

THE SOLICITORS REGULATION AUTHORITY

**INDEPENDENT REVIEW INTO DISPROPORTIONATE
REGULATORY OUTCOMES FOR BLACK AND MINORITY
ETHNIC SOLICITORS**

JULY 2008

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REVIEWER'S GUIDE

This Report is about how black and minority ethnic (BME) solicitors are treated by the Solicitors' Regulation Authority (SRA). It has been prepared following an extensive independent review of the work of the SRA, its approaches to equality and diversity in the profession, in its workforce, as a regulatory body, in all its activities and its responses to BME solicitors' complaints and concerns about differential treatment and disproportionality.

It is the issue of disproportionality that has focused the concerns of BME solicitors. It was an issue for the Law Society before the SRA came into being in 2006 and inherited the problem. Why are BME solicitors over-represented in all aspects of regulation as depicted in the statistics produced by the SRA? That was the question to be answered. But, even more important, was what the SRA was doing about it. In short, the answer is a lot in theory, not enough in practice and with very little to show in positive outcomes. In addition, it was necessary to establish that, while disproportionality in outcomes from regulatory processes was occurring, the disproportionality affecting BME solicitors originated before they came within the ambit of the SRA, through complaints and referrals.

Chapter 2 describes the methodology used in the Review and it is appropriate to state here that, in spite of an understandable uneasiness of feelings held by some people in the SRA about the necessity of such a Review and an element of defensiveness in the organisation, there was full co-operation and helpfulness shown by staff in providing information for this Review and being available for interview. It is also necessary to state here that the cold case review of 187 files did not reveal any evidence of inappropriate penalties being applied to breaches of conduct, practice or other requirements by the subject solicitors. The fundamental issue of concern was how the SRA applied its regulatory activity at the initial point of the process. Chapter 3 provides population data about BME solicitors, who are applying to join the profession in increasing numbers.

The next part of the report gives attention to the organisational issues in the SRA, how it is structured and is being restructured, the difficulties it has experienced determining its values, operational culture and its responses to the challenges posed by equality, diversity, discrimination, fairness and inadequate management data. The processes investigated as part of this Review are the long-standing ones inherited from the Law Society, which the SRA is attempting to reform. Chapters 4, 5 and 6 cover these issues as well as describing the SRA as an employer and its responses to equality and diversity challenges.

Chapter 7 describes the regulatory functions in the SRA, who does what and how. Chapter 9 examines how these functions are activated, applied and the resultant impact and outcomes. In between, Chapter 8 provides the data and evidence of disproportionality.

The original data from 2004 showed that BME solicitors were over-represented in the following areas of regulatory activity:

- Practising Certificate conditions
- In relation to applications to approve employment arrangements
- In referrals to the Solicitors' Disciplinary Tribunal
- Where a decision is made to intervene into a practice
- Named on a file dealt with by the Investigation Casework team, which tend to be more complex matters and include complaints
- In forensic investigations, in the case of black solicitors
- Subject to section 12(e)(e) in relation to late or outstanding Accountants' Reports
- Barred as student applicants or from admission to the Roll

Disproportionality is also evident in applicants for student enrolment or admission to the Roll being referred for character and suitability assessments. One of the main reasons for disproportionality is that sole practitioners and small firms are targeted for regulatory activity. 5.8% of BME solicitors are sole practitioners and most of the rest are found in small firms. Only 3.4% of white solicitors are sole practitioners.

There is undoubtedly a firm commitment to addressing the principles of equality and diversity in the SRA. However, in spite of launching a number of initiatives, the SRA acknowledges, through the Chief Executive, that progress has been lacking in a number of areas. He considers that, in the midst of their reform programme, not sufficient leadership emphasis has been given to the values of equality and diversity, something he is committed to addressing. That lack of leadership emphasis is best exemplified in a body of evidence of delays or non-implementation of intended policy changes. For instance, much of the policy objectives remain as 'drafts' (such as the Draft SRA values; draft corporate objectives – see Chapter 4, paragraph 4.6). The declared commitment to equality and diversity has not been included as a principle of the adopted principles for decision-making, which are yet to be embedded in organisational working (see Chapter 4). Other examples of deficient implementation reported on are as follows:

- Equality and diversity strategy still to be agreed by the Board (Chapter 5)
- Restructuring weaknesses regarding equality and diversity (Chapter 5)
- Outstanding activities in work plans (Chapter 5)
- Delays in reviewing equality policy, since 2006 (Chapter 6)
- Equality competence deficiencies (Chapter 6)

- Data deficiency (Chapter 7)
- Several independent studies with action to implement recommendations outstanding (Chapter 8)

The Chief Executive accepts the need to pursue urgent and dynamic action to end disproportionality and to embrace equality and diversity as integral values and principles in the SRA. Without the missing leadership emphasis management at all levels will continue to regard the commitment to equality and diversity as superficial, tokenistic and unimportant. As a consequence, there will continue to be a lack of serious commitment to equality impact assessments across a whole range of relevant regulatory and operational activities, which the Review regards as having potential discriminatory effects. For instance, there is evidence of disproportionate impact on BME solicitors in the application of Section 12 conditions on Practising Certificates; yet a full equality impact assessment remains outstanding; this is due to be completed later this year. Similarly, there is an outstanding requirement to conduct a full equality impact assessment for the risk assessment process to determine any potential for indirect discrimination. The Review assessed the process driven systems of the Risk Assessment and Designation Centre (RADC) to be robust and not in themselves the cause of disproportionality (see paragraph 11.7). Nevertheless, potentially this still leaves the SRA open to the charge of institutional racism, as its policies, procedures, practices and actions, however unintended, can be seen to have disproportionate detrimental and discriminatory outcomes for BME solicitors.

Two other areas of evidence of disproportionality can be found in Chapter 9 affecting BME solicitors who are more subject to forensic investigations than white solicitors and, as a consequence, are disadvantaged considerably through the non-disclosure of information about allegations made about them.

Not to be under-estimated is the level of prejudice and bias which exists among personnel in this and other similar organisations. No-one admits to the existence of such prejudice in the SRA and there is not the evidence to suggest that its application is widespread. Nevertheless, in those areas of decision-making where subjectivity and discretion prevail, there is evidence of some stereotyping being applied and this needs to be tackled urgently. In both interviews and file and document reviews, there are references to BME solicitors (such as Nigerians and minorities) who are often assumed to be guilty of complaints or allegations made against them (Chapter 12). The equality and diversity competence, including training and experience for all decision-makers, is critical yet it is not an essential or monitored requirement.

Another feature of disadvantage against BME solicitors and BME staff is the failure to deal effectively and independently with complaints made by them of alleged discrimination in the way they have been treated by the SRA. The processes applied seemed designed to ensure that the outcomes are virtually always against the complainer. This approach is not as effective as those complaints of discrimination against solicitors which are investigated and dealt with by the highly specialized case-workers, and overseen by the Legal Services Ombudsman.

The conclusion of the Review is that equality and diversity in the SRA is work in progress. While it has been possible to demonstrate BME disproportionality in all aspects of its regulatory activities and highlight weaknesses in the management structures, leadership, processes and behaviours, disproportionality is also attributable to the vulnerability of BME solicitors setting up as sole practitioners or practising in firms with four or fewer partners – firms which tend to score higher in the SRA's risk assessment and therefore feature more in regulatory work. It is clear that more detailed ongoing assessment and review of both the risk assessment process and the vulnerability of BME solicitors operating in small firms are required. In the meantime, there is sufficient evidence herein to warrant urgent organisational attention and action at all levels, so that the SRA will be able to have the capability, competence and commitment to end disproportionality, to pursue and promote equality and diversity, to achieve equality and diversity targets and to create a regulatory body that is credible, confident, efficient, effective and fair. Recommendations are made accordingly to enable the SRA to address the deficiencies, weaknesses and failures that have been identified. Some of these recommendations have been previously made in earlier Reviews; urgent, active and swift implementation is the most important recommendation being made.

HERMAN OUSELEY

1.0 INTRODUCTION AND BACKGROUND TO THE REVIEW

- 1.1 In January 2006 the Law Society published a report on *The Impact of Regulatory Decisions of the Investigations and Enforcement Unit on Black and Minority Ethnic Solicitors*. This looked at the ethnicity monitoring data that was published in the Society's 2004 ethnicity monitoring report and revealed ethnic disproportionality affecting black and minority ethnic (BME) solicitors in regulatory activities. Subsequent monitoring data for 2005, 2006 and 2007 showed continuing disproportionality. Following representations about allegations of discriminatory treatment, a Working Party was established in 2007 by the Solicitors Regulation Authority (SRA), under the leadership of Anesta Weekes QC, to investigate the apparent disproportionality of regulatory and conduct investigations and activities on BME solicitors.
- 1.2 The role of the Working Party is to work collaboratively with the Solicitors Regulatory Authority (SRA) to
- Address issues of disproportionality in the regulation of BME solicitors
 - Agree the scope and priorities for an independent review
 - Advise the reviewer on the progress of the reviewer's work
 - Consider and comment upon the reviewer's report and recommendations
- 1.3 In March 2008, Lord Herman Ouseley was appointed by the SRA, with the support of the Working Party, to conduct the independent review. Its aim was to:
- consider all relevant aspects of the SRA's regulatory policies, practices and its decision-making process and provide a report with findings and recommendations.*
- 1.4 The review was carried out between March and July 2008 and this report sets out the findings to date. It includes an overview of the profile of BME solicitors in England and Wales and the SRA as an organisation, in particular, its regulatory functions and processes and approach to equality and diversity. It outlines the evidence on disproportionality and BME solicitors and sets out the findings of the review and recommendations for future effective action. The Review team comprised Herman Ouseley, Bob Purkiss and Sheila Rogers.
- 1.5 Consultation and advisory meetings were held with Dr Ali Dizaei (see paragraph 2.1), especially on matters requiring his input on approaches to file reviews and information to be researched.

2.0 METHODOLOGY

2.1 In terms of the methodology to be applied, the Working Party set the context for the review, as follows. Specifically, the role of the Reviewer was to:

- Act as an independent reviewer of the SRA in respect of the issues being raised
- Conduct the review in accordance with and within the scope identified and agreed with the Working Party
- Seek advice from the Working Party appropriately to inform the review
- Seek advice, when necessary and appropriate, from Dr Ali Dizaei, an independent member of the Working Party
- Ensure that the review was not compromised in terms of its confidentiality, independence and objectivity
- Provide monthly updates/reports to the Working Party
- Review all areas and aspects of the work of the SRA identified by the Working Party to include Risk Assessments, use of discretion in decision making, conduct outcomes, collection and use of intelligence
- Provide a final report and make recommendations to the Working Party

2.2 The methodology included:

2.2.1 Interviews with key personnel within the Solicitors' Regulation Authority including the Chief Executive and Directors.

2.2.2 An invitation to the profession, in particular BME solicitors, to contribute their views, perceptions and experiences of dealing with the SRA. In total, 14 submissions were received; all were assessed in line with the terms of reference of the Review and three were interviewed further. (for a summary see Appendix 6)

2.2.3 A desk audit of 245 documents relevant to the SRA's regulatory and other functions (these are listed in Appendix 1)

2.2.4 A review of the operation of selected SRA functions and processes including.

- Inspection and Investigation
- Regulation Response
- Legal (in part)

- Client protection (in part)
- Adjudication
- Resources
- Policy, equality and diversity and communications

2.2.5 A total of 187 files were assessed in the following areas:

- Regulatory matters
- Conduct matters
- Forensic investigations
- Interventions
- Practice Standards Unit
- Complaints to the SRA about the SRA

2.2.6 The criteria used for the file review was:

- To identify from file documents and evidence any apparent inappropriate or inconsistent actions and to verify its justification
- To identify any differential or inconsistent treatment of cases by ethnicity or other reasons
- To identify any aspects of apparent bias and trace back to processes and their sources of application to discern any prejudice or discrimination

2.2.7 An analysis of statistics collected by the SRA as well as data commissioned for the review. These included:

- SRA workforce profile
- SRA summary of performance measures and statistics, March 2008
- Equality and diversity analysis of sole practitioner firms
- Analysis of available instigator ethnicity data
- Regulatory activity by ethnicity 2004 - 2007

2.2.8 A review of 13 initial equality impact assessments

2.2.9 An assessment of key SRA projects and initiatives relevant to the review. These were:

- Decision-making project
- Change management project
- Risk Assessment and Designation Centre
- Equality and diversity strategy
- Regulation audit
- Draft protocol for discrimination complaints

3.0 BME SOLICITORS IN ENGLAND AND WALES

- 3.1 As at 31 July 2007¹ there were 134,378 solicitors on the Solicitors Roll in England and Wales. 108,407, or 80.7%, held Practising Certificates and 76.2% of these were working in private practice.
- 3.2 Ten percent of all solicitors and 8.3% of those holding a Practising Certificate were from a black or minority ethnic background. The proportion of BME solicitors holding a Practising Certificate is lower than for the solicitor population as a whole (76.1% compared to 80.7% overall). The Law Society reports that around one quarter of BME solicitors on the Roll reside abroad.
- 3.3 36.4% of solicitors with a Practising Certificate were working in organisations in London and these organisations employed just over one half of all BME solicitors with a Practising Certificate.
- 3.4 The proportion of BME solicitors seems set to increase with 27% of those applying for student enrolment with the Law Society in 2007 from BME backgrounds. Over eighteen percent of new traineeships registered in the 2006-2007 year were drawn from minority ethnic groups as were 15% of applications for admission to the Roll where ethnicity was known. (see Appendix 2) The SRA will need to ensure that its policies, practices and engagement with solicitors are appropriate for an increasingly diverse profession.
- 3.5 Qualified lawyers from overseas transfer to the Roll under the Qualified Lawyers Regulations 1990 (this process discussed in more detail in Section 10). In the period between 1995 and 2005, nearly 17% of admissions were via this route. The figure for 2007 was 20% and this year is running at 34%. However, in July 2007 less than one half of these (44.4%) held a current practising certificate compared to around 80% for the profession as a whole.²
- 3.6 Just under six percent of BME solicitors are sole practitioners compared with 3.4% of white solicitors³, with a large number of the remainder working in small firms. Most law firms in England and Wales are small, with 86% having four or fewer partners.

Table 1: Minority ethnic solicitors as at 31 July 2007

Ethnic Origin	On the Roll	With Practising Certificate	Participation Rate - %
African-Caribbean	868	741	85.4

¹ Trends in the solicitors' profession – annual statistical report, 2007, The Law Society

² Transferees vs other route solicitors study, SRA, November 2007

³ Analysis of available sole practitioner ethnicity data, SRA, June 2008

Asian	6,782	5,829	85.9
Chinese	2,612	983	37.6
African	1,188	1,027	86.4
Other ethnic group	2,086	1,726	82.7
All minority ethnic solicitors	13,537	10,306	76.1
White/European	102,546	84,572	82.5
Unknown	18,296	13,529	73.9
Total	134,378	108,407	80.7
BME solicitors as % of all solicitors	10.1%	9.5%	
BME solicitors as % of all solicitors with known ethnicity	11.7%	10.9%	

3.7 As Table 1 demonstrates, the statistics include a significant number of 'unknowns'.

Without comprehensive ethnic data it will continue to be difficult to ascertain exactly what the impact is of regulatory activities on BME solicitors. It also means that the SRA, and indeed the Law Society in its representative role, does not have a comprehensive profile of the profession, pre and post admission, and cannot, therefore, be confident that its services, for example around advice and guidance, are meeting a range of diverse needs.

3.8 The SRA is currently undertaking a comprehensive exercise to survey the entire profession in order to bring its statistics up to date. This will be preceded by a marketing exercise to encourage solicitors to provide the information requested.

4.0 THE SRA – ORGANISATIONAL ISSUES

4.1 In 2006, in response to the Clementi Report, the Law Society's representative and regulatory functions were split and the Law Society Regulation Board came into being. This became the Solicitors' Regulatory Authority in 2007. The new body inherited an organisational structure, staffing and an equality and diversity strategy from the Law Society.

4.2 It appears that, until very recently, the SRA lacked the capacity for strategic planning and, since the decision to create the new organisation, attention has been focused on creating an infrastructure and organisational capacity and addressing management issues. All of this should, in the long run, produce an organisation that is fit for purpose, transparent and where equality and diversity are prominent features not only of its internal operations but also its dealings with the profession generally. Equality and diversity are covered in more detail separately in Chapter 5.

4.3 A change programme that seeks to make the SRA's organisation and processes better managed and more transparent is currently being implemented. The key elements of this include:

- A radical restructuring of the organisation to improve managerial control
- A new system of risk assessment to ensure that all information coming to the SRA is dealt with in as consistent a manner as possible and to minimize the likelihood of unconscious bias tainting processes
- The adoption of new decision-making principles to improve consistency and auditability
- A redesign of business processes in preparation for a new, integrated IT system to reduce complexity and improve reporting and analysis
- An overhaul of human resource policies across the Law Society Group

4.4 This process is partly under-pinned by the findings of a comprehensive regulation audit, carried out in 2006 to:

- Develop a comprehensive capability/performance base-line to inform any change and business improvement agenda, and
- Provide an objective basis for assessing how existing regulatory capability might perform against the Legal Services Board's competence tests, themselves predicated on Better Regulation Task Force principles.⁴

⁴ Proportional, accountable, consistent, transparent, targeted

- 4.5 The proposed IT system is intended to replace the current ROAD database, which contains a history of regulatory contact with solicitors and solicitors' firms, the REGIS database, which includes information about solicitors, including ethnicity where this is known, and other databases. This should enable the SRA to maximize its use of data and fully understand the impact of its various regulatory functions, externally and internally, including the use of discretion in decision-making as well as the operation of policies and procedures, including those on equality and diversity.
- 4.6 Unfortunately, the SRA has encountered difficulty in securing the necessary funding from the Law Society to deliver the necessary IT infrastructure and improved data monitoring and this is a major reason for the lack of progress in improving processes and management information.
- 4.7 The organisational restructuring exercise was carried out in mid-2007. This resulted in the creation of eight Directorates, plus a temporary Director-level arrangement in relation to the change programme. All Directors report to the Chief Executive. (see Appendix 3 for an organisational chart) The new arrangements are still bedding in with more work needed to build the senior team into a coherent management group and to develop an organisational culture that will support and promote the five SRA values, currently still in draft form. These are to be an ethical organisation that is customer and performance focused, accountable and that demonstrates respect and recognition.
- 4.8 The organisational values underpin the SRA's five corporate objectives, also still in draft form, which are, in part:
- To set standards for entry to the profession, professional behaviours and continuing professional development and for organisations offering legal services
 - To provide information, advice and support to solicitors and operate processes to monitor compliance with standards to identify where remedial, investigative or other regulatory action is required
 - To protect consumers and tackle unacceptable professional or organisational performance, misconduct and dishonesty by firm, fair and timely action
 - To promote choice, innovation and accessibility in the provision of legal services and information to help consumers make decisions and understand standards
 - To demonstrate value for money and attract and retain high calibre staff committed to service excellence
- 4.9 Also central to the change programme is a new approach to decision-making through the delegation of powers to Adjudicators and SRA staff. In October 2006, the SRA Board adopted ten principles to 'provide a foundation for fairness in its decision making'.

However, implementation is not yet embedded across the organisation. These principles include:

- Decisions being made at the lowest level at which fitness for purpose can be assured
- Decisions that are based on written and accessible guidelines or criteria
- Delegations to categories of staff, not individuals or posts
- Decisions monitored to ensure quality and consistency
- Decisions of similar complexity and impact made at similar levels in the SRA

4.10 The SRA states that it is committed to 'operating fairly towards all individuals and groups regardless of their ethnic origin, race, colour, gender, religion, disability, sexual orientation or age. Its approach would be strengthened if this commitment was incorporated into and integrated as one of the decision-making principles.

5.0 EQUALITY AND DIVERSITY IN THE SRA

- 5.1 The SRA inherited the Law Society's equality and diversity strategy following the reorganisation of the Group and its establishment as an independent Regulator in January 2007. Since then it has been working to finalise its own equality and diversity strategy, as part of its strategic plan, that will help to deliver the vision, values and objectives of the organisation. During the development of the strategy the Board has received periodic reports on equality and diversity and, since the Autumn of 2007, regular updates on the work of the BME Working Party.
- 5.2 A review of the Law Society Group was carried out in 2005 – 2006 by Professor Gus John and looked at progress on equality and diversity and how the Group was responding to new legislative provisions on equality. Overall, it noted that significant progress had been made although concern was expressed about how the restructuring of the Group would impact on equality and diversity, where ownership would lie and how the specific needs and challenges of each constituent part of the Group could be met. It also concluded that human resources was lagging behind other parts of the Society in reflecting anti-discrimination legislation and pursuing equality and diversity goals.
- 5.3 In relation to the SRA, the John report found that, while there had been progress on impact assessment training, there was still much to do in this area. It also commented that efforts had been made to ensure that regulatory matters were fair and equitable and concluded that the challenge for the SRA was to ensure that momentum was not lost and that equality and diversity was properly resourced.
- 5.4 In September 2006, the SRA Board approved a six month equality and diversity action plan and, by June 2007, some progress had been made including an update of the Solicitors Anti-discrimination Rule to incorporate age; some staff training on equality and diversity and impact assessment; an initial analysis of character and suitability guidelines, the Code of Referrals to the Solicitors' Disciplinary Tribunal and monitoring of Practice Standards Unit visits. Still outstanding was work to assess disproportionate impact on BME solicitors and training on equality and diversity and cross-cultural communications and noted as areas for action were equality and diversity data gaps, the need for resources for equality impact assessment and a number of areas where policy development was still required.
- 5.5 In late 2007 an independent baseline review, which included twenty-two semi-structured interviews and two staff focus groups, looked at the SRA's current position and strengths and weaknesses in relation to equality and diversity to identify key areas for focus, gaps and unmet needs and the priorities that needed to be addressed in order to meet the public duties. The review confirmed that there was a commitment to the principles of equality and diversity in the organisation but found a lack of measurable equality and diversity goals and targets and regular reporting as part of the normal business process. These were identified as major gaps.
- 5.6 The review recommended that an equality and diversity strategy and action plan should be developed, to include a focus on what 'fair' regulatory and disciplinary action means

in practice, how any apparent 'unfairness' would be dealt with, and how the SRA would address equality and diversity as an employer including training, flexible working and comprehensive human resource monitoring. It recommended the introduction of a comprehensive programme of equality impact assessments, consultation and monitoring across all of the SRA's functions.

