Solicitors Regulation Authority

Overrepresentation of Black, Asian and minority ethnic solicitors in reports to the Solicitors Regulation Authority: final research report

30 October 2024

Read the summary report [https://publications.sra.org.uk/overrepresentation-of-black-asian-and-minority-ethnic-solicitors/]

1. Introduction

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There is a longstanding and troubling pattern of overrepresentation of solicitors from a Black, Asian and minority ethnic background in the SRA's enforcement processes. The most recent report published by the SRA shows that in 2021/2, Black, Asian and minority ethnic solicitors made up 19 per cent of the practising population but 24 per cent of those reported to the SRA and 29 per cent of those taken forward for investigation.

Over the past 15 years, the SRA has commissioned a series of independent reviews, all of which focused on internal processes and decision making within the SRA to better understand the outcomes for Black, Asian and minority groups.

This research looked, for the first time, at the structural and other factors, present in the legal profession and wider society which might be causing the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. It also considered factors in the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation by the SRA.

As such, the guiding question for the research was as follows: what factors cause the overrepresentation of Black, Asian and minority ethnic solicitors both in reports received by the SRA and in the cases taken forward for investigation?

These patterns of overrepresentation are not unique to the SRA. Many professional regulators, including the General Medical Council (GMC), Nursing and Midwifery Council (NMC), and the Professional Standards Authority (PSA) have identified similar patterns in concerns raised with them.

For example, the GMC [https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf] reports that Black, Asian and minority ethnic doctors working for the NHS are referred by employers in fitness to practise cases at over twice the rate of White doctors. Meanwhile, according to the NMC [https://www.nmc.org.uk/about-us/reports-and-accounts/equality-and-diversity-reports/] , in 2023, 5.2% of registered professionals were Black but 18.2% of reports received were about Black professionals. The research started, therefore, from the position of there being recognised issues across multiple professions in terms of overrepresentation.

The research reported here seeks to understand what may cause overrepresentation, and specifically what might be relevant in relation to solicitors in England and Wales. We used a range of methods to understand potential causes of overrepresentation in both reports received by the SRA and cases taken forward for investigation.

Our approach to the research

We adopted a multi-method approach. We sought to examine as many as possible of the complex range of factors potentially responsible for the overrepresentation of Black, Asian and minority ethnic solicitors in reports about potential misconduct to the SRA and in reports taken forward for investigation.

We divided the research into two components. Component one focused on analyses designed to reveal the reasons for overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. In component one, we firstly completed a literature review. We used the insights gained from the literature review to inform subsequent steps in our research. The intention was to use existing secondary data and the collection of new data to test as many as possible of the propositions developed in the literature review. The data that we used to inform component one included:

- Secondary data collected by the SRA, which consisted of data about the reports received by the SRA between 2018 and 2022 about potential misconduct, and information about the characteristics of the firms and individuals named on these reports. We used statistical testing to try and identify the factors causing overrepresentation in reports received by the SRA. This allowed us to begin to map the range of individual, organisational, and case-

related factors that individually and together can cause overrepresentation.
- A consumer survey to test for biases that may affect those making reports to the SRA and which could contribute to the overrepresentation of Black, Asian and minority ethnic solicitors in reports.
- Interviews with solicitors to include their voice in the research and to better understand the factors identified as relevant through our literature review, statistical analysis and consumer survey.

Component two focused on analysis relevant to questions about the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation by the SRA. In component two, we completed analysis of quantitative data provided by the SRA about the individuals named on reports taken forward for investigation. We also engaged in a desk-based analysis of materials provided by the SRA, and interviewed SRA staff assessing reports received and deciding whether to take them forward for investigation.

This report provides an overview of the approach taken and key findings for components one and two. We have set out more information about the methodology for these methods in section 3 [#heading_018b] and included the key findings in our analysis of the overrepresentation in reports received (section 4 [#heading_7ebe]) and those taken forward for investigation (section 5 [#heading_05a7]). A full report of the findings from each of the four methods used in the research are published separately as supporting reports.

To provide context, we have also included reflections from other professional regulators (section 6 [#heading_5924]). We met with several regulators at the conclusion of our research, to understand whether there were any similarities with the overrepresentation of Black, Asian and minority ethnic solicitors in the SRA's enforcement processes.

We set out our conclusion and areas for further consideration within section 7 [#heading_c754] .

A note on categorisation and terminology

In this research we generally use the term Black, Asian and minority ethnic. Referencing the standard classification used by the Office for National Statistics, which is followed by the SRA in its data collection for the profession, this includes the ethnic groups making up the Black, Asian, Mixed and Other categories and excludes the ethnic groups making up the White category. This is the term used by the SRA in its publications and communications.

When conducting the literature review element of the research, we discovered that there is little consistency in both the terminology used and in the approach to how the groups selected for research are

categorised. When describing studies included in our literature review, we use the terminology adopted in the study cited. This includes the use of terms which are more commonly used in the countries where the research was carried out.

We recognise that there are minority ethnic groups within the White category although we did not identify any studies that focused in particular on these groups.

We acknowledge that terminology can be problematic. We also understand how important it is to recognise that the experience of each ethnic group and of those within each group may be different. Where possible in the research, we looked individually at the experience of each group and took account of intersectionality between diversity characteristics.

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2. Executive summary

The overrepresentation of Black, Asian and minority ethnic solicitors in the SRA's enforcement process is a troubling and long-standing problem. It is not unique to the SRA, or even to legal regulation. There is widespread evidence of similar patterns across a number of other regulated professions and more widely in society.

The research reported here looks for the first time at the structural and other factors, present in the legal profession and wider society which might be causing overrepresentation. We focused on two stages of the SRA's enforcement process which the SRA identified (through its annual diversity monitoring) as being of particular concern.

The first stage is the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. The SRA receives around 10,000 reports of potential misconduct about solicitors and law firms and others who work in law firms every year. These reports come from a variety of sources, including from the profession itself, the public (including clients), from agencies such as the police or the courts and from the SRA itself.

The second stage is when the SRA assesses these reports, to determine which should be taken forward for investigation (and potential enforcement action). The SRA applies its Assessment Threshold Test to all reports received and around 16 percent of reports are taken forward for investigation each year.

We adopted a multi-method approach to examine as many as possible of the complex range of factors potentially responsible for overrepresentation at these two stages of the process. This included a literature review, statistical analysis of the SRA's enforcement data, a

consumer survey, interviews with solicitors and a desk-based analysis of the SRA's process for assessing reports received.

We began by conducting the literature review [https://guidance.sra.org.uk/sra/research-publications/over-rep-black-asian-minority-ethnic-solicitors-reports/] . This considered existing explanations of how not only solicitors, but also other professionals and minority ethnic groups, become overrepresented in reports to regulators and complaints more generally. The review revealed that individual, organisational, and case-related factors can increase the likelihood of reports being made to a regulator or impact the risk of misconduct. The review developed a series of propositions relating to these factors that informed the methodology we adopted for subsequent stages of the research and our analysis.

This report looks at the individual, organisational, and case-related factors that we found to be significant. In doing this, we combine in the discussion insights and analysis from the literature review, and the other methods used in the research. This unique mix of methods reveals a range of insights into the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA and taken forward for investigation by the SRA.

The extent of the overrepresentation

Our quantitative analyses of reports received by the SRA between 2018 and 2022 confirmed that Black, Asian and minority ethnic solicitors are overrepresented in the reports received by the SRA. Overall, there were 22% more reports about Black, Asian and minority solicitors than one would expect and 7% fewer about White solicitors.

This is compounded at the assessment stage, there were 23% more reports about Black, Asian and minority solicitors taken forward for investigation than one would expect and 12% fewer about White solicitors.

However, it is important not to view the Black, Asian and minority ethnic group as a homogenous group. The observed overrepresentation is not distributed equally across the Black, Asian and minority ethnic group. As seen above, there are differences between Black and Asian groups and there are further differences when we look at the different ethnicities making up these groups.

There are 27% more reports received about Asian solicitors than would be expected given the breakdown of the practising population and 32% more reports received about Black solicitors.

At the assessment stage, there are 25% more Asian solicitors named on reports which the SRA takes forward for investigation than would be

expected considering the reports received and 23% more reports about Black solicitors.

Findings from our analysis of the SRA's reports data

We explored the SRA's unique dataset to identify what factors might be causing overrepresentation. We found a huge amount of complexity, with many intersecting factors appearing to contribute to the observed overrepresentation.

While our analysis tells us about the strength of the apparent correlation between factors, it is important to recognise that correlation does not definitively indicate causality – so we cannot know for sure whether there is a cause and effect between different variables. Whilst we have observed there are statistically significant differences in a number of factors which may interact with ethnicity, we cannot say whether ethnicity is the driving force or not.

It is clear however, that ethnicity is a consistent, predictive factor affecting the likelihood of reports about potential misconduct being received and being taken forward for investigation. Compared to reports about White solicitors, Asian solicitors are 14% more likely to be reported to the SRA, and Black solicitors 9% more likely. Compared to reports about Black, Asian and minority solicitors, White solicitors are 8% less likely to be reported.

Ethnicity has an even greater affect at the assessment stage. Compared to reports about White solicitors, reports about Asian solicitors are 54% more likely to be taken forward for investigation and reports about Black solicitors are 43% more likely. Compared to reports about Black, Asian and minority ethnic solicitors, reports about White solicitors are 35% less likely to be taken forward for investigation.

There are other factors which have an impact on the relative likelihood of reports being received and taken forward for investigation. None of these other factors fully explain the overrepresentation but they each appear to interact with ethnicity in ways which are neither linear, nor necessarily predictable.

The individual factors which interact with ethnicity and have an impact on the picture are gender, age and entry route. Looking at gender for example, male solicitors are 12% more likely to be reported to the SRA than female solicitors and 24% more likely to be taken forward for investigation at the assessment stage, given their representation in the reports received. Looking at the interactions between gender and ethnicity, we can see that compared to reports about White females, both Black and White males are 10% more likely to be reported and Asian males are 16% more likely. And compared to reports about White females, reports about Asian and Black males are respectively 126% and

106% more likely to be taken forward for investigation at the assessment stage.

We also looked at the context in which solicitors are practising, identifying a range of organisational and case-related factors to analyse. Of particular relevance are the size of firm and the firm's practice type, including whether the firm is specialist or not, whether it does legal aid work and their practice area(s). All of which appear to have an impact on the observed overrepresentation. Our analyses indicate that it is important to take into account the context in which solicitors practice when understanding the overrepresentation of Black Asian and minority ethnic solicitors.

The size of firm where a solicitor works has a significant impact on the relatively likelihood of being reported to and investigated by the SRA. Solicitors in one partner firms are 33% more likely to be named in a report than those working in all other firm sizes (i.e. with 2 or more partners). This is compounded at the assessment stage, where reports about solicitors in one partner firms are 66% more likely to be taken forward for investigation compared to all other firm sizes. Looking at how ethnicity and firm size interact shows interesting differences. For example, compared to reports about White solicitors in large firms, reports about both Black, Asian and minority ethnic solicitors and White solicitors in one partner firms are more likely to be taken forward for investigation, respectively, 91% and 71% more likely.

Working in a specialist firm appears to mitigate the overrepresentation, fewer reports about Black, Asian and minority ethnic solicitors working in a specialist firm are reported to the SRA than might be expected from looking at ethnicity alone. The area of law can have an impact on the likelihood of a report being made. Working in some areas of law reduces the likelihood of being a subject of a report, whilst working in others increases the likelihood. For example, working in a firm involved in legal aid work increases the likelihood of being reported to the SRA by 7%. This pattern may affect overrepresentation because more Black, Asian and minority ethnic solicitors work in legal aid firms than would be expected.

Some factors have a compounding interaction with ethnicity (where the overrepresentation presents as more acute), and some factors have a mitigating interaction (where the overrepresentation presents as less acute).

