

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Complaints Diversity Analysis

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Executive Summary

Background

1. Past research and reporting of complaints against barristers has identified that Black and Minority Ethnic (BME) barristers were more likely to be subject to a complaint, less likely to have a complaint closed without investigation, and more likely to have a complaint referred to disciplinary action. It was also identified that male barristers were more likely to be subject to a complaint.
2. Inclusive Employers were appointed to carry out an independent review of the complaints system in 2013 in response to the disproportionalities identified. Their conclusion was that the Bar Standards Board (BSB) complaints procedures were not at fault, but that other factors relating to complaints were causing the disproportions shown in the data.
3. In response to the disproportionalities identified in the data and the Inclusive Employers report, the BSB took the decision to undertake a more advanced analysis using the data available to the organisation to see if once other characteristics of barristers (other than ethnicity and gender) and the types of complaint made were controlled for, gender and ethnicity still had an effect on complaint likelihood and complaint outcomes.

Research Findings

4. Regression analysis¹ of complaint outcomes indicates that Ethnicity no longer significantly predicts whether complaints are closed without investigation or referred to disciplinary action when other predictive characteristics are controlled for. The analysis identified a range of characteristics that contribute to a higher or lower likelihood of a complaint being closed without investigation or referred to disciplinary action that are more significant predictors than ethnicity.
5. Regression analysis of complaint outcomes indicates that gender does significantly predict whether complaints are referred to disciplinary action, even when other predictive characteristics are controlled for - male barristers more likely to have complaints referred to disciplinary action than female barristers.
6. Regression analysis of complaint likelihood indicates that ethnicity does significantly predict a barrister being subject to an internal complaint², even when other predictive characteristics are controlled for - white barristers are less likely to be subject to an internal complaint than BME barristers or barristers for whom the BSB does not have ethnicity data available.
7. Regression analysis of complaint likelihood indicates that gender still significantly predicts a barrister being subject to an external complaint³, even when other predictive characteristics are controlled for - male barristers are more likely to be subject to an external complaint than female barristers.
8. The limitations of the data available to the BSB on practising barristers means that the analysis of complaint likelihood has less predictive validity than that of complaint outcomes, and thus should not be seen as proof that gender and ethnicity themselves account for the differences observed in complaint likelihood.

¹ Regression analysis is a statistical process for estimating the relationships between variables.

² An Internal complaint is a complaint initiated by the BSB.

³ An External complaint is a complaint initiated by an external individual or organisation.

Background

1. The Professional Conduct Department (PCD) produced Diversity Reports for the periods 2007-2008 and 2009-2010 and reported in each period that:
 - a. Male barristers were subject to a disproportionate number of complaints compared to the gender composition of the Bar;
 - b. Black Minority Ethnic (BME) barristers were subject to a disproportionate number of internal complaints compared to the ethnicity statistics of the Bar.
2. Further research following the 2007-2008 report indicated that sole practitioners featured disproportionately in the internal complaint figures – particularly in relation to CPD breaches – and could be partly responsible for the disproportionate figures for BME barristers. This hypothesis was not supported by the 2009-2010 report.
3. Following the 2009-2010 report, the Bar Council’s Research Team carried out an analysis of the data for the period 2007-2011. In summary, the conclusions were:
 - BME barristers were over-represented in the complaints process in relation to the makeup of the practicing Bar. In addition, BME barristers were more likely to have an external complaint referred to disciplinary action, white barristers are more likely to have an external complaint dismissed without referral to disciplinary action, and BME barristers were more likely to be subject to a disciplinary action outcome of upheld for external complaints; even when controlling for differences in the subjects of the complaints.
 - BME barristers were overrepresented in the complaints process in relation to internal complaints. The research was unable to identify any other characteristic that accounted for the difference other than ethnicity (such as the nature of the complaint, or other barrister characteristics) with the data available.
 - 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 analysis included data on the practising status of barristers, date of call, circuit, practice areas and some of the details of the complaints (aspects and complainant categories). However, the results could not identify the reasons for the disproportionalities. In order to examine the possibility of discrimination in the complaints (enforcement) system, the report recommended that an external review of the complaints handling process should be carried out.

4. Inclusive Employers carried out a review of the complaints system between January and June 2013, including: a review of 100 case files, an analysis of written policies, procedures and diversity reports and interviews with members of staff. The final report identified a series of steps that could be taken to improve the process from an equality and diversity perspective but the view of Inclusive Employers was that *“the procedure itself is not at fault. This means that other factors, as yet to be identified, are causing the disproportions shown in the data.”*
5. Following the report, the PCD took steps to ensure that members of the Professional Conduct Committee could not identify the names of barristers in cases considered at

Committee meetings. The aim of this was to eliminate any knowledge of the ethnicity of a barrister when taking a decision on whether to refer a case to disciplinary action.

2012 – 2014 Data

6. To determine if the patterns identified by previous monitoring and research still exist, data from three years of complaints (from 1 January 2012 to 31 December 2014) a summary report was prepared by the Research Department for the Equality and Diversity Committee on 4th June 2015. Although the data was provided by PCD, the analysis was undertaken within a separate department to ensure impartiality in reporting.
7. The key findings of the initial analysis of 2012-2014 complaints data are broadly similar to previous findings regarding the complaints process. The data available suggests that:
 - BME barristers are more likely to be the subject of an internal complaint than white barristers (as was identified in 2008 and 2010 reports by PCD, and the 2011 report by the Research department)⁴.
 - BME barristers are more likely to have a complaint closed without investigation than white barristers (as was identified in the 2011 report by the Research department)
 - BME barristers are more likely to have an external complaint referred to disciplinary action than white barristers (as was identified in the 2011 report by the Research department)⁵.
 - Male barristers are more likely to be the subject of an external complaint than female barristers (in contrast to the pattern identified in the 2011 Research department report, which found that male barristers were more likely to be subject to internal complaints than female barristers).
8. While the initial analysis identified certain key differences that exist between white and BME barristers that might contribute to the differences in complaints and case outcomes identified, the preliminary analysis was unable to satisfactorily identify the extent to which ethnicity was a factor once other variables were controlled for. As a result, the Committee recommended that more in depth analysis was undertaken to determine the effect to which demographic characteristics were independently impacting on Enforcement outcomes.

