



# Disproportionality in the Professions: Working together to respond to discrimination and prejudice in the workplace

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# **Disproportionality in the Professions**

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## **Working together to understand and respond to discrimination and prejudice**

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Debbie Ellen, Tom Fegan, Karen Hassell,  
Tine Munk, Ellen Schafheutle, Liz Seston,  
and Graham Smith

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**A working paper**

29 November 2013

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## 1 Introduction

### 1.1 Rationale

The proposal to research disproportionality on grounds of ethnicity in employment and regulation practices in the police, legal, medical and pharmacy sectors grew out of a collaborative exercise to organise an inter-sectoral conference on disproportionality in misconduct proceedings at the University of Manchester. Colleagues in the School of Law (Dr Graham Smith), Pharmacy School (Professor Karen Hassell and Dr Ellen Schafheutle) and Institute of Population Health (Professors Aneez Esmail and Chris Roberts) had published research in the field of disproportionality and established contact with practitioners, including service providers, regulators and staff representatives, in the four professions. As a result of work undertaken in the University by the Head of Equality and Diversity (Patrick Johnson), the higher education sector was also included in the proposal.

### 1.2 Aims and objectives

The overall aim of the project (see Research Proposal in Appendix 1) was to synthesise existing evidence on disproportionality research and regulatory activity and outcomes. The intention was to identify gaps in knowledge and establish similarities and differences in employment practices and approaches to regulation that could then be used to inform the design of an outline proposal for further empirical work.

Within this, the key objectives were to:

- a) prepare a literature review of recently published research evidence on disproportionality in employment practices in the five professions identified above;
- b) gather and collate information into the regulatory procedures and functions that currently operate in the five professions (e.g. statutory committees that investigate complaints and fitness to practise);
- c) establish what data is available on regulatory procedures and outcomes and whether there are likely to be any access problems;
- d) present an interim research report to the stakeholder conference (see below) and collate the feedback from the stakeholder conference;
- e) identify additional partners/collaborators through existing links with researchers in related fields across the University; and
- f) work-up a skeleton interdisciplinary research proposal, with the help of the university team identified here and any additional partners, for an application to a relevant Research Council or other appropriate funding body.

### 1.3 Project development

Research started in March 2013, about one month after the University of Manchester Research Institute agreed to fund four researchers. Dr. Liz Seston (Research Fellow; Pharmacy School) was the first to join the project and was soon followed by the appointment of two casual ManReg (School of Law) research associates (Dr. Debbie Ellen and Tine Munk); Tom Fegan joined the Pharmacy School research team as a Research Assistant at a later date. Dr. Elaine Dewhurst, a Lecturer in Employment Law in the School of Law, also made an invaluable contribution to the research until she was invited to take up the position of Scholar-in-Residence at the University of Coimbra, Portugal.

The 26 March conference, *Disproportionality in Misconduct Proceedings: Understanding and Responding to Difference* (see Appendix 2), was attended by 73 people, including police, legal and medical practitioners. The majority of participants were police

officers, which was unsurprising given that the event was funded by Greater Manchester Police (GMP), which jointly organized the conference along with the National Black Police Association and ManReg. The principal aim of the conference was to explore whether there were commonalities in the experiences of black and minority ethnic (BME) practitioners in public services. Feedback on the conference was positive and a follow up seminar in Manchester was organised for the purpose of exploring possibilities to develop collaborative research.

Representatives from the College of Policing, GMP, Metropolitan Police Service, National Black Police Association, Solicitors Regulation Authority and the Bar Standards Board attended the seminar, held in the School of Law on 21 May 2013. By this time the researchers in the School of Law, in addition to researching the evidence on disproportionality in the police, legal professions and higher education, were also researching employment tribunal case law and the impact of the Equality Act 2010 across the chosen sectors; and the Pharmacy School were researching regulatory mechanisms as well as the evidence in medicine and pharmacy. It was apparent by the time of the May seminar that practitioners, whom had participated in the March conference, were finding it difficult to support the inter-sectoral research that we were attempting to develop. Despite expressions of interest, representatives of a range of pharmacy bodies, including the General Pharmaceutical Council, Royal Pharmaceutical Society, Pharmacy Research UK and the Pharmacists' Defence Association did not attend the conference or seminar. Medical practitioners, regulators and researchers whom had participated in the conference, did not attend the seminar; and other pressures on Professor Esmail's time meant that his important contribution to the early stages of the project could not be maintained.<sup>1</sup> Shortly after the seminar the decision was taken to exclude higher education from the research on the grounds that we were entirely reliant on University of Manchester data. Work on the drafting of an inter-disciplinary research proposal in collaboration with practitioners ceased after the seminar.

Research on media reports of disproportionality, particularly in regard to employment tribunal cases, continued after the project deadline of 31 July. Unfortunately, it has not been possible to write up this research: the media reports examined (n=243) have been placed in the Reference Manager database (see below Section 2 and 8.2) and a table of reports is available in Appendix 4, below.

We are grateful to Professors Esmail and Roberts, Dr Dewhurst and Patrick Johnson for their contributions to this research project: and the help provided in drafting this report by the Quality, Diversity and Inclusion Manager at the General Pharmaceutical Council, Vanda Thomas; the Head of Diversity at the General Medical Council, Andrea Callendar; the Head of Professional Conduct at the Bar Standards Board, Sara Down; and the Director of Inclusion at the Solicitors Regulation Authority, Mehrunnisa Lalani.

## 1.4 Outline of the report

Section 2 outlines the methodological approaches developed by researchers in the two participating schools. In the following three sections the inter-sectoral components of the research are presented. Findings of the research on employment tribunals are presented in Section 3; investigation of the Equality Act 2010 and the public sector equality duty in Section 4; and outlines of misconduct and fitness to practise procedures in Section 5 (based on online research, with practitioner verification acknowledged). Section 6 comprises the findings of the literature reviews in the four professions and a general discussion of research findings are presented in Section 7. Section 8 includes details of the intended outcomes of the project and the report ends with a short Conclusion.

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<sup>1</sup> The General Medical Council commissioned Professor Esmail (supported by Professor Roberts) to do some research in a related field and the Report, Independent Review of the Membership of the Royal College of General Practitioners (MRCGP) Examinations, is due to be completed in September 2013.

The Research Proposal, 26 March 2013 Conference Programme, summaries of the 46 employment tribunal law reports researched, table of media reports researched, poster presented to a conference and a draft funding proposal ideas are presented in six appendices.

## 2 Research Methods

The key aim of the literature review was to identify and synthesise existing research evidence of disproportionality in:

- employment practices in the police, legal profession, medicine and pharmacy, particularly relating to recruitment, career progression and retention
- the regulation of the police, legal profession, medicine and pharmacy (i.e. disciplinary proceedings and performance monitoring)

We used definitions from the Oxford English Dictionary (OED) online to categorise literature and cases. *Recruitment* was defined as 'the action of finding new people to join an organization or support a cause'.

