HOUSE OF LORDS

Library Note

Debate on 11 July: Effect of Cuts in Legal Aid Funding on the Justice System

This Library Note provides background reading in advance of the debate to be held on 11 July on:

"the effect of cuts in legal aid funding on the justice system in England and Wales".

The Note contains a brief summary of the development of legal aid, focussing on changes since the Legal Aid, Sentencing and Punishment of Offenders Act 2012, before summarising the most recent consultation paper, *Transforming Legal Aid: Delivering a More Credible and Transparent System.* The Note then outlines reactions to the latest proposals and summarises recent parliamentary scrutiny of the proposed changes.

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1. Introduction

Legal aid was established by the Legal Aid and Assistance Act 1949. Dissatisfaction with the system, which had developed in response to the growing area of public law, expressed over several decades, and a budget that increased incrementally, resulted in a series of changes being implemented. The previous Government introduced the Access to Justice Act 1999, which created the Legal Services Commission (LSC) and fundamentally changed the way legal aid was administered. Nonetheless, the cost of legal aid continued to rise and increased from £1.5 billion to £2.1 billion between 1997 and 2007 (Department for Constitutional Affairs/Legal Services Commission, *Legal Aid: A Sustainable Future,* July 2006, CP 13/06, p 3).

In 2005, Lord Carter of Coles was commissioned to conduct a review of legal aid procurement, both civil and criminal. Lord Carter recommended a new system for England and Wales that should be driven by best value competition based on quality, price and capacity. Some changes were made in response to the Carter review, but after strong opposition from the legal profession other proposals, including best value tendering, were postponed (Lord Carter, *Legal Aid: A Market-Based Approach to Reform*, July 2006). Further details on the Carter review and other developments in legal aid reform can be found in House of Commons Library, *Legal Aid: Controversy Surrounding the Government's Plans for Reform*, 26 January 2011, SN/HA/5840.

The current Government continued with reforms of legal aid after promising to "make it work more efficiently" (HM Government, *The Coalition: Our Programme for Government*, May 2010). Consequently, the Green Paper, *Proposals for the Reform of Legal Aid in England and Wales* (Cm 7967) was published in November 2010, resulting in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). A programme of reforms was introduced by the Act, mainly to the scope of civil legal aid and eligibility criteria, which came into force on 1 April 2013. The Act also abolished the LSC and introduced the Legal Aid Agency (LAA). The Government intends that the LASPO reforms will bring savings of £320 million per annum in 2014–15.

For a history of reforms and reviews of legal aid, see the following House of Lords Library Notes and House of Commons Library Standard Notes and Research Papers:

- House of Commons Library, *Price Competition and Other Proposals in the Latest Ministry of Justice Consultation on Legal Aid*, 7 June 2013, SN/HA/6628, provides a summary of the most recent consultation paper, *Transforming Legal Aid: Delivering a More Credible and Efficient System* and outlines reaction to it.

- House of Commons Library, *Legal Aid: Controversy Surrounding the Government's Plans for Reform*, 26 January 2011, SN/HA/5840, gives an overview of the Government's plans for legal aid reform as they were published in the consultation paper and the controversy they generated.

- House of Commons Library, *Changes to Legal Aid: The Impact on Providers*, 26 March 2012, SN/HA/6273, examines some of the debate about the Bill's likely effects (as they were seen at the time) on providers of legal aid and especially on the not-for-profit sector.

- House of Commons Library, *Legal Aid, Sentencing and Punishment of Offenders Bill*, 4 July 2011, RP 11/53, prepared for the second reading of the Bill.

- House of Commons Library, *Legal Aid, Sentencing and Punishment of Offenders Bill*, 20 October 2011, RP 11/70 (the committee stage report) complements that paper.

- House of Lords Library, *Legal Aid, Sentencing and Punishment of Offenders Bill*, 15 November 2011, LLN 2011/035, prepared for the Bill's second reading in the Lords on 21 November 2011, summarises the report stage and third reading debate in the House of Commons.

