

Reflecting on Solicitors Professional Indemnity Insurance (PII): market trends and analysis of historic claims data

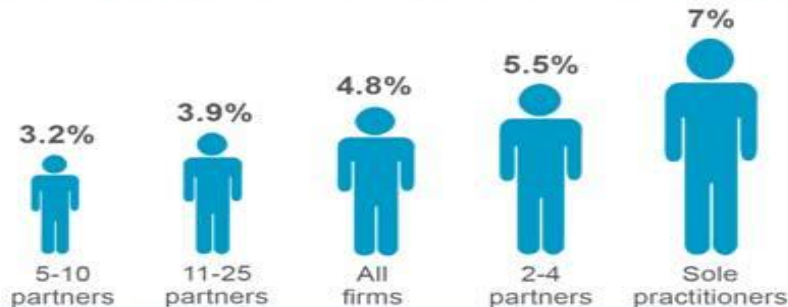
Crispin Passmore

Summary



Recent renewals relatively smooth and premiums stable. But this may not continue.

Mean 2015-16 premium costs as % of turnover



Prescriptive coverage preventing innovation in insurance products for emerging risks

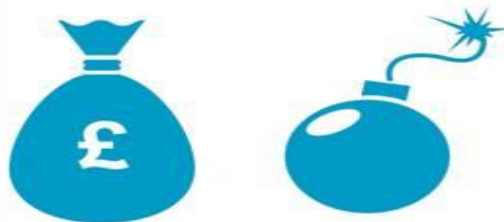
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Limited flexibility for cover to reflect individual firms risk profile

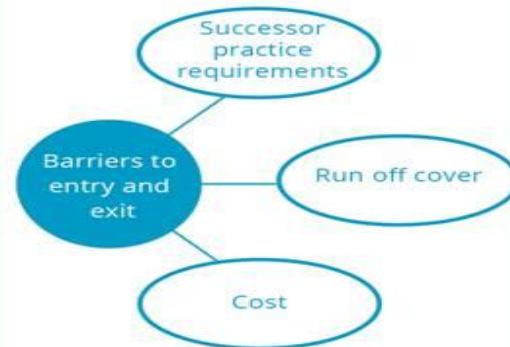
Summary



High proportion of claims from narrow set of legal activities

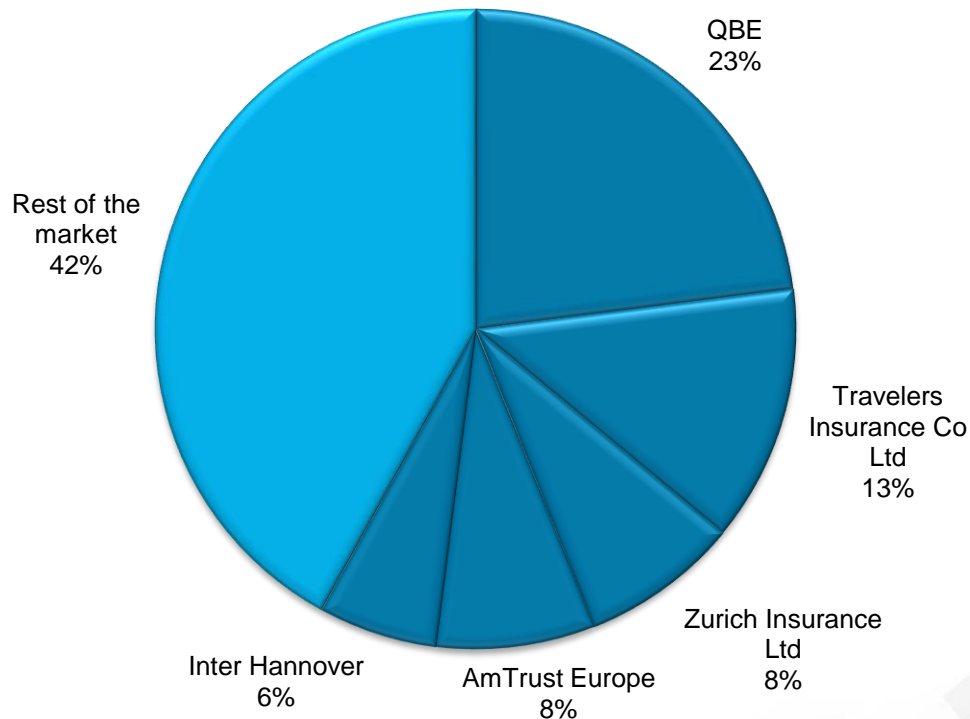


Claims process can be costly and contentious



Current arrangements can act as barrier to entry and exit from the market

The PII market: 2014-15 premium income



In 2014-15
nearly 60%
premiums written by
5 out of 38 insurers

The PII market: comparison with other professions



Size of solicitors PII market bigger than all other regulated legal services providers combined



Compared to other professions only doctors and dentists have a higher number of insured and estimated premiums

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Amount of risks/liabilities covered by mandatory requirements more extensive than most other legal service providers/professions

Recent trends



Increasing rated capacity



Recent renewals relatively smooth and premiums stable. But this may not continue.



Firms moving to
**variable
renewals
period**



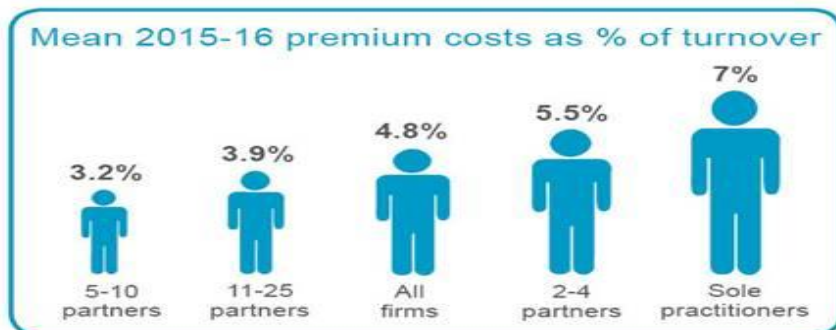
Emerging risks including
Cybercrime

Cost of premiums

2014-15		2015-16
£29,478	All firms	£27,209
£9,448	Sole practitioners	£8,773
£29,848	2-4 partners	£29,049
£85,095	5-10 partners	£71,448
£161,070	11-25 partners	£154,356



Annual renewals process and disclosure requirements create high fees or costs for firms looking to switch insurer



Cost of run-off is barrier to orderly closure



OVER

1/3

of solicitors
aged
41-60 work in
sole practices

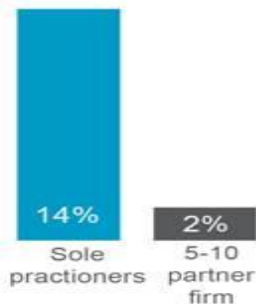


Median cost of run-off 2016

14%

of sole practitioners
have considered
putting their firm
into run-off

(this could make them more
likely to use an unrated
insurer)



NEARLY **20%**

of interventions by the
SRA, causing increased
cost to the profession,
arise from poorly
managed firm closures

Historic claims data

What data did we receive?



Claims data for the ten year period 2004 to 2014 from most insurers currently active in the market.

Around 142,000 negligence claims notified to insurers by firms - this includes 'block claims', so individual cases of negligence much higher.

