Solicitors Regulation Authority

Implementing the Pearn Kandola recommendations (December 2011)

Updated 16 May 2013

The SRA commissioned Pearn Kandola, a group of business psychologists specialising in the area of diversity, to research the disproportionality of regulatory actions taken against black and minority ethnicity (BME) solicitors, as reported by Lord Ouseley in 2008. In July 2010, Pearn Kandola's findings were published [https://www.sra.org.uk/sra/equality-diversity/archive/research-disproportionality/] and a number of recommendations made:

1. Make solicitors aware of the disproportionate number of cases being raised with the SRA against BME solicitors
2. Collect monitoring data about the people and organisations reporting cases to the SRA
3. Provide guidelines on what constitutes a fair complaint
4. Review the support and supervision available to trainees and newly qualified solicitors
5. Review how the SRA monitors the support provided by firms to trainees and solicitors
6. Review how effectively the SRA controls ongoing accreditation and Continuing Professional Development (CPD) of solicitors
7. Review the Qualified Lawyers Transfer Test (QLTT) process
8. Work with the Legal Complaints Service (LCS) regarding referrals
9. Review decision making at the first stage of matter handling
10. Review decision-making processes in relation to conduct cases
11. Review referrals to the Solicitors Disciplinary Tribunal (SDT)
12. Review decision-making processes in relation to the imposition of practising certificate (PC) renewals
13. Review decision-making processes in relation to solicitors' accounts and practising restrictions

14. Review the guidelines concerning referrals of cases to Committee/Panel
15. Consider using unique identification numbers to replace demographic details to reduce unconscious bias
16. Improve data collection, recording and monitoring

We have carried out a series of case audits of our decision making in response to recommendations 9 to 12 and 14. The full reports are available from the links below.

- SRA report on recommendation 9 (PDF 12 pages, 317K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-9.pdf?version=4a1ad2]
- SRA report on recommendation 10 (a) (PDF 12 pages, 275K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-10a.pdf?version=4a1ad2]
- SRA report on recommendation 10 (b) (PDF 12 pages, 317K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-10b.pdf?version=4a1ad2]
- SRA report on recommendation 11 (PDF 15 pages, 210K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-11.pdf?version=4a1ad2]
- SRA report on recommendation 12 (PDF 24 pages, 236K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-12.pdf?version=4a1ad1]
- SRA report on recommendation 13 (PDF 38 pages, 612K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-13.pdf?version=4a1acb]
- SRA report on recommendation 14 (PDF 30 pages, 472K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/pearn-kandola-audit-recommendation-14.pdf?version=4a1ad2]

The report below sets out the progress we have made against these recommendations and provides a summary of the decision making audits and our findings.

Introduction

1. Lord Ouseley's independent report [https://www.sra.org.uk/ouseley] into disproportionate outcomes for black and minority ethnic (BME) solicitors was published in August 2008. The report

has been valuable in helping the SRA focus its equality and diversity priorities over the next two years.

2. The SRA's Equality and diversity strategy, which was published in January 2009, set out how it intended to implement the recommendations of the Ouseley report and how it intended to promote and progress equality and diversity for all. We have made significant progress in achieving our equality and diversity vision which was recognised by Lord Ouseley in his first interim review (PDF, 9 pages, 47K) [https://www.sra.org.uk/globalassets/documents/sra/equality-diversity/ouseley-interim-report-june09.pdf?version=4a1aea] which was published in June 2009. Lord Ouseley found that the ethos of the SRA was changing where people were more open to discussing equality and diversity issues instead of being defensive. He also found that the Board and Senior management team had risen to the challenge and provided clear leadership in driving the agenda forward.

3. One of our strategic objectives, as set out in our Equality and diversity strategy, was to improve our understanding of the reasons for disproportionality in regulatory outcomes. We commissioned Pearn Kandola (PK) to undertake research into the reasons for the disproportionality and their report was published in July 2010. The report stated that while the SRA needed to undertake some further work to ensure that decision making processes were fair and free from bias, the issue of disproportionality itself was complex and not something that the SRA could tackle by itself. The SRA Board accepted the majority of the recommendations set out by PK and published an action plan to implement these recommendations.

4. The timescales for delivery slipped as a result of the transformation taking place within the SRA over the past year to prepare for implementation of outcomes-focused regulation (OFR) and alternative business structures (ABS). Therefore, we felt it more sensible and helpful to implement the recommendations within the transformation timetable as it was important that any learning gained was fed into the transformation change programme.

5. Alongside the implementation of the PK recommendations, we have continued to monitor the diversity outcomes with regard to regulatory activities and our decision making. We recently published our diversity monitoring report for 2010, which shows a similar pattern of disproportionality and which remains a concern. Therefore, gaining a better understanding and tackling disproportionality is still one of our key priorities as set out in our Equality Framework for 2011/2012.

6. We have been working on the PK recommendations over the past year by carrying out a number of audits of our key regulatory decision-making processes. This report sets out the progress we have made against those recommendations and actions as we move forward as an outcomes-focused regulator.

7. We have incorporated at Appendix 1 [#annex1] the executive summary of the PK report and the full report is available [https://www.sra.org.uk/sra/equality-diversity/archive/research-disproportionality/] .

Progress against the recommendations

8. Many of the recommendations made in the report have been taken up and delivered in the context of our move to outcomes-focused regulation. The work we have done to implement the recommendations has been done in accordance with the transformation timetable rather than to the deadlines originally agreed in the action plan.