*Promotion* was defined as: the action of promoting someone or something to a higher position or rank. Here there was a distinction made between recruitment (someone new joining an organisation) and promotion, where someone within an organisation moves into a higher position within the organisation. This is quite similar to use of the term progression, which the OED defines as 'the process of developing gradually towards a more advanced state: good opportunities for career progression'. (Oxford English Dictionary Online 2013)

The term retention in relation to employment was not well defined in the OED. In the BusinessDictionary.com<sup>2</sup> employee *retention* was defined as: 'An effort by a business to maintain a working environment which supports current staff in remaining with the company'. (BusinessDictionary.com, 2013)

*Regulation* Regulation can be defined as a principle or a rule used to control, direct, or manage an activity, organisation, or system (BusinessDictionary.com 2013)

In order to evaluate the evidence of disproportionality on ethnicity grounds across the four professions peer reviewed literature, professional and 'grey' literature were reviewed.

To collate the documents located and reviewed the research team used Reference Manager bibliographic software. This program enables a team of researchers to add to and access the database at the same time. This was important, as it enabled us to work effectively, not duplicating effort where there was cross over (e.g. research that covered more than one profession).

As part of this information management process the team developed 5 user defined fields. These fields are common across all of the reference types available in Reference Manager (e.g. Book, Case Journal, Newspaper, Statute etc.), and are ideal for collaborative team working. The user defined fields are detailed in Figure 3.1, below:

**Figure 2.1. Disproportionality in the Professions Reference Manager Fields<sup>3</sup>**

Fields	Title
1)	Country of origin
2)	Type of evidence (identified by a code system)
	<i>Code</i> <i>Description</i>
	PR-JA                      Peer reviewed journal articles (primary or secondary analysis or literature review)
	PR-PR                      Peer reviewed published reports (contain analysis of primary or secondary data)
	PR-E                        Peer reviewed editorials
	PR-C                        Peer reviewed commentary pieces
	NP-JA                      Non peer reviewed journal articles – which may report primary or secondary data analysis but are not subject to the peer review process
	NP-PR                      Non peer reviewed published reports – which may report primary or

<sup>2</sup> <http://www.businessdictionary.com/definition/employee-retention.html>

<sup>3</sup> For further information about how the team used Reference Manager, please see Section 8, below.



	secondary data analysis but are not subject to the peer review process
UP	Unpublished work – not subject to the peer review process
<i>Other (un-coded) items:</i> Case Law; Book; Book chapter; Legislation; Letter; News Item; Statute; Thesis; Web Page	
3)	Methodology To include: description of the study (methods, sample, professional group, response rate etc.); quality of study; methodological limitations. Keywords: Qualitative; Quantitative; Statistics (including type); Survey; Case study; Interviews; Telephone survey; Ethnography; Desk research
4)	Critique/Future research To include any thoughts about the study (taken in the round), key findings not mentioned elsewhere, links to other studies (use ref man ID) & any suggested areas for future research.
5)	Year case law decided (only used for case law)

## 2.1 School of Law

The two researchers based in the School of Law focused on the legal profession (TM) and the police (DE; who also researched higher education for the first four months of the project), and legal research across the four professions examined relevant statute and case law (TM). As the project progressed, inter-sectoral research was also undertaken examining the Equality Act 2010 and the Public Sector Equality Duty (DE).

### Academic literature

A series of search terms and phrases were developed using previous work undertaken (Esmail and Abel 2003). As noted by Esmail and Abel (2003), relevant research may have been undertaken by researchers across a range of disciplines and specific areas within those disciplines. Social Science literature had to be explored widely and it was not possible to focus on journals relating specifically to police and law. For example, we identified relevant work in journals that focused on career development, human resources, equal opportunities, economics, psychology, social policy, ethnicity, organisational change and leadership. Mazeika et al. (2010) analysed publications on the subject of policing between 2000 and 2007 and found that 38% of publications were not published in policing or criminal justice journals, which further supported our approach.

Importantly, there was an existing body of work available as a starting point (Smith et al. 2012) and the Reference Manager database from Aneez Esmail's work. This database was created in 2003 and regularly maintained up to 2009, holding over 4000 records. Table 2.1, below, provides details of the key search terms used for the literature review.

**Table 2.1. Key search terms: Police and legal professions**

Term	Related terms	AND
“black and minority ethnic”	BME, BAME, ‘minority groups’	Recruitment; retention; Progression; misconduct performance monitoring; leadership; organisational change; staff development  These terms used in conjunction with those in column 1 and/or 2 depending on the topic.
discrimination	‘racial discrimination’	
disproportional*		
diversity	equality	
ethnic*	With some databases this will encompass any word with this stem (i.e. ethnic and ethnicity, ethnicities etc.)	
Police	law enforcement, ‘police service’, ‘police force’	Barrister; Consultant; Doctor; General practitioner; Health; Lawyer; Locum; Medical; Pharmacist; Police; Solicitor  These terms used in conjunction with those in column 1 and/or 2 depending on the topic.
racism	race, racist, racial, ‘race equality’	
employment tribunal	‘employment appeal tribunals’, ‘court of appeal’, ‘civil division’, ‘supreme court’, ‘queen’s bench’	

The literature search and review focused on UK publications, but did not include non UK research where there was an absence of UK literature, or work published in other countries was particularly relevant.

### Search strategies

Given the range of journals that work had been published in, we searched using specific academic databases and Google Scholar (because Google Scholar offers the widest indexing across disciplines). When using academic databases, full text searches were carried out, if possible, to capture all relevant work (i.e. not only keywords within these databases). In order to identify the most relevant academic databases, an analysis of the databases that indexed work already held (by Smith and Esmail) was undertaken. Table 2.2, below, gives details of the academic databases searched.

**Table 2.2: Academic databases searched**

Database	Topic Area	Date range
Ebscohost Premier	Police	1993-2013
Proquest ABI/ Inform Global	Police	1993-2013
Hein Online Law Journal Library	Police Legal	1993-2013 1976-2013
Web of Knowledge	Police	1993-2013
Lexus Nexus/Lexus Library	Legal	1976-2013
Westlaw	Legal	1976-2013

Evidence was reviewed as soon as it was identified and, then, bibliographic data was imported directly into Reference Manager, and any relevant work within that evidence was also followed up. For example, if a particularly relevant paper was identified in Google Scholar, all papers that cited the article were also reviewed and relevant articles also imported to the Reference Manager database. Where possible, further drilling down (via citations) was done to identify the most recent work. This approach enabled effective cross

referencing between articles (because entries were made when the route from one article to another was fresh in the researcher's mind) and was added to the notes field in the Reference Manager database (i.e 'see also ref x').