⁴ 21.5% of Internal complaints involved BME barristers in 2012-14, compared to 20.7% in 2009-11

⁵ 15.1% of external complaints involving BME barristers were referred over 2012-14, compared to 12.7% over 2009-11. Note that the proportion of external complaints involving white barristers referred also rose during this period (5.2% over 2009-11, and 7.3% over 2012-14).

Research Design

9. The following analysis is intended to determine the extent to which the ethnicity or gender of a barrister is likely to have an effect on the likelihood of them being subject to a complaint to the BSB, and the outcomes of such a complaint when it is initiated. Previous reporting and research has identified a number of areas where concerns are raised over possible discrimination against barristers due to their ethnicity or gender, due to the fact that higher proportions of certain barristers with certain protected characteristics are the subject of a complaint, and have higher proportions of complaints made subject to certain disciplinary outcomes.
10. This research uses data on complaints, both complaints received and complaint outcomes, over the period 2012-2014. In order to attempt to more accurately determine which factors impact on complaint likelihood and complaint outcomes, a range of existing data held by the BSB has been used. From the Professional Conduct Department, data on the nature of complaints made (the primary aspect of the complaint) and the type of complainant has been used. In addition, a range of data held by the BSB has been used on barristers practicing status and demographic characteristics.
11. The key questions addressed in this research are:
 - Are the disproportionalities in complaint outcomes between BME and white barristers likely to be as a result of discrimination, or due to the different types of complaints white and BME barristers are subject to or aspects of a barristers practicing status?
 - Are the disproportionate complaint rates relating to BME and white barristers, or male and female barristers, likely to be as a result of discrimination, or due to aspects of a barristers practicing status?

Methodology and Limitations

12. All statistical analysis included in this report has been undertaken in the SPSS statistical software package. Where differences or variables are described as 'statistically significant', this indicates that they have been tested and found to be statistically significant at the 5% significance level or below (the standard significance level for social research).
13. This report makes use of multiple regression analysis in order to enable a number of different factors that impact on complaint outcomes and complaint likelihood to be considered simultaneously. This ensures the analysis can identify which factors have the strongest predictive effect. Regression analysis is a statistical technique that examines the relationship between a single outcome variable⁶ and one or more explanatory variables.⁷ Regression analysis models the size of any predictive relationship, and its statistical significance, while controlling for the effects of the other explanatory variables. However, it should be noted that the size of the predictive relationships identified are statistical estimates and thus may be over or under estimated.
14. The results of regression analysis can be skewed by the selection of variables for the model. In order to avoid any bias in model selection, the variables used for the

⁶ In this case, either being subject to a complaint, or the outcome of a complaint made

⁷ In this case, factors that influence complaint likelihood or complaint outcomes

analysis were first selected by identifying which variables were associated with a significant difference in complaint outcomes or complaint likelihood. These variables were then used by the statistical software to select a final regression model using an automatic process. This process removed variables that no longer had a significant effect once the other variables were controlled for (see paragraph 27, 35, 50 and 55). This ensured that variables were selected by a consistent and defined process, and ensures that any conscious or unconscious bias did not influence the selection of the regression model.

15. In analysing what factors are likely to contribute to complaints being lodged against a barrister, it is necessary to choose a sample that represents barristers who could be subject to a complaint. As described in more detail in paragraph 42, the approach taken was to select barristers who were practicing during the period under consideration, which excludes a number of individuals subject to complaints (who were not practising barristers in the period under consideration) from the analysis. As a result (unlike the analysis of outcomes where all complaints made could be included in the analysis) the sample used for analysis of complaint likelihood represents a compromise that does not include all individuals who could potentially be the subject of a complaint, and does not include some of the individuals who were in fact subject to a complaint. As a result, this section of the analysis should be interpreted with a note of caution, as unlike the analysis of outcomes, it does not represent a complete dataset.
16. Data used for the analysis of complaint outcomes is taken from data held on each complaint by PCD, alongside key demographic data and practising status data held on each barrister subject to a complaint from the BSB's records. Analysis of complaint likelihood uses data on key demographic characteristics, and aspects of their practising status, of barristers from the BSB's records. The data available to the BSB covering the majority of these areas is of good quality. However, two areas are a potential source of concern. The BSB is missing data on ethnicity for just under 10% of the practising bar. The analysis taken has addressed any potential issues with missing ethnicity data by using three ethnicity categories – white, BME, and missing data – to ensure that missing ethnicity data does not skew the results.
17. The other data that is a potential source of concern is data on practice areas. The analysis of complaint likelihood makes use of practice area data to investigate if practising in certain areas of law makes a barrister more likely to be subject to complaints. However, the data held by the BSB on practice areas is unreliable, as it is self-submitted by barristers as part of the renewal of their practising certificate. As a result, some barristers do not provide any listed practise areas, and the data that is provided is not quality assured by the BSB. The findings relating to practice areas should therefore be interpreted with caution, as the available data may not accurately reflect the types of law regularly practised by individual barristers. Nonetheless, this data has been included within the analysis as the type of law practised by barristers was seen as being a likely factor in whether they were subject to complaints, and the data used represents the best available record held by the BSB.

