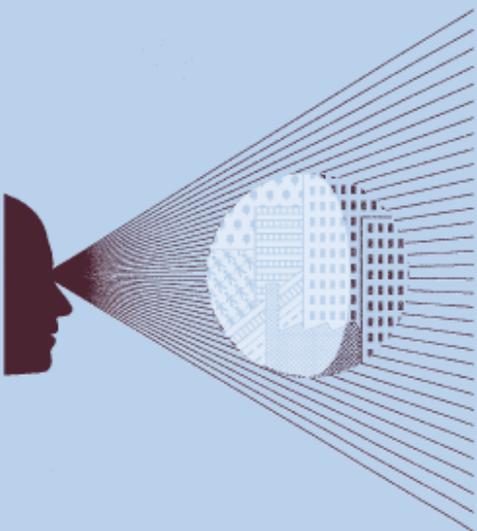


The role of in-house solicitors

Prepared for
Solicitors Regulation Authority

February 2014



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Executive summary

Background and objectives of the research

The Solicitors Regulation Authority (SRA) commissioned Oxera to conduct economic research into the role of in-house solicitors.¹ The need for this research reflects the growing size and influence of this group of solicitors. As in-house solicitors are a large and diverse group, it is important to understand more about the specific segments that make up this market. This information will assist the SRA to make its regulation more proportionate to the risks related to specific segments.

For the purpose of this research, in-house solicitors are defined as solicitors, Registered European Lawyers and Registered Foreign Lawyers who are employed by an organisation that is not a regulated legal business, e.g. in commerce or industry, the not-for-profit sector, a trade union or local government. In-house solicitors are allowed to act only for their employer, subject to limited exceptions.

Methodology

The analysis undertaken by Oxera includes:

- **market segmentation**—developing a framework to group in-house solicitors and legal teams into segments that have similar characteristics and are likely to experience common trends and risks;
- **benchmarking the current composition of in-house solicitors**—in addition to analysing existing data and literature, two extensive surveys were undertaken:
 - an on-line survey of in-house solicitors: **2,013 in-house solicitors responded to the survey**, representing 8% of the total market. The results to this survey can therefore be expected to be representative;
 - a telephone survey of employers of in-house solicitors: **213 senior representatives** from a broad mix of organisations employing in-house solicitors took part. The survey covered the business case for employing in-house solicitors, views on becoming licensed as an alternative business structure (ABS), and the challenges, benefits and trends associated with employing in-house solicitors;
- **economic analysis and regulatory and academic consultation**—in order to identify trends, drivers of change, risks and challenges for in-house solicitors, round-table discussions were held with the Policy, Risk and Research departments of the SRA. These discussions were complemented by the insights drawn from the international research of Professor John Flood, Professor of Law and Sociology at Westminster University.

¹ Oxera was commissioned in August 2012 and completed the analysis in October 2013.

Key findings from the research

Market overview

Between 2000 and 2012, the in-house solicitor population doubled, reaching 25,600 solicitors and increasing to 18% of the total solicitor population.

The vast majority of in-house solicitors (60%) work in the private sector and are most concentrated in the financial services sector—30% of private sector respondents to the online survey work in the financial services sector. 37% of in-house solicitors are employed in the public sector—18% of in-house lawyers work in local government and 8% work in the Crown Prosecution Service (CPS). 3% of the in-house solicitor population work in the third sector, including advice centres and registered charities.

In terms of age and ethnic background, the profile of individuals working in-house are similar to those in legal firms overall. The average age of in-house solicitors is 42, the same as for the general population of solicitors, and 15% of in-house solicitors with known ethnicity belong to the Black Minority Ethnic (BME) group, which closely matches the results for the rest of the profession.

In terms of gender, women make up a higher proportion of the in-house solicitors population (56%) compared with the population of solicitors more generally (48%). These statistics vary considerably between types of organisations, with advice centres employing the highest proportion of women (68%) and BME in-house solicitors (28%).

The remainder of this executive summary sets out key findings from the research for the private, public and third sectors, as well as findings from the research on the views about becoming an ABS.

Private sector

Existing academic research on in-house solicitors has found a shift in the role of in-house solicitors in the private sector, from one focused on compliance to a more complex and demanding 'counsel' or even 'entrepreneurial' role, in which providing strategic advice forms an essential part of the in-house counsel's role.

In some cases financial concerns have contributed to the growth of in-house legal teams. Faced with rising legal costs, general counsel has gained an important role in controlling external legal spend. Many companies have brought in-house much of the work typically done by law firms, resulting in the termination of sometimes long-standing relationships with external law firms.

The top three benefits of an in-house legal team cited by private sector employers participating in the survey confirm these findings: improving the efficiency of managing internal legal affairs; reducing overall costs and expenditures; and better managing risks facing the organisations were cited by 80% of private sector employers.

10% of in-house solicitor respondents working in the private sector think that their employer does not understand their professional obligations as a solicitor. Respondents provided a range of comments, including some that suggest that the employer places a high degree of trust in the legal team to manage their own professional responsibilities, or that the legal team is small compared with the size of the organisation and so, from a business perspective, the professional obligations of the legal team are of low relative importance. Other comments suggested past conflicts between the solicitor's professional obligations and decisions taken by the organisation.

Relatively highly skilled legal teams (in terms of the proportion of the legal teams that are legally qualified) operate in the private sector, compared with local government and third sector legal teams. Based on views expressed within the survey, 85% of those employed in private sector legal teams hold some form of legal qualification (most commonly an SRA or

foreign lawyer qualification), compared with around 70–75% in local government and third sector legal teams.

Almost all respondents from private organisations expect their legal teams either not to change significantly or to increase in size. In comparison, about one-third of respondents from public organisations expect the size of their legal team to decrease. This indicates the likely continuation of the trend of growth in numbers of solicitors working in-house for private firms.

Public sector

There are two significant groups of in-house solicitors working within the public sector: those working in local government (18% of all in-house solicitors) and those working in the CPS (8% of all in-house solicitors).

CPS respondents to the survey were on average the most experienced, with an average of 20 years' experience across the 90 respondents. Such solicitors reported spending a much higher proportion of their time on reserved activities than other in-house respondents (80% compared with 40% for all respondents on average), and, as to be expected, spend most of their time undertaking contentious legal work.

Local government respondents commonly provide transactional legal work, similar to private sector in-house solicitors, but also, quite often provide legal advice to organisations/businesses that are related to, but not part of, their organisation.

There appears to be considerable interest by local governments to provide legal services to external clients on a commercial basis. 45% of local government respondents already providing legal services to external clients receive an explicit fee, and 30–35% of local government respondents consider the SRA's restriction on charging for legal services provided to external clients to pose a substantial or very large constraint on their activities.

Third sector

Third sector in-house solicitors appear to have two different roles. One is similar to the role commonly provided by in-house solicitors in the private sector and relates to meeting the organisation's internal legal, regulatory and compliance needs. The other role focuses on providing assistance to external clients, with the main areas of law being cited including landlord and/or tenant, immigration and employment. 60% of third sector respondents made up the first group and 40% made up the second.

In addition to providing services directly to external clients, a large proportion of in-house solicitors from this latter group also accept or receive referrals. Around 75% of respondents from advice centres have either received or provided referrals in the past 12 months (of which 5–10% received or provided payment for the referrals).

More generally, in-house legal teams within the third sector are smaller than in the private sector, comprising around ten employees on average. The future also looks much more uncertain. While there is emerging optimism among both private sector in-house solicitors and their employers about future growth in the size and qualification of their legal teams, this is much less evident in the third sector.

Views on becoming an ABS

The research revealed that employers have some appetite to become an ABS. One employer surveyed (from the private sector) has already made this change, two (one from the private sector and one from the public sector) are in the process of applying, and a further 12 (from all sectors) are considering the business case of doing so. In total, 15 of the 198 employers (refined sample) are at least considering the business case for an ABS application—i.e. 5–10% of employer participants. Applying this proportion to the total number of firms known to employ in-house solicitors would suggest that somewhere between 300 and 700 firms are potentially considering applying to become an ABS.

Three of the 16 employers from the third sector that participated in the survey report that they are considering the business case of applying for ABS. Therefore, change in the third sector could be significant. Many third sector organisations can be expected to be awaiting further details from the SRA on the tailored ABS regime for ‘Special Bodies’² before considering the business case for ABS. Therefore, actual interest may indeed be higher.

² Special bodies are defined in Section 106 of the Legal Services Act 2007, and include independent trade unions, not-for-profit bodies, community interest companies, and low-risk bodies as set out in Section 108 of the Legal Services Act 2007.

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1 Introduction

In August 2012 the Solicitors Regulatory Authority (SRA) approached Oxera to undertake the research set out in this report. The research was undertaken between September 2012 and March 2013, and the report completed in October 2013.

1.1 Objectives and remit

The overall objective of this research project is to provide a detailed map of the supply of, and demand for, legal services by in-house solicitors. The aim is to support the Solicitors Regulation Authority (SRA) to improve its evidence base on the role carried out by in-house solicitors and to assess emerging regulatory risks and any challenges that in-house solicitors may face.

The analysis undertaken by Oxera includes:

- developing a framework to group in-house solicitors and legal teams into segments that have similar characteristics and are likely to experience common trends and risks;
- an on-line survey of 2,013 in-house solicitors;
- a telephone survey of 213 employers of in-house solicitors;
- economic analysis and regulatory and academic consultation to identify trends, drivers of change, risks and challenges for in-house solicitors.

The research was complemented by the insights drawn from the international research of Professor John Flood, Professor of Law and Sociology at Westminster University.

1.2 Regulatory context

1.2.1 Definition of in-house solicitors

For the purpose of this research, in-house solicitors are defined as solicitors, Registered European Lawyers and Registered Foreign Lawyers that are employed by an organisation which is not a regulated legal business, e.g. in commerce or industry, the not-for-profit sector, a trade union or local government.

In-house solicitors are only allowed to act for the employer, subject to limited exceptions as set out in Rule 4. An overview of Rule 4 is provided in the next section of this report.

1.2.2 Overview of Rule 4

In general, in-house solicitors can act only for the organisation that employs them; however, as set out in Rules 4.4 to 4.26, under specific conditions they can also act for other clients. (For an overview of the types of client and circumstances under which they can act for external clients, see Appendix 1.)

Whenever a solicitor acts for a client other than their employer, the work may need to be covered by professional indemnity insurance cover and to abide by the Principles and Obligations set out in the SRA Handbook. In relation to pro bono work, commercial legal advice services, law centres, charities, other non-commercial advice services, and foreign law firms, the *in-house solicitor* has to have professional indemnity insurance cover. In all other cases, the *employer* of the in-house solicitor has to have appropriate indemnity insurance.

In-house solicitors are still subject to SRA regulation at the practitioner level, under the obligations set out in the SRA Handbook, which also provides some explanation of how to apply the outcomes and the rules relating to in-house practice.

The absence of firm-level regulation (for firms employing in-house solicitors) has implications for the types of outcome that the SRA can enforce. For example, the SRA cannot take action against the employer, only against the in-house solicitor's practice.

1.3 Structure of the report

The report is structured as follows:

- section 2 gives an overview of the in-house solicitor market and sets out the framework developed to segment the market
- section 3 reviews the existing literature and discusses the experience in the USA
- section 4 analyses responses to the in-house solicitor survey
- section 5 analyses responses to the employer survey
- appendix 1 provides an overview of the types of client and circumstances under which in-house solicitors can act for external clients (Rule 4)
- appendix 2 reproduces the online script for the in-house solicitor survey, and gives the total number of responses to each question
- appendix 3 presents some further analysis of responses to the in-house solicitor survey
- appendix 4 reproduces the telephone script for the employer survey, and gives the total number of responses to each question

2 Market overview

This section of the report provides an overview of the current composition of in-house solicitors and their employers.

Section 2.1 considers how market dynamics vary for different types of in-house solicitor and segments the total population of in-house solicitors into groups that are likely to face similar regulatory risks and share common characteristics and trends over time. This conceptual analysis is complemented with data already held by the SRA on the Roll of Solicitors (henceforth referred to as 'the Roll'), to provide summary descriptive statistics showing the types of organisation where most in-house solicitors are employed.

Section 2.2 analyses in more detail the characteristics of in-house solicitors. Using the Law Society 2011 Annual Statistical Report, it draws comparison with the rest of the profession.³

The key findings are as follows:

- Within the in-house segment of legal services market, there are a number of sub-groups with different market dynamics and which may, therefore, experience different trends over time
- Characteristics that are important in determining the market dynamics include:
 - the type of organisation within which the in-house solicitor works
 - the type of legal advice and other services provided
 - whether the in-house solicitor is providing advice to their employer, or to a third party (an 'external client')
- On this basis, to capture changes in the market over time, the population of in-house solicitors can be segmented into the following six categories:
 - private sector, no external clients
 - public sector, no external clients
 - third sector, no external clients
 - private sector, external clients⁴
 - public sector, external clients
 - third sector, external clients
- The in-house population doubled between the year 2000 and 2012, raising the proportion of in-house solicitors from 14% to 18% of the total solicitor population. Much of this growth occurred between 2000 and 2005, with the proportion of in-house solicitors remaining relatively constant since then
- According to the Roll, as at September 2012 there were 25,602 individuals registered as working 'in-house'—approximately 15% of all solicitors registered on the Roll⁵

³ The Law Society (2011), 'Trends in the solicitors' profession: Annual Statistical Report, 2011', prepared by Nina Fletcher, July.
⁴ In the case of the private sector, external clients can include acting for companies within the same group as the employer. For example, Rule 4.13 enables a solicitor employed by an insurance company to act for an external client who is insured by the insurance company (subject to various conditions).

⁵ As at September 2012, a total of 168,713 solicitors were registered on the Roll. See Solicitors Regulation Authority (2012), 'Regulated population statistics', available at http://sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page, accessed July 15th 2013.

- Of these in-house solicitors, 60% work in the private sector, 37% in the public sector (18% in local government, 8% in the Crown Prosecution Service (CPS) and 2% in courts and the remaining 9% in other organisations such as schools and regulatory bodies) and the remaining 3% work in the third sector, including advice centres and registered charities
- Women make up 56% of in-house solicitors, which is a larger proportion of women than found in the population of solicitors more generally (48%). This statistic varies considerably between types of organisation, with local government and advice centres employing the highest proportion of women (66% and 68% respectively)
- The average age of in-house solicitors is 42, the same as for the general population of solicitors. Female in-house solicitors are, on average, three years younger than male in-house solicitors, as is the case in the rest of the profession
- In terms of ethnic background, 15% of in-house solicitors (with known ethnicity) are Black Minority Ethnic (BME). This closely matches the results for the rest of the profession

2.1 Types of organisation employing in-house solicitors

2.1.1 Conceptual analysis

In a regulatory context, the objective of population segmentation is to identify groups of in-house solicitors that are likely to face similar regulatory risks and share common trends over time. The segmentation should also aim to define mutually exclusive groups, in order to reduce the scope for the same data to be split in an inconsistent way between categories over time.

In the absence of existing standard category definitions, a first line needs to be drawn when segmenting the market of in-house solicitors. The lack of standard definitions and the variation in the legal services provided by in-house solicitors make it difficult to know where to draw this line. However, for the analysis of market trends, the precision of the line is less important than applying the same definition consistently over time and ensuring full coverage of the sector.

In line with the framework for benchmarking the legal services sector developed by Oxera for the LSB,⁶ the approach to market segmentation taken in this report draws on the analysis of market failures. Depending on the type of organisation, legal advice provided and customer, different market failures are likely to be present, and these groups of in-house solicitors should therefore be monitored in separate groups.

One characteristic that appears to be important is the recipient of the legal service—in particular, whether the legal services are used by the employer (an ‘internal client’), or by a third party (an ‘external client’). This is because this characteristic influences:

- **the type of legal and non-legal work provided by the solicitor**—for example, solicitors in the internal recipient segment are more likely to be drafting and negotiating commercial terms or managing/commissioning the work of external legal advisers than in-house solicitors whose services are used by an external client
- **the relationship between the recipient of the legal service and solicitor**—when the recipient of the legal service employs the solicitor, they hold more influence than external recipients. This can have a positive impact on aspects such as quality control. Should a commercial organisation consider the work of its in-house legal team to be of

⁶ Oxera (2009): ‘A framework to monitor the legal services sector’, prepared for the Legal Services Board, available at www.oxera.com.

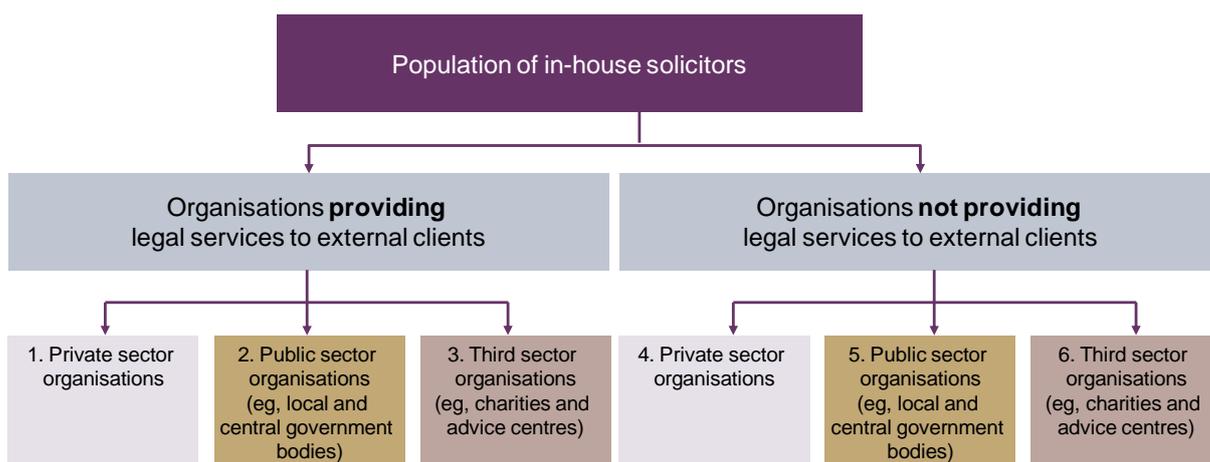
poor quality, it can directly implement policies to change this, which an external recipient cannot. For example, the employer may require the in-house legal team to undertake additional training; may impose an appraisal/review process; or may dismiss legal advisers who are underperforming. An external recipient does not have the same control and may therefore not be able to control the quality of advice they receive as effectively as employers can

One practical disadvantage, from a policy-setting perspective, of segmenting the population along this characteristic is that the type of recipient is not available from the Roll. Thus, at present, the SRA cannot distinguish between in-house solicitors who provide services to external clients and those who do not. The surveys undertaken as part of this study provide an opportunity to capture this information and assess whether there are systematic differences in the way in which these groups of solicitors behave, the challenges they face and the regulatory risks they pose.

A more readily available characteristic is the ‘sector’ of the organisation employing the in-house solicitor; for example, government funding and legal aid pressures would affect only those in-house solicitors working in the public or third sectors. This may be an important indicator of the regulatory risks associated with a particular in-house solicitor.

On this basis, the population of in-house solicitors can be segmented into six categories, as illustrated in Figure 2.1.

Figure 2.1 Conceptual approach to segmentation of the population of in-house solicitors



Source: Oxera analysis.

The Roll holds some information that can help to estimate the size of each group. While the Roll does not identify whether an in-house solicitor provides legal services to external clients or only their direct employer, it does define the ‘type’ of organisation for which the solicitor works; this information can be used to assume the sector of that organisation. As shown in Table 2.1, private sector organisations account for the vast majority of the supply of in-house legal advice, by both number of in-house solicitors and number of offices employing in-house solicitors.

Table 2.1 Breakdown of in-house solicitors and offices, by the type of organisation

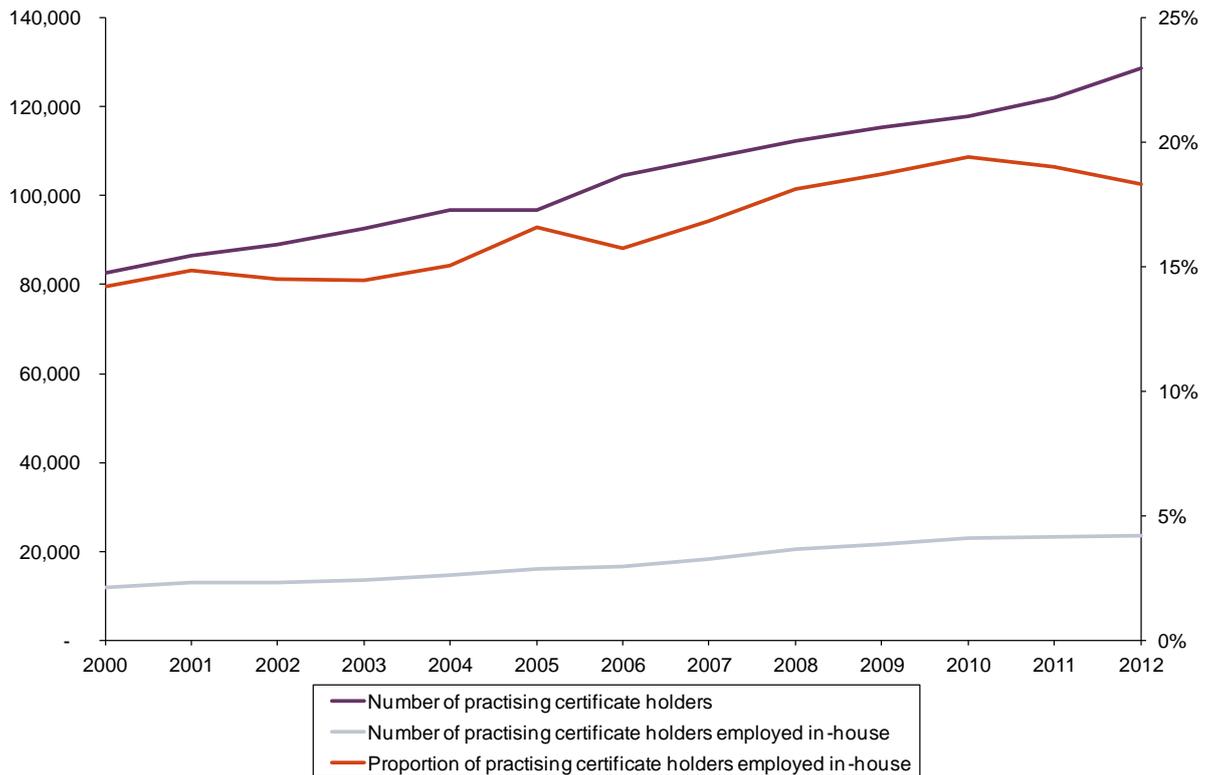
	Number of in-house solicitors (% of in-house population)	Number of offices
Private sector organisations (categories 1 and 4 in Figure 2.1)		
Commerce and industry	15,208 (59%)	5,153
Accountancy practices	167 (1%)	28
Public sector organisations (categories 2 and 5 in Figure 2.1)		
Local government bodies	4,607 (18%)	440
Crown Prosecution Service	2,145 (8%)	54
Educational establishments	459 (2%)	186
Courts	391 (2%)	71
Government bodies	259 (1%)	47
Government funded services	363 (1%)	52
Government legal services	762 (3%)	25
Regulatory bodies	493 (2%)	24
Health services	87 (0%) ¹	32
Armed forces	34 (0%)	1
Third sector organisations (categories 3 and 6 in Figure 2.1)		
Advice services	474 (2%)	145
Registered charities	116 (0%)	55
Institutes	6 (0%)	3
Churches and other religious bodies	19 (0%)	11
Legal consultancy services²	12 (0%)	18
Total	25,602 (99)	6,345

Note: In cases where solicitors work for multiple organisations, they were categorised according to their main practice. These solicitors could be allocated to any of the categories identified in Figure 2.1. Less than 0.5% is rounded to 0%; consequently the column total does not sum to 100%.
Source: Oxera analysis of SRA data.

2.2 Descriptive statistics of in-house solicitors

Over the past ten years, the in-house solicitor population holding Practising Certificates (PCs) has grown broadly in line with the rest of the profession, increasing in number by just over 100% (i.e. 11,769 to 23,577). The proportion of in-house PC holders has grown steadily from 14% of the total PC population in 2000 to its peak of 19% in 2011, before declining again in 2012 to 18%.⁷ This seems to reflect a stabilising trend which has appeared over the past five years: PC holders are growing as a whole but the proportion of in-house remains relatively stable (see Figure 2.2).

Figure 2.2 Number and proportion of practising certificate holders employed in-house, 2000–12



Source: The Law Society, annual reports 2000–12.

The SRA also provided Oxera with data from the Roll. Although there are some limitations with this database (e.g. in terms of the limited number of topics on which it records information), because the data covers the *full* population of in-house solicitors, it can provide some useful descriptive statistics⁸.

The demographic composition of in-house solicitors based on gender, ethnicity, age and disability is analysed below and compared with the characteristics of the whole population of solicitors, as recorded in The Law Society 2011 annual statistical report.⁹

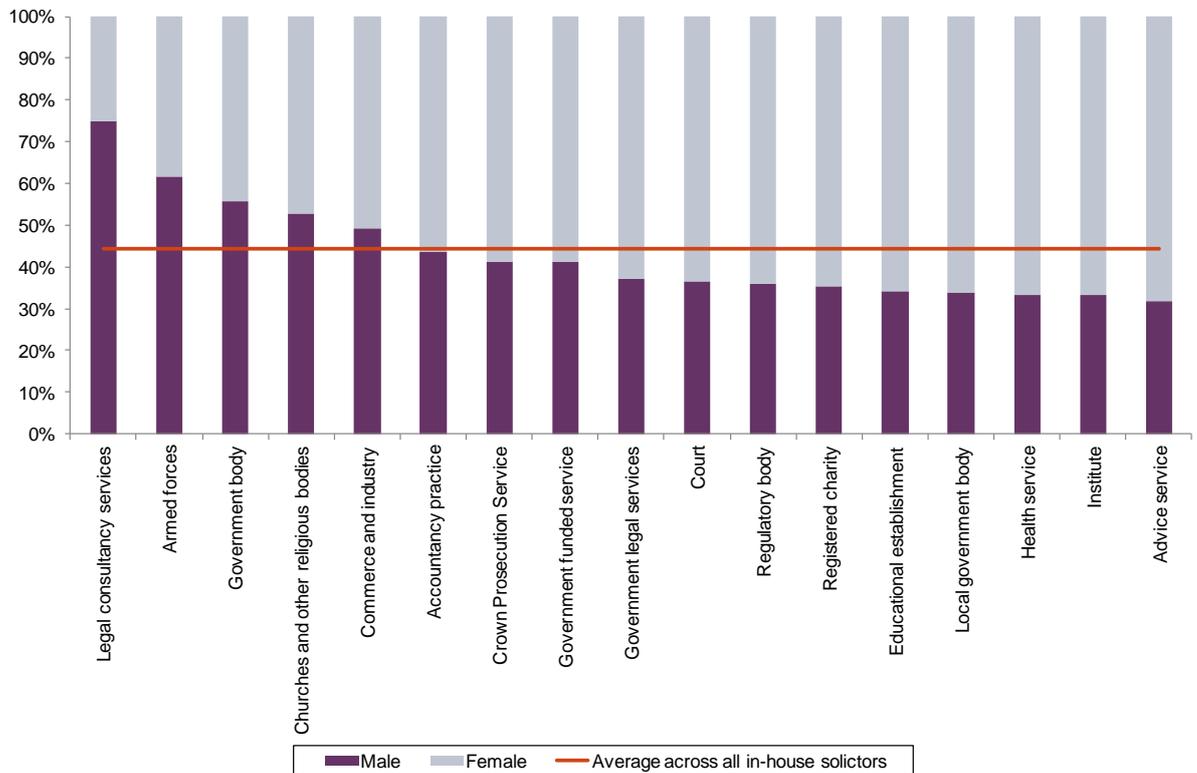
⁷ The Law Society, 'Trends in the solicitors' profession: Annual statistical report', covering the years from 2000 to 2012.

⁸ The Roll is a list of all admitted solicitors held by the Law Society of England & Wales. The Roll includes those that hold a valid Practising Certificate (PC) and those without a PC i.e. non-practising solicitors or those that are carrying out non-reserved legal activities.

⁹ The Law Society (2011), 'Trends in the solicitors' profession. Annual statistical report 2011'.

The data shows that 56% of in-house solicitors are women, higher than the 48% among all solicitors more generally. However, there is considerable variation in this statistic between different types of employer. In general, public and third sector organisations employ a larger proportion of women in-house solicitors than private sector organisations. For example, in the case of local government bodies—the largest sub-group of public bodies—66% of in-house solicitors are women, and 68% in the case of advice centres. The smallest proportion of women is employed by legal consultancy services, the armed forces and government bodies (see Figure 2.3).

Figure 2.3 Gender composition of in-house solicitors, by type of main organisation

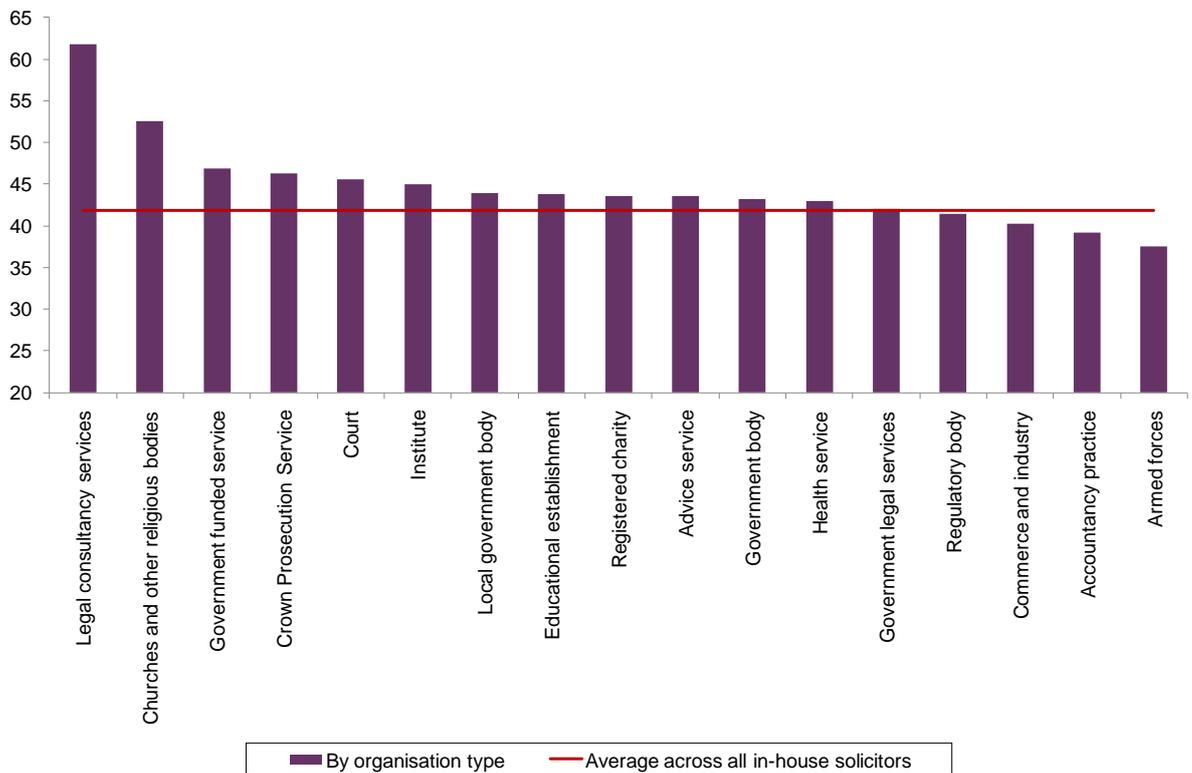


Note: Caution needs to be taken when interpreting the statistics relating to some organisation types because of their small population size; namely, the armed forces; churches and other religious bodies; legal consultancy services; courts and institutes. The 'Average across all in-house solicitors' is calculated as the average across the whole in-house solicitor population—i.e. across all organisation types that employ in-house solicitors.

In terms of average age, there is little difference between in-house solicitors and the general population of solicitors. For both, the average age of in-house solicitors is 42 years, with male solicitors being on average three years older than female solicitors.

Average age varies between types of organisation employing in-house solicitors. In particular, those employed by accountancy practices and the armed forces are on average the youngest, at about 38 and 37 respectively, while those employed by legal consultancy services, churches and other religious organisations, and government funded services are the oldest, at about 63, 53 and 47 respectively (see Figure 2.4).

