

Annex B

SRA performance in ABS authorisations

1. We have been monitoring the SRA's performance on authorisations since January 2013. This followed increasing frustration and concern from a number of sectors about the way the SRA is considering applications for ABS licences.
2. In January the Board considered a report that covered:
 - a) SRA performance on ABS authorisations (and whether expected improvements have been delivered)
 - b) the SRA's progress in introducing other changes in relation to regulatory scope and action issues surrounding MDPs (and whether this is credible and acceptable)
 - c) the sustainability of the improvements put in place.

This annex updates the Board on those issues and links these issues to current LSB work.

Overall performance and work in progress

3. According to the data provided, by 15 April 2014 the SRA had received 443 applications for ABS status since it was designated as a licensing authority. Of these applications the SRA had granted 280 licences. 111 have withdrawn and 52 remain work in progress. Since January 2013 the SRA has closed 85 applications through withdrawals and granted 205 ABS licences. A series of charts showing the detailed monthly statistics are provided at **annex 1**. Figure 1 in the annex shows the status of the applications over the time we have monitored the SRA and figure two shows the frequency of licences issued per month since the SRA was designated.
4. It takes an average of under 7 months from the submission of an application for a firm to be granted an ABS licence. 20% of applicants had to wait over 9 months for their licence. Figures 3 and 4 in annex A show the different numbers and percentage of licences granted since we began monitoring the SRA.
5. The average age of a 'work in progress' application is now under 3 months (it was over four and a half months in January 2014) and only 10% of the work in progress applications are over 6 months old (29% in January 2014). This is outside the statutory decision period of six months (extendible by the three if the SRA issues an extension). However because of the way the SRA determines the start date it has not had to issue an extension notice to any of

these applications. Figure 5 in annex A shows the reduction in the old ‘work in progress’ applications since we began monitoring the SRA.

6. Earlier in the year the SRA concentrated on making decisions on the oldest, more difficult and protracted applications (this includes decisions related to recognised bodies as well as ABS applications). For the past two months no applications in progress are over nine months old. By comparison, in January 2013 there were 21 applications over nine months old and 30 were between six and nine months old.
7. It remains the case that the SRA does not officially consider that the statutory decision period has begun until an application has been deemed complete and the licence fee invoice paid. This is broadly analogous with start of their “stage 2: research” status. The table below shows the current profile of the work in progress according to status of the applicant. The average age of the 26 applications that have not reached “stage 2 - research” status is now just under two months old and the oldest application that has not been deemed complete is 5 months old.

	Number	Oldest	Average	%age
New application	0	n/a	n/a	0%
Stage 1 - Complete Application	26	5	2	50%
Stage 2 - Research	13	5	3	25%
Stage 3 - Evaluation	5	4	3	10%
Stage 4 - Decision	8	9	6	15%

Table 1: Table showing status and age of work in progress in January 2014

8. In January 2014 the average age of the applications that had not reached “stage 2 –research” status was over three months and the oldest 8 months. Therefore we can conclude that there has been progress in this area. This may be due to the SRA’s new triage approach that has been introduced to ensure that files do not remain incomplete for a considerable length of time and applications that do not appear to be eligible for a licence are either resubmitted in a licensable form or withdrawn. The SRA has also begun reporting to management and to the SRA Board on end to end figures rather than figures derived from the date that an application is deemed complete. Both of these changes have been advocated by the LSB and at first glance it appears that they are helping to drive up performance.

Withdrawals

9. So far a quarter of all applicants have withdrawn their ABS application and the SRA has not, according to the status shown in the spreadsheets, refused an application. To find out more about these applicants we conducted some analysis of the November 2013 data to determine how long on average it takes for an applicant to withdraw their application. This was reported on in the January 2013 paper. We have not repeated full analysis of the data related to withdrawals. This is because since November 2013 only 12 more applications have been withdrawn. We have however reviewed the data of those 12 applications.

10. The oldest applicant to withdraw their application between the submission of the November 2013 and the April 2014 spreadsheet was around 12 months old when it withdrew.¹ The average age at withdrawal of these applications was under 6 months and the median around four and half months. The November 2013 data showed an average (mean and median) age of applications that had withdrawn of around 7 months.
11. We attempted to look for reasons for withdrawal. We looked at the notes included in the spreadsheets provided by the SRA, looking specifically at the notes entered for the applicant in the month preceding their withdrawal. Out of 108 withdrawn applications there were notes for 81 applicants. For around half of these the notes were clear that the applicant had chosen to withdraw (either to resubmit, because they were ineligible or due to change in plans) or they had not provided required information. For the rest of the applications the reasons appeared to be more complex, often with a number of different issues and with no clear pattern. There were a few issues that were present in the notes for a number of applications, either on the own or in combination, these were:
- a) a regulatory or supervisory issue (12 applications).
 - b) the issue of the separate business rule and or connected companies (12 applications) and,
 - c) the need for waivers (6 applications)
12. The notes also appear to suggest that the SRA sought detailed information from applicants. Such information included asking about business plans and business model. For example one of the notes stated: *Issues [regarding] structure; outsourcing; referrals; business plan. TT to advise app treated as withdrawn if information not received.* The SRA have assured the LSB that they are no longer asking questions about the viability of the business models of applicants. However, in the March 2014 spreadsheet the notes of an applicant included the following observation: *Unusual structure, the majority of the work is outsourced and so applicant will pay fees to the third party providers as well as having to generate profit/income.* Our view is that, for this applicant at least, the SRA appears to still be looking at the likely prospects of success.
13. We reported in our January 2013 paper that the SRA recognised that too many applications stayed incomplete for too long and that these files could have been dealt with earlier. The SRA hoped that a new approach to triaging and pre-engagement with applicants would reduce the number of withdrawals and for those that do withdraw they should be younger at the time of withdrawal. The figures provided by the SRA in recent months show below trend growth in the number of withdrawn applications and a reduction in the average age of applications at withdrawal. For instance only three applications have withdrawn since January 2014.