9. We have set out our progress against the PK recommendations in three sections:

    1. the recommendations arising from disproportionality in the cases coming into the SRA (recommendations 1–3 and 8);
    2. the audits recommended in relation to key aspects of our regulatory decision making (recommendation 9–14); and
    3. the recommendations arising from the over-representation in our regulatory work of solicitors at the start and end of their

careers and those who have come to the profession from other jurisdictions (recommendations 4–7).

Disproportionality in cases coming into the SRA

10. In recommendation 1 PK emphasised, "it is important that solicitors are made aware that the SRA have a disproportionate number of cases raised against BME solicitors. Currently, some forms of reporting suggest that the disproportionality experienced by BME solicitors is purely due to the SRA; the results of this research indicate that this clearly is not the case."

11. We made this clear when we published the PK report in July 2010 and have emphasised the point in our most recent annual monitoring report for 2010.

12. PK also recommended that we monitor the sources of data referred to us as "collecting this referral source data ... will equip the SRA with significantly more helpful information in addressing the disproportionality that is coming in through the organisation's front door" (recommendation 2).

13. With this monitoring in place, it was envisaged that we would be able to work more closely with those sources of data where there was marked disproportionality to identify and address the reasons for this.

14. One example was the disproportionality in the referrals from the Legal Complaints Service (LCS), which led to recommendation 8: "It is likely that the SRA would benefit from working in partnership with the LCS to improve their decision-making processes in terms of raising cases to the SRA. Reviewing these processes and providing guidelines for use by the LCS would be particularly helpful given that BME solicitors are twice as likely to have a conduct case referred by the LCS raised against them, and that in turn these cases are more likely to not be upheld by the SRA."

15. As the LCS closed in March 2011, we are now working with the Legal Ombudsman, the organisation now dealing with complaints from the public about their solicitors. The Legal Ombudsman referred 40 cases of misconduct to the SRA in the first three months of 2011, a reduction in number than those referred to us by the LCS over the same period last year. We have a Memorandum of Understanding in place with the Legal Ombudsman who have agreed to provide us with aggregated equality data on consumers raising the complaints that are referred to us.

16. We are currently reviewing how to collect and monitor referral source data in the context of our new risk-based approach to regulation. We receive a large amount of information and intelligence each year from a wide range of sources. In 2010, we received and assessed 4,585 (46 per cent) pieces of information from lay informants, 4,227 (42 per cent) from external organisations including government departments and other regulators and 4 per cent from solicitors.

17. As lay informants are the largest source of referrals, we have focused our monitoring on this group, collecting diversity data from informants for 2009 and 2010, although only a small proportion of the total informant population returned the questionnaire in both years. The 2010 monitoring report sets out the diversity data for those informants who responded to our monitoring questionnaire in 2010, with a chart indicating the trend over 2009 and 2010.

18. In the past, we would open a new file for each report received from an informant and consider the most appropriate action to take.

19. We are now much more focused on risk, directing our resources to the areas of greatest risk to the public interest, and high-risk issues are given priority. Our new approach is explained in more detail on our website, but in summary, all information we receive is given a risk scoring to help us decide whether to use the information to supervise a law firm more closely, to use it as part of a formal investigation of a particular law firm or to keep the information for future use.

We acknowledge information received but unless we need further details from the person providing the information we are unlikely to stay in touch with them. This has made it difficult for us to collect data from informants, including diversity data in the way we used to.

20. We are exploring different options for collecting diversity data about informants. In 2012 we will be undertaking a survey of our informants. This will give us a snapshot profile of our informants, including diversity information, but we are also using this survey to measure consumer satisfaction with the SRA's work.

21. Having established improved monitoring of our referral sources we will be able to identify those sources where the disproportionality is highest and undertake some further work to understand why this might be the case.

22. We rejected in part the last recommendation of PK that the SRA provide "additional guidelines to help people more accurately decide what constitutes a fair complaint". We saw this recommendation at the time as an issue for the LCS and subsequently the Legal Ombudsman to engage with the public about the scope of their complaints work.

23. We accept that we do have a role in engaging with the public about our role as the regulator and we have developed this consumer affairs work over the past year. Full details of our consumer affairs work can be found in our Consumer affairs strategy published in September 2011.

24. The information referred to above, explaining how we will respond to reports of misconduct about those whom we regulate, will also help consumers to understand our role and what to expect.

Auditing key areas of decision making

25. Having established that there was disproportionality in the reports received by the SRA, PK then looked at the impact of the SRA's decision making. In areas where they found

that the SRA's decisions were increasing the incoming disproportionality, they recommended that we carry out a detailed audit. We have been working on these audits over the past year which has involved detailed consideration of our decision making.

26. Our audit team completed the following three audits:

    1. Cases referred to a higher level for a first instance decision (recommendation 14);
    2. Cases which were not upheld following an investigation (the first part of recommendation 10); and
    3. Cases which were referred to the Solicitors Disciplinary Tribunal (the second part of recommendation 10).

    Our audit team has now finalised a fourth audit of cases coming in to the SRA via the Risk and Designation Centre (RADC) which is the first stage in the process (recommendation 9).

27. A manager in our Legal department audited the cases which were not referred to the Tribunal (recommendation 11) and we commissioned an external consultant to audit our decisions to impose practising certificate conditions (recommendation 12).