Figure 2.4 Age composition of in-house solicitors, by type of main organisation



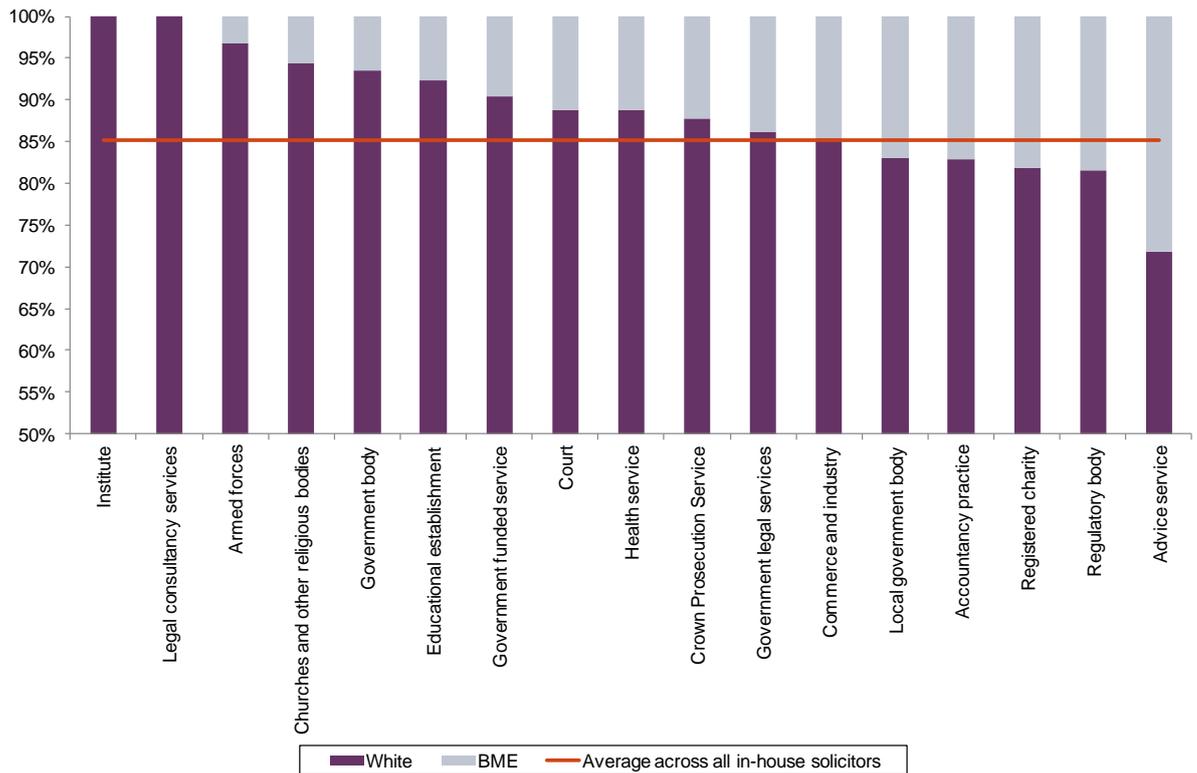
Note: Caution needs to be taken when interpreting the statistics relating to some organisation types because of their small population size; namely, the armed forces; churches and other religious bodies; legal consultancy services; and institutes.

Source: Oxera analysis of SRA data.

In terms of ethnic background, 13% of all in-house solicitors and 15% of in-house solicitors are BME. This closely matches the results for the general population of solicitors as reported in The Law Society 2011 annual statistical report, of 13% and 14% respectively.¹⁰

There is significant variation across organisation types: local government bodies, regulatory bodies, accountancy practices, registered charities and advice services employ BME in-house solicitors in above-average proportions, with advice services employing a particularly large proportion, exceeding 25%. Employers with the lowest proportion are the armed forces, legal consultancy services, churches and other religious bodies and institutes (see Figure 2.5).

Figure 2.5 Ethnic composition of in-house solicitors, by type of main organisation



Note: Caution needs to be taken when interpreting the statistics relating to some organisation types because of their small population size; namely, the armed forces; churches and other religious bodies; legal consultancy services; and institutes.

Source: Oxera analysis of SRA data.

Of the total population of in-house solicitors, 1.4% have some form of disability, although there is some variation between places of employment. Advice services, government funded services and churches and other religious organisations employ the highest proportions of in-house solicitors with some form of disability, while there are no in-house solicitors with disabilities employed in the armed forces, health services, legal consultancy services, and institutes.

¹⁰ The Law Society (2011), 'Trends in the solicitors' profession: Annual statistical report 2011', Table 1.5.

3 Literature review

This section of the report presents a review of the existing literature on in-house solicitors¹¹.

Section 3.1 was prepared by Professor John Flood and provides a comprehensive overview of the academic literature, drawing on the trends in in-house counsel from across the world. This is followed by a more detailed look at the findings from recent UK specific research, summarised in section 3.2.

The key findings from the literature review can be summarised as follows:

- The role of in-house solicitors in the private sector is shifting from one focused on compliance, to a more complex and demanding ‘counsel’ or even ‘entrepreneurial’ role (as characterised by Nelson and Nielsen), in which providing strategic advice is an essential part of the in-house counsel’s role
- This trend was first apparent in the US, but has spread to the UK and most of the rest of the world, including the BRICS and other emerging economies
- In some cases, financial concerns have contributed to the growth of in-house legal teams. Faced with rising legal costs, general counsel have gained an important role in controlling external legal spend. Many companies have brought in-house much of the work typically done by law firms, resulting in the termination of sometimes long-standing relationships with external law firms
- In order to cut legal costs, some companies have implemented a ‘production-line approach’ to standardise, multi-source and improve project management of externally sought legal advice. Academics such as Professor Mari Sako, Professor of Management Studies at Saïd Business School, University of Oxford, have highlighted the risks with such an approach: whilst cutting cost can help reduce the total legal budget, a lost litigation can have a huge impact on the costs for the business as a whole
- The shift of work in-house is likely to be linked to the changing role of the in-house counsel. In becoming recognised as a trusted adviser, in-house counsel have become better positioned to take on the role external counsels may have previously have been responsible for
- In terms of motivations, most solicitors have moved in-house to gain greater commercial insight or broaden their work experience and their work-life balance
- Outside the private sector, the scene is considerably different. Third sector organisations rely heavily on volunteers, and around 70% of staff in legal teams do not have a legal qualification. The nature of the work results in very different types of advice being provided. For example, welfare benefits, debt and housing are the most commonly provided types of legal advice

¹¹ This section of the report uses different terms to describe in-house solicitors (e.g. general counsel and in-house counsel) depending on the source of the original literature being reviewed.

3.1 Academic literature review by Professor John Flood

In-house lawyers have been studied for a considerable time in the USA. The awareness of the interplay between external lawyers and in-house or corporate counsel has increased in academic studies in the last 15 years or so. This reflects the rise of the in-house counsel from a position of inferiority in the legal profession to one of the highest significance. In-house lawyers have moved from being mere internal compliance officers and conduits of instructions to law firms, to being sophisticated corporate counsellors, and procurers and managers of external legal services.

Rosen (1989) charts the rise of in-house counsel in 1989,¹² showing that their numbers were increasing and that the role was less one selected as a consolation prize for failing to get a law firm post or advancement in one, but more a positive choice. Liggio (2002) notes: 'During the 1960s and 1970s corporate [in-house] counsel were looked on with disdain by the outside bar. The corporate counsel role was deemed a parking place for those associates who couldn't make partner.'¹³ Heinz et al. (2001) confirm this growth in their update of the Chicago lawyers study between the 1970s and the late 1990s.¹⁴ The professionalism and power of in-house counsel were transformed in this period as their numbers grew. Between 1998 and 2004, for example, the 200 largest corporate legal departments grew from 24,000 lawyers to 27,500 lawyers,¹⁵ and the number of in-house counsel grew between 1980 and 2000 by 40%.¹⁶

One key difference between in-house counsel and external counsel is in the means of recruitment. On the whole, corporate law departments rarely hire directly from law schools, preferring to employ early- to mid-career associates out of law firms. The 'After the JD' project on law careers¹⁷ showed that in-house law departments were the location of choice for lawyers moving from law firms to elsewhere.¹⁸ However, some companies, such as Pfizer, have begun to recruit from law schools directly.¹⁹ The clear winners from the moves from law firms to in-house positions have been women, who have moved for reasons of work–life balance or perceived that they have reached a glass ceiling.²⁰

Despite the increases in numbers and degree of authority of in-house counsel, their role has become more complex and even in some cases fragmented. Susan Hackett, former General Counsel of the American Association for Corporate Counsel, argues that in-house counsel are distinct from external counsel in terms of what their 'clients' want from them. Whereas the central task of external counsel is to proffer legal advice and undertake transactions including litigation, in-house counsel are required to deal with compliance, offer legal advice, contribute

¹² Rosen, R. (1989), 'The Inside Counsel Movement, Professional Judgment and Organizational Representation', *Indiana Law Journal*, **64**:479.

¹³ Liggio, C. (2002), 'A Look at the Role of Corporate Counsel: Back to the Future—Or is it the Past?', *Arizona Law Review*, **44**:621.

¹⁴ Heinz, J. et al. (2001), 'The Scale of Justice: Observations on the Transformation of Urban Law Practice', *Annual Review of Sociology*, **27**:337. Heinz, J. and Laumann, E. (1994), *Chicago Lawyers: the social structure of the Bar*, Northwestern University Press.

¹⁵ Baker, G. and Parkin, R. (2006), 'The Changing Structure of the Legal Services Industry and the Careers of Lawyers', *North Carolina Law Review*, **84**:1635.

¹⁶ Wald, E. (2012), 'In-House Myths', *Wisconsin Law Review*, **407**.

¹⁷ The After the JD (AJD) project is an empirical study of the career outcomes of a cohort of almost 5,000 new lawyers, offering both a nationally representative picture of lawyer career trajectories and an in-depth portrait of the careers of women and racial and ethnic minority lawyers.

¹⁸ Dinovitzer, R., et al. (2009), 'After the JD II: Second Results from a National Study of Legal Careers', American Bar Foundation and NALP Foundation for Law Career Research & Education.

¹⁹ Wilkins, D. (2010), 'Team of Rivals? Toward a New Model of the Corporate Attorney-Client Relationship', *Fordham Law Review*, **78**:2067.

²⁰ Epstein, C.F. (2001), 'Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors', *University of Kansas Law Review*, **49**:733.

to business decisions, and liaise with external regulatory and investigative bodies from time to time.²¹

Nelson and Nielsen (2000) use the terms ‘cops, counsel or entrepreneurs’ for in-house solicitors, expressing the dimensions of the roles assumed by in-house counsel.²² The ‘cop’ is the most basic role, where the in-house counsel essentially advises on the legality of decisions and ensures compliance with regulations—the cop is the gatekeeper for the corporation. Of the respondents to Nelson and Nielsen’s survey, 17% identified themselves in this way, whereas 50% saw themselves as ‘counsel’. The ‘counsel’ role is more comprehensive, as the in-house counsel proactively seeks situations where its input can contribute to the company’s profitability and business. It also entails the cop role—these were the ‘consigliere’ of the business executives. Indeed, their role often blurred into the final role of ‘entrepreneur’ (33%). This connotes a role where the lawyer is almost indistinguishable from the business people generally.

In the ‘dot com’ boom of the late 1990s, many young lawyers were enticed in-house with offers of stock options which encompassed the entrepreneur role. Indeed, Rosen (2002) takes this further when he classifies in-house lawyers as ‘consultants’—that is, in the guise of management consultants.²³ Integral to Rosen’s analysis is the finding that businesses are organising their law departments differently from before. Instead of monolithic corporate law departments with a distinct budget and character, modern corporations are dividing their lawyers by product, region or process, with the result that lawyers are found throughout the company. For example, lawyers will be found in project management teams related to specific transactions and will be expected to work in multidisciplinary environments.

The transformation of in-house counsel that has occurred over the last 30 years or so is firmly located in the USA. However, in the last 10–15 years, the UK in-house counsel environment has begun to resemble the US scene, as Sako (2011) describes. Previous studies of UK in-house counsel show them very much as the cop, with some element of counsel (to use Nelson and Nielsen’s terms). Both Mackie (1989)²⁴ and Woolfson et al. (1995)²⁵ tell of restricted areas of work for in-house lawyers, usually working in small departments. Their main type of work was in contracts and company law, with litigation being handled by external counsel. Little in-house work was costed or recorded. The work of in-house counsel, according to Woolfson et al. (1995), was differentiated according to the gender of the in-house solicitor. For example, in commerce, men were more likely to handle company law and mergers and acquisitions, while women more often dealt with consumer and advertising law, and personal injury matters. Little international work was conducted by in-house counsel at that time.

The situation was little different in Europe, where in-house counsel were regarded as lowly members of the legal profession, even having to give up their membership of the Bar.²⁶ This was reinforced by the European Court of Justice with respect to denying lawyer–client privilege to in-house lawyers because of their perceived lack of independence.²⁷

What have been the drivers for this significant restructuring of in-house counsel and their work? Financial concerns have forced business to re-evaluate the cost of legal expenditure

²¹ Hackett, S. (2012), ‘Corporate Counsel and the Evolution of Ethical Practical Navigation: An Overview of the Changing Dynamics of Professional Responsibility in In-House Practice’, *Georgetown Journal of Legal Ethics*, **25**:317.

²² Nelson, R. and Nielsen, L. (2000), ‘Cops, counsel, and entrepreneurs: constructing the role of inside counsel in large corporations’, *Law & Society Review*, **34**:457.

²³ Rosen, R. (2002), ‘We’re All Consultants Now: How Change in Client Organizational Strategies Influences Change in the Organization of Corporate Legal Services’, *Arizona Law Review*, **44**:637.

²⁴ Mackie, K. (1989), *Lawyers in Business: and the Business of Law*, Macmillan.

²⁵ Woolfson, R., Plotnikoff, J. and Wilson, D. (1995), *Solicitors in the Employed Sector*, Research Study No. 13, Law Society.

²⁶ Van Houtte, J. (1999), ‘Law in the World of Business: Lawyers in Large Industrial Enterprises’, *International Journal of the Legal Profession*, **7**.

²⁷ Case C-550/07, *Akzo Nobel Chems. Ltd. v. Commission*, 2010 E.C.R. 11-03523.

and to consider bringing work in-house and using different avenues of outsourcing, such as legal process outsourcers in places such as India. Faced with rising legal costs, general counsel argued that they were in a position to control expenditures with law firms.²⁸ Companies, such as GE (General Electric), built up legal departments as large as, if not larger, than some law firms. They brought in-house much of the work typically done by law firms and broke up long-standing relationships with law firms. They insisted that law firms bid and tender for their work, and this enabled general counsel to select the best lawyer rather than the entire firm. The one potential obstacle was the idea that external counsel were trusted advisers to CEOs. However, general counsel were in a closer position and reconstituted themselves as the trusted adviser. In-house lawyers moved from being mere gatekeepers to counsellors and entrepreneurs. Their insider status gave them insights into the business that no other lawyers could have.

Hackett (2012) carefully outlines the difference between in-house counsel who inhabit a dense, contextually ambiguous world compared with the relative simplicity of external counsel.²⁹ Her point is that although in-house counsel are employed by a single company, their range of clients is vast. Indeed, she notes that identifying who is the actual client is nearly impossible.

There are many constituencies in the client organisation who receive the in-house counsel's attention (whether they asked for it or not): including collections of employees or corporate departments, related entities in the corporate family (such as subsidiary companies, affiliates, joint ventures and holding companies), line managers, executives, and board-level leaders. They are the targets of the in-house counsel's services, even if they are not the in-house counsel's 'client' in a formal sense. However, on a practical level, if one's client is an entity then one represents a fiction: an entity exists only through the actions (commissions and omissions) of one's direct employer.

In Hackett's terms, the in-house counsel has become the 'enterprise risk manager', a step further than being a legal risk manager. Thus, at times, an in-house solicitor might be in conflict with their employers because of demands made, for example, by external investigative agencies (tax, environment, financial services) that could trump the desires of the employers or board. Adopting, or having to assume, such a persona means that the in-house lawyer has multiple identities, all of which mean that they must put the company first before their constituent components. This is a remarkable difference to the role of external counsel. Thus, in-house counsel must have a regard for the highest principles of professionalism in the way in which they serve the company's interests.

In sum, the role of in-house lawyers has grown into one that is multi-layered, replete with demands from a range of constituents, more business-oriented and generally more complex and demanding than that of 20 years ago. The US model of general counsel/in-house counsel has become the dominant mode of producing company legal services. It has been exported to the UK and most of the rest of the world, as the literature from the BRICS and other emerging economies is beginning to show.³⁰

3.2 UK specific research

The studies available on in-house solicitors provide some useful insight into their role. The first sub-section summarises the findings of previous surveys of in-house solicitors in commercial organisations. This is followed by a summary of the main findings of existing

²⁸ Wilkins (2010), op. cit.

²⁹ Hackett (2012), op. cit.

³⁰ Papa, M. and Wilkins, D. (2011), 'Globalization, Lawyers and India: Toward a Theoretical Synthesis of Globalization Studies and the Sociology of the Legal Profession', *International Journal of the Legal Profession*, 18:175; and Liu, S. (2012), 'Palace Wars over Professional Regulation: In-house Counsel in Chinese State-owned Enterprises', *Wisconsin Law Review*, 547

research relating to in-house solicitors working in non-profit organisations. On the basis of these findings, section 3.2.3 concludes by assessing what regulatory risks could be inferred.

3.2.1 Commercial sector

The focus of the limited number of previous surveys on in-house solicitors in the commercial sector has been to describe the sector and assess how these solicitors bring value to their organisations, and cover the following topics:

- the role of in-house solicitors in the organisation;
- methods through which in-house solicitors manage external legal spend costs;
- motivations behind the individual's decision to become an in-house solicitor;
- how employers assess the value of their in-house legal team.

The main findings are summarised below.

Role in the organisation—to control legal costs

Sako's 2011 survey of 52 in-house solicitors between 2010 and 2011 focused on the role of general counsel in large, established businesses (36 general counsels from the UK and 16 from the USA, from companies such as Barclays, Sainsbury's and Yahoo).³¹ Of the 52 in-house solicitors interviewed, nearly all were on the executive committee of their company, and therefore likely to be involved in decision-making. However, Eversheds' 2011 survey of 150 in-house solicitors found that less than half (46%) of the heads of legal interviewed were on the board of their company.³²

According to Sako (2011), for most businesses one primary reason for employing an in-house legal team is to reduce total legal spending. However, there are differences in views about the optimal size of the legal team. While the majority of the respondents to Sako's survey have increased the size of their in-house team in order to lessen their reliance on external lawyers, some have reduced the size of the team, arguing that larger teams tend to generate greater demand for outside work, as in-house lawyers seek confirmation of what they are doing from external lawyers.

Of the 52 interviews held by Professor Sako, a large majority of general counsel reported that, in the five years before 2011, the number of in-house lawyers they employed had grown. The primary reason given for this was the expansion of the business. Expanding the legal team in line with the size of the business is consistent with managing total legal spend if the cost of running the in-house legal team is less than the total amount that would otherwise have been spent on external legal advisers.

In order to cut legal costs, some companies implemented a 'production-line approach' in order to standardise, multi-source and improve project management of externally sought legal advice.³³ Professor Sako highlighted that such practices may not be fit for purpose in some types of legal work, and thus may potentially increase legal risks. This risk can be highly asymmetric. Cutting costs, for example, can have a minor direct impact on the total legal budget, but a lost litigation case can have a significant impact. Should the standard of legal service be compromised, strong pressure to decrease legal costs can be considered to pose a significant regulatory risk (see section 3.2.3).

Methods through which in-house solicitors manage external legal expenditure

Among the in-house solicitors interviewed by Professor Sako, the use of panels was quite mixed. Eversheds' finding corroborates this result: 47% of the in-house legal teams interviewed did not have a panel.³⁴ Professor Sako finds that panel law firms are increasingly

³¹ Sako, M. (2011), 'General Counsel with Power?', Saïd Business School, University of Oxford.

³² Eversheds LLP (2011), 'Benchmarking the in-house legal department'.

³³ Sako (2011), *op. cit.*

³⁴ Eversheds LLP (2011), *op. cit.*

required to participate in an online bidding process to win work. Online bidding is generally considered to result in significant cost decreases. Nonetheless, the extent to which external legal advisers are employed varies greatly. Across Professor Sako's sample, the share of external lawyers of total legal spending ranges between 12% and 93%.

Motivations behind the individual's decision to become an in-house solicitor

Nabarro's 2011 survey finds that motivations are similar regardless of the size of the legal team: most moved in-house to gain greater commercial insight or to broaden and/or improve their workload. In addition, the survey identified that some general counsels want to move to a more commercial role.³⁵ Furthermore, many individuals move in-house to seek a better work-life balance: avoiding long hours and the pressures of private practice partnerships, in addition to having a more regular workflow.³⁶

How employers assess the value of their in-house legal team

According to Nabarro's 2010 survey³⁷ and its 2011 survey, most employers consider it important that in-house teams add value. However, some in-house solicitors perceive their role as mainly being about 'saving money' as opposed to adding value.

Nabarro's studies suggest that performance measurement of in-house solicitors working at commercial organisations is in its infancy. It is illustrative that only 21% of general counsels measure their legal team's performance using key performance indicators (KPIs).³⁸ While quality control is an important aspect of the services provided by in-house solicitors, in commercial organisations there is a potential tension between performance measures and regulatory objectives (see section 3.2.3). If performance measures are defined too narrowly, in-house solicitors may have incentives to act only according to these, as opposed to the real needs of their business.

3.2.2 Public sector—non-profit organisations that conduct reserved activities

There is limited literature available on in-house solicitors employed in the public sector, and the existing studies relate only to non-profit organisations that conduct reserved legal activities.

According to one survey, there are more than 3,000 non-profit organisations offering advice in England and Wales.³⁹ However, the Roll (analysed in section 2.1) contains a few hundred comparable organisations. This indicates that most of the non-profit organisations supplying legal advice do not employ solicitors.

Indeed, another study finds that a distinctive feature of 'Special Bodies' is that they rely heavily on volunteers,⁴⁰ which amount to one-third of their workforce, and around 70% of the staff do not have a legal qualification.⁴¹ This study also notes that these organisations vary substantially in size, location, services offered, quality, particular client base, and how services are delivered. According to this research, the main services that these organisations offer are the provision of general information; general advice services; specialist advice services; and casework. In terms of legal advice specifically, the research finds that advice is most commonly provided in relation to welfare benefits, debt and housing. In addition, it finds that those organisations that employ solicitors or barristers offer some reserved activities to a

³⁵ Nabarro LLP (2011), 'Vague about value'.

³⁶ Edwards Gibson (2010), 'Moving In-house: a guide for private practice lawyers', available at: <http://www.edwardsgibson.com/downloads/Moving%20in-house.pdf>, accessed July 2nd 2013.

³⁷ Nabarro LLP (2010), 'From in-house lawyer to business counsel'.

³⁸ Nabarro (2011), op. cit.

³⁹ Smith, M. and Tam, T. (2007), 'Findings from the Legal Advice Sector Workforce Surveys', Legal Services Research Centre.

⁴⁰ Special bodies are defined in Section 106 of the Legal Services Act 2007, and include independent trade unions, not-for-profit bodies, community interest companies, and low-risk bodies. Low-risk bodies are defined within section 108 of the Legal Services Act 2007.

⁴¹ Frontier Economics (2011), 'Understanding the supply of legal services by "special bodies"', a report prepared for the Legal Services Board, September.

limited extent: e.g. litigation, rights of audience, and administration of oaths. Typically, these non-profit organisations do not charge for their services. The main sources of funding are Legal Services Commission contracts, local authority funding, and Primary Care Trusts, although these sources may become uncertain owing to public spending cuts. Moreover, the future reduction in the number of Special Bodies is a regulatory risk for the SRA to monitor (see section 3.2.3).⁴²

3.2.3 Potential risks

The existing literature provides some indication of potential risks in the in-house solicitor market, as follows.

- Depending on the type of work, measures to control legal costs can increase risk to the business. Moreover, the effect of some measures to control legal costs may be asymmetric, having a small impact on reducing total costs to the business, but potentially a much greater impact on risk to the organisation
- As identified in section 3.1.2, there is a potential tension between performance measures and regulatory objectives. If the measures are defined too narrowly, in-house lawyers may have incentives to act only according to them, as opposed to the real needs of their business
- Special Bodies may pose different type of risks, with one key future challenge having been identified as access to the required funding. While some organisations adapt the services they provide in order to secure additional funding, this could create a conflict between the purpose of the funding and the needs of their customers if their respective objectives are not aligned. Owing to the nature of their work and the composition of their employees, Special Bodies might also face difficulty in recruiting and retaining adequately qualified staff⁴³

⁴² Frontier Economics (2011), op. cit.

⁴³ Ibid.

4 Survey of in-house solicitors

4.1 Approach

This section of the report presents the findings of the in-house solicitors survey. An overview of the survey and a description of the methods taken to reduce survey bias are presented followed by a detailed breakdown of the key findings.

4.1.1 Overview of survey

Oxera invited in-house solicitors working in a diverse range of organisations to participate in an on-line survey, with a view to filling the evidence gaps in the existing literature.

The questionnaire covered the following topics⁴⁴:

- characteristics of the organisations employing in-house solicitors (section 4.2)
- characteristics of the legal team (section 4.3)
- trends (section 4.4)
- challenges (section 4.5)

In total, 2,013 responses were received, from a range of organisation types as shown in Table 4.1.

Table 4.1 also shows that, across most organisation types, respondents have considerable, and *similar*, levels of experience. Except for the armed forces and CPS, the average years of experience ranged between 13 and 17 years for all organisation types.⁴⁵ This level of experience is also reflected in the job titles most commonly reported. For example, 29 of the respondents who marked 'other legal title' identified their job title as 'general counsel' and a further 55 used 'general counsel', 'manager', 'head' or 'principal' as part of their job title.

The comparability in experience is useful, as one would expect different roles to be held by in-house solicitors with different levels of experience.

⁴⁴ A copy of the full questionnaire is provided in Annex 2. Annex 2 also specifies the number of responses to each question.

⁴⁵ The average years of experience for the armed forces and CPS was reported as 9 and 20 years respectively

Table 4.1 Overview of survey respondents

	Number of respondents	Coverage of market (approx. %)	The two most commonly reported job titles (as a proportion of the total)	Average years of experience
Private sector	1,075	8	Senior legal adviser/counsel (38%) Head of legal department/legal director (30%)	15
Commercial organisations excluding insurers and claims management companies	961	n/a	Senior legal adviser/counsel (38%) Head of legal department/legal director (31%)	15
Insurers	87	n/a	Senior legal adviser/counsel (45%) Head of legal department/legal director (20%)	16
Membership associations (including industry associations)	26	n/a	Head of legal department/legal director (38%) Other legal title (27%)	15
Claims management companies	1	n/a		
Public sector	814	9	Senior legal adviser/counsel (40%) Other legal title (30%)	17
Local government bodies	473	11	Senior legal adviser/counsel (39%) Other legal title (30%)	17
Crown Prosecution Service	90	5	Other legal title (48%) Senior legal adviser/counsel	20
Central government bodies	80	9	Senior legal adviser/counsel (45%) Junior legal adviser/counsel (29%)	17
Regulatory bodies	79	18	Senior legal adviser/counsel (47%) Other legal title (18%)	15
Educational establishments (state or private)	35	8	Other legal title (31%) Senior legal adviser/counsel (31/5)	17
Other central government-funded body	31	9	Other legal title (35%) Senior legal adviser/counsel (29%)	16
National Health Service	18	23	Senior legal adviser/counsel (39%) Other legal title (33%)	13
Armed forces	6	19	Senior legal adviser/counsel (50%) Head of legal department/legal director (33%)	9
Courts—excluding Clerks to Justice	2	n/a	Other legal title (50%) Senior legal adviser/counsel (50%)	13
Third sector	101	18	Other legal title (41%) Senior legal adviser/counsel (26%)	13
Registered charities	68	65	Other legal title (34%) Head of legal department/legal director (32%)	13
Advice centres	22	5	Other legal title (64%) Senior legal adviser/counsel (23%)	10
Law centres	6	n/a	Senior legal adviser/counsel Other legal title (33%)	9
Religious organisations (e.g. churches)	5	28	Other legal title (40%) Head of legal department/legal director (20%)	19
Not specified	23	n/a	Other legal title (39%) Senior legal adviser/counsel (39%)	16
Total	2013	9	Senior legal adviser/counsel (50%) Other legal title (24%)	16

Note: Coverage of each organisation type has been calculated by comparing the number of participants recording this type of organisation as their main place of employment in the survey with the total number of in-house solicitors on the Roll employed by this type of organisation. The results are therefore sensitive to any difference in allocation of in-house solicitors between the survey and the Roll. This might explain the high coverage of registered charities compared with advice centres: in-house solicitors may have reported to the Roll that they work in an advice centre, but in this survey recorded this as being in a registered charity. n/a indicates that the coverage of the market cannot be computed because the organisation of the in-house solicitor, as recorded in the Roll, does not distinguish this category.

Source: Oxera analysis of questions a14 and a20 and Solicitors Roll.

4.1.2 Approach to analysis

To allow for conclusions to be illustrated clearly, responses have been aggregated and presented in various ways. Common dimensions that have been found to affect the responses received include: whether the in-house solicitor works in an organisation that provides services to external clients (the 'external client' split); and the sector of the organisation in which the in-house solicitor works (e.g. whether the organisation is from the private, public or third sector, as categorised in Table 4.1).

The external client split was determined by how respondents answered question 15 (see appendix 2 for questionnaire); those who ticked any of the following options were considered to be in the external client category:

- providing legal advice to individuals who are customers of the organisation
- providing legal advice to organisations/businesses who are customers of the organisation
- providing legal advice to organisations/businesses who are related to, but not part of, the organisation (e.g. schools for local authorities)
- other services provided to external clients⁴⁶

There is some variation between sectors in the *type* of external client to which legal services are being provided by the in-house legal teams.

As presented in Table 4.2, few respondents from private and public sector organisations provide legal services to individuals who are customers of their organisation: less than 3% in the case of the private sector and about 6% in the public sector. However, a much greater proportion of respondents from the public sector provide legal services to organisations—around 40%.

In comparison, the proportion of respondents from third sector organisations providing legal services to individuals is much higher. About 40% of respondents reported providing services to individuals who are customers of the organisation, and a further 15% provide legal services to other types of external client, who, according to analysis of the comments provided, were also individuals, typically members of the public, some of whom were receiving pro bono advice.

Table 4.2 Number and proportion of respondents from each sector that provide services to external clients

	Provides legal services to:		Total number of respondents ²
	individuals who are customers of the organisation	any type of external client ¹	
Private sector	28 (3%)	138 (13%)	1,075
Public sector	49 (6%)	364 (45%)	814
Third sector	38 (38%)	53 (52%)	101

Notes: The question asked was: 'Over the past 12 months, which of the following activities have you provided?' The four options to cover services provided to external clients are stated in the text above the table. ¹ Refers to total number responding 'Yes' to any of the selected four options. ² Refers to total number of responses to question 15.

Source: Oxera analysis of question 15.

⁴⁶ To a large extent, the services specified by respondents selecting the fourth option were also legal in nature, but were provided to clients that did not naturally fit into one of the three predefined categories. Such clients include, for example, affiliated bodies, other local authorities, group companies and the police; and individuals, such as members of the public, colleagues and members of the organisation. For this reason, it is relevant to include these respondents in the category of providing 'other services to external clients'.

The difference in the types of external client to which legal services are being provided is relevant to bear in mind given that, in general, organisations can be expected to be more sophisticated purchasers of legal services than individuals.

Some of the methods adopted to reduce survey bias are summarised in Box 4.1. Even after adopting these methods, percentages have generally been rounded to the nearest 5%, with other data reported to a maximum of two significant figures in order to avoid presenting a misleading degree of accuracy.

Box 4.1 Methods taken to reduce survey bias

The following methods were adopted to reduce survey bias and enhance the robustness of the study.

- **Stratified sample**—to boost the number of responses from less common types of organisation, Oxera designed a stratified sample, based on the analysis of the Roll presented in section 2.1. This approach has been successful in boosting the number of third sector respondents to (just over) 100, equivalent to 16% of the total population of third sector in-house solicitors.⁴⁷
- **Weighting responses**—in general, responses have been weighted so that the demographic characteristics of the sample match more closely those of the population of in-house solicitors.⁴⁸ As with any survey, a degree of self-selection is unavoidable: those with stronger views may have a greater incentive to respond. Weighting a sample to match more closely observable characteristics in the population can help to mitigate any such bias, but can be applied only to characteristics that are observable in the population, which in this case is limited to age, ethnicity, gender, and type of employing organisation. Such characteristics may not be sufficient to remove all self-selection bias. Sensitivity analysis has also been undertaken to ensure that the applied weighting does not distort any conclusions that can be drawn from the results presented.
- **Careful drafting**—surveys can also report stated preferences only, rather than revealed or true preferences—i.e. participants are free to respond as accurately as they wish. To encourage truthfulness and reduce bias, respondents were assured that only aggregated and anonymised data would be provided to the SRA, with the detailed analysis undertaken by Oxera and the survey administered by the independent market research company. Questions were carefully drafted to avoid introducing a ‘framing’ or ‘leading’ bias. For example, where predefined options were offered, the order was randomised between respondents to overcome any mean reversion in respondent behaviour. Participants were also allowed to skip particular questions and, for certain questions, were given ‘Don’t know’ or ‘Not applicable’ options. To provide transparency in how representative the sample responding can be expected to be, for each question the total number of respondents and the number responding ‘Don’t know’ is reported in the notes to each table and figure.

Source: Oxera.

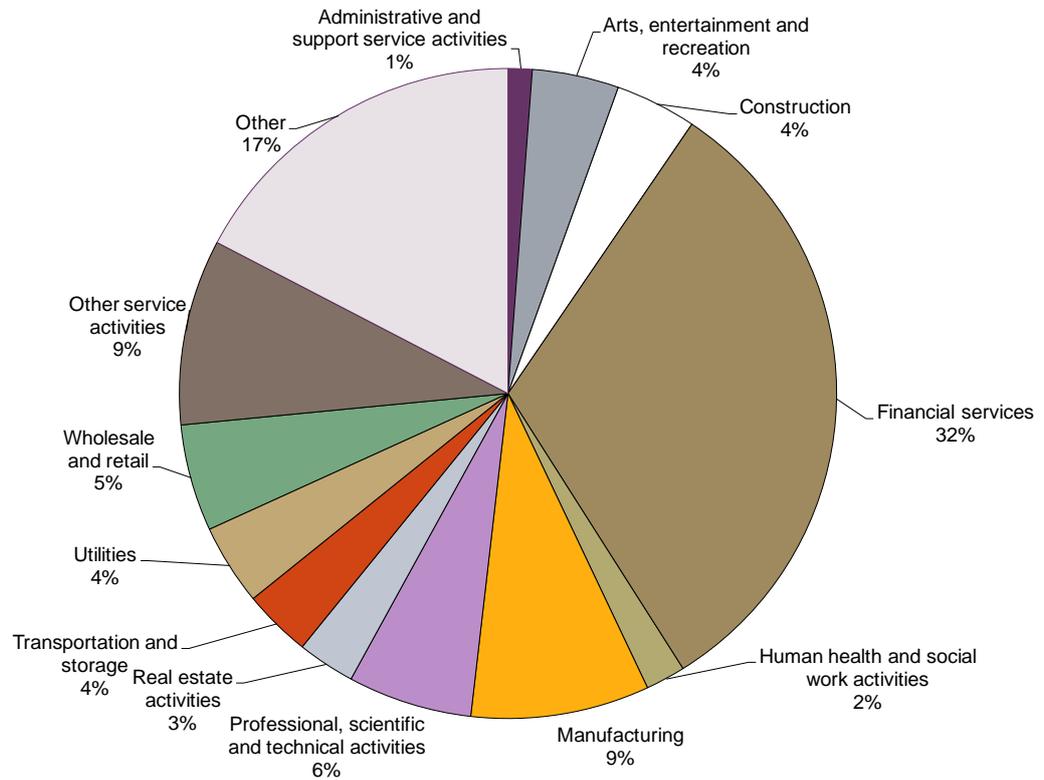
⁴⁷ As at September 2012, there were 615 in-house solicitors employed within third sector organisations (according to data provided by the SRA, see Table 2.1); therefore the 101 respondent account for approximately 16% of the population of third sector in-house solicitors.

