

An assessment of the market for Personal Injury

October 2016

Research report

Our report assessing Personal Injury (PI) legal services has provided us with a detailed and up to date understanding of how this market is functioning following the introduction of legislative reforms under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).

Download the report (PDF 107 pages, 2.35MB)

[<https://www.sra.org.uk/globalassets/documents/sra/research/pi-report.pdf?version=4a1ad1>]

Download the profiling analysis of PI firms (PDF 16 pages, 907K)

[<https://www.sra.org.uk/globalassets/documents/sra/research/pi-profile-analysis.pdf?version=4a1ad1>]

See our regulatory response to the report [#findings]

An assessment of the market for Personal Injury legal services: briefing note

We have published a report on an independent survey into the personal injury (PI) market. The work, conducted by ICF Consulting Services, involved an online survey of over 250 firms and interviews with regulatory and representative bodies, trade associations, insurers and the judiciary.

See our regulatory response to the report [#findings]

Why we commissioned the survey

The PI market has undergone a period of significant change in recent years. It is important for us to understand how the market is responding to this change and to explore the conduct, behaviour and competence of solicitors practising in PI.

Raising standards and upholding the core professional principles of solicitors is one of our key purposes and findings from this piece of work will help us regulate more effectively.

What we learned

The online survey with firms and in-depth interviews were used to identify perceptions of the competence, behaviour and practices of solicitors

working in the PI.

Solicitor competence

- several interview respondents stated that firms are using less experienced staff to triage and prepare cases, resulting in cases that are inadequately assessed and incorrectly valued
- several interviewees flagged NIHL and clinical negligence as particular areas in which a comparative skills gap exists. A lack of specific knowledge in these legal areas prevent the identification and application of legal principles to factual issues. This issue has become increasingly prevalent in these areas of PI as a result of solicitors diversifying activities away from Road Traffic Accident (RTA) claims
- judges are critical of the general standard of court preparation and pointed to a deterioration in the quality of materials produced for court over the last decade.

Solicitor behaviours and practices

- there was general acceptance among survey and interview respondents that frivolous cases are being accepted by solicitors, but at a declining rate. 12% of survey respondents felt that accepting and progressing frivolous cases was 'prevalent' in the market
- defendant solicitors are sometimes making pre-medical offers of settlement when the claimant is not in a position to 'value' the injuries, leading to a risk of inappropriate compensation.

Infrastructural and organisational changes

- the market has experienced increased consolidation since the introduction of LASPO, resulting from a number of mergers and acquisitions. In addition, Alternative Business Structures (ABS) have entered the PI market. In 2015, there were a total of 93 firms who specialised in PI work (50% or more of their annual turnover) that operated as ABS, which represented approximately 11% of specialist PI firms. A significant proportion of these will be existing firms that have changed their ownership structure to include non-lawyers.
- There was strong agreement that relationships between solicitors firms, insurers and medical reporting organisations (MROs) had improved under the MedCo system

What we will do with these findings

In light of wider concerns about some practices in the market, we issued a warning notice on 21 March 2016 targeted at solicitors and regulated persons who take personal injury referrals from third parties, work closely with them or act on their instructions. This notice highlighted specific concerns in relation to cold calling, referral arrangements, third party

instructions, identification of clients, payment of damages and the use of expert medical evidence.

In addition to the warning notice, thematic work is in progress to determine the prevalence of these issues and their impact on consumers and the market. Conducted by our Thematic Team, this work will involve visits to Personal Injury firms to understand how they have adapted to the changes resulting from the introduction of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). During the visits, the Thematic team will review the firms' behaviours and practices, identify and raise awareness of best practice and ethical conduct, challenge poor behaviours, practices and conduct and identify any emerging or potential risks to the effective operation of the market, which may require further analysis or mitigation. This work is expected to be reported on in 2017.

Regulatory response to the findings of the 'assessment of the market for Personal Injury legal services' report

Our report assessing Personal Injury (PI) legal services has provided us with a detailed and up to date understanding of how this market is functioning following the introduction of legislative reforms under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). The sector is adapting positively to the changes, with consumers still benefiting from high levels of access to services, while stakeholders perceive a reduction in the number of fraudulent claims being made. The report also uncovered a number of issues and practices that require further investigation and engagement with solicitors.

We expect all firms and individuals to comply with the core professional principles detailed in the SRA Handbook and we will work with those we regulate to help them raise standards and uphold those principles.

Issues of regulatory concern

The report, together with evidence collated through our investigation of firms, shows that the majority of solicitors and firms are providing services in line with the standards we expect. However, some concerns were expressed.

- several respondents from the qualitative in-depth interviews, stated that firms are using less experienced staff to triage and prepare cases, resulting in cases that are inadequately assessed and incorrectly valued
- several interviewees flagged Noise Induced Hearing Loss (NIHL) and clinical negligence as particular areas in which a comparative skills gap exists. A lack of specific knowledge in these legal areas prevent the

identification and application of legal principles to factual issues. This issue has become increasingly prevalent in these areas of PI as a result of solicitors diversifying activities away from Road Traffic Accident (RTA) claims

- judges are critical of the general standard of court preparation and pointed to a deterioration in the quality of materials produced for court over the last decade
- there was general acceptance among survey and interview respondents that frivolous cases are being accepted by solicitors, but at a declining rate. 12% of survey respondents felt that accepting and progressing frivolous cases was 'prevalent' in the market
- firms are taking and acting on instructions from third parties without ensuring that the instructions originate from the client
- solicitors responding to the survey have highlighted delays in the payment of damages to clients and payment to third parties without accounting properly to the client

Regulatory action we are taking

In light of wider concerns about some practices in the market, we issued a warning notice on 21 March 2016 targeted at solicitors and regulated persons who take personal injury referrals from third parties, work closely with them or act on their instructions. This notice highlighted specific concerns in relation to cold calling, referral arrangements, third party instructions, identification of clients, payment of damages and the use of expert medical evidence.

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