Solicitors Regulation Authority

Upholding Professional Standards 2018/19

Contents

About us

The Solicitors Regulation Authority (SRA) is the regulator of solicitors and law firms in England and Wales.

We work to protect members of the public and support the rule of law and the administration of justice. We do this by overseeing all education and training requirements necessary to practise as a solicitor, licensing individuals and firms to practise, setting the standards of the profession and regulating and enforcing compliance against these standards.

We are the largest regulator of legal services in England and Wales, covering around 80% of the regulated market. We oversee some 199,000 solicitors and 10,300 law firms.

199,000
solicitors

10,300
law firms

Foreword

Anna Bradley
Chair of the SRA Board

Welcome to the Upholding Professional Standards review for 2018/19.

We know that the vast majority of the 199,000 solicitors and 10,300 law firms we regulate do a good job and provide high-quality legal services. But, when people or firms fall short of the standards that we set, we can take action to enforce our standards and make sure that the public can continue to place confidence in the profession. This report looks at how and when we do that.

It also looks at the key themes in our work. You will see that, during 2018/19, we continued to receive reports, 64 in total, about sexual harassment in the workplace. This year, new themes have emerged in relation to ground rents and leasehold issues, as well as solicitor health and wellbeing.

This year's review covers a transition period during which we brought in a new Enforcement Strategy and implemented a new assessment and early resolution process. The new process focuses on upfront engagement with all concerned, delivering earlier outcomes and improving customer service. I anticipate this will make quite a difference to the shape of investigations work in future reports.

In this report we have, for the first time since 2014, reported on the diversity characteristics of the people involved in our enforcement processes. There are various practical reasons why we have been unable to report on this aspect of enforcement work in recent years. While we tackled these, we have taken forward important steps to address the recommendations set out in an earlier independent review of diversity in enforcement.

The new data shows that there continues to be an overrepresentation of men and people from an ethnic minority background in the set of solicitors about whom concerns are raised. The key question for us now is, what can we do to change this for the future? To help answer this question, we have committed to undertaking research in 2021 to understand the structural factors that bring such overrepresentation to our front door, and to identify what we can do about this and where we can work with others to make a difference. These are difficult issues and it is certainly time to see what we can all do to shift the dial.

I hope this year's report will offer some insight into what is a critical, complex and often challenging area of our work.

Our approach to enforcement

Our enforcement work

Our powers

Our own powers to impose sanctions are limited. For example, our fining powers for individual solicitors are limited to £2,000, and we are not able to strike off a solicitor. If we think this sort of action is necessary, we must take the case to the Solicitors Disciplinary Tribunal (SDT). We can, in some circumstances, place restrictions on a solicitor's practice or on a non-solicitor who works in a law firm.

We have more robust powers in relation to certain types of legal businesses. We can impose a fine of up to £250m on an alternative business structure (ABS), also known as a licensed body, and up to £50m on managers and employees of an ABS. These greater powers reflect concerns about these types of businesses when they were first introduced. However, there is no evidence to show that they present any greater risk than traditional law firms.

A table of sanctions we and the SDT impose can be found at annex 1 on page 38.

Our Enforcement Strategy

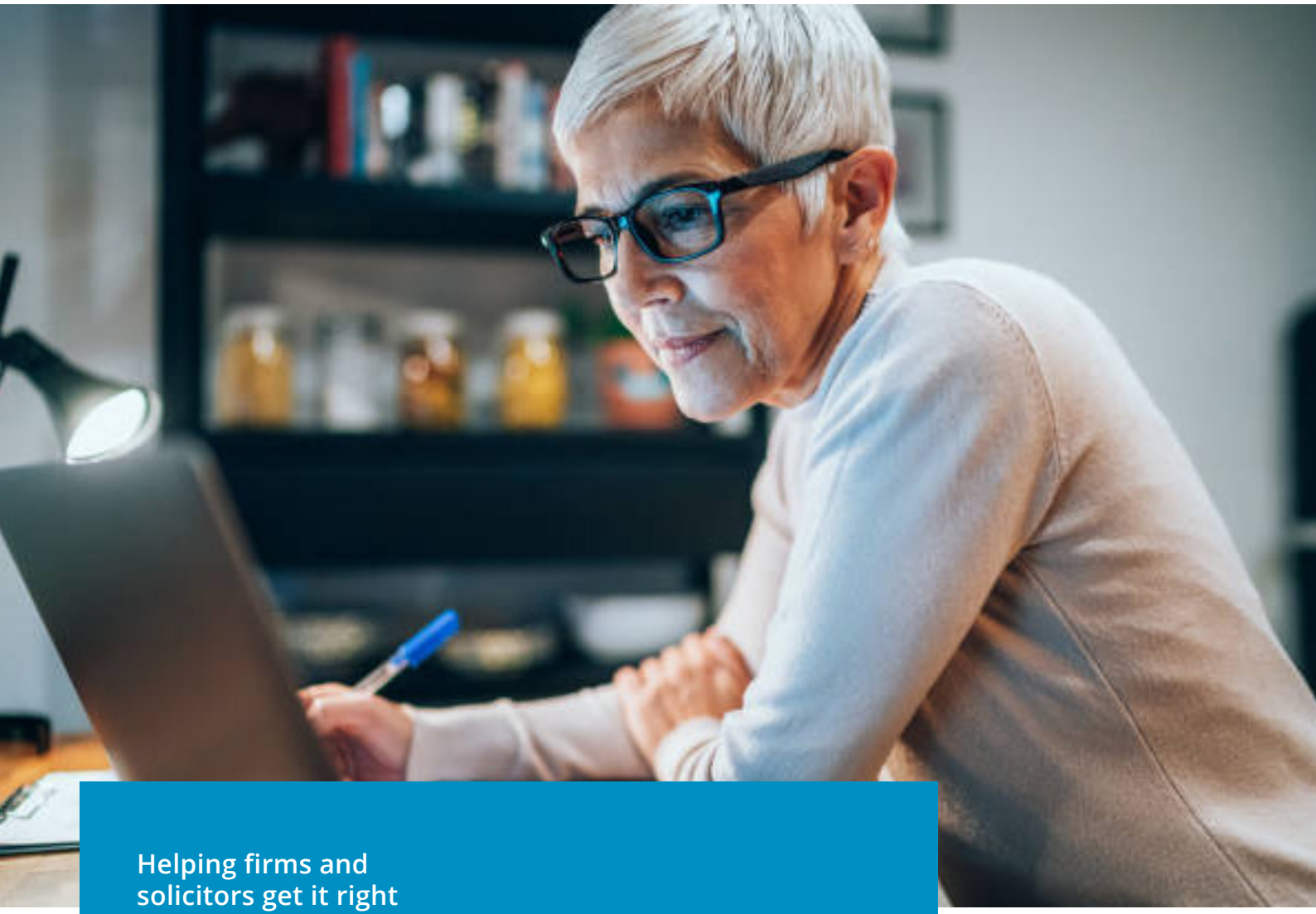
Our Enforcement Strategy sets out how we will use our enforcement powers when a business or person we regulate has not met the standards we expect. It provides clarity on how we decide whether we should act in given circumstances, and what we take into account when assessing the seriousness of misconduct and the action to take.

We revised and published our new Enforcement Strategy in February 2019, after more than three years of engagement with members of the public and the profession

We revised and published our new Enforcement Strategy in February 2019, after more than three years of engagement with members of the public and the profession. This report, which covers our work from November 2018 to October 2019, therefore covers a transition period as we brought in the new Enforcement Strategy.

The role of our enforcement work is to:

- Maintain and uphold standards of competence and ethical behaviour.
- Protect clients and the public – we control or limit the risk of harm by making sure individuals and firms are not able to offend again or are deterred from doing so in the future.
- Send a signal to the people we regulate more widely with the aim of preventing similar behaviour by others.
- Uphold public confidence in the provision of legal services.



Helping firms and solicitors get it right

To help firms and solicitors know when they could be most at risk of falling short of the standards we expect, or not complying with our rules, we provide a range of services and publications, such as:

- our Professional Ethics helpline and webchat service, on hand to answer questions about our rules and regulations
- guidance to help firms understand how our rules and regulations work
- our annual Risk Outlook publication, which highlights the biggest risks in the sector and how firms and solicitors can tackle them
- thematic reviews of key areas within the legal sector, highlighting risks and raising awareness about what good and bad practice looks like.

Key themes

We regulate approximately 150,000 practising solicitors and we received around 10,500 reports in 2018/19.

The number of reports that result in some form of sanction is very small, reflecting that the overwhelming majority of solicitors and law firms do a good job and earn the trust we all place in them.

Some of the matters reported to us relate to concerns that are raised regularly, for example, issues of confidentiality, misleading the court, or taking advantage of a third party. Common areas of the law are also reflected – conveyancing and probate, for example.

Each case is different, however, and many are complex, with a mixture of potential breaches of our regulations. And, although there is variation, we monitor reports to identify any particular issues that are emerging year on year.

The work of solicitors often becomes involved in areas of wider public policy. For example, in recent years, cases concerning sexual harassment in the workplace, non-disclosure agreements, money laundering, and leasehold issues have all been topical. This can lead to a rise in the numbers of related concerns that are brought to our attention and, if appropriate, we take steps to remind the profession of its responsibilities.

Such topical issues are often high profile and attract public – and therefore press and parliamentary – interest. Our work to maintain professional standards can play an important part in addressing these concerns, alongside other activity, perhaps by law enforcement agencies or through legislative reform.

We regulate approximately 150,000 practising solicitors and we received around 10,500 reports in 2018/19

Sexual harassment

One of the key themes for 2018/19 continued to be concerns about sexual harassment in the workplace. We have a responsibility to work, with others, to respond to the concerns raised by the #MeToo movement and the 2018 publication of the Women and Equality Select Committee's report on sexual harassment in the workplace.

During 2018/19, we continued to receive reports, 64 in total, concerning harassment and inappropriate sexual behaviour in work-related environments. Allegations of sexual harassment can include sending inappropriate messages, making inappropriate comments, non-consensual physical contact and serious sexual assault.

These are difficult and sensitive matters, and we have a dedicated team to investigate the concerns raised. We want to do everything we can to provide a safe and supportive environment for the people involved in our proceedings.

Over the past two years, we have updated and published warning notices and provided guidance on reporting obligations to guide firms on how to improve their workplace cultures and practices.

