

Solicitors
Regulation
Authority

Pearn Kandola disproportionality Audit

Recommendation 14: Cases referred to Committee or
Panel in the first instance

October 2010

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Introduction

1. The Solicitors Regulation Authority (SRA) commissioned Pearn Kandola, a group of business psychologists specialising in the area of diversity, to research the disproportionality of regulatory actions taken against black and minority ethnicity (BME) solicitors, as reported by Lord Ouseley in 2008.
2. In July 2010, Pearn Kandola's findings were published and a number of recommendations made. The SRA's Risk-Audit team was commissioned to carry out a detailed review of recommendation 14, which states:

Review of guidelines concerning referrals of cases to Committee/ Panel¹

'The guidelines concerning referral of more cases to Committee/ Panel for decision should be reviewed, as it is clear that BME solicitors are twice as likely as would normally be expected to have their case decided at the more senior level of Committee / Panel.'

3. The full Pearn Kandola report, including recommendations, can be found [here](#).

Background

4. The scope and remit of this audit was to conduct a specific study into cases closed between 2007 and 2009, involving decisions made by either a Committee or Panel in the first instance. Once these cases had been isolated from the overall dataset², the audit looked to ascertain whether there was disproportionality between referral decisions for white and black and minority ethnicity (BME) solicitors.

Purpose

5. The purpose of this audit was to investigate why the SRA referred more than twice as many BME solicitors to a Committee or Panel in the first instance as would usually be expected and to implement any necessary changes to ensure decision making complies with the Principles of regulatory decision making. In particular:

Decisions should be based on the application of guidelines of criteria, which should be (a) fair to all individuals and groups regardless of their ethnic origin, race, colour, gender, religion, disability, sexual orientation or age, (b) published and transparent, and (c) applied consistently.

¹ Committee/ Panel refers to the Panel of Adjudicators sub-committee

² This audit relied entirely upon information contained in 'Dataset 2', as used by 'Pearn Kandola'.

Scope

6. The scope of this audit was to:
 - Filter from the original dataset, a list of all cases referred to Committee or Panel in the first instance, closed between 2007 and 2009;
 - Select a proportionate sample size for audit, providing a confidence level of 95 per cent, with an expected error rate not over three per cent;
 - Conduct physical and electronic file audits, to ascertain whether caseworkers had adhered to documented criteria when deciding to refer cases to Committee or Panel in the first instance;
 - Identify those cases where reasons for referrals were unclear, suggest appropriate recommendations and agree corrective action.

Population and sample size

7. Utilising dataset 2, the information was filtered to return details of all cases referred to a Committee or Panel in the first instance, closed between 2007 and 2009. This returned 410 individual cases, constituting the 'population' size for the audit.
8. In order to review a representative sample of case files from the population, 94 individual cases were selected. These were chosen at random, whilst ensuring a representative sample of each case type were reviewed; Regulatory, Redress Conduct and Conduct. Recognised audit sampling tables suggest this provides a 95 per cent confidence level, with an expected error rate not over three per cent.
9. Further information relating to the population and sample size can be found at annexes 1 and 2.

Key headlines

- BME solicitors accounted for 15.4 per cent (154) of the total regulated individuals referred to Committee or Panel in the first instance;
- 96.5 per cent of all referrals were made in accordance with documented criteria;
- Clear reasons for the decision to refer the case were not evident on any case reviewed;
- Data recording was inaccurate in 4.3 per cent of cases reviewed and misleading in a further 4.3 per cent of cases reviewed;
- The process for referring cases to Committees or Panels has not been equality impact assessed.

Population data

10. In October 2009, the SRA commissioned Pearn Kandola to undertake further research in to the reasons why individuals of black and minority ethnicity were disproportionately involved in some of the SRA's regulatory processes. In order for Pearn Kandola to undertake this research, SRA Management Information (MI) extracted data from the SRA database and produced two datasets for analysis.
11. Pearn Kandola used information contained in dataset 2, to ascertain whether the decision maker differed according to the ethnicity of the regulated individual. This was achieved using a series of statistical tests to determine the probability of obtaining the observed results by chance. Test results differentiated between expected and observed results.
12. Whilst Pearn Kandola made this recommendation based on a discrepancy between expected and actual results, this audit referred exclusively to the information contained within dataset 2 when drawing conclusions and making recommendations. Further information relating to dataset 2 can be found at [Annex 1](#).
13. Details of Pearn Kandola's research and methodology can be found in section 2 of their published [report](#).

Ethnicity categories

14. Dataset 2 contains details of ethnicity categories for each regulated individual; White, BME and Unknown. Whilst Pearn Kandola removed those individuals for whom ethnicity was unknown, this audit did not, on the basis that this may distort findings. Unknown individuals accounted for 18.2 per cent of the total population for this audit, and 15.7 per cent of all regulated individuals within the unrefined dataset.
15. Of those referred to the Committee or Panel in the first instance, 662 were white and 154 BME. Excluding the individuals of unknown ethnicity (182), 18.9 per cent of individuals referred were BME. Had unknown individuals been included in this calculation, the percentage of BME regulated individuals would reduce to 15.4 per cent.
16. Pearn Kandola concentrated exclusively on ascertaining whether there was disproportionality in the regulatory actions taken by SRA against BME solicitors when compared to white solicitors.
17. Within their report, Pearn Kandola refers to 'solicitors' but as dataset 2 contains details of 467 [unadmitted](#) individuals, for the purposes of this audit the term 'regulated individuals' is used. This might include solicitors, trainees, and solicitor's clerks for example.

Population by ethnicity

18. From the population of 410 individual cases in the audit, closed between 2007 and 2009, these related to 998 regulated individuals.

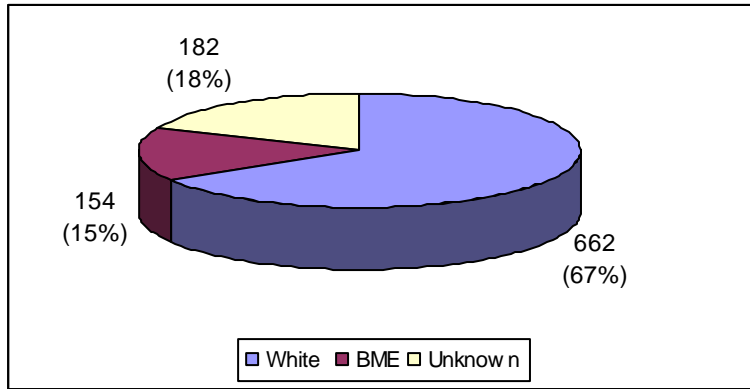


Figure 1. Recorded ethnicity of all individuals referred to the Committee or Panel in the first instance for cases closed between 2007 and 2009.

19. According to dataset 2, BME solicitors accounted for 15.4 per cent of the regulated individuals connected to the population figure of 410 cases. This figure included multiple entries for the same individual, when connected with more than a single case. Removing any duplicate entries, the figure reduced to 836 regulated individuals.

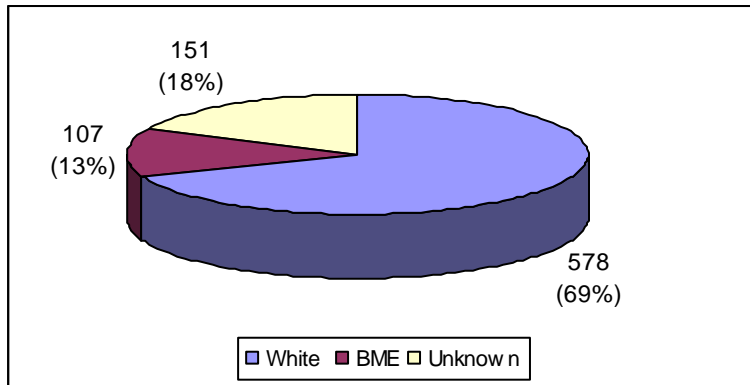


Figure 2. Recorded ethnicity of distinct individuals referred to the Committee of Panel in the first instance for cases closed between 2007 and 2009.

