PEARN **KANDOLA**

# SOLICITORS REGULATION AUTHORITY

**Research into Issues of Disproportionality - Initial Interim Report December 2009**

Because all business is psychology.

# INTRODUCTION FROM THE SRA

The SRA published its first Equality and Diversity Strategy in March 2009 after a comprehensive consultation exercise. The strategy provides the SRA with a framework for progressing equality and diversity    and ensures fairness in the work we do as a regulator and employer. The strategy is also our initial response to Lord Ouseley's independent review into disproportionate outcomes for black and ethnic minority (BME) solicitors.

Since the publication of Lord Ouseley's report the SRA has undertaken a programme of equality impact assessments and is working closely with the diverse stakeholder groups to develop its policies and receive feedback. This work was acknowledged by Lord Ouseley in his interim review report published in June 2009.

We have recognised the continued statistical disproportionality in our regulatory activities and have commissioned further research to understand the reason for disproportionality. This is an important piece of work and it needs to sit alongside the initiatives and changes we are undertaking to demonstrate that we are a fair, transparent and non discriminatory regulator and employer.

This interim report is based on a very high level and baseline analysis of data the SRA holds on those it regulates. The next stage of the research involving more in-depth research and data analysis forms the most critical part of this research and the SRA looks forward to the findings.

## INTRODUCTION FROM PEARN KANDOLA

This interim report has two sections. Section One provides a summary of the literature review completed in Stage One of this follow-up research, together with an overview of the interviews conducted with other regulators regarding their approaches to disproportionality. Section Two provides an overview of the initial data cut from the first part of the data analysis, together with an overview of the next steps that will be taken in this project, due to be completed in 2010. It is important to remember that this is an initial report. Its focus is very much on making sense of the complex data set that exists and inform the future phases of this research. The initial areas addressed in this report do not, therefore, provide firm conclusions.

### Background to the Research

Research conducted by the SRA has identified that black and minority ethnic (BME) solicitors in England and Wales are more likely to be subject to regulatory action. The SRA has therefore commissioned Pearn Kandola, a group of business psychologists who specialise in diversity, to conduct follow-up research to understand why this level of disproportionality is occurring, and what can be learned from other organisations that have tackled similar disproportionality issues.

There are three key stages to this follow-up research. The first stage is a literature review of the research and findings published by other organisations into similar issues of disproportionality. The second stage of this follow-up research will be a comprehensive statistical analysis of the data held by the SRA on solicitors registered in England and Wales. These statistical analyses are designed to identify the factors that are most likely to result in regulatory action being taken against BME solicitors. Having identified the specific issues that result in BME solicitors being more likely to have regulatory action taken against them, the third stage of the follow-up research will be used to explore these identified factors in greater depth, for example through the use of interviews with relevant people.

## SECTION 1: SUMMARY OF THE LITERATURE REVIEW FINDINGS

Although there are a number of large regulatory bodies within the UK, the majority of these bodies focus on reviewing their service provision rather than issues of disproportionality amongst the professionals they regulate.  This review, therefore, took the broad approach of interrogating a number of sources of information including:
- Regulatory bodies' annual reports
- Regulatory bodies' fitness to practise reports
- Organisation specific research, e.g. report for the Metropolitan Police Service
- Academic research and journal articles
- Internet searches for related search terms
- News articles and media coverage.

Much of the research focuses on the under-representation of minority groups in a particular work sector, such as women in engineering.  However, for the purposes of this literature review, the focus is whether regulatory bodies receive a disproportionate number of complaints about certain groups of people and whether the outcome of these complaints is disproportionate in terms of the reference population or the number of complaints received.  Although a number of regulatory bodies monitor demographic information about the people that are registered with them, far fewer monitor these demographics in relation to complaints or allegations made and the outcome of these.

### How is disproportionality identified?

Part of the literature review focused on how different organisations identify issues of disproportionality.  Some regulators appear not to monitor demographic information at all.  The majority of regulators, for which information was available, monitored the type of complaint and number of complaints made. Other types of information monitored include:
- Area of practice
- Who made the complaint
- Age of the registrant
- Gender
- Country of practice
- Country of qualification.

