Looking to the Future: Phase two of our Handbook reforms

Analysis of responses

June 2018

Contents

Who responded?

1. We spoke to thousands of people in a wide range of different ways throughout our consultation period. For example:

    - We spoke at 44 different events, which were attended by lawyers, the public, consumer bodies and other stakeholders.
    - The relevant pages on our website were viewed more than 9,000 times.
    - We had more than 1,500 click throughs on emails we sent about this consultation.
    - 252 people watched our webinars and Periscope broadcasts, both live and on-demand.
    - 116 people joined our virtual reference group to be kept up to date with developments in our work.

2. In addition, we received 77 formal responses to our consultation. They were from a mixture of:

    - representative bodies, including national and local law societies
    - universities
    - law firms and other legal services providers
    - solicitors and other legal professionals
    - academics
    - consumer representative groups, including Citizens Advice

- other regulators.

3. A full list of respondents is attached at Annex one. Data about respondents and the responses received is attached at Annex two.

What did people say?

4. Below we have summarised respondents' views on each question in our consultation.

Section one - authorising firms

Practising addresses

5. The Legal Services Act (LSA) requires alternative business structures (ABS) to have a practising address in England or Wales. For recognised bodies this requirement stems only from our rules. We proposed amending our current requirement so that recognised bodies or recognised sole practices could have a practising address anywhere in the UK.

Q1a Do you agree with our proposal to authorise recognised bodies or recognised sole practices that have a practising address anywhere in the UK?

6. More than two thirds of respondents agreed with this proposal. The City of Westminster and Holborn Law Society ('CoWHLS') saw little risk associated with other UK jurisdictions and no reason to impose a geographic restriction for UK based practices. Birmingham Law Society also highlighted that this arrangement could simplify some situations, such as removing the need to determine whether a solicitor living in Scotland but seeing clients through a serviced office in London has a practising address in England and Wales.

7. Peninsula argued that the physical location of a firm has no bearing on the service provided. They felt this relied heavily on the traditional law firm model where clients visit the premises and could act as a barrier to those offering online or telephone services. Riverview Law Ltd predicted that the flexibility of this change would create a more competitive environment by catering to changes in the use of technology.

8. Of those that did not answer 'yes' to this question, three quarters said they could agree with it but needed more information to do so. The Law Society argued that:

"…firms in Scotland and Northern Ireland (or elsewhere) should only be authorised by the SRA if the same level of protection can be guaranteed for clients". This view was echoed by the Law Centres Network. The Legal Ombudsman stated that they did not oppose the change on principle but would need to ensure that it would not create a 'redress gap' for people using services from providers outside England and Wales.

9. Only seven percent of respondents answered no to this question. Of those, Doncaster and District Law Society stated that: "External jurisdictions throw up particular issues for litigators".

Q1b Do you have any views on our approach to overseas practice more broadly and the practising address restriction?

10. Most respondents did not express any views. Of those who answered, one solicitor argued that we should not limit practising addresses just to the UK but could instead decide to authorise foreign firms on a case by case basis depending on whether we could supervise them effectively. IJBH Ltd felt that we needed to look forward to more firms using the internet and having staff based in different jurisdictions to avoid being left behind as the market developed. Liverpool Law Society expressed its agreement with our approach to overseas practice.

11. Other respondents reiterated their answer to question 1a here. For example, Hampshire Law Society stated that they were in favour of practising addresses being restricted to England and Wales so that there was consistency between how ABS and recognised bodies are authorised. The Yorkshire Union of Law Societies stressed the need to make sure that there was no reduction in client protection.

12. CoWHLS set out the possible issues it considered could arise if we went beyond our proposals to authorise firms without a UK practising address. These included how an award by the Legal Ombudsman could be enforced, and the possibility of conflicts being resolved in different ways by different jurisdictions. CoWHLS suggested the best way of mitigating these problems would be to make sure that

solicitors offering services in England and Wales are required to submit to the jurisdiction of the English courts and have at least an address for service in the UK. It also queried whether a lack of a UK practising address would also mean not having a client account in the UK and raised concerns that we would not be able to protect client money in that situation.

Qualified to Supervise

13. We proposed removing Practice Framework Rule 12. This rule requires all regulated entities and in-house legal departments to employ a solicitor who is 'qualified to supervise'. To be qualified to supervise a solicitor must have been admitted for at least three years and have completed at least 12 hours of management training. The effect of the rule is to prevent someone practising alone until they have been qualified for three years. It does not require a solicitor to be supervised for three years after being admitted.

14. Under the current rule the three-year requirement is based on entitlement to practise, rather than actual practice. An individual could apply to become a sole practitioner without any post qualification experience at all.

Q2a Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is 'qualified to supervise should be removed?

15. There was limited support for our proposal to remove this requirement. A small number of firms, solicitors, local law societies and the software provider, Riliance, agreed with our proposal because:

- the current rule is an ineffective safeguard
- a newly qualified solicitor can set up as sole practitioner by employing a solicitor with at least three years' experience even on a part-time basis or as a consultant

- the intended objective and risk is already managed in practice by Compliance Officers

- existing and more robust safeguards are in place for us to manage the risk of a newly qualified solicitor setting up as a sole practitioner.

16. Neither the Legal Ombudsman nor the Solicitors Disciplinary Tribunal (SDT) disagreed with our proposal. However, they were concerned that removal of the rule could increase consumer detriment through poor competence and service. The SDT also reiterated concerns raised in their response to our phase one consultation that removing the requirement could raise issues of public confidence in providers of legal services. Both called for us to ensure that we have mechanisms in place to protectthe users of legal service..

17. Most respondents disagreed with our proposal. Almost all felt that the current rule offers a safeguard for consumers against inexperienced solicitors providing poor service. It was felt that without an adequate period of post-admission supervision, or a substantial period of practising experience before they set up as a sole practitioner, there was a risk of poor service.

18. Respondents also called for us to retain the current three-year post qualification period. This was considered the minimum period in which a newly qualified solicitor can obtain the appropriate technical and management experience before they can safely practise on their own. Some respondents called for us to go further by requiring a longer period of post qualification (for example, five years).

19. Other respondents who disagreed with our proposal suggested the requirement should focus on actual practice rather than entitlement to practise. Devon and Somerset Law Society also argued that the rule should focus on consecutive years of practice.

20. The Legal Services Consumer Panel suggested the current rule should be maintained, clarified and updated. They suggested there was no evidence that

newly qualified solicitors will always be able to deliver a full service, as sole practitioners, without acquiring technical and consumer-facing skills from experience post qualification.

21. The Law Society plus some local law societies, firms, universities and individual solicitors did not agree with our proposed alternative should we remove the rule. It was felt that reliance on our existing authorisation processes would not be sufficient to identify whether an individual was competent to practise unsupervised. They suggested individuals identifying their own competence needs would not protect against poor competence because:

    - it is a relatively untested approach
    - a newly qualified solicitor will not be able to adequately identify whether they have a management need without prior experience gained through a period of supervised practice
    - we would be relying on individuals to do this. This risk of individuals not doing so could be heightened in the pressurised environment of establishing and running a new business (for example, taking on work above an individual's competence to maintain cash flow).

22. The Law Society, Howden Group, Legal Services Consumer Panel and Junior Lawyers Division all suggested that if the rule is removed it is unlikely that a newly qualified solicitor will be able to obtain professional indemnity insurance at a reasonable price. Many insurers already have an underwriting that a practice should have a solicitor with a specific level of post-qualification experience before they will offer terms. Higher costs are likely to be passed on to clients which will make sole practices run by newly qualified solicitors uncompetitive.

23. Some respondents suggested the rule should be retained until the Solicitors Qualifying Examination (SQE) is firmly embedded. This would provide an

additional and robust safeguard. They also considered that business management should be assessed as part of the SQE.

24. A small number of respondents (including a university, Liverpool Law Society, South Hampshire Junior Lawyers Division, a solicitor and a firm) suggested that the rule should be reworded to provide better safeguards for those seeking to practise without supervision.

Q2b If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?

25. Only a few respondents answered this question. One law firm felt that its trainees still required supervision and support in the first couple of years after they qualified.

26. There were several examples from solicitors who had successfully set up as a sole practitioner with between three and five years post-qualifying experience (PQE). They argued that to do this successfully required:

- existing knowledge of business acquired through training and/or experience not necessarily in law

- employing at least one solicitor with substantial PQE to satisfy and reduce Professional Indemnity Insurance (PII) costs.

Immigration, claims management and financial services

27. We noted that separate statutory regulatory regimes already exist for immigration claims management work undertaken outside LSA-regulated entities. We therefore proposed that solicitors, registered European lawyers (RELs) and registered foreign lawyers (RFLs) will only be able to:

- practise immigration work in a firm authorised under the LSA or by the Office of the Immigration Services Commissioner (OISC)

- provide claims management services in a firm authorised under the LSA or by the Claims Management Regulator (CMR) or its equivalent.

Q3: Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC authorised firms?

28. Almost all respondents to this question agreed with the proposal, often for the reasons given in the consultation. It was felt that the statutory intention was for this work to be regulated either under the LSA or by the OISC. Some respondents including the Legal Ombudsman also felt that clients in this area of law were particularly vulnerable and therefore needed the additional protection.

29. The Law Society (and several respondents who endorsed their response) said that while they agreed with the proposal, they felt all legal services provided by solicitors, RELs or RFLs should be provided from within a regulated entity.

30. The Law Centres Network agreed with the proposal but said that if one area of legal work required regulation, then all areas did. Picking out different areas by subject matter and maintaining different regulatory frameworks for the same work areas was a backwards step. They also stated that Rule 9.1 of the draft Authorisation of Individual Solicitors Regulations, when read with Rule 9.5, appeared to deal only with solicitors in non-SRA regulated bodies working in non-reserved activities, and regulation by OISC. They queried the position in relation to reserved services. The Network also asked for confirmation that solicitors will continue to be able to practise reserved immigration activities and will not be required to register their employing agency with OISC.

31. Another respondent stated that draft Rule 9.5 appeared to imply that solicitors working in OISC authorised bodies (which might include not-for-profit bodies) could not provide reserved legal services.

32. One respondent who opposed the proposal said that generic immigration advice could be easily provided through a non-regulated entity such as a solicitor in a separate business and this could be more cost effective for clients.

Q4: Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR authorised firms (or equivalent)?

33. The overwhelming majority of respondents that answered this question agreed with the proposal. Respondents highlighted that this work should only be conducted by regulated businesses due to the consequences for members of the public if something was to go wrong.

34. The common theme running through responses was that the proposal maintained the policy intention behind the Compensation Act 2006 and the regulatory regime that was in place. It was said that the need to maintain the status quo was also required considering the increase in poor practices in personal injury claims (which included recent media commentary about spurious travel insurance claims for food poisoning).

35. The Law Society agreed with the proposal and said it was necessary because of our proposal to allow solicitors to deliver non-reserved activities outside of regulated firms, and to operate on a freelance basis. This view was shared by the Legal Services Consumer Panel.

36. The Legal Ombudsman also agreed with the proposal and highlighted their demographic research that indicated over 50 percent of those who use claims management companies earn below £25,000 per annum and are statistically more likely than the general population to be unemployed and from a lower social grade. They stated that the figures would be similar for clients of law firms providing claims management services, and that they are therefore likely to be more financially and socially vulnerable. The Legal Ombudsman felt the way these services were regulated strengthened people's powers of redress. They therefore preferred to maintain the current regulation.

37. However, two responses (from individual solicitors) highlighted that the proposal restricted the activities a solicitor could carry on compared to their non-qualified peers. They felt solicitors should be able to provide claims management services in any context.

38. The Law Centres Network commented that though they agreed with proposals, picking out different areas that would or would not be subject to regulation would increase complexity for consumers.

Financial Services

39. We proposed simplifying our current financial services rules. We stated that solicitors, RELS and RFLs providing financial services in non-SRA regulated entities would need to be authorised by the Financial Conduct Authority (FCA) and could not rely on the exemption under part 20 of the Financial Services and Markets Act 2000. We did not ask a specific question on this topic.

40. The Legal Services Consumer Panel felt that removing secondary legislation from the rules would particularly impact small firms, because they would have to take steps to keep up to date with the arrangements that would apply. The Panel suggested that we work with firms to review the guidance and support that might be needed if we were to simplify our rules in this way.

41. The Panel also stated that they did not understand the rationale to not allow solicitors in non-legal regulated firms to provide regulated financial services under our regulation. They were concerned that this would cause confusion for consumers about how services were regulated and how redress would be provided as the Legal Ombudsman would not take complaints relating to financial services provided by these solicitors.

42. The Law Society stated that we should work with the FCA to make sure the burden on solicitors' subject to dual regulation is limited, and that consumers are adequately protected. The Law Society also stated that guidance should be made available to alert practitioners to the changes.

Section two: authorising individuals

Individual self-employed solicitors

43. We proposed allowing individual self-employed solicitors or RELs to provide reserved legal services to the public or a section of the public on their own account without the need to become a recognised sole practice or to work through an authorised body.

