



Home Office

Response to the consultation on locally-set fees under the Licensing Act 2003.

Annex: summary and factual report on the consultation responses

February 2015

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Part 1: Overview

The Government's response

- 1) The Government consulted from 13 February to 10 April 2014. The Government's response to that consultation has been published separately and is available on www.gov.uk

Background - Fees under the Licensing Act 2003

- 2) The Licensing Act 2003 ("the 2003 Act") regulates the sale of alcohol, the provision of late night refreshment and regulated entertainment in England and Wales. Licensing functions under the Act are primarily implemented by local authorities in their capacity as "licensing authorities". Licensing fees are intended to recover the costs that they incur in implementing the 2003 Act. Fees are paid by holders of licences and certificates, and those making applications or issuing notices. Fee payers include businesses that sell alcohol and provide late night refreshment, not-for-profit organisations (including private members' clubs, such as political or British Legion clubs) and individuals (such as personal licence applicants). In addition over 120,000 Temporary Event Notices (TENs) are given each year by a variety of businesses, not-for-profit groups and individuals to authorise licensable activities on an occasional basis.
- 3) Fees levels were set nationally in 2005, but have not been revised since then. The Local Government Association and some licensing authorities have claimed that fees do not recover licensing authorities' costs. The Police Reform and Social Responsibility Act 2011 ("the 2011 Act") introduced a power for the Home Secretary to prescribe in regulations that these fee levels should instead be set by individual licensing authorities.

The consultation

- 4) The consultation invited views on various details of locally-set fees, including the proposed caps on each fee and whether fee levels should vary for different kinds of premises or be the same for all premises. On this issue, the consultation proposed that the use of National Non-Domestic Rateable Value (NNDR) should be abandoned as a criterion for variable fee amounts and sought views on alternative criteria (such as late opening). The consultation also sought views on whether there should be a single national payment date for annual fees.
- 5) Separately, the Home Office sought evidence from licensing authorities on their costs to enable a better understanding of the nature of variations in costs and to predict the effect of enabling licensing authorities to set their fees on a cost recovery basis.

- 6) During the consultation period, four consultation events were held to promote debate on the issues in the consultation documents and encourage responses to the consultation and the costs survey. The Government is grateful to those who responded to the consultation and contributed to the consultation events.
- 7) This report summarises the responses to the consultation. You may wish to read it in conjunction with the consultation document¹. There is a glossary at the end of the document.

¹ Available on [www.gov.uk](https://www.gov.uk/government/consultations/locally-set-licensing-fees) at <https://www.gov.uk/government/consultations/locally-set-licensing-fees>

Part 2: summary of responses to the consultation

Responses to the consultation in total – online, email and correspondence.	681
The 681 responses in total included:	
Responses to the survey questionnaire (475 of which were submitted using the online form).	573
Letters and emails which did not answer the survey questionnaire specifically but which commented on the proposals.	108
The 573 responses to the survey questionnaire were made up as follows:	
Responses from licensing authorities, local government officers, and representative organisations that represent licensing authorities or local government. Throughout the report, these respondents are described collectively as “ licensing authorities ” ² .	148 (25.8%)
Responses from individuals and businesses involved in licensed premises; businesses involved in the production of alcohol; trade bodies; persons or organisations specialising in licensing law ³ ; voluntary or community organisations (in particular, representatives of village and community halls); and representatives of members’ clubs. Throughout the report, these respondents are described collectively as “ fee payers ”.	385 (67.1%)
Responses from “others” - mostly respondents who described themselves as “other” or did not answer the question. Figures for “others” are not set out separately in the charts in the report. However, their responses are included in the figures for “all” respondents.	40 (6.9%)

- 1) The consultation was open for anyone to respond. Those who responded were self-selected and therefore the responses received cannot be considered representative of the views of the public or different sectors in general. As set out above, the great majority responded to the questions in the questionnaire (including those who answered only a few of the questions). Not all respondents answered every question.
- 2) Responses to the closed questions in the consultation (those that invited ‘yes’, ‘no’, or ‘don’t know’ answers) are included in the summaries below whether the respondent filled in the online form or not. Responses to qualitative questions were analysed by coding them to identify frequently occurring themes.
- 3) A small number of representative organisations that answered by email or letter reported alternative points of view among their members, including contradictory views. Where there was a statement that a point of view was the majority or consensus view, we sought to record this as the organisation’s view. In other cases, responses of this kind were treated as ambiguous.
- 4) Some respondents who sent letters and emails commented broadly on the overall issues, rather than answering specific questions. These responses are summarised separately in Part 6 below. We have not attempted to match these points of view to particular questions.
- 5) There were 148 responses to the survey from local government, and a further four in letters and emails. However, the number of licensing authorities who engaged with the survey was higher as some responses were submitted jointly by as many as 12 authorities. This meant that around 200 of the 350 licensing authorities responded to the consultation.

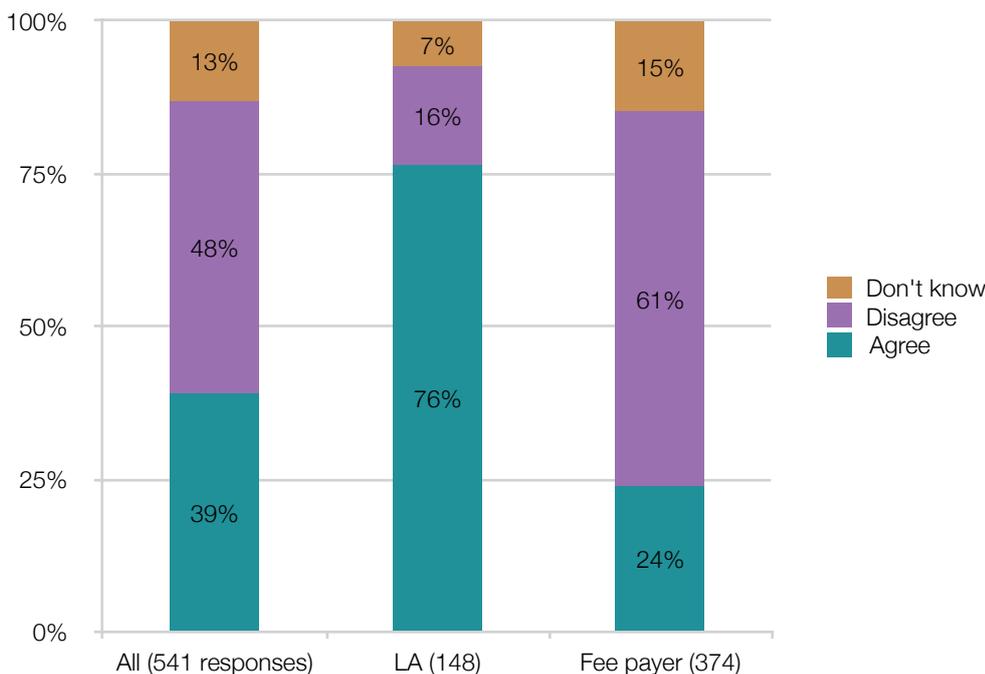
² One police response is included in this group.

³ Licensing lawyers were included in this group because they typically responded from a fee payer perspective, sometimes specifically acting on behalf of licensed businesses, for example.

Part 3: Variable fee amounts - the national non-domestic rateable value “bands”

1) Question 1 asked whether the fee “bands” based on NNDR should be abandoned. Whilst just under half of all respondents disagreed, there was a stark split between fee payers (24% of whom agreed) and licensing authorities (76% of whom agreed).

