Research and Analysis

Profiling and Risk analysis of PI firms

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Handling instructions

This is an analysis of sensitive internal data. It is intended for internal use only for SRA and ICF to inform the research project.

Caveats

This report is an overview and analysis of data provided to the Research and Analysis team by MI. Any actions undertaken as a result of the recommendations or other comments held within this report should be checked with appropriate policy, guidance or other expert areas.

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Objectives

The SRA has commissioned an external research project to assess the market for personal injury (PI) legal advice. One of the drivers for commissioning this research is to understand, respond and potentially address a number of concerns about the PI sector raised by interested parties, such as NHS Litigation Authority, government and non-government organisations, and sector representative bodies.

An independent research organisation ICF is collecting data via an online firm survey and in-depth interviews with firms and stakeholders. This report aims to inform ICF's research by providing profiling information, together with an analysis of our internal data to understand the type of issues raised or investigated against law firms that conduct PI work.

The objectives of this report are:

- To obtain a profile of PI firms and identify any clustering of such firms based on characteristics, including region and turnover

- To analyse reported allegations of misconduct and subsequent investigations about PI services to understand the level of risk posed compared to non-PI services.

Key Findings

We analysed data submitted in the 2015/16 practising certificate renewal application form (RF1), of all firms that were open on January 2016. We also analysed reported allegations of misconduct that were recorded by us between January 2014 and December 2015, and investigation matters that were completed and archived between January 2014 and December 2015. We have defined specialist PI firms as those that have reported at least 50% of their turnover is generated from PI related services in past 12 months.

- In this report, we analysed about 10,000 firms. Of these, 813 firms were identified as specialising in PI services. A firm is considered as specialising in PI, when at least 50% of their turnover was generated from PI work in the past 12 months.

- PI firms are relatively larger than non-PI firms by their turnover. For example, only 52% of all PI firms have annual turnovers up to £500,000, compared with 66% of non-PI firms.

- 58% of PI firms are company limited by shares.

- Of all firms who have head offices in North West, 30% are PI firms, compared with, about 12% of North East firms and 14% of firms in Yorkshire and the Humber.

- By applying a predictive modelling technique we found that firms who have up to five partners, managers or equivalent, large turnovers and have their head office in the North West are highly likely to be PI firms.

- Further analysis has found that the number of partners recorded in our system is not an accurate indicator of firm size. The size of PI firms is best determined by their turnover.

- In analysing firms with head offices in the North West, we found that those with up to 5 partners and turnover between £1 million and £30 million are highly likely to be PI firms. This likelihood increases if we specifically focus on firms with 2 to 5 partners and turnover between £10 million and £30 million.

- A further analysis has found that 11% of all PI firms are ABSs, compared to 4% of all non-PI. 52% of these ABS-PI firms have their head office in North West.

- In a separate analysis of ABS firms, we found that their profile was similar to the profile of PI firms in North West. This finding suggests that it may be easier for PI firms to take advantage of ABS reforms due to their existing associations with insurers and claims management companies (CMCs).Therefore, it may be easier for them to raise investment from various sectors, such as insurance, or claims management.

- We have analysed reported allegations of misconduct to understand the level and type of concerns raised about PI services, compared to non-PI services. The analysis suggests that a significantly smaller percentage (12%) of reports against PI firms were assessed a*s Red* compared to non-PI (20%).

- *Client Care: Incompetence / negligence / delay* (31%), *Fraud: Insurance fraud* (14%) and *Publicity: Cold calling or other improper marketing* (8%) are the top three reasons for reported matters about PI services. These percentages are statistically significantly higher for PI services compared to non-PI services.

- The top three reasons for matters investigated about PI services are: *Fraud: Insurance fraud* (17%), *Fee sharing/refs: Prohibited referral fee* (14%), and *Client Care: Incompetence / negligence / delay* (10%). The percentages for these reasons are higher and statistically significant for PI services when compared to non-PI services.[1]

- Of all matters investigated about PI services, 12% can be *considered to have re*gulatory *outcomes, which is about 3% lower than non-PI services*.

- When we analysed the decisions taken in investigated matters, about 6% have a regulatory action taken, which is approximately 2% less than investigations relating to non-PI services.

Summary of the analysis

We analysed data collected during the annual practising certificate renewal application process (RF1 data), records of reported allegations against firms (POL data), and conduct investigations data (CDT data).

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[1] *Fraud: Insurance fraud* and *Fee sharing/refs: Prohibited referral fee* are allegations specific to personal injury work and therefore we would not expect to see reports of this nature against other fields of law.

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To obtain a profile of firms, we analysed data that was submitted to us during the 2015-16 RF1. Where data was missing, we used data from the previous year's RF1. We have only considered firms that were open at the point of the January 2016 snapshot.

