

The Quest for Regulatory Equality

Report and recommendations arising from two events hosted by Leigh Day's Regulatory & Disciplinary team to address the continued disproportionality experienced by solicitors from the Global Majority in the SRA's regulatory processes

1. Foreword

The question of regulatory disproportionality along racial lines has long been an issue in solicitors regulation, dating back well beyond the inception of the SRA. Indeed, it's been such a long-standing issue that, after at least three SRA commissioned reviews since 2007, including a 2014 Independent Comparative Case Review that pointed at specific potential causes and made 50 recommendations to relevant stakeholders designed to tackle the problem, you could be excused for thinking it was a question that was well on the way to being dealt with.

Yet, since my team began its work in this field in 2018, it is a problem we have witnessed aspects of at first-hand with worrying regularity. As a firm committed to upholding the rights of individuals, including those who have been unlawfully treated or discriminated against, we feel it is crucial to critically examine the reasons behind overrepresentation and disproportionality of outcome and to play our role in bringing about meaningful change. Our events of late 2020 and early 2021 represent our first step in this regard.

This paper draws together the ideas explored and recommendations proposed, to the SRA and others, as to changes panellists and attendees believe might be made to improve what has become an entrenched situation. The intention of the events, of this paper and our team more generally is to make a significant and lasting contribution to the discussion around this issue and, above all, to improve the consistency, transparency and fairness of the SRA's enforcement processes.

We were extremely fortunate to be able to put together such an authoritative selection of panellists to spearhead the discussion and I would like to thank them sincerely for giving up considerable and precious time and for sharing their insights. I would also like to thank all those who attended for giving their time and sharing their experiences and questions which enriched the discussion at the events and which we will take forward with us as we continue our own work in the quest for regulatory equality.

We hope that you find the report useful and, of course, we stand ready to speak to the themes and recommendations set out in this paper if called upon to do so.

Finally, although the SRA opted not to take part in our events at the time, we will be sending this report to the SRA and again invite the regulator to engage with us on this issue to explore what further steps we may be able to take either alone or in concert to bring about the change that is so long overdue and desperately needed.

Gideon Habel

Partner and Head of the Regulatory & Disciplinary team at Leigh Day

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2. Executive Summary

- 2.1. Over the course of decades, solicitors from the Global Majority have been both overrepresented in the profession's regulatory enforcement processes and fared worse in terms of outcomes when measured against their White counterparts.
- 2.2. This disproportionality is a complex issue and is not unique to the SRA among professional regulators. That, however, cannot excuse a less than rigorous analysis of what the SRA has been doing to address the issue since its inception in 2007; nor frank evaluation of its progress in doing so, in particular since the Independent Comparative Case Review (ICCR) by Professor Gus John, published in 2014. As a public interest regulator, the SRA can reasonably be expected to offer itself up to account in this and other areas and must do so if it hopes to build credibility and trust among those it regulates.
- 2.3. The 2014 ICCR concluded that solicitors from the Global Majority faced disproportionality at the three stages of their regulatory process. It made 50 recommendations to The Legal Services Board (LSB), The Law Society and the SRA about steps that ought to be taken towards improving the situation. Unsurprisingly, as the front-line regulator for solicitors, the vast majority of recommendations (45 out of 50) were directed at the SRA. The gauntlet had been laid down.
- 2.4. Levelling the playing field by removing disproportionality based on individuals' protected characteristics is vital to ensuring the fairness, integrity and reputation of the SRA's regulatory process. Unfortunately, however, both the statistics published by the SRA in December 2020 (between our two events) and more recently in July 2021 (see section 6) point clearly to the fact that little of significance has changed since the ICCR and that this remains a deeply engrained problem.
- 2.5. While the SRA is demonstrably engaging with issues of equality, diversity and inclusion, and while there may not be easy or immediate solutions, by not doing enough or by focusing its efforts in the wrong direction, the SRA may be missing opportunities to improve the situation. As Professor John noted at the second event, *"you can't right racial wrongs by doing wrong things more competently."*
- 2.6. The fact that the situation is not significantly improving demonstrates that much work remains to be done. However, genuine and lasting change requires multiple different stakeholders, including the SRA, solicitors and representative groups, to work together to find solutions.
- 2.7. There is a wide range of opportunities available and options open to those who are truly committed to improving fairness in and the quality of the SRA's regulatory processes. The series of events has sought to uncover some of these. It is hoped the SRA (and the Legal Services Board) will seriously consider these and how they might be factored into strategy to tackle the issue going forward.

3. Introduction

- 3.1 In 2020 and 2021, Leigh Day's Regulatory & Disciplinary team developed a programme of content and events exploring the disproportionate representation of and worse outcomes experienced by solicitors from the Global Majority through the SRA's enforcement processes.
- 3.2. The series looked at the data, research and experiences that evidence the disproportionate impact of the SRA's enforcement processes on those it regulates based on ethnicity. The aims were to raise awareness about the issue (among the profession and more widely), to formulate possible solutions and to call for meaningful changes with the overall purpose of contributing to achieving regulatory equality.
- 3.3. Two events were held: the first in November 2020, around a month before the SRA released updated data about the equality, diversity and inclusion impact of its enforcement activities¹; and the second in March 2021, allowing time for analysis of and reflection on the significance of the SRA's updated data. The events – held online due to the prevailing COVID-19 pandemic – brought together panellists from the Law Society, the Legal Services Board, the Society of Black Lawyers, the Society of Asian Lawyers, the author of the SRA's last in-depth research into the issue as well as practitioners, including from Leigh Day's [Regulatory & Disciplinary](#) team.
- 3.4. The first event acted as a retrospective, looking back at research commissioned by the SRA and published in 2014. The second event analysed the data, findings and observations set out in the SRA's report, "[Upholding Professional Standards](#)"², published in December 2020, and invited panellists and attendees to put forward ideas about how to tackle disproportionality for those subject to SRA regulation who identify as having an ethnicity other than "white".

¹ for the year 2018-2019

² <https://www.sra.org.uk/globalassets/documents/sra/research/upholding-professional-standards-2018-19.pdf?version=4af086>

³ for the year 2018-2019

4. A note about terminology

- 4.1. In discussions about ethnicity in the UK, the acronym “BAME” has been widely used in recent years as a shorthand term intended to describe “Black, Asian and Minority Ethnic” people.
- 4.2. In our view, in addition to acknowledging the many other well documented objections to the term, it also fails to reflect the fact that individuals who identify as having an ethnicity other than white are part of a majority on a global scale.
- 4.3. In this paper, we therefore prefer to use the descriptor “Global Majority” when referring to individuals who identify as having an ethnicity other than “white”. However, where the acronym “BAME” was used in the original research or data, we sometimes repeat that term to make reading across to the underlying research simpler.
- 4.4. We hope these events and this paper stimulate debate about the topic of regulatory equality and, in doing so, promote open and constructive discussion about the most appropriate terminology to use in such contexts so as to be representative rather than reductive.

5. Recommendations

Recommendation 1: Analysing and publishing more quantitative and qualitative data

5.1. The data published by the SRA in December 2020 is to be welcomed, but it is insufficient in its current form to illustrate what progress, if any, has been made since Professor John's 2014 Independent Comparative Case Review ("ICCR") and to understand the relevant factors underlying disproportionality in sufficient detail.

5.2. For example, it would be important for the following data to be published:

a) An analysis of outcomes as they relate to underlying allegations

5.3. The December 2020 statistics seem to imply that, once the SRA has opened an investigation, individuals from the Global Majority experience no further disproportionality through the rest of the enforcement process. However, the statistics in their current form – which provide no information about the allegations underlying particular outcomes – provide no insight into whether white solicitors and solicitors from the Global Majority received similar outcomes for similar breaches. Without that data, it is simply impossible to understand whether disproportionality occurs at all stages of the process, where in that process and therefore where efforts to bring about change should be concentrated going forwards.

b) A breakdown of what the SRA does with the reports that it receives by diversity characteristics

5.4. In its [Upholding Professional Standards](#) report, the SRA gives statistics showing what happens to the complaints it receives, such as whether it signposts to the Legal Ombudsman or decides an investigation is not necessary.

5.5. The data published in December 2020 related to diversity characteristics only gives statistics for the proportion of complaints that proceeds to investigation, and not what happens where those complaints do not proceed to investigation. This additional data would help inform the picture on outcomes; it has previously been requested by the Society of Asian Lawyers.

c) A demographic analysis of complainants

5.6. The SRA receives a disproportionate number of complaints about solicitors from the Global Majority. Richer analysis of the sources of these complaints is needed to map complaint sources against outcomes broken down by diversity categories.

5.7. While the SRA clearly has limited influence over the complaints it receives, an understanding of any patterns as between complaint sources and disproportionality in terms of the characteristics of those referred would enable a more nuanced review of the processes involved in the sift stage. Complaint sources would include: consumers, the public, the judiciary, competitors, the police etc.

d) Qualitative data relating to the decision-making criteria that have been applied

5.8. The SRA has outlined its approach to enforcement through its [Enforcement Strategy](#). The full range of regulatory and disciplinary outcomes, their purpose and the indicative criteria for their use, appears in Annex A of the SRA's Enforcement Strategy.

- 5.9. Communicating decisions about enforcement with reference to these (or any other relevant, published and publicly available) indicative criteria would enable greater confidence that the process is objectively assessed and fair.
- 5.10. The SRA could, for instance, publish outcomes anonymously, explained with reference to the indicative criteria and broken down by diversity characteristics. This would enable comparison between decisions and demonstrate transparency in decision-making.

Recommendation 2: Monitoring of SRA investigators and exercises of discretion

- 5.11. In its “Upholding Professional Standards” report, the SRA explains:
- 5.12. “Alongside our ongoing work to establish an in-house ‘arms-length’ quality assurance team, we will undertake a forward review of decision making in our assessment and early resolution process, where the decision to refer a matter for investigation is made.”
- 5.13. To be truly transparent and give confidence in the quality assurance team and the decision-making it will be scrutinising, the SRA must publish further information about the composition, positioning (in terms of its independents from investigation teams), role, methodology and findings of the team.
- 5.14. If not already part of the team’s planned activities, the SRA ought to consider putting in place the following measures:
 - a) A system to record the determination and decision-making process at each stage of investigations so these can be independently scrutinised. This should form part of a quality control process in which decision-making is constantly checked for signs of in-built bias. Ensuring rigorous checks on each and every individual in the decision-making system can only help the SRA identify and eliminate bias and, therefore, reduce the risk of disproportionality continuing within the aspects of the process the SRA has full ownership of.
 - b) Making decision-makers aware their decisions will be monitored by ethnicity (and other diversity characteristics), to ensure consistent, criteria-based decision-making and accountability.

Recommendation 3: Independent, expert external review

- 5.15. In addition to the proposed in-house quality assurance team, the SRA should consider deploying an independent, expert external review team. This will not only serve to underpin the rigour of the proposed quality assurance measures but also boost confidence in the SRA’s enforcement decision-making and the SRA’s credibility in the eyes of those it regulates and more broadly.

Recommendation 4: Training experienced practising solicitors to work on SRA investigations

- 5.16. The interaction that occurs when an SRA investigator or relationship manager goes into a firm or investigates a solicitor is significant for how both the investigation progresses and for the overall confidence of the profession in the SRA.
- 5.17. One key way to build trust and confidence would be to train experienced and practising solicitors to play a role in this process. Their work would then need to be monitored and impact assessed.

