



Provision of legal services by barristers Research report

Research to explore how the delivery of legal services is evolving at the Bar.

May 2017

RyE·Tait
Consulting

BAR
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REGULATING BARRISTERS

Foreword

This study provides an important insight into how the delivery of legal services is evolving at the Bar. The findings will inform our future approach to regulation to ensure that consumers are able to access the services they require. In particular, we hope that the report will help us to see how regulation can help facilitate further improvements to business practices, service delivery and client experience.



The report shows that there are opportunities for innovation in the way that legal services are delivered, which could contribute to increasing access to justice and improving the quality of service provided. Innovation can also enable new and flexible ways of working to support inclusive working practices to encourage equality and diversity at the Bar.

This report confirms that the chambers model is likely to remain the predominant model through which barristers operate. The study also showed examples of innovation benefiting consumers within both the chambers model and alternative models, such as entities and alternative business structures (ABSs). Examples of this innovation include services offering flexible payment plans and fixed fees. The survey also highlights how technology is making it easier and cheaper for barristers to meet and share information with clients and other legal practitioners.

Looking ahead, the majority of respondents did not envisage the market changing the way in which legal services are delivered in the near future. However recent market developments may require the Bar to adapt further. The UK leaving the European Union, reform in the Courts and Tribunals service and the issues of unmet legal need and the lack of consumer understanding of the legal services market, which were highlighted in the Competition and Markets Authority's (CMA) recent study of legal services - published after this survey had taken place - represent challenges for us all to meet.

In the context of the CMA's report, we are particularly interested in the information that barristers make available to potential clients via their marketing materials. Around half of chambers and around two thirds of non-chambers respondents said that they included details of their fee options and structures in their marketing. We will be undertaking further work later this year to consider how we can promote greater transparency in relation to barristers' services.

I would like to thank everyone who participated in this study (which included barristers, practice managers and clerks). We will continue to work with the Bar to ensure that the market remains competitive and that the profession is independent, effective and diverse, to ensure the best service is delivered to consumers.

A handwritten signature in black ink, appearing to read 'Vanessa Davies', with a stylized, cursive script.

Dr Vanessa Davies
Director General
The Bar Standards Board

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Executive Summary

Overview of the research

The Bar Standards Board (BSB) is committed to regulating barristers in the public interest. The BSB's risk-based approach to regulation seeks to ensure that its regulatory intervention is proportionate and evidence-based.

In the course of its supervision and authorisation work the BSB has observed the emergence of new models providing reserved and non-reserved legal services by barristers. The BSB has also observed models facilitating or offering to facilitate the provision of legal services. These services cover a wide range of activities, including some that are traditionally carried out by chambers or entities, such as clerking or marketing services.

This research is needed to find out about the range of different approaches used by barristers to deliver reserved and non-reserved legal services, how they receive instructions, and to understand approaches for the delivery of legal services that barristers may use in the future. The aim is to provide the BSB with an evidence base to enable them to assess the risks and benefits associated with different approaches used by barristers to deliver legal services.

This research has used a mixed-method approach, collecting and analysing primary and secondary sources of qualitative and quantitative data via desk-based research, a consultation workshop, an online survey of organisations involved in delivering or facilitating legal services by barristers, and in-depth telephone interviews.

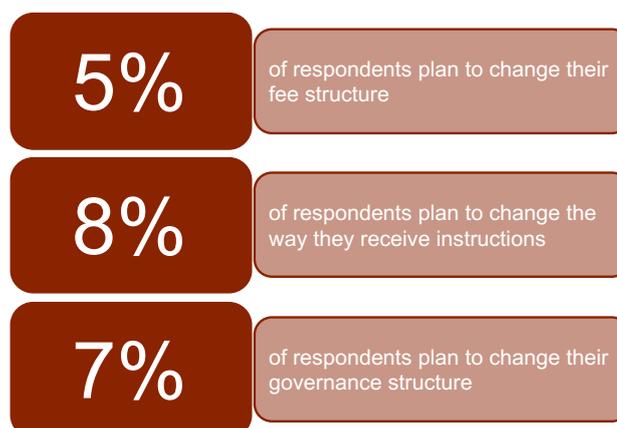
Key findings

- This research finds that the traditional chambers structure¹ strongly prevails. There are isolated examples of approaches to delivery deemed 'new and innovative' that significantly differ from the traditional structure, but these represent isolated examples rather than widespread 'new delivery models'. There are not currently enough organisations operating in this way to enable categorisation into a range of different delivery models.²

1. The traditional model means that barristers are considered self-employed, but share office space and support services (e.g. chambers). Each barrister pays a fee, as per their tenancy. This fee goes towards the costs of the overheads as well as towards clerking services. In this sense, they are represented as a collective, but are also independent.

2. Initial desk-based research supplemented by feedback from the consultation workshop identified a range of models that differ from the norm; although the term 'model' is used here – it should be noted that many of these examples may in fact only refer to one organisation.

- Attributes of new or alternative³ organisations delivering legal services by barristers include:
 - more likely to offer fixed fees and/or payment plans;
 - a more agile and flexible governance structure; and
 - greater use of technology in support of delivery.
- However, these attributes are not unique to new/innovative organisations and could be (and indeed have been) adopted by traditional structures.
- Drivers for change in the sector include:
 - unmet client need for legal services;
 - a need to respond to the threat of competition in the market; and
 - changing client expectations (for example greater demand for legal professionals to be more accessible and the offer of a fixed fee payment structure).
- Whilst these are strong drivers of change for the market, they do not necessarily equate to a felt need or desire for a new approach to the delivery of legal services by barristers.
- This is demonstrated by survey data showing the majority of respondents do not anticipate any significant change to their approach to delivery.
- Over the next five years:



- The pace of change is therefore likely to be slow, with radical change sector-wide seeming unlikely in the near future.

3. i.e. alternative from the traditional chambers structure

Increasing use of technologies

Qualitative evidence suggests there is potential to move towards more virtual means of working to support delivery of legal services in the next five years, via new types of technology as they emerge. Survey data shows that the use of technology such as online document storage/transfer and virtual meetings is expected to continue.

Around 80 per cent of respondents say it is extremely or quite likely they will hold virtual meetings.

Nearly three-quarters of respondents expect to use online document management and nearly 80 per cent expect to use secure document transfer platforms.

Increasing use of technology/cloud systems also increases the threat of cybercrime and its impact on the Bar and consumers. This also has implications financially – barristers must pay for initial investment into software etc. as well as for its upkeep. The threat of cybercrime may require different insurance or increasing current costs.

There is also a risk for the barrister-client relationship, as greater use of technology risks creating a disconnection with the consumer. As public access⁴ work is projected to increase however, the number of direct relationships between barrister and consumer (i.e. without a professional client such as a solicitor to bridge the gap) will also rise.

Fees

The expected increase in use of fixed fees (partly underpinned by an expected increase in public access work) presents a risk of under or over selling: qualitative evidence suggests it is not always straightforward to calculate fixed fees accurately. Getting this wrong could have a negative impact for barristers and consumers. Respondents say that the main risk to the barrister is that of undervaluing the work; clients may find it difficult to assess accurately whether they get value for money due to limited knowledge of the legal work taking place.

Outsourcing

The main benefit of outsourcing is perceived to be more seamless delivery and the ability to offer longer service hours for clients.

A higher proportion of non-chambers respondents expect to outsource paralegal activities than members of chambers (24 per cent compared with 11 per cent of respondents).

4. The public access scheme was introduced in 2004 as a means of permitting clients to contact barristers directly, without needing to instruct a solicitor or other intermediary. In addition to the public access scheme, the licensed access scheme enables specific organisations and individuals under certain conditions to instruct any barrister directly. 'Direct Access' is an umbrella term used to cover both types of arrangement, although in practice the terms Direct Access and Public Access tend to be used interchangeably.

Around 15 per cent of non-chambers respondents say they will outsource practice management, compared with 5 per cent of members of chambers.

However qualitative evidence finds outsourcing is viewed as a significant risk for confidentiality and information security; as well as raising concerns about limited control over quality assurance and adherence to regulations. This could be more pertinent for consideration among organisations that are not chambers, as survey data suggests these organisations are more likely to outsource paralegal activities and practice management in the next five years (compared with chambers).

Marketing

There appears to be a reliance on word of mouth and/or an online presence for marketing legal services provided by the Bar, but this is mostly aimed at professional clients. Furthermore, not all marketing materials contain information about fees or complaints procedures, which could improve client knowledge and understanding at the start of their case.

According to survey data, less than half of chambers provide information within marketing materials for consumers about their fee structures.

Governance structure

Organisations that are not chambers are more likely to be owned/managed by non-authorised individuals (by comparison with chambers). Decisions within these non-chambers may in some cases be taken more quickly because of a more flexible structure without management committees, and with significant input from non-authorised individuals.

As new models of delivery may be more flexible and agile compared with chambers, they can adapt and change very quickly. The BSB (or other regulators as relevant) may find it more challenging to monitor such changes in 'real time' and consider impacts for risk and regulations accordingly.

1 Introduction

About the Bar Standards Board

- 1.1. Regulation of the Bar is vital, not only to underpin high quality standards but also to assure clients of the high levels of proficiency and ethics of their representatives.
- 1.2. In January 2006, the Bar Council split its regulatory and representative functions and created the Bar Standards Board (BSB) as the independent regulatory arm of the Bar Council, responsible for regulating barristers called to the Bar in England and Wales. The Bar Council represents the profession; the independent BSB regulates the profession⁵. The BSB supervises chambers and entities to ensure that they are managing risk effectively and are compliant with regulatory requirements.
- 1.3. As part of its regulation of the profession, the BSB conducts regular research and compiles statistics monitoring equality and diversity and other demographic information. The BSB also operates 'The Register', an online database of all barristers who are authorised to practise in England and Wales and who have a current practising certificate.⁶
- 1.4. The BSB is responsible for:
 - Setting the education and training requirements for becoming a barrister;
 - Setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
 - Setting standards of conduct for barristers;
 - Authorising organisations that focus on advocacy, litigation, and specialist legal advice;
 - Monitoring the service provided by barristers and the organisations the BSB authorise to assure quality; and
 - Handling complaints against barristers and the organisations the BSB authorise and taking disciplinary or other action where appropriate.

5. <https://www.barstandardsboard.org.uk/>

6. <https://www.barstandardsboard.org.uk/regulatory-requirements/the-barristers'-register/>

The need for this research

- 1.5. The majority (80%) of barristers are self-employed⁷, known as the ‘independent Bar’, and run their own practice. Some sole practitioners and others operate together with other independent practitioners as members of chambers. Some entities might also operate within chambers, especially if they have been formed by a single barrister. Barristers in chambers are responsible for ensuring that those chambers are properly run and meet any requirements of the BSB regulatory framework.⁸ Chambers themselves are not authorised or directly regulated by the BSB but the barristers within them are.
- 1.6. The other 20% can be found in a range of areas such as the public sector (local or central government) and in the private sector or in industry.⁹
- 1.7. Traditionally, barristers have operated within chambers to share costs and expenses such as clerking. The traditional model means that barristers are considered self-employed, but share an office building. Each barrister pays a fee, as per their tenancy. This fee goes towards the costs of the overheads as well as towards clerking services. In this sense, they are represented as a collective, but are also independent.
- 1.8. From 5 January 2015, the BSB began accepting applications from those wishing to set up BSB-regulated businesses (“entities”), owned and managed by lawyers, and which provide reserved legal activities. The intention is for entities to be better placed to pool resources and share risks of investing in their own business. In theory, therefore, they provide the opportunity for increased innovation and choice for the consumer. An entity can be a partnership, Limited Liability Partnership (LLP) or company¹⁰ and, unlike chambers, it is authorised and regulated by the BSB.
- 1.9. In addition, the BSB applied to the LSB to extend its regulatory regime in 2015 to include Alternative Business Structures (ABS) by having the Bar Council designated as a Licensing Authority under Part 5 of the Legal Services Act 2007 (LSA). An ABS is a structure which allows non-lawyers to have a financial stake in a law firm. New businesses may therefore be established with shared ownership between non-authorised individuals (who may have no legal training) and authorised individuals. This will further broaden the authorisation functions of the BSB and the types of business models that it regulates.

7. <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/>

8. Individual barristers must be authorised by the BSB i.e. hold a practising certificate to operate as a barrister in connection with the supply of legal services or to undertake any reserved legal activities. Reserved legal activities include exercising rights of audience, conducting litigation, reserved instrument activities, probate activities and the administration of oaths

9. <http://www.barcouncil.org.uk/about-the-bar/about-barristers/where-do-barristers-practise/>

10. Bar Standards Board (2015) BPTC Handbook

- 1.10. In the course of its supervision and authorisation work, the BSB has observed the emergence of models providing, facilitating – or offering to facilitate – the provision of reserved and non-reserved legal services by barristers. These models provide services that cover a wide range of activities, including some that are traditionally carried out by chambers or entities, such as clerking or marketing services.
- 1.11. The BSB is establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained. Allied to this is the BSB’s risk-based approach to regulation which seeks to ensure that its regulatory intervention is proportionate and evidence-based.
- 1.12. This research is necessary to gather information on the range of different approaches used by barristers to deliver reserved and non-reserved legal services. Whilst there is existing research about new delivery models for legal services more broadly, prior to this study there was no research providing sufficient insight specifically into how barristers are providing services, as opposed to other types of legal professional.

Research objectives

1.13. The core research objectives are to provide:

- an understanding of the different approaches or delivery models used by barristers to provide reserved and non-reserved legal services and their governance structure;
- an up-to-date overview of how barristers receive instructions;
- insights into approaches for the delivery of legal services that barristers may use in the future;
- an evidence base for the purpose of assessing the risks and benefits associated with different approaches used by barristers to deliver legal services.

About this report

1.14. This report is structured as follows:

- Following this introduction, chapter 2 provides an overview of the research methodology;
- Chapter 3 summarises the main drivers for change in relation to approaches used by barristers to deliver legal services;
- Current approaches being used to deliver legal services are discussed in chapter 4, specifically taking into consideration:
 - Governance structure and ownership
 - Regulatory framework

- How services are delivered (types of service offered, working arrangements, quality assurance, communication with clients, outsourcing, use of technology)
- How instructions are received
- Insurance models
- Fee structures and pro-bono work
- Marketing strategies

1.15. Chapter 5 then considers how approaches to delivery may change in the future, as well as the likely pace of and any barriers to change;

1.16. Chapter 6 summarises key attributes of 'new' approaches and delivery models compared with traditional ones;

1.17. Finally, chapter 7 presents the research conclusions and key considerations for future risks and benefits assessment.

1.18. It should be noted that survey data have been analysed by chambers and non-chambers, to identify any differences between organisation types. Findings are presented by these two groups in the main body of the report only where there are clear distinctions to be made.

1.19. Findings in chapters 3 and 6 are drawn from desk-based research and the consultation workshop. It should be taken into consideration that the study has found a limited number of delivery models that differ from the traditional approach. But the perspectives offered in relation to new modes of delivery are valid evidence and are all included even if only one or two respondents provided insights. Where it is the case that a limited number of respondents gave a particular view, it has been highlighted accordingly.

2 Methodology

Summary of approach

2.1. This research has used a mixed-method approach, collecting and analysing primary and secondary sources of qualitative and quantitative data to inform the final report (Figure 1). This approach was identified as the most effective and efficient means of obtaining a mix of rich qualitative data and comprehensive quantitative data in order to deliver the research objectives.

Figure 1: Summary of research methodology

Desk-based research	Analysis of existing sources of secondary data to determine and summarise what is already known about delivery models and modes of receiving instructions.
Consultation workshop	Workshop attended by 9 key stakeholders identified by the BSB, to provide an overall steer for the research and capture primary qualitative data about market drivers, current and future approaches to delivering legal services.
Online survey	Survey to capture primary quantitative and qualitative data about ways of delivering legal services currently and any plans for change in the future. 199 responses achieved.
Depth interviews	Follow up depth telephone interviews with a sample of 19 survey respondents, to obtain more detailed qualitative data.
Data analysis & triangulation	All sources of data fully analysed and triangulated to develop the final report.

Desk-based research

2.2. Desk-based research was undertaken during April 2016, which involved interrogation of existing sources of secondary data to determine and summarise what was already known about delivery models and modes of receiving instructions. Sources predominantly spanned law journals and online publications such as HeinOnline, LexisNexis Butterworths, Counsel, Law Society Gazette, and Legal Futures. A snowballing approach was then adopted, using keywords identified via these sources, to generate additional information.

2.3. Findings from the desk-based research were used to design a semi-structured discussion guide for the consultation workshop.

Consultation workshop

2.4. The consultation workshop was held in May 2016, and was attended by nine key stakeholders identified by the BSB, to provide an overall steer for the research and capture primary qualitative data about market drivers, current and future approaches to delivering legal services. The panel of stakeholders recruited by the BSB consisted of a Board Member in addition to representatives from:

- the Institute of Barristers’ Clerks;
- chambers;
- SRA-authorized LLP;
- SRA-authorized ABS;
- business consultancy services to legal practices; and
- marketing consultancy services to legal practices.

Population for the survey

2.5. Contact details for the survey were supplied to Pye Tait Consulting by the BSB, in accordance with the Bar Council’s privacy statement which sets out how personal data may be collected and processed.¹¹ The BSB also received some respondent details from the Solicitors Regulation Authority (SRA) in respect of ABSs with barristers.

2.6. This yielded a total population of 1172 names, comprising:

- Chambers regulatory contacts¹²
- Entities (spanning BSB-authorized limited companies and partnerships – please note the population also included non-authorized limited companies and partnerships)
- SRA licenced ABSs with barristers
- Sole practitioners

11. The privacy statement can be accessed here: <https://www.barstandardsboard.org.uk/footer-items/privacy-statement/> and states “we may also use and disclose other information in aggregate for research, marketing and strategic development purposes. We may also ask you to complete surveys used for research purposes, which you are not obliged to complete but which will be completely confidential and analysed anonymously”. This is the Bar Council’s statement which applies to the Bar Standards Board

12. Whilst regulatory contacts were supplied by the BSB, this did not preclude responses from other members of chambers

How the survey was undertaken

- 2.7. The survey questionnaire was designed by Pye Tait Consulting, based on findings from the desk-based research, consultation workshop and with reference to the overarching research objectives. The questionnaire was refined in consultation with the BSB, and piloted with 12 organisations before being finalised and launched.
- 2.8. The survey was undertaken online, as this was the preferred mode identified by barristers during previous research undertaken by Pye Tait Consulting (i.e. rather than telephone or post).
- 2.9. The survey was live for a period of 10 weeks between September and November 2016. Emails were sent to the research population inviting them to take part. Three waves of reminder emails were sent to encourage participation.

Sampling and response rate

- 2.10. The response rate was 17% (199 completions from a population of 1172). There was a lower response rate from chambers compared with entities:
- 121 of 409 chambers with more than one self-employed barrister responded (response rate of 30%)
 - 27 of 59¹³ entities responded (response rate of 46%)
 - 12 of 35 SRA-registered ABSs with barristers responded (response rate of 34%)
- 2.11. The exact numbers of non-registered and non-authorised¹⁴ organisations with barristers delivering legal services is indeterminate as the BSB may not hold details of the organisations where non-practising barristers work. Therefore as it is not clear what the population is, response rates cannot be calculated.

Data analysis

- 2.12. Survey data were subject to cleaning post-completion. Six of the questions had outliers removed as part of the validation process. Base numbers for each question are shown underneath the figures included in this report. Base numbers vary for this reason, and also because of routing in the survey which meant that respondents were only asked questions that were relevant to them.
- 2.13. Survey data were collected using SNAP software. Basic descriptive analysis was undertaken in SNAP and Excel. Further cross-tabulations of data and derived variables were used in SNAP and Excel to identify differences between respondent groups, and to mitigate the risk of skewing of data in favour of chambers (see limitations and considerations).

13. The number of entities at the time of fieldwork. At the time of writing there are 65 entities

14. For example intermediaries, referral organisations or clerking services

Depth interviews

- 2.14. Headline analysis from the survey and findings from the desk-based research and workshop were used to design a semi-structured topic guide for the depth interviews, supported by prompts and grouped by emerging themes.
- 2.15. Respondents for the depth interview were recruited via a question in the survey, which asked respondents to indicate willingness to take part in a follow up depth interview. Those interviewed were selected on the basis of the responses, to obtain a range of perspectives from different types of organisation, and to gain more detailed insights from those that said they plan to make changes in the future to the likes of fee structure, governance etc.
- 2.16. Depth interviews were undertaken by telephone during November and December 2016. Content analysis techniques were used to analyse depth interview data, identify key themes and triangulate with survey data.

