The national picture: multiple exclusion homelessness (MEH) and mental capacity

HSCWRU Homelessness Webinar: 22 January 2025

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Today: discussing emerging findings - 2nd phase of study

- Outline: what are MEH & what is MCA?
- What prompted this study and what are we doing?
- Survey findings
- Over to you for discussion, comments, experiences

What is Multiple Exclusion Homelessness (MEH)?

Why is homelessness a health and social care, not just a housing issue?

- **People die while homeless, mean age: 45 years men; 43 years women** (ONS 2021).

- **Multiple exclusion homelessness (MEH) captures overlap between repeat and chronic homelessness and other forms of severe and multiple disadvantage**, including: adverse childhood experiences, other trauma, 'institutional care', substance use, domestic and sexual violence and abuse, participation in 'street culture' activities (Fitzpatrick et al. 2011). Negative experiences of statutory services and stigma / discrimination contribute to service mistrust and **deter seeking / accepting help increasing inequalities / exclusion**.

- **Factors and risks** which contribute to people **both *becoming* and *remaining* homeless**, especially 'street homeless', **also contribute to concerns about mental capacity, including**: **mental illness, self-neglect, acquired brain injury, autistic spectrum disorder, learning disabilities and substance use / addiction.** Any of these might indicate we should explore if there is any long- or short-term or intermittent impairment in decision making, **particularly if someone is at risk and is not receiving / accepting support**.

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What is Mental Capacity Act 2005 (MCA)?

Mental Capacity Act 2005 applies to England and Wales:

- **Aim**: to **empower us to make decisions for ourselves wherever possible** and protect us if we lack capacity to make a decision; places our best interests at heart of decision-making about us.
- **Application**: enables practitioners to decide whether a person's consent or refusal to treatment, care or support should be taken at face value: **can they make this decision?** As the significance (and risks) of a decision increases, the assessment, decision-making and recording processes should become more detailed.
- **Five principles**:
  1. Begin by **assuming people have capacity**
  2. People must be helped to make decisions
  3. **Unwise decisions** do not necessarily mean lack of capacity
  4. Decisions must be in the **person's best interests**
  5. Decisions must be as **least restrictive** of the person's 'rights and freedom of action' as possible

Why are we researching MEH and mental capacity?

- No prior research, but Safeguarding Adults Review (SAR) analysis shows **assessments not always done, done well, or documented for this population**. **Our research on MEH and safeguarding** found **'presumption of capacity'** and **freedom to make 'unwise decisions'** are reasons given not to safeguard someone experiencing MEH and severe self-neglect.
- **What decisions might prompt concerns about mental capacity in MEH populations?** Seeking or refusing health treatment (and remaining to receive it), accepting care and support, including accommodation, saying 'no' to unwanted associates, managing money eg, prioritising substance use over adequate nutrition …
- **Concern:** someone unable to make a capacitous decision to reject services may not receive support in their best interests, that could reduce their risk of harm. Intervention under the MCA may not be considered, even where is a risk of people dying on the street.

A critical and delicate balance

Is there risk of welfare over-reach for individuals already traumatised by coercive institutional experiences?

Is there risk of welfare neglect for individuals already facing inequalities and exclusion?

What are we doing? Outline of study & survey

Use of the Mental Capacity Act 2005 (MCA) with people experiencing multiple exclusion homelessness (MEH) in England (2023 - 26): project page

Purpose: Explore **health and social care practitioner approaches** to mental capacity assessments with people experiencing multiple exclusion homelessness (MEH) and the **views of people experiencing MEH**. Use findings to **co-produce an MEH assessment tool for practitioners**, ultimately to **improve understanding, support and outcomes for individuals experiencing MEH**.

Methods: Interviews with national experts; National practitioner survey; Fieldwork in three study sites.

National survey: 2024 national picture across roles / sectors; 674 responses:

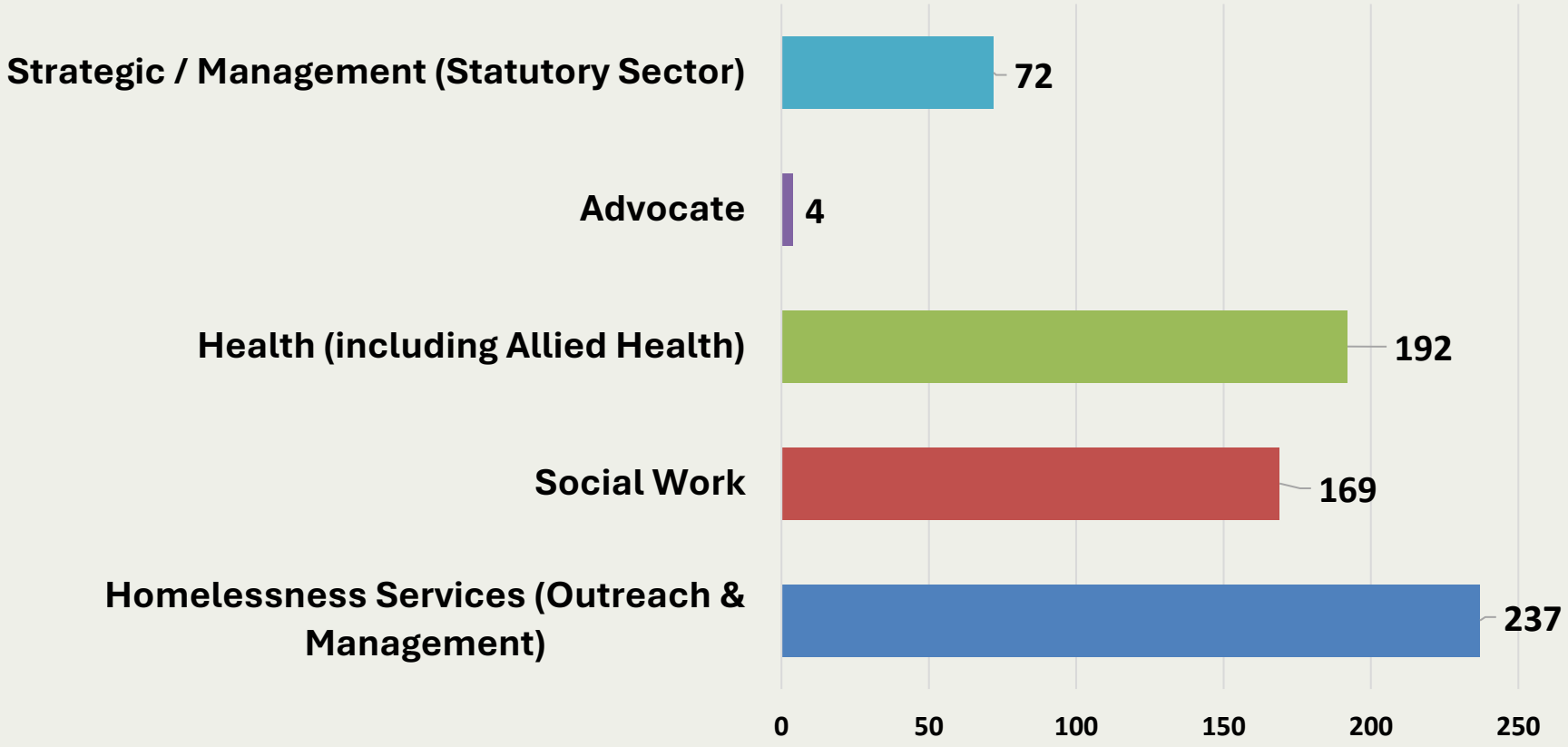
- Around which decisions assessments being conducted; what are outcomes; are there people who do not have capacity assessed for health / care / other decisions; is this a concern; For those that do assessments: what creates challenges; what helps a good assessment; confidence levels, use of Tools.

