

Mapping the Moral Compass

The relationships between in-house lawyers' role, professional orientations, team cultures, organisational pressures, ethical infrastructure and ethical inclination

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All responsibility for errors is our own.

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About the Ethical leadership for in-house lawyers initiative

This research is Part I of a broader process of engagement and evolution of best practice with the practitioner community about ethical practice for in-house lawyers. You can keep abreast of developments at <http://elihls.wordpress.com>.

Executive Summary

This is a survey of 400 in-house lawyers working in public, third and commercial sectors. We set out here the findings at the highest level. A number of organisations assisted with the distribution of the survey.¹

This report provides a unique profile of real differences within the in-house community. We examine individual and team orientations to the in-house role; the invocation of professional principles; and ethical infrastructure, ethical pressure and relationships with the employer. We relate these to externally validated indicators of ethical inclination: (i) moral attentiveness (the extent to which people deal with problems as moral problems and the extent to which people identify moral problems); and (ii) moral disengagement (the extent to which people are inclined to morally disengage to behave unethically without feeling distress). It is as rich a picture of what it means to be an ethical in-house lawyer as has ever been attempted. A more detailed [summary and discussion](#) of our findings is found in the final chapter of the main report for those who would like to know more but do not have the appetite or time to read the whole report.

This mapping of the 'moral compass' of in-house lawyers shows that ethicality is associated with individual and professional notions of the in-house role but also with team orientations and the broader organisational environment.

Through this research we profile the characteristics of individuals, teams and environments most associated with a stronger or weaker inclination to behave ethically. It is important to emphasise that this mapping of the 'moral compass' of in-house lawyers shows that ethicality is associated with individual and professional notions of the in-house role but also with team orientations and the broader organisational environment. Ethicality is both a systemic and individual phenomenon. We think the systemic lesson is important: there is too much emphasis in legal circles on thinking that ethics is about being the right sort of individual. That kind of thinking is complacent and dangerous. As we show here, individuals, systems and cultures mesh together in meaningful and measurable ways to increase or reduce ethical risk. As numerous corporate scandals have shown, such ethical risk puts individual lawyers at risk of professional misconduct but it also encourages poor quality decision-making for the organisations that employ in-house lawyers: short-termism and sharp practice can lead to catastrophic error.

¹ See acknowledgments.

Initial findings at a glance

400 respondents

10-15% experienced elevated ethical pressure

30-40% sometimes experienced ethical pressure

Close to 50% agreed that actions were sometimes taken against their advice on legally important matters

Ethical pressure was highest in public sector organisations

53% of the GCs in our sample reported to the CEO

16% reported to the CFO

10% reported to another board member

6% report to a non-executive board member or the chairman

Less than half of in-house lawyers line-managed by the CEO had a formal or informal reporting line to the chair of the board, chair of audit or other non-executive director.

36% agreed that loopholes in the law should be identified that benefit the business

9% indicated saying “no” to the organisation was to be avoided, even when there is no legally acceptable alternative to suggest

For **65%** achieving what their organisation wants has to be their main priority

30% said an emphasis on commercial awareness sometimes inhibits the in-house lawyer in performing his or her role

12% said where commercial desirability and legal professional judgement are in tension, commercial desirability is more important

7% *never* discussed professional ethics issues with colleagues internally or externally, formally or informally. For most in-house teams, formal and informal ethical infrastructure was limited.

FOUR ETHICAL IDENTITIES

To help understand the diversity in ethical identities, we identify four main groups of in-house lawyers ([described in more detail in Chapter 9](#)):

- **the Capitulators** (who are reasonably morally attentive but are under ethical pressure and are less morally engaged);
- **the Coasters** (who do not perceive themselves as under ethical pressure and have moderate-low levels of moral attentiveness but not lower moral disengagement);

- **the Comfortably Numb** (who do not perceive high levels of ethical pressure and have low levels of moral attentiveness and higher moral disengagement – the most concerning of the four groups); and,
- **the Champions** (who are under the highest levels of ethical pressure but retain the highest levels of moral attentiveness and the lowest levels of moral disengagement).

Against these four groups, we map data on in-house role, team orientation, approach to professional principles and so on, to see what kinds of characteristics are most commonly associated with each of our four groups and our underlying indicators of ethical inclination. Through such a process we provide insight into the correlates of ethicality in practice.

ETHICAL PRESSURE

Chapter 3 sets out the findings on pressures in the organisation. In particular, we measure reported pressure to advise on unlawful and/or unethical practices. Our examination suggests that ethical pressure might be described as elevated in about 10-15 per cent of our sample and sometimes apparent in about 30-40 per cent of respondents.

Although our sample is broadly representative of the in-house population, a survey of this kind is likely to attract lawyers more interested in ethics, and so we should be wary of generalising the figure to all in-house lawyers.

Ethical pressure was more elevated amongst the lawyers working in the public sector, but it was also found in all sectors.

There are good reasons why the line management of in-house lawyers would come from the executive side of an organisation, but we would question the limited extent to which senior in-house lawyers appear to have formal or informal reporting lines to non-executive directors.

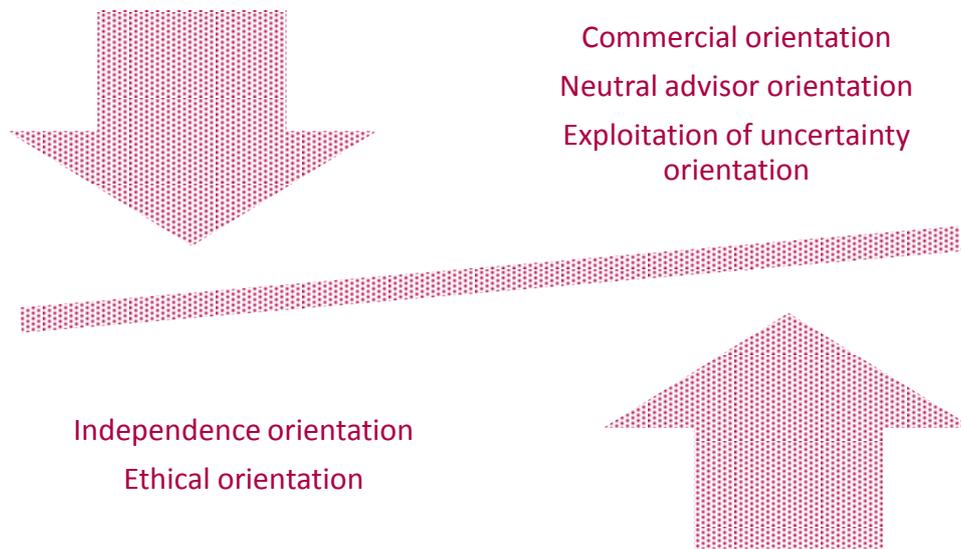
IDEAS ABOUT ROLE

The report also explores differences in the role and team orientations of lawyers working in-house. Some differences reflect organisational characteristics. So, lawyers working in the public sector place a stronger emphasis on independence, and lawyers working in business put a stronger emphasis on a commercial orientation. There are similar differences in team orientation. Importantly though, individual and team orientations differ within sectors, and this research shows that such orientations have a significant association with ethical inclination.

How practitioners conceive of the in-house role is a central concern of this research and of practitioners themselves (see Chapter 4). We identify five particular kinds of orientation.

A commercial orientation is commonly supported by in-house lawyers, especially but not only, those working in business. The research evidences links between a stronger commercial orientation and weaker ethical inclination. This suggests the need for the role of in-house lawyers to be conceptualised in ways that restrain or balance the commercial orientation. Our data also suggest a neutral advisor orientation (which risks lawyers seeing themselves as mere servants of the employer, without their own influence) and an exploitation of uncertainty orientation (seeing uncertainty and looking for loopholes as things to benefit the employer) can be similarly problematic.

Independence and ethical orientations are associated with greater ethical inclination. Most respondents support ideas of independence and ethicality, but do so with varying levels of intensity.



Chapter 5 [looks at team orientation](#). Team orientations similarly reflect ethical and, although there was less consensus here, societal dispositions. These orientations were generally less strong than commercial, financial and effectiveness oriented concerns. Where independence, ethicality and societal concerns were more strongly supported, respondents were more ethically attentive and engaged.

The report also contains data on [the representation of in-house lawyers on boards and their reporting lines](#) (see Chapter 2). There are good reasons why the line management of in-house lawyers would come from the executive side of an organisation, but we would question the limited extent to which senior in-house lawyers appear to have formal or informal reporting lines to non-executive directors.

PROFESSIONALISM AND ETHICAL INFRASTRUCTURE

Existing research suggests that in-house lawyers are not as clear as they might be about when or how to invoke professional principles. This issue goes to the heart of whether there is anything special about a *professional* lawyer working in a business. In Chapter 6, we look at respondents' [invocation of professional principles](#) in the resolution of problems.

Our respondents suggested that client interests were prioritised more often than the principles of integrity and effectiveness, which in turn were prioritised more than the principles of independence and legality. This is not consistent with the approach required under professional codes.

Conversely, those who prioritised these obligations in a way more consistent with the codes – that is, those who more often saw the principles of independence and legality as important to their decision-making, even if they did not see independence as *more* important than other elements of



the principles – were also the most ethically inclined of our respondents. These respondents had a more rounded, less narrow, view of their professional obligations.

In Chapter 7, [we examine the management of professional ethics](#) by in-house teams. We draw attention to the general paucity of ethical infrastructure within in-house teams, by which we mean the general absence or infrequency of formal guidance, training and informal discussion on professional ethical matters. Given the level of ethical pressure experienced by respondents, we think this is a concern.

THE CENTRAL LESSON

Our analysis of the data and our four archetypes show that a stronger ethical infrastructure, as well as the individual, team and professional orientations we have discussed, are all associated with a more ethical (and we would say more professional) in-house lawyer.

We think this last finding is the most important and deserves emphasis. Our research suggests that ethical in-house practice is about individual understandings of the role; it is about the approach of teams and the organisations those teams work in; it is about understanding and drawing on all the obligations of professionalism; and, it is about building a better infrastructure to manage the tensions within the role. We can but speculate on what corporate mishaps might have been avoided or managed better, with concomitant reduction in social and economic harm; or what stress could have been avoided, or how many careers could have been saved, by understanding and acting on this.

WHAT'S NEXT?

It is also important to emphasise that this is not a report which tells in-house lawyers how to behave ethically. Nor do we offer specific solutions. Solutions depend on context: they should be tailored to the needs of individuals, teams and their employers; and they are best led, in our view, by the in-house community themselves. Some will respond defensively, but we hope this research provides a spur to action. In Part II of our Ethical Leadership project, we are taking forward these issues in discussion with the in-house community. The lawyers we have met, and those we have interviewed, have been enormously helpful, engaging, thoughtful and challenging. Their response speaks to a rich river of professionalism as well as the need for improvement. We will be reporting on this work in due course.

The plan is to produce a white paper which sets out ideas about how best to structure the in-house role and manage in-house legal functions for ethical practice. This white paper will be led in large part by discussion with the in-house community, and informed by our research. For now, we make the following observations:

- The varied understandings of the in-house role suggest that in-house teams should engage in an honest and open evaluation of their own approaches and consider where on the spectrum of approaches we have outlined they sit.
- The evaluation should engage the employer and their in-house teams.
- The balance between a commercial (or, outside business, a client-delivery) orientation and independence and ethical orientations should be a particular focus of this review, with consideration given to how independence and ethicality become part of the role description, reporting and day-to-day management of in-house teams.
- The balancing and use of professional principles in day-to-day practice – especially those that promote integrity, independence and ethicality – should be considered and supported.
- The approach to managing for ethicality through ethical infrastructure (such as training, guidance, appraisal and discussion) should be considered as a matter of urgency.

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1 Introduction

This report is part of a broader study and process of engagement with in-house lawyers and those who manage and lead them. We are engaging in discussions with the in-house community at town hall meetings and we are conducting further in-depth interviews to explore the issues we raise here, and to look in greater depth at ideas about best practice. Through these mechanisms we are planning to contextualise our findings and think in greater detail about the implications of our results.

This report looks at data from 400 in-house lawyers in business, public and third sectors. Our respondents came from large and small teams, and with wide-ranging levels of experience. There is a broad representation of gender, role type (GCs and other roles, board-members and non-board members), and levels of experience in-house.

AIMS OF THE STUDY

The aim of the report is to provide insights on approaches to ethicality within in-house legal teams. In particular, we examine:

- **How do in-house lawyers see their identity and their role?** Whilst a tension which we explore is one between the lawyer as servant of their employer and as independent professional, the actual picture is significantly more complex: commercial, neutral advisor, exploitative, ethical and independence orientations vie for supremacy. We also look at how our lawyers see their professional obligations.
- How is **the role structured**: what are its reporting lines and what are the orientations of the teams within which our lawyers work? Are they ethically oriented, societally oriented, financially oriented or delivery oriented?
- What are their **relationships within the organisation**: what kinds of line management and reporting lines are there? Are relations with the organisation positive or weak? Are there indicators of **ethical pressure**? Do in-house lawyers come under pressure to do things which they see as unlawful or unethical, for example?
- The **culture and infrastructure within the organisation**. What are the orientations of the teams within which our lawyers work? What is the ethical infrastructure like within their teams?

This provides us with a detailed, quantitative overview of in-house practice. We are also able to relate that to indicators of **inclination to behave unethically**. Collecting data on incidences of positive or negative ethicality through a survey is fraught with problems. Instead, we are able to collect data on moral attentiveness and moral disengagement: which are predictors of ethical misconduct (such as lying and cheating).

We are able to relate these predictors of inclination to behave unethically with our data on identity, role, infrastructure and the like, to suggest what characteristics of in-house individuals and teams were most strongly associated with ethical inclination. We hope these findings will provide food for

thought for in-house lawyers, their teams and the non-lawyers they report to or work with. We are engaged now in testing and exploring some of the issues we have seen here through town-hall meetings and interviews with in-house lawyers.

It is a process of discussion and exploration that we commend to anyone interested in the report. For any in-house lawyers or leaders we say this: please find the time to read the findings and discuss them with your colleagues. We provide an executive summary at the front of the report and a longer discussion at the end of the report for those not able to read the whole thing.

What we should emphasise is that what we are not doing is calibrating a level of unethical conduct amongst in-house lawyers. Such a calibration is difficult to do in practice, we do not do it here, and we warn against interpreting our findings in this way or in drawing out elements of the data as a vehicle for sensational criticism. We are *not* measuring wrongdoing. What we are seeking to do is provide a set of insights about what is associated with more or less ethical approaches within in-house teams. Whilst our data sometimes gives us cause for concern, we see this concern as underlying the desirability of improvement, and informing an on-going process of improvement. That our respondents were willing to engage in the process, and that many have them have engaged in the next stage of our work is testament to their professionalism and interest in development.

DATA OVERVIEW

Data was collected on the following sets of concepts from 400 in-house lawyers from business, public and third sectors.

The concepts are made up of the more detailed variables below and illustrated in Figure 1.

<p>Individual Background</p> <ul style="list-style-type: none"> Years of practice Professional qualifications Jurisdictions Years working in-house Gender 	<p>Organisation</p> <ul style="list-style-type: none"> Size of in-house legal team Percentage of not qualified personnel Size of organisation Type of organisation Main business /activity Location of business 	<p>Role structure</p> <ul style="list-style-type: none"> Role Line manager Other reporting lines Lawyers on the board Lawyers on executive committee
<p>In-House Identity</p> <ul style="list-style-type: none"> Broad work identity <i>Orientations:</i> Commercial Independence Ethical Exploitation of uncertainty Neutral advisor 	<p>Relations with the Business</p> <ul style="list-style-type: none"> Support and tensions Pressure - legality Pressure - ethicality <p>Professional Orientation</p> <ul style="list-style-type: none"> Client's Best Interests Independence and Legality Integrity and Effectiveness 	<p>Team Orientation</p> <ul style="list-style-type: none"> Financial, Societal or Ethical <p>Ethical Infrastructure</p> <ul style="list-style-type: none"> Guidance Training Formal and informal communications Ethics Performance appraisal

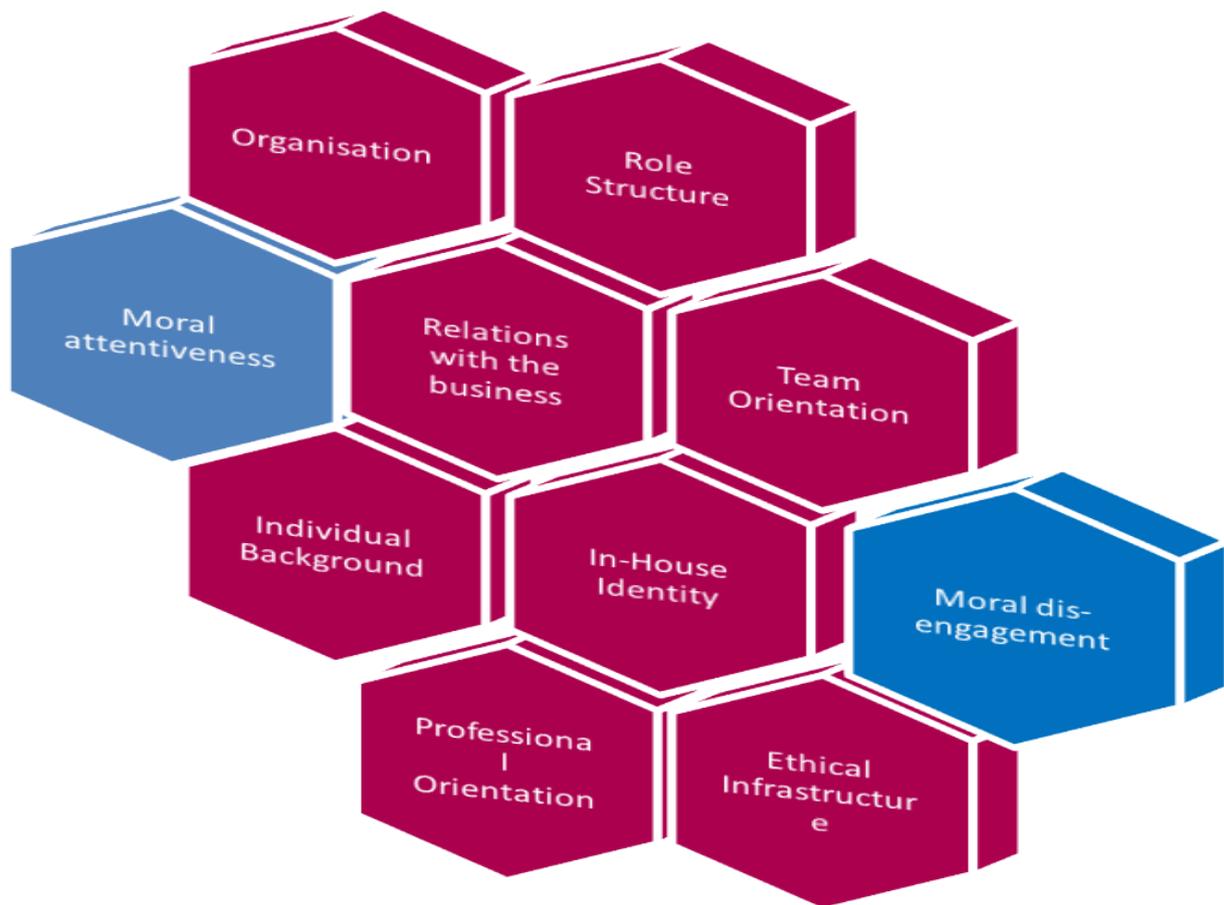


Figure 1: Data overview

We also collected data on other variables, including attitude to regulation, and (importantly) data which allows us to assess:

- moral attentiveness (the extent to which people deal with problems as moral problems and the extent to which people identify moral problems);² and,
- moral disengagement (the extent to which people are inclined to morally disengage, to behave unethically without feeling distress).

As we are unable to measure ethical conduct directly, we use these indicators of moral attentiveness and moral disengagement as proxy measures for the inclination to behave ethically. They are indicators developed by psychologists which have been validated in a number of contexts and are less prone to social response bias than more direct questions about engagement in unethical conduct. These indicators are shown to be associated with unethical behaviour. In this way they are similar to popular notions of the moral compass, but as we will see that moral compass is related not only to individual characteristics but also to environmental factors, such as team orientation and pressures in the organisational environment.

Moral attentiveness is a potentially important predictor of ethicality. We examine it across two dimensions: “perceptual moral attentiveness, the extent to which the individual recognizes moral aspects in everyday experiences, and reflective moral attentiveness, the extent to which the individual regularly considers moral matters.”³ A more morally attentive person is more likely to recall and report morally related behaviour, and moral attentiveness is associated with more moral behaviour.⁴

Moral disengagement is the extent to which people process decisions and behaviour with ethical significance that allows those inclined to morally disengage to behave unethically without feeling distress. It is claimed to explain a significant proportion of in-work misconduct.⁵ The authors of the measure “cautiously” suggest it is, “the strongest *individual*⁶ predictor of unethical behaviour identified to date,”⁷ as well as being a practical test for adult respondents which is not generally prone to significant social desirability biases.⁸ Moral disengagement may be particularly important in organisational contexts.⁹

² Reynolds. S (2008), “Moral Attentiveness: Who pays attention to the moral aspects of life?” 93(5) Journal of Applied Psychology 1027-1041

³ Ibid

⁴ Ibid

⁵ Celia Moore and others, ‘Why Employees Do Bad Things: Moral Disengagement and Unethical Organizational Behavior’ (2012) 65 Personnel Psychology 1.

⁶ Environmental /situational influences may for example be contrasted with influences deriving from the individual.

⁷ Moore and others (n 5) 40.

⁸ Social response biases occurs where a person answers questions in ways likely to over- or under-report good or bad behaviour because of the desire to appear more favourably to others.

⁹ Moore and others (n 5) 11.

SUMMARY - INTRODUCTION

As far as we are aware, this work represents the most detailed quantitative profiling of in-house lawyers undertaken anywhere. It uniquely links data on organisations, individuals, individual and team identities and approaches to professional principles to externally validated proxy measures of the inclination to behave ethically. In this way we map the moral compass of in-house lawyers. Also uniquely, we are able to map out a diversity of identity and understandings about the in-house role and evidence likely links between those understandings and the ethicality of in-house lawyers.

2 The in-house lawyers and their organisations

This section of the report outlines data on our sample of respondents covering the kinds of organisations they worked in, the line management and reporting lines, the size of teams and basic data on individuals (gender, length of post qualification experience, etc.).

The findings come from our survey of in-house lawyers carried out in England and Wales in 2015. The Solicitors Regulation Authority allowed us to contact their list of registered in-house solicitors (either on the Roll, or with practising certificates), but we also sought contacts through a variety of other routes. The survey was distributed by the Bar Association for Commerce and Industry and the Association of Corporate Counsel to their members and to the extensive in-house contacts of Legal Business magazine. We are very grateful to those organisations for their help. The survey was completed by 400 in-house lawyers.

Our sample was marginally more experienced than the population of in-house lawyers from which they were drawn.¹⁰

- There is a good range of experience in the sample (Figure 2): a quarter of respondents had been admitted eight years or less, half had 15 years or more experience, and a quarter had in excess of 24 years of post-qualification experience.
- About two thirds had more than five years of experience of working in-house.
- As we can see, about 60 percent of our sample had less than five years of experience of private practice.

¹⁰ The SRA provided data on gender, date of qualification and work areas which we compared with the data from our survey respondents.

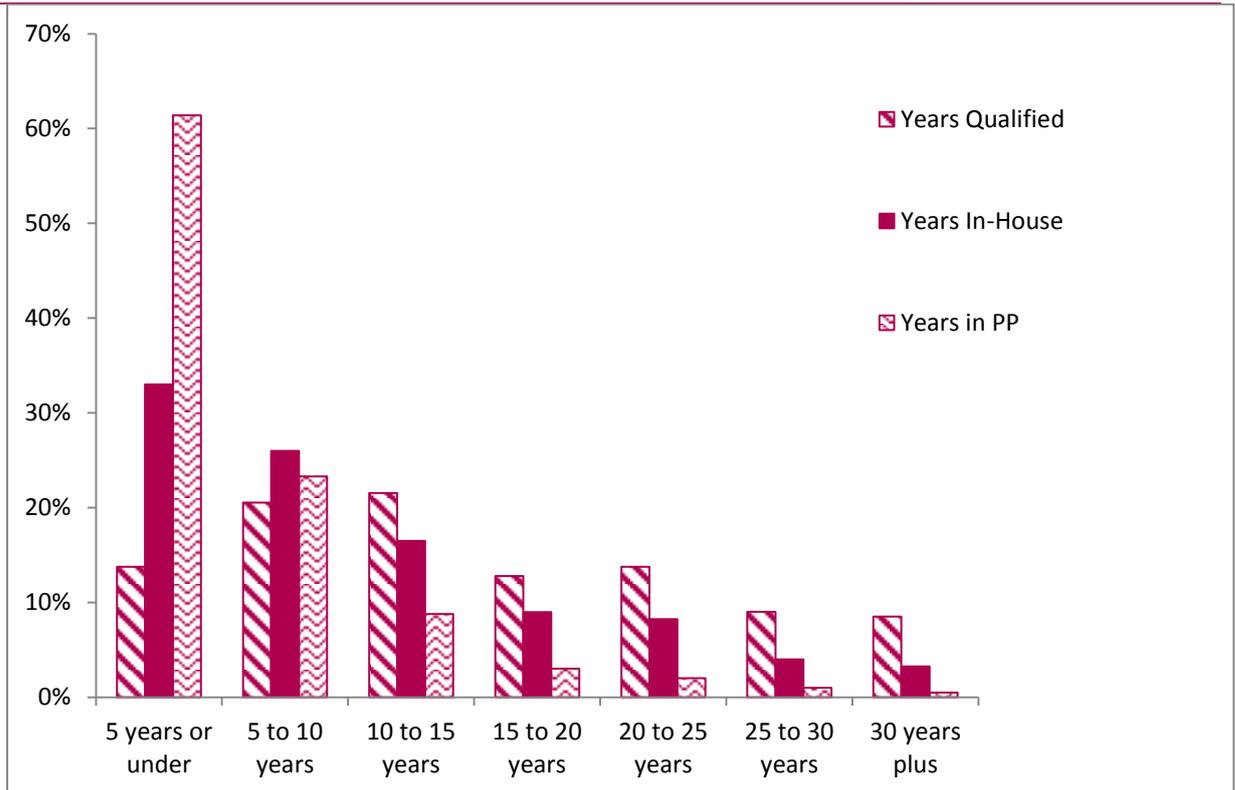


Figure 2: Years post-qualification, in-house and in private practice

Secondly, we can compare gender. Women were somewhat underrepresented in our survey – although not dramatically so (53 percent in our survey compared to 57 percent in the population of solicitors in-house based on SRA data).

Table 1: Gender, Population and Survey

	Population		Survey	
	N	%	N	%
Female	15,547	57.1	212	53.0
Male	11,552	42.4	187	46.8
Unknown	122	0.4	1	0.3
Total	27,221	100	400	100

Thirdly, we have data on the types of organisation in which our respondents work. Our survey grouped lawyers into three broad categories which we compare against the SRA’s categories.¹¹ We can see that in-house lawyers working in business are more strongly represented in our survey, although again the difference is not dramatic.

¹¹ The SRA have more detailed categories which we collapsed into business, public and third sectors.

Table 2: Categories of Workplace

	SRA Data	Survey Sample
Business	63.7	67.3
Charity/Social Enterprise	4.5	7.3
Public Sector	31.9	25.4

In broad terms, the survey respondents are fairly representative of the SRA population (at least on these characteristics). Low response rates can produce samples representative of broader populations if the samples responses do not indicate particularly strong views on any issue.¹² We see that in general they do not, and might surmise that the survey has had a relatively even response among the underlying population of in house lawyers. However, it is important to consider how characteristics of the responding sample might differ from the population. A risk is that we attracted a sample particularly interested in ethics and/or ethical leadership within in-house teams. As such we do not assert the sample's representativeness. Instead, we concentrate on differences within the sample to explore differences in ethical environment, professional role and ethical motivation and engagement.

ROLE AND QUALIFICATIONS

Our respondents were typically General Counsel (GCs) (27 percent of the sample) or in another senior in-house legal role (42 percent).¹³ 26 percent identified as in-house legal, and 5 percent as 'other'.¹⁴

In terms of professional qualification (here, respondents may have multiple qualifications, so the overall percentage totals > 100 percent):

- 95 percent were qualified as solicitors;
- 6.5 percent were qualified as barristers;
- 2.7 percent were qualified as legal executives;
- 9.5 percent held other qualifications;¹⁵ and,
- 12 percent of our respondents had multiple professional qualifications.

Although 18 percent had qualifications in more than one jurisdiction, respondents were principally qualified in England and Wales (Table 3).

¹² Robert M. Groves et al (2011) *Survey Methodology* (John Wiley & Sons)

¹³ In many companies of a certain size (usually multinationals) the term "General Counsel" is often applied to the most senior lawyer in a country, BU or division

¹⁴ 'Other' roles included a variety of in-house legal or associated roles: from Chief Compliance Officer to Corporate Paralegal, directors of ethics and various legal management roles.

¹⁵ Such as the New York Bar.

Table 3: Jurisdictional qualifications

	N	percent
England and Wales	387	96.3
Scotland	15	3.7
N Ireland	3	0.7
EU	13	3.2
USA	13	3.2
Other	39	9.7

Respondents may have multiple qualifications, so percent totals > 100 percent

We also collected data on the type of business engaged in, based on ONS categories.¹⁶ This provides an overview of the sectors within which the respondents work (Table 4).

Table 4: Type of Business

	N	%
Financial	58	14.4
Public administration and compulsory social security	41	10.2
Manufacturing	32	8.0
Information and communication	32	8.0
Professional, scientific and technical activities	24	6.0
Construction	20	5.0
Education	16	4.0
Electricity, gas, steam and air conditioning supply	14	3.5
Real estate activities	14	3.5
Human health and social work activities	14	3.5
Wholesale and retail trade; repair of motor vehicles and motorcycles	13	3.2
Insurance	13	3.2
Arts, entertainment and recreation	10	2.5
Defence	8	2.0
Water supply; sewerage, waste management and remediation activities	6	1.5
Mining and quarrying	5	1.2
Administrative and support service activities	5	1.2
Transportation and storage	4	1.0
Accommodation and food service activities	4	1.0
Agriculture, forestry and fishing	2	0.5
Other service activities	64	15.9
Total	399	99.3

¹⁶ ONS UK Standard Industrial Classification (SIC) 2007 Hierarchy categories
http://www.neighbourhood.statistics.gov.uk/HTMLDocs/SIC/ONS_SIC_hierarchy_view.html

Most of our respondents worked for organisations headquartered in England and Wales, although over a quarter had headquarters outside of the UK and many had offices all over the World (Figure 3).

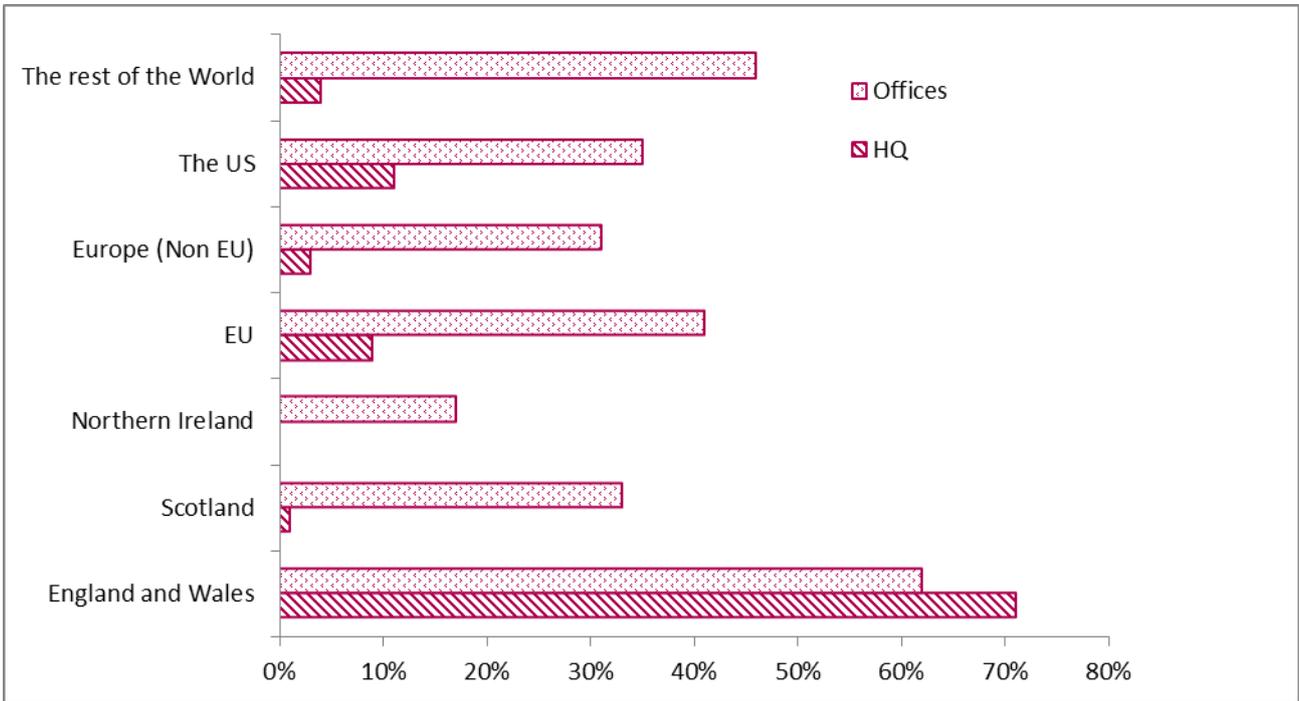


Figure 3: Headquarters and office locations

GENDER

Within our sample, proportionately more men were GCs than women. This was a modest and not statistically significant difference.¹⁷

Table 5: Role by gender

	Male	Female
GC or equivalent	28.9%	23.7%
Senior In-House Legal	42.2%	42.2%
In-house Legal	23.5%	28.9%
Other (please specify)	5.3%	5.2%
	187	211

Similarly proportionately more men were working in the commercial sector, but again this was not a significant difference (Table 6).

¹⁷ Chi-Square was not significant.

Table 6: Organisation type by gender

	Male	Female
A business	70.4%	64.5%
A public sector organisation	24.7%	26.1%
A charity/ social enterprise	4.8%	9.5%
	186	211

The men in our sample did tend to have been qualified for longer, and worked in bigger teams (both these differences were statistically significant). They had spent somewhat longer in-house and worked in bigger organisations on average (here the differences were not statistically significant).

Table 7: Length of service and size of organisation and team by Gender

		Male	Female	p= ¹⁸
How many years since you first qualified as a practising lawyer?	%	17.2	15.0	0.022
	N	186	212	
How many years have you been working in-house?	%	11.8	10.3	0.078
	N	187	212	
What is the approximate size of the in-house legal team in your organisation	%	132.4	53.6	0.017
	N	185	211	
What is the approximate size of the organisation in terms of employees?	%	21147	10369	0.104
	N	183	207	

SIZE OF TEAMS AND ORGANISATIONS

The size of organisation and the size of the team that our respondents worked within differed widely. Organisation size was generally high (half worked in organisations above 1,500 employees) and, as one would expect, size of in-house team was partly a function of size of the organisation.¹⁹

Table 8: Data on teams and Organisations

	Mean	Median
Approximate size of the in-house legal team in your organisation (including paralegals)	90	13
Approximate percentage of your team are not qualified solicitors, barristers or legal executives	27%	20%
Approximate size of the organisation in terms of employees	15,389	1,500

We can see that half of in-house lawyers work in teams of 13 or fewer. In fact:

¹⁸ Independent T-tests were used to compare the means of men and women for these variables.

¹⁹ There was a statistically significant, moderate correlation, $r_s(388) = .474$, $p = .000$

- a quarter were working in teams of five or fewer;
- 8 percent were (in) teams of one person); and
- although the teams are dominated by admitted lawyers, 14 percent of our respondents had more than 50 percent non-admitted staff working in their teams.

LINE MANAGEMENT AND REPORTING LINES

The identity of an in-house lawyer's line manager, and the reporting lines available, may have a significant influence on their status, influence and approach to the role. Table 9 explores line manager relationships for different levels of in-house lawyer. Other work on in-house lawyers suggests that those lawyers who are managed by and report directly to the Board are perceived by those in the organisation as having greater importance to the organisation than those lawyers who report to someone lower down the chain.²⁰ As such, management and lines of reporting can speak to respect for, and importance of, the legal function. Equally, lawyers reporting directly to the Board allows the Board to have a better insight into the legal risks faced by the business, and the ways those risks can be managed.²¹ Coffee writes that, "In the absence of independent professionals — auditors, attorneys and analysts — boards will predictably receive a stream of selectively edited information from corporate managers that presents the incumbent management in the most favorable light possible."²² In this way, in-house lawyers who report to, and are managed directly by, the Board, may be better able to demonstrate the value of the legal team in environments where that team may otherwise simply be seen as a cost centre.²³ Finally, such direct access and oversight may help to preserve the independence of the in-house lawyer from distorting influences elsewhere in the organisation. On the other hand, engagement in company decision making at the Board level may pose conflicts of interest for in-house lawyers and compromise – in subtle and not so subtle ways - their ability to advise independently.

About a third of our respondents were line managed by a member of the Executive Board, whereas only 3.5 percent were managed by a Non-Executive. The remainder were managed by other lawyers or employees.

