

Buying patterns and the changing role of the Bar





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Introduction

The world may be slowly heading out of lockdown and towards some semblance of normality, whatever that looks like, but the ramifications of the coronavirus pandemic are only just starting to emerge within the world of litigation.

The economic downturn which has still to fully play out, the ramifications of lockdown and the widespread use of government support schemes is anticipated to lead to a spike in the number of business disputes, as well as a surge in disputes within complex areas of the law.

Litigators are already reporting a rise in litigation related to employment, cases against universities, fraud cases and cases relating to life sciences patents.

In what is far from a simple time, the report has a simple premise at its heart: What is the role of the Bar in modern business disputes, and is this role changing? If it is changing, we want to know how.

The project was conducted in collaboration between Radcliffe Chambers and The Lawyer, and explores

perceptions of the modern bar and barriers to innovation while shining a light on what constitutes outstanding client service in a post-coronavirus world.

To find out, we surveyed private practice litigators from the UK's top law firms as well as general counsel from some of the country's biggest companies.

We asked respondents to state their biggest frustrations when using barristers, and picked up on the growing desire for collaboration and 'teamworking' between solicitors and barristers to serve clients' best interests.

We look at the factors driving the Bar's evolution, such as globalisation within litigation, and how that is impacting buying patterns and expectations.

The study is the only of its kind on the UK market, and is essential reading for both barristers and those who work with the Bar looking to navigate the tricky litigation landscape in the months and years ahead.

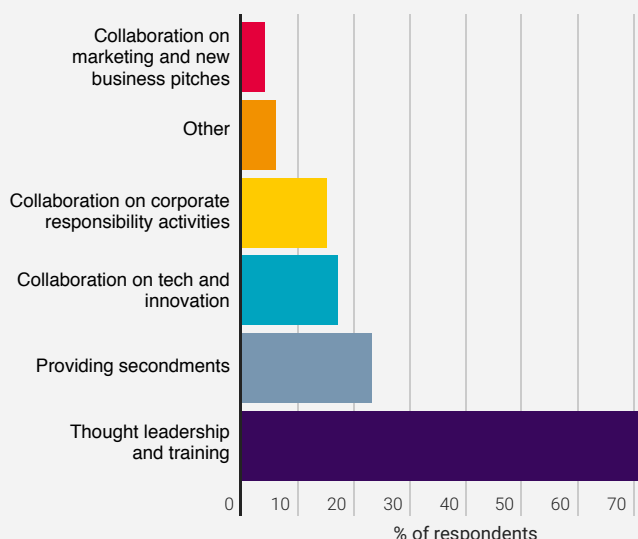
A growing desire for collaboration

A broad desire for closer collaboration emerges from the data, including secondments, collaboration on tech and innovation, and collaboration on corporate responsibility activities. These options were selected by 22, 18 and 16 per cent of survey respondents respectively when asked where the Bar could add extra value. Just over 20 per cent of respondents feel that the Bar *currently* adds value by becoming part of the team.

"The counsel who are likely to get the job are the team players who realise that their part in the case is important. All the best people I've worked with have done that," says Ian Gatt QC, partner at Stewarts.

One survey respondent also added that they feel the Bar could do more by becoming 'part of a team and adding value through strategic advice on cases.'

Where could the Bar add more value?



Striking a balance between increased collaboration while maintaining an expertise in what is 'typically' expected of a barrister is likely the best course of action



Indeed, when asked how they see the role of the Bar changing over the next few years, the most common response (selected by 19 per cent of respondents) was 'more involvement with the litigation process and more collaboration.'

To what extent however can this be done without losing some of what makes the Bar unique? Ian Gatt for example states that: "One great thing about the Bar is that they have the ability to insulate themselves from everything else and concentrate on what they need to work on. They get the job done with no distractions. In private practice there's no way I can do this, as I'm constantly fielding calls. Sometimes you can't get hold of them which is frustrating, but the really good barristers can do both by managing expectations."

