



ALLEN & OVERY

*A&O cross-border surveys
on virtual hearings*

Introduction

Though there is variance in terms of how individual countries, institutions and court systems have adopted virtual hearings, the on-going global Covid-19 pandemic has led to a greater number of hearings being held virtually.

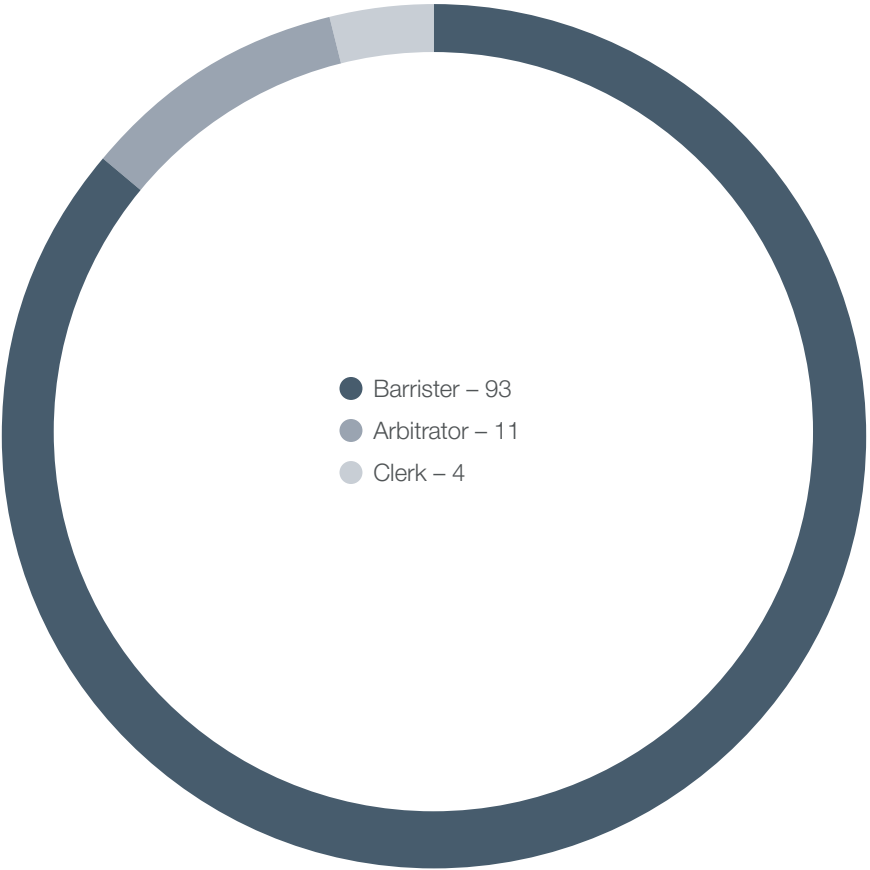
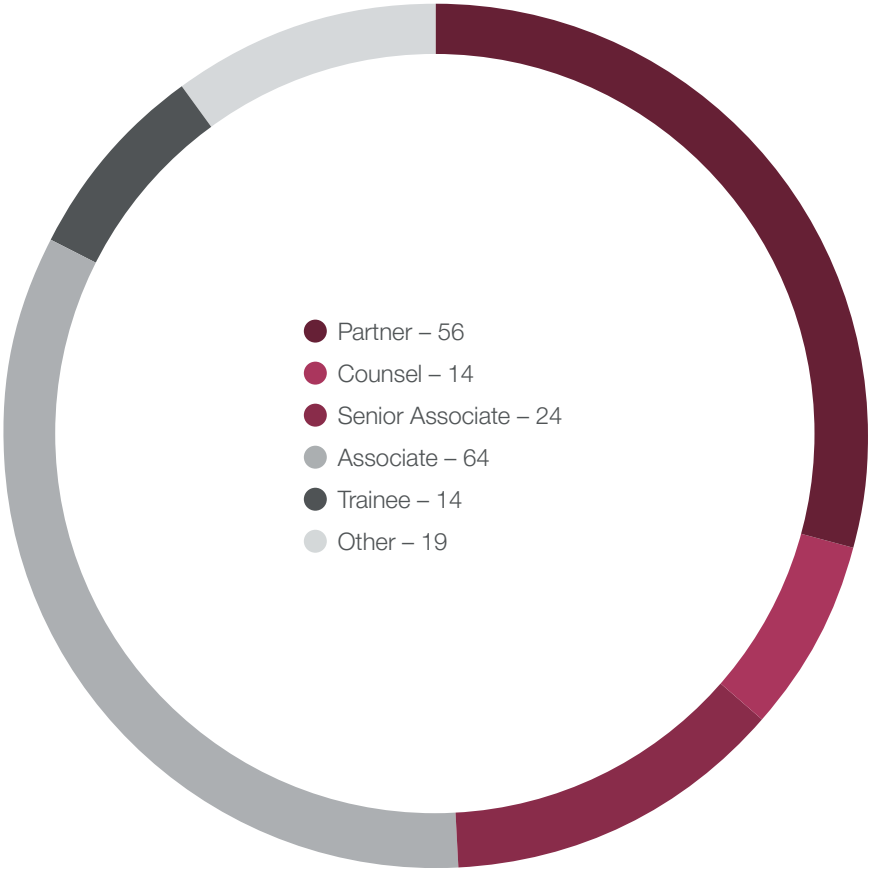
In order to gather data and insights regarding people's experiences of, and opinions on, virtual hearings in June, July and August 2020 we surveyed both internal (191 respondents) and external (108 respondents) audiences. Though the majority of questions asked of each group were the same, there were some additional questions in the external survey as indicated in this report. Please also note that respondents had the option to 'skip' questions, leading to differing sample sizes for each question.

Our responders

- Internal
- External

Internal audience breakdown

External audience breakdown

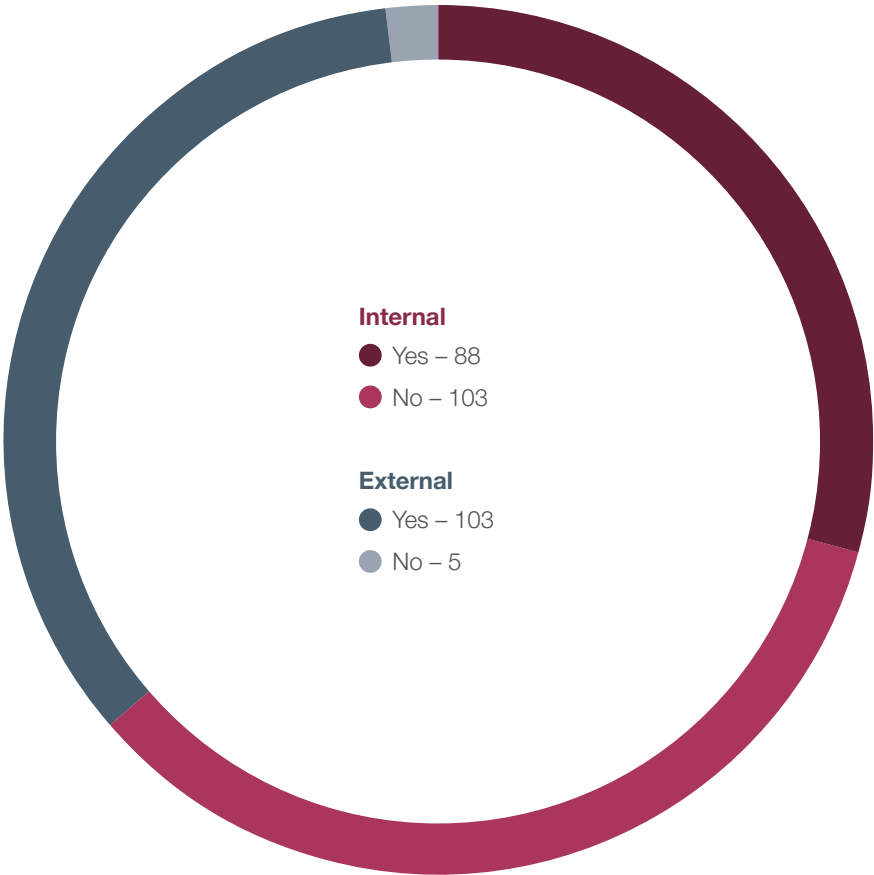


Experience

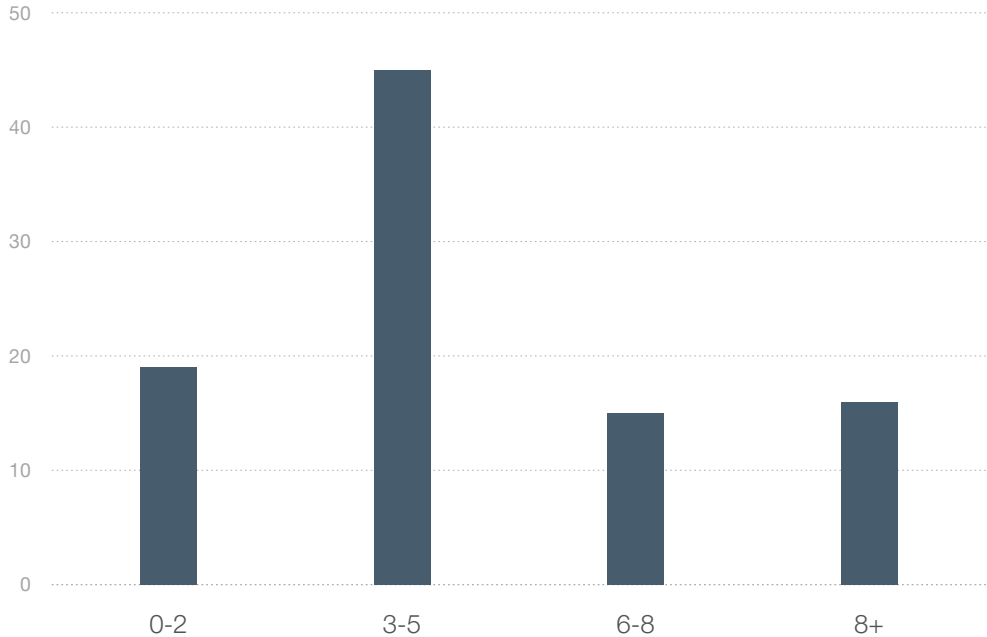


Experience

Do you have experience of virtual hearings (which include hearings by video or telephone conference)?

