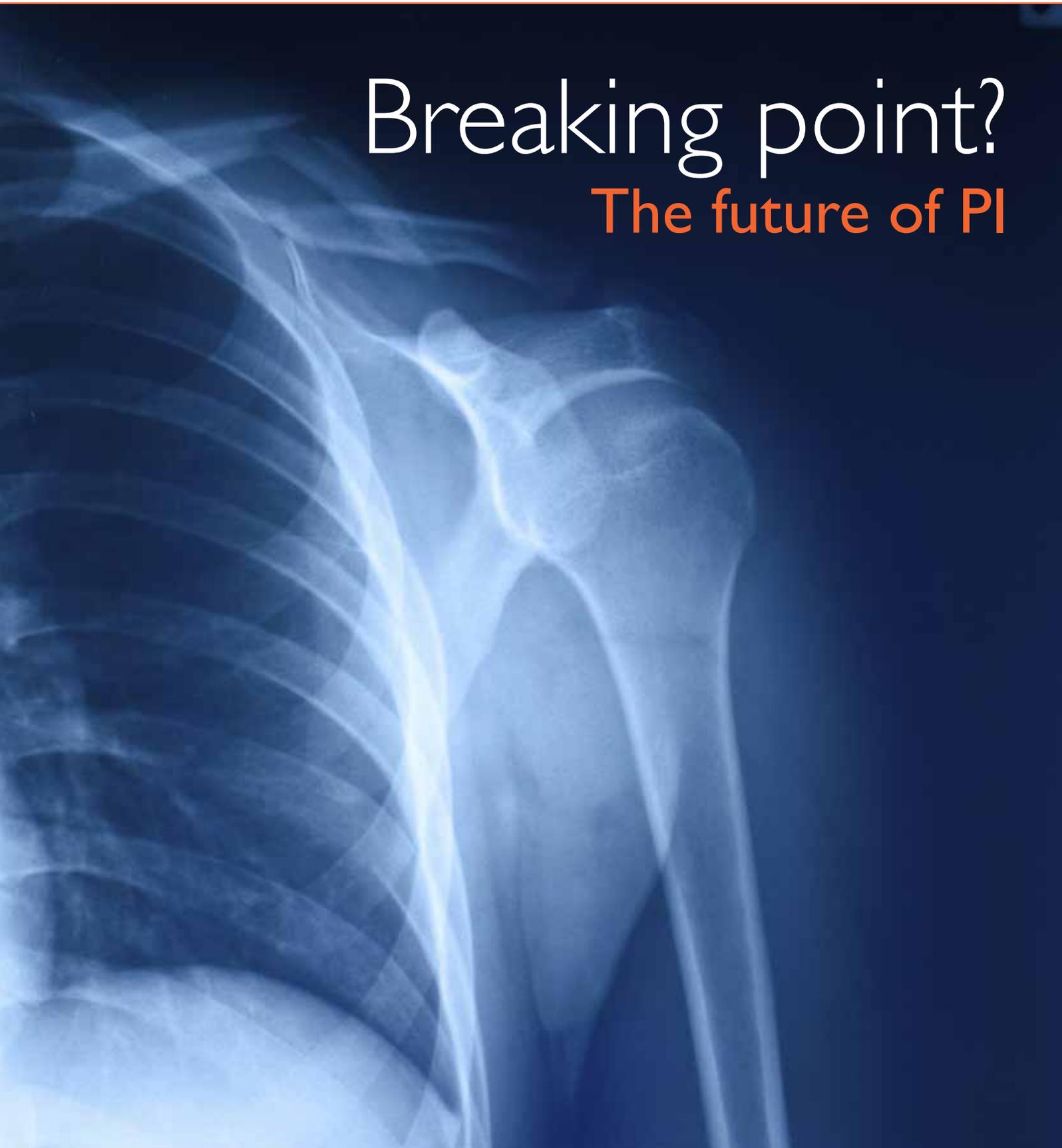


Breaking point?

The future of PI





First4Lawyers is proud to be a trusted partner of many of the country's leading personal injury firms, and we see facilitating dialogue and thought leadership as an integral part of the role we play in the market.

This First4Lawyers White Paper is the product of a roundtable we held in Manchester with several members of our panel as well as the expert input of others involved in the PI world. My thanks to Exchange Chambers for hosting it.

