

LAPG Survey on LAA decision-making processes

October/November 2019



Survey results and future work

With support from



HERBERT
SMITH
FREEHILLS

540 responses

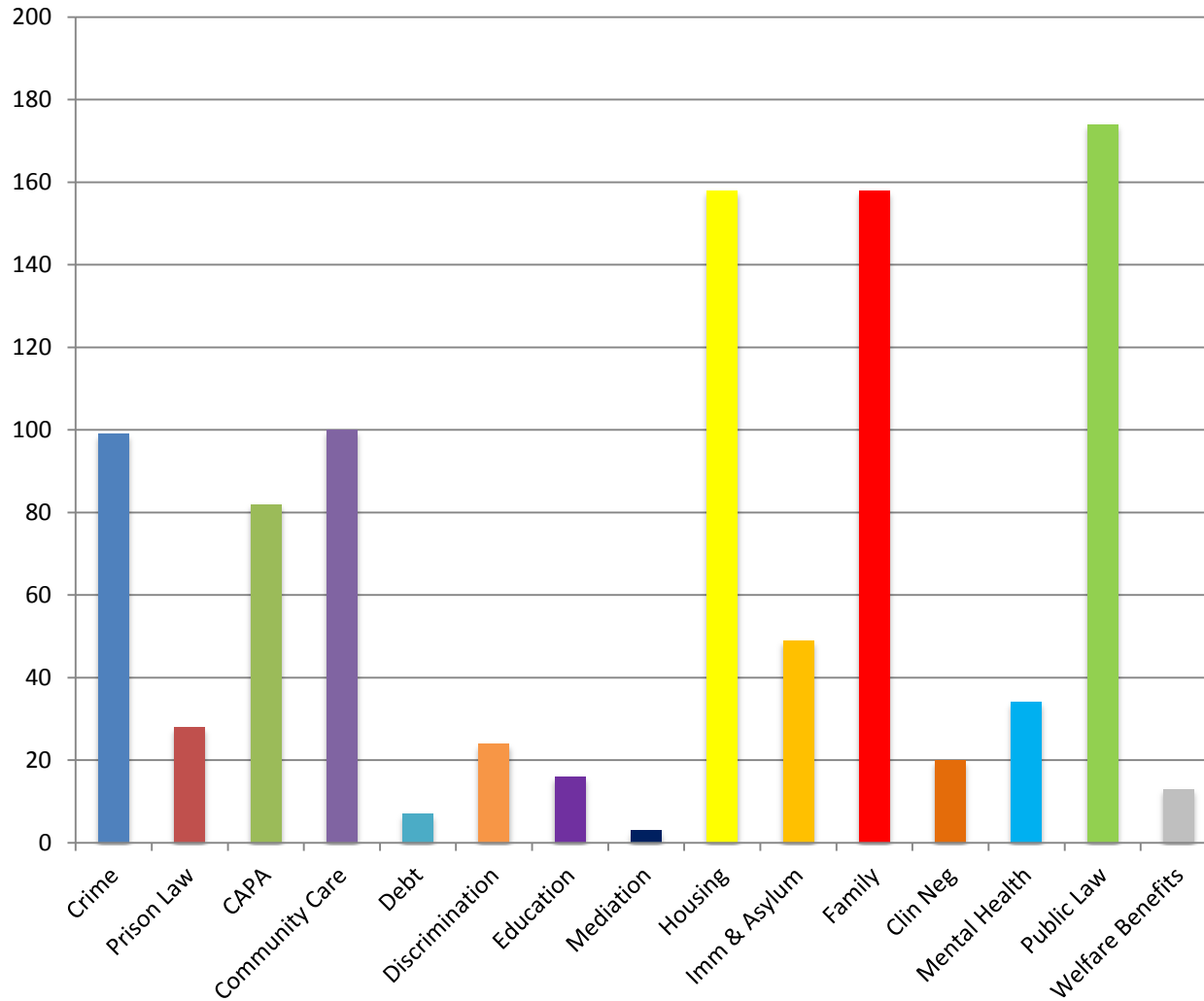
1852 examples provided yielding **2799** 'issues'

In terms of respondents we asked about:

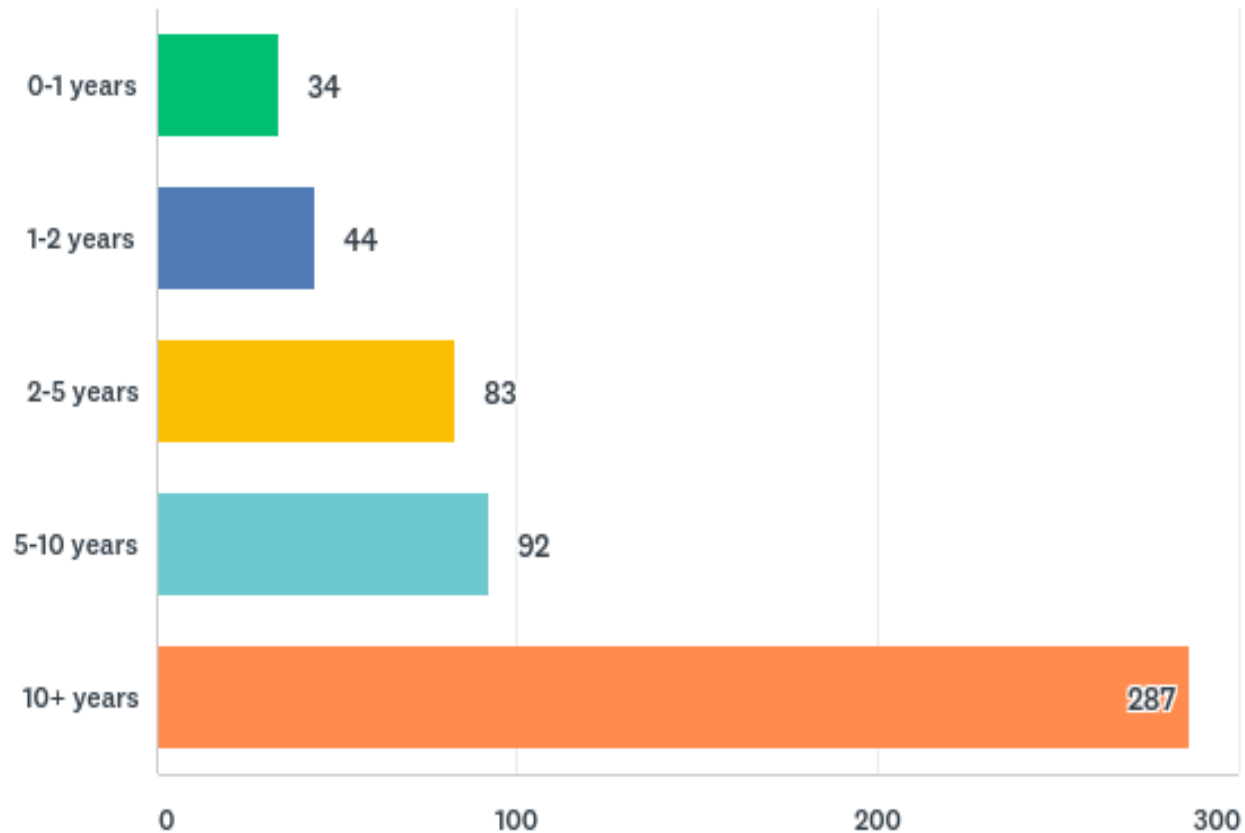
- area(s) of legal aid specialism
- Role
- experience of delivering legal aid
- proportion of caseload under legal aid
- number of legal aid cases undertaken each year



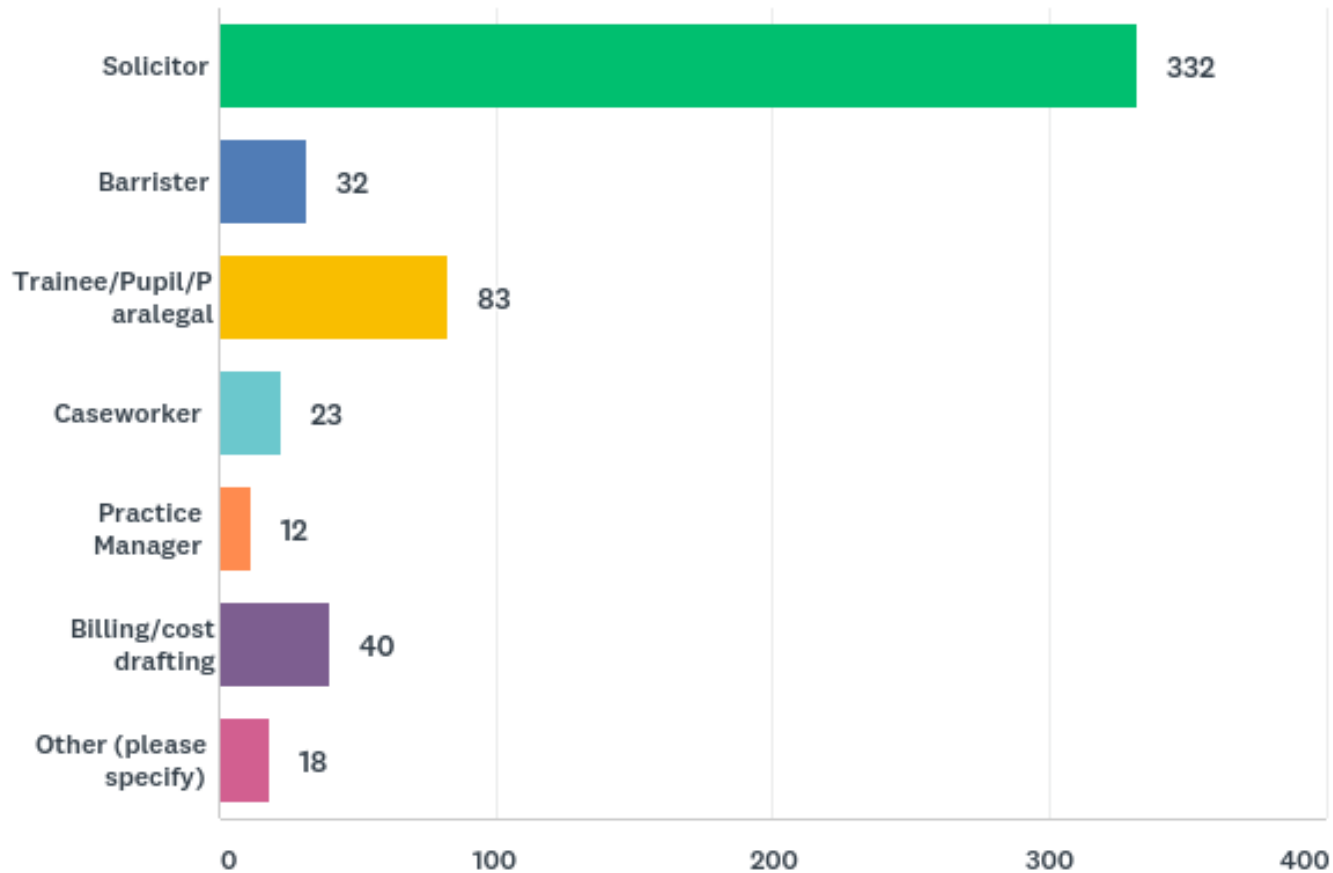
Areas of legal aid specialism (965 recorded)



