



Women in Criminal Law
Survey on Extended Operating Hours
Executive Summary

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1. Introduction

On 4th September 2020, Women in Criminal Law (WICL) launched a survey to collect data on the views of criminal practitioners on the proposals to extend court operating hours. Extended Operating Hours (EOH) have been proposed and are being trialed as a means to deal with the significant backlog of cases in the criminal courts. Current trials of this scheme are ongoing at Liverpool, Hull, Stafford, Portsmouth, Reading, Cardiff and Snaresbrook Crown Courts. The proposed model is that certain courtrooms will run ‘shifts’ at either 9am – 1pm or 2pm – 6pm, with some courts also running a ‘normal’ list.

Additionally, various Magistrates’ Courts are now operating longer hours, and dealing with non-urgent bail matters, including trials, on Saturdays, despite the lack of any formal consultation of the profession. HMCTS has presented plans to extend existing Saturday Courts, expand the number of Saturday courts, extend existing ‘out of hours’ teams to deal with single justice procedure cases between 08.00 and 20.00 and to



introduce evening sessions from Monday to Friday sitting from 17.00-20.00. So far as WICL is aware, there has not been any formal assessment undertaken with respect to the impact of these changes on diversity within the profession, including the impact on gender equality.

The backlog of cases stood at 46,467 in the Crown Courts, and 517,782 cases in the Magistrates' Courts, as of 23 August 2020. The backlog stood at circa 39,000 cases in the Crown Court prior to the nationwide 'lockdown' implemented in March 2020 in response to the Covid-19 pandemic.

WICL launched this survey in response to high levels of concern amongst our membership as to the anticipated impact of EOH on work/life balance, those with caring responsibilities, and the mental and/or physical wellbeing of practitioners.

The survey was closed on 14th September 2020.

2. Summary

WICL received a total of 480 responses to this survey. The largest groups of respondents were barristers of seven years' call and above (207 respondents) and solicitors of five years' PQE or more (102 respondents). 88 respondents were pupil barristers and barristers below seven years' call, whilst 24 were trainee solicitors or solicitors below five years' PQE. The lower rate of responsiveness from solicitors is likely due to the fact that solicitors are less likely to appear in court on a daily basis (although we recognise that many solicitors and HCAs do appear in the Magistrates' and Crown Courts) and also that solicitors are generally salaried and are therefore less likely to see their income immediately impacted by EOH. We also received a small number of responses from HMCTS staff, paralegals, legal executives and members of the judiciary.

Just over 72% of respondents were female.

Number of respondents who indicated their views on EOH: <u>311</u>		
Against EOH	274	88%
In support of EOH	12	3.9%
Neutral to EOH	25	8%

3. Respondents in support of, neutral to or against EOH

3.1 Barristers



Number of barristers (including pupils) who indicated their views on EOH: <u>248</u>		
Against EOH	218	87.9%
In support of EOH	8	3.2%
Neutral to EOH	22	8.9%

3.2 Solicitors

Number of solicitors (including trainees) who indicated their views on EOH: <u>48</u>		
Against EOH	43	89.6%
In support of EOH	2	4.2%
Neutral to EOH	3	6.3%

3.3 By gender

WICL is founded and run by and for female criminal practitioners, and as such, although we invited responses irrespective of gender, we inevitably received a significantly higher proportion of responses from female practitioners. Of those who responded to this question, approximately 90% of female respondents, and approximately 83% of male respondents, were opposed to EOH.

(a) *Female*

Number of respondents in this category who provided a response to this question: <u>220</u>		
Against EOH	199	90.5%
In support of EOH	5	2.3%
Neutral to EOH	16	7.3%



(b) *Male*

Number of respondents in this category who provided a response to this question: <u>87</u>		
Against EOH	72	82.8%
In support of EOH	6	6.9%
Neutral to EOH	9	10.3%

(c) *Non-binary/prefer not to say*

Number of respondents in this category who provided a response to this question: <u>4</u>		
Against EOH	3	75%
In support of EOH	1	25%
Neutral to EOH	0	0%

4. **Reasons cited by respondents who were against EOH**

262 respondents who indicated that they were opposed to EOH provided a reason for their stance.

Reasons for opposition to EOH proposals		
Impact on childcare or other caring arrangements	107	40.8%
Impact on mental and/or physical health	33	12.6%
Impact on work/life balance	113	43.1%
Other	9	3.4%

(a) *Childcare and other caring responsibilities*



Number of primary caregivers who responded to the question on their position on EOH: 132		
Against EOH	120	90.9%
In support of EOH	5	3.8%
Neutral to EOH	6	4.5%

192 respondents indicated that they were primary caregivers. Of those, 120 indicated that they are opposed to EOH. 85 cited the impact on caring arrangements as the reason for their opposition, 26 cited impact on their mental or physical health or their work/life balance.

Of the 192 respondents who indicated that they are primary caregivers, 150 were female.

Respondents noted that the availability of flexible childcare is currently limited due to the Covid-19 pandemic. In any event, most forms of childcare which offer flexibility, such as nannies, are beyond the financial means of most criminal practitioners, particularly at the junior end. This means that practitioners are generally reliant on breakfast and after school clubs, childminders and nurseries. Such forms of childcare are completely inflexible, especially at short notice, and the vast majority operate between 8am – 6pm. This will inevitably mean that primary carers, who are disproportionately women, will be excluded from dealing with cases which are being heard late in the day in the Magistrates’ Court, or in the EOH courts at the Crown Court.

In answer to these questions, respondents said:

“Please continue to represent women who are primary care givers, so we aren’t excluded from the profession”.

“I am a young woman and I want to have children. It is my view that EOH would make attempting to have a family life intolerably difficult, and I therefore I am considering leaving the Bar”.

“The nature of the Bar means we often spend time preparing cases in the evening. If have to sit late and travel and prepare, it means that the cases will suffer or our home lives. It's often the latter, which is why so many people are looking to leave the Bar. All of this is compounded if you are a primary carer and don't have support”.



“Fight against the extended hours proposals to ensure women are not discriminated against across the profession when it comes to choosing work or care giving responsibilities”.

“With the hope of starting a family soon, EOH will make me consider leaving the profession”.

(b) *Impact on work/life balance*

This was the most commonly cited reason amongst respondents overall, and was the most common reason cited by male practitioners (37 male respondents, and 76 female respondents who were against EOH gave this as a reason).

Number of respondents who answered our question on whether they anticipated that EOH would negatively impact their private/family life: <u>297</u>		
Yes	270	90.9%
No	19	6.4%
Unsure	8	2.7%

In answer to these questions, respondents said:

“I will have to work 7 days a week even more often just to keep up with workload and duty solicitor requirements”.

“If EOH are enforced by my firm I will not be able to continue working as I currently do, and this could prove untenable for me and my family”.

“There are hardly any extra hours in the day to prepare the work we already have, let alone the extra hours”.

(c) *Mental and physical health*

33 respondents cited their mental and physical health as the reason that they were opposed to EOH. Of those, 27 were female, with 13 of those being barristers of more than seven years’ call.

In response to these questions, respondents said:

“As solicitors at the moment, we are running around trying to deal with things under a lot of pressure. The police station interviews are running through the night and we are not being given time to breathe”.



“We already work long hours with prep and research in the evenings as well as at weekends. It puts a strain on our relationships, but also our mental and physical health. As a young woman at the Bar, I was already finding it difficult to come up for air on weekends and evenings, I have found it almost impossible to have anything more than perhaps 8 hours not thinking about or doing some work”.

(d) *Other*

The reasons provided by respondents in this category were varied, but included concerns around the discriminatory impact of the proposals more generally, the impact on prisoners, victims and witnesses, the additional administrative workload and the view that the practicalities involved, such as getting defendants in custody to court on time, would mean that the scheme would not work in practice.

5. **Reasons cited by respondents who were in favour of EOH**

Of the 12 respondents in favour of EOH, all provided a reason.

Number of respondents in this category who provided a response to this question: <u>12</u>		
Defendants and witnesses will have their trials dealt with more swiftly	1	8.3%
Expediting justice for defendants and witnesses	1	8.3%
It will help clear the backlog of cases	1	8.3%
The court day should be used more efficiently	1	8.3%
Being able to resume earning	5	41.7%
The hours suit me better	3	25%

6. **EOH ‘by stealth’ in the Magistrates’ Courts**

Many of WICL’s members have contacted us to indicate that, without prior consultation or notice, they are being expected to work longer and longer hours when appearing in



the Magistrates' Courts. Additionally, many have reported that non-urgent bail matters, including trials, are being listed on Saturdays.

196 respondents to our survey indicated that they regularly appear in the Magistrates' Court. 91 respondents reported that, since the easing of lockdown restrictions, they have encountered late sitting in the Magistrates' Court. 42 respondents reported that they have had to attend the Magistrates' Court at the weekend, in circumstances where they would not have had to do so prior to lockdown, in the past 6 months. 61 respondents reported that they had had to remain at the Magistrates' Court past 6pm since the easing of lockdown restrictions.

39 respondents reported that they have had to arrange alternative childcare and/or incurred extra expenses at the last minute as a result of EOH by stealth in the Magistrates' Court.

7. Leaving current position/amending current work arrangements

156 respondents answered a question on whether they anticipated having to leave their current position or amend their current work arrangements as a result of EOH, whether at the Magistrates' or Crown Courts. 54 respondents, or 34.6%, responded that they did anticipate having to do so.

8. Conclusion

Across the profession, irrespective of position, gender and seniority, criminal practitioners who responded to WICL's survey are overwhelmingly opposed to EOH.

Much of the discourse around EOH has understandably centred on the anticipated impact on practitioners with caring responsibilities, who are disproportionately female. This concern has been borne out by WICL's survey. 42% of female respondents indicated that they were primary carers, compared to 32% of male respondents. Primary carers were overwhelmingly opposed to EOH, with the majority citing the impact on childcare arrangements as the reason for their stance. As set out in Section 5 of this report, the practicalities of childcare arrangements will mean that primary carers, who are disproportionately women, will be excluded from certain types of work.

The suggestion that primary carers can ask for their cases to be heard in the 'normal hours' courts in the Crown Court is not sufficient to ameliorate these concerns. It is already becoming clear from discussions with our members that many courts are unwilling to take the availability of advocates into consideration. Additionally, faced with the option of a longer wait for their cases to be heard in the 'normal hours' courts, defendants will understandably want their cases to be heard in the EOH courts, meaning that defendants and instructing solicitors will be incentivised to select an advocate who



can accommodate hearings in those courts. A scheme that excludes some advocates, who are more likely to be women, from certain work is undoubtedly discriminatory.

However, the most cited reason for opposition to EOH was the impact on work/life balance. Our members have communicated to us, in no uncertain terms, that they feel that those making the decisions around EOH do not have a sufficient understanding of their working practices. Criminal practitioners already work extended hours. Outside of court, they are preparing for cases the following day, holding conferences with clients, speaking to counsel or instructing solicitors and dealing with the administration that accompanies a significant caseload. Our solicitor members are attending the police station at all hours of the day and night. Put simply, the vast majority of criminal practitioners have no more hours left to give.