In 2019 and 2020, we went on to bring two cases to the SDT where there were convictions for sexual assault. The solicitors involved were struck off. In addition, there have been widely publicised cases relating to inappropriate conduct in the workplace where there was not a conviction. In such a case in 2020, the SDT found that a solicitor had behaved inappropriately towards a more junior solicitor and fined them £55,000.

Non-disclosure agreements

Using non-disclosure agreements (NDAs) to suppress disclosure of wrongdoing is, itself, a high-profile issue, given its relation to topical social narratives such as #MeToo. Other cases have the potential to be high profile because of the subject matter of the dispute or the parties involved, both of which can be concealed through using an NDA. As we reported in Upholding Professional Standards 2017/18, we issued a warning notice in March 2018 to remind the profession of its obligations when drafting NDAs. We updated that warning notice in November 2020. In 2018/19, we had 14 open investigations concerning their inappropriate use. While some related to sexual misconduct cases, others related to other matters, such as litigation and negligence.

There are legitimate uses for NDAs and such agreements are not illegal or unethical in themselves. What we are concerned with is those NDAs that seek to restrict disclosure of misconduct to a regulator, or reporting a criminal offence to the police, even though they are unenforceable. We want to make sure that those we regulate do not take unfair advantage of their opposing party when drawing up an NDA. Solicitors who draw up such agreements may well be failing to act with integrity and uphold the rule of law and could be found to have failed to uphold public trust and confidence in the legal profession.

Dubious investment schemes

In 2018/19, we investigated 18 cases about solicitor involvement in dubious or risky investment schemes. At a time of low interest rates, and, currently in the light of the Covid-19 pandemic and its effect on the economy, many people may find investment schemes offering high interest rates attractive. In some cases, they lose substantial sums of money.

In 2018/19, we investigated 18 cases about solicitor involvement in dubious investment schemes

In many instances, the involvement of a law firm in a dubious investment scheme does not form part of the usual business of a firm or solicitor. This can be a key reason why our compensation fund (and often the firm's insurance) cannot help with restoring the money people have lost.

But, we can and do investigate the solicitors involved and we take action where we find misconduct. In the last five years, we have taken 48 solicitors and two firms to the SDT for involvement in these types of investment schemes. This resulted in 16 solicitors being struck off, eight being suspended and £870,000 in fines. In August 2020, we updated our warning notice and published a thematic review on solicitor involvement in dubious investment schemes, reminding solicitors of the warning signs and of the impact on the public and the reputation of the profession.

Ground rent and leasehold issues

There is growing concern about leasehold-related issues. We are seeing reports relating to escalating ground rent clauses in new-build leasehold properties and the role of property and conveyancing solicitors that handle their sale or purchase.

Depending on their wording, such clauses may result in an initial ground rent multiplying exponentially over the subsequent years of the leasehold. This can be costly and can blight the future value and saleability of leaseholds. To support consumer confidence in the leasehold market, it is important that we take action when we see improper conduct by solicitor firms involved in leasehold transactions.

In 2019/20, we investigated 16 cases concerning a firm or solicitor failing to properly advise on the existence or impact of ground rent clauses. We anticipate that complaints will increase further as people either start to hear about our decisions in these early cases, or start trying to sell their properties. We will, of course, take enforcement action when it is necessary.

Money laundering

The legal sector is attractive to criminals because it can give the appearance of legitimacy to the holding or transfer of money gained from criminal activity. Law firms and solicitors often hold large sums of money in their client accounts and can transfer money through property or other transactions.

We issued a warning notice in May 2019 concerning firms' anti-money laundering risk assessments. Risk assessments play a key role in tackling money laundering and firms that fall within the scope of money laundering regulations must have one in place.

We received a sustained number of reports, 197, concerning money laundering during 2018/19. Enforcement action continued to play a vital role in tackling money laundering. We prosecuted 14 cases relating to money laundering at the SDT, resulting in six solicitors being struck off, among other sanctions. More information is available in our Anti-money Laundering Review 2018/19.

Health of respondents and solicitor wellbeing

We know that working in law can be challenging and stressful. When this stress has a negative impact on the work of a solicitor or a firm, it can affect competence and lead to mistakes and, potentially, serious breaches of our standards, such as dishonesty. This can result in regulatory engagement and action, which may be avoided if solicitors recognise the warning signs early on and seek the correct support and help. To support solicitors who are unwell, we have published a range of resources and work with organisations, such as LawCare, which can assist.

We have seen an increase in cases where respondents have said the issues that have brought them into our processes were related to pressure of work. We have also seen a rise in medical evidence in proceedings before the SDT relating to solicitors' fitness to participate in our proceedings.

We are also mindful that the investigations process can be stressful and can exacerbate or trigger health issues. If we see this is the case, and depending on the health issue and evidence available, we will consider carefully any reasonable adjustments or case management directions that may assist, and whether it might be more appropriate to resolve matters through practising conditions, or an agreed outcome, rather than a hearing at the SDT.

Our recently published guidance can help people to understand the approach we take to health issues that are raised by those we are investigating and what we look for when it comes to medical evidence.

We are mindful that the investigations process can be stressful and exacerbate or trigger health issues

Risk alert

We scan the legal environment to identify potential risks. We produce a range of material to raise awareness and assist the profession to manage problems, helping to protect the users of legal services.

In 2018/19, our Risk Outlook publication again highlighted the themes and risks mentioned above, such as money laundering and solicitor involvement in dubious investment schemes. It also discussed keeping client money safe and poor standards of service, as many people do not know what to expect from their solicitor and what to do if something goes wrong.

Cybercrime continues to be a risk in the legal sector, as it is in other industries. A recent review into 40 cyberattacks on law firms found that £4m of people's money had, as a result, been lost. We continue to encourage law firms to report cyberattacks and near misses to us, so that we can warn the wider profession about criminals' latest tactics through our alerts and ebulletins. We have also issued additional resources for law firms on cybersecurity in light of the changed ways of working brought about by the Covid-19 pandemic. And, our Risk Outlook 2020 has the latest information on cybercrime and other risks in the legal sector.

Our website scam alerts continue to be well used, with more than 150,000 views in 2018/19. They are designed to alert firms and members of the public about businesses that are misusing law firm details and fake law firms that are attempting to defraud people.

Reporting concerns

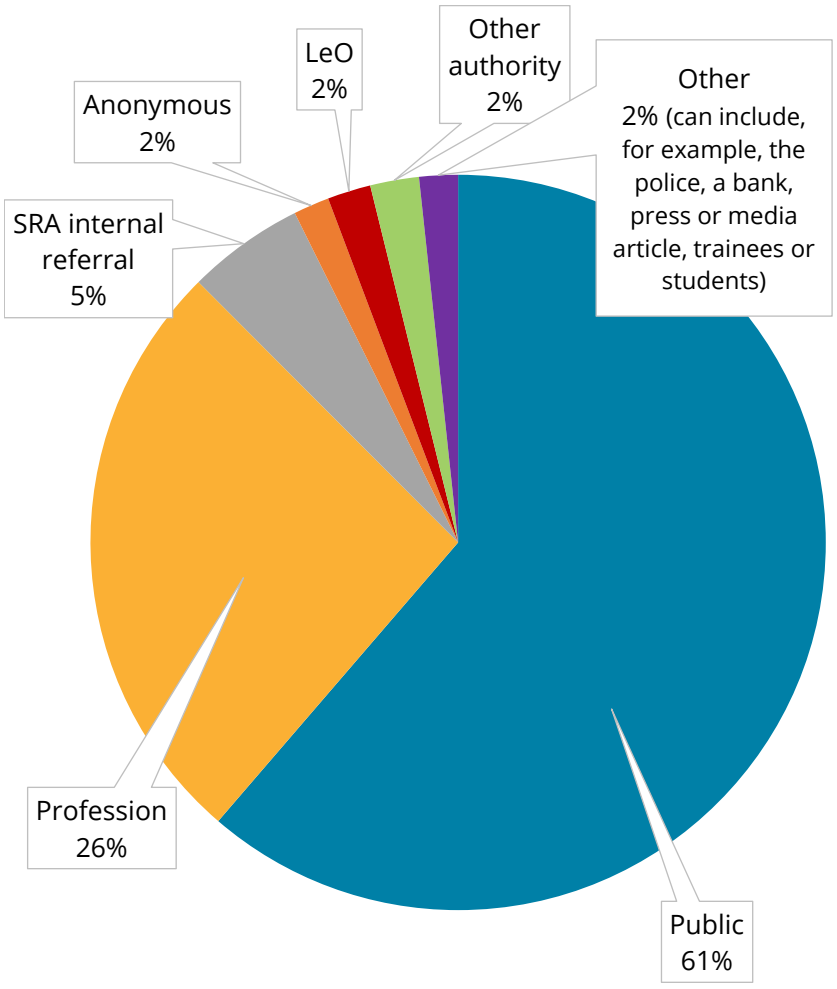
Who reports concerns to us?

Some concerns come to us direct from the profession, such as from solicitors or the compliance officers who work in law firms.

Others come from members of the public, the police and the courts. We also work closely with the Legal Ombudsman (LeO), the organisation that handles complaints about the standards of service people receive from their lawyer. LeO will contact us if, during one of its investigations, it has concerns that a solicitor may have breached our rules. Like all regulators, we also monitor media and other reports.

We also identify concerns as we undertake other aspects of our work. For example, we carry out thematic reviews of particular types of legal work or requirements, such as anti-money laundering procedures.

Who made reports to us in 2018/19?



Total reports dealt with in the 2018/19 year: 9,649

Reporting concerns to the SRA

Over the past four years, we have received, on average, between 11,000 and 12,000 reports raising concerns about the solicitors and legal businesses we regulate.

We carefully consider the information sent to us and decide if we need to investigate. We may ask relevant parties questions to better understand the issues.

In some cases, we can resolve the concerns through prompt engagement with the firm, making sure they correct any shortcomings. Where necessary, we will take witness statements, visit firms in person and analyse evidence, for example, bank accounts, financial statements and other documents.

After carefully considering the issue and speaking to all parties concerned, we will make a decision on next steps in line with our Enforcement Strategy.

In very serious cases, we refer the firm or solicitor to the SDT. The SDT is independent of us and has powers we do not. For example, it can suspend a solicitor, issue an unlimited fine or stop them from practising.

