

Research Summary

Complaints Diversity Analysis - January 2015 to October 2019



Research Background

Amongst other duties, the Bar Standards Board (BSB) is responsible for dealing with reports about barristers - which until 2019 were known 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 2016. This research analysed complaints processed from 2012-2014 with a focus on the protected characteristics of gender and ethnicity. For complaint outcomes, the research looked at the likelihood of complaints being closed without investigation or referred to disciplinary action. For complaint likelihood, the research looked at likelihood of being subject to 'internal complaints' (complaints raised by the BSB based on information received from a wide variety of sources, including self-reports of potential professional misconduct; referrals from other departments of the BSB; referrals from other regulators; judicial criticisms; and public/media coverage of barrister's behaviour) and likelihood of being subject to 'external complaints' (complaints raised by members of the public, legal professionals or other external sources, who wished to make a formal complaint about a barrister). 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 significantly predict whether complaints were referred to disciplinary action - male barristers were more likely to have complaints referred to disciplinary action than female barristers.
- Ethnicity significantly predicted being subject to an internal complaint - white barristers were less likely than minority ethnic background barristers to be subject to such complaints.
- Gender significantly predicted being subject to an external complaint - male barristers were more likely than female barristers to be subject to such complaints.

This new research consists of a repeat of the analysis published in 2015, using the data available for the years from 2015 until the introduction of the new regulatory decision making process in October 2019. The purpose of this research was to see if the patterns and conclusions observed in the earlier research were still valid. In particular, this research aimed to identify if the disparities in outcomes by gender were still present.

Male barristers were more likely to have cases against them referred for disciplinary action than female barristers. Male barristers subject to a complaint were around 2.1 times more likely to have their case referred for disciplinary action compared to female barristers subject to a complaint. Cases against male barristers were also more likely to be referred for disciplinary action in the 2016 BSB report on complaints.

Male barristers were also more likely than female barristers to be subject to an internal complaint (a case brought by the BSB): around 1.3 times more likely. In the 2016 report, male barristers were not found to be more likely than female barristers to be subject to an internal complaint.

There was not a statistically significant relationship between gender and whether cases were closed without investigation, or whether a barrister was subject to an external complaint. In the 2016 report, male barristers were found to be significantly more likely to be subject to an external complaint. However, gender was close to statistical significance when looking at whether cases were closed without investigation, suggesting that there may be some association between being male and a lesser likelihood of a complaint being closed without investigation.

Compared to White barristers, barristers from minority ethnic backgrounds were around 1.7 times more likely to be subject to an internal complaint from Jan 2015-Oct 2019 compared to white barristers. Barristers from minority ethnic backgrounds were also found to be more likely to be subject to internal complaints in the 2016 report.

There was not a statistically significant relationship between ethnicity and whether cases were closed without investigation or referred to disciplinary action, or whether a barrister was subject to an external complaint. The same findings were found in the 2016 research. However, ethnicity was close to statistical significance when looking at whether cases were referred to disciplinary action, suggesting there may be some association between being from a minority ethnic background and a greater likelihood of a complaint being referred for disciplinary action.

Analysis of year on year trends of complaint outcomes and ethnicity suggests that while there were a greater proportion of complaints referred for disciplinary action for barristers from minority ethnic backgrounds in comparison to White barristers prior to 2017, from 2017 onwards there is no clear trend. This suggests that the association between ethnicity and the likelihood of an internal complaint being referred for disciplinary action may have become weaker from 2017 onwards.

Key Findings

This research involves the analysis of complaint outcomes and the likelihood of practising barristers being subject to a complaint during the Jan 2015-Oct 2019 period. The aims of the research were primarily to further investigate the relationship between barrister characteristics (particularly gender and ethnicity) and the outcomes of complaints against barristers, and the likelihood of practising barristers being subject to a complaint during this period. The analysis takes an approach that enables other factors, such as the type of complaint, to be controlled for. As with the 2016 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 complaints being closed without investigation, and complaints being referred for disciplinary action. Logistic regression models were also developed of the likelihood that practising barristers would be subject to a complaint between Jan 2015 and Oct 2019. These related to the likelihood of being subject to what were known as 'internal complaints' and 'external complaints'. 'Internal complaints' were complaints raised by the BSB based on information received from a wide variety of sources, including self-reports of potential professional misconduct; referrals from other departments of the BSB; referrals from other regulators; judicial criticisms; and public/media coverage of barrister's behaviour and 'external complaints' were complaints raised by members of the public, legal professionals or other external sources, who wished to make a formal complaint about a barrister.

How will the BSB use these findings?

This analysis will be used by the BSB to indicate the trends in relation to the handling of complaints under the old system which operated until October 2019. This will then be used as a baseline for comparison to the new enforcement system which was introduced in October 2019.

An equivalent analysis will be undertaken once the new system has been in operation for two years to enable sufficient data to be collected. This future analysis will enable us to determine if the patterns observed in the operation of the old system are still apparent. The BSB will continue to monitor data emerging from our enforcement system and continue to keep our decision making under review to ensure that it is of a high quality and free from bias.