Who filled it in and what did they (you) tell us?

Survey participants (simplified categories)

2. Your job role (if more than one, please select main one)

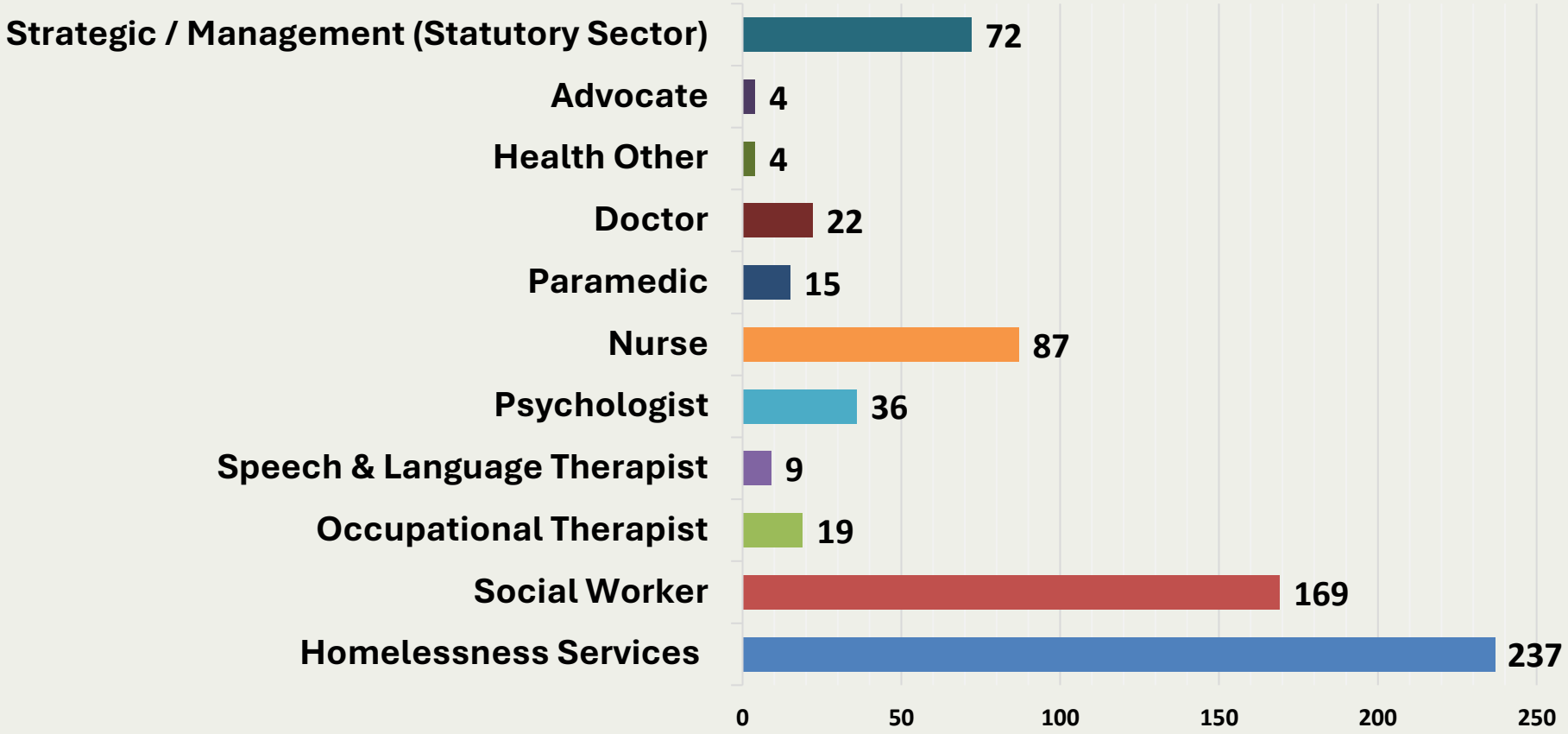
Responses: 674



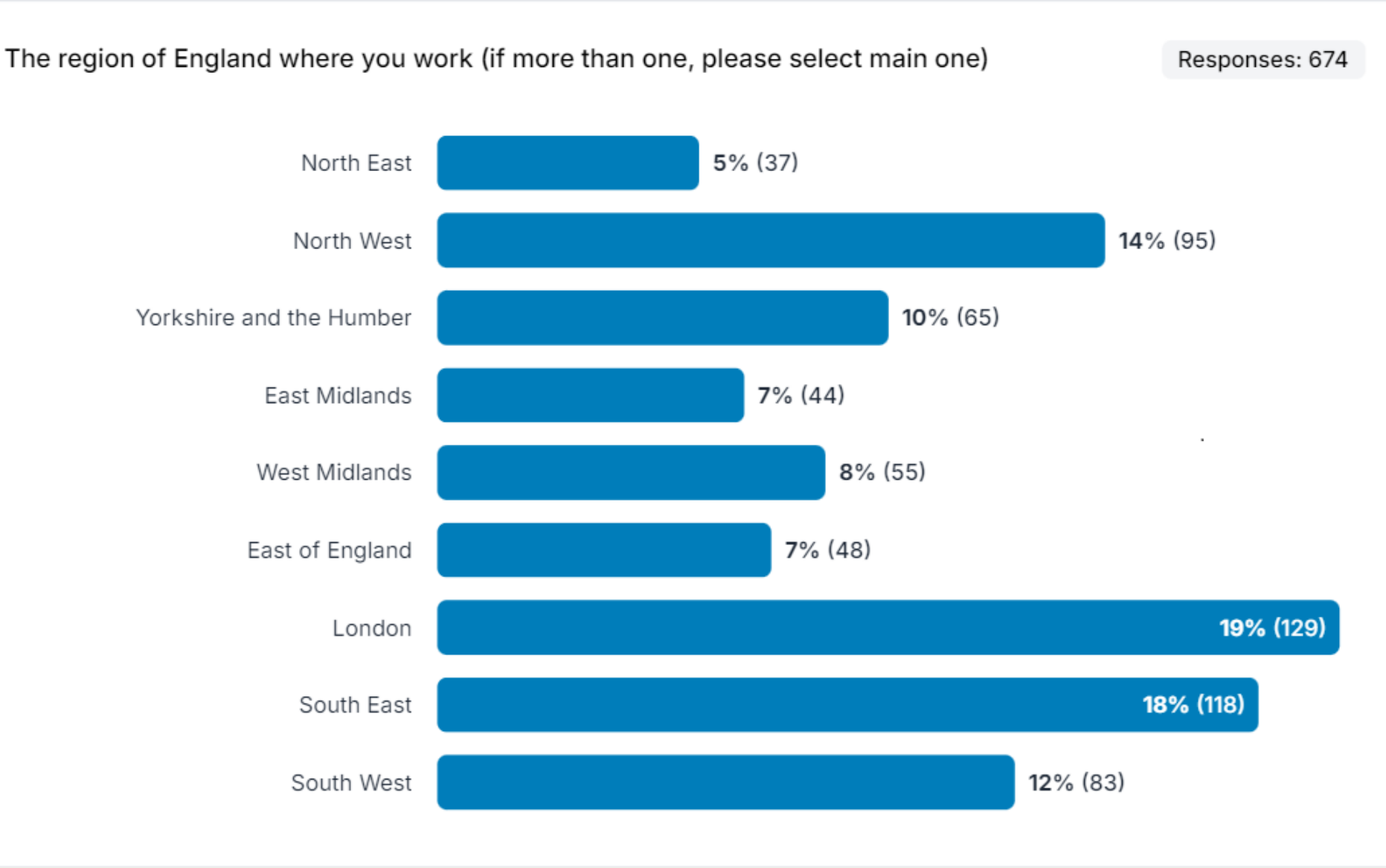
Survey participants (all categories)