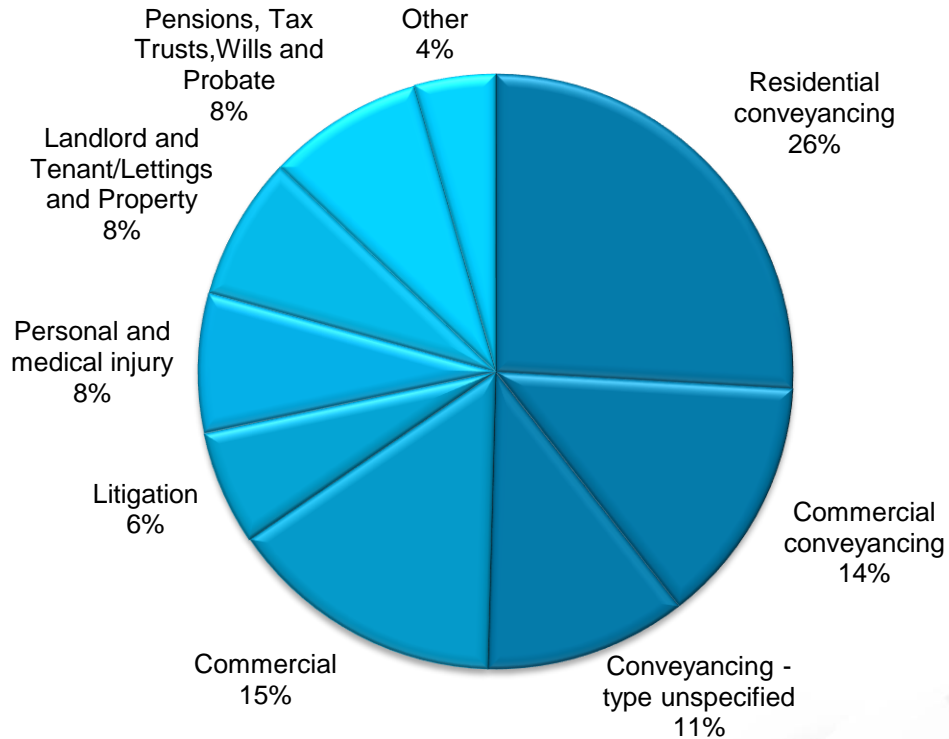
Insurers' data recording systems differ – we re-coded data to consolidate and analyse in a meaningful way.

No one should rely on this analysis for any commercial, purchasing or other decision - it is only to aid discussion about role of PII in legal market

Overview of indemnity payments (£ value)

Area of law	Maximum payment value	Mean payment value	Median payment value	Total payments
Block claims	12,376,000	1,902,000	1,004,000	66,564,000
Commercial	14,413,000	262,000	39,000	229,159,000
Commercial Conveyancing	6,367,000	139,000	37,000	206,007,000
Conveyancing (type unspecified)	3,693,000	65,000	21,000	166,889,000
Employment	1,132,000	30,000	10,000	13,386,000
Family	1,899,000	36,000	11,000	23,169,000
Personal Injury	5,197,000	42,000	9,000	101,333,000
Landlord and Tenant	1,902,000	77,000	23,000	48,355,000
Lettings and property	2,801,000	48,000	4,000	70,367,000
Litigation	2,571,000	49,000	9,000	94,378,000
Medical negligence	3,865,000	60,000	6,000	14,123,000
Not known or unspecified	20,372,000	79,000	6,000	367,070,000
Pension	4,679,000	357,000	44,000	14,639,000
Residential Conveyancing	5,896,000	57,000	19,000	393,911,000
Tax	2,080,000	126,000	24,000	12,563,000
Trusts and Estates	5,883,000	59,000	13,000	73,980,000
Wills and Probate	1,331,000	50,000	15,000	27,960,000
Other	1,824,000	30,000	2,000	30,688,000
All	20,372,000	72,000	13,000	1,954,541,000

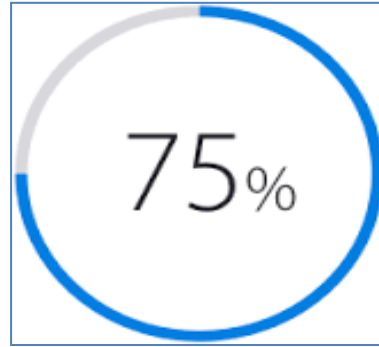
Indemnity payments arise from a narrow set of legal activities



Where insurers specified reason for the claim - 50% or £770 million of value of indemnity payments result from a failure in conveyancing work.

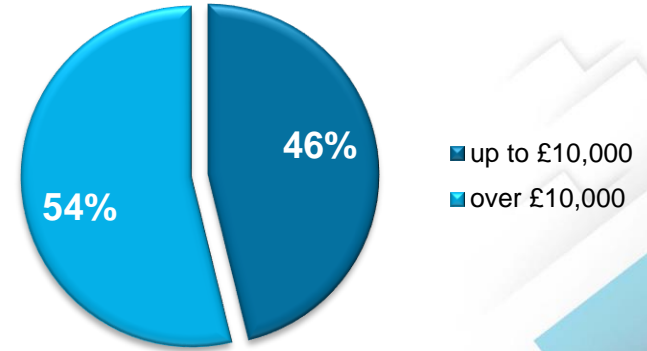
- **Conveyancing:** extent of property, planning, inadequate searches, investigation of title, Council of Mortgage Lenders (CML) notifications
- **Commercial:** tax advice, drafting, registration of charges.
- **Litigation:** missed time limits, suing of failing to sue correct defendants, advice on settlement, costs.
- **Personal Injury:** failure to submit claims on time, inadequate settlement advice.
- **Trusts and Probate:** delay, execution (technical mistakes), drafting, higher tax bills, failing to advise on contested wills.

Size of payments



1 in 5 claims resulted in indemnity payment

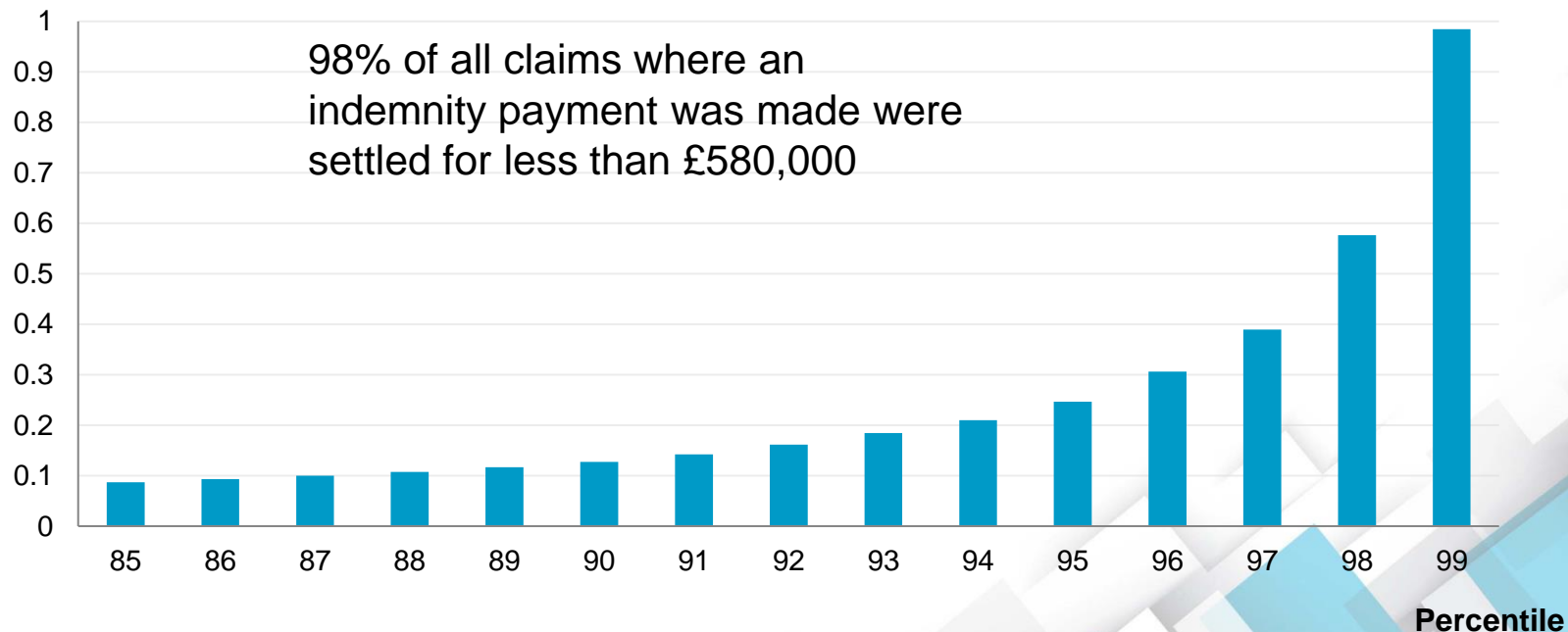
Closed claims involve no positive indemnity or defence costs