Although the number of results using Google Scholar was at times very large, the range of material identified was useful, and the ability to drill down into citations of relevant work from within Google Scholar (and automatically open up articles for review and download) was time saving.

Alerts were also created, using Zetoc, for a range of individual journals in order to ensure that very recently published articles could be included without needing to repeat searches within what was already a short time frame.

### **Other information sources**

Mirroring the approach taken by Esmail and Abel (2003) we also searched outside peer reviewed journals to evidence disproportionality. The absence of research published in peer reviewed journals cannot be taken as evidence disproportionality does not exist, and it was necessary to search more widely. For example, employment tribunal hearings may evidence bias and contribute to perceptions of disproportionality (Smith *et al.* 2012), one reason for researching case law. However, employment tribunal cases are rarely reported and media coverage of claims and hearings are useful alternative data sources. Resources that proved to be helpful included the Factiva news database and Lexis Library case law and news databases; OpenGrey (database for grey literature), which was particularly relevant for finding documents published by the Solicitor's Regulation Authority and the Bar Standards Board; and the websites of associations that held relevant information, the Discrimination Law Association and Society of Asian Lawyers for example, hold useful data on employment tribunals. Information gathered this way was also added to the Reference Manager database and made available in an accessible format.

## **2.2 Manchester Pharmacy School**

The two researchers based in the Pharmacy School (LS and TF) focused on the medical and pharmacy professions. As the project progressed, inter-sectoral research was also undertaken examining misconduct procedures in the four professions (TF).

### **Databases**

We performed the search strategy in a range of databases to ensure that relevant 'grey' literature was identified, as well as the relevant peer reviewed literature. We therefore searched the following online databases:

- PubMed
- Scopus
- Cinahl
- International Pharmaceutical Abstracts
- Factiva (database for grey literature)
- SIGLE (database for grey literature)
- Embase (pharmacy only)
- Medline (pharmacy only)

In addition to searching the above databases, we had access to the Reference Manager database produced by Esmail and Abel (see above), who have published widely in the area under review (Esmail and Everington 1993; Esmail and Abel 2003) We employed the same search strategy in this database as all others in order to identify items of interest.

### **Search terms and strategy**

It was important to identify the major concepts of the research question from the outset in order to decide the search terms that would be used when performing literature searches.

Preliminary searches of the literature used a combination of inclusion search terms (Figure 2.2). These searches identified the key exclusion concepts that were used in later searches (Table 2.3). The terms used to capture the exclusion concepts were database-specific. Where appropriate, indexed terms were used to construct exclusion search terms, and non-indexed terms were used for inclusion search terms. This strategy was employed to keep the search broad. In CINAHL, however, indexed terms were used for both inclusion and exclusion terms because a hierarchical tree provided precise description of the indexed terms.

**Figure 2.2: Inclusion search terms used in literature review**

Pharmacist/pharmacy/doctor/junior doctor/consultant/physician	
<b>AND</b>	
discrimination	racism
minority groups	diversity
disproportionality	inequality
race	unfair
bullying	BME
ethnic*	prejudice

**Table 2.3: key exclusion concepts and examples of the search terms**

<b>Exclusion concept</b>	<b>Exclusion search terms</b>
Disproportionality	homosexual OR ageism OR obesity OR disabled
Professional education	universities OR colleges OR education OR medical school OR curriculum
Healthcare	mortality OR morbidity OR adverse drug event OR therap* OR diagnosis
Practitioner-patient relationships	Doctor*patient OR professional-client relations

**Inclusion criteria**

The following outlines the inclusion criteria for the review:

- date of publication between 1993 and 2013; and
- articles or reports written in the English language.

To establish evidence of disproportionality amongst pharmacists, we also contacted the Pharmacists Defence Association (approximately 20,000 members) to determine whether they had supported any of their members in employment tribunal cases for race discrimination, or were aware of any such cases.

**Identification process of relevant articles**

The literature search was performed by two members of the review team (LS and TF). The items retrieved during the separate searches were assessed by the member of the team who performed the search (LS or TF) by considering the title and/or abstract. Where no abstract was available, or the abstract/title contained insufficient information, the full item was retrieved in order to make a determination.

The relevant items (identified separately by LS and TF) were compiled before being independently considered by members of the review team (LS and TF) to determine which should be included in the review. For those items identified by the title/abstract, if there was disagreement and an agreement could not be reached by these two researchers, a determination of relevance was made using the full item.

Members of the review team (LS and TF) then separately considered each full item to determine which evidence should be included in the literature review. Those full items that made direct reference to the area under review underwent data extraction.

Where a full article was not available through the University library paper or electronic resources, an inter-library loan request was made. Full articles for the items found in the Reference Manager database compiled by Esmail and Abel were also accessed.

**Methodological quality and limitations of the data**

It was important to establish the methodological quality of the articles found. Priority was given to peer-reviewed items and also to UK data. We followed the hierarchy outlined in 2.1, above.

### 3 Employment tribunal cases in the four professions

In this section reported cases of racial discrimination claims in employment tribunals and some associated issues are analysed. This analysis is based on case law developed since the Race Relations Act 1976 was adopted. The methodology follows the outline presented in 2.2, above. The section is divided into four parts. Firstly, the background for the legislative framework is outlined; secondly, a time-line of the case law linked to legislative reform is presented; a discussion of difficulties evidencing discrimination and bias in legal proceedings follows; and, finally, the case law from 1976 to 31 March 2013 is analysed. This analysis is based on 46 court cases (see Appendix 3, below, for a brief outline of the cases).

#### 3.1 Legislative framework

The legislative framework is important background to the cases investigated in this section. Since the Race Relations Act 1976 the public perception of race discrimination has changed and, moreover, legislative reform has facilitated legal challenges. The legislative framework has broadened and deepened in close to 40 years, a period which has seen the statutory focus change from anti-discrimination to equality and diversity. Successive governments have launched initiatives to change the working conditions of BME employees, and membership of the EU has also introduced better employment protection for individuals (Baker, 2010; Fredman, 2011).

Based on principles of formal equality, the Race Relations Act 1965 was intended to prevent widespread and unconcealed discrimination against immigrants from the Caribbean and Indian sub-continent (Hepple, 2010). Yet, the legislation was weak, as its scope only covered specified 'places of public resort', e.g. hotels and restaurants (Connelly, 2004; The Cabinet Papers 1915-1982, 2013), too narrow to make much difference and there was pressure for further legislation (see, for example, Political and Economic Planning, 1967; Connelly, 2004). With the Race Relations Board having sole responsibility for race discrimination complaints, and the exclusive power to refer cases to court, denial of access to law was a common criticism: prior to 1975 only one case proceeded to trial (Connolly, 2004).