28. We will carry out an audit of the regulatory decisions we make about solicitors alleged to have breached the accounts rules and practice regulations in 2012 (recommendation 13). We have set out a brief summary of the findings and recommendations below. The full reports are available at the top of this page [#] .

Audit of cases referred to a higher level for a first-instance decision

29. PK's findings in this area are clear from recommendation 14:

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

29. Specified officers at the SRA have delegated decision-making authority for first-instance decisions, but it is possible for a case to be referred at first instance to a higher level, i.e. to a single adjudicator or higher still to a Committee or Panel of adjudicators. This is determined largely by the complexity of the case and the level of authority and expertise needed to make the decision rather than the severity of the potential outcome.

30. As PK had identified significant disproportionality for BME solicitors, the audit looked at all matters referred to committee or panel at first instance in cases closed between 2007 and 2009, the same data set as PK.

31. The audit team looked at the scale of the disproportionality for BME solicitors evident from this data and their findings were at odds with PK's findings. The audit team found only slight disproportionality: Fifteen per cent of BME solicitors were referred to the higher level although they represented twelve per cent of the overall solicitor population. PK had found that BME solicitors are "twice as likely" as would normally be expected to have their case decided at the higher level.

32. After discussing this apparent contradiction with PK it appears that their finding only related to one type of case, not all cases as suggested in the report. It was the "redress conduct" cases (the conduct cases which were referred by the LCS at the time) where this high level of disproportionality was found and, as a result, PK conceded that the terms of their finding and recommendation on this were an overgeneralisation.

33. The audit team nevertheless went on to conduct a detailed audit of a randomly selected sample of 86 matters, which involved 372 individuals (although some of these were recorded more than once) and was made up of 81 per cent (301) white individuals and 10 per cent (37) BME individuals. For 9 per cent (34) of the group, the ethnicity was unknown.

34. The audit team found that 97 per cent of all referrals were made in accordance with the documented criteria for

deciding to refer matters to committee or panel at first instance. However, the audit team identified a number of concerns which arose from the audit, including:

1. the fact that neither the criteria for making the decision to refer a case to a committee or panel nor the procedure adopted had been equality impact assessed;
2. not all caseworkers making the decisions had been trained on equality and diversity at that time, although this has since been addressed;
3. the criteria was not published on the SRA's website and should have been accompanied by examples to explain the meaning of some of the terminology used such as "high-profile" and "sensitive" (34 per cent of the matters were referred for these reasons);
4. it was not immediately apparent on any of the files what the reason for the referral was, the audit team had to go through a lot of material before the reason became apparent;
5. there were data recording errors in relation to eight matters in the sample, which is of concern as recording errors will of course lead to inaccurate findings when we monitor our work.

35. We are taking forward the findings and recommendations raised by the audit of our decisions to refer matters at first instance to committees and panels.

Audit of conduct cases where the outcome was "not upheld"

37. In recommendation 10, PK suggested that we looked at the cases which were not upheld - those where the caseworker or adjudicator determined there was insufficient evidence to establish there had been a breach of the Code.

38. This audit looked at a sample of 120 cases from 2009 and 2010, made up of 30 randomly selected white and 30 BME individuals from each year. The audit team found that in 14 per cent of the cases it would have been more accurate to have recorded the cases as "closed" rather than "not upheld". Cases are recorded as closed when, for example,

the complaint is outside the SRA's jurisdiction or where the matter is resolved without the need for further investigation.

39. There were only four cases (4 per cent) where the audit team had some questions about the decision making process, in particular whether the caseworker had properly followed up the evidence. The audit team referred these cases to a technical adviser in the relevant unit and were advised that the right outcome was achieved in each case, even if further steps could have been taken by the caseworker.

40. As no significant failings were found in the process followed at the time of the audit, the audit team's recommendations focused on making sure the SRA's new approach under outcomes-focused regulation was supported by new processes and procedures to ensure consistency and fairness and prevent the potential for unfair bias or discrimination. In addition the SRA should consider its future audit requirements for decision making given the changes to our regulatory approach.

Audit of decisions to refer a case to the Solicitors Disciplinary Tribunal

41. The disproportionality for BME solicitors in decisions made by the SRA to refer a matter to the Tribunal has been a matter of concern for the SRA for some time. It was one of the key areas highlighted by the Ouseley report in 2008 and our most recent equality monitoring report for 2010 found that disproportionality was continuing.

42. PK suggested that we looked at this area through two audits:

    1. a review of our decisions to refer a case to the Tribunal, which was part of recommendation 10; and
    2. a review of the cases which were not referred to the Tribunal, as it was clear that white solicitors were less likely to be referred (recommendation 11).

Decisions to refer an individual to the Tribunal

43. The first audit looked at conduct cases referred to the Tribunal in 2009 and 2010, considering in particular whether the decisions were made in compliance with the relevant criteria which is set out in the Code for Referral and consists essentially of an evidential and a public interest test.

44. The audit team selected a random sample of 130 individuals consisting of 57 BME and 73 white individuals and found that in 92 per cent of cases there was evidence on the file that the criteria for referral to the Tribunal had been met. However, in the majority of cases, the audit team had to read through the whole file before they were able to reach this conclusion and the audit report recommends improvements to ensure that it is more clear how the criteria have been applied.