44. We proposed restrictions and safeguards on this activity in that the solicitor or REL would:

- need to be acting as an individual (and therefore without employees or partners and not through a service company) and the client would have to engage them personally
- need a practising address in the UK
- be required to have insurance that provides adequate and appropriate cover in respect of the activities
- not be allowed to hold client money, except in respect of fees and disbursements if held or received prior to a bill (where any money that comprises disbursements relates to costs or expenses incurred by the solicitor or REL on behalf of their client and for which they are liable).

45. We also proposed that the Compensation Fund provisions would apply. The solicitor or REL would be bound by the provisions of the new Code for Solicitors, RELs and RFLs.

Q5: Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?

46. A significant minority of respondents agreed with the proposal. Those that gave reasons for their support felt that that it would make services more accessible. They also stated that the change reflected the reality of flexible working in the 21st century. One respondent stated that the most important safeguard was the restriction on holding client money. Another felt that it did not make sense that barristers had this freedom and solicitors currently did not.

47. A non-LSA regulated business that has several years' experience of providing practising solicitors to work in house on projects for commercial clients responded in support of the proposal. They felt it would be welcomed by self-employed solicitors and allow them to offer a wide range of services. They believed that the high number of applications they receive from solicitors means that there is a demand to work in more flexible ways. They also felt that the proposal would allow clients - particularly small businesses - to access legal services without the extra layer of costs imposed by a firm. They stated that in their experience there was not much demand for a high level of insurance cover from commercial clients who understood the trade-off between cost and nature of service.

48. However, some other respondents said that their support for the proposal was conditional on the self-employed solicitors being required to maintain PII on our minimum terms and conditions.

49. Some respondents that supported the change wanted the proposal to go further and allow the solicitors to have employees and work through a service company.

50. The City of London Law Society (CLLS) said it was less concerned with this proposal than with our decision to allow solicitors to practiae in non-SRA regulated entities. They felt the requirement for PII would mean newly qualified lawyers would be less likely to take this route as they would probably not be able to get insured. However, they stated that the PII requirement should be extended to solicitors offering non-reserved legal services outside LSA-authorised firms.

51. A small number of respondents stated that this change should only be allowed for solicitors with at least five years post qualification experience and who had undergone an additional assessment of competence.

52. There were common themes among respondents that disagreed with the proposal, including the Law Society and several local law societies. They felt that our proposed PII requirement not including the need to comply with our minimum terms and conditions would reduce client protection. Respondents asked, for example, why these solicitors would not have to purchase run-off cover and said that it was unclear how 'adequate and appropriate' insurance would be interpreted.

53. Linked to this were concerns that if these solicitors were not authorised as recognised sole practices there would be no check on whether it was appropriate for them to set up on their own. It may also be easier to set up bogus law firms. Other regulatory safeguards for entities would also not be in place. So, for example, there would be no obligation for this type of practice to have systems and procedures, including those to identify and deal with conflicts, safeguard confidentiality and record undertakings. There would be no obligation to monitor financial stability or to ensure an orderly wind down in the event of closure of the business.

54. These respondents felt the effect of this would be clients be inadequately protected from poor service and confused by differences in regulatory protections. This would compound the issues created by our decision to allow solicitors to provide services to the public via non-LSA regulated firms, create a 'two-tier' service and bring the profession into disrepute through poor service and inadequate remedies.

55. The Legal Services Consumer Panel raised similar issues. While they recognised that the proposal could increase flexibility for solicitors, they felt our qualified to supervise provisions should apply to solicitors setting up their own practice. They were also concerned that the PII requirement was too vague, and that the draft rule allowed solicitors to carry out unreserved legal activities without legal

protections. The Panel said to reduce potential consumer confusion, there should be similar levels of protection attached to self-employed solicitors delivering unregulated services, as to solicitors working in unregulated firms. They also stated that self-employed solicitors should be subject to the same better information requirements as recognised sole practitioners.

56. The Law Society thought there was an assumption that the new provisions would be used mainly by solicitors that were providing pro bono services. They thought this assumption was unjustified.

57. Two respondents from the not-for-profit sector had concerns that these changes, together with the abolition of the detailed provisions currently in Practice Framework Rule four, would leave law centres and other charities unsure how regulation would apply to solicitors working in or with those organisations and to pro bono work generally. This confusion needed to be resolved in the interests of the vulnerable consumers these organisations represent. These concerns were shared by the Legal Services Consumer Panel.

58. The Legal Ombudsman referred to its response to our phase one consultation. It supported the wider policy objective behind this proposal to provide greater flexibility for solicitors to deliver their services, and therefore give consumers greater access to competent and affordable legal advice when needed. However, it had concerns about the impact on the principle of entity-based regulation and the wider system of redress, as well as how the proposals will work in practice. The Legal Ombudsman was unclear about how its jurisdiction would operate in practice if self-employed solicitors could use this provision to work within a business where providers of different kinds of services (regulated or unregulated) collaborate on projects involving both legal and non-legal work and may outsource administrative functions. It felt that this may lead to it only being able to investigate the part of the complaint relating to the solicitor, and therefore not operating an effective complaints handling service. Conversely, the Legal Ombudsman stated that if the rule did not permit the solicitors to work as part of a larger entity in this way then its concerns would be almost entirely negated.

Assessing character and suitability

59. We proposed a revised assessment of character and suitability that:

- clarifies the overriding principles governing our assessment of appropriate character and suitability
- moves to a set of indicative events or behaviours, aggravating or mitigating factors, which apply equally to all
- considers an individual's circumstances and the nature of their role (eg solicitor, Compliance Officer for Legal Practice etc)
- assesses whether RELs and RFLs are in good standing with their home regulator.

60. We also consulted on removing character and suitability testing from students and people about to enter, or within, a period of recognised training. This would align with our agreed approach for apprenticeships. Instead, there would be an assessment at the point individuals apply for admission. Individuals would be able to ask for early advice, but we would not provide a formal regulatory decision at any point prior to admission.

61. We also proposed two further changes:

- Using our existing powers more effectively to impose practising certificate conditions at the point of authorisation, where this will help us to admit an individual while mitigating any risk they might present.
- Looking at the process for approving authorised persons who are already regulated by us or another approved regulator.

Q6 What are your views on the policy position set out above to streamline character and suitability requirements and to increase the flexibility of our assessment of character and suitability?

62. Respondents were generally supportive of our proposed approach, considering it to be sensible and logical. Respondents also welcomed the flexibility that the new test introduces to the decision-making process. One local law society commented: "We agree that the current character and suitability requirements are too rigid to achieve fairness. They make no allowance for youthful misdemeanours."

63. Respondents including the Law Society highlighted the importance of having clear guidance available to potential solicitors, so they know the standards expected of them and can make an informed decision about whether to proceed with their legal training.

64. One member of the public commented extensively on the use of local warnings in the rules and made other minor drafting suggestions. One law firm supported the adoption of a more flexible approach but suggested that local warnings and penalty notices for disorder should be excluded from the list as criminal findings. This firm, and CLLS, also asked us to provide guidance on what we mean by 'more than one' offence.

65. A small number of respondents wanted to retain the early decision, including universities, education and training providers and the Law Society. Education providers wanted to retain the early test, so the onus is on us rather than the education provider. The Law Society suggested that early positive indicative decisions should be given, that candidates can later rely on at admission. This view was endorsed by another representative body. The Junior Lawyers Division also strongly disagreed with the proposal to remove binding decisions for people who would currently pass our existing Suitability Test.

66. Clear signposting was raised by a small number of respondents, along with the importance of highlighting the availability of our proposed ethics guidance advice service.

67. One local law society asked us to consider including a warning in our guidance that, even if approved for qualification, firms may be unwilling to hire people with a criminal record or other suitability issues.

68. The Legal Services Consumer Panel welcomed the proposal and agreed with the arguments put forward. The Panel asked us to think about how best to monitor the effects of the changes (particularly regarding reducing barriers and increasing the diversity of background and experience of those admitted as qualified). The Panel also suggested that we pilot and test the new arrangements with students and education providers before they are implemented.

Our Training Regulations

69. We proposed permitting students who started training before the SQE comes into force, and who complete their training during our transitional period, to have full exemption from the requirement to qualify through the SQE. This includes those who have commenced or invested in a qualifying law degree at the time the SQE is introduced.

70. We also proposed:

- Not to allow candidates to ‘mix and match’ old and new qualifications during the transitional period by permitting exemptions from parts of the SQE.

- A lengthy transitional period of 11 years after the introduction of the SQE.

- Maintaining our current equivalent means route to qualification for those who have started to train under the current system.

- That individuals who have started the qualified lawyers transfer scheme (QLTS) assessment must have completed all parts of the QLTS by the time the SQE is introduced.

- Not to include a rule requiring training providers to pay the minimum wage to trainees in accordance with the minimum wage legislation.

Q7: Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing routes when the SQE comes into force?

71. Most respondents agreed with this proposal. Few stakeholders raised any issues with the length of the transitional period or with the principle that candidates should not mix and match old and new processes for admission.

72. A small number of respondents suggested that we should recognise the common professional examination for longer, so that the Common Professional Examination and Qualifying Law Degree would cease to be recognised at the same time.

73. We also received comments from some QLTS candidates, and Kaplan (the QLTS assessment provider), that we should give longer to individuals who have passed the first QLTS assessment to complete the second one. Kaplan suggested we should permit them to qualify under the QLTS for one year after the introduction of the SQE.

74. A small number of respondents (including the Law Society and CLLS) raised concerns about insufficient time between finalisation of the SQE assessment and its introduction.

75. Views were mixed on us not explicitly requiring training providers to pay the minimum wage. One respondent agreed by saying the Law Society published a recommended minimum salary for trainees and it was not necessary for us to go any further. Other respondents, including the Law Society and some local law societies, disagreed with our position on removing the minimum salary requirement for trainees.

Approving managers and owners

76. We proposed changes to the current system of approving managers and owners so that solicitors, RELs and RFLs will be deemed suitable to be managers or owners of any SRA-authorised body on first admission/ registration and will not have to seek individual approval for any such roles they take up. The only requirement will be to update mySRA to let us know about the change.

77. Other LSA-regulated individuals such as barristers will have to seek our approval (and be required to satisfy character and suitability requirements) when they take up their first role as manager or owner in an SRA-authorised body. However, as with solicitors, this approval will be general and they will not then have to be re-approved to fill those roles in new firms. They will also be required to update mySRA.

78. We proposed continuing to require the approval of non-authorised persons as managers or owners each time they changed role or firm.

Q8: Do you agree with our proposal to expand deeming in this way?

79. The great majority of respondents that answered this question agreed with the proposal. Where a reason was given, it was usually on the ground of reducing unnecessary bureaucracy. In relation to other authorised persons, it was felt that control by their own regulator was an important safeguard.

80. The Law Society said that we had not provided figures on the numbers of barristers, chartered legal executives or other type of authorised person that had been refused approval on change of firm. Nevertheless, the Society was not opposed to this proposal as it is likely to reduce unnecessary bureaucracy.. The Law Society supported our approach of continuing to approve non-authorised persons for each role.

81. Comments were made that solicitors whose practising certificates were subject to conditions, or other authorised persons who had conditions imposed on their approval for a role, should not be brought within the deeming process.

82. One respondent stated that the proposal should go further and deem approvals for subsequent roles for non-authorised persons where the change in role was purely because of a change in constitution or legal status of the firm for which they have been approved.

83. Those few respondents that disagreed with the proposal did not give reasons.

Section three: specialist rules

Overseas Rules and European Cross-border Practice Rules

84. We proposed streamlining the Overseas Rules to reflect changes to our domestic Principles and Accounts Rules. We maintained the separation between the Overseas Rules and our domestic Principles to continue the more proportionate regulatory regime the Rules offer for firms operating abroad.

85. Our current European Cross-border Practice Rules largely duplicate the parts of the Council of Bars and Law Societies of Europe (CCBE)'s Code of Conduct that are not reflected elsewhere in our Handbook. We proposed removing the drafting that duplicates the CCBE's Code, and simply imposing a requirement for those operating in European jurisdictions or cross-border to comply with the Code.

Q9 Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?

86. About half of respondents who answered this question agreed with this proposal. Birmingham Law Society felt: "There is no loss of protection and the streamlining seems sensible." A range of other types of respondents, including firms, individuals, local law societies, large multidisciplinary practices and software providers stated they were content with our suggestions as they did not substantively alter the rules and simply rationalised them.

87. Respondents that did not answer yes to this question were split between saying they needed more information to answer and saying no. By far the most common query from this group was to ask how Brexit might affect this area. The Law Society (and those that endorsed their response) felt that given uncertainty over

the future of the UK-EU trade relationship the SRA should refrain from this proposal until the outcome of the Brexit negotiations is known.

