

## **Conveyancing Thematic Study**

Full Report

March 2013

## Contents

Introduction .....	3
1. Background and context .....	5
2. Conflicts of interest .....	18
3. Referral arrangements.....	24
4. Costs information .....	28
5. Financial stability.....	31
6. Property-related fraud and money laundering.....	35
7. Complaints and professional negligence claims .....	42
8. The SRA's strategy.....	45
9. Views on external factors that increase risk to client money.....	47
Annex A - Questionnaire.....	51

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## Introduction

This report provides detailed finding from the Solicitors Regulation Authority's (SRA's) thematic study on Conveyancing. A summary report is available separately which sets out headline findings and how these will be used.

The SRA is a risk-based outcomes-focused regulator and thematic studies are used to improve understanding of how legal services are delivered and the level of associated risk. This study focused on:

- How firms carry out conveyancing
- How it fits into their business strategies
- The risks that can occur when things go wrong
- Firms strategies to manage these risks
- Whether the SRA's draft supervision and enforcement strategy for conveyancing is fit for purpose.

### Background

Supervision thematic reviews look at practices and risk management across a selection of firms. The findings are used to identify themes and issues which could indicate wider trends and causes of risk.

Conveyancing services were chosen as a theme for thematic review because there can be considerable harm to consumers and the public interest if things go wrong.

### Method

This report details the results of a thematic review involving 100 firms that carry out conveyancing work<sup>1</sup>. The SRA's supervision staff visited these firms in Quarter 3 of 2012.

- The 100 firms are a stratified random sample of all firms who carried out conveyancing work
- The sample was stratified by geographical location and percentage of fees earned that relate to conveyancing work
- The sample is also representative in terms of firms with BME partners, and firms with female partners

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<sup>1</sup> Although 100 firms were visited, only 98 responses were used in the analysis for this report. Two meetings were carried out by a supervisor who subsequently left the SRA, which meant that the appropriate quality assurance could not be carried out on the responses they collected.

- A supervisor interviewed a senior representative from each firm, going through the questionnaire with them face to face.

It should be noted that regulated firms have a duty to co-operate openly with the SRA and participants in this study were encouraged to be transparent and honest with the supervisor in the visit. However, we must also remain conscious that this information was collected through a formal supervision visit and as a result of this context some issues might be under or over reported.

## Structure of this report

The report is divided into nine sections, reflecting the nine areas of discussion at the meetings. These are:

- 1) Background and context
- 2) Conflicts of interest
- 3) Referral arrangements
- 4) Costs information
- 5) Financial stability
- 6) Property-related fraud and money laundering
- 7) Complaints / professional negligence claims
- 8) The SRA's strategy
- 9) External factors that increase risks to client money.

The questionnaire used for the meetings is available at [Annex A](#), and comprises a mixture of multiple choice questions and open questions.

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## 1. Background and context

This section provides a profile of the firms that took part in the thematic visits. This section includes information on the following characteristics:

- Level of conveyancing activity carried out
- Approach to conveyancing billing
- Membership of schemes and panels
- Profile of conveyancing staff
- Profile of conveyancing clients
- Perceptions of risks related to conveyancing.

### Key findings in this section are:

- The percentage of total fees earned through conveyancing ranged from 100% to less than 5%.
- Most firms reported that they did more residential than commercial conveyancing.
- Most firms stated that they used fixed fees for conveyancing, rather than billing by the hour.
- Most firms said that they were members of at least one lender panel.
- Two firms in five were also members of either Lexcel<sup>2</sup> or the Law Society's Conveyancing Quality Scheme.
- Conveyancing clients were in most cases no less financially valuable to firms than other clients. This does not support a commonly held view that conveyancing work is 'low value, high volume' for many firms that provide it.
- Firms saw removal from lender panels as the biggest risk to the conveyancing activities of their firm, followed by the economic downturn<sup>3</sup>.
- When asked to choose which of the risks in the draft supervision and enforcement strategy was the biggest for their firm, over half of firms said property related fraud and money laundering.

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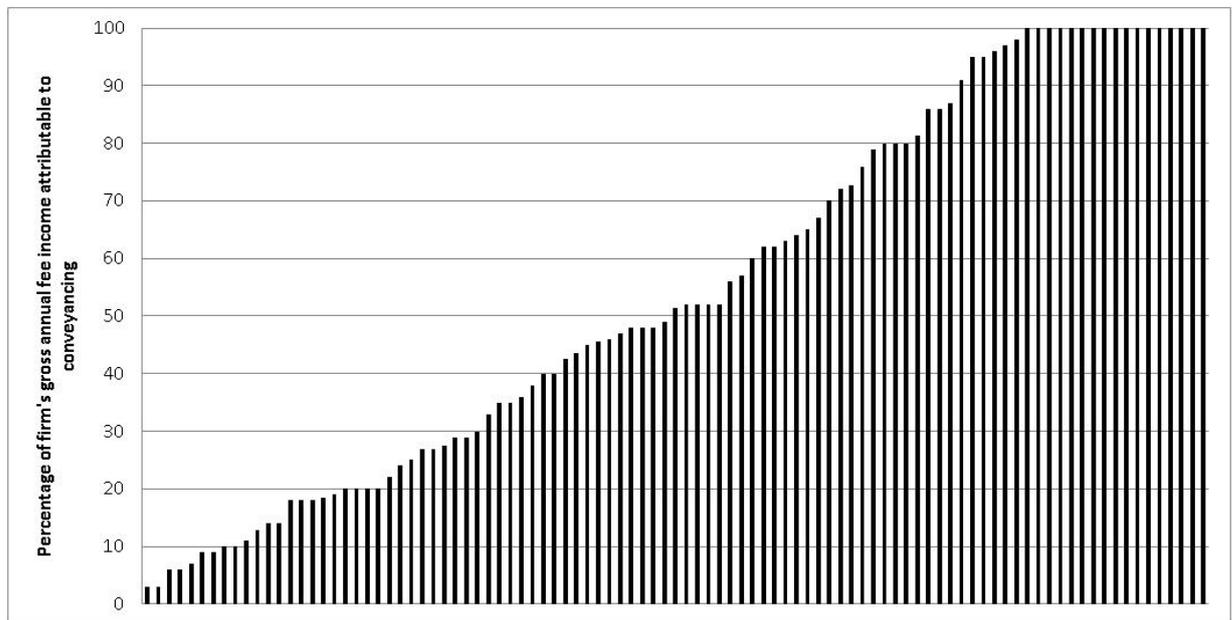
<sup>2</sup> The Law Society's Practice Management Standard

<sup>3</sup> The economic downturn was however stated as the largest threat to firms as a whole.

## Conveyancing activity

The following chart shows the proportion of conveyancing carried out by firms in this survey. 17 firms carried out 100% of their business activities in conveyancing and for 32 firms, conveyancing accounted for more than 75% of their turnover. A key feature of the sample was that it included a wide range of firms in terms of the prominence of conveyancing as a contributor to their overall turnover. This was a result of the sample being stratified by proportion of turnover.

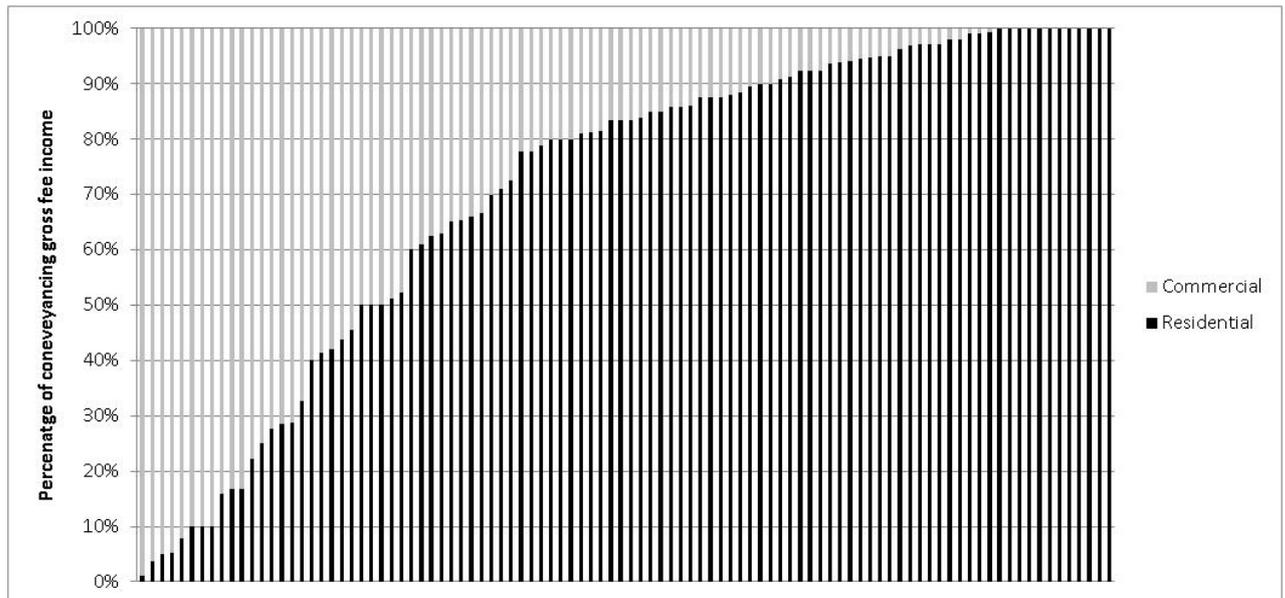
**Figure 1.1: Percentage of fee income that comes from conveyancing, at each firm in the sample**



**Source:** Firm visits.  $N = 98$  firms

A fifth of firms carried out more than 80% of their conveyancing in residential transactions. Businesses carrying out a higher proportion of commercial conveyancing tended to be larger firms.

**Figure 1.2: Distribution of firms in our sample, by percentage of firm’s gross fee income from conveyancing split between residential and commercial conveyancing. Each bar represents one firm.**



**Source:** Firm visits. N = 98 firms

We asked each firm how many residential and commercial conveyancing transactions they completed in a year<sup>4</sup>. Firms reported the following:

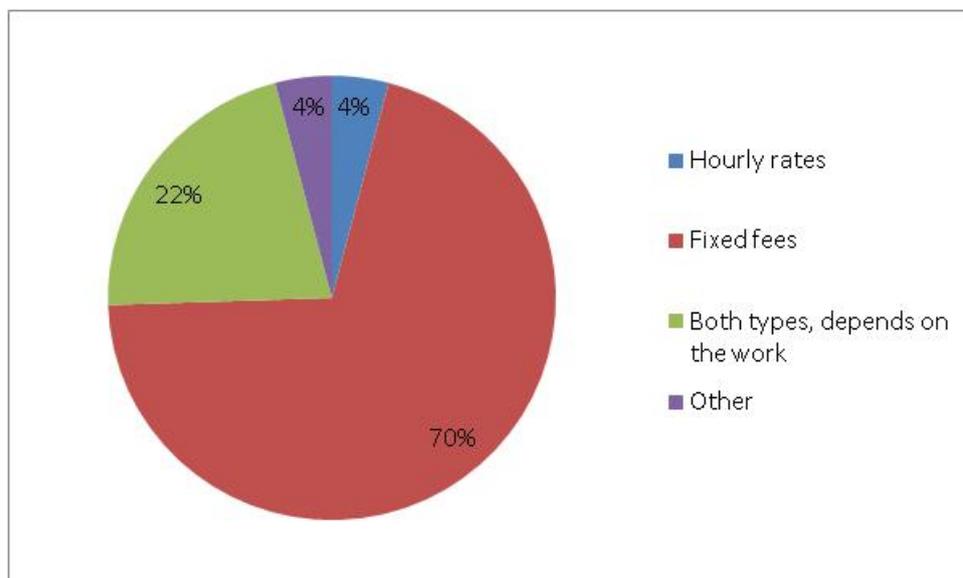
- The **highest** number of residential transactions was 3,570 per year
- The **highest** number of commercial transactions was 985 per year
- The **average** number of residential transactions was 353 per year
- The **average** number of commercial transactions was 85 per year.

<sup>4</sup> One firm stated that they completed ‘hundreds of thousands’ of residential conveyances per year and ‘tens of thousands’ of commercial. We have treated this as an outlying responses and excluded them from the analysis above.

## Conveyancing billing

Nearly three quarters of firms in the sample stated that they use fixed fee billing for their conveyancing services. This is a contrast with the traditional view of solicitors as charging by the hour.

**Figure 1.3: Distribution of method of billing used for conveyancing transactions at firms within our sample**



**Source:** Firm visits. *N* = 98 firms

We asked each firm about their **largest** residential and commercial conveyancing transaction value. Responses included:

- The **highest** largest residential transaction value submitted was £12.5 million
- On **average**, the firms had a largest residential transaction value of £1.25 million
- The **highest** largest commercial transaction value submitted was £28 million
- On **average**, the firms had a largest commercial transaction value of £1.26 million.

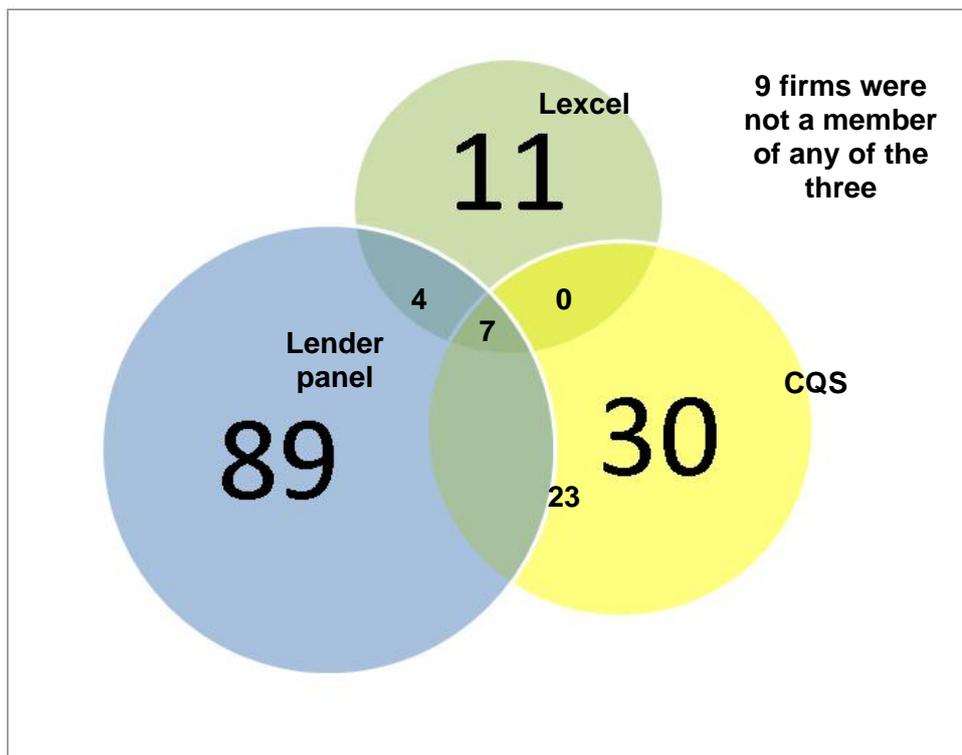
We then asked each firms about their **average** residential and commercial conveyancing transaction value. The responses included:

- The **highest** average value for residential transactions at a single firm was £1.9 million
- On **average**, the firms had an average residential transaction value of £230,000<sup>5</sup>
- The **highest** average value for commercial transactions at a single firm was £6 million
- On **average**, the firms had an average commercial transaction value of £350,000.