It was a valuable exercise in taking the temperature of the PI market at the moment. It showed how the LASPO reforms have not yet had as damaging effect on claimant firms as had been expected – not because the impact was overestimated, however, but because the time it would take was underestimated. There are still a lot of pre-LASPO cases working their way through the system. The consensus round the table was that we will have a much better picture of the full extent of the fallout as 2015 progresses.

The event also helped confirm First4Lawyers' strategy of focusing more on other areas of personal injury than RTA – around a quarter of the cases we pass on are road traffic accidents – and that we have been right to be choosy when selecting firms for our new clinical negligence panel. Diversification is a natural move for many firms, but there is worrying evidence that it is not always being done with sufficient rigour. This, of course, is not good for client, lawyer and marketing partner alike.

First4Lawyers' approach has always been to focus on quality and this has served us well to become one of the UK's leading legal brands. I hope you find this White Paper a valuable read and please do contact us if you would like to continue the conversation.

Qamar Anwar
Managing Director, First4Lawyers

So, more than 18 months on from LASPO and the portal changes, where is the personal injury (PI) market now, and what further upheavals can it expect in the coming months and years?

To get a sense of the answers, First4Lawyers travelled to Manchester and brought together a group of highly experienced players in the market to debate how they saw the future.

The predicted swathe of law firm collapses has yet to occur – despite some high-profile failures and quite a few WIP sales – but it was suggested that this is because pre 1 April 2013 work is having a longer tail than anticipated.

Derrick Smethurst, head of PI at north-west firm Russell & Russell, told the roundtable that having expected pre-Jackson work to last 12-18 months, they are still working through it and indeed are still receiving instructions where the accident date predates 31 July 2013, meaning the fees are dealt with under the previous regime.

It was the same story for Andrew Simcott, head of business development at Merseyside firm Michael W Halsall, but he added: "Historic WIP will not last forever and the vast majority will probably be depleted within the next 12 months, so it is essential that firms are able to make their diversification strategies work within in the next 12-18 months in order to avoid failure."

"The carnage is yet to happen," agreed Ian Pryer, founder of York firm Pryers Solicitors. "A lot of people had thought that the WIP would have disappeared more quickly." He suggested that fee-earners in some firms may have been deliberately slower in turning around cases than they would otherwise have done out of fear of what would happen after.

"I think it will be two years on from Jackson that firms start falling off, unless their business models have moved on," Mr Pryer predicted.

There has been some suggestion that, strategically, some firms are pushing more portal cases to stage three just to pocket the extra costs. "It's a balance," said Simon Shaw, partner at Liverpool firm SGI Legal. "For every month that you continue to run a case, it's costing money, so it is about finding that tipping point of whether or not it is more beneficial to work towards stage three, or to settle it earlier and advise your client appropriately."

Shopping around

The solicitors had also noticed more shopping around by consumers. Manchester firm JMW, for example, has a few different web brands and finds consumers unwittingly making multiple enquiries. "They get the shock of their lives when it is the same person who calls them back," said Richard Powell, its joint head of personal injury.

There has also started being more pressure on success fees, the solicitors reported. "I think a price war is something that we expected would happen much more quickly than it appears to have done," said Graham Ford, head of the insurance law team at Yorkshire firm Lupton Fawcett Denison Till, "and I think that is because our profession started doing its sums. We figured out that we are going to need to take some money from the clients' damages if we were to provide an appropriate level of service. I think we were surprised and pleased at the reaction from the clients who, for years and years, had been told that everything was free but were suddenly told that it no longer was and that they had to pay. They said 'OK', leaving us wondering why we had not done it this way this for many years.

There was some inconsistency in how the firms around the table dealt with this, with some sticking rigidly to their policy, while others would bend it in a slow week. "The one thing we can do is keep talking to each other and not slitting each other's throat," said Richard Powell. "Compete on service but do not start going down the price route, because nobody wants it"

It also tended to be a bigger issue for those at the top end of the damages scale, where taking £5,000 from a £20,000 award starts looking like a lot of money.



Still on the road

This all led to debate over the continuing importance of RTA cases in the new world, especially with participants reporting a recent increase in work providers offering leads for such cases at what looked like an unrealistic cost – making them uneconomic. It was suggested that the involvement of Quindell in RTA may have raised false expectations on the basis that while for Quindell there were other elements of income from an RTA claim that meant it could afford higher marketing costs, this was not the case for solicitors' firms.