The majority of regulators did not provide any evidence that they monitored complaints in relation to ethnic origin.

The literature review was supplemented with interviews with other regulators, to understand practices in other regulatory environments. Specifically the interviews sought to understand what other regulators were doing to monitor the people they regulate.

The regulators were chosen either because of the similarity of their area of work to the SRA or because it was thought they would have a particularly proactive approach to monitoring their regulatory processes, so that the SRA could learn from their approaches.

Interviews were anonymous.  Details of the type of regulator interviewed are provided in Table 1 below.

### Table 1: Regulators Interviewed

|  | Ownership | How many members/organisations do they regulate | How many staff do they employ |
|---|---|---|---|
| Regulator 1 | Public | Potentially all organisations in the UK | 400+ |
| Regulator 2 | Public | 179,317 | 490 |
| Regulator 3 | Membership Organisation | 230,000 | 600 |
| Regulator 4 | Membership Organisation | 39,998 | 150 |
| Regulator 5 | Membership Organisation | 550,000 | 200 |
| Regulator 6 | Membership Organisation | unknown | 26 |
| Regulator 7 | Membership Organisation | 11,500 | 115 |
| Regulator 8 | Membership Organisation | 22,000 | unknown |
| Regulator 9 | Membership Organisation | 132,000 | 480 |

The interviews revealed that many regulators are not taking sufficient steps to measure disproportionality in their regulatory processes.

### Table 2: Proportion of Regulators Collecting Ethnicity Data of Members

|  | Proportion of Regulators |
|---|---|
| Collect ethnicity data of members | 44% |
| Collect ethnicity data of members going through disciplinary process | 33% |
| Intend to collect information in the next 12 months | 44% |

In total, nine regulators were interviewed for this stage of the research.  Only three have suitable ethnicity data to be able to identify whether those they regulate are treated disproportionately in terms of ethnicity.  Even amongst these organisations none claim to have collected data for their entire memberships, due to issues in collecting demographic data.  There appear to be no trends in terms of the organisations that are doing well in this field with regard to collecting data, neither by size of organisation nor by sector.

Of those interviewed there did seem to be an interest in the topic and an urgency to collect better data. In this regard the SRA is currently ahead of other regulators in terms of its understanding of disproportionality.

The General Medical Council (GMC) is one of the few regulators that have looked at complaints in relation to ethnicity. The GMC's approach is to use doctors' country of qualification as an indication of ethnicity (Allen, 2000). They found that 93% of doctors who had qualified in the UK/Ireland/Europe/Australasia were white and 94% of doctors who had qualified overseas were non-white. They therefore took qualification within the UK/Ireland/Europe/Australasia to be an indication of white ethnic origin and qualification overseas (outside of these areas) to be an indication of a non-white ethnic origin. There are obviously limitations to this approach as it assumes that all doctors who qualified in the UK/Ireland/Europe/Australasia are white and all doctors who qualify outside of UK/Ireland/Europe/Australasia are non-white. There are a number of doctors who are, therefore, likely to have had their ethnic origin misclassified.

## Types of disproportionality

Of the disproportionality reported by other regulators, there are four main types that have been identified. These are disproportionality regarding:

- Ethnicity
- Country / place of qualification
- Gender
- Age.

A summary of the findings regarding these four types of disproportionality is provided below.

### 1. Disproportionality regarding ethnicity

The literature into disproportionality in regulation gave little reference to issues relating to ethnicity. This is an interesting finding in itself; it may be the case that the regulators simply are not monitoring the ethnicity of registrants who are the subject of complaints, they may be collecting the monitoring data and not using it, or they are not making public their findings due to their sensitive nature.