WICL EOH Survey

September 2020



480

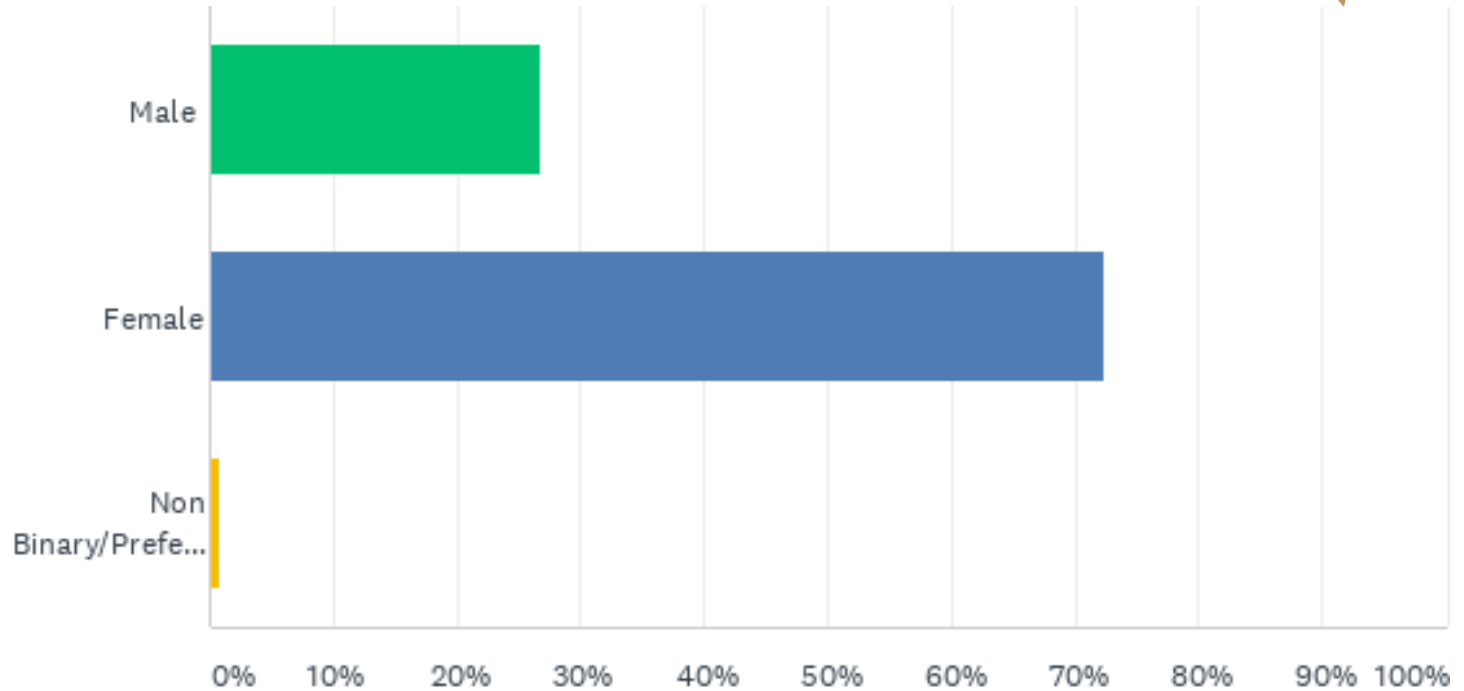
Total Responses

Date Created: Wednesday, September 02, 2020

Complete Responses: 374

Q1: Are you...

Answered: 480 Skipped: 0



Q1: Are you...

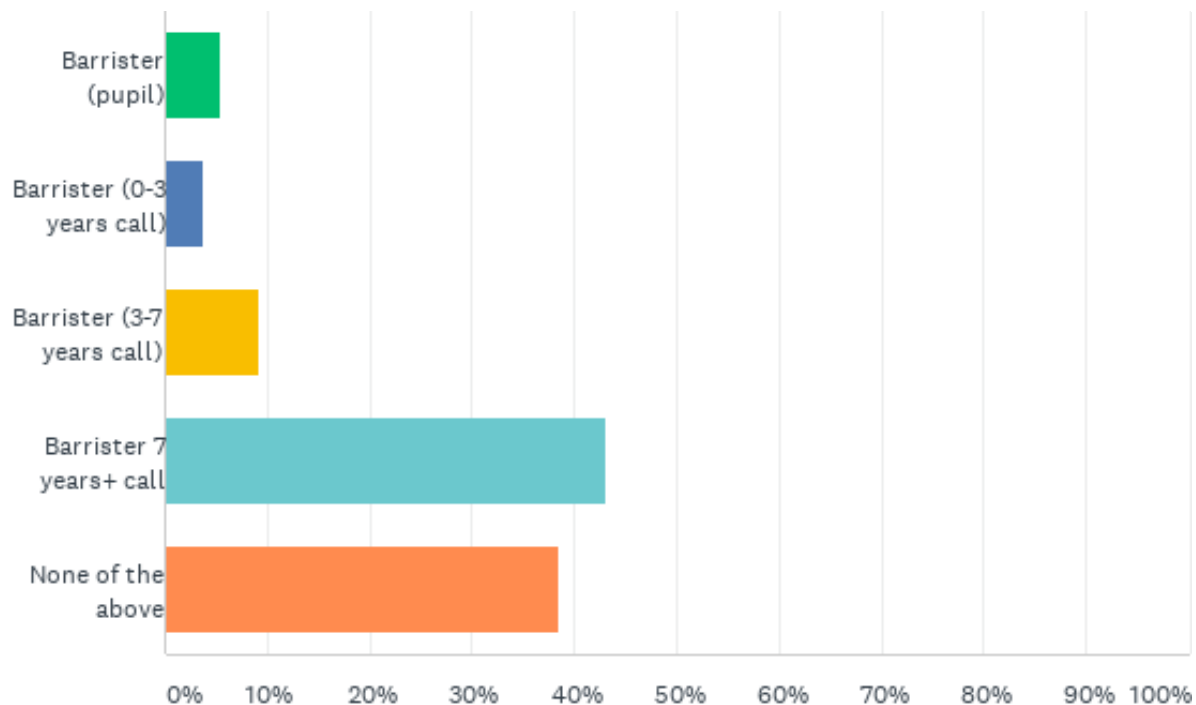
Answered: 480 Skipped: 0



ANSWER CHOICES	RESPONSES	
Male	26.88%	129
Female	72.29%	347
Non Binary/Prefer not to say	0.83%	4
TOTAL		480

Q2: Are you a...

Answered: 480 Skipped: 0



Q2: Are you a...

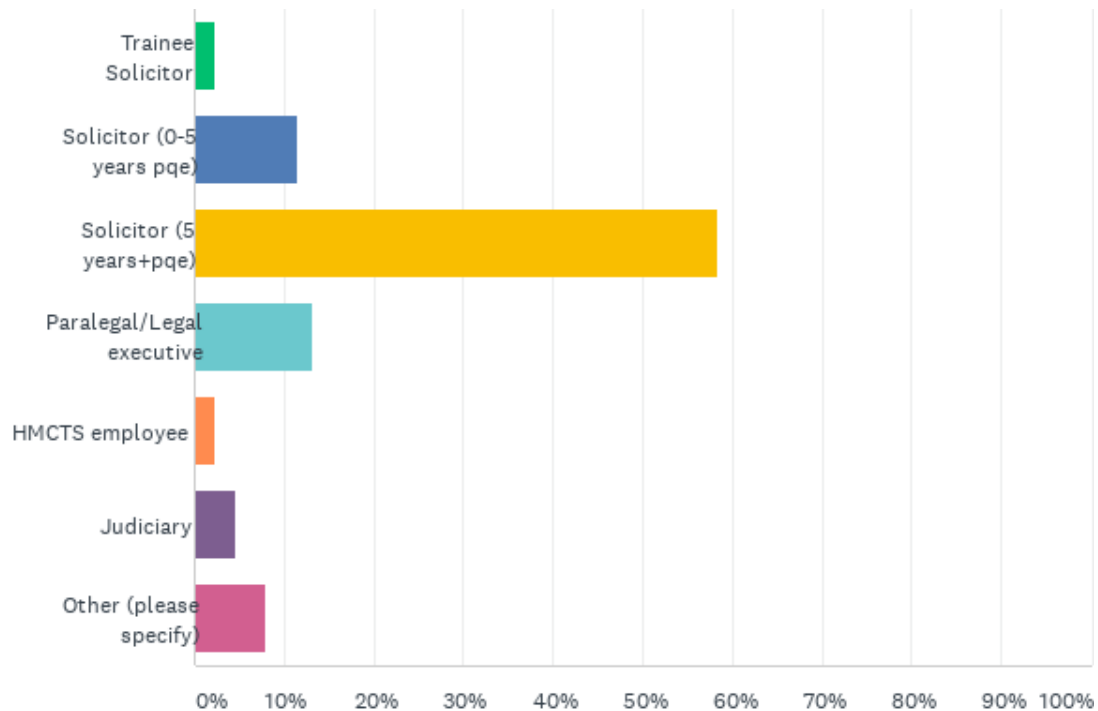
Answered: 480 Skipped: 0



ANSWER CHOICES	RESPONSES	
Barrister (pupil)	5.42%	26
Barrister (0-3 years call)	3.75%	18
Barrister (3-7 years call)	9.17%	44
Barrister 7 years+ call	43.13%	207
None of the above	38.54%	185
TOTAL		480

Q3: Are you a...

Answered: 175 Skipped: 305



Q3: Are you a...