Recommendation 5: Re-introducing regulatory defence costs into the minimum terms of professional indemnity insurance

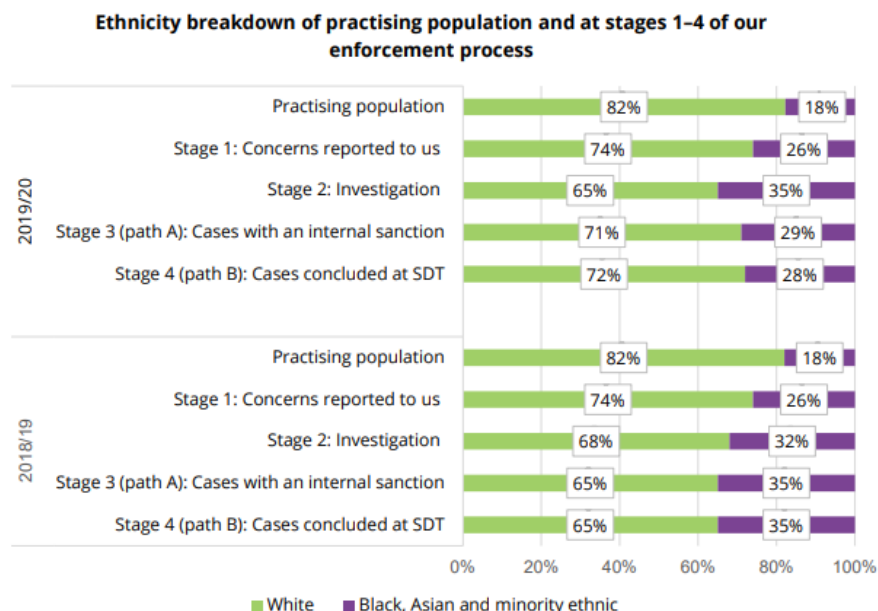
- 5.18. Global Majority practitioners are disproportionately overrepresented in smaller firms and sole practices as opposed to large or city firms. Smaller firms and sole practices often experience greater financial pressures than larger firms and do not, therefore, purchase Management Liability Insurance or Directors and Officers insurance providing cover for regulatory defence costs. The requirement for professional indemnity insurers to provide such cover was removed from the Minimum Terms and Conditions by the SRA in 2010.
- 5.19. The SRA's rationale for this was that it aimed to encourage a reduction in insurance costs that firms would then pass on to clients.
- 5.20. At present there is no comprehensive data to show any cost-savings to firms did benefit the public in the way the SRA anticipated. It is understood that, in any event, many large firms have opted to purchase additional products or add-ons to their policies that provide them with regulatory defence cover.
- 5.21. Having the benefit of expert assistance in responding to an SRA investigation very often plays a significant part in achieving a better outcome for the respondent as it serves to hold the SRA's investigation up to scrutiny both at an earlier stage in the process and through more rigorous regulatory analysis. That can only add to the quality of the SRA's decision-making and ensuring the SRA operates in accordance with the requirements of the Legal Services Act.
- 5.22. Smaller firms and sole practices who have not bought additional cover will therefore be disproportionately impacted. As Global Majority solicitors are overrepresented in these types of practices, the disproportionate impact on them will be amplified.
- 5.23. In our experience, there is a perception in the profession that the SRA's decision to remove regulatory defence cover from the minimum terms was, whether intentionally or otherwise, self-serving; it reduced insurance costs to firms at the expense of being able to afford equality of arms with the regulator when it came to engaging in the investigation process.
- 5.24. So as to ensure that all solicitors and practices have equal opportunity to hold the SRA's investigation up to proper scrutiny, without that continuing to be the privilege only of those (predominantly white) practitioners in larger (or city) firms, the SRA should consider reintroducing regulatory defence cover into the minimum terms for professional indemnity insurance. It is understood that there may be resistance (from insurers) or other obstacles to this, not least in the current professional indemnity insurance market, but it is something that ought to be explored in a meaningful and serious manner. This would not only help level the playing field but would also boost confidence that the SRA is open to being challenged and accountable.

Recommendation 6: Reconsideration of approach to regulatory objectives

- 5.25. This requires a wider debate on the most appropriate regulatory model to enable the SRA to meet the regulatory objectives. In particular, such a debate needs to consider the continued appropriateness of a regulatory model based primarily on enforcement rather than supervision, support and remedy; the need to improve access to justice for all; and the urgent need to promote an independent, strong, diverse and effective legal profession.

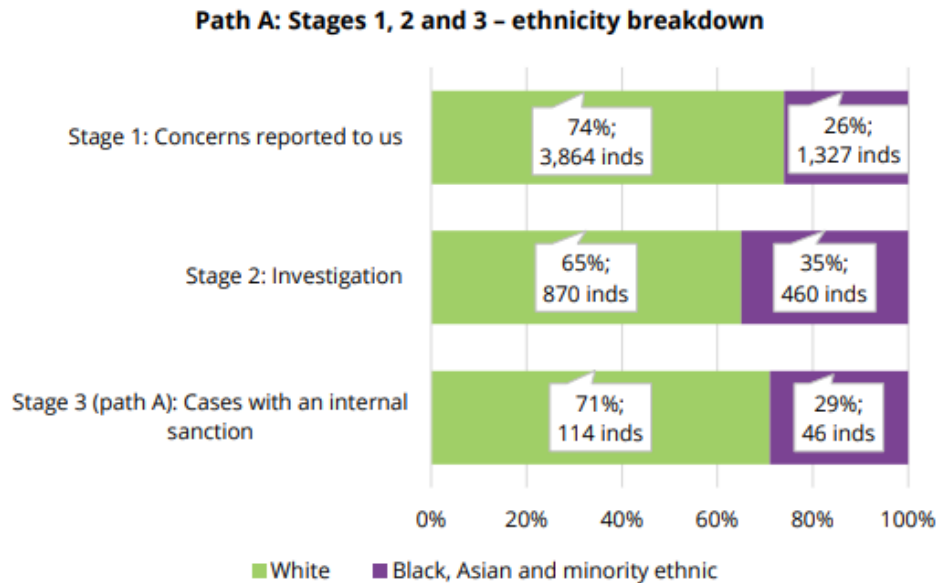
6. The SRA's further published data – July 2021

- 6.1. In July 2021, the SRA released its second report on the characteristics of the people involved in its enforcement processes since the pause from 2014-2020. The data in the report come from the period 2019-2020 and, as such, are historical in much the same way as the 2020 report. One key difference, however, is that these data do take account of the period subsequent to the implementation of the SRA's new Enforcement Strategy and Standards and Regulations.
- 6.2. The report assesses the enforcement practises of the SRA in the light of a number of characteristics, namely: age, disability, gender, and ethnicity. Naturally, this appendix considers only the data presented relating to ethnicity.
- 6.3. It remains notable, however, that the SRA's presentation of the data does not allow for a proper investigation of any intersectional disparities in its enforcement practises. Similarly, one should also note that, while the SRA does not use the abbreviation "BAME", almost all the data provided are simply under the longform heading "Black, Asian, and Minority Ethnic". In the report, the SRA take the same approach to presenting the data as in 2020, which is summarised at 2.6.6-2.6.7 (above).

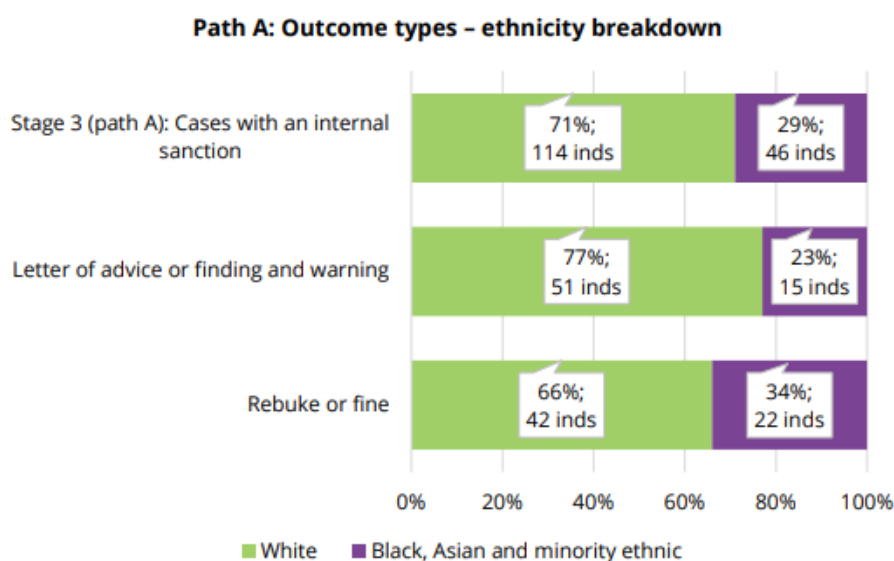


- 6.4. The data presented by the SRA show that the group they term Black, Asian, and Minority Ethnic remain overrepresented in both reports to the SRA (Stage 1) and concerns taken forward by the SRA (Stage 2) when compared with the percentage of the practising population that they make up.
- 6.5. The data also show that those who identify as Asian and Black make up 12% and 3% of the practising population. The SRA reports that Asian and Black practitioners remain overrepresented in the number of concerns reported to the SRA (Stage 1), making up 18% and 4% of reports respectively. The SRA goes on to state "This has not changed when compared with stages 1 and 2 in the 2018/19 findings".
- 6.6. For all ethnicities a smaller proportion of concerns raised have been taken forward to investigation. For White practitioners 22.5% of concerns were taken forward to investigation whereas for Black, Asian, and Minority Ethnic practitioners 34.5% of concerns were taken forward to investigation. So, while the proportion of concerns taken forward to investigation is lower for both groups, the disparity between the proportion of concerns taken forward to investigation regarding White practitioners and Black, Asian, and Minority Ethnic practitioners remains roughly the same as 2018/19 at 12%.

- 6.7. As in the data reported in 2020 from the period 2018/19 the overrepresentation of Black, Asian, and Minority Ethnic practitioners increases from Stage 1 to Stage 2. At Stage 1, Black, Asian, and Minority Ethnic practitioners make up 26% of concerns reported to the SRA but the proportion of Black, Asian, and Minority Ethnic practitioners in cases progressed on to Stage 2 by the SRA rises to 35%.

