been granted, regardless of whether any payment had actually been received.

Regression of cost data frequently produces residuals that have a skewed distribution. This violates one of the assumptions underlying the linear regression model, i.e. that residuals should be normally distributed. Non-normality of residuals can result in inaccurate standard errors and consequently p-values. (Regression coefficients and the amount of variation explained by the models are, however, unaffected by non-normality.) This is generally less of a problem with large sample sizes, but in order to check our findings we used a non-parametric bootstrapping technique which does not require the assumption of normally distributed regression residuals. This procedure involved re-sampling with replacement from the original data set. If a large enough number of samples is drawn from the original then it is assumed that the population distribution of the parameter of interest is approximated. In these analyses we generated 1000 bootstrapped samples.

COMBINED MODELS

Table A9.1 gives details of the full and reduced regression models for the whole sample of clients who were granted legal aid and were either represented by the PDSO or were non-directed clients represented by private solicitors. Model A shows that costs were on average £40 higher for PDSO clients than they were for non-directed private clients. This difference was not however statistically significant at the conventional level of p<0.05. Costs were £225 higher if the client was tried in the Sheriff Court compared with the District Court. Compared with road traffic charges, charges of violence, public order offences, theft, and miscellaneous offences were significantly more costly. Costs were higher the more charges there were, and were also higher the greater the number of accused there were. Model A could explain 17.4% of cost variations.

After non-significant variables were sequentially removed (Model B) it was found that all the previous significant variables remained so with the exception of being charged with miscellaneous offences. Having a reduced number of predictor variables, by definition, causes
the amount of variation explained to fall. However, the reduction here is slight, with 16.7% of variation explained.

Examination of the residuals revealed that they were not normally distributed. However, the use of bootstrap methods showed that the models were robust to this non-normality. In Model B, all the variables remained statistically significant, whilst in Model A only one previously significant variable became non-significant (miscellaneous charge) and one previously non-significant variable became significant (drugs charge).

We also entered interactions between the type of representation and the other predictor variables. This would reveal whether the models were in fact different for the two types of representation and, therefore, whether the use of a single model was justified. Initially a number of interactions between the use of the PDSO and other variables appeared to be significant. However, after the use of bootstrapping it was found that these became non-significant.

**PDSO AND PRIVATE MODELS**

PDSO cases tried in the Sheriff Court were on average £185 more expensive than those in the District Court. Compared to alleged road traffic offences the costs of PDSO clients (Model C in Table A9.2) were on average £342 higher if the main charge was of violence and £212 higher if it was for public order. Costs were also significantly higher the more accused there were. Overall, 18.3% of variations in the PDSO costs could be explained by the model. The model was robust to the non-normality of the residuals.

From Model D it can be seen that the costs of privately represented non-directed clients were on average £250 higher if they were seen in the Sheriff Court rather than the District Court. The significance of the number of charges and the number of charges squared variables means that costs increase at a diminishing rate as the number of charges increases, and at a certain point they then start to fall at an increasing rate. Compared with road traffic charges, costs were again higher for violence and public order offences and also for theft and miscellaneous offences. Finally, and as with the PDSO model, costs were higher the more accused there were. This model could explain 19.5% of the costs for this sample. Bootstrapping did not result in any other variables becoming statistically significant, nor did any significant ones become insignificant.

**CROSS-PREDICTIONS OF COST**

The mean cost for PDSO clients who were granted legal aid was £500.\(^{149}\) Based on their characteristics, we can use Model D to see what the mean cost would have been if they had received representation from private solicitors, and this figure is slightly higher at £481. Likewise, the non-directed clients who received private representation had a mean cost of £449, but if they had been represented by the PDSO then their mean cost would have been £499.

\(^{149}\) The is £2 more than the average given in Chapter 18, because it includes some payments made to private solicitors on these cases under, for example, the duty solicitor scheme.
In algebraic terms (Knapp 1986) the standardised cost difference between the two types of representation, based on the non-directed private equation, is given by:

\[(1)\]

\[Y_{pdso} - f_{priv}(X_{pdso})\]

where \(f_{priv}\) = non-directed private cost equation
\(Y_{pdso}\) = mean cost of PDSO clients
\(X_{pdso}\) = mean cost of PDSO clients obtained from non-directed private cost equation

Equation (1) is equal to £500-£481. Therefore, the PDSO clients would on average be £19 less expensive if represented by private solicitors. If we standardise using the PDSO equation the cost difference is given by:

\[(2)\]

\[f_{pdso}(X_{priv}) - Y_{priv}\]

where \(f_{pdso}\) = PDSO cost equation
\(X_{priv}\) = mean cost of private clients obtained from PDSO cost equation
\(Y_{priv}\) = mean cost of private non-directed clients

Equation (2) is equal to £499-£449. This means that private clients would be £50 more expensive to represent by the PDSO. Therefore, after standardising for differences in client, court and offence characteristics, PDSO representation is between £19 and £50 more expensive than private representation.

