



## Research into the public access scheme



Final report

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## Glossary

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<b>BC</b>	Bar Council
<b>BSB</b>	Bar Standards Board
<b>BPTC</b>	Bar Professional Training Course
<b>CPD</b>	Continuing Professional Development
<b>CPR</b>	Civil Procedure Rules
<b>DAP</b>	Direct Access Practitioner
<b>DPA</b>	Direct Public Access
<b>LA</b>	Licensed Access
<b>LSB</b>	Legal Services Board
<b>PA</b>	Public Access
<b>QC</b>	Queen's Counsel

## Executive summary

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### Overview of the research

The public access scheme<sup>1</sup> was introduced in 2004 as a means of permitting clients to contact barristers directly, without needing to instruct a solicitor or other intermediary<sup>2</sup>.

Public access was initially introduced with a number of restrictions designed to protect clients, however over time these have gradually been lifted. Important changes were made in 2013 and 2014, including new training requirements, an extension of the scheme to enable barristers of less than three years' practising experience to undertake public access work, and the option to conduct litigation<sup>3</sup>.

The Bar Standards Board (BSB)<sup>4</sup> and the Legal Services Board (LSB), commissioned this research amongst barristers to develop a detailed picture of the current provision of legal services through public access barristers, and to understand the perceptions of barristers about the operation of the current regulatory arrangements - in particular their perceptions of the impact on consumers and barristers of the reforms to public access. This research focused on barristers rather than clients because obtaining a sample of clients using the public access scheme would have been challenging, given the small number of clients using the scheme.

### Key findings

Public access work currently accounts for a relatively small proportion of barristers' overall caseload. However many respondents expect it will increase in volume over the next few years. Public access work is undertaken across a diverse range of areas of law, but most commonly in family, chancery, employment, commercial, and general common law.

To date, from the viewpoint of barristers, there appears to have been relatively modest beneficial impacts for consumers, with respect to widening choice, improving timeliness of access to legal services, and reducing costs, as a result of the 2013 reforms. This is partly because not all clients or cases are, in the barristers' opinion, deemed suitable for public access. However, barristers doing higher volumes of public access work, and those authorised to conduct litigation, reported higher levels of beneficial impacts.

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<sup>1</sup> 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 Direct Access and Public Access are used interchangeably. This research relates exclusively to the public access scheme.

<sup>2</sup> [http://www.barcouncil.org.uk/media/119600/public\\_access\\_guidance\\_for\\_lay\\_clients\\_-\\_mar\\_2010\\_-\\_as\\_at\\_25\\_oct\\_2011\\_1.pdf](http://www.barcouncil.org.uk/media/119600/public_access_guidance_for_lay_clients_-_mar_2010_-_as_at_25_oct_2011_1.pdf)

<sup>3</sup> Public access barristers are able to apply for an extension to their practising certificate to be able to conduct litigation

<sup>4</sup> In January 2006, the Bar Council split its regulatory and representative functions and created the Bar Standards Board 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 profession.

According to respondents, the scheme is best suited to consumers that are able to manage for themselves the administrative and other functions, often including litigation, that are traditionally carried out by a solicitor. This was especially the case where respondents had not obtained authorisation to conduct litigation (only a small proportion of public access barristers have so far done so). Barristers acknowledge that conducting litigation is a critical means of improving accessibility of legal services to consumers, but those reluctant to conduct litigation cite the additional administrative burden and a perception of more “hand-holding” of clients as the main barriers. They stated that clients can have unrealistic expectations of the role of the barrister, which can result in what they consider to be “excessive” correspondence and administration.

“Cutting out the middleman” does not always equate to cost savings, although it appears to be more cost effective in areas of law particularly suited to public access, such as employment and chancery. Although 43% respondents reported an increase in the profitability of their practice as a result of public access, in a separate question only 4% of respondents reported they had reduced their fees for public access work in the last 12 months. Furthermore most respondents do not appear to have a clear sense of market prices for public access work, and do not give a great deal of consideration to pricing their services competitively.

Following changes to public access, including removal of the initial restrictions placed on the scheme, respondents believe that the existing regulatory framework is broadly effective in protecting consumers. Of course, the research does not test the client perspective on this.

On the whole, respondents do not believe there is a need to change the current regulatory framework, but instead consider that public access training and guidance should be improved, in order to help mitigate risks for both consumers and barristers. This largely stems from perceived ambiguity in training and guidance documentation, which can result in misinterpretation of the regulations.

In particular it seems that there can be scope for confusion about what is classed as conducting litigation. For example a proportion of respondents who said that they were not authorised to conduct litigation, stated within the survey that they do in fact undertake litigation for some of their public access cases. It is unclear why this is the case, however it appears likely from the evidence that this is a mix of barristers assisting clients who are acting as litigants in person, in addition to some confusion over which activities fall within the reserved legal activity of litigation. Whilst this warrants further investigation, it appears from qualitative evidence that what these respondents describe does not in fact constitute the reserved activity of litigation under the Legal Services Act.

The main improvements barristers suggest for public access training and guidance are to:

- tighten language in order to clarify understanding of the regulations and eliminate “grey areas”;
- provide more information on understanding and managing client expectations;
- include more guidance on pricing;
- offer additional training and guidance for public access clerks and administrators; and
- clarify the rules on conducting litigation.

## 1. Introduction

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### 1.1 Overview of the public access scheme

Barristers have provided expert advice and advocacy for many centuries. Historically it was not possible for the public to engage a barrister without first instructing a solicitor or other third party. Barristers traditionally are therefore instructed by a professional client, typically a solicitor, on behalf of a lay client. This changed in 2004, with the introduction of direct access.

Direct access is the umbrella term used to describe two sets of regulatory arrangements – public access and licensed access – that allow barristers to directly accept instructions from the public, and other types of client, without the involvement of an instructing solicitor.

The **public access** scheme was first introduced in 2004 by the Bar Council; allowing members of the public to instruct barristers directly, without the involvement of a solicitor or intermediary. Separately the **licensed access** scheme enables suitable named organisations and individuals (ranging from the business community to the voluntary sector), under certain conditions to instruct a barrister directly.

Whilst they do have slightly different meanings, the terms ‘direct access’ and ‘public access’ are sometimes used interchangeably to mean instructing barristers directly without an intermediary. The key difference in terms of regulatory oversight is that any barrister can undertake licensed access work, but additional training is required to undertake public access work. This research focuses entirely on the public access scheme.

Not all barristers are authorised to conduct public access work. At the time when the sample for this research was being developed<sup>5</sup>, there were 5,695 barristers registered for public access work out of 15,915 barristers practising in England and Wales.

In 2013, the BSB made a number of important changes to the public access scheme. Among the changes were new training requirements and an extension of the scheme to enable barristers of less than three years’ practising experience to undertake public access work. The rules were also amended to enable barristers to accept public access work from clients who were entitled to legal aid funding, but who had decided to instruct a public access barrister instead.

Following the introduction of these new training requirements, a new handbook was launched in January 2014 containing a Code of Conduct for all barristers. This set out the rules and ethical standards applying to the Bar, including those instructed by or on behalf of a lay client who has not instructed a solicitor<sup>6</sup>. At this stage there were no changes to the public access scheme, apart from the option for public access barristers to apply for an extension to practising certificates in order to

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<sup>5</sup> As at 15<sup>th</sup> December 2015

<sup>6</sup> Bar Standards Board (2015) *The Bar Standards Board Handbook*

conduct litigation. The Handbook was further updated to include new rules relating to entities; this came into force at the end of April 2015<sup>7</sup>.

The public access scheme and how it has evolved is explained in more detail in Appendix 1.

## 1.2 Research aims and objectives

The overarching aim of this research is to develop a detailed picture of the current provision of legal services through public access barristers, and understand the perceptions of barristers about the operation of the current regulatory arrangements - in particular the impact of the reforms to the public access scheme introduced in 2013.

The research objectives are to:

1. Provide statistically rigorous data on barristers undertaking public access work;
2. Develop an understanding of the types of client using public access services, access to services, the areas of law, the types of legal activity where these services are used and intensity of use;
3. Identify the impact of recent reforms to public access on:
  - a. Barristers' businesses;
  - b. The regulatory objectives, with a focus on those relating to improving access to justice; protecting and promoting the interests of consumers; promoting competition; and encouraging an independent, strong, diverse and effective legal profession;
4. Develop an understanding of barristers' perceptions on the operation of the regulatory framework including:
  - a. Whether the BSB Public Access Guidance helps barristers to understand their objectives when conducting public access work;
  - b. Whether the BSB's public access training is seen as effective and whether barristers identify a need for further public access training;
  - c. How barristers provide public access clients with clear information about their case, and whether the BSB's model client care letters are used/seen as useful by barristers;
  - d. Possible areas for improvement to the regulatory arrangements; and
5. Understand barristers' views on how public access might evolve over the next few years.

The research will be used to inform the BSB's review of its regulatory arrangements in this area, which has the following key objectives to assess:

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<sup>7</sup> <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/>

- how effectively risks associated with public and licenced access are being mitigated;
- whether public access barristers are equipped to meet the needs of clients;
- whether the required outcomes of the new public access training regime have been realised; and
- what scope there is for public and licenced access rules to be consolidated and/or drafted in a more outcomes-focused manner.

The research will also be a key evidence source for the market evaluation being conducted by the LSB, due for publication in 2016. This evaluation assesses the impacts of the regulatory reforms, including the broadening of direct access, and other drivers for change in the market.

To further enhance this evidence base, it will be important to obtain perspectives of public access clients as well as barristers. However the relatively small number of clients using the public access scheme means it would be challenging to obtain a sample, and therefore the research methodology has focused on first building a better understanding of the supply side of the market. To obtain client perspectives, the LSB is including a question on its large-scale individual legal needs survey<sup>8</sup> as an initial means of establishing incidence levels among the population. In addition, the BSB plans to undertake research with a small sample of public access clients to find out more about their experiences.

### **1.3 Summary of approach**

The research has used a mixed-methodology, combining primary and secondary research in order to triangulate comprehensive quantitative and qualitative data. The work commenced with desk-based research to obtain a detailed understanding of the public access scheme, regulatory framework and recent reforms. This evidence was used to design a questionnaire aimed at capturing perspectives of public access barristers, which was administered via telephone and an online survey link.

The survey was made available to all public access barristers. In addition a link to the survey was published on the BSB website, and distributed via Counsel, the monthly journal of the Bar of England and Wales. This approach ensured that all public access barristers had the opportunity to participate in the research.

Based on a total available sample of 5,695 barristers registered for public access work out of 15,915 barristers practising in England and Wales, in order to achieve robust and reliable survey results at the 95% confidence interval with a 5% margin of error, a minimum sample of **360** was required. The survey achieved a total of **404 respondents**, equating to a ±4.69% margin of error at the 95% confidence interval.

The respondent profile is broadly representative of the public access barrister population, shown by the following key variables in Table 1:

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<sup>8</sup> Jointly commissioned by the LSB, Law Society and Legal Education Foundation; due to publish in Spring 2016

**Table 1: Representativeness of survey data**

Survey variables	Full population*	Survey data
Male	66.3%	63.8%
Female	33.6%	36.2%
Queen's Counsel (QC)	8.8%	8.5%
Sole practitioner	5%	8.6%

\*Of 5,695 public access barristers

To supplement the quantitative survey, 30 in-depth qualitative telephone interviews were undertaken with a sample of respondents<sup>9</sup>. These were analysed and combined with the quantitative evidence to produce this report.

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<sup>9</sup> The survey included a question asking respondents whether they were willing to be contacted to take part in a follow up interview. Approximately a quarter of respondents (118) agreed to this. From this sample, 30 respondents were selected for interview, and were selected to provide a cross-section of respondents by the following variables: length of time registered as a public access barrister; types of law practised; and number of public access cases undertaken in the past 12 months.

## 2. Barristers undertaking public access work

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### 2.1 Motivations for undertaking public access work

Reasons for participation in the public access scheme vary, depending on the individual circumstances of the barrister. For example those who were previously solicitors were more inclined to view training in public access as the natural next step. Others have been driven by their clients to train to undertake public access work; for example large corporations that anticipate reduced costs and administration from the simplicity of instructing barristers directly.

In other cases, barristers perceive public access work to be an important and potentially lucrative opportunity to grow their practice. Most respondents cite the prospect of more work, and more financially lucrative work.

Certain chambers facilitate training in public access for all their barristers, which is the primary trigger for those particular individuals. Respondents called to the Bar more recently – after the public access scheme was established – appear more likely to undertake the training as a matter of course. Depending on the area of law, certain barristers wanted to complete public access training to help them offer a better service for their clients – especially in family law.

There is no consensus in terms of the realisation of these benefits. Some respondents cite an increasing number of enquiries about their work, which on paper provides strong potential for widening their client base, but in reality many of these cases are refused due to a lack of suitability (discussed in more detail in section 3.5).

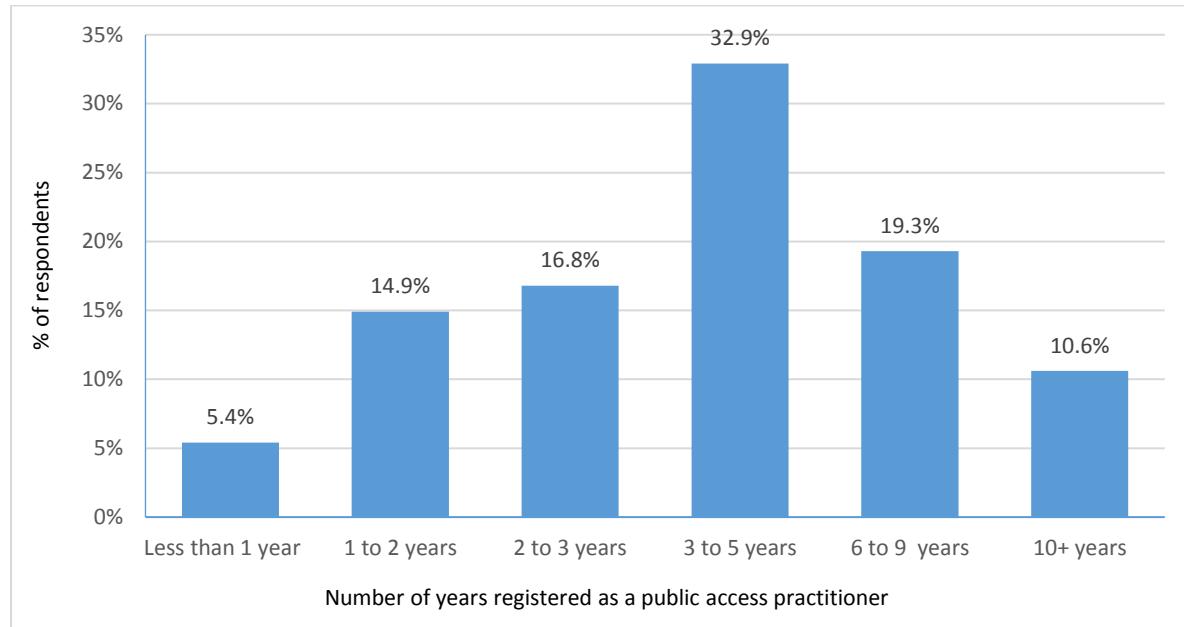
The extent to which perceived benefits from public access work are realised is strongly dependent on the area of law in which a barrister operates. This is predominantly because a higher proportion of public access work is undertaken across certain types of law, notably family, chancery and commercial. Respondents with a higher proportion of public access work are the most positive about the realisation of benefits, including a more diverse client base, better pay and improved quality of work for their clients.

Understandably, those who had fewer public access cases did not realise as many benefits from public access work. These respondents have been disappointed by the calibre of public access work directed to them, and have not found the work to be as lucrative as they had hoped. However, some barristers who have undertaken a small number of public access cases have said that the cases that they have undertaken via public access have been substantial in terms of payment.

## 2.2 Profile of barristers undertaking public access work

Nearly two-thirds of respondents (62.8%) have been registered to undertake public access work for 3 years or more. Just over 10% of respondents have been able to conduct public access work since the scheme began in 2004 (Figure 1).

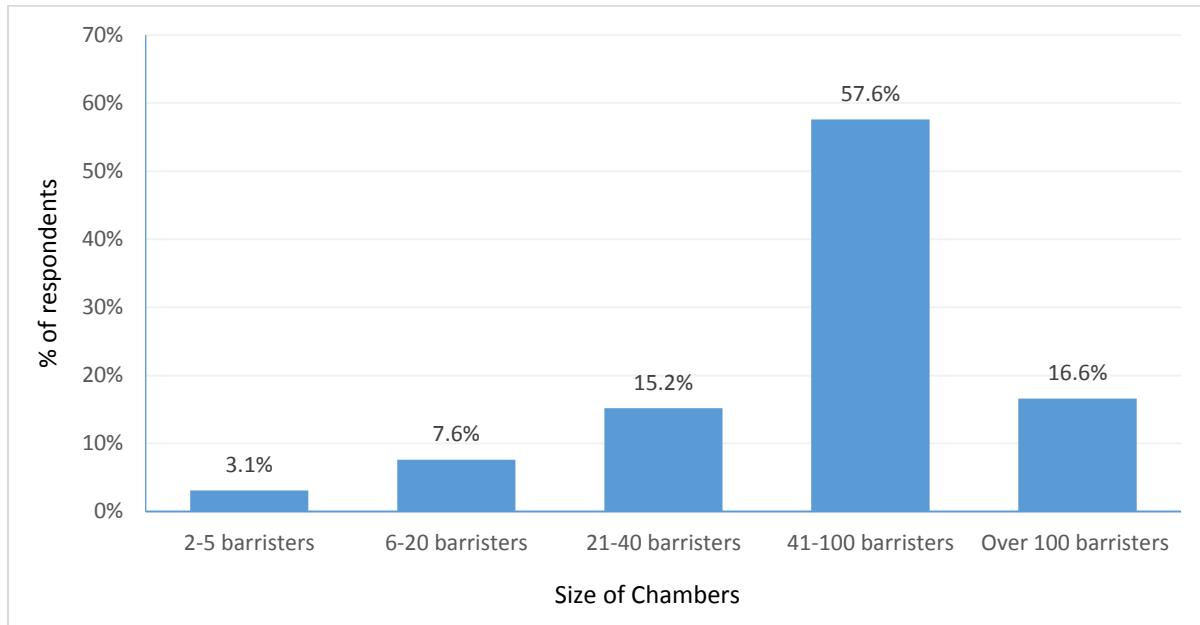
**Figure 1: Length of time registered as a public access practitioner**



Base 404

The vast majority of respondents (97%) are exclusively self-employed. The remaining 3% are dual capacity, which involves a combination of self-employed and employed practice. Just over 90% of respondents are members of Chambers, with the remainder being sole practitioners. Most typically respondents are members of Chambers that have 41-100 barristers, with a smaller proportion (10.7%) part of Chambers with 20 barristers or fewer (Figure 2).

**Figure 2: Respondents who are part of Chambers, by size of Chambers**



Base 356

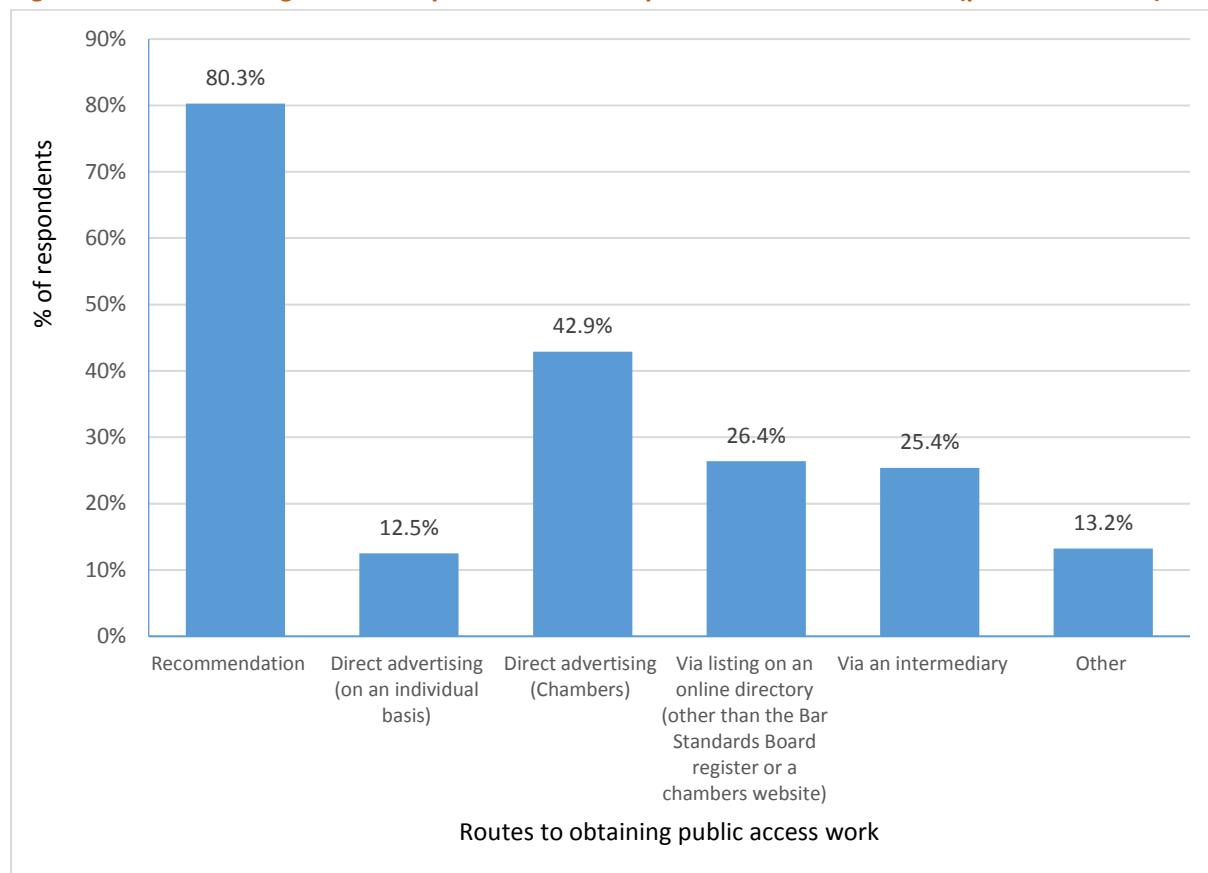
### 2.3 Routes to obtaining public access work

Just over 80% of respondents have obtained their public access work via a recommendation, making this by far the most common route to sourcing cases of this nature. Just over a quarter of respondents have been signposted to public access work via an intermediary, such as a financial adviser (Figure 3).

Online activity of some kind is cited by the 13.2% of respondents who have obtained their public access work via other routes. Notably these include blogs, personal websites and/or other media presence whether this be social media (such as a LinkedIn profile), speaking engagements or legal articles published online.

Nearly 43% of respondents have also secured public access work through direct advertising undertaken by their Chambers. Online listings in directories are also more successful than individual advertising, and have led to public access work for just over a quarter of respondents (Figure 3).

**Figure 3: Routes through which respondents receive public access instructions (past 12 months)**

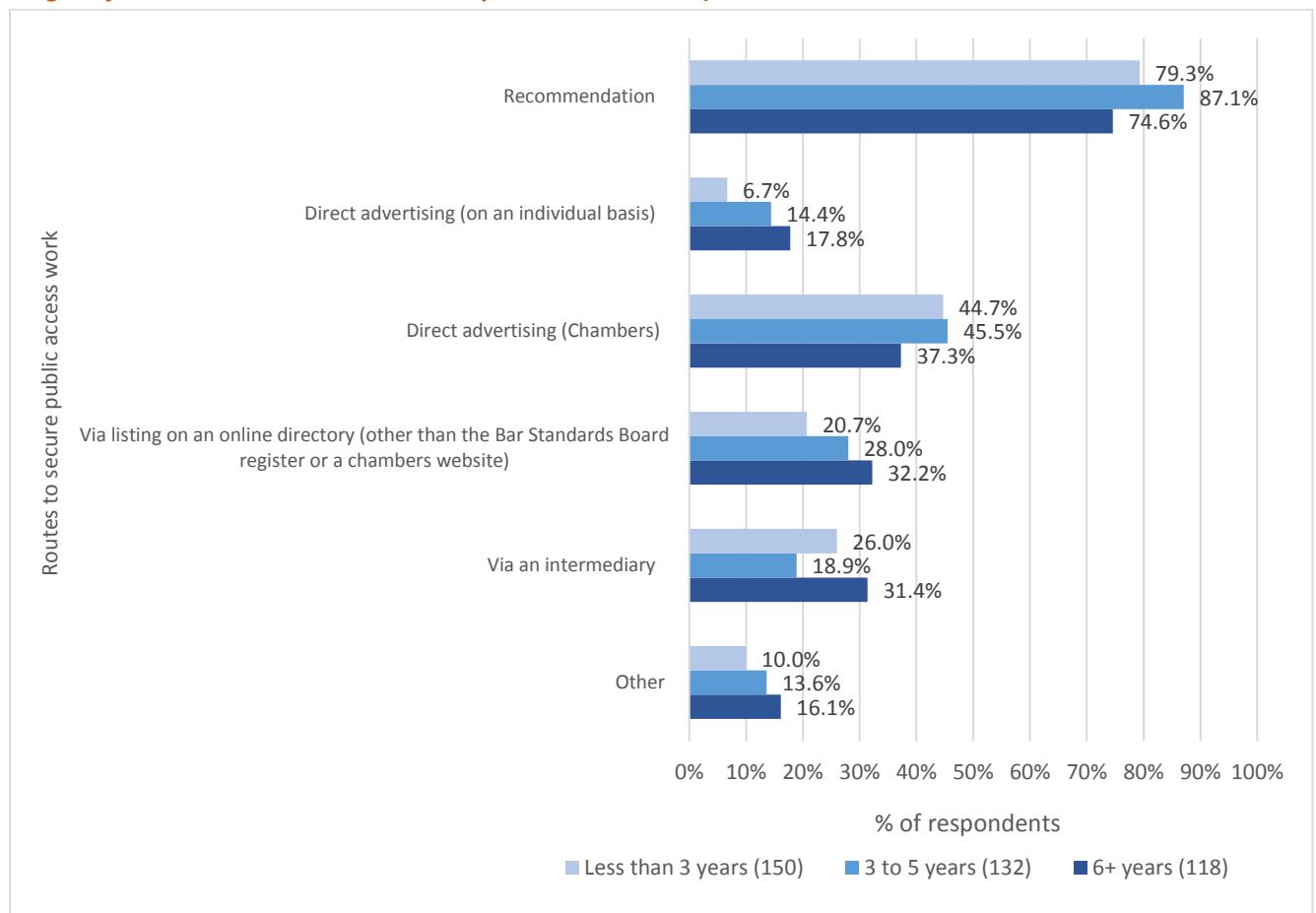


Base 401 \*Respondents were able to select multiple options, therefore responses should not total 100%

Direct advertising on an individual basis is more prevalent among those respondents who have undertaken public access work for the longest period of time. Of the respondents who have been part of the public access scheme for 6 years or more, 17.6% received instructions via individual direct advertising, compared with 6.7% of respondents engaged with the scheme for 3 years or less (Figure 4).

Similarly, a higher proportion of respondents with 6 years or more experience in undertaking public access work obtained cases through listing on an online directory (32.2% compared with 20.7% of respondents with 3 years or less experience), and via an intermediary (nearly a third secured work through this route) (Figure 4).

