

M&A COMPASS

Q2 2017



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EXECUTIVE SUMMARY

Q2 2017

2016 was the best year for deal volumes in the UK since 2007. This survey highlights that sentiment of both professionals and corporates remains strong, but with varying expectations for M&A activity across the Midlands and the UK.

Corporates and professionals based in the West Midlands proved to be the most enthusiastic about future M&A activity (over the next 3 months) whilst respondents based in the East Midlands appeared to have lower expectations.

Professionals were more enthusiastic about the future of M&A market compared to business owners who remain uncertain. This is probably reflective of the professional community being at the coalface and seeing the market first hand.

The results from our survey show the strength of the Midlands M&A market, particularly when compared to the rest of the UK. This is certainly being experienced by Smith Cooper Corporate Finance given the volume of transactions we are currently experiencing.

There remains a small proportion of professionals and corporates who are less enthusiastic about the future and expect headwinds for the M&A market in the months to come.

Overall the survey results demonstrate that the clear majority of respondents expect 2017 to be another great year for M&A in the Midlands.



Darren Hodson,
Corporate Finance Partner

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Q1 | Where are you based?

26%
East Midlands

58%
West Midlands

16%
Rest of the UK



Q2 | Are you a private shareholder/ corporate or a M&A professional?

The vast majority of responses were gathered from M&A professionals, whilst a third of responses were from private shareholders/corporates.



Q3 | Do you think M&A activity in the UK will increase or decrease in the next 3 months?

Participants expressed enthusiasm for the level of M&A activity in the coming months, with almost 80% expecting activity to either maintain current levels or to increase activity.

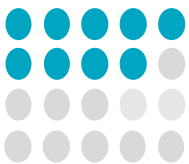
20% of respondents were expecting a decline in activity or were uncertain on the future.

Upon closer inspection of regional demographics, it is clear that respondents from the East Midlands and Rest of the UK were marginally more conservative in their expectations, than the more optimistic West Midlands. This highlights that regional activity is important in assessing the overall M&A market.

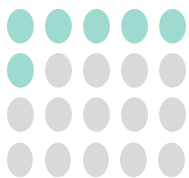
Further analysis shows that, broadly, both professionals and owner managers agree in equal proportions that M&A activity will increase. However, owner managers were much more uncertain on the future than professionals with 18% of owner managers unsure on the future state of M&A activity. This could reflect continued uncertainty in the economy at a corporate level, whilst most M&A professionals will know their current pipeline levels.