- 5.7 A Diversity Working Group was formed in 2005 chaired by the Head of Equality and Diversity to provide a forum to support and champion the progression of equality and diversity in the Law Society, including its regulatory functions. When the SRA came into being in 2007, the Group was reviewed to focus on SRA issues only and it was agreed that to give it profile and credibility it would be chaired by an SRA Director. Its membership is made up of nominees from the SRA's business units. The Group has overall responsibility to co-ordinate and monitor equality and diversity progression and promotion across the SRA, act as a consultative forum to influence and provide feedback on policies and practices on HR and service delivery and champion equality and diversity and monitor progress within units.
- 5.8 Reviewing its membership in March 2008, the group noted that the Risk Assessment and Designation Centre was not represented and that the Information Directorate proposed sending only one Head of Business Unit following the SRA's restructure. It was also proposed that Diversity Working Group and equality and diversity responsibilities and input should be reflected in the performance appraisal system. It was agreed that a second Diversity Week or Day would be held in October 2008 and that a sub-group would be set up to audit the SRA's current practice for dealing with complaints. An interim complaints protocol is now in place (see paragraph 12.8.5).
- 5.9 Equality and diversity activities in the SRA have tended to proceed more in parallel with, rather than as part of, the overall strategic activities that have been undertaken to create a new organisation. This has meant that, although supported by the Board and Senior Management at corporate and policy levels, equality and diversity have not received the personal ownership and visible leadership and drive that is necessary. The SRA needs to ensure that its equality and diversity activities are not fragmented but are part of a coherent, organisation wide programme of change, supported by appropriate and resourced training for all staff and, in particular, to ensure that the senior management team and line managers are equality and diversity competent. They also need to be encouraged to take their equality and diversity responsibilities seriously. It was noted at one Diversity Working Group meeting that not all managers were providing information about equality and diversity, in particular impact assessment, to their staff and staff generally were not aware of equality and diversity initiatives.
- 5.10 The equality and diversity strategy should help to make this happen, subject to the SRA Board having an appreciation of what is required, why and how to ensure that the SRA is seen as a model, even exemplar, organisation in terms of fairness, equality and diversity for all solicitors being regulated.
- 5.11 Additionally, the SRA has not engaged sufficiently or effectively with BME solicitors to date. As a result members of the profession have not been involved in the work the

SRA is undertaking to create a better, more transparent organisation. Similarly, the SRA itself does not have a sufficient understanding of the concerns of BME groups and how these concerns might be addressed. This is evidenced in low attendance at education events, weak targeting of BME solicitors and BME solicitors' fears that any engagement with the SRA opens them up to inspection. For example, there was a perception that, despite it being a confidential service, phoning the Ethics Helpline for assistance might somehow highlight weaknesses that could ultimately lead to SRA regulatory action. Enhanced and open engagement with BME solicitors should help to improve this situation.

- 5.12 Equality and diversity goals and targets are to be integrated into the strategic plan and each Directorate's business plan and will also address the role of the SRA as a regulator and as a procurer of goods and services. The representation of BME staff is broadly in line with the West Midlands population. There is under-representation at both senior and junior levels but not in the middle of the organisation where many case-work decisions are made. Equality and diversity is expected to be central to a new HR strategy, although it may take some time to see any resultant benefits, as the SRA is a predominantly white organisation, especially at decision-making levels, with no positive action programmes in existence to improve under-representation or to provide visible and credible leadership on equality and diversity matters so as to inspire confidence among BME solicitors and the wider profession (discussed in more detail in Chapter 6). The SRA must adequately resource its equality and diversity work and act now, not only to meet its statutory obligations on equality, but also to deliver on the broad equality and diversity agenda it expresses a commitment to. The 2007 baseline review included a comprehensive set of recommendations to assist the SRA to meet its statutory duties including equality impact assessments, monitoring and consultation and these should be implemented.
- 5.13 Proposed areas for action on equality and diversity are set out in detail in Chapter 12. Outcomes for 2012 of interest to the profession as a whole include that the 'regulated community', including those from the key equality groups, having confidence in the SRA as being a fair and proportionate regulator; that equality and diversity will be embedded in all policies and procedures; and that complaints will have decreased. While that is to be welcomed, it is some time away from realization.
- 5.14 The SRA's strategic plan and Equality and Diversity Strategy have yet to be agreed by the Board. This needs to happen as a matter of priority, followed by an appropriate period of internal and external consultation, while at the same time ensuring that the organisational changes that need to be made are progressed, including the development of an equality and diversity culture and ethos, effective IT and management information and demonstrable buy-in from the top of the organisation. This will not happen by token commitment and policy proposals only but requires sustained action over a number of years at all levels in the organisation.

6 THE SRA AS AN EMPLOYER

- 6.1 Currently the human resource policies of the SRA are contained within the corporate policies of the Law Society. This constrains the SRA's flexibility to do things differently to meet their staffs' particular needs, for instance, on equality and diversity training. This is a disadvantage to the SRA if it wants to pursue positive action to end BME under-representation and to meet its expressed equality and diversity commitments.
- 6.2 In his 2005-2006 review, Professor Gus John found that HR performance required urgent action; it was seen as inconsistent and slow due to lack of capacity and 'know how'. He also noted that, while progress had been made with equality impact training for SRA staff, there was still much to do to make sure that the staff were confident in carrying out assessments and recording and addressing impacts.
- 6.3 At that time it was recognized that a number of employment policies needed to be reviewed, including the equality policy, but by October 2006 that had not progressed and a new implementation date of January 2007 was set. It was considered particularly problematic that, more than two years after the production of the Race Equality Scheme, significant gaps remained in the policy review schedule.
- 6.4 The 2007 baseline study into equality and diversity found that there were still common HR policies across the Law Society Group but no current HR strategy or action plan on equality and diversity specific to the SRA. The report noted that there appeared to be no equality and diversity training for staff although this was under consideration. Despite the revised January 2007 implementation date for the HR policy review there was no evidence that this had been completed.
- 6.5 The baseline study made a series of recommendations in relation to HR including the introduction of an annual staff survey, monitoring of HR processes for race, gender and disability, including staff in post, training, promotion, performance assessment, discipline and grievances and leavers and the initial screening and equality impact assessment of all HR policies.
- 6.6 The draft equality and diversity strategy includes six key performance indicators relating to employment for the 2008 – 2012 period. These are:
- To monitor human resource activities
 - To integrate equality and diversity into learning and development programmes
 - To explore the feasibility of setting up employee support networks
 - To develop a comprehensive learning and development programme on equality and diversity

- To integrate equality competencies in job descriptions of all staff
- To impact assess all HR policies

If successfully and effectively implemented and monitored, the SRA would proactively use the information it obtains to ensure equality of opportunity for all staff and job applicants. However, the current draft includes no key performance indicators, targets or timetables for increasing the number of BME staff, especially at more senior levels. Nor does the new draft competence framework include any equality competencies at present. These will need to be incorporated before the framework is finalised in order to ensure that SRA staff, particularly senior management and line managers, understand and can be held accountable for delivering their obligations to uphold and promote equality and diversity values and principles.

6.7 A complete overhaul of HR policies across the Law Society Group is underway although the anticipated completion date is still not clear; however, the SRA should consider the extent to which it should implement its own HRD policies and processes, with associated targets and timetables, in order to ensure that staff training and development needs are met and under-representation across the organisation in terms of BME staff is addressed. Two previous reviews have been very critical of the SRA and its HRD not being fit for purpose and constrained by the attachment to the Law Society's overall policies. The SRA should develop its own suite of HRD policies and practices and ensure that equality and diversity is fully integrated into these.

6.8 Table 2(i) shows the current workforce profile of the SRA by Directorate and Table 2(ii) by Grade. It is mainly a white organisation. Of the 575 staff, 484, or 84 %, are white, 43 (7.4%) are Asian, 9 (1.5%) are of mixed background and 7 (1.2%) are black 32 (5.5%) declined to answer. Sixty-nine percent of staff are women.

Table 2 (i): Profile of SRA staff by ethnicity

Directorate	Asian	Black	Chinese	Mixed	White	Declined	Total
Resources	1	1	-	-	19	-	21
Legal	1	1	-	-	26	1	30
Standards	1	-	-	1	49	3	54
Client Protection	10	-	-	3	59	1	73
Information	7	2	-	-	86	6	101
Regulation Response	11	-	-	2	95	4	112
Policy	2	-	-	-	16	3	21
Inspection Investigation	10	3	-	2	127	13	155

Total	43	7	-	9	484	32	575
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Table 2(ii): Profile of SRA staff by grade (figures provided show a difference of 13 staff)

Grade	Asian	Black	Chinese	Mixed	White	Declined	Total
2	-	-	-	-	5	1	6
4	5	2	-	1	80	4	92
5	-	-	-	1	55	1	57
6	-	-	-	-	3	-	3
7	4	1	-	-	33	-	38
8	0	0	-	-	15	1	16
9	0	0	-	-	8	-	8
10	11	0	-	-	70	3	84
11	14	3	-	4	104	11	135
12	4	1	-	2	53	4	64
13	4	0	-	1	42	3	50
14	0	0	-	-	17	1	18
620+	1	0	-	-	14	2	17
Total	43	7	-	9	499	30	588

6.9 In the lower grades (2 – 8) there is 6% BME representation; the middle grades (9 – 12) have 11%; and there is 6% BME representation in the more senior grades of 13 and 14.

6.10 The 2007 baseline review had much commentary to make about the equality and diversity profile and processes of the SRA; the key elements of this for the purpose of this report are as follows:

Staff in post

- (i) The percentage of staff from BME backgrounds (currently 59 or just over 10% made up of 43 Asian, 7 black and 9 mixed) is broadly the same as for the West Midlands as a whole.
- (ii) The under-representation of men needs to be examined
- (iii) No data was available on vertical segregation by gender or race but the reviewer felt that both groups are more likely to be found in lower grades and there is clear under-representation of BME staff in senior grades.

Applicants for employment, training and promotion

- (iv) All applicants should be monitored by disability, gender, ethnic origin and age
- (v) Only 1% of applicants reported a disability
- (vi) The SRA claimed to have received very few BME applications and a recruitment consultant was appointed to address this; however, the baseline review found that statistics showed a different picture with 26% of applicants from a BME background of those who reported ethnicity in the July to September 2007 period. The SRA's recruitment process needs to be examined in detail to determine why and at what stage BME applications are failing to progress.

- (vii) Information on the number of appointees was not available so an analysis for ethnicity was not possible. A full impact assessment of the entire recruitment process was recommended.
- (viii) Similarly, no monitoring of applications for promotion has taken place and analysis appears to be done only on a reactive basis
- (ix) Monitoring of training has been recently introduced and the statistics show no disproportionality. The staff survey should include satisfaction with training and development in future.⁵
- (x) Performance assessments undertaken are monitored for age, gender, race and disability. This seems to show that a disproportionate number of men and BME staff had not had an appraisal completed. Since this could be considered a detriment the SRA needs to take steps to address this.

Monitoring and analysis

- (xi) The SRA reported that its quarterly monitoring exercise showed no disproportionate adverse outcomes; however, the reports contain only data with no commentary.

Data collection

- (xii) The review recommended the use the 2001 census categories for ethnic monitoring in order to facilitate comparability. However, these categories would need to be expanded where necessary in order to reflect the actual or potential diversity of SRA employees or job applicants.
- (xiii) There were a number of complaints from staff about diversity monitoring being intrusive. The review notes that this is not uncommon where an organisation has not completed the necessary groundwork to ensure that people fully understand equality and diversity objectives. This still needs to be done.

These and other actions to progress equality and diversity should be built into the SRA's forward work plan, along with targets, timetables and performance measures.

⁵ The SRA has yet to conduct its own confidential staff survey. A 2005 survey of the Law Society Group included two units of staff who are now part of the SRA. The response rate for staff now part of the SRA was 37% compared to an overall response rate of 52%; when asked if the Values Training had had a positive impact on the working environment and had developed and enhanced a personal understanding of equality and diversity, only 13% of SRA staff felt that there had been a positive impact and less than a third felt that their personal understanding had been enhanced. Few respondents overall thought that future equality and diversity training would be relevant to them.

7.0 REGULATORY FUNCTIONS IN THE SRA

7.1 This section describes regulatory functions carried out in three Directorates in the SRA – Inspection and Investigation, Regulatory Response and Client Protection.

7.2 **The Inspection and Investigation Directorate** has 155 staff and three functions:

- Practice Standards Unit
- Forensic Investigations

There is also an Investigations Casework Team

7.2.1 Practice Standards Unit

7.2.1.1 The role of the Practice Standards Unit (PSU) is to improve standards through the promotion of client care and practice excellence. The Unit is split into four geographic regions and has a staff complement of 55. Of these 45 (82%) are white, 4 (7%) are Asian, 2 (4%) are black and 4 (7%) declined to say. Visits to firms are planned and targeted. The Unit also has an educational remit delivered through client care seminars; nine seminars were held during the 2007-2008 year. This aspect of its work should be examined to determine what could be done to improve and enhance engagement with BME solicitors.

7.2.1.2 All firms visited by the Unit are profiled through the Risk Assessment process. This enables an in-depth look at the firm, including any Practising Certificate conditions or other conduct or regulatory matters that have arisen. Visits follow a standard framework with the advisor exercising independent judgment.

7.2.1.3 Following a visit an outcome grading of A – D is allocated. In 2007-2008 27% of visits had a C or D grade indicating significant areas of weakness and/or breaches requiring corrective action. This means, of course, that in 73% of firms no or only minor weaknesses were found. Slightly more than 88% of files were closed during the 12 month period with an indication of an improvement made or no further action required.

7.2.1.4 PSU findings are shared with the firm and an agreement is sought in order to rectify any identified deficiencies. Where this is not forthcoming disciplinary action may be taken. During the 2007-2008 year the Unit completed 1064 visits and made 64 formal and 49 intelligence referrals to other SRA units. A large percentage of firms visited are small, with four or less partners. As almost 6% of BME solicitors are sole practitioners and many others work in small firms, they are more likely than white firms to receive a visit from the Practice Standards Unit. The 2005 monitoring programme suggested that BME firms were more likely to receive poorer outcomes following a PSU visit; however, it is not clear what, if anything, was done with this information.

7.2.1.5 Included in the framework for visits is a review of compliance with the Solicitors' Anti-Discrimination Rule. The Rule requires solicitors to have an equality and

diversity policy and be able to show how it is implemented and monitored. The 2007 Baseline Review noted that this aspect of PSU visits was not considered to be a priority yet, those dealing with guidance calls reported in 2007 that putting in place an equality and diversity policy was one of the two main equality issues being raised by solicitors.

7.2.2 Forensic Investigations

- 7.2.2.1 This investigatory process sits at the top of the regulatory pyramid handling allegations of serious misconduct, breaches of rules and professional obligations, fraud, dishonesty and criminality. The Unit has 70 staff; 58 (83%) are white; 3 (4%) are Asian, 1 (1%) is black and 1 (1%) mixed and 7 (10%) declined to say.
- 7.2.2.2 Intelligence or information is processed through the Risk Assessment Designation Centre and, where a determination is made that the information is of the highest priority, the matter is handed to the Forensic Investigations Unit for action. The Unit assesses the suitability of the information and decides if further enquiries are necessary. Evidence or intelligence may also be received from other SRA units if they determine that the nature of a matter goes beyond their remit. Similarly, the Forensic Investigations Unit may refer matters elsewhere in the SRA.
- 7.2.2.3 In deciding on priorities consideration is given to public risk, client risk, the reputation of the profession and the potential for loss of evidence. An investigator with the appropriate technical skills and expertise is assigned to an investigation and high priority cases are dealt with immediately, for example where it is decided that a firm needs to be closed down or evidence or client funds protected.
- 7.2.2.4 For medium or low risk matters a firm may receive between three and seven days notice; in high-risk matters no notice will be given. Reasons for the investigation are not provided. Although SRA investigators have no right to search or enter, any failure on the part of a solicitor to facilitate the investigation will be considered as a conduct matter. During the investigation assessments are made of the sufficiency of the information gathered and the risk of not proceeding further. This includes a measure of proportionality as a forensic investigation is not an audit and a judgment may be made not to proceed once sufficient evidence is obtained.
- 7.2.2.5 Where a matter is not to be pursued the investigator may issue an on-site notice which puts the solicitor on notice of the breaches that have been identified. Where an investigation concludes that a material breach has occurred these matters are referred to the Legal Directorate where they are streamed for priority action in consultation with caseworkers.

7.2.2.6 The Forensic Investigations Unit has on average 45 and 50 investigators who deal with between 400 – 500 high-risk matters annually. In 2007 39%, of these were highest risk, or category 7, up from 15% in 2006 and 6% in 2005.

7.3 The Regulation Response Directorate has 82 staff and is made up of:

- Regulatory Investigations
- Conduct Investigations
- Fraud and Confidential Intelligence
- Risk Assessment Designation Centre

7.3.1 Regulatory Investigations

7.3.1.1 Regulatory investigations are reactive and may be initiated as a result of the findings of a forensic investigation or through a referral from another Unit within the SRA. Its remit includes practising certificate conditions, regulatory breaches and accountants reports.

7.3.1.2 The Unit no longer carries out risk assessments as this is done in the Risk Assessment and Designation Centre. Team leaders allocate new matters to a caseworker based on the nature of the allegation and the skills and expertise of staff. A detailed assessment is carried out and the case-worker then makes a provisional first instance decision if a condition should be applied on the Certificate. If the solicitor disagrees this can be reviewed by the senior case-worker or by an adjudicator, with an appeal to the Master of the Rolls.

7.3.1.3 Caseworkers carry out a detailed assessment and a decision is made whether to refer the matter elsewhere or seek further information from the solicitor in question. In some cases, for example non-contentious Section 12 matters, caseworkers have the discretion to make a decision; otherwise a referral is made to an adjudicator or, in where the case is complex, to an Adjudication Panel.

7.3.1.4 Detailed procedures manuals and guidance is provided to staff covering issues such as money laundering, Section 12 Conditions, Sections 41 and 43 of the Solicitors Act 1974, mortgages and property and Registered European and Foreign Lawyers. Outcomes can include a file closure without further action, Letter of Advice for less serious breaches; or a finding and warning made by an Adjudicator which can lead to a referral to the Solicitors' Regulatory Authority or an intervention.

7.3.1.5 In 2007 – 2008 the Unit handled 4,264 matters. 849 of these were investigated and, of those, 43% related to practising certificate conditions. In 47% of investigations the allegation was upheld and 16% of matters were referred to the Solicitors' Disciplinary Tribunal.

7.3.2 Conduct Investigations

- 7.3.2.1 These investigations are triggered by an alleged breach of conduct. Complaints can come from a range of sources including another solicitor, a client, the police, a member of the public, a press report or a referral from another unit within the SRA or the Legal Complaints Service. All matters are investigated irrespective of the assessed risk and the Unit reports that most of its time is taken up with assessing and closing matters that are not upheld.
- 7.3.2.2 There are 45 staff of whom 39 (87%) are white, 3 Asian (7%), 1 (2%) mixed and 2 (4%) declined to say. There are specialists for areas such as immigration, discrimination, complaints from MPs, reconsiderations from the Legal Services Ombudsman and Bar Council complaints. Matters dealt with cover the full range of legal services from divorce proceedings to probate.
- 7.3.2.3 The Immigration Team handles around 150 cases per year. Between April 2007 and March 2008 there were 121 immigration matters received, of which nine were received from the Office of the Immigration Services Commissioner (OISC). A case-worker either issues a Letter of Advice, sends the matter for adjudication or closes the file. From observation there seems to be a slight difference in how immigration complaints are handled compared to other complaints in that the onus appears to be more on the complainant to show that their complaint is well founded rather than on the solicitor to refute the allegation. No records on ethnicity are maintained but, of firms declaring immigration and nationality as one of their specialist areas, 42% were BME. The November 2006 minutes of the Diversity Working Group report that BME solicitors do not perform as well as non-BME practitioners in the immigration/asylum accreditation scheme. Perhaps consideration should be given to assessing what could be done in this area to assist solicitors with immigration practices to improve their skills and expertise.
- 7.3.2.4 The Unit has a close working relationship with the Office of the Immigration Services Commissioner (OISC), which is responsible for ensuring that all immigration advisers fulfil the requirements of good practice. OISC also has a statutory duty to audit the SRA which it does on a regular basis as well as referring matters to the SRA for investigation and there is ongoing contact between the two organisations on issues such as trends and training needs. Discrimination complaints number between 50 and 100 per year.
- 7.3.2.5 The SRA does not deal with employer/employee disputes and complainants in these matters must seek redress before an Employment Tribunal and although caseworkers must not give legal advice they are advised that it may be 'helpful to point out to such customers that if they are considering making an application to a Tribunal the time limit is short and strict...'. Given the importance of adhering to statutory requirements in discrimination cases the SRA should consider instructing staff to make customers aware of the time limits.