First4Lawyers managing director Qamar Anwar said that RTA only makes up a small percentage of the total enquiries it receives. "RTA work is quite expensive to generate because of the high volume of organisations chasing the work so we have never really focused on it," he said. "But naturally, as we are advertising on TV, you are going to get people enquiring for that. When we originally started this scheme, firms were complaining and saying, 'Send us more RTA work', and then in the long term, I think they have realised that we did them a favour by giving them a nice split of work."

Derrick Smethurst added: "It's a very competitive market, in that your clients are more liable to ask for you to reduce, or take no success fee. So whilst you always take on the cases, you'll much sooner have EL cases in particular."

Equally, RTA is important for cash flow. Richard Powell said about 30% of his department's caseload was RTA: "It is valuable in terms of a quick turnaround and the quick cash flow you can get from it. I am starting to hear about some firms that are now turning away EL/PL in favour of RTA because they are actually getting so tight on the finances that they prefer that fast turnaround – it's their bailout option at the moment."

"Again it's a balance – cash against profit," said Simon Shaw. "RTAs will generate cash quicker whereas your non-RTA work will generate a more significant profit, but you need cash to reinvest."

Ian Pryer added: "PLs are proving more and more difficult, IDs are proving very difficult for firms doing it. So if you do not want RTAs, then what do you want in PI? What is actually going to produce the cash that is going to continue to sustain the practice?"

It was clear that the lawyers expected more failures. "Unless you've got an efficient business with reasonable expectations of those that draw money out of the business and reasonable route to market, then you are doomed to failure," said Simon Shaw.

And, noted Mark Hartigan, client services director at Just Costs Solicitors, there was little evidence of firms going through an orderly wind-down. The decision of multi-service Leeds firm Walker Morris to pull out of PI was one of the few.

The diversification dilemma

One of the major post-LASPO trends has been the push to diversify, most notably into clinical negligence and industrial deafness work.

There was unanimity around the table that some firms were simply reassigning RTA fee-earners to other areas of PI without understanding either the difficulties or the risks. But the long-tail of clinical negligence means that it may take some time for them to realise. "I do not think we have seen the full fall-out of poor diversification," agreed Richard Powell.

Andrew Simcott said his firm had diversified this way but appreciated the need to invest by recruiting specialists. "There was no chance that we were going to run clinical-negligence files with an EL/PL fee-earner in it.

Gareth Shires, a barrister at Exchange Chambers, agreed. "Unless you invest in the staff and do it properly, you might as well not bother. I know a firm that took on 100 cases, and I said to them, 'It is going to take you 18 months to get any money out of these.' Within a year they had already got rid of them and gone back to RTA. You have to invest in it properly."

Ian Pryer, whose firm specialises in clinical negligence, said there was also a myth that if you had good counsel on board, you could run a case even if you were not an expert. "What you have to realise is that at all stages of claim, you have very professional people against you, who have honed all of their arguments over the years. You have got to lay it down in correspondence. This is not just about a process, as PI can be; this is about all of the arguments and the persuasion and proper lawyering, which I suggest is very different than PI at the lowest level."

Further, "in terms of the pain that you go through in terms of expenditure and disbursement, you think



Derrick Smethurst

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at five years you have it clocked yet, at six and seven, it is still going on, and at 12 years it's still going". If you are not a specialist firm, other departments and other partners are calling on you and asking, 'Where is that money going?'

There is good reason to be targeting clinical negligence, however. Only around 1% of medical accidents lead to claims and there is an untapped market at the lower-value end. But if this happened, the government would likely look to introduce fixed costs.

First4Lawyers has recently invested in clinical negligence. Qamar Anwar said: "We have launched a new TV ad because we think it is an area that none of our main competitors have really tapped into and we've taken the lead. The response that we have had has been fantastic. We will continue to promote that further.

"There are a lot of firms knocking on the door to join the panel for clinical negligence, but in this case we rightly have been very, very particular in who would be allowed to join. There are lots of firms who have just recently decided to get into clinical negligence, and said, 'Right, let us join the club'. We are auditing firms before letting them join, because it is our brand and we have got to make sure the service is provided properly."