¹ We cannot pin point the exact date of withdrawal as this information is not provided. Therefore we must use the age between the date of submission of their application and the date of the last SRA spreadsheet in which their application was still live.

Category of applicant

14. We conducted analysis of the SRA's data to see if we could determine whether applicants from certain categories of business or new entrants are encountering greater difficulties or a significantly longer decision making period than firms already regulated by the SRA.
15. The data provided does not make it easy to determine which applications were from existing SRA regulated firms or from new entrants. However, desk research has been undertaken by the LSB to attempt to determine figures. We also conducted desk research to determine what sector applicants came from.
16. Of the 443 applicants, 266 were from existing SRA regulated firms, 141 from those not regulated by the SRA at the time of application and, for 36, their regulatory status at point of application could not be determined.
17. The SRA has licensed 174 firms that were already regulated by it. 82 licences have been issued to firms not already regulated by the SRA at the point of application and 24 to firms who it has not been possible to determine whether they were regulated by the SRA or not at the point of application. Therefore according to our analysis around 29% of licences have been granted to firms that were not already regulated by the SRA. Table 2 below shows this breakdown

Existing firm	Applicants	Licensed	WIP	Withdrawn / Other
Already SRA regulated	266	174	31	61
Not SRA regulated	141	82	14	45
Not known	36	24	7	5

Table 2: Regulated status of applicant at the point of application and outcome as at April 2014

18. The figures suggest that it takes the SRA, on average, one month longer to grant an ABS licence to a firm that was not already regulated by it than one it already regulated (6.4 months compared to 7.4 months).
19. We also looked at whether applicants offering different types of service are encountering particular difficulties when applying for an ABS licence. Definitions were determined with reference to published information on individual firms' websites and the absolute numbers are relatively low so the information is indicative at best.
20. The two most prevalent categories of applicants remained the self styled 'full service law firms' (consumer and commercial lawyers in the figure 7, annex A), and those firms that describe themselves as 'niche' or 'specialist' (single legal discipline/consumer type in figure 7, annex A), excluding those who specialise in Personal Injury (PI) which we have recorded separately. Figure 7 in annex A shows the full details of all the categories.
21. The least successful applicants, so far, have been applicants classed as business services; only 50% of these applicants have been granted a licence. These are firms that typically offer HR, employment or other services to businesses. The next least successful are those categorised as 'other' and the

category of 'accountants, IFAs or wealth managers' or Multi-Disciplinary Practices (MDPs); only 57% of applicants from these categories have been successful. MDP applicants are typically firms that are seeking to offer, or already do offer, a number of regulated services in addition to legal services. (e.g. they are regulated by the FCA, the accountancy regulators or other statutory regulator). Applicants categorised as 'other' includes recruitment/employment agencies, legal outsourcers and consultancies, membership bodies and a variety of other firms.

22. Applicants that are granted their licence in the quickest average time (and for which we have been able to ascribe a category) are those from the categories of consumer and commercial law, insurance and debt recovery which all have an average of 6 months. The longest average time is for applicants from the category of "other" with an average of 8.3 months. The slowest category of applicant that we have been able to ascribe a common category is MDP (Accountancy, IFAs, etc) with an average time to grant a licence of 8.2 months. Care must be taken with these figures as they are based on relatively small numbers (only 12 licences have been granted to applicants categorised as other and only 21 as MDPs). However, it is possible to note that there continues to be an apparent bias towards traditional law firm-like applicants. This bias may be impacting the level of innovation and so competition in the market for legal services. The Act was passed with the intention of liberalising the market for legal services and for greater provision of 'one stop shop' style services for individual consumers and business.
23. Looking at those MDPs that have been authorised, 12 of the 21 that have been granted licences have also had to apply for waivers to SRA rules. All of the waivers granted included a waiver to the separate business rule. Of the 55 waivers issued at 15 April 2014, 42 of them included a waiver to the separate business rule.
24. We consider that the main driver for poor performance in the area of MDP authorisation is the SRA's approach to the scope of regulation together with cultural reasons and the complications arising from existing SRA rules.
25. The LSB has often been concerned about the SRA's approach to its scope of regulation over a number of years. The SRA's rules require it to authorise and regulate all of the "*professional services of the sort provided by individuals practising as solicitors*"² that a recognised body may offer. This is very broad. The SRA does allow firms to have separate businesses. However, the separate business rule prohibits applicants from being associated with, amongst other things, businesses that conduct any matter that may come before a court regardless as to whether any proceedings have begun. In the example of tax advice the SRA consider that because tax disputes can result in litigation, the tax tribunal and ultimately the High Court then it is prohibited separate business and SRA regulated firms cannot own or be owned by such businesses.