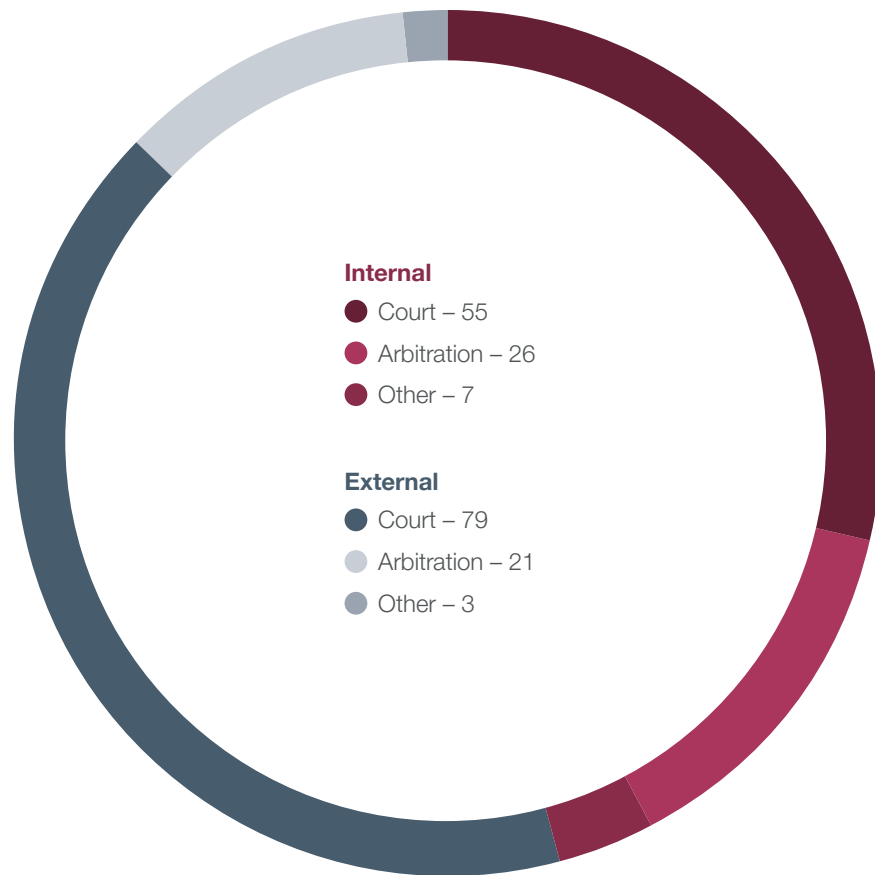


External survey only – How many virtual hearings have you been involved in?



Experience

For those with experience – What type of dispute resolution does your virtual hearing experience predominantly relate to?

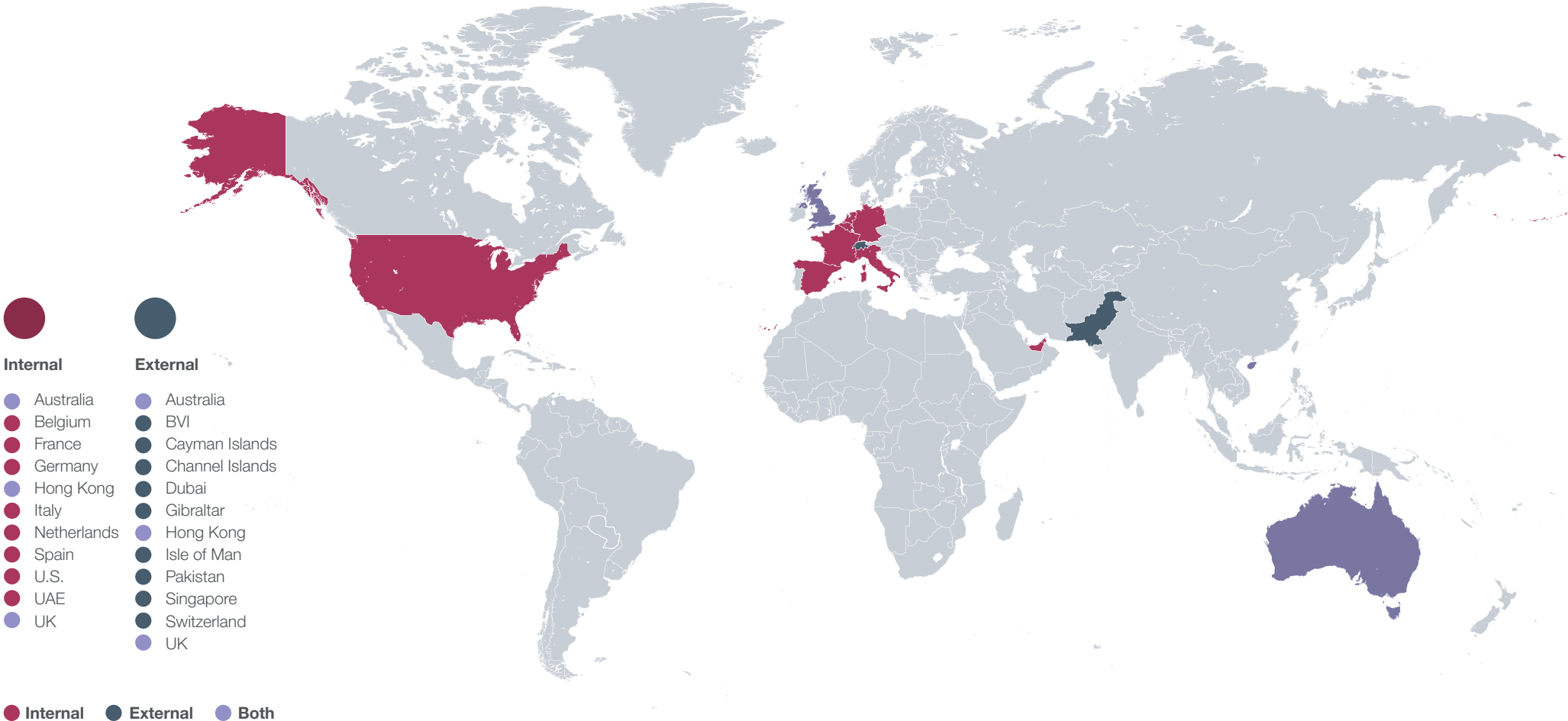


Other types of hearing noted



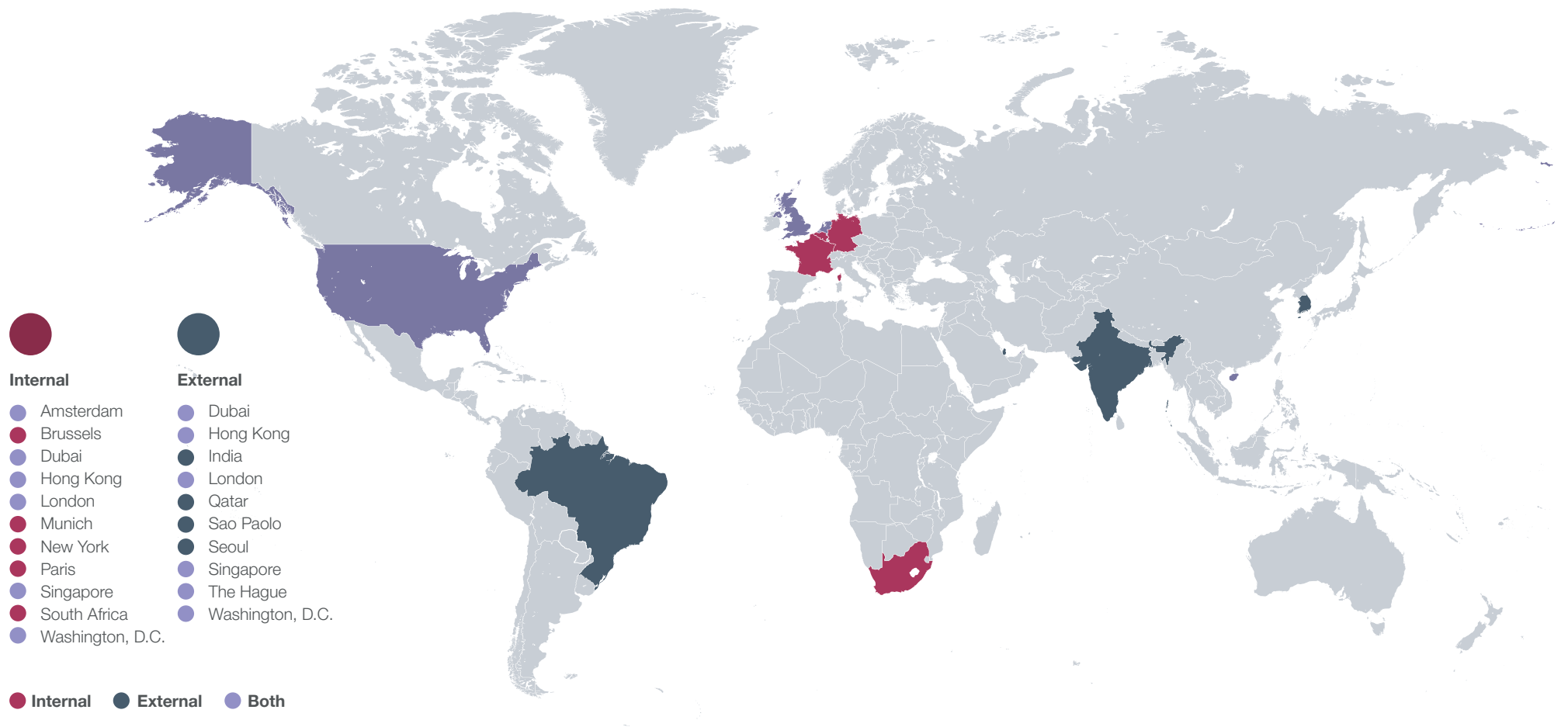
Experience

For court hearings – In which jurisdiction(s) did the virtual hearing(s) take place?