- House of Commons Library, *Legal Aid, Sentencing and Punishment of Offenders Bill: Lords amendments*, 11 April 2012, SN/HA/6293, discusses the Lords amendments.

2. Transforming Legal Aid

On 9 April 2013, the Ministry of Justice published the consultation paper, *Transforming Legal Aid: Delivering a More Credible and Efficient System*. Rather than civil law, the primary focus of the proposals outlined in this document were in criminal law. The consultation closed on 4 June 2013. Lord McNally, Minister of State for Justice, recently said that approximately 16,000 consultation responses had been received (HL *Hansard*, 25 June 2013, col 117). The consultation paper states that most of the proposals would be enacted through secondary legislation in autumn 2013 and, where necessary, contract amendment.

The proposed reforms continue with the Government's wider aims to make further savings and to introduce further efficiency in the legal aid system. The Ministry of Justice's proposals intend to deliver savings in legal aid spending of £220 million per year by 2018/19 and aim for the system to be better targeted. The Ministry of Justice's impact assessments state that "legal aid fund expenditure was just over £2 billion in 2011/12, approximately 25 percent of the Ministry of Justice's net resource budget. Approximately £1.1 billion was spent on criminal legal aid and the remaining £0.9 billion was spent on civil legal aid" (Ministry of Justice, *Civil Credibility Impact Assessment*, IA No: MoJ194, p 6).

The intended policy objectives of the proposed reforms are to improve public confidence in legal aid and to reduce the cost of the system. The impact assessments confirm the Government's chief aim is to ensure that limited public resources are targeted at those cases which justify it and those people who need it.

The consultation relates to England and Wales only.

3. Consultation Proposals

The consultation paper contains proposals across several chapters, each with a separately published impact assessment:

- Civil Credibility Impact Assessment, IA No: MoJ194, 9 April 2013

- Crime Credibility Impact Assessment, IA No: MoJ195, 9 April 2013

- Criminal Litigation Price Competition Impact Assessment, IA No: MoJ196, 9 April 2013

- Criminal Fees Impact Assessment, IA No: MoJ197, 9 April 2013

- Civil Fees Impact Assessment, IA No: MoJ198, 9 April 2013

The consultation paper is constructed as follows:

Chapter three includes restricting criminal legal aid in prison law to cases that cannot be dealt with through non-legal means; the introduction of a household disposable income threshold for legal aid in criminal cases; a residence test for civil legal aid claimants; reducing legal aid use in judicial review cases; and a halt to funding civil cases with less than a 50 percent chance of success.

Chapter four outlines proposals for introducing price competition into the criminal legal aid market. The Ministry of Justice is proposing to introduce price competitive tendering (PCT) for contracts for work in all areas of criminal legal aid except Crown Court advocacy and Very High Cost Cases (VHCCs), both of which are dealt with separately in chapter five. The proposed competitive tendering model aims to consolidate the market by awarding contracts for legal aid work in a specific geographical area and to reduce the total number of provider contracts from around 1,600 to 400. Successful bidders would be required to provide a full range of services, or to use agents to deliver services. Clients would be allocated to a provider.

Chapter five contains proposals covering the reduction of criminal legal aid fees in Crown Court advocacy and VHCCs, which are excluded from competitive tendering. Proposals include: the restructuring of the Advocacy Graduated Fees Scheme; reducing the use of multiple advocacy by encouraging the use of advocates from litigation teams; and a reduction in fees of 30 percent paid for all work in VHCCs.

Chapter six sets out proposals to: reduce solicitor representation fees in family public law cases by 10 percent; to align the fees for barristers and other advocates in non-family cases; and to remove the uplift paid in the rate paid for immigration and asylum cases.

Chapter seven sets out a proposal to reduce fees paid to experts in legal aid cases by 20 percent.