88. One magic circle firm raised two concerns. The first was that the proposed rules appear to impose higher standards by requiring the report of 'any serious breach'. This compares to the need to report 'material and systemic breaches' in the current rules. The same respondent also queried proposed Overseas Rule three, which they thought appeared to give us new rights to authorise withdrawals from overseas client accounts and to otherwise prescribe circumstances when this would be permitted.

89. By far the fullest response to this question was from the CLLS. They echoed the concerns raised by the magic circle respondent. They also questioned:

- whether principles seven and eight (proper standard of service; and proper governance and sound risk management principles) should be retained when these no longer apply domestically as Principles

- what we meant by 'other rules' applicable to overseas practice in the introduction and Rule 1.4, and whether this meant we could bring in additional regulation in the future without having to change the Overseas Rules

- whether our glossary definitions included nominal partners (being someone who does not have ownership rights in a firm but has a strong connected interest and can be involved in decision making)

- whether Rule 3.1(d)(iii) could create conflict with the local overseas regulator

- several other drafting points, including omissions from/ alterations in the glossary and the application of the revised Enforcement Strategy.

Selling property

90. We proposed removing the Property Selling Rules because most of the legislation has not been enacted, and the provisions on conflicts of interest are covered by our new Codes. We proposed retaining two provisions from the existing in the form of guidance. These are two of the key terms used in defining fee structure: 'sole agency' and 'sole selling rights'. Under the Estate Agents Act 1979, estate agents must communicate the meaning of these terms to clients. Our guidance will set out that solicitors should adequately explain these terms if they are used.

Q10: Do you know of any unintended consequences of removing the Property Selling Rules?

91. Nearly all respondents to the consultation either did not know of any unintended consequences of removing the Property Selling Rules or did not respond to the question.

92. The most extensive comments were made by the National Trading Standards Estate Agency Team (NTSEAT). While they did not object to removal of the rules, they asked that we retain a qualification to our definition of a solicitor acting "in the course of their profession". They stated:

> "NTSEAT has concerns of a gap in consumer protection where, for example, a struck off solicitor can legitimately escape sanctions available under the Estate Agents Act 1979 while misconduct was undertaken during their activity as a solicitor; a former solicitor that has been struck off for dishonesty cannot be prohibited, from estate agency work, if that dishonesty was undertaken while practising as a solicitor."

93. The Law Society did not oppose removing the rules but said we should make sure the removal would not undermine the rationale for the Estate Agents Act exemption. In particular, they suggested we check that our new Code of Conduct will cover transactions in which a solicitor has a personal interest, which are set out for non-solicitor estate agents in section 21 of the Estate Agents Act. Three

other respondents said they agreed with the Law Society's comments, and two other respondents said that it was important that no gaps in protection were inadvertently created.

94. The consultation also asked for information on how common it is for solicitors to act as estate agents in England and Wales. We believe this is uncommon, although a few English firms near the border with Scotland provide estate agency (solicitor estate agents are common in Scotland). Only one respondent provided information in response to this request: Cardiff and District Law Society said that they knew of one firm in south east Wales providing estate agency.

Our Notice, Application, Review and Appeal Rules

95. We consulted on a new set of rules that aim to:

- combine general provisions about how a person can make an application to us and how we notify them of our decisions (application-specific provisions would be in the relevant specialist rules)

- set out comprehensively all rights to review our decisions in a consistent and transparent way.

96. In these draft rules we clarified that we will not generally allow additional evidence on review unless satisfied that this is necessary to ensure the fair disposal of the matter. We specified the grounds on which an application for a review can be made and on which we can review our own decisions. The new draft rules also set out clearly which decisions attract this right of review. We put forward a 28-day time limit for lodging an internal review.

Q11: Do you agree with our proposed new review powers?

97. Most respondents agreed with the proposed new powers, with those that gave reasons feeling that they provided a more consistent approach.

98. The Law Society agreed that putting all the provisions in one place was sensible. However, they disagreed with the specific proposal to restrict the evidence that would be allowed on review or appeal. They stated that the experience of specialist regulatory lawyers is that first instance decisions and internal appeals heard by adjudicators often give reasons that do not relate to the reports disclosed to the solicitor. Therefore, additional evidence is sometimes required to address the decision given at first instance. Often solicitors only seek professional representation at the point when the initial decision has been made. On the advice from a regulatory lawyer, further evidence is often necessary. In this situation we would be making two decisions: on the substantive appeal and on the preliminary issue of whether to exclude the evidence, which would have to be read. There is no efficiency gained in seeking a blanket provision to exclude evidence.

99. The Law Society added that seeking to exclude evidence when there is a further right of external appeal is not helpful, as the excluded evidence would be submitted in the external appeal to the SDT or High Court. The Law Society's position was that new evidence should be considered as a matter of course and not be subject to an unnecessary preliminary decision.

100. These concerns about the proposed restrictions on submission of new evidence on review or further appeal were shared by some other local law society and practitioner respondents. For example, Manchester Law Society said that it was unfair not to allow a solicitor to introduce additional evidence except by a decision of ours, which itself which might not be transparent. In representing solicitors in appeals/reviews, specialist regulatory lawyers within the Society had identified many inconsistencies and errors made by the caseworkers in their presentation of the case for adjudication. Similarly, the decisions made by adjudicators can be based on reasons which differ from the evidence disclosed by us and where there has been no opportunity for the solicitor to respond. The outcome could have devastating effects on someone's career and the profession needs to have confidence that the process will be fair.

101. Of those respondents that opposed the changes more generally, the few that gave reasons felt that the current system worked well and there was no need for change.

Q12: Do you agree with the proposed 28-day time limit to lodge all requests for internal review?

102. There was widespread support for the proposed time limit. A significant number of respondents including the Law Society said that this should be on the basis that we could extend the time limit in appropriate cases, perhaps where more complex issues are raised, or the solicitor is in ill health. The Law Society added that we often take months to investigate potential allegations, but then only a short amount of time is given to the solicitor to respond.

103. The Legal Services Consumer Panel agreed in principle with the time limit but asked for clarification as to whether the days referred to were working or calendar days. They also said that there should be provision to extend the time limit for external appeals that might need longer.

104. One local law society said that 56 days would be a more reasonable period, given the need for the solicitor to gain independent legal advice. A solicitor respondent stated that 28 days was much too short, given their experience of dealing with often lengthy and delayed submissions which require complex responses. Another suggestion was for three months to be allowed.

Section 4: Our approach to enforcement

A revised Enforcement Strategy

105. The approach to enforcement we set out included:

- A transparent framework that those we regulate can clearly understand.

- Standards that establish clear expectations but also build in appropriate flexibility about how solicitors behave to meet those standards.

- An Enforcement Strategy that:

    - acts as a guide to the expected behaviours underpinning our standards

    - provides clarity about how, and when, we will enforce (or where we will not)

    - together with the new Codes of Conduct, provides the transparency and assurance that solicitors and firms have been asking for.

Q13: Do you agree with our proposed approach to enforcement?

106. Respondents were overwhelmingly in favour of our revised proposals and most did not add any additional comments or material. Comments that were provided included:

- Welcoming a more flexible approach and a move towards focusing on more serious breaches.

- Welcoming the proposal to develop case studies as part of an Enforcement Strategy toolkit.

- Considering one off or isolated incidents when making decisions.

- Considering mitigating factors when making decisions.

- Training our staff on consistency of decision making will be key to the success of the new arrangements.

107. The Law Society (and those that endorsed their response) were broadly supportive but went on to make a number of specific suggestions regarding the proposed Enforcement Strategy toolkit. LawWorks also agreed with our proposal. They asked whether the impact of freelance work had been considered, and requested we set that out clearly in our response.

108. The Legal Ombudsman used their response to this question to flag up the need for us to continue to work closely together and stated that they are looking forward to discussing this further with us as we move towards implementation. The Legal Services Consumer Panel considered that a more flexible and transparent compliance model has the potential to provide more clarity for providers, consumers and the wider public, but stressed the importance of making enforcement decisions transparent and publicly available.

109. One solicitor respondent expressed concerns that the Enforcement Strategy does not cover mental health issues adequately and suggested that we should move towards the fitness to practice model adopted by health regulators. Another respondent asked for further clarity around elements such as minor motoring offences.

110. The SDT urged us to transparently publish our key performance indicators for the period from the date of decision to the point at which a case is delivered to them. The SDT also asked for clear signposting to the full text of their Guidance Note on Sanctions, to reinforce the message that the SDT is wholly independent of us.

111. A small number of respondents stated that to date, some of our investigations have been slowly resolved and overcomplicated by pleading several different breaches. These and other respondents noted that enforcement can be very stressful for an individual and transparency and proportionality are therefore important. One respondent also noted that it will be important that action taken against a solicitor in a non-authorised firm should be proportionate.

112. The CLLS was concerned that the Enforcement Strategy and associated guidance may be too fluid and that this could reduce regulatory certainty for individuals and firms. They noted it will be important to have all the relevant, up to date information in one place. They also made some additional suggestions around data collection and publication, and a number of drafting suggestions for consideration.

113. Two respondents (one law firm, and one member of the public) disagreed with our approach to enforcement but did not provide any reasons why. Two respondents also disagreed with our proposal to develop an Enforcement Strategy toolkit. One felt the need to have guidance proved the Strategy was not sufficiently detailed. The other was opposed to any guidance being placed outside the Strategy.

Regulatory and Disciplinary Procedure Rules

114. The Law Society made a few suggestions and recommendations around our current disciplinary procedures, and these were endorsed by a number of other respondents.

Annex one: list of respondents

115. The table below groups respondents based on whether they were happy to have their name and response published, or whether they wished to be kept anonymous.

Name	Respondent Type
Responses to be published with name of respondent	
Responses from organisations	
Association of Women Solicitors	Representative body
Birmingham Law Society	Law Society
Bristol Law Society	Law Society
Cardiff and District Law Society	Law Society
Cardiff University	University or other education/training provider
Citizens Advice	Other (Organisation)
City of London Law Society - Professional Rules and Regulation Committee	Law Society
City of London Law Society - Training Committee	Law Society
City of Westminster & Holborn Law Society	Law Society
County Societies Group	Law Society
Devon and Somerset Law Society	Law Society
Doncaster and District Law Society	Law Society
Federation of Small Businesses	Representative body
Hampshire Law Society	Law Society
Hexagon Legal Network	Representative body
Howden UK	Other (Organisation)
IJBH ltd	Law firm or other legal services provider
Junior Lawyers Division	Representative body
Kaplan Inc	Academic
Law Centres Network	Representative body
The Law Society	Representative body
LawWorks (Solicitors Pro Bono Group)	Representative body
Lawyers On Demand	Law firm or other legal services provider

Leeds Law Society	Law Society
Legal Ombudsman	Representative body
Legal Risk LLP	Law firm or other legal services provider
Legal Services Consumer Panel	Representative body
Leicestershire Law Society	Law Society
Liverpool Law Society	Law Society
Manchester Law Society	Law Society
Middlesex Law Society	Law Society
National Trading Standards Estate Agency Team	Regulator
Peninsula	Law firm or other legal services provider
Peterborough and District Law Society	Law Society
Riliance	Other (Organisation)
Sheffield and District Law Society	Law Society
Society of Legal Scholars	Representative body
Solicitors Disciplinary Tribunal	Other (Organisation)
Solicitors for the Elderly	Representative body
South Hampshire Junior Lawyers Division	Representative body
University of Law	University or other education/training provider
Yorkshire Union of Law Societies	Law Society
Young Legal Aid Lawyers	Representative body
Responses from individuals	
Paul Bennett	Solicitor
Peter Causton	Solicitor
Vicki Feng	Other legal professional
Klearchos Kyriakides	Solicitor
Yves Yeung	Other legal professional

Name of respondent to be published, but not response

Responses from organisations

Action against Medical Accidents	Other (Organisation)
Nottingham Law School	University or other education/training provider

Response to be published anonymously

Responses from organisations

Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	University or other education/training provider

Responses from individuals

Anonymous respondent	Member of the public
Anonymous respondent	Not stated
Anonymous respondent	Not stated
Anonymous respondent	Other legal professional
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor

Neither name of respondent nor response itself to be published

Responses from organisations

Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	Law firm or other legal services provider
Anonymous respondent	University or other education/training provider