²⁰ Prashant Dubey and Eva Kripalani, *The Generalist Counsel: How Leading General Counsel are Shaping Tomorrow's Companies* (OUP 2013)

²¹ ABA Task Force on Corporate Responsibility, 'Report of the American Bar Association Task Force on Corporate Responsibility' (2003) 59 *BUS. LAW.* 145, 161

²² John Coffee, *Gatekeepers: The Role of the Professions and Corporate Governance* (OUP 2006), 7

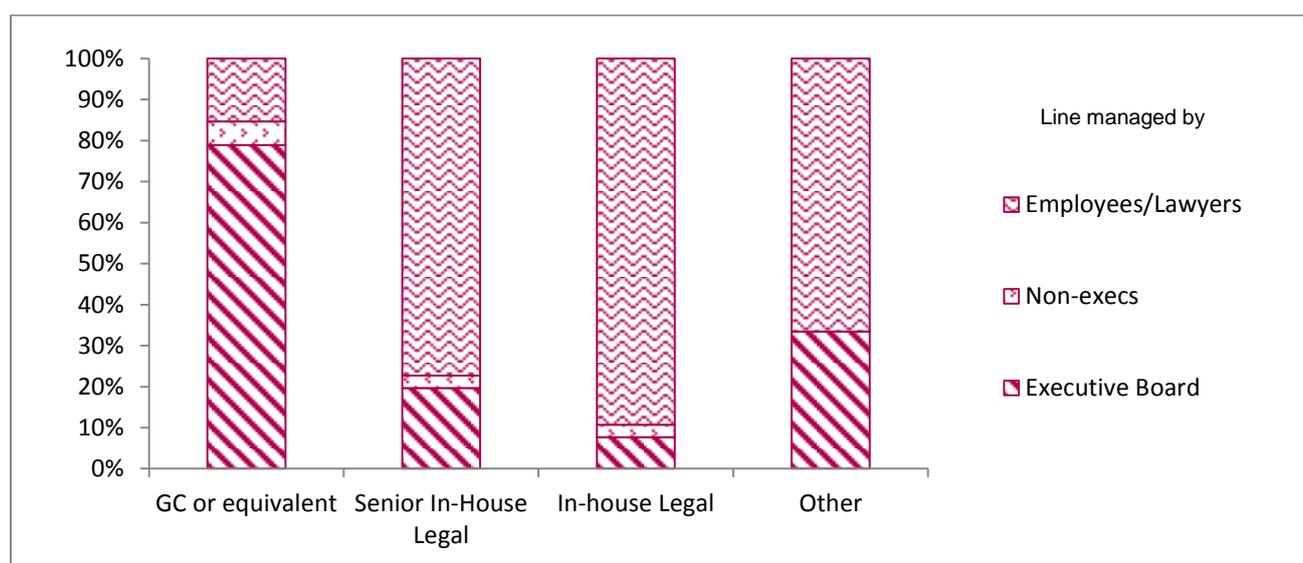
²³ Omari Scott Simmons and James D. Dinnage, 'Innkeepers: A Unifying Theory of the In-House Counsel Role' (2011) 41 *Setton Hall Law Review* 77, 146.

Table 9: Line Manager by Role

Line Manager	Role				N
	GC or equivalent	Senior In-House Legal	In-house Legal	Other (please specify)	
The Chief Executive Officer (CEO)	52.9%	6.0%	1.0%	14.3%	69
The Chief Financial Officer (CFO)	16.3%	1.2%	1.0%	4.8%	21
Another senior Executive (Board Member)	9.6%	12.5%	5.7%	14.3%	40
Another employee of the business	3.8%	4.8%	6.7%	9.5%	21
Another lawyer ²⁴	11.5%	72.6%	82.9%	57.1%	233
Another senior Non-Executive on the Board	1.0%	2.4%	1.0%	0.0%	6
The Chair of the Audit Committee	0.0%	0.0%	1.0%	0.0%	1
The Chairman	4.8%	0.6%	1.0%	0.0%	7
N	104	168	105	21	398

An observation that may be worth making here is that our experience is that many GCs report seeing a reporting line to the CEO as an essential pre-requisite of their role. For the 48 percent that do not have that reporting line, it raises interesting questions about their ability to have influence on their own needs and whether they may be less effective in their roles than is ideal.

If we simplify into three categories of those reported to (executive board members, non-executive board members and other lawyers/employees), we get a clearer sense of how many in-house lawyers are line managed by board members (Figure 4).



²⁴ It may seem strange to have GCs reporting to other lawyers, but some organisations have GCs for divisions/particular sectors of their organisation and are regarded as being GCs in their own right given the size of their team, independence etc.

Figure 4: Role, Line Manager

Whilst it is not surprising to see that many in-house lawyers have other lawyers or a member of the Executive Board as their line manager, the low level of line manager relationships with Non-Executive Directors is of note. This might be particularly important if in-house lawyers were to exercise significant gate-keeper or governance roles. We followed this up by asking about other formal or informal reporting lines in the next two tables.

Table 10: Other informal or formal reporting lines

	%
Another lawyer	22%
Another senior Executive (Board Member)	18%
The CEO	15%
Another employee of the business	12%
The Chairman	10%
The CFO	9%
Another senior Non-Executive on the Board	5%
The Chair of the Audit Committee	3%

Non-executive reporting lines, of a formal or informal nature, only appeared to be in place for 18 percent of our respondents.

In the next table we report the other lines of reporting (both formal and informal) seen in Table 10 for each line management relationship. We can see that slightly less than half of those in-house lawyers who are line managed by CEOs tended to also have reporting lines to non-executive board members. So, for example only a third of those reporting to the CEO also had a line of reporting to the Chairman (and still fewer had reporting lines to other non-executives). The position for those who were line-managed by the CFO or other senior executive was of weaker reporting lines to the non-executive directors. Anecdotally, we have heard some concerns as to GC relationships managed by CFOs. The absence of reporting lines to non-executive directors may thus give rise to particular concern with this category.

The interesting question this suggests is whether reporting lines to non-executive directors needs to be more extensive. As part of shifts towards better corporate governance, the numbers and importance of non-executive directors has grown. They are not corporate employees, almost exclusively sit part time and act (in theory) as wise counsellors and critics to the executive team. Non-executives are seen as holding the potential for important checks and balances on the exercise of powers by the executive, by bringing to the board a combination of expertise, independence and impartiality.²⁵ Having in-house lawyers report (either primarily or additionally) to non-executive directors may help to reinforce (for the lawyer, and the employer) that the corporation is the ultimate client and that its interests may, at times, conflict with senior executives, employees, and other

²⁵ Charlie Weir and David Laing, 'Governance structures, director independence and corporate performance in the UK.' (2001) 13(2) European Business Review 86

corporate constituencies.²⁶ As Weaver notes, “the close working relationship between management and [in-house] corporate counsel may create confusion and uncertainty about the role of corporate counsel in the representation of the organization.”²⁷ As such, a number of scholars in the US have suggested that non-executive directors should have their own, wholly separate in-house lawyers.²⁸

Table 11: Informal and Formal Reporting Lines by Line Manager

Line Manager	Formal or informal reporting lines in addition to line manager							
	CEO	CFO	Other on Exec Board	Chairman	Chair -Audit	Senior Non-Exec Dir	Another lawyer	Another employee
The CEO	4.3%	7.2%	15.9%	33.3%	5.8%	8.7%	5.8%	8.7%
The CFO	47.6%	0.0%	19.0%	19.0%	14.3%	0.0%	4.8%	4.8%
Another senior Executive (Board Member)	22.5%	12.5%	20.0%	17.5%	10.0%	5.0%	2.5%	12.5%
The Chairman	28.6%	28.6%	14.3%	0.0%	0.0%	0.0%	0.0%	0.0%
The Chair of the Audit Committee	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%
Another senior Non-Executive on the Board	33.3%	16.7%	33.3%	16.7%	0.0%	16.7%	33.3%	16.7%
Another lawyer	12.0%	8.1%	17.9%	2.6%	1.3%	5.1%	32.1%	12.4%
Another employee of the business	23.8%	14.3%	23.8%	0.0%	0.0%	4.8%	23.8%	33.3%

In Table 12 and Table 13 we examine legal presence on the board and/or the executive committee.

²⁶ Simmons and Dinnage (n 21) 112

²⁷ Sally R. Weaver, 'Ethical Dilemmas of Corporate Counsel: A Structural and Contextual Analysis' (1997) 46 EMORY L.J. 1023, 1028

²⁸ See, for example: E. Norman Veasey, 'Separate and Continuing Counsel for Independent Directors: An Idea Whose Time Has Not Come as a General Practice' (2004) 59 BUS. LAW. 1413; and Geoffrey C. Hazard, Jr. & Edward B. Rock, 'A New Player in the Boardroom: The Emergence of the Independent Directors' Counsel' (2004) 59 BUS. LAW. 1389.

Table 12: Is there a senior lawyer on the board?

	n	%
Yes, me, I am a member of the board	22	5.5
Yes a/the GC is a member of the board	87	21.6
Yes, me, I attend the board	30	7.5
Yes a/the GC attends the board	58	14.4
Yes a lawyer is a member of the board, but they are not part of the in-house legal team	27	6.7
No	166	41.3
Total	390	97

Thus about sixty percent of our respondents reported that at least one in-house lawyer attended or sat the board. Thirteen percent of our sample attended the board (although often not as a member). Seven percent reported a lawyer who was not a member of the in-house team attended the board, perhaps reflecting a belief that in-house lawyers should not sit on the board and maintain a legal neutral advisor function. Here, it may be challenging for an in-house lawyer who sits on the board of their company to manage the multiple, and possibly conflicting, duties they would owe: as a director, as an employee and as a professional regulated by the relevant professional codes.

Table 13: Is there a Senior Lawyer on the Executive Committee?

	n	%
Yes, I am a member of the Executive Committee	50	12.4
Yes a/the GC is a member of the Executive Committee	127	31.6
Yes, I attend the Executive Committee	10	2.5
Yes a/the GC attends the Executive Committee	56	13.9
Yes a lawyer is a member of the Executive Committee, but they are not part of the in-house legal team	19	4.7
No	124	30.8
Total	386	96

We see above that in-house representation is even stronger on the executive committee.

SUMMARY- IN-HOUSE LAWYERS AND THEIR ORGANISATIONS

This chapter sets out key descriptive data on the nature of our sample and compares it to the general population of in-house solicitors where we are able to as a way of benchmarking our sample against a national population (although our sample extends beyond solicitors).

A key finding of interest from this chapter is the diverse informal and formal lines of management and reporting. Within our sample, we see how strongly executive rather than non-executive board members dominate lines of management and reporting. Of particular note is the proportion of General Counsel reporting to EO's without informal reporting lines to non-executive directors.

3 Pressures in the organisation

Most ethical issues are, to a significant but not total extent, products of the environment. We begin our ethical profiling of in-house lawyers by looking in more detail at the environments that they are working within. In this chapter we report survey data on pressures in the environment by looking at:

- how employers were reported as seeing the role of in-house lawyers; and,
- indicators of ethical pressure, such as being asked to advise on matters which give rise to ethical concerns or where the legal position is uncomfortable.

HOW EMPLOYERS SEE THE ROLE OF THE IN-HOUSE LAWYER

A common concern for in-house lawyers is that their organisations can be mistrustful of their lawyers, seeing them as deal-blockers rather than deal-makers, or costs centres, rather than part of the profit making enterprise.²⁹ In public sector contexts, they can be portrayed as inhibiting democratically legitimate policy making through the overly cautious interpretations of the law.³⁰ Such a view is sometimes allied with a concern that lawyers are too conservative when it comes to taking risks or seen as legal perfectionists (wanting to eliminate risk rather than manage or accept some tolerance for legal problems with proposed courses of action). Equally and oppositely, overly aggressive appetite for risk may pose problems to the administration of justice,³¹ and for organisations seeking to promote a culture of full compliance.³²

Seven questions were employed to examine the relationship between the respondent's legal team (hereafter, 'legal') and the organisation that they worked within. Our analysis of the data suggested these can be meaningfully reduced to three components (see Appendix A).³³

²⁹ For a discussion of the evolution of the role in this context, see: Jenoff, Pam, 'Going Native: Incentive, Identity And The Inherent Ethical Problem Of In-House Counsel' (June 20, 2011). Available at SSRN: <http://ssrn.com/abstract=1868352>; and Nabarro, 'From In house lawyer to business counsel' (Naborro LLP 2010) – see: <http://www.nabarro.com/downloads/from-in-house-lawyer-to-business-counsel.pdf>

³⁰ Dame Ursula Brennan, former Permanent Secretary at the Ministry of Justice indicated there had been a change in approach within the Government Legal Service a recent interview, "One of the things that has changed in the way we advise ministers is that we used to say: "You can do that, you can't do that." Now we more often say: "If you do that, there will be a legal challenge, and it's quite likely we'll lose." And some ministers in those circumstances will give up, and others will say: "No, actually, if there's a chance we might win, I want to try. And as democratically elected politicians that is their prerogative." Jess Bowie, 'Dame Ursula Brennan: The Former Ministry of Justice Permanent Secretary on Why She Left the MoJ, What She's Most Proud of – and Why It Can Be Tricky to Cut Senior Civil Service Roles Written' *Civil Service World* (18 February 2016) <<http://www.civilserviceworld.com/articles/interview/dame-ursula-brennan-former-ministry-justice-permanent-secretary-why-she-left-moj>> accessed 30 March 2016.

³¹ See, *ibid*.

³² This was a lesson we learnt from our risk work, Richard Moorhead and Steven Vaughan, 'Legal Risk: Definition, Management and Ethics' (Social Science Research Network 2015) SSRN Scholarly Paper ID 2594228 <<http://papers.ssrn.com/abstract=2594228>> accessed 4 February 2016.

³³ Three components were extracted using principal component analysis, suggesting we are able to measure three underlying and separate constructs of the relationships between their organisations and legal with acceptable or good reliability: We report the reliability

- i) the existence of sometimes negative relationships with the business;
- ii) the existence of positive and supportive relationships with the business; and
- iii) the existence of uneven relationships with the business.

SOMETIMES RESISTANT/NEGATIVE RELATIONSHIP WITH THEIR EMPLOYER

When we say later in the report that in-house lawyers reported sometimes resistant/negative relationships with their employer we are reporting a composite variable measured by three attitude statements from our survey:³⁴

- ‘Colleagues are sometimes reluctant to raise matters with in-house lawyers’;
- ‘The legal function is sometimes criticised for inhibiting or slowing business decisions’; and,
- ‘The organisation sometimes takes actions which are against my advice on legally important matters.’

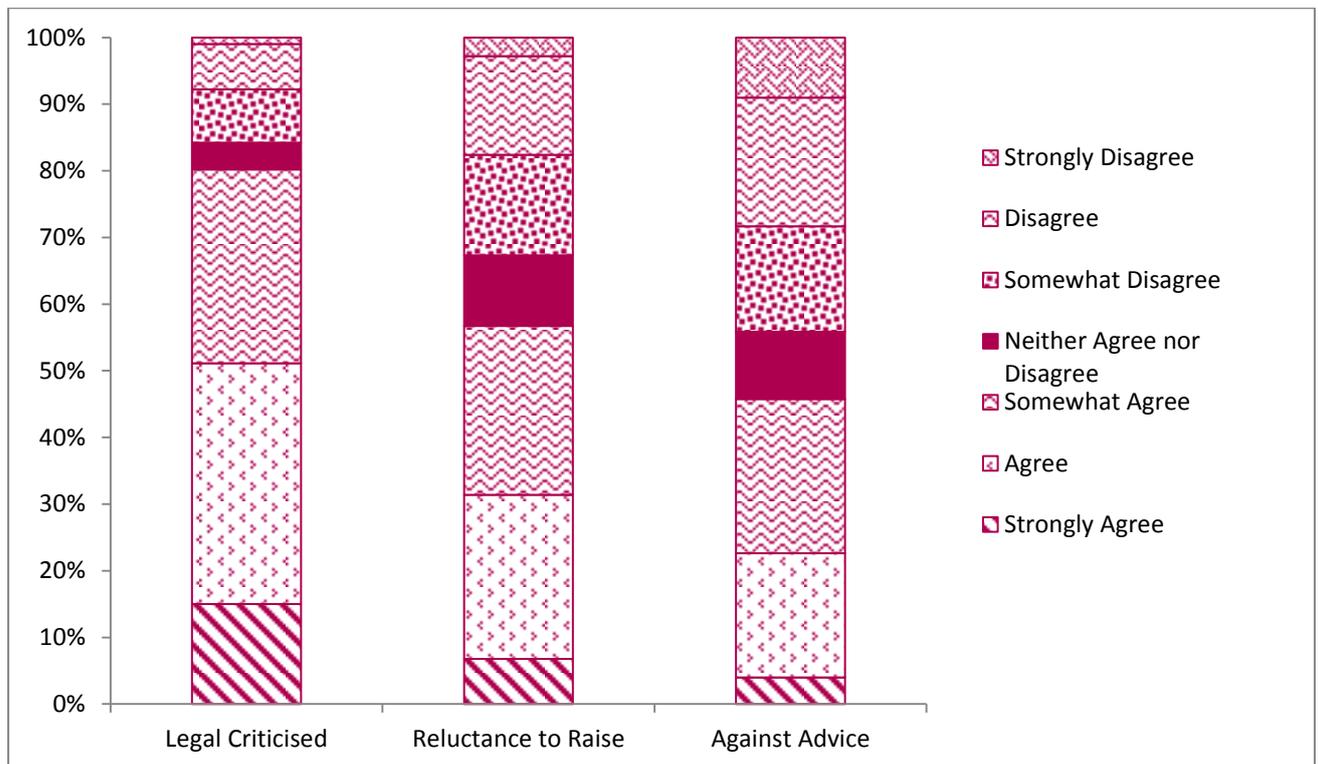


Figure 5: Sometimes resistant/negative relationship with their employer

We can see from Figure 5 that a sizeable majority (80 percent) agreed that legal was sometimes criticised for inhibiting or slowing decisions and a majority (57 percent) agreed that colleagues were

scores in as a below.

³⁴ This scale was measured reliably, $\alpha = .71$

sometimes reluctant to raise issues with legal. Close to 50 percent agreed that actions were sometimes taken against their advice on legally important matters.

Interestingly, although differences between the three sectors were not large, the strongest agreement that there was sometimes a negative relationship came from the public sector lawyers.³⁵

POSITIVE AND SUPPORTIVE RELATIONSHIP WITH THEIR EMPLOYER

When we say later in the report that in-house lawyers reported positive and supportive relationships with their employer we are reporting a composite variable measured by two variables:³⁶

- ‘There is a clear and common understanding within the business of what the role of the legal function is’;
- ‘The independence of the legal function within the business is strongly supported by the business functions’.

In contrast to *some* resistance or negativity towards the legal function being common, most of our respondents also felt supported by their organisations. However, a substantial minority - over one in five - did not. Again, although differences between the three sectors were not large, the strongest agreement that there was a positive relationship came from the business lawyers.³⁷

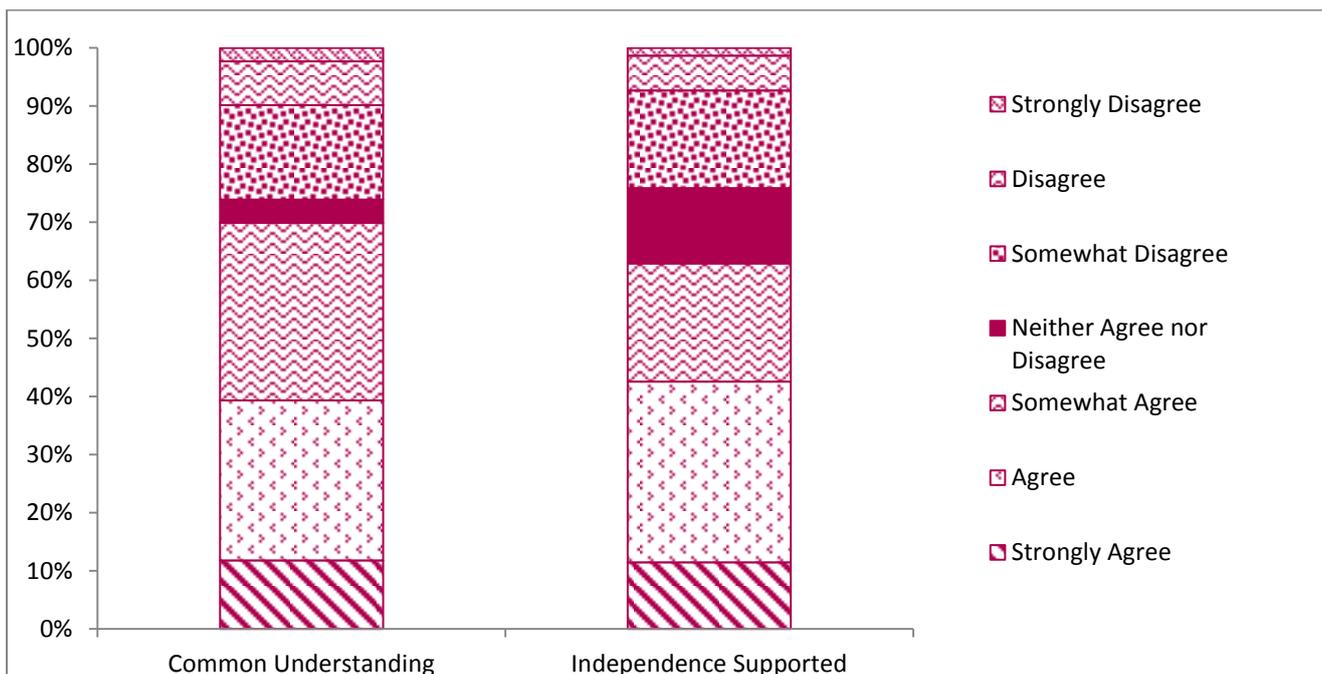


Figure 6: Positive and supportive relationship with the employer

³⁵Anova suggested ($p < .000$) there was a difference in the means of the composite measures for the three organisation types, and that the differences between public sector and business lawyers was significant, although the differences were not large.

³⁶ $\alpha = .84$

³⁷Anova suggested ($p < .02$) there was a difference in the means of the composite measures for the three organisation types, and that the differences between public sector and business lawyers was significant, although the differences were not large.

It is worth dwelling momentarily on the important minority of those that did not agree there was a clear and common understanding of the role of the legal within the organisation. Under 40 percent agreed that there was a clear and common understanding of their role. A lack of such understanding is likely to lead to opportunities for pressure on, and unfair criticism and potential undermining of the legal function.

EVENNESS OF RELATIONSHIPS WITH THE EMPLOYER

A final way at looking at this issue is the evenness of relationships between legal and different parts of the organisation. This was measured by two questions:³⁸

- ‘Parts of the business are more challenging to in-house lawyers than others.’; and,
- ‘Parts of the business are more supportive of legal than others.’

Here we see a widespread agreement with the idea that support and challenges for the legal function are unevenly distributed. The position taken on this indicator was common across the three sectors.

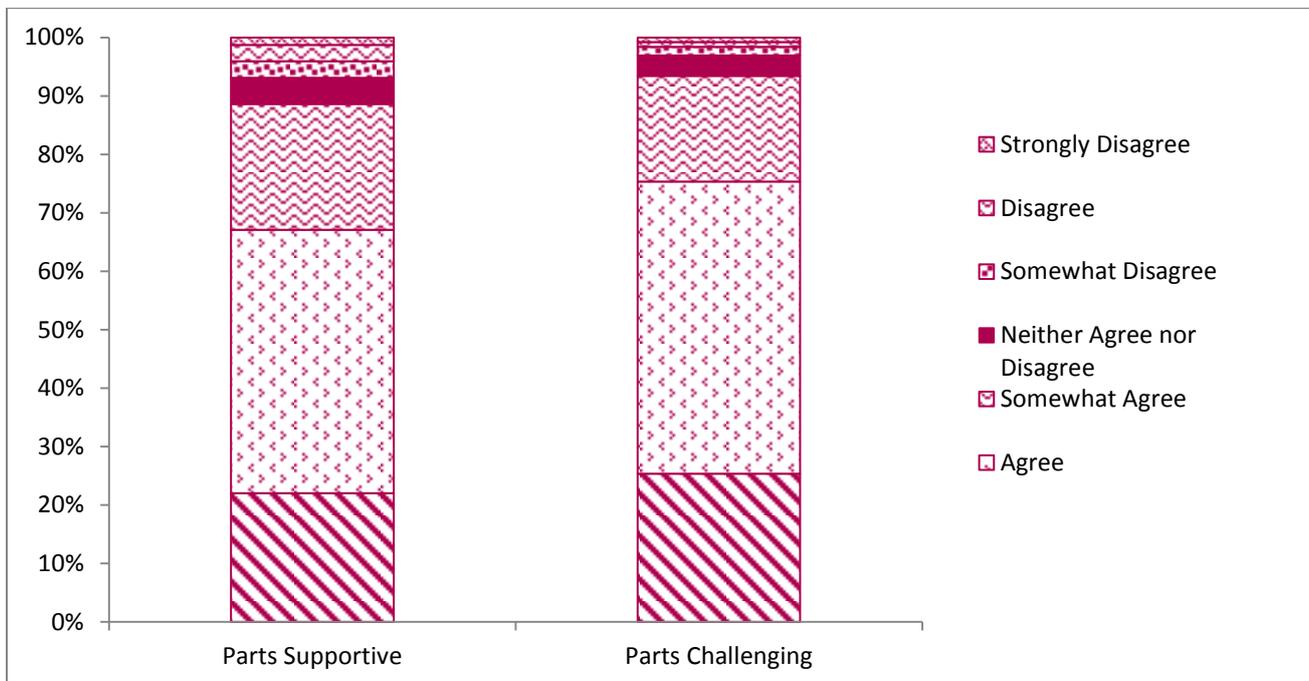


Figure 7: Evenness of support/challenges

In broad terms, then, our respondents reported working in organisations where they felt supported, but also in organisations where an unevenness of relationship was common and where they were sometimes criticised for being obstructive, and (and importantly) where about half agreed that action was sometimes taken against legal advice on important matters. Table 14 overviews the data on relationships with the organisation by organisation type.

³⁸ $\alpha = .80$

Table 14: Relationships with the business

	A business		Public sector organisation		Charity/ social enterprise		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	<i>F</i>	<i>p</i>
Resistant/Negative relationship with the business	4.37	1.27	4.85	1.30	4.71	1.28	5.43	.01
Positive/Supportive relationship with the business	4.95	1.34	4.74	1.58	4.21	1.52	3.95	.02
Uneven relationship with the business	5.75	1.06	5.81	0.96	5.91	0.91	0.43	.65

More detailed analysis showed: (i) those working in the public sector rated the legal department as having more negative/resistant relationships with the employer than those working in a business; and (ii) those working in a business felt they had a significantly more positive/supportive relationship with the employer, than those working in a charity/social enterprise.

ETHICAL PRESSURE

We have already seen that about half of our respondents agreed that action was sometimes taken against legal advice on important matters. Four further questions make up our measure of ethical pressure.³⁹

- 'How often are you asked to advise on something where the legality of a proposed action by the organisation is debatable?'
- 'How often are you asked to advise on something where the ethicality (as opposed to the legality) of a proposed action by the organization is debatable?'
- 'I'm sometimes asked to advise or assist on things that make me uncomfortable ethically'; and,
- 'There are tensions between the way I and the business respects obligations to uphold the law.'

The individual results are shown in Figure 8 and Figure 9.

³⁹ $\alpha = .71$

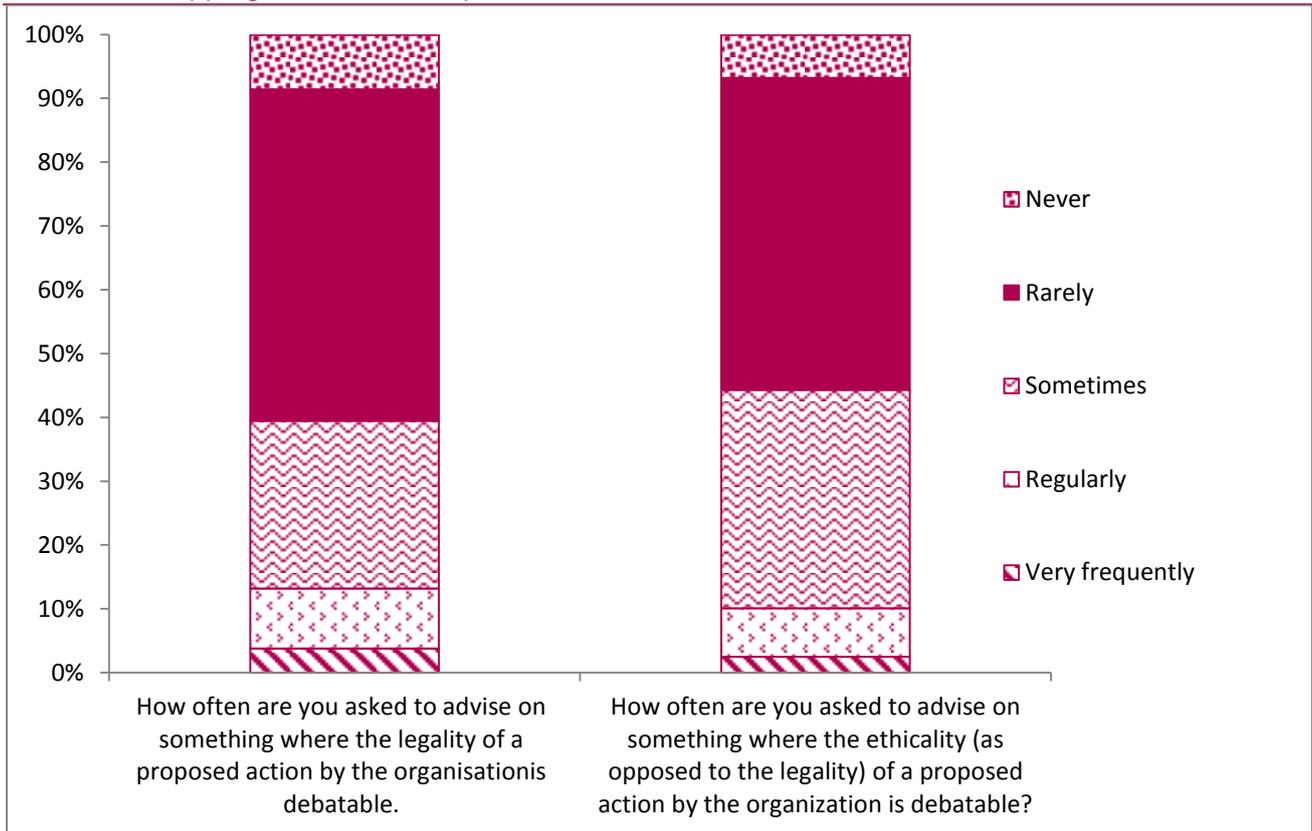


Figure 8: Being asked to advise on matters of dubious legality or ethicality

Around about 10 percent of our respondents were asked to advise on ethically or legally debatable actions frequently or very frequently. Over 40 percent were asked to so advise at least sometimes.

The second pair of questions (Figure 9) relate more to a sense of tension between the judgement of the respondent and the decision of the business. Here, about 10-15 percent agreed or strongly agreed that they were asked to advise on things that made them uncomfortable, or in ways which suggested the business took a different view on whether and/or how to uphold the rule of law and about a quarter to a third agreed somewhat or more strongly.

The extent and nature of these problems raises the very interesting question as to how in-house lawyers deal with them. As we will see, the ideas that they have about their role may be important, as may their ability and willingness to draw on professional principles. Similarly, the extent to which guidance, training, appraisal and discussion of ethics is encouraged and managed for may be important. Interestingly, it might have been thought that those in small teams would be more vulnerable to ethical pressure and so experience more of it. We did not find this.⁴⁰

⁴⁰ There was no correlation between size of team and ethical pressure.

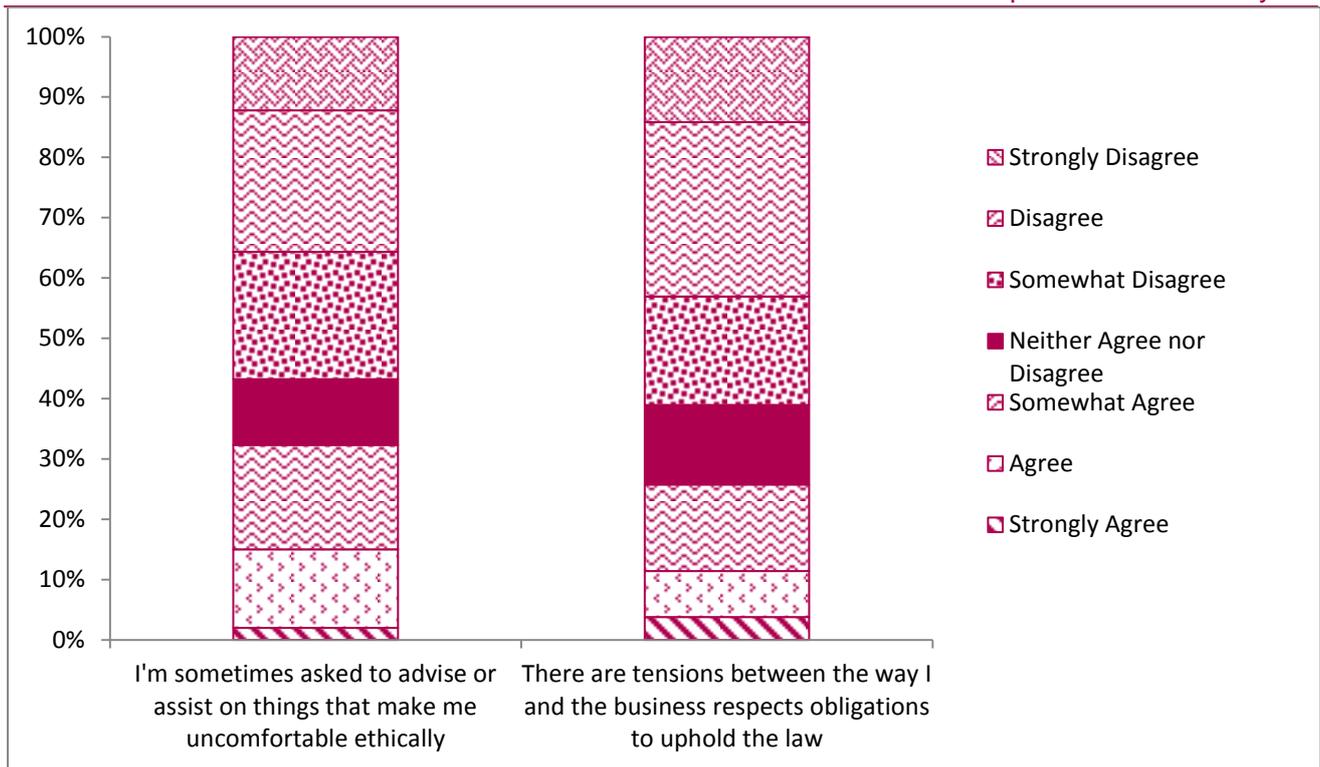


Figure 9: Discomfort and tensions around legality/ethicallity

Interestingly, lawyers working in a public sector organisation showed significantly higher ratings of ethical pressure than those working in a business.⁴¹

Table 15: Ethical pressure by sector

	A business		Public sector organisation		Charity/social enterprise		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	F	p
Ethical pressure	2.78	.95	3.16	.98	3.19	1.25	6.80	.00

Statistically significant differences were also found according to the number of years working in-house, with those working in-house for 0-5 and 6-10 years reporting lower levels of ethical pressure than those working in-house for more than 15 years (Table 16). The results from linear regression analysis indicates that ethical pressure increases somewhat with seniority and/or experience although the strength of the relationship is weak, emphasising the fact that other factors may be at play.⁴²

⁴¹ $\alpha = .002$ Whilst pressure in the third sector was also higher, post facto testing did not show this to be significant.

⁴² $\beta = .018, t = 3.16, p = .002, r^2 = .02$

Table 16: Ethical pressure by length of experience working in-house

	0-5		6-10		11-15		>15		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	<i>F</i>	<i>p</i>
Ethical Pressure	2.80	0.96	2.79	0.92	2.91	0.95	3.19	1.10	3.61	0.01

SUMMARY – PRESSURES IN THE ORGANISATION

In broad terms our respondents reported working in organisations where they felt supported (although a substantial minority did not). They also worked in organisations where an unevenness of relationship was common and where they were sometimes criticised for being obstructive, and (and importantly) where about half agreed that action was sometimes taken against legal advice on important matters. More detailed analysis showed: (i) those working in the public sector rated the legal department as having more negative/resistant relationships with the employer than those working in a business; and (ii) those working in a business felt they had a significantly more positive/supportive relationship with the employer, than those working in a charity/social enterprise.

We also sought to measure ethical pressure:

- Around about 10 percent of our respondents were asked to advise on ethically or legally debatable actions frequently or very frequently. Over 40 percent were asked to so advise on such actions at least sometimes.
- About 10-15 percent agreed or strongly agreed that they were asked to advise on things that made them uncomfortable, or in ways which suggested the business took a different view on whether and/or how to uphold the rule of law. About a quarter to a third agreed at least somewhat with these concerns. Interestingly, lawyers working in a public sector organisation showed significantly higher ratings of ethical pressure than those working in a business.

Our analysis also indicates that ethical pressure increases somewhat with seniority and/or experience although the strength of the relationship is weak suggesting the fact that other factors may be at play.

4

How they conceive of the in-house role

An issue crucial to our understanding of the in-house lawyer is how they conceive of the role. The academic literature has concentrated on the extent to which in-house lawyers are willing to be: cops (policing the legality of their organisations); counsellors (advising independently, at one remove from the hurly burly of the organisation's business); or entrepreneurs (actively exploiting opportunities presented by uncertainty in the law for business ends).⁴³ The business literature similarly reflects on these ideas, whilst also emphasising the growing status and identities of in-house lawyers as a distinct professional group within the broader legal profession.⁴⁴ In this literature, ideas of commerciality, efficiency, status and strategic influence dominate.

In this section of the report we explore in detail the identity and role of our respondents as they saw it.

IDENTITY

Given the growing numbers and status of in-house lawyers,⁴⁵ an interesting question is whether in-house lawyers identify themselves separately from the rest of the legal profession. To shed some light on this issue, respondents were asked how they thought of their identity.

⁴³Robert L Nelson and Laura Beth Nielsen, 'Cops , Counsel , and Entrepreneurs : Constructing the Role of Inside Counsel in Large Corporations Author (S): Robert L . Nelson and Laura Beth Nielsen Cops , Counsel , and Entrepreneurs : Constructing the Role of Inside Counsel in Large Corporations I' (2012) 34 457.Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations' 34(2) Law and Society Review 457-494.

⁴⁴ See, for example: Mari Sako, 'Make or Buy Decisions In Legal Services: A Strategic Perspective' (Oxford: Said Business School, University of Oxford, 2010),

⁴⁵ On status, compare and contrast how in-house lawyers are spoken of in these two pieces: Karl Mackie, *Lawyers in Business: and the Business of Law* (1989 Macmillan); and Ben Heineman, W. *The General Counsel as Lawyer-Statesman* (Harvard Law School Program on the Legal Profession, Blue Paper, 2010).