Figure 1 - Total results split by region

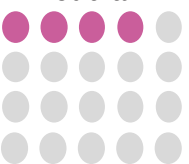
East Midlands*



43% said that activity would increase

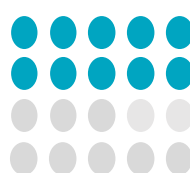


29% said that activity would be neutral

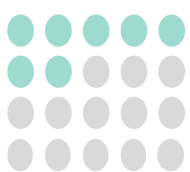


21% said that activity would decline

West Midlands*



47% said that activity would increase

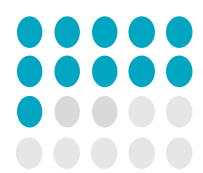


34% said that activity would be neutral

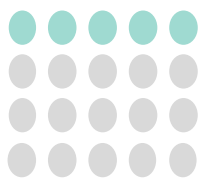


9% said that activity would decline

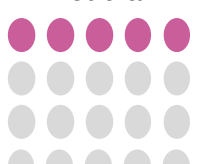
Rest of the UK



56% said that activity would increase



22% said that activity would be neutral

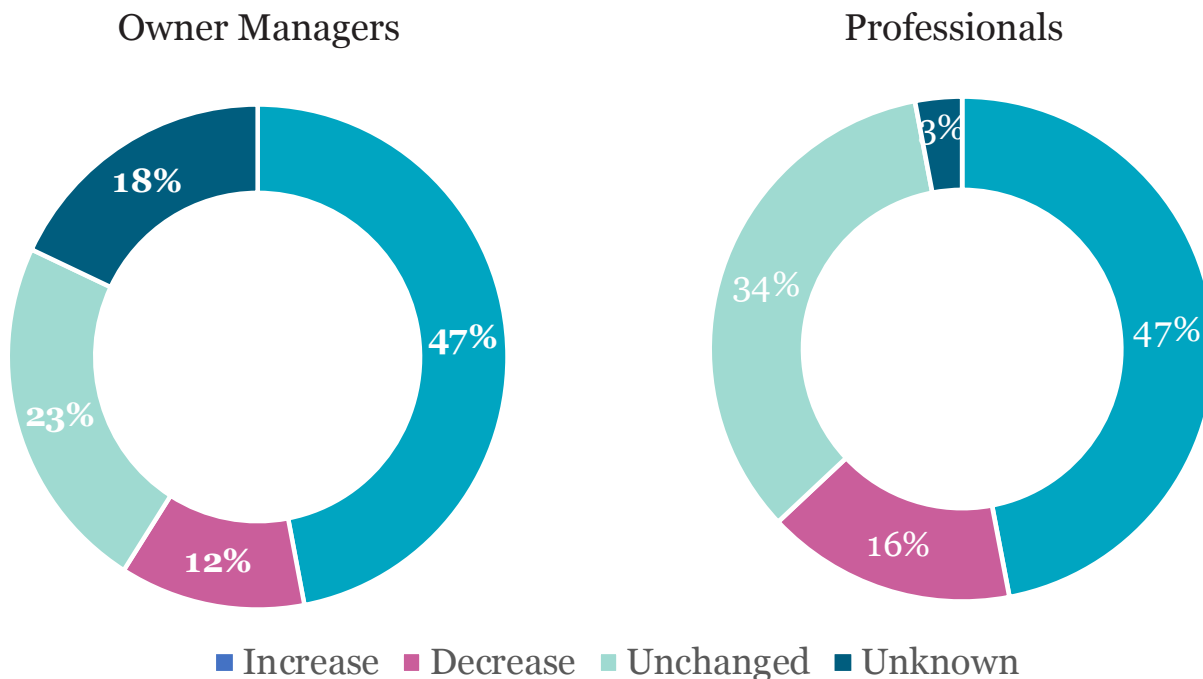


22% said that activity would decline

*Excludes data from respondents who stated they did not know

Figure 2 - Total result split by type of respondent

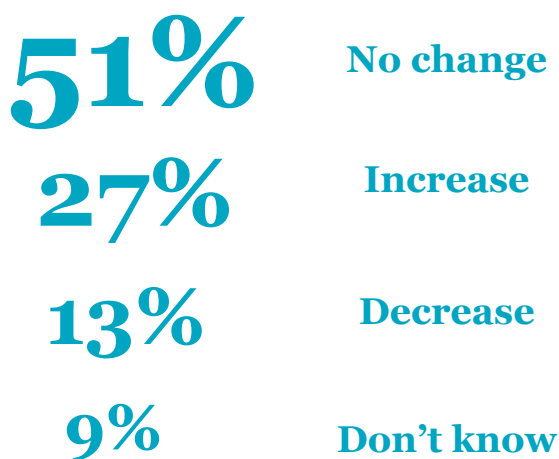
Figure 2 below highlights that overall the majority of respondents expect M&A activity to increase or remain unchanged in the next 3 months.



Q4 | Do you think the availability of UK debt will increase or decrease in the next 3 months?

Participants remain generally positive about debt availability and stability over the coming months, with over 50% anticipating no change.

Specifically, however, M&A professionals from outside the West Midlands region are more pessimistic about the future availability of debt- expecting it to decrease in the next 3 months, whereas private companies are not expecting any change.