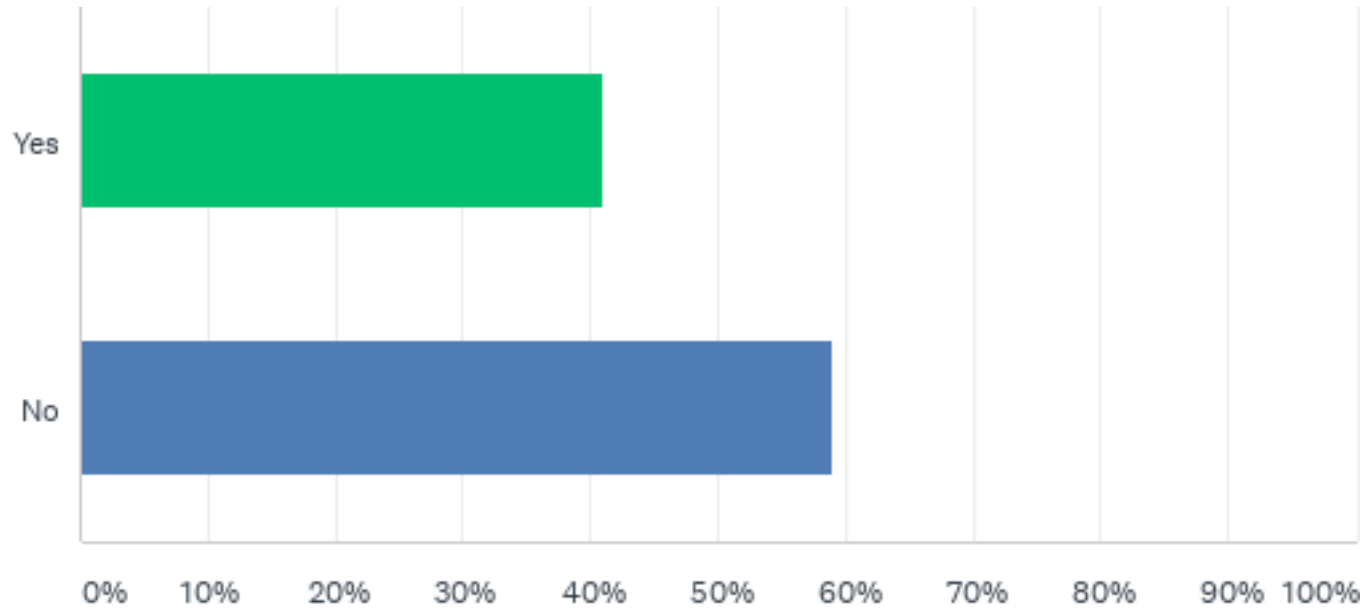
Answered: 175 Skipped: 305



ANSWER CHOICES	RESPONSES	
Trainee Solicitor	2.29%	4
Solicitor (0-5 years pqe)	11.43%	20
Solicitor (5 years+pqe)	58.29%	102
Paralegal/Legal executive	13.14%	23
HMCTS employee	2.29%	4
Judiciary	4.57%	8
Other (please specify)	8.00%	14
TOTAL		175

Q4: Are you a primary care giver?

Answered: 469 Skipped: 11



Q4: Are you a primary care giver?

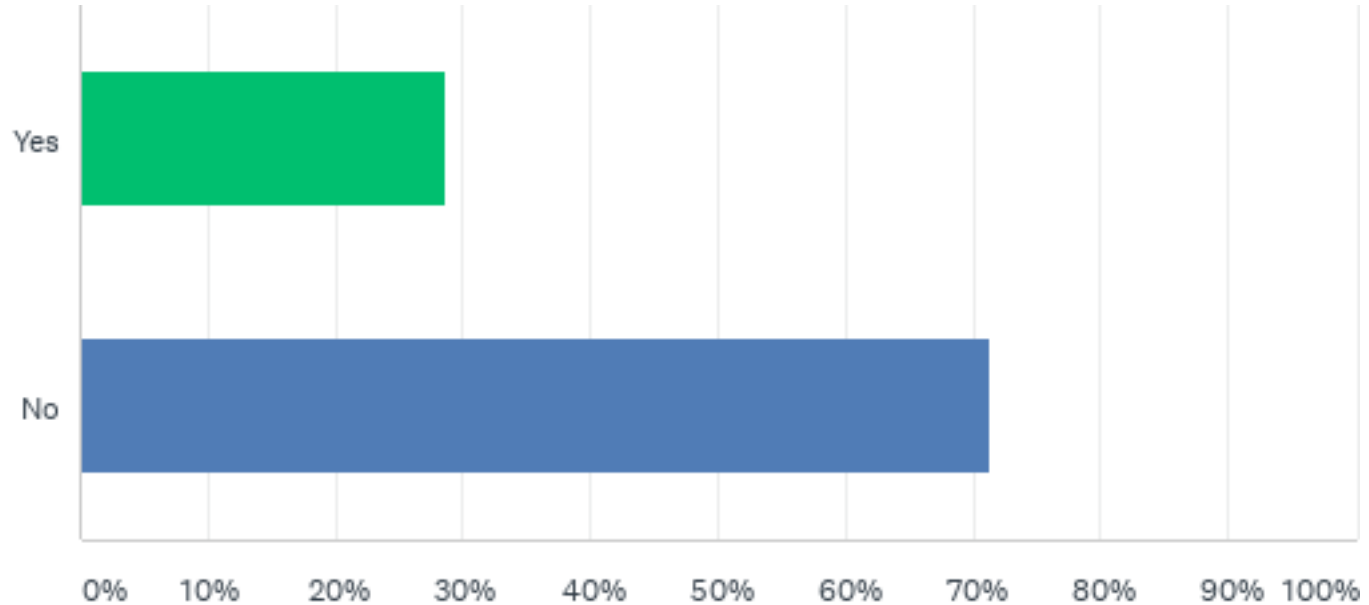
Answered: 469 Skipped: 11



ANSWER CHOICES	RESPONSES	
Yes	40.94%	192
No	59.06%	277
TOTAL		469

Q5: Do you have other caring responsibilities?

Answered: 469 Skipped: 11



Q5: Do you have other caring responsibilities?

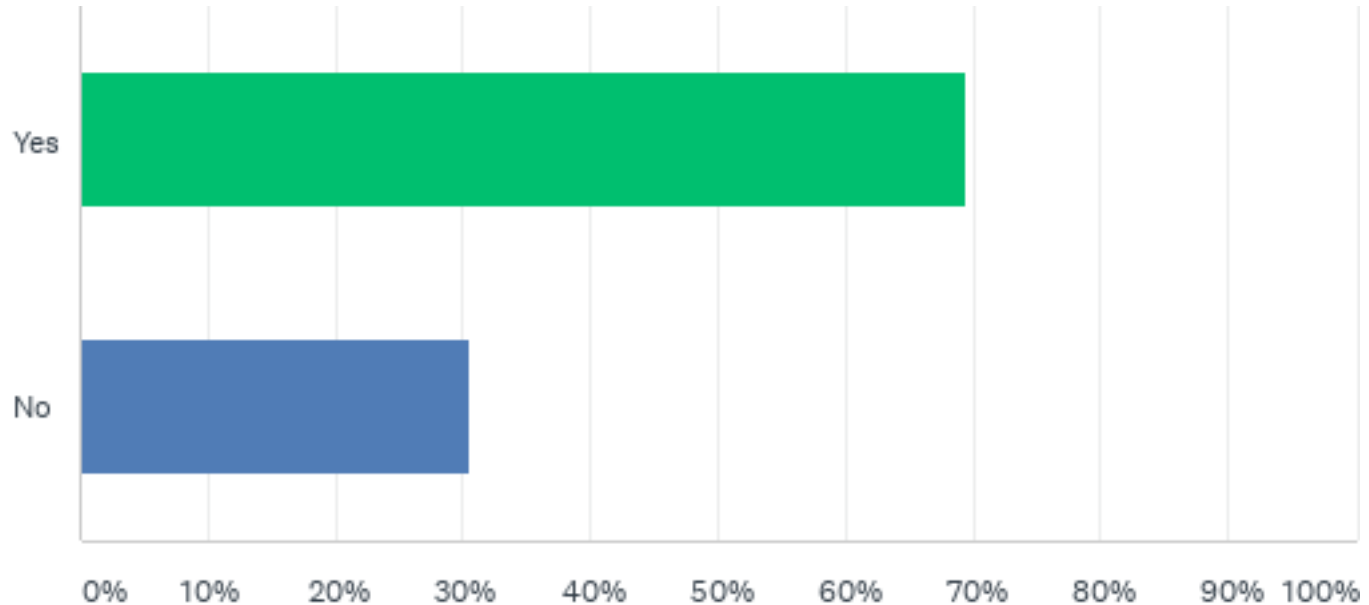
Answered: 469 Skipped: 11



ANSWER CHOICES	RESPONSES	
Yes	28.57%	134
No	71.43%	335
TOTAL		469

Q6: Do you regularly attend the Crown Court (in any capacity)?

Answered: 469 Skipped: 11



Q6: Do you regularly attend the Crown Court (in any capacity)?

Answered: 469 Skipped: 11

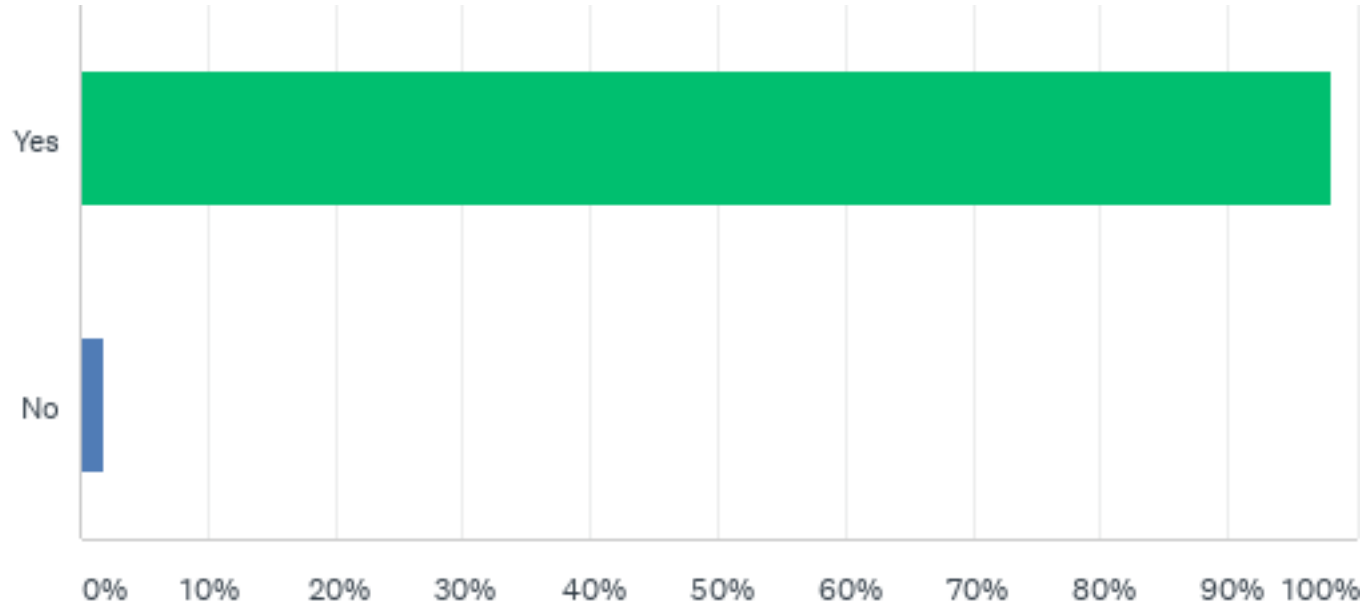


ANSWER CHOICES	RESPONSES	
Yes	69.51%	326
No	30.49%	143
TOTAL		469

Q7: Are you aware of the plans for Extended Operating Hours (EOH) in the Crown Court?



Answered: 323 Skipped: 157



Q7: Are you aware of the plans for Extended Operating Hours (EOH) in the Crown Court?



