

FOR INFORMATION ONLY**The SRA and the Insurance Fraud Taskforce****Purpose**

- 1 This paper sets out our work in response to recommendations made by the Insurance Fraud Taskforce and other work we have been doing which relates to the personal injury sector. It is aligned to the recent publication of our thematic review into this market segment and an updated warning notice.

Recommendation

- 2 The Board is asked to note our work in this area.

If you have any questions about this paper, please contact: Crispin Passmore, Executive Director, Policy, crispin.passmore@sra.org.uk or 0121 329 6687

Equality, Diversity and Inclusion considerations

Consideration	Paragraph nos
Firms (small firms) Our analysis shows that Personal Injury (PI) firms are relatively bigger than non-PI firms by their turnover and are more likely to be based in the north-west of England. Data shows that 49 percent of PI firms have turnover of more than £500,000 compared to 34 % of non-PI firms. Small firms ¹ (and there is a statistically significant over representation of BAME individuals within small firms) are therefore, less likely to be involved in PI work or rely on it as a main source of income.	18-23
Consumer need As part of a working group, the IFB and others are exploring the use of behavioural science to tackle insurance fraud. They will look at how changes to various parts of the customer journey could positively change customer behaviour in tackling insurance fraud ² . We will also engage with consumer representative groups and use the joint regulators' Legal Choices website as a platform to help raise consumer awareness	41-42
General We do not consider that the steps we are taking to combat insurance fraud result in people (regulated individuals and consumers) being treated less favourably because of a protected characteristic and are in fact likely to benefit consumers. As set out above, small firms are less likely to rely on PI work and the clients that these measures seek to protect include many that are particularly vulnerable.	51

¹ SRA definition of small firm: a sole practitioner or a firm with no more than four partners, members or directors, which has an annual turnover of no more than £400,000

² <https://www.insurancefraudbureau.org/media-centre/news/2017/industry-working-group-explore-the-use-of-behavioural-science-to-tackle-insurance-fraud/>

The SRA and the Insurance Fraud Taskforce

Introduction

- 3 In December 2014, the Government set up the Insurance Fraud Taskforce (the Taskforce). It had a wide-ranging remit to make recommendations to tackle insurance fraud, its drivers and the concern that insurance fraud may become 'an acceptable crime'. The Taskforce, chaired by former Law Commissioner, David Hertzell, had one workstream which focused on Personal Injury (PI) and in particular focused on claims arising from road traffic accidents.
- 4 We are not members of the Taskforce, but have played a role by providing evidence. We have also met regularly with David Hertzell throughout the process in bilateral and roundtable meetings. The Taskforce's [final report](#)³ was published in January 2016. It made a range of targeted recommendations for action by interested parties, including us.
- 5 The key aims of the Taskforce's recommendations are to:
 - improve consumer trust in the insurance sector
 - raise the public profile of insurance fraud as a criminal activity
 - support the government's intentions to clamp down on unnecessary whiplash claims

Summary

- 6 This paper sets out our work in response to recommendations made by the Insurance Fraud Taskforce (IFT) and other work we have been doing which relates to the personal injury sector. It is aligned to the recent publication of our thematic review into this market segment and an updated warning notice.
- 7 The IFT was set up in December 2016 to make recommendations to tackle insurance fraud, its drivers and the concern that insurance fraud may become 'an acceptable crime'. The Annex to this paper sets out our progress in response to IFT's recommendations.
- 8 We continue to work with insurers, trade bodies and other regulators to give confidence that information they provide to us will be considered to inform our regulatory action. We also continue to press for changes that would address for example, the low limit of our internal fining powers in relation to traditional law firms; and the standard of proof applied at the Solicitors Disciplinary Tribunal.
- 9 The paper also sets out details of our response to cases of poor practice that we have seen of firms operating in the holiday sickness claims area. We currently

³ <https://www.gov.uk/government/publications/insurance-fraud-taskforce-final-report>

have a number of open investigations about firms that have displayed poor behaviours.