20. This chart shows an accurate representation of the total number of individual persons involved in a case which was referred to the Committee or Panel in the first instance, during this period. However, we should rely on the former statistics when reviewing the break-down ethnicity of those referred; the latter is for comparison purposes only.
21. It is not feasible to remove the 'unknown' entries from the audit results, as this would distort the findings and assumptions cannot be made as to their ethnicity. It does however seem unlikely that all 'unknown' regulated individuals would fall into the 'white' solicitor category, which may suggest the 'BME' figure could be higher.
22. According to Management Information records, the regulated practising population as at quarter three of 2010 was as follows:
- | | | |
|---------|--------|---------|
| White | 95,874 | (78.1%) |
| BME | 14,122 | (11.5%) |
| Unknown | 12,821 | (10.4%) |
23. These figures include all solicitors on the roll with a Practising Certificate, Registered European Lawyers and Registered Foreign Lawyers.

24. Taking this in to account, the known ethnicity of BME individuals referred to Committee or Panel in the first instance was 3.9 per cent above what is proportionate to the regulated population.

Process outcomes

25. The percentage of BME regulated individuals referred to the Committee or Panel in the first instance (15.4 per cent) was compared to those with any other process outcome i.e. all of those individuals which were not referred to the Committee or Panel in the first instance. Results showed that including any duplicate entries for the same individual, BME regulated individuals accounted for 18 per cent of the total. Removing multiple entries to return individual persons only, this figure reduces to 14 per cent.
26. This is further illustrated in [Annex 1](#).
27. The total cases raised and closed during this period relate to 32,358 regulated individuals including multiple entries. Of these, 5832 (18 per cent) are recorded as BME individuals. When compared to the sum of cases, the proportion of BME individuals referred to the Committee or Panel in the first instance was almost three per cent lower.
28. Comparing all process outcomes, BME regulated individuals referred to the Committee or Panel account for a smaller percentage than all other process outcomes, with the exception of Reconsideration Panel decisions.

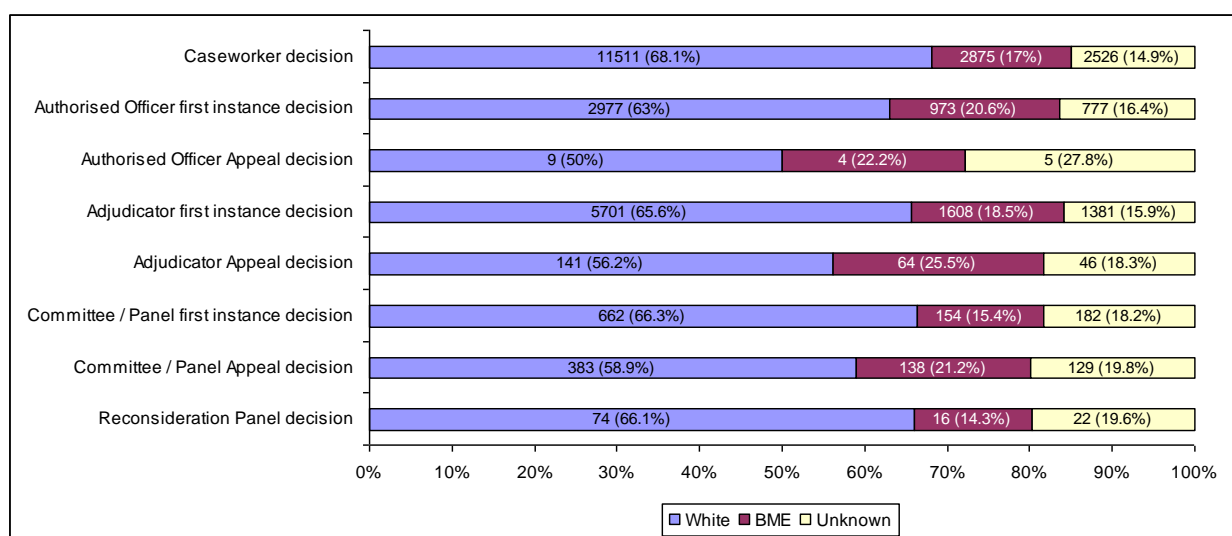


Figure 3. Process outcome (decision) details for all cases closed between 2007 and 2009, separated by ethnicity of each regulated individual involved.

Decisions and ethnicity

29. A number of cases related to multiple individuals, many of which may have been from more than one ethnic background. An example of this is seen in case REG/30411-2006, in which a decision was made by the Panel further to an SRA investigation, concerning six regulated individuals. In this case, the Adjudication Panel decided to refer conduct of the three Equity [Partners](#) (two white and one BME) to the [Solicitors Disciplinary Tribunal](#) (SDT) but took no action against the three Salaried Partners, all of which were of white ethnicity.

30. The total population of 410 individual cases have been broken down into 'decisions' by ethnicity, as follows:

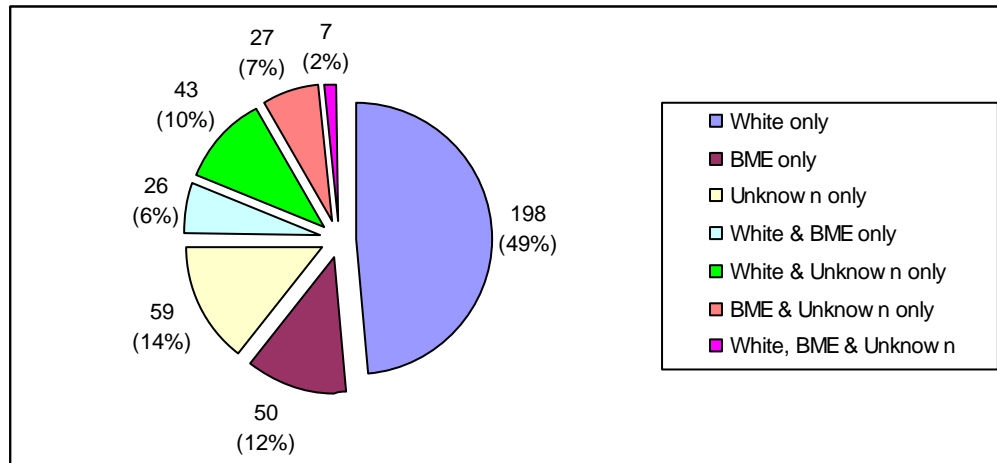


Figure 4. Ethnicity background of all regulated individuals whose case resulted in a referral to Committee or Panel in the first instance, for all cases closed between 2007 and 2009.

31. This chart indicates that 12 per cent of all cases related to BME only, of which 68 per cent involved BME owned practices.
32. Without a more in-depth study into the outcomes of cases concerning derivations of white, BME and unknown regulated individuals, it is not possible to determine whether there has been bias in terms of sanctions against those involved. If such an audit is required, this should be considered and commissioned separately.
33. More details can be found at [Annex 1](#).

Case types

34. Dataset 2 contains information relating to three specific case types: Conduct, Redress Conduct and Regulatory (see below for explanation). These cases were all closed between 2007 and 2009. During this time, Regulatory cases were dealt with by the Regulatory Investigations Unit (RIU) and the Redress Conduct and Conduct cases in Conduct Investigation Unit (CIU) and Casework Investigations and Operations (CIAO), within the Directorate: Inspection and Investigation / Regulation Response.

Conduct (CDT)

35. Conduct cases are generated as a result of reports from non-clients alleging professional misconduct by a regulated person or firm that has acted improperly. Non-clients in this context can include:
- Lay third parties
 - Solicitors, firms; professional bodies
 - Judges; courts
 - Other public departments
 - Employees of a regulated firm.

Redress Conduct (RDC)

36. Redress Conduct cases are generated following a complaint made to the Legal Complaints Service (LCS)³ by a client of a regulated person or firm regarding the service provided by the regulated person or firm. If, during the course of the LCS investigation, they identify issues of misconduct or potential misconduct, the conduct issue is transferred to the SRA and may be investigated further.

Regulatory (REG)

37. Regulatory cases are generated to deal with compliance or non-compliance by regulated persons or firms with regulatory requirements. They can arise from individual reports from clients or non-clients, from general information and intelligence gathered by the SRA, or as a result of applications made by the regulated persons or firms. These cases can include issues of misconduct.

