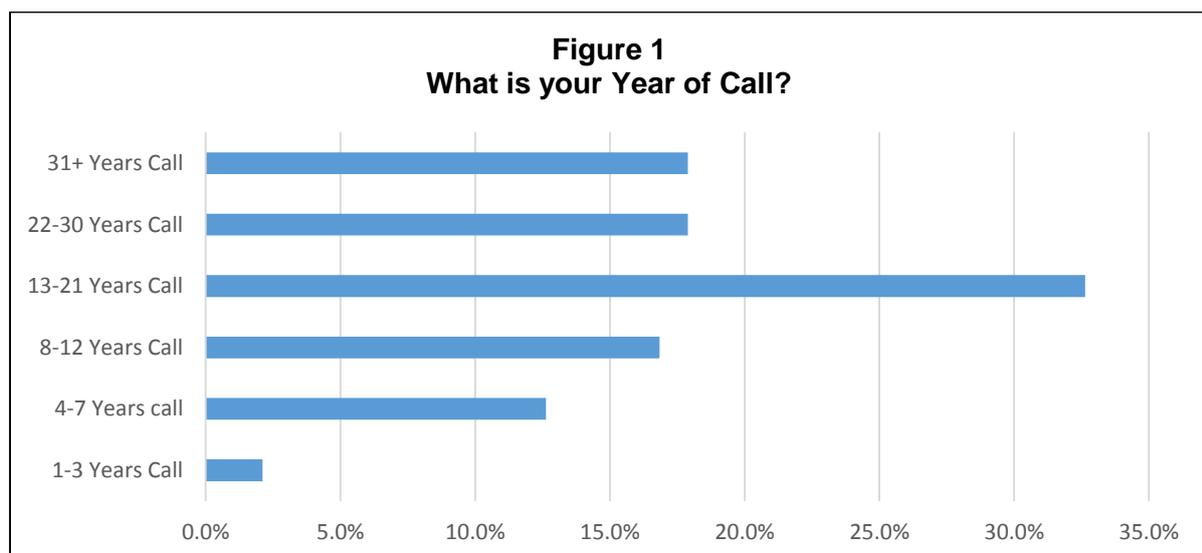


Survey Methodology

1. As part of the call for evidence regarding the Cab Rank Rule and Standard Contractual Terms, the BSB carried out a survey to gather evidence on the contractual basis on which barristers were being instructed and the frequency and basis on which the cab rank rule was being invoked. The survey was targeted at self-employed barristers and their clerks and aimed to provide further evidence to support the submissions received as part of the call for evidence.
2. The survey was hosted online on the surveymonkey website. The survey was launched on the 24/11/14 and left open for responses until 12/01/15. The link to the survey was publicised by the Bar Standards Board (via the Chair's monthly email update and reminders via twitter) as well as being publicised by the Bar Council's twitter account, and emails to the Specialist Bar Associations and the Institute of Barristers' Clerks.
3. The survey was undertaken by 159 respondents. The survey directed respondents through questions relevant to their own situation, and thus not all respondents answered all questions. In addition, the response rate suffers a gradual drop off for later questions in the survey, meaning that the sample size for some questions is small. As a result, the results should not be viewed as statistically significant (particularly given that the sample was self-selecting rather than random due to the nature of the methodology) but treated as indicative of the experience of the Bar as a whole. Numbers of respondents for each question are included below the charts within the report.