Insights from our consumer survey and interviews with practitioners

The literature review highlighted the potential that Black, Asian and minority ethnic solicitors may be more likely to be reported to the SRA because of socio-cognitive biases in those making a complaint. Socio-

cognitive biases relate to how a person's cultural or societal background may influence their conscious and unconscious perceptions or expectations of others.

The solicitors we interviewed as part of this research broadly supported what we found in the literature review. They tended to view the overrepresentation of Black, Asian and minority solicitors as the result of structural biases pervading the profession as well as society as a whole. They suggested that Black, Asian and minority ethnic solicitors faced more difficult working conditions, as they could appear as 'outsiders' who did not fit into the profession, and as result were under more pressure to 'prove' themselves and 'were not given the benefit of the doubt' when things went wrong.

To test the suggestion that socio-cognitive biases in those making a complaint could affect overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA, we conducted a consumer survey. The survey did not support our proposition from the literature review or the views of the practitioners we interviewed. When presented with a hypothetical situation in which something had 'gone wrong', there was no apparent evidence of consumers making attributions about blame that differed depending on ethnicity. These findings echo the view from other regulators, who had not identified any biases or disproportionality in reports received from consumers (e.g. in the medical profession from patients).

Interestingly, we did see differences in the attributions by the characteristics of the consumers, with some groups more likely to say the solicitor is to blame. However, we were not able to further test the effect of this in our data analysis.

In relation to the organisational factors highlighted in our analysis of the SRA's data, a common theme across many of interviews with practising solicitors was the challenges that Black, Asian and minority ethnic solicitors experienced when working in smaller organisations. The practitioners we spoke to felt that solicitors in smaller firms may experience strained and precarious income streams and an absence of resources available to those in larger firms, including resources to support compliance and to develop an understanding of how to follow the SRA's rules. Combined with a sense of isolation and limited support when dealing with problems or contentious decisions, this may heighten the chance of a report being made to the SRA.

One of the most prominent findings to emerge from our interviews is the belief that the SRA is likely to receive more reports about those engaged in work associated with some practice areas rather than others. Practitioners drew a distinction between more personal specialisms like family law, personal injury, and residential conveyancing and criminal defence work. They felt clients in these more personal specialisms are likely to be much more emotionally invested in their case. With high

stakes, if things are perceived to have gone wrong (or an outcome is not as the client wished) there is more likelihood of a report being made to the SRA than with commercially orientated work.

Overrepresentation at the assessment stage - insight from our overview of the SRA's assessment processes

Overall, our analysis revealed that the SRA has a robust set of processes that are helpful and adhered to. The Assessment Test, training materials, online guidance and standard operating procedures are, for the most part, as robust as they can be. In particular, staff EDI training can be considered a 'best practice' tool aligned to expectations of an employer of choice.

Whilst there was some room for personal judgement in deciding whether a matter was serious enough to be taken forward for investigation, the SRA (and its Assessment staff) recognised this. This was managed by providing a transparent set of criteria and clear guidance. Staff were well trained and supported in reaching the right decision with the opportunity to consult others and felt accountable for making these important and difficult decisions.

Our analysis identified opportunities to consider changes that might improve transparency in external communications regarding the decisions taken. More structured and refined ways of considering the complex contextual aggravating and mitigating factors relevant when considering a report could also be considered.

Conclusions

Analysis of reports received and taken forward to investigation by the SRA reveals a range of overlapping factors that together underpin patterns of overrepresentation. To understand this overrepresentation, it is important to look at a wider set of factors than just ethnicity itself. However, that is in no way meant to detract from the troubling and compelling evidence of overrepresentation which is present at the report and assessment stage.

The overrepresentation of Black, Asian and minority ethnic solicitors at the assessment stage is complex, but the SRA's assessment processes and approach follow robust procedures designed to ensure fairness and consistency in decision making.

There are a number of potential actions such as refining data collection, further stakeholder engagement and pan-regulator dialogue about overrepresentation causes and responses which may help to address the systemic problem. However, none will be a quick fix, and many will require input and collaboration from a number of stakeholders.

3. Research methodology

At the outset, we sought to develop an approach sensitive to the multiple and potentially overlapping factors explaining the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA and reports taken forward for investigation. We recognised that previous reviews commissioned by the SRA had identified no single causal factor, and that there were similar findings from reviews in other professions.

We designed a research project that, through an innovative combination of methods, could unpick the different factors that are relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA and in reports taken forward for investigation.

We, therefore, used the following methods and report our approach to each below:

- Literature review of existing research relevant to questions about the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA.
- Quantitative analysis of data provided by the SRA about reports received.
- Consumer survey relating to complaints to regulators.
- Interviews with solicitors.
- Quantitative analysis of data provided by the SRA about reports taken forward for investigation.
- Desk-based review of SRA protocols, staff training and guidance and approaches to assessing whether reports should progress to investigation.
- Interviews with SRA staff assessing whether reports should progress to investigation.
- Comparison of the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA and in reports taken forward for investigation with the situation in other professions.

Literature review

We looked at literature on complaints about potential misconduct in relation to a wide range of factors, from both articles in academic peer-reviewed journals and research reports conducted about other professions. We considered the literature from both the UK and overseas.

Complaints are an important way in which regulators are made aware of potential misconduct. However, not all misconduct or poor practice results in complaints to the regulator, and not all complaints to the regulator necessarily reflect misconduct or poor practice. For this reason, we refer in the literature review to factors which 'increase the likelihood

of complaints being made about potential misconduct' and which may 'impact the risk of misconduct itself'.

An increased likelihood of complaints being made about particular groups can lead to overrepresentation throughout any regulators processes, as is widely seen in a range of professions.

Importantly, many of the factors that may increase the likelihood of complaints about misconduct could also derive from where and how individuals work, the types of work they undertake or other case-related circumstances that by their very nature generate more complaints.

As such this review focused on:

- Factors that may lead people to make complaints about Black, Asian and minority ethnic practitioners.
- Factors that may lead to Black, Asian and minority ethnic practitioners becoming more exposed to circumstances which either make complaints more likely or impact the risk of misconduct itself.

We began by focusing on literature relating to misconduct for solicitors and the legal profession more broadly, but it quickly became apparent that there is very little published research on ethnicity, beyond that commissioned by the SRA. As this area was understudied, the review was widened to include other professions, such as accountants, doctors, nurses, and the police.

The review revealed a large amount of literature relating to a range of non-ethnicity related factors that increase the likelihood of complaints being made about potential misconduct or impact the risk of misconduct itself. These factors could potentially interact with ethnicity and be important in explaining overrepresentation, although in the research they are often considered separately. Questions of intersectionality between ethnicity and other individual and group characteristics thus became an important focus for the literature review.

We also found relevant literature relating to the overrepresentation of Black, Asian and minority ethnic individuals in consumer complaints. Whilst this literature did not cover professions or solicitors specifically, it provided some useful insights into what might be important in causing the overrepresentation of Black, Asian or minority ethnic solicitors in reports received by the SRA.

The literature review was published [https://guidance.sra.org.uk/news/news/press/2023-press-releases/over-representation-in-complaints/] in June 2023.

Statistical analysis of SRA data relating to both reports received and reports progressed to investigation

The SRA provided us with five main datasets, with the overall number of data points running to over 10 million. The data sets included all reports received and taken forward for investigation over four practising years from 2018/19 to 2021/22, with information about the firms and individuals named in these reports. The SRA included all the background information that could be analysed in a meaningful way, so we had a wide range of factors to consider.

In analysing the data, we first used chi-square tests to examine the representation of solicitor ethnicity in the respective data sets. These compare the observed population to the expected population. We then undertook logistic regressions, a type of multivariate statistical test, to assess the likelihood of a report being received or taken forward for investigation depending on a variety of different factors and when compared to a reference category. The factors we considered include:

- Individual factors - ethnicity, gender, age, number of years post qualification experience and entry route to qualification.
- Organisation level factors - whether the firm where the solicitor worked is a one partner firm or not, whether the firms is a specialist, whether they do legal aid work, the longevity of the firm, firm size (in bands by partner count) and the firm's main practice area.
- Case related factors - complainant type and case categorisation.

We also looked at the distribution of these factors within the population.

Finally, having considered the effects of these various factors in isolation, to get a deeper understanding, we explored how some of these factors interacted with ethnicity. Adding ethnicity as the second factor, would help us see whether the effect of being male, compared to female for example, may be different for the different ethnic groups. To investigate this, we used interaction effect models, looking at the odds ratios of all the different possible combinations of the two interacted variables. Full details of the statistical analyses are provided in the report relating to this aspect of our analysis.

Consumer survey

We conducted a survey of people from the general population to analyse potential socio-cognitive biases in those making a complaint. The aim was to understand whether users of legal services are more likely to make a report about Black, Asian and minority ethnic solicitors than White solicitors.

We developed a scenario based on the type of reports received by the SRA and created six versions of this scenario, each featuring a fictional solicitor. Each scenario involved a male and female solicitor (indicated by their title) who were associated with being from a White, Asian or Black ethnic group (indicated by their name). We selected names based on

research and a pilot so we were confident that the majority of people would associate the names with the three selected ethnic groups.

We asked people to read the scenario provided and answer questions about the extent to which they thought the solicitor (or outside factors) were responsible for what happened and whether the outcome could have been prevented. We also asked how likely they would be to report the solicitor in the scenario to SRA. We collected around 700 responses for each ethnicity-gender combination, with around 4,200 responses in total.

We were able to analyse whether there were different responses to the same scenario, depending on the ethnicity and gender of the solicitors involved. We had diversity information about the respondents and information about their experience with and knowledge of the legal sector. We used this to analyse whether the characteristics of the respondents made a difference to their response.

Interviews with solicitors

An important part of our research was to seek the views of individual solicitors about the overrepresentation of Black, Asian and minority ethnic solicitors in reports to the SRA. To do so we conducted a programme of semi-structured interviews with practising solicitors.

The interviews were intended to capture the voice of the profession and also offered a way to further elaborate findings from other components of our research, with reference to the personal experiences and insights provided by individual solicitors.

We contacted a randomly selected sample of almost 1,000 solicitors which was statistically representative of gender, age, organisational size, practice area and qualification route. Our sample included solicitors who had received complaints but not those who had 'live' complaints. From this we had 24 solicitors who volunteered for the interviews. There was a broadly even split between men and women, the ethnicity split was 80:20 (Black, Asian and minority ethnic to White) and solicitors represented a range of sectors, including around a fifth who worked in small firms.

Desk-based analysis of SRA guidance on report assessment and decision-making to progress to investigation, and interviews with SRA staff

We analysed how the Assessment Tests were applied by the Assessment Team, this being the team comprised of multiple Investigating Officers that determine whether reports are taken forward for investigation. We used a combination of a desk-based review of the guidance provided to staff by the SRA and interviews with staff in the Assessment Team.

Our approach to this part of the research was to examine if the SRA is consistently applying its decision-making criteria at this early stage of the enforcement process and to see if there was anything which contributes to the overrepresentation of Black, Asian and minority ethnic solicitors in cases progressed for investigation.

We completed an onsite visit to the SRA. This was followed by a desk-based analysis of induction, training and guidance materials given to staff who make initial assessment decisions about whether reports received should be progressed to investigation. The materials included the criteria which guides this decision making in Assessment Tests and the supporting guidance material used by staff, including the overarching Enforcement Strategy. We also reviewed two modules from the SRA's Equality, Diversity and Inclusion e-learning suite.

Finally, we completed fourteen online semi-structured interviews with Investigation Officers (IOs) and Investigation Managers (IMs) working within the Assessment Team who decide whether to progress reports received for investigation.

Interviews with other regulators

The overrepresentation of Black, Asian and minority ethnic professionals in reports to regulators and in reports taken forward to investigation is not unique to the solicitors' profession. As part of our literature review, we examined patterns in a range of other professions and identified similar concerns about overrepresentation.