- 7.3.2.6 The SRA can and does investigate allegations of discrimination even if the complainant does not wish to pursue the matter. This is because of its responsibility to enforce the Solicitors' Anti-discrimination Rule which says, in part, that solicitors must comply with anti-discrimination legislation and not discriminate, victimize or harass. Twelve discrimination files were reviewed and did not disclose any issues of particular concern although in a number of cases the documentation on file was fairly limited. The number of discrimination complaints about the profession is low and this may be due to the fact that this service is not well publicized or known.
- 7.3.2.7 A procedures manual and Informants Protocol sets out how conduct matters are to be investigated. Where a serious allegation is made information will be shared with others such as the Fraud and Confidential Intelligence Unit. Where patterns of behaviour are detected a referral may be made to the Practice Standards Unit or elsewhere in the SRA.
- 7.3.2.8 A caseworker investigates the allegations, often seeking a response from the solicitor concerned as part of this process. S/he can decide there has been no misconduct and close a file; or send the solicitor complained about a 'Letter of Advice'. In more serious matters a case-note is prepared, with a recommendation, and the file is referred to an Adjudicator.
- 7.3.2.9 Adjudicators are independent of the Conduct Investigations Team and a shared service with the Legal Complaints Service. They are asked to provide feedback on case matters for quality control purposes. The outcomes of a conduct investigation can include a referral to the Solicitors' Disciplinary Tribunal, a reprimand or a decision to take no further action.
- 7.3.2.10 All file closure letters include a reference to the Legal Services Ombudsman and advise complainants that they may raise the matter with that office if they are unhappy with the service they have received. The number of files taken up by and feedback from the Ombudsman are monitored and used for quality control and Unit training purposes.
- 7.3.2.11 In the 2007-2008 year the Unit handled 4,828 matters of which 4,010 (83%) were not upheld, mainly on the basis that they required 'no regulatory action'. Of those that were upheld, 68% resulted in a formal decision by the SRA, 20% were referred to the Solicitors' Disciplinary Tribunal and letters of advice were issued in a further 10% of matters.

7.3.3 Fraud and Confidential Intelligence

- 7.3.3.1 This Unit was set up in the 1990s in response to an increase in the amount of mortgage fraud. Its work has gradually expanded to cover a range of other intelligence sources that relate to fraud, dishonesty and criminal misconduct. It has 16 staff; all are white. Staff are trained in the National Intelligence Model

which is used to assess the information received and its sources; this is stored on a separate database.

- 7.3.3.2 The Unit's main sources of intelligence are law enforcement bodies, immigration, institutions such as banks and insurance and mortgage companies and the profession as well as the general public and the SRA itself. The Unit does not retain monitoring information on complainants; however, it uses the information received to undertake detailed profiling of individuals and firms. These profiles, in turn, inform the deliberations of the Tasking and Co-ordination Group which sets priorities for further investigations by the SRA.
- 7.3.3.3 The unit 'markets' itself across the SRA to encourage staff to share information and pass on intelligence. However, it operates quite separately from the rest of the SRA and is considered secretive by others. In 2007 the Unit handled 2,900 pieces of information. Of these 657 came from SRA staff; 673 from the public; 577 from the profession; 513 from law enforcement and the remainder from banks, insurance companies and other regulators. Much of the internal information comes from the Forensic Investigation Unit.
- 7.3.3.4 Approximately 350 referrals are made annually for investigation. Information not used is stored to see whether patterns of behaviour or trends can be identified that may justify investigatory or regulatory action being taken. Other information may lead to further investigation or immediate action, in which case it is passed to another Unit in the SRA.
- 7.3.3.5 The Unit will not necessarily act on the basis of an anonymous complaint, recognizing that information provided may be malicious, although they will endeavour to substantiate the legitimacy of intelligence if possible. If this cannot be done the information is logged and destroyed after five years.
- 7.3.3.6 When information is considered to have 'substance' and there is a need to advise others, a process that ensures compliance with the Data Protection Act and legal proofing is followed before intelligence is shared with any external source.
- 7.3.3.7 The Unit prosecutes approximately 450 breaches of the 'bogus solicitor' provision of the Solicitors' Act annually.
- 7.3.3.8 The indicators of intelligence and information received show trends in the areas of mortgage fraud, money laundering, client account defaults, misappropriation of funds and high yield investment fraud. Where appropriate, warning information and guidance is prepared to assist solicitors to recognize where dishonest or illegal activities may be occurring.

7.3.4 Risk Assessment and Designation Centre

- 7.3.4.1 Until the recent establishment of the Risk Assessment and Designation Centre (RADC) the assessment of regulatory risk in the SRA, used to determine what regulatory action would be taken, was carried out within a number of different

units. This approach itself posed a risk to the organisation as it could lead to a lack of consistency in definition and application.

- 7.3.4.2 In July 2006 the Law Society Compliance Committee noted that the impact on the profession, including concerns about disproportionate impact on BME firms, depended on how risks were constructed and the structural reality that sole practitioners and small firms, where BME solicitors are over-represented, are much more likely to present a higher risk. This led to the conclusion that ‘if sole practitioners....continue to be seen as the primary risk this will almost inevitably lead to continued impact on BME firms’.
- 7.3.4.3 It was also acknowledged that ‘a key problem in evidence-based decision-making has been a lack of good empirical information, a problem strongly influenced by an absence of consistency in categorizations’. Once the RADC was in place designation criteria were proposed, consistent with the Better Regulation Task Force principles, to help ensure consistency and transparency. SRA staffing figures show only 1 employee currently assigned to the Centre, soon to be increased to 3.6 full time equivalents.
- 7.3.4.4 A taxonomy pilot ran in 2006 and 2007 with the provisional purpose to ‘provide a clear and consistent system for categorizing, recording and communicating regulatory risk’ and its intended outcomes were
- Risk categories that are meaningful and useful in assessing risk
 - A scoring system that would facilitate prioritization of regulatory action
 - Maximizing the possibility of consistent reporting
- 7.3.4.5 In the RADC, risk classification categories are aligned to designation rules to create a Risk Assessment Profile (RAP) so it is clear where a matter should be routed within the SRA. All new information is supposed to be treated in this way. The aim of the risk assessment process is to describe an activity which may be a regulatory risk, in the first instance matching the allegation to a specific category and subsection in the Solicitor’s Code of Conduct.
- 7.3.4.6 The next step is to identify the objective scale of the threat, using a set of values that identify the financial risk and/or number of persons affected, followed by an assessment of subjective impact, or the level of intent, which ranges from ‘unknown’ to ‘deliberate and/or dishonest’. At this point the assessment is completed as if the allegation is true and only on the basis of available evidence.
- 7.3.4.7 A score is then automatically generated. This can be modified by the ‘evidential strength section’ which uses the National Intelligence Model. For RADC purposes the default grading at this point is that the allegation is untested; cannot be judged on the evidence presented; and that the SRA and law enforcement protocols apply. If there are multiple allegations then additional risk assessments are completed.

- 7.3.4.8 An overall risk score is obtained after the section on antecedents is completed. This is any history on the solicitor or firm about whom the information is being assessed. This section also allows the officer to indicate any relevant patterns of open or closed complaints areas where, according to the RADC protocol, the 'skill and judgment of the assessing officer must be applied'.
- 7.3.4.9 Officers also have the opportunity to 'override' the automatically generated overall score although comprehensive reasons for doing so must be included. It is not clear what steps the SRA is taking to monitor 'skill and judgment' nor any equality or diversity implications of the Centre's activities but the imminent introduction of quality audits should be designed to address this concern.
- 7.3.4.10 An initial equality impact assessment of the risk management project was carried out in December 2006. The 2007 Baseline Audit criticized it for not taking account of the potential for indirect discrimination, particularly where previous regulatory history is included in the assessment, given the evidence of disproportionality in relation to BME solicitors. It also recommended that the SRA consider the source of 'intelligence' or evidence and build this into the process and pointed out that consultation must be carried out and monitoring take place not only in relation to the actions taken but also the process itself. A full impact assessment was to be completed on the risk assessment project but this has not yet happened.

7.4 Client Protection

7.4.1 The Client Protection Directorate has 73 staff and the following functions:

- Interventions
- Cost Recovery
- Compensation Fund
- Statutory Trusts
- Indemnity Insurance
- Intervention Archive

7.4.2 The Review considered only the Directorate's work in relation to Interventions and their impact in relation to BME solicitors which is considered in Chapter 9. Statistics indicate that 11 staff are engaged in intervention work within the SRA, not including post intervention or intervention archive. Of these, 9 (82%) are white, 1 is Asian and 1 declined to say.

7.4.3 The overall aim of an intervention is to protect the public from dishonest solicitors or where the acts or omissions of a solicitor are found to justify an intervention. It is made into a solicitor's private practice usually building on work already done by other SRA officers such as Forensic Investigations. A decision to intervene is made by the Professional Regulation Adjudication Panel.

- 7.4.4 The process is managed by Intervention Agents who are solicitors' firms appointed by the SRA. The selection of an agent depends on a number of factors such as geographic location, size of the firm concerned and the type of work undertaken. Currently twenty-five firms are included on the Intervention Panel. None are BME firms.
- 7.4.5 By their very nature interventions are usually processed quickly in order to protect client interests and notice, usually by telephone, will be given to the solicitor followed by the serving of a Statutory Intervention Notice. Where funds or papers are deemed to be at risk, notice may only be given to the solicitor when the Intervention Agent arrives at the premises.
- 7.4.6 The outcomes of an intervention include:
- Closure of a practice
 - The vesting of practice monies
 - A possessory right to all papers, deeds etc
 - Contact with clients to transfer files
 - Distribution of trust funds

7.5 Adjudication

- 7.5.1 The role of panel adjudicators is to deliver impartial decisions independent of the casework function. Depending on the nature and status of a matter, an adjudicator may sit alone or as a member of a Panel. Currently there are between six and twelve panel sittings per year with between 1000 and 1500 decisions made at the appellate stage.
- 7.5.2 There are approximately 40 adjudicators appointed by public advertisement and nine in-house adjudicators who work from home. 2008 ethnicity data shows that 8 of these are white and a ninth declined to say. This pattern has been consistent since 2005. Panel adjudicators are also mainly white. In 2006, 29 of the 36 adjudicators were white, 4 Indian and the remainder either categorized as 'other' or declined to say. The following year 32 of the 38 were white and 2 Indian. A recent exercise to recruit new panel adjudicators offered the SRA the opportunity to instruct its recruitment agent to take steps to ensure a diverse pool of candidates. While it appears that this was done very few BME applications were forthcoming. The current system is being changed to integrate and rationalize these roles although specialisms within the new arrangements will remain.
- 7.5.3 Adjudicators have responsibility for pre and post-admission matters. Post-admission adjudicators receive files from across the SRA, generally in relation to poor service, suitability, misconduct, rule waivers and the compensation fund.
- 7.5.4 The 2006 Regulation Audit identified the expected outcomes of adjudication which include:

- Setting and monitoring practice standards
- An independent assessment of SRA decisions on appeal
- Addressing non-compliance and poor performance

7.5.5 Between December 2006 and December 2007, 954 matters were referred to the in-house adjudication team. Of these 138 (14%) related to BME firms, 67% were white and 172 (18%) were unknown. Although a smaller percentage of BME referrals were upheld (73% compared to 78% for white solicitors) more were referred to the Solicitors' Disciplinary Tribunal (12% as opposed to 10% for white solicitors). Again, however, the 'unknown' figure skews these findings.

8.0 DISPROPORTIONALITY IN REGULATION AND INVESTIGATION

8.1 The 2006 report was an initial race impact assessment of the 2004 statistics which indicated that BME solicitors were disproportionately represented in regulatory decisions compared to their representation within the profession. It sought to identify what actions might be needed to ensure that all regulatory processes and decisions were made in a non-discriminatory way.

8.2 In summary, the 2004 data showed an over-representation of BME solicitors:

- With Practising Certificate conditions
- In relation to applications for approval of employment arrangements
- In referrals to the Solicitors Disciplinary Tribunal
- Where a decision is made to intervene into a practice
- Named on a file dealt with by the Investigation Casework team, which tend to be more complex cases and include complaints
- In forensic investigations, in the case of black solicitors
- Subject to Section 12(1)(ee) in relation to late or outstanding Accountants' Reports

8.3 Because of gaps in data the ethnicity of 12.75% of solicitors was 'unknown' so the disproportionality could, in fact, be greater than what is reflected in the findings; on the other hand it may be less. It should also be noted that the 2004 figures do not include Registered European Lawyers or Registered Foreign lawyers as un-admitted individual's details were not included. Further, the figures used for the profession as a whole reflect all those who were registered on the Roll; this would include those who did not hold Practising Certificates at the time.

8.4 As far as is possible, given the lack of consistency in data reporting, Tables 3 –8 demonstrate how disproportionality continues to be a feature of the SRA's regulatory function. It is important to note the significant number of 'unknowns' which makes comparisons and conclusions unsafe until improved data is produced, as is being attempted. In 2005 the 'mixed' and 'unknown' categories were combined and the figure for the population of solicitors is an average for the period. The SRA is addressing the urgent need to rationalize its ethnic data collection so that reporting is consistent and clear.

Table 3: Regulatory activity by ethnicity 2004 – 2007 – Interventions

Ethnic origin	2004		2005		2006*		2007**		Population of Solicitors
	N	%	N	%	N	%	N	%	
Asian	7	11%	6	9%	2	3%	10	16%	5
Black	3	4%	8	11%	8-9	15%	4	6%	2
Chinese	-	-	-	0%	-	0%	1	2%	1
Mixed	-	-	-	-	-	0%	-	-	1
Unknown	9	14%	11	20%	26	44%	12	19%	13
White/European	47	71%	44	60%	22	37%	35	57%	79
Total	66	100	70	100	59	100	62	100	100%

* data provided = 99%

Table 4: Regulatory activity by ethnicity 2004-2007 - Practising Certificate Conditions

Ethnic origin	2004		2005		2006		2007		Population of Solicitors
	N	%	N	%	N	%	N	%	
Asian	85	11%	75	12%	82	13%	108	15%	5
Black	54	7%	44	7%	46	7%	48	7%	2
Chinese	2	0%	-	0%	5	.8%	5	.7%	1
Mixed	14	2%	-	-	2	.2%	4	.6%	1
Unknown	115	14%	112	18%	121	19%	130	18%	13
White/European	535	71%	394	63%	371	59%	412	58%	79
Total	805	100	625	100	627	100	707	100	100%

Table 5: Regulatory activity by ethnicity 2004-2007 – Tribunal Referrals

Ethnic origin	2004		2005		2006*		2007		Population of Solicitors
	N	%	N	%	N	%	N	%	
Asian	24	8%	42	12%	34	9%	44	9%	5
Black	25	8%	21	6%	33	9%	33	7%	2
Chinese	1	0	-	0%	2	1%	5	1%	1
Mixed	3	1%	-	-	0	0%	3	.6%	1
Unknown	52	17%	81	23%	76	21%	83	17%	13
White/European	196	65%	212	60%	213	59%	325	66%	79
Total	301	100	356	100	358	100	493	100	100%

* data provided = 99%

Table 6: Regulatory activity by ethnicity 2004-2007 – Late Accounts Reports

Ethnic origin	2004		2005		2006		2007		Population of Solicitors
	N	%	N	%	N	%	N	%	
Asian	124	6%	21	9%	25	5%	19	6%	5
Black	55	37%	7	3%	12	3%	18	5%	2
Chinese	7	.5%	2	1%	1	.2%	4	1%	1
Mixed	3	.5%	-	-	-	-	5	2%	1
Unknown	316	16%	19	8%	52	12%	12	4%	13
White/European	1493	75%	184	79%	362	80%	270	82%	79
Total	1998	100%	233	100%	452	100	328	100	100%

Table 7: Regulatory activity by ethnicity 2004-2007 – Inspections

Ethnic origin	2004		2005*		2006		2007		Population of Solicitors
	N	%	N	%	N	%	N	%	
Asian	93	4%	76	9%	68	8%	36	10%	5
Black	42	2%	50	6%	48	6%	21	6%	2
Chinese	16	.7%	8	1%	9	1%	2	1%	1
Mixed	6	.3%	-	-	2	.2%	3	1%	1
Unknown	589	27%	135	16%	139	17%	58	16%	13
White/European	1469	66%	585	69%	568	68%	237	66%	79
Total	2215	100%	849	100	834	100	357	100	100%

* data provided = 101%

Table 8: Approval/refusal of employment arrangements

Ethnic origin	2004		2005*		2006**		2007		Population of Solicitors
	N	%	N	%	N	%	N	%	
Asian	34	14%	21	13%	14	15%	20	14%	5
Black	12	5%	11	7%	12	13%	12	8%	2
Chinese	-	0%	1	1%	-	-	-	-	1
Mixed	4	1%	-	-	1	.9%	1	.7%	1
Unknown	37	15%	32	20%	30	3%	41	28%	13
White/European	161	65%	98	60%	64	68%	71	49%	79
Total	248	100%	163	100%	121	100	145	100	100%

* data provided = 101%

** published figures total 121 and percentages are incorrect; some solicitors had more than one decision made

8.5 Looking at how fraud intelligence information is channeled within the SRA, the evidence shows that for the 1.03.07 – 31.03.08 period, of 123 individuals referred for further investigation and/or regulatory action 20, or 16% were of BME background (10.5% or 13 Asian, 5.6% or 5 black and 1.7% or 2 Chinese). During the same period 217 firms were referred internally by the Fraud and Confidential Intelligence Bureau. 47 of these were either BME sole practitioners or identified as BME firms using the

Equality and Human Rights Commission's classification of 51% of more BME representation (including non legal staff). However, the large percentage of unknown ethnicity (62 out of 217) makes it difficult to draw reliable conclusions.

8.6 The SRA also has a role in assessing applications for student enrolment and admission to the Role when character and suitability referrals are made. During 2007 a total of 17,904 applications were made, 19% from BME applicants and 67% from white applicants. Of these, 3% or 532 were referred to the SRA for a character and suitability assessment. Of the 532, 170 referrals were about BME applicants and 20 or 12% of these resulted in a negative outcome. For white applicants, while there were 278 referrals, only 15 or 5% had a negative outcome.

8.7 When the total figures for those barred from admission either as a student or from the Role in 2007 are examined the number of BME applicants with a negative outcome rises from 20 to 29 or 30% of the total as Table 9 shows. The increase is due to decisions being made to bar an applicant on the basis of intelligence other than a character and suitability assessment. However, again the high number of 'unknowns' make it difficult to draw reliable conclusions.

Table 9: Applications barred, 2007

Ethnicity	Student applicants barred	Admission to Roll applicants barred	Total
BME	18 (29%)	11 (31%)	29 (30%)
Mixed	1 (2%)	-	1 (1%)
Unknown	30 (48%)	7 (19%)	37 (38%)
White	13 (21%)	18 (50%)	31 (32%)
Total	62	36	98

8.8 The 2006 assessment suggested that the Law Society should examine its risk assessment process and criteria to ensure they were free from bias and non-discriminatory in application. This issue has recently been addressed with the establishment of the Risk Assessment and Designation Centre, discussed in more detail in Chapter 7.

8.9 It also highlighted a further seven areas that required attention in order fully to understand the apparent disproportionality. These were:

- Ensuring that decisions of the Solicitors Disciplinary Tribunal are objective and bias free

- The impact of the SRA culture on the willingness and responsiveness of BME solicitors to seek help and the capability of SRA staff to understand matters relating to race
- The size of firms more likely to be subject to regulatory actions and what factors might impact on sole practitioners
- The type of work and whether criteria used to justify inspection were more onerous for some areas than for others and whether practitioners fully understand the rules
- Solicitors' management capacity and the skills needed to keep accurate financial records
- Culture and community expectations and how certain cultural and religious practices and traditions might be interpreted in the regulatory context
- The Qualified Lawyers Transfer Test and issues facing lawyers from overseas

There is a considerable amount of work outstanding to give effect to these recommendations, none of which, with the exception of the Qualified Lawyers Transfer Test, have yet to be actioned.

8.10 In direct response to the disproportionality findings the SRA undertook research looking specifically at the characteristics of solicitors and firms against whom conduct complaints and compensation fund claims, and firms against whom regulatory actions had been taken. The data was extracted in March 2006 with the intention of developing statistical models which could be used to predict, more accurately, those most likely to require investigation or assistance in the future. This was an interesting and novel approach rather than trying to tackle disproportionate impact, which then continued in the absence of action to end it.

8.11 The research, which was never published, concluded that the proposed modeling for predictive application would not be possible due mainly to the lack of data on key variables. It recommended, however, that work should be undertaken to examine if compliance activities were proportionate amongst different groups and mooted the possibility of file studies. Neither of these was progressed.

8.12 In late 2007, an independent baseline equality and diversity report commissioned by the SRA confirmed disproportionality and reinforced the need to carry out equality impact assessments in order to investigate the consistent over-representation of BME solicitors in terms of regulatory and forensic investigations and evidence that black solicitors were disproportionately impacted by a decision to intervene, among other findings.

8.13 The SRA appears to be endeavouring to address the issue of proportionality in two main ways. First of all, through a programme of key initiatives as part of its equality

and diversity strategy and work plan (discussed in more detail in Chapter 12) and, secondly, through its programme of restructuring, risk assessment, decision-making, human resource policy review and IT improvements.

