

# SOLICITORS REGULATION AUTHORITY

Commissioned research into issues  
of disproportionality

July 2010

PEARN **KANDOLA**

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# INTRODUCTION FROM THE SRA

## INTRODUCTION FROM THE SRA

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Acting fairly, and valuing equality and diversity, are key principles of the Solicitors Regulation Authority.

Since 2004, the Law Society's monitoring of its regulatory activity showed that BME solicitors were over-represented in regulatory decisions and outcomes. Before the establishment of the SRA, the Law Society's regulatory arm commissioned an initial equality impact analysis (EIA) of its regulatory activities which suggested that there may be a number of factors that could be having an impact on the statistical disparity. These included size of practice and qualification route as possible factors resulting in the over-representation of BME solicitors in regulatory decisions.

In October 2007 the SRA commissioned Lord Ouseley to undertake an independent review into the issue of disproportionality. The review also included a comparative case audit of closed regulatory cases. The report of Lord Ouseley was published in July 2008 and can be found on our website: <http://www.sra.org.uk/sra/equality-diversity/reports.page>. The case audit findings showed that there was no disproportionality in the regulatory outcomes/sanctions applied by the SRA once a breach of the code of conduct was found. The review found that there may be disproportionality in the early decision making of the SRA and that this might be compounded by the possibility of bias in the intelligence and information being received by the SRA. The report also criticised the SRA for having failed to give sufficient priority to issues of equality and diversity.

In 2008, the SRA responded to the recommendations of the Ouseley report through the publication of its first E&D Strategy, having consulted equality groups in the profession. The strategy and its associated action plans provide the framework for progression and promotion of E&D across the SRA. The progress made since the publication of the strategy includes:

- Improved engagement with the key BME and wider equality practitioner groups. We have worked with the key BME practitioner groups in the development of new policies, and delivered workshops to help BME and other members of the profession to avoid regulatory problems.
- The completion and publication of 12 EIAs on key regulatory policy areas.
- Providing reasons for investigations unless there is a clear public interest case not to do so. This is being monitored and we have provided reasons in 82% of cases. This has benefited the wider profession by enabling solicitors to understand why the SRA is exercising its regulatory powers.
- Increasing the diversity of our adjudicators, who take high-level regulatory decisions: following a recruitment campaign, 29 % of our adjudicators are from a BME background, and 46 % are female.
- Embedding equality and diversity in the behaviours expected of SRA staff, and including equality and diversity in directorate objectives.

An External Implementation Group, chaired by Lord Ouseley, has been monitoring the SRA's progress, and Lord Ouseley published his first progress report in June 2009 (see

<http://www.sra.org.uk/sra/equality-diversity/reports.page>). The SRA E&D Board group, established in January 2008 and chaired by the current SRA Board chair, provides Board-level oversight on the performance of the SRA on Equality and Diversity.

The SRA were keen to understand the reasons for the disproportionate involvement of some equality groups in some of the SRA's processes, as neither the initial EIA nor Lord Ouseley's report were able to establish the causes. In October 2009, the SRA commissioned Pearn Kandola to undertake further research.

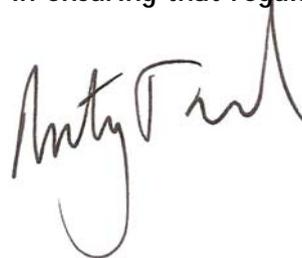
Pearn Kandola's first report, describing how other regulators are tackling issues of disproportionality, was published in December 2009 and can be found on our website: [www.sra.org.uk/sra/equality-diversity/reports.page](http://www.sra.org.uk/sra/equality-diversity/reports.page). That report concluded that, although disproportionality existed in many regulatory systems, very few regulators had done detailed work in the area.

The SRA welcomes this report, which gives us a much more detailed view of where disproportionality is arising, and where we should be directing our efforts. We accept the recommendations in the report, and have developed an action plan in response. We will be having a wider discussion about the issues raised in the report with the Legal Services Board, the Law Society, equality groups, and the Equality and Human Rights Commission.

We will use the findings from this report to improve our processes, and to inform our new outcome focused regulatory approach. We will continue to engage with a wide range of groups in the profession and outside, who can support us in ensuring that regulation is fair and transparent.



CHARLES PLANT  
CHAIR OF THE SRA BOARD



ANTONY TOWNSEND  
CHIEF EXECUTIVE, SRA



# INTRODUCTION FROM PEARN KANDOLA

## INTRODUCTION FROM PEARN KANDOLA

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The Solicitors Regulation Authority (SRA) commissioned Pearn Kandola, a group of business psychologists who specialise in the area of diversity, to research the disproportionality of regulatory actions taken against BME solicitors, as reported by Lord Ouseley in 2008.

Pearn Kandola's research is being undertaken in two phases. The first phase included a literature review of issues relating to disproportionality amongst regulatory practices, together with interviews with other regulators about their experiences of identifying and addressing disproportionality within their regulatory processes. The findings of this first stage, which highlighted a lack of action amongst the vast majority of regulatory bodies in identifying and addressing issues of disproportionality, were compiled in the report "Disproportionality in Regulation"<sup>1</sup>.

The final stage of this research concerns the statistical analysis of SRA data in order to identify which factors contribute towards a solicitor being more likely to have a case raised against them, as well as investigating whether the SRA processes themselves contribute to disproportionate experiences for BME solicitors. An interim report was published earlier in 2010 based on an initial data cut from the first part of the data analysis.

This current report completes the data analysis and is a comprehensive investigation into the factors that contribute towards a solicitor having a case raised against them, as well as whether the outcomes vary by ethnicity for the way in which the case is resolved. The data available from the SRA is very complex in terms of how it is collected and stored. This complexity resulted in two further different datasets being required in order for us to answer the research questions and this level of complexity has implications for how the SRA can monitor improvements in disproportionality issues going forward, as outlined in the recommendations section. We would like to take this opportunity to pass our sincere thanks to the Management Information team within the SRA, as well as the Diversity and Inclusion team, for their perseverance in obtaining the data and explaining its coding and meaning.

The recommendations included in this report are based on the outcomes of our statistical analyses and may well relate to activities that are already underway within the SRA. Indeed, it is clear that the SRA is focused on addressing diversity issues; ensuring equality

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<sup>1</sup> Disproportionality in Regulation, Pearn Kandola, December 2009, [www.sra.org.uk/sra/equality-diversity/reports.page](http://www.sra.org.uk/sra/equality-diversity/reports.page)

and diversity is embedded in its work is a strong theme in the organisation's Strategic Plan for 2009-2012 and a core aspect of the SRA's Equality and Diversity Strategy which includes ensuring they are a fair, non-discriminatory and transparent regulator.

# EXECUTIVE SUMMARY

## EXECUTIVE SUMMARY

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Previous research conducted by the SRA, followed by a review undertaken by Lord Ouseley, has identified potential disproportionality in the regulatory actions taken by the SRA against BME solicitors when compared to white solicitors. Pearn Kandola, a firm of business psychologists were asked to explore the underlying reasons for disproportionality against Black and Minority Ethnic (BME) solicitors. The first report produced by Pearn Kandola was based on a review of the activity amongst other regulators regarding disproportionality issues. The result of this review, as outlined in our first report, was to highlight the limited activity currently underway among many UK-based regulators regarding issues of disproportionality. Many regulators are not monitoring to identify issues of disproportionality in their work, and of those that are, very few are undertaking any action to address it. Those regulators who are undertaking more work in this area include the General Medical Council, the Nursing and Midwifery Council, and now the SRA.

In the final stage of our work, the SRA asked us to explore the issues of disproportionality they had previously identified to a greater depth. The results of this stage of our research are outlined in this current report.

In this stage of our research, we explored whether there was a disproportionate number of cases<sup>2</sup> raised against BME solicitors by sources external to the SRA. Key findings from our analysis were:

- No disproportionality was found when looking at *all* solicitors on the Roll<sup>3</sup>. When we restricted our analysis to solicitors admitted in the last ten years, we did identify disproportionality against BME solicitors, in line with the Ouseley report. This is because the demographics of the solicitor population have changed significantly in the past 50 plus years.
- This disproportionality in the number of cases raised means that by default, the SRA need to respond to a disproportionately high number of cases against BME solicitors.
- The factors that are associated with solicitors having a case raised against them are whether the solicitor was a trainee at the time the case was raised; a shorter number of years practising, and over time having a large number of practising certificates<sup>4</sup>. These findings suggest a U-shaped relationship in that solicitors are more likely to have cases raised against them at the start of their career and after they have been practising for a long period of time.

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<sup>2</sup> A glossary of terms can be found at Appendix 1. Technical terms will appear in the glossary and will be marked with an asterisk (\*) when first mentioned in this report.

<sup>3</sup> On the Roll - this refers to the records that the SRA is required (under the Solicitors Act 1974) to maintain of all qualified solicitors.

<sup>4</sup> In order for a solicitor to practise in England and Wales, they must hold a current and valid practising certificate issued by the regulator.

- It is important to note that a solicitor's ethnicity does not directly predict\* whether a case is more likely to be raised. However, as outlined above, BME solicitors do have a disproportionate number of cases raised against them. This research identified three factors that *indirectly\** result in BME solicitors having a disproportionate number of cases raised against them.
  - Firstly, as outlined above, those who have been admitted to the Roll for fewer years are more likely to have a case raised against them, and BME solicitors are more likely to have been admitted to the Roll for fewer years.
  - Secondly, solicitors working in small firms are more likely to have a case raised against them, and BME solicitors are over-represented in small firms.
  - Thirdly, solicitors working in BME-owned firms are more likely to have a case raised against them. Again, BME solicitors are over-represented in BME-owned firms.
- A disproportionate number of cases are raised against solicitors who first qualified in specific jurisdictions. Those who qualified in Nigeria, India, Pakistan, Bangladesh and The Bar of England and Wales are all disproportionately represented in those who have cases raised against them. (NB barristers who qualified in England and Wales take the Qualified Lawyers Transfer Test (QLTT) route to qualification to qualify as solicitors.) Solicitors who first qualified in New York, America (other) and Europe are less likely to have cases raised against them than would normally be expected.
- BME solicitors have a disproportionate number of cases raised against them from external sources for Initial assessments (initial assessments are created for all allegations that are received by the SRA's Risk Assessment and Designation Centre), Conduct cases raised by the LCS (allegations of misconduct passed to the SRA by the Legal Complaints Service), and Regulatory cases (allegations of breaches of the practising regulations and applications relating to restrictions on practice). Conduct cases (allegations of misconduct passed to the SRA by any source other than the Legal Complaints Service) is the only case type where there is no disproportionality in the number of cases raised; however, BME solicitors are disproportionately represented in Conduct cases in cases where they have multiple cases raised against them. BME solicitors are also over-represented in the other three types of cases (i.e. Initial assessment, Conduct case raised by the LCS, Regulatory Cases) for solicitors who have multiple cases raised against them.

In the next part of our analysis, we explored whether the outcomes of the SRA processes reduced, maintained, or compounded the level of disproportionality experienced by BME solicitors as outlined above. Key findings from our analysis were:

- Initial assessments - SRA outcomes at this stage compound the disproportionality experienced by BME solicitors as fewer BME solicitors have their case not upheld and a greater number of BME solicitors have their case referred to the Solicitors Disciplinary Tribunal (SDT)\*.
- Conduct cases - SRA outcomes reduce the disproportionality experienced by BME solicitors by recording no action for a disproportionate number of the cases raised against BME solicitors; however the SRA outcomes also add to the disproportionality by

fewer BME solicitors having their case not upheld and a greater number of BME solicitors having their case referred to the SDT.

- Conduct cases referred by the LCS - SRA outcomes reduce disproportionality as fewer cases are upheld for BME solicitors; however again, a greater number of cases against BME solicitors are referred to the SDT.
- Breaches of regulation - SRA outcomes result in reduced disproportionality as a greater number of cases result in no action, and a proportionate number are upheld, not upheld, or referred to the SDT.
- Practising Certificate Renewals - SRA outcomes add to the disproportionality as BME solicitors are more likely to have restrictions placed on their practising certificate.
- Solicitors' Accounts and practising restrictions - SRA outcomes add to the disproportionality as BME solicitors are more likely to have their application rejected.

The report also includes some recommendations for the SRA. These cover a range of issues, including the need for:

- the SRA to make it clear that it is being asked to respond to a disproportionate number of cases raised against BME solicitors
- a review of the support available to solicitors in training and those who have recently started their career
- the SRA to introduce a more sophisticated method of collecting data in order to make it easier to identify disproportionality in their regulatory activities, as well as the progress made in addressing these issues; this additional data collection process should include a more consistent approach to collecting data on the people who are raising cases against solicitors
- the SRA to conduct a detailed review of some of its decision - making processes, such as those relating to PC renewals<sup>5\*</sup>.

There are also two general recommendations for the SRA, concerning the importance of collecting and storing data in such a way that makes this analysis easier for the SRA in future in order to track progress, as well as starting to collect more detailed information about those who are raising cases against solicitors.

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<sup>5</sup> See terms in the glossary

# SECTION 1

# RECOMMENDATIONS

## RECOMMENDATIONS

The following table provides an outline of recommendations, each of which address a key finding within this report.