2. Your job role (if more than one, please select main one)

Responses: 674

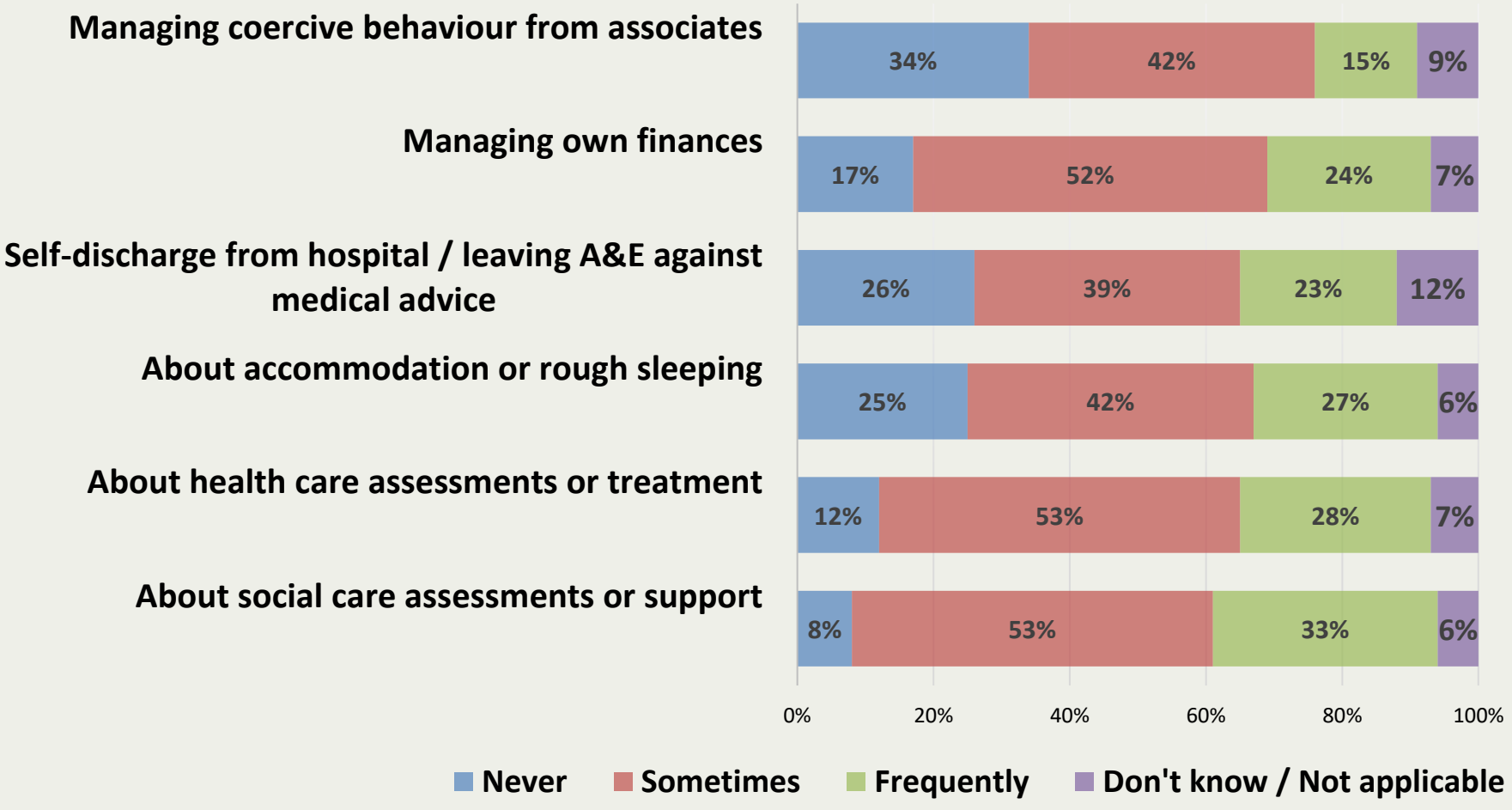


Survey participants by region of England



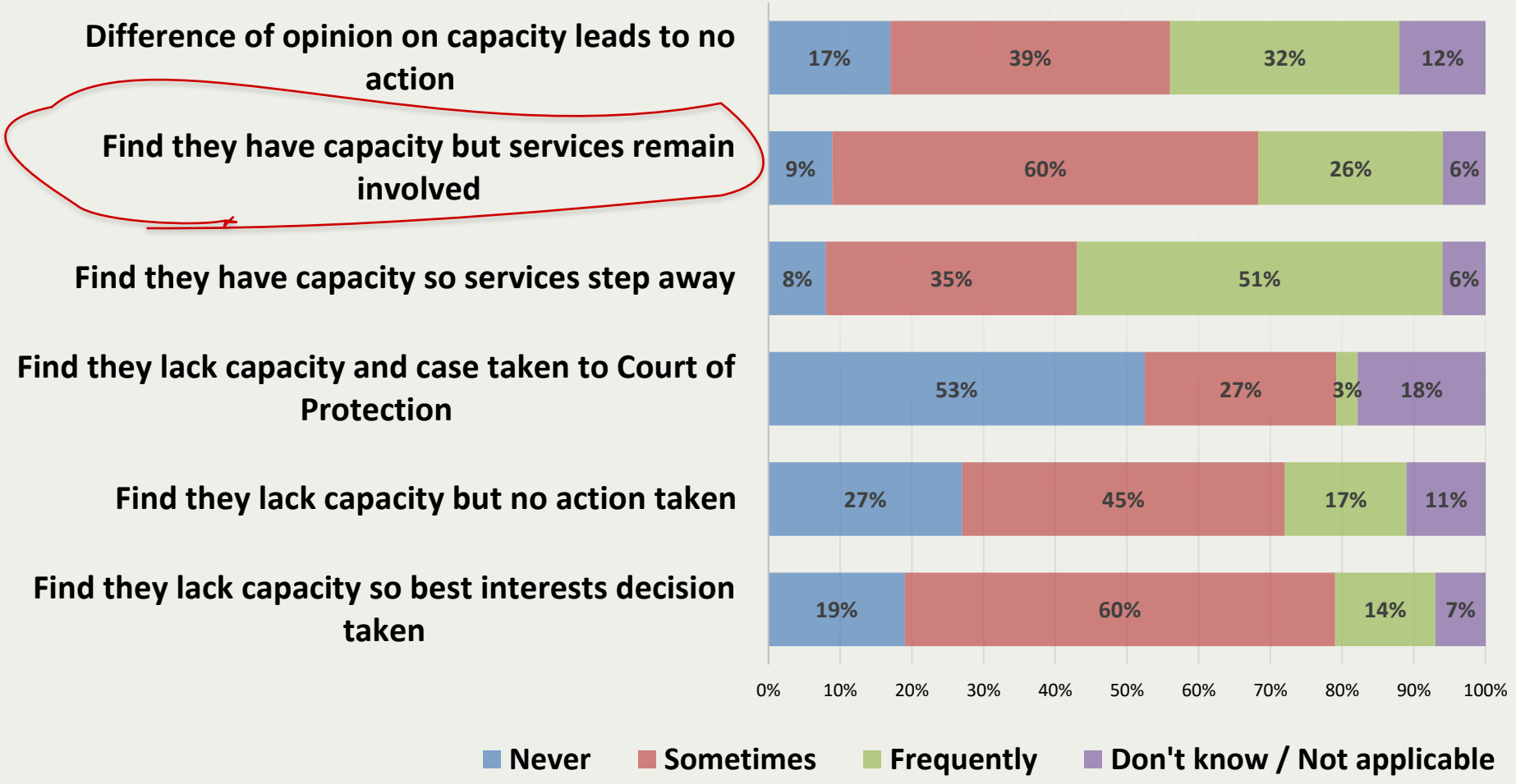
Around which decisions are they conducted?

5. Around which decisions do you find capacity assessments being conducted with the MEH population?



What are the outcomes of assessments?

7. In your experience of cases, what are the outcomes from assessments with this MEH population in relation to the decision?