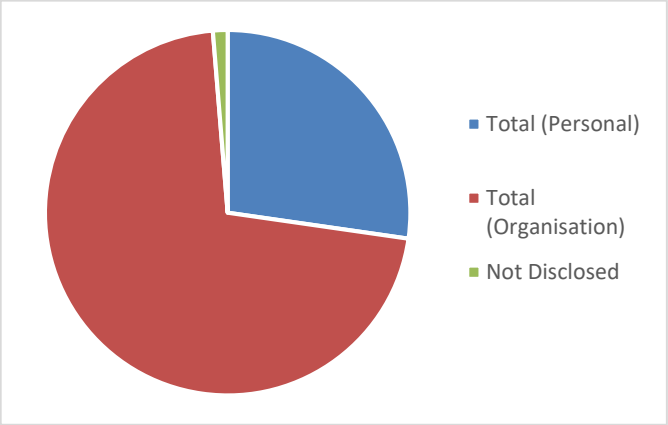
Responses from individuals

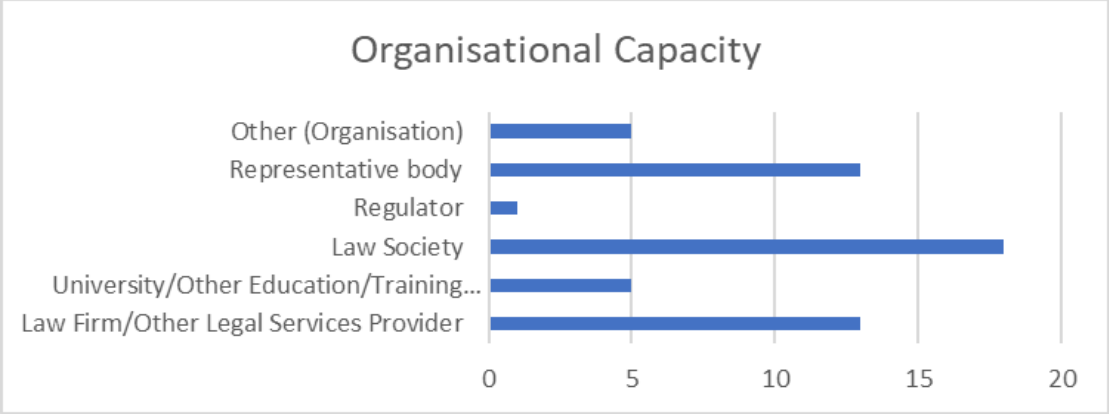
Anonymous respondent	Academic
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor
Anonymous respondent	Solicitor

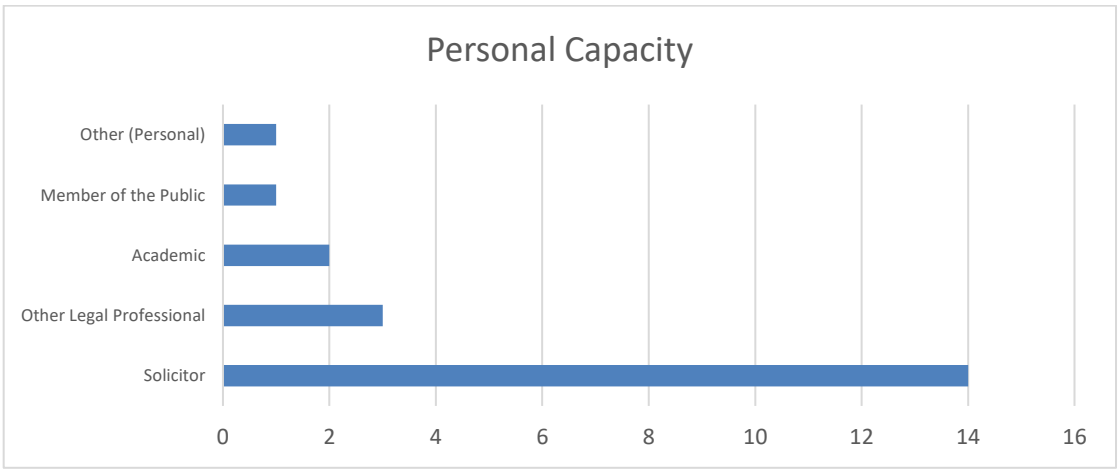
Annex two: data about respondents and responses received

116. Below we set out the date we gathered through the formal responses to our consultation, in order of the questions we asked.

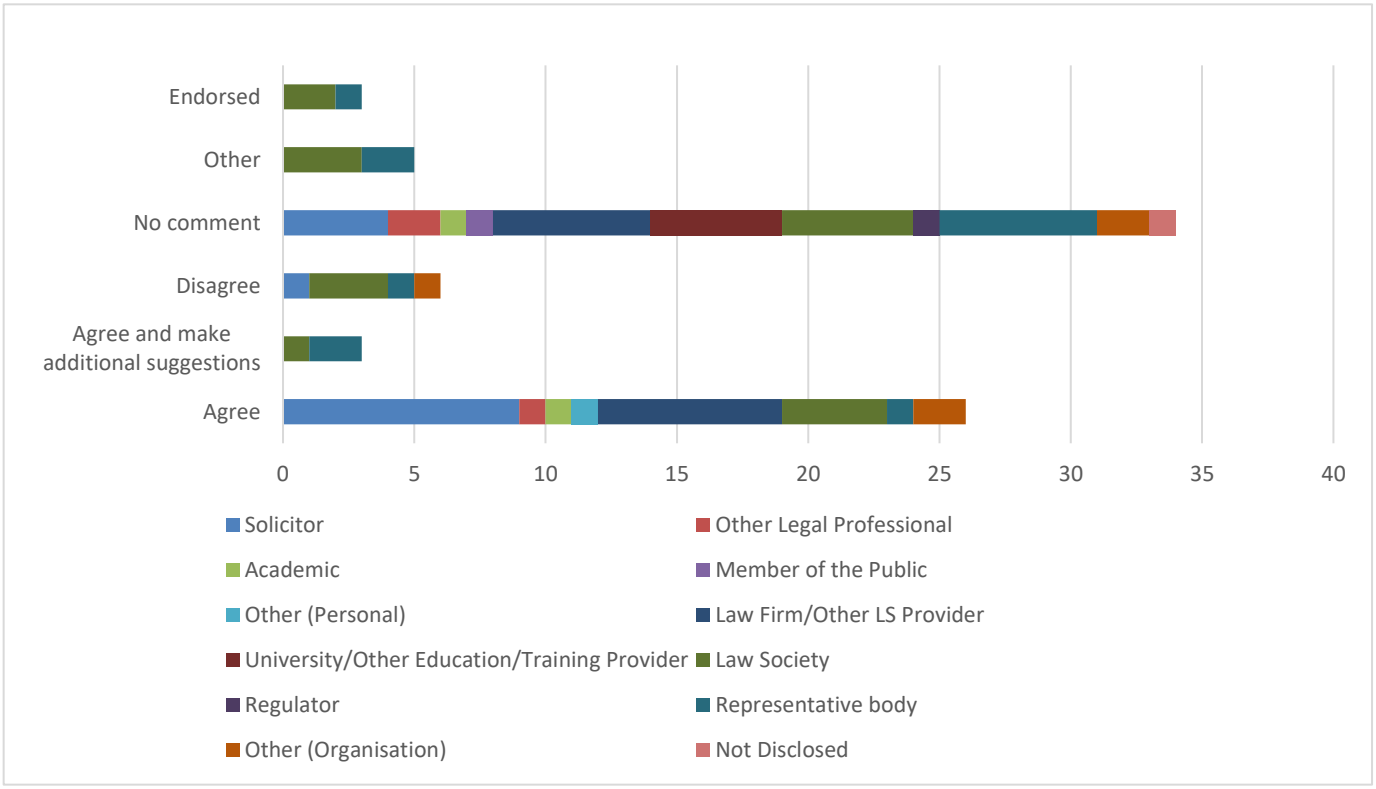
Type of respondent



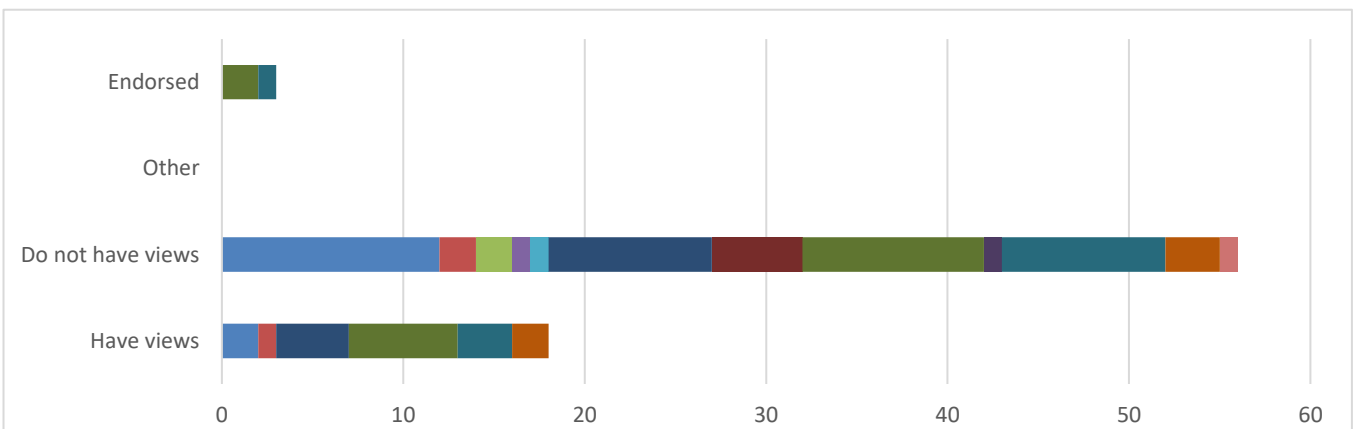




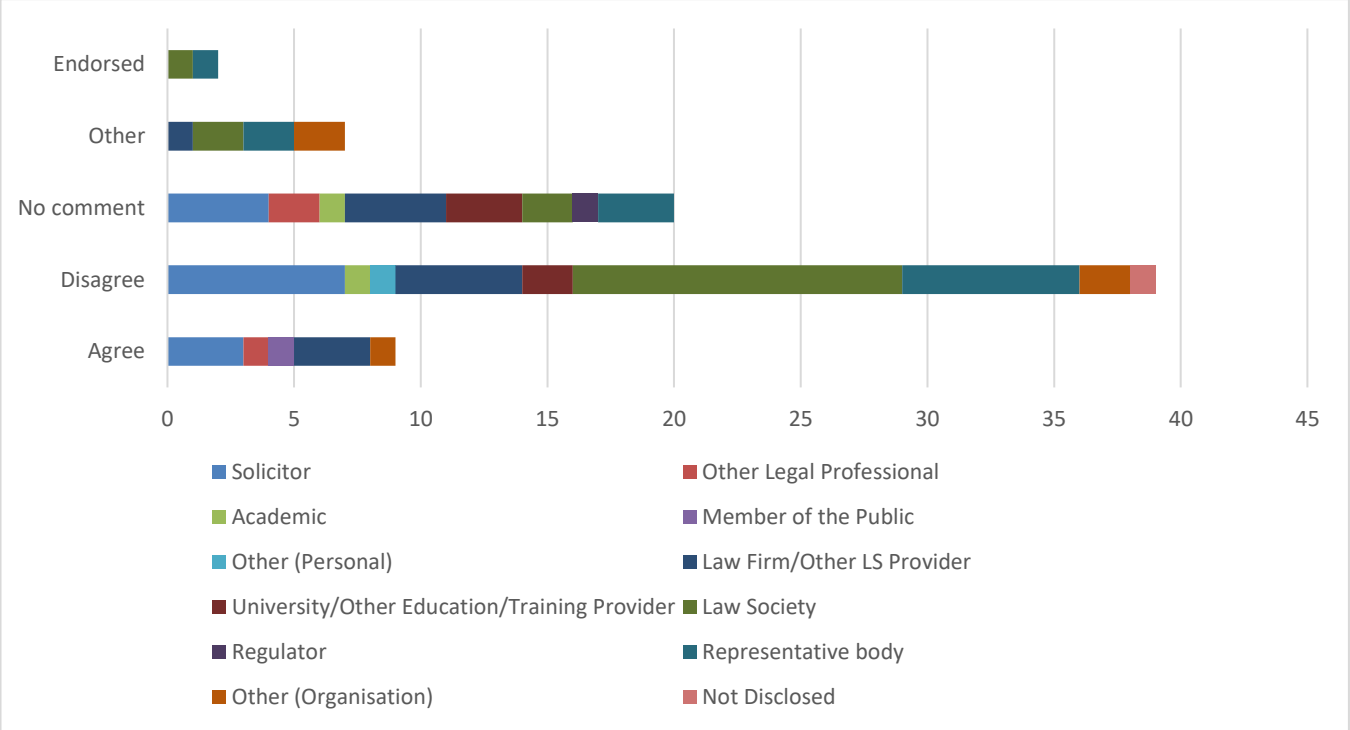
Q1a: Do you agree with our proposal to authorise recognised bodies that have a practising address anywhere in the UK?