Barristers must therefore look to add extra value while maintaining their traditional expertise. For example, when asked where the Bar could add extra value, over 70 per cent of respondents felt that it could be provided through thought leadership and training.

This is of course not to say that no chambers are offering this. This piece of thought leadership is testament to the fact that sets such as Radcliffe Chambers are out there pushing to add extra value where it is needed.

Striking a balance between increased collaboration while maintaining an expertise in what is 'typically' expected of a barrister is likely the best course of action.



The importance of commercial awareness

Adapting to the coronavirus has allowed barristers to demonstrate their adaptability and innovation. Courts have shifted online, and chambers have remained operational in lockdown through the quick uptake of technology. This flies in the face of accusations of inadaptability or a failure to change with the times often thrown at the Bar.

Indeed, some of those accusations are apparent within the survey results.

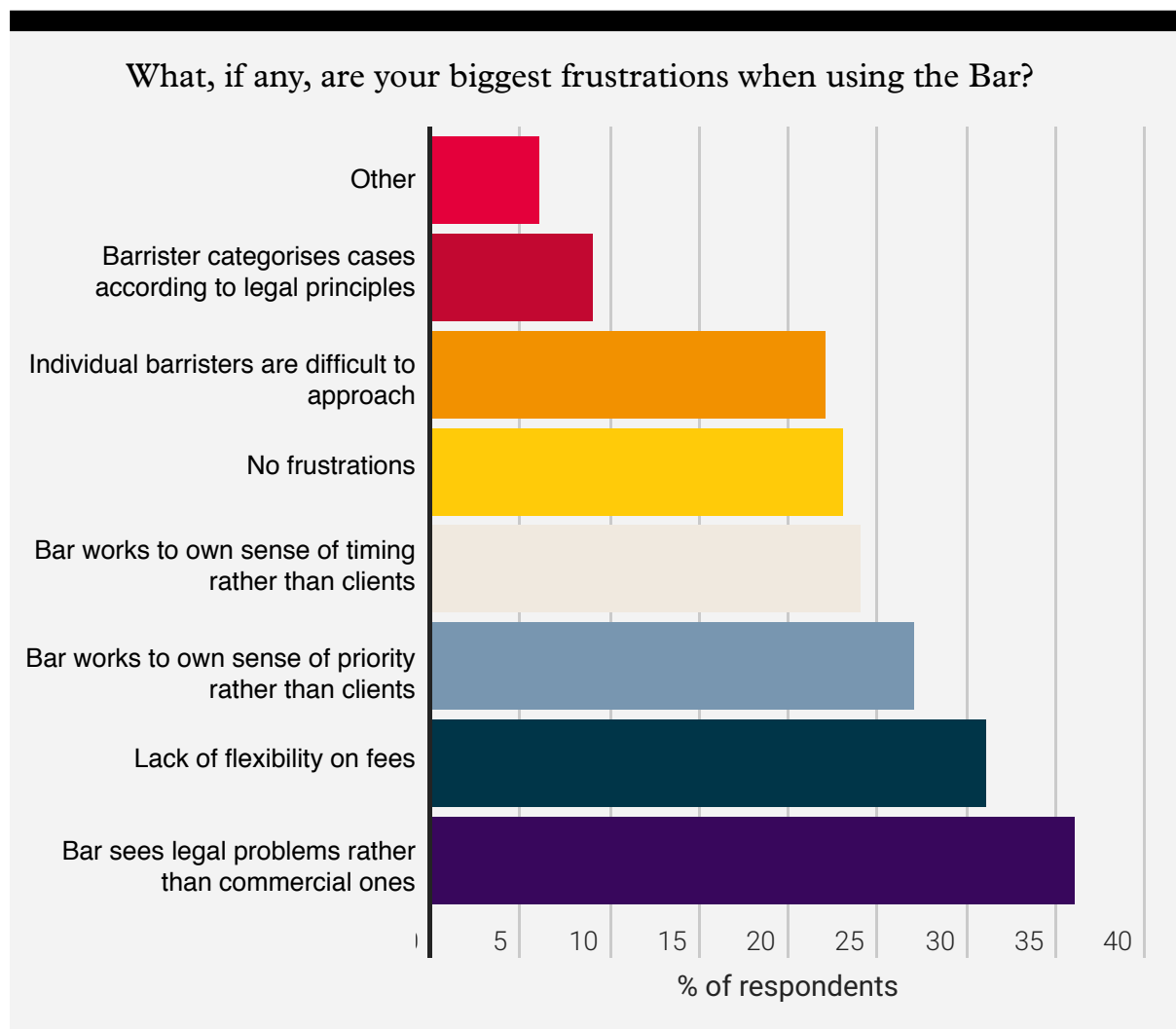
When asked about the Bar's changing role, one respondent said: "So many of the ancient traditions need to be put aside so that they can become truly client