Limitations and considerations

- 2.17. The original brief for this research was to identify and categorise the range of new delivery models being used by barristers. Primary data, obtained from the consultation workshop supplemented by desk-based research at the outset of the study, strongly suggested that it was likely there are only a small number of delivery models that differ from the traditional approach. Furthermore, that it may not even be appropriate to describe these as 'models' per se, rather than a relatively small number of organisations that choose to operate in a different way. Workshop attendees therefore considered it was not a valid approach for the research to attempt to create categories and allocate organisations and/or individuals to them.
- 2.18. On the whole, feedback from the workshop implies there is greater potential for change in the future, rather than wholesale radical new models in operation currently. There is clearly appetite for a more dynamic and client-led model but the extent of this appetite is limited at present, with no clear view on when the 'tipping point' might be. This is discussed in more detail in chapter 5.
- 2.19. Qualitative data and desk-based research have provided the bulk of the evidence in relation to new approaches to delivery currently, and potential for future change. The online survey of the profession has been used to identify the main themes in respect of delivery of legal services by barristers, to understand the appetite for and likelihood of change, and to test the hypothesis that there are only a small number of organisations operating in a way deemed to be different from 'the norm'.

- 2.20. The survey targeted responses from organisation heads, or individuals able to answer the full set of questions that included approaches to marketing, fee structures, insurance held etc. There is a lower response rate from chambers compared with other types of organisation. As there was a risk this may skew the findings in favour of chambers, derived variables were created within the survey analysis process to analyse data by chambers, and by non-chambers. Where there are differences this is highlighted in the report.
- 2.21. There is a higher margin of error in respect of survey data for entities¹⁵ compared with chambers.¹⁶ This is because there is a small population of entities – just 59 at the time the fieldwork took place. To achieve a 5% margin for error this would have required a census of entities rather than a sample. To mitigate this, more qualitative data were obtained from entities and other non-chambers organisations, as part of the in-depth follow up interviews.

15. 95% confidence with a 27% margin of error - entities

16. 95% confidence with a 7.48% margin of error - chambers

3 Drivers of change for delivery of legal services by barristers

Key findings

- The conclusions within this chapter are drawn from the workshop and desk-based research.¹⁷
 - Commercial pressures are the strongest drivers of change in relation to delivery of legal services by the Bar.
 - Notably, these include: unmet client need for legal services, responding to the threat of competition in the market, and changing client expectations (demand for increased accessibility and fixed fees).
 - Legislation such as the Legal Services Act allowing the creation of the likes of Alternative Business Structures (ABS) and technology are seen as enablers of change, rather than directly bringing about change.
 - Whilst there is some dissatisfaction with traditional structures which has driven some organisations to change their approach to delivery, the majority of barristers continue to deliver legal services via the traditional model.
-

Types of drivers of change

3.1. Drivers for change fall into four main categories:

- Commercial
- Technological
- Legislative
- Geographical

17. Drivers for change generally were not covered in the survey, as the main purpose of the survey was to assess the current state of play and how this may change in the future, whereas richer qualitative data could be obtained from the workshop.

Commercial drivers

- 3.2. Commercial considerations appear to be the strongest drivers of change for the legal services market. These commercial drivers fall into a number of main categories:

Opportunities with corporate clients

- 3.3. A high volume of consumers, spanning individuals as well as businesses, do not make use of legal services, or do not use them to the extent that they could. Workshop participants suggest that corporate in-house legal teams do not know how to use the Bar, are uncertain as to where to go for guidance, and are concerned about transparency.
- 3.4. The small and medium size enterprise (SME) market is a critical untapped market, although anticipated growth of direct access¹⁸ may be a catalyst for change.¹⁹

Changes to consumer expectations

- 3.5. Workshop participants believe consumers often perceive the route to the Bar through solicitors to be expensive, and clients expect a more cost effective option. They suggest this is partly because consumers have a clearer understanding of what they need and expect from legal services, prompted by better education and knowledge about the legal market in recent years. It should be noted that this is the interpretation of providers based on their knowledge of their own clients.
- 3.6. The research also finds that consumers also expect instant access to real time information. Respondents consider this is a major driver for change in both commercial and direct access sides of the market. Consumers are likely to want to see how their cases are progressing via virtual access of some kind. In short, consumers want the Bar to be accessible. This could include the use of video technology to support direct communications between barristers and consumers. Traditional models of delivery may obstruct this level of accessibility because of their structure i.e. typically barristers are accustomed to keeping solicitors up-to-date rather than the end consumer.
- 3.7. Workshop participants suggest changing client expectations may have an impact on the amount of resource needed – for example, if the Bar needs to work in the way a solicitor does, perhaps with a group of paralegals that would have contact with clients, then they will need to find a way of bringing in additional resource.

18. The public access scheme was introduced in 2004 as a means of permitting clients to contact barristers directly, without needing to instruct a solicitor or other intermediary. In addition to the public access scheme, the licensed access scheme enables specific organisations and individuals under certain conditions to instruct any barrister directly. 'Direct Access' is an umbrella term used to cover both types of arrangement, although in practice the terms Direct Access and Public Access tend to be used interchangeably

19. Discussed in more detail in chapter 5

3.8. Workshop participants believe a larger volume of clients will expect to be offered the option of fixed fees in the future. A fixed fee model could affect the whole payment structure, and in turn, create a ripple effect in terms of how the rest of the legal service provider operates. Payment plans and other financing options are starting to be offered to consumers, and may increase as a result of the growth of direct access.

Market risks

3.9. Workshop participants believe there is likely to be increased competition from solicitors offering a broader range of legal services, notably unreserved legal services which may in previous years have been undertaken by the (cheaper) junior Bar. In long-term cases much of the non-reserved legal work could be done by solicitors.

3.10. Solicitors also have the potential to partner with accountancy firms, which have size and structure on their side. Such partnership models could bring together solicitors and accountants to offer a wider range of legal and advisory services. There is the option for the Bar to become part of this hybrid model, which would be through multidisciplinary practices (MDPs) authorised and regulated by another regulator such as the SRA. The BSB does not currently authorise and regulate MDPs. However evidence gathered for this study suggests only a very small number of barristers are currently considering this as an option for the future.

Dissatisfaction with the traditional chambers model and governance structure

3.11. Some respondents believe there can be frustration with the traditional chambers structure, as this can be slow and inflexible - “all decisions must be made by committee”. This is considered a factor in disillusionment with the structure of traditional sets, among those barristers who have moved away from chambers. However it should be emphasised that the majority still deliver services via the traditional model (discussed in more detail in chapter 4).

“In the traditional model, I am self-employed – I sit on my management committee but I have no say. I could become a business owner and employ my barristers”

Workshop participant

3.12. Furthermore respondents point out that the traditional structure of a chambers is not completely secure. They explain that a high turnover in quick succession means there is a risk that a chambers could quickly collapse as fee-earners leave. If the set owns rather than rents the building from which it operates, departing fee-earners sell their shares and incoming new barristers may find it difficult to afford the new price (where the value of property is rising over time). If departing fee-earners do not sell their shares in the building, a higher number of people have an interest in the building, which stops it being a viable pension asset. These appear to be strong drivers towards having virtual offices, although there is no strong indication from survey data that large numbers of respondents intend to operate on this basis in the future.

Technological drivers

3.13. The data suggest that technological drivers appear significant, prompted by the on-going growth of cloud-based technology and emergence/use of innovative platforms and packages. Respondents anticipate an increasing reliance on technological access to courts etc. and feel that if a chambers is not “technologically astute”, it will lose clients. For example some ‘brokerage’ services are able to make use of computer programmes to dispense automated or ‘robo-advice’ e.g. the use of automated, algorithm-based legal advice given through an online tool. Robo-advice tools can be either accessed directly by clients or used by advisers to assist them in the provision of legal advice. It should be noted that workshop participants agree this can never entirely replace human contact.

3.14. Evidence from the literature finds technology has already changed delivery of legal services in several ways. For example, the approach to receiving instructions can use online ‘brokerage/match-making’ platforms either instead of, or as well as, traditional routes. Barristers can also make use of online cloud based storage systems, diminishing the need to maintain large offices, and in some cases enabling barristers to operate via an entirely virtual model.

3.15. Technology is therefore likely to be an enabler of alternative delivery structures, and could be embedded as a result of consumer need and expectations.

Legislative drivers

3.16. Respondents view revisions to legislation and allowing for the regulation of alternative structures and entities as enabling change, rather than strongly driving it. The net result of this is that the Bar has more opportunities to get to market, via different routes outside the usual referral channels, which benefits consumers.

Geographical drivers

- 3.17. The data show that there appear to be some regional differences (i.e. outside of London) in terms of the use of alternative models of delivery. For example, when several northern organisations tried to adapt to ProcureCo,²⁰ this led to collaborations between sets of barristers.
- 3.18. Respondents gave examples of new models of delivery in the North-West and Midlands. For example, a firm of accountants in the Midlands amalgamating with solicitors' firm, which may be looking at opportunities to cross-sell via the Bar. This would therefore provide a full service offering, i.e. spanning accountancy and the full spectrum of legal services, in Birmingham. Respondents reported that another organisation deliberately targeted the North-West, rather than a national approach.

20. Launched by the Bar Council in 2010, this was a corporate vehicle to bolt onto chambers, through which barristers could bid for work, instruct solicitors and also bring clerks and others into ownership roles

4 Current approaches

Key findings

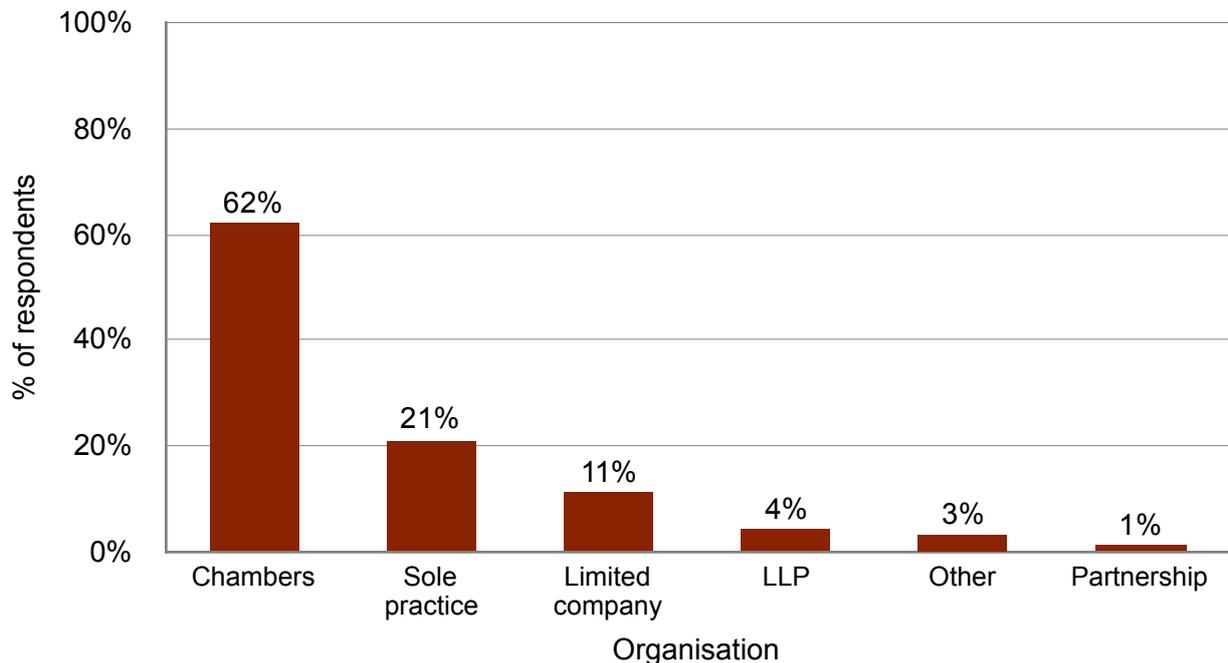
- Few survey respondents are operating significantly differently from the traditional model of delivery, i.e. owned/managed by authorised individuals, predominantly office-based, and using technology as an enabler, rather than the main means of delivery of legal services.
- Changes to models of delivery are more prevalent among non-chambers respondents. For example, a higher proportion of non-chambers are owned/managed by non-authorised individuals and a higher proportion operate predominantly online, compared with chambers.
- It appears that decisions can be taken more easily and speedily within non-chambers; the governance structure can be more agile, with decisions taken predominantly unilaterally rather than by formal committees (unlike in the majority of chambers). Regardless of the actual approach to taking decisions, the vast majority of governance structures comprise authorised individuals.
- Nearly all chambers respondents say their fee-earners/members contribute to operating costs, however less than half of non-chambers respondents say the same. According to survey data, members of chambers are more likely to have top up insurance cover, compared with members of non-chambers. These financial aspects may require consideration for risk assessment.
- Well-established forms of communication with clients (e.g. face-to-face meetings, email and telephone) are preferred over virtual means such as video-enabled meetings. There is a clear commitment to strong client relationships, with the majority of respondents using customer feedback as their main form of quality assurance. However few have a formal mechanism for quality assurance such as ISO 9001, which may be a consideration for future risk assessment.
- With the exception of marketing, there is limited outsourcing of delivery of legal services (or of aspects that support delivery). Fee collection and IT may also be outsourced by a minority of respondents. The main risks associated with this relate to data security and the threat of cybercrime.

- Reliance on word of mouth and an online presence of some form are the most commonly used methods of marketing. Where information is made available to clients via marketing tools, the vast majority of chambers respondents include details of individual barristers and their specialisms. However less than half of chambers provide information about fees. A higher proportion of chambers compared with non-chambers provide information about the complaints policy/ procedures. These factors may require consideration for risk assessment.

Profile of survey respondents

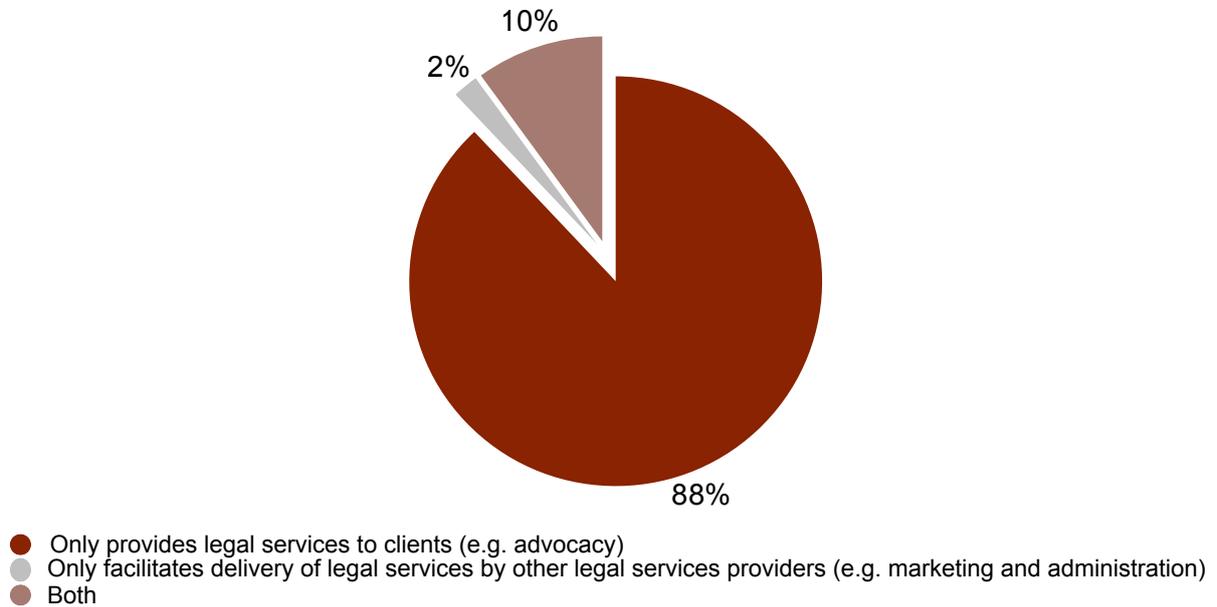
- 4.1. Figure 2 shows the breakdown of organisations that responded to the survey. Nearly two-thirds of responses (62 per cent) are from chambers.
- 4.2. Respondents were asked whether they only provide legal services to clients, facilitate the delivery of legal services (e.g. by providing marketing services), or both. The majority (88 per cent) only provide legal services (Figure 3).

Figure 2: Survey respondents - Organisation type



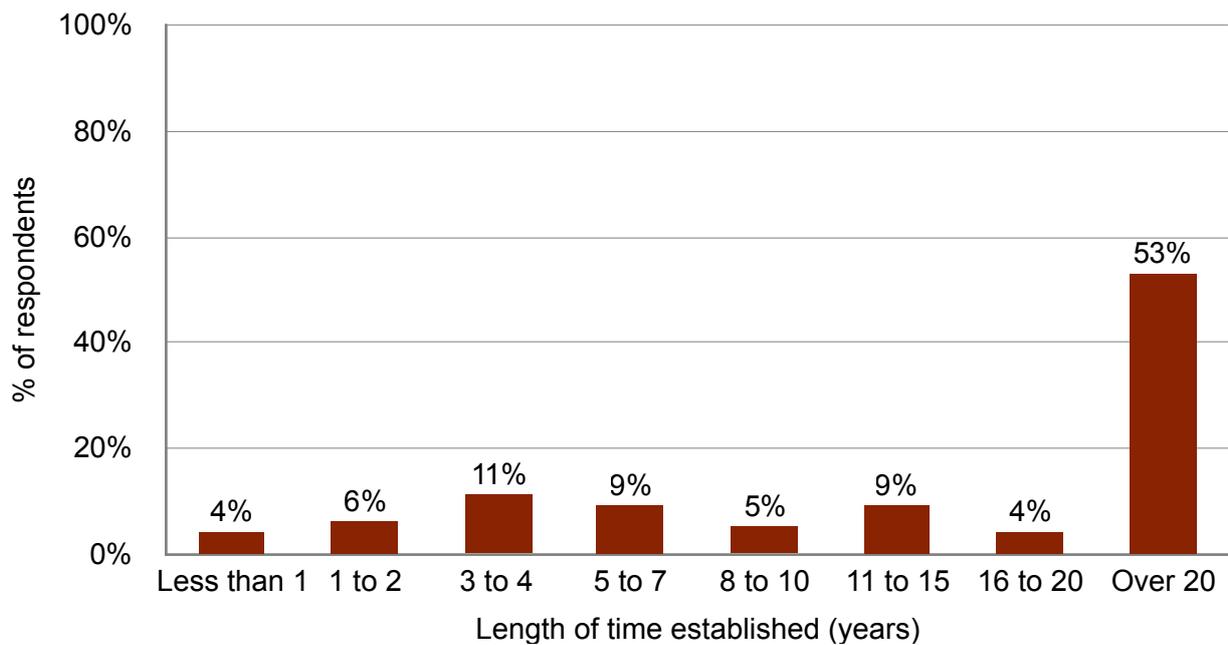
Base: 199

Figure 3: Survey respondents - providers and facilitators of legal services



Base: 199

Figure 4: Length of time for which respondent organisations have been established



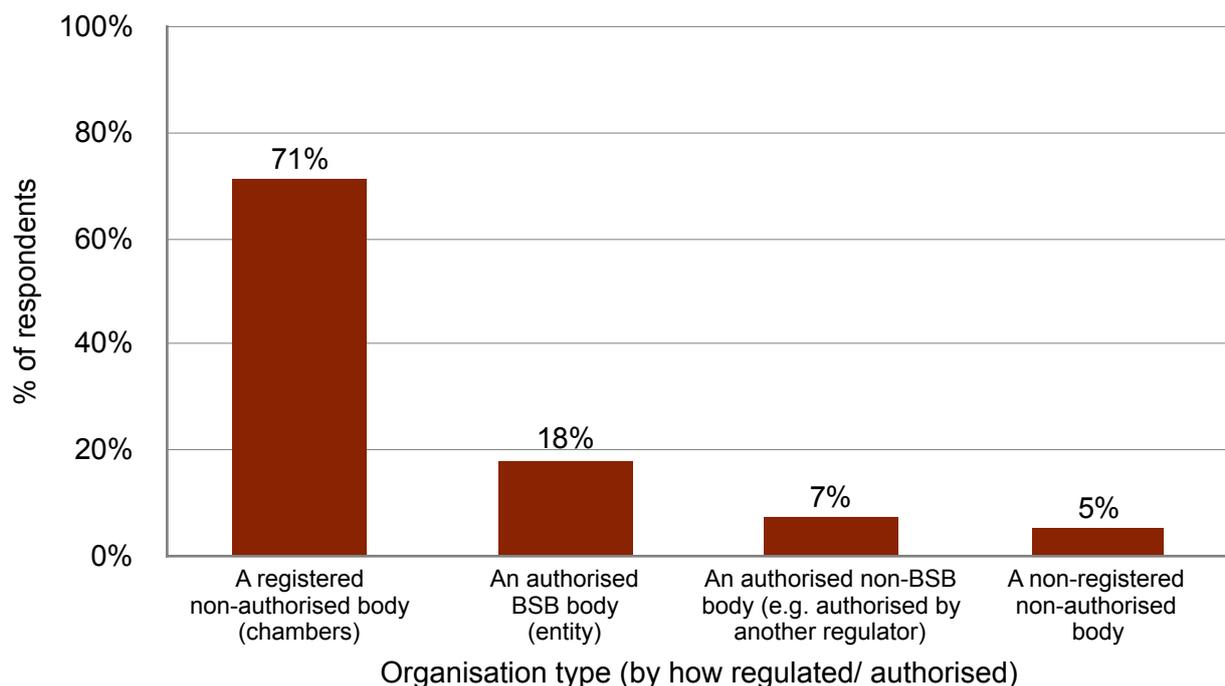
Base: 199

- 4.3. Just over half of all survey respondent organisations have been established for more than 20 years. By contrast, 10 per cent of organisations have been established for less than 2 years (Figure 4).
- 4.4. Respondents were asked in which regions they operate, and could select multiple responses. Most respondents operate in London (72 per cent), however there is an even spread across the remaining regions of England and Wales.

