



REGULATING BARRISTERS

Report on diversity of barristers subject to complaints

2013

PART 1

Introduction

1. The Bar Standards Board is committed to ensuring that it regulates in a fair and proportionate manner and in a way that both eliminates the potential for discrimination and promotes equality of opportunity. A key element of our regulatory role is ensuring that standards at the Bar are maintained and, where appropriate, enforcement action is taken if the provisions of the Bar's Code of Conduct are breached. We receive complaints from external sources, particularly members of the public. We also identify breaches of the Code via internal monitoring and raise complaints of our own motion where breaches of the Code are revealed.
2. In order to ensure that our enforcement system is operating in a fair and non-discriminatory manner, we closely monitor the performance of the complaints and disciplinary system against the diversity profile of the Bar. We do this to identify any potential areas of disparity of treatment and, where possible, take action to address such disparities. Since 2007 we have produced publicly available biennial survey reports on the gender and ethnicity of barristers subject to complaints. In addition to this report, two diversity reports are available for the periods 2007 -2008 and 2008-2010, the conclusions from which are summarised below. .
3. This report is divided into two parts: the first explains the history of our diversity monitoring of the complaints and disciplinary system, summarises the trends revealed and sets out the action the Bar Standards is taking to address potential areas of disparity of treatment. Part 2 sets out the detailed analysis of the complaints diversity data for the five year period 2007-2011.
4. The Bar Standards Board receives complaints about members of the practising Bar (of which there are over 15,000) as well as all those who have been called to the Bar in the past but who are not currently practising. The numbers of complaints handled by the BSB is relatively small, approximately 650 a year in total against all types of barrister. Given the relatively small numbers, diversity trends can be difficult to analyse particularly in relation to ethnicity and disability where the numbers of barristers involved, as well as the number of complaints, are very low. Overall, the data from the last five years shows that there is no evidence of widespread disparity of treatment within the complaints system but there are some discrete areas where sustained trends have been revealed that warrant further action.

Outcomes of previous diversity reports

2007-2008 Report

5. The 2007-2008 Diversity Report revealed two areas of disparity:
 - a) complaints about male barristers were disproportionately high in comparison to the gender composition of the Bar with male barristers being three times more likely to be the subject of complaints as compared to females; and

- b) BME barristers were over-represented in the number of internal complaints raised.
6. Further internal research by the Professional Conduct Department (then the Complaints and Hearings Department) was carried out in 2010 in relation to the over-representation of BME barristers in internal complaints raised. No clear factors were revealed that might be causing the disparity but it was apparent that BME barristers practising outside London and BME sole practitioners featured disproportionately in the numbers of complaints raised for failure to comply with continuing professional development (CPD) requirements. Recommendations were made that the Education and Training Department consider what further steps could be taken to ensure that sole practitioners, particularly BME sole practitioners and barristers practising outside London were aware of the expectations in relation to CPD requirements.

2009-10 report

7. The disparity in relation to internal complaints raised against BME barristers was also reported in the 2009-10 Diversity Report (although the disparity in relation to sole practitioners was no longer apparent). The report also revealed that BME barristers were over-represented in 2010 in relation to the proportion of complaints upheld. However, it was noted in the report that trends revealed in one year were not necessarily apparent in previous or subsequent years. In the light of this it was recommended that professional research, independent of the Professional Conduct Department, should be carried out to analyse the complaints diversity data over a five year period from 2007-2011 to determine whether there was any statistically significant evidence of sustained trends in disparity of treatment in the operation of the complaints system.

Recent research

8. In line with the recommendation set out at paragraph 7, the Bar Council's Research Team carried out an analysis of the complaints data for the period 2007-2011. The results of that data analysis and the detailed conclusions are set out in Part 2. In summary, the conclusions were:
- a) BME barristers are over-represented in the complaints process in relation to the outcomes of external complaints; BME barristers are more likely to have a complaint referred to disciplinary action, white barristers are more likely to have a complaint dismissed without referral to disciplinary action, and BME barristers are more likely to be subject to a disciplinary action outcome of upheld; even when controlling for differences in the subjects of the complaints.
 - b) BME barristers are over-represented in the complaints process in relation to internal complaints. There is no evidence that BME barristers were subjected to a larger proportion of internal complaints for any reason other than their ethnicity.

- c) Male barristers were subject to a larger proportion of internal complaints than their proportion of the Bar although this difference on the basis of gender was not as pronounced as the difference on the basis of ethnicity
9. The report concluded that *“the reason for these disproportionalities is not known”* and recommended that *“in order to examine the possibility of discrimination in the complaints system it is advisable that an external equality expert is commissioned to investigate the complaints handling process”*.
10. The Equalities and Diversity Committee of the BSB and the Board accepted this recommendation. The Bar Standards Board is committed to understanding the effect of its systems and processes. It is also committed to understanding whether there are any aspects of those systems and processes that are having a disproportionate or adverse impact on members of the profession, or the people making complaints about them. For that reason, the Board was happy to accept the recommendation, as endorsed by its Equality and Diversity Committee. Details of the consequent action are set out below.

Action

11. The BSB has commissioned Inclusive Employers, a specialist equalities consultancy company, to undertake qualitative research which will include:
- a review of the Bar Standards Board’s complaints system to determine whether or not there is systematic bias against BME practitioners;
 - a review of the Bar Standards Board’s internal complaints system to determine whether or not there is a systematic bias against male practitioners;
 - To make recommendations for future action for approval by the BSB Board.
12. In carrying out this work, Inclusive Employers will:
- Consider further the complaints data for the period 2007-2011;
 - Consider the current system for raising, referring and determining all types of complaint via process reviews;
 - Conduct up to 100 file reviews;
 - Hold interviews with office holders and key staff; and
 - consult with specialist interest groups such as the Society for Black Lawyers.
13. The research will be carried out during the period February – April 2013 and the results, along with any recommendations for further action, will be reported to the Board in May.

PART 2

**Research report on diversity of
barristers subject to complaints
2007 – 2011**

November 2012

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1. Introduction

This report provides an analysis of the diversity (gender and ethnicity) of all barristers who were subject to complaints between 2007 and 2011. Barristers who were subject to complaints in 2011 are also considered separately. The Professional Conduct Department (PCD) works under the authority of the Bar Standards Board and its Professional Conduct Committee to investigate complaints and, where appropriate, assist the Committee in taking action against barristers who have breached the Code of Conduct. Complaints are first assessed and then a decision is taken on whether or not to investigate based on whether there is any evidence of a breach of the Code. Following an investigation, where there is enough evidence to prove that the Code of Conduct has been breached; the Committee or a senior manager in the PCD will refer the complaint for disciplinary action. The BSB's role in the process then becomes that of the prosecutor as the case against the barrister is heard before an independent panel convened by the Council of the Inns of Court¹.

Under the Legal Services Act 2007, the jurisdiction over complaints about the service barristers have provided for their clients passed to the Legal Ombudsman. The transfer of service complaints took place between 6 October 2010 and 31 March 2011. Therefore, for external complaints, the types of complaints considered by the BSB – along with the complaints processes – changed part way through the period covered by this report. The separate statistics for complaints opened in 2011 represent only the current complaints processes, described above, where the BSB considers complaints of professional misconduct only.

External and internal complaints are analysed separately. Clients, members of the public, solicitors, judges or other professionals and organisations, make external complaints. In contrast to internal complaints, external complaints are registered whenever an individual or organisation indicates they wish to make a formal complaint. This is regardless of whether the complaint reveals evidence of a breach of the Code.

Internal complaints are raised by the Bar Standards Board (BSB) of its own motion for breaches of the Code of Conduct. These are usually breaches of the practising requirements but other common aspects include failures to comply with panel or tribunal decisions, failures

¹ The final decision on whether a barrister is guilty of breaching the Code of Conduct can be made by the Professional Conduct Committee for certain types of complaints – such as failure to comply with the CPD requirements of the profession – if the barrister admits to the charges. This is called the Determination by Consent procedure.

to pay non-disciplinary fines and failures to respond to BSB communications. The large majority of internal complaints relate to administrative matters where the need for value judgements as to whether a breach of the Code has occurred is limited.

2. Methodology

The aim of this research was to explore if there is evidence of discrimination in the complaints process. This was done by comparing the proportions of complaints opened on the basis of gender and ethnicity with the profile of the Bar as well as comparing whether there are differences in the types of complaints opened and the decisions and disciplinary outcomes they were subject to the basis of gender and ethnicity. Data on all barristers subject to external (n=2,019) and internal complaints (n=692) between 2007 and 2011 was extracted from the PCD database and imported into SPSS to allow for statistical analysis. After the first draft of this report was circulated, additional analysis was requested which required this data to be redrawn from the database with additional fields included. As this database is live, there were six barristers who had been subject to complaints since the first extract who were included in the subsequent analysis. The additional analysis was undertaken with the outcomes of complaints which had been referred to disciplinary action; this had not been included with the initial data provided. Due to the time lapse between the first and second data extraction, some complaints in the dataset had changed i.e. complaints which were ongoing had now been dismissed or referred or upheld, for this reason, the original analysis was re-run. However, the trends and significant differences found in the first draft of the report remained the same.

The analysis is based on descriptive statistics² and bivariate analysis (cross tabulations²); significance tests (Pearson's Chi square test³) are also used in order to test if the differences between men and women or white and BME barristers were due to chance or if there was a statistical relationship. The results of bivariate analysis (ie e.g. ethnicity by outcome category for complaints) are only discussed in detail where a statistically significant relationship was

² Please see appendix 1 for an explanation of the statistical techniques used. A cross tabulation is when the results of two variables (e.g. gender and complaint outcome) are tabulated against each other. It shows the proportion of each response category in one variable reporting each response category in the other variable.

³ A Pearson's Chi square test is a statistical test to determine whether the observed series of values differs from the values expected on a hypothesis, to a greater degree than would be expected by chance.

found. Where significant differences are discussed, such as if significantly more BME barristers are subject to an outcome of referred for external complaints, this means that there is a statistical relationship between ethnicity and referral with BME barristers being more likely to have their complaint referred. However in most cases, the results of bivariate analysis are not discussed in detail, as the differences in proportions that were subject to a certain type of complaint or certain types of outcome were not significantly different. Tables at the beginning of each section show the proportions of male and female barristers and white and BME barristers subject to different types of complaints and different complaints outcomes. Significant differences are marked by an asterisk and are then discussed further in the relevant section.

It was also not possible to test if the proportions subject to complaints overall were significantly different to the profile of the Bar; however comparisons are shown for overall subjection to external and internal complaints. For internal complaints, BME barristers were subject to a larger proportion of all complaints than their profile at the Bar and a larger proportion of all outcomes than their profile of the Bar. However, these cannot be tested for statistical significance as it would be necessary to have a dataset which included those who were not subject to complaints in order to do this. This may be possible in future years if the complaints database is linked to core database. As the data collected was monitoring data as opposed to survey data and data on the whole population in question was analysed as opposed to a sample, the confidence intervals for this analysis are zero.

In order to assist the reader in understanding the data in this report, the following points should be taken into consideration.

- The statistical analysis undertaken in this research, where statistical tests are used, considers each barrister and their characteristics individually.