For risk analysis, we considered the POL data that was created between January 2014 and December 2015, and the CDT data that had been archived over the same period, regardless of the date these matters were created.

Profile of PI firms

The raw data suggests that there were about 10,300 open firms at January 2016; of these, 813 firms were considered as specialising in PI work. We have defined specialist PI firms as those that have reported at least 50% of their turnover is generated from PI related services in past 12 months.

Turnover

Figure 1 presents the percentage of PI firms and non-PI firms by turnover bandings.

Figure 1: Percentage of firms by turnover[2] bandings
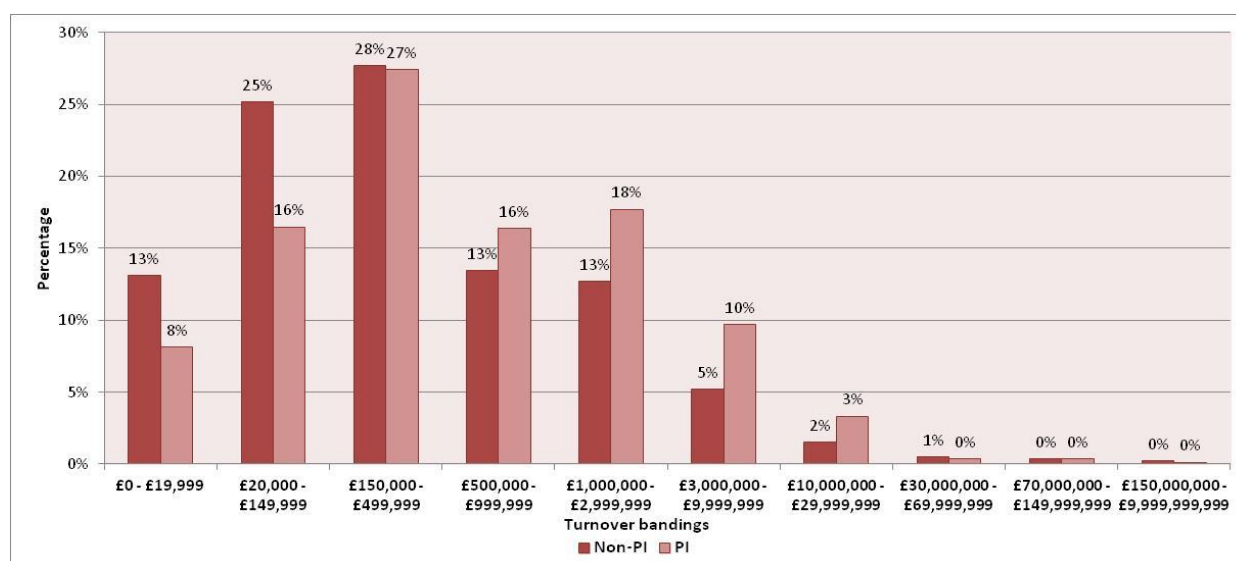
From the above figure we see that 66% of non-PI firms are small firms with a turnover up to £500,000, compared to 52% of PI firms. The figure also shows that a higher proportion of PI firms have a turnover between £500,000 and £30 million when compared to non-PI firms.

Type of legal structure

Analysing firms by their legal structure illustrates that 58% of all PI firms are companies limited by shares, compared to 37% of non-PI and that 18% are sole practitioners, compared to over a quarter of non-PI firms.

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[2] Turnover relates to all work conducted by the firm not just income from PI services

Figure 2: Percentage of PI firms by constitution types
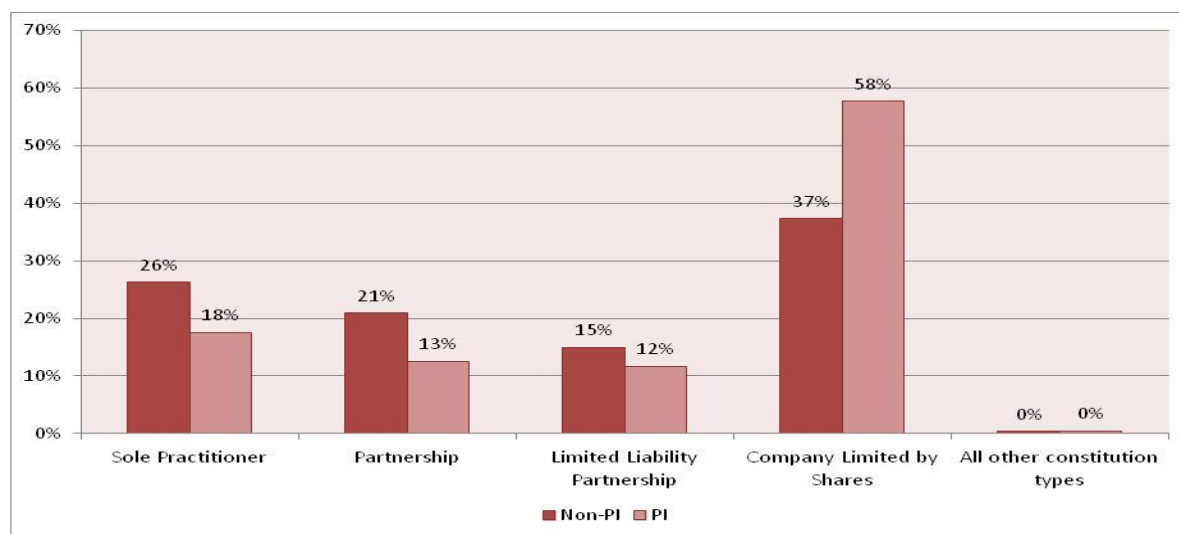
Region