Decision making levels

38. To ascertain whether cases were correctly referred to the Committee or Panel in the first instance, it is necessary to understand the decision making powers possessed by casework staff in the areas of Regulatory, Redress Conduct and Conduct. The Schedule of delegations (June 2010), sets out the levels at which specific decisions can be made across SRA.
39. Where, for example, a caseworker recommends closure into a solicitors practice (intervention), the schedule of delegations state that this case must be considered by a Panel of Adjudicators in the first instance. Due to the complexity and potential impact of the decision to close a practice, the SRA Board has reserved such decisions to be made by a Panel of Adjudicators Sub Committee.
40. It should also be noted that where the decision of a single Adjudicator is appealed, the appeal must be considered by a Panel of Adjudicators. Therefore, in certain circumstances, cases are referred to the Panel according to procedure.
41. Brief details of the decision-makers remit for each case type can be found below.

Conduct and Redress Conduct cases

42. Caseworkers within the Conduct Investigations Unit (CIU) have no delegated decision making powers in relation to findings of misconduct, so if such a decision is required, a case note is prepared and will usually be referred for a decision to an Adjudicator in the first instance.
43. The relevant power: *'to make findings of misconduct, to issue warnings, and to make associated costs orders under s44C of the Solicitors Act 1974, paragraph 12A of Schedule 2 to the Administration of Justice Act 1985 and*

³ Since been replaced by the Legal Ombudsman (LeO) from October 2011.

the Cost of Investigations regulations is reserved to Heads of Business or above.

44. Whilst Heads of Business Units had delegated powers to make findings of misconduct, the process was not in place in casework units which did not have a technical Head.

Regulatory cases

45. Regulatory Investigations caseworkers have the delegated authority to make a number of decisions. Where the caseworker does not have the authority as set out in the [Schedule of delegations](#) (June 2010), recommendations will be made to the appropriate decision maker in the form of a case note.

Referral criteria

46. Casework staff must adhere to specific documented criteria when deciding whether to refer a case to a Committee or Panel in the first instance. Prior to commencing physical file reviews, copies of all relevant training materials were requested, including details of any decision making criteria.
47. This extract was taken from the casework training material titled 'Adjudicator Training – October 2008':

In the first instance, the casenote should be prepared for an Adjudicator. Matters only need to go to the Adjudication Panel in the first instance if:

- *The matter falls under the Board member policy*
- *It is an LSO reconsideration⁴*
- *It is high profile or sensitive and is likely to attract press interest.*

48. Intervention related cases fall under the third criterion, as previously mentioned. Further details on the consideration given to a decision to intervene are published on the SRA website [here](#).

Data analysis

49. Having reviewed a sample size of 94 cases, referring to both the physical and electronic files, a number of inconsistencies were found in the way in which the data had been recorded electronically, affecting the interrogation of dataset 2. This dataset consists of information extracted directly from the SRA database⁵, meaning inconsistencies in initial data entry can only be attributed to the caseworker updating the case details.
50. In four instances, the case was recorded with a 'process outcome' of Committee/ Panel FID (First Instance Decision) but was in fact an appeal of an Adjudicator's decision. In accordance with SRA delegations, any appeal of an Adjudicator's decision should be considered by a Panel of Adjudicators.

⁴ It is understood that this criterion will no longer be applicable following closure of the Legal Complaints Service (LCS) and Legal Services Ombudsman's (LSO) office.

⁵ Information retained by SRA in relation to regulated individuals and firms.

The correct process outcome should have read 'Committee/ Panel appeal decision'. Within the matter data section of the SRA database, the process outcome is inserted by the case holder (caseworker) from a drop-down list of eight options.

51. A further four cases did not have a decision attached, despite having a process outcome of 'Committee/ Panel FID'. Further analysis found that these cases, all of which were Redress Conduct relating to a single solicitors' practice, had been opened with 'RDC' references, yet closed as a result of subject firm being intervened under a separate Regulatory case.
52. Therefore from the random sample of 94 cases, eight should not form part of the audit and were removed, reducing the number to 86.

Results

53. Referring to the documented criteria, confirmation that each case sampled had adhered to said criteria was sought. In addition, further details relating to each case were recorded in order to assist in identifying trends or particular areas of concern with the referral procedure.
54. It is important to identify the route cause of any potential discrimination and address accordingly and because dataset 2 contained relevant information to a point; the audit was expanded to look at additional relevant information which could only be gleaned from physical file reviews. The results have been divided into categories and are set out below.

Referral criteria

55. In 96.5 per cent of cases reviewed, evidence was found which demonstrated adherence with documented referral criteria.
56. However, in ten cases (11.6 per cent) it was not possible to establish the reasons for the referral and therefore a representative from the relevant casework unit was asked to provide an explanation. In seven of these cases, valid reasons were established, leaving three cases which had not followed the correct protocol.
57. Further details can be found at [Annex 3](#).

Instigator

58. To assist in understanding the reason the case was referred to the Committee or Panel for a decision in the first instance, the instigator details were recorded for each case. Results found that over half of all cases were generated by the Fraud Intelligence Unit (FI), following on-site accounts inspections. In most cases, an accounts inspection took place which resulted in a referral to the Regulatory Investigations Unit (RI) for further desk-based investigation into the breaches identified. Where deemed serious, it follows that the RI caseworkers recommended intervention into the subject firm, referring the case to the Panel of Adjudicators for consideration.

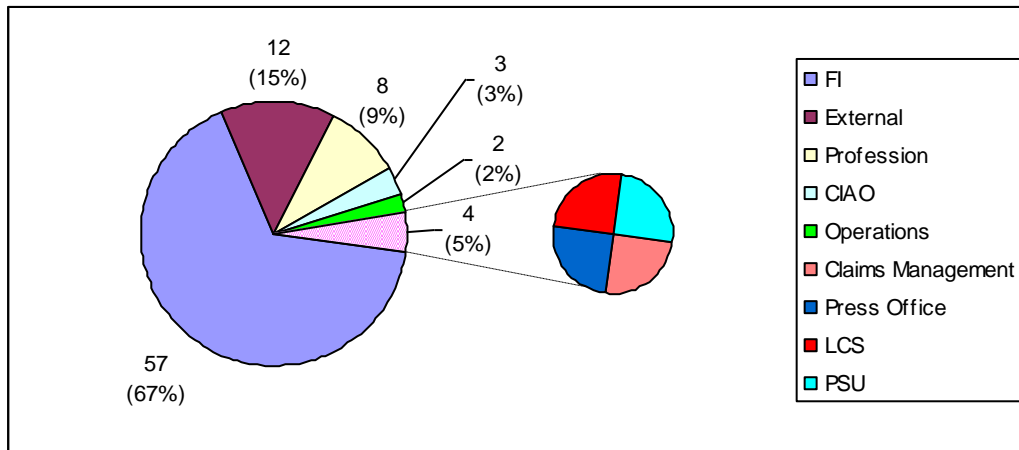


Figure 5. Initial instigator details for all sampled cases referred to the Committee or Panel in the first instance.

Referring unit

59. Referrals to the Committee or Panel were generated by three SRA units: Conduct Assessment and Investigation Unit (CIU), Casework Investigations and Operations (CIAO) and Regulatory Investigations (RI). As the majority of cases were instigated by Fraud Intelligence and then referred for desk-based case-working to RI, it follows that the majority of cases put before the Adjudication Panel were referred by RI (65 per cent). Dealing primarily with 'high profile' and 'sensitive' cases, CIAO were responsible for referring 25 cases (29 per cent) to the Panel and CIU for the remaining five (6 per cent).

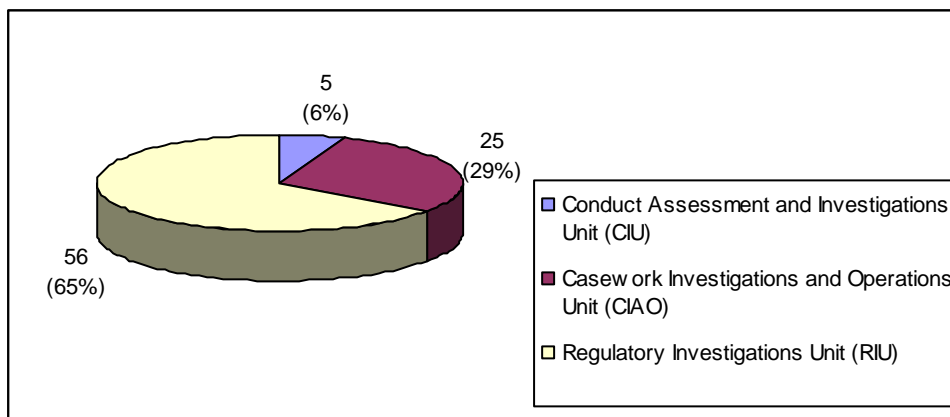


Figure 6. SRA unit which referred the case to Committee or Panel in the first instance for a decision.

