

**INDEPENDENT COMPARATIVE CASE REVIEW
THE SOLICITORS REGULATION AUTHORITY**

REPORT EXECUTIVE SUMMARY

by Professor Gus John

Gus John Consultancy Limited

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Background and Introduction to the Review

1. This review was commissioned by the Solicitors Regulation Authority (SRA) in 2012.
2. The SRA wished to conduct an independent, comprehensive case file review

‘to identify whether there is disparity in the way the SRA applies its policies and procedures in dealing with BME practitioners as compared to others with a view to identifying potential improvements to such practices, policies and procedures to maximise fairness and consistency...’
3. This review followed reviews by Lord Ouseley (2008) and Pearn Kandola (2010), both of which looked at evidence of disproportionate regulatory outcomes for black and minority ethnic (BME) solicitors. The SRA was keen to establish whether such disproportionality as was found, was on account of the ethnicity of BME solicitors, or on account of the application of its own policies and procedures, the result of extraneous factors, or a combination of all those.
4. Gus John Consultancy Limited was commissioned to conduct the review in July 2012 and the terms of reference of the review were agreed in November 2012 (Appendix 1). The review began in earnest in the Spring of 2013, having selected a sample of 160 files of cases that had been concluded between 2009 and 2011. 80 of those files were of cases involving White solicitors, 40 of whom would have had their regulatory matter dealt with through internal adjudication by the SRA and the other 40 by the Solicitors Disciplinary Tribunal (SDT). This pattern was mirrored by the 80 files involving BME solicitors.
5. As the terms of reference stipulated, ‘the reviewer (was) not carrying out a legal review of cases but identifying potential improvements to practices, policies and procedures to maximise fairness and consistency’.
6. The review was conducted in three parts:
 - i) a statistical analysis of ethnicity and gender by regulatory outcomes, drawing upon the SRA’s published monitoring data (2009-2012),
 - ii) a comparative case file review to compare a sample of SRA files for SDT prosecutions in which the SDT published its findings or judgment in 2011 with a sample of files dealt with by way of internal SRA decision by adjudication in 2011,

- iii) surveys, focus group sessions, and follow up interviews with solicitors who had been subject to regulatory action, regulatory solicitors who represent respondents in the SDT and members of other stakeholder groups.
- 7. November 2011, the SRA started rolling out Outcomes Focused Regulation (OFR). Chief Executive, Antony Townsend, said at the time:

We will regulate fairly, proportionately, and firmly....Regulating in a new way, focusing upon risks and outcomes rather than compliance with detailed rules, has been a massive change for our organisation.'

OFR and beyond - The SRA's vision for regulating legal services in the 21st century
- 8. OFR is predicated upon a qualitatively different relationship between the SRA and the regulated profession, with an emphasis on supervision, constructive engagement and supporting solicitors/firms in identifying and managing risk, among other things, so as to anticipate and avoid breaches. We felt it necessary, therefore, to explore the impact 'Outcomes Focused Regulation' and a greater proportion of in-house adjudication, might have on a key intended outcome of the review, i.e., to maximise fairness and consistency and eliminate potentially discriminatory practices.
- 9. In September 2013, an addendum was made to the terms of reference as follows:
 - (a) Examine how current cases are being processed and how recently concluded cases were dealt with under Outcomes Focused Regulation (OFR) in order to highlight the impact of 'improvements to SRA policies and processes and the extent to which the OFR approach to regulation is helping to eliminate disproportionality and maximise fairness and consistency'.
 - (b) Conduct two on-line surveys of external advocates and of respondents respectively, in relation to their experience of the regulatory process. A total of 160 respondents to be surveyed, who were not part of the main file review sample.
- 10. The SRA's **Strategy Paper: "Achieving the Right Outcomes"** (January 2010) set out the regulator's intention to move to OFR and its new approach to regulation as follows:

- The SRA is moving from being a rules-based regulator, primarily responding reactively to individual rule breaches, to an outcomes-focused, risk-based regulator.
- Our goal is to use our resources cost-effectively to maximise our delivery of the regulatory objectives set out in the Legal Services Act 2007, namely:
 - (a) protecting and promoting the public interest,
 - (b) supporting the constitutional principle of the rule of law,
 - (c) improving access to justice,
 - (d) protecting and promoting the interests of consumers,
 - (e) promoting competition in the provision of services,
 - (f) encouraging an independent, strong, diverse and effective legal profession,
 - (g) increasing public understanding of the citizen's legal rights and duties,
 - (h) promoting and maintaining adherence to the professional principles.
- Our approach includes:
 - (a) ensuring that the requirements on firms are more focused on acting in a principled manner to deliver desired outcomes, rather than compliance with over detailed rules.

