Solicitors Regulation Authority

Personal injury report:

The quality of legal service provided in personal injury

December 2017

Contents

Executive Summary

The Personal Injury (PI) market is a very competitive part of the legal services sector. It has gone through a period of significant change in recent years, for example The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) restriction on referral fees. It is likely to be affected further by proposed changes to minor whiplash injury claims and an increase in the small claims limit[1].

Stakeholders in the PI market such as members of the public, insurers, claimant and defendant law firms and industry specialists have raised concerns that some PI practices are not meeting the needs of, and may pose a risk to, the users of legal services and the wider public.

Although there is an adversarial relationship between defendant and claimant firms, they still share many of the same views. Their clients may seek opposing outcomes but it is in the interests of each side to prevent fraudulent claims and unnecessary delay. A well functioning and properly operated claims procedure is in the interest of all parties.

There is a perception among some stakeholders based on their experiences that:

- the PI sector has resulted in the growth of a compensation culture
- there has been an increase in fraudulent and frivolous PI claims
- the PI sector fails to safeguard and promote the interests of vulnerable clients.

These perceptions undermine the reputation of the legal profession and relate directly to a solicitor's core role of upholding the law and supporting the administration of justice. In addition, they raise issues about solicitor competence and integrity. We published a Warning Notice in 2016 to make our expectations clear to the profession.

We also commissioned ICF Consulting Services to undertake an independent survey about the PI market (the Survey)[2]. We published the report prepared by ICF Consulting Services in October 2016. Contrary to the above perceptions, the Survey showed that most respondents thought the market is working well.

But we continue to receive many reports from the public and others about serious concerns in PI cases. This PI Thematic Project (Project) is one of the ways in which we are increasing our understanding of this part of the legal sector and working to improve the experience for the users of legal services. We want to make sure we have a thorough understanding of:

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[1] Reforming the Soft Tissue Injury ('whiplash') Claims Process. A consultation on arrangements concerning personal injury claims in England and Wales (November 2016).

[2] An Assessment of the Market for Personal Injury. A final report for the Solicitors Regulation Authority (October 2016).

- how firms are operating in the PI market
- whether the concerns expressed are widespread and supported by evidence
- whether people are negatively affected by the practices and behaviours of solicitors within the PI sector.

Our Findings

We visited 40 firms, looking at 14 areas where concerns have been raised about the PI market. Given the small number of firms we visited, when compared to the PI market as a whole, our report is intended to be qualitative and aimed at increasing understanding of the concerns that have been raised.

Firms generally showed they had systems and processes in place to make sure a proper service is provided to clients. Although there are good and bad practices in all these areas, some areas raised more concern than others.

Introducers

- Referral agreements are still heavily used, but most firms appear to have appropriate compliance arrangements in place to meet the requirements of LASPO.

- One firm was found to have breached LASPO and one firm was referred into our internal disciplinary processes for possible breaches of LASPO.

- Good practices we saw included firms:

    - sourcing work from a range of introducers
    - making sure that Claims Management Companies (CMCs) are registered with the Ministry of Justice (MOJ)
    - carrying out checks on introducers with Companies House
    - asking introducers to sign an undertaking that they will not cold call or engage in any restricted practices
    - undertaking random compliance visits to the premises of the CMC
    - reviewing the CMC's marketing material.

Alternative Business Structures (ABSs)

- The ABSs we visited carried out a range of PI work. The majority of the entities were reliant on traditional referrers and sources to secure work eg direct marketing.

- Contrary to initial concerns, there was no evidence that ABSs shared confidential client data with other parts of the business.

Training, skills knowledge and experience

- Unadmitted[3] staff – people who are not authorised solicitors but may have legal experience - form the majority of the workforce at the firms we visited. They ranged in seniority and skills and were not necessarily inexperienced or junior but also included practice managers and heads of departments.

- Our data shows there was only five occasions where firms had entered into a new PI discipline within the last year eg catastrophic injury claims.

- Firms provided a mixture of training to their fee earners although several firms did not provide training in a number of significant areas, notably the Rehabilitation Code. The Rehabilitation Code was introduced by the MOJ to promote the use of rehabilitation and help the injured person make the best and quickest possible medical, social and psychological recovery.

- The majority of firms reported that they kept staff training records. However, 13 percent stated that they did not.

- Good practices we saw included firms:

    - using experienced staff with relevant expertise to provide training
    - providing regular and up to date training on a number of topics.

Case selection and triage

- Many firms had dedicated teams to select and triage cases.

- 13 firms did not involve unadmitted staff in the triage process.

- Most firms had a policy in place to avoid exceeding limitation and had not exceeded the limitation period during any cases within the past year.

Costs explanation

- Conditional fee agreements (CFAs) (a contract between a solicitor and a client to share the risk of litigation) are by far the most common form of funding for PI work.

- A range of success fees are charged to clients in CFA work. This reflects attempts by firms to obtain a competitive edge.

[3] An individual who has not been admitted to the roll of solicitors.

- Firms had differing attitudes about after the event insurance (ATE)[4] policies, as premiums are not now recoverable from defendants.

- Good practices we saw included:

    - firms providing explanatory leaflets with CFAs to explain their purpose, effects and the client's obligations
    - firms providing written information about costs in plain English together with an explanation of fundamental dishonesty and its consequences
    - clients being given a preliminary estimate of costs as well as the costs of likely disbursements
    - clients being provided with a verbal explanation of costs and an opportunity to ask questions. This discussion is recorded in a file note and followed up by a letter.

Acting on instructions

- The majority of firms and fee earners took care to check instructions directly with the client at key stages of the case.

- Of the 80 client files we reviewed, the majority showed evidence that instructions were confirmed with the client at key stages. However, on nine files there was no evidence that instructions were confirmed at a particular key stage.

- Most firms do not accept instructions from third parties and the majority of those who do have policies in place to protect the client's interests.

- We found two files where confidential information was shared with a third party without client consent.

- Good practices we saw included firms:

    - checking instructions come from the client and not a third party
    - checking instructions with the client at key stages of a case
    - having processes to keep clients informed at key stages or regular intervals.

Fraudulent claims

[4] ATE is a type of legal expenses insurance policy taken out after a legal dispute has arisen. It is intended to cover the costs of taking a case to trial and protects the policyholder from the risk of having to pay their own disbursements (expenses a solicitor has to pay out on behalf of a client for services provided to the client eg instructing a barrister or an expert) and the opponent's costs and disbursements, particularly in the event that the case is lost. The policy will generally cover a variety of costs including counsel's fees, court fees and expert reports.

- There is a tension in the relationship between claimant and defendant firms on the issue of fraudulent claims. The reputation of the claimant firm can affect the defendant firm's response to a claim.

- Some firms do not obtain evidence of identity at the outset. This decision is partly because PI work does not fall within scope of the Money Laundering Regulations 2017 (MLR 2017). It is also based on a risk assessment of the source and type of claims they carry out.

- Firms have various processes and procedures in place for when fraud is alleged or detected.

- Good practices we saw included firms:

    - having a process to assess the risk of fraud based on consistent risk factors
    - providing training on the detection of fraudulent cases
    - having adequate supervision in place to help detect fraudulent cases
    - thoroughly investigating any allegation of fraud raised in a claim.

Litigation process

- Firms adopted a variety of different methods of supervision in the litigation process. These vary depending on the size of the firm and the complexity of cases.

- Litigation tends to be carried out by solicitors or more experienced paralegals. Some firms focus on the experience and skill set of fee earners rather than legal qualification.

- Litigation fee earners had a lower case holding than those who did pre litigation work.

Medical evidence

- There is criticism about claimants and the way they use the MedCo system, which randomly allocates medical experts in road traffic accident (RTA) claims. We found 25 percent of firms had been contacted by MedCo about perceived compliance issues eg making multiple searches on the MedCo system to find a preferred expert and bypass the random selection process.

- A significant majority of firms had received an offer of settlement before medical evidence had been obtained.

- Firms generally provided adequate supervision to allow fee earners to make informed decisions about medical issues.

- Firms generally provided explanations to clients about prognosis and make sure it is kept under review.

- Of the 80 file reviews we undertook, six were unable to show how and when they considered the Rehabilitation Code.

- Good practices we saw included firms:

    - continuing to evaluate the medical requirements of the client throughout the claim
    - providing adequate training and supervision to allow fee earners to make informed decisions about medical issues
    - ensuring medical reports are appropriately prepared and cover all relevant issues.

Defendant delay and costs

- Defendant insurers usually prepared the Letter of Response to a claim under the Pre-Action Protocol for Personal Injury Claims.

- Defendant work is most often governed by the contractual relationship between the firm and their client.

- There is no incentive for defendant firms to delay a claim as this increases costs in work subject to a fixed fee.

Settlement

- A significant majority of firms settle 95 percent of all PI matters.

- The majority of firms provided evidence to show they had attempted to re-negotiate a better settlement for their client.

- Pre-medical offers were not popular amongst claimant firms and were very rarely recommended.

- Good practices we saw included firms:

    - providing specific training on settlement
    - researching appropriate compensation figures and providing information so the client can make sensible decisions
    - providing advice and guidance on pre-medical offers and outlining possible alternatives
    - seeking client instructions before accepting or making a settlement offer
    - referring large or unusual cases to a supervisor or counsel for consideration
    - reviewing information and evidence on the file to see whether further information is required on settlement.

Paying damages

- There was little evidence that firms made payments to third parties out of client damages.
- The majority of firms paid damages to clients on the same day or within the same week.
- Firms supervised claims in a number of ways to make sure there was no delay in making payments to clients.

Fixed fees

- The majority of firms said that they apply the same level of supervision to fixed fee and hourly rate work.
- Some firms applied a higher level of supervision to fixed fee work as it tended to be carried out by less experienced staff.
- A quarter of firms applied a lower level of supervision to fixed fee work. The main reason given was that it is generally more straightforward.
- Good practices we saw included firms retaining a risk sensitive level of supervision on all files and active and regular supervision of cases.

Merger, acquisition or file purchase

- Firms sought client consent before conducting due diligence on files they wished to acquire or alternatively did not review the files before taking them on where time and consent was an issue.
- Six firms acquired a total of 6499 PI cases as a result of mergers, acquisitions or file purchases in the last two years. This included one firm who had acquired 5088 files and another who had purchased 1323. None of the cases acquired represented a new area of PI work for the firms involved and no new staff were recruited to deal with the additional work.
- Good practices we saw included:
    - the manager of a PI team obtaining client consent and reviewing each of the 63 files purchased. This was followed by a second review by an independent firm of solicitors to assess the state of each file
    - firms having a due diligence checklist to use when undertaking any file purchase. The checklist includes a review of limitation, prospects of success and medical reports
    - firms carrying out early due diligence on each file well in advance of any transfer or contractual obligations being executed

- the limitation period of each new file acquired being immediately recorded on the case management system. Cases are then allocated to fee earners and clients contacted as soon as possible. All acquired cases are then subject to a quarterly review.

Areas requiring further focus

We found that there was little evidence of any significant concerns in eight of the areas we looked at. In the following six areas, although we did not find widespread issues, we did find some causes for concern in the practices of a small number of firms:

1. **introducers** (one firm was found to have breached LASPO and one firm was referred into our internal disciplinary processes for possible breaches of LASPO)

2. **training, skills, knowledge and experience** (several firms have never provided training in a number of areas, notably the Rehabilitation Code and 13 percent of firms did not keep staff training records)

3. **costs explanation** (some firms are failing to consider an appropriate success fee for each individual case whilst others are providing insufficient costs information for cases that fall out of the Portal)

4. **acting on instructions** (we found two files where confidential information was shared with a third party without client consent as well as other files where there was no evidence that instructions were confirmed at key stages of the litigation process)

5. **fraudulent & frivolous claims** (some firms do not obtain evidence of identity at the outset)

6. **paying damages** (we found one firm where there was possible payment of damages by the firm to third parties).

Introduction

Stakeholders in the PI market that have raised concerns include:

- members of the public
- insurers
- claimant law firms
- defendant law firms
- industry specialists
- the NHS Litigation Authority.

In particular, stakeholders have suggested that some PI practices pose an increased risk to the experiences and outcomes for the users of legal services (both claimants and defendants). The following general areas of concern have been raised:

- competence of solicitors
- solicitor behaviours
- structural changes to firms in this market.

We have also published a Warning Notice in 2016 to make our expectations clear to the profession about risk factors in PI claims. In addition, the following publications outlined further concerns about the PI sector.

1. The Survey

   An independent Survey by ICF Consulting Services about the PI sector that we published in October 2016. Read the findings here.

2. Insurance Fraud Taskforce report

   The report delivered by the Insurance Fraud Taskforce in January 2016 (Taskforce Report). The Taskforce Report and our response can be found here.

The areas we researched

To better understand the PI market and the concerns raised, we looked at the life cycle of a typical PI case. This included a review of:

- **Solicitor behaviours:** areas considered included the sourcing of clients; case selection and triaging; dealing with fraudulent and frivolous claims; use of medical evidence and case delays.

- **Competence within the PI market:** whether firms/solicitors have the relevant skills, training, knowledge and experience to carry out work within the PI market.

- **Structural changes:** the composition of firms and in particular the use of ABSs following the introduction of LASPO.

Our objectives

The objectives of this Project were to:

- test the concerns raised above
- raise awareness of best practice and ethical conduct
- challenge poor behaviours and practices
- identify whether any firms have breached the core professional principles
- identify any emerging or potential risks that may require further analysis or mitigation.

What we did

We undertook a review of firms between August and October 2016. A sample of 40 firms was selected. Our criteria required:

- PI work must be over 20 percent of the firm's turnover
- firms must have more than £250,000 PI turnover.

For each firm we:

- sent an online questionnaire seeking core data for us to review before an on-site visit
- interviewed the manager (managing partner, partner, head of department etc) seeking more information about the firm's practices and behaviours.

We cross-checked both these sets of information by:

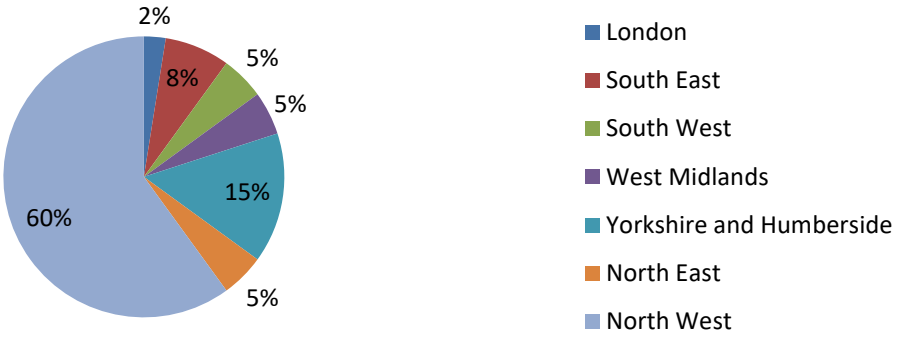
- reviewing two of the firm's files
- reviewing the firm's documentation
- interviewing a fee earner.

Our sample

Our sample included a variety of structures located across England and Wales:

Structure of firms

Location of firms

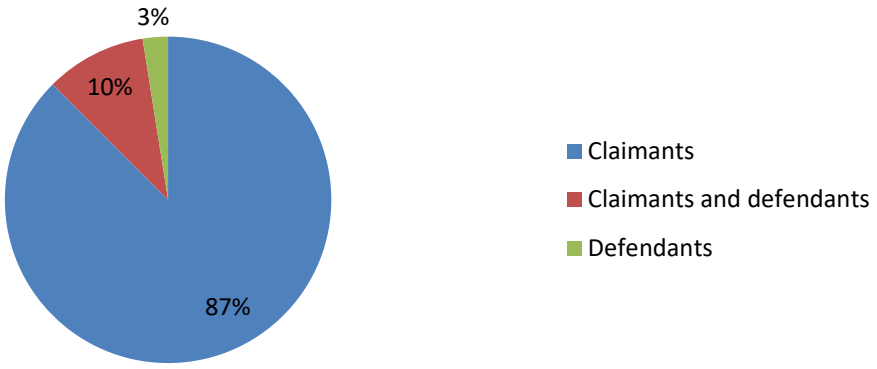


60% of the firms we visited were based in the North West. This was not a specific choice but just a consequence of the sample we selected.

Clients

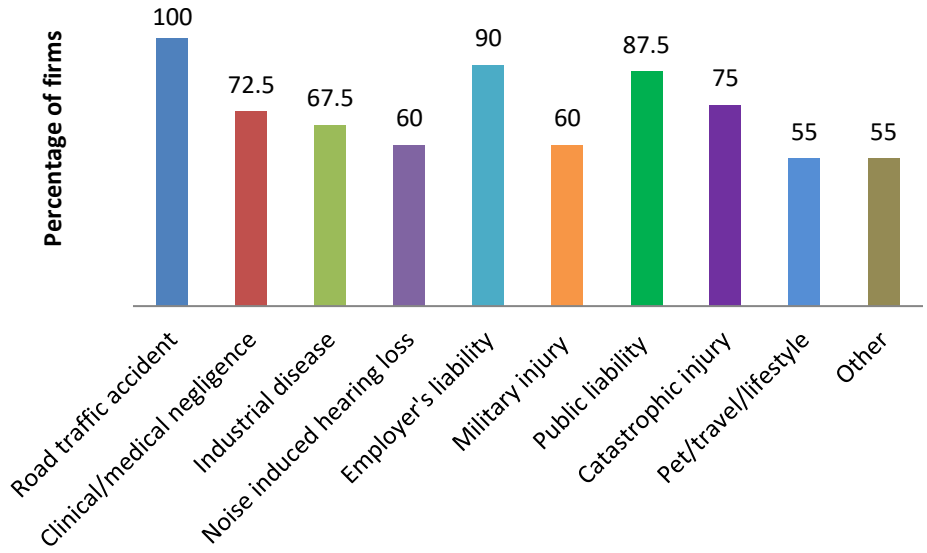
Firms predominantly operated nationally. Only 17 percent of firms operated solely within their local area.

Which clients do you represent?

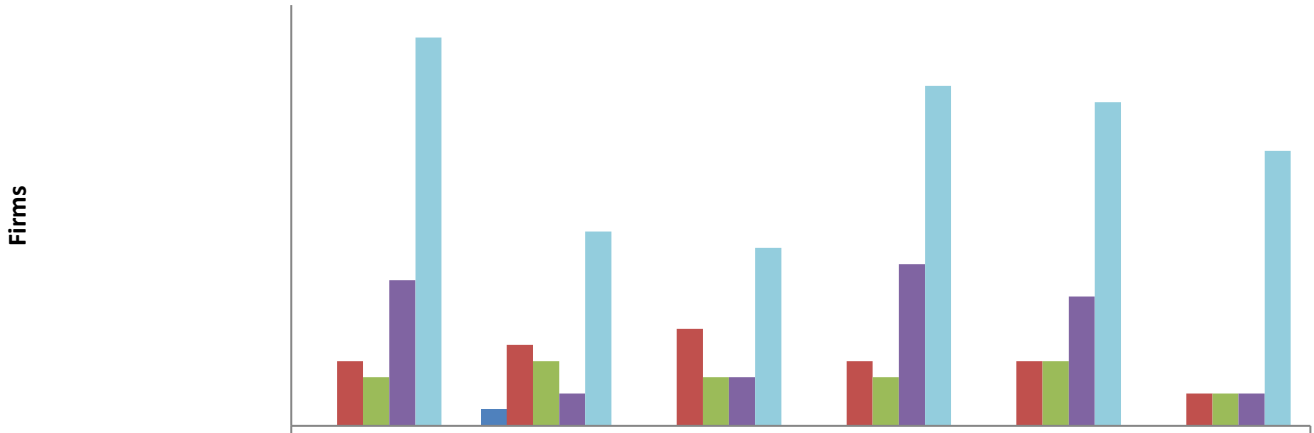


Type of PI work

What sort of work do you do?