Relevant report section	Recommendation
6.1	1. It is important that solicitors are made aware that the SRA have a disproportionate number of cases raised against BME solicitors. Currently, some forms of reporting suggest that the disproportionality experienced by BME solicitors is purely due to the SRA; the results of this research indicate that this clearly is not the case.
6.1	2. The SRA do not currently systematically collect and record data concerning the individual raising the case, nor, if relevant, the organisation they represent. This means that it is currently not possible to identify which demographic groups or professional bodies are most likely to be disproportionate in their referrals. Collecting this referral source data and attaching it to each case raised will equip the SRA with significantly more helpful information in addressing the disproportionality that is coming in through the organisation's front door.
6.1	3. Providing additional guidelines to help people more accurately decide what constitutes a fair complaint will help to address the disproportionality of cases being raised to the SRA.
6.2	4. A review of the support and supervision available to trainees and solicitors who are new into their careers is required. Are employing firms providing the correct support during training and early-career supervision, for example? What is the SRA doing to support this work?
6.2	5. Linked to this recommendation, a review is required of the processes in place for the SRA to monitor the support that firms provide to their trainees and solicitors.
6.2	6. A review is also required of how effectively the SRA controls the ongoing accreditation of solicitors, in particular in ensuring that the continuing professional development of solicitors is effective.
6.2	7. It is important to note that QLTT does not directly predict whether a solicitor is likely to have a case raised against them. However, the results demonstrate that more cases than would be expected

	<p>are raised against solicitors who qualified through some QLTT processes. The SRA is already addressing this through its review of the QLTT processes and it is recommended that data is regularly monitored to ensure the SRA identifies any issues that may arise in the QLTT process.</p>
6.4	<p>8. It is likely that the SRA would benefit from working in partnership with the LCS to improve their decision-making processes in terms of raising cases to the SRA. Reviewing these processes and providing guidelines for use by the LCS would be particularly helpful given that BME solicitors are twice as likely to have a conduct case referred by the LCS raised against them, and that in turn these cases are more likely to not be upheld by the SRA.</p>
6.5 & 6.6	<p>9. A review of the decision-making processes at the first stage of case-handling is required. Initial assessment outcomes result in a disproportionate number of cases being taken forward for BME solicitors as fewer of these cases are not upheld. This suggests that either these cases are more complex or there is a more conservative, risk-averse decision being made in these situations. If the processes are correct, then how closely these processes are followed in practice should also be reviewed.</p>
6.5 & 6.6	<p>10. A review is required of the decision-making processes used when responding to conduct cases as fewer BME solicitors have their case not upheld and more are referred to the SDT. Again, if the processes are correct, then how closely these processes are followed in practice should also be reviewed.</p>
6.5 & 6.6	<p>11. Given that the vast majority of cases referred to, and heard by, the SDT result in some form of punitive action, it is unlikely to be fruitful to review the cases referred to ensure that they are correctly referred. However, it is recommended that a sample of those who are not referred to the SDT are also reviewed, as the consistency with which BME solicitors are disproportionately referred, but white solicitors are not, is noteworthy. A review of the training given to SRA decision makers regarding when they refer cases for decision at a more senior level is required, in order to ensure that these referrals are made when required, and not simply due to a lack of confidence, or the existence of bias, for example.</p>
6.5 & 2.6	<p>12. Given that PC renewals is the one area where ethnicity, amongst other demographics, directly predicts whether a solicitor is likely to have any restrictions placed on their PC, it is critical that the decision-making processes are reviewed for this case type. This review should include step-by-step written guidelines available to</p>

	SRA employees, but also a review of how closely these are followed in practice.
6.5 & 6.6	13. Similarly, a review of the decision-making process should also be undertaken for cases dealing with solicitors' accounts and practising restrictions. This review should include step-by-step written guidelines available to SRA employees, but also a review of how closely these are followed in practice.
6.5 & 6.6	14. The guidelines concerning referral of more cases to Committee / Panel for decision should be reviewed, as it is clear that BME solicitors are twice as likely as would normally be expected to have their case decided at the more senior level of Committee / Panel.
General	15. If not already done, the demographic details of the solicitor involved should be removed from all case documentation, and ideally the name replaced with an identification number, in order to reduce the impact of any unconscious bias.
General	16. One of the factors that has made identifying the sources of disproportionality so complex is the way in which data is collected and stored. Currently, for example, it is difficult to automatically check for disproportionality issues as some of the data required for in-depth analysis has to be manually retrieved. If the SRA is going to take a proactive approach in monitoring the identified disproportionality with a view to ensuring that it is declining, introducing simpler systems that allow the data to be captured in one place will be critical.

Many of the above recommendations concern reviewing the decision-making processes. That is because whilst this research has been able to pin-point the areas where disproportionality occurs, it does not and cannot provide ultimate clarity as to why that disproportionality occurs. It may be that the decision-making guidelines and processes result in these disproportionate outcomes without due reason. This could be the case, for example, if part of the decision-making process is to increase the risk level attributed to cases raised about solicitors employed in small firms, as it is clear that BME solicitors are over-represented in small firms. If the processes in place are correct and transparent, it may alternatively be the way in which they are applied, indicating a need for improved training of staff, and awareness of the role of unconscious bias during key decision making stages. This is reflective of one of Lord Ouseley's recommendations concerning the need to embed equality and diversity within SRA's culture and ethos, including SRA functions.

## **SECTION 2**

# **RESEARCH QUESTIONS AND METHODOLOGY**

## RESEARCH QUESTIONS AND METHODOLOGY

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Six core research questions were established before the statistical analysis was undertaken. These six questions are:

1. Of those with a current practising certificate, have a disproportionate number of cases been raised against BME solicitors?
2. If so, what factors contribute to this disproportionality (for example, whether the firm is minority owned, the number and type of previous cases they have had raised against them, gender, age, UK qualified / foreign qualified, size of organisation at time case was raised).
3. Of the cases closed between 2007 and 2009, have a disproportionate number of cases been raised against BME solicitors?
4. Are a disproportionate number of cases raised against BME solicitors according to the case type?
5. Is there disproportionality in the regulatory decisions made by the SRA? (For example, are BME solicitors more likely to have cases referred for decisions to higher levels of authority?)
6. Is there disproportionality in the final outcome for BME solicitors?

### Methodology

Due to the manner in which data is recorded on the SRA database, it was necessary to request datasets in different formats to answer the research questions. The SRA provided Pearn Kandola with two datasets described below:

#### Dataset 1

Dataset 1 is a database comprising all admitted solicitors. For each solicitor it lists demographic information as well as all the cases raised and their associated final outcomes. This dataset was used to answer questions one and two. The limitation of this dataset and hence the need for an additional data source is that this dataset lists all information for each solicitor. If a solicitor has had more than one case type raised against them, which is far from uncommon, it would be impossible to tell how a particular case type raised was resolved.

The SRA provided Pearn Kandola with dataset 1 broken into four CSV files, which comprised regulatory data for over 200,000 admitted solicitors. The data was transferred into SPSS, a statistical software programme, which allows for sophisticated inferential statistical analysis to be performed. The data was checked to ensure the final database was an exact replica of the four individual databases provided.

This data was used for the analysis in the first report. It is important to note that this dataset comprises data from all solicitors on the SRA's database, regardless of whether or not they have a current practising certificate. The data therefore also includes information, for example, about retired solicitors. Following on from the first report it

was decided to remove all solicitors without a current practising certificate, resulting in a dataset with just over 120,000 solicitors.

The resultant database comprises the following information:

- Demographic details (including ethnicity, gender, and country of qualification\*)
- Types of cases\* (details of all types of cases raised against solicitors)
- Grouped Case reasons\* (case reasons grouped)
- Grouped Final Outcomes\* (details of what happened in each case)
- The level of decision maker\* (details of who made the decision in each case)

The database is complex and as a result much preliminary work has been undertaken to explore the dataset and to formulate an approach to analyse it appropriately.

The first analytical step was to understand the demographic composition of solicitors in the dataset. The table below shows the ethnicity of solicitors broken down by gender and country of qualification.

**Table 1: Demographic Breakdown of SRA Database**

Ethnicity		Gender		Country of Qualification	
		Female	Male	UK	Overseas
White	N	41,886	51,886	90,505	3,267
	%	44.7	55.3	96.5	3.5
BME	N	7,124	5,465	11,230	1,359
	%	56.6	43.4	89.2	10.8
Total	N	49,010	57,351	101,735	4,626
	%	46.1	53.9	95.7	4.3

Just over 11% of solicitors are from a BME background and 88% are white. Just over 12% of people have not shared their demographic information with the SRA. These solicitors are not included in Table 1 above or in further analysis.

Solicitors admitted to the Roll decades ago are more likely to be white than those admitted in more recent times. As dataset 1 records all types of cases ever recorded against a solicitor, the dataset is likely to artificially inflate the proportion of cases raised against white solicitors. Due to this it was decided to analyse a subset of solicitors who were admitted in the last ten years (Table 2). This resulted in a subset of just over 52,000 solicitors. In addition, more recent data held by the SRA is likely to be more accurate than data collected a long time ago. This ten year sample was chosen as it ensured that the data was recent enough that the subsequent findings are valid for current practices in the SRA and because it is representative of the wider, current solicitor population on the Roll.

**Table 2: Demographic Breakdown of Solicitors admitted since 1999**

Ethnicity		Gender		Country of Qualification	
		Female	Male	UK	Overseas
White	N	25,043	18,245	40,524	2,764
	%	57.9	42.1	93.6	6.4
BME	N	5,528	3,613	7,974	1,167
	%	60.5	39.5	87.2	12.8
Total	N	30,571	21,858	48,498	3,931
	%	58.3	41.7	92.5	7.5

Of solicitors admitted since 1999, 17% are from a BME group and 83% are white. This shows that a far higher proportion of more recently admitted solicitors are from a BME group than when compared to the population of all admitted solicitors. This suggests that BME solicitors are entering the profession at a higher rate than pre-1999.

## Dataset 2

This second dataset differs from the dataset 1 in two important ways. Firstly the unit of analysis in the dataset is the 'case' rather than the 'solicitor'. Each case in the dataset has one case type, one process outcome (point of decision making within SRA) and one final outcome (final result of the case). The cases also have the demographic information of the solicitors involved attached to them. Data in this format allowed for the outcomes of the cases to be compared, enabling research questions 3 to 6 to be answered.

Secondly, the data was restricted to cases closed in the three year period 2007-2009. Dataset 1 was problematic because it contained all cases raised against solicitors during their careers. As noted above, the ethnic profile of solicitors who have been admitted longer is different to the profile of more recently admitted solicitors, in that the proportion of BME solicitors has increased. If a solicitor has been practising for many years, there is a greater chance that they will have a case raised against them than one who has been practising for a couple of years. Restricting the data to a three year period gets over this issue and allowed research questions 3 to 4 to be answered.

A first step in using this database was to explore the demographic information of the solicitors attached to cases. A summary follows.

**Table 3: Ethnicity of Solicitors cited in cases closed 2007-2009**

Case type		Ethnicity	
		White	BME
Initial assessment*	N	5,273	1,657
	%	76.1	23.9
Conduct*	N	8,465	1,729
	%	83.0	17.0
Conduct case referred by the LCS*	N	1,311	540
	%	70.8	29.2
Practising Certificate renewals*	N	2,670	786
	%	77.3	22.7
Solicitors' Accounts and practising restrictions*	N	2,790	958
	%	74.4	25.6
Breaches of regulation*	N	6,222	1,819
	%	77.4	22.6
Total	N	26,731	7,489
	%	78.1	21.9

Table 3 shows that nearly 22% of cases closed during the time period involved a solicitor from a BME group. Where a case involved more than one solicitor this case would be re-counted in the above figures, for each solicitor the case referred to.

**Table 4: Demographic Breakdown of Solicitors cited in cases closed 2007-2009**

Ethnicity		Gender		Country of Qualification	
		Female	Male	UK	Overseas
White	N	6,189	20,542	25,975	756
	%	23.2	76.8	97.2	2.8
BME	N	2,418	5,071	6,376	1,113
	%	32.3	67.7	85.1	14.9
Total	N	8,607	25,613	32,351	1,869
	%	25.2	74.8	94.5	5.5

Table 4 above details the gender and country of qualification of solicitors cited in cases closed between 2007-2009. The table shows that whilst just over 25% of solicitors are female, of all BME solicitors just over 32% are female. As would be expected, a greater proportion of overseas solicitors are from a BME group than UK qualified solicitors.

### **Research Question 1 - Of those with a current practising certificate, have a disproportionate number of cases been raised against BME solicitors?**

To answer this question two chi-square tests were performed on dataset 1. A chi-square test is used to determine the probability of obtaining the observed results by chance. The two variables of interest were the ethnicity of the solicitor and whether the solicitor had had a case raised against them. The test takes into account the proportion of BME and white solicitors and makes a prediction of the number of cases raised against each group. Where the number of cases deviates from this prediction the test will tell you if this deviation is significant or not. The first of the two chi-square tests was conducted on all solicitors in dataset 1; the second chi-square test was conducted on all solicitors admitted from 1999 onwards (see Table 2) in order to correct for the skew of ethnicity and length of time on the Roll. The second test was conducted on data that were more stable and consistent in terms of solicitor ethnicity.