11. The difference between the SRA's approach to regulation in the period covered by the flies and cases in this review (2009-2011) and since the introduction of OFR in October 2011 is best summed up in the first bullet point above:

The SRA is moving from being a rules-based regulator, primarily responding reactively to individual rule breaches, to an outcomes-focused, risk-based regulator.

12. The SRA came into existence as an entity in its own right in January 2007 as a result of the Legal Services Act (LSA), having been the regulatory arm of the Law Society. As a regulator of the solicitors' profession, therefore, it works to deliver the regulatory objectives of the LSA. But, as a public body, it has another set of compliance requirements, i.e., compliance with the Public Sector Equality Duty (PSED) of the Equality Act 2010. How then does the SRA ensure that the regulatory objectives and its approach to delivering them are consonant with the requirements and spirit of the Equality Act 2010 and

the PSED compliance requirements? What are the implications of regulatory disproportionality as experienced by BME solicitors for both the regulatory objectives and the PSED?

13. In reviewing the way the SRA dealt with closed cases in order to identify 'potential improvements to practices, policies and procedures to maximise fairness and consistency', we were concerned to establish how those practices, policies and procedures reflected the SRA's approach to the regulatory objectives such that one did not negate the other(s), while having due regard to the requirements of the Equality Act 2010. In looking at the causes of BME disproportionality, therefore, we needed to explore the approach the SRA took to four inter-related regulatory objectives:
- protecting and promoting the public interest,
 - improving access to justice,
 - protecting and promoting the interests of consumers, and
 - encouraging an independent, strong, diverse and effective legal profession.

Findings

14. The review found evidence of disproportionality at three stages of the regulatory process, namely: at the point at which a case is raised or a complaint is registered against a solicitor or a firm; in the process of investigating that complaint; and at the point at which an outcome is determined and a sanction imposed. Disproportionality in the number of cases raised is not necessarily as a result of SRA action. Cases could be raised or complaints registered by members of the public, other solicitors, through self-referrals, or by other external agents.
15. Our analysis of the SRA's monitoring data revealed that BME solicitors, given their percentage of the solicitor population overall, were disproportionately represented amongst those subject to investigation. Between 2009-2012 as an average, BME solicitors made up **13%** of the entire solicitor population, but during the same period they represented **25%** of the '**new conduct investigations**'. The percentage of new investigations involving BME solicitors was almost double what one would expect, while their White counterparts were underrepresented; representing **87%** of the solicitor population and accounting for **75%** of the new investigations.
16. What follows is a cross-section of our findings in respect of cases internally adjudicated by the SRA as well as those that were prosecuted in the SDT upon referral by the SRA.

17. Our analysis of the outcomes of the cases showed that BME solicitors and firms also comprised a higher percentage of those against whom action was taken and were also subjected to more severe sanctions than their White counterparts. In the case of interventions, where the SRA took control of a solicitor's legal practice or a firm, BME solicitors and firms were again over-represented. Whilst **25%** of the SRA's new investigations involved BME solicitors, they accounted for **29%** of interventions, during the period. Their White counterparts were under-represented in the same category, making up **75%** of the new investigations and **71%** of the interventions.
18. In the case of eventual referral to the SDT, BME cases made up **33%** of the cases referred, and accounted for **25%** of new cases, while White cases were proportionally underrepresented making up only **67%** of referrals in relation to **75%** of new cases. In instances where conditions were attached to practising certificates, BME cases accounted for **32%** in comparison to their **25%** share of newly opened cases, contrasted with cases involving White solicitors who accounted for **68%** in comparison to **75%** of new cases.
19. The figures indicate that not only was there a disproportionate number of BME solicitors under investigation by the SRA during the period 2009-2012, but also that the eventual outcome of the SRA's investigations ended with more severe sanctions being applied to BME respondents.
20. The group composed of White respondents featured more often in the lesser sanctions categories such as 'Finding and Warning' and 'Rebuke', in comparison to the BME sample. The largest difference in the sanctions passed between the two ethnic groups was in the 'Conditions on PC', which accounted for 20% in the BME compared to 7.5% in the White group. On the lower end of the scale BME respondents received more 'Cost Direction' orders with 12.5% compared to 5% in the White group.
21. We analysed 72 judgements passed by the SDT, 40 cases involving White respondents and 32 involving BME. The figures have been adjusted to level the sample size and are expressed in percentage form. 28% of BME cases ended in the suspension of the respondent compared with 17.5% in cases where the respondent was White.
22. Using the same data as the ethnicity comparison, but relating to gender, there is a clear concentration around Solicitors' Account Rules breaches, with the majority of cases in the female group, 52.6% and 43.1% in the male group, triggered by these offences. In relation to category 11, 'Fraud, Dishonesty and Money Laundering' (FDM), the female group outweighed the male group by 15.8% compared to 5.9%.
23. The outcome of cases that were prosecuted before the SDT for 'Fraud, Dishonesty and Money Laundering' breaches were weighted towards the