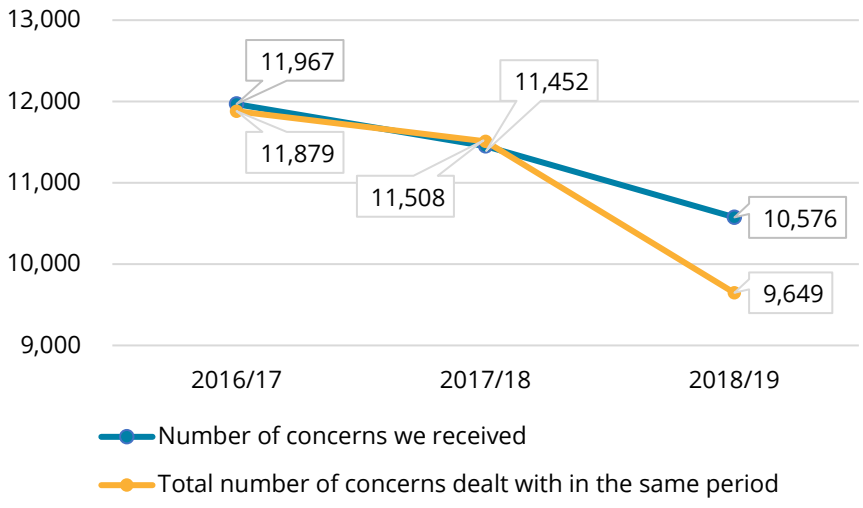
Number of concerns

The total number of reports we received in 2018/19 was 10,576, compared with 11,452 in 2017/18. This is around an 8% decrease. It may be that one reason for this is improved communications. In particular, we have improved the public-facing information on our website and, in 2018, we also introduced a joint leaflet with LeO. It has information as to which organisation a complaint should be raised with, where a person has encountered an issue or problem with a legal professional or firm. We will continue to monitor this statistic to see if it is part of any ongoing trend.

The total number of reports the team responded to and dealt with in the same period was approximately 9,600. This is a 16% decrease compared with the numbers responded to during 2017/18. This is because of the overall decrease in concerns reported to us, as seen in the chart below, and some changes in our processes (read more on page 17).

Please note, there is not always a linear relationship between the number of reports we receive and the number dealt with in the same 12-month period. This is because not all cases will be resolved within that timeframe. This is why we dealt with a slightly higher number of concerns in 2017/18 compared with the number we received.

Number of concerns 2016–2019



Key stages when considering a concern

Initial look at concerns by our Assessment and Early Resolution Team

1

We do not investigate

In many cases, there will be no need for us to investigate. We will always explain why this is the case. Midway through 2018/19, we brought in a new process to manage this work and which now includes a greater degree of engagement with the parties involved.

We redirect the matter to LeO

LeO deals with complaints about a law firm's or solicitor's standard of service. We work closely with LeO. We send relevant matters to it and vice versa.

We redirect matters to other authorities

In some cases, we are unable to investigate as it is not in our jurisdiction or is about firms or people we do not regulate.

We redirect the matter internally

We do this if, for example, it is in fact a claim on our compensation fund or an authorisation query.

We investigate

2

Talking to all concerned parties

We normally need to ask for more information. We may talk to the person who raised the concern with us and the firm or the solicitor involved and/or contact a third party. Where necessary, we will gather documents and evidence.

We will write or speak to the firm or solicitor, formally setting out our concerns. They have the opportunity to respond.

Keeping people up to date

We keep parties up to date throughout the investigation. Most of our investigations are resolved within a year.

Bringing an investigation to a close

3

We do not find the firm or solicitor has breached our standards or regulations

In cases where we find that the firm or solicitor has not fallen short of the standards we expect, we will always explain our findings and why we are not taking action to the people who initially reported the matter to us.

Resolving through engagement with the firm

This happens when the breach of our standards or regulations is minor, there is no ongoing or future risk to the public, the firm or solicitor took swift steps to remedy the issue and had a cooperative and constructive approach to resolving the matter.

We impose a sanction

In some cases, we will take enforcement action and impose a sanction or agree an outcome. This can include fining a firm or solicitor or imposing restrictions on their practising certificate.

SDT referral

4

Case is referred to the SDT and it makes a decision

The most serious cases are referred to the SDT. It considers the matter and decides whether there should be a hearing. If there is a hearing, the SDT will decide if issuing a sanction is appropriate.

We and the firms and solicitors involved can apply to appeal SDT decisions.

Report outcomes 2018/19

The 'Concerns reported to us 2018/19' diagram on page 16 gives an overview of the number of reports we received about firms' and solicitors' behaviour in 2018/19 and the outcomes recorded in the same period. There is no linear relationship between the number of reports we receive and the number of outcomes in a 12-month period. This is because not all cases will be resolved within that timeframe.

Most of our investigations are resolved within a year. In 2017/18 and 2018/19, the median time taken to complete an initial assessment of a concern raised with us was four working days[1]. And, 95% and 93% of cases were resolved within 12 months against a key performance indicator of 95% in 2017/18 and 2018/19, respectively.

In 2018/19, we rolled out our new assessment and early resolution process. The new process introduces a threshold for opening an investigation that is aligned to the new Enforcement Strategy. This has resulted in fewer concerns reported to us resulting in a full investigation: investigation was not necessary for 5,108 matters in 2018/19 compared with 4,711 in 2017/18.

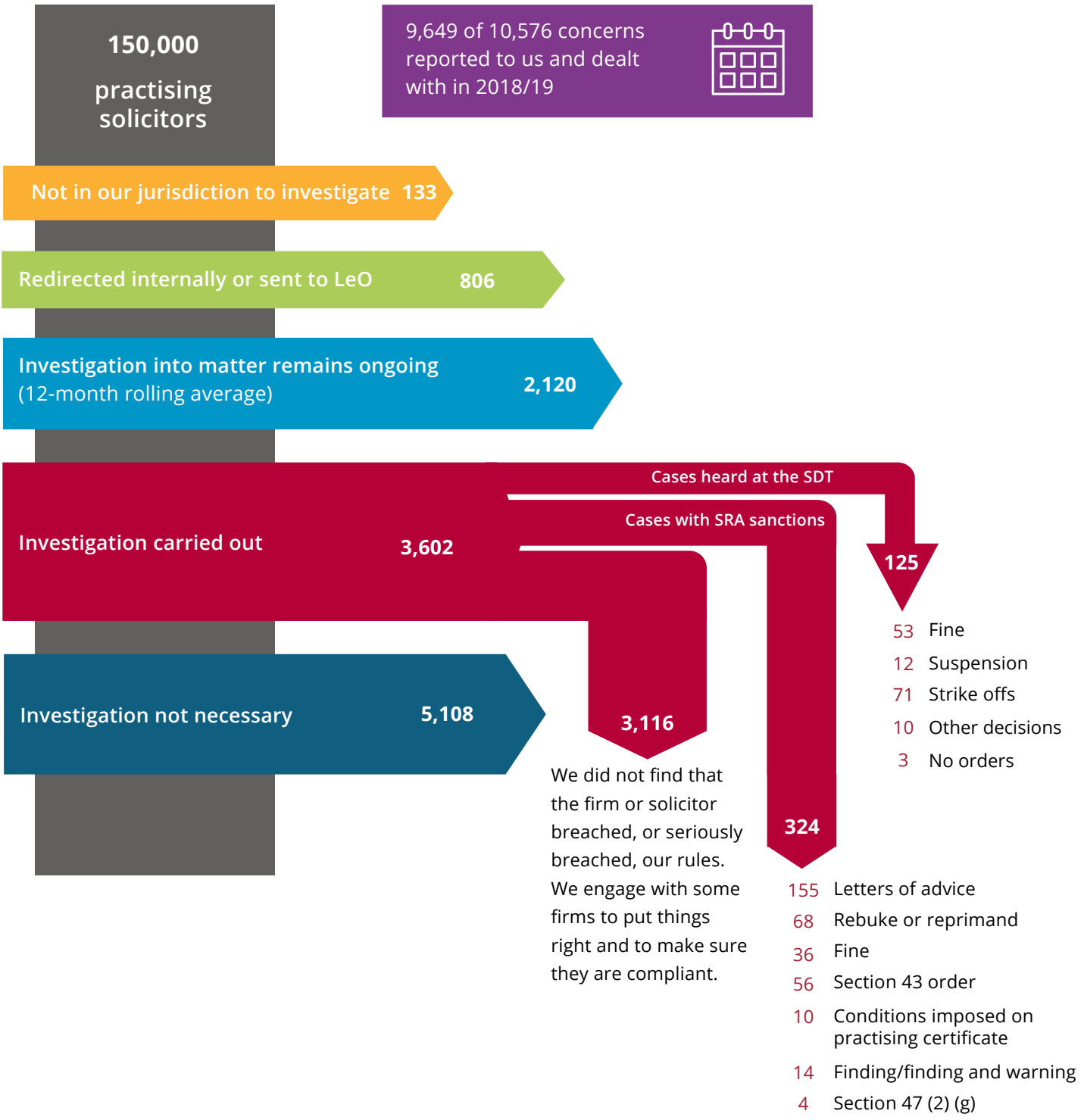
Instead, matters are concluded following early engagement with parties – resulting in a more proportionate response. It has also led to improved levels of customer service and reduced complaints about our decisions as we are able to manage expectations much more effectively. More information on the new assessment and early resolution process can be found on page 17.

If, however, a matter is referred to the SDT, or there is other activity, such as a police investigation or we receive further related reports, cases may take much longer.

The majority of concerns do not result in us taking enforcement action or referring a case to the SDT. This is because, in many cases, we can resolve matters through engagement and without the need for enforcement action. In many others, we find that the solicitor or firm has not breached our rules. We keep all information sent to us in our records and, if appropriate, use it to profile risk if concerns are raised in the future.

1. The median figure is determined by listing the number of days it took to complete each initial assessment in 2018/19 and extracting the middle number.

Concerns reported to us 2018/19



- One case can result in multiple outcomes. As previously mentioned, there is no linear relationship between the number of reports we receive and the number of outcomes in a 12-month period.
- If a report is redirected internally, it is generally because it is a matter for our Authorisation or Compensation Fund teams, for example.
- We redirect matters to LeO if we think it is a service level-related complaint.
- The meaning of the different types of outcomes and the action we and the SDT take can be found in the glossary on page 39 and at annex 1 on page 38.

New assessment and early resolution process

In 2018/19, we piloted the introduction of a new assessment and early resolution process for assessing all concerns reported to us. The new assessment process thoroughly considers cases through the lens of our new Enforcement Strategy and takes a much more customer-focused approach when engaging with the people who have made reports to us. Of the 5,108 concerns reported to us where an investigation was not necessary, 4,335 passed through this new process.