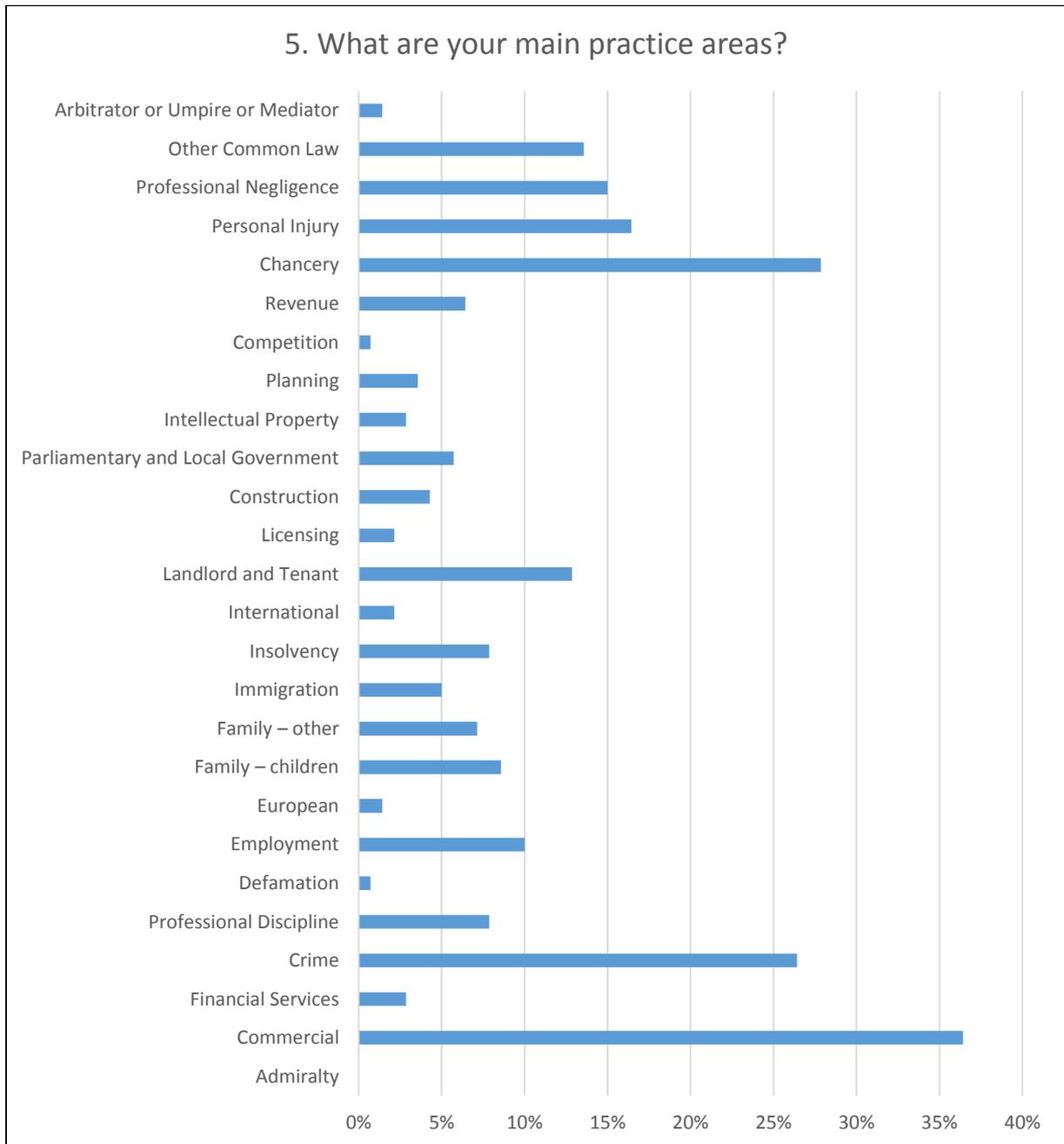
Profile of Respondents

4. The majority of survey respondents (71.2%) were barristers. Barrister's clerks made up 28.8% of respondents.
5. The majority of barristers who completed the survey were Junior Barristers (84.1%). Queen's Council made up 15.9% of respondents, a higher proportion than in the profession as a whole, of which 10% of Barristers were QCs in 2014.



N=94

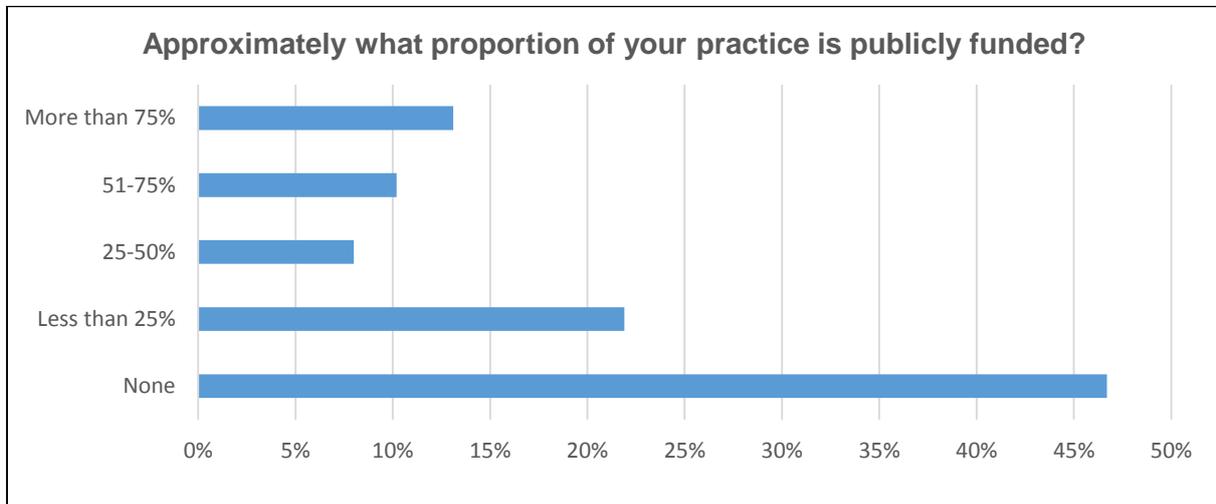
6. The profile of respondents by Year of Call has 13-21 Years Call as the most common response (32.6%) with more junior barristers (1-3 and 4-7 years call) the least common, in particular barristers of 1-3 years call who make up only 2.1% of respondents. This largely mirrors the results for the same question in the most recent Biennial Survey of the Bar¹, suggesting that the survey sample is relatively representative of the profession as a whole in terms of the year of call of respondents.