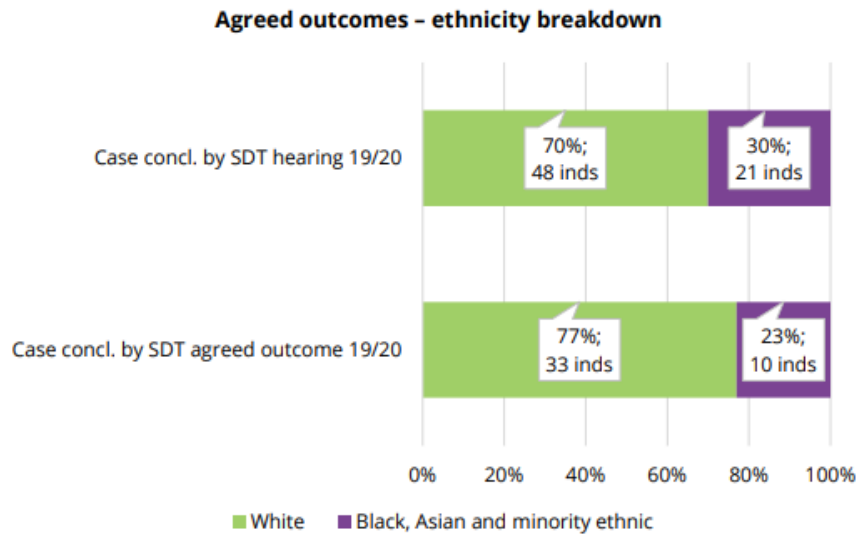


- 6.8. The data provided by the SRA seems to suggest, much as it did for the period 2018/19, that there is little disparity in treatment based on ethnicity once someone is in the SRA's processes. 26% of concerns raised with the SRA relate to Black, Asian, and Minority Ethnic practitioners and 29% of those whose cases are dealt with through an internal sanction come under the heading of Black, Asian or Minority Ethnic.
- 6.9. When the type of internal sanction is considered, however, it is clear that Black, Asian, and Minority Ethnic practitioners are overrepresented amongst the more serious internal sanctions, namely rebukes or fines, and underrepresented amongst the less serious internal sanctions, namely a letter of advice, finding, or warning.



- 6.10. Black, Asian, and Minority Ethnic practitioners made up 34% of rebukes which when compared with the figures for concerns raised and cases dealt with through internal sanction above is a clear

overrepresentation. Similarly, regarding letters of advice, finding, or warning Black, Asian, and Minority Ethnic practitioners made up only 23% of those receiving this lesser sanction.



- 6.11. Finally, it is of note that, as in 2018/19, Black, Asian, and Minority Ethnic practitioners were underrepresented as a proportion of those whose cases were resolved at the SDT through an agreed outcome. Black, Asian, and Minority Ethnic practitioners make up 28% of those whose cases are decided by the SDT however they only make up 23% of those whose cases were dealt with at the SDT by means of an agreed outcome.
- 6.12. While it is true that much of the data must be interpreted with the caveat that the sample sizes in question are often very small, and so any conclusions drawn must be tempered to some degree, it does not seem unreasonable to conclude that the latest SRA enforcement data demonstrates that there remains a pattern of disproportionate representation of and worse outcomes for Black, Asian, and Minority Ethnic practitioners within the SRA's processes. This latest report is further evidence of engrained, systemic bias of the kind that will not disappear on its own. As such, urgent action, including with reference to thinking along the lines of the recommendations in this White Paper, should be taken to address these issues.

7. Conclusion

- 7.1. As a profession, we have yet to achieve regulatory equality. The issue requires multiple different stakeholders, including the SRA, solicitors and representative groups, to work together to find solutions.
- 7.2. Through this series to date, we have distilled 6 recommendations for the SRA (and the Legal Services Board) to reflect on and factor into its strategy to tackle the issue going forward.
- 7.3. We invite the SRA to inform the regulated community how it addressed the recommendations, when it comes to report on the intersection between its enforcement processes with diversity characteristics in the future, which it has now committed to do on an annual basis.
- 7.4. There are steps that the wider community can take to ensure the issue receives the attention it needs and to support the SRA in its endeavours to comply with the regulatory objectives:
 - 7.4.1. practitioners can provide the SRA with up-to-date and accurate diversity data. In May 2021 the SRA published a news story⁴ asking those with “mySRA” accounts⁵ to log in and check their data is up-to-date. This is something each individual needs to do, because firms cannot do it on behalf of their staff;⁶
 - 7.4.2. practitioners can provide feedback on their engagement with the SRA, to enable the SRA to understand where things are going right and learn and adapt where things could be improved;
 - 7.4.3. as a community, SRA-regulated professionals need to keep the conversation going, to ensure to the quest for regulatory equality does not slip from the agenda.
- 7.5. Levelling the playing field by removing disproportionality based on individuals’ protected characteristics is vital to ensuring the fairness, integrity and reputation of the SRA’s regulatory process. For that to happen, we must all play a part.

⁴ <https://www.sra.org.uk/sra/news/sra-update-92-diversity-data/>

⁵ <https://www.sra.org.uk/mysra/get-mysra-account/>

⁶ Providing data via “mySRA” is distinct from the exercise firms are required to do every two years, to collate, report and publish diversity data. The “mySRA” data is critical because it is the only way analysis of the regulatory processes can be conducted with reference to the diversity characteristics of the individuals involved in those processes.

Annex 1

Event 1 - 11 November 2020 - *The quest for regulatory equality: the disproportionate impact of regulation on lawyers from BAME backgrounds*

Outline of the event



Event Chair: Dave Neita

Dave Neita is a lawyer, a published poet, lecturer and motivational speaker.

He specialises in a range of areas including law, mental health, diversity and creativity.

- 1.1. The event formally opened with a presentation from [Emma Walker](#), Associate Solicitor in Leigh Day's Regulatory & Disciplinary team, outlining previous research and findings on the title topic.
- 1.2. A solicitor gave an anonymous account of her experience of being investigated by the SRA.
- 1.3. The following panellists were then invited to speak:
 - 1.3.1. Sally Brett, Head of Diversity & Inclusion, Law Society;
 - 1.3.2. Angela Latta, Head of Regulatory Performance and Oversight, Legal Services Board;
 - 1.3.3. Peter Hebert, Chair, Society of Black Lawyers;
 - 1.3.4. Gideon Habel, Partner and Head of the Regulatory & Disciplinary team, Leigh Day
- 1.4. Those who registered for the event had access to exclusive content produced by the Leigh Day team prior to the event, including an article, videos and an audio recording introducing and exploring the topic. The content can be accessed here: <https://www.leighday.co.uk/our-services/regulatory-and-disciplinary/further-insights/the-quest-for-regulatory-equality/>.
- 1.5. The event was recorded and is available to watch in full by clicking [here](#).

See next page for summaries of key points by the speakers

1.6. Introductory presentation – Emma Walker



Associate Solicitor in the Regulatory & Disciplinary team, Leigh Day

Emma is an associate solicitor in Leigh Day's [Regulatory & Disciplinary team](#), where she advises regulated professionals about their rights and obligations, including assisting them to report and respond to their regulators. She has particular expertise in solicitors' discipline, advising individuals and firms subject to SRA investigation or prosecution.

Emma is committed to achieving access to justice for all and is ranked as an Associate to Watch by Chambers & Partners 2021.

1.6.1. In her presentation, [Emma](#) provided a background to and outlined the research commissioned by the SRA and published in 2014, Professor John's "Independent Comparative Case Review" ("ICCR").⁷

1.6.2. The presentation included an overview of research carried out by the regulator on the subject of the disproportionate impact of regulation on Global Majority lawyers.

Looking back

- 2006: *The Impact of Regulatory Decisions of the Investigations and Enforcement Unit on Black and Minority Ethnic Solicitors* (The Law Society)
- 2007: SRA established
- 2008: *Independent review into disproportionate regulatory outcomes for black and minority ethnic solicitors* (Lord Ouseley)
- 2010: *Solicitors Regulation Authority Commissioned research into issues of disproportionality* (Pearl Kandola)
- 2014: *Independent Comparative Case Review* (Professor John)

Leigh Day

1.6.3. The ICCR showed disproportionate outcomes for Global Majority solicitors at three stages of the regulatory process:

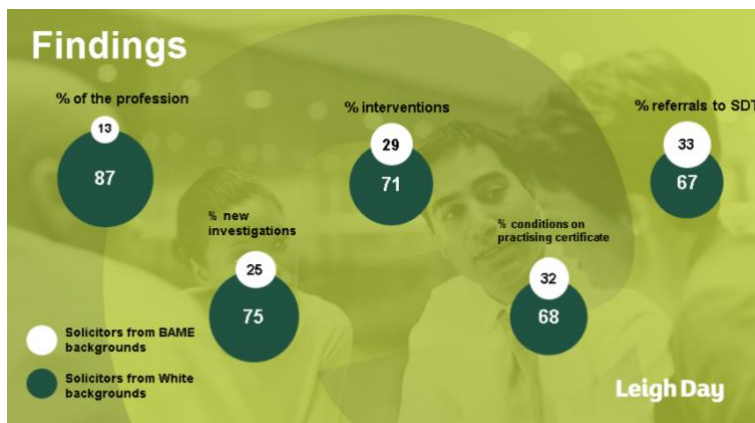
⁷ <https://www.sra.org.uk/sra/equality-diversity/archive/independent-comparative-case-review/>

Findings

Professor John found disproportionality at 3 stages:



1.6.4. The report compared outcomes for white and “BAME” (Black, Asian and Minority Ethnic) solicitors and noted a disparity between the groups:



1.6.5. Through the ICCR, Professor John pinpointed a number of trends that could account for disproportionality. When compared with their white counterparts, respondents from “BAME” backgrounds going through the regulatory process:

- 1.6.5.1. had been on the Roll of solicitors for fewer years;
- 1.6.5.2. had been qualified for fewer years before becoming sole practitioners;
- 1.6.5.3. had held fewer practising certificates.

1.6.6. Professor John provided a number of hypotheses for why these trends may exist, including that:

- 1.6.6.1. Frustrations and limitations in career opportunities may result in individuals from the Global Majority working for smaller firms or deciding to advance their prospects by starting sole practices, relatively soon after qualifying. In other words, they were more likely to work in smaller firms.
- 1.6.6.2. Smaller, less established firms or inexperienced sole practitioners lack the financial resources of larger firms that could act as a cushion against temporary cash flow problems, meaning they are more likely to find themselves under investigation resulting in sanction.

1.6.7. The causal factors underpinning Professor John’s hypotheses were hotly debated by a number of representative groups and had a significant impact on how the SRA has sought to address matters since the ICCR.

1.7. Anonymous solicitor

1.7.1. Describing her experience of undergoing an SRA investigation, the solicitor speaking anonymously explained she felt:

- 1.7.1.1. *“depleted by the whole process and stripped bare, the whole process impacted on every aspect of my life, including my mental and physical health”;*
- 1.7.1.2. the SRA investigator did not facilitate communication with her and did not respect requests to communicate with her in a specific way, causing her to feel overwhelmed;
- 1.7.1.3. like she *“was a commodity and not a person who was entitled to human consideration”*.

1.7.2. The solicitor noted that in contrast to her poor experience of being investigated by the SRA, she had dealt with other people at the SRA who had been *“totally professional”*.

1.8. Sally Brett



Head of Diversity & Inclusion, Law Society

Sally has made a career of championing equality and diversity in the workplace. Following her previous roles with the British Medical Association and Trades Union Congress, Sally recently joined the Law Society as its Head of Diversity and inclusion.

Sally’s team is dedicated to *‘eradicat[ing] unlawful discrimination and promote equality, diversity and inclusion’* in the legal profession.