Chart 1: NNDR

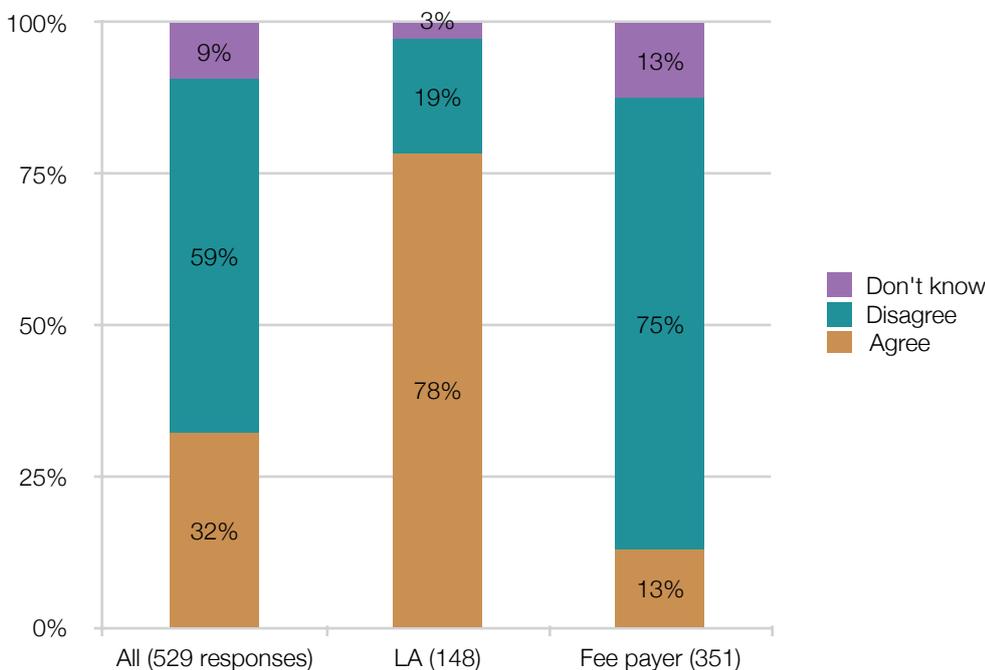


2) Question 2 asked those who disagreed that NNDR bands should be abandoned to give reasons for their answers by providing evidence of a link to costs. Among the main themes of fee payers was that there is no reason to change the system and general opposition to locally-set fees more widely. This was one of a number of open questions where a large numbers of fee payers took the opportunity to express a general opposition to locally-set fees. (Question 24, below, is another example). The use of NNDR bands was defended by both fee payers and licensing authorities on the grounds that it is generally fair, understood by the trade, easy to administer, or transparent. Some licensing authorities provided evidence or cited experience against or in favour of a link between NNDR and costs. For example, one council had analysed the correlation between high NNDR and higher costs in its area and concluded that it correlated with costs for annual fees but not application fees.

Part 4: Variable fee amounts - alternative classes

- Chapter 6 of the consultation asked about alternative classes (or types) of premises in respect of which licensing authorities might be able to apply different fee amounts for the “main fees”⁴.
- Question 3 asked whether the possession of an authorisation to provide licensable activities to a late terminal hour is linked to higher administrative costs to the licensing authority. The majority of respondents disagreed. Again, there was a split between those responding from a fee payer perspective and those responding from a licensing authority perspective.

Chart 2: late terminal hour – linked to costs?

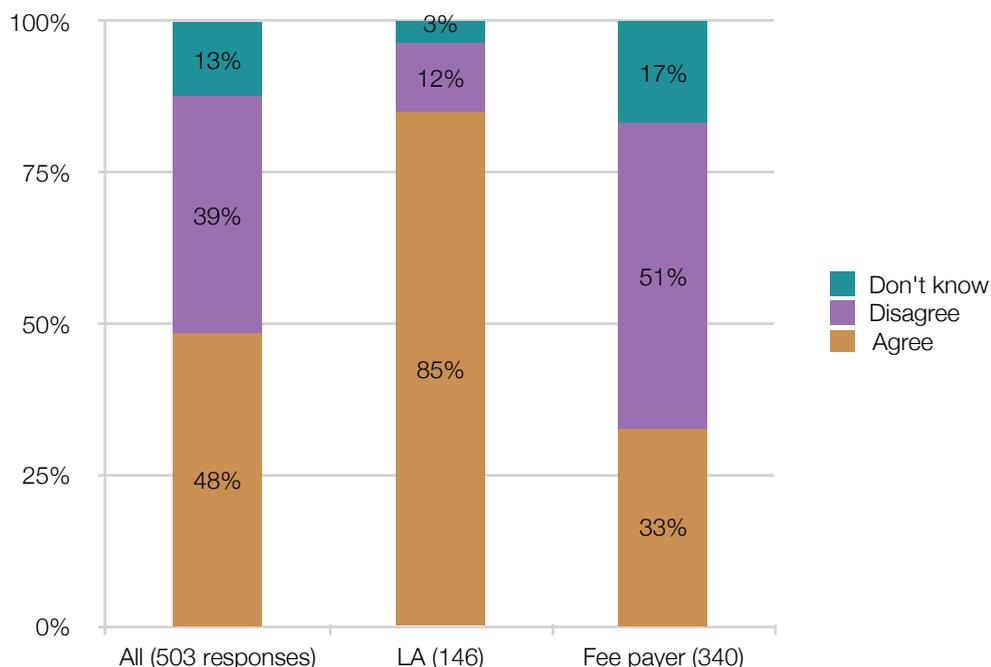


- Question 4 asked for evidence indicating a link between premises that authorise a late terminal hour and higher costs to the licensing authority. Licensing authorities commonly reported their experience indicating that there is a link, as premises that open late are more likely to be subject to representations, complaints or review applications. Licensing authorities also said that carrying out inspections is more expensive late at night.
- A small number of respondents provided more detailed analysis of whether certain costs (such as hearings) were more likely to relate to late authorisations. For example, one authority provided mixed evidence: premises open later had not received a disproportionate number of representations on application. Nevertheless, in the experience of that authority, they led to higher costs post-grant.

⁴ The “main fees” were defined as the fees paid in respect of: applications for new premises licences and club premises certificates; applications for full variations to premises licences and club premises certificates; and annual fees in respect of premises licences and club premises certificates

5) Question 5 asked whether it would be practical to implement variable fee amounts based on whether premises are authorised to provide licensable activities to a late terminal hour. Nearly half of respondents agreed. However, there was again a split between those responding from a licensing authority perspective as opposed to a fee payer perspective.

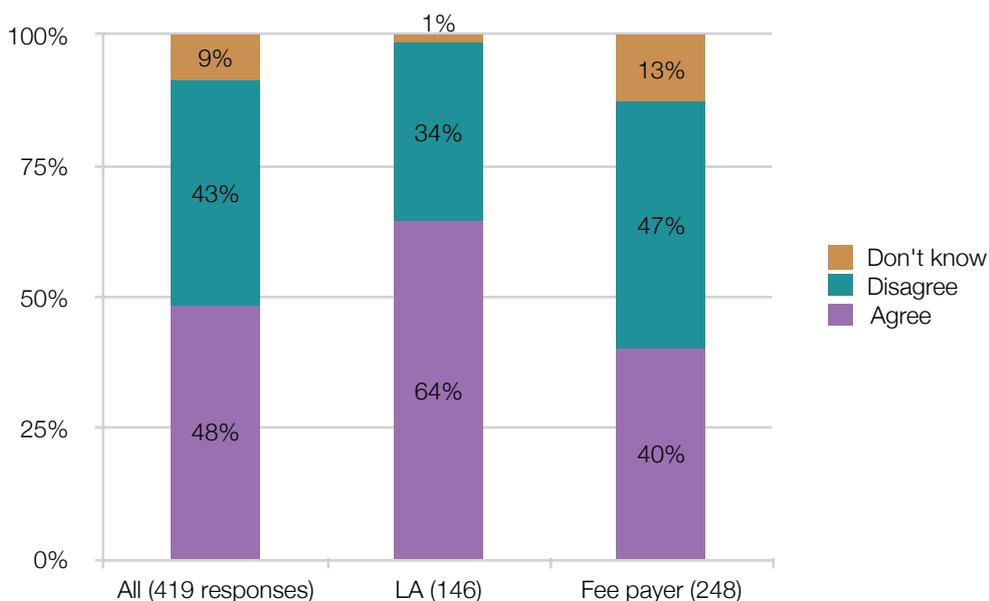
Chart 3: late terminal hour – practical to implement?



6) Question 6 asked those who did not agree with the proposal to provide reasons for their answer. A key concern of those who disagreed was how the proposal would affect premises that are authorised to open late, but which do so infrequently. Another concern was whether it would be appropriate to apply a higher fee amount to premises that have the authorisation only one day per week. It was suggested that the proposal would lead to administrative burdens for licensing authorities and licence holders as licence holders that did not use their late authorisations seek to remove them. A small number of respondents argued that since applicants were encouraged to apply for longer hours than they required when the 2003 Act came into force, it would be unjust to subject licence holders to higher fees now.