² SRA Handbook version 9, Rule 13.2, Practice framework rules.
<http://www.sra.org.uk/solicitors/handbook/practising/part4/content.page>

26. The SRA has recognised the issues regarding MDPs and appears to be more open to a reconsideration of the separate business rule.³ The SRA has gone so far as to publish a press release regarding its MDP work. This is covered in more detail below.

SRA activity

27. On 2 April the SRA published a statement announcing that it is reviewing its approach to authorising MDPs. This statement is included at **Annex C** to the main paper. The statement acknowledges that the SRA's approach to the scope of regulation, if applied over rigidly, can stifle the development of MDP ABS. At present the SRA rules require that all "legal" activity should be regulated by the SRA. This leads to the current situation where the SRA regulates chartered accountants providing tax advice within MDPs. The statement makes it clear that they recognise that this approach leads to duplication and regulatory conflict. The statement suggests that an outcome of the SRA review could be the SRA "*removing duplicate regulation for some of their [the MDPs] activities*". It also acknowledges the amount of waivers it has issued in relation to the separate business rules. The SRA has set up an MDP reference group and intends to consult on policy and rule changes in early summer of 2014 with the intention that changes will come into effect later in 2014. The LSB has been invited to attend the reference group; an update on the first meeting (on 12 May) will be given orally.

28. Publication of the SRA's statement and the clear indication of a timeline are welcome. One issue we need to be conscious of is that the SRA need to ensure that they design a policy (and associated rule changes) that work with MDPs of all sizes not simply the largest accountancy firms. Additionally we would require an approach that solves the root causes of the issue (as identified in the January paper and referred to above) rather than being simply a fix for large accountancy firms.

29. During March the SRA provided a draft copy of a report on the results from a survey of alternative business structures and applicants. The report has yet to be published but the SRA has confirmed that it does intend to publish it soon. The report consisted of two surveys (one of successful applicants and one of those that withdrew their application) and a second qualitative study on the experience of applicants. The SRA also undertook a review of the profile of ABS firms based on the practising certificate details held by the SRA.

30. The survey work is interesting but to a certain extent suffered from a relatively low response rate (our survey in July 2013 received 49 responses from SRA regulated ABS from a population of 155 whereas the SRA only got 41 from a population of 190). The most interesting area of survey was those that had withdrawn and only five responses were received from a population of 62.

³ Richard Collins (SRA Executive Director) told Legal Futures: "*We have always recognised that the SBR is restrictive, but it also offered protection for consumers. The question is one of balance between its positive and negative impacts. As the legal market has changed and the way that solicitors practice becomes more plural, then we have to reconsider that balance. "We have to ask ourselves if we can achieve an appropriate level of consumer protection in a different way that allows greater freedom for innovation without having such tight restrictions. Our work on MDPs will help us consider these issues and we wouldn't make changes without proper consultation."* <http://www.legalfutures.co.uk/latest-news/sra-signals-fresh-approach-regulation> [accessed 2 May 2014]

Overall the results largely support the findings of the survey conducted by the LSB and published in 2013.⁴

31. The more useful information arises from the SRA's analysis of the practising fee information. This shows that only 32% of ABS (at that time) were entirely new to SRA regulation. It showed that ABS firms were more likely to have a higher turnover. The data suggests that ABS are active across all categories of law. However, they had a concentration in personal injury and accounted for a third of all turnover in that market. The research also shows that they have a higher concentration in the North West and a low concentration in London. This is likely to be a function of the concentration of law firms undertaking PI work in the North West. The research also reports that the average cost of the fee that applicants must pay to SRA for them to process the application is £3,315 (although it is not clear whether this includes all the individual candidate costs or just simply the entity costs and an extra costs related to that entities application).⁵
32. In terms of views on the licensing process, respondents tended to echo the findings of our 2013 survey. Most felt that the application was not handled in a timely manner, most felt that staff were bureaucratic to deal with. However, they also felt that staff were professional and many found discussing applications with a member of staff was particularly useful. Interestingly some 42% respondents had to make changes to their application or business plan after submission. However, only two applicants detailed specific commercial impacts of these changes. 83% of respondents felt that they had spent more time on the applications than they expected and 44% of respondents spent more money than expected. We do not currently know when the research will be published.
33. On 19 March 2014 the LSB visited the SRA to discuss authorisation. The SRA reported that it was restructuring the authorisation team. There will be two more manager posts and four teams set up. Three teams will make authorisation decisions and another team will provide support. This way the three teams' performance can be benchmarked against each other. It is still the SRA's intention that the new head of authorisation will be given a mandate to review the authorisation process and consider what changes can be made to further improve performance. In the meantime only iterative improvement is likely. It is the SRA's ambition to have made substantial progress addressing capacity issues by summer and have improved capability on a similar timescale.
34. We also sought information on what is reported to the SRA board. The SRA reports performance against the existing KPIs on a monthly basis with more information provided if required, for instance to explain exceptions. The SRA is