How long have you carried out this work?



	Road traffic accident	Medical negligence	Industrial disease	Employer's liability	Public liability	Catastrophic injury
Less than 1 year	0	1	0	0	0	0
1 to less than 3 years	4	5	6	4	4	2
3 to less than 6 years	3	4	3	3	4	2
6 to less than 10 years	9	2	3	10	8	2
10 years+	24	12	11	21	20	17

Commentary

- a majority of the sample have provided RTA, employer's liability, public liability and catastrophic injury services for 10+ years
- six of the firms started providing clinical/medical negligence services in the last three years
- seven of the firms started to provide Noise Induced Hearing Loss (NIHL) services in the last three years.

Summary of findings

Introducers[5]

Concern

In April 2013, LASPO introduced a restriction on the payment of referral fees in PI cases.

There have been concerns raised about the effectiveness of the referral fee ban and whether solicitors have complied with its provisions.

Our 2016 Warning Notice also highlighted that firms are failing in their duties to act in accordance with the Principles and Outcomes of the SRA Code of Conduct 2011 (Code) by:

- allowing third parties to cold call potential clients
- entering into referral arrangements that are in breach of LASPO.

In addition, the Survey said that the referral fee ban is understood and accepted, but its effectiveness was questioned.

We are also continuing a number of investigations around prohibited referral fee arrangements.

How do referral arrangements work?

A regulated person[6] will be in breach of LASPO if that person:

- refers prescribed legal business[7] to another person or is referred prescribed legal business by another person; and
- pays or is paid for the referral (see section 56(1) of LASPO).

The ban applies to referrals between regulated persons (eg between a solicitor and a CMC or between two firms of solicitors). It also applies between a regulated person and another

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[5] The PI market includes intermediary organisations or 'introducers', including insurers, CMCs and trade unions. These organisations predominantly manage claims and refer consumers to solicitors when required.

[6] "Regulated person" for the purpose of the ban is a CMC, any person authorised by the Law Society or Bar Council to carry on reserved activities under the Legal Services Act 2007, authorised persons under the Financial Services and Markets Act 2000 (such as insurers) if specified in regulations made by the Treasury or any other person specified in regulations made by the Lord Chancellor.

[7] "Prescribed legal business" is defined as business which involves the provision of legal services to a client in respect of (a) a claim or potential claim for damages for personal injury or death (b) any other claim or potential claim for damages arising out of circumstances involving personal injury or death (ancillary claims) or (c) other claims or business specified in regulations made by the Lord Chancellor.

person who is not a regulated person for the purpose of LASPO (eg a trade union or a charity).

A regulated person will also breach LASPO if, in providing legal services in the course of prescribed legal business, he or she arranges for another person to provide services to the client and is paid for making that arrangement. If a solicitor is acting for a client in respect of prescribed legal business and receives a payment from an insurance company for arranging ATE for the client or from a medical agency for referring a client for a medical report, this will also be a breach.

LASPO therefore, not only prohibits the payment and receipt of referral fees in PI cases, but also for other claims for damages arising from the same circumstances. For example, if a PI claim resulting from a road traffic accident is referred to a solicitor, together with a claim in relation to uninsured loss recovery resulting from the same accident, the solicitor could not pay a referral fee in relation to either claim. It is not possible to claim that a referral fee is for a related claim rather than for the PI claim.

We consider that the communication of a client's name and contact details to or by a regulated person would amount to a referral, as this information would enable the recipient to make an offer to the client to provide relevant services.

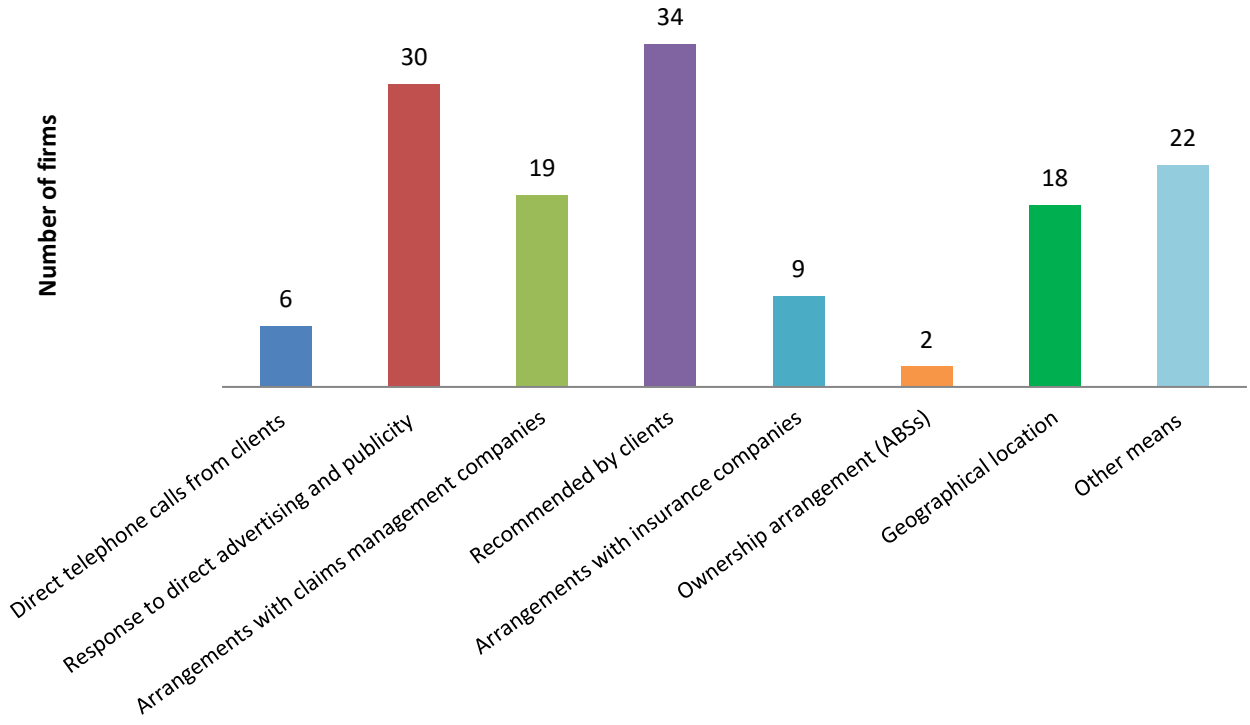
Key findings of the thematic review

- Despite the restrictions introduced by LASPO, firms are still using referral arrangements.
- 78 percent of all firms we visited had referral arrangements in place.
- 48 percent of firms had referral arrangements in place with CMCs.
- One firm was found to have breached LASPO and one firm was referred into our disciplinary processes for possible breaches of LASPO. No evidence of such breaches was found at any other firms.

Findings

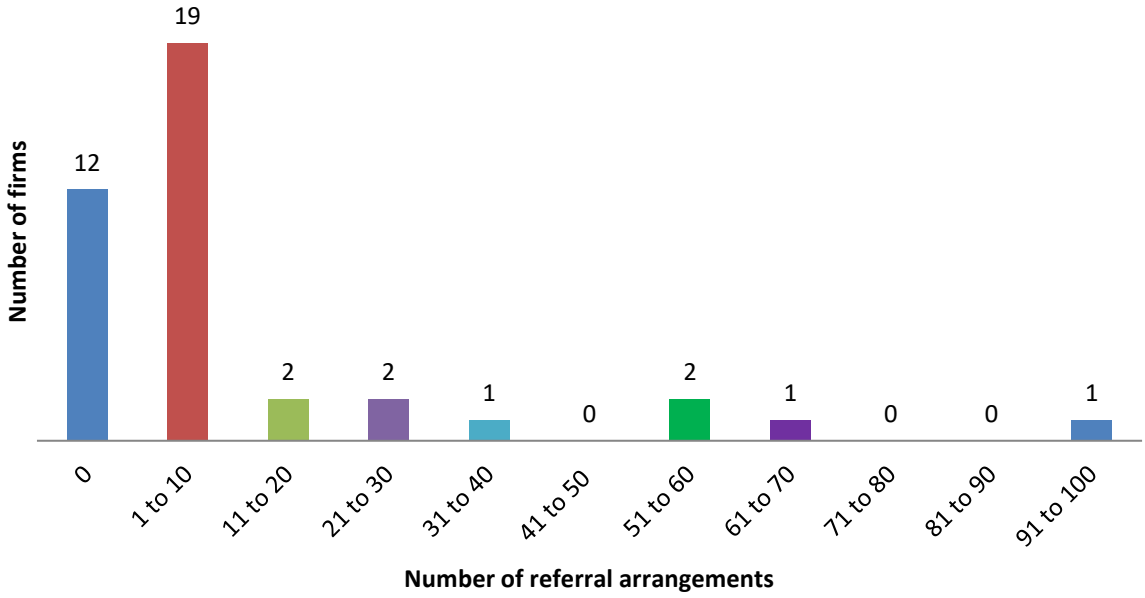
We found firms sourced work from a variety of areas:

Where do you source your PI work from?



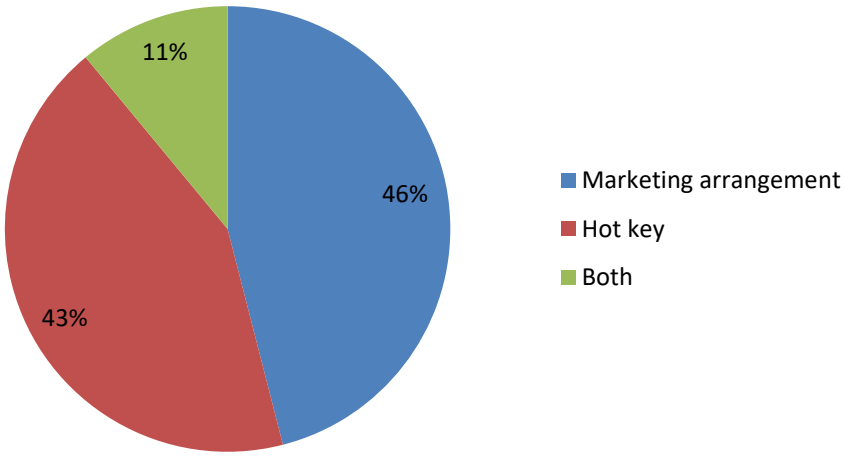
Significantly, 28 firms had a referral arrangement in place to introduce PI work. The extent of referral arrangements varied greatly between firms

How many referral arrangements do you have?



We asked the 28 firms to outline the types of referral arrangements they had in place. These broadly fell in to three categories:

What type of referral arrangement do you have?



A hot key arrangement is where a third party transfers a telephone call to a firm. In particular, no information is provided to the firm by the third party and the client must provide all relevant details about their claim directly.

The marketing arrangements and hot key process were similar across all of the firms. Slight variations occurred at larger firms who could use their size to their advantage eg:

- negotiate their own bespoke terms with CMCs
- use dedicated "first contact" call handlers to receive clients through the hot key process. Firms suggested this promotes uniformed call handling and enables each claim to be triaged more successfully
- purchase and use call recording facilities. This enabled them to carry out random audits and review evidence and conversations that occurred at the outset of a claim.

During our limited review of each firm's systems and processes, we found two firms that caused us concern about their arrangements with introducers.

Firms appeared to understand the referral fee ban and took appropriate steps to make sure the referral arrangements complied with the requirements of LASPO. Typically, they will either:

a) make sure that no payment is made for any referral, or

b) make sure no information is provided to the firm by the third party, with the client providing all relevant details about their claim directly.

Compliance checks carried out

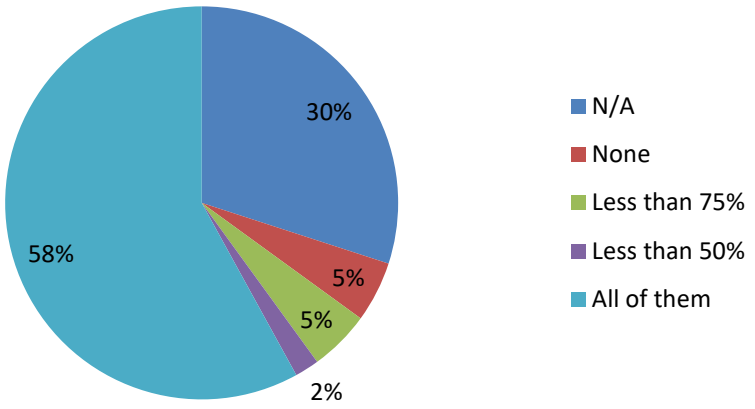
We asked managers what checks they carry out on their introducers. There was a range of answers:

- The majority of firms had visited their introducers to review their practices and procedures.
- Some firms preferred to use a handful of tried and trusted introducers. Firms were particularly interested in the conversion of enquiries to case rate.
- Many firms randomly audited the calls they and CMCs undertook.
- Firms spoke to other solicitors to find out more about CMCs. In addition, firms sought advice from other firms to review and check the legality of their referral agreements.
- The majority of firms checked that the introducer was authorised by MOJ.
- Some larger firms were able to use their negotiating position to request enhanced commercial and compliance terms from CMCs.
- Where appropriate, additional checks on the introducer are carried out with Companies House.
- Some firms asked introducers to sign an undertaking that they will not cold call or engage in any restricted practices. Firms would also insist that introducers had a landline number.

During our visits we asked firms who was responsible for the relationship between the firm and the CMC. In general, firms tended to delegate this role to either the Compliance Officer for Legal Practice (COLP)[8], the head of the department or a business development officer. We consider that the identity of this person is key to ensuring the continued compliance of the firm. In particular, the role must be given to an individual who is not at risk of personal conflict. If an individual is responsible for bringing work into the business and providing a compliance overview, there is a danger that these two roles may conflict.

[8] The COLP has overall responsibility for the firm's systems and controls. They are responsible for ensuring processes are in place to enable the firm, its managers and employees, and anyone who has any interest in the firm to comply with the requirements in our Handbook.

How many of your introducers have you visited?



We received a number of "not applicable" responses. These reflect firms who did not have any referral arrangements in place.

Are you aware of any other law firms breaching LASPO?

We asked managers if they were aware of any firms breaching the referral fee ban, with 88 percent saying they were.

Managers provided further comments about the nature of their concerns:

- CMCs were encouraging non-compliance by law firms. In particular, CMCs were telling firms "X is doing it why don't you?"
- firms and CMCs were providing misleading publicity about costs and deductions
- some firms were paying cash sums to CMCs to hide prohibited referral payments
- one individual provided an account of a call he received when he had personally been injured which appeared to breach the ban.

Managers were asked to provide additional details and formally report these concerns to us for further assessment.

Good Practice

The firm sources all of its PI work via direct marketing.

The firm sources work from a range of introducers.

Any CMC referrer is registered with the MOJ.

Additional checks are carried out with Companies House.

The firm asks introducers to sign an undertaking that they will not cold call or engage in any restricted practices.

The firm insists that introducers have a landline number and allows the firm to visit their offices.

The firm undertakes random compliance visits to the premises of the CMC.

Call vetting and a review of the CMC's marketing material takes place.

Firms sought advice to review and check the legality of their referral agreements.

Poor Practice

The firm sources work from non-regulated CMCs.

The firm carries out no checks to review the arrangements in place.

The firm is wholly reliant on a single source of work.

The firm is in breach of the requirements of LASPO.

The person responsible for the relationship between the firm and the CMC has responsibilities for both bringing work into the firm and overseeing compliance, giving rise to a potential conflict.

Alternative Business Structures

Concern

Following the referral fee ban, some entities formed ABSs. Several ABSs within the PI sector consist of an introducer and legal entity eg an insurer and law firm. This arrangement allows the introducer to pass work to the legal entity but does not breach LASPO because they are deemed to be one entity. However, ABSs are still required to follow the Code.

A general concern has arisen about whether ABSs are observing our Code eg maintaining client confidentiality and acting in the best interests of the client.

The Survey also highlighted that some interview respondents felt that ABSs and joint ventures were being established to circumvent the ban on referral fees.

Findings

During our Project we visited 11 ABSs. This sample included:

- six limited companies
- five limited liability partnerships
- nine claimant firms
- one defendant firm
- one firm which carried out a mix of defendant and claimant work.

Key findings of the thematic review

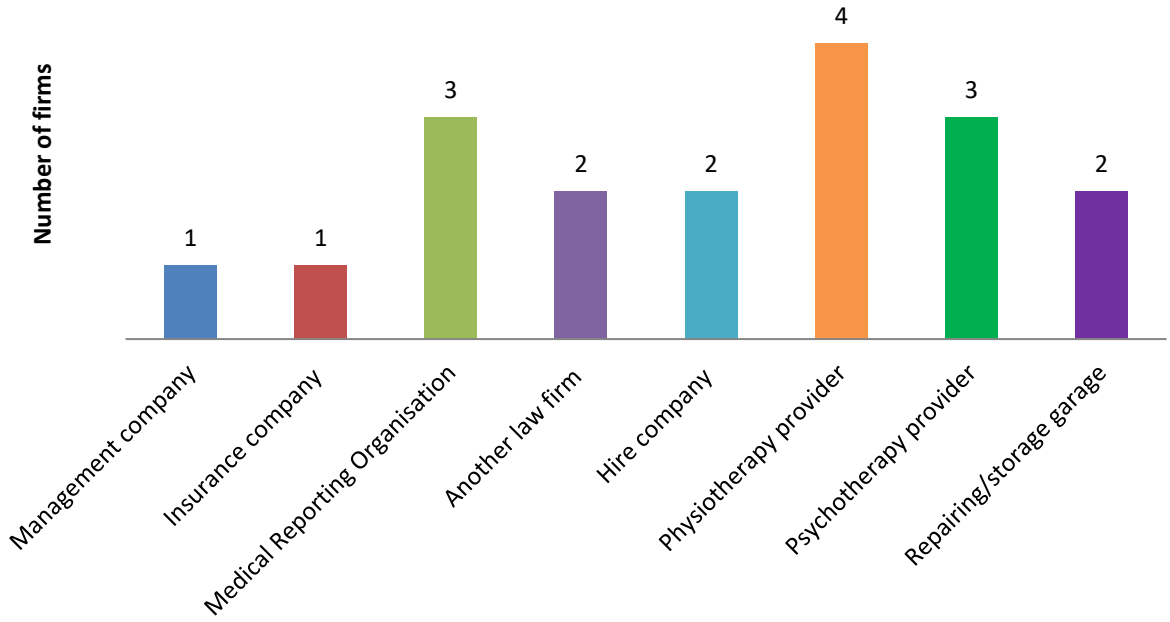
- Each ABS carried out a range of PI work. The majority of the entities were reliant on traditional referrers and sources to secure work eg direct marketing.

- We had received anecdotal information that suggested the ABS model had been adopted by many to comply with the referral fee ban. We found only two ABSs received 100 percent of their work from a parent company. The other nine ABSs had referral arrangements in place with various unconnected providers and took steps to comply with the ban.

Connection to separate businesses

In addition to legal businesses, six ABSs also owned 18 other separate businesses.

ABS – how many entities are you connected to?



The number of PI firms that have an interest in additional commercial entities does raise considerations as to how:

- clients are referred amongst the entities
- firms are transparent with clients about that relationship
- clients are given a choice of providers
- firms are acting in the client's best interests by referring them to a provider in which they have an interest.

We asked managers whether confidential information was available to other non-legal entities connected to the ABS. A single firm confirmed that confidential client data was available to its parent or subsidiary company. Significantly, the arrangement was explained in the client letter and clients were given the opportunity to opt out of this arrangement and password protect their data.

None of the ABSs within our sample shared a case management system or data storage system with a third party.

Good Practice

Safeguards are in place to protect the confidential information of clients.