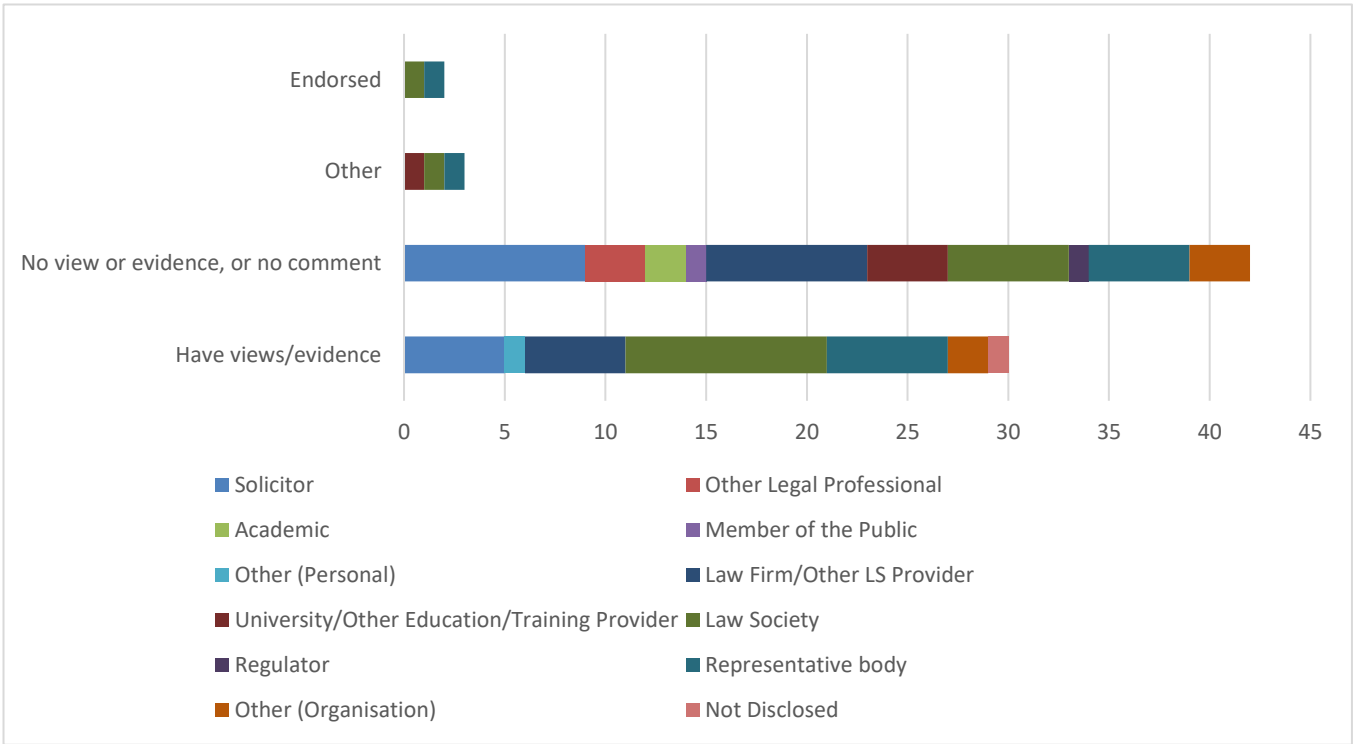
Q1b: Do you have any views on our approach to overseas practice more broadly and the practising address restriction?



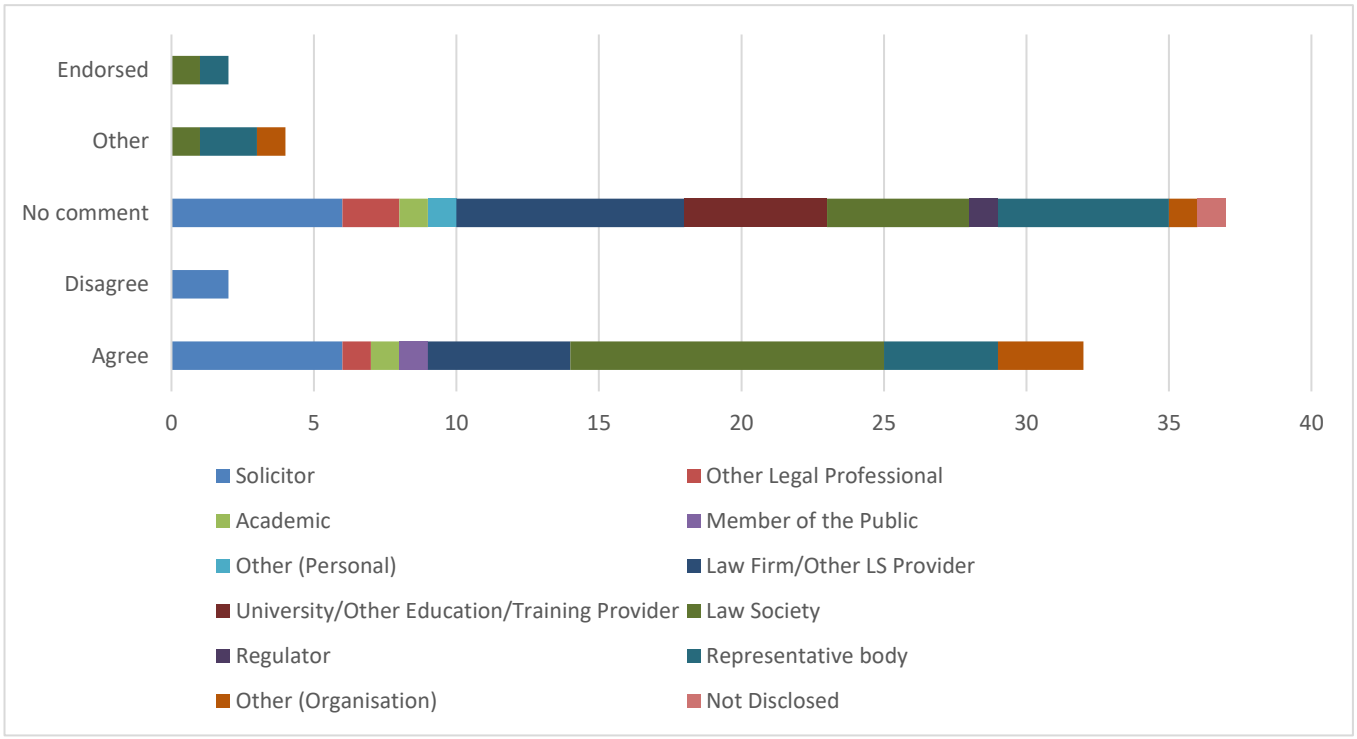
Q2a: Do you agree with our proposal that the current requirement for firms to have within the management structure an individual who is 'qualified to supervise' should be removed?



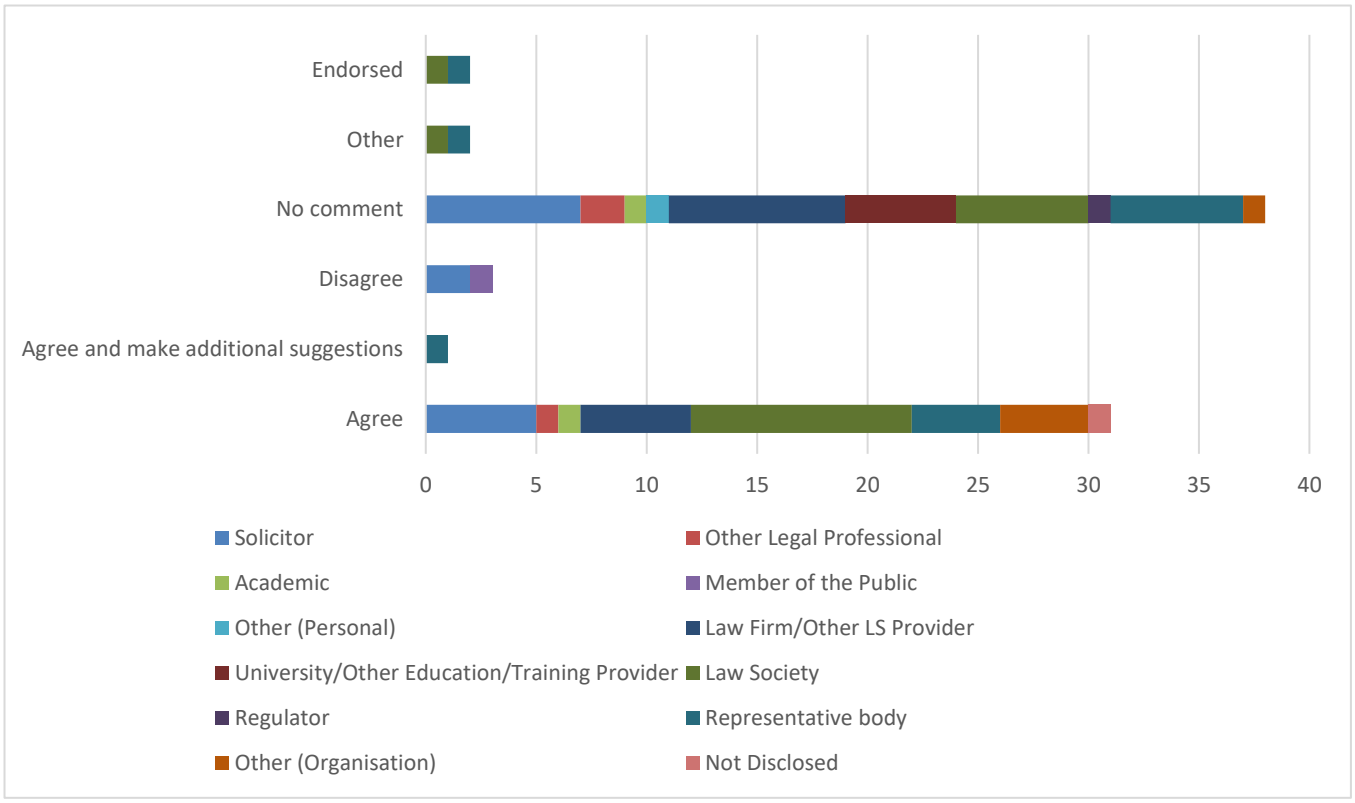
Q2b: If you disagree, what evidence do you have to help us understand the need for a post-qualification restriction and the length of time that is right for such a restriction?



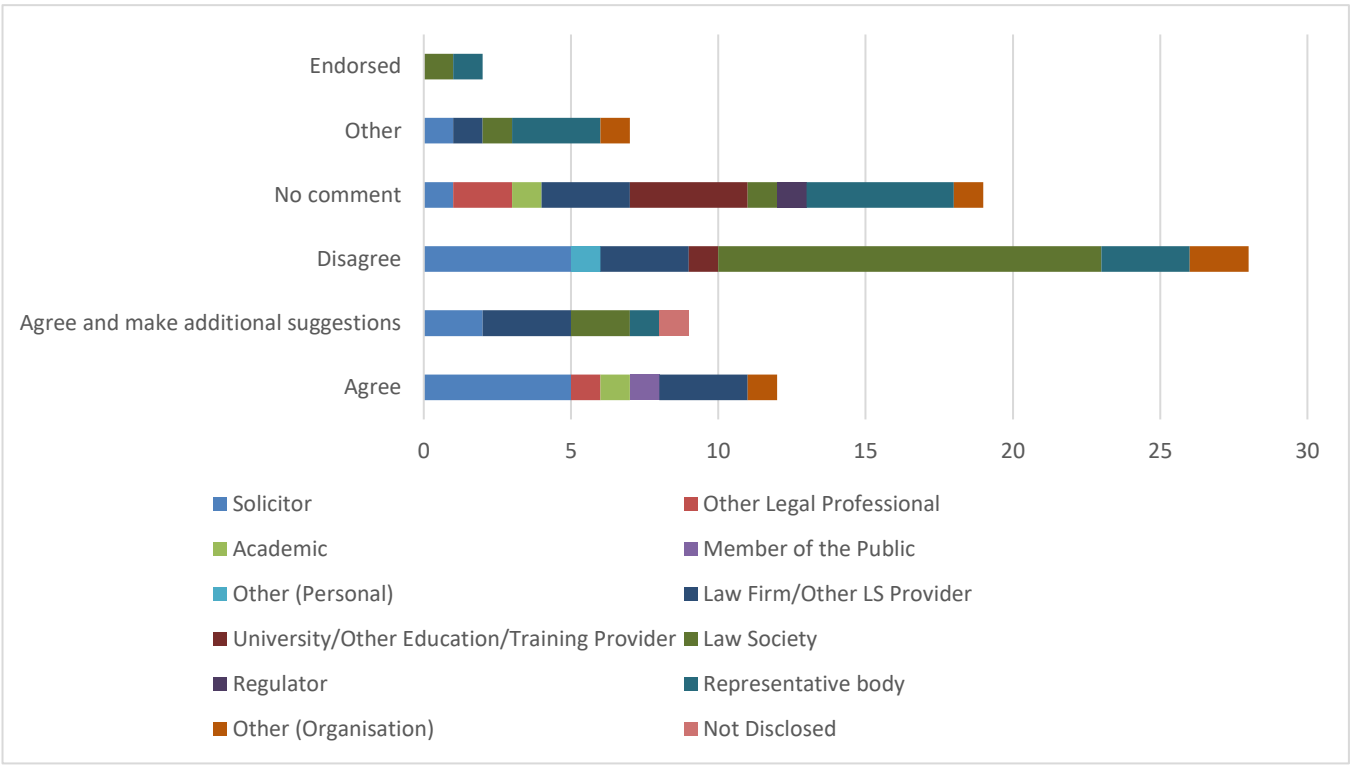
Q3: Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide immigration services outside of LSA or OISC-authorised firms?