Complaint Outcomes - Analysis

Identification of Variables

18. In order to identify the factors that impact on the outcomes of complaints made, a range of available data was gathered relating to the primary aspect of the complaint made, the type of complainant, and the profile and status of the barrister involved.
19. Note that for the analysis of complaint outcomes, all complaints (both internal and external complaints) were considered together. This was done in order to ensure a sample size sufficient for the statistical approaches used. Note that whether a complaint was an internal or external complaint is still accounted for in the analysis, enabling the different likelihood of certain outcomes for internal and external complaints to be controlled for.
20. For the primary aspect of the case, all complaint categories with a frequency of over 10 during the relevant period were identified and included in the analysis. This covered the following complaints:
 - Disciplinary findings by another body
 - Conspiracy / collusion
 - Failure to administer chambers properly
 - Criminal conviction – other, Criminal conviction – drink driving, and Failure to report criminal charges or convictions (collectively grouped as ‘criminal conviction’)
 - Failure to comply with a court order
 - Fee dispute
 - Inappropriately drafting pleadings
 - Misleading the court
 - Rudeness / misbehaviour in court
 - Rudeness / misbehaviour out of court
 - Incompetence
 - Conflict of Interest
 - Discrimination
 - Dishonesty / discreditable conduct
 - Breach of public access rules
 - Practising without a practising certificate
 - Unregistered barrister holding out
 - Failure to renew a practising certificate
 - Failure to comply with the sentence of a tribunal / panel
 - Failure to pay an administrative fine
 - Failure to cooperate with LeO
 - Failure to comply with CPD Requirements
21. For the type of complainant, key complainant groups were included in the analysis if they totalled over 100 complaints made. These covered the following complainant groups:
 - Criminal - defendant, Criminal – defendant prisoner, and Criminal – non-defendant (grouped as ‘Criminal case complainant’) – where the complainant was a party in a criminal case
 - Family – ancillary relief, Family – child proceedings, and Family – other (collectively grouped as ‘Family Case Complainant’) – where the complainant was a party in a family case

- Civil Litigant – where the complainant was a party in a civil case
- Litigant In Person – where the complainant was a litigant in person
- The Bar Standards Board (representing internal complaints) – where the complainant was the Bar Standards Board

22. For the barrister who was the subject of the complaint, key profile data was included based either on the key focus of the research (key demographic characteristics) or on the basis of the findings of previous research and advice from PCD. This resulted in the following identifiers being included in the analysis:

- Ethnicity (White, BME and Missing Data) - whether the barrister who is the subject of a complaint is from a white ethnic group, a Black or Minority Ethnic group, or whether the BSB does not have the ethnic group of the barrister on record
- Gender –whether the barrister who is the subject of the complaint is male or female
- Years of Call (at the date the complaint was made) –the number of years since the barrister who is the subject of a complaint was first called to the bar
- Employed or self-employed (at the date the complaint was made) –whether the barrister who is the subject of the complaint is a self-employed barrister (working in chambers or as a sole practitioner) or an employed barrister (employed under a contract by an organisation)
- QC (at the date the complaint was made) – whether the barrister who was the subject of a complaint was a Queens Council (senior barristers who are considered as experts in their field)
- Sole Practitioner (at the date the complaint was made) - whether the barrister who was the subject of a complaint was a Sole Practitioner (self-employed barristers who work alone rather than within a set of barrister’s chambers)
- Unregistered (at the date the complaint was made) – this category indicates whether the barrister who was the subject of a complaint did not have an active practising certificate. Barristers must have an active practising certificate in order to conduct certain reserved legal activities
- Low Income Waiver –whether the barrister who was the subject of the complaint had submitted a low income waiver, an application to reduce the fees payable for their practising certificate by virtue of their low income in the previous year

Using whether a barrister had previously been the subject of disciplinary action was also considered at this stage. However, if any gender or racial bias did exist, this could also have affected the outcomes of previous disciplinary findings. As such, this variable was not included in the analysis, despite the fact that previous findings against a barrister did have a significant correlation with the outcomes of subsequent complaints.

Closed Without Investigation

23. The lower proportion of complaints closed without investigation involving BME barristers when compared to white barristers was identified by the previous research. In order to determine if ethnicity was itself affecting complaint outcomes, it was important to identify all aspects of complaints that had notable differences in outcomes. All of the variables selected (see paragraphs 20-22) were tested to see if there were statistically significant differences in outcomes for complaints with these variables.
24. All the selected case aspects were analysed to identify where there were statistically significant differences in whether cases were closed without investigation. Table 1

below lists the case aspects were the analysis identified statistically significant differences in the proportion of cases that were closed without investigation, and includes the proportion across all cases for comparison.

Table 1

Case Category	Closed without Investigation
All Cases	45.6%
Disciplinary findings by another body	0%
Criminal Conviction	0%
Failure to comply with the sentence of a tribunal / panel	0%
Practising without a practising certificate	1.9%
Failure to renew practising certificate	6.1%
Failure to comply with CPD Requirements	6.4%
Failure to Cooperate with LeO	7.1%
Failure to pay an administrative fine	8.3%
Unregistered Barrister Holding Out	13.6%
Breach of Public Access Rules	14.3%
Dishonesty / discreditable conduct	58.6%
Rudeness or misbehaviour in court	65.9%
Rudeness or misbehaviour out of court	68.9%
Misleading the Court	80.8%
Conspiracy or Collusion	91.7%

25. All key complainant groups were also analysed to identify where there were statistically significant differences in whether cases were closed without investigation. All of the main complainant groups were identified as exhibiting significant differences, and Table 2 below lists the proportion of cases closed without investigation for each type of complainant, and includes the proportion across all cases for comparison.