Experience of delivering legal aid



Role

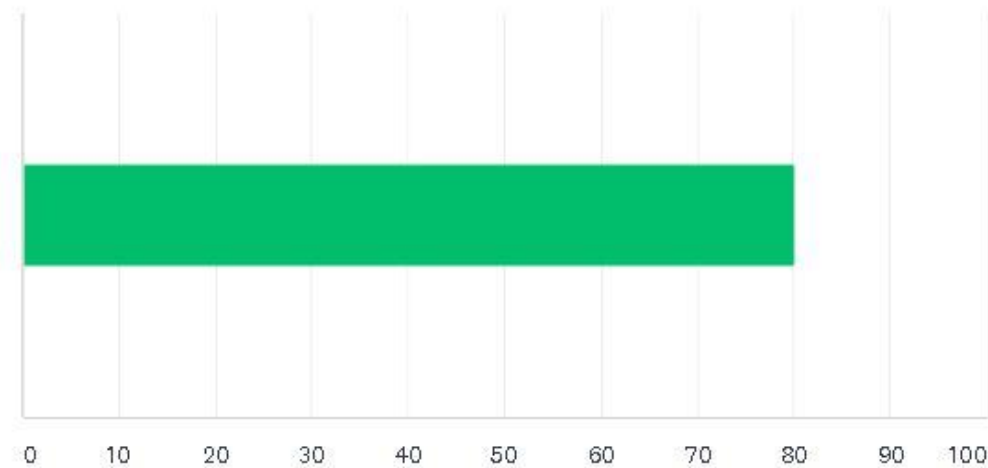


Other = predominantly legal execs



Proportion of work done under legal aid

Answered: 540 Skipped: 0



We also asked about average caseloads, but these varied wildly between areas of law and because some respondents described their organisation's caseload

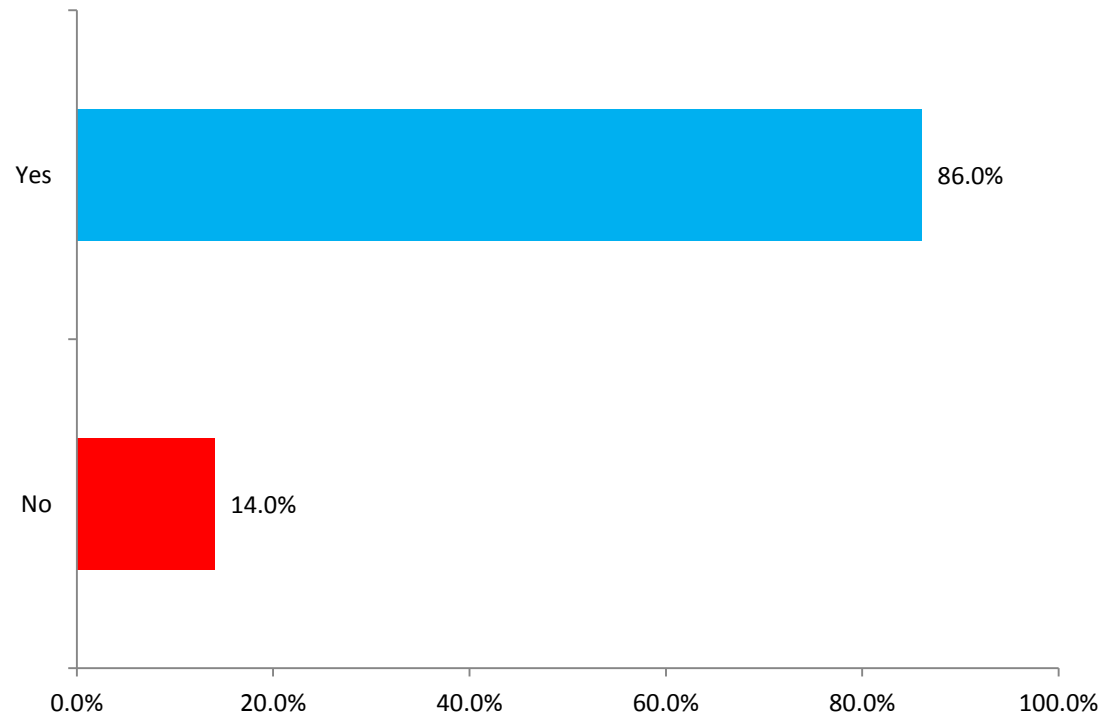
The focus was civil legal aid because of the ongoing MOJ review of criminal legal aid – CLAR. We also specifically noted this was not about CCMS however, inevitably, some responses referenced issues with the system.

We posed a series of questions asking for respondents' experiences over the last 12 months, with a specific focus on LAA decision-making. The survey was broadly structured around the different stages of legal aid applications, amendments, costs assessments and reviews/appeals. Each question asked respondents to provide specific examples of any issues they had experienced. Respondents could skip questions as not all practitioners deal with every aspect of application and billing processes.



Incorrect refusals of substantive certificates and/or amendments to substantive certificates?

(i.e. failing to apply the regulations/ not considering information provided/ generally bad reasons)

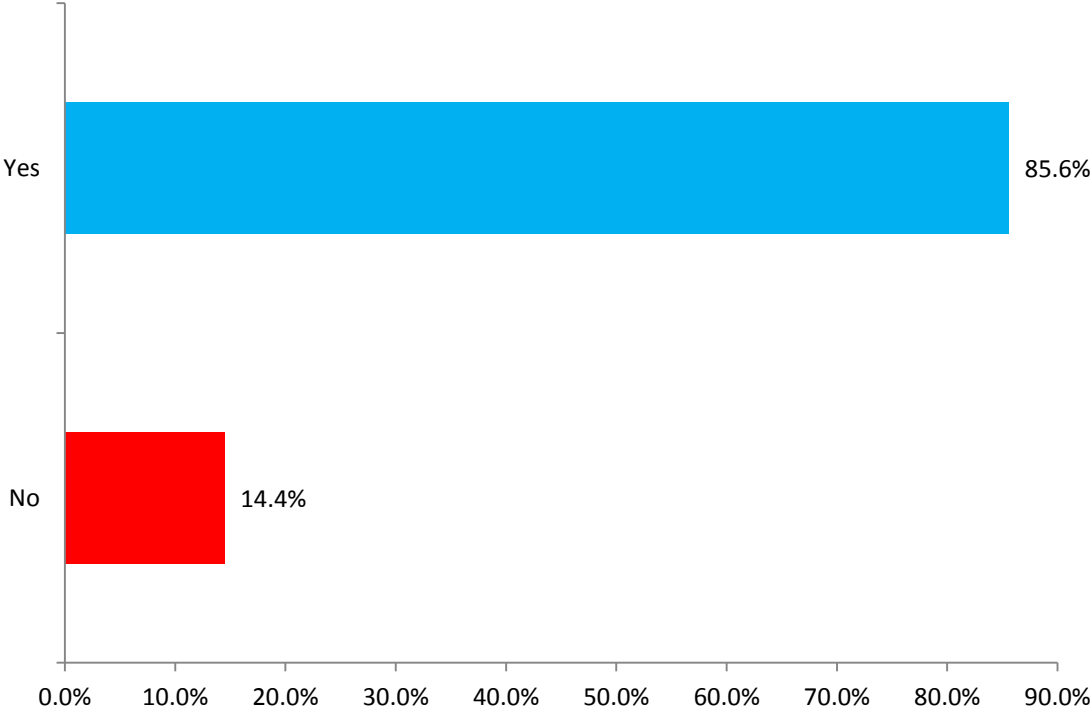


Yes - 326

No - 53



Delays in granting substantive certificates and/or amendments to substantive certificates?