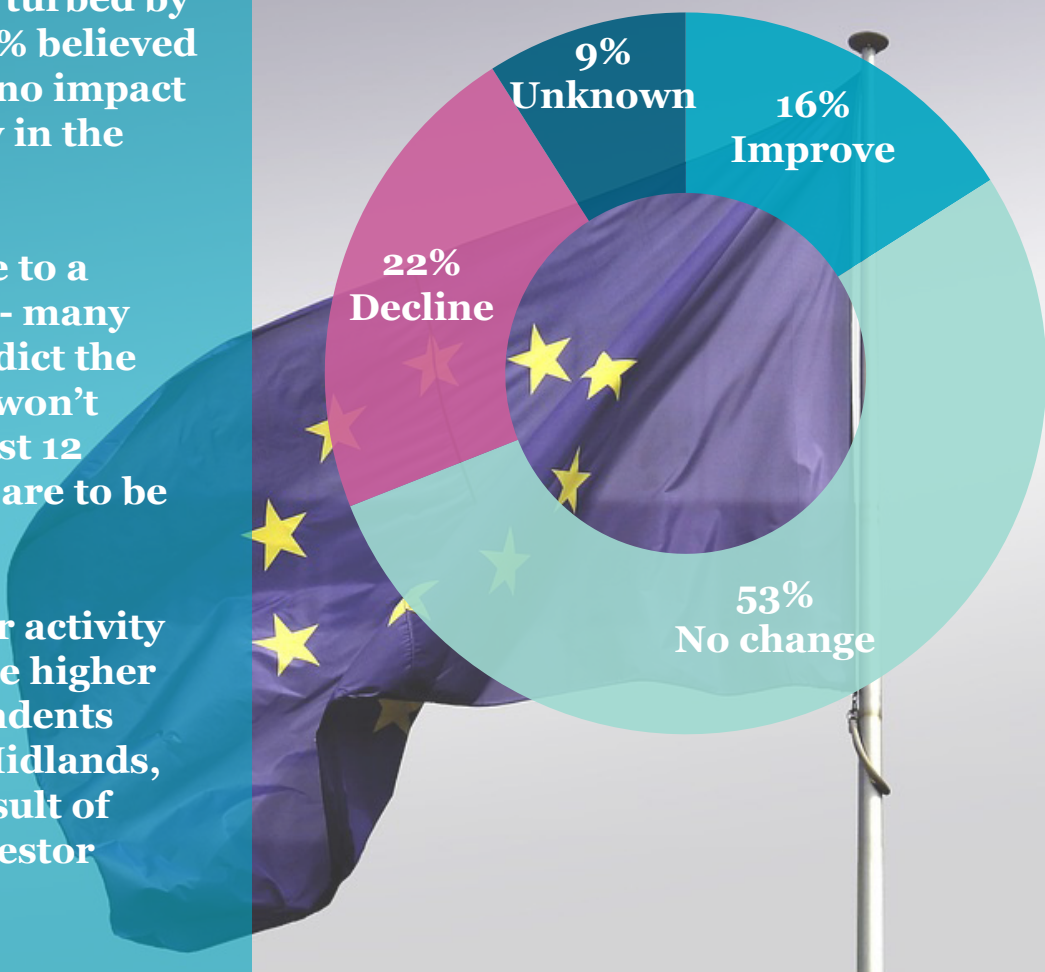


Q5 | Do you think Brexit will impact M&A in the next 3 months?

Participants remain relatively unperturbed by Brexit - over 50% believed there would be no impact on M&A activity in the next 3 months.

This may be due to a delayed impact - many economists predict the effect of Brexit won't be felt for at least 12 months (if they are to be believed!).

Expectations for activity to decrease were higher amongst respondents from the East Midlands, possibly as a result of depreciated investor confidence.



Q6 | Which current legal compliance process frustrates you and why?

Participants detailed a catalogue of legal compliance processes causing frustration, with the most common being Anti Money Laundering/ 'know your client' regulations, the Bribery Act and PSC disclosures (People with Significant Control).