In addition to reviewing published reports, we, therefore, also interviewed representatives of five regulators in other professions. We agreed to maintain the anonymity of interviewees and the discussions were confidential. However, we are able to report on the common challenges experienced by other regulators and we also identify some approaches adopted by other regulators that may inform the response of the SRA to the findings of this research and help with collaboration to work collectively on this issue.

4. Overrepresentation in reports received by the SRA - key findings

We looked at factors relevant when seeking to understand the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA.

Our different methods – a literature review, statistical analysis and interviews with solicitors -identified factors that operate at individual, organisational and case levels. We, therefore, present our findings using these categories.

Individual factors relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA

The literature reviewed highlighted the role of the individual characteristics of solicitors in making a solicitor more likely to be the subject of a report to a regulator. It also highlighted that Black, Asian and minority ethnic individuals may be more exposed to other individual factors that increase the likelihood of reports being made to a regulator or impact the risk of misconduct. We, therefore, completed statistical analysis of the SRA's reports data to examine which other individual factors may be most relevant when explaining the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA.

We developed a number of propositions about the individual characteristics of solicitors that we sought to understand using our statistical analysis and interviews with solicitors. These propositions are that gender, age and experience are likely to be a factor in complaints about potential misconduct made to regulators. We were not able to test country of qualification but looked instead at entry route into the profession.

Insight from the SRA's reports data

The statistical analysis revealed a range of individual factors affecting the likelihood of reports being received by the SRA. We first looked at how these factors affected the likelihood of being named in a report and to provide a richer picture we then looked at the interactions between ethnicity and the other individual factors we considered. The analysis of the interaction models highlights an often complex relationship between the factors being considered. Sometimes they have a compounding effect, and sometimes they have a mitigating effect when their potential interaction with ethnicity is considered. We focused on ethnicity, gender, age and entry route into the profession.

Ethnicity

Our results show ethnicity is significant, in line with previous research. Ethnicity is a consistent and predictive factor which affects the likelihood of a report being made.

We found there were 22% more reports about Black, Asian and minority solicitors than one would expect compared to the population. And there are around 7% fewer reports about White solicitors than one would expect. When compared to reports about the White group, being Asian, Black, or being from the Other minority ethnic group increases the likelihood of reports by 14%, 9% and 6%, respectively.

Looking at the groups which make up the Black, Asian and minority ethnic population, there are 32% more reports received about Black solicitors (55% more reports about African and 30% more reports about Caribbean solicitors) than one would expect. There are 27% more reports received about Asian solicitors (98% more reports about Pakistani solicitors, 57% more reports about Bangladeshi solicitors and 25% more reports about Indian solicitors and 57% fewer reports about Chinese solicitors) than one would expect. Solicitors from a Mixed or Other minority ethnic background are underrepresented in the reports received by the SRA, respectively, by 25% and 12%.

Gender

Gender is another important factor to consider. Female solicitors are less likely by 12% than male solicitors to be named in a report received by the SRA. The observed association between gender and the likelihood of being named in a report may not contribute to the overrepresentation of Black, Asian, and minority ethnic solicitors. This is because female solicitors are more likely to be from a Black, Asian and minority ethnic background, yet female solicitors overall are less likely to receive a report.

However, when we explored the interaction between gender and ethnicity, we found there were differences in the findings seen when considering ethnicity alone. For all ethnic groups, males are more likely to be named on a report than females, but we see that this effect differs for different ethnic groups. White males are 10% more likely to be named on a report than White female solicitors. Black males are also 10% more likely to be reported but the impact is greater for Asian males and Other males (16% and 13%, respectively). This demonstrates the complex picture and that the effect of ethnicity is not homogeneous across men and women. We found that White female solicitors were 10% less likely to be named on a report compared to Black, Asian and minority ethnic male solicitors. The effect is mitigated for Asian females who are 6% more likely to be named than White females and Black females who are 4% more likely to be reported than White females.

Age

Age is somewhat less clear, on the whole older solicitors are more likely than younger solicitors to be named in a report received by the SRA. These results may be influenced by the possibility that older solicitors (particularly those in supervisory roles) are named alongside junior colleagues in reports to the SRA.

Specifically, for each increase of one year of age, there is a 1% increase in the likelihood of receiving a report. The observed association between age and the likelihood of being named in a report may not contribute to the overrepresentation of Black, Asian, and minority ethnic solicitors.

This is because, Black, Asian, and minority ethnic solicitors tend to be on average younger than White solicitors.

The interaction between age and ethnicity reveals a complex picture. For White solicitors there is an increase in the likelihood of being named in a report as to be expected going up the age bands. For Black, Asian and minority ethnic groups they are slightly overrepresented in reports when compared with White solicitors in age bands 35-44 and 45-54, 8% versus 5% and 17% versus 9%. They are however underrepresented in age band 55-64, 11% versus 17%. When we look at level two, Asian solicitors are overrepresented in age bands 35-44, 11% versus 5%, and 45-54, 19% versus 9%. In age band 55-64 they are close to but slightly underrepresented when compared with White solicitors at 15% versus 17%. For the Black group, not all the results are significant, but for those that are, the highest likelihood of being named in a report is for the older category - those aged 65+ are slightly overrepresented at 26% more likely versus 24% for White solicitors, with those aged 45-55, 12% more likely versus 9% for White solicitors.

Entry route

Finally, we looked at entry route into the profession. There are different entry routes that an individual can take to qualify as a solicitor which change over time. The main route now is the Solicitors Qualification Examination (SQE) but this was not introduced until 2021, so the datasets provided for this research did not include anyone who had qualified through the SQE route. The main route for qualification before the SQE was passing the Legal Practice Course (LPC) and then completing a period of recognised training (PRT).

Our analysis showed that solicitors who entered the profession through the CILEX route are 5% more likely to be named in a report received by the SRA compared with those entering by the LPC then PRT. Solicitors who enter the profession via the QLTS (the Qualified Lawyers Transfer Test which was the main route for overseas qualified lawyers until the SQE was introduced) are 11% less likely to be named in a report received by the SRA compared with those entering by LPC then PRT. The observed association between entry route and likelihood of being named in a report may not contribute to the overrepresentation of Black Asian and minority ethnic solicitors. This is because a similar proportion of Black, Asian and minority ethnic solicitors and White solicitors entered the profession through a CILEX route. And there are more Black, Asian and minority ethnic solicitors who have entered via the QLTS route.

Interaction with entry route showed some differences but we found limited evidence to suggest there is a strong interaction between ethnicity and entry route as the results seem to be driven by ethnicity rather than route into the profession. Compared to White solicitors qualifying through the LPC then PRT, Black, Asian and minority ethnic

solicitors who entered the profession through this route are 15% more likely to be named in a report. Black solicitors who enter the profession via a LPC and PRT route are 9% more likely to be reported. Asian solicitors who enter the profession via a LPC and PRT route are 16% more likely to be named in a report. White solicitors who entered the profession via a CILEX route are 7% more likely to be named in a report.

Overall, our statistical analysis of individual factors revealed, then, that ethnicity is a strong predictor for increased likelihood of reports received by the SRA.

Insight from our consumer survey

The literature review highlighted the potential for Black, Asian and minority ethnic solicitors may be more likely to be reported to the SRA because of socio-cognitive biases in those making a complaint. Socio-cognitive biases relate to how a person's cultural or societal background may influence their conscious and unconscious perceptions or expectations of others. This is referred to as social attribution. Social attribution may make some groups more likely to complain about certain other groups.

The literature review thus developed the following proposition: Social attribution is likely to be a factor in complaints about potential misconduct made to regulators. We sought to test whether socio-cognitive biases may result in Black, Asian and minority ethnic solicitors being more likely to be reported to the SRA.

We, therefore, ran a consumer survey to understand whether consumer biases (in a given scenario) play a role in the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. This generated new primary data and, to our knowledge, is one of the first analyses of potential consumer bias in reports to regulators, about solicitors or other professionals.

The report showed that consumer respondents did not make substantially differential attributions based on either the ethnicity or the gender of the solicitor in a given scenario. Nor were they more likely to report a solicitor to the SRA based on their understanding of the solicitor's ethnicity or gender. Specifically, the results of our analysis show that the ethnicity or the gender of the solicitor did not affect how consumers:

- Attribute responsibility for potential misconduct.
- View the role of factors outside the control of solicitors when problems arise.
- Respond to questions about whether a solicitor could have prevented a problem.
- Decide whether to report a solicitor to the SRA.

When we analysed the results by the different characteristics of the consumer respondents, we found evidence that there were differential attributions. We found that:

- The ethnicity of respondents affected how they attributed responsibility for what happened in the scenario. White respondents felt the solicitor in the scenario was responsible for the outcome more than Asian or Black respondents, who tended to place responsibility on outside factors.
- Female respondents were more likely to feel the solicitor in the scenario was responsible for the outcome, but male respondents were slightly more likely to believe outside factors were mostly responsible.
- Older respondents were more likely to feel the solicitor in the scenario was responsible for the outcome in the scenario, whereas younger respondents were more likely to attribute responsibility to outside factors.
- Respondents not in paid work (e.g., homemaker, retired or disabled) and unemployed respondents were, respectively, the most and the least likely to attribute responsibility to the solicitor in the scenario. Employment status also affected the likelihood to report solicitors to the SRA for potential misconduct.

However, with the exception of employment status, none of these factors made the consumer respondent more or less likely to report a solicitor to the SRA.

We found that different levels of experience of, satisfaction with, and knowledge of the legal industry changed how consumers responded to problems with legal services:

- Respondents with a higher level of experience of the legal industry were more likely to believe that the potential misconduct could have been prevented than those with a lower level of experience of the legal industry. This group were also slightly more likely to take the complaint further and report the solicitor to the SRA for potential misconduct.
- Respondents who were more dissatisfied with the legal industry were more likely to think the solicitor would behave in the same way in the future (in relation to the potential misconduct) than those who were more satisfied with the legal industry. The level of satisfaction with the legal industry did not significantly affect whether someone would report the solicitor to the SRA for potential misconduct.
- Respondents with a better legal knowledge were more likely to think that outside factors were totally responsible for what happened than respondents with a poorer legal knowledge. And respondents with a better legal industry knowledge were more likely to report the solicitor to the SRA.

Taken together, the results of our survey provided evidence that respondents attributed responsibility for potential misconduct differently. Different attributions, however, seemed to be linked more to respondents' socio-demographic characteristics and levels of experience of, satisfaction with, and knowledge of the legal industry than to the ethnicity or gender of the solicitor who delivered the service in the scenario.

Insight from our interviews with practising solicitors

Some of the solicitors we interviewed, even when they had no prior knowledge of the matter, were not surprised by the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. These respondents tended to view this as the result of structural biases pervading the profession as well as society as a whole.

In this context, respondents suggested that Black, Asian and minority ethnic solicitors faced more difficult working conditions, as they could appear as 'outsiders' who did not fit into the profession, and as result were under more pressure to 'prove' themselves and 'were not given the benefit of the doubt' when things went wrong.

As such, some of our respondents felt that other solicitors and clients might be more likely to complain about Black, Asian and minority ethnic solicitors as they are more likely to presume their culpability. Indeed, in the words of one of our respondents:

> I would imagine that those people from ethnic minority backgrounds would not be given the benefit of the doubt in complaints, compared to a white demographic.
> *Solicitor who is male, Black and working in a large firm*

This was not corroborated by our consumer survey but was a strongly held view for some solicitors. Some respondents thought bias also existed within the profession, with more senior solicitors being less likely to support, provide guidance to and help train junior Black, Asian and minority ethnic solicitors. Here the issues such as networking and mentoring were particularly prominent. At the same time there was a sense that if things went wrong, Black, Asian and minority ethnic solicitors were less likely to be 'trusted', 'believed' or 'supported' by their own organisation and professional institutions. One respondent reflects on the issue of isolation that affects Black, Asian and minority ethnic solicitors, even in the context of large firms:

> So in firms where you are very much in isolation, this exposes people from different backgrounds even more because cultural norms are new to you and if you don't have a network of support, you will not see it [the risks] and you are at a disadvantage

Solicitor who is male from an Other ethnic group and working in a large firm

When asked, respondents drew similar conclusions about the causes of overrepresentation in reports received by the SRA in relation to other demographic characteristics such as gender, age, or country of qualification. Specifically, they thought that women, more recently qualified solicitors, and those qualified in Global South jurisdictions would also experience similar biases and negative stereotypes, leading to a higher likelihood of a report being made to the SRA.