4. Recent Reaction to the Consultation Proposals

The consultation proposals received strong and unified opposition from across the legal profession, which has been widely reported. Opposition has particularly focused on the introduction of competition in the criminal legal aid market and price competitive tendering (as set out in chapters four and five of the consultation paper). Vehement opposition was also expressed on the proposals to restrict legal aid using a residence test, as outlined in chapter three of the consultation document. There was also criticism that the consultation appeared to have been rushed through with limited time for debate and for the changes brought in by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 in April 2013 to 'bed in'.

The House of Commons Library paper, *Price Competition and Other Proposals in the Latest Ministry of Justice Consultation on Legal Aid* (7 June 2013, SN/HA/6628), provides a summary of the consultation paper and outlines reactions to the proposals from key organisations including the Bar Council, the Law Society and others. The remainder of this section will look at recent developments.

4.1 Opposition to the Reforms Voiced by Prominent Members of the Legal Profession

Lord Neuberger of Abbotsbury: Judges and Policy—A Delicate Balance

Lord Neuberger, President of the Supreme Court, gave a lecture at the Institute for Government on 18 June 2013 in which he strongly challenged the Government reforms to legal aid. He stated that the judiciary had a duty to contribute and protect the rule of law for every citizen, particularly "the poor, the vulnerable [and] the disadvantaged", yet legal advice and legal proceedings were unaffordable for most people. He went on to say that there was a fundamental duty on the Government, the legal profession and the judiciary "to work constructively together with a view to best maintaining access to justice in the face of harsh realities of Government finances". Lord Neuberger then gave the Government two warnings:

> It is a mistake to have a new legal aid regime with a costs structure which will drive out the best lawyers. Good lawyers save money, because they are less likely (i) to waste time in and out of court, (ii) to be responsible for miscarriages of justice, and (iii) to engender appeals and retrials. It is also a mistake to structure legal aid costs so as to reward lawyers for doing long trials... lawyers should be rewarded for cases lasting less time, not more.
>
> Secondly, the money problems faced by legal aid are also faced by the courts system, and it is vital for the Ministry to appreciate that any changes which are made to reduce legal aid and cut the cost of litigation are likely to have a knock-on effect on the cost of the courts. Less legal aid means more unrepresented litigants and worse lawyers, which will lead to longer hearings and more judge-time. More judicial control of cases will mean more judge-time out of court to understand the details of each case in advance.
>
> (Lord Neuberger of Abbotsbury, *A Delicate Balance*, Institute of Government, 18 June 2013)

Lord Neuberger went on to state that there were currently two legal professions: "lawyers who serve rich individuals and companies, and lawyers who serve ordinary citizens". He argued that the latter were under intense pressure from legal aid cuts and were "overmanned".

Lord Neuberger's lecture was widely reported in the press; see for example: BBC News website, 'Court costs should be cut, says Lord Neuberger', 18 June 2013; *Guardian*, 'Legal aid cuts will drive out the best lawyers, supreme court president warns', 19 June 2013; and *Daily Telegraph*, 'Courts can learn from eBay, says Britain's top judge', 18 June 2013.

Letter to the *Daily Telegraph*, 29 May 2013

Opposition to the proposed reforms have also been voiced by leading barristers. In a recent letter to the *Daily Telegraph* 90 QCs, including the former Attorney General Lord Goldsmith, Baroness Kennedy of the Shaws, and Lord Pannick, expressed grave concerns that judicial review was threatened by the proposed reforms to legal aid. They said that the cumulative effect of the proposals, such as withdrawing legal aid for those failing a residence test and preventing small specialist law firms from giving prison law advice, "will seriously undermine the rule of law". They ended by urging the Government to withdraw the consultation proposals.