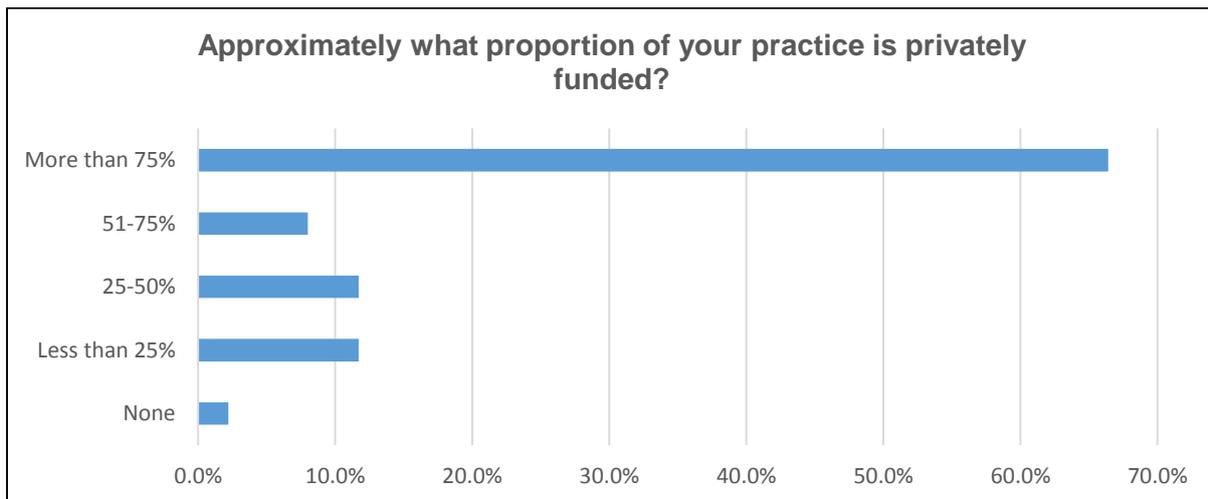
N=140

¹ *Second Biennial Working Lives Survey of the Bar*: Institute for Employment Studies (2013)

7. The most common practice areas identified by respondents were Commercial (36.4%) Chancery (27.8%) and Crime (26.4%). It is difficult to determine the extent to which the sample mirrors practice areas across the Bar as a whole due to inconsistencies in the way data on practice areas is collected from the profession. However, the practice areas listed by respondents does not seem to have any significant impact on responses to key questions elsewhere in the survey.



N=137



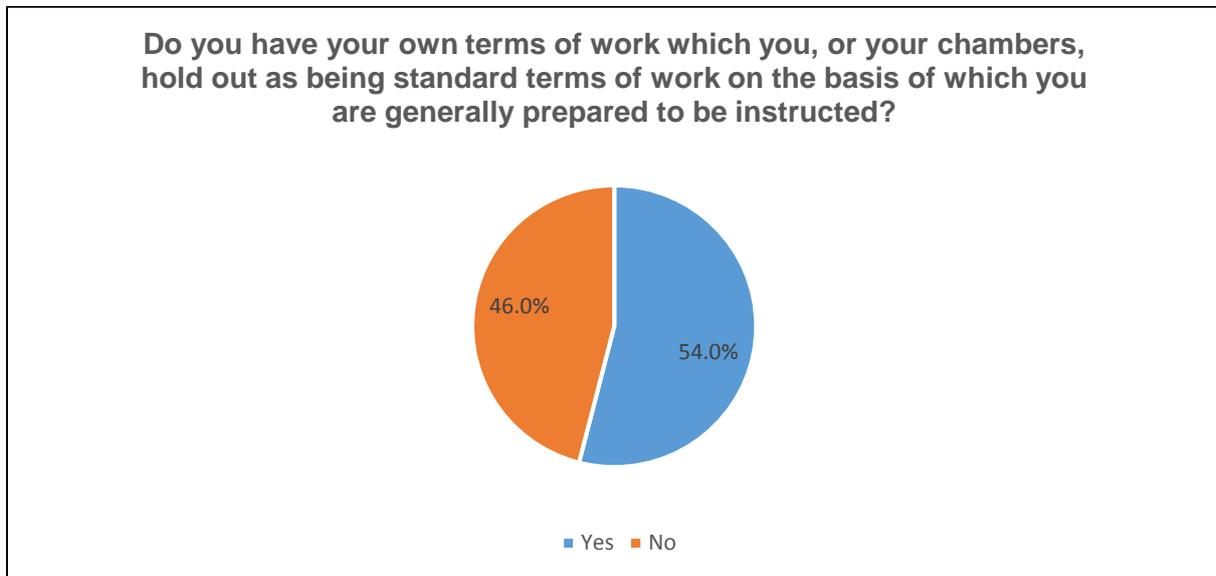
N=137

8. Of survey respondents, a large majority are predominantly privately funded – nearly two thirds (66.4%) of respondent's practices receive over 75% of their income from private clients, increasing to approximately three quarters (74.4%) who receive over half their funding from private clients. In contrast, less than a quarter of respondents receive over half their funding from public clients (23.3%), with close to half undertaking no publicly funded work whatsoever (46.7%). The proportions of publicly funded and privately funded work undertaken by the profession as a whole is not generally collected, although indicative survey data² suggests that the proportion of the Bar undertaking at least some publicly funded work may be over 60-65%, and as a result the proportion of respondents who undertake no publicly funded work may be higher than across the profession as a whole.