There was also some awareness of the possibilities of intersectionality whereby the effect of different individual characteristics combined and compounded each other. For this reason, one respondent identified female Black, Asian and minority ethnic solicitors as being the most likely group to be exposed to the possibility of being reported to the SRA. However, it must be noted that this hypothesis is not supported by the literature or data analyses conducted as part of this research, which shows male Black, Asian and minority ethnic solicitors as being more likely to be reported.

Organisational factors relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA

The literature review identified a range of organisational factors as potentially relevant when considering the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA.

Organisational factors either increase the likelihood of complaints being made about potential misconduct or impact the risk of misconduct itself. For example, Black, Asian and minority ethnic solicitors may be overrepresented in firm environments and circumstances that by their very nature are more likely to generate complaints about potential misconduct. These could be related to a wide range of factors which could be outside of the control of the individual solicitor in question, for example firm size.

We developed a number of propositions in relation to organisational factors that we sought to examine further using statistical analysis and interviews with solicitors. These propositions are that firm size and organisational complexity are likely to be factors in complaints about potential misconduct made to regulators. We were not able to test against the latter in the SRA dataset.

Insight from the SRA's reports data

Our literature review also revealed a range of organisational factors that are relevant when seeking to understand the overrepresentation of

Black, Asian and minority ethnic solicitors in reports received by the SRA. It suggested, in particular, that a potential explanation is that Black, Asian and minority ethnic solicitors may be overrepresented in firm environments that are more likely to generate reports to the SRA.

We, therefore, used our statistical analysis to examine whether particular firm environments increase the likelihood of a solicitor being the subject of a report to the SRA, and whether Black, Asian and minority ethnic solicitors are disproportionately working in such environments. We have set out our main findings under each of these firm characteristics below, including the results of our analysis of interactions with ethnicity where we were able to.

Working in a small firm

Working in a one partner firm means a solicitor is 33% more likely to be named in a report than working in a firm with two or more partners.

In addition, the relative likelihood of being named in a report to the SRA decreases as the firm size increases. Solicitors working in one partner firms are 45% more likely to be named in a report to the SRA than those working in large firms (more than 10 partners). It is 23% more likely for those in small firms (2 to 5 partners) and 13% more likely for those in medium firms (6 to 10 partners).

Looking at Black, Asian and minority ethnic solicitors in firms by size, 167% more work in one partner firms than one would expect, given the population of solicitors regulated by the SRA and 40% more work in small firms, 6% fewer work in medium firms and 38% fewer work in large firms. In particular, Asian solicitors and Black solicitors are 169% and 318%, respectively, more likely to work in one partner firms than one would expect given the population of solicitors regulated by the SRA.

Looking at the interaction between working in a firm by size shows that firm size does affect ethnic groups differently. Unlike many of the other factors, firm size interacts with reports about White solicitors to produce the largest effect. White solicitors are 40% more likely to reported if they work in a one partner firm and 20% more likely in small firms, and 13% more likely to be reported in a medium (compared to White solicitors in large firms). Black, Asian and minority ethnic solicitors in one partner firms are 15% more likely, and 13% more likely in small firms, to be named in a report than White solicitors in large firms. Asian solicitors in one partner firms are 20% more likely, in small firms 12% more likely, and in large firms 3% more likely to be named in a report than White solicitors in large firms. Black solicitors in small firms are 10% more likely to be named in a report than White solicitors in large firms. Finally, Other ethnicity solicitors in small firms are 21% more likely to be named in a report than White solicitors in large firms.

Working in a specialist firm

We defined a specialist firm as a firm that receives more than 50% of its revenue from a single revenue stream. Working in a specialist firm means a solicitor is 3% less likely to be named in a report than working in a firm that is non-specialist. There are 55% more Black, Asian and minority ethnic solicitors working in specialist firms than expected.

Looking at the interaction between working in a specialist firm and ethnicity indicates there are differences for some groups. Black, Asian and minority ethnic solicitors who work in non-specialist firms are 13% more likely than White solicitors who work in non-specialist firms to be named in a report received by the SRA. Black, Asian and minority ethnic in specialist firms are 6% less likely to be named in a report than a White solicitor in a non-specialist firm which is a stronger effect than might be expected from ethnicity alone. Similarly, Asian and Other ethnicities in specialist firms are 17% and 6% less likely to be named in a report than White solicitors in non-specialist firms. Again, this is a stronger effect than might be expected from ethnicity alone.

Working in a firm that does legal aid

Working in a firm that does legal aid means a solicitor is 7% more likely to be named in a report than a firm that does not. There are around 15% more Black, Asian and minority ethnic solicitors working in firms doing legal aid work than one would expect. More specifically, there are around 15% more Asian and around 53% more Black solicitors working in firms doing legal aid work than one would expect.

Working in a firm that has been operating for a longer period

Working in a firm which has been operating for 16 or more years means that a solicitor is 1% less likely to be named in a report than one that has been operating for 15 or fewer years.

Working in a firm by main practice area

The three practice areas where the likelihood of being reported are the lowest (compared to Property residential) are Commercial/corporate work for listed companies (29%), Financial advice and services (28%) and Intellectual property (27%). There were only three practice areas where it was more likely that a person would be named in a report and those were Consumer, Discrimination/civil liberties/human rights and Payment Protection Insurance where it was, respectively, 34%, 36% and 10% more likely. As practice types are not equally distributed across ethnicities, some may contribute to Black, Asian and minority ethnic solicitors being overrepresented in the reports received by the SRA, but others may not.

Particularly important is the fact that Black, Asian and minority ethnic solicitors are more likely than White solicitors to work in firms that specialise in 'Criminal' and 'Immigration' law.

There are some limited interactions between the main practice area of the firm where solicitors are working and ethnicity. The change in relative likelihood of receiving a report is predominately driven by the practice area of law not ethnicity. Black, Asian and minority ethnic solicitors working in firms with the main practice area of 'Discrimination/civil liberties/human rights' and 'Family/matrimonial' are 270% and 25%, respectively, more likely to be named in a report than White solicitors working in the area of 'Property residential' (our reference category). Asian solicitors working in Discrimination/civil liberties/human rights are 1848% more likely to be named in a report received by the SRA than White solicitors who work in Property residential (our reference category).

Working in-house

In-house solicitors are much less likely to be referred to the SRA than would be expected given their background distribution – 58% fewer than expected receive no reports.

Insight from our interviews with practising solicitors

To understand the findings of our statistical analysis, we again used interviews with solicitors to gain an appreciation of their experiences of the factors identified as relevant. A common theme across many interviews were the challenges that Black, Asian and minority ethnic solicitors experienced when working in smaller organisations – something our statistical analysis of individual factors also identified as a relevant consideration. Our interviews help to shed light on ways in which contextual factors in one partner and small law firms (with five or fewer partners) increase the likelihood of being the subject of a report received by the SRA. We raised these issues with all the respondents and have reflected the broad themes through the quotes provided in each section. Some of the quotes are from solicitors currently working in small firms, so may come from lived experience, other quotes are the perceptions of solicitors working in larger firms.

Resources to reduce risk

Solicitors' access to organisational resources emerged as a key issue from our interviews. Specifically, our respondents felt that one partner and small law firms tend to lack the necessary resources to minimise the risk of a report being made to the SRA. In the following quotation, a respondent captures this situation both in general terms and how it specifically relates to ethnicity.

> ...small firms, especially ethnic minority firms, they don't have as much access to resources as other firms. So even like for like high street firms, where one firm is a white firm and the other is predominantly ethnic minority, you find that the resources [available to] the white firm...[are] greater than what an ethnic minority firm would have.
> *Solicitor who is female, Black and working in a small firm*

More specifically, respondents suggested that, unlike their larger counterparts, one partner and small firms are unlikely to have internal advisory functions, such as 'internal Counsel' roles or 'in-house psychologists', and suffered from an absence of supporting procedures and protocols designed to minimise the risk of misconduct. As a result, solicitors, and especially earlier career solicitors, may not have easy access to support and guidance mechanisms that can help avoid circumstances that are more likely to result in a report being made to the SRA.

Respondents also suggested that in smaller firms there was a lack of formal training programmes designed to ensure compliance. Indeed, in the words of one respondent this lack of training meant that 'the chances of actually learning [how to avoid and manage potential issues] and becoming a good lawyer...are much less at a small firm'. A related topic that emerged from several interviews was the challenge of understanding how to properly interpret and follow SRA rules. Again, some respondents thought that solicitors in smaller firms, due to a relative lack of resources, may struggle to make sense of how to comply with the many rules set out by the SRA.

Relatedly, respondents mentioned the sense of isolation or loneliness that can characterise working in smaller firms. They described the challenge of having a limited number of other people to share problems and contentious decisions with. This limited their ability to get feedback and triangulate decisions.

The effects of isolation were also perceived to be exaggerated for early career solicitors in small firms, as they had a limited number of more experienced professionals to turn to for guidance. This in turn made it harder to check decisions and develop confidence in making ethical decisions or judgements in difficult situations which comply with the SRA's principles-based approach.

> ...the smaller the firm, the more likely the chances that you would have complaints, because there are few people dealing with this person [client]. They [client] only see that one face or very few people around, so they feel they can target [i.e., make a complaint], it's a small firm, there's not much by way of checks within there.
> *Solicitor who is female, Black and working in a small firm*

Resources to manage client concerns

An important topic of discussion with some respondents related to how a lack of resources affected the ability of solicitors in smaller firms to manage client relationships and, especially in situations when clients are unhappy. Smaller firms were perceived by some respondents as being less likely to have dedicated client relationship procedures, processes and personnel that could help ensure service standards are met in a consistent way and risks mitigated appropriately.

At a very small firm, in the view of respondents, a solicitor is more likely to have to deal with a client concern with little support from others. Whereas in larger organisations a dedicated individual or team is more likely to respond using defined procedures.

> Now the big national law firms have the resources to invest in compliance. They have teams of compliance people. You don't even have to think about compliance because there will be someone there who knows this [compliance] inside out and who will look after you..... A smaller firm has fewer resources,... [which means] not only are you having to know your own practice area inside out, you are having to know all the compliance inside out, so I can see quite easily that someone could make a mistake there.
> *Solicitor who is female, from an Other ethnic group and working in a large firm*

Some respondents suggested that a combination of all of the resource related factors outlined here could lead to solicitors feeling threatened, fearful and thus defensive when a concern is raised by another party. This can lead to clients perceiving the response of a solicitor to be unacceptable, thus heightening the chance of a report to the SRA.

Resource strains

Respondents also identified a number of other strains on solicitors working in smaller firms that can increase the likelihood of a report being made to the SRA.

Strain can be financial. Smaller firms were perceived by respondents to be more likely to experience precarious income streams and engage in less profitable work such as Legal Aid. In response, solicitors working in these firms might feel under pressure to take on more work than they could reasonably handle or to take on matters in which they lacked sufficient experience or expertise.

> I think when you are a sole practitioner, when you are in a very small law firm, exacerbated by challenges around what has happened to Legal Aid and all the rest of it, I think actually it is really quite difficult because they don't have the resources, the

> infrastructure to really support education and development, I think in the same way that big city law firms do.
> *Solicitor who is male, Asian and working in a large firm*

A related form of strain refers to caseload. A combination of being fearful of refusing work, and the lower fee levels for some of the more readily available work, can lead to solicitors in smaller firms handling 'hundreds of clients at any one time'. This caseload strain can make it hard to ensure all clients receive appropriate service levels. Tracking progress with each client's case and reviewing decisions becomes difficult when client number grow. In turn this creates more opportunity for oversights or errors that could be the basis of a report to the SRA.