Table 2

Complainant Category	Closed without Investigation
All Cases	45.6%
Bar Standards Board ⁸	4.5%
Civil Litigant	73.2%
Criminal case complainant	84.3%
Litigant In Person	85%
Family case complainant	85.6%

26. All identified barrister characteristics were also analysed to identify where there were statistically significant differences in whether cases were closed without investigation. Table 3 below lists the barrister characteristics were the analysis identified statistically significant differences in the proportion of cases that were closed without investigation, and includes the proportion across all cases for comparison.

⁸ Note that the significant difference in closure rates between Internal and external complaints is not surprising – internal complaints are generally only initiated when the BSB has firm evidence that a barrister may be in breach of the BSB Handbook.

Table 3

Barrister Characteristics	Closed without Investigation
All Cases	45.6%
Sole Practitioner	15.7%
Unregistered Barrister	21.6%
Low Income Waiver	26.8%
Missing ethnicity data	31.7%
BME	33%
White	50.7%
Self-employed Barrister	52.5%
Queens Counsel	67.4%

Other barrister identifiers (gender and year of call) did not exhibit any statistically significant difference in whether cases were closed without investigation. However, as part of the key focus of the research, gender was kept for the next stage of the analysis.

27. In order to more accurately determine the causal relationship between the variables identified and the case outcome of complaints, it is important to use an approach that enables controls for all factors that could influence case outcomes. In order to achieve this, a binary logistic regression⁹ was run including all the characteristics identified as exhibiting a significant difference, alongside gender. The variables were entered into the model using a backwards stepwise method to remove variables that did not improve model fit.¹⁰ This process was undertaken automatically by the statistical software to ensure there was no bias in model selection.
28. The final regression model is included in appendix A. The logistic regression model was statistically significant, and explained 56.2% of the variability observed in the data¹¹. Eleven variables were identified by the model as having a significant effect on whether cases were closed without investigation when other significant predictors are controlled for:
 - **Unregistered** – complaints involving unregistered barristers are 0.50 times as likely to be closed without investigation
 - **Sole Practitioner** – complaints involving sole practitioners are 0.22 times as likely to be closed without investigation
 - **QC** - complaints involving QCs are 1.69 times as likely to be closed without investigation
 - **Dishonesty or discreditable conduct** – complaints about dishonesty or discreditable conduct are 1.38 times as likely to be closed without investigation
 - **Criminal Conviction** – no complaints about criminal convictions are closed without investigation
 - **Failure to comply with LeO** – complaints about failure to comply with LeO are 0.06 times as likely to be closed without investigation

⁹ Regression analysis is a statistical technique that examines the relationship between an outcome variable and one or more explanatory variables. See paragraph 13 for a more detailed description of regression analysis.

¹⁰ A backwards stepwise method is a technique for model selection. It removes variables one by one until the removal of further variables has a statistically significant effect on the accuracy of the model, and is intended to ensure that only variables that significantly predict the outcome variable are included in the regression model.

¹¹ Variability is a measurement of the spread between numbers in a dataset. The greater the proportion of the variability explained, the better a statistical model predicts the observed data.

- **Bar Standards Board** - complaints initiated by the BSB are 0.05 times as likely to be closed without investigation
- **Family Case Complainant** - complaints relating to Family cases are 3.69 times as likely to be closed without investigation
- **Criminal Case Complainant** - complaints relating to Criminal cases are 3.97 times as likely to be closed without investigation
- **Litigant in Person** - complaints made by Litigants In Person are 2.47 times as likely to be closed without investigation
- **Civil Litigant** - complaints made by Civil Litigants are 1.57 times as likely to be closed without investigation

All the other variables identified in the first stage of the analysis were not included in the model as they did not lead to a significant improvement in model validity.

29. This indicates that Ethnicity no longer significantly predicts whether complaints are closed without investigation when other significant predictive variables are controlled for. In order to confirm that ethnicity was not a statistically significant factor, ethnicity was added back into to the final model, which resulted in no improvement in model validity and no improvement in the predictive accuracy of the model. This confirms that when the above variables are controlled for, the ethnicity of the barrister subject to the complaint does not help to predict complaint outcomes.
30. There are significant correlations between whether a barrister is BME and several of the significant predictors of whether a complaint is closed without investigation. Complaints about BME barristers are more likely to relate to a sole practitioner, more likely to relate to an unregistered barrister, and more likely be initiated by the BSB. All of these variables mean a complaint is less likely to be closed without investigation. In contrast, complaints about BME barristers are less likely to involve a civil litigant, less likely to involve a litigant in person, and less likely to relate to a QC. All of these variables mean a complaint is more likely to be closed without investigation.
31. This suggests that the lower proportion of complaints involving BME barristers that are closed without investigation observed in previous reporting and research are a result of the types of complaints made and the characteristics of the barrister complained about (other than their ethnicity). There is no indication in the analysis that the ethnicity of the barrister is itself having a significant influence over whether a complaint is closed without investigation or not.

Referred to Disciplinary Action

32. All the selected case aspects were analysed to identify where there were statistically significant differences in whether cases were referred to disciplinary action. Table 4 below lists the case aspects were the analysis identified statistically significant differences in the proportion of cases that were referred to disciplinary action, and includes the proportion across all cases for comparison.