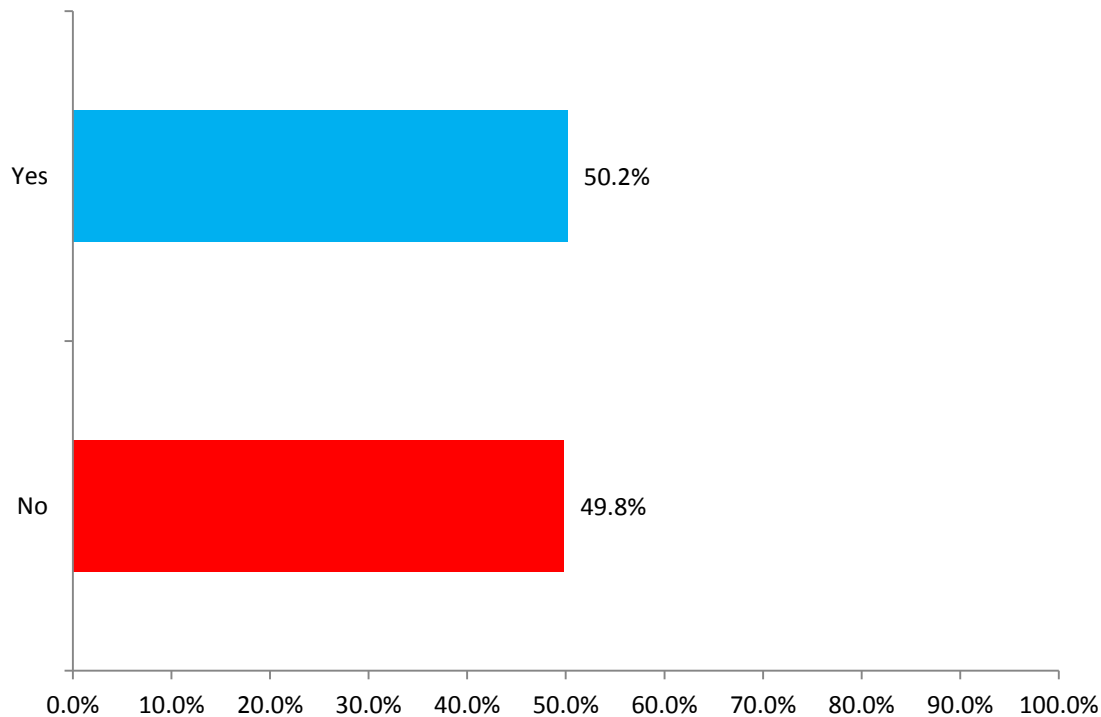


Yes - 308

No - 52



Any particular issues in relation to the way the LAA deals with applications for emergency certificates?



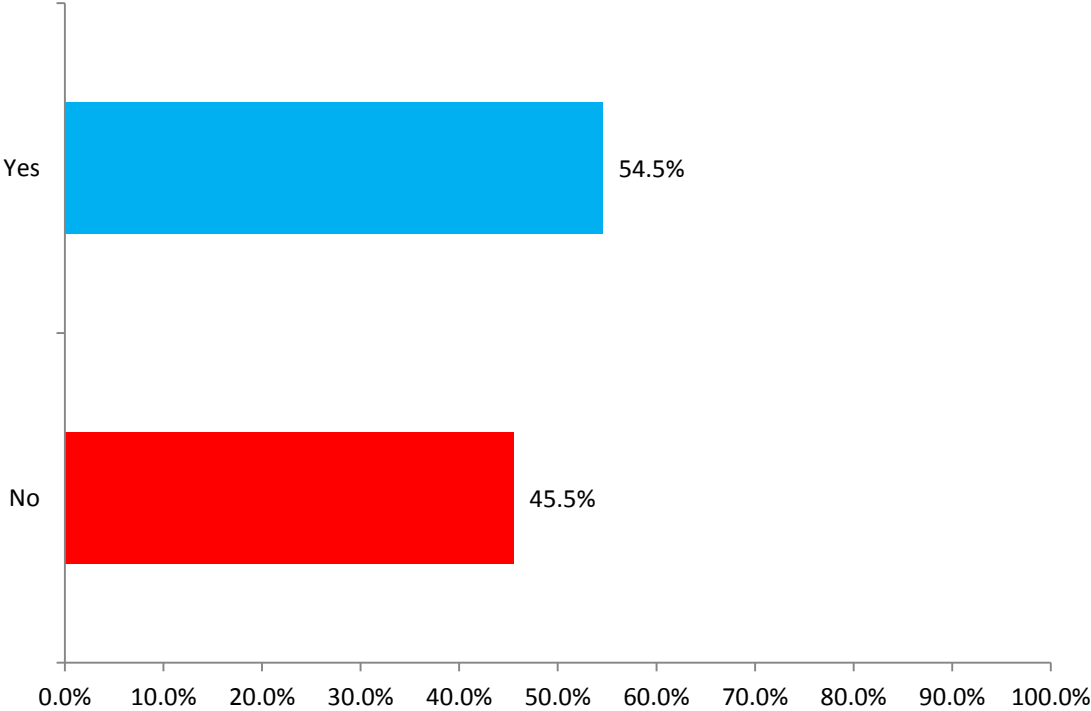
Yes - 142

No - 141



Incorrect nil assessments of Escape Fee or other claims for costs

(i.e. failing to apply the regulations/guidance)

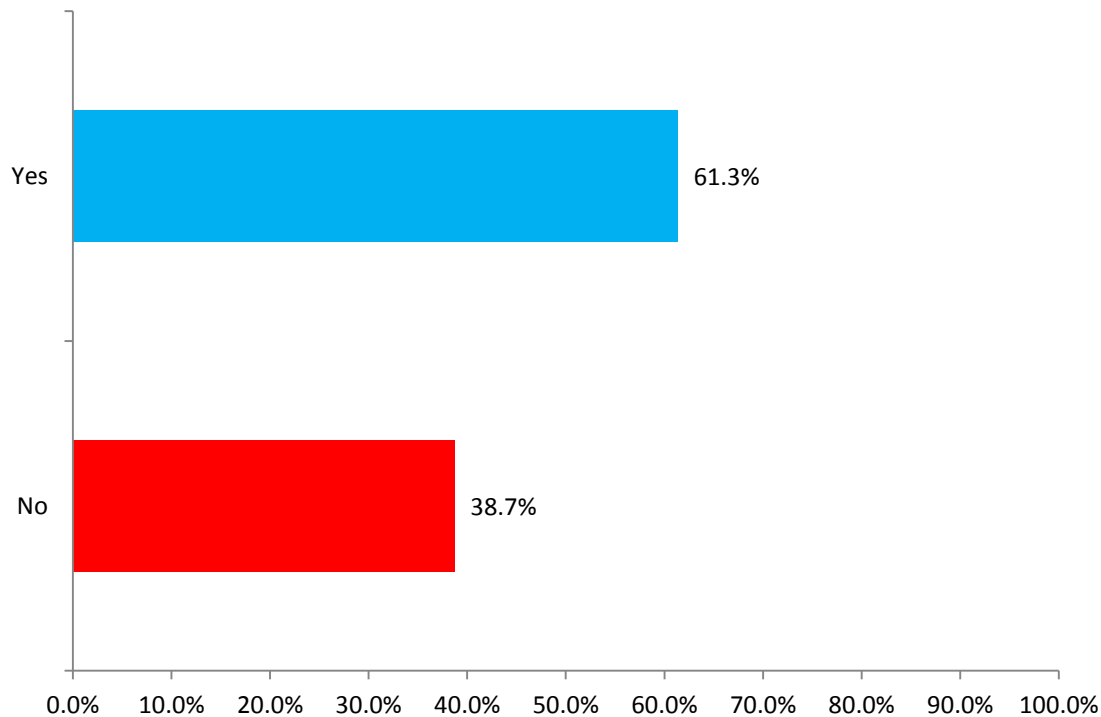


Yes - 151

No - 126



Incorrect requests for evidence of means that may be impossible to obtain and/or not in compliance with the regulations, in particular for destitute clients

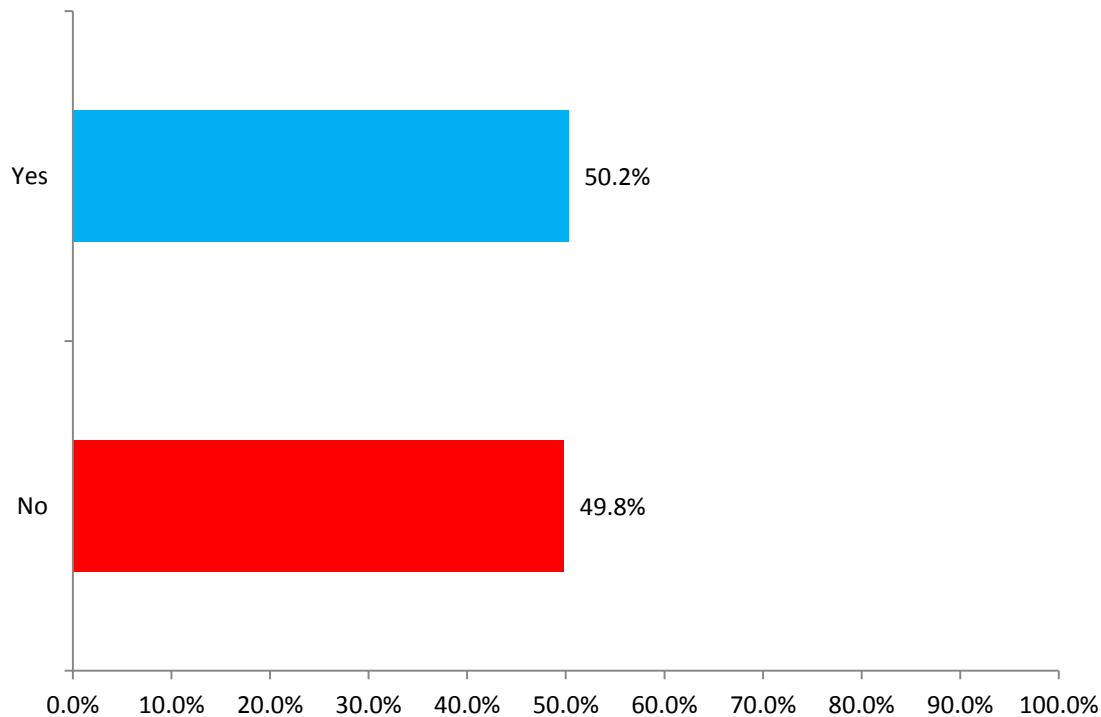


Yes - 187

No - 118



Particular problems when dealing with the Exceptional Case Funding team.