What are the outcomes … (other)

7. In your experience of cases, what are the outcomes from assessments with this MEH population in relation to the decision?

Inaction because assessment inconclusive (as well as disputes):

*'**Inconclusive capacity** as using substances and **no further action taken** and left with Homeless Services and Drug & Alcohol services'*

*'Issues around **fluctuating capacity** for those using substances and **no action gets taken**'*

*'There is often **ongoing arguments** between [services]… that **prevents any actual beneficial assessments** being completed and the **applicant is left unsupported**'*

Find they have capacity but services remain involved:

*'Find they have capacity and are making unwise high-risk decisions; **continue to work with the individual via a multi agency team around the adult approach** and **escalate to high-risk panels for multi agency senior leadership** to advise, guide, authorise non-standard approaches to support wellbeing and risk management'*

What are the outcomes … (if cases go to CoP)

7. In your experience of cases, what are the outcomes from assessments with this MEH population in relation to the decision?

If cases go to Court of Protection (CoP) please give details

Lack of appropriate / specialist provision:

'Lack of capacity ***more often than not leads to a residential package and restrictions against them drinking / leaving the accommodation****, which they object to and therefore goes to the Court of Protection as a 'DoLS objection''*

'We find ***they lack capacity but it would not be proportionate to deprive them of their liberty*** *based on their wishes, feelings, beliefs and so our Best Interests (BI) decision is for them to continue as they are - it is usually* ***only when someone is at risk of death that we will apply to CoP to deprive them of their liberty*** *in a care home environment, as many Supported Living providers are not able to do Community DoLS'*

Is there concern about a lack of assessments?

9. In your experience, are there people in this MEH population who do not have their capacity assessed for decisions about health, social care or other needs?

Responses: 674

10. If 'yes', in your view, is this lack of capacity assessments a concern?

Responses: 633

Concern about lack of assessments (details)

Q11: Case details where lack of assessment has been a concern

- Substance use
- Poor assessment (rather than complete lack of)
- Poor services before the assessment
- Held on to ‘presumption’ of capacity for too long
- Refusal of person to engage / person is missing
- Discrimination / assumptions about ‘lifestyle choice’
- Executive function: failure to attend to / challenge of assessing
- Self-discharge from hospital
- Self-neglect
- Exploitation, including cuckooing
- Fluctuating capacity
- Acquired brain injury (ABI)

Concern about lack of assessments (free text)

Q11: Case details where lack of assessment has been a concern

'The assessments aren't carried out formally and blanket statements about a person's capacity are offered despite a specific decision not having actually been assessed. ***We spend so much time advocating for this, it's exhausting'***

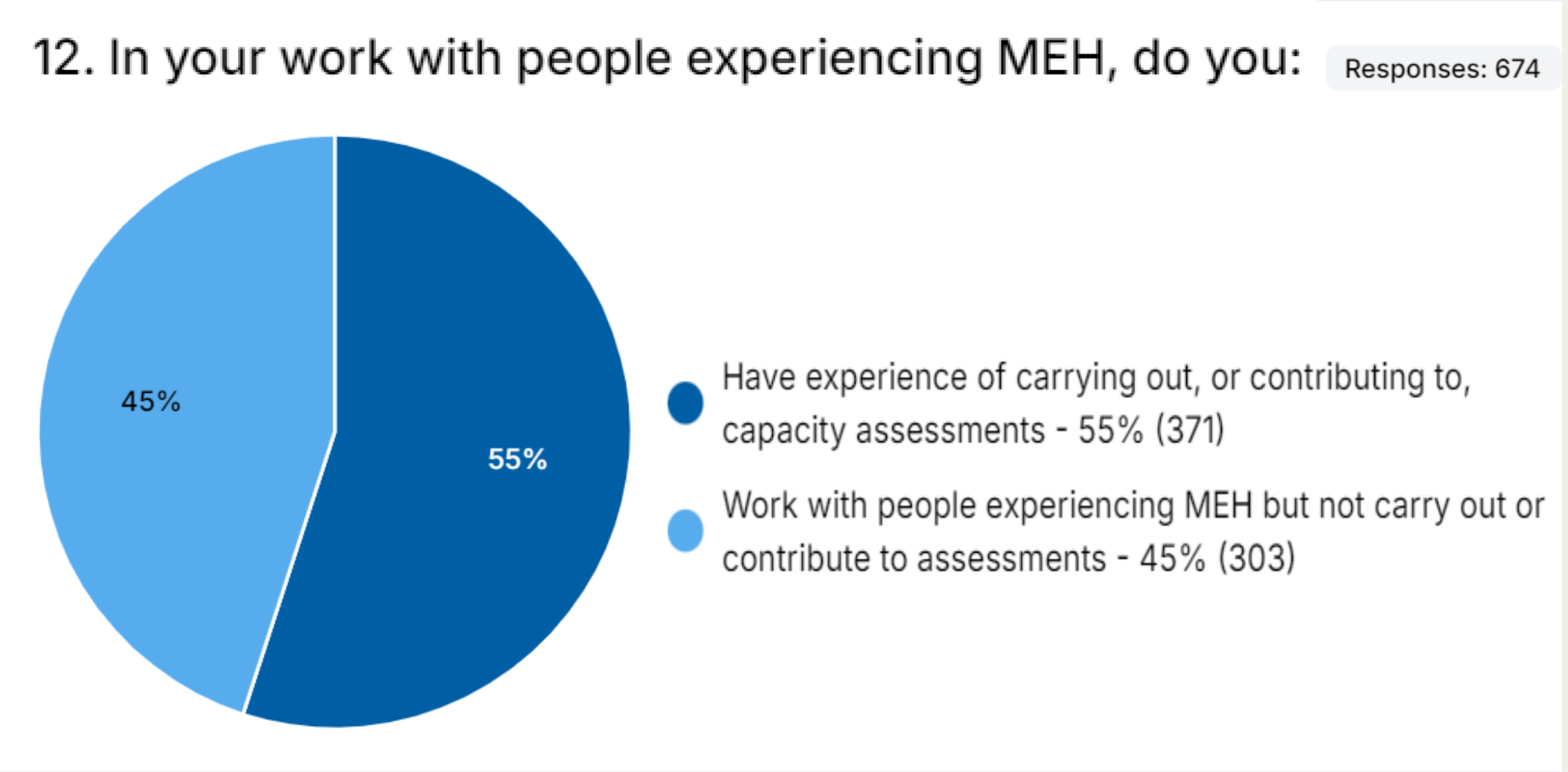
'The reason so few assessment are completed or actioned is, ***if deemed to lack capacity on a specific issue, then what?*** *…* ***No long-term options'***