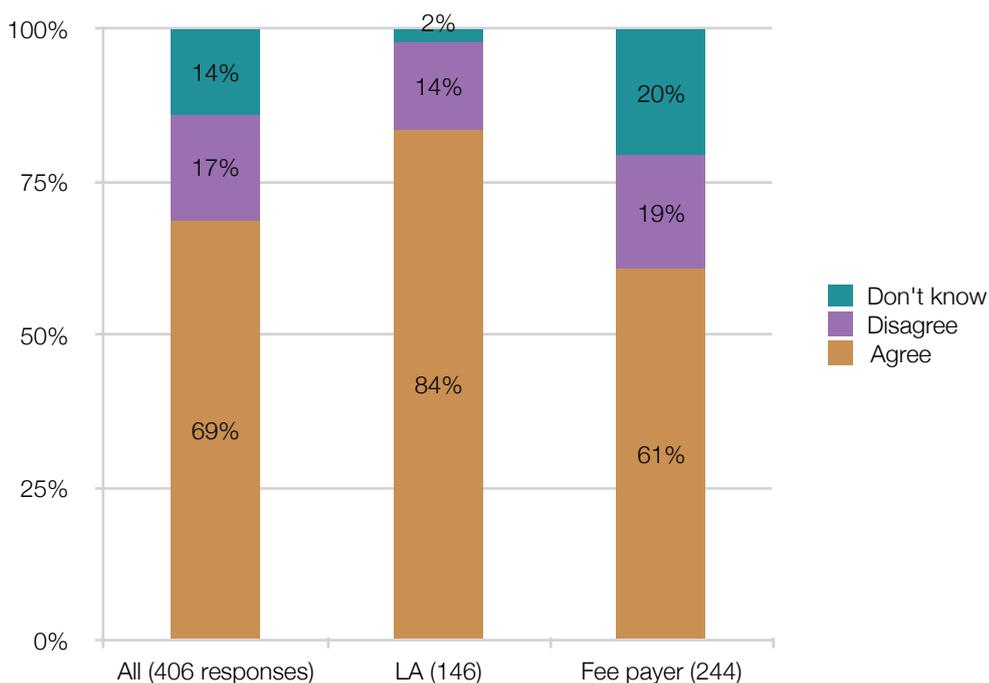
7) Question 7 asked whether licensing authorities should have discretion to determine the definition of “late terminal hour” in their area within the boundaries of midnight and 6am. Views were fairly evenly split between those who agreed and those who disagreed. However, the majority of licensing authorities agreed whilst more fee payers disagreed than agreed.

Chart 4: late terminal hour – defined locally within midnight and 6am?



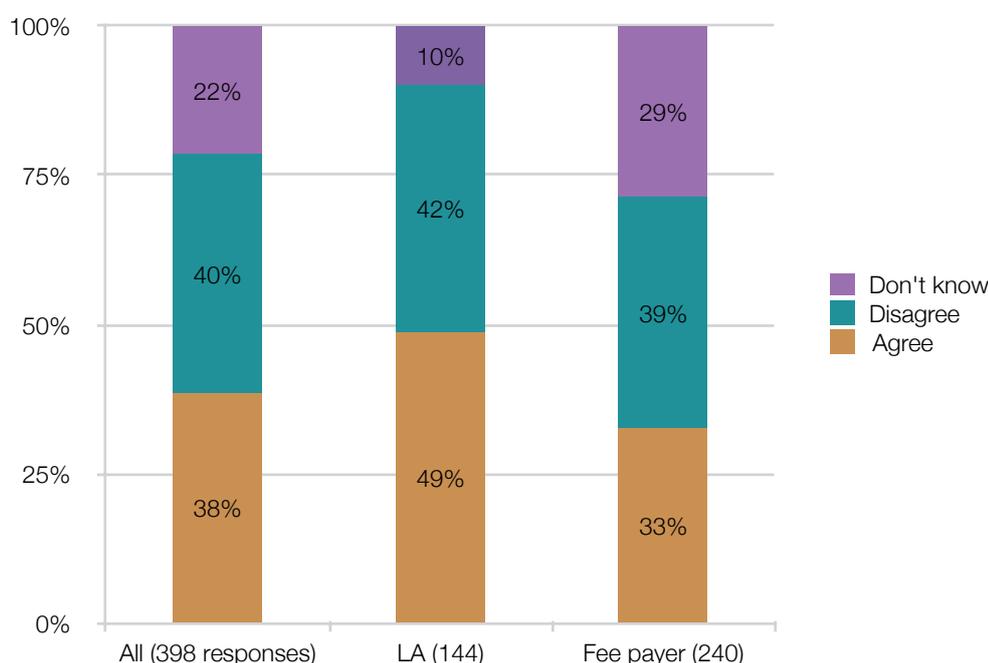
- 8) Question 8 invited those who disagreed with the timings proposed in question 7 to select alternative start and finish times from a range of options. 127 respondents selected alternative times. The most popular alternative start time was 11pm, proposed by 38 respondents. However, it was more common for respondents to suggest later start times, with 1am, 2am and 3am all supported by at least 16 respondents. The majority of those who suggested alternative times proposed retaining the finishing time for the period - 6am. However, almost a quarter selected later finish times and 10% selected 5am.
- 9) Question 9 asked whether licensing authorities that impose higher fees for premises that open later should have discretion to exclude premises that are authorised to open late only on certain nights per year. The majority of respondents agreed with this proposal. Licensing authorities were more likely to agree than fee payers.

Chart 5: late terminal hour – exclusions for certain nights?



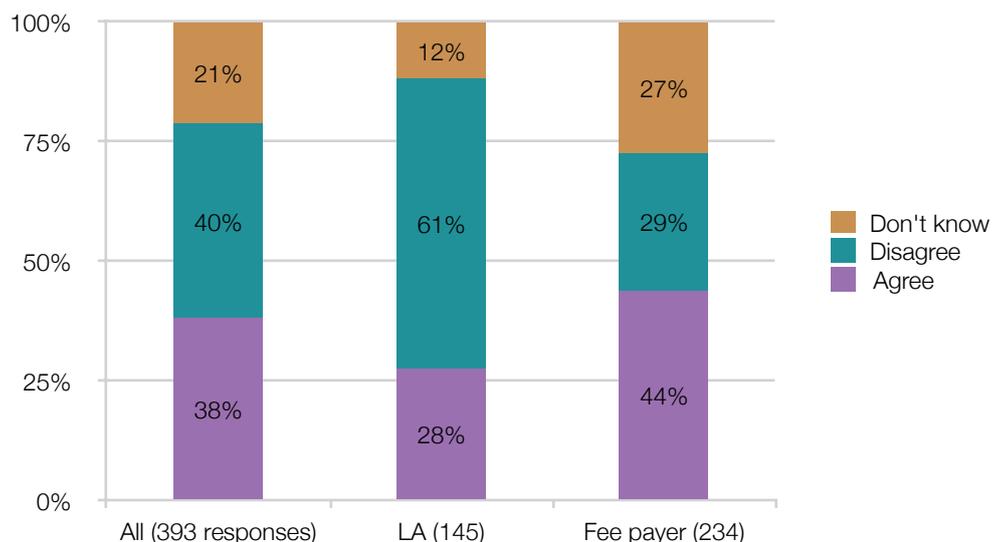
- 10) Question 10 asked for reasons for the views given in question 9. There was a variety of opinions and proposals about which kinds of premises should be excluded and how this should be achieved. One of the main themes was that there should be a wide range of discretion for local government or a wider range of possible exclusions. Alternatively, it was suggested that it would be unfair to exclude some premises, or that the exclusions should be defined centrally. Some proposed a narrower definition than suggested by the consultation document or suggested a maximum number of days, applied nationally. Others took the opportunity to restate their opposition to the imposition of higher fees for premises open late.
- 11) Question 11 asked if the criterion of whether premises are “primarily used for the sale of alcohol for consumption on the premises” is linked to costs. Opinions were fairly evenly divided, with a large proportion of fee payers selecting “don’t know”. Licensing authorities were more likely to agree than disagree.