4.2 Demonstrations

Several demonstrations and court staff strikes have taken place in protest at the proposed cuts to legal aid. On 22 May 2013 there was a rally outside Parliament with around 500 lawyers and supporters, organised by the London Criminal Law Solicitors Association. Following the rally around 1,000 defence lawyers held a meeting at Friends Meeting House, Euston, at which they voted unanimously on a motion that price competitive tendering (PCT) was 'not the way forward' and that the Government should abandon it. Speaking at the event, the former Court of Appeal judge Sir Anthony Hooper said that the proposals were inherently flawed and should be rejected. He also said that the intention to implement the reforms with secondary legislation was "a complete scandal" (*Law Society Gazette*, 'Unanimous: Profession Votes for 'Training Days' Action in Protest Over Cuts', 23 May 2013). Like many others speaking at the meeting, he was critical of recent comments by Chris Grayling, Secretary of State for Justice, particularly on the issue of removing client choice. The Secretary of State said that abolishing the right of clients to chose their own solicitor is necessary under PCT as it guarantees reasonable volumes of work for contract holders (*Law Society Gazette, '*Interview with Chris Grayling', 20 May 2013).

During the week of 22 May 2013 there were also disruptions at courts in the north of England in protest at the proposals to introduce PCT for legal aid. The Chairman of the Criminal Bar Association, Michael Turner QC, said that he hoped the public were sympathetic to the protests as PCT will limit the choice over who defends you in court and that "democracy is being abolished" (*Legal Week,* 'Resistance to Criminal Bar Reforms Escalate as Protest Disrupt Northern Courts', 26 April 2013).

Timed to coincide with the closing of the consultation on legal aid reforms, demonstrations also took place in London, outside the Ministry of Justice in Westminster, and in Manchester on 17 June 2013. Attendees at these demonstrations included defence lawyers, leading QCs, court room staff and others.[1]

5. Recent Parliamentary Activity on the Legal Aid Proposals

5.1 Select Committee Evidence

The House of Commons Justice Committee recently held evidence sessions with leading lawyers, on 11 June 2013, and the Secretary of State for Justice and Lord Chancellor, Chris Grayling, on 3 July 2013. As yet, only uncorrected transcripts of evidence are available on the Committee website.

Prior to appearing before the Select Committee the Secretary of State announced that he would go back to the initial proposals on client choice of solicitor in legal aid and "look again" at the issue. Further details of this announcement, and Select Committee evidence from Chris Grayling on 3 July, can be found in section 6 of this Note below.

As the Chairman of the Committee explained at the session on 11 June 2013, the Committee did not put out a usual call for written evidence but based their questions to witnesses on their consultation responses.[2] Key themes running through the evidence session included: criticisms

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[1] *Law Society Gazette*, 'Hundreds attend legal aid protest rally', 22 May 2013; *Guardian*, 'Ministry of Justice plans to cut court services trigger strikes', 13 June 2013; and *New Law Journal*, 'A call to arms', 21 June 2013.

[2] Consultation responses can be accessed for the Law Society and the Bar Council.

of the consultation timetable and implementation of the reforms; the possible effects of PCT on both legal services providers and clients; implications of the removal of client choice; and alternatives to cost savings via PCT.

Lucy Scott-Moncrieff, President of the Law Society, began the first evidence session by saying that they accepted that budget cuts needed to be made but that PCT was not a way of delivering the cuts and might instead make it harder for law firms to survive (Q 1). She went on to say that the Law Society was not ideologically opposed to competitive tendering but that to competitively compete in addition to a 17.5 percent cut in fees would be unsustainable, even for some large legal aid firms (Q 11). There was agreement on this issue across all witnesses (Q 12–15).

Throughout the evidence session witnesses made several complaints that the Government rushed through the consultation and was expecting to bring in the reforms within a few months, which did not enable law firms to adapt to all of the recent changes (Q 24, 25, 54). Ms Scott-Moncrieff argued that the timetable of the reforms would prevent legal firms from being sufficiently prepared to be able to deliver a contract. She stated:

> I understand why the Government have imposed this timetable, because these things will take these lengths of time, but they do not seem to understand what the profession needs to do to adapt to these timetables. To give a very simple example, we are a very heavily regulated profession and any time you want to change your business structure or whatever, you have to get the consent of the Solicitors Regulation Authority. If it is something quite simple such as bringing new people on board or opening a branch office, that is not a very big deal, but, if it is something major such as combining with other people to create a new structure that can bid for these contracts, that takes six to nine months. You are not going to start that process until you know you have been offered a contract, and yet you are not going to be offered a contract unless you can show that you are going to be able to deliver it in three months. It is just bonkers.
>
> (Q 26)

Ms Scott-Moncrieff went on to say that the introduction of PCT would damage an already fragile market but that an alternative model was being sought by the Law Society in cooperation with practitioner associations (Q 19).[3] This was later confirmed by Bill Waddington, Chairman of the Criminal Law Solicitors Association (Q 73). See section 6 of this Note for further details of the Law Society's recently published proposals for PCT.