Table 17: How do they think of their identity?

	n	%
As a solicitor, barrister or advocate (or your own jurisdiction's equivalent, e.g. attorney)	184	45.8
As an in-house legal adviser (rather than, say, a solicitor or barrister)	161	40
As a business adviser	18	4.5
As a manager	10	2.5
As a subject specialist [e.g. as a trade mark lawyer or a competition lawyer or whatever your specialism is]	14	3.5
As a business person	14	3.5
Total	401	99.8

We can see that there is a reasonably even split between respondents thinking of themselves in terms of their professional title and thinking of themselves as an in-house legal adviser or other organisational role. This begins to suggest that a sizeable group of in-house lawyers see themselves as distinct from solicitors or barristers. An interesting question is whether shifting identities change the way they execute their role. Does it, for example, strengthen or weaken their ethicality? Might it begin to suggest that in-house lawyers should be seen as a distinct group, with their own Code, whatever their background qualification? Mere self-conceptualisation would not decide such questions, but it does provide an interesting pointer about occupational and therefore, perhaps, professional identity.

There were significant differences on work identities in different types of organisation:⁴⁶ public sector lawyers were more likely to think of themselves as 'a solicitor, barrister or advocate (or your own jurisdiction's equivalent, e.g. attorney)' or as 'a manager' and less likely to think of themselves as 'an in-house legal adviser (rather than, say, a solicitor or barrister)' in comparison to those in business or in charities/social enterprises (see Figure 10). One hypothesis that might be derived from this is that in-house lawyers within commercial organisations are more occupationally distinct. Another would be that the public sector more actively cultivates a traditional professional identity, or it may be that some public sector lawyers spend more time in court/litigation type activity and this influences their identity. It may also be that those in the public sector spend more of their time working on national matters and with stakeholders in the UK (where 'solicitor or barrister' has greater purchase) compared with those working in commercial organisations where 'solicitor or barrister' may have less meaning or relevance for large, international organisations, their employees and customers.

⁴⁶ Chi-square, $p = .019$

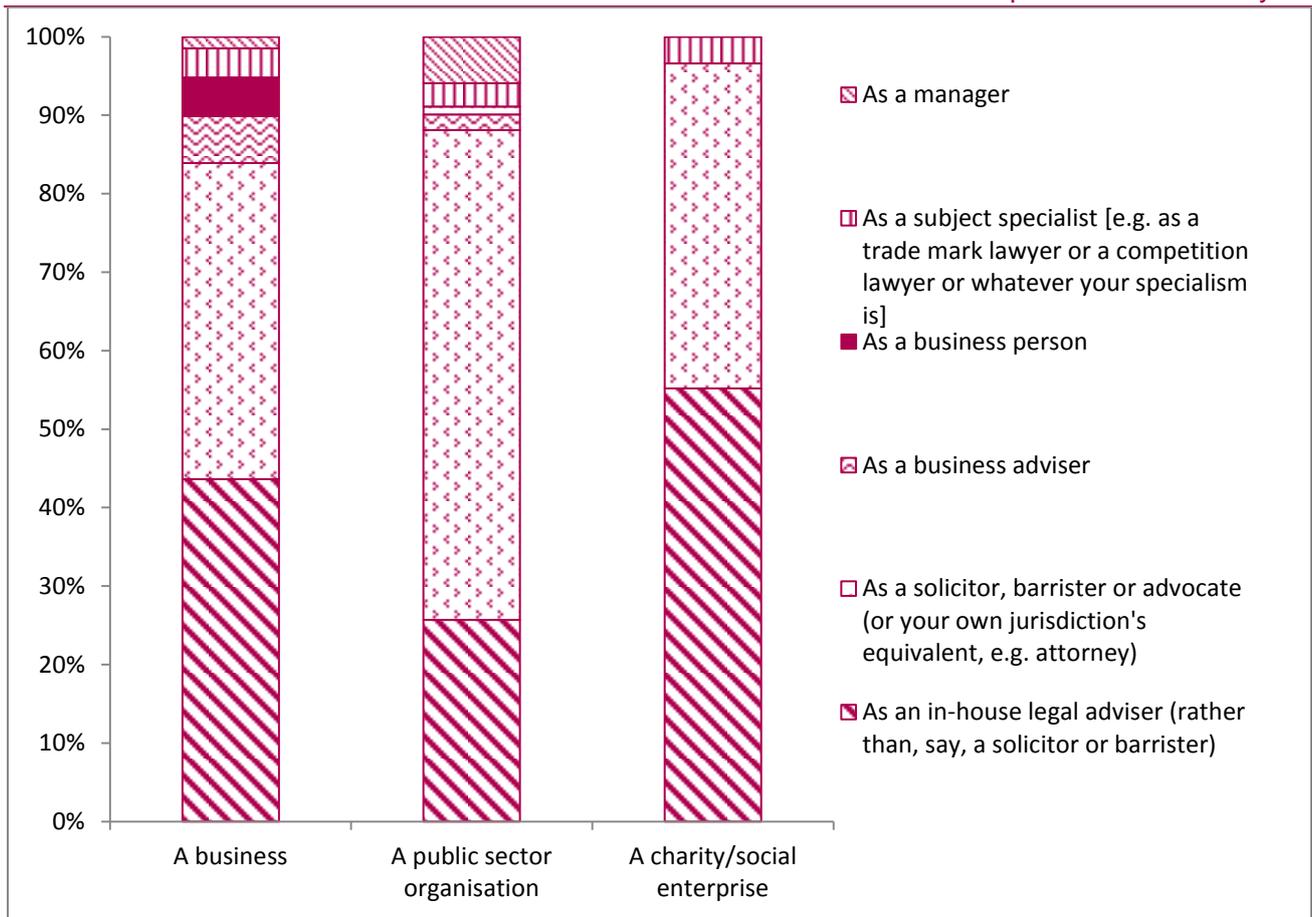


Figure 10: Occupational identity by sector

There was some evidence that in-house lawyers further through their career were less likely to think of themselves as a solicitor barrister or subject specialist. Those seeing themselves as solicitors or barristers (or equivalent) averaged just short of 15 years in practice (private and in-house), whereas those who thought of themselves as an in-house legal adviser (mean, 17 years) business adviser (mean, 17 years) or a business person (mean, 22 years) were likely to have been in practice longer. Conversely, the length of time in-house did not suggest a similar relationship. The identity profiles of men and women were very similar.

ROLE CONCEPTION

We supplemented the occupational identity question with a much more detailed investigation of how our respondents conceived of their role. They were asked, ‘*What is your attitude to the following statements about the in-house lawyer role?*’ and were given 28 attitudinal statements – based on our analysis of the literature, and interviews in our own research with in-house lawyers⁴⁷ - with which they could agree or disagree with on a Likert Scale.⁴⁸ A principal component analysis (PCA) was run on these 28 items to identify the core groups of separate ideas emerging from the 28 questions (see Appendix A). This produces groups of questions (principal components) which

⁴⁷See: Moorhead and Vaughan (n 29)

⁴⁸The full breakdown of results is in Appendix A

appear to be measuring the same underlying concept. Eight components were extracted, although three were excluded as being insufficiently reliable (see Appendix A). The remaining five were sufficiently reliable to be included in the analysis. Two of these (ethical orientation and independence orientation) had consistency ratings at the borderline of conventional test of reliability but we have included them here given the early, experimental nature of this research and the importance, and face validity,⁴⁹ of the concepts and their individual dimensions.⁵⁰ Subsequent research should seek to increase the robustness of measures of independence and ethical orientations.

A.COMMERCIAL ORIENTATION

The first idea defining how our respondents saw the in-house role we describe as a commercial orientation.⁵¹ The constituent variables can be seen in Figure 11.

The idea that lawyers need to ‘be commercial’ or have ‘commercial awareness’ takes centre stage in many discussions about commercial lawyers, working in-house and in private practice.⁵² Our data suggest that in-house lawyers strongly endorse this as an orientation. Whilst usually seen as a virtue in professional discussions, the ethical literature problematises a commercial orientation. Framing problems in business terms is suggested to lead to a less ethical approach to problems, for example.⁵³ Even quite subtly framing of problems in aspirational, ‘getting the job done’ terms rather than a compliance terms has been shown evidenced as having similar effects.⁵⁴ And at the heart of most academic discussion of in-house lawyers is the belief that the needs of the organisation or its managers are sometimes in tension with the law or with ethicality which can put a lawyer in an uncomfortable position.⁵⁵ We examine later whether there is evidence within our data to suggest a commercial orientation may sometimes lead to ethical problems.

⁴⁹ The extent to which a test is subjectively viewed as covering the concept it purports to measure

⁵⁰ Cronbach’s alpha tests were conducted. This is a test of internal consistency which indicates how closely the individual elements of a group of variables are related to each other. Conventionally, an $\alpha > .7$ is seen as an acceptable level of reliability. Yes, we can say that: Although .70 is the most conventionally used cut-off level for Cronbach alpha measure of reliability, there is no gold standard of acceptable or unacceptable level of alpha and in some cases conventionally low levels of alpha are still useful: Schmitt, N. (1996). Uses and abuses of coefficient alpha. *Psychological Assessment*, 8(4), 350-353. As this is the first study to look at in-house lawyer perceptions in this way we have included components with an $\alpha > .6$ where the components make analytical sense.

⁵¹ $\alpha = .78$

⁵² See, for example, Nelson and Nielsen (n 39) 477

⁵³ Maryam Kouchaki and others, ‘Seeing Green: Mere Exposure to Money Triggers a Business Decision Frame and Unethical Outcomes’ (2013) 121 *Organizational Behavior and Human Decision Processes* 53.

⁵⁴ Francesca Gino and Joshua D Margolis, ‘Bringing Ethics into Focus: How Regulatory Focus and Risk Preferences Influence (Un)ethical Behavior’ (2011) 115 *Organizational Behavior and Human Decision Processes* 145.

⁵⁵ See, for example, Donald C Langevoort, ‘Getting (Too) Comfortable: In-House Lawyers, Enterprise Risk, and the Financial Crisis’ [2012] *Wis. L. Rev.* 495.

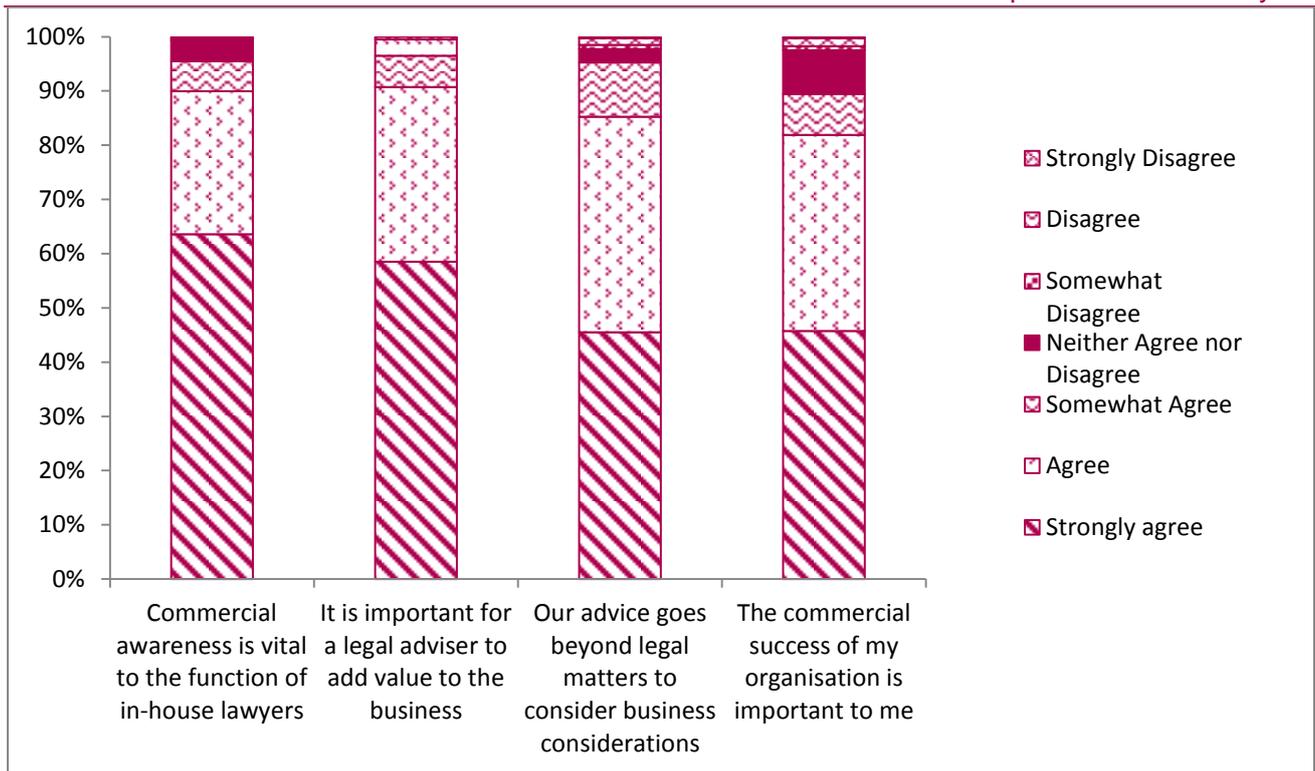


Figure 11: Dimensions of Commercial Orientation

B. EXPLOITING UNCERTAINTIES ORIENTATION⁵⁶

The second separate idea defining how our respondents saw the in-house role can be described as an exploiting uncertainties orientation: here we measure the extent to which lawyers said they oriented towards exploiting law’s uncertainty for commercial ends, through the use of loopholes and the like.⁵⁷ The constituent variables can be seen in Figure 12.

It is a signature of the zealous advocacy model of legal ethics that lawyers can, and perhaps should, take advantage of all opportunities available to their clients unless prohibited by law or their professional code of conduct.⁵⁸ This model of ethics is often claimed to be the dominant model. If that were so we might see a stronger level of agreement with this orientation in the sample. In fact, our in-house lawyers were often resistant to this orientation. That said, over 30 percent of respondents were willing to agree, at least somewhat, that loopholes should be identified that benefit the business, just below 20 percent similarly agreed that their role was to exploit the law for

⁵⁶ One of the best known articulations of this view is Stephen L Pepper, ‘The Lawyer’s Amoral Ethical Role: A Defense, a Problem, and Some Possibilities’, American Bar Foundation Research Journal, 1986, 24;. A more restrained approach is contained in Tim Dare’s, ‘Mere-Zeal, Hyper-Zeal and the Ethical Obligations of Lawyers Tim Dare’, Legal Ethics 7 (2004): 24–38; William H Simon’s book offers a thorough set of counter-arguments, The Practice of Justice: A Theory of Legal Ethics (Cambridge: Harvard University Press, 1998).

⁵⁷ $\alpha = .74$

⁵⁸ For a recent discussion see: Richard Moorhead and Rachel Cahill O’Callaghan, ‘False Friends? Testing Commercial lawyers on the claim that Zealous Advocacy is Founded in Benevolence towards Clients rather than Lawyers Personal Interest’ (2016) 19(1) Legal Ethics

commercial ends, and almost half agreed that where the law is uncertain, they help the business benefit from that uncertainty.

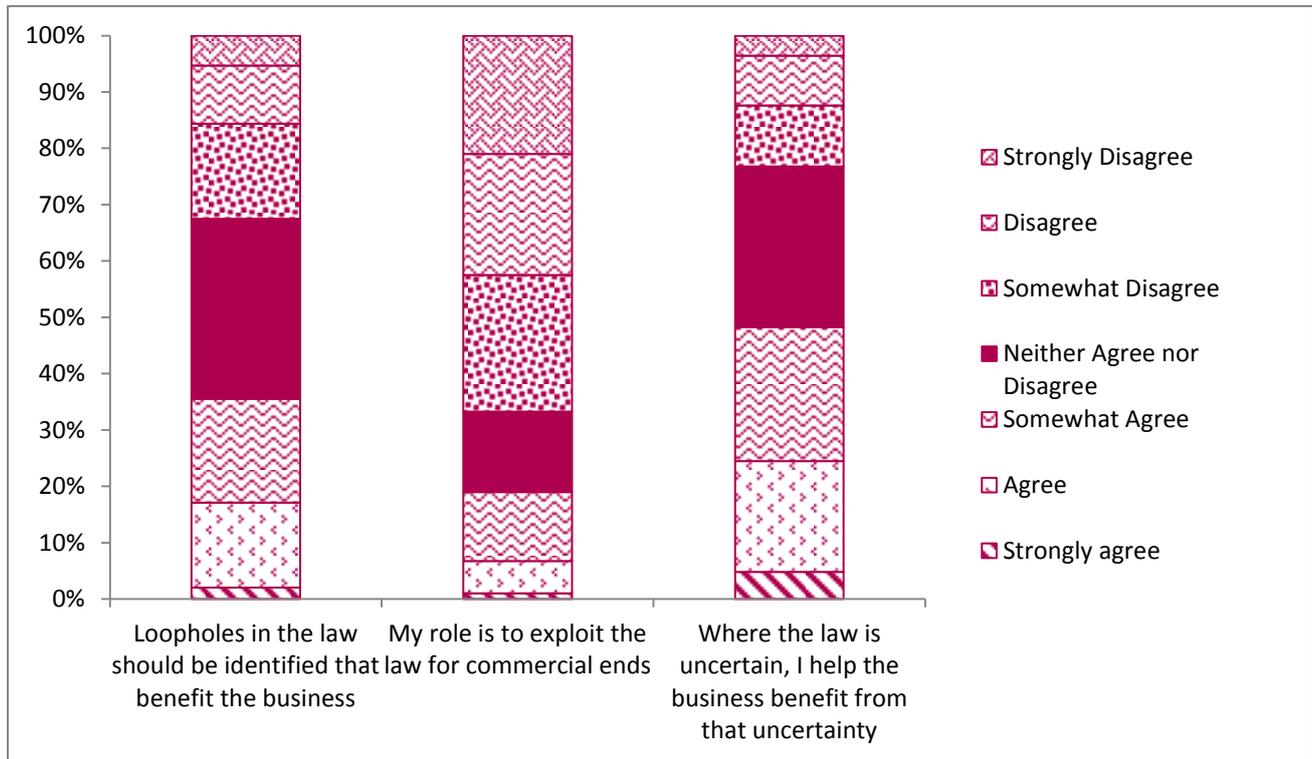


Figure 12: Dimensions of exploiting uncertainty

C. NEUTRAL ADVISOR ORIENTATION

The third separate idea defining how our respondents saw the in-house role can be described as a neutral advisor orientation. The outlook being articulated here is that the lawyer advises and the business decides.⁵⁹ Along with zeal, the neutral advisor orientation is often seen as part of the standard conception of lawyers' ethics.⁶⁰ The idea is that lawyers are able to advise clients unencumbered by ethical responsibility for the aims of the client. Legal advice is for the lawyer, and any moral decisions about what advice is sought on, and how that advice is used, are for the client. To a degree, our neutral adviser orientation aligns with this element of a lawyer's ethical paradigm.

It is claimed that this kind of non-accountability allows lawyers to distance themselves inappropriately from their own ethical agency.⁶¹ A barrister representing a particularly unpopular criminal defendant has good reasons for being able to say they should not be associated with their client's misdeeds, but the issues become less clear with more transactional and forward looking legal work. To give an example, a lawyer that creates a tax device that is at the very borders of

⁵⁹ $\alpha = .72$

⁶⁰ Pepper (n. 56)

⁶¹ See, for example, David Luban, *Lawyers and Justice: An Ethical Study* (Princeton University Press 1988).

avoidance/evasion and advises the client of the risks associated with this course of action, cannot in all honesty then claim that they bear no moral responsibility for the adoption of the device by the client.

We identified two variables consistent with the neutral advisor orientation which are shown in Figure 13. We can see that our sample of in-house lawyers often agreed with this orientation, although – interestingly – less strongly than a commercial orientation.

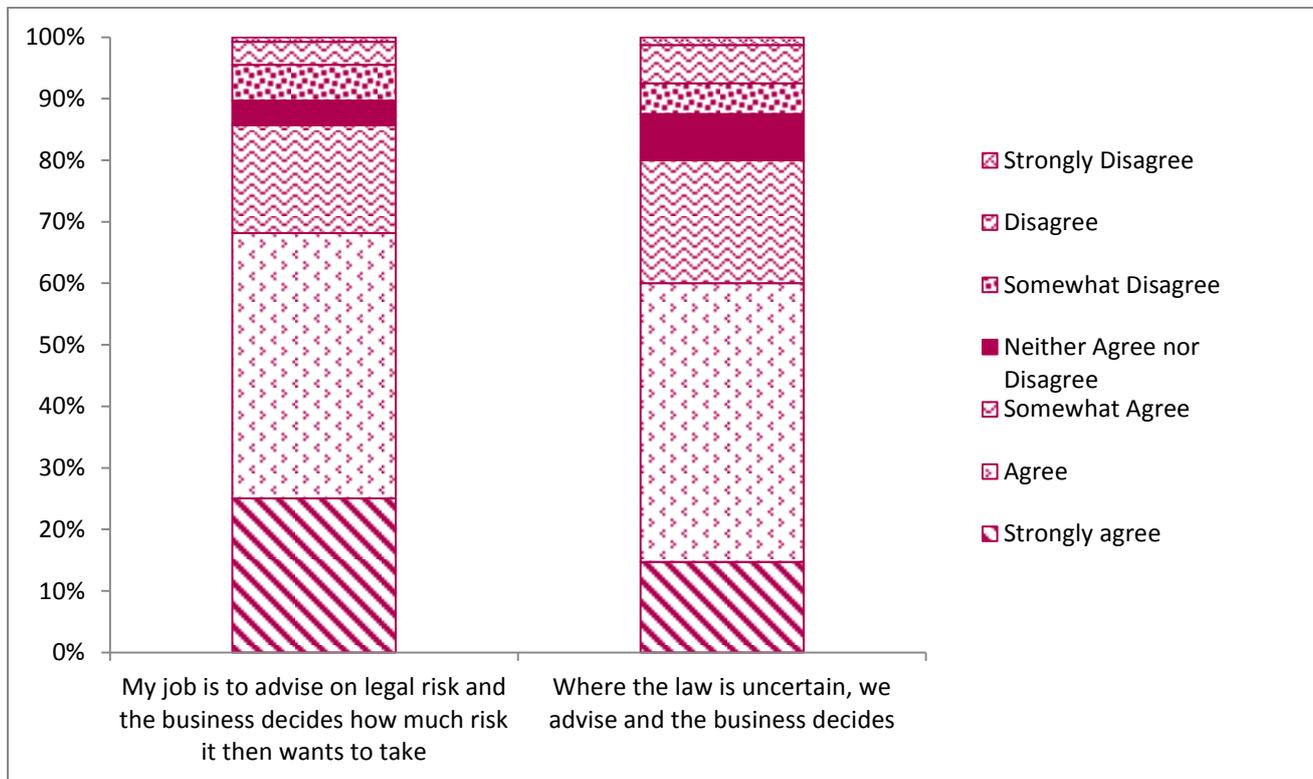


Figure 13: Dimensions of the neutral advisor orientation

D. ETHICAL ORIENTATION

The fourth separate idea defining how our respondents saw the in-house role can be described as an ethical orientation.⁶² Its constituent dimensions are shown in Figure 14. The place of an ethical orientation in the classical literature on lawyers’ ethics is perhaps most strongly suggested by the idea of lawyer as wise counsel.⁶³ We see something of that idea in these dimensions – an orientation towards a degree of ethical leadership and being influenced by ethical considerations.

⁶² $\alpha = .66$

⁶³ Anthony Kronman, *The Lost Lawyer: Falling Ideals of the Legal Profession* (Belknap Press of Harvard University Press 1995). Heinemann’s work from the perspective of his experience as a leading GC, speaks to some similar themes. See, for example, Jr Ben W. Heineman, *The Inside Counsel Revolution: Resolving the Partner-Guardian Tension* (Ankerwycke 2016).

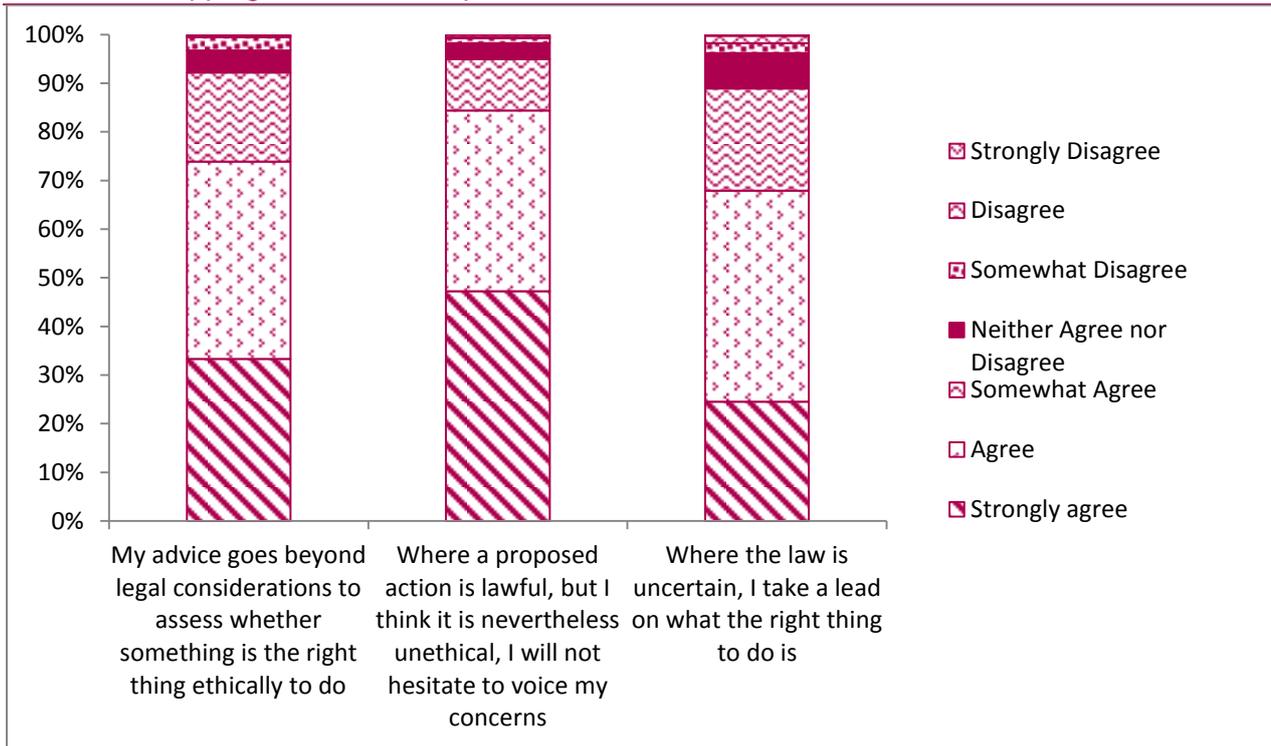


Figure 14: Dimensions of ethical orientation

E.INDEPENDENCE ORIENTATION

The fifth separate idea defining how our respondents saw the in-house role can be described as an independence orientation. Independence is a professional principle recognised in the courts.⁶⁴ Our measure is based on two variables which confine an independence orientation to agreeing that there needs to be an understanding between the employer and the lawyer on the lawyer's independence and that that independence is important to the lawyer (Figure 15).⁶⁵

⁶⁴ See, for example, in the context of criminal defence *R. v Farooqi & Ors*, [2013] EWCA Crim 1649 (30 September 2013) and this discussion, Richard Moorhead, 'Court of Appeal Criticism of Advocate Extends beyond the Man Himself' <<http://lawyerwatch.wordpress.com/2013/10/02/court-of-appeal-criticism-of-advocate-extends-beyond-the-man-himself/>> accessed 8 March 2014.

⁶⁵ $\alpha = .61$

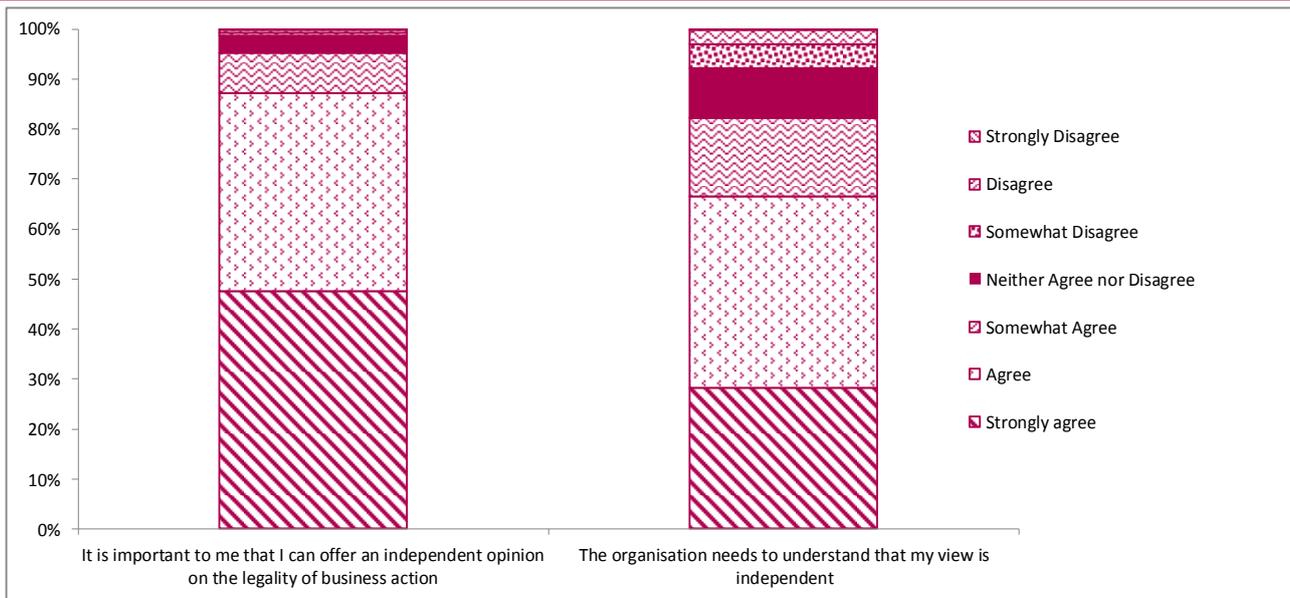


Figure 15: Dimensions of the independence orientation

F. OTHER INFLUENCES

A number of other questions did not group together as orientations but may nonetheless provide important insight into how in-house lawyers see their role. These are shown in Figure 17.

SAYING 'NO'

An element of the literature that has interested academics, and interests in-housers too, is the willingness of in-house lawyers to say 'No' in situations where potentially unlawful or unethical conduct is proposed. The willingness to say 'No' is part of the 'Cops' conception of the in-house lawyer: that in-house lawyers can and should act as gate-keepers restraining illegality within the organisation.⁶⁶ Our previous work on ethics and risk suggested that the gate-keeping role was in tension with in-housers establishing trust and a role influencing the business.⁶⁷ Almost all (97 percent) of our sample agreed that insisting something cannot be done within the law is sometimes necessary (2 percent disagreed) and 88 percent agreed that they might do more than just refuse to act if their organisation insisted on an illegal course of action (5 percent disagreed).⁶⁸ Conversely, 9 percent of our respondents agreed that saying 'No' to the organisation is to be avoided, even when there is no legally acceptable alternative to suggest (86 percent disagreed).

⁶⁶ Nelson and Nielsen (n 34)

⁶⁷ Moorhead and Vaughan (n 32).

⁶⁸ We see as implying escalation of the problem within the organisation and/or resignation but it might also include whistleblowing or other responses.

SPIRIT OF THE LAW AND REPUTATION

Beyond the ethical orientation discussed above, we can see also that nearly all (98 percent) of our respondents agreed that their advice went beyond legal considerations to consider reputational aspects (1 percent disagreed). Similarly, 97 percent agreed that their advice encompasses both the letter and the spirit of the law (1 percent disagreed). Interestingly, when considering whether the organisation's decisions were determined by the purpose and not just the letter of the law, agreement weakened somewhat, but was still strong: 82 percent agreed and 8 percent disagreed that decisions were so determined.

OTHER ISSUES AROUND A COMMERCIAL ORIENTATION

We could see the commercial orientation being supported by an approach to the job which saw legal as a form of risk management. In total, 81 percent agreed with the idea that their job is to help set appetite for risk within legal bounds (10 percent disagreed) and 77 percent agreed that their job is to manage to a known risk appetite (11 percent disagreed). Importantly though, whilst 65 percent agreed that achieving what their organisation wants has to be their main priority, nearly a quarter (23 percent) disagreed.

As we might expect, the position is nuanced: 71 percent agreed that sometimes it's necessary to think less about the organisation's needs and more about what the law requires, whereas 17 percent disagreed. The body of evidence that points to the potential detriment of overly emphasising commercial ends is supported, to an extent, by 30 percent agreeing that an emphasis on commercial awareness sometimes inhibits the in-house lawyer in performing his or her role, whilst 57 percent disagreed.

INDEPENDENCE, NEUTRAL ADVISOR AND ETHICAL ORIENTATIONS

Our data suggests that an independence orientation is quite strong in our group of respondents, but also that businesses sometimes take decisions that are at odds with the lawyer's view of the law or the ethicality of the situation. The neutral advisor orientation provides a rationale for justifying any snub to their independent view. The weight given to independence might matter; so, 74 percent of our respondents agreed that it is important to them that the business agrees with their opinion on the legality of proposed actions, whereas 14 percent disagreed. Perhaps surprisingly, as many as 12 percent agreed that where commercial desirability and legal professional judgement are in tension, commercial desirability is more important, suggesting independence was not strong within the 12 percent. However 69 percent disagreed.

Consistent with the neutral advisor position and somewhat inconsistent with the ethical orientation would be the 22 percent who agreed that others in the organisation are responsible for considering the ethics of the organisation's decisions; their role is to advise on the law (a position rejected by 71 percent).

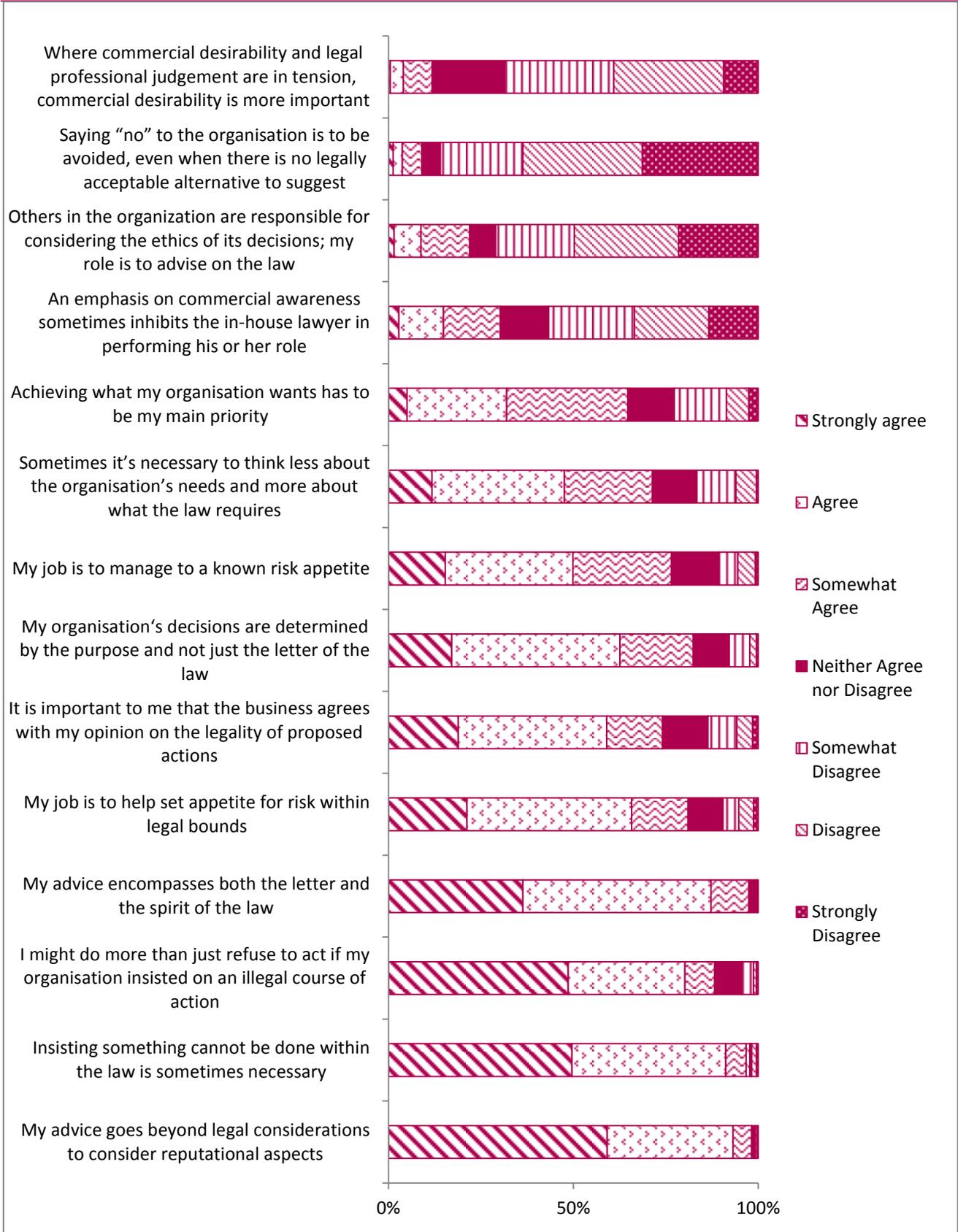


Figure 16: Other elements of role identity

SUBSERVIENCE NOT INDEPENDENCE?

We have begun to see in the data a minority group that appeared to agree with a less independent or more subservient role. This was supported somewhat by our principal components analysis which suggested that where respondents tended towards disagreeing with the idea that commercial awareness sometimes inhibits the in-house lawyer in performing his or her role, they tended to agree more with the ideas that: (i) others in the organization are responsible for considering the ethics of its decisions, their role is to advise on the law; (ii) that saying 'No' to the organisation is to be avoided, even when there is no legally acceptable alternative to suggest; and (iii) where commercial desirability and legal professional judgement are in tension, commercial desirability is more important. The level of commonality was not strong enough for us to see these as measuring subservience as one underlying construct,⁶⁹ but it is illustrative of the potential difficulties with allowing a commercial and neutral advisor orientations to become unbalanced.

A CLOSER LOOK AT ORIENTATIONS

Composite scales were developed from the principal components identified above so that we can step back from the detail and get a stronger sense of the overall picture. We can get a comparison of how strongly in-house lawyers identified with each of the components by comparing the distributions of each scale.