Chart 6: primarily for the sale of alcohol – linked to costs?



- 12) Question 12 asked for evidence in support of the answer given to question 11. Key concerns of licensing authorities included definitional and practical difficulties in applying the criterion, and experiences that indicated that the criterion is not linked to costs. Other licensing authorities reported their experience that the criterion is indeed linked to costs. Some of these answers were nuanced. For example, indicating that the criterion is linked to costs, but less than, or only in combination, with other factors (such as the provision of entertainment, off-sales of alcohol, or operating late at night). Fee payer responses included a variety of contrary examples, such as premises that meet the criterion but do not cause higher costs and vice-versa, as well as factors that they suggest are more important.
- 13) Question 13 asked whether the proposal in question 11 (the use of the criterion “primarily used for the sale of alcohol for consumption on the premises”), is sufficiently practical to implement. Licensing authorities did not think that the criterion is practical to implement.

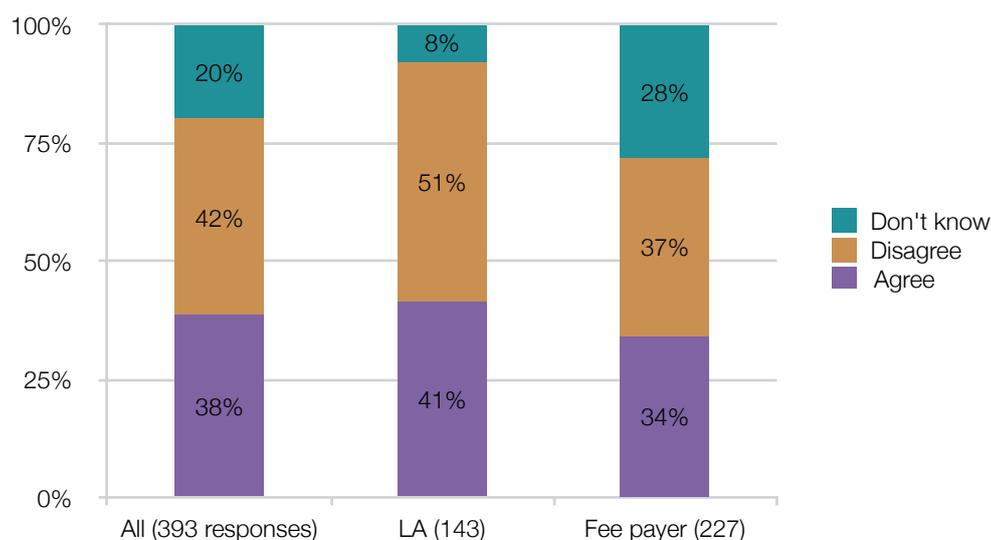
Chart 7: primarily for the sale of alcohol – practical to implement?



14) Question 14 asked for reasons for the answer given in question 13. A very strong theme of the responses was the difficulty of determining “primary” use, the possibility of the authority being challenged on the classification, and the potential for costly disputes. Some respondents were particularly concerned about the difficulty of applying the criterion when premises have different business practices at different times of day. Some licensing authorities suggested alternative definitions intended to resolve the problem.

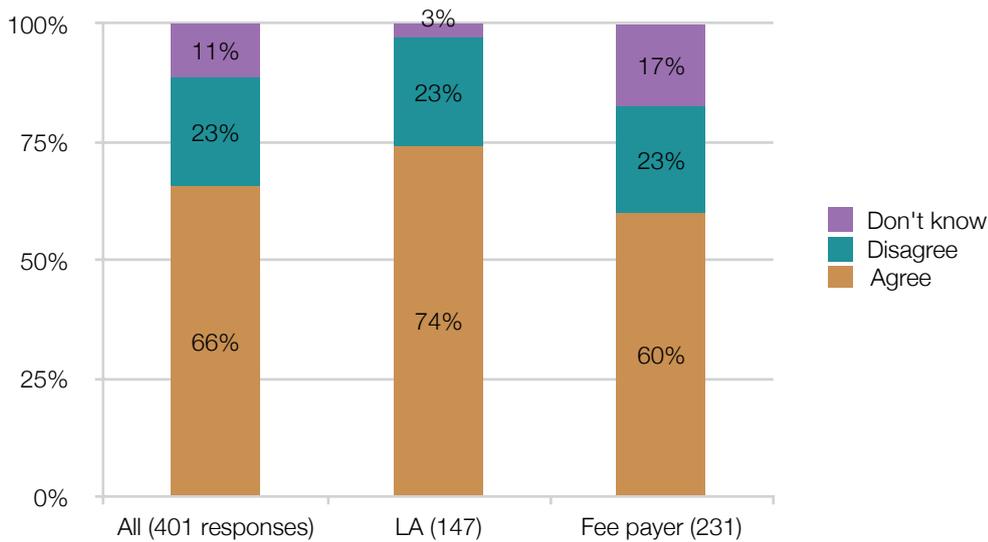
15) Question 15 asked whether authorities should be able to implement a “combined” criterion, where premises pay a higher amount only if they are both open late and primarily used for the sale of alcohol for consumption on the premises. More respondents disagreed with this proposal than agreed with it. A majority of licensing authorities disagreed. Although there was no question inviting reasons, some respondents noted that the criterion would be impractical to implement if either of its elements was impractical.

Chart 8: a combined criterion?



16) Question 16 asked whether, if licensing authorities were able to apply variable fee amounts, they should have discretion to exclude certain types of premises from the higher amount. Discretion to apply exclusions was widely supported.

Chart 9: exclusions for types of premises?



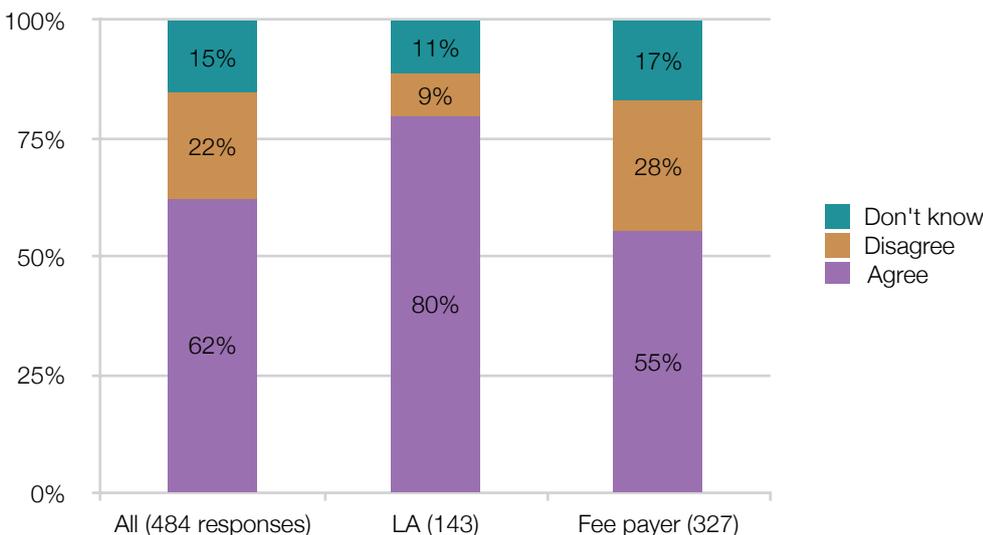
17) Question 17 asked for proposals of the types of premises that the licensing authority should have discretion to exclude. A wide variety of different exclusions was proposed. Key themes included premises related to tourism and entertainment (such as hotels and theatres), restaurants, sports or members’ clubs and charitable or community premises. Some respondents suggested that the exemptions should be the same as those available under the late night levy. Others proposed exclusions on the basis of geographical criteria or the history of individual premises. Some respondents were opposed to exclusions, either because of concerns about difficulties in implementation, or because greater consistency was preferred.

18) Question 18 asked whether there were alternative criteria that should be available to licensing authorities to apply variable fee amounts, and asked for evidence. This question evoked a variety of responses, including lists of factors and detailed proposals incorporating caveats or exceptions. Some of the proposals were already addressed in the consultation document, such as late terminal hour and the retention of NNDR. Other proposals included the size of the business (in terms of number of employees, size or capacity), geographical factors, and the history of individual premises. Some respondents argued for exemptions for charities and community premises.