Two pieces of research which have revealed issues of disproportionality in relation to ethnicity were both conducted with police forces. The Morris Inquiry (2004) was commissioned to examine professional standards and employment matters in the Metropolitan Police Service (MPS). The following findings were outlined in the report:

- There is disproportionality in the way BME police officers are treated in relation to the management of their conduct - some managers lack the confidence to manage BME officers, perhaps because they are fearful of prompting claims of race discrimination.
- Some managers also appeared to lack confidence in managing other issues of difference including gender, sexual orientation, disability and faith.

- A higher number of complaints were recorded against black officers than would be expected if the numbers were the result of chance.
- A higher number of internal investigations were recorded against black and Asian officers than would be expected if the numbers were the result of chance.
- A higher number of written warnings recorded were for black, Asian and other minority ethnic officers than would be expected if the numbers were the result of chance.

In summary, BME officers were significantly more likely to be the subject of complaints and to have formal investigations and warnings because of those complaints. Similar research conducted in the US by Lersch and Mieczowski (2000) looked at the relationship between external (from the public) and internal complaints, officer characteristics and type of complaint, with similar findings.

This MPS research was followed up by an investigation into the causes of this disproportionality, which were provided in a report in 2006. This outlined the fact that there was a lack of understanding of the importance of diversity in strategic thinking in the MPS, a blame culture was evident in the organisation, poor training, and a significant lack of confidence amongst managers in tackling issues of underperformance demonstrated by BME officers.

## 2. Disproportionality regarding country/place of qualification

The GMC is the only regulatory body reviewed to have reported issues of disproportionality in relation to country of qualification. As previously noted, the GMC used country of qualification as an indication of ethnicity and this approach is likely to have resulted in the misclassification of ethnicity. However, the GMC monitors the source of complaints and classifies them as from members of the public or from a person acting in a public capacity (PAPC), i.e. someone working on behalf of a public organisation. This is usually NHS Trusts or police forces.

The report indicates that for UK qualified doctors, 14.7% of enquiries were from PAPC. For International Medical Graduate (IMGs), the proportion was almost double at 29.3%. The report did not outline any reasons as to why this is the case. Furthermore, the findings suggested there are extreme regulatory activities for IMGs; that is, IMGs are more likely to have complaints made about them; of those complaints, they are more likely than UK qualifiers to have their complaint dismissed than UK qualifiers but if they are found to require sanctions, they are more likely to be struck off in comparison to UK qualifiers, who are more likely to be suspended. UK qualifiers are therefore more likely to receive regulatory sanctions in the middle ground, such as being suspended or given conditions.

No explanation was given to account for these findings. However, a report produced for the GMC in 2009 by the University of Warwick looking at the experiences of non-UK qualified doctors, found that there are a number of difficulties experienced by non-UK qualified doctors in their transition to practise within the UK ethical and professional regulatory framework. These findings may go some way to explain why a greater

proportion of complaints were made against non-UK qualified doctors. The key findings highlighted that:

- There was little emphasis put on ethical and professional standards in the information, training and support available. The main source of information on ethical standards and guidance is a copy of the 'Good Medical Practice' received on registration. However, this is not always read and may not be understood.
- Recognition of the ethical, legal and cultural context of UK health care does not actually happen until doctors are working in practice.
- Many non-UK qualified doctors find the ethical framework of UK healthcare very different to that of their country of qualification. The main difference is that in the UK more emphasis is placed on autonomy and shared decision-making between doctor and patient, whereas non-UK qualifiers often have more experience of a more paternalistic model.
- There are concerns amongst many non-UK qualifiers about communication, e.g. subtleties of language, non-verbal communication and social and behavioural norms.

It appears that whilst the practical needs, such as the immigration of non-UK qualifiers are attended to, they are given little support in terms of ongoing integration and how ethical and professional standards play out in practice. Particularly interesting are the differences in terms of autonomy and decision-making, and communication, social and behavioural norms. Research into cultural intelligence and the success of expatriate workers suggests that understanding of different social and cultural norms are some of the key factors in determining the success of overseas placements.