Regulation

- 4.5. The majority of survey respondents (71 per cent) are from chambers. Nearly a fifth of respondent organisations (18 per cent) are authorised by the BSB i.e. are entities. The remainder of respondent organisations are either non-authorised or authorised by another regulator (Figure 5). Of those authorised by another regulator, over 90 per cent of these are authorised by the Solicitors Regulation Authority (SRA), with the remainder authorised by the Intellectual Property Regulation Board.

Figure 5: How survey respondents are regulated/authorised



Base: 199

Ownership and investment

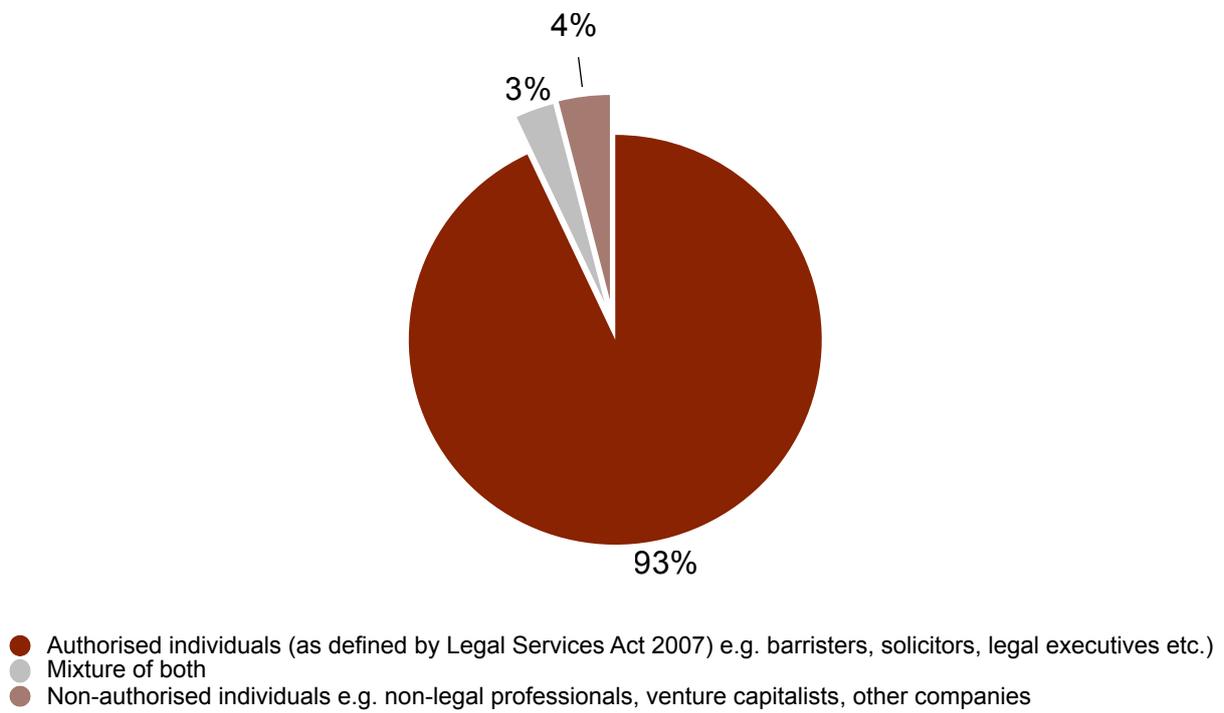
- 4.6. Whilst there is flexibility around ownership of legal services providers, the vast majority of survey respondents (93 per cent) say their organisations are owned by authorised individuals. Only 4 per cent of respondents say their ownership comprises non-authorised individuals, which could be expected given the BSB does not currently permit non-lawyer ownership of authorised entities. Therefore only a small proportion of the sample was likely to have any non-lawyer ownership (Figure 6).
- 4.7. Looking specifically at non-chambers, a higher proportion of respondents say that non-authorised individuals own their organisations (14 per cent compared with 4 per cent across all respondents) (Figure 7).²¹
- 4.8. No respondent organisations are backed by venture capitalists, but 3 per cent are backed by private investors. Nearly all of these are limited companies, one is an ABS and one a partnership. All of these organisations are owned by authorised individuals.²²
- 4.9. On average, turnover for chambers responding to the survey is around 75 per cent higher than the average turnover of non-chambers.²³

21. The data shown here are a sub-set of those contained in Figure 6 which accounts for the lower base number

22. Respondents self-selected their answers so it is not clear whether/how private investors are providing backing if not via an ownership interest (on the assumption that the private investors are not the authorised individuals that own the organisations)

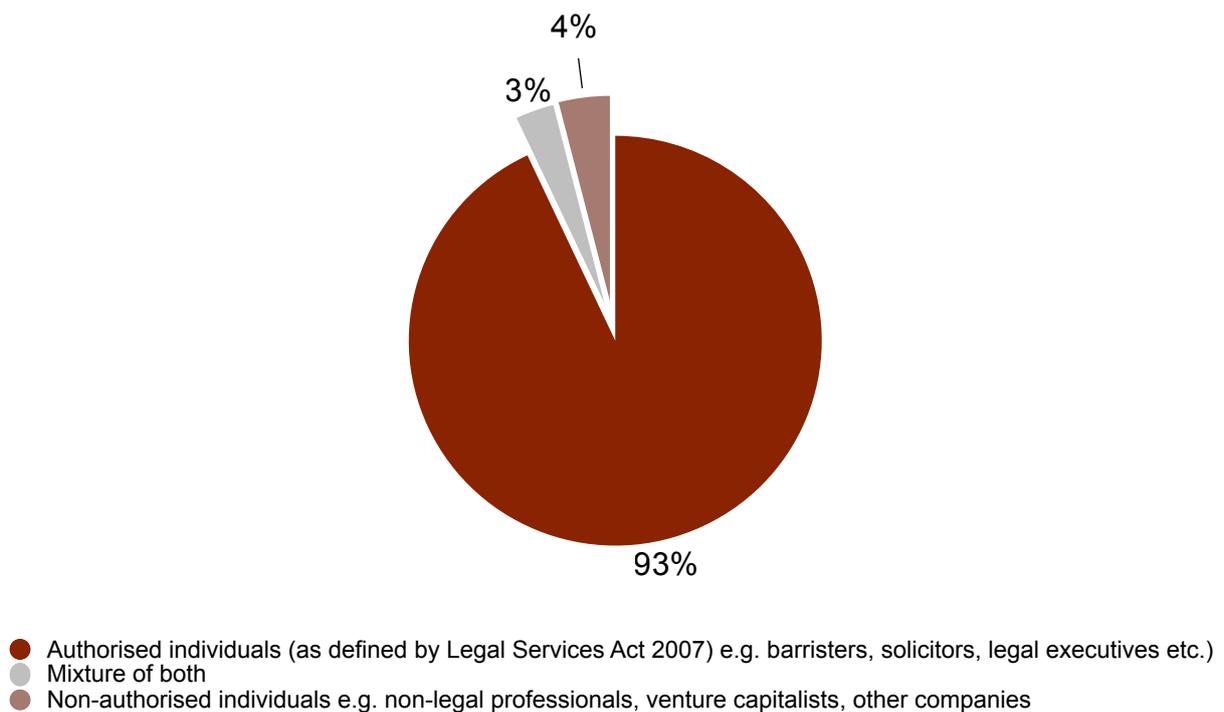
23. Excluding outlier data

Figure 6: Ownership profile of respondent organisations



Base: 199

Figure 7: Ownership profile of survey respondents (non-chambers)



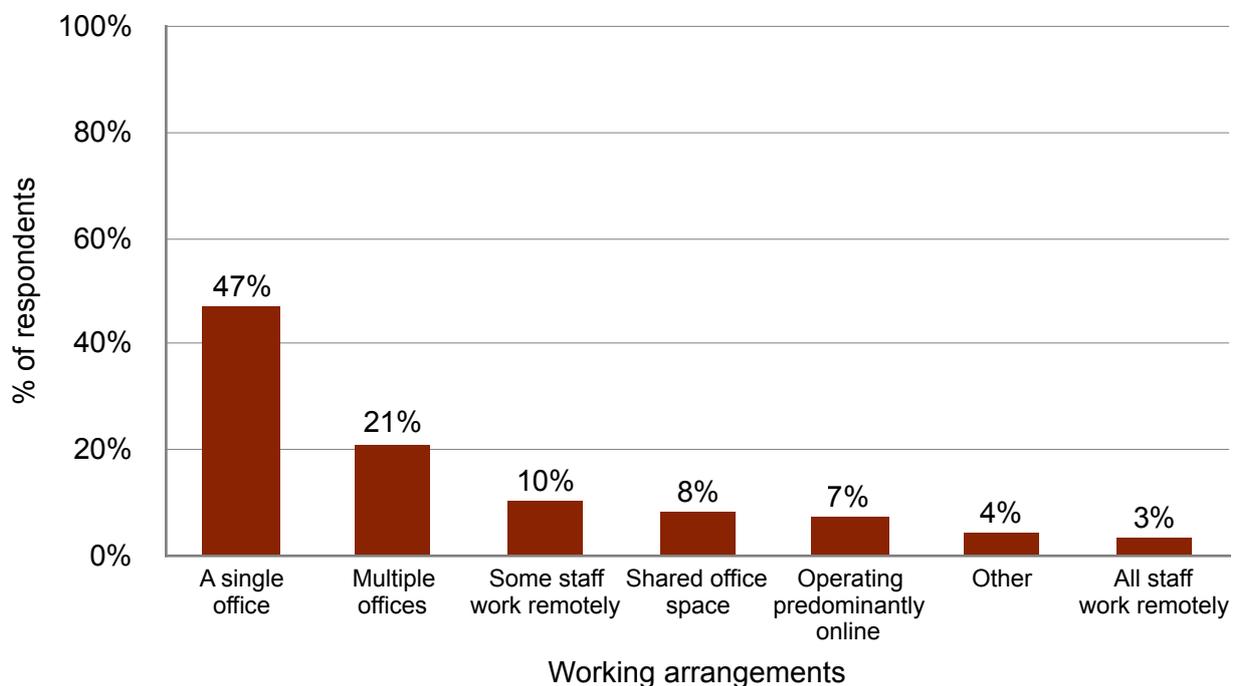
Base: 58

Working arrangements

4.10. Survey data indicate few organisations work either predominantly via an online space, or entirely remotely. The preference is for office-based working, with nearly half of all respondents operating from a single office, and just over a fifth from multiple offices (Figure 8).

4.11. A minority of chambers operate predominantly online (5 per cent), compared with a higher proportion of non-chambers that do so (14 per cent of respondents).

Figure 8: Working arrangements



Base : 194

4.12. Whilst 10% of respondents say some staff work remotely, it appears from qualitative evidence that a higher proportion may have the opportunity to work remotely but do not do so.

“It is possible for staff to work remotely and some choose to do this nearly all the time, whilst some choose to do this only occasionally, depending on needs”

Barrister, Chambers

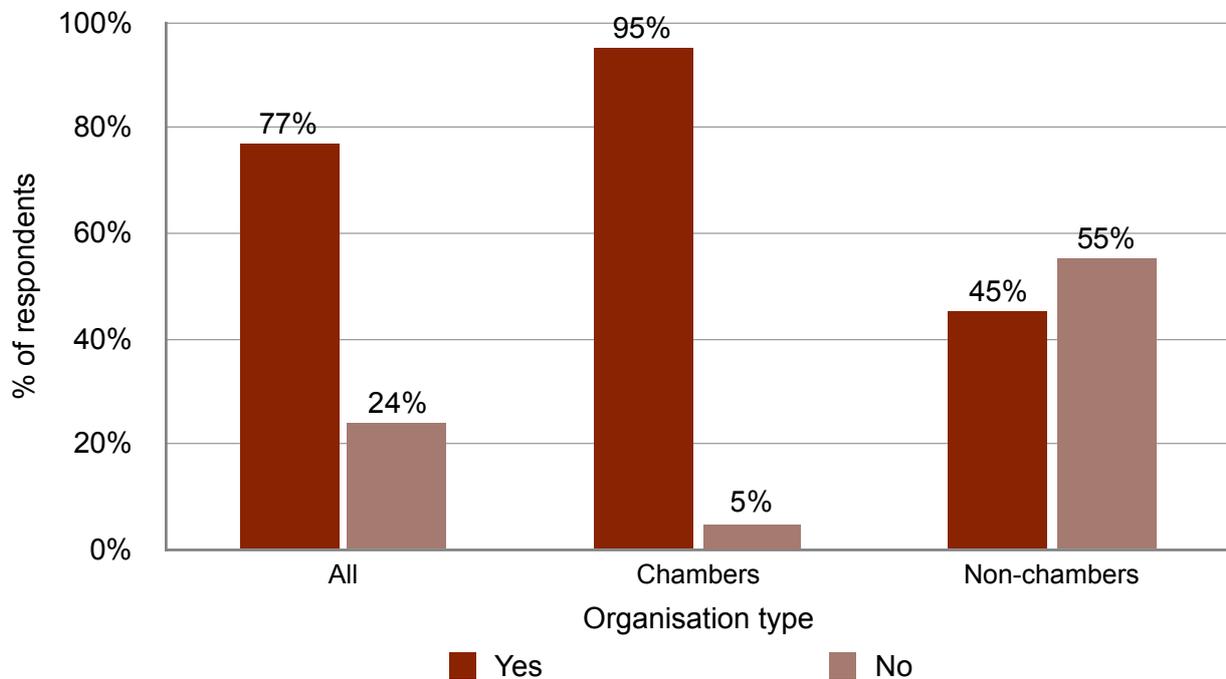
4.13. For just over three-quarters of respondents, members or fee-earners make a contribution to the organisation’s operating costs. This rises to 95 per cent among chambers, but looks markedly different for non-chambers, where only 45 per cent of respondents say contributions are made in this way (Figure 9).

4.14. Around 11 per cent of respondents pay fixed contribution costs, while 63 per cent of respondents pay contributions that vary, depending on income (Figure 10).²⁴ Around 14 per cent of respondents say they have a combination of one fixed sum (often this is rent) plus one variable contribution (dependent on income).

4.15. Around 12 per cent of respondents say different approaches are used, spanning:

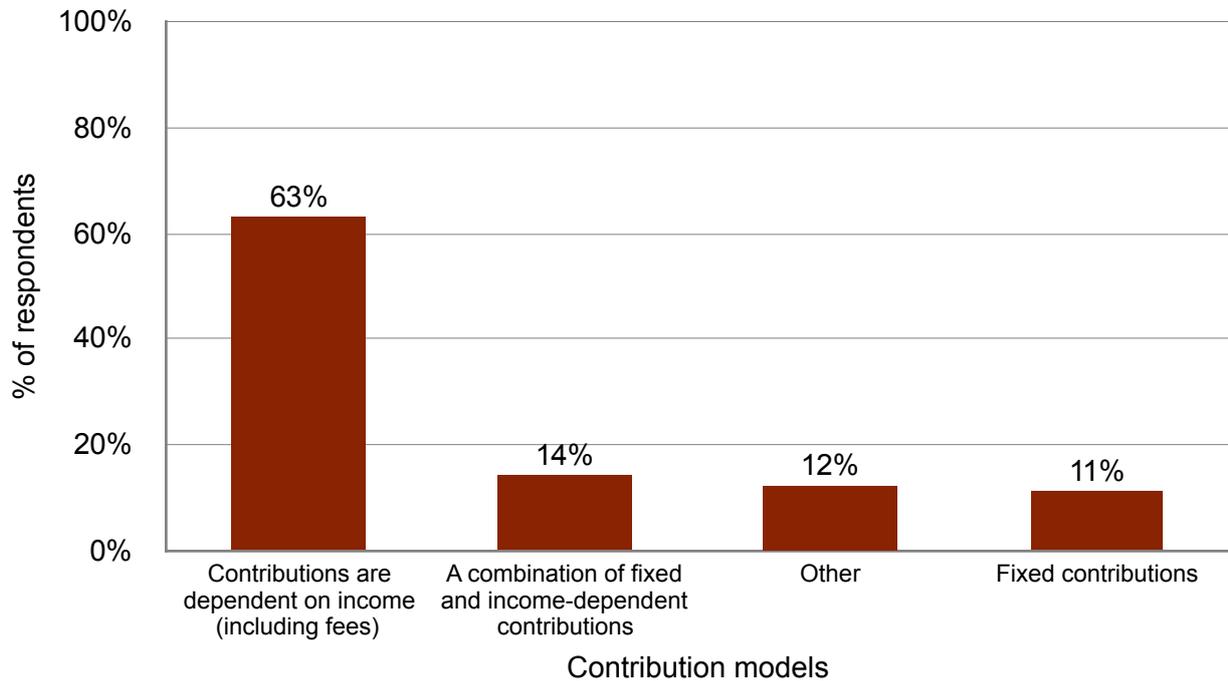
- all operating costs paid for out of income (sole practitioners); and
- contributions are determined by seniority.

Figure 9: Do members or fee-earners make a contribution to organisational operating costs?