more severe end of the sanctions spectrum. 'Strike Off', a sanction reserved only for the SDT, was followed by 'Fine' in the frequency of sanction issued to both ethnic groups. In the 'Fine' category there was a disparity, with 50% of cases involving a White respondent ending in this sanction, compared to only 19% of BME cases. The majority of the remaining BME cases, 23.8%, fell into the 'Suspension of PC' category, with none of the White cases receiving this sanction.

24. Comparing the sanctions imposed in cases involving 'Solicitors' Account Rules' by ethnicity indicates a clear disparity. Cases involving a White respondent were more likely to end with a relatively minor sanction, i.e., a reprimand, with 47.8% ending in this way, against 21.2% in the BME group. Reprimands formed the majority of the sanctions given in the White group; this is more than twice as likely as the next most frequent sanction. By comparison, the most frequent sanction in the BME group was a fine, with 26.3%. This is quickly followed by suspension, which accounted for 21.1% of BME sanctions, nearly 5 times more frequent than suspensions occurring in the White group, which accounted for only 4.3% of cases.

Conclusions

25. The data analysed in this Report relating to SRA and SDT investigations and sanctions has highlighted disparities along ethnic lines in a number of key areas. However, it is important that these results are not immediately interpreted as evidence of discrimination or racism on an institutional level. A number of complex socio-economic and political factors must be considered as part of a comprehensive discussion of disproportionality. It is then possible to identify areas where the SRA can adjust its practices in order to take account of the nuances that might account for numerical disparities between ethnic groups and 'maximise fairness and consistency'.
26. In terms of the number of years a solicitor had been on the roll at the time of their investigation, clear differences were evident between the ethnic groups. For cases held by both the SRA and the SDT, White solicitors had been on the roll for more than twice as long as their BME counterparts. A possible explanation for this relates to the fact that, according to the data, the BME solicitors investigated had established sole practices with only 6 years post qualification experience (PQE), compared to 19 years PQE for White solicitors. Less experienced sole practitioners are more likely to fall foul of SRA regulation as they lack the resources to both ensure best practice is always followed and to insulate themselves against investigation. Therefore, the issue that arises is why BME solicitors are more likely to establish themselves on their own, with relatively little experience, in comparison to White solicitors.