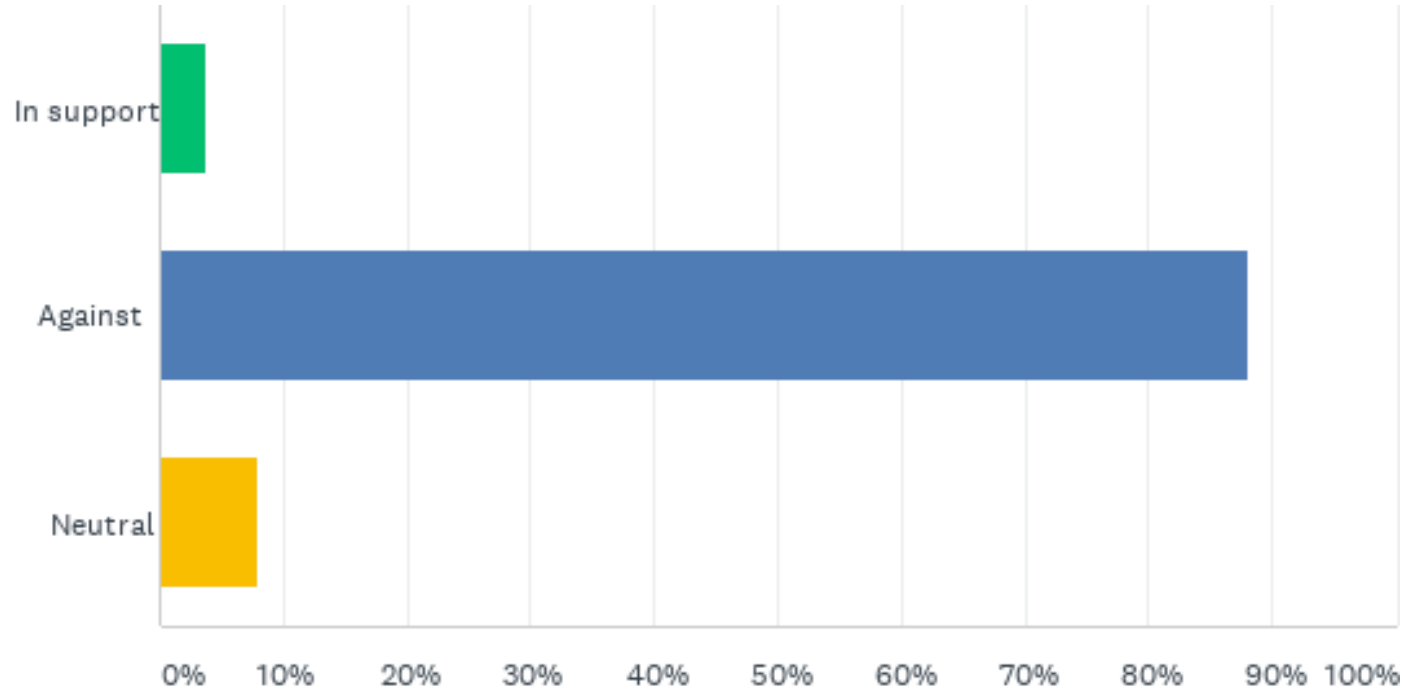
Answered: 323 Skipped: 157

ANSWER CHOICES	RESPONSES	
Yes	98.14%	317
No	1.86%	6
TOTAL		323

Q8: What is your position on the proposed EOH arrangements?



Answered: 311 Skipped: 169



Q8: What is your position on the proposed EOH arrangements?

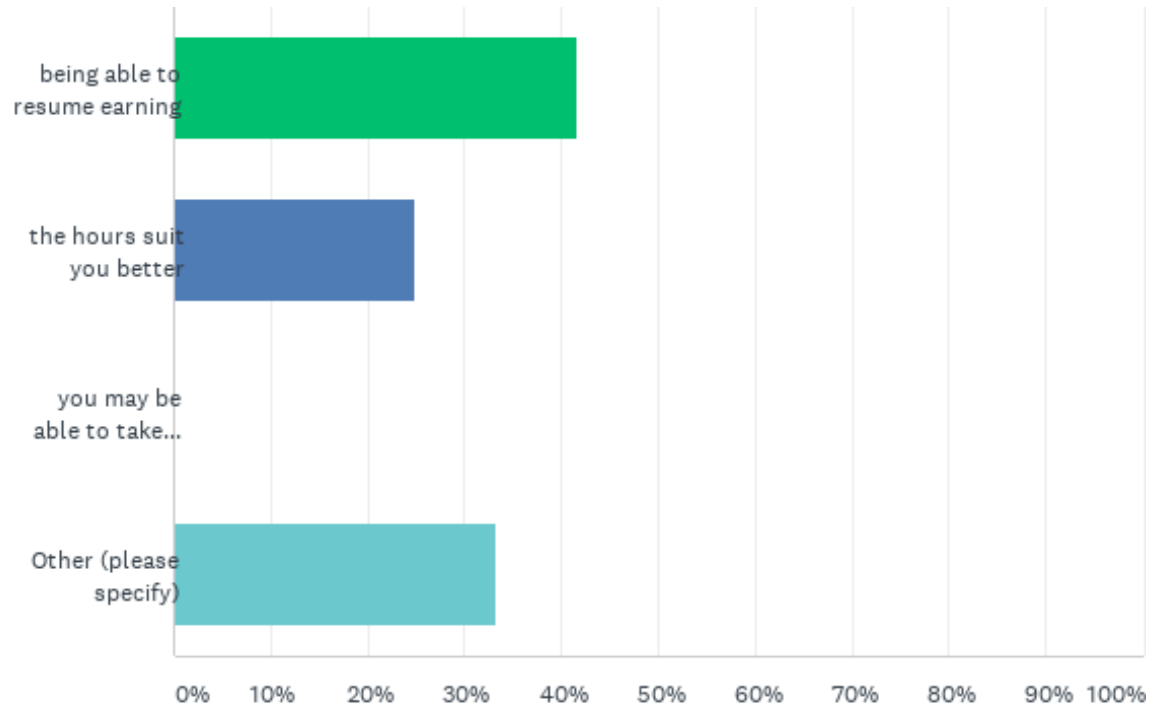


Answered: 311 Skipped: 169

ANSWER CHOICES	RESPONSES	
In support	3.86%	12
Against	88.10%	274
Neutral	8.04%	25
TOTAL		311

Q9: If in support, is your main reason...

Answered: 12 Skipped: 468



Q9: If in support, is your main reason...

Answered: 12 Skipped: 468

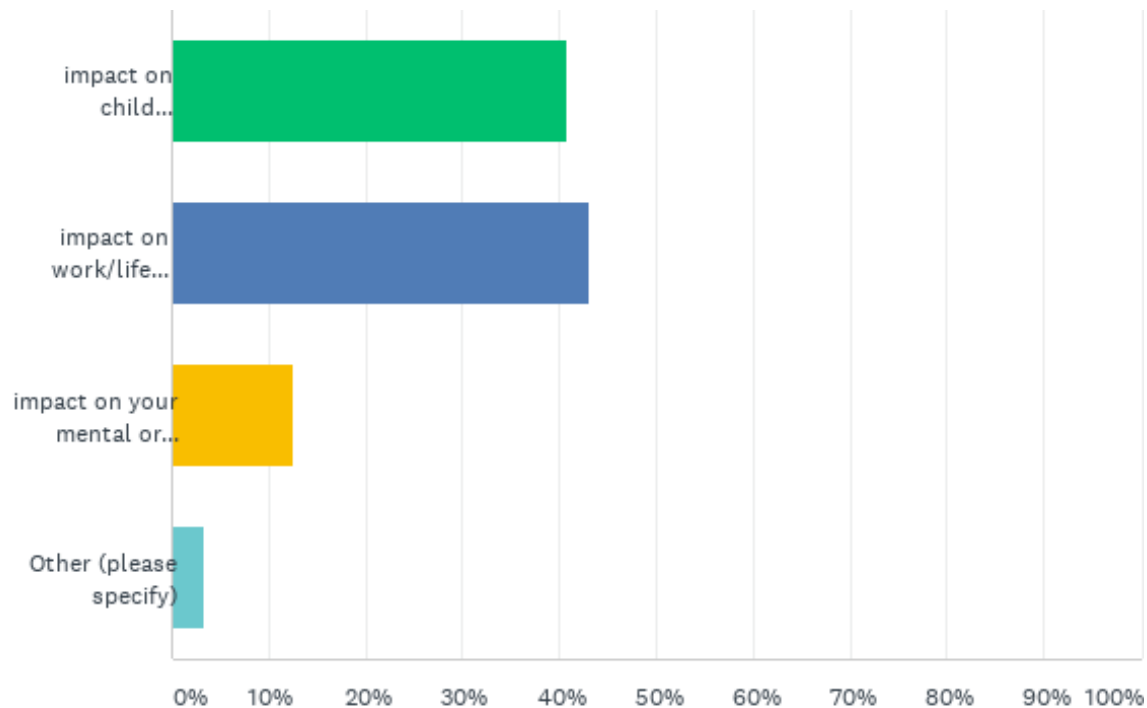


ANSWER CHOICES	RESPONSES	
being able to resume earning	41.67%	5
the hours suit you better	25.00%	3
you may be able to take up more opportunities others may not be free to take	0.00%	0
Other (please specify)	33.33%	4
TOTAL		12

Q10: If against the proposals, is your main reason...



Answered: 262 Skipped: 218



Q10: If against the proposals, is your main reason...

Answered: 262 Skipped: 218

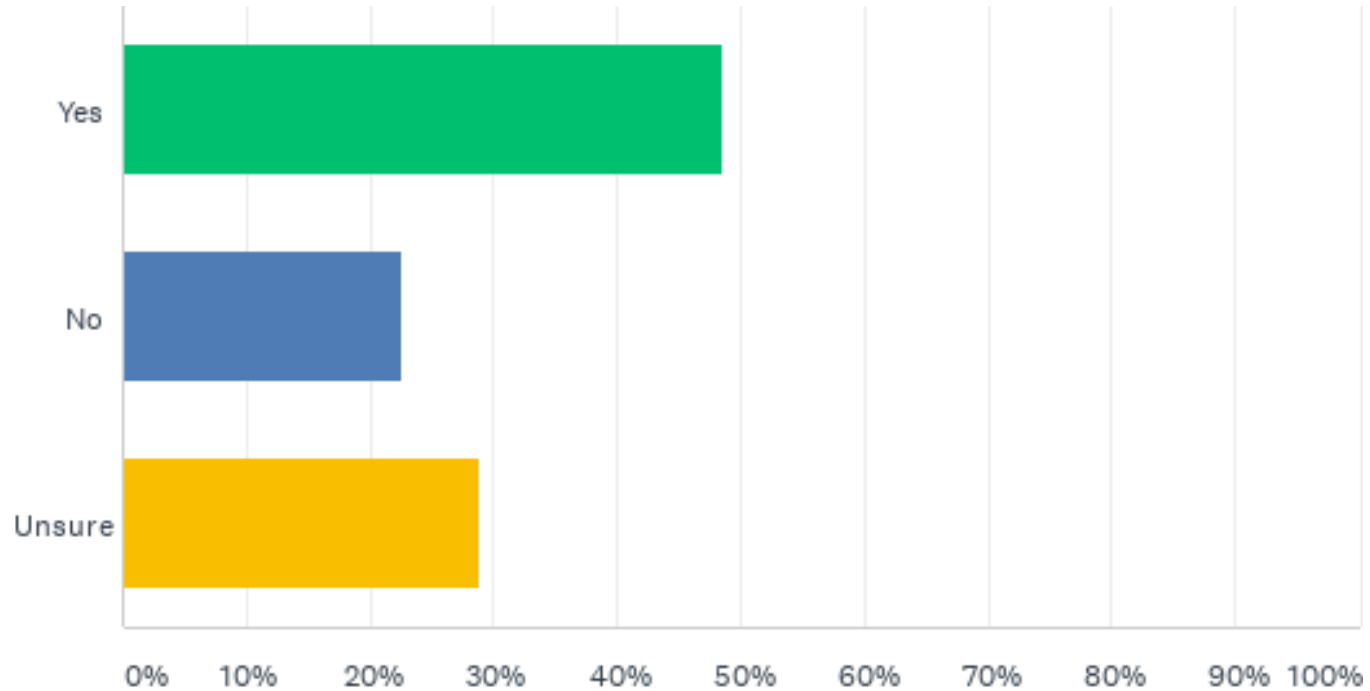


ANSWER CHOICES	RESPONSES	
impact on child care/other caring arrangements	40.84%	107
impact on work/life balance	43.13%	113
impact on your mental or physical health	12.60%	33
Other (please specify)	3.44%	9
TOTAL		262

Q11: Do you anticipate that you will have to return trials as a result of EOH?



