An Assessment of the Market for Personal Injury

A final report for the Solicitors Regulation Authority

October 2016

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A report submitted by ICF Consulting Services
in association with Dominic De Saulles of Cardiff Law School

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Executive summary

Background

In December 2015, the Solicitors Regulation Authority (SRA) commissioned ICF Consulting Services to conduct research on the Personal Injury (PI) market. The purpose of this research is to provide the SRA with a thorough and up to date understanding of how the PI market is functioning following the reforms introduced under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), and to collate evidence exploring the conduct, behaviour and competence of solicitors practising in this area.

Legislative changes to the PI market under LASPO

LASPO implemented legislative reforms across the legal services market, but particular emphasis was placed on changing the infrastructure and operation of the PI market. The major changes that impacted PI were:

- **Referral Fee Ban:** Since 1 April 2013, there has been a ban on the payment and receipt of referral fees for claimant PI firms. Before the reforms, referral fees could be paid by legal representatives to third parties who referred a claim to them.

- **No win, no fee:** Under these agreements, the legal representative's payment is conditional on the case being successful. There are two types of agreement, Conditional Fee Arrangements (CFAs), where the legal representative is paid their normal fee plus an uplift or success fee and Damage Based Agreements (DBAs), where the uplift and success fee is calculated as a percentage of the damages recovered. Since 1 April 2013, the success fee for CFAs are now paid by the winning side.

- **After the event (ATE) insurance[1]:** Related to the above, where parties fund their litigation via CFAs, the success fee and ATE premium are no longer recoverable from the losing side if the case is successful. Parties can still enter into CFA and take out ATE but have to bear the additional costs.

- **Reforms to Part 36 Civil Procedure Rules:** This refers to a settlement offer that can be made by either party at any stage of the process. The aim is to get both sides to reconsider their position and attempt to settle their dispute before a court judgment is made.

- **Qualified one-way costs shifting:** In addition to encouraging early settlement of claims, a new costs protection regime was introduced. Qualified one-way costs shifting (QOCS) affects the costs that a claimant might have to pay the defendant should they lose the claim.

Rationale for the research: Concerns over the competence, behaviours and practices of solicitors

It was expected that key players in the PI market, namely, claimant and defendant solicitors, Claims Management Companies (CMCs), insurers and consumers, would adapt their

[1] After The Event Insurance (ATE Insurance) is insurance which covers the legal costs and expenses involved in litigation. After the Event Insurance policies normally cover the legal costs which a Claimant must pay to a defendant when a claim is unsuccessful – when the claim is either lost at trial, or abandoned/settled after the defendant has incurred costs which the claimant is liable to pay.
http://www.boxlegal.co.uk/what_is_ate_insurance/

business structures and practices in response to these changes. However, three years on, a number of stakeholders, including Government, the NHS Litigation Authority, the Association of British Insurers (ABI), the Association of Personal Injury Lawyers (APIL) and the Motor Accident Solicitors Society (MASS), raised specific concerns regarding the functioning of the PI market and requested a response from the SRA.

These concerns were organised into three main categories and are summarised below:

- **Solicitor Competence:** There were concerns that firms diversifying into different areas of PI, including Noise Induced Hearing Loss (NIHL), occupational disease and catastrophic injury, lack the competence and expertise required to take on cases. Specific examples of poor solicitor competence included poor case selection and triage, inadequate supervision of staff, failure to obtain relevant evidence and information to build a strong case for court proceedings and a lack of legal and case knowledge specific to PI, characterised by poor understanding of the Rehabilitation Code.

- **Solicitor behaviours and practices:** Alongside examples of poor solicitor competence, there were also concerns raised over behaviours and practices that were calling into question the honesty and integrity of solicitors and were resulting in wasted court resources. In particular, Government were *'concerned at the increase in the number of fraudulent cases and grossly exaggerated personal injury claims and the effect this has upon motor insurance premiums*[2]*'.* Concerns were also raised by Government about solicitors overcharging and *'loading grossly excessive costs onto the NHS'* in clinical negligence cases[3], and examples were provided of defendant solicitors under-settling cases using pre-medical offers of settlement when the claimant is not in a position to 'value' the injuries. Prior to LASPO, insurers would only put forward an offer of settlement upon receipt of medical evidence. However, defendant insurers have started to put forward an offer before medical evidence from an expert has been obtained, which makes the decision whether to accept more difficult for claimant solicitors and their clients.

- **Infrastructural and organisational changes:** Two infrastructural changes have also led to concerns about the relationships between solicitors and third party organisations. Firstly, the ban of referral fees between CMCs, insurers and legal firms, have resulted in attempts to circumvent the ban. However, a clear distinction has been made in the research, between lawful and unlawful circumvention of the ban. Secondly, concerns were raised about the relationships between law firms and medical reporting organisations (MROs) progressing soft tissue and NIHL claims. The MedCo portal was established to ensure high quality, independent medical evidence was provided for low value, high volume cases. However, the Ministry of Justice told MedCo to *'crack down on the large tier MROs that have created multiple tier two agencies to increase their chances of receiving instructions*[4]*.*

The findings, detailed later in this summary report, have been organised under these categories.

Research objectives

To increase the SRAs understanding of the profile and functioning of the PI market and to address the concerns raised by stakeholders, this research had four objectives:

[2] *'How to tackle fraud in personal injury claims'.* Solicitors' Journal, 10 September 2014. https://www.solicitorsjournal.com/personal-injury/claims-management/how-tackle-fraud-personal-injury-claims

[3] '*Medical legal costs 'excessive and should be capped',* 28 June 2015. http://www.bbc.co.uk/news/health-33287879

[4] http://www.litigationfutures.com/news/moj-tells-medco-stop-big-mros-registering-multiple-smaller-agencies

- to profile the current market for provision of PI legal services from both supply and demand-side perspectives.
- to explore and understand the various decisions and processes implemented by firms to respond to legislative and market changes.
- to identify examples of good and poor solicitor practices within all areas of PI and use this information to assess the competence of solicitors.
- to identify the impacts these decisions, processes and practices are having on claimants, defendants, firms and the wider PI market.

Research approach

Qualitative and quantitative evidence was collated through a combination of survey and consultation approaches, divided into four main elements:

- ***Desk based research:*** This task included a review of relevant literature and SRA documentation, as well as data from the Compensation Recovery Unit (CRU) and the Claims Management Regulator.
- ***Stakeholder consultations:*** In-depth interviews were conducted with 15 non-solicitor stakeholders (listed in Annex 3), who provided a range of different perspectives on good and bad practices in the market.
- ***Online survey:*** An online survey of SRA regulated firms was completed during January and February. A total of 255 firms completed and returned the survey from a sample of 2,648 taken from across England and Wales. Of these, 87% solely represented claimants, with 13% providing services to defendants (only 1% of these respondents were solely representing defendants). While the survey principally reflected the views of claimant solicitors, this respondent profile is not too dissimilar to profile of firms in the market.
- ***Qualitative in-depth firm interviews:*** To address the imbalance between claimant and defendant views, and to further explore issues of interest from the survey, 34 SRA regulated firms were interviewed using a semi-structured topic guide.

Key findings

Profile of the PI Market

- Recent estimates indicate that the PI market, which includes clinical negligence, is worth an estimated £3 billion per annum and constitutes the second largest segment of the UK legal services market.
- While the majority of PI firms are small, the market has experienced increased consolidation, following a number of mergers and acquisitions, together with the introduction of Alternative Business Structures (ABS). As of 2015, there were a total of 93 firms who specialised in PI work (50% or more of their annual turnover) that operated as ABS, which represented approximately 11% of specialist PI firms.
- The PI market is the most heavily concentrated market in consumer law, with the largest 10 personal injury law firms accounting for a quarter of the market in 2013.

- Data from the Compensatory Recovery Unit highlighted that:
    - there were almost a million PI cases (998,359) in 2014/15, 76% of which were estimated to be Motor-related claims.
    - the number of settlements had increased by 25% between 2006/07 and 2013/14 to more than one million, before a six per cent reduction between 2013/14 and 2014/15.

- PI legal services are primarily provided directly through solicitors and other legal companies, however the introduction of ABS has made it possible for insurers, claims management companies and trade unions to be involved in the ownership and/or management of an ABS.

- At the time of conducting the research, approximately 8% of SRA regulated firms (833) were specialist PI firms (where more than 50% of their turnover is derived from PI) with a further 2,000 involved in PI related services, such as claims management and medical reporting. Ninety-three specialist PI firms were operating as ABS.

Solicitor Competence

Key findings

- Several interview respondents stated that firms are using less experienced solicitors and paralegals to triage and prepare cases in order to make cost savings. As a result, cases are being inadequately assessed and incorrectly valued. This is most clearly evident among firms diversifying into other areas of PI, such as clinical negligence, occupational disease and NIHL.

- Several interviewees flagged NIHL and clinical negligence as particular areas in which a comparative skills gap exists. A lack of specific knowledge in these legal areas prevent the identification and application of legal principles to factual issues.

- Related to the above, a small proportion of firms are taking on too much work, leading to errors and slower processing.

- Survey respondents remain concerned about the provision of medical evidence and the quality of medical reports. More than a quarter believed that poor quality medical reporting occurred often in cases, while 76% stated poor quality medical reports were having a detrimental impact on the rule of law and proper administration of justice.

- Judges were even more critical, and pointed to a deterioration in the quality of general materials produced for court cases over the last decade.

- More than a third of solicitors interviewed (35%) felt there is a lack of understanding of the Rehabilitation Code in the industry. 30% of these felt this lack of understanding is having a significant and detrimental effect on consumers, the rule of law and the administration of justice.

Solicitor behaviours and practices

Key findings

- There was general acceptance among survey and interview respondents that frivolous cases were being accepted by solicitors, but at a declining rate since the reforms.

- 12% of survey respondents believed the practice of solicitors accepting and progressing frivolous cases was prevalent in the market. However, there were differing views on the pursuance of frivolous cases, with some claimant firms stating that solicitors are bringing genuine cases as it is in their financial interest to do so. However, defendant firms felt that frivolous cases are accepted and pursued by solicitors, albeit in relatively small numbers.

- Many interview respondents reported that delays are not common on either side and, when they occur, it was usually for a good reason and has little bearing on the outcome of the case.

- In-depth interviews with claimant solicitors believed that legal costs are not unnecessarily high, particularly when you take into account the introduction of fixed fees for many cases.

- Concerns were raised by some claimant firms that defendant solicitors are making pre-med offers of settlement when the claimant is not in a position to 'value' the injuries. This could mean that clients are at risk of receiving inappropriate compensation owing to an inflated perception of litigation risk. Almost half of all survey respondents viewed delay in payment as a common practice, while two thirds felt the practice put a strain on solicitor's cash flow and significantly inhibited the rule of law and the proper administration of justice. It was unclear from the research what the motivations for delaying payment could be and this may require further exploration.

Infrastructural and organisational changes

Key findings

- Overall, the referral fee ban is understood and accepted, however there is a view that the ban is not totally effective.

- The referral fee ban has contributed to some notable changes in the PI market, not least the reduction in the number of claims management companies, which has halved since 2009/10. Despite this fall in numbers, turnover of CMCs has increased by 30% to £310 million in the 12 months to March 2015.

- A small number of in-depth interview respondents felt that ABSs and joint ventures are being established as a means to circumvent the ban.

- There is no evidence in the report suggesting that firm and solicitor practices aimed at circumventing the ban has led to a reduction in quality of service or access to legal services for consumers.

- Only a quarter (24 per cent) believe that MedCo achieved independence between Medical Reporting Organisations (MROs) and firms, with almost two-fifths (38 per cent) disagreeing with this assertion.
- Over two-thirds (68 per cent) of respondents thought that the quality of reports for consumers had not improved as a result of the MedCo system.
- The in-depth interviews corroborated survey respondents' sentiments on the effectiveness of MedCo in respect of MRO's independence, its relationship with solicitors and quality of medical reports prepared under the new system
- However, many of those critical of the portal agreed with the rationale for its introduction, but criticised its 'rushed implementation and resultant loopholes, one example of which is Tier 1 MROs, establishing Tier 2 structures to maximise their likelihood of securing work.

1 Introduction

The Solicitors Regulation Authority (SRA) commissioned ICF International to undertake an assessment of the market for personal injury (PI). The purpose of this report is to provide a thorough understanding of how the PI market is functioning; the perceptions and experiences of the conduct, behaviour and competence of solicitors practising in this area; and views as to the prevalence and impact of concerns raised primarily by solicitors and also other stakeholders.

As the regulatory body for solicitors in England and Wales, the SRA is responsible for regulating the professional conduct of more than 133,000 practising solicitors and other authorised individuals at more than 10,000 firms, as well as those working in-house at private and public sector organisations. Its primary role is to protect consumers of legal services and support the operation of the rule of law and the proper administration of justice. In particular, the SRA will act to:

- protect and promote the public interest;
- support the constitutional principle of the rule of law;
- improve access to justice;
- protect and promote the interest of consumers;
- promote competition in the provision of services;
- encourage an independent, strong, diverse and effective legal profession; and
- increase public understanding of the citizens' legal rights and duties[5].

In performing this role, the SRA can take enforcement action against both firms and individuals who have not complied with their regulatory requirements, which includes closing a firm through Intervention. To inform its regulatory work, the SRA regularly commissions independent research to assist its regulatory activities.

1.1 Aims of the study

The PI 'market' has become increasingly diverse in recent years following a number of recent legislative and regulatory reforms (see subsequent sections). This has led stakeholders in the PI market, including insurers, claimant and defendant firms, industry specialists and the NHS Litigation Authority, to raise a number of concerns that pose increased risk to the experiences and outcomes for consumers and the proper administration of justice. These issues span three main areas. The SRA has been approached for a view on how the reforms have influenced the activities, behaviours, competences in the PI sector. This provides the context for this study:

1. **Solicitor competence:** there is evidence that shortly after the 2013 LASPO reforms, firms diversified their activities into different areas of PI from Road Traffic Accidents (RTAs) to Noise Induced Hearing Loss (NIHL), occupational disease and catastrophic injury[6]. However, there are concerns that a number of these firms lack the competence and expertise to handle such cases. As such, some firms are selecting cases that they are not able to manage, and consequently are failing to obtain the relevant evidence and information to build strong cases within the three-year limitation period for bringing a claim. This has led to cases being under-settled, ill-considered court proceedings and claimants being awarded insufficient compensation.

[5] SRA (2015) Approach to regulation and its reform: Policy statement

[6] IRN Research (2015)

Early evidence of lack of competence exhibited by solicitors in the PI market

In a recent report, the Association of British Insurers (ABI) found that since 2012, more than 200,000 claims for noise-induced hearing loss have been submitted. However, owing to solicitors failing to gather sufficient evidence to link their clients' hearing loss to the workplace, less than a fifth have been eligible for compensation.

Source: ABI (2015) https://www.abi.org.uk/News/News-releases/2015/06/Industrial-Deafness-claims

It is however not clear from the above study whether the issues with evidence gathering were a result of recent diversification or a more long standing issue.

2. **Solicitor behaviours and practices**: concerns expressed by defendant solicitors – both prior to and following the LASPO reforms – that claimant PI firms were taking on fraudulent or exaggerated PI claims and overcharging for their services. This practice is expected to have reduced due to the changes made to the ways solicitors charge (see Table 1.1)[7]. It is too early to say whether these impacts have been realised in practice.

   Similarly, there is concern about poor practice from defendant PI firms such as[8]: (1) negotiating compensation prior to taking cases to court, often leading to under-settlements for claimants; (2) delays in case preparation or correspondence with claimants; and (3) poor quality services (including inefficiency in gathering evidence to support a case).

3. **Infrastructural and organisational changes**: there are concerns that, in spite of the ban on referral fees, informal arrangements continue to exist between legal service providers. For instance, anecdotal evidence suggests that such arrangements continue to exist between Claims Management Companies (CMCs) and insurers, whereby CMCs ask for payment for the service they offer (preparatory work involved in the referral process) rather than payment for referring individuals[9].

   A related issue of concern is that of 'claims farming,' where claims managers and other intermediaries encourage people to make (low-value) claims where there is no evidence that an injury has been caused[10]. One well-documented route for fraudulent 'claims farming' is nuisance calls whereby consumers are cold-called by organisations which hold their data without their knowledge and pressure them to make a claim.

   Finally, there are concerns about the use of the MedCo portal. The portal was introduced in April 2015 as a means of addressing concerns around the quality and independence of medical evidence in whiplash claims. The MedCo rules were designed to ensure: (1) independence of experts and reporting organisations; (2) fair allocation of work; (3) and consistent quality of reports. However, from early on, there have been reports of inappropriate behaviours, such as larger Tier 1 Medical Reporting Organisations (MROs) establishing Tier 2 agencies to increase the likelihood of securing business[11].

   Many of the concerns and issues outlined above are addressed by this research which seeks to provide further evidence on the impact of recent legislative/ policy changes, as

[7] IRN. 2015. UK Personal Injury Market

[8] Lodge. R, 'A further misguided attack on claimant costs in clinical negligence litigation'. Clinical Negligence Law Blog, June 2015

[9] . PI firms should fear referral fee questions. [online] Law Society Gazette. Available at: http://www.lawgazette.co.uk/pi-firms-should-fear-referral-fee-questions/5037506.fullarticle

[10] Insurance Fraud Taskforce (2015) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413146/PU1789_Insurance_Fraud_Taskforce_interim_report_-_final.pdf

[11] Law firms drop JR threat over MedCo scheme. [online] Law Society Gazette. Available at: http://www.lawgazette.co.uk/practice/law-firms-drop-jr-threat-over-medco-scheme/5051741

well as the prevalence of certain practices and behaviours in the PI market (and their impact for consumers, the rule of law and the administration of justice).

More specifically, the aims of this research are to:

- profile the current market for the provision of PI legal services from both supply and demand-side perspectives (section 3);
- explore and understand the various decisions and processes implemented by firms to respond to legislative and market changes (section 4-7);
- identify examples of good and poor solicitor practices, within all areas of PI and use this information to assess the competence of solicitors, against the SRA competence statement, operating in this market (section 4-7); and
- identify the impacts these decisions, processes and practices are having on claimants, defendants, firms and the wider PI market (section 4-7).

1.2 Research questions

The key research questions addressed in this report are as follows:

- What is the profile of firms/entities providing legal services to PI claimants? In developing this profile, key information/data will include:
  - Number and size of firms (focussing on SRA regulated solicitors and legal service providers) offering PI legal advice;
  - How are these firms structured, including an emphasis on entity type, annual turnover, number of solicitors, involvement of non-solicitors, management structures, preferred business models and funding arrangements. This will enable us to identify the range of business models used by those operating in the market;
  - A breakdown of the main areas of PI work firms are operating in (and how long have they operated in particular markets).
- What have been the main changes firms have implemented in response to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) reforms?
  - How have firms changed their business and funding structures since 2012 to remain competitive and profitable in the PI market, and how effective are these new structures? This will include a focus on the referral fee ban and its impact;
  - What has been the impact of one-stop-shop providers and new entrants to the market?
  - For firms that have sought to diversify from RTA personal injury into other areas of personal injury (clinical/medical negligence, industrial disease, noise induced hearing loss) and other areas of law, how have they approached this, how successful have they been and what barriers have they encountered in establishing themselves?
- What practices and behaviours are being exhibited by solicitors in the PI market?
  - What are the good and poor practices exhibited by PI claimant and defendant solicitors when progressing a case and what impact are they having on the quality of service and outcomes for consumers?
  - What approaches are firms using for advertising and attracting consumers and what approaches are consumers responding most to? Is there any evidence of pressure selling or mis-selling, to be derived from SRA complaints data?
  - How are firms triaging and selecting PI cases to take forward? To what extent is this leading to poor case selection and encouraging the pursuit of frivolous claims?

- Is there evidence of unjustified early settlement of cases? What is driving this practice and what potential problems could this lead to for the market and regulation?
- How have firms, insurers and Medical Reporting Organisations (MROs) responded to the MedCo portal and what impact has its implementation had on relationships between these groups and on the quality of reports for consumers?
- What are the perceived benefits and shortcomings of fixed fees to the provision of appropriate legal advice and case preparation?

1.3 Structure of the report

The remainder of the report is structured as follows:

- Section 1 - briefly describes the study scope and context.
- Section 2 - provides an overview of the study approach and methodology, including the challenges and limitations of the methods and data used.
- Section 3 - profiles the current market for the provision of PI legal services from both supply and demand-side perspectives
- Section 4 - briefly describes the PI legal process
- Section 5 - examines the preparatory stage of the legal process, including securing clients and case selection/ triage
- Section 6 – assesses the processes, practices and behaviours of solicitors in terms of the management of the claims
- Section 7 – examines how claims are settled
- Section 8 - provides a synthesis of the principal research findings and presents a set of conclusions

1.4 Study context

1.4.1 Personal injury

Personal injury claims arise where a person suffers physical or psychological injury as a result of a breach of legal duty by someone else. That breach might arise in a number of different contexts, each of which may trigger distinct types of claim (causes of action):

- A road traffic accident (RTA), in which case the legal duty will arise from the law of negligence where the driver has either done something or failed to do something which the reasonable driver would do.
- A workplace accident, in which case the legal duty will arise from the law of negligence and breach of statutory duty.
- Noise induced hearing loss (NIHL) in the workplace
- A workplace disease (Industrial Disease) may arise the cause of which is a breach of a duty in the law of negligence and breach of duty imposed by statute.

The Health and Safety at Work Act 1974 (HSWA) and the regulations made under it provide the main source of law for workplace liability claims. The Act has to comply with EU Directives. The extent of liability under HSWA is uncertain because of recent changes made to it. It will require a series of decisions for the courts before the position is clear. Solicitors have to operate in this uncertain environment.

- A trip or slip on the pavement, which the council has failed to maintain in breach of its statutory obligations under the Highways Act 1980.

Public Liability Claims are commonly governed by the law relating to occupiers' liability or by the law of negligence. In all cases, the occupier has to take care for the safety of people on their land. How much care is required will depend upon whether the victim was a trespasser or a proper visitor.

- Clinical negligence (e.g. resulting from a treatment).

1.4.2 The Jackson Review

The PI market grew rapidly in the early 2000s. Reforms such as the Access to Justice Act (1999) and the liberalisation of referral fees made the role of intermediaries (such as claims management companies) more profitable. This led to an increase in the number and variety of legal service providers, making it easier for individuals to make claims[12].

Concerns were raised as regards the impacts of these reforms on the wider PI market. In his review, Lord Jackson was critical of the reforms on the basis that they had[13]:

- adversely impacted on the amount of time solicitors' firms spent on PI cases, thereby reducing the quality of legal services[14];
- led to the creation of a *"compensation culture, an increase in fraudulent activities and frivolous claims and an increase in the overall cost of legal services."*[15] Evidence from the literature indicates a rise in the number of frivolous motor claims from 2005 onwards. For example, in 2011 it was reported that the number of PI claims rose by 18 per cent in spite of a reduction in the number of road accidents in that year (-11 per cent), costing the insurance industry an extra £400 million[16]. This may partly be due to people with legitimate claims properly accessing their rights to justice, and indeed access having increased over time as awareness rises. It should, however, be noted that not all claims will be made in the year of the accident. Moreover, the rise in claims related to all PI markets and not just motor-related claims.

Recommendations from the review triggered various regulatory changes, the majority of which were contained in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO), enacted in 2012. A summary of key legislative changes in the area of PI is provided in Table 1.1 below.

[12] Legal Services Board, 2014. *Access to Justice: Learning from long-term experiences in the personal injury legal services market* https://research.legalservicesboard.org.uk/wp-content/media/Access-to-Justice-Learning-from-PI.pdf

[13] The Law Society, 2010. *A summary of Sir Rupert Jackson's final report*

[14] Legal Services Board (2014)

[15] Legal Services Board (2014)

[16] Cited in BBC News, 2012. *Personal injury claims soar despite fall in accidents* http://www.bbc.co.uk/news/uk-18700212

Table 1.1 Key recommendations from the Jackson Report (in relation to PI) and resulting legislative changes implemented through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)

Recommendation	Rationale for change	Implementation
Referral fees should not be permitted	Referral fees were considered as wrong in principle and against the public interest.	Introduction of a ban applying to both the payment and receipt of referral fees by a regulated person (*2012, LASPO - sections 56-60*).
Part 36 offers: the playing field between claimants and defendants should be levelled	Before 2010, the consequences for defendants that fail to accept a claimant's Part 36 offer were felt to be insufficiently serious to advance the cause of settlements.	Introduction of an extra sanction for failing to accept claimants' Part 36 offers (10% of the first £500,000 damages then 5% of the next £500,000) (*2012, LASPO - section 55*).
Recoverability of Conditional Fee Agreements (CFA) and After The Event Insurance (ATE) should be abolished	Before 2010, losing defendants were incurring large costs while claimants could litigate "risk-free". If claimants won the claim, they could recover their costs from the defendant. If they lost, they would not need to pay their lawyer, because they had a CFA, nor would they need to pay their opponent's costs if they had an ATE.	Ban on parties who fund their ligation via CFAs or ATE insurance recovering the CFA success fee or the ATE premium from the losing opponent, in case of success (*2012, LASPO - sections 44&46*).
Contingency fees or damages-based agreements (DBAs) should be introduced	Jackson's recommendation to abolish recoverability of CFA success fees and ATE insurance premiums increased the costs and risks for the claimants. Counter-balancing measures were deemed necessary.	Introduction of DBAs for contentious work (fees subject to a 25% cap). Lawyers may conduct litigation and arbitration in return for a share of any damages. If the claim is unsuccessful, solicitors are not paid: "no win, no fee" (*2012, LASPO - section 45*).
Qualified One-way Costs Shifting (QOCS) should be introduced		Introduction of QOCS: defendants may be ordered to pay the costs of successful claimants but might not recover their own costs if they successfully defend the claim (*2013, Civil Procedure Rules 44.13 to 44.17*).
General Damages should be increased		Introduction of a 10% increase in general damages for non-pecuniary loss (*2012, Court of Appeal guidance in the case of Simmons v Castle).*

Recommendation	Rationale for change	Implementation
Before The Event Insurance (BTE) should be promoted by the government	Before 2010, BTE insurance was underused in England and Wales.	Announcement that the UK Government "would welcome a change in culture so that there is a greater use of existing BTE policies and the development of the market to expand BTE insurance coverage" (*2011, Reforming Civil Litigation Funding and Costs in England and Wales*).
Recoverable Costs should be fixed[17]	Fixed costs were considered efficient in keeping costs in small claims proportionate.	Introduction of Fixed Recoverable Costs via the MoJ Portal: up to £800 for RTA and up to £1,600 for EL/PL (first introduction in April 2013, extension in July 2013).

Sources: Herbert Smith Freehills website. Handy client guide to the Jackson reforms. http://hsfnotes.com/litigation/jackson-reforms/
UK Government. Reforming Civil Litigation Funding and Costs in England and Wales. 2011
Kennedys. Jackson implementation timeline. http://www.kennedyslaw.com/files/Uploads/Documents/CJG/Jackson%20Implementation%20timeline%20Kennedys.pdf
MoJ. Introduction of a ban on the payment of referral fees in personal injury cases.

[17] RTA (Road Traffic Accidence), EL (Employer Liability), PL (Public Liability)

1.4.3 Reforms following LASPO

The PI regulatory landscape has further evolved since the introduction of the LASPO reforms.

In 2014, additional regulatory and legislative changes were implemented, mainly concerning CMCs. These include:

- **further powers conferred to the Legal Ombudsman (LeO)**: the LeO is now able to handle consumer complaints about PI CMCs and take action as necessary; and
- **tougher requirements around selling practices**: new rules have been put in place to ensure that claims handled by CMCs are properly substantiated and any leads acquired through telemarketing are undertaken legally.

Additionally, in 2015, there were three newly-announced changes:

- **enactment of the Criminal Justice and Courts Act 2015**: which has provisions allowing courts to strike out claims where the claimant is dishonest in PI cases. The Act has also placed a ban on legal services providers in terms of offering inducements to potential PI clients;
- **introduction of MedCo**: Government concerns about whiplash claims and the quality of expert evidence generally, led to the introduction of MedCo. The MedCo Portal is a website facilitating the sourcing of medical reports relating to road traffic accident soft tissue injury claims. Medical experts, Medical Reporting Organisations and Commissions of Medical Reports must register via MedCo. The website returns a choice of randomly generated MROs and Medical Experts from which users can select and instruct (one top-tier provider and six second-tier providers). Tier 1 providers are volume providers that must be able to handle 40,000 clients a year, operate nationwide and have a proven trading history. Tier 2 providers are smaller and lower volume local/ regional providers. With a large number of providers registering as Tier 1 providers (legitimately or illegitimately) there has been lack of work for many providers. This in turn has resulted in some Tier 1 providers setting up Tier 2 subsidiaries.
- **The government is reviewing the level at which cases presently escape the small claims track.** It is possible that some cases which currently fall within the fast track will drop down to the bottom track with a consequent impact on the recovery of costs.

More changes to the PI regulatory landscape can be expected over the coming years. For example:

- the HM Treasury and the Ministry of Justice commissioned a review of the regulation of Claims Management Companies (CMCs) in October 2015. The Government has accepted the recommendations of the review of CMCs it commissioned from Carol Brady, chair of the Chartered Trading Standards Institute (the Brady report). In order to ensure that the new regulatory regime is implemented effectively, the Government intends to transfer responsibility for regulating CMCs to the Financial Conduct Authority. This will require primary legislation and is likely to happen in 2018.
- a public Call for Evidence was issued by the Ministry of Justice in July 2015 regarding the MedCo system. A number of changes have been proposed as a result of the review, including clarification and tightening of the MRO definition and qualifying criteria. The MoJ will work with MedCo to implement the changes in late summer 2016.
- fixed fees for all types of claims are currently under consideration[18] (clinical negligence claims are is expected to come into force by 1 October 2016).