**Figure 4: Routes through which respondents receive public access instructions (past 12 months, by length of time authorised to undertake public access work)**



Base figures are shown in brackets next to the respondent group

\*Respondents were able to select multiple options, therefore responses should not total 100%

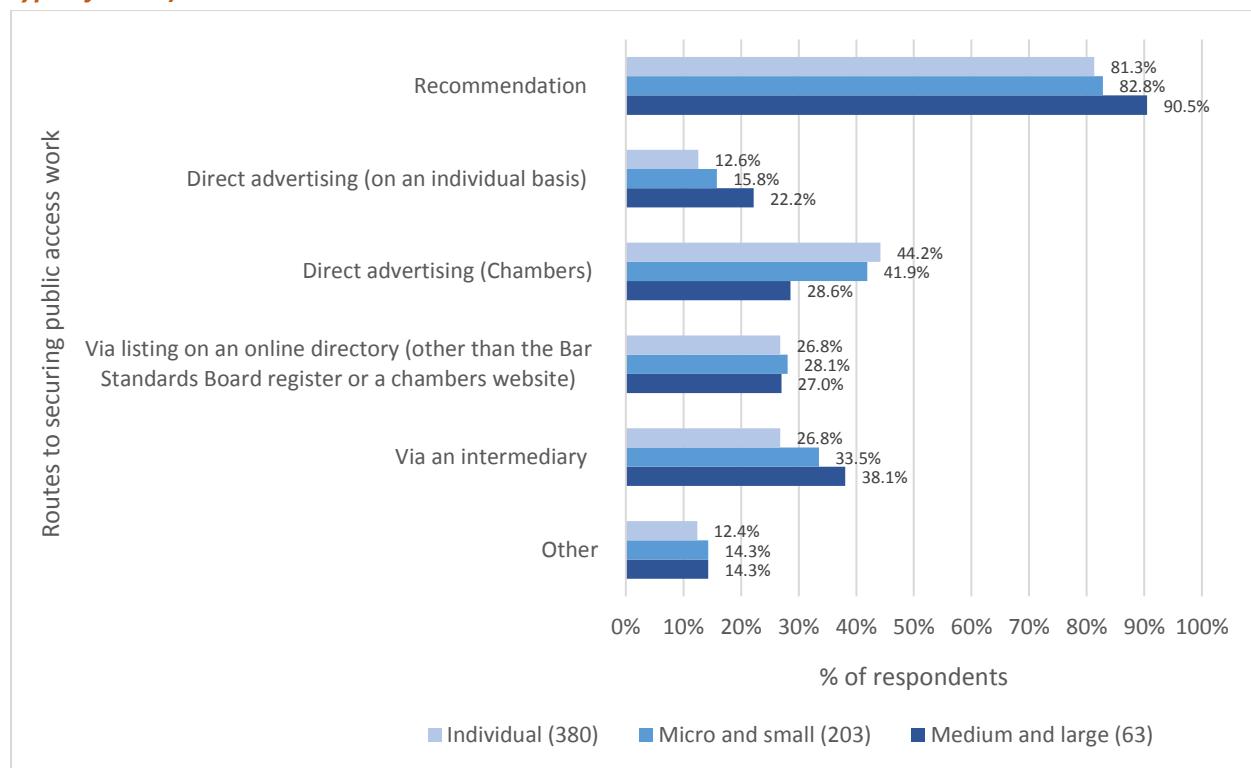
Routes to obtaining public access work differ slightly depending on type of client. Individuals, micro and small businesses – which comprise the largest proportion of public access clients – more commonly find barristers via direct advertising by Chambers. Around 44% of respondents working for individuals and 42% of those working on behalf of micro and small businesses said that these clients had found them through their Chambers advertising. By comparison, around 28% of respondents' work from medium and large businesses originated from this route (Figure 5)<sup>10</sup>.

However a comparatively higher proportion of respondents working on behalf of medium and large organisations found these clients via direct advertising on an individual basis (22.2% compared with 12.6% of respondents who found individual clients via this route). A slightly higher proportion of public access work on behalf of medium and large organisations was obtained via a recommendation

<sup>10</sup> Please note the lower base number in respect of medium and large organisations

or an intermediary, compared with public access work for individuals, small and micro businesses (Figure 5).

**Figure 5: Routes through which respondents receive public access instructions (past 12 months, by type of client)**



Base figures are shown in brackets next to the respondent group

\*Respondents were able to select multiple options, therefore responses should not total 100%

Over half of all respondents say that recommendations are a highly effective means of securing public access work, with a further 35.6% believing they are quite effective. Just over 40% of respondents find intermediaries to be a highly effective way of obtaining public access instructions (Table 2).

Just over a quarter of all respondents have obtained work via listing on an online directory. However, while 61% of these respondents consider this approach to be highly or quite effective just over 16% consider this approach to be either quite or very ineffective – a higher proportion than other routes (Table 2). This is predominantly because certain directories are considered to be more effective than others, and so responses are determined by the choice of directory.

**Table 2: Effectiveness of selected routes in securing public access work (past 12 months)**

Routes to secure public access work	Base	Highly effective	Quite effective	Neither effective nor ineffective	Quite ineffective	Very ineffective
Recommendation	317	52.1%	35.6%	8.8%	1.9%	1.6%
Direct advertising (on an individual basis)	50	18.0%	52.0%	20.0%	8.0%	2.0%
Direct advertising (Chambers)	171	15.2%	52.6%	21.1%	10.5%	0.6%
Via listing on an online directory	103	11.7%	49.5%	22.3%	11.7%	4.9%
Via an intermediary	99	40.4%	36.4%	18.2%	3.0%	2.0%

#### 2.4 Barristers' perceptions of 'awareness raising' of the public access scheme

A number of barristers suggested that the public access scheme should be more widely 'marketed' among the general public, for example by the Bar Council, and that there should be a commitment to raising awareness generally about the scheme.

However when this suggestion was probed in more detail through the qualitative depth interviews, the majority of those interviewed pointed to potential tensions between promotion of public access work, and the role of solicitors, namely the risk that solicitors would not instruct barristers for fear of losing clients.

Some respondents said that any kind of awareness raising or promotion of the public access scheme should assure solicitors that the scheme is not detrimental to their practices.

*"with public access there begins a blurring between what solicitors and barristers do... solicitors become territorial"*

*"you cannot advertise you are doing public access work too blatantly – a colleague noticed that some solicitors stopped instructing her [as a result]"*

*"marketing should be directed at solicitors, assuring them that public access is not a threat"*

**Feedback from respondents**

### 3. Scope and scale of the public access scheme

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#### 3.1 Types of law in which public access work is undertaken

Respondents were asked to indicate the areas of law in which they practise, thinking firstly about their entire portfolio of work. They were then asked to indicate in which of these practice areas they had undertaken public access work (Table 3).

The survey data shows that public access work is being undertaken across a wide range of practice areas. The types of law in which the public access scheme is most commonly used are: family, chancery, employment, general common law and commercial law (litigation and property). Of the 135 respondents who work in family law, nearly all of them (95.6%) had undertaken public access cases. For over 40%, public access work contributes 75-100% of their family work. There is a similarly high proportion of public access work undertaken in chancery (83.5% of the 109 respondents) (Table 3).

Qualitative feedback provided some explanation for these trends. Barristers working in family law referred to the cuts to legal aid, which have reduced the number of clients that are eligible for legal aid funding. For those clients that must now self-fund their case, instructing a barrister directly is a more cost effective route than doing so via the traditional route of appointing a solicitor first. A number of barristers acknowledged that if they did not offer public access work, then there is the risk that they could miss out on what they perceive to be a growing client base.

Having said this, there are also barriers to public access for family law clients – in particular there is a need for them to be sufficiently capable to understand and fulfil the traditional solicitor function where the barrister is not authorised to conduct litigation. Furthermore feedback from the qualitative interviews indicates that family law can be highly emotive, and may result in a lot of stress for the client. Family law cases account for a higher proportion of the barristers' time compared with other types of law, primarily for this reason. In the majority of cases, the clients who are passed back to solicitors because they are deemed unsuitable (explained in more detail in section 3.5) for public access work, tend to be in family law. Stress is associated with the direct exposure to the legal environment whereas previously the solicitor acted as a buffer. Therefore, while family law is a growing market for public access, it appears that the client base could be somewhat narrow.

*"Family matters are always difficult and require great sensitivity...feel more vulnerable doing public access work"*

*"Levels of vulnerability in family work make Direct Access unsuitable for many more clients than in other areas"*

**Feedback from respondents**

**Table 3: Areas of law in which respondents have been instructed for public access work over the past 12 months**

Type of law	Base	Yes
Administrative	72	47.2%
Arbitration	26	26.9%
Banking	32	56.3%
Bankruptcy and insolvency	67	59.7%
Care proceedings	51	31.4%
<b>Chancery</b>	<b>109</b>	<b>83.5%</b>
Civil liberties	21	38.1%
<b>Commercial Litigation</b>	<b>106</b>	<b>72.6%</b>
<b>Commercial property</b>	<b>83</b>	<b>63.9%</b>
<b>Common law (general)</b>	<b>118</b>	<b>79.7%</b>
Company & commercial	70	54.3%
Construction	32	62.5%
Crime	62	80.6%
Discrimination	47	68.1%
EC & competition law	15	60.0%
<b>Employment</b>	<b>71</b>	<b>80.3%</b>
Equity, wills & trusts	62	67.7%
<b>Family</b>	<b>135</b>	<b>95.6%</b>
Financial services	30	53.3%
Housing	54	55.6%
Human rights	47	59.6%
Immigration	38	78.9%
Insurance	22	50.0%
International	26	53.8%
Local Government	43	58.1%
Medical negligence	12	33.3%
Mental health	9	44.4%
Personal injury	51	29.4%
Professional negligence	84	44.0%
Public law	51	62.7%
Sale of goods	38	44.7%
Tax	14	64.3%
Other	51	86.3%

Public access work can lend itself more readily to areas of law with “professional” clients such as businesses seeking assistance with employment cases and other predominantly commercial issues. Feedback from the depth interviews suggests that chancery drafting work is being increasingly referred through financial intermediaries, one reason for the higher proportion of chancery cases, although the actual amount of work undertaken appears to be quite low (Table 4).

**Table 4: Proportions of work undertaken in public access across the following areas of law**

Type of law	Base	1-10%	11-25%	26-50%	51-75%	76-100%
Administrative	34	44.1%	20.6%	20.6%	2.9%	11.8%
Arbitration	7	71.4%	28.6%	0%	0%	0%
Banking	18	61.1%	11.1%	11.1%	11.1%	5.6%
Bankruptcy and insolvency	40	50.0%	32.5%	15.0%	2.5%	0%
Care proceedings	16	62.5%	12.5%	12.5%	6.3%	6.3%
<b>Chancery</b>	<b>87</b>	<b>36.8%</b>	<b>27.6%</b>	<b>23.0%</b>	<b>5.7%</b>	<b>6.9%</b>
Civil liberties	8	37.5%	37.5%	12.5%	0%	12.5%
<b>Commercial litigation</b>	<b>74</b>	<b>39.2%</b>	<b>33.8%</b>	<b>14.9%</b>	<b>6.8%</b>	<b>5.4%</b>
<b>Commercial property</b>	<b>50</b>	<b>50.0%</b>	<b>30.0%</b>	<b>16.0%</b>	<b>2.0%</b>	<b>2.0%</b>
<b>Common law (general)</b>	<b>94</b>	<b>39.4%</b>	<b>34.0%</b>	<b>18.1%</b>	<b>4.3%</b>	<b>4.3%</b>
Company & commercial	37	45.9%	37.8%	13.5%	2.7%	0%
Construction	19	36.8%	21.1%	26.3%	0%	15.8%
Crime	49	55.1%	12.2%	6.1%	6.1%	20.4%
Discrimination	29	20.7%	27.6%	31.0%	13.8%	6.9%
EC & competition law	9	11.1%	22.2%	44.4%	0%	22.2%
Employment	56	23.2%	21.4%	21.4%	17.9%	16.1%
Equity, wills & trusts	42	31.0%	42.9%	19.0%	4.8%	2.4%
<b>Family</b>	<b>129</b>	<b>20.2%</b>	<b>15.5%</b>	<b>10.9%</b>	<b>7.8%</b>	<b>45.7%</b>
Financial services	15	46.7%	13.3%	13.3%	0%	26.7%
Housing	27	33.3%	37.0%	22.2%	3.7%	3.7%
Human rights	27	40.7%	33.3%	7.4%	7.4%	11.1%
Immigration	30	20.0%	33.3%	10.0%	16.7%	20.0%
Insurance	9	66.7%	22.2%	0%	0%	11.1%
International	14	57.1%	28.6%	0%	7.1%	7.1%
Local Government	22	40.9%	22.7%	18.2%	9.1%	9.1%
Medical negligence	4	75.0%	0%	25.0%	0%	0%
Mental health	4	75.0%	0%	0%	0%	25.0%
Personal injury	14	64.3%	14.3%	14.3%	0%	7.1%
Professional negligence	33	63.6%	21.2%	9.1%	0%	6.1%
Public law	31	29.0%	41.9%	25.8%	3.2%	0%
Sale of goods	17	88.2%	5.9%	5.9%	0%	0%
Tax	8	25.0%	12.5%	25.0%	12.5%	25.0%
Other	43	25.6%	18.6%	11.6%	4.7%	39.5%

Other types of law not listed in the survey questionnaire encompass a wide range and are not statistically significant. These span:

- Aviation
- Consumer protection
- Court of protection
- Disciplinary
- Ecclesiastical
- Education
- Energy
- Environmental
- Intellectual property
- Licencing
- Media & entertainment
- Oil & gas
- Planning
- Regulatory
- Residential property
- Space
- Sport

### **3.2 Types of legal activity undertaken within public access work**

Barristers may undertake a variety of activities on any one case, such as advocacy, drafting and providing legal advice. Some are authorised separately to be able to conduct litigation. Survey data shows that legal advice is most commonly offered; over a quarter of respondents spent between 76 and 100% of their time on public access cases providing legal advice. Feedback from the depth interviews suggests that legal advice is often provided in relation to out of court settlements (Table 5). In addition some barristers are providing free advice as a precursor to accepting instructions.

Advocacy also accounts for a higher proportion of time compared with other activities; just over a fifth of respondents spent between 76 and 100% of their time on this. This compares with only 3% of respondents that spent the same amount of time on arbitration and mediation. Nearly two-thirds of respondents have never provided arbitration or mediation via the public access scheme (Table 5).

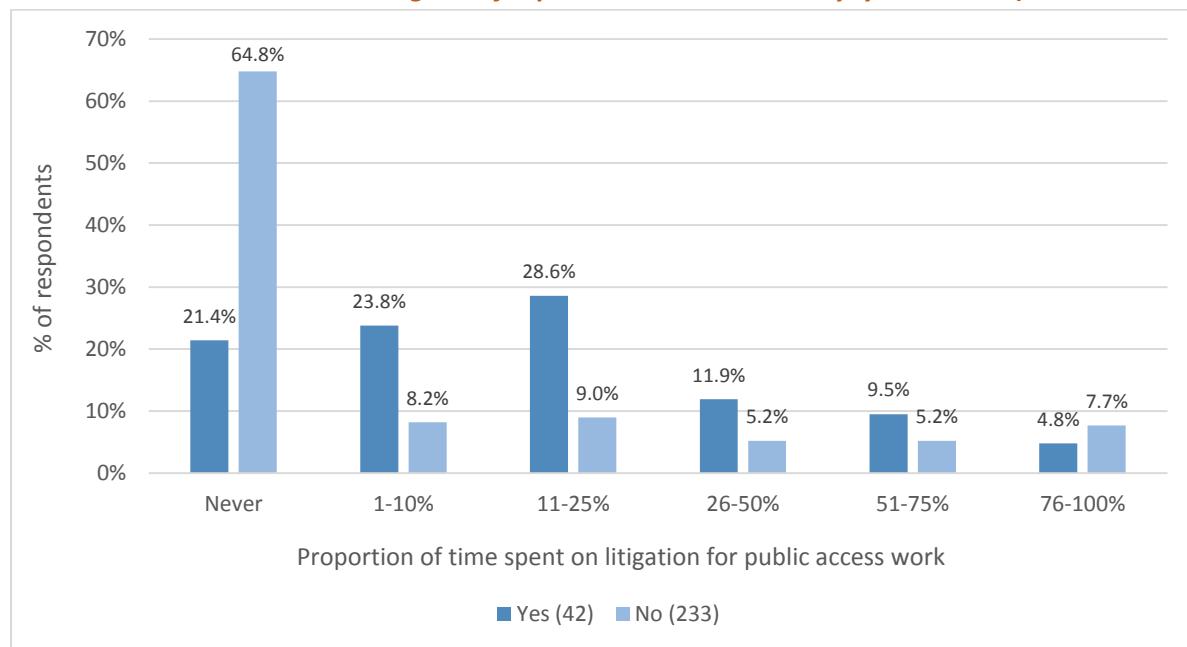
***Table 5: Frequency with which respondents undertake the following types of legal activity within public access work***

Types of legal activity	Base	Never	1-10%	11-25%	26-50%	51-75%	76-100%
Advocacy	379	15.0%	18.2%	14.2%	12.7%	18.2%	21.6%
Litigation	275	58.2%	10.5%	12.0%	6.2%	5.8%	7.3%
Drafting	344	10.5%	20.9%	26.2%	20.9%	10.5%	11.0%
Arbitration/mediation	266	63.9%	18.0%	9.8%	3.4%	1.9%	3.0%
Legal advice	382	2.1%	16.8%	17.5%	22.5%	13.6%	27.5%
Negotiation	299	31.1%	28.1%	13.7%	9.4%	9.0%	8.7%
Corresponding on behalf of the clients	296	52.4%	25.3%	9.5%	8.8%	2.7%	1.4%
Investigating and collecting evidence	283	78.1%	14.1%	3.9%	2.8%	0.7%	0.4%

Nearly 60% of respondents have never provided litigation via the public access scheme – however it should be borne in mind that barristers have only been able to do so since 2014, when regulations were relaxed to allow them to apply for an extension to their practising certificate in order to conduct litigation.

It should be noted that a number of respondents that said they are not authorised to conduct litigation for public access work, indicated in their survey response that they do undertake litigation for some proportion of their public access caseload (Figure 6). It is unclear why this is the case, however it appears from the qualitative feedback that this includes assisting clients who are acting as litigants in person, and that there is also some confusion over which activities fall within the reserved legal activity of litigation. For example, one respondent stated that “*clarity is needed on whether employment work which is a non-reserved legal service is covered by the requirement not to conduct litigation. Non lawyers carry out litigation, but it seems the Bar cannot*”. Whilst this warrants further investigation, it appears from qualitative evidence that what these respondents describe does not in fact constitute the reserved activity of litigation under the Legal Services Act.

**Figure 6: Proportion of time spent on litigation on public access work (respondents that are, and are not authorised to conduct litigation for public access indicated by ‘yes’ and ‘no’)**



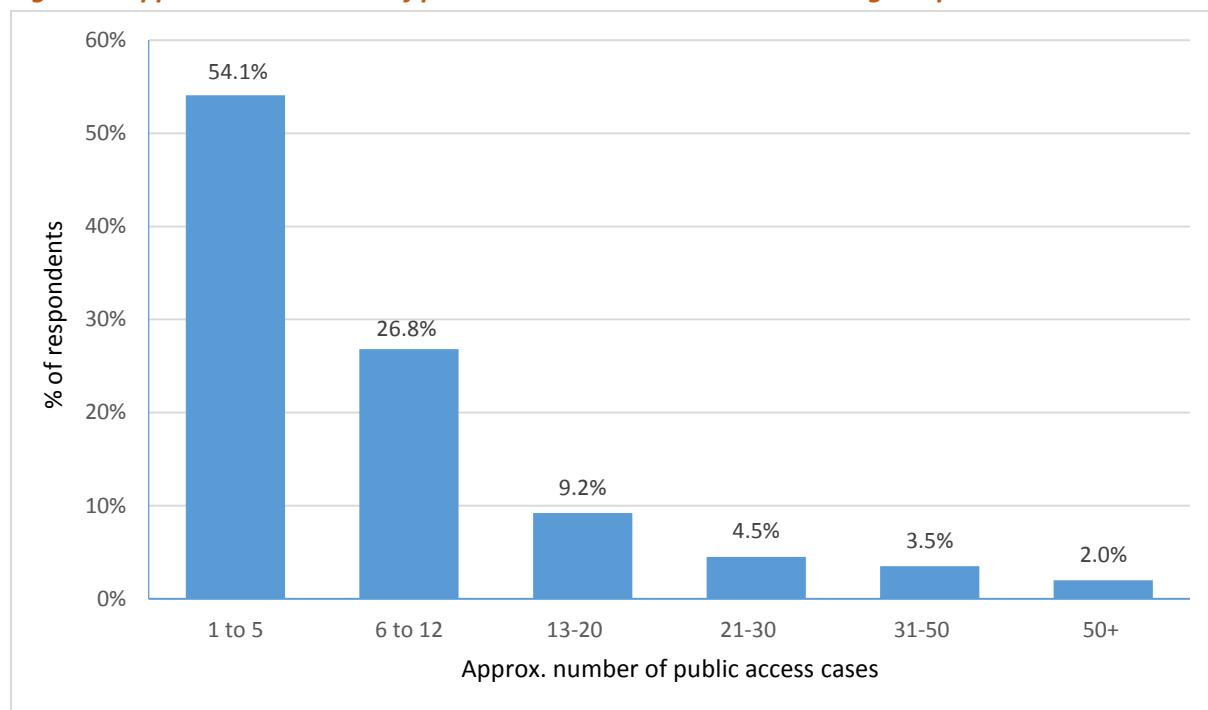
Base figures are shown in brackets next to the respondent group

A small number of respondents said that they are providing representation on behalf of their clients – for example at inquests, committee hearings or conferences.

### 3.3 Number of public access cases undertaken

Public access work most commonly accounts for a relatively low proportion of barristers’ workload. Around 54% of respondents registered to do public access had undertaken between 1 and 5 cases in the past 12 months. Only 2% of respondents had undertaken 50 or more cases (Figure 7).

**Figure 7: Approximate number of public access cases undertaken during the past 12 months**

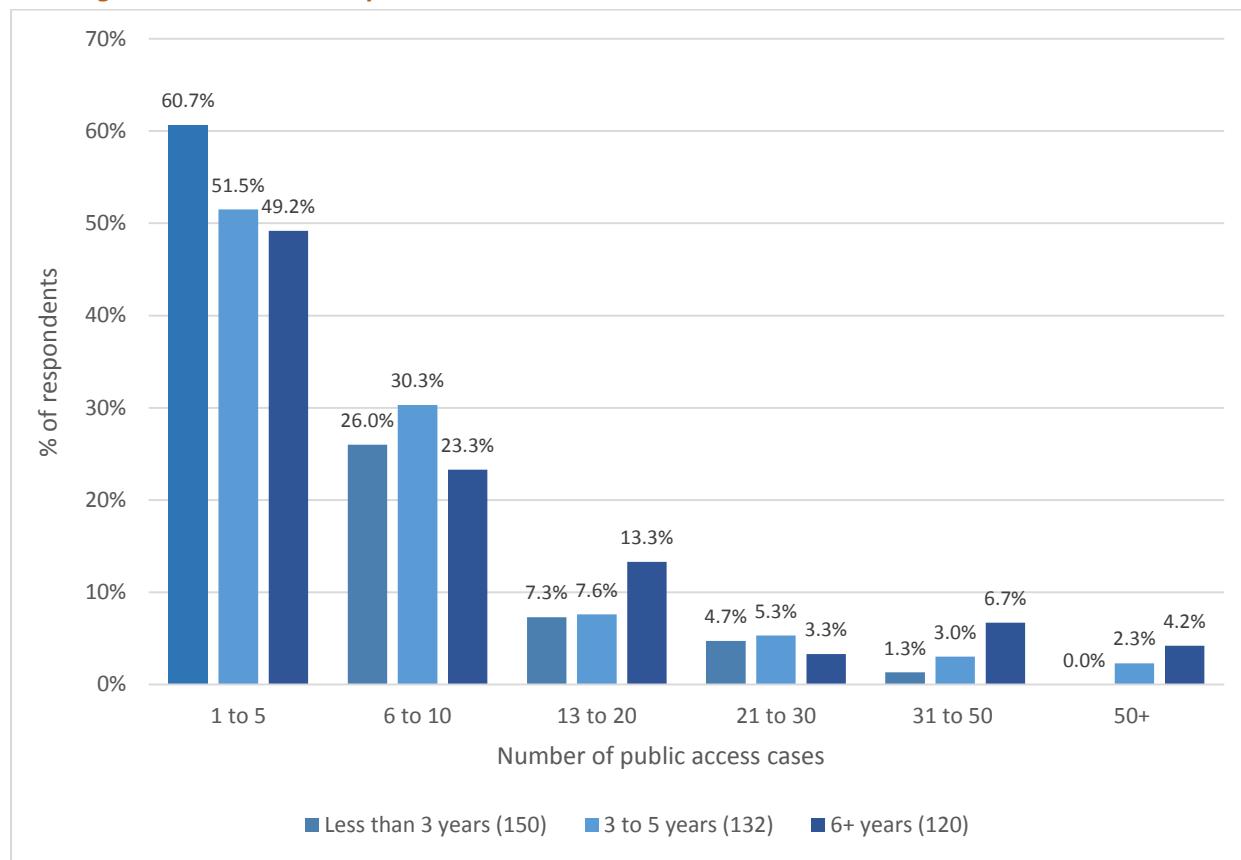


Base 403

There are three main factors that influence the amount of public access work typically undertaken by barristers:

1. **Personal circumstances:** barristers previously trained as solicitors, or with a commercial background tend to take on more public access cases;
2. **Type of law practised:** as previously stated more public access work is undertaken in certain types of law such as family and chancery; and
3. **Length of time registered to undertake public access:** a higher proportion of barristers that have been part of the scheme for 6 years or more take on more public access cases, compared with those that have 3 years or less (Figure 8).

**Figure 8: Approximate number of public access cases undertaken, respondents by the length of time registered to undertake public access work**



Base numbers are in brackets next to each respondent group

### 3.4 Time spent on public access work

Public access work accounts for a relatively small number of actual cases for the majority of barristers, and also, subject to the number of cases undertaken, equates to a relatively low proportion for the majority of barristers' overall fee income and time spent on caseloads.

