



REGULATING BARRISTERS

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

September 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.

External and internal complaints are analysed separately. Clients, members of the public, solicitors 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 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.

The aim of this research was to explore if there is evidence of discrimination in the complaints process 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 in their outcomes on the basis of gender and ethnicity. The analysis is based on descriptive statistics and bivariate analysis (cross tabulations<sup>1</sup>); significance tests (Pearson's Chi square test<sup>2</sup>) 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 (i.e. ethnicity by outcome category for complaints) are shown in this report only where a statistically significant relationship was found. However in most cases, the results of bivariate analysis are not shown, as the differences in proportions that were subject to a certain type of complaint or certain types of outcome were not

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<sup>1</sup> Please see appendix 1 for an explanation of the statistical techniques used. A cross tabulation is when the results of two variables (i.e. 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.

<sup>2</sup> 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.

significantly different. 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, positive and negative, 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.

## **2.1 Barristers subject to complaints between 2007 to 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.

## **2.2 Barristers subject to external complaints 2007 to 2011**

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 subjected to two complaints and negligible proportions of barristers subjected to more than two complaints. This is shown on Figure 1 below.

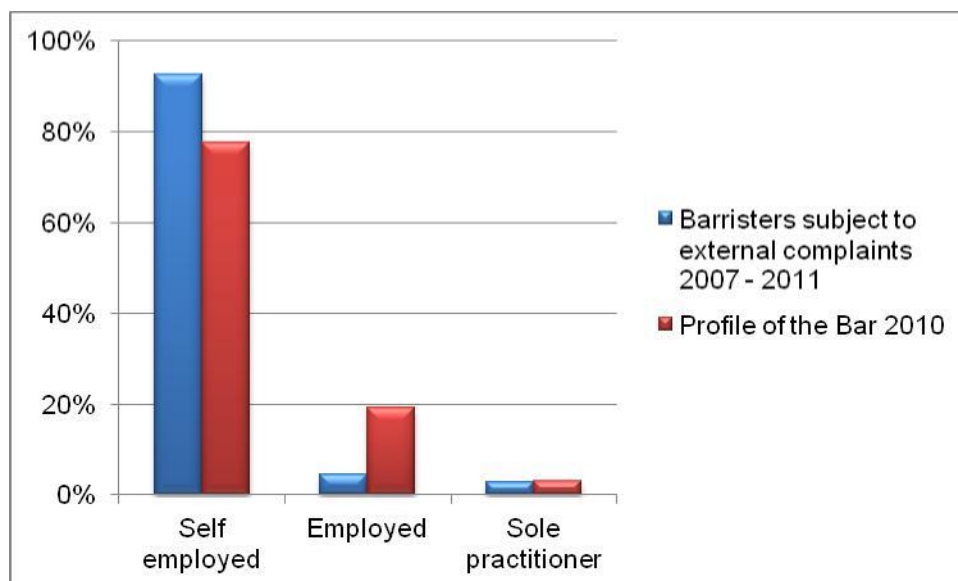
Figure 1

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

## 2.2.1 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 of the Bar, they accounted for 85 (4.6%) 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 2 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).