### **Research Question 2 - What factors contribute to disproportionality against BME solicitors?**

A binomial logistic regression was conducted on dataset 1 to answer this question. Logistic regression is used to predict a dependent variable (has a case been raised against the solicitor?) on the basis of continuous and/or categorical independents (e.g. ethnicity, age, gender). The analysis determines the variance in the dependent variable explained by the predictor variables.

Two different binomial logistic regressions were run to explore what factors might predict whether a solicitor has a case raised against them or not, with the hypothesis that given there is disproportionality, then ethnicity would be one of the predictors.

For the first model we explored the following variables:

- Number of practising certificates (PCs) held
- BME status
- Whether a solicitor was qualified via the Qualified Lawyers Transfer Test (QLTT)
- Number of years practising before first case was raised
- Whether they were a trainee at the time of the first case or not
- Size of firm (based on number of partners)
- Whether they had a qualifying law degree
- Whether they had a conversion qualification.

For the second model we explored the following variables:

- Number of practising certificates held
- Number of years practising before first case was raised
- Whether they were a trainee at the time of the first case or not
- Size of firm (based on number of partners)
- Whether they had a qualifying law degree

- Whether they had a conversion qualification
- Whether they qualified via QLTT and were of BME status.

**Research Questions 3 & 4 - Of the cases closed between 2007 and 2009, have a disproportionate number of cases been raised against BME solicitors & Are a disproportionate number of cases raised against BME solicitors according to the case type?**

These questions were answered using dataset 2, again using the chi-square test technique. In total, five tests were conducted to answer these questions. In each case the analysis was used to determine whether BME solicitors had a disproportionate number of the following types of cases raised:

- All types of cases
- Initial assessment types of cases
- Conduct case referred by the LCS
- Conduct types of cases
- Regulatory types of cases

The chi-square test discerns whether observed results (in this case, has a case been raised) differ from expected results. The expected results were calculated using the ethnicity proportions from solicitors who had been admitted from 1999-2009. These figures were used in preference to the demographic breakdown of the SRA database as it was felt it would be a more stringent test of disproportionality.

**Research Question 5 - Is there disproportionality in the regulatory decisions made by the SRA?**

To investigate the impact of the level of the SRA decision maker, a series of chi-square tests were conducted on dataset 2. For each case type (Conduct and Conduct cases referred by the LCS) a chi-square test was performed to see whether the level of decision maker (that is who made the final decision on the case) differed according to ethnicity of the solicitor. Chi-square tests were not conducted on initial assessments made by the SRA as these initial assessments have no designated decision maker.

Regulatory types of cases were broken down into three sub-types of cases (Practising Certificate renewals, Solicitors' Accounts and practising restrictions and Breaches of regulation). This is because each of these sub-types of cases has different final outcomes to each other and would have made answering question six impossible.

For each case type, the analysis computes the expected outcomes based on the proportion of solicitors in each ethnic group. These expected results are compared with the observed results and significant differences identified.

## **Research Question 6 - Is there disproportionality in the final outcome for BME solicitors?**

Very similar chi-square tests to question five were conducted to investigate disproportionality in final outcomes. In total six chi-square tests were conducted for each of the following types of cases:

- Initial assessments
- Conduct
- Conduct cases referred by the LCS
- Practising Certificate renewals
- Solicitors' Accounts and practising restrictions
- Breaches of regulation

### **Logistic Regression**

As in research question two, logistic regression was used to explore the underlying reasons for disproportionality, in this case disproportionality in the group final outcome of each case.

A logistic regression analysis was conducted for each of the six types of cases raised. In each case we were using the analysis to understand if a variable (e.g. ethnicity) was predicting the final outcome.

In each of the regression analyses the following variables were used to see if they predicted the final outcome:

- Ethnicity
- Grouped case reasons (each case type has one or more associated case reasons. There are 12 grouped case reason variables and each is a count of the number of case reasons of that type associated with the case)
- Level of decision maker (Process outcome) (this variable records at what level the decision on the case was made)
- BME-owned (Whether the firm the solicitor worked for at the time the case was raised was BME-owned or not. BME-owned means that at least half of the partners are BME)
- Gender
- Age when case raised
- Number of years admitted to the Roll when the case was raised
- Whether the solicitor had a practising certificate, was a registered European/Foreign lawyer or not
- Whether the solicitor has a qualifying law degree or equivalent
- Whether the solicitor has a conversion qualification or equivalent
- Number of practising certificates held by the solicitor
- UK or foreign qualified
- Whether they have appealed in the last 3 years
- Whether the solicitor has previously been made bankrupt

- Whether the solicitor has previously had a County Court Judgement (CCJ) made against them
- Whether the solicitor has previously been convicted of an offence.

The logistic regression was either binomial (where there are only two categories for the dependent variable) or multinomial (where there are more than two). Multinomial logistic regression is more complex and more susceptible to data that is skewed (data where the majority of people have very similar values for a variable). In some cases, even when predictor variables were excluded, the multinomial results were not reliable due to several breaches of the assumptions involved. As a result, in two of the analyses the grouped final outcome had to be turned into a dichotomous variable and a binomial analysis run instead. This is specified in the table below and, if this were the case, the two categories of the variable were combined to be No Action/Not Upheld or Upheld/Referred to the Solicitors Disciplinary Tribunal (SDT).

In all cases the regression method used was forward stepwise regression. In this method of regression an initial regression model is calculated to predict the outcome variable (in this case group final outcome). The statistical analysis package used in the analysis then searches for the predictor variable of those entered which best predicts the outcome variable. If this predictor significantly improves the models ability to predict, then the predictor is retained in the model. The process is then iterative, where the computer programme searches for the next variable which accounts for the largest proportion of the remaining unexplained variance in the model, until no other predictor variable is able to account for further variance.

**Table 5: Details of Logistic Regression Analyses Undertaken**

Case Type	Logistic Regression Type	Reason for choice	Variables excluded
Initial assessments	Multinomial	n/a	<ul style="list-style-type: none"> <li>Applications regarding restrictions on practice</li> </ul>
Conduct	Binomial	Breached multinomial assumptions	<ul style="list-style-type: none"> <li>Abandonment of solicitor's practice group case reason</li> </ul>
Conduct cases referred by the LCS	Multinomial	n/a	<ul style="list-style-type: none"> <li>Abandonment of solicitor's practice group case reason</li> <li>Removed 2 level of decision maker (process outcome) categories - 'Adjudicator appeal decision' &amp; 'Reconsideration panel decision'</li> </ul>
Practising Certificate renewals	Binomial	2 categories for final outcome	None
Solicitors' Accounts and practising restrictions	Binomial	2 categories for final outcome	None
Breaches of regulation	Binomial	Breached multinomial assumptions	<ul style="list-style-type: none"> <li>Removed 2 level of decision maker (process outcome) categories - 'Authorised officer appeal decision' &amp; 'Adjudicator appeal decision'</li> </ul>

N.B. All variables were used unless specified in table 5 above. Variables were excluded either because very few solicitors had a value different to others or because the analysis indicated that the variable was reducing the reliability of the output. The variable definitions may be found in the glossary.

# SECTION 3

# RESULTS

## RESULTS

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This section outlines the findings of the statistical analyses conducted on the SRA datasets. Throughout this section, references are made to different types of regulatory issues. A glossary of these terms is included in Appendix 1.

In line with the six research questions, this section is divided into subsections, each of which addresses one of the questions outlined in Section 2. In some cases, the results of the analysis sparked additional questions, which were subsequently investigated using the data available. These are reported throughout in the relevant sub-section.

In interpreting these results, it is important to note that when it is written that something is more or less likely, it is *statistically significantly* more or less likely. We have only reported those findings that are statistically robust and therefore reliable. This means that the statistical confidence levels<sup>6</sup> are such that there is little chance that the findings have occurred by chance.

**6.1: Of those with a current practising certificate, have a disproportionate number of cases been raised against BME solicitors?**

### Results

#### Ethnicity

The results of the first chi-square test demonstrated that when all solicitors with a current practising certificate were included in the analysis, no disproportionality was found in terms of the number of cases raised against BME or white solicitors. This was surprising given the findings of the Ouseley report, which took a sample of far more recent cases rather than looking at all solicitors admitted to the Roll. Further, as noted in the previous report, this analysis does not take into account the fact that the demographic make-up of solicitors has changed over the past decades. The fact that there are more BME solicitors admitted to the Roll now than there were in the 1960s, for example, potentially skews this result.

In order to account for this, the analysis was rerun using only solicitors who have been admitted to the Roll in the past ten years. This ten year period was chosen because it was representative of the wider sample; it is worth noting that more than 50,000 solicitors have been admitted to the Roll in the past 10 years, all of whom are included in this sample. Within this population, 7,035 had cases raised against them, 1,879 of which were against BME solicitors. The results of a second chi-square test indicate that a disproportionate number of cases have been raised against BME solicitors. In fact, 54%

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<sup>6</sup> Significance level used was 0.05

more cases have been raised against BME solicitors than would be normally expected, given the proportion of BME to white solicitors.

#### **UK / Foreign qualified**

This analysis of solicitors admitted to the Roll in the past 10 years also indicates that a disproportionate number of cases have been raised against UK qualified solicitors when compared to a solicitor who has first qualified outside of England and Wales and then taken the Qualified Lawyers Transfer Test (QLTT) to enable them to practise in England and Wales. 20% more cases have been raised against UK-qualified solicitors than would be normally expected, given the proportion of UK-qualified to QLTT solicitors. Given that there is disproportionality against BME solicitors, and that there is a disproportionately large number of BME solicitors who qualified through the QLTT process, this finding is somewhat confusing. A further analysis was therefore conducted to explore disproportionality against solicitors who are both BME and QLTT qualified. This identified, that there is indeed disproportionality against foreign qualified BME solicitors, as had been expected given previous findings. These findings are further explored in section 6.2.

#### **Summary and discussion**

These findings indicate that as the pool of solicitors working in the UK has become more ethnically diverse, issues of disproportionality have been introduced in terms of the cases raised against solicitors. Specifically, for solicitors admitted to the Roll in the last 10 years, BME solicitors are disproportionately likely to have a case raised against them. UK-qualified solicitors are also disproportionately more likely to have a case raised against them. It is outside of the remit of this report to identify the specific factors that cause people to raise a disproportionate number of cases against BME solicitors, and the reasons could be wide, including the presence of bias in society *et cetera*. What is important, however, is that this disproportionality in the number of cases reported about BME solicitors means that by default, there is disproportionality in the number of BME and UK-qualified solicitors being reviewed by the SRA. This leads to the question of whether the SRA is in turn disproportionate in the way that these cases are reviewed, thereby exacerbating this problem, or whether the disproportionality that exists in the regulatory action taken by the SRA simply reflects the disproportionality of cases being raised in the first instance. This question is addressed in sections 6.5 and 6.6.

#### **6.2: What factors contribute towards this disproportionality?**

Having established that a disproportionate number of cases are raised against BME solicitors, the data for those solicitors admitted to the Roll between 1999 and 2009 were then analysed in order to identify the factors that contribute towards solicitors having a case raised against them.

The following factors were investigated:

- Solicitor's ethnicity
- Whether the solicitor is UK or foreign-qualified
- Whether the solicitor works in a BME-owned organisation (defined as being a firm where 50% or more of the partners are from a BME background)
- Whether the solicitor was a trainee at the time the case was raised

- The number of years the solicitor had been admitted before a case was first raised
- The number of practising certificates (PC) the solicitor has held
- The number of partners in the firm in which the solicitor worked
- Whether the solicitor has a qualifying law degree
- Whether the solicitors has completed a conversion course, or equivalent.

The area of law practised by the solicitor was not included in this analysis because the area of law being practised when the case was raised is not currently collected and stored on the SRA electronic databases. Although the demographic details of those raising some types of cases is beginning to be collected by the SRA, insufficient data has been collected to date to enable this factor to be included in this analysis.

### Results - contributing factors to a case being raised

The results of a forward stepwise logistic regression analysis indicate that the following factors contribute towards cases being raised against a solicitor:

- If the solicitor was a trainee
- The number of years the solicitor had been on the Roll before the case was raised - i.e. the fewer years, the more likely a case is raised
- The number of practising certificates the solicitor has held (i.e. the more PCs, the greater the chance of a case being raised).

The results suggest that solicitors at the beginning of their careers as well as those towards the end of their careers, are at greater risk of having a case raised against them. These findings could appear to contradict; a more plausible explanation is that there is a U-shaped relationship between length of career and having a case raised; with solicitors mid career being less likely to have a case raised against them.

As interesting as these findings are, it is of at least equal interest to note those factors that do not predict, (i.e. they are not directly related to) whether a case is raised against a solicitor or not. These include the ethnicity of the solicitor and whether the solicitor works in a BME-owned firm, the jurisdiction where the solicitor first qualified (QLTT), and the number of partners at the firm where the solicitor is employed (as a proxy for the size of the firm).