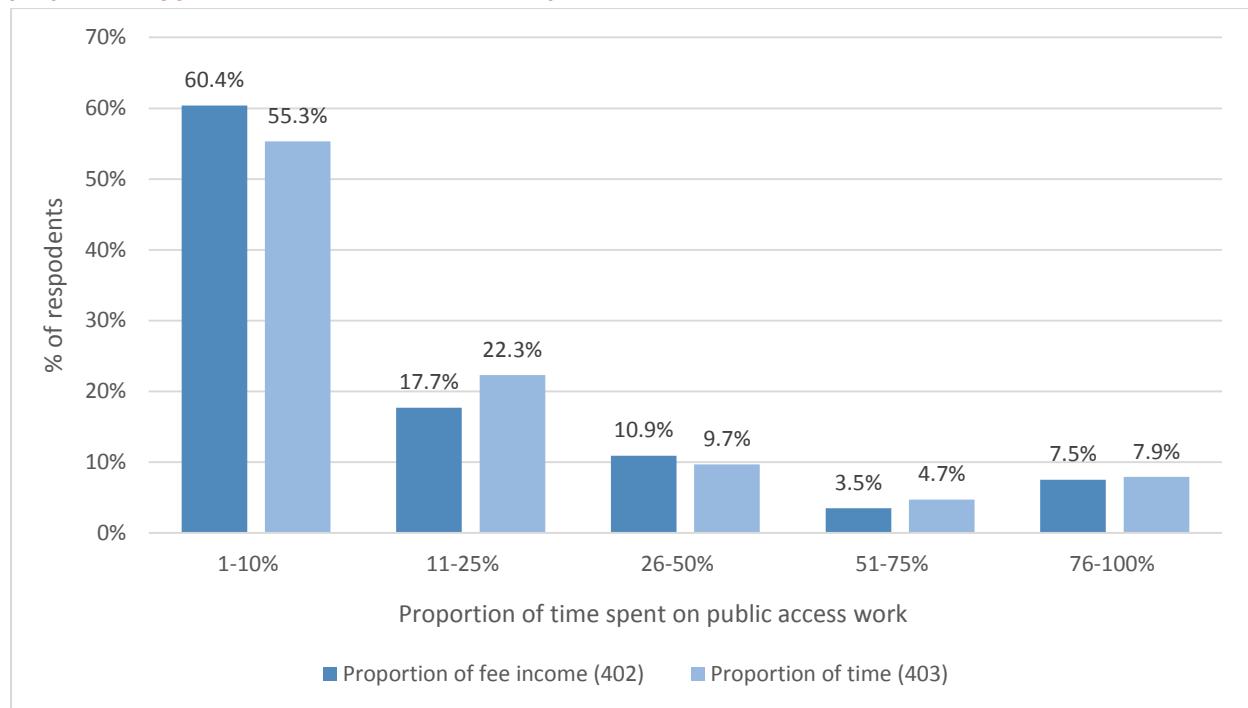
On average around 60% of respondents say that public access work accounts for between 1 and 10% of their fee income (Figure 9). This rises to 84.7% of respondents who have undertaken 5 or less public access cases. At the other end of the spectrum, of the very small number of respondents who have undertaken more than 50 public access cases, all reported that public access work accounts for between 76 and 100% of their overall fee income (Figure 9).

This pattern is broadly similar in relation to the proportion of time spent on public access work, which increases in line with the number of cases (Figures 10 and 11).

However it should also be taken into consideration that feedback from the qualitative interviews suggests that some barristers who only undertake a small number of public access cases, tend to find them to be more time consuming in comparison with their other work. This relates to some

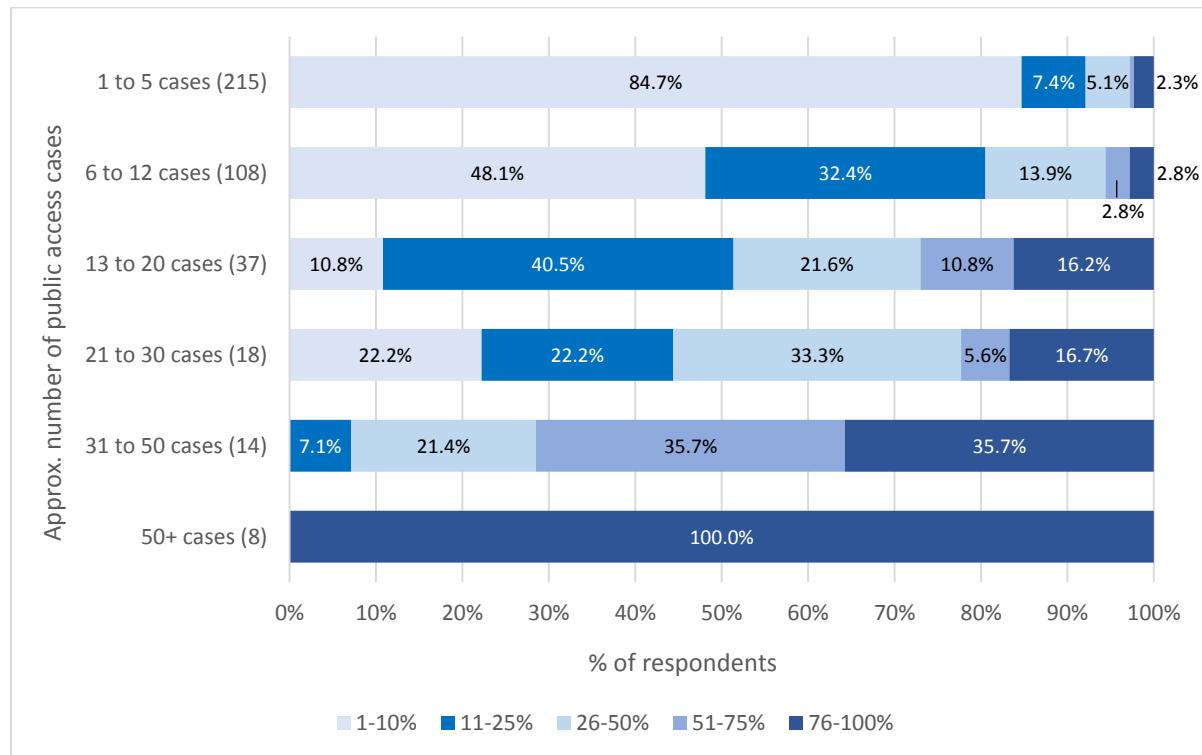
extent to the issues barristers have encountered when dealing with public access clients; predominantly as a result of different expectations – discussed in more detail in sections 4.5 and 5.2.

**Figure 9: Proportion of respondents' practice comprising public access work in relation to proportion of fee income and time, over the past 12 months**



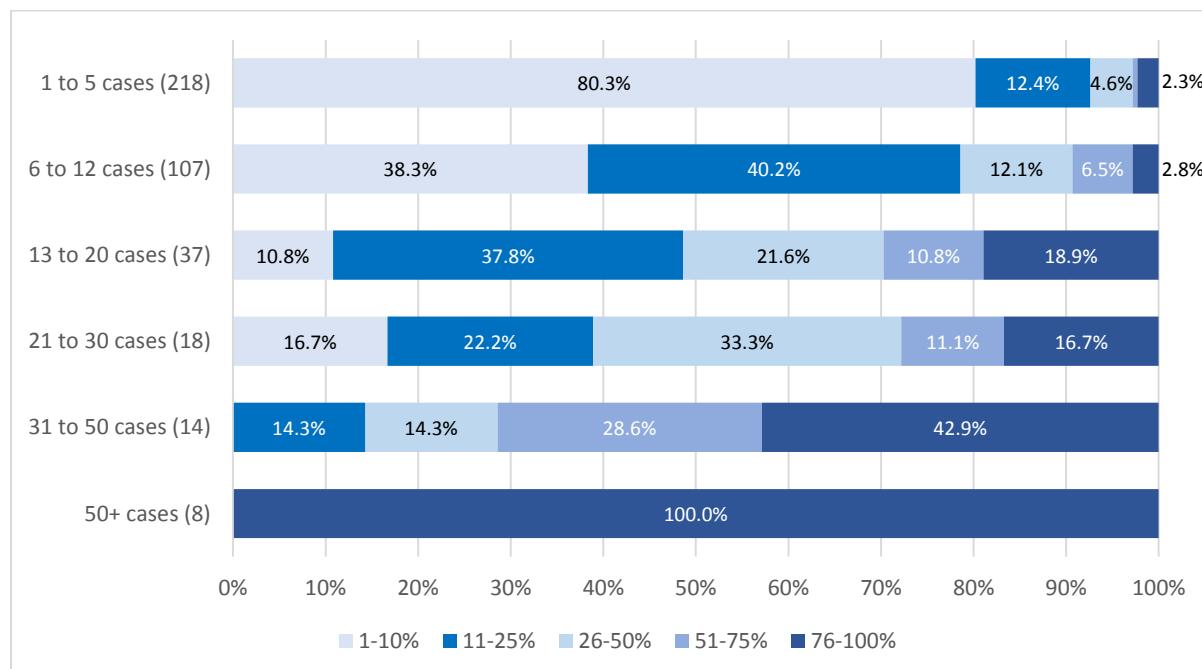
*Base numbers are in brackets next to each respondent group*

**Figure 10: Proportion of respondents' practice comprising public access work in relation to proportion of fee income over the past 12 months, by the approximate number of public access cases undertaken**



Base numbers are in brackets next to each respondent group

**Figure 11: Proportion of respondents' practice comprising public access work in relation to proportion of time over the past 12 months, by the approximate number of public access cases undertaken**



Base numbers are in brackets next to each respondent group

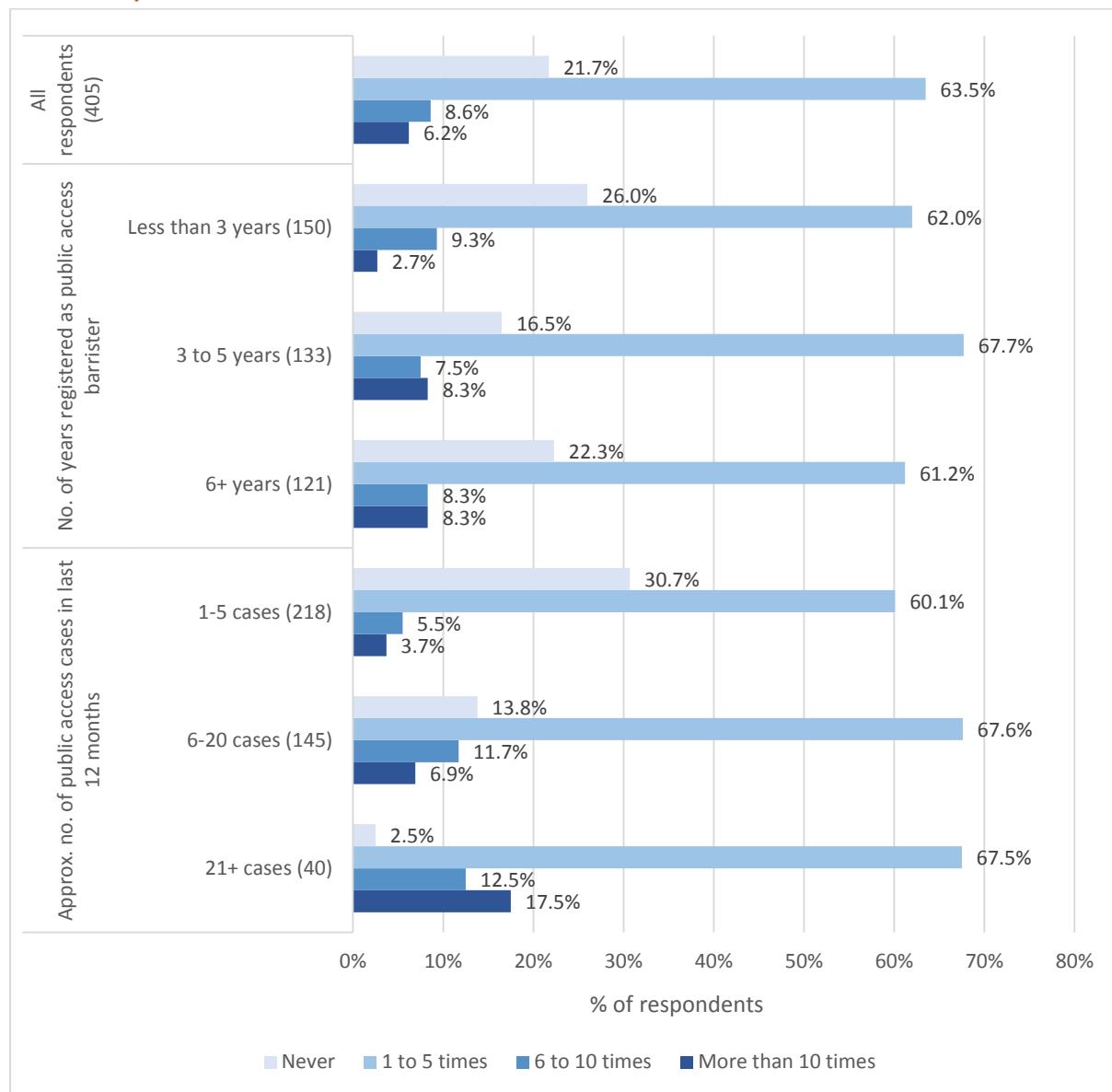
As Figure 7 showed, barristers with more than 6 years' experience of public access work tend to undertake the highest number of cases. There are clear correlations with the proportion of time and fee income from public access work, which is higher for these individuals with more experience of the scheme, compared with others with less experience. For example nearly 10% of barristers with more than 6 years' experience of the scheme say it accounts for between 76 and 100% of their fee income, compared with 5.4% of barristers with less than 3 years' experience of public access.

### **3.5 Public access work declined by barristers**

Public access work is not subject to the cab rank rule, allowing barristers to decline a case if they wish, provided they observe the non-discrimination rule (see Appendix 1 for a description of the regulatory framework). In the past 12 months, nearly two-thirds of respondents declined between 1 and 5 public access cases. Just over a fifth of respondents have never declined a public access case at all.

Barristers who are less experienced in public access work are less inclined to turn down a case. Respondents who have undertaken the largest number of public access cases, i.e. the most well versed in the work, turn down a higher proportion of cases. For example of the 40 respondents who undertook more than 21 public access cases in the past 12 months, nearly a fifth had declined cases on more than 10 occasions (Figure 12).

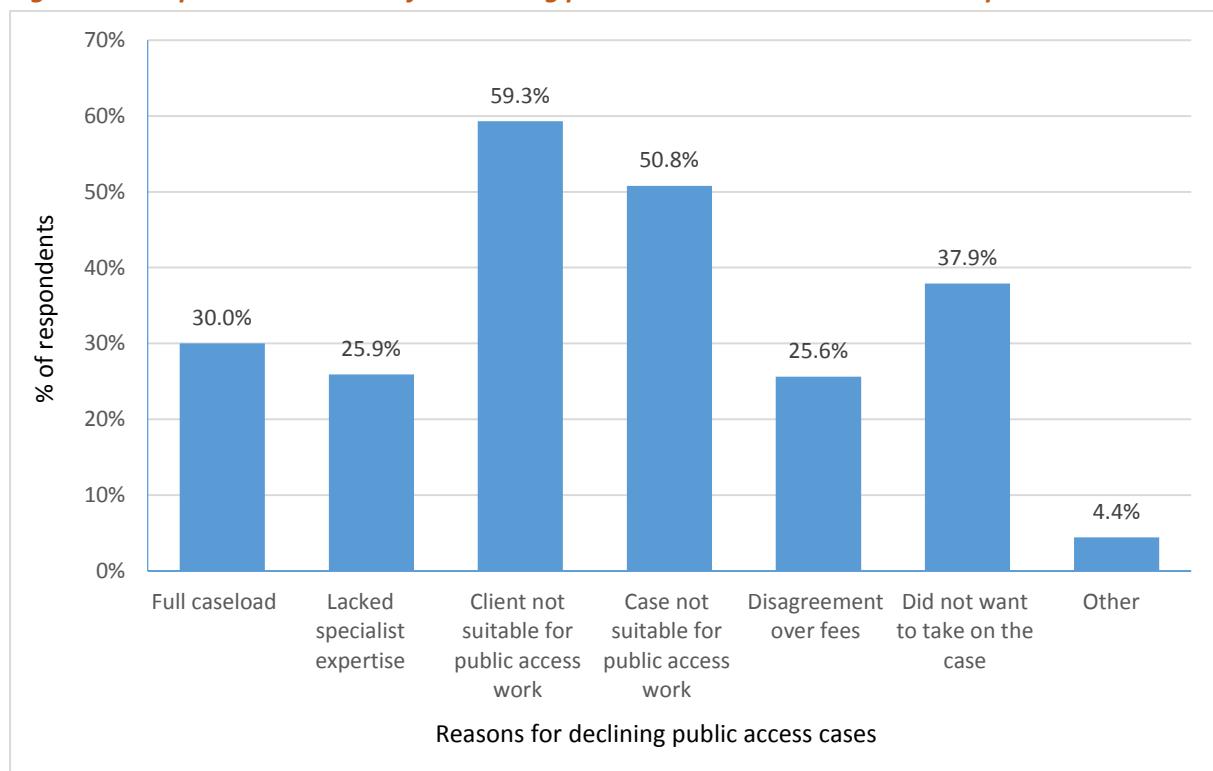
**Figure 12: Frequency with which respondents declined an instruction to take on a public access case in the past 12 months**



Base numbers are in brackets next to each respondent group

The most prevalent reasons for declining cases are that either the client or the case is not suitable for public access work. Nearly 60% of respondents stated that clients were unsuited to the scheme, and just over 50%, that the case was unsuitable. Nearly 40% of respondents did not want to take on the case (Figure 13). However it should be noted that this does not reveal the number of instances of barristers electing not to take on a case because they did not want to, for example this may have only happened once in the past 12 months.

**Figure 13: Respondents' reasons for declining public access instructions over the past 12 months**



Base 317 \*Respondents were able to select multiple options, therefore responses should not total 100%

Qualitative feedback reveals that risk assessment is an important influencing factor when barristers decide whether or not to accept public access instructions. As the vast majority of respondents are self-employed, the risk of the work going wrong in some way can be significant.

Another risk relates to getting paid for public access work; a number of barristers who participated in depth interviews said they have spent time and effort chasing up fees which would not have been the case if instructed by a professional client. Some respondents pointed out that there had been so much emphasis on money laundering in the public access top up training, that it has made barristers more wary of accepting instructions from certain clients, even though money laundering is a valid risk in only a very small proportion of cases.

Some barristers are therefore more inclined to turn down the case than bear the risk of it potentially going wrong; as a worst case scenario it could result in disciplinary action taken against them.

A number of barristers believe that public access cases are more risky than their conventional work, because of the nature of the client and the relationship with them. This is partly because of misconceptions about the role of the barrister that they feel can be harboured by some clients. For

example some barristers say public access clients expect more personal communication from them - more than they as barristers would expect to provide.

*"Clients inevitably ask for assistance or advice in relation to matters that are traditionally within the solicitor's role, which barristers are not used to doing and are consequently more likely to get wrong"*

*"Whilst I think that public access is a good thing in principle, I find that all too often the client develops a reliance on the barrister, despite the barrister making every effort to avoid this"*

*"I find myself doing a lot of favours to DPA<sup>11</sup> clients. Very risky"*

#### **Feedback from respondents**

Some barristers said they do not think public access work is suitable for vulnerable clients, and these cases are often declined as part of the clerks' initial screening. In this context barristers consider clients to be 'vulnerable' if they would be unable to conduct litigation, and manage the administrative burden.

Just over a quarter of respondents decline cases because of a disagreement over fees (Figure 13), with clients typically choosing to walk away from the process following an initial consultation when the fee is explained. Qualitative feedback indicates that very few barristers have a clear understanding of the level of fees charged in the market. For the most part a fixed fee is agreed. In some cases clerks negotiate fees on behalf of the barrister. Pricing models can evolve as the work does, however – for example in cases where a fixed fee has been agreed but correspondence becomes excessive, at which point a further fee is agreed per letter, telephone call and so on. In a small number of cases barristers are prepared to reduce their fees or even work on a pro bono basis, where the case has sufficient merit.

In a lot of cases, clients approach barristers via the scheme when they have already been turned away by solicitors, as their case is unlikely to succeed or lacks validity in other ways. Therefore barristers will reject the case on grounds of lack of suitability. Another issue is timing – some clients approach barristers via the scheme at the 'last minute', with a matter of days before they are due in court, and it is not feasible to accept these cases at such short notice.

It tends to be that individual clients are most likely to be deemed unsuitable. This is partly because businesses may have a better understanding of the legal framework and/or require litigation which is more straightforward and therefore less time-consuming. Businesses also have their own administrative capacity to take on those elements of the case.

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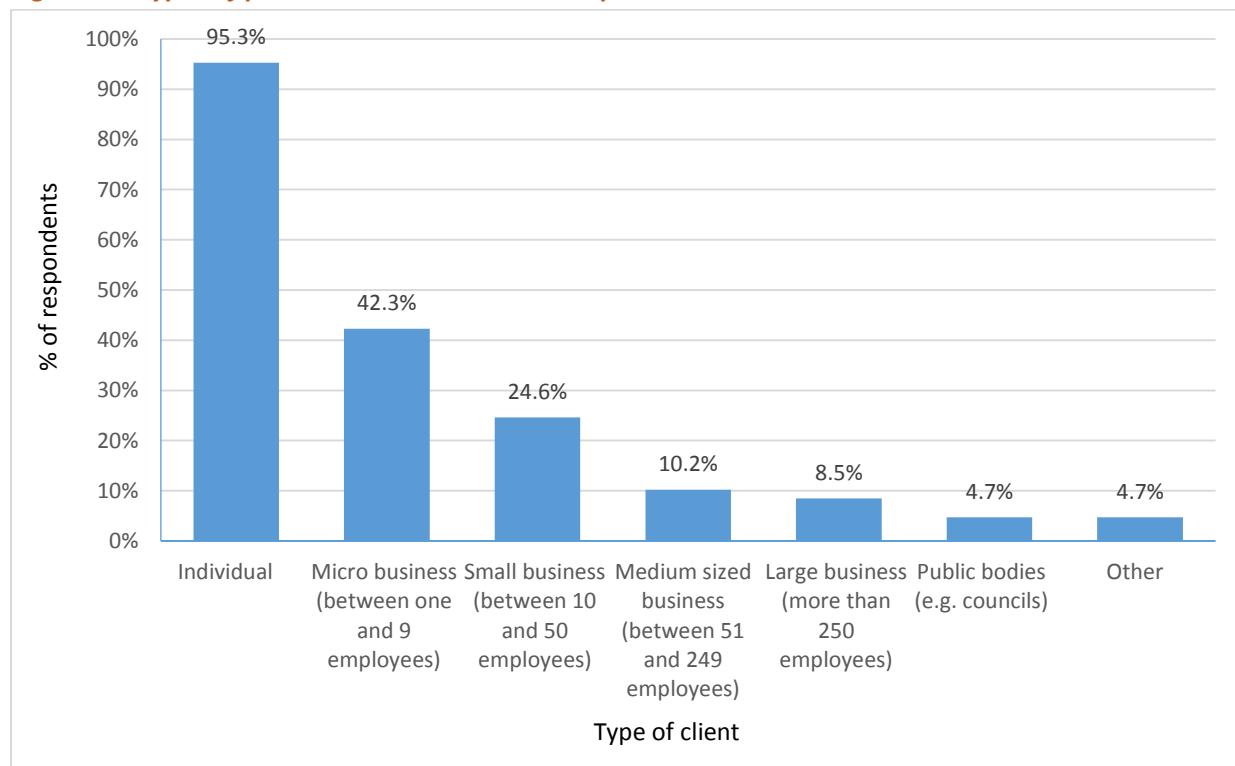
<sup>11</sup> Direct Public Access

## 4. Types of client using public access

### 4.1 Instructions received by type of client

Over 95% of respondents have been instructed in public access work by an individual client. Just over 40% of respondents have received instructions from micro businesses, and nearly a quarter of respondents, from small businesses. By comparison a much smaller number of respondents (less than 10%) have undertaken public access work for large businesses (Figure 14).

**Figure 14: Types of public access clients over the past 12 months**



Base 402 \*Respondents were able to select multiple options, therefore responses should not total 100%

Similarly, instructions from individuals account for between 76 and 100% of public access instructions, for nearly half the respondents working on behalf of this client group (Table 6). A high proportion of respondents (79%) have been instructed by a litigant in person.

There is a diverse mix of other types of client – these numbers are not statistically significant - and span:

- Churches
- Charities
- Community groups
- Consultancies
- Foreign law firms not operated by solicitors
- Resident owned companies (e.g. right to manage companies)
- Trade associations
- Trust companies
- Trustees
- Unincorporated association

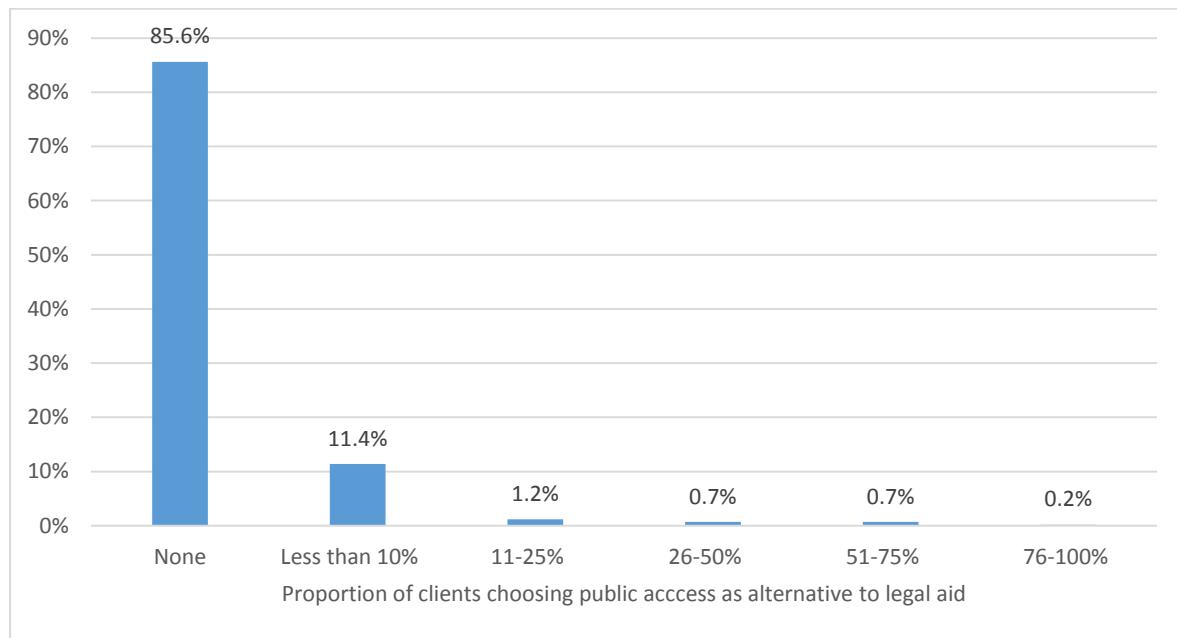
**Table 6: Proportion of instructions received from different client types**

Respondent group	Base	None	1-10%	11-25%	26-50%	51-75%	76-100%
Individuals	379	0%	22.1%	9.8%	9.6%	13.8%	44.7%
Micro businesses	163	0.6%	44.8%	31.3%	17.2%	3.1%	3.1%
Small businesses	93	1.1%	48.4%	31.2%	16.1%	2.2%	1.1%
Medium-sized businesses	40	2.5%	45.0%	30.0%	20.0%	0.0%	2.5%
Large businesses	32	0.0%	50.0%	15.6%	15.6%	6.3%	12.5%
Public bodies	17	0.0%	47.1%	29.4%	17.6%	5.9%	0.0%
Other	18	0.0%	44.4%	33.3%	11.1%	5.6%	5.6%

Base numbers are shown next to each respondent group

A very small proportion of public access clients opted to go down the public access route as an alternative to legal aid (Figure 15).