## Membership

Firms were asked about their membership of lender panels and accreditation schemes.

**Figure 1.4: Membership status of firms in sample: Lexcel, Law Society Conveyancing Quality Scheme (CQS), and one or more lender panels**



**Source:** Firm visits. N = 98 firms

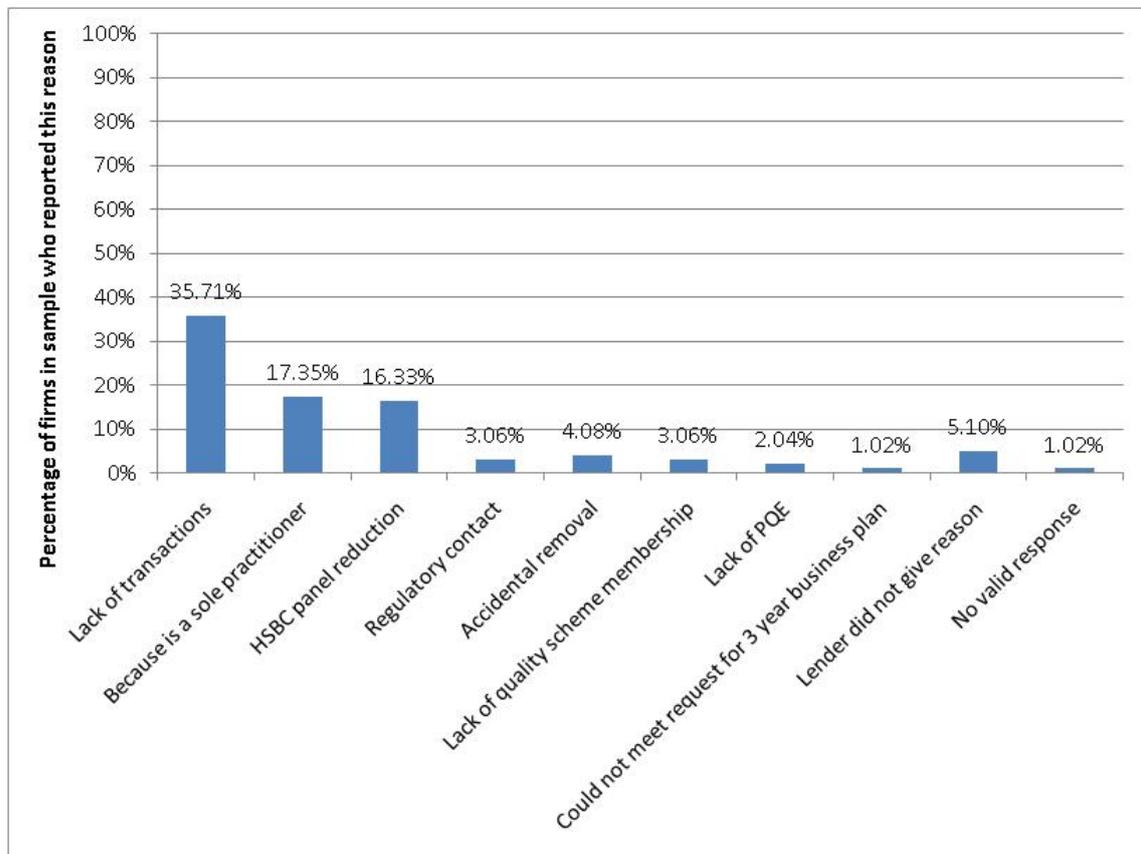
<sup>5</sup> This is more evidence that our sample was broadly representative, as it tallies with the fact that the average UK mix-adjusted house price in August 2012 was £234,000, according to the Office for National Statistics House Price Index: [http://www.ons.gov.uk/ons/dcp171778\\_282734.pdf](http://www.ons.gov.uk/ons/dcp171778_282734.pdf)

All firms who were members of either Lexcel or CQS were members of at least one lender panel.

76% of firms had been removed, or threatened with removal, from a lender panel. The reasons they were given for their removal are shown in Figure 1.5. The top three reasons for removal were:

- Lack of transactions
- Because the firm is a sole practitioner
- As part of the HSBC panel reduction.

**Figure 1.5: Reasons for removal or threatened removal from a lender panel**

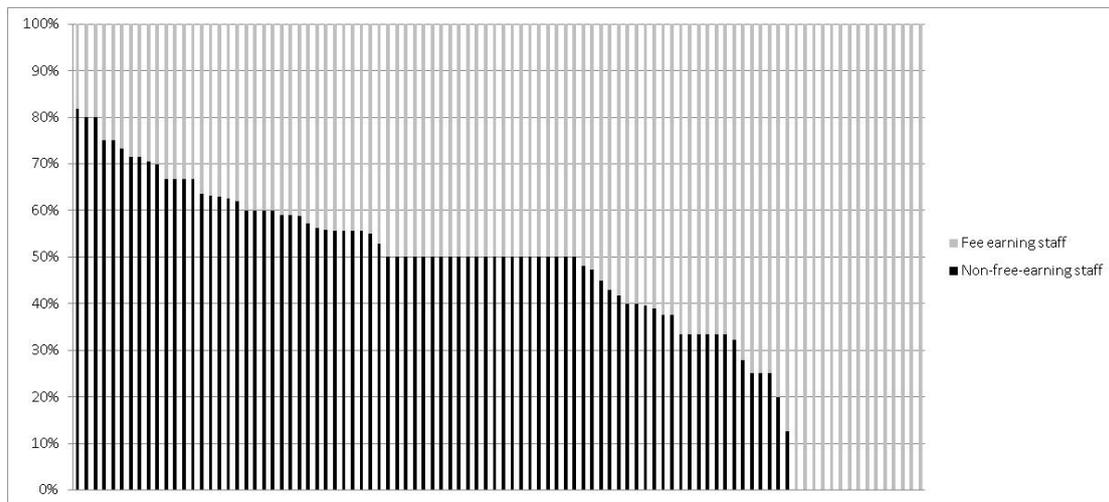


**Source:** Firm visits. N = firms who reported removal or threatened removal from a lender panel = 74 firms

## Staff

As can be seen from Figure 1.6, some firms in the sample only employ fee-earning staff, whereas others employ a large proportion of staff who do not earn fees. These staff are likely to be administrators or other support staff.

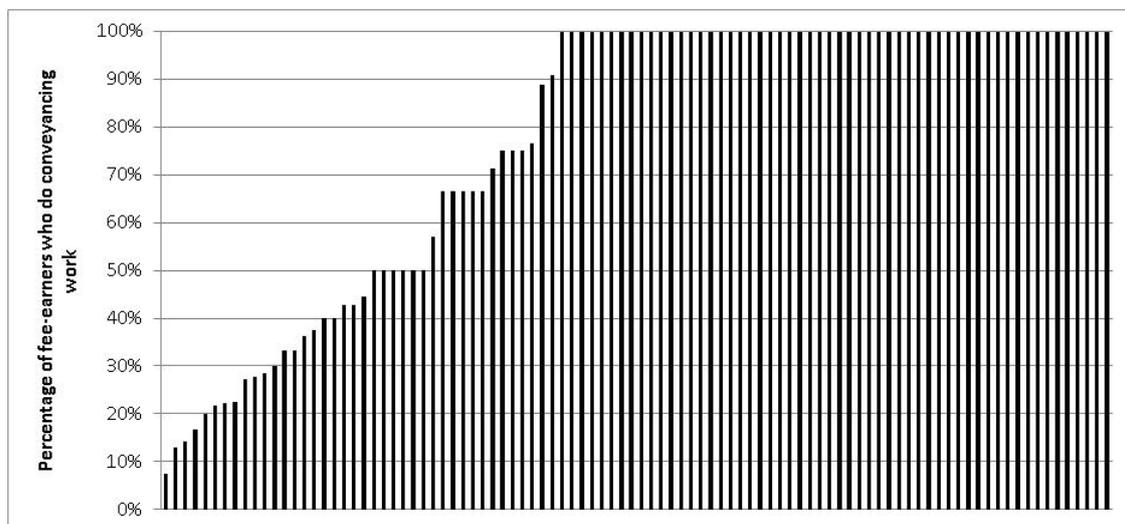
**Figure 1.6: Ratio of fee earning to non-fee earning staff at each firm in the sample**



**Source:** Firm visits.  $N = 96$  firms

Figure 1.7 shows that at around half the firms in the sample, all fee earning staff do conveyancing work. This is partly due to the inclusion of sole practitioners in the sample, where the sole practitioner is the only fee earner, and carries out conveyancing work.

**Figure 1.7: Percentage of fee earning staff who do conveyancing work, for each firm in the sample**



**Source:** Firm visits.  $N = 96$  firms

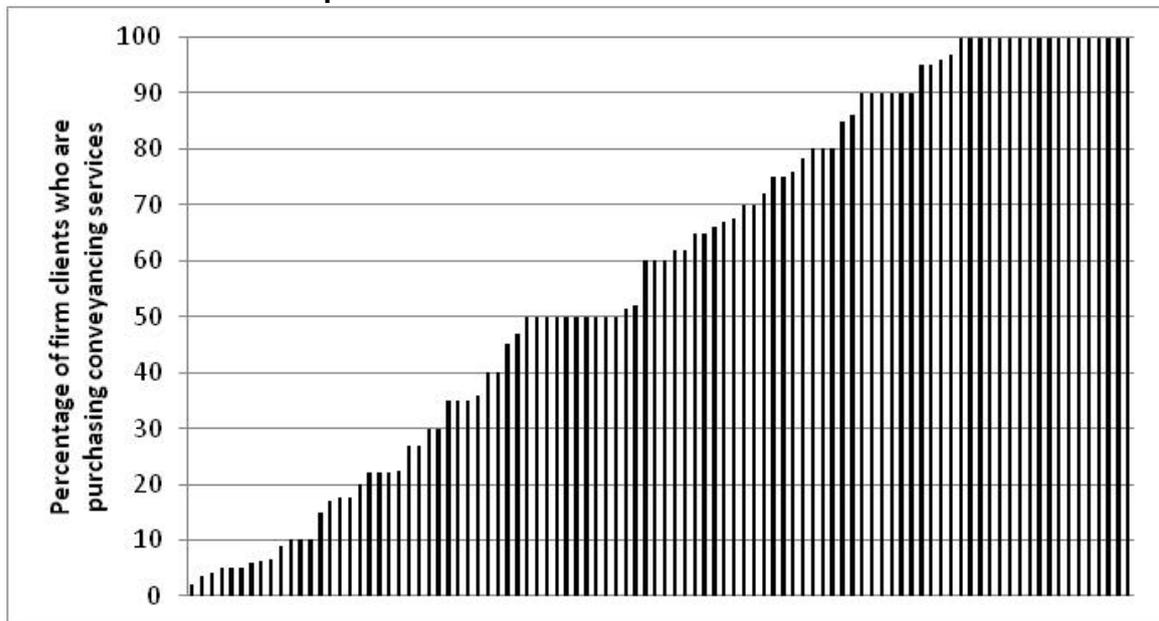
Firms with only one fee earner

We looked at whether conveyancing staff were solicitors, qualified to undertake conveyancing but not a solicitor, or not qualified. There was no pattern among conveyancing firms, and at every firm but two, the majority of conveyancing staff were solicitors.

## Clients

The percentage of clients who are purchasing conveyancing services varied from very few to 100%, with a range of percentages in between. This is unsurprising considering we stratified the sample by percentage of fees coming from conveyancing.

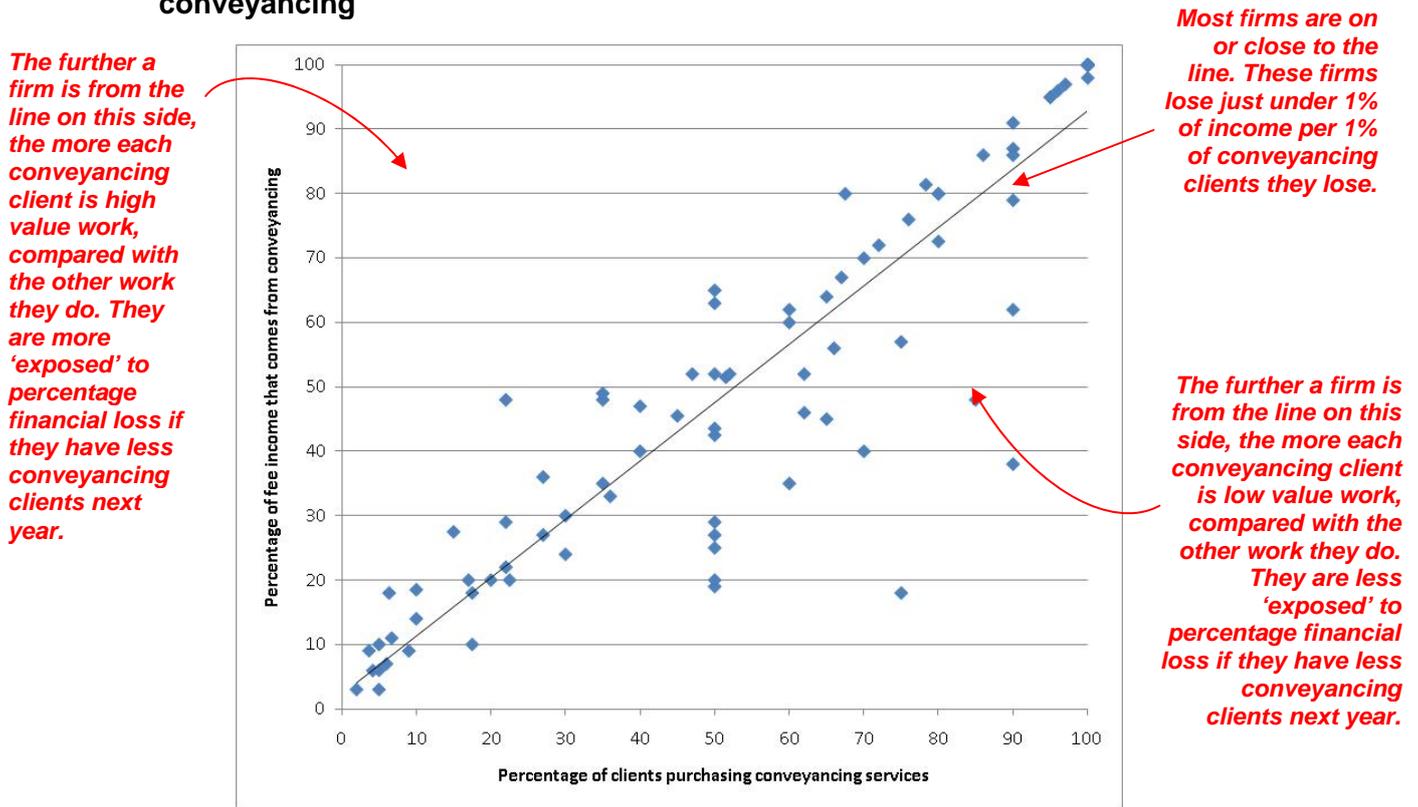
**Figure 1.8: Percentage of clients who are purchasing conveyancing services, at each firm in the sample**



**Source:** Firm visits. *N* = 96 firms

We also looked at the relative number of clients who are purchasing conveyancing services, and compared this with the percentage of fee income that the firm gets from conveyancing. Although this is an approximate measure, this allowed us to assess how much conveyancing clients, as a group, are worth to the firm in terms of fee income.