Given that ethnicity does not directly predict (i.e. is not directly related to) whether a case is raised against a solicitor, but that there are a disproportionate number of cases raised against BME solicitors, a further analysis was undertaken to identify whether any of the three identified predicting factors are linked to BME status. The findings indicate that BME solicitors are indeed more likely to have been admitted to the Roll for fewer years. The fact that this predicts whether a solicitor is likely to have a case raised is therefore likely to be an indirect reason why BME solicitors are disproportionately likely to be represented in those who have cases raised against them.

Further, the data was analysed to explore relationships between size of firm and BME status of solicitors as well as size of firm and minority owned status. In both instances, it

was found that smaller firms have a disproportionately larger number of BME solicitors, with, for example, sole practitioners having 2.25 times as many BME solicitors as would be expected. Smaller firms are disproportionately more likely to be BME-owned (2.78 times more likely). This finding then led to exploring whether small firms and BME-owned firms tend to have a disproportionately larger number of cases raised against them. Further chi-square analyses revealed that smaller firms (1-10 partners) are significantly more likely to have a case raised against them. Similarly, BME-owned firms are more likely to have cases raised against them.

As the results to research question 1 indicated, solicitors who qualified at the Bar of England and Wales were also more likely to have cases raised against them. Further analysis was undertaken to explore the impact of jurisdiction of qualification. Whilst it is important to note that a solicitor's jurisdiction does not in itself predict whether they are more likely to have a case raised, there are differences between the jurisdictions in terms of whether a disproportionate number of cases are raised against solicitors coming from these areas. The results of additional chi-square analysis indicate that solicitors who have qualified in the following locations are significantly more likely to have a case raised against them:

- Nigeria (more than three times as many cases as would normally be expected).
- India (twice as many cases as would normally be expected).
- Pakistan (more than twice as many cases as would normally be expected).
- Bangladesh (Of the 19 Bangladeshi solicitors included in this sample, 7 have had a case raised against them; statistically, only 2.2 solicitors from this group should have a case raised against them).
- The Bar of England and Wales (approximately 1.5 times as likely to have a case raised against them than would normally be expected).

The results of additional chi-square analysis tests also indicate that solicitors who have qualified in the following locations are significantly less likely to have a case raised against them:

- New York Bar.
- America (excluding New York Bar but including South America).
- Europe.

Solicitors who qualified in US jurisdictions have as many cases raised against them as would normally be expected - i.e. there is no disproportionality either way for these groups. Analysis was not possible for other jurisdictions, including Africa (other), Asia (excluding India, Bangladesh & Pakistan) and Oceania, or for those solicitors who qualified as a distinguished specialist practitioner, as the sample was too small to allow meaningful analysis.

### Summary and discussion

These results demonstrate some important findings for the SRA. Firstly, there are two career stages which are associated with an increased risk in having a case raised against a solicitor. Those stages are at the start of a solicitor's career when they are training, and also when a solicitor has been practising for many years.

Secondly, ethnicity is not a significant predictor of whether cases are raised; i.e. there is no direct relationship between a solicitor's ethnicity and whether a case is raised against them. This may seem contradictory given that we know that BME solicitors have a disproportionate number of cases raised against them. However, these results demonstrate that there are other factors that result in a higher risk of a solicitor having a case raised against them - i.e. whether they are a trainee, whether the solicitor has been practising for a short period of time, or whether they have a large number of practising certificates.

So why do BME solicitors have a disproportionate number of cases raised against them, if solicitor ethnicity does not in itself predict whether a solicitor is likely to have a case raised against them? The answer is because there are indirect reasons why BME solicitors are more likely to have cases raised against them. Firstly, we know that BME solicitors are likely to have been practising for a shorter period of time and, this time period predicts whether a case is raised or not. Secondly, whilst working in a BME-owned firm in itself does not directly predict whether a solicitor is more likely to have cases raised against them, solicitors who work in BME-owned firms are indirectly more likely to have cases raised against them and, BME solicitors in turn are over-represented in BME-owned firms. Thirdly, BME-owned firms also have fewer partners - i.e. they tend to be smaller, and smaller firms do tend to have a disproportionately larger number of cases raised against them. Whilst none of these factors in themselves directly predicts disproportionality in which solicitors are more likely to have a case raised against them, in comparison to other factors which have a highly statistically significant impact (i.e. the number of practising certificates, whether the solicitor is a trainee and the number of years the solicitor has been practising before the case was raised), these findings suggest that these factors combine and indirectly increase the chances that a BME solicitor is likely to have a case raised against them.

Thirdly, whilst the geographical location where a solicitor qualified does not directly predict, or is not directly related to, whether a particular solicitor is more likely to have a case raised against them, there are differences in the number of cases raised against solicitors qualified in different jurisdictions. The resulting pattern does not mean that all QLTT solicitors are more likely to have a case raised against them. In fact, solicitors qualified through the Bar of England and Wales are disproportionately represented amongst solicitors who have a case raised against them, as are solicitors who originally qualified in Nigeria, India, Pakistan and Bangladesh. It is worth noting that the level of disproportionality, however, differs amongst these groups. Those solicitors who originally qualified in Nigeria, India, Pakistan and Bangladesh are between twice and more than three times as likely to have a case raised against them than would normally be expected; for those qualified through the Bar of England and Wales, this figure is lower, 1.5 times more cases than would normally be expected. It is also worth emphasising, however, that QLTT status does not directly predict whether a solicitor is more likely to have a case raised against them. Given that there is a larger than expected proportion of white solicitors qualifying from the Bar of England and Wales, the disproportionality associated with QLTT is unlikely to be related to ethnicity alone, and may reflect other issues such

as, but not limited to, education and training, different operating standards, and even in some instances cultural differences.

The finding that there is an increased risk of a case being raised against solicitors who have a greater number of practising certificates may simply be a result of the fact that these solicitors are likely to have dealt with more cases, and therefore are more likely to have a case raised against them than those who have been admitted to the Roll for a shorter period of time or have dealt with fewer cases.

Solicitors who are trainees, and solicitors who have been admitted to the Roll for a shorter period of time are also more likely to have cases raised against them. This suggests the need for closer supervising and support in the early stages of solicitors' careers.

Also of note in these findings is that smaller firms do tend to have a disproportionately large number of cases raised against them and, in part, may be due to different and potentially less effective risk management processes in smaller firms.

### **6.3: Of the cases closed between 2007 and 2009, have a disproportionate number of cases been raised against BME solicitors?**

Having established that a disproportionate number of cases have been raised against BME solicitors admitted to the Roll in the past ten years, the next step of analysis involved exploring whether the same level of disproportionality existed within the cases that had been closed in the past three years, using dataset 2. It was important to address this question before examining whether SRA processes themselves further compound the disproportionate number of cases being raised, in order to ensure that dataset 2 was representative of the patterns identified within dataset 1.

#### **Results - disproportionality against BME solicitors in the second dataset**

In order to answer this question, the second dataset provided by the SRA containing details of all initial assessments, regulatory, conduct and conduct cases referred by the LCS closed within the past 3 years (2007-2009), was analysed using a chi-square test. In line with the findings for research question 1, these results indicate again that a disproportionately high number of cases were raised against BME solicitors. This replication of the finding of disproportionality therefore enables further analysis using this second dataset to identify additional sources of disproportionality.

#### **Summary and discussion**

This second research question simply needed to be answered in order to ensure that the disproportionality that is experienced by BME solicitors admitted to the Roll in the last ten years is reflected in the second dataset that we have available for cases closed between 2007 and 2009. The finding that the disproportionality is also evident in the second dataset means that further, more detailed analysis of this disproportionality is possible, the results of which are outlined in the following sections.

#### **6.4: Are a disproportionate number of cases raised against BME solicitors according to the case type?**

Having established that the pattern of disproportionality was replicated in the second dataset, analyses were then conducted in order to explore the nature of this disproportionality in greater detail. The first part of this analysis looked at whether the disproportionality experienced by BME solicitors was evident across all the types of cases, or just some.

A case type is the form of case being raised against a solicitor. In essence, there are four key types of case:

- **Initial Assessments** - any allegation that is routed through the Risk Assessment and Designation Centre (RADDC). Initial assessments are created for all allegations that are received and following that a regulatory, a conduct or a conduct cases referred by the LCS will be created where required. It is worth noting that initial assessments have only been recorded since January 2009.
- **Conduct cases** - these are allegations of misconduct, such as failure to reply / co-operate, misleading the client or the court, overcharging, deception or dishonesty. These cases are raised predominantly by the public or the profession.
- **Conduct cases referred by the LCS** - these are the same as conduct cases, apart from the fact that they represent conduct cases referred to the SRA by the Legal Complaints Service\* (LCS)<sup>7</sup>. Conduct cases raised by the LCS account for 5% of all the types of cases raised in the dataset used.
- **Regulatory Cases** - allegations of breaches of the practising regulations and application relating to restrictions on practice.

Cases are raised by a range of different stakeholders. The table below details the proportion of cases raised by different stakeholders during the period 2007-2009. It is not possible to ascertain the source of the different types of cases, apart from Conduct cases referred by the LCS as the only source of these cases is the Legal Complaints Service.

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<sup>7</sup> The Legal Complaints Service is an independent complaints handling body. It is part of the Law Society but operates independently.

**Table 6: Sources of Referral 2007-2009**

Source	Percentage
Public	50.9
Profession	21.6
Internal SRA Business Units	17.9
Legal Complaints Service	4.1
Government Bodies	0.9
Law Enforcement	0.8
Financial cases	0.8
Other	3.0
<b>Total</b>	<b>100.0</b>

Since late 2007 all allegations have been recorded on a risk assessment form. This data represents the information as it is recorded on the form. It is not possible to tie up all of the risk assessment forms to the cases that then resulted from them.

**Table 7: Sources of intelligence 2007-2009**

Source	Percentage
Public	23.2
Profession	18.0
Financial	10.9
Government Bodies	5.7
Law Enforcement	16.7
Internal referrals	16.8
Other	8.8
<b>Total</b>	<b>100.0</b>

The Fraud and Confidential Intelligence Bureau receive intelligence from a wide range of sources. This intelligence will not always result in a case being created immediately as it may not relate to specific allegations. FCIB refer around 800 allegations to the RADC each year. These allegations will generally be based on several pieces of intelligence. This table reflects the sources of intelligence received into the FCIB.

Allegations made to the SRA are recorded on risk-assessment forms. It is not possible to link the risk assessment forms to the cases raised as a result of them. The consequence of this is that it is not possible to identify the sources of referral by case type.

#### **Results - disproportionality by case type**

In order to explore whether BME solicitors are experiencing a disproportionately high number of specific types of cases, the data were analysed in two ways. Firstly, multiple cases against an individual solicitor were removed. This enabled us to compare whether BME solicitors were over-represented in single cases and multiple cases - making this comparison answered the question of whether either BME or white solicitors are more likely to have multiple cases raised against them. The results of the chi-square analysis

indicate that BME solicitors were disproportionately represented when the data were restricted to a single case for only three of the four types of cases:

- Conduct cases referred by the LCS - BME solicitors have a disproportionate number of conduct cases referred by the LCS raised against them (52% more than would normally be expected).
- Initial assessments - BME solicitors have a disproportionate number of cases raised requiring an initial assessment.
- Regulatory Cases - BME solicitors have a disproportionate number of regulatory cases raised against them (52% more than would normally be expected).

These results demonstrate that for these individual cases raised against solicitors, BME solicitors are disproportionately represented in the number of conduct cases referred by the LCS, initial assessments and regulatory cases raised. Conduct cases are the only case type where there is no disproportionality of cases raised against BME solicitors when only one case for each solicitor is considered. This finding is particularly interesting given that the only difference between conduct cases and conduct cases referred by the LCS is that conduct cases referred by the LCS are referred by the LCS. This finding is in line with the Equality Impact Assessment published by the LCS which has indicated that they are aware they are alerting the SRA to cases in which BME solicitors are disproportionately represented. This raises the question of whether there are different mechanisms in place for referring conduct cases in the LCS when compared to other sources, such as the general public and other people within the profession.

#### **Results - disproportionality for multiple cases, by case type**

The data were then analysed a second way, including multiple cases raised against a solicitor. The findings of this chi-square analysis demonstrates that when all cases (i.e. including multiple cases against an individual solicitor) are taken into consideration, BME solicitors are disproportionately represented across all four types of cases:

- Initial assessments - BME solicitors have a disproportionate number of cases requiring an initial assessment raised against them.
- Conduct cases - BME solicitors have a disproportionate number of conduct cases raised against them (44% more cases than would normally be expected).
- Conduct cases referred by the LCS - BME solicitors have a disproportionate number of conduct cases referred by the LCS raised against them (more than double the number of cases than would normally be expected).
- Regulatory Cases - BME solicitors have a disproportionate number of regulatory cases raised against them (twice as many cases than would normally be expected).

#### **Summary and discussion**

There are several findings of note from this analysis. Firstly, the fact that there is disproportionality in the individual instances of conduct cases referred by the LCS being raised against BME solicitors, but not conduct cases, suggests that there is something in particular associated with the LCS processes of escalating cases to the SRA that is disproportionate. However, it is important to note that as conduct cases referred by the

LCS make up only 5% of the cases recorded by the SRA, the level of disproportionality introduced by the LCS does not account for all of the disproportionality experienced by the SRA.