Table 4

Case Category	Referred to disciplinary action
All Cases	19.1%
Rudeness or misbehaviour in court	2.3%

Misleading the Court	5.1%
Rudeness or misbehaviour out of court	6.6%
Dishonesty / discreditable conduct	13.7%
Failure to comply with CPD Requirements	33%
Breach of Public Access Rules	50%
Disciplinary findings by another body	78.6%
Failure to comply with the sentence of a tribunal / panel	81.8%
Criminal Conviction	90.0%

All other case categories did not exhibit any statistically significant difference in whether cases were referred to disciplinary action.

33. All key complainant groups were also analysed to identify where there were statistically significant differences in whether cases were closed without investigation. All of the main complainant groups were identified as exhibiting significant differences, and Table 5 below lists the proportion of cases closed without investigation, and includes the proportion across all cases for comparison.

Table 5

Complainant Category	Referred to disciplinary action
All Cases	19.1%
Criminal case complainant	2%
Litigant In Person	2.1%
Family case complainant	2.5%
Civil Litigant	6.2%
Bar Standards Board ¹²	38.1%

34. All identified barrister characteristics were also analysed to identify where there were statistically significant differences in whether cases were closed without investigation. Table 6 below lists the barrister characteristics were the analysis identified statistically significant differences in the proportion of cases that were closed without investigation, and includes the proportion across all cases for comparison.

Table 6

Barrister Characteristics	Referred to disciplinary action
All Cases	19.1%
Queens Counsel	5.2%
Self-employed Barrister	15.5%
White	16.1%
Low Income Waiver	25.2%
BME	26.5%
Missing ethnicity data	27.2%
Sole Practitioner	32.9%
Unregistered Barrister	34.7%

¹² Note that the significant difference in disciplinary action rates between Internal and external complaints is not surprising – internal complaints are generally only initiated when the BSB has firm evidence that a barrister may be in breach of the rules.

All other identifiers (gender, year of call, employed barrister) did not exhibit any statistically significant difference in whether cases were referred to disciplinary action. However, as part of the key focus of the research, gender was kept for the next stage of the analysis.

35. In order to more accurately determine the causal relationship between the variables identified and the case outcome of complaints, it is important to use an approach that enables controls for all factors that could influence case outcomes. In order to achieve this, a binary logistic regression¹³ was run including all the characteristics identified as exhibiting a significant difference, alongside gender. The variables entered into the model using a backwards stepwise method to remove variables that did not improve model fit.¹⁴ This process was undertaken automatically by the statistical software to ensure there was no bias in model selection.
36. The results of this analysis are included in Appendix A. The logistic regression model was statistically significant, and explained 35.2% of the variability observed in the data¹⁵. Eleven variables were identified by the model as having a significant effect on whether cases were referred to disciplinary action when other significant predictors are controlled for:
 - **Gender** – complaints involving female barristers are 0.53 times as likely to be referred to disciplinary action
 - **Sole Practitioner** – complaints involving sole practitioners are 1.77 times as likely to be referred to disciplinary action
 - **QC** - complaints involving QCs are 0.24 times as likely to be referred to disciplinary action
 - **Criminal Conviction** – complaints relating to a criminal conviction are 29.08 times as likely to be referred to disciplinary action
 - **Findings by Another Body** - complaints relating to findings by another body are 9.02 times as likely to be referred to disciplinary action
 - **Failure to comply with the sentence of a tribunal / panel** - complaints relating to a failure to comply with a previous sentence are 11.07 times as likely to be referred to disciplinary action
 - **Bar Standards Board** - complaints initiated by the BSB are 2.05 times as likely to be referred to disciplinary action
 - **Family Case Complainant** - complaints relating to Family cases are 0.2 times as likely to be referred to disciplinary action
 - **Criminal Case Complainant** - complaints relating to Criminal cases are 0.2 times as likely to be referred to disciplinary action
 - **Litigant in Person** - complaints made by Litigants In Person are 0.25 times as likely to be referred to disciplinary action
 - **Civil Litigant** - complaints made by Civil Litigants are 0.55 times as likely to be referred to disciplinary action

All other variables identified in the first stage of the analysis were not included in the model as they did not lead to a significant improvement in model validity.

¹³ Regression analysis is a statistical technique that examines the relationship between an outcome variable and one or more explanatory variables. See paragraph 13 for a more detailed description of regression analysis.

¹⁴ A backwards stepwise method is a technique for model selection. It removes variables one by one until the removal of further variables has a statistically significant effect on the accuracy of the model, and is intended to ensure that only variables that significantly predict the outcome variable are included in the regression model.

¹⁵ Variability is a measurement of the spread between numbers in a dataset. The greater the proportion of the variability explained, the better a statistical model predicts the observed data.