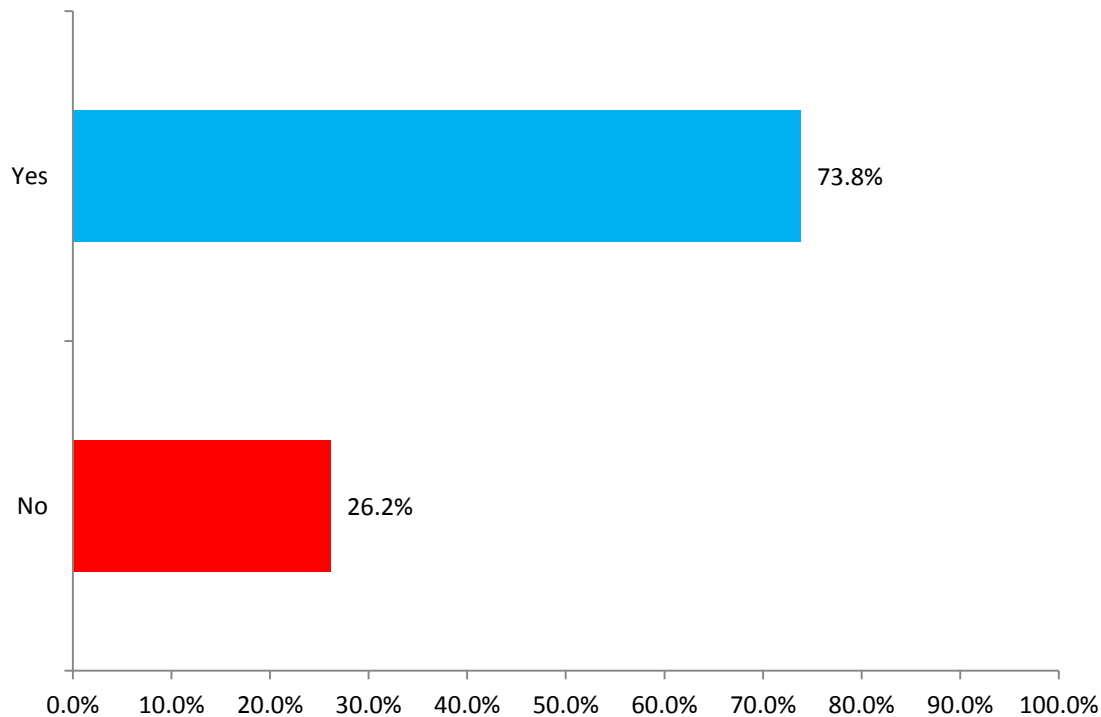


Yes - 109

No - 108



The appeal or internal review process for challenging any of the above (or any other) decisions by the LAA

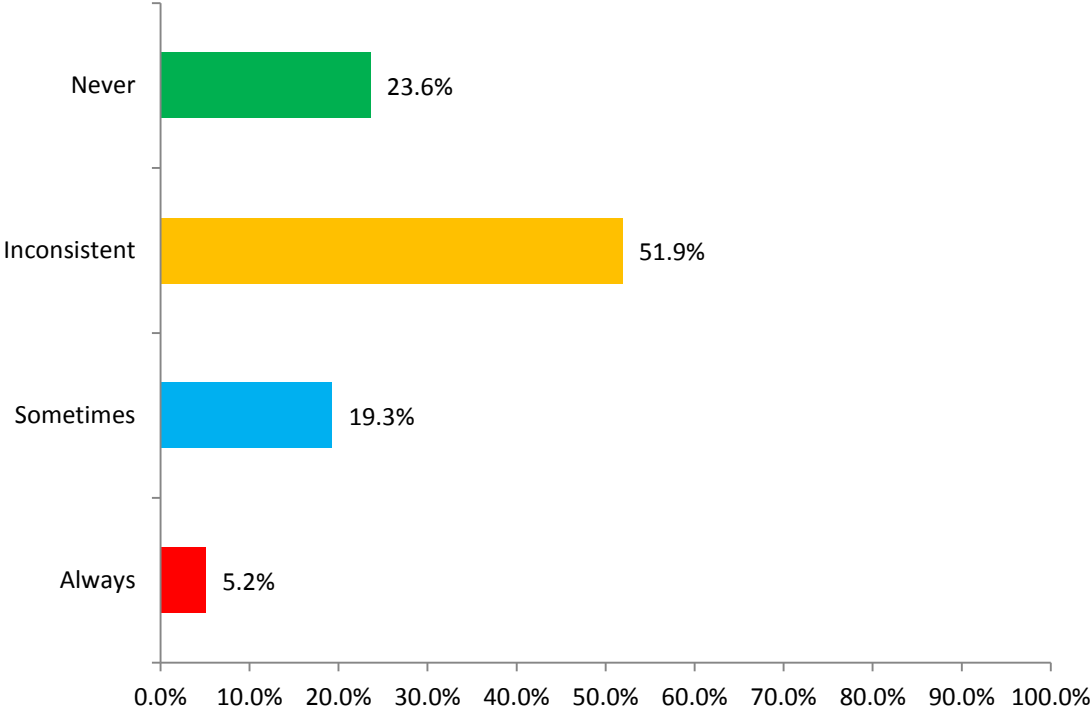


Yes - 237

No - 84



Were the appeals you have pursued dealt with promptly?

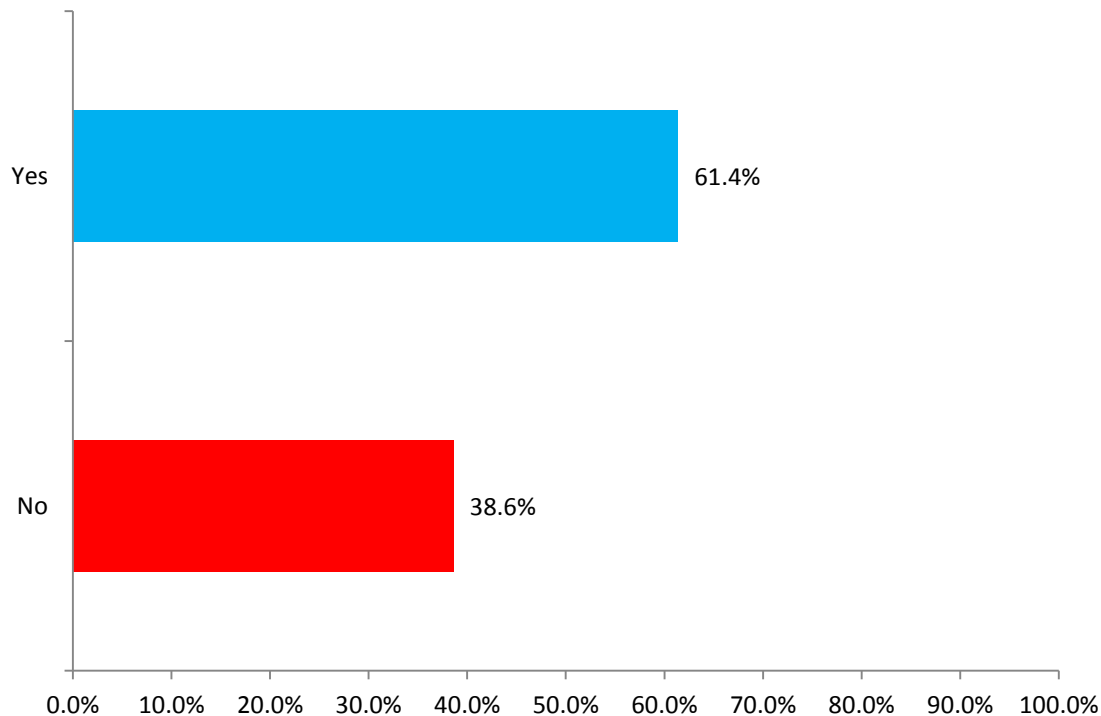


Never – 55 Mixed Bag – 121 Sometimes – 45 Always - 12



Have you been forced to issue a claim or make an application 'at risk'

(i.e. not knowing whether legal aid will be granted to cover the claim/application) while awaiting the outcome of an appeal?