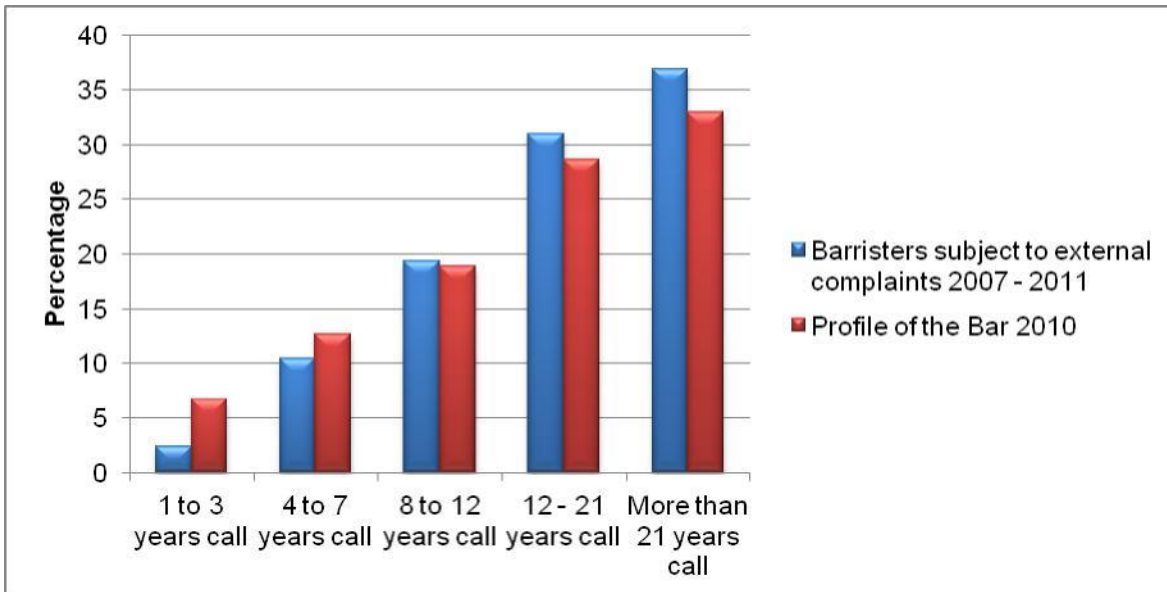
**Figure 2**



### **2.2.2 Year of Call of barristers subject to external complaints**

The profile of barristers subject to external complaints was approximately in proportion with 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 3 below.

**Figure 3**

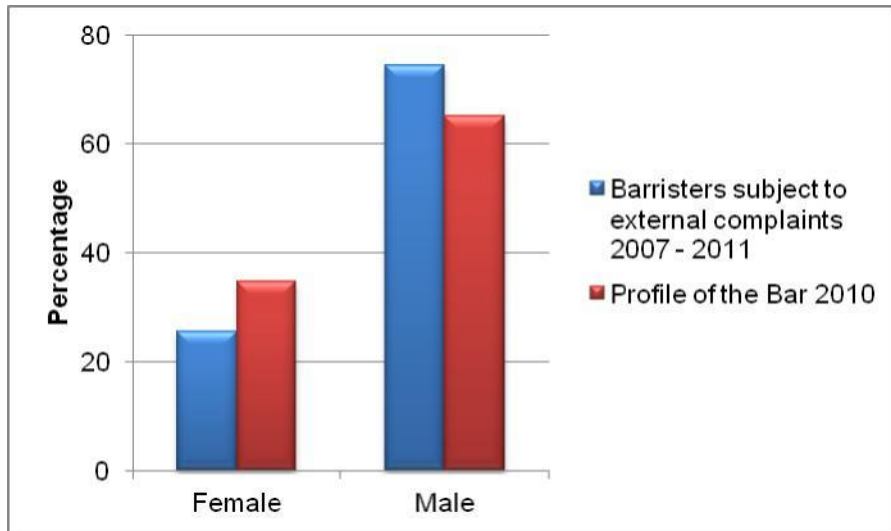


### **2.2.3 Gender of barristers subject to external complaints**

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 in comparison to their proportion of the Bar. Male barristers accounted for 65.2% and female barristers accounted for 34.8% of the practising Bar. This is shown on Figure 4 overleaf.



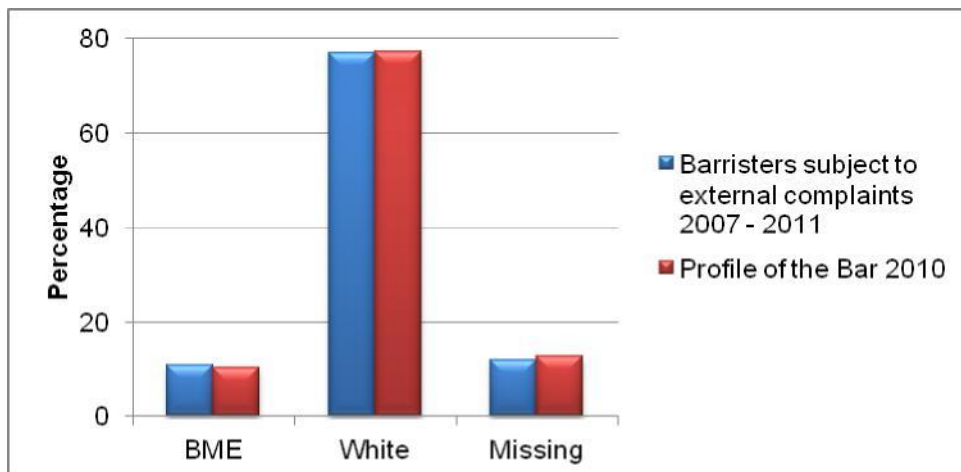
**Figure 4**



### **2.2.4 Ethnicity of barristers subject to external complaints**

BME barristers accounted for 221 (10.9%) of 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 5 below.