The GMC has also conducted research into disproportionality based on country of qualification and found that although more complaints were raised about UK qualifiers from members of the public, there were more complaints about non-UK qualifiers from public bodies, and that non-UK qualifiers were more likely to be referred to the Professional Conduct Committee. The report concluded that there was no bias at any stage of the regulatory process. However, there is also an indication that there was some divergence in the approaches of screeners and committee panel members, and that there were no clear decision making rules or reasons given for decisions. These factors may well account for some of the disproportionality.

### 3.  Disproportionality regarding gender

Interestingly, whilst there was little reported by regulators about ethnicity, findings in relation to gender are much more prevalent. All of the research available on issues of disproportionality in relation to gender indicated that men are much more likely to be the subject of complaints than women. Our review has found evidence for disproportionality in complaints against male officers in the US, male midwives in Scotland, male health professionals covered by the Health Professionals Council, and male solicitors in New South Wales (Australia). In addition, in New South Wales they also found that the greatest number of complaints was in relation to commercial and property conveyancing. One possible explanation for the gender differences is that there are more male solicitors working in commercial and property conveyancing. However, firm conclusions cannot be

drawn as the report did not provide a breakdown of male and female solicitors by area of law.

## 4. Disproportionality regarding age

During this review, only two pieces of research were found that directly reported findings in relation to age. These indicated that younger police officers are more likely to be the subject of complaints, whereas with solicitors in New South Wales, the subjects of complaints were more likely to be older. In this research in New South Wales, most of the solicitors complained against fell within the age group 45-54. This group accounted for 37% of complaints and comprises 22% of the practising profession. This may be related to the finding that 51% of complaints were about Sole Principals, and people in these positions are more likely to be older through working their way up in their career.

## Addressing Disproportionality

Although a broad search was undertaken for this literature review, there is very little available information to suggest that regulators are actively addressing issues of disproportionality. The only specific action currently being taken is the work underway within a number of Councils responsible for regulation in the health and medical professions. These Councils have implemented a self-review against set standards. This has been set up under the review of the Council for Healthcare Regulatory Excellence (CHRE), an independent body accountable to Parliament. The set of standards is for use by regulators to assess themselves against and which the CHRE would use to review them. This helps the regulators to identify their strengths and areas for development as well as comparing their performance with others. The five standards are:

- Standards and guidance.
- Registration.
- Fitness to practise.
- Education.
- Governance and external relations.

As part of its review, the CHRE highlighted the following examples of good practice:

- Assessment and appraisal of panel members. Identifying development and training for panel members which form the basis of their regular training. (General Optical Council)
- Robust quality assurance processes used to ensure decisions are made in line with guidance and policy. (GMC)
- Independent analysis of the reasons for Professional Conduct Committee decisions. It was felt that the benefit of this could be maximised by setting up a formal mechanism for auditing decisions. (General Chiropractic Council)
- Clear and detailed Indicative Sanctions Guidance. (GMC)
- Clear criteria and risk assessment model used for identifying serious cases. (Health Professions Council)
- Appointment of panel members by assessing them against competencies and the use of peer assessment. (Health Professions Council)
- Refresher training for panel members. (Health Professions Council)

The following areas for improvement were also identified for some of the regulators:

- Lack of training or appraisal for Statutory Committee members.
- Panel and Committee members should be appointed using competencies and be subject to appraisal.
- The need for a comprehensive and integrated IT management system to record and track cases.

## Literature Review Conclusion

Given the number of regulatory bodies operating in the UK, there is a striking paucity of information regarding the monitoring of demographics in relation to complaints made and regulatory outcomes. It is unclear whether this is due to a lack of demographic monitoring on the part of regulators, a failure to use collected demographic information or a reluctance to publish this information due to its sensitive nature.

Of the types of disproportionality that were identified in relation to ethnicity or country/place of qualification, it is useful to separate these by professional sector:

Police Forces:
The main causes highlighted within police forces concerned the organisational culture. This is likely to have a direct impact on the strategy, priorities, understanding, blame culture and confidence and competence of managers in dealing with diversity issues.