We use a new three-stage assessment threshold test directly linked to the new Enforcement Strategy to help us decide if an investigation should take place. We consider:

1. Has there been a potential breach of the SRA's Standards and Regulations based on the allegations made?
2. Is the potential breach sufficiently serious that, if proved, is capable of resulting in regulatory action?
3. Is that breach capable of proof?

A concern will only pass this test where the answer to all three questions is 'yes'. If we need more information, we will ask for that information to help us decide. We are guided by the Enforcement Strategy when we consider each stage of the test. We will tell the person who reported the concern to us if and when we decide to move into a full investigation into the matter. We will also advise and explain our reasons if we decide not to investigate.

The reasons we close matters at this stage can be because there has not been a breach of our rules, we resolve the matter through engagement, or the concern presented does not present a significant enough regulatory risk. Although these matters do not progress into an investigation, we look into them carefully, engage with firms where necessary and keep matters on file in case we need to refer to them in the future.

Three-stage assessment threshold test

1

Has there been a potential breach of the SRA's Standards and Regulations based on the allegations made?

2

Is the potential breach sufficiently serious that, if proved, is capable of resulting in regulatory action?

3

Is that breach capable of proof?

Constructive engagement

In some cases, engaging with a firm or solicitor to resolve a matter and help with compliance will be an appropriate course of action.

For example, we might offer guidance to the firm or solicitor and supervise and monitor them as they take steps to remedy the issue. This will be when the breach of our rules has been minor, where evidence suggests it is unlikely to be repeated and where there is no ongoing risk. It will also be where the firm or solicitor involved has an open, cooperative and constructive approach towards resolving the issues.

Taking appropriate next steps

When we have decided on the appropriate steps to take in each case that comes to our attention, we will always explain how we have come to our decision to those involved.

We only take the steps that are needed to protect and promote the public interest and we consider everything on a case-by-case basis. Our focus is on the most serious of issues, such as where a firm or solicitor has fallen well below the standards we expect in an isolated instance, or where they have persistently fallen well below these standards. In these cases, it is likely we will take enforcement action.

Taking urgent action

When we become aware of an issue of a more serious nature and there is an immediate risk to the public, there are steps we can take to limit the risk. These are:

- Intervening into a law firm: we can take possession of all money and files that the firm or solicitor holds, effectively closing down the firm or solicitor's practice. We do this in cases where we know that people are at risk of receiving legal services from a dishonest solicitor, or it is otherwise necessary to protect the interests of the clients.
- Placing conditions on practising certificates: to stop an individual solicitor or a firm from, for example, handling client money or acting as a manager of a firm.
- Imposing a section 43 order: this stops non-solicitors from working in a firm we regulate without our permission.

Case study – taking urgent action

We intervened into and closed down a firm offering services in family law, conveyancing, probate, and debt recovery. We initially opened an investigation into the firm after we carried out a sample review of its accounts and found a cash shortage and other accounting irregularities.

As part of our investigation we found that one of the firm's partners had been transferring money from the client bank account to meet the firm's running costs. The partner claimed that this money was owed to the firm as payment for its services. This was untrue. The partner had overcharged clients and misled our onsite investigator about the charges. In one of the cases, a client had been charged £23,500, when the work was initially quoted as costing just less than £1,000. We identified a shortage of at least £105,000 on the client account.

We intervened on the grounds that we had reason to suspect dishonesty on the part of one of the firm's partners and that they, and the other partner in the firm, had breached our regulations and Accounts Rules.

We recovered more than £540,000 from the firm's client account and returned it to its owners. We also made grants from the compensation fund totalling £435,000 to clients whose money we were not able to recover. This included grants made to a number of vulnerable clients who had been charged excessive fees.

The intervention allowed us to close the firm down while we took action to refer both of the firms' partners to the SDT. Following the referral, one partner was struck off and the other was suspended for one year. They were ordered to pay our costs of £34,800 and £14,900, respectively.

Issuing sanctions and regulatory settlement agreements

If there has been a serious breach of our rules by a firm or solicitor, we can issue an in-house sanction. We impose in-house sanctions if they are an appropriate and proportionate outcome to the issue at hand.

The range of sanctions we can impose is limited. For example, our fining powers for individual solicitors are limited to £2,000, and we are not able to strike off a solicitor. However, we can impose a fine of up to £250m on an ABS, also known as a licensed body, and up to £50m on managers and employees of an ABS.

Where appropriate, we can also resolve a matter through a regulatory settlement agreement (RSA). Under an RSA, the facts and outcome are agreed on by both parties. RSAs allow us to protect both consumers and the public interest by reaching appropriate outcomes swiftly, efficiently and at a proportionate cost.

We publish the details of our findings and sanctions, including RSAs, on our website. We are able to withhold any confidential matters from publication, if necessary and appropriate in the public interest.

Case study – drink driving

We investigated a matter after a solicitor reported to us that they had been convicted for drink driving. They were fined £1,500 and given an 18-month ban from driving.

We took action in line with our Enforcement Strategy and topic guide on driving with excess alcohol convictions. The conviction, sentence, and level of alcohol found at the time of driving were aggravating factors. Mitigating factors were that this was the solicitor's first offence and there was no other relevant regulatory history. The solicitor had also decided to stop driving by the time the police had arrived at the time of the offence, showing insight into their actions. There was no damage caused, and the solicitor promptly reported the conviction to us.

Balancing these factors, we considered a fine to be an appropriate sanction, and looked to our guidance on financial penalties to decide an amount of £750. The solicitor agreed to it and the matter and the fine were dealt with by an RSA.

Bringing cases to the Solicitors Disciplinary Tribunal

We prosecute the most serious cases at the SDT. It is independent of us and can impose a wider range of sanctions than we can.

For example, it can impose unlimited fines, or suspend or strike a solicitor off the roll of solicitors, meaning they can no longer work as a solicitor. A full breakdown of the sanctions we impose and the sanctions the SDT imposes can be found at annex 1 on page 38. In 2018/19, we referred 125 cases to the SDT, compared with 134 in 2017/18.

When deciding whether to bring a case to the SDT, we consider whether:

- we have evidence that would support a realistic prospect of the SDT making a finding of misconduct
- the SDT is likely to impose a sanction that we cannot
- it is in the public interest to make the application.

Case study – bringing a case to the SDT, sexual harassment

We prosecuted a solicitor at the SDT after they admitted to, on one occasion, inappropriately touching and, on a second occasion, sending inappropriate messages to the same junior member of staff. The solicitor received a police caution for the inappropriate messages. On both occasions, the solicitor acted while under the influence of alcohol.

When considering the matter, the SDT found that the solicitor had failed to act in a way that upholds public trust in the profession and had failed to act with integrity. It also considered the caution the solicitor received and that there had been a very negative impact on the more junior member of staff.

However, it also took into account that the solicitor had shown remorse and insight into their actions, that they had taken steps and undergone treatment to try to assure that they would not repeat their actions, and that the solicitor had not drunk alcohol since the second of the two incidents.

The SDT suspended the solicitor for 18 months and ordered them to pay almost £8,000 in costs.

Cases heard at the SDT

2017/18 2018/19

Agreed outcomes

If we refer a matter to the SDT and it says there is a case to answer, and the firm or individual admits to the allegations, it may be appropriate to conclude the matter by an agreed outcome rather than through a full hearing. In these circumstances, the firm or individual makes admissions and we agree an outcome based on a set of facts, sanction(s) and costs.

Agreed outcomes allow us to protect both consumers and the public interest – swiftly, efficiently and at a proportionate cost.

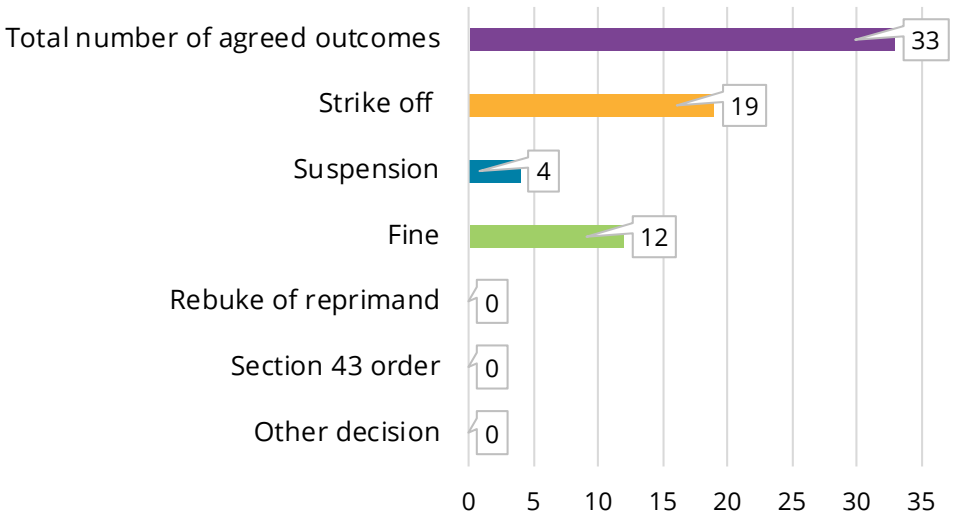
The agreed outcomes in the table below are a subset of the overall number of cases we referred to the SDT during 2018/19 (125).

Agreed outcomes 2018/19

There were 33 cases resolved by agreed outcome in 2018/19, compared with 37 in 2017/18[2]. These cases resulted in the sanctions in the table below. Please note, one case can result in more than one sanction.

The glossary on page 39 and annex 1 on page 38 have more information on what sanctions mean and the action the SDT takes.

Agreed outcomes 2018/19



Case study – agreed outcome, missing client money

We reached an agreed outcome with a solicitor after finding that they had used client money from eight different client matters for personal use and unrelated business purposes.

The solicitor had created false estate accounts to disguise the fact that they were transferring money from their client to personal bank account. When we started investigating the matter and the missing client money, the solicitor told us that a £40,000 repayment into the client account had come from a tax refund. It was, in fact, from a third-party loan. In total, there was a shortage in the client account of around £200,000.

We alleged dishonesty. The solicitor admitted this and accepted that the appropriate outcome following this finding was that they should be struck off the roll. In addition to the strike off, the SDT ordered them to pay costs of £19,000.