For example, when considering if there is a statistical relationship between a barrister's ethnicity and complaint outcome:

- Barristers can have multiple complaints and therefore they can have multiple complaint outcomes.
- Therefore whether barristers have ever been subject to a disciplinary action ie ever had a disciplinary action of "upheld", each barrister has a response of "yes" or "no"; this is considered in relation to a barrister's ethnicity data.

- The data is split into those who have an ethnicity of “white” or “BME”.
- Then the proportion of “white” and “BME” who were subject to a disciplinary action of “upheld” or never were subject to a disciplinary action of upheld is compared.
- If someone who was subject to an action of “upheld” also was subject to an action of “dismissed” in another complaint, this is considered separately since the categories are not mutually exclusive. While a barrister can have been subject to multiple decisions and outcomes in their individual data, that barrister is only counted once in the analysis.
- When the term “more likely” is used this means that when testing if there was a statistical relationship between two variables eg ethnicity (BME or white) and an outcome of referred (had a complaint referred or did not have a complaint referred), a statistical relationship has been found between ethnicity and referral. In this case BME barristers were more likely than white barristers to be subject to an outcome of referred.
- In some tables used in this report (for the purposes of displaying the number of complaints in different subjects or with different outcomes and the proportion of barristers subject to complaints in different subjects and different outcomes, due to barristers being subject to multiple complaints) totals do not always add up to the total number of barristers in the dataset, and total percentages may be more than 100 per cent. This is because each barrister is counted in each outcome which is relevant to him or her. In the analysis each outcome is considered separately, for example 85% were subject to an outcome of dismissed and 15% were not subject to an outcome of dismissed; 7% were subject to an outcome of referred and 93% were not subject to an outcome of referred and so on. This analysis allows for the identification of relationships between gender and ethnicity and subjection to complaints and complaint outcomes, however a limitation of this analysis is that the data does not allow for a more meaningful exploration of “why” these exist.

3. Overview of complaints between 2007 and 2011

Overall 2,575 barristers were subject to complaints over this period, some were subject to multiple complaints and some were subject to both internal and external complaints. This paper considers barristers' internal and external complaints separately, there were 136 barristers who were subject to both internal and external complaints over the 2007 to 2011 period and they are counted in both categories. The focus of this report is on the barristers who were subject to complaints rather than the complaints themselves.

3.1 Overview of external complaints between 2007 and 2011

Table 1 overleaf shows the number of external complaints and the percentage of barristers who were subject to external complaints (n=2,019) between 2007 and 2011 by year, practice area, complaint, subject and outcome of complaint.

The number of external complaints decreased in 2011, due to the new role of the Legal Ombudsman, in previous years it varied from 473 complaints to 548 complaints. Complaints whose subject was classified as "other" accounted for the most common subject of complaint. In order to simplify the subjects of complaints for this analysis, some subjects of complaints were classified as "other". The PCD records many different subjects of external complaints; examples of these include fee dispute, failure to administer chambers properly and discrimination. As the numbers of barristers subject to complaints in these subjects become small and not suitable for statistical analysis, they have been merged into a subject category of "other". The majority of external complaints were dismissed.

Table 1 Numbers and percentages of barristers subject to external complaints by year, practice area, type, subject and outcome – please note that categories are not mutually exclusive and barristers may have complaints in multiple categories

	Number	Percentage
Year		
2007	548	27.1
2008	483	23.9
2009	512	25.3
2010	473	23.4
2011	282	14.0
Practice area		
Civil	742	36.7
Criminal	506	25.0
Immigration	29	1.4
Family	303	15.0
Other	613	30.3
Type		
Misconduct	1559	77.1
Service	894	44.2
Subject		
Incompetence	678	33.5
Misleading the court	330	16.3
Discreditable conduct	232	11.5
Rudeness	194	9.6
Instructions	164	8.1
Other subject	1,222	60.5
BSB decisions		
No further action	10	0.5
Dismissed	1712	84.7
Referred to disciplinary action	131	6.5
Disciplinary action outcome		
Upheld (post referral)	84	4.2
Dismissed (post referral)	42	2.1
Other (post referral)	7	0.3
Upheld – determination by consent	4	0.2
Miscellaneous outcomes		
Other outcome	208	10.3
Ongoing	67	3.3

3.2 Overview of internal complaints

Table 2 shows the number of internal complaints and the percentage of barristers who were subject to internal complaints (n=692) between 2007 and 2011 by year, subject and outcome of complaint. Barristers were subject to a larger number of internal complaints in 2011 in comparison to other the other years included in this analysis.

Internal complaints with a subject of “other” accounted for the most common subject of complaint. In order to simplify the subjects of complaints for this analysis, some subjects of complaints were classified as “other”. Subjects which have been merged into “other” include criminal conviction, failing to register or have insurance with BMIF and non-practising barrister holding out. The numbers of barristers subject to complaints in these subjects were small and not suitable for statistical analysis. They were merged into a subject category of “other”. The majority of internal complaints were referred to disciplinary action and once referred, the majority were upheld.

Table 2 Numbers and percentages of barristers subject to internal complaints by year, subject and outcome - please note that categories are not mutually exclusive and barristers may have complaints in multiple categories

	Number	Percentage
Year		
2007	99	14.2
2008	244	35.1
2009	132	19.0
2010	144	20.7
2011	263	37.8
Subject		
CPD	164	23.6
Failure to pay a non-disciplinary fine	140	20.1
Practising certificate	140	20.1
Failure to respond to BSB	85	12.2
All breaches of practising requirements	350	50.3
Other	430	61.8
BSB decisions		
No further action	121	17.4
Dismissed	205	29.5
Referred to disciplinary action	357	51.3
Disciplinary action outcome		
Upheld (post referral)	335	48.1
Dismissed (post referral)	25	3.6
Other (post referral)	11	1.6
Upheld - determination by consent	62	8.9
Miscellaneous outcomes		
Other	78	11.2
Ongoing	41	5.9

4. External complaints between 2007 and 2011

This section discusses barristers subject to external complaints in this period. It compares their profile to that of the practising Bar in 2010, which was the most recent data available for comparison. The differences in external complaints on the basis of gender and ethnicity are also discussed.

4.1 Barristers subject to external complaints

This section outlines how barristers subject to external complaints compare to the profile of the practising Bar in terms of practising status, year of Call, gender, ethnicity and disability. Additionally the number and percentage of barristers who were subject to multiple complaints is also discussed.

4.1.1 Multiple external complaints

The table below shows the numbers and percentages of barristers subject to one and more external complaints between 2007 and 2011. The majority of barristers who were subject to external complaints were subject to one, 1,696 (84%). There were 250 (12.4%) barristers subject to two complaints and negligible proportions of barristers subject to more than two complaints. This is shown on Table 3 below.

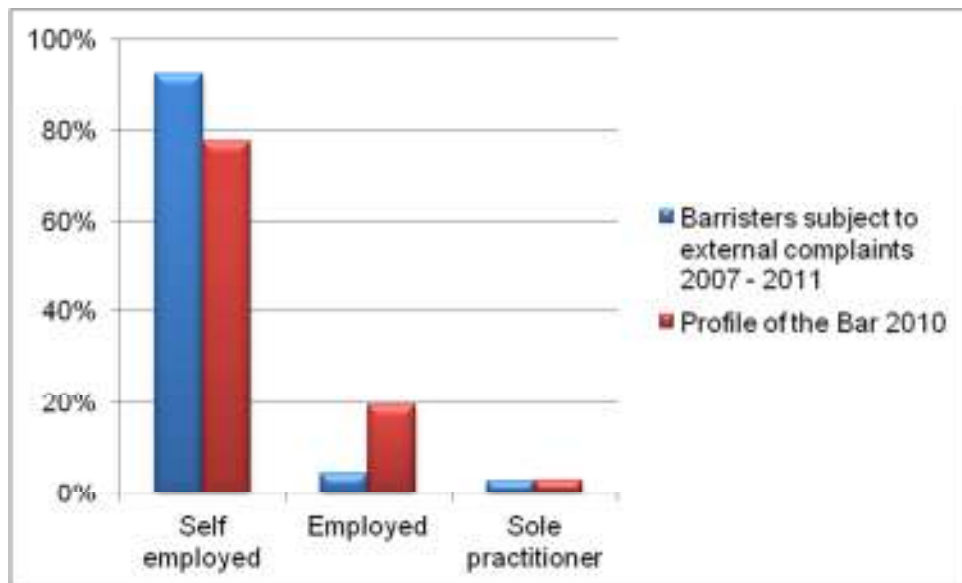
Table 3 Number and percentage of barristers subject to one and more external complaints

	Number of barristers	Percentage of barristers
One complaint	1696	84.0
Two complaints	250	12.4
Three complaints	54	2.7
Four complaints	9	0.4
Five complaints	6	0.3
Six complaints	2	0.1
Seven complaints	1	0.0
Eight complaints	1	0.0
Total	2,019	100.0

4.1.2 Practising status of barristers subject to external complaints 2007-2011

The majority of barristers subject to complaints between 2007 and 2011 were at the self-employed Bar, they accounted for 1,708 (92.5%) of barristers subject to external complaints. In comparison barristers at the self-employed Bar accounted for 77.7% of the practising Bar in 2010 (Bar Barometer, 2011). Employed barristers were subject to a smaller proportion of external complaints than their proportion at the Bar, they accounted for 85 (4.6%) of barristers subject to external complaints between 2007 and 2011 in comparison to accounting for 19.3% of the practising Bar. The proportion of sole practitioners subject to external complaints, 53 (3%) in this period was equal to their proportion at the Bar, (3%). This is shown on Figure 1 below. There were 173 barristers who were subject to external complaints excluded from this, as their practising status could not be classified (for instance having left the Bar, no longer registered or having obtained judicial appointment).

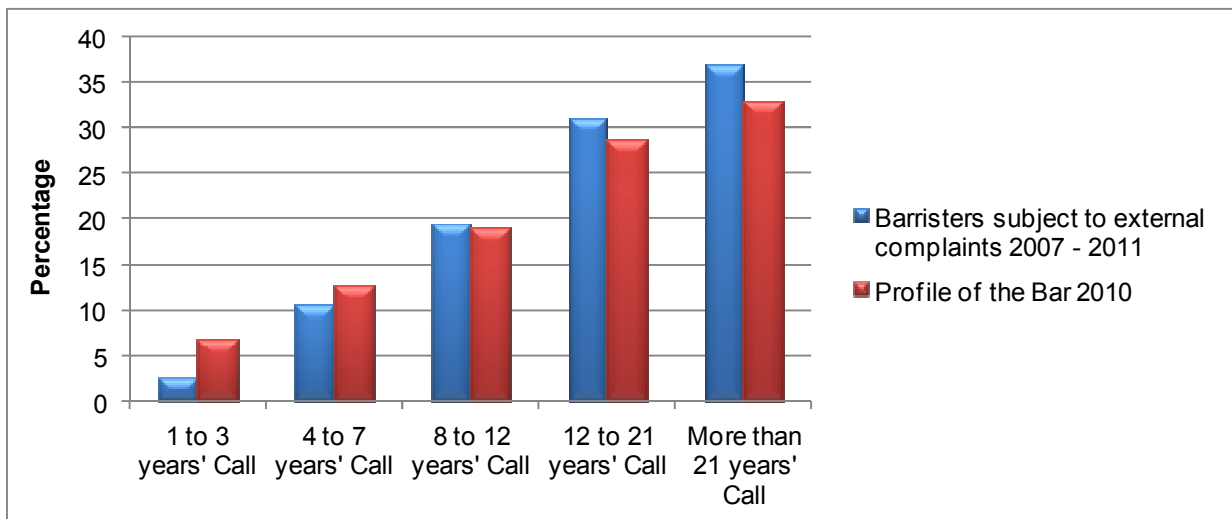
Figure 1 Practising status of barristers subject to external complaints



4.1.3 Year of Call of barristers subject to external complaints

The profile of barristers subject to external complaints was similar to the profile of the Bar by year of Call. However, those who were one to three years' Call and four to seven years' Call accounted for a smaller proportion of barristers subject to complaints than their proportion at the Bar. There were more barristers subject to complaints in the eight to 12 years' Call and 12 to 21 years' Call and more than 21 years' Call in comparison to the profile of the Bar. This is shown on Figure 2 below.