Information is not shared with other entities without informed written consent.

Client interests remain paramount despite commercial pressures of the ABS structure.

Poor Practice

Confidential client information is shared with connected, non-legal entities without the client's consent.

The commercial interests of the ABS are placed above the professional obligations of the authorised legal body.

Training, skills, knowledge and experience

Concern

The Survey noted concerns that less experienced, unadmitted staff are engaged in PI work in both triage[9] and case preparation. This could have an impact on the quality and progress of the case.

General concerns were also expressed by judges in the Survey about a decline in quality of case materials such as witness statements.

Key findings of the thematic review

- Most firms used a mixture of internal and external training.
- Several firms have never provided training in a number of areas, notably the Rehabilitation Code (explained below).
- The majority of firms kept records that enable them to better plan future training.
- The majority of staff within our sample had more than three years' experience.
- Forty one percent of individuals within the firms were legally qualified eg a solicitor or a regulated legal executive (ie a member of the Chartered Institute of Legal Executives).
- Paralegals represented 42 percent of the employees within our sample.

Findings

In general, firms reported in the online questionnaire that training was regular, recent and covered a number of topics. The majority of firms delivered a mixture of internal and external training. Much of this had been delivered within the last year or the last six months. Internally and externally, the most recent training tended to be in the areas of PI law and procedure. During the interviews we asked to see the training records of fee earners and generally detected no issues. However, this did not test the depth and breadth of fee earner's actual knowledge. The graphs below demonstrate that there is a wide spread in the type, timing and delivery of training. It is difficult to draw conclusions from this but it highlights the

[9] Triaging is about sorting and signposting different types of PI cases to teams depending on complexity and facts.

importance of firms having appropriate training to meet their own individual needs and business risks.

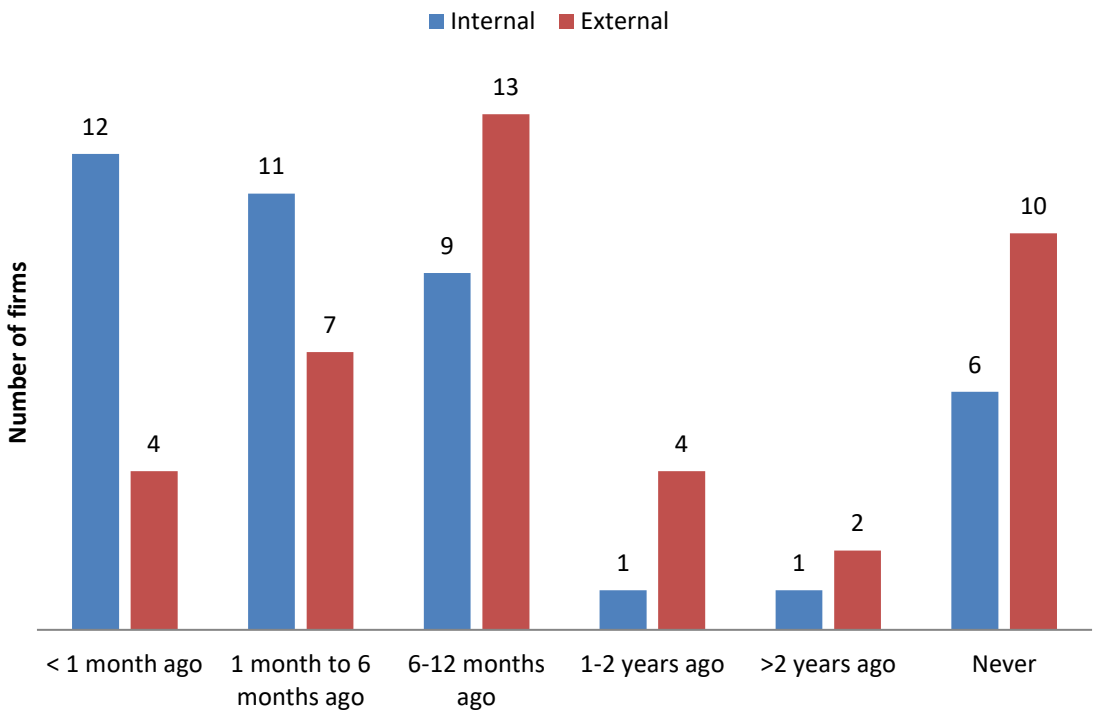
Firms used a variety of external training providers. One firm reported that they had engaged a GP to deliver training on identifying and treating food poisoning and a barrister to train staff in valuing claims.

We asked firms:

- what training they provided to their staff
- whether training was internal or external
- when training had last been delivered.

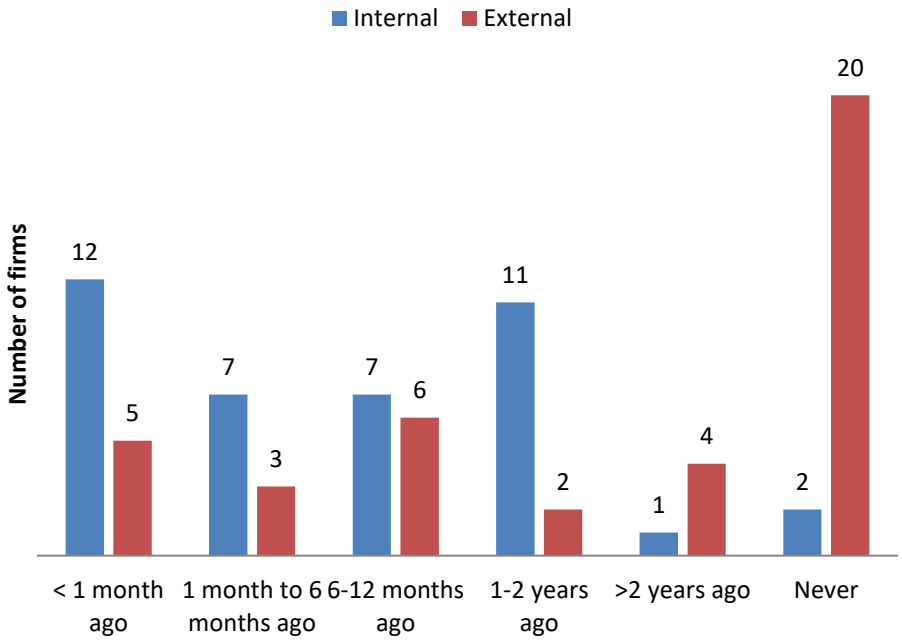
We also asked firms how often training was given to staff to help manage specific risks in the sector.

When did you last provide Anti-Money Laundering training?



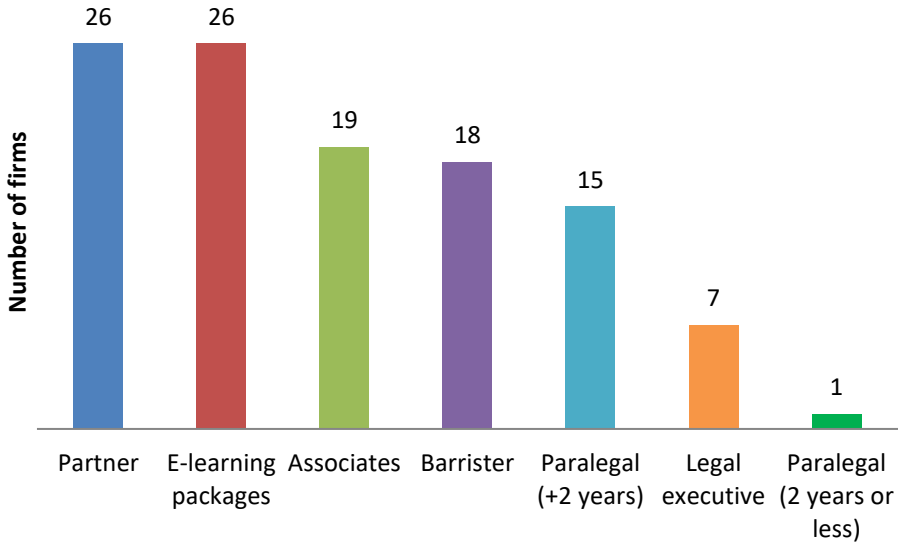
Although PI work currently falls out of scope of the MLR 2017, firms may be asked to gather client identification documents in future. These figures suggest that some firms are prepared for this.

When did you last provide fraudulent claims training?



Fraudulent claims are a specific concern that is continually raised and it appears that firms are addressing this issue.

Who provides your internal training?

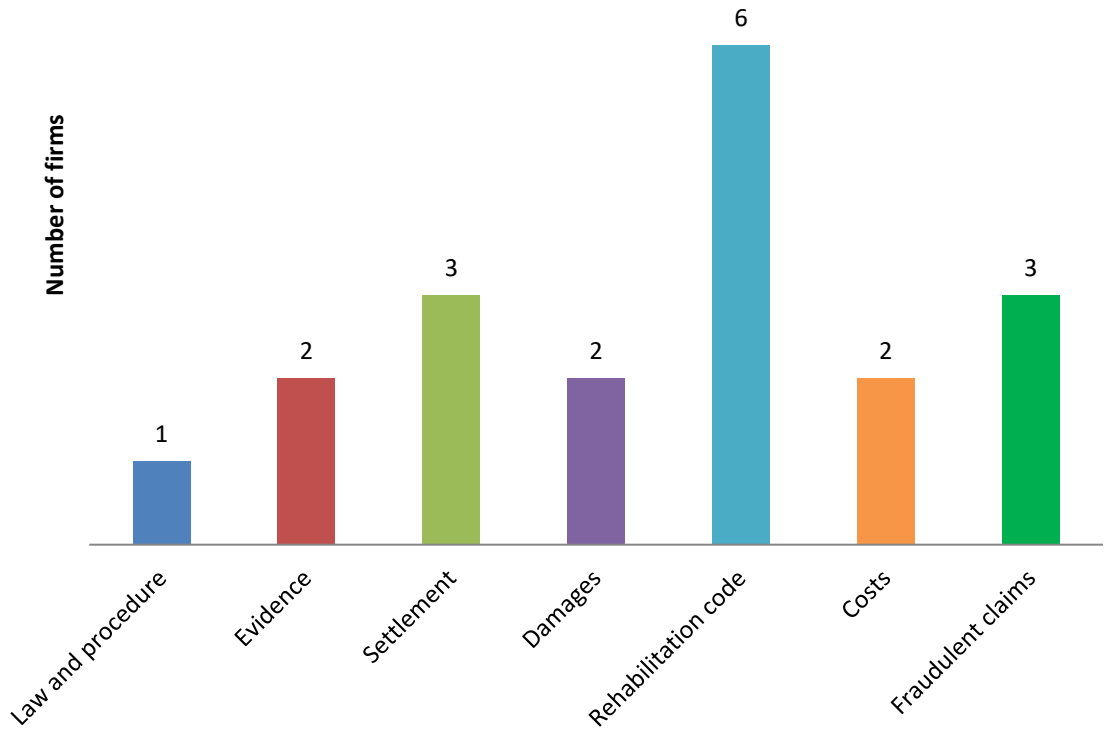


As the chart above shows, firms tended to use experienced and qualified staff when delivering internal training.

Although good firms will provide regular training (including a combination of internal and external training) and updates, some firms also reported a high level of staff turnover, particularly among unadmitted staff. This could also account for the frequency of training.

Few firms reported having provided training more than two years ago. A number of firms, however, had failed to provide any training on a number of subjects.

Which areas have you not provided training on?



The Rehabilitation Code was introduced by the MOJ to promote the use of rehabilitation and help the injured person makes the best and quickest possible medical, social and psychological recovery. The Rehabilitation Code applies whatever the severity of the injuries sustained by the claimant.

It is concerning that six firms have not provided training to staff in relation to the Rehabilitation Code. This was specifically noted as an area of weakness in the Survey. Under the Rehabilitation Code, solicitors should assess whether the claimant's condition can be improved, and their losses mitigated, by medical treatment. Although it is not mandatory, the process is acknowledged in the Personal Injury Pre-Action Protocol.

In addition,12 firms had not provided any training on advocacy. This may be because:

- PI cases are usually settled out of court
- firms generally instructed counsel for trials

- as noted below, the majority of staff in the firms were unadmitted and do not have rights of audience.

Keeping training records

The majority of firms reported that they kept staff training records. However, 13 percent stated that they did not. This was broadly borne out by interviews with fee earners, 85 percent of whom were able to show their training records to us. Not all staff kept their own records as they were centrally held, but they were able to show us records on-screen or produce printouts from a database.

Six fee earners, however, were unable to show us any training records at all. Only one individual was able to provide a valid reason which was that they had just joined the firm. The others stated:

- the firm's HR department had decided that only staff with formal legal qualifications needed to keep training records
- they had misunderstood the requirements of the new competency statement process. One individual thought that training was not compulsory and it did not need to be recorded. We explained that records of all training and development were necessary for him to show his ongoing competency. This was also discussed with his manager.

Training records are an important way of making sure that staff are appropriately trained and their knowledge and skills are kept updated. Failure to record staff training risks knowledge becoming out of date and inaccurate. This is a particular risk in an area such as PI where law and procedure have changed rapidly in a short space of time.

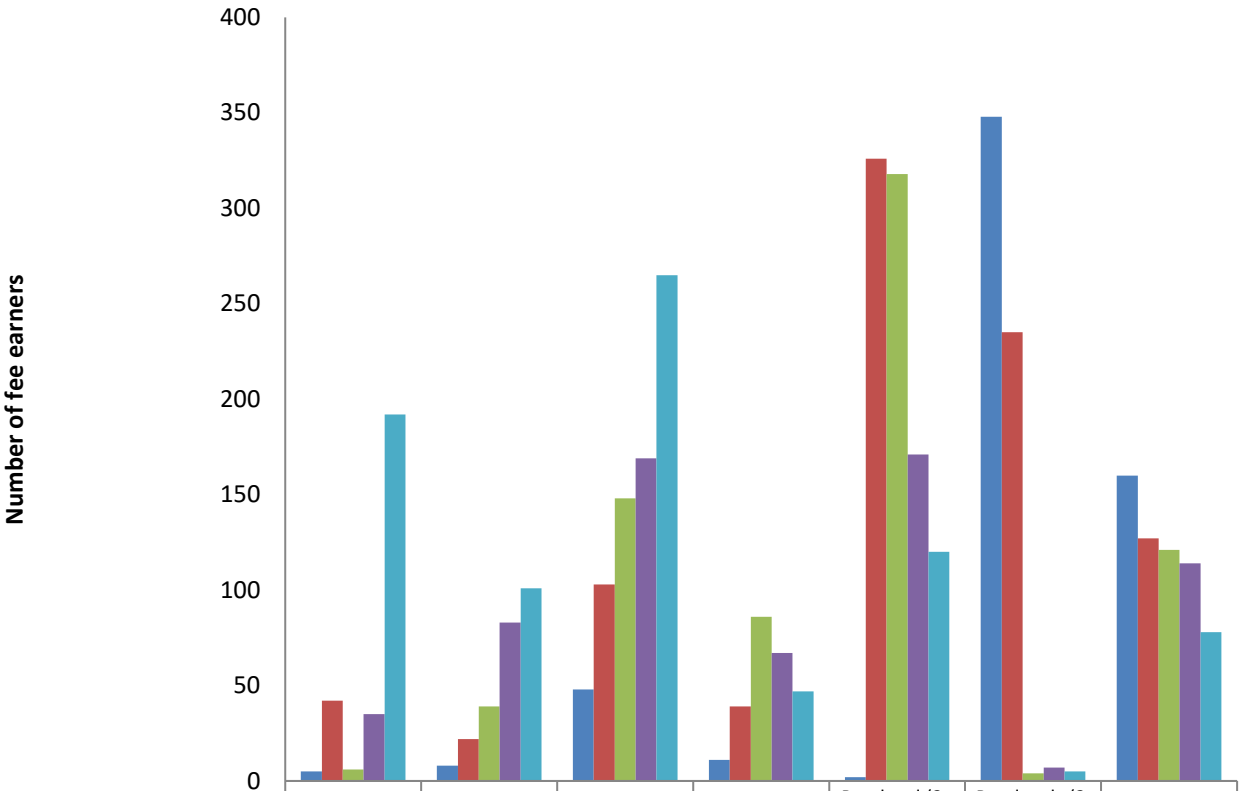
Likewise, it is good practice for firms to keep training records for all fee earning staff, regardless of their qualification level. It is arguably more important for unadmitted staff to receive regular training, which is more difficult to achieve without a record of what they have done. A high level of staff turnover makes this essential.

Keeping a schedule of potential training can also assist in making sure that firms provide the right training when needed. Only 70 percent of firms kept a schedule of future training.

Experience of staff

We asked firms to tell us about their staff's qualification, seniority and fee earning experience. We specifically asked for PI experience, as some staff may have worked in different areas of the law before.

How experienced are your staff?



	Partners	Associates	Solicitors	CILEx	Paralegal (2+ years experience)	Paralegals (2 years or less experience)	Other
Less than 1 year	5	8	48	11	2	348	160
1 to less than 3 years	42	22	103	39	326	235	127
3 to less than 6 years	6	39	148	86	318	4	121
6 years to less than 10 years	35	83	169	67	171	7	114
10+ years	192	101	265	47	120	5	78

'Other' staff included not only administrative staff but also employees such as trainee solicitors, practice managers, enquiry agents and legal apprentices.

Firms expressed the belief that experience was equally as significant as qualifications.

Firms also spoke of the benefit of having non legally qualified staff with other specialities eg team management, project management, budgeting, marketing etc. Non legally qualified staff included people at senior levels and key positions within the firms.

The majority of partners, associates, solicitors, regulated legal executives and paralegals (with more than two years of legal experience) had worked within the PI market for more than three years. One exception was paralegals that had less than two years of PI experience.

Paralegals represented 42 percent of the employees within our sample.

Our data suggests that associates, solicitors and regulated legal executives tended to remain within the PI sector.

One firm told us that their paralegals tended to be recent graduates who would work at the firm for a few years before moving on. This seems to be borne out by the data, which shows paralegals represent the highest numbers of staff with three years or less experience. Their numbers reduce after six years. Reasons for this may include paralegals leaving the firm, leaving the sector or qualifying as solicitors or regulated legal executives.

Good Practice

Keeping a central database of staff training to make sure that all fee earners can be kept up to date on changes to law and procedure.

Internal training delivered by experienced staff with relevant expertise.

Providing a mixture of regular internal and external training to make sure that fee earners are kept up to date and engaged.

Poor Practice

Failure to record training centrally or at all.

Miscommunication with staff about the nature of the competency statement and the importance of being able to evidence training.

Failure to provide training to staff in relation to a number of areas, notably the Rehabilitation Code.

Case selection and triage

Concern

The Survey highlighted a concern that some firms were failing to appropriately triage matters and were relying on paralegals and junior members of staff to carry out this important task. This could lead to a case being prolonged, particularly if essential information was not gathered at the outset of the case. There was also a concern that these practices could lead to claims being incorrectly valued or not being prosecuted within the limitation period. Neither consequence is in the best interests of the client.

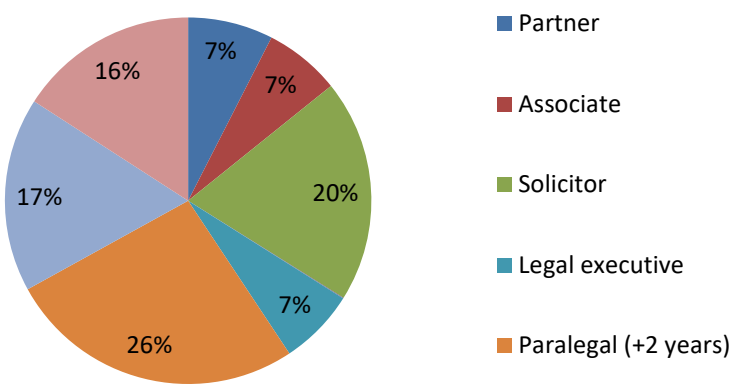
Key findings of the thematic review

- Unadmitted staff formed the majority of the workforce in the firms we visited.
- Unadmitted staff were not necessarily inexperienced or junior personnel eg they could be practice managers or head of departments.
- Many firms have dedicated teams to select and triage cases.
- 13 firms did not involve unadmitted staff in the triage process.
- Most firms had not exceeded the limitation period during any cases within the past year.
- Most firms had a policy in place to avoid exceeding limitation.