Part 5: the proposed caps

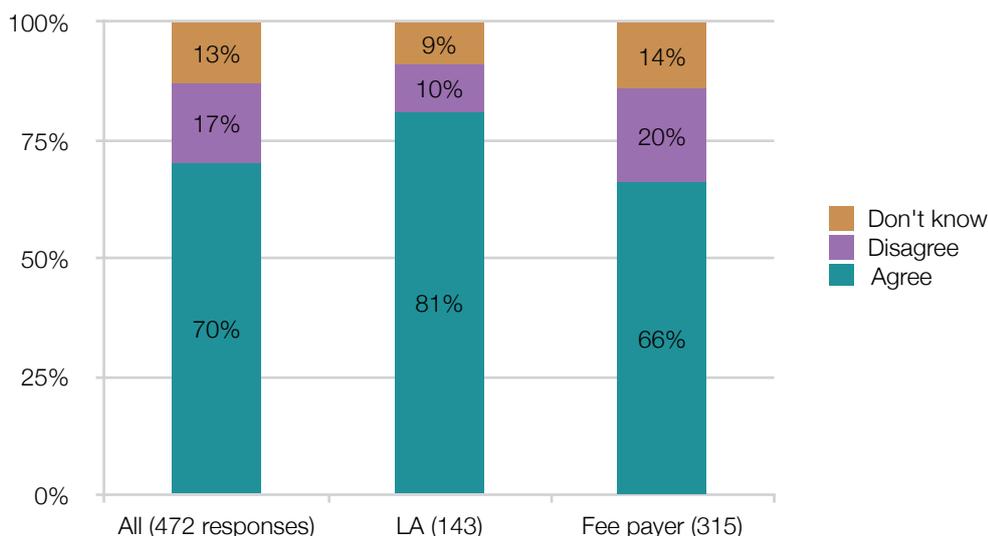
- 1) Chapter 7 of the consultation invited views on the proposed caps (or maximum permitted fee levels). A separate cap was proposed for each licensing process that incurs a fee (for example, an application for new premises licence, or for a replacement licence document).
- 2) Question 19 asked whether the proposed caps would enable licensing authorities to recover their costs. There was a separate sub-question for 22 licensing processes - questions 19(a) to 19(v). Question 20 asked for comments on the proposed caps.
- 3) Most of those who answered the survey questionnaire by letter or email (as opposed to completing the online survey) gave only a single response to question 19. These single responses have been interpreted as the respondent's response to each sub-question.
- 4) The responses to sub-questions 19(a) to 19(v) were generally similar. In general, around 80% of licensing authorities agreed that each fee would allow them to recover their costs. Around 50%-70% of fee payers also agreed, depending on the sub-question. A summary of the responses to two typical examples (an application for a premises licence, and an application for the transfer of a premises licence) are set out below.
- 5) Question 19(a) asked whether the proposed cap on the fee for an application for the grant of a premises licence (£2,400) would enable the respondent's licensing authority to recover its costs.

Chart 10: cap on the fee for a premises licence



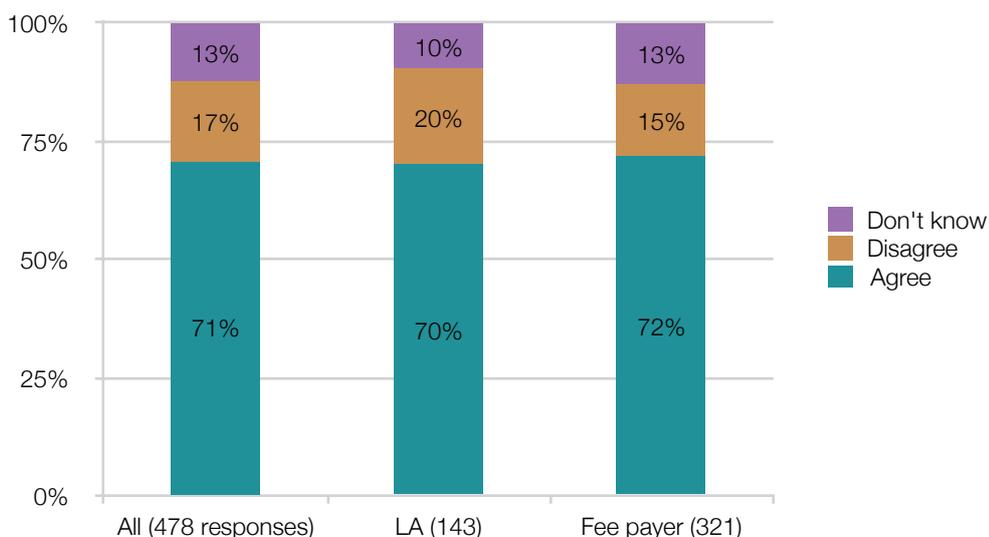
- 6) Question 19(l) asked whether the proposed cap on the fee for an application for the grant or renewal of a personal licence (£114) would enable the respondent's licensing authority to recover its costs:

Chart 11: cap on the fee for a personal licence



7) One proposed cap produced a notably different response. Question 19(f) asked whether the proposed cap on the fee for an application for the transfer of a premises licence (£65) would enable the respondent’s licensing authority to recover its costs. Compared with the other proposed caps, fewer licensing authorities thought that this cap would enable cost recovery.

Chart 12: cap on the fee for an application for transfer of a premises licence



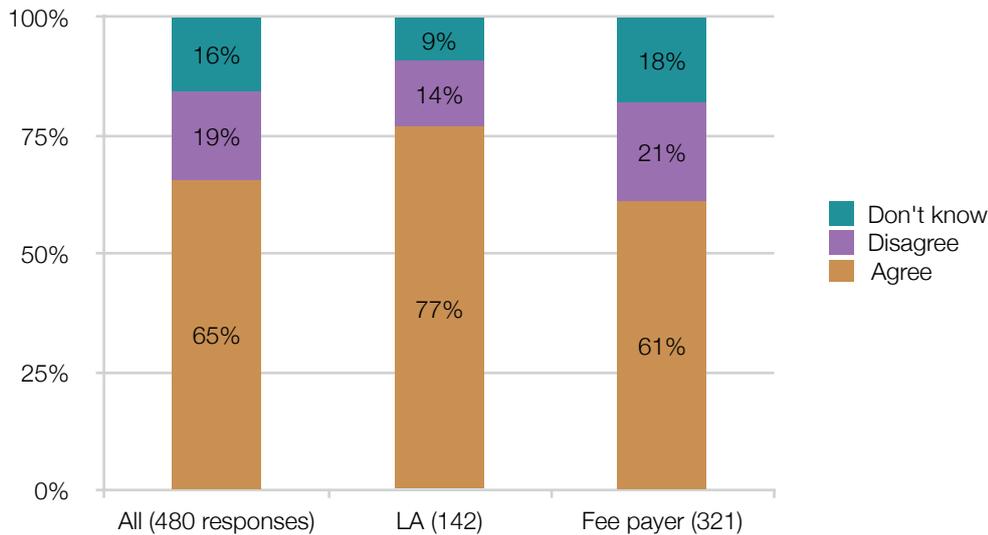
8) Question 20 asked for other comments on the proposed caps. Fee payers were generally hostile to the levels of the proposed caps, which they considered too high. A key theme of responses from fee payers was that the caps were too high because licensing authorities would aim to set fees near the level of the cap (and thereby seek to use fees as a source of income). Some fee payers referred to the example of the Gambling Act 2005, which, they argued, indicates that fee levels will tend to be set near the level of the caps.

9) Around 100 fee payers gave an identical (or very similar) campaign response:

“We have agreed that all the fees caps will enable all the councils we deal with to recover their costs because the caps are set at a level that is so high and penal to operators that they could not fail to do so. Our real concern is that councils will aim to set their fees at or near the cap”.

- 10) Some licensing authorities argued against the imposition of caps (rather than the particular cap levels proposed). Others suggested that particular caps or the caps in general would be only marginally sufficient and would need to be reviewed.
- 11) Question 21 addressed the proposed cap on the fee for a TEN (£100), which can be used to authorise licensable activities, such as the sale of alcohol, on an occasional basis. The majority of respondents thought that the proposed cap would enable licensing authorities to recover their costs.