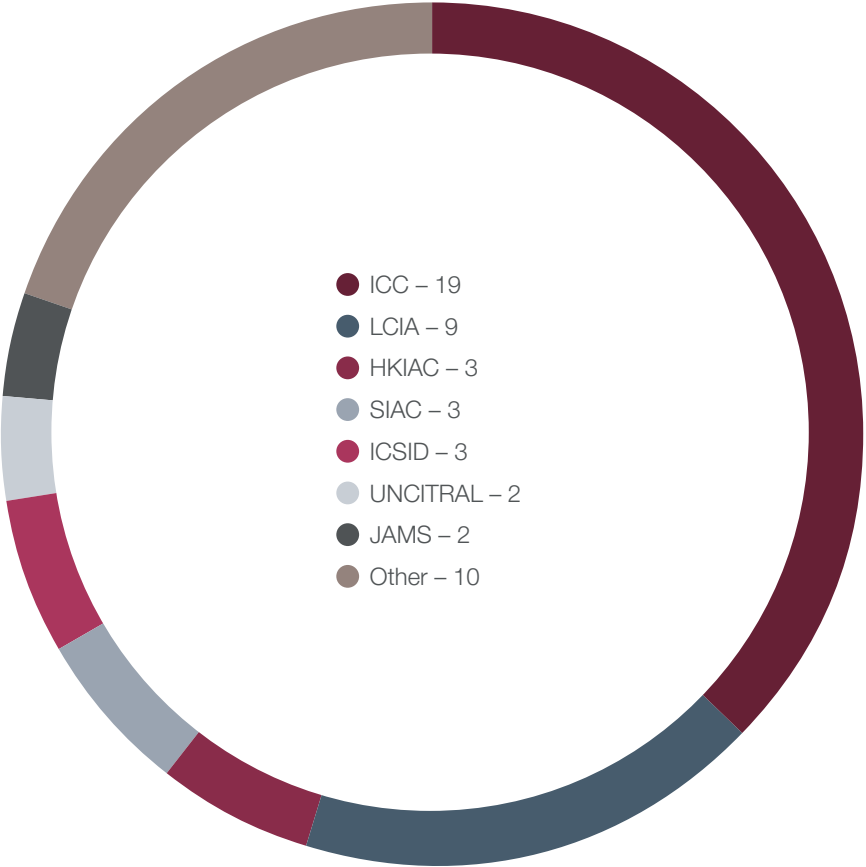
Experience

For arbitration – Where was/were the virtual arbitration(s) seated?

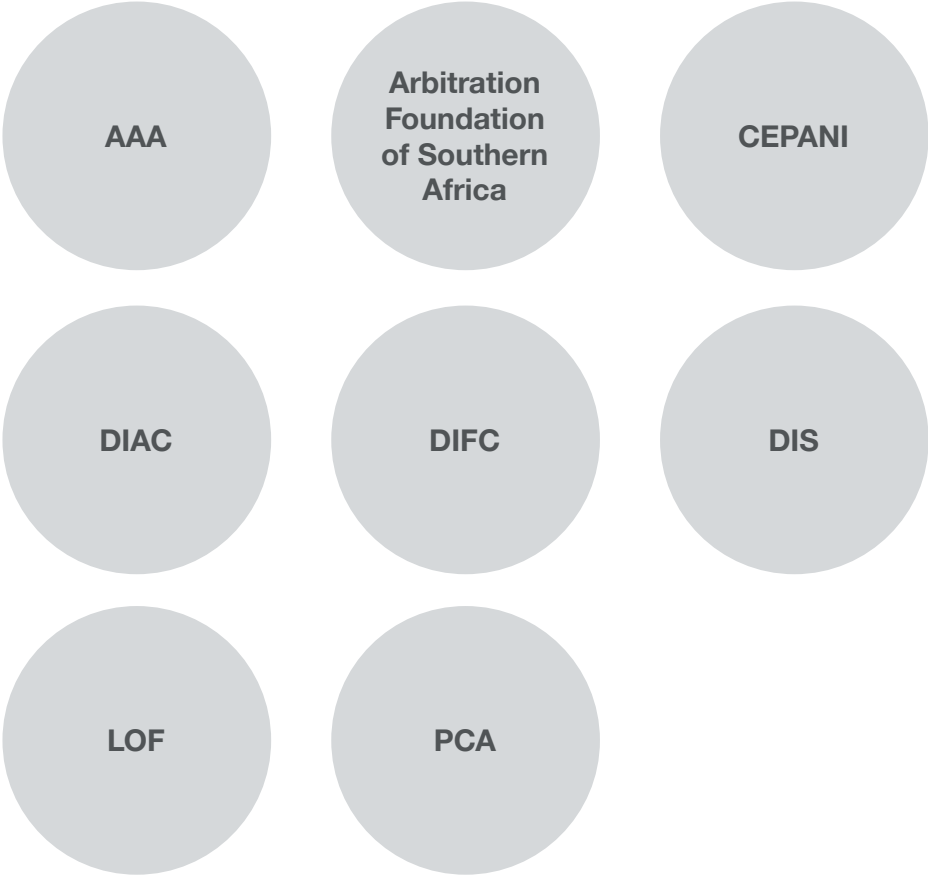


Experience

Which institution(s)?

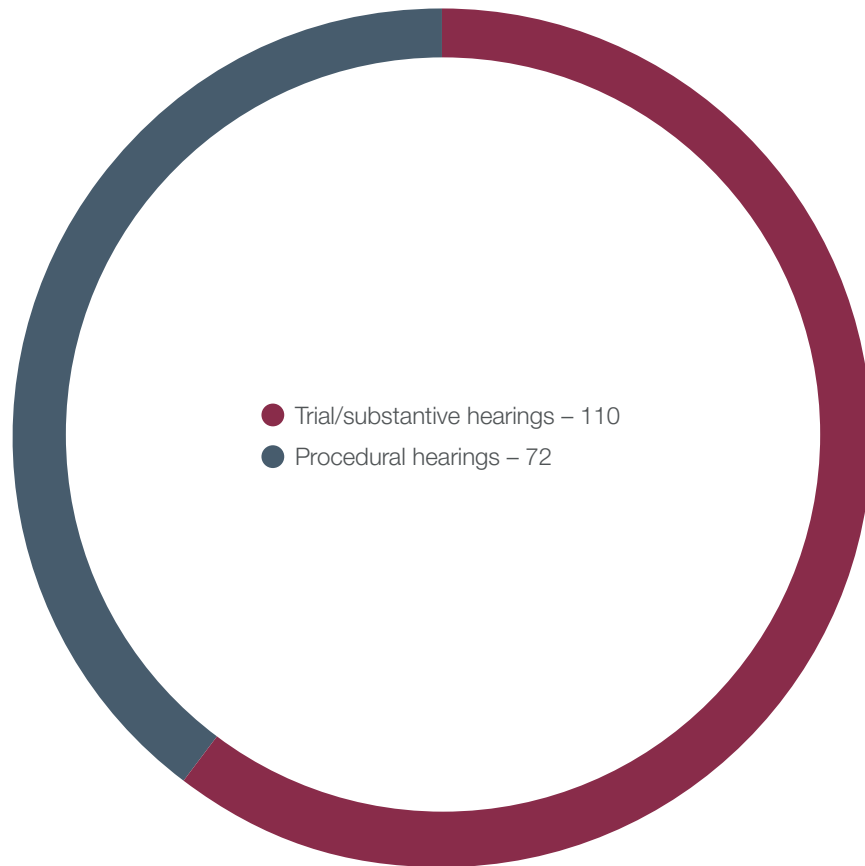


Other institutions noted:

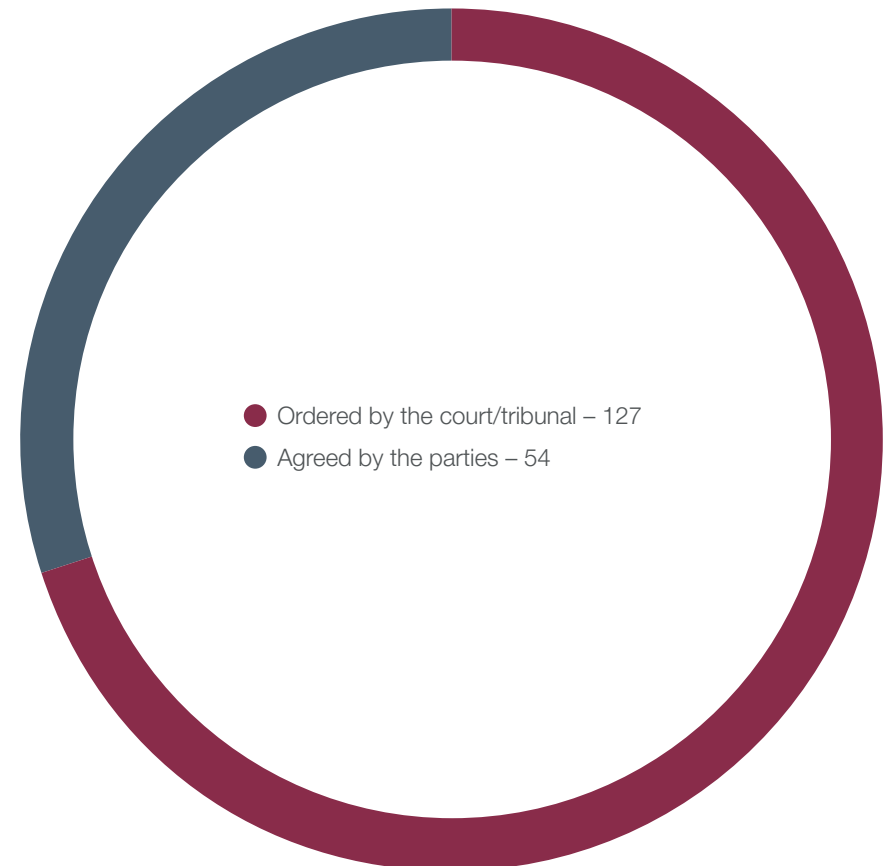


Experience

What type of virtual hearing does your experience predominantly relate to?
(Please indicate what was predominantly the case if you participated in more than one hearing)



Was the virtual hearing ordered by the court or tribunal, or agreed by the parties?
(Please indicate what was predominantly the case if you participated in more than one hearing)