37. This indicates that Ethnicity no longer significantly predicts whether complaints are referred to disciplinary action when other predictive variables are controlled for. In order to confirm that ethnicity was not a statistically significant factor, ethnicity was added back into the final model, which resulted in no improvement in model validity and no improvement in the predictive accuracy of the model. This confirms that when the above variables are controlled for, the ethnicity of the barrister subject to the complaint does not help to predict complaint outcomes.
38. In contrast, the analysis suggests that when other predictive variables are controlled for, gender *does* significantly predict whether cases are referred to disciplinary action, with female barristers less likely to have complaints referred to disciplinary action than male barristers.
39. There are statistically significant correlations between whether a barrister is BME and several of the significant predictors of whether a complaint is referred to disciplinary action or not. Complaints about BME barristers are more likely to involve a Sole Practitioner, more likely to be initiated by the BSB, more likely to be about a female barrister, and more likely to relate to findings by another body. All of these variables (aside from the gender of the barrister) mean a complaint is more likely to be referred to disciplinary action. Conversely, complaints about BME barristers are less likely to be made about a QC, less likely to be made by Litigants in Person, and less likely to be made by a Civil Litigant. All of these variables mean a complaint is less likely to be referred to disciplinary action.
40. This suggests that the higher referral rates for complaints involving BME barristers observed in previous reporting and research are a result of the types of complaints made and the characteristics of the barrister complained about (other than their ethnicity). There is no indication in the analysis that the ethnicity of the barrister is itself having a significant influence over whether a complaint is referred to disciplinary action or not.

Complaint Likelihood - Analysis

41. Previous research had identified that BME barristers and male barristers were overrepresented in the complaints process when compared to the overall makeup of the bar, a finding supported in the initial analysis of the 2012-14 data. However, determining the factors which contribute to an increased likelihood of being subject to a complaint is more difficult to determine than analysing case outcomes. In order to analyse in detail what factors contribute to a barrister being subject to a complaint, analysis must be undertaken on the individuals who make up the barrister profession as a whole, rather than merely the restricted group who are subject to complaints as in the analysis of complaint outcomes. This raises issues surrounding missing and limited data to a greater extent than the analysis of complaint outcomes, and also raises issues over the selection of the sample itself (see paragraph 42 and 43 below). As a result, the findings of this part of the analysis should be interpreted with more caution than the section of the report which deals with complaint outcomes.
42. In order to compare the figures accurately against the composition of the Bar during this period, data was drawn from the Core Database covering all barristers who had an active practising certificate at any stage between 1/1/2011 to 31/12/2014 (the period

covered begins a year before the complaint period as complaints can be made up to a year after the incident involved). This excludes from the analysis 113 individuals against whom complaints were made who were not registered barristers (i.e. barristers with an active practising certificate) at any stage during this 4 year period. The sample consisted of 17588 individuals who had an active practising certificate at any stage during the 4 years under consideration, of whom 974 individuals (5.5%) had been the subject of at least one external or internal complaint during this period.

43. Of the 113 individuals who were subject to complaints during this period yet were not included from the analysis (see paragraph 42), 76 had been called to the bar (i.e. passed their vocational training) but had never been a registered barrister, 6 had completed the pupillage stage of their training but never been a registered barrister, 17 had practiced as a self-employed barrister in the past (but subsequently become unregistered), 12 had practiced as an employed barrister in the past (but subsequently become unregistered), and one had been a self-employed barrister in the past, but then became a Judge.

Selection of Variables

44. In order to identify the factors that impact on the outcomes of complaints made, a range of available data was gathered relating to the key aspects of the characteristics of barristers included in the sample, their practising status, and their listed practice areas.
45. Of particular note are aspects of a barristers practising status that are subject to change over the four year period. While the date of a complaint enables factors like whether a barrister was a sole practitioner, or was unregistered, at the time of the complaint to be determined (both of which have been shown to have a significant effect on complaint outcomes), over a period of time barristers may change their status a number of times - moving from chambers to sole practice or to employed status, or becoming unregistered for a short period of time before registering again. As a result, this analysis did not classify barristers as having a single status, but instead calculated the proportion of the 4 year period they had spent with any given status. This calculation was used for the following statuses: unregistered, sole practitioner, employed, self-employed, public access registered, and QC.
46. Data relating to both the demographic characteristics of barristers and their practising status were used for this stage of the analysis. The following barrister characteristics were included:
 - Gender
 - Ethnicity (White, BME, Missing data)
 - Years of Call
 - Self-employed status (the proportion of the 4 years the barrister had been registered as a self-employed barrister)
 - Employed status (the proportion of the 4 years the barrister had been registered as an employed barrister)
 - Sole practitioner (the proportion of the 4 years the barrister had been registered as a sole practitioner)
 - Unregistered (the proportion of the 4 years the barrister had been unregistered – note that barristers who spent the entire 4 year period unregistered were excluded from the analysis as per paragraph 42)

- Public access registered (the proportion of the 4 years the barrister had been registered to undertake public access work)
- Queens Counsel (the proportion of the 4 years the barrister had been a QC)
- Low income waiver (if the barrister had submitted a low income waiver during the 4 year period)

47. In addition to aspects of a barristers practising status, data on the practice areas listed by barristers was also used in the analysis. Certain areas of practice were expected to be more likely to prompt complaints against a barrister than others, so this enabled the analysis to investigate the extent to which practising in certain areas of law increased or decreased the likelihood of a barrister being the subject of an internal or external complaint. However, note that the practice area data held by the BSB is less reliable than other data held by the organisation (see paragraph 17) so the analysis on the impact of practice areas on complaint likelihood is likely to be less reliable than analysis addressing the practising status and demographic characteristics of the barrister. The following practice areas were analysed:

- Crime – this included both general crime and corporate/fraud
- Family – this included care proceedings
- Personal Injury
- Immigration
- Employment
- Landlord & Tenant
- Professional Negligence
- Commercial Litigation

No other practice areas were analysed, as the listed practice areas consist of those that are either the most common practice areas listed by barristers, or were areas identified by consultation with PCD as areas of practice that could contribute to a greater likelihood of being subject to a complaint.