Referral reason

60. To identify the rationale behind the decision to refer a case for Committee or Panel consideration, recommending intervention was separated from 'high profile / sensitivity', although it does fall under this category.

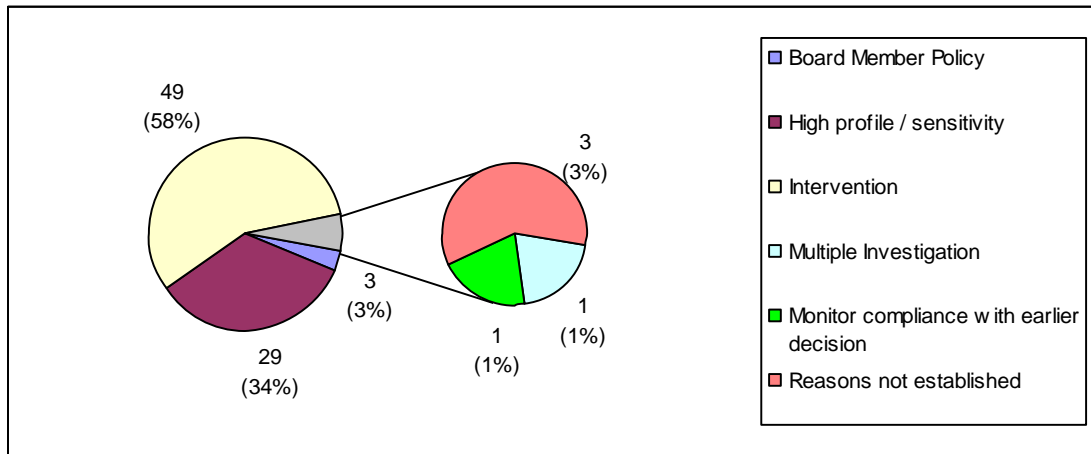


Figure 7. Reasons casework staff referred cases to Committee or Panel in the first instance.

61. In 58 per cent of cases reviewed, staff referred the case to the Adjudication Panel, recommending that intervention be considered. SRA delegations dictate that this decision can only be made by a Panel (save that one adjudicator may do so in cases of emergency), due to the impact and sensitivity surrounding this decision type. It should be noted that this decision is one of only two decisions assessed by the organisation to be 'high' risk, defined as follows:

Sensitive or high-profile decisions - Decisions in sensitive or high-profile cases, especially where material facts are in dispute will usually be made by an Adjudication Panel.

Intervention (practice closure by SRA)

62. As the majority of cases were referred to the Adjudication Panel to consider intervention, a supplemental study was undertaken to ascertain whether the referrals were made in accordance with documented criteria. The criteria that must be considered prior to intervention are:
- whether there are ground to intervene
 - whether intervention is necessary, balancing the interests of the public and the effect it will have on the solicitor
63. In each case, it was possible to ascertain that grounds existed, the most common being dishonesty, breaches of the Solicitors' Accounts Rules and abandonment. Likewise, in each case there was evidence that the caseworker had set out the test for the Panel to decide whether intervention was necessary.
64. Further information can be made available upon request.

Case holder

65. Caseworkers accounted for 75 per cent of cases referred to the Panel. Investigation Officers and Investigation Caseworkers, primarily based in CIAO, were responsible for a combined total of 18 per cent of referrals, with the remainder made by Consultant Caseworkers (5 per cent) and Outsourced work undertaken by SRA Agent solicitors (2 per cent).

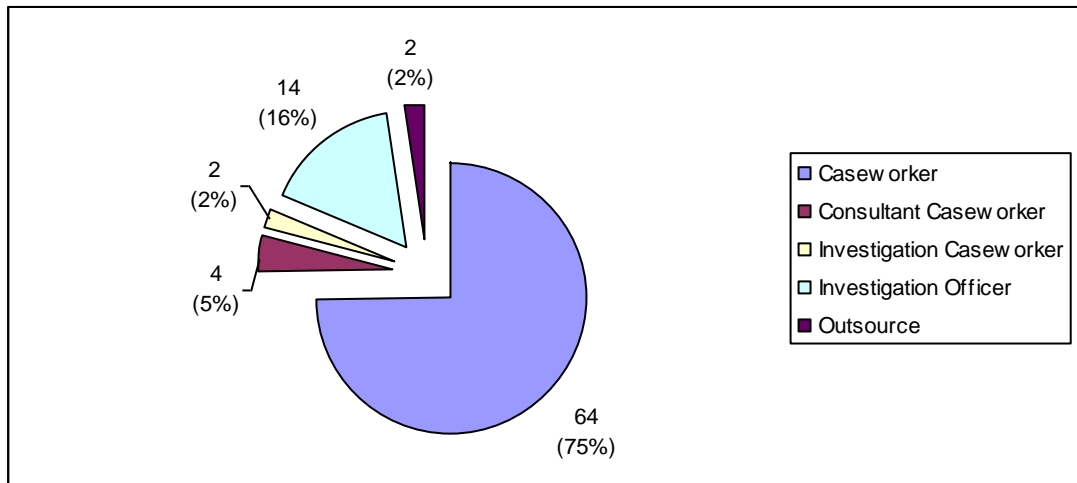


Figure 8. Referrals to Committee or Panel in the first instance by job title.

66. Staff details were not available from dataset 2, requiring this audit to manually record the details for those cases sampled. Having followed the correct procedure in 96.5 per cent of cases, the remaining three cases referred incorrectly were attributed to three separate staff in Regulatory Investigations.
67. The 86 sampled cases were dealt with by 36 individual SRA staff and two SRA agent solicitors. Two SRA staff referred more than four cases to the Panel, 17 staff referred a single case alone, 17 referred between two and four cases, with the remaining two cases referred by SRA agent solicitors.

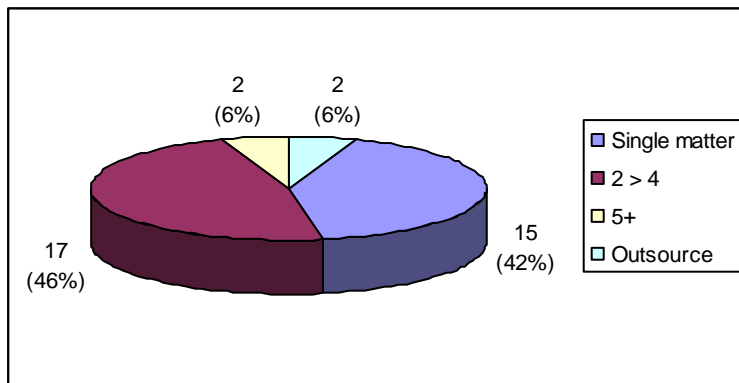


Figure 9. Average number of cases referred to Committee or Panel in the first instance per individual casework staff member.

68. This chart shows the average number of cases referred to the Committee or Panel by individual staff was invariably between one and four cases. An exception to this saw two staff refer six and 11 cases to the Panel. When queried, the casework units stated that these particular caseworkers were highly experienced and efficient and it was suggested that these figures were likely to be proportionate to the total number of cases allocated, if compared to colleagues. As the correct procedure was followed in each case, this was not investigated further.

Equality and Diversity training

69. Evidence to confirm the provision of equality and diversity (E & D) training between 2007 and 2009 was requested from the casework technical team. Training records were only maintained for staff in CIU and CIAO, which recorded 8 staff as having received Equality and Diversity training. As the majority of staff responsible for the referrals to Committee/ Panel in the first

instance were based in RI, it was only possible to demonstrate that 15.8% of relevant staff had received training during this period.

70. Policy (Inclusion) confirmed that according to their records, they had not provided E & D training to any of the named casework staff.