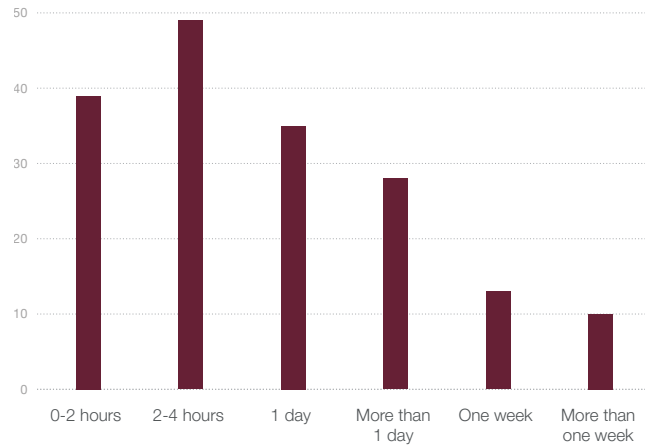


Logistics and technology

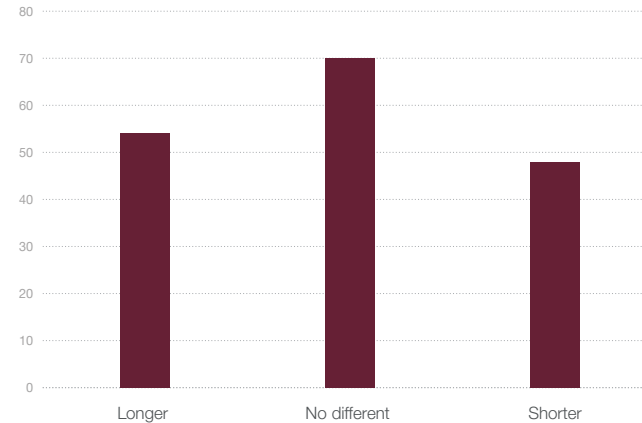


Logistics and technology

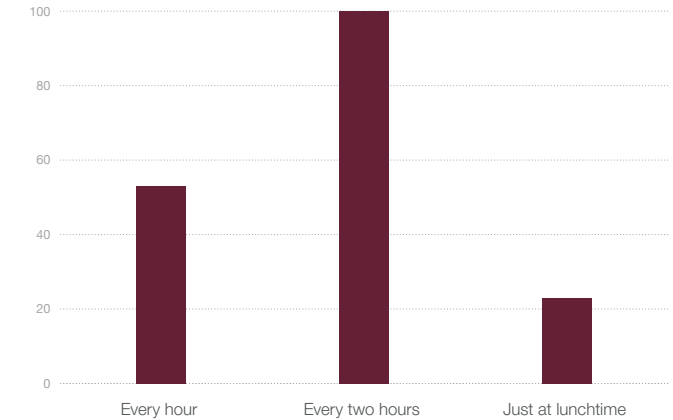
How long was the hearing you took part in? If more than one, please answer as to the average length.



In your view, what impact does hosting a hearing virtually have on the length of the hearing?

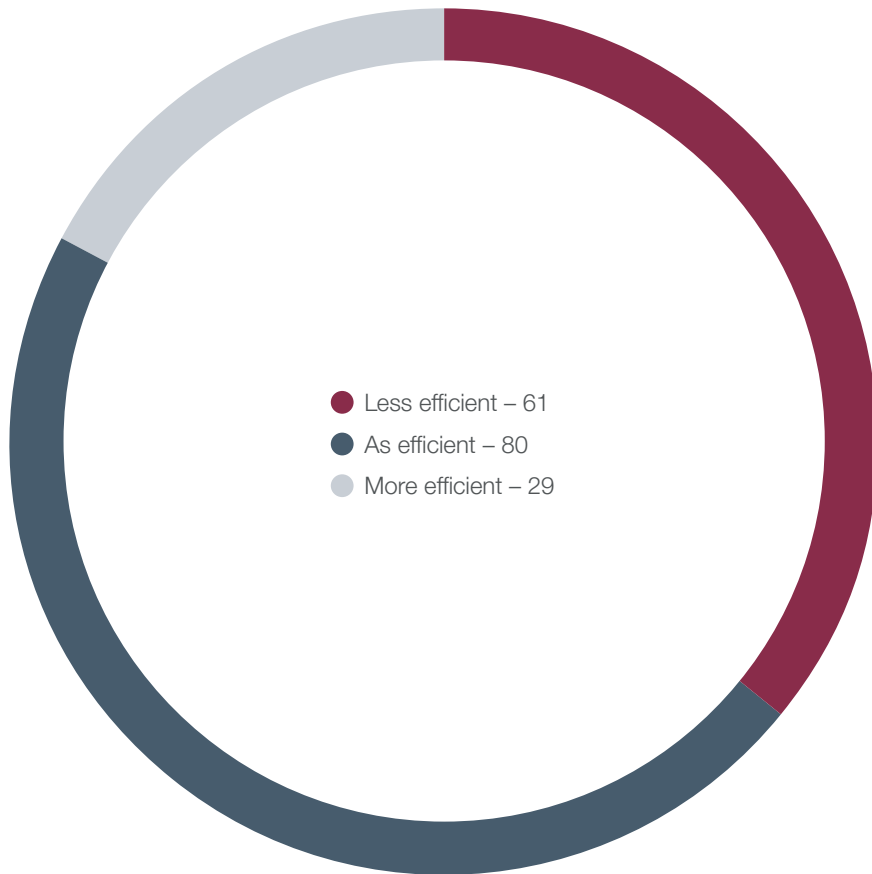


How regularly should breaks be scheduled during virtual hearings?

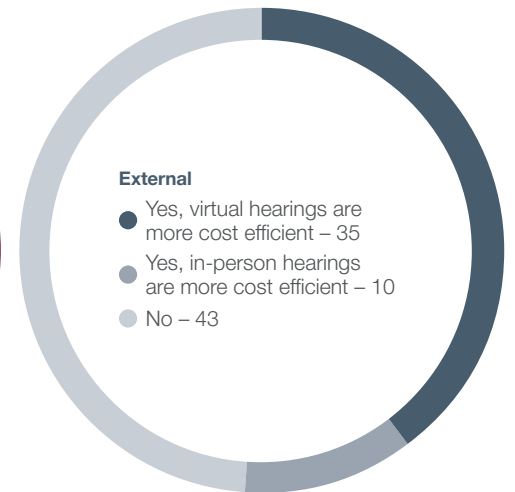
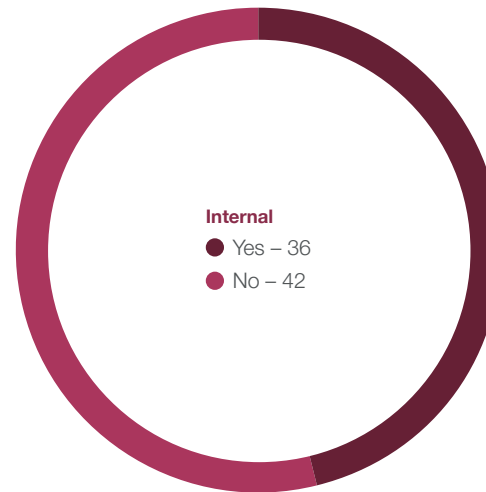


Logistics and technology

Are virtual hearings as efficient as in-person hearings?

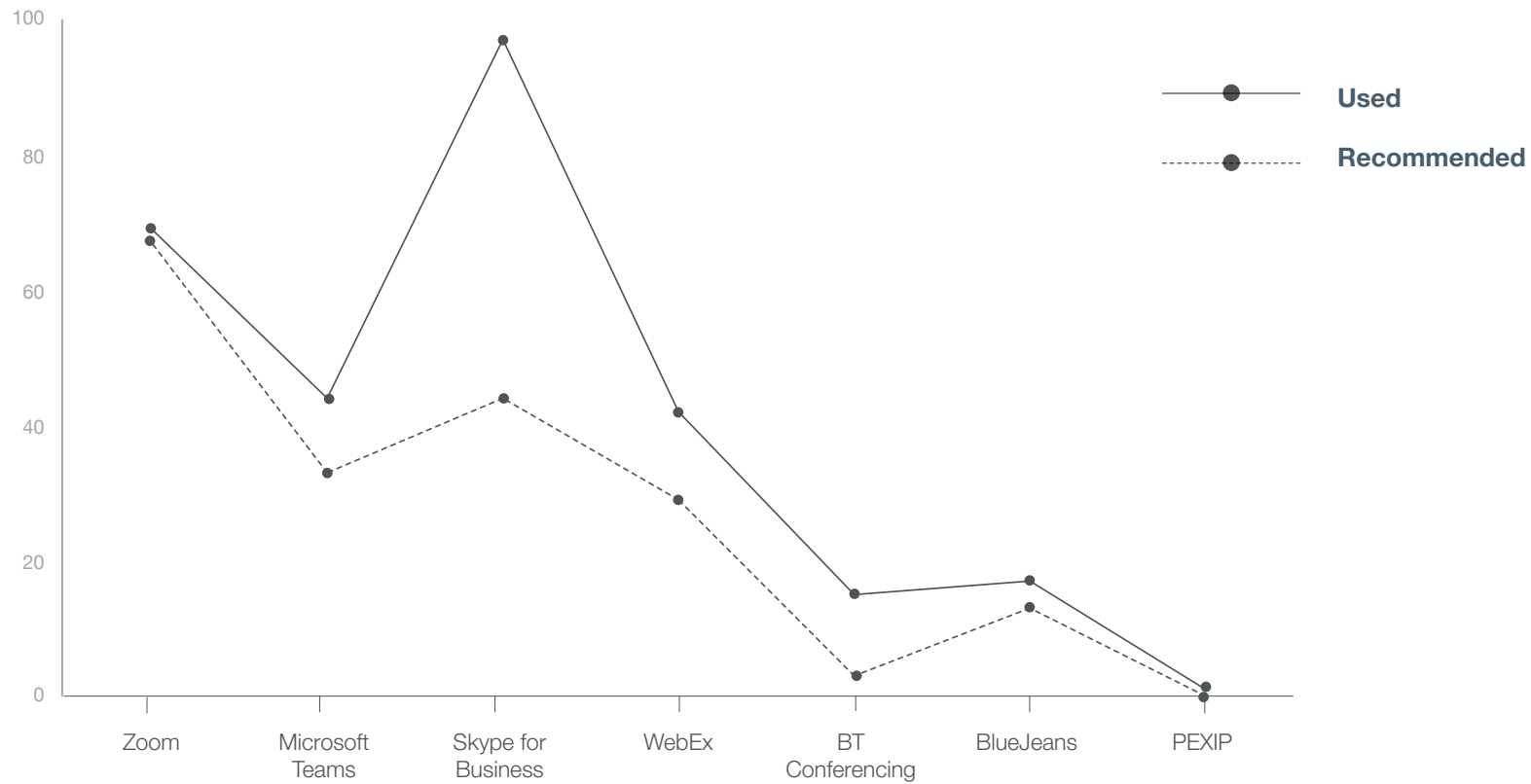


Broadly, is there a significant cost differential between virtual and in-person hearings?



Logistics and technology

Which platform(s) have been used to host the virtual hearing(s) you have attended and would you recommend it/them?