**Figure 1.9: Relationship between percentage of clients who are purchasing conveyancing services, and percentage of income the firm gets from conveyancing**

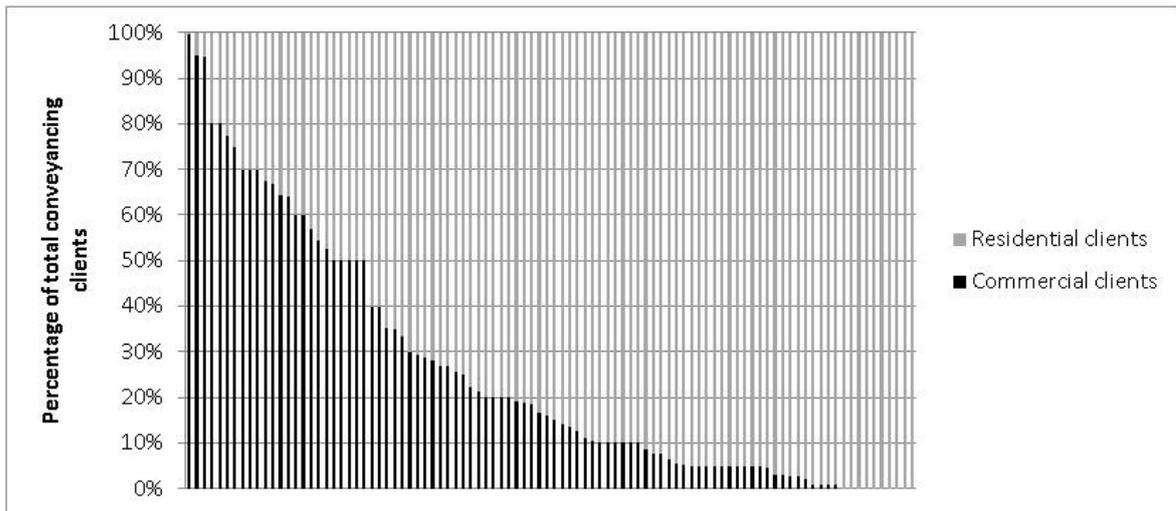


**Source:** Firm visits. N = 96 firms

The data from this sample suggests that the percentage of a firm's clients who are purchasing conveyancing is very similar to the percentage of a firm's income that comes from conveyancing. This suggests that the idea of conveyancing being a 'high volume, low value' type of work may not be a valid assumption.

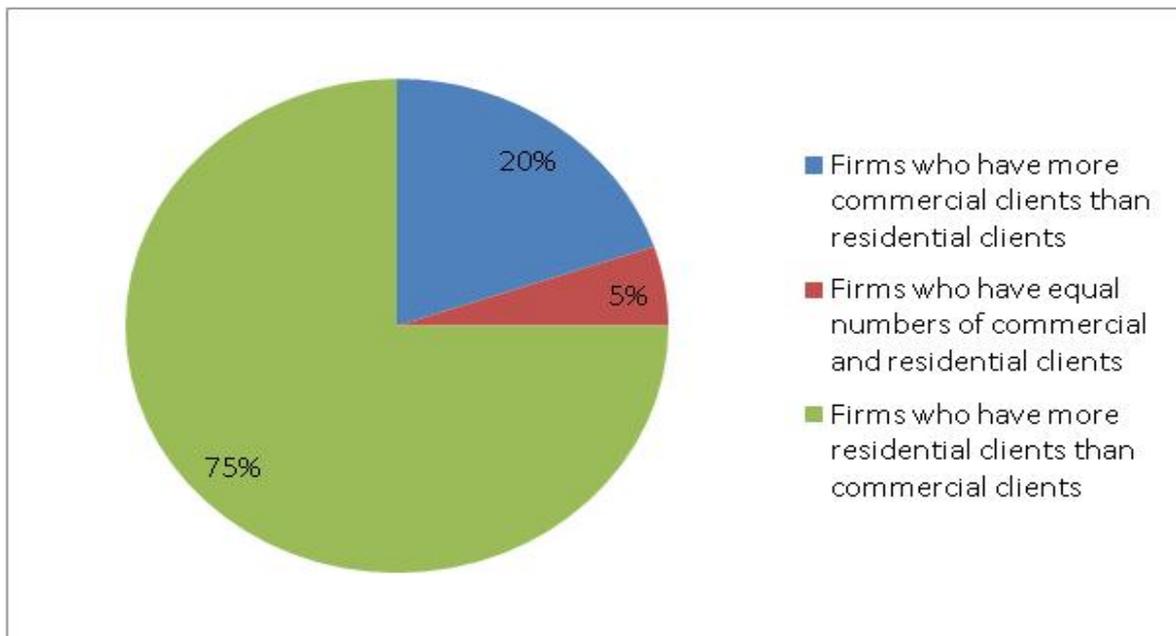
We looked at the split between residential and commercial clients at the firms in our sample. The majority had more residential conveyancing clients, as can be seen from figures 1.10 and 1.11.

**Figure 1.10: Conveyancing clients at each firm, split into a) residential and b) commercial**



**Source:** Firm visits. N = 96 firms

**Figure 1.11: Majority client type at firms in our sample**



**Source:** Firm visits. N = 96 firms

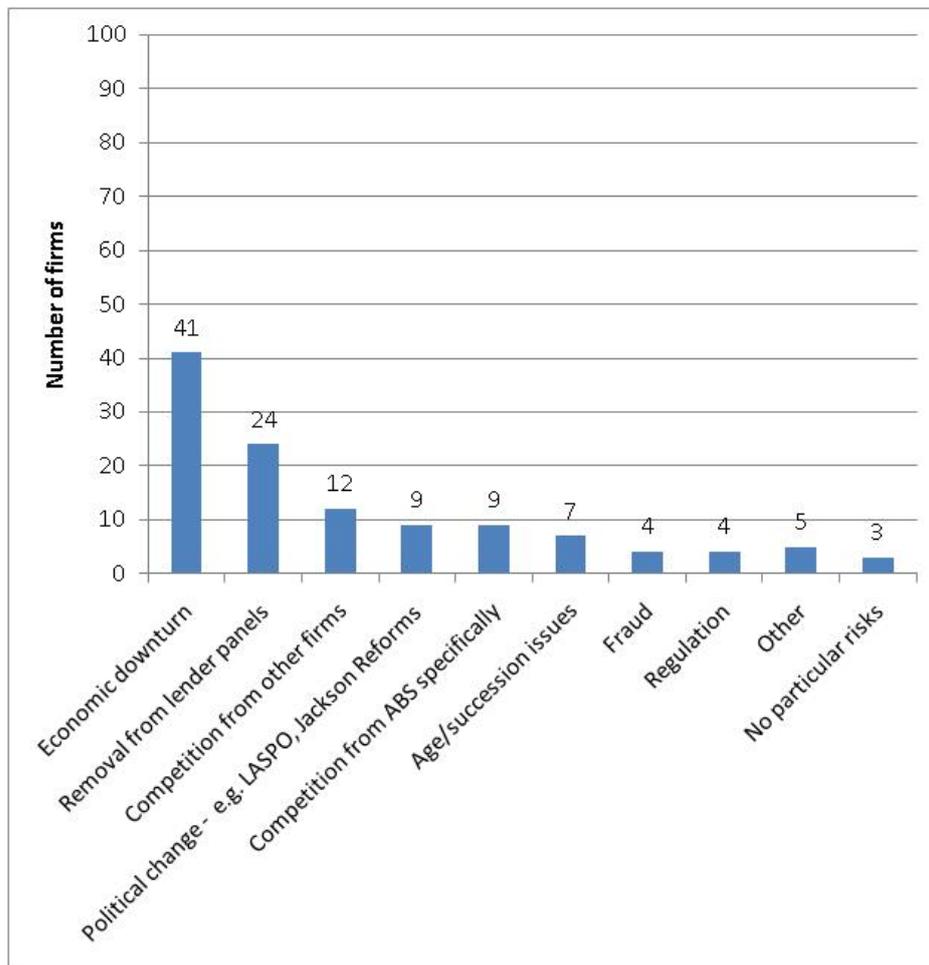
## Risk

We asked each firm some initial questions about their perceptions of risks related to conveyancing. The 'economic downturn' and 'removal from a lender panel' were the two most frequently reported areas of risk.

The same two reasons were also the most frequently reported risks when firms were asked an open question about risks relating specifically to conveyancing activities. However, the order was reversed, and 'removal from lender panel' was followed by 'economic downturn'.

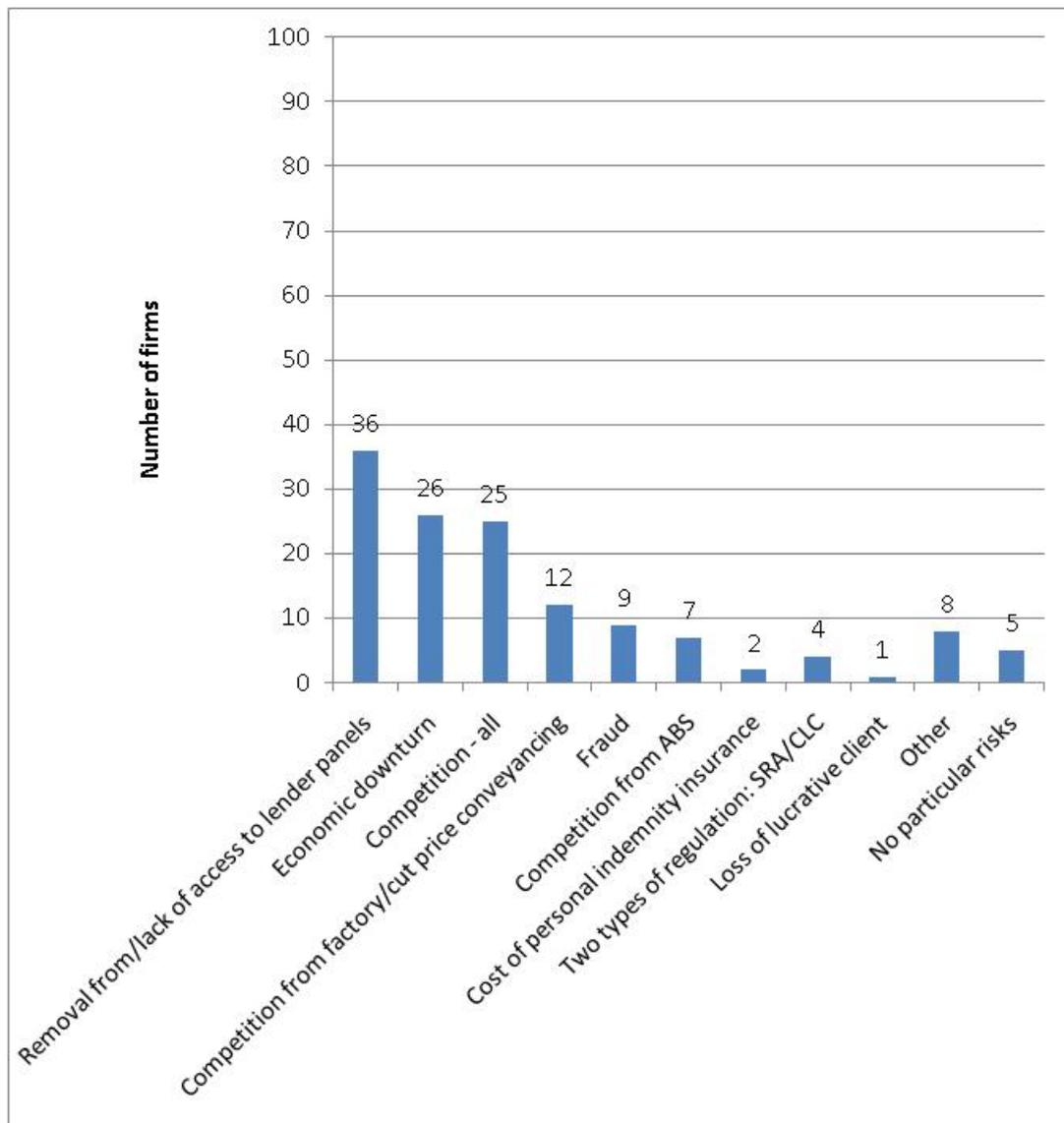
Firms also highlighted other economic or political threats - such as reforms related to the Legal Aid, Sentencing, and Punishment of Offenders Bill (LASPO) and new types of business structure, including Alternative Business Structures (ABSs) or firms using large numbers of paralegals to reduce costs (commonly termed by respondents as 'factory firms'). These responses indicate a recognition by firms that the market that they operate is changing and that this presents threats to their current business models.

**Figure 1.12: What do you feel is currently the biggest risk facing your firm? (open question)**



**Source:** Firm visits. N = 98 firms (Some firms named more than one risk)

**Figure 1.13: What do you feel is currently the biggest risk relating to conveyancing facing your firm? (open question)**



**Source:** Firm visits. N = 98 firms (Some firms named more than one risk)

We then asked each firm to identify the biggest risk to their firm from the five options:

- 51% said property-related fraud and money laundering
- 17% said financial stability
- 12% said conflicts of interest
- 10% said costs information
- 5% said referral arrangements.

These findings are interesting, as fraud and money laundering was only mentioned by 4% of firms when they were asked about risk as an open question (Figure 1.12), yet here it was given as the biggest risk by over half of firms. The reason for this discrepancy is not clear, but we could hypothesise from the data that firms saw

removal from lender panels as separate from 'referral arrangements', and saw economic downturn as different from 'financial stability'.

It is also likely that firms did not think about risks relating to fraud and money laundering until they were prompted by the multiple choice question.

We also asked each firm to identify the smallest risk to their firm from these options:

- 52% said referral arrangements
- 16% said conflicts of interest
- 12% said financial stability
- 9% said costs information
- 5% said property related fraud and money laundering.

Interestingly, most firms did not choose financial stability, conflicts of interest and costs information as their biggest or smallest risks. This could indicate that firms know less about these risks, but the sample is not big enough for us to be certain about this.

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## 2. Conflicts of interest

This section reviews issues of conflicts of interest, including the most frequently encountered conflicts and how these cases are managed.