Onerous HR regulations entailing immoderate procedures and excessive paperwork relating to legal compliance processes were also noted. Customer Regulations, Registering of Beneficial Ownership, Releasing of Funds and Broker Dealer rules were examples provided of exceptionally frustrating processes to complete due to excessive time consumption and seemingly needless formalities involved.



Chris Reed is a corporate partner and practising solicitor at the UK's first listed law firm. He acts for large companies (both based in the UK and overseas), in-house counsel, institutions and individuals who own, manage or invest in businesses. Chris specialises in acquisitions and disposals with a focus on private equity transactions and shareholder reorganisations.

He has reviewed the survey results and provided two areas of commentary on the results to the legal survey.

NDAs: what's the point?

A number of respondents to Smith Cooper's survey highlighted their lack of faith in non-disclosure agreements (NDAs). In particular, there was scepticism about the enforceability of these agreements.

NDAs are seen in almost every corporate transaction Gateley advises upon and we would not advise any seller to enter into negotiations about a potential deal without one.

Contrary to some of the views expressed in the survey, NDAs are examined very carefully by the Courts and the value of confidential information – whether that be a data base of customers or pricing information – is recognised. In fact, in a recent leading judgment which concerned a management buy in, the Court went out of its way to find that damages for breaching the NDA may not simply be assessed by reference to the financial loss suffered by the innocent party but may also be calculated by reference to the benefit obtained by the receiving party.

The key areas to consider in any well prepared NDA are as follows.

- Are the right parties listed? IE does the NDA cover the receiving party's whole group?
- Are the signatories of substance?
- Is the NDA backed by sufficient consideration so as to make it legally binding?
- Does the NDA cover non-disclosure and non-use?
- Does the NDA have an appropriate term?
- Should the NDA contain non-solicitation covenants?
- Is an indemnity appropriate?

The disclosing party will then need to think about how and when its confidential information is disclosed and to work with its advisers to ensure that any transaction process properly protects their clients.”

**Chris Reed
Partner, Gateley Plc**

Coping with compliance

“Legal compliance is never likely to be popular with business owners or professionals who put together corporate transactions.

Smith Cooper’s survey has highlighted three common areas of frustration being Anti Money Laundering/ ‘Know your client’ regulations, PSC disclosures and Bribery Act compliant corporate hospitality.

Dealing with compliance probably should start with your mind set: we do business in an internationally respected legal environment which provides as good a certainty of process and outcome as anywhere in the world. This environment has always evolved and will continue to do so. Compliance is part of this and is not something to fear, especially if you’re put in place procedures to remain on top of the compliance formalities and deadlines.

The know your client regulations are often differently interpreted by banks, lenders and professionals and it is the inconsistency in approach which causes confusion to prospective clients. However, the basic concept behind these requests is reasonable and any person who is conducting his business lawfully should have nothing to fear from disclosure of his personal details and status. Organisation is often the key – particularly ahead of a corporate transaction - and you can ask your lawyers to prepare packs of appropriately certified documentation to allow you to satisfy most third party concerns.

The so-called PSC (People with Significant Control) regime has been in force since April 2016 and has caused much additional work for company secretaries and directors alike. The premise behind the regulations is to encourage greater transparency over the ownership and control of UK companies for the benefit of third parties and government bodies. It is important that companies now comply with their disclosure obligations under the PSC regime and that the information is filed with Companies House and kept up to date. Failure to comply carries a criminal sanction. Gateley advises a large number of clients on the PSC register and general company secretarial compliance for modest fixed fees.

The Bribery Act 2010 marked a step change in UK compliance and it is a complicated area. Many businesses have sought external support and in our experience have made positive steps to adopt policies which prohibit bribery and similar behaviours. Where improvement can be made is often around the procedures for ensuring consistent behaviour. Gateley offers a specific Bribery Act tool kit with detailed policies, flow charts and forms which we can tailor to the business in question. We also deal with the thorny question of when hospitality is lavish and potentially criminal and when it is legitimate.”

Chris Reed
Partner, Gateley Plc



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