**USE OF CURRENT PDSO UNIT COST**

As stated earlier the cost per hour of casework activity in 2000/2001 has been estimated at £79 excluding outlays. If outlays are reallocated and the £79 cost is applied to the current data then the cost prediction equation across both samples is similar to that in Table A9.1, except that now the PDSO results costs that are on average £26 less than the costs for non-directed private clients. This difference remains statistically insignificant. The equation for the PDSO clients is almost the same as in Table A9.2, except that each coefficient is reduced in size. We applied the characteristics of the non-directed private clients to the new PDSO equation in the same way as before. This resulted in a new predicted cost for non-directed private clients of £435, which is 87% of the previous figure. However, we do have to be very cautious about using this figure given that most of the outcome data relate to a period during which the unit cost was £93.
### Table A9.1: Impact of client, court and offence characteristics on cost

<table>
<thead>
<tr>
<th></th>
<th>Model A (n=932)</th>
<th></th>
<th>Model B (n=1079)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Full Model</td>
<td>Reduced Model</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coeff.</td>
<td>P</td>
<td>Coeff.</td>
<td>P</td>
</tr>
<tr>
<td>PDSO</td>
<td>40</td>
<td>0.131</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sheriff Court</td>
<td>225</td>
<td>&lt;0.001</td>
<td>270</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Main charge (RC = road traffic)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>301</td>
<td>&lt;0.001</td>
<td>251</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Public order</td>
<td>203</td>
<td>&lt;0.001</td>
<td>161</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Theft</td>
<td>99</td>
<td>0.012</td>
<td>67</td>
<td>0.027</td>
</tr>
<tr>
<td>Property</td>
<td>79</td>
<td>0.421</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Drugs</td>
<td>126</td>
<td>0.061</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>222</td>
<td>0.018</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Number of charges c</td>
<td>67</td>
<td>0.007</td>
<td>17</td>
<td>0.037</td>
</tr>
<tr>
<td>Number of charges squared c</td>
<td>-6</td>
<td>0.052</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td>-6</td>
<td>0.877</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Number of co-accused c</td>
<td>155</td>
<td>&lt;0.001</td>
<td>143</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Evidence of bail at time of offence</td>
<td>72</td>
<td>0.051</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Female</td>
<td>-7</td>
<td>0.860</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Age c</td>
<td>-0.1</td>
<td>0.926</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Time between offence and first diet c</td>
<td>0.1</td>
<td>0.392</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Constant</td>
<td>-30</td>
<td>0.687</td>
<td>82</td>
<td>0.021</td>
</tr>
</tbody>
</table>

R² = 0.174
Adjusted R² = 0.159

R² = 0.167
Adjusted R² = 0.162

n = number of cases in model

Coeff. = coefficient which indicates the amount that cost changes, given a unit change in the independent variable, with others held constant.
P = p value
RC = reference category
- indicates that the variable is not included in the particular model

\(^c\) Continuous variables; all others are dichotomous, taking the value of 1 if the condition is met and 0 otherwise
Table A9.2: Impact of client, court and offence characteristics on cost

<table>
<thead>
<tr>
<th></th>
<th>Model C PDSO clients (n=338)</th>
<th>Coeff.</th>
<th>P</th>
<th>Model D Private clients (n=594)</th>
<th>Coeff.</th>
<th>P</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheriff Court</td>
<td></td>
<td>185</td>
<td>0.040</td>
<td></td>
<td>250</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Number of charges c</td>
<td></td>
<td>55</td>
<td>0.305</td>
<td></td>
<td>77</td>
<td>0.002</td>
</tr>
<tr>
<td>Number of charges squared c</td>
<td></td>
<td>-4</td>
<td>0.577</td>
<td></td>
<td>-7</td>
<td>0.015</td>
</tr>
<tr>
<td>Main category (RC = road traffic)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td></td>
<td>342</td>
<td>&lt;0.001</td>
<td></td>
<td>268</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Public order</td>
<td></td>
<td>212</td>
<td>0.028</td>
<td></td>
<td>201</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Theft</td>
<td></td>
<td>49</td>
<td>0.572</td>
<td></td>
<td>127</td>
<td>0.001</td>
</tr>
<tr>
<td>Damage to property</td>
<td></td>
<td>11</td>
<td>0.966</td>
<td></td>
<td>86</td>
<td>0.354</td>
</tr>
<tr>
<td>Drugs</td>
<td></td>
<td>167</td>
<td>0.225</td>
<td></td>
<td>104</td>
<td>0.138</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td></td>
<td>53</td>
<td>0.787</td>
<td></td>
<td>309</td>
<td>0.001</td>
</tr>
<tr>
<td>Initial appearance from custody</td>
<td></td>
<td>38</td>
<td>0.643</td>
<td></td>
<td>-32</td>
<td>0.431</td>
</tr>
<tr>
<td>Number of co-accused c</td>
<td></td>
<td>262</td>
<td>&lt;0.001</td>
<td></td>
<td>99</td>
<td>&lt;0.001</td>
</tr>
<tr>
<td>Evidence of bail</td>
<td></td>
<td>114</td>
<td>0.176</td>
<td></td>
<td>45</td>
<td>0.220</td>
</tr>
<tr>
<td>Age c</td>
<td></td>
<td>1.7</td>
<td>0.536</td>
<td></td>
<td>-0.9</td>
<td>0.510</td>
</tr>
<tr>
<td>Female</td>
<td></td>
<td>54</td>
<td>0.498</td>
<td></td>
<td>-32</td>
<td>0.408</td>
</tr>
<tr>
<td>Days between offence and first diet c</td>
<td></td>
<td>0.07</td>
<td>0.843</td>
<td></td>
<td>0.18</td>
<td>0.294</td>
</tr>
<tr>
<td>Constant</td>
<td></td>
<td>-36</td>
<td>0.811</td>
<td></td>
<td>-17</td>
<td>0.822</td>
</tr>
</tbody>
</table>