**Figure 5**



### 2.2.5 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.

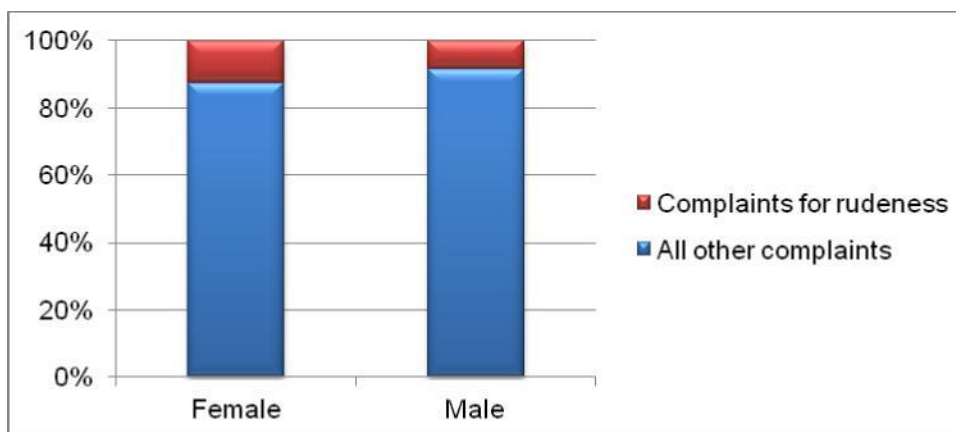
## 2.3 External complaints by gender

In regards to area of practice, female barristers were more likely 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). There were no significant differences in the outcomes of complaints on the basis of gender and the differences found in subject of complaints are discussed below.

### 2.3.1 Subject of complaints

Female barristers were more likely to be subject to complaints for rudeness than male barristers, complaints for rudeness accounted for 65 (12.6%) of opened complaints for female barristers and accounted for 129 (8.6%) of opened complaints for male barristers, this is shown on Figure 6 below.

Figure 6



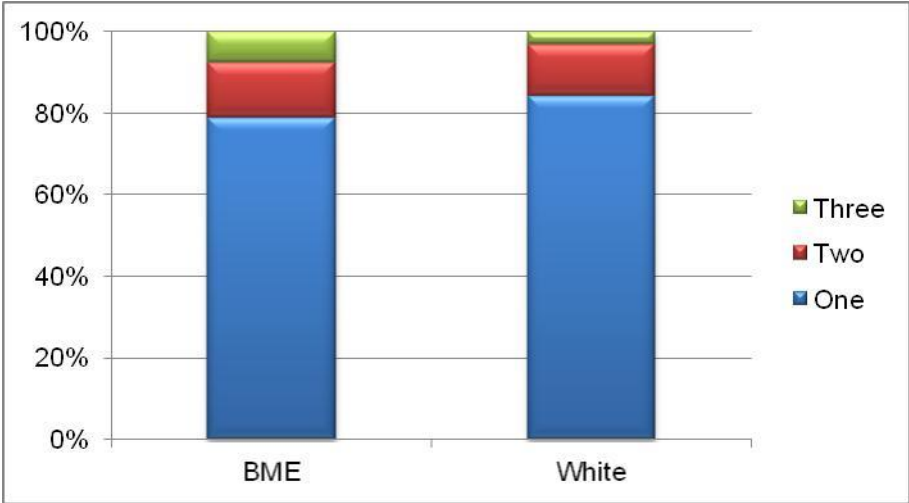
## 2.4 External complaints by ethnicity

Statistical tests were used in order to establish if there were statistically significant differences in the types of complaints barristers were subject to on the basis of ethnicity and in the complaint outcomes. It was found that BME barristers were more likely to be subject to multiple complaints, complaints for discreditable conduct and have complaints referred. White barristers were more likely to have complaints for misleading the court and to have complaints dismissed. In regards to practice area, white barristers were more inclined than BME 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.

### 2.4.1 Number of external complaints by ethnicity

BME barristers were more likely 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 7 below.