In Figure 17 the thin vertical lines represent the top and bottom 25 percent of each distribution and the boxes represent the middle 50 percent. Where there is no vertical line, the box represents 75 percent. So, we can see that 75 percent have very high levels of agreement with a commercial orientation. Ethical orientation was the next strongest. Independence the third and neutral advisor the fourth. The exploit uncertainty orientation was the one which prompted the widest spread of agreement-disagreement, with the centre of gravity of the group being just towards disagreeing with the idea that this was part of their role.

⁶⁹ $\alpha = .56$

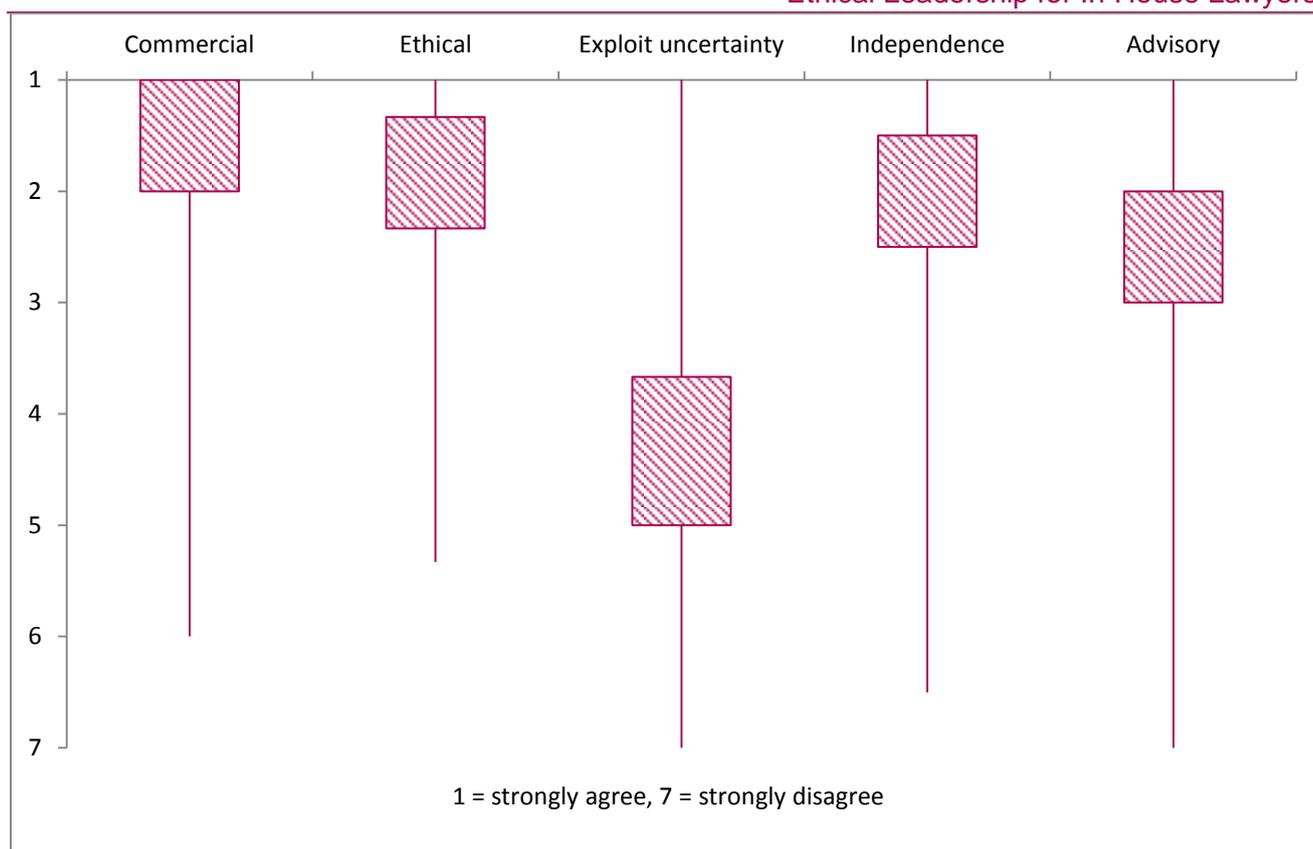


Figure 17: In-house role orientations

We can also compare the scores on these components by organisation type (Table 18). In the table 7 = strongly agree and 1 = strongly disagree.

Table 18: Orientations by organisation type

	A business		Public sector organisation		Charity/social enterprise		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	F	p
Commercial	6.58	0.44	5.68	0.88	6.16	0.81	79.01	.00
Ethical	6.08	0.74	5.73	0.84	5.97	0.89	7.63	.00
Independence	5.94	0.93	6.08	0.91	5.86	1.16	0.99	0.37
Neutral advisor	5.39	1.29	5.7	0.93	5.57	1.23	2.42	0.09
Exploit uncertainty	3.9	1.19	3.52	1.18	3.62	1.18	4.10	0.02

Our analysis of variance (ANOVA) found significant differences between lawyers working in different organisation types (i.e., business, public sector, charity) regarding commercial, ethical, and exploit uncertainty orientations.⁷⁰ However, no differences were found for independence and neutral

⁷⁰ A statistical test used to determine whether there are any significant differences between the means of three or more independent

advisor orientations between lawyers working in different organisation types. More detailed comparisons showed statistically significant differences across the following groups as follows:⁷¹

- Lawyers working in a business showed the highest commercial orientation, followed by those working in charities/social enterprises and those working in the public sector.
- Ethical orientation was significantly higher amongst those working in business compared with those working in the public sector.
- Although most respondents did not have an exploit uncertainty orientation, those working in a business environment showed more agreement with the exploit uncertainty approach than those working in the public sector.

Whilst it is important to know in absolute terms whether someone agrees or disagrees with an orientation, it may be also be important to know the *relative* importance of each orientation to an individual. Someone might tend to rate both commerciality and ethicality highly, but which is most highly rated by them, for instance? Another way of thinking about this is: if a decision poses a conflict between one or more orientations, which is likely to be the most influential?

If we look at the effective ranking of each orientation by each respondent,⁷² we can see that a commercial orientation was in the top two for almost three quarters of respondents. Independence was the next most highly ranked orientations with it ranking in the top two for just over half of our respondents. An ethical orientation was similar but slightly less highly ranked.

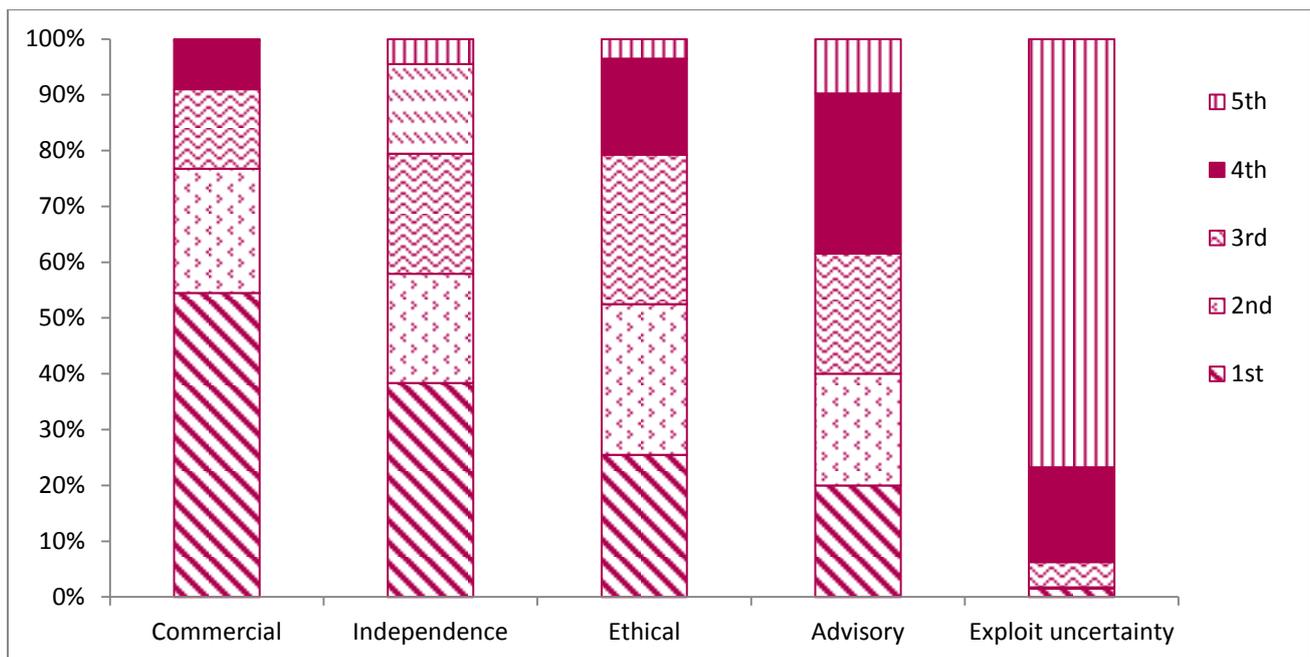


Figure 18: Ranking of orientations (1st = strongest agreement, 5th = weakest agreement)

(unrelated) groups.

⁷¹ Post hoc comparisons were conducted, statistical significance is recorded at conventional levels $p \leq .05$

⁷² Respondents were not asked to rank each orientation. We have derived rankings from the strength of agreement they indicated with each of the statements making up our components.

We also analysed the rankings by organisation type:

- Nearly all in-house lawyers working in a business had commercial orientation as the first (66 percent of them) or second (21 percent of them) strongest orientation. In the third sector, 48 percent ranked it first and 24 percent second. In the public sector 23 percent ranked it first and 21 percent second.
- An independence orientation was ranked as the top orientation for 53 percent of public sector in-house lawyers and second for 20 percent. The figures were 24 percent and 25 percent for those in the third sector, and 34 percent and 14 percent in the business sector.
- An ethical orientation was strongest in the third sector, where 35 percent ranked it first and 21 percent second. 25 percent ranked it first and 25 percent second in the public sector, and 25 percent first and 22 percent second in the business sector.
- A neutral advisor orientation was first ranked for 28 percent of third sector lawyers and second for 14 percent. The figures for public sector lawyers were 23 percent and 26 percent respectively. Indeed, it was the third or higher orientation for three quarters of public sector in-house lawyers (but similarly rated for only 50 percent of business lawyers and 48 percent of third sector lawyers).
- An exploiting uncertainty orientation was generally lowly ranked, though slightly less so for business lawyers. For 67 percent of business in-house lawyers this was ranked in their bottom two orientations. The figure was 83 percent in the public sector and the third sector. Interestingly, for six in-house lawyers in business this was in the top two strongest orientations.

From this data we get a strong sense of the diversity of orientations within our sample of in-house lawyers. The strongest consensus was around a commercial orientation – most of the business lawyers saw this as a strong orientation in absolute terms (they strongly agreed with it) and in relative terms (they tended to rank this orientation highly). Public sector lawyers tended to agree most strongly with an independence orientation. Third sector lawyers, consistent with their organisational mission presumably, put a somewhat greater relative emphasis on an ethical orientation.

It is interesting to see, too, the somewhat stronger level of agreement with commercial, ethical and independence orientations over a neutral advisor orientation. It is not that our sample did not generally agree that the in-house lawyer advises and the client decides (they did), but rather they emphasised orientations which saw a stronger emphasis on their own agency. That is, they were more strongly in agreement with a role which saw themselves as influencers towards commerciality and/or ethicality and for that influence to be exercised from a position of some independence, than they were to distance themselves from difficult decisions by saying the client (and not them) is responsible. This is an important signal of maturity in the majority of approaches. In-house lawyers, whilst they might sometimes call on the language and values of non-accountability, do not really see themselves as neutral, non-accountable advisors as strongly as they see themselves as commercial or ethical agents (i.e. as people with some form of commercial or ethical role to play).

SUMMARY – HOW IN-HOUSE LAWYERS CONCEIVE OF THEIR ROLE

Our respondents split reasonably evenly between respondents thinking of themselves in terms of their professional title and thinking of themselves as an in-house legal adviser or other organisational role. This begins to suggest that a sizeable group of in-house lawyers see themselves as somehow distinct from solicitors or barristers. Public sector lawyers were more likely to think of themselves as a solicitor, barrister or advocate than those in business or in charities/social enterprises. We might hypothesize that in-house lawyers within commercial organisations are more occupationally distinct, and/or that the public sector more actively cultivates a conventional professional identity, and/or it may be that some public sector lawyers spend more time in court/litigation type activity and this influences their identity. The geographic spread of the organisation and the extent to which those in the organisation (and its customers) recognise the titles of solicitor and barrister may also have purchase.

Our particular interest was in how in-house lawyers conceived of their role. From a range of questions we isolated five orientations:

- a commercial orientation (our data supported the view that lawyers frame their role strongly in terms of the needs of the organisation they work for);
- an exploiting uncertainties orientation (supported by a significant minority of our respondents);
- an ethical orientation (generally supported);
- an independence orientation (generally supported); and,
- a neutral advisor orientation (agreed with by most of our respondents, if less strongly than the ethical and independence orientations).

Our profiling also looks at other issues such as appetite for saying 'No' (the vast majority said they were willing to do this and back it up with further action if necessary, yet 9 percent indicated that saying 'No' to the organisation was to be avoided, even when there is no legally acceptable alternative to suggest). Most advised, they said, in the spirit of the law (and also said that their organisations were guided by this when deciding). We can get a sense of the emphasis to be placed on a commercial orientation from the 65 percent that agreed that achieving what their organisation wants has to be their main priority; although nearly a quarter (23 percent) disagreed. Academic concerns about over-emphasising commercial awareness are given some support by the 30 percent of our sample agreeing that an emphasis on commercial awareness sometimes inhibits the in-house lawyer in performing his or her role, whilst 57 percent disagreed. Furthermore, perhaps surprisingly, 12 percent agreed that where commercial desirability and legal professional judgement are in tension, commercial desirability is more important.

There were differences across sectors. Lawyers working in a business showed the highest commercial and ethical orientations in absolute terms. They also showed the highest exploit uncertainty orientation. If we look more at relative ranking of orientations we can see that lawyers working in a business were particularly likely to rank commercial orientation as the strongest orientations (in their top two); whereas, public sector lawyers emphasised an independence orientation more strongly and third sector lawyers emphasised an ethical orientation.

It is interesting to see, too, the somewhat stronger level of agreement with commercial, ethical and independence orientations over a neutral advisor orientation. It is not that our sample did not

generally agree that the in-house lawyer advises and the client decides (they did), but rather that they emphasised orientations which saw a stronger emphasis on their own agency. That is, they were more strongly in agreement with a role which saw themselves as influencers towards commerciality and/or ethicality and for that influence to be exercised from a position of some independence, than they were to distance themselves from difficult decisions by saying the client not them, is responsible. We see this is an important signal of maturity in the majority of approaches adopted by our respondents.

5 Team Orientation

Much of the work on ethics emphasises that context and culture are critical influences on ethicality. We have already considered relations with the business and ethical pressure. In this section we look at team orientation. Respondents were asked to ‘*Indicate the overall orientation of [their] team by rating the extent to which the following subjects are a topic of conversation for them*’. This approach reflects how respondents assessed their teams, not what the teams themselves thought. A risk is that respondents saw teams through their own perspectives. So, an ethically oriented respondent might be more likely to see their teams as ethical (of course the opposite is also possible depending on how happy they were with their team). We guarded against this to a degree by asking the respondents to reflect on team behaviours rather than on something more nebulous. A principal component analysis identified four distinct components with acceptable or good reliability from this list of statements (see Appendix A).

A. ETHICAL ORIENTATION

An ethical team orientation had three dimensions.⁷³ Most (70-75 percent) of respondents indicated their teams regularly or very frequently discussed: ‘doing the right thing’, ‘treating people fairly’ and ‘valuing integrity as much as profits’. Very few were willing to say they rarely or never discussed such matters (Figure 19).

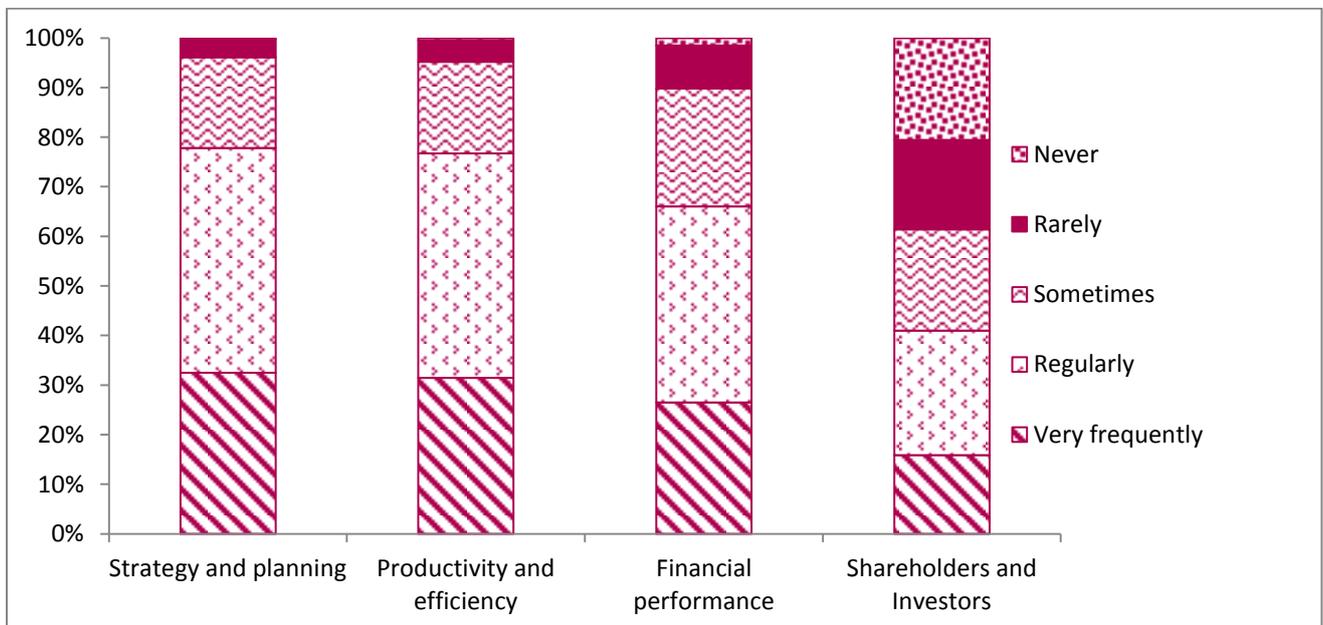
⁷³ $\alpha = .73$



Figure 19: Team orientation - ethical

B. PRODUCTIVITY AND STRATEGY AND C. FINANCIAL PERFORMANCE

A second component was performance and productivity.⁷⁴ This consisted of strategy and planning and productivity and efficiency. A financial performance orientation was measured based on discussions about financial performance and shareholder/investor interests.⁷⁵



⁷⁴ $\alpha = .70$
⁷⁵ $\alpha = .62$

Figure 20: Team orientation – productivity and strategy

We can see from Figure 20 that strategy, productivity and finance were more frequently discussed than more ethical matters, with the exception of shareholders and investor interests, which a substantial minority said they never discussed.⁷⁶

D. SOCIETY ORIENTATION

A societal orientation was based on teams discussing two questions:⁷⁷

- Seeking the good of society
- The organisation's role in society

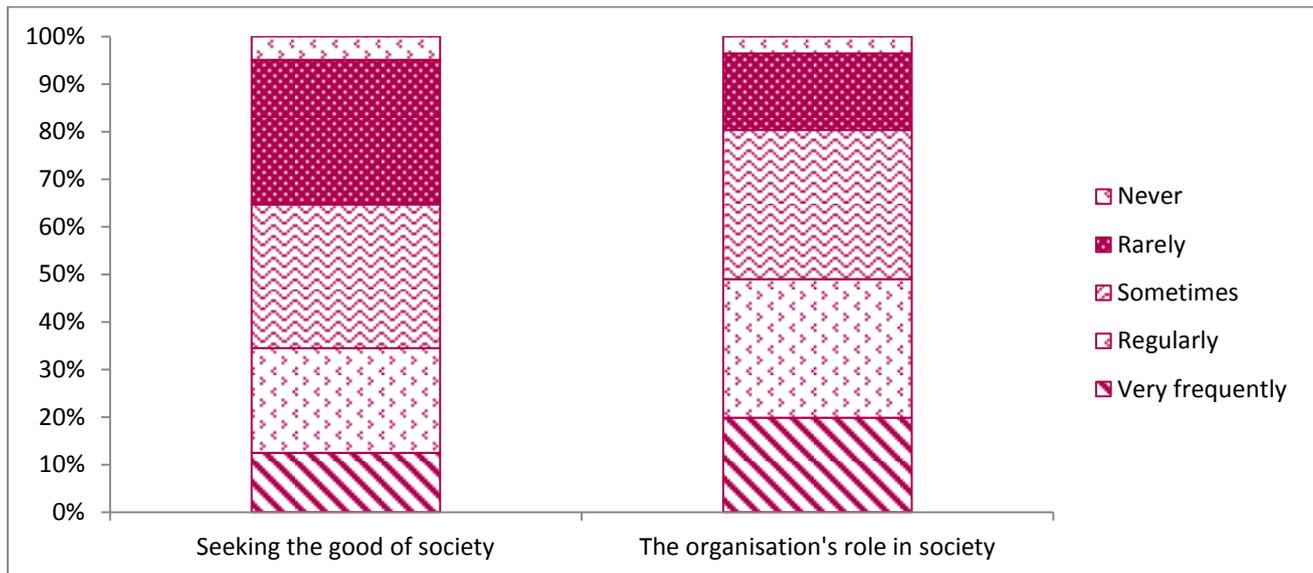


Figure 21: Team orientation - societal

Here our respondents split more evenly between those who said they discussed this regularly and those who are more equivocal, doing so only sometimes or rarely.

When looking across the sectors at team orientation, significant differences were found between lawyers working in different organisation types (i.e., business, public sector, charity) regarding their ratings of the different team orientations (ethical, financial performance, productivity and strategy, and society).

⁷⁶ Although these were often public or third sector organisations, even in business organisations about 20% discussed shareholder and investor interests rarely or never.

⁷⁷ $\alpha = .82$

Table 19: Team orientation by sector

	A business		Public sector organisation		Charity/social enterprise		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	<i>F</i>	<i>p</i>
Ethical orientation	3.91	0.75	4.09	0.72	4.25	0.62	4.38	.01
Financial performance	3.78	0.85	2.57	0.86	2.81	0.81	80.08	.00
Society Orientation	2.90	0.90	3.89	0.82	4.36	0.68	72.73	.00
Productivity and Strategy	4.13	0.70	3.87	0.79	3.88	0.68	5.56	.00

We can see that teams working in commercial organisations were most oriented towards productivity and strategy. Public sector lawyer teams emphasised ethicality most strongly followed by society and productivity/strategy. Charity/social enterprise lawyers emphasised society most strongly. More detailed analysis showed several statistically significant differences:⁷⁸

- Those working in a charity/social enterprise rated their team as having greater ethical orientation than those working in a business.
- Those working in a business rated their team as having greater financial performance orientation than those working in either the public sector or in a charity /social enterprise.
- Those working in a charity/ social enterprise showing higher ratings of their team's society orientation, followed by those working in the public sector, and finally those working in a business.
- Those working in a business rated their team as having greater productivity and strategy orientation than those working in the public sector.

SUMMARY – TEAM ORIENTATION

Our analysis of team orientation suggested four components: an ethical orientation; a performance and productivity orientation; a financial orientation; and, a society orientation.

Teams working in commercial organisations were most oriented towards productivity and strategy. Public sector lawyer teams emphasised ethicality most strongly followed by society and productivity/strategy. Charity/social enterprise lawyers emphasised society most.

⁷⁸ $p < .05$

6 Professional principles

A key question for in-house lawyers is the extent to which they are meaningfully *professional* in their approach. Part of the answer to that question has to engage with a consideration of their employment of professional principles. Our previous work has suggested that the role of professional principles in the work of the in-house lawyer is muted, with public interest principles taking a back seat to the idea of putting the client first.⁷⁹ We sought to explore the nature of any role more quantitatively in this study.

Respondents were asked: ‘*To what extent do the following obligations have an important influence on you in practice?*’ The principles required under the SRA code were then listed.⁸⁰ We did not label them as professional principles to minimise response bias associated with being explicitly reminded these were mandatory.

Three components were extracted from the nine principles used using principal component analysis (see Appendix A), suggesting practitioners tended to treat the principles in three distinct groups: one group we have called ‘public trust and legality obligations’, because the principles relate to obligations the lawyer owes other than to the client, to independence and legality. A second set we call ‘effective service and integrity obligations’ – it included acting with integrity and providing a proper standard of service to the organisation – and was focused on *how* services are delivered to the client. The third component was a single criterion, the ‘*best interest of the client*’, suggesting – interestingly – that respondents treated this principle separately from the other two groups of principles.

A. INDEPENDENCE AND LEGALITY

Here we see the more public facing of the professional principles being clustered together by the respondents, with independence also included.⁸¹ Whilst all the principles here are regularly or frequently influential according to our respondents, it is noticeable that within this group of principles it is the influence of legal and regulatory obligations on them as lawyers that appears slightly stronger.

As we will see, the influence of these public trust and legality principles is not as strong as the other two clusters.

⁷⁹Moorhead and Vaughan (n 32); Richard Moorhead and Victoria Hinchly, ‘Professional Minimalism? The Ethical Consciousness of Commercial Lawyers’ (2015) 42 *Journal of Law and Society* 387.

⁸⁰ Most of our respondents were expected to be (and were) solicitors, hence we decided to use the solicitors’ principles. Broadly similar duties are in the code of conduct for barristers.

⁸¹ $\alpha = .81$

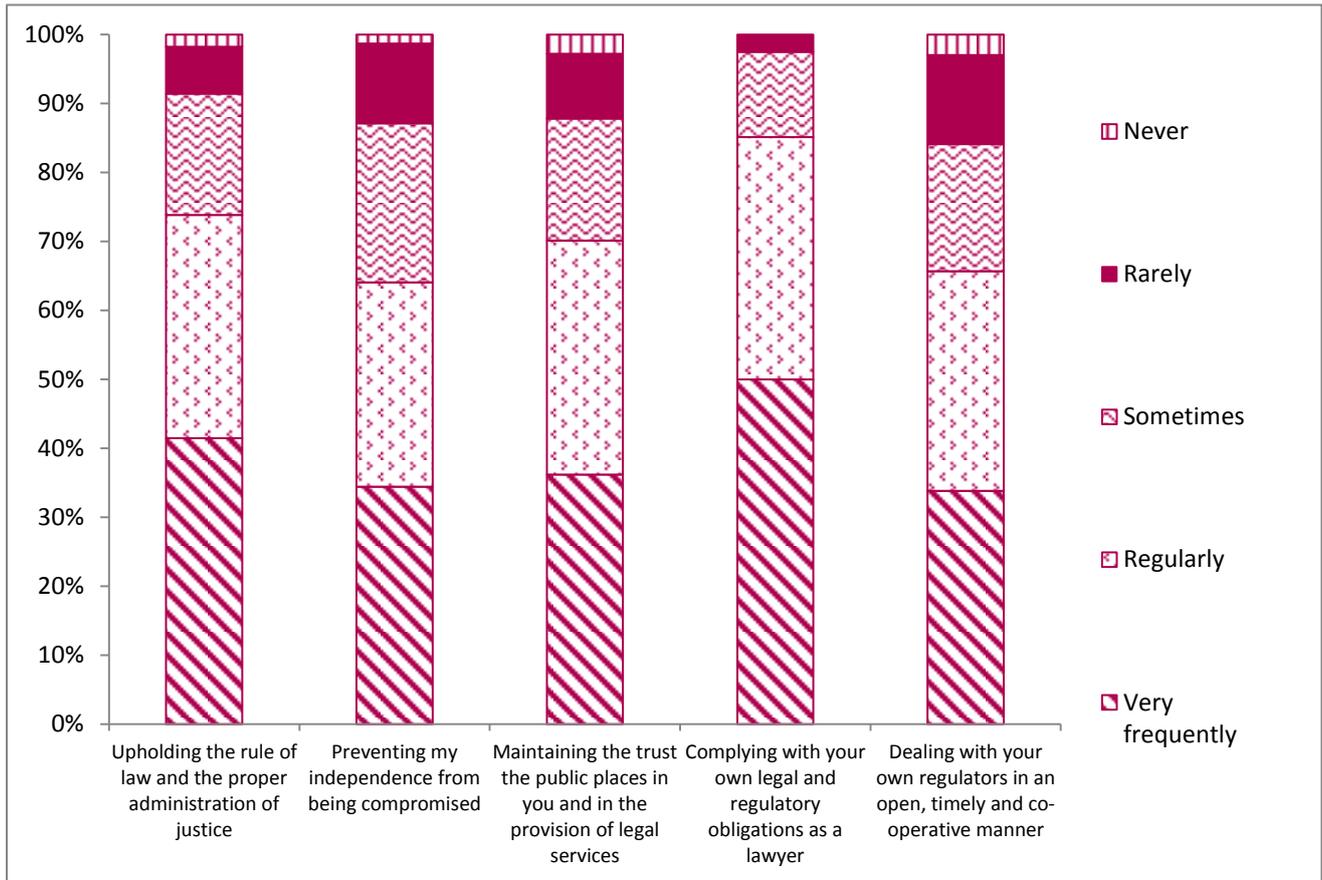


Figure 22: Professional principles - independence and legality

B. EFFECTIVE SERVICE AND INTEGRITY

Here we see three of the professional principles related to effective service for the client being clustered together by the respondents, but the ‘best interest of the client’ was not included in this component.⁸² This suggests that our respondents dealt with the best interest principle in a somewhat different way than the effective service and integrity principles. When compared with the independence and legality principles, what is noticeable immediately is the even greater agreement that these effective service principles are at least sometimes influential, and the higher incidence of our respondents saying they are very frequently influential.

⁸²α= .71

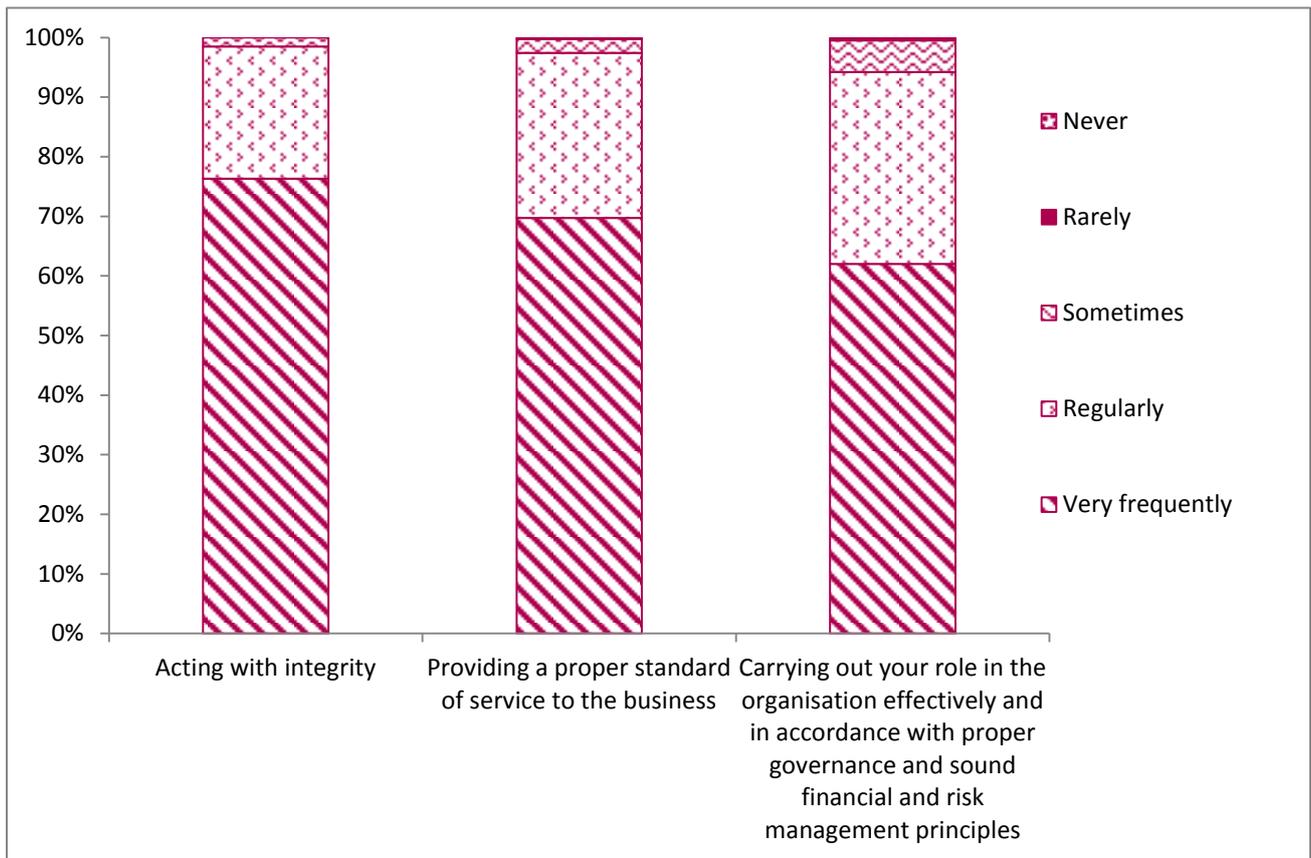


Figure 23: Professional principles – proper service

C. CLIENT'S INTERESTS

This left the 'best interest of the client' (or, as we phrased it in the survey, the best interest of the organisation) as a third component in the analysis. Again, respondents indicated this was almost always at least sometimes influential. They were somewhat less likely to see the client's interests as being very frequently influential than they were for the effectiveness and integrity principles, but it was still very frequently influential for a majority of respondents. This was something of a contrast with the legality and independence principles.

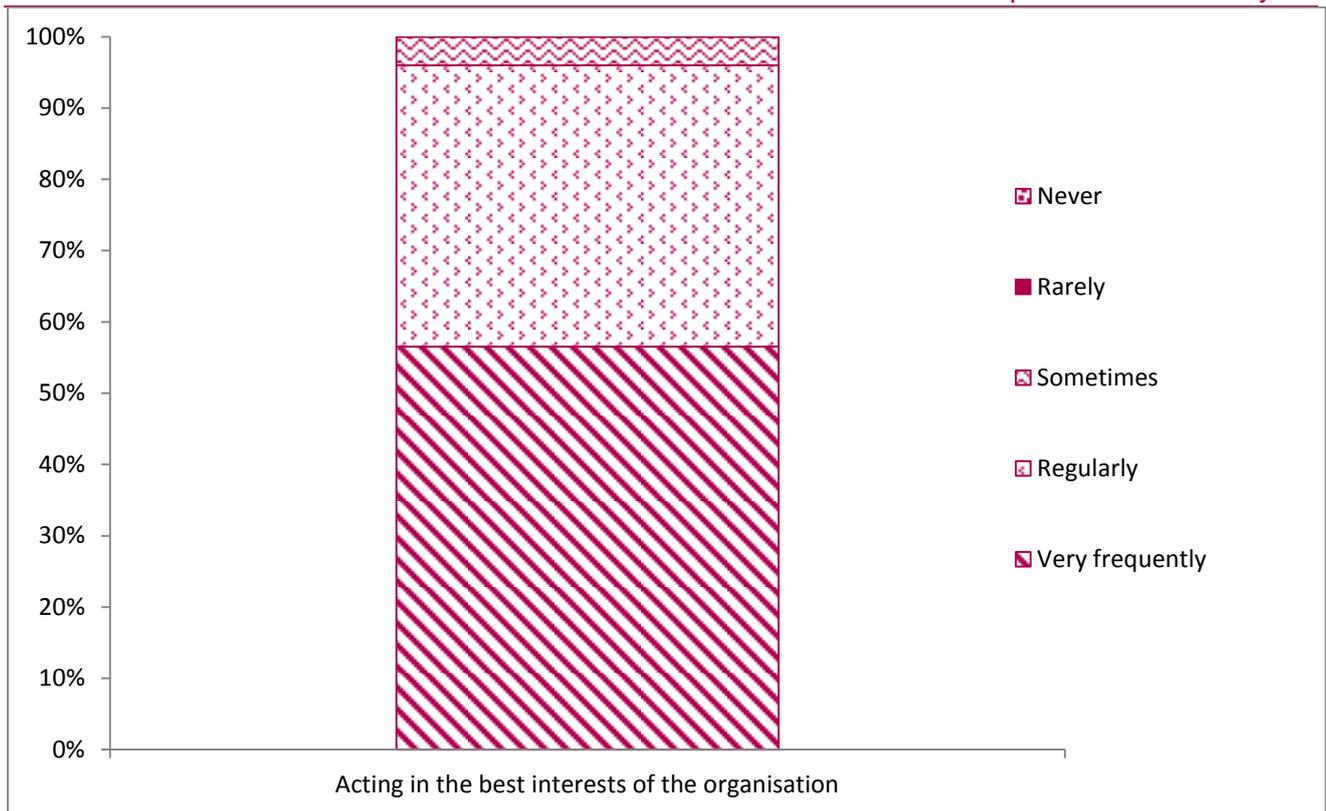


Figure 24: Professional principles - best interest of the organisation

Significant differences were found between lawyers working in different organisation types (i.e., business, public sector, charity) regarding their ratings of the professional principles of ‘Independence and legality’ (Table 20). ‘Independence and Legality’ was applied significantly more frequently by those working in the public sector than by those working in a business. No significant differences were found regarding the principles of ‘Effectiveness and Integrity’ and ‘Clients interests’.

Table 20: Professional principles usage by sector

	A business		Public sector organisation		Charity/social enterprise		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	F	p
Independence and Legality	3.88	0.76	4.30	0.66	4.00	0.86	11.54	.00
Effectiveness and Integrity	4.67	0.43	4.64	0.44	4.62	0.48	0.41	.67
Client Interests	4.54	0.56	4.44	0.64	4.66	0.48	1.82	.16

All groups put the least emphasis on independence and legality overall, but only the charity/social enterprise lawyers said they applied the clients’ interests’ principles more often than effectiveness and integrity (and then only marginally so).