Answered: 297 Skipped: 183



Q11: Do you anticipate that you will have to return trials as a result of EOH?



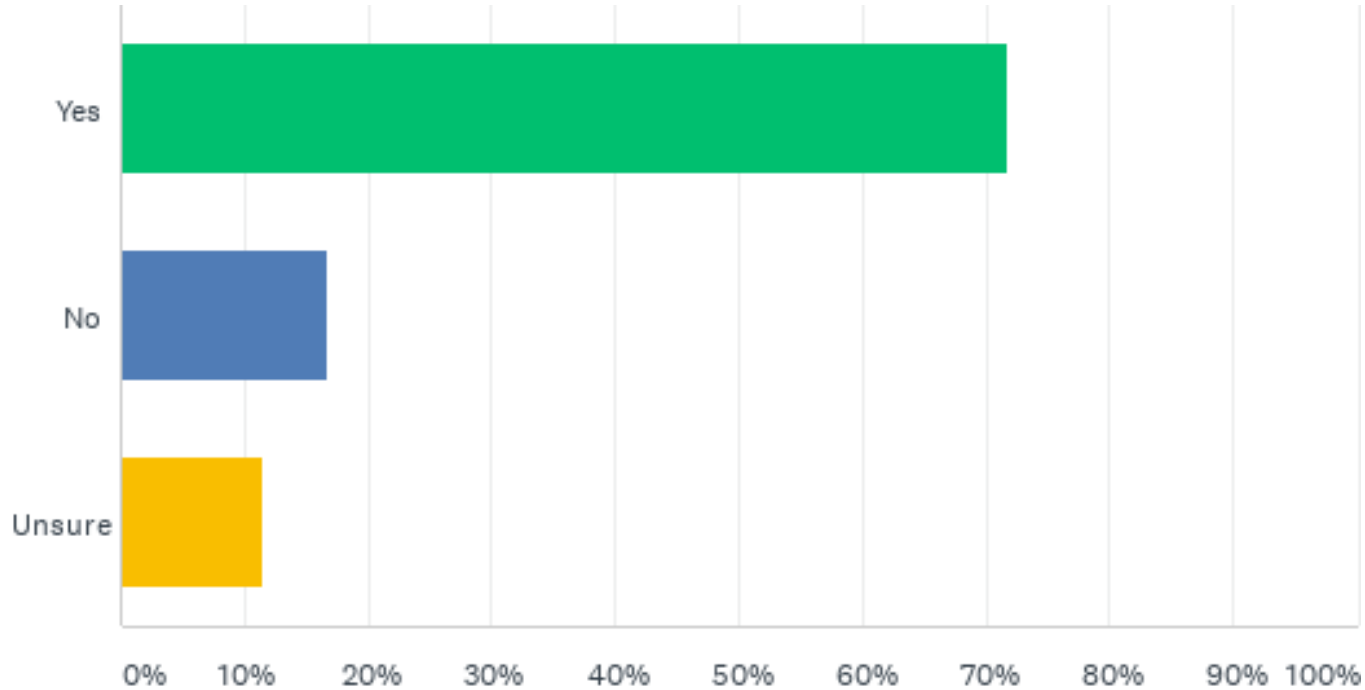
Answered: 297 Skipped: 183

ANSWER CHOICES	RESPONSES	
Yes	48.48%	144
No	22.56%	67
Unsure	28.96%	86
TOTAL		297

Q12: Are you concerned about a loss of instructions if you are unable to operate within EOH?



Answered: 297 Skipped: 183



Q12: Are you concerned about a loss of instructions if you are unable to operate within EOH?



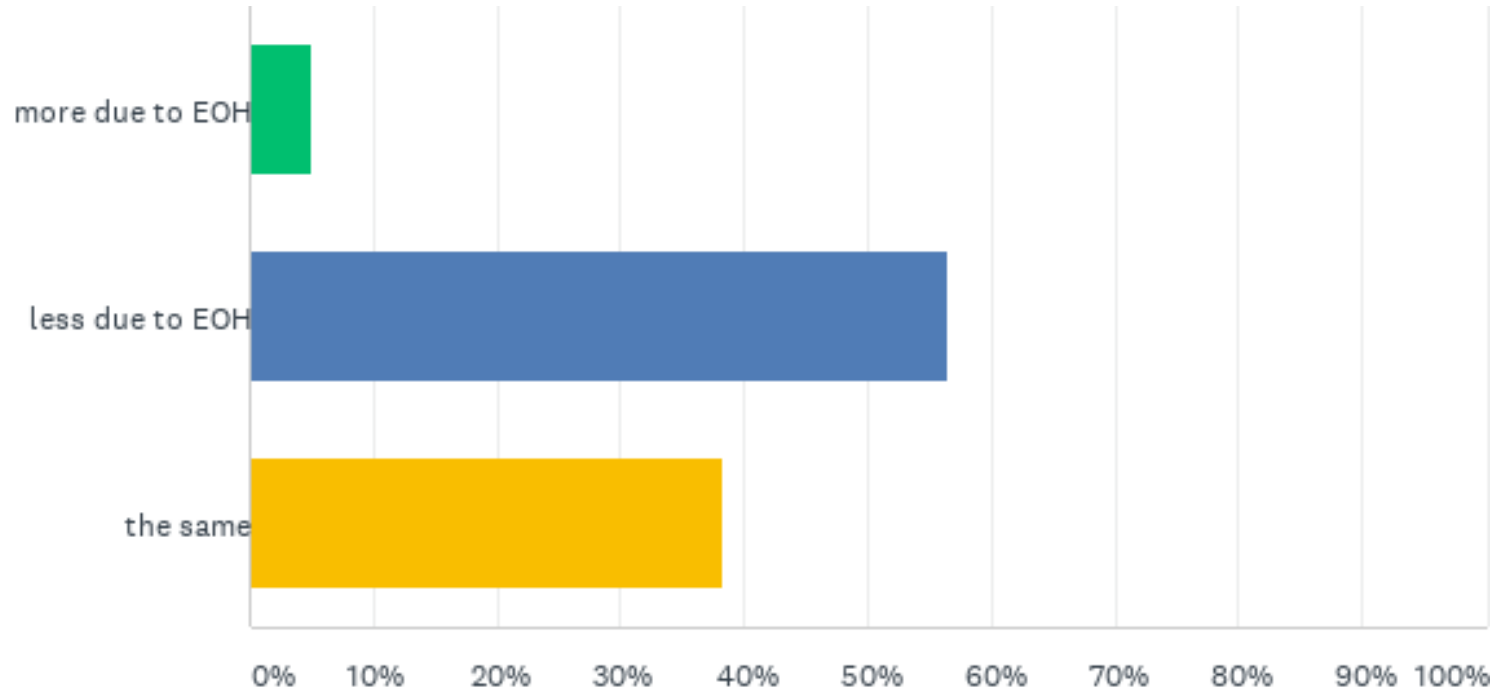
Answered: 297 Skipped: 183

ANSWER CHOICES	RESPONSES	
Yes	71.72%	213
No	16.84%	50
Unsure	11.45%	34
TOTAL		297

Q13: Do you anticipate earning...



Answered: 297 Skipped: 183



Q13: Do you anticipate earning...

Answered: 297 Skipped: 183

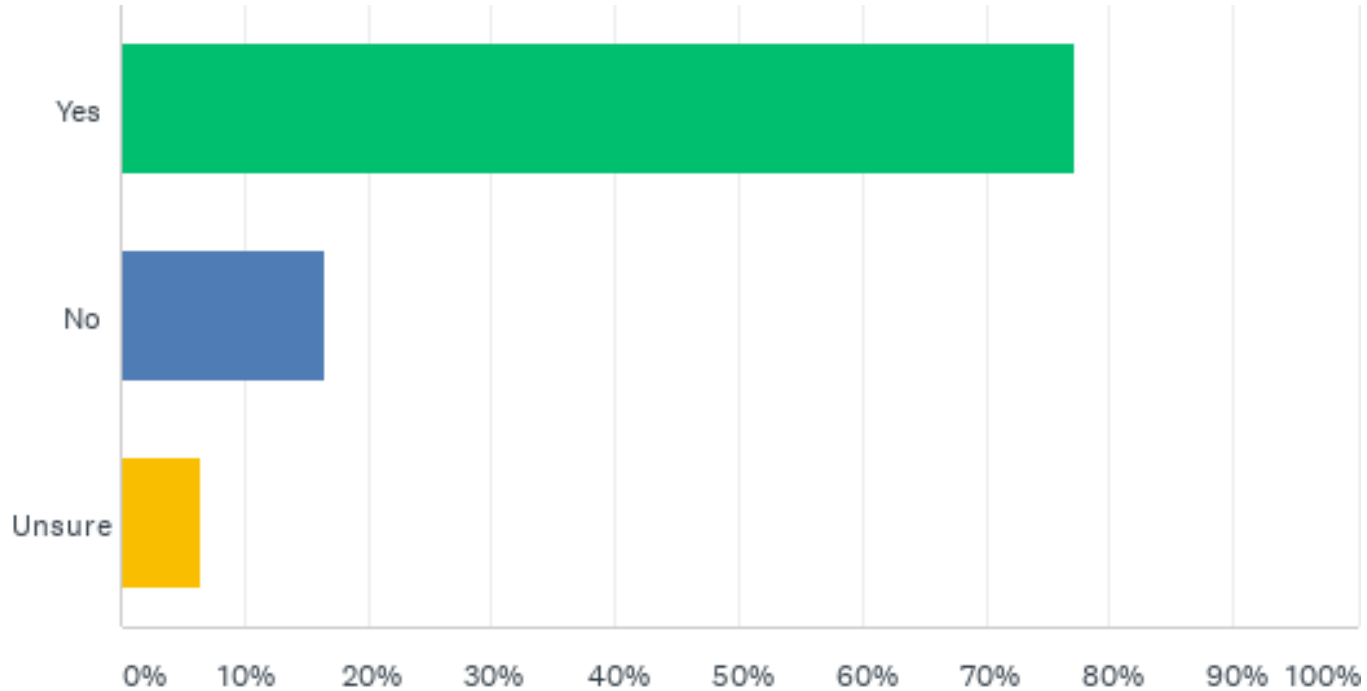


ANSWER CHOICES	RESPONSES	
more due to EOH	5.05%	15
less due to EOH	56.57%	168
the same	38.38%	114
TOTAL		297

Q14: Are you concerned about a negative impact on your mental health if required to work within EOH?