### Key findings in this section are:

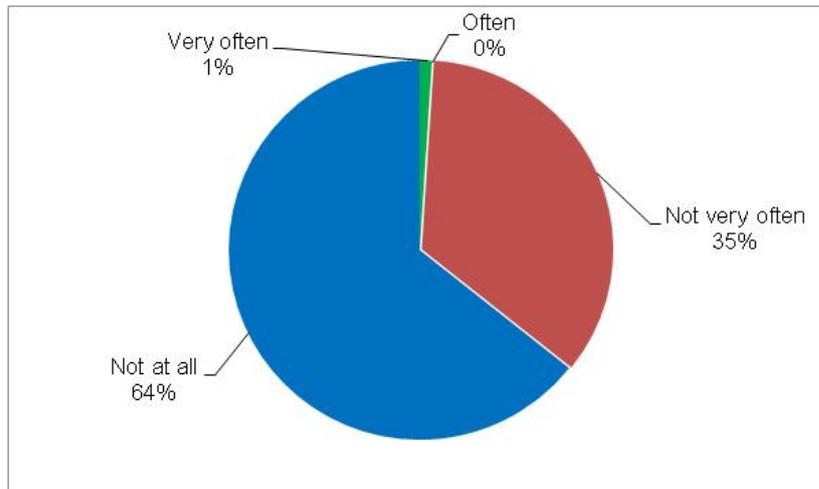
- Based on firms reporting, conflicts between clients were rare. 93% of firms stated either that they had 'not at all' or 'not very often' encountered any conflicts between clients. Two thirds of firms reported that they had not experienced any personal interest conflicts.
- The most frequently reported area for conveyancing conflicts related to acting for both the buyer and seller (47%), followed by the potential conflict between duty of confidentiality to the borrower and duty of disclosure to the lender (41%). The least reported area of conflict was acting for two buyers in a contract race.
- Firms stated that they managed these risks by a variety of methods ranging from specific software and ICT solutions to case management and knowledge of their client base.
- The main reasons cited for avoiding problem associated with conflicts of interest included: good systems, robustness of office procedures and client care letters, never representing buyer and seller, common sense, early identification, separate branch, fee earners and supervisors and a small client base.
- Half of the firms felt that most cases of improper management of conflicts of interest in conveyancing occur because of a 'lack of understanding and/or failure to recognise a conflict or a significant risk of a conflict' (50%). This was followed by 'firms do not have appropriate systems in place to manage conflicts of interest' (19%) and 'firms intentionally fail to comply with the outcomes for monetary gain' (10%).

### Incidences of conflicts of interest

Firms were asked if they had encountered any conflicts of interest in conveyancing work. These could be related to personal interest conflicts or conflicts between clients. A conflict between the solicitor's duty to act in the best interests of two or more different clients is defined as client conflict or between the solicitor's own interests and those of a client is defined as own interest conflict.

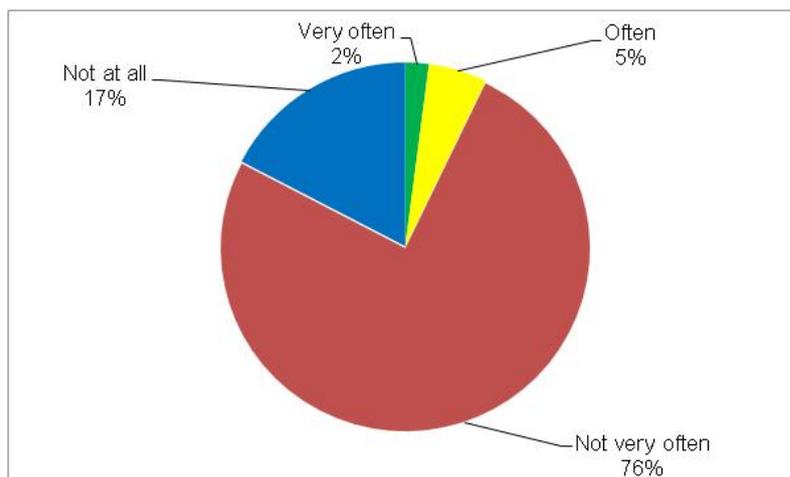
Figure 2.1 shows that two thirds of firms stated they had not experienced any personal interest conflicts. The vast majority of firms (93%) either had 'not at all' or 'not very often' encountered any conflicts between clients as shown in Figure 2.2.

**Figure 2.1: Personal interest conflicts**



**Source:** Firm visits. N = 98 firms

**Figure 2.2: Conflicts between clients**



**Source:** Firm visits. N = 98 firms

### Areas of conveyancing conflict

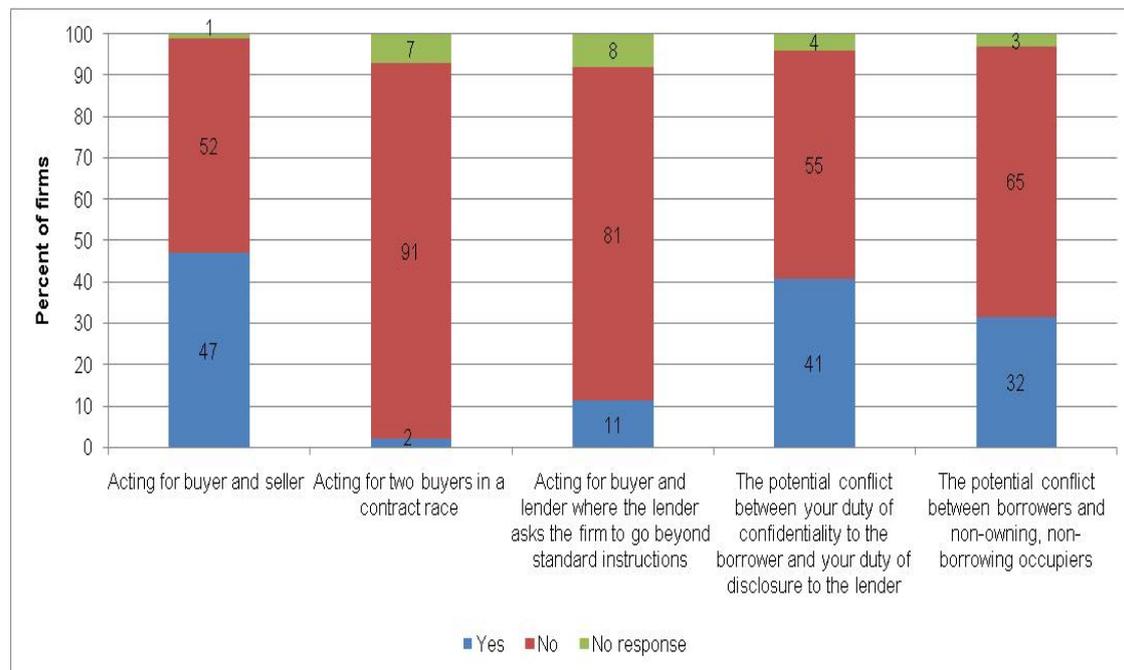
Firms were asked whether they had ever experienced a conflict of interest in a selection of different scenarios. The most frequently stated area was related to acting for both the buyer and seller (47%) followed by the potential conflict between duty of confidentiality to the borrower and duty of disclosure to the lender (41%). The least frequently identified area of conflict was acting for two buyers in a contract race as only 2% of firms had encountered this type of conflict.

Firms indicated that couples owning property and going through a divorce could present conflicts as illustrated by the following quotes:

- *"Matrimonial...wouldn't act if consent not given."*
- *"Possible conflicts on sales by divorcing couples."*

- "One party was not represented; I had to make sure I was not deemed to be giving legal advice."

**Figure 2.3: Conflicts between clients**



Source: Firm visits. N = 98 firms

### Systems for managing risk relating to conflicts of interest

Firms were asked about the systems they had in place for managing risk related to conflicts of interest. The responses varied from sophisticated computer software systems to having 'no specific policies'.

Some firms relied on checking their own database usually through accounting records and checking for conflicts. Smaller firms, particularly sole practitioners, stated they knew most of their clients and were confident there were no risks. The vast majority of firms relied on a combination of a simple database, case management and paper files along with discussions between partners.

The following quotes show the variety of methods used to managing conflicts of interest risks:

- Several firms highlighted **specific software and ICT solutions**:
  - "We do a conflict check before a file is opened on 'Lawbyte' (computer system) which checks for clients we have acted for previously and on the other side, and have policies regarding when not to act."
  - "Common sense, good recollection of clients and 'Card Box' - this is a computer system that flags linked clients."
  - "'Osprey' accounts system which has a conflict of interest internal check and procedures are in the office manual and we check clients' information."

- Some respondents relied on their **knowledge of their client base**:
  - *"There are just two partners with nearly 80 years experience between us. We do not have written policies. We simply talk to each other to discuss the situation, record incidents on files, write attendance notes and memos."*
  - *"I carry out a thorough search of the client database to identify any conflicts, but as 75% of clients are known personally, have a good grasp of any potential conflicts that may arise."*

Firms were also asked about managing risks associated with specific areas such as acting for buyer and seller, most responses mentioned their overall procedures as stated earlier. Specific policies were mentioned in the following areas:

- Most firms said they would not act for both the buyer and seller in a conveyancing transaction. The firms that stated that they act for both parties stated they would use **separate partners** to avoid conflicts of interest.
- Most respondents stated that they would not act for buyer and lender where the lender asks the firm to go beyond **standard instructions**. One firm stated they would ask the client to confirm if information can be provided otherwise they would then cease to act.
- Managing risks related to the potential conflict between duty of confidentiality to the borrower and duty of disclosure to the lender were mainly addressed by obtaining **consent from the client** and if refused then ceasing to act.
- Some firms said they would **assess the case** themselves, as illustrated by the following quotes:
  - *"I take a balanced view and assess whether the information provided to the lender will affect the decision to lend."*
  - *"Will verify source of funds and conduct due diligence tests to be signed by a Partner and disclose to a lender."*

In addition, one firm stated it was important in the not for profit sector to ensure that checks are made to identify all trustees or directors and that additional checks are made with Companies House and the Charities Commission.

### Problems managing conflicts of interest

Over three quarters (77%) of firms stated that they had not encountered any problems managing conflicts of interest with regard to conveyancing work, 11% stated problems had been encountered and 12% did not provide a response. Examples of difficulties experienced by respondents are set out below:

- *"Order from Court to hand over file to police because mortgage fraud investigated by police. I didn't tell client, handed file over to police."*
- *"A fee earner once started to act for both buyer and seller, and then when they found out, they dropped one client."*

- *"A developer of a block of flats. A private client bought a flat and also wanted to buy the freehold. I advised that I could not act for her as was already instructed by the developer."*

For those firms who had not encountered any problems managing conflicts, the main reasons cited were:

- Good systems
- Robustness of office procedures and client care letters
- Never representing buyer and seller
- Common sense
- Early identification
- Separate branch, fee earners and supervisors
- Small client base.

### **Case Studies**

Acting for both parties in a transaction:

- An example was given of a client and their mother transferring property to each other. This was identified as a potential conflict of interest and the mother was told to instruct another firm.
- A local farmer wanted a firm to act on the sale of a field. Both the buyer and seller were established clients of the firm. The firm stated that do not act when there is potential for a conflict of interest regardless of whether it is an exception. The farmer was asked to seek independent solicitors.

Dealing with requests to conceal information:

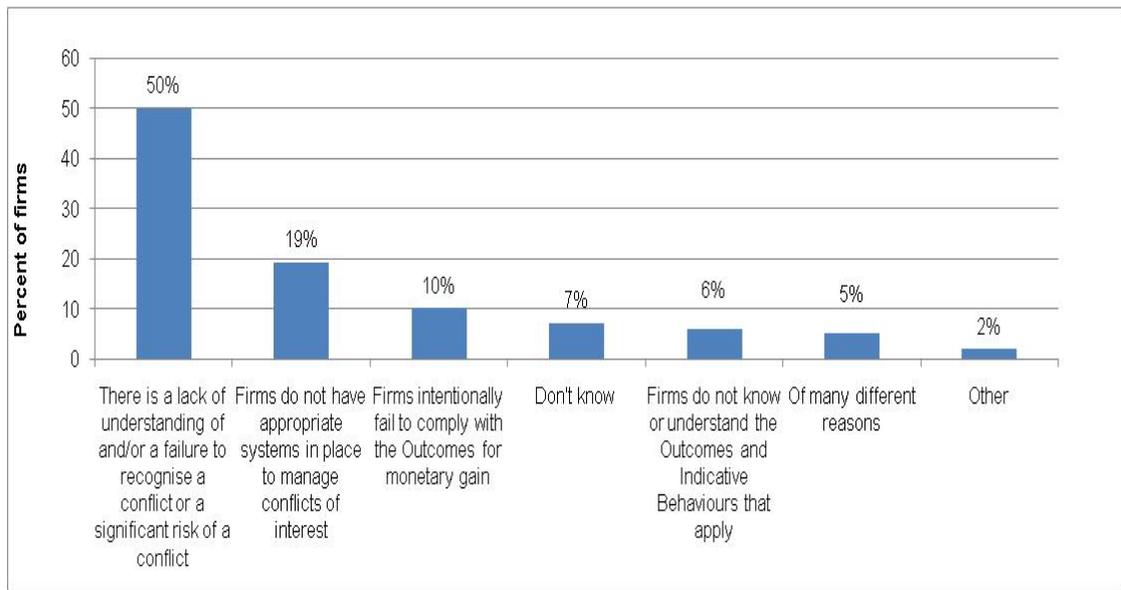
- A lender requested that a credit card debt be paid off as condition of a mortgage. The solicitor obtained copy of bank statement from client but he also informed lender he was not able to take any action to enforce this condition of the mortgage.
- A client was buying a property, but asked the firm not to disclose the true value of the property (buying at an undervalue). The firm explained their duty, but the client was persistent and therefore firm ceased to act.

### **Views on improper case management**

To explore views on improper case management, firms were asked to pick a single response from a list of options to complete the following sentence: *"Most cases of improper management of conflicts of interest in conveyancing occur because..."*

As illustrated in Figure 2.4 the most frequently stated answer was 'lack of understanding and/or failure to recognise a conflict or a significant risk of a conflict' (50%). This was followed by 'firms do not have appropriate systems in place to manager conflicts of interest' (19%) and 'firms intentionally fail to comply with the outcomes for monetary gain' (10%).

**Figure 2.4: Views on causes of improper management of conflicts of interest in conveyancing**



**Source:** Firm visits. N = 98 firms

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### 3. Referral arrangements

This section looks at current referral arrangements at firms, and how firms manage the risks which may arise from referral arrangements.

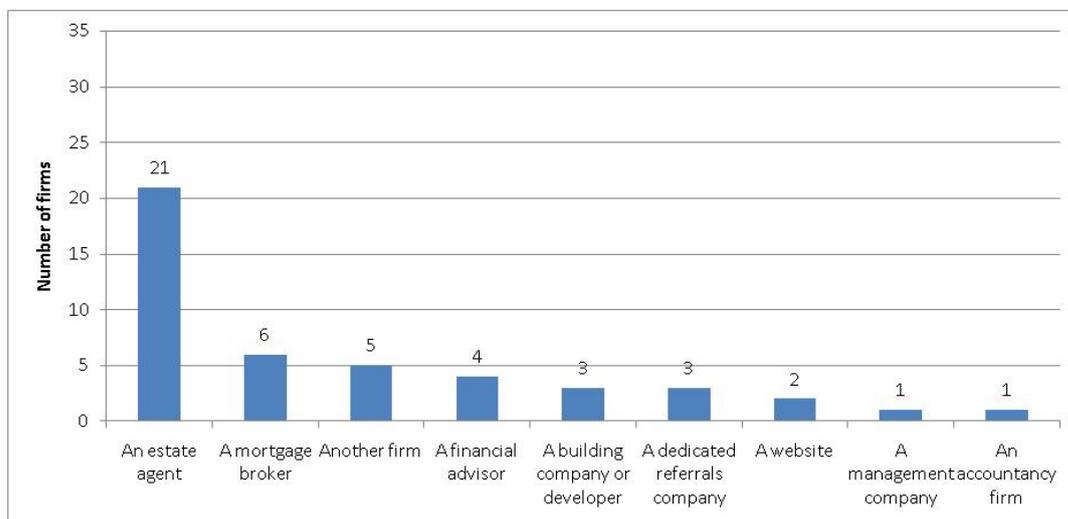
#### Key findings in this section are:

- A third of firms stated that they had referral arrangements in place.
- Most of the referral arrangements that firms described were with estate agents.
- Over half of firms with referral arrangements stated that they had a written agreement in place.
- Very few firms reported relying on a single referrer, client or development for more than 10% of their instructions.
- A third of firms believed that other firms that provide conveyancing services are not clear with their clients when it came to explaining the existence of a referral arrangement.