27. Of more concern, is the fact that the data identified a procedural discrepancy in the sanctions given to BME and White solicitors. White solicitors were over represented in receiving lesser sanctions, such as rebukes, whereas 20% of BME solicitors compared to only 7.5% of White solicitors were disciplined with conditions placed on their practising certificates. Clearly, there is a link between the nature of the offence committed and the severity of the sanction issued. However, it is possible that certain practitioners may be more likely to commit certain breaches than others, depending upon their circumstances and the challenges they face in their practice. All of this relates to the question posed earlier: why are BME solicitors with less experience more likely to establish sole practices than Whites and what factors might disproportionately affect these more junior sole practitioners?
28. The data collected indicates that the most frequent offence triggering an investigation by either the SRA or SDT related to financial irregularities falling under either a breach of the Solicitors' Account Rules and Practising Regulations (SAR), or Fraud, Dishonesty and Money Laundering (FML). This was the case for investigations into both BME and White solicitors. FML breaches accounted for 60% of BME and 22% of White investigations. Significantly, the majority of these cases were the result of investigations initiated by the SRA themselves, rather than coming from public complaints, law enforcement agencies or other referrals. This would perhaps point to the fact that the SRA is particularly concerned with enforcing regulation concerning the financial practices of law firms; a focus that may disproportionately affect some firms more than others.
29. Given the factors mentioned above, a hypothetical example is useful in suggesting reasons why BME solicitors might be disproportionately affected by SRA regulation. It can be argued that BME individuals are less likely to come from backgrounds that enjoy the privileges of private schooling and, as a result, are underrepresented in Oxbridge or other first class higher education institutions. As such, they lack the advantages enjoyed by other demographics when it comes to progressing in an elite profession such as practising law. These advantages relate not only to the standard of education received, but also to the formation of a network of elite associates that might be useful in providing access to opportunities and resources later, and to a pronounced understanding of how to navigate elite systems so as to advance one's career. On the face of it, these factors, which are increasingly referred to as 'social and cultural capital', have more to do with barriers presented by class status and socio-economic background than ethnicity. However, they disproportionately restrict BME individuals who are less likely to come from backgrounds of privilege. A BME solicitor, lacking the benefits and social and cultural capital outlined above, may be directly or indirectly disadvantaged

when seeking training contracts and/or employment with established and well resourced law firms.

30. Frustrations and limitations in career opportunities may result in a BME individual working for smaller firms or deciding to advance their prospects by starting sole practices, relatively soon after qualifying. It is perhaps also the case that some BME solicitors, recognising the fundamental principle of providing access to legal representation, may choose to establish practices aimed at serving BME communities. The disciplines practised by these BME sole practitioners will therefore reflect the needs of the communities they serve and may demonstrate an emphasis on criminal, immigration, welfare rights, or residential conveyancing law, over corporate or commercial law. Due to the nature of client billing, specialising in certain disciplines may affect the financial standing and cash-flow situation of a law firm. In this Report, no data relating to the correlation between disciplines practised, breaches committed and sanctions given, was analysed.
31. Smaller, less established firms or inexperienced sole practitioners, particularly if affected by billing issues relating to discipline specialisation, lack the financial resources of larger firms that could act as a cushion against temporary cash flow problems, for example. They are, therefore, less able to manage their finances to ensure best practice is consistently adhered to. Given the aforementioned scrutiny of financial issues by the SRA, individuals at these firms are more likely to find themselves under investigation resulting in a sanction. If BME solicitors are disproportionately represented in the composition of these more vulnerable firms, then BME solicitors will be disproportionately investigated for financial irregularity. As these firms lack resources in the first place, they will be less able to structure solid and robust defences and may, therefore, be more susceptible to more severe sanctions, resulting in evidence of procedural disproportionality.
32. This is why we recommend later in this Report that the Law Society as the profession's representative body:
 - a) explore what positive action provisions can be made for BME solicitors and sole practitioners to enable them to deliver the best possible services to their communities within the challenging environments in which many of them operate, and
 - b) consider the extent of practical support that can be provided, including the provision of more extensive toolkits, or guidance on the challenges of setting up and running small firms, including:

guidance on the Regulations and requirements concerning setting up sole practices or small firms and on the capitalisation rules, to ensure that solicitors seeking to set up firms have sufficient knowledge and experience of the regulatory rules and that they are adequately capitalised to be able to cope with the financial pressures that small firms face.