- 10 Concerns about unjustified claims and cold calling, as well as our own investigations, have led us to publish a new warning notice reminding law firms about their responsibilities involved in these claims.
- 11 We are also working with key stakeholders to look at how we can provide more information to members of the public to help tackle poor behaviours in the personal injury sector. We will update the Board on this work in July 2018.

What did the Taskforce recommend?

- 12 There are 26 recommendations in total. Several recommendations directly require us to act. These are:
 - Recommendation 15: The SRA should take a tougher approach to combatting fraud including by:
 - making clear that it will give an appropriate focus to combating financial crime through its existing powers, including naming and shaming
 - considering requiring solicitors to undertake client identification checks in cases other than just those where they handle client money
 - working with the [Claims Management Regulator] to enforce the referral fee ban.
 - Recommendation 16: Insurers should provide the SRA with evidence regarding claimant law firms suspected of insurance fraud and the SRA should investigate and act robustly. The [Insurance Fraud Bureau] should act as a single point of contact between insurers and the SRA.
 - Recommendation 19: Claimant and defendant representatives APIL, MASS, FOIL and ABI⁴ should produce a standard letter in conjunction with the SRA and IFB for insurers to send to claimants directly to verify whether they have instructed a firm to represent them.
 - Recommendation 21: The government should:
 - develop and deliver a coherent regulatory strategy to tackle nuisance calls that encourage fraudulent personal injury or other

⁴ Association of Personal Injury Lawyers, Motor Accident Solicitors Society, Forum of Insurance Lawyers and Association of British Insurers

claims, in partnership with the CMR, IFB, ICO⁵, ABI, Ofcom and SRA

- put the ICO's Direct Marketing Guidance on a statutory footing.

Recommendations for others

13 Two further recommendations impact directly on our work:

- Recommendation 14: The government should:
 - consider strengthening the fining powers of the SRA for fraudulent or corrupt activity
 - consider reviewing the standard of proof used in cases put before the Solicitors Disciplinary Tribunal.
- Recommendation 17: In implementing the whiplash reforms outlined at Autumn Statement 2015, the government should consult on introducing a mandatory requirement for referral sources to be included on CNFs and claims should only proceed where CNFs are complete. Insurers should share data with the SRA and CMR if they suspect claimant representatives of breaching the referral fee ban

14 We support each of the Taskforce's recommendations, and note recommendation 14 with interest. We use the civil standard of proof in our decisions. However, our powers to take action against traditional law firms and solicitors are very limited and we prosecute serious cases in front of the Solicitors Disciplinary Tribunal (SDT). The Tribunal uses the criminal standard of proof, which is unusual amongst professional tribunals. In our view, the criminal standard of proof is inappropriate and, taken with solicitor majorities on the Tribunal panels, means that there is a serious risk the SDT's decisions protect the profession rather than the public. In addition, there is a lack of consistency between the criminal standard being used for traditional firms before the SDT, and potentially very similar businesses that are alternative business structures (ABS) being disciplined by us using the civil standard of proof. This is unfair and creates competition issues.

15 The Bar Standards Board has recently consulted on its standard of proof and decided to move to the civil standard. In anticipation of the Tribunal reviewing its standard of proof 'towards the end of 2017' the Law Society has recently published a discussion paper on this issue and are seeking views from the profession. The discussion paper closes for responses on 1 December 2017.

16 We also support any consideration of our fining powers. Our limited fining powers of £2,000 for all bar alternative business structures increases the number of cases that have to go the Tribunal. That means more time is taken to resolve a matter, associated costs to both the firm and the SRA (and thus

⁵ Claims Management Regulator, Insurance Fraud Bureau, Information Commissioner's Office

the profession) go up and the stress and uncertainty for the firm and individuals involved increases.

- 17 Until changes are made it is difficult to impose proportionate financial penalties. Further, misconduct proven on the balance of probabilities (the civil standard of proof) can continue to practise, risking harm to the public. This undermines our ability to protect the public and means our enforcement actions may not act as a credible deterrent.