R² = 0.183
Adjusted R² = 0.145
R² = 0.195
Adjusted R² = 0.174

n = number of cases in model
Coeff. = coefficient which indicates the amount that cost changes, given a unit change in the independent variable, with others held constant.
P = p value
RC = reference category
- indicates that the variable is not included in the particular model

Continuous variables; all others are dichotomous, taking the value of 1 if the condition is met and 0 otherwise
APPENDIX 10: COURT DATA COLLECTION FORM

The following form was consulted on widely and used as a blue-print in designing the CAPI script used in collecting data from court records.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th>Sheriff 1 District 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Court</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Researcher</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Court reference number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Does this case have more than one case reference? If so, what?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Given names</td>
<td></td>
<td>Surname</td>
</tr>
<tr>
<td>7</td>
<td>PF number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Date of birth</td>
<td></td>
<td>(D D/ MM/ YY)</td>
</tr>
<tr>
<td>9</td>
<td>Sex</td>
<td></td>
<td>Male 1 Female 2 Not clear from files 3</td>
</tr>
<tr>
<td>10</td>
<td>Postcode (If not given write in full address below)</td>
<td></td>
<td>No fixed abode=00000000; In prison/custody=11111111</td>
</tr>
<tr>
<td>11</td>
<td>Is accused known by any other name? Yes 1 No 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IF YES, What is it? (Including any aliases) First names</td>
<td></td>
<td>Surnames</td>
</tr>
<tr>
<td>12</td>
<td>Number of (additional) co-accused</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Date of complaint</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Earliest date of alleged offence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Latest date of alleged offence (if different)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
16 Initial appearance from custody?  
   Yes 1  
   No 2  
   Don’t know 9

17 Custody/ bail?  
   Detained in custody 1  
   Bailed 2  
   Neither  
   In custody on another matter 3  
   Don’t know 9

**Criminal record**

18. Was accused convicted?  
   Yes/ No. If no, skip to 25

19 Number of previous occasions at which conviction took place  
   How many of these occasions were under solemn procedure?

20 Number of charges on which accused convicted

21 Past custodial sentence?  
   Yes 1  
   No 2  
   Don’t know 9

22 Total custodial sentences in months

23 Past community sentence?  
   (ie probation/ CSO)  
   Yes – in past year 1  
   Yes – but not in past year 2  
   No 3  
   Don’t know 9

24 Number of analogous offences in last 5 years

**Court process**

25 Is there a joint minute on the file?  
   Yes 1  
   No 2

26 Was evidence led at trial?  
   Yes 1  
   No 2  
   No trial 3  
   Don’t know 9

27 Name of sentencer  
   No sentence=00
### Social Enquiry Report?

<table>
<thead>
<tr>
<th>Option</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>No - none</td>
<td>1</td>
</tr>
<tr>
<td>Yes - report recommended non-custodial sentence</td>
<td>2</td>
</tr>
<tr>
<td>Yes - report cannot recommend non-custodial sentence</td>
<td>3</td>
</tr>
<tr>
<td>Yes - report made no clear recommendation</td>
<td>4</td>
</tr>
<tr>
<td>Yes - recommendation not known</td>
<td>5</td>
</tr>
<tr>
<td>Not known if there was report</td>
<td>9</td>
</tr>
</tbody>
</table>

### Is there any evidence on the file that at the time of the alleged offence(s) the accused was

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>On bail?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>On probation?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject to a community service?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Case category

<table>
<thead>
<tr>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 Overall Category at start of case</td>
</tr>
<tr>
<td>30 2nd level Category at start of case</td>
</tr>
<tr>
<td>31 Overall Category on conviction (if different)</td>
</tr>
<tr>
<td>32 2nd level Category on conviction (if different)</td>
</tr>
</tbody>
</table>

### Overall sentence for the whole case

<table>
<thead>
<tr>
<th>Type (most serious)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantum</td>
</tr>
</tbody>
</table>
### Breakdown of charge options