33. An understanding of the nuances of socio-economic and wider societal and political factors that may increase the likelihood of junior BME solicitors establishing sole practices, and the vulnerability of these firms regarding financial matters, particularly considering the SRA's focus on monitoring this area, can help to build a picture of why BME solicitors may be disproportionately affected by key decisions made by the SRA. Rather than conclude that disparities across ethnicities must be evidence of institutionalised racial discrimination, or conversely and perversely, evidence of a greater propensity on the part of BME practitioners to commit breaches of a financial nature, nuanced and comprehensive investigation of wide ranging issues can provide a more useful resource with which targeted and considered modifications to regulatory practices can be made.
34. It is for all the above reasons that we stress in this Report, coincidentally reiterating some of the concerns raised by Lord Ouseley (2008), the need for Equality and Diversity competencies and an understanding of unconscious bias as part of the 'necessary skills and competencies to deliver the new (OFR) approach' to regulation.
35. If supervision and a regulatory culture of more positive engagement with firms as they improve their capacity to identify and manage risk, do not result in more tangible evidence of the application of these Equality and Diversity skills and competencies, then OFR is unlikely to have any impact upon regulatory disproportionality and the rate of referral of BME respondents to the SDT.
36. Regulation 'in the public interest' necessitates the SRA working with the solicitors' profession, rather than operating in a manner that sets up regulator and regulated as adversaries. It means also, connecting up the objectives of 'protecting and promoting the public interest' with 'improving access to justice' and 'encouraging an independent, strong, diverse and effective legal profession'.
37. Our review found, that while regulatory disproportionality is correlated with the ethnicity of BME solicitors, it is not caused by their ethnicity. The persistence of it, however, impacts upon all three of these core regulatory objectives. This is why the pre-OFR approach to regulation, focused as it was upon 'responding reactively to individual rule breaches' and on 'compliance with

detailed rules' served to compound the racial disadvantage and 'ethnic penalty' that BME solicitors, especially community based sole practitioners and those operating small firms, suffered.

38. The challenge for the SRA and the Law Society is to ensure that no 'one size fits all' approach is applied to the regulated profession that increasingly mirrors the socio-economic, ethnic, gender and cultural diversity of the communities whose interests the regulator seeks to promote and protect.
39. As we argue in the Report, BME solicitors in big city firms, or in 'magic circle' and international firms, do not face the same challenges as those on inner-city high streets. While we did not research this, anecdotal evidence suggests that they are not subject to regulatory disproportionality. However, the displacement of BME solicitors and their firms from the vulnerable communities that are served by those who face disproportionate regulatory outcomes has a direct impact upon those communities' 'access to justice' and upon the LSA's objective to 'encourage an independent, strong, diverse and effective legal profession'.
40. For all the above reasons, among the 45 recommendations in this Report for the SRA, the Law Society, the SDT and the Legal Services Board (LSB) are:
 - On publication of this Report, there should be a tripartite discussion between the Law Society, the SRA, BME stakeholders in the Equality Implementation Group (EIG) and the wider network of BME practitioners, as to how to address the range of issues identified in the Report, as contributing to the vulnerability of BME sole practitioners and small firms and their exposure to regulatory action.
 - The Law Society and the SRA should conduct a mapping exercise using surveys and focus groups in order to gain as comprehensive an understanding as possible of the many challenges facing solicitors and firms serving vulnerable communities, including the challenges in the legal services marketplace, such as criminal legal aid and alternative business structures.
 - The SDT should monitor by ethnicity and gender, the outcomes for those solicitors who appear before it on regulatory charges, to see whether there is any disproportionality.
 - The Legal Services Board and the Law Society should take steps to initiate a public debate about the SRA's approach to the regulatory objectives and the persistence of evidence of disproportionality in regulatory outcomes for BME solicitors.

Recommendations

The SRA

1. The SRA should declare its understanding of the regulatory objectives and of how it sees them in relation to one another. The SRA should demonstrate how it is delivering those objectives through regulation.
2. The SRA should conduct an equality impact assessment (EIA) of the impact of its regulatory practice upon the regulatory objectives, including 'protecting and promoting the public interest'.
3. Against the backcloth of that EIA, the SRA should engage a combination of stakeholders, the Equality Implementation Group (EIG), the Law Society, the SRA, the Legal Services Board (LSB), and the Equality and Human Rights Commission, in auditing its regulatory outcomes, having regard to the requirements of the Public Sector Equality Duty.
4. The SRA should make it its default position to demonstrate at all times the way in which 'the public interest' is impacted by the regulatory decisions it makes.
5. The 'public interest' definition should be reviewed to ensure that the impact of regulatory actions on particular communities (including communities from the protected characteristics) or locales is taken into account.
6. The SRA should examine the evidence of disproportionality presented in this data analysis and consider its implications for procedural disproportionality, decision making, its relationship with BME stakeholder organisations and with the Law Society as the solicitors' representative body.
7. The SRA and the Law Society should give greater thought to the underlying objectives and rationale of the regulatory process to ensure that the right balance is struck between the punitive, deterrent, declaratory, compensatory and restorative objectives of the sanctions and options for dealing with regulatory breaches.
8. In keeping with declared OFR objectives, the SRA and all those involved in regulatory procedures should adopt a more nuanced approach to enforcement and acknowledge that race related issues are

complex and can co-relate as much to class and socio-economic background as to ethnicity.