Finally, strain can also be personal. Respondents described how in some smaller firms there was often no-one to turn to for moral or practical support, thus creating a stressful working environment. Respondents talked about how this could result in an inability to pass-on work during periods of illness or family emergency, and thus a higher likelihood of delays and poor-client service occurring.

Case-related factors relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA

Our literature review also identified that certain types of cases or clients may be more likely to increase the risk of being the subject of a report to the SRA. Certain case or client types could increase the likelihood of ethical dilemmas emerging and/or make clients more likely to turn to the regulator.

We developed a number of propositions about case related factors that we sought to examine further through our statistical analysis and interviews with solicitors. The propositions are that the 'moral intensity' and area of law of a case is likely to be a factor in complaints about potential misconduct made to regulators. Moral intensity is the extent to which the 'issues' involved in a matter, can influence the behaviour of the professional involved. Previous research suggested that there is less likelihood of unethical behaviour if the matter itself raises ethnical issues. We were unable to test this in our statistical analysis of SRA data but, as reported above, we were able to look at area of law.

Other case related factors we looked at were source of report and category of reports.

Insight from the SRA's reports

To understand the role of case-related factors in overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA we used our statistical analysis to test the impact of the source of reports

and the category of the report on the likelihood of being the subject of a report to the SRA.

Source of report

We used the SRA's four broad groupings for the source of the reports received, these are:

- Regulated individuals such as a solicitor or a partner or role holder in a firm.
- Regulated organisations such as a firm of solicitors, or an organisation where solicitors may work in-house, such as a government department, a court or a private corporation.
- Non-regulated individuals, who are often clients of a solicitors or law firm but could also be individuals who work in a law firm but who are not solicitors or individuals who work for the police, courts or for government departments.
- Non-regulated organisations which could include referrals from within the SRA, or from organisations such as insurers, government or other public departments, courts or banks.

The analysis showed, in relation to the source of reports, that 2% more White, 7% fewer Asian and 8% fewer Black solicitors are reported by non-regulated individuals (mostly clients). In relation to non-regulated organisations (mostly other agencies, including the police, courts and reports from the within the SRA), there are 9% fewer reports about White solicitors and 29% and 42% more reports respectively about Asian and Black solicitors. Looking at complaints from the profession there are 8% fewer reports for White solicitors and 28% more for Asian solicitors reported by regulated individuals (mostly other solicitors) - the findings for reports about Black solicitors are not statistically significant. The only significant finding in relation to reports from regulated organisations (mostly law firms) is there are 38% more reports about solicitors from the Other minority ethnic group.

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Case categorisation

In relation to the category of report type, the analysis shows some differences between the ethnic groups for some report types. Focusing just on the findings which are significant, for reports about potential fraudulent activity, White solicitors receive 19% fewer reports and Asian solicitors receive 70% more. For reports about potential money laundering, Asian solicitors receive 38% more and Black solicitors 56% fewer reports. For reports about potential financial [in]stability, White solicitors receive 23% fewer reports, Asian and Black solicitors receive, respectively, 70% and 64% more reports. For potential concerns about trust and acting fairly, White solicitors receive 3% more reports and Asian and Black solicitors receive, respectively, 11% and 4% fewer reports. For reports about potential conflict or confidentiality, White solicitors receive 10% more and Asian and Black solicitors receive, respectively, 27% and 39% fewer reports. And for reports about potential practice or employment arrangements, White solicitors receive 26% fewer and Asian and Black solicitors receive, respectively, 84% and 75% more reports.

We do not look at any interactions with ethnicity for these factors, given the low base sizes for some categories.

Insight from our interviews with practising solicitors

We again used interviews with solicitors to understand their experiences of the factors identified in the statistical analysis.

One of the most prominent findings to emerge from our interviews is the belief that the SRA is likely to receive more reports about those engaged in work associated with some practice areas rather than others.

Our respondents referred to a presumed distinction between more personal areas of law like family law, personal injury, and residential conveyancing and more criminal oriented specialisms. The presumption here was that in more personal areas of law, clients are likely to be much more emotionally invested in their case because the result may have life-changing consequences for them. They might stand to lose their jobs, their children or even their freedom.

As such, since the stakes are so high, if things are perceived to have gone wrong (or an outcome is not as the client wished) there is more likelihood of a report being made to the SRA than with commercially orientated work. Indeed, in the words of some of our respondents:

> Areas like family law, private client – anything that is litigation where there is high emotion and you are dealing with individuals rather than businesses - can be quite difficult [and liable to more complaints].

Solicitor who is female, Asian and working in a large firm

> Family and crime [are examples of practice areas more susceptible to complaints because]...you are dealing with a huge amount of stress at a personal level, so family for obvious reasons, crime, potential deprivation of liberty.
> *Solicitor who is female, from an Other ethnic group and working in-house*

Respondents also suggested that clients associated with personal areas of law might be more likely to make a report to the SRA because they were less regularly in need of legal help. These clients use lawyers sporadically and often in situations of vulnerability. In this context, as captured by the quote below, they may have unreasonable expectations of what their solicitor can do for them.

> It's quite tricky working with individuals because I mean you can handle a case properly and the recipient or the client is just not happy with the decision either you or the courts take.
> *solicitor who is female, Black and working in-house*

This is part corresponds with our consumer survey finding that the characteristics of a client influence the likelihood of them making a report to the SRA.

Also, since clients associated with personal areas of law are often one-time or very infrequent consumers, they do not have long term relationship with their solicitors or the same mechanisms to respond to concerns as commercial clients. For example, as indicated by the quote below, whilst commercial clients can address a problem via a negotiation as part of a long-term relationship with their advisors (e.g., via a discount on future work or by developing better communication protocols), this option is not available for one-time users:

> There are more chances of clients complaining in small firms because if you are a huge company [like] Apple or Microsoft, they solve their problem by other means. [Generally] big clients just won't submit a complaint to SRA, they will communicate directly to their partner.
> *Solicitor who is female, from an Other ethnic group and working in a large firm*

Conclusions on the overrepresentation in reports received by the SRA

Our unique mix of methods reveals a range of insights into the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA.

Our findings reveal a range of overlapping factors that together generate patterns of overrepresentation in reports received by the SRA. Ethnicity is a key factor in explanations, but most importantly it interacts with other factors including gender, age, organisational contexts, such as size of firms, and types of work that increase the likelihood of a report being made to the SRA.

Our analyses reveal that working in a one partner or small firm, and the overrepresentation of Black, Asian and minority ethnic solicitors in such firms, is the key organisational factor relevant when considering the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. Our interviews revealed a range of challenges and 'strains' that solicitors working in smaller firms might experience. Our findings suggests that Black, Asian and minority ethnic solicitors are disproportionately exposed to these challenges and 'strains'.

Our interviews with solicitors also identified ethnicity, and biases in society and the legal profession, as the main individual factor that solicitors consider relevant when explaining overrepresentation. However, our consumer survey did not provide any corroborating evidence for client biases as a cause of overrepresentation in reports received by the SRA and our methods did not allow us to investigate further the nature and effects of any biases in the legal profession. As such, our analysis of individual factors reveals ethnicity as a key predictor in the overrepresentation of Black, Asian, and minority ethnic solicitors in reports received by the SRA. However, a number of factors, above and beyond ethnicity, have to be taken into consideration when examining the reasons behind the overrepresentation of Black, Asian and minority ethnic solicitors in the reports received by the SRA.

We found a number of factors that did not appear to play a role, including no evidence of consumer bias about Black, Asian and minority ethnic solicitors, although the individual characteristics of consumers themselves does play a role in determining how likely they are to ascribe responsibility for what went wrong in our scenario. We found that solicitors working in firms providing legal aid work are more likely to be the subject of a report to the SRA, and Black, Asian and minority ethnic solicitors are disproportionately working in these types of firms.

However, it is likely that case-related factors combine with other individual and organisational factors to produce the observed overrepresentation effect.

Our interviews suggested that certain areas of work increase the likelihood of being the subject of a report to the SRA because of the personal and emotive nature of the work and the characteristics of clients, including their level of experience of using legal services.

The findings suggest that it could be beneficial to pay further attention to the way particular organisational and work contexts explain the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA. Recognising that Black, Asian and minority ethnic solicitors are overrepresented in one partner and smaller firms, and that solicitors practising in such contexts are more likely to be reported to the SRA, suggests it may be appropriate to consider further the reasons for such patterns of concentration, the challenges faced when practicing in such contexts and the support the SRA and others can provide to alleviate the challenges. Our interviews with solicitors provided insight into the characteristics of the challenges faced and can be used as the basis for examination of the kinds of support that may be beneficial.

The findings thus indicate a complex picture with a raft of contributing factors to the overrepresentation of Black, Asian and minority ethnic groups in the reports received by the SRA.

5. Overrepresentation in reports taken forward to investigation by the SRA - key findings

We statistically analysed quantitative data provided by the SRA that provided details of the cases received, allowing us to identify patterns in the cases taken forward for investigation at individual, organisational and case levels.

We also analysed how the SRA's Assessment Test was applied by the SRA's Assessment Team, this being the team comprised of multiple investigating officers that determine whether reports are taken forward for investigation. We used a combination of desk-based review of the guidance provided to staff by the SRA and interviews with staff in the Assessment Team.

Individual factors relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation

Our statistical analysis revealed a number of individual factors relevant when seeking to understand the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward to investigation by the SRA.

It revealed that ethnicity is an important factor associated with an increased likelihood of reports being taken forward for investigation. In addition to ethnicity, we have also identified several other factors which are associated with an increased likelihood of reports being taken forward for investigation. However, as we found with our analysis of reports received, ethnicity must not be considered in isolation as there

are a number of overlapping factors which also appear to interact and impact upon the observed overrepresentation.

Ethnicity

The SRA has taken forward for investigation around 23% more reports about Black, Asian and minority ethnic solicitors than one would expect, given the composition of the reports received. White solicitors are underrepresented in the reports taken forward by the SRA for investigation by 12% in comparison to the composition of the reports received.

The SRA has taken forward for investigation 25% and 23% more reports about, respectively, Asian and Black solicitors than one would expect given the composition of the reports received. Solicitors included in Other minority ethnic groups are also overrepresented in the reports taken forward for investigation by the SRA. The SRA took forward for investigation around 40% more reports about these solicitors than one would expect given the composition of the reports received. In contrast, solicitors included in the Mixed group are underrepresented in the reports the SRA took forward for investigation. The SRA took forward around 39% fewer reports about these solicitors than one would expect given the composition of the reports received.

Reports about Black, Asian and minority ethnic solicitors are 52% more likely to be taken forward for investigation, in comparison to reports about White solicitors. Reports received about White solicitors are 35% less likely to be taken forward for investigation, in comparison to all other reports.

The likelihood of reports being taken forward for investigation varies within this category – with reports received about Asian solicitors 54% more likely to be taken forward for investigation and those about Black solicitors are 43% more likely to be taken forward for investigation, in comparison to reports about White solicitors.

Gender

We also found that the gender of a solicitor is a relevant factor when considering which reports are taken forward for investigation. We found that reports received about female solicitors are 36% less likely to be taken forward for investigation, in comparison to reports about male solicitors.

Interaction with gender shows reports received about Black, Asian, and minority ethnic female solicitors are 45% more likely to be taken forward for investigation than those about White-Female solicitors. Reports about White-Male solicitors are 44% more likely to be taken forward for investigation, in comparison to White-Female solicitors. Reports received

about Black, Asian, and minority ethnic male solicitors are 128% more likely to be taken forward for investigation, in comparison to report about White-Female solicitors.