Base: 194

24. This is a further breakdown of data depicted in Figure 9, thus accounting for the lower base number of responses

Figure 10: Contribution models used by survey respondents

Base: 146

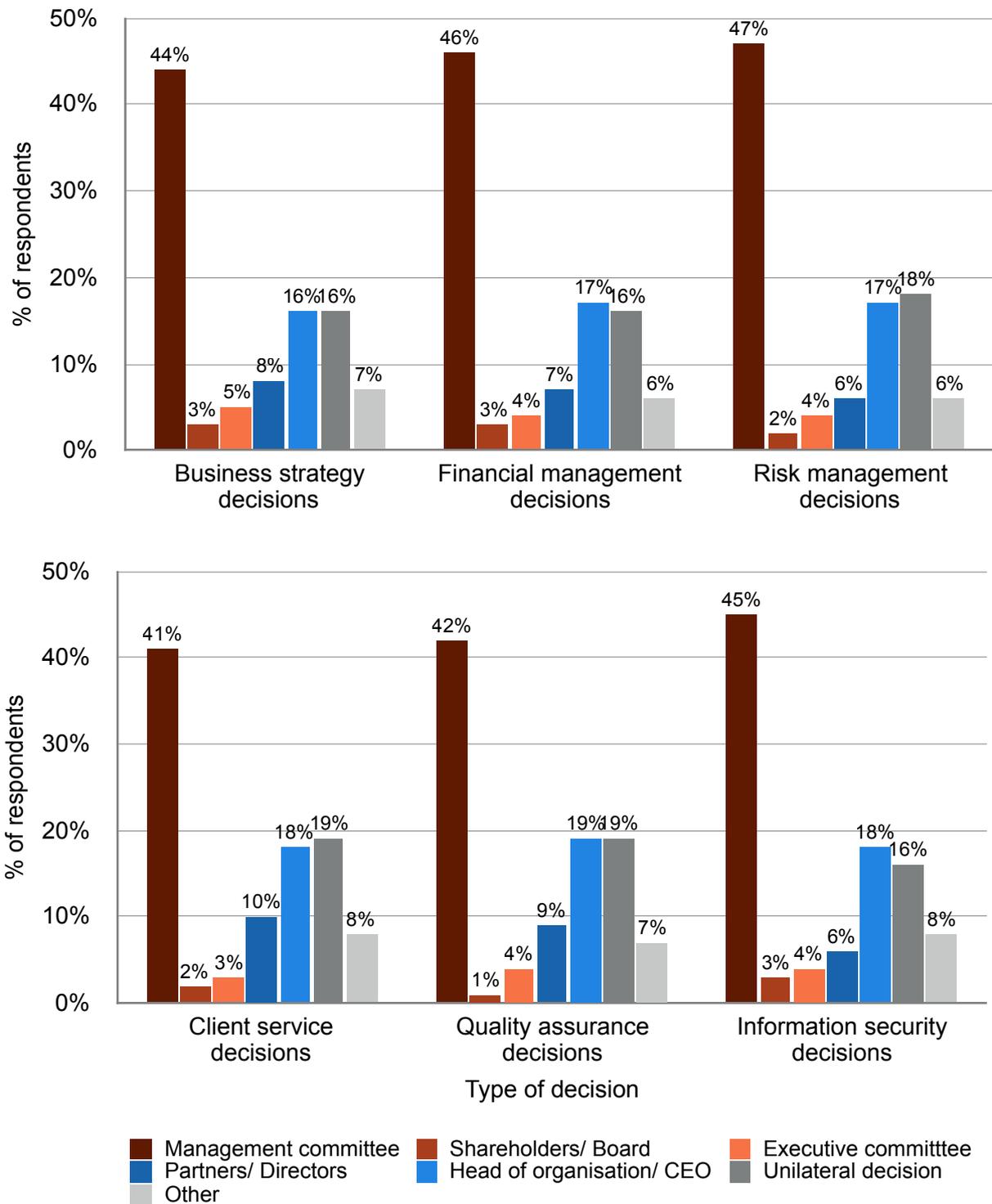
Governance

4.16. On average, among survey respondents, 45 per cent of all types of decisions are made by a management committee. On average, nearly a fifth of decisions are taken by the organisation head or CEO, and around 17 per cent are made unilaterally²⁵ (Figure 11).²⁶

25. A decision taken unilaterally that is not taken by a head of organisation or CEO

26. Given the range of options, data are shown over two lines for ease

Figure 11: How key decisions are made among all survey respondent



Base: 188-191

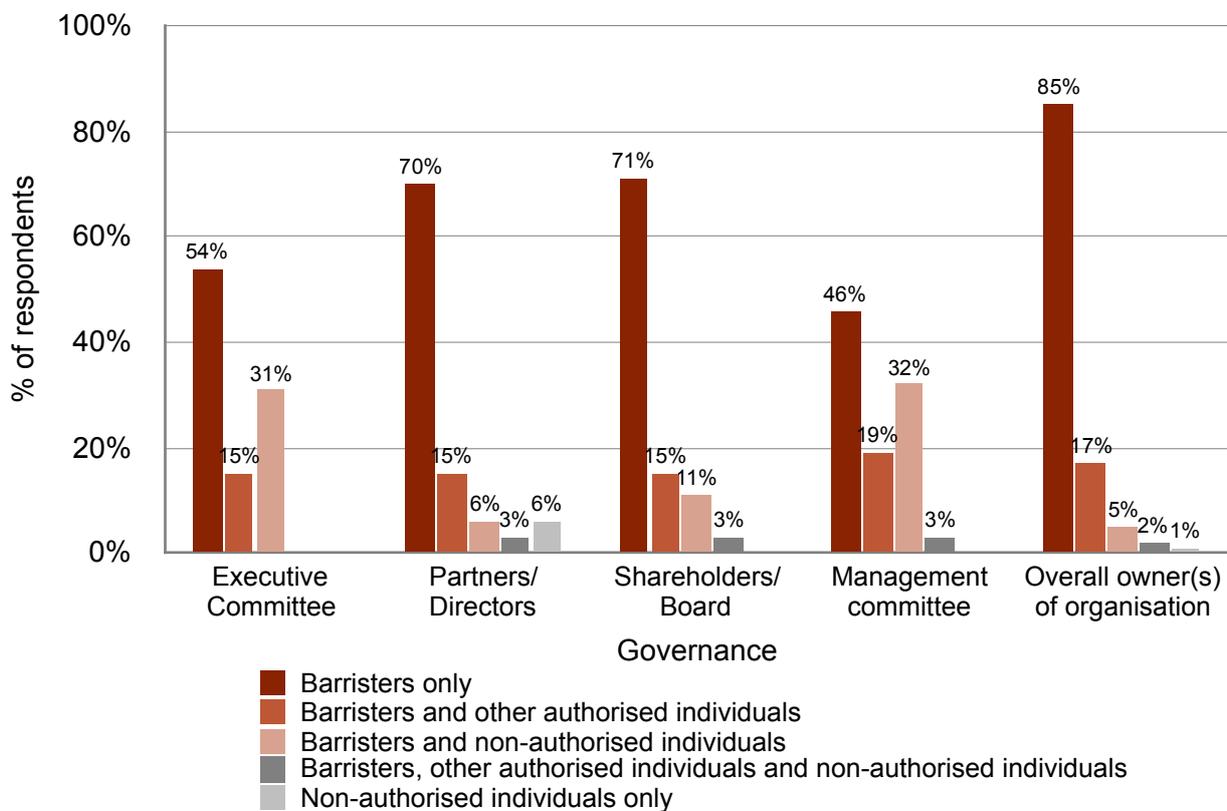
4.17. Responsibility for decision-making clearly differs between chambers and non-chambers. On average, around 60 per cent of decisions are taken by a management committee within chambers, and 14 per cent by the organisation head. Very few decisions are taken unilaterally.

4.18. By comparison, 16 per cent of decisions, on average, are taken by a management committee in non-chambers, and 42 per cent of decisions are taken unilaterally.

4.19. Very few governance structures comprise non-authorized individuals only, with the majority comprising barristers only, or a mix of barristers and other authorized individuals. For example 46 per cent of management committees are made up of barristers only, and nearly a fifth of barristers and other authorized individuals. Around a third of executive and management committees comprise a mix of barristers and non-authorized individuals (Figure 12).

4.20. It appears that chambers have a wider variety of job roles available in their organisations, compared with non-chambers, even though the average number of employees for non-chambers is nearly double that of chambers. For example, around 30 per cent of chambers have marketing officers and practice managers working in their organisation, compared with 12 per cent of non-chambers that do. Just over half of chambers have administrators working for them, compared with 30 per cent of non-chambers. Just over 12 per cent of non-chambers have legal executives working for them, whereas less than 1 per cent of chambers do.

Figure 12: Composition of governance structures

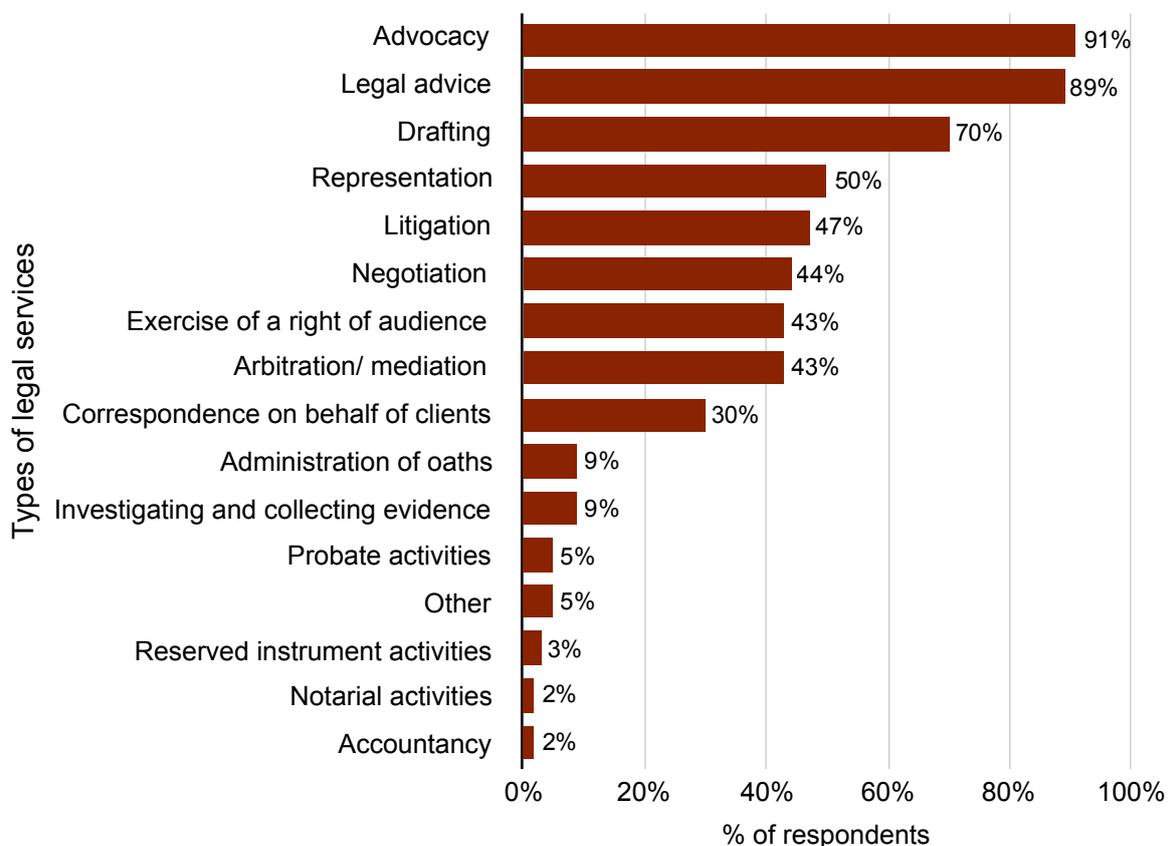


Base:153-178

Types of service provided

4.21. The most commonly provided services among respondents are advocacy (by 91 per cent of respondents) and legal advice (by 89 per cent of respondents). Although evidence gathered from the consultation workshop suggests accountancy services could be part of a combined service offer with solicitors/barristers, currently, a very small number of respondents (2 per cent) offer accountancy services (Figure 13) – which should be expected given the BSB does not currently authorise and regulate MDPs.²⁷

Figure 13: Services provided by respondents



Base: 195

27. See paragraph 3.10

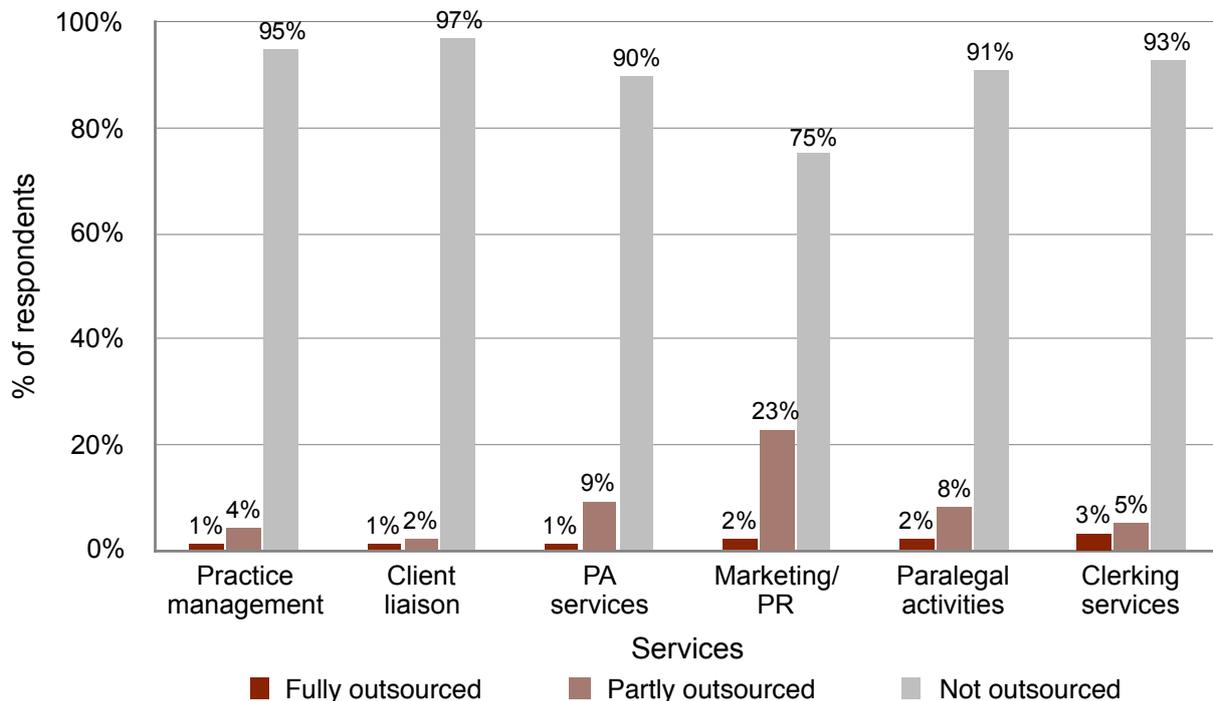
Outsourcing

4.22. Very few services are currently outsourced, with the exception of marketing/ PR, which is outsourced by around 23 per cent of respondents (Figure 14). A small number of respondents (3 per cent) also outsource fee collection and IT services – the latter in their entirety i.e. none undertaken in-house. Qualitative evidence suggests outsourcing IT improves efficiency and reduces costs for some organisations.

4.23. The small number (4) of respondents who only facilitate the delivery of legal services by others predominantly offer:

- PA services;
- clerking services;
- paralegal services; and
- practice management.

Figure 14: Extent to which services are outsourced to help facilitate legal services



Base: 174-190

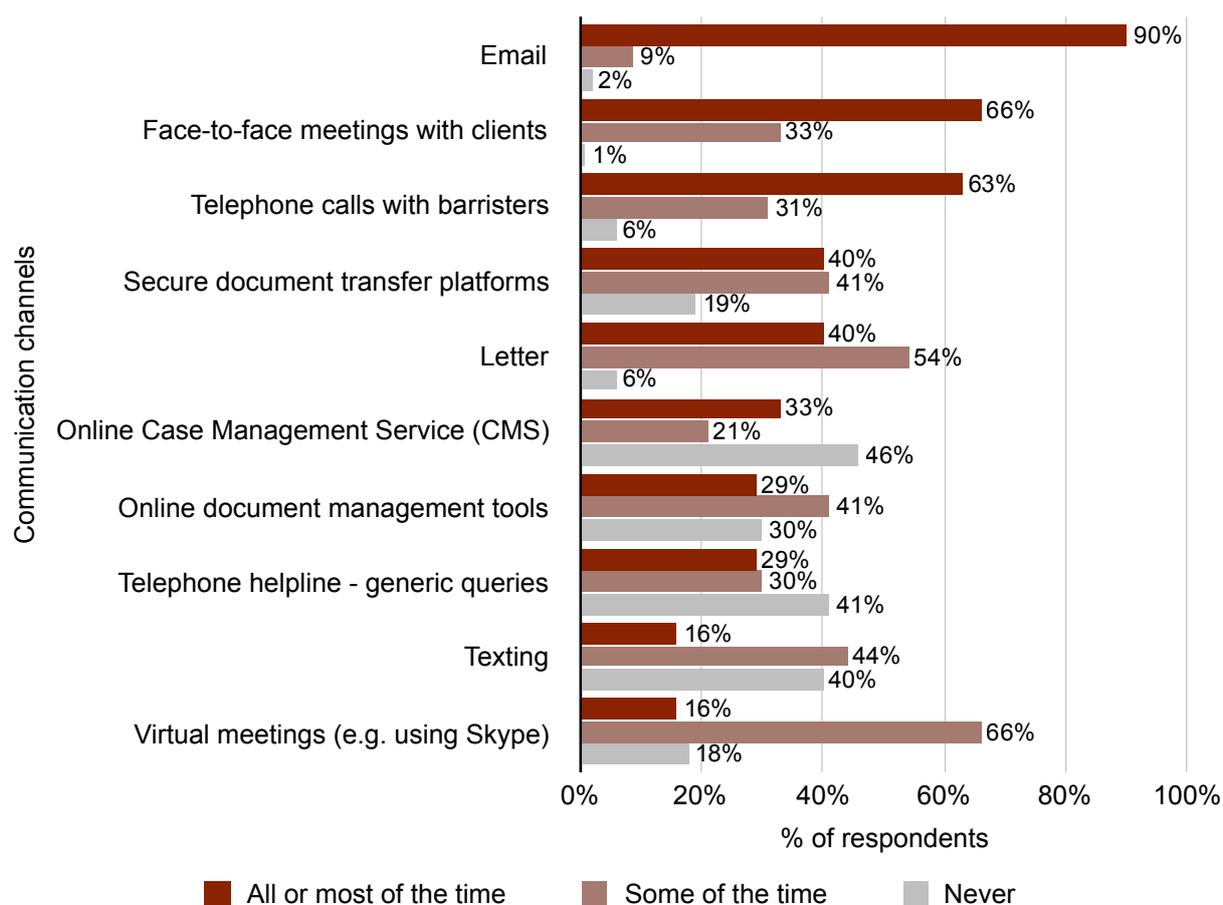
Client communications

4.24. There is a strong preference for regular personal communications with clients.

Around 90 per cent of respondents use emails to communicate with clients all or most of the time; nearly two-thirds of respondents telephone clients all or most of the time. Two-thirds of respondents say they meet clients face-to-face all or most of the time (Figure 15). Only 1 per cent say that they never meet with clients face-to-face.

4.25. More 'virtual' forms of communication are less common. Only 16 per cent of respondents say they use virtual meetings (e.g. using Skype, Slack or similar video conferencing) all or most of the time, although 66 per cent do make use of them some of the time. Texting is only used by 16 per cent of respondents all or most of the time, with 40 per cent reporting never using text. Likewise, telephone helplines are never used by 41 per cent of respondents (Figure 15).

Figure 15: Ways in which respondents communicate with clients

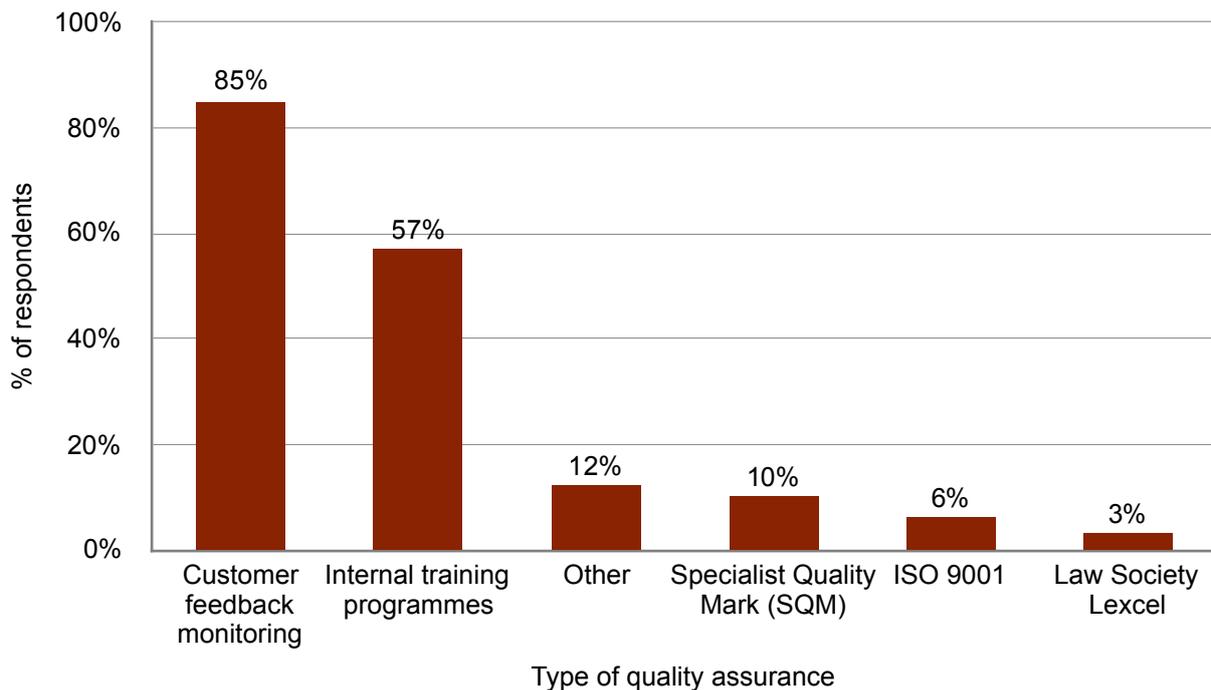


Base: 162-190

Quality assurance

4.26. When given the choice of multiple responses, 85 per cent say they assure quality through customer feedback monitoring. Fewer respondents by comparison say they use SQM²⁸, ISO 9001²⁹ or Law Society Lexcel³⁰, with 90 per cent or more reporting that they do not use these at all (Figure 16).