⁴ Page 49 – 65, LSB (October 2013) *Evaluation: Changes in competition in different legal markets, an empirical analysis*, annexes <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-ANNEX.pdf> [accessed 6 May 2014]

⁵ The SRA charges an initial fee to applicants of £2000 and £150 is payable for each candidate that requires authorisation. However, if the amount of time required exceeds those covered by the initial fee and candidate fee then a day rate of £600 can be applied. The cost of any external assistance is billed entirely to the applicant.

currently reviewing the KPIs to make sure that they capture the most important details.

Related LSB work

35. The LSB's business plan commits it to review the extent to which regulation unnecessarily prevents legal services providers from structuring their businesses as they wish. This thematic review will look specifically on the operation of the SRA's separate business rule. The project is due to start this quarter and is intended to complete relatively quickly. As part of the project we will look at the impact that the separate business rule has on ABS applicants and also whether there are alternative regulatory tools to address the issues the restriction purports to address. We consider that this project will dovetail with the SRA's work on MDPs given the high number of MDP firms that have been granted waivers to the rule.
36. However, the project will also look at the impact the rule has on recognised bodies. It is worth noting that 15% of ABS licence holders have been granted a waiver from the separate business rule but, according to information provided by the SRA to the LSB in February 2013, only four recognised bodies had been granted a waiver from the separate business rule. It may be the case that the rule and the existence of so many waivers are actually disadvantaging recognised bodies.
37. The schedule 13 work looking at the checks on individuals that must be made before an ABS licence is granted has also been useful in informing our view on SRA performance in ABS authorisation. The project is uncovering and highlighting a number of significant issues with the SRA's authorisation processes. This is detailed in full in another annex to the main paper today.

General conclusions

38. We consider that the SRA has much it can point to as successes:
 - a) it has reduced the average age of its work in progress;
 - b) it has speeded up the process of deeming the applications complete;
 - c) it has not had any work in progress applications that are older than nine months for two successive months and fewer are over six months than previously;
 - d) it has authorised six MDPs (nearly a third of the total) and announced a wide ranging review into their authorisation (and has committed to an ambitious timescale); and
 - e) in the last three months there been below trend growth in the number of withdrawn applications.

39. However, more needs to be done:

- f) The SRA's assessment of business plans remains a concern of the LSB's. The research shows that 40% either changed their business plan or their application. Although few could quantify a commercial impact, we still do not consider that it is a regulator's job to judge the likely success of an applicant's business model. SRA comments in the March and April spreadsheets suggest that this continues to some extent.
- g) The average age of an application at point of being granted a licence continues to be just under 7 months. Although for applications received since 15 May 2013 the average time taken stands at just over 5 months.
- h) It still has an approach to the decision period which means that the SRA can effectively determine when the six month time limit starts. Despite reductions in the time taken for applications to be deemed complete this interpretation still gives the SRA, on average, an extra two months to make a decision.

40. In conclusion, we consider that the SRA performance has greatly improved and it has credible plans to improve the capacity and capability of the firm based authorisation team to ensure that these improvements are sustainable. However, it is getting to the point where the real barrier to progress may actually be the processes adopted by the SRA which are compounded by the complications inherent in the SRA's handbook.

41. The new Head of Authorisation is likely to look at issues of process improvement. It may be the case that further performance improvement is simply not possible until a process redesign takes place and specific disproportionate rules, such as the separate business rule but also the SRA's approach to the scope of regulation, are reformed.

42. We consider that the work proposed on the restrictions place on business and the work already underway on schedule 13 will provide the LSB with information to challenge the SRA's current approach to authorisation and encourage further reform.