Table 1 presents the number of PI and non-PI firms by region, and the percentage of PI firms in each of these regions.

Table 1: Firms by region

Region	Non-PI firms	PI firms	Total	Percentage of PI firms
East	860	30	890	3.4%
East midlands	601	27	628	4.3%
London	2782	67	2849	2.4%
North East	245	33	278	11.9%
North West	924	396	1320	30.0%
South East	1393	43	1436	3.0%
South West	652	37	689	5.4%
Wales	413	29	442	6.6%
West Midlands	780	46	826	5.6%
Yorkshire and the Humber	635	101	736	13.7%
Total	9285	809[3]	10094	8%

[3] Due to incomplete data, we were unable to verify regions of four PI firms.

From the table, we see that about half of all PI firms have their head office in the North West. About 30% of all North West firms are specialised in PI. There are also a higher proportion of PI firms in the North East (12%), and Yorkshire and the Humber (14%).

Predictive modelling

We applied predictive modelling techniques to understand the characteristics of firms that are most commonly associated with PI work. We applied a logistic regression model that can determine the likelihood of firms being specialised in PI services by their characteristics. The analysis suggested that firms, who have one or more of the characteristics detailed below, are more likely to be PI firms:

- Firms based in the North West. York and Humber and the North East have a high likelihood of being PI firms.

- The higher the turnover of firms, the more likely they are to be PI firms.

- Legal structures of firms, which are not as common among traditional law firms, such as unlimited companies, are more likely to be PI firms. Firms whose legal structure is a *company limited by shares* also have a higher likelihood of being PI firms.

- Firms with between 2 and 5 partners: However, turnover tends to be a better predictor/indicator of whether a firm is likely to specialise in PI.

Profiling PI firms by number of partners is an inaccurate way to determine their size. Increasingly, PI firms are taking advantage of the structural flexibility afforded them by ABSs. This is enabling non-lawyer ownership and involvement from Claims Management Companies (CMCs) and insurers. Many of these ABSs have a small number of partners (between 2 and 5) managing the firm, but far larger turnovers than non-PI firms with the same number of partners. This indicates a move away from the "traditional" partnership model.

**Predictive analysis by segmenting firms in North West**

49% of PI firms analysed in this report are based in North West. Therefore, we looked at the PI firms in North West to better understand the profile of such firms. We ran a segmentation analysis known as Chi-squared Automatic Interaction Detection (CHAID) analysis, with all firms in North West to identify and understand any clusters of PI firms.

This analysis automatically creates segments of firms by similarities in their characteristics, and then estimates the proportion of a predefined variable of interest in each segment.

In this analysis, we have considered the turnover and partner bandings as characteristics of firms to identify similar segments, and we assigned PI firms as our variable of interest.