focused. Using emails, producing work on time, not hiding behind clerks, and upping the speed of change for diversity and inclusion."

Another, when commenting on their biggest frustrations when using the Bar, said: "some are stuck in the 19th century." These comments are all obviously very general, and individual chambers would have a strong case to argue that these perceptions do not apply to them.

Radcliffe Chambers makes a point of ensuring that its barristers are accessible and responsive.

Co-head of the commercial litigation team at Radcliffe,



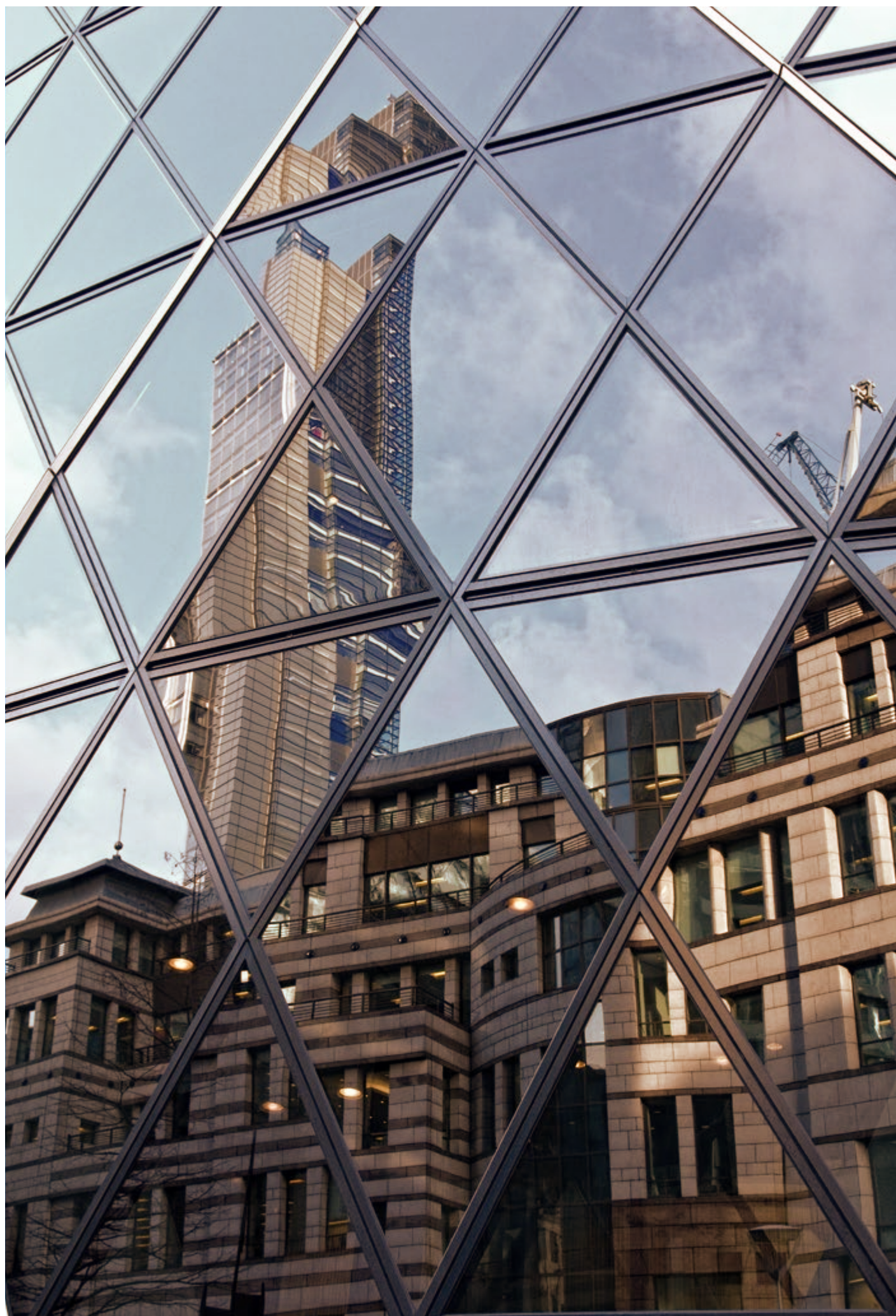
Christopher Boardman QC says: “This isn’t an ivory tower. We enjoy our work, so we want our clients to enjoy working with us and to feel as though we are an extension of their team, rather than an external provider.”