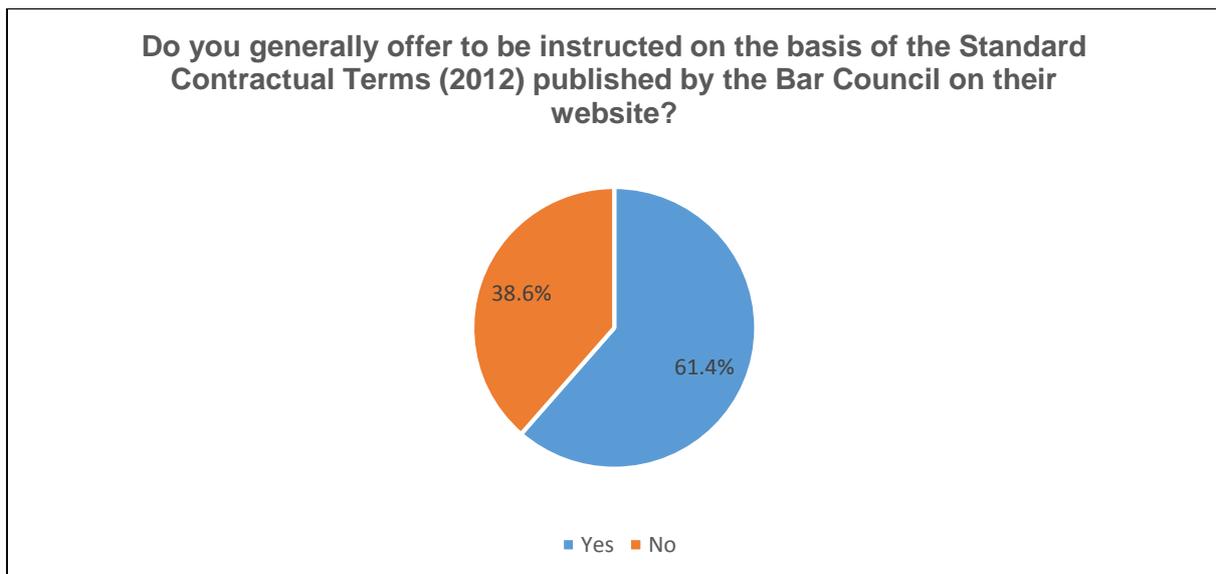
Contractual Terms

² *The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) – One Year On*: Bar Standards Board (2014)

9. A key element of the call for evidence was to determine which contractual terms barristers were generally offering to potential clients. A series of questions within the survey addressed both the terms generally offered by respondents, as well as the proportion of referrals they received under the different contractual terms listed.



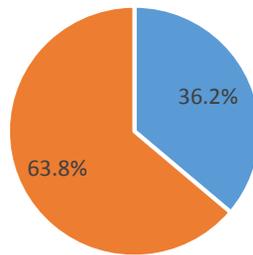
N=137



N=132

10. A small majority of respondents are generally prepared to be instructed on their own standard terms. A larger majority of survey respondents offer to be instructed on the Standard Contractual Terms, suggesting that the adoption of the terms in January 2013 has had a marked influence on the terms on which barristers offer to be instructed, with close to two thirds of barristers offering to be instructed on the basis of the BSB's Standard Contractual Terms.

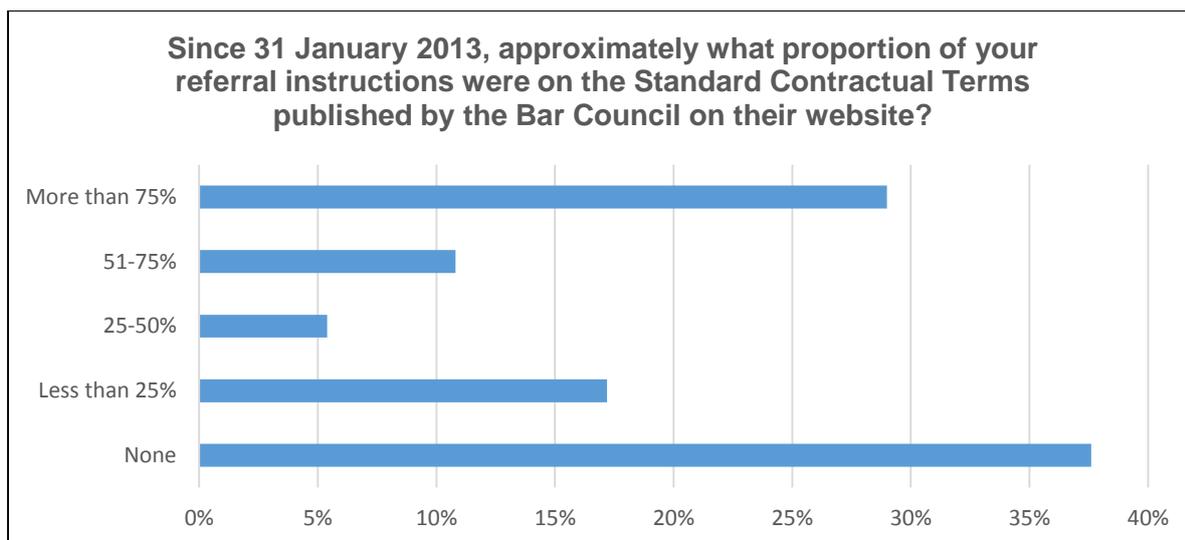
Do you generally offer to be instructed on the basis of standard terms published by any other organization?