Logistics and technology

Other platforms our respondents used and would recommend:

**HMCTS Cloud
Video Platform**

Starleaf

Lifesize

Sparq

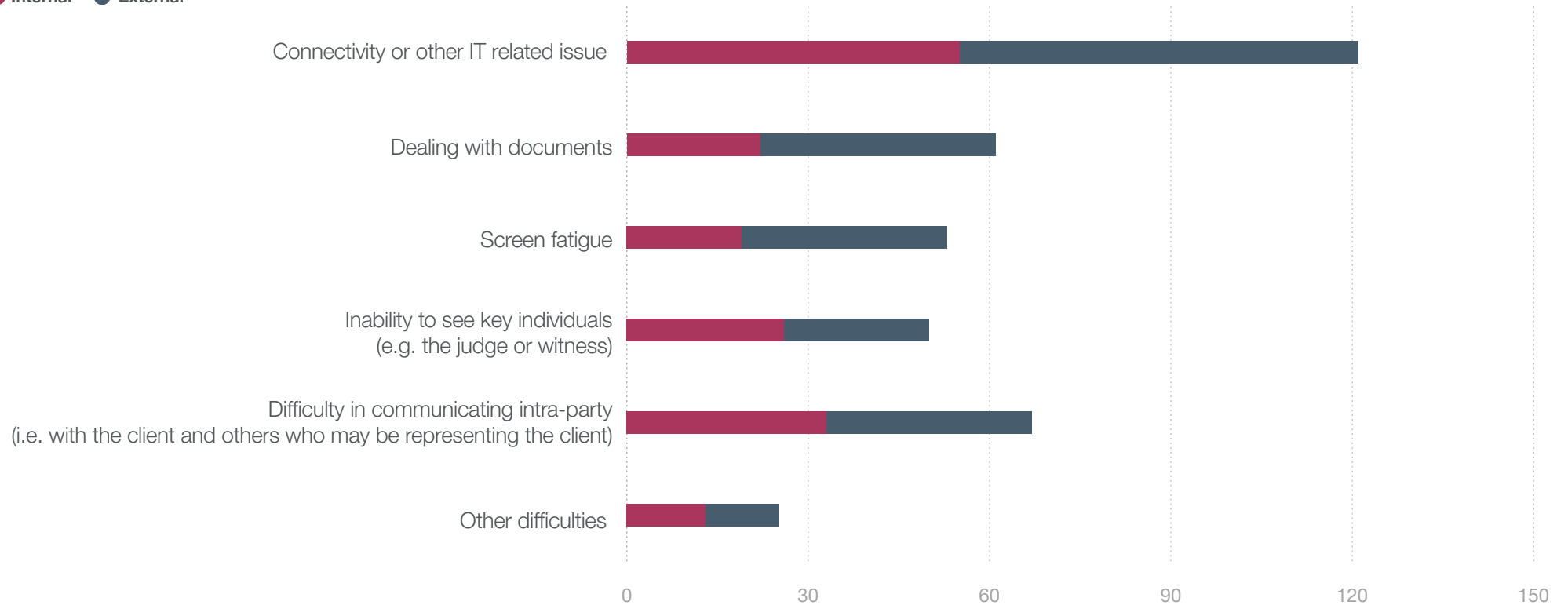
**Jitsi
Meet**



Logistics and technology

Have you experienced any of the following difficulties when participating in a virtual hearings (choose all that apply)?

● Internal ● External



Logistics and technology

Other difficulties highlighted:

Recordings stopped mid-hearing

Poor quality sound/audio feedback

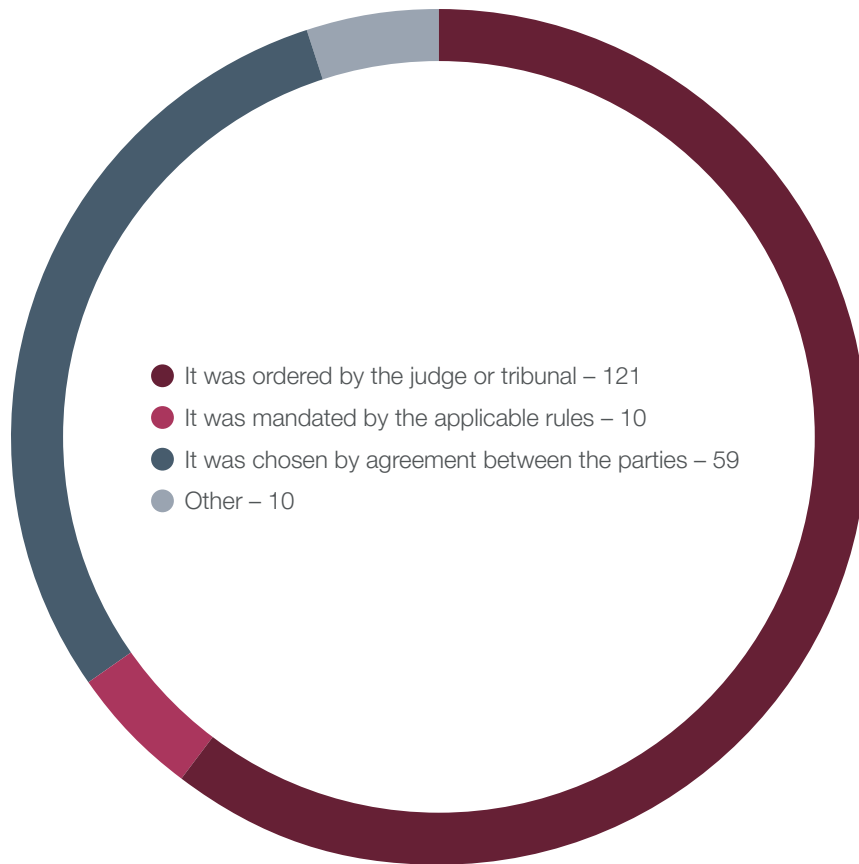
Mute control

Lack of password protection – third parties connecting and slowing down the process

Doorbell ringing for a delivery

Logistics and technology

How was the platform you used for the virtual hearing(s) you have attended chosen?



External survey only – How could your instructing solicitors assist you better to prepare for virtual hearings?

Finalise electronic bundles as early as possible, paying close attention to pagination.

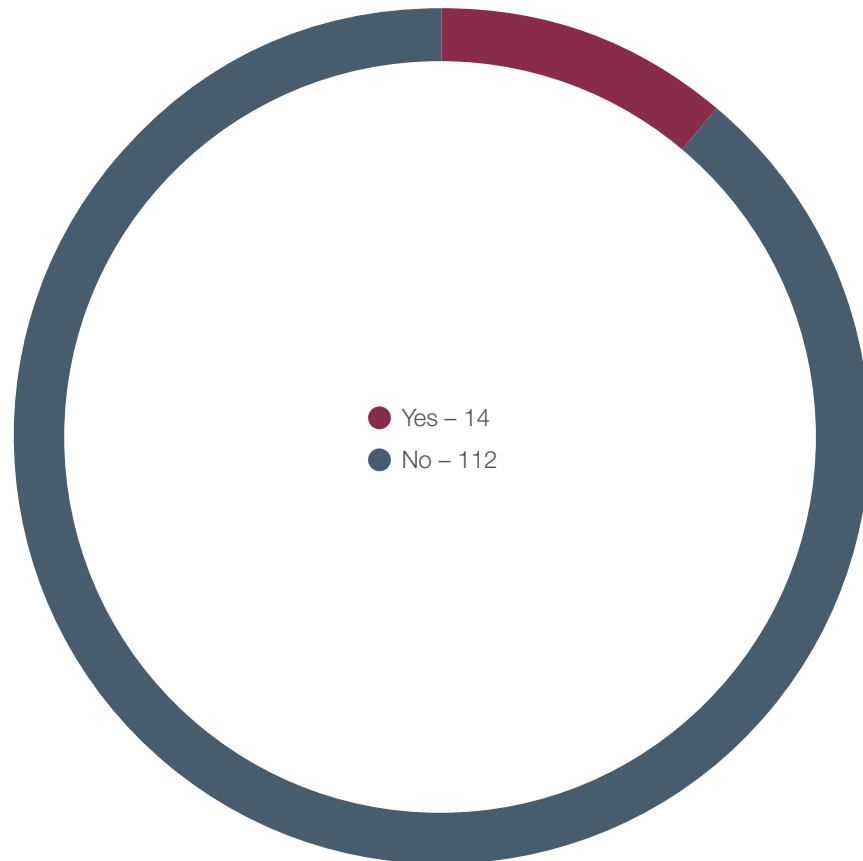
Practice runs using the relevant platform.

Observations

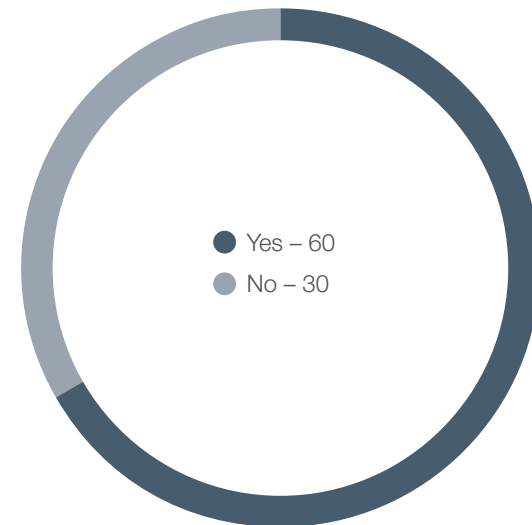


Observations

Do you feel the ultimate result of your hearing was impacted because the hearing took place virtually as opposed to physically? (Please indicate what was predominantly the case if you participated in more than one hearing)



External survey only – Do you consider that your ability to ‘read’ witnesses, judges or arbitrators is impacted by a virtual environment?



Observations

**Our respondents indicated that this was difficult to assess.
Comments on this question noted:**

- Cross-examination being more difficult.
- If videos/cameras are not switched on (which can happen to try to counter connection issues), you lose the valuable insight to be gained from reading facial reactions.
- Hearings held only over the telephone present more challenges.
- That it can be more difficult to meaningfully engage with the other parties, including the Judge.
- That it takes time for counsel and other parties to get used to what may be a new format for them.
- That physical hearings involve “physical performance”, body language, facial expressions, volume of the voice. These elements are missing in a virtual setting, which may have an impact.
- Some felt that technical difficulties can lead to hearings being less ‘smooth’, but others noted that virtual hearings had worked well and presented ‘no issues’.

Observations

One risk that has been identified in relation to giving oral evidence virtually is that witnesses might be coached off camera. Do you have any suggestions as to how this risk can be managed?