[18] http://www.lawgazette.co.uk/law/jackson-fixed-costs-needed-for-all-claims-up-to-250k/5053344.fullarticle

- Through the Autumn Statement of 2015 the Government[19] announced that it would end the right to cash compensation for minor whiplash and soft tissue injuries and raise the upper limit for the small claims court for personal injury claims from £1,000 to £5,000.
- The Insurance Fraud Taskforce, which was set up to investigate and make recommendations on how to reduce overall levels of insurance fraud, presented their final report in January 2016. The recommendations presented in the report aim to improve consumer trust in the insurance sector and raise the public profile of insurance fraud as a criminal activity; encourage greater use of data sharing and collaboration between the insurance sector and regulatory bodies to better prevent organised insurance fraud; and reflect and support the government's intentions to clamp down on unnecessary whiplash claims, which are a major source of fraud, and strengthen regulation of claims management companies[20].

1.4.4 Anticipated impacts of the reforms, and new concerns in the PI market

Central objectives of the legislative reforms, in particular the 2013 LASPO reforms, comprise:

- discouraging unnecessary and adversarial litigation at the public expense;
- targeting legal aid to those who need it most;
- making significant savings in the cost of the legal aid scheme, and
- delivering better overall value for money for the taxpayer.

In the PI market specifically, the reforms were aimed at reducing claims costs and making them more proportionate between both parties.

Early evidence from the Institute and Faculty of Actuaries shows that the 2013 LASPO reforms have had an impact on third party injury claims with reductions in their frequency, the number of claimants per claim and in the average cost per claimant. However, it also notes that the long-term effects of legal changes such as LASPO remain uncertain. Indeed, the significant fall in average costs in 2013 did not continue in 2014. Moreover, quoted motor insurance premiums have started to rise again following 2.5 years of decreases[21].

In spite of the 2013 LASPO reforms, there are still concerns about certain aspects of market conduct, and practices may still prevail which risk significant consumer detriment. The SRA was approached to provide a view on the concerns raised, which was a motivation for this study.

1.4.5 Setting standards for solicitors

The SRA's **Code of Conduct** (the Code)[22] contains a mixture of broad principles and specific rules, all of which are aimed at producing appropriate outcomes for the administration of justice, for the client and for third parties. The Code currently includes ten principles that define the fundamental ethical and professional standards that are expected of all firms and individuals (including owners who may not be lawyers) when providing legal services. The ten principles are as follows:

- uphold the rule of law and the proper administration of justice;
- act with integrity;
- not allow your independence to be compromised;
- act in the best interests of each client;

[19] https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents

[20] https://www.gov.uk/government/news/government-welcomes-measures-to-tackle-insurance-fraud

[21] Institute and Faculty of Actuaries (IFoA), 2015. Report on third party motor claims

[22] SRA Code of Conduct 2011 http://www.sra.org.uk/solicitors/handbook/code/content.page

- provide a proper standard of service to your clients;
- behave in a way that maintains the trust the public places in you, and in the provision of legal services;
- comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
- run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
- run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and
- protect client money and assets.

Further to the Code, the SRA Board recently approved the publication of a competence statement for solicitors. The **Statement of Competence**, which defines the continuing competences that are required of all solicitors, is made up of three parts: (1) a statement of solicitor competence; (2) the threshold standard; and (3) a statement of legal knowledge.

The Statement of Competence spans four key areas:

- ethics, professionalism and judgement;
- technical legal practice;
- working with other people; and
- personal and work management.

There are a number of underlying principles and standards to each of the aforementioned areas. These are described in full in the Statement of Competence. This study assesses the activities and behaviour of solicitors against the Statement.

2 Profile and Evolution of the PI market

Summary

- The PI market is sizeable with some 1 million claims per annum and a similar amount of settlements (three quarters of PI claims are motor related)
- There has been a 50% increase in claims since 2006/7 following liberalisation of the market but this peaked in 2012/13 in line with reforms being made to the PI market
- The PI Market is evolving with the rise of non-traditional businesses (Alternative Business Structures), specialist firms in specific markets (e.g. military injuries), and diversification into other PI and/ or non PI sectors (with 45% of those surveyed by ICF planning diversification/further diversification

2.1 Introduction

Recent estimates indicate that the UK PI market (including clinical negligence) is worth an estimated £3 billion per annum[23]. The PI market constitutes the second largest segment of the UK legal services market (12 per cent of the total)[24].

This section sets out the demand and supply sides of the market

The information and data presented in this section is drawn from a number of sources, including:

- SRA data
- Relevant literature and other secondary data sources
- Results from the online survey

2.2 Demand side of the PI market

2.2.1 The number of PI cases in UK

According to data provided by UK Compensation Recovery Unit (CRU)[25], there were **nearly a million (998,359) PI cases in 2014/15**, the most up to date information available at the time of the study[26]. **Motor-related claims were the most significant – with an estimated 761,878 cases (76 per cent of total) recorded in 2014/15**[27]. Employers' liability and public liability claims represented 10 per cent of the total number of claims respectively. Clinical negligence cases accounted for a smaller share of the total number of PI cases (1.8 per cent), but they tended to be more significant in terms of the value of compensation payments awarded[28]. Figure 2.1 provides a breakdown of PI cases for the period 2006/07-2014/15.

[23] IRN Research, 2015. *UK Personal Injury Market*. UK Legal Market Briefing

[24] This percentage was calculated on the basis that the UK legal services market was worth an estimated £26 billion in 2013 [source: IRN Research (2015)]

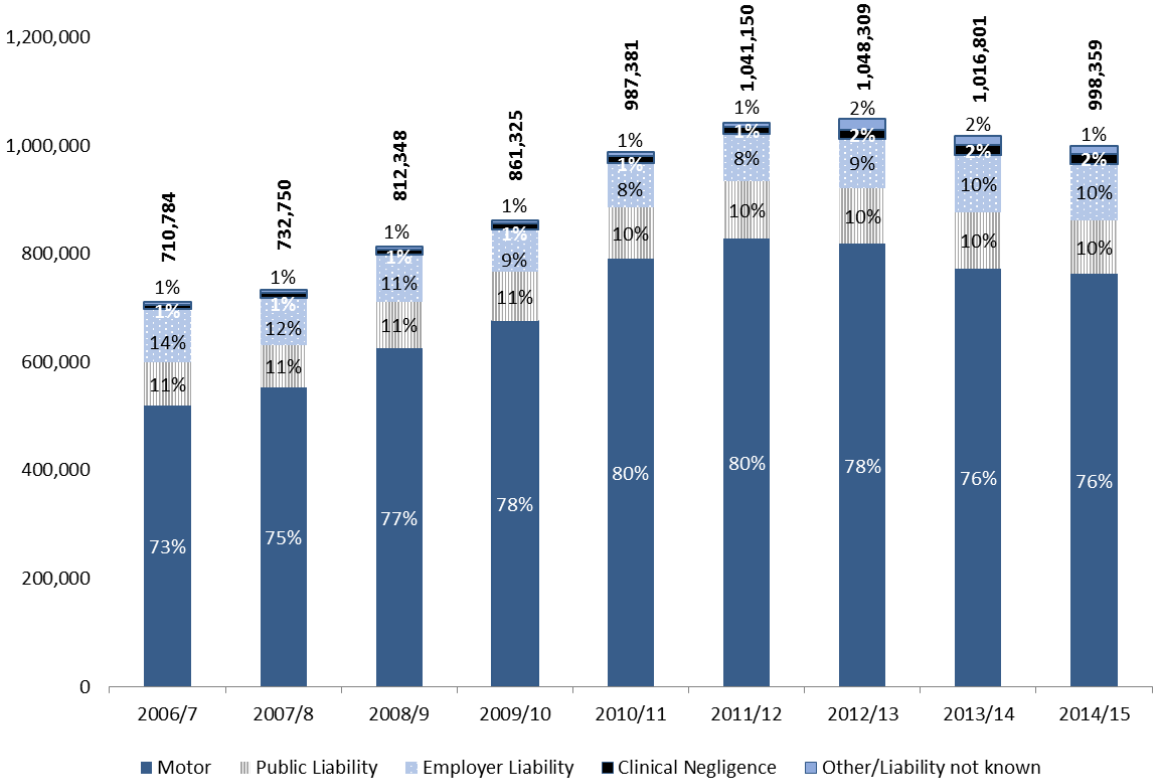
[25] The Compensation Recovery Unit (CRU) works with insurance companies, solicitors and DWP customers, to recover: (1) amounts of social security benefits paid as a result of an accident, injury or disease, if a compensation payment has been made via the Compensation Recovery Scheme; (2) costs incurred by NHS hospitals and Ambulance Trusts for treatment from injuries from RTAs and PI claims (Recovery of NHS Charges)

[26] Compensation Recovery Unit, 2015. *Compensation Recovery Unit Performance Data* https://www.gov.uk/government/publications/compensation-recovery-unit-performance-data

[27] Compensation Recovery Unit (2015)

[28] IRN Research, 2015. UK Personal Injury Market. UK Legal Market Briefing

Figure 2.1 The number of PI cases registered to the CRU, and breakdown by injury type, for the period 2006/7-2014/15



Source: Compensation Recovery Unit (CRU), Department for Work and Pensions

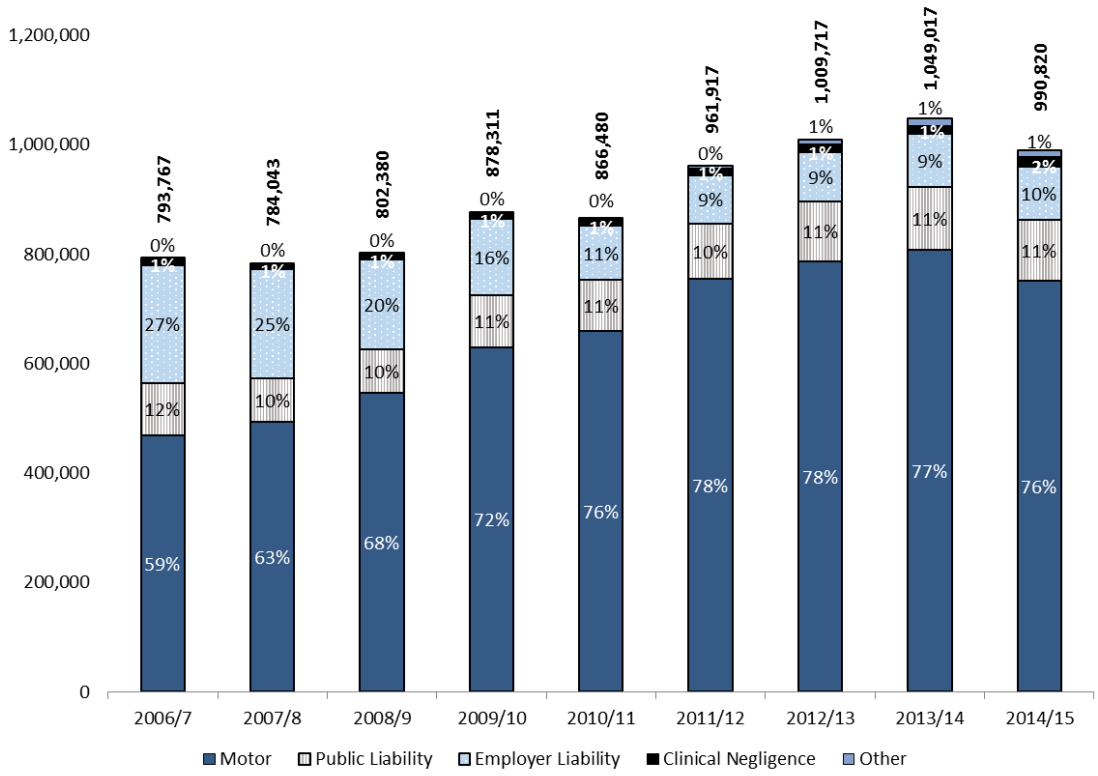
The number of PI claims increased significantly up until 2011/12, leading to the perception of a compensation culture and increases in fraudulent and frivolous claims.

As illustrated in the figure above, **the number of PI cases registered to the CRU increased by almost 50 per cent over the period of 2006/07-2012/13**. Significant increases were recorded in relation to **clinical negligence (+87 per cent)** and motor-related claims (+58 per cent). However, more recently the number of claims has stagnated – **between 2012/13 and 2014/15, the total number of claims fell by 5 per cent**. The most significant reductions were observed in relation to employers' liability claims (-13.5 per cent) and motor-related claims (-7 per cent). There may be many reasons for this stagnation or decline in the number of claims, but it is worth noting that it coincided with the legislative changes under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). These figures also need to be seen in the context of a well-functioning market, characterised by more people being able to access justice, otherwise the decline in claims might have been greater over this period.

2.2.2 Number of settlements

Whilst recognising the time lag between claim and settlement, the number of settlements broadly mirrored the trend on number of claims. **The number of settlements increased by 25 per cent between 2006/07 and 2013/14, from under 800,000 to more than 1,000,000. A slight reduction was observed between 2013/14 and 2014/15, with the number of settlements falling by about 6 per cent.**

Figure 2.1 The number of PI settlements recorded to the CRU, and breakdown by injury type, for the period 2006/7-2014/15



Source: Compensation Recovery Unit (CRU), Department for Work and Pensions

The figure above also shows that the profile of the settlements has changed over the period covered. For example, the proportion of settlements accounted for by motor-related claims has increased from 59 per cent to 76 per cent. In addition, the *proportion* of settlements related to Employer Liability claims – which tend to be larger in value - has fallen from 27 per cent to 10 per cent.

2.3 Supply side of the PI market

2.3.1 Providers of legal services

Not all PI claims require legal action. Those who make PI claims are sometimes able to obtain compensation through the following channels:

1. claims assessors/ claims management companies (CMCs);
2. special government compensation schemes (including NHS Redress Arrangements in Wales);
3. criminal compensation orders; and/or
4. Criminal Injuries Compensation Authority[29].

Where claimants choose to take legal action through the portal or through a civil court, PI legal services can be accessed[30]:

[29] Citizens' Advice Bureau https://www.citizensadvice.org.uk/law-and-rights/legal-system/personal-injury/personal-injuries/#h-making-a-complaint

[30] Legal Services Board, 2014. *Access to Justice: Learning from long-term experiences in the personal injury legal services market* https://research.legalservicesboard.org.uk/wp-content/media/Access-to-Justice-Learning-from-PI.pdf

- directly from solicitors, barristers, law firms (which provided regulated legal services but with different ownership structures and hence are worthy of separation in respect of our analysis; or
- indirectly through intermediary organisations, including: (1) insurers; (2) claims assessors/CMCs; and/or (3) trade unions.

PI legal services are primarily provided directly through solicitors and other legal companies (including ABSs). ABSs were introduced through the 2007 Legal Services Act and began to operate in 2012.

The PI market also includes intermediary organisations or 'introducers', including insurers, CMCs and trade unions. Such organisations predominantly manage claims and refer consumers to solicitors when required (although some of these relationships have changes following the referral fee ban). It is possible for insurers, trade unions or CMCs to be involved in the ownership and/ or management of an ABS. Given the concentration of cases with four insurers it is also possible for a defendant and a claimant law firm to have the same insurer (see Table 4.1 for a diagram of key roles in the PI market).

Table 2.1 The role of key introducers in the UK PI market

	Insurers	Trade unions	CMCs
Role	**Intermediary role**: insurers direct their consumers to relevant solicitors. **Other roles**: insurers can also be the ultimate defendants in cases. They also provide funding for people covered in their policies. Can have ownership interests in claimant/defendant law firms.	**Intermediary role**: trade unions direct their members to relevant solicitors. **Other roles**: trade unions can also engage in litigation work (some have their own legal departments). Unions often fund claims made by their members. Can have ownership interests in claimant/defendant law firms.	**Intermediary role**: CMCs recruit individuals to make claims. The legal work is then carried out by solicitors or other legal service providers. **Other roles**: CMCs can also handle all the pre-litigation work including investigation. However, they cannot initiate legal actions nor can they represent victims in court. Can have ownership interests in claimant/defendant law firms.
Key players	Examples include: ■ AVIVA plc ■ AXA UK plc ■ Direct Line Group ■ RSA Insurance Group plc Also ■ AIG Europe Limited ■ Ageas Insurance Limited ■ BUPA Insurance Ltd	The Trade Union Congress (TUC) counts 52 members (approximately 6 million workers), including for example: ■ Unite the Union; ■ Unison; and ■ GMB	Examples include: ■ National Accident Helpline Limited; ■ Accident Advice Helpline Direct Limited; ■ First 4 Lawyers Limited; and ■ Injury Lawyers 4U Limited.

Sources: Legal Services Board (2014)

2.4 Profile of SRA regulated PI firms

2.4.1 Number and size of firms

The **SRA regulates around 10,300 law firms in England and Wales**. Approximately **8 per cent of SRA regulated firms (833) are specialist PI firms** (defined as those firms that have reported that at least 50 per cent of their annual turnover is generated from PI related services in the past 12 months)[31]. **In addition to the specialist PI firms, it is estimated that there are approximately 2,000 firms involved in the provision of PI related services, for instance claims management and medical reporting.**

Table 2.2 Size of firm (number of partners)

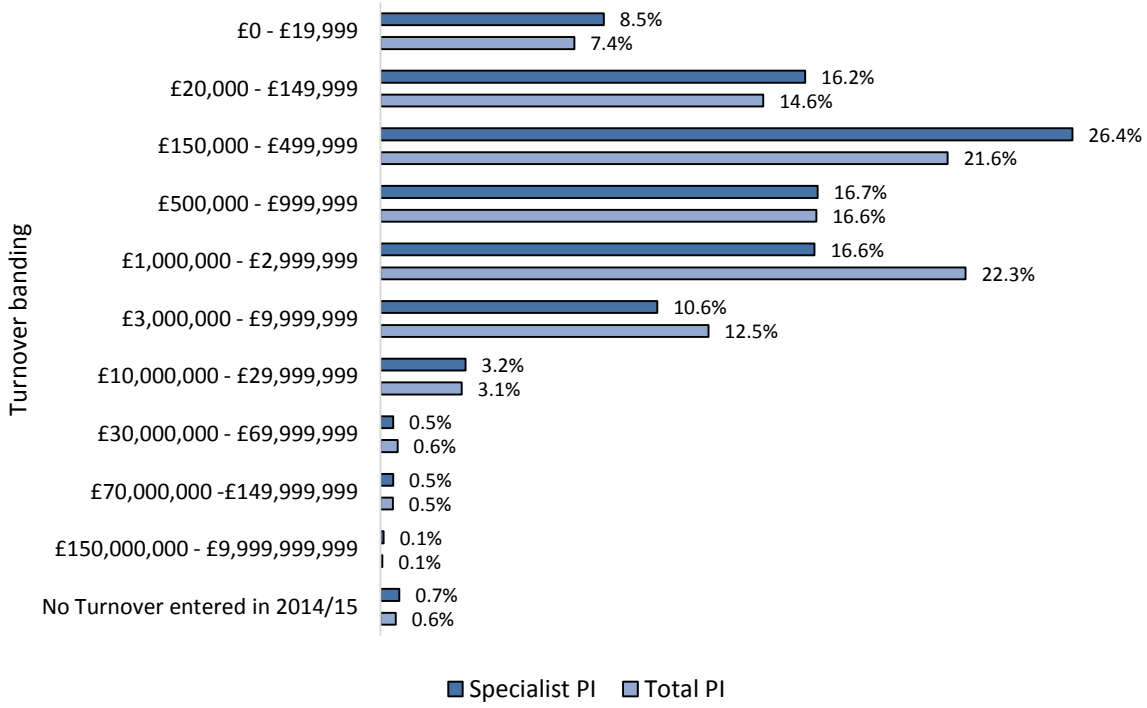
	Specialist PI firms	Percentage	Total PI firms	Percentage
Sole practitioner	393	47.2%	851	30.7%
2-4 partners	364	43.7%	1,249	45.1%
5-10 partners	60	7.2%	452	16.3%
11-25 partners	7	0.8%	138	5.0%
26-80 partners	7	0.8%	55	2.0%
81+ partners	1	0.1%	13	0.5%
No open people partner posts*	1	0.1%	14	0.5%
Total	833	100.0%	2,772	100%

*Source: SRA database; *these are firms that have no partners identified in the staff structure*

Table 2.2 below illustrates a spread of firms by turnover, with 51.1 percent of specialist PI firms stating a turnover of less than £500,000 (43.7 per cent for all PI firms) and 32.2 per cent stating a turnover of more than £1m (39.7 per cent for all PI firms). The turnover banding with the largest proportion of specialist PI firms is the £150,000 to £499,999, which accounts for more than a quarter of firms. For all PI firms, the turnover banding with the largest proportion of firms is the £1,000,000 to £2,999,999 (22.3%).

[31] As of January 2016, based on data from the annual practicing certificate renewal application process (RF1 data)

Figure 2.2 Size of firm by turnover



Source: ICF analysis, based on SRA administrative data

Whilst the majority of law firms active in the PI market are small operations, the market has experienced increased consolidation following a number of mergers and acquisitions. In fact, the PI market has been shown to be the most heavily concentrated market in consumer law[32]. According to a recent report by the Legal Services Board, **the largest 10 personal injury law firms accounted for a quarter of the market in 2013**[33]. However, given recent mergers and acquisitions in the sector, it is likely that this share has now increased to almost 30% of the market[34].

According to the table below, nearly a fifth of all PI firms attribute 90 per cent or more of their turnover to PI work. This represents more than half of the specialist PI firms (59 per cent). PI legal services is, however, also provided by a significant proportion of firms that attribute less than 10 per cent of their turnover to PI work. Such firms account for more than two-fifths of all PI firms (42.7 per cent).

Table 2.3 Percentage of turnover from PI legal services

	Number of firms	Percentage
0.0-9.9%	1,183	42.7%
10.0-24.9%	459	16.6%
25.0-49.9%	297	10.7%
50.0-74.9%	193	7.0%
75.0-89.9%	146	5.3%
90.0%-100%	494	17.8%

[32] IRN Research, 2015. UK Personal Injury Market. UK Legal Market Briefing

[33] Legal Services Board, 2013. Evaluation: Changes in competition in different legal markets.

[34] IRN Research, 2015. UK Personal Injury Market. UK Legal Market Briefing

Total	2,772	100%

Source: ICF analysis based on SRA administrative data

2.4.2 Business models

Alternative Business Structures (ABS) have existed as a new business model for legal service providers since 2012, enabling non-lawyers to invest in law firms and other legal providers. As of 2015, there were a total of **93 firms who specialise in the PI work (50% or more of turnover) that operated at as ABSs**, representing approximately 11 per cent of specialist PI firms (we only have partial information on company ownership though the solicitor survey). Notably, nearly 4 in 5 ABSs are active in the PI market (based on a total number of 219 ABSs identified in 2015. Note this figure has now more than doubled to over 500)[35]. In terms of turnover, it is estimated that ABSs account for around a third of the PI market[36].

Table 2.4 Number and percentage of PI firms by type of licence

	Specialist PI firms	Percentage	Total PI firms	Percentage
Licensed body (i.e. ABS)	93	11.2%	171	6.2%
Recognised body	596	71.5%	2189	79.0%
Recognised sole practice	144	17.3%	412	14.9%
Total	833	100.0%	2,772	100%

Source: ICF analysis based on SRA administrative data

The increasing number of ABSs in the personal injury market is partly attributed to existing suppliers changing their business structure. Early analysis suggested that approximately half of ABS firms who undertake work in personal injury were existing solicitor firms changing structure. However, the growth of ABSs has also been the result of the entry of new legal services providers[37].

The PI market may see more links established between law firms and non-lawyers due to SRA restrictions being lifted in relation to solicitors having links with outside businesses. The changes to the Separate Business Rule allows solicitors to be owned by, or connected to, separate businesses providing non-reserved legal services.

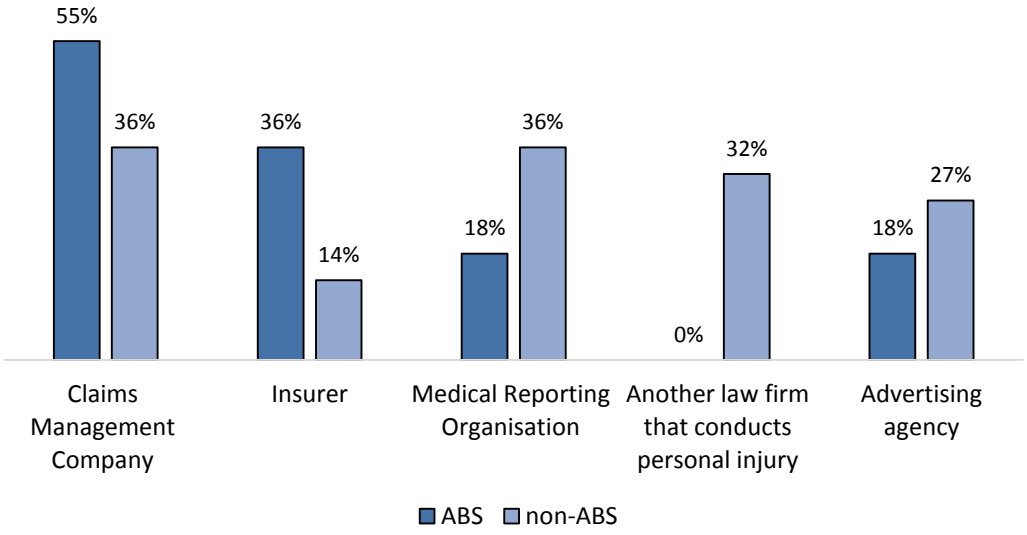
The figure below shows the financial association between solicitors and legal service providers (and/ or senior staff within these organisations) and other organisations. For ABSs the main financial associations can be found with CMCs and insurers. CMCs are also financially associated with non-ABS. Non-ABS also tend to have financial relationships with MROs, other legal service providers and advertising agencies.

[35] SRA (2014), Research on alternative business structures (ABSs): Findings from surveys with ABSs and applicants that withdrew from the licensing process

[36] Ibid.

[37] Legal Services Board (2013a)

Figure 2.3 Financial association between firm/ senior staff and other organisations



Source: ICF analysis; unweighted base: 35 (of which 14 are ABSs); NB. Multiple answers permitted.

A third of firms operating in the PI market have arrangements with third parties who introduce business to them and/ or whom they share their fees.

2.4.3 Areas of PI work

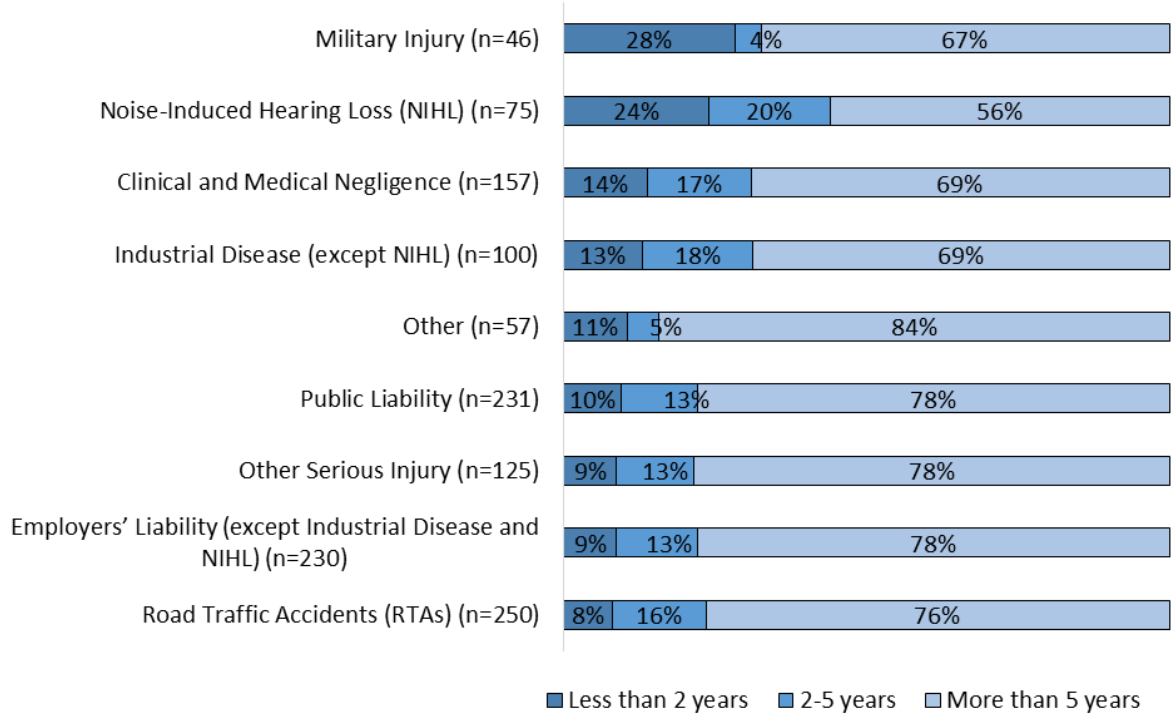
The SRA does not have full data on the areas of PI in which regulated firms offer services in. However, based on the survey of SRA regulated firms, **it would appear that most of the respondents are active in the more traditional and larger PI market segments such as RTAs (250 out of 255), public (231 out of 255) and employers' liability (230 out of 255)**. These segments of the PI market are also characterised by a high proportion of firms that have been active in the market for more than five years. Consequently, they have also had among the lowest proportion of new entrants over the last two years.

Around 60 per cent of the respondents are involved in clinical negligence cases. Military injury and noise-induced hearing loss (NIHL) appear to be more specialist areas, but have also seen a relatively high level of new entrants into the market over the last two years.

Figure 2.4 illustrates the number of firms in each of the PI market segments, together with the length of time that they have been active in the particular PI market segments.

The figure shows that many firms have started to explore other areas of work, including NIHL, military injury, clinical negligence and industrial disease spheres, to compensate for lost PI work (i.e. relating to road traffic accident soft tissue injury claims) following recent regulatory changes set out in Figure 1.1 and the introduction of the portal. This prompts questions about experience, understanding and skills.