When asked whether they wanted more time to review PCT or if they had an alternative proposal, witnesses agreed that PCT could not work and that the proposals as outlined could not be improved (Q 67–8). This reiterated the consultation responses from their organisations. Maura McGowan QC, Chair of the Bar Council, said that their organisations had made no secret of this and they were all happy to work with the Ministry of Justice to improve the current system (Q 72).

Michael Turner QC, Chair of the Criminal Bar Association, said that there was substantial waste in the legal aid system and that savings could be made through making minor changes to

[3] *Law Society*, *Procuring criminal defence services: is there a better way?*, April 2013.

court procedures and "plugging gaps" rather than substantial changes (Q 5, 6, 8). Commenting on the fragility of the legal services market, Mr Turner went on to say:

> The most important thing for this Committee to understand is that, if this is introduced, ultimately, in ten years' time, you are going to lose your independent judiciary, which is a fundamental cornerstone of this democracy… The reason that that is going to happen is because, once you introduce the corporate supplier into this market, your ethics disappear. You replace what the lawyer is brought up with, which is that ethical consideration, with a competing base that the corporate supplier wants to produce the best contractual price. The Bar supplies your independent judiciary. Once the Bar is brought up in that atmosphere, with those competing interests, your independent judiciary will disappear. It is a very fundamental point.
>
> (Q 20)

Witnesses were questioned on the consultation's proposals that would remove the client's choice of solicitor. Bill Waddington said that client choice over a solicitor improved quality, saved taxpayers money as it saves on court time and could prevent the defendant from going to prison (Q 51). Removal of client choice was also raised by witnesses in connection with legal aid practices assisting ethnic minority communities, disabled people and other vulnerable people. Ms Scott-Moncrieff highlighted the problem of the introduction of procurement areas, arguing that specialist firms representing such communities would suffer, as many would be unable to cover the required large geographical areas and would have to subcontract, which could be financially precarious (Q 55). She continued that the effects of the cuts recently caused by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 would add to the detrimental financial effects for such providers (Q 60). Michael Turner QC described the current proposals as another attack on the Citizens Advice Bureaux (CABx) and community law centres that provided legal services to vulnerable people, who will no longer be able to access professionals with expertise in the relevant areas of law (Q 75).[4]

The last section of the evidence session saw a change of witnesses. The Chairman introduced Steve Brooker, Manager of the Legal Services Consumer Panel, Tudur Owen, from Tudur Owen Roberts Glynne and Co, and Roger Smith, former Director of Justice and visiting Professor at London Southbank University.

Continuing on the theme of procurement areas from earlier witnesses, Steve Brooker began by saying that it would bring more difficulties for disabled people and other vulnerable groups as, although PCT might help to increase the number of contractors in each procurement area, expertise was already spread thinly across the country. He stated: "If you cut off that supply to vulnerable clients, you potentially remove access to justice for them" (Q 84).

Roger Smith argued that there were three fundamental problems with the proposals: i) lack of client choice; ii) quality issues of competition; and iii) the 'rule of law issue'. He said: "You can remove choice, but you have to do it much more carefully than these proposals do" (Q 87). He went onto say that PCT removed a client's ability to go to a specialist provider, whether based on language or for example if faced with a terrorism or serious fraud charge (Q 97–100). Tudur Owen spoke about the difficulties in Wales in providing suitable services for Welsh language

[4] A recent article in the journal *Legal Action* by the Chief Executive of Citizens Advice highlighted the difficulties faced by CABx clients due to the legal aid cuts caused by LASPO 2012 (*Legal Action*, 'Legal aid cuts will create a justice gap', April 2013).

speakers and also of the difficulties that the introduction of PCT would bring in rural areas in England and Wales (Q 87–8). Roger Smith speculated that an alternative route to improve PCT might be to allow successful contractors to use the services of other providers for highly specialised cases (Q 106).