Figure 3: Proportion of PI firms in the various segments of the firms' population in North West
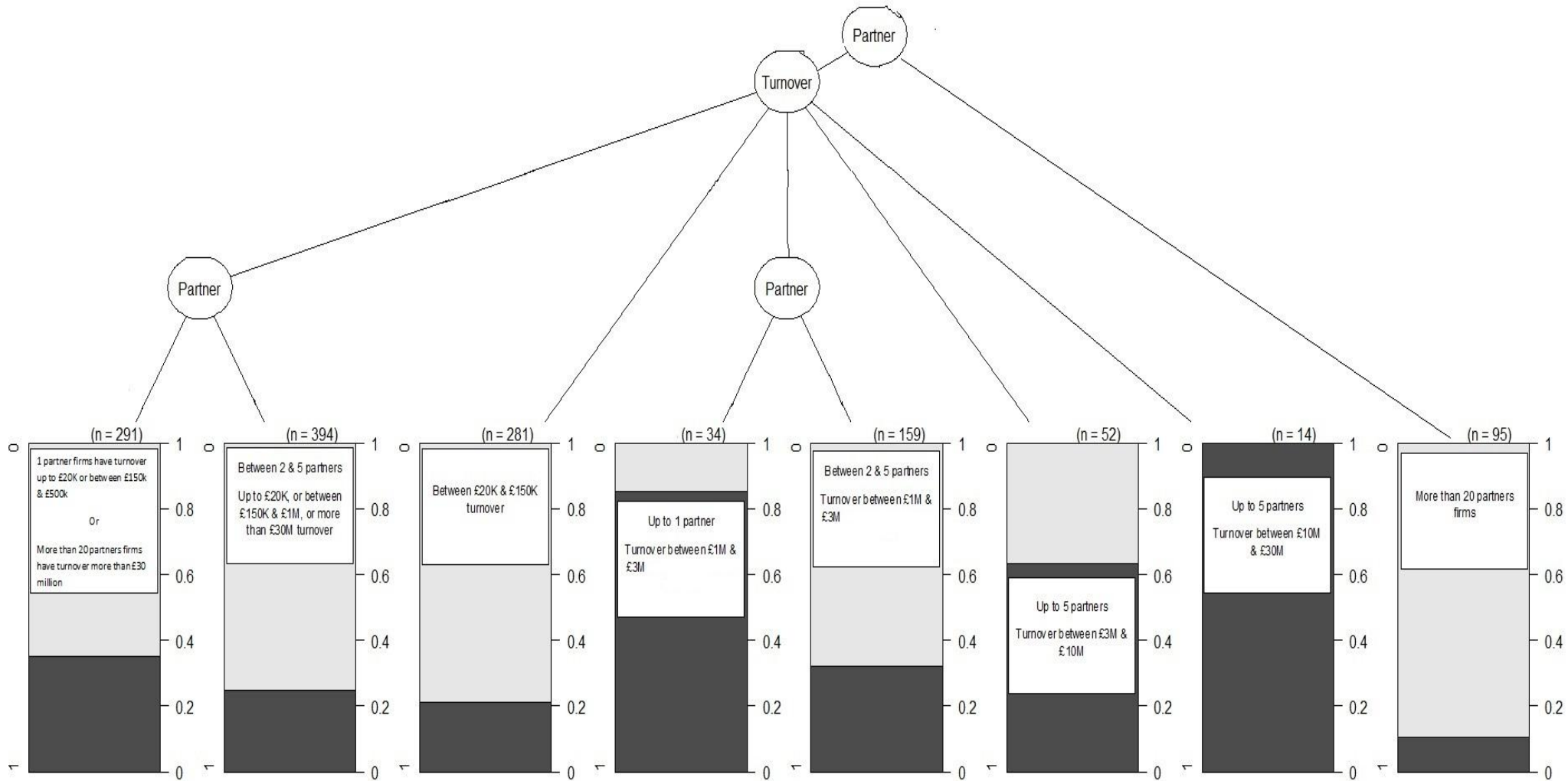
In Figure 3, we see that all firms in the North West have been clustered into eight segments. The figure suggests that firms with up to five partners and a turnover of between £1million and £30 million are highly likely to be PI firms. For example, the cluster of firms in the second segment from the right of the chart suggests that there are 14 firms in this segment, who have up to five partners and a turnover of between £10 million and £30 million, and all of these firms are PI firms.

Similarly, the cluster of firms in the fourth segment from the left of the chart suggests that there are 34 firms in this segment; of which, 85% of firms are PI firms with one partner[4], and who have turnover between £1million and £3million. This demonstrates that PI work is regularly undertaken by small firms as well as larger firms.

Analysis of ABS firms

Table 2 presents the number of PI firms by their recognition types. We can see that about 11% of all PI firms are ABSs compared to 4% of non-PI firms. Further analysis has found that 52% of these PI ABS firms have their head office in the North West.

Table 2: PI firms by recognition types

Recognition type	PI	non-PI	Total	Percentage of PI firms
ABS	93	343	436	21%
Recognise body	577	6583	7160	8%
Recognise Sole Practitioners	143	2573	2716	5%
Total	813	9499	10312	8%
Percentage of ABS firms	11%	4%	4%	

An earlier analysis of ABS firms[5] has found similar firm structures forming ABSs as the PI firms found in this report. The analysis of ABS firms found that:

- Firms who are highly likely to form an ABS have turnover between £3 million and £150 million. However, firms who have turnover between £10 million and £30 million and specialised in PI work, have a relatively higher likelihood of being an ABS firm compared to other structures.