Deafness cases are also dangerous. Graham Ford said there could be a lot of money spent before making a decision to pursue the claim, with causation and limitation particular issues. This explains why a lot of deafness cases do not succeed, making it a high-risk area for solicitors that can eat up a lot of WIP. This too may well soon attract fixed fees, it was thought.

Commoditisation risk

The continued changes have driven the commoditisation of PI work, and that obviously brings issues with it.

Graham Ford said: "I think that most lawyers appreciate that they have to give the client good service. The client service comes at a cost. The alternative to it is not very attractive, and it is certainly not very attractive in terms of keeping the client, especially if you are a multi-disciplinary practice, for other legal services. However, there is an argument that perhaps the younger end of society expect a more commoditised Amazon-style approach to the way in which their services are provided, so there is a tension there."

There is a trend towards keeping lawyers in the back office, leaving customer-focused non-lawyers to deal with clients. But Mr Ford pointed out that different clients want different things. "My experience, still, and over the years, is that what the client wants is to be able to talk to the lawyer, find out what is going on, what he is going to get, when he is going to get it, etc." Should it be the lawyer front of house and the technology behind the scenes, he asked.

Clearly lawyers become involved in more complex cases where there are more costs at stake. So does that mean that solicitors should raise the bar in terms of the cases they run? It is, the reply came, purely a risk management issue, although firms are now less likely to have a go and see what happens if they are not sure.

And this had prompted a new risk from the push by some firms to seek out potential professional negligence claims against commoditised or thinly spread PI firms from unhappy clients. Richard Powell was speaking for many both inside and outside the room when he said: "We have certainly had a few letters, every single one of which is hugely speculative. When we have taken them to our indemnity insurer, they have said, 'Oh, that lot again'. They are clearly just farming for professional negligence work as their diversification. It is becoming a little bit of a joke."

Ian Pryer questioned whether this could be a successful new seam of work. "Where is the business model? Let's say you've missed a head of care that's worth £500. Unless you happen to get a good cluster of these, where do you make your money? You've still got to read the files, get the evidence, and then is it going to be fast-track or small claims track?"



Andrew Simcott



Historic WIP will not last forever and the vast majority will probably be depleted within the next 12 months, so it is essential that firms are able to make their diversification strategies work within the next 12-18 months in order to avoid failure



(L-R) Richard Powell, Mark Robinson (Wilkin Chapman), Qamar Anwar

"It sounds as if it is a bit of a death rattle from firms wondering, 'What else can we do?' I know one or two firms where the managing partners have almost said that to their staff: 'Either we try this or we have a major problem looking forward beyond the pre-LASPO work settling'"

Divide and rule

Next on the agenda are April's whiplash reforms. Barry Gray from Capita was understandably frustrated by the lack of detail on what random allocation of medical agencies and experts would actually look like. "Will we be thrown up every time, every third instruction or every 100, at this point it is very unclear as to how random allocation will work?"

"There could be upwards of 300 providers on MedCo and we and other established agencies could go into March with considerable market share, built up over many years and through investment in technology, clinical governance, capacity management and quality etc to an, as yet, undefined randomised system in April spread across any number of unknown providers.

"That just can't be a good thing for all stakeholders in the industry. Solicitors need to operate as efficiently as possible on these fixed-costs cases and in turn need the flexibility to select established, reliable and efficient agencies."

Participants also wondered what effect the introduction of MedCo would have on prognosis periods, which in turn could have a big impact on costs.

Then there is the new 'fundamentally dishonest' rule, which could lead to entire claims being thrown out. Gareth Shires said he expected insurers to start having a go at claims under the new rule on the basis that they have little to lose in doing so. For claimants with borderline cases, of course, the risks will increase significantly, although Ian Pryer suggested that it would be a good thing if the focus returned to those who are genuinely injured, rather than suffered just minor injuries and light damage.

There was also little sympathy round the table for the government's argument that banning pre-med offers outright was difficult. "I don't understand why it's hard to stop," said Simon Shaw. "Just say you can't make them." There was obviously more to it than just drafting the legislation though.

So what could be the next round of reform? There was concern around the table that a Conservative victory in May's general election would likely lead to the small claims limit for PI going up, probably to £5,000 – and in doing so wiping out 80% or so of firms' RTA caseloads, making business models even harder to sustain. What may hold this back, however, is the prospect of claims management companies targeting small claims PI as a new workstream.