Concerns about approach to, rather than lack of assessment:

'Often capacity assessments are not adapted appropriately … where ***collateral information is not sought*** *after and conclusions are unhelpfully based on* ***single conversations which give an inaccurate picture of capacity'***

'When substances or alcohol are a feature *of presentation, decision is made long-term the person being intoxicated* ***even though when not intoxicated they continue to have impaired capacity,*** *leads to abrupt discharges … without adequate treatment and / or follow up in place'*

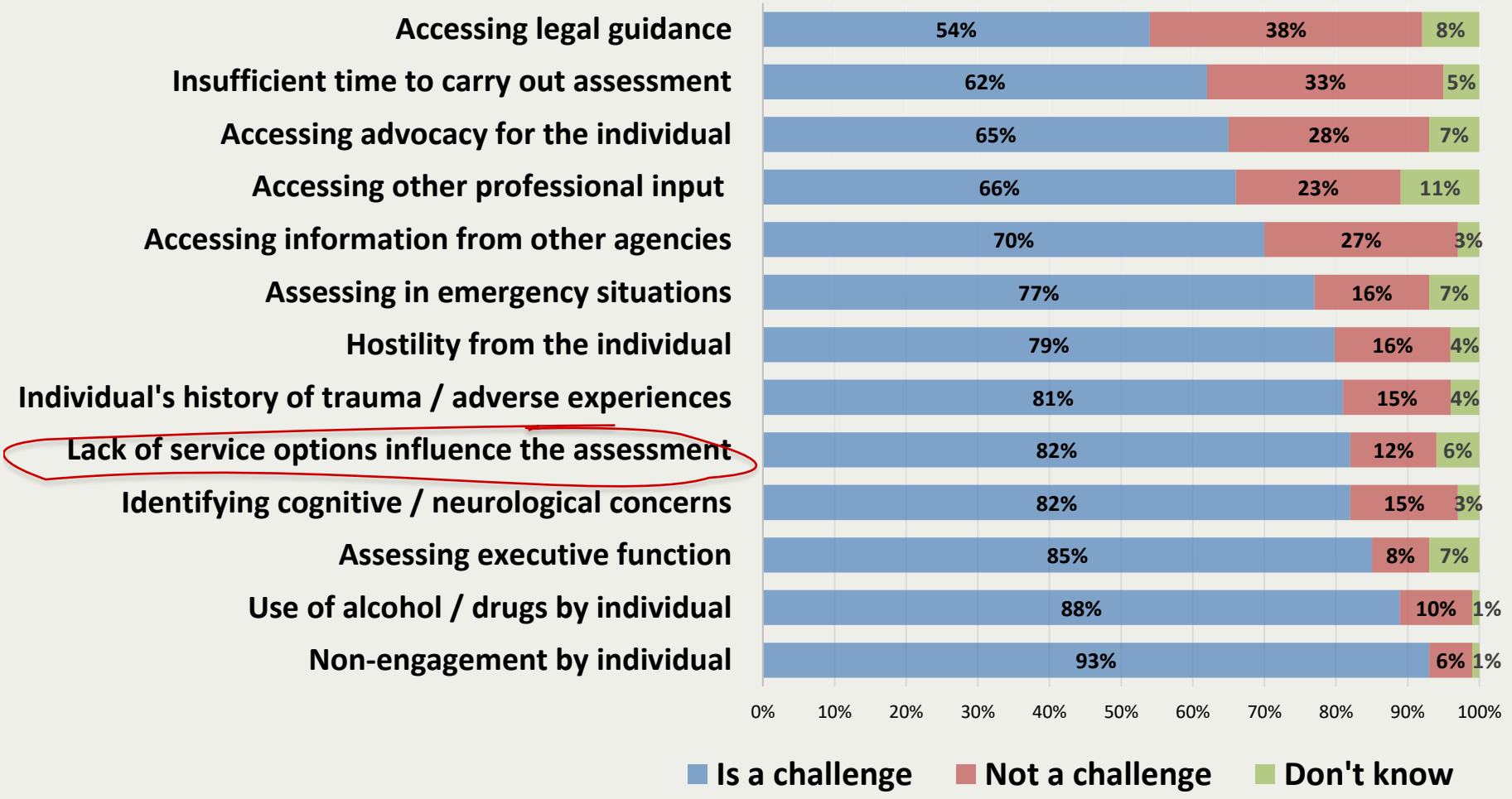
Do you undertake capacity assessments? (filter)



- **55% who have experience of assessments completed second half survey.**

What creates challenges for assessments?

13. In your experience, do any of the following create challenges for capacity assessment with this MEH population?



What creates challenges for assessments? (other)

13. In your experience, do any of the following create challenges for capacity assessment with this MEH population?

Other challenges not listed:

*'**Differentiating between skills deficit and lack of capacity** - this is often misunderstood by professionals and capacity assessments are pursued when the issue is that **the person is unable to do something for themselves**'*

*'**Clarification on cognitive impairment**. If **too generic it can't be clear on 'Causative nexus'** [connection between an impairment and the inability to make a decision]'*

*'Differentiating between **conditions / experiences**'*

Lack of service options influence assessment:

*'I am concerned that **lack of service options may influence the outcome** of a Capacity Assessment - I am specifically thinking of individuals who have a substance dependence - rather than fully exploring whether this could affect an MCA outcome - **often the conclusion is that an individual is 'making an unwise decision'***

Do you use an MCA Tool to help assessments?