Reform came in the form of the Race Relations Act 1968, which, like its predecessor, covered formal equality and direct discrimination. Compared to the 1965 Act, it broadened the legislative framework by integrating employment, housing, goods and services (Hepple, 2010; Connolly 2004; The Cabinet Papers 1915-1982, 2013). At the same time (1969), the government ratified the United Nations Convention on Racial Discrimination, albeit with reservations in respect of the Commonwealth Immigration Acts (The Cabinet Papers 1915-1982, 2013).

#### The Race Relations Act 1976

The Race Relations Act 1976 extended the definition of racial discrimination to cover indirect discrimination, and practices that disadvantaged a particular racial group on grounds of colour, race, nationality or ethnic or national origin (The Cabinet Papers 1915-1982, 2013). By involving employers, trade unions, professional associations, employment offices and similar bodies, the scope of the legislation was extended compared with previous acts. With similar anti-discrimination acts that were to follow, for example the Equal Pay Act 1970, Sex Discrimination Act 1975 and Disability Discrimination Act 1995, the Race Relations Act 1976 marked a shift from principles of formal equality to substantive equality (Hepple, 2010; Eurofond, 2009; The Cabinet Papers 1915-1982, 2013).

The definition of racial discrimination in the Race Relations Act 1976 increased opportunities for claimants to go to court and represented a clear improvement over the ineffective Board system provided under the 1968 Act (Connelly, 2004; Hepple, 2010; Eurofond, 2009; The Cabinet Papers 1915-1982, 2013). Yet, the Act was not without flaws.

Although it was unlawful to discriminate in employment, education and the provision of other public services, the 1976 Act did not prohibit discrimination beyond this limited sphere (Fredman, 2001).

### **The Race Relations (Amendment) Act 2000, EU Directives and the Race Relations Act 1976 (Amendment) Regulation 2003**

The Race Relations (Amendment) Act 2000 (Amendment Act 2000) was introduced following Macpherson's (1999) finding of institutional racism in the Metropolitan Police Service in the *Stephen Lawrence Inquiry Report*. Inclusion of a positive legal duty on public authorities to promote racial equality broadened the legislative framework and represented a step towards transformative equality (Fredman, 2001). The EU Treaty of Amsterdam (1997), Article 13, and two directives, the Race Directive (Council Directive 2000/43/EC of 29 June 2000) and the Framework Employment Directive (Council Directive 2000/78/EC of 27 November 2000) also had an impact on domestic legislation. Both directives covered race discrimination, and together with other employment directives, they increased the pressure on the UK to improve domestic anti-discrimination legislation (Hepple, 2010; Fredman, 2001). In addition, Article 14 of the European Convention on Human Rights, incorporated into UK law under the Human Rights Act 1998, sought to protect equality beyond the scope of the existing UK legislation.

The Amendment Act 2000 extended application of the 1976 Race Relations Act and prohibited direct and indirect race discrimination and victimisation on grounds of race in public services. The Act established that public authorities or private sector organisations acting in a public capacity should give due regard to the elimination of unlawful racial discrimination, promote equality and opportunity and good relations between persons of different racial groups. The Amendment brought police services within the framework of the Race Relations Act 1976 in accordance with Macpherson's (1999) Recommendation 11.

Further reform followed adoption of the Race Relations Act 1976 (Amendment) Regulations 2003 (the Race Regulations). The regulations, which incorporated the EU Race Directive into UK law, made two important contributions to the legislative framework. Firstly, harassment was incorporated as an unlawful activity parallel to direct and indirect discrimination. Harassment was defined as engaging in unwanted conduct for the purpose of violating another person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment (Parliament of United Kingdom 2003). Secondly, the Act extended the scope of racial discrimination to cover every employee in terms of recruitment, progression and retention (Parliament of United Kingdom 2003).

### **The Equality Act 2010**

The 1976 Race Relations Act and the Amendment Acts were repealed by the Equality Act 2010 (see Section 5 of this Report). Prior to the Equality Act 2010, there were nine pieces of legislation and in excess of 100 statutory instruments designed to cater for the protected characteristics covered by the Equality Act 2010: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation. (Parliament of United Kingdom 2010; Baker, 2010; Fredman 2011; Hepple 2010).

## **3.2 Employment Tribunal Cases**

Employment law cases involving claims of racial discrimination are difficult to research. This is largely because, with the emphasis on internal procedures and tribunal hearings (which are not normally reported), it is an under-reported area of law. The only employment tribunal cases that tend to be reported are those that are eventually decided in the Employment Appeal Tribunal, the Court of Appeal, the House of Lords and/or the Supreme Court. An online search of the case law between 1 January 1980 and 31 March 2013, using Lexis Library and Westlaw, was conducted in March/April 2013. The search words 'discrimination

on racial grounds' returned 645 matches in Lexis Library, and 1832 in Westlaw. This was further broken down with the search words - 'police', 'medicine', 'pharmacy', 'barrister' and 'solicitor': 46 cases were found.

The number of cases reported has steadily increased since the Race Relations Act 1976. Figure 4.1 shows the number of racial discrimination employment tribunal cases involving the police, legal, medical and pharmacy professions reported between 1980 and 31 March 2013. Only 15 cases were reported under the provisions of the Race Relations Act 1976 in 20 years (1980-2000), compared with 21 cases in the following decade after the Amendment Act 2000 and the Race Regulations of 2003. In the two-and-a-half years since 1 October 2010 when the Equality Act 2010 came into effect and this case law search was conducted a further 10 cases were reported.

Although the numbers are small, there has been a noticeable increase in the number of racial discrimination employment tribunal cases reported across the four professions.