2. Due to an error, we misreported agreed outcomes in earlier years. The number of agreed outcomes in the 2014/15, 2015/16 and 2016/17 years were 5, 2 and 27, respectively.

The appeals process

There are rights of appeal against decisions we make in-house and decisions the SDT makes.

Appealing our decisions

Firms and individuals subject to our conditions or sanctions have the right to appeal. Appeals against our decisions are considered in-house by our Adjudication team. This is only if they have not been involved with the initial investigation and are considering the matter for the first time. Parties have further rights of appeal to either the SDT (in the case of a fine, rebuke or section 43 order) or to the High Court.

Appealing SDT decisions

Firms and solicitors subject to our or the SDT's decisions can bring an appeal in the courts. We can also appeal SDT decisions in the courts. The right to appeal is a fundamental part of natural justice, due legal process and the administration of justice.

Appeals allow courts to correct any errors that may have been made and to clarify the interpretation of law.

When deciding whether to appeal a decision the SDT makes, there are several factors that we will take into consideration. For example:

- Acting in the public interest: we take cases to the SDT to make clear what we consider to be inappropriate, and to deter other firms and solicitors from acting in ways that we consider unethical or potentially harmful to the public. We also want to make sure the public can maintain trust in the profession.
- Public protection: if we think the sanction the SDT imposed is too lenient and that the public may, as a result, be at risk, we will consider whether an appeal is appropriate. For example, we may appeal a decision where we consider that a solicitor should have been struck off the roll, rather than suspended for a short period.
- Clarification on the law: if the SDT makes a decision that may appear to contradict or misinterpret a point of law, we will consider whether we should appeal. This is because we need to make sure we understand our powers as a regulator, and the people we regulate need to understand what they can and cannot do. We also need to know when we should take action and what the likely decisions of the SDT could be. This helps us to use our resources more effectively.

A firm, solicitor or other person who has been the subject of an SDT decision may appeal if they believe the decision is wrong.

To appeal an SDT decision, we or the respondent must apply to the High Court. SDT appeals rarely go beyond this point.

Firms and individuals subject to our conditions or sanctions have the right to appeal

External appeal decisions

The majority of the decisions in the 'external appeals decisions' chart on page 24 relate to appeals against decisions the SDT makes. However, as mentioned above, parties have further rights of appeal to either the SDT or to the High Court. The table on the next page includes three of these decision types.

Case study – appeal, dishonesty

We investigated and brought a case to the SDT after finding that a solicitor received £500 relating to a client matter into their personal account. The solicitor had failed to transfer or pass on the money to their firm. They then told us they had not received payment for this matter into their personal bank account. We found this to be untrue and misleading, and we alleged dishonesty.

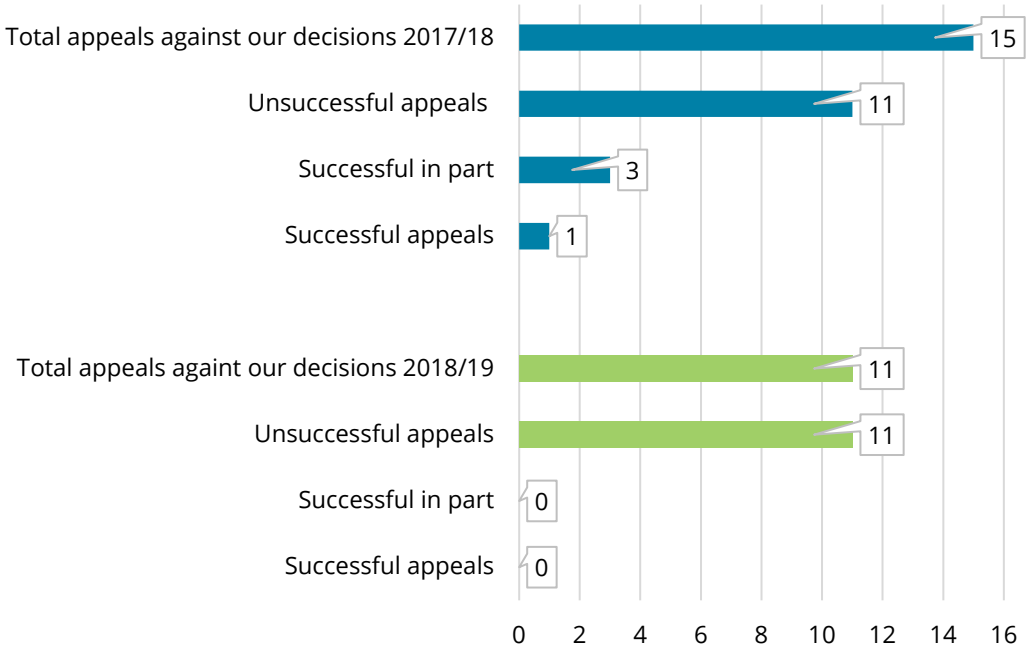
At the hearing, the SDT heard evidence and considered the solicitor had received fees for legal services they had carried out, the money for which should have been paid to the firm. However, this did not take place. When considering whether the solicitor had misled us, the SDT acknowledged that what the solicitor said was untrue and misleading, and fell far below the standards expected of a solicitor. It imposed a fine of £10,000 on the solicitor and ordered them to pay our costs.

However, the SDT found the solicitor to have acted without integrity, rather than dishonestly.

Given the evidence, we appealed on the basis that the solicitor continued to pose a risk to the public and clients. We also sought clarification of the law on the finding of dishonesty.

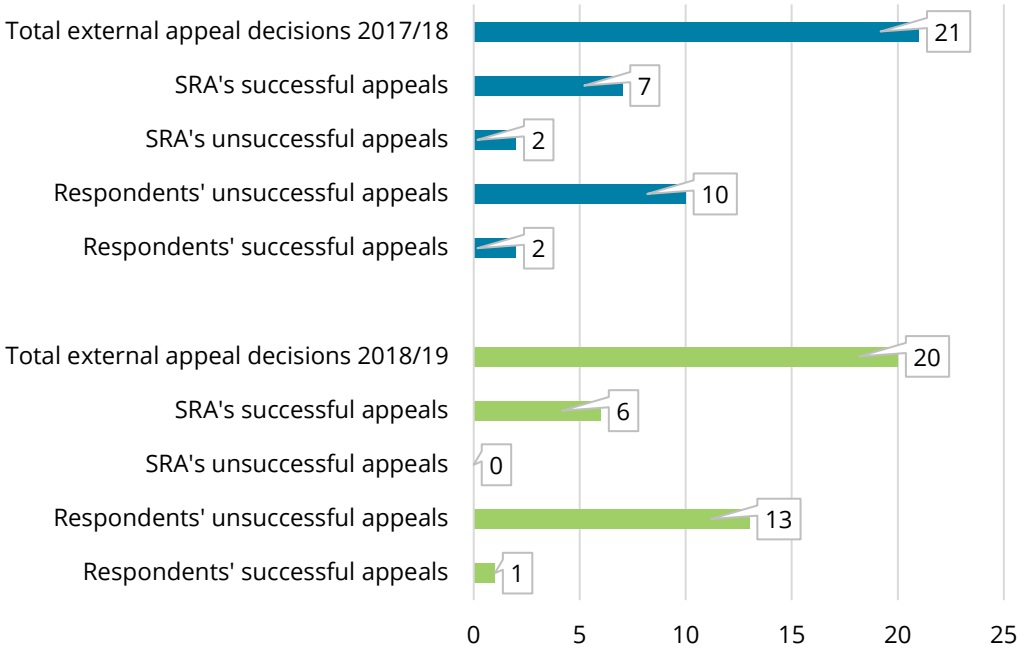
The High Court upheld our appeal and substituted the lack of integrity finding with a finding of dishonesty. It also struck off the solicitor from the roll.

Appeals against our decisions 2017/18 and 2018/19[3]



Successful in part means, for example, where the terms of any outcome change, such as the type of conditions placed on a practising certificate.

External appeal decisions 2017/18 and 2018/19



3. In the 2017/18 Upholding Professional Standards, we reported 12 unsuccessful appeals and 2 successful appeals. In some instances, these figures can change, for example, where a reconsideration is requested and granted.

Our costs

Every year, we collect practising fees from solicitors and law firms in England and Wales, and from solicitors and law firms practising English and Welsh law overseas.

The practising fees we collect fully, or partly, fund six organisations, including us. In 2018/19, we collected £101m in total, with £53.4m going towards our overall expenditure.

In 2018/19, we spent £15m on our disciplinary processes

In 2018/19, we spent £15m on our disciplinary processes, which are a fundamental part of our work to ensure high professional standards. Although this is a small increase compared with 2017/18, where we spent £14.6m, we have steadily reduced the costs of our disciplinary processes from £16.7m in 2015/16.

We keep how we work under review and, to keep costs under control in any case, we work to key principles. These are to act quickly, fairly and proportionately.

High-value cases

Our enforcement work can be high profile and often relates to topical issues of wider public interest. This means there can be interest in how much it costs us to bring cases to the SDT and to make an appeal. There are a number of factors that affect this. These include the complexity and lifespan of a case and the number and cooperation of those involved.

Cases costing more than £100,000 in 2018/19

Of the 125 cases we brought to the SDT in 2018/19 and the 20 appeals heard, there were five where our costs exceeded (approximately) £100,000. The costs in these cases will generally have accrued over a number of years.

The figures include the costs claimed (or agreed) for:

- bringing the case to the SDT
- bringing an appeal, if there was one
- costs awarded to the opposing party.

The costs of bringing a case generally cover:

- our work in investigating a case
- preparing for hearings before the SDT and the High Court, whether in-house or by instructing a panel firm
- advice from or instructing counsel when our internal legal team is handling a case.

In some of these cases, we were awarded some or all of our costs by the SDT.