Figure 2.4 Number of firms and length of time firms have operated in the PI market, by categories of PI



Source: ICF survey data; unweighted base: 255

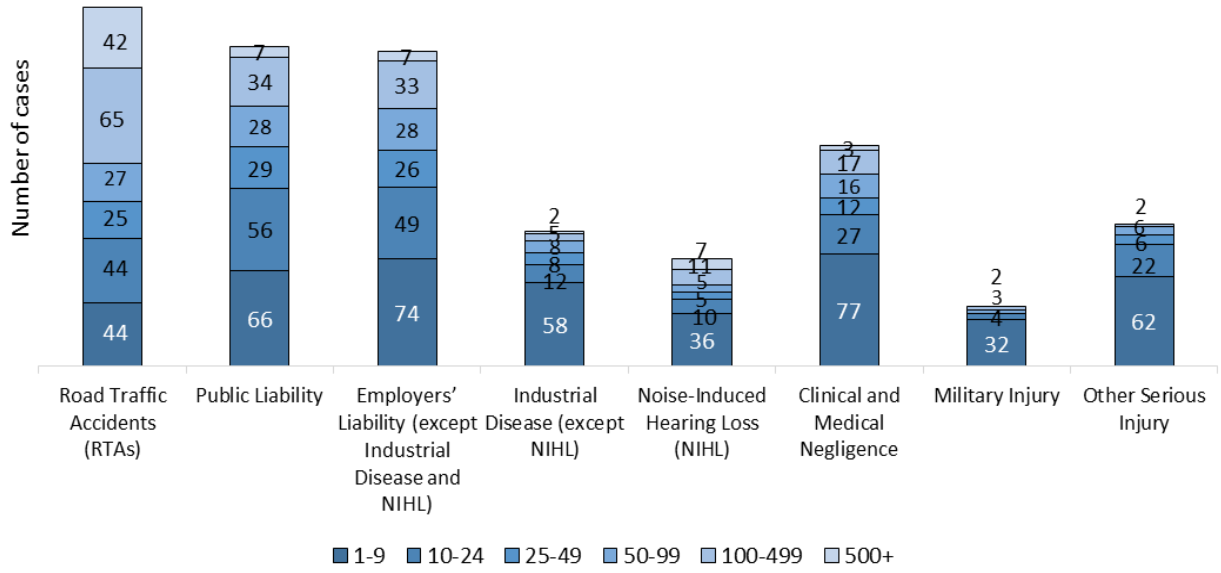
Similar trends present themselves in relation to case numbers. A large proportion of firms working in RTAs take on 100-499 (26 per cent) and 500+ (16 per cent) cases a year (see Figure 2.5). This is also true for Public and Employers' liability claims with 19 per cent and 18 per cent of respondents' firms working over 100 cases in 2015 respectively.

Although a lower number of firms were involved in clinical negligence, a high proportion (13 per cent) had 100+ cases in 2015, suggesting a prevalence of specialised firms with the requisite experience and skills. Although this could also could be indicative of larger, diversified firms. For instance:

- Of the 20 firms in the survey with more than 100 clinical negligence cases, 25 per cent employed more than 50 fee earning solicitors,
- In contrast, 73 per cent of the 77 firms managing over a 100 cases had less than 10 fee earners.
- The distribution of firms' caseloads were skewed with over 50 per cent reporting fewer than 10 clinical negligence cases. There was also proportionally large number medium sized firms (10-49 fee earners) with fewer than 10 cases (43 per cent of the 42 medium sized firms involved in clinical negligence).
- This, combined with a high proportion of firms with fewer than 5 years' experience, supports the perception that practices are diversifying into clinical negligence.

The number of firms taking on a small number of clinical negligence claims may indicate attempts to diversify their work portfolio following the Jackson reforms. Similarly, firms in industrial disease and NIHL are smaller in number and in workload with more than half taking on less than 25 cases in 2015. Military injury also had a large proportion of firms (78 per cent) taking on fewer than 10 cases.

Figure 2.5 Number of cases by PI legal area

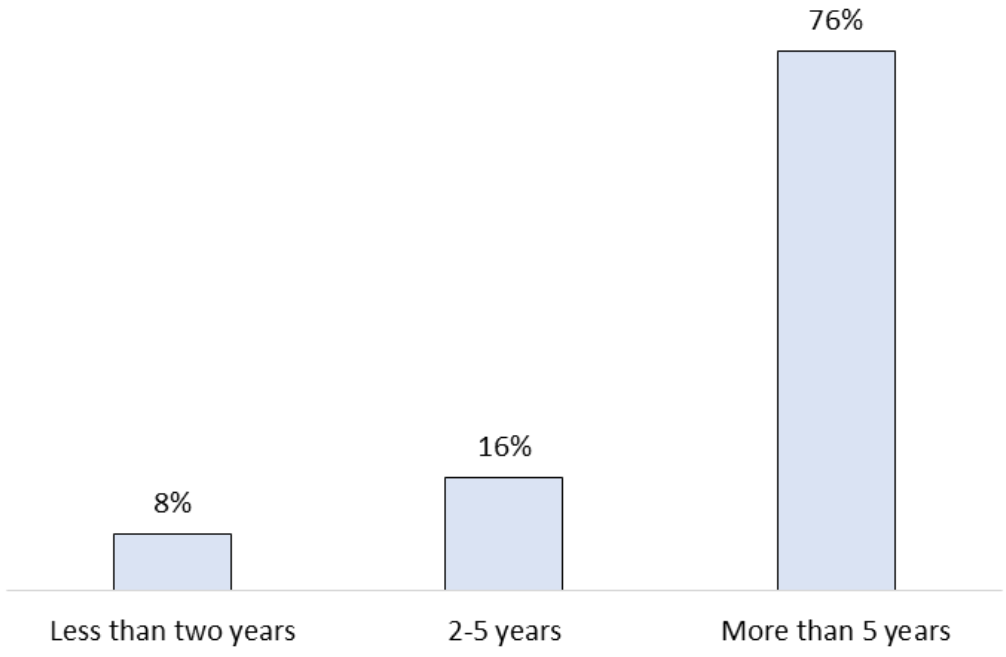


Source: ICF survey data; unweighted base: 255

2.4.4 Length of time firms have operated in the PI market

Most of the solicitor practices represented in the survey had been involved in the PI market for more than five years (75 per cent). A quarter of respondents, however, had been involved in the PI market for fewer than five years, of which a third had operated in the market for less than two years (see Figure 2.6).

Figure 2.6 Length of time firms have operated in the PI market



Source: ICF survey data; unweighted base: 250

2.4.5 Future plans

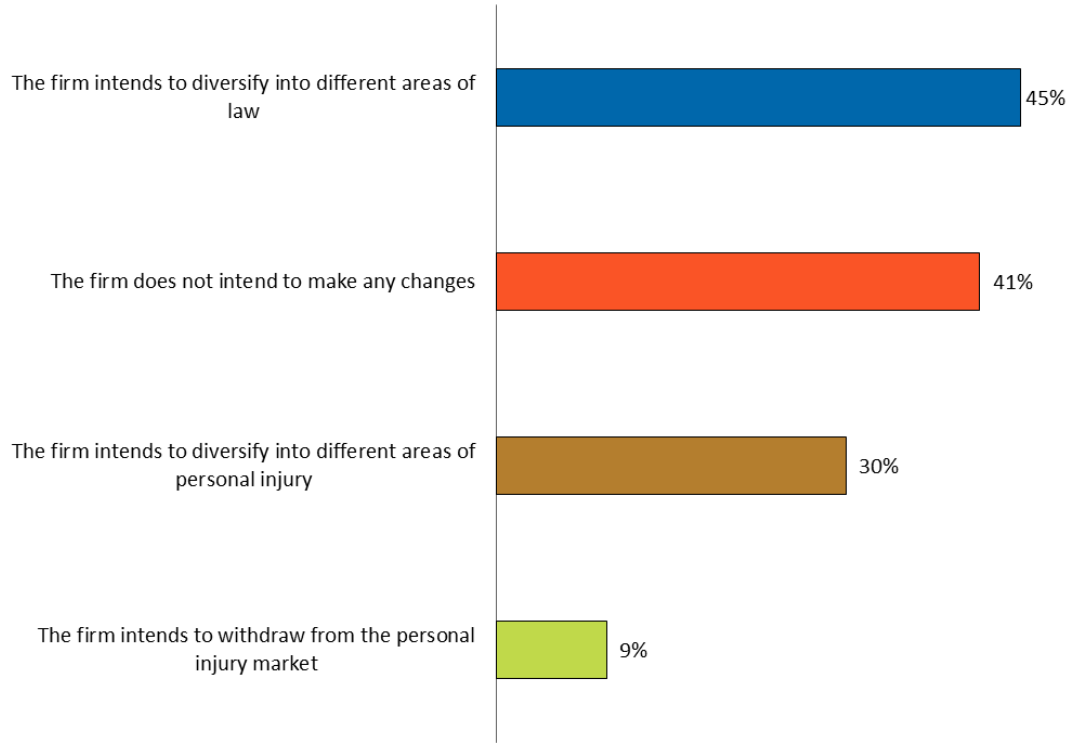
SRA regulated firms that responded to the survey were asked to specify their firms' business intentions in the next two years (Figure 2.7). **A large proportion (41 per cent) stated that their firm would not make any changes to their operational or PI legal focus**. These were predominantly firms where less than 50 per cent of their turnover was attributed to PI (49 per cent). A smaller, but significant proportion specialist PI firms (39 per cent) indicated that their firm would not be making any operational changes in the next two years.

45 per cent of respondents stated that their practice would diversify into different areas of law in the next 2 years, whilst 30 per cent of firms reported that their diversification will take place within the PI market. Respondents at specialist PI firms were more likely to state that they would be diversifying either into a different area of PI (37 per cent) or into separate areas of law (54 per cent).

The variation of short term business intentions between PI specialist and non-specialist firms demonstrates that legislative changes have increased cost pressures on personal injury firms and contributed to a perceived/real contraction of PI sub-sectors. Diversification therefore, implies firms are making attempts to reduce their exposure to market turmoil and falling profit margins. However, diversification (particularly into other areas of PI) presents challenges relating to the specialist skills required in different areas of this market.

There was also a minority of respondents (9 per cent) stating that there firm would be leaving the PI sector all together in next two years.

Figure 2.7 Length of time firms have operated in the PI market by annual turnover



Source: ICF survey data; unweighted base: 255

3 The PI legal process

We have set out below an overview of the process that covers the three main stages in the PI legal process:

1. The preliminary stage (3.2)
2. The portal/ PI protocol stage (3.3); and
3. The court stage (where agreement is not reached) (3.4)

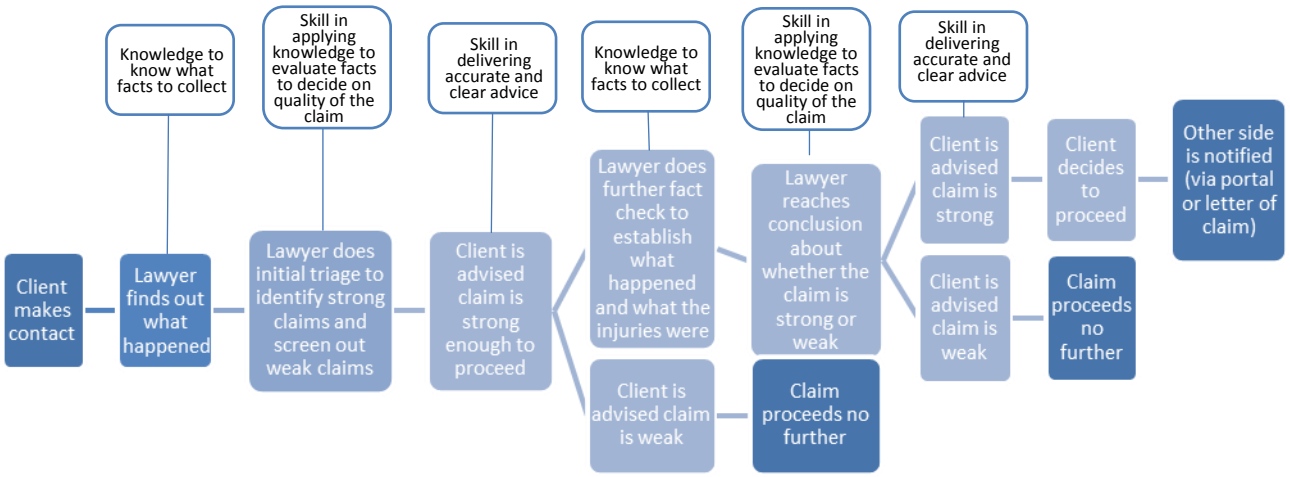
These are described below after a brief section on the PI market that sets the scene for a well-functioning market.

3.1 The preliminary stage

At this stage, the client makes contact with the lawyer, who finds out what has happened and undertakes an initial triage. If the claim passes the triage stage, the lawyer advises the client and proceeds with further checks. If the claim passes further checks, the client is advised that the claim is strong and if the client decides to proceed with the claim, the other side is notified (via portal or letter of claim). If the claim is weak, it should either be 'weeded' out at the initial triage stage or once further checks have been undertaken.

We have set out below three typologies of the process which are likely to occur depending on whether the claim being brought forward is weak or strong. Figure 3.1 also provide an overview of the skills and judgements required for effective case selection and triaging.

Figure 3.1 Preliminary stage - claims are investigated, weak claims are weeded out triage and strong claims are progressed



The preliminary stage is critical, particularly on the side of the claimant (the defendant will go through a similar exercise once a claim is made but they have the benefit of having something to work with). This stage requires knowledge of what facts to collect, as well as skill in terms of evaluating the 'facts' to decide on the quality of the claim. Evaluating the merits or value of a case is not a mechanical exercise. It requires judgment and, because judgment is required, careful solicitors may legitimately hold different views. The most that can be said in a difficult case is that there are a range of outcomes that could be classed as probable. To account for this uncertainty, lawyers often use the concept of 'litigation risk'. When solicitors try to settle a case, one of the things separating them will be their respective evaluations of the case. A good solicitor will advise their client that it may be preferable to give a discount for the litigation rather than risk fighting the case to trial. From the lawyer's

perspective a case which has a 75 per cent prospect of success has a 25 per cent prospect of failure. Certainty of outcome will be attractive for many clients.

Effective triaging of cases is also a matter of legitimate regulatory concern as it will help prevent weak or false claims from entering the court system.

Where claimant or defendant solicitors are handling a large number of claims they need to allocate staff time and resources efficiently to ensure that the claim is subject to a proper early evaluation ('triage'), ensuring that cases which are probably capable of settlement are settled and that cases which are to be brought to trial are adequately prepared. Where a case is large, or a trial is likely, then both parties will put in more time and resources.

3.2 The portal/ PI protocol stage

If a claim is made, it will enter the Portal (low value claims) or PI protocol stage (higher value claims and low value claims which have exited the portal). Once the claim has been uploaded to the portal, the defendant can either accept or reject responsibility (or not respond). If the defendant accepts responsibility, the claimant will make a formal offer on value. If an agreement is reached on the value, then payment from the defendant side can be made. If an agreement is not reached on the value, a simplified court process will follow.

If the defendant side rejects responsibility or does not respond, the claim will exit the portal and proceed through the PI Protocol instead.

Below we set out different typologies of the processes that are likely to occur depending on whether legal responsibility and/or the value of the claim is/are accepted.

Figure 3.2 Claims process portal stage 1

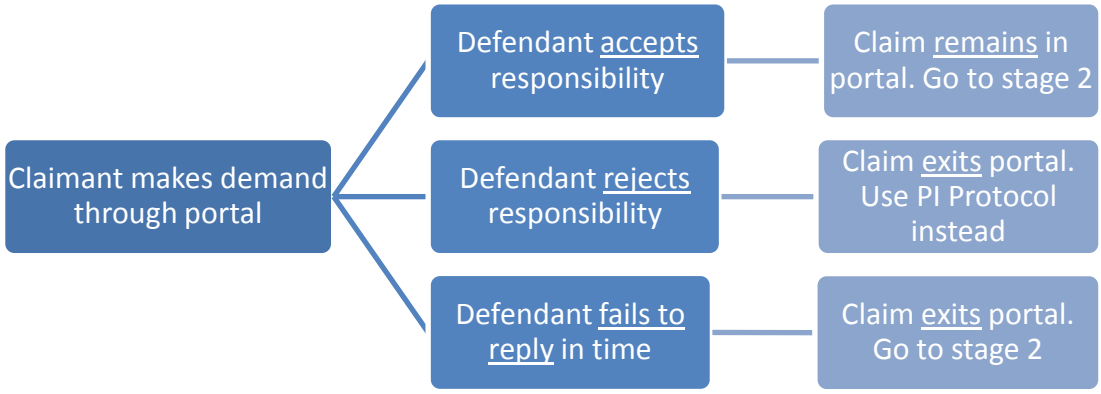
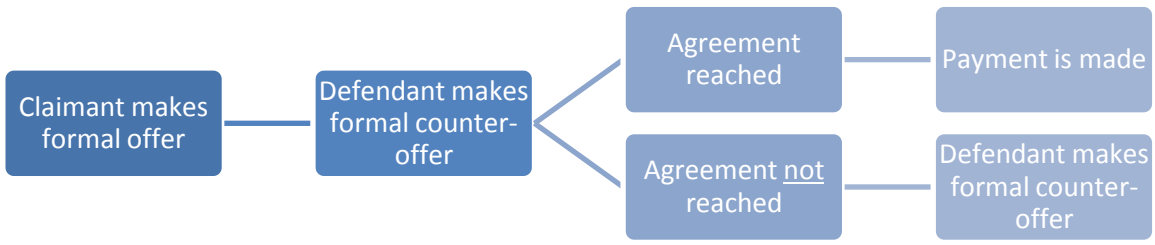


Figure 3.3 Claims process portal stage 2

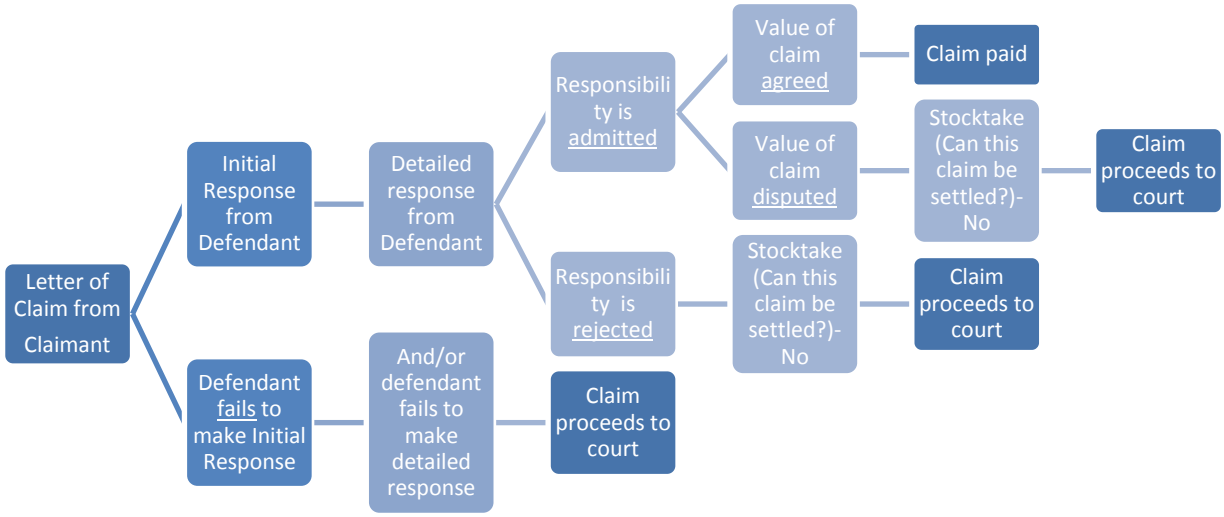


The PI protocol is used for higher value claims and low value claims that have exited the portal. Under the PI protocol, the claimant makes a demand by letter, which the defendant can either accept or reject responsibility for (this is a two stage process – initial response and detailed response). This is followed by negotiations which will result in the case being settled

and the defendant paying, or an agreement not being reached with the case then proceeding to the court stage.

The figure below sets out the process for a claim made under the PI protocol.

Figure 3.4 Claims process under PI protocol

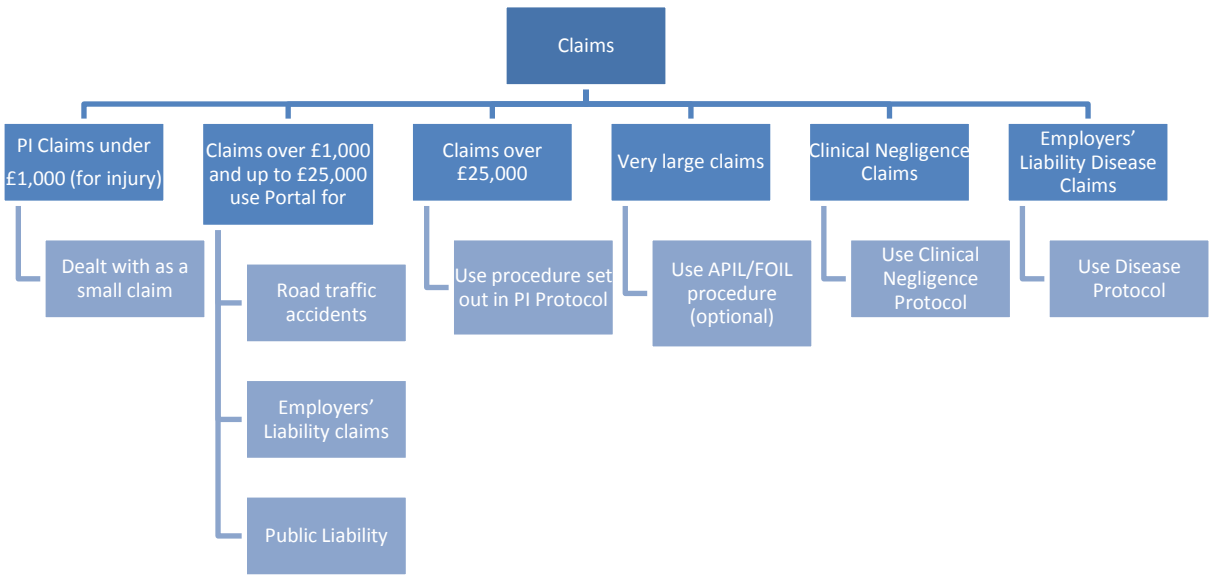


3.3 The court stage

Where an agreement between the claimant and defendant side is not reached, the claim proceeds to the court stage. A simplified process is followed if the only dispute remaining from the portal is the value of the claim. A detailed process is followed if both responsibility and the value of the claim is contested.

The above description of the legal process has been simplified to provide a broad overview. In reality, there are a several different processes that vary slightly. The figure below provides an overview of the claims process.

Figure 3.5 Overview of the claims process



4 Securing clients and case selection/triage

Summary

- Reforms have prompted changes in the way claimants' access justice (and the PI industry accesses potential claimants). Claims Management Companies (CMCs) play a prominent intermediary role but there has been a steep reduction in the number of CMCs, although at the same time their collective financial turnover has increased. The efficiency savings required by solicitors have led to a shift in towards a higher proportion of larger CMC businesses. It is premature at this stage to assess the impacts on the quality of service. More research is also required to investigate the impacts of the ownership structure of CMCs on the PI market (e.g. some ABS have ownership stakes in CMCs).
- At the same time solicitors are increasingly sourcing business through personal recommendations, which is attractive due to the low costs involved. Solicitors are also using direct advertising to source clients. The lack of clear patterns from the data (e.g. size/types of firms using different methods) underlines that the post reform processes (including the ban on referral fees) are still working their way through the PI industry. The new business models are still developing.
- From our interviews the rationale for the referral fee ban was understood and accepted, however, there was a view that the ban was not totally effective and that legitimate ways of circumventing the ban were prevalent in the industry.
- The ban on referral fees and the move to fixed recoverable costs has – according to those surveyed - had an impact on solicitor practices. There is a competence concern over the use of less experienced staff, especially at the triage stage, although other respondents felt that issues of inexperience could be overcome with adequate supervision.
- There was a general acceptance that some frivolous claims were being accepted by solicitors but at a declining rate due to the reforms and to commercial factors (it is in the interest of claimant solicitors to weed out frivolous claims before costs are incurred). There was little evidence of fraud although the survey approach adopted in this study was always unlikely to uncover serious fraud incidents, if they occurred. That would require a fuller audit and investigation.

4.1 Introduction and section explanation

As highlighted above**, the actions and behaviours of solicitors and the decisions taken by firms and individuals, have been driven by significant legislative changes to civil litigation funding costs, for instance through the 2013 LASPO reform**.

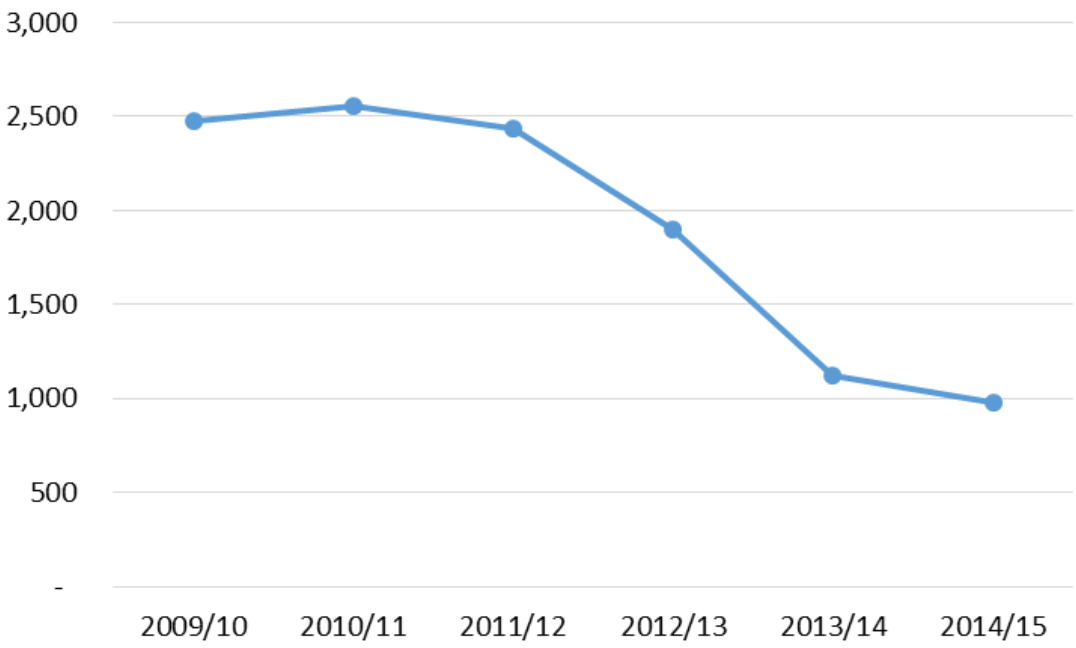
This section presents findings of the research surrounding practices and behaviours of solicitors at the preliminary stages of a PI claim. It is based on the quantitative online survey and qualitative interviews with solicitor firms and industry stakeholders. The primary research is supported by evidence from the literature, as well as SRA data.

4.2 Securing clients – ban on referral fees

Since 1st April 2013, there has been a ban on the payment and receipt of referral fees for PI claimants. Before the reforms, referral fees could be paid by legal representatives to third parties who referred a claimant to them. Within the PI market, this role was principally filled by CMCs, which have proved to be highly adept at marketing and advertising legal services to prospective claimants. As has been widely reported, the number of CMCs operating in PI has fallen significantly following the ban. **There was a 13 per cent reduction in the number of authorised PI CMCs (to 979 firms) between 2014 and 2015**, following a respective 41 and 25 per cent reduction in the previous two years.

The number of authorised CMCs in the personal injury market has more than halved since 2009/10 and is now the smallest it has ever been since the early days of regulation in 2007. Note, the MoJ (Claims Management Regulator Unit) suggests that this reduction is due to the introduction of a tougher regulatory system, involving the introduction of new rules and more resources to supervise firms. Some firms have left the market voluntarily, whilst others have had their authorisation cancelled as a result of MoJ enforcement action. The contraction of the sector continued in 2014/15, although the rate at which it has contracted has slowed (see Figure 4.1).

Figure 4.1 Total number of authorised PI CMCs (at end March)



Source: Claims Management Regulator: annual reports

Following the 2004 regulatory and legislative liberalisation of advertising rules, CMCs played a particularly important role in advertising legal services. CMCs, being typically larger firms, are often better equipped to do this due to the fixed costs involved. Referral fees were expected to increase the efficiency of the PI market by minimising the effects of information asymmetry and scale[38]. The liberalisation was intended to fill the perceived skills deficit because it was thought solicitors were poor at marketing and that members of the public were relatively unsophisticated regarding their legal rights and had unrealistic expectations surrounding consultative solicitor fees[39]. **As a result the evidence suggests that the public is more aware than before due to the liberalisation process**[40]. This study has not consulted members of the public which could be the focus of future research, which we note in Section 8.