In some ways this takes us a bit further on the subtle view of in-house lawyer agency that we saw when looking at orientations to the role. Effectiveness and integrity principles are apparently the

most influential, alongside client interests. One interpretation is that our respondents retain a sense of their own integrity, and the importance of that as part of an ethical orientation, but that the strongest contextual influences are about being effective and serving the client's needs. A more emphatic independence is not coming out through their application of the professional principles – although independence and legality principles were more influential for public sector lawyers where ideas about the rule of law being in tension with the dictates of political masters may be stronger. This stronger emphasis may also reflect a strong culture of independence within the government legal service, a greater sensitivity to threats to that independence and/or a more pragmatic response to the risk that decisions for their employers would be scrutinised by judicial review.⁸³ It may also reflect the wider culture of the civil service and the need for civil servants to be impartial and objective in their work.

The stronger role of client/effectiveness principles is also interesting because, whilst the professional principles support acting in the best interests of the client, where that principle conflicts with others (notably, for the sake of this argument, upholding the rule of law and the administration of justice) then the SRA guidance on the principles for solicitors indicates that it is the principle which best serves the public interest, and especially the public interest in the administration of justice, that takes precedence.⁸⁴ The Bar's Code has similar requirements. Does the frequency with which client interests are emphasised suggest a resistance to, or lack of awareness of, the pre-eminence of the public interest in the rule of law? There are a number of ways of interpreting the data here: one is that rule of law type concerns simply surface less often. Another is that the rule of law and administration of justice principle is less well known, less well understood, and/or has less practical traction. A third is that any 'ethical orientation' is more likely to be seen through an integrity rather than a public interest/rule of law lens and more frequently through a client's best interest lens. Overall we see diverse interpretations of which principles are prioritised and this is somewhat at odds with how the SRA (and the BSB) defines solicitor (and barrister) obligations.

What the findings do not support is the view that in-house lawyers are not influenced by professional principles in their everyday decision making.⁸⁵ Our respondents said they were influenced by their professional principles, although this may reflect a reaction to being presented with a list of obligations which are, in the abstract, uncontroversial. The findings do support the view that client facing obligations tend to be prioritised over public interest considerations but so also does integrity. The treatment of legality and public interest concerns as the least called upon of the professional principles is evidence that the in-house legal community surveyed here may have a misapprehension of its professional obligations. Where there is a conflict between principles, barristers and solicitors are supposed to put the public interest in the administration of justice first, not last.

⁸³Shelagh Campbell, 'Exercising Discretion in the Context of Dependent Employment: Assessing the Impact of Workload on the Rule of Law' (2015). See, also the interview referred to in Bowie (n 30).

⁸⁴ SRA, 'Handbook – The Principles' (Version 15), para 2.2. This says: "Where two or more Principles come into conflict, the Principle which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice."

⁸⁵ Our qualitative work tends to suggest such influence is modest, Moorhead and Hinchly (n 79); Moorhead and Vaughan (n 32).

SUMMARY – PROFESSIONAL PRINCIPLES

This chapter looks at the relative influence of the main professional principles as a way of understanding, in broad terms, how our respondents conceptualised their professional responsibilities. Our respondents tended to treat certain of the principles (what we call principles of independence and legality) similarly. They also tended to treat a set of principles around what we called integrity and effectiveness similarly. They also tended to treat the final remaining principle, the best interests of the client, separately from these two other groups.

As we expected from our prior work, but contrary to the way in which the professional codes prioritises the principles, we saw the best interest of the client, and then principles of integrity and effectiveness as being the most influential on our respondents. Whilst all groups tended to suggest 'Independence and Legality' was the least influential, it was applied significantly more frequently by those working in the public sector than by those working in a business.

In some ways this takes us a bit further on the subtle view of in-house lawyer agency that we saw when looking at orientations to the role. Effectiveness and integrity principles are apparently the most influential, alongside client interests. One interpretation is that our respondents retain a sense of their own integrity, and the importance of that as part of an ethical orientation, but that the strongest contextual influences are about being effective and serving the client's needs.

The stronger role of client/effectiveness principles is also interesting because, whilst the professional principles support acting in the best interests of the client, where that principle conflicts with others (notably, for the sake of this argument, upholding the rule of law and the administration of justice) then the SRA guidance on the principles for solicitors indicates that it is the principle which best serves the public interest, and especially the public interest in the administration of justice in particular, that takes precedence.⁸⁶

What the findings do not support is the view that in-house lawyers are not influenced by professional principles in their everyday decision making.⁸⁷ Our respondents said they were influenced by professional principles, although this may reflect a reaction to being presented with a list of obligations which are, in the abstract, uncontroversial. The findings do support the view that clients facing obligations tend to be more influential than public interest considerations but so, also, does integrity and effectiveness. The treatment of legality and public interest concerns as the least called upon of the professional principles is evidence that the in-house legal community surveyed here may have a misapprehension of its professional obligations. Where there is a conflict between principles, barristers and solicitors are supposed to put the public interest in the administration of justice first, not last.

⁸⁶ SRA, 'Handbook – The Principles' (Version 15), para 2.2. This says: "Where two or more Principles come into conflict, the Principle which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice."

⁸⁷ Our qualitative work tends to suggest such influence is modest, Moorhead and Hinchly (n 79); Moorhead and Vaughan (n 32).

7

Professional Ethical Infrastructure

With ethical pressure a feature of practice for a significant number of our respondents, the way in which ethical challenges are managed is emphasised in importance. The business literature explores the importance of an infrastructure which protects and promotes ethicality but it is not something much explored within the legal field.⁸⁸ A question of some interest to us is therefore respondents' views on ethical infrastructure. Respondents were asked: '*Other than through the professional Code(s) that apply to you as a lawyer, are professional legal obligations (i.e. your obligations as a lawyer) implemented through...*' and they were then given a number of options, discussed below, to indicate the frequency with which such means were used. For some methods it was not appropriate to ask a frequency question: for example, 55 percent of respondents indicated that Corporate Codes were one route, but it did not make sense to ask how frequently a Corporate Code implemented professional legal obligations.⁸⁹

Again, principal component analysis was used to simplify the data (see Appendix A). Two components were found to the remaining questions about ethical infrastructure – formal and informal infrastructure.

FORMAL INFRASTRUCTURE

Training and written guidance is one means by which we might expect professional obligations to be implemented, which we describe as formal infrastructure.⁹⁰

⁸⁸Linda K Treviño, Gary R Weaver and Scott J Reynolds, 'Behavioral Ethics in Organizations: A Review' (2006) 32 *Journal of Management* 951; Gino and Margolis (n 54). For an exception in law, see Elizabeth Chambliss and David B Wilkins, 'Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting' (2001) 30 *Hofstra L. Rev.* 691.

⁸⁹ This was indicated on yes or no basis and so was analysed separately.

⁹⁰ $\alpha = .70$

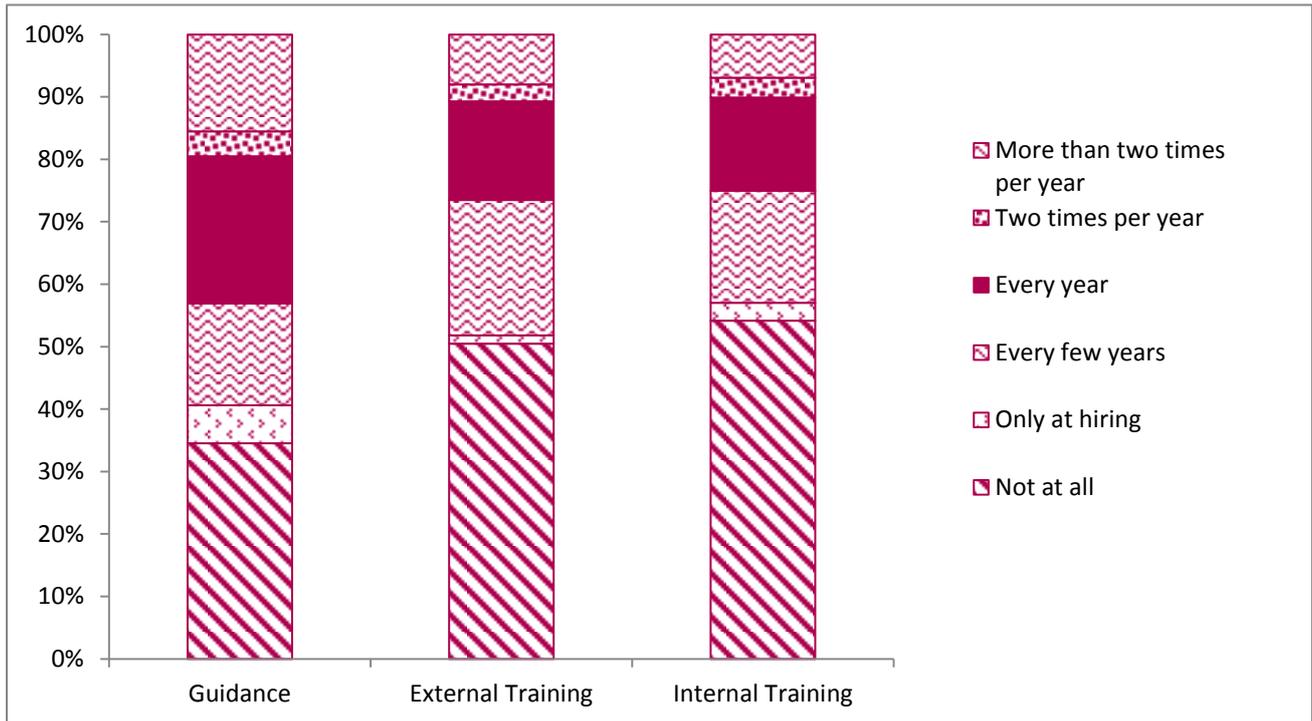


Figure 25: Professional ethical infrastructure - formal

One striking indication in Figure 25 is the high proportion of respondents indicating there was no formal infrastructure, or that where guidance is issued or training takes place this happens only every few years. In these terms, professional ethics looks like a low priority, not much supported by these processes. The incidence of ethical pressure underlines the importance of this finding. If significant minorities of in-house lawyers experienced pressure to advise on unlawful or unethical activities then we might expect to see greater emphasis on training and guidance to cope with these pressures. We do not.⁹¹

Let us turn then to informal infrastructure. This was made up of three elements.⁹²

⁹¹ Similarly we found no correlation between levels of ethical pressure and formal ethical infrastructure. High pressure did not appear to prompt improved formal infrastructure.

⁹² $\alpha = .70$

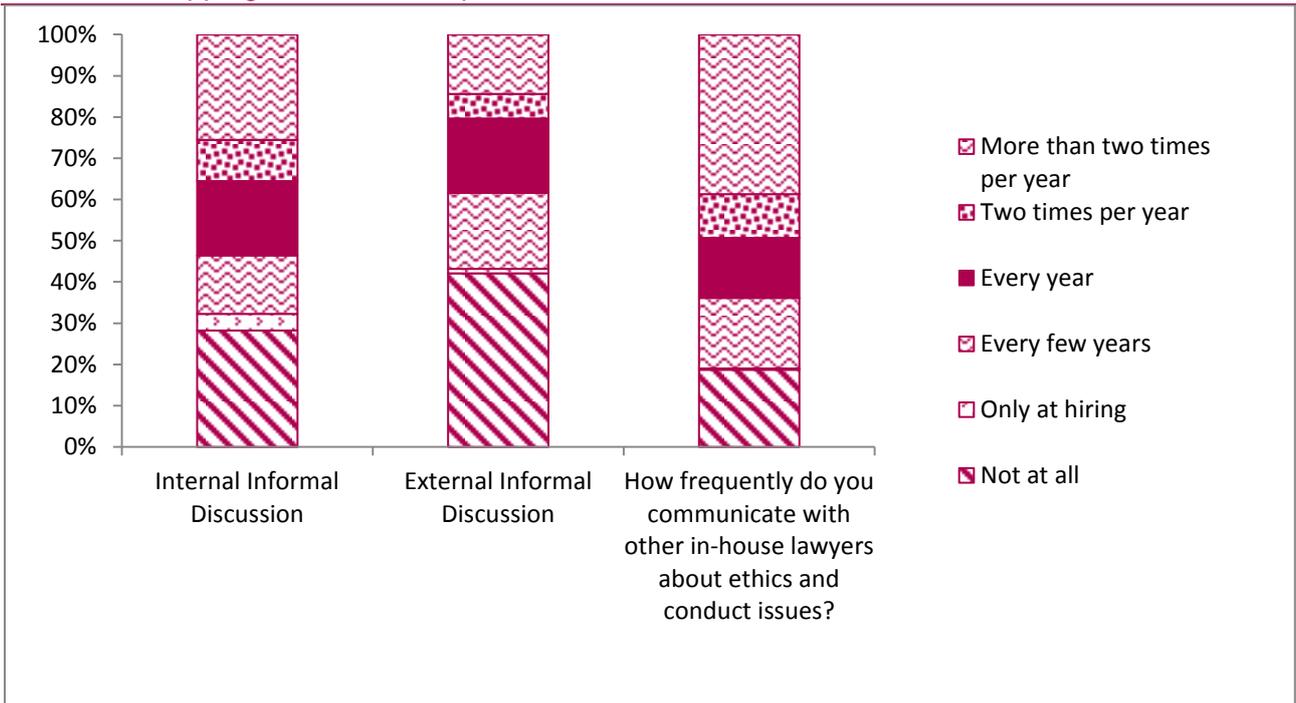


Figure 26: Informal infrastructure

Whilst the figures do not appear to be as bad for informal infrastructure, one might expect informal interactions around ethics to be more frequent than formal interactions. It is again noticeable that communication, even informally, around professional ethical issues is infrequent and for some does not occur at all, unless ethical discussions are taking place without the respondents framing them in terms of ‘ethics’. Indeed, 7 percent of respondents indicated ‘not at all’ to all six questions indicating that they *never* discussed professional ethics issues with colleagues internally or externally, formally or informally.

Again, we emphasise that we would expect to see in-house lawyers faced with ethical pressure develop a stronger informal ethical infrastructure. We see some signs of a relationship between ethical pressure and informal ethical infrastructure, pressure may be prompting more informal discussion, but there is only a weak correlation.⁹³

Lawyers working in different organisation types (i.e., business, public sector, charity) showed significant differences regarding their ratings of formal ethical structure – but not regarding the informal ethical structure. Those working in a business showed higher ratings of formal ethical structure than those working in a charity/social enterprise.

⁹³ $r(55) = .17, p = .001$

Table 21: Ethical infrastructure by organisation

	A business		Public sector organisation		Charity/ social enterprise		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	<i>F</i>	<i>p</i>
Formal infrastructure	2.63	1.30	2.64	1.51	2.00	1.08	2.93	.05
Informal infrastructure	3.48	1.49	3.59	1.58	4.11	1.49	2.27	.10

We also wanted to know whether teams had reviewed professional codes (e.g. found in the SRA and BSB Handbooks) and documented a response to them. Agreement that this had been done was weak (although agreement was slightly more likely in larger teams). Nearly a third (29 percent) agreed, and 12 percent only somewhat, that they had done this. Half (50 percent) disagreed (again 12 percent only somewhat).

Fifty-six percent agreed that assessment of an in-house lawyers ethics forms an explicit and formal part of performance appraisals (14 percent only somewhat). Twenty-two percent disagreed (8 percent somewhat). The extent and nature of such appraisals is something that we are investigating further in follow-on interviews with in-house lawyers.

ATTITUDES TO REGULATION

An interesting counterpoint to informal and formal infrastructure within in-house teams is the role of external regulation. We have seen the respondents state that they attached some importance to lawyers adhering to their legal and regulatory obligations. We also surmise, based on work we have conducted elsewhere, that one reason ethical infrastructure is given a low priority (beyond pressure of work), is the belief that lawyers' ethics is maintained by recruiting the 'right kinds of people' who come already trained (principally through the LPC and BPTC) in their professional obligations.⁹⁴ Similarly, low levels of translation of the SRA and BSB codes into internal guidance or other documents may indicate a satisfaction with the content of the code. We explore that in this section.

We tested attitude to regulation with nine questions.⁹⁵ Principal component analyses suggested four components, although only one of these had reasonable levels of reliability, the first one: '*Codes could be more useful*', which consisted of the following two variables.⁹⁶

A large majority of our respondents felt the professional codes of conduct should be more useful and should include more rules and guidance about their roles and responsibilities.

⁹⁴Moorhead and Hinchly (n 79).

⁹⁵ One question (about the relevance of the Bar's Code of Conduct) was excluded because most respondents neither agreed nor disagreed with the statement (reflecting the majority of our respondents being solicitors).

⁹⁶ $\alpha = .73$

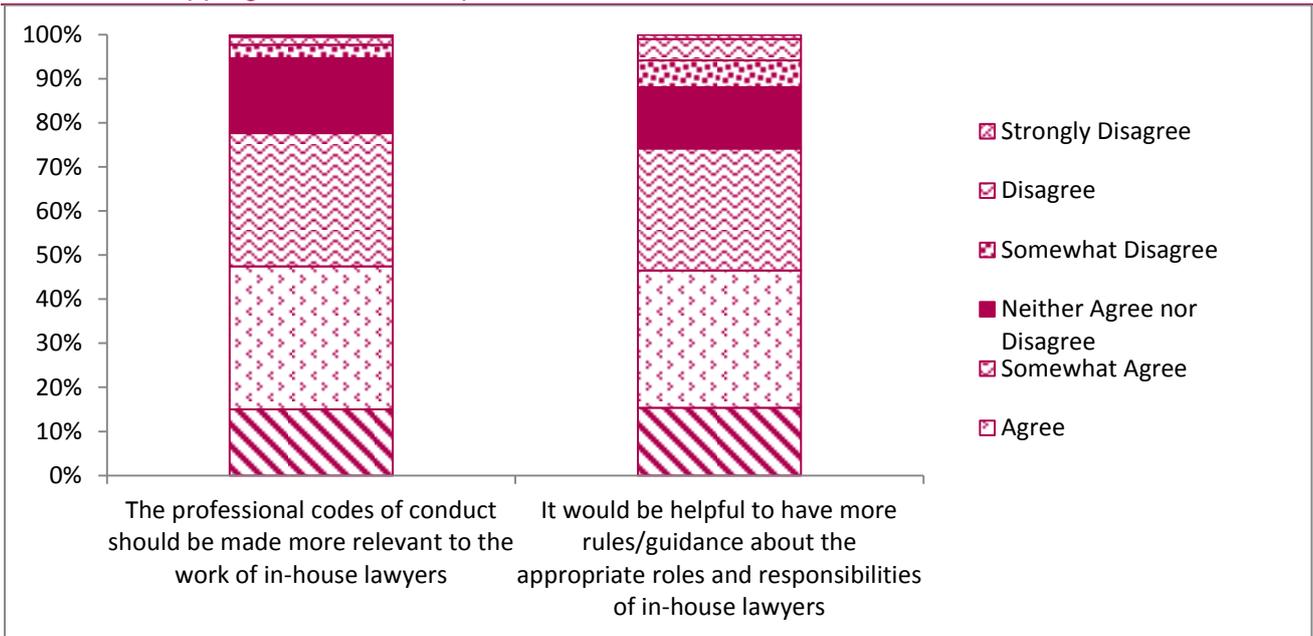


Figure 27: Codes could be more useful

The next questions dealt with whether the respondents felt like there was too much or not enough regulation.⁹⁷

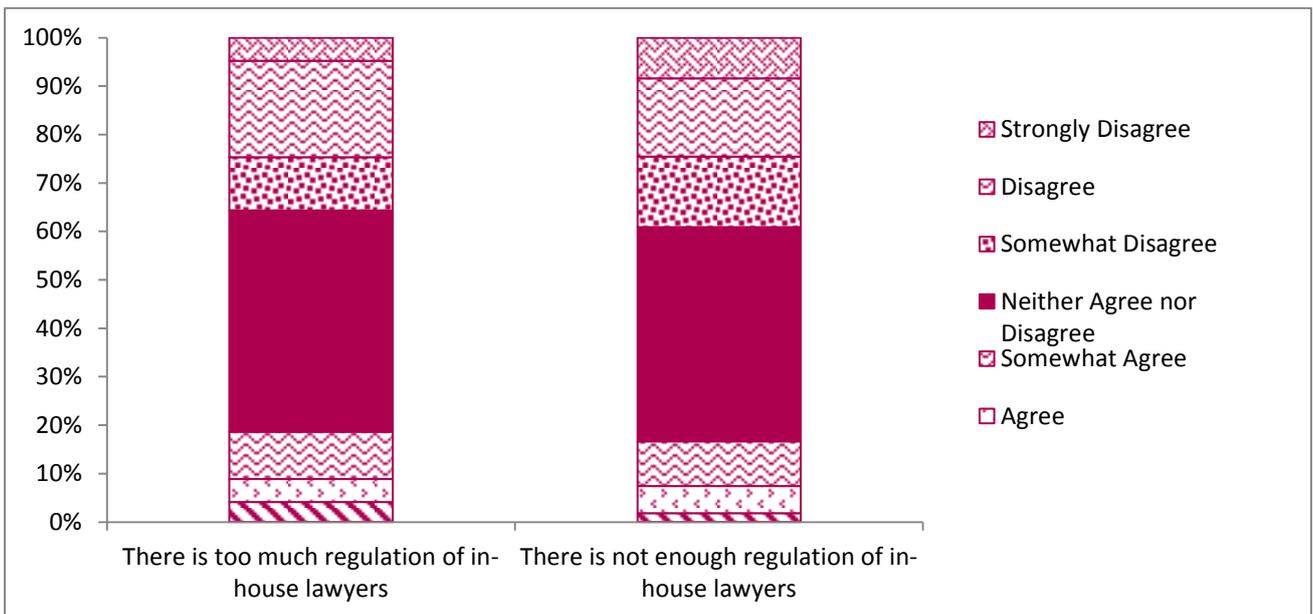


Figure 28: Is there enough regulation of in-house lawyers?

Whilst the tendency of our cohort of in-house lawyers was to disagree with the statement, many of our respondents neither agreed nor disagreed. Perhaps asking about the *volume* of regulation is not

⁹⁷ $\alpha = .57$

the most helpful question unless, as seems unlikely given the other answers in this section, they thought, like a lawyerly Goldilocks, the level of regulation was just right.

Our next two questions dealt with the extent to which respondents claimed that the regulatory codes of conduct were actually used in practice. One of these questions we have already discussed above in the context of ethical infrastructure but it seemed appropriate also to consider it here:⁹⁸



Figure 29: Utility of codes

In spite of the low levels of ethical discussion and training, a majority our respondents indicate that the codes have a material day to day impact. These two bits of data are difficult to reconcile: our own dealings with in-house lawyers lead us to suspect the impact of the Code is not generally material day to day. Finally we asked whether the Solicitors' Code of Conduct addresses the needs of in-house lawyers well. More disagreed than agreed.

⁹⁸α= .59



Figure 30: Code addresses need of in-house lawyers

SUMMARY – ETHICAL INFRASTRUCTURE

This chapter examined the level of formal and informal professional ethical infrastructure within our respondents’ organisations.

Formal infrastructure looked at training and written guidance. A high proportion of respondents indicated in essence that there was no formal infrastructure, or that where guidance is issued or training takes place that this occurs only every few years. In terms of guidance and training, professional ethics looks like a low priority, not much supported by these processes.

Our measure of informal infrastructure sought data on internal or external discussion and communication around ethics. Although informal infrastructure was more commonly in place, it is again noticeable that communication, even informally, around professional ethical issues is infrequent and for some does not occur at all, unless ethical discussion are taking place without the respondents framing them as in terms of ‘ethics’. Indeed, 7 percent of respondents indicated that they *never* discussed professional ethics issues with colleagues internally or externally, formally or informally.

In terms of regulatory attitudes, the data of most note was a fairly high level of agreement that the Codes of Conduct should be made more relevant to the work of in-house lawyers and that it would be helpful to have more rules/guidance about their roles and responsibilities.

8

Board attendees and time in-house

In this short chapter we deal with some issues of general interest on which our data can shed some light. Board participation by in-house lawyers is a subject of some interest and controversy amongst in-house lawyers. We can examine whether board attendees are somehow different on our indicators than non-board attendees. We also look at the issue of in-house experience.

BOARD ATTENDANCE

An interesting question is whether board attendance may have some relationship with the outlook of in-house lawyers. There is a vigorous debate about the appropriateness of board attendance and its fit with the role of GC. The debate goes to the heart of the tension between the in-house lawyer as an independent and wise counsellor and the in-house lawyer as a commercially oriented, team-playing decision-maker whose advice is sought out and respected. There is a risk that a lawyer attending the board may be seen and may act as subservient to the directors,⁹⁹ and/or than in attending the board the in-house lawyer becomes captured by it and so loses the potential for shaping the board's actions.¹⁰⁰ The in-house lawyer's client is the corporation, not the board.

The flip side is that board attendance may strengthen the connection between the in-house lawyer and the board (which in turn may make the board more willing to accept advice from the lawyer), and allow the in-house lawyer to have a closer, better insight to what the board does and the information it receives.¹⁰¹ Such attendance also, in theory, allows the board to have quick and direct access to independent legal advice.¹⁰² Board attendance is also seen as a mark of career progression and status. Lawyers attending the board do not, however, act as guarantors or guardians of ethicality. A General Counsel attended Enron's board meetings.¹⁰³ There is also some evidence that lawyers who attend or sit on the board are more likely to be appointed (in due course) the CEOs of their companies than those who do not.¹⁰⁴ Whether or not this is a good thing is debateable.

Lawyers that were on *or* attended the board showed significant differences from those who were not on the board in the following terms:

1. They were likely to hold stronger ethical, exploitation of uncertainty, and independence orientations and less strong neutral advisor orientations. A commercial orientation was only

⁹⁹ Robert E Rosen, *Lawyers in Corporate Decision Making* (Quid Pro Books 2010) 239.

¹⁰⁰ See the discussion in: Tanina Rostain "General Counsel in the Age of Compliance: Preliminary Findings and New Research Questions." (2008) 21 *Geo. J. Legal Ethics* 465.

¹⁰¹ *ibid*, 485-486

¹⁰² Jill E. Fisch and Kenneth M. Rosen. "Is There a Role for Lawyers in Preventing Future Enrons?." (2003) 48(4) *Villanova Law Review* 1097; E. Norman Veasey, 'Separate and Continuing Counsel for Independent Directors: An Idea Whose Time Has Not Come as a General Practice' (2004) 59 *BUS. LAW.* 1413

¹⁰³ For a discussion of his role, see: Deborah DeMott, "The discrete roles of general counsel." (2005) *Fordham Law Review* 74 .

¹⁰⁴ *ibid*

marginally stronger than those not on or attending boards.¹⁰⁵ The overall impact of board attendance is not clearly in a positive or negative direction overall, and may well depend on other contextual factors.

Table 22: In-house lawyer roles by board attendance

	Member or attends the board		Non member		ANOVA	
	Mean	SD	Mean	SD	<i>F</i>	<i>p</i>
Commercial	6.51	0.61	6.31	0.72	3.64	.06
Ethical	6.26	0.78	5.95	0.78	7.17	.01
Exploit uncertainty	4.12	1.29	3.72	1.18	5.03	.03
Independence	6.30	0.77	5.93	0.94	7.14	.01
Neutral advisor	4.99	1.45	5.57	1.15	10.73	.00

2. Lawyers that were on or attended the board rated the organisations where they worked more positively in terms of their relationship with the business.

Table 23: Relationship with business by board attendance

	Member or attends the board		Non member		ANOVA	
	Mean	SD	Mean	SD	<i>F</i>	<i>p</i>
Resistant /Negative relationship with the business	3.83	1.40	4.61	1.24	17.18	.00
Positive/ Supportive relationship with the business	5.56	1.23	4.74	1.43	15.34	.00
Uneven relationship with the business	5.39	1.21	5.83	0.99	8.05	.00

3. They tended to say they used all three constellations of professional principles more frequently.

¹⁰⁵ This difference was only marginally significant.

Table 24: Professional principles by board attendance

	Member or attends the board		Non member		ANOVA	
	Mean	SD	Mean	SD	F	p
Independence and Legality	4.19	0.80	3.95	0.76	4.36	.04
Effectiveness and Integrity	4.78	0.33	4.64	0.45	4.82	.03
Client Interests	4.67	0.47	4.51	0.58	3.73	.05

The data is shown graphically in

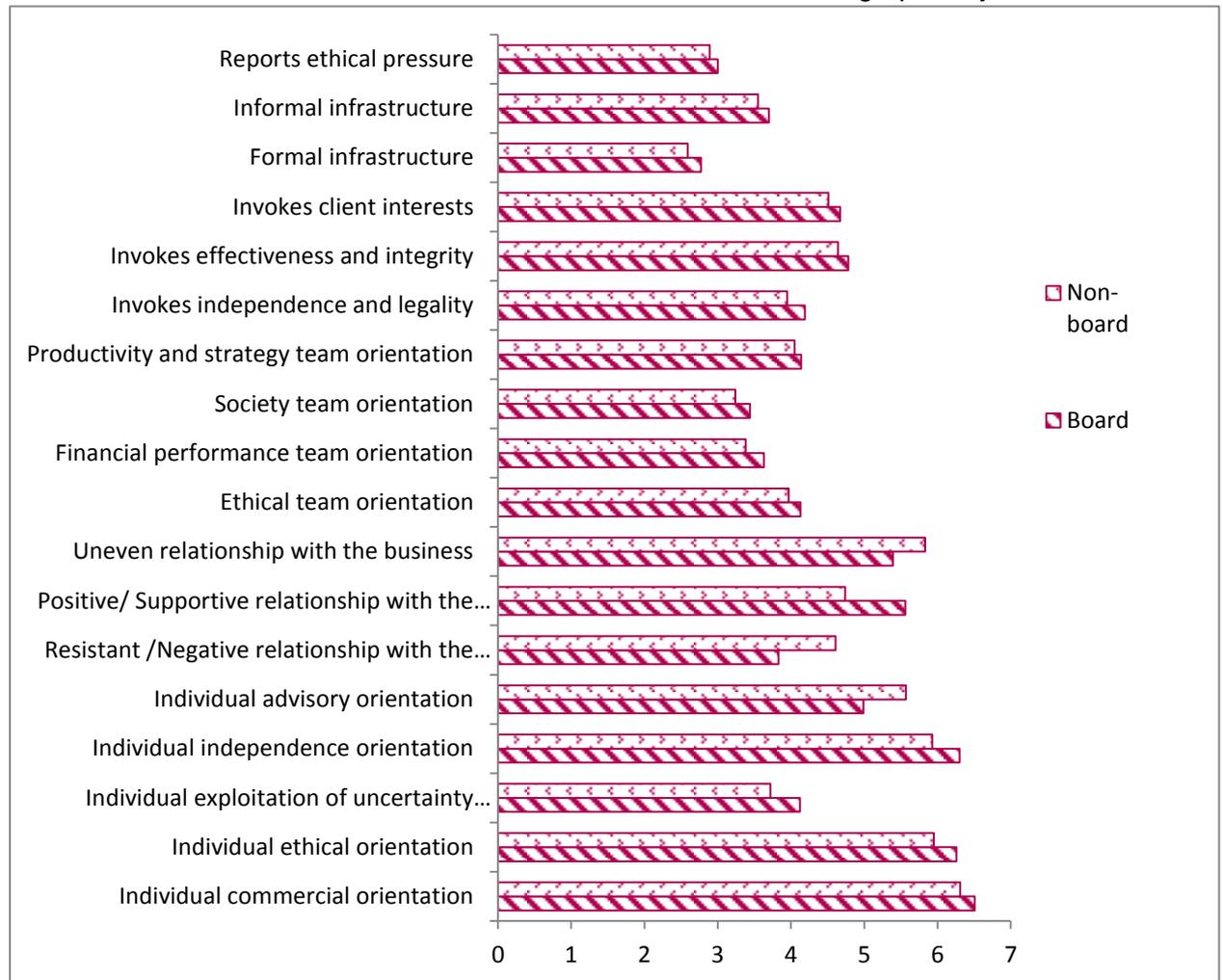


Figure 31 to provide an overview. Board attendance is not associated with striking or strong differences on this picture.

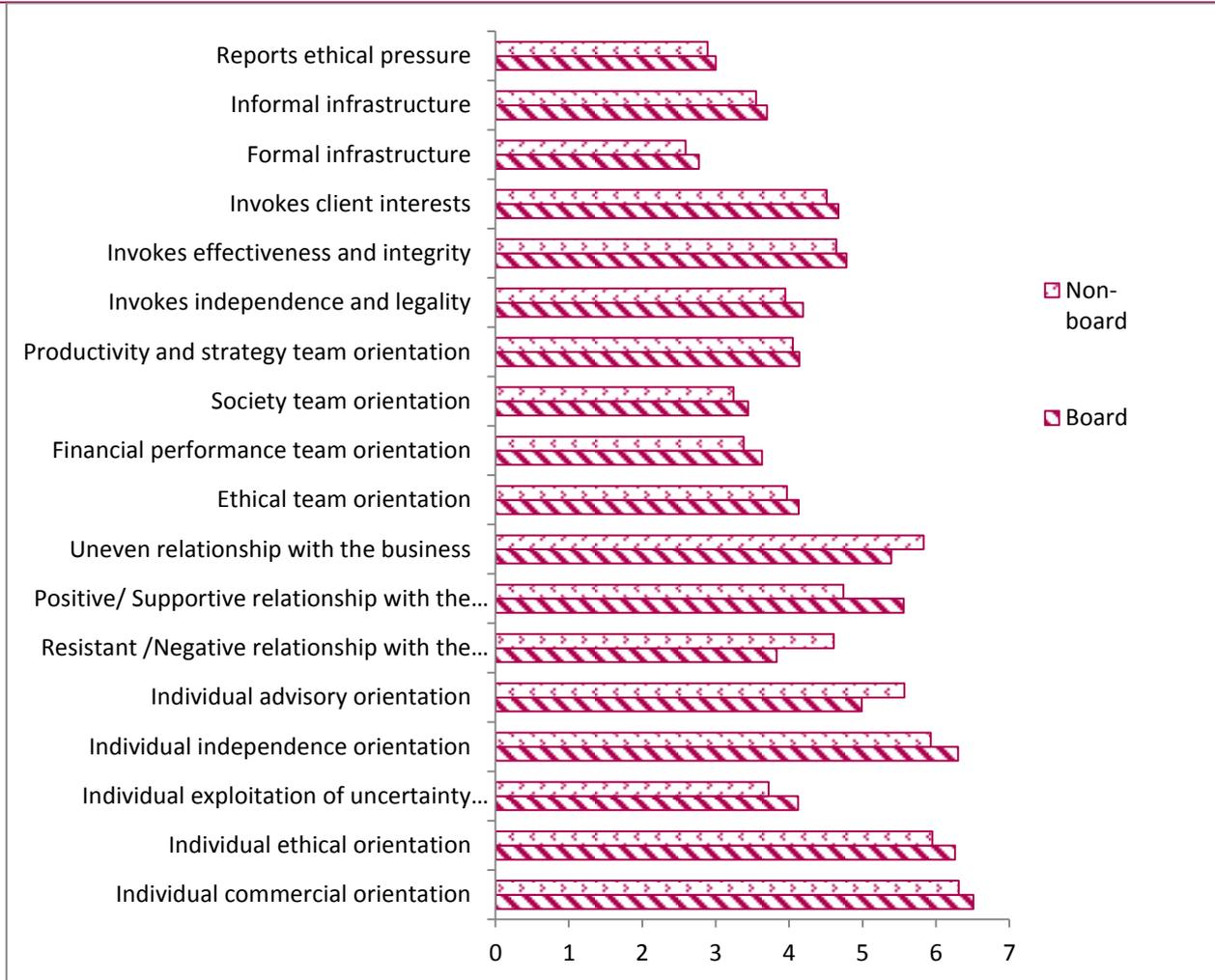


Figure 31: Board members/attendees compared on orientations etc.

YEARS SPENT WORKING IN-HOUSE

Another issue of some interest is whether the outlook and approach of in-house lawyers may change over time. The variable 'years of working in-house' was recoded into four categories (0-5, 6-10, 11-15 and > 15 years). The data analysis is summarised in Table 25.

Statistically significant differences were found for the 'Ethical orientation' and the 'Independence orientation'. In particular:¹⁰⁶

- Statistically significant differences between those working in-house for fewer than 5 years and those working in-house for more than 15 years regarding the views of in-house layer role in terms of ethicality and independence, with the more experienced group having stronger orientations to ethicality and independence.

¹⁰⁶ Differences between groups were established through Tukey pairwise multiple comparisons.

- No significant differences were found among the groups regarding their ratings of the type of relationship with the business.
- Statistically significant differences were found in ratings of team society orientation, according to the number of years working in-house. The difference on ratings of team orientation for society issues was found between those working in-house for 6-10 years (that had a particularly low societal orientation) and those working for more than 15 years.
- No significant differences were found among the groups regarding their ratings of professional principles.
- No significant differences were found among the groups regarding their ratings of ethical infrastructures.
- Statistically significant differences were found in ratings of ethical pressure, according to the number of years working in-house, with differences found between those working in-house for 0-5 and 6-10 years and those working for more than 15 years.

Table 25: Components examined by years working in-house

	Years working in-house								p
	0-5		6-10		11-15		>15		
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	
<i>Individual orientations</i>									
Commercial	6.33	0.7	6.38	0.62	6.26	0.82	6.27	0.8	0.64
Ethical	5.89	0.84	5.88	0.8	6.05	0.63	6.16	0.78	0.03
Independence	5.8	0.96	5.93	0.93	5.95	0.98	6.26	0.84	0
Neutral advisor	5.59	1.18	5.57	1.02	5.39	1.13	5.31	1.45	0.26
Exploit uncertainties	3.66	1.15	3.81	1.15	3.62	1.18	4.01	1.29	0.1
<i>Relations with the business</i>									
Resistant / Negative relationship with the business	4.52	1.27	4.63	1.31	4.61	1.35	4.33	1.26	0.39
Positive / Supportive relationship with the business	4.88	1.43	4.67	1.31	4.73	1.54	5.03	1.48	0.3
Uneven relationship with the business	5.77	1.07	5.88	1.07	5.72	0.88	5.69	1	0.56
<i>Team orientations</i>									
Ethical	4.00	0.82	3.87	0.73	4.03	0.63	4.03	0.69	0.36
Financial performance	3.43	0.98	3.5	1	3.33	1.04	3.29	1.05	0.49
Society	3.35	1.04	3.03	1.01	3.28	0.96	3.38	0.97	0.05
Productivity and Strategy	4.13	0.69	4.08	0.74	3.92	0.75	3.98	0.76	0.2
<i>Professional principles</i>									
Independence and Legality	4.01	0.7	3.92	0.81	3.99	0.77	4.03	0.79	0.73
Effectiveness and Integrity	4.63	0.47	4.66	0.4	4.63	0.47	4.7	0.41	0.61
Client Interests	4.55	0.57	4.52	0.61	4.42	0.56	4.57	0.56	0.41
<i>Ethical infrastructure</i>									
Formal infrastructure	2.57	1.41	2.55	1.21	2.66	1.4	2.62	1.36	0.96
Informal infrastructure	3.53	1.5	3.52	1.48	3.44	1.53	3.72	1.55	0.65
<i>Ethical Pressure</i>									
	2.8	0.96	2.79	0.92	2.91	0.95	3.19	1.1	0.01

The data implies that ethical pressure increases with seniority and/or experience. The same data was also analysed through linear regression. In those analyses, the number of years working in-house was a significant predictor of the views of the in-house lawyer role in terms of 'ethicality', 'exploitation', and 'independence', as well as of ratings of 'ethical pressure', with lawyers working in-house for more years showing a tendency to agree more with these views. In contrast, lawyers working in-house for more years showed lower ratings of 'moral disengagement' than those working in-house for fewer years, although the effect was modest in size.¹⁰⁷

SUMMARY – BOARD ATTENDEES AND AGE

There were some signs that those of our respondents who attended boards had different orientations. They were likely to hold stronger ethical, exploitation of uncertainty, and independence orientations and less strong neutral advisor orientations. A commercial orientation was only marginally stronger than for those not on or attending boards.