His fellow co-head, Shantanu Majumdar QC adds: “Organisational culture is really important in a high-performance environment. There’s no room for ego or unnecessary hierarchy if you want to provide the best possible service. Everybody needs to be ready to roll up their sleeves and get their teeth into the case.”

The most prevalent frustrations about the Bar include barristers seeing legal problems rather than commercial ones (35%), a lack of flexibility on fees (31%) and the Bar working to its own sense of priority rather than client commercial imperatives (26%).

Breaking out of the legal mould has been a key method of differentiation for innovative chambers such as Radcliffe. Fiona Fitzgerald, Chief Executive at Radcliffe Chambers says: “We work hard to recruit and develop commercially aware barristers. Every legal problem has a commercial context that is inextricably linked to the best possible outcome for our clients. Surveys such as this help us to ensure we provide the type of service that our clients want and not what we think they need.”

Key frustrations differ significantly when respondents are divided between in-house and private practice. Those in in-house roles are broadly in line with the survey average, however private practice lawyers are most often frustrated about the Bar working to ‘its own sense of timing rather than clients.’” This is again tied to that commercial understanding that innovative chambers



such as Radcliffe pride themselves on cultivating.

The need to have an understanding of client needs and expectations is expressed by Bill Gilliam, partner at Addleshaw Goddard. “Sometimes we won’t use certain barristers if they’re known to be client unfriendly. It’s important that counsel work with us as a team to make our instructing client look good – including by providing their input in the right way, at the right time and at the right price.

“Counsel have to appreciate and deliver on our client’s expectations. Some elements of the Bar unfortunately are still anachronistic – lacking accessibility and diversity – but we have encouraged and seen positive progress, and have our clients. We would hope that everyone’s ongoing commitment, combined with overall market forces, will continue to work to the good here.”



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Christopher Boardman QC,
co-head of the commercial
litigation team at Radcliffe



Perceptions around cost

The Bar has always had to fight off perceptions that it is too expensive. Data from this report however suggests that sets have been successful in demonstrating that while they may not provide the cheapest service, the legal expertise offered is invaluable.

That isn’t to say that both in-house and private practice

lawyers cannot see room for improvement on cost; more than half of our survey respondents want the Bar to improve on cost including billing and flexibility. Private practice lawyers are more likely to have a problem here: when their responses are looked at in isolation, 68 per cent want to see improvement on cost at the Bar.

However, when respondents were asked to list the most important factors in deciding which chambers to work with, expertise, relationships and availability, as well as the quality of service, were all ranked higher than cost. In fact, only 37 per cent of respondents selected price as one of their top three most important factors when selecting a chambers to work with.