Ethnicity

71. The audit sample related to 372 regulated individuals. If all duplicate entries were removed, this figure would be lower, at 351. The ethnicity break-down of the total record of regulated individuals can be seen below:

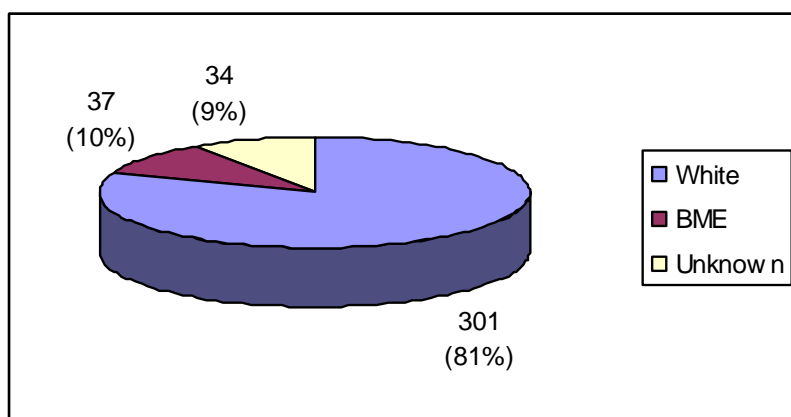


Figure 10. Ethnicity background of regulated individuals referred to Committee or Panel in the first instance from audit sample.

72. Of the regulated individuals grouped into the category 'BME', more specific details regarding ethnic background can be seen below.

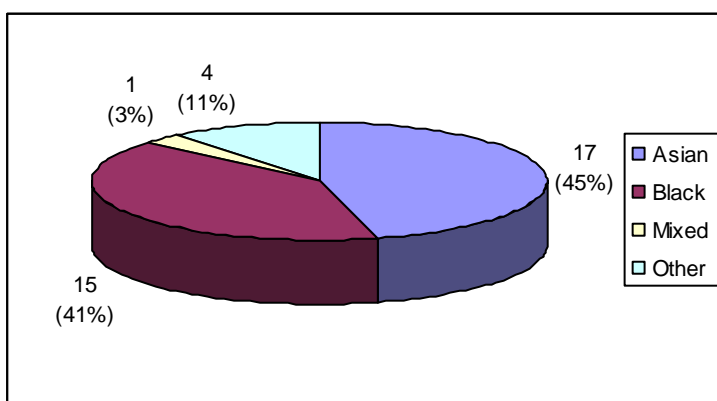


Figure 11. Additional ethnicity details pertaining to those falling under the category of 'BME' in Fig.10 above.

Outcome (decision)

73. This chart provides the case outcome (decision) details as recorded on the SRA database. In respect of the outcomes recorded against white individuals, 34.2 per cent were referred to the SDT, 46.8 per cent 'upheld' and 16.3 per cent not upheld. In respect of outcomes recorded against BME individuals, 51.4 per cent were referred to the SDT, 37.8 per cent as 'upheld' and 5.4 per cent not upheld.

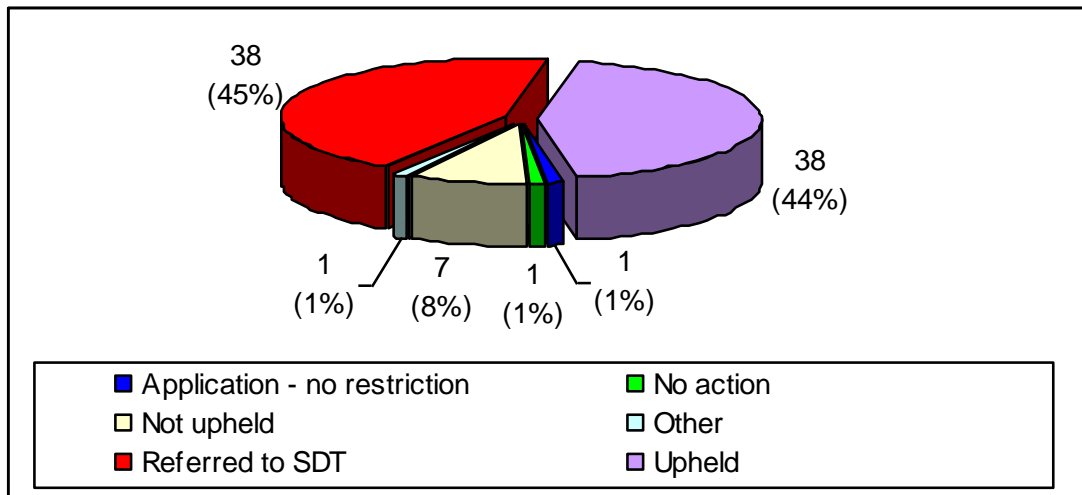


Figure 12. High level outcome (decision) details of cases referred to Committee or Panel in the first instance

Decision and ethnicity

74. As a single decision can be directed at one or more regulated individual, from one or more ethnicity background, the decisions were dissected according to ethnicity.

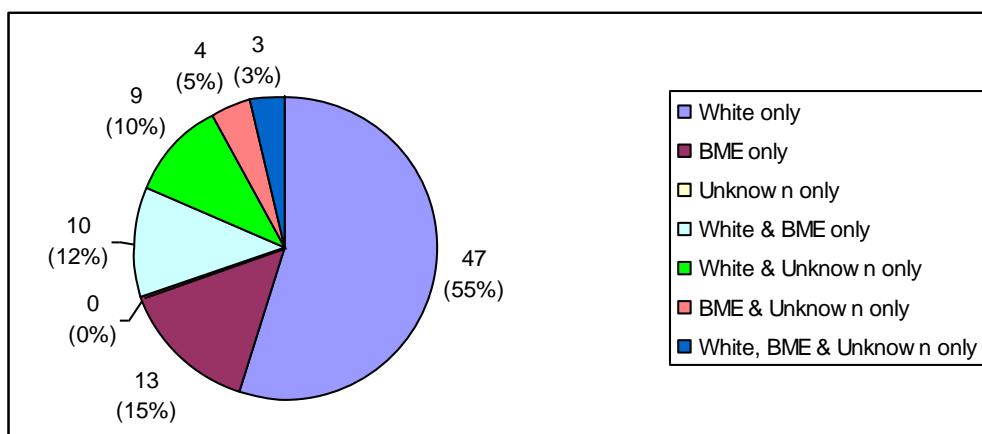


Figure 13. Cases divided into ethnicities of regulated individuals to which the decisions relate.

75. This exercise was also undertaken for the population data, details of which can be found at [Annex 1](#).

Conclusions

76. Having interrogated dataset 2, the audit found that BME solicitors accounted for 15.4 per cent of all regulated individuals referred to the Committee or Panel between 2007 and 2009. Whilst slightly disproportionate when compared to the entire regulated population, proportionately fewer BME individuals were referred to the Committee or Panel in the first instance, when compared to any other process outcome, bar Reconsideration Panel decisions.

77. Pearn Kandola conducted a number of statistical tests, resulting in them observing a higher percentage of BME 'solicitors' referred to Committee or Panel, to that which was expected. This consequential internal review studied

observed results extracted from the dataset only. Results from this study do not concur with the Pearn Kandola recommendation.

78. Subsequent to the audit review, further dialogue took place with Pearn Kandola following concern that the audit findings did not correspond with their observations in relation to this recommendation.
79. On 20 May 2011 Pearn Kandola contacted the SRA's Risk-Audit team and confirmed that their recommendation was inaccurate. This was due to an over generalisation of a finding specifically on redress conduct cases, which related to 17 white and 31 BME individuals.
80. On 09 August 2011, Pearn Kandola issued the following clarifying statement:
'Having reviewed recommendation 14, we have come to realize that the interpretation of the data represented an overgeneralization. The finding only refers to redress conduct matters rather than all conduct matters. Having been made aware of this, we decided that we would check all other interpretations in the report to ensure that there were no further misleading findings. Having conducted this check, we can confirm that the remaining points have identified exactly the correct group and that the statistical findings are in the correct direction.'
81. Assessing the population data, the audit identified potential disparity between white and BME subject individuals on redress conduct cases. An explanation for this can be found [here](#).
82. In 83 of 86 cases, the referral was made correctly and in accordance with documented criteria or guidelines. Until such time that an equality impact assessment has been carried out on the criteria adhered to when referring a case to the Committee or Panel, it is not possible to conclude whether this is having a disproportionate impact on BME individuals.
83. Despite adhering to documented criteria in the most part, clear and obvious reasons for referrals to the Committee or Panel were not evident on any case reviewed. In order to establish reasons, physical and electronic correspondence was trawled in order to link the referral reason to the relevant criteria. Without access to processes, procedures and contact with technical staff from the casework units, establishing such reasons would not have been possible. Adding a simple paragraph to outgoing correspondence and inserting referral reasons in the comments field on the SRA database would significantly improve transparency, and the ability to interrogate data; enabling future internal audits to assess consistency, fairness and equality in decision making.
84. In ten cases, it was not possible to establish the reason for the referral to the Committee or Panel. It was often noted in correspondence that the caseworker was preparing the casenote for submission to the Adjudication Panel, without clarifying why the case was being referred there. Of the cases in question, explanations were provided for the referral reasons on seven; the remaining three could not be explained. These were all regulatory cases which related to eight regulated individuals; six were of white ethnicity, one BME and one unknown. In each case, the referring staff member differed.
85. To conclude, whilst the audit found no evidence of discrimination in respect of cases referred to the Committee or Panel in the first instance, without correctly capturing the reasons for doing so, the organisation cannot demonstrate consistency or fairness in decision making. Providing reasons for the SRA decisions, where appropriate, will improve transparency and fairness, engendering consistency in approach to decision making.