■ Yes ■ No

N=130

11. A substantially lower proportion of respondents generally offered to be instructed on standard terms published by other organisations when compared to those offering to be instructed on standard terms published either by the Bar Council or themselves. Nonetheless, over a third of respondents, a significant minority, do generally offer to be instructed on this basis. Of these respondents, the majority who provided details of the terms - 86.1% - offered to be instructed on variants of the COMBAR terms. CLLS and PIBA terms were also listed by respondents.
12. The survey responses suggest that despite the Standard Contractual Terms being commonly offered within the market, substantial numbers of barristers do not generally offer to be instructed on this basis. Barristers offering their own standard terms, either in addition to or instead of the Standard Contractual Terms, is common. In addition, a substantial minority of respondents - over a third - generally offer to be instructed on other organisations standard terms, with COMBAR terms (in particular COMBAR A and COMBAR B) being particularly commonly offered.
13. The majority of respondents (52.2%) generally offer more than one set of terms to clients. Of all survey respondents, 20% offer their own terms alongside the Bar Council's Standard Contractual Terms, 15.3% offer their own terms and the standard terms of another organisation, 10% offer the Bar Council's standard terms alongside the standard terms of another organisation, and 6.9% offer the Standard Contractual Terms, their own standard terms, and standard terms provided by another organisation.

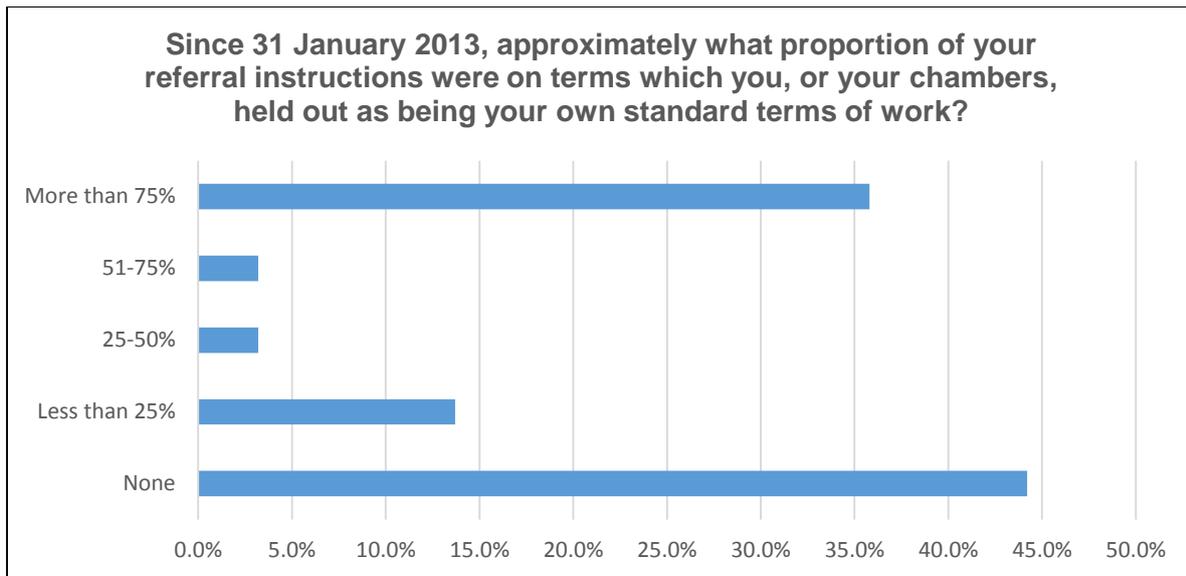


N=93

14. When asked what proportion of their referrals since January 2013 were on the basis of the Bar Council's Standard Contractual Terms, the most common responses were none - over a third of respondents (37%) – and over 75% (29.3%). Unsurprisingly, responses to this question were largely dependent on whether respondents generally offered to be instructed on the Standard Contractual Terms (see Table 1). The vast majority of respondents who had not received any referrals on the Standard Terms were those who did not generally offer to be contracted in this manner (82.4%). In contrast, only 10.7% of respondents who generally offered to be instructed on the standard terms did not receive any instructions on this basis. Nearly half (48.2%) of respondents who did offer to be contracted on the standard terms received over 75% of their instructions on this basis, and close to two thirds (66.1%) of respondents who offered the Standard Terms received over half of their instructions on this basis. This suggests that where offered, the Bar Council's Standard Contractual Terms are a popular option for clients and are frequently adopted as a contractual basis for instructions.