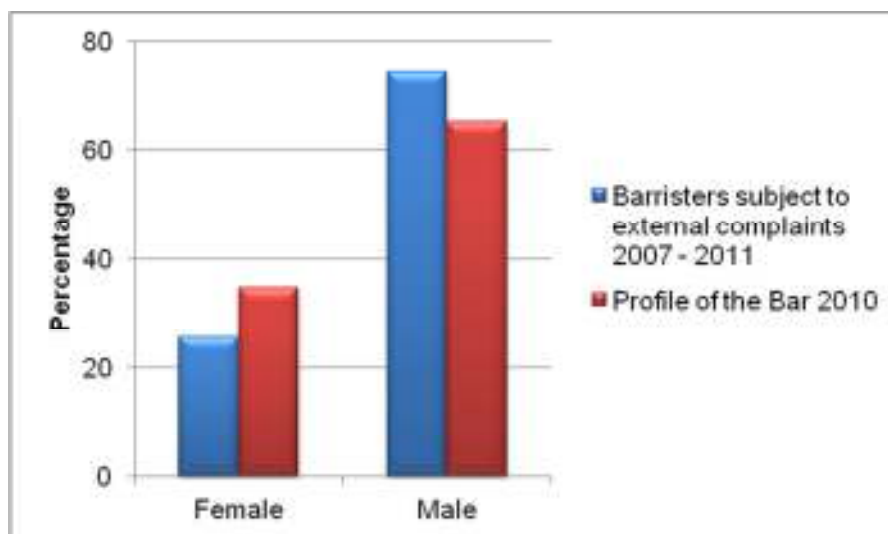
Figure 2 Year of Call of barristers subject to external complaints



4.1.4 Gender of barristers subject to external complaints

Male barristers accounted for 1,504 (74.5%) of all those who were subject to external complaints between 2007 and 2011. Female barristers accounted for 515 (25.5%). In comparison to the profile of the Bar, male barristers were slightly over-represented. Male barristers accounted for 65.2% and female barristers accounted for 34.8% of the practising Bar. This is shown on Figure 3.

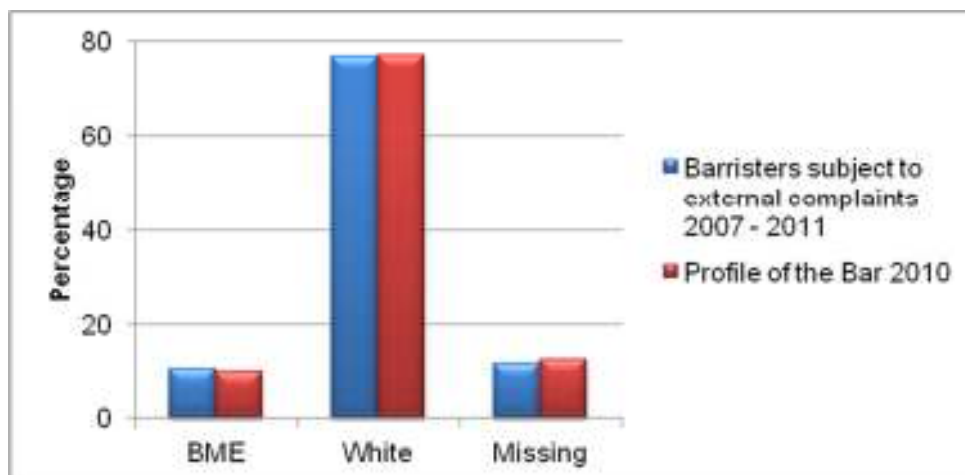
Figure 3 Gender of barristers subject to external complaints



4.1.5 Ethnicity of barristers subject to external complaints

BME barristers accounted for 221 (10.9%) barristers subject to external complaints, white barristers accounted for 1,557 (77.1%) and there was no data on the ethnicity of 241 (11.9%) barristers subject to external complaints. This is almost identical to the profile of the Bar, where BME barristers comprised 10.2% and white barristers comprised 77.2% of the practising Bar and no data was available for 12.6% of barristers. This is shown on Figure 4 below.

Figure 4 Ethnicity of barristers subject to external complaints



4.1.6 Disability of barristers subject to external complaints

There were only 13 (0.6%) barristers subject to external complaints who reported having a disability between 2007 and 2011. Due to the small numbers reporting having a disability, bivariate analysis on the basis of disability was not undertaken.

4.2 External complaints by gender

Table 4 overleaf shows the proportion of external complaints male and female barristers were subject to by year, type of complaint, subject of complaint, practice area, BSB decisions and disciplinary action outcomes. Where significant differences were found, these are marked with an asterisk on the table. Where significant differences were found in subject, BSB decision or disciplinary action outcome of complaint; these are discussed in more detail. For those whose outcome was “upheld – determination by consent” (DBC), this means that the barrister subject to complaint admits the charge and agrees to a sentence imposed by the Professional Conduct Committee. This was excluded from analysis by ethnicity and gender as the numbers with an outcome of “upheld – determination by consent” was too small for statistical analysis.

However, there were no significant differences in BSB decisions and disciplinary action outcomes of external complaints on the basis of gender and the only difference in subject of complaint was that a significantly larger proportion of female barristers were subject to complaints for rudeness or misbehaviour out of court.

In regard to area of practice, female barristers were more likely⁴ to be subject to complaints in family practice and less likely to be subject to complaints in criminal and civil practice. Although this does not reflect the gender composition of all those subject to complaints, in regards to their proportion of the Bar (34.8%), female barristers are over-represented in family practice and underrepresented in civil (Survey of the Bar, 2011).

⁴ In this report, when the phrase “more likely” is used, it is a statistical term which means that statistical tests found that something was significantly more likely to occur for one group on the basis of a particular characteristic, due to a statistical relationship and not because of chance.

Table 4 Percentage of external complaints that female and male barristers were subject to by year, type, subject, practice area and outcome – please note that categories are not mutually exclusive and barristers may have complaints in multiple categories

n=2,019	Female	Male	Total
Year			
2007	24.7%	28.0%	27.1%
2008	21.6%	24.7%	23.9%
2009	27.0%	24.8%	25.3%
2010	24.3%	23.1%	23.4%
2011	14.6%	13.8%	14.0%
Type			
Misconduct	77.1%	77.2%	77.1%
Service	41.7%	45.0%	44.2%
Subject			
Incompetence	30.9%	34.4%	33.5%
Misleading	15.3%	16.7%	16.3%
Discreditable conduct	12.6%	11.1%	11.5%
Rudeness/misbehavior out of court*	12.6%	8.6%	9.6%
Instructions	8.7%	7.9%	8.1%
Other subject	55.3%	62.2%	60.5%
Practice area			
Civil*	31.3%	38.6%	36.7%
Crime*	19.0%	27.1%	25.0%
Immigration	1.6%	1.4%	1.4%
Family*	25.4%	11.4%	15.0%
Other	28.5%	30.9%	30.3%
BSB decisions			
No further action	0.6%	0.5%	0.5%
Dismissed	83.7%	85.0%	84.7%
Referred for disciplinary action	6.0%	6.6%	6.5%
Disciplinary action outcome			
Upheld (post referral)	3.3%	4.5%	4.2%
Dismissed (post referral)	2.7%	1.9%	2.1%
Other (post referral)	0.2%	0.4%	0.3%
Miscellaneous outcomes			
Other outcome	11.5%	9.9%	10.3%
Ongoing	2.7%	3.5%	3.3%

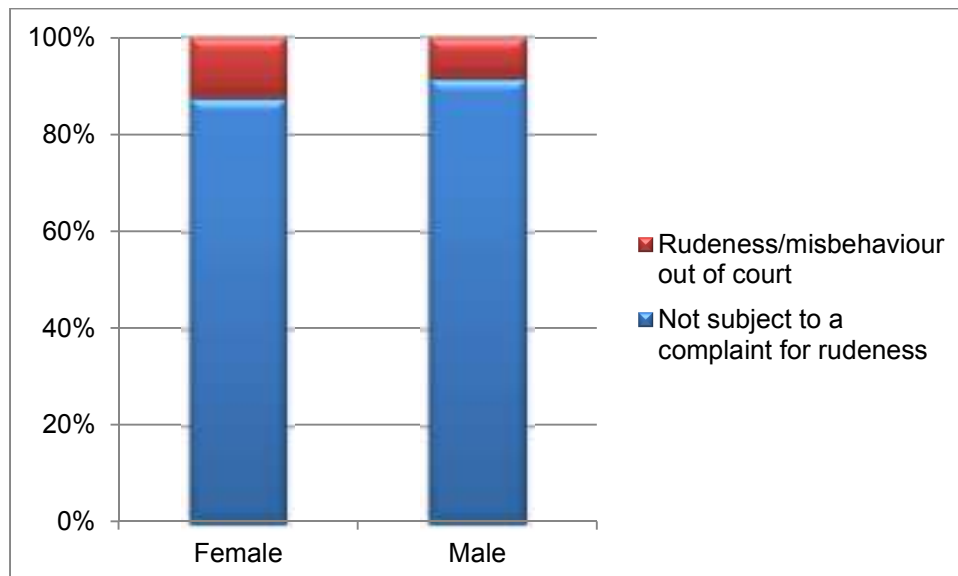
4.2.1 Subject of external complaints

This section discusses the differences in the subjects of external complaints on the basis of gender.

Barristers subject to complaints of rudeness/misbehaviour out of court by gender

Female barristers were more likely than male barristers to be subject to complaints for rudeness/misbehaviour out of court than male barristers. Complaints for rudeness/misbehaviour out of court accounted for 65 (12.6%) of opened complaints for female barristers and accounted for 129 (8.6%) of opened complaints for male barristers, as shown on Figure 5 below.

Figure 5 Barristers subject to complaints of rudeness/misbehaviour out of court by gender



4.3 External complaints by ethnicity

Table 5 overleaf shows the proportion of external complaints white and BME barristers were subject to by year, type, subject of complaint, practice area, BSB decisions and disciplinary action outcomes.

Where significant differences were found these are marked on the table with an asterisk and when found in subject, BSB decision and disciplinary action outcome of complaint; these are discussed in more detail. Outcomes of “upheld - determination by consent” were excluded from analysis by ethnicity and gender as the numbers with an outcome of “upheld – determination by consent” was too small for statistical analysis.

It was found that BME barristers were more likely than white barristers to be subject to multiple complaints, complaints for discreditable conduct, to have complaints referred and to have complaints upheld. White barristers were more likely than BME barristers to have complaints for misleading the court and to have complaints dismissed. Additionally BME barristers were more likely to be subject to multiple external complaints which are also discussed.