45. The eight per cent of cases where the audit team was unable to establish that the decision to refer to the Tribunal was made in accordance with the criteria involved ten individuals, six white and four BME. The audit team referred these cases to the Legal department who were satisfied in all but one case that the right decision was made to refer to the Tribunal. The legal department confirmed that in six of these cases (three white and three BME), there were already ongoing proceedings at the Tribunal and in such cases, it was normal practice to add in further allegations without necessarily raising these allegations with the subject solicitor first. There was only one case where the Legal department thought that the individual, who was BME, could have been dealt with internally rather than referred to the Tribunal and in that case they had rescinded the referral decision before the case got to the Tribunal. The audit team recommended a system for the feeding back learning points when decisions to refer are rescinded by the Legal department.

46. The audit also looked at other demographic factors present in the sample group and found that almost three quarters of the cases reviewed concerned firms with two partners or less and almost 30 per cent involved firms based in London. The team recommended that we look further at these

findings as well as analysing the types of conduct issues which are referred to the Tribunal.

Decisions not to refer an individual to the Tribunal

47. In recommendation 11, PK recommended "that a sample of those who are not referred to [the Tribunal] are also reviewed, as the consistency with which BME solicitors are disproportionally referred, but white solicitors are not, is noteworthy. A review of the training given to SRA decision makers regarding when they refer cases for decision at a more senior level is required, in order to ensure that these referrals are made when required, and not simply due to a lack of confidence, or the existence of bias, for example."

48. This audit was carried out by a manager in the Legal department who handles the cases referred to the Tribunal and, as such, has the relevant legal expertise to assess the decisions. The audit looked at cases which were considered for referral to the Tribunal by advocates in the Legal department during the calendar year 2009. Of the 183 individuals considered, 133 were referred to the Tribunal and 50 were directed back to the casework units for further work or to adjudication for a final decision. As the non-referred group was reasonably small, the audit reviewed the files relating to all 50 individuals. Based on the 39 individuals for whom we had ethnicity data, 33 individuals in the audit (85 per cent) were white and six (15 per cent) were BME.

49. The audit considered whether procedures were followed, whether reasons were given and the ultimate outcome of the cases not referred. The reviewer also objectively assessed the quality of decisions made by the advocates on each file and whether or not the advocates had shown confidence in their decision making and record their comments with reasons.

50. Although the numbers were too small to draw firm conclusions, the audit found that white individuals were slightly less likely to be referred to the Tribunal than BME individuals. The 112 white individuals who were considered by Legal in 2009, made up 78 per cent of the total group (for whom we have ethnicity information), but 85 per cent of the

group not referred. The 31 BME individuals made up 22 per cent of the total group but only 15 per cent of those not referred.

51. The audit found that procedures were followed in all cases and as the procedure does not require written reasons to be provided it was therefore not surprising that in almost all cases, neither the advocates' decisions nor the caseworkers' requests for the Legal department to consider a referral were accompanied by written reasons. It was explained by the Legal department that reasons were not given because they could unduly influence the adjudication process if drawn to the adjudicator's attention and because they may represent legal advice and as such would not be disclosable. However, when the advocates referred the case back for further investigation they would typically provide some explanation and advice to the caseworker.

52. The audit found that 76 per cent (38) of the individuals who were not referred had their cases concluded by decisions from the adjudicators. However, 24 per cent (involving 12 individuals) were referred to the Tribunal by adjudicators. These later referrals were looked at further and explained by there having been further developments following the advocates' decisions. There was one matter, involving 2 individuals, whose ethnicity is unknown, where it was not clear why the advocate had not referred the individuals' conduct to the Tribunal. The audit concluded that it was safer for an advocate to err on the side of caution and not refer, than refer a case if there were any doubts about it meeting the referral criteria.

53. The audit found nothing to suggest that the advocates in the Legal department were referring individuals to the Tribunal that should not have been referred. Nor was there any evidence to suggest that the advocates were inappropriately declining to refer individuals to the Tribunal, except for the case highlighted above where 2 individuals were declined for referral but subsequently referred by an adjudicator. Recommendations were made to make minor improvements to the process for further clarity, for example to ensure there is clear reference to which documents were taken into account by advocates when making their decisions.

Audit of practising certificate conditions

54. This was one area of the report where it was found that a solicitor's ethnicity was directly related to the outcome, although PK noted that "this does not necessarily indicate direct discrimination on the part of the SRA's processes; these results tell us that there is a clear relationship between a solicitor's ethnicity and their practising certificate renewal, it does not tell us why that occurs". PK suggested in recommendation 12 that "it is critical that the decision-making processes are reviewed for this case type" and we determined that it was appropriate for this audit to be conducted by an independent consultant.

55. This audit was a qualitative consideration of the extent to which the decisions made by the SRA in imposing a practising certificate condition were fair and reasonable and, as far as could be determined, non-discriminatory. It also included a review of the SRA's guidance material and how closely the decisions adhered to that guidance.

56. In agreement with the auditor, a sample of 25 white solicitors and 25 BME solicitors were randomly selected from the total of 697 solicitors who had a condition or conditions imposed on their practising certificate during the calendar year 2009.

57. The audit did not find any evidence to suggest that any of the decisions were discriminatory and concluded that: "the review did not indicate that there was unfairness in the way the files were considered or the decisions were made vis-a-vis the regulatory rules that are in place." Decision makers appeared to follow the criteria, guidance and tests set down by case law and in many cases they were prepared to take into account mitigating factors.

58. The audit concluded that, even if a larger number of solicitors had been included in this qualitative review, the conclusion may have been similar due to the rigidity of the regulatory rules and systems.

