

# Why the time is right for investors to move into criminal legal aid

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There is much noise and fury about the Ministry of Justice reforms to the criminal defence service. But the lasting impact will go far beyond a one-off cut in the income of lawyers who do criminal legal aid work.

It means that the consolidation of the market will lead to many inefficient law firms going out of business and the arrival of new crime firms operating as what are called alternative business structures (ABSs) under the Legal Services Act.

At present criminal legal aid firms are a hugely fragmented group. Data released under the Freedom of Information Act by the Ministry of Justice to Jomati Consultants reveals that in some criminal justice areas of England and Wales, few legal aid firms have more than a 2 per cent market share of crime fees, while some can have as little as 1 per cent.

Take the West Midlands, where just seven of the twenty top legal aid firms handle more than 2 per cent of crime cases in terms of fees, from a total of about £50 million fee income. The one firm that managed 6 per cent did so by focusing on a relatively small number of serious cases, but steered away from the equally necessary “process work” of police station visits and the magistrates’ court. These 20 firms absorb about 45 per cent of local fees, with the other 55 per cent split between dozens of even smaller firms with a share of 1.3 per cent or less. In other words, there is a completely atomised delivery of services. This pattern is nationwide.

A second problem is costs. To meet their legal aid contract obligations, these small firms must fund their back office staff, IT, premises, salaries of employed solicitors and spend time dealing with the Legal Services Commission (LSC) to gain and keep contracts.

So profit margins become slimmer and slimmer. When fees per legal aid case are falling, and with plans for a new system of competition over price that will push fees down farther, such small firms are worried. Many are pulling out of legal aid entirely. Yet what the ministry wants is not fewer lawyers willing to handle criminal legal aid work; rather it wants fewer, more competitive firms, with the same overall capability — in other words, consolidation.

For the ministry, the problem is the huge duplication of bureaucracy. Imagine a corporate client that had to account for the legal bills of hundreds of providers. Their procurement team would soon suggest a thorough panel review.

In the ministry’s case this is not so simple, because there are insufficient larger firms to take the work removed from weaker ones. So while it wants efficiencies, it cannot force small

independent crime firms to merge, even though that would make their partners wealthier because of economies of scale and greater case volumes.

There are some in the ministry who regard this as an unacceptable position and hope that it will be remedied by the Legal Aid, Sentencing and Punishment of Offenders Bill. The aim is to ensure that fewer firms get contracts, and eventually make them compete on price, forcing them to merge to gain competitive scale. When he was Justice Secretary, Jack Straw suggested that the LSC reduce the number of firms it dealt with by 70 per cent. Kenneth Clarke, his successor, has not been so public about the remedy, even if he agrees with the diagnosis.

But the problem with artificially engineering the legal aid market is that many crime firms may simply go out of business with little to fill the gap. That would stymie reform. There are, however, alternatives. The Legal Services Act permits ABS firms, who may have outside investors, to offer legal aid advice.

Would potential investors in law firms want to be involved in public work? It may seem unlikely but consider the market: £1.1 billion just for crime, and then consider the competition: there is none, or none that could compete with a well-organised, well-funded entity, the likes of which a Capita could create. Having one paymaster, the State, would effectively underwrite the cash flow and business model of the ABS. Criminal legal aid ABSs would have scale that could handle multiple large contracts; have the right IT systems to handle the mass of bureaucracy that such cases bring; and if competitive bidding came into force, their greater efficiencies would swallow the cost cutting.

They could either “roll up” the best legal aid firms in the area, or build their own from scratch, hiring local talent who want a more structured career in criminal law and either employ barristers direct or enter into special deals with the relevant chambers. Those criminal legal aid firms left would then have no choice but to merge or leave the sector.

Finally, the ministry would have achieved what it set out to do: consolidation of the market and value for money for the taxpayer. So the shape of the criminal legal aid market is set for radical change. But only with the addition of the ABSs will it become what Government desires.

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