In regards to practice area, white barristers were more likely than BME barristers to be subject to complaints in criminal practice. There were no significant differences between subjection to complaints on the basis of ethnicity in any other areas of practice.

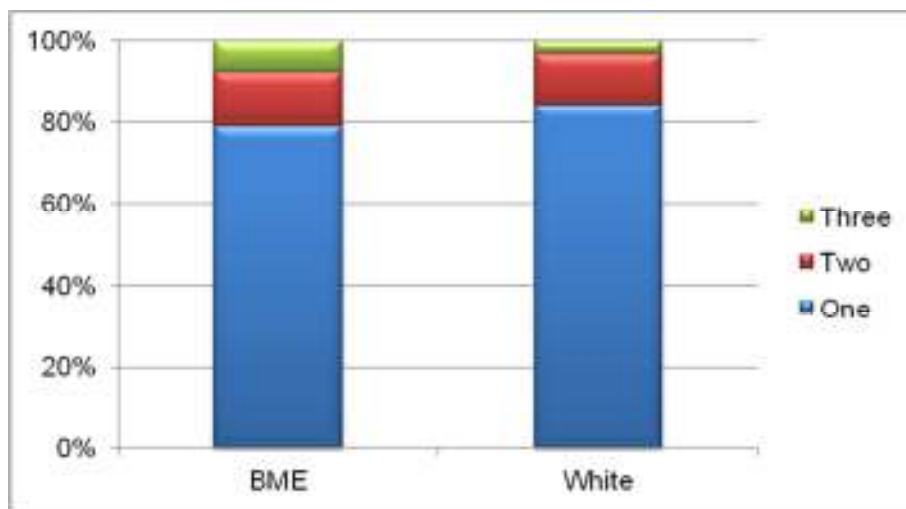
Table 5 Percentage of external complaints that BME and white barristers were subject to by year, type, subject, practice area and outcome – please note that categories are not mutually exclusive and barristers may have complaints in multiple categories

n=2,019	BME	White	Total
Year			
2007	26.2%	27.5%	27.1%
2008	27.1%	23.6%	23.9%
2009	25.8%	25.1%	25.3%
2010	29.0%	23.2%	23.4%
2011	12.2%	13.8%	14.0%
Type			
Misconduct	76.5%	77.0%	77.1%
Service	47.5%	44.3%	44.2%
Subject			
Incompetence	36.2%	33.1%	33.5%
Misleading the court*	10.4%	17.4%	16.3%
Discreditable conduct*	19.9%	10.1%	11.5%
Rudeness/misbehavior out of court	9.0%	9.2%	9.6%
Instructions	6.3%	8.5%	8.1%
Other	65.6%	59.5%	60.5%
Practice area			
Civil	35.3%	36.4%	36.0%
Crime*	16.7%	27.1%	25.0%
Family	12.2%	15.4%	1.4%
Immigration	7.2%	0.6%	15.0%
Other	38.9%	28.9%	30.3%
BSB decisions			
No further action	0.9%	0.4%	0.5%
Dismissed*	76%	86.5%	84.7%
Referred to disciplinary action*	12.7%	5.5%	6.5%
Disciplinary action outcome			
Upheld (post referral)*	9.0%	3.1%	4.2%
Dismissed (post referral)	2.7%	2.1%	2.1%
Other (post referral)	0.9%	0.3%	0.3%
Miscellaneous outcomes			
Other outcome	14.9%	9.5%	10.3%
Ongoing	5.0%	3.1%	3.3%

4.3.1 Number of external complaints by ethnicity

BME barristers were more likely than white barristers to be subject to multiple complaints than white barristers. There were 30 (13.6%) and 17 (7.7%) BME barristers subject to two and three complaints respectively in comparison to 195 (12.5%) and 49 (3.1%) white barristers who were subject to two and three or more complaints. This is shown on Figure 6 below.

Figure 6 Number of external complaints by ethnicity



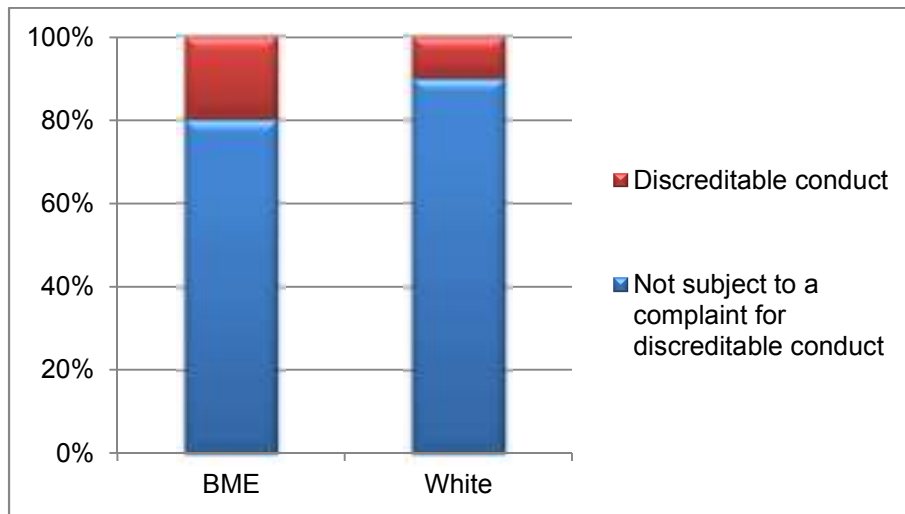
4.3.2 Subject of external complaints by ethnicity

This section discusses the differences in the subjects of external complaints on the basis of ethnicity.

Barristers subject to complaints of discreditable/dishonest conduct by ethnicity

BME barristers were more likely than white barristers to be subject to complaints for dishonesty or discreditable conduct. There were 43 (19.5%) BME barristers subject to complaints for dishonesty or discreditable conduct in comparison to 157 (10.1%) white barristers. This is shown on Figure 7 overleaf.

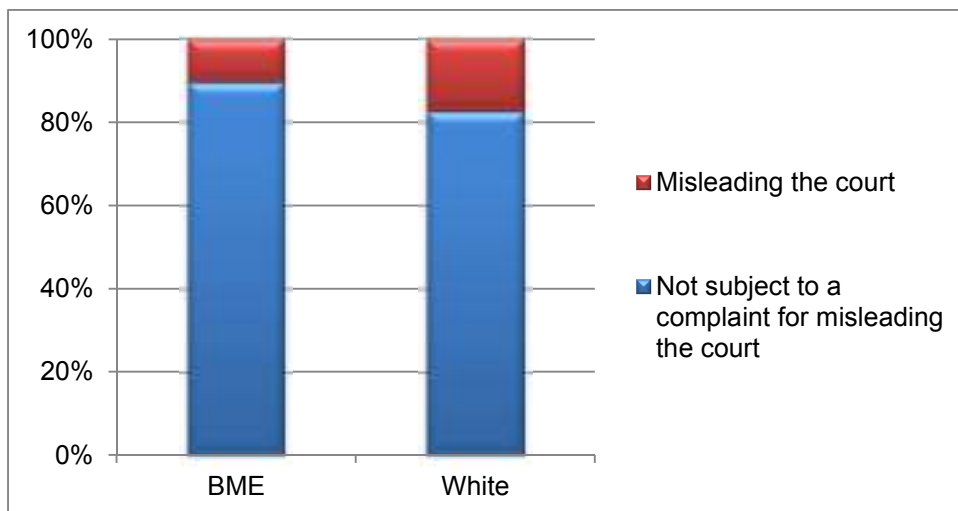
Figure 7 Barristers subject to complaints of discreditable/dishonest conduct by ethnicity



Barristers subject to complaints of misleading the court by ethnicity

White barristers were more likely than BME barristers to be subject to complaints for misleading the court than BME barristers, 270 (17.3%) white barristers were subject to complaints for misleading the court in comparison to 23 (10.4%) BME barristers. This is shown on Figure 8 below.

Figure 8 Barristers subject to complaints of misleading the court by ethnicity



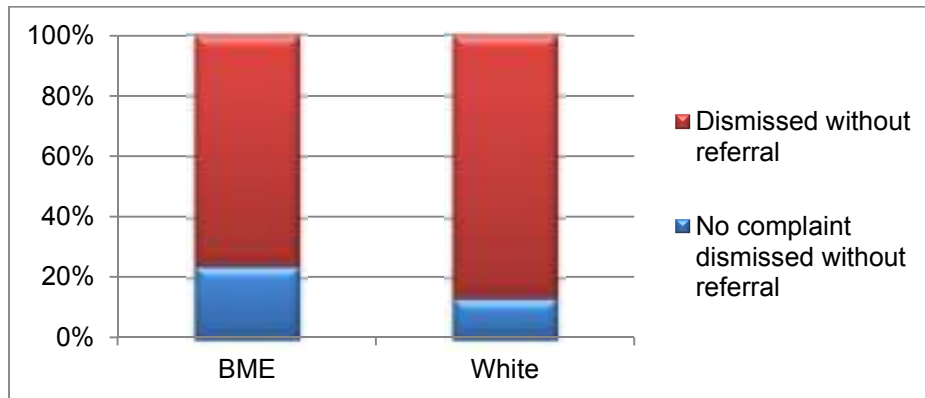
4.3.3 BSB decisions / outcome of external complaints by ethnicity

This section discusses the differences in the outcomes of external complaints on the basis of ethnicity. Significant differences in decisions on the basis of ethnicity were found for the outcomes of dismissed without referral, referral to disciplinary action and upheld. Complaints can be dismissed, have no further action, have an “other” outcome or are referred to disciplinary action. After referral they may then be dismissed, have an “other” outcome or be upheld. For those whose outcome was “upheld – determination by consent” (DBC), this means that the barrister subject to the complaint admits the charge and agrees to a sentence imposed by the Professional Conduct Committee.

Barristers subject to decisions to dismissal without referral to disciplinary action by ethnicity

The majority of opened external complaints against both white and BME barristers were dismissed without being referred to disciplinary action. However a larger proportion of complaints were dismissed among white barristers. There were 1,348 (86.5%) white barristers who had complaints against them dismissed in comparison to 168 (76%) BME barristers. This is shown on Figure 9. In this case, misleading the court, dishonest or discreditable behaviour and criminal practice were controlled for in order to test if these could account for the difference in dismissals between white and BME barristers, however in this case, they also did not. This means that there was a statistically significant relationship between ethnicity and BSB decisions on external complaint with white barristers being more likely than BME barristers to have their complaint dismissed without referral to disciplinary action.