Answered: 297 Skipped: 183



Q14: Are you concerned about a negative impact on your mental health if required to work within EOH?

Answered: 297 Skipped: 183

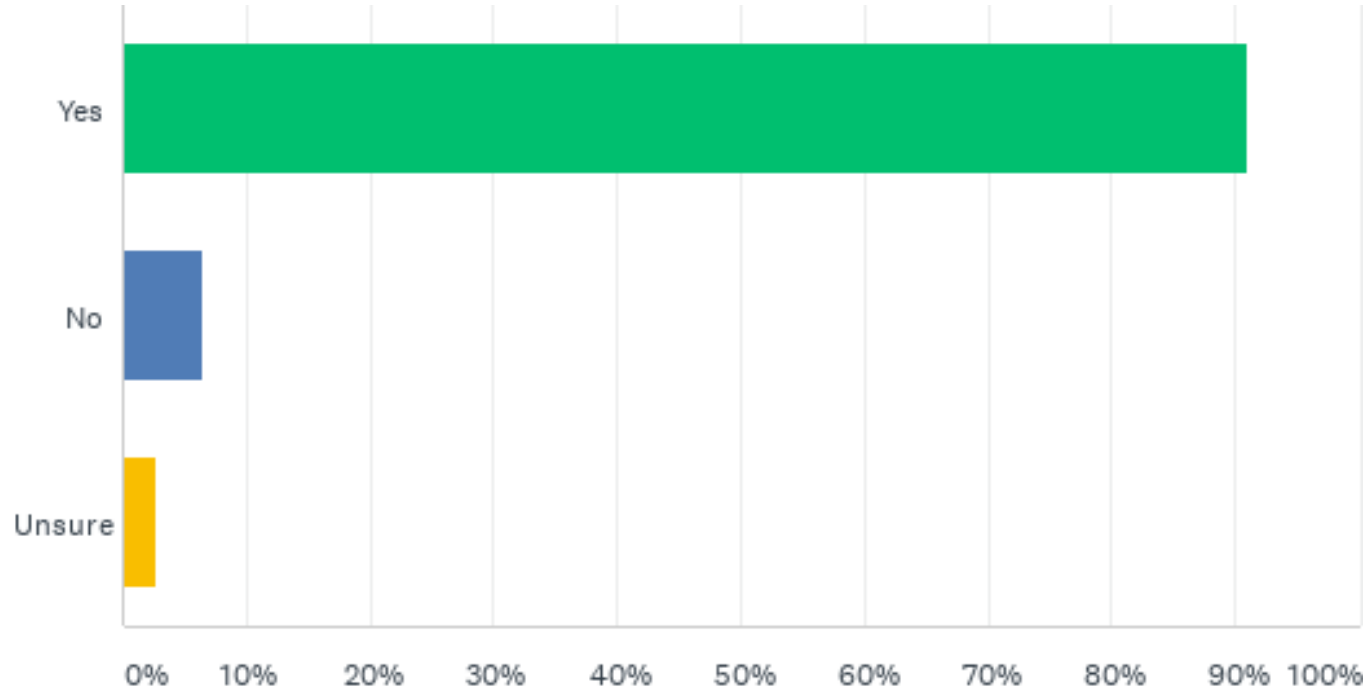


ANSWER CHOICES	RESPONSES	
Yes	77.10%	229
No	16.50%	49
Unsure	6.40%	19
TOTAL		297

Q15: Do you anticipate a negative impact on your private/family life if required to work within EOH?



Answered: 297 Skipped: 183



Q15: Do you anticipate a negative impact on your private/family life if required to work within EOH?



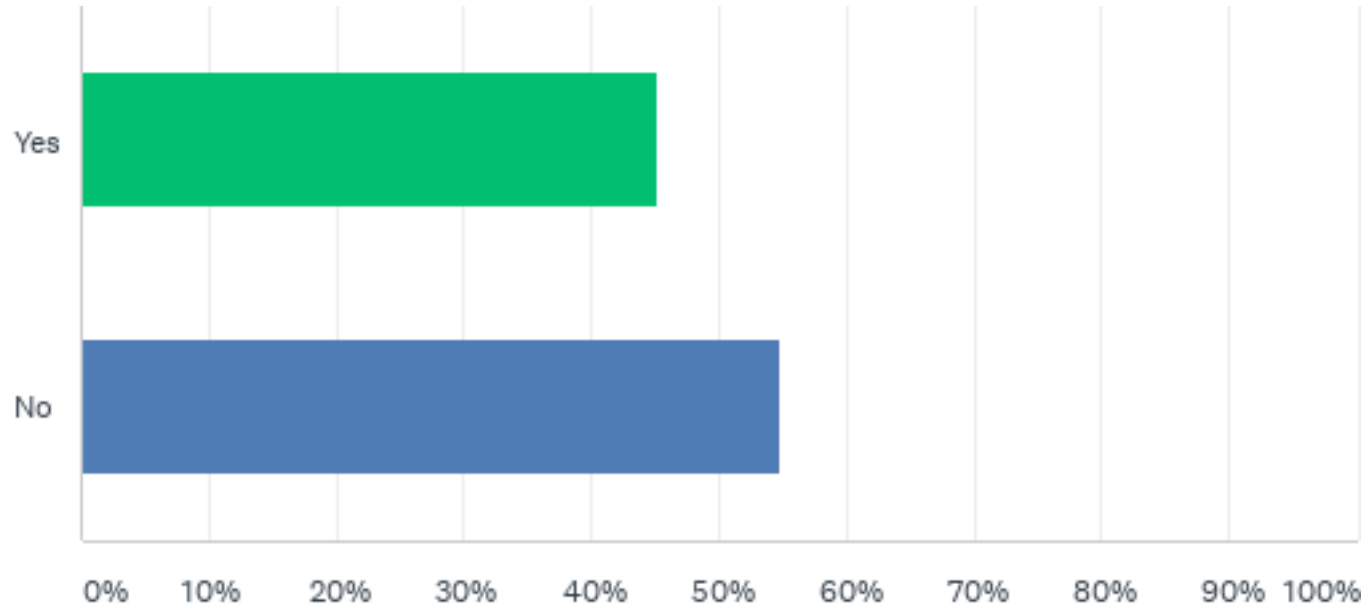
Answered: 297 Skipped: 183

ANSWER CHOICES	RESPONSES	
Yes	90.91%	270
No	6.40%	19
Unsure	2.69%	8
TOTAL		297

Q16: Do you regularly attend the Magistrates' Court (in any capacity)?



Answered: 433 Skipped: 47



Q16: Do you regularly attend the Magistrates' Court (in any capacity)?



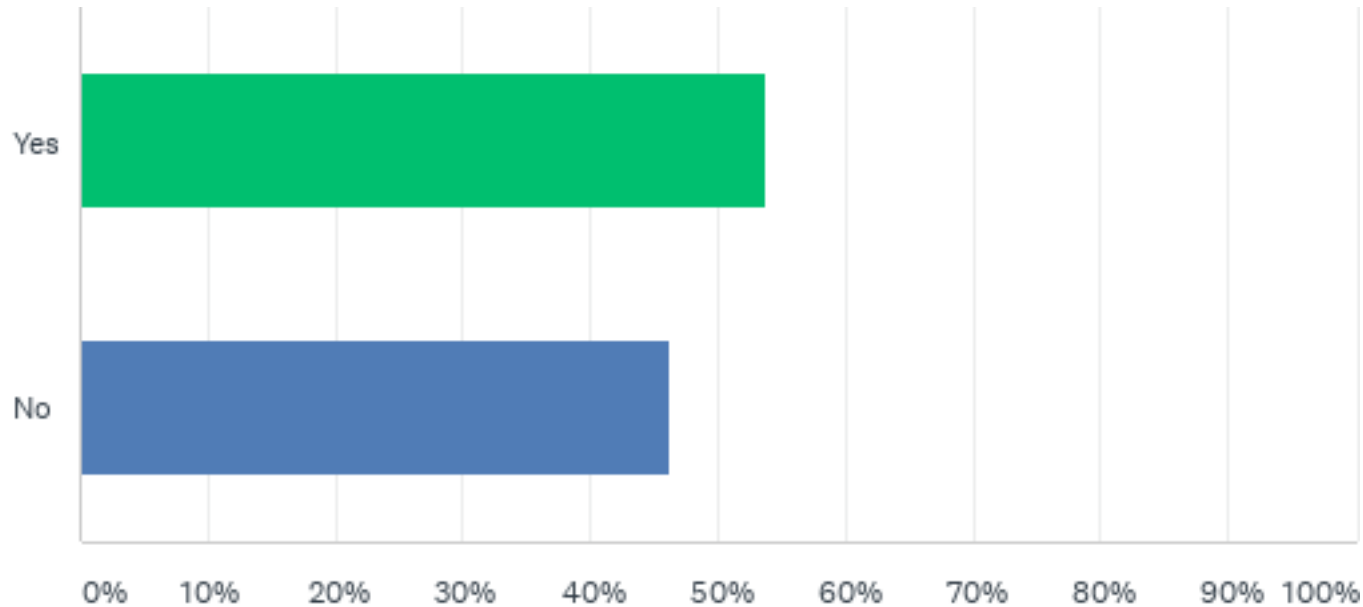
Answered: 433 Skipped: 47

ANSWER CHOICES	RESPONSES	
Yes	45.27%	196
No	54.73%	237
TOTAL		433

Q17: Have you encountered the late sitting which appears to be happening in the Magistrates' Court since the easing of lockdown, sometimes termed 'EOH by stealth' in the last 6 months?



Answered: 169 Skipped: 311



Q17: Have you encountered the late sitting which appears to be happening in the Magistrates' Court since the easing of lockdown, sometimes termed 'EOH by stealth' in the last 6 months?