- The analysis also found that there is a cluster of ABS firms who are highly likely to do PI or litigation work, have turnover between £10 million and £30 million, have 2 to 5 partners with a large number of fee earners (50 or more).

Findings from both analyses give us an indication that in near future we may see more PI firms taking advantage of becoming ABS. We need to keep a track of such transformation, as there is a risk that the issues in the PI market will occur in ABSs, as a result of inheriting such issues by PI firms who transformed into ABSs.

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[4] Majority of the firms that appear to be one partner firms are companies limited by shares. In effect these are sole practitioners who work through a company rather than being self-employed on their own account. Please note this does not mean they do not have other solicitors and staff as employees.

[5] Profiling and Risk Analysis of ABS Firms, (4/03/16).

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Risk analysis of PI firms

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When reported allegations are first recorded in our system, the assessment team assign appropriate reasons to them. Each of the matters is risk assessed, and depending on the issues raised in the reports, the assessment team assign them a RAG rating. They also assign fields of law to each of these reports that can assist in determining where the complain comes from. Reported matters and investigation matters can have multiple reasons or fields of law assigned to them. In this report we used field of law[6] to determine whether the source of reports were about PI services or not.

We have focused on the most frequently reported or investigated matters about PI services, and compared the results with non-PI services.

Reported allegations of misconduct

Figure 4 presents a breakdown of matters by the severity of RAG rating assigned to reports of alleged misconduct. In this figure, an "*" against the RAG rating means the difference in the percentage between PI and Non-PI is statistically significant.

From the chart we see that about 12% of matters about PI services have been assessed as red, which is significantly lower than the percentage of red matters against all other services. We do not see any significant difference in the proportion of amber matters.

The Supervision assessment team assess the level of concern raised by each reported issue and rate them as red, amber or green (RAG) depending on the level of severity, as determined by measures including level of harm, vulnerability of the reportee and frequency. One of the most common concerns determined as severe is when there is direct financial fraud, such as stealing money from a client account. We see a smaller percentage of these matters for PI firms, compared to the matters relating to more transactional areas of law, such as conveyancing.

Figure 4: Analysis of RAG rating of the reported matters against PI vs non-PI


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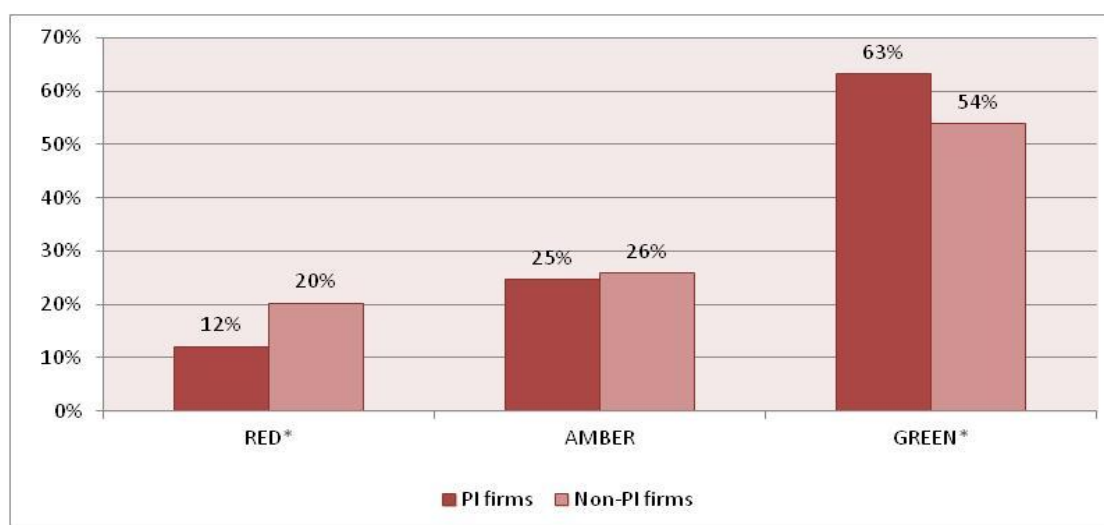
[6] We considered a report is related to PI services when they have a field of law either, Medical negligence, Personal Injury, or Road Traffic Accident. See Table A1 in appendix for the list of all fields of laws we record.

Figure 5 overleaf identifies the reasons for the most frequently reported allegations of misconduct about PI services. In this figure, an "*" marked against a reason means the difference in the percentage between PI and Non-PI services is statistically significant. We reported the top 29 frequently reported matters of all matters reported about PI services. As a matter can have multiple reasons assigned to them, the total of all reasons add to more than 100%.