Figure 9 Barristers subject to dismissal without referral to disciplinary action by ethnicity



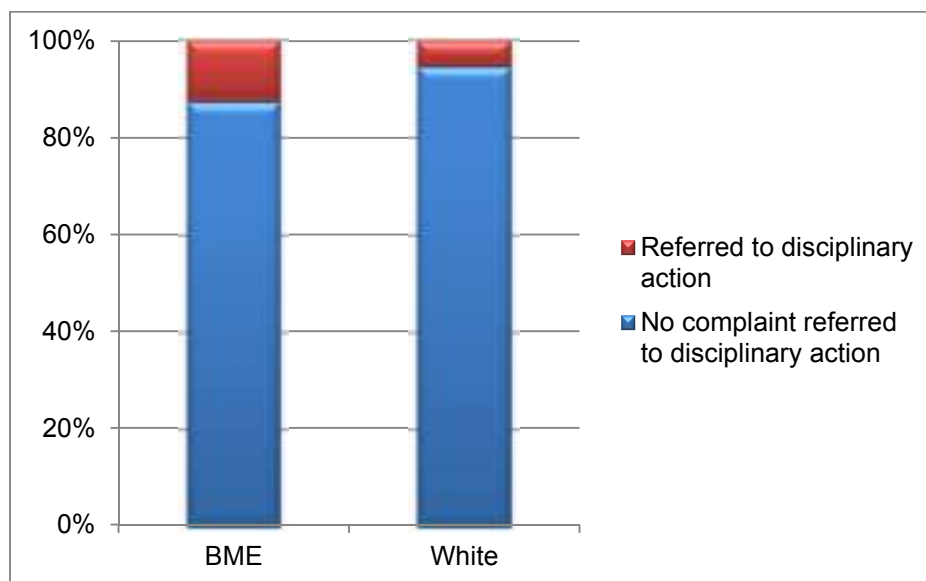
Barristers subject to decisions to refer to disciplinary action by ethnicity

BME barristers were more likely to have their complaint referred to disciplinary action by the BSB than white barristers. There were 28 (12.7%) BME barristers who had their complaint referred in comparison to 81 (5.2%) white barristers.

As misleading the court and discreditable conduct were the only subjects of complaint where there were significant differences by barristers' ethnicity, these categories of complaint were controlled for in order to identify if the difference in referral was related to the type of complaint they were subject to or by ethnicity. However when these were controlled for, significant differences in the likelihood of being referred remained between the proportions of white and BME barristers. Criminal practice area was also controlled for, and the difference in referrals between white and BME barristers also remained. This is shown on Figure 10 below.

This means that there is a statistically significant relationship between ethnicity and outcome of external complaint with BME barristers being more likely than white barristers to have their complaint referred to disciplinary action.

Figure 10 Barristers subject to decisions to refer to disciplinary action by ethnicity



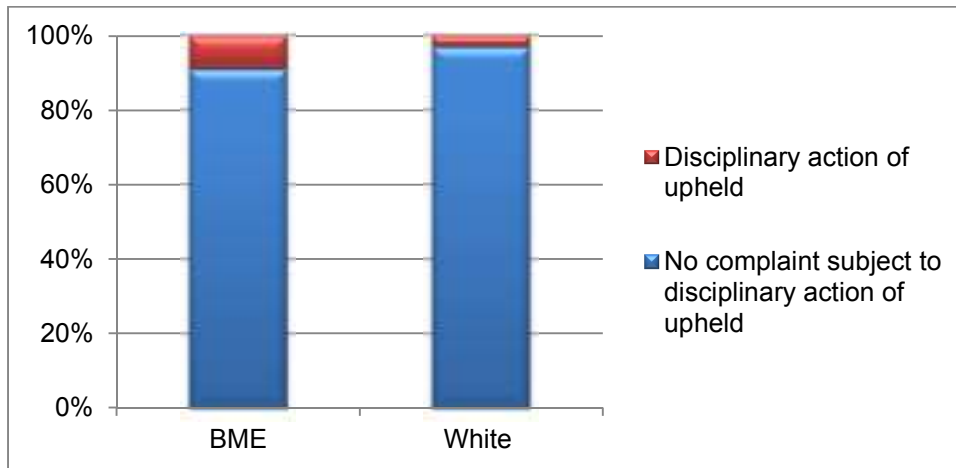
Barristers subject to upheld complaints at disciplinary action by ethnicity

BME barristers were more likely than white barristers to have their complaint upheld following a referral to disciplinary action by the BSB than white barristers. There were 20 (9%) BME barristers who had their complaint upheld in comparison to 49 (3.1%) white barristers.

As misleading the court and discreditable conduct were the only subjects of complaint where there were significant differences by barristers' ethnicity, these categories of complaint were controlled for in order to identify if the difference in being subject to a disciplinary action of upheld was related to the type of complaint they were subject to or by ethnicity. However, when these were controlled for, the differences in the likelihood of being subject to a disciplinary action of upheld remained between the proportions of white and BME barristers. Criminal practice area was also controlled for, and the difference in being subject to a disciplinary action of upheld between white and BME barristers also remained. This is shown on Figure 11 below.

This means that there is a statistically significant relationship between ethnicity and disciplinary action outcomes of external complaints, with BME barristers being more likely than white barristers to have their complaint upheld following disciplinary action.

Figure 11 Barristers subject to upheld complaints at disciplinary action by ethnicity



5. Internal complaints between 2007 and 2011

This section discusses barristers subject to internal complaints in this period and compares their profile to that of the practising Bar in 2010, which was the most recent data available for comparison. The differences in internal complaints on the basis of gender and ethnicity are also discussed.

5.1 Barristers subject to internal complaints

This section outlines how barristers subject to internal complaints compare to the profile of the practising Bar in terms of practising status, year of Call, gender, ethnicity and disability. Additionally the number and percentage of barristers who were subject to between one and nine complaints is also shown

5.1.1 Multiple internal complaints

The table below shows the numbers of internal complaints barristers were subject to over the 2007 to 2011 period. The majority of barristers were subject to one internal complaint 517 (74.7%), 94 (13.6%) were subject to two complaints and 41 (5.9%) were subject to three complaints. This is shown on Table 6 below.

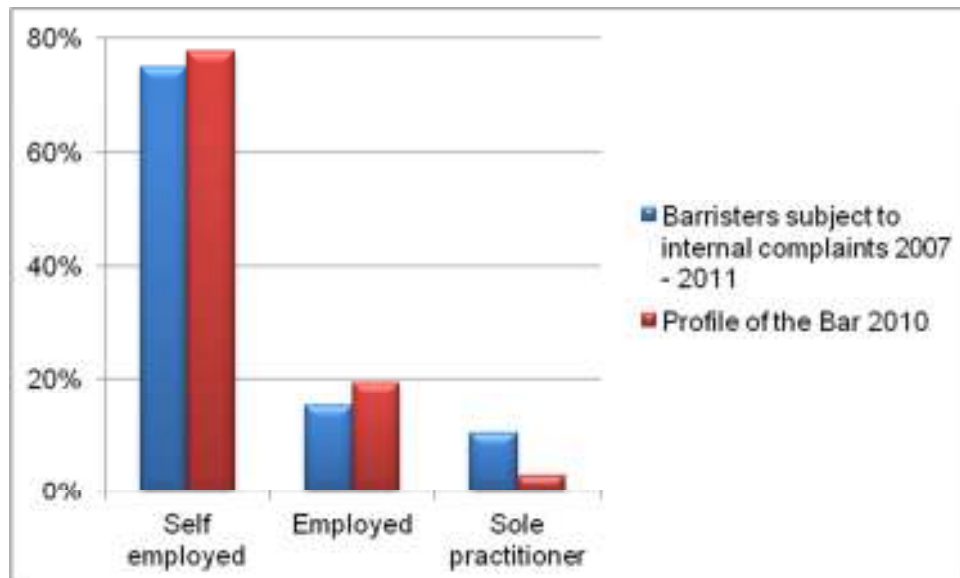
Table 6 Number and percentage of barristers subject to one and more internal complaints

	Number of barristers	Percentage of Barristers
One complaint	517	74.7
Two complaints	94	13.6
Three complaints	41	5.9
Four complaints	17	2.5
Five complaints	14	2
Six complaints	5	0.7
Seven complaints	1	0.1
Eight complaints	2	0.3
Nine complaints	1	0.1
Total	692	100

5.1.2 Practising status of barristers subject to internal complaints

The profile of barristers subject to internal complaints over the 2007 to 2011 period was similar to the profile of the Bar, although sole practitioners accounted for a larger proportion of barristers subject to internal complaints than their proportion of the Bar. Sole practitioners comprised 55 (10.1%) of barristers subject to internal complaints. The self-employed Bar accounted for 407 (74.8%) of barristers subject to internal complaints and the employed Bar accounted for 82 (15.1%) of barristers subject to internal complaints. There were 148 barristers excluded from this, as it was not possible to categorise their practising status. This is shown on Figure 12 below.

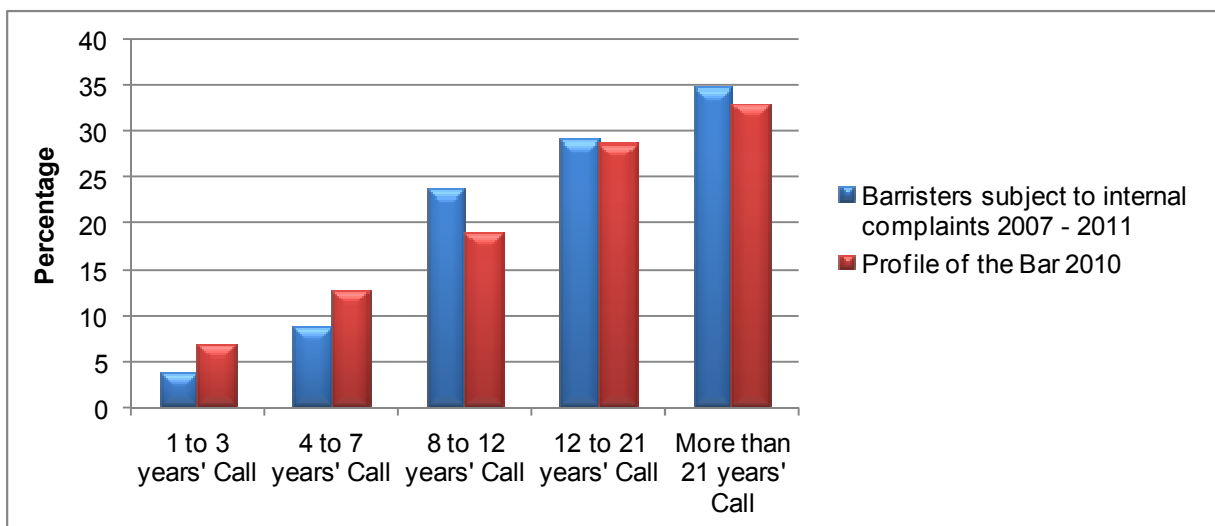
Figure 12 Practising status of barristers subject to internal complaints



5.1.3 Year of Call of barristers subject to internal complaints

The profile of barristers subject to internal complaints was similar to the profile of the Bar in regard to year of Call. Those who were one to three and four to seven years' Call accounted for a smaller proportion of barristers subject to internal complaints in comparison to their proportion in the Bar. In contrast, barristers eight to 12 years' Call were subject to a larger proportion of complaints in comparison to their profile in the Bar. There were also a slightly larger proportion of barristers 12 to 21 years' Call and more than 21 years' Call subject to internal complaints in comparison to their respective proportions in the Bar. This is shown on Figure 13.