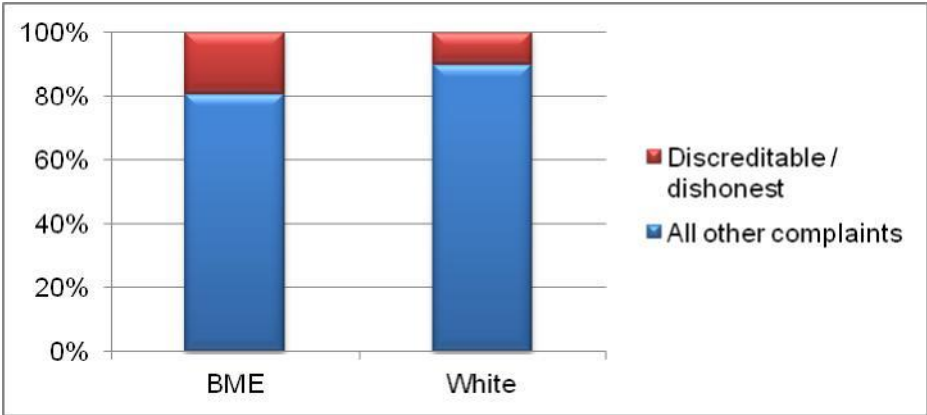
Figure 7



### 2.4.2 Subject of external complaints by ethnicity

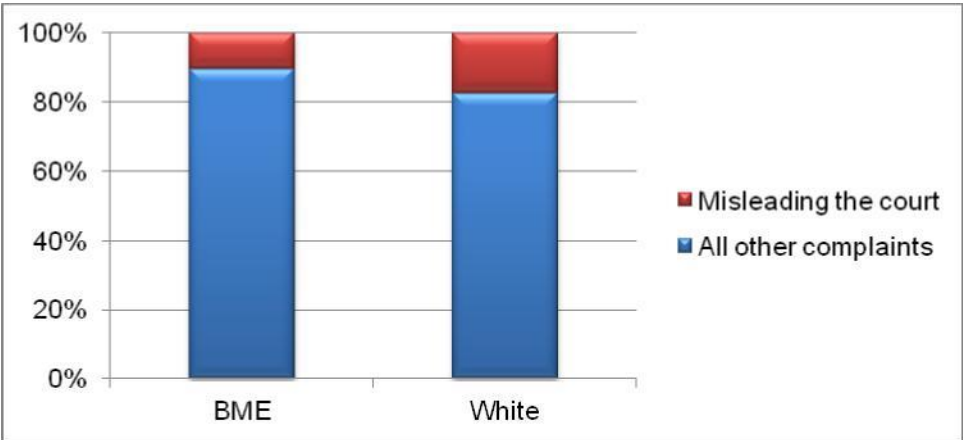
BME barristers were more likely to be subject to complaints for dishonesty or discreditable conduct. There were 43 (19.5%) BME barristers were subject to complaints for dishonesty or discreditable conduct in comparison to 157 (10.1%) white barristers. This is shown on Figure 8 below.

Figure 8



White barristers were more likely 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 9 below.

Figure 9



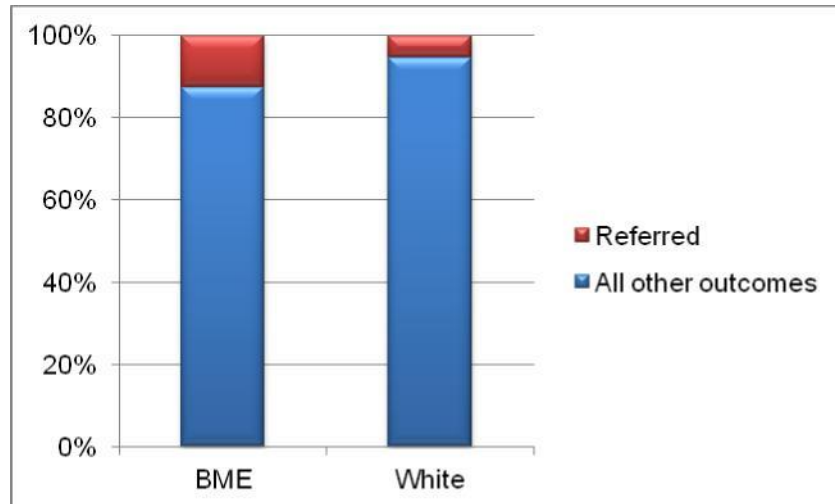
### 2.4.3 Outcome of external complaints by ethnicity

BME barristers were more likely to have their complaint referred 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 complaints 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 to have their complaint referred.