Annex 1: Detailed ABS performance statistics (month by month)

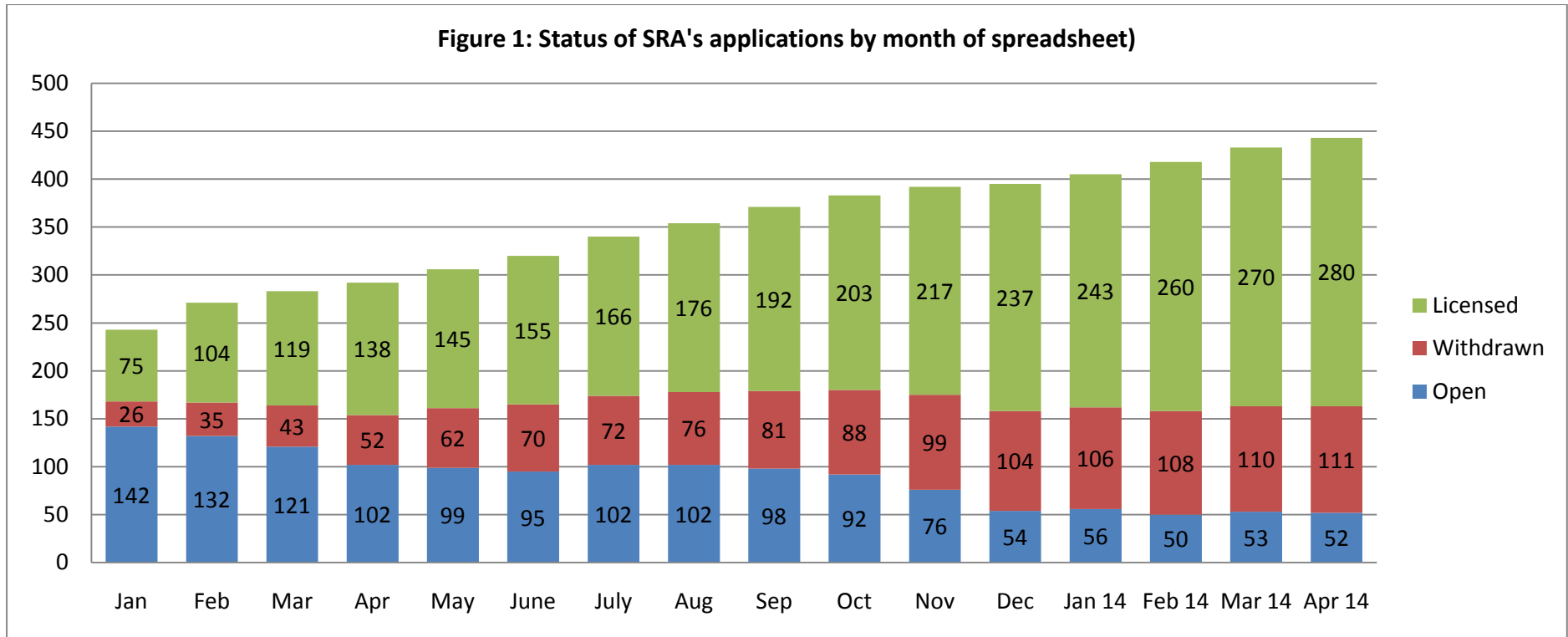


Figure 2: Frequency of licences granted by month

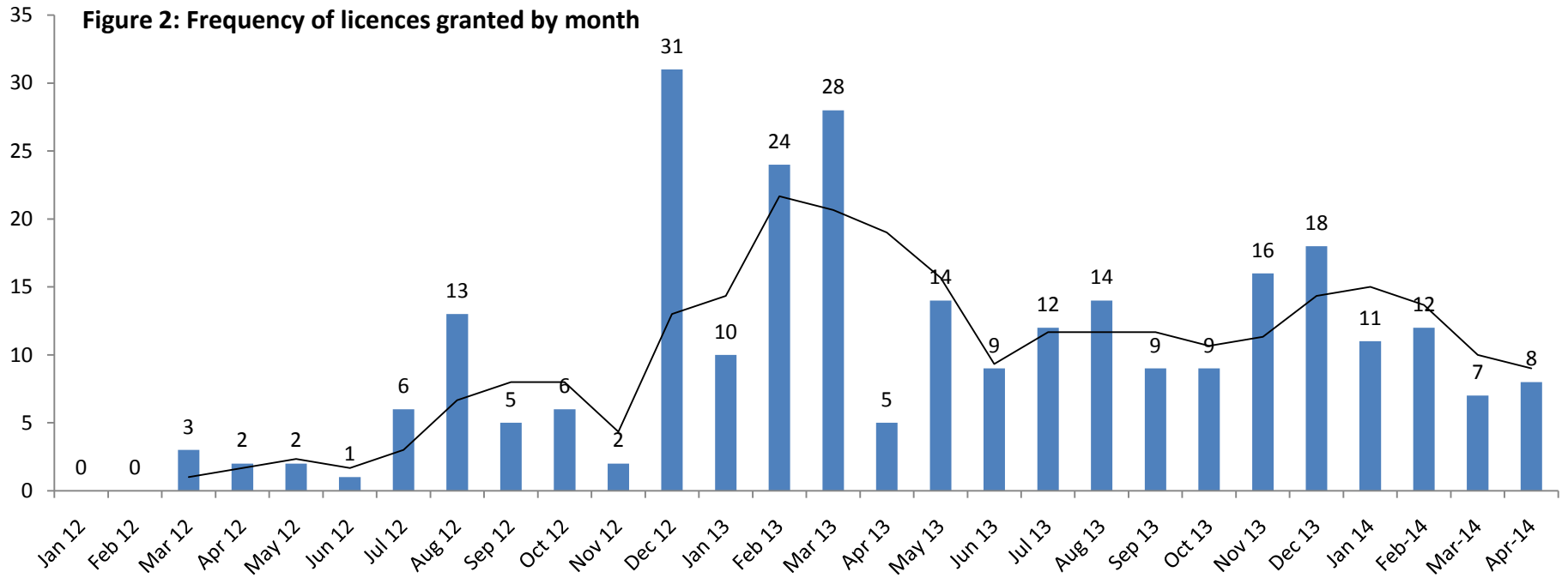


Figure 3: Time taken from application to licence granted (first month of each quarter)