Firms involved in this sector

- 18 Personal Injury (PI) is, and remains, a profitable sector of the legal services market, and one where consumer engagement and access to services is promoted through highly effective advertising and marketing. Law firms provide a significant proportion of legal advice, litigation and other support in both claimant and defendant personal injury claims.
- 19 Current renewal data indicates that there 'are 10,506 open law firms, of these, 768 firms were considered as 'specialising in PI work. By specialising, we mean firms who have reported that at least 50 percent of their turnover is generated from PI work in past 12 months.
- 20 Our analysis shows that PI firms are relatively bigger than non-PI firms by their turnover and are more likely to be based in the north-west of England. Data shows that 49 percent of PI firms have turnover of more than £500,000 compared to 34 % of non-PI firms. Small firms⁶ (and there is a statistically significant over representation of BAME individuals within small firms) are therefore, less likely to be involved in PI work or rely on it as a main source of income.
- 21 In addition, 105 of the 572 alternative business structures (ABS) that we have licensed are involved in PI work.
- 22 Our work in response to the Taskforce's recommendations and the risks that we have seen in this sector will affect all firms that deal in this category. From our analysis so far, there should be no disproportionate impact on solicitors with protected characteristics.
- 23 We have engaged with firms directly where they have wanted to share their concerns but also examples of good practice. Firms have also made use of our publications, for example, the Risk Outlook and warning notices to make improvements to their systems and controls and to provide clients with an assurance that the firm will be acting in the client's best interests. These resources particularly help small firms as they may not have dedicated compliance teams.

⁶ SRA definition of small firm: a sole practitioner or a firm with no more than four partners, members or directors, which has an annual turnover of no more than £400,000

What have we been doing?

Response to the Taskforce's recommendations

- 24 The Taskforce has published an [update report⁷](#) which sets out what we have done in response to their recommendations. Annex one summarises our response. Key stakeholders recognise the positive steps we have taken so far in combatting insurance fraud whereas previously there was some scepticism about our effectiveness in this area. A further update is likely, covering activity in 2017.

Our new Code of Conduct

- 25 We anticipate the robust standards in our new Codes of Conduct⁸ will help combat fraud in the personal injury market and other high-risk areas. Firms will be expected to undertake client identification in matters beyond those covered by rules on money laundering. Beyond this we have been undertaking a range of work specifically targeting insurance fraud.

Working with other organisations

- 26 We have worked closely with key organisations including the Claims Management Regulation Unit (CMRU), the IFB, the Claims Portal⁹ and the Ministry of Justice to take forward the Taskforce's recommendations. This work has highlighted risks that can only be managed through better data sharing and collaboration between the insurance sector and regulatory bodies. We continue to use information from insurers, trade bodies and other regulators to inform our regulatory action.

Warning notices

- 27 We have issued several warning notices in this area. These notices are designed to highlight potential risks to the profession. Even though they are not part of our rules, we will take compliance or otherwise with a relevant warning notice into account when making any decisions.

Warning notice on risk issues in personal injury

- 28 In 2016 we issued a [warning notice](#) on risk factors in personal injury claims and this has now been updated following our thematic review.

⁷ [update rehttps://www.gov.uk/government/publications/insurance-fraud-taskforce-report-2016port](https://www.gov.uk/government/publications/insurance-fraud-taskforce-report-2016port)

⁸ More information on our reform of our regulatory approach is available here <https://www.sra.org.uk/sra/policy/future/looking-future.page>

⁹ The Claims Portal is a tool for processing low value personal injury claims. More information is available on their website <https://www.claimsportal.org.uk/>