Answered: 169 Skipped: 311

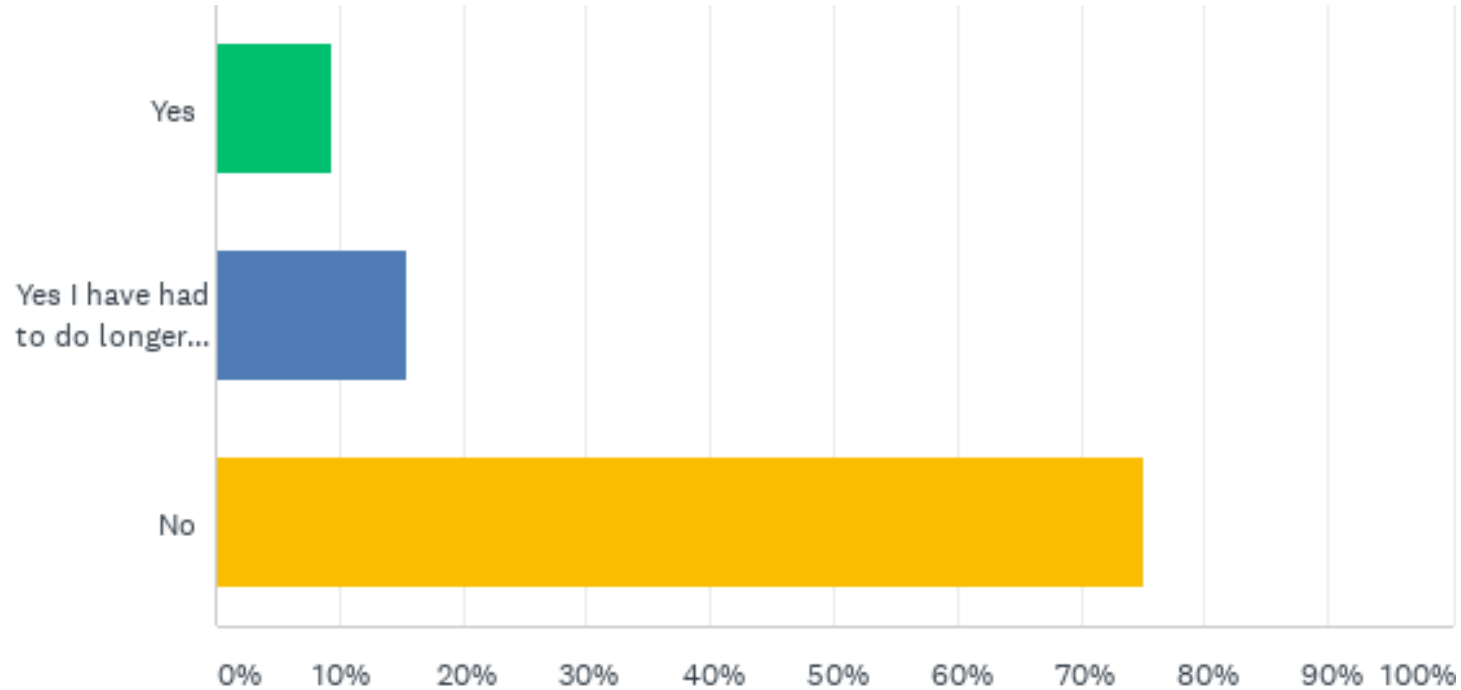


ANSWER CHOICES	RESPONSES	
Yes	53.85%	91
No	46.15%	78
TOTAL		169

Q18: Have you had to attend court at the weekend when otherwise you would not have to in the last 6 months?



Answered: 169 Skipped: 311



Q18: Have you had to attend court at the weekend when otherwise you would not have to in the last 6 months?

Answered: 169 Skipped: 311

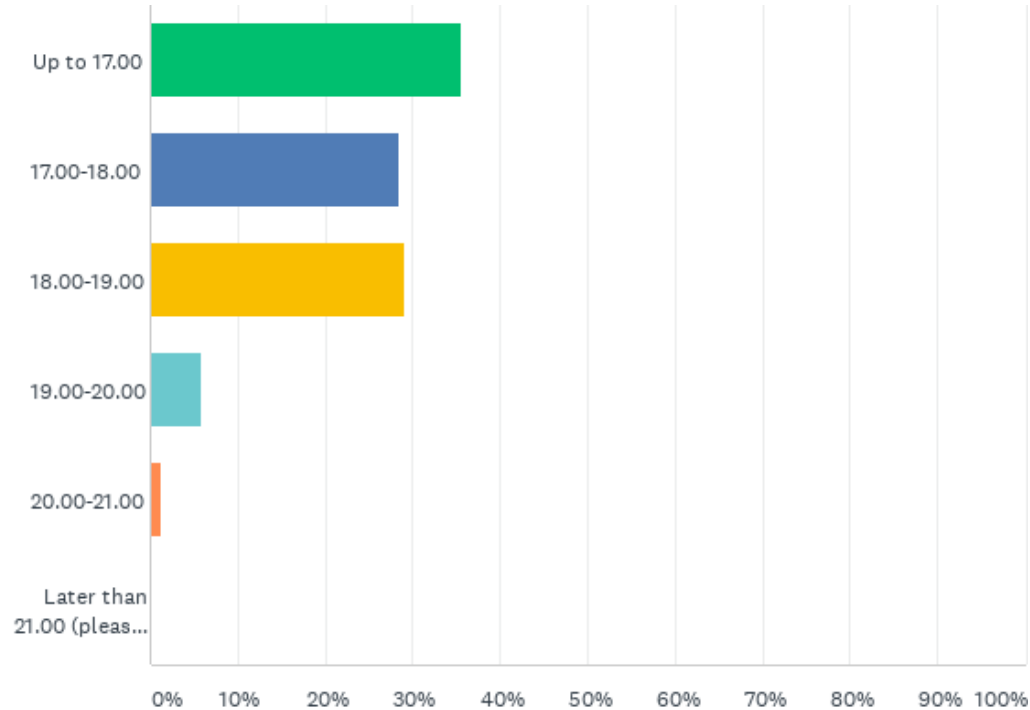


ANSWER CHOICES	RESPONSES	
Yes	9.47%	16
Yes I have had to do longer hours and attend for types of hearing I would not normally expect to attend at the weekend	15.38%	26
No	75.15%	127
TOTAL		169

Q19: What is the latest time you have had to remain at court due to EOH by stealth (whether virtually or in person)?



Answered: 169 Skipped: 311



Q19: What is the latest time you have had to remain at court due to EOH by stealth (whether virtually or in person)?



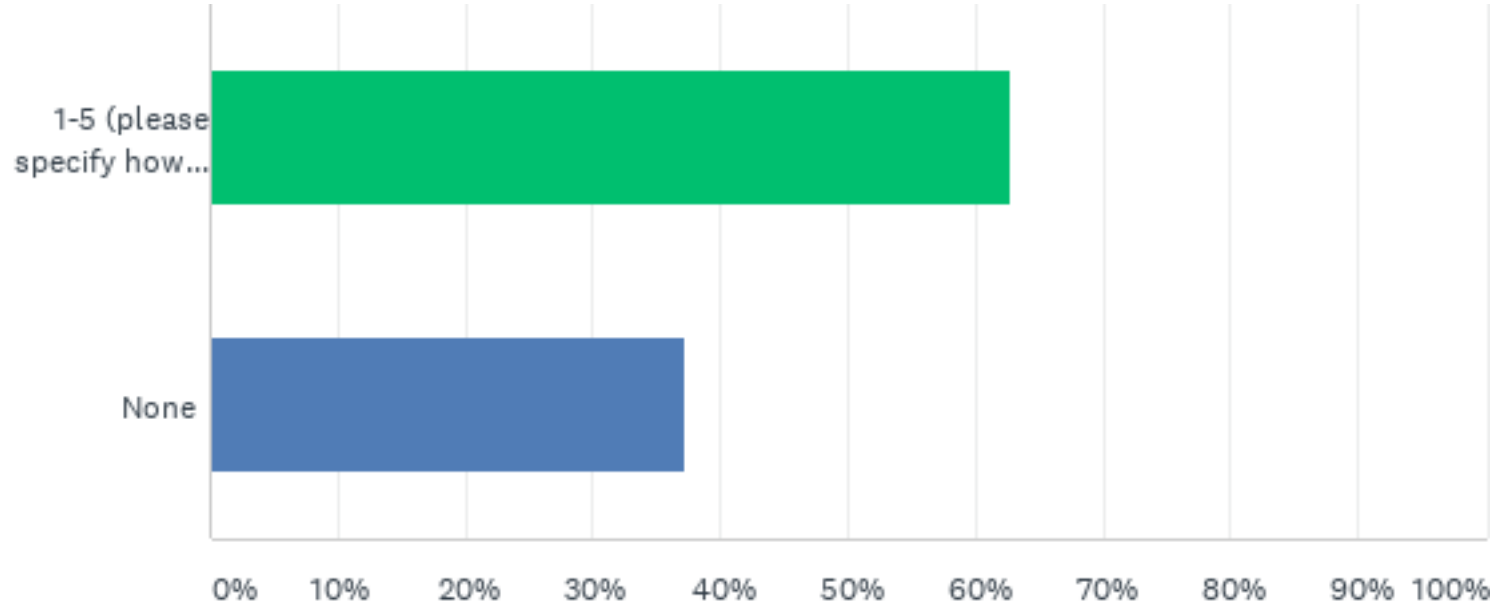
Answered: 169 Skipped: 311

ANSWER CHOICES	RESPONSES	
Up to 17.00	35.50%	60
17.00-18.00	28.40%	48
18.00-19.00	28.99%	49
19.00-20.00	5.92%	10
20.00-21.00	1.18%	2
Later than 21.00 (please specify the time)	0.00%	0
TOTAL		169

Q20: How many times a week (approximately) in a week have you had to stay at court after 16:30 since the courts have re-opened?



Answered: 169 Skipped: 311



Q20: How many times a week (approximately) in a week have you had to stay at court after 16:30 since the courts have re-opened?