59. The report set out a number of issues for the SRA to consider including

1. the impact, proportionality and fairness of imposing conditions in some circumstances, for example where the status of a solicitor is no longer relevant to the conduct being regulated;
2. whether there are any improvements which could be made to the process to speed it up and to ensure that the decision maker only takes account of the relevant information;
3. more closely monitoring and evaluating the effectiveness of these decisions, taking into account the impact of this work on consumers;
4. considering the presence of and guarding against unconscious bias; and
5. considering further research into why certain groups are more likely to have conditions imposed (for example how they fall into the scope of regulation 3).

60. As part of our move to outcomes-focused regulation we are looking further at our approach to practising regulations and as part of this review we will take account of the issues raised by the audit.

61. Although we have not found any instances of unfairness or discrimination in the audit, we remain concerned about this area and will review this area at the end of 2012, by which time we will have a much clearer picture of how our new outcomes-focused way of working is affecting the way we approach these cases.

Audit of cases coming in to the SRA via the Risk Assessment and Designation Centre (RADC)

62. Because of their finding that fewer conduct cases involving BME individuals were recorded as "not upheld", PK recommended that we looked at decisions made in these cases at an earlier stage – the risk assessment stage.

63. The majority of reports received by the SRA are referred to the RADC, whose purpose, as the name suggests, is to risk assess the information received and designate the matter to the appropriate team in the SRA. Before our move to outcomes-focused regulation, the report would then have

been dealt in accordance with the case working process that was in place at the time. For reports raising potential conduct issues, a file would have been opened (by creating a matter reference) and sent to a designated team in our Conduct Investigations Unit, which would review the issues and decide the next steps.

64. In some cases it is clear at the outset that the SRA would not be able to take any action, for example the case may be outside the scope of the SRA's regulatory powers. In these cases the RADC would have referred the case to the Summary Closure team in the Conduct Investigation Unit who would review the case but would be expected to close the case quite quickly. The Summary Closure team would record their decision to close the matter against one of a number of outcomes available to the caseworker, one of which was "not upheld".

65. Other cases may be less clear cut and RADC would refer these cases to a different case working team, which would be expected to investigate the issues as necessary and take appropriate action. In some of these cases, the investigation would lead to the allegations being upheld, but in others the investigation may also lead to the matter being closed with an outcome of "not upheld".

66. Although the RADC decision would influence where the case was sent in the SRA, it is important to emphasise that the caseworker assigned to deal with a case would be responsible for independently assessing the issues and taking appropriate action to investigate and determine the outcome of that case.

67. Our audit looked at a sample of cases which had been recorded as "not upheld" over the calendar years 2009 and 2010. We calculated that we needed a sample size of 117 cases to provide reliable findings, and decided to select an equal number of BME and white solicitors, which were then selected randomly from the pool of cases identified.

68. The audit found that the case working decisions agreed with the RADC's initial assessment in each of the 117 matters

and the case working criteria for recording a case as "not upheld" were met In 115 of the 117 matters considered (98 per cent). In relation to the two matters which the audit team questioned, one had not involved a complaint at all and should not have been processed through the RADC and in the other, the caseworker had actually written to the solicitor concerned to request a change to their website so a more appropriate outcome would have been that the complaint was upheld but no regulatory action was required.

69. The findings of the audit did not warrant any recommendations to the work of the RADC, but as the risk assessment process is changing, we will review the equality impact of our new approach as it is developed.

Taking forward the audit recommendations

70. Although there was no evidence of unfairness or discrimination found in any of the audits, the audits have identified a number of areas where we need to make improvements in the way we are working to strengthen the quality of our decision making and transparency. This includes better data recording to make future monitoring more effective and improved recording of reasons for our decisions. There is more detail about how we are going to implement these recommendations in our final section which looks at our key challenges going forward.

71. One common theme was the need to ensure that caseworkers have mandatory equality and diversity training and our decision making criteria and processes are assessed for their impact on equality. We have provided a comprehensive range of training which has been available to all our staff on a range of equality and diversity matters since 2008 which have been well-attended. In 2011 we introduced a compulsory e-learning package on equality and diversity for all staff and will continue to provide a range of additional training to staff as well as support and advice when requested.

Entry requirements and support for the profession

72. PK made a number of recommendations as a result of their findings that there were more cases brought against certain sectors of the profession, namely trainees and newly qualified solicitors at the beginning of their careers, solicitors closer to the end of their careers, and some of those who were first qualified outside England and Wales and had entered the profession through the qualified lawyers transfer arrangements. These have been dealt with in the following three sections:

    1. Trainees and newly-qualified solicitors (recommendations 4 and 5);
    2. Continuing professional development (recommendation 6); and
    3. The Qualified lawyers transfer scheme (recommendation 7).

Trainees and newly-qualified solicitors

73. As a result of their finding that solicitors are more likely to have cases raised against them at the start of their career, PK recommended that the SRA reviewed the support trainees and newly-qualified solicitors were being provided by firms and how this was monitored by the SRA.

74. Recommendation 4, to review the support and supervision available to trainees and new solicitors, has been overtaken by the legal education and training review commissioned jointly by the SRA, the Bar Standards Board (BSB) and the Institute of Legal Executives (ILEX) earlier this year. The review will explore all stages of legal education and training, including the academic stage(s) of qualification, professional training and continuing professional development of the regulated professions. The primary objective of the review is to ensure the legal education and training system advances the regulatory objectives contained in the Legal Services Act 2007, and particularly the need to protect and promote the interests of consumers and to ensure an independent, strong, diverse and effective legal profession.