#### Details of current referral arrangements

Of 98 firms, 33 firms said that they had some kind of referral arrangements in place. The types of referral arrangements these firms had can be seen in Figure 3.1. The most widely used referral arrangements are with estate agents. A range of other referral providers were stated, but other than estate agents, no single source appears to dominate the market. When asked, no firms said that they had referral arrangements in place with letting agents, mortgage providers, or surveyors.

**Figure 3.1: If you currently have any referral arrangements (paid or unpaid), who are the referral arrangements with?**



**Source:** Firm visits. N = 33 firms. Firms could choose more than one option.

Of the 33 firms who had referral arrangements in place, just over half (18 firms) said they had a written agreement in place, but the rest did not. For most of the 33 firms, payment was involved in the referrals. Only one firm had two way referrals, the rest had one way referrals.

We also asked those firms with referral arrangements about the benefits of their arrangements, there were no clear themes, but answers included:

- *“It produced an increase in turnover originally but now we don’t hugely benefit from it.”*
- *“Good matching service, new clients and work streams, and simplicity.”*
- *“Hopefully we acquire clients we would not normally have obtained.”*

All but one firm stated that they told their clients about the referrals. This one firm said that they *“did not have a particular system in place”* to ensure their clients were informed.

When asked about managing any risks relating to their referral arrangements, the most commonly stated ways to manage risk were:

- Regular review of the arrangements
- Formal referral policies
- Requirement for business cases
- Requirement for manager approval
- Discussion at team meetings.

Firms highlighted the following problems related to their referral arrangements:

- Two firms commented that the standard of work provided by someone they had referred clients to was of a low standard
- One firm commented on poor value for money at firms they had referred clients to
- One firm commented that their referral arrangement was poor value for money
- The rest of the firms with referral arrangement did not mention any problems.

## Reliance on referrals, developments and clients

We asked, *“Over any 12 month period have more than 10% of your firm’s conveyancing instructions (either commercial or residential) come from a single referral source, a single development, or a single client or group of clients?”*

- Five firms (out of 98 respondents) said more than 10% of their conveyancing instructions had come from a single referral source

- One firm (out of 98 respondents) said more than 10% of their conveyancing instructions had come from a single development
- Six firms (out of 98 respondents) said more than 10% of their conveyancing instructions had come from one client (or connected group of clients).

The low numbers of firms answering ‘yes’ to these questions was accompanied by a low response rate in general (only around 2/3 of firms responded to each one)<sup>6</sup>. This may be due to the fact that firms thought they didn’t have to respond if they did not have referral arrangements.

However, the Law Society 2012 survey of solicitors found that that 57% of firms generated at least half of their work from repeat clients<sup>7</sup>, which suggests that this may still be a risk area.

### Opinions on why clients are sometimes not aware of referral fees

We asked all 98 firms a multiple choice question about the reasons that clients at other firms might not be aware of referral fees. Responses were mixed, and are shown in Figure 3.2. The most frequently provided response (from around a third of firms) was that “the firm is intentionally not making clients aware”.

Firms’ compliance behaviour can be influenced by how they believe their peer group are complying, as detailed in the SRA report *Attitudes to regulation and compliance in legal services*<sup>8</sup>. Therefore, there is a potential risk if so many firms feel others are breaking the rules on referral fees.

<sup>6</sup> Due to the sample size and low response rate, the data from this question should not be taken to reflect the extent of these risks in the general population of firms.

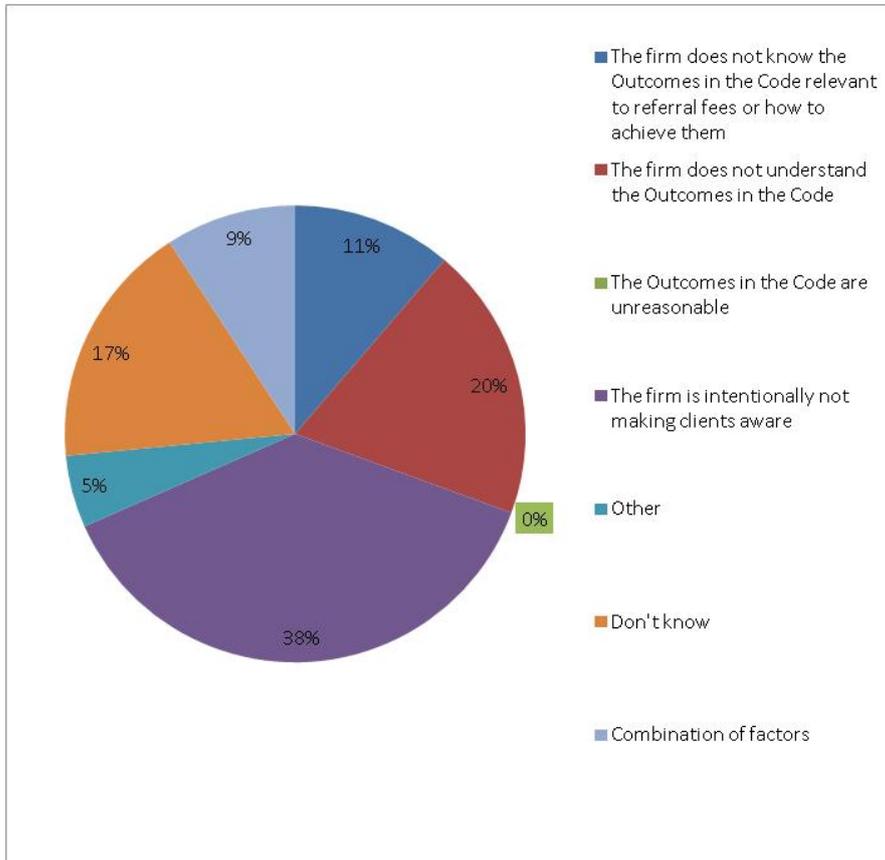
<sup>7</sup> Market impacts of the Legal Services Act 2007 - Baseline Report (Final) – Legal Services Board, 2012:

[http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/20121023\\_evaluation\\_baseline\\_report\\_final.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/20121023_evaluation_baseline_report_final.pdf)

<sup>8</sup> *Attitudes to regulation and compliance in legal services* – SRA, 2012:

<http://www.sra.org.uk/documents/SRA/research/attitudes-regulation-compliance-2011-research-findings.pdf>

**Figure 3.2: When firms do not make their clients aware of referral arrangements, it is usually because... (pick one)**



**Source:** Firm visits. N = 98 firms

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## 4. Costs information

This section looks at the information that firms provide to their clients about costs. This covers, how costs are presented, whether costs are included in marketing and views on the information provided by other firms.

### Key findings in this section are:

- Three quarters of firms saw the client care letter as the main way to give their clients good information about costs.
- Firms stated that they did not provide costs information 'up front' in advertising, preferring to wait until asked for a quote.
- Just over half of firms believed other firms' publicity was unclear about costs.
- Two thirds of firms felt that when a consumer feels unhappy with the cost of conveyancing, it is because the firm they have used has quoted a cheap headline figure, that does not accurately reflect the final bill.
- When asked what they would do if a client questioned the bill, over half of firms said they would try to resolve it by discussing it with the client.
- All firms reported that they made their clients aware, in writing, of their right to query the bill.

### Providing good costs information

When asked how they ensure that their clients receive the best possible costs information, 73 out of 98 firms mentioned the client care letter. These responses are interesting, as those who provide no further details other than "it's in the client care letter" put the onus on the supervisor to ascertain whether the client care letter meets standards on costs information, rather than explaining how they ensure that clients get good costs information.

### Costs information in marketing

We asked each firm, *"When marketing your conveyancing services to potential clients, how do you ensure that the information about charges is clearly expressed and identifies whether VAT and disbursements are included?"*

Firms who responded to this question talked about their process for quoting, rather than their use of costs information in marketing. A number of firms specifically stated that they did not advertise, and some said they advertised, but did not give any information about costs in their advertising. These responses indicated that firms did not provide costs information 'up front' in advertising, preferring to wait until asked for a quote.

We then asked each firm *"Do you think other firms' publicity is clearly expressed and identifies whether VAT and disbursements are included?"* Over half of firms (56%) questioned said that they did not think other firms' publicity was clearly expressed or

identified whether VAT and disbursements were included. Only 20 firms said that they thought other firms' publicity was clear, with the remaining 23 firms either stating that they did not know, or did not respond.

### Firm opinions on why consumers are sometimes unhappy with costs information

A consumer may sometimes feel that a firm has not been transparent about how much they would be charged for conveyancing work. We asked each firm to choose from a selection of reasons why a consumer might feel like this.

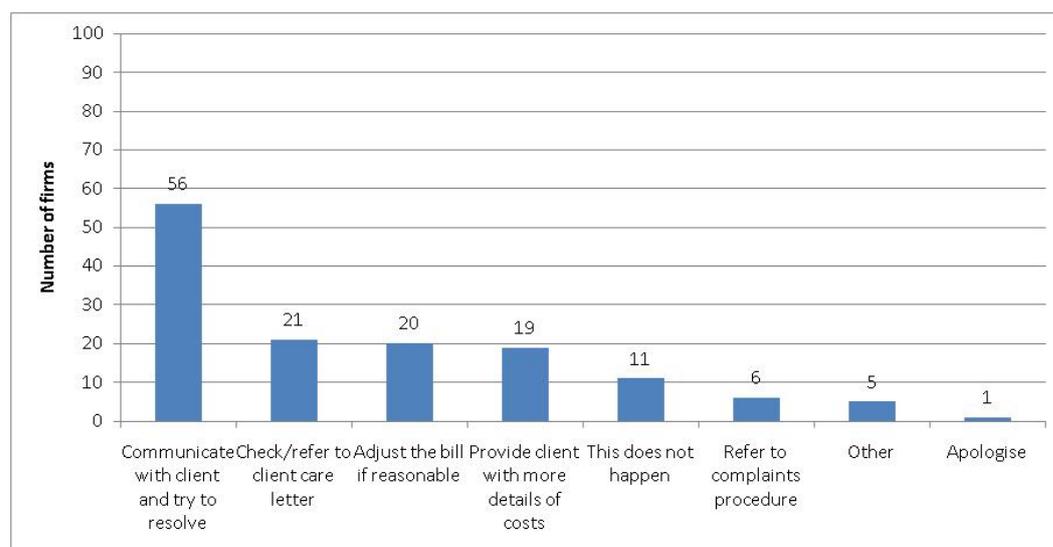
Two thirds of firms felt that when a consumer feels like this, it is usually because the firm in question quoted a cheap headline figure that did not accurately represent the actual cost of the work.

It appears that some respondents believe that other firms mislead consumers about the amount they are likely to be charged. Firms' compliance behaviour can be influenced by how they believe their peer group are complying, as detailed in the SRA report *Attitudes to regulation and compliance in legal services*<sup>9</sup>. Therefore, there is a potential risk that if so many firms feel others are providing poor information about costs, they may think that it is the 'norm' to provide poor information, and provide poor information themselves.

### Queries about the bill

We asked all 98 firms what their response would be if a client questioned the bill for conveyancing work. This was an open question, and responses have been grouped into categories. Figure 4.2 shows that the most frequently stated option would be to communicate with the client to resolve the matter.

**Figure 4.2: If a client questioned your bill for your conveyancing work what would be your response?**



<sup>9</sup> *Attitudes to regulation and compliance in legal services* – SRA, 2012: <http://www.sra.org.uk/documents/SRA/research/attitudes-regulation-compliance-2011-research-findings.pdf>

The responses in Figure 4.2 also showed that firms had a range of different approaches to resolving these types of issues:

- *“If the bill contained an unexpected item and no discussion had taken place with the client then the item would be removed. The firm would have a dialogue with the client if they were unhappy.”*
- *“Provide the client with a breakdown [of costs] and go through the completion statement.”*
- *“I would speak to them and try to find out what the misunderstanding was. I would explain the position but if the dispute continued then I would nearly always resolve in favour of the client. If any additional work was carried out that was not agreed in the original estimate then this would not be charged.”*

However, there were firms who did not feel they would ever encounter this issue:

- *“This is not likely to happen as a client would be provided with a fixed costs quote from the outset which is confirmed in the client care letter and if this were to be increased for any reasons, then I would discuss this with the client first. I would refer the client to the client care letter. “*
- *“Costs set out very clearly at the beginning – in the client care letter. We don't get many issues on costs. Where additional costs, we explain this to the client & get it agreed. No questions have been received to date.”*
- *“I cannot remember the last time this happened. Clients are given all information at the outset and are updated continually along the way if anything changes. We ensure that there are no surprises and this way clients will not have a reason to challenge their bill.”*

All firms said that they made clients aware of their right to query the bill. All said they did this in writing, whether through the client care letter, the invoice, the completion statement or other letters or policies.

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## 5. Financial stability

This section looks at how firms manage their finances, risks to firms' financial stability and how these risks are managed.

### Key findings in this section are:

- 80% of firms stated that they have seen less conveyancing clients as a result of the recession.
- 70% of firms reported that they monitor the property market.
- Two in five firms stated that they had seen a drop off in income from conveyancing and had to cut costs or make redundancies.
- Falling numbers of clients was seen as a risk to financial stability by half of firms.

### Financial Management Systems

We asked about the systems that firms have in place to monitor and manage their financial stability. This was an open question, and the answers cannot be coded into statistical form, but the answers could be broadly grouped into:

- Daily, weekly or monthly checking of accounts
- Monthly or quarterly reconciliation of accounts
- Employment of, and consultation with, accountants
- Partner meetings
- Computerised accounts management systems
- Setting and monitoring of performance indicators
- Forecasting and advanced budgeting
- Business plans, and monitoring of performance against them.

All but a few firms are using at least one of these methods of financial management.