⁴⁸ Weighting has been applied to the tables and charts presented in this section, with the exceptions of Table 4.1 and Figures 4.3, 4.18, 4.19, 4.20 and 4.21.

4.2 Overview of the organisations employing in-house solicitors

As reported in section 2, data in the Roll reports that 59% of in-house solicitors work in 'Commerce and industry'. In-house solicitors from the private sector participating in this survey were asked to identify the industry/sector in which their organisation operated. As illustrated in Figure 4.1, the largest sub-group is the financial services sector, in which 32% of respondents work; the next largest sector is manufacturing, in which 9% of respondents work.

Figure 4.1 Industries and sub-sectors in which in-house solicitors work



Note: Question asked was: 'In which industry/sector does your organisation operate?' Based on 1,047 respondents.

Source: Oxera analysis of responses to question 2a.

Respondents were asked to estimate the total number of employees in their organisation and whether any other institutions supervised or regulated the organisation (see Table 4.3).

Table 4.3 Overview of organisations employing in-house solicitors

	Average size of organisation (number of employees) ¹	Regulated by:					
		FSA (%)	Charity Commission (%)	Ministry of Justice (%)	Community Interest Regulator (%)	Office for Immigration Services Commissioner (%)	Royal Institute of Chartered Surveyors (%)
Private sector	26,000	40	0	0	none	0	0
Commercial organisations excluding insurers and claims management companies	29,000	30	0	0	none	0	0
Insurers	8,600	100	0	10	none	0	0
Membership associations (including industry associations)	290	0	0	0	none	none	10
Public sector	8,100	10	10	10	0	none	0
Local government	7,100	10	0	0	0	none	10
Crown Prosecution Service	6,200	0	none	50	none	none	none
Central government bodies	25,000	0	none	none	none	none	none
Regulatory bodies	2,200	0	10	0	none	0	0
Educational establishments (state or private)	4,200	10	50	none	none	0	none
Other central government-funded body	8,600	0	10	20	0	none	none
National Health Service	4,700	none	10	none	none	none	none
Armed forces	39,000	n/a	n/a	n/a	n/a	n/a	n/a
Third sector	1,000	20	90	10	none	10	0
Registered charities	1,400	20	90	10	none	0	0
Advice centres	200	10	80	none	none	30	none
Total	18,000	20	10	0	0	0	0

Notes: Based on 1,666 respondents for question 4 and 1,990 respondents for question 5. In general, the average size of organisation is reported to two significant figures and the proportion of organisations regulated by each institution to one significant figure. To distinguish between cases where less than 5% of respondents indicated that their organisation is regulated by an institution (which rounds to 0) and cases where no respondents indicated that their organisation is regulated by a particular institution, 0 is reported in the former case and 'none' in the latter. For some organisation types, the number of respondents is too small to provide data to this degree of accuracy, in which case 'n/a' is reported. Percentages are based on the number of respondents who answered 'Yes' or 'No' in relation to whether that particular institution regulated the organisation in which they worked; 'Don't know' responses were excluded. Some organisations may be regulated by multiple institutions and therefore the percentages do not sum to 100. ¹ Calculated from the responses of the employed individuals. As larger organisations are more likely to have at least one employee participating in this survey, this average is likely to overestimate the average size of organisations in each sector.

Source: Oxera analysis of responses to questions 4 and 5.

The findings from Table 4.3 can be summarised as follows.

- The size of the organisations in which in-house solicitors work varies substantially
 - In terms of private sector organisations specifically, while most respondents reported working in organisations with 2,000 or fewer employees, 10% reported working in organisations employing 50,000 or more employees, and 1% in organisations employing more than 250,000
- The organisations in which in-house solicitors work can be grouped into three broad size categories:
 - those employing fewer than 500 employees—e.g. advice centres, law centres (not presented) and membership associations
 - those employing between 1,000 and 10,000 employees—e.g. regulatory bodies, the NHS, local government and the CPS
 - those employing tens of thousands of employees (e.g. commercial organisations, and central government)
- The Financial Services Authority (FSA)⁴⁹ and Charity Commission play an important role in this sector.
 - As can be expected, almost all respondents working in insurance companies identified the FSA as a relevant supervisor of their organisation, as did 90% of respondents from other commercial organisations working in the financial services sector⁵⁰
 - In terms of the Charity Commission, 90% of respondents working in registered charities, 80% of respondents from advice centres, and about half of the respondents from educational establishments identified the Charity Commission as a relevant supervisor

4.3 Characteristics of the legal team

In relation to understanding the characteristics and role of the legal teams in which the in-house solicitors work, the survey covered the following themes:

- the jurisdictions in which the legal team operates (question 7)
- the size and make-up of legal team in terms of different types of qualification (question 8)
- the use of external legal advisers (question 16)
- the responsibilities held by the in-house legal team (questions 11 and 12)
- the types and nature of work undertaken by the in-house solicitor (questions 15, 17 and 19)

The key findings in each of these themes are set out in the following section.

⁴⁹ At the time of the on-line survey, the FSA was the regulator of the financial services sector. It has since been succeeded by the Financial Conduct Authority and the Prudential Regulation Authority.

⁵⁰ The analysis of respondents working within the financial services sector is not presented in Table 4.1.

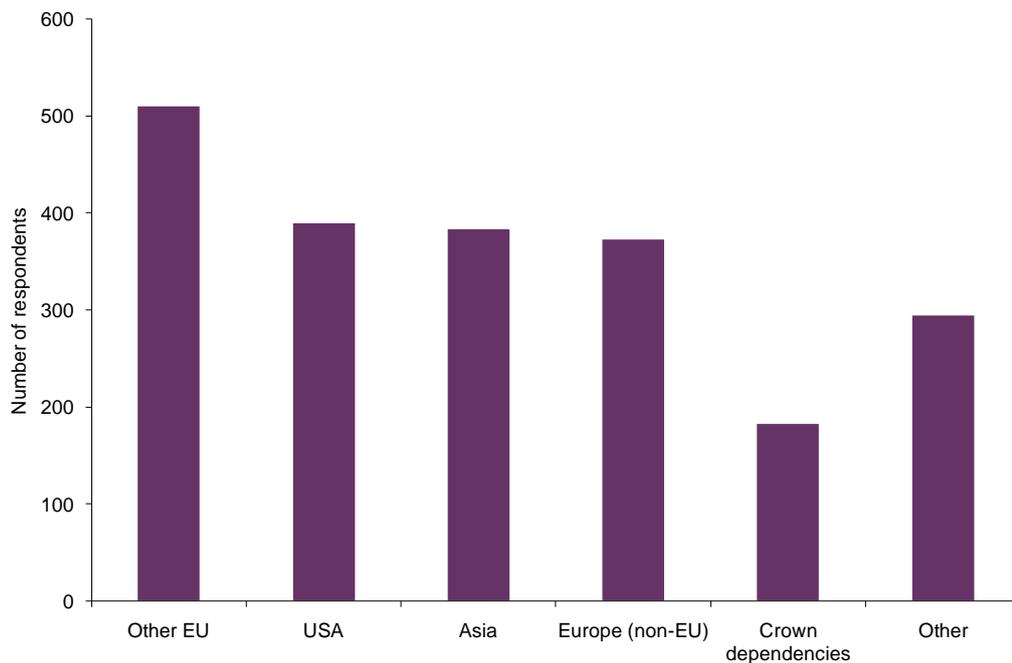
As a high number of respondents (1,628) responded to question 6 that they could answer on behalf of the *full* legal capability in their organisation, in general the analysis presented in this section focuses on these respondents⁵¹

4.3.1 Jurisdictions in which legal teams operate

In terms of the jurisdictions in which in-house solicitors operate, substantial differences can be observed between organisations from the private sector and other sectors. While the majority of respondents who work for private organisations identified jurisdictions outside the UK (60%); the vast majority of the respondents from the public and third sectors answered that their team operates in the UK only, respectively 90% and 85%. Those public and third sector organisations with internationally active legal teams include registered charities and government departments.

Figure 4.2 shows the jurisdictions outside the UK where private sector legal teams have a presence. The most popular location is elsewhere in the EU, with the USA and Asia also being relatively common.

Figure 4.2 Jurisdictions where legal teams of private organisations provide advice, based on number of responses



Note: Based on question a7: 'In which of the following jurisdictions does the in-house legal team operate and provide advice?' Respondents were asked to tick all the jurisdictions that apply. Based on those respondents who form part of legal teams that provide legal services outside the UK. Number of respondents: 578.
Source: Oxera analysis of question 7.

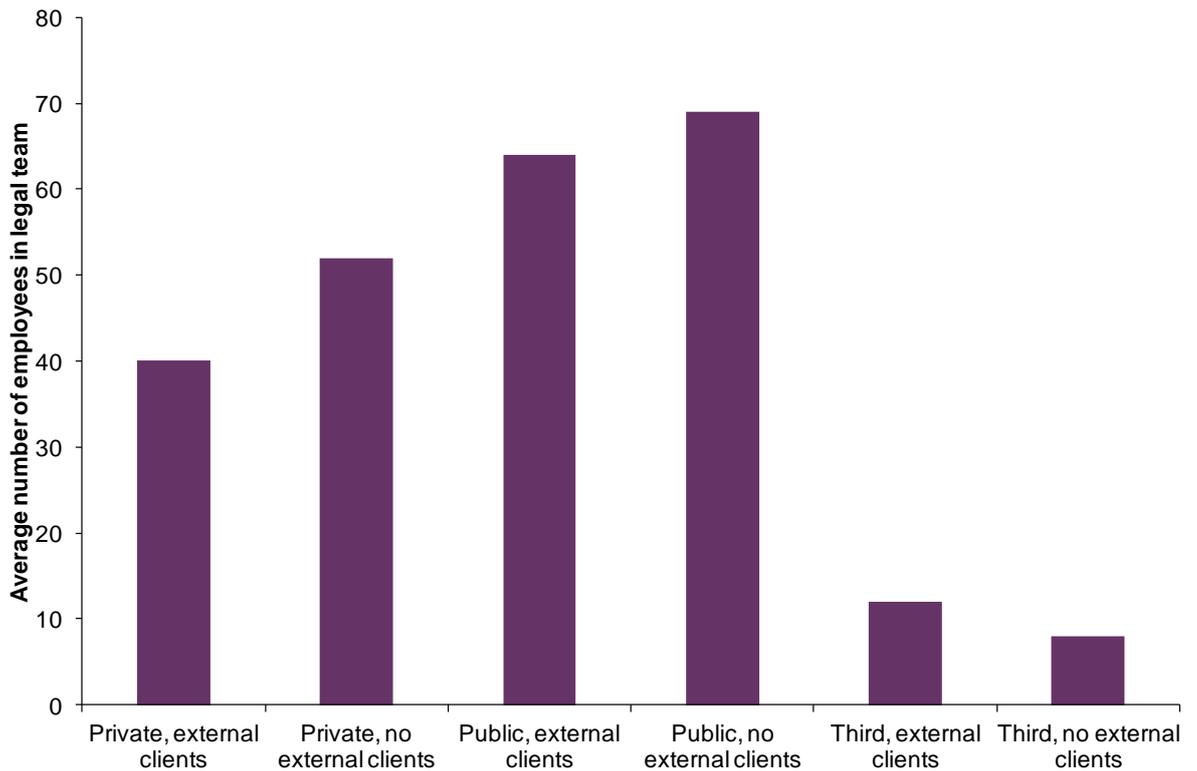
⁵¹ Figure 4.2 presents responses to the question: 'Please identify the number of employees in the legal team who fall in the following groups. Please include yourself.' In this case, all those who could complete the question were included (1,989 respondents). Figure 4.7 presents responses to the question: 'What systems are in place to ensure that the quality of legal services provided by the in-house team is maintained?' In this case, responses from all 2,013 participants have been considered.

4.3.2 Size and make-up of legal team

The size of the legal team varies between the different types of organisation employing in-house solicitors.

As shown in Figure 4.3, the average size of legal teams described by respondents from public sector organisations is the largest, at around 60–70 employees. This finding is likely to reflect the high numbers employed in the CPS. Respondents from private sector organisations also report working in legal teams of a substantial size—around 40–50 on average, with considerable variation between sectors. Teams in the financial sector average around 80 staff compared with teams in most other sectors of between 10 and 40 in general. In comparison, legal teams in the third sector appear to be much smaller—on average around 10 employees.

Figure 4.3 Average total size of legal teams, by number of employees



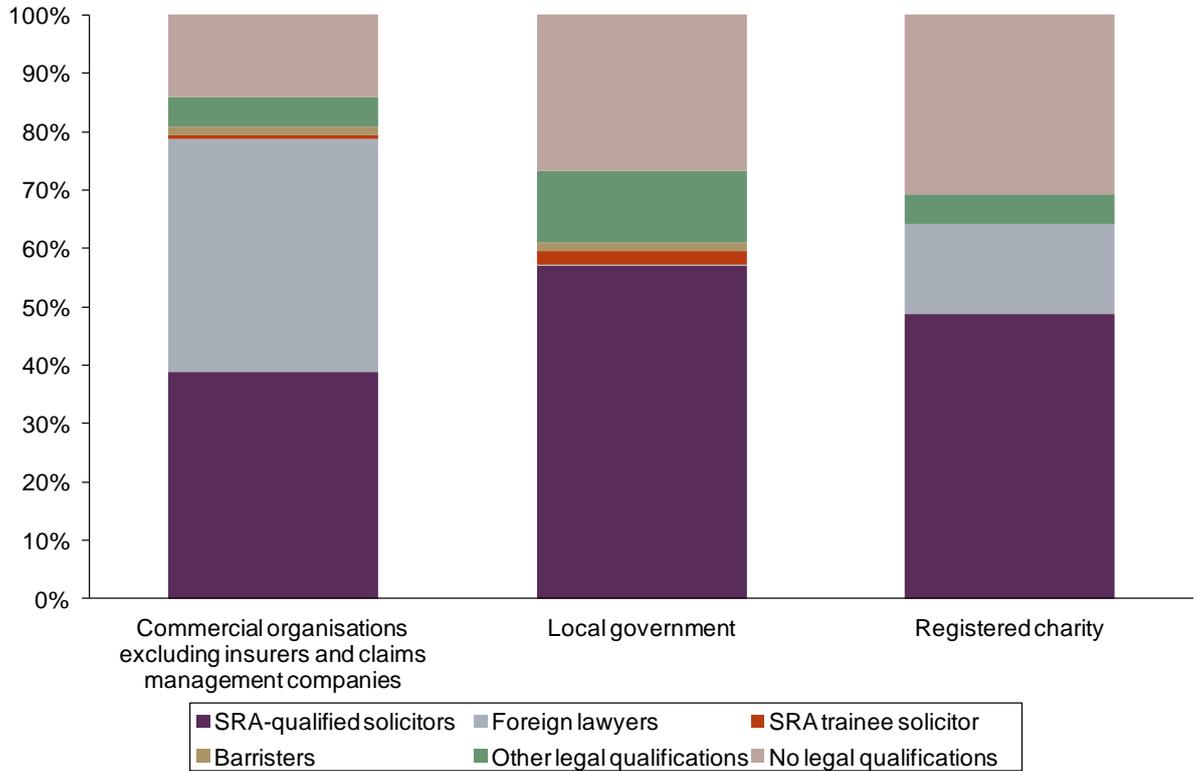
Note: Based on 1,989 respondents. The question asked was: 'Please identify the number of employees in the legal team who fall in the following groups. Please include yourself.' This provides a measure of the size of the legal team that an employee could be expected to join. It is not a measure of the *average* size of a legal team falling into each category, although the ranking of size can be expected to show the same pattern—i.e. third sector and no external clients can be expected to have the smallest legal teams; private sector and no external clients can be expected to have the largest legal teams.

Source: Oxera analysis of question 8.

Figure 4.4 presents a breakdown for a sample of organisation types in terms of legal qualifications (many participants could not provide a breakdown).

Responses suggest that the proportion of staff without professional legal qualifications in commercial organisation legal teams is low relative to local government and registered charity legal teams. Figure 4.4 also suggests that legal teams in commercial organisations are likely to employ a higher proportion of foreign or Continental European-qualified lawyers than registered charities or local government organisations.

Figure 4.4 Breakdown of legal teams in terms of qualifications

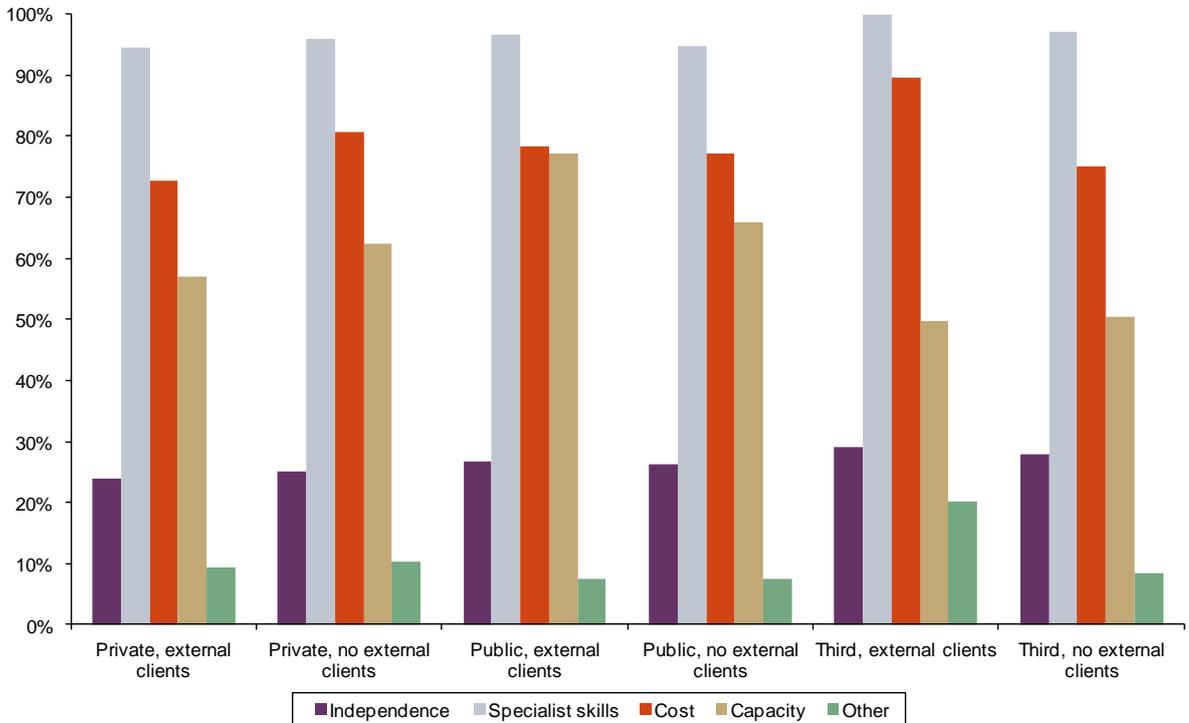


Note: Based on respondents who did not mark any employees as 'cannot specify' in response to question 8: 63 for commercial organisations; 39 for local government and 10 for registered charities.
 Source: Oxera analysis of question 8.

4.3.3 The use of external legal advisers

As presented in Figure 4.5, across all types of organisation, specialist skills and cost were identified as the most important factors when commissioning external advisers. This finding does not change according to whether the in-house solicitor provides legal services to external clients or not.

Figure 4.5 Factors considered important when commissioning external legal advice



Note: The question asked was: 'When deciding whether to commission external legal advice, what factors do you take into account?' Respondents were asked to tick all the factors that apply. Four respondents answered 'Don't know'; therefore, the base is 1,237 respondents.
Source: Oxera analysis of responses to question 16.

4.3.4 The typical responsibilities of in-house legal teams

Two questions explored the responsibilities typically held by in-house legal teams, covering: the role of the legal team when the organisation needs to make a decision on a legal matter; and the organisation's approach to legal risk management.

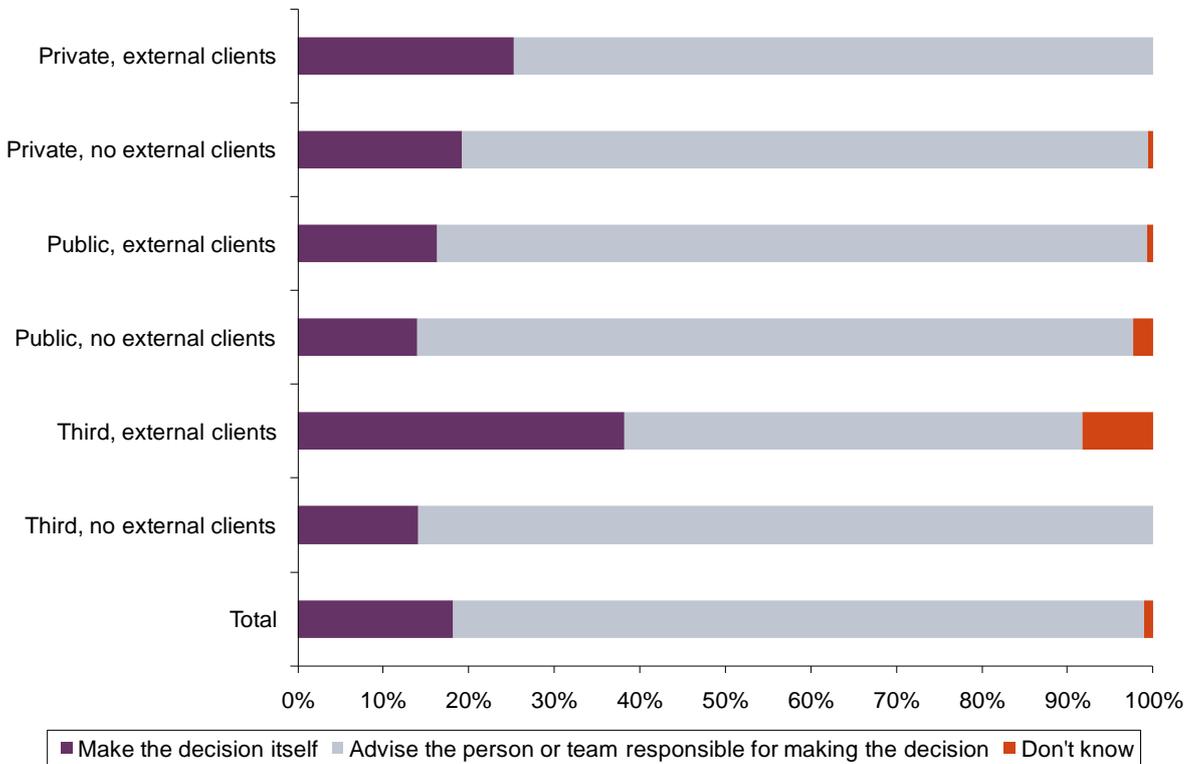
The majority of respondents (80%) reported that, in the context of legal matters, the legal team advises the person or team responsible for making the decision, rather than making the decision directly.⁵² This adds depth to the view expressed by the Heads of Legal interviewed in the Eversheds 2011 survey, in which less than half reported holding a position on the board of their company, and suggests that even those who are on the board may still not have ultimate control.⁵³

⁵² To enhance consistency between responses, participants were asked to consider the role of the legal team, rather than their own personal role, when the organisation needs to decide on a legal matter.

⁵³ Eversheds LLP (2011), 'Benchmarking the in-house legal department'.

As shown in Figure 4.6, there is some variation between groups, with legal teams from third sector organisations that provide legal services to external clients much more likely to make decisions on legal matters than to offer advice only. This is perhaps to be expected, given that the role of in-house solicitors in organisations designed to provide advice to external clients is likely to involve directly making decisions on legal matters in providing such advice. In other organisations, the legal team may be expected to take a more ‘business advisory’ or ‘consultant’ role.

Figure 4.6 The role of the legal team in making decisions on legal matters



Note: The question asked was: ‘In most cases, when your organisation needs to make a decision on a legal matter, the role of the legal team is to...?’ Three options were provided, as indicated in the figure. Based on 1,609 respondents; 19 responded ‘Don’t know’.

Source: Oxera analysis of responses to question a11.

Most organisations (90%) have a system of legal risk management in place.

As presented in Figure 4.7, across all organisations, only a small minority of respondents reported that their organisation did not have any legal risk management system (2%), although a slightly higher proportion (8%) did not know how legal risk was managed.⁵⁴ Respondents from the CPS, advice centres and membership associations were most likely to answer ‘Don’t know’.

The finding that about 90% of respondents could identify the nature of the legal risk management system may be considered a positive outcome for the SRA: a lack of clear legal risk management could be considered to pose a regulatory risk.

Figure 4.7 Legal risk management



Note: The question asked was: ‘Which of these following statements best describes responsibilities for legal risk management in your organisation?’ 129 respondents out of 1,628 answered ‘Don’t know’.
Source: Oxera analysis of responses to question 12.

Figure 4.7 also indicates that, across all types of organisation, legal risk management is most likely to be conducted as part of an organisation-wide process. 15% of respondents reported either that there was no legal risk management or that this was not part of an organisation-wide process.

Respondents from third sector organisations—particularly those providing services to external clients—were more likely to report that legal risk was managed by individuals as opposed to the legal team/legally qualified employees. The greater control of individuals in legal teams working in third sector organisations is likely to be related to the finding that, in third sector organisations the legal team is more likely to make a decision on legal matters

⁵⁴ Figure 4.6 presents the results for respondents who could account for the full legal capability of their organisation. Analysis of all responses, including those from respondents who answered question 6 that they could account for only part of the legal capability of their organisation, leads to the same conclusion: only 2% reported that there is no legal risk management and 8% responded ‘Don’t know’.

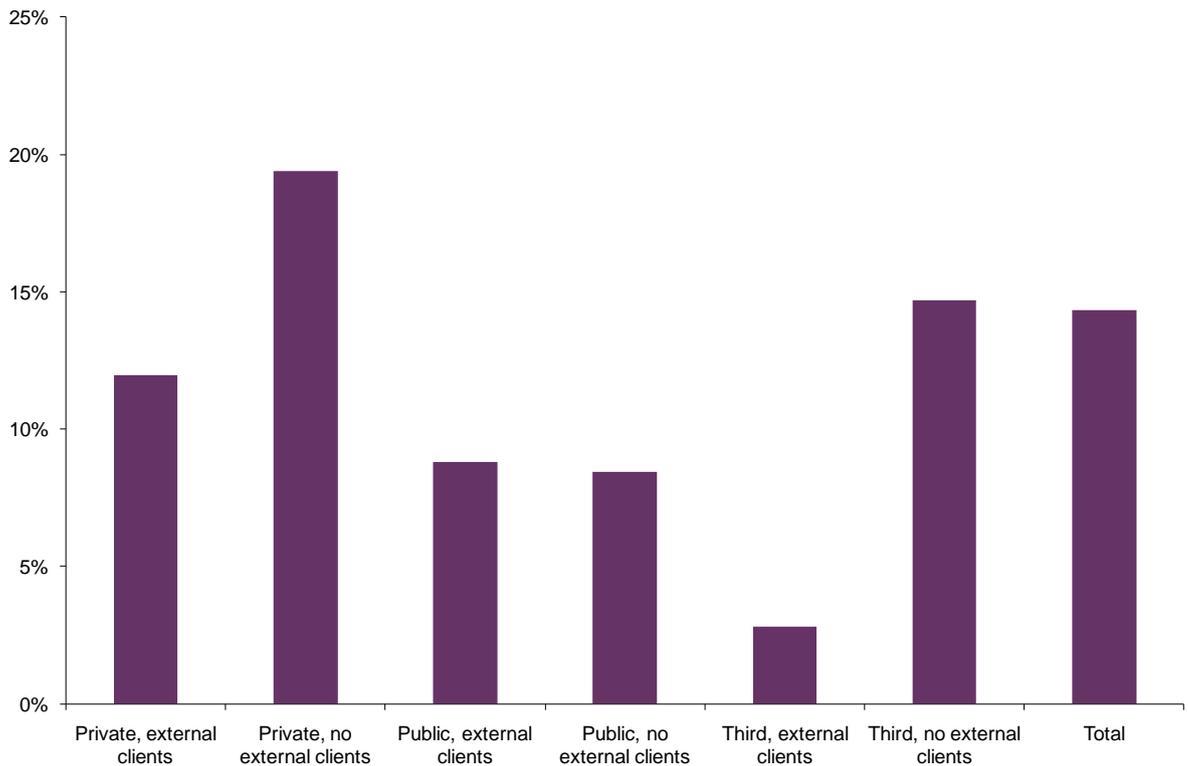
than in other organisations. This may reflect the fact that legal teams in the third sector are typically smaller than their private and public sector counterparts.

4.3.5

Quality control

Of all the respondents, 85% reported that their organisation has some form of system to monitor the quality of legal services provided by the in-house legal team. This proportion varies according to the sector of the organisation and whether the in-house legal team provides legal services to external clients. As shown in Figure 4.8, private sector organisations are less likely to have quality control systems; and, across all sectors, when the legal team provides services to external clients, it is more likely to have a system in place to monitor quality. This variation may be due to the different types of work provided by in-house legal teams working in these different types of organisation.

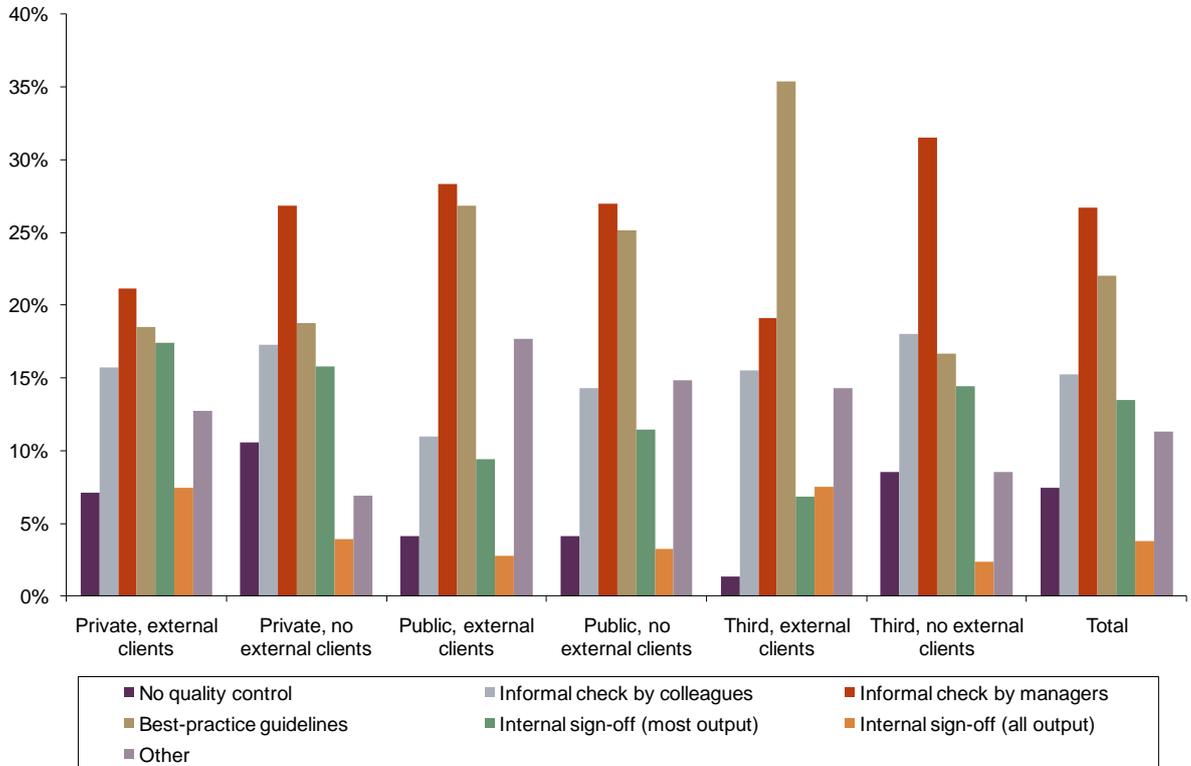
Figure 4.8 Use of quality control systems—proportion of organisations that *do not* have any systems in place



Note: The question asked was: 'What systems are in place to ensure that the quality of legal services provided by the in-house legal team is maintained?' Based on 2,013 respondents.
Source: Oxera analysis of question 13.

Where systems are in place, these are most likely to be informal checking by managers, best-practice guidelines, or informal checking by colleagues, across all organisation types. Formal sign-off procedures for all output are relatively uncommon for any type of organisation, as illustrated in Figure 4.9.

Figure 4.9 Systems monitoring the quality of legal services provided by the in-house team



Note: The question asked was: 'What systems are in place to ensure that the quality of legal services provided by the in-house legal team is maintained?' Based on 1,388 respondents. As respondents were asked to tick all the systems that apply, the proportions in each group may not sum to 100%.
 Source: Oxera analysis of question a13.