**Figure 10**

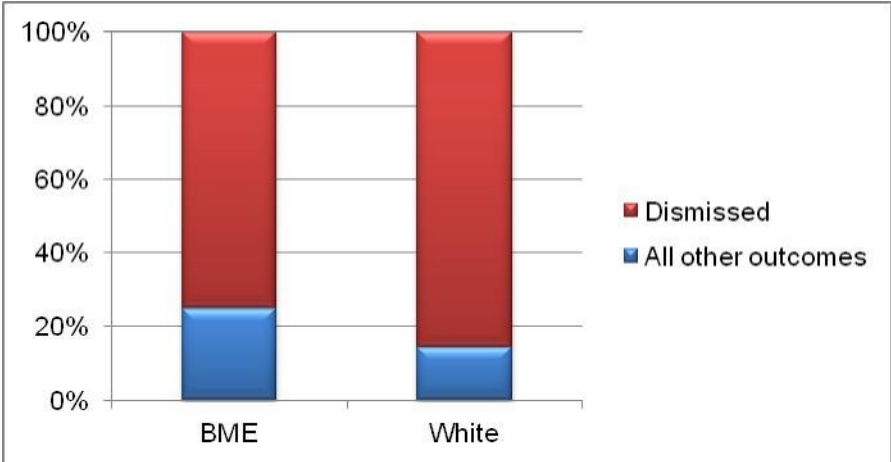


The majority of opened external complaints against both white and BME barristers were dismissed. However a larger proportion of complaints were dismissed among white barristers. There were 1,331 (85.5%) white barristers who had complaints against them dismissed in comparison to 166 (75.1%) BME barristers. This is shown on Figure 11 overleaf. 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 the outcome of external complaint with white barristers being more likely to have their complaint dismissed.

**Figure 11**



## 2.5 Internal complaints 2007 to 2011

The table below shows the numbers of internal complaints opened against barristers 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 Figure 12 below.

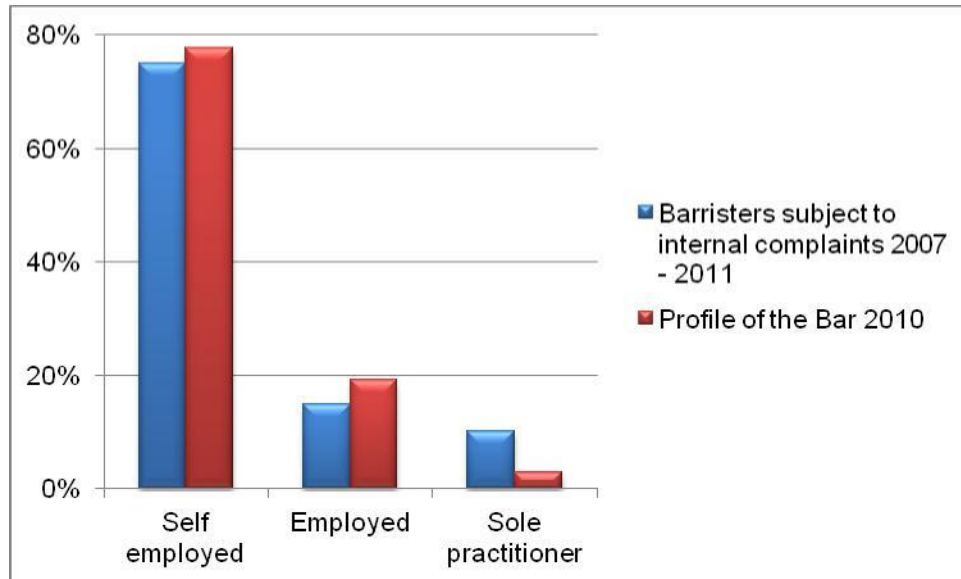
**Figure 12**

	<b>Number of internal complaints</b>	<b>Percentage of internal complaints</b>
One	517	74.7
Two	94	13.6
Three	41	5.9
Four	17	2.5
Five	14	2.0
Six	5	0.7
Seven	1	0.1
Eight	2	0.3
Nine	1	0.1
Total	692	100