Medical Profession:
The main causes highlighted in the medical profession were related to ongoing support and integration of non-UK doctors into the UK healthcare framework. The research suggests that there are important differences for non-UK doctors in terms of autonomy and decision making, and communication, social and behavioural norms. Research into cultural intelligence and the success of expatriate workers suggests that understanding of different social and cultural norms are some of the key factors in determining the success of overseas placements.

In addition to these findings, gender was an area of disproportionality that arose across a number of sectors including the police, medical profession and legal profession. The reasons for this were unclear. In terms of the medical profession, this may be related to more external factors such as referral by the police. In terms of the legal profession, it may be related to area of law. However, further research is required.

## Key learning for the SRA

In order for the SRA to better understand what actions can be taken to address issues of disproportionality, it is crucial to firstly distinguish between external and internal influences identified in this report.

External influences are the causes of disproportionality which lay outside of the influence of the SRA or legal firms. For example, members of the public making more complaints against BME solicitors.

Internal influences are the causes of disproportionality which lay directly within the influence of the SRA or legal firms. For example, bias or inconsistency within the regulatory process, additional support and training required for registrants etc.

It is clear that the SRA is focussed on addressing diversity issues; ensuring equality 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 includes ensuring they are a fair, non-discriminatory and transparent regulator. Indeed, this review has demonstrated that the SRA is taking a stronger, more proactive approach than many other UK regulators. There are however a number of things that the SRA can learn from other organisations in order to reduce the likelihood of disproportionality occurring. These include how other organisations have found their working culture has contributed towards issues of disproportionality, as has a lack of support for managers, particularly in addressing under-performance, the need for better training, together with the need for accurate monitoring of employee groups. These are areas that may require further investigation to understand whether they are contributing towards disproportionality in the SRA. More information is provided about these areas, and all of the findings summarised in this section, in the initial report from Pearn Kandola provided in October 2009. However, it should be noted that the SRA is already working to address these issues, for example by introducing the "Enabling Programme", the aim of which is to bring in new and improved business processes and information technology. The Enabling Programme will provide the SRA with new systems which will help to transform processes, ways of working and organisational structures to meet the demands of modern regulation.

# SECTION 2: PRELIMINARY ANALYSIS OF SRA DATA

This section outlines the initial approach to the statistical analyses underway on the existing SRA data set.

**It is important to note that this section reports the outcomes of a rudimentary and early cut of the data. This early data cut has been performed in order to direct the next stage of more detailed analyses, which will be completed in 2010. The outcomes from these early data cuts, therefore, cannot and should not be used to draw conclusions about potential issues of disproportionality.**

Throughout this section, references are made to different types of regulatory issues. Glossary of these terms is included in Appendix 1.

## Methodology

The SRA provided Pearn Kandola with a dataset broken into four Excel documents, which comprised regulatory data for over 200,000 admitted solicitors. 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 included therefore also includes information, for example, about retired solicitors. It is also important to note that accurate demographic information is not available for all of the 200,000 admitted solicitors, an issue which the SRA is currently addressing.

The data was transferred into SPSS, a statistical software programme, which allows for sophisticated inferential statistical analysis to be performed. The data was cleaned and checked to ensure the final database was an exact replica of the four individual databases provided.

The resultant database comprises the following information:

- Demographic details (including ethnicity, gender, and country of qualification)
- 17 Matter Types (details of all matter types raised against solicitors)
- 10 Grouped Matter Reasons (matter reasons grouped)
- 13 Grouped Intervention Reasons (reasons for interventions taking place)
- 12 Grouped Final Outcomes (details of what happened in each case)
- 8 Process Outcomes (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 3: Demographic Breakdown of SRA Database
(NB These data are based on approximately 200,000 solicitors on the SRA's database; this includes current solicitors, as well as others such as retired solicitors or those who do not hold a current practising certificate).