The main reason for a reported allegation of misconduct against PI services is *Client Care: Incompetence / negligence / delay,* which represents 31% of all reported allegations of misconduct against PI services. This percentage is significantly higher when compared to non-PI services. Other top reasons for reported allegations against PI services are *Fraud: Insurance fraud (*14%), *Publicity: Cold calling or other improper marketing* (8%), *Failure to account to client or others* (7%), and *Client Care: Inappropriately acting/refusing instructions* (7%). All these reasons are statistically significant and higher for reports about PI services.

**Figure 5: Analysis of the reported matters**
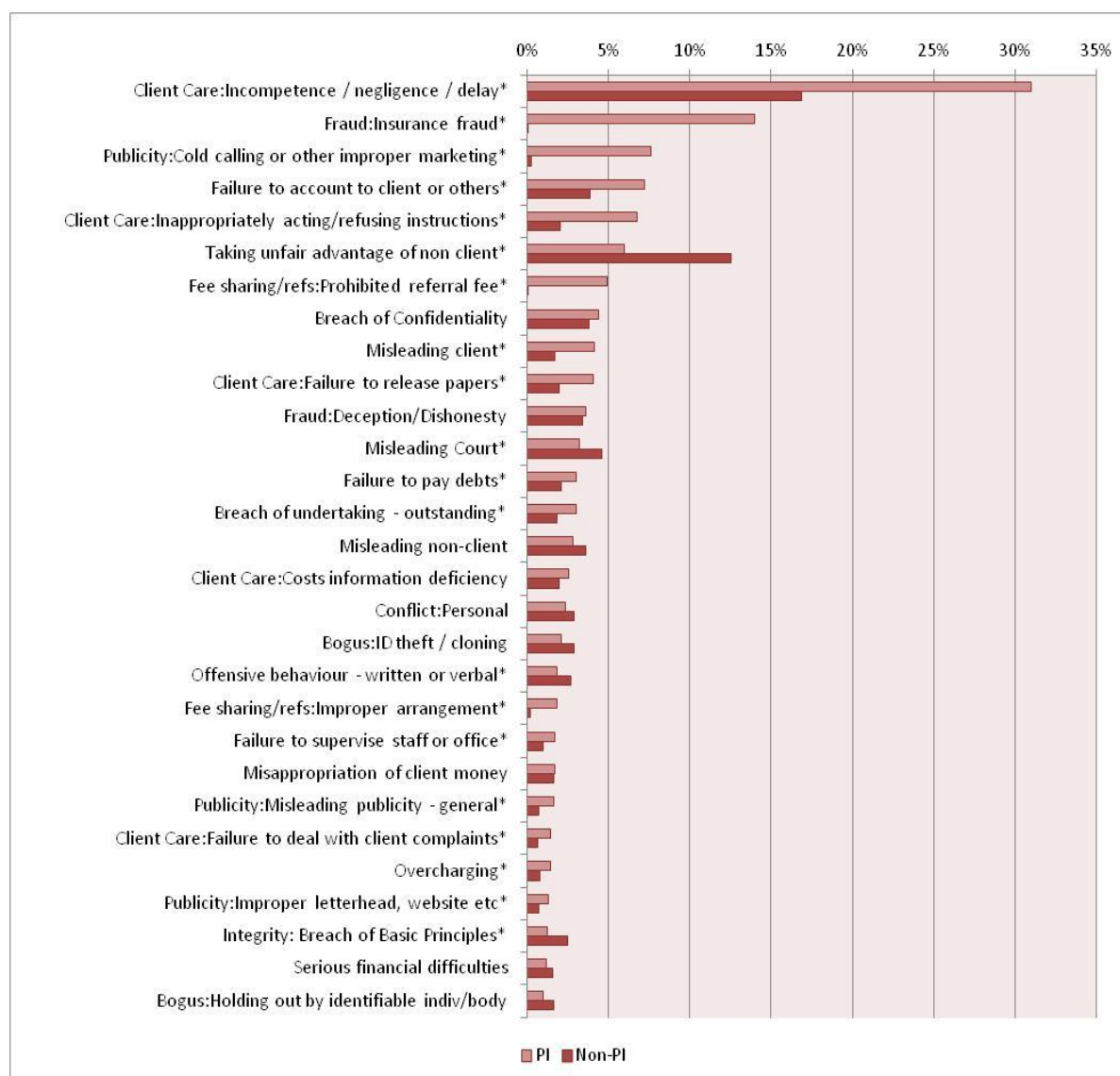
Types of reasons for investigating matters

We also analysed all investigation matters that were archived between January 2014 and December 2015. As was the case with reported matters, we used fields of law to determine whether the source of an investigation was PI or non-PI.

Figure 6, identifies the most frequently investigated matter reasons.