Findings

Our sample of 40 firms represented 3,697 staff engaged in PI work. Some of these firms were composed entirely of qualified lawyers. Others employed large numbers of unadmitted staff under the supervision of solicitors. The majority of staff, 59 percent, did not hold formal legal qualifications.

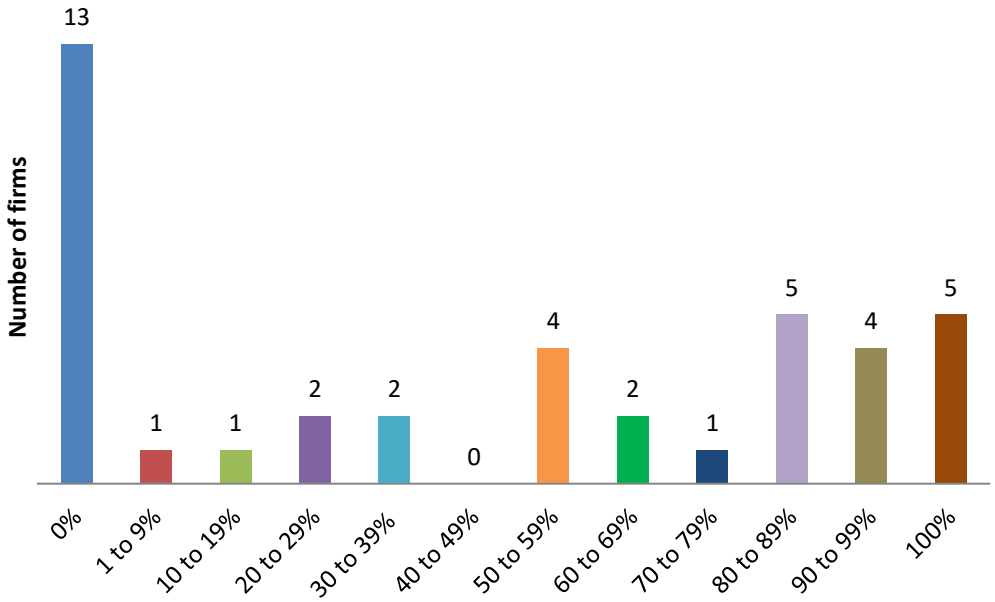
What positions do your staff hold?



'Other staff' included:

- secretaries
- legal assistants
- practice managers
- apprentices
- a registered European lawyer
- in-house nurses
- consultants.

What percentage of triage work and case selection is carried out by unadmitted staff?



How firms triaged

Firms handled triaging in a number of ways. Triaging was carried out by:

- a dedicated first response or new claims team (13 firms)
- a practice manager (four firms)
- a non-lawyer partner
- a former solicitor
- a dedicated translator
- in-house nurses
- outsourcing to an external provider
- the parent insurer company (two firms).

Triaging carried out by legally qualified staff included the following:

- a partner (five firms)
- solicitors (five firms)
- a team of trainee solicitors
- emailing the details of the new claim round to relevant solicitor teams.

Firms took a number of factors into account when allocating, triaging and risk-assessing cases including:

- fee earner skills and experience
- workloads and capacity
- the client's geographical location or linguistic needs
- complexity of the matter
- type of claim eg fixed fee or hourly rate, RTA or employer's liability.

Assessing the merits of a case is also a key part of case selection and triage. The merits include an assessment of both liability and damages. The majority of firms, 80 percent, had a standard form of assessment which helped them decide whether the firm would take on a case and who would deal with it. In many cases, the initial checklist mirrored the Claims Notification Form (CNF) that must be submitted to the defendant before proceedings begin. This made sure that the firm gathered essential information at an early stage. Factors that firms considered include:

- type of claim eg one firm did not take on "trip and slip" claims
- particular circumstances of the accident and injuries suffered eg the weather at the time
- any evidence which the client was able to supply
- whether the accident was reported to the police
- whether liability was already admitted
- the client's claims history, using the Motor Insurers' Bureau's (MIB) askCUE PI Check

- the limitation period. It is necessary at the outset of any new claim to determine whether or not the limitation period has already expired. If it has, the claimant may be prevented from bringing a claim. Firms must pay careful attention to limitation periods because of the serious consequences it can have on a claim. Monitoring limitation periods allows a firm to take any necessary action before it expires.
- fraud risk factors eg the number of passengers, time of day when the accident occurred[10].

When we spoke to fee earners, however, two said that their firm did not have a triage process. In one case this was because the firm's work was disrupted by a recent bereavement. In the other firm, however, the firm relied on fee earners to use their own judgement.

Good Practice

A standardised method of gathering vital case information at the outset of a matter.

Having dedicated, competent and trained staff to triage and select cases.

Robust and effective procedures for tracking and managing the limitation period.

Poor Practice

Total delegation of triaging and case selection to individual fee earners who lack experience and expertise.

Failing to assess cases in a standardised way that can lead to different criteria being applied.

Lack of systems to prevent limitation periods expiring.

Failure to alert supervisors and relevant parties when the limitation period is approaching.

[10] See the section on fraudulent and frivolous claims, below

Costs explanation

Concern

The Survey noted a concern among some clients that the basis of the solicitor's fees had not been properly explained. Concerns included:

- costs being hidden in the 'small print' of client care documentation
- clients having a poor grasp of what they were being charged and why.

Key findings of the thematic review

- CFAs are by far the most common form of funding for PI work.
- A range of success fees are charged to clients in CFA work. This reflects attempts by firms to obtain a competitive edge.
- Few firms use damages-based agreements (DBAs), and those who do tend to use them for unusual cases.
- Firms had differing attitudes about ATE policies, as premiums are not now recoverable from defendants. Attitudes ranged from discussing ATE with clients, continuing to cover most cases with ATE or advising clients against taking out an ATE policy.

Findings

Thirty eight firms reported that they undertook work under CFAs. Four undertook work under DBAs.

Conditional Fee Agreements

A CFA is a contract between a solicitor and a client to share the risk of litigation. If the client wins the case, the solicitor's costs will be payable. If they lose, the costs are not payable. Although the client is ultimately liable for the costs, these are usually paid by the defendant (or their insurer) if the case succeeds.

In addition, a success fee (an uplift on charges) may be paid. This has been fixed in PI cases at a maximum of 25 percent of the client's damages. The lawyer can therefore be paid a success fee of up to 100 percent of normal fees but it cannot be more than 25 percent of damages.

Damages-Based Agreements

A DBA (also known as a contingency fee agreement) is a different way of sharing the risk of litigation between client and firm. Like CFAs, they are a contract where the client will only pay solicitors' fees if the case is successful. Under a DBA, the solicitor is entitled to up to 25 percent of recovered damages only. The client is only liable for damages recovered from the defendant eg if the defendant is insolvent and damages are not recovered, the solicitor will not be paid.

After the Event Insurance

ATE is a type of legal expenses insurance policy taken out after a legal dispute has arisen. It is intended to cover the costs of a trial. It protects the policyholder from the risk of having to pay their own disbursements and the opponent's costs and disbursements, particularly in the event that the case is lost. The policy will generally cover a variety of costs including counsel's fees, court fees and expert reports.

Some firms engaged in good practice by:

- giving clients an initial estimate of costs
- keeping clients up to date with costs as they increase
- checking whether clients had before the event (BTE) legal expenses insurance which could cover the cost.

During claims which proceed under the Ministry of Justice Claims Portal (Portal)[11], firms should also explain the meaning of "fixed fees". They should also explain the costs implications of a claim changing so that it no longer falls within the scope of the Portal. Only three firms specifically told us that they included this information in costs explanations.

Explaining CFAs to clients

From 1 April 2013, a CFA in a PI claim may charge a success fee of up to 100 percent of normal fees but it must not be more than 25 percent of damages. However, not all firms charged this and many would decrease it. A lower success fee means the client will receive a higher amount of damages. This allows for competition within the PI market.

Firms tended to set success fees at a standard rate across their portfolio of clients. A 'set' success fee would suggest that a risk assessment of the individual file is not being done. The success fee is not being linked to the actual prospects of success for that individual case. In these circumstances, firms need to consider how this is acting in the best interest of the client.

In view of this, we have updated our warning notice to highlight the areas that firms need to consider when agreeing success fees with their clients.

Of the 38 firms who provided us with details on how they explained CFAs to clients:

- 10 gave a verbal explanation only
- 11 gave a written explanation only
- 17 explained CFAs both verbally and in writing.

When we examined client files, we found that written costs information had been provided in all cases. However, in 15 cases a written and verbal explanation had been given.

A verbal explanation gives clients a chance to ask questions and firms the ability to check the clients' understanding. However, unless calls are recorded, the adequacy of the explanation may be difficult to evidence. It may also create difficulties if the client cannot

[11] The Portal is a tool for processing low value PI claims. It acts as a go-between for claimants and defendants, making it straightforward to pursue a road traffic accident or PI claim.

understand English. A written explanation is easy to evidence but lengthy documentation may confuse some clients. The most thorough approach is to use both and to record in a file note any discussion.

One firm explained to us that their client care letter, which explained CFAs, had been written by a barrister and was reviewed every six months. While the letter contained all the required information, it used very complex language. Other firms provided CFA leaflets written in a more user-friendly language that summarised the important parts of the agreement.

Many firms also reminded clients of their obligations under a CFA and the cost consequences of breaching these. One firm provided a specific warning in relation to fundamental dishonesty[12]. Others highlighted that the client remained ultimately responsible for fees, which would be payable if they breached the terms of the CFA.

As the client is ultimately liable for the firm's fees, it is also important to make them aware of the firm's hourly rates or the applicable fixed fee. Clients should also be made aware of the applicable VAT and likely disbursements.

Using DBAs

Only four firms used DBAs. The amount of work carried out under DBAs varied widely eg three percent, five percent, 20 percent and 100 percent.

Three of the firms used DBAs for cases where the defendant party was unknown or uninsured eg cases involving the MIB or the Criminal Injuries Compensation Authority.

The remaining firm, who used 100 percent DBAs, suggested they were easier for clients to understand than CFAs.

Considering ATE

Firms also spoke to us about ATE. This is insurance taken out after an accident has happened to indemnify clients against paying the defendant's costs. ATE used to be commonplace in claimant PI cases as the cost of the premium could be recovered from the defendant. From 1 April 2013, ATE premiums are no longer recoverable from the losing party. Instead, qualified one-way costs shifting (QOCS) has been introduced. This means that an unsuccessful claimant in a PI claim will not have to pay the defendant's costs if their claim was honest and properly brought.

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[12] Fundamental dishonesty is a finding that judges can make under s.57 of the Criminal Justice and Courts Act 2015. If a claimant is found to be dishonest in one aspect of their case the whole claim can be struck out including any genuine elements. The court will also make a finding of the value of the genuine elements and the defendant can recover their costs less the amount that the court would have awarded the claimant.

Seven firms reported that they discussed ATE policies with clients. One firm stated that they tend to advise clients against ATE policies as QOCS will cover their cases. Another firm, by contrast, informed us that 'the vast majority' of cases were still covered by ATE policies.

Firms may wish to discuss ATE with their clients but should make sure that clients are fully informed that the premium cannot be recovered from the losing party and QOCS applies. Firms are able to arrange ATE on behalf of clients but need to comply with the SRA Financial Services (Conduct of Business) Rules 2001 and the SRA Financial Services (Scope) Rules 2001 in order to do so.

Clients may also have BTE in place before the accident. Some firms carried out the majority of their work for clients with BTE policies. Other firms stated that they would check whether clients had BTE in place at the outset. If the client had BTE in place, this insurance product could be used to cover the legal costs.

Good Practice

Firm checks whether clients have BTE legal expenses insurance which could cover the costs of a claim.

Including explanatory leaflets with CFAs to explain their purpose, effects and the client's obligations.

Written information about costs is provided in plain English together with an explanation of fundamental dishonesty and its consequences.

Giving clients a preliminary estimate of costs as well as the costs of likely disbursements.

Clients are kept up to date with costs as they increase.

Giving a clear explanation of the advantages and disadvantages of ATE and the implications of QOCS.

Clients are provided with a verbal explanation of costs and an opportunity to ask questions. This discussion is recorded in a file note and followed up by a letter.

Poor Practice

Reliance on either wholly written or wholly verbal ways of explaining the basis of funding.

Complex and difficult to understand client care letters and terms of business.

Failure to explain the meaning of "fixed fees" and the costs implications of a claim falling out of the Portal.

Success fees being set without undertaking a proper assessment of the prospects of success for that particular claim.

Acting on instructions

Concern

Our Warning Notice noted a general concern that some firms may be pursuing PI cases without reference to the client. This involves taking instructions from third parties without making sure they have authority from the client. These third parties could be referrers or other parties seeking to speak on behalf of the client.

Our Warning Notice stated that solicitors must:

- make sure that they are acting on valid instructions by checking with the client at each stage of the retainer
- not rely on a friend or relative providing instructions on behalf of a client without further scrutiny
- satisfy themselves that it is in the client's best interest to accept instructions from a third party
- properly identify clients by obtaining and verifying proof of identity and address.

Key findings of the thematic review

- The majority of firms and fee earners took care to check instructions directly with the client at key stages of the case.
- There used to be an issue with clients having instructed more than one firm, but firms reported that it had not been a problem for some time.
- Most firms do not accept instructions from third parties and the majority of those who do have policies in place to protect the client's interests.
- There were two files out of the 80 we reviewed where confidential information was shared with a third party without client consent.

Findings

Checking instructions with the client at key stages

We asked firms whether they checked instructions directly with clients at the following key stages of a case:

- issue of proceedings
- disclosure
- witness statements
- instructing an expert
- updated losses

- settlement
- trial.

A significant majority of firms stated that they checked instructions with clients at key stages. However, two firms stated that they did not seek the client's instructions at the stage of instructing an expert and one did not check instructions at the settlement stage.

One firm did not directly involve the client in the settlement process but instead obtained the client's written authority to negotiate on their behalf. The firm gave their assessment of quantum and the client filled in a form with their preferred compensation bracket. The firm would then negotiate a settlement on the client's behalf within the bracket.

Likewise, defendant firms used delegated authority to defend claims. These agreements allowed firms to make decisions on certain cases without reference to the client, provided that certain conditions were met. These conditions could be a value threshold for claims or a particular level of complexity. Delegated authority cases also had fixed fees applied to them, whereas work which exceeded the thresholds would be charged at an hourly rate.

Of the 80 client files we reviewed, the majority showed evidence that instructions were confirmed with the client at key stages. However, on nine files there was no evidence that instructions were confirmed at the following stages:

- issue of proceedings (three files)
- disclosure (one file)
- witness statements (two files)
- instructing an expert (two files)
- settlement (one file).

It is important to be able to show that the client has been consulted at all of these key stages, but particularly so in the case of settlement. This is because settlement is full and final and the client cannot make any further claims.

The firms used a number of different strategies to make sure that clients gave them informed and current instructions. These included:

- automated updates given to the client at key stages through the firm's case management system
- regular client updates eg every two months throughout the case (particularly in higher value multi-track matters)
- warnings to clients throughout a case about the consequences of false evidence
- updates to clients when claims fall out of the Portal[13].

[13] eg the claim is re-valued at more than £25,000, or injuries other than soft tissue injuries become apparent.

Where these policies exist, firms should make sure that staff are following them. One firm, for example, had a policy of giving clients at least two monthly updates on their cases but when we examined two client files neither had complied. This calls the firm's ability to supervise files into question.

Taking instructions from more than one firm

Thirty six firms said that they had historically found another firm had been instructed by their client in parallel on the same case. Firms reported that this was, however, less common than it had been in the past, due to increased use of the Portal. Thirty firms attempted to stop this at the outset of the case by asking the client whether they had instructed another firm. This also helped firms to identify and vet recycled claims.

Despite these measures, firms still found that clients sometimes instructed more than one firm on a single claim. In most cases this was an honest mistake by the client who may have become confused. Some clients visit multiple firms before settling on one and this might lead to mistaken instructions. Another firm stated that some clients simply became dissatisfied with their original firm and did not realise that they should terminate their instructions with that firm before instructing another. Firms said this situation had been more frequent when CMCs were more active as clients would assume that the various calls had come from the same CMC.

Taking instructions from third parties

Nine firms reported that they might take instructions from third parties rather than the client:

- two firms acted for clients funded by BTE legal expenses cover and might receive instructions from their client's insurer
- one firm stated that they would only do this if the client lacked capacity due to injury or minority
- five firms stated that if the client had difficulties in speaking English, they would take the client's instructions through a relative or friend
- one firm said that clients who have difficulties with the English language may ask a CMC for assistance, but they would only ever write to the client.

The firms who took instructions from the family or friends of clients all stated that they would only do so with client consent. Four of these firms made sure that they got the client's written authority. One firm took steps to mitigate the risk of accepting third party instructions by only accepting instructions from a third party if the client was physically present in a meeting. One firm, however, only obtained verbal consent from clients to take instructions from a third party. Although a file note could be made, it may be difficult to prove that the client had given their authority if it was ever challenged.

We asked firms how they assured themselves that taking third party instructions were in the client's best interests. One firm told us that they assumed family members would naturally act in the client's best interests. Firms should not assume this eg family members might think that they are helping clients by exaggerating their injuries.

All firms who reported that they would take instructions from a third party said that they would obtain separate authority from the client to make or accept a settlement offer.

Our file reviews featured six matters where a third party had instructed the firm. In one case, there was no written client consent received from the client to confirm this was appropriate, though on further inspection the file reflected a clear intention from the client that this was known and accepted. In two other cases, there was no written warning that the firm may share some client information with a third party eg friend or family member. This warning should be present on all files where instructions are received from a third party.

Although firms said they would not accept instructions from a referrer, we encountered two files where information had been shared. In the first case, the firm's pro forma client details sheets included sections asking whether the client consented for case information to be shared with the referrer, or for monies to be paid to them. In the second case, client information was shared with a referrer without the client's consent. Both matters have been referred into our disciplinary processes.

Forty two percent of firms also stated that they never physically met their clients. This increases the risk of accepting instructions from third parties. The firm has no way of knowing whether they are receiving valid instructions from clients themselves. Gathering client due diligence information, such as passports and utility bills, can be a useful way of establishing the client's identity.

Good Practice

Firm checks instructions directly with the client at key stages of a case.

Standard processes for keeping clients informed either at key stages or at regular intervals.

Written instructions are obtained before relying on instructions from third parties.

Making sure that the client has not instructed another firm at the outset of a case.

Making sure that instructions ultimately come from the client and not a third party.

The firm properly identifies the client by obtaining and verifying proof of identity and address.

The firm does not share client information with any third party without the client's informed written consent.

Poor Practice
Failing to get written authority from a client to take instructions from a third party. Failing to record the client's instructions on the file. Sharing information with third parties without the client's consent. Failing to get direct instructions from the client at key stages of a case. Failing to properly supervise files to ensure regular updates are provided to clients.

Fraudulent and frivolous claims

Concern

The Survey says that 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, particularly in respect of RTAs. Concerns were raised in the Jackson Review of Civil Litigation Costs over whether liberalisation had gone beyond encouraging ease of access to justice and had contributed to an increased number of fraudulent claims.