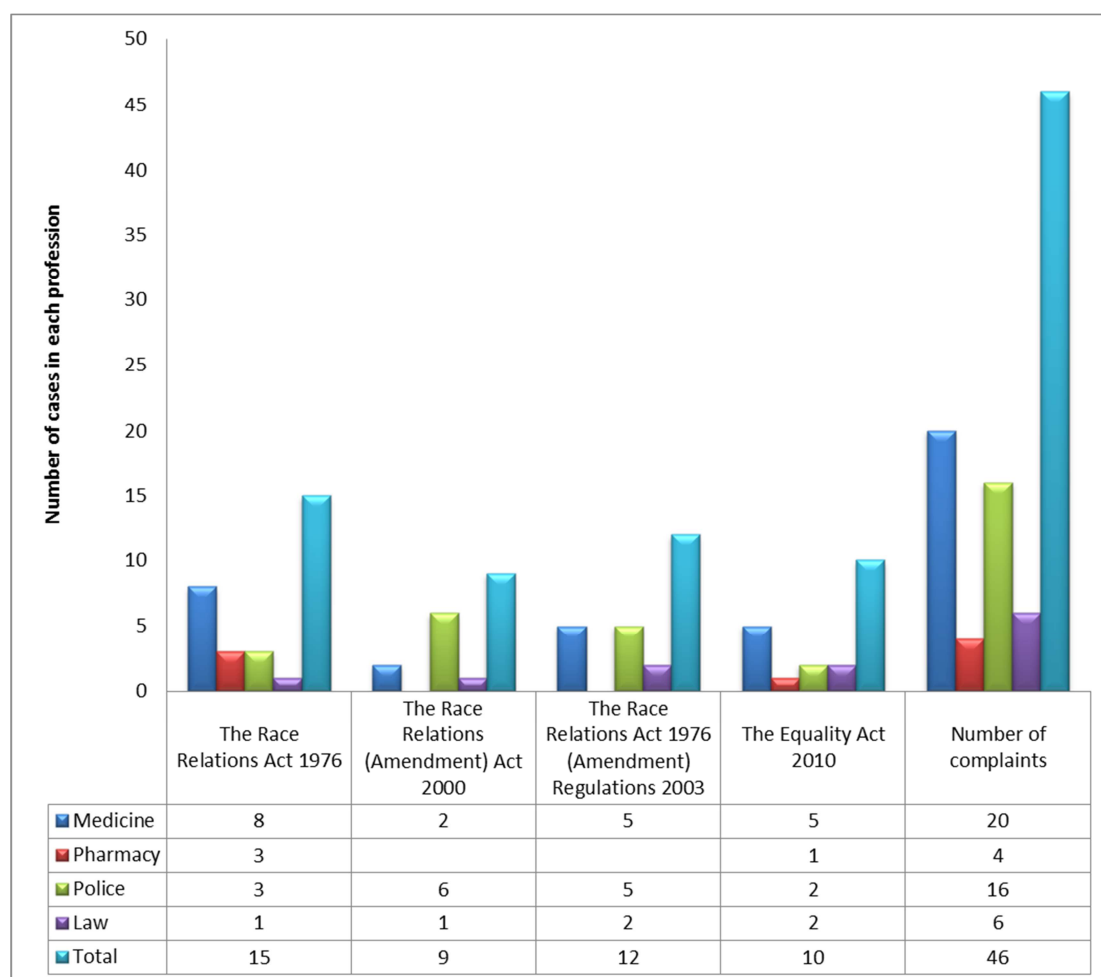


Figure 3.1. Reported racial discrimination employment tribunal cases: 1976-2013

### 3.3 Understanding disproportionality: institutional racism, unconscious bias and tokenism

In this section there is a short discussion of developments in the racial discrimination employment tribunal case law in the four professions and their association with policy and research discourses. The inquiry into the death of Stephen Lawrence (Macpherson, 1999) highlighted problems in police community relations and within the police. In The Stephen Lawrence Inquiry Report institutional racism was defined as:



The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people. (Macpherson, 1999, para. 6.34)

The processes, attitudes and behaviours referred to in the Macpherson definition are not limited to the police and 'unwitting prejudice, ignorance, thoughtlessness and racist stereotyping' feature across social organisations. It is generally recognized, also, that race discrimination goes beyond institutional discrimination. Esmail and Abel (2010) identified a range of definitions of racism, discrimination or bias in the literature which derive from everyday interactions, including colour-blind racism, unconscious/implicit bias and aversive racism. In total, they found 31 definitions of discrimination. Bonilla-Silva's (2010) approach, which involves dissecting racist ideology, allows him to question and expose key elements of colour-blind racism. In his research, he largely focused on the actions of whites and their often inconsistent, and usually self-serving, efforts to conceal their racism. He unpacks the prejudiced attitudes and discriminatory practices that reveal white professionals' assumptions of colour-blindness and their endorsement of race equality (Omi and Winant, 2009). Colour-blindness may itself be a form of discrimination as the idea of 'blindness' derives from the white majority's perceptions of norms, which overlook the needs of the individual. This point was picked up in the Stephen Lawrence Inquiry:

..police officers may mistakenly believe that it is legitimate to be "colour blind" in both individual and team response to the management and investigation of racist crimes, and in their relationship generally with people from minority ethnic communities. Such an approach is flawed. A colour blind approach fails to take account of the nature and needs of the person or the people involved, and of the special features which such crimes and their investigation possess. (Macpherson, 1999: para 6.18)

An arguable example of institutional racism of this type can be found in *Rostant v Commissioner of Police for the Metropolis* [1997] EWCA Civ 1432, The applicant, who unsuccessfully sought leave to appeal against dismissal, had been told to generate more work for herself, i.e. carry out more stops and searches. She objected to this, stating:

Being one of a statistically tiny group of ethnic minority officers in the force my cultural and behavioural traits do differ from those of the bulk of my colleagues. My being expected to conform to the behavioural norms of the white ethnic majority of the force is an unreasonable and unconstitutional constraint of my operational independence as defined by the Principles of Policing and Guidance for Professional Behaviour and constitutes a discriminatory practice in terms of the provisions of the Race Relations Act 1976." (*Rostant v Commissioner of Police for the Metropolis* [1997] EWCA Civ 1432, p.1-2 of transcript).

Unconscious, or implicit, bias and tokenism along with other forms of direct or indirect racism are substantially documented in US socio-legal research (Banks & Ford, 2008; Jolls & Sunstein, 2006; Kanter 1997; Krieger & Fiske, 2006). Unconscious bias is generally held to exist where, in spite of claims that prejudice and discrimination are not tolerated, and may be actively opposed, bias occurs unintentionally, perhaps as a consequence of subconscious associations or assumptions which operate to the detriment of the offended party. Unconscious bias is particularly problematic because indirect discrimination based on prejudice and stereotyping, can seriously damage equality and diversity in employment and regulatory practice (McNally 2012) The UK courts have developed a test to determine indirect discrimination cases despite the lack of hard evidence (discussed below).

Anti-discrimination laws forbid various forms of racism. Difficult to prove, unconscious bias and indirect discrimination create major evidential obstacles to racial discrimination claimants whom frequently fail to meet the burden of proof (Jolls and Sunstein

2006 p.976). In *North West Thames Regional Health Authority v Noone* [1987] IRLR 357, the court emphasised that:

These cases nearly always have to be dealt with on the basis of the proper inferences to be drawn from the primary facts in the light of or absence of an explanation of the discrimination. However, in this case the employers did provide an explanation. Even if the explanation was founded on a system which has been found to be unfair, there was the first obvious inference that the discrimination was based upon a personal bias or personal prejudice. (*North West Thames Regional Health Authority v Noone* [1987] IRLR 357 para 26).

As a result of *Noone*, the Court of Appeal stated in *Effa v Alexandra Healthcare NHS Trust* [1999] All ER (D) 1229, that although an Employment Tribunal is less formal in its procedures, and is not bound by the rules of evidence, it still needs to be satisfied that the complaint is proved, on the balance of probabilities, by the person who makes it. When the direct evidence of less favourable treatment or racial grounds is absent, the tribunal may make inferences from other facts, which are undisputed or are established by evidence.