| Ethnicity | | Gender | | Country of Qualification | |
|---|---|---|---|---|---|
| | | Female | Male | UK | Overseas |
| White | N | 61,467 | 76,226 | 132,514 | 5179 |
| | % | 44.6 | 55.4 | 96.2 | 3.8 |
| BME | N | 11,041 | 8,608 | 16,197 | 3452 |
| | % | 56.2 | 43.8 | 82.4 | 17.6 |
| Unknown | N | 12,117 | 30,848 | 32,713 | 10,252 |
| | % | 28.2 | 71.8 | 76.1 | 23.9 |
| Total | N | 84,625 | 115,682 | 181,424 | 18,883 |
| | % | 42.2 | 57.8 | 90.6 | 9.4 |

Just under 10% of solicitors are from a BME background and 69% are white. Just over 20% of people have not shared their demographic information with the SRA. There is a higher proportion of solicitors who report themselves as female BME solicitors than would be expected when looking at the overall proportion of female solicitors. It is therefore important to scrutinise gender in greater depth, as it may be possible that there is a link between gender and ethnicity in the regulation process. Further data analysis, which will examine issues of disproportionality whilst accounting for the large number of female BME solicitors, will be undertaken in the next stage of the analysis, as outlined in the next section of this report.

There is also a strong relationship between ethnicity and country of qualification, with a greater proportion of BME solicitors gaining qualifications abroad.

There are several limitations with the dataset. Firstly, Matter Types and Grouped Matter Reasons in the dataset represent all those that have accrued since 1998 whilst an individual has been a solicitor (old matters were not transferred onto the SRA's new database which was introduced in 1998). The UK has become more ethnically diverse over the last 50 years and accordingly, so has the solicitor population. A greater proportion of solicitors were from a white background 50 years ago, for example. The longer a solicitor has been in practice, the greater the chance of them having a matter raised against them during their career. As a greater proportion of longer serving solicitors are white, there is the potential for the analysis to be skewed by this artefact of the changing demographics. Again, this skew in the data will be factored for in the detailed data analysis to follow.

Secondly the way in which Grouped Final Outcomes and Process Outcomes has been collected and saved has changed over time, and is only considered to be reliable for analysis from the last three years. Hence data for these two broad areas is analysed for only the last three years.

Finally, the dataset is constructed with the solicitor being the unit of analysis. Many solicitors have more than one matter raised against them over the course of their careers. The result of this is that it cannot be determined how a particular Matter Type was resolved. Instead the data, which is in aggregated format, shows the number of different matter types raised and also the number of different outcomes that a particular solicitor has received. What cannot be deduced is how a particular matter type was resolved due to the aggregated format of the data. Pearn Kandola are currently reviewing options to overcome this restriction.

These three issues have shaped our plans of how to analyse the data in an appropriate and intelligent manner. We give details of the next steps of analysis at the end of the next section.

## Disproportionality by Ethnicity

Having completed the initial descriptive statistics, the data was then analysed using the Kruskal-Wallis test, which is a non-parametric test of equality of medians amongst different groups. An important health warning is required however when reviewing the results of the Kruskal-Wallis tests; because of the very large sample of more than 200,000 solicitors, even small differences of, for example, 0.5% points can become statistically significant, even though in a real world context there would be no genuine difference in proportionality. Future analyses planned for a smaller sub-set of solicitors will provide data from which more meaningful results can be drawn. However, the initial data cut indicates that:

- White solicitors are more likely than BME solicitors to be the subject of referrals to the SRA from the Legal Complaints Service.

It is important to note that this contradicts the findings of a Legal Complaints Service Equality Impact Assessment (EIA). The Legal Complaints Service EIA looked at referral conduct matters (RAR referrals) made between July 2007 and June 2008 indicated an over representation of BME solicitors in the population of solicitors who were referred by the LCS to the SRA for risk screening (and, if considered appropriate by the SRA, investigation of possible misconduct) when compared to the proportion of BME solicitors in the population of complaints received by the Legal Complaints Service in the same period. This contradiction in finding is an example of how the early data cut included in this report requires further analysis, and an issue that will be explored in greater depth in the next stage.

However, BME solicitors are more likely than white solicitors to have:

- Matters raised made against them regarding financial matters.