Responses to this question noted the following points:

- This could be mitigated by paying close attention to the witness' body language, particularly if they seem to be making eye contact with someone off camera and/or exchanging non-verbal cues – if observed, this should be stated for the record.
- That having established protocol was useful. For example, for the witness to confirm that communication devices are switched off, that they are alone and to confirm that they are not being assisted by counsel or any third party during testimony.
- It may help to have clear instructions from the Judge/Arbitral panel at the outset about rules and expectations.
- 360-degree “owl” camera or multiple cameras showing the full room/back of the witness may help to allay concern.
- A camera feed of opposing counsel may help, this would also allow them to participate more actively should they wish to object.
- Locked computers and/or browsers provided for the hearing may help to allay concern.
- Arrange for a procedural order saying that no contact between the witnesses and the parties will be permitted.
- That having witnesses give evidence from independent, Court-approved locations may help; companies could apply to be accredited, for example law firm offices of firms not involved in the case.
- Imposition of sanctions/fines for those found to be doing this.
- The presence of a third-party lawyer or other neutral party to act as moderator could be one approach.
- That this is also a risk at in-person hearings.
- That there would need to be clarity around what constitutes ‘coaching’.
- That this would be clear to those involved if it were to take place.
- That consideration of ethics is paramount.



Observations

External survey only – have you identified any other material risks?

Responses to this question included the following points:

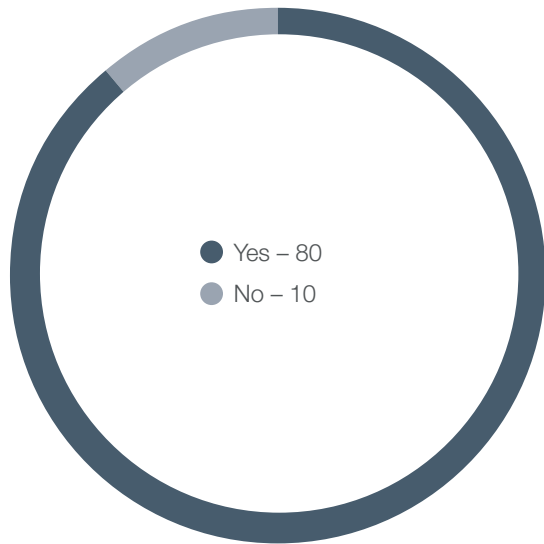
- It is more difficult to reveal dissembling.
- The risk of dissatisfaction is greater, due to parties not having had their 'day in court'.
- There are more challenges with regard to document handling and the inability to hand up documents.
- Overspeaking.
- Illicit recording.
- Virtual hearings are more draining/tiring for all participants and breaks and length of hearing should be responsive to that – this may have an impact on concentration/ the ability to communicate effectively.
- Connection issues leading to missed submissions.
- Internet failure/lack of availability of broadband connection.
- There is front-loading of cost, which could affect access to courts.
- Risk of impersonation.
- Risk of breach of confidence with cloud based document and data storage.



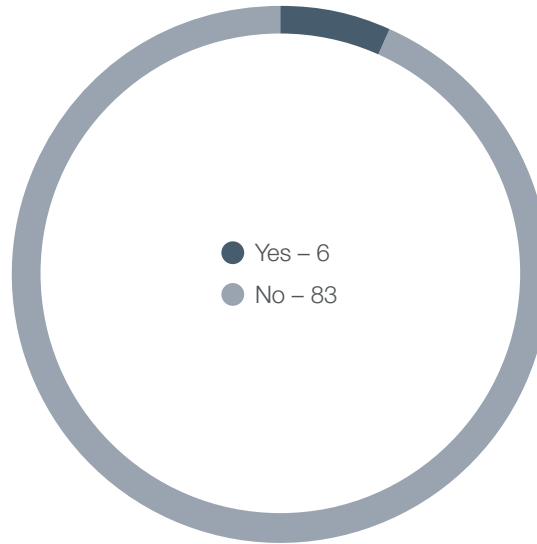
Observations



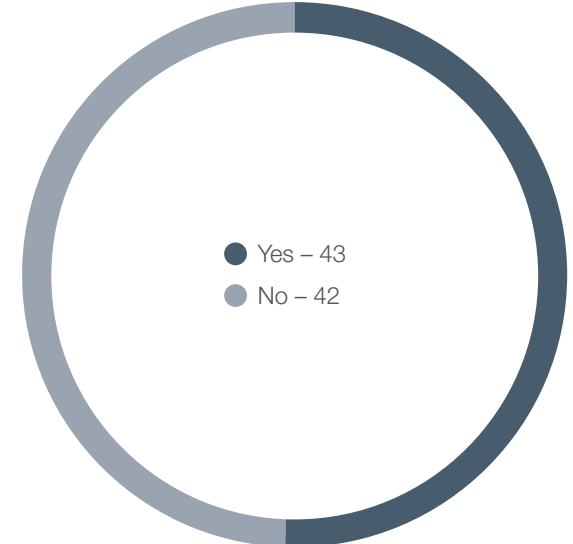
External survey only – Would you be in favour of developing a protocol for the conduct of virtual hearings (handling witnesses etc)?



External survey only – In your opinion, should pre-recorded submissions be allowed?



External survey only – Have you received any feedback from judges/tribunal members on the process?



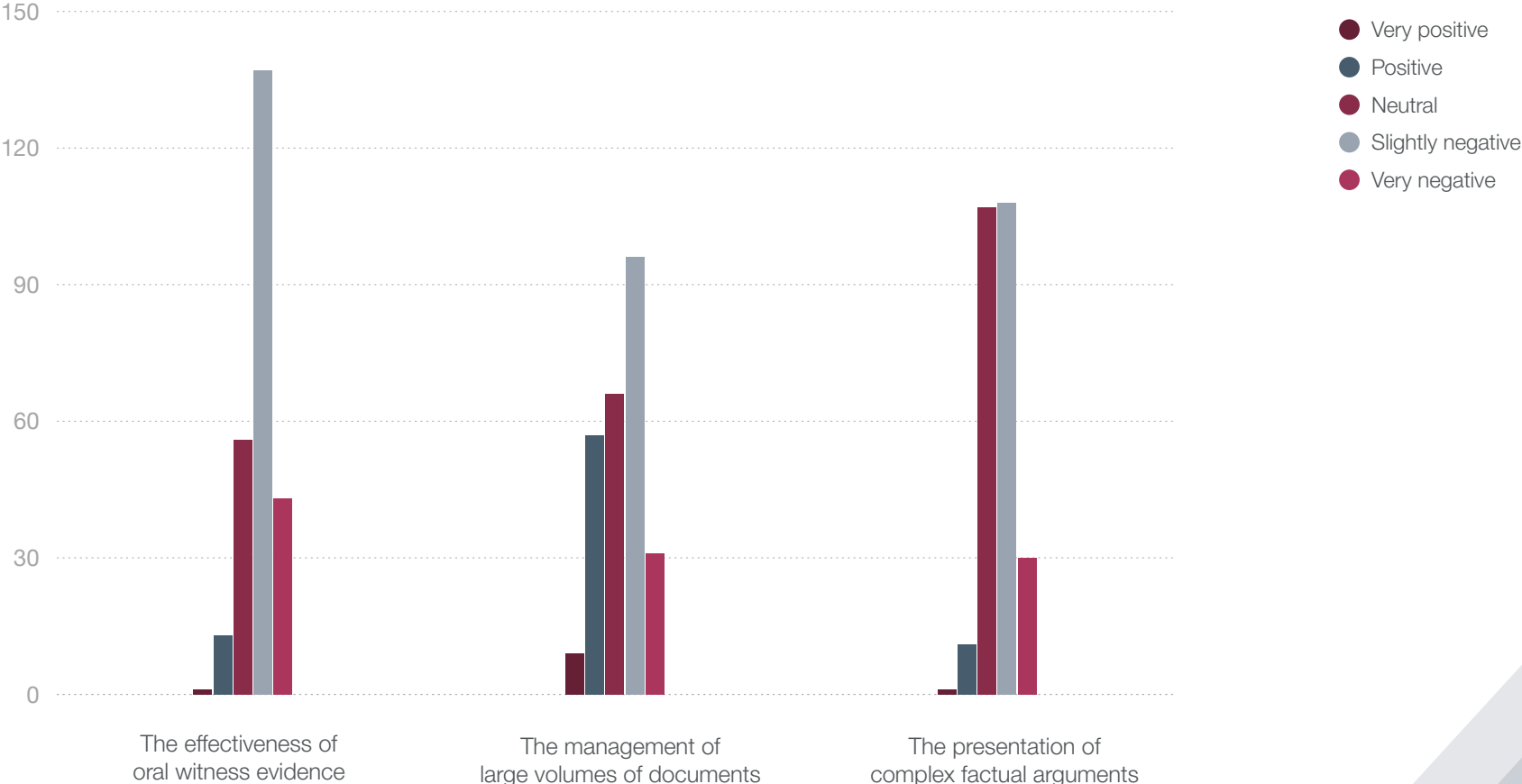
Comments from responders noted that:

- Judicial views differ.
- They had observed mostly positive feedback, though some highlighted that Judges had indicated they ‘strongly preferred’ in-person hearings.
- The removal of the need to travel internationally, particularly for procedural hearings, was welcome.

- They find hearings more tiring.
- There is a need for the pace to be slower.
- There is a need for more breaks.
- They also have noted problems related to technology and connection.