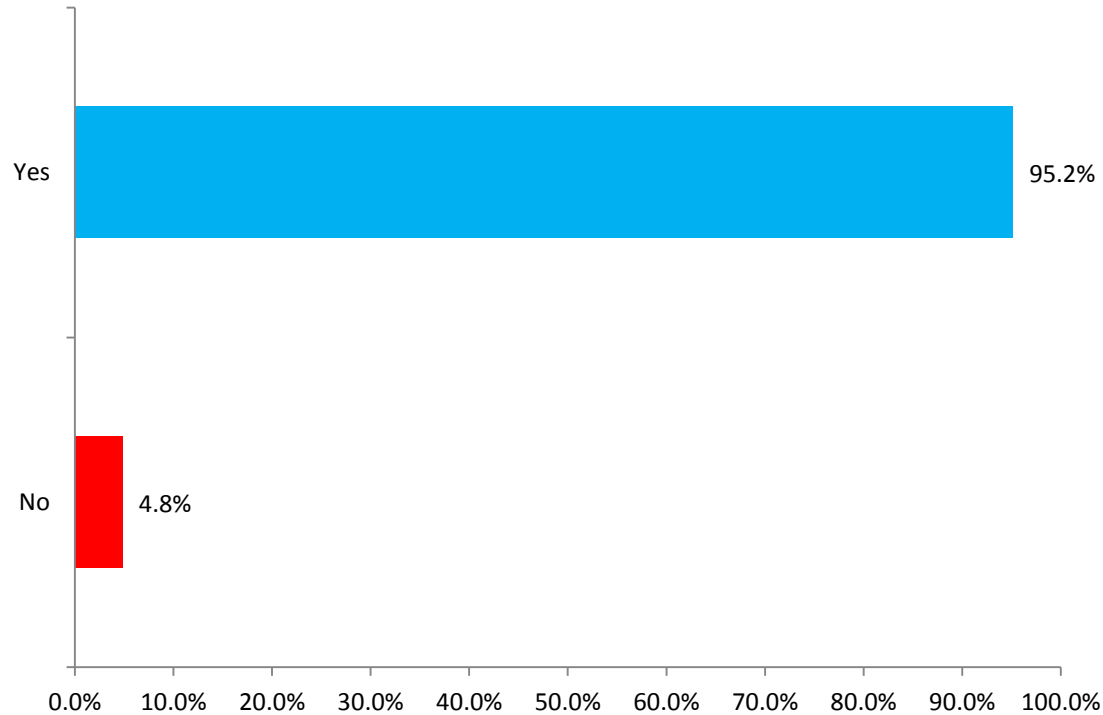


Yes - 124

No - 78



Do you or others in your organisation spend unpaid time dealing with appeals?

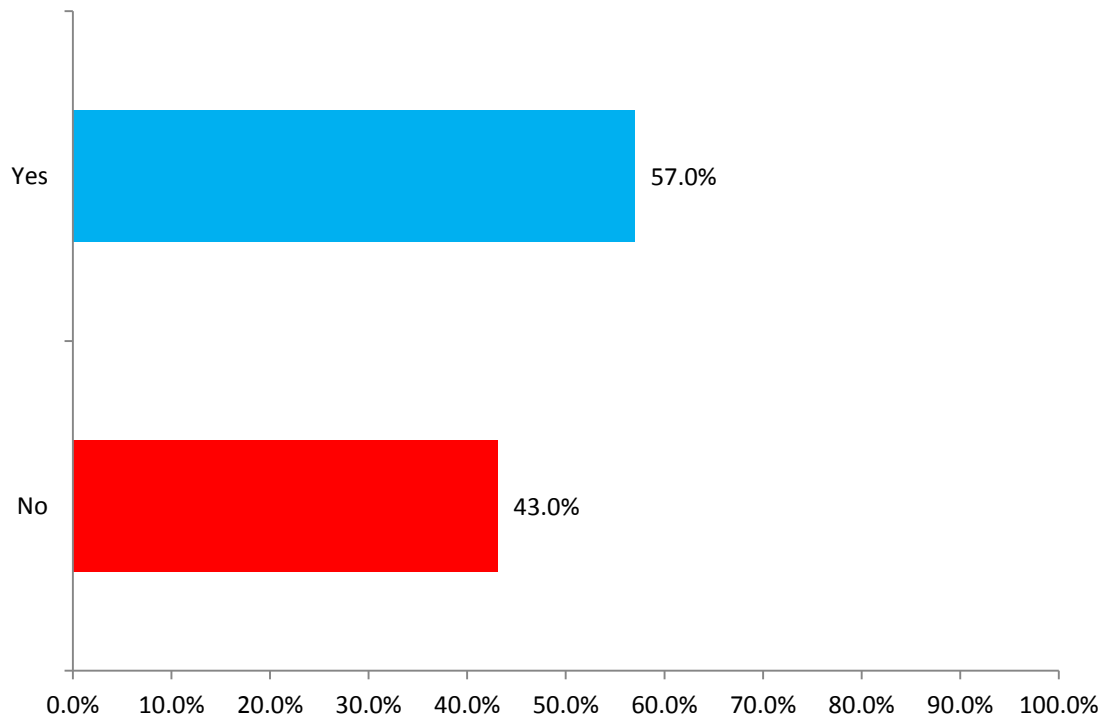


Yes - 216

No - 11



Does the amount of unfunded time required deter you from pursuing appeals?

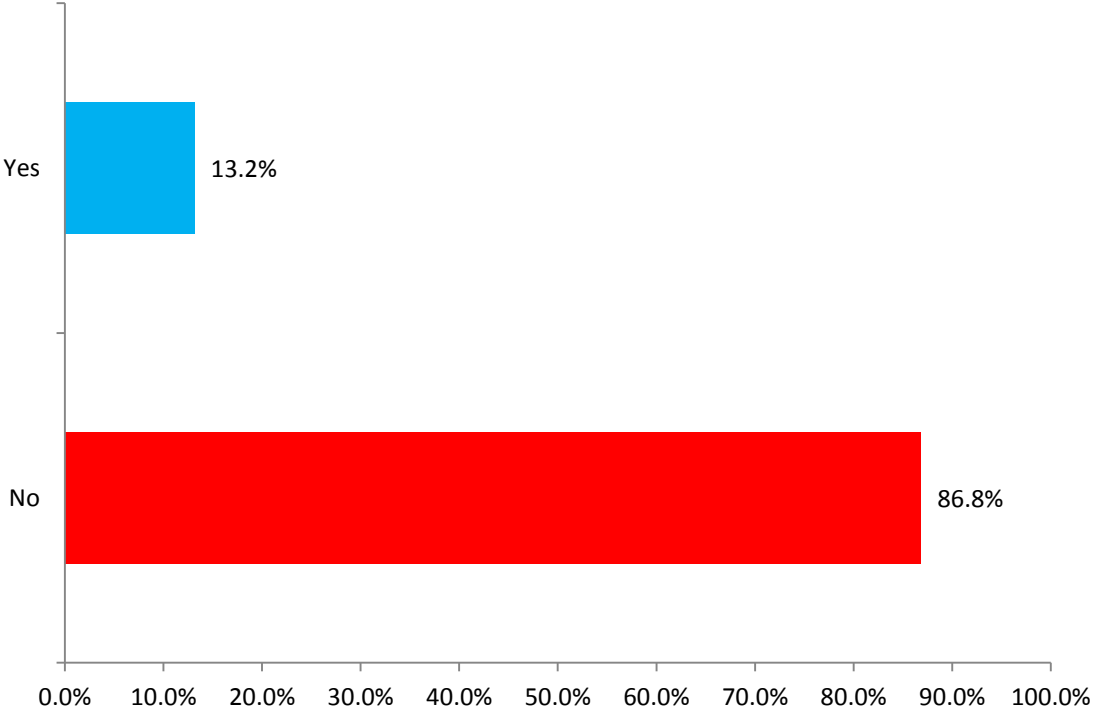


Yes - 127

No - 96



In your opinion was the process fair and transparent?

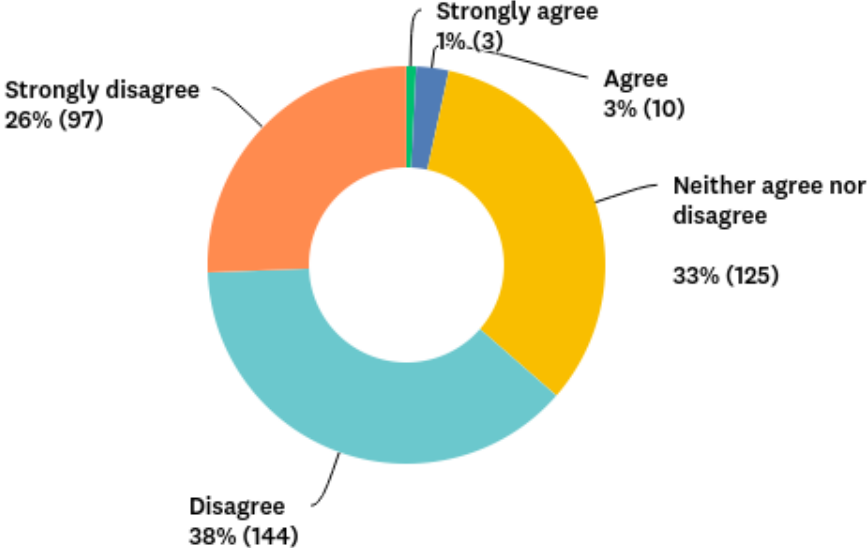


Yes – 30

No - 198



Please provide a response below to this statement:
'Over the last 12 months LAA decision-making processes have improved.'