1.8.1. Disproportionality in regulatory proceedings came to the fore as a major issue when she was working in her previous role at the British Medical Association.⁸

1.8.2. The General Medical Council (“GMC”)⁹ commissioned research into disproportionate regulatory outcomes based on ethnicity, resulting in the *Fair to Refer*¹⁰ report being published. This noted that there was disproportionality in the GMC’s regulatory process, particularly in complaints being made by NHS employers rather than members of the public, and it concluded that there were “insider-outsider” dynamics deeply entrenched within the profession. Some doctors were more likely to be outsiders because of their race, ethnicity, or nationality or because they worked in more isolated roles like being a locum or a sole practitioner. Doctors from the Global Majority were more likely to be sole practitioners. Outsiders face a series of risk factors in their careers that work in a cumulative way, including a lack of support and adequate induction at the beginning of their careers and a lack of ongoing mentoring and support. Insiders, on the other hand, benefit from protective factors.

1.8.3. The report commissioned by the GMC recommended that a lot more needed to be done to support doctors from the Global Majority throughout their careers, but also that when performance concerns were being looked into, there should be proper consideration of systemic issues and the

⁸ The trade union and professional body for doctors in the UK

⁹ The regulator of doctors in the UK

¹⁰ https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf

context of the working environment that were likely to have affected performance. It further recommended that the profession needed leadership that was actively inclusive, open, and continually listening and responding to concerns.

- 1.8.4. As a result of these developments across many of the healthcare professions, there has been a recognition at senior levels of the need to move away from a “fear and blame” culture and towards a “just and learning” culture, with a just culture being defined as one where the primary focus is on establishing what went wrong rather than who did wrong, what can be learned and what steps can be taken to prevent it happening again.
- 1.8.5. There are some parallels with the legal profession, including issues of culture and structural inequalities, such as solicitors from Global Majority backgrounds being less likely to progress in big city firms and more likely to be sole practitioners.
- 1.8.6. Following the ICCR, the Law Society worked with its Small Firms Division¹¹ and Ethnic Minority Lawyers Division¹² to roll out workshops on managing firms and the Small Firms Division is continuing to provide support on regulatory compliance and financial resilience. The Law Society has also recently been conducting research and engaging with the profession, particularly on the experiences and racial inequalities within the profession, and the lower representation of individuals who identify as black in large private practice firms.

1.9. Angela Latta



Head of Regulatory Performance and Oversight, Legal Services Board

[Angela Latta](#) leads on the key interfaces with the regulators on regulatory performance policy, performance review and remedies.

She is also the project sponsor for two of the longer-term LSB projects on Ongoing Competence and Diversity.

- 1.9.1. The Legal Services Board’s (“LSB”) functions include making sure that the frontline regulators’ performance meets the regulatory objectives, as well as taking a more strategic role by looking at the sector itself. The regulators have significant flexibility how they regulate the profession under the Legal Services Act 2007, but it is the LSB’s responsibility to make sure that the systems the regulators have in place are effective and that they are performing to the highest possible standards.
- 1.9.2. As one of the regulatory objectives is to encourage an independent, strong, diverse and effective legal profession, the LSB has set guidance on what the regulators ought to be doing in terms of collecting data.
- 1.9.3. The LSB publishes an annual report setting out what the regulators are doing on diversity, but the action plans are determined by the regulators themselves.

¹¹ <https://www.lawsociety.org.uk/topics/small-firms>

¹² <https://www.lawsociety.org.uk/topics/ethnic-minority-lawyers>

1.9.4. The LSB introduced three new objectives in 2020; it wanted regulators to understand the composition of the regulated community in terms of protected characteristics, to understand the barriers to entry and progression in the profession and to have measures in place to understand the differential impact on protective characteristics within the discipline and enforcement procedures.

1.9.5. There are many activities happening across the sector in terms of diversity, but the impact they are having on demographics is so limited that the LSB is questioning whether the regulators are doing the right things. The LSB will be reviewing its current policy guidance framework, looking at how it holds the regulators to account and how it can place greater emphasis on evaluation to understand what interventions and activities are having a positive impact.

1.10. Peter Hebert



Chair, Society of Black Lawyers

A former judge, Peter Herbert OBE has played a significant part in the ongoing quest for equality in the legal profession. Recently retired from his successful career as an advocate, he is now pursuing reparation and historical injustice projects in Kenya and is the Chair of the Society of Black Lawyers.

He is a past recipient of the National Bar Association's Human Rights Award (USA) and his tireless efforts have been acknowledged with an OBE for his work in "equality, diversity and human rights"

- 1.10.1. The issue of disproportionality has to be understood within the wider political context of society and institutions in the UK. The SRA has to be understood as part of wider historical legacy of institutions that were not designed for the benefit of Global Majority solicitors and where racism and disparity are built into the DNA of the UK.
- 1.10.2. A disproportionate number of complaints about solicitors from the Global Majority come from competing solicitors and firms and the police, rather than members of the public. They often come from sources who have a vested interest in pursuing the complaint, which may include making sure their competition is distracted and sometimes achieves closure of a firm.
- 1.10.3. Solicitors from the Global Majority are more likely to be in private practice due to the racism they face getting into the mainstream profession. They are disproportionately practising as sole practitioners due to racism and are disproportionately investigated because of the same institutional or stereotypical views; they are also less likely to receive a helping hand than a white solicitor.
- 1.10.4. The SRA is very reluctant to take on city firms, not because they are not guilty of impropriety, but because city firms' incomes far outstrips that of the SRA and they can inundate the SRA with teams of lawyers from all over the world.

- 1.10.5. The SRA is a majority white organisation. When looking at the way the regulator exercises its discretion as to whether to push a Global Majority solicitor down the road of assistance or discipline, they are more likely to end in discipline. When Lord Ouseley completed his review related to the issue,¹³ he found there was flagging in the system, meaning that solicitors of Sri Lankan and Nigerian origin would be highlighted higher risk. This had nothing to do with whether individual solicitors were culpable of misconduct.
- 1.10.6. The Law Society committees are disproportionately made up of people who have had past membership of the SRA.
- 1.10.7. The LSB has to be more dynamic than it has been in seeking to question what goes on at the SRA.

1.11. Gideon Habel



Partner and Head of the Regulatory & Disciplinary team, Leigh Day

Gideon is a partner in Leigh Day's [Regulatory & Disciplinary team](#).

He specialises in defending and advising solicitors and firms responding to SRA investigations and in proceedings before the SDT.

Gideon has a particular interest in exploring ways to make the regulatory processes fairer and is ranked as an Up and Coming individual in Chambers & Partners 2021.

- 1.11.1. Clients of Leigh Day's Regulatory & Disciplinary team have, more often than not, experienced the SRA as a regulator intent on prosecution from the early stages of investigations, rather than as a supportive and empathetic regulator that gives careful thought to the impact of its processes. There seems to be a significant issue of trust between the SRA and the regulated community, which is partly related to issues of race and discrimination, and partly more general.
- 1.11.2. While the SRA may have good reason for not publishing empirical data on disproportionality for over six and a half years, a failure to be transparent in this context could be seen as an unwillingness to be so, and has the consequence that we must rely on anecdotal evidence. Providing statistics that speak to the impact of its enforcement processes as they intersect with diversity characteristics on an annual basis going forward will help build trust among the profession that the SRA is committed to changing its approach and open to making itself as accountable as possible.
- 1.11.3. After the publication of the ICCR, the SRA made clear its intention to support those it regulates, a key aspect of which was to be through the use of designated relationship managers or supervisors at the SRA. This ought to have been an important part of building trust and confidence with smaller firms, but these relationship managers have since been withdrawn. Although there is now a confidential anonymous helpline, it is unclear how willing solicitors will be to engage with this.

¹³ In 2008, Lord Ouseley completed the "Independent review into disproportionate regulatory outcomes for black and minority ethnic solicitors": <https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/ouseley-report.pdf?version=4a1ac9>

- 1.11.4. Very often Leigh Day's clients have experienced in their dealings with the SRA what they perceive to be a lack of empathy about their personal circumstances and a lack of understanding of what it is like to be a solicitor in a busy practice, dealing with highly demanding and emotionally draining matters on a day-to-day basis. In some cases, the SRA might have good reason to press, where it has good grounds for thinking that in raising such concerns, the solicitor may be applying delaying tactics, but where there are no such grounds, this approach can leave people feeling powerless, criminalised and scared. This is even more acute when an impression of racial bias is formed, raised and rejected. It is not enough for the SRA to acknowledge such concerns with formulaic wording; it needs to present a more human approach in its work. The current approach has the clear potential to lead to unfair outcomes, which cannot be in the interests of the profession, the public or the SRA.
- 1.11.5. As members of the profession, is it important that solicitors play their part in engaging with these issues by sharing their experiences with the SRA and analysing the SRA's data, as well as providing feedback through other means such as through representative groups, the Law Society, the legal press and by responding to SRA consultations.
- 1.11.6. Insurance is also very important in ensuring that firms and individuals have the resources to properly test and challenge the SRA's case. Regulatory defence cover used to be a mandatory part of professional indemnity insurance, but the SRA took it outside of the minimum terms in 2010. By making sure they have such cover, firms can play an important part in the regulatory system and in ensuring accountability by robustly and fearlessly testing the SRA's enforcement work and making sure the correct balance is struck, including in cases where the risk of disproportionality is highest.

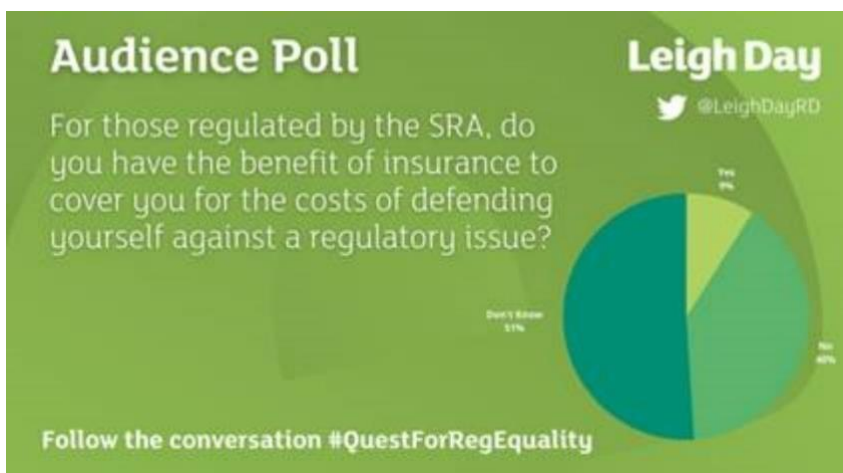
1.12. Audience polls

- 1.12.1. During the event attendees were surveyed for their answers and views in response to three questions. The same question was posed to the audience at the start and the end of the event:





- 1.12.2. The second question was designed to make the audience think about whether they have the benefit of insurance to cover the costs of a regulatory investigation or defending prosecution by the SRA:



1.13. Questions and answers

- 1.13.1. During the event, attendees were able to pose questions to the panel. The questions and answers raised during the event are summarised below.

“I think that it is important to look at the history of the professions and the frameworks created for working within those professions - they were not created with BAME professionals in mind. EDI (equity, diversity and inclusion) needs to be embedded in the work that regulators do. Do you have any tips for how regulators could/should go about this?”