Warning notice on holiday sickness claims

- 29 According to the Association of British Travel Agents, claims for compensation for sickness while on holiday sickness quadrupled in the past four years, though these numbers are disputed. The number of law firms becoming involved in these claims has increased following a crackdown on fraudulent whiplash claims and reforms relating to costs from the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO).
- 30 We have reports that holidaymakers are being encouraged to make unjustified claims by unethical claims management companies and law firms. This has included
- 'touts' coaching holidaymakers in major resorts
 - improper advertising for claims services
 - paying prohibited referral fees (prohibited because sickness claims fall into the definition of personal injury)
 - cold calls falsely promising compensation for hygiene problems.
- 31 These concerns and our own investigations have led us to publish a new [warning notice](#) reminding law firms about their responsibilities. We are working with key stakeholders to review cases of poor practice. The CMRU has passed information to us about 31 law firms that have potentially improper referral arrangements with claims management companies. We are currently investigating a number of firms for these types of behaviours.

Research and thematic review

- 32 We have conducted initial research, plus an external consultation, into:
- compliance with the referral fee ban
 - quality of triaging cases, including whether sufficient care and competence is being applied to cases
 - trying to better understand perceptions of claimant and defendant solicitors in this area.
- 33 The results of this research helped shape a more targeted thematic review of the personal injury market, which we began in 2016. We began this project by asking a number of solicitors involved in personal injury work to complete a short online survey.
- 34 Our thematic team then engaged with a sample of firms involved in personal injury work in the following areas:
- competence - whether firms/ solicitors have the relevant skills and experience
 - behaviours – including the following concerns raised in relation to solicitors:

- involvement in fraudulent/grossly exaggerated cases
 - using unqualified and inexperienced staff to make costs savings
 - defendant delays in progressing cases
 - under-settling cases
 - acting on instructions without client approval
 - bringing claims without clients' knowledge
 - paying damages to third parties without accounting directly to the client
 - allowing third parties to cold call potential clients
- referral fees - how clients are referred to solicitors and any evidence of breaches of the ban on referral fees
 - use of Medco¹⁰ - whether firms complied with MedCo requirements and whether solicitors were circumventing the portal's objectives.

Report to us and regulatory action

35 In a sample of reports received in the period January 2015 and December 2016, the top 5 reasons for complaint have been:

- Client Care: Incompetence/negligence/delay
- Insurance fraud including prohibited referral fees
- Client Care: Inappropriately acting/refusing instructions
- Not accounting to clients for damages received
- Publicity: cold calling or other improper marketing

36 In the two-year period to the end of September 2017, we have received 88 reports about firms paying or receiving prohibited referral fees. In the same period, we have had 202 reports of cold calling or other improper marketing.

37 Where we have evidence that firms are not meeting our standards in these areas we will take robust action. One recent example involved us intervening into a firm. We had reason to suspect dishonesty on the part of the sole director of this firm. The solicitor's conduct is being investigated for behaviours that, if proven, highlights concerns noted in our recent warning notice.

38 Other example cases include:

- A partner who made unauthorised payments to third party referrers from client damages without advising his clients. The partner was struck off by the SDT on 13 October 2016.
- A sole practitioner who was rebuked and fined £2,000 plus £600 costs in November 2015. The practitioner received the maximum fine we could levy without referring her to the SDT. The practitioner was found to have

¹⁰ MedCo is a non-profit making organisation with a Board comprised of representatives with cross industry interests. A full list of membership organisations is available [here](#).

paid for referrals in contravention of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(LASPO).

- A solicitor consultant at a law firm was rebuked and ordered to pay a contribution to costs in November 2015. The consultant failed to achieve Outcome 9.8 of our Code of Conduct (a solicitor must not pay a prohibited referral fee).
- 39 We have intervened into many firms in the last two years and referred conduct to the SDT after receiving information from the IFB or other sources:
- Firm A – Intervention 2 December 2016
 - Firm B – Intervention 22 March 2017
 - Firm C – Intervention 30 March 2017
 - Firm D – Intervention 18 May 2017
 - Firm E – Intervention 24 May 2017
- 40 We make regulatory decisions public in line with our [publication policy](#). Decisions are made available on our website. The most recent decisions can be accessed on our website.