Indeed, more than half of respondents describe the cost of working with the Bar as ‘expensive but worth it’. 21 per cent of respondents feel that the Bar is too expensive, which is perhaps lower than one might’ve guessed without seeing the data.

Respondents stated that ‘good counsel make all the difference. The best can save you money’, and that ‘counsel are comparatively cost effective when compared to the hourly rates and processes of major City firms.’

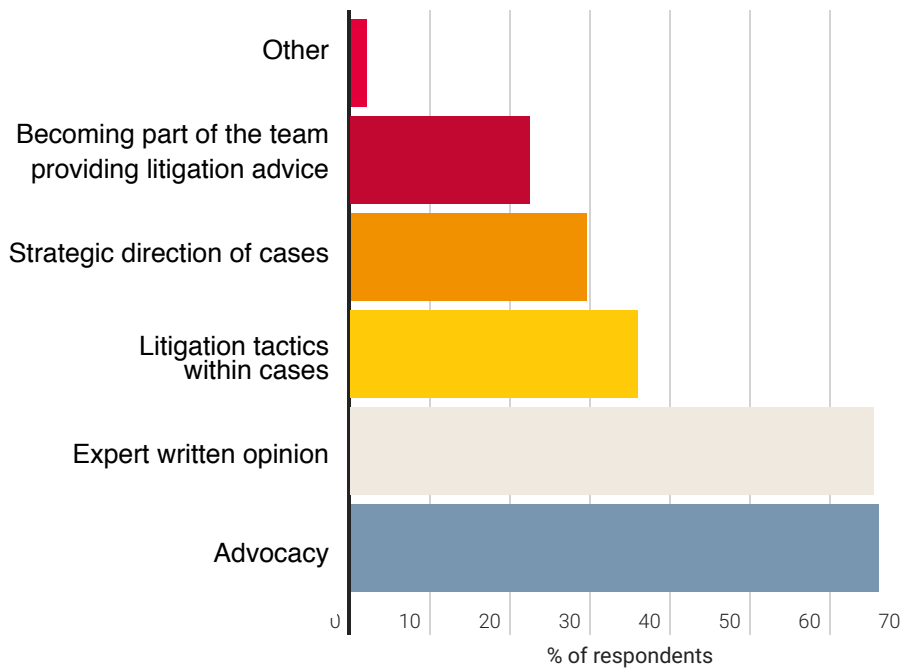
While there are complaints about cost therefore, it seems that those that use the Bar know that they are getting their money’s worth. In the meantime, sets are doing well to demonstrate that in the long run they can actually prove to be cost-effective.

John Clark, senior clerk at Radcliffe Chambers says: “The Bar is often considered a premium product, but that doesn’t mean that it shouldn’t provide good value for money. Flexibility around fee structures and billing arrangements can assist with this. Solicitors and GCs are increasingly asked to deliver more for less, and the Bar cannot consider itself immune to this. We all need to work together to provide value, especially in these difficult times.”

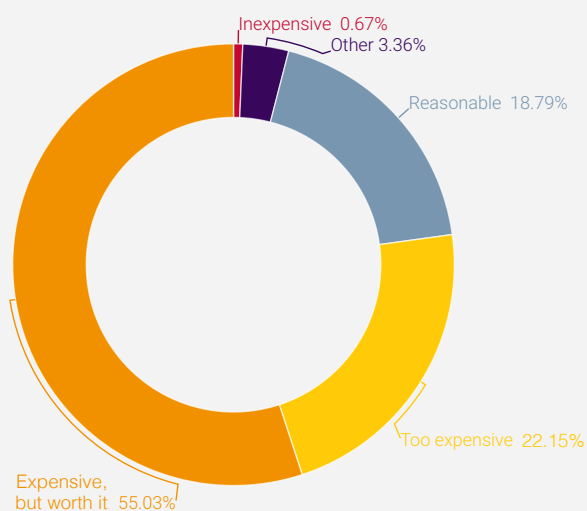
Why is the Bar worth it?