Secondly, and of particular note, is that although there is no disproportionality in conduct cases for individual cases against a solicitor, once they have one conduct case against them, a BME solicitor is then more likely than white solicitors to have multiple cases raised against them. This leads to the question of whether BME solicitors are simply more likely to behave in a way that repeatedly breaches conduct regulations, or whether once a BME solicitor is on the conduct case radar, they then become subject to further regulation by the SRA.

Thirdly, the finding that once BME solicitors have one conduct case raised against them they are more likely to have later conduct cases is not reflected in the white solicitor population; if a white solicitor has one conduct case raised against them, they are no more likely to have multiple conduct cases raised against them than would normally be expected. This is a clear indication that there is disproportionality against BME solicitors in the number of cases raised against them. It may also suggest that there is something within the SRA processes that means that once a BME solicitor is on the organisation's radar, they are more likely to have further inspections by the SRA that in turn result in additional cases being raised. It is, of course, reasonable for a regulator to have individuals or firms on their radar if they have previously contravened professional guidelines and have required some form of regulatory intervention; it is unreasonable if this results in unfair regulatory processes being experienced by those individuals or firms.

Finally, for initial assessments, conduct cases referred by the LCS and regulatory cases, BME solicitors have at least twice as many cases raised against them than would normally be expected. This indicates a significant level of disproportionality entering the SRA through the people who are raising the cases. This raises the question of whether these cases are legitimate - i.e. whether BME solicitors are genuinely twice as likely to breach regulatory criteria regarding the SRA's initial assessments, conduct cases referred by the LCS and regulatory policies, whether people are simply more likely to raise cases against BME solicitors but not against white solicitors (even when there is due cause for them to raise them against white solicitors), or whether people are simply more likely to raise cases against BME solicitors without due cause. Whilst this question cannot be conclusively answered given that it covers questions of bias in the general population, some indicators can be found in the research undertaken for questions 5 and 6, as reported in sections 6.5 and 6.6.

**6.5: Is there disproportionality in SRA outcomes?**

**and**

**6.6: Is there disproportionality in the final outcome for BME solicitors?**

This final results section addresses the remaining two questions together, in order to identify whether there are any particular aspects of the SRA processes that further

compound the disproportionality experienced by BME solicitors, and ultimately whether the final decision taken in cases raised against BME solicitors is disproportionate.

The results of the analysis covered in previous sections has indicated that there is a disproportionate number of cases being raised against BME solicitors; the SRA does not have direct control over which cases are raised and about whom, and clearly has a responsibility to look into cases that are brought to their attention. The next stage of this analysis, therefore, is to explore whether the SRA compounds this incoming disproportionality by taking disproportionate action against BME solicitors through their decision-making or punitive actions. In this part of the results section, the SRA is referred to as having reduced, maintained, or added to the disproportionality experienced by BME solicitors. It is important to note that this reference simply refers to the statistical outcomes of disproportionality - i.e. whether the SRA is then increasing disproportionality through the results of their decisions also being more punitive action for BME solicitors. It is not to say that the SRA decisions for these cases are incorrect; this section simply reports the statistical findings of whether the decisions are in line with the proportion of decisions made.

Data in the second dataset pertaining to cases closed within the last 3 years (2007-2009) were analysed using a variety of statistical methods. A table is presented at the end of this section which summarises the key results detailed below.

### **Initial Assessments**

Firstly, initial assessments were explored. Initial assessments are used to track all items of information coming into the SRA for risk assessment and designation. Where the information available to the SRA results in an investigation, it is then classified into the relevant case type, such as a conduct case or a regulatory case. As an initial investigation is not therefore an investigation in its own right, the following outcomes simply refer to the decision made about whether further investigation or action by the SRA is required, or not. Potential outcomes from initial assessments, therefore, are:

- **No action** - this includes things such as the allegation being withdrawn, the subject individual or informant being incapacitated, or the allegation being outside of SRA jurisdiction.
- **Not upheld** - for cases where it is clear at the assessment stage that the risk is minimal and that a full allegation is not needed due to the allegation / breaches not posing any adverse consequences. A conduct case is created in this instance to deal with any follow up correspondence and an outcome of not upheld would be added to the conduct case.
- **Referred within the SRA for further investigation** - the information received has been assessed and warrants investigation and so is referred to the appropriate unit within the SRA.
- **Other** - accounts for a very small number of diverse outcomes which do not fit into the other categories.

### **Results - Disproportionality in initial assessments**

The results of the analysis indicate that there is no disproportionality in the number of initial assessments where no action was taken, or where an 'other' outcome was recorded.

However, significantly fewer initial assessments for BME solicitors resulted in a not upheld outcome; in fact almost half as many initial assessments for BME were not upheld as would normally be expected. Unsurprisingly, then, significantly more initial assessments for BME solicitors were referred within the SRA for further investigation.

These initial assessment results suggest, therefore, that the SRA processes in place at this early case handling stage are compounding the disproportionality experienced by BME solicitors.

A multinomial regression analysis was then undertaken in order to explore these findings in greater detail. The results of this additional analysis indicate that cases with the following case reasons attached are all more likely to be referred internally within the SRA for further investigation:

- money laundering\*
- costs and fees and referrals of clients\*
- financial cases\*
- professional competency\*
- breach of undertaking\*
- guidelines for practising\*
- mortgages and property\*
- character and suitability\*.

The only case which is more likely to be not upheld than referred internally for further investigation is the small number of cases classed as "other". However, having a PC / Registered European Lawyer (REL)/ Registered Foreign Lawyer (RFL) at the time the case is raised means that the case is more likely to be not upheld rather than referred internally for further investigation. It is important to note, however, that all of these cases are considered by the SRA to be of highest risk, as they have implications for both client protection and criminality. It is therefore perhaps unsurprising that these cases are referred internally for further investigation.

This multinomial regression analysis also confirmed the finding that BME solicitors are 58% more likely than would be expected to have their case referred internally within the SRA for further analysis, rather than it being not upheld.

Analyses were then conducted to determine whether there is further disproportionality in SRA processes once these internal referrals have taken place. Referrals to conduct cases, conduct cases referred by the LCS and regulatory cases were therefore analysed next in order to identify any further disproportionality. The results are reported in the following sections.

**Conduct cases and Conduct cases referred by the LCS**

When either a Conduct case referred by the LCS or any other Conduct case is raised and investigated, there are in essence five outcomes that can be recorded:

- **No action** - this includes things such as the allegation being withdrawn, the subject individual or informant being incapacitated, or the allegation being outside of SRA jurisdiction
- **Not upheld** - the case has been progressed to a formal decision (adjudication or panel decision), but there is no decision that results in a finding, action or sanction against the solicitor, or the allegations have been adequately investigated but no evidence of a breach of rules was demonstrated and therefore the case did not progress to a formal decision
- **Upheld** - the case has been investigated and a breach of the rules has been found
- **Referred to the SDT** - The SDT is an independent tribunal and has wider powers in relation to the application of sanctions than the SRA. These referrals to SDT occur when the SRA consider their powers are insufficient given the seriousness of the misconduct. The SDT has the power to strike a solicitor from the Roll, suspend a solicitor from practice and to apply fines and reprimands
- **Other** - this category is used for a very small number of diverse outcomes which do not fit into other categories. In this instance, the "other" outcomes were removed because the numbers were negligible.

#### **Results - Disproportionality in Conduct cases**

The results of the analysis indicate that there is no disproportionality in the number of conduct cases that were upheld, or had an 'other' result recorded.

A greater number of BME conduct cases result in no action. Fewer BME solicitors have their case not upheld when compared to white solicitors; linked to this, a greater number of BME solicitors have their conduct case referred to the SDT.

These results suggest that BME solicitors with a conduct case raised against them are more likely to have that case dropped. If their case is investigated, a proportionate number will find that their case is upheld. However, a disproportionately low number will find that their case is not upheld and, more BME solicitors will find that their case is referred to the higher decision making body, the SDT. Taken together, these findings suggest although BME solicitors are more likely to have conduct cases raised against them, the SRA partly add to that disproportionality by recording fewer not upheld decisions for BME solicitors and, through being more likely to refer cases to the SDT. These findings suggest that the conduct cases for BME solicitors are either consistently more complex, that BME solicitors are consistently demonstrating behaviour which requires stronger intervention, or that the SRA is more cautious in making a decision in these cases.

A binomial regression analysis was conducted in order to identify any further factors that predict whether a conduct case results in No Action / Not Upheld or Upheld / Referred to SDT. The grouped case reasons which are most likely to result in the case being either upheld or referred to SDT are:

- Breach of undertaking grouped case reason\*

- Guidelines for practising grouped case reason\*
- Professional competence grouped case reason\*
- Mortgages and property grouped case reason\*
- Character and suitability grouped case reason\*
- An application regarding restrictions on practice grouped case reason\*
- No "other" grouped case reason\*.

Conduct cases are also more likely to result in being Upheld or referred to the SDT when the solicitor has a bankruptcy filed against them.

For conduct cases, it is interesting to note that caseworkers are significantly less likely to be the decision maker who ultimately decides to uphold the complaint; this may simply reflect the complexity of the case and that these cases are likely to require further investigation. Decisions taken at the authorised decision maker, adjudicator appeal, adjudicator, committee / panel appeal and committee / panel levels are all disproportionately more likely to result in the case being either upheld or passed to the SDT. Again it is outside of the remit of this report to comment on why this is the case; it may simply be that conduct cases passed on by caseworkers are successfully identified as either being more serious and requiring intervention, or as being more complex and requiring referral to the SDT.

A number of variables were found not to directly predict (i.e. they are not directly related to) whether the conduct case results in no action/not upheld or the case being upheld/referred to the SDT. These include:

- Solicitor's gender
- Solicitor's ethnicity
- Being employed by a BME firm
- Having a County Court Judgement (CCJ)
- Having a conviction
- Number of years admitted to the Roll.

These results suggest that although BME solicitors with multiple cases against them are disproportionately likely to have a conduct case raised against them, ethnicity is not a factor that directly predicts this. In fact, the above findings clearly indicate that a solicitor's demographic details such as their ethnicity and gender are not related to whether the case is upheld or not, again suggesting that there is no direct disproportionality evident in the SRA processes; quite simply, other factors including the specific type of conduct case are more influential on the final decision made about conduct cases.

### **Results - Disproportionality in Conduct cases referred by the LCS**

In the next stage of the analysis, conduct cases referred by the LCS were investigated. Again, these cover the same types of cases as conduct cases, but are referred to the SRA from the LCS.

The results of the analysis indicate that BME solicitors are proportionally represented in decisions where no action is taken, where the complaint is not upheld, and in the 'other' category. However, a disproportionately lower number of conduct cases referred by the LCS are upheld for BME solicitors than for white solicitors but BME solicitors are over-represented in conduct cases referred by the LCS which are then referred to the SDT.

Again, a further multinomial regression analysis was undertaken in order to explore these findings in greater detail.

The results of this analysis indicate that some cases are more likely to be referred to the SDT rather than resulting in a decision taken by the SRA:

- Character and suitability cases are more likely to be referred to the SDT than resulting in either no action or not upheld or upheld.
- Cost and fees and referral of client's cases, breach of undertaking cases, financial cases, and other cases are all more likely to result in the case being referred to the SDT than the case not being upheld.
- Money laundering cases are more likely to be referred to the SDT than upheld.
- Being employed in a BME-owned firm means that conduct cases referred by the LCS are more likely to be referred to the SDT than resulting in no action, being not upheld or being upheld, suggesting that the SRA is generally more likely to refer the case to the SDT when it involves a solicitor working in a minority owned firm.

Those cases that are more likely to result in a decision by the SRA rather than it being referred to the SDT include:

- Mortgages and property cases are significantly more likely to result in no action rather than referral to the SDT.
- Having a PC / REL / RFL means that a conduct case referred by the LCS is more likely to result in no action, be upheld or not upheld, rather than being referred to the SDT. This suggests that the SRA feels more able to take decisions around conduct cases referred by the LCS for solicitors with a PC / REL / RFL.

These results again demonstrate a tendency in some areas to escalate cases to the SDT for cases involving BME solicitors.