Large number of low value - but positive - indemnity payments (dark blue – value £40 million and light blue £1,920 million)

Percentile distribution: all claims

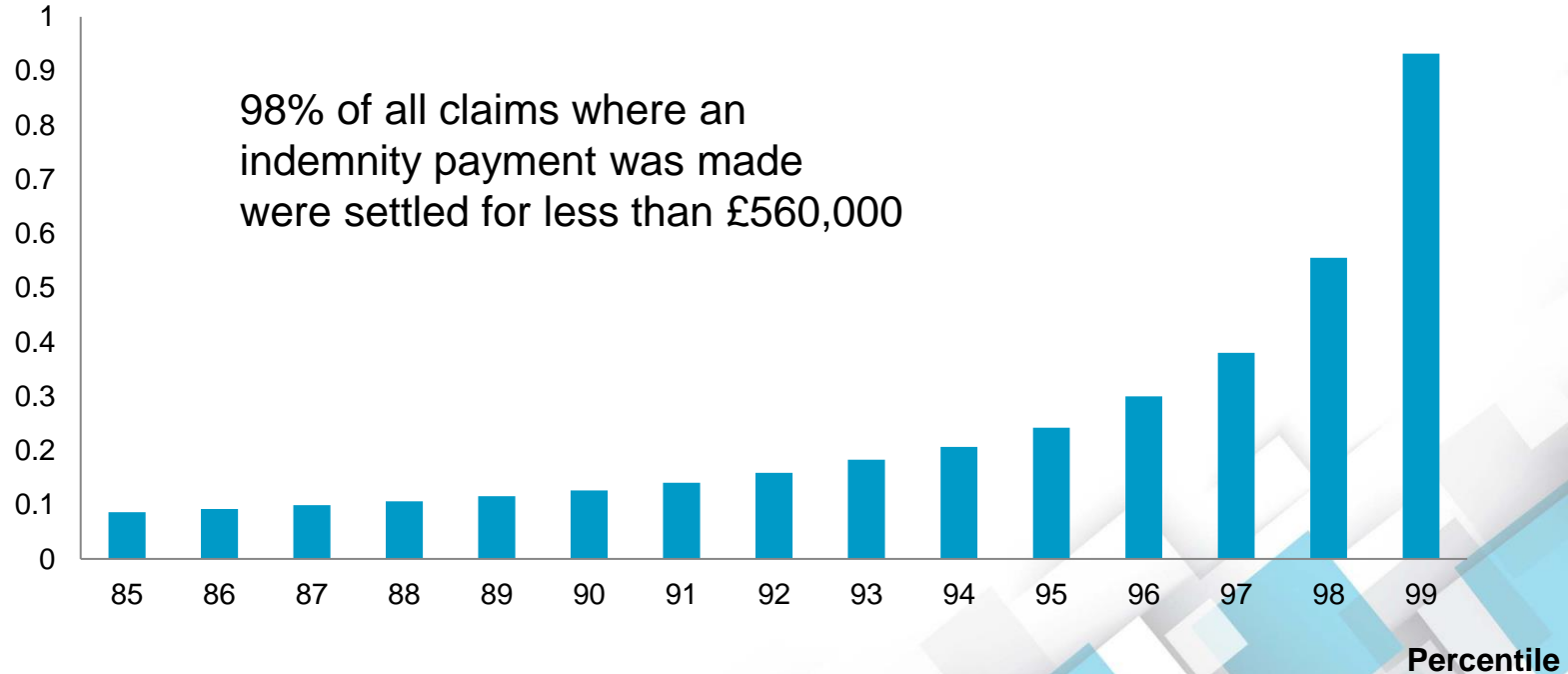
Value – £ millions



Source: insurer claims data 2004-14

Percentile distribution: all claims (excluding block claims)