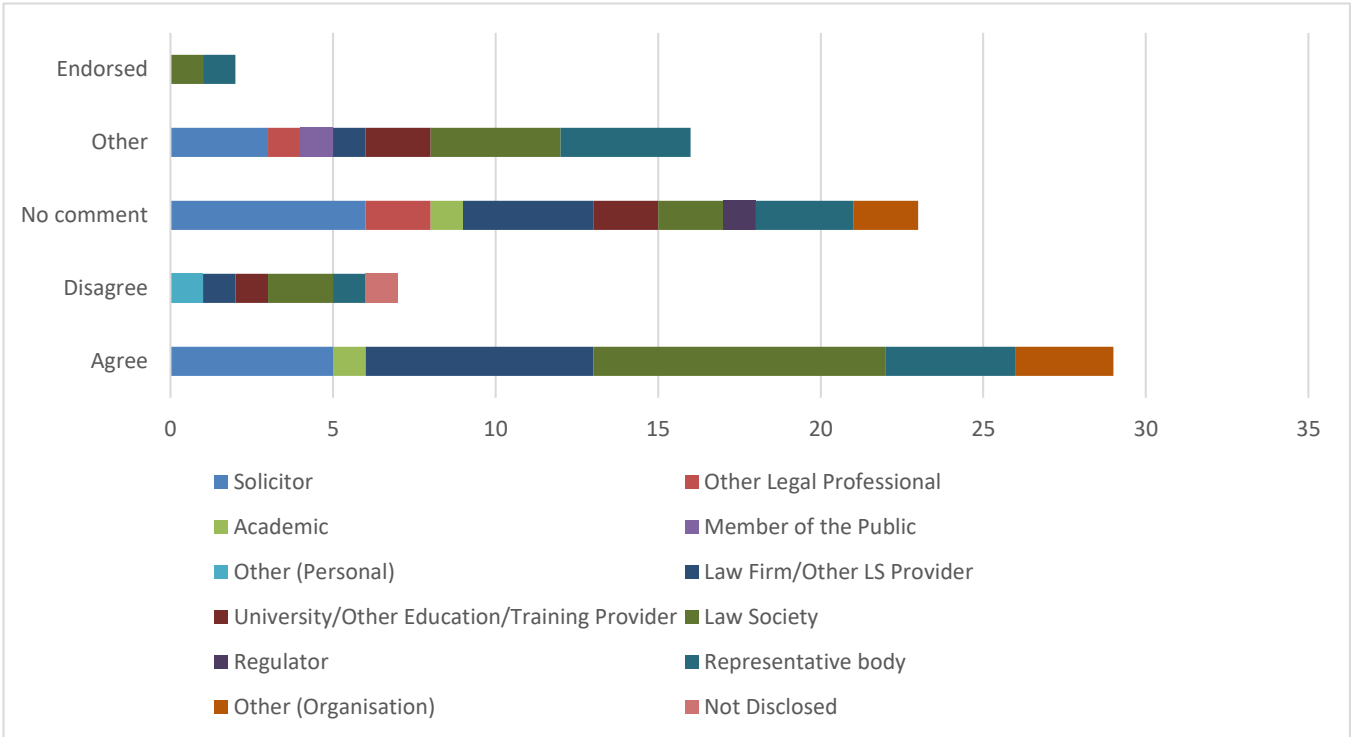
Q4: Do you agree with our proposal that solicitors, RELs and RFLs should not be able to provide claims management services outside of LSA or CMR-authorised firms (or equivalent)? If you disagree, please explain your reasons why.



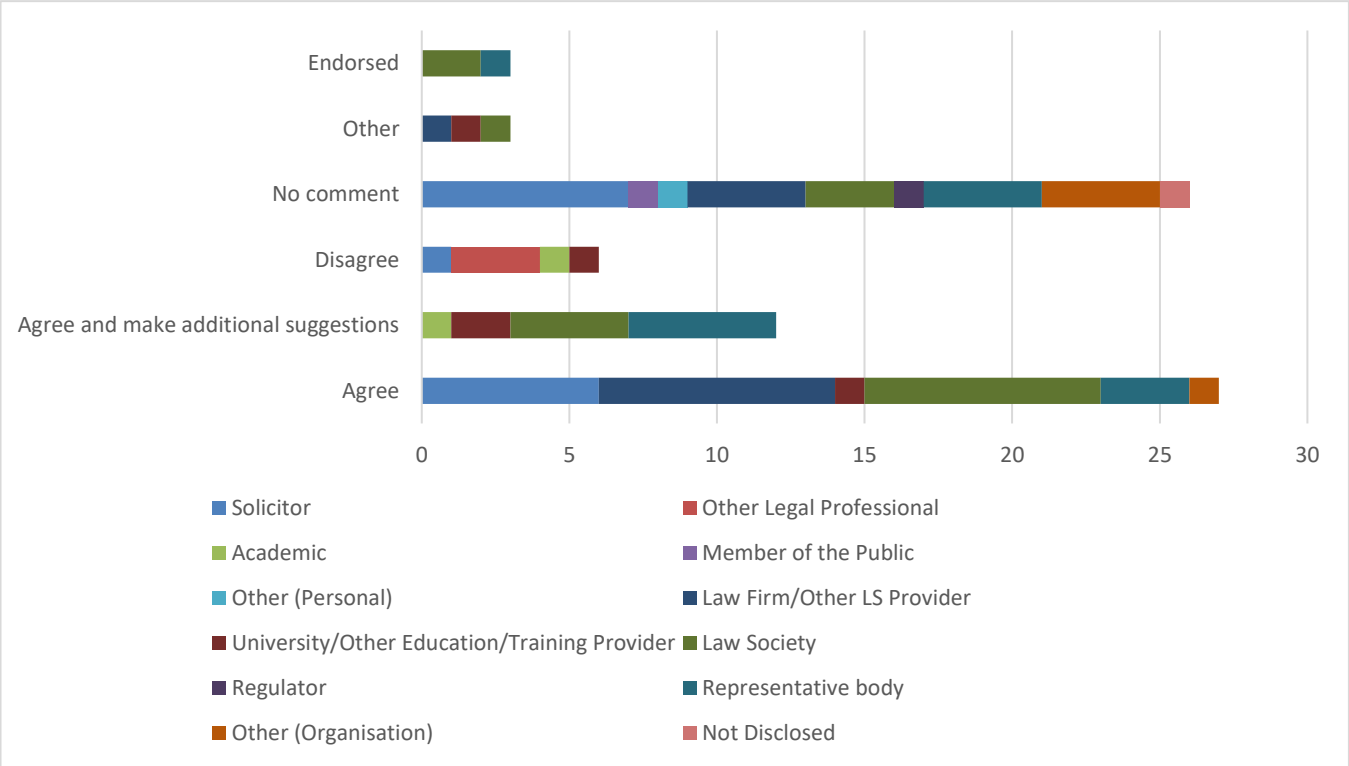
Q5: Do you agree with our proposal to allow individual self-employed solicitors to provide reserved legal services to the public subject to the stated safeguards?



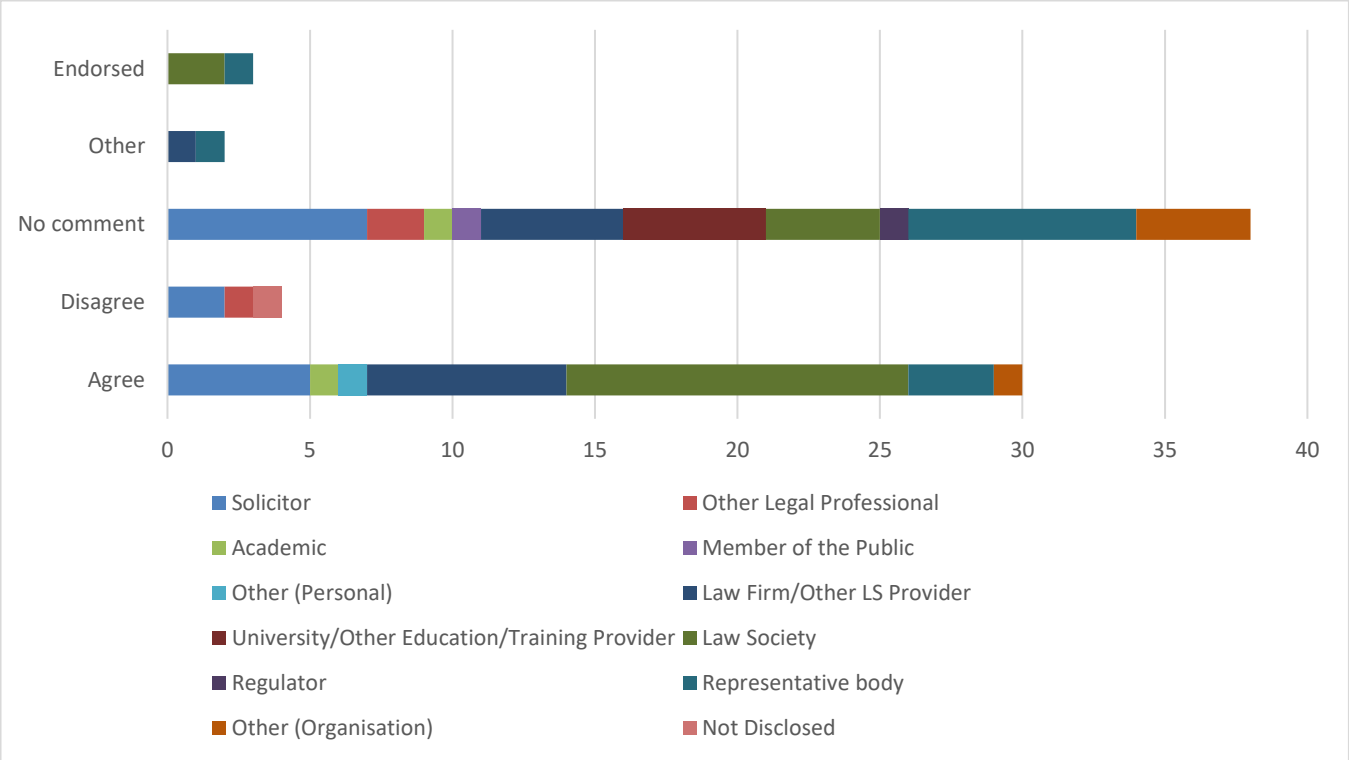
Q6: What are your views on the policy position set out above to streamline character and suitability requirements, and to increase the flexibility of our assessment of character and suitability?



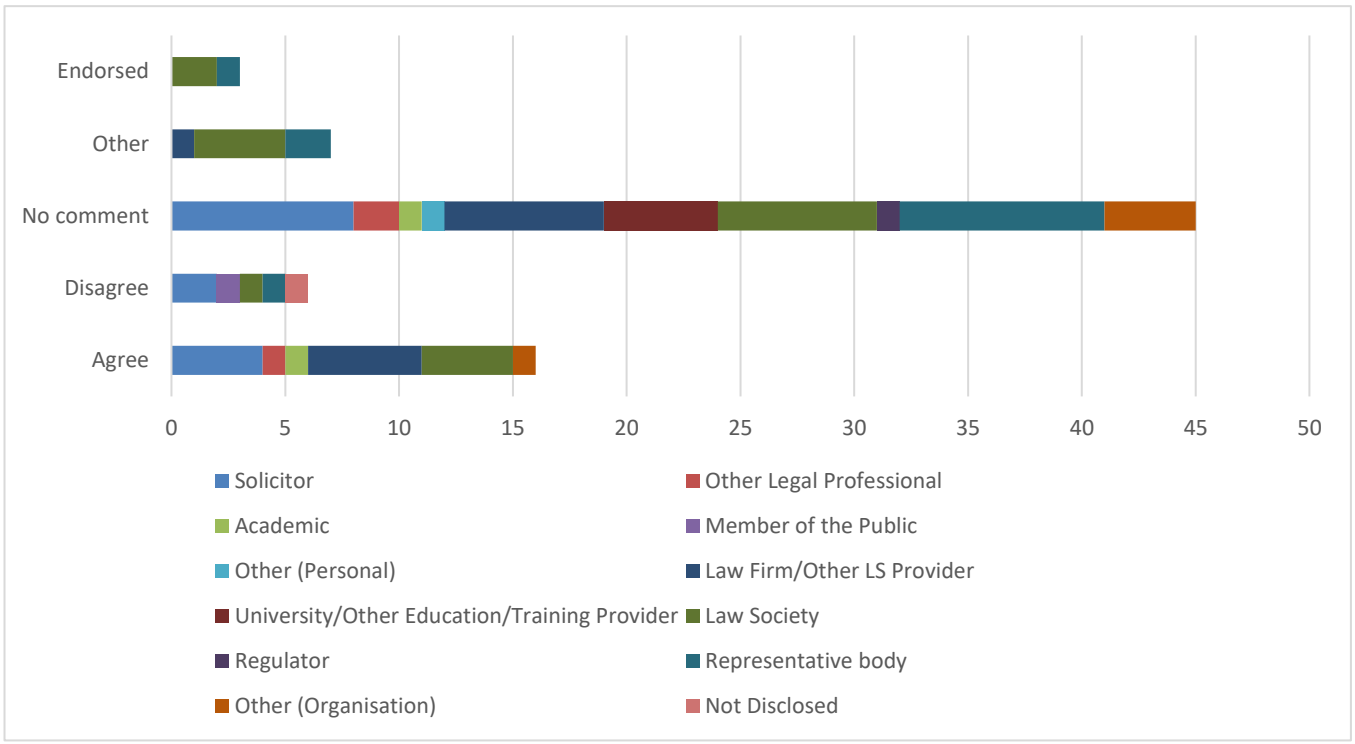
Q7: Do you agree with our proposed transitional arrangements for anyone who has started along the path to qualification under the existing routes when the SQE comes into force?