**Figure 15: Proportion of clients that chose public access as an alternative to legal aid over the past 12 months**

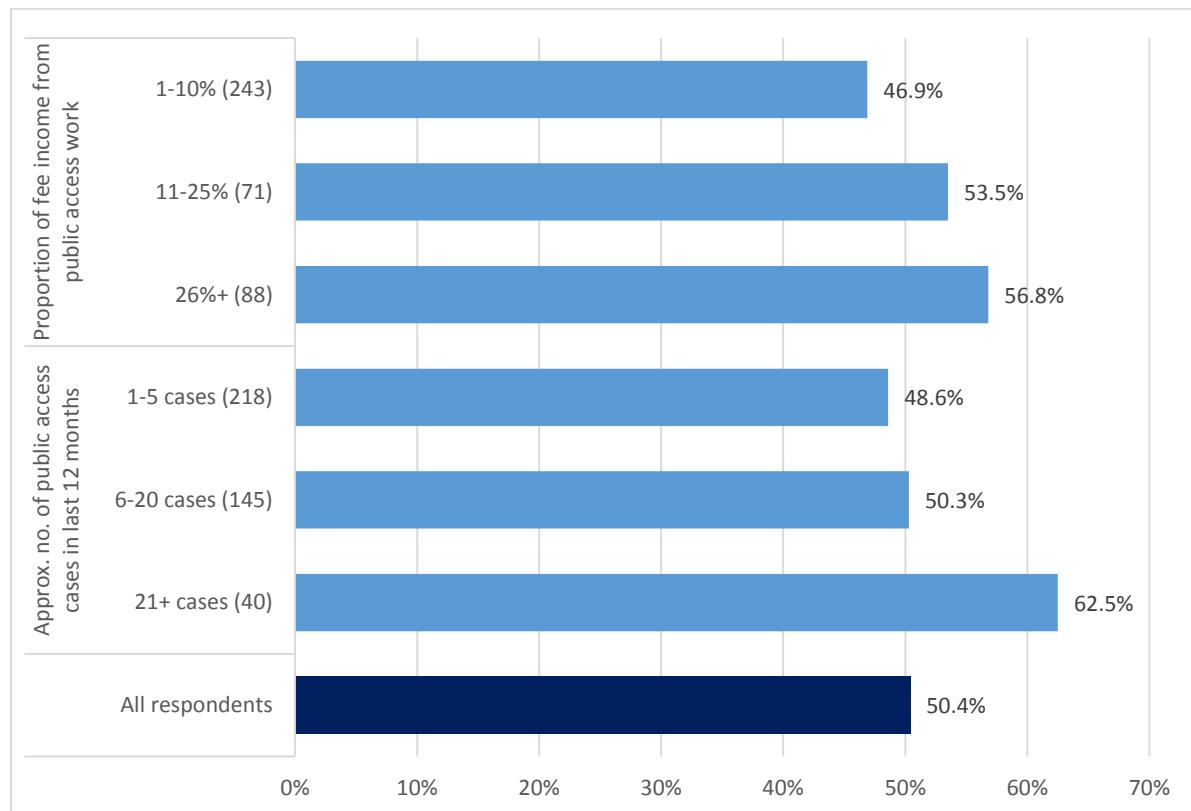


Base 403

#### 4.2 Barriers to client use of the public access scheme

Around half of all respondents consider there are barriers preventing clients from accessing, or making full use, of the public access scheme. Barristers typically taking on a larger volume of cases generating a higher proportion of overall fee income, are more inclined to perceive barriers. For example 62.5% of respondents who had undertaken more than 21 cases in the past 12 months said there are barriers; as did 56.8% of respondents for which public access work accounts for more than 26% of their overall fee income (Figure 16).

**Figure 16: Whether respondents believe there are any barriers for clients to engage with public access barristers**



Base numbers are in brackets next to each respondent group

Qualitative feedback indicates that barristers consider general lack of awareness of the public access scheme is the biggest barrier for clients. A number of barristers cited the lack of promotion of the scheme at a national level as an issue, saying that many of their clients were previously unaware of public access until they received a recommendation – but regretted they had not known of the scheme earlier.

*"There is a fundamental lack of awareness on the part of the public that public access to the Bar is an option. The Bar should really collectively invest in a bit of advertising to get the message out there. Very few people have any idea about it. This is a serious barrier"*

**Feedback from respondent**

Barristers also refer to a lack of understanding among clients as to the scheme, notably contributing to misunderstandings as to what barristers can and cannot do via public access. This in turn can create unrealistic expectations of the service, and can also mean that clients who are unsuitable for the scheme seek to instruct barristers through this route. In some cases this relates to litigation, where clients expect this will be undertaken by the barrister. As public access barristers are now able to apply for an extension to their practising certificate to conduct litigation, this barrier may wane

over time if more barristers opt to do this. However in other cases differences in opinion between barrister and client about the role of the barrister, appear to stem from cultural barriers.

For example a number of respondents said that vulnerable clients struggle to access the scheme, particularly if there are language barriers, as do clients unable to fulfil the functions traditionally handled by a solicitor, notably litigation and administration. As previously stated, in this context barristers consider clients to be 'vulnerable' if they are unable to manage their own litigation and administration.

Furthermore some respondents say that prospective clients can have the perception that barristers are intimidating, difficult to engage and hard to contact. This is partly attributed to Chambers and clerking infrastructures, which they say are designed for professional, rather than lay clients. However in other cases it appears that barristers expect clients to contact them and communicate with them in a certain way – for example providing instructions in writing.

*"Complexity of their case [can be a barrier]. I am busy and cannot hand hold. The client has to be able to set out their position clearly in writing to me and if they are unable to do that then I am probably not the one for them"*

*"It's more about their [public access clients] communication and their ability to give you firm instructions"*

*"They [public access clients] do not understand how to talk to barristers"*

#### **Feedback from respondents**

Additionally and as previously stated in section 3.5, some barristers perceive that their public access clients expect far more personal communication from them, than they as barristers expect to provide.

*"There is an expectation of a high level of customer service and occasionally it has taken the client by surprise that I am not available during court hours or that I am not a one-stop shop for all areas of legal work and a guarantee of success"*

*"[There are] difficulties for lay clients in understanding what barristers do not do. Most expect to be able to pick up the phone at any time and have direct and immediate communication"*

*"They [public access clients] are much more demanding than my professional clients demanding almost instant attention"*

#### **Feedback from respondents**

Other respondents say that barristers can create barriers themselves as a result of their stance on client communications.

*"Barristers often put up barriers themselves to keep clients at arm's length"*

*"Barristers themselves do not always know how to engage with Joe Public as opposed to another professional"*

**Feedback from respondents**

A small number of respondents say that the role of the clerk can be a barrier, if this means clients are unable to meet with and/or speak to barristers before instructing them, as they would expect to do with solicitors.

The restrictions on the types of work that can be done via the scheme, notably litigation<sup>12</sup>, does inevitably constrain the range of clients able to instruct barristers via public access. Misperceptions of the role of barristers, notably confusion between what solicitors and barristers do, can intensify this issue. In some cases this means barristers give free advice at the outset only for the prospective client to walk away once they have a more realistic understanding of the scheme.

The fee infrastructure can also be a factor in client disengagement. Some barristers have found their clients believe the scheme will be cheaper, but it is not in reality. Furthermore the rules on holding fees on account can make it difficult for barristers to price a case for lay clients or allow for contingencies. Some clients expect a "no win-no fee" structure and have limited experience in understanding or negotiating fees with professionals.

*"The perception [among public access clients] seems to be that barristers will be much cheaper than solicitors and clients do not go ahead with instructing us when they find out the fee"*

*"There is a general perception amongst the public that fees should be on a "no win-no fee" basis and the public generally has little experience in understanding and negotiating a professional's fees. This gap in understanding puts considerable pressure on barristers as we try to clearly explain to clients why our fees are at a particular level"*

**Feedback from respondents**

Respondents acknowledge the need for the regulatory framework but feel that it can create barriers for clients, because the client care letter and public access handbook require that a number of risks be clearly communicated to the client. In some cases these act as a deterrent, particularly the money laundering checks.

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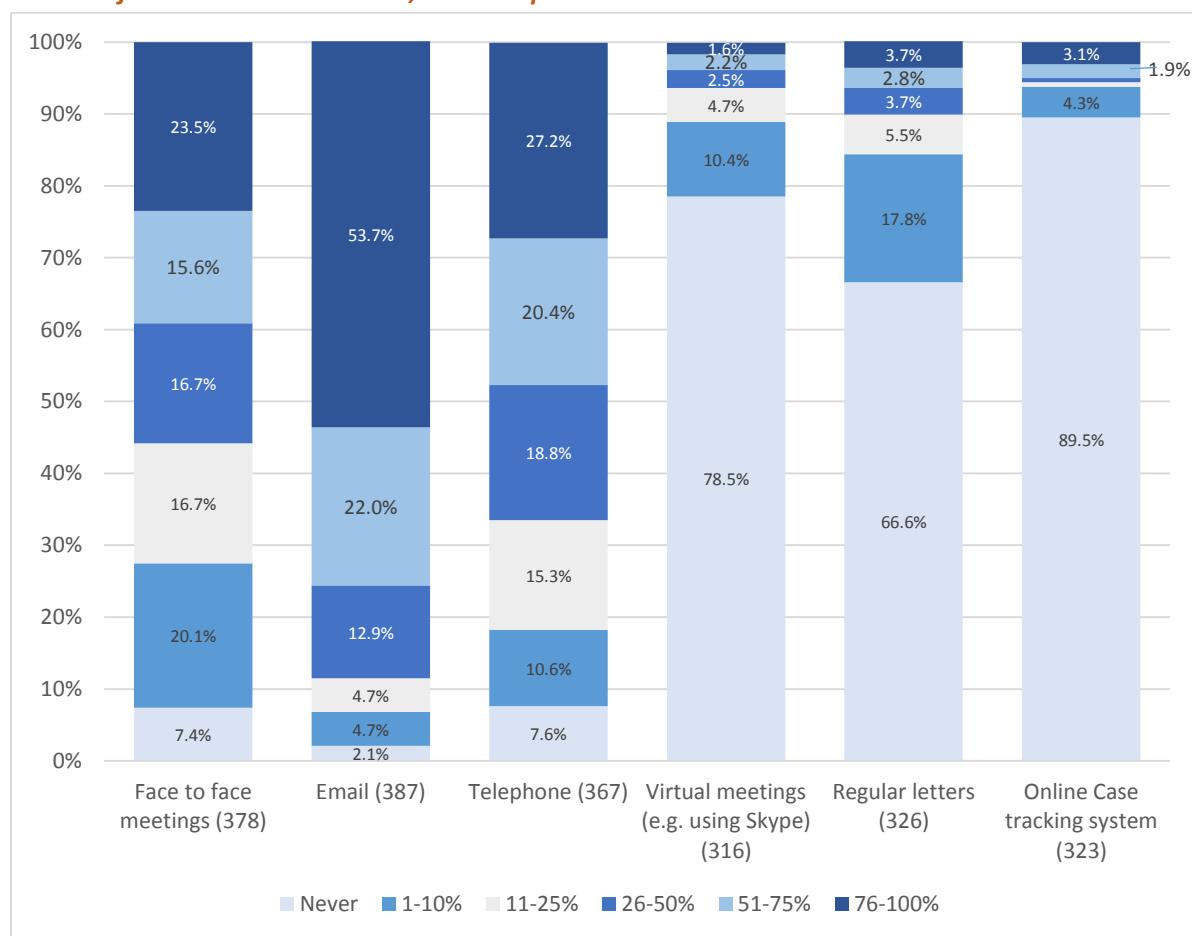
<sup>12</sup> Although regulations were relaxed in 2014 to allow public access barristers to apply for an extension to their practising certificates to conduct litigation

## 5. Client communications and complaints

### 5.1 Channels of communication

The most commonly used method of communication between barristers and their public access clients is email, used between 76 and 100% of the time by over half of all respondents. Just over a quarter of respondents keep in touch via telephone for approximately the same proportion of time. By contrast few barristers send letters or use an online case tracking system as a means of communication for their public access work (Figure 17).

**Figure 17: Frequency with which respondents used the following approaches to keep public access clients informed about their case, over the past 12 months**

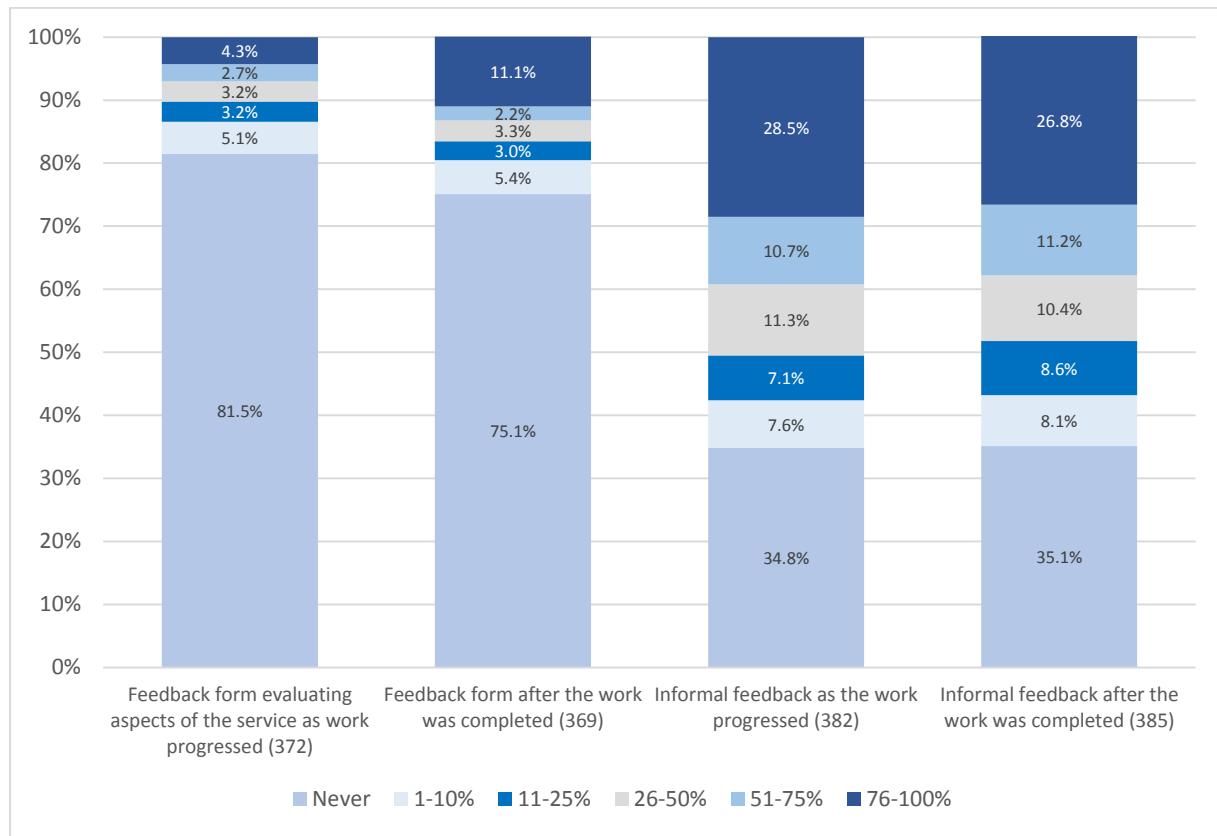


Base numbers are in brackets next to each respondent group

The majority of barristers are not regularly using any kind of formal mechanism to obtain, record and thus act upon, feedback from their public access clients (Figure 18). However, obtaining formal feedback at the conclusion of a case appears to be embedded as standard practice for around a quarter of respondents. On the whole, barristers are more likely to obtain feedback through informal means, whether this be as the case progresses, or after its conclusion (Figure 18). There are

no significant differences between the approach taken by respondents with less than 3 years' practising experience who are required to maintain a log of public access cases, and the remainder of respondents.

**Figure 18: Frequency with which respondents used the following means to seek feedback from their public access clients, over the past 12 months**



Base numbers are in brackets next to each respondent group

## 5.2 Issues encountered with client communications

A number of barristers cite client correspondence to be the biggest burden of their public access work. Those with more experience of the scheme are inclined to set out 'ground rules' at the outset, enabling them to manage client expectations. Others find public access work to be a marked change from conventional practice, whereby solicitors typically cushion them from such regular communications with the end client. In particular the client expectation that the barrister will be readily available, can be difficult to manage – barristers do not work 9-5 in an office – and thus cannot provide the same level of communication that a solicitor can.

Furthermore barristers can become frustrated with the amount of correspondence that in their opinion unrealistic client expectations can generate – particularly if a fixed fee has been agreed.

[In terms of correspondence] “*lay clients need permanent hand-holding*”

“*clients expect constant access to you*”

“*client expectations of instant replies*”

“*it is difficult to build time taken on excessive correspondence into the overall fee*”

“*public access client correspondence is a huge administration burden on chambers*”

#### Feedback from respondents

### 5.3 Client care letter

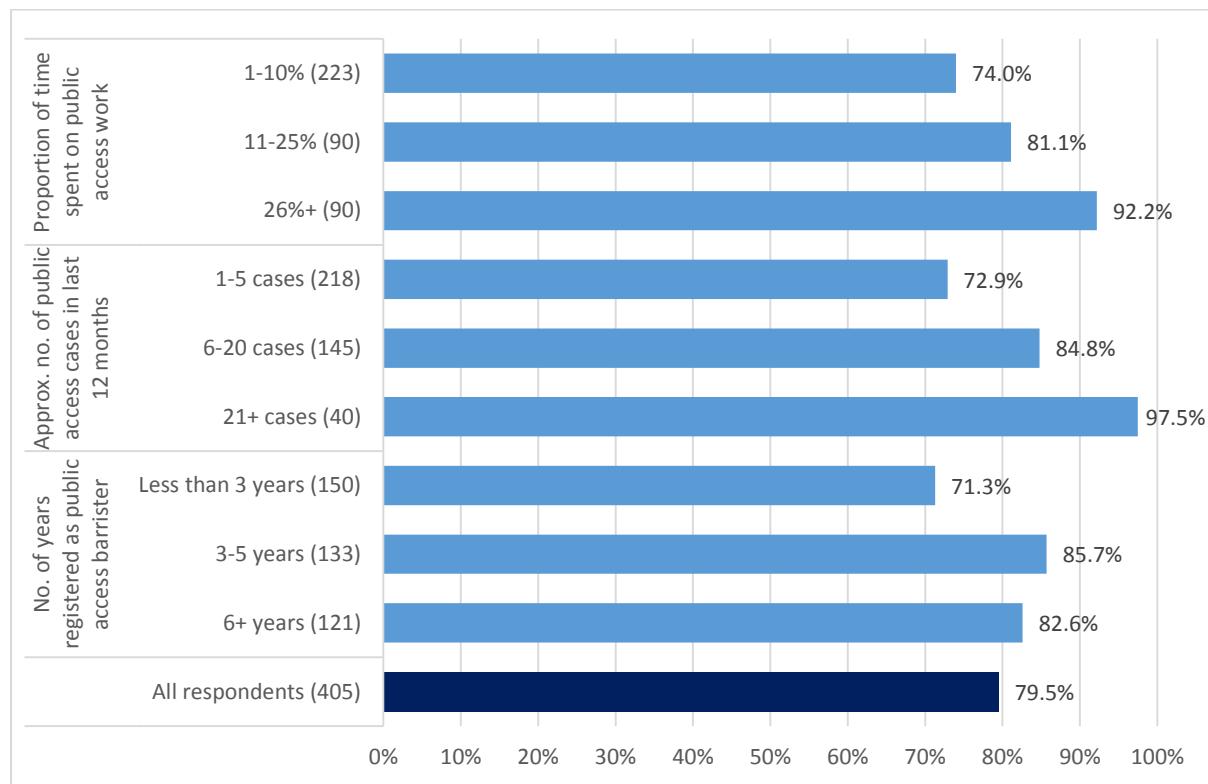
Nearly 80% of respondents have used the Bar Standards Board Public Access model client care letter. This increases to 92% among respondents who earn more than 26% of their fee income from public access work, and just over 97% among respondents that have undertaken more than 21 public access cases in the past 12 months (Figure 19).

Of those that use the client care letter, around 34% of respondents use it in all cases, whereas just over 45% of respondents make regular use of the letter, but with their own amendments (Figure 20).

Feedback from the qualitative interviews shows that barristers have amended the letter in a wide range of ways, to suit their own and their clients’ particular circumstances, as well as the area of law. For example some had added details about their public liability and professional indemnity insurance, and others, more detail on the likely processes as the case progressed – to help manage client expectations.

Most barristers think it is reasonable to have a standard template which can be adapted as required. However the consensus was that the existing letter needs to be re-worded to include language in “layman’s terms”, reducing the amount of legal jargon. In addition many barristers objected to the separate two-page complaints section, which was described as a means of “almost inviting complaints to be made”. Those that had adapted this always made it shorter, with more accessible language.

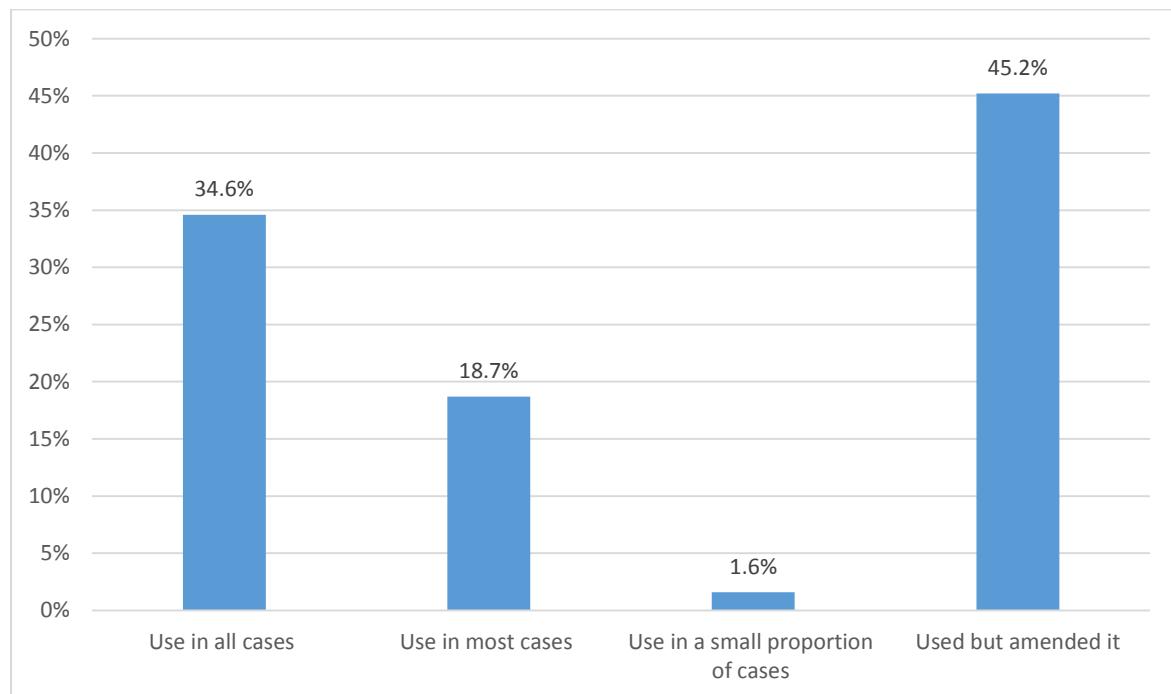
**Figure 19: Whether respondents do or have ever used the Bar Standards Board Public Access model client care letter**



Base numbers are in brackets next to each respondent group

\*Respondents were able to select multiple options, therefore responses should not total 100%

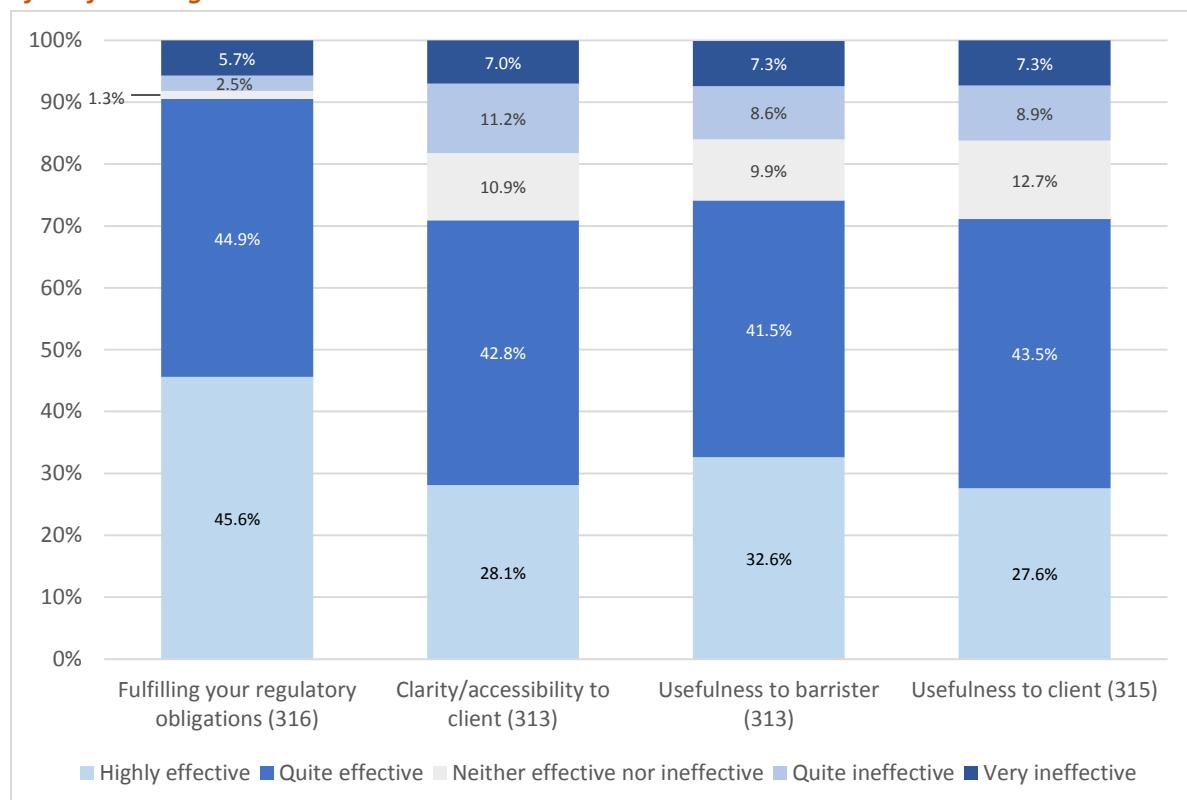
**Figure 20: Extent to which respondents use the Bar Standards Board Public Access model client care letter**



Base 321 \*Respondents were able to select multiple options, therefore responses should not total 100%

Nearly 90% of respondents think the client care letter is highly or quite effective in helping barristers to fulfil their regulatory obligations, but a slightly lower proportion of around 70% of respondents believe it is as effective from a client perspective (Figure 21).

**Figure 21: Effectiveness of the Bar Standards Board Public Access model client care letters in each of the following:**



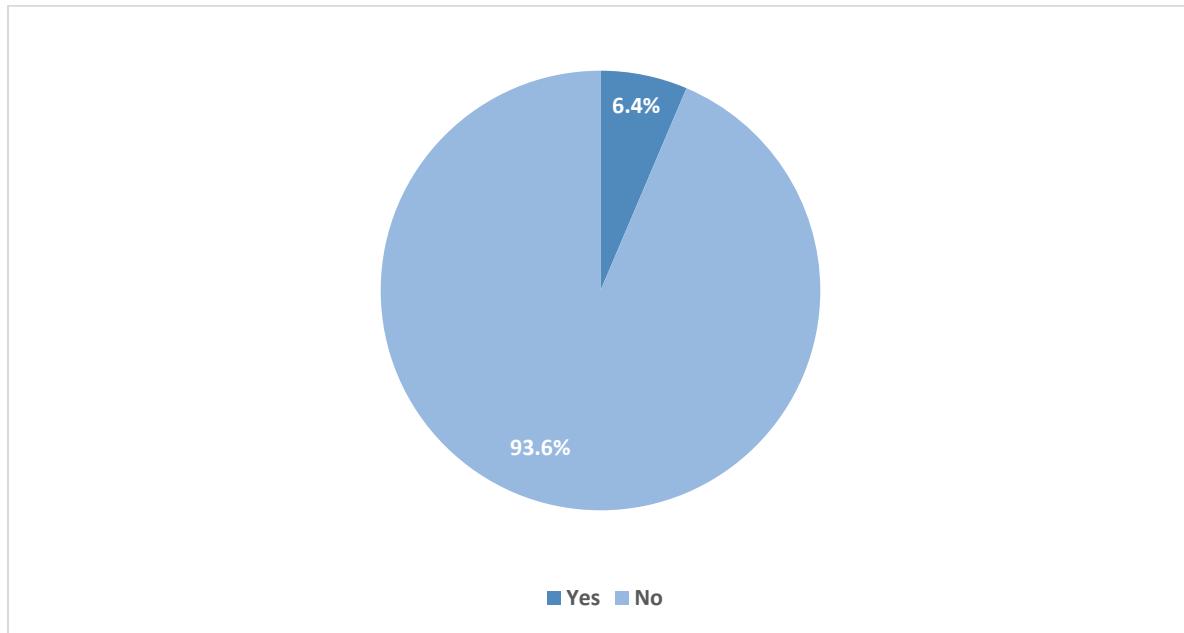
Base numbers are in brackets next to each respondent group

## 5.4 Client complaints

The majority of respondents (93.6%) have not received a complaint<sup>13</sup> from a public access client in the past 12 months (Figure 22). Of the very small number of respondents who had experienced complaints, half said the number of complaints had remained static in that time, while around 42% reported an increase (Figure 23). Of those that reported an increase, around two-thirds had undertaken less than 10 public access cases in the past 12 months. Nearly all of the respondents who had completed over 30 public access cases in the same time stated that the number of complaints received had either stayed the same or decreased. However these findings are not statistically significant due to the low base numbers.