Responses 379



Categorisation of the examples provided

1. Assessment - claims being reduced despite there being clear evidence of work carried out on the file
2. Assessment - incorrect nil assessments
3. Communication - inadequate explanations for decisions
4. Communication - Poor communication with providers
5. Delay - general
6. Delay - prejudicing the client's case
7. Delay - waste Court time
8. Delay - leading to firm working at risk
9. Delay - billing delays
10. Delay - dealing with appeals against LAA decision
11. Delay - lack of expedition / process for dealing with things quickly
12. Incorrect application - the costs assessment guidance
13. Incorrect application - the merits criteria
14. Incorrect application - scope
15. Incorrect application - divide between Legal Help and certificated work
16. Incorrect application - the means test
17. Incorrect application - telling providers to use a CFA when case is eligible for LA
18. Inconsistent decision making – general
19. Inconsistent decision making - the use of experts
20. Request - disproportionate requests for means information
21. Request - for documents already provided
22. Refusal - costs amendments
23. Refusal - enhancements
24. Refusal - disbursements
25. Refusal - DV gateway
26. Means - Rigid application of means test in relation to vulnerable / homeless / detained people / people fleeing domestic abuse
27. Merits - ignoring counsel's advice
28. Merits - favouring opponents' argument
29. Merits - Court finds in favour of client / legally aided person
30. Merits - no arguable defence (housing)
31. Merits - no arguable case
32. Merits - wrong application of law / other

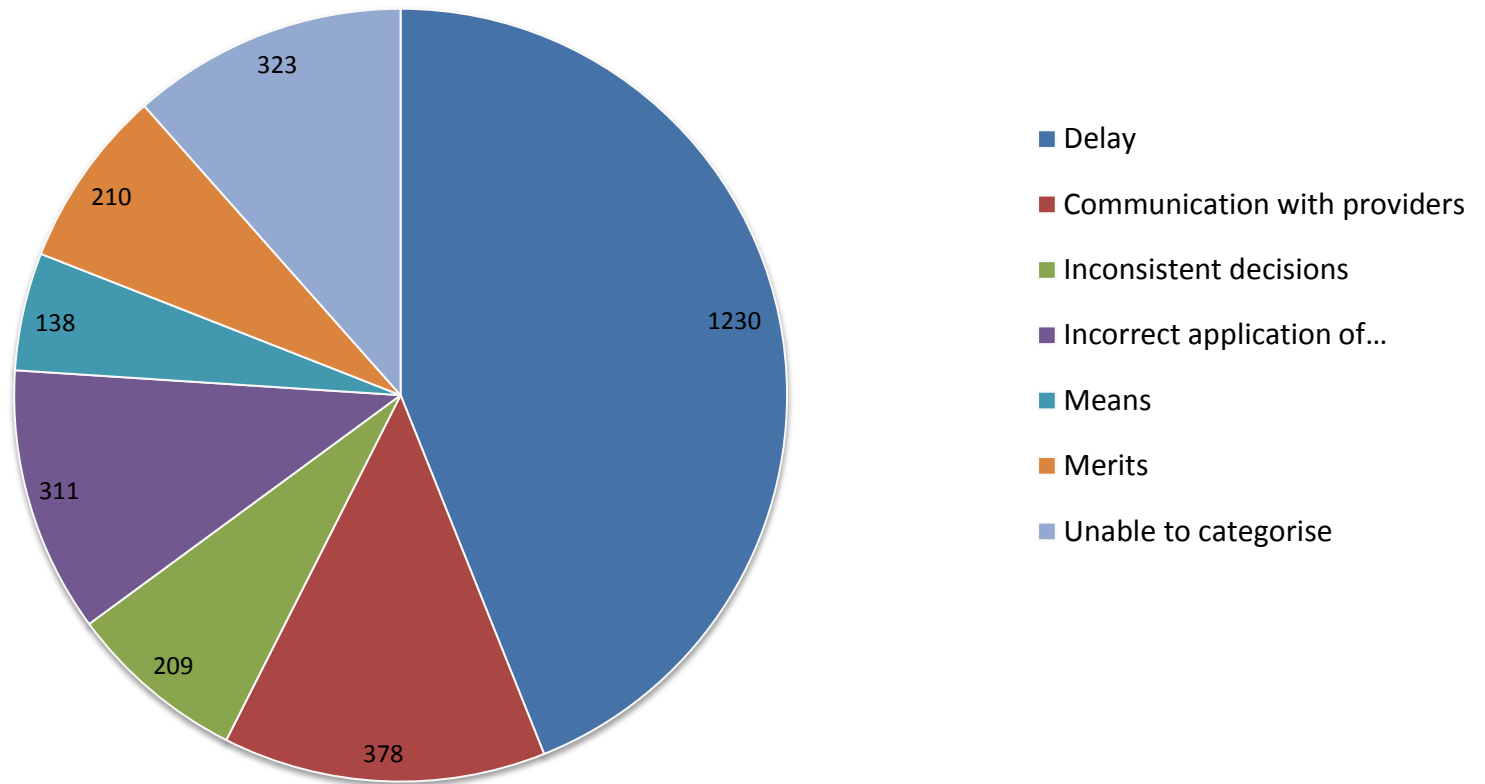


An example of the examples...

“Many examples. A damages-only unlawful eviction claim where funding was incorrectly refused on the grounds that "the case was suitable for a CFA". We successfully appealed but had to demonstrate that there was no practical way of obtaining ATE insurance for the client's case and that therefore there was no scope for a CFA. From application to appeal decision took 3 months. An unlawful eviction claim (injunction and damages) where funding was granted for the interim injunction but client was then refused funding to continue the matter to trial. We successfully appealed after arguing that this was an absurdity since without continuing to trial, the client had no way to enforce the terms of the interim injunction and was vulnerable to a repeat unlawful eviction forthwith. Funding was subsequently granted for pre-trial steps only but the LAA are insisting on a separate application to extend funding to trial, supported by a huge quantity of documentary evidence as well as Counsel's opinion. There is no guarantee that further funding will be granted. An application to extend funding to cover an appeal on a housing possession case for which funding had already been granted. Because of delays at the Court end in obtaining transcripts of judgment, the LAA's decision took over 2 months and when it was received, funding was granted going forward only - no funding had been allowed for all the work that had gone into preparing the appeal. We would thereby have been out of pocket for the appeal issue fees, costs of a consent order to extend deadlines, Counsel's fees for advice and preparing the appeal paperwork, plus our own prep and attendance. It was necessary to appeal to obtain backdated funding. The appeal was successful.”

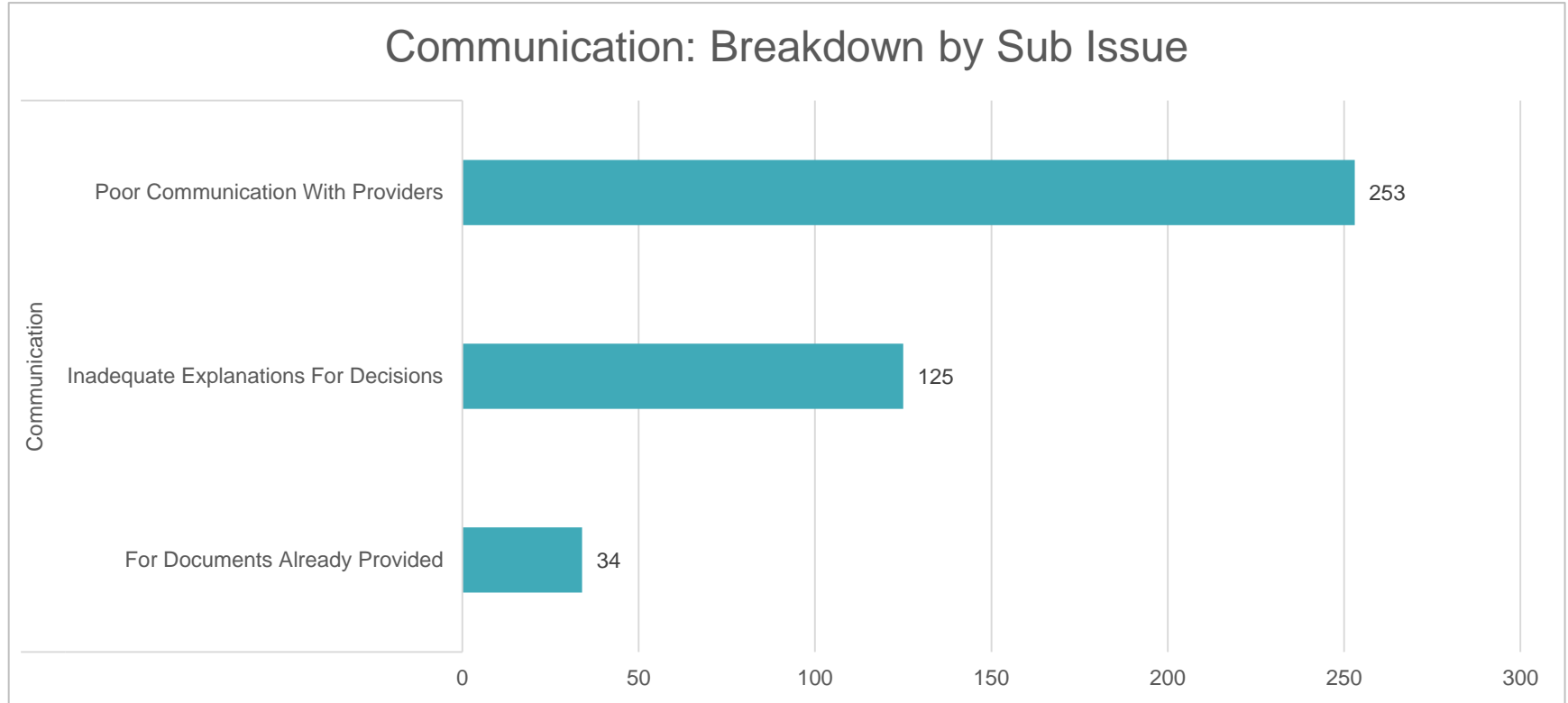


Breakdown by 'issue'