Cases costing more than £100,000 in 2018/19

Parties involved	Costs of the case	Nature of the case and the final outcome
Alexis Maitland Hudson, who, at the time of the allegations, practised at a French firm, Cabinet Maitland Hudson. Hudson was also a partner in London-based Maitland Hudson and Co. We did not take action against either of the firms. There was an appeal heard at the High Court in this case.	£677,000 across the SDT (£603,000) and High Court (£74,000) hearings. The SDT awarded us £358,000. The High Court awarded us costs of £56,000.	Allegations concerning conflict of interest in a commercial transaction. The SDT struck the solicitor off the roll. The appeal brought by Hudson was dismissed by the High Court.
Two solicitors: Eric Evans and David Alan Whiteley, partners at M&A Solicitors in Cardiff (we did not bring action against the firm).	£225,561 The SDT awarded us £50,000.	Allegations concerning conflict of interest in a property transaction. The matter was concluded by way of an agreed outcome. Both solicitors were fined £10,000 each by the SDT.
Two solicitors: Jonathan De Vita and Christopher Platt, who were partners at the law firm De Vita Platt, and a trainee at the firm, Emily Scott. We intervened into the law firm in 2018.	£145,533 The SDT awarded us the costs in full.	Allegations including falsifying documents, raising bills for work not carried out, and other breaches of our Accounts Rules. The SDT struck off all three.
Two solicitors: Ehsan Kabir and Lauren Ruth Anderson, equal shareholders in a firm with Lauren Ruth Anderson as sole director and Ehsan Kabir as an employee of the firm.	£111,221 The SDT awarded us £77,700.	Issues concerning the proper running of a firm and giving us misleading information. The SDT struck off Ehsan Kabir and suspended and placed practising conditions on Lauren Ruth Anderson.
Colin Ross Downie	£102,952 The case was resolved by way of an agreed outcome, in which costs of £20,833 were agreed.	Allegations that the solicitor misused various funding schemes. The SDT struck off the solicitor.

Please note, we have not included cases subject to an appeal.

Wellbeing in the legal profession

We know that working in law can be challenging and stressful.

When this stress has a negative impact on the work of a solicitor or a firm, it can affect competence and lead to mistakes and, potentially, serious breaches of our standards, such as dishonesty. This can result in us taking action, which may be avoided if solicitors recognise the warning signs early on and seek the correct support and help.

Seeking support

We understand that being part of an investigation can be a stressful and daunting time, particularly for people with health problems, or who are in a vulnerable situation. If this is the case, we encourage people to talk to their SRA contact, as there are actions we can take to make the process easier. Some examples of how we can offer support are:

- providing one point of contact
- allowing extra time to respond to us (where we are able to)
- putting an investigation on short-term hold.

This is not an exhaustive list and we approach each matter based on its circumstances. Members of the public and solicitors who raise concerns with us may also need support, particularly when they are in a vulnerable situation. We signpost people to a range of resources and organisations that can help, and all our staff have training on making reasonable adjustments.

Our wider commitment to wellbeing in the profession

We launched our Your Health, Your Career campaign in 2016 to encourage solicitors to talk to us if they are having difficulties with their health or wellbeing that may be affecting their work. Solicitors can talk to us about this and ask any questions they may have about our regulations and the problems they are facing.

To help solicitors and firms understand how we approach health issues and the medical evidence we might ask for during an investigation, we published our health issues and medical evidence guidance in August 2020. It has information on raising a health issue with us, medical reports, health and ability to practise, among other related topics.

Whistleblowing to the SRA

If information is provided to us on a confidential basis, we will take appropriate steps to protect the reporter's identity and deal with the matter sensitively.

Individuals and firms who we regulate must report matters to us in any event. However, for someone who is regulated by us and is concerned about whether they may be investigated for their own part in any wrongdoing, reporting the issues and cooperating with us could constitute mitigation. This is particularly so where issues are reported to us at an early stage. However, we would rather solicitors and others working in the legal sector provided information late than not at all. Although we cannot guarantee that we will not take any action against the reporter, bringing the information to us is likely to help their position, and we will take context into account, including, for example, fear of recrimination.

Supporting witnesses

When we are investigating a solicitor or firm, it may be necessary to take a statement or interview witnesses. This will help us in our investigation and, possibly, to decide whether we need to refer the matter to the SDT.

We understand this can be distressing, so we do everything we can to support witnesses. For example, if English is not the witness's first language, we might be able to offer a translator or interpreter. If the witness is also the person who reported the concern to us, we will keep them up to date with how we are progressing with the matter. We also train our staff in how to support vulnerable and distressed individuals, for example, in cases concerning sexual harassment.

Diversity monitoring

We take our commitment to supporting equality, diversity and inclusion (EDI) very seriously. As part of this, we have made good progress in recent years to promote EDI in the legal profession, develop and support our own workforce and embed EDI considerations in all the work we do.

A vital part of embedding EDI in the work we carry out is reviewing our systems and processes to make sure they are free from bias and non-discriminatory. We not only do this because we have a public duty to do so, as set out under the Equality Act and Legal Services Act, but because it is the right thing to do.

This year, our Upholding Professional Standards report looks at the diversity characteristics of the people involved in our enforcement processes. Although previously an annual exercise, we paused this reporting in 2015 because of an increasing focus on the role of law firms in maintaining high professional standards. This meant we were recording a growing proportion of our enforcement work against firms, rather than individuals. This, and the falling number of newly enrolled solicitors providing their diversity data to us through our online portal (following our move to an online admissions process), meant that monitoring the diversity of individuals in our enforcement work was a challenge.

We have now resumed this monitoring and, to do so, undertook a resource-intensive, manual review of the reports we received in 2018/19 to identify information about the individuals involved. New systems and processes we are putting in place will allow us to better extract and analyse data about our enforcement decisions in the future.

This chapter explains the work we have undertaken, the key findings and next steps, with the detailed analysis published in a separate, supporting report.

Findings from previous diversity monitoring reports

We have been aware of patterns showing overrepresentation of certain groups in our enforcement processes for some years, particularly for men and people from a black, Asian or minority ethnic (BAME) background. The data from 2018/19 shows a broadly similar picture, in the concerns we received and investigations taken forward.

We have commissioned several external reviews to look at this, building on work that The Law Society undertook in 2006 before the SRA was established. The most recent was Professor John's Independent Comparative Case Review (ICCR), published in 2014. Before that, we commissioned Pearn Kandola to review our regulatory decisions data in 2010, which was recommended by Lord Herman Ouseley in his report about the same issues, published in 2008. None of the reviews found any evidence of discrimination, but each review highlighted overrepresentation of certain groups and provided recommendations for us and others, which have helped to shape our approach to enforcement.

In responding to the overrepresentation of BAME solicitors, we benefitted from Professor John's insight into some of the external factors affecting the profile of BAME solicitors referred to us (such as being more likely to work in small firms, and establishing sole practices after only a few years of qualification, for example). In the past few years, we have been addressing some of these issues, as we have delivered our programme of regulatory reform. In addition, we have made progress on a range of

planned actions to implement the commitments we made following the ICCR, including a review of our decision-making criteria and developing improved processes in our investigation and enforcement work. We have published a review of the work we have done since the ICCR.

At the end of this chapter, we set out work we will take forward to address the issues identified from our latest analysis. As the issues are not unique to us or the legal sector, one of the actions is to commission independent research that looks at some of the wider issues which influence the overrepresentation of BAME individuals in the concerns reported to us.

Although very few regulators have published a diversity profile of the people in their disciplinary processes, there is information available from the General Medical Council (GMC)[4], the General Pharmaceutical Council (GPhC)[5], and the Bar Standards Board (BSB)[6]. Some, such as the GMC[7], have gone on to undertake analysis and research into the over-representative reporting to them of BAME professionals. It is clear from this research that the issues are complex and multifactorial. We will take account of the experience of other regulators in the legal sector, and beyond, to understand what is happening and to look at what can be done to address these widespread and persistent patterns.

The scope of our analysis

We looked at the representation of gender, ethnicity, age and, in some areas where numbers were sufficient, the disability of individuals at the following stages of our enforcement process for the 2018/19 year:

- stage 1: individuals named on concerns reported to us
- stage 2: individuals named on concerns which we took forward for an investigation
- stage 3: individuals named on cases with an internal sanction and the types of sanctions we imposed (path A)
- stage 4: the cases which were concluded at the SDT by way of a hearing or an agreed outcome, and the types of sanctions the SDT imposed (path B).

The diagram below illustrates these stages and paths. They are broadly aligned with the 'Key stages when considering a concern' diagram on page 14.

4. GMC, Analysis of cases resulting in doctors being suspended or erased from the medical register, 2014.
5. The Pharmaceutical Journal, 'Worrying' proportion of minority ethnic pharmacists suspended or struck off GPhC register, 2019.
6. BSB, Complaints at the Bar: An analysis of ethnicity and gender 2012–2014, January 2016.
7. GMC, Fair to Refer, 2019.

The individuals counted at stage 2 (individuals named on concerns taken forward for an investigation in 2018/19) are a subset of stage 1 (the individuals named on the concerns reported to us in 2018/19). At stages 3 and 4, we count the individuals named on cases who received an internal sanction or who were named on cases concluded at the SDT in 2018/19. Although there may be some overlap between the individuals involved in stages 1 and 2 and those involved in stage 3 in this report for 2018/19, it is unlikely to be significant. This is because cases are not always received and concluded in the same year. Similarly, there is very unlikely to be any overlap between the individuals involved in stages 1 and 2 and those involved in stage 4. This is because it takes longer than a year to investigate, refer, and conclude a matter at the SDT.

Starting with a breakdown of the practising population, we have compared the proportions of each diversity group at the different stages of our enforcement process. For example, men make up:

- 49% of the practising population
- 67% of individuals named on concerns reported to us (stage 1)
- 73% of the individuals taken forward for investigation (stage 2)
- 70% of the individuals named on cases with an internal sanction (stage 3, path A)
- 85% of individuals named on cases concluded at the SDT (stage 4, path B).

The number of individuals gets smaller at each stage of the process, making it difficult to draw firm conclusions at stages 3 and 4. Overall, there were:

- 6,860 individuals named on concerns reported to us in 2018/19 (stage 1)
- 2,579 individuals taken forward for investigation (stage 2)
- 297 named on cases with an internal sanction (stage 3)
- 144 named on cases concluded at the SDT (stage 4).

Our analysis looks at the known population among those groups – that is, the people for whom we hold diversity information. For gender and age, we have information for 97% and 99% of the practising population, respectively, and 76% for ethnicity. Because of the way we have collected disability data in the past[8], we can only identify the proportion of people who have declared a disability, which is 1% of the practising population.

A full set of the charts showing the data at each of the stages is in the supporting report of our findings, including, where sufficient data is available, a breakdown of the different sanctions we made and those the SDT made. We have also looked at how the cases at the SDT have been concluded, in particular, whether there is a difference by diversity characteristic in the use of agreed outcomes. We have provided the diversity declaration rates at each stage.