9 REGULATORY ACTIVITIES IN THE SRA

9.1 This section examines selected regulatory activities that result from the exercise of the functions described in Chapter 7. It examines in more detail the areas of disproportionality highlighted in Chapter 8 in particular, interventions, Section 12 Practising Certificate Conditions, referrals to the Solicitors' Disciplinary Tribunal, Accounts Reports and Investigations.

9.2 Interventions

9.2.1 As Chapter 8 showed, there is disproportionality in the number of BME solicitors subject to an intervention. The SRA was asked to try and address the high percentage of those with an 'unknown' ethnicity and estimate how many might be BME solicitors in order to provide a more complete picture. The results of this show (Table 10) that, from 2005 onward, the percentage of BME solicitors subject to an intervention was indeed higher than the initial figures had suggested.⁶ Figures also show that 14 of the interventions in 2006 were in relation to solicitors who had transferred to the Roll under the Qualified Lawyers Transfer Regulations.

Table 10 – Interventions by ethnicity 2005 – 2007 (Figures in brackets are original number of interventions by ethnicity)

Ethnicity	2005	2006	2007
Asian	6 (6)	7 (2)	11 (10)
Black	11 (8)	17 (9)	9 (4)
Chinese	-	-	1 (1)
White	53 (44)	35 (22)	41 (35)
Total	70	59	62

9.2.2 When looked at as a percentage of the representation of Black, Asian and white solicitors in the profession this over-representation becomes starker.

⁶ For the purposes of tables 8 and 9 the 'white' category includes those categorised as British and Irish by the SRA. The figures used in table 8 were provided by the SRA for this exercise. Totals do not match other published data on interventions which show 70 in 2005, 59 in 2006 and 62 in 2007

Table 11 – BME interventions as a percentage of representation in the profession

Ethnicity	2005 Interventions		2006 Interventions		2007 Interventions	
	% of interventions	% of pop.	% of interventions	% of pop	% of interventions	% of pop
Asian	9%	5.0%	12%	5.2%	18%	5.5%
Black	16%	1.5%	29%	1.6%	15%	1.6%
White	76%	79.3%	59 %	78.6%	66%	78.3%

9.2.3 Published data for the 2007-2008 year shows that all of the 63 interventions were into sole practitioners (51) or 2 – 4 partner firms (12).

9.2.4 The 2007 baseline audit concluded that the SRA faced a ‘*major compliance gap*’ because it has so far failed to carry out an equality impact assessment despite the evidence of a ‘consistent pattern of over-representation in interventions for black solicitors and, in two out of three years, for Asian solicitors.

9.3 Section 12 Practising Certificate Conditions

9.3.1 The Solicitors’ Act requires the Law Society to issue a practising certificate where specified conditions are met. The Society has discretion under certain circumstances to consider the imposition of conditions and, in these cases, the matter is handled by the Regulation Unit of the SRA which considers practising certificate applications where a number of situations arise, for example, Accountants Reports not being received on time or bankruptcy. Risk is assessed by the RADC before matters are referred to the Regulation Unit.

9.3.2 In these circumstances SRA staff have the power to regulate a solicitor’s practice and, in making a determination, will look at a solicitor’s history and current record. As the Regulation Unit’s Guidance Note on Practising Certificates and Conditions states this is ‘one of the most powerful ways in which the Society is able to regulate the profession; conditions have a far greater impact than a sanction because it is a practical solution and one that the Society is able to monitor.’

9.3.3 Any condition imposed must be ‘proportionate’ to the risks posed and, in reaching a conclusion, SRA staff or Adjudicators must consider:

- If there is a good regulatory reason to impose the condition
- If doing so will address that regulatory reason
- If there are other ways it could be addressed short of imposing a condition

- Whether the proposed condition addresses the regulatory reason without being too wide.

They are also required to weigh the potential public risk against the adverse consequences restrictions might have on a solicitor's ability to seek employment or pursue their livelihood.

- 9.3.4 All Section 12 decisions are discretionary and each application is decided on its merits. Caseworkers can make decisions but only in non-contentious matters, such as where the solicitor agrees to the condition. Otherwise, a case note is prepared and the matter is referred to an adjudicator. Given that a solicitor can be prohibited from practicing as a sole practitioner or from taking on a trainee solicitor; required to attend training or have limits placed on the areas of work they can undertake, among other conditions, this is clearly an area where the SRA should be confident that any decisions made or conditions recommended are not tainted by discriminatory perceptions or prejudices.
- 9.3.5 As Table 4 in Chapter 8 showed, since 2004 Asian solicitors have been two to three times more likely to have a Section 12 condition imposed than their overall representation in the solicitor population; for black solicitors, the incidence is more than three times their representation, whereas white solicitors are consistently under-represented in relation to Section 12. This disproportionality may or may not be skewed by the high number of 'unknowns', particularly in 2006, and the SRA is now undertaking the same exercise as was carried out for interventions to determine whether a similar pattern emerges but, more importantly, ensure that its data collection systems reduce or eliminate this in the future. It is also the case that a greater proportion of solicitors who transfer to the Roll by way of the Qualified Lawyers Transfer Regulations are subject to Section 12 conditions.
- 9.3.6 A random sample of eighteen Section 12 files was reviewed, representing six black, six Asian and six white solicitors. Because of the range of conditions that can be imposed it was difficult to identify any trend or pattern in terms of the decisions made on these files although, in the case of one black solicitor, even though the Law Society had taken into account the particular circumstances of the case and agreed that it was appropriate for the applicant to continue as a student member, the SRA saw fit to impose a condition.
- 9.3.7 In January 2008, an initial equality impact assessment of Section 12 matters concluded that the policy had a high relevance for race, gender, age and disability and recommended that a full impact assessment was required. This should be done as a matter of priority, so that the use of discretion by caseworkers and the need for and extent of equality and diversity training for staff can be considered.

9.4 Referrals to the Solicitors' Disciplinary Tribunal

- 9.4.1 The Solicitors' Disciplinary Tribunal (SDT) is an independent body that considers and decides on alleged breaches by solicitors. Matters are referred to the SDT by the SRA which then acts in a prosecutorial role.
- 9.4.2 Trends in SDT referrals show that Asian solicitors were highest in 2005 (12%) reducing to 9% in the two subsequent years, yet still almost double their overall representation in the profession. For black solicitors SDT referrals are consistently and significantly higher than their representation in the profession. SRA statistics also include a large number of 'unknown' referrals and it will not be until better quality information is available that the true picture of BME disproportionality is known.
- 9.4.3 SRA activity on prosecutions for the 2006 – 2007 and 2007 – 2008 years shows a 16% increase in new cases, a monthly average of 28, and currently 451 cases in progress. The SRA's target for issuing proceedings is within six months after the decision to refer is made. The SDT's target for hearing a matter is within a further six months. This is all in addition to the time the SRA has already taken to investigate allegations. For a sole practitioners or small firm having to wait such a lengthy period before knowing the outcome of an allegation could be particularly problematic
- 9.4.4 While decisions of the SDT may be independent of the SRA and outside its sphere of influence, it is also the case that the SDT considers the matters referred to it and, therefore, it is essential that the regulatory process which results in a referral is not tainted by unfairness or discrimination, particularly in view of the serious nature of the sanction that can be imposed, including suspension and striking off.

9.5 Accounts Reports

- 9.5.1 All solicitors who hold or receive client or trust monies or operate a client account must submit accountant reports in a standard format and within specified timescales. On receipt by the SRA these are checked to ensure the required information is included and to determine whether they have been qualified or observed.
- 9.5.2 Where reports have not been received or are late they become subject to Section 12 of the Solicitor's Act and the circumstances are investigated. The result of this can be a referral to an adjudicator for a sanction or to the SDT.
- 9.5.3 Chapter 8 (Table 6) showed that the representation of Asian solicitors in this area has, with the exception of 2005 when it peaked at 9%, remained fairly constant at around 6%, slightly above their representation in the profession. Black solicitors made up 3% of the figures for 2005 and 2006 – double their representation – and then increased again last year to 5%. White solicitors, too, are over-represented in relation to accountant reports although only slightly.

- 9.5.4 Regulatory investigation's most recent statistics show a slight decrease overall (from 894 to 800) in the number of accountant report matters handled in 2007 – 2008; however, until these are disaggregated by ethnicity it is not possible to assess whether there has been any impact on BME solicitor disproportionality.
- 9.5.5 Chapter 10 notes that Section 12 conditions imposed on solicitors admitted to the Roll by way of the Qualified Lawyers Transfer Regulations tend to be associated with their ability and capacity to practice rather than actual breaches. This may well be the case also with sole practitioners and small firms who are more likely to be the subject of regulatory activities, The SRA – perhaps together with the Law Society and in consultation with sole practitioners and small firms – should consider the quality and accessibility of current guidance, advice and educational programmes on practice management and make whatever improvements may be necessary to help develop competence among these groups of solicitors.

9.6 Investigations

- 9.6.1 A forensic investigation is undertaken once the risk assessment process concludes that this is a justifiable and necessary action and the SRA maintains that greater experience and understanding of risk has led to better, more focused intelligence. In terms of impact Table 7 in Section 8 has demonstrated that there is a disproportionate impact on black and Asian solicitors in this area – double their representation in the solicitor population for Asian solicitors and four times their representation for black solicitors.
- 9.6.2 However, solicitors who have been the subject of regulatory activity by the SRA talk of unfairness in not being told what allegation is being made and of insufficient attention being paid to their right to be free of unnecessary and disproportionate attention from the SRA.
- 9.6.3 In March 2008 forensic investigations were resulting in a 69% adverse report rate, which the SRA believes reflects accuracy in terms of targeting and prioritization. This was down slightly from a high of 72% for the year in January 2008. However, this means that in March, for example, 31% of forensic investigations did not result in adverse findings. It is important that the SRA analyse these for lessons learned as well as monitor all of their activities in relation to investigation for ethnicity.

10. QUALIFIED LAWYERS TRANSFER REGULATIONS

- 10.1 The Qualified Lawyers Transfer Regulations (QLTR), which provide a means for qualified lawyers from other jurisdictions to be admitted to the Roll for England and Wales, were introduced in 1990 partly in response to a European Directive requiring the recognition of professional qualifications by Members States.⁷
- 10.2 At present, for EU transferees there is a presumption that the individual, who is fully qualified in their home jurisdiction, has the skills necessary to practice in the UK and the SRA, as the competent authority under the Directive, has a number of obligations towards applicants. Any shortfall in skills essential to practice in the UK are demonstrated by way of an aptitude test. As an alternative, EU lawyers who register with the SRA and practice in the UK for three years can be admitted to the Roll subject to character checks.
- 10.3 The SRA also has international obligations under the World Trade Organisation General Agreement on Trade in Services eventually to enable individuals from jurisdictions party to the Agreement to benefit from transfer arrangements. The current preferential treatment given by the SRA to lawyers from certain (generally common law) jurisdictions is inconsistent with this.
- 10.4 In March 2008 the SRA Board considered a paper setting out the basis for a review of the QLTR. As well as needing to meet international obligations, the SRA identified a number of other reasons why a QLTR review was timely. These were:
- The SRA's responsibility to ensure lawyers are competent
 - Changes in some overseas legal systems
 - The QLTR allows people to bypass training regulations which set out the domestic route to qualification
 - Not all jurisdictions are covered by the Regulations
 - Evidence that transferees are more likely to be subject to disciplinary sanctions
 - Areas of practice of some QLTR lawyers do not align with Qualified Lawyer Transfer Test subjects assessed
- 10.5 This is an area that the Law Society has been interested in for some time. Research in 2005 sought to determine how QLTR solicitors, who qualified in 1998, compared to 'direct route' solicitors in terms of discipline, retention and employment issues. However, the numbers involved were small and led to inconclusive findings.
- 10.6 In November 2007 the Education and Training Policy Unit in the SRA produced a report entitled *Transferees and other route solicitors*. This covered all solicitors admitted between January 1995 and December 2005 (although not necessarily still

⁷ Also Norway, Iceland, Liechtenstein and Switzerland. The European Recognition of Professional Qualifications Directive (89/48/EEC) subsequently superseded by Directive 2005/36/EC on professional recognition

practising or registered). The study identified three overall risk indicators in relation to transferees who were:

- Slightly more likely to hold a conditional practising certificate
- Slightly more likely to have a SDT finding and order against them
- More likely to hold principal roles, especially partner and sole practitioner

10.7 Specifically the research found that:

- 17% of solicitors admitted during the study period (11,411) came in via the QLTR
- Only 7% of all solicitors practising as at July 2007 were transferees
- The trend was for foreign lawyers to transfer to the Roll but not practice as long as others or at all; in July 2007, only 44% of transferees held a practising certificate compared to 82% of other solicitors
- Of these, Hong Kong solicitors had the lowest rate of practising certificates, at 16%, and Nigerian Solicitor and Barrister had the highest at 73%
- While a greater proportion of transferees were subject to Section 12 conditions (including training requirements, employment restrictions and accounts reports) this was mainly in relation to their ability and capacity to practice rather than actual breaches.⁸ This is an important point given the advisory and guidance roles and remits of the SRA and the Law Society to help transferees and others set up and effectively run a practice
- SRA data suggests an increase in the numbers of interventions and other regulatory matters against foreign transferees (10% of interventions in 2005 and 24% in 2006); however, it notes that this may be as much a function of the number of interventions against non-transferee solicitors falling

10.8 In light of this evidence the SRA should consider, in consultation with the Law Society, what can be done to minimise the risks and better prepare QLTT solicitors for practice, particularly those destined to be sole practitioners or work in small firms.

10.9 A consultation exercise on interim proposals for the transfer process and requirements for lawyers qualifying under the QLTR was carried out by the SRA in late 2007. The consultation document identified what the SRA saw as 'significant weaknesses in the current system', namely:

- That the guidelines are vague and may lead to inconsistent decision making and the raising of false expectations
- There is no explicit requirement for non-EU applicants to have any experience at all of practice in the law of England and Wales

⁸ Note that this includes 25% who had never applied for a practising certificate and a further 32% who had been removed from the Roll for a number of reasons including voluntary removal and striking off

- The system is open to a restricted list of countries and is unfair
- The system is mismatched with the requirements for solicitors qualifying via the domestic route

10.10 The consultation proposed a review of the guidelines on the nature of the experience that non-EU qualified lawyers should have; the circumstances in which exemptions from the Transfer Test should be allowed; and recommended a temporary moratorium on appointing new QLTT organisations. These proposals were based on concerns about a lack of consistency in decisions on qualification requirements; evidence of disproportionality in terms of disciplinary action against solicitors entering the profession via the QLTR and allegations about QLTR providers and unfair disparities in relation to standards.

10.11 Draft guidance on the experience requirement for transferring solicitors called for a minimum of two years experience in a common law jurisdiction, of which at least one year must have been practising England and Wales law supervised by a solicitor admitted in England and Wales; transferees would also have to have experience of three distinct areas of law gained in England or Wales or another common law jurisdiction.

10.12 An initial impact assessment of the proposals noted that ‘it will be more difficult for applicants from certain countries to satisfy the experience requirement...because England and Wales firms and solicitors have a greater presence in some jurisdictions than in others’. It concluded that ‘it is reasonable and proportionate to require all solicitors...to have some prior experience of the law of England and Wales’ both from the perspective of the public but also in the transferee’s own interests; and, further, that the proposal is less stringent than is allowed for under the QLTR which permits a requirement for experience of up to two years.

10.13 The experience proposal generated the strongest opposition. Consultees felt that:

- The requirement could deter individuals from working in this jurisdiction and limit firms’ ability to recruit from overseas
- Some senior lawyers with specialisms might find the requirements difficult to meet, insulting and deter transfers
- Experience based requirements would not align with new approaches to outcome focused criteria
- The requirement would be harsh on those who sought to be admitted but not practice in England and Wales. This is a significant percentage of transferees; (66% in July 2007)
- Negotiations on reciprocal arrangement for England and Wales firms to practise elsewhere would be jeopardised, particularly in India which currently prohibits England and Wales solicitors from practising
- The requirement was unfair as it did not apply to EU lawyers
- The guidance could be indirectly discriminatory

- 10.14 Respondents were almost equally split on whether the experience proposal could be indirectly discriminatory. 41.4% felt it could be while 46% thought there would be no equality impact or agreed with the SRA that any impact would be proportionate and justifiable.
- 10.15 In response the SRA now proposes to remove the requirement for supervision if transferees are working in entities regulated by the SRA, as well as limit the breadth of experience transferees would be required to show. The requirement that transferees have experience in England or Wales law for a year prior to admission would remain.
- 10.16 The second proposal on the QLTR was that exemptions from the Qualified Lawyer's Transfer Test examinations should only be granted if the applicant could demonstrate that they had successfully been assessed in the same area during the previous five years. Following consultation the SRA took the view that this was an acceptable and reasonable approach to take and one that would help to ensure greater consistency in decision-making around exemptions.
- 10.17 Finally, 67% of respondents agreed with the SRA proposal to place a moratorium on approving further QLTT providers until the SRA was satisfied that standards were being applied consistently. However, it made a commitment to review this decision by December 2008.
- 10.18 The Law Society opposed the interim guidance seeing it as unnecessary and a disproportionate response to what it felt was a relatively small potential pool of solicitors about whom the SRA might have concern.⁹
- 10.19 The timetable for the QLTR review anticipates recommendations being made by the SRA Board in September 2008 followed by a period of consultation. However, given the legal requirements for the approval of new regulations the SRA expects that it will be at least 2010 before a new transfer scheme will be in place.

⁹ It noted that of the 8,597 solicitors admitted between 1997 and 2007, 3,993 were currently working in private practice and, of these, 2,296 were in firms with 11+ partners, leaving 1,697 as potentially of concern because of a lack of adequate supervision.

11. IDENTIFYING BIAS AND ELIMINATING POTENTIAL UNFAIR DISCRIMINATION

- 11.1 The SRA is keenly aware of the serious consequences of its staffs' actions of regulatory activities for the subject solicitors. These consequences are reflected in the grievances and complaints submitted by solicitors to the Review and summarised in Appendix 4. All of those who made independent submissions held the view that their experiences were shared by other BME solicitors, who would either have felt it a waste of time to complain or to challenge the SRA's actions in spite of their feelings of being treated differently, unreasonably, unfairly and discriminatorily, for fear of victimisation but, more significantly, because it would be costly, detrimental and virtually always end in failure.
- 11.2 The SRA, however, whilst recognising the severe consequences of its actions and the need also to work with and to help solicitors comply with professional standards, and to do so fairly, proportionately and consistently, justifies its regulatory actions as necessary in line with its over-riding duty to ensure that the interests of the public and the profession are adequately protected. That over-riding duty includes taking action to reassure clients and the public that appropriate regulatory measures are in place in order to promote and maintain confidence in the profession.
- 11.3 The SRA must also have regard for the solicitor's right to practice unfettered by unnecessary, unreasonable, inappropriate or disproportionate conditions but some members of the profession consider that there is insufficient attention paid to this responsibility. In addition, it must be a consideration that BME solicitors are part of the profession and BME individuals part of the public, therefore warranting specific attention to ensure consistency, fairness and effectiveness.
- 11.4 Maintaining a balanced approach while having a dominant over-riding duty, as described above, has proved difficult to sustain at all times. Perhaps it is for the SRA and the Law Society together to ensure that adequate education and support is provided for solicitors so that they are aware of the severe consequences of conduct breaches and non-compliance with regulations and are prepared and able to be compliant. BME solicitors were of the view that it would be beneficial for them, the SRA and the profession as a whole if those about to take on the responsibilities of a sole practitioner were made fully aware of the extent of their competence requirements and enabled to comply with their professional obligations and remain fit and proper to continue in practice. This is also important in light of any implications the new forms of practice and regulation proposals in the Legal Services Act will have for sole practitioners.
- 11.5 The SRA has published guidelines on decision-making within the framework of its principles, guidance and values for the profession to ensure that, as a regulator, it is fair at all times and that all decisions taken by designated decision-makers are made

without unlawful discrimination. As described earlier, such decisions are made through delegated authority from the SRA Board by adjudicators and other decision-makers.

- 11.6 All decision-makers are expected to make decisions and exercise their delegated powers in accordance with the SRA's principles adopted in October 2006. Decision-making is intended to be fair and not to impact unfairly or adversely on any particular groups of solicitors in the profession. All decision-makers, including Adjudicators and others who work from home, must also be competent and skilled in relation to their awareness and understanding of the principles of equality and diversity. However, this review has observed several instances of subjectivity being applied during the processes of decision-making without any over-riding monitoring of the quality, consistency and fairness of decisions made or about to be made. In one case, an officer said they were looking for data to justify what appeared to be a disproportionate impact on BME solicitors in relation to conduct outcomes.
- 11.7 In observing and analysing the critical area of Risk Assessment, the process driven systems of the RADDC, the Fraud and Confidential Intelligence Bureau are fairly robust and not in themselves the cause of disproportionality. However, there is still the risk posed by the subjectivity through the application of the process which can skew the results if any personal bias or perception plays a part, whether consciously or not. The Review observed two cases in which applying subjective analysis could lead to different outcomes. There are issues of individual's awareness, expertise and equality and diversity competence to be addressed if consistency and fairness are to be actioned. In addition, there is the targeting of sole practices and small firms, where BME solicitors are concentrated and are most vulnerable and liable to be subjected to a greater degree of regulation attention, which in itself may be indirectly discriminatory.
- 11.8 The matter of fairness and consistency of operations and applications of processes are of critical concern in understanding unfair treatment and indirect discrimination. If individual investigators, inspectors or caseworkers carry any racial (or other) bias and, if this is not capable of being detected, monitored and eliminated, then it is likely to inflict additional damage. It is no surprise, therefore, to observe managers not being concerned that outcomes, from enrolment, through regulation, through intervention, and practising certificate conditions, are adversely disproportionate for BME solicitors, believing that policies and processes are justifiable. Managers and decision-makers are neither aware nor comfortable about challenging or examining disproportionality.
- 11.9 Even more detrimental, is the observed and witnessed casually made clumsy and offensive statements between staff which are both inappropriate and unacceptable yet, neither challenged nor deemed insulting. This fact cannot be regarded as a feature that is common across the organisation. Nevertheless, it is a clear indication that the organisational culture is not satisfactory in the effective application of equality and diversity values, principles and behaviours. If the outcomes are always disproportionate and the conditions for operational application of policies, procedures

and practices are as described herein, then the SRA leaves itself open to the potential charge of institutional racism.