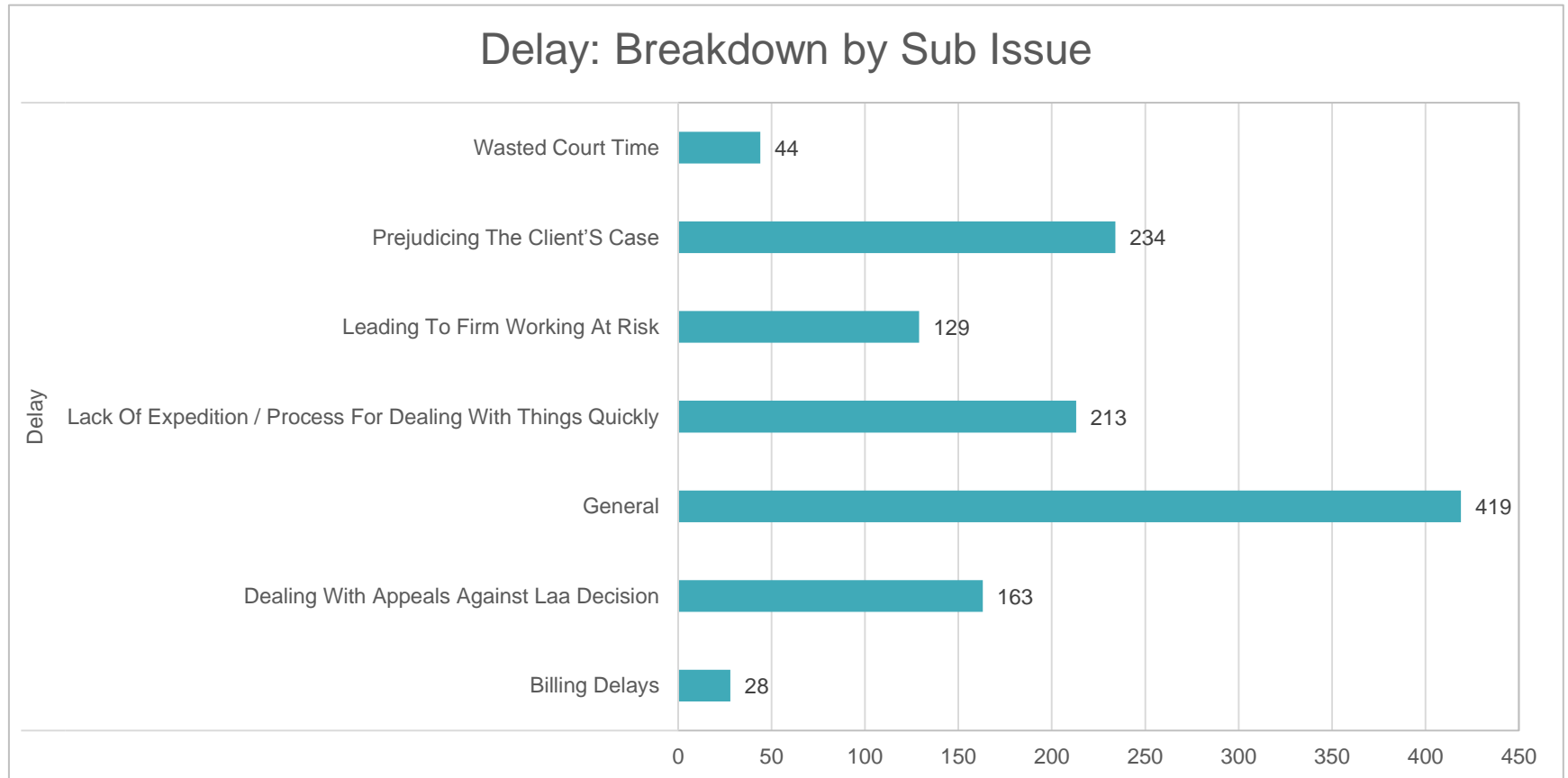
Communication

Communication accounts for 14% of the total issue tags



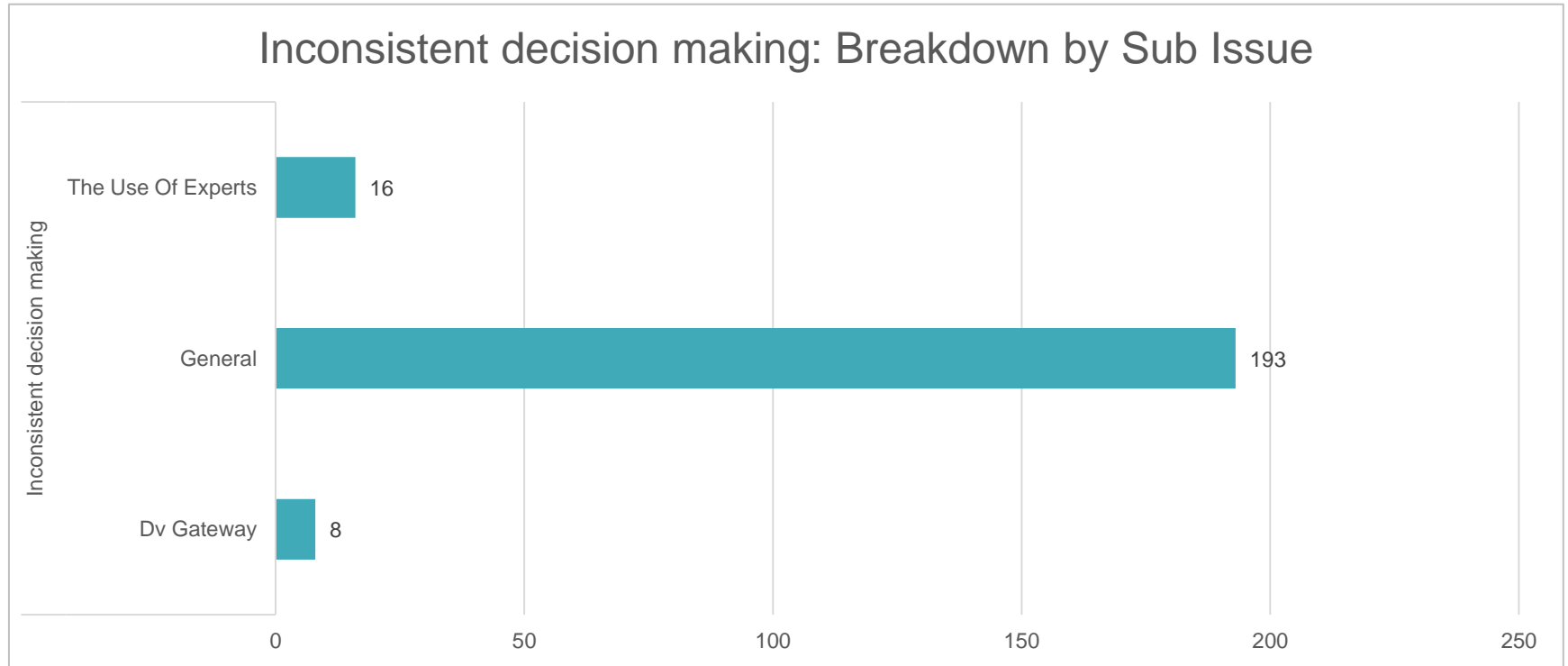
Delay

Delay accounts for 41% of the total issue tags



Inconsistent decision making

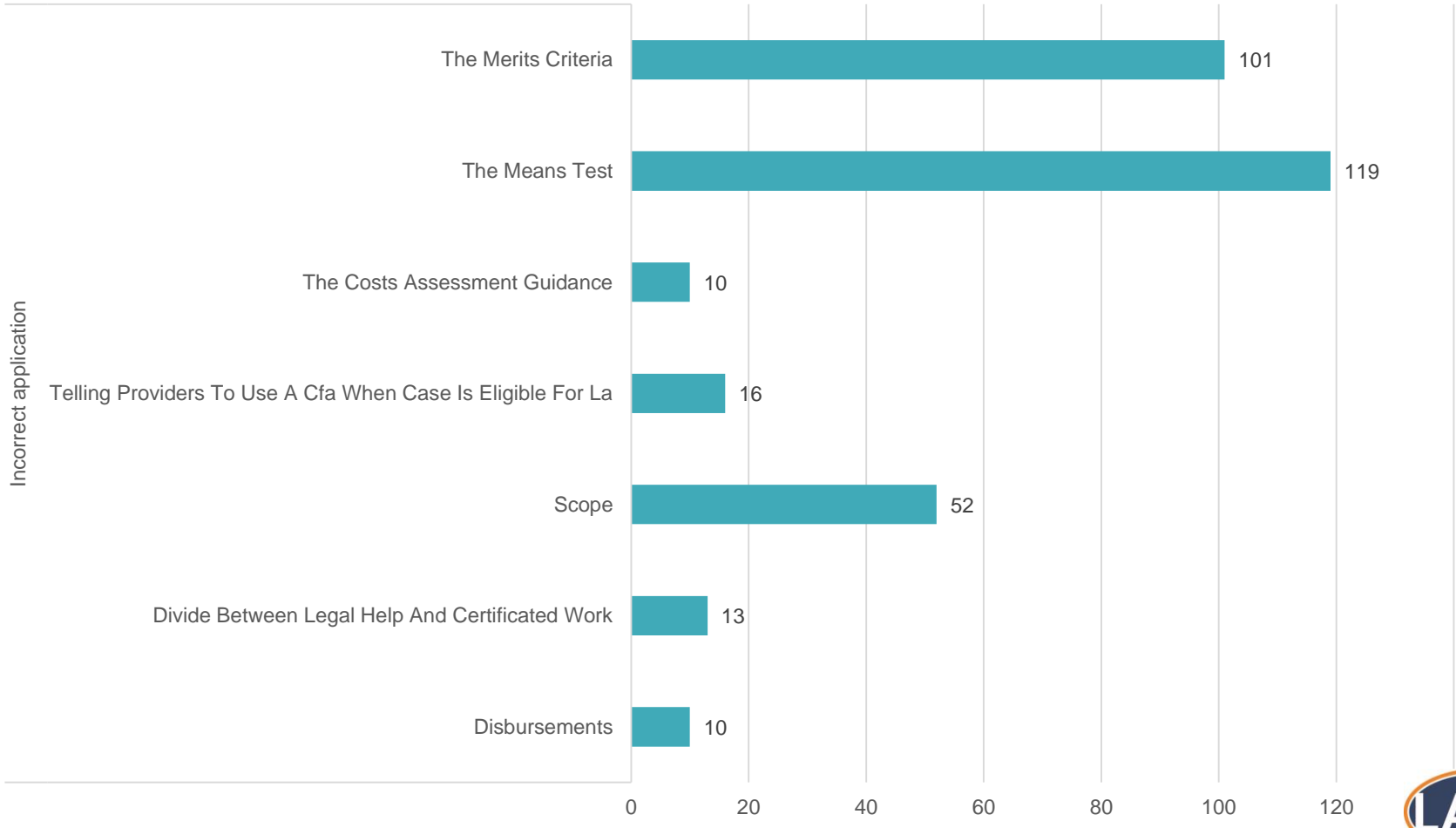
Inconsistent decision making accounts for 7% of the total issue tags



Incorrect Application of...