Our Warning Notice states that because of the risks involved in bringing false claims, clients must be properly identified by obtaining and verifying proof of identity and address. Unusual or suspicious factors must be investigated fully. If any third party, including an agent, provides copy documentation such as a photocopy of a passport, the client must confirm its authenticity.

If proper steps are not taken to minimise risks or deal with issues that arise, action may be taken for misleading the court and failing to comply with the Code.

Key findings of the thematic review

- Some firms do not obtain evidence of identity at the outset. This decision is partly because PI work does not fall within scope of the MLR 2017. It is also based on a risk assessment of the source and type of claims they carry out.
- Firms use a variety of methods to obtain client identification.
- Firms also have various processes and procedures in place for when fraud is alleged or detected.
- Firms use a variety of fraud indicators.
- Defendant firms tend not to pursue fraudulent claims as it is easier for them to get a notice of discontinuance. This ends the claim. This may explain the low number of actual fraudulent claims overall.
- There is tension in the relationship between claimant and defendant firms on the issue of fraud.
- Particular tensions include the high volume of fraud allegations from defendants and the failure to promptly disclose information.

What the Survey said about fraudulent PI claims

The Survey sets out two basic types of fraudulent PI claims:

- the most common type of insurance fraud is soft (or 'opportunistic') insurance fraud which occurs when a claimant inflates a claim (eg 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.

The Survey said that most interviewees understood there was 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 the CMCs aggressive advertising methods and not by widespread fraud. Almost all claimant solicitors felt that the Jackson reforms[14] 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 Jackson 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 constituted a small number of firms.

Findings

Identifying clients

There are two main ways that claimant firms identify clients:

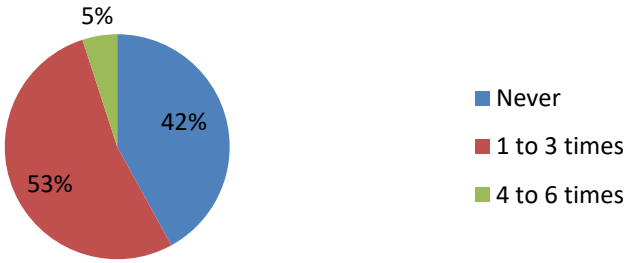
- The first method is to get documents from the client. The most common documents were the client's passport and driving licence. However, there were a number of other documents requested including birth certificates, national insurance details and Department for Work and Pension's records (these were usually part of the evidence). Those firms with clients belonging to a union relied on proof of union membership, such as the client's union number and membership details.

- The second method is to obtain online verification of the client's identity. The firms named three companies who offer this service: CallML, LexisNexis and Tracesmart. These systems produce a risk rating for clients based on various information collected from different sources. Firms generally checked this identification with the client and would ask for documentary proof of identify if the client was high risk.

[14] Lord Justice Jackson's reforms created a new funding regime for court proceedings and made several other changes to litigation procedure.

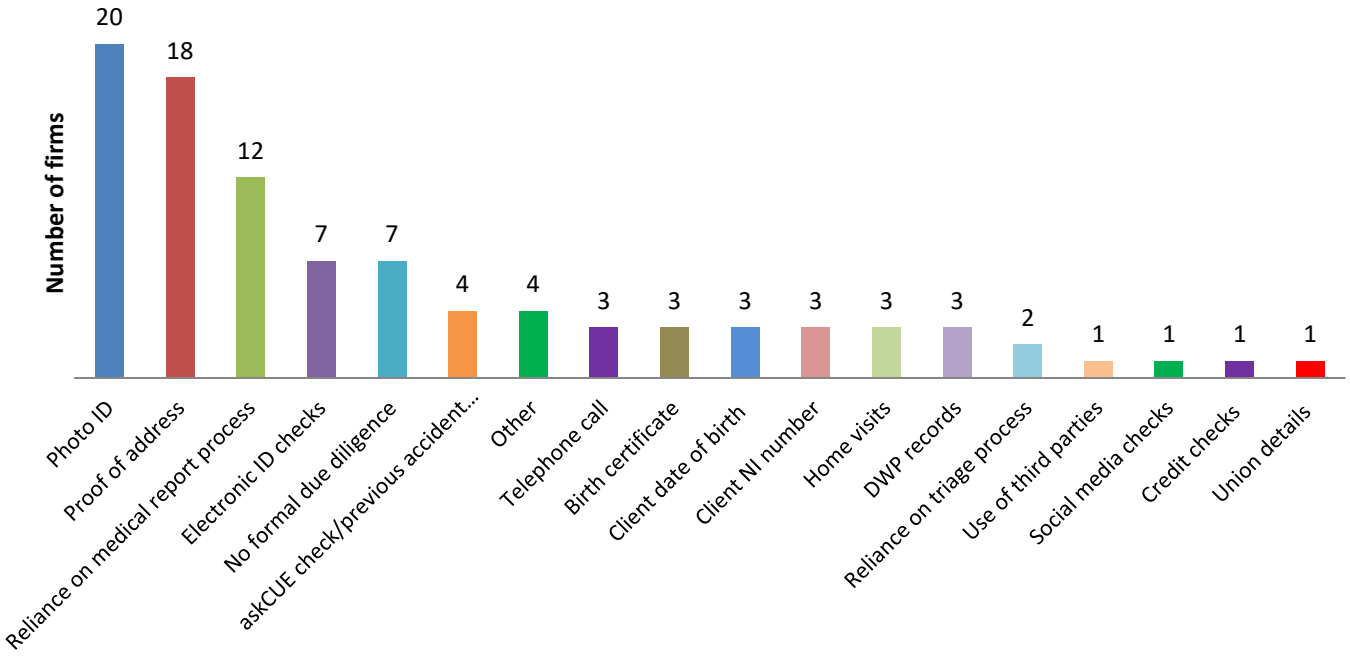
Firms also said that they had confidence in their triage processes to filter out any potentially fraudulent claims. They said it is important to ask searching questions at the outset. Some firms said that they would also visit the client at home as part of the identification process. Firms were more likely to meet clients face to face in more serious claims.

How many times do you meet clients on average?



Straightforward RTA cases are unlikely to require firms to meet with their clients and it is therefore unsurprising that 42% of firms do not do so. The nature of straightforward PI work can lend itself to client relationships where face to face meetings do not take place. The absence of such meetings in PI cases does not necessarily result in an increase in risk for the claim. Firms would generally meet clients in more complex cases such as medical negligence and catastrophic claims. Firms also occasionally met with clients if they were local.

What due diligence do you carry out?



- Seven firms said that they did not undertake any formal client identification process. This included four firms who mostly relied on the identity checks carried out by the insurer. Another firm said that the work was out of scope of the Money Laundering Regulations 2007. The majority of their work took a long time to complete and they got to know their client over that period. They also tended to deal with more serious, life-threatening injury cases.

- Twelve firms said that they would use the medical report process to identify their client[15]. Two of these firms said they would rely solely on this process to identify their client. Others used it to cross check their client's identity with the documents held on their files.

- Some firms said that they did not feel it was proportionate to collect client identification at the start of a case. One firm mentioned the additional costs of doing so was disproportionate when they only recover around £500 in fees per case. Whilst we appreciate that some firms operate under tight profit margins, cost should not be an excuse to avoid managing the risk of fraud. Firms should carefully assess the likelihood of encountering a fraudulent claim based on their business and case profile. Appropriate measures should be introduced following this assessment.

Client ID - file reviews

The file reviews showed that steps were taken to identify the client on 55 out of 80 files (69 percent). The question was answered as 'not applicable' on eight files - four relating to defendant insurers and four where the firm said they had obtained the documents but they were either not yet on the system or entered on a different system. No identification was obtained in 17 files (21 percent). Reasons for this have been explained above.

At one firm we questioned why there was no identification on two of the client files when it was supposed to be under the firm's policy. We established that the firm had a software issue that meant that letters asking for client identification had not been sent to clients for over 12 months. This issue was therefore picked up during the visit and has been passed into our disciplinary processes.

Undertaking a risk assessment

All firms showed an understanding of fraud risk indicators. 73 percent of firms reviewed these indicators throughout the case's life cycle.

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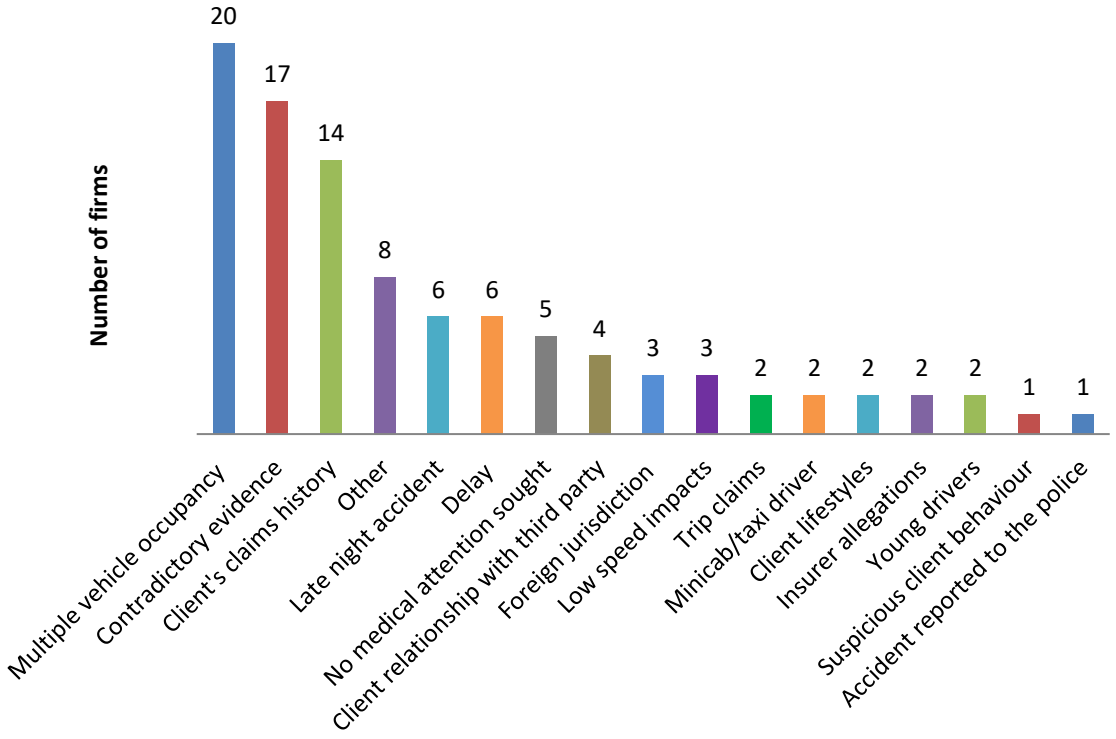
[15] Patients are required to provide photo identification to the medical expert at the MedCo medical report stage.

Examples of fraud risk indicators are set out in the chart below. The most common indicators were multiple vehicle occupancy claims and claims where there was contradictory evidence from the client.

Another common risk indicator was the client's claims history. There would be concern if the client had made multiple claims. The solicitor will check the PI database using the askCUE online service[16]. This is a requirement under the Pre Action Protocol for Low Value Personal Injury Claims.[17]

What key indicators do you review to determine whether a claim is frivolous or fraudulent?



'Other' factors included the exaggeration of special damages, country roads, exaggerated vehicle damage and the use of a risk assessment matrix. Some firms used social media to investigate claims, particularly Facebook in the investigation of holiday sickness claims.

There does not appear to be any definitive version of these risk indicators and firms tend to adopt their own indicators based upon experience.

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[16] askCUE PI is an enquiry service which allows approved organisations to check records held on the CUE PI database before they submit a PI claim through the Portal. These records relate to PI/industrial illness incidents reported to insurance companies, which may or may not give rise to a claim.

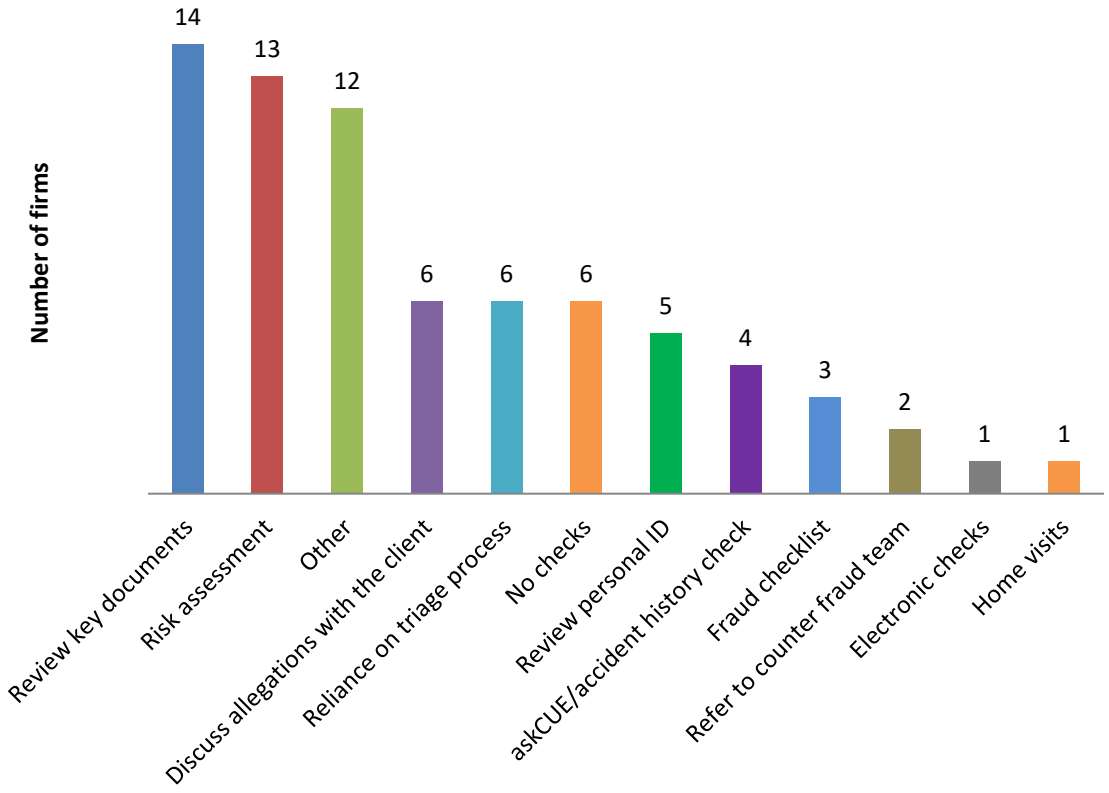
[17] See Link

The file reviews showed that steps were taken to make sure that the claim was not frivolous or fraudulent in 89 percent of the files reviewed. Checks were not considered applicable on nine files. Reasons for this included:

- the firm was solely reliant on insurer referrals where checks had already been completed
- the fee earner had not personally done checks but these were conducted by a previous fee earner
- the case was a straightforward one where liability was admitted.

Fee earners said the two most common ways to make sure a claim was not fraudulent or frivolous were to check their client's documents and carry out some form of risk assessment. They also said they would rely on the firm's initial triage process to identify fraudulent claims.

What steps did you take to make sure the claim was not fraudulent or frivolous?



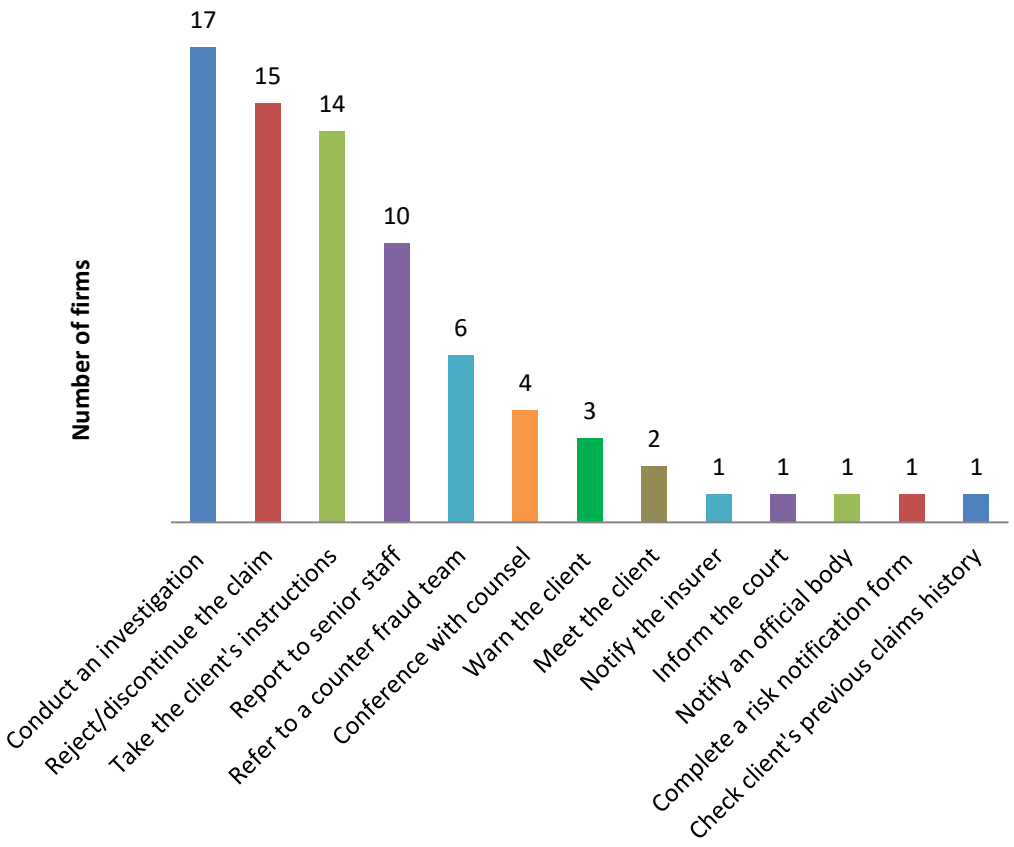
There were six firms where the fee earners were unable to show that checks had been undertaken. At five of the firms (nine files) the checks were considered not to be applicable. At one firm, checks should have been carried out but had not been due to a software error.

Action taken if a potential fraudulent claim is spotted

Claimant firms were aware of the view that fraud is widespread in the PI market. They maintained that they did not want fraudulent claims any more than defendant insurers, as

they are bad for business and their reputation. They had developed a number of strategies for dealing with potentially fraudulent and frivolous claims.

What steps are taken if a fraudulent/frivolous claim is spotted?



A number of firms said they would investigate allegations of fraud. One large firm said they employed ex-police officers to take witness statements and investigate allegations. However, the cost of investigating such allegations is often disproportionate to the value of the claim and the costs. Another firm said they would investigate despite the cost, as they would not want to be caught out if the claim went to trial. They felt that they owed it to their clients to investigate the allegations.

Other firms said they would end their retainer with the client if they suspected fraud. They said the main reason for this was to protect the firm's reputation. Firms tended to explain this to clients by saying that the prospects of success have been reduced.

A number of firms said they would take the client's instructions if allegations of fraud were raised. Amongst these, two firms said they would meet the client in person. If the client does not want to attend they will end the retainer. One firm said that a client had confessed to a fraudulent claim in such a meeting. Three firms said they would also warn the client about their obligations and responsibilities to the court.

Several firms said that suspicious activity would be reported to senior staff. This included the Practice Manager, COLP, Managing Partner and a partner/director.

Six of the firms had their own counter-fraud teams. This included two defendant firms we visited. The role of this team was to investigate any claims where fraud was suspected or alleged. It was also to provide guidance and expertise in fraud related issues. Other firms said they would involve counsel if there were allegations of fraud.