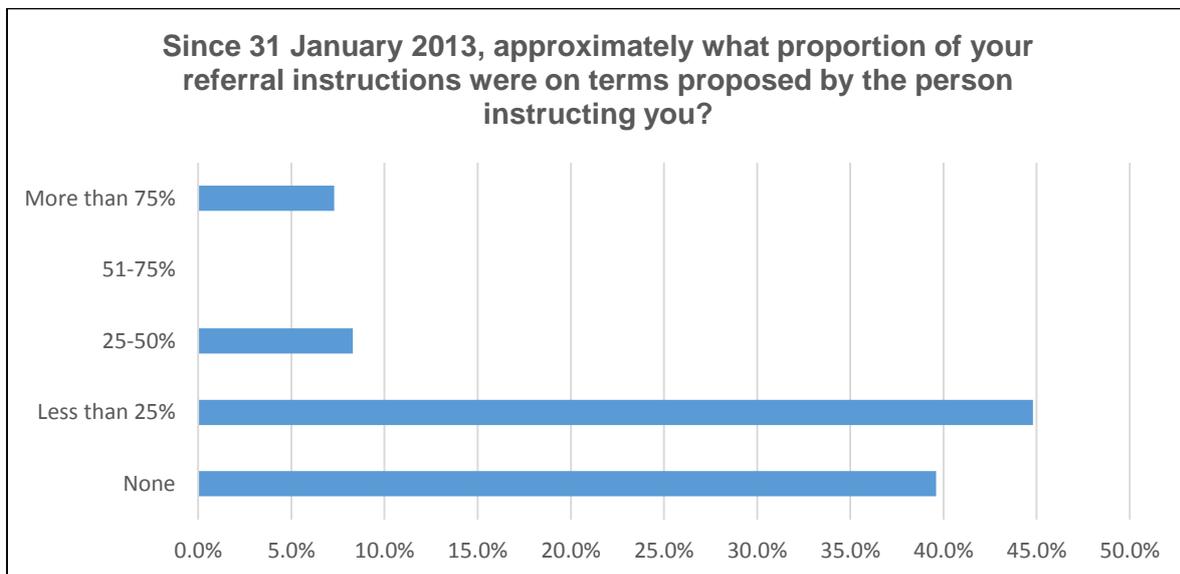
Table 1

Since 31 January 2013, approximately what proportion of your referral instructions were on the Standard Contractual Terms?	None	Less than 25%	25-50%	51-75%	More than 75%
Do generally offer to be instructed on the Standard Contractual Terms	10.7%	14.3%	8.9%	17.9%	48.2%
Do not generally offer to be instructed on the Standard Contractual Terms	77.8%	22.2%	0.0%	0.0%	0.0%
Overall	37.0%	17.4%	5.4%	10.9%	29.3%



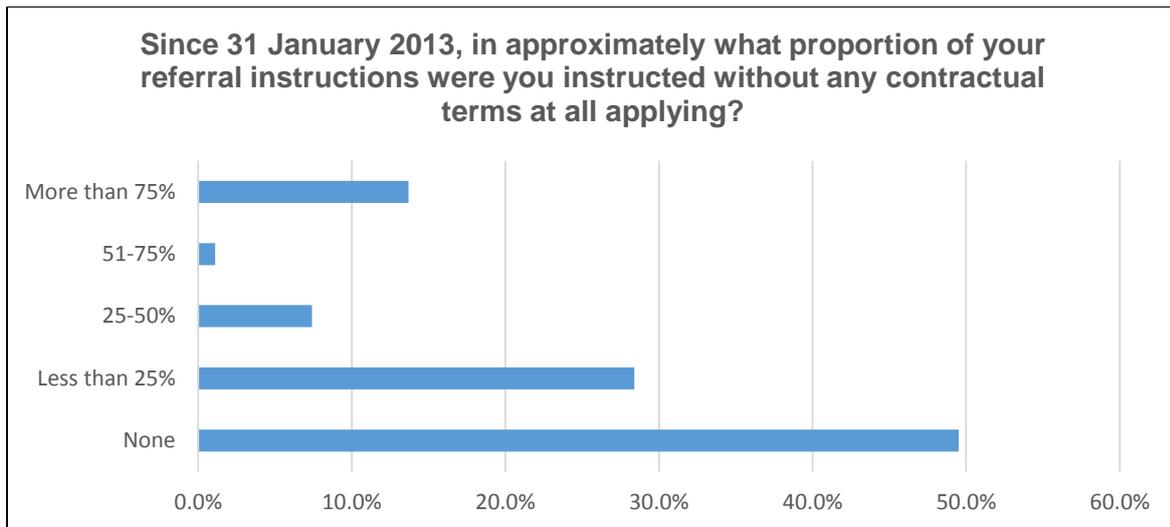
N=95

15. The most common responses when asked what proportion of instructions received were on their own standard terms were none (44.2%) and over 75% (35.8%), between them making up over 80% of responses. As with the proportion of instructions received on the Bar Council's Standard Contractual Terms, responses to this question were largely dependent on whether respondents generally their own standard terms to clients. Over half (56.3%) of respondents who generally offered their own terms received over 75% of their instructions on this basis.