The amount of pre-litigation work carried out by CMCs prior to the ban varied, with some offering referral only arrangements – in which they simply passed on contact details to a solicitor – whilst others offered more comprehensive, "oven-ready" case preparation.[41]

[38] Peasence, Balmer and Moorhead (2012)

[39] Legal Services Board (2014) Access to Justice: Learning from long term experiences in the personal injury legal services market

[40] Peasence, Balmer and Moorhead (2012)

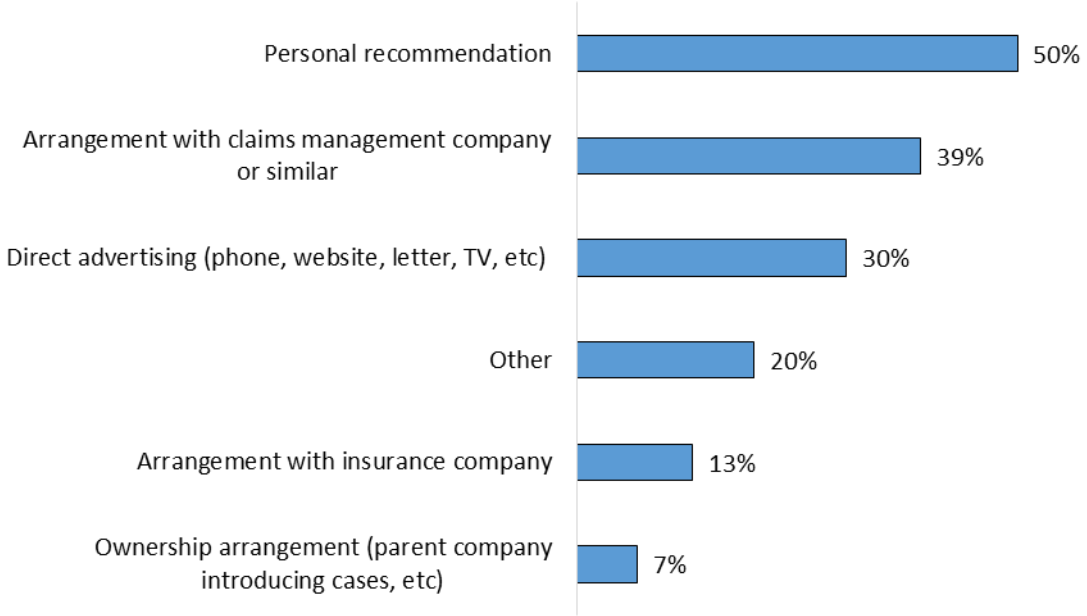
[41] https://research.legalservicesboard.org.uk/wp-content/media/Access-to-Justice-Learning-from-PI.pdf

Despite the fall in the number of CMCs, their turnover actually increased by 30 per cent (to £310m) in the year leading to March 2015[42]. CMCs, therefore, still play an active role in the PI market, advertising and securing work for solicitors.

> ***"We have seen consolidation of the claimants market. There are still smaller players but bigger players have taken more of the market share"***
>
> **-Large defendant solicitor firm**

Respondents to the survey were asked to estimate the proportion of their firms' clients currently secured by the method used (see Figure 4.2). On average, firms reported a higher proportion of business being achieved through personal recommendations (although further research would be required to obtain details on the source of such recommendations, as information from the interviews suggest there is a loosely applied definition among solicitors), with less emphasis placed on direct advertising (this was consistent across all firm sizes, with the exception of large firms who rely much less on direct advertising). This potentially contradicts the widely held view that direct advertising generates the most leads and the biggest caseloads. However, a large standard deviation existed in the reported proportion of personal recommendations suggesting that data points are spread far from the mean (i.e. they are less reliable). Arrangements with CMCs were the second most used method of generating new business, although the proportion using CMCs was much higher amongst firms with fewer than 10 solicitors. Additionally, firms with a PI portfolio of more than 50 per cent of their caseload used CMC arrangements more than any other method and were the only substrata not to use personal recommendations most. Ownership arrangements, with the owners of an ABS owning part of or all of a CMC, whilst being the least used method in the overall sample, were on average the second most used channel for securing work amongst ABS firms.

Figure 4.2 Mean proportion of PI case secured, by method



Source: ICF survey data; unweighted base: 255

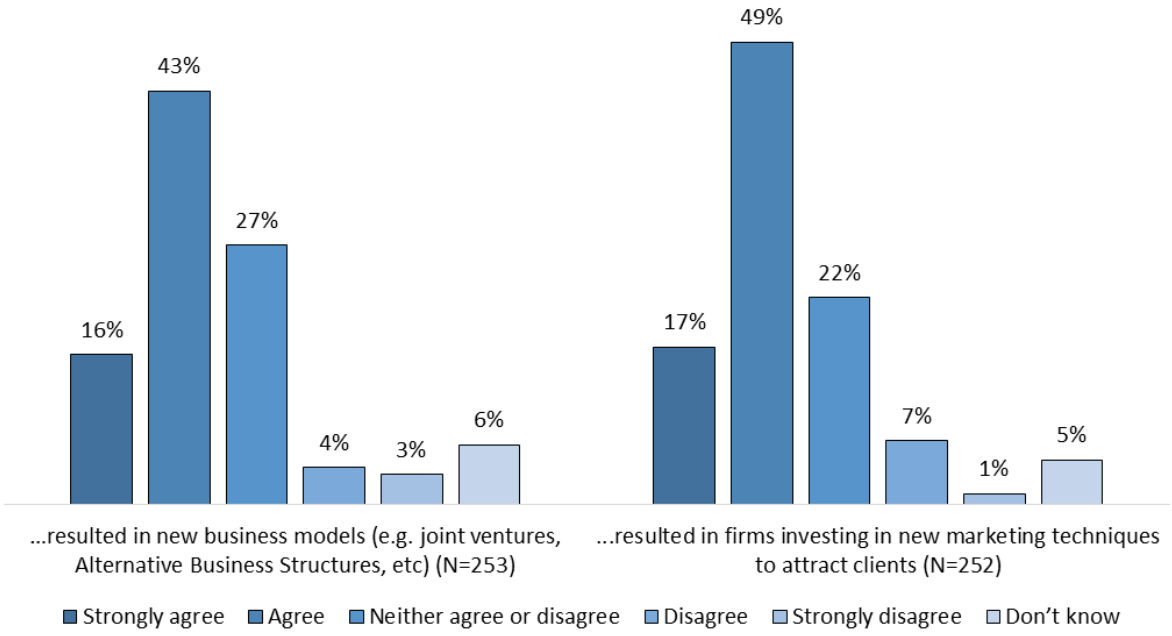
[42] https://webcache.googleusercontent.com/search?q=cache:lgsIpx-WNmIJ:https://www.actuaries.org.uk/documents/short-version-interim-findings-2015-report-third-party-motor-claims+&cd=4&hl=en&ct=clnk&gl=uk

The **qualitative in-depth interviews suggest the most relied upon method for securing work among solicitors was direct advertising or arrangements with CMCs. Most solicitors interviewed actively encouraged personal recommendations due to the low cost involved, however the proportion of work obtained this way varied (although all firms received some portion of work via this method).** In contrast to the survey findings, many interviewees believed that, in terms of volume, personal recommendations are "close to irrelevant" with most claims coming through the well-established claimant supply chain, including CMCs. However, several of the smaller firms felt that personal recommendations were not only important but increasingly so following the referral fee ban. Several respondents also spoke of the increasing importance of ensuring that their website ranked highly on search engines, using "Search Engine Optimizers" to improve their visibility.

> ***"The referral fee ban, whilst not going far enough, has gone some way toward the re-establishment of a local, grass-roots client solicitor relationship [for small businesses]"***
>
> **-Sole practitioner representing claimants**

Respondents to the survey were asked whether the ban on referral fees had resulted in new business models or increased investment in new marketing techniques (see Figure 4.3). **Almost two-thirds (65 per cent) believed that the ban had encouraged firms to invest in new techniques to attract clients**. A similarly large proportion (59 per cent) felt that the ban had encouraged the take up of new business models.

Figure 4.3 Market effects of the ban on referral fees



Source: ICF survey data; unweighted base: 253

A small number of stakeholders and solicitors who took part in the in-depth interviews suggested that ABSs and joint ventures are being established as a means to circumvent the ban of referral fees. The stakeholder consultations also revealed a number of other practices that are being used, including:

- the use of profit-sharing arrangements (which is linked to new business models adopted);
- the reclassification of referral fees (e.g. as marketing fees); and/ or

- the use of the 'hot key' model whereby a CMC avoids direct communication with solicitors but nevertheless recommends a client.

Whilst almost all of those interviewed agreed with the rationale behind banning referral fees, most felt that the ban was ineffective and that referral arrangements were still being used under a different guise or mechanism.

Despite questions surrounding the effectiveness of the ban, **interviewees in many cases felt that referral fees contributed to poorer quality PI legal services as they encouraged solicitors to under-invest in cases in order to afford higher referral fees.**

> ***"The referral fee ban is being legally circumvented through ABSs, with the fees being rebranded and CMCs making anonymous 'introductions' rather than direct referrals – the overall effect is the same."***
> **-Small to medium sized firm representing both claimants and defendants**

However, **several respondents (exclusively claimant solicitors), while agreeing that the ban was not fully effective, did not agree that referrals negatively impacted the quality of legal services**. Charles River Associates' 2010 study (pre-dating the ban on referral fees) supported this position, finding no evidence of any impact on quality of legal services. The study used two metrics, firstly, the success rate of motor claims and secondly, the size of damages for standard claims. Both had remained constant since the introduction of referral fees, supporting the idea the quality of PI legal services had not reduced as smaller less frequent settlements would be expected[43].

4.2.2 Receiving referrals outside the provision of LASPO

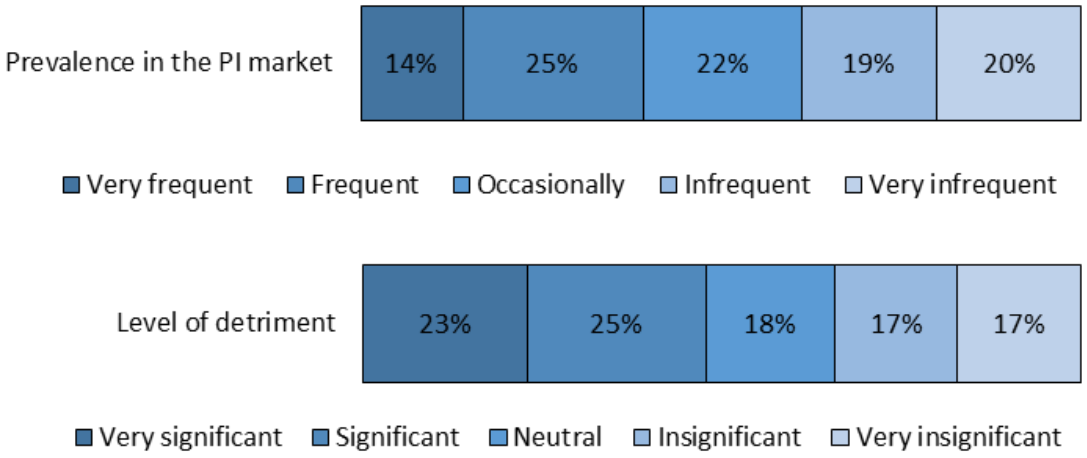
Most of those interviewed could not give examples of specific instances of solicitor practices breaching the LASPO prohibition on referral fees. However, some felt that the fee regulations were sufficiently broad to allow firms to circumvent the ban legitimately. Most individual respondents (i.e. solicitors called as members of the public) reported having being personally "cold called" at home recently but many were unaware of whether this would technically constitute a breach, which it does. Whilst interviewees were able to provide examples of firms "breaching the spirit of the ban", there were very few instances of solicitors thought to be in direct contravention. One example, however, was of firms or individuals from law firms, advertising or expressing an interest in buying personal data (of contacts, via LinkedIn).

Respondents to the online survey were asked about the prevalence of solicitors' practices receiving referrals outside of LASPO and the significance in terms of the detriment on the PI market as a whole (see Figure 4.4).

More than a quarter (27 per cent) of respondents believed that the practice of receiving referrals outside of the provisions of LASPO was both prevalent and significant in respect of the detriment to consumers, the rule of law and administration of justice. A further 7 per cent agreed on the significance but felt the practice was infrequent. Eight per cent indicated that whilst the practice occurred often, its effect was insignificant on the market as a whole. Almost a fifth (18 per cent) stated firms receiving referrals outside of the ban were both infrequent and overall insignificant (see Figure 4.4).

[43] Charles River Associates (2010), 'Cost Benefit Analysis of Policy Options Related to Referral Fees in Legal Services', prepared for the Legal Services Board

Figure 4.4 Prevalence and significance to the personal injury market - firms receiving referrals outside of the LASPO rules



Source: ICF survey data; unweighted base: 240

4.3 Case selection and triage

Solicitors on both the claimant and defendant side face particular difficulties when assessing potential/initial claims. Claimant solicitors will be dealing with an injured person whose views on the legal merits of the case may not accord with what the justice system will deliver. Defendant solicitors will be responding to a claim the strength or value of which may not be easy to assess.

Where claimant or defendant solicitors are handling a large number of claims they need to allocate staff time and resources efficiently to ensure that the claim is subjected to a proper early evaluation ('triage'). This process facilitates efficient outcomes, as cases deemed capable of settlement can be settled in a timely way and those thought likely to be fought at trial will be adequately prepared. Where a case is large, or a trial is likely, then both parties will put in more time and resources.

It is a matter of legitimate regulatory concern as to whether too many claims are being made if solicitors are not triaging cases effectively and so failing to prevent unwinnable, or in the worst case, false claims from entering the court system. The process used by solicitors to weed out weak or fraudulent claims heavily relies on their experience and requires them to exercise judgment based on their legal knowledge (see Figure 3.1 in Section 3).

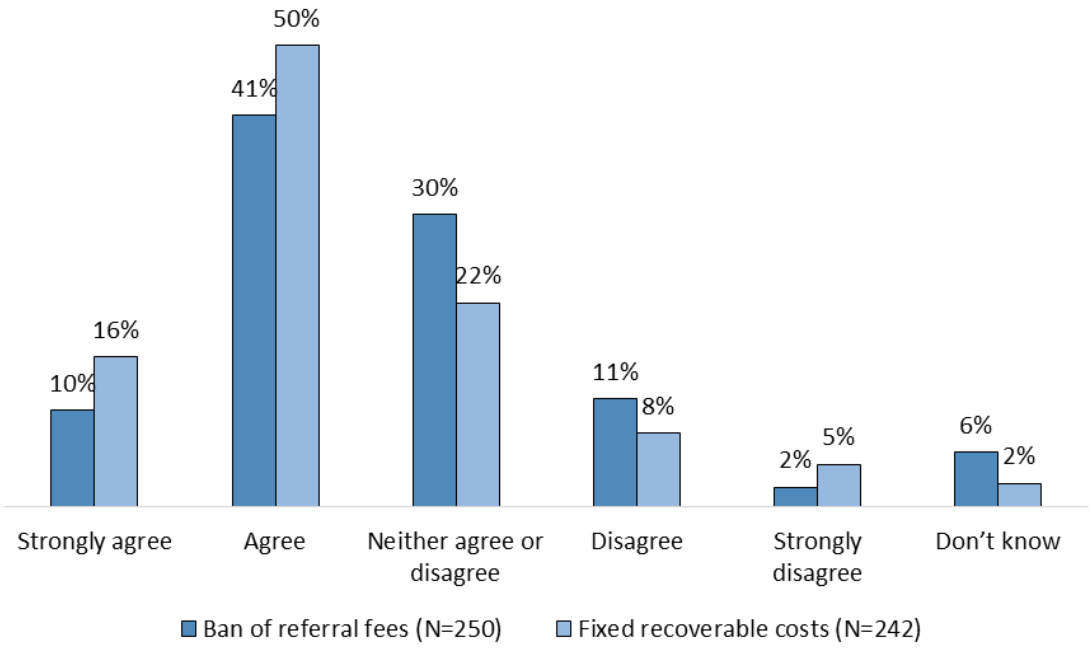
Ultimately, it is everyone's interest that unwinnable or fraudulent claims are filtered out early on. Solicitors have a proper role here, due to their obligation to the administration of justice.

4.3.1 Impacts of legislative changes

The referral fee ban was designed to deal with issues associated with behaviour that might have a negative impact on the quality of work provided by individual solicitors. Referral fees were thought to encourage solicitors to devote fewer resources to cases in order to recoup the high cost of referral fees. Although the ban was not aimed at precluding specific types of companies from offering legal services, it does encourage firms to bring the initial and sometimes outsourced case activity in-house. This, it was hoped, would incentivise solicitors to better monitor the quality of claims from the outset, owing to a need to protect their consumer brand.

The online survey asked respondents how the regulatory changes had impacted on how firms triaged, selected and prepared cases. As can be seen in Figure 4.5 , **51 per cent of respondents felt that the ban on referral fees had caused procedural and system changes in respect of triaging, case selection and case preparation.** The qualitative in-depth interviews, attributed the effects more to the quality of introduction rather than to preparation or case selection. However, the reduced number of CMCs suggests that much of the pre-litigation work carried out prior to referral has been transferred to solicitors.

Figure 4.5 Impacts of regulatory changes on procedures and the systems used for triaging, case selection and case preparation



Source: ICF survey data; unweighted base: 250

The survey respondents more strongly attested to the impact that RTA fixed recoverable costs have had on the market. **Almost two-thirds of respondents (64 per cent) believed the introduction of fixed recoverable costs resulted in changes to how their firm triages cases**.

Based on the qualitative, in-depth interviews, claimant solicitors' view fixed fees as too small a reward for the time needed to prepare "a good quality case". **Several interviewees, from both the claimant and defendant perspectives, suggested that larger firms had responded to the changes by employing inexperienced, junior staff, which ultimately lowered the quality of legal services (at least in the case preparation stages)** – see section 3 for further information on the skills and competences required for case selection and triaging. One defendant solicitor, anecdotally, had observed more inexperienced lawyers handling claimant work and "a slight drop off in quality" – also remarking, however, that falling standards were likely to be a temporary adjustment and that using more junior staff was appropriate as long as there were good supervisory and audit processes in place.

The 2013 reforms aimed to lower the cost of litigation which essentially meant lowering the revenues of lawyers, and because in many cases defendant lawyers were already working to fixed-costs arrangements with their clients, the impact was most severely felt by claimant lawyers[44].

> ***"Solicitors are cutting corners […] the quality of advice has declined – this matters particularly for higher volume, lower value cases."***
>
> **-Large defendant solicitor firm**

This supports the idea that reduced quality of service is likely to be temporary, only if claimant solicitors adjust by adopting new working practices.

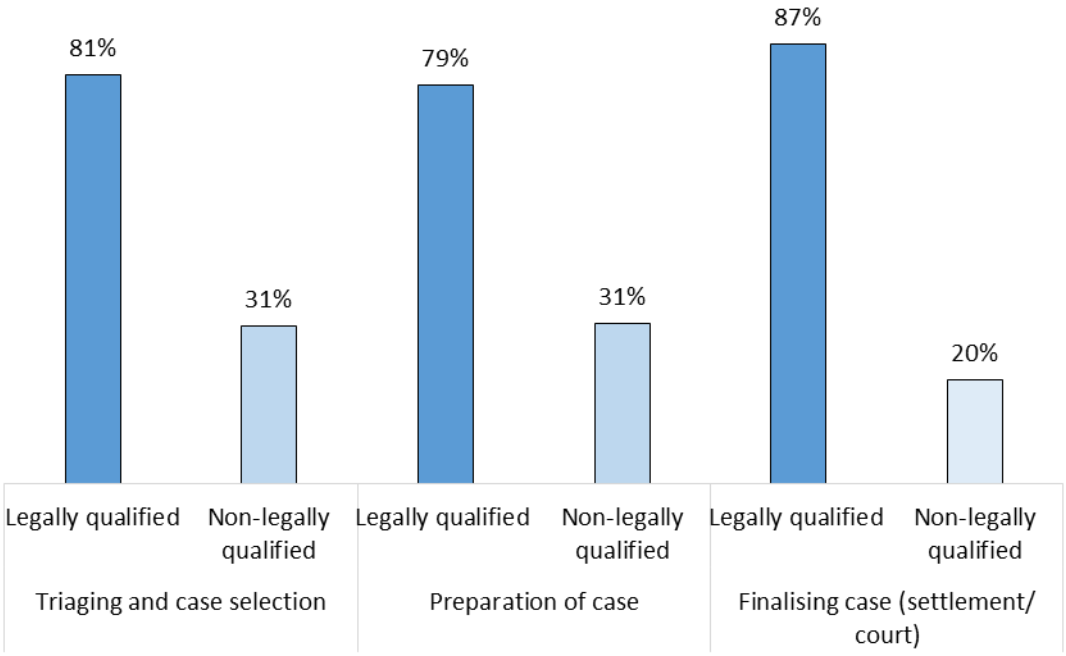
The interviews highlighted competence concerns surrounding simple, low value PI claims (e.g. RTAs), run in volume by system and cost driven "factory firms". For example, there were concerns expressed that a small proportion of solicitor firms take on too much work, leading to more errors and slower processing. Competency issues identified on the claimant side from the solicitor interviews largely pertained to the triage and inability of staff to properly assess and value cases, although some also suggested that inexperienced staff providing poor legal advice was a serious concern. For example, it was reported by one solicitor that staff who only do a certain part of the process may have difficulties in seeing the bigger picture and potential pitfalls, and may sometimes lack legal and personal/ communications skills.

However, most interviewees felt that the more complex, higher value cases were appropriately skills-matched to solicitors. This was due to a propensity for assigning senior staff to such case.

As reported by survey respondents, legally qualified staff, on average, were more involved at each stages of the claims process (see Figure 4.6). Non-legally qualified employees were least likely to be involved in finalising a case (this position was ubiquitous across all sub-strata). ABS firms comparatively had more non-legally qualified personnel involved with triaging (avg. 51) and preparation (avg. 52) which can be dealt with through effective supervision. The majority of firms interviewed believed that adequate supervision and thorough risk assessments were enough to justify the use of junior staff, particularly in the early stages of a case. Similarly, PI firms had more non-legally qualified staff triaging and preparing cases (a respective avg. 40 and avg. 35).

[44] The Bar Council, 2014. *LASPO: One year on* http://www.barcouncil.org.uk/media/303419/laspo_one_year_on_-_final_report__september_2014_.pdf

Figure 4.6 Average proportion of work on PI cases completed by qualified and non-legally qualified staff



Source: ICF survey data; unweighted base: 255

As PI firms diversify into other areas of PI, such as clinical negligence, occupational disease and NIHL there are emerging skills concerns in relation to case triaging and selection. The issues, in particular, stem from firms entering new, and often complex areas in order to make up for work lost elsewhere. As a case proceeds, the work done is recorded as work in progress (WIP). A solicitor will only recover the value of this WIP if the case is won. Anecdotal evidence from the interviews and from complaints received by the SRA suggests that a lack of technical and legal knowledge, has resulted in a proportion of cases proceeding too slowly. Indeed, a recent PI profiling report completed by the SRA found that 31% of reported matters about PI services related to incompetence, negligence or delay[45] Thorough analysis of case materials and extract of relevant information was highlighted as an issue by both defendant and claimant solicitors, particularly in instances where firms had recently transitioned into new legal areas.

Where cases are proceeding too slowly and reaching their period of limitation, some solicitors appear to have been issuing poorly constructed court proceedings that could be construed as ill-considered in order to avoid a loss of revenue. This works if the defendant settles or loses the case. If the case is not successful then even more WIP will have been incurred thus increasing the solicitor's loss. This 'toxic WIP' is costing firms significant sums of money and consumers are seeing weak cases which should be closed, drag on for too long.

[45] *Research and Analysis: Profiling and Risk analysis of PI firms, (2016)*

> ***"NIHL have much lower success rates than other areas of PI, but this isn't due to lack of skill but rather the nature of the injury and the difficulty proving negligence"***
>
> **-Large defendant solicitor firm**

Several interviewees flagged NIHL and clinical negligence as particular areas in which a comparative skills gap exists. A lack of specific knowledge in these legal areas prevent the identification and application of legal principles to factual issues, however one interviewee conceded that this was likely a temporary adjustment and would ultimately be solved through firms dealing with more cases. As NIHL and clinical negligence claims are both very specialist, practitioners moving from other PI areas face significant barriers in terms of technical and legal knowledge. However, this was by no means a ubiquitous view with **several solicitors (both defendants and claimants) feeling that niche areas of PI were adequately provisioned with skilled solicitors**.

If appropriately implemented and managed, diversification and these new approaches to service delivery can be highly profitable. Profits that encourage competition are also likely to improve quality as firms attempt to differentiate to win work, ultimately improving quality of legal services for consumers[46]. However, **it is important that businesses fully research and understand the market they are entering, and have the required skills and competence to operate effectively and offer the required standard of service.**

4.4 Fraudulent or frivolous claims

The Access to Justice Act (1999) and the liberalisation of the use of referral fees may have contributed to an increase in frivolous or fraudulent claims[47], particularly in respect of RTAs. Concerns were raised in the Jackson review over whether the liberalisation had gone beyond the remit of encouraging ease of access to justice and had contributed to an increased number of fraudulent claims[48].

There are two basic types of fraudulent personal injury claims: (1) soft insurance fraud and (2) hard insurance fraud.

- The most common type of insurance fraud is soft (or 'opportunistic') insurance fraud which occurs when a claimant inflates a claim (e.g. by exaggerating the severity of the injury).
- Hard (or 'premeditated') insurance fraud occurs when a claimant devises a way to make a claim. This usually involves some sort of deliberate action, such as intentionally causing an accident or staging arson or theft of the vehicle.

The qualitative in-depth interviews illustrated that most interviewees (that stakeholders defendant and claimant solicitors) understood that there is a trade-off between increasing access to justice and reducing the number of illegitimate claims. However, most claimant solicitors rejected the idea of a 'compensation culture', suggesting that a negative stigma surrounding PI was driven by CMCs aggressive advertising methods and not by endemic fraud. **Almost all claimant solicitors felt that the reforms had unduly affected marginal cases where liability for the injury rather than injury itself was in question**.

Defendant solicitors were more likely to feel that the reforms were "a step in the right direction to curbing high numbers of fraudulent RTA cases". Most defendant solicitors stated that they were aware of claimant solicitors pursuing frivolous claims, but this

[46] Legal Services Consumer Panel (2010) Quality in Legal Services

[47] Frivolous claims can cover a wide spectrum of issues including exaggeration of injuries, whereas fraudulent cases have to meet a legal test for being fraudulent

[48] Many of the suggested reforms were fed into the 2012 LASPO Act

constituted a small number of firms**. It was thought that most claimant solicitors were bringing genuine cases as it was in their financial interest to do so, particularly following the reforms.**

A small number of the survey respondents solicitors (12 per cent) believed the practice of solicitors accepting and progressing frivolous cases was prevalent in market (see Figure 4.7). **Defendant solicitors[49] were more likely to feel that frivolous cases were accepted and pursued by solicitors, however half selected this as being only an occasional to very infrequent practice**. Despite most respondents believing that frivolous cases were generally not being pursued, more than half (52 per cent) of respondents believed that the practice has detrimental effects on the rule of law and proper administration of justice (see Figure 4.8). The stakeholder interviews suggested that the detrimental effects largely pertained to the "clogging up of the court system" and burden placed on public administration, whereas solicitors mainly felt they impact the industry's reputation and lead to stigmatisation of those making legitimate claims. Twenty-three per cent of respondents stated that frivolous cases being progressed was not significant, incidentally all of whom selected the frequency as "Occasional" to "Very infrequent" (see Figure 4.7 and Figure 4.8).

Even fewer respondents felt the progression of fraudulent cases – compared to frivolous ones – was prevalent (8 per cent) (see Figure 4.7). Most defendant solicitors (75 per cent) also believed the practice of bringing fraudulent cases was infrequent. More than two-thirds (64 per cent) of the sample however recognised that where it did happen, fraud would have a detrimental effect on the rule of law and the proper administration of justice (see Figure 4.8). Most respondents believing fraudulent cases had a significant impact (57 per cent) stated they were an "Occasional" to "Very infrequent" practice (see Figure 4.7 and Figure 4.8).

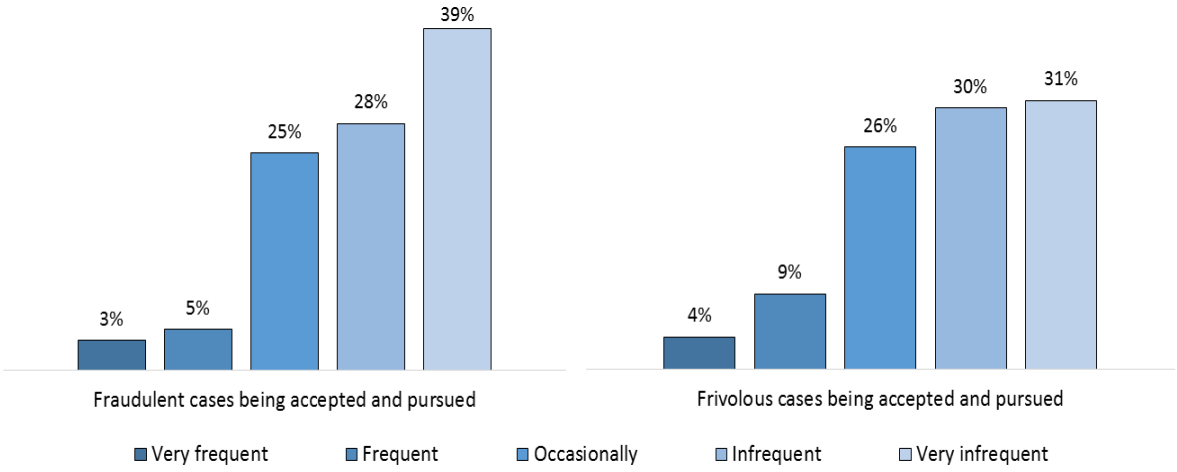
Over a fifth of respondents (21 per cent) stated that instances of solicitors progressing fraudulent cases were neither prevalent nor significant in respect of its effects on the rule of law and administration of justice (see Figure 4.7 and Figure 4.8).

The judiciary stakeholders did not specifically comment on fraud but did comment on the sometimes poor quality of evidence - with a suspicion that some work was undertaken by a poorly trained or inexperienced clerk or assistant – with inadequate, incomplete instructions and sometimes inadequate or inaccurate witness statements.