Since at least 2017, the SRA has openly said that it is taking that approach in its corporate strategy and that it has stopped dealing with EDI as an issue in itself but rather is trying to take an approach where EDI is a primary consideration in everything it is doing. (Gideon Habel)

Every single exercise of discretion should be subject to independent scrutiny and review and tested against the commonality of what happens to white solicitors. If you do not look at equality of impact for every exercise of discretion and have somebody else audit it, it remains a subjective judgement by generally white males within the SRA. (Peter Hebert)

In the medical profession, there was a consideration that disproportionality came not just from Global Majority professionals being over-referred, but also white professionals being under-referred or under-investigated. It is a

common response to make sure all decision-makers are aware of bias, but it is also important to have accountability of the decision-makers and for them to know that their decisions are going to be monitored by ethnicity. It is also imperative to look at all the systems to see if there is any in-built bias and what can be done to processes to remove the impact of bias and to make sure there are enough checks on every individual in that system. Based on the learning from medicine and healthcare, a key consideration is trying to stop people getting into these procedures in the first place, by trying to identify early on where people are getting into difficulty and where more support is needed. The NHS has an incident decision tree to be gone through before someone is referred to the regulator to check whether it was likely that an individual had made a deliberate or very reckless decision. (Sally Brett)

“My question is whether or not the LSB should provide compulsory sentencing guidelines to be used by the regulators when certain acts are found to have occurred, regardless of subsequent apologies and matters in mitigation?”

This is not something the LSB has become involved with. Regulators have regulatory boards which are designed to provide the governance structures to determine what is required. The LSB would not seek to determine a set of guidelines that would apply universally, preferring to allow each of the regulators to determine the right level of remedies that are required and so as not to prevent decisions being made on the merits of each case. Some remedies are set in law. (Angela Latta)

“What is the importance of getting insurance?”

The importance of insurance is to make sure that if a solicitor is investigated by the SRA, they are able to access a resource in an affordable way that will enable them to offload the burden of responding to the SRA, make sure they are getting the right tone and structure of response and going through the right evidence-gathering procedures. This helps give a solicitor the best possibility to demonstrate the truth of the position. Many people do not know whether they have this cover. It is vital to make sure that the SRA is being challenged when it is following up on complaints and carrying out investigations. (Gideon Habel)

This is something that came up in Leigh Day’s case. There may be solicitors who do not know if they have cover, or think that they do have it, and only find out that this is not the case when they are faced with a situation where they have to respond to the regulator. (Emma Walker)

“Should there be a lower regulatory bar for smaller firms and sole practitioners?”

It would not be about a lower bar, but a different bar. The SRA has a mountain to climb when taking on a city firm because it would be out-lawyered, and so it is comparatively reluctant to take on city firms. As such, there is already a built-in unfairness towards targeting low-hanging fruit, perceived to be sole practitioners. Unless it is an affair of outright dishonesty then the SRA should be forced to go through a stage of constructive engagement. Only if that fails should disciplinary action be considered. That should not be a necessary step for city firms because, given their resources and experience, they should not be in the position of breaking any regulations. (Peter Hebert)

1.14. Comments and experiences

- 1.14.1. Attendees also shared comments and experiences in the online event’s Q&A function. Those comments are included in this paper because they inform the picture of this topic for the entire regulated community – those regulated, regulators, representative body and independent tribunal.

“I totally agree with this solicitor. What a courage to speak up which I never had, always kept quiet, cried in private!” [responding to the contribution by the anonymous solicitor]

"I never had been a subject of any investigations from SRA or Law Society but my horrible experiences were in the law firm I worked - partner shouting at me racial comments"

"Would be helpful to have an SRA representative to talk about the SRA's perspective - not a criticism just an observation." [The SRA was on two occasions asked to take part in the first event but declined; it was also invited to take part in the second event but again declined.]

"What does the panel suggest can be done to raise the confidence of BAME professionals facing disciplinary proceedings that they will get a fair hearing? Should there be at least one BAME tribunal member for each hearing for example? How does one raise the issue that the tribunal may be being biased without being accused of playing the race card?"

"The Gus John report recommended in 2014 that the SRA publish monitoring data on how its policies affect BAME solicitors. Nothing has been published since. Why has the LSB allowed the SRA to get away with not doing this?"

"How do we encourage BAME solicitors to apply for roles on tribunals, in particular the SDT and BTAS?"

"Question for Angela, what type of diversity analysis do you feel would be helpful? I work for a regulator who is very keen to get this right, but there is very little disciplinary data to actually draw any meaningful conclusion."

"My horrible experience was a close friend whose partner was investigated in a 2-partner firm. He was so traumatised he left his firm and the country"

*"A solicitor was recently found to have used the word c**n and dressed like the KKK in the office. He was fined but not suspended. Is there also a problem with the tribunal about how racism is punished?"*

"I have also thankfully not been a subject of any investigations from SRA, Law Society or CLC (I am a Licensed Conveyancer) nor have I been subject to any racial discrimination (I am white English). However, my negative experiences with previous law firms have involved discrimination due to mental health issues and for being female."

"Are there any plans in the pipeline for the LSB to review their operations with a view to making the SRA accountable- for example reviewing/auditing a portion of their cases to ensure consistency and proportionality. Or appealing against decisions?"

"I totally agree with peter Herbert, the SRA always target the coloured solicitors for investigation I was once investigated on an anonymous malicious complaint by another competitor solicitor firm near my office caused me tremendously stress and time waste. Having answered their query they closed the file. Totally unwarranted investigation"

"At present there appears to be no real oversight of the [SRA's] behaviour and no effective way of dealing with complaints in relation to the way they work and accordingly no real need for improvement."

"I see parallels with police stop and search. The exercise of discretion is where powerful discriminatory practices take ground. Looking at cases on an individual case basis commonly frustratingly leads to a finding that there is no racism, however the racial disproportionality across-the-board indicates there definitely is racism; that racism needs to be identified. It's crucial therefore to root out racism in the exercise of discretion at all levels from initial referral moving forward. How to do that is the real challenge."

"Will the SRA publish data regarding the split between ethnic groups?"

“Insurance for BME practitioners is not an option but a must, especially given the impact upon individuals of regulatory action (bankruptcy, mortgage default and repossessions, marriage breakdown, ultimately [sic] suicides). How is such regulatory practice consistent with the regulatory objectives?”

2. Annex 2

Event 2 – 3 March 2021 – *The quest for regulatory equality: disproportionality in the regulation of Global Majority lawyers – where are we now and what comes next?*

Outline of the event



Event Chair: Dave Neita

Dave Neita is a lawyer, a published poet, lecturer and motivational speaker.

He specialises in a range of areas including law, mental health, diversity and creativity.

2.1. The event formally opened with a presentation from [Emma Walker](#), Associate Solicitor in Leigh Day's Regulatory & Disciplinary team, which focussed on the SRA's enforcement statistics published in December 2020.

2.2. The following panellists were then invited to speak:

2.2.1. Professor Gus John, Academic and author of the ICCR

2.2.2. Jacqueline McKenzie, Director of McKenzie Beute and Pope

2.2.3. Angela Latta, Head of Regulatory Performance and Oversight, Legal Services Board

2.2.4. Ranjit Sond, President of the Society of Asian Lawyers

2.2.5. Gideon Habel, Partner and Head of the Regulatory & Disciplinary team, Leigh Day

2.3. The panellists were asked questions and asked to comment on three main topics:

2.3.1. The data published by the SRA in December 2020;

2.3.2. The steps taken by the SRA since the ICCR;

2.3.3. What should happen next.

2.4. There were then some additional questions based on questions submitted by the audience during this and the previous event.

2.5. A full recording of the event can be accessed by clicking [here](#).

See next page for summaries of key points by the speakers

2.6. Introductory presentation – Emma Walker



Associate Solicitor in the Regulatory & Disciplinary team, Leigh Day

Emma is an associate solicitor in Leigh Day's [Regulatory & Disciplinary team](#), where she advises regulated professionals about their rights and obligations, including assisting them to report and respond to their regulators. She has particular expertise in solicitors' discipline, advising individuals and firms subject to SRA investigation or prosecution.

Emma is committed to achieving access to justice for all and is ranked as an Associate to Watch by Chambers & Partners 2021.

- 2.6.1. Emma provided a background to and an outline of the data published by the SRA in December 2020. The presentation explained the SRA had published three reports that were relevant to the topic:

What the SRA has published

In December 2020, the SRA published three reports relevant to this topic:

1. Upholding Professional Standards report 2018/2019
2. Upholding Professional Standards 2018/2019 – Diversity Monitoring, Supporting Report
3. Our work since the Independent Comparative Case Review on the profile of solicitors in our enforcement work



- 2.6.2. In the reports, the SRA explains it is reporting on diversity characteristics of the people involved in its enforcement processes for the first time since 2014 and that it had paused what was previously an annual exercise in 2015 because of an increasing focus on the role of law firms (rather than individuals) in maintaining high professional standards. The SRA says this meant it was recording a growing proportion of enforcement work against firms rather than individuals.
- 2.6.3. The SRA explains it has now resumed this monitoring and undertook a manual review of reports received in 2018 to 2019, to identify information about the individuals involved. The SRA adds that new systems and processes it is putting in place will allow it to better extract and analyse data about its enforcement decisions in the future.
- 2.6.4. As the data that has been analysed relates to 2018 to 2019, it does not give a real time picture of what is happening, but a slightly historic one and, in the large part, it relates to the previous "Outcomes Focussed" regulatory regime, that is, before the Standards and Regulations came in and the standard of proof in the Solicitors Disciplinary Tribunal changed on 25 November 2019.

2.6.5. In the reports, the SRA looked at the impact of its enforcement in the context of a number of diversity characteristics: gender, age, ethnicity and disability. The presentation focussed on the data relevant to the series' theme, namely ethnic identity.

2.6.6. The SRA's analysis looks firstly at the practising population and then breaks down the data at four different stages in the disciplinary process:

Stage 1: individuals named on concerns reported to the SRA;

Stage 2: individuals named on concerns the SRA took forward for an investigation;

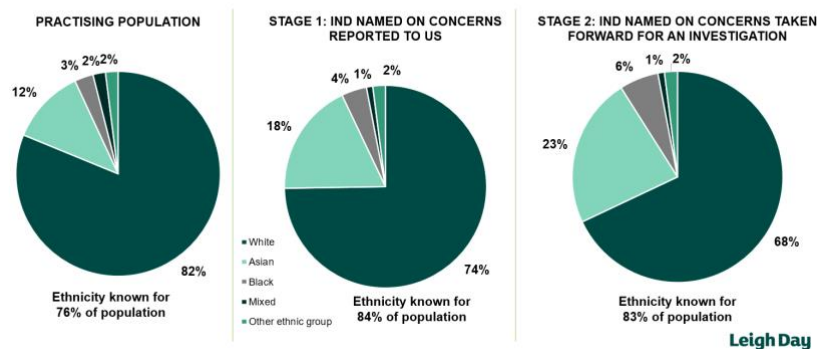
Stage 3: individuals named on cases with an internal sanction;

Stage 4: the cases concluded at the SDT by way of a hearing or an agreed outcome

2.6.7. For stages 3 and 4 the SRA also produced statistics for several outcomes in each stage.

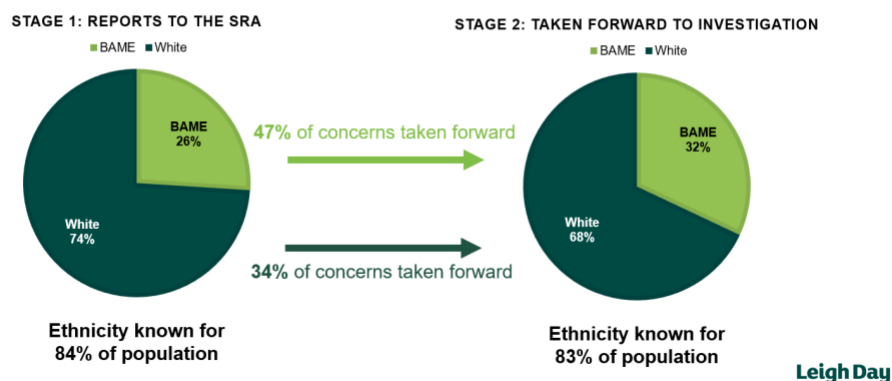
2.6.8. The statistics show solicitors who identify as Asian and Black are overrepresented in reports to the SRA (stage 1), based on the practising population. The picture relating to concerns taken forward for investigation by the SRA (stage 2) looks even worse. There are proportionately twice the number of investigations for Black solicitors in the SRA's processes as there are solicitors in the practising population and almost twice as many for Asian solicitors.