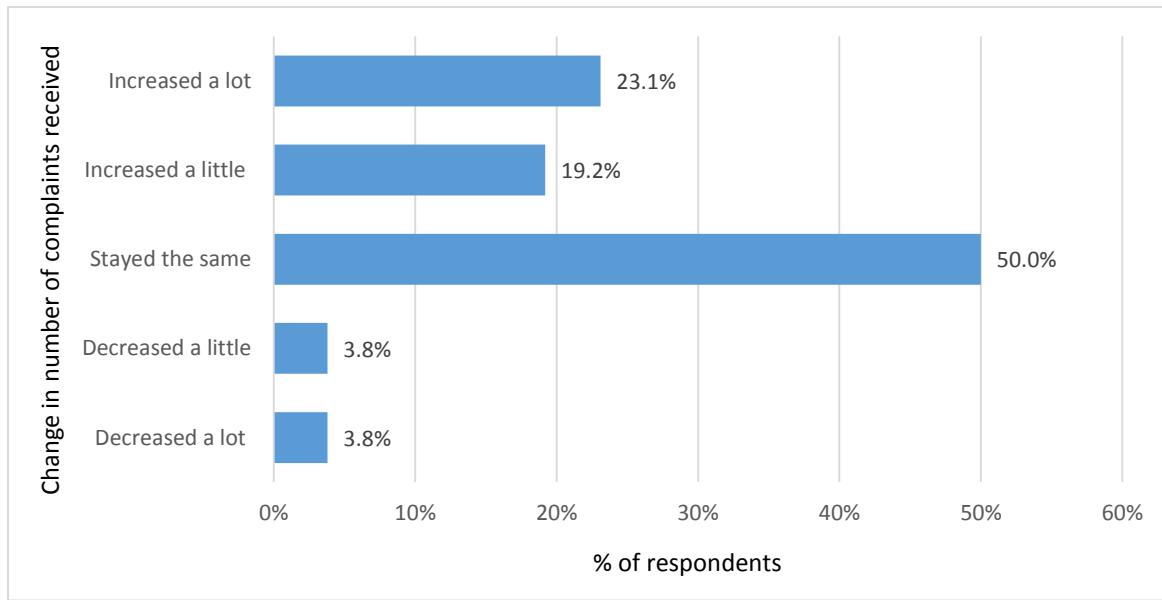
<sup>13</sup> This refers to complaints either made directly to the barrister or to the Bar Council and/or Bar Standards Board (BSB) i.e. all complaints of which the respondent was made aware

**Figure 22: Whether respondents had received a complaint in relation to a public access case during the past 12 months**



Base 404

**Figure 23: Whether the number of complaints received has changed in relation to public access cases, over the past 12 months**



Base 26

Qualitative feedback indicates that there may be greater scope for complaints within the public access scheme, as clients have less experience of the law and may be more likely to misinterpret statements or legal advice. One barrister said she received a complaint after providing advice which the client misinterpreted – this was overturned post-investigation – but she felt the incident

highlighted that barristers are less likely to keep a record of everything they do and say, unlike solicitors, which again increases the risk of complaints.

## 6. Impacts of reforms to the public access scheme on consumers and barristers

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### 6.1 Impacts for consumers

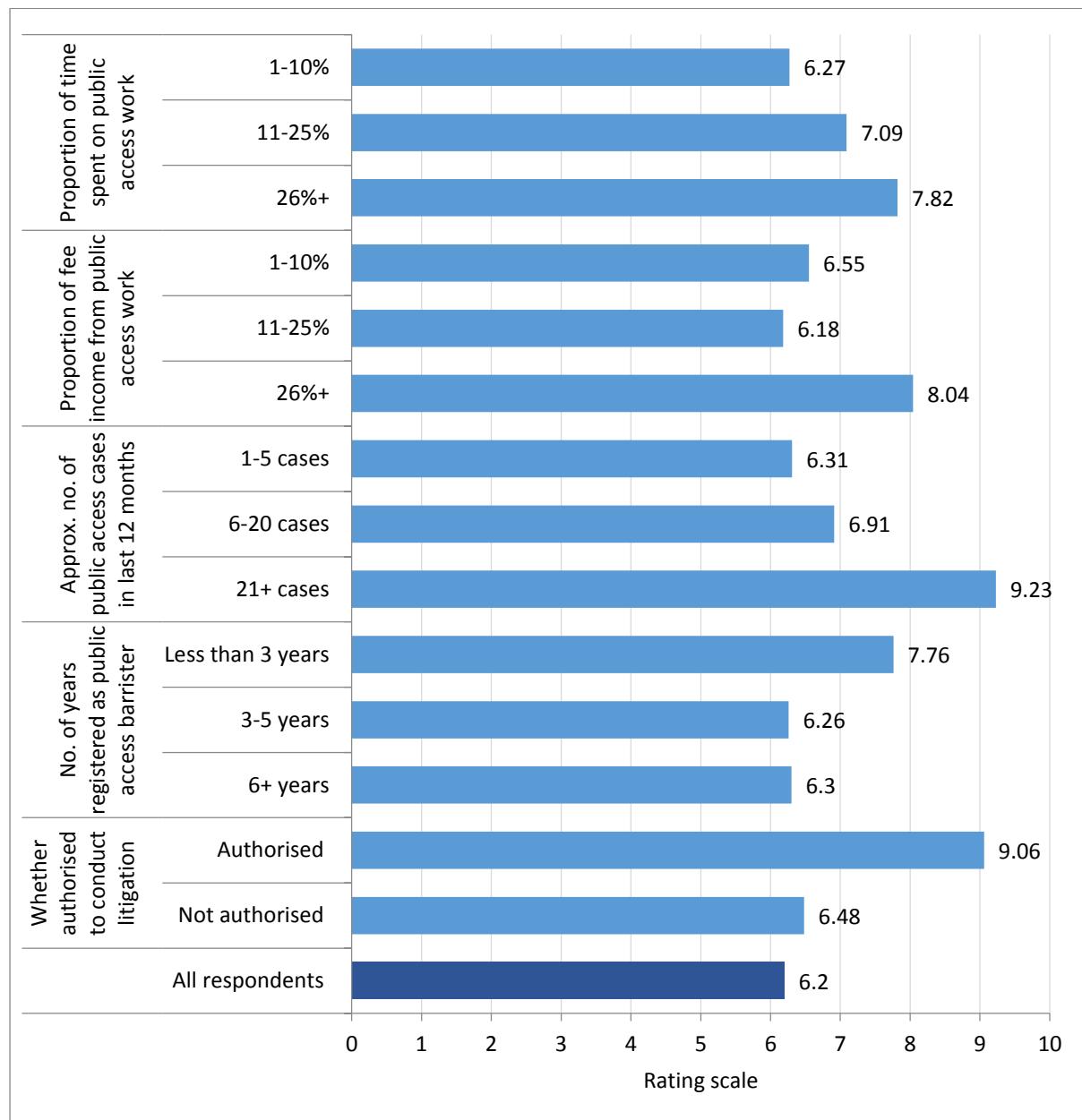
#### *6.1.1. Effectiveness of the regulatory framework*

Overall, respondents consider that the regulatory framework is largely effective in protecting consumers of the public access scheme. When asked to rate its effectiveness using a 1-10 scale, where 1 is not at all effective in protecting consumers, and 10 is highly effective in protecting consumers, 387 respondents gave an average rating of 7.5. The mode rating was 8.

When considering specific impacts for consumers, average ratings were slightly lower. On average, when asked about the impact of the 2013 reforms to public access in increasing choice for the consumer, respondents gave a rating of 6.2 (although the mode rating was 8). Ratings increase depending on the experience of the barrister in conducting public access work. For example those that had undertaken more than 21 public access cases in the past 12 months gave an average rating of 9.23 (Figure 24).

Barristers authorised to conduct litigation also gave a markedly higher average rating of 9.06, compared with 6.48 among those not authorised to conduct litigation (Figure 24).

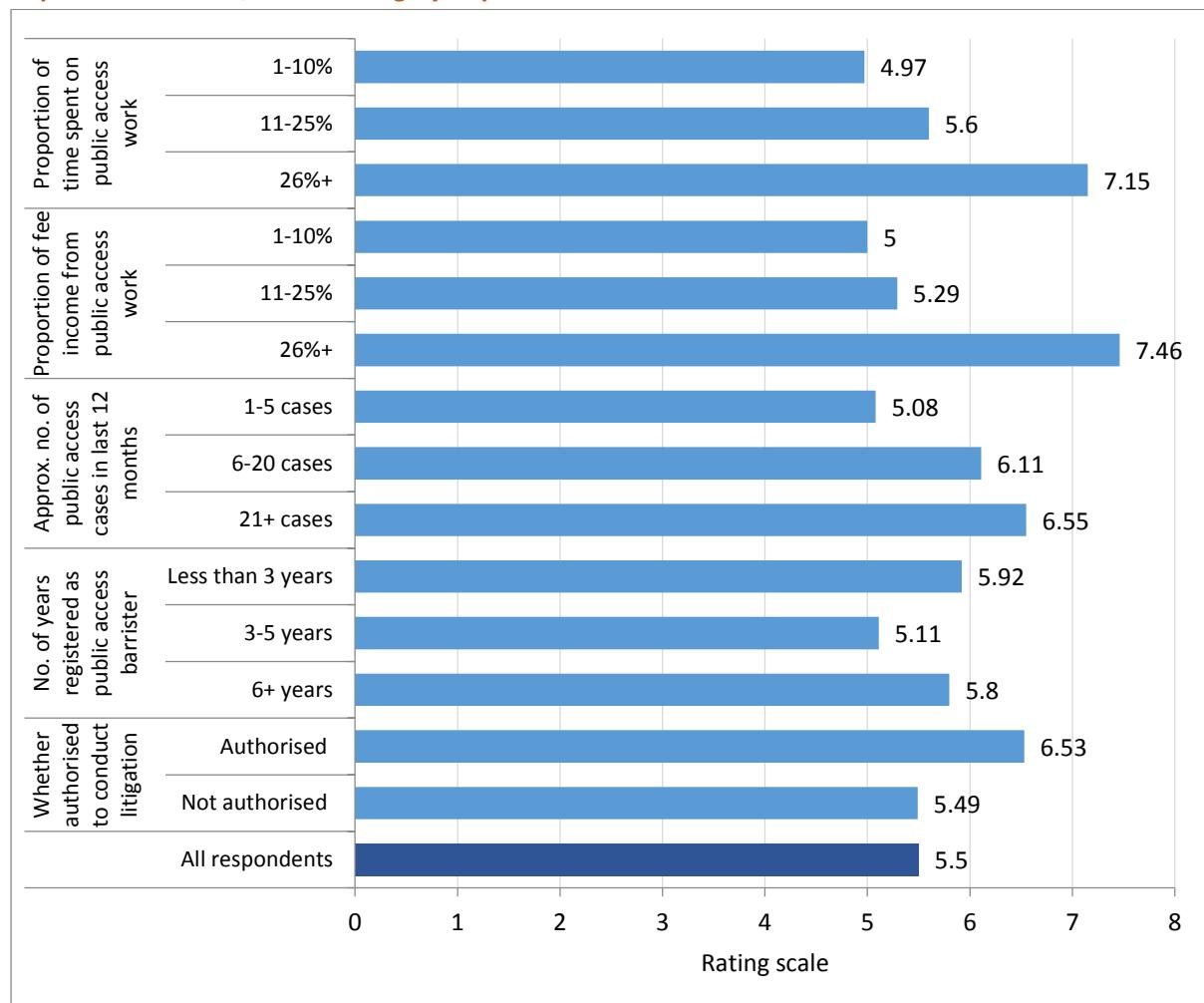
**Figure 24: Respondents' views on the impact of reforms to the public access scheme in increasing choice for the consumer, using a scale of 1 to 10, where 1 is no change at all, and 10 is extensive increase in choice**



Base for all respondents 379

A similar pattern can be seen among respondents considering the extent to which the 2013 reforms have improved timeliness of access to legal services for consumers, although overall ratings are generally lower by comparison with the previous two figures. An average rating of 5.5 was given by all respondents (with a mode rating of 5); this rose to around 7 among respondents that obtain more than 26% of their fee income and spend more than 26% of their time on public access work (Figure 25).

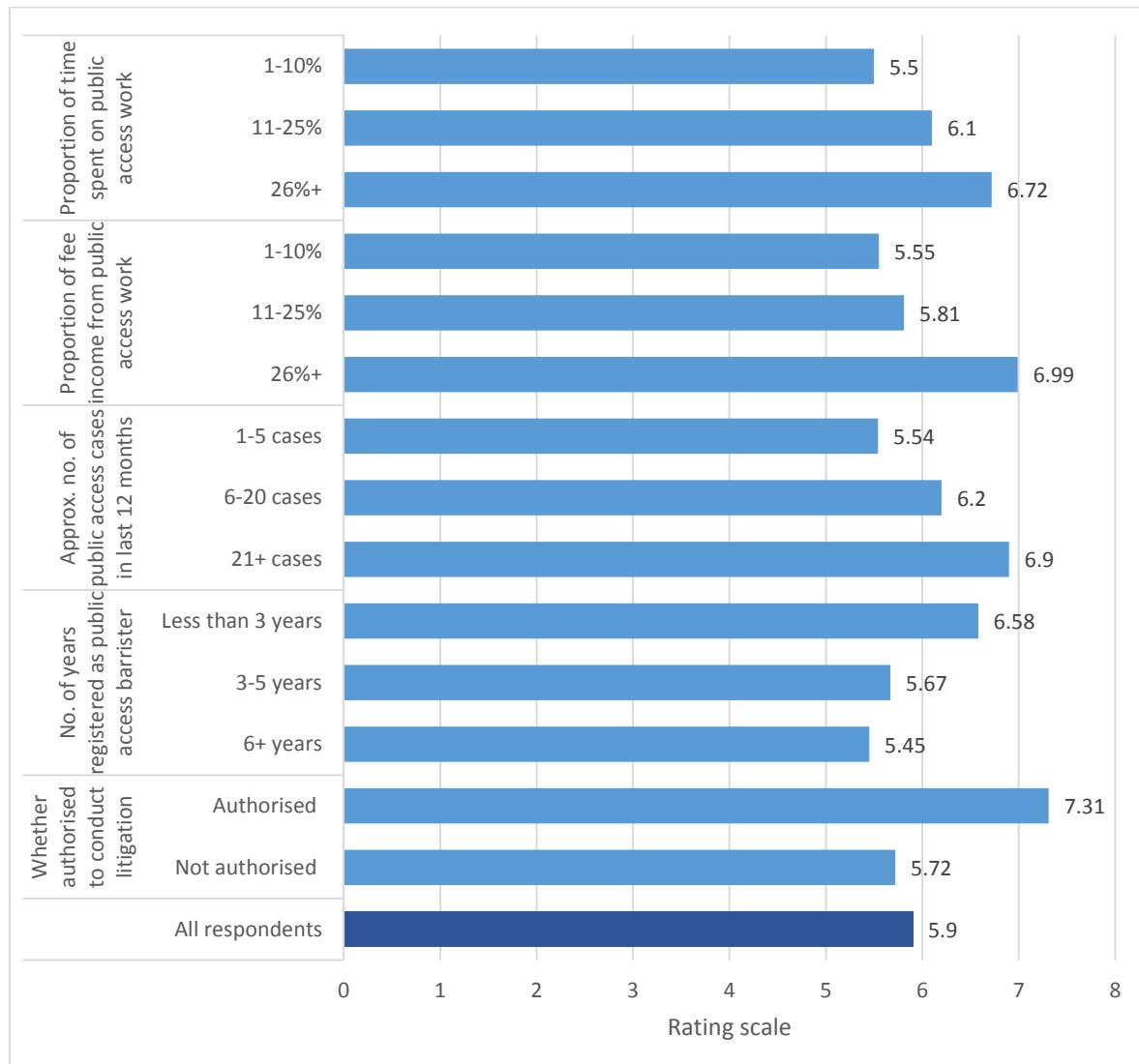
**Figure 25: Respondent views' on the impact of reforms to the public access scheme in improving timeliness of access to legal services for the consumer, using a scale of 1-10, where 1 is no improvement at all, and 10 is highly improved**



Base for all respondents 375

Again there is a similar trend among respondents asked about the extent to which the 2013 reforms have helped to reduce costs for the consumer. In particular barristers authorised to conduct litigation consider this change has been a factor in reducing consumer costs. An average rating of 5.9 (mode rating of 5) rises to 7.31 among respondents authorised to conduct litigation. Barristers undertaking the most public access work are more likely to perceive that costs for consumers have reduced (Figure 26).

**Figure 26: Respondent views on the impact of reforms to the public access scheme in reducing cost for the consumer, using a scale of 1-10, where 1 is no difference at all, and 10 is substantial difference**



Base for all respondents 378

### 6.1.2 Views on how the regulatory framework could be improved

Most respondents did not suggest any specific improvements to the regulatory framework, but are opposed to any additional regulations within the existing framework. A number of barristers find the 3-year rule which requires supervision, to be unnecessary, however this was not the consensus position.

Very few respondents that took part in a depth interview could suggest any other regulatory arrangements which would improve the scheme for consumers, other than the right to conduct litigation. However most were unwilling to apply for authorisation to conduct litigation, saying that this is the role of the solicitor, and not something they would wish to do. Most respondents support

restrictions around conducting litigation, saying that this rightly distinguishes the barristers' role from that of the solicitor. Furthermore it could pose greater risk to the barrister and consumer. Many respondents support the framework's stance on holding client money – the inability to hold client money seems to mitigate risks of money laundering and other risks, including a knock on effect of higher insurance premiums.

## 6.2 Impacts for barristers

### 6.2.1 Impacts on barristers' practice

For most barristers, public access work has increased over the past 3 years. Nearly 70% of respondents say their public access caseload has increased by a lot or by a little (Table 7).

Fees have also risen over the same time period. Around 43% of respondents have increased fees for public access work by a lot or by a little. This rises to nearly 50% among respondents that have been undertaking public access work for more than 6 years. However just over half of all respondents also say that their fees have remained at the same level (Table 7).

Around a third of all respondents have increased the volume and range of their professional development and training as a result of undertaking public access work, however for the majority (70.4%) this has stayed the same (Table 7).

There are more noticeable impacts for respondents undertaking the highest proportion of public access cases. Around 43% of all respondents have reported an increase in the profitability of their practice as a consequence of the public access scheme; this rises to over 77% among respondents who undertook more than 21 public access cases in the past 12 months. Similarly, 70% of the latter group say their fees have increased by a lot or by a little, compared with the average of nearly 43% across all respondents (Table 8). While increased fees and profitability is positive news for barristers, consumers may not always be benefiting through lower prices as a result of the reforms – just 4% of barristers said their fees had reduced over the past three years.

However qualitative feedback indicates that some respondents do not find the scheme to be financially worthwhile, because they are more likely to have to spend unpaid time explaining issues to clients. Furthermore not all barristers have a clear understanding of how to calculate fees for public access clients (explained in more detail in section 6.2.2).

Further, feedback from the depth interviews suggests that consumers can achieve an overall cost saving as they do not incur solicitors' fees. There are mixed opinions about the extent to which consumers can benefit from lower costs via public access, linked to the type of client and also the area of law. For example some respondents believe clients in professional organisations such as consultancies, tend to save money by "cutting out the middleman". A number of family law barristers say that public access is a cheaper option for matrimonial cases. Similarly employment law practitioners believe consumers can save money, as this area of law is well suited to public access

work. Of course, this research has only explored one perspective; the views of consumers would need to be sought to provide a rounded picture.

*"Clients come to me not being able to afford a solicitor. Public access means that there is an increased access to justice as I am affordable for them"*

*"My fees are incredibly low compared to standard solicitor fees"*

*"Could save them [clients] so much money in the field of employment law, which is particularly well suited to public access"*

#### **Feedback from respondents**

However a number of other respondents say many potential clients walk away from public access when they realise what the fee will be – having expected a lower overall cost. One respondent stated “it [the public access scheme] is wrongly seen as an opportunity to save costs, but rarely achieves that”.

**Table 7: Changes experienced in relation to the following aspects of public access work, over the past 3 years – all respondents and respondents by number of years registered as a public access barrister**

Impacts for barristers	Respondent group	Base	Increased a lot	Increased a little	Stayed the same	Decreased a little	Decreased a lot
<b>Volume of public access work</b>	All	<b>394</b>	<b>28.9%</b>	<b>39.6%</b>	<b>24.9%</b>	<b>5.6%</b>	<b>1.0%</b>
	<3 years	143	33.6%	36.4%	28.7%	1.4%	0.0%
	3-5 years	131	29.8%	43.5%	19.1%	6.1%	1.5%
	>6 years	119	22.7%	38.7%	26.9%	10.1%	1.7%
<b>Volume of public access work as a proportion of overall caseload</b>	All	<b>387</b>	<b>25.1%</b>	<b>36.4%</b>	<b>31.5%</b>	<b>5.7%</b>	<b>1.3%</b>
	<3 years	140	28.6%	38.6%	30.0%	2.9%	0.0%
	3-5 years	129	24.8%	35.7%	31.0%	7.8%	0.8%
	>6 years	117	21.4%	34.2%	34.2%	6.8%	3.4%
<b>Fees charged for public access work</b>	All	<b>386</b>	<b>8.0%</b>	<b>34.7%</b>	<b>53.4%</b>	<b>2.1%</b>	<b>1.8%</b>
	<3 years	141	9.2%	34.0%	52.5%	2.8%	1.4%
	3-5 years	128	6.3%	30.5%	61.7%	1.6%	-
	>6 years	116	8.6%	39.7%	45.7%	1.7%	4.3%
<b>Volume of professional development and training undertaken (not including public access training)</b>	All	<b>390</b>	<b>5.6%</b>	<b>24.1%</b>	<b>68.2%</b>	<b>1.3%</b>	<b>0.8%</b>
	<3 years	141	5.7%	28.4%	63.8%	0.7%	1.4%
	3-5 years	131	6.9%	19.1%	72.5%	0.8%	0.8%
	>6 years	117	4.3%	24.8%	68.4%	2.6%	-
<b>Range of professional development and training undertaken (not including public access training)</b>	All	<b>388</b>	<b>4.4%</b>	<b>24.2%</b>	<b>70.4%</b>	<b>0.8%</b>	<b>0.3%</b>
	<3 years	139	3.6%	28.8%	66.2%	0.7%	0.7%
	3-5 years	131	6.1%	24.4%	69.5%	-	-
	>6 years	117	3.4%	18.8%	76.1%	1.7%	-
<b>Profitability of practice</b>	All	<b>392</b>	<b>10.5%</b>	<b>32.9%</b>	<b>41.3%</b>	<b>11.5%</b>	<b>3.8%</b>
	<3 years	142	10.6%	36.6%	40.8%	9.9%	2.1%
	3-5 years	131	10.7%	34.4%	38.2%	14.5%	2.3%
	>6 years	118	10.2%	27.1%	44.9%	10.2%	7.6%
<b>Diversity of practice (range of areas of law in which public access work undertaken)</b>	All	<b>388</b>	<b>5.2%</b>	<b>22.7%</b>	<b>66.2%</b>	<b>4.6%</b>	<b>1.3%</b>
	<3 years	141	6.4%	22.7%	66.7%	3.5%	0.7%
	3-5 years	131	5.3%	23.7%	66.4%	3.8%	0.8%
	>6 years	115	3.5%	21.7%	65.2%	7.0%	2.6%
<b>Diversity of client base (range of different types of client e.g. by sector)</b>	All	<b>391</b>	<b>4.9%</b>	<b>25.1%</b>	<b>65.5%</b>	<b>4.1%</b>	<b>0.5%</b>
	<3 years	141	5.7%	26.2%	64.5%	3.5%	0.0%
	3-5 years	131	6.1%	21.4%	69.5%	3.1%	-
	>6 years	118	2.5%	28.0%	61.9%	5.9%	1.7%

**Table 8: Changes experienced in relation to the following aspects of public access work, over the past 3 years – all respondents and respondents by number of public access cases**

Impacts for barristers	Respondent group	Base	Increased a lot	Increased a little	Stayed the same	Decreased a little	Decreased a lot
<b>Volume of public access work</b>	All	<b>394</b>	<b>28.9%</b>	<b>39.6%</b>	<b>24.9%</b>	<b>5.6%</b>	<b>1.0%</b>
	1-5 cases	209	11.0%	45.5%	34.9%	6.7%	1.9%
	6-20 cases	143	47.6%	37.8%	11.9%	2.8%	-
	21+ cases	40	55.0%	17.5%	17.5%	10.0%	-
<b>Volume of public access work as a proportion of overall caseload</b>	All	<b>387</b>	<b>25.1%</b>	<b>36.4%</b>	<b>31.5%</b>	<b>5.7%</b>	<b>1.3%</b>
	1-5 cases	204	9.8%	36.8%	43.1%	7.8%	2.5%
	6-20 cases	142	38.0%	42.3%	16.9%	2.8%	-
	21+ cases	39	56.4%	15.4%	23.1%	5.1%	-
<b>Fees charged for public access work</b>	All	<b>386</b>	<b>8.0%</b>	<b>34.7%</b>	<b>53.4%</b>	<b>2.1%</b>	<b>1.8%</b>
	1-5 cases	203	5.9%	25.1%	63.5%	3.0%	2.5%
	6-20 cases	141	11.3%	40.4%	46.1%	0.7%	1.4%
	21+ cases	40	7.5%	62.5%	27.5%	2.5%	-
<b>Volume of professional development and training undertaken (not including public access training)</b>	All	<b>390</b>	<b>5.6%</b>	<b>24.1%</b>	<b>68.2%</b>	<b>1.3%</b>	<b>0.8%</b>
	1-5 cases	206	7.3%	19.9%	71.8%	0.5%	0.5%
	6-20 cases	143	4.2%	28.7%	64.3%	2.8%	-
	21+ cases	39	2.6%	30.8%	61.5%	-	5.1%
<b>Range of professional development and training undertaken (not including public access training)</b>	All	<b>388</b>	<b>4.4%</b>	<b>24.2%</b>	<b>70.4%</b>	<b>0.8%</b>	<b>0.3%</b>
	1-5 cases	204	4.4%	23.5%	72.1%	-	-
	6-20 cases	143	4.9%	24.5%	68.5%	2.1%	-
	21+ cases	39	2.6%	28.2%	66.7%	-	2.6%
<b>Profitability of practice</b>	All	<b>392</b>	<b>10.5%</b>	<b>32.9%</b>	<b>41.3%</b>	<b>11.5%</b>	<b>3.8%</b>
	1-5 cases	206	4.9%	29.1%	51.0%	11.2%	3.9%
	6-20 cases	144	13.2%	34.0%	35.4%	13.9%	3.5%
	21+ cases	40	30.0%	47.5%	12.5%	5.0%	5.0%
<b>Diversity of practice (range of areas of law in which public access work undertaken)</b>	All	<b>388</b>	<b>5.2%</b>	<b>22.7%</b>	<b>66.2%</b>	<b>4.6%</b>	<b>1.3%</b>
	1-5 cases	203	3.4%	20.2%	70.4%	3.9%	2.0%
	6-20 cases	144	5.6%	27.1%	62.5%	4.2%	0.7%
	21+ cases	39	12.8%	20.5%	56.4%	10.3%	-
<b>Diversity of client base (range of different types of client e.g. by sector)</b>	All	<b>391</b>	<b>4.9%</b>	<b>25.1%</b>	<b>65.5%</b>	<b>4.1%</b>	<b>0.5%</b>
	1-5 cases	205	3.4%	21.0%	70.7%	3.9%	1.0%
	6-20 cases	144	6.3%	31.3%	58.3%	4.2%	-
	21+ cases	40	7.5%	25.0%	62.5%	5.0%	-

### **6.2.2 Impacts on diversity of the client base**

To help understand the impact of the 2013 reforms in respect of improving accessibility to legal services, respondents were asked about their public access work client base in relation to the Equality Act 2010 protected characteristics. It should be noted that it is not expected that public access barristers will regularly or formally collate this type of information about their clients, and the findings therefore should be treated as indicative only based on barristers' observations.