> ***"We would say that generally the standard of preparation of cases for trial has deteriorated over the least ten years or so"***
>
> **- Judiciary consultation**

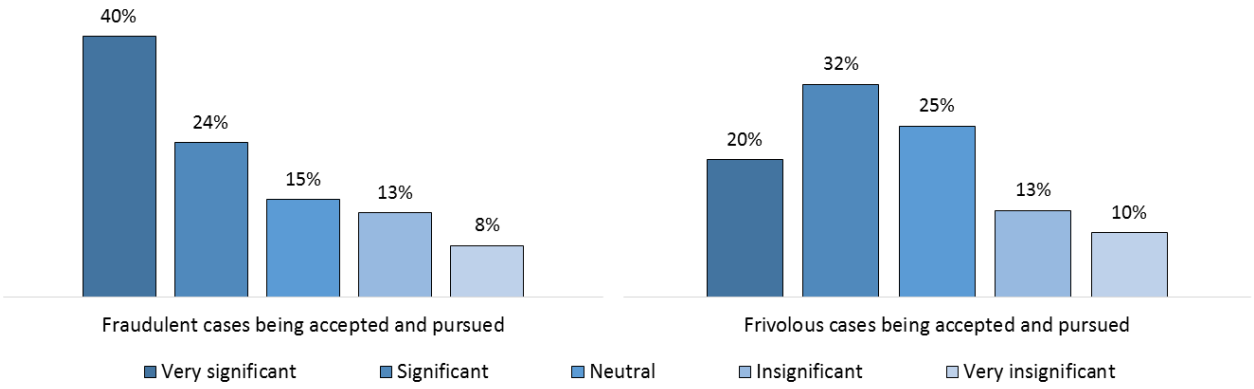
[49] This includes only 8 respondents whose firm represented defendants on more than 50 per cent of their cases

Figure 4.7 Prevalence in the personal injury market - fraudulent/ frivolous claims



Source: ICF survey data; unweighted base: 241

Figure 4.8 Level of detriment to consumers, rule of law and proper administration of justice - fraudulent/ frivolous claims



Source: ICF survey data; unweighted base: 241

According to the judicial representatives, a common feature of some questionable personal injury claims is the time lapse between the date of the accident and the date of instruction of solicitors/ medical examination.

5 Costs and Case Management

Summary

- There was little agreement from the solicitor survey that poor quality evidence gathering occurred on a frequent basis, although concerns remain in respect of poor medical evidence, resulting in an impact on the rule of law and the proper administration of justice. Judicial representatives consulted were more critical, noting a deterioration in the materials produced for court cases over the last decade.
- There were mixed views on the introduction of the MedCo system, which was introduced to improve efficiency and impartiality in determining soft tissue injury claims. There was little support from the survey and the interviews that MedCo had resulted in positive change and instead there was a widespread view that the quality of reports had deteriorated, partly as a result of reduced fees impacting on the quality of medical advice received.
- The move to telephone and online services is generally welcomed as an efficiency improvement, although solicitors want to retain a level of face-to-face contact with clients. Some of the smaller firms are interested in exploring collaborations with similar businesses to access national markets. Collaborations could also spread the cost of investments in online case management system which are more frequently found amongst the larger firms and ABSs in particular.
- There were mixed responses on the extent of under valuation of cases, although the majority of those consulted did not think that the practice was extensive. Judicial representatives noted that taking medical evidence at a too early stage could lead to the expert opinion being a provisional one.
- There was a general acceptance that written communication to clients could be simpler and clearer, especially in the explanation of legal costs. This in turn was seen as a contributing to unnecessary legal costs (a practice that was noted more by defendant than claimant solicitors).
- Claimants and defendant solicitors, had differing views on No Win, No Fee (NWNF) arrangements. The defendant solicitors were concerned that NWNF had led to a compensation culture, a point denied, strenuously in many cases, by claimant solicitors, who considered that their use had resulted in improved marketing and increased access to legal services among those consumers who previously could not afford legal advice.
- More than a third of solicitors interviewed felt that there was a lack of understanding of the Rehabilitation Code in the industry (the purpose of the Code being to encourage rehabilitation or medical treatment if felt to be of benefit to the client).
- There were instances where solicitors had failed to state fully the rights of clients to complain. This was mostly seen as occasional or infrequent.

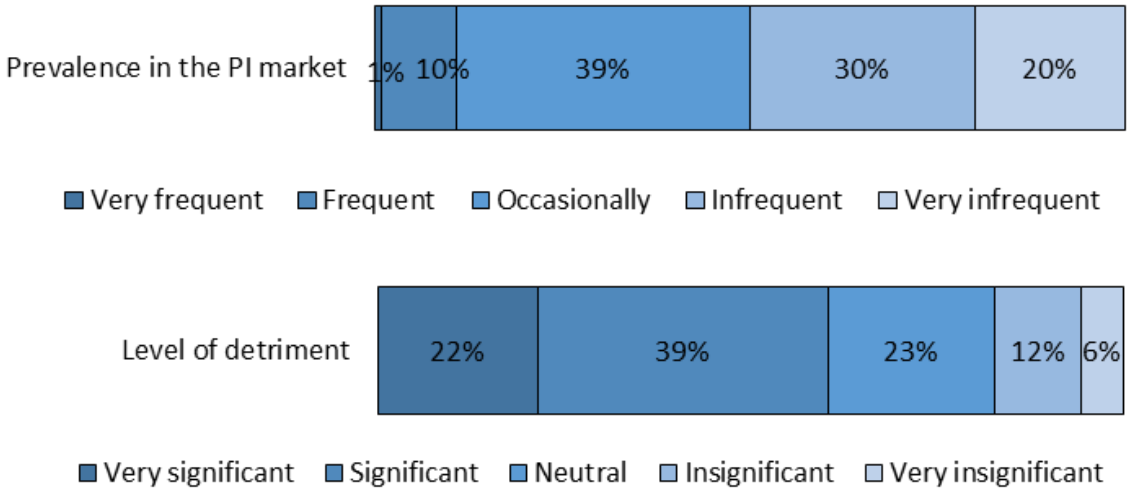
5.1 Evidence gathering

The quality of evidence gathering is important in order to progress and resolve claims efficiently and to ensure weak and frivolous claims are weeded out. Following initial contact with a client, solicitors attempt to establish the facts of the case and gather evidence about the circumstances of the accident and nature of the claimant's injury. The information collected not only informs solicitors' decisions on whether to progress a claim (see workflow diagram Figure 3.1) but also forms the evidential foundation for the cases should they reach

trial. Thus, evidence gathering is a vital part of any PI claims process, ensuring that weak – or even fraudulent – cases exit the system as early as possible.

Only 9 per cent of respondents to the online survey viewed poor evidence gathering as a frequent PI solicitor practice, compared to 50 per cent who saw it as only an occasional to very infrequent practice (Figure 5.1). However, the majority (61 per cent) believed that a failure to gather appropriate evidence (e.g. medical reporting, witnesses etc.) had a detrimental effect on consumers, the rule of law and the proper administration of justice (Figure 5.1). Almost all of the 17 per cent of respondents who indicated that the failure to gather appropriate evidence was insignificant believed it was an occasional to very infrequent occurrence (see Figure 5.1).

Figure 5.1 Prevalence and significance to the personal injury market - failure to gather appropriate evidence



Source: ICF survey data; unweighted base: 240

Respondents to the online survey were also asked specifically whether poor quality medical reporting had a detrimental effect on the rule of law and the proper administration of justice. **Three quarters (76 per cent) felt that it did, and more than a quarter believed that poor quality medical reporting occurred often**. Two-fifths (38 per cent) observed poor practice occasionally. A small proportion of respondents (5 per cent) felt that poor quality medical reports did not have a significant impact on the rule of law and the proper administration of justice. These respondents however had observed few instances of poor quality medical reporting. Several solicitors in the qualitative interviews suggested that poor medical reporting is not detrimental per se but rather creates inefficiency as MROs will often address complaints and are happy to improve report quality where there is a clear issue.

According to the judicial representatives, there is minimal evidence of solicitors *not* acting upon instructions. There are however, signs of inadequate instructions, which is often apparent at trial when claimants or defendants solicitors fail to take accurate or detailed instructions (a competence issue) leading to the preparation of inaccurate or incomplete witness statements.

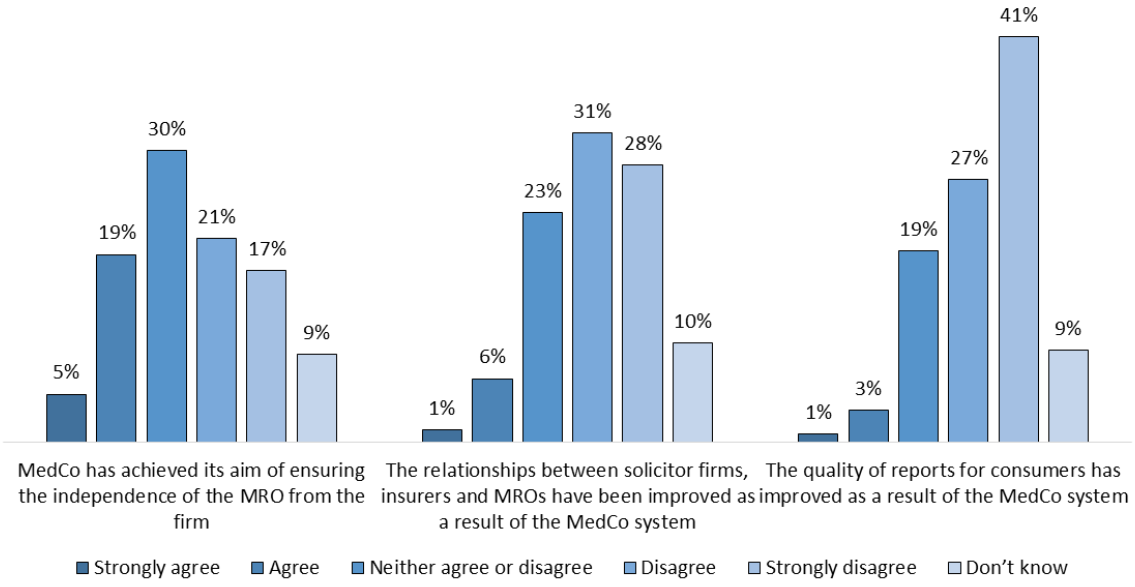
5.1.2 MedCo

The MedCo system was introduced to ensure that medical reports in soft tissue claims were sourced efficiently and kept free of any conflict-of-interest. Solicitors enter basic information into the portal, and are provided with a randomised list of seven experts or Medical Reporting Organisations within a 30-mile radius.

Four-fifths (83 per cent) of respondents to the online survey indicated that their firm used the MedCo system (see Figure 5.2). Only a quarter (24 per cent) believe that MedCo achieved independence between Medical Reporting Organisations (MROs) and firms, with almost two-fifths (38 per cent) disagreeing with this assertion.

Fifty-nine per cent of respondents believed that relationships between solicitor firms, insurers and MROs had not improved as a result of the MedCo system. Over two-thirds (68 per cent) of respondents thought that the quality of reports for consumers had not improved as a result of the MedCo system. The majority of which (41 per cent) felt this strongly. **Only 4 per cent of respondents believed that the quality of reports had improved under the MedCo system.** Anecdotal examples, from the qualitative interviews, of poor quality medical reports include, factually incorrect or insufficient information about the injuries, incorrect patient details and general administrative errors.

Figure 5.2 MedCo's impact



Source: ICF survey data; unweighted base: 249

The in-depth interviews corroborated survey respondents' sentiments on the effectiveness of MedCo in respect of MRO's independence, its relationship with solicitors and quality of medical reports prepared under the new system. **However, many of those critical of the portal did not disagree with the rationale behind its introduction, but rather criticised the *'rushed implementation'* and resultant '*loopholes'* and the regrettable '*complication of a previously simple system'*.** Those on the defendant side were generally more understanding of the new systems' limitations given the quick roll out of the accreditation system.

Solicitors finding ways round the system were reported by both claimants and defendant solicitors. Both sides commonly mentioned that the mechanisms used to circumvent portal objectives saw Tier 1 MROs setting up as Tier 2 MROs and bilateral agreements by MROs with solicitors. MROs registering in the system more than once, in particular, was seen as an obvious contravention of the intended use of MedCo**. Some interviewees also thought that large practices were able get around the MedCo system due to the scale of their operation: big firms, dealing with thousands of cases a year, could have arrangements with groups of MROs, ensuring that one would always appear on the list of agencies produced by MedCo**. However, it was also possible for small firms to manipulate the system by filtering search results by location.

> ***"MedCo is based on sound ideas and principles, but the execution should be improved. Better sanctions against circumvention of rules are needed"***
>
> **- Non-departmental public body stakeholder**

Recently however, it was said that MedCo had increased efforts to prevent PI firms' manipulation of the MedCo portal and attempts to circumvent the random allocation of MROs. Additionally, solicitors thought to be manipulating the system's search function to increase the probability of known experts appearing are, it is said, being monitored[50].

In light of evidence of solicitor practices being able to undermine the MedCo's policy objectives the Government committed to reviewing the Portal. According to central government, reported misuse and behaviour of some practices were not envisaged when the system was developed, and was central to the MoJ's considerations as part of the recent review[51].

Many claimant solicitors felt that the independence of medical reporting had remained constant. While most interviewees believed the quality problems were largely down to technical ineffectiveness[52], a small number believed that impartiality was maintained due to an already high level of professionalism in both the medical and legal professions.

Several defendant solicitors believed that the system had met the goals in terms of independence between MROs. But claimants, however felt that it was too early to tell whether this was enough to outweigh "poorer quality medical reporting".

> ***"There were some issues with some medical agencies but they should have been dealt with individually and not by reforming the whole system."***
>
> **-Large claimant solicitors firm**

Most solicitors in the in-depth interviews expressed concerns over the quality of medical reports following the introduction of MedCo, respondents stating that reports lacked important information. There was felt to be less evidence of a thorough review of records and the accounts of the factual circumstances, and less evidence of thorough medical examinations. Many interviewees provided anecdotal evidence of "copy and paste reports", meaningless prefabricated descriptions of injuries (for example, *'moderate to severe'*) or rushed consultations with factual errors.

The poorer quality medical reports were largely attributed to the standardisation process, increased use of *'drop-down lists'* and reduced fees for medical experts. **The reduced fees in particular were seen as the driver of poorer quality reports. Some interviewees suggested that the medical experts were now paid too little and were producing poorer quality reports as a result.** As part of the calls for evidence for the MedCo review,

[50] See http://www.lawgazette.co.uk/news/dozens-suspended-for-medco-whiplash-panel-breach/5055281.article

[51] ibid.

[52] Relating to the website's user friendliness and bugs that allow solicitors to find ways round the rules

the ABI raised concerns that some medical examinations for soft tissue injury claims were conducted via Skype or other methods that do not involve a physical examination by the expert. Moreover, it argued the fee paid to medical experts from MROs is frequently only a small fraction of the fixed fee paid.

Many interviewees felt that the detached nature of the MedCo system, precluding, in most instances, the possibility of repeat business, caused a supply-side induced commoditisation of medical reports with no quality incentives.

Another criticism of the MedCo system made by respondents in the in-depth interviews related to the medical accreditation system. Respondent's largely agreed with the rationale for medical accreditation, but believed its implementation was "*ill-conceived and rushed"*.

Several respondents suggested that prior to the introduction of the portal, the best reports came from doctors who practice and *"write the reports on the side"*. The accreditation system, however, combined with the focus on efficiency had meant that more experienced doctors exited the system due to pressures on scale and cost: it made more sense for doctors who primarily write reports to be accredited under MedCo.

> ***"The logic is sound – weeding out dishonest or poor medical advice is important. Although, there was an initial 'free for all' with frequent cases of poor quality doctors, however the system is starting to settle down."***
>
> **- Medium sized claimant solicitor firm**

Most of the in-depth interviewees felt that the relationship between MROs had not improved, but neither had they deteriorated. As the new system allocated MROs to solicitors on a random basis there was now little scope for a relationship to develop.

5.2 Communicating with clients

Technological changes have meant that consumers of legal services have become increasingly used to buying services remotely and relying less on face-to-face delivery. There has been an industry-wide move away from traditional face-to-face legal services due to a perception that they are expensive and time consuming.

New technology to manage cases is seen, particularly by smaller firms, as an important source for delivering efficiency and competitiveness, while not lowering quality[53]. The large proportion of work secured though CMCs, combined with their falling numbers and increasing turnover, suggests a consolidating market. As such, an increasing premium is placed on both scale and specialisation, with new technology and new approaches to operating becoming increasingly important. **Smaller operators are therefore looking to network together and/or use modern online methods to reach a national audience and handle cases efficiently.**

However, face-to-face contact is still highly valued by consumers of legal services, especially if they have experienced a poor service in the past. Face-to-face contact is seen by consumers as a safeguard and a way of preventing poor service, as it provides a platform for them to express themselves and to develop a better understanding of processes[54]. A 2010 Law Society study reported that solicitors find face-to-face contact with clients as being most important when dealing with consumers with[55]:

- communication problems (i.e. poor English or learning disabilities);

[53] See https://research.legalservicesboard.org.uk/wp-content/media/2010-Small-Business-legal-needs.pdf

[54] Paragraph 5.4.4, First-tier Complaints Handling YouGov 2011 - https://research.legalservicesboard.org.uk/wp-content/media/2011-First-tier-complaints-handling-report.pdf

[55] What will be the impact of ABS on geographic access to justice Part 1, Oxera, The Law Society 2010

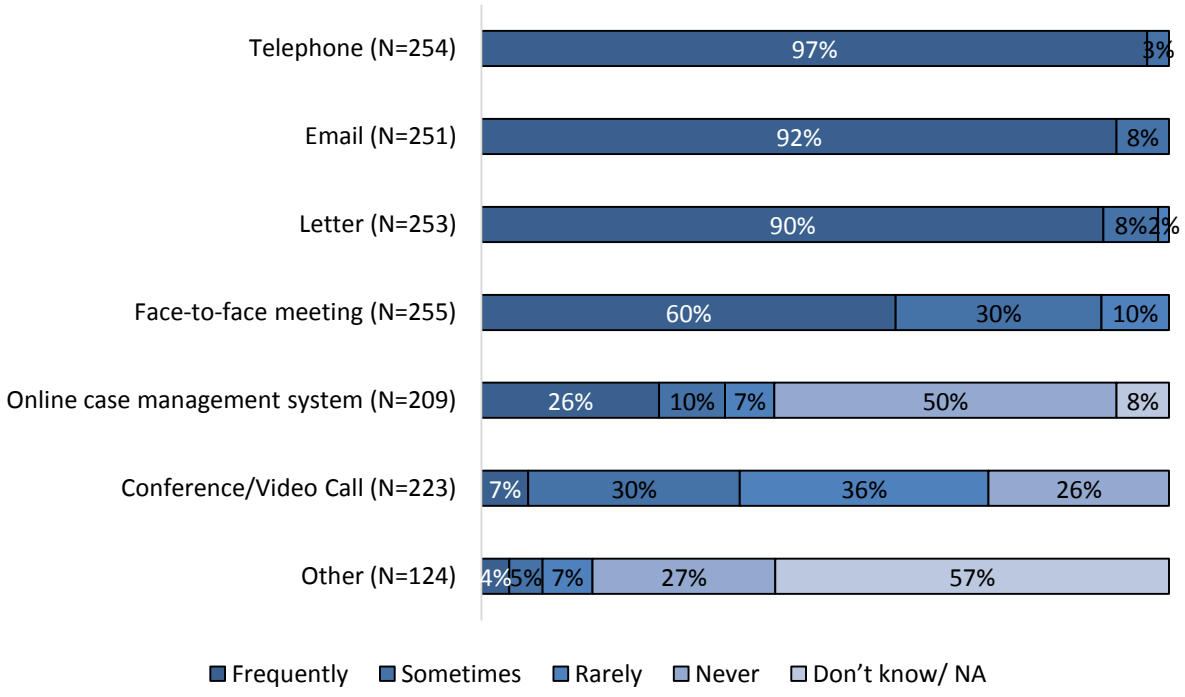
- a divisive or distressing issue;
- consumers with poor IT literacy (often the elderly); and
- those attending court.

Compared to some other areas of law, there are segments within the PI market that are less complex and more process orientated, meaning that face-to-face contact with a PI legal advisers is less vital. In PI where referral networks are historically most active, there appears to be greater use of indirect service delivery methods[56].

Respondents to the online survey were asked the method and frequency of the communication method they used with clients (see Figure 5.3). The method used most frequently was telephone (97 per cent) followed by email (92 per cent), letters (90 per cent) and in significantly less predominant numbers, face-to-face meetings (used by only 60 per cent of respondents).

A quarter of respondents (26 per cent) used online case management systems. This was much higher for ABSs, where 50 per cent of firms used online case management systems as a frequent method of communication with clients. Smaller firms were less likely to use these methods due to the often expensive technologies or software needed. The least used method of communication were conference/ video calls.

Figure 5.3 Frequency of client communication method



Source: ICF survey data; unweighted base: 255

According to judicial representatives, the standard of preparation of cases for trial has generally deteriorated over the last 10 years or so, with inadequate statements often being filed, poor quality photographs being relied upon and a large trial bundle being filed containing much irrelevant material. Much of the difficulty is often the fact that the litigation is being conducted by distant solicitors who never meet their client, and deal

[56] See www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/10%20Highlights.pdf

with everything over the telephone or by post/ email. There is also a suspicion that the work is not being undertaken by a solicitor but by a clerk or assistant who is not properly trained.

5.3 Engagement and communication between claimant and defendant

Two-thirds of respondents (66 per cent) stated that the reputation of the claimant firm had an impact on the type of response by the defendant firm (see Figure 5.4). This was mirrored by respondents from firms where more than half of their work was for defendants (67 per cent agreed).

Forty per cent of solicitors stated that defendant insurers rarely failed to provide a Letter of Response within the prescribed period. However, an equally large proportion (38 per cent) disagreed with this assertion. Defendant firms had similarly mixed views.

Only 5 per cent of respondents believed that Letters of Response were always well drafted, unambiguous, and showing a good understanding of the case. Two-thirds of defendant firm respondents neither agreed nor disagreed with this assertion. Letters were often deliberately vague as solicitors are generally not inclined to provide more information than they need to, due to the potential implications should the claim go to court.

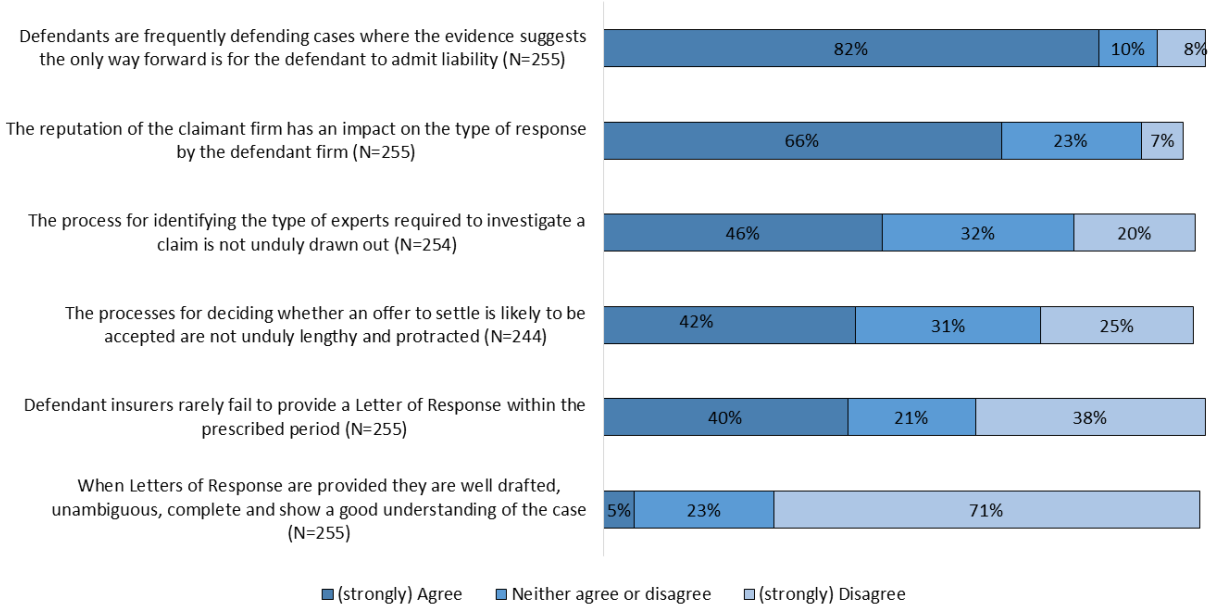
Almost half (46 per cent) of respondents felt the process for identifying the type of experts required to investigate a claim was not unduly drawn out. However, one-fifth (20 per cent) *did* feel the process for identifying and agreeing experts was drawn out. This point was corroborated by several interviewees in the in-depth interviews, suggesting that the recent changes had complicated the process.

Eighty-two per cent of respondents felt that defendant solicitors frequently defended cases where the evidence suggests the only way forward is for the defendant to admit liability. If there is such a delay it might be caused by a number of different reasons. Fifty-six per cent of defendants disagreed that cases were frequently defended in such circumstances.

> ***"One of the problems is that if a solicitor needs a report from an orthopaedic surgeon and the other side disagrees, there is a need to see a MedCo GP. Then the MedCo GP will usually [say] that they need a report from an orthopaedic surgeon so it is a waste of everybody's time"***
>
> **- Medium sized claimant solicitor firm**

Just over two-fifths (42 per cent) of respondents felt the process for deciding whether an offer to settle was likely to be accepted was not unduly lengthy and protracted. Most solicitors from the in-depth interviews believed that this was not the case. This was because defendant firms face their own pressures from clients to settle early as this is in their clients' interest to reduce costs.

Figure 5.4 Claimant and defendant solicitor interaction



Source: ICF survey data; unweighted base: 255

The online survey asked respondents whether delays in respect of correspondence – stemming from either the claimant or defendant side – impacted on consumers, the rule of law and the administration of justice. **Seventy-eight per cent of respondents believed that delays on the defendant side significantly inhibited the claims process, whereas only 38 per cent indicated claimant-side correspondence delays as having an impact**. The higher level of significance placed upon defendant-side delays reflects, we think, the survey respondent composition bias of claimant solicitors. For instance, only one fifth of respondents (24 per cent) held the view that delays in claimant correspondence occurred often. Comparatively, a much larger proportion of respondents (80 per cent) felt that there were frequent to very frequent delays in defendant correspondence.

The in-depth interviews provided mixed evidence with respect to the prevalence and significance of delays between defendant and claimant solicitors. **Significantly, many interviewees reported that delays were not common on either side, but thought when they did occur this was usually for good reason and had little bearing on the case**.

There were however several claimant firm representatives that felt delays were significant, particularly in regards to the initial questions, identifying experts required to investigate a claim and in deciding whether an offer to settle was likely to be accepted.

There were several defendant solicitors who felt that claimants often held up proceedings with "selective correspondence". It was suggested by one defendant solicitor that if firms were using lots of paralegals[57] to manage cases then the consequent lack of experience and confidence of these staff would usually result in delayed correspondence.

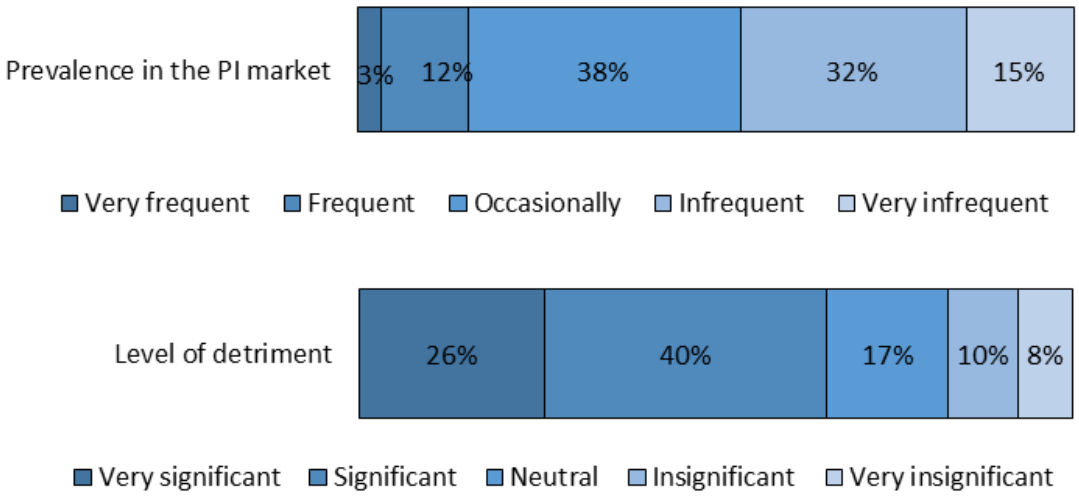
> ***There is always a protracted correspondence with a defendant solicitor, usually followed by a lengthy delay whilst we obtain instruction."***
>
> **- Small claimant solicitor firm**

[57] a person trained in subsidiary legal matters but not fully qualified as a lawyer.

5.3.2 Estimating the level of compensation for claimants

The online survey asked respondents whether claimant solicitors often failed to adequately estimate an appropriate level of compensation and what impact this had on consumers (see Figure 5.5). Sixty-six per cent of respondents agreed that a failure to adequately estimate the level of compensation would significantly impact the PI market. However, a minority (15 per cent) felt that claimant solicitors were regularly unable to estimate a justified level of compensation (see Figure 5.5). The survey data does not allow a breakdown by sub-area of PI. More than half of respondents (52 per cent) thought the impact would be significant but indicated that it was not common practice.

Figure 5.5 Prevalence and significance to the personal injury market - failure to adequately estimate the level of compensation



Source: ICF survey data; unweighted base: 246

Many respondents from the in-depth interviews corroborated the survey results. **It was suggested that whilst any undervaluation would have significant implications for the claimant, the undervaluing of claims was only an occasional practice**. The nature of calculating compensation meant that the process was an "iterative and involve[d] negotiation". Further, it was suggested, good supervision and a structured approach would prevent poor estimation.