However, in the absence of adequate material from which inferences can be properly made, a tribunal is not entitled to find a claim proved by making unsupported legal or factual assumptions about disputed questions of less favourable treatment on racial grounds. This is so, whether the discrimination is alleged to arise from conscious or subconscious influences operating in the mind of the alleged discriminator. (*Effa v Alexandra Healthcare NHS Trust* [1999] All ER (D) 1229, p. 3 of transcript)

In *The Law Society v Bahl* [2003] IRLR 640, the conclusion of the Employment Appeal Tribunal was that the appellants (The Law Society) were liable for race and sex discrimination. The judgment of the Tribunal was that two leading members of the Law Society had committed unconscious direct discrimination and the Society was liable for their actions. In *Chief Constable of the Kent Constabulary v Kufeji* [2001] All ER (D) 87 (May), the Tribunal found that a police officer was treated less favourably than a hypothetical white comparator on the grounds of race. In the *Bahl* case and the *Kufeji* case the claimants had problems meeting the burden of proof.

In *Qureshi v Victoria University of Manchester* [2001] I.C.R. 863 the extended use of substantial evidence was problematic. The Employment Appeal Tribunal stated that it was frequently observed in race discrimination cases that the applicant struggled with the difficulty of discharging the burden of proof in the absence of direct evidence on the issue of racial grounds. Developing a two-fold approach:

[F]irst, to establish what the facts were on the various incidents alleged by Dr Qureshi and, secondly, whether the tribunal might legitimately infer from *all* those facts, as well as from all the other circumstances of the case, that there was a racial ground for the acts of discrimination complained of". (*Qureshi, v Victoria University of Manchester* [2001] I.C.R. 863: p.874)

Yet, this approach is not without problems. It is tempting for the applicant to introduce as many items as possible to establish 'racial grounds'. The danger is that material, which is only marginally relevant, is introduced in a way, which might overshadow the main arguments and drag out the court hearings unnecessarily. The Tribunal stated:

The process of inference is itself a matter of applying common-sense and judgment of facts, and assessing the probabilities on this issue of whether racial grounds were an effective cause of the acts complained of or were not. The assessment of the parties and their witnesses when they give evidence also form an important part of the process of inference. The Tribunal may find that the force of the primary facts is insufficient to justify an inference on racial grounds. It may find that any inference that it might have made is negated by a satisfactory explanation by the Respondent of non-racial grounds for the action or decision. (*Qureshi, v Victoria University of Manchester* [2001] I.C.R. 863: at p.876: this paragraph was cited by Macpherson (1999: para. 6.41) when developing his institutional racism definition

(see above))

The test developed in *Qureshi* was advanced in *Wong v Igen Ltd (formerly Leeds Careers Guidance)* [2005] 3 All ER 812. Addressing the lack of tangible evidence, the Employment Appeal Tribunal issued guidance on the two-stage statutory test (Section 54A of the Race Relations Act 1976) introduced by the Race Regulations of 2003, whereby the burden of proof transfers from the employee to employer (at para. 17). The two-stage test was approved by the Supreme Court in *Hewage v Grampian health Board* [2012] 4 All ER 447. In the first stage, the employee has to prove that the employer has committed or was to be treated as having committed the unlawful act of discrimination against the employee. The second stage will only apply if the employee successfully has proven these facts. In this part of the test, the employer has to prove that he did not commit or was not to be treated as having committed the unlawful act, if the complaint was not to be upheld.

Despite important legislative advances, which have drawn on domestic policy and EU directives, and their clarification by the Supreme Court, it remains the case that employees who wish to make a racial discrimination claim against their employer have major difficulty attempting to establish indirect discrimination. Although little has been published in the UK in the closely connected field of unconscious bias, it is suggested that behavioural science-legal research in this area has a lot to offer employment and discrimination law.

Tokenism is largely based on Kanter's (1977) work, which offers an insight into processes which generate and sustain race discrimination within the professions and set up barriers to progress for BME employees. Central to tokenism theory is the notion that the small number of 'tokens' sets in motion processes that create more stress, isolation and obstacles to career mobility for them than 'non-tokens' (Gustafson, 2008). Kanter has defined a token group as a sub-group, which covers less than 15% of the over-all work force, but which is perceived to be different from the rest of the group. A token group can be based on race, gender, disability, or religious differences. Members of a minority group, that are exposed as being different, are more likely to have negative experiences in their workplace as a result of under-representation (Stichman et al, 2011).

According to Kanter (1977), there are three consequences of tokenism. Firstly, tokens are more visible, as the token stands out compared to the dominant group. As a result, they constantly feel under scrutiny and pressure to perform well. Secondly, they are often polarized, as the differences between the token and the dominant group are overstated, and the commonalities minimized. This can result in the social isolation of the token. To fit in with the group, they might present themselves differently or change behaviour. Finally, the dominant group may feel insecure about how to treat the token and, therefore, treat tokens in stereotypical ways - often by referring them to specific roles that are considered fit or appropriate for members of their token group (Stroshine and Brandl, 2011; Stichman et al, 2011). When tokens are integrated into the stereotypical categories defined for them by the majority, they may be forced into limited and caricatured work roles (Gustafson, 2008; Stroshine and Brandl, 2011). This may be either related to a specific limited role and/or by being treated less or more favourably compared with other employees. This can create a division in the workforce, generate tension between employees and/or expose the token more than necessary.

Signs of tokenism can be found in reading *Rostant v Commissioner of Police for the Metropolis* [1997] EWCA Civ 1432. The applicant was from a BME background. Required to repeat five weeks of training she passed with a bare minimum in 1988 and the following year was recorded as under-achieving and ill-disciplined towards her seniors. Her probation period was extended for another six months in 1990, despite her superiors believing that she was unlikely to make a good and efficient police constable, and she was eventually dismissed in 1991. Nevertheless,

Another example might be *Fearon v Chief Constable of Derbyshire* [2004] All ER (D) 101 (Jan). One of the 47 racial discrimination claim points concerned a transfer of the applicant to the city centre police station partly on racial grounds. Therefore, it was capable of being an act of discrimination, particularly, as the applicant objected to the move. He

objected because he lived near the city centre and feared that he would be subjected to threats of violence. The Derbyshire police service's decision to transfer the BME officer was in furtherance of the policy to encourage the recruitment of ethnic minority police officers. Similarly, in *Dattani v Chief Constable of West Mercia Police* [2005] IRLR 327 the claimant was the only BME officer in his division. He complained when transferred against his wishes to another station and was told that the decision to move him was based on an objective criterion, which he was the only officer to fulfil. The Employment Appeal Tribunal found that Mr Dattani was selected from a pool of 10 white officers and himself. However, it turned out that other officers could have met the stated criterion and therefore, should have been a part of the selection pool.