### Impact of the recession

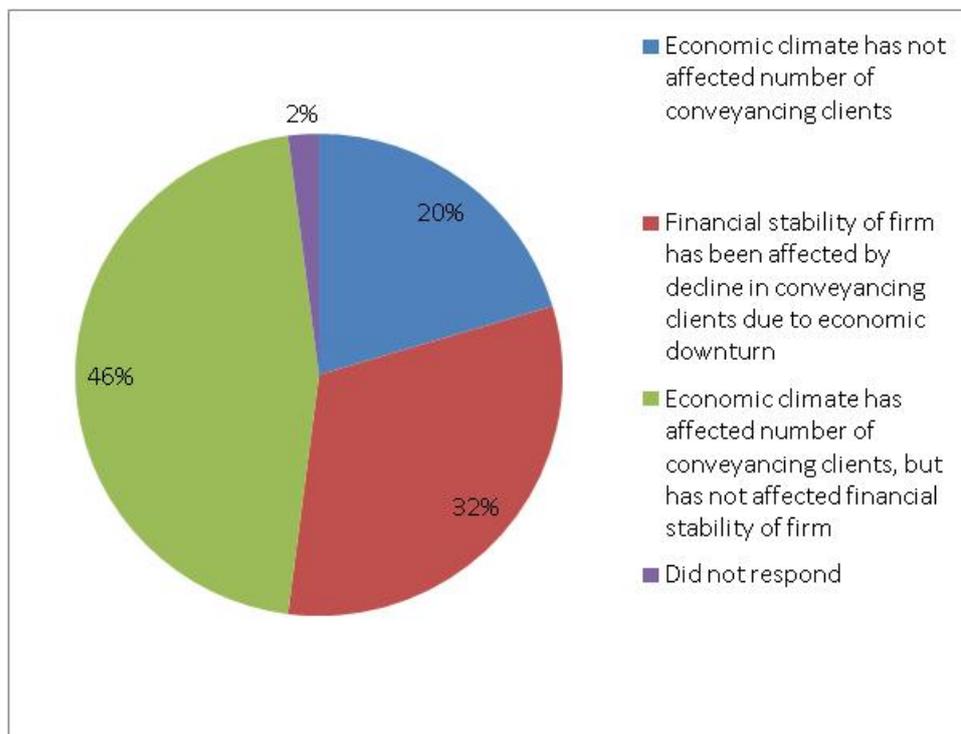
We asked firms whether the economic climate had affected how many people came to them for conveyancing work. 78 firms of 98 (80%) said yes, with 20 (20%) saying no.

Those who said there had been no impact offered a number of reasons their firms had avoided a reduction in clients. Quotes on this topic included:

- “We only started trading in 2008, after the main decline in conveyancing work. Since then the flow of work has been steady.”
- “We deal with the middle to top end of the market rather than first time buyers and people trading up property.”
- “It hasn’t affected our local area much”

The 78 firms who said the economic climate **had** affected the number of people coming to them for conveyancing work, were asked whether this has had an impact on the financial stability of their firm. 31 (40% of these firms) said it did, and 45 (58% of these firms) said it did not.

**Figure 5.1: Impact of economic climate on conveyancing and financial stability at firms**

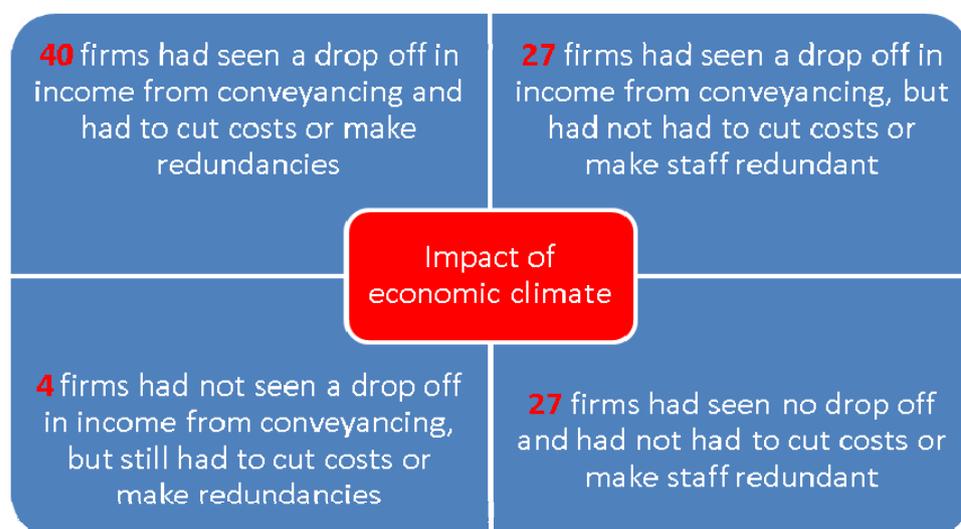


**Source:** Firm visits. N = 78 firms

70% of firms stated that they monitored the property market. We asked each firm whether the current state of the property market was having an impact on their conveyancing work. Nearly three quarters of firms (73%) said that it had.

Firms were also asked if they had seen a drop off in their gross fee income from conveyancing, and whether they had had to cut costs or make conveyancing staff redundant.

**Figure 5.2: Have you seen a drop off in your gross fee income from conveyancing? Have you had to cut costs or make conveyancing staff redundant?**



**Source:** Firm visits. N = 98 firms

### Risks to financial stability

Firms were asked whether they felt each one of a list of risks were likely to affect their financial stability over the next year. The results, shown in Figure 5.3; show that the most frequently stated risks were falling numbers of conveyancing clients, obtaining professional indemnity insurance and competition from Alternative Business Structures (ABSs).

Figure 5.3: Perceived risks to financial stability at firms over the next 12 months	
Do you feel any of the following will be a significant risk to the financial stability of your firm over the next 12 months?	Percentage of firms who agreed it would be a risk
Falling numbers of conveyancing clients	51%
Obtaining professional indemnity insurance	37%
Competition from Alternative Business Structures	31%
Competition from non-solicitor licensed conveyancers	26%
The cost of complying with SRA regulation around conveyancing	16%
Falling house prices	15%
A referral fee ban covering conveyancing	5%
Clients unable to pay the bill for conveyancing work	4%

**Source:** Firm visits. N = 98 firms. Firms who did not respond were not included in percentage calculations.

We also asked firms to explain the strategies they had in place to address these risks. A wide range of answers were given, including:

- *“To diversify into new areas of work”* – to address risks of falling numbers of clients and competition from ABSs.
- *“Keep doing what we are doing. We don’t compete on price, only quality and on service. We go by word of mouth.”* – to address risks of competition from ABSs and non-solicitor licensed conveyancers.
- *“Make SRA regulation a standard part of every transaction and therefore avoid the need for 'extra' work.”* – to address risks of the costs of complying with SRA regulation.

However, some firms admitted that they did not have any strategy to deal with these risks.

Finally, we asked if there was anything the SRA could do to support firms in addressing these risks. Responses varied, but were generally divided into two groups – a larger group which discussed possible changes to SRA policy, and a smaller group which discussed risk management in relation to their own business.

- Examples of those who understood risk management as about changes to **SRA policy** included:
  - *“Carry out more thematic visits, concentrating on the mature partner firms, as they are the ones that have high management issues.”*
  - *“Ban referral fees, monitor bigger firms more rigorously, help small firms deal with OFR”*
  - *“Address the issue of lenders taking solicitors off their panels.”*
- Examples of those who understood support on risk management to be about their **own risk management behaviour** and how the SRA could help with this included:
  - *“Having a Supervisor we could contact if risks increased would be beneficial.”*
  - *“Transparency and clarity of the rules, language could be simplified”*
  - *“Be more friendly. In the past the firm have felt under pressure from regulators with their tone in emails.”*
  - *“Feedback and publication of research carried out by SRA on the SRA website.”*

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## 6. Property-related fraud and money laundering

This section explores experiences, control systems and perceptions of risk associated with property-related fraud and money laundering.

### Definitions

Property-related fraud is fraud involving property transactions. It will often involve mortgage fraud – illegally obtaining more money from a lender than you would normally be able to, through use of fraudulent documents. However, it may also involve identity fraud when buying or selling a property, misrepresenting any aspect of the transaction, and any other type of fraud relating to the buying or selling of property. It can involve the buyer, seller, lender, financier, broker, estate agent or conveyancer in a property transaction, and sometimes involves more than one of these people.

Money laundering is the process of making illegally obtained money look like it has been obtained legally; the money is ‘cleaned’ through subsuming it into what looks like a credible transaction, such as presenting it as profit from selling a property.

### Key findings in this section are:

- A quarter of firms stated that they had experienced property-related fraud or money laundering.
- Three quarters of firms believed that they were unlikely to experience it. However, having experienced it did not make firms any more likely to think it would happen again.
- When firms were asked what warning signs they looked for, the most common themes were: International connections, unusual financial arrangements, client behaviour and having no local connections.
- If suspicions are raised, around a quarter of firms said they would refuse to represent the client. Similar numbers report to the Serious and Organised Crime Agency (SOCA) or the police, or consult their Money Laundering Reporting Officer (MLRO).
- A third of firms admitted that they did not know how they would decide whether to report a suspicion to SOCA, with a further 15% going only on ‘gut instinct’.
- Three quarters of firms said that they want more training on property-related fraud and money laundering.

## Experiences of money laundering or fraud

Around a quarter of firms reported an experience of clients attempting to use property transactions to launder money or commit fraud. Firms who had experienced clients attempting to use property transactions in this way, gave details of incidents including:

- Clients withdrawing from the work when ID was requested, or refusing to provide ID
- Money laundered through use of a 'finders fee' and a connected buyer and seller
- A client attempting to pay in cash, who was later revealed to be laundering money
- Attempted use of fixtures and fittings to reduce stamp duty liability
- A client asking a firm to inflate the sale price of a property to get a better mortgage advance.

## Perceptions about likelihood of encountering money laundering or fraud

Firms were also asked how likely they thought it would be that they would encounter property related fraud or money laundering in the future. Three quarters said they were 'somewhat unlikely' or 'very unlikely' to encounter it, compared with just under a quarter who believed it was 'somewhat' or 'very likely' that they would encounter this type of activity.(Figure 6.1).

Interestingly, having experienced clients trying to launder money or commit fraud did not make firms feel they were any more likely to encounter it again in the future.

**Figure 6.1: How likely do you think it is that your firm will encounter property related fraud or money laundering?**

Perception of likelihood	%
Very likely'	6%
Somewhat likely'	17%
Very unlikely'	42%
Somewhat unlikely'	32%
Don't know	3%

**Source:** Firm visits. N = 98 firms

Those firms who believed they were likely to encounter fraud or money laundering related to property gave a number of reasons for this view:

- *“There’s lots of it going on, and when undertaking a lot of conveyancing there is a likelihood you might meet it”*
- *“Crime is high in [my area]. There is a drug problem in the area”*
- *“Dealing with matters involving money, it is inevitable at some point”*

Those who did not believe fraud or money laundering was something they were likely to encounter also gave reasons, including:

- *“It is nothing we've experienced in the past so it's unlikely we should in the future”*
- *“The firm has all the checks in place”*
- *“The firm doesn't normally deal with clients that fall into this risk category. Most clients are long time clients; the firm doesn't take cash payments.”*

## Identity checks

We asked firms to provide us with details of their identity verification processes / procedures for conveyancing clients, including details of the checks carried out.

As can be seen from Figure 6.2, responses were mixed, reflecting the fact that some firms were more detailed than others in explaining their checks, but most stated that they asked for photo identification and a proof of address. Interestingly, only a fifth of firms who responded to this question stated that they met with all clients face to face.

**Figure 6.2: Please provide us with details of your identity verification processes / procedures for conveyancing clients including details of the checks carried out (open question)**

Identification process	%
Check photo identification, e.g. passport, driving licence	59%
Check proof of address, e.g. utility bill	52%
Check identification – type not specified	21%
Every client seen face to face	20%
Computerised check	19%
Client completes a questionnaire	12%

**Source:** Firm visits. N = 91 firms (7 did not respond)

## Warning signs and taking action when suspicions are raised

We asked firms an open question about the warning signs they looked for that might indicate fraud or money laundering in conveyancing transactions. Figure 6.3 summarises the responses provided into themes and illustrates these with some examples:

**Figure 6.3: Most common types of warning signs that firms use to detect property-related fraud and money laundering, with examples**



Firms were asked how they proceeded if their suspicions were raised as an open question. Figure 6.4 shows these answers grouped under broad headings. The most popular answers were refusing to represent the client, consulting SOCA or the police, and consulting the MLRO.

**Figure 6.4: How do you proceed if your suspicions are raised in relation to property-related fraud or money laundering? (open question)**

Action	%
Refuse to represent the client	24%
Consult SOCA or the police	23%
Consult money laundering reporting officer (MLRO)	22%
Obtain further information from the client	14%
Other	14%
Don't know	10%
Contact SRA Ethics Helpline	8%
Carry out further checks	7%

**Source:** Firm visits. N = 98 firms (some firms cited multiple factors)

Firms were asked whether they carry out any tests to determine if a case is suspicious or whether it should be reported to SOCA. The responses generally fell into the following three categories:

- Those who proceeded in a systematic way, evaluating the evidence. 50 firms fell into this category. Quotes from these firms included:
  - *“Look at the client, their behaviour, and the evidence.”*
  - *“We refer to Law Society warning signs, have a partners meeting and request further information.”*
  - *“A comprehensive review of the file is made to analyse issues and consider suspicions.”*
- Those who made overall judgement calls based on experience, ‘common sense’ or on ‘gut instinct’. 15 firms fell into this category.
- Those who did not know or had not considered how they would determine whether to report. 32 firms fell into this category<sup>10</sup>.

Supervisors conducting the interviews also checked whether each firm had a documented reporting policy. Around three quarters of firms did, and many of those who did not were sole practitioners who did not have other members of staff.

One course of action if suspicions of fraud or money laundering are raised is to report the issue to SOCA in the form of a formal Suspicious Activity Report (SAR). The question was posed to firms *“How many issues do you raise internally, versus actual*

<sup>10</sup> One firm did not answer this question

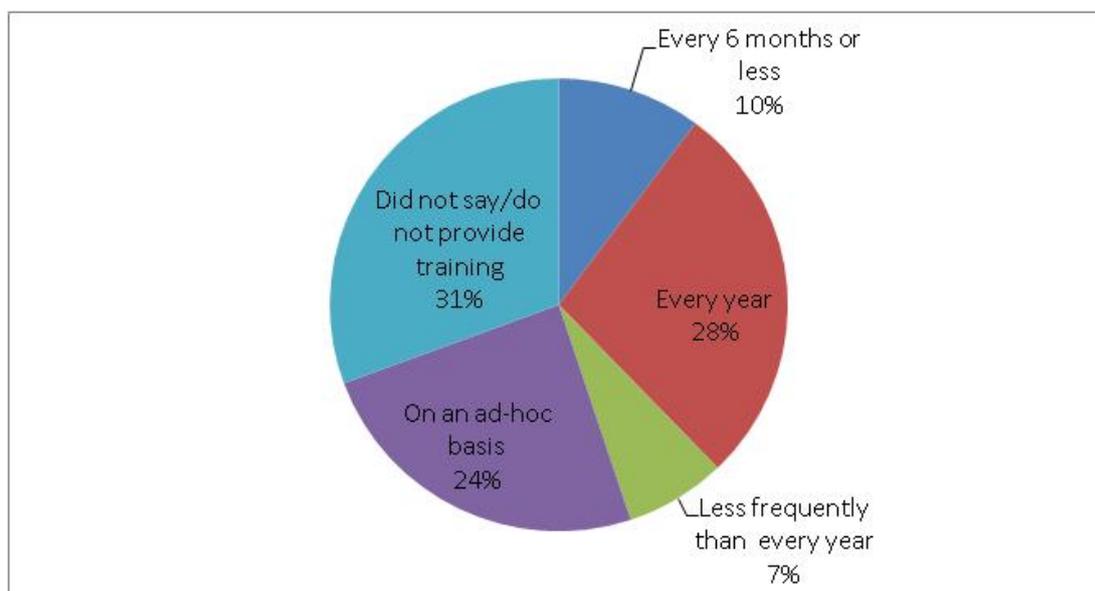
*Suspicious Activity Reports (SARs) to SOCA?*” The responses indicated that the majority of firms have raised some issues internally but very few are reported to SOCA.