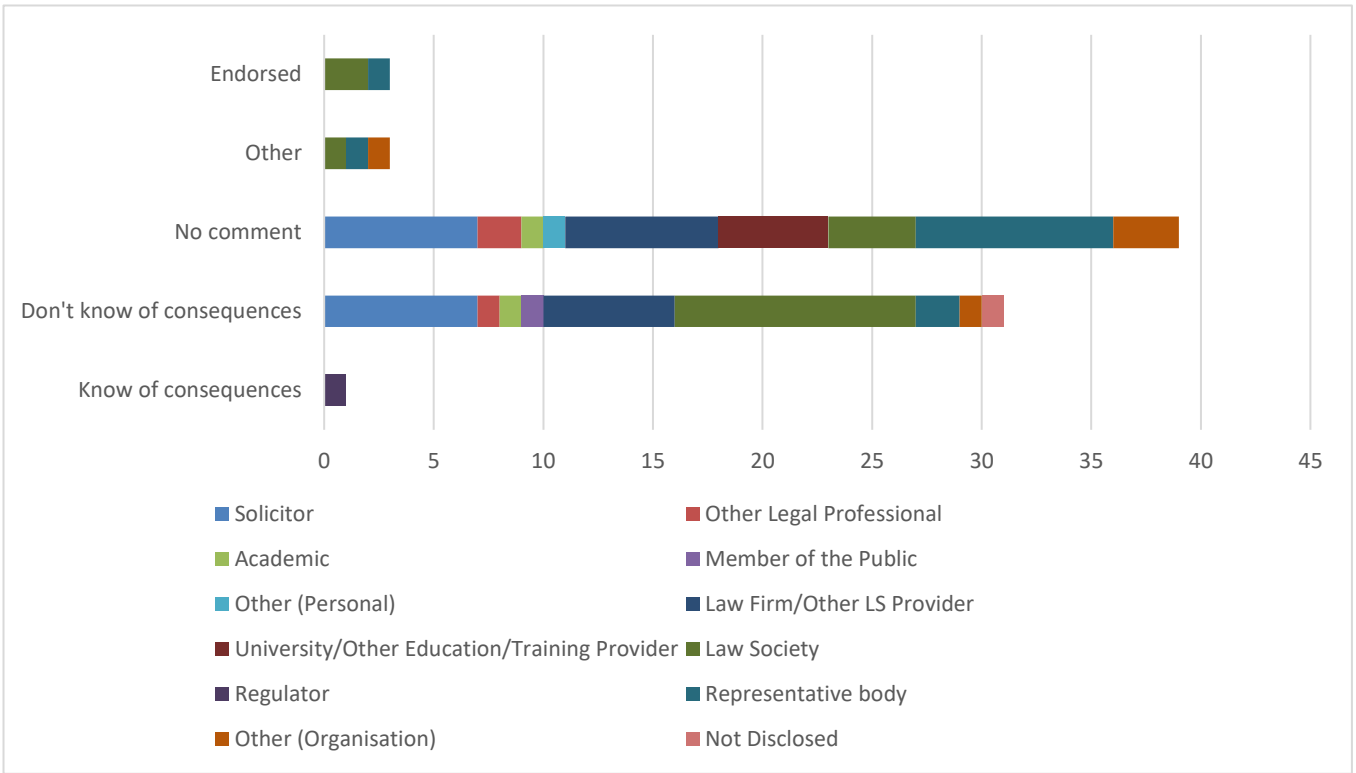
Q8: Do you agree with our proposal to expand deeming in this way?



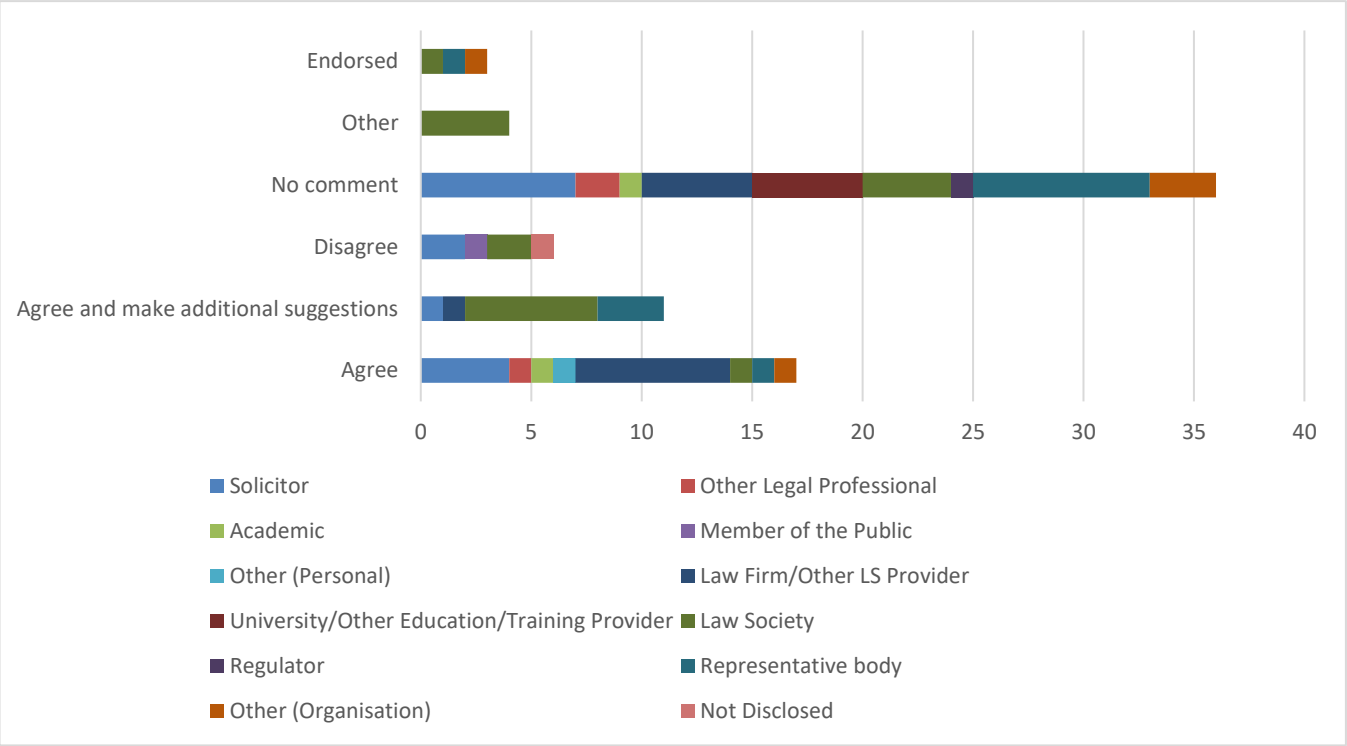
Q9: Do you agree with our proposed streamlining of the Overseas Rules and the European Cross-border Practice Rules?



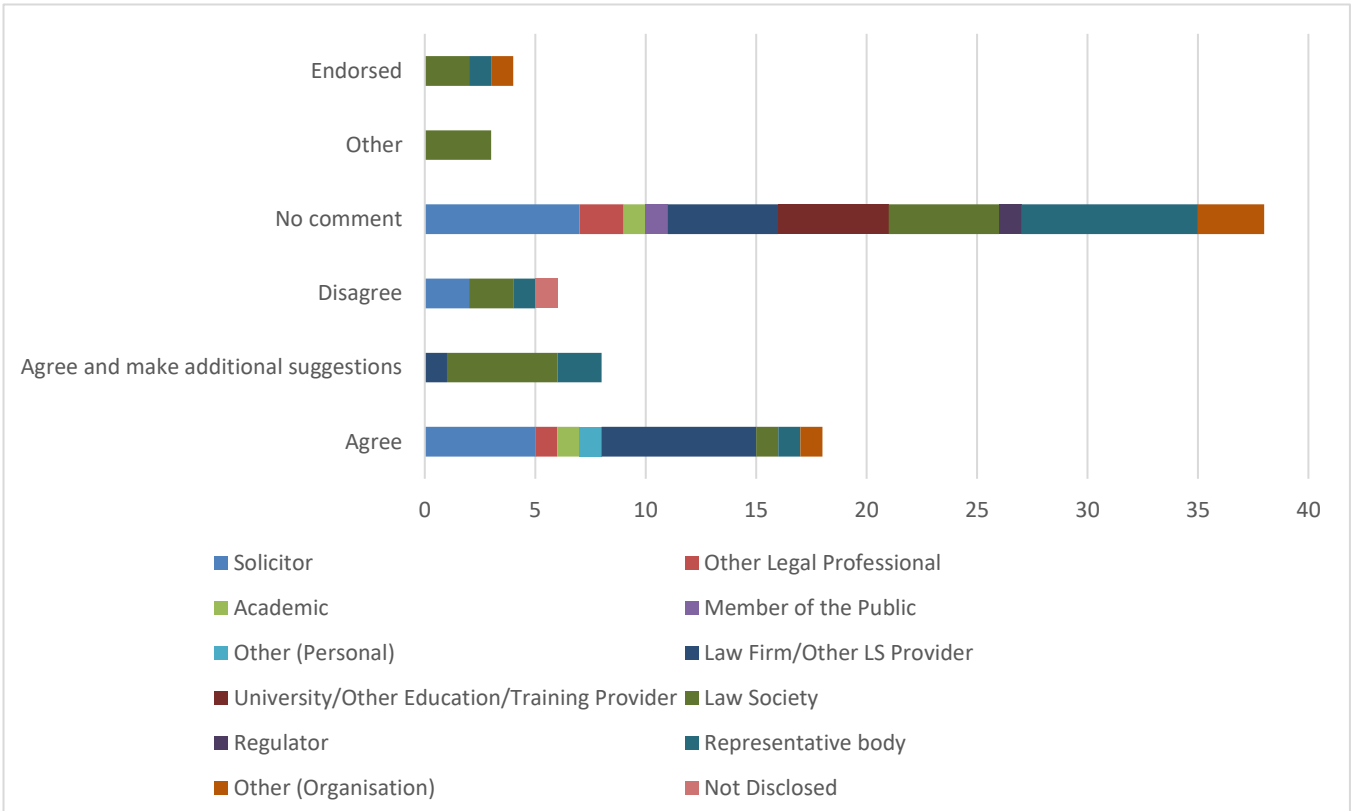
Q10: Do you know any unintended consequences of removing the Property Selling Rules?