With perceptions around cost at the Bar defined by a broad feeling that barristers are both expensive but,

Where does the Bar currently add the most value?



How would you describe the cost of working with the Bar?



generally, worth the money, it is important to understand where buyers feel they get the most value.

Over 60 per cent of respondents stated that they feel that the Bar's value currently comes from providing both advocacy and expert written opinion. This will probably be unsurprising to most barristers and to those who interact with them, as advocacy in particular has come to define what is expected of the 'typical' barrister.

Alexandra Thrower, general counsel at corporate travel management company Reed Mackay, argues that while barristers are excellent when it comes to advocacy, they could perhaps do more to broaden their offering. "Barristers are lawyers with a lot of knowledge and skill, they could use these valuable skills and knowledge in a wider arena than just advocacy and litigation."

Thrower feels that, generally, chambers could however be doing more to promote their initiatives, but may

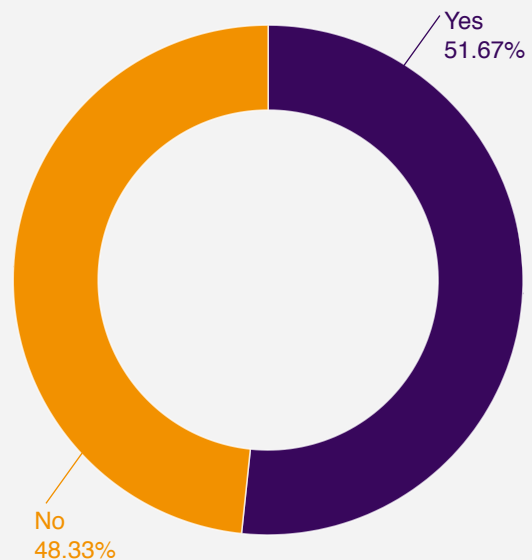


Barristers are lawyers with a lot of knowledge and skill, they could use these valuable skills and knowledge in a wider arena than just advocacy and litigation

Alexandra Thrower,
general counsel at Reed Mackay



Have you ever used a barrister on a direct access basis?



be put off doing so in order not to anger the solicitors through which they gain a significant amount of work.

"If the Bar are offering more variety of services they could advertise this more succinctly through marketing channels to in house teams.

"There's a good opportunity to broaden horizons. It is rare to receive an email from a chambers saying that we can also offer XYZ. There is a balance there though for chambers as this would effectively mean competing with solicitors firms who instruct them."

John Bramhall, partner at DAC Beachcroft, elaborates on this, saying: "The simple truth is that barristers get their work when solicitors choose to instruct them. That means that both they and the clerks' rooms need to behave reasonably towards us, both on fees and in respect of

their availability, because if they get a reputation for overcharging or overtrading, then we will vote with our feet."

Despite this, more than half (52 per cent) of in-house respondents indicated that they had used barristers on a direct access basis. Chambers would of course like to see that figure grow going forward, which again could potentially be gained through marketing.

It would appear however that converting the non-believers may be a difficult task. Of those that hadn't used a barrister on a direct access basis, just under half stated that they simply preferred using external solicitors, while just over 40 per cent felt that they had no real need to. These are the perceptions that will need to be changed if chambers want to see more of their work come directly from clients.



Buying patterns

Beyond cost and meeting client expectations, respondents are likely to rate their relationship with and the reputation of individual barristers highly when deciding which chambers to work with.

Respondents were given 10 factors to rank based on their importance when commissioning a set, and the expertise and relationship with specific barristers ranked way out ahead as the most important factors.

Despite this, more than 40 per cent of respondents do not have a preferred panel of counsel.

Those who do have a panel of counsel are likely to review it on an ad-hoc basis according to need rather than within defined time frames. However, while respondents may not specifically have a panel, more than 60 per cent work with fewer than five chambers on a regular basis.