The session ended with a discussion around the advantages and disadvantages of public defender schemes (Q 110–22).

5.2 House of Commons Debate, 27 June 2013

A backbench debate on legal aid and the proposals in the recent consultation paper was held in the House of Commons on 27 June 2013 (HC *Hansard*, 27 June 2013, cols 508–65). The debate lasted more than two hours and 32 Members spoke. Key issues covered by the debate included: the effects of price competitive tendering (PCT) on legal service providers and clients; the restriction of client choice; the impact on quality; and the question of whether savings in the legal aid budget could be made through other means.

Introducing the debate, Sarah Teather (Liberal Democrat MP for Brent Central) explained her reasons for calling for the debate, saying that as the Government were proposing to introduce the reforms using secondary legislation, the House might not otherwise get an opportunity to debate the wide-ranging and significant issues they raised (col 509).

She welcomed the Justice Minister's presence in the Chamber in spite of the absence of the Secretary of State (col 509). The speed of the consultation process and the absence of the Secretary of State were raised by several more Members of all parties. David Davis (Conservative MP for Haltemprice and Howden) questioned the timetable for the proposed reforms, saying that the LASPO 2012 reforms had not been assessed, yet the Government intended to introduce these reforms in the autumn: "Frankly, without primary legislation, the likelihood is that this business will be challenged in the courts. We will have more haste and less speed on the delivery of savings" (col 535). Mr Davis went on to ask the Government to "think again, come back more slowly and present this House with some primary legislation we can then be proud of" (col 537).

David Lammy (Labour MP for Tottenham) argued that the debate was not just about "producers and suppliers of legal services… and fat-cat lawyers"; rather it was about "profound changes that would completely unsettle our constitutional arrangement, which begins with Magna Carta". He argued that judicial review was crucial and it "was a travesty that this Government would run a coach and horses through it for £6 million" (col 514).

PCT was criticised on the grounds of being a threat to small businesses, unsuitable for rural areas and with a danger of creating 'advice deserts'. The aim of the reforms proposed in the consultation paper was to reduce the number of practices offering legal aid from 1,600 to 400. Paul Blomfield (Labour MP for Sheffield Central) said that small legal practices would be "squeezed out of the system" as they would not be able to expand to the scale needed to compete for contracts (col 541). The danger of the market being dominated by a few private companies was expressed by Karl Turner (Labour MP for Kingston-Upon-Hull) who said that PCT will "inevitably lead to the market being dominated by the big multinationals and probably the new entrants to the market who have absolutely no experience" (col 524). Mr Elfyn Llywyd (Plaid Cymru MP for Dwyfot Meirionnydd) raised concerns that "the first casualty of this race to the bottom will be quality of service" (col 544). Mr Blomfield also argued that this "race to the bottom" would incentivise firms to "cut corners and find the innocent guilty" (col 541).

Under the proposals, clients would be allocated a solicitor and would no longer be able to choose their own. Removal of client choice was described by several members as fundamental in a democratic legal system and necessary to preserve quality. Simon Reevell (Conservative MP for Dewsbury) said: "The idea that the state will prosecute, that it will contract those who defend, and that those contractors are likely, under these proposals, to employ the defence advocate, is worrying" (col 528). The removal of client choice was criticised by Ian Swales (Liberal Democrat MP for Redcar and a member of the Public Accounts Committee) who cited evidence from the USA where "even people who are charged with the most serious crimes, including murder, are given low-cost lawyers and scant attention… Only through choice can standards be maintained and competitive pressures take effect" (col 521). However, Robert Neill (Conservative MP for Bromley and Chislehurst) said that when choice is being funded by the taxpayer "it should not come with a blank chequebook" (col 532).