Figure 16: Quality assurance approaches



Base: 162

Use of technology to facilitate delivery of legal services

4.27. Overall, over 90 per cent of respondents do not use a virtual assistant or technology such as algorithm based programmes to provide automated legal advice. Online Case Management Systems (CMS) and cloud computing systems, however, are more common, with over 58 per cent and 64 per cent respectively using them (Figure 17).

4.28. Qualitative evidence suggests a key driver for use of cloud computing systems is the potential for costs savings.

28. Specialist Quality Mark, a quality mark standard

29. A certificated quality management system

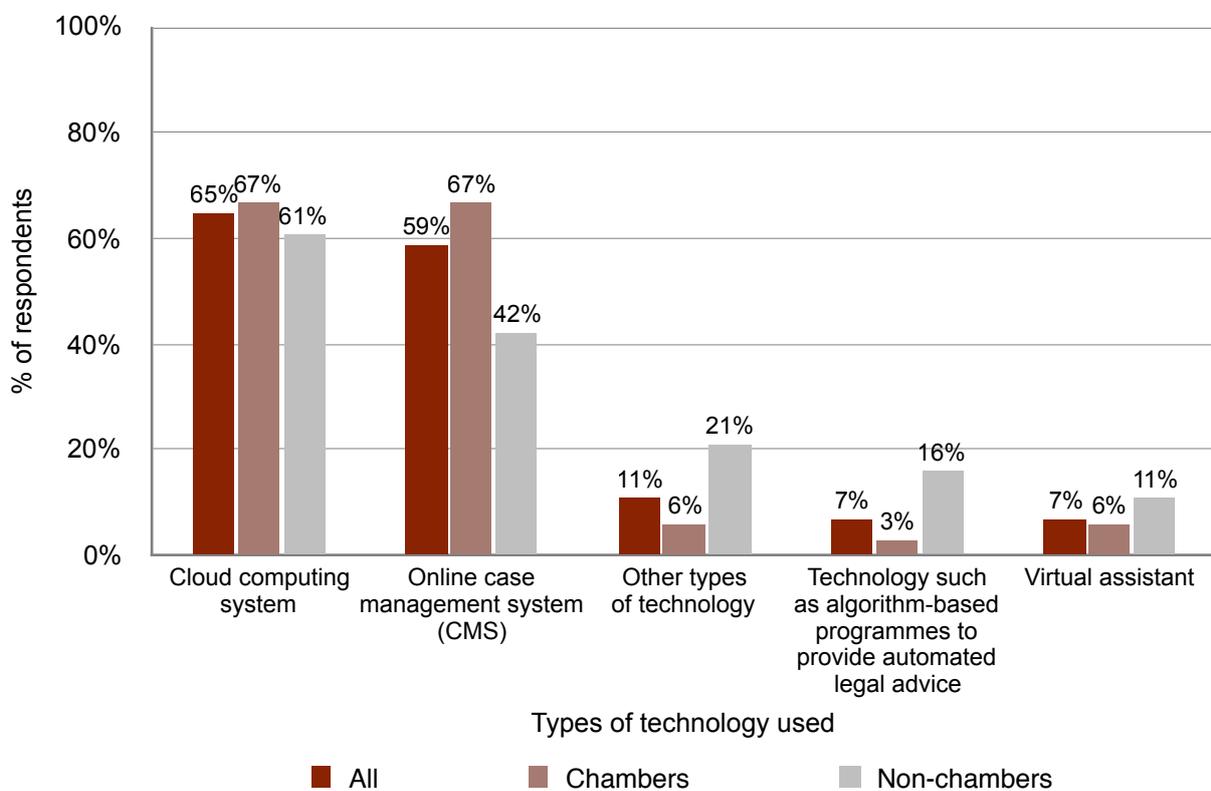
30. The Law Society's legal practice quality mark for excellence in legal practice management and excellence in client care.

“We’re now looking at how to save costs, so that they can be invested elsewhere... That’s partly why we’ve moved onto the cloud. It’s meant that we have not had to increase staffing levels in certain areas – we can do more with less”

Head of chambers

4.29. When comparing the differences between how respondents from chambers and non-chambers utilise technology, the biggest difference is the usage of Online Case Management Systems (CMS): non-chambers respondents are 25 per cent less likely to use a CMS. They are, however, more likely to use technology such as algorithm-based programmes, virtual assistants or other types of technology (Figure 17).

Figure 17: Use of technology



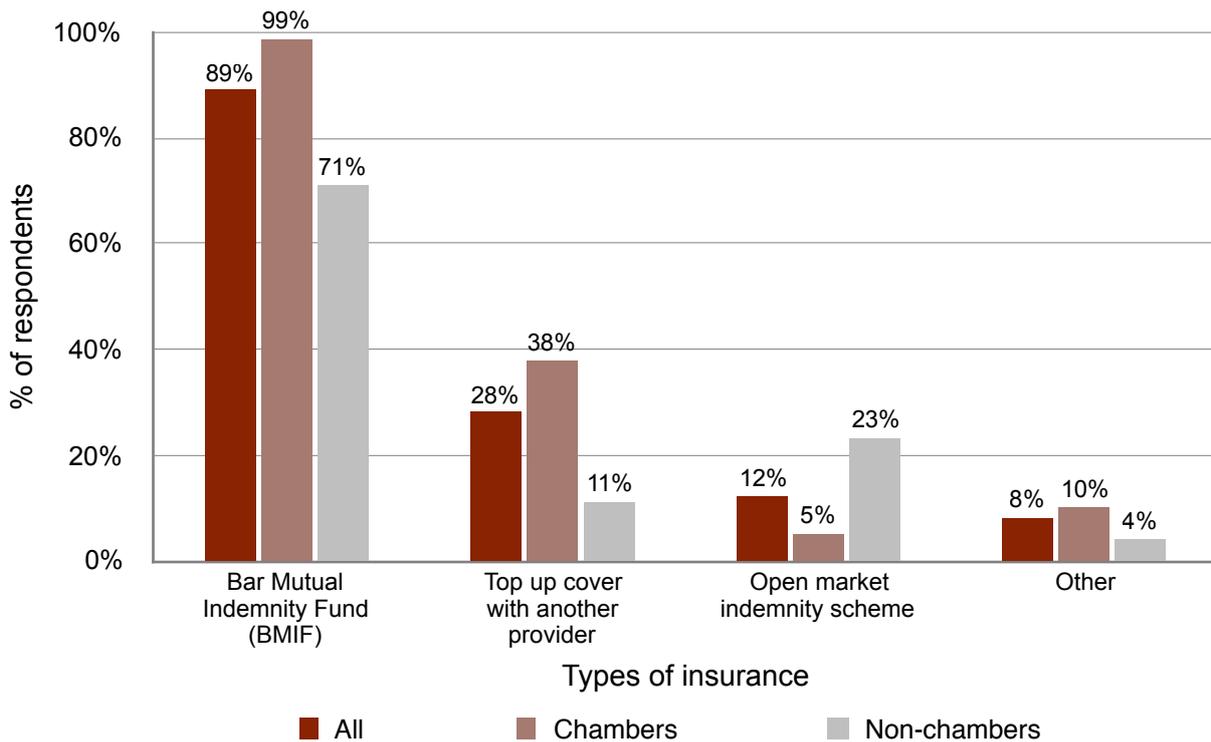
Base: 111

Insurance

4.30. The majority – nearly 90 per cent – of respondents use the Bar Mutual Indemnity Fund (BMIF) (Figure 18). Of these respondents, 99 per cent of members from chambers are insured with BMIF³¹ compared with 71 per cent of respondents from non-chambers. Nearly a quarter of respondents from non-chambers obtain insurance cover through the open market. Members of chambers are more likely to take out top up insurance cover compared with members of non-chambers. It should be taken into account, however, that where respondents are heads of chambers or equivalent, they may not know how many of their members have top up cover.

“Top up cover is an individual matter”
Head of chambers

Figure 18: Types of insurance used



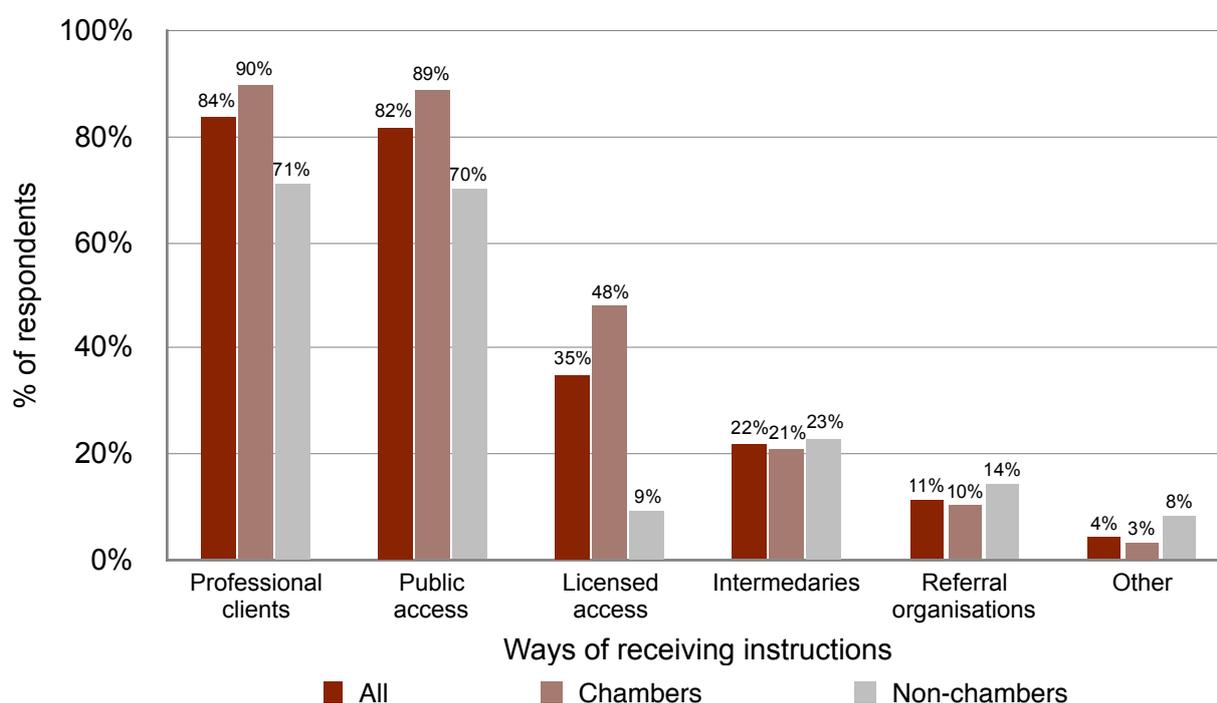
Base: 196

31. Self-employed barristers are required to take out their primary layer of insurance with the BMIF, whereas single-person entities may obtain insurance through the BMIF or open market providing this meets the minimum requirements of the BSB

Receiving instructions

4.31. Survey data show the majority of organisations receive instructions via professional clients and public access. Receiving instructions via professional clients and licensed access is more common among members of chambers than non-chambers respondents. The use of intermediaries, referral organisations and other methods of receiving instruction are marginally more common among non-chambers respondents (Figure 19).

Figure 19: How organisations receive instructions



Base: 188

4.32. Of those using intermediaries and referral organisations (base numbers: 41 and 21), less than a third use them all or most of the time. The types of intermediaries providing respondent organisations with instructions/business, vary widely, including³²:

- Absolute Barrister, a referral based system (8);
- accountants (professional clients) (8)
- solicitors (professional clients) (8);
- claims managers, financial advisors and banks (7);
- surveyors and management consultants (6);

32. The number of respondents that said each option is shown in brackets – the total is 49 responses even though the base number is 41, as the same 8 respondents said accountants as well as solicitors

- charities and organisations working with vulnerable individuals (such as victims of domestic violence) (3);
- international lawyers (2);
- licensing advisors (2);
- legal recruitment agencies (2);
- journalists (2); and
- land agents and planning/environmental consultants (1).

4.33. Referral organisations cited by the 21 respondents using them span³³:

- Citizens Advice, immigration practitioners and law centres (6);
- Charities (5);
- local authorities and trading standards (3);
- on demand legal service providers of large law firms (3);
- professional insurance bodies and legal services intermediaries (2); and
- Mybarrister, a referral based system (2).

4.34. On average, 15 per cent of work undertaken is pro-bono, however around three-quarters of respondents say they carry out pro-bono work occasionally or never. There are 7 respondents that say they carry out pro-bono work all or most of the time. Of these, 3 are chambers, 3 sole practices and 1 a limited company – therefore there are no clear trends as to the type of organisation undertaking the most pro-bono work.

4.35. Approximately 37% of respondents say individual barristers are able to accept instructions to undertake work independently, and just over half (51 per cent) say this is not the case. The remaining 12 per cent did not know.

Marketing

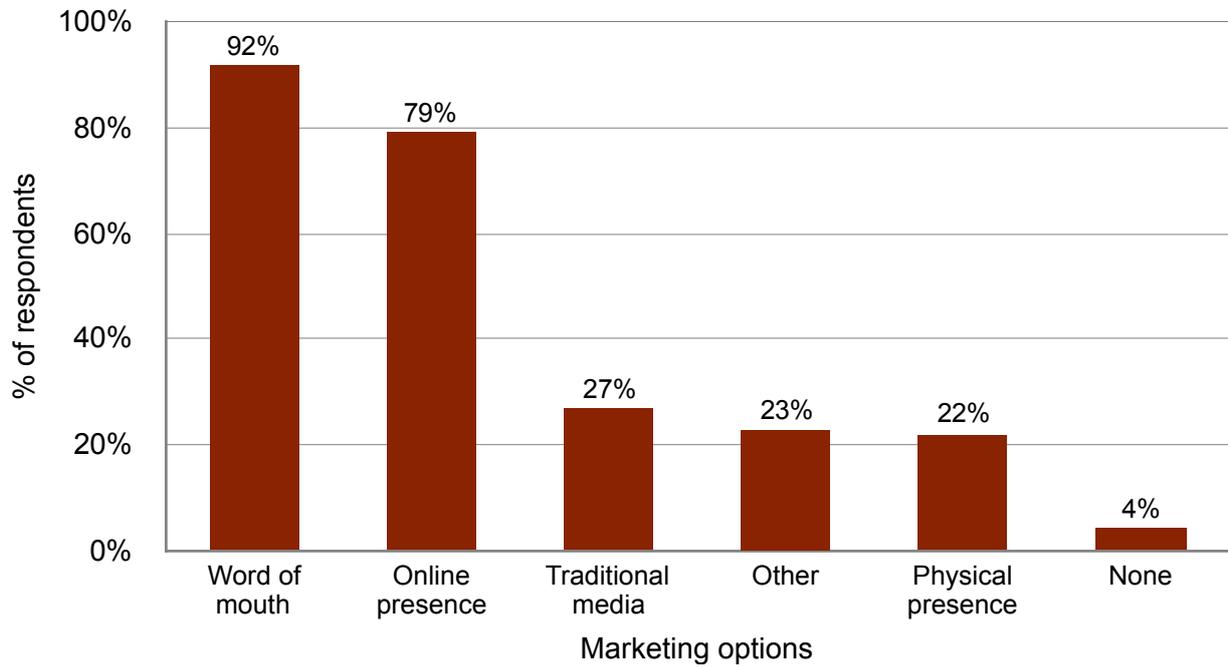
4.36. Nearly all respondents use word of mouth as a marketing option. An online presence of some kind is also prevalent, used by 79 per cent of respondents. Only 4 per cent do not use any marketing at all - all of these respondents are from non-chambers (Figure 20).

4.37. Looking at traditional media used by organisations for marketing, over two-thirds of respondents use articles in the legal press and client brochures. Less than half, however, use articles in the national or local press. TV, radio and other forms of advertising are the least commonly used among respondents (Figure 21).³⁴

33. The number of respondents that said each option is shown in brackets

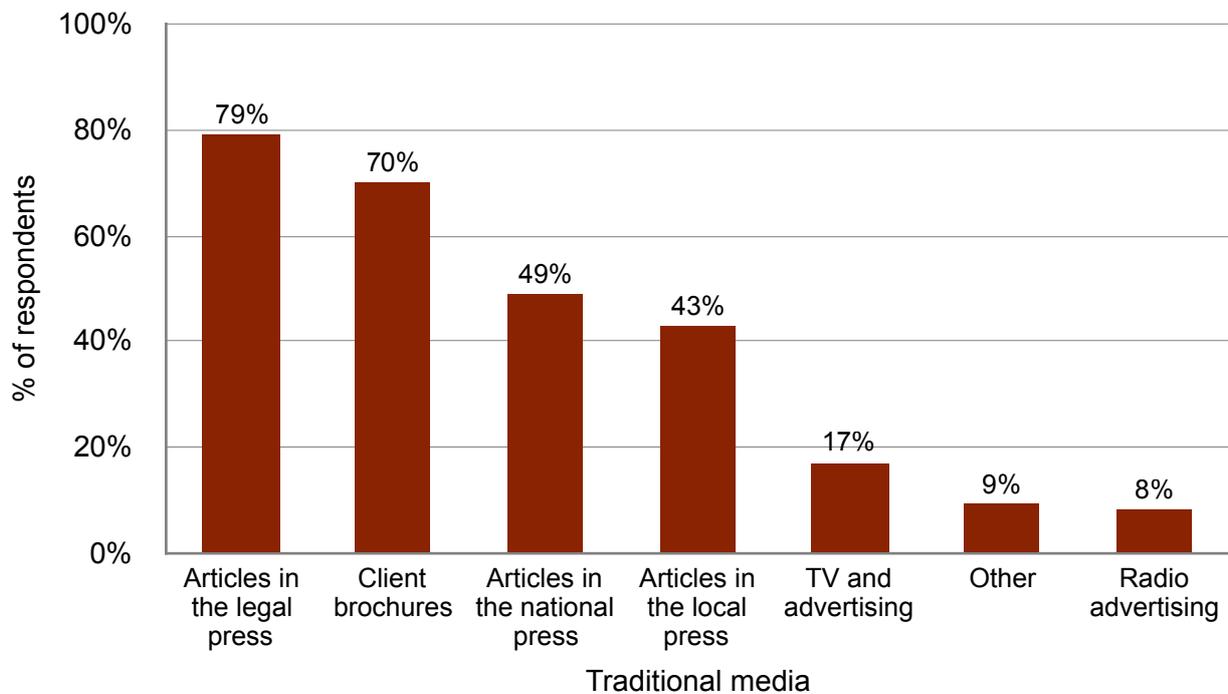
34. This is a further breakdown of data depicted in Figure 21, thus accounting for the lower base number of responses