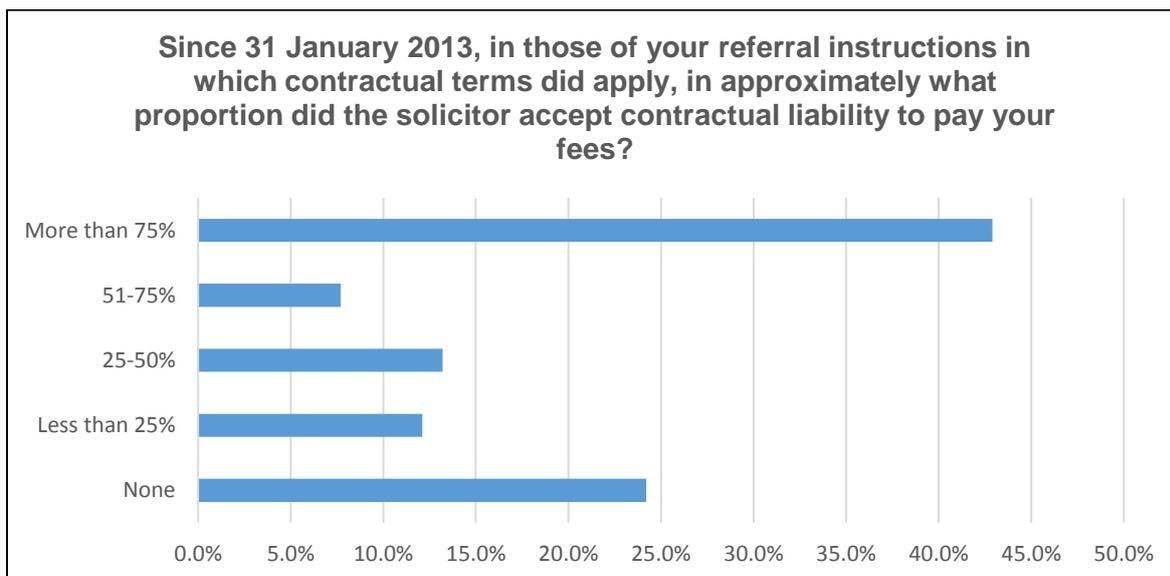
N=96

16. Despite concerns within the BSB over the proportion of instructions accepted on terms proposed by those instructing rather than terms proposed by the barrister or chambers, the survey responses suggest this is relatively uncommon. Nearly 40% of respondents have not received any referrals on terms proposed by those instructing them, and for nearly 45% of respondents such instructions represent less than 25% of their instructions – a combined percentage of 84.4%.



N=95

17. The most common response given regarding the proportion of referral instructions that did not involve any contractual terms at all was that no instructions had been received on this basis. However, this represented just under half of respondents (49.5%). The majority of survey respondents had received at least some instructions on this basis, and 13.7% of respondents received over 75% of their instructions without contractual terms applying.

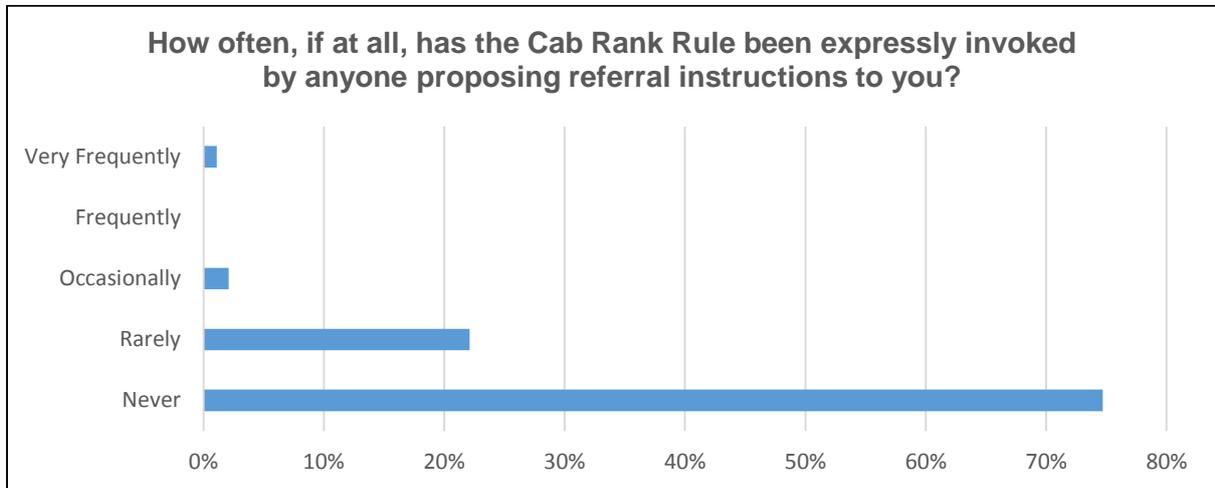


N=91

18. The most frequent response to the proportion of referral instructions where solicitors had a contractual liability to pay fees was more than 75% (42.9%). However, close to a quarter of respondents received no instructions on this basis (24.2%). A combined percentage of 49.4% (nearly half of respondents) received at least half of their instructions without the solicitor accepting contractual liability for their fees. These results suggest that a large proportion of barristers are regularly accepting referral instructions where solicitors do not have a contractual liability to pay their fees, raising potential issues around the ability of barristers to ensure they receive fees owed for work carried out.