Solicitors from the global majority continue to be overrepresented in reports to and investigations by the SRA



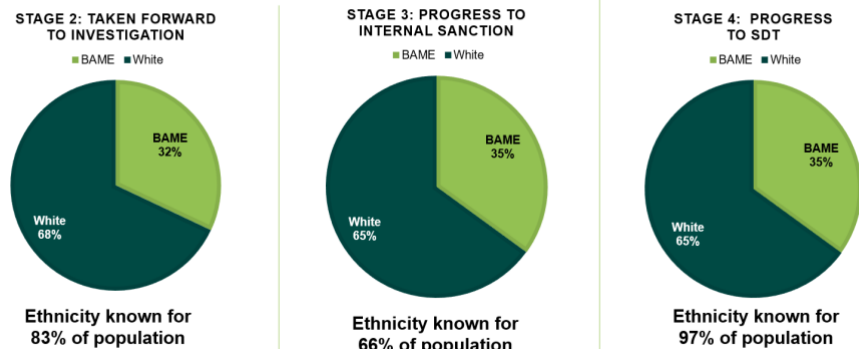
2.6.9. Looking at the data another way, 47% of concerns raised about global majority solicitors were taken forward to investigation, compared with only 34% of concerns about white solicitors.

Solicitors from the global majority are overrepresented in concerns progressed from the reporting stage to investigation



- 2.6.10. The SRA then groups the data and so looking at the split between white and global majority solicitors at stage 2, 68% of cases relate to solicitors who identify as white and 32% of solicitors who identify as Black, Asian, Mixed or Other ethnic minority. At both stages 3 and 4, the split is 65% and 35% respectively.

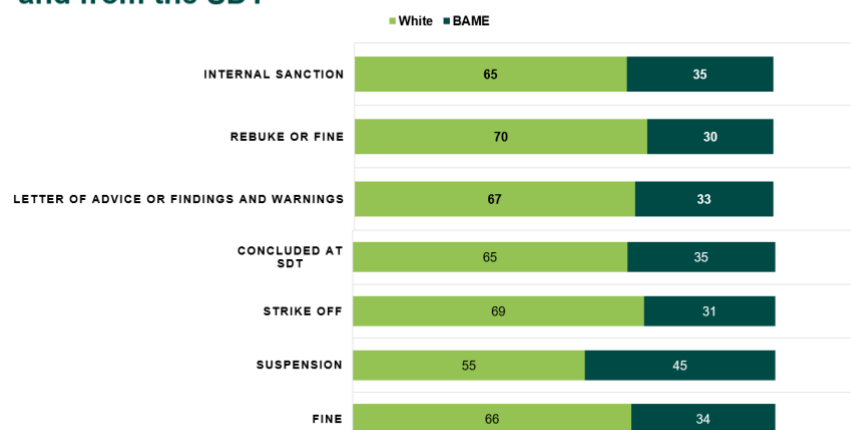
No statistically significant difference in determination and outcome



Leigh Day

- 2.6.11. The difference between stage 2 and stage 3 and 4 is 3%, which the SRA describes as “not a statistically valid differentiation.” This gives the impression that, once in the SRA’s processes, there is no change to the proportions of cases progressing, based on ethnicity.
- 2.6.12. The SRA’s reports split out sanctions to look at internal sanctions from the SRA (within stage 3) and sanctions from the independent Solicitors Disciplinary Tribunal (within stage 4) separately.

Percentages of internal sanctions (from the SRA) and from the SDT

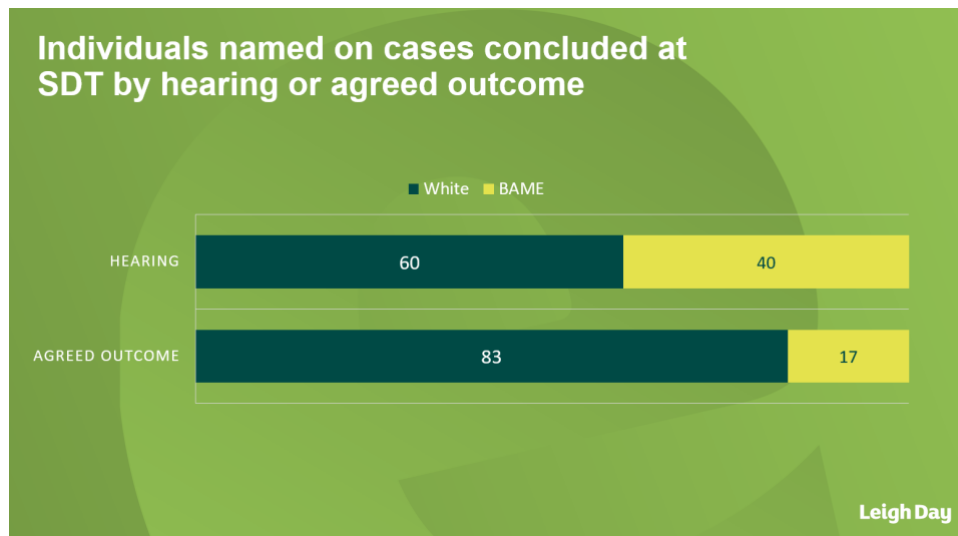


Leigh Day

- 2.6.13. The sanctions appear to reflect the proportions of global majority and white solicitors seen at stage 3 and 4, with a couple of notable exceptions:
- 2.6.14. Global Majority solicitors appear to be overrepresented in the “suspension” category, relative to the proportion of solicitors at stage 4 of the process; and,
- 2.6.15. in relation to agreed outcomes:¹⁴
- 2.6.15.1. only 17% of agreed outcomes related to Global Majority solicitors. This equates to only 12% of cases involving Global Majority solicitors that make it to stage 4.

¹⁴ An agreed outcome is where the SRA agrees an outcome with the regulated individual and submits it to the Solicitors Disciplinary Tribunal for approval rather than the case going to a full hearing

- 2.6.15.2. White solicitors accounted for 83% of agreed outcomes, meaning an agreed outcome was the result in 31% of cases at stage 4.



- 2.6.16. Against this backdrop, the panellists provided their views. We provide a summary of some of the key points made by each panellist in relation to the three topics identified above and the additional questions below.

2.7. Professor Gus John



Academic and author of the ICCR

Professor Gus John is an award-winning writer, lecturer, researcher, advisor to international and national governments and academic.

Professor John is also the author of the Independent Comparative Case Review (“ICCR”) commissioned by the SRA ‘to identify whether there is disparity in the way the SRA applies its policies and procedures in dealing with BME practitioners as compared to others with a view to identifying potential improvements to such practices, policies and procedures to maximise fairness and consistency...’. The ICCR was published in 2014 and was the most recent review of the topic, prior to the publication of the updated SRA data in December 2020.

- 2.7.1. It was disappointing to see that the SRA has not provided information on the extent to which the recommendations from the ICCR have been applied across the organisation between 2014 and the new report.
- 2.7.2. The SRA seems to have concentrated a lot on diversity and what it has been doing to help its staff understand protected characteristics. However, the SRA has provided no information in its recent reports about how it monitors and quality assesses the work of individual supervisors who engage with solicitors and firms. There needs to be evidence regarding how the SRA interrogates the

conduct of its own professionals and monitors how its individuals exercise their discretion. “You can’t right racial wrongs by doing wrong things more competently.”

- 2.7.3. There is still a need, as recommended in the ICCR, to look at how the SRA’s regulatory interventions achieve the regulatory objectives in the Legal Services Act 2007, particularly promoting the public interest, improving access to justice, encouraging an independent, strong, diverse and effective legal profession.
- 2.7.4. Many of the Global Majority solicitors subject to investigation are in small firms, sometimes with one partner. Importantly, they are serving vulnerable communities in urban or suburban areas. In addition, they have had to manage the pressure of austerity and the cuts to legal aid on their services to the public. These challenges need to be addressed in the context of SRA action, to ensure the regulatory objective of improving access to justice is adequately pursued.
- 2.7.5. There is disproportionality in the complaints made to the SRA (stage 1), but there is also a need to understand what baggage the decision-makers are bringing when they come to look at complaints.
- 2.7.6. Solicitors from the Global majority come to Professor John asking him to intervene with the SRA on their behalf. More often than not it transpires that the investigators have placed extraordinary pressure on the solicitors concerned. It is not clear what mechanisms the SRA has for interrogating the practice of these individuals within its organisation, and the kinds of training that happened after the ICCR do not address this issue. Most people experience the SRA as in opposition to the profession.
- 2.7.7. The SDT rarely challenges the SRA on the cases it refers, so questions also need to be asked of the SDT.
- 2.7.8. There needs to be debate about whether the SRA could achieve the same outcome, protecting high standards in the profession, by taking other decisions.
- 2.7.9. Experienced and practising solicitors should form part of the body of people who go into firms to investigate, similar to Ofsted. At the time of writing the ICCR, many of the senior investigators had police backgrounds. Teams of people need to be found that the profession can have confidence in, and their work then needs to be monitored and impact-assessed.
- 2.7.10. The SRA should also engage in providing developmental support to people, particularly those working in complex situations and small firms dealing with vulnerable communities.

2.8. Jacqueline McKenzie



Partner specialising in immigration law, Leigh Day

[Jacqueline Mckenzie](#) is a solicitor and a Grenadian Attorney. She is powerful advocate for change in immigration law.

Jacqueline was a Director of McKenzie Beute and Pope, a London law firm specialising in immigration and asylum law, and has acted for over 200 claimants in the Windrush scandal. In July 2021, Jacqueline joined Leigh Day as a partner. Jacqueline is ranked at number seven in the Top 10 of the Powerlist 2021.

- 2.8.1. Due to her perception of the issue of disproportionality, Jacqueline McKenzie chose not to have her firm regulated by the SRA, but rather by the OISC.¹⁵ Part of this perception was the recognition that a lot of global-majority-led firms doing grassroots work to help vulnerable communities in the past ended up closing. Though setting up a firm is very difficult and requires significant resources, more firms led by people from the Global Majority are now being set up.
- 2.8.2. There might be some areas of law that attract more complaints, like immigration and asylum law, and it may be that most of those complaints do not go anywhere as they are nonsensical.
- 2.8.3. There is a need for more data, more analysis and deeper data. However, what needs to be revisited is the question of what should lead to punitive action and what constitutes a disciplinary issue. The culture of scrutiny means that people can be afraid to be creative and sometimes afraid to act at all. That has a knock-on impact on access to justice. Because of the underlying perceptions that society has towards certain groups, members of those groups are going to fare worse, irrespective of the amount of training and initiatives going on in relation to diversity.
- 2.8.4. More engagement is needed with representative groups, but, overall, there needs to be political discussion around the issues being raised by the Black Lives Matter movement, as well as searching individual and organisational souls to understand how to promote change.