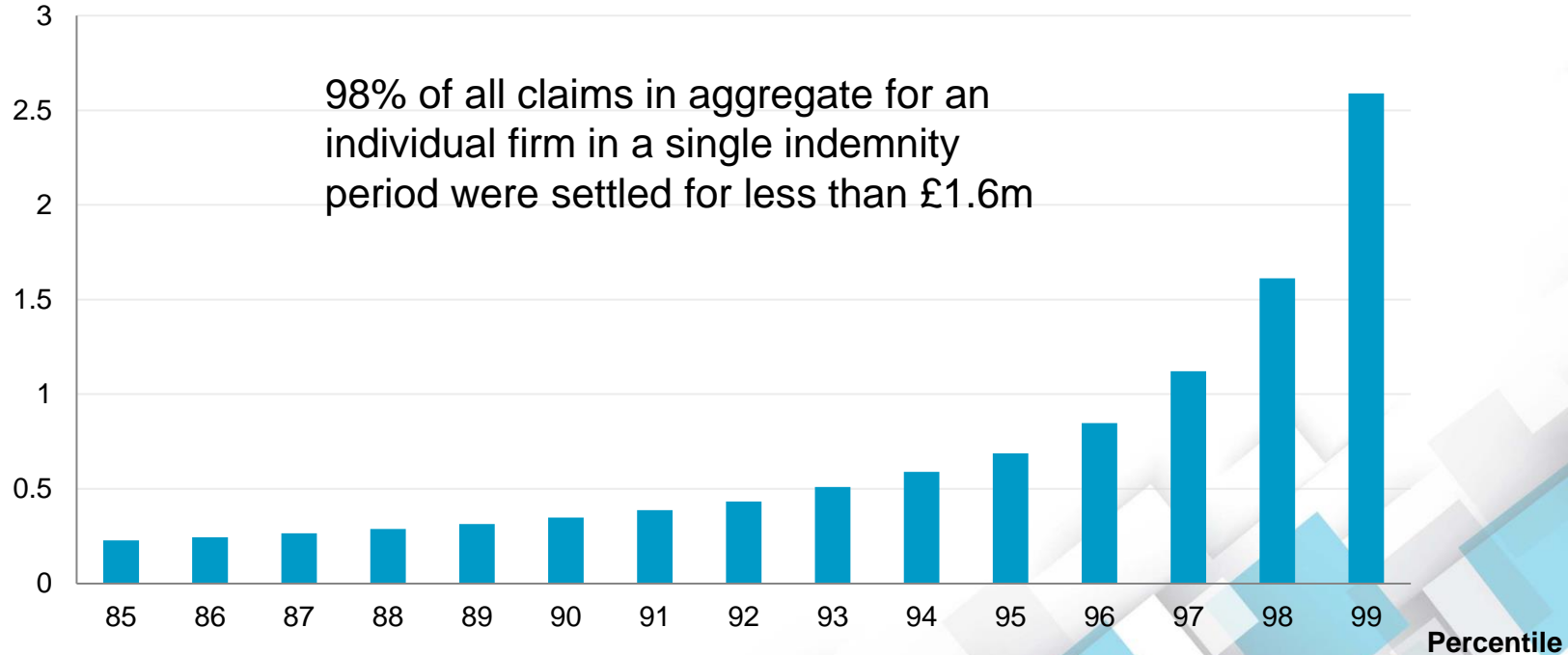
Value - £ millions



Source: insurer claims data 2004-14

Aggregate payments individual firms in indemnity year: all closed claims

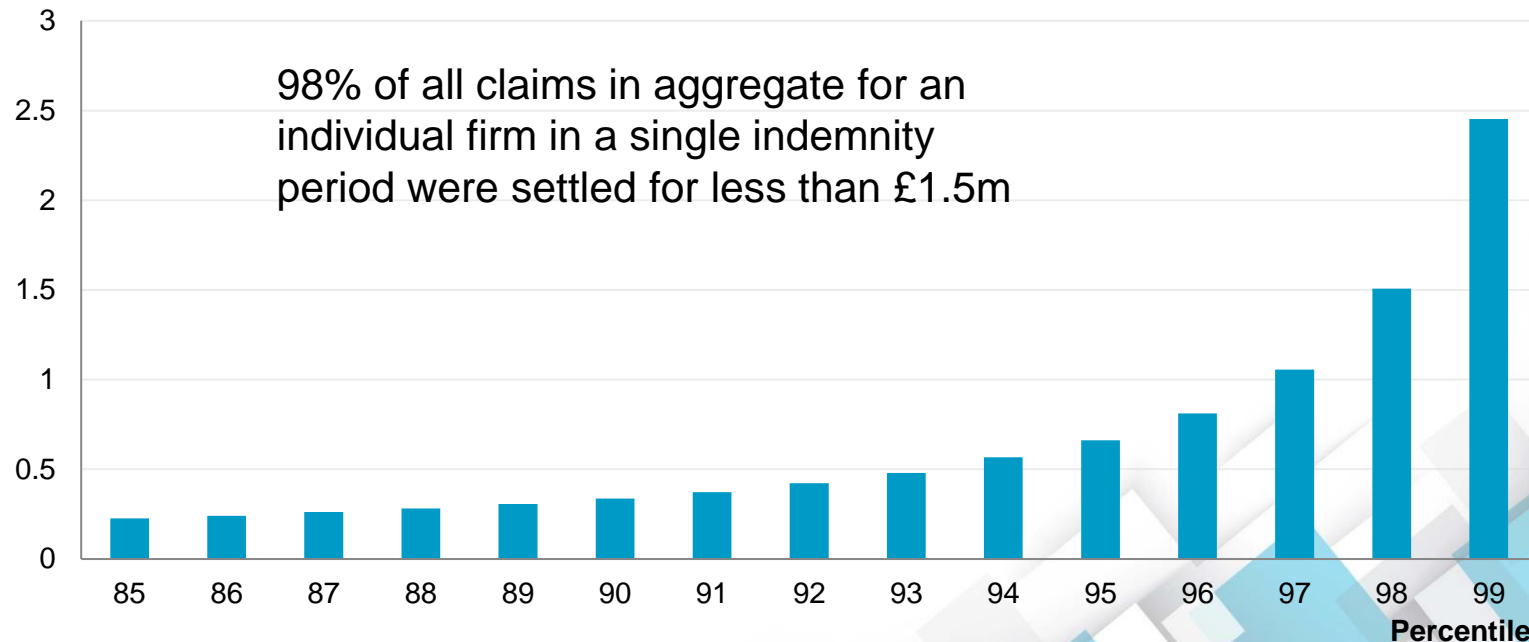
Value – £ millions



Source: insurer claims data 2004-2014

Aggregate payments individual firms in indemnity year: all closed claims excluding block claims