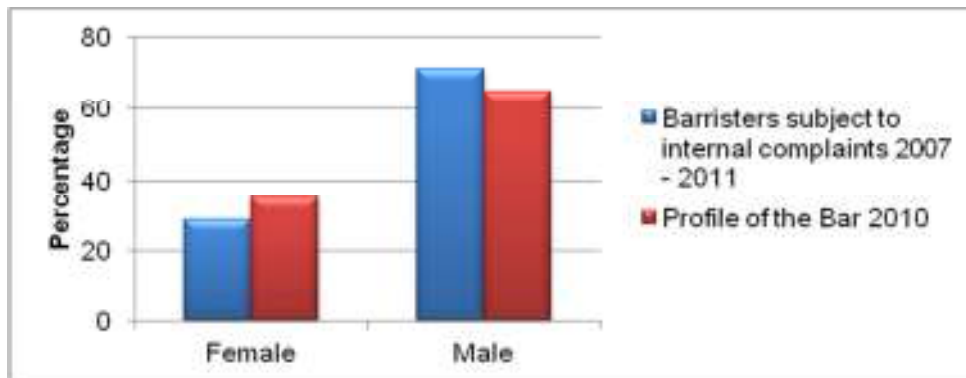
Figure 13 Year of Call of barristers subject to internal complaints



5.1.4 Gender of barristers subject to internal complaints

A comparison between all barristers subject to internal complaints between 2007 and 2011 and the profile of the practising Bar in 2010 is shown on Figure 14 overleaf. There were a higher proportion of male barristers subject to internal complaints than their proportion in the practising Bar. Female barristers accounted for 198 (28.6%) of all those subject to internal complaints and male barristers accounted for 494 (71.4%). In comparison female barristers accounted for 34.8% of the practising Bar and male barristers accounted for 65.2% of the practising Bar.

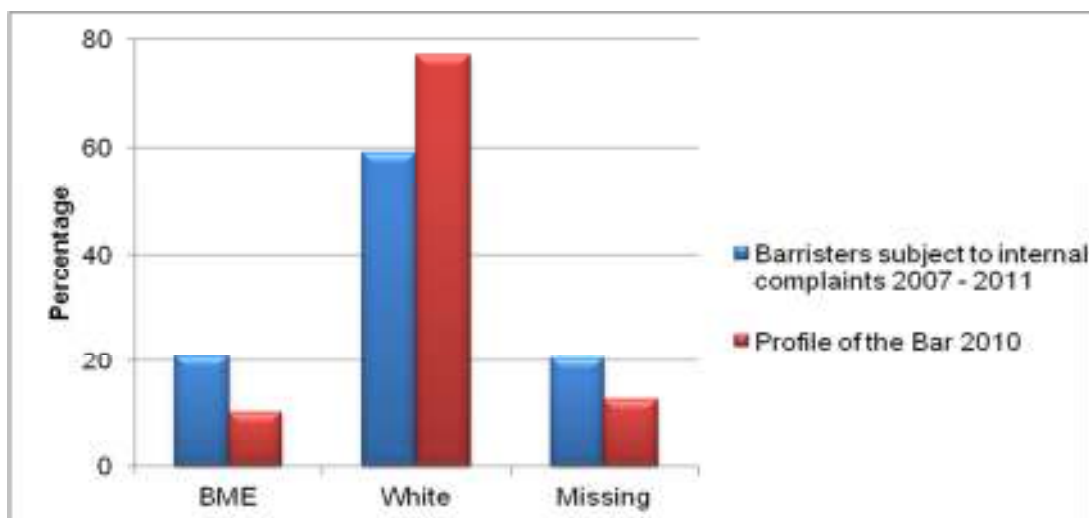
Figure 14 Gender of barristers subject to internal complaints



5.1.5 Ethnicity of barristers subject to internal complaints

BME barristers were overrepresented among barristers subject to internal complaints in comparison to their proportion of the practising Bar. BME barristers accounted for 143 (20.7%) of those subject to internal complaints, while accounting for 10.2% of the practising Bar. White barristers accounted for 408 (59%) of those subject to internal complaints in comparison to accounting for 77.2% of the practising Bar. There was no data on the ethnicity of 141 (20.4%) of barristers subject to complaints and 12.6% of the practising Bar. This is shown on Figure 15 below.

Figure 15 Ethnicity of barristers subject to internal complaints



5.1.6 Disability of barristers subject to internal complaints

There is a very small proportion of practising barristers who declared a disability; only 0.6% of the practising Bar have done so and among barristers who were subject to an internal complaint, 10 (1.4%) had declared a disability. As this number is so small, detailed breakdown on the types of complaints and outcomes which barristers who reported disabilities were subject to is not included in this paper.

5.2 Internal complaints by gender

Female barristers accounted for 198 (28.6%) barristers subject to internal complaints and male barristers accounted for 494 (71.4%). Table 7 overleaf shows the proportion of male and female barristers subject to internal complaints in each year as well as the proportions by subject of complaint, BSB decision and disciplinary action outcome of complaint. Where significant differences were found these are marked with an asterisk and when found in subject, BSB decision or disciplinary action outcome of complaint; these are discussed in more detail.

There were no differences in the subjects of internal complaints on the basis of gender. Female barristers were subject to more complaints in 2008 and less in 2011. In 2008 the proportion of female barristers who were subject to complaints was larger than their proportion in the Bar.

In regard to BSB decisions, significantly more female barristers than male barristers were subject to decisions of no further action and significantly more male barristers were subject to decisions to refer to disciplinary action and disciplinary action outcomes of upheld. When complaints are initially brought to the BSB, they may be dismissed, be subject to no further action, have an “other” outcome or be referred to disciplinary action. After referral they may then be dismissed, have an “other” outcome or be upheld. For those whose outcome was “upheld – determination by consent”, this means that the barrister subject to complaint admits the charge and agrees to a sentence imposed by the Professional Conduct Committee.

Table 7 Percentage of internal complaints that female and male barristers were subject to by year, subject and outcome – please note that categories are not mutually exclusive and barristers may have complaints in multiple categories

n=692	Female	Male	Total
Year			
2007	12.1%	15.1%	14.2%
2008	43.7%	31.6%	35.1%
2009	17.1%	19.7%	19.0%
2010	21.1%	20.5%	20.7%
2011*	31.7%	40.2%	37.8%
Subject			
CPD	21.6%	24.3%	23.6%
Fine	18.6%	20.7%	20.1%
Practising certificate	15.6%	21.9%	20.1%
Not responding to BSB	11.1%	12.7%	12.2%
All breaches of practising requirements	65.8%	60.2%	50.3%
Other	65.8%	60.2%	61.8%
BSB decisions			
No further action*	23.1%	15.1%	17.4%
Dismissed	31.7%	28.6%	29.5%
Referred for disciplinary action*			
	44.7%	53.9%	51.3%
Disciplinary action outcome			
Upheld (post referral)*	42.2%	50.5%	48.1%
Dismissed (post referral)	3.0%	3.8%	3.6%
Other (post referral)	1.5%	1.6%	1.6%
Upheld DBC	8.5%	9.1%	8.9%
Miscellaneous outcomes			
Other	12.1%	10.9%	11.2%
Ongoing	4.0%	6.6%	5.9%

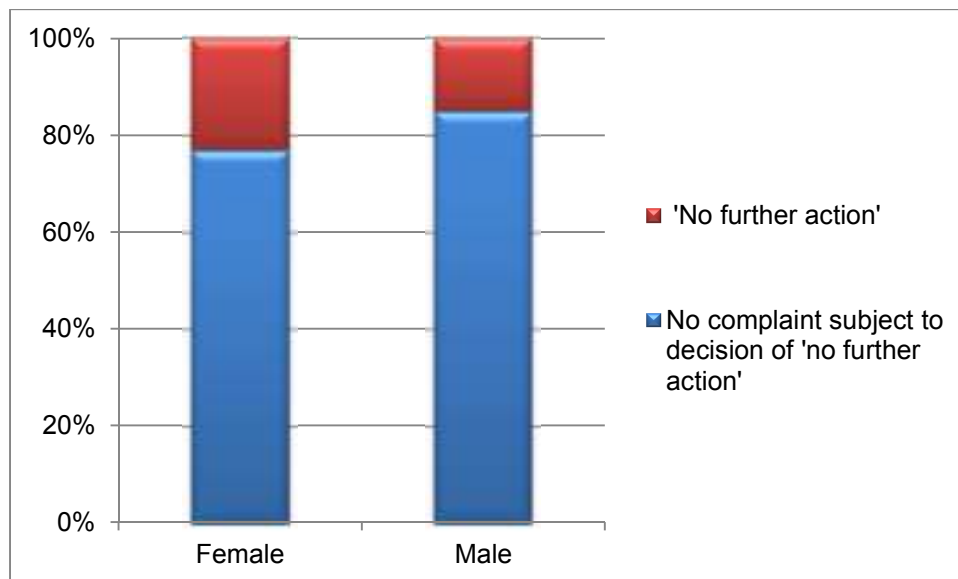
5.2.1 BSB decisions / outcomes of internal complaints by gender

This section discusses the differences in the outcomes of internal complaints on the basis of gender.

Barristers subject to decisions to take 'no further action' by gender

Female barristers were more likely than male barristers to be subject to a BSB decision of no further action. There were 46 (23.1%) female barristers whose complaint was subject to no further action in comparison to 75 (15.1%) male barristers whose complaint was subject to no further action. This is shown on Figure 16 below.

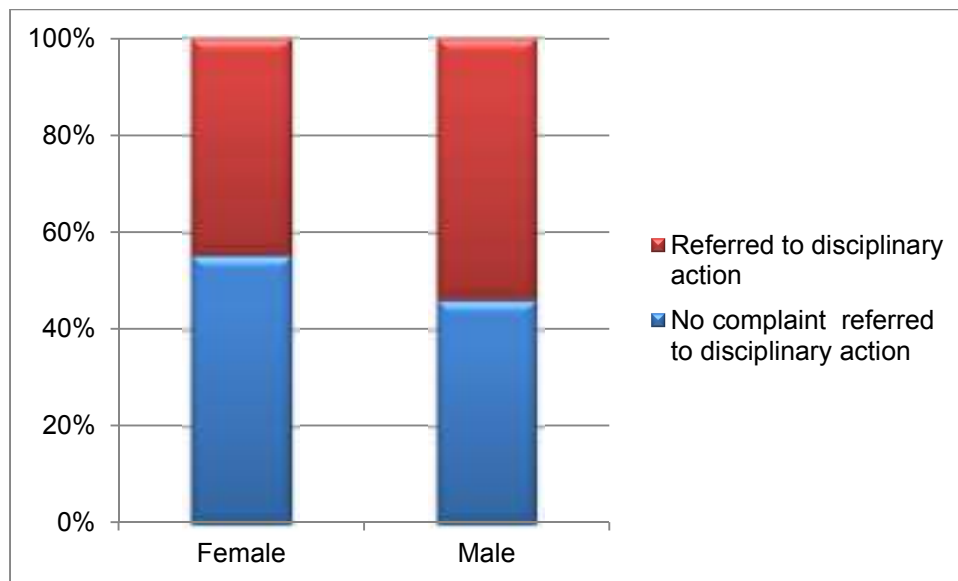
Figure 16 Barristers subject to decisions to take 'no further action' by gender



Barristers subject to decisions to refer to disciplinary action by gender

A significantly larger proportion of male barristers who were subject to internal complaints were referred for disciplinary action in comparison to female barristers. There were 268 (53.9%) male barristers who had their complaint referred in comparison to 89 (44.7%) female barristers. This is shown on Figure 17 below.