The impact of tokenism is not limited to minority groups. Under certain circumstances members of the majority group may see themselves as being discriminated against. This creates tensions between different groups and everyone in the work force is affected.

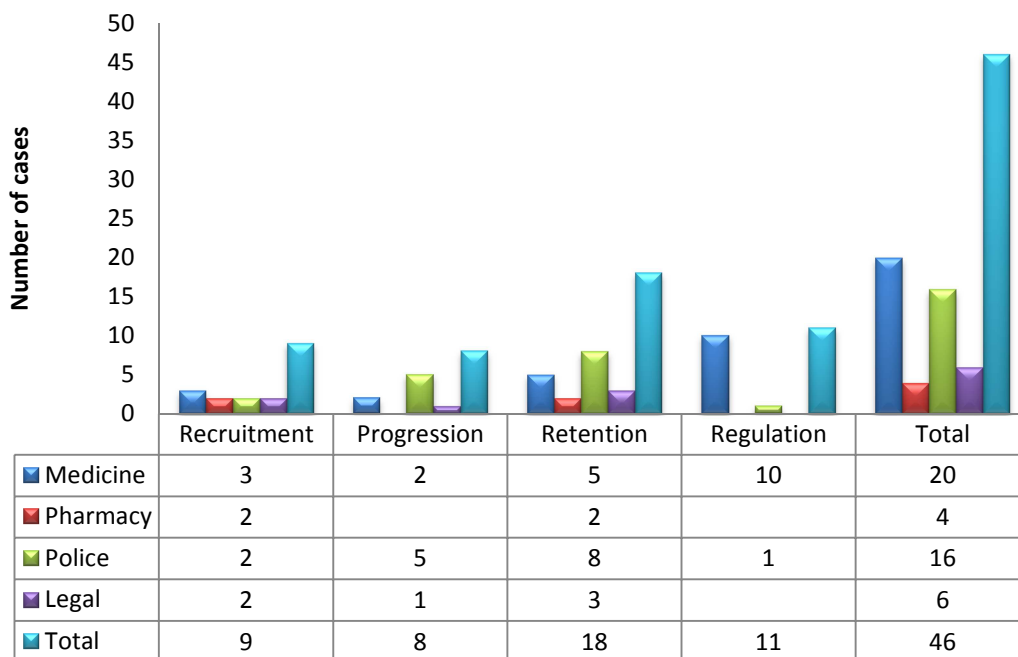
### 3.4 Case law across the four professions

Each of the 46 law reports was read to determine whether the racial discrimination claim related to recruitment, progression, retention or regulation. The four areas, which are a central feature of the research framework, tend to overlap, especially in cases involving more than one claim. Case categorisation was based on the principle or overarching claim.

Identification of recruitment cases focused on claims which related to the existence of barriers to BME applicants entering the profession or ensuring employment, compared to the circumstances existing for white professionals. There was potential for overlap with the progression and regulation categories; for example, if a claim related to a decision by a regulatory body about the number of trainee contracts (or pupillages) to be awarded. The main factor for categorising a case as recruitment was, therefore, if the claim related to appointment to a post or securing a contract for a BME applicant in equal competition with white applicants. These circumstances were determined to be distinct from progression, where categorisation related to lack of opportunities for BME practitioners to progress internally within the profession. The main factor for categorising a progression case was that the claimant was employed or in service and their claim related to internal career development opportunities. In regard to employment tribunal hearings, the retention category is associated with the lack, or inadequacy, of procedures to prevent race discrimination or ensure grievances raised by BME practitioners are addressed. The main factor for categorising a case as retention was that the claim related to allegations that a BME practitioner had been treated less favourably internally or was the subject of racial discrimination by other employees, colleagues and/or the employer. Finally, regulation cases relate to regulatory processes which prevent a BME practitioner from being registered as a professional. This may be linked to educational requirements imposed on practitioners trained outside of the UK, or fitness to practise cases where a BME professional's registration is suspended. There is potential for overlap with recruitment and retention cases, and the main determining factor for the retention category is that the claim relates to requirements imposed by a regulatory body.

This research of the case law has several limitations. Very few cases have been reported in a 37 year period (see Figure 3.1, above) and, in the absence of data of professionals practising in each of the four professions in the same time period, it is not possible to undertake comparative analysis. Nevertheless, the cases are important indicators of underlying problems relating to disproportionality, and employment tribunal cases have served as important triggers for policy initiatives in medicine (Esmail and Abel, 2010) and policing (Smith *et al*, 2010). In addition to the underreporting of employment tribunal cases (see above), many cases, as with all litigation, are settled prior to a formal hearing, sometimes with a binding confidential agreement that restricts media coverage. However, race discrimination claims do attract media interest and summaries of media reports are presented in Appendix 4, below.

Figure 3.2, below, presents a breakdown of the 46 cases by profession and category of claim.



**Figure 3.2. Race discrimination employment tribunal cases by profession and claim category: 1976-2013**

The most cases reported were in medicine (20) and the police (16). The largest group of cases within medicine related to regulation (10), whereas the majority of cases in police were in retention (8). Cases were primarily solved through internal complaint processes or employment tribunals, which are not reported in official transcripts. The largest number of reported cases related to retention. In Appendix 3, below, brief summaries of the 46 cases are presented and summaries of media reports of employment tribunals are included in Appendix 4.

## 4 Equality Act 2010 and the Public Sector Equality Duty

### 4.1 Equality Act 2010 and the statutory intention

The Equality Act 2010 was the outcome of 14 years of campaigning by equality specialists and human rights organisations. It was also one of the last measures enacted by the Labour Government before losing the election in May 2010. Hepple (2010) describes the background to introducing a single act, and the formation of a single commission. The overriding aim of the Equality Act was to achieve 'harmonisation, simplification and modernisation of equality law' (Hepple, 2010: 14).

This harmonisation was achieved by bringing together all previous anti-discrimination legislation and adding together legal protection against discrimination. 'Protected characteristics' under the act are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Additional measures in the Equality Act 2010 would have provided even further protection, but these have not been implemented by the coalition government (see below).

#### **Public Sector Equality Duty 2011 and Specific Duties Regulations 2011**

The Public Sector Equality Duty (PSED) came into force across Great Britain on 5 April 2011, replacing the previous race, disability and gender equality duties. The PSED consists of a general duty, with three main aims (set out in Section 149 of the Equality Act 2010) and specific duties (set out in regulations). It requires that public bodies consider the implications for equality when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees.

The PSED applies to 40,000 public authorities across the UK. It comprises a general equality duty and specific duties. The general equality duty requires public authorities to have due regard to the need to:

- Eliminate discrimination and harassment;
- Advance equality of opportunity; and
- Foster good relations between different groups when carrying out their activities.