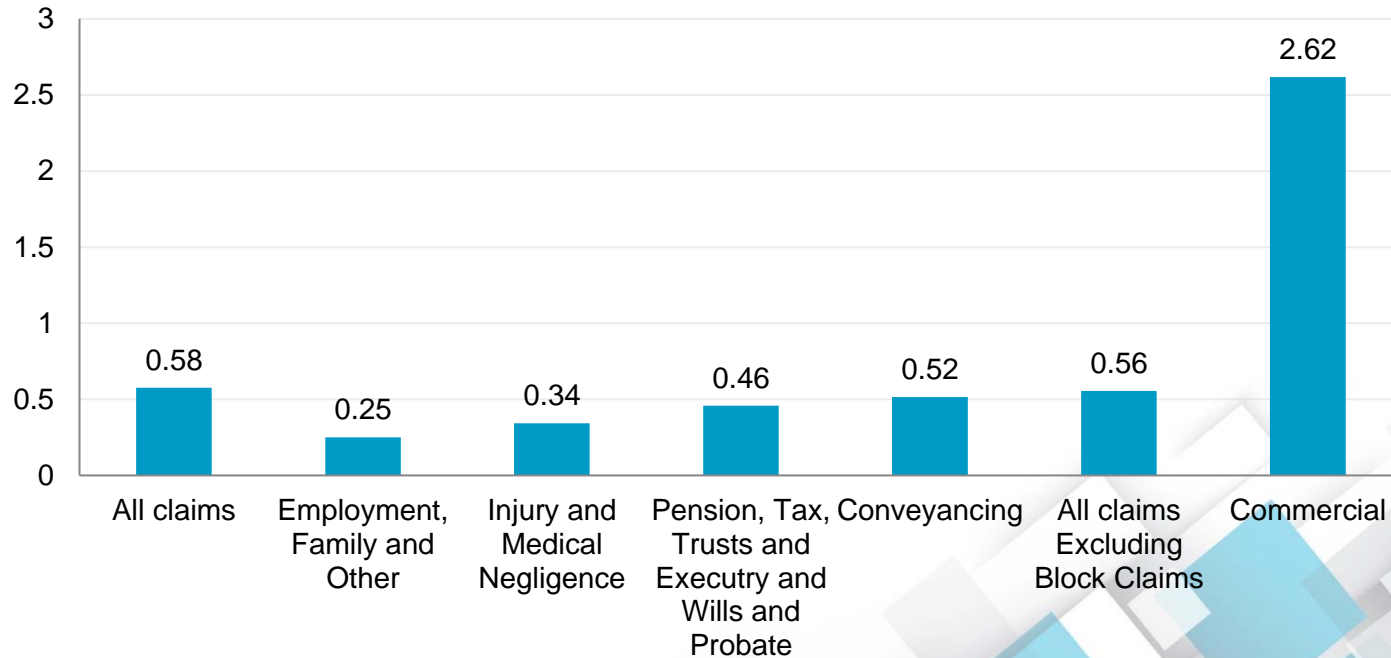
Value -
£ Millions



Source: insurer claims data 2004-2014

Individual claims by grouping areas of law: 98 percentile

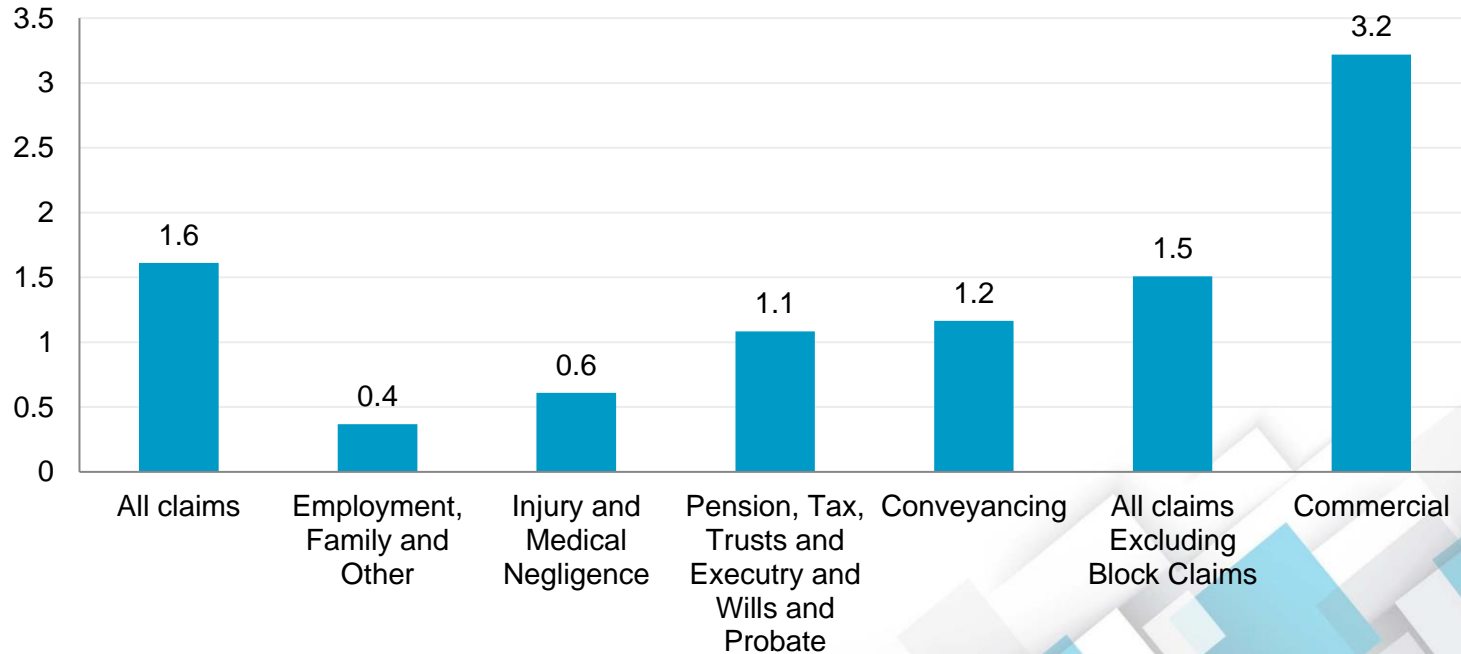
Value -
£ millions



Source: insurer claims data 2004-2014

Claims in a single indemnity period by grouping areas of law: 98 percentile

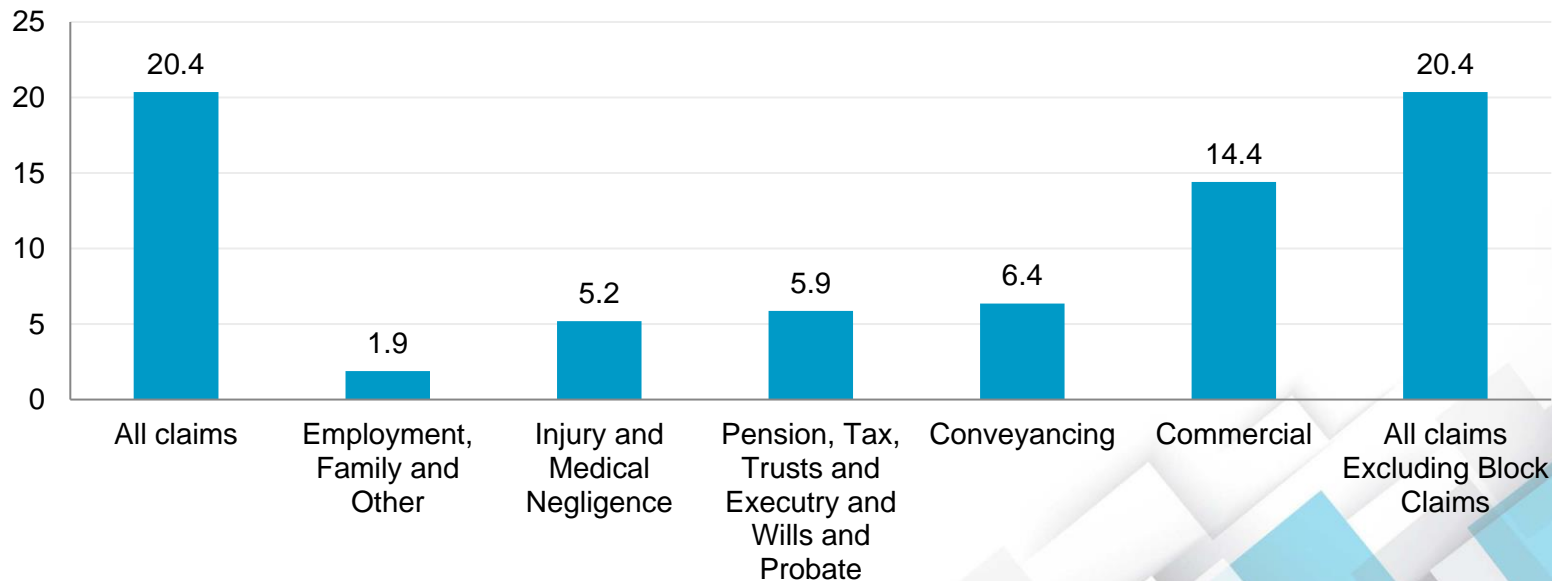
Value - £ millions



Source: insurer claims data 2004-2014

Individual claims by area of law: maximum value

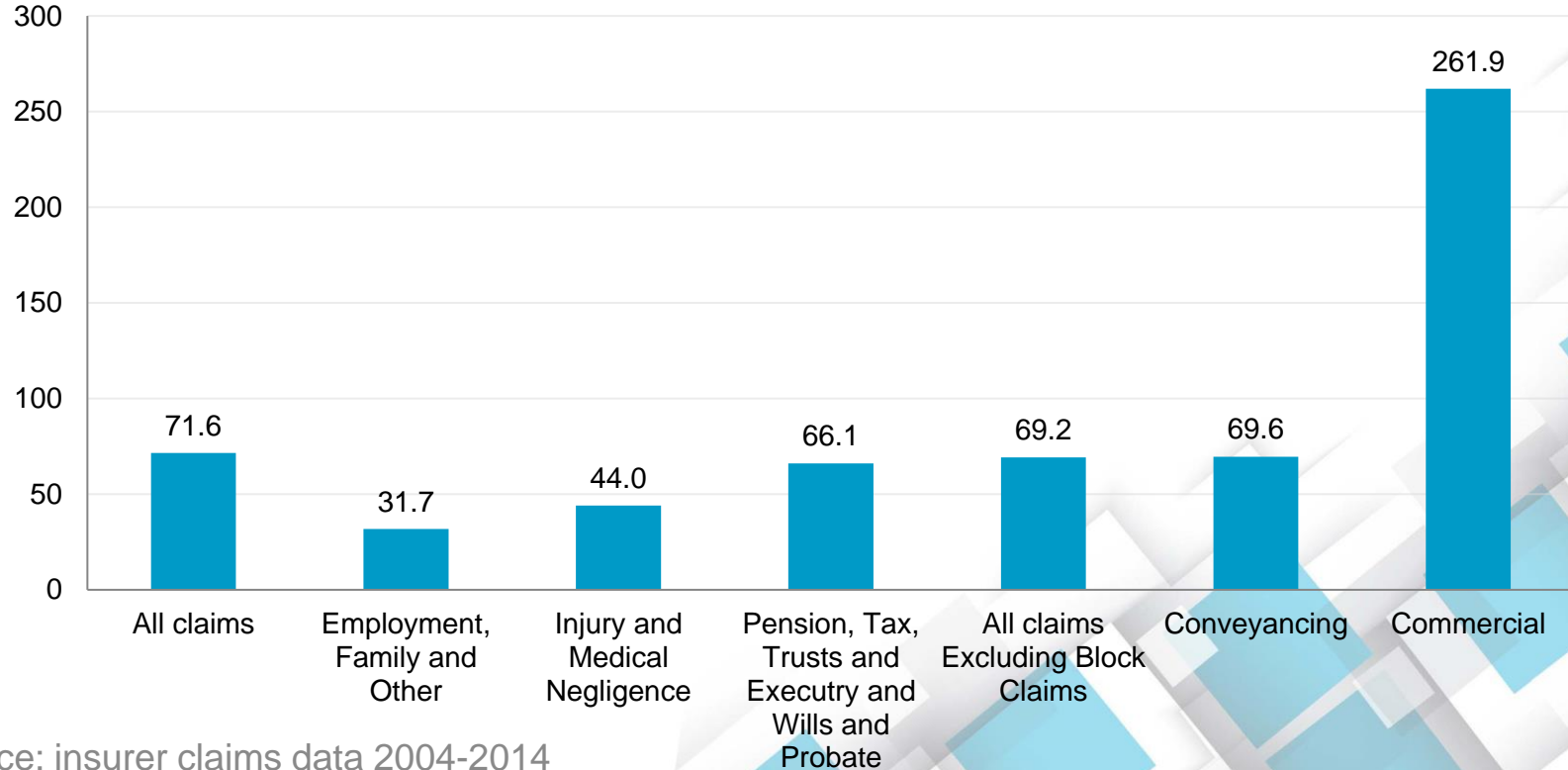
Value - £ millions



Source: insurer claims data 2004-2014

Individual claims by area of law: mean value

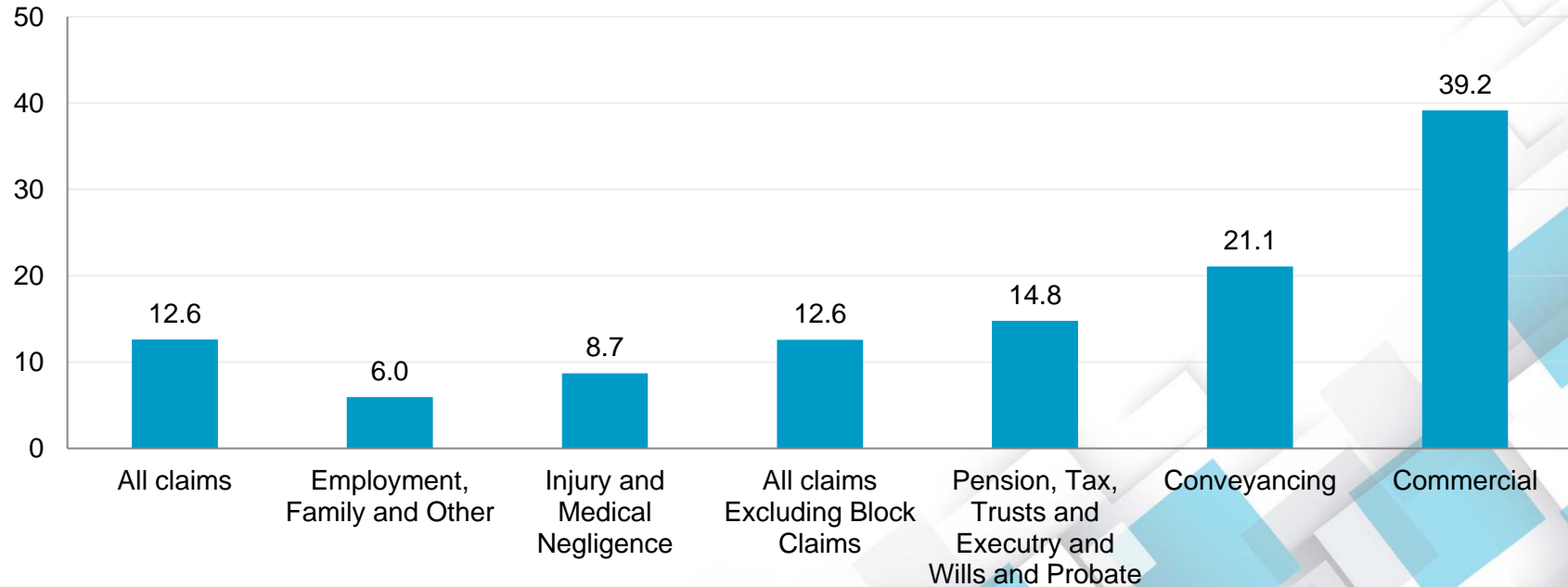