Lawyers that were on or attended the board rated the organisations where they worked more positively in terms of their relationship with the business. They also tended to say they used all three constellations of professional principles more frequently.

As we will see in the Chapters which follow some of these orientations suggest board membership may be more ethically problematic (such as an exploitation of uncertainty orientation in particular) and others are ethically positive. In broad terms, board membership may accentuate the agency of the individual lawyer (they may become a bit more ethically oriented or a bit more commercial oriented and a bit less likely to see themselves as a mere advisor) but the nature of the role, individual and context are likely as or more important and we do not in general see strong differences associated with Board membership.

¹⁰⁷ $R^2 = .01$

9

What can we say about in-house ethicality?

In the report so far we have sought to outline differences within our sample of in-house lawyers. We have described how they see their role and line management orientations and examined different levels of pressure within their organisation. We have looked to articulate and measure different ways in which the in-house role is conceptualised by our respondents; what the orientation of their teams is perceived to be; and how they prioritise their professional principles. Finally we have examined professional ethical infrastructure.

Much of this data speaks for itself – outlining differences within the in-house community and highlighting areas of potential concern. In this section of the report we take the debate a step further to look at linkages between those things that we have discussed so far and broader, externally validated indicators of ethical inclination for moral attentiveness and moral disengagement.

MORAL ATTENTIVENESS

One predictor of ethical inclination we use is moral attentiveness. This is examined across two dimensions: “perceptual moral attentiveness, the extent to which the individual recognizes moral aspects in everyday experiences, and reflective moral attentiveness, the extent to which the individual regularly considers moral matters.”¹⁰⁸ A more morally attentive person is more likely to recall and report morally related behaviour, and moral attentiveness is associated with more moral behaviour.¹⁰⁹ Interestingly, this inclination may be influenced by the environment: positive forces – such as an improved ethical infrastructure - can induce more moral attentiveness as can more negative experiences.¹¹⁰

We used Reynolds’ moral attentiveness scale.¹¹¹ *Perceptual moral attentiveness* (Figure 33) is an indicator of the extent to which an individual frequently recognises moral problems.¹¹² We see a fairly even split between those who perceive ethical problems in their work and those tending not to.

¹⁰⁸ Reynolds. S (2008), “Moral Attentiveness: Who pays attention to the moral aspects of life?” 93(5) Journal of Applied Psychology 1027-1041

¹⁰⁹ Ibid

¹¹⁰ Scott J Reynolds, ‘Moral Attentiveness: Who Pays Attention to the Moral Aspects of Life?’ (2008) 93 Journal of Applied Psychology 1027.

¹¹¹ n 51 above

¹¹² The scale was reliable: $\alpha = .88$

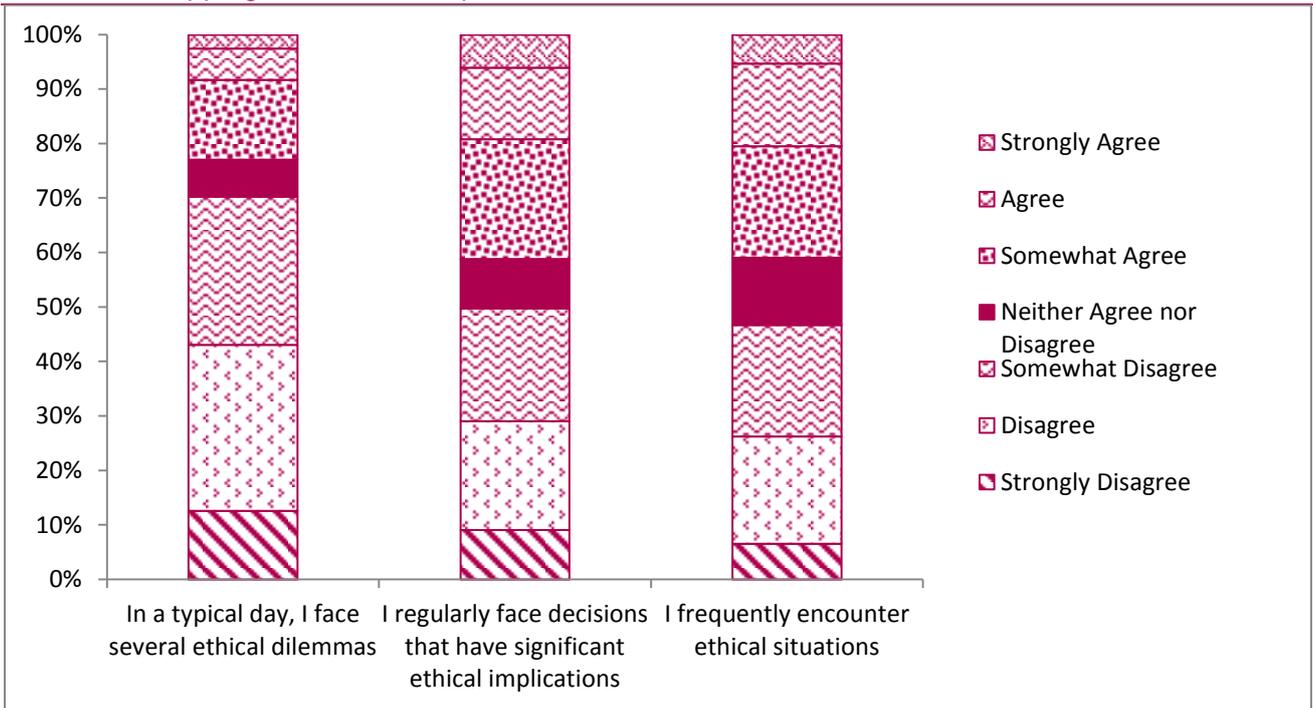
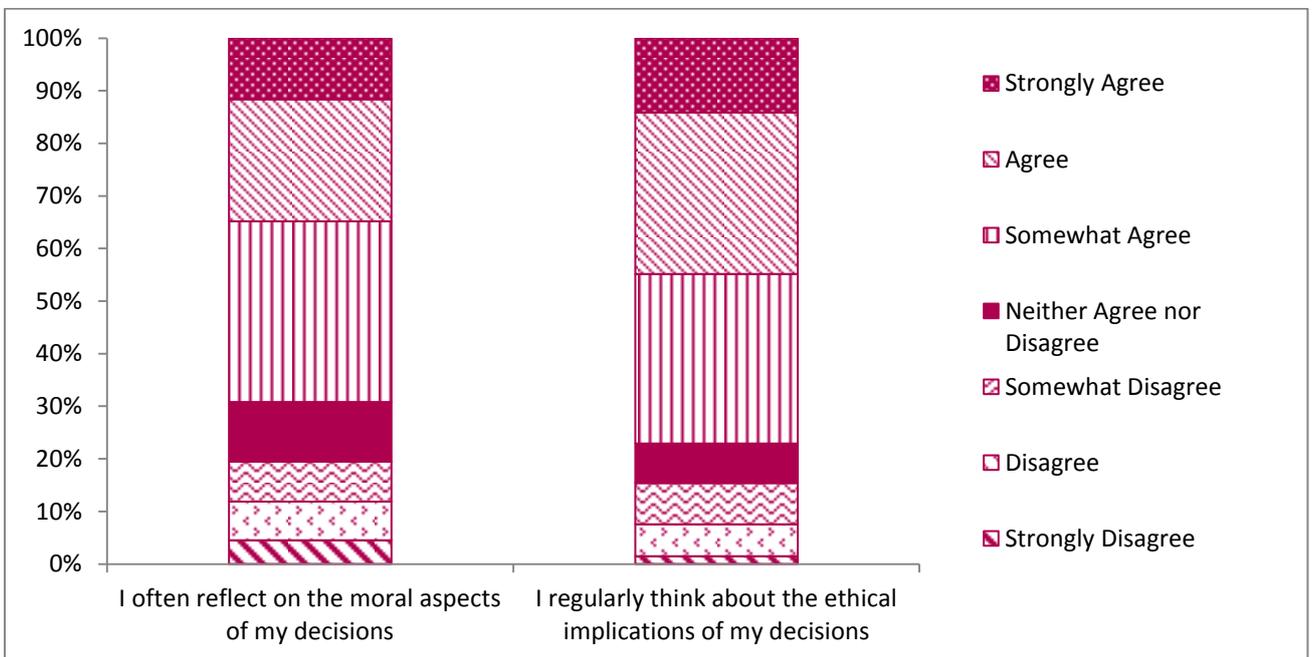


Figure 32: Perceptual moral attentiveness

The second component deals with reflective moral attentiveness (Figure 34).¹¹³ We see a greater readiness in the respondents to say they think about the moral aspects of problems or the ethical implications of their decisions.



¹¹³α= .80

MORAL DISENGAGEMENT

Moral disengagement is our other indicator of ethical inclination. It is said to explain a significant proportion of in-work relevant behaviour.¹¹⁴ The authors of the measure of moral disengagement “cautiously” suggest it is, “the strongest *individual* predictor of unethical behaviour identified to date,”¹¹⁵ as well as being a practical test for adult respondents which is not generally prone to significant social desirability biases (respondents are not likely to answer in ways significantly influenced by the desire to look good). It is possible also that moral disengagement is particularly important in organisational contexts, as Moore notes:¹¹⁶

The workplace provides ample opportunities for moral disengagement: organizations tend to be hierarchical, providing opportunities for the displacement of responsibility; work is often undertaken within teams, providing opportunities for the diffusion of responsibility; organizational membership automatically defines the boundaries of an in-group, providing opportunities for moral justification (to protect the organization) and the cognitive minimization of the consequences of one’s actions for those who are outside the organization (and thus in an out-group). The propensity to morally disengage might also be particularly damaging in organizational life because work contexts have been documented as triggering amoral frames of judgment. As Jackall pointed out in Moral Mazes, organizations are particularly effective at assisting individuals in bracketing off moral schemas that guide behavior elsewhere. Thus, the propensity to morally disengage is likely to be particularly relevant in the prediction of unethical behavior in organizations.

Moore et al’s scale proved reliable with our set of respondents.¹¹⁷ Based on eight questions,¹¹⁸ it provides a univariate (single variable) measure of relative disengagement. We do not use the measure to ascertain, in an absolute sense, that in-house lawyers display worrying levels of moral disengagement. Rather we use the scale to ascertain which in-house lawyers are more or less morally disengaged than others. The differences we report are statistically significant but usually modest in size. However, even small differences in moral disengagement have been associated with a significant (but modest) increase in a propensity to behave unethically.¹¹⁹

Collectively we refer to these measures of moral attentiveness and disengagement as indicators of ethical inclination. Lower levels of moral attentiveness and higher levels of moral disengagement predict unethical conduct but they do not guarantee it. As such, they are proxies for ethicality: we

¹¹⁴Moore and others (n 5).

¹¹⁵ibid 40. Environmental /situational influences may for example be contrasted with influences deriving from the individual.

¹¹⁶ibid 11.

¹¹⁷ $\alpha = .84$

¹¹⁸ These were: (1) It is okay to spread rumours to defend those you care about; (2) Taking something without the owner's permission is okay as long as you're just borrowing it; (3) Considering the ways people grossly misrepresent themselves, it's hardly a sin to inflate your own accomplishments a bit; (4) People shouldn't be held accountable for doing questionable things when they were just doing what an authority figure told them to do; (5) People can't be blamed for doing things that are technically wrong when all their friends are doing it too; (6) Taking personal credit for ideas that were not your own is no big deal; (7) Some people have to be treated roughly because they lack feelings that can be hurt; and (8) People who get mistreated have usually done something to bring it on themselves.

¹¹⁹Moore and others (n 5).

can examine our data on in-house lawyers for signs that environment, role conception, approach to professional rules, etc., have some relationships with ethical inclination, but what we are *not* saying is that our data ‘proves’ certain groups of in-house lawyers are unethical. Such proof is unavailable and what we are able to show is something more subtle: what is likely to influence or be associated with ethicality.

WHICH ORIENTATIONS ARE INDEPENDENTLY ASSOCIATED WITH ETHICALITY?

We look here at individual role orientations as potential predictors of each of the three indicators of ethicality in our data (i.e., perceptual moral attentiveness, reflective moral attentiveness, and moral disengagement).

Three linear regression models were deployed to estimate the independent contribution of each orientation to predict moral disengagement and the two measures of moral attentiveness.¹²⁰ So, in Table 26, by way of example, we can see associations between our measures of ethical inclination and (say) an ethical orientation separately from any association with independence orientation.

What this shows is that a stronger commercial orientation is associated with significantly lower perceptual moral attentiveness but significantly higher reflective moral attentiveness. Thus the more commercially oriented in our sample were less likely to perceive problems as moral ones but more likely to think about problems in moral terms. Whilst the stronger impact of the two was for perceptual moral attentiveness, this is an intriguing but inconclusive combination of results suggesting some ethical ambiguity around a commercial orientation.

¹²⁰The five role orientations enabled explanation of 9% of variance in perceptual moral attentiveness, 9% of variance in reflective moral attentiveness and 15% variance in moral disengagement (see table below).

Table 26: Associations between orientations and moral attentiveness and disengagement

Outcome variable	Predictors - orientation	β	Sig.	η^2
Perceptual moral attentiveness	Commercial	-.264	.000	.06
	Ethical	.212	.000	.04
	Exploitation	.072	.153	.00
	Independence	.087	.085	.01
	Neutral advisor	-.032	.531	.00
		$R^2 =$.09	
Reflective moral attentiveness	Commercial	.269	.012	.01
	Ethical	.009	.000	.06
	Exploitation	.114	.863	.00
	Independence	.030	.025	.01
	Neutral advisor	-.133	.549	.00
		$R^2 =$.09	
Moral disengagement	Commercial	-.065	.211	.00
	Ethical	-.219	.000	.04
	Exploitation	.249	.000	.06
	Independence	-.130	.008	.02
	Neutral advisor	-.059	.221	.00
		$R^2 =$.15	

As one might expect, an ethical orientation predicted higher perceptual and reflective moral attentiveness and lower moral disengagement. An ethical orientation was thus positively associated with our externally validated measures of ethical inclination.

An independence orientation also predicted higher reflective attentiveness and lower moral disengagement, albeit more weakly. The exploitation uncertainty orientation did not predict moral attentiveness, but did predict greater moral disengagement, indicating a positive association with this measure of concern. A neutral advisor orientation did not independently influence any indicators of ethical inclination.

In broad terms, then, our data suggests predictable associations between ethical and exploitation of uncertainty orientations, and a more complex but somewhat negative position in relation to commercial orientation.

CLUSTER ANALYSIS - INCLINATION TO ETHICALITY

A further, higher-level view of the data can be gained through cluster analysis, which allows to us examine whether different profiles of lawyers can be established in relation to their inclination to ethicality.

Cluster analysis is an exploratory multivariate data analysis technique which allows to group our respondents into (broadly) homogeneous groups. Cases are classified according to their similarity in relation to a number of pre-defined attributes. We use it here to explore whether there are common groups or patterns of profiles of lawyers in terms of their inclination to ethicality. As lower levels of moral attentiveness and higher levels of moral disengagement have been shown in other studies to predict a greater inclination to behave unethically we classified our respondents on these three indicators (see appendix B).¹²¹

The analysis produced four clusters.

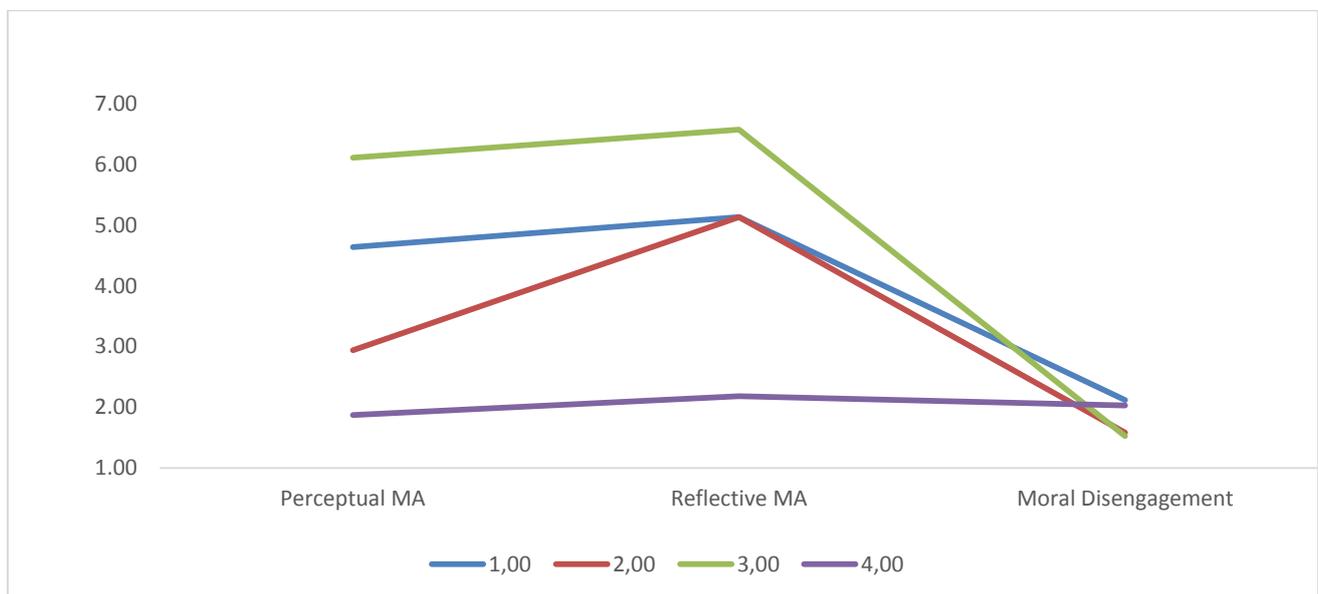


Figure 34: Clusters – Moral attentiveness and moral disengagement

The clusters that emerged using Ward’s Method showed significant differences for moral attentiveness (perceptual and reflective) and moral disengagement.¹²² Statistically significant different levels of moral attentiveness and disengagement are shown in Table 28 below.

Group 1 we are calling the **Capitulators**: they experienced the second highest levels of ethical pressure and had moderately high perceptual and reflective moral attentiveness and yet also significantly higher levels of moral disengagement. They saw moral challenges and thought about moral challenges but appeared to have begun to disengage in response. Eighty-nine respondents were in this group.

¹²² p < .001

Group 2 we are calling the **Coasters**. This was the largest group by some distance: 213 respondents were in it. They had moderately low levels of perceptual moral attentiveness but moderately high reflective moral attentiveness. Yet they also had lower levels of moral disengagement than Group 1 and Group 4. This position was seen in the context of the second lowest levels of ethical pressure. Hence we speculate that this group is not yet being tested or testing itself in ethical terms.

Group 3 we are calling the **Champions** as they had significantly higher perceptual and reflective moral attentiveness than the other groups and were also experiencing the greatest ethical pressure. They also (along with Group 2) had the lowest moral disengagement. This group had 48 respondents.

Group 4 contained 47 respondents. It was our smallest group and the one of most concern: we are calling them the **Comfortably Numb**. They showed a significantly higher level of moral disengagement than Groups 2 and 3 and the lowest levels of moral attentiveness on both indicators.

Table 27: Clusters – Moral attentiveness and moral disengagement

	Capitulators		Coasters		Champions		Comfortably Numb		ANOVA	
	Group 1 n = 89		Group 2 n=213		Group 3 n=48		Group 4 n=43		F	P
	Mean	SD	Mean	SD	Mean	SD	Mean	SD		
Perceptual Moral attentiveness	4.64	.61	2.94	.94	6.11	.55	1.87	.70	324.2	.00
Reflective Moral attentiveness	5.13	.54	5.13	.96	6.57	.48	2.18	.65	261.0	.00
Moral disengagement	2.12	.68	1.58	.52	1.52	.64	2.03	.81	21.51	.00

CHARACTERISATION OF THE CLUSTERS

A multivariate analysis of variance was conducted to examine the key characteristics of the clusters looking at types of lawyer and sector, individual and team orientations, use of professional principles, ethical infrastructure and relations with the business. This analysis tells us whether there are significant associations between each of the clusters and these variables. For example, are Champions more likely to be found in business or public sectors; are they more likely to be male or female? Are the Comfortably Numb more likely to be commercially oriented? And so on.

Table 28 and Appendix B summarises the results of our analysis looking at the characteristics of our four clusters. There were no significant differences across the clusters in terms of post qualification experience, size of legal team, gender, use of professional principles or work identity.

As previously described, our **Champions** are the most ethically vigilant and least morally disengaged but also under the most ethical pressure. The analysis enables us to describe the characteristics associated with this cluster and so suggest (but not prove) that such characteristics are associated with greater ethicality (as measured by moral disengagement and attentiveness).

- Champions had fewer business but more public sector lawyers and (possibly relatedly) more barristers than other groups. Thus 8 percent of business lawyers were classified as Champions, compared to 20 percent of public sector lawyers.
- Champions worked in teams with higher perceived ethical and societal orientations than the other groups.
- Champions had higher individual ethical orientation than the other groups.
- Champions had a higher independence orientation than the Capitulators and the Comfortably Numb, suggesting a link between independent and ethical conceptions of the in-house role and inclination to behave ethically.
- Champions invoked independence and legality principles more than Coasters and the Comfortably Numb, and effectiveness and integrity principles more than Capitulators and the Comfortably Numb.
- Champions had stronger formal and informal ethical infrastructure than the Coasters and the Comfortably Numb.
- In comparison with the Comfortably Numb, Champions had a more negative relationship with the business and had weaker/less even relations with the business. Champions also had fewer inexperienced in-house lawyers than the Comfortably Numb.

The Capitulators present an interesting contrast with the Champions. The Capitulators' view of the in-house role was less emphatic on independence and ethical orientation but was in other ways similar, yet they were somewhat more morally disengaged.

The Comfortably Numb present a set of clearer differences.

- They had the highest level of uneven relations with their employer
- They had the lowest ethical team orientation
- They had lower resistant/negative relations than the Capitulators and the Champions
- Their teams had a lower society orientation than the Capitulators and the Champions
- They had a lower rating for formal and informal ethical infrastructure than the Capitulators and the Champions
- Compared to the Champions, they had lower individual ethical and independence orientations and they were less likely to invoke professional principles of independence and legality, and effectiveness and integrity.

The main difference between the Coasters and the Comfortably Numb was the Coasters had a stronger ethical orientation.

Table 28: Summary of Cluster Analysis

1 Capitulators (n= 89)	2 Coasters (n= 213)	3 Champions (n= 48)	4 Comfortably Numb (n= 47)
Mid/High Perception Mid Reflection Higher Disengagement More public sector workers	Low/Mid Perception Mid Reflection Lower Disengagement Fewer public sector workers	Higher Perception High Reflection Lower Disengagement More years in house than 4 More barristers or advocates Fewer business, more public sector workers	Low Perception Low Reflection Higher Disengagement
Lower ethical and independence orientation than 3	In-House Lower ethical orientation than 3	Role Highest ethical orientation Higher independence rating than 1 and 4	Lower ethical and independence orientation than 3
Higher resistant/negative relations with the business than 2 and 4. Lower uneven relations than 4	Relations with Lower resistant/negative relations than 1 Lower uneven relations than 4	Business Higher resistant/negative relations with the business than 4 Lower uneven relations than 4	Lower resistant/negative relations than 1 and 3 Highest uneven relations
Higher ethical orientation than 4 Higher society orientation than 4	Team Higher ethical orientation than 4	Orientation Highest ethical orientation Highest society orientation	Lowest ethical orientation Lower society orientation than 1 and 3
Lower invocation of effectiveness and integrity than 3	Professional Lower invocation of independence and legality than 3	Principles Higher invocation of independence and legality than 2 and 4 Higher invocation of effectiveness and integrity than 1 and 4	Lower invocation of independence and legality than 3 Lower invocation of effectiveness and integrity than 3
Higher rating of formal and informal infrastructure than 4	Ethical Lower rating of formal and informal infrastructure than 3	Infrastructure Higher rating of formal and informal infrastructure than 2 and 4	Lower rating of formal and informal infrastructure than 1 and 3
Second highest	Ethical Second lowest	Pressure Highest	Lowest

DIFFERENCES IN RANKINGS ACROSS CLUSTERS

As we noted above, the importance of difference in individual orientation, or team orientation, or the invocation of professional principles may be found in the way they ranked each of the elements of these orientations relevant to the other. Respondents from the commercial world, for example, tended to agree more strongly that everything ‘good’ was important or very important but if we looked at the relative importance they placed on the very important and the important a more distinctive picture emerged. To give a specific example, commercial lawyers tended to rate both ethics and commerciality highly as individual orientations (more highly than public and third sector lawyers) but when we looked at the relative ranking of these orientations it suggested that the commercial orientation might be the most consistently strongest orientation.

As a result we repeated an analysis of the clusters looking at rankings of our orientations by our respondents. Statistically significant differences were found across our four clusters in the relative importance attributed to the various orientations.

For individual orientations significant differences were found in rankings of commercial¹²³ and ethical orientations,¹²⁴ and a marginally significant difference in rankings of neutral advisor orientation.¹²⁵ In particular, we see the following differences:

- The Comfortably Numb were most likely to rank commercial orientation the most highly compared to the Capitulators,¹²⁶ Coasters,¹²⁷ and Champions.¹²⁸
- As we can see below, 70 percent of the Comfortably Numb ranked a commercial orientation the most strongly of the orientations. The Coasters were also significantly more commercially oriented on this measure than the Champions.¹²⁹

¹²³ $\chi^2_{KW}(3) = 12.11; p = .007, \eta^2 = .03$

¹²⁴ $\chi^2_{KW}(3) = 15.46; p = .001, \eta^2 = .04$

¹²⁵ $\chi^2_{KW}(3) = 7.62; p = .055, \eta^2 = .02$

¹²⁶ $\rho = .029$

¹²⁷ $\rho = .031$

¹²⁸ $\rho = .001$

¹²⁹ $\rho = .019$

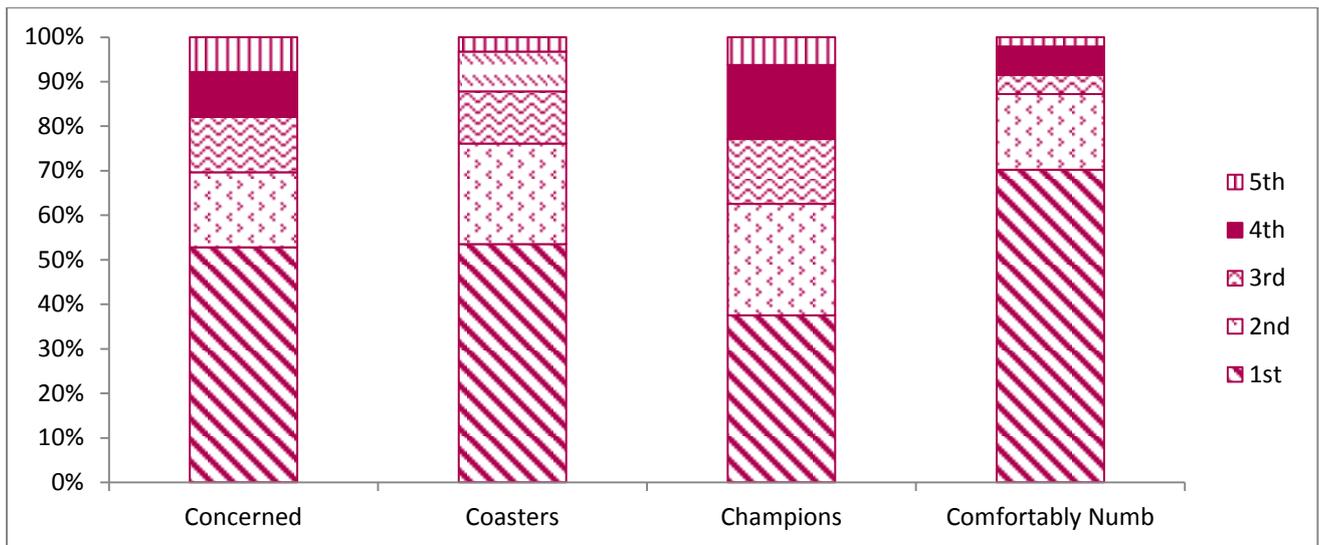


Figure 35: Commercial orientation ranking by clusters

- Higher rankings were attributed to ethical orientation by the Champions than the Capitulators,¹³⁰ the Coasters,¹³¹ and the Comfortably Numb.¹³²
- As we can see, over 40 percent of the Champions ranked the ethical orientation first and 80 percent first or second.

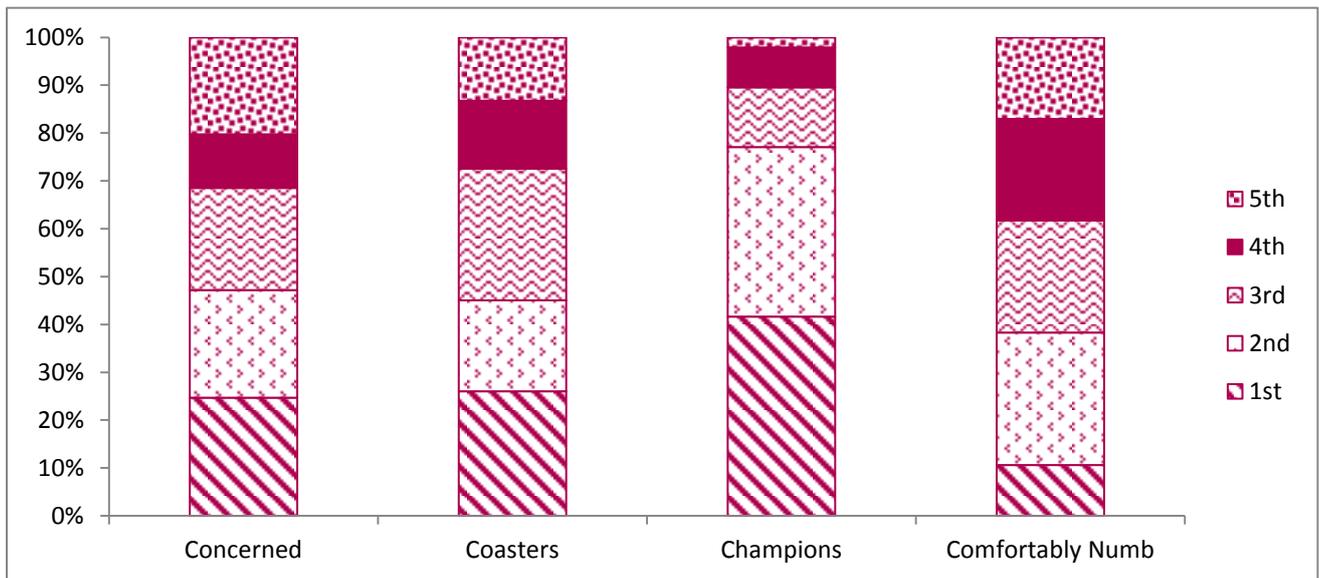


Figure 36: Ethical orientation ranking by clusters

- Champions ranked a neutral advisor orientation lower than Capitulators,¹³³ Coasters¹³⁴ and, the Comfortably Numb.¹³⁵

¹³⁰ $p = .003$
¹³¹ $p = .001$
¹³² $p < .001$
¹³³ $p = .008$

- More than half of the Champions ranked the neutral adviser in the bottom two orientations.

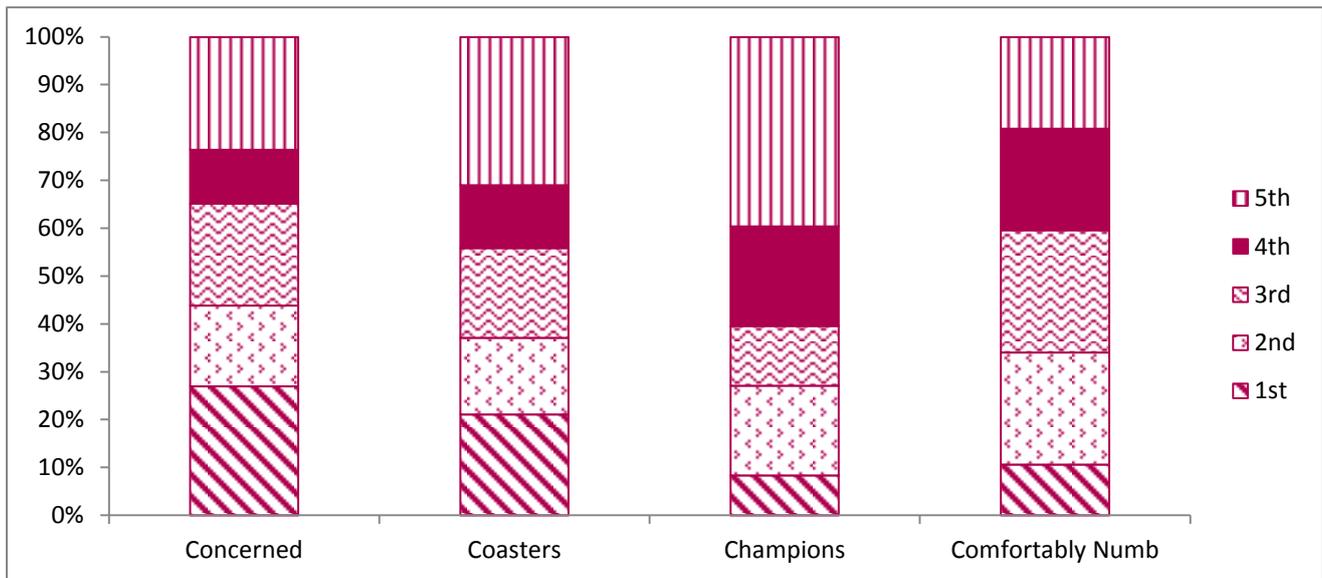


Figure 37: Neutral advisor orientation ranking by clusters

For team orientation, significant differences were found across the four clusters in rankings of ethical orientation,¹³⁶ financial performance,¹³⁷ society orientation,¹³⁸ and productivity and strategy.¹³⁹ In particular:

- The Capitulators were most likely to work within teams with a high ethical orientation . More so than the Coasters,¹⁴⁰ the Champions,¹⁴¹ and the Comfortably Numb.¹⁴²
- The Champions ranked an ethical team orientation more highly than the other orientations when compared to the Coasters¹⁴³ and the Comfortably Numb.¹⁴⁴

¹³⁴ $p = .035$

¹³⁵ $p = .034$

¹³⁶ $\chi^2_{KW}(3) = 21.98; p < .001, \eta^2 = .06$

¹³⁷ $\chi^2_{KW}(3) = 13.75; p = .003, \eta^2 = .04$

¹³⁸ $\chi^2_{KW}(3) = 16.70; p = .001, \eta^2 = .04$

¹³⁹ $\chi^2_{KW}(3) = 15.23; p = .002, \eta^2 = .04$

¹⁴⁰ $p = .025$

¹⁴¹ $p = .069$

¹⁴² $p = .009$

¹⁴³ $p < .001$

¹⁴⁴ $p < .001$

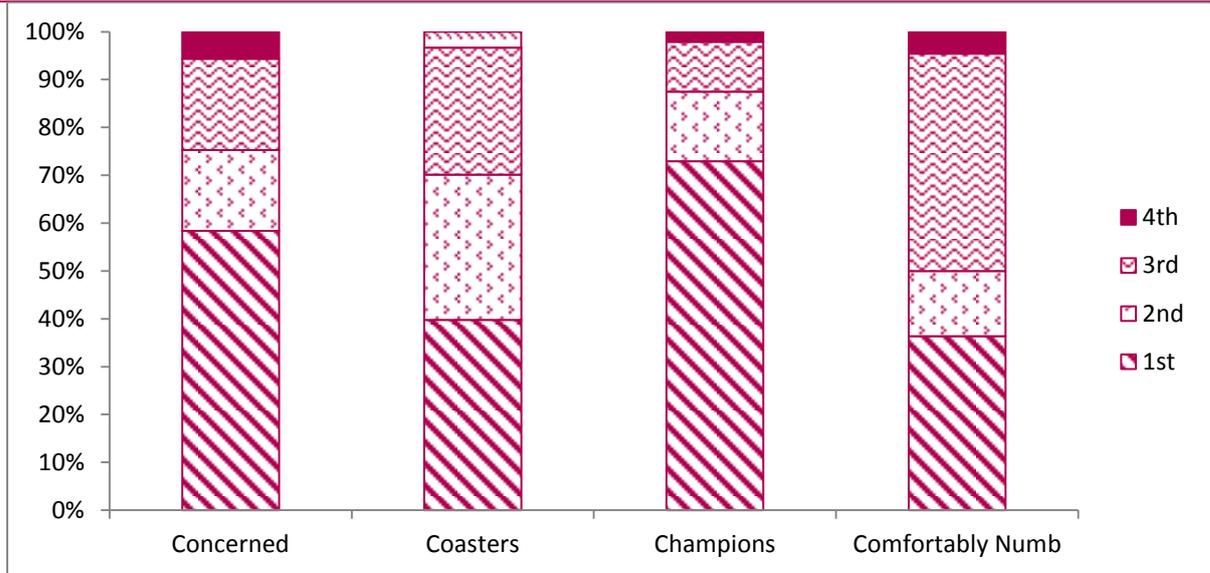


Figure 38: Ethical team orientation ranking by clusters

- The Comfortably Numb ranked financial performance higher than the Capitulators¹⁴⁵ and the Champions.¹⁴⁶
- The Coasters ranked a financial performance team orientation more highly than the Champions.¹⁴⁷

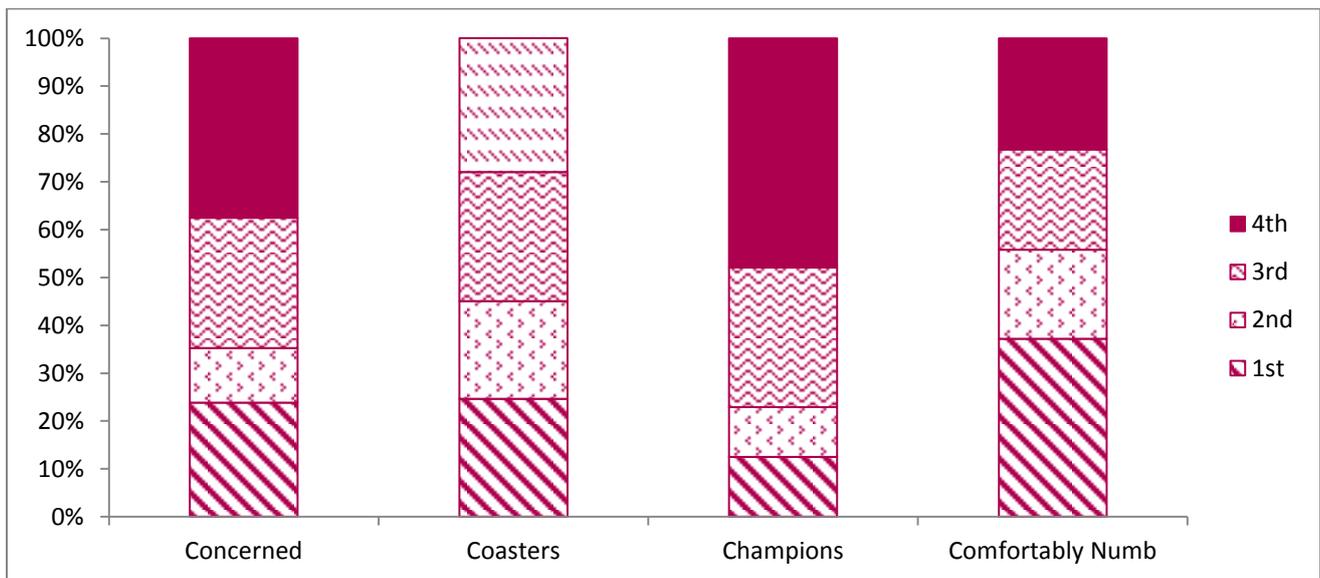


Figure 39: Financial performance team orientation ranking by clusters

- The Champions and Capitulators had teams which were reported as giving a stronger emphasis to a **society orientation** than the Coasters¹⁴⁸ and the Comfortably Numb.¹⁴⁹

¹⁴⁵ $p = .035$

¹⁴⁶ $p = .001$

¹⁴⁷ $p = .003$

¹⁴⁸ $p = .061$ and $p = .001$, respectively

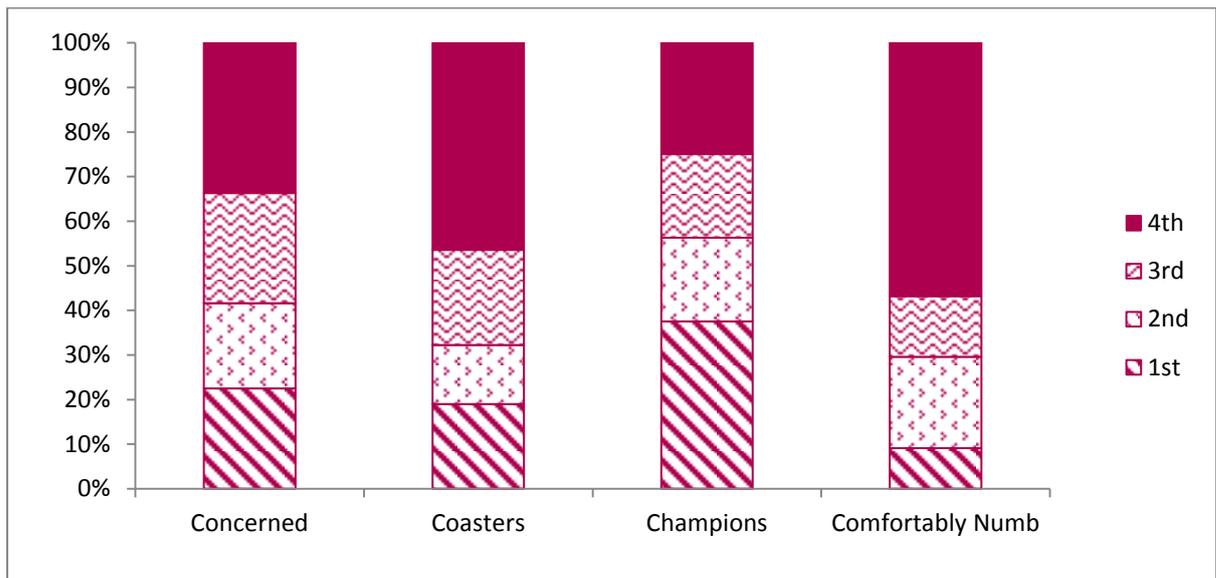


Figure 40: Societal team orientation ranking by clusters

- The teams of Champions attributed less of a priority to productivity and strategy than the Capitulators,¹⁵⁰ Coasters¹⁵¹ and Comfortably Numb¹⁵².