In a recent interview in the *Law Society Gazette*, Chris Grayling, the Secretary of State for Justice, was quoted as saying, "I don't believe that most people who find themselves in our criminal justice system are great connoisseurs of legal skills". Many during the debate criticised this comment, which has been widely paraphrased across the legal profession and in the media as clients being described as "to thick to pick". It was quoted several times during the debate (HC *Hansard*, 27 June 2013, cols 515, 523) and in the Select Committee evidence session on 27 June 2013. Elfyn Llywyd described the Secretary of State's comments as condescending and showing a lack of compassion (col 544).

The introduction of PCT in rural areas was identified as problematic and reducing client choice due to the large geographical area a district covers and also because of the difficulties in receiving specialist legal advice. George Hollingbery (Conservative MP for Meon Valley) said that rural areas would be disadvantaged as "it is very likely that contracts awarded will cluster in or around a small number of larger towns" (col 525). The danger of this creating "advice deserts" was raised by Karen Buck (Labour MP for Westminster North) (col 519), Rosie Cooper (Labour MP for West Lancashire) (col 526) and Elfyn Llywyd (col 543).

It was argued that removal of choice would also affect cases where clients already had a trusted solicitor with background knowledge of the client. Steve Brine (Conservative MP for Winchester) gave an account of a constituent, a young man who, prior to being diagnosed with Asperger's, was arrested for having a knife in a public place. He had a solicitor who he trusted and who had his psychiatric reports on file. Mr Brine went on to say that under PCT he would have been allocated a solicitor with no knowledge of his condition which might detrimentally have affected the outcome of his case (col 539).

The importance of solicitors with specialist knowledge, especially in black and ethnic minority communities, was raised by Seema Malhotra (Labour/Coop MP for Feltham and Heston). She cited research from the Legal Services Commission that identified the importance of black and minority ethnic (BME) firms in the communities that they serve. She said: "Under the Government's proposals, where BME firms secure a contract there is no obvious way in which BME defendants will be able to be allocated those providers should they so choose" (col 538).

George Hollingbery said: "At the heart of the Government's proposals lies the question of what is the best method of delivering savings without threatening the quality of justice dispensed" (col 524). He went on to say that reforming the legal aid budget was tough but that the Government's proposals "if handled correctly, they can be the right way forward, although, crucially, they must protect the quality of outcomes at the same time as saving money" (col 525). Several Members remarked that current inefficiencies within the justice system could

be tackled by better court management and improved procurement procedures. David Lammy compared the prices of tagging a defendant in the UK and the USA and said that savings should be found through cheaper procurement (cols 514–5). Dominic Raab (Conservative MP for Esher and Walton) cited the savings that could be made through tighter management of court delays caused by the Crown Prosecution Service (col 525).

Much of the first part of the debate covered the residence test and immigration. Sarah Teather said the new residence test appeared to undermine the protection currently given to vulnerable groups such as victims of domestic violence, victims of trafficking and children subject to care orders or with special needs that were introduced by LASPO 2012 (col 511). She argued that the proposed residence test would contradict the LASPO reforms and seriously affect those in vulnerable groups (col 514).

Speaking for the Opposition, Sadiq Khan (Labour MP for Tooting) said:

> We do not support the Government's proposals to place the quantity of cases processed ahead of the quality of legal provision and to remove choice from defendants. We believe that those proposals could lead to more miscarriages of justice. We do not support legal aid being run by the same global corporations that run prisons, probation services, courts and tagging.
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> (col 559)

He later said that although the Opposition opposed the plans they would be happy to work with the Government "to see whether we can make savings that are less unjust" (col 562).