> ***"What you find is junior staff don't spot high value cases and either undervalue them or turn them down. Firms that run that level of work (huge caseloads) are using unqualified paralegals who don't know what they are doing. "***
>
> **- large claimant solicitor firm**

According to the judicial representatives, the undervaluation of a claim may be the result of solicitors in RTA claims obtaining medical evidence at too early a stage (e.g. four weeks after the accident). Good practice would dictate that such evidence is obtained later.

5.4 The impact of funding arrangements on legal costs, fraudulent and frivolous claims

5.4.1 Funding arrangements

Conditional Fee Agreements (CFAs)[58], introduced in 1995, by the Conditional Fee Agreements Order, enable legal service providers to offer fees that vary depending on the success of the claim. They allow solicitors to mitigate the litigation costs risk for claimants[59]. Where a client is paying for their own litigation, the most common vehicle used is called a Conditional Fee Agreement (CFA). Put simply, if the client wins then they pay the solicitor the agreed fee for taking on the litigation and a 'success fee' to compensate the solicitor for the risk they ran of getting nothing if the client lost.

Claimants and defendants may be offered CFAs by their solicitors but they are most commonly used by claimants. The cash flow and profitability impact of a 'No Win, No Fee' (NWNF) CFA can be substantial.

If a legal business is doing mainly claimant work and doing most of it under NWNF agreements where they will only get paid if the client wins, there is a significant risk that some work will therefore end up being done for nothing. This also means that there may be a considerable lead time before payment is received which may put a strain on the solicitor's cash flow. Any delay in payment after settlement may impose further strain. This is not an excuse for poor quality service and was not suggested as such by those interviewed.

The 1999 regulatory and legislative liberalisation of funding arrangements[60], aimed at improving access to justice, was thought to have contributed to increasing unnecessary legal costs. It was thought that the recoverability of success fees and after-the-event insurance premiums from defendants had removed incentives to limit legal expense. In spite of improving access to justice through reduced financial risk to claimants, the use of CFAs had created perverse incentives to devote disproportionate resources to winning cases.[61]

The online survey asked respondents their views on NWNF (see Figure 5.6). **The majority (82 per cent) believed that NWNF arrangements improve access to justice, whilst retaining a high standard of service**. Almost a third (30 per cent) holding this belief felt this strongly. A similar proportion (80 per cent) felt 'no win, no fee' arrangements were adequately explained to clients. **More than two-thirds (69 per cent) disagreed with the view that NWNF arrangements had led to a compensation culture, with 40 per cent strongly disagreeing**. Due to the composition of the survey respondents, the results mostly reflect claimant solicitor views and such a response is not unexpected. Forty-four per cent of respondents that represented defendants believed that NWNF had contributed to a compensation culture. A third of defendants (33 per cent) however did not feel the funding mechanism encouraged a compensation culture.

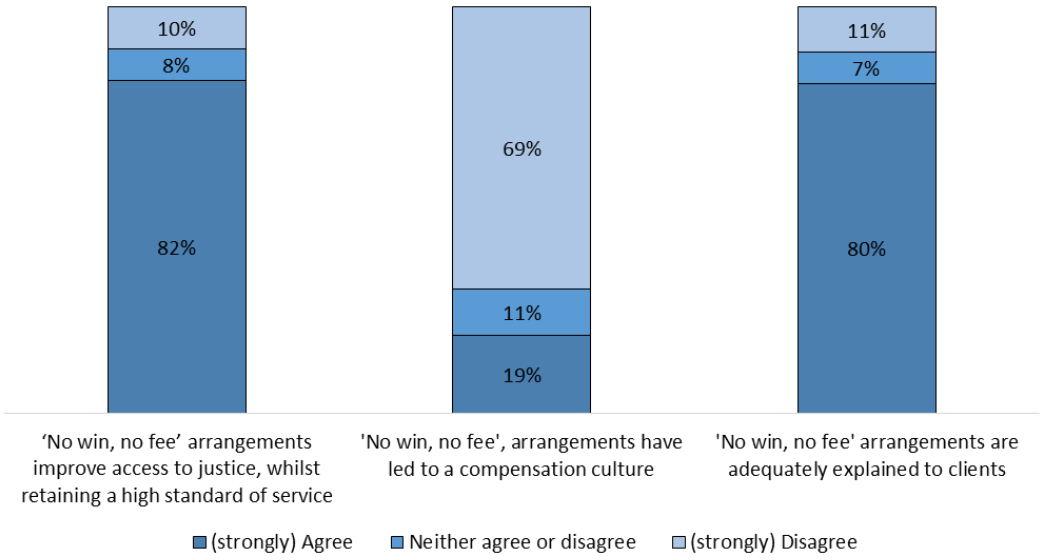
[58] Often referred to as 'no win, no fee agreements' (NWNF)

[59] NWNF does not necessarily mean what it says. In some cases solicitors will agree to write off any costs that they cannot get back from the losing side. In other words, they will take a lower profit. In other cases the client will make a contribution, but only if they win.

[60] Access to Justice Act (1999)

[61] Legal Services Board (2014) Access to Justice: Learning from long term experiences in the personal injury legal services market See https://research.legalservicesboard.org.uk/wp-content/media/Access-to-Justice-Learning-from-PI.pdf

Figure 5.6 No win, no fee (NWNF) arrangements



Source: ICF survey data; unweighted base: 255

Participants in the interviews mostly agreed that NWNF had improved access to justice, but thought that such arrangements were open to potential misuse. It was thought that the high profile of NWNF increased consumer awareness of the avenues through which they could get compensation for injuries sustained. In some cases that had meant those who would otherwise have gone uncompensated had received compensation. NWNF had, it was felt, also given rise to spurious claims.

> ***"Definitely, some people otherwise could not afford legal representation, but it can be misused. Access to justice however outweighs the problems around misuse."***
>
> **- medium sized defendant firm**

Despite defendant and claimant solicitors agreeing on the headline impacts, they differed on the degree to which NWNF affected access to justice and spurious claims. **Defendant solicitors felt more strongly that NWNF had *'led to a litigation boom'* which increased the number of frivolous and fraudulent claims**. Some defendant solicitors felt that the introduction of NWNF arrangements had increased the opportunity for claimant firms to profit and therefore provoked the increased entry of firms into the PI market. The view was that this increase was not isolated to claimant law firms but also that MROs and other legal service providers had benefitted. However, a few defendants also believed that whilst the expansion of the market had encouraged bad practices (i.e. claims farming), it had also brought with it more effective representation for those injured and obtaining compensation.

Claimants on the other hand, believed that the so-called *'litigation boom'* was simply those who were excluded from justice previously making claims, that fraudulent or spurious claims were rare, and that it was difficult to spot such claims when exercising reasonable due diligence.

> ***"Where the claimant has an arguable case, (that is, there is certainly an injury) but may not be legally entitled to claim, the financial uncertainties prevent solicitors from pursuing these cases"***
>
> **-Large claimant solicitors**

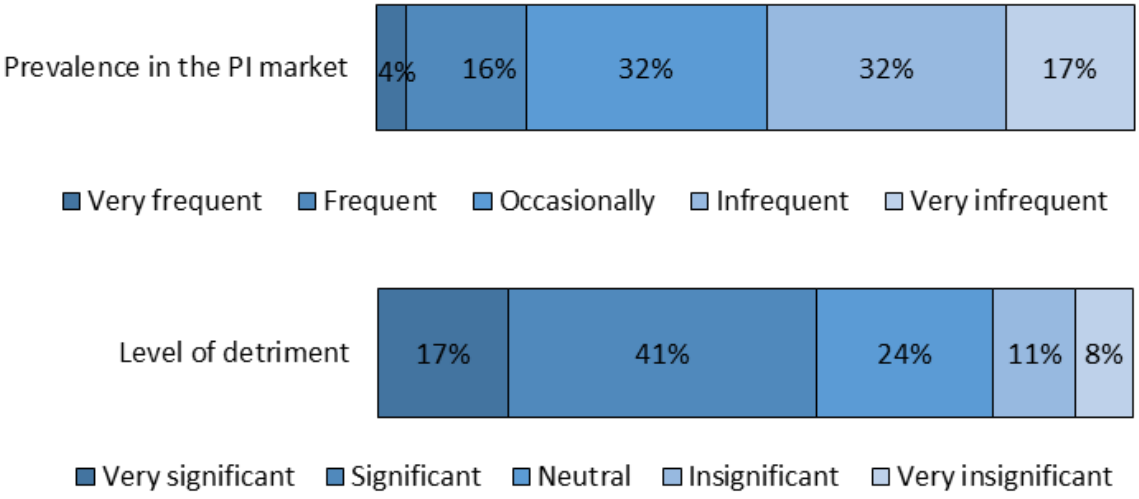
Following the change in the law, both claimant and defendant solicitors thought that there was a problem with **NWNF in that solicitors are setting fees deliberately high in order to hit the 25 per cent cap**. This behaviour was perpetuated by consumers lack of knowledge of the legal process, the lack of information preventing *'clients from shopping around'*. Leaving aside the question of the responsibility to avoid overcharging, interviewees were generally unclear about whether the failure of clients to shop around stemmed from poor explanations of the market choices that clients had. Interviewees could not say whether this was a widespread problem.

However, some of the in-depth interviews showed that solicitors on both sides had concerns about practices surrounding the explaining of costs to clients. Several claimant solicitors suggested that they had taken over cases from larger firms where the client had a poor grasp of '*what they were being charged and why'*. Defendant solicitors largely felt unable to comment on whether claimant solicitors were explaining costs properly to their clients. However, it was suggested that because of the different levels of scrutiny placed on defendant solicitors (usually by large insurers), clients on the defendant side had a better understanding than claimants.

> ***"There have been a few cases when clients come through from other law firms and it was clear that cost information was only in the small print and not explained properly."***
>
> **-Sole practitioner representing claimants**

Fifty-eight per cent of respondents to the online survey recognised that poor information provision about costs to claimants – or indeed too much information that cannot be easily absorbed and may not be directly relevant – has a significant and detrimental effect on consumers (see Figure 5.7). One-fifth (20 per cent) thought inadequacy of information prevalent in the PI market and 80 per cent indicated poor information on costs as being an occasional to very infrequent practice (see Figure 5.7). There was a high instance of respondents (41 per cent) that felt despite the inadequate provision of information being rare, the impact on the market was significant.

Figure 5.7 Prevalence and significance to the personal injury market - poor information about costs provided to claimant



Source: ICF survey data; unweighted base: 238

5.4.2 Unnecessary legal costs

Evidence from the Legal Services Consumer Panel found that prior to the regulatory changes introduced in 2013, solicitors using the NWNF mechanism were unconcerned about their cost charges as they were, largely, passed on to the losing party. Further, the price of legal services was not playing as large a role in the selection of the service provider as would be expected as was the case before the reforms, and provided the impetus for the reforms[62].

'Legal costs' means the money that solicitors are paid for their services. The term 'costs' has two aspects- it can refer to the money used to fund the running of a claim, or it can refer to the ability of the claimant to recover some of that cost from a defendant who settles the claim or loses it in court. Claimants are not normally at risk of paying the other side's legal costs if they lose, subject to Part 36[63] or if a claimant is found to be fundamentally dishonest[64].

The in-depth interviews with claimant solicitors showed that they believed that legal costs were not unnecessarily high, particularly taking into account the introduction of fixed fees for the majority of cases. Several defendant solicitors stated that the introduction of fixed fees was essential as previously claimant solicitors would do as much (often unnecessary) work on a case as they could to the point that cost of legal fees outweighed the damages. This view is shared by the NHS Litigation Authority (NHS LA)[65]. The NHS LA has seen excessive legal costs being claimed at on average three times

[62] Charles River Associates (2010)

[63] Part 36 is a provision in the Civil Procedure Rules ("CPR") designed to encourage parties to settle disputes without going to trial. Under Part 36, both claimants and defendants can inform the other side what they will accept or offer to resolve a dispute

[64] The Criminal Justice and Courts Act 2015 allows cost to be awarded to the defendant if a claimant is found to be fundamentally dishonest about any part of their claim but fundamental dishonesty is difficult to prove. It is not sufficient to show that part of the claim is brought dishonestly, the dishonesty must be of a fundamental nature.

[65] http://www.lawgazette.co.uk/analysis/comment-and-opinion/costs-and-clinical-negligence/5050646.fullarticle

damages for claims resolved for less than £10,000, according to their annual report[66]. The newly introduced fixed costs for portal cases made this practice more difficult. However, several defendants provided examples of ways in which claimant solicitors were attempting to maximise recoverable costs and circumvent cost fixing regulation. These included;

- attempts to get a claim to drop out of a portal so as to trigger higher fees; and
- attempts to drive cases to a stage 3 hearing.

Defendants (e.g. insurers) were generally thought to have a better understanding of reasonable costs, and their ability to scrutinise these costs in a sophisticated manner, precluded unnecessary charges. These constraints essentially forced defendant lawyers to keep their costs reasonable prior to the reforms.

> ***"Once a claim is concluded, the only other aspect which is problematic is the assessment of costs process. It is archaic and one of the advantages of the fixed fees is that they will get rid of that process."***
>
> **-medium sized claimant firm**

Defendant interviewees said that, for higher value claims, claimant firms still used payment by hourly rate because their clients were less interested in cost levels, as it is the insurer who paid the claimant's costs in a successful case. It was recognised that claimants do now pay some of their own costs in the form of success fees. However, it was said, claimants are less well equipped (compared to insurers) to understand what constitutes a reasonable cost. Defendants (who are often insurers) had more experience using legal services compared to claimants who often had little prior experience of using legal services.

An important caveat to the online survey results is that (for reasons discussed in the methodology) respondents were mainly claimant solicitors, potentially explaining the discrepancy between why views concerning the significance and prevalence of unnecessary legal cost were more prominent for defendants than claimants in spite of the few examples provided in the in-depth interviews[67]. For instance, very few respondents (7 per cent) indicated that claimant solicitors often run up unnecessary legal cost or that this would have a detrimental effect on the PI market, whereas more than half (52 per cent) felt that defendants did (see Figure 5.8).

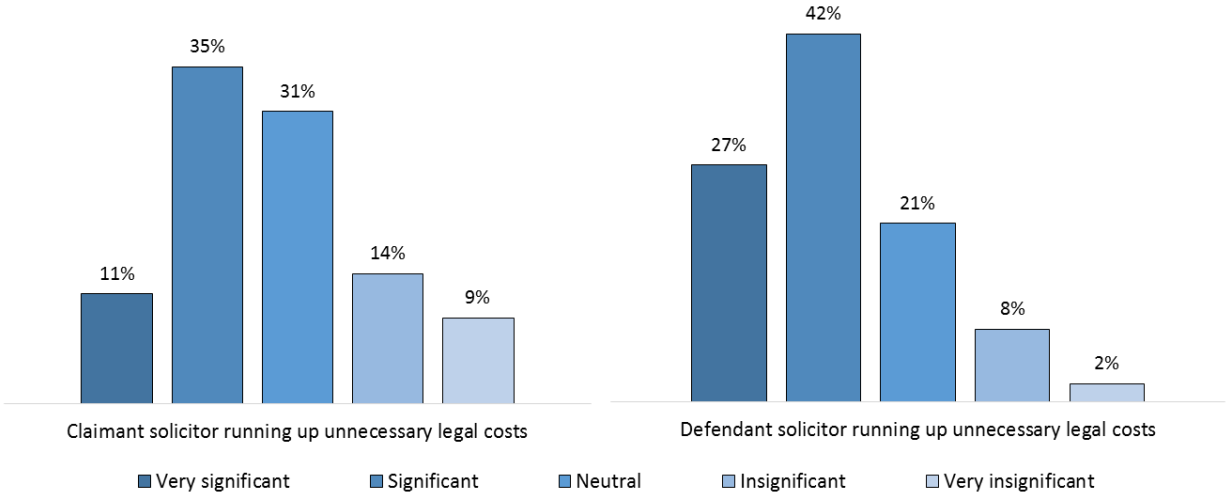
Thirty per cent of the overall cohort stated that claimants "occasionally" run up unnecessary legal costs and that this detrimentally impacts consumers, the rule of law and proper administration of justice. However 21 per cent of respondents believed that unnecessary claimant solicitor costs were either infrequent or very infrequent and had an insignificant impact (see Figure 5.8).

Forty-nine per cent of respondents thought that unnecessary defendant-side legal costs were uncommon, although 23 per cent believed that (where it occurred) they had a significant impact on consumers and the market more broadly. Almost half of survey respondents (47 per cent) believed that defendants often run up unnecessary legal costs and that this had a detrimental effect on consumers and the application of justice (see Figure 5.8 and Figure 5.9).

[66] NHS Litigation Authority Report and accounts 2013/14

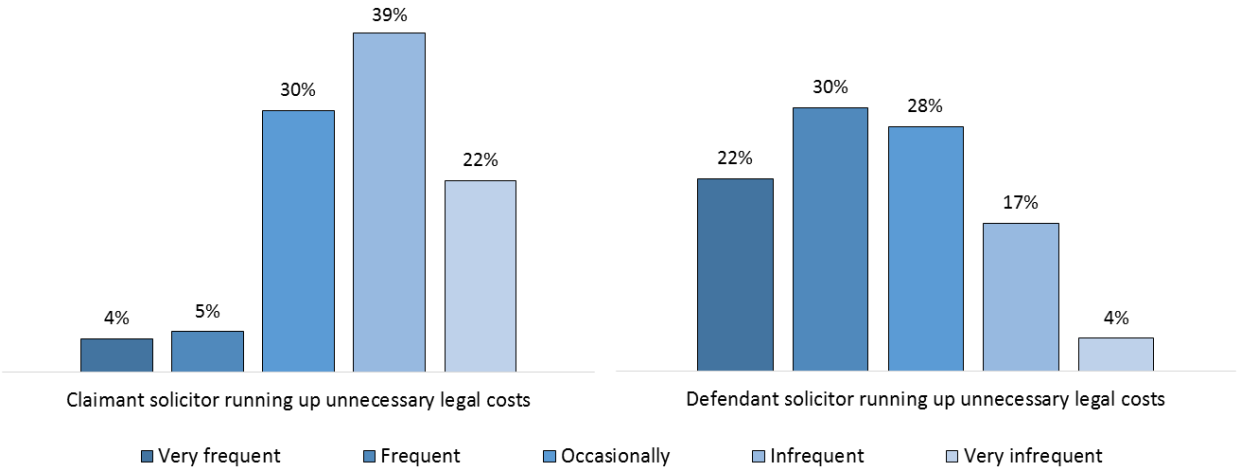
[67] Examples of defendants running up unnecessary legal costs provided in the in-depth interviews exclusively related delays in respect of admitting liability and correspondence.

Figure 5.8 Level of detriment to consumers, rule of law and proper administration of justice - unnecessary legal costs



Source: ICF survey data; unweighted base: 239

Figure 5.9 Prevalence in the personal injury market - unnecessary legal costs



Source: ICF survey data; unweighted base: 239

5.5 Rehabilitation Code

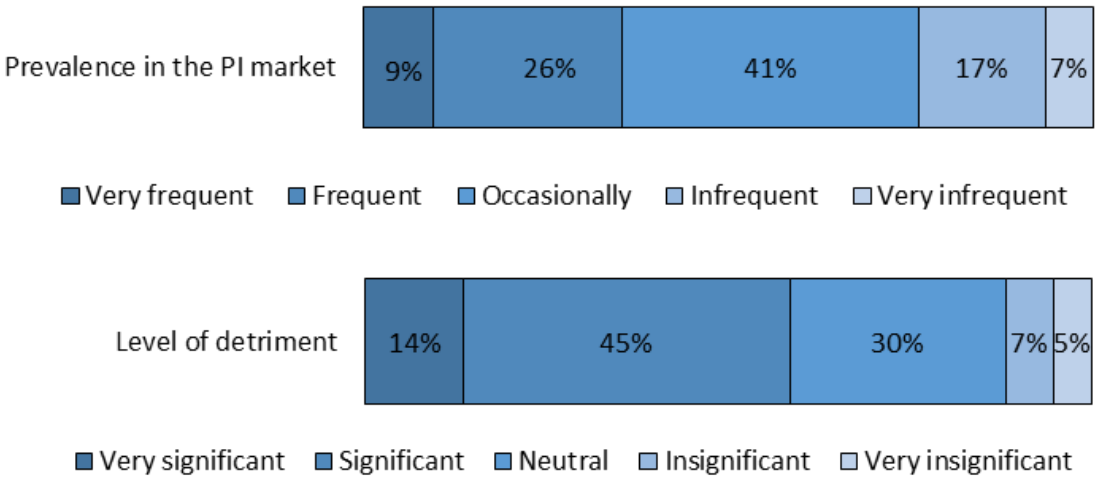
The Rehabilitation Code requires claimant solicitors to assess[68] whether early intervention, rehabilitation or medical treatment is likely to, or may possibly, improve the claimant's present and/or long term wellbeing. Solicitors are required to understand how rehabilitation can benefit the injured client, but also which aspects of the Code should be within or entirely outside the litigation process[69].

[68] Using an independent medical assessor agreed with defendant solicitors

[69] See http://www.iua.co.uk/IUA_Member/Publications/Rehabilitation_Code.aspx

The online survey asked respondents whether solicitors in the PI market had trouble understanding or applying the Rehabilitation Code. **Thirty-five per cent the of respondents believed that a lack of understanding of the Rehabilitation Code was common amongst claimant and defendant solicitors**, 30 per cent of which felt this had a significant and detrimental effect on consumers, the rule of law and administration of justice (see Figure 5.10). The study did not find much additional evidence, relative to this question.

Figure 5.10 Prevalence and significance to the personal injury market - lack of understanding & application of the Rehabilitation Code

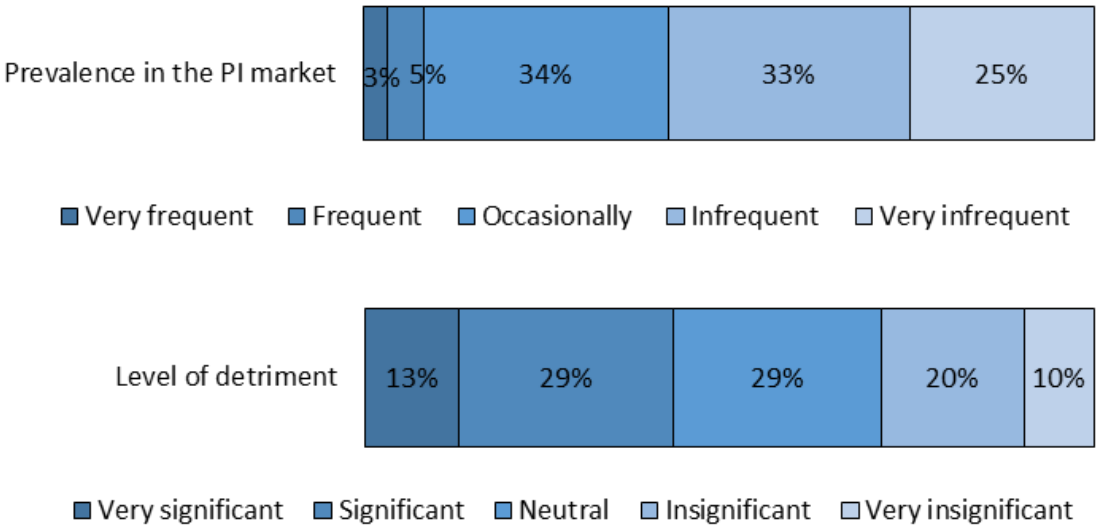


Source: ICF survey data; unweighted base: 245

5.6 Right to complain

Forty-two per cent of respondents understood that the failure to notify either claimants or defendants about their right to complain would significantly impact consumers, the rule of law and proper administration of justice (see Figure 5.11). A large proportion (35 per cent) indicated that whilst only occurring occasionally to very infrequently, where it happened it would have a significant impact . Only 8 per cent of respondents believed that solicitors consistently failed to provide notification to their clients (see Figure 5.11).

Figure 5.11 Prevalence and significance to the personal injury market - failure to notify either claimants or defendants about their right to complain



Source: ICF survey data; unweighted base: 241

6 Case settlement

Summary

- Most cases are settled out of court and there are various pressures to do so (increased court fees, pressures on early settlements including from clients etc.) but this can impact on the levels of settlement and potentially result in cases of under-settlement.
- The move to fixed recoverable costs has had a significant impact on solicitors' practices and may, in some, cases have led to under settlement as there is pressure to spend less time on investigation and to use less experienced staff thereby reducing solicitor costs.
- Other factors that can potentially lead to under settlement are the timing of pre-medical offers (offers made before injuries are assessed by a medical expert) and Part 36 offers, although the views of solicitors and other stakeholders were mixed on the levels of significance of such practices and the impact they were having.
- There are often good reasons to settle efficiently and as early as possible. There is often pressure on clients to settle early, and more clients can access justice if the processes are efficient and less time consuming.
- Payment delays are a negative issue both for clients receiving compensation, and for solicitors in terms of their cash flow.

6.1 The impact of regulatory changes on settlement

6.1.1 Introduction of fixed recoverable costs

Respondents to the online survey were asked to what extent they agreed or disagreed with the statement that the introduction of fixed recoverable costs had *"resulted in more out of court settlements*" (not to prejudge such settlements which can be an effective and fair tool if used appropriately). A large proportion of respondents (40 per cent) believed that the changes had resulted in an increased number of out of court settlements (see Figure 6.1). Respondents from medium sized (employing 10-49 solicitors) and larger (employing more than 50) practices were more likely to feel the changes had caused more out of court settlements with a respective 50 and 48 per cent. However, if used appropriately, out of court settlements can lead to a quicker and more resource effective resolution, which reduces the burden on the court system.

Several claimant solicitors in the in-depth interviews highlighted concerns about defendant solicitor behaviour toward settlement following the introduction of fixed recoverable costs. It was suggested that defendants are less likely than previously to offer an appropriate early settlement. This had the consequence that a case might be unprofitable for a claimant solicitor to run. Interviewees suspected that this change of approach could be put down to creating an economic incentive for solicitors to encourage clients to settle.

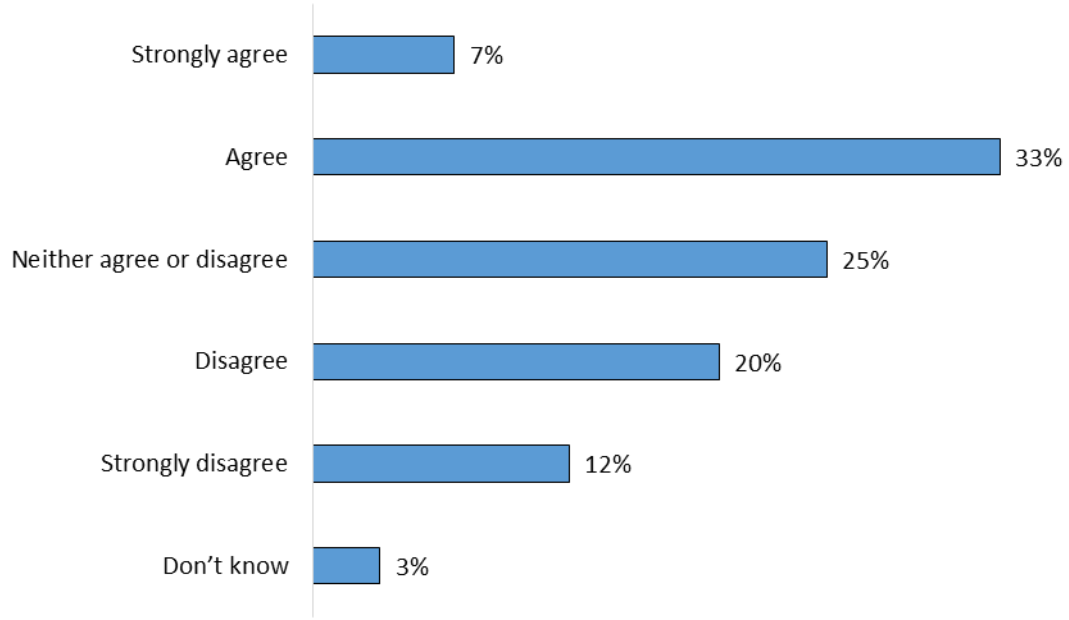
However, defendant solicitors felt that fixed costs had made it easier to settle frivolous claims, reducing their overall impact on the PI market.

The in-depth interviewees also suggested that many PI law firms have responded to the introduction of fixed recoverable costs by using unqualified and inexperienced staff

> ***"FRC has reduced fees by about 50% meaning that using resourced and experienced staff is expensive, therefore settlements are quicker and less care and attention is taken to what could be deeper issues."***
>
> **-Large claimant solicitor firm**

to run these claims in order to make cost savings. Increasing court fees and use of under qualified staff therefore was suggested as a driver of why outofcourt solutions are being more heavily used.

Figure 6.1 Whether fixed recoverable costs have resulted in more out of court settlements



Source: ICF survey data; unweighted base: 249

6.1.2 Using the courts

The vast majority of PI claims settle pre-trial, which is a largely positive practice owing to the cost of court hearings and the uncertainty of trial outcomes[70]. Litigation risk is potentially the strongest driver of settlement as no one can be completely confident what outcome will be achieved at trial.

When solicitors fail to settle a case, one of the factors separating them will be their respective evaluations of the likely outcomes. A solicitor should advise their client that it may be preferable to give a discount for the litigation rather than risk taking the case to trial. Certainty of outcome will be attractive for many clients as well.

Users of the court system will be the claimant and the defendant, but they are not the only people who have a stake in the administration of justice. There is widespread and longstanding concern about how efficient the court system is. There are also regulatory concerns over poor outcomes for consumers, with potential under-settlement being driven by the perverse incentives created by the structure and cost of litigation.