¹⁵ "OSIC" is the Office of the Immigration Services Commissioner, which regulates immigration advisers; ensuring they are fit, competent and act in their clients' best interests. OSIC is an executive non-departmental public body, sponsored by the Home Office.

2.9. Angela Latta



Head of Regulatory Performance and Oversight, Legal Services Board

Angela Latta leads on the key interfaces with the regulators on regulatory performance policy, performance review and remedies.

She is also the project sponsor for two of the longer-term LSB projects on Ongoing Competence and Diversity.

- 2.9.1. There is a continuing endemic problem that we have not managed to find a solution to, across the legal services regulators and other sectors. However, the SRA has an intense focus on diversity and a sophisticated approach. In any broad range of activities, there are always areas which an organisation has not focused its attention on to the extent that people expect, but the SRA has been open and transparent about what it has focused on.
- 2.9.2. The SRA's board has the responsibility for making sure that the recommendations of the ICCR are carried through.
- 2.9.3. The issues are complex, and it could be argued that they are more structural and cultural failures. The SRA needs to look more deeply into the reasons for the outcomes it sees, part of which involves looking at the demographics of the complainants.
- 2.9.4. There is a need for more evaluation in terms of data on which interventions work and which do not.
- 2.9.5. The LSB performance framework is at the moment focused on process, but this will be reviewed. Diversity is a major theme which will be taken forward. The LSB is currently looking at its entire performance framework and how it can make sure there is greater accountability and that the regulators are meeting all of the regulatory objectives.
- 2.9.6. The LSB is planning to review its enforcement policies, looking at how it evaluates and has assurances about the regulators' enforcement policies, part of which includes looking at how the LSB might audit the procedures the regulators follow. The LSB does not have the powers to intervene in individual cases, but can look at systems and processes.
- 2.9.7. The SRA is sophisticated in its approach, genuinely reflective of reports like the ICCR and committed to improving diversity. Regarding supporting small firms, this is something that the Law Society should do, as the representative organisation for the profession.

2.10. Gideon Habel



Partner and Head of the Regulatory & Disciplinary team, Leigh Day

Gideon is a partner in Leigh Day's Regulatory & Disciplinary team.

He specialises in defending and advising solicitors and firms responding to SRA investigations and in proceedings before the SDT.

Gideon has a particular interest in exploring ways to make the regulatory processes fairer and is ranked as an Up and Coming individual in Chambers & Partners 2021.

- 2.10.1. The data is not sufficient in its current form to give an understanding of what progress, if any, has been made since 2014. The SRA does not have control over the first stage, complaints, where there is an over representation of solicitors from the Global Majority. However, the SRA's report does not explain the increased disproportionality at stage 2, that is complaints taken forward to investigation, in circumstances where the SRA said it would be improving its decision-making and engaging in quality control in its 2019 Enforcement Strategy.
- 2.10.2. The SRA's statistics imply that, as there is no statistically significant difference between the proportion of white solicitors and solicitors from the Global Majority that are taken forward for investigation and those that go through the SRA's internal sanctions processes (stage 3) or are referred to the SDT (stage 4), once solicitors are in the disciplinary system there is no disproportionality in outcome based on ethnic identity. However, we need more detailed information about the allegations underlying particular outcomes to understand the nuances of the picture.
- 2.10.3. We cannot ascertain, on the basis of the SRA's recent reports, what its internal scrutiny has looked like and, therefore, what improvements (if any) have been made in terms of the quality of decision-making.
- 2.10.4. It is too early to tell whether the SRA's new enforcement strategy and the move to Standards and Regulations¹⁶ will make any difference to the issue of disproportionality. This is because it typically takes one to two years for complaints to make their way through the SRA's processes; it will therefore take time for any changes to be reflected in the data.
- 2.10.5. It will be important, going forward, to have more qualitative and quantitative data:
 - 2.10.5.1. quantitative data to enable a better understanding of the SRA's processes, how they translate in specific cases and tying those cases to outcomes; and,
 - 2.10.5.2. qualitative data to shine a light on the decision-making criteria that have been applied and marrying them back to the enforcement strategy.

¹⁶ The SRA's Standards and Regulations 2019 came into effect on 25 November 2019

- 2.10.6. The SRA could contribute towards levelling up by putting legal expenses insurance back in the minimum terms for professional indemnity insurance).
- 2.10.7. The SRA is a public interest regulator and is not there to regulate in the interests of the profession; however, that is not to say it does not need to look at how the way it regulates impacts the profession.

2.11. Ranjit Sond



President of the Society of Asian Lawyers

Ranjit is the president of the Society of Asian Lawyers, which aims to develop relationships with regulators, inform and educate its community and develop the legal profession within the Asian community in the UK.

Ranjit is an experienced solicitor, a visiting lecturer and a mentor.

- 2.11.1. More data and more detailed data is needed. For example, the Society of Asian Lawyers has asked the SRA for a breakdown of the data of what happens to concerns reported to the SRA (which the SRA divides into: not in our jurisdiction to investigate, redirected internally or sent to LeO, investigation into matter remains ongoing, investigation carried out, investigation not necessary). There is an overall breakdown of this in the SRA's Upholding Professional Standards report, but no additional breakdown by protected characteristics. We also need the demographic data of the people making the complaints.
- 2.11.2. Although there are clearly wider societal factors at play, there is an increase in disproportionality once complaints are within the SRA's processes which needs to be looked at.
- 2.11.3. The SRA is keen to sit down with SAL and other groups to improve things, and has already reached out to SAL to discuss the report, although the discussion has not yet occurred. There has not previously been dialogue between the SRA and the SAL on this specific issue. It is important for these representative groups to be involved as they have sizeable memberships.
- 2.11.4. There is a need to drill down and understand how the decision-making process is being applied on each individual case and what criteria are being used. Everyone has biases, and it is important to understand how this translates into work and decision-making. We need to understand to what extent the SRA is scrutinising and monitoring its own employees.
- 2.11.5. The SRA has said it wants to introduce an in-house arm's length quality assurance team to look at performance; an in-house team is part of the solution but there has to be an independent body as well that can look at, monitor and audit the work the SRA is doing.

2.12. Questions and answers

- 2.12.1. During the event, attendees were able to pose questions to the panel. The questions and answers raised during the event are summarised below.

“Do you think the fact that many COLPs in firms come from the BAME population could be a reason for the number of prosecutions involving BAME solicitors?”

We do not know, but there is potentially a way for the SRA to get this data if people who are COLPs are identifying themselves to the SRA as being from a Global Majority backgrounds and if the SRA is able to bring together data on who is a COLP with ethnicity data. It is logical to think, as solicitors from the Global Majority are overrepresented in small firms, that there would be more COLPs from the global majority in those firms. (Gideon Habel)

“What does the panel know about racial diversity and training at the SRA and what does the panel think could be done on that front to assess and ensure decisions from the SRA are free from discrimination or bias?”

The LSB is not involved with what training goes on at the SRA, but it is likely to be quite sophisticated given the impressive resources the SRA devotes to diversity initiatives. However, to have an answer to this question, someone from the SRA would need to come along to the next panel on this topic. (Angela Latta) [again, the SRA was invited to take part in the second panel discussion but declined to do so]

“What can be done to give confidence to regulated individuals from the global majority when they go before the Solicitors Disciplinary Tribunal, and what can be done to improve representation of global majority individuals on panels that hear cases prosecuted by the SRA?”

If people have these perceptions of disproportionality and there is this data in its raw form, they are not going to feel very confident. If I were under scrutiny, I would be thinking whether I might be treated more harshly as a black woman. To improve confidence in those who are regulated, we need to sure that disproportionate outcomes are not happening and that will take time. In terms of getting better representation, most organisation are not reflective of the population in any way. However, more representation is not always the answer; it is about having the right people with the right training. (Jacqui McKenzie)

What would give people more confidence was if there were a procedure by which a solicitor could measure their outcome to know that the process is fair and transparent. In terms of representation from the Global Majority at the SDT, Ranjit Sond noted that if he went into a room and saw somebody who looked like him, that would put him at ease and would perhaps reduce some of the imposter syndrome some people experience. It is time to push for real change on this. (Ranjit Sond)

“Does the regulatory regime need to change in order to weed out racism or discriminatory behaviour by the regulated and the regulator and, if so, what would that look like?”

Certainly change is needed. The SRA should look back at each of the recommendations in the ICCR and look at the actions it took and how it went about measuring the impact of those actions on the culture of the organisation, the regulated profession and the regulatory objectives.

There is an issue of culture and a need for culture change. We understand it is a long process, but it is imperative to look at who the SRA is, what their understanding is of the issues and who they look to for help and guidance.

There is a need to look at endemic and structural issues, as well as people issues. If the regulatory regime has changed, but is being applied by the same people with the same attitude to regulation, the results are likely to be the same. The SRA needs some different people, with a different attitude to regulation and a different approach to the purpose of regulation; there needs to be a root and branch dissection of the organisation and its purposes (Professor John).

2.13. Comments and experiences

- 2.13.1. Attendees also shared comments and experiences in the online event's Q&A function. A selection of those comments are included in this paper because they inform the picture of this topic for the entire regulated community – those regulated, regulators, representative body and independent tribunal.

"Do you think the regulatory regime for BAME lawyers would work better if there was one legal regulator?"

"If it is appropriate to update the language of 'BAME' to refer to people of colour as 'global majority' should we also stop the dilution in focus that arises from the use of the term 'diversity' whilst ignoring the most insidious complex matter of all grounds for discrimination, namely racial inequity especially in professional white spaces? The generalised term 'Diversity' is itself becoming a form of colonisation whilst also side-stepping the intersectionality of race with other personal characteristics."

"How does the issue of disproportionality of disciplinary proceedings relating to global majority solicitors get mirrored in other professions and positions of leadership and if there is a similar pattern what and who are the common factors that act as barriers to stop the rise of the global majority to address institutional racism e.g. role of white leadership and white HR, white judiciary?"

"Does discrimination law and its application and the methodology for detecting it need to be updated to catch up with developments in critical race theory to address the issue of racial micro-aggressions and selective incivility that is a feature of the lived experience of global majority working in 'professional spaces' where the nature of racism is more nuanced, insidious and covert?"

"How racially diverse is the SRA and LSB - as regulators? are they best placed to design the policies, practices systems, procedures and their enactment?"

"Do you think SRA bias could be reduced if the demographic representation of the SRA itself was improved? I'd be interested to know what proportion of SRA employees/decision makers are from the Global Majority."

"Professor John's report said: 'Our review found, that while regulatory disproportionality is correlated with the ethnicity of BME solicitors, it is not caused by their ethnicity rather they were caused by wider socio-economic factors, such as access to the profession, areas of practice etc'. Is this not a wider and more fundamental issue that needs addressing by more bodies than the SRA? The tone of many of the comments seems to be indicating that the problem is mainly at the SRA."