- 11.10 Inevitably, the way regulated solicitors are treated is based on the behaviours and processes that are acceptable to, approved of and applied by the SRA. Decision-making is affected by the quality of the investigations and reports. However, the content and quality of reports may be deficient and imbalanced because subject solicitors are not given adequate opportunities to provide explanations. This compounds the feeling of subject solicitors that they are not being treated fairly; they have been targeted and are likely to receive discriminatory and damaging outcomes. It is often the case that allegations are made against subject solicitors that can be vague, non-specific and unsubstantiated, which leaves them considerably disadvantaged in being able to provide adequate responses. That is not fair in any principled way of working, or in the pursuance of good guidance, or in ultimate outcomes yet we were not able to detect any mechanisms for measuring consistency in terms of fairness, including in relation to equality and diversity, across the decision-making process. It may, therefore, be necessary to reconsider carefully the extent of discretion permitted across all of the SRA's functions, the quality and rigour of the required monitoring, the dangers of bias and prejudice, the unreasonableness of the limited information provided to subject solicitors and the silo mentality emerging in different sections and Directorates.
- 11.11 As a body undertaking public functions the SRA should also be mindful of its responsibilities under the Human Rights Act and ensure that it is not in breach and that its practices or processes do not run afoul of the discrimination provisions of the Act.

12. UNDERSTANDING ETHNIC DISPROPORTIONALITY IN THE SRA

- 12.1 Concerns about the 'heavy-handed' regulatory activities of the SRA have been expressed by some solicitors across different ethnic backgrounds. In assessing the ethnic data available, the simple fact which emerges year on year is that BME solicitors appear to be disproportionately regulated by the SRA. However, the data is so incomplete that the real situation could be either no BME disproportionality or even worse disproportionality than exists on paper at present. For instance, in the 2006 data on interventions 44% of the cases were recorded as 'unknown' ethnicity.
- 12.2 The cold case examination of 187 files undertaken in this review failed to yield conclusive explanations for the disproportionality, although it did offer pointers for further exploration of possible differential and discriminatory treatment, where discretionary activity is not adequately controlled or monitored continuously for consistency and fairness and where attitudes may have adversely influenced decisions. Those leads were traced to source and this issue is covered in more detail below.
- 12.3 Inevitably, because a high proportion of BME solicitors are sole practitioners or work in small firms (see paragraph 9.2.3) and these are more frequently regulated by the SRA than larger firms, more BME solicitors will feature in the regulatory activity. This in itself is not an indicator nor evidence of unfairness, although it does put BME solicitors at a disadvantage, particularly when compared with white solicitors in larger firms and even when compared with the treatment of the 'Magic Circle' firms, which are able to deflect the sort of attention given to the sole practitioner and small firms. Historically, the Law Society and the SRA have spent relatively little time with firms of 26 or more fee earners resulting in less frequent and detailed scrutiny. Although they make up only 5% of law firms, they employ half of the practising solicitors and around a quarter of BME solicitors. New processes are now under consideration and a pilot programme will enable the SRA to increase its monitoring capability with large firms and may result in greater parity of inspection.
- 12.4 The regulation of small firms has been on the increase and, as of 2007, there are approximately 1700 complaints per year. These include complaints about a growing number of sole practitioners from the Qualified Lawyers Transfer route. Many BME solicitors set up their own or join small firms because they are unable to get positions in larger firms. To date, no proper analysis has taken place of these regulatory incidences. A comprehensive analysis of regulatory activities would help to identify the nature of these matters and the responses from small firms or sole practitioners. It would also show whether small firms have greater difficulties with management and structure issues and procedure compliance and whether public-funded small firms, which work with ever decreasing funds, are able to cope sufficiently with the challenge of setting up adequate backup and support to address problems which may arise as they do in all firms whatever the size.

12.5 Such analysis would also inform the SRA of the need for greater or different types of support when small firms are setting up so that proactive support can be available before problems occur. At present, a solicitor who wishes to set up as a sole practitioner must have held a practising certificate for 36 months within the last 10 years and have completed 12 hours of management skills training. In the light of the number of complaints, it is essential to review whether the 12 hour management requirement is sufficient. While it would not be right to increase the requirements without proper justification, as unfair treatment must be avoided, it is nevertheless appropriate to ask and answer this question. Some support is available, including the Law Society Helpline and the Solicitors Assistance Scheme. An analysis is required of how BME solicitors use either of these and whether they find them helpful. It is also necessary to know how much support, if any, is given by the Practice Standards Unit and what steps can be taken to improve consultation with BME representative groups on this issue. These are some, but not all, of the questions that the SRA may seek to answer when carrying out a proper analysis.

12.6 In assessing closed files for this Review there is an inescapable conclusion that allegations of breaches were founded and penalties imposed appropriately. What is not so conclusive from the information on files is the way in which allegations originated; they were often vague and non-specific, sometimes mere suspicions and with no explanations given, leaving the subject solicitor unable to mount a credible defence. This led to a consideration, not only of possible organisational and operational influences, but also the source of complaints that can lead to regulatory actions.

12.7 **Who is complaining about who?**

12.7.1 In the absence of comprehensive, complete and useful ethnic data, any available sources of information about BME solicitors had to be gleaned in the search for explanations about complaints leading to SRA actions. The most useful information was where a match could be made with complainant and subject solicitor where ethnic data was available for both. Described as an analysis of available 'instigator ethnicity data', this is set out in Appendix 5 and shows the limitations of ethnic data available in the SRA, with the significant numbers and percentages of 'unknowns'. It covers the period from January 2004 – May 2008 and the focus is on customer satisfaction returns.

12.7.2 From the 1343 cases, 338 (25%) remain unknown. Similarly, where the information was analysed by final outcome 491 (23%) of the 2121 records were unknown.

12.7.3 Insofar as it is possible to put some useful interpretation on the data analysed, it can be noted that only 7% (96) of non-solicitor instigators are of BME origin and 899 (67%) are white. Nearly one in three of BME instigators complained about BME solicitors and 59% complained about white solicitors. Only 6% of white instigators complained about BME solicitors and 79% about white solicitors.

- 12.7.4 When it comes to solicitors complaining about solicitors, ethnicity data was only available for 268 records with 48 (18%) being BME and 166 (62%) being white. Around 31% of the BME solicitor instigators complained about other BME solicitors and 44% complained about white solicitors. Of the latter 21 cases none were upheld. 11% of the white solicitors complained about BME solicitors and in these 18 cases 5 or 28%, were upheld. 73% of white solicitors complained about other white solicitors.
- 12.7.5 Given that around 6% of practising BME solicitors are sole practitioners compared with just 3.6% of white solicitors, an analysis was undertaken looking at sole practitioners who were named as subject individuals on complaints handled by the SRA. Since January 2005 there have been 1,948 new complaints received relating to 1,131 different individuals. Of these 324 or 16.6% were BME and 1,344 or 69% were white. 14.5% (283) were unknown. Over the same period only 36 complaints have been made by sole practitioners and 14% of these were instigated by BME practitioners and 78% by white practitioners.
- 12.7.6 In relation to satisfaction with the service provided, 38% of BME and 37% of white, non-solicitor complainants were satisfied with the SRA's service. Thus, a majority of the non-solicitor complainants were not satisfied with the SRA. This is hardly unsurprising as both BME and white non-solicitor complainants are less likely to be satisfied with the service if their complaint is not upheld, as is virtually always the result.
- 12.7.7 Although it only comprises small numbers in the analysis, when BME non-solicitors complained about white subject solicitors, only 3.5% were upheld (2 of 57); however, where the instigator was white and the subject solicitor BME, 27% (15 of 56) were upheld.
- 12.7.8 In the data where it was possible to analyse the ethnicity of solicitors complaining about solicitors, where the instigator was BME and the subject solicitor white, none of the complaints were upheld. When it was the other way around, the instigator white and the subject solicitor BME, 11% were upheld.
- 12.7.9 A follow-up review of the cases referred to in 12.5.6, 12.5.7 and 12.5.8 revealed concerns in four of the cases. One upheld a complaint against a BME solicitor when no further action was involved. Another case showed no further action in spite of a finding of 'poor service' provided by a white solicitor; in two other comparable cases involving BME solicitors, both received severe warnings. Of particular concern from the case reviews was the reliance by the SRA Fraud Bureau on informants from police forces who raise, in confidence, concerns they have about solicitors. Those pieces of information are acted upon or stored by the Bureau until it considers it appropriate to warrant action. The issue of confidential informants, not disclosed to the Review, warrants further examination to eliminate any opportunity for differential

treatment. Because they are not known to the Review, it has not been possible to assess any bias.

12.8 SRA action to tackle disproportionality

12.8.1 Given the Law Society's commitment to equality and diversity policies and activities over the past eight years, and carried forward by the SRA when it came into being in 2007, the question to be answered is 'what action has been taken to tackle the known disproportionality impacting on BME solicitors'?

12.8.2 In its first year of existence (in 2006 as the Law Society Regulation Board), the SRA was essentially operating as part of the Law Society Group. Thus its policies, processes and practices were located within the Law Society's operational culture, with an organisational structure and staffing that reflected the Law Society's approach to equality and diversity. Whilst there was then, and continues to exist, a firm commitment to the principles of equality and diversity in the organisation, the implementation of action to give effect to such principles and commitments in the day to day operations of the SRA across the entirety of its regulatory activities remains weak in terms of effect and outcomes, a fact confirmed by studies and assessments referred to in earlier Chapters of this report as well as in interviews with key staff, Directors and the Chief Executive.

12.8.3 The SRA has undertaken a number of initiatives on equality matters including:

- Fourteen initial equality impact assessments of some key policies
- Consulting with the profession on matters such as regulatory decision-making
- Developing and delivery of equality and diversity training to staff, managers and Board and committee members
- Improving the handling of discrimination complaints
- Establishing the Diversity Working Group
- Improving the collection and reporting of data relating to equality and diversity in a number of business areas
- Updating the anti-discrimination rule
- Providing learning and awareness training for managers responsible for regulatory activities

12.8.4 Despite this, earlier reviews and studies have shown that many of the actions needed to give effect to equality outcomes have not been implemented. Other work is incomplete, is still work in progress or has been implemented by some staff half-heartedly, tokenistically and with no real passion for taking responsibility to make fairness, equality and diversity a priority in their work. This significant failure is evidenced in Chapters 5, 6, 7 and 9.

12.8.5 Initial attempts to respond to the disproportionality issue, following the publication of the January 2006 report (*The Impact of Regulatory Decisions of the Investigations*

and Enforcement Unit of BME Solicitors), resulted in an unpublished study on Early Warnings Indicators which was indecisive in identifying the causes for concern, largely due to data deficiency. It led to more studies being undertaken in subsequent years, such as the 2007 baseline audit.

12.8.6 At the core of the failure of the Law Society and the SRA to address effectively the issue of disproportionality have been the fundamental issues of (1) data deficiency, (2) inadequate management commitment, oversight and effective monitoring of equality and diversity implementation activity and (3) leadership of the organisation.

12.9 Data deficiency

12.9.1 This is currently being addressed through the implementation of an essential comprehensive IT infrastructure to provide improved management information and data monitoring, including on equality and diversity issues and the source of complaints, which is considered below. When this will be achieved remains speculative but without accurate management information there is little likelihood of effective resultant action.

12.9.2 The current project to update the SRA's data sets on the profession is to be preceded by a positive marketing message to be sent to all solicitors. It is to be hoped that the outcome of this exercise will facilitate much more robust monitoring, reporting and, as necessary, action to address disproportionality in the future.

12.10 Management oversight

12.10.1 Senior managers in the SRA are engaged in an extensive programme of structural, strategic and operational changes to meet the challenges of becoming a more effective and independent regulatory organisation. Despite this, there is little evidence that there is sufficient knowledge in the current management of the depth of change required to ensure that equality and diversity issues are recognised at all levels. Equality and diversity should be embedded in all aspects of the change programme and should be integral to business planning and risk management.

12.10.2 One of the major challenges has been to create a new organisational culture and ethos among staff who were overwhelmingly inherited from the Law Society and have been in an established operational mode for years. However, not only does the ethos of the past remain, it is likely to become deeper embedded by the creation of more process driven departments.

12.10.3 With eight different Directorates there may be too many lines of accountability, given the need for continuous, effective and meticulous oversight of complex regulatory staff activities, without which there is scope for individual bias and prejudice contributing to unfair and possible indirect discriminatory activity where unsupervised and unchecked discretionary action prevails. Observing various

approaches in different parts of the organisation revealed a developing or ongoing 'silo mentality' which does not encourage internal coherence in terms of monitoring for effectiveness, consistency and cohesive and collaborative ways of working and can lead to dysfunctionality. This is reflected in some areas that operate discretely and do not always share information because of the importance they attach to protectionism for their own style and way of operating.

12.10.4 There is no doubt about the firm establishment, in policy terms, of the principles of equality and fairness in the SRA. The Chief Executive reports that there has been extensive training on equality and diversity; however the actual extent and effectiveness of what has been delivered is questionable and without demonstrable leadership driving it through to implementation and action. Certainly, the comments made by some personnel during the Review suggest that this has been regarded as cosmetic and of minimal benefit.

12.10.5 There is an absence of robust systems of monitoring and audit to demonstrate and give confidence that bias, prejudice and potential discriminatory treatment are in check. This requirement is not only essential for all those staff who are involved in the regulatory activities to ensure absolute fairness but also to enable the organisation to develop the competence to deal effectively with complaints about discrimination which, up until now, have not been dealt with nor monitored in a consistent manner across the SRA. An interim protocol has been developed to achieve greater effectiveness in complaints handling. Under this a complaint will be no longer be investigated by the Directorate about which the complaint has been made. However, a more comprehensive protocol is required, supported by adequate training, starting at the top of the organisation, with the provision of sufficient resources, a system of centralised logging, monitoring and oversight, robust evaluation to determine if this new approach is effective and independent equality and diversity expertise with responsibility for investigating all complaints of alleged discrimination, both external and internal. All future complaints should be handled independent of the Directorates involved, by a central Equality and Diversity Unit.

12.11 Leadership

12.11.1 For equality and diversity commitments and principles to take meaningful effect throughout any organisation requires unequivocal and demonstrable leadership from all those at the top. If the tone at the top of the organisation is only to pay lip service to equality and diversity, that establishes the organisational culture for staff activity at all levels and this is the situation in the SRA where equality and diversity is seen by some as an irritant and peripheral. The SRA has yet to match its many commitments with visible and demonstrable leadership which leads to equality outcomes and, when challenged on equality and diversity issues the organisation seems uncomfortable and defensive. In terms of visible diversity, the SRA's Board comprises only one BME member out of a total of 14; the senior management team

is made up of eight white Directors and the Chief Executive. While efforts to attract diverse applicants for job vacancies in recent times have been helpful, it is at the relatively lower end of the organisational structure that any prevalence of BME staff can be seen.

- 12.11.2 The organisation has deficiencies which impact adversely on BME solicitors. As was found in the Lawrence Inquiry by McPherson, these may be inadvertent and unwitting but, nevertheless, must be addressed. At present, the SRA cannot draw on the benefits of an inclusive ethos as part of its everyday deliberations, activities and the range of competencies needed for effective regulation of BME solicitors. More inclusive professional, cultural and community experiences would enhance operational decision-making activities at all levels if they were present as part of the key personnel of the SRA. Other organisations with equality and diversity competency requirements among staff at all levels are able to demonstrate capability, operational cultures and equality and diversity confidence. This is not the case with the SRA, even though it aspires to do so with its commitments and initiatives.
- 12.11.3 This lack of diversity is manifested in the fact that it would be rare for a BME firm or solicitor being regulated to find any of the Adjudicators, Disciplinary Tribunal Members, Agents, Investigators or solicitors' firms instructed by the SRA, to be of BME origin. The perception is that the SRA is biased against BME solicitors and the data makes this hard to refute. The SRA should use its procurement processes to begin to diversify its supply chain.
- 12.11.4 A stronger BME presence and visibility would, if achieved, not only enable BME staff to feel comfortable in the organisation and lead to positive equality and diversity benefits generally and a working environment with equality and diversity at its core, but also give the profession more confidence in the competence of the SRA to handle a diverse profession fairly, sensitively, appropriately, proportionately and consistently. As more BME people seek to join the profession, this diversity is increasing which makes this requirement, to be achieved through effective leadership, management and actions, even more urgent.
- 12.11.5 The SRA is still, at times, in reactive and defensive mode in these matters and this is reflected in perceptions about the organisation and its activities among some of the regulated community. Rather than simply responding defensively to criticism of power resting largely with white personnel and waiting for change in diversity to occur organically, it has to be proactive and dynamic in bringing about change through a range of positive activities, perhaps including an independent equality and diversity mentoring scheme for senior managers, to achieve meaningful and measurable change to give effect to the expressed equality and diversity commitments.

12.11.6 In this respect the Chief Executive accepts that the SRA has not given sufficiently visible and demonstrable leadership on equality and diversity. He has described the key elements to improving the SRA's performance on equality issues as:

- The finalisation of the equality and diversity strategy and the Board's strategic plan, informed by the findings of this Report
- Visible leadership from the Board and Senior Managers on equality and diversity issues, underpinned by regular reporting on progress
- A programme for all staff, led by the CEO, to embed the organisation's values, from the summer of 2008
- Improved recruitment procedures to enhance the diversity of the SRA's people (employees and members of Boards and committees), particularly at a senior level. The SRA will continue to advertise widely, but will also review its role requirements to remove any unnecessary barriers to inclusion and take positive action where it is legal and appropriate to do so
- Continued improvements in the support available to staff to ensure that they understand, and are committed to, equality and diversity policies
- Enhanced training, informed by a training needs analysis
- Continued improvement in monitoring and audit activities to enable problems to be identified and addressed
- A new system for dealing with complaints of discrimination systematically
- Continuing engagement (through the BME working group and other means) with BME solicitors
- Engagement with a diverse range of consumers, to ensure that their needs are met

12.11.7 For real and meaningful change to occur, which makes equality and diversity a reality for the SRA in all its activities, these and other elements, as set out in the recommendations, will have to be incorporated into an action plan, led and driven by the Chief Executive, with specified programmes, targets, timescales and monitoring arrangements. In addition, there needs to be ownership for these issues accepted by the Board. Equality and Diversity has not been an integral part of the Board's activities. The existing Board members were appointed in September 2005 and took office formally on 1 January 2006. All appointments were made by the Council of the Law Society in an open process, following advertisement and interview. Appointments are due to expire on 31 December 2009 and it is essential for the Council to take the necessary steps now to ensure that the Board of the SRA, in future, will reflect ethnic diversity among its members and acquire the equality competence necessary to fulfil its obligations and discharge its responsibilities.

12.11.8 The SRA at present lacks the drive and the equality and diversity competence within its managerial and leadership spheres to make the changes happen. The existing equality and diversity specialist expertise is not beneficially utilised and, in any event, needs to be reinforced to meet the need for dynamic action. More expert resources to implement the equality and diversity change programme in order to end

regulatory disproportionality in the SRA and deal with the deficiencies identified have to be provided to support the Board, Chief Executive and senior management and the whole organisation in achieving its equality and diversity targets.

- 12.11.9 Despite the SRA's commitment to equality and diversity and to implementing its equality and diversity strategy across the organisation to improve performance both as an employer and as a regulator, genuine and sustained ownership of the agenda at senior levels is absent and the necessary infrastructure is not yet in place to help this ambition to succeed.
- 12.11.10 In order to address the fragmented and marginalized way in which equality and diversity initiatives are currently viewed and delivered the SRA must put in place a governance structure that will complement an explicit and reinforced senior level commitment to delivering equality and diversity outcomes for the organisation as a whole rather than through piecemeal implementation or one off initiatives. This could include the existing Equality and Diversity Group, chaired at Director level, E and D oversight at Board level and a better resourced equality and diversity specialist function. Equality targets should be set as benchmarks covering Board and staff composition, BME representation at senior management levels and for achieving proportionality in all regulatory activities.
- 12.11.11 Effective equality and diversity governance arrangements must ensure that:
- There is ownership, oversight and accountability at senior management team and Board levels, especially in assisting with the implementation of a programme of action arising from this Review and regular monitoring of progress in achieving the equality and diversity targets.
 - This must include authoritative, specialist equality and diversity input as part of the senior management team
 - An appropriately resourced equality and diversity unit or team should be created with direct lines of accountability to the Chief Executive and representation on the senior management team
 - This unit or team would act as an independent monitor for the handling of discrimination or harassment complaints about and within the SRA
 - It would be resourced to commission research in order to develop a robust evidence base on equality and diversity across the range of SRA functions
 - The unit would be routinely consulted about and involved in the development of SRA policies and procedures in order to ensure that equality and diversity considerations are integrated into all SRA decision making processes

- Immediate steps would be taken, in consultation with the equality and diversity unit or team, to implement IT systems that will produce high quality equality and diversity monitoring data
- The unit would act in an advisory capacity directly responsible to the CEO, available to the Board and managers across the SRA and oversee the implementation of specialist policies and procedures, statutory duties and positive action initiatives
- It would also have responsibility for guiding the equality and diversity input on consultation and engagement within the SRA and with external stakeholders, particularly the profession
- It would provide specialist input into the education, training and development framework for staff to ensure that their knowledge, awareness and equality and diversity expertise met the required level of competence to eliminate bias and potential indirect discrimination

12.11.12 These arrangements would help the SRA to embed equality and diversity across the organisation and begin to develop effective relationships with the profession. They would need to be in place and sustained for 24 – 36 months, after which an independent assessment could be undertaken to determine how the SRA has progressed and to advise on what specialist equality and diversity structure would be required for the future.