6.1.3 Use and appropriateness of out of court settlements

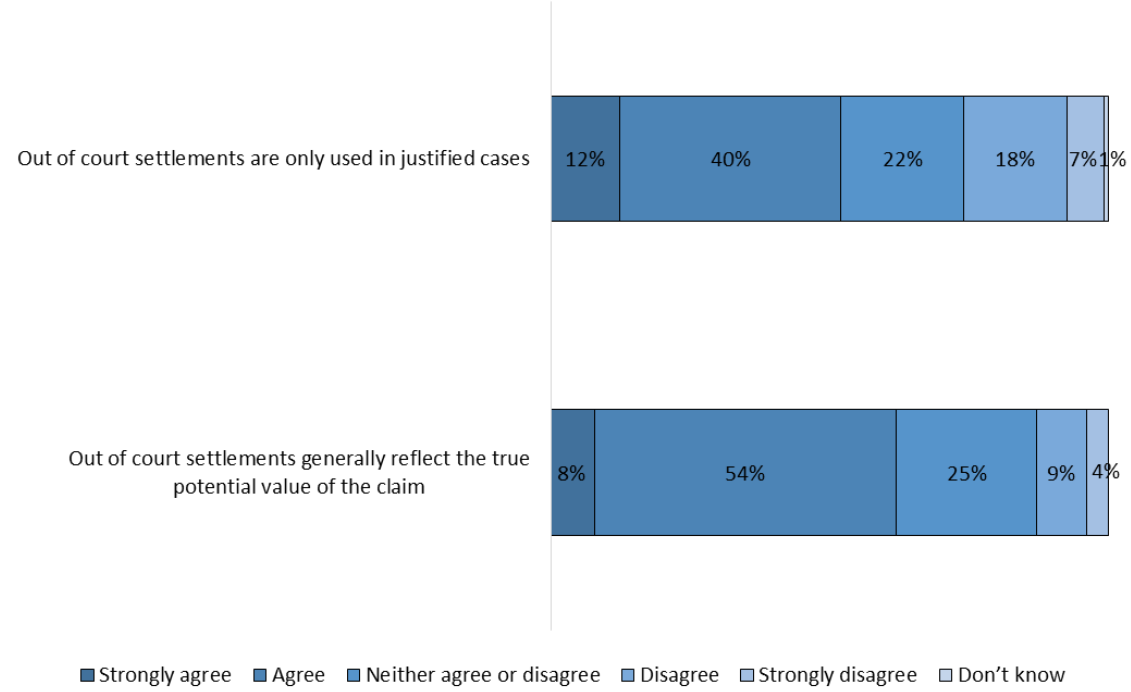
We have relied on the survey data and selective interviews. We have not had access to recent data on settlements that could be compared with earlier work (e.g. the report by Charles Rivers).

[70] Law Society (2010)

The online survey asked respondents about their views on the current use and appropriateness of out of court settlements. More than half (52 per cent) of respondents felt that out of court settlement was only used in justified cases. Additionally, close to two-thirds (62 per cent) believed that these settlements generally reflected the "true" value of the claim.

Cases are mostly settled on the basis of the compensation offered as well as the assessment of the overall risks involved in proceedings, factoring both the risk of failure of a claim, and the parties' consideration of the true value of the claim. As such, most respondents to the in-depth interviews highlighted that, particularly with respect to the value of negotiated settlements, the outcomes were generally fair. The judges involved in the in-depth interviews were also of the view that settlements mostly reflected the true value of a claim. Whilst settlements in court may offer a higher value, there is a litigation risk that is accounted for in the settlement offer. Defendants tend to make use of previous settlements to inform the level of offers.

Figure 6.2 Views on out of court settlement



Source: ICF survey data; unweighted base: 252

However, participants in the qualitative interviews did highlight areas of concern in terms of emerging trends in settlement practice. Many interview participants mentioned larger firms using inexperienced staff in the settlement process which, it was said, was contributing to worse outcomes. One piece of anecdotal evidence of under-settling practice was provided in the interviews:

One client went first to a legal service provider, and the person in charge of her case never met her. She had an offer of £12,000 and was told it was a good offer. When her solicitor subsequently met with her, he could immediately see that the case was much more serious. She ended up with £400,000.

"There is evidence of under-settlement of cases. Especially in the big firms, where they have lots of cases and there is a pressure to settle quickly"

-Medium sized defendant solicitor firm

It was suggested, in interviews, that increasing prevalence of under-settlement, is the result of the prevailing system of incentives – e.g. parties are penalised if they decline to go to mediation. Pressure is on, from both regulatory and business perspectives, for an earlier settlement. Several claimant solicitors believed that the introduction of fixed costs and transfer of litigation risk had also incentivised under-settlement, as more work around individual cases would incur unpaid costs.

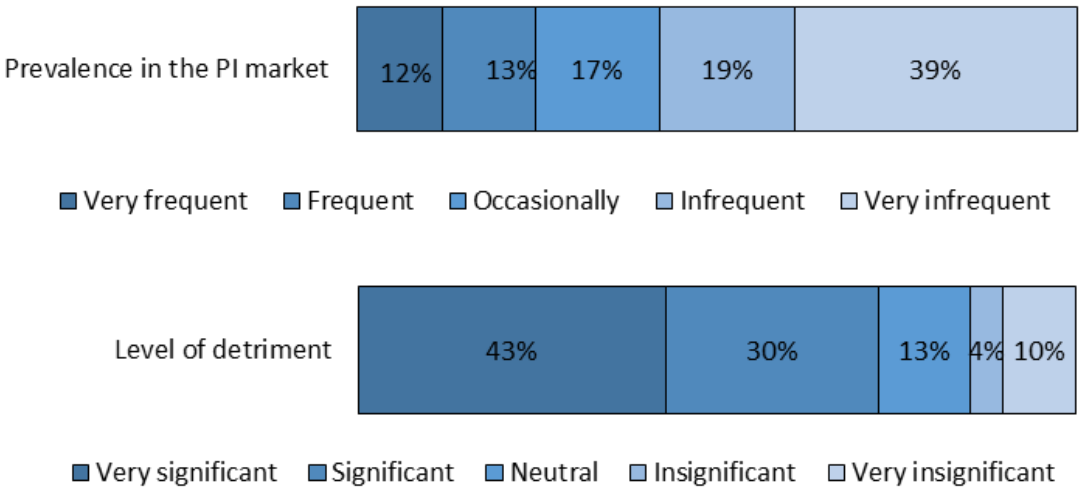
Defendant solicitors generally felt there was little evidence to suggest there was systemic under-settlement taking place in the PI market, although most believed there were isolated instances. The main reasons given by defendants for under-settlement by defendants included:

- client pressures to deal with claims as quickly and cheaply as possible;
- claimant solicitors being under pressure with low value cases;
- when solicitors' firms are having cash flow pressures.

Several defendant solicitors in the qualitative in-depth interviews made the point that under-settling is not a common practice because: '*they can get sued by the client if they feel they are not getting enough*'. Also, clients would need to have sufficient confidence and legal knowledge to be able to do this. This would need to be backed up by separate consumer research (outside of the brief for this study).

Views from the online survey, suggest that defendant solicitors often under-settled case to save their clients' money (see Figure 6.3). Eighty-three per cent stated that the practice had a detrimental effect on consumers, the rule of law and administration justice; a quarter (24 per cent) of whom suggested that it was a frequent practice (see Figure 6.3).

Figure 6.3 Prevalence and significance to the personal injury market - deliberately under-settling a case to save the defendant money



Source: ICF survey data; unweighted base: 246

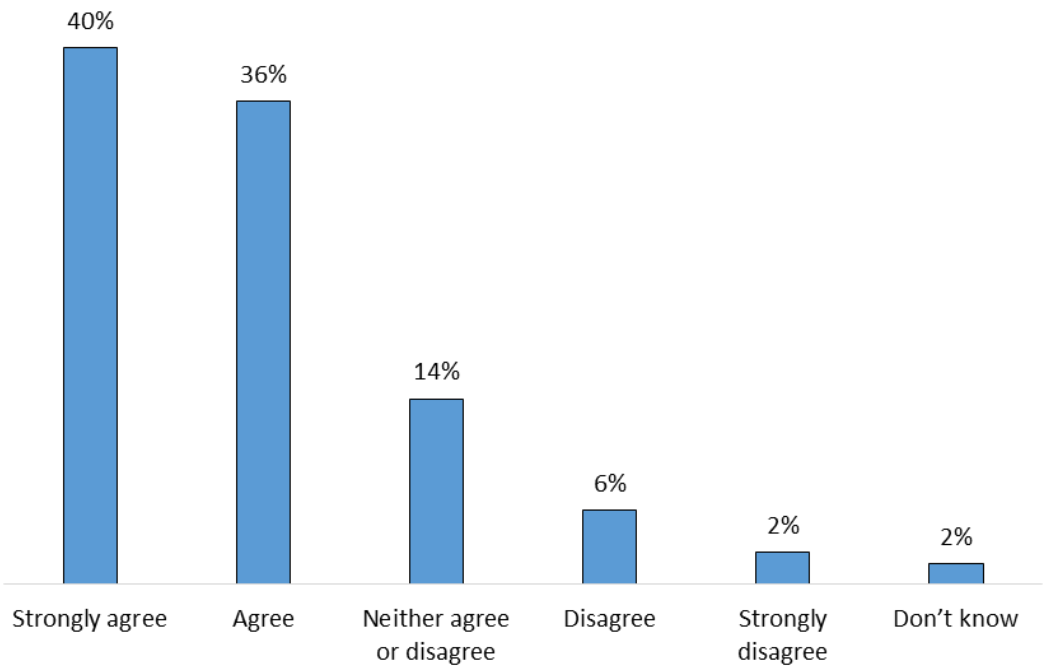
6.2 Pre-medical offers

The term 'pre-medical offer' refers to the practice of defendants instructing their solicitors to offer claimants compensation prior to a medical assessment. In a lot of cases the offer is

made without knowledge of the severity of the claimant's injuries. **There are concerns with defendant behaviours and business models with respect to pre-medical offers as they potentially encourage fraudulent claims.** However, despite recent criticism in Parliament and a targeted campaign by the Law Society, pre-medical offers are still used. Figure 6.4 shows that 75 per cent of respondents believed that pre-med offers of settlement are made when the claimant is not in a position to "value" the injuries or the likely ongoing costs of rehabilitation. A larger proportion of respondents selected "Strongly agree" than "Agree", suggesting strong feelings about this practice.

The online survey also asked about the impact pre-medical offers had on the rule of law and the proper administration of justice**. Almost three quarters of claimant respondents (69 per cent) believed that defendant solicitors made pre-med offers of settlement when the claimant was not in a position to 'value' the injuries**, 65 per cent of which felt that this significantly impacted the PI market and administration of justice.

Figure 6.4 Pre-med offers of settlement when the claimant is not in a position to 'value' the injuries



Source: ICF survey data; unweighted base: 252

The majority of participants from the in-depth interviews held similarly strong views about the practice. **Several claimants felt that not only did pre-medical offers invite frivolous or fraudulent cases, but that they disproportionately impacted poorer or more vulnerable clients, preventing them from attaining appropriate redress**. Several interviewees thought that pre-medical offers should be banned and that any offers made by defendants' solicitors should only be made following a medical assessment.

Medical examinations provide important checks and balances within the PI process, and as such, ensure that the injury suffered by the claimant is valid. If money is offered in the absence of medical evidence, this potentially creates an environment of "easy money", encouraging opportunistic claims.

> ***"They happen all the time. It is bad and needs to be stopped. It is tempting to clients and lawyers too, but ultimately becomes a deferred cost to the NHS"***
>
> **-Medium sized claimant solicitor firm**

One claimant solicitor also felt that there was a juxtaposition between insurers on the one hand campaigning against fraudulent claims and on the other, incentivising low value fraud with pre-medical offers. Several defendant solicitors however, suggested that whilst insurers do make pre-medical offers, claimants often invite them so they can settle cases with minimal work. One defendant felt that pre-med offers were in fact a useful mechanism to avoid unnecessary legal costs and were more a symptom of insurers' lack of faith in much of the medical evidence presented to them, than an effort to cut costs.

The view from the judiciary interviews – where they would be aware - was that there was no evidence that the use of medical evidence at early stage was being undertaken at the explicit convenience or benefit of the solicitors involved. However, they also noted that early expert opinion should be treated as provisional.

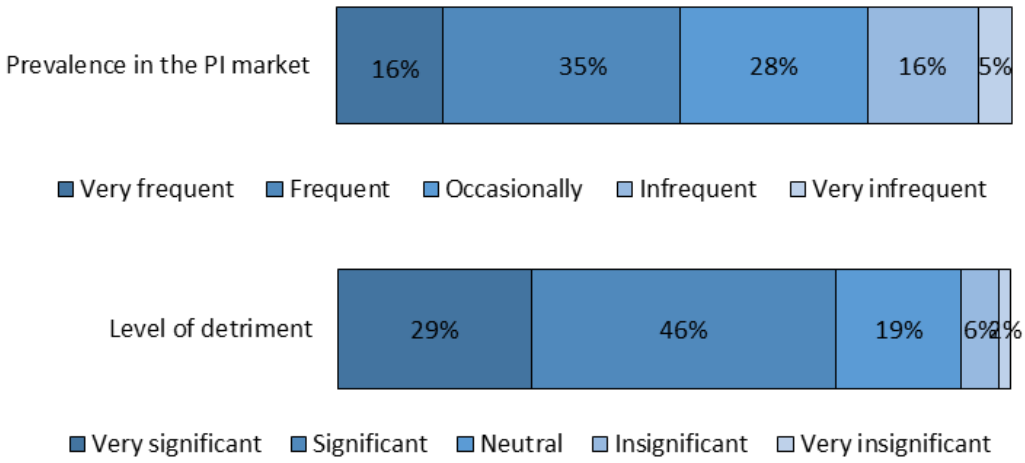
6.3 Inappropriate use of Part 36 offers to undervalue a settlement

"Part 36 offer" is the name given to an official offer made by one party to settle the case. This offer is made "without prejudice" which is to say that it is made "off the record" and can only be looked at after the judge has decided the case. Part 36 offers have positive and negative effects: positive in that they allow the process of negotiation to begin but negative in that if a party turns the offer down and subsequent events prove that to be a poor decision then the person turning down the offer can end up having to pay some of the other side's costs even if they have won.

Judging offers correctly requires the careful exercise of skill and judgment but is one of the ways in which the solicitor adds value to the process. As mentioned above, there is often no one right answer which makes the exercise of judgment even more difficult. Careful solicitors will allow a margin of error in order to be on the safe side. It is for the client to decide what to do about the offer. The solicitor's role is to ensure that the client has the information needed to make an informed choice.

Three-quarters of respondents (75 per cent) thought that inappropriate use of Part 36 offers to undervalue a settlement would have a significant impact on consumers, the rule of law and proper administration of justice (see Figure 6.5). Further, approximately half (48 per cent) believed Part 36 was commonly used as a vehicle for under-settling cases (see Figure 6.5). Whilst a quarter (26 per cent) agreed that misusing Part 36 would have a significant impact, they disagreed that it was common practice.

Figure 6.5 Prevalence and significance to the personal injury market - - inappropriate use of Part 36 offers to undervalue a settlement



Source: ICF survey data; unweighted base: 252

In contrast, **the in-depth interviews suggested that most people felt that Part 36 offers worked well and that, whilst there was some under-settlement, this largely took into account the risk of litigation and was for the most part fair.** The only specific and substantive example of inappropriate use was defendant solicitors partaking in a practice called "*time bomb part 36 offers".* Essentially, claimants are not given much time to consider and accept otherwise the offer expires[71]. This puts pressure on claimants who are worried about either a joint settlement meeting or going to trial to accept an offer. However, this is not an illegitimate tactic - the rules allow for it. The downside for the person withdrawing their Part 36 offer is that they gain no benefit from it later on. The other explanation that time limited offers are being made outside Part 36. Again this is legitimate. There was a concern claimant solicitors are not properly evaluating cases early enough so are unprepared for offers when they come.

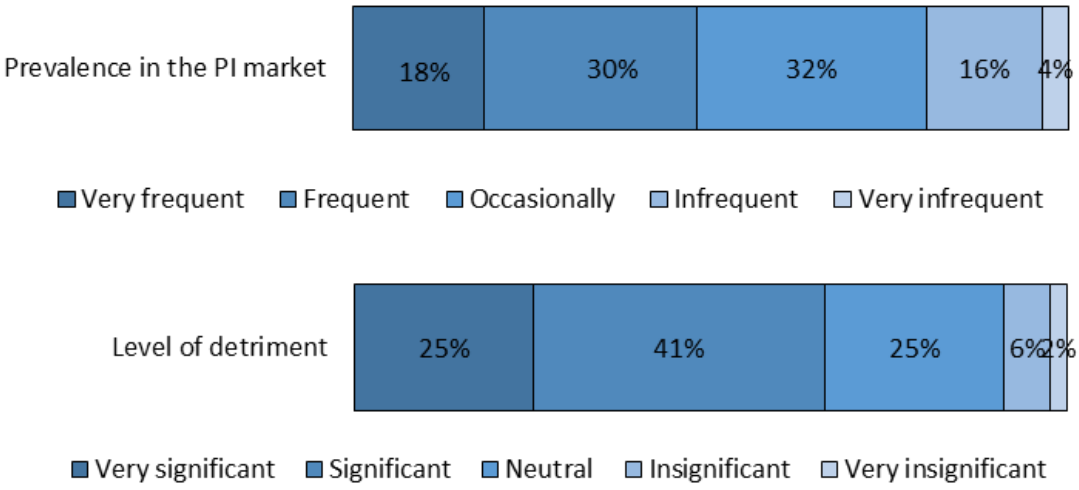
6.4 Delays in payment of damages to successful claimants

As PI claims are most often contingency fee-based, there may often be a considerable time lapse before a payment is received, potentially putting strain on the solicitor's cash flow. Any delay in payment after settlement may impose further strain.

Two-thirds of respondents (66 per cent) to the online survey felt delays in payment of damages to successful claimants significantly inhibited consumers, the rule of law and the proper application of justice (see Figure 6.6). Delay in payment was viewed by almost half of all respondents (47 per cent) as a common practice (see Figure 6.6).

[71] A part 36 offer has a lifespan of 21 days. So the pressure may arise because the Claimants have 21 days to decide. These offers can be structured so that they will be withdrawn after 21 days

Figure 6.6 Level of detriment to consumers, rule of law and proper administration of justice - delays in payment of damages to successful claimant



Source: ICF survey data; unweighted base: 246

Many participants to the in-depth interviews felt that delays in payment of damages often occurred and that it negatively impacted their business: "*far too much time is spent on chasing for payment and then solicitors are not reimbursed for this"*. However most were under the impression that payment delays stemmed from insurers rather than solicitors.

One interview participant suggested that getting interim damages from defendant firms was usually more of a problem than the final damages: "*Interim damages are critical and defendant lawyers are very difficult regarding giving this over. Pre-Jackson I could get things done much more quickly in court."*

7 Conclusions

This section presents our conclusions based on the analysis detailed in the previous sections. There are points that could benefit from further investigation that fall outside of the scope of this particular research. These are highlighted.

7.1 The Personal Injury Market

7.1.1 Claims and settlements

There are approximately one million cases of personal injury brought forward per annum (998,359 in 2014/15) and almost the same number of settlements (990,820) although these are not necessarily the same cases due to time lags and other factors. The majority of claims (76 per cent) relate to motor related claims (road traffic accidents or RTAs). Clinical negligence makes up a very small number of claims (under 2 per cent) but is disproportionate in terms of value (fewer but higher value claims).

The number of claims registered to CRU increased by almost 50% between 2006/7 to 2011/12 and has subsequently peaked, falling below one million in 2014/15. The growth in claims has prompted media commentary on a perceived rise in a 'compensation culture' especially in motor related claims (where there was a 58 per cent increase), leading to speculation of frivolous or fraudulent activity.

Lord Jackson's review of the PI market led to several recommendations, including a ban on referral fees and the introduction of fixed recoverable costs, resulting in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) of 2012.

7.1.2 The industry

The SRA regulates some 10,300 law firms in the UK of which 833 are specialist PI firms (defined as PI accounting for more than 50 per cent of turnover). In addition, there are a further set of firms (around 2,000) who engage in PI work. The market is split between solicitors representing claimants or defendants, and a few (generally larger firms) doing both.

The structure of the PI industry is changing and there is a growing gap between the smaller practices and larger firms. In terms of the industry structure, small firms still dominate in numerical terms (some 91 per cent are sole practitioners or firms with between 2-4 partners), but there has been a growth in the number of larger firms together with a noticeable market consolidation (solicitor firms coming together); Alternative Business Structures are now a reality. These were originally solicitor firms changing their business structures but increasingly there have been new entrants from firms that are new to the market (including Co-Op, BT, Saga and Tesco Law).

Research by the Legal Services Board estimated that a quarter of the PI market in terms of value could be accounted for by ten firms, and the percentage has probably grown subsequently. Non-specialist firms, where PI is less than 10 per cent of their business, account for some 20 per cent of the market. Some specialist area of PI work (e.g. military injuries) have attracted new businesses that cater specifically for niche market work. As a result there is an overall increase in the number of firms with less than five years' experience in the PI market. Our solicitor survey indicated that just under half (45 per cent) of respondents planned to diversify in the next two years, either into other areas of PI, or away from PI into different areas of law.

From our research, these changes in the make-up of the industry are more significant than other factors such as geography. There are some trends that can be seen as positive (more players in the market with increased competition, an increase in very specialist/niche businesses but at the same time more diversification and less reliance on PI for many firms) although this could also be seen as more negative (less experience). Other business sectors

demonstrate that smaller firms have barriers to investment, innovation and skills development/recruitment, whilst larger firms have some advantages of economies of scale.

7.2 Securing Clients

7.2.1 Referrals

As a result of LASPO the ban on referral fees took place in 2013. Such fees were regarded as being against the public interest and as potentially leading to frivolous or fraudulent cases – Claims Management Companies having proven adept at marketing PI services to prospective clients. Evidence from the literature suggests that CMCs still play a key role although there has been a rise in personal recommendations (50 per cent of those surveyed reported this as a route to securing business, especially the smaller firms. There is also evidence from the survey that the referral fee ban has led to new approaches to securing customers as well as a rethink of business models (such as joint ventures, collective marketing approaches etc.).

There was general support for the referral fee ban from those who participated in the survey although equally there were strong opinions that the ban could be circumvented – legally – through different mechanisms (e.g. through new business models such as ABSs), breaching the 'spirit of the ban' in a few cases.

There has been a move to new ways of securing business, including a greater use of social media and some direct advertising. Larger companies, including ABSs, are better resourced to invest and benefit from these changes, further extending the gap between the (majority) small and the larger firms. For the future we might expect smaller firms grouping together to invest in training and new skills.

7.2.2 Case selection and triage

A particular challenge for the PI industry is the initial assessment of cases (the process known as triage). Time and resources are less of a problem if a large settlement or a court procedure is anticipated but there have been concerns that weak claims are not always 'weeded out' (sometimes due to paralegals or junior legal staff being used at this stage of the process). The ideal position is that such cases will be addressed efficiently and correctly because solicitor firms are keen to maintain or promote their reputation and brand. The reduction of the role of CMCs would also be expected to see a transfer more of the initial assessment work to solicitors.

The survey suggested that the introduction of fixed recoverable costs has had the biggest impact on this stage of the process, given the time often required to prepare an assessment. It was suggested that larger firms had responded by employing junior/less experienced staff, with a consequent impact on quality, with senior staff reserved for the higher profile/more lucrative cases. Others responded by defending this practice, as long as the quality of supervision was high. Concerns for the future centred on capacity and specialist skills as firms diversify into non PI areas or focus more on niche areas of PI requiring specialist skills (especially in clinical negligence and noise induced hearing loss).

7.2.3 Frivolous and fraudulent claims

The survey and in-depth interviews tended to show that the PI industry is aware of its obligations and that a balance needs to be struck in supporting access to justice (not overly restricting claims) whilst reducing illegitimate claims (the rule of law and proper administration of justice). Claimant firms in particular rejected the notion that they were responsible for a 'compensation culture' or indeed if such a culture was widespread. Frivolous claims were recognised but were thought to be infrequent, as was the case for fraudulent claims.

7.3 Case Management

7.3.1 Gathering evidence

Once a case has been assessed and is in progression a more detailed gathering of evidence is required. This also serves to remove any frivolous or fraudulent cases that have passed the initial assessment. Solicitors consulted generally felt that the evidence gathering processes were good and recognised that there were negative impacts on clients if the processes were poor. There remain concerns over the quality of medical reporting and even with the introduction of the MedCo system which was designed to remove conflicts of interest and improve the quality of medical reports. Only a quarter of those surveyed felt that MedCo had achieved its objective of independence. Whilst the principles behind MedCo were generally supported, the implementation was criticised. There were also criticisms over the depth of scrutiny required to remove poor quality medical reports (some felt the information contained in the reports was overly standardised or superficial).

7.3.2 Client communication

There has, as in other business sectors, been a shift away from face-to-face meetings to email and/or telephone communication (used by 92 per cent and 97 per cent of surveyed firms respectively). These are used by both smaller and larger firms. Some clients prefer or require face-to-face communication (issues of language, literacy, sensitive issues) and firms require this when claims go to court. The right of clients to complain was adequately explained according to the majority of survey respondents.

7.3.3 Communication between claimant and defendant firms

There have been delays reported as well as concerns around the quality of Letters of Response (some can be ambiguous) which do not serve the reputation of the solicitor firms well and can have a negative impact on clients and their access to justice, and timely settlements. Claimant and defendant solicitors tend to blame each other for delays. Letters were often deliberately vague as solicitors are not inclined to provide more information than they need to, due to the potential implications should the claim go to court.

7.3.4 Cost implications

There was general support for no win no fee arrangements (NWNF) and most surveyed felt that the arrangements were adequately explained to clients (87 per cent agreed or strongly agreed that arrangements were adequately explained; although the in-depth interviews highlighted specific information and communication shortfalls, with variations for defendant and claimant solicitors – defendant solicitors have more scrutiny from insurers leading to a greater level of information). NWNF can increase access to justice in so far as the financial risk for clients is reduced, although this can also lead to frivolous and fraudulent cases, whilst solicitor firms have been compensated by success fees. There is a balance to be struck with solicitor firms wary of the business risks for companies dependent on NWNF arrangements.

7.4 Settlement

7.4.1 Out of court claims

There is an underlying incentive to settle as many claims out of court as possible (court claims requiring more time and money, and for the PI industry less ‘predictability’). Our research was concerned with the impact of regulatory changes on settlement, with evidence to suggest that fixed recoverable costs had encouraged more out of court settlements. In parallel the in-depth interviews suggested that increasing court fees were also a driver for out of court settlements. The in-depth interviews also suggested that out of court claims were agreed at a fair rate with both parties taking into account the risks of a court settlement.

7.4.2 Under settlement

Under settlement has been raised as a concern throughout the study. However, evidence for the survey, interviews and the research also highlights pressures from clients to settle, especially in low value claims. There were mixed views on the likelihood of under settlement with a minority (24% - very frequently, frequently) of survey respondents stating that cases were deliberately under settled to save money (for the defendant). There are two points here - defendant solicitors offering less than they think a case is worth and claimant solicitors taking less than they think a case is worth, but within a range of acceptable settlements, to expedite closure (and also balancing the work/time required to increase the financial value of the settlement)it may be that the likely additional value is not worth the input required to achieve it.

However, defendant solicitors interviewed pointed to the fact that clients could sue their solicitors if under settlement could be proved. This was seen as a safeguard to under settlement.

7.4.3 Pre-medical offers

In a related issue, the practice of pre-medical offers which was criticised by the Law Society, continues. In these cases a client is offered compensation before the severity of injuries or other medical problems has been assessed. It can cut costs for defendants and lead to under settlement. From our survey three quarters of respondents felt that offers were made before a client was in a position to have their injuries assessed and 'valued'. There was a view that the practice encouraged opportunistic claims with a detrimental impact on the PI industry in financial and reputation terms, whilst also leading to the potential for under settlement.

7.4.4 Part 36 offers

Another potential cause of under settlement is the use of Part 36 offers – an offer made by one party to settle a case. Part 36 offers were subject to reform under LAPSO to increase the pressure on defendants to settle cases. Views were mixed from the interviews and the survey, although the majority agreed that an inappropriate use of Part 36 offers had the potential to undervalue settlements, especially in cases where claimants are given just days to accept an offer before it expires.

7.4.5 Rehabilitation code

There were a few concerns raised about the level of knowledge and appropriate use of the rehabilitation code, however, in the main, solicitors applied the code correctly.

7.4.6 Payment delays

Almost half of those surveyed (47 per cent) felt that payment delays were common and had serious impacts on clients (relatively small sums can be important to lower income clients), solicitor cash flows, the costs of chasing payments, and the rule of law. Our study was undertaken at a time when plans were announced to introduce legal requirements on insurers to pay claims within a reasonable time period, although it does not appear that claimants would be the direct beneficiaries of this.

7.5 Potential Additional Research/Thematic Review

- **Under settlement** - a sampling of anonymised cases files – assuming access - could be used to provide hard data on under settlements, and the methods used for gauging claims.
- **Fraud** - a study of this type is unlikely to uncover any specific incidents of fraud. That would require a full audit of files for selected solicitor firms.

- **Quality standards** - a more in depth study on the quality standards employed by a sample of firms looking at the training provided to staff, the appropriateness of the levels of staff used, their knowledge base, staff turnover? and the information systems used by firms.
- **Client/customer perspectives** - this study is based on the perspectives of the PI industry and not its clients. However, it makes assumptions about client behaviours and perspectives that should be tested (e.g. are claims fully explained to clients or is the process overly technical lacking clarity and transparency for clients? what advice and guidance should clients have that is not currently available?).

ANNEXES

Annex 1 Solicitor interview topic guide

Your views on the effects of recent legislative and policy changes in the market

1. Introduction of fixed recoverable costs
    - What changes (positive or negative) have resulted from the introduction of fixed recoverable costs in relation to RTAs?
2. Ban on referral fees, and changes in business structures
    - How effective has been the ban on referral fees?
    - What has been the impact (positive and negative) of ABSs on the Personal Injury market?
    - What has been the impact (positive and negative) of solicitors making financial associations (e.g. with CMCs, insurers, MROs)?
3. Funding arrangements
    - What has been the impact of the introduction of "no win, no fee" arrangements?
4. To what extent has MedCo achieved its goals?