However, BME solicitors are more likely than white solicitors to have:

- Outcome upheld
- Outcome not upheld.

The suggestion that BME solicitors are both more likely to have complaints upheld as well as not upheld is likely to be explained by the fact that, as outlined in the Ouseley Report, BME solicitors are over-represented in a number of areas of regulatory activity. That is, the fact that BME solicitors are more likely to have a matter raised against them, means that in turn they are also more likely to have a disproportionate number of matters upheld as well as a disproportionate number of matters not upheld, simply because disproportionally more matters are raised against them. It will be possible to explore this in more detail in the further analysis to be carried out, where time served, and thus changes in demographics over time, can be factored out.

BME solicitors are also more likely to have the following Process Outcomes (the person or body who makes the decision about the case) for the cases raised against them
- Authorised Officer: First Instance Decision
- Adjudicator: First Instance Decision.

## Disproportionality by country of qualification

Our early analyses indicates that UK-qualified solicitors are more likely than solicitors who have qualified overseas to have the following matter types/matter reasons raised against them:

- Complaint of Inadequate Professional Service (CRO Complaint)
- Conduct (Desk-based investigation of allegations of misconduct)
- Professional competence/client relations.

UK-qualified solicitors are also more likely to have no action taken against them, and matters not being upheld.  In addition, they are also more likely to have:

- Some form of Legal Complaints Service Outcome on their records.

This early indication in itself is interesting and warrants further investigation as it does not take into account any potential interaction between ethnicity and country of qualification. For example a solicitor may be BME and qualified in the UK, conversely they may be white, but qualified overseas.  Further analysis will be able to look at this in more detail as it will be critical to determine whether any disproportionality that is evident is due to the solicitor's country of qualification, which may in turn be due to factors such as the training they have received, or their understanding of how to undertake their work in a professional manner in the UK, for example, rather than the ethnic background of the solicitor per se.

## Disproportionality by Gender

Male solicitors are more likely to have matters raised against them with regards to:

- Complaint of Inadequate Professional Service (CRO Complaint)
- Conduct (Desk-based investigation of allegations of misconduct)
- Regulatory complaint (allegations of breaches of the practising regulations or applications relating to restrictions on practise).

Regarding outcomes, although male solicitors are more likely than female solicitors to have the above complaints made against them, they are also more likely to have no action taken against them, and matters not being upheld.  In addition, they are also more likely to have:

- Some form of Legal Complaints Service Outcome on their records.

### Summary

It needs to be re-iterated that the results from the initial data cut should be used with caution.  The analysis is ongoing and it is too early to draw any meaningful conclusions from the data.  Further analysis is planned to explore the results of the initial data cut in greater depth.

So far, univariate analyses (analyses which compare one variable with another) have been performed.  These show that there are some differences between groups.  However, what they do not account for is the changing demographic composition of solicitors, nor any

other mitigating variable.  The next step of the analysis is to perform multivariate statistics, which allow several other variables to be taken into consideration at the same time.

We intend to do the following analyses:

- Are BME solicitors more likely to have particular Matter Types raised against them (these are the reasons for the investigations), while controlling for gender, country of qualification, age, length of time registered.
- We intend to do similar analyses for Grouped Matter Reasons (the subject matter of the allegations), Grouped Intervention Reasons (the reasons why interventions with solicitors occurred), Grouped Final Outcomes (what was decided in each case) and Process Outcome (who made the decision).

Carrying out these multivariate statistics will enable conclusions to be made about the data and will also enable the building of a statistical model that may identify which factors have the biggest impact on disproportionality.

In addition we wish to pursue the idea of using data that has the 'case' (i.e. the issue or complaint that has been raised) rather than the 'solicitor' as the unit of analysis.  We intend to carry out more detailed analysis on a sub-sample of the dataset and would like to consider this as an option for this stage of work.