Age

We also considered the role of a solicitor's age. Our results show that younger solicitors are less likely to have reports taken forward for investigation. For instance, reports about solicitors in age band 25-34 are 23% less likely to be taken forward for investigation, in comparison to those in other age bands. In contrast, the age effects increase to 19%, 32% and 34% more likely for age bands 35-44, 55-64 and 65+, respectively, in comparison to those in age band 25-34.

Entry Route

Our results show that reports received about LPC then PRT qualified solicitors are -12% less likely to be taken forward for investigation, in comparison to all other routes. Reports received about solicitors with a CILEX background are even less likely to be taken forward for investigation (–22%). In contrast, reports about QLTT (Qualified Lawyer Transfer Test) qualified solicitors are +16% more likely to be taken forward for investigation, in comparison to reports about LPC then PRT qualified solicitors.

Interaction with entry route showed that reports about White solicitors with a CILEX background are the least likely to progress to investigation – 35% less likely than the comparison category of White-LPC then PRT. Reports about Black, Asian, and minority ethnic solicitors with a CILEX background are 119% more likely to progress to investigation than the comparison category of White-LPC then PRT.

Organisational factors relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation

We examined the effects of various organisational level factors and relevant ethnicity intersections on the likelihood of reports being taken forward for investigation. We also looked at the interactions between ethnicity and some of the organisational factors we considered, including size of firm, working in a specialist firm and practice area.

Working in a small firm

Reports about solicitors in one partner firms are 66% more likely to be taken forward for investigation. This effect decreases as firm size increases.

Working in a firm by size (in bands by partner count) - reports about solicitors working in small firms (2-5 partners) are 32% less likely to be taken forward for investigation, while those about solicitors working in medium and large firms are 49% and 38% less likely, respectively, in comparison to one partner firms.

Interaction with working in a firm by size shows that reports received about Black, Asian and minority ethnic solicitors are 91% and 76% more likely be taken forward for investigation in one partner and small firms (2-5 partners), respectively, in comparison to reports about White solicitors in large firms. This contrasts with reports received about White solicitors that are 71% more likely to be taken forward for investigation in one partner firms, with no statistically significant increase or decrease in likelihood for White solicitors working in small firms.

Working in a specialist firm

Reports about solicitors working in specialist firms are 15% more likely to be taken forward for investigation.

Interaction with working in a specialist firm shows Black, Asian and minority ethnic solicitors working in specialist firms are 34% more likely to have report taken forward for investigation by the SRA.

Working in a firm by main practice area

With respect to specific practice areas, we assessed the impact of each practice area specialisation in comparison to the largest practice area specialisation: Property residential. We found that reports in some practice area specialisations are more likely to be taken forward for investigation. For instance, specialisation in Personal injury and Immigration increases the likelihood of a report being taken forward for investigation by 54% and 64%, respectively. In contrast, specialisation in Family and Children practice areas decreases the likelihood of a report being taken forward for investigation by 51% and 72%, respectively. Several specialisations, e.g. Commercial and Probate, did not have statistically significant results.

Interaction with working in a firm by main practice area, for example, within firms specialising in the practice area of Personal injury, shows reports about White solicitors are 32% less likely to be taken forward for investigation, while those about Black, Asian and minority ethnic solicitors are 31% more likely to be taken forward. Immigration specialisation is an exception in this respect, as ethnicity effects are reversed - reports about White solicitors are 64% more likely to be taken forward for investigation, while those about Black, Asian and minority ethnic solicitors are 37% less likely to be taken forward.

Our findings about the increased likelihood of reports being taken forward for investigation across all ethnic groups working at one partner firms, indicates the importance of firm size as a predictor.

Case-related factors relevant to the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation

We investigated whether the source of report, or the category of report affects the likelihood that a report is taken forward for investigation. We also looked at the interactions between ethnicity and the case related factors, including source of report and case categories.

Source of report

The database included four types of complainants: non-regulated individuals; non-regulated organisations; regulated individuals; and regulated organisations. We also examined the intersectional effects of type of complainant and solicitors' ethnicity.

Our results also show that the source of a report affects the likelihood of being taken forward for investigation. We found that reports submitted by regulated individuals are 104% more likely to progress to investigation, in comparison to reports submitted by all other type of complainants. Our analysis shows that reports submitted by non-regulated individuals, the largest category of complainants (68% of all reports), are the least likely to be taken forward for investigation - 71% less likely to be taken forward for investigation, in comparison to reports by regulated individuals. Reports submitted by organisations, whether regulated or non-regulated, are more likely to be taken forward for investigation; those by non-regulated organisations are 44% more likely and those by regulated organisations are 41% more likely to be taken forward to investigation, in comparison to reports by regulated individuals.

Interaction with source of report shows that reports about White solicitors are less likely to be taken forward for investigation, irrespective of the complainant type. In contrast, reports about Black, Asian and minority ethnic solicitors are more likely to be taken forward for investigation for reports submitted by both regulated and non-regulated individuals, 94% and 58% more likely, respectively.

Case categorisation

Some case categorisations were significantly more likely to be taken forward for investigation, e.g. 'Money laundering concerns' – 14 times more likely – and 'Sexual misconduct' – 20 times more likely, in comparison to the reference category of 'maintaining trust and acting

fairly'. However, sexual misconduct is a very small category, with only 104 observations. Among larger categories, 'Accounts rules concerns and concerns' and 'Concerns about fraudulent activity' were 264% and 258% respectively, more likely to be taken forward for investigation.

In contrast, some of the other case categorisations were less likely to be taken forward for investigation, e.g. 'Service and competence' is 46% and 'Bogus solicitors and/or law firm' is 45% less likely to be taken forward for investigation.

Interaction with case category showed ethnicity effects to be consistent in increasing the likelihood of a report being taken forward for investigation across most case categorisations, except in a few cases where the results are statistically not significant. For example, for the largest case categorisation, 'Maintaining trust and acting fairly', reports about White solicitors are 37% less likely to be taken forward for investigation, while those about Black, Asian, and minority ethnic solicitors are 34% more likely to be taken forward.

For the case categorisation 'Concerns about fraudulent activity', reports about White solicitors are 27% less likely to be taken forward for investigation, while those about Black, Asian, and minority ethnic solicitors are 41% more likely to be taken forward.

Interaction with size of firm and case category shows that overall, firm size effects within most key case categorisations are consistent with reports about one partner firms more likely to be taken forward for investigation, while those about other types of firms (i.e. those with partner count > 1) are less likely to be taken forward for investigation.

Our statistical analyses reveal, then, that a number of individual, organisational and case-related factors which may correlate to a change in the likelihood of a report being progressed to investigation by the SRA.

The approach taken by the SRA when assessing reports received and deciding whether to progress them to investigation

To examine if the SRA is consistently applying its decision-making criteria at this early stage of the enforcement process and to see if there was anything which contributes to the overrepresentation of Black, Asian and minority ethnic solicitors in cases progressed for investigation, we used a combination of desk-based review of the guidance provided to staff by the SRA and interviews with staff in the Assessment Team.

The Assessment Team is responsible for decision making at the first stage of the enforcement process for any reports received by the SRA. Regardless of their source, all reports must pass through the assessment process. When a report is received, the Assessment Team assesses it

against a three-stage Assessment Test. The test involves assessing the following three limbs:

1. Whether there is a potential breach of the SRA's standards or requirements based on the allegations made.
2. Whether that breach is sufficiently serious that, if proved, is capable of resulting in regulatory action.
3. Whether that breach is capable of proof.

The results of the Assessment Test determine whether a report proceeds to the investigation stage. If the report does not meet all three limbs of the Assessment Test, the SRA will advise the complainant that the report will not be progressed for investigation and explain why not. The team deals with 800 to 1,000 reports per month with around 16 percent of these meeting the assessment test and being passed on for investigation.

Our analysis involved looking at a number of aspects of this assessment process, with the findings from each reported below.

Guidance and standard operating procedures

There is a comprehensive induction process when an Investigation Officer (IOs) joins the Assessment Team. The focus of the induction is on how to analyse the reports that come in and gather the additional information that may be needed to fully understand the facts. Case studies are used to help develop the IO's approach to applying the various factors which should be taken into account in making the decision whether to take a matter forward for investigation. It was observed as part of the review that the scenarios provided were relatively straightforward, something we return to in our conclusions as a possible area for change.

The SRA has a suite of guidance and standard operating procedures which set out the Assessment Test and how to apply it. The internal guidance material is detailed and comprehensive and in line with the approach set out in the SRA's published Enforcement Strategy, which informs the decision-making process. The parameters of what constitutes aggravating and mitigating circumstances are clearly defined for IO decision making purposes.

We found the documented procedures to be a clear step-by-step guide that appears a vital aide to all within the assessment team regardless of prior experience. It incorporates a range of reflection points that encourage the IO to take a step back and review their evidence and thought processes.

The SRA's EDI training modules

In addition to the induction process and the SRA's guidance and operating procedures for making assessment decisions, the SRA provides staff with training on equality, diversity and inclusion. We reviewed two of the most relevant EDI training modules which are well-developed, comprehensive and in line with the Chartered Institute of Personnel and Development's (CIPD) best practice.

The first module, Conscious Inclusion, is completed by all staff when joining the SRA. It provides guidance to employees making the workplace an inclusive one. Staff are also encouraged to seek other diverse views, respect alternative experiences, and demonstrate a willingness to learn and develop. The training encourages staff to be the best, authentic version of themselves and challenge bias, providing details on how the brain processes information and seeks to create short cuts. Guidance is provided on The Equality Act, 2010 and the focus on how the SRA regulates solicitors' firms in a way that encourages equality, diversity, and inclusion within the focal firm.

The second module, A Spotlight on Unconscious Bias, is well-developed and emphasises that individual decision making needs to be complemented by other measures including effective quality assurance, monitoring decisions to observe trends over time, setting guidelines for decision makers, publishing regulatory decisions, involving others in decision making and engaging independent reviewers.

Insight from SRA staff on making assessment decisions

Each of the 14 SRA staff from the Assessment team that we interviewed agreed that the assessment test served as a key decision-making tool that helped frame their actions. Some believed that the assessment test ensured greater objectivity and prevented IOs from interpreting data differently, removing human judgement and creating a more definable boundary between right and wrong.

One of the most complicated judgements the IOs have to make is determining the seriousness of a breach and deciding which aggravating and mitigating circumstances to take into account. The IO's judgement will depend upon factors such as their understanding of the case, whether claims are substantiated and corroborated and the regulatory history of the firm. The guidance sets out a list of factors to consider, including: the seniority of the solicitor, numbers of employees, date of qualification, age and size of the firm, and the risk posed to the client. One of the SRA's IMs suggested there is some room for personal judgement:

> There is that lateral thinking, thinking outside the box. That is, again, encouraged. Yes, you have a set of set criteria, but that criteria isn't necessarily set in stone. It gives a good basis to

> ensure consistency and ensure that cases are dealt with fairly, but, yes, think of it holistically, think of it laterally.

IOs recognise that each case is different and that they are continuously learning, but also that their judgement could be flawed. The IOs, therefore, use additional knowledge sources in the form of informal and formal social networks of support within the SRA. A borderline case forum also provides a further useful opportunity to advice and support. These networks were perceived as central in ensuring greater degrees of consistency.

It was recognised that keeping a record of the reasons for a decision was important as was the level of detail provided to the complainant about the outcome. All participants felt accountable for their decisions and took care to provide reasons to the complainant, in particular when having to advise them that their report would not be taken forward. Whilst there was clear guidance and materials to support both, some staff recognised there was room for improvement.

The IOs do not have access to any diversity data about individuals named in the reports they are assessing, but names and title and pronouns in the papers they see may lead to an inference being made. Some IOs stated that they did not look at the names of these solicitors or assume specific demographics based on details in the report, nor did they look at the other information held by the SRA about that person. One IO said:

> The actual background of the individual or whatever is irrelevant to this situation because we're looking at the cold, hard facts. What's the allegation? What's the evidence? Is there reg history?