9. Staff development sessions should be organised to enable supervisors/caseworkers, team leaders and technical advisers, forensic investigators and adjudicators to study the results of this review and assess their training needs in the light of their decision making powers and especially the amount of discretion they have authority to exercise when taking regulatory action.
10. Specifically, the SRA should take steps to adopt a more considered approach to enforcing financial regulations that take into account the vulnerability of certain practices compared to others, and that recognises the disservice to the public interest, that results from closing firms that aim to provide access to legal representation for BME communities.
11. Supervision and engagement with sole practices/firms should be conducted against this background in order that early warning signals could be agreed between supervisors and practitioners and the latter could be advised as to the preventive actions they should take.
12. The SRA should undertake some further work on trying to identify cultural or religious practice or observances that may impact on the ability of solicitors to satisfy some of the current regulatory obligations and consequently, whether some of those rules need further consideration to see if they can be finessed.
13. The SRA should hold regular training sessions targeted at the profession as a whole, led by the investigative departments, to explain what they do, how the SRA's pursuit of the regulatory objectives intersects with its actions to meet the Public Sector Equality Duty and make clear the obligations on solicitors.
14. The relevant departments of the SRA that carry out regulatory investigations, should have regular liaison with representative practitioner groups and individual Black and minority ethnic (BME) and sole practitioners and small firm solicitors with regard to regulation and compliance with the Public Sector Equality Duty.
15. Since this review is probably the last such review that will examine SRA closed cases pre-Outcomes Focused Regulation (OFR), the SRA should publish monitoring data on the impact of OFR on BME disproportionality specifically, and on the regulation of sole practitioners and small firms generally.

16. The SRA should review its monitoring systems and databases and its approach to measuring issues of ethnicity, with a view to making improvements as necessary, especially in consistency and clarity. In doing so, it should examine for its usefulness, the Race and Diversity Audit Template devised by the ACPO and praised in the DIPPS report.
17. The SRA should review its Code for Referral to the Solicitors Disciplinary Tribunal (SDT) in the light of BME disproportionality and the objectives of OFR.

Discrimination

18. Complaints of racial discrimination against the SRA, whether internally or externally generated, should be reported to the EIG twice yearly.
19. The SRA should establish an independent body consisting of 3 people, one of whom would be a suitably qualified member of the SRA's Diversity & Inclusion team and two external to the SRA, with suitable terms of reference, to investigate individual complaints of racial discrimination and publish the results of their investigations.

Excessive Regulation?

20. The SRA should pay attention to what respondents are saying about 'over regulation' and the impact of the premature publication of regulatory action being taken against named individuals.
21. The SRA should monitor by ethnicity and gender, the impact of the application of its publication policy and should send that monitoring data to the SMT (the executive group), the Equality Diversity and Inclusion (EDI) Committee and the EIG. Specifically, the monitoring should tell how many BME solicitors facing regulatory action have had their matter published and been subsequently cleared of any breaches (by SRA internal adjudication, SDT, or the High Court), how long after publication they were cleared, and what has been the impact of publication upon their ability to practise, or upon their firm.
22. A more detailed piece of work should be carried out to find out the views and experiences of respondents who have been through the regulatory process. This should also include demographic details of respondents and the environment and context in which they practise. This more qualitative inquiry should be designed to highlight the challenges sole practitioners and heads of small firms face, the impact

of their services on improving access to justice and ways in which they feel the Law Society and the SRA could work with their sector of the profession and support solicitors' careers. It should also aim to identify and remedy inadequacies in the regulatory process and highlight any evidence of discriminatory practices or outcomes.

23. The SRA should examine its relationship with organisations that provided advice and assistance to solicitors, as a consequence of the SRA pointing them to such organisations, during the 2009-2012 period covered by this review, in order to assess the quality of the support provided, the way solicitors were dealt with and whether individuals in some of these organisations may have abused their position and exploited vulnerable solicitors.