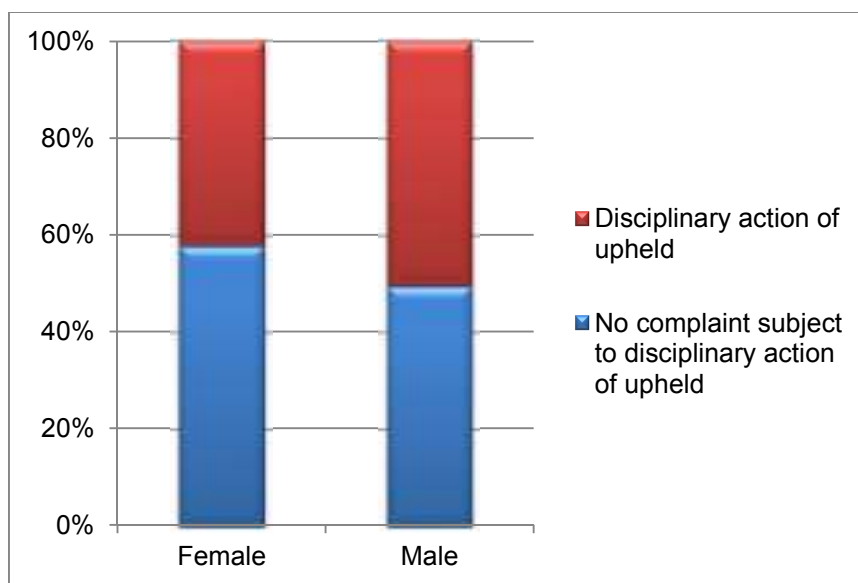
Figure 17 Barristers subject to decisions to refer to disciplinary action by gender



Barristers subject to upheld complaints at disciplinary action by gender

A significantly larger proportion of male barristers who were subject to internal complaints had their complaint upheld following referral to disciplinary action in comparison to female barristers. There were 251 (50.5%) male barristers who were subject to a disciplinary action that was upheld in comparison to 84 (42.4%) female barristers. This is shown on Figure 17 below.

Figure 18 Barristers subject to a disciplinary action of upheld by gender



5.3 Internal complaints by ethnicity

BME barristers accounted for 143 (20.7%) of those who were subject to internal complaints; this is considerably larger than their proportion of the practising Bar where they account for 10.2% of all barristers. The complaints data used for this project was collected between 2007 and 2011, the proportion of BME barristers at the Bar during this period has varied between 9.6% and 10.2%.

Table 8 overleaf shows the proportion of BME and white barristers subject to internal complaints in each year, as well as the proportions by subject of complaint, BSB decision and disciplinary action/outcome of complaint. Where significant differences were found these are marked on the table with an asterisk and if found in subject, BSB decision or disciplinary action/outcome of complaint; these discussed in more detail further on in this section.

There were differences in the subjects of internal complaints on the basis of ethnicity. White barristers were significantly more likely than BME barristers to be subject to complaints for not responding to the BSB. BME barristers were significantly more likely than white barristers to be subject to complaints for subjects classified as “other”. As previously discussed, due to the large volume of different subjects and small numbers of barristers subject to each of these subjects, subject categories were merged into a category of “other” to allow for statistical analysis.

In regard to outcomes, significantly more BME barristers than white barristers were subject to BSB decisions of no further action while significantly more white barristers than BME barristers were subject to disciplinary action outcomes of upheld after referral. When complaints are initially brought to the BSB, they may be dismissed, be subject to no further action, have an “other” outcome or be referred to disciplinary action. After referral they may then be dismissed, have an “other” outcome or be upheld. Outcomes of “upheld – determination by consent” (DBC) mean that the barrister subject to complaint admits the charge and agrees to a sentence imposed by the Professional Conduct Committee.

Table 8 Percentage of internal complaints that BME and white barristers were subject to by year, subject and outcome – please note that categories are not mutually exclusive and barristers may have complaints in multiple categories

n=692	BME	White	Total
Year			
2007	14.7%	13.7%	14.2%
2008	35.0%	36.4%	35.1%
2009	14.0%	19.6%	19.0%
2010	25.2%	18.8%	20.7%
2011	30.8%	39.4%	37.8%
Subject			
CPD	19.6%	24.4%	23.6%
Fine	18.2%	20.8%	20.1%
Practising certificate	18.9%	19.6%	20.1%
Not responding to BSB*	7.0%	13.9%	12.2%
All breaches of practising requirements	42.0%	53.1%	50.3%
Other	65.0%	60.6%	61.8%
BSB decisions			
No further action*	23.8%	15.9%	17.4%
Dismissed	35.0%	26.7%	29.5%
Referred to disciplinary action	44.8%	53.5%	51.3%
Disciplinary action outcomes			
Upheld (post referral)*	38.5%	51.6%	48.1%
Dismissed (post referral)	5.6%	2.7%	3.6%
Other (post referral)	4.2%	1.0%	1.6%
Upheld DBC	6.3%	10.8%	8.9%
Miscellaneous outcomes			
Other	7.7%	12.2%	11.2%
Ongoing	4.9%	5.6%	5.9%

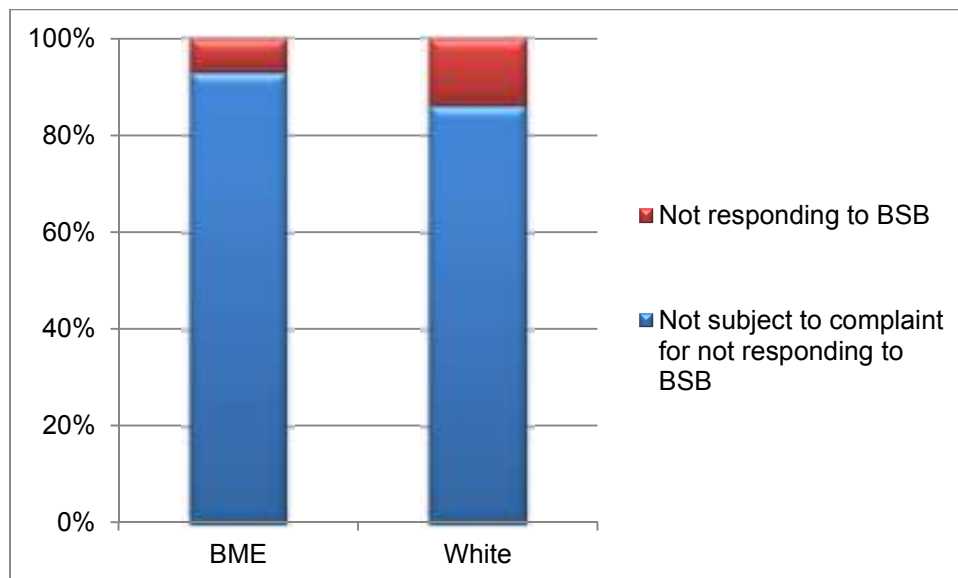
5.3.1 Subject of internal complaints by ethnicity

This section shows where there were differences found on the basis of subject of internal complaint on the basis of ethnicity.

Barristers subject to complaints of failure to respond to the BSB by ethnicity

Of those who were subject to internal complaints, white barristers were more likely than BME barristers to be subject to complaints for not responding to the BSB, 57 (14%) white barristers were subject to a complaint for this in comparison to 10 (7%) of BME barristers. This is shown on Figure 19 below.

Figure 19 Barristers subject to complaints of failure to respond to the BSB by ethnicity



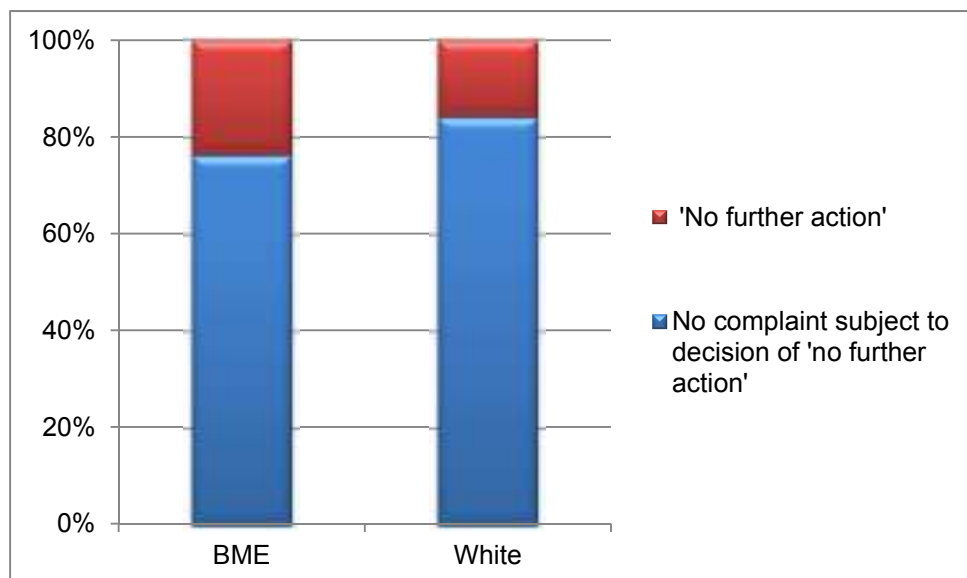
5.3.2 BSB decision / outcome of internal complaints by ethnicity

When complaints are initially brought to the BSB, they may be dismissed, be subject to no further action, an “other” outcome or be referred. After referral they may then be dismissed, have an “other” outcome or be upheld. Complaint outcomes which were “upheld – determination by consent”, means that the barrister subject to the complaint admits the charge and agrees to a sentence imposed by the Professional Conduct Committee.

Barristers subject to decisions to take ‘no further action’ by ethnicity

There was a significantly larger proportion of BME barristers whose complaint outcome was “no further action” for internal complaints opened in comparison to white barristers. There were 34 (23.8%) BME barristers subject to complaints with an outcome of “no further action” in comparison to 65 (15.9%) white barristers. As not responding to the BSB was the only subject of complaints where there was a difference on the basis of ethnicity, this was controlled for and when this was done, more BME barristers still were subject to no further action as an outcome both if their complaint was for not responding to the BSB or for another reason. This is shown on Figure 20 below.

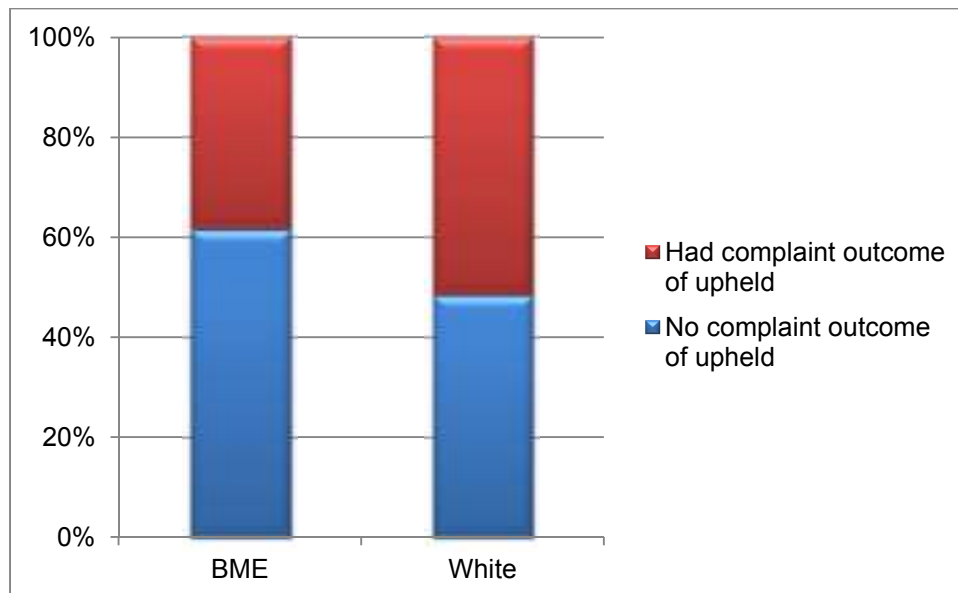
Figure 20 Barristers subject to decisions to take ‘no further action’ by ethnicity



Barristers subject to upheld complaints at disciplinary action by ethnicity

There were a significantly larger proportion of white barristers whose complaint outcome was upheld following a referral to disciplinary action. There were 211 (51.6%) white barristers subject to complaints with an outcome of upheld in comparison to 55 (38.5%) BME barristers. As not responding to the BSB was the only subject of complaints where there was a difference on the basis of ethnicity, this was controlled for and when this was done, more white barristers still were subject to an outcome of upheld as an outcome both if the complaint was for not responding to the BSB or for another reason. This is shown on Figure 20 below.