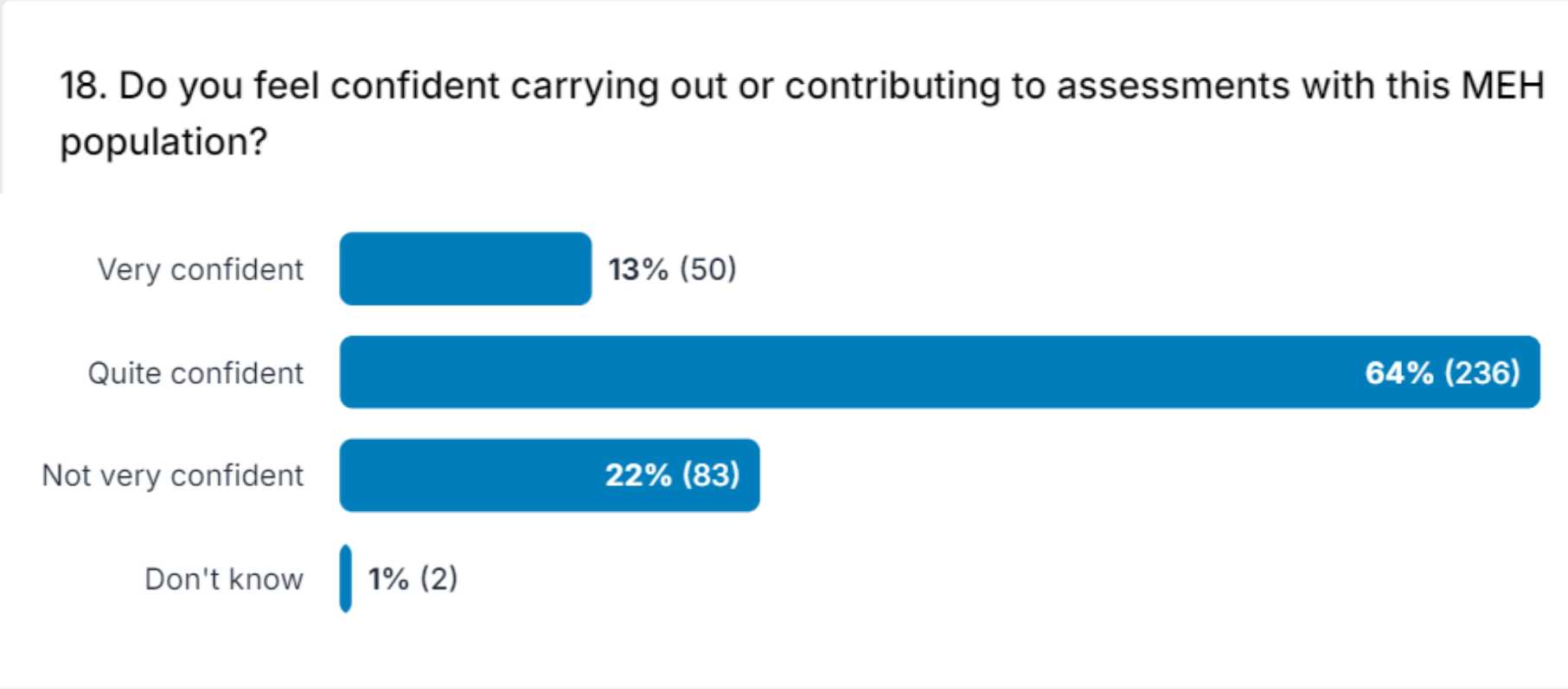
15. Do you ever use an MCA tool to help with assessments?

Responses: 371

16. Which tool?

17. What would (or do) you find useful in an MCA assessment tool with guidance?

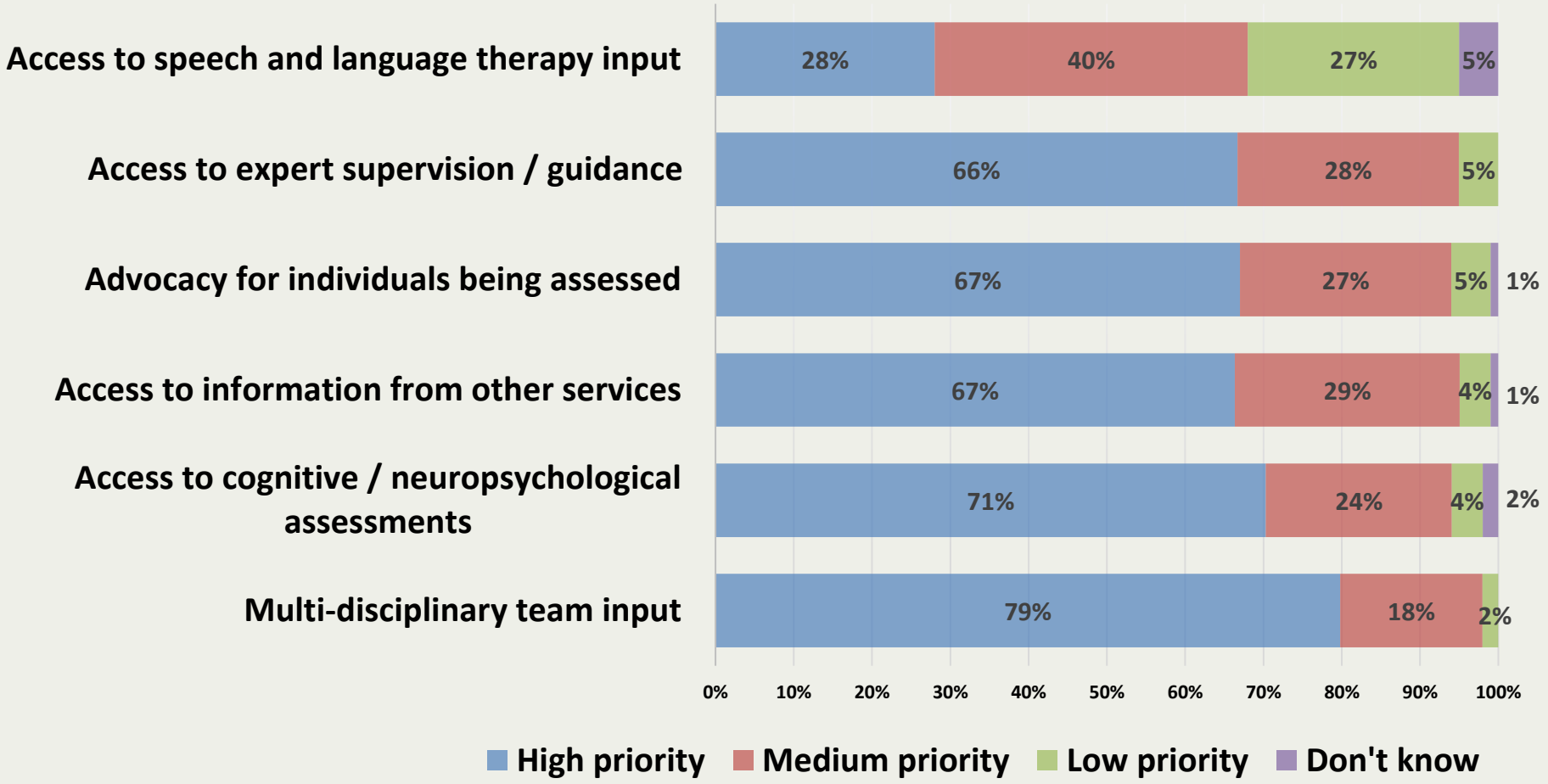
What are practitioner confidence levels?