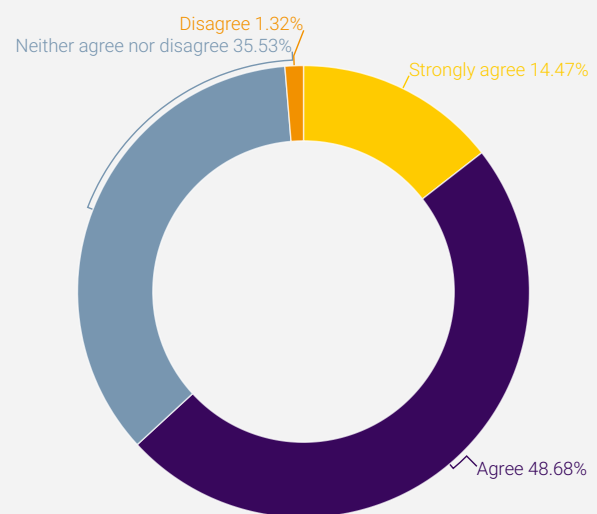
Globalisation and the changing face of legal teams

Whether respondents use a panel or not, the way in which barristers form part of a legal team is likely to change in the near future as a result of globalisation and growing complexity within commercial disputes.

More than 63 per cent of respondents agree that disputes will need to be run differently owing to increasing complexity. Interestingly, 61 per cent neither agree nor disagree that this changes the way legal teams will need to be put together. Just 2 per cent outright disagree, suggesting that the vast majority feel that complexity will have some impact, but aren't entirely sure how that will manifest itself within the structure of legal teams.

Indeed, one respondent stated that they do not have 'enough data to form a view' on the topic. Others are more convinced of where things are headed, with one respondent stating that 'There are huge regulatory and commercial concerns [when it comes to increased globalisation and complexity], which affect decision making and it is no longer realistic to focus solely on legal issues. One has to navigate a complex set of risks to find a way through. There is much more strategic

Do you agree that globalisation and the growing complexity and size of disputes changes how commercial disputes need to be run?





The need for collaborative barristers is only going to grow as disputes become more complex