## Training

We asked firms “*What training is provided to conveyancing staff in respect of identifying mortgage fraud / money laundering / other property related fraud?*” The answers to this were varied, including Law Society training, CPD and other external or internal training programmes.

Firms were also asked how often that training was delivered or updated. The results show a wide range of approaches (Figure 6.5).

**Figure 6.5: How often is that training provided to conveyancing staff delivered or updated?**



**Source:** Firm visits. N = 98 firms

17 firms out of the 98 we spoke to specifically stated that they did not provide any training on this issue.

We asked firms whether they believed they would *benefit* from any training relating to fraud or money laundering risk in conveyancing. Three quarters said ‘yes’. Firm comments on the positive role of training in this area included:

- “*Yes, make training more accessible to firms. Training costs are too high and too far away to attend. Webinars are a good tool and it would be great if they were more subject specific.*”
- “*I’d like to attend more courses to update my knowledge in a constantly changing area.*”
- “*Working on my own and out of town, I am in a sheltered environment, it would be useful to talk to other solicitors and hear their experiences.*”

Other responses indicated that case studies would be valuable to help firms prepare to deal with the risks of property related fraud or money laundering.

## Firms' opinions on the reasons fraud and money laundering happens through law firms

We asked firms why they felt property-related fraud or money laundering happens through a law firm. The most popular answer (45%) was that it was because the firm did not have appropriate systems in place to detect money laundering or fraud. This shows the value that many firms place on good systems for detection.

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## 7. Complaints and professional negligence claims

This section looks at conveyancing complaints and professional negligence claims relating to conveyancing work at firms, and the systems firms have in place to handle them.

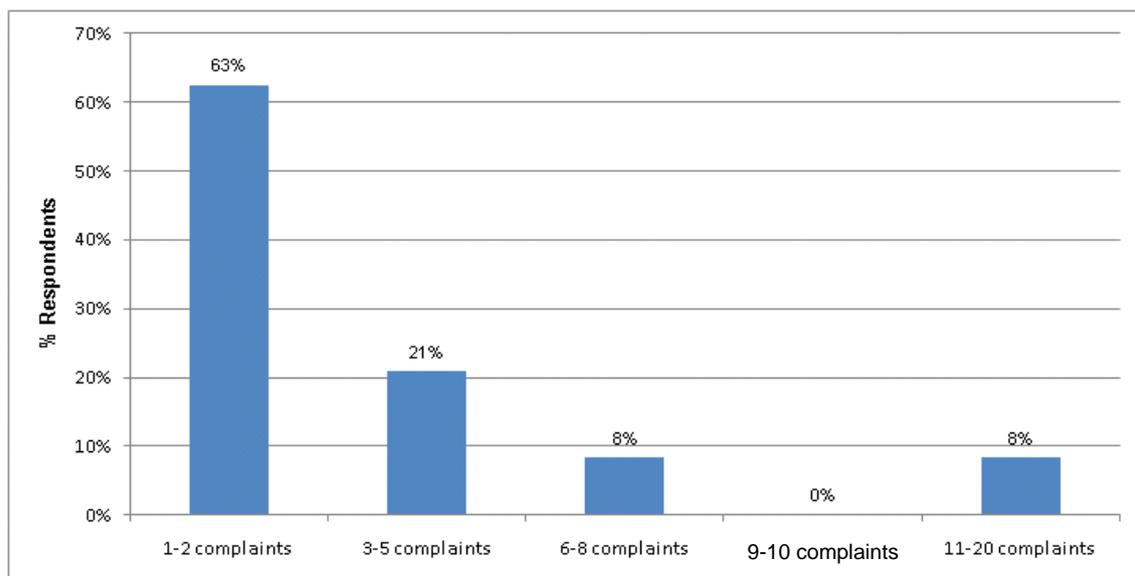
### Key findings from this section are:

- Just under half of firms reported that they had service complaints from clients about their conveyancing work in the last two years.
- A quarter of firms stated that they had professional negligence claims relating to conveyancing work in the last two years.
- Two thirds of firms said that they pass on lessons learned from complaints and negligence claims to the rest of the firm.

### Conveyancing complaints

Just under half of the firms (42) reported that they have had service complaints from clients about their conveyancing work in the last two years. 24 of these specified the number of complaints they received during this time – this information is presented in Figure 7.1.

**Figure 7.1: Number of complaints about conveyancing work in last 24 months**



**Source:** Firm visits. N = 24 firms

## Conveyancing-related professional negligence claims

Just under a quarter of the firms reported having professional negligence claims relating to their conveyancing work in the last two years. Figure 7.2 presents the distribution of the firms total professional negligence claims in relation to conveyancing work.

**Figure 7.2: Proportion of total professional negligence claims relating to conveyancing**

Proportion of negligent claims relating to conveyancing	Number of respondents	%
0-25%	3	16%
26-50%	3	16%
51-75%	1	5%
76%-100%	12	63%
Total	19	100%

**Source:** Firm visits. N = 19 firms

All of the firms that had professional negligence claims in relation to conveyancing work referred the matter to their insurers. In terms of outcomes, in most cases the insurers paid out and the cases were settled.

One firm reported that the insurer didn't pay as the matter was resolved under the excess limit so the partners of the firm paid out. Other reported outcomes, as a result of referring to the firm's insurer, included:

- *“Following an auction of land by one of our public company clients, it was discovered that the parcel of land transferred was not the correct title. This was corrected as soon as it was discovered and the client indemnified of any associated costs. The costs relating to putting this right were borne by the firm and neither our client nor the purchaser sustained any loss”*
- *“Our client's landlord changed during the life of their lease so that when the termination notice was served it was served on the wrong party. This would have led to a financial liability on our client. The firm rectified the position and indemnified the client for the additional costs associated with the late notice. The fee earner with conduct of this file has left the firm”.*

## Complaint systems and procedures

Firms were asked about the systems and procedures they have in place for reviewing the progress of matters and discussing any problems with the relevant fee earners. 88 of the 98 visited firms provided information on their systems and procedures. Examples include:

- File reviews
- Discussions at regular team meetings
- Risk registers and audits
- Keeping diaries and having secretarial support to help with chasing matters
- Operation of a “no blame” culture and encourage fee earners to discuss issues.

60 of the 98 firms stated that they communicate “lessons learnt” to their conveyancing staff from conveyancing complaints/professional negligence claims. Examples of how these lessons are communicated include 1-2-1 meetings, team meetings and by email.

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## 8. The SRA's strategy

This section looks at firms' knowledge and understanding of the SRA's draft supervision and enforcement strategy for conveyancing, and their view on how the SRA could improve support on conveyancing.

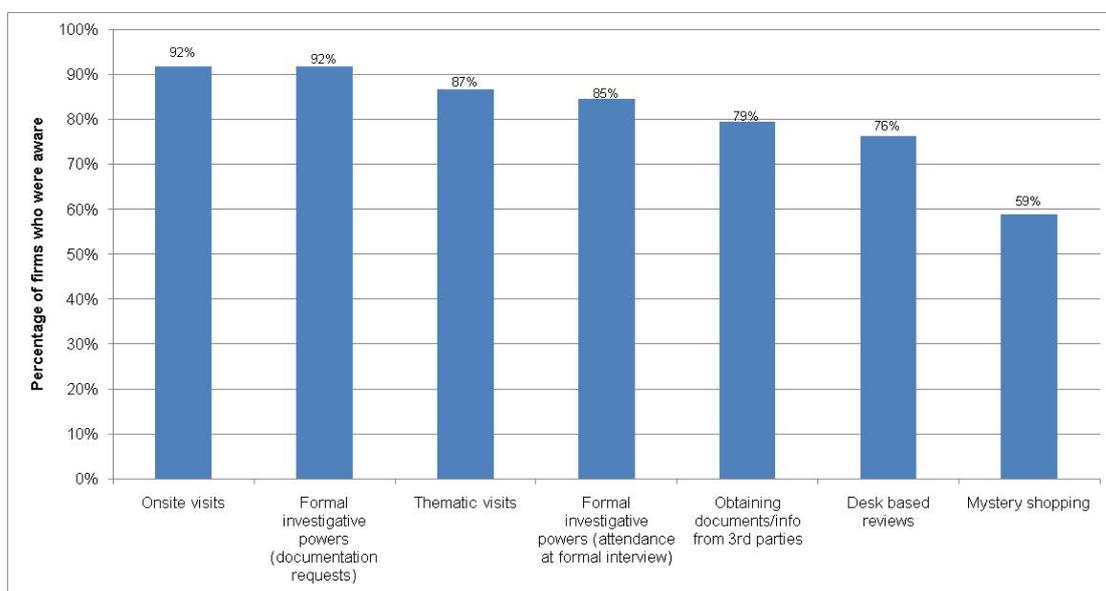
### Key findings from this section are:

- 83% of firms stated that they were aware of the SRA strategy.
- Firms had less awareness of mystery shopping as a regulatory tool to address conveyancing risk, compared to other traditional SRA tools such as visits and formal investigative powers.
- Direct emails and the SRA website were the ways most firms preferred to receive information from the SRA.

Firms were asked about their awareness of the SRA's draft supervision and enforcement strategy for conveyancing. The majority of firms (83%) stated that they were aware of the strategy.

The majority of firms that were visited were aware of the different types of tools that the SRA's supervision team will be using to address conveyancing related risk, with respondents being most aware of onsite visits, formal investigative powers (requests for documentation) and thematic visits. It is interesting to note that some of the firms reported that they were completely unaware of the different tools prior to receiving the letter about their thematic visit. This indicates that these thematic visits also played an educational role by improving participants' awareness.

**Figure 8.1: Awareness of SRA's supervision tools for addressing conveyancing related risk**



**Source:** Firm visits. N = 98 firms (note multiple responses allowed)

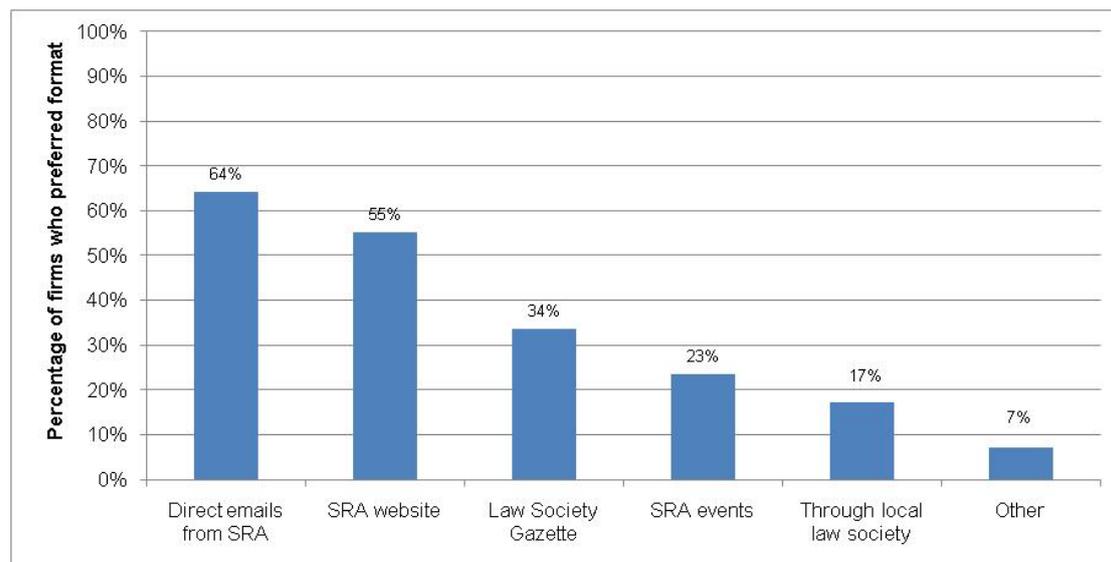
## How the SRA could improve conveyancing supervision

The majority of firms provided useful suggestions on how the SRA could better support firms in helping them manage risks relating to conveyancing. Suggestions were mainly around being more approachable, improving physical presence by putting on more roadshows, having more thematic visits and by continuing with dedicated supervisory contacts. Suggestions were also made on making information more accessible and to increase publicity.

## Preferred format of SRA information

All 98 firms provided information on their preferred format for accessing SRA information. Firms were provided with six options (Figure 8.2.) and were asked to select which of these they would prefer to use. Direct emails from the SRA and the information from the SRA website are the most preferred methods followed by the Law Society Gazette. Examples of other sources of SRA information were provided by a small number of firms including Twitter and newsletters.

**Figure 8.2: Preferred format for SRA information**



**Source:** Firm visits. N = 98 firms (note multiple responses allowed)

## 9. Views on external factors that increase risk to client money

This section looks at whether firms believe that any external bodies have any practices that increase risks related to conveyancing. This section also looks at how firms manage risks relating to external statutory duties.

### Key findings from this section are:

- Half of firms believed that lender and Land Registry practices increased the risk of negligence claims.
- Half of firms believed that lender and Land Registry practices increased the risk of fraud.
- Firms were less concerned that HMRC practices had an impact on either of the above risks.
- There is no common way that firms manage risks relating to the giving of undertakings, accuracy of redemption statements, stamp duty and applications for registration.

### Aspects of lender, HMRC and Land Registry practice that increase the risk of negligence claims and mortgage fraud

When asked if there were any aspects of lender, HMRC or the Land Registry's practices that increased the risk of negligence claims, around half of firms thought that lender and Land Registry practices increased this risk. Only around 1 in 4 firms thought HMRC practices increased this risk.

**Figure 9.1: Do the practices of the following increase the risk of negligence claims**

	Lenders	HMRC	Land Registry
There are aspects of practice which increase this risk	55	25	46
No aspects of practice increase this risk	29	52	30
No valid response	14	21	22
Total	98	98	98

**Source:** Firm visits. N = 98 firms

Firms expressed a range of views about how practices could increase the risk of negligence claims:

- If lenders remove a large number of local firms from their panels it can force consumers to use a supplier that is based a long way from their locality
- Mortgage brokers can provide incorrect information
- Lenders can create significant delays by taking too long to produce DC1 forms<sup>11</sup>.

When asked if there were any aspects of lenders', HMRC or the Land Registry's practices that increased the risk of fraud, around half of firms thought lenders' and Land Registry practices increased this risk. Less than a fifth of firms thought HMRC practices increased this risk.

<b>Figure 9.2: Do the practices of the following increase the risk of fraud</b>			
	Lenders	HMRC	Land Registry
There are aspects of practice which increase this risk	47	17	46
No aspects of practice increase this risk	23	29	28
No valid response	28	52	24
Total	98	98	98

**Source:** Firm visits. N = 98 firms

Aspects of lenders' practice that firms thought increased the risk of fraud included:

- Allowing non-solicitors on panels
- Failing to implement proper risk analysis
- Failure to disclose incentives.

Aspects of Land Registry practices that firms thought increased the risk of fraud mainly focused on the fact that the Land Registry is now open and electronic.

### Managing risks relating to accuracy of redemption statements

We asked firms how they manage the risks arising from the failure of some lenders to provide accurate redemption statements, particularly where the lending arrangements cover variable amounts. Most firms explained that they had a way to manage this, but they approached it in different ways. Some examples include:

<sup>11</sup> <http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=0soeNzq596U&formId=549>

- *“We quote all mortgage account numbers and confirm that the redemption statement will redeem all borrowing.”*
- *“Staff are experienced and vigilant - where illustrative statements are provided by lenders, staff know to apply for proper redemption statements”*
- *“We phone the lender on the day of completion then annotate the redemption statement with the accurate figure. It takes time but saves any future problems with lenders.”*

### Managing risks relating to giving of undertakings

We asked firms how they manage risks arising from the giving of undertakings. Most firms stated a combination of the following approaches:

- Do not give undertakings unless absolutely necessary
- Only senior partners can give undertakings
- Managed through an electronic records management system or central register
- Warnings on files.