And, in time, might England and Wales look to copy Ireland's Personal Injuries Assessment Board, where claimants pursue their cases through an administrative system with tariff damages and no need to instruct a lawyer?

Alternative to what?

The advent of alternative business structures (ABSs) has been felt most strongly in the PI world, with Solicitors Regulation Authority figures indicating that they had already captured a third of the market. A couple of the firms around the table were ABSs. "There were two main reasons: one was for joint ventures and the other one was the potential for people to progress within the business," said Simon Shaw of SGI. "It hasn't made a huge difference yet, to be fair."

But with a couple of claimant firms – industrial disease specialists Roberts Jackson and RTA firm Winns – taking external investment from private equity firms, do the solicitors think, "That could be us?" "Yes, but there are some downsides," he said. "Investors want their money back."

"I wonder if private equity really understands how this works," said Qamar Anwar. "As people looking from outside in, they do not quite get that you have to spend all this money to earn money."

"It is better the devil you know," reckoned Ian Pryer. "We have been through this dance a few times and you have no idea what happens beyond then. Lots of things can go wrong. They could pull the practice down. We had approaches from a couple of law firms and we had discussions with them. They have now gone under, and we would have gone under with them, so it makes you think, 'Do you really need that?' Unless you absolutely have to go down that route, there is a huge hesitation."

Collective benefit

The issues around sustainability of PI – despite nobody complaining about a lack of work – were a continual theme throughout the discussion. Graham Ford suggested that it might be difficult for multi-disciplinary firms not reliant on PI to maintain. "Marketing is expensive these days, especially given the cost of things like television and internet advertising. It is a question of where you spend your money, especially if you are a multi-disciplinary firm. It's not so much of a question if you are pure PI firm, and don't have pressure from other parts of the practice."

Route to market is, of course, a huge issue for PI firms and explains the success of the likes of First4Lawyers. In the wake of the LASPO reforms, some firms have tried to go it alone, leading to the unlikely situation that despite reduced fee income, the cost of internet advertising has never been higher. "There has got to be a time, probably in the next six months, where things are going to start to calm down," said Qamar Anwar. "It cannot be sustained."

Ian Pryer said his firm had found marketing itself independently was more costly than doing it via a collective. "We stepped out of any marketing for 18 months and thought, because of compliance and profitability concerns, 'Let us have a go ourselves'. It cost a fortune and takes a long time. You do not have that consistency of work that will come through from a very good marketing agency who are doing that and a lot more."

Andrew Simcott's experience was slightly different with a targeted clinical negligence campaign. "But it is smoke and mirrors," he said. "As soon as you walk in, it is rack rate plus 30%, so you are on a hiding before you start."

Qamar Anwar agreed that relying on agencies is a danger for those going it alone. "They will come in and sell you an idea, and it is only because we have done it from the grass roots up that we know what we want and we are very particular. With lots of law firms, we have heard of stories where someone invests millions of pounds in a new brand, TV ads and websites and then, within three months, they have blown it and not had many cases to show for it."

"With our collective, it is pretty much guaranteed: a constant supply of cases and a fair split. I think everyone would say that, over the last 12 months, it has been consistent in terms of the quality, split and volume of cases that come through. It is very hard to achieve that."

Operations like First4Lawyers also deliver a significant advantage through the vetting process, said Derrick Smethhurst. "We do a certain amount of marketing ourselves, and vetting enquiries can be a nightmare. When we get a case referred that has been vetted already, the lawyer can make a decision and tell the fee-earner, 'Get it converted and signed up'. That is so helpful in terms of the time you put into a case."

In that context, there was widespread agreement that direct call transfer is the best way of ensuring a conversion. "It gives you the best chance of converting the client because you've got them on the phone, but there is still a skill in managing that transition," said Qamar Anwar. "We are still working our way through it. We found that a few of our firms were not getting to the calls quickly enough. We were ready to pass the call over, but it was taking forever. We looked at the stats, and we had been waiting to pass over to some clients for five minutes, which cannot make for a good client journey."

Optimistic outlook

Overall the solicitors seemed to retain a sense of optimism, despite all the blows they have suffered in recent years. It requires planning, process and professionalism, supported by intelligent marketing, but PI remains an area of law where the good lawyers can continue to thrive and do the best by their clients.



Ian Pryer (l) and Barry Gray

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