## FURTHER REQUIREMENTS

### Unavailable Data

There are a number of criteria which may contribute, at least in part, to the disproportionality experienced by some solicitors. However, the current data collection and monitoring processes within the SRA mean that this data is either unavailable, or is too unreliable to be used with a view to identifying contributing factors. The data currently unavailable includes:

- Full or part-time status
- Information regarding continuous professional development

### Next steps – subsample

A more detailed representative subsample of current solicitors is being identified. This subsample will allow us to collect significantly more detail about each solicitor, which is currently not possible for the large database of over 200,000 solicitors, as in some cases the data needs to be manually identified and coded. We are currently exploring the possibility of including the following data points for each solicitor in this subsample:

- Self-reported types of practice
- Size of organisation (based on number of partners and number of PC holders)
- Whether they work in a minority-owned firm
- Final matter outcome
- Character reference
- Route to qualification

This dataset will be used to look at the issues identified in this paper, such as the interplay between country of qualification and ethnicity, gender and ethnicity and age and ethnicity, for example. This detailed analysis is critical in identifying if there is disproportionality, specifically what form it takes and against which group of solicitors.

The outcomes of the analysis of this more detailed analysis will also determine further research steps, which may include, for example, how matters are handled within SRA, exploring whether specific SRA decisions are more likely to result in disproportionality, and if this is the case, the causes behind this disproportionality.

### Summary

The statistical analyses completed to date indicate that whilst there is some evidence of disproportionality in the actions taken against particular solicitors in the UK, there is no consistent pattern in the type of disproportionality. For instance, white solicitors are more likely to receive complaints of professional misconduct, whilst BME solicitors are more likely to have complaints regarding financial matters raised against them. Male solicitors are more likely to have complaints raised against them on a number of grounds, whilst there is no evidence of disproportionality against female solicitors.

Perhaps of most interest is the fact that although male solicitors might be more likely to have matters raised against them, their matter in turn is also more likely not to be upheld.  This is also evident for UK-qualified solicitors as well as BME solicitors, although it should be remembered that BME solicitors are also more likely to have cases upheld; this is likely to be due purely to the disproportionate number of matters raised against BME solicitors to start with as identified in the Ouseley report.

As stressed throughout this report, what is reported here is an initial data cut only; further research is required, building on these top level analyses, in order to fully understand the nature of this disproportionality.  These additional analyses will help to determine whether any identified disproportionality is in reality correlated with the solicitor's demographic background rather than being as a result of the large dataset employed to date, and whether there are any interactions happening within the data, such as BME male solicitors being more likely to be the subject of matters or complaints.  These issues will be addressed in the next stages of the analysis and will be reported in 2010.

# APPENDIX 1: GLOSSARY OF TERMS

**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 practice in England and Wales, this is the first country in which they qualified.

**Final Outcomes**
The final outcome on a matter 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 matters**
All matter reasons that relate to financial issues have been grouped together. These include issues such as failure to submit an accountants report on time, breaches of financial services requirements and failure to pay agents 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.

**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.

**Matter**
Each case file opened by the SRA is known as a matter 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.

**Matter Reasons**
Matter reasons are used to determine specific reasons behind each matter. There can be more than one matter reason on a matter; they have been grouped together into similar reasons for the purpose of this report.

**Matter Type**
Matter types are used to distinguish different file types. For example, a conduct matter represents an investigation into a solicitor's conduct and a compensation fund claim matter represents a claim made against the compensation fund.

## Process Outcomes

Process outcomes identify the level at which a decision was made – caseworker, authorised officer, adjudicator or adjudication panel - and whether or not that was a first instance decision or an appeal. Process outcomes are used on conduct, redress conduct and regulatory matters as well as on complaints that are investigated by the Legal Complaints Service, therefore not every matter will have a process outcome.

## Upheld / Not upheld

These are final outcomes used on conduct, redress conduct and regulatory matters 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 matters include Referred to Solicitors Disciplinary Tribunal (SDT), which indicates a matter that we consider to be serious, and no action, which is used when a matter is no longer being investigated for reasons such as ongoing legal action or the incapacity of a solicitor.

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