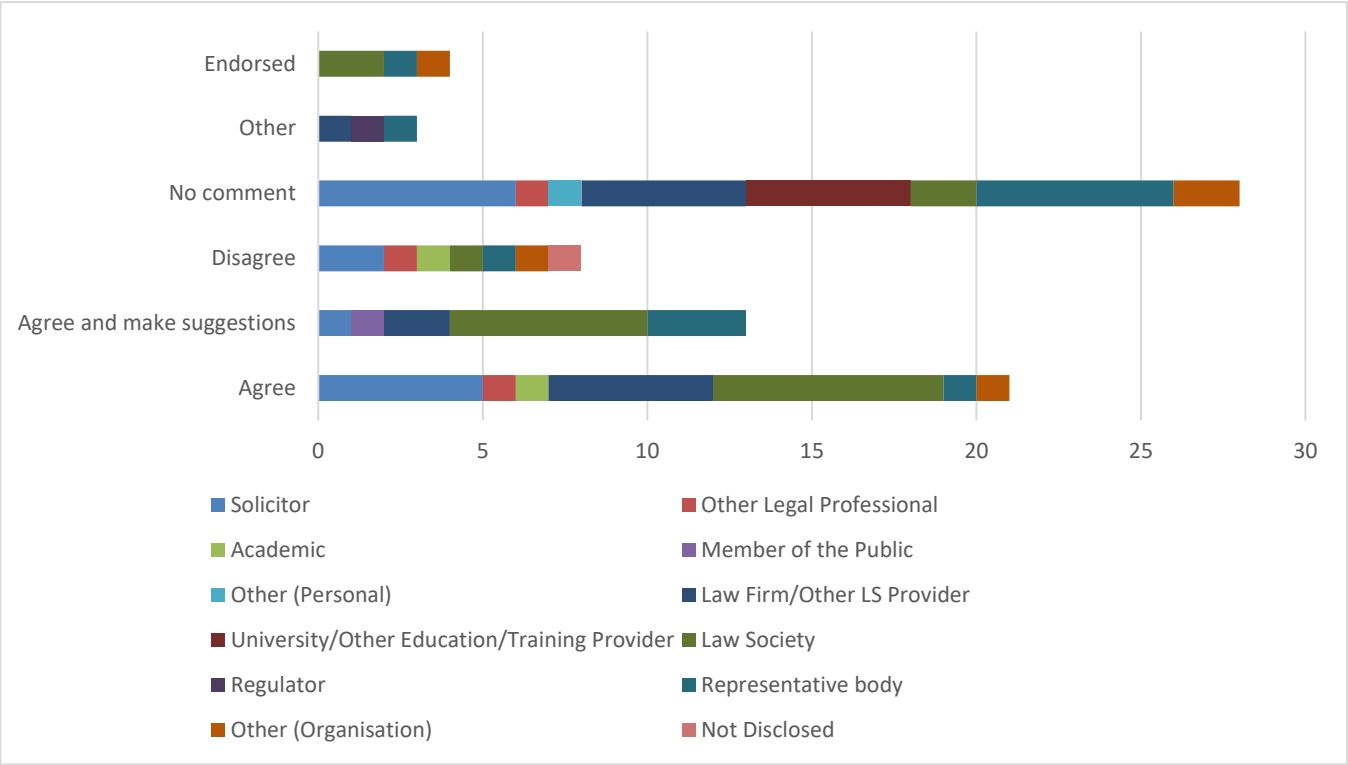
Q11: Do you agree with our new proposed review powers?



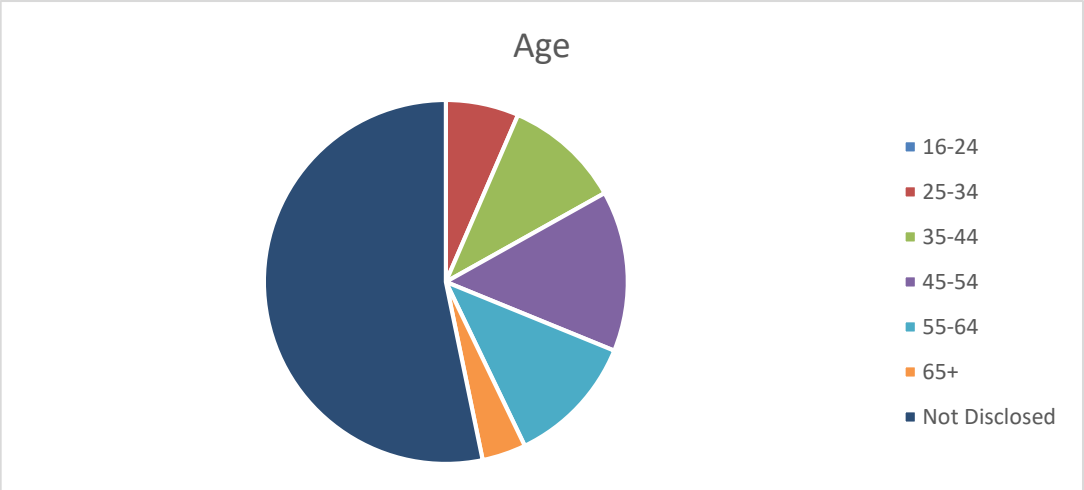
Q12: Do you agree with the proposed 28 day time limit to lodge all requests for internal review?

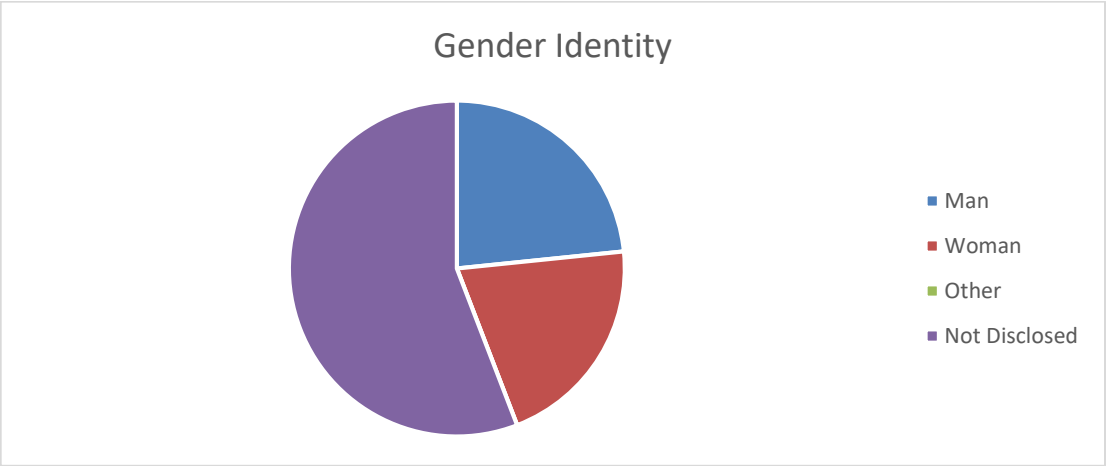


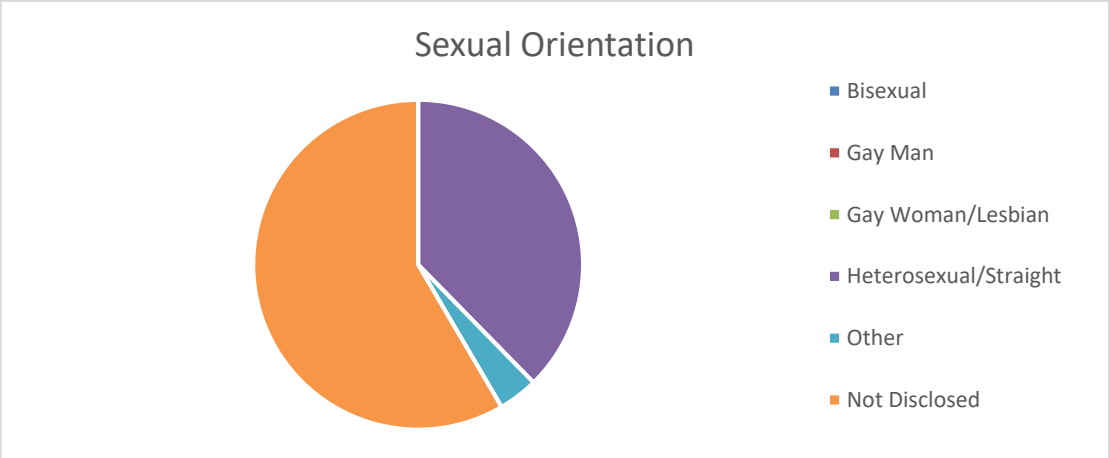
Q13: Do you agree with our proposed approach to enforcement?

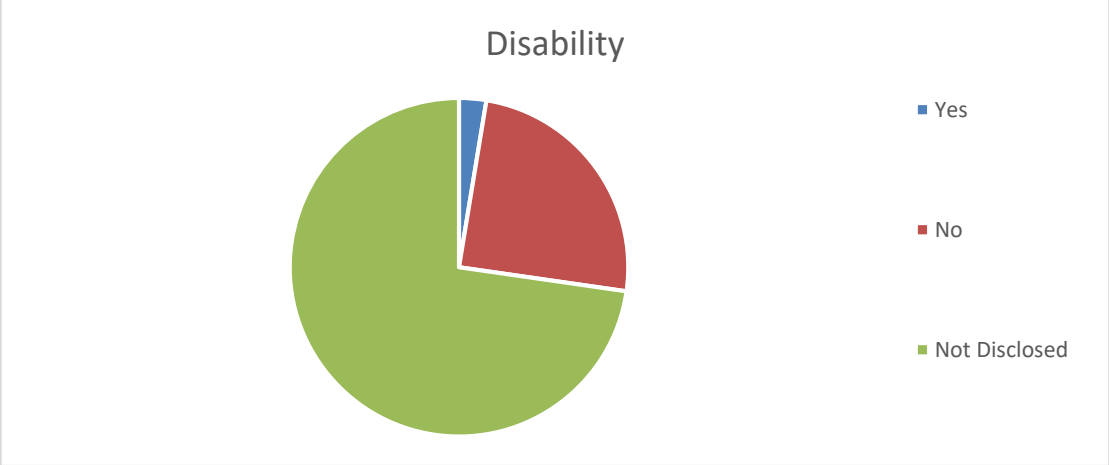


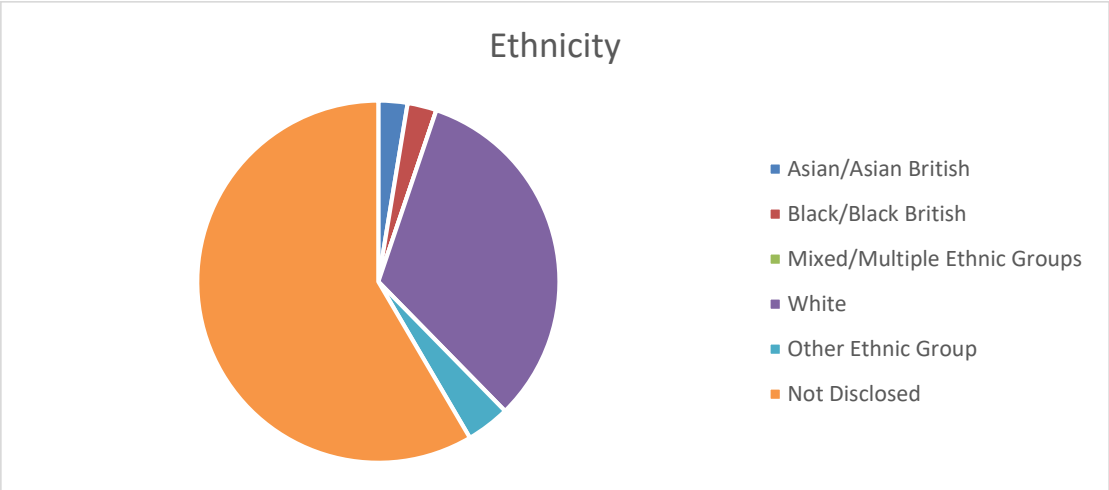
Respondents' equality, diversity and inclusion data

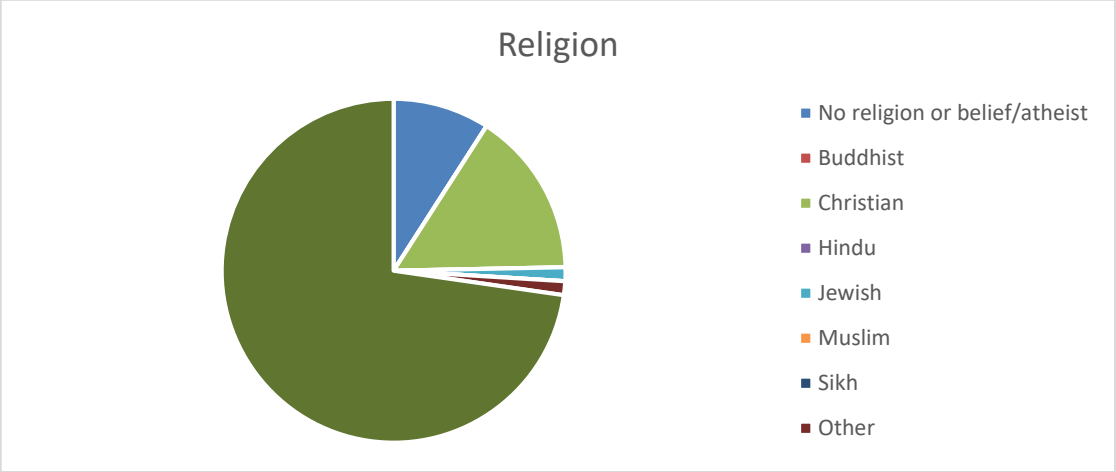



Gender Identity
Man
Woman
Other
Not Disclosed


Sexual Orientation
Bisexual
Gay Man
Gay Woman/Lesbian
Heterosexual/Straight
Other
Not Disclosed


Disability
Yes
No
Not Disclosed


Ethnicity
Asian/Asian British
Black/Black British
Mixed/Multiple Ethnic Groups
White
Other Ethnic Group
Not Disclosed


Religion
No religion or belief/atheist
Buddhist
Christian
Hindu
Jewish
Muslim
Sikh
Other