Figure 20: Marketing options used by organisations



Base: 199

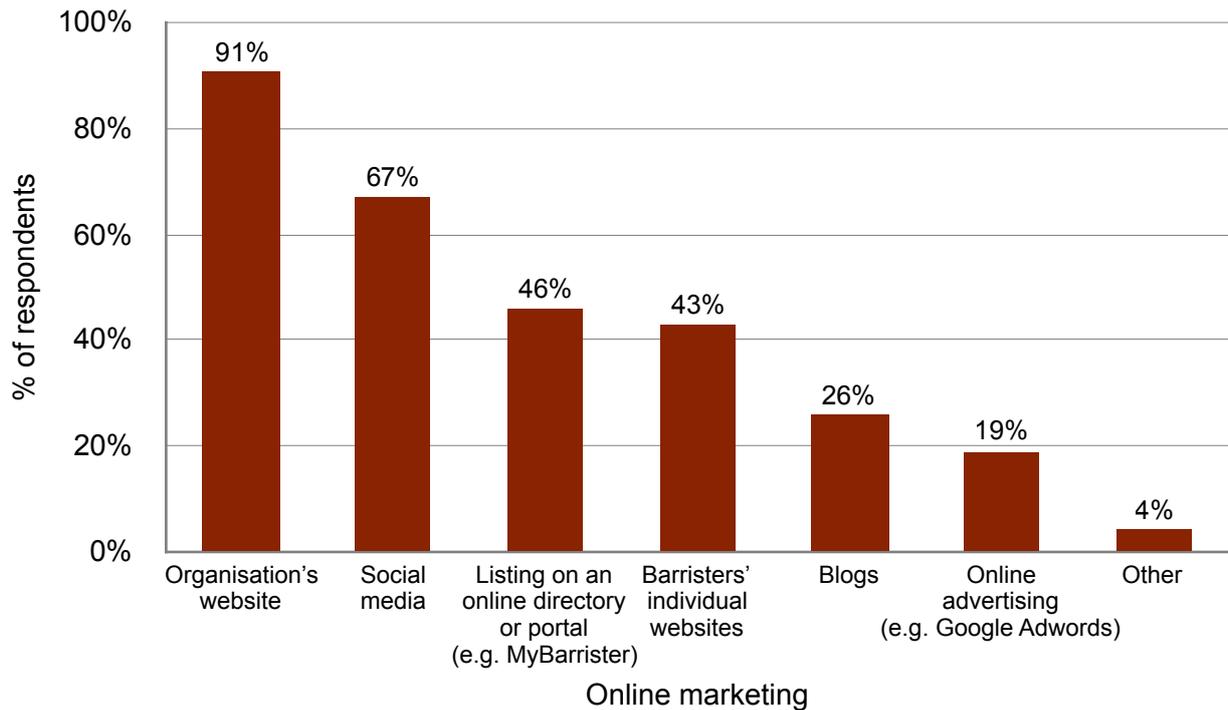
Figure 21: Traditional media used by organisations for marketing



Base: 53

4.38. Over 90 per cent of respondents say they market their services via their organisation's website. Although the majority of barristers are self-employed, 43 per cent market their services via a single website, indicating a greater reliance on an organisational-wide (i.e. chambers) approach (Figure 22).³⁵

Figure 22: Online marketing used by organisations



Base:158

4.39. Just under half of respondents say their organisation is listed under an online portal or directory. Of these, the most commonly mentioned³⁶ were Legal 500 (15), Chambers & Partners (11) and the Direct Access Portal (7). Others mentioned include:

- Legal Hub (3);
- Clerksroom Direct (3);
- Waterlow Legal (2);
- Who's Who in the Law (2);
- Pupillage Gateway (2);
- British Chambers of Commerce (1);

35. This is a further breakdown of data depicted in Figure 21, thus accounting for the lower base number of responses

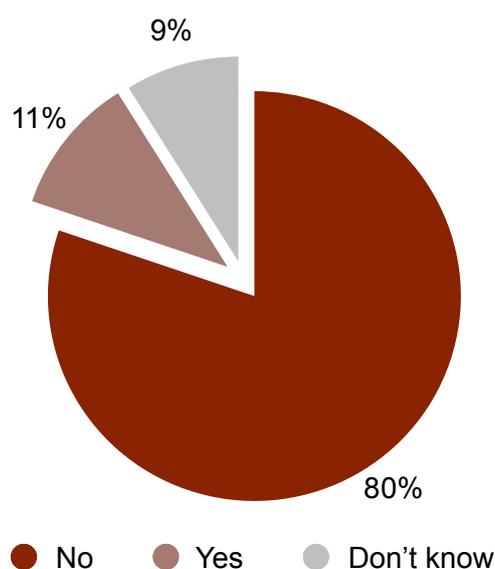
36. Numbers of respondents are shown in brackets next to each option. Please note, although 72 respondents said they/their organisation have a listing on an online directory/portal, only 32 provided details of what these are. Multiple options were cited by some respondents.

- Barrister Web (1); and
- Barrister Magazine (1).

4.40. Where organisations advertise online, Google was the most commonly listed (72 per cent of respondents answering this question). In addition to Chambers & Partners and Legal 500 as mentioned above, three respondents also advertise on Family Law Week.

4.41. Two-thirds of respondents say their organisation uses social media as a marketing tool (Figure 23). LinkedIn and Twitter are the most common: 60 per cent of respondents identified the use of LinkedIn and 58 per cent Twitter. Facebook is used by 28 per cent of respondents. Only 4 per cent use other social media platforms outside of these options.³⁷ Overwhelmingly, the majority of organisations do not pay to advertise on social media, although the reasons for this are unclear (Figure 23).³⁸

Figure 23: Organisations that pay to advertise on social media



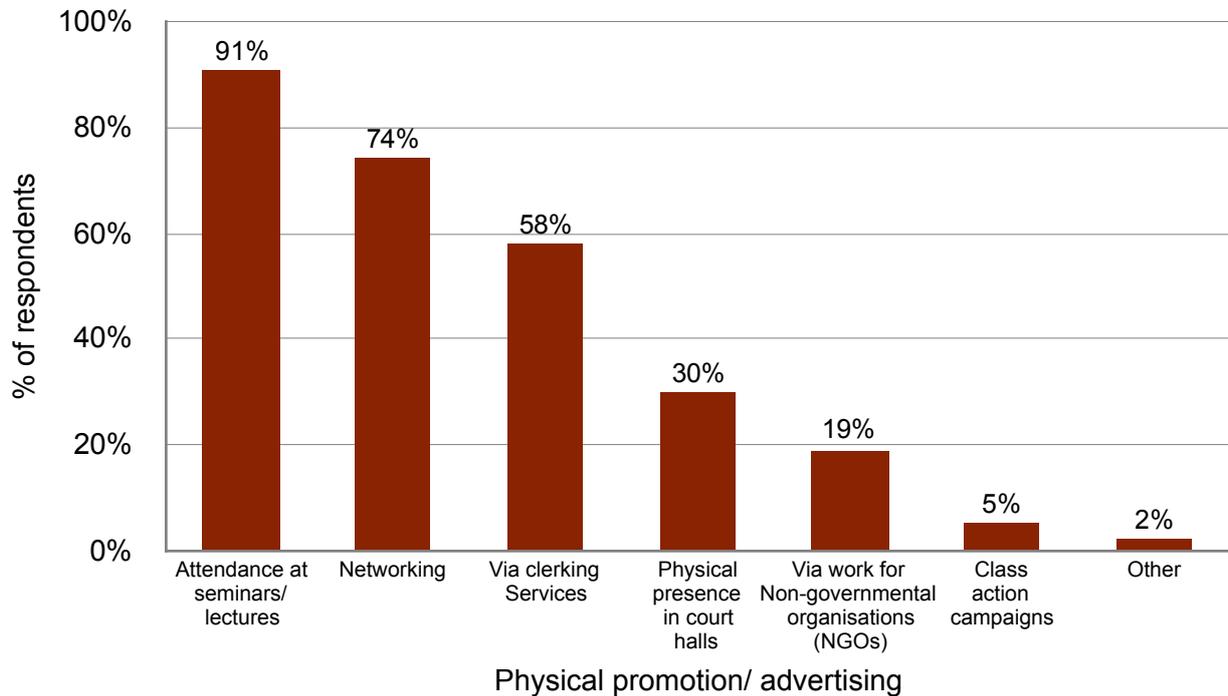
Base: 139

4.42. The most common forms of physical promotion and advertising by respondents are attending seminars/lectures and networking events. Over half use clerking services to promote/advertise their organisations. The majority of organisations do not use working for NGOs or class action campaigns as a means of promotion (Figure 24).³⁹

37. The 4% of respondents identified two other options: Google + and YouTube

38. This is a further breakdown of data depicted in Figure 22, thus accounting for the lower base number of responses

39. This is a further breakdown of data depicted in Figure 20, thus accounting for the lower base number of responses

Figure 24: Physical forms of marketing

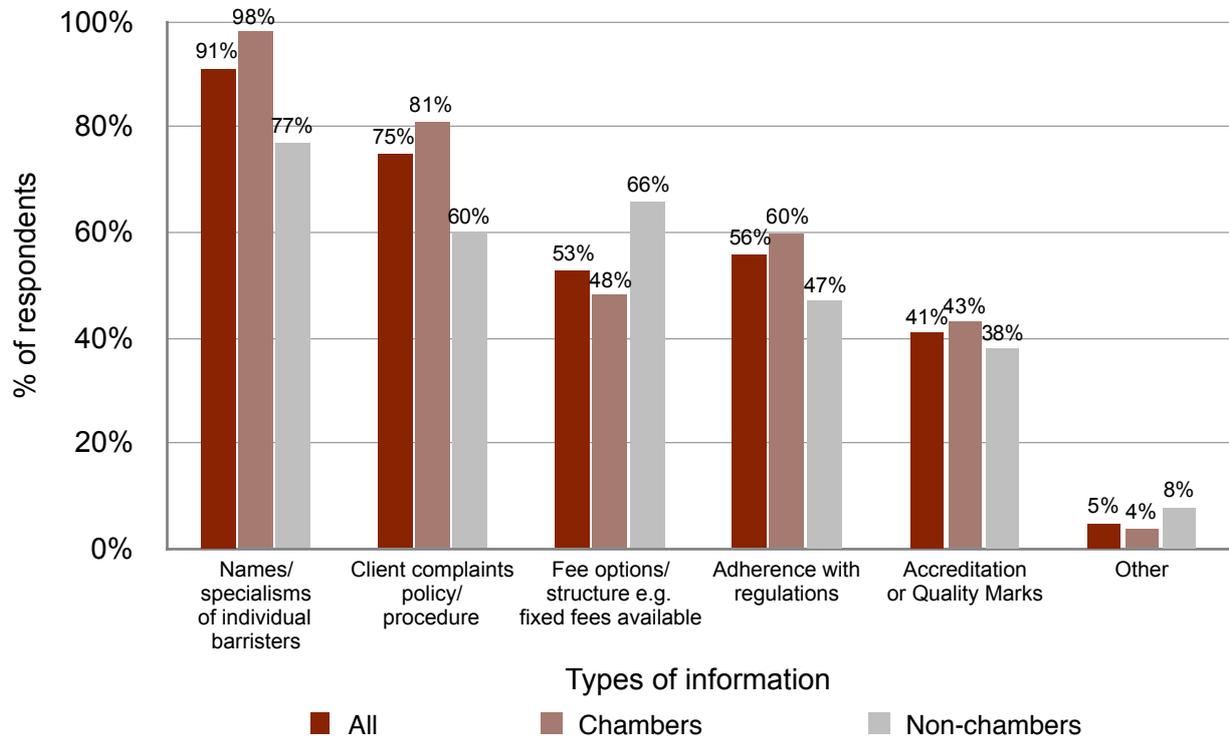
Base: 43

Marketing materials and spend

4.43. There are notable differences between the information included by respondents from chambers and non-chambers in marketing materials. Nearly all chambers respondents say they include names/specialisms of individual barristers compared with 77 per cent of non-chambers respondents. A higher proportion of chambers respondents (81 per cent) compared to those from non-chambers (61 per cent) include details of their complaints policy. Notably, less than half of all chambers respondents (48 per cent) include details of their fee options/structures, compared with two-thirds of non-chambers respondents that do (Figure 25).

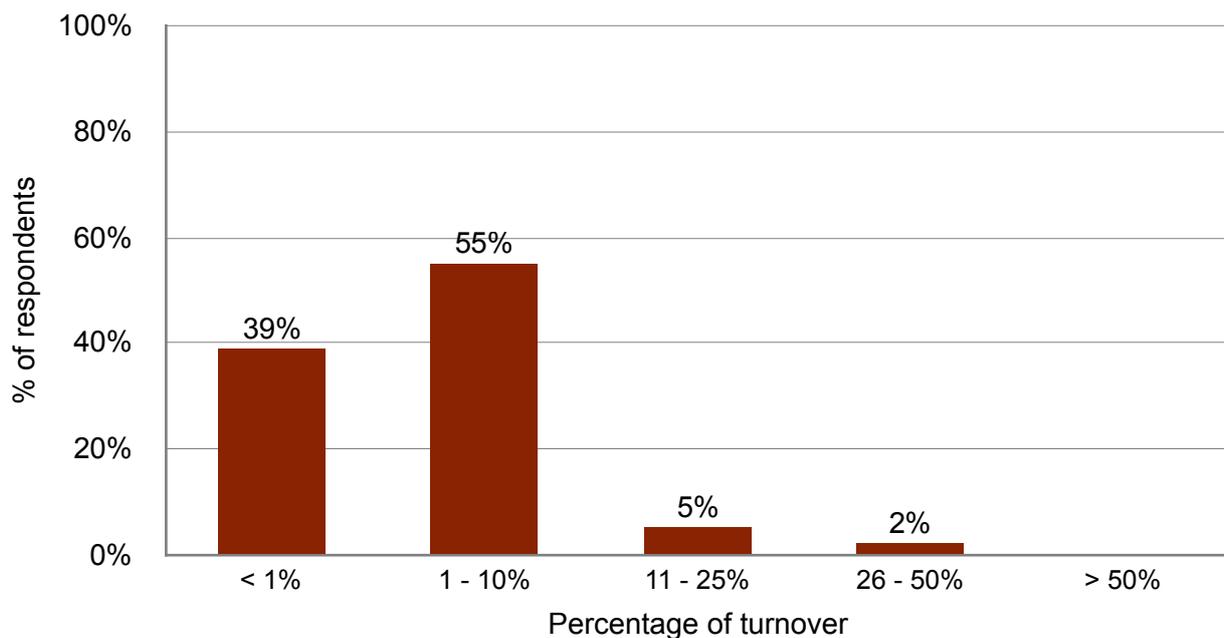
4.44. Overall spend on marketing and advertising by organisations is low, with only 7 per cent of respondents spending over 10 per cent of their turnover. Over a third of organisations are spending less than 1 per cent (Figure 26).

Figure 25: Information included in marketing materials



Base: 174

Figure 26: Approximate percentage of organisations' turnover spent on marketing and advertising



Base: 179

Fees

4.45. Different fee structures that may be used by the Bar are summarised in Table 1:

Table 1: Different fee structures that may be used by the Bar

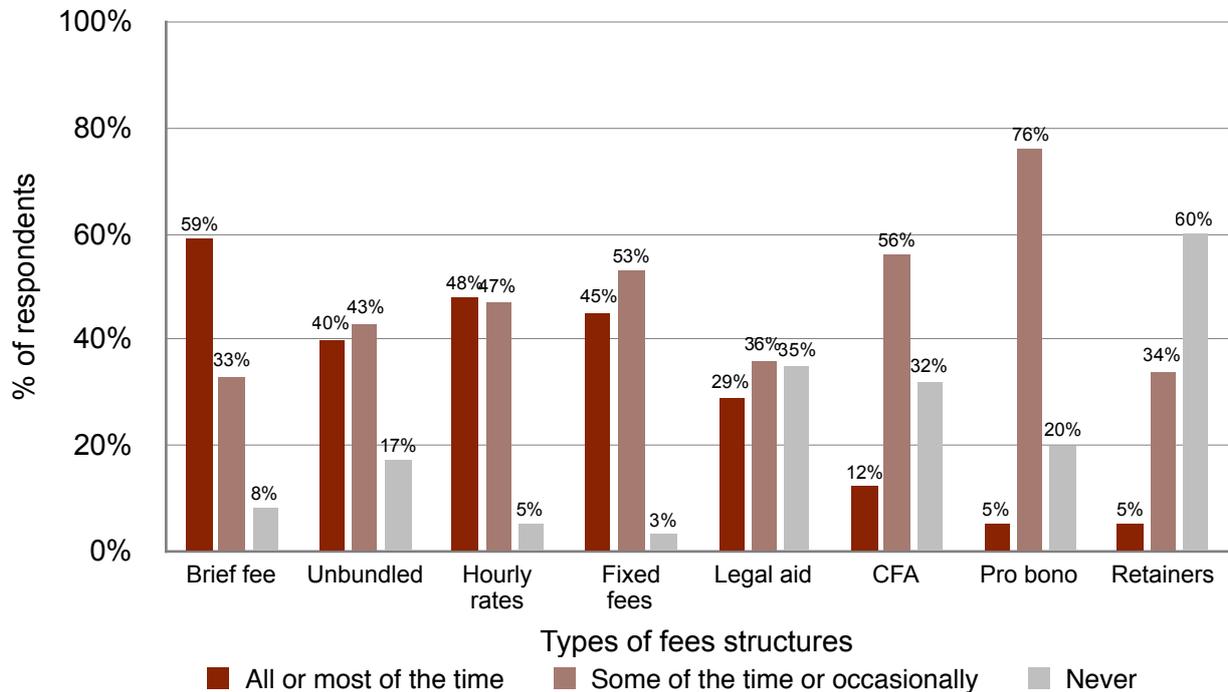
Fee structure	Description
Brief fee	Usually includes the fee for trial preparation, pre-trial conference where needed and the fee for time in court. ⁴⁰
Unbundled	Clients pay for aspects of the legal services undertaken by a barrister; it is possible the barrister may not undertake all aspects of the case and charges only for the work done.
Hourly rate	Calculated based on the nature and complexity of the case - clients pay for the time incurred by the barrister.
Fixed fee	Calculated based on the nature and complexity of the case – clients pay one fixed fee regardless of the time incurred by the barrister.
Legal aid	Legal services are funded (wholly or partly) by the Government to those unable to afford legal representation.
Conditional Fee Agreement (CFA)	Part or all of the barrister fee is only payable by the client in the event of success in the case.
Pro bono	Work is undertaken without charge i.e. no fee is payable.
Retainers	Clients may pay a fixed fee to retain a barrister to undertake all their barrister legal services over a set period of time.

4.46. Over half of all respondents will use a brief fee all or most of the time. Over a third will use unbundled, hourly rate or a fixed fee most or all of the time. Conversely, over a third never use Legal Aid or a conditional fee agreement, and nearly two-thirds never use a retainer. Over half undertake pro-bono occasionally (Figure 27).

4.47. Around 70 per cent of non-chambers respondents never use legal aid, compared with 20 per cent of chambers respondents who never do. Nearly 70 per cent of non-chambers never use a conditional fee agreement, compared with 48 per cent of chambers (Figure 27).

40. Refresher fees can also be required for longer cases, and are calculated based on the costs and time of subsequent days spent in court

Figure 27: How frequently organisations use different fee structures



Base: 143-183

4.48. When asked to provide information about any other payment structures currently used by their organisations, responses span:

- daily rates (3 respondents);
- graduated fee structure (2 respondents);
- client-imposed tariffs that involve fixed and hourly rates for different types of work within a single case (1 respondent); and
- staged payments (1 respondent).

5 Potential for future change

Key findings

- There are opportunities for market growth and to address unmet client need for legal services, but this in itself does not necessarily equate to a need for a new approach to delivering legal services.
- The majority of respondents do not anticipate any significant change to their approach to delivery in the next five years. Of those that do expect changes, these predominantly relate to: outsourcing, greater use of technology (and a gradual transition to more virtual approaches to support delivery) and changes to fee structures. Few expect radical change to governance structures.
- A higher proportion of non-chambers respondents anticipate outsourcing paralegal activities and practice management, compared with those from chambers. Those less likely to do so - predominantly chambers respondents - say they are disinclined to outsource in this way because of the risks to data security, the threat of cybercrime, and reduced control over quality and adherence to regulations.
- Responses suggest that there will be a transition towards more virtual means of working to support delivery of legal services, notably greater use of technology such as online document storage/transfer and virtual meetings. Respondents taking part in depth interviews say there is a risk of cybercrime, and the potential cost of IT systems and upkeep could prove significant. Respondents also point to the risk of 'disconnect' for the barrister-client relationship.
- Respondents predict a higher demand for fixed fees, prompted partly because of the expectation that public access work will increase. They say the main risk to the barrister is that of undervaluing the work; clients may find it difficult to accurately assess whether they get value for money due to limited knowledge of the legal work taking place. It should be noted that it could be the case that clients find it easier to budget and to make comparisons between providers who are offering fixed fees.⁴¹
- Very few respondents expect to significantly increase their marketing budget or change their marketing strategy even though it may be necessary to do so to attract a new type of client via the public access scheme.