<table>
<thead>
<tr>
<th>35 Charge</th>
<th>36 Fate of charge WRITE IN CODE</th>
<th>37 Time of resolution WRITE IN CODE</th>
<th>38 First Sentence WRITE IN TYPE CODE</th>
<th>39 Tariff AMOUNT</th>
<th>40 2nd Sentence</th>
<th>41 Tariff</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>(5-6) (7-8)</td>
<td>(9-10)</td>
<td>(11-12)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(ii)</td>
<td>(16-17) (18-19)</td>
<td>(20-21)</td>
<td>(22-23)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iii)</td>
<td>(26-27) (28-29)</td>
<td>(30-31)</td>
<td>(32-33)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(iv)</td>
<td>(36-37) (38-39)</td>
<td>(40-41)</td>
<td>(42-43)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(v)</td>
<td>(46-47) (48-49)</td>
<td>(50-51)</td>
<td>(52-53)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>(vi)</td>
<td>(56-57) (58-59)</td>
<td>(60-61)</td>
<td>(62-63)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Codes

- **01** Pled Guilty as libelled
- **02** Pled Guilty after deletion of bail aggravation only
- **03** Pled Guilty under deletion
- **04** Pled Guilty to an alternative charge
- **05** Found Guilty as libelled
- **06** Found Guilty of an amended charge
- **07** Plea of Not Guilty accepted
- **08** Charge deserted/ case not called
- **09** Found Not Guilty/ acquittal after submission of no case to answer
- **10** Found not proven
- **99** Not known

#### Codes

- **01** Pleading diet or continued pleading diet
- **02** Intermediate diet
- **03** Accelerated diet
- **04** Warrant diet
- **05** Trial diet before trial starts
- **06** During trial (i.e. before conclusion of evidence)
- **07** Following trial (i.e. determination by court)
- **08** Trial unspecified (i.e. not sure at what stage)
- **09** Warrant never executed
- **10** Found not proven
- **99** Not known
## Court appearances

<table>
<thead>
<tr>
<th>42 Type of diet</th>
<th>43 Date DD/MM/YY</th>
<th>44 Represented WRITE IN CODE</th>
<th>45 Name of solicitor WRITE IN CODE</th>
<th>46 Reason for continuation/conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(21-22)</td>
<td>(23-28)</td>
<td>(29-30)</td>
<td>(31)</td>
</tr>
<tr>
<td>(2)</td>
<td>(32-33)</td>
<td>(34-39)</td>
<td>(40-41)</td>
<td>(42)</td>
</tr>
<tr>
<td>(3)</td>
<td>(43-44)</td>
<td>(45-50)</td>
<td>(51-52)</td>
<td>(53)</td>
</tr>
<tr>
<td>(4)</td>
<td>(54-55)</td>
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<td>(5)</td>
<td>(65-66)</td>
<td>(67-72)</td>
<td>(73-74)</td>
<td>(75)</td>
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<td>(6)</td>
<td>CARD 4 (1-2)</td>
<td>(3-8)</td>
<td>(9-10)</td>
<td>(11)</td>
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<td>(12-13)</td>
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<td>(20-21)</td>
<td>(22)</td>
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<td>(34-35)</td>
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<td>(10)</td>
<td>(45-46)</td>
<td>(47-52)</td>
<td>(53-54)</td>
<td>(55)</td>
</tr>
</tbody>
</table>

### Codes
- **01** Pleading diet
- **02** Intermediate diet
- **03** Accelerated diet
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- **05** Bail Appeal
- **06** Trial diet
- **07** Appearance for sentencing (if not followed by other type of diet)

### Codes
- **01** Unrepresented
- **02** Represented by duty solicitor
- **03** Represented by agents letter
- **03** Otherwise represented.

### Codes
- **01** Non-appearance warrant granted
- **02** Continued without plea
- **03** Continued to intermediate diet
- **04** Continued to trial
- **05** Trial adjourned on defence motion
- **06** Trial adjourned on prosecution motion
- **07** Trial adjourned on joint motion
- **08** Trial adjourned ex proprio motu by court
- **09** Trial adjourned not clear whose motion
- **10** Accused acquitted
  - (eg found NG, Plea of NG accepted, Case deserted)
- **11** Adjourned for sentencing (not including deferred sentence of 6 months plus)
- **12** Sentence passed
- **13** Deferred sentence (6 months or more)
APPENDIX 11: CLIENT QUESTIONNAIRE

The following was the questionnaire sent to clients in both the main and secondary client study.
Survey of users of legal services

This survey is about people and their lawyers. We are looking at people who have used either the Public Defence Solicitors’ Office (the ‘Public Defender’) or private solicitors. This questionnaire is strictly confidential and the information you provide will only be seen by the researchers.

The questionnaire is about when you used a lawyer in the case mentioned in the letter. Most of the questions ask you just to tick a box, though one or two may also ask you to write something in the space provided.

Please return this questionnaire in the envelope provided (you do not need to use a stamp).