The Government response to the debate came from Jeremy Wright, the Parliamentary Under-Secretary of State for Justice. On the issue of costs, he said, "criminal legal aid accounts for £1 billion of the overall legal aid budget, and in the current financial climate, the Government… cannot overlook such a sizeable portion of Government spending. We have had to make extremely tough choices in other areas, and it would not be right to exclude this one" (col 563). The Minister welcomed the suggestions made during the debate on which areas in the legal system savings could be made and said the debate would be considered along with the 16,000 consultation responses (cols 563–4). He acknowledged concerns raised on the effects on small firms and clarified that "the proposed competition model would see the number of contracts, not the number of firms, reduced from 1,600 to 400. Our proposals do not prescribe how many lawyers should be available or how those that have the contracts should divide up the work allocated to them" (col 565).

On the issue of quality and client choice the Minister said that quality-assured duty solicitors and lawyers would still be available, as they were now. He continued: "The Legal Aid Agency will need to ensure, as part of the tendering process, that all providers are capable of delivering the full range of criminal legal aid services across their procurement areas. That is also true in relation to the points raised about rural sparsity and about the Welsh language" (col 565). He finished by confirming that a Government response to the consultation was expected in the autumn.

6. Developments since 1 July 2013

In a letter to Sir Alan Beith, the Chairman of the Justice Committee, on 1 July 2013, the Secretary of State announced that after listening to legal professionals he was prepared to "look

again" at the issue of client choice in the delivery of criminal legal aid. Mr Grayling was writing to Sir Alan ahead of his appearance before the Justice Committee on 3 July 2013. In the letter he explained:

> One specific point in the consultation which has attracted significant response is the proposal to remove client choice in the model for criminal litigation. The rationale for proposing this change was to give greater certainty of case volume for providers, making it easier and more predictable for them to organise their businesses to provide the most cost-effective service to the tax-payer—it is not a policy objective in its own right. However, I have heard from the Law Society and other respondents that they regard client choice as fundamental to the effective delivery of criminal legal aid. I am therefore looking again at this issue, and expect to make changes to allow a choice of solicitor for clients receiving criminal legal aid.
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> (Letter to Sir Alan Beith MP, Chairman of the Justice Committee, 1 July 2013)

The Law Society welcomed this change of direction and presented the Ministry of Justice with an alternative proposal for PCT, *Transforming Legal Aid*. Their model has three core objectives: to retain choice via the provision of information to defendants; provide certainty with a new system of rolling contracts; and to facilitate efficiency and reform the duty solicitor scheme. The accompanying press notice conceded that although the suggested alternative model might not be popular, it sets out a workable future for criminal legal aid solicitors and clients that is "a million miles away from the unworkable approach initially proposed by Government".

The Bar Council issued a statement to the effect that although they have been involved in discussions about the legal aid consultation with the Law Society and other legal bodies they had no role in the drafting of the Law Society's alternative proposal but will be examining it closely.

6.1 Select Committee Evidence, Chris Grayling, Secretary of State for Justice and Lord Chancellor

Chris Grayling, Secretary of State for Justice, gave evidence to the Justice Committee on 3 July 2013. He began by referring to the useful meetings he had had with the Law Society and others, he stressed that he was keen to listen to all consultation responses and welcomed the new model for legal aid that was submitted by the Law Society.

When asked the reasons for his "change of heart" on client choice of solicitor, the Secretary of State said:

> I have done the radical thing of being a Government minister who consulted on a set of proposals, listened to the responses and decided fairly early on that this was probably something that we needed to change. I waited for the consultation responses to come in, had a look at some of them and decided that I was of the same view. I decided that, to avoid uncertainty, it was better to make an early announcement than a late announcement, and got on with it. Isn't that what Governments are supposed to do?
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> (Q 129)

The Secretary of State went on to make a further announcement:

> My intention is that we should have a second, shorter, phase of consultation in the early autumn, starting in September, so that we can coalesce some of the things that have been brought to us, see how they affect the model that we have put forward, and see whether there is a viable alternative in what the Law Society and others have put to us, so that we can consider all this and then move ahead. Despite all the criticisms that have been made about the length of consultation, in fact we will end up having consulted for a longer period than the 13 weeks that people have called for.
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> (Q 157)