Internal Complaints

48. All selected barrister characteristics were analysed to identify where there were statistically significant differences in whether barristers were subject to an internal complaint. Table 7 below lists the barrister characteristics where the analysis identified statistically significant differences in the proportion of barristers subject to one or more internal complaints, and includes the proportion across all cases for comparison.

Table 7

Barrister Characteristics	Subject to 1+ internal complaints
Whole sample	1.7%
BME	3%
White	1.4%
Low Income Waiver	3.2%

Table 8 below lists the barrister statuses where the analysis identified statistically significant differences in the average value for barristers subject to one or more

internal complaints, and includes the proportion across the whole sample for comparison.

Table 8

Barrister Status	Subject to 1+ internal complaints – average	Whole Sample - average
Employed Barrister	0.33 years	0.62 years
Sole Practitioner	0.24 years	0.09 years
Unregistered Barrister	0.52 years	0.26 years
Queens Counsel	0.18 years	0.36 years

All other variables selected did not exhibit any statistically significant differences in the proportion or average value for those subject to one or more internal complaints.

49. All selected barrister practice areas were analysed to identify where there were statistically significant differences in whether barristers were subject to an internal complaint. Table 9 below lists the practice areas listed by barristers where the analysis identified statistically significant differences in the proportion of barristers who listed each practice area who were subject to one or more internal complaint, and includes the proportion across all cases for comparison. All other practice areas analysed did not exhibit any statistically significant difference in whether a barrister was subject to an internal complaint.

Table 9

Barrister's Practice Areas	Subject to 1+ internal complaints
Whole sample	1.7%
Crime	2.3%
Immigration	3.7%
Professional Negligence	1.1%

50. In order to more accurately determine the causal relationship between the variables identified and whether a barrister was subject to an internal complaint, it is important to use an approach that enables controls for all factors identified that could influence whether a barrister is subject to a complaint. In order to achieve this, a binary logistic regression¹⁶ was run including all the characteristics identified as exhibiting a significant difference. The variables entered into the model using a backwards stepwise method to remove variables that did not improve model fit.¹⁷ This process was undertaken automatically by the statistical software to ensure there was no bias in model selection.
51. The results of this analysis are included in Appendix A. The logistic regression model was statistically significant, and explained 3.6% of the variability observed in the

¹⁶ Regression analysis is a statistical technique that examines the relationship between an outcome variable and one or more explanatory variables. See paragraph 13 for a more detailed description of regression analysis.

¹⁷ A backwards stepwise method is a technique for model selection. It removes variables one by one until the removal of further variables has a statistically significant effect on the accuracy of the model, and is intended to ensure that only variables that significantly predict the outcome variable are included in the regression model.

data¹⁸. Six variables were identified by the model as having a significant effect on whether barristers were subject to one or more internal complaints when other significant predictors are controlled for:

- **White** – white barristers are 0.62 times as likely to be subject to one or more internal complaints
- **Sole Practitioner** – each year spent as a sole practitioner (of the 4 years covered by this analysis) is associated with being 1.2 times as likely to be subject to one or more internal complaints
- **QC** - each year spent as a QC (of the 4 years covered by this analysis) is associated with being 0.84 times as likely to be subject to one or more internal complaints
- **Unregistered** - each year spent as an unregistered barrister (of the 4 years covered by this analysis) is associated with being 1.44 times as likely to be subject to one or more internal complaints
- **Employed Barrister** - each year spent as an employed barrister (of the 4 years covered by this analysis) is associated with being 0.82 times as likely to be subject to one or more internal complaints
- **Low Income Waiver** – barristers who had submitted a low income waiver were 1.55 times as likely to be subject to one or more internal complaints
- **Crime** – barristers who have listed crime as one of their practice areas are 1.55 times as likely to be subject to one or more internal complaints

All other variables identified in the first stage of the analysis were not included in the model as they did not lead to a significant improvement in model validity.

52. The regression model still identifies ethnicity as a significant predictor of a barrister being subject to one or more internal complaints, even when controlling for other significant predictors - white barristers are less likely to be subject to an internal complaint than BME barristers and barristers with missing ethnicity data. However, the model accounts for a small proportion of the variability in the observed data (3.6%, as compared to 35.2% and 56.2% for the two regression models for complaint outcomes) and therefore is of limited value in predicting whether barristers are subject to an internal complaint. Given the shortcomings of the model, and the issues surrounding available data on practice areas (see paragraph 17), the findings of this analysis should be interpreted with caution.

External Complaints

53. All selected barrister characteristics were analysed to identify where there were statistically significant differences in whether barristers were subject to an external complaint. Table 10 below shows the only barrister characteristic where the analysis identified statistically significant differences in the proportion of barristers subject to one or more external complaints, and includes the proportion across all cases for comparison.

Table 10

Barrister Characteristics	Subject to 1+ internal complaints
Whole sample	4%
Male	4.7%

¹⁸ Variability is a measurement of the spread between numbers in a dataset. The greater the proportion of the variability explained, the better a statistical model predicts the observed data.

Table 11 below lists the barrister statuses where the analysis identified statistically significant differences in the average value for barristers subject to one or more external complaints, and includes the proportion across the whole sample for comparison.

Table 11

Barrister Status	Subject to 1+ internal complaints – average	Whole Sample - average
Self-employed Barrister	3.5 years	2.82 years
Employed Barrister	0.23 years	0.62 years
Sole Practitioner	0.04 years	0.09 years
Public Access Registered Barrister	1.64 years	1.06 years
Unregistered Barrister	0.12 years	0.26 years
Queens Counsel	0.54 years	0.36 years

All other variables selected did not exhibit any statistically significant differences in the proportion or average value for those subject to one or more external complaints.