### **Results- Disproportionality in Regulatory Cases**

In the final stage of this part of the analysis, regulatory cases were investigated. For the purposes of this analysis, regulatory cases were divided into the following three categories:

- **PC Renewals** - these cases relate to areas such as PC/REL/RFL renewals. Case outcomes for renewals are:
  - **Application - no restriction** - this includes no restriction being imposed, or restrictions lifted.
  - **Application - restriction** i.e. some form of restriction has been imposed on the PC.
- **Solicitors' Accounts and practising restrictions** - cases relating to the submission of accountants reports (extensions, waivers etc) and a very small number of applications

relate to approval of employment for individuals who have previously been struck off the Roll. Case outcomes for Solicitors' Accounts and practising restrictions are:

- **Application (non S12) - granted** - non S12 applications relate predominantly to the submission of accounts reports. Granted means an application for an extension to submit accountants reports or waiver etc. has been granted.
  - **Application (non S12) - rejected** - as above, but the application is rejected.
- **Breaches of regulation** - where an accusation of some form of breach has been made and investigated. Outcomes for Breaches of regulation are:
    - **No Action** - this includes things such as the allegation being withdrawn, the subject, individual or informant being incapacitated, or the allegation being outside of SRA jurisdiction.
    - **Not upheld** - the case has been progressed to a formal decision (adjudication or panel decision), but there is no decision that results in a finding, action or sanction against the solicitor, or the allegations have been adequately investigated but no evidence of a breach of rules was demonstrated and therefore the case did not progress to a formal decision.
    - **Upheld** - the case has been investigated and a breach of the rules has been found.
    - **Referred to SDT** - The SDT is an independent tribunal and has wider powers in relation to the application of sanctions than the SRA. These referrals to the SDT occur when the SRA consider their powers are insufficient given the seriousness of the misconduct. The SDT has the power to strike a solicitor from the Roll, suspend a solicitor from practice and to apply fines and reprimands.
    - **Other** - this category is used for a very small number of diverse outcomes which do not fit into other categories. In this instance, the "other" outcomes were removed because the numbers were negligible.

### **Practising Certificate Renewals**

The results of the analysis indicates that within cases relating to PC renewals, BME solicitors are significantly more likely to have restrictions placed on their applications. Furthermore, white solicitors are significantly more likely to have no restrictions following their application.

A binomial regression analysis was undertaken in order to further explore these findings. The results of this analysis confirmed that those solicitors who are more likely to have restrictions placed on their certificate include:

- BME solicitors
- Male solicitors
- UK qualified solicitors
- Those with fewer PCs
- Older solicitors at time the case was raised
- Greater number of years on the Roll
- Working in a BME-owned firm
- No PC/REL/RFL at the time the case was raised
- If been made bankrupt
- If CCJ on record.

It should be noted that PC renewals is the only area of SRA's work where a solicitor's ethnicity is directly related to the decided outcome. It is also important to note however that this does not necessarily indicate direct discrimination on the part of the SRA's processes; these results tell us that there is a clear relationship between a solicitor's ethnicity and their PC renewal - it does not tell us why that occurs.

A number of variables do not predict whether restrictions are placed on PC renewals. These include:

- Conversion or equivalent qualification
- Qualifying Law Degree (QLD) or equivalent
- Conviction

The results of this analysis clearly reinforce the finding that a solicitor's ethnicity is directly related to whether they are likely to have restrictions placed on their PC. It is also interesting to note that solicitors who are older when the case is raised, as well as solicitors who have fewer PCs are also more likely to have restrictions placed on their PC. These findings suggest that those solicitors who have come to the legal profession as a second career or later in life, or solicitors who have taken a break in their career (although this is unlikely to be due to child care reasons, as male solicitors are more likely to have restrictions placed on their PC rather than female solicitors), are more likely to experience restrictions on their PC. This second option of returning to the profession after a break in their career is especially likely given the fact that the number of years on the Roll is also a predictor of having restrictions placed upon the PC.

Finally, these results demonstrate that decisions made at the Adjudicator and Committee/Panel levels are also more likely to result in restrictions being placed on PCs.

### **Solicitors' Accounts and Practising Restrictions**

The results of the analysis indicate that within cases relating to Solicitors' Accounts and practising restrictions, higher numbers of BME solicitors have their application rejected than would normally be expected.

A binomial regression analysis was conducted in order to identify any further factors that predict whether an application is accepted or rejected. Those solicitors who are more likely to have their application (non S12) rejected are:

- Those with a financial case reason raised against them
- Those without a PC/REL/RFL at the time

### **Breaches of regulation**

The results of the analysis indicate that for cases relating to breaches of regulation, BME solicitors are more likely to have no action taken against them. There is no further disproportionality with regard to decisions being made about whether the case is upheld or not upheld.

A binomial regression analysis was undertaken in order to explore which cases were more likely to result in the regulatory breach case being upheld or referred to the SDT, rather than being not upheld or resulting in no action. The results indicate that solicitors are more likely to have their regulatory breach case either upheld or referred to the SDT if the breach is of any of the following types:

- A guidelines for practising grouped case reason\*
- A financial grouped case reason\*
- A costs and fees and referrals of clients grouped case reason\*
- An "other" grouped case reason\*.

Solicitors are less likely to have their regulatory breach case either upheld or referred to the SDT if the breach is related to abandonment of the solicitor's practice or an application regarding restrictions on practice grouped case reason. In addition, regulatory breach cases which resulted in the case being either upheld or referred to the SDT were disproportionately low for solicitors who worked in BME-owned firms.

For breaches of regulation, it is interesting to note that caseworkers are significantly less likely to make the decision to uphold the complaint or refer it to the SDT; this may simply reflect the complexity of the case and that these cases are likely to require further investigation. Decisions taken at the Adjudicator level are disproportionately more likely to result in the case being either upheld or passed to the SDT.

A number of variables do not directly predict whether the regulatory breach results in no action/not upheld or upheld/referred to the SDT. These include

- Solicitor's ethnicity
- Solicitor's gender
- Solicitor's age
- Years since admitted to the Roll
- Conviction
- PC count
- Bankruptcy

It is of particular interest in this report to note that within cases relating to breaches of regulation, BME solicitors are more likely to have no action taken against them, and that when combined with all other variables, a solicitor's ethnicity does not directly predict whether their regulatory breach case will be upheld, not upheld, require no further action, or be referred to the SDT. This suggests that SRA processes for regulatory case demonstrate no further disproportionality against BME solicitors.

### **Summary of findings regarding disproportionality in SRA outcomes**

The following table provides a summary of the findings outlined in this section concerning where disproportionality was identified in SRA processes.

**Table 8. Summary of findings regarding disproportionality in SRA outcomes**

	<b>SRA outcomes result in reduced disproportionality</b>	<b>SRA outcomes maintain levels of disproportionality in line with the cases raised</b>	<b>SRA outcomes add to disproportionality</b>
<b>Initial assessments</b>		<ul style="list-style-type: none"> <li>• Proportionate number where No Action is taken (e.g. withdrawn) or an "Other" outcome recorded</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer BME solicitors have their case Not Upheld</li> <li>• Greater number of BME solicitors referred within SRA for further investigation</li> </ul>
<b>Conduct cases</b>	<ul style="list-style-type: none"> <li>• Greater number of cases result in No Action (e.g. withdrawn) for BME solicitors</li> </ul>	<ul style="list-style-type: none"> <li>• Proportionate number are Upheld or "Other" outcome recorded</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer BME solicitors have their case Not Upheld</li> <li>• Greater number of BME solicitors have their case referred to the SDT</li> </ul>
<b>Conduct cases referred by the LCS</b>	<ul style="list-style-type: none"> <li>• Fewer cases are Upheld for BME solicitors</li> </ul>	<ul style="list-style-type: none"> <li>• Proportionate number result in "No Action" (e.g. Withdrawn), Not Upheld or "Other" result recorded</li> </ul>	<ul style="list-style-type: none"> <li>• Greater number of BME solicitors have their case referred to the SDT</li> </ul>
<b>Breaches of regulation</b>	<ul style="list-style-type: none"> <li>• Greater number of cases result in No Action (e.g. withdrawn) for BME solicitors</li> </ul>	<ul style="list-style-type: none"> <li>• Proportionate number are Upheld, Not Upheld or referred to the SDT</li> </ul>	
<b>PC / REL / REFL renewals</b>			<ul style="list-style-type: none"> <li>• BME solicitors more likely to have restrictions placed on their PC; white solicitors more likely to have no restrictions</li> </ul>
<b>Solicitors' Accounts and practising restrictions</b>			<ul style="list-style-type: none"> <li>• BME solicitors more likely to have their application rejected</li> </ul>

## Level of Decision Maker

In the final stage of this part of the analysis, the impact of the level of the SRA decision maker was investigated. A process outcome refers to the level to which a case was taken, and therefore the level at which a decision was made. It should be noted that the various levels of decision are more to do with the complexity of the investigation and therefore the level of expertise / authority needed, rather than an indication of the severity of the outcome.

These levels of decision making are as follows:

- Caseworker decision.
- Authorised decision maker decision, followed by Adjudicator Appeal Decision if the solicitor appeals the decision at this level.
- Adjudicator decision, followed by Committee / Panel Appeal Decision if the solicitor appeals the decision at this level.
- Committee / Panel decision, also followed by Committee / Panel Appeal Decision if the solicitor appeals the decision at this level.
- Reconsideration Panel Decision - where SRA reconsiders a decision at a later stage; this is outside of the above appeals process.

The analysis was conducted across all types of cases. The results of the analysis indicate that BME solicitors are approximately twice as likely as would be normally expected to have their case decided at the Committee / Panel. The number of cases where decisions are taken by the Caseworker, Authorised decision maker, Adjudicator and Committee / Panel Appeal Decision is proportionate for BME solicitors. The number of cases decided at the Adjudicator appeal level or by the Reconsideration Panel is so small that meaningful comparison is not possible.

## Summary and discussions

The results of these final analyses highlight some interesting themes for the SRA.

Previous analyses have indicated that BME solicitors are over-represented in the number of cases raised against them, and therefore the number of cases that the SRA is required to look into. At the early initial assessment stage, there is fairness in the number of cases that are withdrawn or found to be outside of SRA's jurisdiction. However, disproportionately fewer cases for BME solicitors are not upheld, whilst a disproportionately high number of cases are referred within the SRA for further investigation. This suggests that the incoming levels of disproportionality are further compounded at this early stage. It is not possible to say whether that is simply because cases raised against BME solicitors are more complex, or more likely to require further investigations, or whether there is some form of bias present in the SRA decision making processes at this stage; what is clear, however, is that the initial assessment outcomes add to the disproportionality experienced by BME solicitors.

Secondly, although BME solicitors are disproportionately represented in the number of conduct cases raised against them when they have multiple cases registered against them,

it is also clear that more of these cases result in no action - i.e. the case is withdrawn. However, again the results indicate that fewer BME solicitors than would be expected have their case not upheld, and more have cases referred to the SDT.

Thirdly, the results of analyses reported in section 6.4 indicate that there is clear disproportionality in the number of cases relating to BME solicitors reported to the SRA from the LCS. However, the SRA processes result in a disproportionately low number of these cases being upheld, suggesting that SRA processes in part negate this incoming disproportionality. It should be noted again that BME solicitors with a conduct case referred by the LCS against them are more likely to be referred to the SDT.

Fourthly, there are several findings of concern for the way in which decisions are made regarding regulatory issues in the SRA. These results indicate that BME solicitors are more likely to have restrictions placed on their PC/ REL/ RFL renewals. BME solicitors are also more likely to have their application regarding accounts cases rejected. Finally, a disproportionately high number of regulatory decisions are made at the higher level of the Committee / Panel. Taken together, these findings suggest that the disproportionality experienced by BME solicitors is being compounded by SRA regulatory case processes.

Finally, the most consistent pattern that emerges throughout the above findings is that although the SRA processes themselves do not necessarily result in further disproportionality against BME solicitors, a significantly higher proportion of cases raised against BME solicitors are referred to the SDT. It is possible that the cases raised against BME solicitors are simply more complex; however it may also be that the SRA is more cautious about making decisions in these cases. In line with advice from the SRA, it is fair to conclude that being referred to the SDT is a more serious outcome than the case being upheld. An outcome of 'Referred to SDT' will result in the creation of a tribunal case against the solicitor(s) involved. The SRA have explored the tribunal cases closed in the last 3 years, and found that 71% (569 / 798) actually went to the tribunal. It can be the case that even though an initial decision is made to refer someone to the SDT, an alternative resolution is found before this actually happens which explains the 29% that did not reach the tribunal. In the same 3 year period, the statistics provided by the SDT show that 95% of the cases they heard resulted in a reprimand, fine, suspension or strike off. All of these outcomes are as serious, or more serious, than anything the SRA could do at the time.

# SECTION 4

# CONCLUSIONS

## CONCLUSIONS

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### **Are a disproportionate number of cases being raised against BME solicitors?**

The results of this study indicate that a disproportionately high number of cases are raised against BME solicitors. These cases are being raised by members of the public, members of the profession, partners such as the Legal Complaints Service (LCS), and a small number are made by other bodies, such as the police. This means that before the SRA puts any of its processes in place, it is dealing with a disproportionate case load.

However, a clear finding of this research has been that a solicitor's ethnicity in itself does not predict whether they are more likely to have a case raised against them. In essence, whilst BME solicitors have a disproportionate number of cases raised against them, it is not their ethnicity that directly contributes to this. Instead, other factors, such as the number of years a solicitor has been practising and the number of PCs they have held are more likely to predict whether a case is raised. We know, for example, that solicitors who work in BME-owned firms are more likely to have cases raised against them, that BME solicitors are more likely to work in BME-owned firms, and that BME-owned firms are more likely to have fewer partners (i.e. they are likely to be smaller firms). In addition, this research has also highlighted that those with fewer number of years practising when their first case is raised are more likely to have a case raised against them; BME solicitors are also more likely to have fewer years practising. These factors, therefore, are indirectly associated with the disproportionality experienced by BME solicitors. However, the strength of the other factors such as the number of years they have been practising at the time the case was raised and whether they were a trainee when the case was raised are so strong that they cause these other factors to become insignificant when all potential contributing factors are taken into account.