- Addressing confidence levels features in ‘what would help’

What would help ensure good assessments?

19. What do you think would help to ensure 'good' capacity assessments with this MEH population?



What would help ensure good assessments? (other 1/2)

19. What do you think would help to ensure 'good' capacity assessments with this MEH population?

Clarity on addiction:

*'Legal clarity: **is addiction an impairment for the purpose of the MCA?** Not intoxication, but the addiction. I don't think it is, but lots do, and **I don't think the law is clear**'*

Confidence:

*'**Training that is practical and prepares you to actually do a capacity assessment**. So many trainings just teach you about the MCA and give examples of case law. That doesn't **help build confidence** to conduct an assessment'*

*'**Improve all practitioners' confidence**: I have been in a meeting with experienced nurses who know the person really well, but they seem to expect a mental health practitioner or a psychiatrist to assess capacity. I really feel **the person who knows the individual the best is well placed** to identify when they have lost capacity'*

Not just multi-disciplinary but (frontline) expertise sharing:

*'**Expertise sharing** rather than the elitist attitude of 'Well I'm the expert so I know more than you and **I won't listen to you**'*

What would help ensure good assessments? (other 2/2)

19. What do you think would help to ensure 'good' capacity assessments with this MEH population?

Understanding of all the 'interplaying issues':

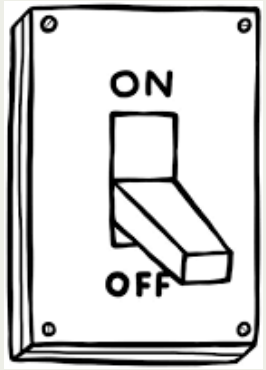
*'Comprehensive training around the **issues and barriers such as fluctuating capacity, substance misuse and interplaying issues**, such as someone with LD, ADHD, autism, trauma, health issues, mental health issues, substance misuse and executive functioning'*

Assessment by an expert 'neutral' trusted assessor / expert panel process:

*'Assessment **conducted by a neutral agent** in the situation who has a good understanding of the Mental Capacity tests, who will document their reasoning and accept accountability for their decision'*

*'Developing an **expert champion in this decision-making space would be a really good role** … I wonder if setting up **a capacity/ethical panel on a (?)monthly basis might support development of assessment and decision making in the MEH population**. There are of course emergency assessments that are needed, but **for many in this cohort, developing relationships to promote better informed decisions** and assessments of ability to make decisions might be helped with an expert panel that can provide some oversight and guidance for complex cases.*

Question: is finding of capacity used as off switch for support?



Whilst we try to improve understanding and assessment of mental capacity for this population, **does practitioner engagement end when there is a finding of capacity in a decision to reject support**, even when there are high levels of risk to an individual experiencing MEH?

How **does a binary 'ON / OFF' service approach fit** with emerging evidence of uncertainties carrying out, and disputes over, assessments involving multiple 'interplaying issues', and the possible need for an expert, 'neutral' trusted assessor and / or an expert panel to offer guidance / oversight?

*'You will see these **highly idealized theoretical situations being posited as the bar for capacity** …were Joe Bloggs not to have issues with addiction, and were he to not be in the circumstances he is now, **then he would have capacity, therefore he has capacity'***

Back to that debate about maintaining a balance between **welfare over-reach** vs. **welfare neglect**.

Study next steps

- **Current phase: interviews in three contrasting study sites across England; future webinar will share those findings and continue this discussion** (event series here)
- **Start co-producing Tool update and piloting**

Over to you for discussion, comments and experiences

Thanks.

Thanks: To our research participants and Lived Experience Advisory Group for their time and insights.

Research Team: Jess Harris, Stephen Martineau, Kritika Samsi, Alex Ruck Keene KC (Hon) (King's College London), Michelle Cornes (University of Salford), Bruno Ornelas (Collaborative Safeguarding Hub), Stan Burridge (Lived Experience Lead), Sam Dorney-Smith, (University College London), Sophie Koehne (Pathway homeless health charity), Nathan Davies (Queen Mary University of London).

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