### **2.5.1 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 13 below.

**Figure 13**

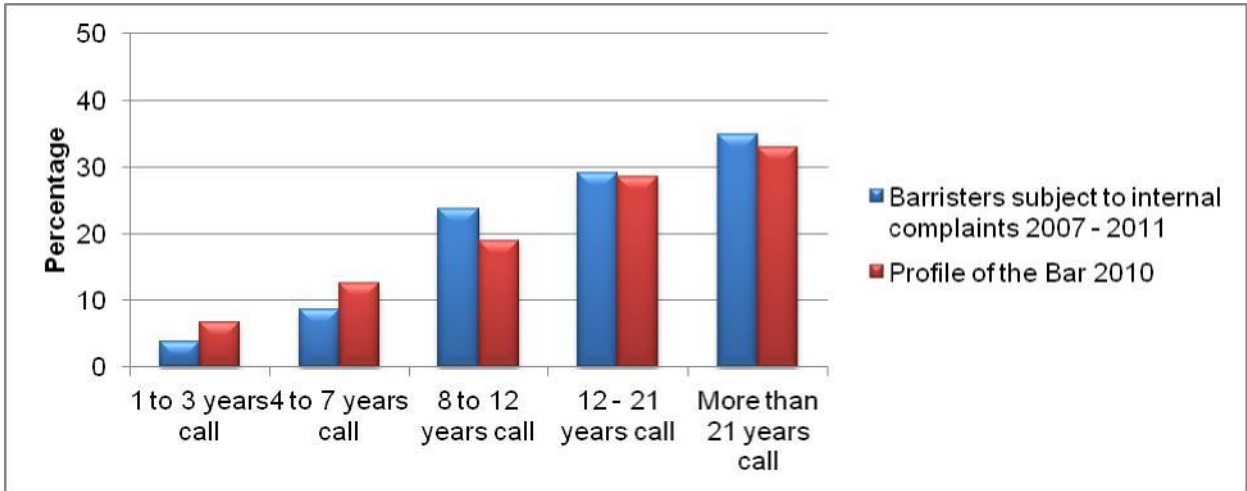


### **2.5.2 Year of Call of barristers subject to internal complaints**

The profile of barristers subject to internal complaints was similar to the profile of the Bar in regards to year of Call. Those who were one to three and four to seven years Call accounted for fewer barristers subject to internal complaints in comparison to their proportion in the Bar. While barristers eight to 12 years Call were subject to a larger proportion of complaints in comparison to their profile in the Bar. There was 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 14 overleaf



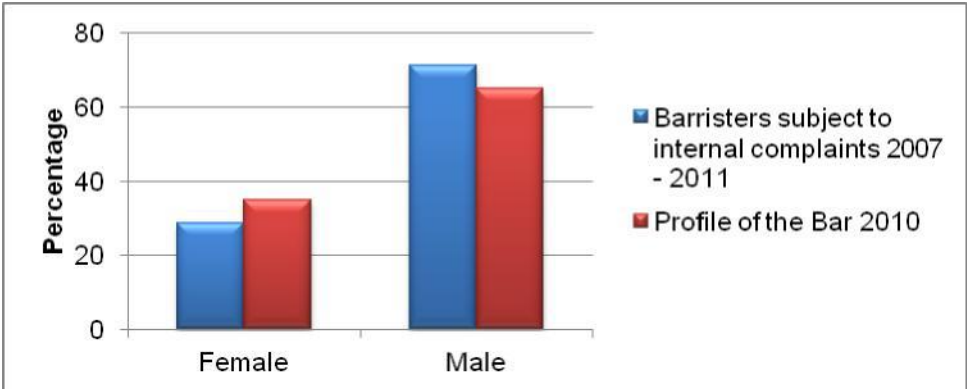
Figure 14



### 2.5.3 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 15 below. 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.

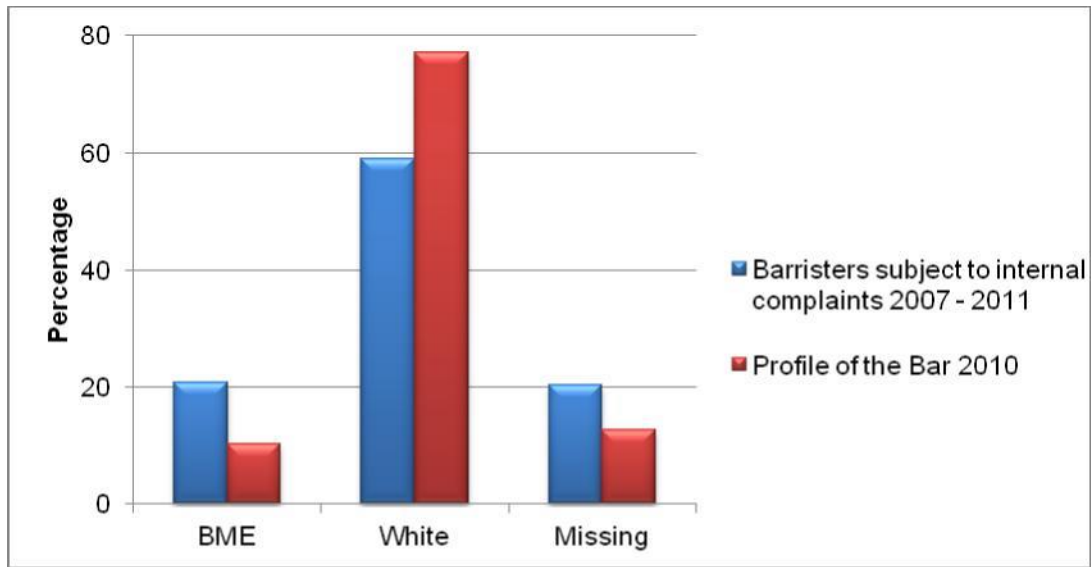
Figure 15



### 2.5.4 Ethnicity of barristers subject to internal complaints

BME barristers were overrepresented amongst 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 16 below.