12.11.13 Leadership, and appropriate organisational infrastructure, management ownership and commitment, expert equality and diversity input, adequate management information and data, adequately trained and managed staff, greater oversight of discretion and improved engagement with the profession are all key elements of change to enable the SRA to become more efficient, effective, credible and fair. The recommendations framed in this Review Report, and those reflected in earlier studies, provide a basis to assist the SRA to achieve its equality and diversity targets and to tackle more effectively the issue of disproportionality.

13. RECOMMENDATIONS

Organisational Culture and Leadership

1. A comprehensive action plan, incorporating the actions set out in paragraph 12.9.6 together with the recommendations set out below to be adopted and implemented, led by the Chief Executive and with specified programmes, targets, outcomes, timescales and monitoring and evaluation arrangements, (12.9.7)
2. The future composition of the SRA Board to reflect ethnic diversity (12.9.7)
3. The SRA should affirm that equality and diversity competence is an essential and integral aspect of it being a credible and capable regulator (12.9.9)
4. The SRA should develop visible and demonstrable leadership on equality, diversity and shared values at Board, Chief Executive and senior management levels. (12.9)
5. An organisational culture and ethos should be created that respects and promotes equality and diversity and ensures that these principles are central to all of the SRA's functions. In this respect the SRA should establish an effectively resourced and authoritative equality and diversity Unit to provide expert internal and independent equality and diversity input to all levels of the organisation and to be part of the senior management team (12.9.11)
6. The SRA should address the adverse effects of the development of a silo mentality which works against openness, co-operative and collaborative working, shared learning and is protectionist to the respective silo. (12.8.2)
7. The SRA should investigate how its culture and ethos can impact upon solicitors' willingness to engage and implement change accordingly to achieve the necessary outcomes. (12.9.4)
8. Equality and diversity should be embedded into all aspects of the SRA's change programme, business planning processes and risk management and this requires stronger leadership at policy level than exists at present. (12.8.1)
9. A proactive approach should be taken now to address and counter the culture of defensiveness that currently exists in relation to equality and diversity issues. (12.9.5)
10. Equality and diversity should be incorporated into the SRA's competence framework, with appropriate targets and objectives, linked to reward to ensure that the senior management team and line managers are equality and diversity competent. (6.6)

Equality and Diversity

11. The Equality and Diversity strategy should be prioritised and implemented as a matter of urgency. (5.15; 12.9.6)
12. Equality and diversity should be included as one of the key principles in SRA's decision-making. (4.10; 11.6)
13. A training needs analysis should be completed and a comprehensive programme of equality and diversity training rolled out, including cultural awareness and equality impact assessment and to ensure effectiveness in helping to tackle racial bias or prejudice. This should include all staff, Adjudicators and others who work from home. It should also include training on the Human Rights Act and the SRA's responsibilities as a public body. (6.6; 11.6; 11.11; 12.9.6)
14. All outstanding equality impact assessments should be completed and this approach built into all future policy development with steps taken to address any unjustifiable adverse impact that is identified, especially with regard to the Risk Assessment and Designation Centre. (5.6; 7.3.4.10; 9.4.2)
15. Sufficient resources should be allocated to deliver the equality and diversity strategy and action plan and lines of accountability to and from the Chief Executive and Board agreed. (12.9.11)
16. The SRA should consider implementing its own HRD policies, practices and processes, incorporating equality and diversity, and independent of the Law Society's overall approaches. (6.7)
17. The human resource policy review and associated impact assessments should be completed as soon as possible and policies implemented across the organisation. (6.7)
18. The SRA should implement its equality and diversity policies on human resources effectively and not be constrained by the Law Society's Group approach in meeting its statutory, strategic and policy equality and diversity goals. (6.7)
19. An annual confidential staff survey should be conducted that will inform the equality and diversity strategy and action plan. (6.9 {1x})
20. The SRA should introduce equality and diversity targets with timetables, positive action programmes, talent management personal development programmes, mentoring and succession planning to change the ethnic composition of decision-makers and achieve better equality and diversity inclusion. (12.9.2)

Support and Guidance

21. A comprehensive programme of consultation and engagement with BME solicitors and representative groups should be implemented to understand their concerns and expectations and how best to target SRA (and Law Society) support resources. (5.12; 8.9; 7.3.2.3; 11.4; 12.9.4)
22. In the light of this, all policies, practices and engagement with solicitors should be regularly reviewed for their appropriateness for an increasingly diverse profession, including trainees and students. (3.4; 12.9.4)
23. Accessible guidance should be developed and disseminated on accounts and management practices for sole practitioners and small firms. (8.9; 9.5.5; 11.4)
24. The SRA should evaluate the effectiveness of the Practice Standards Unit educational role and remit and consider ways to reach greater numbers of BME solicitors, sole practitioners and small firms. (7.2.1.1)
25. The SRA should consider what assistance is required by solicitors transferring to the Roll under the Qualified Solicitors Transfer Regulations to enhance their capacity, skills and understanding. (8.9; 10.8)
26. The SRA should give greater priority to publicising, monitoring and providing guidance on the implementation of the Solicitor's Anti-Discrimination Rule. (7.3.2.6)

Monitoring and Evaluation

27. A comprehensive equality profile for the profession, pre and post admission, should be developed and maintained. (3.7)
28. An integrated IT system should be introduced that captures ethnicity for all stages of the regulatory process in a consistent fashion, including informants and instigators. (4.6; 12.7)
29. The SRA should take steps to reduce the number of 'unknowns' in all data including, where possible, in relation to existing data to facilitate the identification of trends. (3.7; 8.4)
30. There should be robust equality and diversity monitoring and audit across all functions including regulatory activities, employment and the use of discretion with the findings used to improve equality and fairness, deliver equality outcomes and deal with any unjustifiable disproportionality. (4.9; 6.9; 7.2.1.4; 7.3.4.10; 11.6)

Operational Issues

31. The SRA should reconsider the extent of discretion permitted across its functions and reinforce the quality and accountability controls, especially in auditing fairness in the application of procedures and guidance. (11.8; 11.9)
32. The process for procuring services, including intervention agents, representatives, adjudicators and firms contracted by the SRA to act on its behalf should be designed to reach as diverse a pool of potential applicants as possible. (12.9.3)
33. The SRA should assess its internal regulatory time-scales and other policies and protocols for unjustifiable adverse impact on sole practitioners and small firms. (8.9; 10.8; 12.3)
34. The SRA should consider advising complainants about the statutory time limits that apply in discrimination cases (7.3.2.4)
35. The current policy of non-disclosure in relation to reasons for all forensic investigations should be reviewed in order to consider where greater transparency and fairness in line with equality and diversity principles, may be possible. (9.6.2; 11.9)
36. All regulatory matters, where allegations are not upheld or no adverse report results, should be monitored and assessed from an equality and diversity perspective for lessons to be learned. (8.6; 9.6.3)
37. The SRA should ensure that it is fully compliant with the provisions of the Human Rights Act (11.11)
38. A comprehensive protocol for handling complaints of discrimination should be developed and monitored for effectiveness. (5.8; 12.8.4)
39. A reconstituted Equality and Diversity Unit should have responsibility for independently investigating all complaints of alleged discrimination, both internal and external (12.8.4)
40. The SRA should take urgent steps to analyse the increasing number of regulatory incidences in respect of small firms with a view to reviewing the support available to these firms.

Appendix 1

DOCUMENTS SCHEDULE

Adjudication

- Referrals closed 1.12.06 – 31.12.07
- Ethnicity
- Decisions referred for review 2005, 2006, 2007
- Lay members role description
- Appointment of Adjudication Panel – Law Society

Baseline Audit of Equality and Diversity – Astar

CDT and RDC matters

- With a 'costs direction' decision 2005, 2006, 2007
- Where reason is 'discrimination – race' and subject individual 'white European'

Client Protection – main functions

Complainant information from Regulation Response

- Email on potential analysis
- Equality query options (table)

Conduct Investigation Unit Discrimination Training

- Gender Recognition Act 2004
- Discrimination reports and complaints – guidance note for CAI
- Model Policy – Solicitors anti-discrimination rule guidance note
- Disability Discrimination workshop notes
- Training for caseworkers in CAI (email)

Conduct Investigation Unit

- Guidance for caseworkers
- Training schedule
- Compliance Committee report on discrimination allegations 2006

Decision-making project

- Proposals for decision-making for the SRA, October 2006
- Guidelines on decision-making

Diversity Working Group

- Proposal to establish equality and diversity form in the Regulation Directorate, 2005
- Terms of reference
- Minutes and notes
 - 20 December 2005
 - 29 August 2006
 - 16 October 2006
 - 20 November 2006
 - 24 April 2007
 - 17 July 2007

27 November 2007

4 March 2008

Early Warning Indicators

Education, training and development for solicitors – February 2007

Equality and Diversity

Update meeting with CEO October 2006

Briefing note (April 2008)

SRA pilot induction (October 2007)

E and D in the SRA (January 2008)

E and D in the SRA (January 2006 including Board Committee structure and terms of reference

Executive Summary, June 2007

Committee members Responsibilities on equality and diversity, April 2007

Draft Equality and Diversity Strategy 2008 – 2012

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Ethnicity Report – Compliance Directorate 2004 (duplicate)

Ethnicity findings on student enrolment and admission (2006-2007)

Equality Impact Assessments

SRA Impact Assessment Toolkit x 2

Proposed quality assurance framework for impact assessments (March 2008)

Template for initial EIA

Development of Risk Management Project (December 2006)

Risk Management E and D comments

Initial assessment - Solicitor's obligation to respond

Initial assessment – Impaired capacity

Trainee Solicitors' Minimum Salary

Initial assessment – New requirements for Legal Practice Courses

Practice Waivers Policy

Waivers of Solicitors Code of Conduct (March 2008)

Escalation Matrix for Character and Suitability

Guidance – Astar Management Consultants

Code for referral to the SDT

E and D Unit comments on code on referral

Section 12 Practising Certificate application

E and D comments for Section 12

Practising Standards Unit visit policy

- Guidance notes on conduct outcome and criteria
- E and D comments on conduct outcome and criteria
- Complaints against Law Society staff
- Complaints Handling feedback
- Rule making, policy develop and guidance process in Professional Ethics
- E and D impacts matter report form
- E and D feedback for Ethnic

FCIB Intelligence

- Referral (Form B)
- Assessment statistics
- FIS source proportions, 2007

Forensic investigation (Inspection and Investigation)

- Overview
- Primary judgements
- Reasons for investigations 2007

Foreign Lawyers Registration Regulations 1995 (May 2000)

Generic SRA process map – version 1.1

Glossaries

- Common CIU acronyms
- Recognised attainment codes applied to organisations
- Recognised attainment codes applied to people
- Foreign jurisdiction codes for people
- RA statuses
- RAT termination reasons
- RAT withdrawal reasons
- Offence type codes
- Condition types
- Statuses

Human Resources

Policies

- Law Society job application form
- Grievance policy
- Disciplinary policy
- Application for employment
- Recruitment and selection policy
- Internal reference form for LS employees
- Recruitment and selection – guidance notes for managers
- Recruitment and selection – guidance notes for applicants
- Reference for employment form
- Bullying and harassment

Workforce profile 28.04.08 for Regulation Response, Inspection and Investigation, Legal and Casework by ethnicity, gender, disability and religion or belief

All staff at 28.04.08

Information for Providers of Legal Practice Course – Jan 08
Interim protocol for complaints of discrimination against SRA, 2008
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- 2006 BME firms
- 2006 BME firms by instigator
- 2006 subject solicitors
- 2007 non-BME solicitors
- 2004 – 2007 interventions
- Panel of intervention agents
- Analysis by main instigator

Investigation of Professional Misconduct – Training manual

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- Summary of performance measures March 2008
- Complaints handling performance against LSCC targets March 2008
- Can we help? (brochure)
- Complaints form

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New Training Framework Survey – work based learning, September 2006 (LPC Research)
Number of partners – 2005, 2006, 2007 (Inspection and Investigation)

Organisation charts

- SRA management structure 2008
- Organisational Development project
- Regulation Response

Practice Standards Unit policies and procedures manual

Qualified Lawyers Transfer Regulations

- QLTT rats granted via REGIS
- QLTT PC Statistics
- Consultation on Requirements for lawyers qualifying as solicitors in England and Wales
- Excerpts from consultation responses
- Review of Qualified Lawyers Transfer Regulations – Executive Summary
- SRA draft guidance for lawyers making QLTR applications
- Transferees vs Other Route Solicitors' Study – SRA Education and Training,
 - Report, November 2007
 - Headline note

Regulation Audit

- Summary of the Audit

- Appendix to the Audit

Regulation Unit guidance

- Casework procedures

- Money laundering

- Accountants reports

- Practice Standards Unit reports

- Forensic investigation reports

- Closure of practice

- Appeals

- Disqualification of Reporting Accountants

- Incorporated Solicitors' Practices

- Indemnity Insurance

- Interventions

- Mortgage and property fraud

- Practising Certificates

- Reconsiderations

- Regulatory checks

- Registered European Lawyers

- Registered Foreign Lawyers

- Secret profits

- Section 41 SA 1974

- Section 43 SA 1974

- Solicitors' publicity code

Regulatory checks overview (September 2007)

Risk assessment

- Profile form (V1.07)

- Process map (February 2008)

- Assessments by source type (FCIB)

- Assessment by source (incomplete)

- Compliance Committee report on risk identification and assessment, July 2006

- Risk-based regulation (web based)

- Risk assessment and designation centre (RADC) Operations Manual (March 2008)

- RADC – Post assessment designation process (January 2007)

- Process map 1

- Process map 2

- Sample cases (5)

Safe as Houses – ACPO report on mortgage fraud in the UK (RESTRICTED)

Settlement of regulatory and disciplinary cases – SRA policy statement 2007

Solicitors Admission Regulations 1994

Solicitors instructed by the SRA

SRA Board minutes on Minimum Salary Board

SRA Board Recruitment

Application form
Report to the Law Society
SRA Organisation Development Project and Organisational Development Management Structure
SRA Regulatory Investigations by Ethnicity

- statistical summary 2006, supplemental notes
- statistical summary 2005

SRA Human Resources data

Training delegates

Job applicants

Profile overall

Leavers

Appraisals completed

SRA complaints handling performance against LSCC Targets March 2008

SRA service complaints 2006-07

SRA summary of performance measures and statistics (March 2008)

Statistics

Character and suitability ethnicity analysis, June 2008

Character and suitability ethnicity by instigator, June 2008

Character and suitability reporting: equality and diversity review, June 2008

Equality and diversity intelligence review, June 2008

Ethnicity and gender in the SRA (Resources table)

Ethnicity, gender, disability and gender in Regulation Response, Inspection and Investigation, Legal and Caseworking Applications

Inspections by firm and ethnicity (June 2008)

Inspections by start date, firm and job type (June 2008)

Inspections – months since authorised (June 2008)

Inspections – months since started (June 2008)

Service complaints 2005 – 2007

Service complaints by instigator, satisfaction level and final outcome

Sole practitioner ethnicity data, June 2008

Discrimination service complaints 2006-2007

Number of partners between 1 – 6 2005 – 2007

Regulatory Interventions (activities) 2005 – 2007 with analysis

Technical Liaison Group – updates (22.06)

The impact of regulatory decisions of the Investigations and Enforcement Unit on black and minority ethnic solicitors – Law Society (2004 stats)

The impact of regulatory decisions on black and minority ethnic solicitors (external assessment, March 2005)

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Equal Opportunities Training delivered 07.07 – 09.07

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Discrimination Caseworkers (CIU)

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Trends in Regulation of the Solicitors' Profession 2003 - Law Society, 2005
Trends in the solicitors' profession, annual statistical report 2007 – Law Society
Tribunal Proceedings Matters with Decision of 'fined' 2005, 2006, 2007

Vision and Values (draft)
Vision statement
SRA values
Overarching measures of success
SRA objectives (5)

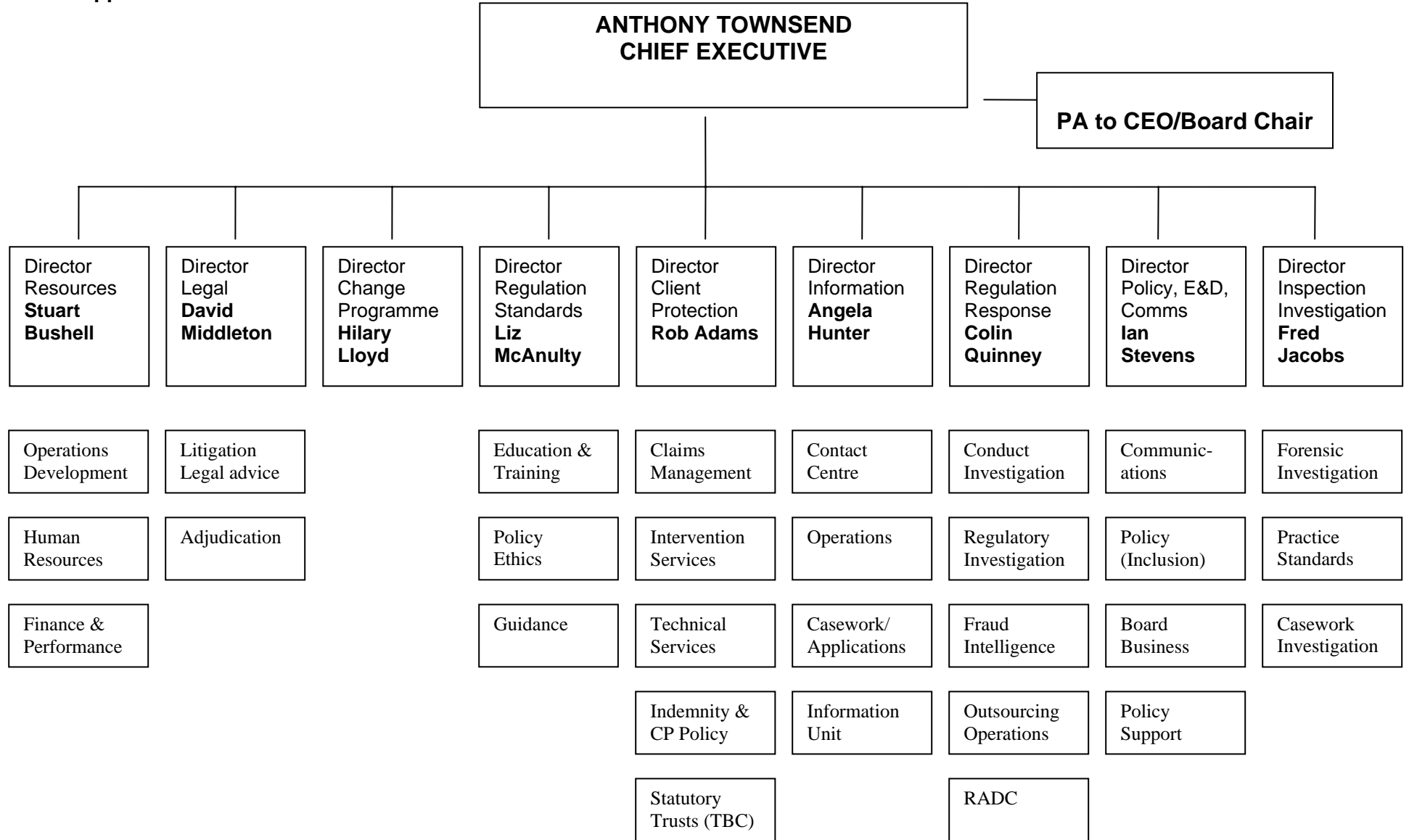
Workforce statistics (27.3.08)
Profile of training delegates
Profile of job applicants
Workforce profile
Appraisals completed
Leavers profile
Ethnicity and Gender in the SRA (Resources)

Work based learning –
Education and Training Committee paper, March 2008 (confidential)
New training framework survey, September 2006
Pilot design – March 2008
Pilot project plan
Pilot communications plan – February 2008
Assessment organisation evaluation methodology
Assessment organisation evaluation methodology – guidance notes
Handbook for participants
Learning outcomes

Other documents (web based)

Risk based regulation (includes matrix)
Settlement of regulatory and disciplinary cases – policy statement
Solicitors' Admission Regulations 1994
Solicitors Disciplinary Tribunal
Annual Report
Tribunal findings (October 2007)

Appendix 2



Appendix 3

Ethnicity findings provided at student enrolment and admission during 2006 and 2007

Introduction/Background

This paper provides ethnicity details of those applying for student enrolment (EN1) and admission to the roll of solicitors (AD1) during 2006 and 2007. We have allowed for a 2% error margin in the overall totals which accounts for people who apply for student membership or admission using the incorrect version of the application form.