Your views on solicitor practices that may have a detrimental effect on consumers, the rule of law and the proper administration of justice.

5. Client introduction and case selection
    - How are firms reviewing and selecting PI cases to take forward? To what extent is this leading to poor case selection and encouraging the pursuit of frivolous claims on behalf of vulnerable claimants?
    - For advertising and attracting consumers, how prevalent are personal recommendations relative to direct advertising?
    - Firms have an obligation to take their clients instructions before progressing a case. Is there evidence of firms not doing so (i.e. rather than waiting for their client's instructions, firms progress the case simply on a signed authorisation provided by the claims company)?
6. Case management and progression
    - In terms of case management and progression, which other good and poor practices are exhibited by PI claimant and defendant solicitors?
7. Closure and settlement of claims
    - Is there evidence of undervaluing of claims, unjustified early settlement or under-settlement of cases? If so, what is driving these practices and what potential problems could this lead to for the market and regulation?
    - In terms of closure and settlement of claims, which other good and poor practices are exhibited by PI claimant and defendant solicitors?
8. Other issues
    - Overall, do solicitor firms – on claimant and defendant sides - have the required skills and competences to operate effectively and offer the required standard of service? Is this true for all claims or does it depend on the type of the claim?

- Finally, do you have any other comments that you would like to make about the market for PI in the UK?

Annex 2 Stakeholder interview topic guide

Your views on the effects of recent legislative and policy changes in the market

1. Introduction of fixed recoverable costs.
   - Changes brought by fixed recoverable costs in relation to RTA claims and Employers' Liability and Public Liability matters.
   - Effects of a possible introduction of a cap on the costs for clinical negligence claims.

2. Ban on referral fees
   - Changes in the business and funding structures of firms since the ban on referral fees.

3. Funding arrangements
   - Changes brought by the ban on recovery of fees from the losing defendant (CFA success fee and ATE premium).
   - Changes brought by the introduction of DBA capping fees and of "no win, no fee" arrangements.

4. Use of the MedCo system
   - Reactions of firms, insurers and MROs to the MedCo portal.
   - Effectiveness of the MedCo rules in achieving their goals.

Your views on solicitor practices that may have a detrimental effect on consumers, the rule of law and the proper administration of justice.

Please identify the prevalence of any solicitor malpractices, the level of detriment caused, and the causes of the malpractices - both on claimant and defendant sides.

1. Client introduction and case selection
   - Review and selection of cases to take forward. Pursuit of frivolous claims on behalf of vulnerable claimants?
   - Advertising techniques to attract consumers. Pressure selling and mis-selling?

2. Case management and progression
   - Progression of case without taking client instructions.
   - Other good and poor solicitor practices?

3. Closure and settlement of claims
   - Unjustified early settlement or under-settlement of cases?
   - Other good and poor solicitor practices?

4. Other issues
   - Solicitor firms' skills and competences.
   - Recommendations for future regulation or policy.

Annex 3 Research Approach

The study involved four main elements:

- Desk based research;
- a quantitative online survey of 255 SRA regulated PI firms in England and Wales;
- semi-structured in-depth interviews with 34 SRA regulated firms (representing claimants and/ or defendants) and 12 stakeholders;

The approach to the quantitative online survey and the qualitative in-depth interviews is summarised below.

7.6 Desk based research

This task involved the collection of quantitative and qualitative data from various sources to provide the evidence for the study. Specifically, this task included a review of relevant literature and SRA documentation, as well as an analysis of relevant data from the Compensation Recovery Unit (CRU) and the Claims Management Regulator.

7.7 The online survey

The online survey was designed to develop a profile of the current PI market as well as to explore solicitor behaviours, attitudes and motivations in respect of recent legislative and policy changes. The survey included questions exploring views on PI solicitor behaviours and resultant practices, as well as their perceived effects on consumers, the rule of law and the proper administration of justice. It also explored the impact, in terms of conduct and behaviour, of recent reforms, including the introduction of fixed recoverable costs, the ban on referral fees, the introduction of Alternative Business Structures (ABSs) and the MedCo system.

The survey results have been weighted to reflect the available data on the profile of the total population of SRA regulated PI firms. Due to uncertainty over the split between claimant and defendant solicitors, it has not been possible to weight the results by claimant firm and defendant firm. With claimant firms accounting for most of the survey responses (87 per cent), the results of the online questionnaire are therefore largely reflective of claimant solicitor views[72]. The subsequent analysis will, therefore, attempt to present a balanced picture, using both literature and the qualitative in-depth interviews to provide rationale or counterbalance explicitly claimant-sided views.

Further detail on the survey design and method, including the survey questionnaire, is presented in Annex 3.

7.8 Qualitative in-depth interviews

Semi-structured in-depth interviews were designed to unpack individual responses to the online survey and explore in more detail some of the key issues, which included:

- the effectiveness and impact of recent legislative changes on PI firms and efforts made to adapt to new requirements; and
- views on solicitor practices in the PI market and the extent to which these behaviours affect consumers and the administration of justice;

[72] The SRA, the Law Society and the Association of Personal Injury Lawyers (APIL) have advised that no list of claimant / defendants firms has been compiled – however, the number of claimant firms was reported to be significantly higher than defendant PI firms.

Respondents to the quantitative survey were asked whether they would be willing to participate in further research and the sample for the qualitative interviews was selected from this group. Additionally, trade organisations such as FOIL and ABI were approached in order to secure further contacts on the defendant side and ensure a balanced perspective. The interviews were conducted by telephone and lasted around 30 minutes. The interview topic guides are provided in and Annex 2.

A total of 34 solicitor interviews (8 of which were defendant solicitors) were undertaken over the telephone, a short period after these individuals had responded to the online survey. Due to the PI market structure, efforts were made to oversample defendant solicitors for the in-depth interviews to counterbalance well represented claimant solicitor views.

In-depth interviews were also conducted with (non-solicitor) stakeholders and government representatives, providing a range of different perspectives on good and bad practices in the market. The views of 15 key stakeholder views are reflected in our analysis and comprise the following organisations[73]:

Table 7.1 Stakeholder interview organisations

Organisation type	Stakeholders interviews
Regulatory bodies	■ Claims Management Regulator(Ministry of Justice (MoJ))
Representative body	■ The Law Society
Non-departmental public body	■ NHS Litigation Authority ■ MedCo
Trade/industry associations	■ Association of Personal Injury Lawyers (APIL) ■ Forum of Insurance Lawyers (FOIL) ■ Association of British Insurers (ABI) ■ Personal Injury Bar Association (PIBA) ■ Motor Accidents Solicitors Society (MASS)
CMC	■ National Accident Helpline
Insurers	■ Aviva ■ Allianz ■ Direct Line
Judicial representatives	■ High court judges specialising in PI ■ District judges specialising in PI

7.8.2 Analysing the responses to the stakeholder consultations

In terms of presenting the results of the qualitative in-depth interviews, we take into account differences between various types of stakeholders, whilst also making it clear to what extent opinions and statements are shared by them.

In terms of the 'weighting' of stakeholder opinions, we use the following 'scale':

- 100% - all
- 90-99% - almost all
- 50-89% - most
- 25-49 – many
- 10-24% - few
- 5-9% - very few
- 1-4% - almost none

[73] Because of anonymity requirements, information provided by stakeholders will not be directly attributable to their organisation.

- 0% - none

We also make use of 'around a quarter/third/half/two thirds/three quarters' if and when this is possible.

Annex 4 Online survey design and method

A4.1 Sample design and response rate

The survey population was targeted at solicitor firms in England and Wales with some proportion of their turnover attributed to PI. Respondents were sourced from the SRA's solicitor database. The overall survey population consisted of **2,648 SRA regulated PI solicitor firms operating across England and Wales**[74]. The overall sample size was selected to be sufficiently robust to allow analysis by turnover size, employee size bands (although some bands were combined to allow for meaningful analysis), firms by proportion of PI case work and by type of licence (e.g. ABS vs non-ABS).

Additionally, due to uncertainty over the extent to the balance between claimant firms and defendant firms (and those that are mixed) in the UK PI market, firms were asked in the survey to identify the proportion of claimant and defendant work, helping ensure that both defendant and claimant perspectives are represented in the analysis. Even so, the large majority of firms appear to focus on claimants.

Provides a summary of outcomes and response rates. The 255 completed online surveys represented approximately 10 per cent of the 2,648 contacts provided by the SRA. The respondents to the survey were almost all solicitor owners/ partners/ directors of an SRA regulated firm (89 per cent), which should ensure that the survey respondents have a high level of understanding of their firm, as well as the wider PI market.

A further 119 (4 per cent of contacts) partially completed the survey but did not submit their response. 46 (or two per cent of respondents) declined, the reasons for which ranged from a lack of time, firms not having a high enough level of involvement with PI and perhaps the belief that this research would lead to more (and excessive) regulation of PI. The relatively high no-reply rate increases the risk of non-response bias (i.e. that the answers of respondents differ from the potential answers of those who did not answer).

Table A4.1 Summary of response

Outcome	n=	% of all
Completed	255	10%
Partially complete	119	4%
Email bounces	54	2%
Declined	46	2%
No reply	2,174	82%
Total numbers called	**2,648**	**100%**

A4.1.2 Data weighting

Whilst the survey sample was broadly representative of the wider population[75], there were some minor differences between the characteristics of the respondents and the population parameters in the SRA database. For example:

- The survey sample included a higher proportion of firms with only one solicitor and a lower proportion of firms with 2-9 solicitors.

[74] The total population of SRA regulated PI firms is 2,772, although for the purposes of the survey some firms have been removed due to duplication in terms of legal structure/ partnership and/ or contact details.

[75] The population parameters were derived from administrative data provided to ICF by the SRA

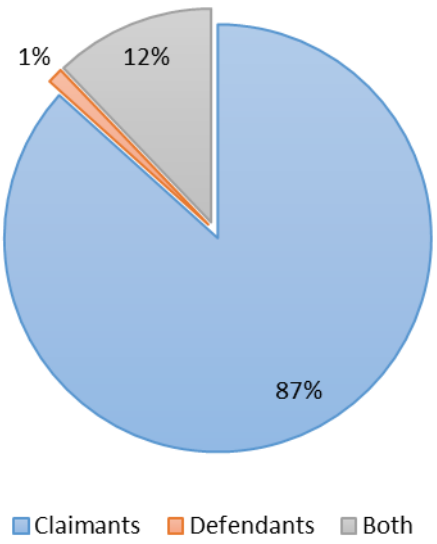
- The survey sample included a relatively larger proportion of firms with a turnover on the lowest (less than £20,000) and the higher end of the spectrum (£3 million and above). By contrast the survey sample represented a much lower proportion of firms with a turnover between £500,000 and £2,999,999.
- A higher proportion of specialist PI firms (i.e. with at least half of their annual turnover attributed to PI work) were represented in the survey sample compared to the overall population. Over half (51%) of respondent were specialist PI firms, whereas less than a third (29%) of SRA regulated firms active in PI secured more than half income from PI legal services.
- The number of ABSs in survey sample was higher than in the total population.

To correct for some of these differences in the profile of the survey sample, Random Iterative Method (RIM) weighting was used. The weighting applies a relative importance to the data based on the PI market population parameters, improving the validity of responses and potential inference.

A4.1.3 Claimant and defendant representation in the survey sample

An important caveat to interpreting the survey analysis is that it will be largely reflective of claimant solicitor views[76]. As illustrated in Figure A3.1**,** 87 per cent of respondents (221) solely represented claimants, whilst 1 per cent (3) were defendant-only solicitors. This is due to the structure of the PI market with fewer defendants who often purchase legal services in bulk (for instance, insurers).

Figure A4.1 Firm representation

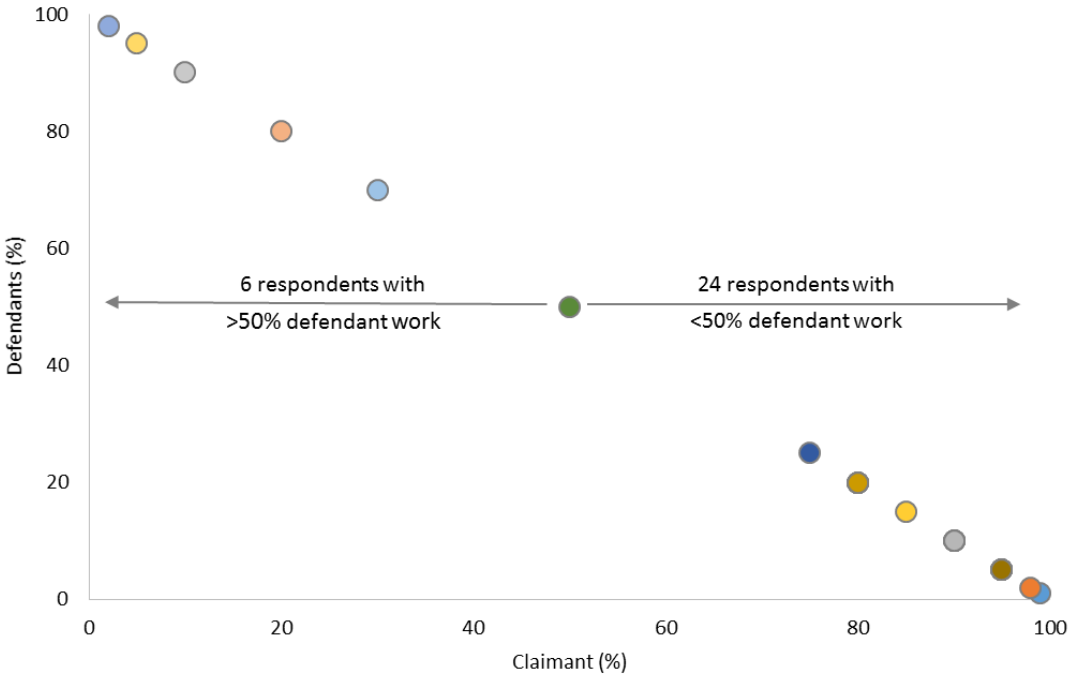


Source: ICF survey data; unweighted base: 255

Respondents indicating that their firms represented both claimants and defendants were asked to estimate the proportion of work undertaken for each. Figure A3.2, shows the distribution of respondents' reported proportion of defendant and claimant work, presenting the minimum, medium and maximum values. Those that represented both sides tended to have a larger proportion of claimant case work. For instance, the average proportion defendant casework amounted to 25 per cent (median of 10%) of firms' PI activity, compared to a much larger 72 per cent average (median of 88%) for claimant work.

[76] The SRA, the Law Society and the Association of Personal Injury Lawyers (APIL) have advised that no list of claimant / defendants firms has been compiled – however, the number of claimant firms was reported to be significantly higher than defendant PI firms.

Figure A4.2 Proportion of defendant and claimant work



Source: ICF survey data; unweighted base: 255

Annex 5 Online solicitor survey

Assessment of Personal Injury Market - survey of SRA regulated firms

Introduction

ICF International (an independent research consultancy firm), in association with Dominic De Saulles of Cardiff Law School, has been commissioned by the Solicitors Regulation Authority (SRA) to provide an assessment of the market for Personal Injury (PI) legal services.

The insights and opinions of individual solicitors and solicitor firms are fundamental to the validity and robustness of this work and we would therefore encourage you to spend 20 minutes completing this questionnaire.

The aims of this survey are to i) develop a profile of the current PI market; ii) explore perceptions about the impact of recent legislative / policy changes in this market; iii) explore perceptions about the practices of solicitors in this market.

We thank you in advance for your contribution.

Company information/ profile

For how many years has this firm been involved in personal injury claims?

- ◯ Less than two years
- ◯ 2-5 years
- ◯ More than 5 years

Which areas of the PI market is your firm active in and how long have you operated in each of these sub-markets? (Please tick all that apply)

	Less than 2 years	2-5 years	More than 5 years
Road Traffic Accidents (RTAs)	◯	◯	◯
Public Liability	◯	◯	◯
Employers' Liability (except Industrial Disease and NIHL)	◯	◯	◯
Industrial Disease (except NIHL)	◯	◯	◯
Noise-Induced Hearing Loss (NIHL)	◯	◯	◯
Clinical and Medical Negligence	◯	◯	◯
Military Injury	◯	◯	◯
Other Serious Injury	◯	◯	◯
Other	◯	◯	◯

If "other", please specify:

How many personal injury cases (ongoing and completed) did your firm handle in 2015? (Please tick all that apply)

	1-9	10-24	25-49	50-99	100 -499	500+
Road Traffic Accidents (RTAs)	◯	◯	◯	◯	◯	◯
Public Liability	◯	◯	◯	◯	◯	◯
Employers' Liability (except Industrial Disease and NIHL)	◯	◯	◯	◯	◯	◯
Industrial Disease (except NIHL)	◯	◯	◯	◯	◯	◯
Noise-Induced Hearing Loss (NIHL)	◯	◯	◯	◯	◯	◯
Clinical and Medical Negligence	◯	◯	◯	◯	◯	◯
Military Injury	◯	◯	◯	◯	◯	◯
Other Serious Injury	◯	◯	◯	◯	◯	◯

Other (please specify case type):

Company information/ profile

What are the business intentions of your firm in the next two years? (Please tick all that apply)

- ☐ The firm intends to diversify into different areas of personal injury
- ☐ The firm intends to diversify into different areas of law
- ☐ The firm intends to withdraw from the personal injury market
- ☐ The firm does not intend to make any changes

What are your firm's principal routes for securing clients? Please estimate the percentage of clients received using each of the following methods.

Personal recommendation (%)	
Direct advertising (text/phone, website, letter, TV, etc) (%)	
Arrangement with claims management company or similar (%)	
Arrangement with insurance company (%)	
Ownership arrangement (parent company introducing cases, etc) (%)	
Other (%)	
Total (%)	

Company information/ profile

How frequently does your firm use the following communication methods when interacting with the client? (Please tick all that apply)

	Frequently	Sometimes	Rarely	Never	Don't know/ NA
Face-to-face meeting	○	○	○	○	○
Telephone	○	○	○	○	○
Conference/Video Call	○	○	○	○	○
Email	○	○	○	○	○
Letter	○	○	○	○	○
Online case management system	○	○	○	○	○
No communication	○	○	○	○	○
Other	○	○	○	○	○

If "other", please specify:

Perceptions about the impact of recent legislative / policy changes in the personal injury market

We would like to explore your perceptions regarding the impact of recent legislative / policy changes in the personal injury market.

N.B. In this section, we are interested in your perceptions of the market as a whole rather than how you feel about your particular firm.

Perceptions about the impact of recent legislative / policy changes in the personal injury market

Out of court settlement of cases

To what extent do you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
Out of court settlements generally reflect the true potential value of the claim	◯	◯	◯	◯	◯	◯
Out of court settlements are only used in justified cases	◯	◯	◯	◯	◯	◯
Pre-med offers of settlement when the claimant is not in a position to 'value' the injuries (i.e. 'Calderbank' offers) is an increasing problem for claimants	◯	◯	◯	◯	◯	◯

Do you have any additional comments regarding out of court settlements of cases?

Introduction of fixed recoverable costs

Since 31st July 2013, RTA claims up to a value of £25,000, as well as Employers' Liability and Public Liability matters, have been subject to fixed recoverable costs.

To what extent do you agree or disagree that the introduction of fixed recoverable costs has...

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
...improved the quality of service	◯	◯	◯	◯	◯	◯
...improved access to legal services	◯	◯	◯	◯	◯	◯
...resulted in more out of court settlements	◯	◯	◯	◯	◯	◯
...resulted in changes to procedures and systems used for triaging, case selection and case preparation	◯	◯	◯	◯	◯	◯

Do you have any additional comments regarding the introduction of fixed recoverable costs?

Perceptions about the impact of recent legislative / policy changes in the personal injury market

Ban on referral fees

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act of 2012 introduced a ban on the payment of referral fees in personal injury cases. The ban has been effective since April 1st 2013.

To what extent do you agree or disagree that the ban on referral fees has...

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
...reduced the number of claims	◯	◯	◯	◯	◯	◯
...resulted in new business models (e.g. joint ventures, Alternative Business Structures, etc)	◯	◯	◯	◯	◯	◯
...resulted in changes to procedures and systems used for triaging, case selection and case preparation	◯	◯	◯	◯	◯	◯
...resulted in firms investing in new marketing techniques to attract clients	◯	◯	◯	◯	◯	◯

Do you have any additional comments regarding the ban on referral fees?

Perceptions about the impact of recent legislative / policy changes in the personal injury market

Introduction of Alternative Business Structures (ABSs)

Alternative Business Structures (ABSs) were introduced by the Legal Services Act 2007. The majority are regulated by the Solicitors Regulation Authority (SRA).

To what extent do you agree or disagree that the introduction of ABSs has...

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
...improved the quality of legal services provided to injured people	○	○	○	○	○	○
...improved injured people's access to legal services	○	○	○	○	○	○
...benefited larger firms at the expense of smaller firms	○	○	○	○	○	○

Do you have any additional comments regarding Alternative Business Structures (ABSs)?

Does your firm/senior staff have a financial association (e.g. through partnership/ownership) with any of the following organisations? (Please tick all that apply)

- ☐ Claims Management Company (CMC)
- ☐ Insurer
- ☐ Medical Reporting Organisation (MRO) (Tier 1 or Tier 2)
- ☐ Another law firm that conducts personal injury
- ☐ Advertising agency

Perceptions about the impact of recent legislative / policy changes in the personal injury market

Funding arrangements

To what extent do you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
'No win, no fee' arrangements improve access to justice, whilst retaining a high standard of service	◯	◯	◯	◯	◯	◯
'No win, no fee', arrangements have led to a compensation culture	◯	◯	◯	◯	◯	◯
'No win, no fee' arrangements are adequately explained to clients	◯	◯	◯	◯	◯	◯

Perceptions about the impact of recent legislative / policy changes in the personal injury market

Use of the MedCo system

April 2015 saw the introduction of MedCo, a new system used to facilitate the sourcing of medical reports in soft tissue injury claims brought under the Ministry of Justice's Pre-Action Protocol for Low-Value Personal Injury Claims in RTAs.

Does your firm use the MedCo system?

◯ Yes
◯ No

To what extent do you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
MedCo has achieved its aim of ensuring the independence of the MRO from the firm	◯	◯	◯	◯	◯	◯
The relationships between solicitor firms, insurers and MROs have been improved as a result of the MedCo system	◯	◯	◯	◯	◯	◯
The quality of reports for consumers has improved as a result of the MedCo system	◯	◯	◯	◯	◯	◯

Do you have any additional comments regarding the MedCo system?

Solicitor practices and behaviours

In this section we would like to explore solicitor practices and behaviours in the personal injury market . We are interested in your perceptions of practices in the market generally (not necessarily those of your firm).

To what extent do you agree or disagree with the following statements:

	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree	Don't know
The reputation of the claimant firm has an impact on the type of response by the defendant firm	◯	◯	◯	◯	◯	◯
Defendant insurers rarely fail to provide a Letter of Response within the prescribed period	◯	◯	◯	◯	◯	◯
When Letters of Response are provided they are well drafted, unambiguous, complete and show a good understanding of the case	◯	◯	◯	◯	◯	◯
The process for identifying the type of experts required to investigate a claim is not unduly drawn out	◯	◯	◯	◯	◯	◯
The processes for deciding whether an offer to settle is likely to be accepted are not unduly lengthy and protracted	◯	◯	◯	◯	◯	◯
Defendants are frequently defending cases where the evidence suggests the only way forward is for the defendant to admit liability	◯	◯	◯	◯	◯	◯

Solicitor practices and behaviours

How frequently are the following practices followed by solicitors in the personal injury market?

	Always	Mostly	Sometimes	Rarely	Never	Don't know
Using the correct claim document	○	○	○	○	○	○
Filling in all the required parts of the document	○	○	○	○	○	○
Claim document demonstrating a clear understanding of the nature of the Claimant's case	○	○	○	○	○	○
Correctly identifying the Claimant	○	○	○	○	○	○
Correctly identifying the Defendant (or Insurer)	○	○	○	○	○	○
Correctly stating the date of the incident	○	○	○	○	○	○
Correctly setting out the facts of the incident	○	○	○	○	○	○
Providing sufficient detail to enable the Defendant to investigate	○	○	○	○	○	○
Demonstrating that the facts have been investigated properly	○	○	○	○	○	○
Correctly identifying the cause of action	○	○	○	○	○	○
Setting out only those causes of action which are justified by the facts	○	○	○	○	○	○
Showing that each of the elements of the cause of action is satisfied	○	○	○	○	○	○
Correctly detailing the medical treatment given	○	○	○	○	○	○
Requesting an amount of disclosure that would be justified by the facts put forward in the claim document	○	○	○	○	○	○

Solicitor practices and behaviours

Consumer detriment and administration of justice

'In this section, we are interested in whether there are any identifiable practices or behaviours within the personal injury market that may have a detrimental effect on consumers, the rule of law and the proper administration of justice.

We would be interested in your views on the extent to which these practices or behaviours are prevalent and the significance you attach to them in respect of the negative impact they have.

In your view how prevalent are the following practices and behaviours and how significant is the detriment to consumers, the rule of law and the proper administration of justice? (Please select from the dropdowns to indicate the frequency and significance of each practice)

	Prevalence in the personal injury market	Level of detriment to consumers, rule of law and proper administration of justice
Receiving referrals outside of the provisions of LASPO (referral fee ban)	--Click Here--	--Click Here--
Fraudulent cases being accepted and pursued	--Click Here--	--Click Here--

Very frequent
Frequent
Occasionally
Infrequent
Very infrequent

Very significant
Significant
Neutral
Insignificant
Very insignificant

Frivolous cases being accepted and pursued	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Poor information about costs provided to claimant	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Poor evidence gathering to determine strength of claim and quantum	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant

Solicitor practices and behaviours

In your view how prevalent are the following practices and behaviours and how significant is the detriment to consumers, the rule of law and the proper administration of justice? (Please select from the dropdowns to indicate the frequency and significance of each practice)

	Prevalence in the personal injury market	**Level of detriment to consumers, rule of law and proper administration of justice**
Claimant delay in respect of correspondence	--Click Here--	--Click Here--
Defendant delay in respect of correspondence	--Click Here--	--Click Here--

Prevalence options: Very frequent; Frequent; Occasionally; Infrequent; Very infrequent

Level of detriment options: Very significant; Significant; Neutral; Insignificant; Very insignificant

Failure to notify claimant/defendant of right to complain	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Failure to gather appropriate evidence (medical reporting, witnesses etc)	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Poor quality medical reporting	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant

Claimant solicitor running up unnecessary legal costs	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Defendant solicitor/representative running up unnecessary legal costs	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Lack of understanding and application of the Rehabilitation Code	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant

Solicitor practices and behaviours

In your view how prevalent are the following practices and behaviours and how significant is the detriment to consumers, the rule of law and the proper administration of justice? (Please select from the dropdowns to indicate the frequency and significance of each practice)

	Prevalence in the personal injury market	**Level of detriment to consumers, rule of law and proper administration of justice**
Failure to adequately estimate the level of compensation (claimant)	--Click Here--	--Click Here--
Deliberately under-settling a case to save the defendant money	--Click Here--	--Click Here--

--Click Here--
Very frequent
Frequent
Occasionally
Infrequent
Very infrequent

--Click Here--
Very significant
Significant
Neutral
Insignificant
Very insignificant

Defendant solicitors making pre-med offers of settlement when the claimant is not in a position to 'value' the injuries.	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Inappropriate use of Part 36 offers to undervalue a settlement	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant
Delays in payment of damages to successful claimant	--Click Here-- Very frequent Frequent Occasionally Infrequent Very infrequent	--Click Here-- Very significant Significant Neutral Insignificant Very insignificant

Solicitor practices and behaviours

Do you have any additional comments regarding the practices and behaviours of SRA regulated firms with respect to:

Claimants:

Defendants:

Additional information about your firm

Below we present a number of additional questions that will help us profile the personal injury market. **We appreciate that some of this information may not be readily available to you so we kindly ask you to provide a best estimate based on your existing knowledge.**

Currently, how many full-time equivalent (FTE) staff does your firm employ?

--Click Here--
1-24
25-49
50-99
100-199
200+

For each occupational type, how many FTE employees principally work on personal injury cases (i.e. at least half of their work load relates to PI cases)

	1-24	25-49	50-99	100-199	200+
Barrister	○	○	○	○	○
Solicitor - owner/partner/director	○	○	○	○	○
Solicitors - Non-partner	○	○	○	○	○
Chartered legal executives	○	○	○	○	○
Paralegals	○	○	○	○	○
Legal secretaries and other staff	○	○	○	○	○
Don't know	○	○	○	○	○

Additional information about your firm

Typically, what proportion of work on a personal injury case is completed by the following types of staff? Please specify for each stage of the process

	Legally qualified staff (%)	Nonlegally qualified staff (%)	Total (%)
Triaging and case selection			
Preparation of case			
Finalising case (settlement/ court)			

Additional information about your firm

Based on your best estimate, have your firms' fees (total sales) from personal injury claims increased, decreased, or remained the same over the last two years?

- ○ Increased
- ○ Remained the same
- ○ Decreased
- ○ Don't know

Based on your best estimate, have the total fees (sales) from personal injury claims as a proportion of total turnover increased, decreased, or remained the same over the last two years?

- ○ Increased
- ○ Remained the same
- ○ Decreased
- ○ Don't know

Finally, do you have any further comments that you would like to make?

Further contact

As part of this research, we also plan to undertake interviews with a sample of solicitor firms. These interviews will allow further exploration of key issues identified through this survey. The discussions will last 40 minutes, and will be conducted during February / March. We would be grateful if you would indicate whether you would be happy to be contacted for a telephone or face-to-face meeting.

If you do not wish to be contacted for a follow-up interview, please tick the box below:

☐ Opt-out

Further contact

If you are happy to be contacted, please complete the following contact details

Name:

Job Title:

Email:

Thank you

Thank you very much for taking the time to respond to this survey;
your response is important to us.

Please press 'submit' below.