Number of fraudulent cases

Generally the number of fraudulent cases identified by firms during the last twelve months was low compared to the volume of claims being processed. Firms had found no more than 10 cases with the exception of one firm who said they had found 25 to 30 cases.

There was no obvious indication that those firms who did not collect client identification at the start were either better or worse than other firms at detecting fraudulent claims. A number of firms said they were not sure whether they had had any fraudulent claims and it was difficult for them to say. Several referred to clients exaggerating their claim as the most common type of 'fraud' as opposed to premeditated fraud. This was the most common type of fraud in holiday sickness claims.

Claimant solicitors' viewpoint on fraudulent claims

There were 11 firms who said they had not detected any fraudulent claims in the last 12 months. This was despite a general view amongst claimant firms that defendants are alleging fraud too often and taking a 'scatter gun' approach to fraud. Claimant firms believed that they are receiving too many standard letters alleging fraud. They said that insurers need to be sensible as fraud is not an allegation that can be made lightly.

Several claimant firms also mentioned 'fundamental dishonesty' and that defendant firms are commonly referring to this. This follows the decision in *Hughes, Kindon and Jones v KGM*[18], which invoked section 57 of the Criminal Justice and Courts Act 2015 for the first time in a full trial. This provision allows judges to reject the entirety of a case when fundamental dishonesty has been demonstrated in any part of the claim, even if it contains a genuine element.

Some claimant firms also said that there was an incentive for defendant firms to allege fraud as the defendant firm would be paid more if fraud is alleged. They believed this contributed to the rise in the number of allegations of fraud.

[18] Unreported, Taunton County Court 1 April 2016

There was also a general concern that defendant firms were unwilling to share information about fraudulent claims at the earliest opportunity. Allegations were often only made clear once proceedings had been issued and a defence filed. This is because defendants did not want to provide information in advance of a hearing and enable the claimant to alter their evidence. It was felt that there was an uneven playing field in terms of the information available to claimant firms. Defendant insurers have access to more complete databases of information. It was felt that more co-operation between claimant and defendant firms and early disclosure would help with fraud detection.

Defendant solicitors' viewpoint on fraudulent claims

Defendant firms said that they tend not to allege fraud as part of the proceedings as it can be difficult to reach the high threshold of proof. A pragmatic result for them is to get the claimant to discontinue the claim if fraud is suspected. If fraud is proven, this may only relate to one aspect of the claim. However, if the claim is discontinued, the claim goes away.

Defendant firms were also wary of tipping off a potentially fraudulent client if allegations were made too early. One firm said that claimant firms are usually in possession of more information about the client than defendant firms, provided the client is truthful.

In respect of defendant costs, the firms denied that costs were a factor in alleging fraud. One firm agreed that an allegation of fraud would usually take a claim outside of their delegated authority to act under fixed fees. This is explained in the earlier costs section. However, they pointed out that they are often under strict contractual obligations to the defendant insurer. The insurer would want to see sufficient evidence of fraud to justify the increased costs.

Other concerns raised by one defendant firm related to the failure of claimant firms to undertake due diligence eg not obtaining the client's National Insurance number or date of birth. This issue is

Training

Firms were asked to provide information about training that is given to detect fraud in PI cases.

Twenty six firms stated they had carried out internal AML training and 32 firms stated they had carried out internal fraud training in the last 12 months.

Twenty four firms stated they had carried out external fraud training and 14 stated they had carried out external AML training within the last 12 months.

These figures are encouraging but firms need to make sure that fee earner knowledge and training is kept up to date. This may be a particular issue for firms who have a high turnover of lower paid staff processing lower value claims.

discussed above. They were particularly concerned about holiday sickness claims which they regarded as a higher risk of fraud.

Another concern was exaggerated costs and use of advisers with high rates of pay.

It was apparent that there were considerable tensions between the claimant and defendant firms about fraud. Greater co-operation between claimants and defendants may be the only way to tackle these issues.

Good Practice

Make sure you have adequate ways of identifying your client.

Have a process to assess the risk of fraud based on consistent risk factors.

The risk of fraud should be monitored throughout the life of the case.

Make sure that fee earners are aware of the firm's identification policy and what to do if fraud is suspected.

Provide training on the detection of fraudulent cases.

Have adequate supervision in place to help detect fraudulent cases.

Thoroughly investigating any allegation of fraud raised in a claim.

Poor Practice

Failure to make sure that clients are appropriately identified.

Poor risk assessment of cases.

Little or no training on how to detect fraud.

Limited supervision of cases.

Litigation process

Concern

Our Warning Notice states that acting in the clients' interests and delivering the required quality of service needs clear instructions from the client and an agreed course of action. Clients should have all the necessary information to make informed decisions on how their matter should be dealt with.

We wanted to understand how firms approach the litigation process and keep clients informed. This included whether litigation was carried out by properly experienced staff.

We asked firms various questions about how they approached and supervised the litigation process. The process includes:

- preparation of the claim form to make sure that it reflects the client's instructions and the client is aware of what is happening
- appropriate disclosure to make sure that evidence is collected and disclosed
- preparation of an accurate and (where needed) detailed witness statement.

Key findings of the thematic review

- Firms adopted a variety of different methods of supervision in the litigation process. These vary depending on the size of the firm and the complexity of cases.
- Litigation tends to be carried out by solicitors or more experienced paralegals. Some firms focus on the experience and skill set of fee earners rather than legal qualification.
- Litigation fee earners had a lower case holding than those who did pre litigation work. Many fee earners had a mix of litigation and non-litigation cases. However, some firms had specialist litigation teams.

Litigation process for PI claims

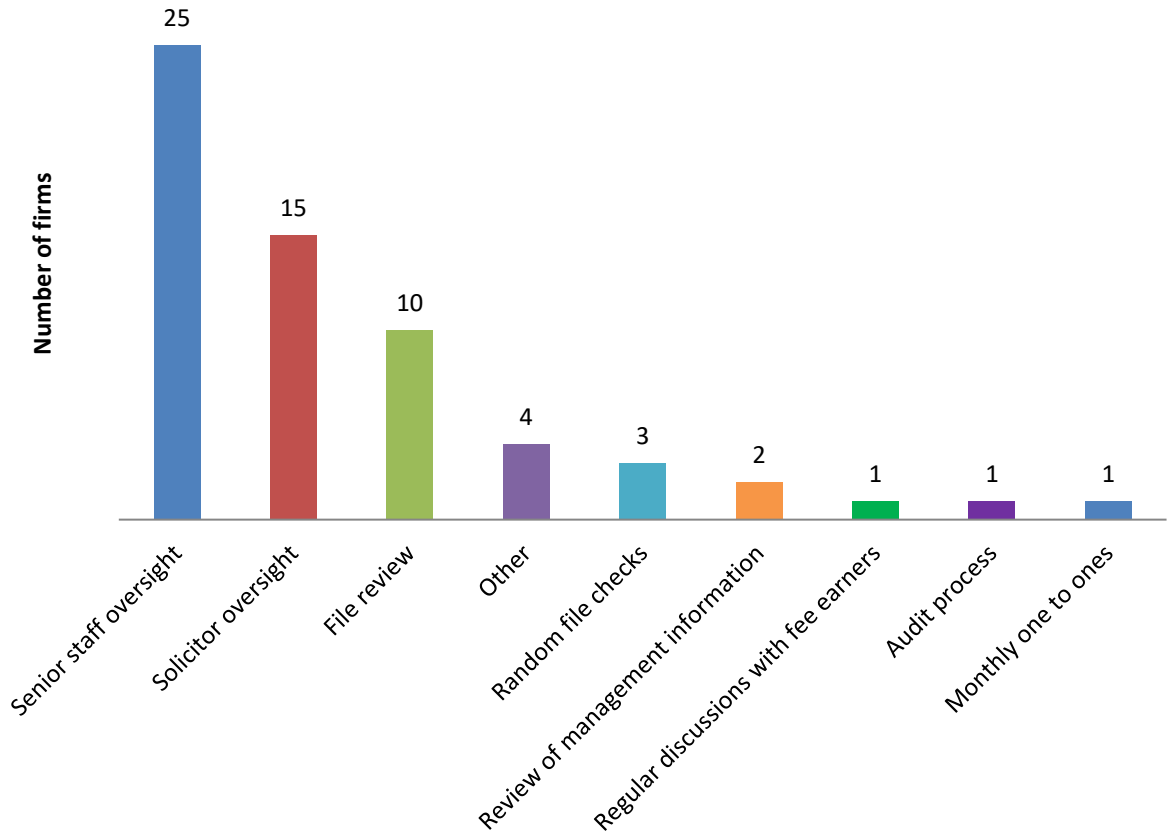
Many claims for PI will proceed under the Portal for low value claims. An important stage in the process is to notify the defendant about the claim through the Portal or by a letter of claim. Claims will drop out of the Portal if an agreement is not reached. It is then necessary to issue proceedings.

Preparation of the claim form

The first part of the litigation process is to prepare the claim form. We asked how fee earners were supervised to make sure that the claim form is accurate and detailed. Responses were broadly split into two main categories:

- supervision and oversight
- processes designed to help the fee earner with their work.

How are fee earners supervised to check that the claim form is accurate and detailed?



Firms generally relied on solicitors and senior staff (admitted and unadmitted individuals) to have control over the issue of proceedings. Senior staff included team leaders, heads of department (or equivalent) and managers. Firms also tended to have more than one method of supervision.

In some firms, more experienced unadmitted staff completed the claim form. This was especially the case in lower value Portal claims where a CNF had been completed. One firm said they would use counsel to prepare the claim form and particulars of claim.

Ten firms also said that they relied on file reviews to identify any issues with the claim forms and issue of proceedings. This included a random 'spot check' or 'cabinet raid' at four firms.

Processes designed to help fee earners manage their case-holding included:

- litigation fee earners having a reduced case-holding
- the use of templates and proformas.

The average number of pre-litigation cases for a fee earner at the sample firms was 120. This was reduced to an average of 49 litigation cases per fee earner. This reflects the greater complexity of litigation cases and the oversight required once proceedings have been issued. The majority of fee earners interviewed had a mix of both pre litigation and post litigation cases.

Handling PI cases in larger firms

Larger firms with more teams of fee earners tended to have a supervision structure with fee earners reporting to team leaders. Team leaders either had a reduced case-holding or focussed entirely on the management of their team. Team leaders would report to a Head of Department, or equivalent role. The focus at these firms tended to be on the skill-set and experience of fee earners rather than whether they were legally qualified. Fewer key decisions, like whether to issue proceedings, were approved by senior staff. Firms relied on the file review and case management processes to identify any problems.

However, larger firms tended to have more sophisticated electronic case management systems. There was also a focus on collecting and using management information with staff bonuses sometimes being linked to performance. Firms should consider the type of behaviour that this may encourage and in particular whether these bonuses may lead to poor behaviours eg a concentration on speed over quality.

Five firms said that they used specific litigation teams to prepare documents. It was felt that having specialist teams reduces the risk of errors occurring. These teams generally consisted of solicitors and more experienced fee earners.

Dealing with disclosure

Disclosure is made by serving a list of the documents on the other party. This list is a standard form which must identify and describe the party's documents.

Firms adopted the same supervision systems and processes for preparation of the disclosure list. This work tended to be done by more experienced staff and solicitors.

The fee earner would review the documents held by the firm and consider whether they should be disclosed. A letter would be sent to the client explaining disclosure and asking them about documents that the client had to provide. The disclosure list is then prepared and sent to the client, once documents have been provided. Defendant firms would ask for the claimant's authority to obtain medical records.

One firm said they would wait until there is a directions order from the court to disclose documents. Others said they would disclose early to 'get ahead of the game'. Some firms said they use their own diary systems to monitor deadlines for responses.

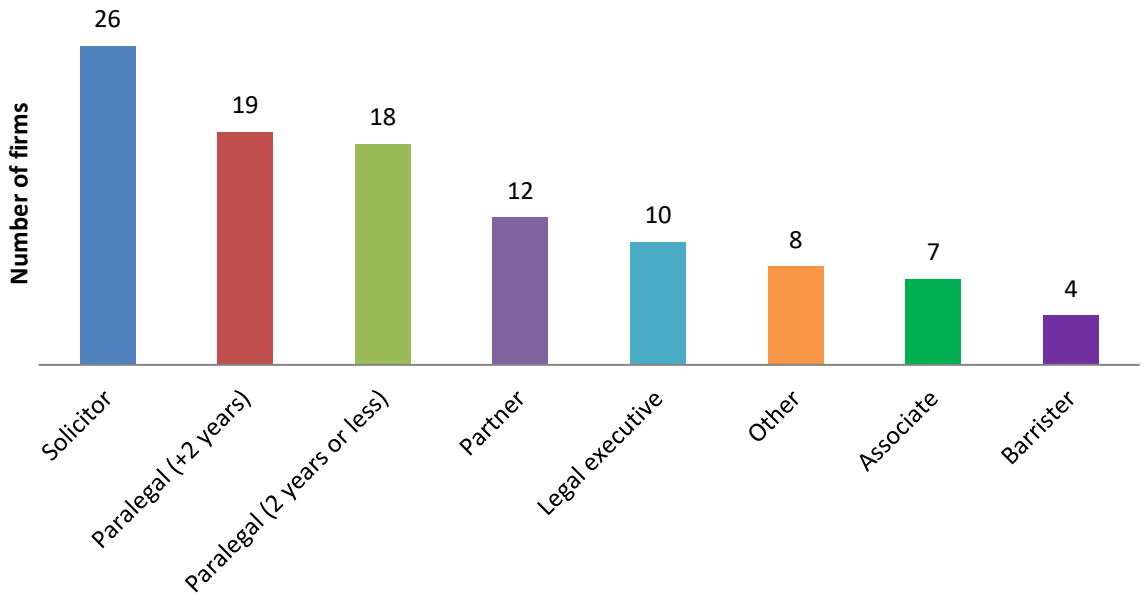
The disclosure list was signed by the client at all but one firm. This firm said they would sign the disclosure list if they did not have time to get the client's signature but did have the client's permission.

Preparation of witness statements

Firms also used similar supervision systems and processes for the preparation of witness statements.

Eighty five percent of firms said they would take the witness statement remotely eg by telephone. A further 63 percent of firms said they would also take statements in person, usually for more complex or high value claims. Witness statements for multi-track cases could sometimes be taken over several meetings.

Who prepares the witness statement?



The majority of firms said that the witness statement would be prepared by a solicitor. This was followed by more experienced paralegals.

At some firms the witness statement was prepared by an external party (see "other" on the graph). Firms said this helped to move cases along as there was always someone with expertise available to take the witness statement. Two firms also used ex police officers to complete witness statements. These are included in the 'other' section above.

One large firm outsourced preparation of witness statements to a specialist firm that would also give an opinion about the credibility of the witness. This gave fee earners an opportunity to progress other parts of the case in the meantime. Another firm said they used the Proclaim system[19] to draw out information in a pro forma statement. The system provided prompts to the fee earner when discussing the witness statement with the client. Witness statements in more complex cases were reviewed by a supervisor.

For defendant firms, witness statements tended to be prepared by loss adjusters or accident investigators on behalf of the insurers. The firm would prepare witness statements in more complex cases.

A copy of the statement would be sent to the client for them to sign the statement of truth. Most firms explained the meaning and importance of the statement of truth to the client.

What our file reviews showed

The preparation of a letter of claim is an important part of the process before issuing proceedings. The Pre Action Protocol for Personal Injury Claims states[20] that, where a claim no longer continues under the Pre Action Protocol for Low Value Personal Injury Claims, the CNF can be used as the letter of claim. The CNF cannot be used if the claimant has been notified it is inadequate.

Letters of claim were prepared on 35 files. We thought that these letters were sufficiently detailed in all cases.

Litigation had been started in 28 (35 percent) of the files. We felt that the claim form had been properly prepared on all but one file where the form lacked detail.

The claim form was signed by the firm on 70 percent of the files reviewed. However, managers had told us that the firm signed the claim form in only 35 percent of cases. There is a difference between the manager's view and the reality as shown by the file reviews. This could suggest that it is more common for firms to sign the claim form. The main issue here is whether the client is fully informed about the details of the claim. There were three files where the fee earner had not confirmed their instructions with the client at the start of proceedings.

The disclosure statement was signed by the client in the 10 files where this was applicable. The fee earner had not confirmed their instructions to the client at the disclosure stage on one file.

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[19] Proclaim is a legal case management system that manages the full lifecycle of case from start to finish.

[20] At Paragraph 5.5

Witness statements were prepared in 20 files. A witness statement is generally not required or encouraged in a Portal claim. All witness statements were signed by the claimant client. Other witness statements were signed by representatives of the defendant. We found no evidence of wasted costs orders on the files.

Medical evidence

Concern

The poor quality of medical evidence provided in PI claims has been a source of concern for the sector.

The Survey outlined the following concerns:

- the poor quality of medical reports
- failures by fee earners to understand and assess information contained within medical reports
- failures by fee earners to scrutinise and respond to poor quality medical reports.

In addition, there has been a concern that firms have favoured particular medical experts irrespective of the client's best interest eg financial incentives have been offered by medical agencies to secure work from law firms. To address this, the Government introduced MedCo. The MedCo system went live on 6 April 2015. This body is responsible for randomly allocating medical experts in RTA claims. The process is intended to prevent any conflict of interest between the medical agency and the solicitor. However, concerns continue to remain about the use of MedCo. These concerns include:

- solicitors finding ways round the MedCo system by overly refining their requirements so that claims are directed to preferred providers
- medical agencies undermining the MedCo system by registering multiple shell companies
- large firms establishing multiple arrangements with medical agencies to make sure that one of their preferred entities always appears on the list of agencies
- the accreditation system not attracting the most experienced doctors to the system.

In addition to concerns about MedCo, the Survey also said there is a lack of understanding about the Rehabilitation Code and this is having a significant and detrimental effect on consumers and the administration of justice.

Key findings of the thematic review

- There were no issues about the quality of the medical reports we inspected during our file reviews.
- MedCo had contacted 25 percent of firms about perceived misuse of the MedCo system.
- A significant majority of firms had received an offer of settlement before medical evidence had been obtained.
- A significant majority of firms were able to show how they had considered the Rehabilitation Code.

All firms stated that medical evidence was a crucial part of each injury claim. A medical report was not necessary where an injury was not claimed. Of the 80 files we reviewed:

- 55 featured a medical report
- 11 had not reached the stage where a medical report was necessary
- 14 did not require a medical report as the incident only included minor injuries which were no longer an issue.

Medical evaluation is an ongoing part of a PI claim. An accurate prognosis helps inform a client about:

- rehabilitation requirements
- if and when to settle a claim
- the value of a claim.

Our file reviews showed that firms continued to evaluate the medical requirements of the client throughout the claim. In particular:

- all firms asked clients about their current health and ongoing injuries on a regular basis
- on 20 occasions, firms had commissioned a second medical report to clarify a medical issue on behalf of a client. In particular, firms required further medical advice following a referral from the initial expert.

Issues with medical reports

Eighty eight percent of firms stated that they had received a poor quality medical report. The issues ranged in severity and included:

- typographical, spelling and punctuation errors

- data breaches eg production of data and/or reports which related to a third party
- factual errors that suggested reports had been cut and pasted from other documents.

The medical reports were appropriately prepared on all of the files we reviewed.

We asked managers what happened if there was an issue with the medical report. Firms explained that minor issues such as typos and spelling could be referred back to the expert for amendment. Major issues may require the commission of a second expert but this can be cost prohibitive, the defendant may object and the initial report may be disclosable.

We asked managers about how and when they supervise the review of medical reports. All firms initially leave the fee earner to review the report. Copies of the report are sent to the client for review and consideration. A number of firms suggested that this review was a useful way to cross reference and check information that was previously provided by the client. Some firms said they use the services of medical staff to review and respond to medical information and expert reports.

