

Research Summary

Regulatory Action Diversity Analysis



Background

Amongst other duties, the Bar Standards Board (BSB) is responsible for dealing with reports about barristers – which until 2019 were referred to as “complaints” - and carrying out investigations where there is evidence of a potential breach of the professional obligations set out in the BSB Handbook.

The most recent research published by the BSB looking into complaint outcomes and likelihood of being subject to a complaint was published in 2021. This research analysed complaints processed from 2015-2019 with a focus on the protected characteristics of gender and ethnicity. The research found (once other factors, such as the type of complaint, were controlled for) that:

- Ethnicity did not significantly predict whether complaints were closed without investigation or referred to disciplinary action.
- Gender did not significantly predict whether complaints were closed without investigation, but did significantly predict whether they were referred to disciplinary action - male barristers were more likely to have complaints referred to disciplinary action than female barristers.
- Ethnicity significantly predicted barristers being subject to an internal complaint (i.e. a complaint initiated by the BSB) - white barristers were less likely than minority ethnic background barristers to be subject to such complaints.
- Gender also significantly predicted barristers being subject to an internal complaint- male barristers were more likely than female barristers to be subject to such complaints.

This research consists of a repeat of the analysis published in 2021. This analysis aimed to use the data available for the years following the introduction of the new regulatory decision-making process in October 2019 through to March 2024. The purpose of this research was to see if the patterns and conclusions observed in the earlier research were still valid.

Research Approach

This research involves the analysis of report outcomes and the likelihood of practising barristers being subject to a report during the October 2019-March 2024 period. The aims of the research were primarily to further investigate the relationship between barrister characteristics (particularly gender and ethnicity) and the outcomes of reports about barristers, and the likelihood of practising barristers being subject to a report during this period. The analysis takes an approach that enables other factors, such as the type of report, to be controlled for. As with the 2016 and 2021 research, this involved developing logistic regression models to enable the analysis to control for multiple factors simultaneously. Models were developed to analyse the likelihood of reports being referred to the Investigations and Enforcement Team or Supervision Team following assessment by the Contact and Assessment Team (CAT), and the likelihood of reports investigated by the Legal and Enforcement Team being

Key Findings

Contact and Assessment Team - For reports processed by CAT, both gender and ethnicity contained significant predictors of progression to the BSB Enforcement or Supervision teams, with reports regarding male barristers around 1.3 times more likely to be referred compared to those regarding female barristers, and reports regarding minority ethnic background barristers around 2.3 times more likely to be referred compared to those regarding White barristers. It is difficult to compare results for CAT to previous research as the processing of reports was undertaken under a different system. However, in the previous research, gender and ethnicity were not significant predictors of whether a report was closed without investigation, which is the closest analogue for this purpose.

Investigations and Enforcement team - For reports referred to the Investigations and Enforcement team, results suggest that reports about male barristers remain more likely to be referred to disciplinary action (male barristers were around 1.8 times more likely to have a report referred to disciplinary action compared to female barristers), and that ethnicity was not a significant predictor of whether reports were referred to the same stage. This mirrors the findings of the previous research, which found that male barristers were more likely to have complaints referred to disciplinary action than female barristers.

Disciplinary Action - For reports referred to disciplinary action, results suggest that gender and ethnicity were not a significant predictor of whether reports were referred to disciplinary tribunal, or for whether reports were upheld at the tribunal stage. Ethnicity was not a significant predictor of sanctions received following reports being upheld at tribunal. However, gender was a significant predictor of sanctions received, with male barristers more likely to be suspended and less likely to be fined than female barristers.

Report Likelihood - Male barristers appear to be more likely to be subject to a report compared to female barristers (around 1.4 times more likely). When aggregating ethnicity, barristers from minority ethnic backgrounds appear to be more likely to be subject to a report compared to White barristers. When further disaggregating by ethnicity, the major differences appear to be for those from Asian/Asian British and Black/Black British backgrounds compared to White barristers, with those from such backgrounds more likely to be subject to a report.

Change Under New System - Results from this analysis suggest that the introduction of the newer system did not significantly relate to changes in the outcome of reports with regard to gender or ethnicity, with one exception for gender (upon introduction of the newer system, female barristers were slightly more likely to have a report referred to disciplinary action than before the introduction of the newer system, although this remained lower than those seen for male barristers in both systems/time periods).

referred for disciplinary action. Logistic regression models were also developed of the likelihood that practising barristers were subject to a report between October 2019 – March 2024. The previous research differentiated between “internal complaints” (complaints raised by the BSB based on information received from a wide variety of sources) and “external complaints” (complaints raised by external sources who wished to make a formal complaint about a barrister). However, under the new regulatory decision-making system, this distinction no longer exists, so this research only looks at being subject to a report overall rather than looking at ‘internal’ and ‘external’ reports separately. Unlike the two previous reports, this research also looked at the outcome of reports that were referred to disciplinary action.

How will the BSB use these findings?

- The BSB will continue to remain committed to anti-racist practices across all our departments in the organisation. Our employees partake in mandatory anti-racism training as well as mandatory EDI learning on topics such as Anti-Bullying Harassment and Discrimination and Inclusive Leadership. The BSB will reflect on whether any further training is required specifically for CAT, Supervision and I&E to identify bias and support decision-making.
- The BSB will review our existing enforcement technology on a regular basis to ensure our system keeps up with the latest developments and we will also reflect on our use of digital tools to identify bias and support decision-making.
- The BSB will continue to engage in regular forums with other legal regulators in order to share best practice and learnings in this area. The SRA recently released a report on the overrepresentation of Black, Asian and Minority Ethnic solicitors in its enforcement processes, and the BSB shared information on our working practices with the SRA during the research phase.

The main report can be found at <https://www.barstandardsboard.org.uk/media-centre/research-and-statistics/research-reports/>