4.3.6 Types and nature of work undertaken by in-house solicitors

As presented in Table 4.4, there is wide variation in the proportion of time spent by in-house legal teams on reserved, non-reserved and non-legal work, with respondents from the CPS spending on average 80% of their working time on reserved activities compared with the 15% spent by in-house solicitors working in commercial organisations.

In response to question 1 of the survey, 96 respondents noted that, although they are listed on the Roll, they do not hold a practising certificate. Most of these respondents work in central government such a certificate is not generally required in order to undertake reserved activities (classed as exempt under section 88 in the Solicitors Act)⁵⁵. However, of the ten respondents working in commercial organisations without a practising certificate, three reported spending a marginal amount of time on reserved activities.

Table 4.4 Breakdown of working time, by organisation type

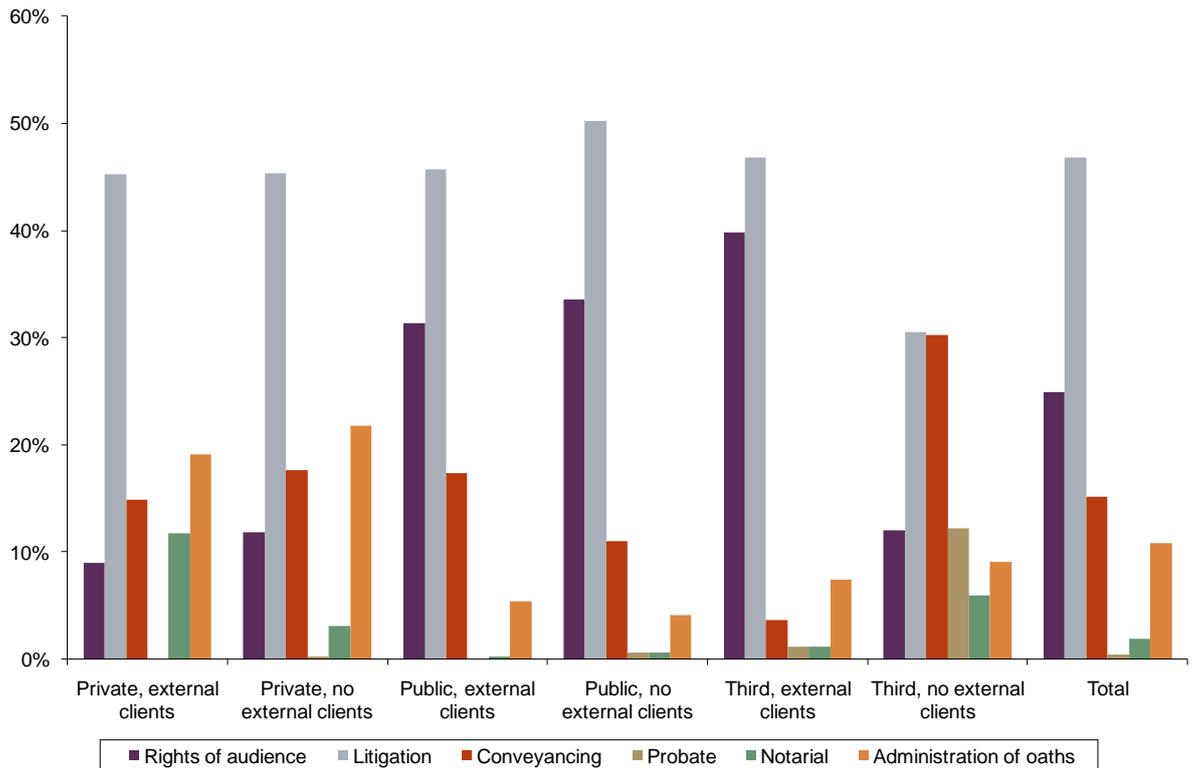
Organisation type	Reserved (%)	Non-reserved (%)	Non-legal work (%)
Private sector	15	65	20
Commercial organisations excluding insurers and claims management companies	15	65	20
Insurers	10	70	20
Membership associations (including industry associations)	40	45	15
Public sector	40	45	20
Local government	45	40	15
Crown Prosecution Service	80	10	10
Central government bodies	30	60	10
Regulatory bodies	20	60	20
Educational establishments (state or private)	10	70	25
Other central government-funded body	25	60	15
National Health Service	35	40	25
Third sector	38	43	19
Registered charities	30	50	25
Advice centres	40	50	10
Total	25	55	20

Note: The question asked was: 'How is your working time split between reserved, non-reserved and non-legal activities (approximately)?' Based on 1,105 respondents.
Source: Oxera analysis of question 19b.

⁵⁵ See <http://www.legislation.gov.uk/ukpga/1974/47/section/88>

Figure 4.10 presents the types of reserved activity that respondents have provided in the last 12 months.

Figure 4.10 Reserved activities provided in the past 12 months



Note: The question asked was: 'Over the past 12 months, which of the following reserved legal activities have you provided?' Respondents were asked to tick all the activities that apply. Based on 1,305 responses.
Source: Oxera analysis of questiona19a.

The main findings can be summarised as follows:

- at both the organisation-type level and on average across the whole sample, litigation is the reserved activity provided by most respondents
- for public sector organisations, rights of audience is the second most frequently cited activity, although it is less important for private sector organisations, where administration of oaths is more common
- conveyancing has been undertaken by around 15% of respondents in the past 12 months. Given that conveyancing was cited by as many respondents from organisations without external clients as those organisations with, it is likely that it is being provided for the organisation rather than as a service for external clients

In terms of the nature of the work undertaken, the three activities most frequently identified by in-house solicitors working in private, public and third sector organisations as their main activity are presented in Table 4.5.

Table 4.5 Three main activities, by organisation type and the proportion reporting the activity

				Coverage ¹
Private, external clients	Transactional legal work	Services provided to external clients—other	Providing legal advice to organisations/businesses that are customers of your organisation	
%	29	9	7	45
Private, no external clients	Transactional legal work	Risk management	Assessing the organisation's compliance with its legal and regulatory requirements	
%	44	10	9	63
Public, external clients	Contentious legal work	Transactional legal work	Providing legal advice to organisations/businesses that are related to, but not part of, your organisation	
%	33	22	8	63
Public, no external clients	Contentious legal work	Transactional legal work	Assessing the organisation's compliance with its legal and regulatory requirements	
%	34	18	14	66
Third, external clients	Providing legal advice to individuals who are customers of the organisation	Contentious legal work	Services provided to external clients—other	
%	44	30	11	84
Third, no external clients	Transactional legal work	Business strategy advice	Legal services provided for the organisation—other	
%	34	8	8	50
Total	Transactional legal work	Contentious legal work	Assessing the organisation's compliance with its legal and regulatory requirements	
%	33	16	9	58

Note: The question asked was: 'Over the past 12 months, which of the following activities have you spent the majority of your time doing?' Based on 1,624 respondents. ¹ Coverage refers to the proportion of respondents from this group of organisations whose main activity is included in the three presented.

Source: Oxera analysis of questiona15b.

The main findings can be summarised as follows:

- in general, transactional legal work is one of the top three activities reported by respondents from all organisations, with the exception of third sector organisations with external clients
- on average, respondents working in organisations that provide legal services to external clients report that providing advice to external clients is at least one of the top three activities they personally provide. For private sector organisations, such services appear to be frequently provided to customers of the organisations, and, for public sector organisations, such services are most commonly provided to other organisations. From reviewing additional comments provided, the public sector finding is likely to reflect local

governments providing services to other local authority organisations, including academy schools

- in general, contentious legal work is one of the top-three activities reported by respondents for public sector organisations and third sector organisations with external clients, but not for respondents from private sector organisations

In terms of the area of legal work provided, the five areas most frequently identified by in-house solicitors working in private, public and third sector organisations as their main one are presented in Table 4.6.

Table 4.6 Five main areas of law by type of organisation and their proportion (%)

						Coverage
Private	Commercial corporate in respect of non-listed companies	Commercial corporate in respect of listed companies	Intellectual property	Employment	Non-litigation— not related to any of the above	
%	30	11	5	5	5	56
Public	Public administration law	Criminal	Planning	Children	Commercial property/ conveyancing	
%	19	15	9	7	6	56
Third	Landlord and/or tenant	Immigration	Commercial property/ conveyancing	Commercial corporate in respect of non-listed companies	Employment	
%	24	11	8	8	8	56
Total	Commercial corporate in respect of non-listed companies	Public administration law	Commercial corporate in respect of listed companies	Criminal	Employment	
(%)	19	8	6	6	5	44

Note: The question asked was: ‘Over the past 12 months, which area of law have you spent the majority of your time providing advice?’ Based on 1,625 respondents. Coverage refers to the proportion of respondents from this group of organisations whose main area of law is included in the five presented.
Source: Oxera analysis of question 17b.

In the private and public organisation types, the main areas of law undertaken are the same irrespective of whether the solicitors have external clients. The area most frequently cited by in-house solicitors in the private sector is commercial law, while for those working in the public sector it is public administration law.

4.3.7 Few in-house solicitors also work in private practice

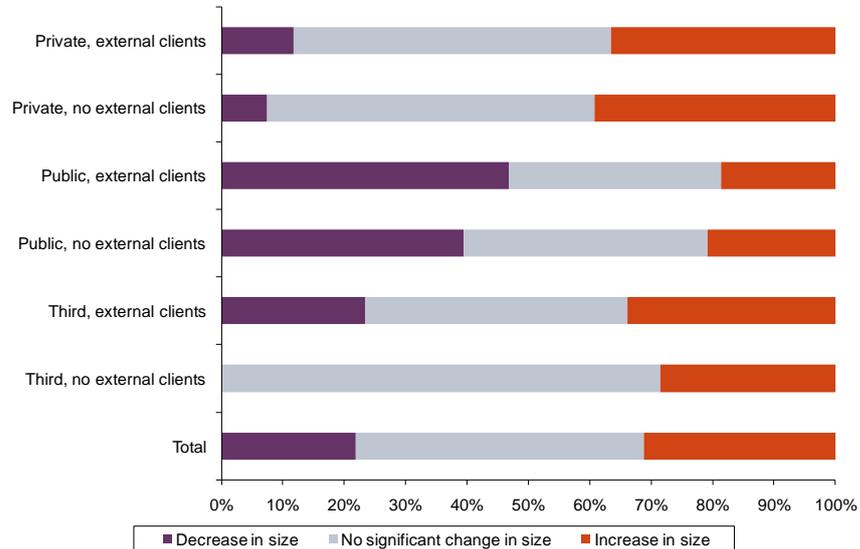
The survey provided an opportunity to explore the extent to which solicitors working in-house also worked in private practice. Of the 2,013 respondents, nine reported that they were also working in some form of legal firm, and these were predominately from the public or third sector; one was employed as an in-house solicitor in the private sector.

Except in one case, these respondents reported spending the majority of their working time at their in-house place of employment, several spending as little as 5–10% at their legal firm.

4.4 Trends

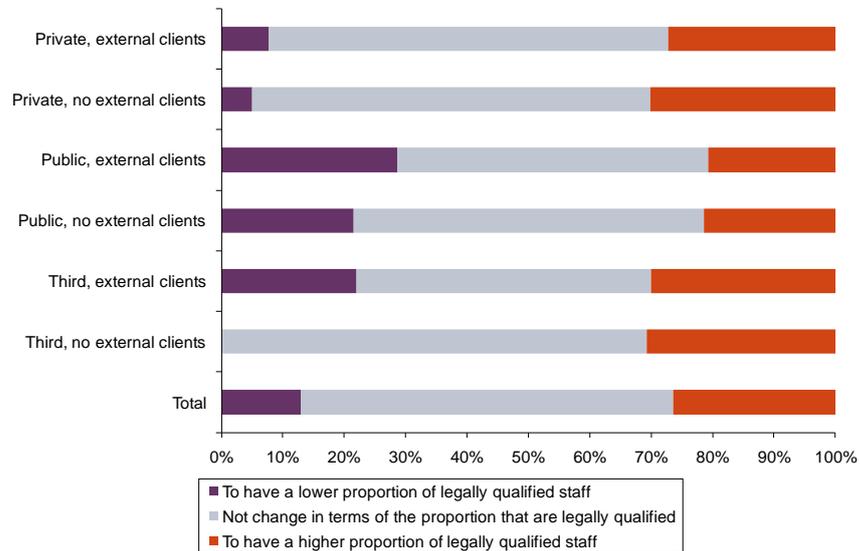
In relation to trends, the survey asked in-house solicitors whether they expected any change in the size of the legal team, and whether they expected any change in the composition of the legal team in terms of qualifications. The responses vary according to the type of organisation, and, in the third sector, according to whether legal services are provided to external clients, as presented in the figures 4.11 and 4.12.⁵⁶

Figure 4.11 Expected change in size of legal team over the next three years



Note: The question asked was: ‘Over the next three years, do you expect the legal team to...?’ Four options were provided, the three indicated in the figure and ‘Don’t know’. The 172 ‘Don’t know’ responses were excluded from the sample of 1,628 for the analysis presented above; therefore the figure is based on 1,456 respondents. Source: Oxera analysis of responses to question 9.

Figure 4.12 Expected change in the composition of the legal team over the next three years



Note: The question asked was: ‘Over the next three years, do you expect the legal team to...?’ Four options were provided, the three indicated in the figure and ‘Don’t know’. The 208 ‘Don’t know’ responses were removed from the sample of 1,628; therefore, the figure is based on 1,420 respondents. Source: Oxera analysis of responses to question 10.

⁵⁶ Similar to section 4.3, Figures 4.11 and 4.12 summarise the responses of participants who could respond on behalf of the full legal capabilities of their organisation.

Figures 4.11 and 4.12 indicate that, in the private sector, many legal teams may grow and become more qualified in composition. Approximately 40% of respondents from the private sector expect the legal team to grow in size and 30% expect their legal teams to become more highly qualified. This view is not unanimous throughout the private sector. The majority of respondents do not expect the legal team in their organisation to change significantly, in either size or composition, over the next three years. However, those expecting growth and a more qualified composition outweigh those expecting a reduction in size/qualification.

Sako (2011) found a similar variation in the views about the future size of their legal teams held by general counsels working in large UK and US corporations.⁵⁷ While most had observed the size of the legal team grow over the past five years and expected this trend to continue, others were reluctant to increase the size of the legal teams, arguing that larger teams increased the demand for external legal advice and therefore total legal costs.

In the public sector a greater proportion of respondents (45%) expect the legal team to shrink, compared with 35% who expect no change and 20% who expect growth. In terms of composition of the legal team, 50% expect no significant change and roughly equal proportions expect an increase or decrease in qualifications.

There is some variation in the third sector, as shown in Figures 4.11 and 4.12. Most do not expect any significant change in size or composition; however, where change is expected, it is more likely to be an increase in size or qualifications than a decrease.

4.5 Challenges faced by in-house solicitors

This survey provides the SRA with a first opportunity to ask questions directly about the challenges that in-house solicitors may face. The themes covered by the survey include:

- the nature and relevance of certain challenges, including the regulatory burden from the SRA (questions 23, 24 and 25)
- the working environment for in-house solicitors, including typical working hours (question 18) and the availability of continuing professional development (CPD) courses (questions 16 and 27)
- the responsibilities held by the in-house legal team (questions 11 and 12)
- the use of quality control systems (question 13)

The key findings in each of these themes are presented below.

(In comparison to sections 4.3 and 4.4, this section presents the analysis of responses from all participants to the survey, not only those who could provide detail on the full legal capability of their organisation.)

4.5.1 Overview of the challenges faced by in-house solicitors

Participants were asked: 'Over the past 12 months, to what extent have the following presented challenges? Please rank on a scale from 1 to 5 (where 1 is not at all and 5 is to a substantial extent).

- Meeting tight timescales reflecting external deadlines
- Delayed involvement of the legal team in projects with a legal issue
- Heavy workload for limited in-house legal resources
- Budget pressures limiting use of external legal advisers
- Limited access to training and opportunities to refresh skills
- Ensuring confidentiality of information
- Complying with SRA regulation

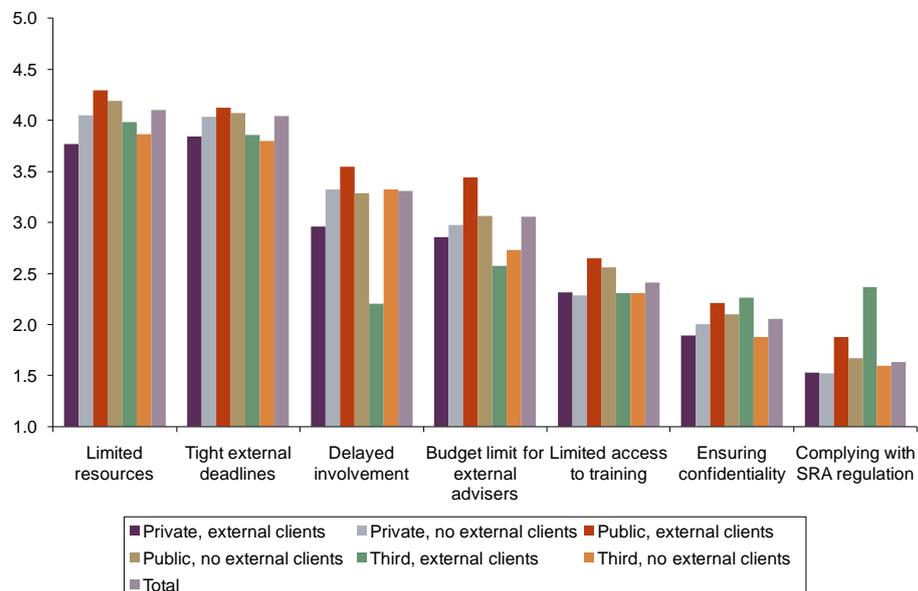
⁵⁷ Sako, M. (2011), 'General Counsel with Power?', Saïd Business School, University of Oxford.

Figure 4.13 presents the *average* 'score' reported by respondents from each sector, such that comparisons can be drawn between in-house solicitors working in different types of organisation. Figure 4.14 then presents the distribution of views grouping all respondents together.

The key findings can be summarised as follows.

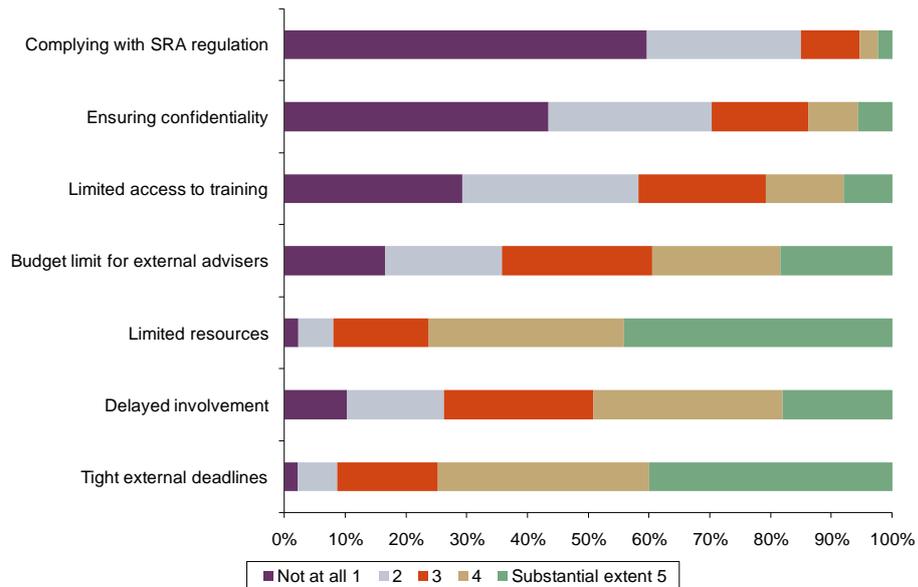
- Limited resources and tight external deadlines are substantial challenges that in-house solicitors across all sectors commonly face. As shown in Figure 4.13, the average ranking provided by respondents from all types of organisation is 4 out of 5. Figure 4.13 shows that 40% of all respondents identified limited resources and tight external deadlines as presenting a challenge to a 'substantial extent' in the past 12 months
- Delayed involvement is also a common challenge in the private and public sectors, but the results are mixed for the third sector, with organisations providing legal services to external clients not finding this to be such a problem. Figure 4.14 also suggests that, while an important challenge for many respondents, it is not as severe a challenge for many respondents as limited resources or tight external deadlines. While a similar, large proportion of respondents (30%) ranked 'delayed involvement' as 4 out of 5 as for limited resources and tight external deadlines, the proportion of respondents ranking delayed involvement at 5 is lower at 20%
- On the other hand, complying with SRA regulation is not viewed as a significant challenge for most respondents. On average across all respondents, SRA compliance was given a ranking of 1.6 out of 5. Nevertheless, there is some variation in views; as shown in Figure 4.14, 5% gave SRA compliance a 4 or 5 out of 5. Such respondents are spread across all sectors, but are most concentrated in advice centres, law centres and the CPS, where around 25% of respondents ranked SRA compliance 4 or 5

Figure 4.13 Challenges experienced in the past 12 months, by organisation type



Note: The question asked was: 'Over the past 12 months, to what extent have the following [as indicated in the figure] presented challenges? Please rank from 1 to 5, where 1 is not at all and 5 is to a substantial extent.' Based on 2,013 respondents. There were no 'Don't know' responses.
Source: Oxera analysis of responses to question 23.

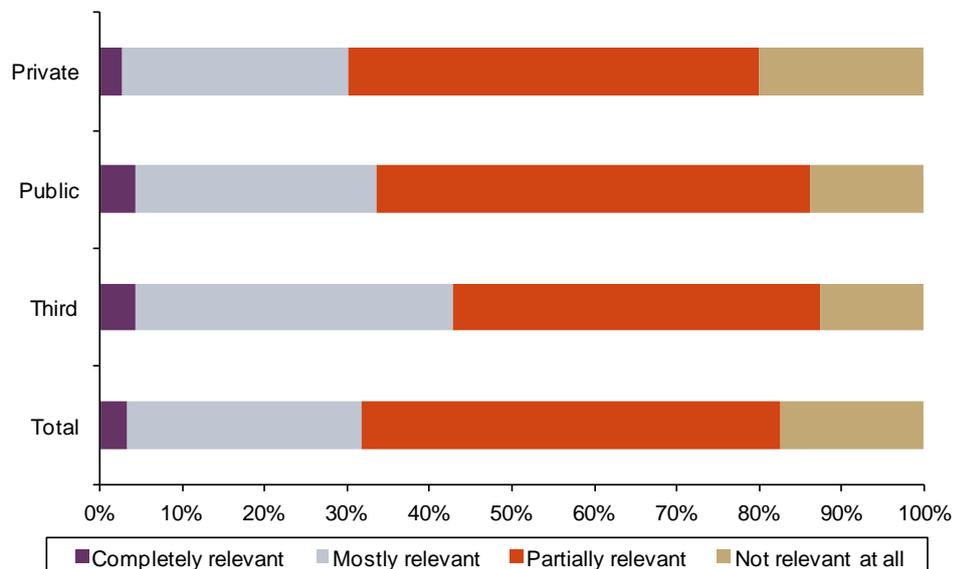
Figure 4.14 Challenges experienced in the past 12 months, all organisations



Note: The question asked was: ‘Over the past 12 months, to what extent have the following [as indicated in the figure] presented challenges? Please rank from 1 to 5, where 1 is not at all and 5 is to a substantial extent.’ Depending on the challenge, based on 1,943–2,003 respondents, 10–70 respondents answered ‘Don’t know’. Source: Oxera analysis of responses to question 23.

The survey also asked: ‘To what extent do you think the SRA makes the regulatory outcomes it expects you to deliver relevant for in-house solicitors?’ As shown in Figure 4.15, there is a small amount of variation in the views of the in-house solicitors from different sectors. While the majority of respondents consider SRA regulation relevant to a certain degree, a significant minority (20%) do not consider it to be relevant at all.

Figure 4.15 Relevance of SRA regulation



Note: The question asked was: ‘To what extent do you think the SRA makes the regulatory outcomes it expects you to deliver relevant for in-house solicitors?’ Based on 2,013 respondents. Source: Oxera analysis of responses to question 24.

A follow-up question investigated whether time taken or financial cost presented were of a burden in relation to complying with SRA regulations. The responses showed that for most respondents SRA compliance is not considered a great burden, either in time or cost.

- 3% ‘strongly agree’ and 7% ‘agree’ with the statement: ‘complying with SRA requirements takes up too much time’
- 5% ‘strongly agree’ and 11% ‘agree’ with the statement: ‘complying with SRA requirements costs too much’

These findings contrast with the views of solicitors working in private practice, as reported in SRA (2013).⁵⁸ In response to similar questions:

- 23% ‘strongly agree’ and 21% ‘agree’ with the statement: ‘complying with OFR (Outcomes Focused Regulation, the SRA’s new approach to regulation) takes up too much time’
- 16% ‘strongly agree’ and 18% ‘agree’ with the statement: ‘complying with OFR costs too much money’

4.5.2 Working environment

Table 4.7 presents the average hours worked by in-house solicitors in a typical working week, alongside average salaries and years of experience by type of organisation. This shows that in-house solicitors working in the private sector work on average longer hours than in all other sectors (44 hours per week compared with around 40 hours per week in other sectors), but also receive higher wages: around £100,000 compared with around £50,000 in the public sector and between £35,000 and £65,000 in the third sector.

Table 4.7 Working environment

	Average weekly working hours	Average experience (years)	Average salary (£)
Private, external clients	44	14	95,000
Private, no external clients	44	15	110,00
Public, external clients	39	17	50,000
Public, no external clients	38	15	50,000
Third, external clients	38	10	35,000
Third, no external clients	40	15	65,000
Total	41	15	80,000

Note: The questions asked were: ‘In a typical working week, how many hours (approximately) do you work at your main place of employment as an in-house solicitor?’, ‘Excluding any career breaks from the legal profession, how many complete years of post-qualifying experience (PQE) do you have?’ ‘What is your estimated gross annual salary for the financial year 2012/13 (approximately)?’ Based on 2,013, 2,013 and 1,850 respondents respectively.

Source: Oxera analysis of questions 18, 20 and 21.

The salaries reported by participants from the private sector in this survey are broadly in line with those reported in other sources. For example, Hudson Legal (2012) reports average salaries for Heads of Legal working in London or the Home Counties of between £100,000

⁵⁸ SRA (2013), ‘Measuring the impact of Outcomes-focused Regulation (OFR) on firms’, February.

and £125,000 according to the sector of their organisation, and to be around £75,000 elsewhere.⁵⁹

Another finding from Table 4.7 is that, in the private and third sector, significantly higher salaries are reported on average if the organisation does not provide services to external clients. The difference is most substantial in the case of third sector organisations, perhaps reflecting the different roles played by in-house legal teams in such organisations. In third sector organisations not providing legal services to external clients, in-house solicitors commonly provide functions similar to those in private sector organisations. For example, as shown in Table 4.5 (section 4.4) transactional legal services is the top activity provided by in-house solicitors in both private and third sector organisations without external clients.

Long working hours can be considered a challenge. Table 4.8 presents some metrics to explore the extent to which in-house solicitors may be ‘over-worked’.

The Working Time Directive governs the number of hours that EU citizens can work per week.⁶⁰ One of its conditions provides for a right to work no more than 48 hours per week (although individuals can choose to work more and in effect opt out of the protection provided by the Directive). As shown in Table 4.8, in most cases, this regulation is complied with in the public and third sectors—around 10% of the respondents reported that they work more than 48 hours. However, in the case of private organisations around 35% of the respondents reported that they work more than this. In addition, a small but significant proportion of the in-house solicitors who work for private organisations with no external clients work more than 60 hours a week on average.

Table 4.8 Excessive hours

	Proportion reporting:	
	48 hours or more (%)	60 hours or more (%)
Private, external clients	36	3
Private, no external clients	37	2
Public, external clients	8	[1]
Public, no external clients	11	[0]
Third, external clients	14	[0]
Third, no external clients	19	[0]
Total	26	1

Note: Square brackets indicate that the proportions reporting more than 60 hours for public and third sector organisations are not significantly different from zero.
Source: Oxera analysis of questions a18.

The distribution of wages was reported in order to assess whether low wages were particularly prevalent. This analysis found a small proportion of respondents (1%) report earning £20,000 or less. However, three-quarters of these solicitors worked less than 20 hours a week. 3% of respondents earn between £20,000 and £30,000 and on average such solicitors work 37.5 hours a week, with the average weekly hours generally higher for respondents with less PQE.

⁵⁹ Hudson Legal (2012), ‘Hudson Legal Salary Guide 2012’, available at: <http://uk.hudson.com/Portals/UK/documents/SalarySurveys/legal-salary-survey-2012.pdf>, accessed April 11th 2013.

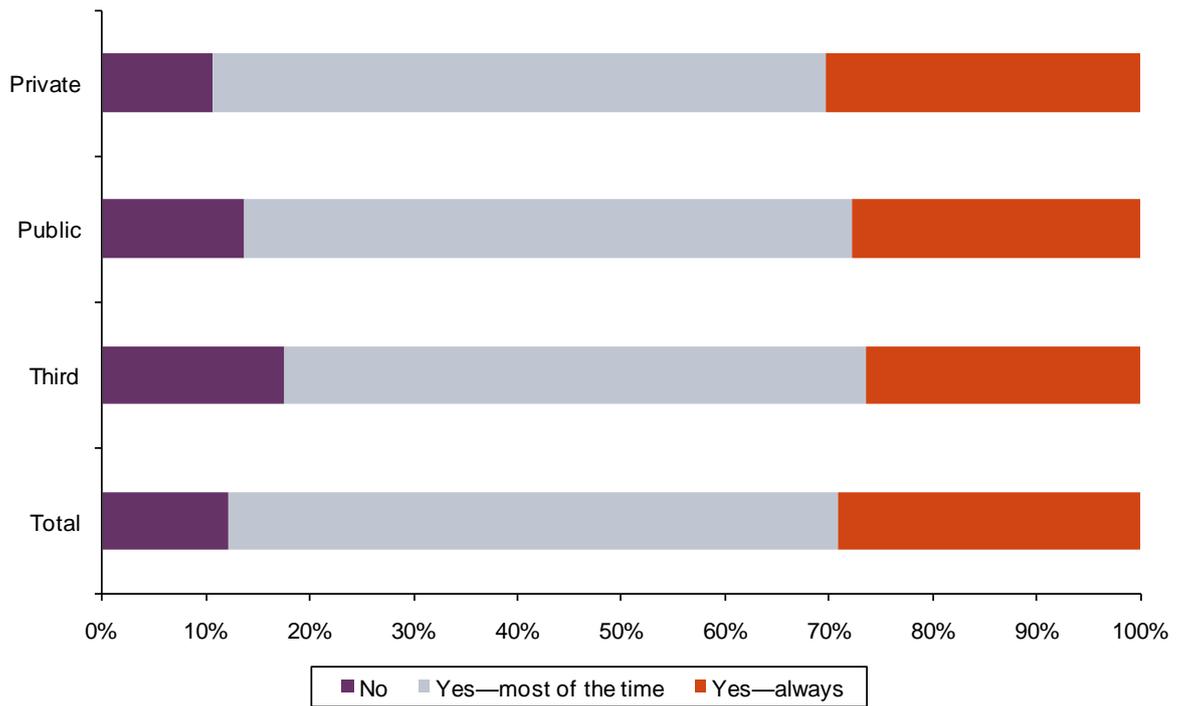
⁶⁰ ‘Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time’, *Official Journal L 299*, 18/11/2003 P. 0009 – 0019.

4.5.3 Support from employer

As shown in Figure 4.16, 10% of in-house solicitors think that their employer does not understand their professional obligations as a solicitor, and these solicitors are slightly more likely to work in the third sector.

Respondents provided a range of comments, including some that suggest that the employer places a high degree of trust in the legal team to manage their own professional responsibilities, or that the legal team is small compared with the size of the organisation and so, from a business perspective, the professional obligations of the legal team are of low relative importance. Others provided more concerning comments, suggesting past conflicts between the solicitor’s professional obligations and the decisions taken by the organisation.

Figure 4.16 Employer understanding of the professional obligations of in-house solicitors

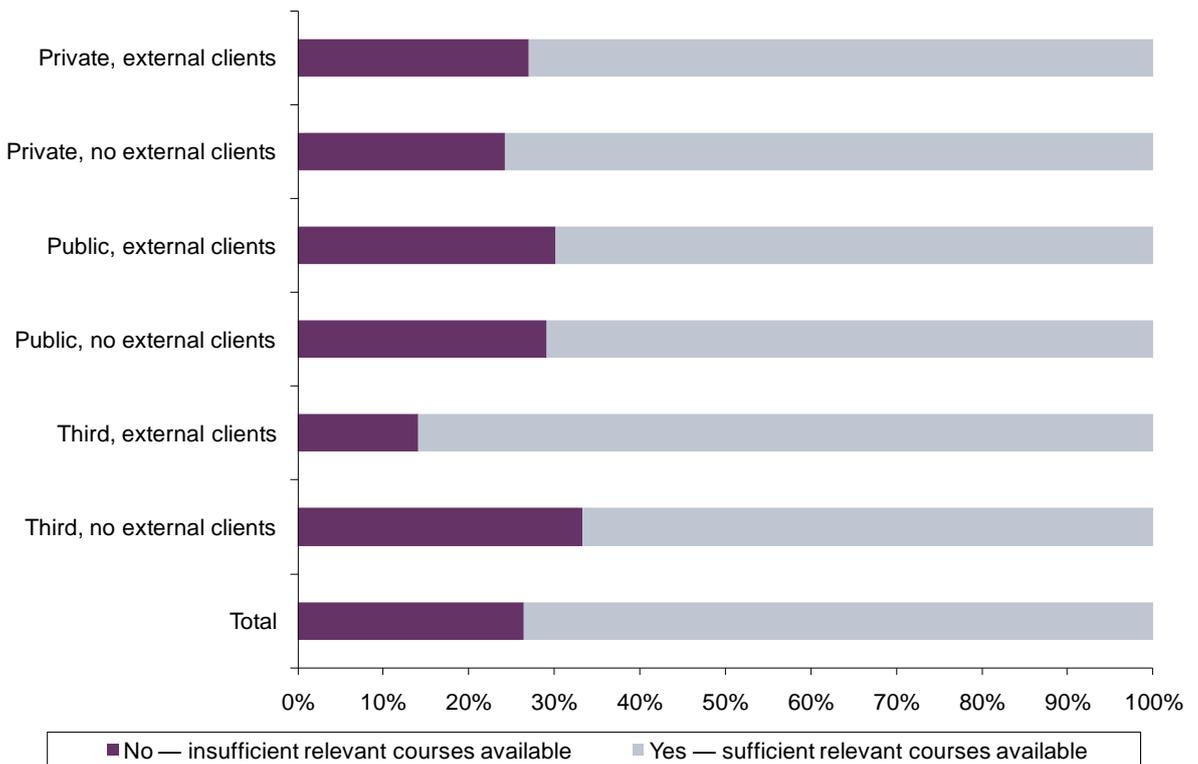


Note: The question asked was: ‘Do you think that your employer understands the professional obligations that you have as a solicitor?’ Based on 1,628 respondents.
Source: Oxera analysis of question 22.