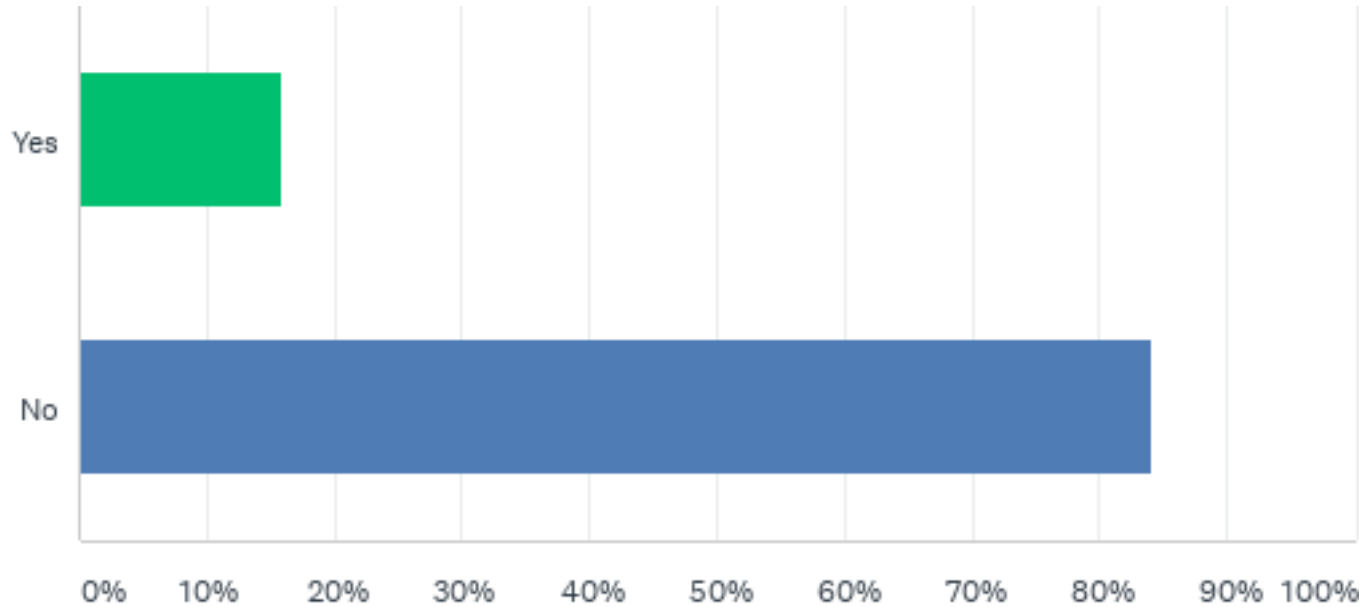
Answered: 169 Skipped: 311

ANSWER CHOICES	RESPONSES	
1-5 (please specify how many)	62.72%	106
None	37.28%	63
TOTAL		169

Q21: Has staying unexpectedly late at court resulted in you travelling home at a time you feel unsafe to do so?



Answered: 100 Skipped: 380



Q21: Has staying unexpectedly late at court resulted in you travelling home at a time you feel unsafe to do so?



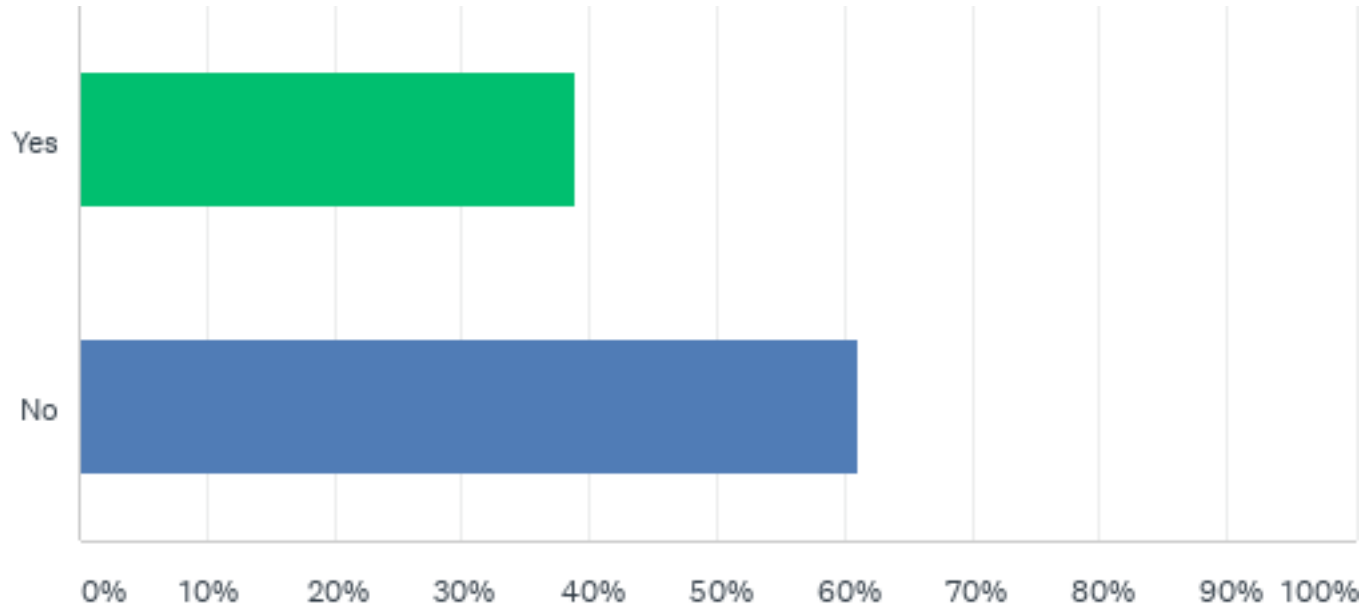
Answered: 100 Skipped: 380

ANSWER CHOICES	RESPONSES	
Yes	16.00%	16
No	84.00%	84
TOTAL		100

Q22: Have you had to arrange for an alternative care giver/incurred extra expenses at the last minute due to the EOH by stealth in the Magistrates' Court?



Answered: 100 Skipped: 380



Q22: Have you had to arrange for an alternative care giver/incurred extra expenses at the last minute due to the EOH by stealth in the Magistrates' Court?

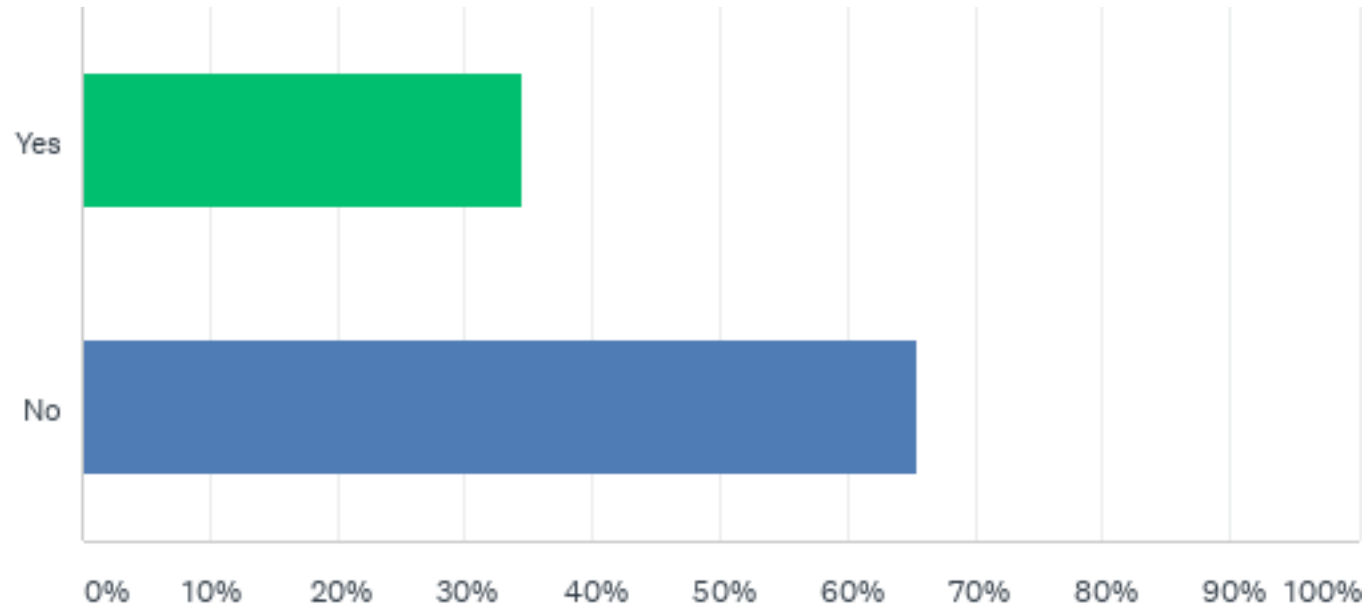


Answered: 100 Skipped: 380

ANSWER CHOICES	RESPONSES	
Yes	39.00%	39
No	61.00%	61
TOTAL		100

Q23: Have you encountered any other issues due to the de facto EOH operating at the Magistrates' Court?

Answered: 156 Skipped: 324



Q23: Have you encountered any other issues due to the de facto EOH operating at the Magistrates' Court?

Answered: 156 Skipped: 324

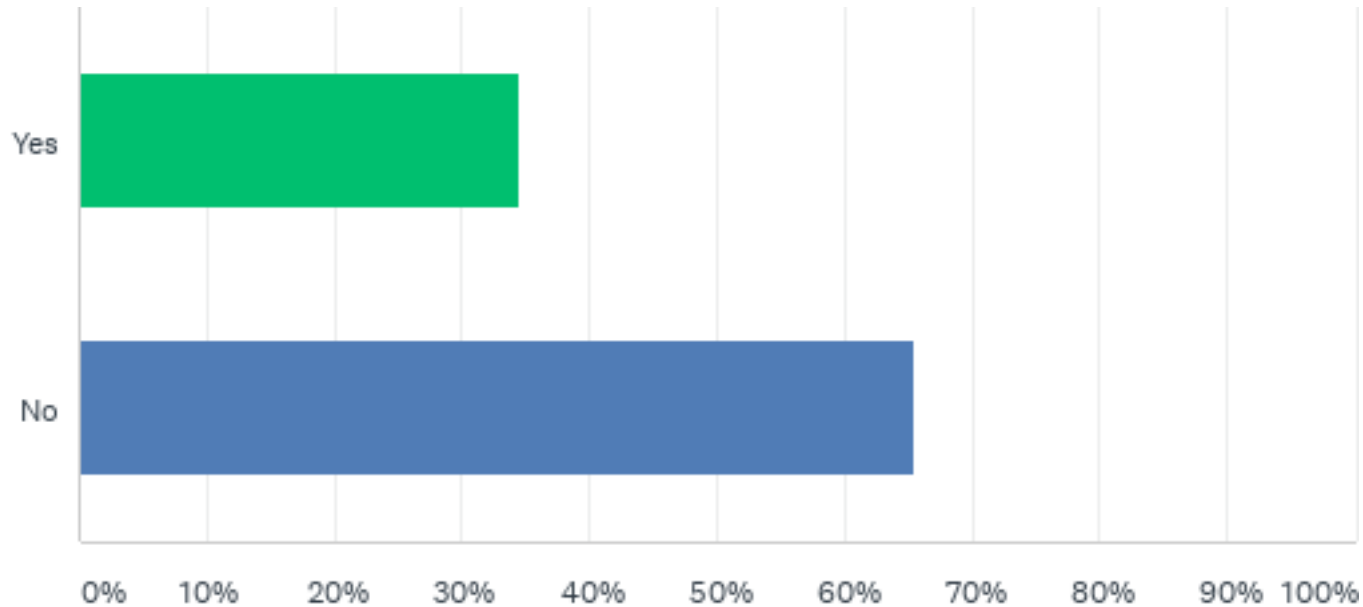


ANSWER CHOICES	RESPONSES	
Yes	34.62%	54
No	65.38%	102
TOTAL		156

Q24: Do you anticipate having to leave your current position or amending your current work arrangements as result of EOH whether at the Magistrates' or Crown Court?



Answered: 156 Skipped: 324



Q24: Do you anticipate having to leave your current position or amending your current work arrangements as result of EOH whether at the Magistrates' or Crown Court?

Answered: 156 Skipped: 324



ANSWER CHOICES	RESPONSES	
Yes	34.62%	54
No	65.38%	102
TOTAL		156