The table below is based on the total number of EN1's received during 2006 and 2007.

Description	2006	%	2007	%
AA - White / European	868	8.2%	299	2.8%
AB - Asian / Bangladeshi	105	1.0%	124	1.2%
AC - Asian / Chinese	23	0.2%	25	0.2%
AI - Asian / Indian	750	7.1%	793	7.5%
AP - Asian / Pakistani	486	4.6%	535	5.0%
BA - Black / African	348	3.3%	216	2.0%
BB - Afro - Caribbean	211	2.0%	154	1.4%
BO - Black / Other	20	0.2%	24	0.2%
BR - British	4881	46.3%	5999	56.4%
CC - Asian	130	1.2%	126	1.2%
CO - Chinese other	32	0.3%	60	0.6%
DD - Chinese	172	1.6%	184	1.7%
EE - African	68	0.6%	213	2.0%
FR - Facetious Reply	1	0.0%	1	0.0%
II - Irish	230	2.2%	212	2.0%
MO - Mixed other	117	1.1%	191	1.8%
WA - White & Asian	110	1.0%	120	1.1%
WB - White & Black African	31	0.3%	23	0.2%
WC - White & Black Caribbean	33	0.3%	91	0.9%
WO - White other	288	2.7%	362	3.4%
XX - Other Genuine Reply	138	1.3%	127	1.2%
ZZ - Unknown/Unanswered	1505	14.3%	762	7.2%
TOTAL NO. FORMS RECEIVED	10547	100%	10641	100%

The table below is based on the total number of AD1's received during 2006 and 2007.

Description	2006	%	2007	%
AA - White / European	2212	30.8%	929	12.8%
AB - Asian / Bangladeshi	40	0.6%	52	0.7%
AC - Asian / Chinese	40	0.6%	30	0.4%
AI - Asian / Indian	343	4.8%	393	5.4%
AP - Asian / Pakistani	147	2.0%	175	2.4%
BA - Black / African	5	0.1%	31	0.4%
BB - Afro - Caribbean	46	0.6%	50	0.7%
BO - Black / Other	13	0.2%	13	0.2%
BR - British	2265	31.5%	3651	50.3%
CC - Asian	35	0.5%	53	0.7%
CO - Chinese other	8	0.1%	16	0.2%
DD - Chinese	32	0.4%	95	1.3%
EE - African	101	1.4%	98	1.3%
FR - Facetious Reply	0	0.0%	2	0.0%
II - Irish	116	1.6%	147	2.0%
MO - Mixed other	17	0.2%	38	0.5%
WA - White & Asian	30	0.4%	59	0.8%
WB - White & Black African	9	0.1%	8	0.1%
WC - White & Black Caribbean	9	0.1%	15	0.2%
WO - White other	131	1.8%	322	4.4%
XX - Other Genuine Reply	133	1.8%	110	1.5%
ZZ - Unknown/Unanswered	1461	20.3%	976	13.4%
TOTAL NO. FORMS RECEIVED	7193	100%	7263	100%

Appendix 4

BME SOLICITORS' EXPERIENCES OF DEALINGS WITH THE SRA

The Working Group invited BME solicitors to make submissions to the Review about their experiences in dealing with the SRA in the context of the terms of reference for the Review. Fourteen submissions were received and acknowledged. Three follow-up interviews were conducted.

A range of issues was raised and are summarised below. Many of the issues were recurrent in all of the submissions. All respondents were told that there would be no intervention by the Reviewer into their cases, which was a disappointment to all those who anticipated such support for their individual cases.

The issues raised were as follows:

1. Initial contact with the SRA on minor matters can inevitably lead to an interest in the practice/firm, resulting in inspections and investigations; victimisation; and regular repeat visits from different parts of the organisation until they find something that can lead to punitive action.
2. Double standards are applied by the SRA. It demands information and documents within punishing time scales but rarely ever responds to reciprocal requests for information in any reasonable time periods and, in some cases, never responds at all unless prompted on more than one occasion.
3. The extensive delays inflicted by the SRA on subject solicitors cause personal stress on staff, loss of business and even the collapse of a business.
4. Whenever a matter is dismissed, there is unlikely to be an apology for all the suffering experienced.
5. 'Public interest' is the most over-used explanation ever given for the SRA's regulatory activities, even when being applied excessively in pursuit of minor or perceived misconduct.
6. 'Draconian' interventions, which necessitate a disproportionate and unreasonable effort to be expended by subject solicitors on 'low risk' allegations or flimsy suspicions; the use of untrained caseworkers; unrestrained search and seizure without explanation; having to relate the same facts to different parts of the organisation; no reasons provided for decisions and the non-disclosure of evidence and information on which decisions are made by 'faceless' panellists in secret/closed sessions.
7. Little or no weight given to subject solicitors' own submitted evidence.
8. Minimal oversight of the application of the draconian discretionary powers and delegated authority used to inflict damage on small BME firms.

More general complaints alleged negligence, racism, victimisation, inequality and mal-administration. One submission, which was the subject of on-going litigation, made extensive allegations of lies, deceit, failure to reply, 'fishing expeditions' and false investigations.

In another detailed submission, a complainant claimed that his experiences with the SRA were the same as those experienced by many other BME solicitors. He described the consequence of intervention processes for a solicitor in a sole practice or a small firm, who have regulatory dealings with the SRA, as nothing short of 'ruinous'. He cited the following adverse consequences as the inevitable result of such processes:

- Loss of goodwill and of work in hand
- Loss of professional indemnity insurance and liable personally for professional negligence
- Liable for redundancy and other employment related claims
- Liable for Law Society/SRA Agents' costs of intervention and administration leading to bankruptcy
- Unlikely to obtain employment as a solicitor
- Unable to mount a successful defence against any SRA proceedings
- Challenging the intervention is beyond the means of most solicitors

The main suggestions made for improving the situation were:

- More active consultation with and engagement of BME solicitors
- Change in the SRA's leadership
- Independent arbitration arrangements for disputes between the SRA and solicitors

Appendix 5

Analysis of Available Instigator Ethnicity Data

The Data

This analysis is based on data from the following sources:

- An Access database of customer satisfaction returns pre-dating the Informants Protocol and, therefore, representing forms sent out on all closed files
- An Access database of customer satisfaction returns capturing Informants Protocol returns and, therefore, representing forms sent out on a sample of closed files
- The SRA's REGIS database, which holds data on all regulated individuals
- The SRA's ROAD database, which holds data on investigations and complaints

The time frame covered by this analysis is January 2004 to May 2009 and the data relates to Conduct (CDT) and Redress Conduct (RDC) matters. The earlier records will include hybrid matters where service issues were dealt with alongside conduct issues as part of the same investigation. It should be noted that this is no longer the case and that the Legal Complaints Service (LCS) now considers all service issues.

The analysis has been divided into 2 strands. The first (1) is based on non-solicitor instigators and is derived from the customer satisfaction database. The second (2) strand is based on solicitor instigators and is derived from the ROAD database. In each case the ethnicity of the subject individual has been derived from the REGIS database.

Data from the customer satisfaction database is restricted to those records where the form was returned on or after 1 January 2004. ROAD data is restricted to records created on or after 1 January 2004. Data has been grouped for ease of presentation and shown for the whole time period.

The Analysis

The data has been analysed according to the following criteria:

- 1 (a) Ethnicity of non-solicitor instigator and ethnicity of subject solicitor
- 1 (b) Ethnicity of non-solicitor instigator and final outcome
- 1 © Ethnicity of subject solicitor and final outcome
- 1 (d) Ethnicity of non-solicitor instigator and satisfaction with service
- 1 (e) Ethnicity of non-solicitor instigator, satisfaction with service and final outcome
- 1 (f) Ethnicity of non-solicitor instigator, ethnicity of subject solicitor and final outcome

- 2 (a) Ethnicity of solicitor instigator and ethnicity of subject solicitor
- 2 (b) Ethnicity of solicitor instigator and final outcome
- 2 © Ethnicity of subject solicitor and final outcome
- 2 (f) Ethnicity of solicitor instigator, ethnicity of subject solicitor and final outcome

1 (a) Ethnicity of non-solicitor instigator and ethnicity of subject solicitor

Of the 1,343 records where it was possible to identify the ethnicity of both the non-solicitor instigator and the subject solicitor, only 96 (7%) of instigators are BME, whereas 899 (67%) are white.

Of those 96 BME instigators, 29% were complaining about BME solicitors and 59% were complaining about white solicitors. Of the 899 white instigators, only 6% were complaining about BME solicitors whilst 79% were complaining about white solicitors.

2 (a) Ethnicity of solicitor instigator and ethnicity of subject solicitor

Of the 268 records where it was possible to identify the ethnicity of both the solicitor instigator and the subject solicitor, 48 (18%) of instigators were BME and 62% were white.

Of those 48 BME instigators, 31% were complaining about BME solicitors and 44% were complaining about white solicitors. Of the 166 white instigators, 11% were complaining about BME solicitors whilst 73% were complaining about white solicitors.

1 (b) Ethnicity of non-solicitor instigator and final outcome

Of the 2,121 records where it was possible to identify the ethnicity of the non-solicitor instigator, 144 (7%) of instigators were BME, whereas 1,474 (69%) were white. The percentage with an outcome of not upheld is similar for both BME (71%) and white (72%) instigators. A higher proportion of BME complaints were conciliated than those made by white complainants – 15% BME compared to just 9% of white instigated complaints. These conciliated matters would be the older, hybrid matters. Nine percent of white instigated complaints were upheld compared to 6% of BME complaints.

2 (b) Ethnicity of solicitor instigator and final outcome

Compared to non-solicitor instigated complaints, proportionally more are upheld overall when they are made by a solicitor. However, those made by BME solicitors were still only upheld in 6% of cases, proportionally the same as the non-solicitor complaints. 14% of complaints by white solicitors were upheld.

1 © and 2 © Ethnicity of subject solicitor and final outcome

Where the instigator was a non-solicitor, 15% of complaints were upheld where the subject solicitor was identified as BME compared to 9% where the subject was white. However, where the instigator was a solicitor these proportions are markedly different. Of the solicitor-generated complaints, 7% are upheld against BME subjects compared to 14% against white subjects.

1 (d) Ethnicity of non-solicitor instigator and satisfaction with service

38% of BME complainants were satisfied with the service provided by the SRA, which is fairly comparable to the 37% of white complainants. However, white complainants were 4% more likely to express dissatisfaction than their BME counterparts.

1 (e) Ethnicity of non-solicitor instigator, satisfaction with service and final outcome

Not surprisingly, customers are less likely to be satisfied with the service they received if their complaint is not upheld. This is true irrespective of ethnicity and just 19% of both BME and white complainants expressed satisfaction with the service where their complaint was not upheld.

1 (f) Ethnicity of non-solicitor instigator, ethnicity of subject solicitor and final outcome

Of the 28 matters where both instigator and subject were BME, 50% (14) were not upheld whilst 18% (5) were upheld. Of the 711 matters where both parties were white, 75% (531) were not upheld with 16% (111) upheld.

Where the instigator was BME and the subject white, 3.5% (2 of 57) were upheld. Where the instigator was white and the subject BME, 27% (15 of 26) were upheld.

2 (f) Ethnicity of solicitor instigator, ethnicity of subject solicitor and final outcome

Of the 15 matters where both instigator and subject were BME, 53% (8) were not upheld whilst 7% (1) were upheld. Of the 121 matters where both parties were white, 43% (52) were not upheld with 23% (28) upheld.

Where the instigator was BME and the subject white, none of the 21 was upheld. Where the instigator was white and the subject BME, 11% (2 of 18) were upheld.

It should be noted, particularly in respect of solicitor instigated complaints that the population data set is not large and analysis using three separate comparators reduces the population for each combination and, as a consequence, reduces the statistical validity of the output.

Appendix 6 Sole Practitioners

All fee earners

Ethnicity	Count Individuals	Percentage
BME	6639	8%
Mixed	383	0%
Unknown	11549	14%
White/European	66,754	78%
Sum:	85,325	100%

All Solicitors on the Roll with a PC @ 26/6/08

Ethnicity	Count Individuals	Percentage
BME	9257	8%
Mixed	510	0%
Unknown	15053	13%
White / European	87111	78%
	111,931	100%

Population of England and Wales

Ethnicity	Count Individuals	Percentage
BME	4,283,000	8%
White	48,072,000	92%
	52,355,000	100%

Source: Labour Force Survey, Office for National Statistics

All Sole Practitioners

Ethnicity	Count Individuals	Percentage
BME	539	13%
Mixed	14	0%
Unknown	571	14%
White/European	2,981	73%
Sum:	4,105	100%

Variations

BME Fee Earners	6639
BME Solicitors on the Roll with a PC	9257
BME Sole Practitioners	539
Percentage of BME Fee Earners who are Sole Practitioners	8.1%
Percentage of BME Sols on roll with PC who are Sole Practitioners	5.8%

White Fee Earners	66754
White Solicitors on the Roll with a PC	87111
White Sole Practitioners	2981
Percentage of White Fee Earners who are Sole Practitioners	4.5%
Percentage of White Sols on roll with PC who are Sole Practitioners	3.4%

7.2.2.6 Forensic Investigations

	2005	2006	2007	Total
Visits Started	446	448	406	1300
Priority 7	26	67	160	253
% priority 7	6%	15%	39%	19%

Table 10

Ethnicity	2005		2006		2007	
Asian	6 (6)	9%	7 (2)	12%	11 (10)	18%
Black	11 (8)	16%	17 (9)	29%	9 (4)	15%
Chinese	0	0%	0	0%	1 (1)	2%
White	53 (44)	76%	35 (22)	59%	41 (35)	66%
TOTAL	70	100%	59	100%	62	100%

Table 11

Ethnicity	2005		2006		2007	
	% of interventions	% of population	% of interventions	% of population	% of interventions	% of population
Asian	9%	5.0%	12%	5.2%	18%	5.5%
Black	16%	1.5%	29%	1.6%	15%	1.6%
White	76%	79.3%	59%	78.6%	66%	78.3%

QLTT	2005		2006		2007	
	Number	% QLTT	Number	% QLTT	Number	% QLTT
Asian	6	0%	7	29%	11	9%
Black	11	45%	17	53%	9	56%
White	53	4%	35	9%	41	0%

Appendix 7

Addendum – Compendium of responses to the report

SRA's Initial Response

The SRA welcomes the report of the Independent Reviewer. We are pleased to note that the review recognised that the SRA, as a newly established regulator, has a commitment to the integration of equality and diversity and has commenced some work to make this a reality in its regulatory activities. However, we accept the review finding that progress in embedding equality and diversity has been slow and that we must address issues of discretion and possible prejudice which may result in disproportionate outcomes for BME practitioners, as part of our programme of ensuring that we have the best organisation to deliver regulation in the public interest.

The SRA and its Board are fully committed to progressing the recommendations in Lord Ouseley's report to demonstrate that the SRA is fair, consistent and transparent in its dealings with all solicitors. It is essential that we can satisfy our stakeholders that the principles of equality and diversity are embedded in our policies and procedures. Equally, we need a better understanding of the factors outside our immediate control that appear to place some BME solicitors at greater risk of regulatory action. The key to success will lie in a partnership between the SRA and BME solicitors to identify and address the factors which cause this increased risk.

The following are immediate actions which we will take under each of the key areas for action identified by Lord Ouseley.

Leadership

We recognise that leadership is critical to making equality and diversity a reality within the SRA. The SRA will:

- Establish a Board member Group to take forward the SRA's E&D Strategy – Group, Chaired by Peter Williamson, with Yvonne Brown, Penny Owston, and Stephen Whittle as members, established 24th July 2008
- Finalise, and publish for consultation, its Equality and Diversity Strategy – the Board has already discussed this, and has set a target date September
- Establish a programme, led by the CEO, to explain the findings of the Ouseley report to all staff, and to set out the strategy for tackling the issues
- Integrate E&D objectives into SMT's performance objectives and appraisals – by year end
- Use the staff Diversity Working Group, chaired by the CEO, to enable equality and diversity to become fully embedded into the business and culture of the SRA – to be implemented immediately
- Strengthen the E&D function by providing additional resources and capacity to implement the E&D strategy and action plan, and by having the E&D function reporting directly to the CEO
- Ensure that every board paper will identify whether policies under development have an E&D impact – immediate implementation

- Include equality and diversity messages in external events and speeches hosted and attended by board members and the SRA SMT – from now
- Deal effectively and expeditiously with staff who display evidence of prejudiced behaviour – from now, with training for staff to be arranged as soon as possible

Engagement

We have consulted on a number of policy areas with the profession and also used targeted consultation approaches to reach BME practitioner groups as with the QLTR reforms. However, we recognise that we need to improve on the way we consult and engage with key diversity groups, including BME practitioners to better understand their concerns.

We will implement the following to reach out to the key diversity groups, including BME practitioners:

- Initiate further meetings with key BME practitioner groups to better understand their concerns and seek their help in improving our processes – from now
- Extend these meetings to the other key diversity practitioner groups such as the GSD – from now
- Make an offer of participation at events and meetings held by the BME practitioner groups to provide the opportunity for us to speak directly to BME practitioners – from now
- Hold focus groups around the regions to find out the concerns of BME practitioners and how they would like us to engage with them – by end 2008
- Use positive marketing to increase the number of BME practitioners attendance at our road shows – from now
- Work with the Law Society to develop training and guidance to help BME practitioners, particularly those from abroad, to understand our rules and seek support by end 2008
- Engage the services of an external provider, such as Language Line, to ensure that we are able to respond to requests for information in other languages both from the profession and the public – by end 2008.

Impact Assessment

The SRA has already undertaken a number of impact assessments of some of its key policy areas. We have also published three of these impact assessments and have committed ourselves to an action plan over the coming three years to initially impact assess all our current and future regulatory policies and functions.

We view the process of impact assessment to be key to demonstrating that our policies and process are fair and transparent. In doing so we will ensure enough resources and expertise are provided that will enable us to:

- Publish a four year impact assessment schedule that will identify our key functions and policies and indicate timescales for completion of impact assessments – by October 2008.
- Ensure that in undertaking any full impact assessments we engage with BME practitioners to identify impact and improvements
- Publish all our assessments and ensure that they are accessible to the profession and the public
- Undertake a full impact assessment of the RADC process as identified by the report and complete this by the end of this year
- Complete a full assessment on the Section 12 referral policy
- Complete initial impact assessments of all our policies and functions by 2010.

Training and Development of Staff on E&D

The SRA has provided training to its staff on equality and diversity. However, we recognise that this needs to be improved and a process needs to be put in place to evaluate the effectiveness of training. We want to ensure that all our staff, from SMT to those working directly with the profession and public, are E&D competent. We aim to do this by:

- Undertaking a training needs analysis of all our staff in this area to be completed by October
- Developing an E&D learning and development programme for all staff that will be linked to performance
- Introducing a robust evaluation system to measure the effectiveness of the training provided
- Providing training on cultural communication and dealing with issues of race
- Providing training on legislation and impact assessments
- Integrating equality and diversity into all our learning and development programmes, such as induction programmes, Train the Trainer and Recruitment and Selection.

Data collection, monitoring and analysis

The SRA is acutely aware of its current data limitation in the area of E&D which has also been indicated by the independent reviewer's report. We are committed to improving our data collection to enable us to identify and address any disparities at an early stage. We will do the following:

- Collect data on the demographic make-up of the profession, including ethnicity – September 2008. We are marketing this now and have sought help from key practitioner groups to maximise response rates
- Provide regular Management Information reports to all our Directorates on our key regulatory areas to ensure that any weaknesses are identified
- Publish annual reports on our monitoring, together with action taken, to address any disparities

- Routinely collect data on information and strengthen data collection in other areas, such as Fraud Confidential Information Bureau and ethics
- Present data on E&D to the Board every three months.

Complaint Investigation

We have an interim protocol to improve the way we investigate complaints about ourselves from the profession and the public. We recognise that we need to develop a more formal policy that is more transparent, published and accessible to all our stakeholders. We will take some initial steps towards this:

- Develop an independent central unit within the SRA which will have the responsibility for investigating all complaints
- Deliver training to individuals and equip them with the E&D skills and competencies to investigate complaints about the SRA
- Publish an annual report to include the number of complaints received and outcomes.

Recruitment

We will seek expert advice on strategies, including the use of positive action where appropriate, to encourage applications from BME and other minority groups to improve representation particularly at senior levels.

Scrutiny and Quality Assurance

The independent reviewer would be invited to conduct regular inspections, assessments and audits during the year, as required, to verify and supplement the content of progress reports on all aspects of the implementation programme, as well as the proposed annual reporting arrangement.

In welcoming the report we are fully committed to demonstrating that we are a fair and non-discriminatory regulator. We intend to achieve this by:

- Publishing an annual report on E&D progress, to include the findings of the independent reviewer
- Publishing our rules and guidance in simple language and ensure they are accessible to all the profession and the public
- Implementing regular audits in relation to case working.

The following addendums are views of the BME stakeholder groups who were represented on the SRA Working Party looking at the impact of SRA decisions on BME solicitors.