In terms of ongoing training, on average across all in-house solicitors, 75% consider there are sufficient CPD courses available that are relevant to their roles as an in-house solicitors.

As shown in Figure 4.17, there is little variation in views across most types of organisation in which in-house solicitors work, although third sector organisations with external clients were most likely to state: ‘Yes—sufficient relevant courses available’. (Caution should be taken when interpreting the results for the third sector owing to the smaller sample size for this group.)

Figure 4.17 Availability of relevant continuing professional development (CPD) courses



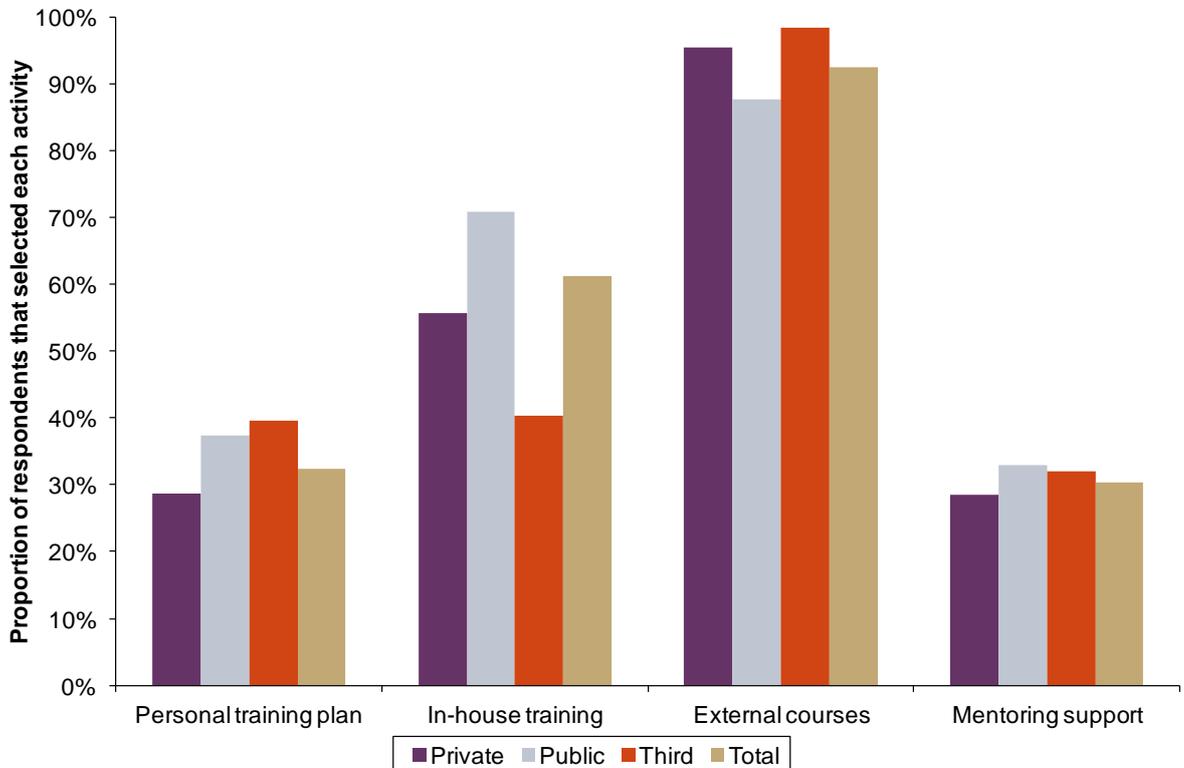
Note: The question asked was: ‘Are there sufficient CPD courses available that are relevant to your role as an in-house solicitor?’ Based on 2,013 respondents.

Source: Oxera analysis of responses to question 28.

To assess the extent to which organisations support the in-house solicitors’ CPD, participants were asked who paid for CPD activities. For the vast majority of respondents (95%), the employer covers the total cost of the CPD, and in a further 2%, the employer makes some contribution. (There is little variation across different sectors, with in-house solicitors employed within the private or public sector more likely to pay for their training than those in the third sector.)

As shown in Figure 4.18, there is some variation in the types of training and CPD activity undertaken by in-house solicitors working in different organisations. Those employed by third sector organisations tend to have less in-house training than the sample average. On the contrary, those employed by public organisations tend to have more in-house courses and fewer external courses than the sample average.

Figure 4.18 Types of training and continuing professional development activities followed



Note: The question asked was: 'Which of the following training and CPD activities do you follow?' Respondents were asked to tick all those that apply (and therefore proportions for each sector sum to more than 100%). Based on 2,013 respondents.

Source: Oxera analysis of responses to question a26.

4.5.4 Influence held by the in-house legal team

The analysis presented in section 4.3.4 shows that, in the majority of organisations (80%), the role of the legal team is to advise on legal matters, rather than make decisions. In some circumstances, the lack of ultimate control of the in-house legal team in handling legal matters could be of regulatory concern.

As presented in Figure 4.7, in 77% of organisations legal risk is managed as part of an organisation-wide process (by a team or an individual). This could be considered a positive finding since it potentially empowers the legal team to escalate concerns should they arise. However, the finding that 8% of respondents do not know how legal risk is managed, while a further 14% report that legal risk is managed outside an organisation-wide process, could be of potential regulatory concern.

4.5.5 Quality control

The analysis presented in section 4.3.5 shows that the majority of organisations (85%) have some form of quality control. Of particular relevance from a regulatory risk perspective, those organisations providing services to external clients are likely to have more formal procedures than otherwise.

4.6 Interaction with external clients

This section summarises views expressed by in-house solicitors in relation to the implications of SRA regulations for referral fees and the payment of services provided to external clients.

4.6.1 Referrals

In-house solicitors working in local government, advice centres or other organisations that provide legal services to external clients were asked whether they had received and/or provided referrals of potential legal work in the past 12 months. Overall, very few in-house solicitors responded that they had. In the case of local government respondents, only 5% have both received and provided referrals in the past 12 months, with the vast majority (88%) neither receiving nor providing referrals (the 8% remaining have either only received referrals, or only provided them). The sample of respondents from advice centres is too small to present precise results, but the picture looks very different. In this case, more than half of in-house respondents from advice centres have both received and provided referrals, with less than one-quarter neither providing or receiving them.

Those in-house solicitors who identified that they have received or provided referrals in the past 12 months were then asked whether any fees were paid or received for these referrals. Of these respondents (all from local government organisations), 5–10% reported that fees had been received or paid in at least some instances.

In terms of the areas of law for which referrals have been received or provided, there is a broad spread. Employment law was the most frequently stated response, closely followed by public administration law. Commercial property/conveyancing, planning, landlord and/or tenant, and children were also all relatively popular areas.⁶¹

4.6.2 Charging for services provided to external clients

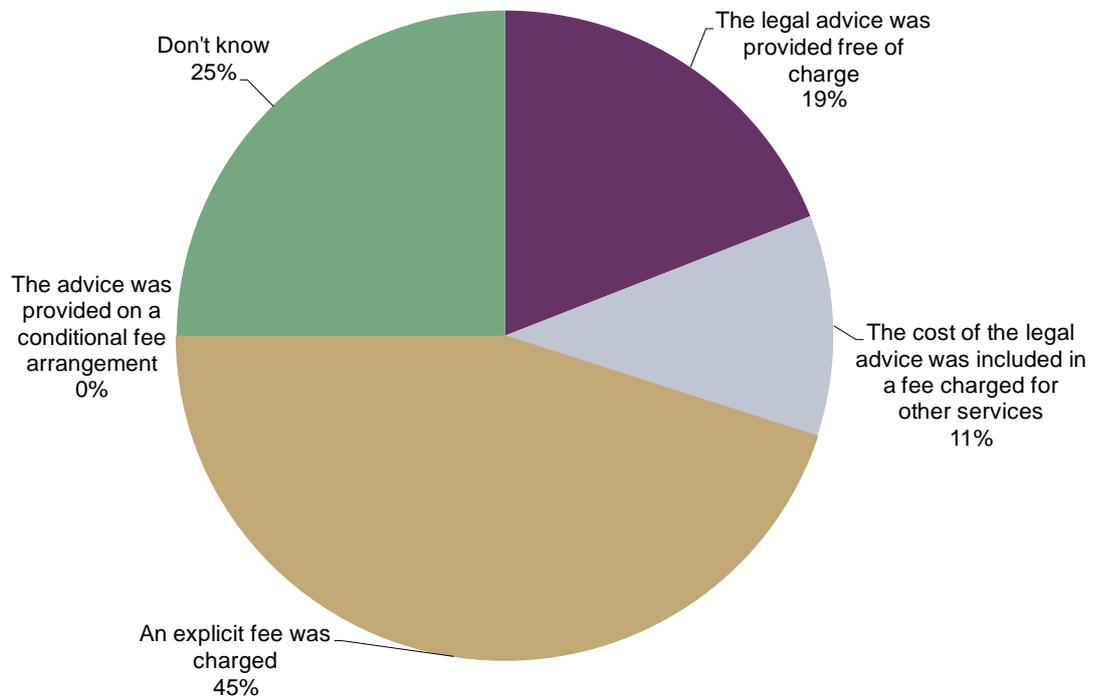
The SRA imposes restrictions on when an in-house solicitor can charge for legal services provided to external clients. In many cases charging is prohibited; however, in-house solicitors can apply to the SRA for a waiver to this rule (as they can for any rule imposed by the SRA). A number of in-house solicitors working in local governments providing services to other related local government organisations have been granted such a waiver.

All in-house solicitors that provide legal services to external clients were asked whether such clients had made any form of payment for the services.

⁶¹ Respondents were asked to select areas of law from a list of 29, with options to choose 'Other, please specify' and 'Don't know' (neither of which was chosen).

As shown in Figure 4.19, a sizeable proportion received an explicit fee. However, as almost all such solicitors work in local government organisations, it is unlikely that this poses a serious regulatory risk. Only one of the respondents charging an explicit fee worked in an advice centre. Of those responding 'Don't know', more than 90% worked in local government organisations and around 5% were from the private sector.

Figure 4.19 Methods of paying for legal services provided to external clients



Note: Question asked was: 'If external clients were provided with a legal service, how did they pay for this?' Base is the number of respondents who provide legal services to external clients (256 respondents).
Source: Oxera analysis of responses to question h4.

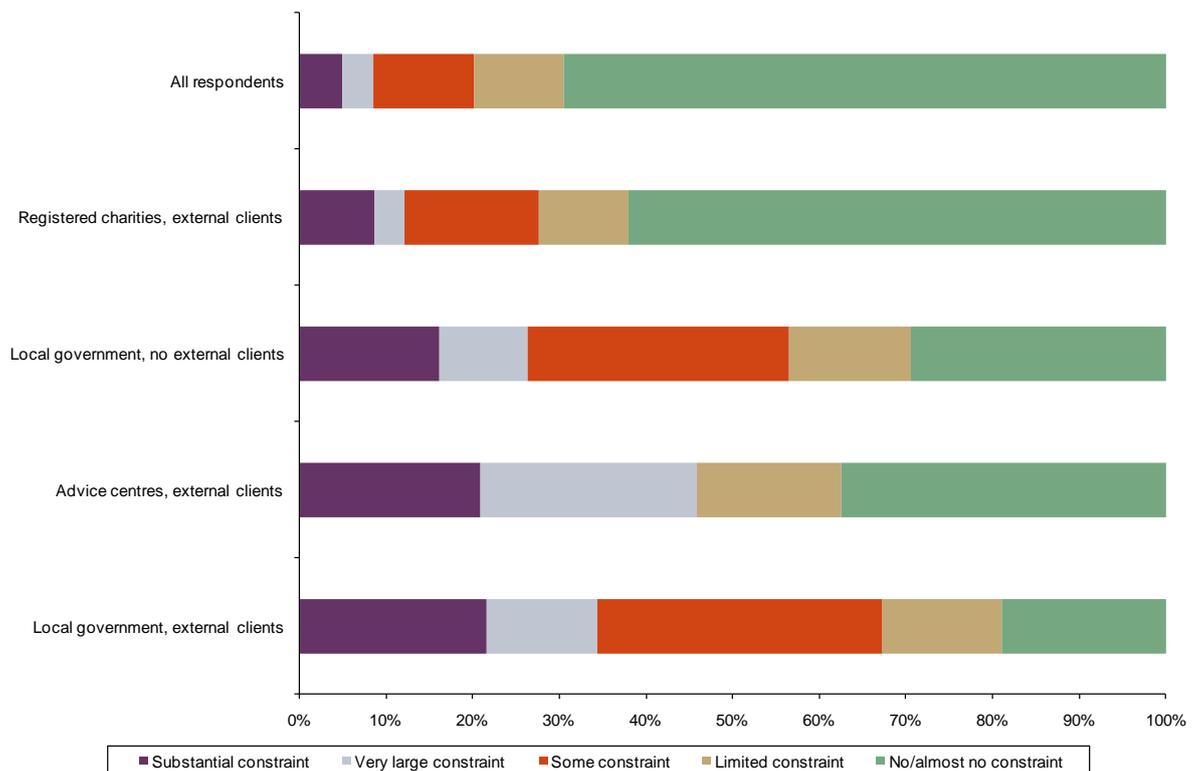
Respondents were asked about the extent to which the SRA's restriction on charging external clients for the provision of legal services was considered to act as a constraint on the activities of their organisation. The results were as follows:

- for the majority of in-house solicitors, the SRA's restriction on charging for legal services provided to external clients poses little constraint. 80% of respondents reported that the restriction posed 'limited' or 'no/almost no constraint', and 9% of respondents reported that it posed a 'substantial' or 'very large' constraint
- the respondents who find that the SRA's restriction imposes a substantial or very large constraint are concentrated in particular sectors: the third and public sector, especially those providing services to external clients
- there is a slight difference of view between respondents from advice centres and registered charities: almost half of respondents from the former considered the SRA's restriction to impose a very large or substantial constraint compared with around 10% of the latter
- respondents working in local government organisations were also more likely than average to report that the SRA's restriction imposes a very large or substantial constraint. This is the case regardless of whether the in-house solicitor currently

provides services to external clients, although the finding is more pronounced when it does

- around 35% of in-house solicitors currently charging an explicit fee consider that the SRA’s restriction on charging imposes a substantial or very large constraint on their organisation (not shown in Figure 4.20). This could indicate that such organisations are interested in broadening the supply of legal services provided to external clients in return for a fee, but are constrained by the SRA’s restriction

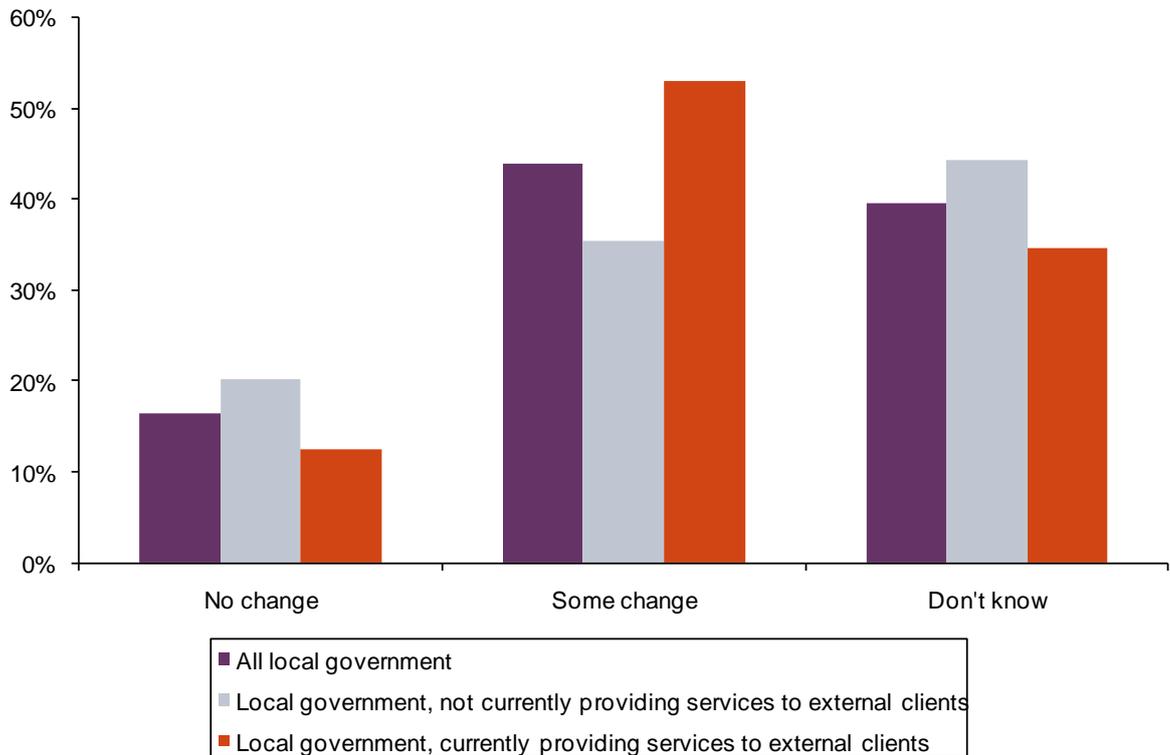
Figure 4.20 Constraint from SRA’s restriction on charging for legal services provided to external clients



Note: The question asked was: ‘To what extent does the SRA’s rule that restricts charging external clients for the provision of legal services by in-house solicitors constrain the activities of your organisation?’ Base is 1,644 responses (excluding Don’t know responses).
Source: Oxera analysis of responses to question h5.

Figure 4.21 shows how respondents employed in local government expected their organisations to respond to a removal of the SRA's restriction on charging for legal services.

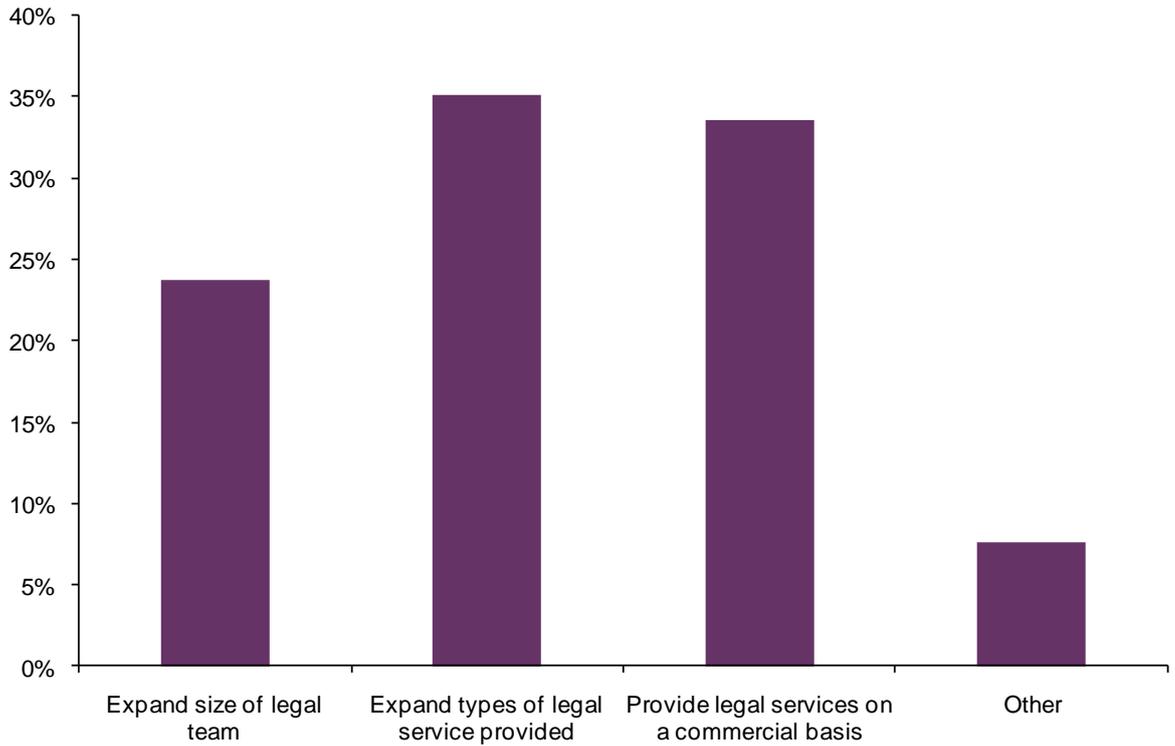
Figure 4.21 Removal of SRA's restriction on charging for legal services provided to external clients, response by local government



Note: The question asked was: 'How would the removal of the SRA's rule that restricts charging external clients for the provision of legal services by in-house solicitors affect your organisation?' Based on 455 respondents. Source: Oxera analysis of responses to question h7.

As can be expected given the responses in Figure 4.20 and analysed, about 15% of respondents from local government did not expect their organisation to respond to a removal of the SRA's charging restriction, compared with 45% who identified specific ways (presented in Figure 4.22). The remaining 40% responded 'Don't know'. Some of the other specified options included providing additional services to other local authority organisations or to other related organisations currently prohibited, such as academy schools for local authorities.

Figure 4.22 Ways in which local government organisations are expected to change



Note: The question asked was: 'How would the removal of the SRA's rule that restricts charging external clients for the provision of legal services by in-house solicitors affect your organisation?' Based on 316 responses (excluding those who did not expect the organisation to change, or responded 'Don't know').
Source: Oxera analysis of responses to question h6.

5 The employer's perspective

5.1 Approach

This section of the report presents the findings from the employer telephone survey. The overall purpose of this survey was to find out more about the demand side picture (i.e. why are in-house solicitors employed) and to also find out more about the employers views on becoming ABSs and the challenges, benefits and trends associated with employing in-house solicitors.

In the online survey of in-house solicitors, participants were requested to provide contact details for a senior representative of their organisation who would be able to answer questions about the legal team.⁶² The sample base for this employer survey was formed from 525 contact details provided by a wide range of organisations. The survey resulted in 213 completed questionnaires.

This method of collecting contact details may have introduced a degree of selection bias—for example, if in-house solicitors were more likely to give contact details for certain types of employer (e.g. perhaps employers with views similar to their own). This bias cannot be mitigated by weighting the sample in the same way as was possible for the survey of in-house solicitors because population statistics are not available for employers. Nevertheless, as the first large-scale survey of employers of in-house solicitors, the results can be considered to provide valuable new insights into the market for in-house solicitors.

Participants in the employer survey were asked about their level of legal oversight in order to verify whether their views could be taken to represent those of employers of in-house legal teams. As demonstrated in Table 5.1, the majority of participants have oversight of the full legal capabilities in their organisation.

⁶² The full text of the question can be found at the end of the employee questionnaire in Appendix 1.

Table 5.1 Summary of sample

	Number of respondents	'I oversee the:		n/a: the respondent is the only legal adviser
		full legal team'	part of the legal team'	
Private sector	90	50	33	7
Commercial organisations excluding insurers and claims management companies	80	45	28	7
Insurers	6	3	3	0
Membership associations (including industry associations)	4	2	2	0
Public sector	92	46	44	2
Local government	63	36	27	0
Crown Prosecution Service	8	2	6	0
Central government body	3	0	3	0
Regulatory body	4	2	2	0
Educational establishment (state or private)	5	2	1	2
Other central government-funded body	4	3	1	0
National Health Service	3	0	3	0
Armed forces	1	1	0	0
Courts—excluding clerks to Justice	1	0	1	0
Third sector	16	12	3	1
Registered charity	11	7	3	1
Advice centre	3	3	0	0
Law centre	1	1	0	0
Religious organisations (e.g. churches)	1	1	0	0
Not specified	4	3	1	0
Total	202	111	81	10

Note: The question asked was: 'Do you oversee the full legal capabilities in your organisation?'

Source: Oxera analysis of question A2.

Private sector employers were asked to provide approximate turnover figures for the last year. Their responses showed a median value of £300 million, although there was significant variation in the values given. This included some very large organisations with turnovers above one billion.

As with the online survey of in-house solicitors, responses have been analysed to explore any differences in views in terms of whether the legal team provides services to external clients. As presented in Table 5.2, more than half of the respondents are employers at organisations that do so. This is a much higher proportion than for the in-house solicitor survey.

To a large extent (80%), private and public sector organisations provide external legal services to other organisations only, not to individuals. The reverse holds for employers of third sector organisations.

Table 5.2 Number of respondents providing services to external clients, by sector of respondent

	Provides external services to individuals who are customers of the organisation	Provides services to any type of external client	Total number of respondents
Private sector	6	33	90
Public sector	11	63	92
Third sector	8	10	16
Total	25	106	198

Note: Organisations that have external clients were identified by their responses to questions A3A and A3B. Those who answered at least one of 'Providing legal advice to individuals', 'Providing legal advice to organisations/businesses which are customers of your organisation' or 'Providing legal advice to organisations/businesses which are related to, but not part of, your organisation (e.g. schools for local authorities)' were categorised as having external clients. This might exclude some respondents who did not identify these as one of their 'main activities'. Although the questions asked about the three main activities, respondents tended to selected more than three activities; therefore the risk of excluding respondents is negligible. Source: Oxera analysis of questions A3A and 3B.

In general, the analysis presented in this section has been carried out distinguishing between organisations with no external clients and those with such clients; however, where relevant, the group of respondents whose organisation has individuals as external clients have also been analysed separately.

Owing to the small sample size for respondents from third sector organisations, the views expressed by this group have been analysed on an aggregate level and are not split according to whether or not they have external clients.

5.2 Role of the legal team

In order to gain a general understanding of the role of the in-house legal teams, the survey explored the type of work they provide and their interaction with external legal advisers.

5.2.1 The role of the in-house legal team

The services most frequently cited by employers from the private sector as main services provided by in-house legal teams were commissioning and managing external legal advisers, negotiation, and transactional legal work.⁶³ This shows a slight difference in views to those expressed by employees, where neither of the first two options made the top three most frequently cited services, and transactional services were the most frequently mentioned (Table 4.5).

The views expressed by public sector employers more closely match those of their employees, with respondents to both surveys citing contentious legal work the most frequently. In addition, both employees and employers from public sector organisations with external clients highlighted the importance of 'providing legal advice to organisations/businesses which are related to, but not part of, your organisation'. This option was the second most frequently cited service by employers, and third most frequently cited service by employees.

The most frequently cited activities by employers from the third sector generally related to providing legal services to the organisation, such as negotiation and assessing the organisation's compliance with its legal and regulatory requirements. This is comparable to the views expressed by employees in third sector organisations.

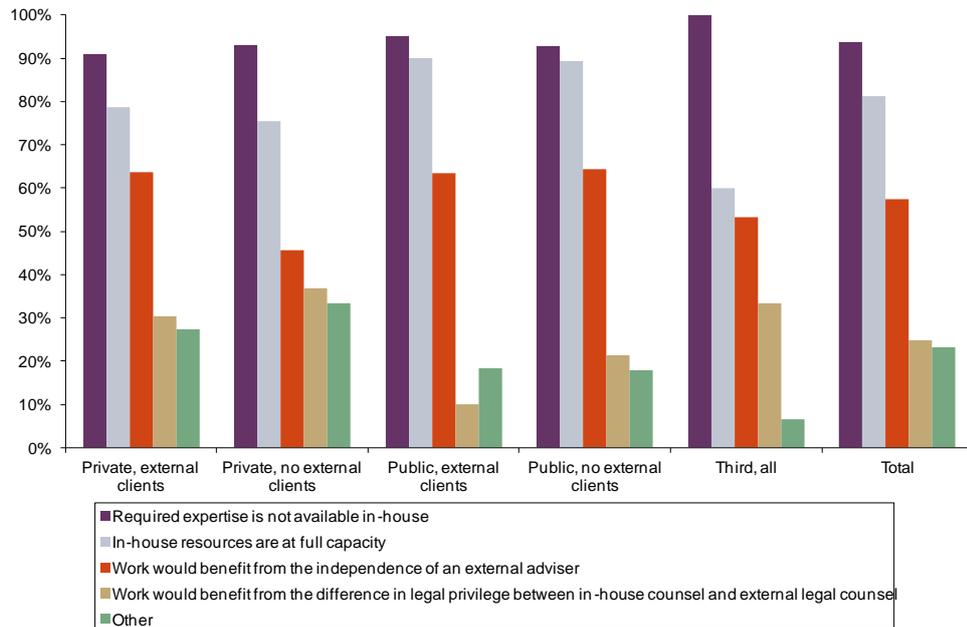
5.2.2 Use of external legal advisers

Employers were asked whether their organisation uses external legal advisers (question A4). With a few exceptions in the public sector, all employers answered that their organisation did use such advisers. The reason given most frequently by employers for doing so was that the required expertise is not available in-house, similar to the survey of in-house solicitors (see Figure 4.5).

⁶³ Oxera analysis of questions A3A and A3B.

As shown in Figure 5.1, the reasons for using external legal advisers provided by employers show little variation across groups of organisations, although capacity issues appear to be relatively more important for public organisations.

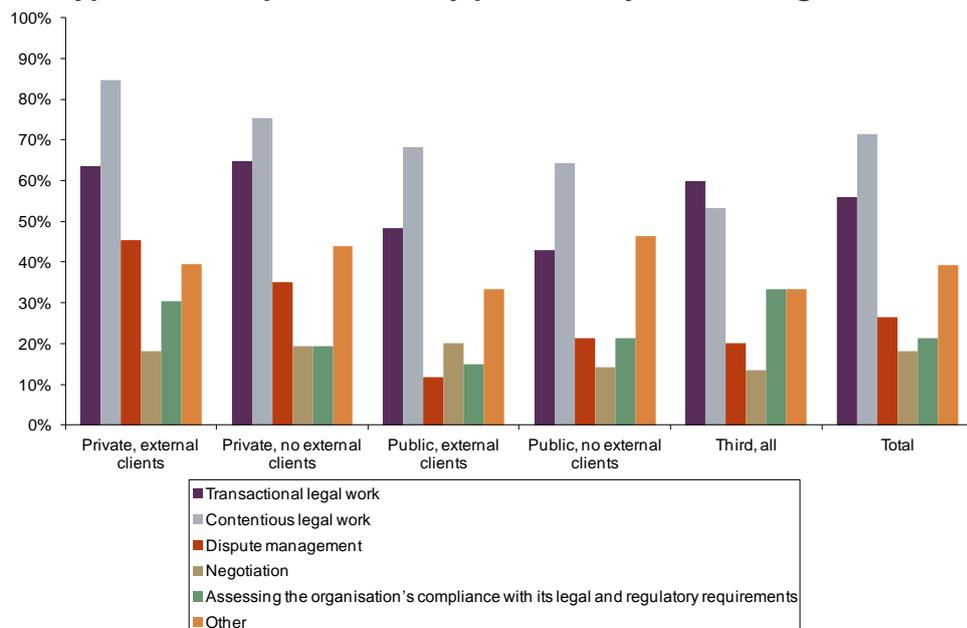
Figure 5.1 Reasons for using external legal advisers (% of category of respondents)



Note: The question asked was: 'Why do you use external legal advisers? Is it because...?' Five options were provided, as indicated in the figure. Based on 193 respondents.
Source: Oxera analysis of question A5.

Employers were asked to choose from a list of options which types of legal work were predominately provided by external legal advisers rather than the in-house legal team. The results, in Figure 5.2, show that employers from the public and private sector cited contentious legal work most frequently.

Figure 5.2 Types of work predominantly provided by external legal advisers



Note: The question asked was: 'Which of the following types of legal work [as indicated in the figure] are predominantly provided by external legal advisers (rather than by the in-house legal team)?' Based on 193 respondents.
Source: Oxera analysis of question A7.

On average, the value of external legal spending reported by participants from the private sector represents around 0.5% of turnover. However, there are substantial differences in this sector, with 6 of the 41 private sector respondents from the sector reporting external legal spend of at least 5% of turnover, and ten reporting external legal spend of 0.1% of turnover or less.

There are also substantial differences between groups of organisations in the amount they spend on external legal advice. Table 5.3 presents some summary statistics on the amount spent on such advice by each sector of organisation. This shows that the averages for private and public organisations are affected by a few large numbers: three-quarters of the respondents in the private sector spend less than £2m, compared with an average of £18.6m, while three-quarters of public organisations spend £0.4m compared with an average of £1.7m.

An outlier respondent from the private sector who reported spending £1 billion on external legal advisers (equivalent to 10% of the organisation's turnover) reduces the average spend for this sector to £5m. This respondent identified contentious legal work as the type of legal work predominately provided by external legal advisers.

Table 5.3 Descriptive statistics of external legal spending (£'000)

	Private	Public	Third
Minimum	10	2	4
First quartile	100	60	20
Median	500	200	60
Average (arithmetic mean)	18,607	1,730	154
Third quartile	1,950	413	225
Maximum	1,000,000	70,000	750

Note: The question asked was: 'Please estimate the amount spent on external legal advisers in the last 12 months.' Based on 137 respondents.
Source: Oxera analysis of question A9.