Figure 6: Analysis of the investigation matters
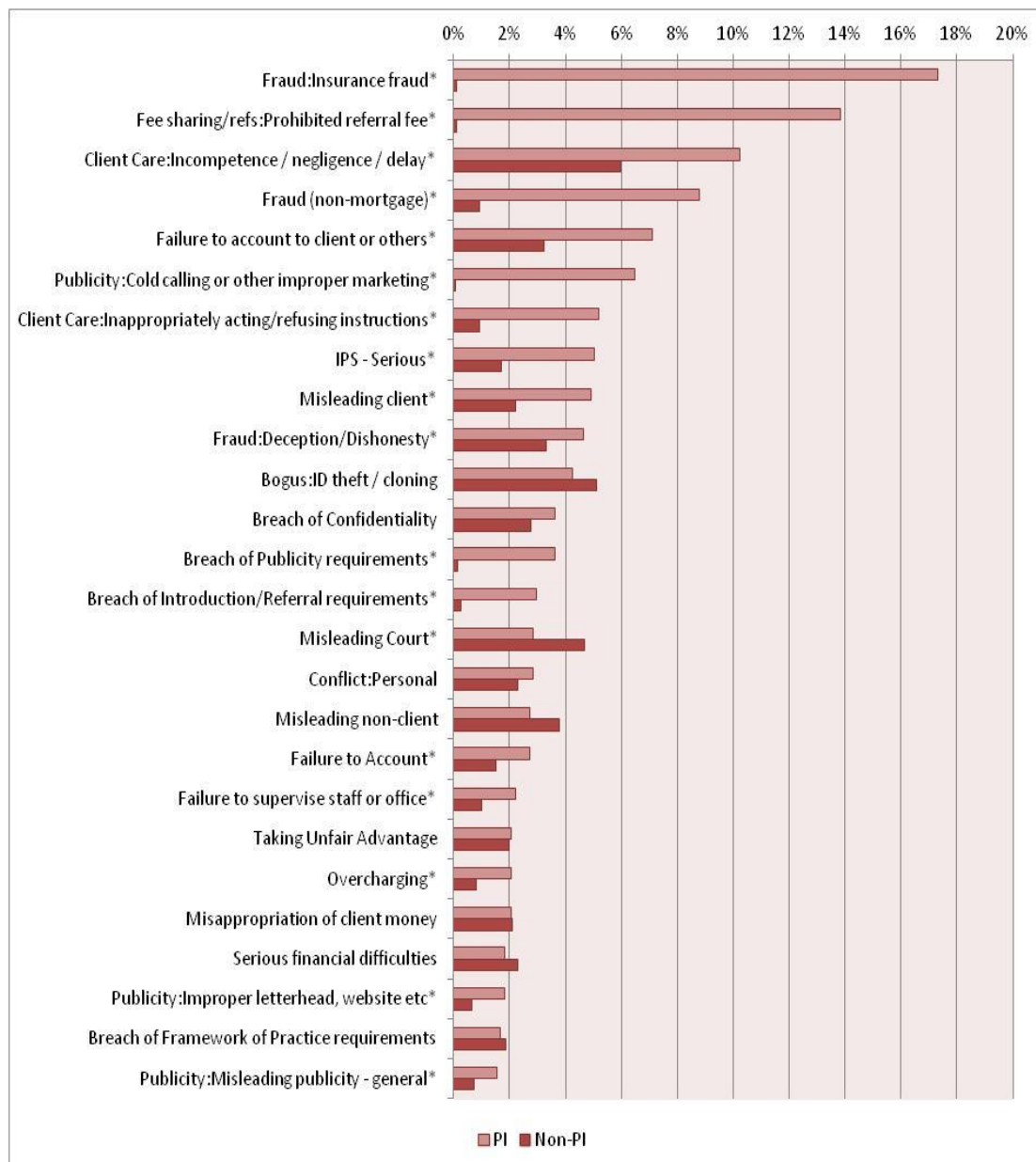
From the figure we see that there are clear differences between PI and non-PI firms for many of the matter reasons investigated. ;

In particular, the top three reasons for investigations are: *Fraud: Insurance fraud* (17%), *Fee sharing/refs: Prohibited referral fee* (14%), and *Client Care:*

Incompetence / negligence / delay (10%). All these reasons are statistically significantly higher for PI, compared to non-PI.

It should be noted that *Fraud: Insurance fraud* and *Fee sharing/refs: Prohibited referral fee* are specific to personal injury work and therefore we would not expect to see reports of this nature against other fields of law.