A. GETTING A LAWYER

1. What type of lawyer did you use in this case?
   - A private lawyer
   - The duty solicitor
   - The public defender
   - Don’t know/ can’t remember

2. Why did you use that lawyer?
   - It was handy
   - I had used them before
   - I had heard they were good
   - I had to use the public defender
   - Friends/ family recommended them
   - No real reason
   - Some other reason (PLEASE WRITE IN)

3. How much choice do you think you had in picking your lawyer?
   - A lot
   - Quite a lot
   - Not very much
   - None at all
   - Don’t know

4. How important do you think it is to be able to choose your own lawyer?
   - Very important
   - Fairly important
   - Not very important
   - Not at all important
## B. ADVICE FROM YOUR LAWYER

<table>
<thead>
<tr>
<th>Question</th>
<th>Option</th>
<th>Answering Choice</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Did your lawyer advise you how to plead?</td>
<td>Yes</td>
<td>Answer Question 6</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>Go straight to Question 8</td>
</tr>
<tr>
<td></td>
<td>Don’t know/ can’t remember</td>
<td></td>
</tr>
<tr>
<td>6. What did your lawyer advise you to do?</td>
<td>Plead guilty to all charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plead <em>not</em> guilty to all charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plead guilty to some charges and not guilty to others</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plead guilty to different charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Plead not guilty at first, and then change to guilty later</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Something else <em>(PLEASE WRITE IN)</em></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Don’t know/ can’t remember</td>
<td></td>
</tr>
<tr>
<td>7. Did you change your mind about how to plead because of your lawyer’s advice?</td>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Don’t know/ can’t remember</td>
<td></td>
</tr>
</tbody>
</table>

## C. THE POLICE STATION

<table>
<thead>
<tr>
<th>Question</th>
<th>Option</th>
<th>Answering Choice</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Were you ever held at a police station because of this case?</td>
<td>Yes</td>
<td>Answer Question 9</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>Go straight to Question 11</td>
</tr>
<tr>
<td></td>
<td>Don’t know/ can’t remember</td>
<td></td>
</tr>
<tr>
<td>9. Did your lawyer visit you at the police station while you were being held there?</td>
<td>Yes</td>
<td>Go straight to Question 11</td>
</tr>
<tr>
<td></td>
<td>No</td>
<td>Answer Question 10</td>
</tr>
<tr>
<td></td>
<td>Don’t know/ can’t remember</td>
<td></td>
</tr>
<tr>
<td>10. Would you have liked your lawyer to have visited you at the police station?</td>
<td>Yes - I would have liked it</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Not bothered</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Don’t know</td>
<td></td>
</tr>
</tbody>
</table>
### D. COURT BAIL

11. Was it suggested that you might be refused bail?  
   - Yes  
   - No

12. How helpful do you think your lawyer was in trying to get you bail?  
   - Very helpful  
   - Fairly helpful  
   - Not very helpful  
   - Not at all helpful  
   - Don’t know/ can’t remember

### E. YOU AND YOUR LAWYER

13. Did you have the same lawyer all the way through this case?  
   - Always the same lawyer  
   - Different lawyers from the same firm  
   - Different firms  
   - Don’t know/ can’t remember

14. Would you have preferred to have had only one lawyer?  
   - Yes – definitely  
   - Yes – probably  
   - No

15. Was the result of this case better or worse than you thought it was going to be?  
   - Better  
   - Worse  
   - Same as I expected  
   - Don’t know

16. How good a job did your (main) lawyer do in each of these?  

<table>
<thead>
<tr>
<th>Area of Performance</th>
<th>A very good job</th>
<th>A fairly good job</th>
<th>Not a very good job</th>
<th>A very bad job</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>Listening to what I had to say</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telling me what was happening</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Being there when I wanted them</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Having enough time for me</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telling me what would happen at the end</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

17. Here are some things people have said about their lawyers. Thinking about your lawyer in this case, how much do you agree or disagree with each statement?  

<table>
<thead>
<tr>
<th>Statement</th>
<th>Agree strongly</th>
<th>Agree slightly</th>
<th>Neither agree nor disagree</th>
<th>Disagree slightly</th>
<th>Disagree strongly</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘They knew the right people to speak to’</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>‘They really stood up for my rights’</td>
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</tr>
<tr>
<td>‘They seemed too friendly with the procurator fiscal and police’</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>‘They told the court my side of the story’</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>‘They treated me like I mattered, not just as a job to be done’</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
18. Have you ever used another firm of lawyers to defend you in a criminal case?

Yes ☐  Answer Question 19
No ☐
D don’t know/can’t remember ☐  Go straight to Question 20

19. Thinking about the last firm of lawyers you used in a criminal case, how did they compare with the lawyers you used in this case?

Much better ☐
A bit better ☐
About the same ☐
A bit worse ☐
Much worse ☐
D don’t know ☐

20. If you had to use a criminal lawyer again, would you use the firm you used in this case or another firm?

This firm ☐
Another firm ☐
D don’t know ☐

21. Do you think your lawyer made the result of this case better or worse or made no difference?

Better ☐
Worse ☐
Made no difference ☐
D don’t know ☐

22. If you have any other comments you would like to make about your lawyer in this case, feel free to put them in the space provided or on a separate piece of paper.