This of course raises the questions of whether these other predicting factors, i.e. the number of PCs and number of years practising, as well as trainee status, should be investigated by the SRA. Taken together, these findings indicate that "experience" is a more important predictor of whether a case is raised against a solicitor. As trainees and those with fewer years practising before their first case is raised are disproportionately likely to have a case raised against them, it may be suggested that further support and supervision is required at these early career stages. That solicitors who have a greater number of practising certificates are also disproportionately likely to have a case raised against them suggests a curvilinear relationship with experience. That is, solicitors with little experience or with a great deal of experience are more likely to have a case raised against them; it is unclear whether this latter finding is simply because there is an increased likelihood of having a case raised against a solicitor who has more practising certificates, whether their performance declines as they continue to practise, or whether those raising the cases are more likely to attribute what they perceive as poor performance to the solicitor being older, and therefore make a complaint.

The disproportionality experienced by BME solicitors is evident across all four types of cases. Interestingly, this disproportionality for BME solicitors only becomes apparent within conduct cases once multiple conduct cases are raised. This might suggest that having a conduct case as a BME solicitor places you on the SRA's radar for investigating further cases.

This research has highlighted that it is not just BME solicitors who experience disproportionality, but also those solicitors who qualified in particular jurisdictions. Solicitors from Nigeria, India, Pakistan and Bangladesh are more likely to have cases raised against them. It might be suggested that the QLTT should be reinforced for solicitors looking to practise in the UK who have qualified in these countries. However, solicitors who originally qualified at the Bar of England and Wales are also disproportionately likely to have cases raised against them; this raises the question of whether the current standard set for this Bar are also sufficiently high. Interestingly, there is no predictive relationship between BME status and district of qualification in predicting disproportionality.

### **Do SRA processes further compound this disproportionality?**

The findings of this research indicate that some SRA outcomes act to reduce the disproportionality experienced by BME solicitors, some act to maintain the level of disproportionality coming through in the cases raised, and in some areas the SRA outcomes add to the disproportionality experienced by BME solicitors.

More specifically, those areas where the SRA reduces the levels of disproportionality by being more likely to not uphold the case raised against a BME solicitor are in conduct cases referred by the LCS. This is particularly notable, given the fact that the LCS refers a disproportionately high number of cases against BME solicitors to the SRA; however it should also be remembered that in the dataset of the cases closed in the three year period 2007-2009, only 5% of cases were conduct cases referred by the LCS.

Those SRA processes that neither reduce nor increase the level of disproportionality experienced by BME solicitors are breaches of regulation, whereby the SRA processes results in a proportionate number of these cases being upheld, not upheld and referred to the SDT. In the dataset of the cases closed in the three year period 2007-2009, 23% of all cases related to breaches of regulation.

There are also some SRA processes that result in increased disproportionality against BME solicitors. These are:

- Initial assessments: fewer BME solicitors have their case not upheld and more are referred internally within the SRA for further investigation.
- Conduct cases: BME solicitors are less likely to have their case not upheld, (although it is important to note that a proportionate number will have their case upheld). In the dataset of the cases closed in the three year period 2007-2009, 30% of cases were conduct cases.
- Two forms of regulatory cases -
  - Solicitors' Accounts and practising restrictions: BME solicitors are more likely to have their application (non S12) rejected. In the dataset of the cases closed in the

three year period 2007-2009, 11% of cases were accounts and practising restrictions cases.

- Practising Certificate renewals: BME solicitors are more likely to have restrictions placed on their PC. In the dataset of the cases closed in the three year period 2007-2009, 10% of cases were PC renewals. In particular, PC renewals is the only area of SRA processes where a solicitor's ethnicity, together with other demographics including gender and number of years on the Roll, directly predict whether a solicitor will have restrictions placed on their PC.

It is not possible to determine the exact causes of the disproportionality in these particular SRA functions; it may be that people are simply more accurate when reporting these types of cases, alternatively that some form of bias is present either within the formal processes, or the decision making processes of the individuals involved. A key area for concern is the disproportionality evident at the initial assessment outcome stage, as this is the first stage which determines whether a case that has been raised requires further investigation, thereby compounding the earlier experiences of disproportionality experienced by BME solicitors.

There is one further finding concerning the SRA's role in disproportionality; the SRA is more likely to refer internally for further investigation cases raised against BME solicitors; these cases are also more likely to be decided at the higher decision-making level of Committee / Panel, and are more likely to be referred to the SDT across all three: conduct, conduct cases referred by the LCS, and regulatory cases. The increased chance of referral to the SDT is in itself an important form of disproportionality, given the level of seriousness often associated with these cases. As discussed in the body of this report, being referred to the SDT usually results in a more serious outcome than the case being upheld; of those who were referred to SDT and went to tribunal, 95% of the cases heard resulted in a reprimand, fine, suspension or strike-off. There is an important question to answer beyond the scope of this current report; that is whether BME solicitors are simply more likely to be involved in more complex cases that need to be referred to the SDT, whether the decisions made at the SDT level are in themselves unfair, or whether a disproportionately low level of cases concerning white solicitors are referred to the SDT.

In totality, this research therefore has confirmed that BME solicitors do indeed experience disproportionality in the regulatory processes. Part of this disproportionality is simply because a higher number of cases are raised against BME solicitors than would normally be expected; this is largely outside of the control of the SRA. However, this report has also identified areas where the outcomes of the SRA processes result in further disproportionality, particularly regarding whether cases required further investigation within the SRA, conduct cases, decisions made about PC restrictions, and refusing BME solicitors' applications (non S12). As highlighted in our first report on the activities of other regulators regarding disproportionality in their regulatory behaviours, the SRA is taking a more proactive approach in understanding and addressing these issues of disproportionality than most regulators; as laid out in the recommendations included in this report, there are a number of actions that the SRA can take to further explore their processes in order to identify specific actions that can be taken to reduce or eliminate this

disproportionality. Such further action is in line with the SRA's commitment to be fair and consistent with the regulated community.

# APPENDIX 1

## GLOSSARY OF TERMS

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### Case

Each file opened by the SRA is known as a case and given a unique reference. If the case is subsequently referred for further investigation in another area this will result in a second unique reference being created.

### Case reasons

Case reasons are used to determine specific reasons behind each case. Each case has one or more case reasons recorded to describe in more detail the reason for the complaint / allegation / investigation or application. There can be more than one reason in each instance and there are over 200 possible reasons in total. These are grouped together under broader themes for the purpose of data analysis.

- **Abandonment of Solicitor's Practice** - This relates specifically to abandoned practices.
- **Applications regarding restrictions on practice** - These relate to applications made to the SRA regarding restrictions on practice.
- **Breach of undertaking** - Used when it is alleged that an individual has breached an undertaking.
- **Character and suitability** - Topics classed as 'Character & Suitability' issues include the following: misleading (whether a client, non-client, court or the SRA); taking advantage of client or non-client; threatening or offensive behaviour; discrimination or harassment on the grounds of race, sex, age, disability, sexual orientation or religion / belief; conviction, arrest or caution; alcohol or drug abuse; or breach of confidentiality.
- **Conflict of Interest** - Allegations that an individual has not acted appropriately where there is a perceived or actual conflict of interest.
- **Costs and fees and referrals of clients** - This covers an individual's responsibilities regarding the costs and fees that they charge and how they deal with referrals of clients.
- **Financial cases** - This covers the actions of an individual with regards to financial issues. It includes failing to deliver accountants reports in a timely manner and failure to pay other parties.
- **Guidelines for practising** - These reasons relate to the failure of an individual to comply with the requirements surrounding practice. This includes issues such as practising uncertificated, not providing adequate supervision, failing to comply with indemnity insurance rules, or rules surrounding publicity.
- **Fraud/Dishonesty/Money laundering** - This covers allegations of fraud (other than mortgage related) dishonesty or money laundering.
- **Mortgages and property** - This covers issues surrounding mortgages or property transactions, including suspected fraud.
- **Other** - Any other case reasons, including a large proportion relating to allegations that the SRA does not need to pursue further.
- **Professional competence** - These reasons surround an individual's relationship with the client and include issues such as failing to adequately deal with complaints.

## **Case Type**

Types of cases are used to distinguish different file types. The types of cases discussed in this report are:

- **Solicitors' Accounts and practising restrictions Cases** - cases relating to the submission of accountants reports and approval of employment for individuals who have previously been struck off the Roll.
- **Conduct Cases** - these are allegations of misconduct, such as failure to reply / co-operate, misleading the client or the court, overcharging, deception or dishonesty. These cases are raised predominantly by the public or the profession.
- **Practising Certificate (PC) Renewal Cases** - these cases relate to areas such as Practising Certificate renewals, as well as renewals for Registered European or Foreign Lawyers.
- **Initial assessments** - any allegation that is routed through the Risk Assessment and Designation Centre (RADDC). Initial assessments are created for all allegations that are received and following that a regulatory, a conduct or a conduct case referred by the LCS case will be created where required. It is worth noting that initial assessments have only been recorded since January 2009.
- **Conduct cases referred by the LCS** - these are the same as conduct cases, apart from the fact that they represent conduct cases referred to the SRA by the Legal Complaints Service (LCS).
- **Breaches of regulation Cases** - where an accusation of some form of breach has been made and investigated.
- **Regulatory Cases**- allegations of breaches of the practising regulations and application relating to restrictions on practice.

## **Country of qualification**

Where a Solicitor has first qualified outside of England and Wales and then taken the Qualified Lawyers Transfer Test to enable them to practise in England and Wales, this is the first country in which they qualified.

## **Direct / Indirect prediction**

One factor can be said to directly predict another factor when the relationship between them has not happened statistically by chance. That is, the two factors are related to one another. For example, ice-cream sales are predicted by hot weather - the increase in temperature directly predicts the increase in ice-cream sales. It is important to note however that this relationship does not necessary mean causality - it simply means they are related. For example, we also know that ice-cream sales directly predict violent crime rates; this does not of course mean that eating ice-cream increases the chance of committing an act of violent crime. Indirect prediction is when one factor is related to another factor, but only when it is combined with a third factor.

## **Final Outcomes**

The final outcome on a case reflects the result of the investigation. The outcome codes have been refined over time and these have been grouped into similar outcomes for the purpose of this report.

### **Financial Cases**

All case reasons that relate to financial issues have been grouped together. These include issues such as failure to submit an accountant's report on time, breaches of financial services requirements and failure to pay agent's fees.

### **First Instance Decision**

This is used as part of the process outcome to determine whether or not the decision was subject to an appeal. First instance decision indicates that no appeal hearing took place.

### **Indirect Prediction**

See Direct Prediction.

### **Legal Complaints Service**

The Legal Complaints Service (LCS) is an independent complaints handling body dealing with complaints from clients regarding poor service or solicitor's bills. If during the course of investigating a complaint the LCS identify significant issues regarding the conduct of a solicitor they refer this to the SRA. This issue is then investigated separately by the SRA.

### **Level of Decision Maker**

The level of decision maker identify the level at which a decision was made - caseworker, authorised decision maker, adjudicator or adjudication panel - and whether or not that was a first instance decision or an appeal.

### **Qualified Lawyers Transfer Test (QLTT)**

The Qualified Lawyers Transfer Regulations (QLTR) allow certain overseas lawyers and other UK qualified lawyers to become qualified as solicitors in England and Wales. There are usually two requirements to do so; lawyers must pass the Qualified Lawyers Transfer Test (QLTT); and/or satisfy a two-year legal experience requirement (which includes experience of practising the law of England and Wales). The QLTR and QLTT will be replaced by the Qualified Lawyers Transfer Scheme (QLTS) in September 2010.

### **The Solicitors Disciplinary Tribunal (SDT)**

This is an independent statutory tribunal.

### **Upheld / Not upheld**

These are final outcomes used on conduct, conduct case referred by the LCS and regulatory cases as well as on complaints that are investigated by the Legal Complaints Service to indicate that the complaint / allegation was upheld or not upheld.

Other outcomes used on these cases include Referred to the Solicitors Disciplinary Tribunal (SDT), which indicates a case that is considered to be serious, and no action, which is used

when a case is no longer being investigated for reasons such as ongoing legal action or the incapacity of a solicitor.

## Action plan

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
<b>1. Disproportionate number of cases raised against BME solicitors</b>	It is important that solicitors are made aware that the SRA have a disproportionate number of cases raised against BME solicitors. Currently, some forms of reporting suggest that the disproportionality experienced by BME solicitors is purely due to the SRA; the results of this research indicate that this clearly is not the case.	Accept	Published reports on website.	Communication message (internal and external) to all stakeholders that a disproportionate number of cases are raised against BME solicitors and does not occur purely due to SRA processes.	Director of Communications	July 2010
<b>2. Collect referral source data</b>	The SRA do not currently systematically collect and record data concerning the individual raising the case, nor, if relevant, the organisation they represent. This means that it is currently not possible to identify	Accept	The SRA have recently started to collect data on lay informants but not on organisations <sup>1</sup> .	Analysis of informant data as part of regular Management Information (MI) updates.	Chief Operating Officer	31 August 2010 for regular MI reporting on current data.