75. The review goes much wider than the recommendations made by PK. Covering solicitors, barristers and legal executives, it is looking at how to produce lawyers who are

well-equipped for legal practice, as well as ways in which we can promote diversity by opening up the pathways into the professions.

76. The review is being undertaken by the UK Centre for Legal Education Research Consortium led by Professor Julian Webb of Warwick University and will be guided by a consultation steering panel. Progress can be monitored through the review's website [http://letr.org.uk/] . The work will be conducted in four key stages:

    1. literature review and analysis (June 2011-January 2012);
    2. contextual analysis of the factors and issues that will influence and affect the shape and structure of legal services in the future (October 2011-June 2012);
    3. workforce development to identify potential future structural change and its implications for future education and training needs (October 2011-September 2012);
    4. final report and recommendations (August-November 2012).

77. The work-based learning pilots that the SRA has already been running to test alternatives to the traditional training contract will feed into the training review.

78. Recommendation 5, focused on the SRA's monitoring of firms taking trainees, has been taken forward in the context of our move to outcomes-focused regulation. This has seen the introduction of the SRA's new Handbook from 6 October 2011, which includes a section on Authorisation and practising regulations [https://www.sra.org.uk/solicitors/handbook/introAuthPrac/content] where the revised training regulations can now be found.

79. Although the regulations applying to firms who are authorised to take trainees have not changed substantially, our approach to authorising and supervising firms in this area is being changed and will continue to develop over the next few months.

Continuing professional development

80. PK's recommendation 6 - to review how effectively SRA controls ongoing accreditation and continuing professional development (CPD) - is being addressed by a separate review that will feed into the main education and training review when it is complete.

81. We commissioned a report from Professor Andy Boon to critically review the literature on CPD and put forward alternative options for testing. The report was received earlier this summer and a Task and Finish Group representing a range of expertise and stakeholder interests has been set up to consider the report and agree the preferred options for testing from October 2011 until Spring/Summer 2012.

82. We are consulting on various aspects of this review and considering the impact on equality of the proposals as they are developed.

The qualified lawyers transfer scheme

83. PK made it clear that although more cases were being brought against solicitors who originally qualified in certain jurisdictions; this was not the case for all solicitors who had transferred through the Qualified lawyers transfer test (QLTT) which was the process in place at the time.

84. The SRA had already reviewed the QLTT at the time of the PK report and the new scheme, the QLTS, was implemented in September 2010. PK recommended that data is regularly monitored to identify whether there are any changes in the patterns identified with the previous test.

85. We have developed a full evaluation plan of the scheme and its impact on the profession over the coming years, including the first-year outcomes, the current and future implementation of the scheme, and the longer term impact it may have on regulatory outcomes.

86. One of the main changes to the scheme involved the introduction of an assessment for applicants and we

appointed a single provider to administer that assessment process for us, Kaplan Altoir. The first stage of evaluation which is planned will be a review of the data that has been gathered by Kaplan in relation to the assessment part of the scheme, although there have only been a limited number of applicants for the first year. This data will be published in early 2012.

87. We will not be able to reliably assess the impact of the new scheme on regulatory outcomes until much later. QLTS applicants have five years to satisfy our assessment requirements so it will be a few years before there is a significant number of QLTS qualified lawyers in the system. We will conduct a comparative review of the regulatory outcomes for QLTT lawyers as compared to QLTS lawyers in 2020. However, in the meantime, we will continue to monitor the regulatory outcomes for lawyers who have transferred to this jurisdiction, whether through the previous test or the new scheme.

Key challenges going forward

88. We are moving through a period of rapid change and transformation as we implement our new processes under OFR. This has meant that we have had to review and overhaul our regulatory approach from taking direct action on rule breaches to a risk-based, proportionate form of regulation. OFR enables us to be flexible in how we engage with firms constructively to "put things right" and our approach to risk focuses on the wider impact a firm may have if it were to fail.

89. We are designing our processes to be fair and effective and are mindful of some of the key challenges that face us along the way. The key areas in which we need to ensure clear evidence-based decision making and record keeping are:

    1. data recording and monitoring;
    2. decision making;
    3. monitoring of supervisory outcomes.

Data recording and monitoring

90. One of the factors that has made identifying the source of disproportionality difficult is in the way we collect and store data. The key challenge is that the parameters set out as part of our new IT systems have the capability to record and produce the information we need and to link this information to individuals' and firms' demographic data. We can then begin to identify the nature of any disproportionality coming into the SRA or identified through our systems. What is required is an:

    1. analysis of data recorded on our online systems by demographic data;
    2. monitoring and analysis of reasonable adjustment requirements;
    3. analysis of data coming into the Risk centre, Fraud intelligence unit, Forensic investigation and Supervision by demographic data;
    4. analysis of supervision activity as a whole including capture and analysis of engagement with firms small and large;
    5. analysis of data provided to us through our annual reporting mechanism, for example first-tier complaints by demographic data;
    6. collecting informants' data by equality group and linking it to the case reported.