Figure 16



### 2.5.5 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 amongst 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.

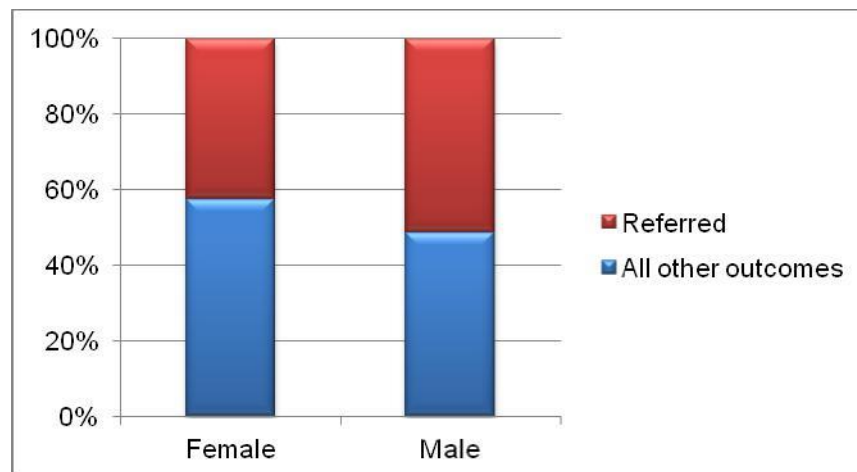
## 2.6 Internal complaints by gender

Female barristers accounted for 198 (28.6%) of all those subject to internal complaints and male barristers accounted for 494 (71.4%). 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.

### 2.6.1 Outcomes of internal complaints by gender

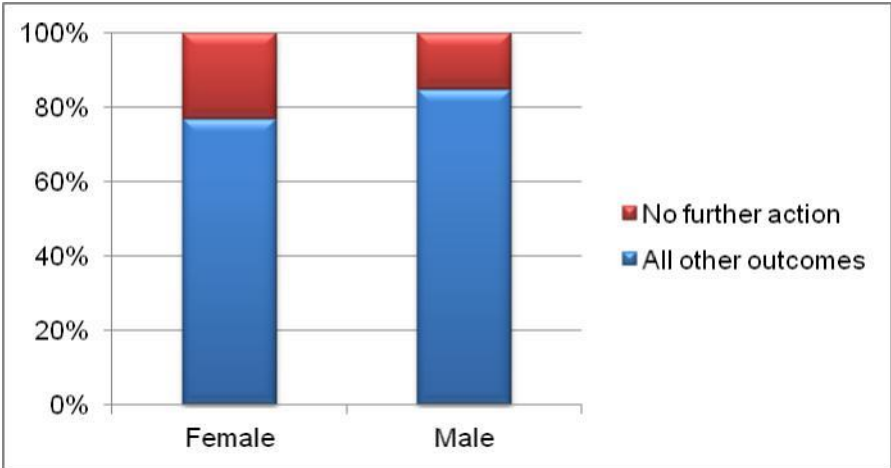
A larger proportion of male barristers who were subject to internal complaints were referred for disciplinary action than female barristers. There were 253 (51.2%) male barristers who had their complaint referred in comparison to 84 (42.4%) female barristers. This is shown on Figure 17 below.

Figure 17



Female barristers were more likely to have no further action as an outcome of an opened complaint. There were 46 (23.2%) female barristers whose complaint outcome was no further action in comparison to 75 (15.2%) male barristers whose complaint outcome was no further action. This is shown on Figure 18 overleaf.