41. This is the speculative conclusion of the researchers and was not stated by respondents

- The pace of change is expected to be slow, with more change in the longer rather than shorter term. There are examples of approaches to delivery significantly different from the traditional structure⁴², but these are isolated examples rather than a range of 'new' delivery models as such.
- These new approaches share some similar attributes e.g. more likely to offer fixed fees or payment plans; more flexible and agile governance structure; and greater use of technology. However this does not mean that traditional structures could not or would not adopt similar approaches.
- Some future structures may have the potential to be significantly 'disruptive'⁴³ from the perspective of barristers operating within the traditional model. This kind of change is likely to be client-led.⁴⁴

Opportunities for future change in the legal services market

- 5.1. Respondents taking part in the consultation workshop and in-depth interviews identified a number of opportunities for future change in the legal services market. Respondents say the opportunity for 'in-house work' may be a growing part of the UK legal market within organisations outside of the legal sector. In the USA, many mid-market legal services firms are in-house, whilst other organisations are established solely to advise in-house teams. This can be highly lucrative work.
- 5.2. Qualitative evidence suggests the local authority (LA) market may also offer opportunities for growth. Known to be extensive users of legal services, some LAs employ in-house barristers and are familiar with using the Bar. Kent County Council has its own ABS whereby it can now offer legal services to other LAs, and this service has grown rapidly - employing around 250 solicitors. They also employ in-house barristers, although the research was unable to ascertain the number employed.
- 5.3. Respondents say market expansion could also involve chambers employing a team of paralegals who deal with public access work to the extent permitted within the regulations.
- 5.4. Respondents also say solicitors as members of entities or of chambers could also undertaking legal services typically provided by solicitors via the Bar model. This would be permissible via the BSB regulation of entities. There is no strong evidence from the survey to suggest this is likely to happen in the immediate future.

42. The traditional model means that barristers are considered self-employed, but share an office building (e.g. chambers). Each barrister pays a fee, as per their tenancy. This fee goes towards the costs of the overheads as well as towards clerking services. In this sense, they are represented as a collective, but are also independent.

43. Disruptive is a term defined in the mid-1990s as an approach that creates a new market and value network, disrupting and potentially displacing established market leading firms, products and alliances.

44. This may be further underpinned by actions recommended by the CMA seeking to enable consumers to be well-informed about the legal sector underpinning increased competitive pressure to offer better quality and services and lower prices for consumers [Competition and Markets Authority (CMA) (2016) Legal services market study]

- 5.5. Participants of the consultation workshop say there is an opportunity for accountants to move into the legal sector; they are experienced in delivering professional services to clients, with structures that facilitate cross-delivery and cross-selling.

“Of all the potential ABSs, this is the one that makes most sense - barristers, solicitors and accountants working together, within a commercial environment.”

Workshop participant

Barriers to change

- 5.6. Workshop participants suggest that new models in the past that have come and gone have contributed to a nervousness of “getting it wrong” within the culture of the Bar. They suggest that where change has failed previously, organisations may react to this by becoming more risk averse and resistant to change.

- 5.7. There is a general consensus among respondents that the more experienced barristers would not recognise a need to change from their existing structure, as this serves them and, as they see it, their clients, effectively. It seems that providing an environment in which change can happen, may not lead to significant change in practice, as most simply do not see any need to do so, and indeed there is no evidence from this research that suggests a strong need for the traditional model to change.

“Many barristers simply do not want to change. It will take something very compelling to make them change”

Workshop participant

- 5.8. Evidence obtained from depth interviews also states the traditional structure is sufficiently agile to respond to changing consumer needs.

“I very strongly believe that the current [traditional] structure is sustainable as a model in the future”

Barrister, Chambers

“The traditional model is flexible”

Senior clerk

- 5.9. Some respondents believe that more recently qualified barristers could be more receptive to changing approaches to delivery, compared with more experienced barristers.

5.10. The evidence suggests the preference for retaining traditional structures is linked to the question of conflicts. There is a significant concern about changing structures which could create the risk of conflict – i.e. two barristers working against each other within the same business – whereas the traditional structure of self-employed barristers working independently but within the same chambers is designed to be able to deal with this.

“For three out of four cases that come into our set, we are on both sides. This is the one thing that puts people off changing structures - it put our set off”

Workshop participant

5.11. Furthermore respondents say changing structures and/or modes of delivery could have an impact on costs, notably insurance such as professional indemnity. Changing client expectations coupled with technological drivers may even prompt a need for a dedicated cybercrime insurance policy.

5.12. The evidence suggests costs may be higher for alternative models to deliver barrister services. The traditional structure can benefit from relatively low overheads, although the level of income is unpredictable and less secure than some of the newer models, or compared to being an employed barrister. However to establish a structure such as a full service model requires a large number of clients to be profitable, and set up costs to invest can be high. A key consideration is finding the initial capital.

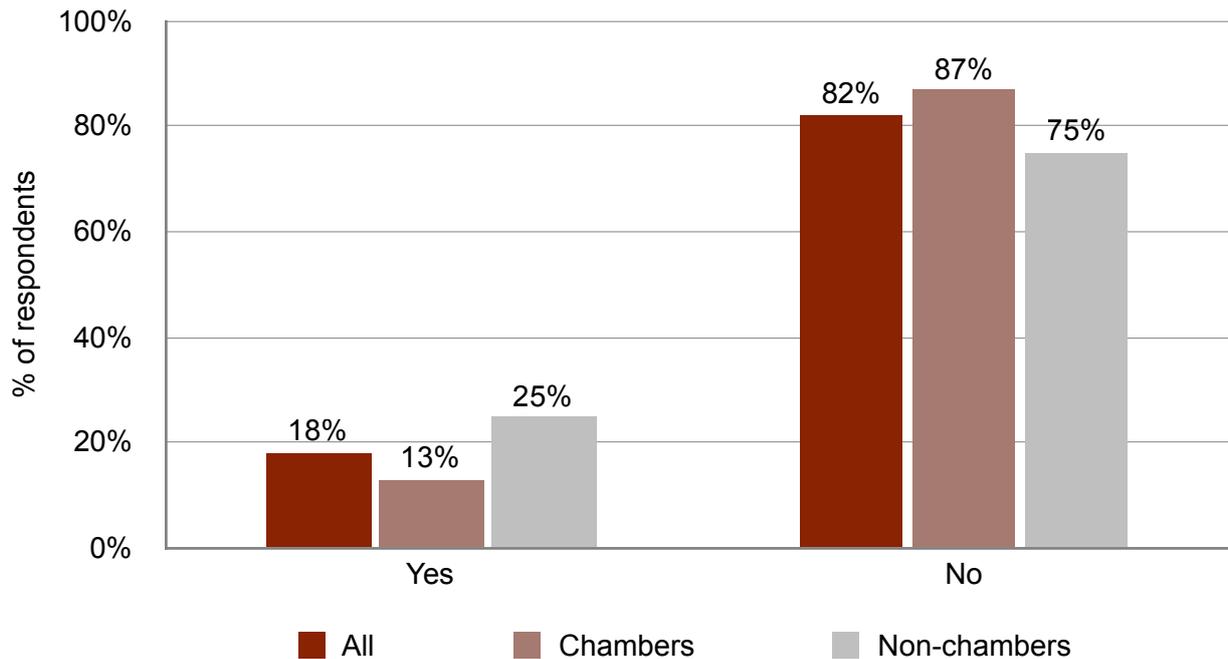
What is likely to change?

5.13. To date, the pace and extent of change has been limited. For example, there were only 65 BSB-authorized entities at the time of writing and 59 when fieldwork took place. It is unclear when the “tipping point” of more significant change might be - if indeed at all - but this is not expected in the short-term (i.e. next 1-3 years). This is strongly supported by survey data as discussed in the following sections.

Changes anticipated to working arrangements and governance

5.14. A higher proportion of non-chambers respondents anticipate changes to their working arrangements in the next five years (25 per cent) compared with chambers respondents that do (13 per cent) (Figure 28).

Figure 28: Do respondents plan to change their working arrangements in the next five years?



Base: 197

5.15. The main changes anticipated relate to:

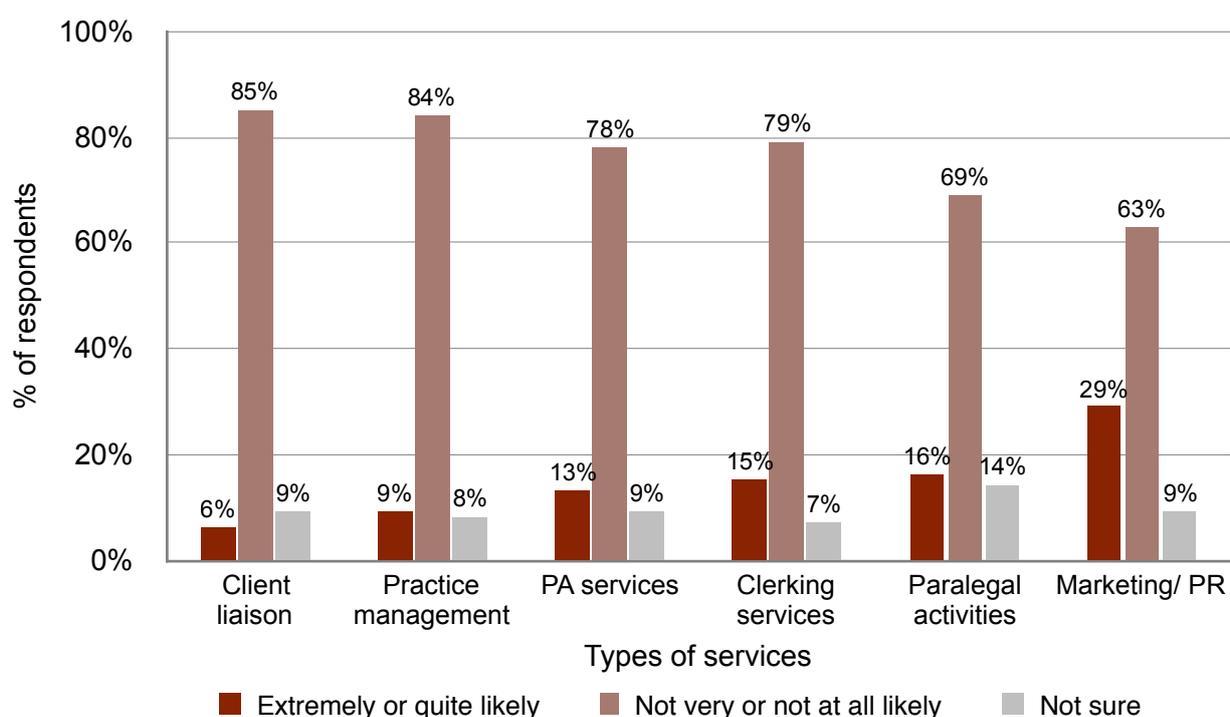
- increasing the number of staff;
- more remote working and a reduction in fixed office space; and
- more efficient use of space and resources e.g. increasing desk-sharing and hot-desking, merging with other organisations (which could include a set of chambers) to share premises.

5.16. Only 7 per cent of respondents plan to change their governance structure over the next five years (base number of responses: 197). Of these, some are exploring the prospect of greater involvement of senior non-authorized individuals in decision-making processes. One respondent is considering “outside ownership and involvement of Non-Executive Directors”. Several respondents are looking into “the possibility of creating an ABS to operate in conjunction with chambers”, but are unsure what this would mean in practice for governance.

Changes anticipated in outsourcing

- 5.17. Nearly 30% of respondents say it is very or quite likely that they will outsource marketing/PR over the next five years. It seems less likely that other services will be outsourced in large volumes (Figure 29).
- 5.18. A higher proportion of non-chambers respondents expect to outsource paralegal activities than chambers respondents (24 per cent compared with 11 per cent). Around 15 per cent of non-chambers respondents say they will outsource practice management, compared with 5 per cent of chambers respondents. The main benefit is perceived to be more seamless delivery and the ability to offer longer service hours for clients.
- 5.19. Qualitative evidence shows respondents that do not expect to outsource services say this is because of a lack of control, particularly in relation to quality assurance and monitoring service delivery. They also believe outsourcing presents a risk to confidentiality and information security issues. Performing checks on businesses to ensure that they work to the required standards is viewed as time-consuming and an unwanted additional responsibility. There is a critical difference for barristers between outsourcing of legal services e.g. tasks that could be performed by paralegals, and operational aspects such as fee collection. The former is viewed as higher risk.

Figure 29: Likelihood of outsourcing services over the next five years



Base: 180-188

5.20. A minority of respondents (7, all from non-chambers) say they expect to give other responsibilities to their clerks instead.

“I can only see it [outsourcing] as a risk. If you have outsourcing, you have to check the business, find out if the file servers are in the jurisdiction of the courts etc. I think the future is to insource, not outsource. It’s about utilising the talent of clerks. They can prep trial bundles and take witness statements etc. They can also sell services and source work”

Barrister, Alternative Business Structure

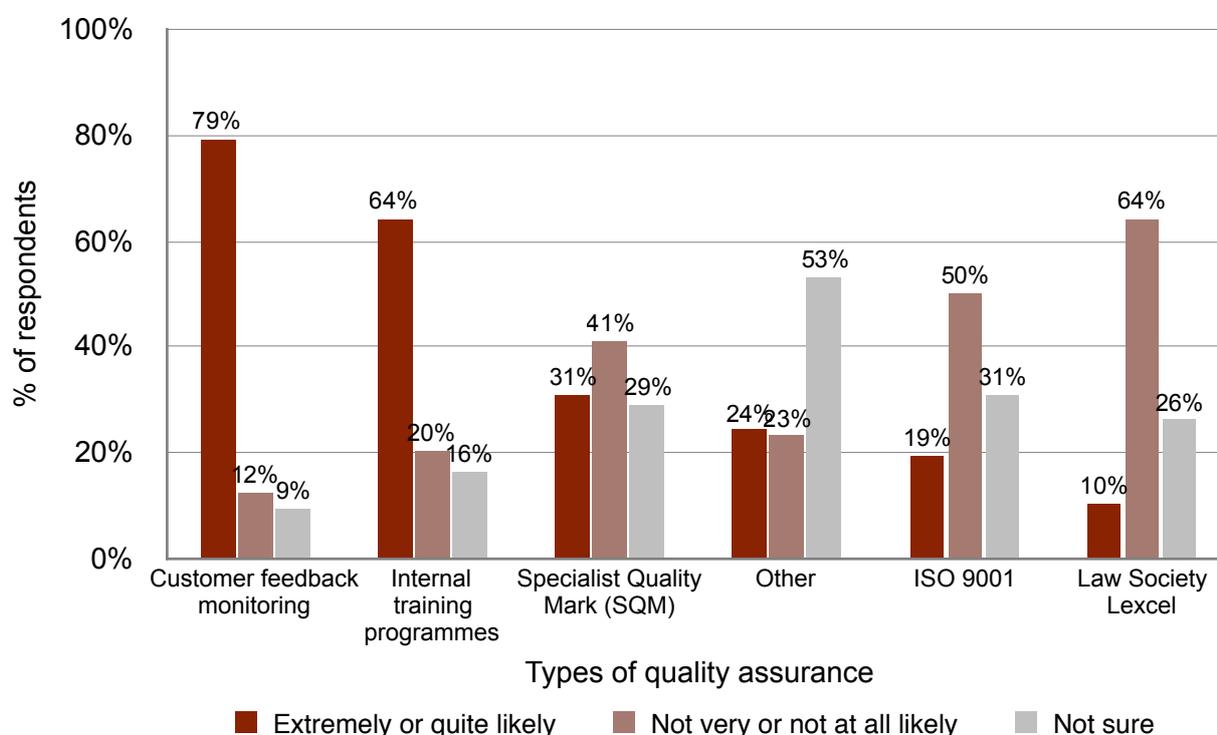
Changes anticipated to quality assurance

5.21. The majority of respondents (79 per cent) expect to use customer feedback monitoring as the means of quality assurance in the next five years – similar to the current situation (85 per cent currently using this).⁴⁵

5.22. For most survey respondents an increase in the use of quality assurance tools is expected. Nearly a fifth of respondents expect to use ISO 9001 – an increase as currently only 6 per cent of respondents are using this. There is also an increase anticipated in the use of Specialist Quality Marks (SQM) – 31 per cent of respondents say it is extremely or quite likely they will use these in the next five years compared with 10 per cent currently using them. Currently 3 per cent of respondents say they use Law Society Lexcel – 10 per cent of respondents say it is extremely or quite likely they will use this in the next five years (Figure 30).

45. Current use of quality assurance tools is shown in Figure 16

Figure 30: Likelihood of using quality assurances tools in the next five years



Base: 104-178

Changes anticipated in client communications and the use of technology

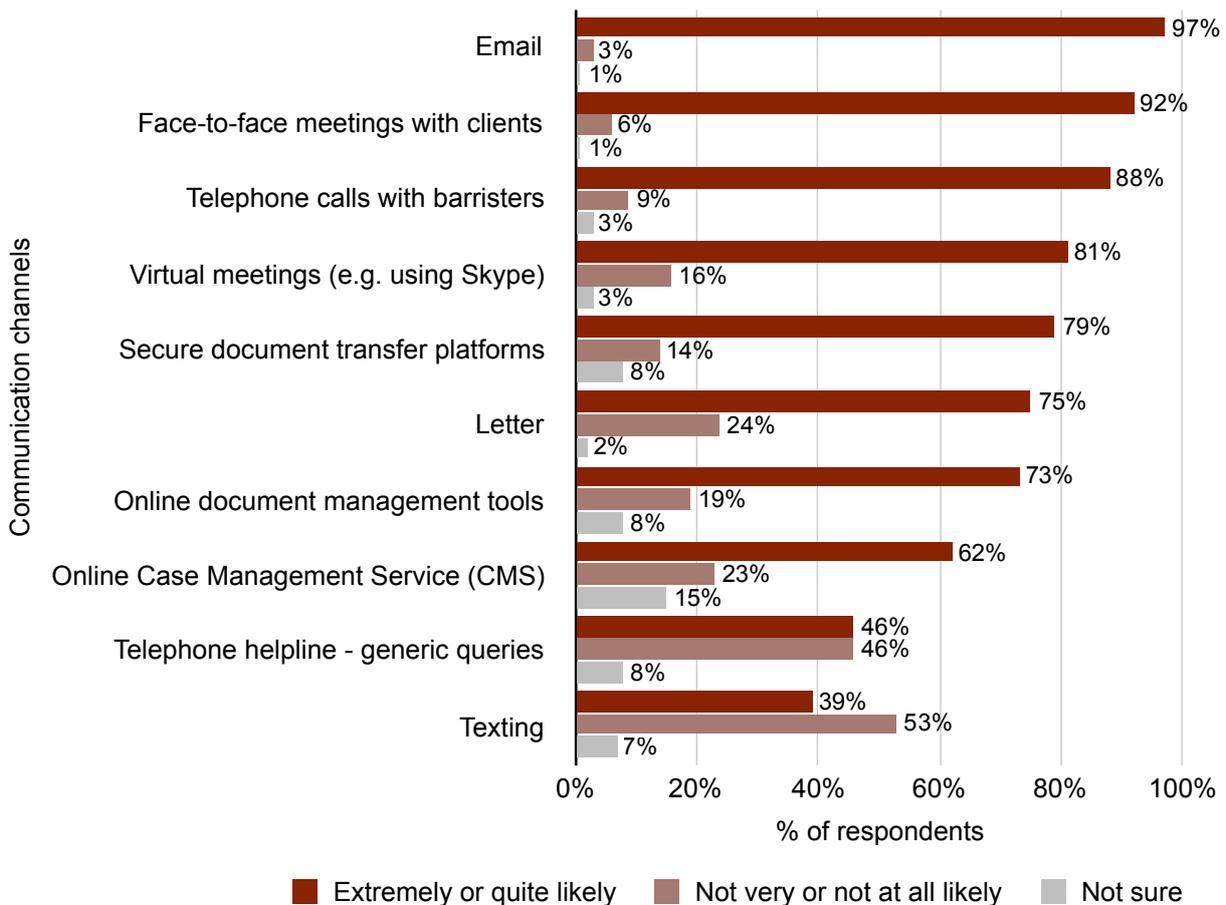
5.23. Respondents expect communications with clients to continue making use of technology including 'virtual' facilitation of service delivery. Around 80 per cent of respondents say it is extremely or quite likely they will hold virtual meetings (Figure 31), compared with 82 per cent who currently do either most or some of the time.⁴⁶ Technology such as FaceTime or Skype (or others) will be used to hold meetings, as well as SharePoint, Dropbox and other cloud-based programmes for document transfer and storage. Texting as a form of technology to communicate with clients may decline – currently 60 per cent of respondents text clients (Figure 15) but 39 per cent expect to use this in the next five years (Figure 31).