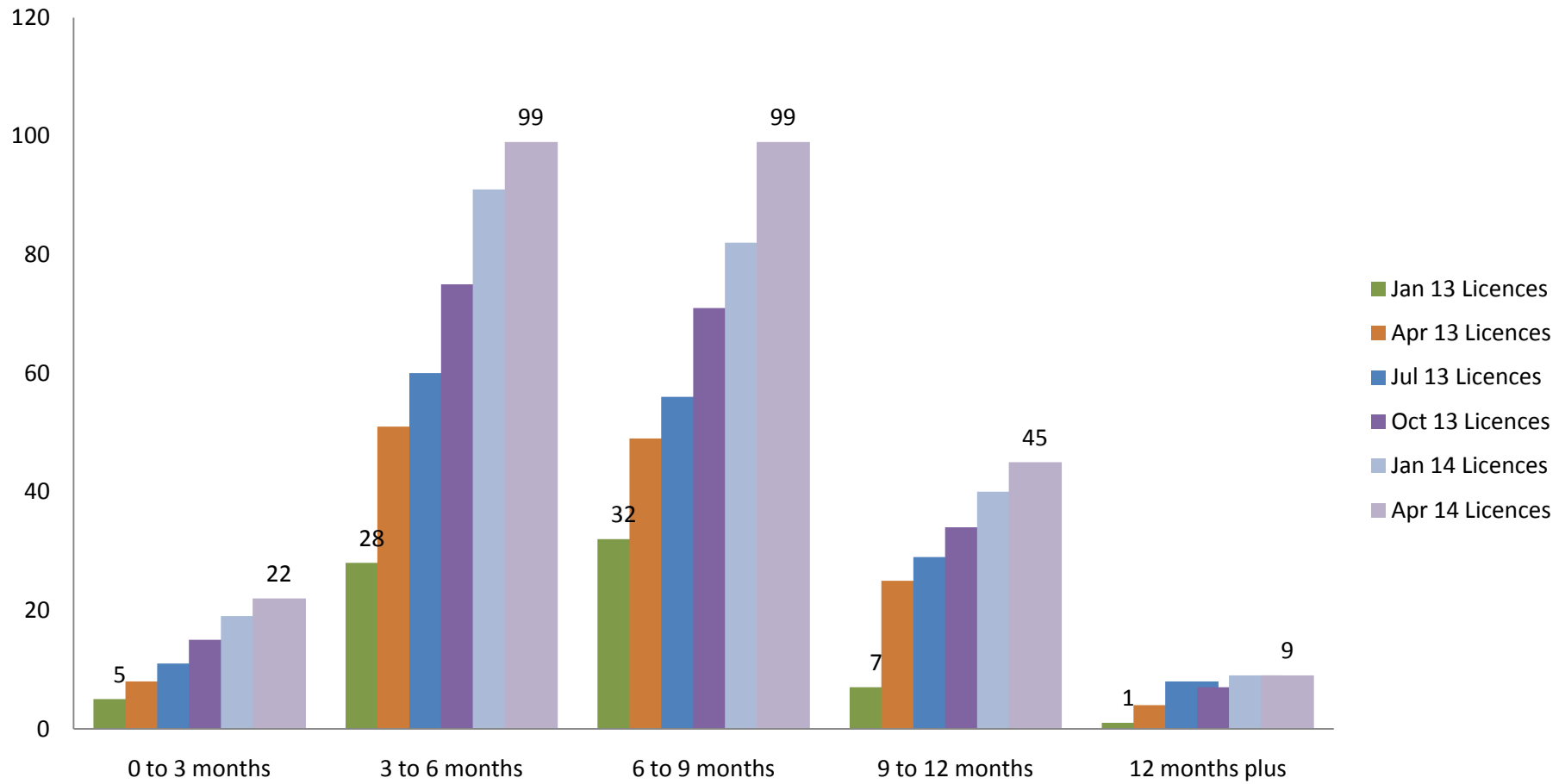
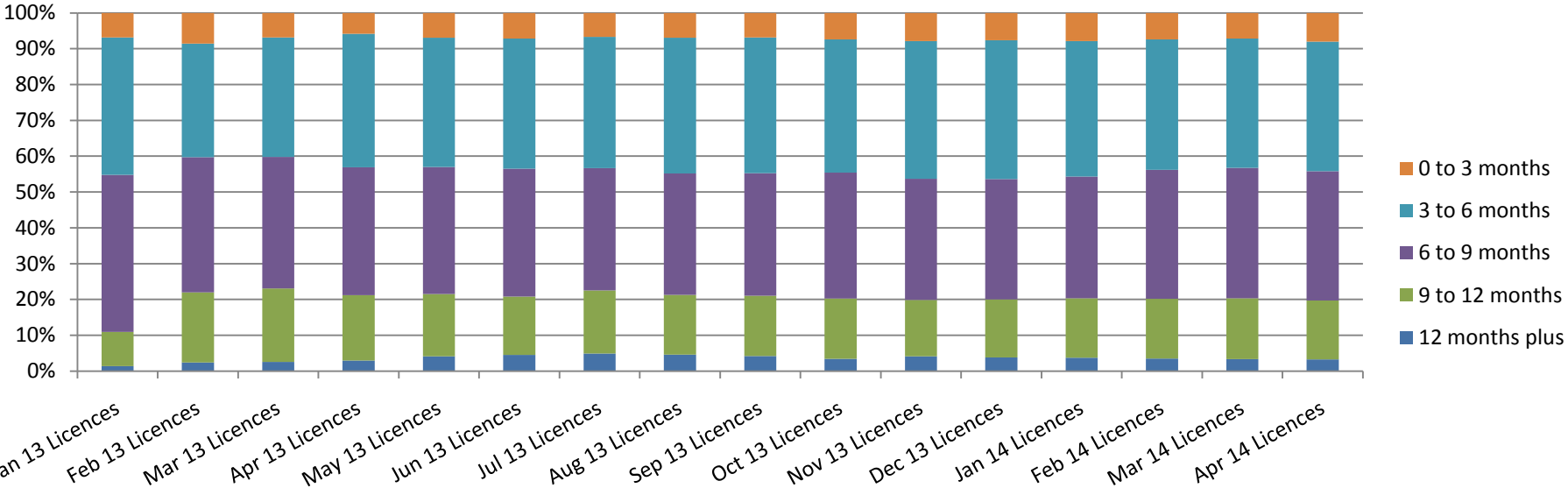