Summary of our findings on the approach taken by the SRA

Overall, our analysis revealed that the SRA has a robust set of processes that are helpful and adhered to. The Assessment Test, training materials, online guidance and standard operating procedures are, for the most part, as robust as they can be. IOs also have access to a range of networks including a borderline case forum which considers any complexities and where they can gain further clarification on decision making. Many of the resources available to the Assessment Team include a range of training scenarios, and it is impossible to include all of the possible scenarios given the diversity and multiplicity of the reports received. Nonetheless, it might be useful to augment the portfolio of complex case scenarios and decision guides.

Interviews revealed that the Assessment Tests structure the decision-making process, and this structure helps remove some risk of bias and

supports Investigating Officers in focusing on the facts of the case. The participants each observed that decision making within the assessment team is based on 'objectively assessing evidence'.

The consideration of aggravating and mitigating circumstances when considering seriousness (in the second limb of the Assessment Test) incorporates a degree of human judgement with some recognition that this may be challenging. It requires IOs to think laterally as well as reach out to broader knowledge networks. Those networks within the SRA are multifarious and each of the participants in the interviews highlighted the importance of their direct team and those more specialist internal networks. It was apparent that those networks were particularly important, and that everyone knew where to go and who to ask for further advice, support, and information. This suggests adequate socialisation, information, and network support within the SRA for the assessment team members.

The Enforcement Strategy does encourage a degree of flexibility around the factors that might be considered pivotal to any given case when considering issues of proportionality. However, this flexibility creates the possibility of a degree of bias. Complex judgements have to be made about what is proportionate in any particular context, with important links to the test of seriousness in the second part of the Assessment Tests. Each of the participants were clear about which factors needed to be considered and suggested that the various standard operating procedures and work instructions are clear and were being followed consistently. But because they were required to make their own judgement on the various factors available to them, it was recognised that it was possible for the IOs to arrive at the same conclusion, even if the precise route to how they got there could be slightly different.

Each of the participants stated that they did not look at names or, instead they focused on the facts of the case: 'the actual background of the individual is irrelevant to this situation because we're looking at the cold, hard facts'.

While work has been done to ensure that assessment team members justify their decisions via the assessment test proforma, IMs suggested that there remain incidents where insufficient detail is provided by the IO. Therefore, more work could be done to ensure the quality and detail of the case decision notes. For those interviewed, this represented the weakest area of assessment team operationalisation.

Overall, participants believed that the decisions made by the assessment team were 'fair, proportionate and transparent'. They felt that fairness was assured by the application of a logical process which captured all relevant information. They felt that the seriousness test itself helped make sure their decisions were proportionate, albeit with one participant reflecting on the impact on the solicitor concerned if the case proceeded for investigation. And participants agreed the decision making was

transparent but there was room for improvement in explaining the reasons for their decisions, in particular, to complainants whose reports were not being taken forward for investigation.

Conclusions on the overrepresentation in reports taken forward to investigation by the SRA

Our analyses reveal that the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation by the SRA is primarily explained by the effects of ethnicity, with reports about Black, Asian and minority ethnic solicitors being 52% more likely to progress to investigation.

In addition, reports about solicitors in one partner and small firms are also a key factor in the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation by the SRA. Reports about Black, Asian and minority ethnic solicitors in one partner and small firms are 91% and 76% respectively more likely to be taken forward for investigation. This is doubly significant when we consider, as noted earlier in this report, that Black, Asian and minority ethnic solicitors are overrepresented in one partner and small firms. This contrasts with reports received about White solicitors that are 71% more likely be taken forward for investigation in one partner firms.

Specialisation is also an important factor. Specialisation in Personal injury and Immigration increases the likelihood of a report being taken forward for investigation by 54% and 64%, respectively. In contrast, specialisation in Family and Children practice areas decreases the likelihood of a report being taken forward for investigation by 51% and 72%, respectively. These findings are important because, as noted earlier in this report, there are fewer White solicitors and more Black, Asian, or minority ethnic solicitors than expected working in firms specialising in Immigration work. However, there are more White solicitors and fewer Black, Asian, or minority ethnic solicitors than expected working in firms specialising in Personal Injury. This is indicative of the complexity of the factors affecting whether a report is taken forward, the only clear pattern being that ethnicity as a factor consistently leads to an increased likelihood of a report being taken forward for investigation.

We also found that entry route is important (with entry via the QLTT route increasing the likelihood of a report being taken forward to investigation) and the source of a report (reports from organisations – regulated and non-regulated – being more likely to be taken forward to investigation).

Our analysis of the approach taken by the SRA when deciding whether to take forward a report to investigation reveals that the SRA has a robust set of procedures for assessing reports received.

Whilst there was some room for personal judgement in deciding whether a matter was serious enough to be taken forward for investigation, the SRA (and its Assessment staff) recognised this. This was managed by providing a transparent set of criteria and clear guidance. Staff were well trained and supported in reaching the right decision with the opportunity to consult others and felt accountable for making these important and difficult decisions.

As with all processes, there are opportunities for continuous improvement and based on the findings of our analysis we have identified some areas for consideration relating to:

- further guidance for staff in handling the borderline cases, to augment the range of guidance and support which is already in place.
- more systematic recording of the combination of factors considered and the rationale for the recommendation in every case, including detail of how contextual and mitigating circumstances were considered:
    - this may help make the process more robust.
    - this will also help IOs in explaining the reasons for decisions.

6. The context in other professions

Patterns of overrepresentation of Black, Asian and minority ethnic solicitors in reports received by regulators and in reports taken forward for investigation are not unique to the SRA. Many professional regulators, including the General Medical Council (GMC), National Police Chief's Council (NPCC), and Nursing and Midwifery Council (NMC), have identified similar patterns in concerns raised with them.

For example, Black, Asian and minority ethnic officers in the Metropolitan police are overrepresented in disciplinary proceedings, being twice as likely as White officers to be the subject of misconduct allegations. The GMC [https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf] reports that Black, Asian and minority ethnic doctors working for the NHS are referred by employers in fitness to practise cases at over twice the rate of White doctors. Meanwhile, according to the NMC [https://www.nmc.org.uk/about-us/reports-and-accounts/equality-and-diversity-reports/] , in 2023, 5.2% of registered professionals were Black but 18.2% of reports received were about Black professionals. The research started, therefore, from the position of there being recognised issues across multiple professions in terms of overrepresentation.

We engaged with five professional regulators to better understand their experiences and responses to overrepresentation. Interviews identified a number of patterns and responses that are relevant when considering the findings of this research:

- The organisational context of practice is an important factor across many professions. The resources and support Black, Asian and minority ethnic professionals can access in their employing organisation affect the likelihood of being the subject of a report. Multiple regulators have identified a lack of support for Black, Asian and minority ethnic professionals, isolation and an increased likelihood to escalate concerns to regulators when it involves Black, Asian and minority ethnic professionals as common features of organisational contexts that generate more reports to regulators. This corresponds with the identification by this research of the overall greater likelihood of Black, Asian and minority ethnic solicitors being the subject of a report, and of overrepresentation in one partner and small firms as being a key factor in the overrepresentation of Black, Asian and minority ethnic solicitors in reports to the SRA.
- The view from the other regulators was that overrepresentation tends to be a result of referrals from either employing organisations or other professionals rather than consumers. In line with the findings of our consumer survey, other regulators had not identified any biases or disproportionately in reports received from consumers (e.g. patients). This also highlights the importance of further investigating the source of reports and variations between sources.
- All regulators face challenges because of the volume of reports received. There are also challenges in terms of the collection of report information in a consistent manner, with reports from individuals often less detailed than reports from employers or other organisations. These differences could affect the likelihood of reports from different sources progressing, and this may be a cause of overrepresentation. A number of regulators have, therefore, begun to explore ways of making reports format more consistent and ways of ensuring data is stored in a format that allows easier analysis.
- The type of work a professional specialises in was highlighted across professions as a relevant factor both in producing overrepresentation in reports received and when deciding whether to take a report forward to investigation. This is one of the contextual factors that some regulators consider when making decisions about whether to take a report forward to investigation.
- Many regulators have taken steps to ensure that the context relating to a report is appropriately considered when deciding whether to take a report forward to investigation. And there are parallels here to the approach taken by the SRA, where they 'can take into account the systems in place and environment in which the events took place; and the responsibility or control the individual had over the matters in question' as considerations set out in their enforcement strategy [https://guidance.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/] .
- We found, however, evidence from other regulators of a more detailed requirement that staff ensure relevant contextual and

mitigating factors are identified and consistently recorded as having been considered when making decisions. These requirements include checklists to identify known contextual factors that can increase the likelihood of being the subject of a report and which may be considered in mitigation. In those examples, all case records must document in detail whether, and how, the contextual factors were assessed and considered in decision-making and this information is saved directly into the relevant systems. This was felt by the other regulators as helping to enhance the confidence of those making decisions (and ultimately the confidence of other stakeholders) about the basis on which reports are taken forward to investigation.

- Some regulators are also setting targets to reduce overrepresentation and have begun tracking the effectiveness of interventions in achieving targets.

Engaging with other regulators revealed that the overrepresentation of Black, Asian and minority ethnic professionals is a common concern. There are some similar patterns across professions in terms of factors affecting the likelihood of Black, Asian and minority ethnic professionals being the subject of a report. There is also consideration of similar factors influencing the likelihood of a report being taken forward to investigation to those identified by our research.

We use these insights into commonalities across professions to inform the areas for further consideration outlined in the section below.

7. Overall conclusions

Our unique mix of methods reveals a range of insights into the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by and taken forward for investigation by the SRA. Our findings show that ethnicity is a consistent factor in understanding changes to the likelihood of a report being received and/or taken forward for investigation by the SRA. However, ethnicity must not be considered in isolation as it interacts with a number of other factors to contribute to this overrepresentation revealing a large amount of complexity.

Analysis of reports received by the SRA reveals a range of overlapping factors that together underpin patterns of overrepresentation in reports received by the SRA. We identify variations between ethnicities, with Black solicitors being most overrepresented, followed by Asian solicitors. Gender is also an important factor, with male solicitors being more likely to be the subject of a report to the SRA. Entry route to the profession can also vary the likelihood of being the subject of a report.

The context in which a solicitor works is also crucial, with solicitors in one partner and small firms being significantly more likely to be the subject of a report. And our findings identify an increased exposure of Black,

Asian and minority ethnic solicitors to some organisational contexts and areas of work that increase the likelihood of a report being made to the SRA. For example, Black, Asian and minority ethnic solicitors are more likely than White solicitors to work in a one partner firm.

The area of law a solicitor works in is also a relevant consideration. In particular, solicitors who work in firms which do legal aid work are 7% more likely to be named in a report received by the SRA than solicitors who work in firms which do not carry out legal aid work, when holding all other factors constant. The observed association between working in a firm doing legal aid work and the likelihood of being named in a report received by the SRA may contribute in important ways to the overrepresentation of Black, Asian and minority ethnic solicitors in the reports received by the SRA.

Our interviews elaborated on reasons for and the effects of some of the factors identified as increasingly the likelihood of Black, Asian and minority ethnic solicitors being the subject of a report to the SRA. We identified combinations of perceived biases and inequalities, resource constraints in smaller firms and the challenges of particular client types and areas of work emerging as important factors. The results of a survey conducted on a nationally representative sample of consumers provided additional support for the idea that certain types of clients, may be more likely than others to apportion blame to the solicitor in our hypothetical scenario where something 'went wrong'. However, this did not result in any differences when respondents indicated their likelihood of reporting the solicitor to the regulator.

Our analysis of reports taken forward to investigation by the SRA reveals that there is considerable overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward. There are some variations in patterns of overrepresentation, with Asian solicitors, those from Other ethnic groups and males disproportionately affected.

Again, the context that a solicitor works in is crucial when examining the overrepresentation of Black, Asian and minority ethnic solicitors in reports taken forward for investigation by the SRA. Solicitors working in one partner firms are significantly more likely to have reports taken forward to investigation, as are solicitors working in specialist firms. As noted in this report, Black, Asian and minority ethnic solicitors are more likely to practise in one partner firms.