THANK YOU VERY MUCH FOR YOUR CO-OPERATION

PLEASE NOW RETURN THE QUESTIONNAIRE IN THE ENVELOPE PROVIDED TO

SYSTEM THREE
19 ATHOLL CRESCENT
EDINBURGH
EH3 8WZ

Final version 17.6.99
<table>
<thead>
<tr>
<th></th>
<th></th>
<th>Sheriff 1</th>
<th>District 2</th>
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<tr>
<td>1</td>
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<tr>
<td>2</td>
<td>Researcher</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Court reference number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Does this case have more than one case reference?</td>
<td></td>
<td>If so, what?</td>
</tr>
<tr>
<td>5</td>
<td>Given names</td>
<td></td>
<td>Surname</td>
</tr>
<tr>
<td>6</td>
<td>PF number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Date of birth</td>
<td>(D D/ MM/ YY)</td>
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</tr>
<tr>
<td>8</td>
<td>Sex</td>
<td>Male 1</td>
<td>Female 2</td>
</tr>
<tr>
<td>9</td>
<td>Postcode</td>
<td></td>
<td>(If not given write in full address below)</td>
</tr>
<tr>
<td>10</td>
<td>Is accused known by any other name?</td>
<td>Yes 1</td>
<td>No 2</td>
</tr>
<tr>
<td>11</td>
<td>IF YES, What is it? (Including any aliases)</td>
<td></td>
<td>First names</td>
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<tr>
<td>12</td>
<td>Number of (additional) co-accused</td>
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<tr>
<td>13</td>
<td>Date of complaint</td>
<td></td>
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<tr>
<td>14</td>
<td>Earliest date of alleged offence</td>
<td></td>
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<tr>
<td>15</td>
<td>Latest date of alleged offence (if different)</td>
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No fixed abode=00000000; In prison/custody=11111111
<table>
<thead>
<tr>
<th>No.</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Don’t know</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Initial appearance from custody?</td>
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<td>1</td>
<td>2</td>
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<tr>
<td>17</td>
<td>Custody/bail?</td>
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<tr>
<td></td>
<td>Detained in custody</td>
<td>Bailed</td>
<td>Neither</td>
<td>In custody on another matter</td>
</tr>
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<td></td>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>

**Criminal record**

| 18. | Was accused convicted?                                                                                                                                                                               |     | No |            |
|     | Yes/ No. If no, skip to 25                                                                                                                                                                           |     |    |            |
| 19  | Number of previous occasions at which conviction took place                                                                                                                                       |     |    |            |
|     | How many of these occasions were under solemn procedure?                                                                                                                                          |     |    |            |
| 20  | Number of charges on which accused convicted                                                                                                                                                        |     |    |            |
| 21  | Past custodial sentence?                                                                                                                                                                              |     |    |            |
|     | Yes | No | Don’t know |
|     | 1 | 2 | 9 | |
| 22  | Total custodial sentences in months                                                                                                                                                                 |     |    |            |
| 23  | Past community sentence?                                                                                                                                                                             |     |    |            |
|     | (ie probation/ CSO) | Yes – in past year | Yes – but not in past year | No | Don’t know |
|     | 1 | 2 | 3 | 9 | |
| 24  | Number of analogous offences in last 5 years                                                                                                                                                         |     |    |            |

**Court process**

| 25  | Is there a joint minute on the file?                                                                                                                                                                |     | 1  | 2          |
|     | Yes | No |            |
| 26  | Was evidence led at trial?                                                                                                                                                                          |     |    |            |
|     | Yes | No | No trial | Don’t know |
|     | 1 | 2 | 3 | 9 | |
| 27  | Name of sentencer                                                                                                                                                                                   |     |    |            |

No sentence=00
<table>
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<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Enquiry Report?</td>
<td>No - none 1</td>
</tr>
<tr>
<td></td>
<td>Yes - report recommended non-custodial sentence 2</td>
</tr>
<tr>
<td></td>
<td>Yes - report cannot recommend non-custodial sentence 3</td>
</tr>
<tr>
<td></td>
<td>Yes - report made no clear recommendation 4</td>
</tr>
<tr>
<td></td>
<td>Yes - recommendation not known 5</td>
</tr>
<tr>
<td></td>
<td>Not known if there was report 9</td>
</tr>
</tbody>
</table>

28a Is there any evidence on the file that at the time of the alleged offence(s) the accused was

<table>
<thead>
<tr>
<th>Condition</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>On bail?</td>
<td></td>
<td></td>
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<tr>
<td>On probation?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subject to a community service?</td>
<td></td>
<td></td>
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</tbody>
</table>