Costs

24. The SRA should conduct an equality impact assessment on the cost of its regulatory proceedings and report on the cost determinations it makes, cost orders that are made by the SDT, the amounts the SRA actually recovers, the impact of meeting such costs on respondents, especially sole practitioners and partners in small firms and the total amounts that are outstanding and cannot be collected without leave of the SDT.
25. The SRA should conduct an exercise to estimate the cost implications of the reduction of cases referred to the SDT as a function of OFR, and of cost orders that might otherwise have been imposed on sole practitioners but for risk-based and outcomes-focused regulation.

Large and Small Firms

26. The SRA should monitor its regulation of large firms for any impact upon BME solicitors in such firms. As a baseline, the SRA should publish monitoring data on BME solicitors in 'magic circle', big city and international firms as compared to those in sole practice or in small firms.
27. The SRA should use the diversity monitoring data it collects from big city and 'magic circle' firms to assess the rate of entry and level of retention of BME solicitors to and in those firms. This data should include their policy in respect of the awarding of training contracts and their breakdown by ethnicity of the application of that policy.

Governance

28. The SRA Board should keep a focus upon and demonstrate its commitment to promote equality of opportunity and eliminate unlawful discrimination. It should ensure that the EDI Committee's terms of reference are clearly consistent with fulfilling the Public Sector Equality Duty and ensuring that the regulator has in place measures for tackling such structural, cultural, institutional and personal manifestations of discrimination that may exist or might arise within the organisation.
29. The SRA should set itself a target, with timescales, for achieving a better balance on the axis of ethnicity on its Board, Board Committees, and its team of Adjudicators, using appropriate positive action measures as necessary, including co-options and secondments.
30. In addition to ensuring that 'the overall SRA strategy and... vision and values (continue to) feature in the performance and development review of staff so that E&D can be translated into their day to day activities', the SRA should determine what constitutes 'Equality & Diversity competence' and ensure that this is rigorously tested in the selection and recruitment of Board members, senior managers and staff with line management and decision making responsibilities, including regulatory staff, and in the performance and development review of all staff.

Leadership and Management

31. The Chief Executive must be seen by SRA staff, the SRA Board, the profession and the public to provide visible and demonstrable leadership on equality, diversity, inclusion and shared values, particularly with respect to promoting equality and eliminating institutional and other forms of discrimination.
32. SMT and the Operational Delivery Group (ODG) should have a specific competency and objective around delivery of equality, diversity and inclusion and their performance in meeting that objective should form part of their performance appraisal.
33. The Director of Inclusion should be made a member of both the SMT and the ODG, to act as a strategic consultant on equality, diversity and inclusion and to help members of both those groups build their competence in leading and managing the equality, diversity and inclusion agenda. This would allow the Director of Inclusion, in turn, to help develop capacity within the teams that are led and managed by those SMT and ODG members.

34. The SRA should demonstrate a clear commitment to meeting the Public Sector Equality Duty. Promoting equality and combating discrimination in the spirit of the Equality Act 2010 should be reflected in the core strategic priorities and the strategic management of the organisation and how it functions as a regulator.
35. The SRA should audit its decision making framework and practices and ensure that equality, diversity and inclusion is included and the expertise of the Diversity & Inclusion team is called upon as necessary, even when managers anticipate challenges from that team.
36. The SRA should take further steps to change its culture and ethos and engage with the profession in a manner that enhances solicitors' willingness to engage and implement change, rather than seeing themselves in a potentially adversarial relationship with the regulator. In this regard, the profession should be able to see more tangible signs of the SRA being a change leader as far as promoting equality and combating discrimination is concerned.
37. The ODG should revisit the 'two day leadership development workshop' that was held for the Leadership Group in 2011, with a view to taking appropriate measures to build the Equality & Diversity competence levels of each member of the Group and monitor their application in the leadership and management functions members of the Group perform.
38. Staff should be encouraged and guided to take personal responsibility for combating personal and institutional discrimination.
39. The SRA should focus upon promoting equality and human rights and combating discrimination, rather than on promoting or valuing diversity, in order to assist individual members of staff to understand and take responsibility for how they could be implicated in perpetuating discrimination and exclusion and what they can do about it.
40. Given the profile of its staff, its leadership and senior management group and the equality and human rights issues it needs to address in the context of its regulatory functions, the SRA should take steps, as soon as is practicable, to ensure implementation of Ouseley 16 and Ouseley 18:
 16. The SRA should consider implementing its own HRD policies, practices and processes, incorporating equality and diversity, and independent of the Law Society's overall approaches.