Value - £ thousands



Source: insurer claims data 2004-2014

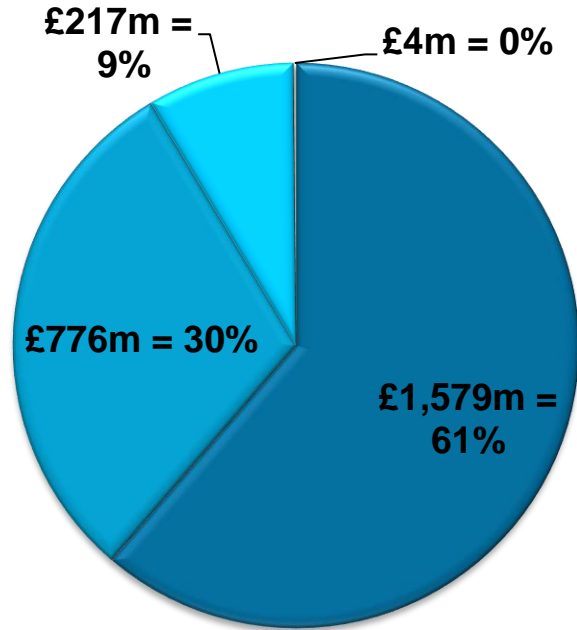
Individual claims by area of law: median value

Value - £
thousands



Source: insurer claims data 2004-2014

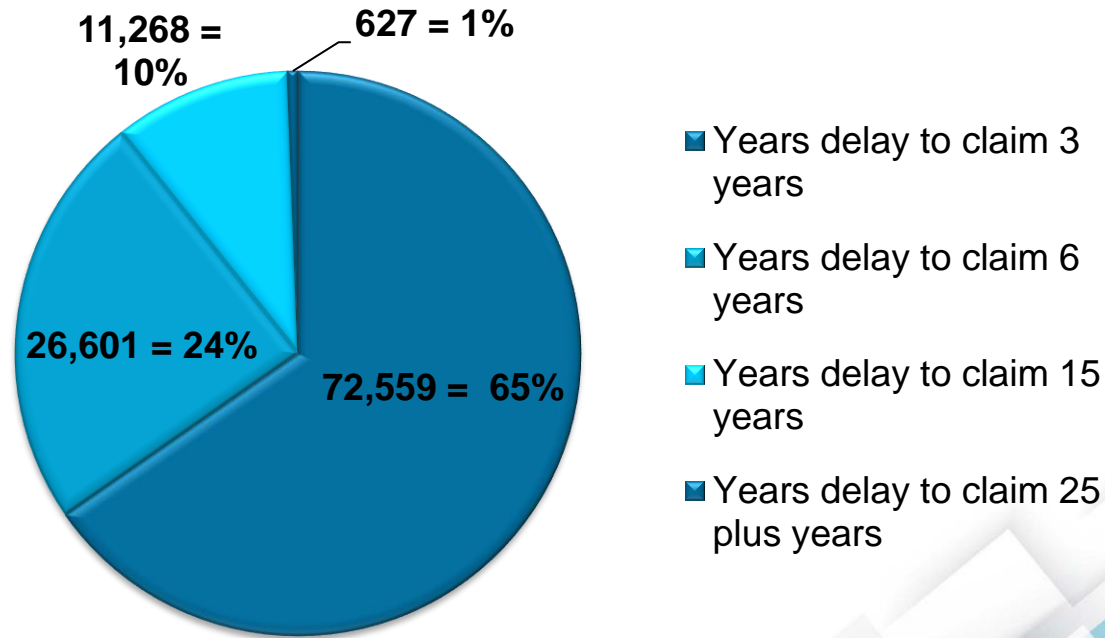
Pattern of claims in run-off period: all claims value (£ million)



- Years delay to claim 3 years
- Years delay to claim 6 years
- Years delay to claim 15 years
- Years delay to claim 25 plus years

Source: SIF analysis of all claims against SIF (1987 – 2016)

Pattern of claims in run-off period: all claims (numbers)



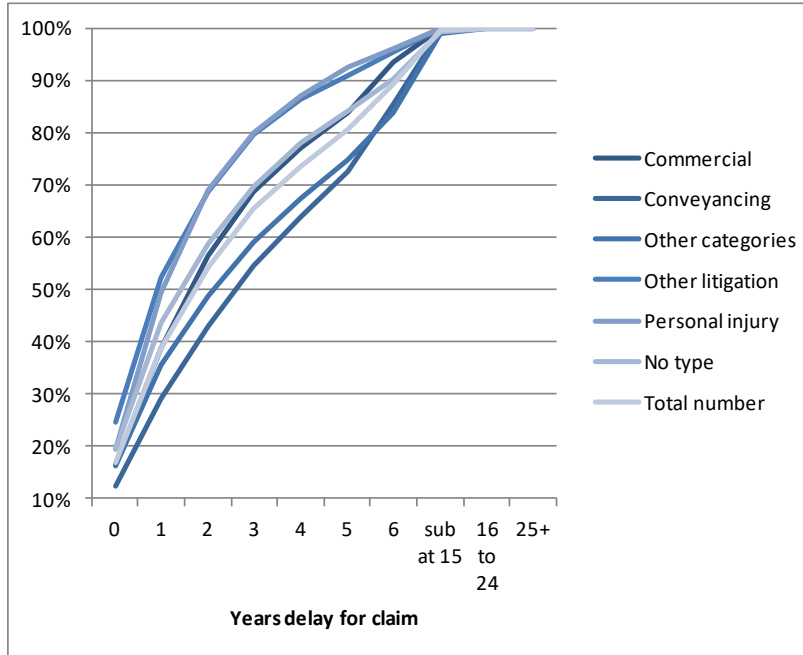
Source: SIF analysis if all claims against SIF (1987 – 2016)