Figure 4: Licence decision time in percentages (by month of spreadsheet)



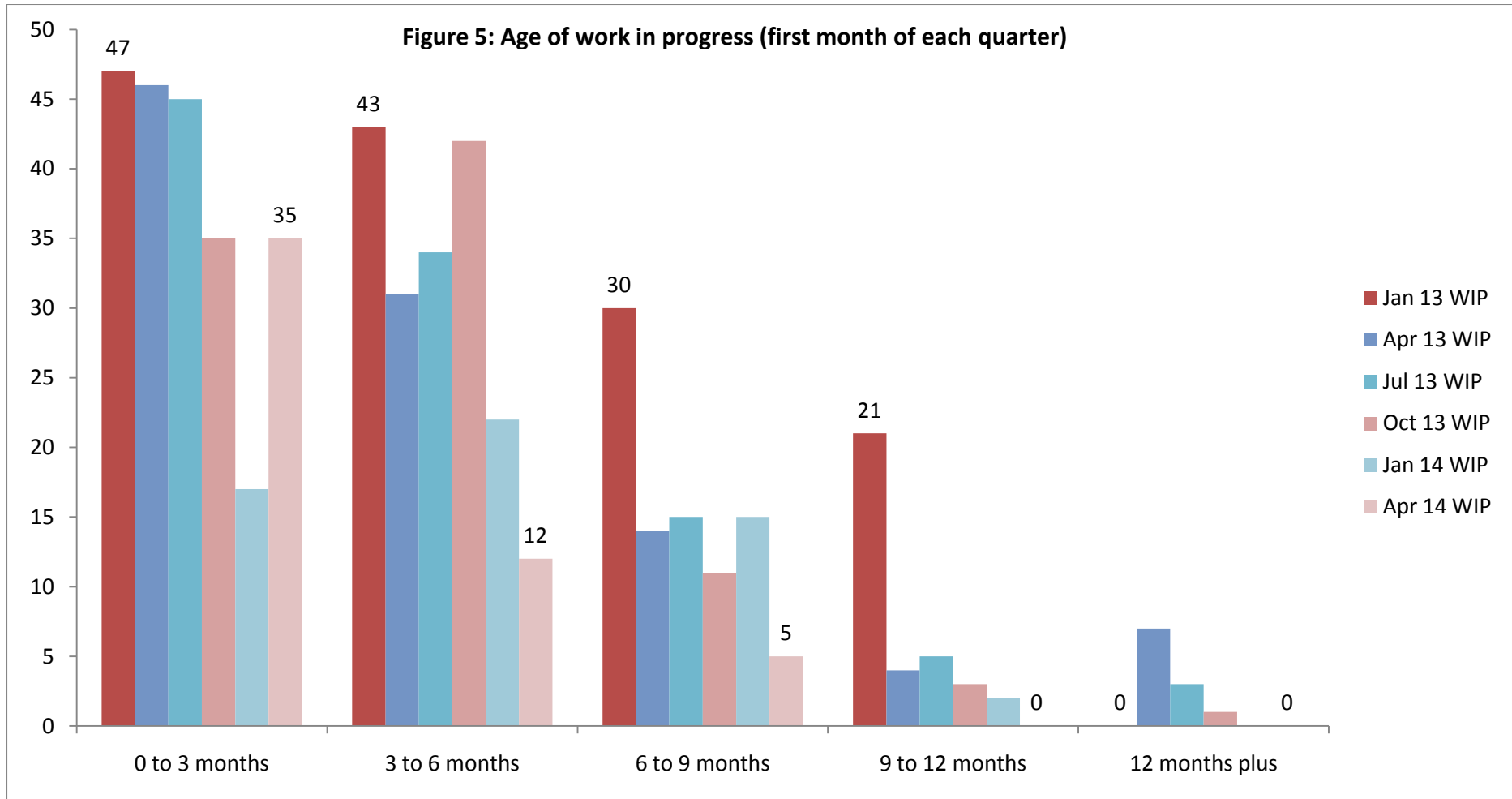


Figure 6: Age of work in progress in