5.24. Email and face-to-face meetings with clients will continue to be used regularly – over 90 per cent of respondents say it is extremely or quite likely they will use these in the future (Figure 31), whilst 99 per cent of respondents say they currently use these (Figure 15).

46. Current use of ways of communicating with clients is shown in Figure 15

5.25. Nearly three-quarters of respondents expect to use online document management (Figure 31) which suggests an increase in the future – 54 per cent of respondents are currently using this (Figure 15). Nearly 80 per cent expect to use secure document transfer platforms (Figure 31), with 81 per cent currently using them.

Figure 31: Likelihood of using channels of client communication in the next five years



5.26. Nearly all respondents taking part in depth interviews say technology facilitates barristers working remotely, which is an advantage. Working remotely can be viewed as a cost-saving measure as it means avoiding paying for desk-space.

5.27. Respondents participating in depth interviews say there is a risk of increased use of technology and remote working in the form of client “disconnect” – a loss of “eye-to-eye contact” that can prevent the barrister from building a relationship with the client. Similarly, there is the risk of barristers feeling disconnected from their chambers. However the use of video conferencing technology (not currently used by the majority according to survey data) can help to minimise this risk.

5.28. Other key risks identified include:

- security of data/the risk of hacking; and
- the cost of IT maintenance.

“Many barristers in our chambers work remotely. They may be in court all day and not come in to the office. Remote working is basic technology. The risk is that people become disconnected from the centre – they may question the need to belong to the chambers. So you have to create links like Skype for Business in order to connect effectively”

Barrister, Chambers

“I think that virtual working is the way it’s going to go – it takes down the cost of legal services and encourages collaboration...The challenges are keeping the face-to-face element – which you can’t beat. It hinders the training and experience of new barristers. It also hinders client care – how do you build up a relationship with someone you don’t meet?”

Barrister, Limited company

Changes anticipated to marketing strategies

5.29. Partly because they expect public access work to increase, respondents participating in depth interviews say that barristers need to improve their accessibility in order to market themselves more effectively to this audience.

5.30. A critical success factor will be clarifying to the public exactly what it is the Bar does, as well as a perceived need to “package barrister services and present them in a way that shows added value to commercial clients”. Steps towards increasing accessibility are already in place: web-pages, for example, allow potential clients to read up on individual barristers. Social media and the use of blogs are similarly being used to break down the ‘barrier’ between the client and the Bar.

5.31. The evidence suggests barristers need to direct more attention to marketing themselves, and can no longer rely on a clerk to drive that aspect; engaging in social media, having a clear website, and attending talks are all aspects of these. There are, however, some concerns regarding an increased expenditure in advertising in order to market to the public. Few survey respondents expect to increase the proportion of turnover they currently spend on marketing in the next five years.

“We can’t predict what the impacts will be. We don’t know what the costs could be, given that advertising would need to be continuous. I can see sets spending a fortune without knowing what the outcome would be”.

Senior clerk, Chambers

Changes anticipated to receiving instructions

- 5.32. Only 8 per cent of respondents expect to change how they receive instructions over the next five years (base number of responses: 193).
- 5.33. Predominantly the change expected is more direct, or more online instructions. Respondents expect public access work to increase, even though some believe that there should be concerns that barristers are not able to meet the demands (notably in managing client expectations and case management skills).

Changes anticipated to fee structures

- 5.34. Only 5 per cent of respondents anticipate a change to their fee structures over the next five years (base number of responses: 192). Respondents recognise a growing demand for fixed fees, but acknowledge the challenges of this. There is pressure to provide clients with a professional service without cutting corners. As a result, many of the interviewees recognise that barristers working under a fixed fee model risk underestimating how long a case will take.
- 5.35. Most of the respondents participating in depth interviews believe barristers are not as experienced as solicitors in relation to accurately valuing and thus pricing their cases. This can put the barrister at risk of underselling. None of the respondents consider that this creates or increases the risk of overselling.

“Barristers underprice work and spend more time on cases than they declare”
CEO, Chambers

“Most barristers are operating on a fixed fee model where they underestimate how long the case will take”
Senior clerk

- 5.36. Respondents believe there is a risk that clients do not know if they get value for money as they may not have a clear understanding of legal processes and what their barrister should be doing for the fees being charged.

6 New delivery models identified

Examples of new models being used by barristers to deliver legal services

- 6.1. Evidence suggests that most barristers appear to retain the ‘traditional’ delivery model – indeed this works very well from the perspective of many respondents. Initial desk-based research supplemented by feedback from the consultation workshop identified a range of models that differ from the norm; although the term ‘model’ is used here – it should be noted that many of these examples may in fact only refer to one organisation. It would therefore be misleading to assume that these examples are in fact delivery models per se, if only a very small number of organisations are adopting this. These ‘models’ are shown in Table 2.

Table 2: Features of delivery “models” used by barristers to deliver legal services⁴⁷

Delivery “model” features⁴⁸	Details
Traditional	Barristers are considered self-employed, but share office space and support structures (e.g. chambers). Each barrister pays a fee, as per their tenancy. This fee goes towards the costs of the overheads as well as towards clerking services. In this sense, they are represented as a collective, but are also independent.
“One-stop-shop”	Range of legal services offered in one place, stemming from partnerships between different kinds of professionals. An integrated approach with minimum overheads.
“Barrister-solicitor” model	The two sides of the profession work together in the same firm or some other structure.
“Barrister-owned” model	Employs paralegals to support barristers undertaking public access or litigation work.

47. It should be noted that these are not mutually exclusive

48. Not presented in any particular order

“Chambers-entity” model	Chambers becomes a corporate vehicle umbrella for collective ownership and formal governance structures.
Direct access	As a result of changes in 2004 to the Bar Council’s Code of Conduct, clients can now directly instruct barristers without needing to go via a third party, typically a solicitor.
“Corporate vehicle” model	Aimed solely at corporate clients operating under direct access principles, creating a new corporate vehicle.
“Specialist”	A team of barristers specialising in one area of law also share organisational responsibilities, including for regulatory compliance, finances and marketing.
“Re-structured Chambers”	Can vary from alternative contribution models (e.g. the more barristers earn the lower the percentage they pay for contribution costs); to individual business units within Chambers each with its own business plan and budget.
ProcureCo	Developed by the Bar Council, allows barristers to secure work directly, whilst mostly preserving the traditional Chamber model. The model allows for a corporate vehicle to amalgamate with Chambers and procure business. Thought to be in limited use.
“Flexible” freelance/ consultancy model	Barristers working under the banner of a limited company regulated by the BSB able then to work flexibly, for example on a freelance or consultancy basis for firms.
Digital hub Chambers	Retains the chamber structure, but discards large, traditional offices. Smaller offices are used as hubs, in conjunction with secure virtual office software.
Web-based Chambers	Entirely virtual with some examples of planned use of ‘virtual assistants’.
Barrister-led Alternative Business Structure	Barristers regulated by the BSB practising from Chambers regulated by the BSB (from April 2017) or by the Solicitors Regulation Authority (SRA). Examples include: ABS established specifically for international work; ABS ‘attached’ to current Chambers; and ABS operating on a profit share model.

Receiving instructions

“Brokerage”	Alternative approach to receiving instructions - an organisation acts as the middleman to facilitate linking barristers with clients.
“Match-making”	A platform that is typically online, to match barristers with clients. This may be achieved through would-be clients submitting a short summary of their requirements, with barristers invited to tender or provide a quote.

6.2. Examples of alternative models used by barristers to deliver legal services

- **Riverview Law** offers fixed fee commercial law services. It has both a solicitor and barrister division, meaning that companies can fully outsource their legal work and gain direct access to barristers.⁴⁹ Riverview is also introducing ‘virtual assistants’. This means that they are using artificial technology to automate their services. Riverview have said that they aim to use this technology to improve processes, increase access to advice and create smarter systems that pre-empt needs and improve the current legal system.⁵⁰
- **Clerksroom Direct** is an online chambers, comprising of 80 barristers from across England and Wales. Its focus is on technology. It uses an online portal, which solicitors use to find the appropriate barrister. This means that barristers do not have to physically work out of one single location.⁵¹ It also has a public access wing, where members of the public can ask for hourly or fixed fee payment options. The public access wing does not restrict itself to the 80 barristers belonging to the chambers; it has around 1000 barristers from various chambers all signed up to advertise their service.⁵²
- **Outer Temple Chambers** has adopted a re-structured Chambers model. The amount of contribution its barristers pay depends on the amount they earn. The more they earn, the less they pay. This has been chosen as a way of retaining higher earning barristers. It has also separated itself into two departments: health and business. Each has its own budget and recruitment process.⁵³ In this case, while delivery may not have outwardly changed, the processes behind delivery have.

Key attributes of newer⁵⁴ models being used by barristers to deliver legal services

Fees

- 6.3. A number of respondents consider pricing and fee structures to be a key attribute distinguishing a mode of delivery different from the norm, or traditional approach. However they do not believe a different pricing structure alone is sufficient to equate to a “new delivery model”. Barristers in traditional sets offer fixed price services to large companies, where they agree on a set of services that they will provide. This is described as a ‘traditional model’ offering a more innovative pricing structure.

49. The Law Society Gazette, ‘Riverview Law aims to double in size’, <http://www.lawgazette.co.uk/practice/riverview-law-aims-to-double-in-size/5037136.fullarticle>

50. Legal Futures, ‘Virtual assistants will mean fewer lawyers, Riverview predicts’, <http://www.legalfutures.co.uk/latest-news/virtual-assistants-will-mean-fewer-lawyers-riverview-predicts>

51. Clerksroom Direct, ‘About’, <http://www.clerksroom.com/about.php>

52. Clerksroom Direct, ‘About’, <http://www.clerksroomdirect.com/26-about>

53. Legal Futures, ‘How leading chambers reacted to “shock” of Riverview Law by embracing barrister innovation’, <http://www.legalfutures.co.uk/latest-news/how-leading-chambers-reacted-shock-riverview-law-embracing-barrister-innovation>

54. Compared with ‘the norm’ or ‘traditional’ approach more typically adopted by chambers

- 6.4. A move to a fixed fee structure is starting to happen for some organisations, and may be more widespread in the future. As individual barristers bear their own risks, long-term cases where payment may not be received until the end, on a fixed fee basis, increases that risk. This could stimulate more interest in a partnership model, where solicitors jointly bear that risk. Corporate, flat rate models appear to bring about structural changes according to the evidence from the workshop, and may also have a knock-on effect on approaches to marketing and receiving instructions.
- 6.5. One respondent states that the fixed fee model is most typically be offered as a result of client demand. Although many barristers still ask for hourly rates they are compelled to work on a fixed fee basis if they wish to work with the likes of Clerksroom Direct.
- 6.6. There are examples of payment plans being offered, including low cost finance payment plans being offered to consumers for direct access work, including an additional service offered in the form of a paralegal team, if the client is unfamiliar with the process and requires further support. The main responsibility for delivery still lies with the barrister, particularly as not all clients take up the offer of paralegal support.
- 6.7. Survey data show non-chambers established in recent years are less likely to use conditional fee agreements, legal aid or brief fees in favour of fixed fees.

Ownership and governance

- 6.8. Survey data show delivery models that differ from the traditional are more likely to be owned/managed by non-authorized individuals. They are also more likely to have decisions made unilaterally, and do not typically have management committees. Respondents identified a key difference from the traditional structure for some of the new delivery models – this being greater flexibility. Workshop participants consider a lack of structured governance committees is a way to boost efficiency. New delivery models appear to be underpinned by a structure that offers greater flexibility, which could make them more agile and responsive to meet changing client needs and capture new or untapped markets.

“If something needs doing like a new marketing initiative, we just do it. No-one’s reporting into a Board, we’re getting on with the work”

Workshop participant

- 6.9. Respondents consider that structural change is making the Bar more flexible, and this is often underpinned by businesspeople brought in to manage the organisation. An example of an entity model is one where each of the individual members/ shareholders are also individual incorporated entities, which are in turn owned by regulated individuals. The overall structure can be managed by an individual from a non-legal background. A structure of this nature can make it easier to bring together a solicitor-barrister mix, or introduce accountants into the mix – i.e. offer a full service model. This type of model was identified via desk-based research but there is no evidence to suggest it is currently being, or likely to be implemented on a widespread scale.
- 6.10. Respondents suggest that a potential means to mitigate the risk of increased competition from solicitors is via a hybrid model i.e. solicitors and barristers working together in the same organisation. By having a barrister on the board, this has the scope to increase revenue. The Bar is viewed as ‘expert’, so having a barrister on the board enables an organisation to charge more for services, whereas traditionally barristers have not necessarily actively marketed themselves. The hybrid model also opens up opportunities for cross-selling, underpinned by shared marketing across shared sets. In terms of insurance, newer organisations are more likely to use an open market indemnity scheme.

Information technology

- 6.11. Survey data suggest newer delivery models that differ from the norm are more likely to use virtual assistants and emerging technologies to support delivery. It should be noted that while virtual technology is changing the legal services offer, this is slow and incremental change. Examples of significant use of virtual technology are isolated. One example is Riverview Law, which has a Virtual Assistant, whereby an algorithm provides the answers to every question in a certain context.
- 6.12. The likes of Zoom and Legal Rocket provide legal documents such as draft contracts, for a wide range of circumstances, which can be downloaded and completed, accompanied by advice from a legal professional if so required (for example via telephone or a ‘live chat’ button online). This is considered popular amongst the SME market. Both of these more ‘automated’ services could help fulfil unmet client need.
- 6.13. The other aspect of changing information technology is the storage and processing of data and documents. Notably, the use of electronic documents and collaborative space for document portals in a shared, cloud-based space, is set to increase. Respondents noted that a number of law firms have issues with the current guidance of the Solicitors Regulation Authority, which they consider to be vague. This says solicitors need to ‘take reasonable precaution’, which respondents feel is ambiguous and could discourage innovation, as well as present a risk to barristers and ultimately to clients.

More innovative attributes of traditional models being used by barristers to deliver legal services

6.14. There are some ways in which delivery of legal services is starting to change – but these appear to be more innovative attributes of the traditional model rather than a shift towards a new model as such. These are described below.

Marketing

6.15. Respondents emphasise the importance of marketing, and this appears to take precedence over the delivery model that underpins this. Traditionally, barristers have had a limited need to market themselves, but some individuals from traditional sets will contract out personal marketing, because they feel they do not always see a direct impact from the marketing conducted by their chambers.

6.16. Client demand and expectations are driving changes to marketing. One respondent referred to “Brand Bar”, suggesting that in the future lay clients will seek online recommendations in the manner of Trip Advisor, as an increasing number of clients shop around in this way on the internet.

Receiving instructions

6.17. In addition to online brokerage services, other methods of receiving instructions include social networking and dedicated organisations to provide barristers with another source of work alongside their ‘traditional’ chambers work i.e. there is not necessarily a need to leave the set. A new business, Spoke⁵⁵, claims that it will “innovate”, and this model has been described as the legal ‘Airbnb’⁵⁶. It allows barristers and solicitors to register online and be approached (mainly by businesses) to conduct fixed-fee freelance work⁵⁷. To some extent, respondents disagree with the notion that receiving instructions via some kind of online approach is considered ‘innovative’, because this has been taking place for some years already.

55. Spoke is described as an online legal marketplace which uses a search algorithm to match legal professionals with consumers [www.spoke.law]

56. Airbnb is a business which allows users to advertise their homes as holiday lets, at a fixed fee. It uses its own portal to verify users, monitor messages and facilitate secure payment

57. The Law Gazette, ‘Legal airbnb pioneers new law web domain’, <http://www.lawgazette.co.uk/practice/legal-airbnb-pioneers-new-law-web-domain/5055207.article>

- 6.18. Other examples from the desk research included a person or online platform being used to match potential clients to barristers. There is evidence of growth for at least one such business – turnover for Absolute Barrister has doubled year on year since inception, and the organisation has recently won the ‘Friend to Business’ award at the Everline Future 50 2016.⁵⁸ Clerksroom Direct’s public access wing claims to have 1000 barristers, spanning 192 chambers registered on their site.⁵⁹ Many of these services charge marketing fees or similar. Most seem to allow barristers to sign up and continue to practise elsewhere. This means that barristers can increase their outreach potential.
- 6.19. However, respondents feel this does not necessarily reflect a shift towards a ‘new’ model for receiving instructions. In many cases they felt that such approaches would be used in conjunction with, rather than instead of, a more traditional model.

58. Real Business, ‘Absolute Barrister: Is it time to make “lawtech” a thing? This legal service thinks so’, <http://realbusiness.co.uk/article/33530-absolute-barrister-is-it-time-to-make-lawtech-a-thing-this-legal-service-thinks-so>

59. Clerksroom Direct, ‘Home’, <http://www.clerksroomdirect.com/>

7 Conclusions and key considerations for risk and benefits assessment

- 7.1. Commercial considerations are the strongest drivers for change to the way(s) the Bar delivers legal services, notably:
- unmet client demand;
 - market risk - competition from solicitors;
 - client expectations - better accessibility and flexible fee models;
 - fee structures (linked to client needs: growth of fixed fees); and
 - increase in public access.
- 7.2. Emerging technology and new legislation are enabling change rather than strongly driving it.
- 7.3. Whilst there are strong drivers of change for the market, these do not necessarily equate to a need or desire for a new approach to the delivery of legal services by barristers.
- 7.4. The majority of the Bar is delivering legal services in the ‘traditional’ way.⁶⁰ There is a comparatively small number of organisations deemed to be ‘new’ and alternative/innovative compared to the ‘norm’, but widespread change is not currently taking place.
- 7.5. New, innovative organisations operating differently from the traditional structure should not be described as new delivery models per se; there are not enough organisations operating in this way to enable categorisation into a range of different delivery models.
- 7.6. There are certain attributes shared by new/innovative organisations, such as: more likely to offer fixed fees and/or payment plans; a more agile and flexible governance structure; and greater use of technology in support of delivery. However, these attributes are not unique to new organisations and could be adopted by traditional structures.

60. This includes the use of technology/remote working as required – these are generally considered to be part and parcel of ‘the norm’ rather than innovative

- 7.7. The drivers of and potential for future change need to be monitored, although the pace of change is expected to be slow. The majority view appears to be a preference for the traditional structure.
- 7.8. The main risks for the consideration of the Bar Standards Board (BSB) appear to be:
- Growing use of technology/cloud systems increasing the threat of cybercrime and its impact on the Bar and consumers. This also has implications financially – barristers must pay for initial investment into software etc. as well as for its upkeep. The threat of cybercrime may require different insurance or increasing current costs.
 - Outsourcing is viewed as a significant risk for information security; it also raises concerns about reduced control over quality and adherence to regulations. This could be more pertinent for consideration among organisations who are not chambers as they could be outsourcing more paralegal activities and practice management (compared with chambers).
 - Greater use of technology risks creating a disconnect with the consumer. As public access work is forecast to increase, direct consumer relationships will be important. Technologies to enable more effective and efficient delivery of services should not be at the expense of the consumer;
 - Organisations that are not chambers are more likely to be owned/managed by non-authorized individuals (by comparison with chambers). Decisions within these non-chambers can be taken more quickly due to a more flexible structure without management committees and with significant input from non-authorized individuals.
 - As new models of delivery are more flexible and agile compared with chambers, they can adapt and change very quickly. The risk is that the BSB (or other regulators as relevant) may find it harder to monitor such changes in ‘real time’ and consider impacts for risk and regulations accordingly.
 - The expected increase of fixed fees (underpinned by rise in public access) increases the risk of under or over selling; qualitative evidence suggests it may be difficult to accurately calculate fixed fees. Getting it wrong could have a negative effect for barristers and consumers.
 - There is a reliance on word of mouth and/or an online presence for marketing legal services provided by the Bar, but this is predominantly aimed at professional clients. The expected increase in public access suggests a need for a different marketing strategy. Around 18 per cent of survey respondents plan to increase their marketing spend over the next five years, but this may not be substantial – two-thirds of that 18 per cent will increase spend from less than 1 per cent of turnover to between 1 and 10 per cent of turnover. Not all marketing materials contain information about fees or complaints procedures, which could improve client knowledge and understanding at the outset of their case.

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