Development patterns – by area of law (value)



Years Delay	Cumulative proportion of claims (value)						
	Commercial	Conveyancing	Other categories	Other litigation	Personal injury	No type	Total number
0	11%	8%	10%	19%	21%	15%	12%
1	30%	24%	28%	41%	51%	39%	32%
2	49%	38%	42%	59%	69%	57%	49%
3	63%	51%	54%	74%	80%	70%	61%
4	74%	62%	65%	82%	87%	79%	71%
5	83%	73%	74%	88%	92%	86%	80%
6	93%	90%	83%	95%	96%	93%	91%
sub at 15	100%	100%	99%	100%	100%	100%	100%
16 to 24	100%	100%	99%	100%	100%	100%	100%
25+	100%	100%	100%	100%	100%	100%	100%

Development Patterns – by area of law (Nbr)



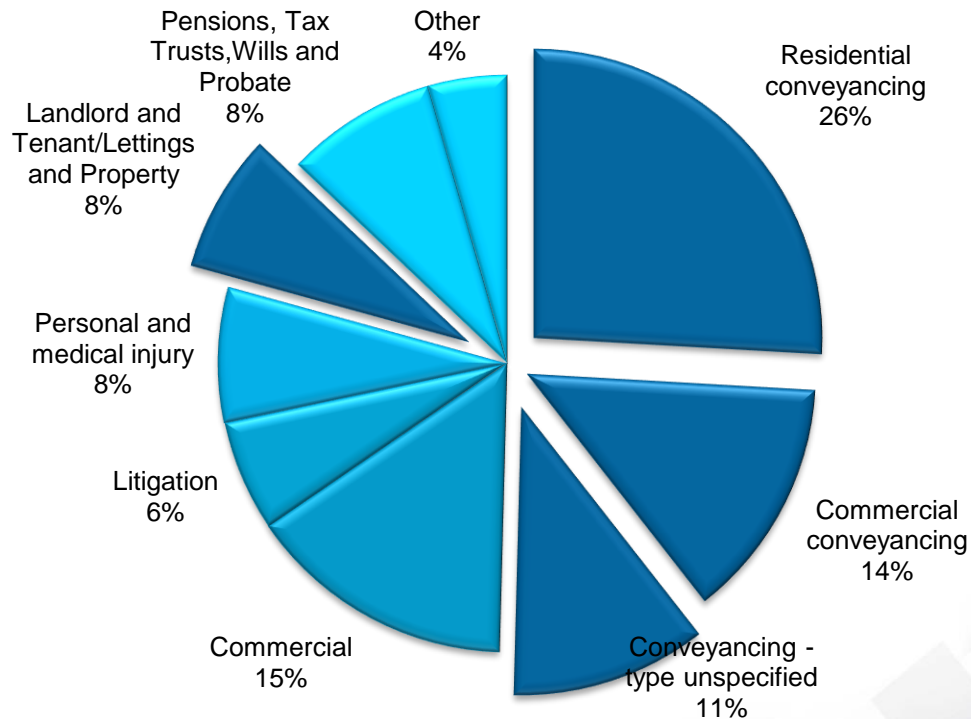
	Cumulative proportion of claims (number)						
Years Delay	Commercial	Conveyancing	Other categories	Other litigation	Personal injury	No type	Total number
0	16%	12%	16%	25%	19%	19%	17%
1	39%	29%	35%	52%	49%	44%	39%
2	56%	43%	49%	69%	69%	59%	54%
3	69%	55%	59%	79%	80%	70%	65%
4	77%	64%	67%	86%	87%	78%	74%
5	84%	72%	75%	91%	92%	84%	81%
6	93%	86%	84%	95%	96%	90%	89%
sub at 15	100%	99%	99%	100%	100%	99%	99%
16 to 24	100%	100%	100%	100%	100%	100%	100%
25+	100%	100%	100%	100%	100%	100%	100%

Source: SIF analysis of all claims against SIF (1987 – 2016)

- Defence costs currently sit outside indemnity limit and are unlimited.
- Over a ten-year period, around £0.6bn was incurred defending claims.
- Plaintiff lawyers' costs will be included in total £2bn settled indemnity claims.
- Vast majority (80 percent) of value of defence costs arise when defence costs are in range £0–5m and sectors with low maximum claims tend to have low defence costs.