Recommendations

86. Having analysed the findings from the sampling exercise, a number of issues were identified which need addressing. Where practicable, the following recommendations have been made which should improve consistency and transparency in decision making, ensuring the reasoning behind referring cases to a Committee or Panel in the first instance is documented in accordance with published criteria and easily demonstrated to our stakeholders:
- a) The procedure and criteria adhered to when deciding to refer a case to the Committee or Panel should undergo an equality and diversity implication assessment as soon as is practicable. This is vital in ensuring our decisions are fair to all individuals and groups regardless of any of the protected characteristics covered by the Equality Act 2010.
 - b) Staff should receive mandatory equality and diversity training and a records retained centrally. In addition to attending necessary training, it is recommended that Policy (Inclusion) also retain records of training provided to each employee.
 - c) The criteria for deciding which cases should be referred to a Committee or Panel at first instance should be published on the SRA website to further enhance transparency and should clarify what might constitute a 'high profile' or 'sensitive' matter such as would justify such a referral.
 - d) It is recommended that casework units add a paragraph to existing template letters to subjects, informing them of the reason why the case was being referred to the Committee or Panel.
 - e) As procedure notes were not uniform and as a result, were not straightforward to follow, a process-mapping exercise should be undertaken by the SRA's Work Study Unit to ensure consistency of approach to assist in demonstrating consistency.
 - f) Eight cases from the sample (8.5 per cent) were incorrectly recorded on the SRA database. Incorrect recording of process outcomes or decisions will distort data analysis and question the reliability of information gathered. It is recommended that the technical team should ensure all caseworkers are aware of the correct procedure when inserting process outcomes on the SRA database.

Recommendations (b) and (d) have already been implemented. Please refer back to the conclusions of our report "Implementing the Pearn Kandola Recommendations" for further details about how we are proposing to take forward the recommendations from this audit as part our move to outcome-focused regulation.

Next steps

87. As SRA reform takes effect and it moves towards becoming an outcomes focused regulator, it is important that the recommendations contained in this report are considered and if approved, implemented. As the audit function develops in to 2012 and beyond, we must take account of the issues raised within this report and develop appropriate robust methods of gauging resilience in SRA decision making, from initial assessment of the issues, to final decision.
88. A review of the reasons for referrals to all categories of decision maker should be undertaken within the next 12 months, identifying and concentrating on any areas of concern. A proportionate sample of cases will be analysed to ensure that actions agreed further the audit in respect of Pearn Kandola's recommendation 14 have been implemented.

Annex 1: Population data

89. For the purpose of this audit, dataset 2 was referred to for analysis. This dataset identifies all cases raised and closed between 2007 and 2009, by case identification number and type. Each case in the dataset contains demographic information of the regulated individuals involved, in addition to a process outcome and final outcome.
90. In order to select the appropriate sample size, it was necessary to accurately interpret the 'population' data contained within dataset 2.
91. This dataset contains a total of 40,789 Excel 'row' entries. This was filtered to return all cases with a process outcome: 'Committee/ Panel FID', returning a 'population' figure of 410 separate cases, relating to 998 regulated individuals. Having obtained the population figure, a proportionate sample size ([Annex 2](#)) was then ascertained.

Regulated individuals

92. Pearn Kandola removed regulated individuals of unknown ethnicity from their study; comparing regulatory action taken against BME individuals to white individuals. Regulated individuals of unknown ethnicity account for 18 per cent of all regulated individuals referred to Committee or Panel in the first instance and 16 per cent of the entire population with a case raised and closed between 2007 and 2009. This internal audit deemed it appropriate to include details of 'unknown' individuals to avoid potential distortion upon analysis of the dataset.
93. Of the 998 regulated individuals referred to Committee or Panel, a number were recorded against more than a single case within the population data. Removing duplicate entries reduces the overall total to 836 regulated individuals, although relying on the total distinct individual count would also distort analysis.
94. The ethnicity breakdown of those regulated individuals referred to the Committee or Panel in the first instance, compared to all other process outcomes is represented in Fig. 1 below. The combined total of all process outcomes is denoted in the final column. It is evident that when compared to the collective total of all alternative process outcomes or all process outcomes inclusive, a lower proportion of BME regulated individuals were referred to the Committee or Panel in the first instance during this period.

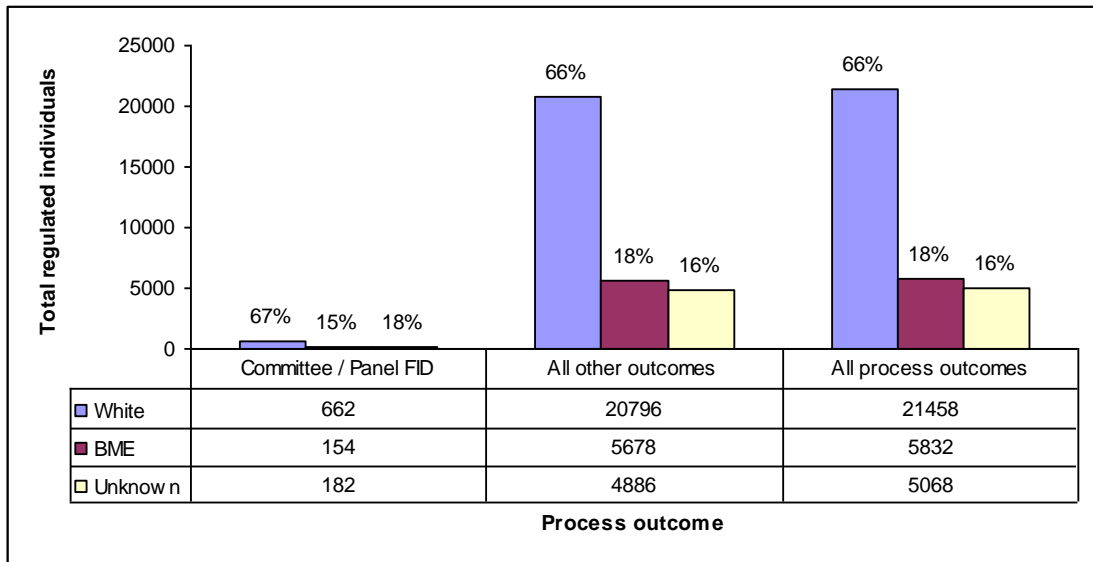


Figure 1. Comparison between case outcomes (decisions) and proportion of affected regulated individuals by ethnicity type, including multiple entries.

95. Recording only distinct individuals referred to the Committee or Panel in the first instance impacts on the ethnicity proportions of regulated individuals. Where the total BME regulated individuals referred to Committee or Panel is 15 per cent, the same calculation with distinct individuals only, returns a figure of 13 per cent. Fig. 2 shows comparison between process outcomes for distinct individuals only.