Approach to the Rehabilitation Code

There was no uniform approach to how firms handled the Rehabilitation Code. Of the 80 file reviews we undertook, six were unable to show how and when they had considered the Rehabilitation Code.

Each firm's approach to rehabilitation varied depending on the nature of the case. Clients with serious injuries often require significant rehabilitation and firms incorporate these requirements into the client's case plan. For minor injuries, firms either:

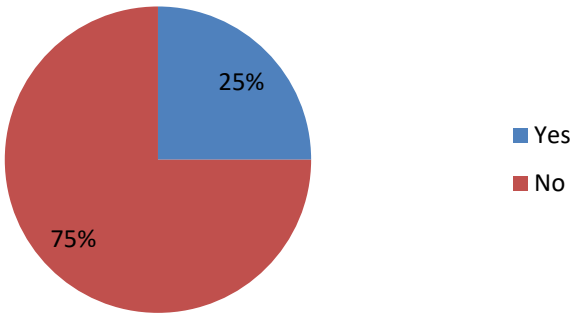
- enquired about rehabilitation requirements at the outset of a claim
- relied on medical experts to suggest appropriate rehabilitation
- relied on defendant insurers to make arrangements for their client
- had arrangements and/or connections with third party physiotherapists and psychotherapists. These firms tended to deal with injuries at the outset and proactively appeared to address the rehabilitation of the client.

In particular, some firms mentioned that the claimant's solicitor should be responsible for ensuring that rehabilitation was considered. Although defendant insurers would offer to arrange rehabilitation there was scepticism amongst claimant solicitors that this was actually a tactical offer to rush clients back to work.

Interaction with MedCo

During our file reviews we reviewed 27 medical reports which had been sourced via MedCo:

Have you received any communication from MedCo about misuse of their system?



A significant proportion of firms in our sample received a communication from MedCo about misuse of their system. We asked the firms for further information about their interaction with MedCo:

- all the firms had been contacted about multiple expert searches. This has been perceived by MedCo to be an attempt to bypass the random selection process in favour of a preferred expert
- two firms received a stage one warning
- the remaining firms had provided responses which led to no further action.

We asked firms why they had made multiple searches. The firms gave a variety of responses:

- user error following a lack of training from MedCo
- the claimant had two accidents and multiple experts were required
- multiple searches had been used to avoid poor experts.

All of the above issues have now been resolved and MedCo has declared the firms are compliant.

Good Practice

The firm provides adequate supervision to allow fee earners to make informed decisions about medical issues.

The firm employs in house medical staff to review and respond to medical information and expert reports.

The firm considers the requirements of the Rehabilitation Code on an ongoing basis and records their decision making.

The firm provides an explanation to the client about prognosis and makes sure it is kept under review.

The firm adheres to MedCo guidance.

Medical reports are appropriately prepared and cover all relevant issues.

Poor Practice

Fee earners are poorly supported and supervised when reviewing medical reports.

The fee earner seeks to conclude a matter without ensuring they have fully understood the client's prognosis.

Fee earners make multiple searches on the MedCo system to find a preferred expert.

Fee earners fail to consider the Rehabilitation Code.

Defendant delay and costs

Concern

The Survey raised a number of concerns about the conduct of firms acting for defendants.

Only five percent of respondents believed that Letters of Response were always well drafted, unambiguous and showed a good understanding of the case. 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.

In addition, 66 percent of respondents said that the reputation of the claimant firm had an impact on the type of response by the defendant firm. This was mirrored by respondents from firms where more than half of their work was for defendants (67 percent agreed).

In relation to the process for identifying and agreeing the type of experts required to investigate a claim, 46 percent of respondents felt it was satisfactory. However, 20 percent did feel the process for identifying and agreeing experts was drawn out.

Eighty two percent of respondents to the Survey felt that defendant solicitors frequently defended cases where the evidence suggested the only way forward was for the defendant to admit liability.

Key findings of the thematic review

- Defendant insurers usually prepared the Letter of Response to a claim under the protocol.
- Defendant work is most often governed by the contractual relationship between the firm and their client. This will involve certain service level agreements and key performance indicators which must be met.
- Defendant firms will settle cases at the earliest available opportunity. There is no incentive for defendant firms to delay a claim as this increases costs. This is very important for fixed fee work.

Findings

We interviewed two large, mainly defendant, firms (although one did two percent claimant work). Two other firms said they were mostly claimant firms but did around 10 percent defendant work.

The two large defendant firms had mainly insurer and some commercial or local government clients. They tended to work through panel arrangements that were organised by tender.

The firms regarded their insurer client as the main driver of the process. The policyholder was also regarded as a client and would receive information about a claim as it progressed. The policyholder became more involved in claims that were more complex or disputed.

Preparing a Letter of Response

Firms were asked about the Letter of Response. This is a requirement under the Pre-Action Protocol for Personal Injury claims. The firms said that it would be unusual for them to prepare a Letter of Response as these are prepared by the insurer. It was generally more cost effective for insurers to do this. The firms tended to get involved at an earlier stage only with complex and high value claims. One firm said they would sometimes prepare a further letter of response to the claimant explaining their view.

There was some anecdotal evidence from claimant solicitors that Letters of Response on Portal claims were sometimes inadequately prepared with poorly expressed language. However, the response from the defendant firms would suggest that the insurer is largely responsible for the preparation of these letters rather than solicitors.

Avoiding delay

Defendant firms were also asked about what they did to make sure claims were progressed efficiently to avoid unnecessary costs and delays.

Generally, the firms said that it is not in their interests to delay the settlement of a claim. The two main defendant firms had contractual arrangements with their insurer clients that required them to meet strict service level agreements and key performance indicators. It was important for them to meet targets set by their clients to protect the firm's reputation and keep the work. One firm said that, as a lot of the work they do is for a fixed fee, timeliness is the driving force behind the business. It does not pay to delay a claim and increase costs. Another said that they try to drive the pace of litigation.

Both purely defendant firms had case management systems which produced management information to monitor the progress of claims. The firms operated on a team structure with fee earners reporting to team leaders or supervisors. Key dates and reminders were built into the case management systems. Cases also had a case management plan. One firm said they operated a red, amber and green rating system for cases. This system looked at timeliness and the stage of the proceedings. Too many red indicators would suggest there was a problem with the fee earner.

Good supervision and training were also ways of ensuring that fee earners avoided delay when defending claims.

Dealing with a lack of evidence

Defendant firms were also asked what would happen when the evidence suggests there is no merit in defending a claim. This arose from a concern about cases where defendants have refused to admit liability and unnecessarily prolonged cases and increased costs.

The defendant firms said they generally encourage settlement at the earliest available opportunity as this saves both time and costs for the firm and the insurer client. Sometimes it is not possible to make a decision following initial assessment. The firm will then carry out an investigation and review the position at a later stage in the proceedings, such as exchange of witness statements.

One firm did explain that their insurer clients usually follow the firm's advice. However, sometimes, if an important broker or policyholder is involved, the client may want to pursue the claim so that they can 'have their day in court'. This can cause problems if the firm does not think there is sufficient merit in defending the claim. Part 1.1 of the Civil Procedure Rules[21] clearly sets out:

"the overriding objective of enabling the court to deal with cases justly and at proportionate costs."

There is a risk here of the firm breaching Outcome 5.6[22] of the Code (complying with duties to the court) by a failure to comply with this objective. The firm said they resolve this by spelling out to the parties the effect of losing the case on their premiums (a likely significant increase in the amount). This will usually discourage the parties from continuing the claim. Further research on lawyer-client relationships in large firms can be found on our website.[23]

Agreeing expert evidence

We asked defendant firms about how they agreed an expert with the other side.

The firms said that usually the claimants have appointed an expert by the time the defendant firm becomes involved. They usually rely on the claimant's expert's evidence unless the claim is complex or high value. In those cases, the firm will instruct their own expert.

It was felt that there was more co-operation between the claimant and defendant firms in higher value claims. The only delay in the process could be caused if the firm did not receive instructions. One firm said they encourage their lawyers to pick up the phone and speak to the claimant's solicitors, rather than use correspondence.

Several interviewees in the in depth interviews suggested that the recent changes (eg the use of MedCo) had complicated the process which had made it more drawn out.

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[21] See link

[22] See link

[23] Independence, Reputation and Risk Report, Claire Coe and Steven Vaughan, 2015.

Impact of a claimant firm's reputation

We also asked the defendant firms about whether the reputation of a claimant firm has an impact on their response.

The majority of the firms said that the claimant's reputation would have an impact on how they responded to a claim. Some smaller claimant firms may have a reputation for failing to respond and delay.

Defendant firms also had some concerns about the independence of expert reports and the amount of costs claimed where the claimant firm had a relationship with the expert eg car hire or mechanical engineer experts.

Defendant firm concerns

One defendant firm raised a concern about the number of claims where liability had been admitted but the claimants had not progressed the claim. This clearly causes problems for defendant firms but may also be an indication of poor service on the part of the claimant firm.

It is not clear why claimant firms would deliberately delay the settlement of a claim. It is in both parties' interests to settle the claim, including the claimant solicitors being able to claim their costs.

Another area of concern raised by a defendant firm is Noise Induced Hearing Loss claims (NIHL). The concern is about claimant firms that do not specialise in this area. They said it is one of the few areas where, even under the fast track system, solicitors can obtain an hourly rate. It is therefore attractive to firms who see it as an opportunity to make money and do the work but without the required knowledge. They said NIHL is a very technical area and has a very low pay out rate by insurers. The claims go through the Portal but it is not geared up to handle them and there is no guidance on how to deal with the claims. However, the defendant firm acknowledged that NIHL is now a more ‘mature’ market and is starting to reduce. It was suggested that this may be why firms are moving in to the holiday sickness market.

Settlement

Concern

Settlements usually exclude the possibility of further claims. A fair settlement will enable a client to resume their life and make sure they receive necessary rehabilitation or medical care. An under-settlement can therefore be disastrous for the client and lead to lifelong difficulties.

Concerns have been raised about the quality of the settlements secured by solicitors for their clients. In particular:

- firms lack the relevant skills and competence to secure an appropriate settlement on behalf of their client
- firms under settle matters
- firms improperly expedite the closure of cases
- pre-medical offers of settlement are being made when the claimant is not in a position to value the injuries. This could mean that clients are at risk of receiving inadequate compensation.

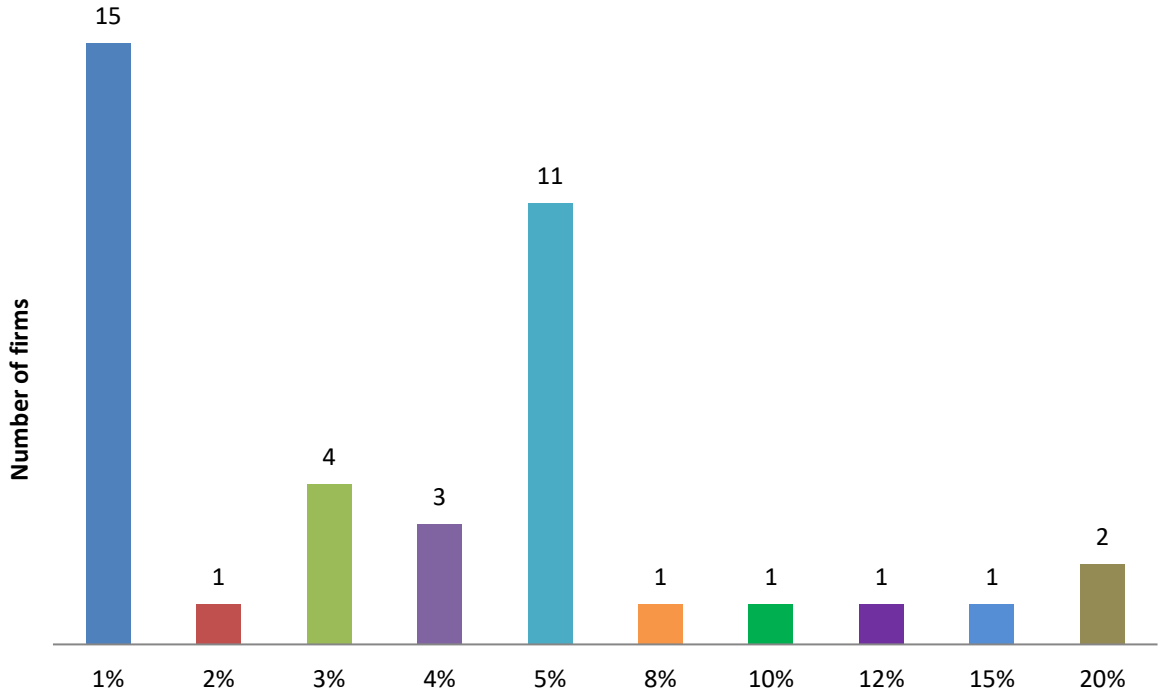
Key findings of the thematic review

- A significant majority of firms settle 95 percent of all PI matters.
- The majority of firms provided evidence to show they had attempted to re-negotiate a better settlement for their client.
- Pre-medical offers were not popular amongst claimant firms and were very rarely recommended.

Findings

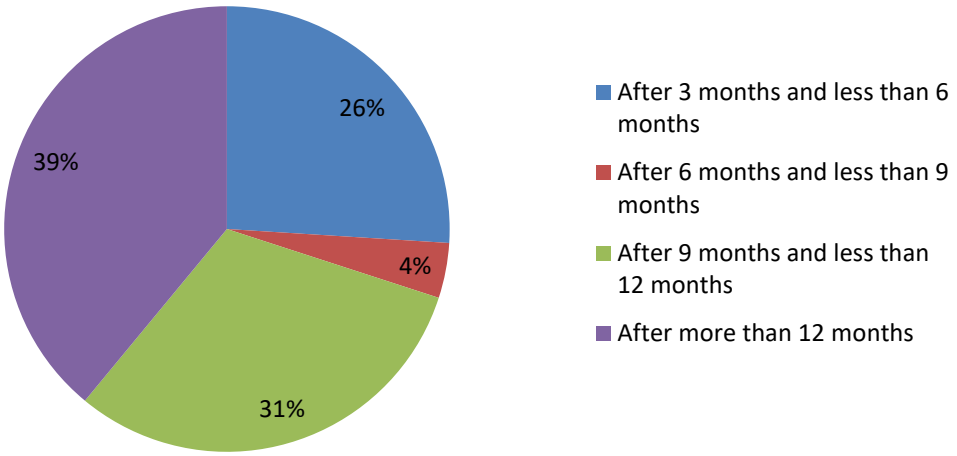
The majority of PI cases are settled before the matter reaches trial. This is reflected in our findings:

What percentage of PI matters result in a trial?



The files we reviewed involved a number that had reached the point of settlement:

How long after the letter of claim was the settlement offer received?



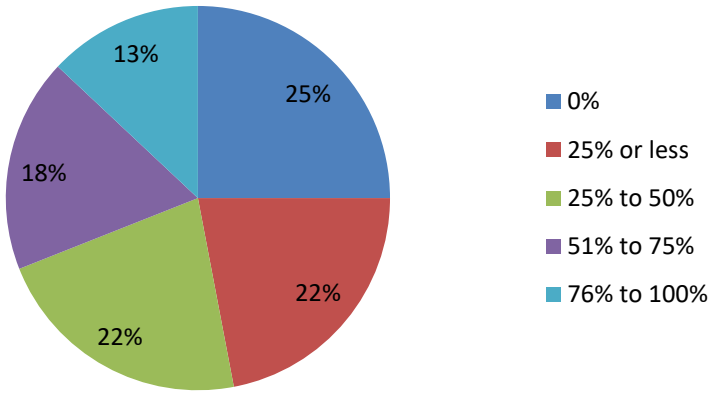
Claims were accepted at different stages and this depended on the circumstances of each case. This period ranged from within a week of the offer to 10 months in exceptional circumstances.

Fifty five percent of the files also showed evidence that fee earners had attempted to negotiate a better settlement on behalf of their client rather than accept the first offer made.

Determining the value of the settlement

We asked managers which staff were responsible for agreeing settlements. This varied from firm to firm and differed according to the type of work undertaken. In complex claims, settlements tended to be done by admitted staff while simple Portal work could be conducted by unadmitted staff:

What percentage of settlement work is completed by unadmitted individuals?



We asked fee earners about how they gather information to make or agree an offer of settlement. In particular, we asked how they determine the appropriate value of each claim. Firms generally followed a similar process:

- fee earners were responsible for determining the level of damages
- all fee earners reviewed the information and evidence on the file to see whether further information was required eg experts report
- many firms said they had provided specific training to fee earners
- firms used reference material such as the Judicial Studies Board guidelines, Kemp and Kemp and previous court cases to identify previous compensation awards
- serious or unusual cases were often referred to a supervisor or counsel
- clients were asked to provide details about their financial losses.

Supervision of the settlement

Settlement sums vary in size. Catastrophic injuries can result in seven figure settlements. Due to the broad nature of injuries, firms used a range of supervisory measures to check settlements:

- all offers were sent in writing to the client for approval/rejection
- some offers were discussed in person over the telephone/in person. This tended to depend on the complexity and the size of the proposed settlement
- some firms allowed fee earners to settle low value claims within set boundaries once they had received the consent of the client
- some smaller firms required all settlements to be agreed with a supervisor
- serious injuries/large settlements required sign off from supervisors/managers
- some large settlements needed to be approved by the court
- some firms also sought counsel's opinion if the offer was significant or involved a complex matter.

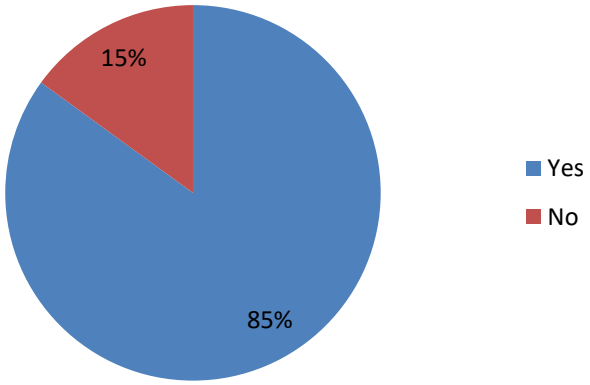
Making pre-medical offers

Pre-medical offers are made prior to the claimant receiving a medical examination. If accepted, pre-medical offers are paid in full and final settlement of the claim. By definition, the offers are based on little information and represent a risk to both the claimant and defendant:

- claimants are unaware of the full extent of their injuries and will have no expert advice on their prognosis or injury. This may be significant if money is required to fund rehabilitation and/or life style changes. An underpayment may affect the claimant's ability to recover and proceed with their life
- defendants may make an offer that is higher than average for the injuries sustained.

Managers told us that the use of pre-medical offers is widespread:

Have you ever received a pre-medical offer?



The topic of pre-medical offers was of particular interest to firms and the majority raised similar comments:

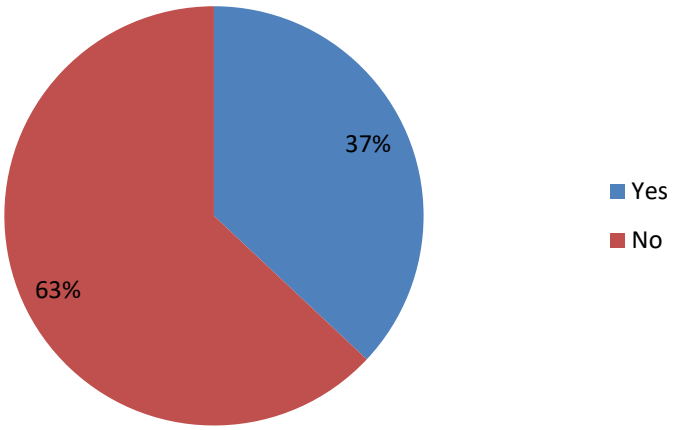
- pre-medical offers from defendants were common place but unhelpful
- pre-medical offers must be referred to clients but this was accompanied by strong advice from the solicitor to ignore it until further information had been gathered
- pre-medical offers are a favoured tactic of insurance firms. Clients are vulnerable to settlement offers and may need money. Some clients will opt for short term gain over long term requirements. This is a particular issue around the Christmas period
- generous pre-medical offers are rare.