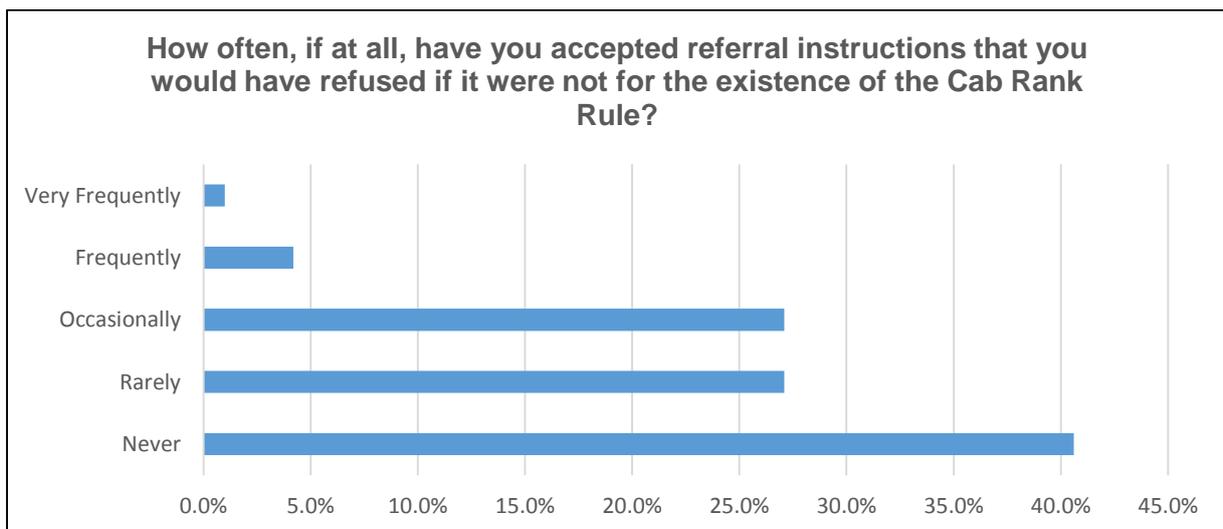
The Cab Rank Rule

19. The call for evidence was interested in establishing the extent to which the Cab Rank Rule was being invoked, and the impact it was having on the behaviour of barristers and their clerks.



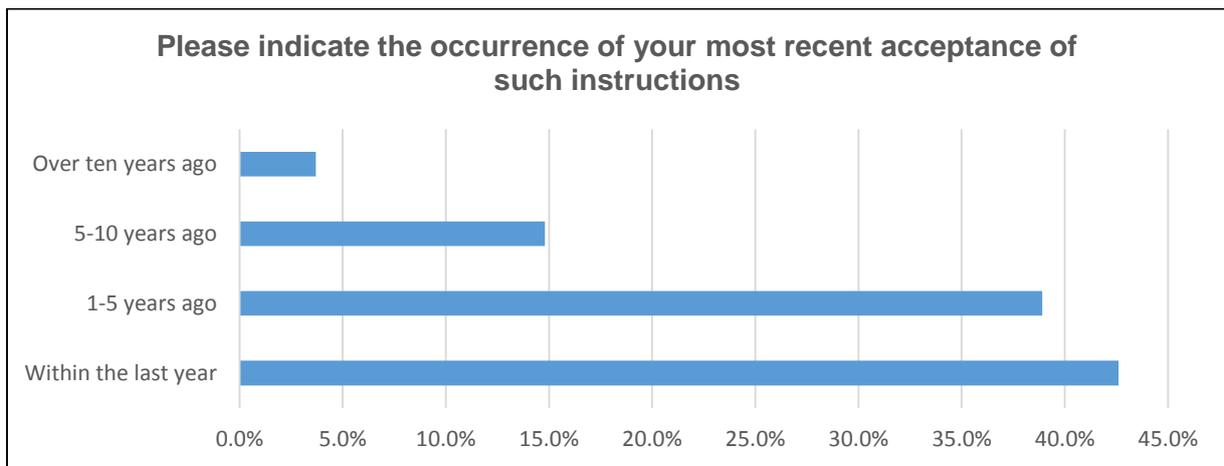
N=95

20. The vast majority of survey respondents have never had the Cab Rank Rule invoked by those proposing referral instructions – close to three quarters have never had the rule expressly invoked (74.7%) with the remainder of respondents largely made up of those who have only rarely had the rule expressly invoked (22.1%), a combined percentage of 96.8%. Responses to this question suggest the formal invocation of the Cab Rank Rule does not occur for the vast majority of referral instructions.
21. Only 5 respondents had been proposed instructions where the Cab Rank Rule was explicitly invoked in the period since January 31st 2013 when the Bar Council's Standard Contractual Terms were introduced. Of these respondents, three had been proposed instructions invoking the rule on the Standard Contractual Terms, one on their own terms, and one on another contractual basis.



N=96

22. In contrast to the explicit invoking of the Cab Rank Rule, responses when asked if the existence of the rule had influenced their decisions to refuse instructions reveal the rule has influenced the majority of respondents. The most frequent answer was that respondents had never accepted instructions they would have refused had the rule not been in existence (40.6% of those taking the survey). However, the majority of respondents had accepted instructions that they would have refused were the rule not in effect (59.4%). This supports the view that the existence of rule, regardless of the extent to which it is invoked or enforced, plays a role in influencing the behaviour of barristers. Indeed, when taking into account the high proportion of respondents indicating the rule had never been expressly invoked in referral instructions they had received, responses to this question suggest that awareness of - and adherence to - the rule ensures cases are being accepted that would otherwise have been refused, even when the rule is not explicitly invoked.



N=54

23. Where survey respondents had accepted instructions they would have refused were the Cab Rank Rule not in effect, a follow-up question asked the most recent occurrence of these instructions. The most common responses were within the last year (42.6%) and between 1-5 Years (38.9%). Thus for the majority of respondents who had accepted instructions they would have refused were it not for the Cab Rank Rule - despite the fact that such instances were rare - they have occurred within the last five years (81.5% of respondents).