54. All selected barrister practice were also analysed to identify where there were statistically significant differences in whether barristers were subject to an external complaint. Table 12 below lists the practice areas listed by barristers where the analysis identified statistically significant differences in the proportion of barristers who listed each practice area who were subject to one or more external complaint, and includes the proportion across all cases for comparison. All other practice areas analysed did not exhibit any statistically significant difference in whether a barrister was subject to an external complaint.

Table 12

Barrister's Practice Areas	Subject to 1+ external complaints
Whole sample	4%
Crime	4.7%
Family	6.1%
Immigration	5.5%
Personal Injury	5%
Employment	7.2%
Professional Negligence	7.6%
Commercial Litigation	7.2%

55. In order to more accurately determine the causal relationship between the variables identified and whether a barrister was subject to an external complaint, it is important to use an approach that enables controls for all factors identified that could influence whether a barrister is subject to a complaint. In order to achieve this, a binary logistic regression¹⁹ was run including all the characteristics identified as exhibiting a significant difference, alongside gender. The variables entered into the model using a

¹⁹ Regression analysis is a statistical technique that examines the relationship between an outcome variable and one or more explanatory variables. See paragraph 13 for a more detailed description of regression analysis.

backwards stepwise method to remove variables that did not improve model fit.²⁰ This process was undertaken automatically by the statistical software to ensure there was no bias in model selection.

56. The results of this analysis are included in Appendix A. The logistic regression model was statistically significant, and explained 4.9% of the variability observed in the data²¹. Eight variables were identified by the model as having a significant effect on whether a barrister was subject to an external complaint when other significant predictors are controlled for:
- **Male** – male barristers are 1.45 times as likely to be subject to one or more external complaints
 - **Self-Employed Barrister** – each year spent as a self-employed barrister (of the 4 years covered by this analysis) is associated with being 1.25 times as likely to be subject to one or more external complaints
 - **Public Access** - each year spent as a public access registered barrister (of the 4 years covered by this analysis) is associated with being 1.12 times as likely to be subject to one or more external complaints
 - **Family** – barristers who have listed family as one of their practice areas are 1.41 times as likely to be subject to one or more internal complaints
 - **Professional Negligence** – barristers who have listed professional negligence as one of their practice areas are 1.42 times as likely to be subject to one or more internal complaints
 - **Personal Injury** – barristers who have listed personal injury as one of their practice areas are 1.20 times as likely to be subject to one or more internal complaints
 - **Employment** – barristers who have listed employment as one of their practice areas are 1.28 times as likely to be subject to one or more internal complaints
 - **Commercial Litigation** – barristers who have listed commercial litigation as one of their practice areas are 1.24 times as likely to be subject to one or more internal complaints

All other variables identified in the first stage of the analysis were not included in the model as they did not lead to a significant improvement in model validity.

57. The regression model still identifies gender as a significant predictor of a barrister being subject to one or more external complaints, even when controlling for other significant predictors - male barristers are more likely to be subject to an external complaint than female barristers. However, the model accounts for a small proportion of the variability in the observed data (5.2%, as compared to 35.2% and 56.2% for the two regression models for complaint outcomes) and therefore is of limited value in predicting whether barristers are subject to an external complaint. Given the shortcomings of the model, and the issues surrounding available data on practice areas (see paragraph 17), the findings of this analysis should be interpreted with caution.

²⁰ A backwards stepwise method is a technique for model selection. It removes variables one by one until the removal of further variables has a statistically significant effect on the accuracy of the model, and is intended to ensure that only variables that significantly predict the outcome variable are included in the regression model.

²¹ Variability is a measurement of the spread between numbers in a dataset. The greater the proportion of the variability explained, the better a statistical model predicts the observed data.

Conclusions and Implications

58. The analysis undertaken suggests that for complaint outcomes, ethnicity no longer has a significant predictive effect on outcomes once other key aspects of the case (which more accurately predict case outcomes) are taken into account. This suggests that the higher referral rates for complaints involving BME barristers observed in previous reporting and research are a result of characteristics of the complaints made and characteristics of the barrister complained about other than their ethnicity. This supports the view taken in the Inclusive Employers 2011 report that the BSB complaints system was not discriminating against BME barristers.
59. In contrast, the analysis suggests that when other predictive variables are controlled for, gender *does* significantly predict whether cases are referred to disciplinary action, with female barristers less likely to have complaints referred to disciplinary action than male barristers. The BSB may want to consider whether to look into potential responses to this as an issue in order to ensure there is no gender discrimination in the complaints process.
60. The analysis undertaken for complaint likelihood suggests that ethnicity (for internal complaints) and gender (for external complaints²²) continues to have a predictive effect on the likelihood of barristers being subject to one or more complaints even while controlling for the impact of other significant predictive variables. However, given the limited data available to the BSB on the various factors that could increase or decrease the likelihood of barristers being subject to a complaint, and issues identified earlier with the reliability of some of the data we have available (specifically, data on practice areas – see paragraph 17) this should not be seen as confirmation that ethnicity or gender are themselves contributing to increased complaint likelihood.
61. It may be that gathering additional data on practising barristers, or taking measures to better guarantee the quality of existing datasets, may enable a future analysis that is able to determine with more accuracy what factors increase the likelihood of barristers being subject to complaints. Given the data currently held by the organisation, it is unlikely that the factors responsible can be accurately determined without additional evidence gathering or quality assurance of existing data.

²² Note that the BSB has no control over whether external complaints are made against barristers – as such, these findings relating to gender have no implications for policy at the BSB.