Case category

<table>
<thead>
<tr>
<th>Category</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Overall Category at start of case</td>
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</tr>
<tr>
<td>2nd level Category at start of case</td>
<td></td>
</tr>
<tr>
<td>Overall Category on conviction (if different)</td>
<td></td>
</tr>
<tr>
<td>2nd level Category on conviction (if different)</td>
<td></td>
</tr>
</tbody>
</table>

Overall sentence for the whole case

<table>
<thead>
<tr>
<th>Type (most serious)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Quantum</th>
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<tbody>
<tr>
<td>35 Charge</td>
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<tr>
<td>-----------</td>
</tr>
<tr>
<td>(i)</td>
</tr>
<tr>
<td>(ii)</td>
</tr>
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<td>(iv)</td>
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<tr>
<td>(v)</td>
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<tr>
<td>(vi)</td>
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</tbody>
</table>

**Codes**

- 01 Pled Guilty as libelled
- 02 Pled Guilty after deletion of bail aggravation only
- 03 Pled Guilty under deletion
- 04 Pled Guilty to an alternative charge
- 05 Found Guilty as libelled
- 06 Found Guilty of an amended charge
- 07 Plea of Not Guilty accepted
- 08 Charge deserted/ case not called
- 09 Found Not Guilty/ acquittal after submission of no case to answer
- 10 Found not proven
- 99 Not known

**Codes**

- 01 Pleading diet or continued pleading diet
- 02 Intermediate diet
- 03 Accelerated diet
- 04 Warrant diet
- 05 Trial diet before trial starts
- 06 During trial (i.e. before conclusion of evidence)
- 07 Following trial (i.e. determination by court)
- 08 Trial unspecified (i.e. not sure at what stage)
- 09 Warrant never executed
- 99 Not known
<table>
<thead>
<tr>
<th></th>
<th>Type of diet</th>
<th>Date DD/ MM/YY</th>
<th>Represented WRITE IN CODE</th>
<th>Name of solicitor WRITE IN CODE</th>
<th>Reason for continuation/conclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>(1)</td>
<td></td>
<td>(21-22)</td>
<td>(23-28)</td>
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<td>(34-39)</td>
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<td>(3)</td>
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<td>(43-44)</td>
<td>(45-50)</td>
<td>(51-52)</td>
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<td>(56-61)</td>
<td>(62-63)</td>
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<td>(67-72)</td>
<td>(73-74)</td>
</tr>
<tr>
<td>6</td>
<td>(6)</td>
<td></td>
<td>CARD 4</td>
<td>(1-2)</td>
<td>(3-8)</td>
</tr>
<tr>
<td>7</td>
<td>(7)</td>
<td></td>
<td>(12-13)</td>
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<td>(36-41)</td>
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<td>10</td>
<td>(10)</td>
<td></td>
<td>(45-46)</td>
<td>(47-52)</td>
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</tr>
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**Codes**

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**Codes**

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- 10 Accused acquitted
- (eg found NG, Plea of NG accepted, Case deserted)
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- 13 Deferred sentence (6 months or more)
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Please return this questionnaire in the envelope provided (you do not need to use a stamp).

### A. GETTING A LAWYER

1. **What type of lawyer did you use in this case?**
   - A private lawyer
   - The duty solicitor
   - The public defender
   - Don’t know/ can’t remember

2. **Why did you use that lawyer?**
   - It was handy
   - I had used them before
   - I had heard they were good
   - I had to use the public defender
   - Friends/ family recommended them
   - No real reason
   - Some other reason *(PLEASE WRITE IN)*

3. **How much choice do you think you had in picking your lawyer?**
   - A lot
   - Quite a lot
   - Not very much
   - None at all
   - Don’t know

4. **How important do you think it is to be able to choose your own lawyer?**
   - Very important
   - Fairly important
   - Not very important
   - Not at all important
### B. ADVICE FROM YOUR LAWYER

5. **Did your lawyer advise you how to plead?**
   - Yes □ **Answer Question 6**
   - No □  Go straight to Question 8
   - Don’t know/ can’t remember □

6. **What did your lawyer advise you to do?**
   - Plead guilty to all charges □
   - Plead not guilty to all charges □
   - Plead guilty to some charges and not guilty to others □
   - Plead guilty to different charges □
   - Plead not guilty at first, and then change to guilty later □
   - Something else *(PLEASE WRITE IN)* □
   - Don’t know/ can’t remember □

7. **Did you change your mind about how to plead because of your lawyer’s advice?**
   - Yes □
   - No □
   - Don’t know/ can’t remember □

### C. THE POLICE STATION

8. **Were you ever held at a police station because of this case?**
   - Yes □ **Answer Question 9**
   - No □  Go straight to Question 11
   - Don’t know/ can’t remember □

9. **Did your lawyer visit you at the police station while you were being held there?**
   - Yes □  Go straight to Question 11
   - No □ **Answer Question 10**
   - Don’t know/ can’t remember □

10. **Would you have liked your lawyer to have visited you at the police station?**
    - Yes – I would have liked it □
    - Not bothered □
    - Don’t know □