percentages (by month of spreadsheet)

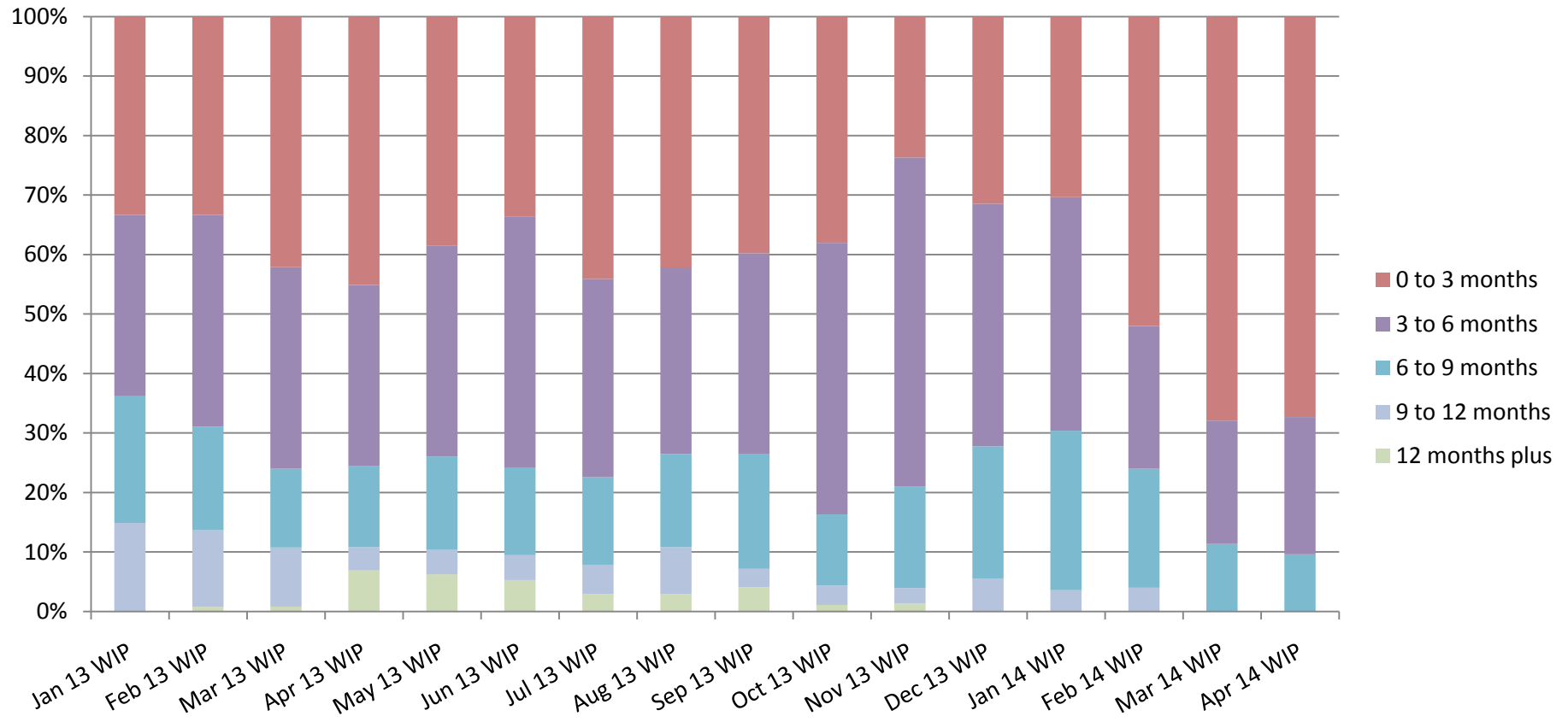


Figure 7: Status of applicants from different business category (April 2014)