91. We will also be collecting and recording firm diversity data as part of the Legal Services Board (LSB) requirements. When piloting the LSB's diversity questionnaire on a voluntary basis with firms, we received information from 49 per cent (37) of the firms participating in the Supervision pilot. Of the equality and diversity data received there were a number of negative comments which were recorded. This initial analysis highlighted some of the worry and perhaps resistance felt by firms in providing this information. For the SRA it is important that this requirement is part of our approach to firm engagement and built into our supervisory systems and annual data and information requirements.

92. While we do not want to duplicate the data we are collecting from individuals and firms, this will be the case in the short term as the data required by the LSB is on entity demography and includes regulated and non-regulated

individuals. The data we are collecting on individuals helps us to monitor the impact of regulation on the various diversity characteristics and demonstrate compliance with the Equality Act requirements. As we will be collecting this data twice, once the information is provided to us we will need to be clear how this will inform part of our engagement activity and decision making processes.

Decision making

93. In order to ensure we are fair, proportionate and non-discriminatory and that we continue to be open and transparent about the way we work, we are undergoing a review of our decision-making processes. The standards we apply to our decision making across the SRA are set out in the 11 principles of regulatory decision making. It is important that the quality of our decision making supports us to meet our regulatory objectives, which is to regulate in the interest of consumers and the public and ensure that those providing legal services are fit and proper people to continue in practice.

94. The challenges in ensuring our decision-making criteria are fair and effective are:

    1. auditing of all decisions made including informal decisions to determine consistency of approach;
    2. undertaking equality impact assessments on key areas of decision making;
    3. training and development;
    4. transparency (disclosing the information we have used in making a decision and where it may not be possible to disclose, informing the regulated individual of any non-disclosure); and
    5. monitoring the consistency of decisions made.

95. We want to make sure that decisions are made without unlawful discrimination and in a manner that is proportionate and compliant with human rights. We are delivering training to staff on areas of decision making, unconscious bias, human rights and equality and diversity.

Monitoring of supervisory outcomes

96. Identifying the exact nature of the disproportionality experienced by BME solicitors is complex. The concern is to identify not where this disproportionality is occurring, but why it is occurring.

97. Risk-based regulation seeks to identify, assess and prevent risks which may materialise in the future. This means that firms can work with us to prevent risks arising and prevent their own non-compliance. A key aspect of a risk-based approach will be to collect sufficient information from firms to provide key indicator data to assess the level of risk presented by a given firm. The intention is that this information will be collated on Authorisation, through reporting on a regular basis or as a notification requirement as the event occurs.

98. In this way we can decide the level of resource required in the supervision of a firm which will be proportionate to the risk that a firm presents. This will be determined by our Risk Framework, which helps us to identify types of risk and broader categories that these risks relate to. The framework has three headline risks which are "firm's activities", "thematic risks" and "operational risk". The Risk Framework is divided into multiple categories and specific risks to these categories have been produced. These will be changed over time as we identify new risks, or older risks become obsolete. The Risk Framework is set up to enable us to prioritise risk in a consistent and well-timed way the risks inherent in any particular firm.

99. However, this move to subjectivity/discretion requires an evidential basis and the need to consistently record decisions and reasons for our decisions. This will enable us to carry out an analysis of who we are engaging with and why. It will help assess potential trends of the type of firm, size of firm and equality grouping of a firm requiring supervision.

00. The challenges posed to us from this approach include tracking the change of risks over time and the impact that this has on any particular firm. It is important that data is collected and monitored for:

    1. analysis of referral source data by equality group;
    2. a firm's risk profile by equality group;
    3. a firm's impact score by equality group (determined by several pieces of data which consider, for example, the size of the firm, its position regarding client money and the types of work a firm undertakes);
    4. the methodology used for supervisory activity including the analysis of subjective engagement with firms;
    5. decision made to investigate further;
    6. monitoring enforcement outcomes.

01. The aim of our supervisory activity is to continue to help firms improve standards, reduce risk for consumers and enhance the reputation of legal services providers. In order to show we are achieving these outcomes we require robust data recording to enable us to track such changes and to compare against our initial baseline profiles. We also require a Quality Assurance Framework to measure the process and outcomes agreed as part of our engagement.

Conclusions

02. There are clear themes emerging from our audit work and on tackling disproportionality. The findings from these audits provide helpful pointers to areas we need to tackle to ensure a consistent and unbiased approach. Our next steps are to communicate and embed these recommendations and lessons into the Authorisation, Supervision and Enforcement functions and within the delivery of OFR. We will also continue to carry out audits which are one of the ways we aim to demonstrate fairness.

03. Our Equality Framework is clear about the priorities we have set and aims to embed the principles of equality and diversity in our work. This must not be lost through the

transformation programme and here strong leadership will be critical to determining its successful integration.

04. We also need a wider debate on the issue of disproportionality and will consider having a workshop involving the LSB, the Law Society and other interested stakeholders to discuss this issue and identify solutions to what is an increasingly complex issue. We will do this at the same time as continuing to ensure that our processes and the way we regulate is fair and free from bias.

Annex 1 – Executive summary of the Pearn Kandola Report: "Commissioned research into issues of disproportionality," July 2010

Previous research conducted by the SRA, followed by a review undertaken by Lord Ouseley, has identified potential disproportionately in the regulatory actions taken by the SRA against BME solicitors when compared to white solicitors. Pearn Kandola, a firm of business psychologists were asked to explore the underlying reasons for disproportionality against black and minority ethnic (BME) solicitors. The first report produced by Pearn Kandola was based on a review of the activity amongst other regulators regarding disproportionality issues. The result of this review, as outlined in our first report, was to highlight the limited activity currently underway among many UK-based regulators regarding issues of disproportionality. Many regulators are not monitoring to identify issues of disproportionality in their work, and of those that are, very few are undertaking any action to address it. Those regulators who are undertaking more work in this area include the General Medical Council, the Nursing and Midwifery Council, and now the SRA.