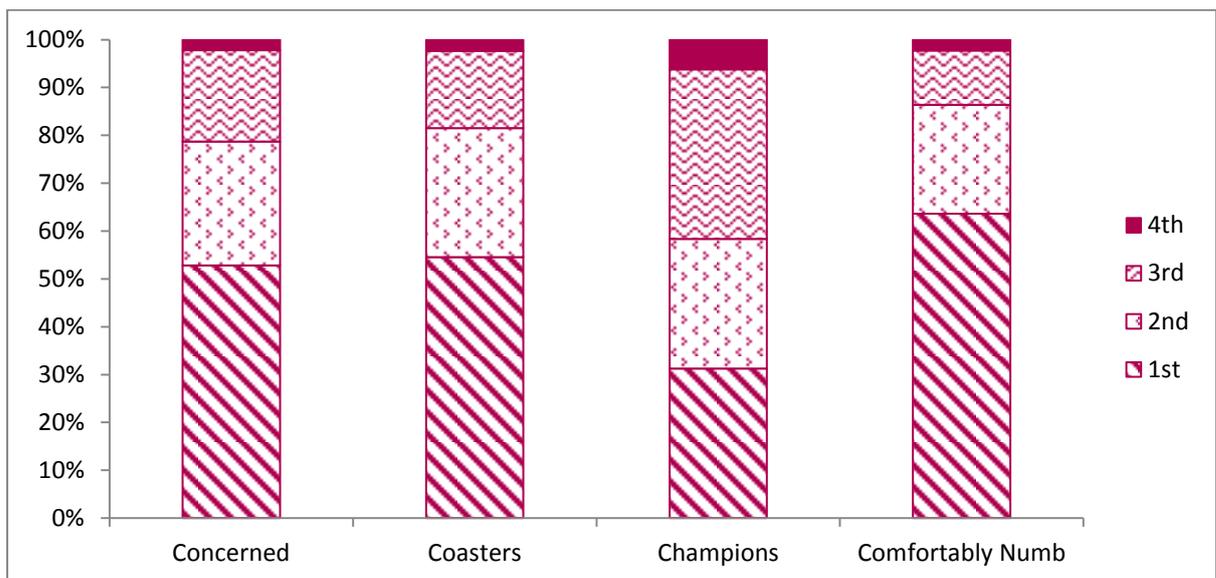


Figure 41: Productivity team orientation ranking by clusters

For professional principles, significant differences were found across the four clusters in rankings of the principle of independence and legality.¹⁵³ In particular:

¹⁴⁹ $p = .017$ and $p = .001$, respectively

¹⁵⁰ $p = .005$

¹⁵¹ $p < .001$

¹⁵² $p = .001$

- The Champions ranked the invocation of independence and legality in priority to other principles more often than the Capitulators¹⁵⁴, the Coasters¹⁵⁵ and the Comfortably Numb.¹⁵⁶

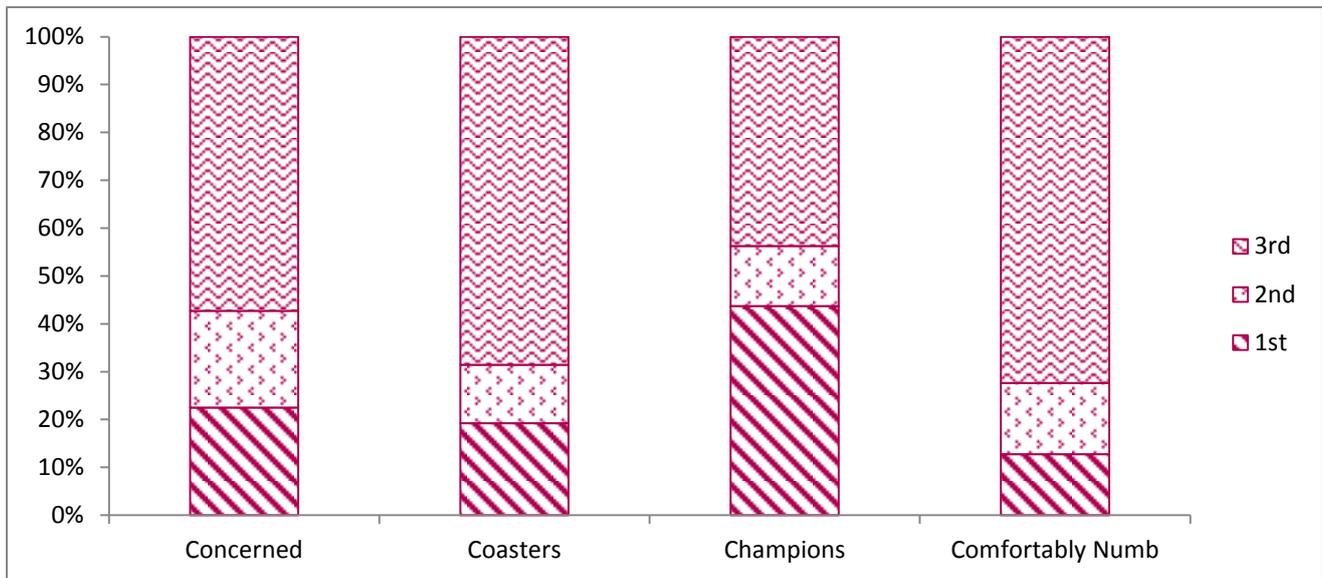


Figure 42: Invocation of independence and legality principles ranking by clusters

SUMMARY – WHAT CAN WE SAY ABOUT IN-HOUSE ETHICALITY

Through looking at moral attentiveness and moral disengagement, we use externally validated measures shown to be associated with ethical conduct. Lower levels of moral attentiveness and higher levels of moral disengagement predict a greater incidence of unethical conduct, but they do not guarantee it. As such, they are proxies for ethicality: we can examine our data on in-house lawyers for signs that environment, role conception, approach to professional rules, etc., have some relationships with ethical inclination, but what we are *not* saying is that our data ‘proves’ certain groups of in-house lawyers are unethical. Such proof is unavailable and what we are able to show is something more subtle: what is likely to influence or be associated with ethicality.

We do this in a number of ways but for overview purposes the most interesting and helpful focus is on the four clusters of in-house lawyers we found within our sample: our Champions, Capitulators, Coasters and the Comfortably Numb.

- The **Capitulators** experienced the second highest levels of ethical pressure and had moderately high perceptual and reflective moral attentiveness and yet significantly higher levels of moral disengagement. They saw moral challenges and thought about moral challenges but appeared to have begun to disengage in response. A total of 89 respondents were in this group.

¹⁵³ $\chi^2_{KW}(3) = 15.75; p = .001, \eta^2 = .04$

¹⁵⁴ $p = .037$

¹⁵⁵ $p < .001$

¹⁵⁶ $p = .001$

- The **Coasters** were the largest group by some distance: 213 respondents were in it. They had moderately low levels of perceptual moral attentiveness but moderately high reflective moral attentiveness. Yet they also had lower levels of moral disengagement than the Capitulators and the Comfortably Numb. This position was seen in the context of the second lowest levels of ethical pressure. Hence we speculate that this group is not yet being tested or testing itself in ethical terms.
- The **Champions** had significantly higher perceptual and reflective moral attentiveness than the other groups and were also experiencing the greatest ethical pressure. They also (along with the Coasters) had the lowest moral disengagement. This group had 48 respondents.
- At 47 respondents our smallest group and the one of most concern was the **Comfortably Numb**. They showed a significantly higher level of moral disengagement than the Coasters and the Champions and the lowest levels of moral attentiveness on both indicators.

Our **Champions** were thus the most ethically vigilant and least morally disengaged but also under the most ethical pressure. The clusters enable us to describe the characteristics associated with this cluster and so suggest (but not prove) that such characteristics are associated with greater ethicality (as measured by moral disengagement and attentiveness).

- Proportionately fewer business lawyers, but more public sector lawyers, and (possibly relatedly) more barristers were Champions. Thus 8 percent of business lawyers were classified as Champions, compared to 20 percent of public sector lawyers.
- Champions worked in teams with higher ethical and societal orientations than the other groups.
- Champions had a stronger individual ethical orientation than the other groups.
- Champions had a stronger independence orientation than the Capitulators and the Comfortably Numb, suggesting a link between independent and ethical conceptions of the in-house role and inclination to behave ethically.
- Champions invoked independence and legality principles more than Coasters and the Comfortably Numb, and effectiveness and integrity principles more than the Capitulators and the Comfortably Numb.
- Champions had stronger formal and informal ethical infrastructure than the Coasters and the Comfortably Numb.
- In comparison with the Comfortably Numb, Champions had a more negative relationship with the business and had weaker/less even relations with the business. Champions also had fewer inexperienced in-house lawyers than the Comfortably Numb.

The Capitulators present an interesting contrast with the Champions. The Capitulators' view of the in-house role was less emphatic on independence and ethical orientation but was in other ways similar, yet they were somewhat more morally disengaged.

The Comfortably Numb present a set of clearer differences.

- They had the highest level of uneven relations with their employer.
- They had the lowest ethical team orientation.
- They had lower resistant/negative relations than the Capitulators and the Champions.
- They had a lower group society orientation than the Capitulators and the Champions.

- They had a lower rating for formal and informal ethical infrastructure than the Capitulators and the Champions.
- Compared to the Champions, they showed a lower individual ethical and independence orientations and, they were less likely to invoke professional principles of independence and legality and effectiveness and integrity.

The main difference between the Coasters and the Comfortably Numb was that the Coasters had a stronger ethical orientation.

When we looked at rankings we found some similar and some new associations within clusters:

- The Comfortably Numb were most likely to rank a commercial orientation the most highly compared to the other groups. The Coasters were also significantly more commercially oriented on this measure than the Champions.
- Higher rankings were attributed to the ethical orientation by the Champions than the other groups.
- Champions also ranked a neutral advisor orientation lower than the other groups.
- Interestingly, the Capitulators were most likely to rank a team orientation as ethical when compared to the other groups. Whilst the Champions ranked an ethical team orientation more highly when compared to the Coasters and the Comfortably Numb.
- The Comfortably Numb ranked financial performance higher than the Capitulators and the Champions, and the Coasters ranked a financial performance team orientation more highly than the Champions.
- The Champions and Capitulators had teams which were reported as giving a stronger emphasis to a society orientation than the Coasters and the Comfortably Numb.
- The teams of Champions attributed less of a priority to productivity and strategy than other teams.

For professional principles, Champions ranked the invocation of independence and legality in priority to other principles more often than the other groups.

10

Summary, discussion and conclusions

In this Chapter, we first summarise the survey and results. We then discuss those results and draw some tentative conclusions.

This survey covers 400 in-house lawyers, mainly solicitors drawn principally from England and Wales. This work uniquely links data on organisations, individuals, their individual and team identities, and approaches to professional principles to proxy data on their inclination to behave ethically. In this way, we map the moral compass of in-house lawyers, showing links between moral attentiveness and engagement and, individual and environmental factors. This provides the richest profiling of ethicality within the in-house community yet undertaken.

The survey contains a wide range of experience levels, including many senior in-house lawyers. It engages with public, commercial and third sector in-house practice. Although broadly similar to the population of in-house lawyers in England and Wales in terms of gender, the sector that they work in, and length of experience, we do not claim that this is a fully representative sample of in-house lawyers. It is likely, in particular, that our survey was less often completed by those not interested in ethics although, as we shall see, we have within our sample a diverse range of approaches to the in-house role and ethics. As a result, where we estimate the frequency of (say) ethical pressure, our estimates are limited to our sample. Given the size of our sample, such estimates are illuminating and probably the best available, but they should not be held up as an accurate indicator of the size of the problem in practice generally. More accurate estimates would require the cooperation of fully random samples of in-house lawyers and such cooperation is unlikely particularly with the hardest-to-reach groups, which would be likely to include the least ethical.

What our approach does particularly well is provide significant insights into the *differences* between the in-house lawyers within our sample. In particular, we are able to examine the associations between individual, team and professional orientations and the ethical inclination of in-house lawyers. We map the associations between elements of their 'moral compasses' and how in-house lawyers see their role, how their teams are oriented, and pressure from the employers, and can thus provide fresh insights into what kinds of environment and approach make for a more or less ethical in-house lawyer.

REPORTING LINES

Within our sample, we see how strongly executives rather than non-executive board members dominate lines of management as well as lines of reporting. In particular, 53 percent of the GCs in our sample reported to the CEO; 16 percent to the CFO (a reporting relationships which some regard as problematic) and 10 percent to another board member. Only 6 percent report to a non-executive board member or the chairman. Just under half of the in-house lawyers line-managed by

the CEO had a formal or informal reporting line to the chair of the board, chair of audit or other non-executive director.

RELATIONSHIPS WITH THEIR EMPLOYER

Our respondents reported working in organisations where, in broad terms, they felt supported. However, a sizeable majority (80 percent) agreed that the legal department was sometimes criticised for inhibiting or slowing decisions and a majority (57 percent) that colleagues were sometimes reluctant to raise issues with them. Close to 50 percent agreed that actions were sometimes taken against their advice on legally important matters. Indeed, an unevenness of relationships with their organisation was commonly reported.

Interestingly, those working in the public sector rated the legal department as having more negative or resistant relationships with the employer than those working in a business; and those working in a business felt that they had a significantly more positive or supportive relationship with the employer than those working in a charity or social enterprise.

ETHICAL PRESSURE

We also sought to measure ethical pressure:

- About 10 percent of our respondents were asked to advise on ethically or legally debatable actions frequently or very frequently. Over 40 percent were asked to so advise on such actions at least sometimes.
- About 10-15 percent agreed or strongly agreed that they were asked to advise on things that made them uncomfortable, or in ways which suggested the business took a different view on whether and/or how to uphold the rule of law. About a quarter to a third agreed at least somewhat with these concerns.
- Interestingly, lawyers working in a public sector organisation showed significantly higher ratings of ethical pressure than those working in a business.

Our analysis also indicates that ethical pressure increases somewhat with seniority and/or experience, although the strength of the relationship is weak, emphasising that factors other than seniority may be at play.

IN-HOUSE ROLE ORIENTATIONS

Our particular interest was in how in-house lawyers conceived of their role. We isolated five orientations.

A **commercial orientation** was the most strongly endorsed orientation, widely agreed with by our respondents in all three sectors but especially amongst those working in business. Thus, large majorities of respondents agreed or strongly agreed that the commercial success of their organisation is important to them; that commercial awareness is vital to the function of in-house lawyers; that it is important for a legal adviser to add value to the business; and that their advice goes beyond legal matters to include business considerations.

The next most strongly endorsed orientation was an **ethical orientation**. Most tended to agree that: their advice goes beyond legal considerations to assess whether something is the right thing

ethically to do; that where the law is uncertain, they take a lead on what the right thing to do is; and that where a proposed action is lawful, but they think it is nevertheless unethical, they would not hesitate to voice their concerns. Strong agreement with an ethical orientation was less likely than for commercial orientation.

A similarly strong orientation was the **independence orientation**. It was generally important to our respondents that they can offer an independent opinion on the legality of business action and that their organisation needs to understand that their view is independent. Again, this orientation was less strongly agreed with than the commercial orientation.

A fourth, somewhat weaker orientation, was what we call the **neutral advisor orientation**. A majority also agreed that their job was to advise on legal risk and the business decides how much risk it then wants to take; and that where the law is uncertain, they advise and the business decides. Agreement with that was less strong than for commercial, independent and ethical orientations.

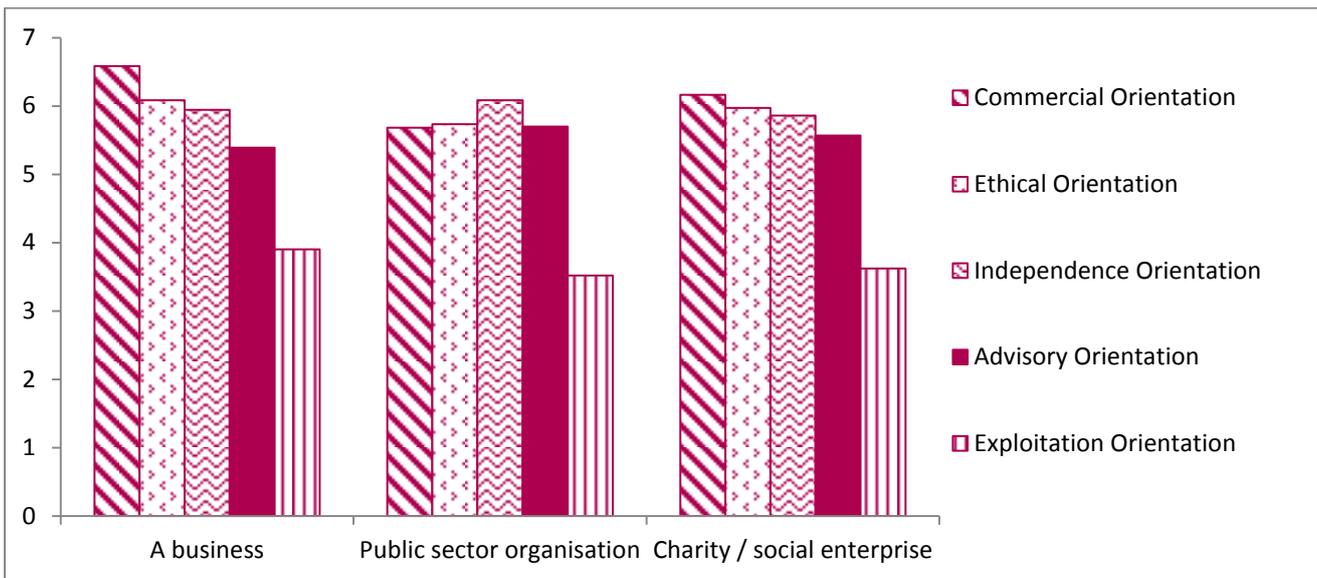
A fifth orientation was what we call an **exploiting uncertainties orientation**. This orientation split our respondents. Most tended to disagree with this as an orientation, but 36 percent of our respondents agreed (at least somewhat) that loopholes in the law should be identified that benefit the business; 19 percent agreed that their role was to exploit the law for commercial ends; and 48 percent agreed that where the law is uncertain, they help the business benefit from that uncertainty.

Our profiling also looks at other issues such:

- The appetite of in-house lawyers for saying ‘No’ (the vast majority said they were willing to do this and back it up with further action if necessary, yet 9 percent indicated that saying “no” to the organisation was to be avoided, even when there is no legally acceptable alternative to suggest).
- Most advised, they said, in the spirit of the law (and also said that their organisations were guided by this when deciding).
- We can get a sense of the emphasis to be placed on a commercial orientation from the 65 percent who agreed that achieving what their organisation wants has to be their main priority, while nearly a quarter disagreed with this statement.
- Academic concerns about over-emphasising commercial awareness are given some support by 30 percent of our sample agreeing that an emphasis on commercial awareness sometimes inhibits the in-house lawyer in performing his or her role, whilst 57 percent disagreed.
- Perhaps surprisingly, 12 percent agreed that where commercial desirability and legal professional judgement are in tension, commercial desirability is more important.

There were differences in orientation across sectors (Figure 43). In-house lawyers in business agreed most strongly with a commercial orientation and public sector lawyers agreed most strongly with an independence orientation.

Figure 43: Individual orientation across sectors



We can also see in the public and third sectors the four strongest orientations are more closely aligned, whereas the hierarchy appears a bit clearer in the business sector. We can explore this more closely if we look more at relative ranking of orientations (Figure 44), we can see that: lawyers working in a business were particularly likely to rank commercial orientation as the strongest (in their top two); on the other hand, public sector lawyers emphasised an independence orientation more strongly; and third sector lawyers emphasised an ethical orientation. The exploitation ranking was generally the lowest ranked orientation– though some did rank it as their strongest orientation.

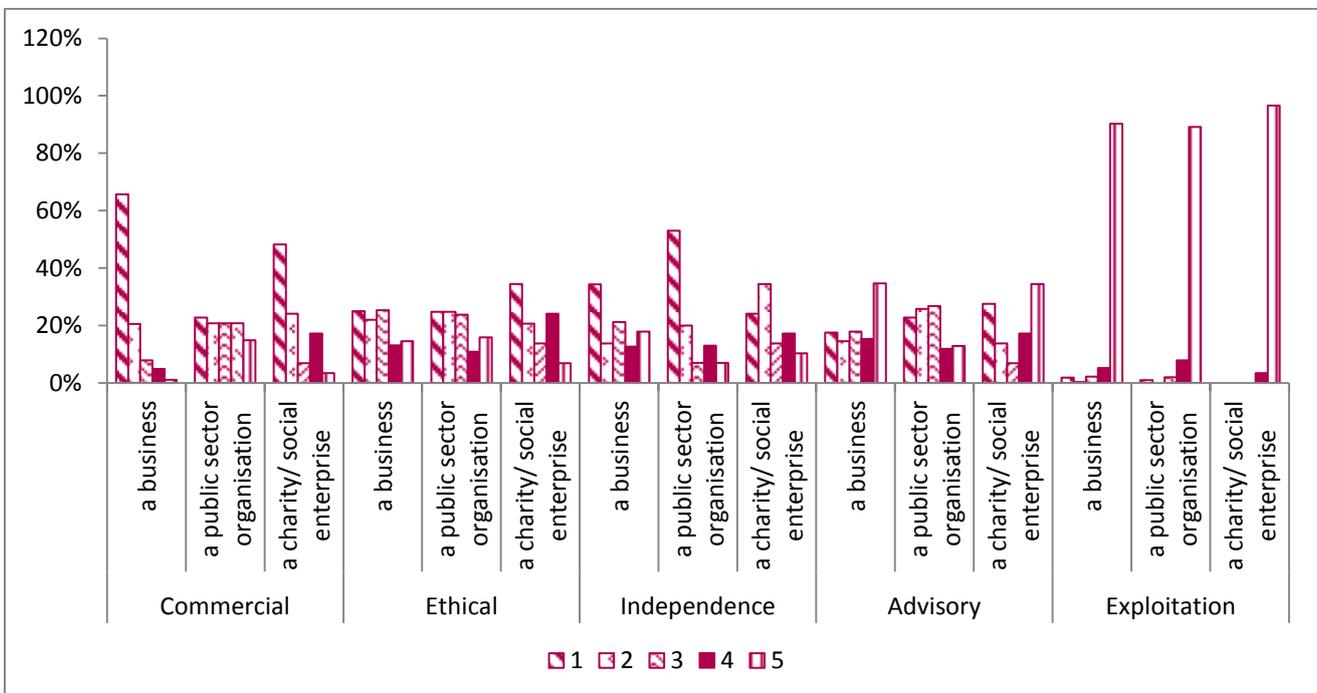


Figure 44: Individual orientation rankings by sector

It is interesting to see, too, the somewhat stronger level of agreement with commercial, ethical and independence orientations over a neutral advisor orientation. It is not that our sample did not generally agree that the in-house lawyer advises and the client decides – they did – but rather they emphasised orientations which saw a stronger emphasis on their own agency. In other words, they were more strongly in agreement with a role which saw themselves as influencers towards commerciality and/or ethicality, and for that influence to be exercised from a position of some independence, than they were to distance themselves from difficult decisions by saying that the client (and not them) is responsible. We see this is an important signal of maturity in the majority of our respondents' approaches.

There were some signs that those of our respondents who attended boards had different orientations. They were likely to hold stronger ethical, exploitation of uncertainty, and independence orientations and a less strong neutral advisor orientation. A commercial orientation was only marginally stronger than for those not on or attending boards. Lawyers that were on or attended the board rated the organisations where they worked more positively in terms of their relationship with the business. They also tended to say they used all three constellations of professional principles more frequently. Overall, the impact of board membership on orientation and ethicality appears neither clear nor strong.

TEAM ORIENTATION

Our analysis of team orientation suggested four components: an ethical orientation (where teams frequently discussed doing the right thing and treating people fairly; and valuing integrity as much as profits); a performance and productivity orientation (where teams frequently discussed strategy and planning, and productivity and efficiency); a financial orientation (where teams frequently discussed financial performance, as well as shareholders and investors); and a society orientation (where teams frequently discussed seeking the good of society and the organisation's role in society).

Teams working in commercial organisations were most oriented towards productivity and strategy; societal orientations were much less common. Public sector lawyer teams emphasised ethicality most strongly followed by society and productivity/strategy. Charity/social enterprise lawyers emphasised society most. Both public and third sector lawyers had a significantly weaker financial orientation.

PROFESSIONAL PRINCIPLES

We analysed how our respondents conceptualised their professional responsibilities by looking at which professional principles most influenced them. Our respondents tended to treat what we call principles of independence and legality similarly. They also tended to treat a set of principles around what we called integrity and effectiveness similarly. And, they tended to treat the final remaining principle, the interests of the client, separately from these two other groups.

As we expected, we saw the best interest of the client, and then principles of integrity and effectiveness as being the most influential on our respondents. Whilst all three sectors tended to

suggest 'Independence and Legality' was the least influential group of principles, it was applied significantly more frequently by those working in the public sector than by those working in a business.

In some ways this takes us a bit further on the subtle view of in-house lawyer agency we saw when looking at orientations to the role. Effectiveness and integrity principles are apparently the most influential, alongside client interests. One interpretation is that our respondents retain a sense of their own integrity, and the importance of that as part of an ethical orientation, but that the strongest contextual influences are about being effective and serving the client's needs.

The stronger role of client/effectiveness principles is also interesting. Whilst the professional principles support acting in the interests of the client, where that principle conflicts with others (notably, for the sake of this argument, upholding the rule of law and the administration of justice), then the SRA guidance on the principles for solicitors indicates that it is the principle which best serves the public interest, and the public interest in the administration of justice, that takes precedence.¹⁵⁷

What the findings do not support is the view that in-house lawyers are not influenced by their professional principles in their everyday decision-making.¹⁵⁸ Our respondents said they did call upon their professional principles, although this may reflect a reaction to being presented with a list of obligations which are, in the abstract, positive and uncontroversial. The findings do support the view that client-facing obligations tend to be more influential than public interest considerations but so, also, does integrity. The treatment of legality and public interest concerns as the least called upon of the professional principles is evidence that the in-house legal community surveyed here may have a misapprehension of its professional obligations. Barristers and solicitors are supposed to put the public interest and the public interest in the administration of justice first, not last where there is a conflict between professional principles.

ETHICAL INFRASTRUCTURE

We were interested in exploring the extent to which professional ethical obligations were supported through guidance, training, appraisal, and informal discussions. Formal infrastructure looked at training and written guidance. A high proportion of respondents indicated in essence that there was no formal infrastructure or that where guidance is issued or training takes place this occurs only every few years. In terms of guidance and training, professional ethics looks like a low priority, not much supported by these processes.

Our measure of informal infrastructure sought data on internal or external discussion and communication around ethics. Although informal infrastructure was more commonly in place, it is again noticeable that communication, even informally, around professional ethical issues was infrequent and for some does not occur at all, unless ethical discussion are taking place without the respondents framing them in terms of 'ethics'. Indeed, seven percent of respondents indicated that

¹⁵⁷ SRA, 'Handbook – The Principles' (Version 15), para 2.2. This says: "Where two or more Principles come into conflict, the Principle which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice."

¹⁵⁸ Our qualitative work suggests such influence is minimal: Moorhead and Hinchly (n 79); Moorhead and Vaughan (n 32).

they *never* discussed professional ethics issues with colleagues internally or externally, formally or informally.

In terms of regulatory attitudes, the data of most note was a fairly high level of agreement that the Codes of Conduct should be made more relevant to the work of in-house lawyers and that it would be helpful to have more rules/guidance about their roles and responsibilities.

ETHICAL INCLINATION

Through looking at moral attentiveness and moral disengagement, we use externally validated measures shown to be associated with the inclination to behave unethically. Lower levels of moral attentiveness and higher levels of moral disengagement predict a greater incidence of unethical conduct, but they do not guarantee it. As such, they are proxies for ethicality. We have examined our data for signs that environment, role conception, approach to professional rules, etc., have some relationships with ethical inclination, but what we are not saying is that our data ‘proves’ certain groups of in-house lawyers are unethical. Such proof is unavailable and what we are able to show is something more subtle: what is likely to influence or be associated with ethicality.

We do this in a number of ways but for overview purposes the most interesting and helpful focus is on the four clusters of in-house lawyers we found within our sample: Champions, Capitulators, Coasters and Comfortably Numb.

- The **Capitulators** experienced the second highest levels of ethical pressure and had moderately high perceptual and reflective moral attentiveness and yet significantly higher levels of moral disengagement. They saw moral challenges in their work and thought about challenges in moral terms but appeared to have begun to disengage, perhaps in response. A total of 89 (22 percent) of our respondents were in this group.
- The **Coasters**. This was the largest group by some distance: 213 (54 percent) of our respondents were in it. They had moderately low levels of perceptual moral attentiveness but moderately high reflective moral attentiveness. Yet they also had lower levels of moral disengagement than the Capitulators and the Comfortably Numb. This position was seen in the context of the second lowest levels of ethical pressure. Hence we speculate that this group is not yet being tested or testing itself in ethical terms.
- **Champions** had significantly higher perceptual and reflective moral attentiveness than the other groups and were also experiencing the greatest ethical pressure. They also (along with the Coasters) had the lowest moral disengagement. This group had 48 (12 percent) respondents.
- At 47 (12 percent) respondents our smallest group and the one of most concern were the **Comfortably Numb**. They showed a significantly higher level of moral disengagement than the Coasters and the Champions and the lowest levels of moral attentiveness on both indicators.

Our **Champions** were thus the most ethically vigilant and least morally disengaged – indicators which would suggest they are the least likely to behave unethically – but they are also under the most ethical pressure. Our analysis enables us to describe the characteristics associated with this

group and so suggest (but not prove) that such characteristics are associated with greater ethicality (as measured by moral disengagement and attentiveness).

- Fewer business but more public sector lawyers, and more barristers were champions than other groups. For example, 8 percent of business lawyers were classified as Champions, compared to 20 percent of public sector lawyers.
- Champions worked in teams with higher ethical and societal orientations than the other groups.
- Champions had a stronger individual ethical orientation than the other groups.
- Champions had a stronger independence orientation than the Capitulators and the Comfortably Numb, suggesting a link between independent and ethical conceptions of the in-house role and propensity to behave ethically.
- When it came to their professional principles, Champions invoked independence and legality principles more than Coasters and the Comfortably Numb, and effectiveness and integrity principles more than the Capitulators and the Comfortably Numb.
- Champions had stronger formal and informal ethical infrastructures than the Coasters and the Comfortably Numb.
- In comparison with the Comfortably Numb, Champions had a more negative relationship with the business and had weaker/less even relations with the business.
- Champions also had fewer inexperienced in-house lawyers than the Comfortably Numb.

The Capitulators present an interesting contrast with the Champions. The Capitulators' view of the in-house role was less emphatic on independence and ethical orientation but was in other ways similar, yet they were somewhat more morally disengaged. This re-emphasises the importance of the ethical and independence orientations.

The Comfortably Numb present a set of clearer differences:

- they had the highest level of uneven relations with their employer.
- they had the lowest ethical team orientation.
- they had lower resistant/negative relations than the Capitulators and the Champions.
- their teams had a lower society orientation than the Capitulators and the Champions.
- they had a lower rating for formal and informal ethical infrastructure than the Capitulators and the Champions.
- and, compared to the Champions, they had a lower individual ethical and independence orientations, and they were less likely to invoke professional principles of independence and legality, and of effectiveness and integrity.

The main difference between the Coasters and the Comfortably Numb was that the Coasters had a stronger ethical orientation.

We conducted a similar analysis but looking at rankings of individual orientation, team orientation, and approach to the professional principles. We found some similar, and some new, associations within clusters. The following reports only significant differences:

- The Comfortably Numb were most likely to rank commercial orientation the most highly compared to the other groups.
- The Coasters were also significantly more commercially oriented on this measure than the Champions.

- Champions ranked ethical orientation more highly than the other groups.
- Champions also ranked the neutral advisor orientation lower than the other groups.
- Interestingly, the Capitulators were most likely to rank an ethical team orientation highly when compared to the other groups, whilst the Champions ranked an ethical team orientation more highly when compared to the Coasters and the Comfortably Numb.
- The Comfortably Numb ranked financial performance higher than the Capitulators and the Champions and the Coasters ranked a financial performance team orientation more highly than the Champions.
- The Champions and Capitulators had teams which were reported as giving a stronger emphasis to a society orientation than the Coasters and the Comfortably Numb.
- The teams of Champions attributed less of a priority to productivity and strategy than other teams.
- For professional principles, Champions ranked the invocation of independence and legality in priority to other principles more often than the other groups.

DISCUSSION AND CONCLUSION

What are the key lessons that can be taken from this research?

The first is that in-house lawyers differ significantly in how they conceive their role and that these variations matter. We identified five particular orientations: a commercial orientation; an independence orientation; an ethical orientation; a neutral advisor orientation; and an exploitation of uncertainty orientation. Most in-house lawyers supported the first four orientations but with important differences of emphasis. The exploitation of uncertainty orientation split our respondents more strongly – only a substantial minority agreed this was part of their role.