Consumer engagement

- 41 An objective of the Taskforce was to increase consumer trust in the PI insurance sector and consumer understanding of the risks in this sector. The Ministry of Justice has provided some data around the type of consumer involved in PI claims as part of their impact assessment on reforms to whiplash claims. In serious cases, consumers are likely to be more vulnerable having suffered catastrophic injuries.

We feel that our work in this area will give consumers the confidence to engage with law firms and that the firm can be trusted to act with independence and integrity. It is important that the benefits of our work and positive changes that firms make are felt by all consumers.

- 42 We will be working with the IFB and the Association of British Insurers to look at how we engage with consumers. As part of a working group, the IFB and others are exploring the use of behavioural science to tackle insurance fraud. They will look at how changes to various parts of the customer journey could positively change customer behaviour in tackling insurance fraud¹¹. We will also engage with consumer representative groups and use Legal Choices as a platform to help raise consumer awareness, for example, using case studies. It is expected that this work will equip consumers with information so that they can ask appropriate questions of firms to make sure their interests are protected.

¹¹ <https://www.insurancefraudbureau.org/media-centre/news/2017/industry-working-group-explore-the-use-of-behavioural-science-to-tackle-insurance-fraud/>

Recommendation: the Board is asked to note our work in this area.

Next steps

- 43 We plan to make contents of this paper available to the public. We will also continue to engage with members of the public through Legal Choices to highlight the good behaviours that they should expect to see from PI firms.

Supporting information

SRA corporate strategy

- 44 Our work in response to the Taskforce's recommendations supports our strategic aim to "... *set and apply consistently high professional standards for the individuals and firms we regulate and make sure they are appropriate to meet the challenges of today and the future...*".

How the issues support the regulatory objectives and best regulatory practice

- 45 Our response to the Taskforce's recommendations demonstrates that our focus is to make sure that consumers are protected and that by tackling poor behaviour consumers can continue to access good quality services through SRA-authorized firms.
- 46 If solicitors or firms do not meet our standards, we investigate their practice and compliance with our rules, where necessary taking regulatory action, such as issuing a fine or reprimanding the solicitor. We prosecute when we have serious concerns about a solicitor or a firm's conduct at the SDT.
- 47 By addressing poor behaviour, we can help make sure that SRA-authorized firms can compete in a market that is diverse and effective whilst adhering to professional principles - to act with integrity, maintain proper standards of work, and act in their clients' best interests.

Public and consumer impact

- 48 Publication of a position statement/update on our work in response to the Taskforce's recommendations will have a positive impact as it is likely to increase confidence in our response to poor behaviours in this sector. The information will also raise awareness amongst consumers about good and bad practices to look out for.

What engagement approach has been used to inform the work and what further communication and engagement is needed

- 49 We continue to work with key stakeholders to inform our work in this area and to give confidence that information and intelligence we receive about firms will be considered to inform our regulatory response.
- 50 We will ask our External Affairs team to look at ways of sharing our update with the legal media and public generally.

What equality and diversity considerations relate to this issue

- 51 We do not consider that the steps we are taking to combat insurance fraud result in people (regulated individuals and consumers) being treated less favourably because of a protected characteristic and are in fact likely to benefit

consumers. As set out above, small firms are less likely to rely on PI work and the clients that these measures seek to protect include many that are particularly vulnerable due to disability.

How the work will be evaluated

52 We will continue to work with key external stakeholders involved with the taskforce. Our Investigation and Supervision directorate will continue to track reports received and final outcomes.

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Annex 1: progress against the Insurance Fraud Taskforce's recommendations.

Annex 1 - Progress against the Insurance Fraud Taskforce's recommendations – the table below sets out the recommendations relevant to the SRA and progress on our actions to date.