"The 'data' is only part of any process if we want to improve systems within a 'Just Culture' of learning, listening and no-blame. 1. Who is raising the complaints - clients or firms? and 2. What types of issue/ cases /errors are Global Majority making? - is there a training issue or 'Super' Human error?"

"More data needed. How do we ensure our children's children actually see change? Pleasure to meet Gus John. Great Panel."

"Why do we not have the ethnic data on the decision-makers at each stage to compare to the data against the ethnicity of the solicitors being disciplined and the outcomes of the decisions?"

"I think the reason behind the unjustified persecution of BAME lawyers by the SRA simply comes down to institutional racism. We work in a profession that is overtly elitist and favours white solicitors over non-white. I believe there is complicity between the government and the SRA. I witnessed this when the standard of proof for

enforcement action was lowered after the whole fiasco with the Leigh Day case.

When the government does not like BAME firms challenging the home office they resort to regulatory action. I don't think dissecting the report and data will help but instead we need to challenge the SRA directly on the makeup of their institution and challenge them to be more representative on their panels. What does the panel think?"

"Should we be monitoring the ethnicity of the complainants and the those representing them v representing respondents (given the disproportionality) in outcome for the global majority?"

"Do we need accreditation of disciplinary investigators and training in an updated methodology, as well as monitoring their ethnicity against the outcomes for global majority?"

"Agreeing with Gideon and Ranjit - with all professional standards - the categorisation of initial complaint from clients / practice can direct whether the final outcome ends up in a hearing or agreement. (Eg Midwives and errors during delivery - Global Majority Healthcare staff automatically treated punitively by their managers for tragic outcomes)"

"Part of the problem appears to be the difficulty in recovering costs from the SRA when challenging their decisions and their unreasonably high costs. I've seen reported cases that are fairly straight forward where the solicitor in question admits their culpability but yet the SRA still slams them with a high costs bill. Maybe if the rules were changed in relation to costs, the SRA would think twice before pursuing others for unjustified reasons"

"Professor Gus is spot on - we must examine not only the design of the policies and procedures but how they are enacted. There is evidence to show this is not due to 'unconscious bias' but applied knowledge to conceal racially motivated use of discretion which is free of scrutiny and therefore accountability. I have seen this in insidious way key individuals will collude together to avoid disclosure, inappropriate levels of redactions, patterns of selective incivility and zero empathy."

"Firstly, at what point does (or should) the SRA become accountable for its poor outcomes on regulatory equality given all the reports showing the same statistics? Secondly, to improve its performance on the sifting of complaints from the public, should the SRA collaborate formally with other legal regulatory organisations, e.g. the OISC?"

"LSB has the role to ensure that the SRA delivers against the regulatory objectives -would it be intrusive if you have complaints that the SRA are not delivering against one of those objectives-strong, independent diverse profession?"

"Angela Latta talks the talk but refuses to take accountability as a regulator but is not taking its role seriously - white led organisation reinforcing the status quo in another white leadership organisation. Further, If the school and university [sic] curriculum is not decolonised to teach anti-racism v becoming unmoored from our history is it no surprise we keep replicating institution racism?"

"To Gideon's point, empirical analyses are only as good as the specific data being assessed. As per, Baroness Hale, "In the law, context is everything." One of the most salient aspects of the "Rule of Law" is that of relative certainty of outcomes of like cases. Not publishing empirical data on how like cases are decided vis-a-vis white v BAME solicitors, will never provide the requisite transparency to alleviate the current trend of disproportionality. Professor Gus John seems to have understood what the SRA has not, sometimes the people making the decisions need to be held accountable (i.e., they are not infallible). "Power corrupts, and absolute power corrupts absolutely." Thus, why is the SRA not being transparent in this context? The fact that like cases are not being decided in like ways, and that there is a corollary effect being observed between most severe reprimands and BAME backgrounds is disconcerting."

"Is it not a potential failure of process? You have expressed concerns about the enforcement team at the SRA in the past, including failure to provide information requested by you which was not followed up in the subsequent review 3 years later."

"...My studies over the past 20 odd years including one that explored cultural meanings of respect and how these meanings manifest in behaviours, revealed that cultural socialisation is the 'lens' we wear wherever we go, that shapes our beliefs about self and other of cultural/ethnic differences (I liken this to brainwashing). If the 'other' is perceived based on negative stereotypes or biases, then they are likely to be treated in this manner in the workplace. Furthermore, those who behave in this manner, might not be consciously aware of their behaviour. The Metropolitan Police Service, has recently commissioned me to help them to be more culturally aware. For any organisation to achieve this requires self-scrutiny and critique. I suspect the issue of disparity in the way the SRA applies its policies and procedures in dealing with BME Practitioners, referred to by Gus in his report, is culturally situated. What's your view?"

"Jacqui Mackenzie is spot on, we constantly allude to the issue that we are a racist society but are side-stepping it. 'Unconscious Bias' training is problematic and not delivering the change as it has become a tick box, statutory defence exercise that dilutes the opportunity. For real change that can only come from uncomfortable conversations and having resilience to talk about racism, from a position of self-examination and awareness of our position and role in the system v seeing oneself in a binary way as being either racists or not racists v anti-racists"

"It is true that at present, there is a greater proportion of global majority solicitors in small firms. One of the difficulties is that regulation impacts disproportionately on these firms. The SRA should review their approach to all small firms and put greater effort into ensuring such firms know how to and can comply. An example is AML - the regulations are complex and will become increasingly so with no allowance for size of firm and size of transaction. Firms are confused and cannot possibly have the resources to deal with compliance in the way envisaged."

"Many underwriters are refusing to offer directors liability insurers to law firms now-particularly small firms."

"It seems the panel want some reassurance the activities of the SRA are fair. Part of the issue is that an inhouse auditing team is a good idea. As long as that is published to the LSB or has public observers. Let us not forget the world is growing even more complex than we would like to admit. I think an easy way is to have a comprehensive feedback loops whereby KPI's are directly linked to the integrity of diversity objectives. Agree?"

"Probably not possible in a hardening market. It would in fact mean that a greater number of small firms would be unable to get MTC at all and would thus have to close."

"With all due respect Professor Gus, would you not agree that each law firm, with the variety and range of ways it operates (how it holds money, how it conducts legal work, and the range of legal work it does) makes regulatory issues particularly difficult to find. Issues can range from Fraud, money laundering, fitness to practice, money missing from client accounts, a poorly done job etc) the scope is exceptionally broad. What I would suggest as an alternative in order to reach what I think Gus John may be pointing towards - which is experts engaging in expert problems, is to have more specialised experts."

"Prof Gus is spot on - the quality of the supervision and investigator qualities and choice of their background (i.e. not ex-Police) needs to change. The criteria for what/who makes an effective and fair investigator as well as how their practices are scrutinised needs to be addressed - does there need to be an overhaul of the selection and training process for investigators as this affects all professions where global majority are seeking to rise?"

"Excellent analysis from Prof Gus- amazed at the proportion of police officers"

"Regulators in other arenas see their role as being to assist the regulatory community to comply. I have seen no evidence of this from the SRA."

"How much of the day-to-day SRA investigative KPI's relate to diversity and inclusion. Do you think there could be a world where the SRA are able to receive direct feedback at each stage of every investigation (both qualitative and quantitative) to inform future decision making?"

"There are approximately 10,000 firms and 4,000 of these are sole practices. Given that each firm has to have a COLP it seems likely that there will be a greater proportion of COLPs from Global majority but this does not account for the issues"

"Thank you for a very interesting session. I am not a practising solicitor, but would suggest that the situation mirrors the wider societal challenges BAME professionals and their organisations face. That indicates a need for structural and organisational change."

"Is there a fear culture at the SRA? Would their own investigators be able to speak up should they witness any discriminatory practices?"

"Disappointed that the narrative in relation to small firms appears to have been adopted without actually looking at the data and the manner of operation of the SRA as an example of what is wrong with this debate. The SRA, if one follows them closely, is clearly unfit for purpose for a number of reasons. The issue of confirmation bias and the exercise of discretion being ignored as is the fact that the SRA do not follow their own policy documents in many cases."

"Regarding the SDT they need to follow the rules of evidence and open justice as a very basic starting point. Maybe the membership of the Tribunal needs to be shaken up and a few district judges be drawn into the membership. A fair hearing first and foremost."

"Is there a way of holding the SRA to account for any statements made to engage with the various issues suggested? Basically, to hold them to act on the statements made rather than just leaving things at that."

"Gideon Habel is right the homogeneity of decision making panels is important to inspire confidence of shared lived experience. It took me 18 years of my 20 years serving on employment tribunals to be on an all global majority panel; it took 38 years of my 40 years in HR profession to be on an all global majority recruitment panel - white privilege is never having to think about this."

"Are global majority initiatives directly linked to the KPIs of the SRA and how are they measured?"

"How much more time does SRA and LSB and white people per se need to do the right thing and accept the [sic] legacy of colonialism, slavery that has a long arm reach into today's inequities that plague the global majority (sometimes with the complicity of the same for close proximity to power for self-interest). The law has not delivered blind justice, this is a myth. Thank you, Gus for saying "You cannot right the wrongs by doing this more efficiently"'"

Annex 3

Glossary

BAME/BME	Black, (Asian) and minority ethnic
BMA	British Medical Association - the trade union and professional body for doctors in the UK
COLPs	Compliance Officers for Legal Practice. The responsibilities of a COLP are set out in paragraphs 9.1 and 9.2 of the Code of Conduct for firms .
EDI	Equity, diversity and inclusion (historically also used to describe “equality, diversity and inclusion”)
Global Majority	A term that refers to people who identify as any ethnicity that has historically been racialised as an “ethnic minority”. Collectively these individuals represent a majority of the world's population, making them the “Global Majority”.
GMC	General Medical Council - the regulator of doctors in the UK
ICCR	The “ Independent Comparative Case Review ” completed by Professor Gus John and published by the SRA in 2014
LSB	Legal Services Board – the oversight regulator of legal services in England & Wales
MTC	the minimum terms and conditions with which a policy of <i>qualifying insurance</i> is required by the SRA Indemnity Insurance Rules
OSIC	The Office of the Immigration Services Commissioner , which regulates immigration advisers. OSIC is an executive non-departmental public body, sponsored by the Home Office.
PII	Professional Indemnity Insurance
SDT	Solicitors Disciplinary Tribunal - The Tribunal adjudicates upon alleged breaches of the rules and regulations applicable to solicitors and their firms. It is independent of the Law Society and the Solicitors Regulation Authority.
SRA	Solicitors Regulation Authority – the regulator of the solicitor profession

About the authors

This paper has been prepared by Leigh Day's Regulatory & Disciplinary team, with contributions from the panellists from the two events in the series. Our thanks to the panellists for sharing their insights.

We will be continuing to seek ways to press for change around this essential issue and we welcome opportunities to discuss the themes and recommendations set out this paper. You can follow or contribute to the conversation by looking out for our hashtag #QuestForRegEquality on LinkedIn and Twitter.



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The authors would like to thank: [Alika Lee-Crandon](#), FBM, Romany Kisbee-Batho and Callum Moran for their contributions to the events and this report; and all those in the Leigh Day events and marketing teams who made the events possible; and in particular [Frances Swaine](#) for her visionary leadership of the team in its early days and in inspiring this series.

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