The findings from our diversity monitoring of the people in our enforcement work will become a regular feature of this report going forward. This will help us to monitor future trends and evaluate the impact of our new Enforcement Strategy and Standards and Regulations, brought in in 2019.

8. Previously, we only asked people to declare if they had a disability. We did not give an option for people to say they did not have one or if they preferred not to tell us if they had one.

Key findings 2018/19

Detailed findings in relation to stages 1 to 4, as described above, are set out in the supporting report of our findings, along with a breakdown of the practising population.

For example, BAME solicitors are overrepresented among sole practitioners (39%), overrepresented in firms mainly doing criminal and private client work (33% and 40%, respectively) and underrepresented in the firms doing corporate work (15%). These are factors that we will consider in the research outlined at the end of this chapter about the profile of those reported to us.

Our analysis shows that there are challenges for different groups in the profession

We know from our analysis of diversity in law firms that the profession has been getting more diverse over recent years, with women now outnumbering men among newly qualified solicitors, and one in five solicitors in law firms coming from a BAME background. While encouraging, our analysis also shows that there are challenges for different groups in the profession, which, as Professor John identified, are likely to affect the profile of those reported to us.

For this report, we are using the data we hold in our systems as the starting point for the analysis of how the profile of people changes through our enforcement processes.

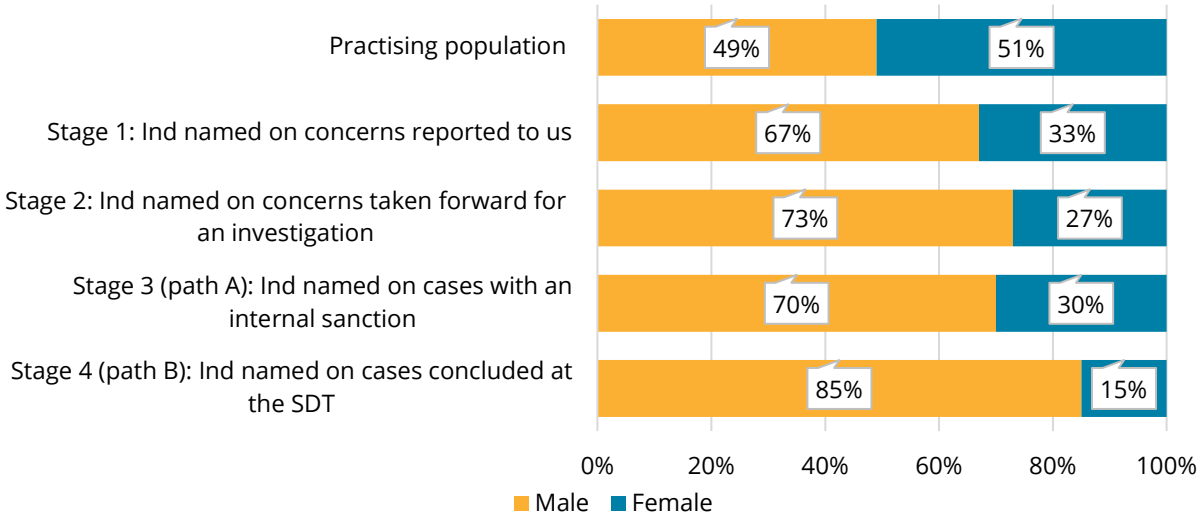
Gender

There is an overrepresentation of men throughout our enforcement process, with around a 70:30 proportion of men to women at stages 1 to 3. This is compared with a practising population of 49:51, men to women. This overrepresentation is also generally seen in the different types of internal sanctions.

However, the proportion of men increases to 85% when looking at stage 4, cases concluded at the SDT, with a corresponding decrease for women. There is no overrepresentation when comparing the individuals named on cases concluded by a hearing and those concluded by way of an agreed outcome.

In relation to the sanctions imposed by the SDT, the percentage of men and women who received a fine (85% and 15%, respectively) is the same as those named on cases. The proportion of men is lower than might be expected among those suspended (50%) and higher for those who were struck off (92%). However, the number of people who received a suspension is particularly small (12), making it difficult to draw a conclusion from this data.

Gender breakdown of practising population and at stages 1–4 of our enforcement process



Ethnicity

We recognise the experience of groups making up the BAME community will not be the same, but, for parts of this report, the numbers in some of the groups which make up the BAME community are too small to report separately, as it risks individuals being identified. This means some of the ethnicity data will be presented for the BAME group as a whole. The same is true for the groups making up the white group. This is why, in the overview chart below, only the BAME and white groups are shown. A more detailed breakdown can be found in the supporting report.

The BAME group, as a whole, makes up 18% of the practising population and 26% of individuals reported to us. This increases to 32% of those whose cases were taken forward for investigation at stage 2.

Asian and black individuals make up 12% and 3% of the practising population, respectively, yet are overrepresented when looking at the number of reports made to us (stage 1), at 18% and 4%.

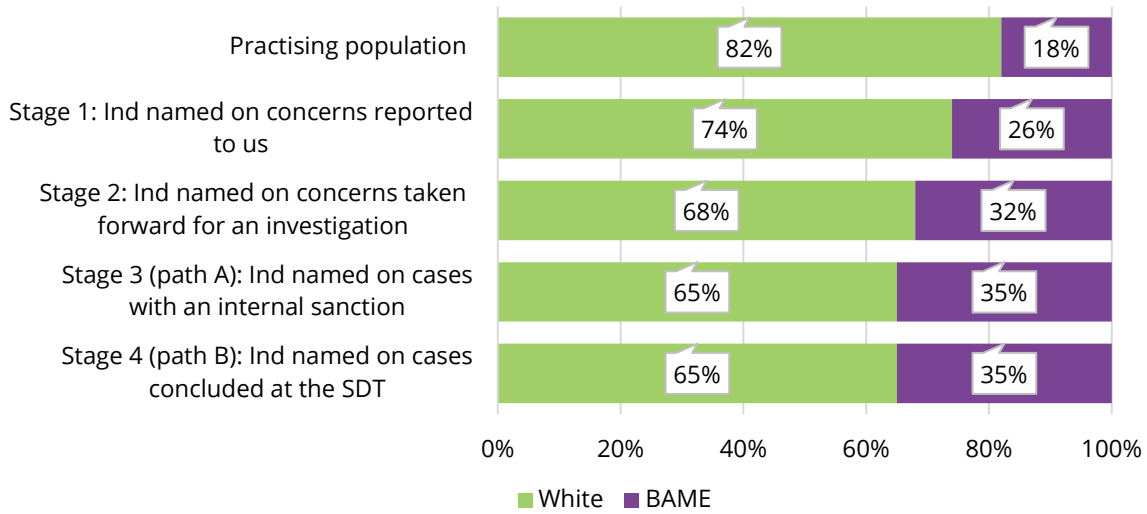
The percentage of BAME individuals at stage 3 and at stage 4 is 35%. In light of the small numbers of people involved at stages 3 and 4, it is important to note that this is not a statistically valid differentiation from the 32% investigated at stage 2.

Looking at the internal and SDT sanction types, the numbers are very small, making it difficult to draw conclusions from the findings. Compared with the breakdown of BAME individuals named on cases with an internal sanction (35%), there is a lower proportion in the most serious sanction types (rebukes and fines) at 30%, and in the least serious outcomes (letters of advice and findings and warnings) at 33%. Again, the small numbers mean that this is not statistically significant.

In relation to the sanctions imposed by the SDT, given that BAME individuals make up 35% of those whose cases are concluded at the SDT, they are proportionately represented among those given a fine (34%), and there is a lower proportion among those struck off (31%). There is a higher proportion of BAME individuals among those suspended (45%), but, again, it is difficult to draw any conclusions from this, as there were only 11 individuals in the known group who were suspended.

There is a smaller proportion of BAME individuals named on cases resolved at the SDT by way of an agreed outcome when compared with those resolved by way of a hearing. The proportion decreases from 40% (38 out of 94 people) named on SDT decisions resolved by way of a hearing to 17% (five out of 30 people) who concluded their case through an agreed outcome. Again, it should be noted that the very small numbers for these categories make it difficult to draw conclusions from these findings.

Ethnicity breakdown of practising population and at stages 1–4 of our enforcement process



Age

In this chart, we have grouped together the 16–24-year-old and 25–34-year-old age categories. This is because the numbers of 16–24-year-olds named on reports in stages 1 and 2 are nominal, and there were no 16–24-year-olds named on cases with an internal sanction or concluded at the SDT.

There is an underrepresentation of people in the younger age categories (44 and under) named on concerns reported to us compared with their proportion of the practising population. The opposite is true for those in the older age categories (45 and over) who are overrepresented when compared with the practising population.

When looking at cases involving individuals taken forward for investigation, there is little difference for any of the age groups.

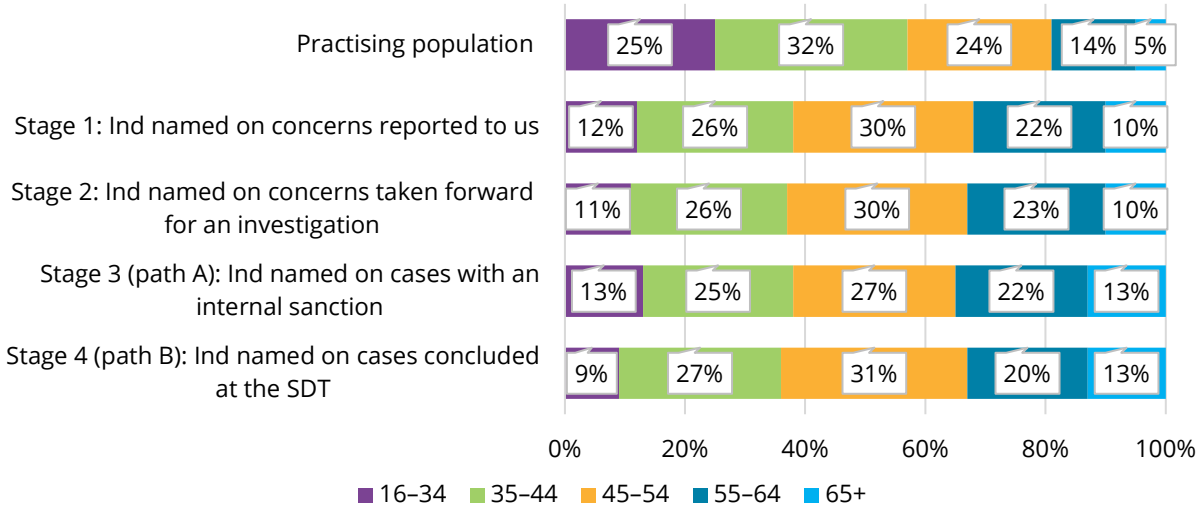
For all age groups, the percentage of individuals named on cases with an internal sanction (stage 3) is largely proportionate to those whose cases were taken forward for investigation (stage 2).