<sup>1</sup> Incoming reports record the name and type of source which may be linked to data already held on the central database (REGIS) in addition to an assessment of the reliability of the source.

Information coming into the Fraud and Confidential Intelligence Bureau (FCIB) is confidential and source information is not recorded.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
	which demographic groups or professional bodies are most likely to be disproportionate in their referrals. Collecting this referral source data and attaching it to each case raised will equip the SRA with significantly more helpful information in addressing the disproportionality that is coming in through the organisation's front door.			Further work on collecting sources of referral data.		
<b>3. Guidelines on what constitutes a fair complaint</b>	Providing additional guidelines to help people more accurately decide what constitutes a fair complaint will help to address the disproportionality of cases being raised to the SRA.	Reject in part with qualification	This is an issue for the Legal Complaints Service and the Legal Ombudsman to address and provide	Raise with relevant bodies.	Chief Operating Officer (liaising with Legal Ombudsman)  Director of Inclusion (consumer	Ongoing

The equality and diversity (E&D) informant data is then collected centrally by MI. Over the 12 months from 1 Feb 2009 to 31 Jan 2010 a response rate of 77% was recorded.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
			guidance for complainants on fair complaints. The SRA may have a limited role around consumer engagement.		engagement)	
<b>4. Support and supervision available to trainees and new solicitors</b>	A review of the support and supervision available to trainees and solicitors who are new into their careers is required. Are employing firms providing the correct support during training and early-career supervision, for example? What is the SRA doing to support this work?	Accept	<p>External monitors conduct visits on a sample of firms where trainees are placed.</p> <p>Work Based Learning (WBL) supports trainees to meet the required standards.</p> <p>The Work Based Learning Pilots</p>	As part of the work which is taking place to implement outcomes focused regulation (OFR), the SRA is reviewing its approach to the authorisation and monitoring of firms who take trainees. The SRA will be looking at the role of the training principal and the role of the firm in training trainees and the regulatory requirements which should be in place to ensure that trainees	Executive Director of Regulation	Consultation on new framework for authorisation and supervision of training establishments post final report of Training Pilots November 2010.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
			underway will provide valuable data on new approaches to improve and streamline supervision and support of trainees.	are properly trained.  Incorporation of evidence from WBL Pilots to the monitoring of training function of firms and the training principal.  Incorporation of evidence into monitoring function of firms being established within OFR.		Final Report due November 2010
<b>5. Review of processes in place for SRA to monitor support by firms to trainees and solicitors</b>	Linked to this recommendation, a review is required of the processes in place for the SRA to monitor the support that firms provide to their trainees and solicitors.	Accept	Consultation on new framework for authorisation and supervision of training establishments post November 2010 based on Training Pilots evidence.	As above	Executive Director of Regulation	Consultation on new framework for authorisation and supervision of training establishments post November 2010.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
<b>6. Review of how effectively SRA controls ongoing accreditation and Continuing Professional Development (CPD) of solicitors</b>	A review is also required of how effectively the SRA controls the ongoing accreditation of solicitors, in particular in ensuring that the continuing professional development of solicitors is effective.	Accept	CPD providers are authorised on the content, structure and format of courses to determine if they meet the criteria set by the SRA <sup>2</sup> .	The SRA will be reviewing its approach to the regulation of CPD for solicitors which will be a substantial piece of work in the longer term.  A further review as part of the overall CPD review will look at where there is a regulatory need for accreditation <sup>3</sup> of solicitors in certain areas of law.	Executive Director of Regulation	July 2011
<b>7. Review of Qualified Lawyers Transfer Test (QLTT)</b>	It is important to note that QLTT does not directly predict whether a solicitor is likely to have a case raised against	Accept	The Legal Services Board approved the	The SRA has recently reviewed its system for admitting qualified lawyers	Executive Director of Regulation	New QLTS will be implemented in September

<sup>2</sup> Providers are monitored at random on an ongoing basis. Solicitors are not currently monitored in relation to CPD.

<sup>3</sup> Currently the Law Society runs all non mandatory accreditation schemes. The SRA only runs the higher rights of audience scheme, the police station representatives register and the insolvency scheme.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
process	<p>them. However, the results demonstrate that more cases than would be expected are raised against solicitors who qualified through some QLTT processes. The SRA is already addressing this through its review of the QLTT processes and it is recommended that data is regularly monitored to ensure the SRA identifies any issues that may arise in the QLTT process.</p>		<p>new Qualified Lawyers Transfer Scheme (QLTS) for introduction in September 2010<sup>4</sup>.</p>	<p>from other jurisdictions.</p> <p>Those qualifying via the Bar will now be subject to the same QLTS requirements with perhaps exemptions (under review).</p> <p>An evaluation/monitoring programme needs to be established to monitor implementation of the new requirements and determine further actions required. For example Language and Literacy testing.</p>		<p>2010.</p> <p>Evaluation program implemented Post September 2010.</p> <p>Formal Evaluation Report of implementation September</p>

<sup>4</sup> The changes to the guidelines confirm the test will be opened up to lawyers from a wider range of jurisdictions. The new framework also stipulates that transferees will have to pass a basic English language test before they can go on to take the QLTS. The current experience requirement has also been removed from the scheme and instead candidates will be expected to take practical exercises as a way of being assessed.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
						2011.
<b>8. Working with Legal Complaints Service (LCS) regarding referrals</b>	It is likely that the SRA would benefit from working in partnership with the LCS to improve their decision-making processes in terms of raising cases to the SRA. Reviewing these processes and providing guidelines for use by the LCS would be particularly helpful given that BME solicitors are twice as likely to have a conduct case referred by the LCS raised against them, and that in turn these cases are more likely to not be upheld by the SRA.	Accept	<p>There is currently a threshold test in place.</p> <p>It is more important to focus on the relationship with the Legal Ombudsman going forward, given that from autumn 2010 complaints will go to the Ombudsman rather than LCS. A memorandum of understanding between the SRA and the Ombudsman is in place, and more details are being</p>	Build into on going discussions regarding Processes and Information requirements with the Legal Ombudsman.	Chief Operating Officer	December 2010

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
			discussed with the Ombudsman.			
<b>9. Review of decision- making at the first stage of matter handling</b>	A review of the decision-making processes at the first stage of case-handling is required. Initial assessment outcomes result in a disproportionate number of cases being taken forward for BME solicitors as fewer of these cases are not upheld. This suggests that either these cases are more complex or there is a more conservative, risk-averse decision being made in these situations. If the processes are correct, then how closely these processes are followed in practice should also be	Accept	A new audit process for decision making processes has recently been introduced, however further work is required on E&D aspects.	Comprehensive quality audits in line with OFR.  Recommendation to Compliance Committee for Principle 8 of the decision making criteria be amended <sup>5</sup> .	Chief Operating Officer	Full process by 30 April 2011

<sup>5</sup> Recommendation to Compliance Committee for Principle 8 of the decision making criteria be amended to ensure that, in addition to final decisions, those related to in - house process decisions are also recorded. This will require the capture of 'reasons' for the outcome of cases, whether they be 'taken forward' or not. This was agreed in June by the Committee. Principles of regulatory decision making can be found at <http://www.sra.org.uk/sra/how-we-work/decision-making.page>

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
	reviewed.					
<b>10. Review of decision making processes in relation to conduct cases</b>	A review is required of the decision-making processes used when responding to conduct cases as fewer BME solicitors have their case not upheld and more are referred to the Solicitors Disciplinary Tribunal (SDT). Again, if the processes are correct, then how closely these processes are followed in practice should also be reviewed.	Accept	An initial Equality Impact Assessment (EIA) was undertaken.	A full Impact Assessment will be carried out.  Comprehensive quality audits.	Chief Operating Officer	30 April 2011
<b>11. Review of referrals to Solicitors Disciplinary Tribunal (SDT)</b>	Given that the vast majority of cases referred to, and heard by, the SDT result in some form of punitive action, it is unlikely to be fruitful to review the cases referred to ensure that they are correctly referred. However, it is recommended that a sample of those who are not referred to the SDT are also reviewed, as the consistency with which BME solicitors are disproportionately referred, but white solicitors are	Accept	There were 112 referral requests made to the Litigation and Legal Advice Unit <sup>6</sup> in 2009, some of which involved more than one individual. Of those, the unit	Review a sample of the declined referrals from 2009.	Executive Director of Legal	31 October 2010

<sup>6</sup> Caseworking units can also send case notes to Adjudicators and panels for referral decisions.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
	not, is noteworthy. A review of the training given to SRA decision makers regarding when they refer cases for decision at a more senior level is required, in order to ensure that these referrals are made when required, and not simply due to a lack of confidence, or the existence of bias, for example.		declined to refer 63 individuals <sup>7</sup> . The unit has obtained data on the breakdown of those individuals by ethnicity, age and gender.			
<b>12. Review of decision making processes regarding Practising Certificate (PC) renewals</b>	Given that PC renewals is the one area where ethnicity, amongst other demographics, directly predicts whether a solicitor is likely to have any restrictions placed on their PC, it is critical that the decision-making processes are reviewed for this case type. This review should include step-by-step written guidelines available to SRA employees, but also a review of how closely these are	Accept	Regulatory Investigations is currently working on the full Impact Assessment in relation to practising certificate condition applications to be completed	An audit of files and decisions regarding PC conditions should be undertaken.	Chief Executive Chief Operating Officer  Independent auditor	31 January 2011

<sup>7</sup> These may have been further investigated and so it is possible that they were referred to the SDT at a later date.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
	followed in practice.		by end of August 2010.			
<b>13. Review of decision making processes in relation to solicitors' accounts and practising restrictions</b>	Similarly, a review of the decision-making process should also be undertaken for cases dealing with solicitors' accounts and practising restrictions. This review should include step-by-step written guidelines available to SRA employees, but also a review of how closely these are followed in practice.	Accept	In relation to accountant's reports, including extensions, waivers and dispensations, decision making criteria is in place.	Comprehensive quality audits.	Chief Operating Officer	28 February 2011
<b>14. Review of guidelines concerning referrals of cases to Committee/ Panel</b>	The guidelines concerning referral of more cases to Committee / Panel for decision should be reviewed, as it is clear that BME solicitors are twice as likely as would normally be expected to have their case decided at the more senior level of Committee / Panel.	Accept	The impact of the decision and the requirement for wider input is considered before referring to Panel.	Investigating the issues around confidence in decision making <sup>8</sup> .  Comprehensive quality audits.	Chief Operating Officer	Full process by 30 September 2010

<sup>8</sup> Having documented reasons for referrals to 'senior' levels will enable better assessment of equality in decision making.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
<b>15. Unique identification numbers to replace demographic details to reduce unconscious bias</b>	If not already done, the demographic details of the solicitor involved should be removed from all case documentation, and ideally the name replaced with an identification number, in order to reduce the impact of any unconscious bias.	Reject in part with qualification	This is not feasible as caseworkers will often contact solicitors by phone which they could not do without knowing their details such as name. In terms of demographic data, ethnicity is not available to caseworkers but gender and age are available.	Undertake anonymised auditing of cases to test for unconscious bias.  The Adjudication Unit are considering a pilot on making more decisions on 'character and suitability' issues on a paper basis as opposed to oral interview. This would address concerns about emotional and unconscious bias <sup>9</sup> .	Chief Operating Officer  Head of Adjudication	As above audits  Commence pilot scheme by September 2010

<sup>9</sup> It will remain necessary to interview some applicants and detailed criteria need to be developed for deciding when an interview is required. A further step would then be to consider redacting personal details from case notes submitted for Adjudication. These initiatives are at an early stage of discussion with internal stakeholders but could proceed on a trial basis for six months and then reviewed following an audit of outcomes pre and post trial.

Summary of Recommendation	Full Recommendation	Accept/Reject Recommendation	Existing	Proposed Action	Who	By
<b>16. Improving data collection, recording and monitoring</b>	One of the factors that has made identifying the sources of disproportionality so complex is the way in which data is collected and stored. Currently, for example, it is difficult to automatically check for disproportionality issues as some of the data required for in-depth analysis has to be manually retrieved. If the SRA is going to take a proactive approach in monitoring the identified disproportionality with a view to ensuring that it is declining, introducing simpler systems that allow the data to be captured in one place will be critical.	Accept	A management information strategy is currently in development which encompasses requirements for the Enabling Programme (EP) with regards to data capture and retrieval <sup>10</sup> .	Build into detailed Process reviews in EP.	Chief Operating Officer	June 2011

Many of the above recommendations are related to reviews of decision making processes, the audit team with the respective team unit and perhaps an external auditor will lead on these issues.

<sup>10</sup> The Enabling Programme is a major programme being undertaken by the SRA to improve IT and business processes. Consideration should be given by EP to the reporting that is required from any new system. Ultimately however, the level of reporting that is available is limited to the system with which we have to work. Changes have been made recently to allow decisions to be recorded against individuals rather than cases, and also the informants monitoring questionnaires provide more information on the sources of referral than has previously been available.

A further point recommended by the SRA Senior Management Team (SMT) is training of internal staff to raise awareness of unconscious bias in decision making. A training session was delivered last year by Professor Avrom Sherr. Values based training may be considered going forward.