It is through these orientations that we see differences in the way in-house lawyers see their role. In Figure 45 orientations sometimes diminishing ethical inclination exert downward pressure and orientations increasing ethical inclination generally exerted upward pressure.

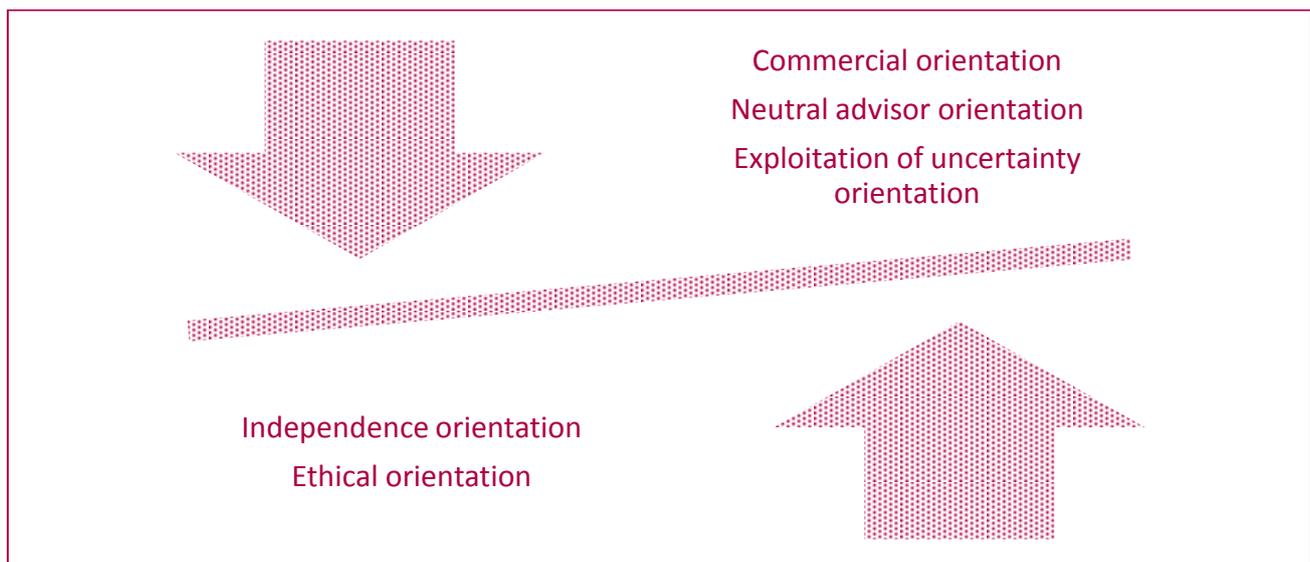


Figure 45: Five individual orientations

Amongst those working in commercial organisations in particular we found that a commercial orientation is both ubiquitous and strong. It was also commonly strong in the third sector. Given the commercial drivers within these organisations, and the legal profession's elevation of commercial awareness as a key differentiator of excellence, this is unsurprising.¹⁵⁹ Sixty-five percent of our respondents agreed that achieving what their organisation wants has to be their main priority.

A more measured approach to the idea would ask what is sought from a lawyer when asking them to 'be commercial'. Some elements of commerciality are unproblematic and desirable: understanding the business; communicating relevantly, in ways colleagues can understand; finding practical solutions to problems; and managing costs effectively. For others, the ethical literature suggests problems. Framing issues in business terms is suggested to lead to a less ethical approach to problems, for example.¹⁶⁰ Moorhead and Hinchly found that experienced lawyers sometimes used the term 'commercial' to make an implicit distinction from 'professional' or as an association with sharper practice.¹⁶¹ If the needs of the business are in tension with the law or with ethicality, then a commercial orientation has the potential to put a lawyer in an uncomfortable position.¹⁶² Did our evidence support these concerns?

The answer is: up to a point. Thirty percent of our sample agreed that an emphasis on commercial awareness sometimes inhibits the in-house lawyer in performing his or her role. Furthermore, and conversely, 12 percent agreed that where commercial desirability and legal professional judgement are in tension, commercial desirability is more important. And whilst a strong majority of respondents indicated a willingness to say 'No' to employers – to act on occasion as legal policemen – and also a willingness to back that up with further action, 9 percent of our respondents indicated that saying 'No' to the organisation was to be avoided, even when there is no legally acceptable alternative to suggest. We also found that the group most unlikely to be ethically inclined, the Comfortably Numb, were significantly more likely to rank a Commercial orientation highly (e.g. it was the strongest orientation for over 70 percent of the Comfortably Numb compared to just over 30 percent of the ethical Champions). One contrary finding was that a commercial orientation was independently associated with a small increase in reflective moral attentiveness, but this was undone by a negative impact on perceptual moral attentiveness.

This suggests that a commercial orientation can be taken too far, and it is perhaps most important to emphasise the positive influences of other orientations on ethicality. In particular, ethical and independence orientations were stronger amongst our most ethically inclined group (the Champions) and had the strongest positive impacts of our individual orientations on moral attentiveness and disengagement.

The neutral advisor orientation is interesting. It taps into the view that the lawyer advises and the client decides, and thus that in-house lawyers are mere advisers. The literature suggests a risk that such an approach can blunt lawyers' ethics. The risk is that in acting as a 'mere' advisor, the lawyer is distanced from ethical responsibility for their own acts. Our respondents supported the neutral advisor orientation but did so less strongly than the commercial, independence and ethical

¹⁵⁹ A Google search for 'commercial awareness law' produced 2.6 million results, 5 April 2016

¹⁶⁰ Kouchaki and others (n 53).

¹⁶¹ Moorhead and Hinchly (n 79).

¹⁶² See, for example, Langevoort (n 55).

orientations. In this way, we can see that the lawyers see their own agency (be that commercially, ethically or independence oriented) as a stronger part of their role than the mere neutral advisor role. A sign that the neutral advisor orientation, if over-emphasised, can be problematic is seen in the finding that the neutral advisor orientation was lower for our most ethically inclined group.

The exploitation of uncertainty orientation was less commonly supported by our respondents, but where it was supported respondents were more likely to show higher moral disengagement.

Individual orientations were not the only factors associated with greater ethical inclination. Team orientations also had an influence: higher ethical and societal orientations were more likely to be associated with inclination to behave ethically. Our least ethically inclined group had teams generally more strongly oriented to financial performance, whereas our most ethically inclined group attributed less of a priority to productivity and strategy than other teams.

Our prior work has suggested a great deal of variation, and some weaknesses, in the way that in-house lawyers (and private practice commercial lawyers) understand their professional obligations.¹⁶³ We discover in this research that in-house lawyers seem likely to think about their ethical obligations in three sets. One 'set' is based on one principle: the best interest of the client. Our respondents suggested this is the most influential obligation in their day-to-day practices. To simplify a little, this suggests a view of ethics which sees one interest as paramount. A second set of obligations looks to integrity and effectiveness – this is the second most commonly invoked set of obligations, and these obligations emphasise a broadening of ethical dialogue between two sets of interests: the employer's needs and the lawyer's ability to deliver those needs with integrity. The third set of obligations, less commonly invoked – but still invoked frequently according to our respondents – we call the independence and legality interests, as these broaden the ethical dialogue still further to include the interest of third parties.

In-house lawyers differed in how strongly they emphasised each of these three groups. The professional principles for barristers and solicitors indicate that it is the principle(s) which best promote the public interest (and the public interest in the administration of justice in particular) which should be determinative in a situation of conflict. It might be argued that perhaps in-house lawyers do not often face ethical dilemmas which call into play third party interests, hence they are more likely to need to invoke client or effectiveness/integrity interests. For that to be true, the client or effectiveness interests would have to be in tension with some other interest. Without this tension, they do not need invoking. Either client interests are most commonly in tension with integrity/effectiveness issues, or legality/independence issues are more rarely invoked than they should be. Indeed, we might speculate that integrity issues must nearly always invoke a legality/independence interest of some kind – it is just less often framed in that way by our respondents. Our analysis is supported by other research that suggests that lawyers have a weak grasp of independence and are reluctant to frame issues in independence and legality terms.¹⁶⁴

¹⁶³Moorhead and Vaughan (n 32).

¹⁶⁴ibid; Richard Moorhead, 'Corporate Lawyers: Values, Institutional Logics and Ethics' [2015] CEPLER Working Paper. University of Birmingham; Steven Vaughan and Claire Coe, 'Independence, Representation and Risk: An Empirical Exploration of the Management of Client Relationships by Large Law Firms' (Social Science Research Network 2015) SSRN Scholarly Paper ID 2679005 <<http://papers.ssrn.com/abstract=2679005>> accessed 3 February 2016.

Figure 46: Professional Principle Clusters



Our data about the inclination to behave ethically provided important insights into the potential influence of professional principles which go some way to underlining the importance of the way the professional codes frame these principles. In particular, a greater willingness to invoke independence and legality principles and, often also, a greater willingness to invoke effectiveness and integrity principles was associated with more ethical inclinations. In this way, the more inclined an in-house lawyer is to see their professional obligations as encompassing their client's interest, and their own integrity and effectiveness, *and* the public interest in the administration of justice, the more likely they are to act ethically and in accordance with their own code.

We are exploring some of these issues in more depth in focus groups and interviews. Our view based on our other work is that professional ethics is a somewhat neglected element of professional practice both in-house and in private practice. Our concern has been underlined by the low levels of ethical infrastructure, whether formal (training, guidance and appraisals) or informal (discussion), as reported by our respondents. The management literature suggests that such infrastructure can be, but is not always, an important influence on ethicality.¹⁶⁵ Our data suggests that the more ethically inclined of our respondents have stronger formal and informal ethical infrastructures, emphasising the potential significance of quite modest improvements in ethical infrastructure. The numbers of respondents reporting that professional ethical issues were not dealt with even annually by way of training and discussion is surprising.

¹⁶⁵Treviño, Weaver and Reynolds (n 88); Gary R Weaver, Linda Klebe Treviño and Philip L Cochran, 'Integrated and Decoupled Corporate Social Performance: Management Commitments, External Pressures, and Corporate Ethics Practices' (1999) 42 *Academy of Management Journal* 539; Gary R Weaver and Linda Klebe Trevino, 'Compliance and Values Oriented Ethics Programs: Influences on Employees' Attitudes and Behavior' [1999] *Business Ethics Quarterly* 315; Chambliss and Wilkins (n 88); David Hess, 'Ethical Infrastructures and Evidence-Based Corporate Compliance and Ethics Programs: Policy Implications from the Empirical Evidence' (Social Science Research Network 2015) SSRN Scholarly Paper ID 2698820 <<http://papers.ssrn.com/abstract=2698820>> accessed 5 April 2016.

A particularly interesting set of findings relates to the relationships between the employer and the lawyer and approaches to ethics. In particular, our most ethically inclined group also operated in the environment with the most ethical pressure. This is a reminder that tension between the employer and the lawyer can be dealt with positively. Our Champions had a more negative relationship with the business and had weaker/less even relations with the business, yet they remained the most ethically vigilant. They were also somewhat more experienced than our most worrying group, the Comfortably Numb. We also saw, with our group called the Capitulators, how such ethical pressure can be associated with moral disengagement – suggesting that some respond more negatively to ethical pressure by beginning to disengage. Those in-house lawyers who seemed to respond positively to the pressure were supported by a more ethical, independent outlook, more ethical and societally oriented teams and a somewhat stronger ethical infrastructure. The lower levels of moral attentiveness indicated by some of our in-house lawyers also suggest that some, when recording an absence of ethical pressure, may not be sensitive enough to the issues that face them.

The importance of context can be further seen in the modest but significant signs of disquiet that our respondents reported in their framing of the role of in-house lawyers around ethicality and what might be called rule of law challenges. 10 percent of our respondents were asked to advise on ethically or legally debatable actions frequently or very frequently, and 40 percent were asked to advise on such actions at least sometimes. Similarly, a sizeable majority (80 percent) agreed that the legal department was sometimes criticised for inhibiting or slowing decisions, and a majority (57 percent) agreed that colleagues were sometimes reluctant to raise issues with the business. Close to 50 percent agreed that actions were sometimes taken against their advice on legally important matters.

Our level of concern with this depends, of course, on how their employers respond to advice on such actions. More clearly concerning is the 10-15 percent who agreed or strongly agreed that they were asked regularly or very frequently to advise on things that made them uncomfortable, or in ways which suggested the business took a different view on whether and/or how to uphold the rule of law. Given reported changes within at least parts of the Government Legal Service suggesting a heightened appetite for legal risk, which some criticise as a disregard for the rule of law,¹⁶⁶ it is worth emphasising that lawyers in public sector organisations showed higher ratings of ethical pressure than those working in a business. Interestingly those working the public sector also rated the legal department as having more negative/resistant relationships with the employer than those working in a business.

IMPLICATIONS

This report provides a unique profile of real differences within the in-house community. We examine individual and team orientations to the in-house role; the invocation of professional principles; ethical infrastructure, ethical pressure and relationships with the employer; and we relate these to externally validated indicators of ethical inclination (moral attentiveness and moral disengagement). It is as rich a picture of what it means to be an ethical in-house lawyer as has been attempted but much more can be and, we hope, will be done to develop understanding in the area.

¹⁶⁶ Bowie (n 30).

This work is part of a broader study. We are engaging in discussions with the in-house community at town hall meetings and we are conducting further interviews. Through these mechanisms we are planning to contextualise our findings and think in greater detail about the implications of our results.

The plan is to produce a white paper which sets out ideas about how best to structure the in-house role and manage in-house legal functions for ethical practice. This white paper will be led in large part by discussion with the in-house community, and informed by our ongoing research. For now, we make the following observations:

- The varied understandings of the in-house role suggest that in-house teams should engage in an honest and open evaluation of their own approaches and consider where on the spectrum of approaches we have outlined they sit.
- The evaluation should engage the employer and their in-house teams.
- The balance between a commercial (or, outside business, a client focused) orientation and independence and ethical orientations should be a particular focus of this review, with consideration given to how independence and ethicality is part of the role description, reporting and day-to-day management of in-house lawyers.
- The balancing and use of professional principles in day-to-day practice, especially those that promote integrity, independence and ethicality, should be considered and supported.
- The approach to managing for ethicality through ethical infrastructure such as training, guidance and appraisal should be considered as a matter of urgency.

-end-

Appendix A:

DETAILED DESCRIPTION OF THE PRINCIPAL COMPONENTS ANALYSES

Principal component analysis (PCA) is an exploratory multivariate analysis technique that allows the transformation of a set of correlated variables into a subset of independent variables. These independent variables are linear combinations of the original variables and are called “principal components”. Thus, a PCA allows to reduce the complexity of the data, summarising the information present in correlated– and thus, to a certain extent, redundant– variables into independent variables which represent a big proportion of the information contained in the original variables. We use it here to reduce the number of variables included in the analyses, retaining the analytic dimensions that underlie substantively different sets of variables.

Besides the input variables being metric, and having at least 5 times more cases (i.e., participants) than the number of variables, the input variables should be correlated in order to run a PCA. We have verified the correlation among input variables using the Kaiser-Meyer-Olkin (KMO) statistic, which varies between 0 and 1. The higher the KMO, the higher the correlation between input variables and thus, the more consistent should be the extracted principal components.

For deciding how many components to extract and retain in the final solution, we have used the following criteria: 1) Kaiser criteria, retaining all components showing an eigenvalue higher than 1 and 2) Scree test, which involves examining the graphical representation of the eigenvalues and finding the natural bend or break point in the data where the curve flattens out. The number of factors to retain is usually the number of data points above the “break” (i.e., not including the point at which the break occurs).

It is also important to look at the commonalities, i.e., part of variance of each original variable that is captured by the extracted components. Commonalities lower than .05 are considered to be low, indicating that the original variable is not well represented in the final solution of extracted components. In those cases we have considered deleting the variables showing low commonalities and running a new PCA without those variables.

Finally, it is common to use rotation in order to simplify and clarify the data structure, making the extracted components easier to interpret substantively. There are a number of possible rotation methods that can be used. Varimax is the most commonly used orthogonal method. Orthogonal methods produce factors that are uncorrelated; however, in social sciences it is reasonable to expect some correlation among factors, since cognitive and/or behavioural factors tend to be interdependent. Also, it has been verified¹⁶⁷ that if factor correlations exceed .32 there is 10% (or more) overlap in variance among factors, which is enough variance to warrant oblique rotation. Thus, in those cases we have opted to use the Oblimin rotation method.

¹⁶⁷ Tabachnick, B. G., & Fidell, L. S. (2007) *Using multivariate statistics*, (Boston: Pearson/Allyn & Bacon).

IN-HOUSE LAWYER ROLE

A principal component analyses was run for items assessing in-house lawyer roles. KMO was acceptable (.79).

Eight components were extracted on the basis of the following criteria: a) retaining components that have eigenvalues > 1 and b) scree test. The eight components explained 56.7% variance. Communalities were below .50 for items 5, 16 and 20 and thus they were taken out from the analysis and the procedure was repeated. Items with factor loadings below |.50| or loading heavily in more than one factor are signalled in red and were excluded.

Table A1: Rotated component matrix of in-house lawyer role

	Component							
	1	2	3	4	5	6	7	8
Q24_4	.786						.112	
Q24_6	.764		.105					
Q24_8	.702	.286			.140		.293	.105
Q24_7	.587	.293	.135		.118		.104	
Q24_18		.805						
Q24_24	.255	.684		.148				
Q24_21		.626	.120	.137	-.219			.162
Q24_17	.269	.481		.110	.283	-.102	.291	
Q24_13	.181	-.115	.791			.100		
Q24_15		.141	.789		.188			.119
Q24_14	.101		.763	.144		.153		-.165
Q24_22	-.119	.101		.756			.208	
Q24_26	.168	.171		.696	.156	-.137	.110	
Q24_3					.840			
Q24_12			.130		.815	.132		
Q24_10	-.184		.160	-.183	.134	.610		-.186
Q24_9	.161	-.162	.288	-.214		.540	.140	-.110
Q24_23	-.337				.111	.532	.137	.308
Q24_11	-.185	-.356	.103		.292	.531		-.104
Q24_25	.324	.224	-.177	.358		.495	-.222	
Q24_1	.255		.123	.180			.662	-.203
Q24_2	.272	.154	.190	.308			.631	.123
Q24_19	.103	.340		-.293			.412	.237
Q24_27	.145				.129	-.190		.717
Q24_28				.420		.107	-.258	.594

Note. Extraction Method: Principal Component Analysis; Rotation Method: Varimax with Kaiser Normalization. Rotation converged in 12 iterations.

Factor 1: Commercial orientation ($\alpha = .78$)

- The commercial success of my organisation is important to me
- Commercial awareness is vital to the function of in-house lawyers
- Our advice goes beyond legal matters to consider business considerations

- It is important for a legal adviser to add value to the business:

Factor 2: Ethical orientation ($\alpha = .66$)

- My advice goes beyond legal considerations to assess whether something is the right thing ethically to do
- Where a proposed action is lawful, but I think it is nevertheless unethical, I will not hesitate to voice my concerns
- Where the law is uncertain, I take a lead on what the right thing to do is

Factor 3: Exploitation orientation ($\alpha = .74$)

- Loopholes in the law should be identified that benefit the business
- Where the law is uncertain, I help the business benefit from that uncertainty
- My role is to exploit the law for commercial ends

Factor 4: Independence orientation ($\alpha = .61$)

- The organisation needs to understand that my view is independent
- It is important to me that I can offer an independent opinion on the legality of business action

Factor 5: Advisory orientation ($\alpha = .72$)

- My job is to advise on legal risk and the business decides how much risk it then wants to take
- Where the law is uncertain, we advise and the business decides

Factor 6: The subservient adviser orientation ($\alpha = .56$)

- Saying “no” to the organisation is to be avoided, even when there is no legally acceptable alternative to suggest
- Where commercial desirability and legal professional judgement are in tension, commercial desirability is more important.
- An emphasis on commercial awareness sometimes inhibits the in-house lawyer in performing his or her role
- Others in the organization are responsible for considering the ethics of its decisions; my role is to advise on the law

Factor 7: Risk management orientation ($\alpha = .57$)

- My job is to manage to a known risk appetite

- My job is to help set appetite for risk within legal bounds

Factor 8: Legality orientation ($\alpha = .28$)

- Insisting something cannot be done within the law is sometimes necessary
- Sometimes it's necessary to think less about the organisation's needs and more about what the law requires

ORGANISATIONAL APPROACHES TO LEGAL

A principal component analyses was run for items assessing organisational approaches to legal. KMO was acceptable (.76).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, three components were extracted. The three components explained 76.3% variance. Communalities were all above .50. Given that some of the correlations between the three components exceeded .32¹⁶⁸, oblique rotation (i.e. oblimin) was performed.

Table A2: Rotated component matrix of organisational approaches to legal

	Component		
	1	2	3
Q25_4	.860		
Q25_3	.788		
Q25_5	.733		
Q25_1		.933	
Q25_2		.915	
Q25_7			-.951
Q25_6			-.857

Note. Extraction Method: Principal Component Analysis; Rotation Method: Oblimin with Kaiser Normalization. Rotation converged in 5 iterations.

Factor 1: Resistant/Negative relationship with the business ($\alpha = .71$)

- Colleagues are sometimes reluctant to raise matters with in-house lawyers
- The legal function is sometimes criticised for inhibiting or slowing business decisions

¹⁶⁸ Brown (2009). Choosing the Right Type of Rotation in PCA and EFA. Retrieved from: <http://jalt.org/test/PDF/Brown31.pdf>

- The organisation sometimes takes actions which are against my advice on legally important matters

Factor 2: Positive and supportive relationship with the business ($\alpha = .84$)

- There is a clear and common understanding within the business of what the role of the legal function is
- The independence of the legal function within the business is strongly supported by the business functions

Factor 3: Uneven relationship with the business ($\alpha = .80$)

- Parts of the business are more challenging to in-house lawyers than others
- Parts of the business are more supportive of legal than others

TEAM ORIENTATION

A principal component analyses was run for items assessing team orientation. KMO was acceptable (.75).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, 4 components were extracted. The four components explained 75.7% variance. Communalities were all above .50.

Given that some of the correlations between the four components exceeded .32, oblique rotation (i.e., oblimin) was performed.

Table A3: Rotated component matrix of team orientation

	Component			
	1	2	3	4
Q26_1	.851	.102		
Q26_5	.771			
Q26_3	.720	-.131	-.104	
Q26_8		.860	.222	
Q26_6		.802	-.164	-.134
Q26_2			-.885	
Q26_4	.116		-.840	
Q26_9	.119		.144	-.946
Q26_7	-.154	.324	-.240	-.647

Factor 1: Ethical orientation ($\alpha = .73$)

- Doing the right thing
- Valuing integrity as much as profits
- Treating people fairly

Factor 2: Financial performance ($\alpha = .62$)

- Shareholders and investors
- Financial performance

Factor 3: Society orientation ($\alpha = .82$)

- Seeking the good of society
- The organisation's role in society

Factor 4: Productivity and strategy ($\alpha = .70$)

- Productivity and efficiency
- Strategy and planning

PROFESSIONAL PRINCIPLES

A principal component analyses was run for items assessing professional principles. KMO was good (.86).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, three components were extracted. The three components explained 65.6% variance. Communalities were all above .50 (except for item 8 that was .48).

Given that some of the correlations between the four components exceeded .32, oblique rotation (i.e., oblimin) was performed.

Table A4: Rotated component matrix of professional principles

	Component		
	1	2	3
Q27_5	.860	-.165	.159
Q27_1	.770		
Q27_3	.706	.166	-.309
Q27_8	.702		
Q27_7	.605	.284	-.120
Q27_9		.872	-.103
Q27_6		.714	.261
Q27_2	.152	.676	.115
Q27_4		.226	.856

Factor 1: Independence and legality ($\alpha = .81$)

- Maintaining the trust the public places in you and in the provision of legal services
- Upholding the rule of law and the proper administration of justice
- Preventing my independence from being compromised
- Dealing with your own regulators in an open, timely and co-operative manner;
- Complying with your own legal and regulatory obligations as a lawyer

Factor 2: Effectiveness and integrity ($\alpha = .71$)

- Carrying out your role in the organisation effectively and in accordance with proper governance and sound financial and risk management principles
- Providing a proper standard of service to the business
- Acting with integrity

Factor 3: Client's interests

- Acting in the best interests of the organisation

ETHICAL INFRASTRUCTURE

A principal component analyses was run for seven items related to ethical infrastructure. KMO was good (.80). However, the scale used in one of the items was very different from the other ones – and communality of that item was very low. Thus, a subsequent principal component analyses was run without it. KMO was acceptable/good (.79).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, 2 components were extracted. The two components explained 62.7% variance. Communalities were acceptable (above .50 except for item 2 that was .49).

Given that some of the correlations between the components exceeded .32, oblique rotation (i.e., oblimin) was performed.

Table A5: Rotated component matrix of ethical infrastructure

	Component	
	1	2
Q29_3	.898	
Q29_1	.780	
Q29_2	.679	
Q31	-.122	.875
Q29_5		.736
Q29_4	.358	.541

Factor 1: Formal infrastructure ($\alpha = .70$)

- Through professional ethics training delivered by internal providers
- Through other written guidance from the organisation
- Through professional ethics training delivered by external providers

Factor 2: Informal infrastructure ($\alpha = .67$)

- How frequently do you communicate with other in-house lawyers about ethics and conduct issues
- Through informal discussions of professional ethics with others outside the organisation
- Through informal discussions of professional ethics within the organisation

REGULATION OF IN-HOUSE LEGAL ROLE

A principal component analyses was run for items related to the regulation of in-house legal role. KMO was poor (.55).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, 5 components were extracted. Communality of item Q33_5 was low (.38), thus this item was taken out and other PCA was run. Through scree test, only 4 components were extracted and these components explained 78.4 % variance. All communalities were then good.

Given that some of the correlations between the components exceeded .32, oblique rotation (i.e., oblimin) was performed.

Table A6: Rotated component matrix of in-house legal role

	Component			
	1	2	3	4
Q33_8	.908	-.104		
Q33_7	.834	.118		-.182
Q33_3	.129	.899		
Q33_4	.183	-.747		
Q33_1		.102	.862	-.127
Q33_2		-.113	.805	.190
Q33_6				.958

Note.Extraction Method: Principal Component Analysis;
Rotation Method: Oblimin with Kaiser Normalization.
Rotation converged in 7 iterations.

Factor 1: Codes could be more useful ($\alpha = .73$)

- The professional codes of conduct should be made more relevant to the work of in-house lawyers
- It would be helpful to have more [rules/guidance] about the appropriate roles and responsibilities of in-house lawyers

Factor 2: Desired regulation amount ($\alpha = .57$)

- There is too much regulation of in-house lawyers
- There is not enough regulation of in-house lawyers (rev)

Factor 3: Codes are used ($\alpha = .59$)

- We have reviewed applicable lawyer professional codes of conduct and documented a response to them
- Lawyers' professional codes of conduct have a material, day to day impact on the operations of me and/or my team

Factor 4: Addresses the needs

- The Solicitors' Code of Conduct addresses the needs of in house lawyers well.

MORAL ATTENTIVENESS

A principal component analyses was run for items assessing moral attentiveness. KMO was good (.82).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, two components were extracted. Communalities were all above .50.

Given that some of the correlations between the components exceeded .32, oblique rotation (i.e., oblimin) was performed. The solution obtained, with two factors, and replicates what was expected from the use of this scale.

Table A7: Rotated component matrix of moral attentiveness

	Component	
	1	2
Q36_1	.983	-.145
Q36_2	.809	.156
Q36_4	.788	.177
Q36_3		.912
Q36_5		.887

Note. Extraction Method: Principal Component Analysis; Rotation Method: Oblimin with Kaiser Normalization; Rotation converged in 5 iterations.

Factor 1: Perceptual moral attentiveness ($\alpha = .88$)

- In a typical day, I face several ethical dilemmas.
- I regularly face decisions that have significant ethical implications
- I frequently encounter ethical situations.

Factor 2: Reflective moral attentiveness ($\alpha = .80$)

- I regularly think about the ethical implications of my decisions
- I often reflect on the moral aspects of my decisions.

ETHICAL PRESSURE

A principal component analyses was run for item assessing ethical pressure. KMO was adequate (.72).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, 2 components were extracted. Communalities were all above .50.

Given that some of the correlations between the components exceeded .32, oblique rotation (i.e., oblimin) was performed.

Table A8: Rotated component matrix of ethical pressure

	Component	
	1	2
Q38	.913	
Q37	.823	
Q36_7		-.943
Q36_6	.125	-.797

Factor 1: Environmental pressure ($\alpha = .69$)

- How often are you asked to advise on something where the legality of a proposed action by the organisation is debatable
- How often are you asked to advise on something where the ethicality (as opposed to the legality) of a proposed action by the organization is debatable.

Factor 2: Ethical pressure ($\alpha = .71$)

- I'm sometimes asked to advise or assist on things that make me uncomfortable ethically
- There are tensions between the way I and the business respects obligations to uphold the law.

MORAL DISENGAGEMENT

A principal component analyses was run for item assessing moral disengagement. KMO was good (.84).

On the basis of the following criteria a) retaining components that have eigenvalues > 1 and b) scree test, either one or two components could be extracted. Given that some of the correlations between the components exceeded .32, oblique rotation (i.e., oblimin) was performed.

As can be observed from the two components solution below, all items showed higher loadings on the first component, and thus we decided to retain only the first component, which also replicated the original measure of moral disengagement.

Table A8: Rotated component matrix of moral disengagement

	Component	
	1	2
Q40_5	.773	-.305
Q40_6	.731	-.105
Q40_3	.718	
Q40_1	.696	
Q40_2	.693	-.179
Q40_7	.657	.569
Q40_8	.646	.591
Q40_4	.628	-.477

Factor 1: Moral disengagement ($\alpha = .84$)

- People shouldn't be held accountable for doing questionable things when they were just doing what an authority figure told them to do.
- People can't be blamed for doing things that are technically wrong when all their friends are doing it too.
- Taking something without the owner's permission is okay as long as you're just borrowing it.
- Taking personal credit for ideas that were not your own is no big deal.
- Considering the ways people grossly misrepresent themselves, it's hardly a sin to inflate your own accomplishments a bit.
- It is okay to spread rumours to defend those you care about.
- People who get mistreated have usually done something to bring it on themselves
- Some people have to be treated roughly because they lack feelings that can be hurt.

Appendix B:

DETAILED ANALYSIS OF THE CLUSTERS

Cluster Analysis is an exploratory multivariate data analysis technique which allows us to group our respondents into (broadly) homogeneous groups. Cases are classified according to their similarity in relation to a number of pre-defined attributes. We use it here to explore whether there are common groups or patterns of profiles of lawyers in terms of their inclination to ethicality.

There are several methods for doing cluster analysis: hierarchical cluster analysis, K-means cluster analysis and two-step cluster analysis. We have opted for hierarchical cluster analysis as these are more adequate for small datasets (in contrast with two step cluster analysis) and do not require an *a priori* definition of the number of clusters to be extracted (as in K-Means cluster analysis).

We have used the squared Euclidian distance as a measure of similarity between cases, as this is the most conventional measure that is used when dealing with numeric variables. In order to determine the distance between clusters, we have compared the solution when using the two most commonly used methods: furthest neighbour (or complete linkage) method and the Ward method.

As there is no statistical criteria that can be used to decide the number of clusters to retain, nor the method to determine the distances between clusters, the decision was based on the analysis of the graphical representation of the fusion coefficients and the analytical interpretation of clusters that were derived through both the furthest neighbour and Ward methods. The graphical representations of fusion coefficients derived from both methods suggested that a solution with four clusters would be the most adequate, and the clusters derived from Ward method were considered the most pertinent from a substantive analytical point of view. Therefore, the results reported regarding this cluster analysis correspond to the four clusters that were extracted from Ward method.

CLUSTERS AND BACKGROUND VARIABLES

A marginally significant difference across the different clusters was found for the 'number of years working in-house' (see Table 29 below), with cluster 3 showing a higher mean of years working in-house in comparison to cluster 4.¹⁶⁹ Chi-square tests also revealed statistically significant differences across the clusters in terms of 'professional qualifications',¹⁷⁰ with more respondents in cluster 3 identifying themselves being qualified as barrister or advocate than in the other clusters, and in relation to the 'organisation sector'¹⁷¹ and with respondents of cluster 1 working more in the public sector, respondents of cluster 2 working less in the public sector, and respondents of cluster 3 working less in a business and more in the public sector.

¹⁶⁹ $p = .063$

¹⁷⁰ $\chi^2(3) = 9.89, p = .02$

¹⁷¹ $\chi^2(6) = 33.20, p < .001$

No significant differences¹⁷² were found among the different clusters regarding: (i) number of years since qualification; (ii) size of organization legal team; (iii) gender; (iv) professional role; and (v) work identity.

Table 29: Clusters in relation to organisation and background variables

	Group 1		Group 2		Group 3		Group 4		ANOVA	
	Mea n	SD	Mea n	SD	Mean	SD	Mean	SD	F	P
Years working in-house	10.7 3	8.16	10.7 3	8.23	13.8 2	9.90	9.52	8.09	2.38	.07
Years since qualification	15.9 0	9.42	15.7 7	9.60	18.0 0	9.60	15.73	9.89	0.75	.52
Size of legal team	98.4 6	448.6 7	99.8 3	294.2 9	72.5 3	164.21	53.13	166.0 9	0.36	.79

A Multivariate analysis of variance (MANOVA), which is a multivariate procedure for testing whether significant differences exist between groups in two or more dependent variables, was used for testing whether the clusters differed in relation to a number of features. The choice for using MANOVA instead of multiple ANOVAs for each dependent variable was made to avoid artificially increasing the odds of incorrectly rejecting a true null hypothesis or a "false positive" by running multiple tests, which is especially relevant when the dependent variables are correlated. The MANOVA was significant¹⁷³ and was followed by significant tests involving individual dependent variables separately (ANOVA's in this case), to determine in relation to which specific variables the groups differed significantly.

These analyses revealed statistically significant differences across the clusters regarding respondents' views of:

- a) the in-house lawyer role in terms of commercial, ethical, independence, and subservient orientations, with cluster 3 showing higher ratings of ethical orientation than the other clusters and higher independence orientation than clusters 1 and 4, and cluster 1 showing higher ratings of subservient orientation than clusters 2 and 3.

¹⁷² $\alpha > .10$

¹⁷³ Pillais' Trace = .65, $F(60, 1050) = 4.91$, $p < .001$.

	Group 1		Group 2		Group 3		Group 4		ANOVA	
Orientation	Mean	SD	Mean	SD	Mean	SD	Mean	SD	F	P
Commercial	6.17	0.78	6.39	0.68	6.28	0.71	6.43	0.76	2.23	0.08
Ethical	5.77	0.70	6.03	0.79	6.46	0.53	5.69	0.92	10.56	0.00
Exploitation of uncertainty	3.98	1.18	3.72	1.17	3.90	1.23	3.70	1.29	1.17	0.32
Independence	5.90	0.87	5.95	0.95	6.34	0.72	5.72	1.11	3.58	0.01
Neutral advisor	5.49	1.22	5.48	1.23	5.54	1.08	5.44	1.21	0.06	0.98

- b) the relationship with the business, namely resistant /negative and uneven relationships with the business, with cluster 1 showing higher ratings of resistant/negative relationship with the business than clusters 2 and 4, and cluster 3 showing higher ratings than cluster 4, and cluster 4 showing lower ratings of uneven relationship with the business than the other three clusters.

	Group 1		Group 2		Group 3		Group 4		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	F	P
Resistant / Negative relationship with the business	5.07	1.04	4.37	1.32	4.93	1.17	3.88	1.33	11.69	0.00
Positive / Supportive relationship with the business	4.99	1.35	4.82	1.42	4.83	1.58	4.59	1.52	0.75	0.52
Uneven relationship with the business	5.82	0.92	5.80	1.03	6.07	0.74	5.33	1.22	4.13	0.01

- c) team orientation in terms of ethical and society orientations, with cluster 3 showing higher ratings of ethical orientation than the other three clusters, and clusters 1 and 2 showing higher ratings than cluster 4, and cluster 3 showing higher ratings of society orientation than the other 3 clusters, and cluster 1 showing higher society orientation than cluster 4.

	Group 1		Group 2		Group 3		Group 4		ANOVA	
Team orientations	Mean	SD	Mean	SD	Mean	SD	Mean	SD	F	P
Ethical	4.01	0.65	3.93	0.71	4.57	0.56	3.54	0.82	17.27	0.00
Financial performance	3.24	1.01	3.46	1.05	3.41	0.81	3.48	1.06	0.99	0.40
Society	3.35	0.89	3.17	0.97	3.95	1.10	2.78	0.98	11.79	0.00
Productivity and strategy	3.98	0.70	4.08	0.72	4.07	0.76	3.98	0.89	0.47	0.70

- d) professional principles, namely independence and legality, effectiveness and integrity , with cluster 3 showing higher ratings of independence and legality than clusters 2 and 4 and higher ratings of effectiveness and integrity than clusters 1 and 4.

	Group 1		Group 2		Group 3		Group 4		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	F	P
Independence and legality	4.04	0.68	3.91	0.77	4.38	0.73	3.71	0.83	6.89	0.00
Effectiveness and integrity	4.58	0.46	4.68	0.44	4.79	0.34	4.50	0.45	4.51	0.00
Client interests	4.41	0.67	4.56	0.55	4.54	0.55	4.59	0.55	1.41	0.24

- e) ethical infrastructure, both formal and informal, with cluster 3 showing higher ratings of both formal and informal ethical infrastructure than clusters 2 and 4 and cluster 1 showing higher ratings than cluster 4 on both formal and informal ethical infrastructures.

	Group 1		Group 2		Group 3		Group 4		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	F	P
Formal infrastructure	2.77	1.25	2.50	1.29	3.16	1.53	2.02	1.24	6.26	0.00
Informal infrastructure	3.82	1.27	3.52	1.44	4.31	1.35	2.28	1.32	17.22	0.00

- f) ratings of ethical pressure, with all clusters showing significantly different ratings of informal ethical pressure, the highest ethical pressure being rated by cluster 3, followed by cluster 1, 2 and 4, respectively.¹⁷⁴

	Group 1		Group 2		Group 3		Group 4		ANOVA	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	F	P
Ethical pressure	3.28	0.78	2.66	0.83	4.06	1.05	2.12	0.63	53.27	0.00

¹⁷⁴For this analysis, we conducted a MANOVA followed by post-hoc multiple comparisons