There appears to be very little change in the diversity of the client base accessing the public scheme, with the exception of clients with diverse ethnic/racial backgrounds (nearly 15% of respondents said there had been an increase) (Table 9).

**Table 9: Changes to the diversity of respondents' public access client base in the past 12 months**

Types of client	Base	Increased a lot	Increased a little	Stayed the same	Decreased a little	Decreased a lot
Clients from different age groups	389	1.3%	8.2%	89.7%	0.5%	0.3%
Clients with different levels of disability	387	1.0%	5.9%	91.7%	1.0%	0.3%
Clients with diverse ethnic/racial backgrounds	389	1.8%	12.9%	84.6%	0.8%	0.0%
Clients with diverse religious beliefs	382	1.3%	5.8%	92.7%	0.3%	0.0%
Clients with diverse sexual orientation	379	1.3%	2.9%	95.5%	0.3%	0.0%
Clients of different marital status	382	0.8%	2.4%	96.6%	0.3%	0.0%
Clients with gender reassignment	374	0.5%	0.5%	98.4%	0.3%	0.3%

### **6.2.3 Most challenging aspects of public access work and subsequent impacts**

The most commonly cited challenges for public access work fall into three categories:

#### **1. Administrative burden**

Many respondents say they have to adapt to the very different demands for public access work in relation to more meticulous record-keeping, time spent dealing with what they perceive to be a larger volume of email instructions, and additional time spent on correspondence. This can have an impact on clerks as well, increasing their workload. One respondent suggested there should be a training course for public access administrators.

*"The administration that would normally be done by secretaries/paralegals in a solicitors firm takes up a lot of time and is not something a person with a busy practice has capacity for"*

*"It [public access] is a good idea, but barristers are simply discovering why it is that solicitors insist upon running cases in certain ways (and at a higher cost than a prima facie 'un-administratively-supported' barrister): it is because you need administrative support to function as an effective lawyer"*

**Feedback from respondents**

## 2. Dealing with clients

Many barristers say that managing client expectations and dealing with excessive correspondence can be a major barrier. This style of working is noticeably different from the relationship with professional clients.

## 3. Understanding how and what to charge in fees

Feedback from the depth interviews showed that a lot of barristers have not known when to charge or what to charge in fees. Most respondents did not know what their peers working in similar practice areas would charge for public access work. Those that did have an idea of competitor costs had found this out in court when fees are read out, or by consulting their peers.

Very few respondents said that they consider themselves to be competing on price; for most it is not something that they think about, and they lack knowledge of the market. A number of barristers interviewed said they knew they were undercharging for their work – in some cases this was a deliberate and benevolent decision, but for most it was because of a lack of foresight into the time the work would take, and lack of understanding of how to price “commercially”.

*“A solicitor quite rightly charges for sorting bundles out and doing admin, yet it feels as though lay clients are not prepared to pay barrister’s chambers to do this, even if not at a barristers hourly rate, but using an administrator or clerk whose time is billed”*

*“I have no idea of the market price of public access work”*

*“I am not aware of what others charge [for public access work]”*

**Feedback from respondents**

## 7. Perceptions of public access training and guidance

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### 7.1 Effectiveness of the Bar Standards Board Public Access Guidance

Respondents are broadly familiar with the BSB public access guidance, giving an average rating of 7.9 (where 1 is not at all familiar and 10 is very familiar); however the mode rating was 10.

Unsurprisingly this rating rises according to the amount of time barristers spend on public access work – for example respondents that said public access work accounts for more than 26% of their overall workload, gave a familiarity rating of 9.8.

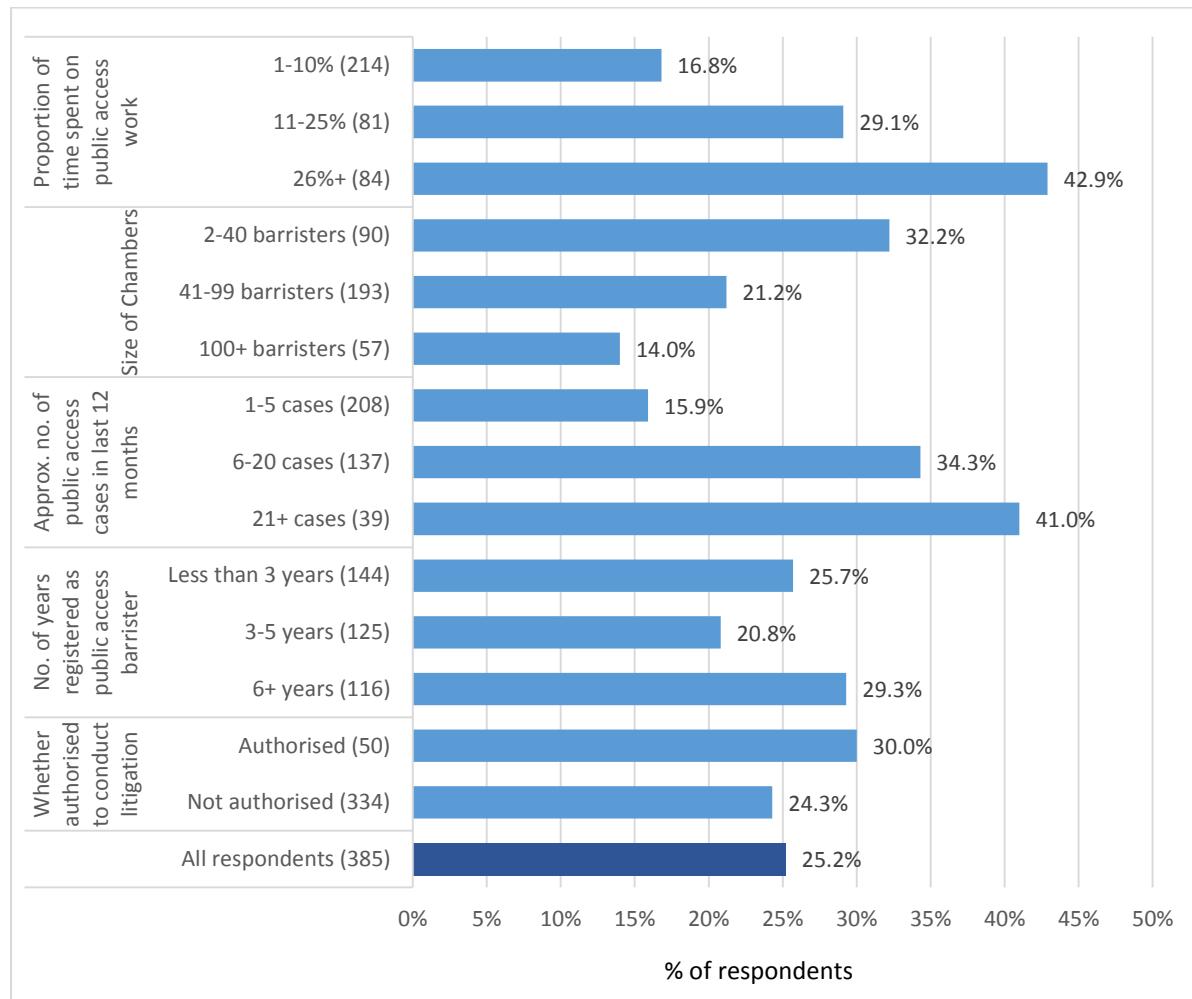
The lowest overall average ratings when considering the effectiveness of different aspects of the guidance were in relation to fees and administration (mean rating of 6.6), and dealing with clients and intermediaries (mean rating of 6.8). (Table 10). Earlier findings have pointed to issues experienced when dealing with clients – notably setting and managing expectations – and the suggestion that some barristers find it difficult to know what to charge. There was a strong desire among many barristers for further guidance on this matter.

***Table 10: Effectiveness of the Bar Standards Board Public Access Guidance for barristers, in enabling respondents to understand and fulfil the following obligations:***

	Whether to accept or withdraw from a case	Any restrictions in practice	Dealings with clients and intermediaries	Fees and administration	Dealing with disputes and complaints
<b>Base</b>	396	391	394	392	392
<b>Mean</b>	7.4	7.2	6.8	6.6	7
<b>Mode</b>	8	8	8	8	8

Just over a quarter of all respondents would like changes or improvements to be made to the guidance. This rises noticeably however among respondents with more experience of delivering public access work (Figure 27).

**Figure 27: Whether respondents would want to see changes or improvements in the Bar Standards Board Public Access Guidance for barristers**



## 7.2 Proposed improvements to the Bar Standards Board Public Access Guidance

There were mixed opinions about the usefulness of the public access guidance. Some respondents say it is useful, and it is easy to find relevant information. Others were more negative saying that it is not user friendly, and needs much more clarity, notably in providing definitions of terms used. A further perception is that it is not presented in a logical order, making it difficult to access appropriate guidance quickly. A number of respondents felt that guidance could be more usefully segmented by type of client – specifically individuals and businesses.

The knock on effect of this is that many barristers, regardless of how much time is spent on public access work, feel the need to seek clarification from the Bar Council. One respondent said there was a need to send emails to the Bar Council on an almost daily basis, but that despite this, a number of ‘grey’ areas remained. Barristers perceive that regular checks and verification of the guidance is necessary to “cover our backs” and thus mitigate the risk of disciplinary action, as well as the risks to consumers.

*"There is a danger of barristers operating practices with informal systems and controls. This is not only a consumer risk, a regulatory risk but also an insurance one"*

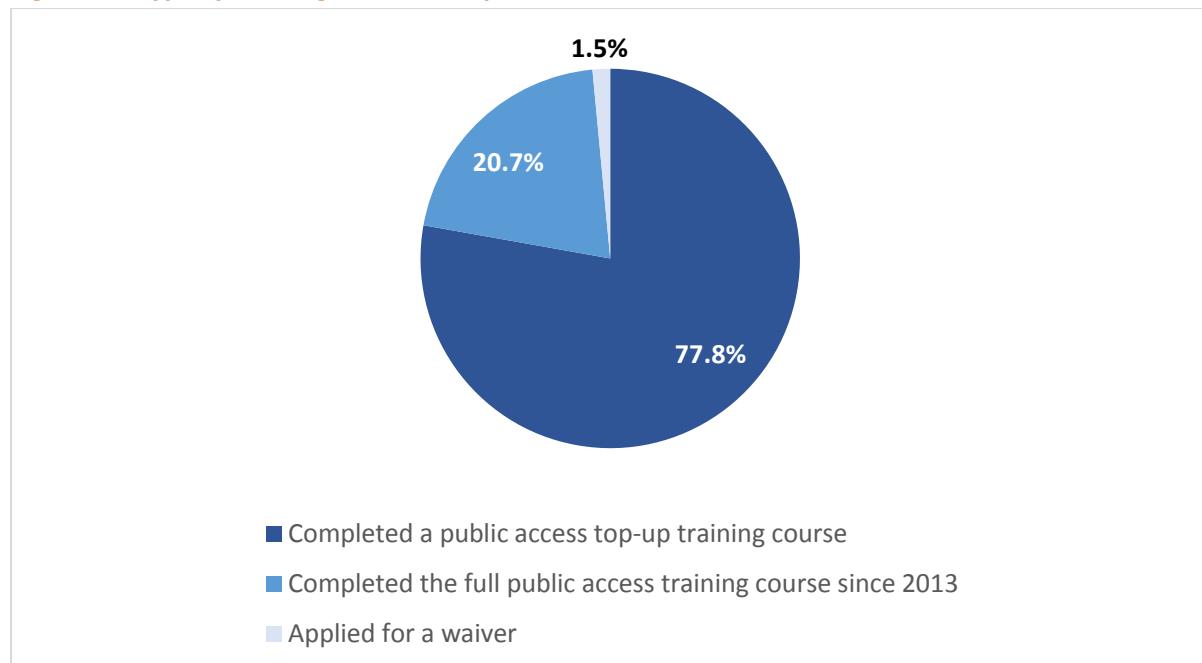
**Feedback from respondent**

Most respondents therefore do not think there is any need for additional information to be included, it is more important that existing content is much clearer and more accessible.

### 7.3 Effectiveness of public access training

Nearly all respondents have completed the new training in public access since the reforms were introduced in 2013. Over three quarters had completed the top-up course and 1.5% had applied for a waiver (Figure 28).

**Figure 28: Type of training undertaken post 2013**



Base 404

Respondents were asked how effective they considered specific aspects of the public access training to be. On the whole barristers feel the training is reasonably effective at ensuring they can fulfil their regulatory objectives – though as with the guidance there is still ambiguity. There was a sense that

training with respect to dealing with clients could be improved, however, with typical ratings around 6 (where 1 is not at all effective, and 10 is highly effective) (Tables 11 and 12).

**Table 11: Effectiveness public access training course, using a scale of 1-10, where 1 is not at all effective, and 10 is highly effective**

	Fulfilling your regulatory obligations	Helping you to serve clients effectively	Helping you to identify vulnerable clients	Helping you to respond to the needs of vulnerable clients
Base	82	82	81	80
Mean	7.3	6.9	6.8	6.5
Mode	10	8	8	7

**Table 12: Effectiveness of public access top up training, using a scale of 1-10, where 1 is not at all effective, and 10 is highly effective**

	Fulfilling your regulatory obligations	Helping you to serve clients effectively	Helping you to identify vulnerable clients	Helping you to respond to the needs of vulnerable clients
Base	313	313	312	312
Mean	7.5	6.5	6.3	6.2
Mode	8	8	8	8

## 7.4 Proposed improvements to public access training

### 7.4.1 Content of the training

There was a wide variation of opinions on the content of the training. Qualitative feedback indicates this seems to be based on the area of law that the respondent specialised in, and also whether or not the respondent had been at the Bar for their whole career.

#### Managing client expectations

Some barristers felt that public access training should contain more preparation for managing client expectations. Respondents feel there needs to be a better framework of understanding about how clients would expect public access barristers to act, which in their experience is almost as solicitors. Therefore, barristers felt that training needed to detail an awareness of the amount of correspondence, “hand holding” and contact generated by being instructed by a lay client, and subsequent advice on how to manage this.

#### Practical advice

There was also a call from some respondents to give advice and guidance on the practicalities of public access work. This was particularly for barristers who had not trained as a solicitor initially, or had no non-Bar employment. Respondents flagged up that public access work was “*a whole new way of operating*”, and because of lack of preparation about this, they often found themselves in an “*administrative nightmare*”. “*Barristers need to be constantly aware of diary deadlines for submission, replies and filing etc. and need to remind the client.*”

Recommendations for additions to the practical elements of the training also included:

- use of IT;
- agreeing fees and billing;
- lines of communication;
- recording time;
- recording documentation;
- correspondence with third parties on behalf of lay client;
- responsiveness to communication;
- how to deal with complaints; and
- time management specifically for public access.

### **Business advice**

Some respondents also thought that the training course should provide some guidance in terms of thinking and behaving like a business. Respondents said that because of the difference of public access work from their original practice, they are not set up to behave like a business, and therefore there is a risk that they hugely undercharge for their services, do not know the market and are unable to compete with solicitors. However, some barristers stated that some of the content aimed at helping barristers to market their public access services, could be improved by differentiating more clearly by types of client, and how their approach might be tailored accordingly.

### **Regulations**

Some barristers felt that training and guidance should focus more on the regulations, and be able to answer any queries that barristers had. To this end, some of the respondents identified that it would be helpful to have a dedicated public access helpline with an expert on the other end who could help them navigate through any questions they had regarding the regulation, to help mitigate any risks to themselves.

This seemed to be particularly the case as to:

- when to refuse instructions;
- when to withdraw from a case; and
- what amounts to conducting litigation.

To address this, some of the respondents thought that working through more case studies that demonstrated the difficulties that may be encountered in relation to the regulation and guidance would be helpful.

### **Vulnerable clients**

Respondents were of mixed opinions about the guidance and training with regards to vulnerable clients. This seemed to depend on law area; those who practised in family, immigration or criminal law believe public access barristers should complete special training on identification of vulnerable

clients and then have guidance on how to support such clients. However, these barristers mostly feel that through their own experience they had this expertise prior to their public access training. Barristers specialising in other work, for example commercial law, mostly disagree with the notion that training needed to have provisions regarding vulnerable clients. Respondents who typically had no interaction with lay clients as individuals, and therefore were not likely to come into contact with a vulnerable client, did not think that this training was necessary. Barristers that commented on this did not identify any issues with the training that already exists, and were more inclined to debate whether or not this training is required.

Respondents that consider there should be training regarding vulnerable clients flagged up the need for practical advice on providing client care. Some barristers wanted a clearer definition of vulnerable clients, one respondent said this needed to be addressed “as a matter of urgency” as the *“definition does not appear to be drawn from any statutory background and does not correspond with the Equality Act’s definition of protected characteristics. Some of the guidance, e.g. re gender reassignment is misleading and patronising to the point of being dangerous”*

Other than revisiting the definition of what a vulnerable client is, some respondents suggested that there could be information about organisations to which they could refer clients in need of further support if they were not able to take on their case.

#### **Areas of law**

A large proportion of respondents pointed out the vast differences in public access work through the different areas of law. Although most found that generic training was useful in some aspects, in terms of familiarising themselves with the general regulations, and framework of public access, the differences between client base, expectations and work carried out varied by area so much as to need a more specialised training course. About half of the respondents were in favour of keeping generic training, and said that it was the individual barrister’s responsibility to adapt this to their area of law.

Some respondents suggested add-on training, or breakout sessions that were more focused on law area, and that there could be an expert in that field leading the training. Some respondents commented that their training was delivered by someone who was less specialist in the area of law than they were, therefore they found it difficult to take it seriously.

*"Many barristers there did commercial work. I don't. I do vulnerable people's work (prisoners, asylum seekers, community groups etc.) and the training was a little too generic"*

*"The training does not understand how in reality public access works, and therefore fails to deliver suitable, targeted and specific training"*

*"Public access for me is about providing legal advice and services to highly sophisticated investment banking and asset management clients generally via internal legal departments. The Public Access rules and training are all geared towards individual lay clients"*

#### **Feedback from respondents**

#### **7.4.2 Delivery of the training**

Some barristers expressed an opinion that the trainer should be an experienced public access barrister of high standing. The training was felt to be too long in some cases; there was a suggestion that the course could be streamlined, or even adapted to be absorbed as part of the BTPC training.

#### **7.5 Suggested improvements to public access top up training**

There was no consensus of opinion regarding the top-up training held by the barristers, and responses to top up training continued in the same themes as responses to the initial training. The main variants in opinion seemed to stem from when they did the initial training, and whether they did the online or face-to-face course.

Some respondents found the top up training incredibly helpful, as it reiterated what they learned initially, and may have forgotten. Others noted that the value from the top up training came from meeting other barristers doing public access work and seeing how they ran their practice.

There was unanimous acceptance that training in public access is required for clerks and administrators, if they had not already done some training in this. Respondents suggested a separate training course, versing clerks and administrators in the actualities of public access work, and notably the need to:

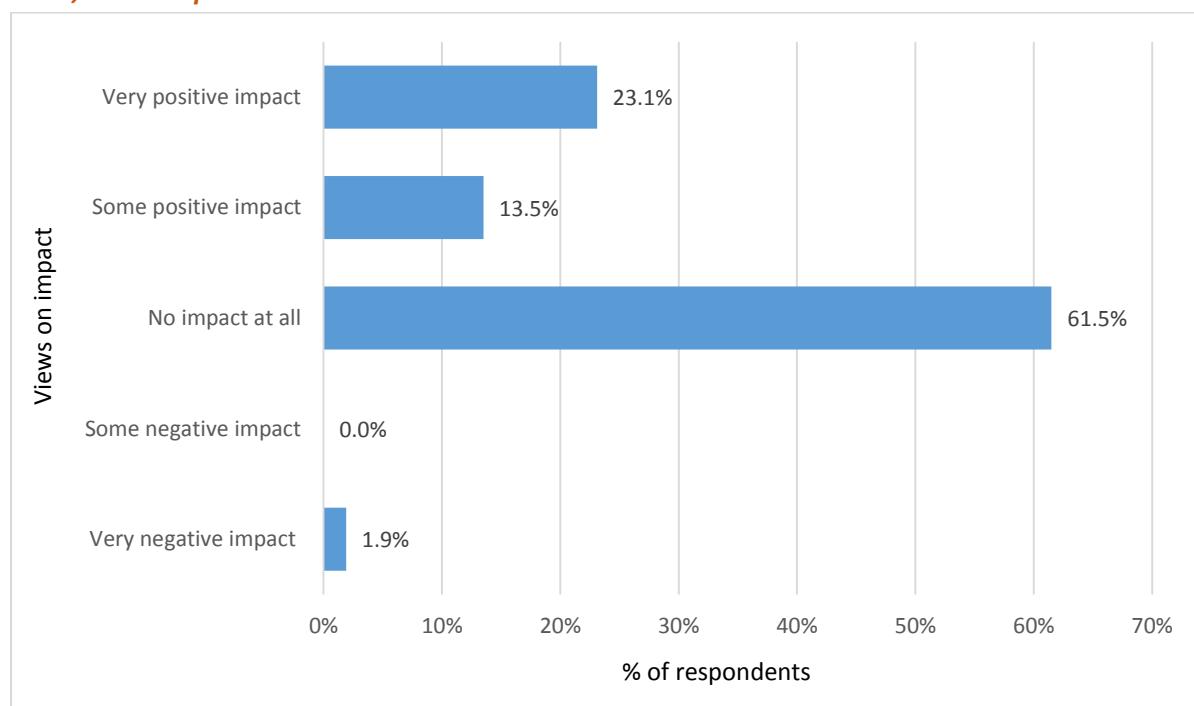
- have skills/training to deal with lay clients in terms of first contact;
- be able to screen lay clients for their suitability for public access;
- be able to monitor and record correspondence between client and barrister; and
- have knowledge of pricing for lay clients.

## 8. The future for public access

### 8.1 Impact of ability to conduct litigation

Respondents authorised to conduct litigation (a small proportion of all respondents) were asked about the impact that this has had on their public access work. Nearly two-thirds said it had not resulted in any impact at all, and nearly a quarter of respondents said it had led to a very positive impact (Figure 29).

**Figure 29: Respondent views on the impact of being able to conduct litigation on public access work, over the past 12 months**



Base 52

It should be taken into consideration that not all barristers authorised to conduct litigation have elected to do so, which may account for the majority view of no impact at all, as they have not had personal experience as yet. Respondents authorised to conduct litigation that provided additional qualitative feedback said that although authorised, they were less inclined to actually undertake litigation primarily because of the “administrative burden”. Typically barristers do not have the day-to-day involvement in case management and the administrative responsibilities that a solicitor has, and this can be off-putting for public access barristers.

### 8.2 Views on how public access work is likely to evolve

The overwhelming consensus among respondents is that the volume of public access work is expected to increase in the next few years. Barristers anticipate that members of the public and businesses will become increasingly aware of the scheme, helping to widen the potential client base.

This may also be underpinned by any further cuts or restrictions made to the legal aid scheme, which would reduce the number of clients eligible for funding.

Respondents referred to a rise in the number of online portals advertising public access barristers as a key driver in increasing public awareness and understanding of the scheme. A small number of barristers expect that more intermediaries will start to refer work via the scheme as well.

Clients, particularly corporate businesses, some of which may perceive a cost saving from the service<sup>14</sup>, are expected to become repeat customers. Some barristers think this could evolve into ongoing, more formal arrangements similar to some kind of retainer, which would be beneficial for the client as well as the practitioner. This could make legal services more accessible – but arguably only to a certain type of consumer.

A number of respondents expressed concern about the potential for overlap and “blurring of the edges” between the roles of the barrister and the solicitor, particularly now that barristers are able to apply for an extension to conduct litigation. A small number of barristers questioned whether this could result in tensions between the two professions, with fewer cases referred by solicitors to barristers as a result, and more direct competition for clients.

In turn this led to comments about the other impacts of more public access work, notably an increased risk of complaints made about barristers and disciplinary proceedings in the event of non-compliance. This links to the concerns about the type of client accessing the scheme, and the extent to which they have a clear understanding of how it works, and what the barrister should and should not do. A knock on effect could be higher costs for barristers in the form of indemnity insurance premiums, especially for those conducting litigation. A small number of respondents expressed concern about the risks to the reputation of the Bar in consequence.

If the volume of public access work does increase significantly, barristers consider this could lead to changes in infrastructure, likely to move away from the traditional operating model to be close to that of the solicitor. This in turn may affect the role of the clerk, who may be required to fulfil a different or greater administrative function.

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<sup>14</sup> However this is the respondent perception rather than that of the client

## 9. Conclusions

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### Scope and scale of public access work

The public access scheme represents a relatively small proportion of the overall caseload for the majority of barristers, although public access work has markedly increased over the past 3 years, and is expected to continue to grow. Public access cases account for a higher proportion of fee income and time among those barristers that have been authorised through the scheme for 6 years or more. As the scheme is not considered to be widely known or understood among the general public, much public access work is obtained via a recommendation or referral from an intermediary.

Public access work is taking place across a wide range of areas of law, but most commonly in family, chancery and commercial law. This is partly because of cuts to legal aid in the case of family law; and the fact that the types of activity typically undertaken in chancery and commercial cases lend themselves well to the structure of the scheme.

Much of the work conducted is either legal advice or drafting. A small proportion of barristers are now offering litigation through the scheme since regulations were relaxed in 2014, but many do not want to go down this route, believing that it ‘blurs the lines’ between their role and that of the solicitor. In turn this could create tensions between the two professions if in direct competition for the same clients.

### Accessibility of the public access scheme

An obvious objective of the scheme is to broaden choice for consumers and improve accessibility to legal services. However whilst on paper ‘cutting out the middle man’ should facilitate this, barristers consider that not all clients are suitable for public access work, especially vulnerable clients, meaning that the scheme is not a silver bullet for making legal expertise widely accessible to all.