Black Solicitors Network Comments on Lord Herman Ouseley's Report

1. BSN agrees with all the recommendations of the report which is a vindication of anecdotal evidence gathered by BSN from its members.
2. We particularly agree with the recommendation that there should be extensive dialogue between BSN and the SRA with a view to minimising any future disproportionate and negative impact on BME solicitors of SRA actions and decisions taking into account, SRA's obligations under race, human rights and equality and diversity legislation.
3. We agree with the recommendation that the SRA should have a more diverse panel of firms instructed to carry out interventions on behalf of the SRA.
4. The SRA should proactively adopt a policy which seeks to prevent rather than cure regulatory breaches. In this regard BSN will be keen to assist SRA in putting together a series of workshops that will enable BSN members to be better informed about the regulatory framework and the risk management matrix of the SRA.
5. The SRA should meet on a quarterly basis with representative groups such as the BSN to provide information relating to the number of interventions and adjudications undertaken against BME firms. This information should also be provided to Council Members of The Law Society representing BME solicitors.
6. The SRA should urgently review its proposals to change rules on regulation relating to firm based regulation and the accounts rules in so far as the impact of such a change will have on sole practices, small and medium sized firms in which a great number of BME solicitors work.
7. The SRA should consider creating workshops for new firms to better understand the regulatory requirements and continue to monitor firms within the first 12 months and be available to provide any assistance that firms may require in complying with the regulations.
8. BSN would be happy to liaise with the SRA to provide a guidance pack for foreign lawyers who wish to set up practice in the UK in order that they may have a comprehensive understanding of the rules and regulations within the UK Legal Profession.

SOCIETY OF ASIAN LAWYERS

THE SOCIETY OF ASIAN LAWYERS HAS NO CONFIDENCE IN THE ABILITY OF THE SOLICITORS REGULATION AUTHORITY TO POLICE THE SOLICITORS PROFESSION IN A FAIR AND IMPARTIAL WAY

1. The Society of Asian Lawyers formed in 1990 is one of the UK's largest independent legal societies and encompasses members from every field of the legal profession.

Solicitors and barristers happily co-exist. Sole Practitioners participate alongside partners from large city firms.

Employed lawyers, whether in private practice or government service, are also comprised within the membership.

2. The Society of Asian Lawyers congratulates Lord Ouseley for his excellent, thorough and well researched review of the work of the Solicitors Regulation Authority but is deeply disturbed at its findings.
3. The report clearly demonstrates that the SRA has not learnt the lessons of the 2006 initial impact assessment and continues to disproportionately target BME Lawyers and Solicitors in all facets of its regulatory work.
4. The SRA appears to be incapable of putting its own house in order. Token lip service to equality and diversity is not the way to dispel allegations of institutional racism.
5. Radical root reform is required as a matter of urgency.

6. The Society of Asian Lawyers demands that –
- (a) More BME candidates must be employed at decision making levels of the organisation. It is scandalous that at present only one member of the SRA board (out of a total of 14) is from a BME background.
The board needs to be reconstituted so as to reflect the multi cultural make up of the profession in the 21st century.
 - (b) A coherent equality and diversity policy must be adopted and implemented as a matter of urgency.
 - (c) Crucial impact assessments must be completed.
 - (d) All staff must be given equality and diversity training to ensure that they deal with those accused without displaying stereotypical racial attitudes.
 - (e) The reforms need to be monitored by an independent steering group comprised of stakeholder groups and organisations. The Society of Asian Lawyers is happy to assist with such a process.
 - (f) The leadership of the SRA need to consider their positions in the light of the damning conclusions of the report.
7. For more information please contact:-

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Society of **Black Lawyers**
the pursuit of equality in justice

SOCIETY OF BLACK LAWYERS COMMENTS ON

THE REPORT OF LORD HERMAN OUSELEY

The SBL has, since its creation in 1973 by Sigbat Khadri Q.C, and the late Rudy Narayan been campaigning against racism within the legal profession and in the wider community. In the light of our experiences this report comes as little surprise however it details a collective failure of leadership in both the SRA and the Law Society. This is all the more negligent a failure as it comes some ten years after the Lawrence Inquiry laid down a standard for all public institutions to achieve. It is also being paid for by the wider community and by our professional fees as solicitors.

We have experienced black and minority solicitors being struck off for many years. There have been many BME solicitors who have been struck off, intervened against, placed under onerous conditions with the BME community denied access to their chosen lawyers. The beneficiaries of these actions are a largely white bureaucracy and a few select white firms who wait ready to clean up when minority firms are closed down for whatever reason. We do not condone bad practice in minority firms however there are clearly two standards at work here.

On a sinister note, information on alleged misconduct sometimes comes from police officers or others such as immigration officers who may have a vested interest in a firm of solicitors being unable to represent a client group. By contrast, there is a policy of non disclosure used by the SRA to keep solicitors in the dark.

Lord Ouseley's damning report spoke of a "lack of leadership" and "a culture of bias" against minority solicitors leading to a disproportionate number experiencing serious interference with their professional practice and reputation. Lord Ouseley's recommendations include a significant overhaul of the way in which the SRA operates with an action plan to address a whole range of issues.

The disproportionate rate at which BME student applicants are turned down as being unsuitable to qualify in the first place means that white people with previous character issues are far more likely to be admitted to the solicitor's role. There is also clear and obvious bias and racism when nationals from countries such as Nigeria seek to be admitted. City firms and those with more than 26 partners are almost left untouched with less than 10 investigations since the formation of the SRA. There is clearly a financial dynamic at work and a reluctance to challenge the powerful city firms many of whose members sit on Law Society committees.

Peter Herbert, Chair of the SBL and a member of the working party stated that,

"This level of institutional racism seriously undermines the principle of equal access to justice for all. Not only have Black and minority solicitors faced racism and investigations but the BME community has been denied access to the lawyers they need with white firms employed by the SRA benefiting

from such interventions and closures. This is as serious for the Legal Profession as the Lawrence Inquiry was for racism in the Metropolitan Police”.

The ability of the Ministry of Justice to recruit BME Judges and Tribunal members is also set back as solicitors facing prolonged disciplinary action and investigation are unable and often unwilling to apply for judicial office. The Law Society and SRA have shown a cavalier disregard for the rights of both BME lawyers and our wider communities. This is in direct contrast to the overwhelmingly white, middle class city firms enjoying almost complete immunity from such enquiries, investigations and disciplinary sanctions.”

Several findings stood out namely;

The lack of minority employees of the SRA, particularly in management positions;

The failure of the SRA to address issues of racism and disproportionality first identified in a report in 2006;

The disparity in treatment evident in African Caribbean solicitors being 6 times as likely to be closed down and Asian firms 3 times as likely as compared to white firms;

A culture of bias and racism evident in the investigation process and culture of the Sra which has gone unchallenged by managers;

The absence of diversity and expertise on the SRA management board itself;

The refusal of SRA caseworkers to disclose the nature or source of their allegations.

Mr. Peter Herbert, Chair of the Society of Black Lawyers commented that *“This report is a damning indictment of the failure of both the SRA and the Law Society to identify and combat the racism they were clearly aware of in 2006. We no longer have trust or confidence in the SRA Board having the expertise or commitment to implement these recommendations. We call upon the Chief Executive and the members of the SRA including it’s Board who were responsible for this debacle to resign forthwith”*

- The SBL and other stakeholder groups call for
 - 1) A steering committee to be established chaired by a Government Minister to implement the recommendations.
 - 2) All current investigations of minority solicitors to be suspended and past investigations to be subjected to an independent and impartial review.
 - 3) A new SRA board and Chief Executive to be appointed forthwith with diversity and equalities expertise as one of the criteria for selection.
 - 4) All SRA staff to be given equality and diversity training as a matter of urgency.

- 5) All previous findings against minority solicitors since the inception of the SRA to be subject to an independent and impartial review.
- 6) A coherent equality and diversity policy to be adopted and implemented and all the recommendations made in Lord Ouseley's report to be implemented in full within an agreed time frame.
- 7) All outstanding race discrimination Tribunal actions by minority firm to be settled forthwith.
- 8) The action plan to be adopted and implemented in full within the next twelve months with a full progress report to be given every 4 months to the Equality Steering Committee.

THE BRITISH NIGERIA LAW FORUM RESPONSE TO LORD OUSELEY'S INDEPENDENT REPORT ON THE IMPACT OF SRA DECISIONS ON BME SOLICITORS

The BNLf Executive and BNLf SRA Report Committee welcome the Independent Reviewer's report into the disproportionate regulatory outcomes for Black and Minority Ethnic Solicitors. SRA decisions have affected a large number of Nigerian lawyers many of who have recently qualified through the QLTT or are Registered Foreign Lawyers. Lord Ouseley's report gives us an invaluable insight into the otherwise opaque and inscrutable world of the decision making machinery within the SRA. The report shows that there are serious organisational issues within this institution that need to be urgently addressed. This may not necessarily address all the issues of disproportionality, but it will assist the process of seeking to achieve a fair and level playing field for BME lawyers, particularly those working as sole practitioners or in small firms. Whilst there is strong criticism of the SRA much of which it accepts, the BNLf is anxious that the SRA adopts a constructive approach to those criticisms and lessons are learnt. At the same time the BNLf is of the view that the Report offers an opportunity for stakeholder groups and BME solicitors to take a more proactive role within the profession. As a stakeholder, committed to representing the interest, training and education of Nigerian lawyers and students in the United Kingdom, BNLf endorses the recommendations proposed by the Independent Reviewer and is committed to working with other stakeholder groups and the SRA to ensure that the proposed recommendations are implemented and, the commitments given by the SRA arising from this report to BME members of the profession are honoured.

BNLF COMMENTS ON THE REPORT

- 1) ORGANISATIONAL STRUCTURES EQUALITY AND DIVERSITY – BNLf was particularly concerned that the SRA is a predominantly white workforce at all levels of the organisation. Of particular concern was the absence of BME staff in key areas of the directorate that determine whether regulatory action should be taken or not. Whilst there is a token representation of Asian staff, key areas such as client protection, regulation response, standards and policy have no black members of staff. (See para 6.8 and Table 2.). It is

BNLF's view that this under representation of BME people within the workforce may be a significant factor when it comes to try and understand the reasons for the disproportionality of regulatory activity of BME solicitors and their concerns about bias and prejudice, and the sense of alienation felt by all BME members who have experienced regulatory activity of one kind or another. The SRA needs to take urgent steps to ensure that BME staff are recruited into directorates that currently have no BME representation and into senior and middle management positions. This is important for a Regulator which says that it takes equality issues seriously and is also important if it is to avoid allegations being levelled at it of possible institutional racism. Key also to the image change and reform within the SRA must be the appointment of BME firms or individuals as intervention agents and adjudicators or on to the Solicitors Disciplinary Tribunal. A complete overhaul of the current image of the organisation as an exclusively white club, with no proportionate representation of BME employees in positions of influence is necessary if the SRA wants BME members of the profession and the public to see it is a fair and independent regulator.

- 2) COMPLAINTS HANDLING – The special treatment given to “Magic Circle” firms (para 12.3) is an area of great concern to BNLF. The phrase “size matters” is a constant theme throughout the report. If you are small you are targeted whereas if you are big there appears to be a presumption of innocence. We have concerns that the Law Society is not only failing to apply its resources to investigating the bigger firms but also with the fact that they also appear to receive preferential treatment. BNLF knows of one case which indicates that the Legal Complaints Service was undoubtedly biased in dealing with complaints of poor service and misconduct against a Magic Circle firm, when there were unjustifiable delays, excessive overcharging and unauthorised withdrawal from client account. The statistics in the report show that BME solicitors are not extended such privilege. This prejudice and bias noted at paragraph 12.3 of the report in decision making and complaints handling must be eradicated.

BNLF is particularly disturbed to read that Nigerian lawyers are assumed to be guilty of complaints and allegations made against them. (See page 6 of the report). As a public body,

the SRA and Law Society are subject to Article 6 and ordinary administrative principles of fairness. It is worrying to BNLF that presumptions of guilt have prejudiced the process of complaints handling from the start and it is no wonder that caseworkers, adjudicators, etc, then follow the trail of prejudice and bias and make findings that confirm the original decision maker's opinion without any independent or balanced assessment.

The SRA must also review the proportionality of some of the sanctions imposed on solicitors. If appropriate, it is suggested that a review of the available sanctions should be conducted *vis a vis* the ECHR and this could be included in the Monitoring and Evaluation section of the recommendations in the report. BME solicitors are often unable to challenge the regulatory process and the sanction imposed on them. The absence of legal aid and other means of funding mean a lot of SRA decisions have not been challenged in the High Court. It would be useful for the SRA to review the sanctions meted out to solicitors in light of the European Convention on Human Rights. See *R (Wright & Others V Secretary of State for Health 9 2006) EWCH 2886 (Admin)* and *Para 39,42 and 65 Le Compte, Van Leuven & De Meyere v Belgium 1981 4 EHRR1*. Whilst BNLF recognises that public protection and confidence is important and indeed paramount, BNLF considers the imposition of excessive career limiting sanctions unhelpful, where for example, the allegations are of poor service and some inadequate accounting errors as opposed to misconduct issues. BNLF would suggest that the answer to these types of cases ought to be appropriately targeted refresher and training programmes, including compulsory additional CPD training in specified areas.

- 3) NON-DISCLOSURE – BNLF finds the SRA's understanding of the ordinary principles of procedural fairness worrying. The comments in the report confirm that there is an urgent need for transparency. Sources of allegations and complaints leading to investigations should be well documented for audit purposes. Solicitors must have the same rights as ordinary citizens to know who is complaining about them and the reasons for the investigations being conducted. The current system of secrecy leaves room for criticism and allegations of a witch-hunt, where the SRA carries out investigations without disclosing what it is looking for and instead conducts a fishing expedition. If the SRA is to be trusted as an independent and fair

regulator, it must change this system of non-disclosure. Similarly, where solicitors are barred from admission on the basis of intelligence, the intelligence should be documented and available for audit and inspection by an independent reviewer, with power to disclose the source of the intelligence and the reasons for non-admission to the applicant. The SRA must abide by ordinary principles of natural justice.

- 4) **SCRUTINY** – The SRA should be more accountable and its activities should be subject to closer scrutiny. As BME solicitors are unlikely to have the resources to pursue the SRA through judicial review there is an urgent need for a permanent Independent Reviewer to ensure that the SRA conducts its functions impartially, to undertake regular audits and reviews of the equality and diversity strategy and to oversee the implementation of the recommendations contained in this report, not only within the SRA but in the Law Society Group as a whole.

BNLF. 13.8.08



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the most beneficant, the most merciful

AML initial response to Lord Ouseley’s Independent Review Report on the impact of SRA decisions on BME solicitors

1. Introduction

- 1.1 The Association of Muslim Lawyers (AML) welcomes the report of the Independent Reviewer, Lord Ouseley (the Reviewer) and the opportunity to contribute to this Review through active participation in the Working Group to whom the Reviewer reported throughout the course of his Review.

2. AML concerns

- 2.1 We clearly support this Review and the work of the Reviewer, but we must state that the AML had been looking forward to more direct involvement into the review process by the stakeholders. This was fully discussed by all members of the working group and the majority view was that this would not be practicable as members were of course undertaking this work in a voluntary capacity in addition to their own work. We accepted this democratic process. We have therefore been heavily reliant on

the work of the Reviewer, upon which he has regularly consulted and updated the working group.

- 2.2 In addition, whilst we accept that in so far as they are concerned, the Reviewer and the Chair of this Review have given ample opportunity for all interested groups to participate in the process, we have raised with them the concerns of one of our member firms who felt otherwise. This is a matter which can be further investigated and has little or no bearing on the Review necessarily. It is of importance to the AML as this is a firm that has been intervened on five occasions over several years with little basis and little by way of outcome but to whom a huge amount of damage has been caused.

3. **Background**

- 3.1 AML has for some time been deeply concerned about the over-representation of black and minority ethnic (BME) solicitors in complaints and referrals to the SRA and in all aspects of regulation by the SRA itself (and, before the SRA came into being, by the Law Society). This is reflected in the statistics produced by the SRA itself. The over-representation of BME solicitors cannot simply be explained away by the fact that more BME solicitors are likely to become sole practitioners or to work in small firms. There is very clearly a degree of targeting of which we have received numerous complaints from our own membership. The impact that SRA investigations have on BME solicitors who are often sole practitioners or partners in small firms cannot be underestimated. Livelihoods have been lost and lives have been affected considerably as a result of disproportionate and discriminatory actions on the part of the SRA.
- 3.2 The SRA has accepted in its response that it needs a better understanding of the factors outside its immediate control that appear to place some BME solicitors at greater risk of regulatory action. Whilst not subject to this Review, a very important issue that needs to be addressed is the underlying reasons for the fact that the majority of BME solicitors are likely to be practicing as sole practitioners or in small

firms. This is mostly due to the fact that they suffer discrimination and/ or are marginalised in the main stream. They then find that instead of receiving appropriate support and advice from their professional body, they are instead targeted by its regulatory body, resulting in detrimental and discriminatory outcomes for BME solicitors.

- 3.3 In addition, BME solicitors are more likely to be subject to complaints and referrals generally and there are clearly issues surrounding this that also need to be explored albeit they are outside the ambit of this report. The reviewer has stated that it is clear that more detailed ongoing assessment and review of both the risk assessment process and the vulnerability of BME solicitors operating in small firms are required.

4. **Observations**

- 4.1 It is noted in the Reviewer's foreword that there is '*undoubtedly a firm commitment to addressing the principles of equality and diversity in the SRA*'. A commitment is not worth the paper that it is written on if it is not actioned in a meaningful and effective manner. The Reviewer clearly found this to be the case as the Chief Executive himself has admitted that 'progress has been lacking in a number of areas' and that insufficient leadership emphasis has been given to the values of equality and diversity. In addition, the equality and diversity strategy is still to be agreed by the Board, restructuring weaknesses have been identified regarding equality and diversity, there have been delays since 2006 in reviewing equality policy and equality competency deficiencies
- 4.2 In addition, it is of considerable concern to AML that commitment to equality and diversity has not been included as a principle of the adopted principles for decision-making. This is something that the majority of public authorities and most organisations expressly commit to in order not only to inspire trust and confidence but also to remind themselves and their members of the importance of remembering

and applying these principles. We welcome the actions that the SRA have set out in their response in this regard.

- 4.3 It is also noted that the SRA, has experienced difficulties in determining its values, operational culture and its responses to the challenges posed by equality, diversity, discrimination, fairness and inadequate management data. Until the SRA is able to overcome these difficulties in a positive and effective way, how can members of the profession and the public expect it to act in a manner which inspires any confidence? Again, we welcome the actions that the SRA have set out in their response in this regard also.
- 4.4 Following on from this, there is clearly some concern on the part of the Reviewer of racism within the SRA, evidenced by the level of prejudice and bias which exists among personnel through interviews and file and document reviews. In those areas of decision-making where subjectivity and discretion dominate, he found evidence of some stereotyping being applied and has noted that this needs to be tackled urgently. He also found evidence of assumption of guilt where BME solicitors were concerned. In addition, the equality and diversity competence, including training and experience for all decision-makers, whilst critical was not an essential or monitored requirement.
- 4.5 We welcome the SRA response to this and the actions that it has outlined in respect of staff training and awareness raising, as well as ensuring that the equality and diversity competence becomes an essential and monitored requirement. We do however impress the need for a clear and committed leadership emphasis on the values of equality and diversity.

- 4.6 An area of concern that does not appear to have been directly addressed in the SRA response to the report is the non-disclosure of information about allegations made against solicitors. This clearly cannot be allowed to continue as it is a clear breach of the human rights of any individual to face any form of investigation without knowing the case against them. All investigations must be on the basis of full disclosure in an atmosphere of transparency.
- 4.7 A further area of concern highlighted by the Review in relation not just to BME solicitors but also BME staff is the failure to deal effectively and independently with complaints made by them of alleged discrimination in the way they have been treated by the SRA. The Reviewer has commented that the processes applied seemed designed to ensure that the outcomes are virtually always against the complainer. He has compared this unfavourably with complaints of discrimination against solicitors which are investigated and dealt with by the highly specialized case-workers, and overseen by the Legal Services Ombudsman.
- 4.8 We are not satisfied that the SRA has provided an appropriate response to its handling of these complaints or put forward a fairer, more consistent and transparent manner of dealing with such complaints.

5. **Scrutiny and Quality Assurance**

The SRA has stated that the independent reviewer would be invited to conduct regular inspections, assessments and audits during the year, as required, to verify and supplement the content of progress reports on all aspects of the implementation programme, as well as the proposed annual reporting arrangement. However, in addition to this, we would submit that it would be appropriate for the working group to form a steering group that meets quarterly to review progress.

6 AML RECOMMENDATIONS

- **In light of the foregoing, there can clearly be little or no confidence in decisions already made by the SRA and cases that are currently being investigated. All the previous decisions of the SRA are clearly called into question. Those decisions already made ought urgently to be reviewed.**
- **All cases that are currently being investigated ought to be aborted or an urgent case by case review of each one of those pending cases ought to be carried out by the Working Group and/or the Reviewer and the merits of pursuing further action be considered given the findings of this Report.**
- **The issue of non-disclosure of information about allegations against solicitors needs to be urgently addressed and remedied. There must be full disclosure before any investigation is undertaken.**
- **As mentioned by the Reviewer, there is a need for a more detailed ongoing assessment and review of both the risk assessment process and the vulnerability of BME solicitors operating in small firms.**
- **Given the level of direct participation in the process by the stakeholders who formed the working group, all responses ought to be incorporated as appendices to the Review, as suggested at the last meeting by the AML representative and adopted by the working group.**

AML, 13th August 2008.