Figure 21 Barristers subject to a disciplinary action of upheld by ethnicity



6. Complaints data 2011

In 2011 there were a total of 528 barristers subject to complaint, 282 of these were external and 263 of these were internal. There were 17 barristers were subject to both internal and external complaints and these barristers are counted in both groups.

6.1 External complaints 2011

The majority of external complaints were for self-employed barristers, they accounted for 227 (80.5%) of those subject to external complaints in 2011. External and internal complaints are discussed in relation to gender and ethnicity.

6.2 External complaints 2011 by gender

Female barristers accounted for 75 (26.6%) of those who were subject to an external complaint in 2011 and male barristers accounted for 207 (73.4%) of those who were subject to complaints. This differs slightly in comparison to the profile of the Bar. In 2010, female barristers accounted for 34.8% of practising barristers and male barristers accounted for 65.2%. Female barristers accounted for a higher proportion of those who were subject to complaints in family practice, however female barristers account for a higher proportion of those who practice in family law (Survey of the Bar, 2011). There were no other significant differences found between subjects or outcomes of complaints on the basis of gender.

6.3 External complaints 2011 by ethnicity

BME barristers accounted for 27 (9.6%) of those who were subject to external complaints and white barristers accounted 215 (76.2%) of those subject to external complaints in 2011. There was no data on the ethnicity of 40 (14.2%) barristers subject to external complaints. There were no significant differences between the outcomes of barristers on the basis of their ethnicity, though the trends were similar to those in the data on external complaints from 2007 to 2011. Difference in subjects of complaints on the basis of ethnicity is discussed overleaf.

6.3.1 Subject of external complaint 2011 by ethnicity

BME barristers in “other” areas of practice (who did not select civil, crime, family, immigration or chancery or commercial) were subject to a significantly higher proportion of complaints than white barristers who selected this category. Seventeen (63%) BME barristers were subject to a complaint in this area in 2011 in comparison to 88 (40.9%) of white barristers subject to external complaints.

6.4 Internal complaints 2011

There were 242 (92%) barristers who were subject to one internal complaint in 2011, 16 (6.1%) who were subject to two and five (1.9%) who were subject to three complaints.

6.4.1 Internal complaints 2011 by gender

In 2011, male barristers were subject to a slightly larger proportion of internal complaints in comparison to their proportion of the profession. Male barristers accounted for 200 (76%) of those subject to internal complaints in comparison to female barristers who accounted for 63 (24%). There were no significant differences between the subject of complaints and outcomes of complaints on the basis of gender for internal complaints in 2011.

6.4.2 Internal complaints 2011 by ethnicity

BME barristers were subject to a disproportionately larger amount of internal complaints in comparison to their profile at the Bar. BME barristers accounted for 44 (16.7%) of barristers subject to internal complaints and white barristers accounted for 160 (60.8%) of those subject to internal complaints. There was no data on the ethnicity of 59 (22.4%) of those receiving internal complaints. There were no significant differences found between the subjects or outcomes of internal complaints on the basis of ethnicity.

7. Conclusion

This research highlights differences in the proportions of barristers subject to external and internal complaints on the basis of gender and ethnicity.

The main significant differences found were

Between 2007 and 2011 in external complaints

- More male barristers were subject to external complaints in comparison to their proportion at the Bar
- Female barristers were more likely than male barristers to be subject to external complaints for rudeness/misbehaviour out of court
- BME barristers were more likely than female barristers to be subject to more complaints for discreditable conduct
- BME barristers were more likely than white barristers to be subject to multiple complaints
- White barristers were more likely than BME barristers to be subject to complaints for misleading the court
- White barristers were more likely than BME barristers to have their external complaint dismissed without referral for disciplinary action
- BME barristers were more likely than white barristers to have their external complaints referred to disciplinary action
- BME barristers were more likely than white barristers to have their external complaints upheld following a referral to disciplinary action

Between 2007 and 2011 in internal complaints

- More male barristers were subject to internal complaints in comparison to their proportion at the Bar
- More BME barristers were subject to internal complaints in comparison to their proportion at the Bar

- Male barristers were more likely than female barristers to have their internal complaints referred to disciplinary action
- Female barristers were more likely than male barristers to be subject to a BSB decision of no further action for internal complaints
- White barristers were more likely than BME barristers to be subject to complaints for not responding to BSB correspondence
- BME barristers were more likely than white barristers to be subject to a BSB decision of no further action as for internal complaints
- White barristers were more likely than BME barristers to have their internal complaints upheld following a referral to disciplinary action

In 2011

- Male barristers were more likely than female barristers to be subject to more external and internal complaints in comparison to their proportion at the Bar
- BME barristers were more likely than white barristers to be subject to more internal complaints in comparison to their proportion at the Bar

The conclusions which can be drawn from the results of this data analysis are:

- BME barristers are over-represented in the complaints process in relation to the outcomes of external complaints; BME barristers are more likely to have a complaint referred to disciplinary action, white barristers are more likely to have a complaint dismissed without referral to disciplinary action, and BME barristers are more likely to be subject to a disciplinary action outcome of upheld; even when controlling for differences in the subjects of the complaints.
- BME barristers are overrepresented in the complaints process in relation to internal complaints. There is no evidence that BME barristers were subjected to a larger proportion of internal complaints for any reason other than their ethnicity.
- Male barristers were subject to a larger proportion of internal complaints than their proportion of the Bar although this difference on the basis of gender was not as pronounced as the difference on the basis of ethnicity

The reason for these disproportionalities is not known. In order to examine the possibility of discrimination in the complaints system it is advisable that an external equality expert is commissioned to investigate the complaints handling process.

Appendix 1 – Explanation of statistics used

Analysis for this research was undertaken using statistical analysis of the data extracted from the Professional Conduct Department database. This data was extracted and analysed using SPSS for Windows (Statistical Package for the Social Sciences).

This software package allows for easy analysis of data. SPSS works like a calculator that calculates statistical formula for statistical tests. SPSS calculates the statistical tests requested and produces the results in an output file. This provides the data requested and the results of any specific statistical tests requested.

The statistical techniques used in this research were **descriptives**; this does not include a statistical test but simply provides the numbers of barristers who were in each response category to a question in the database and the corresponding percentage. So if looking at the gender of barristers in the database, using descriptives would allow you to see the number and percentage who were in each possible category i.e. male, female and unknown.

Cross tabulations allow analysis of whether one variable has a statistical relationship with another, such as is ethnicity related to a complaint being referred. SPSS provides the proportion of each response category selected which selected each response category of the other variable in question.

If there was no relationship between ethnicity and having a complaint referred then you would expect equal proportions of white and BME barristers to have their complaint referred.

Looking at the data in this way allows identification of whether or not different proportions of white and BME barristers had their complaint referred.

If the proportions are different, a test of statistical significance can then be added to this in order to allow identification of whether the difference is due to chance or the result of statistical relationship, this test is called a **Chi-Squared (χ^2) test**.

The result of this test will identify if the difference in proportions of BME and white barristers having their complaint referred was due to chance or a statistical relationship.

However, it is possible that the statistical relationship found could be due to something else – other than ethnicity. In case of this, it is worth checking if other variables where there are differences between white and BME barristers could be causing this difference in referrals.

In this case we know that there are significant differences between the subject of complaints white and BME barristers are subject to. More white barristers are subject to complaints for misleading the court and it may be worth checking if less complaints for misleading the court are referred which could be causing the difference in referrals between white and BME barristers. So we **control** for this to see if the difference in proportions of white and BME barristers having their complaint referred remains or disappears when we take this into account.

In order to do, SPSS splits the entire dataset on the basis of whether a complaint was on the basis of misleading the court or not and checks what the proportion of referrals white and BME barristers got when the subject of their complaint was for misleading the court and when it was not for misleading the court. If the difference in proportion of referrals remains between white and BME barristers even in different subject areas then we know that the subject of complaints did not cause the difference in referrals on the basis of ethnicity. This can be repeated with all variables which could be responsible for the difference in referrals between white and BME barristers.

Appendix 2 Glossary of terminology used in complaints process

Type (external)	Service	Complaints of both service and misconduct are counted once under each heading
	Misconduct	Misconduct complaints received - (from Oct 2010 the BSB has only had jurisdiction over complaints of misconduct)
Subject of complaints (external)	Incompetence	Alleging "incompetence"
	Misleading	Alleging "misleading the court"
	Discreditable	Alleging "dishonesty/discreditable conduct" (paragraph 301 of the Code)
	Rudeness	Alleging "rudeness/misbehaviour out of Court"
	Instructions	Alleging "failure to follow instructions"
	Other	Alleging any other issue
Complainant practice categories (external)	Civil	Where complainant was a party in civil proceedings
	Crime	Where complainant was a party in criminal proceedings
	Family	Where complainant was a party in family proceedings
	Immigration	Where complainant was a party in immigration proceedings
	Other	Identified in any other way (e.g. non-professional, barrister, solicitor)
Subject of Complaints (Internal)	CPD	Relating to failure to comply with CPD requirements
	Fine	Relating to failure to pay a non-disciplinary fine
	Practising Certificate	Relating to failure to comply with practising certificate requirements
	Non response	Relating to failure to respond to the BSB
	Discreditable	Relating to "dishonesty/discreditable conduct"
	Other	Relating to any other issue
	All breaches of practising requirements	Relating to any failure to comply with the practising requirements (CPD, practising certificate, insurance)

BSB decisions	Referred	Complaint which the BSB referred to disciplinary action
	No further action	Complaint where the BSB decision was no further action
	Dismissal	Complaint where the BSB decision was to dismiss (also includes: upheld with a warning or administrative fine)
Disciplinary action outcomes	Referred -upheld	Complaint referred to disciplinary action and subsequently upheld
	Referred-upheld – determination by consent	Subset of “upheld”, upheld – determination by consent (DBC), this means that the barrister subject to complaint admits the charge and agrees to a sentence imposed by the Professional Conduct Committee
	Referred- dismissed	Referred to disciplinary action and subsequently dismissed
	Referred - other	Referred to disciplinary action and resulted in any other outcome e.g. struck out, withdrawn etc.
Miscellaneous outcomes	Other	Complaint with any other outcome
	Ongoing	Complaints still in progress