5.3 Trends expected by employers

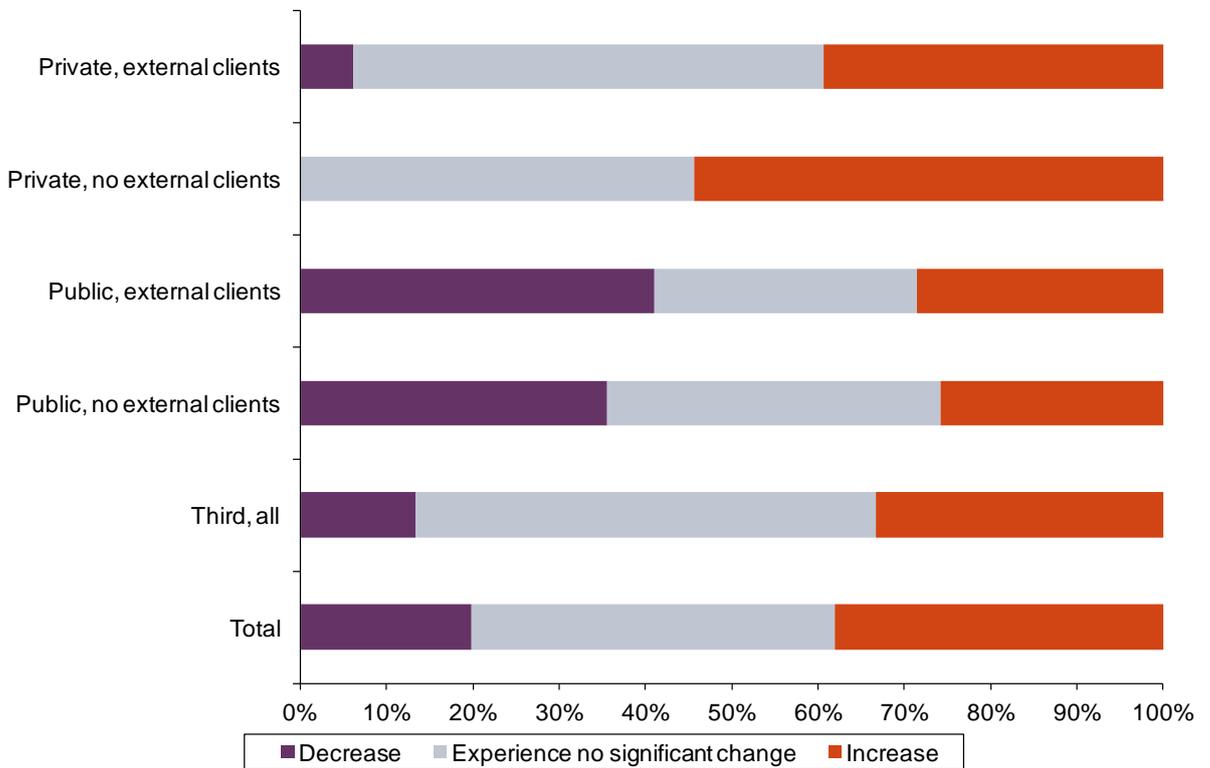
Having gained a view on the current role of the legal teams, employers were asked to provide their views on the trends they expect, if any. In this context, they were also asked about their awareness of the introduction of ABSs and if they intend to use this opportunity.

5.3.1 Trends regarding the in-house legal team

As found in the survey of employees, the growth of the legal team is stronger among private sector respondents than those from the public or third sector.

Almost all respondents from private organisations expect their legal teams either not to change significantly or to increase in size. In comparison, about one-third of respondents from public organisations expect the size of their legal team to decrease.

Figure 5.3 Expected trend in the size of legal teams

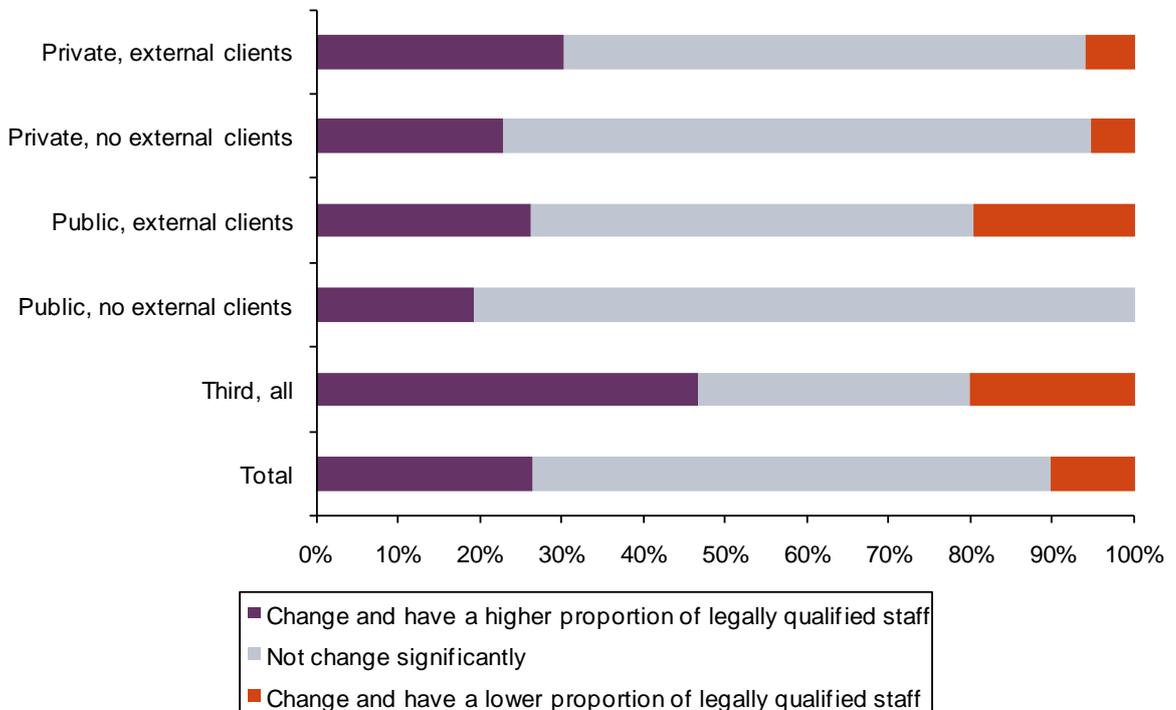


Note: The question asked was: 'Over the next three years, do you expect the size of the in-house legal team to...?' Based on 192 respondents. Six respondents answered 'Don't know'.
Source: Oxera analysis of question A13.

Around three-quarters of those who expect any trend, regardless of its direction, reported that this was part of an ongoing trend.

Across the whole sample, a greater proportion of respondents answered that they expect an increase in the proportion of legally qualified staff in their legal team than those who expect a decrease. However, as shown in Figure 5.4, most respondents from the public and private sector do not expect a change in this regard. The third sector stands out in this regard: almost half of these respondents expect a higher proportion of legally qualified staff in the next three years.

Figure 5.4 Expected trend in the composition of the legal team



Note: The question asked was: ‘Over the next three years, do you expect the level of qualification in the in-house legal team to...?’ Based on 197 respondents. One respondent answered ‘Don’t know’.
Source: Oxera analysis of question A15.

Employers of private organisations were also asked whether they have legal teams overseas and whether they expected any growth in the overseas presence of their legal teams over the next three years.

Around 40% of private sector respondents reported that some of their in-house legal team was based in offices overseas, nearly all of which cited assistance in the organisation’s international activities as the reason for setting up such offices. In terms of trends going forward, around one-quarter of private sector respondents (mostly those without external clients) answered that they expect to have more legal staff abroad.

5.3.2 ABSs

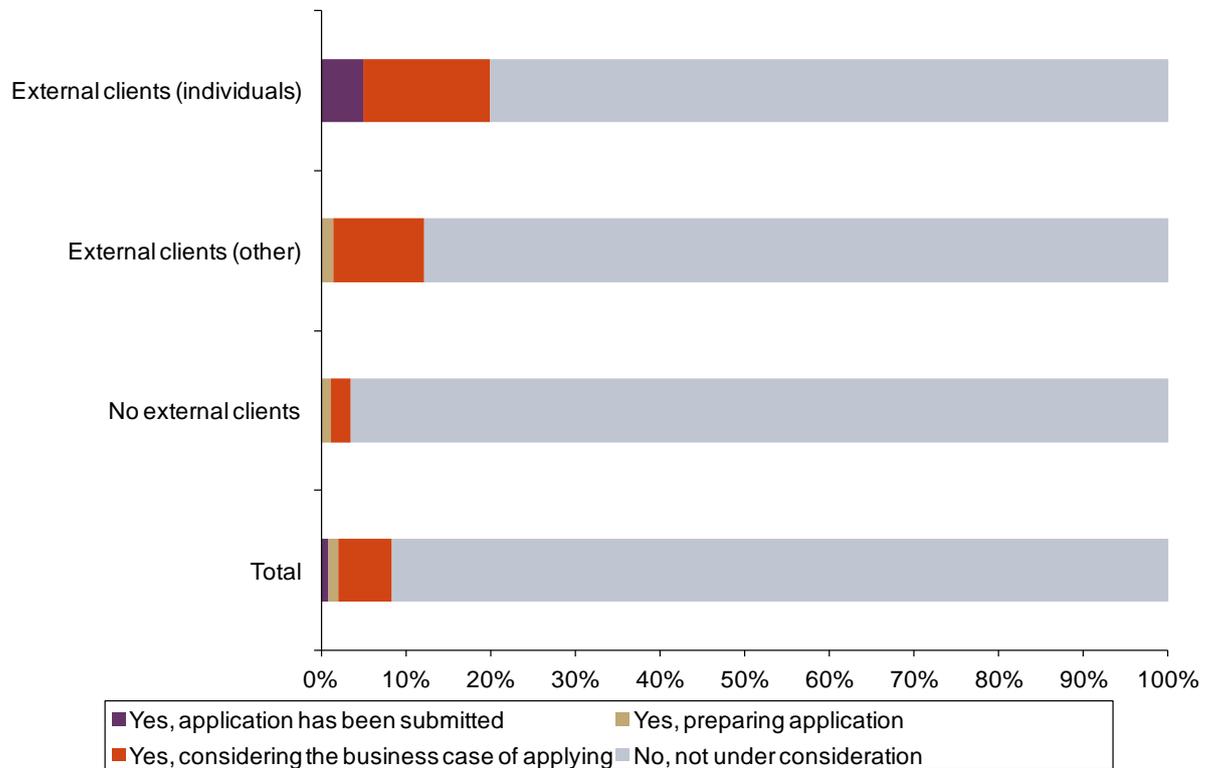
This survey provided an opportunity to explore the extent to which organisations with in-house legal teams might take advantage of the introduction of ABS and offer legal services to external clients on a commercial basis.

Awareness of ABSs among survey participants is high. Close to 90% of respondents reported that they were ‘fully aware’ or ‘aware about the legal change, but not the details’.

The second question looked at the degree of interest in applying to become a licensed ABS. Those respondents who were aware of ABSs and the scope of ABSs were also asked about their interest in applying to become a licensed ABS. As shown in Figure 5.5, one respondent (from a private organisation) has already submitted an application. A further two (one from a

private organisation and one from a public one) are in the process of preparing an application, while 12 are considering the business case (roughly split across each sector: four from the private sector, five from the public sector and three from the third sector).

Figure 5.5 Interest in applying to become a licensed ABS



Note: The question asked was: 'Is your organisation considering applying to become a licensed ABS? If so, what is the status of its progress?' Based on 171 respondents. Six respondents answered 'Don't know'. Source: Oxera analysis of question A19.

In total, 15 respondents (5–10% of the sample) are considering or preparing an application. This group is split roughly evenly between those that provide legal services to external clients (8) and those that do not (7). By applying this proportion to the total number of firms known to employ in-house solicitors, would suggest that somewhere between 300 and 700 firms are considering applying to become an ABS.

While this is a small number of organisations, this could have a significant impact on the market for external legal advice, depending on the size and market position of the organisation involved. Although the turnover figures are available for only a few of these companies (therefore examining them is inconclusive), the size of their legal teams can shed some light on their likely impact. The average size of their legal team is around 33, which suggests that even if all these respondents decide to apply for ABS, and their applications are successful, it is unlikely that they would have a material impact on private law firms.

If the full population of employers of in-house solicitors are of a similar view on ABS applications as the employers participating in this survey, this would suggest that 1,250–2,500 in-house solicitors could move into private practice without changing their place of employment.⁶⁴ This is a relatively small proportion. For example, it represents between 1% and 3% of the current population of solicitors working in private practice,⁶⁵ or, equivalently,

⁶⁴ 1,250–2,500 is 5–10% of 25,602, the total population of in-house solicitors.

⁶⁵ Calculated according to the number of solicitors in private practice between August 2010 and July 2011 (87,973), as reported in The Law Society (2011), 'Trends in the solicitors' profession: annual statistics report 2011', prepared by Nina Fletcher, research unit.

about 20–50% of the number of solicitors entering the profession each year through traineeships.⁶⁶

While the views expressed by employers of in-house solicitors do not suggest a substantial impact on the general market for external legal advice, the impact on the provision of legal advice by the third sector could be quite substantial. Three of the 16 employers from the third sector that participated in this survey are considering the business case for making an ABS application. Should these views reflect the views of all third sector employers, this suggests that one-third of advice centres could shift to become ABS.

Furthermore, the responses by third sector employers to this particular question may underestimate the true interest by such respondents in providing legal services on a commercial basis. This is because the SRA is currently developing a tailored ABS regime for non-profit organisations providing legal services to the public, and it is likely that many third sector organisations are waiting until the detail of this regulation is finalised before considering applying for ABS status. The SRA has indicated that, under the tailored regime for Special Bodies, regulation may be applied differently to take into account that these bodies are not commercially motivated.⁶⁷

⁶⁶ Calculated according to the number of new traineeships between August 2010 and July 2011 (5,411); between August 2009 and July 2010 (4,849); and between August 2008 and July 2009 (5,809), as reported in The Law Society (2011), 'Trends in the solicitors' profession: annual statistics report 2011', prepared by Nina Fletcher, research unit.

⁶⁷ See SRA website, FAQ: 'What happens if I am a Special Body?' available at <http://www.sra.org.uk/sra/legal-services-act/faqs/14-abs-what-changes-mean-for-me/What-happens-if-I-m-employed-by-a-special-body.page>, accessed April 14th 2013.

5.4 Benefits and challenges of having an in-house legal team

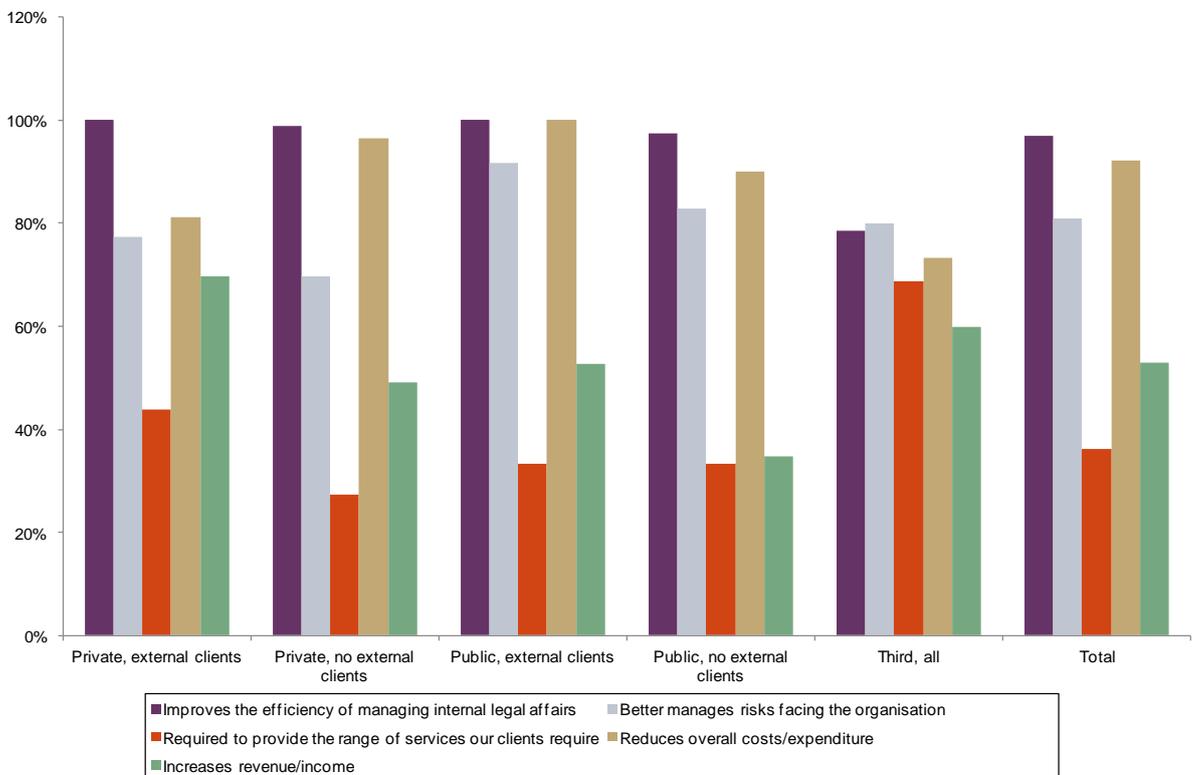
Employers were also asked about the benefits and challenges they face in relation to having an in-house legal team. Furthermore, they were asked to give a view on the extent of the cost—in time and money—that it takes to comply with the SRA’s regulations.

5.4.1 Benefits of the in-house legal team

The respondents almost unanimously mentioned ‘Improves the efficiency of managing internal legal affairs’ as a benefit of having an in-house legal team. This is closely followed by ‘Reduces overall costs/expenditure’ and ‘Better manages risks facing the organisation’.

It is worth noting that ‘Increases revenue/income’ seems relatively more important for private organisations with external clients than for other groups. In addition, as can be expected, ‘Required to provide the range of services our clients require’ was mentioned relatively more frequently by third sector organisations.

Figure 5.6 Benefits of having an in-house legal team



Note: The question asked was: ‘Which, if any, of the following benefits [as indicated in the figure] does the in-house legal team bring to your organisation?’ Based on 198 respondents.

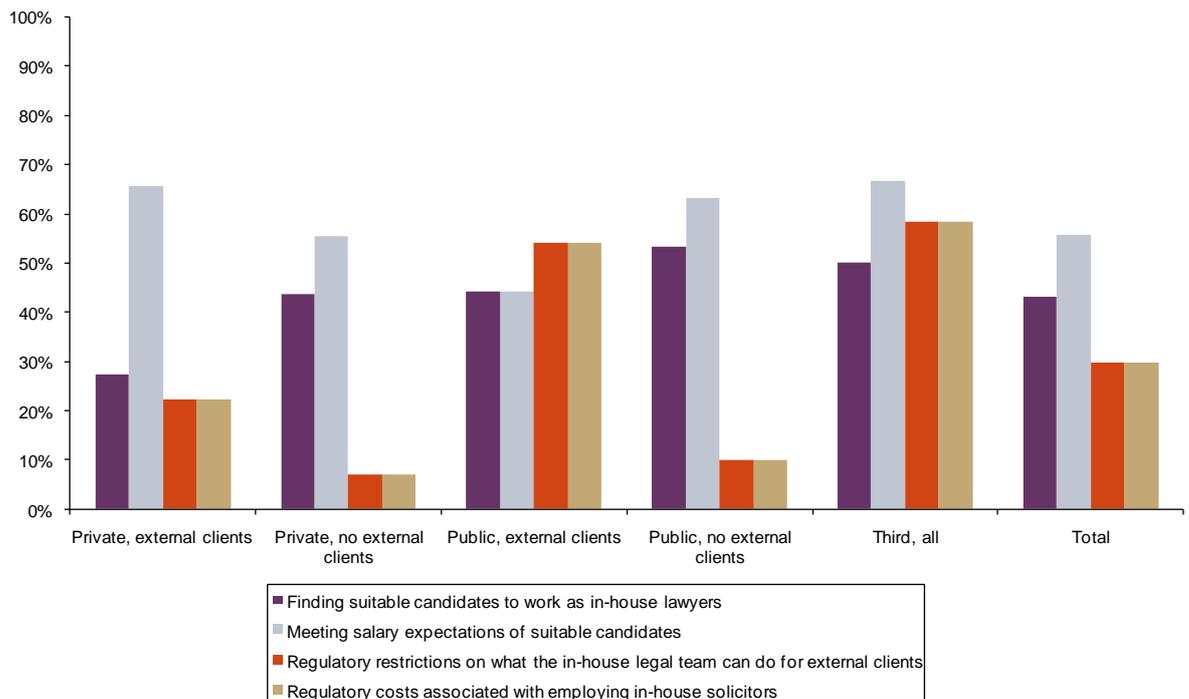
Source: Oxera analysis of question A12.

5.4.2 Challenges when using in-house solicitors

In general, respondents from the public sector (especially those with external clients) and from the third sector cited more challenges than those from private sector. Around half of the respondents from the public and third sector reported that all the potential challenges listed in the question applied to their organisation.

In terms of how challenges may vary between sectors, respondents from public organisations with external clients and the third sector were more concerned about regulatory restrictions and the regulatory costs associated with employing in-house solicitors than respondents from the private sector.

Figure 5.7 Challenges faced by employers



Note: The question asked was: 'Thinking about the way you use your in-house lawyers, are any of the following [as indicated in the figure] seen as challenges for your organisation?' Based on 198 respondents.
Source: Oxera analysis of question A11.

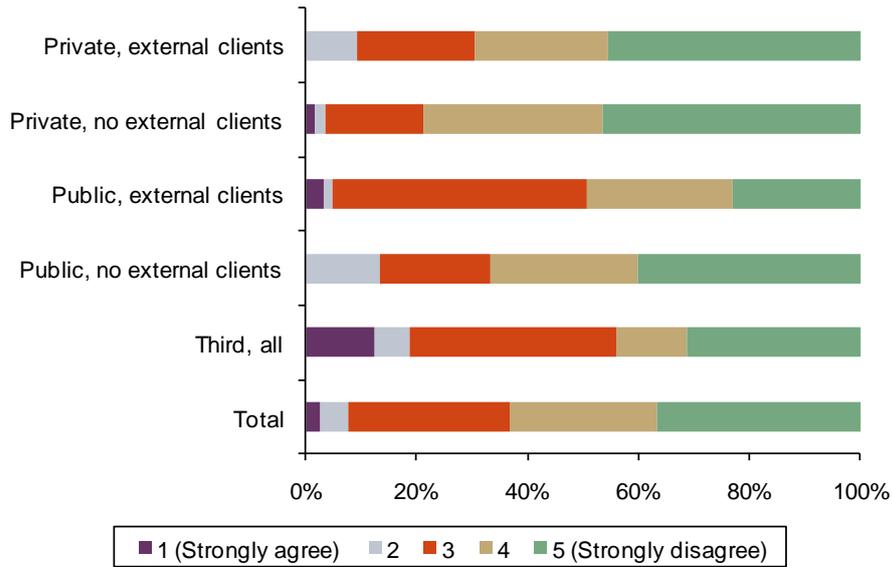
5.4.3

Compliance costs

As with the in-house solicitors that took part in the online survey, employers from the third sector report SRA compliance as more challenging than other employers. About 20% of respondents from the public sector either strongly agreed or agreed with the following statements: ‘Complying with SRA requirements takes up too much time’; and ‘Complying with SRA requirements takes up too much money.’

In comparison, less than 10% of private sector employers agree or strongly agree with either statement; while around 10% of public sector employers agree or strongly agree with both statements. Particularly in terms of time taken, employers at public sector organisations with external clients appear to feel more strongly than public sector organisations without (see Figures 5.8 and 5.9).

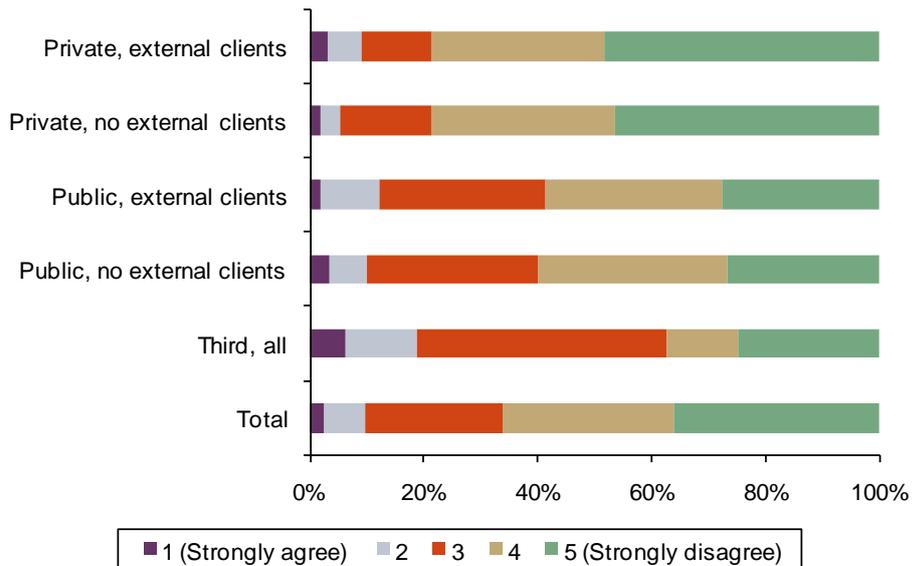
Figure 5.8 Compliance takes too much time



Note: The question asked was: ‘To what extent do you agree with the following statement, on a scale of 1 to 5, where 1 is strongly agree and 5 is strongly disagree?’ Based on 196 respondents. Two respondents answered ‘Don’t know’.

Source: Oxera analysis of question A11.

Figure 5.9 Compliance costs too much money



Note: The question asked was: ‘To what extent do you agree with the following statement, on a scale of 1 to 5, where 1 is strongly agree and 5 is strongly disagree?’ Based on 196 respondents. Two respondents answered ‘Don’t know’.

Source: Oxera analysis of question A26.

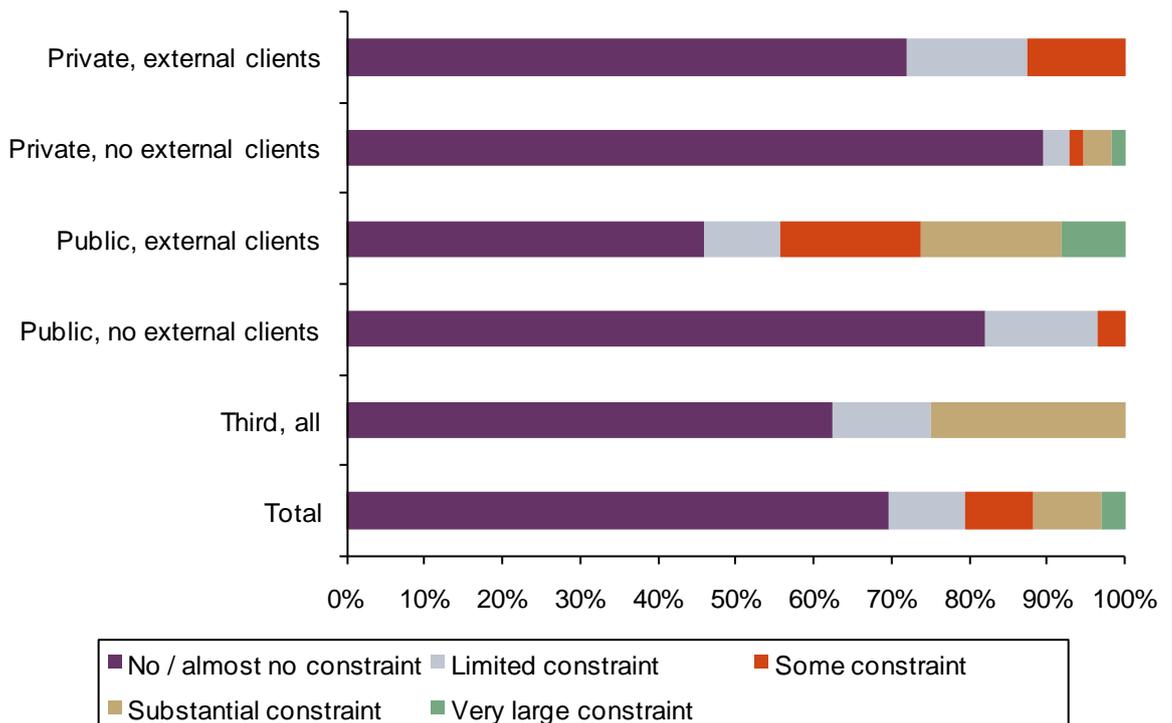
5.4.4 Regulatory risks: interactions with external clients

The survey also explored employers’ views on external client-related issues—specifically, the areas related to handling client money and restrictions on charging clients.

Around 10% of the sample replied that they handle client money in some way. The most frequently cited answer was that they manage funds on behalf of clients, customers or members.

Most respondents (around 70%) replied that SRA restrictions on charging clients for legal services do not constrain their organisation’s activities. However, a small but significant minority (around 10%) replied that these restrictions pose ‘substantial constraint’ or a ‘very large constraint’. The third sector and public organisations with external clients tend to perceive these restrictions as more of a constraint (see Figure 5.10).

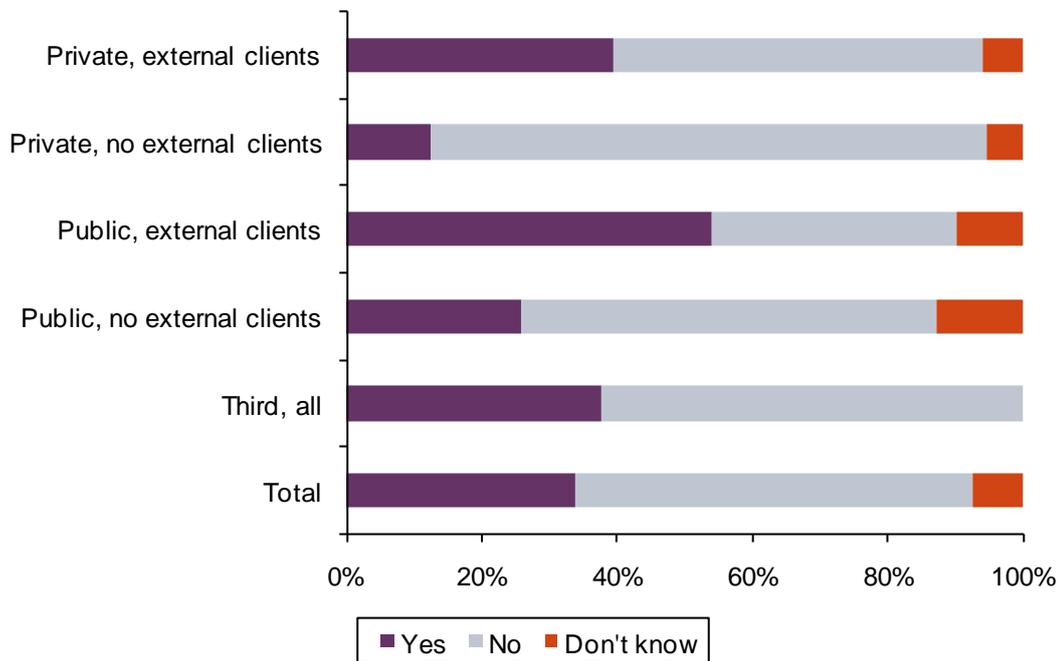
Figure 5.10 The extent of constraints from the restriction on charging external clients



Note: The question asked was: ‘To what extent does the SRA’s rule that restricts charging external clients for the provision of legal services by in-house solicitors currently constrain your organisation’s activities?’ Based on 194 respondents. Four respondents answered ‘Don’t know’.
Source: Oxera analysis of question A23.

If these restrictions were not in place, around one-third of the respondents would be interested in providing and charging clients for legal services. In line with the result that public organisations with external clients find the restriction the most constraining, it is in this sector that organisations are most likely to be interested in charging for their services (see Figure 5.10).

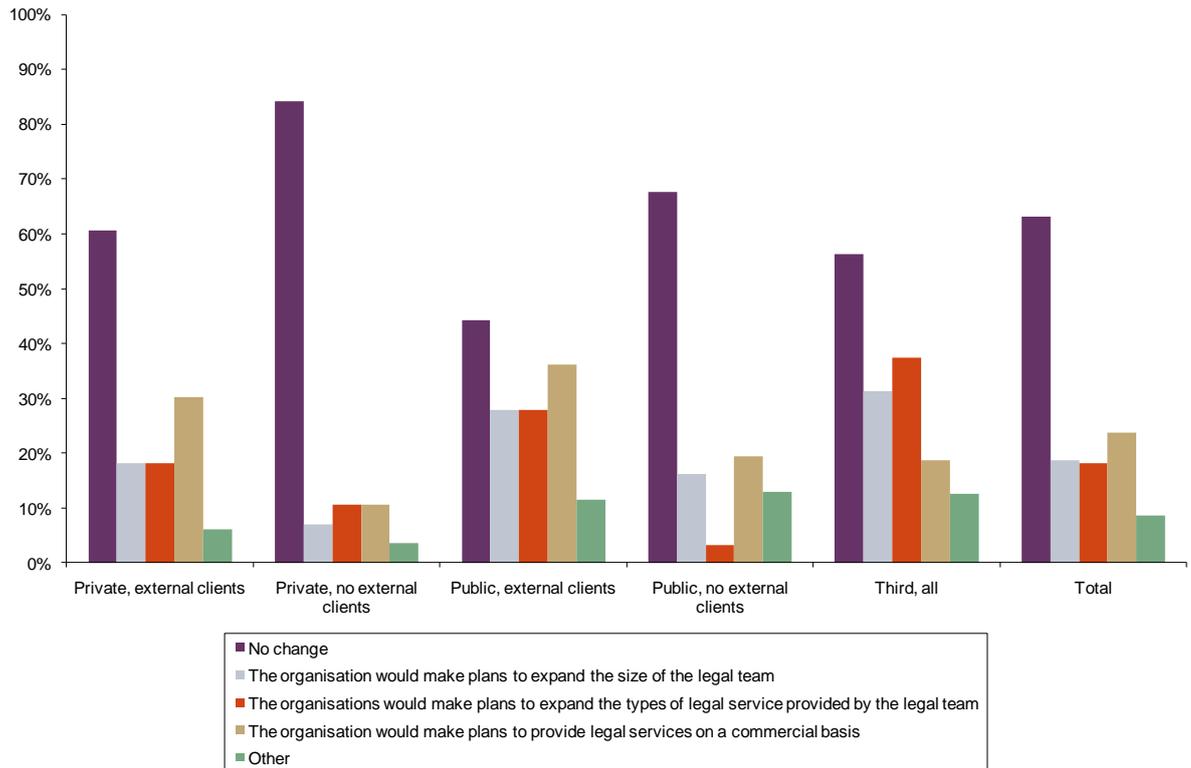
Figure 5.11 Interest in charging for legal services



Note: The question asked was: 'If regulatory restrictions were not in place, would your organisation be interested in providing and charging clients for legal services?' Based on 183 respondents. 15 responded 'Don't know'. Source: Oxera analysis of question A24.