In the final stage of our work, the SRA asked us to explore the issues of disproportionality they had previously identified to a greater depth. The results of this stage of our research are outlined in this current report.

In this stage of our research, we explored whether there was a disproportionate number of cases raised against BME solicitors by sources external to the SRA. Key findings from our analysis were:

- No disproportionality was found when looking at all solicitors on the Roll. When we restricted our analysis to solicitors admitted in the last ten years, we did identify disproportionality against BME solicitors, in line with the Ouseley report. This is because the demographics of the solicitor population have changed significantly in the past 50+ years.

- This disproportionality in the number of cases raised means that by default, the SRA need to respond to a disproportionately high number of cases against BME solicitors.
- The factors that are associated with solicitors having a case raised against them are whether the solicitor was a trainee at the time the case was raised; a shorter number of years practising, and over time having a large number of practising certificates. These findings suggest a U-shaped relationship in that solicitors are more likely to have cases raised against them at the start of their career and after they have been practising for a long period of time.
- It is important to note that a solicitor's ethnicity does not directly predict whether a case is more likely to be raised. However, as outlined above, BME solicitors do have a disproportionate number of cases raised against them. This research identified three factors that indirectly result in BME solicitors having a disproportionate number of cases raised against them:
  - Firstly, as outlined above, those who have been admitted to the Roll for fewer years are more likely to have a case raised against them, and BME solicitors are more likely to have been admitted to the Roll for fewer years.
  - Secondly, solicitors working in small firms are more likely to have a case raised against them, and BME solicitors are over-represented in small firms.
  - Thirdly, solicitors working in BME-owned firms are more likely to have a case raised against them. Again, BME solicitors are over-represented in BME-owned firms.

- A disproportionate number of cases are raised against solicitors who first qualified in specific jurisdictions. Those who qualified in Nigeria, India, Pakistan, Bangladesh and The Bar of England and Wales are all disproportionately represented in those who have cases raised against them (barristers who qualified in England and Wales take the Qualified Lawyers Transfer Test (QLTT) route to qualification to qualify as solicitors). Solicitors who first qualified in New York, America (other) and Europe are less likely to have cases raised against them than would normally be expected.
- BME solicitors have a disproportionate number of cases raised against them from external sources for initial assessments (initial assessments are created for all allegations that are received by the SRA's Risk assessment and designation centre), Conduct cases raised by the LCS (allegations of misconduct passed to the SRA by the Legal Complaints Service), and regulatory cases (allegations of breaches of the practising regulations and applications relating to restrictions on practice). Conduct cases (allegations of misconduct passed to the SRA by any source other than the Legal Complaints Service) is the only case type where there is no disproportionality in the number of cases raised; however, BME solicitors

are disproportionally represented in conduct cases in cases where they have multiple cases raised against them. BME solicitors are also over-represented in the other three types of cases (i.e. initial assessment, conduct case raised by the LCS, regulatory cases) for solicitors who have multiple cases raised against them.

In the next part of our analysis, we explored whether the outcomes of the SRA processes reduced, maintained, or compounded the level of disproportionality experienced by BME solicitors as outlined above. Key findings from our analysis were:

- Initial assessments – SRA outcomes at this stage compound the disproportionality experienced by BME solicitors as fewer BME solicitors have their case not upheld and a greater number of BME solicitors have their case referred to the Solicitors Disciplinary Tribunal (SDT).
- Conduct cases – SRA outcomes reduce the disproportionality experienced by BME solicitors by recording no action for a disproportionate number of the cases raised against BME solicitors; however the SRA outcomes also add to the disproportionality by fewer BME solicitors having their case not upheld and a greater number of BME solicitors having their case referred to the SDT.
- Conduct cases referred by the LCS – SRA outcomes reduce disproportionality as fewer cases are upheld for BME solicitors; however again, a greater number of cases against BME solicitors are referred to the SDT.
- Breaches of regulation – SRA outcomes result in reduced disproportionality as a greater number of cases result in no action, and a proportionate number are upheld, not upheld, or referred to the SDT.
- Practising certificate renewals – SRA outcomes add to the disproportionality as BME solicitors are more likely to have restrictions placed on their practising certificate.
- Solicitors' accounts and practising restrictions – SRA outcomes add to the disproportionality as BME solicitors are more likely to have their application rejected.

The report also includes some recommendations for the SRA. These cover a range of issues, including the need for

- the SRA to make it clear that it is being asked to respond to a disproportionate number of cases raised against BME solicitors,
- a review of the support available to solicitors in training and those who have recently started their career,
- the SRA to introduce a more sophisticated method of collecting data in order to make it easier to identify disproportionality in their regulatory

activities, as well as the progress made in addressing these issues; this additional data collection process should include a more consistent approach to collecting data on the people who are raising cases against solicitors,

- the SRA to conduct a detailed review of some of its decision-making processes, such as those relating to PC renewals.

There are also two general recommendations for the SRA, concerning the importance of collecting and storing data in such a way that makes this analysis easier for the SRA in future in order to track progress, as well as starting to collect more detailed information about those who are raising cases against solicitors.