A public access client must be able to fulfil certain functions, notably the work usually undertaken by the solicitor; predominantly associated with administration and litigation. In practice if clients are not competent to undertake litigation in particular, and the barrister concerned has not gained rights to conduct litigation, then this acts as a major barrier, undermining accessibility via the scheme. Further, clients deemed to be more vulnerable (which in this context can simply mean that they cannot fulfil the solicitor remit) may therefore have their cases declined<sup>15</sup>, or find that they are referred back to a solicitor having first had their case accepted.

There is a certain amount of wariness among barristers who are unwilling to take on cases or clients they deem unsuitable for public access work, not least because of the risk of non-compliance with the regulatory framework. Many barristers cite the unfamiliar territory of dealing directly with lay clients, and what they perceive as clients’ unrealistic expectations of the scheme and the role of the

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<sup>15</sup> This is feasible in public access where the cab rank rule does not apply

barrister, as important factors when deciding whether or not to decline a case. Respondents with more experience of undertaking public access work are more inclined to decline a higher proportion of cases – possibly as they have a clearer understanding of the issues to avoid.

### **Public access clients**

According to respondents, misconceptions of the role of the barrister often prompt ‘excessive’ correspondence with the client, which has an impact on the profitability of the case, and can be a significant administrative burden for barristers. This typically takes place among a much higher proportion of individual, rather than business, clients. At present individuals account for the largest proportion of public access clients. The majority of barristers typically use email as their main form of communication with public access clients, and this can be a further barrier for clients accustomed to a more personal approach in the form of face-to-face meetings and telephone calls.

Barristers therefore must, to some extent, adapt their approach and fee infrastructure, to meet the needs of public access clients. For some this has posed challenges, notably in understanding what and how to charge fees to the lay client. Some barristers say they have undercharged for their work as a result, especially if the case proves more time-consuming than expected, for the reasons outlined above. Furthermore few respondents appeared to have a clear understanding of market prices, or a sense of a need to charge competitive prices.

### **Impacts of reforms to public access**

Respondents with the most experience of public access work are more inclined to rate the existing regulatory framework as highly effective in protecting consumers. A similar pattern is evident when barristers considered specific aspects such as whether the scheme improves timeliness of access to legal services, or reduces costs for consumers.

On the whole, however, respondents consider the public access scheme has had relatively modest beneficial impacts in facilitating more timely access to legal services, or in reducing costs for the consumer. A number of barristers acknowledged that this may change if litigation is offered more widely, but as stated, not all respondents would wish to do this. Concurrently around 40% of respondents say their fees for public access work have increased over the past few years.

### **Public access training and guidance**

Moving forward, barristers predominantly acknowledge that public access work will increase in volume, and with this in mind, have suggested a number of improvements to the existing training and guidance, to help them more effectively fulfil the role, and to avoid the risk of non-compliance with the regulations.

The most critical change they think is required is greater clarity within the public access guidance and handbook, and training courses, notably the definition of terms used, and where appropriate,

clearer differentiation between areas of law and/or types of client. Some barristers suggested that case studies within the training would be useful – particularly on dealing with clients – as would the addition of practice area-specific training to supplement the existing, more generic course.

Respondents also suggest more information should be provided on setting and managing client expectations. Helping barristers and their clerks to better understand how to manage the administrative aspects of public access work is another area for improvement. Many barristers singled out the role of the clerk (the ‘front line’ for public access clients), suggesting there is a need for specific training for both clerks and administrators in public access.

If demand for public access does continue to grow, barristers say that more are likely to become approved to practise in that way, increasing competition in the market. Some respondents say there is a need for a national initiative to raise awareness of the public access scheme, but many more consider it will expand regardless, as word of mouth spreads. Respondents therefore consider it will be important to resolve any issues associated with the scheme, so that it operates as effectively as possible for both consumers and barristers.

## Appendix 1: The regulatory framework and public access scheme

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### The regulatory framework

The General Council of the Bar, known as the Bar Council, was established in 1894. The Courts and Legal Services Act 1990 designated the Bar Council as professional body for barristers in England and Wales. The Bar Council established the Bar Standards Board (BSB) to provide its regulatory functions in 2006 in anticipation of the Legal Services Act 2007, which required the Bar Council (the approved regulator under the Act) to separate its regulatory functions from its representation function.

The Legal Services Board (LSB) was created by the Legal Services Act 2007. The LSB became fully operational from 2010. The LSB's main aim is to ensure that regulation in the legal services sector is carried out in the public interest; and that the interests of consumers are placed at the heart of the system<sup>16</sup>. The LSB is responsible for overseeing legal regulators in England and Wales and performs its duty by focusing on eight regulatory objectives as set out in the Legal Services Act 2007.

The LSB and the BSB share the same regulatory objectives under the Act, which are:

1. protecting and promoting the public interest;
2. supporting the constitutional principle of the rule of law;
3. improving access to justice;
4. protecting and promoting the interests of consumers;
5. promoting competition in the provision of services in the legal sector;
6. encouraging an independent, strong, diverse and effective legal profession;
7. increasing public understanding of citizens legal rights and duties; and
8. promoting and maintaining adherence to the professional principles of independence and integrity; proper standards of work; observing the best interests of the client and the duty to the court; and maintaining client confidentiality.

### The public access scheme

The public access scheme was first introduced in 2004 by the Bar Council; allowing members of the public, certain organisations and members of licensed professional bodies to instruct barristers directly, without the involvement of a solicitor or intermediary.

Separately the licensed access scheme enables suitable organisations and individuals (ranging from the business community to the voluntary sector), under certain conditions to instruct a barrister directly.

Whilst they do have slightly different meanings, the terms 'direct access' and 'public access' are sometimes used interchangeably to mean the same i.e. instructing barristers directly without an intermediary. This research focuses entirely on the public access scheme.

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<sup>16</sup> [http://www.legalservicesboard.org.uk/about\\_us/](http://www.legalservicesboard.org.uk/about_us/)

The BSB defines the public access scheme in the following manner:

*"A scheme under which a member of the public may directly instruct a suitably qualified barrister, rather than going through a solicitor. Any barrister wishing to undertake public access work must have completed a training course and must have registered with the Bar Council"<sup>17</sup>*

The BSB Handbook sets out the professional obligations to which persons or bodies regulated by the BSB are subject. Its general purpose is to stipulate the requirements for practice and the rules and standards of conduct applicable to "BSB regulated persons"<sup>18</sup>. In carrying out public access work a barrister must comply with the BSB Handbook and in particular the public access rules which are at rC119-rC131 of the Code of Conduct section. Additionally, there is also 'The Public Access Scheme Guidance for Barristers' document which provides further guidance on the interpretation of the Handbook and good practice<sup>19</sup>.

Barristers are not obliged to accept any public access instructions. The "cab rank rule"<sup>20</sup> does not apply where the instructions are not tendered by a professional client, but barristers who are willing in principle to accept public access instructions must observe the "non-discrimination" rule<sup>21</sup>.

From the time of its introduction in 2004, the public access scheme has been evolving to accommodate greater flexibility and better access to justice; with the public access rules going through several reviews, consultations and changes.

An amendment to the Code of Conduct to allow barristers to accept instructions directly from or on behalf of a lay client came into force on 31st October 2004, with the introduction of the Eighth Edition of the Code. This was established through paragraph 401(a)(iii) of the Code and became known as public access. This was the first time that this type of interaction was possible. To guide this new venture, a set of corresponding public access guidance was published. Any barrister undertaking public access work was obliged to comply with the Eighth Edition of the Code of Conduct and the public access Rules which were contained in Annex F2 of this edition of the Code. This was not a universal scheme, and the ability to be instructed directly by or on behalf of lay clients had certain prerequisites<sup>22</sup>.

Barristers who wanted to undertake public access work had to have at least 3 years' practising experience. A preliminary training course in public access had to be attended and completed. The initial public access scheme in 2004 was not available for areas of family, immigration and criminal law<sup>23</sup>.

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<sup>17</sup> The Bar Standards Board (2014): *Bar Barometer, Trends in the profile of the Bar*

<sup>18</sup> Bar Standards Board (2013): *Regulatory Framework*

<sup>19</sup> Bar Standards Board (2015): *The Public Access Scheme Guidance for Barristers*

<sup>20</sup> Professional obligation on barristers to accept instructions from a client regardless of any personal dislike of the client or the case, etc.

<sup>21</sup> BSB (2010): *Public Access work guidance for barristers*

<sup>22</sup> Information provided by BSB

<sup>23</sup> Old Code of Conduct, LSB (2004)

The BSB published a consultation paper in 2008 to review the public access rules and gather opinions on the working and possible reform of the public access scheme. An application to amend the public access rules was approved by the LSB in March 2010 and subsequently implemented by the BSB. These changes spanned:

- Range of work available under the scheme to be widened to include family, criminal and immigration work – clients entitled to public funding were excluded from the public access scheme, whether or not they chose to claim public funding;
- Barristers permitted to engage in correspondence between parties – distinguishing case management-type correspondence from the conduct of litigation, although the prohibition on conducting litigation remained;
- Guidance for barristers to be enlarged to include information on money laundering and the keeping of records;
- Guidance for barristers and clients rephrased to appear less negative in tone; and
- The public access Rules at Annex F2 of the Bar Code of Conduct modified to reflect these changes, along with the addition of a minor enabling amendment at 401(b) of the Code.<sup>24</sup>

In July 2011 the BSB published a consultation paper seeking views on the possibility of relaxing rule 3(1) of the public access rules to ensure that prospective public access clients were able to make an informed decision about whether to apply for legal aid or whether to proceed with public access (as public access work is not eligible for legal aid). In addition, following a broader review of the public access rules and guidance, the BSB decided that it was in the public interest to relax rule 2, which prohibited barristers with under 3 years' practising experience from accepting public access instructions. These suggestions were published in the BSB's "Public Access Rules" December 2011 consultation document. These proposals were implemented in 2013 together with changes to the training on public access to enhance course content and to introduce an element of formal assessment.

In 2014 a new BSB handbook was published for barristers which combined all regulation, rules and most guidance into a central document. This included the revised Code of Conduct which formed part 2 of the 'Handbook'. Self-employed barristers were allowed to apply for an extension to their practising certificate in order to be able to conduct litigation, therefore extending public access options.

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<sup>24</sup> Final LSB Decision Notice 31 March 2010 Page 1 of 68 Legal Services Board – Decision Notice issued under Part 3 of Schedule 4 to the Legal Services Act 2007

From June 2014, there was also a requirement that barristers undertaking international work were subject to the public access scheme (previously it was possible for barristers to accept international instructions direct from lay clients without having done the public access training).

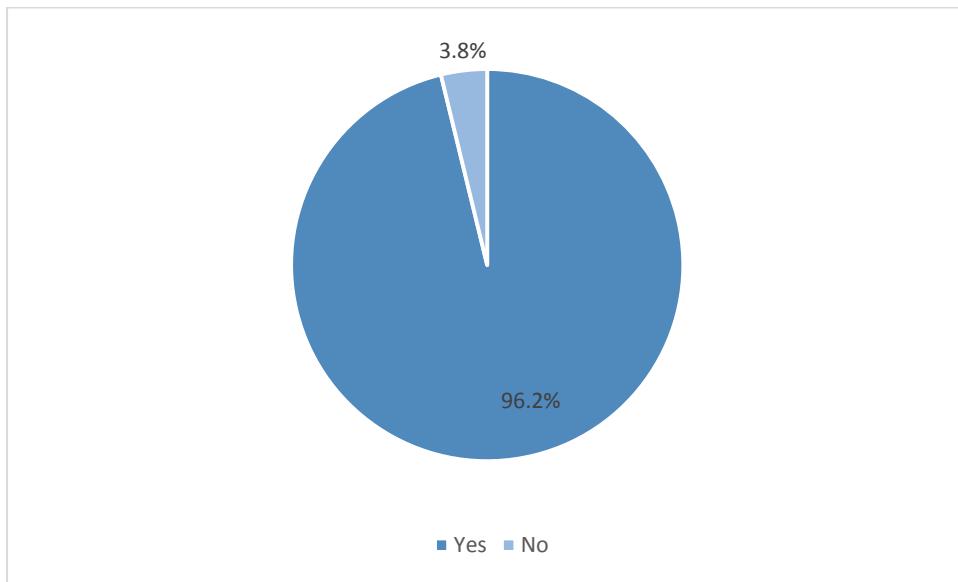
The following year completion of a public access top up training course became a requirement for those barristers whose initial public access training took place prior to October 2013. If the top up training was not completed, then the barristers would not be allowed to undertake any further public access work. The deadline for this was the 4<sup>th</sup> November 2015. A small number of barristers were eligible for a waiver, but had to apply for this.

## Appendix 2: Respondent profile

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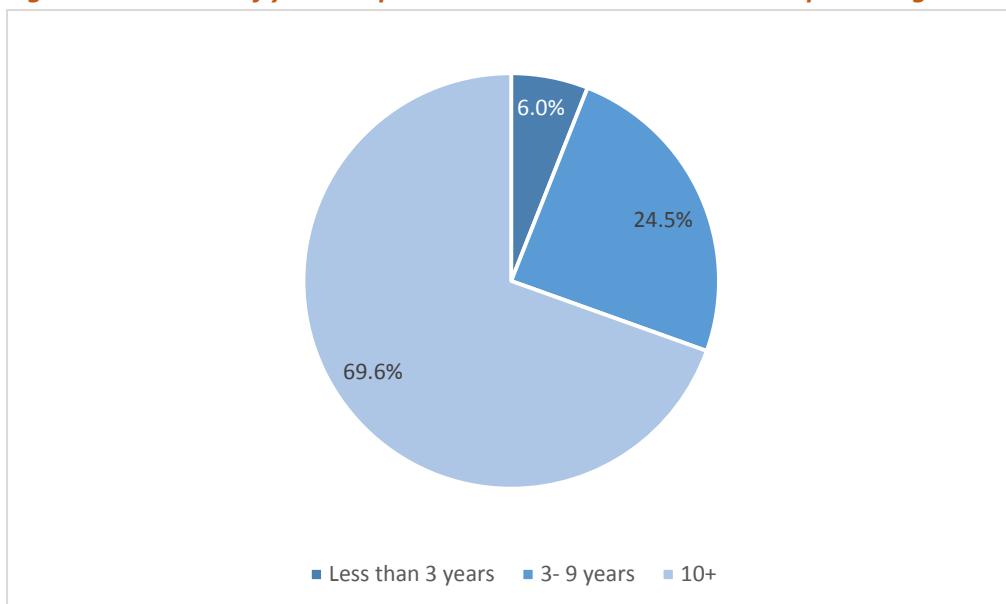
The following charts provide more detail about the profile of respondents that participated in the survey.

**Figure 30: Whether respondents have undertaken any public access cases in the past 12 months**



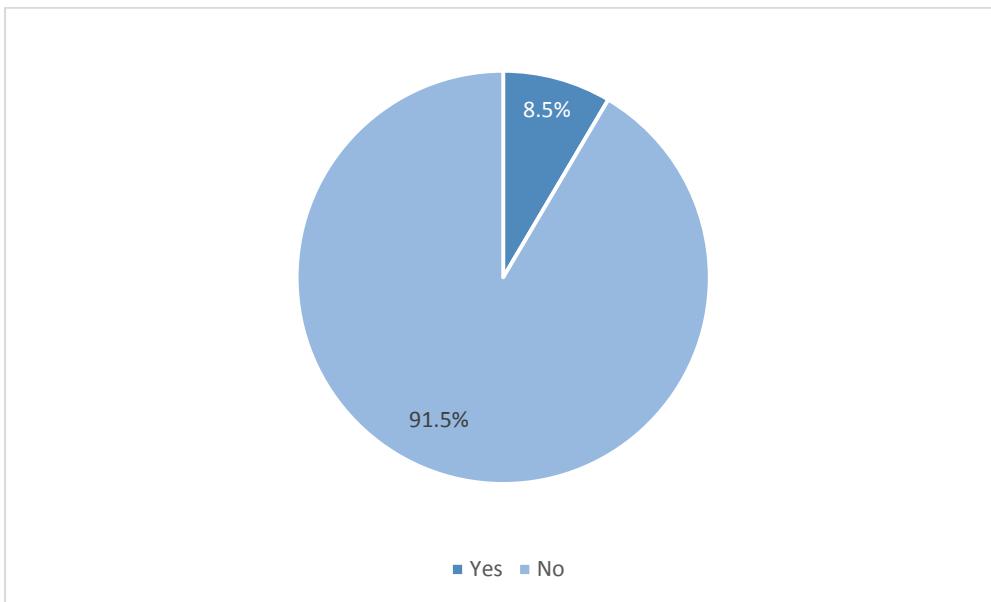
Base 420

**Figure 31: Number of years respondents have been an authorised practising barrister**



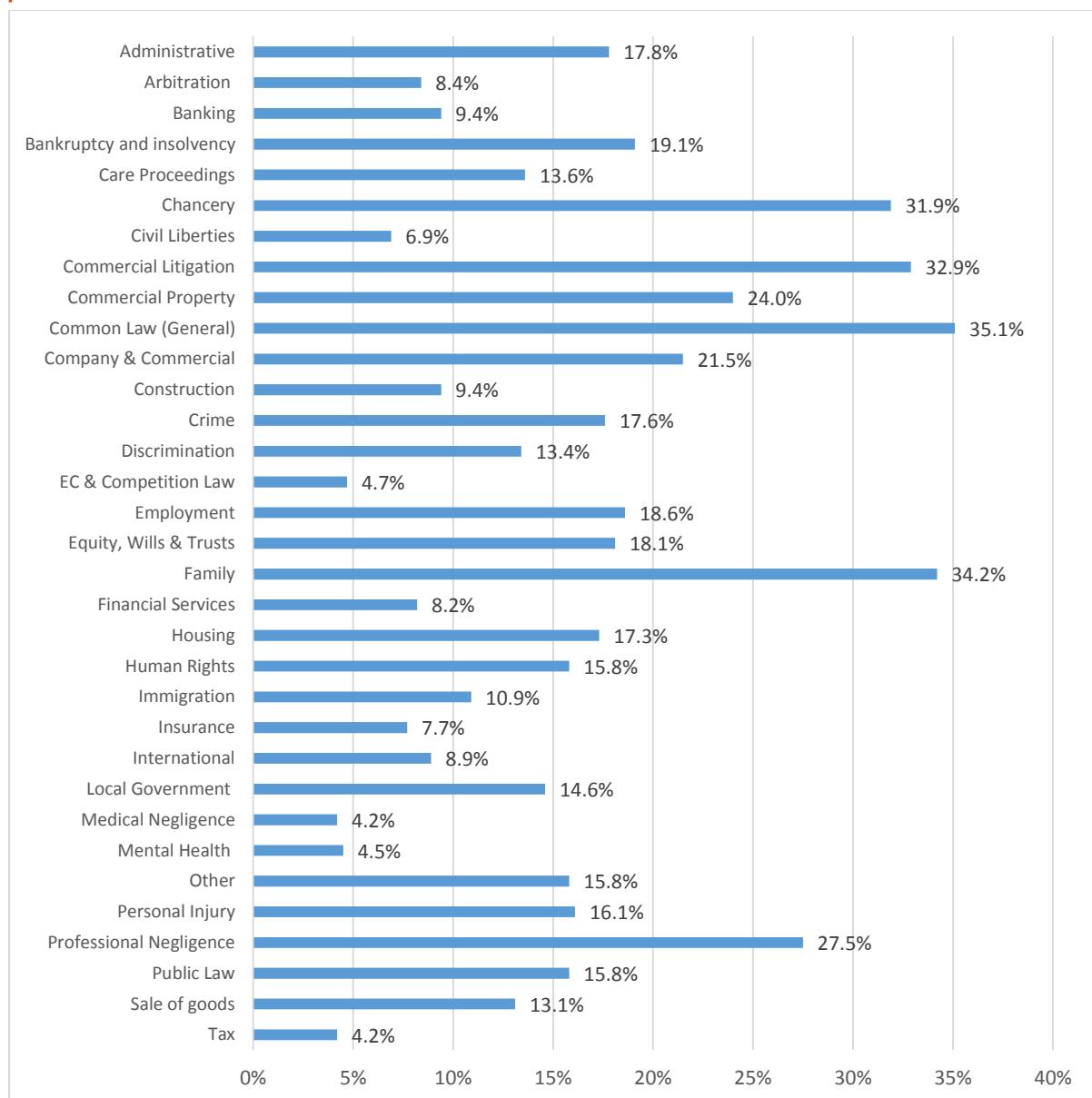
Base 404

**Figure 32: Whether respondents are appointed as Queen's Counsel (QC)**



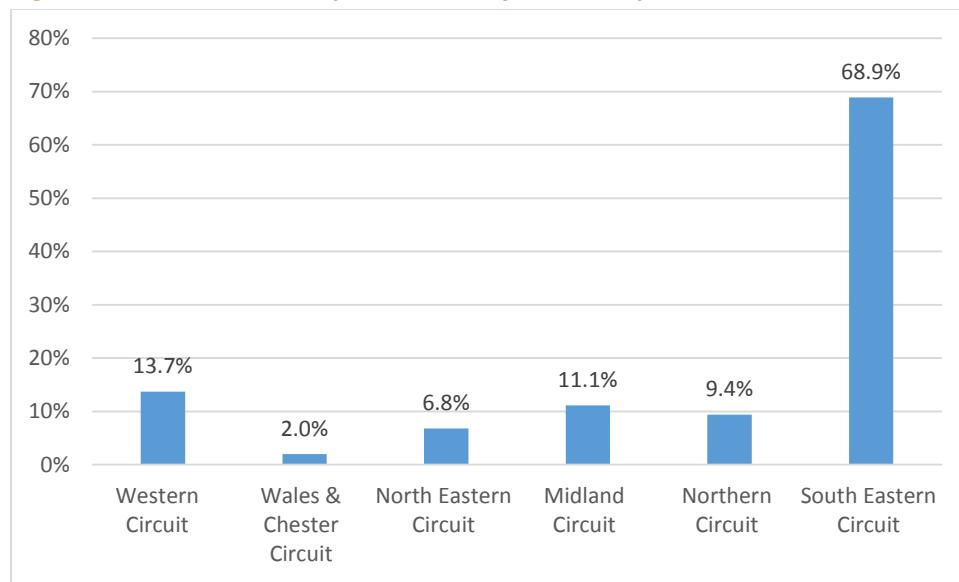
Base 398

**Figure 33: Area(s) of law in which respondents you practice, in relation to all of their work, not just public access**



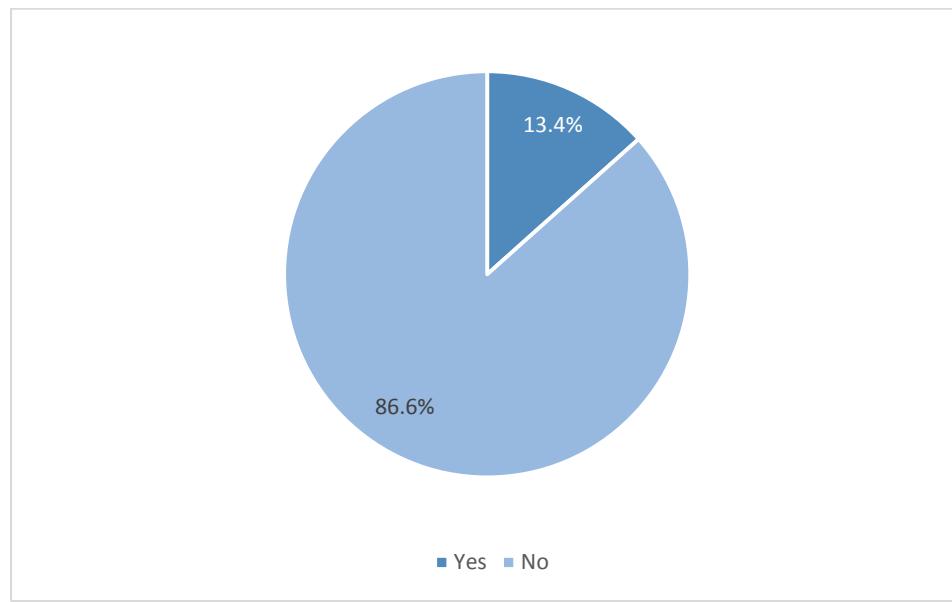
Base 404 \*Respondents were able to select multiple options, therefore responses should not total 100%

**Figure 34: Areas where respondents carry out most public access work**



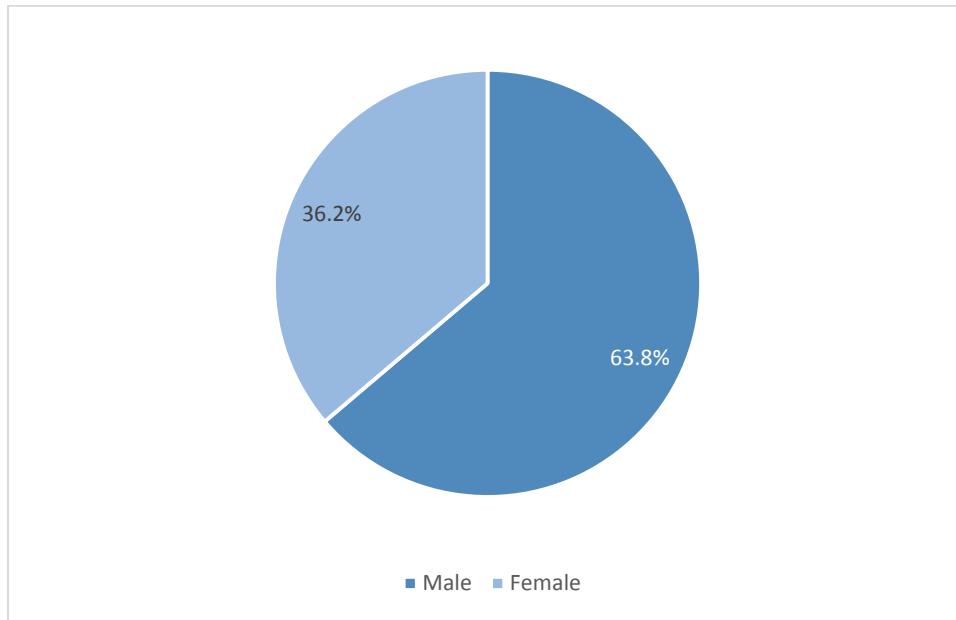
\*Respondents were able to select multiple options, therefore responses should not total 100%  
Base 395