Chart 13: cap on the fee for a Temporary Event Notice



- 12) Question 22 asked for evidence for the answer given in Question 21. Again, fee payers were generally concerned that the level of the proposed cap was too high. Some expressed particular concerns about impact on community events and charity fund-raisers. Many thought that the cap implied that costs had risen. Around 90 fee payers gave an identical (or very similar) campaign response:

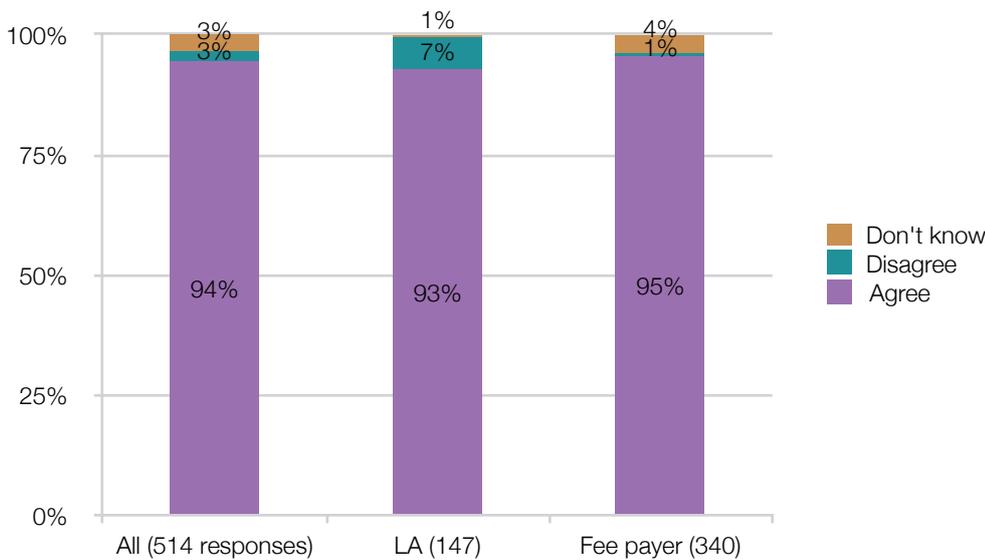
“£100 is more than adequate. If costs for processing TENs have risen it is because the Government has raised the regulatory burden by moving away from simpler process initiated under the Licensing Act -TENs were designed to be a simple system.”

- 13) Key themes from licensing authorities included restating that the cap would permit cost recovery and suggesting that it would need review.

Part 6: Licensing authority costs, transparency, consultation with fee payers and guidance on setting fees

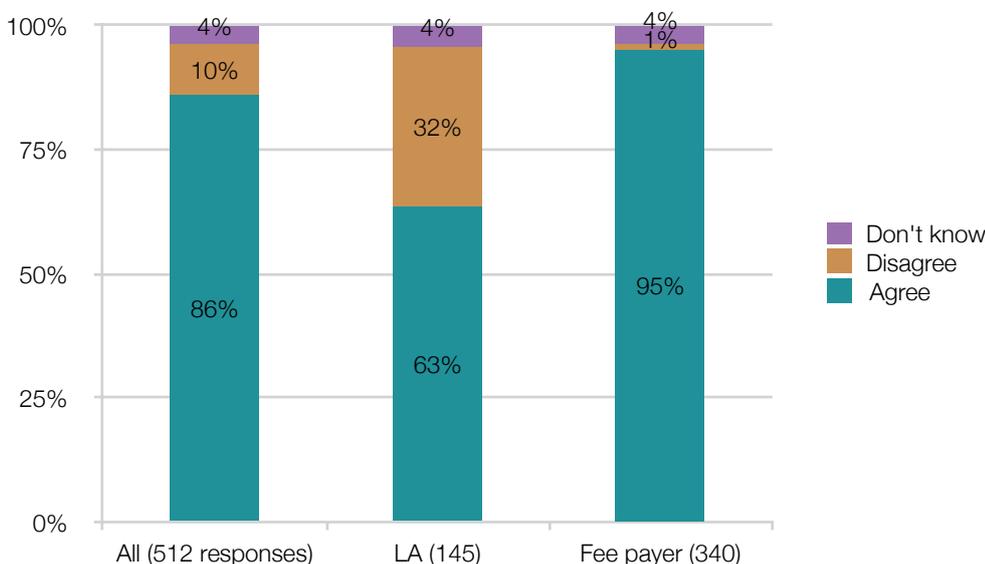
1) Chapter 8 considered issues to do with the process of setting fees locally. Question 23 invited views on the steps that licensing authorities should be required to take before setting fees. Firstly, sub-question 23(a) asked whether licensing authorities should be required to publish their proposed fee levels. Almost everyone agreed with this requirement.

Chart 14: requirement to publish proposed fee levels



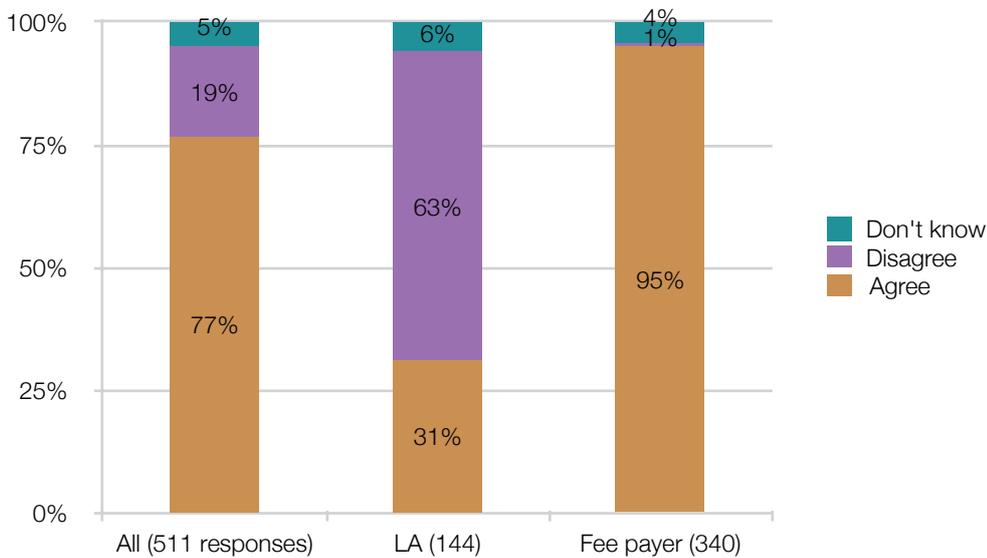
2) Question 23(b) asked whether licensing authorities should be required to publish the basis on which the proposed fees had been calculated. Again, this was widely supported, although about a third of licensing authorities did not agree.

Chart 15: requirement to publish basis of calculations



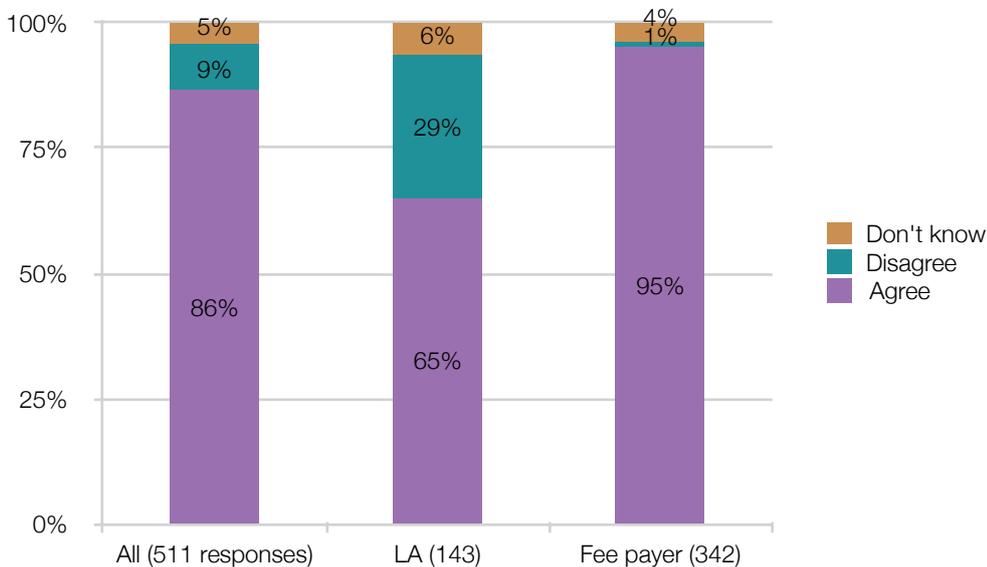
3) Sub-question 23(c) asked whether licensing authorities should be required to publish the measures they have taken to keep costs down. Although a majority of all respondents supported this requirement, almost two thirds of licensing authorities opposed it.