Recorded Outcomes of investigated matters

We have analysed the outcomes of all investigation matters that reached a conclusion. Table 3 shows the percentage of the outcomes of the matters investigated. Like in the earlier section, an "*" marked in the top right corner of outcomes suggests that the differences in the percentages between PI and non-PI are statistically significant.

Table 3: Analysis of the outcomes of investigation matters (outcomes in red font are considered as regulatory outcomes)

	PI	Non-PI
No further action - no issue of misconduct	31%	28%
No further action - insufficient evidence*	19%	13%
No further action - low risk*	19%	30%
No further action - considered in other matter*	16%	11%
No further action - issue of misconduct. Resolved with engagement	8%	8%
No further action - risk to lie on file	3%	2%
Upheld by Supervision Staff	2%	1%
Referred to SDT	2%	3%
Upheld at Adjudication*	1%	2%
Complaint/Allegation not upheld	0%	0%
NULL	0%	0%
Upheld by Authorised Officer*	0%	1%
Matter to Lie on File	0%	0%
Complaint/Allegation upheld	0%	0%
Complaint/Allegation noted - Ongoing other action	0%	0%
No Engagement at Present	0%	0%
Within jurisdiction but investigation declined	0%	0%
Compliant/Allegation added - in to existing DPs	0%	0%
Complaint/Allegation outside our jurisdiction	0%	0%

In Table 3, the outcomes in red font are considered as regulatory outcomes. Investigation matters result in regulatory outcomes when issues of misconduct have been found as a result of the investigation. From the table we see that 12% of matters against PI services are considered to have regulatory outcomes, compared to 15% of the matters against non-PI services. However, about 8% of the matters against both types of services have an outcome *No further action - issue of misconduct. Resolved with engagement.*

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Recorded decisions of investigated matters

Decision data differs from outcome data as it details a specific action we take after reaching an outcome. Table 4 presents the decisions of all matters investigated about PI services and non-PI services. We have highlighted some of these decisions in red font where we identified that regulatory action was taken. From the table we see that 6% of all investigated matters about PI services have regulatory actions. This is lower than non-PI, which is about 8% of all investigated matters about non-PI services.

Table 4: Analysis of the decisions of investigation matters (decisions in red font have considered as regulatory actions)

	PI	Non-PI
No further action*	85.3%	82.4%
Letter of Advice	2.0%	2.1%
Disciplinary Proceedings	1.4%	2.1%
Costs Direction	0.5%	0.9%
Publication	0.4%	0.5%
Section 43 Order	0.4%	0.4%
Rebuke	0.4%	0.5%
Fine - published	0.3%	0.2%
Stand Over	0.1%	0.2%
Rebuke - published	0.1%	0.0%
Section 44B Order	0.1%	0.1%
Disciplinary Proceedings - add in	0.0%	0.3%
Renew or vary PC or registration condition	0.0%	0.0%
Refer for application to be made under section 44BB	0.0%	0.0%
Finding and Warning*	0.0%	0.9%
Reprimand / severe reprimand	0.0%	0.0%
Impose new PC or registration condition	0.0%	0.2%
Reporting Accountant Disqualified	0.0%	0.0%
Impose new PC Condition	0.0%	0.0%
Regulatory Settlement Agreement	0.0%	0.1%
NULL	10.0%	8.9%

Conclusion

A number of concerns about the operation of the market for personal injury advice have been raised by central government, representative bodies and insurers. Alongside research being conducted by ICF to confirm the prevalence and impact of claimant and defendant solicitor practices, we have conducted an analysis of internal data held in relation to reported and investigated firm matters.

Findings from this analysis are expected to be triangulated with the research findings from ICF to robustly evaluate the issues in the PI sector. In addition, this report is likely to inform ICF's research project and final report.

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Appendix 1:

Table A1: Fields of law

FIELD OF LAW	PI	FIELD OF LAW	PI
Charity	No	Landlord and Tenant	No
Commercial	No	Licensing/gaming	No
Commercial Conveyancing	No	Matrimonial	No
Consumer	No	Matrimonial Conveyancing	No
Consumer Credit	No	Medical negligence	Yes
Criminal	No	Mental health	No
Discrimination	No	Negligence	No
EC	No	Neighbour Dispute	No
Employment	No	No relevant field	No
Environment/planning/neighbour	No	NULL*	N/A
Family	No	Personal Injury	Yes
Financial Services	No	Powers Of Attorney	No
General civil	No	Probate	No
Immigration	No	Professional regulation	No
Information not yet available	No	Residential Conveyancing	No
Insolvency	No	Road Traffic Accident	Yes
Insurance	No	Social Security	No
Intellectual property	No	Tax	No
Investment Business	No	Trusts	No

*This is either equivalent to *No relevant field* or a complaint outside of our jurisdiction and hence the fields were left empty or missing fields.