Observations

In your view, what impact does a virtual hearing have on:

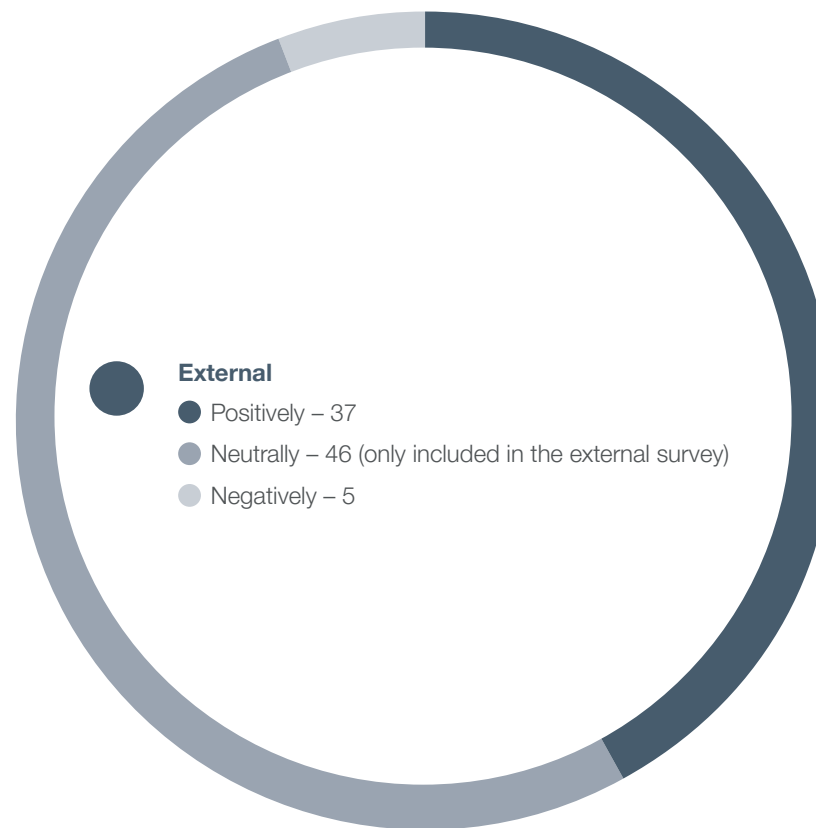
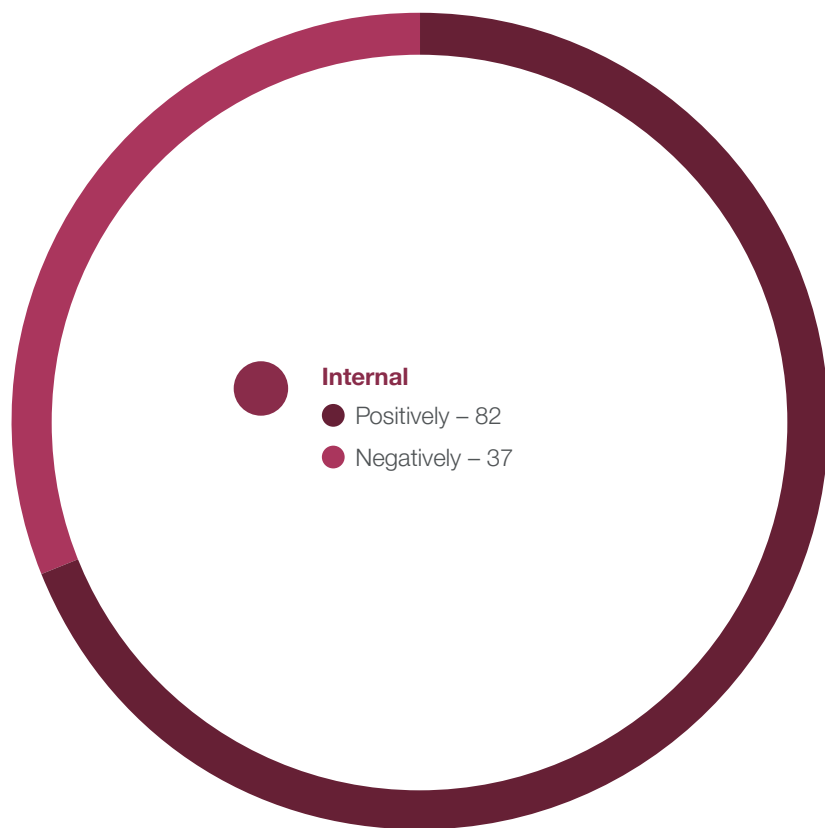


Impact



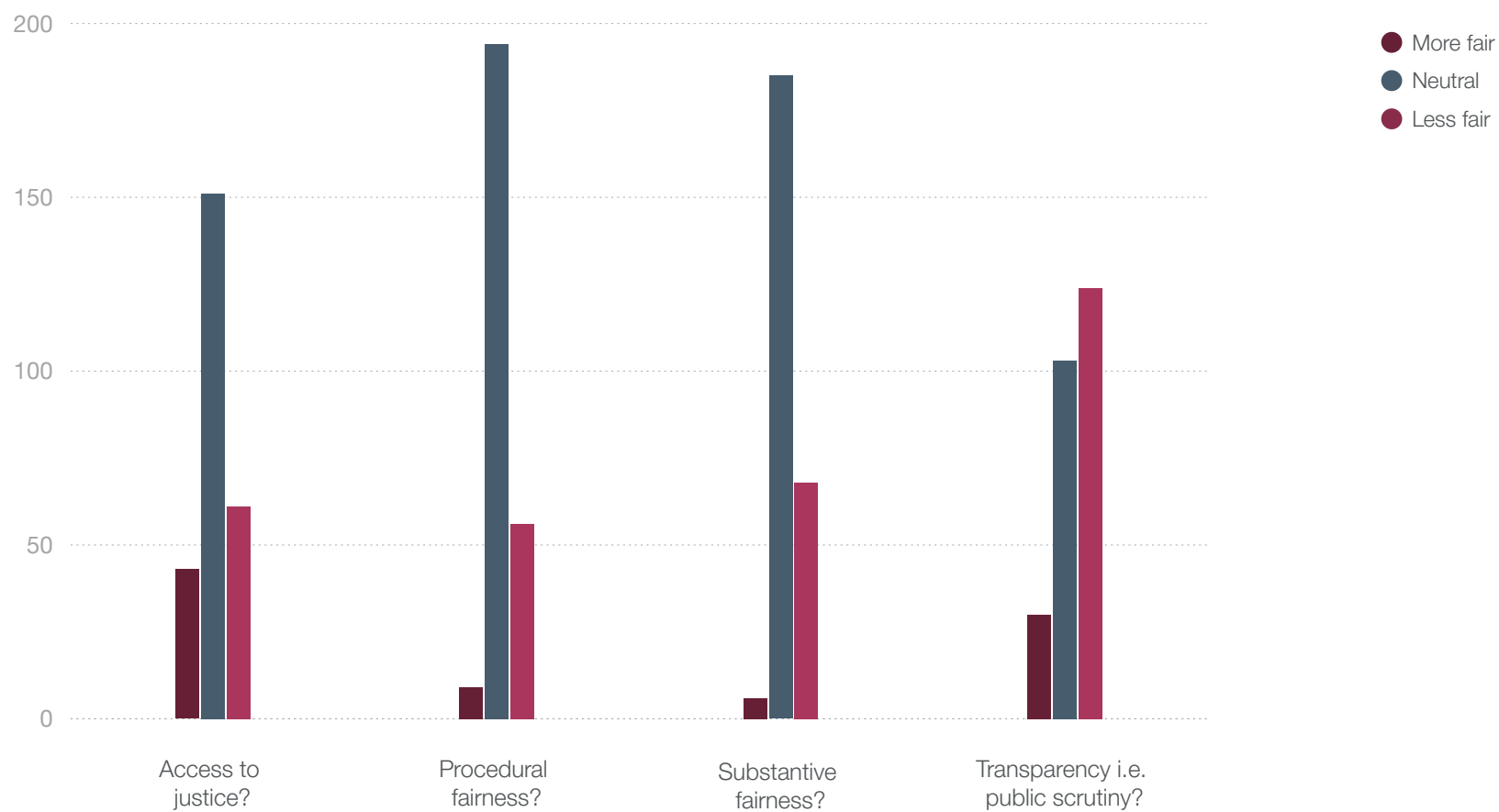
Impact

Overall, how have your clients (ie the party to the dispute) reacted to participating in hearings on a virtual basis?



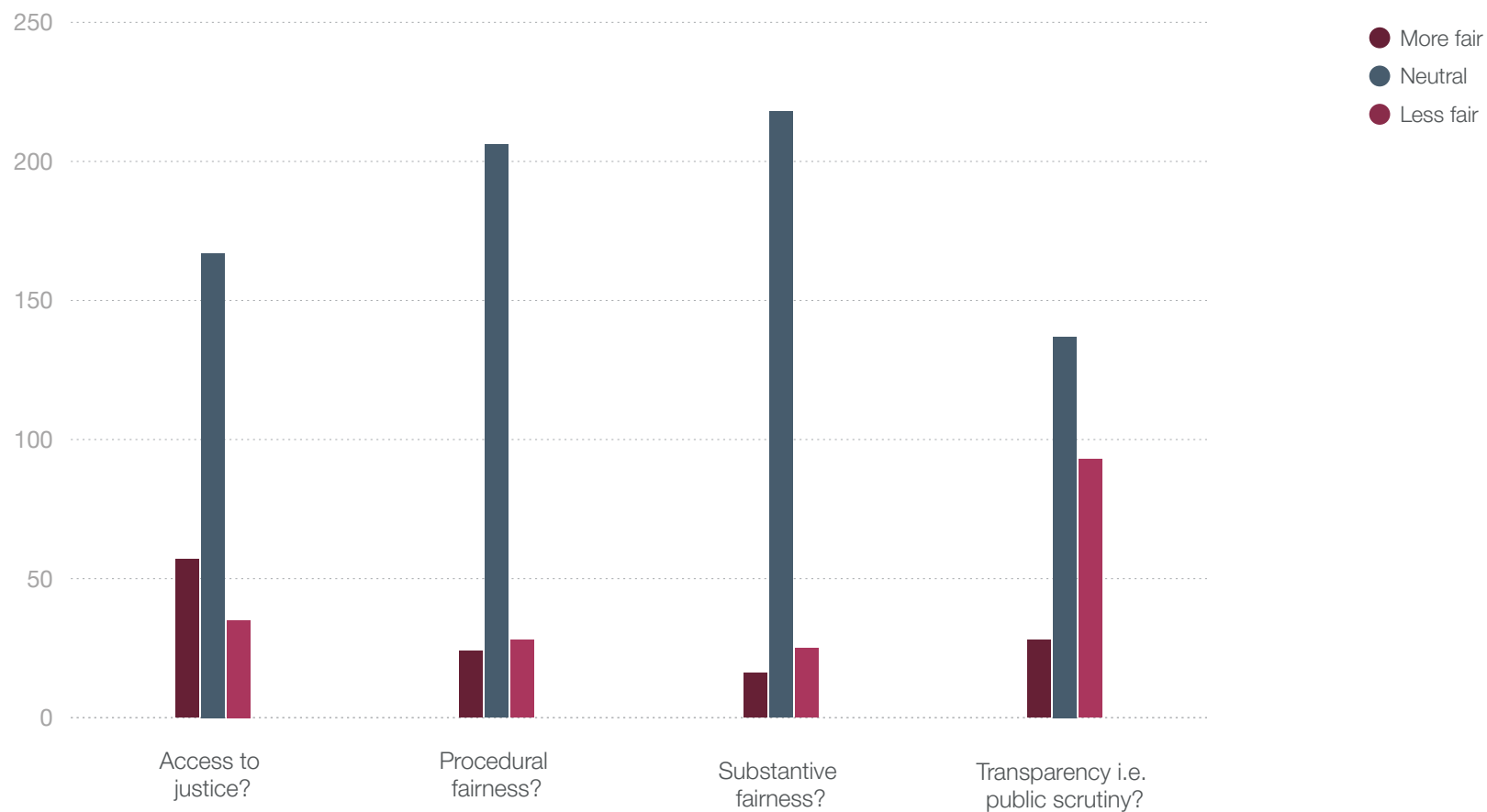
Impact

Do you think virtual trials and substantive hearings (eg injunction applications, depositions) are likely to result in a fairer outcome compared with in-person hearings in terms of:



Impact

Do you think virtual procedural hearings are likely to lead to a fairer outcome compared with in-person hearings in terms of:

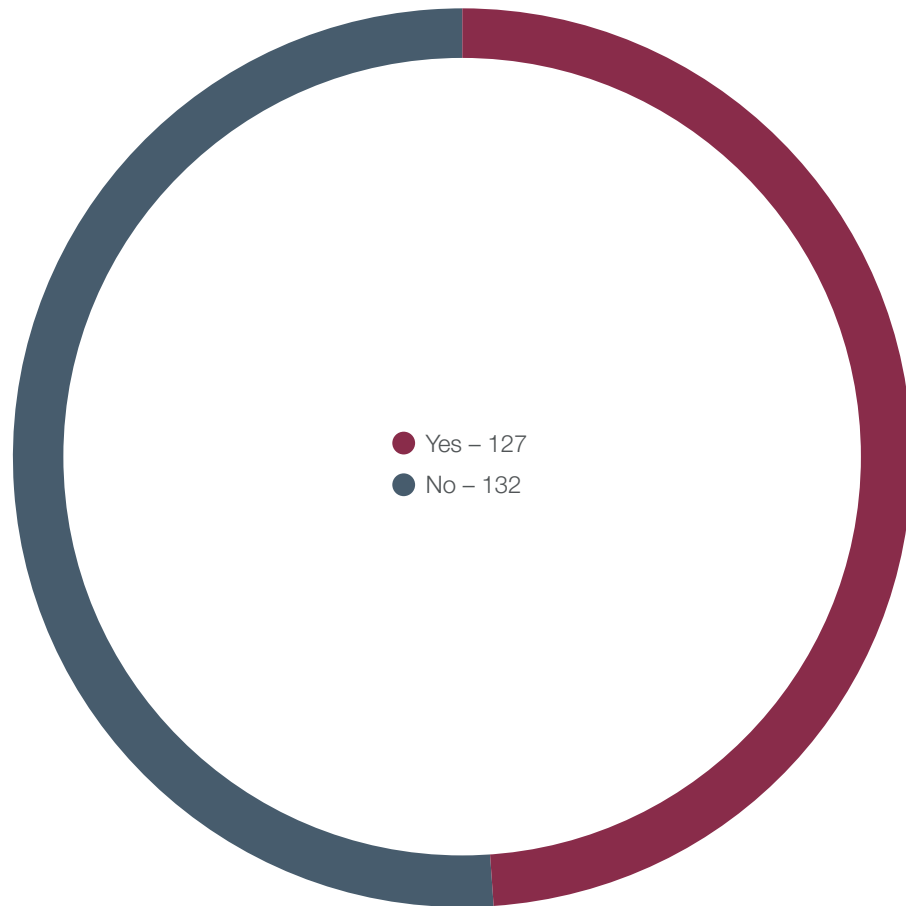


The future

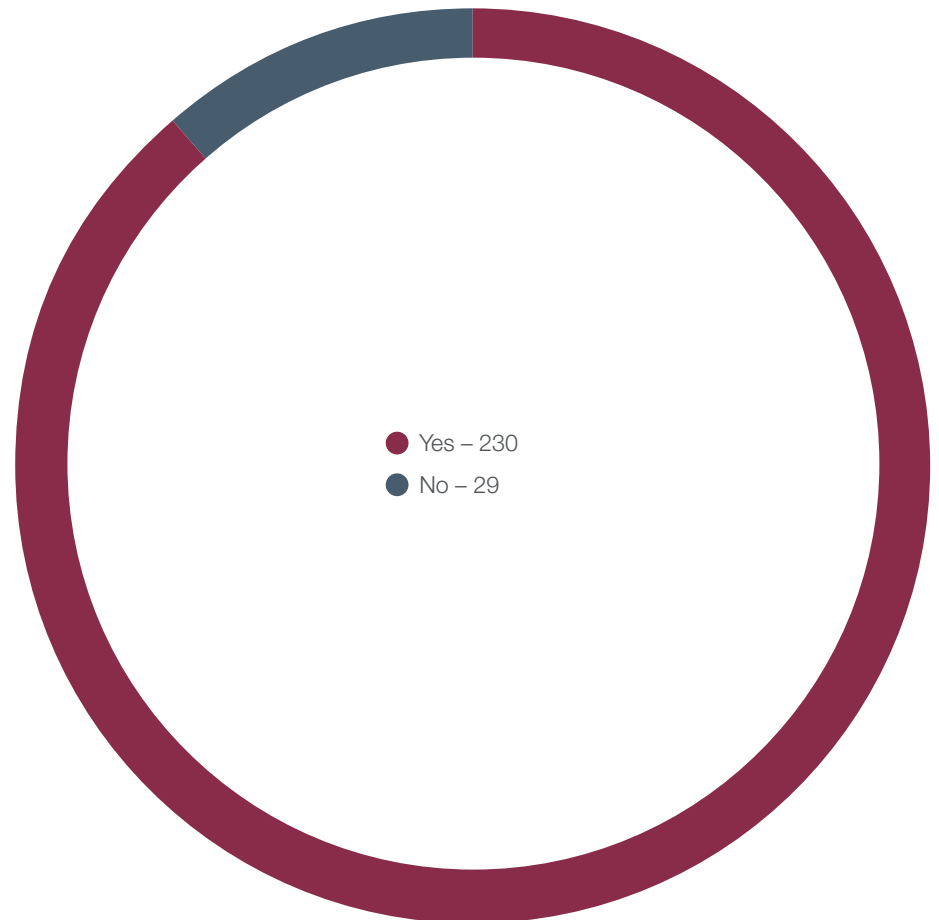


The future

Should virtual hearings continue to be used for trials and substantive hearings in the longer term?



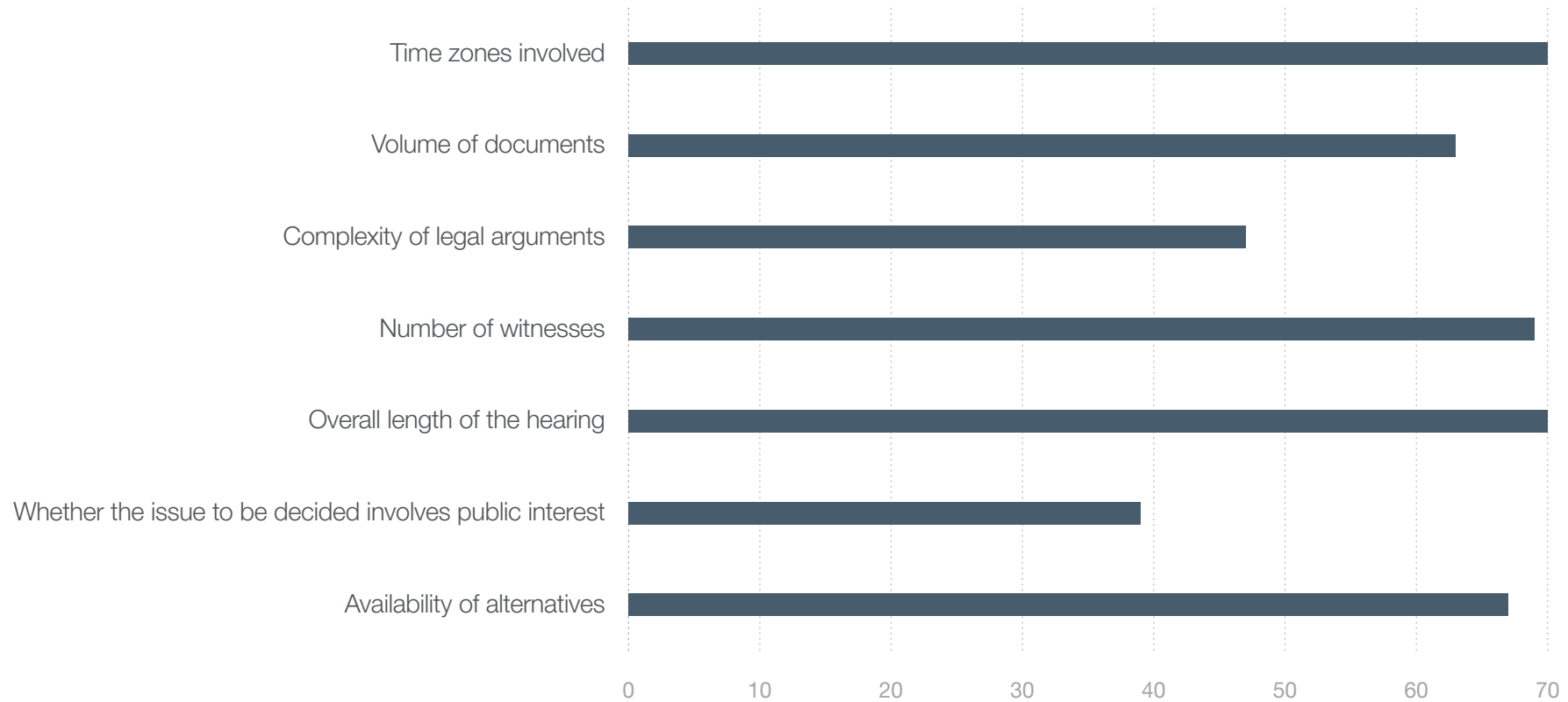
Should virtual hearings continue to be used for procedural hearings in the longer term?



The future



External survey only – what circumstances do you think should be taken in to account when deciding whether a virtual hearing is suitable?



The future

Other circumstances noted:

**Location/the
need to travel**

Cost

**Whether there
will be witness
evidence**

**Disability/access
to justice issues**

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