Who submits a report to the SRA also matters when considering the likelihood of a report being taken forward for investigation. Reports from regulated individuals and organisations are significantly more likely to be taken forward than reports from individual consumers. Case categorisation also influences the likelihood of a report being taken forward for investigation, with some categorisations such as money laundering being far more likely to be taken forward for investigation.

Our analyses also reveal that the SRA has a robust set of procedures for assessing reports received and that these appear to be robustly adhered to by staff. The SRA staff EDI training modules are comprehensive and can be considered a 'best practice' tool aligned to expectations of an employer of choice.

There is however some room for further consideration of potential improvements, as noted in the section below.

Areas for further consideration

Our research reveals a range of seemingly interconnected factors that are relevant when examining the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA and in reports taken forward for investigation. However, this is a complex problem which is experienced in a number of other regulated professions and markets. Hence there are unlikely to be any simple solutions to this longstanding and troubling problem and the problem is unlikely to be solved by a single organisation.

But that does not mean that the SRA and other stakeholders should not try. We have identified a set of specific actions for the SRA. These were developed in conjunction with the SRA to ensure the feasibility of the proposed actions.

There is, we contend, also an important role for cross-professional consensus and collaboration between the SRA, law firms, the representative body (The Law Society), representative groups, and other regulators if initiatives in response to this report's findings are to be successful. In response to our findings we suggest that different stakeholders might consider a range of areas of action, and that in doing so working together is more likely to bring about positive results.

We recommend that any actions taken are monitored in order to understand their impact.

The potential actions for the SRA and for others to consider are set out below.

For the SRA

1. Refine its approach to the identification, collection, quality assurance and storage of relevant data to allow deeper analysis of factors impacting the patterns of overrepresentation.
2. Consider what more can be done to disseminate guidance and support to solicitors in one partner and small firms.
3. Take on board the suggestions for further strengthening its assessment process and how consideration of contextual factors and mitigation is recorded.

4. Continue to engage with the profession, including Black, Asian and minority ethnic solicitors and their representative groups to identify potential ways to address the factors identified as relevant when considering overrepresentation.

Refine its approach to the identification, collection, quality assurance and storage of relevant data to allow deeper analysis of factors impacting the patterns of overrepresentation

The SRA already collects extensive data about the reports received and progressed to investigation. There are opportunities to facilitate more meaningful analysis by further refining the data through the identification, collection, quality assurance and storage of additional data. This could help build an even richer understanding of the reasons for both the overrepresentation of Black, Asian and minority ethnic solicitors in reports received by the SRA and in reports taken forward for investigation.

Priority should be given to storing report data in a format that allows analysis of the content of the report in a systematic way as data limitations meant we were unable, as originally planned, to analyse the content of reports as part of our research. Organising data in a way that allows report text to be quickly extracted in a format suitable for analysis using machine learning and other techniques would allow a richer understanding to be developed of the characteristics of the reports received by the SRA. It would then be possible to consider whether there are significant variations in the way reports are narrated, evidenced and conveyed to the SRA.

The SRA provides for complaints to be made through a number of different channels, including an online form and other ways. This is best practice from a user perspective and should be maintained. At the same time, steps should be taken to digitise and record in a systematic manner, regardless of the channel used to submit a complaint, the natural language of the complainant in a dedicated field in the SRA's databases. This could facilitate machine reading of the 'complainant's voice' to provide further insight into how reports vary.

Also, some key additions to the data held about solicitors would allow more detailed analyses to be conducted. For example, holding (where appropriate) data on the main area of legal practice for each individual solicitor might be helpful. This would avoid the need to use proxies. We recognise there is a balance to be struck, so careful consideration should be given to the types of data required, the level of detail required, how it will be kept up to date and the purpose of the data collection.

Finally, from a data perspective, the SRA should also prioritise actions to address missing or incomplete data in its dataset on reports of potential misconduct.

We note that since the data analysis undertaken as part of this project began, the SRA has begun developing a Data Strategy as part of its overall strategic commitments. We recommend that the approach taken by the SRA in developing its Data Strategy should be focussed on activities which will enable the best possible insights from its data – at each stage of the data cycle.

Consider what more can be done to help solicitors in one partner and small firms to access guidance and support

In light of the findings of this research in relation to reports received, the SRA might explore ways of better utilising the guidance and support that it offers to the profession, so it reaches the right people and has its intended impact. Through its website and other channels, the SRA offers guidance designed to both help solicitors maintain compliance and to help solicitors navigate situations in which they are the subject of a report. They should explore, in conjunction with others like The Law Society and representative groups, whether there are further, more active steps that would help key groups to engage more effectively with their guidance.

Take on board the suggestions for further strengthening its assessment process

Given its stated commitment to continuous improvement we identified steps which the SRA could take to further strengthen its assessment processes.

There is currently clear and helpful guidance which staff use to decide whether a report passes the assessment test. Among other things, this sets out a wide range of mitigating and aggravating factors which staff take into account when considering the seriousness of a case. And the SRA's Enforcement Strategy is clear that context is important, stating that it will 'take into account the systems in place and environment in which the events took place; and the responsibility or control the individual had over the matters in question'. Our research found careful and considered decision-making by those assessing reports received, but also a sense that the decisions can be challenging in some cases.

We would suggest further guidance for staff in handling the borderline cases, to augment the range of guidance and support which is already in place. Providing more complex case scenarios, which involve balancing a range of relevant contextual factors will enhance the confidence of those making decisions about whether a report is taken forward to investigation. And we would suggest including examples involving some of the environmental factors that we identified in this research as being relevant to the likelihood of a report being made, such as being in a small firm or working in certain practice areas. We do however

acknowledge that it is impossible to include all of the possible scenarios given the diversity and multiplicity of reports received.

We would also suggest systematic recording of the combination of factors considered, including mitigation, and the rationale for the recommendation in every case, which may help make the process more robust. And including all of the evidence upon which their decision is based in their record of each decision, will help staff communicate their decisions more clearly.

We recognise the challenge for the SRA and all regulators in considering contextual and mitigating factors when deciding on the appropriateness of taking a report forward for investigation. There is always a balance to be struck in considering which factors to take into account and which should take precedence. We recognise the need for flexibility, and we are not advocating a blanket approach to the weight that should be given to any particular factor. A complaint of dishonesty will be regarded as serious and require investigation whatever the context.

Indeed, the context of a complaint and mitigation was a common theme in our conversations with other regulators, many of whom thought it was important to take account of factors such as the type of practice and type of work a professional is engaged in. Some regulators had developed systematic ways to manage and document this. We, therefore, recommend collaboration between regulators to explore these issues further, and examination by the SRA of how steps taken by other regulators to manage and document consideration of contextual factors and mitigation might be adapted and incorporated into decision-making about whether to take a report forward to investigation (see section 7.1.3 below).

Continue to engage with the profession, including Black, Asian and minority ethnic solicitors and their representative groups to identify potential ways to address the factors identified as relevant when considering overrepresentation

Our interviews with solicitors found some awareness of the overrepresentation of Black, Asian and minority ethnic solicitors in the SRA's enforcement processes. Others were unaware, yet not surprised at the overrepresentation. Given the range of factors identified in this research which affect the likelihood of a report being made to the SRA, in our view the SRA should work with the representative body (The Law Society) and other appropriate stakeholders to disseminate these findings widely. Increasing visibility about the factors which are associated with increased likelihood of being the subject of a complaint will help raise awareness and should help to drive further inquiry.

Perhaps most importantly, the SRA should continue to engage with Black, Asian and minority ethnic solicitors about this research. The voice of Black, Asian and minority solicitors was captured through the solicitor

interviews and the External Reference Group which supported development of this project. However, there is now an opportunity to take the findings of the report and further engage in discussions about the issues and proposed actions.

For law firms

1. Develop support mechanisms and networks to help Black, Asian and minority ethnic solicitors navigate challenges that increase the likelihood of being the subject of a report to the SRA.
2. Consider what more can be done to tackle the underrepresentation of Black, Asian and minority ethnic solicitors in larger law firms.

Develop support mechanisms and networks to help Black, Asian and minority ethnic solicitors navigate challenges that increase the likelihood of being the subject of a report to the SRA

Our interviews with solicitors highlighted a perceived lack of peer support and even biases that result in Black, Asian and minority ethnic solicitors being more likely to be the subject of a report. We acknowledge most law firms have support procedures in place for their staff however, firms should take steps to increase efforts and check to make sure their staff are indeed adequately supported in their work, in particular their Black, Asian and minority ethnic staff, given the additional challenges they may face in practice.

In smaller firms, and sole practices there may be potential to develop networks and peer to peer support, to address potential isolation as well as taking advantage of the support available through local law societies, representative groups as well as the Sole Practitioners Group. The Law Society may have a role in facilitating this and building on the support already available to the profession. There would be value in focusing on challenges faced by those working in practice areas where there is a greater likelihood of a complaint being made.

The benefits of peer learning, mentoring and networks have been demonstrated across a range of other contexts and could address some of the challenges faced by Black, Asian and minority ethnic solicitors.

Consider what more can be done to tackle the underrepresentation of Black, Asian and minority ethnic solicitors in larger law firms

Our findings showed that solicitors working in larger firms were less likely to be named on a complaint to the SRA. And that there was an underrepresentation of Black, Asian and minority ethnic solicitors in larger law firms. Whilst many solicitors choose to progress their career by setting up as a sole practitioner, or working in a small firm, the lack of representation in senior roles in larger law firms may also be a cause of this imbalance in the profession. We are aware of the SRA's existing

commitment to address this and the discussions which are developing following the SRA's publication of its research into the differential outcomes in professional assessments.

As a result, we don't propose to elaborate on the actions which could address this, but these issues would be useful to discuss in the engagement that we are recommending for the SRA.

For pan-regulator dialog

1. Regulators to work together to identify current best practice and share learning.

Regulators to work together to identify current best practice and share learning

Given its complexity and long-standing nature, no single stakeholder is likely to be able to 'solve' the problem in isolation. In our view it would be beneficial for regulators to identify common themes, (such as those picked up through their own research findings) and share best practice. It is likely that collaboration will bring better results than a set of individual actions.

Our research identified similar challenges of overrepresentation of Black, Asian and minority ethnic professionals in regulatory processes across a number of professions. Whilst the context of practice is different in each case, a common theme to emerge relates to the role of the type of professional practice (e.g., corporate versus criminal law; geriatric versus psychiatric nursing) and the organisational setting this occurs within (e.g. small versus large law firm; community care versus hospital settings; organisations with resources to and a culture of supporting Black, Asian and minority ethnic professionals versus those that do not). Such context can have a sizeable impact when considering the overrepresentation of Black, Asian and minority ethnic professionals both in reports received by regulators and reports taken forward for investigation.

Collaborating with other regulators to share best practice would be a productive way of both further understanding the role of such factors and ways of developing responses that are proportionate and robust in terms of protecting the public.

8. Resources

- Perceptions from the profession on the factors driving reports [https://guidance.sra.org.uk/sra/research-publications/overrepresentation-perceptions/]
- The impact of socio-cognitive bias on the likelihood that people will complain about potential misconduct to the SRA [https://guidance.sra.org.uk/sra/research-publications/overrepresentation-potential-misconduct-sra/]

- An analysis of the factors causing overrepresentation of Black, Asian and minority ethnic solicitors in reports made to the SRA and in reports taken forward for investigation [https://guidance.sra.org.uk/sra/research-publications/overrepresentation-analysis/]
- An analysis of the factors causing overrepresentation of Black, Asian and minority ethnic solicitors in reports made to the SRA and in reports taken forward for investigation - Appendices A to E [https://guidance.sra.org.uk/sra/research-publications/overrepresentation-analysis-appendices/]
- Decision making at the assessment stage [https://guidance.sra.org.uk/sra/research-publications/overrepresentation-decision-making/]