18. The SRA should implement its equality and diversity policies on human resources effectively and not be constrained by the Law Society Group's approach in meeting its statutory, strategic and policy equality and diversity goals.

Partnership and Collaboration

41. In the light of the many matters that concern EIG representative groups and their members, and their relationship with the Law Society as their representative body, the SRA should enter into discussions with EIG members as to the most effective structural arrangements for securing their engagement with the SRA and its strategic management of the equality, diversity and inclusion agenda.
42. On publication of this Report, there should be a tripartite discussion between the Law Society, SRA, EIG and the wider network of BME practitioners as to how to address the range of issues identified in the Report as contributing to the vulnerability of BME sole practitioners and small firms and their exposure to regulatory action.
43. Specifically, EIG members and the bodies they represent should be facilitated to form part of a working group with a remit to examine regulatory disproportionality as it relates to the regulatory objectives and in particular: *regulation in 'the public interest', access to justice; the interests of consumers of legal services and encouraging an independent, strong, diverse and effective legal profession.* That working group should also include representatives of the Law Society, the SRA, the Legal Services Board, the Bar Standards Board and the Equality and Human Rights Commission.

SRA and the Law Society

44. The Law Society and the SRA as part of the Law Society Group, should promote and protect the public interest by working to ensure that solicitors' practices that serve vulnerable communities are supported in a manner commensurate with the market and societal challenges they face, so that those communities could access legal services locally and of a high standard.
45. The Law Society and the SRA should:
 - i. Conduct a mapping exercise using surveys and focus groups in order to gain as comprehensive an understanding of the many challenges facing solicitors and firms serving vulnerable communities, including the challenges in the legal services

marketplace, such as criminal legal aid and alternative business structures,

- ii. Jointly seek out legal insurance providers who can provide legal insurance at preferential rates for solicitors who are subject to regulatory proceedings,
- iii. Give consideration to whether legal insurance can be provided as part of the practising certificate fees,
- iv. Develop closer relationships with practitioner networks/forums and provide opportunities for them to contribute to the strategic policy development of the respective organisations and especially their agenda to combat unlawful and institutional discrimination,
- v. Work with the EIG and the networks they represent to examine the most effective ways of addressing with BME solicitors most susceptible to regulatory action the matters raised in the above analysis and in this report more generally, and
- vi. Provide closer scrutiny of persons applying to set up law firms, in order to ensure that the solicitors concerned are not just properly capitalised, but they have the necessary experience to run a law firm and fully understand the onerous regulatory requirements they would need to satisfy.

The Law Society

46. The Law Society should:

- Consider what its own response should be to the structural and operational issues identified as having a bearing upon the nature and incidence of cases raised that involve BME sole practitioners and small firms.
- Consider providing modular training for sole practitioners and heads of small firms on:
 - Management,
 - Leadership,
 - Recruitment,
 - Due diligence,
 - Practice management, and
 - Financial probity.

- Explore what positive action provisions can be made for BME solicitors and sole practitioners to enable them to deliver the best possible services to their communities within the challenging environments in which many of them operate.
- Consider the extent of practical support that can be provided, including the provision of more extensive toolkits, or guidance on the challenges of setting up and running small firms. This should include guidance on the Regulations and requirements concerning setting up sole practices or small firms and the capitalisation rules, to ensure that solicitors seeking to set up firms have sufficient knowledge and experience of the regulatory rules and that they are adequately capitalised to be able to cope with the financial pressures that small firms face.

The Law Society and the Legal Services Board

47. The Legal Services Board and the Law Society should take steps to initiate a public debate about the SRA's approach to the regulatory objectives and the persistence of evidence of disproportionality in regulatory outcomes for BME solicitors.

SRA and the Solicitors Disciplinary Tribunal

48. The SRA and the SDT should make it clearer in their publications and on their respective websites that they are separate entities from each other.

The Solicitors Disciplinary Tribunal

49. The SDT should monitor by ethnicity and gender, the outcomes for those solicitors who appear before it on regulatory charges to see whether there is any disproportionality.
50. The SDT should ensure that its panel of members include an ethnically diverse range of individuals.