Chart 16: requirement to publish measures to keep costs down



4) Sub-question 23(d) asked whether licensing authorities should be required to invite comments on their proposals from interested parties. This proposal was again supported by the majority of respondents, although nearly a third of licensing authorities disagreed.

Chart 17: requirement to invite comments

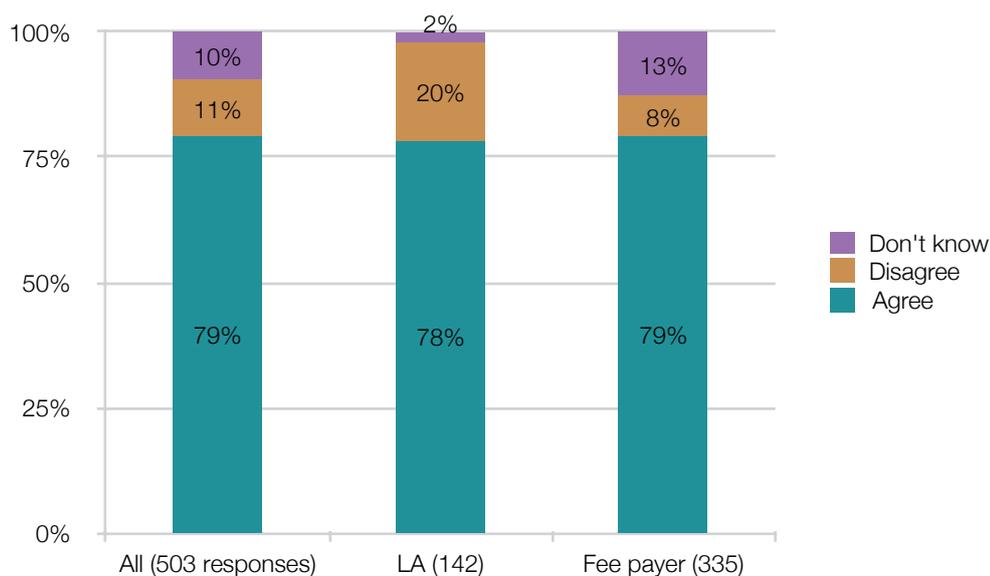


5) Question 24 focussed on the costs that locally-set fees are intended to recover, and asked what practical steps licensing authorities can take to secure efficiency. There was a variety of different proposals. Over 100 fee payers gave an identical (or very similar) campaign response:

“Whereas we do not support the principle of locally set fees, if they are set locally, there should be full transparency and consultation.”

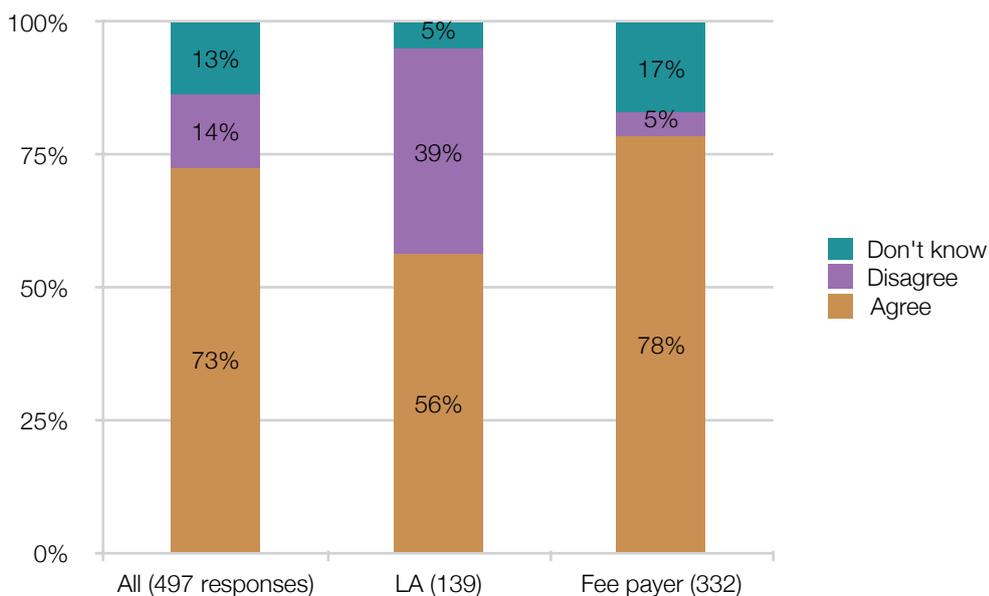
- 6) A key theme of both fee payers and licensing authorities was to highlight the importance of licensing authorities fulfilling their existing duty to accept online applications. Some respondents emphasised the acceptance of online payment in particular. Respondents also recommended the improved provision of guidance to applicants on licensing authority websites.
- 7) Other suggestions, primarily by licensing authorities, included risk-based inspection, joint provision with other licensing authorities, closer working with responsible authorities, and the use of mediation to avoid hearings. Some licensing authorities emphasised that they were already efficient or providing the efficiency mechanism described.
- 8) Question 25 continued the theme of the costs that locally-set fees should recover. Its three sub-questions asked whether the guidance provided to licensing authorities should suggest that particular activities present a risk of “gold-plating”. (“Gold-plating” was defined as “activities that go beyond the duties of the 2003 Act and are not justified by proportionality”).
- 9) Sub-question 25(a) asked if the guidance should refer to the practice of notifying residents of licensing applications in their area by letter as a potential example of gold-plating. The majority of respondents agreed with this proposal, with more than three-quarters of both licensing authority and fee payer respondents in favour.

Chart 18: notification by letter



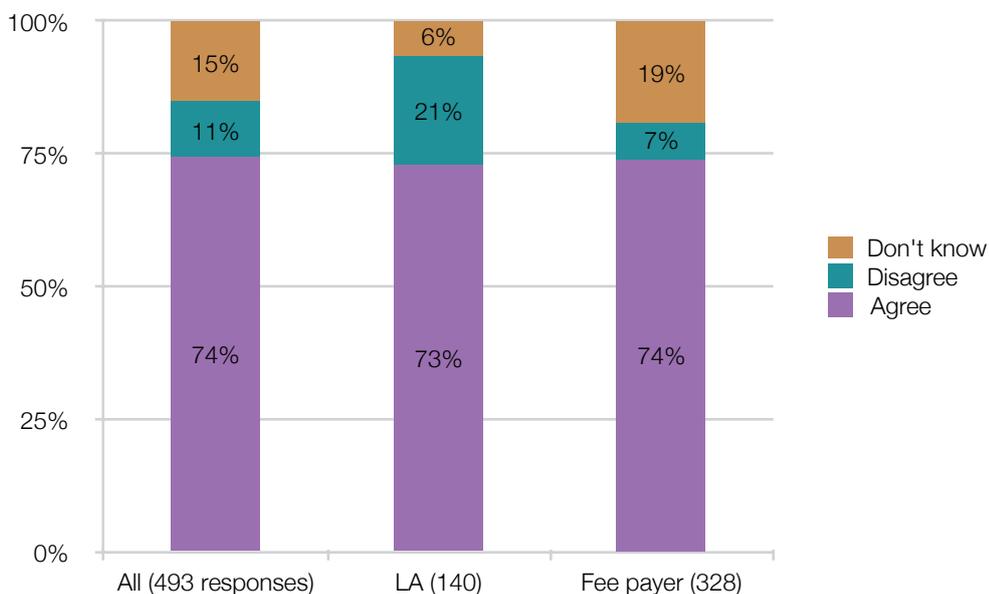
- 10) Sub-question 25(b) asked if the guidance should refer to central re-charges, such as payments from the licensing budget to legal services or external communications, as a potential example of gold-plating. The question suggested that central re-charges calculated as a standard percentage of overall costs might result in gold-plating. Nearly three quarters of respondents agreed with this proposal. However, a significant minority of licensing authorities – nearly 40% - disagreed. Some authorities who responded by email or letters questioned the practicality and cost-effectiveness of calculating central re-charges on a service-by-service basis.