**Figure 18**



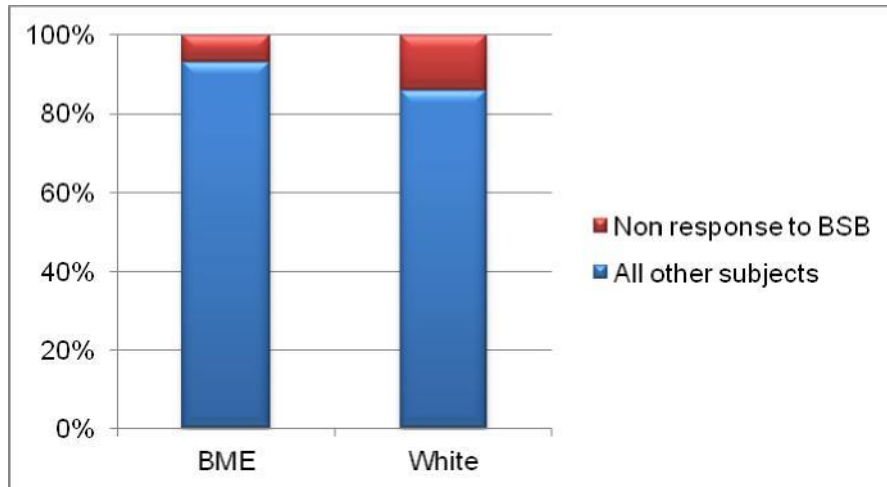
## **2.7 Internal complaints by ethnicity**

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%.

### **2.7.1 Subject of internal complaints 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 overleaf.

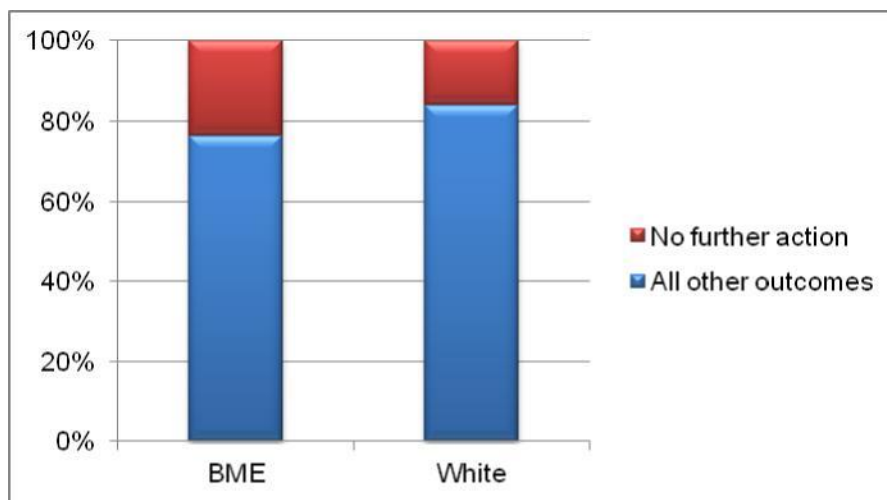
**Figure 19**



### 2.7.2 Outcome of internal complaints by ethnicity

There were a larger proportion of BME barristers whose complaint outcome was no further action for internal complaints opened. 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. This is shown on Figure 20 below.

**Figure 20**



### **3. Complaints data 2011**

In 2011 there was a total of 528 barristers subject to complaints, 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.

#### **3.1 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.

#### **3.2 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 (IRS/IES, 2011). There were no other significant differences found between subjects or outcomes of complaints on the basis of gender.

#### **3.3 External complaints 2011 by ethnicity**

BME barristers were subject to a slightly larger proportion of external complaints in 2011 than their proportion in the Bar. 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.

### **3.3.1 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.

### **3.4 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.

#### **3.4.1 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.

#### **3.4.2 Internal complaints 2011 by ethnicity**

BME barristers were subject to a disproportionately larger amount of internal complaints. 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.

## 4. 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 to be subject to external complaints for rudeness
- BME barristers were more likely to be subject to more complaints for discreditable conduct
- BME barristers were more likely to be subject to multiple complaints
- White barristers were more likely to be subject to complaints for misleading the court
- BME barristers were more likely to have their external complaints referred
- White barristers were more likely to have their external complaint dismissed

### **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 to have their internal complaints referred
- Female barristers were more likely to have no further action as an outcome of internal complaints



- White barristers were more likely to be subject to complaints for not responding to BSB correspondence
- BME barristers were more likely to have no further action as an outcome of internal complaints

### **In 2011**

- Male barristers were more likely to be subject to more external and internal complaints in comparison to their proportion at the Bar
- BME barristers were more likely 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 appear to be discriminated against in the complaints process in regards to the outcomes of external complaints; BME barristers are more likely to have a complaint referred and white barristers are more likely to have a complaint dismissed even when controlling for differences in the subjects of the complaints.
- BME barristers appear to be discriminated against in the complaints process in regards to being subject to a substantially larger proportion of internal complaints than their respective proportions of the Bar. There is no evidence in this data 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

In order to ensure that the BSB and Professional Conduct Department are not having an adverse impact on barristers on the basis of protected characteristics, it is advisable that an external equality expert is commissioned to investigate their 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 ( $\chi^2$ ) 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.