Incorrect application of... accounts for 11% of the total issue tags

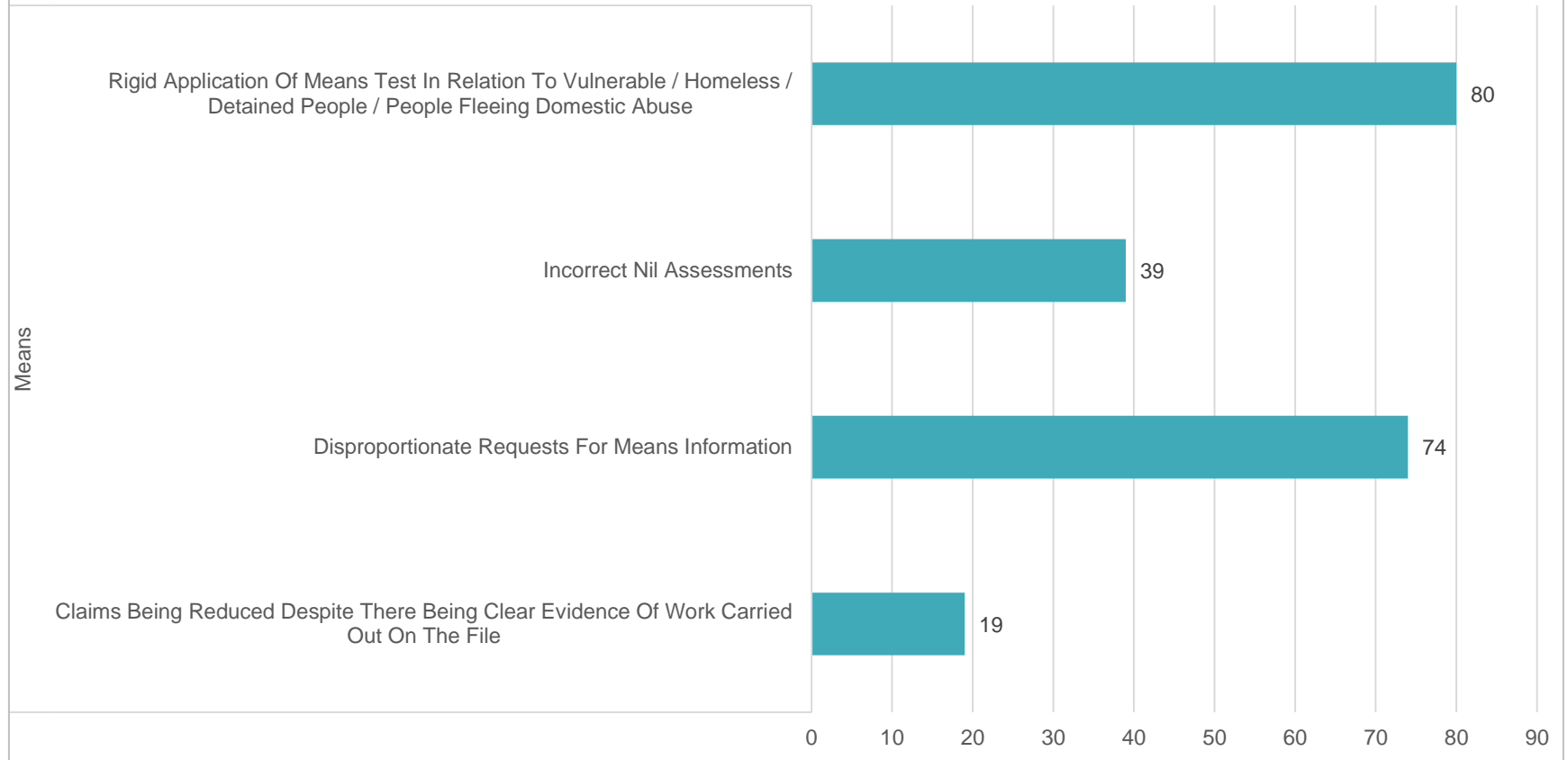
Incorrect Application: Breakdown by Sub Issue



Means

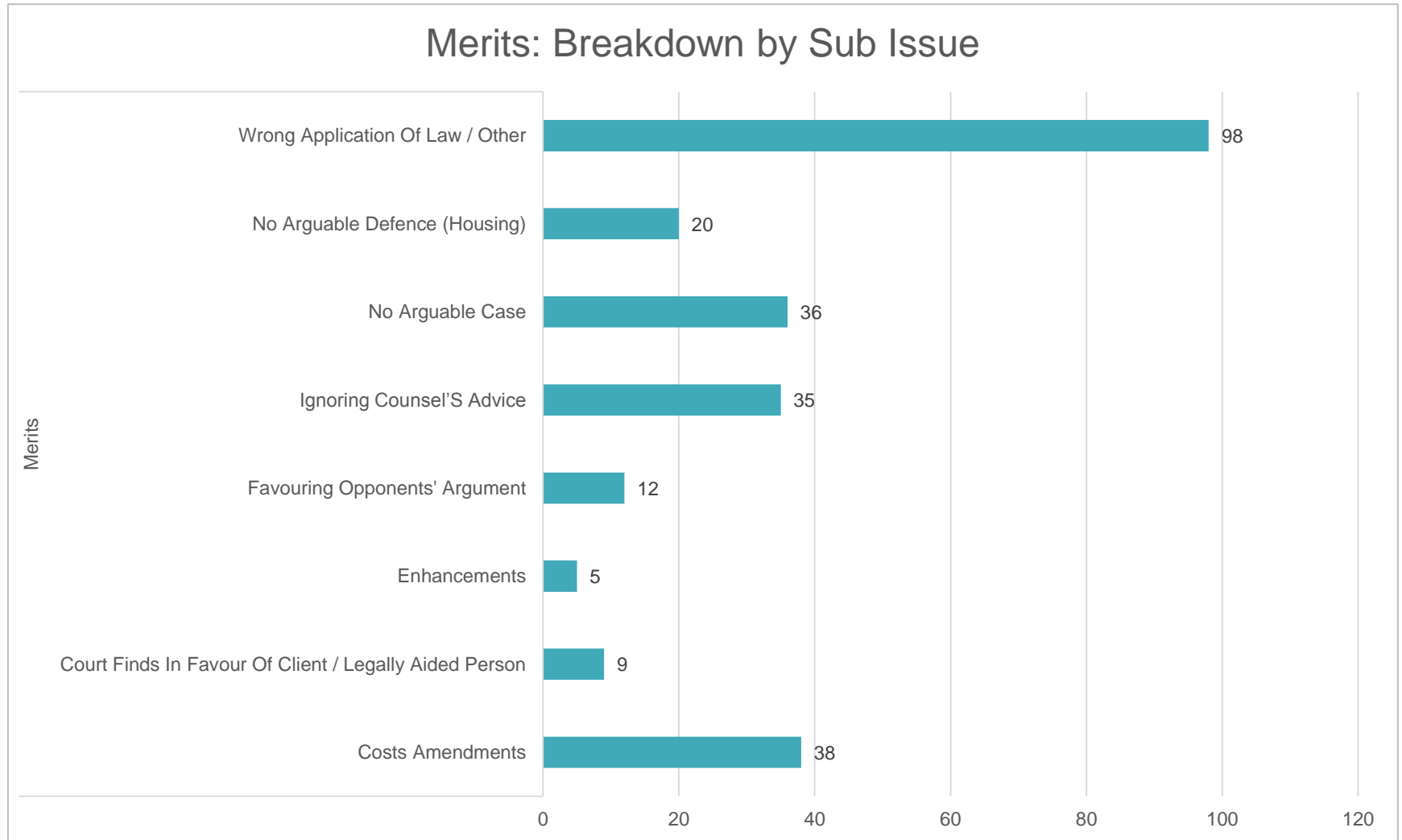
Means accounts for 7% of the total issue tags

Means: Breakdown by Sub Issue



Merits

Merits accounts for 9% of the total issue tags



What next?

Having discussed the 6 broad themes with the LAA's Chief Exec, we have arranged a meeting on 12 March with the Process Efficient Team to look at our first two priorities:

- Delay
- Merits/first instance decision-making

Along with the 6 broad themes, the survey has also reinforced concerns about Exceptional and High Cost Cases so we will continue to raise these with the LAA.

We will share relevant examples (anonymised where necessary) from the survey and we're using other examples that practitioners have provided.

We are attempting to tackle both 'operational' and 'cultural' issues, and the LAA has, at this stage, accepted that both need to be considered.

The big question for us is how do we tell if things are getting better???