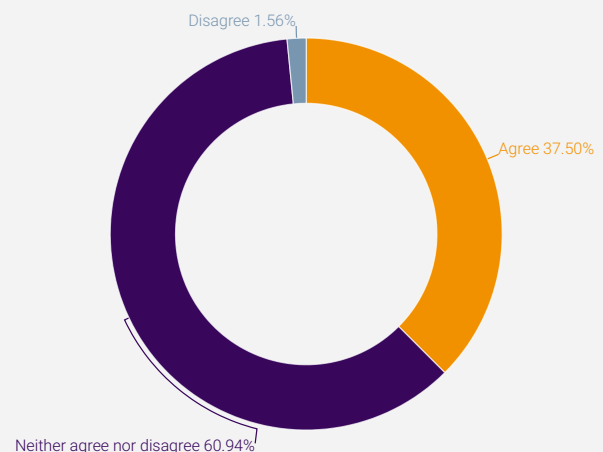


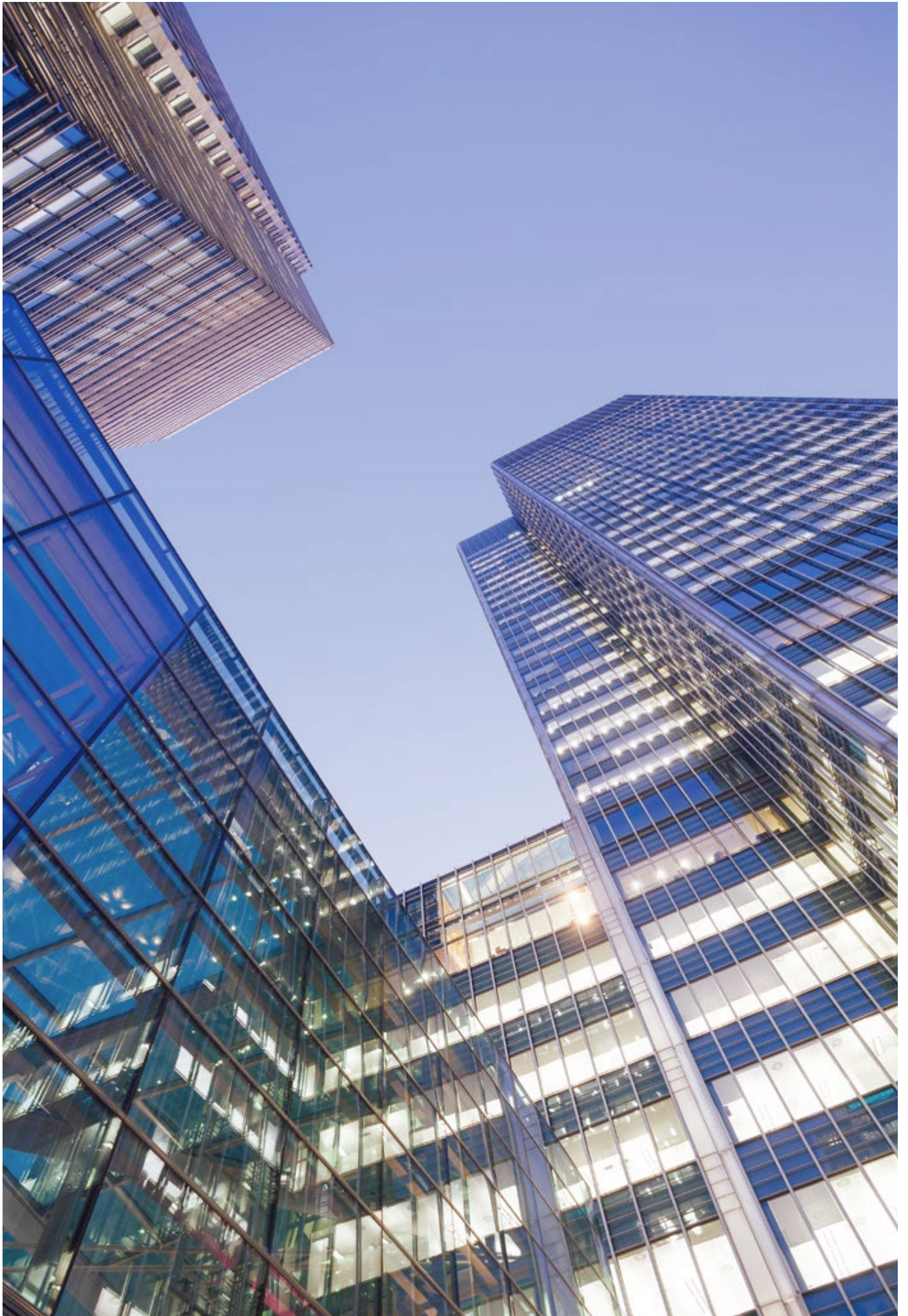
analysis required. Understanding the legal implications of decisions is important, but it is now a much smaller piece of the whole picture.'

Another respondent commented that 'the efficient and effective running of complex and large cases can save huge amounts of time and costs and ensure that the disputes are dealt with justly. Technology has a huge part to play here - especially in relation to e-disclosure and bundles - but the key is ensuring that all parties (directed by the Court if necessary) take a constructive and co-operative approach to achieve that.'

This is again tied to the desire for barristers to be truly commercially aware and not isolated within a legal bubble. The need for collaborative barristers is only going to grow as disputes become more complex. The Bar is seen as an expensive but valuable tool within dispute resolution. Going forward, it will be the sets that can demonstrate broad commercial awareness and teamworking skills that will be deemed to be worth the expense.

How far do you agree that this changes how you put together legal teams when disputes arise?





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