Chart 19: central recharges



11) Sub-question 25(c) asked whether the guidance should refer to the costs of discharging the statutory functions that arise under other legislation, such as the duties arising under the Environmental Protection Act 1990, as a potential example of gold-plating. The majority of respondents agreed with this proposal.

Chart 20: statutory functions under other legislation

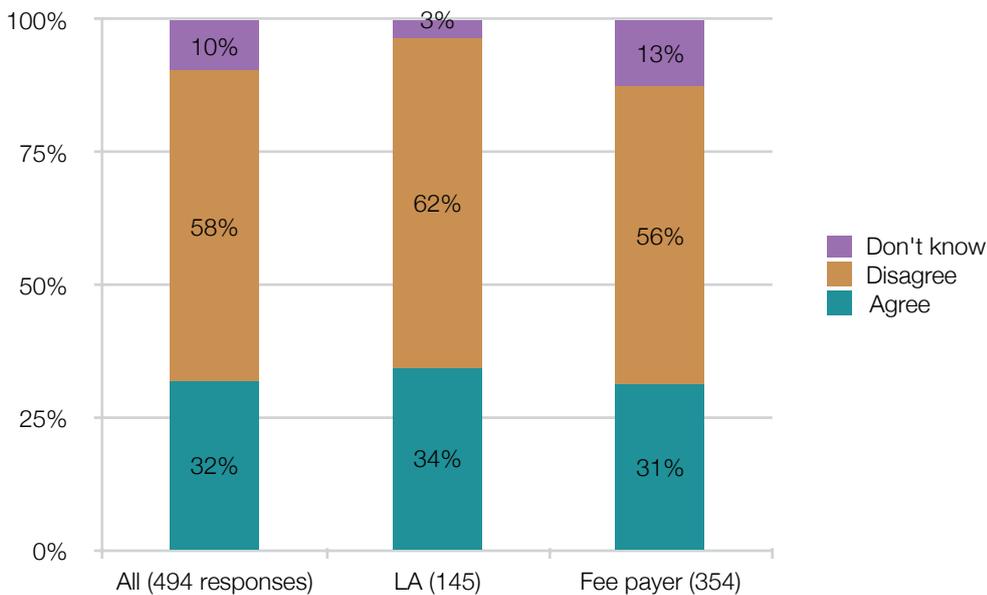


12) Question 26 asked whether there are other activities that present a particular risk of gold-plating. There were relatively few responses compared with other open questions in the consultation. Some licensing authorities disagreed with the concept of gold-plating residents individually or argued that licensing authorities are generally efficient. Some fee payers suggested that locally-set fees would lead to inefficiency. Some respondents suggested that unnecessary hearings are held when all parties have reached agreement, or that unnecessary inspections are held.

Part 7: A single national payment date for annual fees

1) Chapter 8 considered only one issue – whether there should be a single payment date for annual fees in England and Wales. (Annual fees are currently payable on the anniversary of grant of the licence or certificate). A majority of both fee payers and licensing authorities disagreed with the proposal.

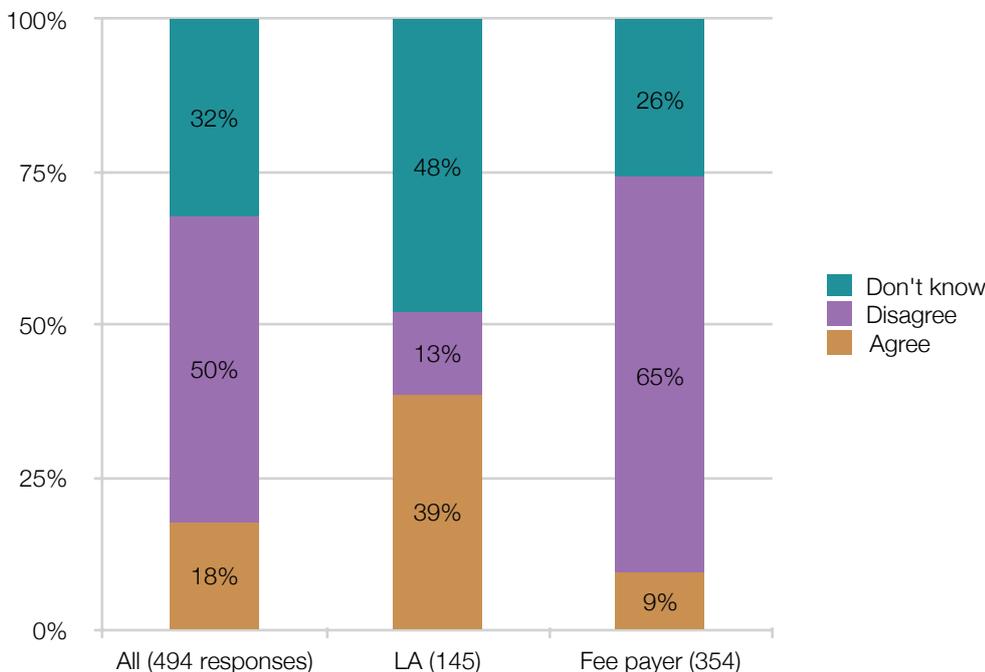
Chart 21: single payment date for annual fees



Part 8: Impact assessment

- 1) Chapter 9 invited views on the impact assessment (IA) that accompanied the consultation. The IA attempted to predict the results of fees being set locally on a cost-recovery basis, based on the best available evidence. Question 28 asked whether the IA provided an accurate representation of the costs and benefits of the proposal to move to locally-set fees (including, in particular, the costs of setting fees locally). The majority of fee payers did not agree that the IA provided an accurate representation. Very few fee payers agreed that it did, and a large proportion of both fee payers and licensing authorities selected “don’t know”.

Chart 22: impact assessment



- 2) Question 29 asked for comments on the IA. The responses were largely from fee payers. They tended to be very critical of the IA, particularly in saying that it was overly complicated and based on out of date evidence. Around 90 fee payers gave an identical (or very similar) campaign response:

“The Impact Assessment is overly complicated without giving data in sufficient detail to enable a proper analysis of the conclusions that have been drawn and to a lay person are largely incomprehensible. Some of the data is drawn from research undertaken for the Fees Review nearly ten years ago but the conclusions drawn are not the same, while no explanation is provided for the explanations.”

- 3) Other respondents agreed that the IA was overly-complicated. Some suggested it did not take into account particular types of business or specific costs. These included the administrative costs to business of fees being set locally, such as having to check fee levels and responding to local consultations.

Part 9: other emails and letters

- 1) There were 108 emails or letters that set out the respondent's opinions on fees overall rather than responding to consultation questions. (This is in addition to the 98 email or letter responses that answered consultation questions). These were almost all from fee payers who opposed locally-set fees. Some of the letters and emails made similar arguments, and appear to have followed a view suggested by a representative body:
 - a) Around 58 of these responses were on behalf of village or community halls, and argue against locally-set fees, or fee increases more widely. They emphasise, for example, very low profit margins from small scale activities, and that the funds raised are often for charity. Many of them were particularly concerned about potential increases to the fee for a TEN.
 - b) Around 24 were from representatives of pubs, pubcos or brewers who had written to their MP, who in turn wrote to the Government. These respondents tended to oppose locally-set fees, express a belief that fees would rise towards residents individually of the highest permitted amounts, and argue for the retention of the use of NNDR as a criterion for variable fee amounts.
 - c) Around 10 were from hospitality industry representatives (such as hotels). These responses opposed locally-set fees and argued for the retention of the use of rateable value bands and against the introduction of variable fee amounts dependent on late terminal hour.
 - d) Three were from bodies with a health interest. They suggested that fee amounts ought to be dependent on the volume of alcohol sales.