No	Recommendation	SRA progress to date
14	<p>The government should</p> <ul style="list-style-type: none"> • consider strengthening the fining powers of the SRA for fraudulent or corrupt activity • consider reviewing the standard of proof used in cases put before the Solicitors Disciplinary Tribunal 	<p>The government has committed to consider whether our enforcement powers should be strengthened, including potentially increasing our fining powers.</p> <p>We are continuing to press for change from the criminal to the civil standard of proof</p>
15	<p>The SRA should take a tougher approach to combatting fraud including by</p> <ul style="list-style-type: none"> • making clear that it will give an appropriate focus to combating financial crime through its existing powers, including naming and shaming • considering requiring solicitors to undertake client identification checks in cases other than just those where they handle client money • working with the CMR Unit to enforce the referral fee ban 	<p>Regulatory decisions are published on our website in accordance with our <u>publication policy</u>. In March 2016 we published a <u>warning notice</u> reminding practitioners that they must act only on valid client instructions.</p> <p>We have highlighted the issues raised in the warning notice in our <u>2016/17 Risk Outlook</u>. The Risk Outlook sets out the priorities to which we will allocate our resources over the year.</p> <p>We prioritised the personal injury market for a <u>thematic review</u>. We undertook independent research about the market and visited authorised firms to build our understanding and evidence base around good and bad practice. The findings of the review are being collated and will help us to effectively target our regulation.</p> <p>In our recent consultation on <u>draft Codes of Conduct</u> we set out that we will expect firms and individuals to only act for clients on valid instructions from the client. Our Board has agreed the Code of Conduct and we are working towards implementation.</p> <p>We continue to work with the Claims Management Regulation Unit to facilitate investigations</p>

16	<p>Insurers should provide the SRA with evidence regarding claimant law firms suspected of insurance fraud and the SRA should investigate and act robustly. The IFB should act as a single point of contact between insurers and the SRA</p>	<p>The IFB is working to ensure that data is shared with us and has also endorsed our <u>warning notice</u>. We are also currently investigating matters where an allegation of insurance fraud has been made against a firm.</p> <p>We continue to work with the IFB/insurers to give confidence that information they provide will be considered to inform investigations.</p>
17	<p>In implementing the whiplash reforms outlined at Autumn Statement 2015, the government should consult on introducing a mandatory requirement for referral sources to be included on CNFs and claims should only proceed where CNFs are complete. Insurers should share data with the SRA and CMR if they suspect claimant representatives of breaching the referral fee ban</p>	<p>This issue has been addressed in part 1 of the government response to the Ministry of Justice's consultation on '<i>Reforming the Soft Tissue Injury ('whiplash') Claims Process</i>'.</p>
19	<p>Claimant and defendant representatives (APIL, MASS, FOIL and ABI) should produce a standard letter in conjunction with the SRA and IFB for insurers to send to claimants directly to verify whether they have instructed a firm to represent them</p>	<p>Whilst some guidance is provided in their <u>Guidance Note</u>, the Claims Portal Board is currently considering more detailed guidance to include proposed wordings that insurers should utilise that would be acceptable to the Claims Portal Ltd behaviours committee. This matter is due for further discussion at its next board meeting in November 2017.</p> <p>We continue to engage with organisations to seek information about firms that are possibly acting without valid instructions.</p> <p>We understand that the ABI and IFB have commenced work to agree text of a model letter, to develop a list recommending what should/should not be discussed by telephone and recommending evidential requirements. Draft narrative will be discussed with us prior to</p>

		buy-in being sought from other listed stakeholders. Agreed text will be incorporated into revised IFB Counter Fraud Best Practice Guidance.
21	<p>The Government should</p> <ul style="list-style-type: none"> develop and deliver a coherent regulatory strategy to tackle nuisance calls that encourage fraudulent personal injury or other claims, in partnership with the CMR, IFB, ICO, ABI, Ofcom and SRA put the ICO's Direct Marketing Guidance on a statutory footing 	<p>The ICO leads a multi-agency group and has operational working arrangements with Ofcom, MoJ CMRU, FCA and including IFB and us.</p> <p>The government has announced an additional measure aimed at tackling cold-calling: forcing cold callers to display their number when contacting consumers. Government action has been accompanied by proactive steps from regulators.</p>