**Figure 35: Whether respondents are authorised to conduct litigation in relation to public access work**



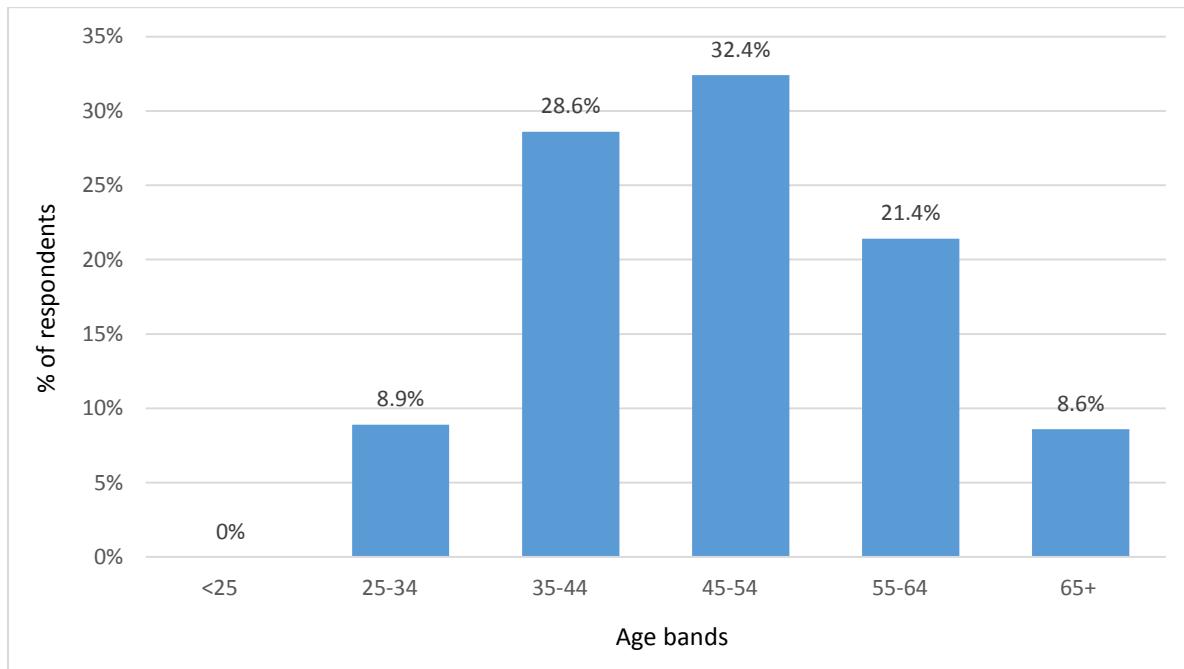
Base 404

**Figure 36: Gender of respondents**



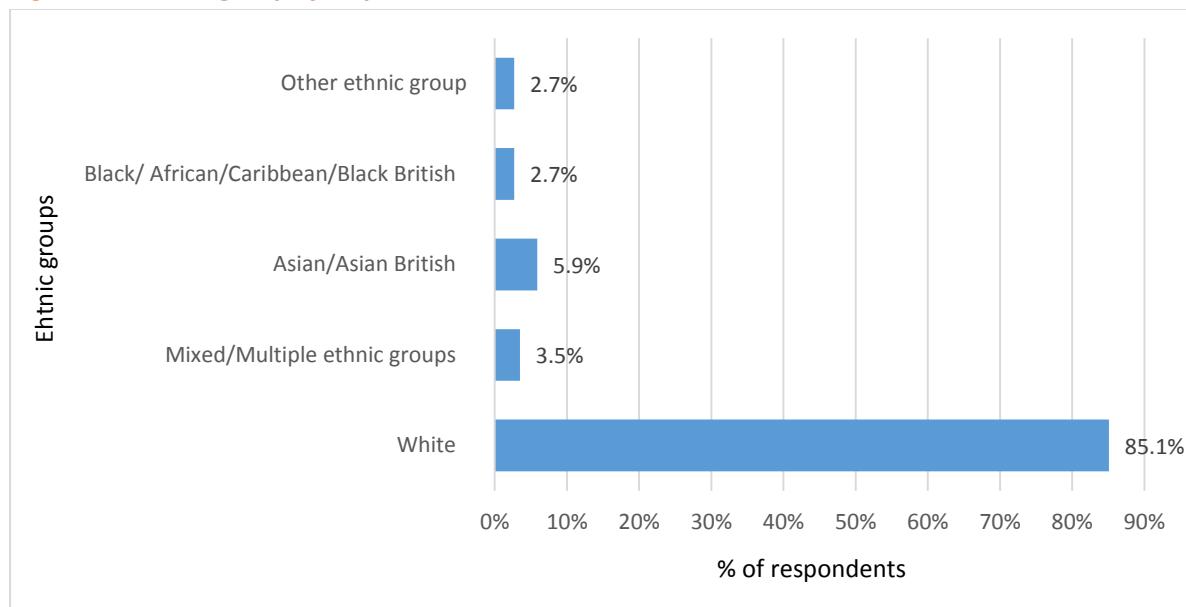
Base 373

**Figure 37: Age band of respondents**



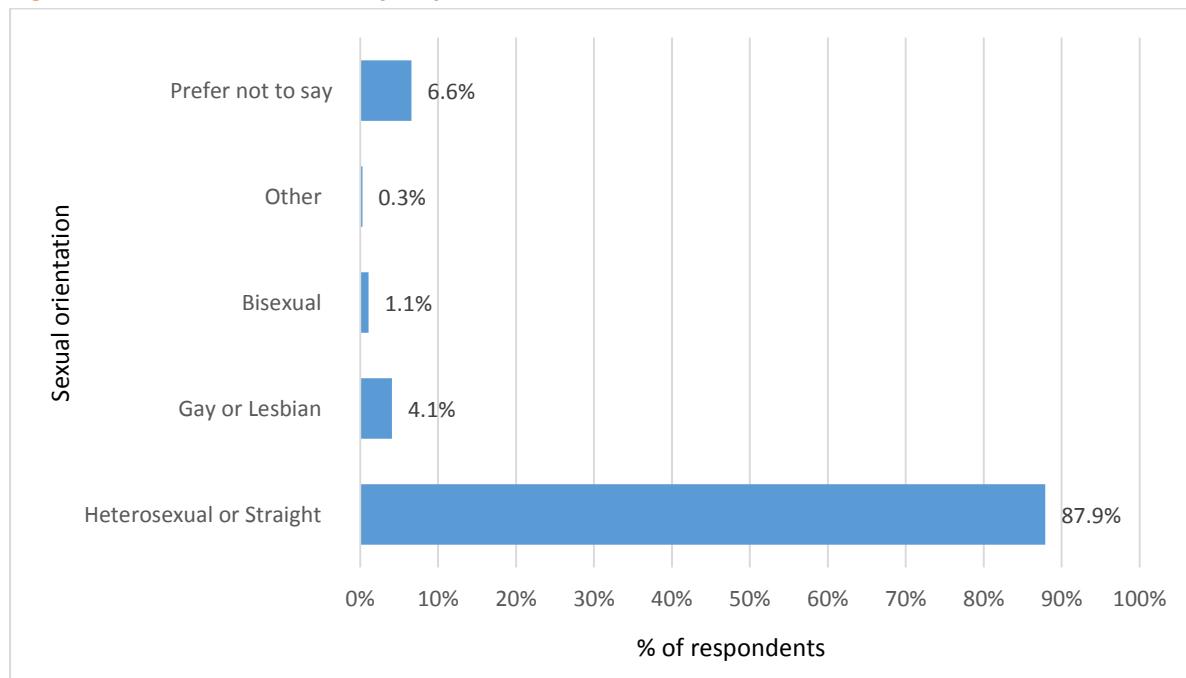
Base 370

**Figure 38: Ethnic group of respondents**



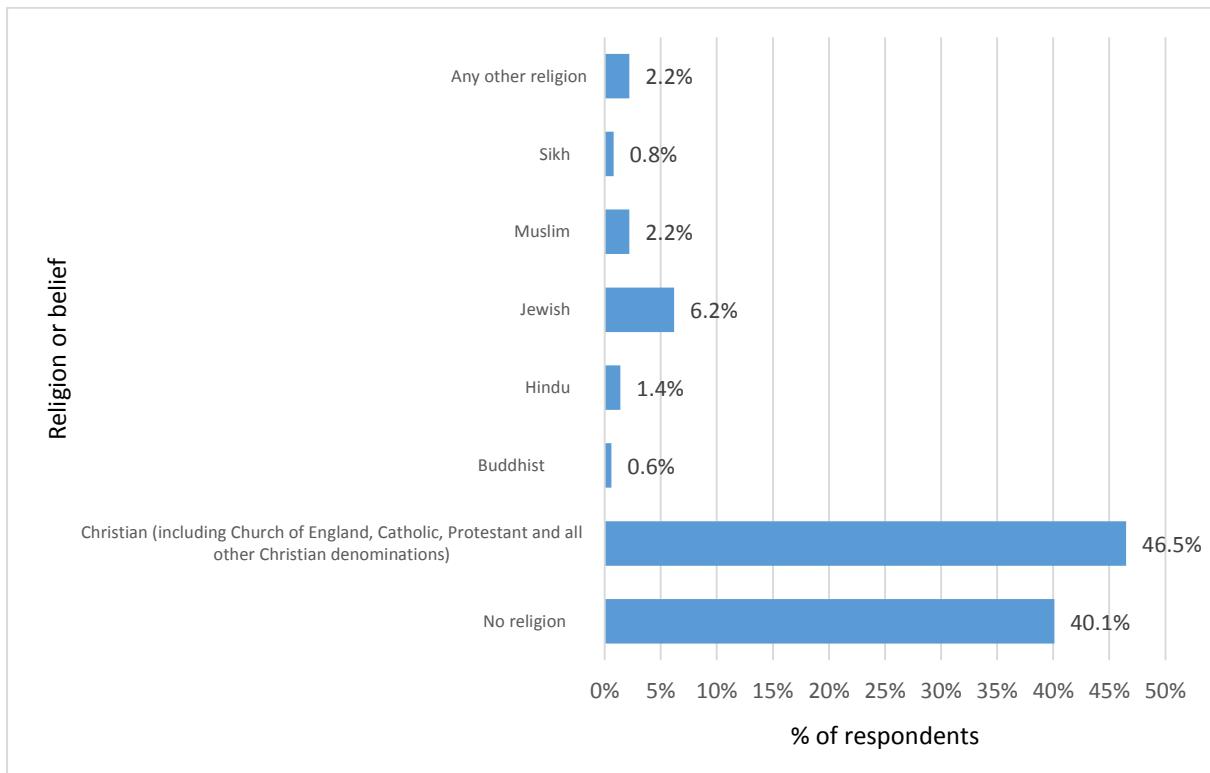
Base 370

**Figure 39: Sexual orientation of respondents**



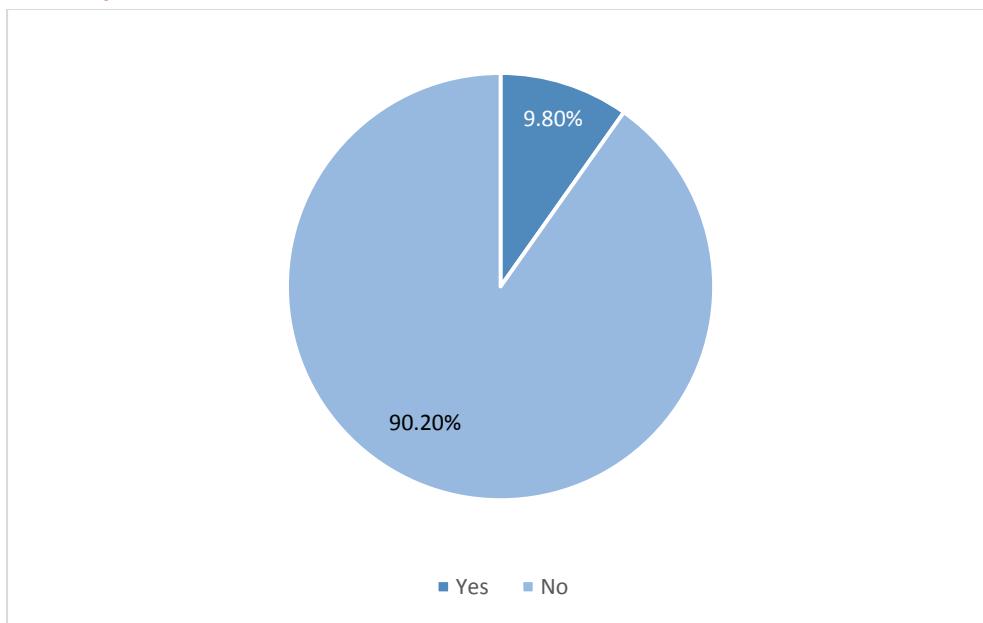
Base 364

**Figure 40: Religion or belief of respondents**



Base 357

**Figure 41: Whether respondents have any long-standing physical or mental impairment, illness or disability**



Base 367

## Appendix 3: Survey questionnaire

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### Part 1: About your experience as a barrister

1. To begin with, can you please confirm that you are registered as a public access practitioner?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

2. Can you please confirm that you have taken on public access cases in the past twelve months?

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

*Continue ONLY if Qs 1 and 2 both receive a 'Yes' response otherwise thank and close – respondent to be routed to page that explains this*

3. Your name:

4. Please select the number of years for which you have been an authorised practising barrister:

Less than a year	<input type="checkbox"/>
1-2	<input type="checkbox"/>
2-3	<input type="checkbox"/>
3-5	<input type="checkbox"/>
6-9	<input type="checkbox"/>
10+	<input type="checkbox"/>

5. Please tell us if you are appointed as Queen's Counsel (QC):

Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

6. Please state the area(s) of law you practice in, in relation to ALL your work i.e. not just public access: *[select all that apply]*

Administrative	
Arbitration	
Banking	
Bankruptcy and insolvency	
Care Proceedings	
Chancery	
Civil Liberties	
Commercial Litigation	
Commercial Property	
Common Law (General)	
Company & Commercial	
Construction	
Crime	
Discrimination	
EC & Competition Law	
Employment	
Equity, Wills & Trusts	
Family	
Financial Services	
Housing	
Human Rights	
Immigration	
Insurance	
International	
Local Government	
Medical Negligence	
Mental Health	
Personal Injury	
Professional Negligence	
Public Law	
Sale of goods	
Tax	
Other	
<b>Q6a:</b> If Other please specify:	

7. Please select a category that applies to you. You are:

Self-employed		Go to Q8
Dual capacity		Go to Q10
Registered European Lawyer		Go to Q10

**8.** As a self-employed barrister, please select the categories that apply to you:

Member of chambers		Go to Q9
Sole practitioner		Go to Q10
Other self-employed		Go to Q10

**9.** What size is the chambers?

2-5 barristers	
6-20 barristers	
21-40 barristers	
41-100 barristers	
Over 100 barristers	

**10.** In which of the following areas do you carry out most public access work? *[select all that apply]*

Western Circuit	
Wales & Chester Circuit	
North Eastern Circuit	
Midland Circuit	
Northern Circuit	
South Eastern Circuit	
European Circuit	

**11.** Have you been authorised to conduct litigation in relation to public access work?

Yes		Ask Q52
No		Do not ask Q52

#### Part 2: Your experience of public access work

**12.** Please select the number of years you have been registered as a public access practitioner:

Less than 1 year	
1-2 years	
2-3 years	
3-5	
6-9	
10+	

**13.** Please tell us the approximate number of public access cases you have undertaken during the last twelve months:

1-5	
6-12	
13-20	
21-30	
31-50	
50+	

During the last twelve months, please indicate approximately what proportion of your practice has constituted public access work in relation to:

	<b>Q.14 Proportion of fee income</b>	<b>Q.15 Proportion of time</b>
1-10%		
11-25%		
26-50%		
51-75%		
76-100%		

- 16.** In 2013 the Public Access scheme was widened to include clients entitled to Legal Aid. During the last twelve months, please indicate approximately what proportion of your clients chose public access as an alternative to legal aid?

None	
1-10%	
11-25%	
26-50%	
51-75%	
76-100%	

- 17.** During the last twelve months, have you been instructed by any of the following types of client to carry out public access work: *[select all that apply]*

Individual	
Micro business (between one and 9 employees)	
Small business (between 10 and 50 employees)	
Medium sized business (between 51 and 249 employees)	
Large business (more than 250 employees)	
Public bodies (e.g. councils)	
Other	
<b>Q17a:</b> If other please specify:	

**18.** Thinking only about your public access work during the past twelve months, please indicate approximately the proportion of instructions received from the following types of client:

Type of client	None	1-10%	11-25%	26-50%	51-75%	76-100%
Individual						
Micro business (between one and 9 employees)						
Small business (between 10 and 50 employees)						
Medium sized business (between 51 and 249 employees)						
Large business (more than 250 employees)						
Public bodies (e.g. councils)						

**19.** During the last twelve months have you been instructed for public access work by a litigant in person?

Yes	
No	

**20.** During the last twelve months, have you been instructed in any of the following areas of law for public access work? [select all that apply]

Administrative	
Arbitration	
Banking	
Bankruptcy and insolvency	
Care Proceedings	
Chancery	
Civil Liberties	
Commercial Litigation	
Commercial Property	
Common Law (General)	
Company & Commercial	
Construction	
Crime	
Discrimination	
EC & Competition Law	
Employment	
Equity, Wills & Trusts	
Family	
Financial Services	
Housing	
Human Rights	
Immigration	
Insurance	
International	
Local Government	
Medical Negligence	
Mental Health	
Personal Injury	
Professional Negligence	
Public Law	
Sale of goods	
Tax	
Other	
<b>Q20a:</b> If Other please specify:	

**21.** Thinking only about your public access work during the last twelve months, please can you indicate approximately the proportions of this work across the following areas of law:

<b>Areas of law</b>	<b>1-10%</b>	<b>11-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>76-100%</b>
Administrative					
Arbitration					
Banking					
Bankruptcy and insolvency					
Care Proceedings					
Chancery					
Civil Liberties					
Commercial Litigation					
Commercial Property					
Common Law (General)					
Company & Commercial					
Construction					
Crime					
Discrimination					
EC & Competition Law					
Employment					
Equity, Wills & Trusts					
Family					
Financial Services					
Housing					
Human Rights					
Immigration					
Insurance					
International					
Local Government					
Medical Negligence					
Mental Health					
Personal Injury					
Professional Negligence					
Public Law					
Sale of goods					
Tax					
Other					

**22.** Thinking generally about all your public access work during the last twelve months, please can you indicate approximately how often you undertake the following types of legal activity (we recognise cases may involve more than one of these activities and we are interested in the overall spread of activities undertaken):

Type of legal activity	Never	1-10%	11-25%	26-50%	51-75%	76-100%
Advocacy						
Litigation						
Drafting						
Arbitration / mediation						
Legal advice						
Negotiation						
Corresponding on behalf of the clients						
Investigating and collecting evidence						

**23.** During the last twelve months if have you undertaken any other types of legal activity on behalf of your clients for public access work, not listed in Question 22 above, please can you tell us what these were?

**24.** During the last twelve months how often have you declined an instruction to take on a public access case?

Never		Go to Q26
1-5 times		Go to Q25
6-10 times		Go to Q25
More than 10 times		Go to Q25

**25.** During the last twelve months, can you please state the main reason(s) for declining public access instructions? [select all that apply]

Full caseload	
Lacked specialist expertise	
Client not suitable for public access work	
Case not suitable for public access work	
Disagreement over fees	
Did not want to take on the case	
Other	
<b>Q25a.</b> If other, please specify:	

### Part 3: Routes to obtaining public access work

**26.** Thinking only about your public access work during the last twelve months, through which of the following routes did you receive instructions? [select all that apply]

Recommendation	
Direct advertising (on an individual basis)	
Direct advertising (Chambers)	
Via listing on an online directory (other than the Bar Standards Board register or a chambers website – for example the Bar Council Direct Access Portal, myBarrister, Public Access Clerk, Clerksroom Direct)	
Via an intermediary	
Other	
<b>Q26a:</b> If other, please specify:	

**27.** How effective have you found each of the following routes to secure public access work over the past twelve months?

	Highly effective	Quite effective	Neither effective nor ineffective	Quite ineffective	Very ineffective
Recommendation					
Direct advertising (on an individual basis)					
Direct advertising (Chambers)					
Via listing on an online directory (other than the Bar Standards Board register or a chambers website – for example the Bar Council Direct Access Portal, myBarrister, Public Access Clerk, Clerksroom Direct)					
Via an intermediary					

#### **Part 4: Your perceptions of the reforms to public access and their impacts**

Since its first introduction in 2004, the Public Access scheme has been evolving and has undergone a number of reviews, in particular the changes to the Public Access Rules in 2013. This introduced a new training requirement for all public access practitioners. It also extended the scheme to enable barristers of fewer than three years' practising experience to undertake public access work and the rules were amended to enable barristers to accept public access work from clients who were entitled to legal aid funding, but who had decided to instruct a public access barristers instead. We would like to understand the impacts of those changes.

**Part 4a: Impact on your business**

**28.** We would like to understand how public access work has changed over the past three years. Can you please tell us what changes you have experienced in relation to the following aspects of your public access work, over the past three years:

Aspects of work	Increased a lot	Increased a little	Stayed the same	Decreased a little	Decreased a lot
Volume of your public access work					
Volume of your public access work as a proportion of your overall caseload					
Fees you charge for public access work					
Volume of professional development and training you undertake (not including the public access training required by the Bar Standards Board)					
Range of professional development and training you undertake (not including the public access training required by the Bar Standards Board)					
Profitability of your practice					
Diversity of your practice (range of areas of law in which you undertake public access work)					
Diversity of your client base (range of different types of client e.g. by industry sector, organisation size etc.)					

**29.** We would like to know about your public access work client base in relation to the Equality Act 2010 protected characteristics. During the last twelve months has the diversity of your client base changed in relation to the following groups?

Types of client	Increased a lot	Increased a little	Stayed the same	Decreased a little	Decreased a lot
Clients from different age groups					
Clients with different levels of disability					
Clients with different ethnic/racial backgrounds					
Clients with difference religious beliefs					
Clients with different sexual orientation					
Clients of different marital status					
Clients with gender reassignment					

#### Part 4b: Impact on consumers

**30.** Using a scale of 1-10, where 1 is not at all effective in protecting consumers, and 10 is highly effective in protecting consumers, how effectively do you think the regulatory framework for public access protects consumers?

Reforms to the public access scheme from 2013 included new training requirements and the creation of new guidance documents. We would like to understand the impact on these reforms upon consumers.

**31.** Using a scale of 1-10, where 1 is no change at all, and 10 is an extensive increase in choice, what impact do you think the reforms to the public access scheme have had in increasing choice for the consumer?

- 32.** Using a scale of 1-10, where 1 is no improvement at all, and 10 is highly improved, what impact do you think the reforms to the public access scheme have had on in improving timeliness of access to legal services for the consumer?

- 33.** Using a scale of 1-10, where 1 is no difference at all, and 10 is substantial difference, what impact do you think the reforms to the public access scheme have had on reducing cost for the consumer?

#### **Part 4c: Effectiveness of regulatory framework and guidance**

- 34.** Please tell us the extent to which you are familiar with the Public Access Scheme Guidance for Barristers, using a scale of 1-10, where 1 is not at all familiar, and 10 is very familiar:

- 35.** Using a scale of 1-10, where 1 is not at all effective, and 10 is highly effective, please rate the effectiveness of the Bar Standards Board Public Access Guidance for barristers, in enabling you to understand and fulfil your obligations regarding:

Elements of Guidance	1	2	3	4	5	6	7	8	9	10
Whether to accept or withdraw from a case										
Any restrictions in practice										
Dealings with clients and intermediaries										
Fees and administration										
Dealing with disputes and complaints										

- 36.** Are there any changes or improvements that you would like to see in the Bar Standards Board Public Access Guidance for barristers?

Yes	
No	

**Part 5: About your views of the regulatory framework**

- 37.** In 2013 barristers were required to undertake additional top up training within 24 months or cease to undertake public access. Please indicate which of the following applies to you:

Completed a public access top-up training course		Go to Q38
Completed the full public access training course since 2013		Go to Q40
Applied for a waiver		Go to Q42

- 38.** Using a scale of 1-10, where 1 is not at all effective, and 10 is highly effective, how effective do you consider the public access top up training to be in relation to the following:

Fulfilling your regulatory obligations	
Helping you to serve clients effectively	
Helping you to identify vulnerable clients	
Helping you to respond to the needs of vulnerable clients	

- 39.** How, if at all, do you think that public access top up training could be improved?

**Go to Q42**

- 40.** Using a scale of 1-10, where 1 is not at all effective, and 10 is highly effective, how effective do you consider the public access training course to be in relation to the following:

Fulfilling your regulatory obligations	
Helping you to serve clients effectively	
Helping you to identify vulnerable clients	
Helping you to respond to the needs of vulnerable clients	

- 41.** How, if at all, do you think that the full public access training course could be improved?

## Part 6: Client engagement and communications

**42.** Do you or have you ever used the Bar Standards Board Public Access model client care letter?

Yes		Go to Q43
No		Go to Q45

**43.** To what extent do you use the Bar Standards Board Public Access model client care letter?

Use in all cases	
Use in most cases	
Use in a small proportion of cases	
Used but amended it	

**44.** How effective do you consider the Bar Standards Board Public Access model client care letters to be in each of the following:

Type of legal activity	Highly effective	Quite effective	Neither effective nor ineffective	Quite ineffective	Very ineffective
Fulfilling your regulatory obligations					
Clarity/accessibility to client					
Usefulness to barrister					
Usefulness to client					

**45.** During the last twelve months, across your public access work, approximately how often did you use the following approaches to keep your public access clients informed about their case:

Approach used	Never	1-10%	11-25%	26-50%	51-75%	76-100%
Face to face meetings						
Email						
Telephone						
Virtual meetings (e.g. using Skype)						
Regular letters						
Online Case tracking system						

**46.** Can you please tell us about any other ways in which you have kept your public access clients informed about their case, in the past twelve months:

**47.** During the last twelve months, across your public access work, approximately how often did you seek feedback about your work from your clients through the following means?

Type of feedback	Never	1-10%	11-25%	26-50%	51-75%	76-100%
Feedback form evaluating aspects of the service as work progressed						
Feedback form after the work was completed						
Informal feedback as the work progressed						
Informal feedback after the work was completed						

**48.** Do you think there are any barriers for clients to engage with public access barristers?

Yes		Go to Q49
No		Go to Q50

**49.** Can you please tell us what these are?

**50.** Have you received a complaint in relation to a public access case during the last twelve months?

Yes		Go to Q51
No		Go to Q52 IF Yes to Q11 otherwise go to Q53

**51.** During the last twelve months, has the number of complaints received in relation to your public access cases:

Increased a lot	
Increased a little	
Stayed the same	
Decreased a little	
Decreased a lot	

**Go to Q52 IF Yes to Q11**

**If No to Q11 go to Q53**

#### Part 7: About your views on the future of public access

**52.** Barristers are allowed to apply for an extension to their practising certificate in order to be able to conduct litigation. During the last twelve months, what kind of impact do you think this has had on your public access work in general?

Very positive impact	
Some positive impact	
No impact at all	
Some negative impact	
Very negative impact	

**53.** In what ways, if at all, do you think that public access work might evolve over the next 2-3 years?

**54.** As part of this research we are conducting a number of follow up interviews by telephone, to explore views and feedback in more detail. Would you be happy to be re-contacted over the course of the next 3 months for this purpose?

Yes		Go to Q55
No		Go to Q56

**55.** Please can you provide the best telephone number to reach you on:

**56.** Do you have any final comments to make on the subject of public access?

#### Part 8: Equality and diversity

The Legal Services Board and Bar Standards Board have regulatory objectives which aim to encourage an independent, strong, diverse and effective legal profession. The following optional questions will help with monitoring equality and diversity. Questions are based on the protected characteristics as set out in the Equality Act 2010.

If you would prefer not to answer this section, please click 'next' to be taken to the next page in order to submit your response.

**57.** Your gender:

Male	
Female	

**58.** Please select your age band:

<25	
25-34	
35-44	
45-54	
55-64	
65+	

**59.** What is your ethnic group?

White	
Mixed/Multiple ethnic groups	
Asian/Asian British	
Black/ African/Caribbean/Black British	
Other ethnic group	

**60.** Which of the following options best describes your sexual orientation?

Heterosexual or Straight	
Gay or Lesbian	
Bisexual	
Other	
Prefer not to say	

**61.** What is your religion or belief?

No religion	
Christian (including Church of England, Catholic, Protestant and all other Christian denominations)	
Buddhist	
Hindu	
Jewish	
Muslim	
Sikh	
Any other religion, please describe	

- 62.** Do you have any long-standing physical or mental impairment, illness or disability? [Long-standing' means anything that has affected you over a period of at least twelve months or that is likely to affect you over a period of at least twelve months]

Yes	
No	