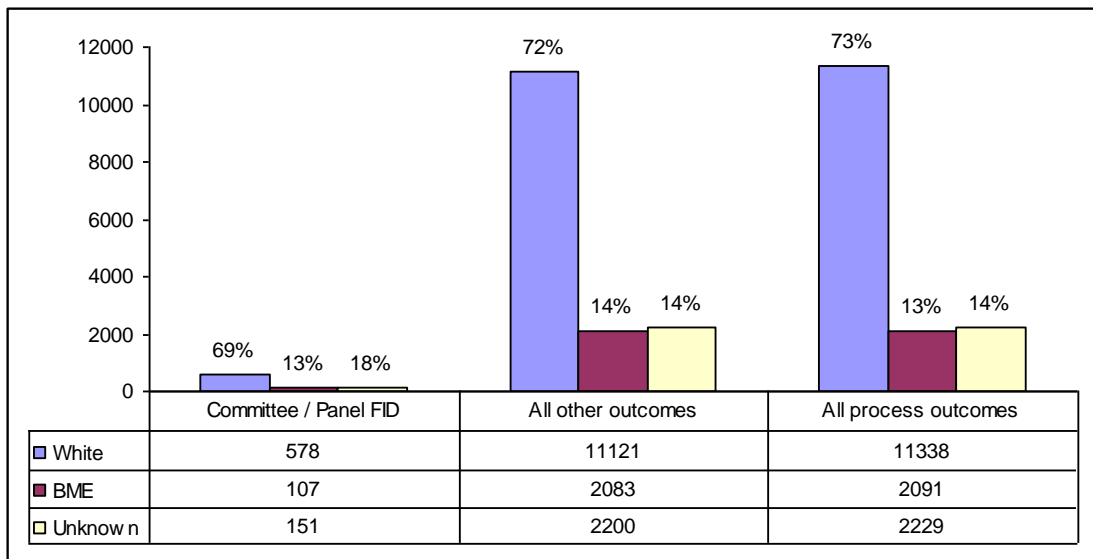


Figure 2. Comparison between case outcomes (decisions) and proportion of affected regulated individuals by ethnicity type, distinct entries only.

96. The illustrated separation of regulated individuals by multiple and distinct entry is for reference only. For the purpose of this study the former figure of 998 regulated individuals was relied on.

Case type

97. Dataset 2 refers to 'case' as the relevant unit of analysis, as opposed to 'solicitor' in dataset 1. With cases referred to Committee or Panel totalling 410, it was imperative that a proportionate sample of each case type was selected for review. To select this sample, the total cases were divided in to

type; Regulatory, Redress Conduct and Conduct. A similar division of each type of case was then chosen for audit at random.

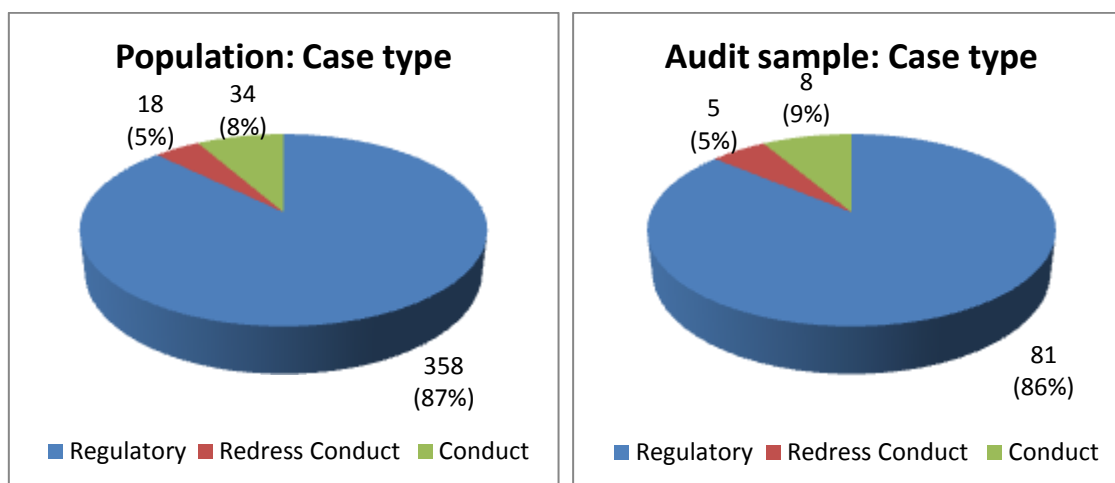


Figure 3. Population and sample size divided by case type category.

98. Due to the relatively small population figure, it was not possible to review an exact proportionate sample for each case type and ethnicity. For example, in relation to Conduct cases, 0.3 per cent of the total regulated individuals were BME (3 of 998). The sample required would therefore be 0.3per cent of the sample size selected (0.282 of 94).
99. BME regulated individuals accounted for 15.4 per cent of the population figure across all case types. It was not possible to select the same percentage from the sample size, as this could have resulted in excluding case types from the audit. Had the initial population figure been larger, it may still not have been appropriate to select a sample according to individuals (ethnicity) involved without considering the case type.

Table 1. Population data extracted from dataset 2, divided by case type category.

	Conduct	Redress Conduct	Regulatory	Total
Excel 'row' entries	53	50	895	998
Individual cases	34	18	358	410
Related practises	20	8	308	336
Regulated individuals (including multiple entries)	53	50	895	998
Regulated individuals (distinct entries only)	27	14	805	846

100. There is a difference between the regulated individual figures when comparing the total distinct entries to those including multiple entries, to the figure of 152. This is due to numerous regulated individual's involvement in more than a single case during the period in question. Furthermore, prior to division into case type category, distinct individuals total 836, but when categorised by case type, the figure increases by ten. This is as a result of certain regulated individuals being involved in more than a single case type.

101. The ethnicity of regulated individual's has been further broken down in to two tables below. Table 2 details the total number of entries including multiple counts of the same persons, whereas table 3 shows distinct entries only.

Table 2. Ethnicity of regulated individuals referred to Committee or Panel in the first instance, including multiple entries, separated by case type category.

	Conduct		Redress Conduct		Regulatory		Total	
Ethnicity – White	47	88.7%	17	34%	598	66.8%	662	66.3%
Ethnicity – BME	3	5.7%	31	62%	120	13.4%	154	15.4%
Ethnicity - Unknown	3	5.7%	2	4%	177	19.8%	182	18.2%
Total	53	100%	50	100%	895	100%	998	100%

Table 3. Ethnicity of regulated individuals referred to Committee or Panel in the first instance, distinct individuals only, separated by case type category.

	Conduct		Redress Conduct		Regulatory		Total	
Ethnicity – White	21	77.8%	7	50%	556	69.1%	584	69%
Ethnicity – BME	3	11.1%	5	35.7%	102	12.7%	110	13%
Ethnicity - Unknown	3	11.1%	2	14.3%	147	18.3%	152	18%
Total	27	100%	14	100%	805	100%	846	100%

Redress Conduct

102. When compared to the total percentage of BME regulated individuals referred to the Committee or Panel in the first instance, Redress Conduct cases appears to contain a disproportionate count of BME individuals. However, upon closer scrutiny it was found that the 50 regulated individuals involved were in fact 14 distinct individuals linked to a total of 18 cases. Of the 14 distinct individuals, seven were white, five BME and two unknown.
103. Raising concern, the audit further investigated the outcome or 'decision' on the 18 Redress Conduct cases. A single case related to a BME regulated individual only, five related to white regulated individuals only and one case related to an unknown regulated individual only. The majority of Redress Conduct cases contained outcomes affecting more than one individual from more than one ethnicity background. This is illustrated in Fig. 5 below.

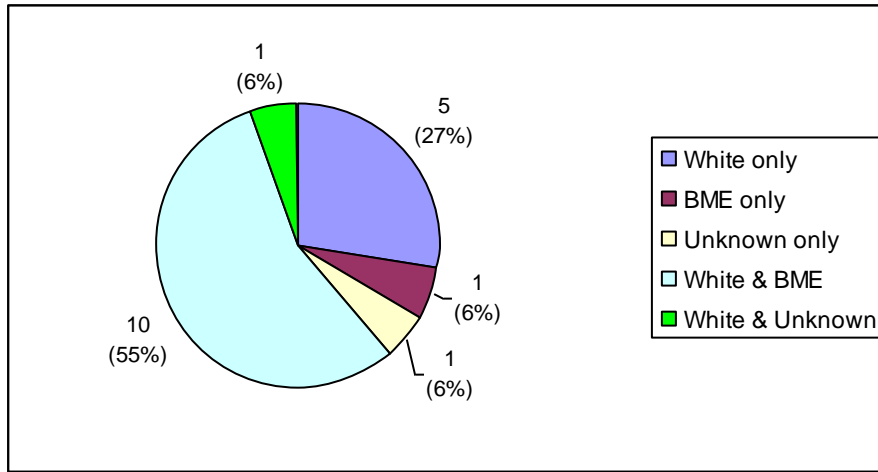


Figure 5. Ethnicity of those involved in Redress Conduct cases.