A hypothetical question was asked to explore the potential reaction of organisations if the restriction were lifted. The results are summarised in Figure 5.12 and described below.

Figure 5.12 Effect of the removal of charging restrictions



Note: The question asked was: ‘How would your organisation be affected by the removal of the SRA’s rule restricting charging external clients for the provision of any legal services by in-house solicitors?’ Respondents were asked to name all effects that apply. Based on 198 respondents
Source: Oxera analysis of question A25.

In general, the majority of the sample (around two-thirds) would make no change at all. As one would expect, this is driven by the fact that most organisations that do not provide legal services to external clients (which represent around 60% of the sample) would not plan any change.

The remainder of respondents, approximately 35%, would make some plans in response. Relatively speaking, respondents from the public sector with external clients and respondents from third sector organisations indicated most frequently that the removal of the constraint would bring about changes in how they operate: around one-third of these would plan changes to the operation of their legal teams.

A1 Overview of Rule 4

In general, in-house solicitors can act only for the organisation that employs them; however, as set out in Rules 4.4 to 4.26,⁶⁸ under specific conditions they can also act for other clients. The types of clients and circumstances under which they can do so can be summarised as follows:

- **related bodies of the organisation that employs them:** an in-house solicitor can act for their employer's holding company, other companies in which the employer has an interest, trade associations for which the employer is a member; and other associations, clubs and pension funds that are operated for the benefit of the employees of the solicitor's employer (Rules 4.7–4.9);
- **work colleagues:** an in-house solicitor can act for present and former employees (defined quite broadly) of their current employer (or a related body of the employer), subject to certain restrictions, including that no charge can be levied on the beneficiary (Rules 4.4–4.6);
- **members of an association:** an in-house solicitor can act for members of an association they are employed by, subject to certain restrictions, including that no charge is made to the member, the matter is relevant to membership of the association, and the association is bona fide (Rule 4.12);
- **insured persons:** an in-house solicitor can act for persons insured by their employer subject to certain limitations (Rule 4.13);
- **pro bono work:** an in-house solicitor can act for clients other than their employer when the work is covered by an indemnity and no reserved legal activities are provided (Rules 4.10–4.11). Fees can be charged only if there is a conditional fee agreement and the fees are paid to a charity;
- **commercial legal advice services:** an in-house solicitor can act for clients of a commercial organisation they are employed by, to provide a telephone legal advice service, provided that the advice does not include reserved legal activities and comprises telephone advice only, with a possible follow-up letter (Rule 4.14);
- **law centres, charities, and other non commercial advice services:** an in-house solicitor, employed by a law centre, charity or similar non-commercial organisation, can act for members of the public, subject to certain restrictions, including that no fee is charged (Rule 4.16);
- **local government:** an in-house solicitor, employed by a local government body, can act for organisations for which the employer is statutorily empowered to provide legal services; other specifically defined related bodies; and current and former members of the local authority (in this case subject to certain restrictions, including that no fee is charged). Charging restrictions also generally apply when providing work to charities (Rule 4.15);
- **the crown, non departmental bodies and the Legal Services Commission:** an in-house solicitor, employed by the organisations listed above, can act for persons other

⁶⁸ This overview relates to Rule 4 as it was worded when the survey was carried out—i.e. SRA Practice Framework Rules, Version 6.

than their employer when to do so is required as part of the lawful functions of their employer (Rule 4.18);

- **regulatory bodies:** an in-house solicitor, employed by a regulatory body, may in the course of carrying out the function of their employer, give legal advice and act for persons other than their employer (Rule 4.26);
- **foreign law firms:** an in-house solicitor, employed by a foreign law firm, can act for clients of the firm, subject to restrictions, including that no reserved legal activities are provided and that the client is made aware the firm that is not regulated by the SRA (Rules 4.19–4.20);
- **in-house practice overseas:** except when providing pro bono work subject to the conditions set out in Rules 4.10–4.11 (see above), the types of client for which in-house solicitors working in overseas practice can act is limited to those that constitute their employer, a body related to their employer, or a work colleague (Rules 4.22–4.25).

A2 In-house solicitor survey questionnaire and number of responses

This appendix reproduces the questionnaire used by market research company, Facts International, in conducting the employee survey. The questions also involved routing instructions such that, depending on their answers to previous questions, only relevant further questions were asked of a respondent.

The number of responses received for each question or option is shown in square brackets.

Thank you for taking part in this survey

s1

Are you currently practising as an in-house solicitor? That is, are you employed by an organisation that is not authorised to provide legal services for external clients, except in the specific circumstances set out in Rule 4 of the SRA Handbook (e.g. Pro Bono work), as either:

- a solicitor, or as
- another type of lawyer or legal specialist

Please choose yes if you conduct at least some legal work

- Yes — and I am on the Solicitors Roll and hold a PC (1) [1,912]
- Yes — and I am on the Solicitors Roll, but do not hold a PC (2) [96]
- Yes — and I am registered as a Foreign or Registered European Lawyer (3) [5]
- No (4)

STOP ||| Screened –

Thank you for taking the time to initiate this survey. The objective of the survey is to collect information from in-house solicitors. As you are not an in-house solicitor, your participation is no longer required.

a1

Which of the following types of organisation do you currently work for?

Please select ALL that apply

Private sector (A)

- Commercial organisations excluding insurers and claims management companies (1) [950]
- Insurers (2) [93]
- Claims management companies (3) [3]
- Membership associations (including industry associations) (4) [27]

Public sector (B)

- Local government (5) [456]
- Crown Prosecution Service (6) [90]
- Courts—excluding Clerks to Justice (7) [3]
- Courts—Clerks to Justice (8) [0]
- Educational establishment (state or private) (9) [36]
- Armed forces (10) [7]
- National Health Service (11) [19]
- Regulatory body (12) [80]
- Central government body (13) [77]
- Other central government-funded body (14) [35]

Third sector (C)

- Religious organisations (e.g. churches) (15) [5]

- Registered charity (16) [79]
 - Advice centre (17) [21]
- Legal firm (D)
- SRA solicitors firm (18) [5]
 - SRA ABS (19) [1]
 - Non-SRA legal services regulated firm (20) [3]
- Other (please specify) (21)_____ [93]

STOP ||| **Screened –**
Thank you for taking the time to initiate this survey. The objective of the survey is to collect information from in-house solicitors. As you are not an in-house solicitor, your participation is no longer required.

a1b

Please provide an approximate allocation of your working time:

Please enter time spent as a percentage (%)

- Private sector (A)
- Commercial organisations excluding insurers and claims management companies (1) [23]
 - Insurers (2) [12]
 - Claims management companies (3) [2]
 - Membership associations (including industry associations) (4) [8]
- Public sector (B)
- Local government (5) [12]
 - Crown Prosecution Service (6) [1]
 - Courts—excluding Clerks to Justice (7) [1]
 - Courts—Clerks to Justice (8) [0]
 - Educational establishment (state or private) (9) [7]
 - Armed forces (10) [2]
 - National Health Service (11) [1]
 - Regulatory body (12) [6]
 - Central government body (13) [4]
 - Other central government-funded body (14) [6]
- Third sector (C)
- Religious organisations (e.g. churches) (15) [1]
 - Registered charity (16) [17]
 - Advice centre (17) [5]
- Legal firm (D)
- SRA solicitors firm (18) [5]
 - SRA ABS (19) [1]
 - Non-SRA legal services regulated firm (20) [3]
- Other (21) [9]

a1c

The remainder of this questionnaire asks about your role as an in-house solicitor. You have allocated the same amount of time to more than one in-house solicitor employer, please select which employer you would prefer to refer to, in the remainder of your responses.

Private sector (A)

- Commercial organisations excluding insurers and claims management companies (1) [942]
- Insurers (2) [86]
- Claims management companies (3) [1]
- Membership associations (including industry associations) (4) [20]

Public sector (B)

- Local government (5) [455]
- Crown Prosecution Service (6) [90]
- Courts—excluding Clerks to Justice (7) [2]
- Courts—Clerks to Justice (8) [0]
- Educational establishment (state or private) (9) [30]
- Armed forces (10) [6]
- National Health Service (11) [18]
- Regulatory body (12) [78]
- Central government body (13) [75]
- Other central government-funded body (14) [29]

Third sector (C)

- Religious organisations (e.g. churches) (15) [5]
- Registered charity (16) [66]
- Advice centre (17) [20]

Legal firm (D)

- SRA solicitors firm (18) [0]
- SRA ABS (19) [0]
- Non-SRA legal services regulated firm (20) [0]
- Other (21) [90]

a2b

Which of the following options best describe the type of central government organisation you currently work for?

- Government department (1) [49]
- Non-ministerial department (2) [15]
- Non-departmental government body (3) [15]
- Executive agency (4) [14]
- Other (please specify) (5) _____ [11]

i60

Please complete the remainder of this questionnaire with reference to your main in-house employer:

a2a

In which industry/sector does your organisation operate?

- Agriculture, forestry and fishing (1) [4]
- Mining and quarrying (2) [4]
- Manufacturing (3) [93]
- Utilities (4) [39]
- Construction (5) [41]
- Wholesale and retail (6) [53]

- Transportation and storage (7) [36]
- Accommodation and food services (8) [8]
- Financial services (9) [327]
- Real estate activities (10) [32]
- Professional, scientific and technical activities (11) [64]
- Administrative and support service activities (12) [14]
- Education (13) [5]
- Human health and social work activities (14) [19]
- Arts, entertainment and recreation (15) [46]
- Other service activities (16) [99]
- Other (17) [164]

a3a

Which of the following options best describe the sub-sector your organisation operates in?

- Food and drink (1) [14]
- Clothes and textiles (2) [1]
- Chemicals/pharmaceuticals (3) [17]
- Engineering and machinery (4) [25]
- Computers and electrical (5) [7]
- Metals (6) [2]
- Rubber, plastics and non-metallic (7) [2]
- Other (8) [25]

a3b

Which of the following options best describe the sub-sector your organisation operates in?

- Information and communication (1) [3]
- Retail banking (2) [48]
- Investment banking (3) [82]
- Insurance (4) [77]
- Other (5) [117]

a4

How many employees does your organisation have (approximately)? [1,695]

--

a4x

- Don't know (99) [318]

a5

Is your organisation regulated by any of the following institutions?

	Yes (1)	No (2)	Don't know (3)
Financial Services Authority (1)	<input type="checkbox"/> [431]	<input type="checkbox"/> [1,372]	<input type="checkbox"/> [210]
Charity Commission (2)	<input type="checkbox"/> [138]	<input type="checkbox"/> [1,726]	<input type="checkbox"/> [149]
Ministry of Justice (3)	<input type="checkbox"/> [74]	<input type="checkbox"/> [1,752]	<input type="checkbox"/> [187]
Community Interest Company Regulator (CIC Regulator) (4)	<input type="checkbox"/> [8]	<input type="checkbox"/> [1,789]	<input type="checkbox"/> [216]
Office for Immigration Services Commissioner (OISC) (5)	<input type="checkbox"/> [20]	<input type="checkbox"/> [1,825]	<input type="checkbox"/> [168]
Royal Institute of Chartered Surveyors (RICS) (6)	<input type="checkbox"/> [43]	<input type="checkbox"/> [1,809]	<input type="checkbox"/> [161]

a6

The following questions ask for details on the size, composition and role of your organisation's full in-house legal team. We recognise that, in some cases, it may not be possible for respondents to account for total in-house legal capabilities, such as when there are multiple legal teams, or when in-house lawyers are dispersed across the business. Therefore, please clarify whether your responses cover part, or all, of the organisation's legal team.

Please select ONE option

There is no separate legal team/department; in-house lawyers work across the organisation (A)

- The full legal capability of the organisation (1)
- Part of the organisation's legal capability (2)

There is one legal team (B)

- The full legal capability of the organisation (3)

There are multiple legal teams (C)

- The full legal capability of the organisation (4)
- Part of organisation's legal capability (5)

<i>The full legal capability of the organisation</i>	[1,628]
<i>Part of organisation's legal capability</i>	[323]
<i>Part of the organisation's legal capability</i>	[62]

a7

In which of the following jurisdictions does the in-house legal team operate and provide advice?

Please select ALL options that apply

- England and Wales (1) [1,956]
- Scotland (2) [471]
- Northern Ireland (3) [366]
- Crown Dependencies or British Overseas Territories (e.g. Channel Islands, Isle of Man) (4) [231]
- Other EU Member States (5) [578]
- Europe — non EU (6) [422]
- USA (7) [425]
- Asia (8) [410]
- Other (9) [331]

a8

Please identify the number of employees in the legal team who fall in the following groups. Please include yourself.

For none, please leave blank

SRA-qualified solicitors (1)	[1,777]
SRA trainee solicitors (2)	[725]
Barristers (3)	[734]
Foreign- or European-qualified lawyers (4)	[755]
Those with other professional legal qualifications (e.g. legal executives) (5)	[917]
Those with no professional legal qualifications (6)	[953]
Cannot specify (7)	[434]

a9

Over the next three years, do you expect the legal team to...

Please select ONE option

- | | |
|---|-------|
| <input type="radio"/> Increase in size (1) | [572] |
| <input type="radio"/> Decrease in size (2) | [395] |
| <input type="radio"/> No significant change in size (3) | [823] |
| <input type="radio"/> Don't know (4) | [223] |

a10

Over the next three years, do you expect the legal team...

Please select ONE option

- | | |
|--|---------|
| <input type="radio"/> To have a higher proportion of legally qualified staff (1) | [442] |
| <input type="radio"/> To have a lower proportion of legally qualified staff (2) | [235] |
| <input type="radio"/> Not change in terms of the proportion that are legally qualified (3) | [1,080] |
| <input type="radio"/> Don't know (4) | [256] |

a11

In most cases, when your organisation needs to make a decision on a legal matter, the role of the legal team is to:

Please select ONE option

- | | |
|---|---------|
| <input type="radio"/> Make the decision itself (1) | [397] |
| <input type="radio"/> Advise the person or team responsible for making the decision (2) | [1,591] |
| <input type="radio"/> Don't know (3) | [25] |

a12

Which of these statements best describes responsibilities for legal risk management in your organisation?

Please select ONE option

- | | |
|--|---------|
| <input type="radio"/> There is no legal risk management (1) | [39] |
| <input type="radio"/> Legal risk is managed by the legal team/legally qualified employees, but not as part of an organisation-wide process (2) | [279] |
| <input type="radio"/> Legal risk is managed by the legal team/legally qualified employees, as part of an organisation-wide process (3) | [1,321] |
| <input type="radio"/> Legal risk is managed by an individual with risk management and compliance responsibilities for the whole organisation (4) | [215] |
| <input type="radio"/> Don't know (5) | [159] |

a13

What systems are in place to ensure that the quality of legal services provided by the in-house legal team is maintained?

Please select ALL that apply

- | | |
|---|---------|
| <input type="radio"/> There are no such systems (1) | [276] |
| <input type="radio"/> Output is informally checked by colleagues (2) | [596] |
| <input type="radio"/> Output is informally checked by managers (3) | [1,030] |
| <input type="radio"/> Best-practice guidelines for all staff are in place (4) | [865] |
| <input type="radio"/> There is an internal sign-off process in the legal team for most output (5) | [509] |
| <input type="radio"/> There is an internal sign-off process in the legal team for all output (6) | [142] |
| <input type="radio"/> Other types of assurances are in place (please specify) (7) _____ | [461] |

a14

As a reminder, please complete this questionnaire with reference to your role at your main in-house employer.

Which of the following job titles best describes your position in your organisation?

Please select ONE option

- | | |
|---|-------|
| <input type="radio"/> Trainee (1) | |
| <input type="radio"/> Junior legal adviser/counsel (2) | [201] |
| <input type="radio"/> Senior legal adviser/counsel (3) | [773] |
| <input type="radio"/> Head of legal department/legal director (4) | [463] |
| <input type="radio"/> Other legal title (please specify) (5)_____ | [491] |
| <input type="radio"/> Other non-legal title (please specify) (6)_____ | [85] |

a15

Over the past 12 months, which of the following activities have you provided?

Please select ALL services provided

Legal services provided for the organisation (or related bodies in your employer's group) (A)

- | | |
|--|---------|
| <input type="radio"/> Transactional legal work (e.g. employment contracts, procurement contracts) (1) | [1,427] |
| <input type="radio"/> Contentious legal work (2) | [1,267] |
| <input type="radio"/> Dispute management (3) | [1,052] |
| <input type="radio"/> Negotiation (4) | [1,501] |
| <input type="radio"/> Commissioning and managing external legal practitioners/barristers (5) | [1,520] |
| <input type="radio"/> Assessing the organisation's compliance with its legal and regulatory requirements (6) | [1,464] |
| <input type="radio"/> Other legal services (please specify) (7)_____ | [342] |

Non-legal duties provided for the organisation (or related bodies in your organisation) (B)

- | | |
|---|---------|
| <input type="radio"/> Risk management (8) | [1,091] |
| <input type="radio"/> Business strategy advice (9) | [848] |
| <input type="radio"/> Financial (10) | [258] |
| <input type="radio"/> Due diligence (11) | [790] |
| <input type="radio"/> Government lobbying (12) | [253] |
| <input type="radio"/> Administrative (13) | [1,066] |
| <input type="radio"/> Other business activities (please specify) (14)_____ | [121] |
| <input type="radio"/> Services provided to external clients (C) | |
| <input type="radio"/> Providing legal advice to individuals who are customers of the organisation (15) | [116] |
| <input type="radio"/> Providing legal advice to organisations/businesses who are customers of your organisation (16) | [142] |
| <input type="radio"/> Providing legal advice to organisations/businesses who are related to, but not part of, your organisation (e.g. schools for local authorities) (17) | [348] |
| <input type="radio"/> Other services provided to external clients (please specify) (18)_____ | [125] |

a15b

Over the past 12 months, which of the following activities have you spent the majority of your time doing?

Please select ONE option

Legal services provided for the organisation (or related bodies in your employer's group) (A)

- | | |
|--|-------|
| <input type="radio"/> Transactional legal work (e.g. employment contracts, procurement contracts) (1) | [632] |
| <input type="radio"/> Contentious legal work (2) | [328] |
| <input type="radio"/> Dispute management (3) | [55] |
| <input type="radio"/> Negotiation (4) | [84] |
| <input type="radio"/> Commissioning and managing external legal practitioners/barristers (5) | [38] |
| <input type="radio"/> Assessing the organisation's compliance with its legal and regulatory requirements (6) | [179] |
| <input type="radio"/> Other (7) | [148] |

Non-legal duties provided for the organisation (or related bodies in your organisation) (B)

<input type="radio"/> Risk management (8)	[126]
<input type="radio"/> Business strategy advice (9)	[117]
<input type="radio"/> Financial (10)	[0]
<input type="radio"/> Due diligence (11)	[32]
<input type="radio"/> Government lobbying (12)	[9]
<input type="radio"/> Administrative (13)	[81]
<input type="radio"/> Other (14)	[35]

Services provided to external clients (C)

<input type="radio"/> Providing legal advice to individuals who are customers of the organisation (15)	[43]
<input type="radio"/> Providing legal advice to organisations/businesses who are customers of your organisation (16)	[25]
<input type="radio"/> Providing legal advice to organisations/businesses who are related to, but not part of, your organisation (e.g. schools for local authorities) (17)	[32]
<input type="radio"/> Other (18)	[39]

a17

Over the past 12 months, on which of the following areas of law have you provided advice at your main place of employment?

Please select ALL services provided

<input type="radio"/> Criminal (1)	[392]	<input type="radio"/> Bankruptcy insolvency (18)	[310]
<input type="radio"/> Personal injury (2)	[169]	<input type="radio"/> Discrimination, civil liberties and human rights (19)	[343]
<input type="radio"/> Wills, trusts and tax planning (3)	[66]	<input type="radio"/> Mental health (20)	[135]
<input type="radio"/> Probate and estate administration (4)	[79]	<input type="radio"/> Social welfare (21)	[135]
<input type="radio"/> Residential property/conveyancing (5)	[150]	<input type="radio"/> FSA-regulated financial advice (22)	[186]
<input type="radio"/> Commercial property/conveyancing (6)	[496]	<input type="radio"/> SRA-regulated financial advice (23)	[8]
<input type="radio"/> Planning (7)	[314]	<input type="radio"/> Claims management (24)	[214]
<input type="radio"/> Landlord and/or tenant (8)	[438]	<input type="radio"/> Debt collection (25)	[383]
<input type="radio"/> Children (9)	[130]	<input type="radio"/> Litigation—not related to any of the above (26)	[644]
<input type="radio"/> Family and matrimonial (10)	[24]	<input type="radio"/> Non-litigation—not related to any of the above (27)	[379]
<input type="radio"/> Family—other (11)	[26]	<input type="radio"/> Arbitration and dispute resolution (28)	[330]
<input type="radio"/> Employment (12)	[642]	<input type="radio"/> Public administration law (29)	[513]
<input type="radio"/> Immigration (13)	[108]	<input type="radio"/> Other (please specify) (30)_____	[580]
<input type="radio"/> Consumer (14)	[258]	<input type="radio"/> Don't know (31)	[5]
<input type="radio"/> Intellectual property (15)	[667]		
<input type="radio"/> Commercial corporate in respect of listed companies (16)	[319]		
<input type="radio"/> Commercial corporate in respect of non-listed companies (17)	[718]		

a17b

Over the past 12 months, which area of law have you spent the majority of your time providing advice?

Please select ONE option

- | | | | |
|--|-------|--|-------|
| <input type="radio"/> Criminal (1) | [138] | <input type="radio"/> Commercial corporate in respect of non-listed companies (17) | [357] |
| <input type="radio"/> Personal injury (2) | [11] | <input type="radio"/> Bankruptcy insolvency (18) | [7] |
| <input type="radio"/> Wills, trusts and tax planning (3) | [3] | <input type="radio"/> Discrimination, civil liberties and human rights (19) | [5] |
| <input type="radio"/> Probate and estate administration (4) | [4] | <input type="radio"/> Mental health (20) | [4] |
| <input type="radio"/> Residential property/conveyancing (5) | [13] | <input type="radio"/> Social welfare (21) | [23] |
| <input type="radio"/> Commercial property/conveyancing (6) | [84] | <input type="radio"/> FSA-regulated financial advice (22) | [48] |
| <input type="radio"/> Planning (7) | [71] | <input type="radio"/> SRA-regulated financial advice (23) | [0] |
| <input type="radio"/> Landlord and/or tenant (8) | [66] | <input type="radio"/> Claims management (24) | [20] |
| <input type="radio"/> Children (9) | [55] | <input type="radio"/> Debt collection (25) | [8] |
| <input type="radio"/> Family and matrimonial (10) | [2] | <input type="radio"/> Litigation—not related to any of the above (26) | [83] |
| <input type="radio"/> Family—other (11) | [0] | <input type="radio"/> Non-litigation—not related to any of the above (27) | [17] |
| <input type="radio"/> Employment (12) | [96] | <input type="radio"/> Arbitration and dispute resolution (28) | [160] |
| <input type="radio"/> Immigration (13) | [10] | <input type="radio"/> Public administration law (29) | [434] |
| <input type="radio"/> Consumer (14) | [22] | <input type="radio"/> Other (30) | [124] |
| <input type="radio"/> Intellectual property (15) | [70] | | |
| <input type="radio"/> Commercial corporate in respect of listed companies (16) | [124] | | |

a16

When deciding whether to commission external legal advice, what factors do you take into account?

- | | |
|---|---------|
| <input type="radio"/> Independence of that advice (1) | [394] |
| <input type="radio"/> Specialist skills that you do not have in-house (2) | [1,443] |
| <input type="radio"/> Cost (3) | [1,187] |
| <input type="radio"/> Capacity (4) | [958] |
| <input type="radio"/> Other (please specify) (5) _____ | [146] |
| <input type="radio"/> Don't know (6) | [5] |

a19a

Over the past 12 months, which of the following reserved legal activities have you provided?

Please select ALL options that apply

- | | |
|--|-------|
| <input type="radio"/> Exercising rights of audience (e.g. appearing as an advocate before a court) (1) | [438] |
| <input type="radio"/> Conducting or supervising litigation (e.g. issuing proceedings before a court, and commencing, prosecuting or defending those proceedings) (2) | [803] |
| <input type="radio"/> Conducting or supervising conveyancing (e.g. dealing with the transfer of land or property under specific legal provisions) (3) | [244] |
| <input type="radio"/> Conducting or supervising probate activities (e.g. handling probate matters for clients) (4) | [14] |
| <input type="radio"/> Conducting or supervising notarial activities (5) | [39] |
| <input type="radio"/> Conducting or supervising the administration of oaths (6) | [190] |

a19b

How is your working time split between reserved, non-reserved and non-legal activities (approximately)?

Please insert approximate allocation of time (%). If you don't know, please leave empty.

- | | |
|-----------------------------|---------|
| Reserved legal work (1) | [940] |
| Non-reserved legal work (2) | [1,225] |
| Non-legal work (3) | [1,028] |

a18

In a typical working week, how many hours (approximately) do you work at your main place of employment as an in-house solicitor? [2,013]

--

a18x

Please could you confirm that your answer is accurate. If not, please correct it above.

Yes (1) [19]

a20

Excluding any career breaks from the legal profession, how many complete years of post-qualifying experience (PQE) do you have?

- Less than two years (1) [47]
- Between two and five years (inclusive) (2) [237]
- Between six and ten years (inclusive) (3) [423]
- Between 11 and 15 years (inclusive) (4) [442]
- Between 16 and 20 years (inclusive) (5) [300]
- Between 21 and 25 years (inclusive) (6) [230]
- More than 25 years (7) [334]

a21

What is your estimated gross annual salary for the financial year 2012/13 (approximately)?

Please select the relevant salary band, including London weighting and performance-related payments where applicable.

- £20,000 or less (1) [26]
- More than £20,000 up to £30,000 (2) [59]
- More than £30,000 up to £40,000 (3) [259]
- More than £40,000 up to £50,000 (4) [312]
- More than £50,000 up to £60,000 (5) [236]
- More than £60,000 up to £80,000 (6) [294]
- More than £80,000 up to £100,000 (7) [189]
- More than £100,000 up to £120,000 (8) [143]
- More than £120,000 up to £140,000 (9) [94]
- More than £140,000 up to £160,000 (10) [56]
- More than £160,000 up to £180,000 (11) [39]
- More than £180,000 up to £200,000 (12) [47]
- More than £200,000 (13) [96]
- Don't know (14) [2]
- Prefer not to answer (15) [161]

a22

Do you think that your employer understands the professional obligations that you have as a solicitor?

- Yes—always (1) [597]
- Yes—most of the time (2) [1,175]
- No (3) [241]

a22b

Please explain why you say no?

--

a23

Over the past 12 months, to what extent have the following presented challenges?
Please rank from 0 to 5, where 0 is not at all and 5 is to a substantial extent.

	Not at all (A)	1 (1)	2 (2)	3 (3)	4 (4)	5 (5)	Substantial extent (B)	Don't know (6)
Meeting tight timescales reflecting external deadlines (1)	<input type="checkbox"/>	<input type="checkbox"/> [43]	<input type="checkbox"/> [127]	<input type="checkbox"/> [339]	<input type="checkbox"/> [696]	<input type="checkbox"/> [796]	<input type="checkbox"/>	<input type="checkbox"/> [12]
Delayed involvement of the legal team in projects with a legal issue (2)	<input type="checkbox"/>	<input type="checkbox"/> [219]	<input type="checkbox"/> [304]	<input type="checkbox"/> [478]	<input type="checkbox"/> [597]	<input type="checkbox"/> [345]	<input type="checkbox"/>	<input type="checkbox"/> [70]
Heavy workload for limited in-house legal resources (3)	<input type="checkbox"/>	<input type="checkbox"/> [51]	<input type="checkbox"/> [117]	<input type="checkbox"/> [312]	<input type="checkbox"/> [638]	<input type="checkbox"/> [881]	<input type="checkbox"/>	<input type="checkbox"/> [14]
Budget pressures limiting use of external legal advisers (4)	<input type="checkbox"/>	<input type="checkbox"/> [338]	<input type="checkbox"/> [375]	<input type="checkbox"/> [490]	<input type="checkbox"/> [402]	<input type="checkbox"/> [356]	<input type="checkbox"/>	<input type="checkbox"/> [52]
Limited access to training and opportunities to refresh skills (5)	<input type="checkbox"/>	<input type="checkbox"/> [596]	<input type="checkbox"/> [569]	<input type="checkbox"/> [429]	<input type="checkbox"/> [246]	<input type="checkbox"/> [163]	<input type="checkbox"/>	<input type="checkbox"/> [10]
Ensuring confidentiality of information (6)	<input type="checkbox"/>	<input type="checkbox"/> [867]	<input type="checkbox"/> [534]	<input type="checkbox"/> [324]	<input type="checkbox"/> [154]	<input type="checkbox"/> [113]	<input type="checkbox"/>	<input type="checkbox"/> [21]
Complying with SRA regulation (7)	<input type="checkbox"/>	<input type="checkbox"/> [1,155]	<input type="checkbox"/> [498]	<input type="checkbox"/> [192]	<input type="checkbox"/> [64]	<input type="checkbox"/> [47]	<input type="checkbox"/>	<input type="checkbox"/> [57]

a24

To what extent do you think the SRA makes the regulatory outcomes it expects you to deliver relevant for in-house solicitors?

- Completely relevant (1) [69]
- Mostly relevant (2) [566]
- Partially relevant (3) [1,022]
- Not relevant at all (4) [356]

a25

To what extent do you agree with the following statements, on a scale of 1 to 5, where 1 is strongly agree and 5 is strongly disagree?

	Strongly agree (A)	1 (1)	2 (2)	3 (3)	4 (4)	5 (5)	Strongly disagree (B)	Don't know (6)
Complying with SRA requirements takes up too much time (1)	<input type="checkbox"/>	<input type="checkbox"/> [47]	<input type="checkbox"/> [125]	<input type="checkbox"/> [620]	<input type="checkbox"/> [586]	<input type="checkbox"/> [359]	<input type="checkbox"/>	<input type="checkbox"/> [276]
Complying with SRA requirements costs too much money (2)	<input type="checkbox"/>	<input type="checkbox"/> [74]	<input type="checkbox"/> [181]	<input type="checkbox"/> [570]	<input type="checkbox"/> [515]	<input type="checkbox"/> [279]	<input type="checkbox"/>	<input type="checkbox"/> [394]

qh1

Over the past 12 months, at your main place of employment as an in-house solicitor, have you received, or provided any referrals of, potential legal work?

Please select ONE option

- No — I have not received or provided any referrals (1) [480]
- Yes — I have only received referrals (2) [17]
- Yes — I have only provided referrals (3) [34]
- Yes — I have received and provided referrals (4) [37]

qh1b

Over the past 12 months, for which areas of law have you received, or provided, referrals?

<input type="radio"/> Criminal (1)	[9]	<input type="radio"/> Bankruptcy insolvency (18)	[2]
<input type="radio"/> Personal injury (2)	[9]	<input type="radio"/> Discrimination, civil liberties and human rights (19)	[7]
<input type="radio"/> Wills, trusts and tax planning (3)	[5]	<input type="radio"/> Mental health (20)	[7]
<input type="radio"/> Probate and estate administration (4)	[4]	<input type="radio"/> Social welfare (21)	[13]
<input type="radio"/> Residential property/conveyancing (5)	[5]	<input type="radio"/> FSA-regulated financial advice (22)	[1]
<input type="radio"/> Commercial property/conveyancing (6)	[13]	<input type="radio"/> SRA-regulated financial advice (23)	[0]
<input type="radio"/> Planning (7)	[15]	<input type="radio"/> Claims management (24)	[0]
<input type="radio"/> Landlord and/or tenant (8)	[19]	<input type="radio"/> Debt collection (25)	[9]
<input type="radio"/> Children (9)	[18]	<input type="radio"/> Litigation—not related to any of the above (26)	[12]
<input type="radio"/> Family and matrimonial (10)	[11]	<input type="radio"/> Non-litigation—not related to any of the above (27)	[2]
<input type="radio"/> Family—other (11)	[5]	<input type="radio"/> Arbitration and dispute resolution (28)	[0]
<input type="radio"/> Employment (12)	[29]	<input type="radio"/> Public administration law (29)	[19]
<input type="radio"/> Immigration (13)	[5]	<input type="radio"/> Other (please specify) (30) _____	[12]
<input type="radio"/> Consumer (14)	[1]	<input type="radio"/> Don't know (31)	[6]
<input type="radio"/> Intellectual property (15)	[4]		
<input type="radio"/> Commercial corporate in respect of listed companies (16)	[2]		
<input type="radio"/> Commercial corporate in respect of non-listed companies (17)	[12]		

qh2

Were fees offered in return for such referrals?