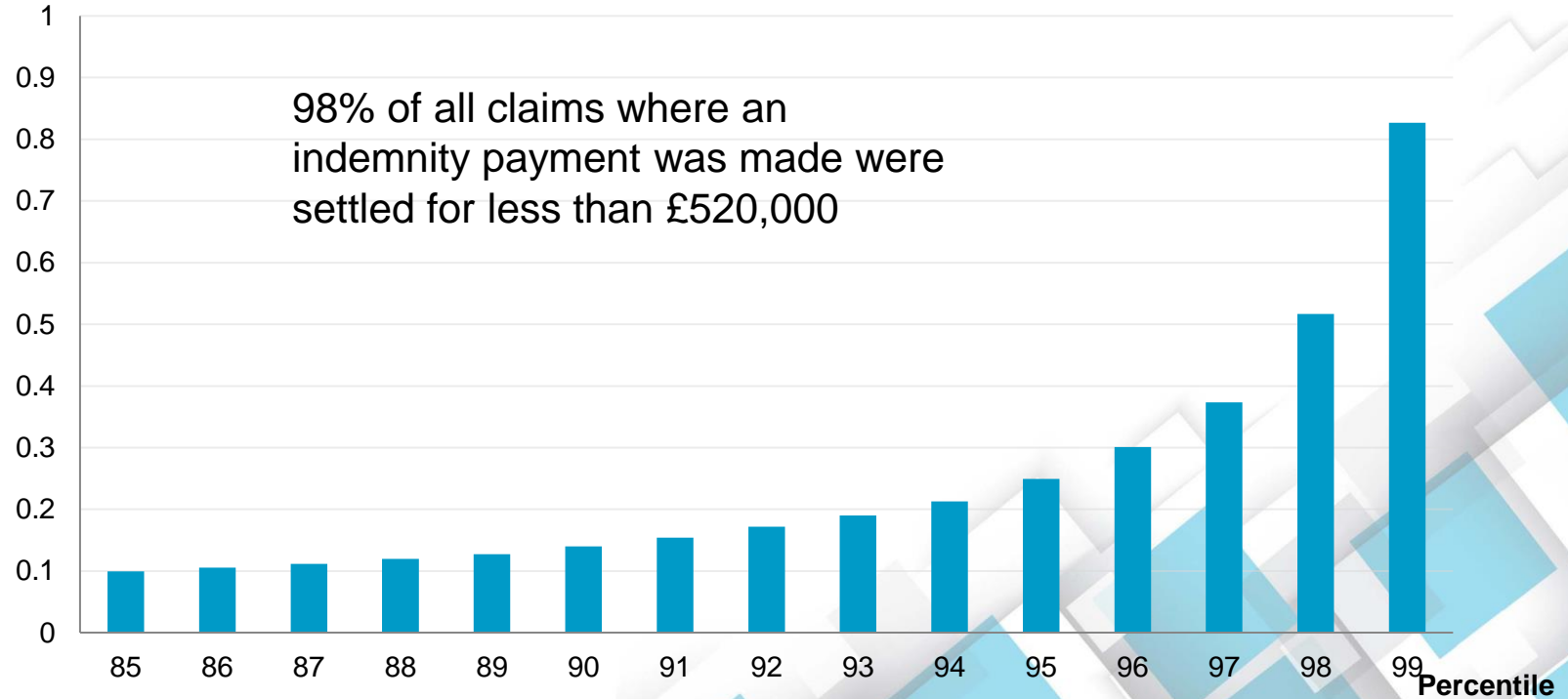
Conveyancing

Property represents a disproportionate level of negligence



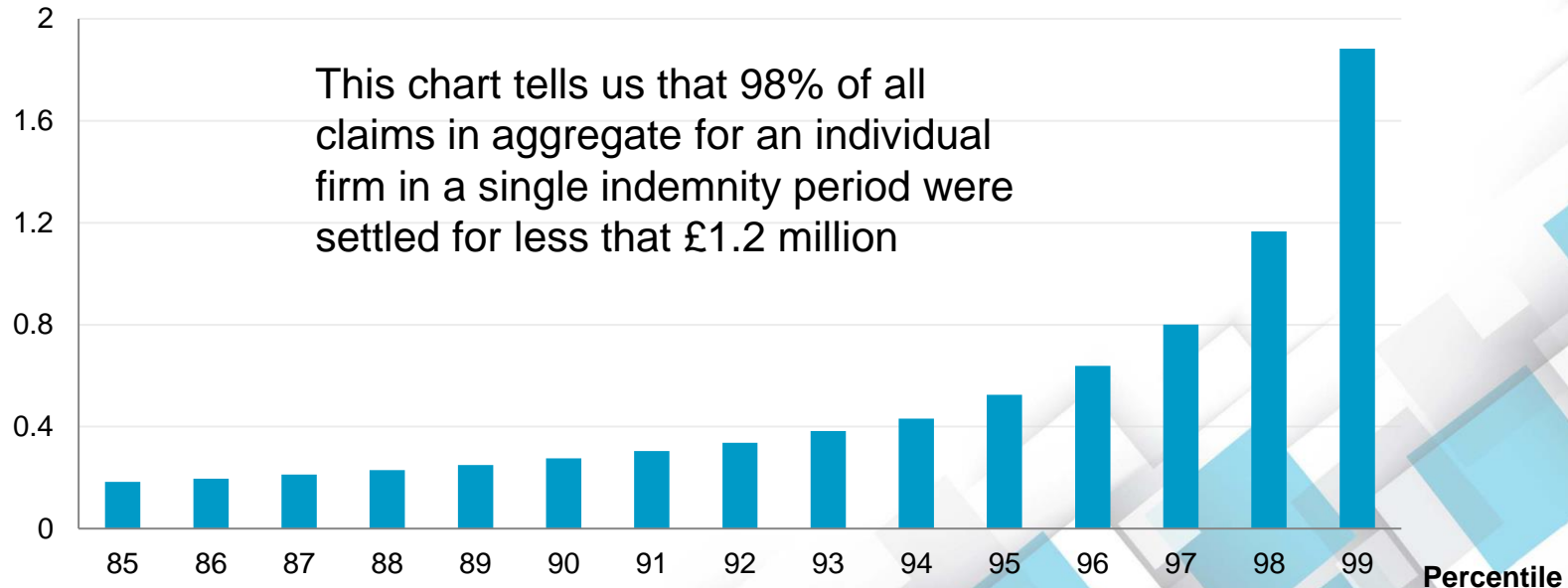
Percentile distribution: Conveyancing

Payments - £ millions



Aggregate payments individual firms in indemnity year: Conveyancing

Payment - £ Millions



Reasons for claims

Failure to
carry out
searches
or
enquiries

Failure to
investigate
title

Failure to
advise
following
search
results

Failure to
register
purchase
or lease

Acting in
a conflict
of interest

Failure to advise
on missing
items - planning
permission

Acting
without
client
authority

Failing to
raise
requisitions
on title

Failing to
remove
charges or
mortgages

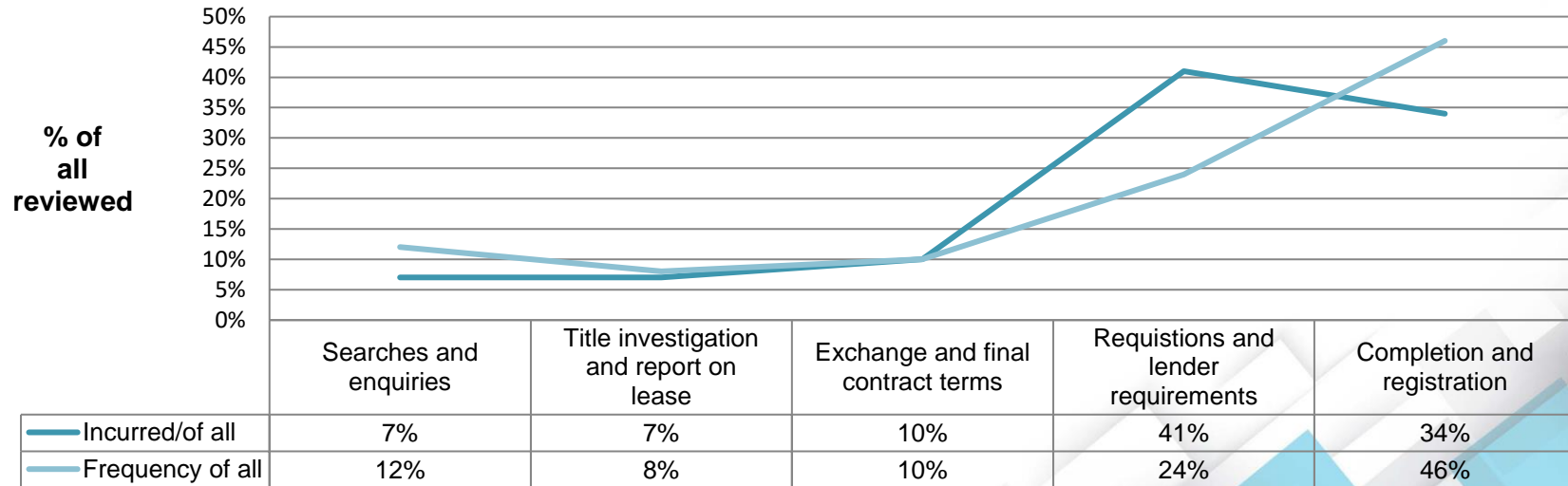
Failing to
register legal
charge or
mortgage

Failing to
obtain
consent on
change of
use

Drafting
incorrect
provisions
in contract
or Deeds

Conveyancing analysis and risk improvement

England and Wales conveyancing process claims review 2011 - 2014 - 1031 claims



- Failure to comply with agreed requirement to **four** facts about the transaction account for nearly 20% of all claim payments across all areas:
 - Back to back transaction – seller is an intermediate owner who is buying and immediately selling on (“flipping”).
 - Seller has owned property for less than 6 months.
 - Part of purchase money is not passing through the solicitor – allegedly paid direct.
 - Variation in purchase price.
- Notwithstanding some data limitations in categorising reasons for claims **wider response** to improving this issue could transform outcomes

Root causes ?

- Work completed by unqualified staff without suitable supervision.
- Inadequate risk practices.
- Pressures to complete large volumes of work quickly.
- Amount of client money linked to conveyancing transactions.

Driving better behaviour

Can we change things to drive better behaviours?



To manage and mitigate risk of **internal and external** fraud



Better incentives for firms to invest in good **systems and controls**



Wider regulatory reform



Innovation in insurance products to better target specific risks

- Striking the right balance between consumer protection and an innovative and accessible legal services market.
- Better incentives:
 - for solicitors/managers to manage poor practice within firms
 - for the emergence of innovative insurance products better targeted for specific risks.
- Broader responses to reduce negligence claims in the first place.

PII Reforms – next steps

- Engagement with key stakeholders.
- Further analysis, evidence gathering and verification of key findings
- Policy consultation next year