For all age groups, the percentage of those whose cases were concluded at the SDT (stage 4) is largely proportionate to those whose cases were taken forward for investigation (stage 2), with some small differences for the youngest and oldest groups. Those under 34 made up 11% of cases investigated and 9% of those concluded at the SDT. Those aged 65 and over made up 10% of concerns taken forward for an investigation and 13% of cases concluded at the SDT.

There is a smaller proportion of individuals aged 45–54 named on cases concluded by way of an agreed outcome when compared with those concluded by a hearing, decreasing from 34% to 24%. The opposite is true for individuals aged 65+, increasing from 10% to 21%.

However, there is no clear pattern and the numbers are too small to draw any conclusions from the findings when considering the internal and external sanction types across age categories.

Age breakdown of practising population and at stages 1–4 of our enforcement process



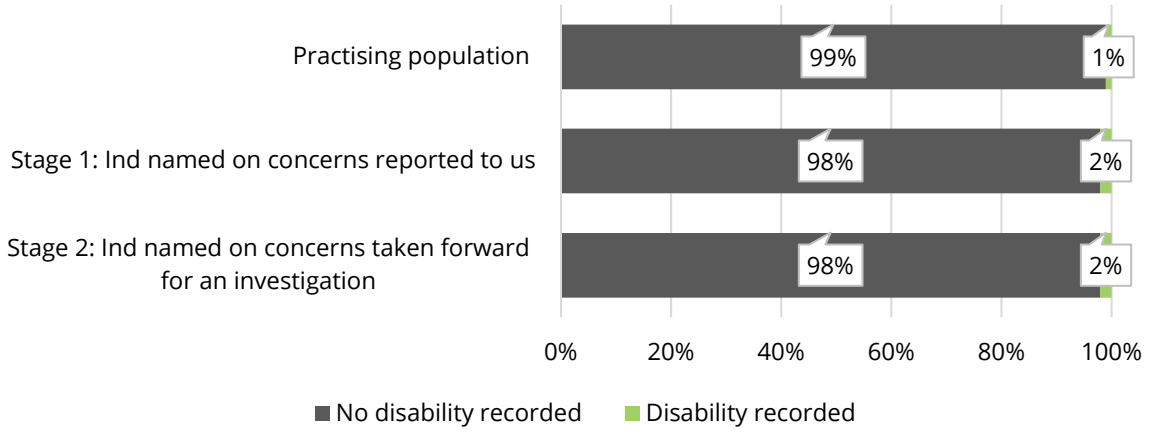
Disability

Because of the very small numbers involved, we are only able to report the numbers of disabled people involved in our enforcement processes at stages 1 and 2. We do, though, see overrepresentation of disabled individuals in concerns reported to us compared with the practising population. There were 141 disabled individuals named on the concerns we received (2% of the total) compared with 1% in the practising population.

Of those named on the concerns reported to us, 62 disabled people had their cases taken forward for investigation (2% of the total number of cases investigated).

Declaration rates for disability need to improve before we can draw any meaningful conclusions from the data.

Disability recorded among practising population and at stages 1–2 of our enforcement process



Further work and research

We will build on the findings from 2018/19, which have given us a baseline for future monitoring and will be part of wider plans for evaluating the impact of our new Enforcement Strategy and new Standards and Regulations.

There is always more we can do to make sure our decision making is consistent, fair, and free from bias. In addition to the ongoing work we have set out in our corporate strategy and business plan, we will be taking forward a range of work in response to the findings set out in this chapter:

- We will commission independent research into the factors that drive the reporting of concerns about BAME solicitors to us, to identify what we can do about this and where we can work with others to make a difference.
- Alongside our ongoing work to establish an in-house 'arms-length' quality assurance team, we will undertake a forward review of decision making in our assessment and early resolution process, where the decision to refer a matter for investigation is made.
- We will work to increase the number of individuals who disclose information concerning their diversity characteristics to us.
- We will report annually on the profile of people in our enforcement processes and include intersectional analysis where we can.
- We will evaluate the changes we have made through our regulatory reform programme, with understanding the impacts on EDI forming a key part of that work.
- We will continue to build on our wider work to promote and support diversity in the profession and our ongoing work to support small firm compliance.

Annex 1: Action we take and action the SDT takes

Action taken and in what circumstances	Level of misconduct	Our sanction	SDT sanction
Letter of advice: we remind the individual or firm in writing of their regulatory responsibilities.	**Minor or where there has been appropriate firm management of an issue**	✓	✗
Issue a warning: to warn a person or firm that, should the conduct or behaviour be repeated, or the situation continue, we will likely take more serious action. The warning may be taken into account in any future proceedings.		✓	✗
Rebuke: we rebuke an individual or a firm where there has been a moderately serious breach of our requirements or standards.	**Moderate**	✓	✗
Fine: where there has been a serious breach of our requirements or standards and where, for example, the regulated person or firm could have financially benefited from the misconduct, and it is appropriate to remove or reduce their financial gain.	**Serious or a series of incidents which together are serious**	✓ Up to £2,000*	✓ Unlimited
Practising conditions placed on a solicitor or other person we regulate: we restrict or prevent the involvement of a solicitor or individual in certain activities or engaging in certain business agreements/ associations or practising arrangements.	**Serious or a series of incidents which together are serious, and when it is necessary to deal with the risk posed**	✓	✓ Referred to as a 'restriction order'
Practising conditions placed on a firm: we restrict or prevent a firm, or one of its managers, employees, or interest holders, from undertaking certain activities. This can also help us to effectively monitor the firm or individual through regular reporting.		✓	✓ Referred to as a 'restriction order'
Reprimand: the SDT sanctions the regulated person for a breach of our requirements and/or standards. It is the SDT's equivalent of our rebuke.	**Serious or a series of incidents which together are serious, and when it is in the public interest to do so**	✗	✓
Section 43 order (for non-lawyers working in the profession, eg non-lawyer managers and employees such as legal secretaries): we restrict individuals from working in a law firm without our permission.	**Moderate seriousness, or a series of incidents which together are moderately serious**	✓	✓
Suspension or revocation of a firm's authorisation/recognition: we remove a firm's authorisation either permanently or temporarily.	**Serious or a series of incidents which together are serious**	✓	✓
Suspension: the SDT suspends a solicitor from practising either for a fixed term or for an indefinite period. The SDT can also suspend a period of suspension, so long as a restriction order remains in place.		✗	✓
Strike off: the SDT stops a solicitor from practising entirely. The solicitor's name is removed from the roll.	**Serious or a series of incidents which together are serious**	✗	✓

* However, we can impose a fine of up to £250m on an ABS and a fine of up to £50m on managers and employees of an ABS

Glossary of terms

Agreed outcome

An alternative to having a case heard at the SDT. Where appropriate, it is a cost-effective, swift and proportionate way of resolving a matter. Agreed outcomes have to be approved by the SDT.

Alternative business structure (ABS)

Also known as a licensed body, ABSs allow non-lawyers to own or invest in law firms, opening up what was previously a closed market.

Finding/finding and warning

An outcome for more significant but one-off misconduct. The finding/finding and warning can be taken into account in the outcome of any future investigation.

Fine

A monetary sanction. We are able to issue a fine up to the value of £2,000 for firms, solicitors and other individuals we regulate. We can fine an ABS up to £250m and up to £50m for manager and employees of an ABS we regulate. The SDT can impose unlimited fines on individuals and firms.

Intervene

An action we take if we consider that people are at risk of receiving legal services from a dishonest solicitor, or it is otherwise necessary to protect the interests of clients. Generally, this will involve closing down the firm and taking away client money and files to keep safe.

Legal Ombudsman (LeO)

An organisation which handles complaints about the standards of service people receive from their lawyer.

Letter of advice

A letter we send to remind an individual or firm in writing of their regulatory responsibilities.

No order

In the context of an outcome at the SDT, no order can mean that the SDT finds in our favour but decides that it is not necessary or appropriate to impose a sanction or control. It can also mean that it does not find in our favour.

Other decision

In the context of an outcome at the SDT, other can mean, for example, a reprimand or section 43 order.

Rebuke

We rebuke an individual or a firm to show disapproval where there has been a moderately serious breach of our requirements or standards.

Practising condition

A sanction both we and the SDT are able to impose on solicitors, firms and other people we regulate. It restricts or prevents them from certain activity, and can help us to effectively monitor the firm or individual through regular reporting.

Regulatory settlement agreement (RSA)

Similar to agreed outcomes, RSAs allow us to agree appropriate outcomes with individuals and firms swiftly, efficiently and at a proportionate cost. Unlike agreed outcomes, they are handled in-house and generally take place before any decision has been made to refer the matter to the SDT.

Glossary of terms

Reprimand

The SDT reprimands an individual where they have breached our regulations. It is the SDT's equivalent of our rebuke.

Respondent

The respondent is the firm, solicitor or other person against which or whom we take enforcement action.

Roll of solicitors

This is a record of solicitors that we have authorised to practise English and Welsh law. Not all solicitors on the roll will actively be practising as a solicitor.

Sanctions

Actions taken to discipline firms, solicitors or other people we regulate to prevent similar behaviour by them or others in the future, and to maintain standards and uphold public confidence in the profession.

Section 43 order

A sanction we issue to non-lawyers working in the profession, eg non-lawyer managers and employees such as legal secretaries. We restrict them from working in a law firm without our permission.

Section 47 (2) (g)

An order the SDT imposes preventing a former solicitor who has been removed from the roll from being restored without its permission.

Solicitors Disciplinary Tribunal (SDT)

An independent tribunal where we bring prosecutions against firms, solicitors and other people we regulate. It has powers which we do not, eg imposing unlimited fines or striking solicitors off the roll.

Strike off

Sanction where the SDT stops a solicitor from practising and their name is removed from the roll.

Suspension

A sanction we can impose to suspend a firm's authorisation either permanently or temporarily. The SDT is able to suspend a solicitor from practising either for a fixed term or for an indefinite period. The SDT can also suspend a period of suspension, so long as a restriction order remains in place.