<input type="radio"/> No (1)	[46]
<input type="radio"/> Sometimes (2)	[3]
<input type="radio"/> Yes (3)	[2]
<input type="radio"/> Don't know (4)	[3]

qh3

Were fees received in return for such referrals?

<input type="radio"/> No (1)	[64]
<input type="radio"/> Sometimes (2)	[2]
<input type="radio"/> Yes (3)	[3]
<input type="radio"/> Don't know (4)	[2]

qh4

If external clients were provided with a legal service, how did they pay for this?

<input type="radio"/> The legal advice was provided free of charge (1)	[47]
<input type="radio"/> The cost of the legal advice was included in a fee charged for other services (2)	[29]
<input type="radio"/> An explicit fee was charged (3)	[116]
<input type="radio"/> The advice was provided on a conditional fee arrangement (4)	[0]
<input type="radio"/> I have no external clients (5)	[312]
<input type="radio"/> Don't know (6)	[64]

qh5

To what extent does the SRA's rule that restricts charging external clients for the provision of legal services by in-house solicitors constrain the activities of your organisation?

<input type="radio"/> No/almost no constraint (1)	[1,142]
<input type="radio"/> Limited constraint (2)	[170]
<input type="radio"/> Some constraint (3)	[191]
<input type="radio"/> Substantial constraint (4)	[82]
<input type="radio"/> Very large constraint (5)	[59]
<input type="radio"/> Don't know (6)	[369]

qh6

How would removal of the SRA's rule that restricts charging external clients for the provision of any legal services by in-house solicitors affect your organisation?

Please select all options that apply

- No change (1) [146]
- The organisation would make plans to expand the size of the legal services team (2) [83]
- The organisation would make plans to expand the types of legal service provided by the legal team (3) [125]
- The organisation would make plans to provide legal services on a commercial basis (4) [120]
- Other (please specify) (5) _____ [28]
- Don't know (6) [197]

a26

Which of the following training and CPD activities do you follow?

Please select all that apply

- A personal training plan (1) [670]
- Scheduled in-house training/CPD activities (2) [1,239]
- External CPD courses/activities (3) [1,842]
- Mentoring/supervisory support to support development (4) [610]

a27

Who pays for your CPD activities?

Please select ONE option

- I pay (1) [67]
- My employer pays (2) [1,903]
- I pay but receive a contribution from my employer (3) [43]

a28

Are there sufficient CPD courses available that are relevant to your role as an in-house solicitor?

- Yes — sufficient relevant courses available (1) [1,484]
- No — insufficient relevant courses available (2) [529]

a29

How old are you?

[2,013]

Please state your age on November 1st 2012

--

a30

What is your gender?

- Male (1) [952]
- Female (2) [1,000]
- Prefer not to say (3) [61]

a31

What is your ethnic group?

- Asian/Asian British (1) [81]
- Black/African/Caribbean/Black British (2) [45]
- Mixed/multiple ethnic groups (3) [40]
- White (4) [1,668]
- Other ethnic group (5) [35]
- Prefer not to say (6) [144]

a32

Are you suffering from any long-term illness, health problem or disability which limits your daily activities or the work you can do?

- Yes (1) [83]
 No (2) [1,836]
 Prefer not to say (3) [94]

Details

The SRA is also interested in the role of in-house legal teams from the employer's perspective, and intends to commission a short telephone survey to explore the following issues:

motivation for establishing an in-house legal team; how the roles of an in-house legal team and external legal team overlap/complement one another; how the in-house legal team might develop going forward

Please provide the name, job title, email address and telephone number of a senior representative of your organisation who would be able to answer questions about how the in-house legal team is staffed and how the organisation of the legal team fits with wider organisation strategy. For example, in the case of a commercial organisation, this could be the managing director, chief operating officer or chief finance officer.

Please be assured that all responses will be kept anonymous and no link will be made between this response and any other response from this organisation.

These contact details will be used only for the purposes of this study and, as is required by data protection rules, will be destroyed after use.

- Name (1) [633]
Job title (2) [621]
Email address (3) [600]
Contact telephone number (4) [556]

STOP ||| Complete –

A3 Further analysis from survey of in-house solicitors

A3.1 Demographic analysis of respondents

Table A3.1 Gender split of in-house solicitor respondents, by sector of organisation

	Number of respondents	Average age (years)	Female (%)	Male (%)
Private, external clients	132	43.3	46	54
Private, no external clients	943	42.5	45	55
Public, external clients	356	46.0	58	42
Public, no external clients	458	45.0	58	42
Third, external clients	53	43.8	66	34
Third, no external clients	48	42.0	62	38
All in-house respondents	1,990	43.8	51	49

Note: Questions asked were: 'How old are you? Please state your age as at November 1st 2012'; and 'What is your gender?' Number of respondents for age is as stated, but, for gender, 60 responded 'prefer not to say'. Source: Oxera analysis of responses to question 30.

Table A3.2 Ethnicity statistics for in-house solicitor respondents, by sector of organisation (%)

	Asian/Asian British	Black/African Caribbean/Black British	Mixed/multiple ethnic groups	Other ethnic group	White
Private, external clients	7	5	2	3	82
Private, no external clients	4	2	2	2	90
Public, external clients	4	2	2	1	91
Public, no external clients	4	3	3	2	89
Third, external clients	4	12	2	0	83
Third, no external clients	7	0	5	0	88
All in-house respondents	4	2	2	2	89

Note: Question asked was: 'What is your ethnic group?' Respondents were asked to choose from the groups identified in the table, with a 'Prefer not to answer' option. Number of respondents was 1,850. Source: Oxera analysis of responses to question 31.

Table A3.3 Proportion of in-house solicitor respondents suffering from long-term illness or other health problem, by sector of organisation (%)

	Yes	No
Private, external clients	2	98
Private, no external clients	2	98
Public, external clients	7	93
Public, no external clients	7	93
Third, external clients	8	92
Third, no external clients	6	94
All in-house respondents	4	96

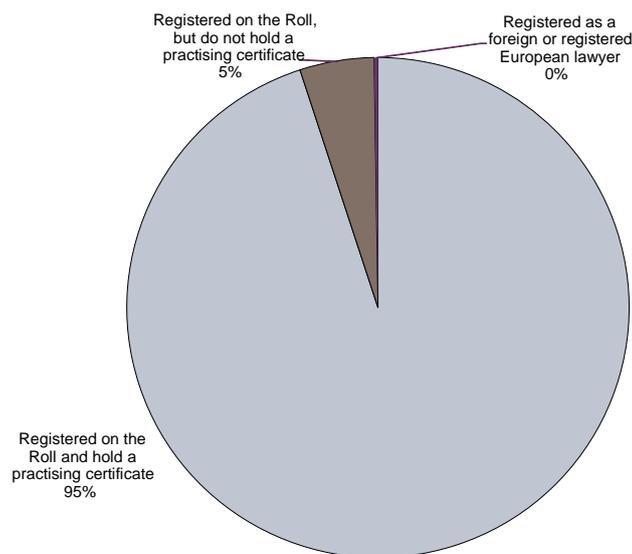
Note: Question asked was: ‘Are you suffering from any long-term illness, health problem or disability which limits your daily activities or the work you can do?’ Number of respondents was 1,899; 91 preferred not to answer. Source: Oxera analysis of responses to question 32.

A3.2 Overview of the market

A3.2.1 Registration of in-house solicitors

As expected, a small proportion of in-house solicitors do not hold a practising certificate. This is not cause for concern, as there is no requirement for in-house solicitors to do so.

Figure A3.1 Are you currently practising as an in-house solicitor?



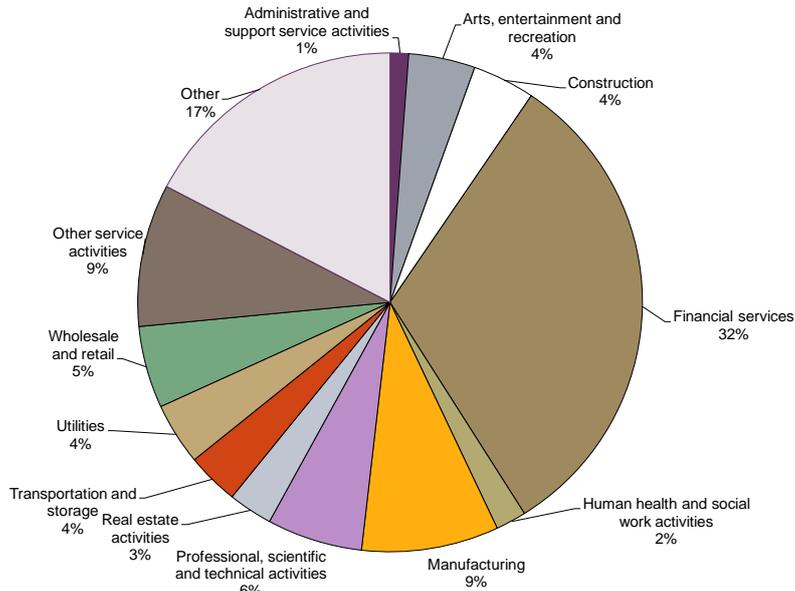
Note: The screening question asked “Are you currently practising as an in-house solicitor? That is, are you employed by an organisation that is not authorised to provide legal services for external clients, except in the specific circumstance set out in Rule 4 of the SRA Handbook (e.g. Pro Bono work) as either: a solicitor; or as another type of lawyer or legal specialist. Respondents were asked to choose from the groups identified in the chart in addition to a “No” option which only 4 respondents identified with. Source: Oxera analysis of responses to question s1.

A3.2.2

Breakdown of the types of organisation employing in-house solicitors

In-house solicitors in the private sector work across a broad range of industries, as illustrated in Figure A3.2.

Figure A3.2 Industry/sector in which organisations operate?

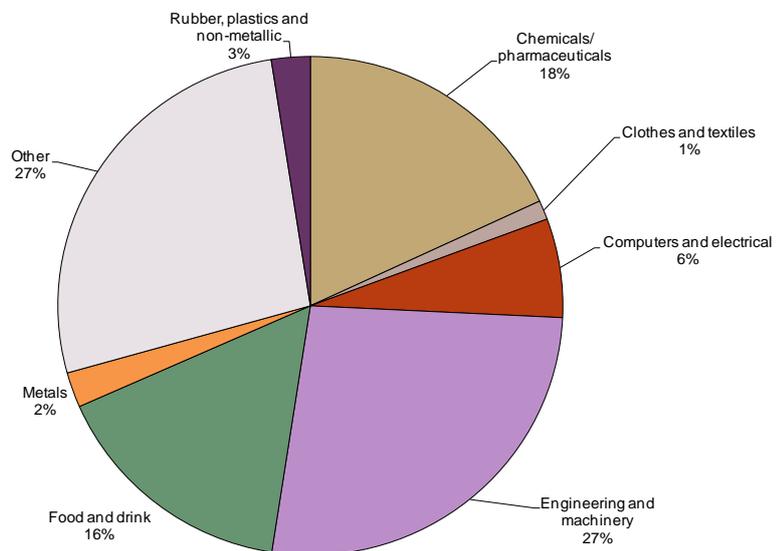


Note: Question asked was: 'In which industry/sector does your organisation operate?' Based on 1,047 respondents.

Source: Oxera analysis of responses to question 2a.

Those working in the broader categories of manufacturing and financial services cover the following sub-sectors.

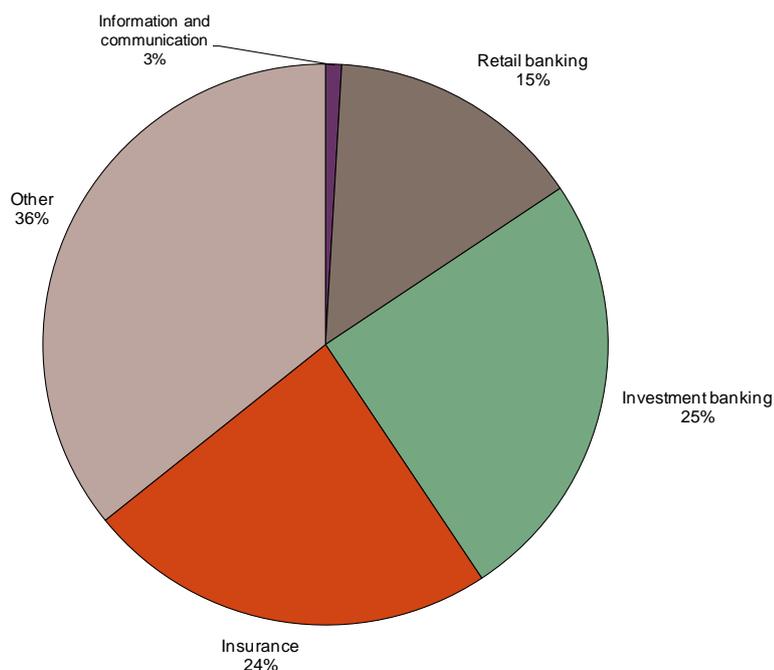
Figure A3.3 Sub-sectors in which manufacturing organisations operate



Note: The question asked was: 'Which of the following best describes the sub-sector in which your organisation operates?' Based on 92 respondents.

Source: Oxera analysis of responses to question 3a.

Figure A3.4 Sub-sectors in which financial services organisations operate



Note: The question asked was: 'Which of the following best describes the sub-sector in which your organisation operates?' Based on 92 respondents.
Source: Oxera analysis of responses to question 3a.

A3.3 Characteristics of in-house solicitors

A3.3.1 Hours worked, experience, salary

Hours worked, experience and salary are all consistent with what one would expect from the various groups. Solicitors with non-legal titles on average work less (although not to a statistically significant degree), but have considerably more years of experience and higher salaries. This is consistent with those with a non-legal job title holding an executive role.

Other legal titles include those that are likely to refer to relatively senior positions such as 'general counsel' (29), 'principal solicitor' (9), as well as more general titles such as 'lawyer' (19) and 'legal adviser' (12). Given the average hours worked and relatively high salaries, it is likely these are also relatively senior positions.

	Number of observations	Average work hours	Experience (years)	Salary (£)
Head of legal department/legal director	357	44.5	19.8	119,712
Senior legal adviser/counsel	553	41.1	14.6	69,946
Junior legal adviser/counsel	154	39.7	6.9	48,009
Other legal title	370	39.6	15.0	74,350
Other non-legal title	46	38.1	19.8	109,277
All in-house respondents	1,480	41.3	15.3	81,573

Source: Oxera analysis of questions a18, a20 and a21.

A4 Employer survey questionnaire script and number of responses

This appendix reproduces the questionnaire used by market research company, Facts International in conducting the employee survey. The questions also involved routing instructions such that, depending on their answers to previous questions, only relevant further questions were asked of a respondent. The comments and sub-titles in square brackets were not read out.

The number of responses received for each question or option is shown in square brackets.

Introduction

Good morning/afternoon, my name is XXX and I'm calling from Facts International. Please can I speak to XXX?

If transferred to required contact:

Good morning/afternoon, my name is XXX, calling from Facts International, an independent market research company. We are conducting a survey on behalf of Oxera and the SRA on in-house lawyers.

The aim of the survey is to help the SRA understand more about why firms employ in-house lawyers and how they use them. We are also keen to hear about any challenges that the employers of in-house lawyers face. By furthering its understanding of the role of in-house lawyers, the SRA can design proportionate regulation that is more risk-based and better tailored to the type of work that is actually being carried out.

The survey should take no longer than 15 minutes. Would you have time to take part now?

[If necessary, use the following reassurances]:

Please note that your answers will not be reported to the SRA in any way that would allow you to be identified.

If respondent wants to confirm validity of survey or get more information about aims and objectives, they can call:

READ OUT: First of all I'd like to ask some general questions about the in-house legal team in your organisation.

[Legal team profile] [do not read out sub-headings]

A1 Which of the following descriptions best fits how your organisation's in-house legal team is structured?

READ OUT AND CODE ONE ONLY

ASK ALL

There is only one legal team in the organisation	1	[113]
There are multiple legal teams in the organisation, organised by geography and/or business activity	2	[76]
There is no <i>separate</i> legal team in the organisation	3	[13]

A2 Do you oversee the full legal capabilities in your organisation?

READ OUT AND CODE ONE ONLY

Yes	1	[111]
No, just part of the legal capabilities in the organisation	2	[81]
No, I do not oversee any of the legal capabilities in the organisation	3	
Not applicable, I am the only legal adviser in the organisation	4	[10]
Don't know	5	

IF ANSWER IS 'No, just part of the legal capabilities in the organisation' ASK

A2b Approximately what proportion of the organisation's full legal capabilities do you oversee?

WRITE IN PERCENTAGE

[74]

A2bb If figure is unknown, prompt with ranges

Less than 25%	1	[4]
25-50%	2	
50-75%	3	
More than 75%	4	
Don't know	5	[3]

IF ANSWERED 'YES' TO A2a, READ OUT:

The following questions aim to understand the role of the in-house legal team and, if applicable, your use of other legal services.

IF ANSWERED 'No, just part of the legal capabilities in the organisation' TO A2, READ OUT:

The following questions aim to understand the role of the in-house legal team and, if applicable, your use of other legal services.**When answering questions regarding in-house legal capabilities, please do so with respect to the legal team you oversee.**

IF ANSWERED 3,4,5 to A2, READ OUT:

The following questions aim to understand the role of the in-house legal team and, if applicable, your use of other legal services.**Please answer as best you can****A3A What are the main three services provided by your in-house legal team(s)?**

ASK 'PRIVATE' AND 'PUBLIC' ONLY

[if necessary, explain main means in terms of resources]

INTERVIEWER TO READ OUT MAIN HEADINGS FIRST, AND ONLY IF APPLICABLE THE SERVICES IN EACH GROUP, AND CODE UP TO THREE, ROTATE IN CATEGORIES

Legal services provided for the organisation (or related bodies in your employer's group) (A)

- Transactional legal work (1) * [151]
- Contentious legal work (2) * [152]
- Dispute management (3) * [147]
- Negotiation (4) * [159]
- Commissioning and managing external lawyers/law firms(5) * [162]
- Assessing the organisation's compliance with its legal and regulatory requirements (6) * [162]

Non-legal duties provided for the organisation (or related bodies in your organisation) (B)

- Risk management (7) [145]
- Business strategy advice (8) [126]
- Financial (9) [62]

- Due diligence (10) [134]
- Government lobbying (11) [45]
- Administrative (12) [136]

Services provided to external clients (C)

- Providing legal advice to individuals who are customers of the organisation (13) [15]
- Providing legal advice to organisations/businesses which are customers of your organisation (14) [27]
- Providing legal advice to organisations/businesses which are related to, but not part of, your organisation (e.g. schools for local authorities) (15) [83]
- Other (please specify) (16)_____

*Should the interviewee request clarification, the following explanations and examples can be provided:

- Transactional legal work e.g. employment contracts, procurement contracts
- Contentious legal work: legal work with court proceedings e.g. litigation, mediation and arbitration
- Dispute management: includes attempts to resolve any kind of business dispute, contractual or otherwise before it gets to the litigation stage
- Negotiation: this is quite a broad term. It could cover negotiating a settlement of a dispute, the terms of a commercial contract (e.g. for the supply of goods or a construction contract) or the terms of sale of a business or property
- Assessing the organisation’s compliance with its legal and regulatory requirements: e.g. introducing training policies and procedures

A3B What are the main three services provided by your in-house legal team(s) to your organisation?

ASK THIRD ONLY [if necessary, explain main means in terms of resources]

INTERVIEWER TO READ OUT MAIN HEADINGS FIRST, AND ONLY IF APPLICABLE THE SERVICES IN EACH GROUP, AND CODE UP TO THREE, ROTATE IN CATEGORIES

Legal services provided for the organisation (or related bodies in your employer’s group) (A)

- Transactional legal work (1) * [11]
- Contentious legal work (2) * [9]
- Dispute management (3) * [8]
- Negotiation (4) * [14]
- Commissioning and managing external lawyers/law firms(5) * [9]
- Assessing the organisation’s compliance with its legal and regulatory requirements (6) * [12]

Non-legal duties provided for the organisation (or related bodies in your organisation) (B)

- Risk management (7) [11]
- Business strategy advice (8) [9]
- Financial (9) [4]
- Due diligence (10) [11]
- Government lobbying (11) [7]
- Administrative (12) [11]

Services provided to external clients (C)

- Providing legal advice to individuals (13) [7]
- Providing legal advice to organisations/businesses which are customers of your organisation (14) [1]
- Providing legal advice to organisations/businesses which are related to, but not part of, your organisation (e.g. schools for local authorities) (15) [5]
- Other (please specify) (16)_____ [4]

*Should the interviewee request clarification, the following explanations and examples can be provided:

- Transactional legal work e.g. employment contracts, procurement contracts
- Contentious legal work: legal work with court proceedings e.g. litigation, mediation and arbitration
- Dispute management: includes attempts to resolve any kind of business dispute, contractual or otherwise before it gets to the litigation stage
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- Assessing the organisation’s compliance with its legal and regulatory requirements: e.g. introducing training policies and procedures

A4 In addition to your in-house legal team(s), does your organisation use external legal advisers?

ASK ALL [SOME RESPONDENTS MAY FIND THIS QUESTION IRRELEVANT, BUT PLEASE ASK ALL AND JUST APOLOGISE AND IF RELEVANT EXPLAIN THE FAR-REACHING NATURE OF THE SURVEY AND DIVERSITY BETWEEN IN-HOUSE SOLICITORS, MEANS SOME QUESTIONS MAY BE LESS RELEVANT TO PARTICULAR RESPONDENTS]

Yes	[197]
No	[4]
Don’t know	[1]

A5 why do you use external legal advisers? Is it because...

ONLY ASK IF ANSWERED ‘Yes’ to A4

ROTATE

	Relevant
Required expertise is not available in-house	[185]
In-house resources are at full capacity	[161]
Work would benefit from the independence of an external adviser	[113]
Work would benefit from the difference in legal privilege between in-house counsel and external legal counsel**	[48]
Other, please specify	[45]

***If respondent requests clarification, the following explanation can be provided: legal professional privilege protects all communications between a professional legal adviser (a solicitor, barrister or attorney) and his or her clients from being disclosed without the permission of the client. The privilege is that of the client and not that of the lawyer.*

A6 If so, which is the most common?

ONLY ASK THIS QUESTION IF MORE THAN ONE OF THE CIRCUMSTANCES IN A5 IS IDENTIFIED AS RELEVANT

DO NOT READ OUT OPTIONS UNLESS ASKED TO, AND THEN ONLY READ OUT THE OPTIONS IDENTIFIED AS RELEVANT TO A5

CODE ONLY 1 OPTION

	Most common
Required expertise is not available in-house	[120]
In-house resources are at full capacity	[40]
Work would benefit from the independence of an external adviser	[7]
Work would benefit from the difference in legal privilege between in-house counsel and external legal counsel **	[1]
Not relevant—all comments are as common as each other	[15]

A7 Which of the following types of legal work are predominantly provided by external legal advisors (rather than by the in-house legal team)?

ONLY ASK IF ANSWERED ‘Yes’ to A4

READ OUT OPTIONS, ROTATE, CODE ALL THAT APPLY

- Transactional legal work* (1) [109]
- Contentious legal work* (2) [140]
- Dispute management *(3) [52]
- Negotiation* (4) [37]
- Assessing the organisation’s compliance with its legal and regulatory requirements (5)
- Other (6) please specify [80]

*Should the interviewee request clarification, the following explanations and examples can be provided:

- Transactional legal work e.g. employment contracts, procurement contracts
- Contentious legal work: legal work with court proceedings e.g. litigation, mediation and arbitration

- Dispute management: includes attempts to resolve any kind of business dispute, contractual or otherwise before it gets to the litigation stage
- Negotiation: this is quite a broad term. It could cover negotiating a settlement of a dispute, the terms of a commercial contract (e.g. for the supply of goods or a construction contract) or the terms of sale of a business or property
- Assessing the organisation's compliance with its legal and regulatory requirements: e.g. introducing training policies and procedures

A9 Please estimate the amount spent on external legal advisers in the last 12 months.

ASK IF ANSWERED 'Yes' to A4 [139]

A10 Please estimate, to the nearest £10,000, your organisation's recorded annual turnover in the last (financial) year?

ASK IF PRIVATE ONLY

WRITE IN NUMBER, LEAVE BLANK IF DON'T KNOW

[43]

A10b If figure is unknown, prompt with ranges

£0-£19,999	
£20,000-£149,999	
£150,000-£499,999	
£500,000-£999,999	
£1,000,000-£2,999,999	[1]
£3,000,000-£9,999,999	[7]
£10,000,000- £29,999,999	[1]
£30,000,000-£69,999,999	[4]
£70,000,000-£149,999,999	[1]
£150,000,000 - £9,999,999,999	[19]
Don't know	[10]

[Challenges, benefits and trends]

Next I'd like to ask about the challenges and benefits that may be associated with in-house lawyers and any future changes to the legal team.

A11 First, challenges: Thinking about the way you use your in-house lawyers, are any of the following seen as challenges for your organisation?

ASK ALL

READ OUT AND CODE ALL THAT APPLY

ROTATE

	Yes	No	Don't know	Not applicable
Finding suitable candidates to work as in-house lawyers	[85]	[113]	[1]	[3]
Meeting salary expectations of suitable candidates	[109]	[89]	[1]	[3]
Regulatory restrictions on what the in-house legal team can do for external clients	[46]	[106]	[0]	[50]
Regulatory costs associated with employing in-house solicitors	[22]	[173]	[1]	[6]

A12 Next, benefits: which, if any, of the following benefits does the in-house legal team bring to your organisation?

ASK ALL

READ OUT AND ROTATE OPTIONS

[AGAIN SOME RESPONDENTS MAY NOT FIND THESE OPTIONS RELEVANT, SO APOLOGISE REFER TO THE DIVERSITY BETWEEN IN-HOUSE LAWYERS AND APPLY THE NOT APPLICABLE OPTION]

	Yes	No	Don't know	Not applicable
Improves the efficiency of managing internal legal affairs (e.g. contracts/deals/transactions)	[188]	[6]	[1]	[7]
Better manages risks facing the organisation	[192]	[8]	[0]	[2]
Required to provide the range of services our clients require	[154]	[38]	[2]	[8]
Introduces new services or products	[70]	[124]	[1]	[7]
Reduces overall costs/expenditure	[180]	[15]	[5]	[2]
Increases revenue/income	[99]	[89]	[2]	[12]

And now some trends:

A13

Over the next three years, do you expect the size of the in-house legal team to...

READ OUT AND CODE ONE OPTION

- Increase (1) [75]
- Decrease (2) [38]
- Experience no significant change (3) [83]
- Don't know (4) [6]

A14

IF ANSWERED 1 OR 2 TO A16

Is this the continuation of an ongoing trend?

- a) Yes [87]
- b) No [25]
- c) Don't know [1]

A15

Over the next three years, do you expect the level of qualification in the in-house legal team to...

READ OUT AND CODE ONE OPTION

- Change and have a higher proportion of legally qualified staff** (1) [54]
- Change and have a lower proportion of legally qualified staff** (2) [20]
- Not change significantly (3) [127]
- Don't know (4) [1]

**If queried, legally qualified refers to employees with a legal professional qualification e.g. SRA-qualified, BSB-qualified (rather than just those with a law degree).

A16 Are any of your in-house legal team based in offices overseas?

ASK PRIVATE ONLY

Yes	[35]
No	[55]
Don't know	[0]

If yes, please could you explain why? Is this to...

READ OUT AND CODE ALL THAT APPLY

	Further explanation that can be provided if respondent requests	Yes	No
Help reduce total legal costs	(i.e. because it is cheaper to employ in-house lawyers in other countries)	[8]	[27]
Take advantage of different time zones	(i.e. allows work to be carried out when UK offices are closed for the day/allows round the clock business operations)	[10]	[25]
Assist in organisation's international activities	(i.e. to provide legal advice for the organisation's international offices, or in the context of international clients)	[31]	[4]
Other (please specify)		[12]	[21]

A17 Over the next three years, do you expect to have more of your legal team based in offices overseas?

ASK PRIVATE ONLY

Yes	[21]
No	[67]
Don't know	[2]

If yes, please could you explain why? Is this to...

READ OUT AND CODE ALL THAT APPLY

	Further explanation that can be provided if respondent requests	Yes	No
Help reduce total legal costs	(i.e. because it is cheaper to employ in-house lawyers in other countries)	[7]	[14]
Take advantage of different time zones	(i.e. allows work to be carried out when UK offices are closed for the day/allows round the clock business operations)	[6]	[15]
Assist in organisation's international activities	(i.e. to provide legal advice for the organisation's international offices, or in the context of international clients)	[18]	[3]
Other (please specify)		[8]	[10]

[Interaction with the SRA]

READ OUT: Thank you very much for your time so far, only five questions remaining.

First I would like to ask about your organisation's views to Alternative Business Structures (ABS)*.

A18 To what extent were you aware that non-law firms can now apply to the SRA to become authorised as Alternative Business Structures (ABS) and, if successful in their application, provide reserved legal services to the public and charge for those services? *

ASK ALL

Unaware	[25]
Aware about the legal change, but not the details	[89]
Fully aware	[88]

*If respondent requests clarity over ABS, the following info can be provided (but to save time, do not otherwise read out): ABS are a new type of law firm structure allowing non-lawyers and external investors to share management and control of law firms. This means that new types of law firms can be created, and businesses that couldn't previously offer reserved legal services will now be able to invest in law firms, and offer legal services in new, flexible ways.

A19 Is your organisation considering applying to become a licensed ABS? If so, what is the status of its progress?

ASK IF RESPONSE TO A19 is 'Aware' or 'Fully aware'.
READ OUT AND CODE ONE OPTION

Yes, application has been submitted	1 [1]
Yes, preparing application	2 [2]
Yes, considering the business case of applying	3 [12]
No, not under consideration	4 [156]
Don't know	[6]
Prefer not to say	

IF YES:

A20 Which areas of law would you be looking to deliver to the paying public as an ABS?

DO NOT READ OUT, CODE

Area of law	Relevant areas of law that respondent might use	
Property and conveyancing		[5]
Employment		[5]
Immigration and nationality		[0]
Intellectual property rights		[1]
Corporate taxation		[1]
Corporate structuring and finance		[0]
Business affairs not otherwise specified		[3]
Injury	Personal injury, other injury, 'slip and trip'	[2]
Debt collection	Debt collection	[2]
Managing personal debts and finance	Managing personal debts and finance	[0]
Family	Children (adoption)	[1]
	Relationship-related (divorce)	[0]
Managing external disputes on behalf of the organisation	Commercial litigation	[3]
Other	PLEASE SPECIFY	[13]

A21 Which reserved activities would you be looking to deliver?

OPEN, PROMPT OPTIONS IF REQUIRED

	Examples that can be provided if requested	
Exercising rights of audience (1)	e.g. appearing as an advocate before a court	[16]
Conducting or supervising litigation (2)	e.g. issuing proceedings before a court, and commencing, prosecuting or defending those proceedings	[15]
Conducting or supervising conveyancing (3)	e.g. dealing with the transfer of land or property under specific legal provisions)	[7]
Conducting or supervising probate activities (4)	e.g. handling probate matters for clients	[2]
Conducting or supervising notarial activities (5)		[1]
Conducting or supervising the administration of oaths (6)		[6]

READ OUT: Lastly, I would like to ask about your organisation's relation handling client money and charging.

A22 Does your organisation handle third-party or client money in relation to legal matters?

READ OUT AND CODE ONE ONLY

Yes, we manage funds on behalf of clients/customers/members	[7]
Yes, we receive donations to finance certain projects	[3]
Yes, we act as an intermediary for some clients/customers/members in some procurement procedures	[2]
Yes, in some other way, please specify how	[7]
No	[182]
Don't know	[1]

A23 To what extent does the SRA's rule that restricts charging external clients for the provision of legal services by in-house solicitors currently constrain your organisation's activities?

READ OUT AND CODE ONE OPTION

- No/almost no constraint (1) [138]
- Limited constraint (2) [19]
- Some constraint (3) [17]
- Substantial constraint (4) [17]
- Very large constraint (5) [7]
- Don't know (6) [4]

A24 If regulatory restrictions were not in place, would your organisation be interested in providing and charging clients for legal services?

Yes	[68]
No	[119]
Don't know	[15]

A25 How would your organisation be affected by the removal of the SRA's rule restricting charging external clients for the provision of any legal services by in-house solicitors?

READ OUT, CODE ALL THAT APPLY

- No change (1) [128]
- The organisation would make plans to expand the size of the legal team (2) [38]
- The organisation would make plans to expand the types of legal service provided by the legal team (3) [36]
- The organisation would make plans to provide legal services on a commercial basis (4) [48]
- Other (please specify) (5) _____ [17]
- Don't know (6) [4]

A26 To what extent do you agree with the following statements, on a scale of 1 to 5, where 1 is strongly agree and 5 is strongly disagree?

	Strongly agree (A)	1 (1)	2 (2)	3 (3)	4 (4)	5 (5)	Strongly disagree (B)	Don't know (6)
Complying with SRA requirements takes up too much time (1)	<input type="checkbox"/>	[5] <input type="checkbox"/>	[10] <input type="checkbox"/>	[60] <input type="checkbox"/>	[53] <input type="checkbox"/>	[72] <input type="checkbox"/>	<input type="checkbox"/>	[2] <input type="checkbox"/>
Complying with SRA requirements costs too much money (2)	<input type="checkbox"/>	[5] <input type="checkbox"/>	[14] <input type="checkbox"/>	[48] <input type="checkbox"/>	[58] <input type="checkbox"/>	[72] <input type="checkbox"/>	<input type="checkbox"/>	[5] <input type="checkbox"/>

Lastly, do you have any comments you would like to make? WRITE IN

Thank you for taking the time to participate in our survey.

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