### Settlement of Stamp Duty Land Tax (SDLT)

Firms were asked an open question about how they ensured that SDLT was paid on time. We identified four common types of assurance:

- Funds obtained in advance (29% of firms mentioned this)
- Payment on completion (38% of firms mentioned this)
- Online payment system (13% of firms mentioned this)
- Diary system (37% of firms mentioned this).

Some firms used more than one of these methods of assurance. There were a few firms (14) who did not provide a convincing method of assurance; examples of responses are quoted below.

- *“I try to settle on earliest date possible as otherwise I have to pay £100 penalty, which I cannot afford”*
- *“When deeds are received monitor the dates”*
- *“Pay as soon as filled SDLT return.”*

## Applications for registration

We also asked firms how they ensure that all necessary applications for registration, including legal charges, are lodged at HM Land Registry within the relevant search periods. Most firms reported that they used a diary system, but other methods of assurance included:

- Electronic records management systems
- Supervision of less experienced fee-earners
- Notes on the front of files
- Only experienced staff having responsibility for this work.

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## Annex A – Questionnaire

The purpose of this Questionnaire is to understand the following:

- The risks faced by firms who undertake conveyancing work
- Whether the risks that we have identified in the draft strategy paper accurately reflect the current issues firms are having to contend with
- The level of awareness firms have of our conveyancing strategy specifically and our Outcomes Focused Regulatory (OFR) approach generally
- To gather background information about the current state of the conveyancing market and how that market is impacting upon firms' financial stability, profitability and plans for the future
- To understand whether firms are ready for the potential impact and competition coming in to the conveyancing services market with the introduction of Alternative Business Structures (ABS)

A number of the questions asked reflect the sort of questions that firms have to answer when completing their Qualifying Insurance (QI) proposal forms so answering them should not prove too onerous.

### Section 1: Background

#### Conveyancing Activity

1. What percentage of your firm's gross fee income is attributable to conveyancing? (both residential and commercial)
2. How is that broken down between commercial conveyancing and residential conveyancing (residential conveyancing includes buy-to-let transactions and re-mortgages) – i.e. the percentage of gross fee income attributable to commercial conveyancing and residential conveyancing?
3. What method of billing do you use at your firm for conveyancing transactions? (please confirm if there is a difference between commercial and residential conveyancing billing)
  - a. Hourly rates
  - b. Fixed fees
  - c. Both types, depends on the work
  - d. Other (please give details)
4. Please tell us the number of transactions completed in the last complete year (broken down by commercial and residential)

5. What was the largest transaction value? (both commercial / residential)
6. What was the average transaction value? (both commercial / residential)
7. Is your firm a member of the Conveyancing Quality Scheme / Lexcel? If yes which one and when was your firm first accredited?
8. Are you a member of a lender panel / more than one lender panel?
9. Have you ever been removed/threatened with removal from a lender panel? If so, why?

#### **Staff at your firm**

10. Please tell us how many staff you have at your firm (broken down by fee-earning and non-fee earning staff)?
11. How many fee-earning staff undertake or have undertaken conveyancing work (residential or commercial) at your firm?
12. Please provide a break down of your conveyancing fee-earning staff following the categories detailed below:
  - a. Solicitors
  - b. Qualified fee-earners
  - c. Unqualified fee-earners

#### **Clients at your firm**

13. What percentage of your clients are purchasing conveyancing services?
14. What percentage of your conveyancing clients are commercial?
15. What percentage of your conveyancing clients are residential?
16. Can you tell us anything more about your client base? For example are they first time buyers, buy to let, commercial property purchasers, long time commercial clients, builders/developers etc.

#### **Risk at your firm**

17. What do you feel is currently the biggest risk facing your firm?
18. What do you feel is currently the biggest risk relating to conveyancing facing your firm?
19. We are now going to ask you some questions about some specific risks that could arise when undertaking conveyancing work. These risks are highlighted in our Conveyancing Strategy [Supervisor to take copy of strategy with them to hand over at meeting].
  - a. Conflicts of interest
  - b. Referral arrangements
  - c. Costs information
  - d. Financial stability

e. Property-related fraud and money laundering

Please put these five in order of priority, based on how much of a risk you feel they are for your firm.

Why do you consider your top choice to be the biggest risk?

Why do you consider your bottom choice to be the smallest risk?

## Section 2: Conflicts of interest

1. How often do you encounter conflicts of interest in conveyancing work?

a. Your own personal interest conflicts (Very often / Often / Not very often / Not at all)

b. Conflicts between clients (Very often / Often / Not very often / Not at all)

2. Have you encountered conveyancing conflicts of interest relating to the following areas?

a. Acting for buyer and seller

b. Acting for two buyers in a contract race

c. Acting for buyer and lender where the lender asks the firm to go beyond standard instructions

d. The potential conflict between your duty of confidentiality to the borrower and your duty of disclosure to the lender

e. The potential conflict between borrowers and non-owning, non-borrowing occupiers

f. Other areas (please give details)

3. What systems do you have in place to manage risk relating to conflicts of interest?

Please give details – specific policies or a general approach? Collect documentation if necessary.

a. Please describe how you manage risk around the following conflicts of interest described in Question 2 about (a to e)

4. Have you encountered any problems managing conflicts of interest with regard to conveyancing work?

a. If yes, please give details, including the final outcome

b. If no, why do you think this is?

5. We are interested in collecting case studies in this area. If possible, could you talk us through an incident where one of these conflicts of interest has arisen, and how you managed it. (This is optional, and your firm will not be identified with the case study).

6. Please pick one response to complete this sentence that most accurately reflects your view.

Most cases of improper management of conflicts of interest in conveyancing occur because:

- a. There is a lack of understanding of and/or a failure to recognise a conflict or a significant risk of a conflict
- b. Firms do not know or understand the Outcomes and Indicative Behaviours that apply
- c. The Outcomes and Indicative Behaviours are unreasonable
- d. Firms do not have appropriate systems in place to manage conflicts of interest
- e. Firms intentionally fail to comply with the Outcomes for monetary gain
- f. Firms intentionally fail to comply with the Outcomes for another reason (please specify)
- g. Of many different reasons
- h. Other (please give details)
- i. Don't know

### Section 3: Referral arrangements

1. Do you currently have any referral arrangements (whether or not a fee is paid) relating to conveyancing work?

a. If yes, are the referral arrangements with:

- i. Another firm
- ii. An estate agent
- iii. A letting agent
- iv. A mortgage provider
- v. A mortgage broker
- vi. A financial advisor
- vii. A building company or developer
- viii. A surveyor
- ix. Other (please give details)

(Please note that if they have more than one referral arrangement, you can tick more than one box)

2. Over any 12 month period have more than 10% of your firm's conveyancing instructions (either commercial or residential) come from:

- a. A single referral source? – yes / no
- b. One development? – yes / no
- c. One client (including a connected group of clients)? – yes / no

For those who answered YES to question 1 (if answered NO, please proceed directly to question 6):

3. How did the arrangement come about?
4. Please provide us with a quick overview of the arrangement:
  - a. Why did you decide to enter into the arrangement?
  - b. How long has it been in place?
  - c. What are the terms of the arrangement?
    - i. Do you have a written agreement?
    - ii. Do referrals occur both ways or one way?
    - iii. Is payment involved, if so, how much?
  - d. What are the benefits of the arrangement?
  - e. How do you ensure transparency for your clients and compliance with the Outcomes in Chapter 9 of the SRA Code of Conduct 2011
5. What systems do you have in place to manage risk relating to referral arrangements?

Please give details – specific policies or a general approach? Collect documentation if necessary.

6. Have you encountered any problems managing referral arrangements relating to conveyancing work?
  - a. If yes, please give details
  - b. If no, why do you think this is?

For everyone:

7. Please pick one response to complete this sentence that most accurately reflects your view.

When firms do not make their clients aware of referral arrangements, it is usually because:

- a. The firm does not know the Outcomes in the Code relevant to referral fees or how to achieve them
- b. The firm does not understand the Outcomes in the Code
- c. The Outcomes in the Code are unreasonable
- d. The firm is intentionally not making clients aware
- e. Other (please give details)
- f. Don't know

8. Do you feel that referral arrangements are beneficial for consumers?
  - a. Why? / Why not?

## Section 4: Costs information

1. How do you ensure that your clients receive the best possible costs information?  
(Consider asking for standard Client care letter / Terms of business)
2. When marketing your conveyancing services to potential clients how do you ensure that the information about charges is clearly expressed and identifies whether VAT and disbursements are included?
3. Do you think other firms' publicity is clearly expressed and identifies whether VAT and disbursements are included?
4. Please pick one response to complete this sentence that most accurately reflects your view.

When consumers feel that a firm was not transparent about how much they would be charged for conveyancing work, it is usually because:

- a. The firm quoted a cheap headline figure, that did not accurately represent the actual cost of the work
  - b. The consumer did not pay attention to information given to them about additional charges due to unforeseen circumstances
  - c. The consumer's expectations were not realistic
  - d. The consumer has been charged an unreasonable amount
  - e. The billing structure was complex, and the consumer did not understand it
  - f. There is no 'usual' case, reasons are always different
  - g. Other (please specify)
  - h. Don't know
5. If a client questioned your bill for your conveyancing work what would be your response?
  6. Do you make clients aware that they have the right to complain about your bill?  
How do you do that?

## Section 5: Financial stability

1. What systems do you have in place to monitor and manage the financial stability of the firm?
2. Has the economic climate affected how many people come to you for conveyancing work?
  - a. Why? / Why not?
  - b. Does this have an impact on your firm's financial stability?
3. Do you monitor the property market?
4. Has the current state of the property market impacted on your conveyancing work?

- a. Have you seen a drop off in your gross fee income from conveyancing?
  - b. Have you had to cut costs / make conveyancing staff redundant?
  - c. Do you see your conveyancing work remaining the same going forward?
5. Do you feel any of the following will be a significant risk to the financial stability of your firm over the next 12 months?
- a. Falling numbers of conveyancing clients
  - b. Falling house prices
  - c. Competition from non-solicitor licensed conveyancers
  - d. Competition from Alternative Business Structures (ABS)
  - e. Clients unable to pay the bill for conveyancing work
  - f. A referral fees ban covering conveyancing
  - g. The cost of complying with SRA regulation around conveyancing
  - h. Obtaining professional indemnity insurance

If answered any questions with yes:

- a. What strategies do you have in place to address this risk?
- b. Is there anything the SRA could do to support you in addressing this risk?

## Section 6: Property-related fraud and money laundering

1. What systems do you have in place to identify and report where property-related money-laundering and/or mortgage fraud may be taking place?
  - a. Who is your money laundering reporting officer (MLRO)?
  - b. What training is provided to conveyancing staff in respect of identifying mortgage fraud / money laundering / other property related fraud?
  - c. How often is that training delivered / How often is it updated?
  - d. Please provide us with details of your identity verification processes / procedures for conveyancing clients including details of the checks carried out
  - e. What warning signs do you look for?
  - f. How do you proceed if your suspicions are raised?
  - g. Are there any tests you carry out to determine if a case is suspicious or to determine whether to report a case to SOCA?
  - h. Are your internal reporting procedures documented and readily available?
  - i. How many issues do you raise internally, versus actual Suspicious Activity Reports (SARs) to SOCA?
2. Do you have any experience of clients attempting to use property transactions to launder money or commit fraud?

- a. If yes, please give details
  - b. If no, why do you think this is?
3. How likely do you think it is that your firm will encounter property related fraud or money laundering?
- a. Very likely
  - b. Somewhat likely
  - c. Somewhat unlikely
  - d. Very unlikely
  - e. Don't know

Please explain why you have given the answer you have

4. Do you feel that your firm would benefit from any training relating to money laundering and fraud risk in conveyancing?
- a. If yes, please give details
5. Please pick one response to complete this sentence that most accurately reflects your view.

When property-related fraud or money laundering happens through a law firm it is usually because:

- a. The firm does not know the law / regulations
- b. The firms does not understand the law / regulations
- c. The law / regulations are unreasonable
- d. The firm does not have appropriate systems in place to detect fraud/money laundering
- e. The firm did everything right, but it would have been impossible to detect it until it was too late
- f. The firm or an employee of the firm is involved and profiting from it
- g. There's no common reason
- h. Other (please give details)
- i. Don't know

## Section 7: The SRA's strategy

1. Are you aware of the SRA's draft supervision and enforcement strategy for conveyancing?
2. Are you aware of the types of tools that the SRA's supervision team will be using to address conveyancing-related risk? Please indicate which tools you are aware of:
- a. Desk-based reviews

- b. On-site visits, including interviews
  - c. Use of formal investigative powers: requests for documentation
  - d. Use of formal investigative powers: attendance of individuals at formal interview
  - e. Obtaining documents or information from third parties, including law enforcement agencies
  - f. Mystery shopping
  - g. Thematic visits (such as this one)
3. How could the SRA better support firms in helping them to manage risk relating to conveyancing?
4. In what format do you prefer to access SRA information?
- a. The SRA website
  - b. Direct emails from the SRA
  - c. In the Law Society Gazette
  - d. SRA events
  - e. Through your local law society
  - f. Other (please specify)

## Section 8: Complaints / Professional Negligence Claims

1. Have you had any service complaints from clients about your conveyancing work in the last 24 months?
2. What proportion of your firm's total number of service complaints relate to conveyancing work?
3. Did you resolve the complaint(s) through your internal complaints procedure? If yes how was the matter resolved?
4. If no and the matter went to the Legal Ombudsman how was it resolved eventually?
5. Have you had any professional negligence claims relating to your conveyancing work in the last 24 months?
6. What proportion of your firm's total professional negligence claims relate to conveyancing work?
7. Was the matter referred to your insurer? What was the outcome?
8. What systems and procedures do you have for reviewing the progress of matters and discussing any problems with the relevant fee earners
9. Do you communicate any "lessons learnt" to your conveyancing staff from conveyancing complaints / professional negligence claims?

## Section 9 : Review of the Regulation of Conveyancing and the holding of Client Money

The SRA is also conducting a review of the regulation of conveyancing and the holding of client money which will be run in conjunction with the Supervision and Enforcement Strategy for conveyancing. The following questions relate to that review:

1. Are there any aspects of lenders' practice which in your view increase the risk of (a) negligence claims; and /or (b) mortgage fraud?
2. Are there any aspects of HMRC's practice in relation to the payment of SDLT (Stamp Duty Land Tax) which in your view increase the risk of (a) negligence claims; and / or (b) fraud?
3. Are there any aspects of Land Registry Practice which in your view increase the risk of (a) negligence claims; and / or (b) fraud?
4. How do you manage the risks arising from the failure of some lenders to provide accurate redemption statements, particularly where the lending arrangements cover variable amounts?
5. How do you manage the risks arising from the giving of undertakings?
6. How do you ensure that SDLT is settled at the appropriate time?
7. How do you ensure that all necessary applications for registration, including legal charges, are lodged at HM Land Registry within the relevant search periods?