104. As these cases contain decisions against regulated individuals of multiple ethnicity, it is not possible to draw any further conclusion without conducting a further in-depth study, looking at potential inconsistencies in case outcomes or 'decisions'.

Ethnicity

105. Decisions are often made against one or more individual, from one or more ethnic background. Looking at the ethnicities of the regulated individuals involved, each case type was separated into decision by ethnicity.
106. Decisions related to BME regulated individuals only accounted for 12.2 per cent of the total number of decisions by Committee or Panel in the first instance, on cases closed during 2007 and 2009.

Table 4. Ethnicity details of regulated individuals affected by each case referral to Committee or Panel in the first instance, by case type.

Ethnicity	Conduct		Redress Conduct		Regulatory	
	Count	Percentage	Count	Percentage	Count	Percentage
White only	28	82.4%	5	27.8%	165	46.1%
BME only	2	5.9%	1	5.6%	47	13.1%
Unknown only	1	2.9%	1	5.6%	57	15.9%
White & BME only	1	2.9%	10	55.6%	15	4.2%
White & Unknown only	2	5.9%	1	5.6%	40	11.2%
BME & Unknown only					27	7.5%
White, BME and Unknown					7	2%
Total (410 cases)	34 (8.3%)		18 (4.4%)		358 (87.3%)	

Annex 2: Sample data

107. Taking the population figure of 410 individual cases, a sample of 94 was selected at random. Recognised audit tables indicate this provides a confidence level of 95 per cent, with an expected error rate not over 3 per cent.
108. The sample was chosen by case type, proportionate to the population. Upon selection and analysis, eight cases (three Conduct, four Redress Conduct and one Regulatory) were found to have been recorded incorrectly, so could not be included in this audit. Four cases were appeals of single adjudicator's first instance decisions and the remaining four had no decision attached.
109. The data contained in the tables below relate to the 94 cases inclusive. Removing the erroneous entries would not provide an accurate picture of the sample size chosen from the outset.

Case type

110. The 'population' consisted of 88 per cent Regulatory, four per cent Redress Conduct and eight per cent Conduct cases. The sample size was dissected similarly to ensure a representative number of cases were reviewed for each category. This is illustrated in [Annex 1](#).
111. Once the number of cases required for review had been ascertained for each category, they were then chosen at random from dataset 2. In doing so, this ensured impartiality.
112. Details relating to the original sample chosen by case type can be seen in the table below:

Table 1. Sample data extracted from dataset 2, divided by case type category.

	Conduct	Redress Conduct	Regulatory	Total
Excel 'row' entries	13	18	363	394
Individual cases	8	5	81	94
Related practises	6	2	76	84
Regulated individuals (including multiple entries)	13	18	363	394
Regulated individuals (distinct entries only)	9	6	346	361

113. The ethnicity of regulated individual's has been further broken down in to two tables below. The first has been divided according to the total number of entries to include multiple counts of the same persons; the latter contains details of distinct entries only.

Table 2. Ethnicity of regulated individuals referred to Committee or Panel in the first instance, including multiple entries, separated by case type category.

	Conduct		Redress Conduct		Regulatory		Total	
Ethnicity – White	11	84.6%	4	22.2%	294	81%	309	78.4%
Ethnicity – BME	2	15.4%	14	77.8%	34	9.4%	50	12.7%
Ethnicity - Unknown	0		0		35	9.6%	35	8.9%
Total	13	100%	18	100%	363	100%	394	100%

114. Having selected a proportionate sample size by case type, BME regulated individuals accounted for 12.7 per cent of the total involved in these cases. Although slightly below the ethnicity percentage for the population data (15.4 per cent), where Redress Conduct had been identified as a potential concern, the audit reviewed more cases concerning BME individuals.

Table 3. Ethnicity of regulated individuals referred to Committee or Panel in the first instance, distinct individuals only, separated by case type category.

	Conduct		Redress Conduct		Regulatory		Total	
Ethnicity – White	7	77.8%	1	16.7%	281	81.2%	289	80.1%
Ethnicity – BME	2	22.2%	5	83.3%	32	9.2%	39	10.8%
Ethnicity - Unknown	0		0		33	9.5%	33	9.1%
Total	9	100%	6	100%	346	100%	361	100%

115. The total number of distinct regulated individuals related to all cases in the audit sample totals 357. However, when divided by case type and totalled, it appears the number is higher at 361. This is attributed to four individuals having both a Redress Conduct and Regulatory case closed against them during the period.
116. Akin to the population data, each case was then divided by ethnicity category, according to whom the decision or outcome was directed:

Table 4. Ethnicity details of regulated individuals affected by each case referral to Committee or Panel in the first instance, by case type.

Ethnicity	Conduct		Redress Conduct		Regulatory	
White only	6	75%			43	53.1%
BME only	1	12.5%	1	20%	12	14.8%
Unknown only						

White & BME only	1	12.5%	4	80%	9	11.1%
White & Unknown only					10	12.3%
BME & Unknown only					4	4.9%
White, BME and Unknown					3	3.7%
Total (94 cases)	8 (8.5%)		5 (5.3%)		81 (86.2%)	

117. It is not possible or appropriate to draw conclusion from the sample of cases chosen for audit. This information is for reference only.

Annex 3: Referral queries

118. This section contains details of those cases in which the audit could not establish clear reason for the referral to Committee or Panel in the first instance. Where this occurred, the case was referred to the relevant casework unit and the technical expert was requested to review the physical file to explain the referral reason, providing evidence.

Reference	Comments
Regulatory	
REG/24398-2005	Referred to Casework Investigations and Operations for consideration. The response received suggested that this case surrounded a novel issue in which the subject solicitor argued he had not acted as a solicitor. Wanting a wider opinion, the caseworker referred the case to the Panel. It was added, these type of decisions can influence and lead to changes to policy.
REG/25903-2005	Referred to Regulatory Investigations for consideration. No rational explanation could be found for the caseworker's decision to refer the case to the Panel.
REG/27740-2006	Referred to Casework Investigations and Operations for consideration. The response received suggested that this case was referred to the Panel under the criteria of High profile / sensitivity, involving a large city firm which was likely to attract publicity.
REG/30655-2006	Referred to Regulatory Investigations for consideration. The response received suggested that this case was referred to the Panel under the criteria of High profile / sensitivity; current SRA Adjudicator was a partner at the firm four years prior and the Panel were asked to consider whether he should have input.
Regulatory (Section 43 related)	
These cases relate to decisions in respect of the prevention of employment or remuneration of non-solicitors. The relevant decision making criteria which should be applied is published here .	
REG/30745-2006	Referred to Regulatory Investigations for consideration. No rational explanation could be found for the caseworker's decision to refer the case to the Panel.
REG/32192-2007	Referred to Casework Investigations and Operations for consideration. The response received suggested that this case was one where notice of intervention was given although intervention was not resolved. This was not apparent from the file because documents were missing. This case should therefore have been referred to the Panel under the criteria of recommending Intervention.

REG/32568-2007	Referred to Regulatory Investigations for consideration. It would appear that this case was sent to a Panel following an application for revocation of a Section 43 Order. The case was mistakenly dealt with by the caseworker as an appeal from an Adjudicator's decision, with all appeals from Adjudicator decisions being referred to Panels.
Conduct cases	
CDT/42094-2005	Referred to Conduct Assessment and Investigations for consideration. The response received suggested that this case was referred to the Panel under the criteria of High profile / sensitivity – the solicitor's practice had been subject to FI investigation following a high profile project into 'referral fee arrangements'.
CDT/42271-2005	Referred to Casework Investigations and Operations for consideration. The response received suggested that this case was referred to the Panel as the solicitor's practice was subject to a multiple investigation (CIAO) - these types of decisions were sent to a Panel.
CDT/43546-2006	Referred to Conduct Assessment and Investigations for consideration. The response received suggested that this case was referred to the Panel under the criteria of High profile / sensitivity – the solicitor's practice was subject to FI investigation following high profile project into 'referral fee arrangements'.
CDT/52329-2008	Referred to Conduct Assessment and Investigations for consideration. The response received suggested that this case was referred to the Panel under the criteria of High profile / sensitivity – involving discrimination complaints. Background of media interest contested proceedings against the SRA, intervention and so on.