Answer Question 6
Answer Question 10
### D. COURT BAIL

11. Was it suggested that you might be refused bail?  
   - Yes [ ]  
   - No [ ]

12. How helpful do you think your lawyer was in trying to get you bail?  
   - Very helpful [ ]  
   - Fairly helpful [ ]  
   - Not very helpful [ ]  
   - Not at all helpful [ ]  
   - Don’t know/ can’t remember [ ]

### E. YOU AND YOUR LAWYER

13. Did you have the same lawyer all the way through this case?  
   - Always the same lawyer [ ]  
   - Different lawyers from the same firm [ ]  
   - Different firms [ ]  
   - Don’t know/ can’t remember [ ]  
   - Go straight to Question 15

14. Would you have preferred to have had only one lawyer?  
   - Yes - definitely [ ]  
   - Yes - probably [ ]  
   - No [ ]  
   - Go straight to Question 15

15. Was the result of this case better or worse than you thought it was going to be?  
   - Better [ ]  
   - Worse [ ]  
   - Same as I expected [ ]  
   - Don’t know [ ]  
   - Go straight to Question 15

16. How good a job did your (main) lawyer do in each of these?  
   - Listening to what I had to say  
     - A very good job [ ]  
     - A fairly good job [ ]  
     - Not a very good job [ ]  
     - A very bad job [ ]  
     - Don’t know [ ]  
   - Telling me what was happening  
     - A very good job [ ]  
     - A fairly good job [ ]  
     - Not a very good job [ ]  
     - A very bad job [ ]  
     - Don’t know [ ]  
   - Being there when I wanted them  
     - A very good job [ ]  
     - A fairly good job [ ]  
     - Not a very good job [ ]  
     - A very bad job [ ]  
     - Don’t know [ ]  
   - Having enough time for me  
     - A very good job [ ]  
     - A fairly good job [ ]  
     - Not a very good job [ ]  
     - A very bad job [ ]  
     - Don’t know [ ]  
   - Telling me what would happen at the end  
     - A very good job [ ]  
     - A fairly good job [ ]  
     - Not a very good job [ ]  
     - A very bad job [ ]  
     - Don’t know [ ]

17. Here are some things people have said about their lawyers. Thinking about your lawyer in this case, how much do you agree or disagree with each statement?  
   - ‘They knew the right people to speak to’  
     - Agree strongly [ ]  
     - Agree slightly [ ]  
     - Neither agree nor disagree [ ]  
     - Disagree slightly [ ]  
     - Disagree strongly [ ]  
     - Don’t know [ ]  
   - ‘They really stood up for my rights’  
     - Agree strongly [ ]  
     - Agree slightly [ ]  
     - Neither agree nor disagree [ ]  
     - Disagree slightly [ ]  
     - Disagree strongly [ ]  
     - Don’t know [ ]  
   - ‘They seemed too friendly with the procurator fiscal and police’  
     - Agree strongly [ ]  
     - Agree slightly [ ]  
     - Neither agree nor disagree [ ]  
     - Disagree slightly [ ]  
     - Disagree strongly [ ]  
     - Don’t know [ ]  
   - ‘They told the court my side of the story’  
     - Agree strongly [ ]  
     - Agree slightly [ ]  
     - Neither agree nor disagree [ ]  
     - Disagree slightly [ ]  
     - Disagree strongly [ ]  
     - Don’t know [ ]  
   - ‘They treated me like I mattered, not just as a job to be done’  
     - Agree strongly [ ]  
     - Agree slightly [ ]  
     - Neither agree nor disagree [ ]  
     - Disagree slightly [ ]  
     - Disagree strongly [ ]  
     - Don’t know [ ]
<table>
<thead>
<tr>
<th>Question</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>18. Have you ever used another firm of lawyers to defend you in a criminal case?</td>
<td>Yes ☐  Answer Question 19</td>
</tr>
<tr>
<td></td>
<td>No ☐  Don’t know/ can’t remember ☐  Go straight to Question 20</td>
</tr>
<tr>
<td>19. Thinking about the last firm of lawyers you used in a criminal case, how did they compare with the lawyers you used in this case?</td>
<td>Much better ☐  A bit better ☐  About the same ☐  A bit worse ☐  Much worse ☐  Don’t know ☐</td>
</tr>
<tr>
<td>20. If you had to use a criminal lawyer again, would you use the firm you used in this case or another firm?</td>
<td>This firm ☐  Another firm ☐  Don’t know ☐</td>
</tr>
<tr>
<td>21. Do you think your lawyer made the result of this case better or worse or made no difference?</td>
<td>Better ☐  Worse ☐  Made no difference ☐  Don’t know ☐</td>
</tr>
<tr>
<td>22. If you have any other comments you would like to make about your lawyer in this case, feel free to put them in the space provided or on a separate piece of paper.</td>
<td></td>
</tr>
</tbody>
</table>

THANK YOU VERY MUCH FOR YOUR CO-OPERATION

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