Where a client accepted a pre-medical offer, a number of firms stated that they would take specific steps to record that this was against the solicitor's advice. Firms said this was necessary to protect themselves against future claims of under-settlement which is a developing area of practice.

Claims made by clients for under-settlement

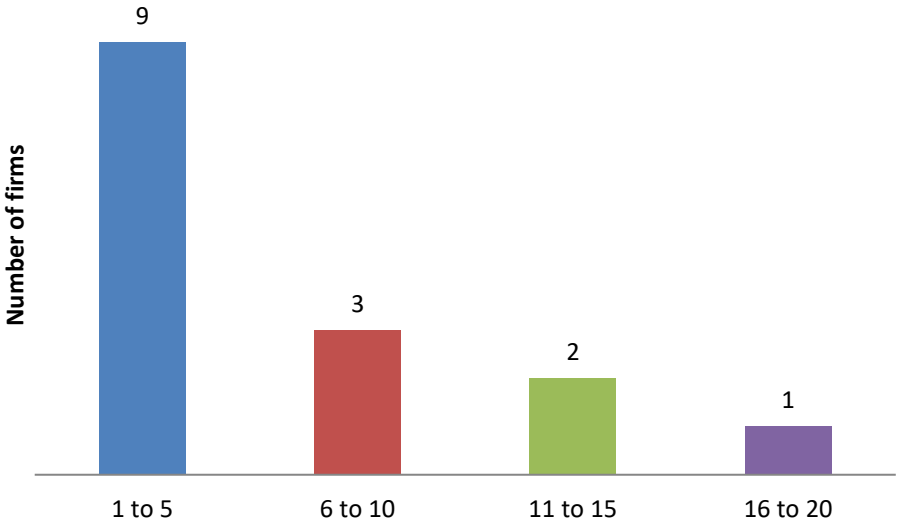
We also asked managers about the number of claims that had been made against their firm for under-settling by clients within the past 3 years:

Have you been the subject of a claim for under-settlement in the past 3 years?



We asked firms how many claims they had received in the past 3 years:

How many claims for under-settlement have you received?



Good Practice

The firm research appropriate compensation figures and provide information so the client can make sensible decisions.

The firm provides advice and guidance on pre-medical offers and outline possible alternatives eg interim payments.

The firm seeks client instructions before accepting or making a settlement offer.

Large or unusual cases are referred to a supervisor or counsel for consideration and determination of quantum.

The firm provide specific training on settlement and in particular quantum.

The firm review information and evidence on the file to see whether further information is required to determine a settlement figure.

Poor Practice

The firm fail to take instructions from the client prior to accepting or making a settlement offer.

The firm fail to take into account all relevant information and in doing so lead the client to under-settle their claim.

Paying damages

Concern

PI claims are often contingency fee-based and there may be a considerable time lapse before the client receives a payment. This is significant as the client may be in a vulnerable position and need the money to assist with their rehabilitation and/or move on with their lives.

The Survey raised a concern that firms failed to pay compensation promptly to their clients. This seriously affected clients, firms' cash flows and leads to additional chasing of payments.

Our Warning Notice raised concerns that firms are failing in their duties to act in accordance with the Principles and Outcomes of the Code by paying damages or sending cheques to third parties without their client's authority.

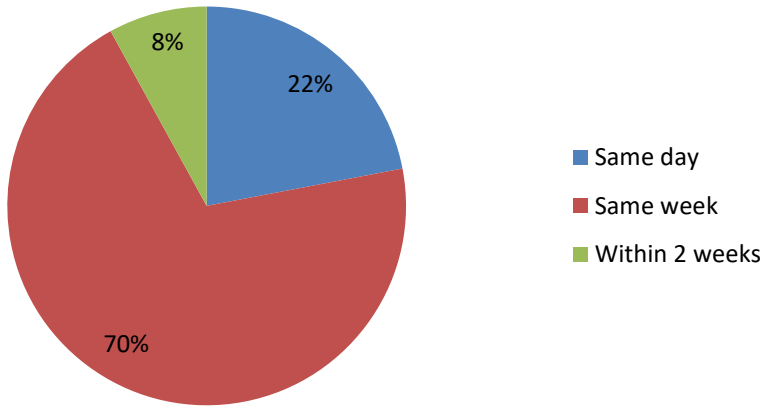
Key findings of the thematic review

- The majority of firms paid damages to clients on the same day or within the same week.
- Firms supervised claims in a number of ways to make sure there was no delay in making payments to clients.
- We were unable to find any wide spread payments of damages to third parties.

Findings

We asked managers how long it usually took to pay damages to clients:

How long does it usually take you to transfer damages to clients?



We asked managers to outline the typical delays that were encountered when paying damages to clients. The answers fell into the following broad categories:

- late payment of monies by the insurer (requiring the firm to chase)
- waiting for ID from clients
- waiting for the cheque to clear
- temporary HR issues eg staff holidays/sickness.

We also asked managers how payments were made to clients. The answers fell into three broad categories:

- cheque
- bank transfer
- BACS payment.

We asked managers how they supervised claims to make sure there was no delay. Firms provided the following responses:

- strict internal protocols dictated time limits for payments to clients
- use of case management systems which monitored when cheques were received and when money was paid out. Issues were easily spotted and could be dealt with by supervisors and/or the accounts team
- having an accounts department who were responsible for ensuring punctual payments to clients
- payment of damages was audited as part of the file review process
- incoming and outgoing post is checked to spot issues as they arise.

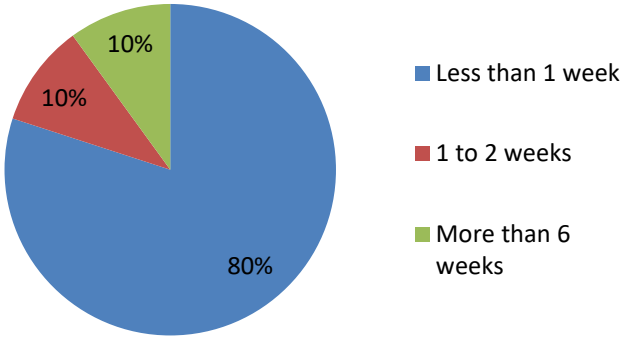
In general, firms told us that prompt receipt and payment of damages was in the interests of both the client and the firm. In particular:

- once a payment was due, clients will contact the firm regularly to chase payment
- once a cheque has arrived, firms will act promptly to secure the payment of their fees.

These opinions were reflected in the file reviews we undertook:

- settlement payments had been received on 10 files
- on three matters, the cheques had been made payable to the claimant and had been sent to them direct. The remaining cheques were made payable to the firm and were placed into the client account before being sent to the client
- we saw no evidence that claimant solicitors delayed paying sums to the client unnecessarily.

File review – how long did it take the firm to pay the settlement to the client?



Contrary to the concerns raised, we were unable to find any widespread payments of damages to third parties across the 80 files we reviewed. Only one file featured a payment to a third party and on this occasion it was to a car repair firm who had introduced the client. The payment was made with the client's consent. The file documented the circumstances and the client was informed from the outset about the arrangement and proposed payment.

Good Practice

The firm adopts and enforces reasonable time scales for payment of client damages.

Firms chase payment of damages from defendants where there are unreasonable delays.

The firm review the receipt and payment of client damages to monitor prompt payment and delays.

Firms make electronic payments to clients rather than paying by cheque.

Poor Practice

The firm fails to pay client damages promptly.

The firm do not have appropriate systems in place to monitor the receipt and payment of damages.

Damages are deducted on behalf of a third party without client’s consent or knowledge.

Impact of fixed fees

Concern

A concern was raised in the Survey that solicitors were using unadmitted and inexperienced staff on fixed fee claims. This was because fixed fees were considered less profitable than work at an hourly rate.

Key findings of the thematic review

- The majority of firms said that they apply the same level of supervision to fixed fee and hourly rate work.
- Some firms applied a higher level of supervision to fixed fee work as it tended to be carried out by less experienced staff.
- A quarter of firms applied a lower level of supervision to fixed fee work. The main reason given was that it is generally more straightforward.

Findings

Firms were asked if they supervised fixed fee work differently from hourly rate matters. This question did not apply to 10 percent of firms as five percent did not use the fixed fee Portal and five percent exclusively did Portal work.

Fifty two percent of firms reported that fixed fee work receives the same level of supervision as work charged at an hourly rate.

Thirteen percent of firms reported that fixed fee work received a higher level of supervision than work on an hourly rate. The main reason given for this was that this work tended to be carried out by less experienced staff. In some cases, Portal work was carried out by a dedicated team of paralegals. One firm reported that supervision of fixed fee work tended to be more interventionist and proactive. Another firm employed a former partner, whose sole job was to supervise and advise on fixed fee work.

Twenty five percent of firms reported a lower level of supervision on fixed fee matters because they consider Portal work more straightforward. These firms said that contact with clients is more regular on hourly rate files and that fixed fee cases are less likely to include meetings or witness statements. Not all cases will be like this though and firms should have supervisory structures in place to cater for more demanding or complex fixed fee matters.

One firm told us that the reason for the lower supervision of these files was cost efficiency. As these files were less profitable for the firm, less billable time would be spent on supervision.

As noted above, clients should be fully informed of the costs implications of fixed fee work and the consequences of cases falling out of the Portal.

Good Practice

Retaining a risk sensitive level of supervision on all files.

Active and regular supervision of cases.

Fixed fee work is supervised by a former partner whose sole job is to proactively review work.

Poor Practice

Reliance on fee earners to come to senior staff with issues rather than active supervision of files.

Levels of supervision based on the profitability of the work as opposed to the risk.

Merger, acquisition or file purchase

Concern

Legislative changes within the PI market have caused some firms to consider diversifying into other areas eg NIHL or clinical negligence claims. However, there are concerns that firms:

- lack the competence and expertise to deal with and progress cases in these new areas
- have not conducted proper due diligence on the files acquired
- are acquiring cases in bulk leading to errors and a failure to progress matters.

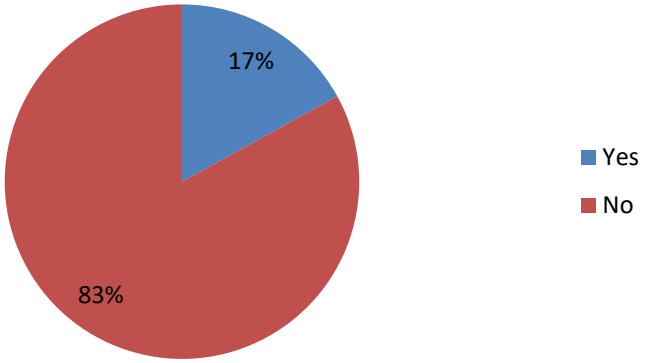
Key findings of the thematic review

- Six firms acquired a total of 6499 PI cases as a result of mergers, acquisitions or file purchases in the last two years. This included one firm who had acquired 5088 files and another who had purchased 1323.
- Firms sought client consent before conducting due diligence on the files or alternatively did not review the files before taking them on where time and consent was an issue.
- Once received, files were allocated and progressed.
- None of the cases acquired represented a new area of PI work for the firms involved and no new staff were recruited to deal with the additional work.

Findings

We asked firms if they had received PI files as a result of a merger, acquisition and/or file purchase:

Have you received PI files in the last two years as a result of a merger, acquisition or file purchase?



The total number of files acquired was 6499. This included one firm who had acquired 5088 files and another who had purchased 1323.

Due diligence on the acquired files varied and included firms:

- using a due diligence checklist to look through each file to check limitation, the prospects of success and the general state of the files
- undertaking early due diligence themselves and then having an independent firm assess the files.

Some firms undertook no due diligence due to the urgency of the acquisition and were unable to obtain confidentiality waivers from clients to allow a review of the files. Significantly, firms did not review confidential client information.

Firms did not acquire files in new areas of PI work and no firms employed new staff to deal with the additional work. As noted above, very few of the sample firms have been operating in new areas of PI law for less than a year.

Files were progressed and limitation managed through various methods:

- limitation dates were highlighted on the case management system when the files were transferred
- limitation dates were checked prior to acquisition and immediately diarised when files were acquired. Cases were then reviewed on a three monthly basis
- files were immediately allocated and reviewed on acquisition. Clients were subsequently contacted straight away.

Good Practice

The manager of the PI team obtained client consent and reviewed each of the 63 files purchased. This was followed by a second review by an independent firm of solicitors to assess the state of each file.

The firm have a due diligence checklist which it uses when undertaking any file purchase. This includes a review of limitation, prospects of success and medical reports.

The firm carried out early due diligence on each file well in advance of any transfer or contractual obligations being executed.

The limitation period was recorded on the case management system as soon as the files were acquired. Cases were immediately allocated to fee earners and clients were contacted as soon as possible. All acquired cases were subject to a three monthly review.

Files were allocated to different case handlers in the firm. Although there was an increase in staff workload for a period of time, staff progressed the cases and contacted clients to provide updates. Clinical negligence files were triaged on the first day they were acquired. The acquisition process was assisted by the fact that both firms had the same case management system that meant files could be migrated over immediately and reports on progress and limitation could be produced straight away.

Poor Practice

No due diligence was conducted by the firm before the files were taken on and it transpired that many of the files acquired were in a poor state.

One firm had taken on NIHL cases even though they did not have the expertise to progress them. That firm had to acknowledge to clients that it did not have the specialist knowledge to deal with the matters and needed to transfer them.

Limitation dates were missed due to issues with compatibility of case management systems. Although one firm had a similar case management system to the firm that it acquired, limitation was still missed on the odd file due to appropriate flags not being replaced on the case management system.

Conclusions

This Project has addressed various concerns raised by external stakeholders. It has also reviewed fee earners behaviour and competence against our Warning Notice.

We have worked with a broad range of PI businesses and this has informed our findings. These relate to the organisations and structures within the PI market and the behaviour and competence of those who work within the sector.

Summary of findings

We looked at 14 areas of the PI market where concerns have been raised. Firms generally showed they had systems and processes in place to make sure a proper service is provided to clients. Although there are good and poor practices in all these areas, some areas raised more concern than others.

There was little evidence of any significant concerns in the following eight areas:

- operation of ABSs
- case selection and triage
- litigation process
- medical evidence
- defendant delay & costs
- settlement
- fixed fees
- merger, acquisition or file purchase.

In the remaining six areas, although we did not find widespread issues, we did find some causes for concern due to the practices of a small number of firms. These areas and concerns included:

- introducers (one firm was found to have breached LASPO and one firm was referred into our internal disciplinary processes for possible breaches of LASPO)
- training, skills, knowledge and experience (several firms have never provided training in a number of areas, notably the Rehabilitation Code and 13 percent of firms did not keep staff training records)
- costs explanation (some firms are failing to consider an appropriate success fee for each individual case while others are providing insufficient costs information for cases that fall out of the Portal)
- acting on instructions (we found two files where confidential information was shared with a third party without client consent as well as other files where there was no evidence that instructions were confirmed at key stages of the litigation process)
- fraudulent & frivolous claims (some firms do not obtain evidence of identity at the outset)

- paying damages (we found one firm where there was possible payment of damages by the firm to third parties).

The PI market remains a competitive and heavily populated sector. Firms compete to find clients and streamline their business models to improve their revenues in a difficult market. However, this must not be at the expense of the client's best interests or those of wider society.

Introducers

Despite legislative attempts to end referral arrangements, our Project found that referral agreements are still heavily used. We found 48 percent of the firms had various referral arrangements in place. However, most firms appear to have appropriate compliance arrangements in place to meet the requirements of LASPO although one firm was found to have breached these requirements.

ABSs

We visited 11 ABSs but only two received 100 percent of their cases from their parent company. Contrary to initial concerns, there was no evidence that ABSs shared confidential client data with other parts of the business.

Training, skills, knowledge and experience

Unadmitted staff form the majority of the workforce at the firms we visited. These members of staff included people at senior levels and key positions within the firms. They ranged in seniority and skills and were not necessarily inexperienced or junior.

The PI market is continually evolving and the sector must make sure it provides adequate and relevant training to meet the needs of clients and the court. When assessing the nature and scope of training, a firm must consider what is appropriate in light of its own structure and staff model.

Training and skills are fundamental to ensuring that clients receive a good service. We found that firms provided a mixture of training to their fee earners. However, several firms did not provide training in a number of significant areas eg the Rehabilitation Code.

In addition to training, firms must also consider their supervision structures. The majority of firms applied the same level of supervision for fee earners regardless of whether it was fixed fee or hourly rate work. Whilst this is encouraging, firms should also consider whether the supervision is sufficient.

Our data also shows there was only five occasions where firms had entered into a new PI discipline within the last year eg NIHL or catastrophic injury claims.

Costs explanation

As significant competition remains within the sector, firms look to gain a competitive edge. We found that firms have decided to charge clients a range of success fees when conducting CFA work.

Fraudulent Claims

There are a number of different views held by PI solicitors and there is a tension in the relationship between claimant and defendant firms on the issue of fraud. The identity of the claimant firm can affect the defendant firm's response to a claim. The elimination of fraudulent and frivolous claims is in the interests of both sides. We consider a more co-operative relationship may help both sides resolve this issue.

Defendant delay and costs

Initially there were concerns that defendant solicitors were responsible for creating poor Letters of Response and delay. We found that defendant solicitors were rarely responsible for producing Letters of Response and this was largely carried out by insurers. In addition, defendant firms often work within the constraints of fixed fees. It is therefore not in the defendant firm's interests to delay settlement as this increases the work.

Settlement

Claimants and defendants rely on the advice of competent and supportive fee earners.

Many claimants are vulnerable and some face life changing decisions. Our report suggests that the profession generally works to support these individuals.

It is crucial that claimants receive sound advice and appropriate compensation to safeguard their future. Pre-medical offers raise a significant risk that clients can be tempted into making significant, long term decisions for short term financial gain. Our data shows that the majority of firms had received a pre-medical offer at some stage. They are unpopular among claimant firms and are often referred to clients with significant warnings.

Paying damages

Where damages are obtained it is important that the client receives the compensation with minimal delay. This appears to be happening. In addition, despite concerns raised by the Warning Notice, we found little evidence that firms made payments to third parties out of client damages.

MedCo

Medical advice plays a critical role in the settlement process and various concerns have been raised about the use of MedCo and pre-medical offers. In particular, there is criticism about claimants and the way they use MedCo. We found 25 percent of firms had been contacted by MedCo about perceived compliance issues eg multiple searches.

Disciplinary processes

We are considering investigation under our disciplinary processes in four cases following the 40 visits. The issues concern:

- an admission by the COLP at one firm that it has obtained a substantial number of referrals in breach of LASPO
- possible payments of damages by the firm to third parties. Additional breaches relate to the firm's failure to progress cases, breaching client confidentiality by sharing client information and failure to properly supervise files
- breaching client confidentiality by sharing client information without client consent, the operation of an unlicensed CMC and possible breaches of LASPO
- failure to supervise files and identify clients.

While this report addresses areas of concern in the PI market, areas of good practice are also highlighted in the main body of this report. In a market that is constrained by cost, firms generally showed they had the necessary systems and processes in place to make sure a proper service is provided to clients. Whilst PI is an area that has come in for criticism, some firms have taken proactive steps to deal with the legislative changes in order to make sure they are compliant and provide a good standard of PI service to clients.