Within the Act the PSED requires public authorities to take account of equality in their work and their organisation. Its remit includes decision making, policy development, budget setting, procurement, service delivery and employment functions. This aspect of the Equality Act was enacted on 5 April 2011 and some aspects of the PSED, including some of the specific duties, were not implemented by the Coalition government.

Specific duties are supportive steps intended to improve performance on the general equality duty (different for England, Scotland and Wales). In England a listed authority is required to:

- publish information to demonstrate compliance on the general equality duty. This must include information relating to those who have a protected characteristic who are its employees and people affected by its policies and practices.<sup>4</sup>
- Prepare and publish one or more objectives that it needs to achieve to further any aims of the general duty.

#### **Coalition reappraisal and 'soft touch' regulation**

After the general election in May 2010 the Coalition Government has taken a different approach to equality, which the Fawcett Society describes as 'one that often runs contrary to the previous direction of travel' (Wright et al. 2013: 12)

The coalition government approach is set out in its Equality Strategy *Building a Fairer Britain*, published in December 2010 which states:

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<sup>4</sup> Public authorities with less than 150 employees are exempt from the requirement to publish information on their employees)

New legislation and increased regulation has produced diminishing returns... This strategy sets out a new approach to equalities, moving away from the identity politics of the past and to an approach recognising people's individuality. And it sets out a new role for government, moving beyond simply introducing more legislation, to promoting equality through transparency and behaviour change. (Government Equalities Office, 2010: 6)

As detailed by the Fawcett Society, a series of announcements and initiatives were issued during this period:

- Equalities duties and methods of progressing them, such as Equality Impact Assessments (EIAs) being characterised or treated by some as 'red tape' or unnecessary bureaucracy;
- A reduction in legal requirements and greater reliance on voluntary action or culture change to tackle discrimination and advance equality; and
- A reduction in consultation, through which government can hear from those who will be affected by legislative and policy decisions. (Fawcett Society, 2013: 13)

Fredman contrasts the situation that has developed in England with the Welsh and Scottish regulations, which:

..require the authority to set out the steps to be taken to fulfil each stated objective; and a timetable to achieve this. In addition, the authority is required to monitor the progress and effectiveness of these steps. Particularly important are the requirements to involve affected persons. Scottish draft regulations similarly require public bodies to publish equality outcomes and publish a report every two years on actions has taken and progress made. (Fredman, 2011, p. 416)

Another area that was not implemented by the coalition government was the socio economic duty. Burnham (2012) cites an initial response by the Conservative Party to the proposed socio economic duty as creative of class war. At the time, this was challenged by Harriet Harman (Wintour, 2009).

The decision to not enforce the socio-economic duty was announced by the Minister for Women and Equalities, Theresa May, in November 2010 in her Equality Strategy Speech at Colin Street Community Centre (Gentleman, 2010). The quote from *Building a Fairer Britain* (Government Equalities Unit, 2010) above refers to 'identity politics' in relation to equality legislation, yet, by removing the socio economic duty the Coalition removed the means to address socio economic disadvantage, which had previously been missing in anti-discrimination legislation.

The outcome of these changes has been to reduce regulation (of the Duty) in preference for operating on a guidance basis. Subsequent statements and announcements underline the position of the coalition government. In a November 2012 speech to the CBI, David Cameron announced that he was "calling time on Equality Impact Assessments" as "we have smart people in Whitehall who consider equalities issues while they're making the policy." (Cameron, 2012)

The government also launched a public consultation exercise, *Red Tape Challenge*<sup>5</sup> which set out to reduce regulation, by inviting individuals and organisations to give their views on what legislation could be cut. Although the Act received cross party support during its passage through Parliament, the Equality Act 2010 featured on the '*Red Tape Challenge*' as an example of potentially unnecessary regulation. This led to a review of the PSED, which is expected to report in September 2013.

## 4.2 Four Professions and the Public Sector Equality Duty

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<sup>5</sup> <http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>

For this study, to understand what duty different regulatory bodies or organisations have regarding the Equality Duty involved delving into the Equalities Act 2010 and subsequent changes to the way that organisations are required to meet their obligations. The PSED is provided for in Sections 149-157 of the Equality Act 2010 and the public authorities that are included are listed in Schedule 19.<sup>6</sup>

In 2012 the Equality and Human Rights Commission (EHRC, 2012) assessed data published as part of the Equality Duty (1100 authorities were examined by the Commission between February and April 2012). The report found that only half of public authorities were meeting their requirement to publish equality data on their workforce in April 2012 and 78% were partially meeting their requirement. The report suggests good practice as follows:

- Be available online and up to date
- Be easy to find, clearly linked together and ideally available in one place
- Cover both potential and actual service users
- Provide information for all the core functions of the organisation
- Set out the information using facts and figures supported by a clear narrative
- Cover each of the protected characteristics. Information gaps should be acknowledged, with an indication as to how and when these will be addressed
- Include evidence of how impact on equality is assessed, particularly with regards to the most relevant functions and policies
- Be accessible to everyone and available in relevant alternative formats and ideally in alternative languages where required. (EHRC, 2012: 6-7)

### **Police**

Police and Crime Commissioners (PCCs) and Chief Constables share responsibility for meeting the Equality Duty in the police services. As an employer of police and office staff, the PCC has responsibilities in relation to employment tribunals and human resource issues, and is subject to the provisions of the Equality Act 2010 (Association of Police and Crime Commissioners, 2012). Warranted police officers serve under the direction and control of the Chief Constable (Section 10 of the Police Act 1996), and he or she is responsible for the appointment of officers below the rank of Chief Constable. Although not technically an employer, the Chief Constable has employment and human resource responsibilities including the PSED.

### **Medicine**

The following NHS bodies are listed in the Equality Act as being subject to the PSED:

- Regulators:
- The General Dental Council, in respect of its public functions
- The General Medical Council, in respect of its public functions.
- A Strategic Health Authority established under Section 13 of the National Health Service Act 2006, or continued in existence by virtue of that Section.
- A Primary Care Trust established under Section 18 of that Act, or continued in existence by virtue of that Section.
- An NHS trust established under Section 25 of that Act.
- A Special Health Authority established under Section 28 of that Act other than NHS Blood and Transplant and the NHS Business Services Authority.
- An NHS foundation trust within the meaning given by Section 30 of that Act. (pages 204-205 of the Act)

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<sup>6</sup> A revised/consolidated list which is longer is available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/84984/Schedule-19.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/84984/Schedule-19.pdf) and this has been reproduced in the appendix (excluding references to Welsh and Scottish organisations).



The policy review paper also lists The Independent Regulator of NHS Foundation Trusts (Government Equalities Office, 2011).

NB. Recent changes within the NHS will have had an impact on how data is collected, analysed and reported.

### **Pharmacy**

There is no public duty. The General Pharmaceutical Council (GPhC) is the regulatory body, but, according to the Act,<sup>7</sup> it has no public duty.

Vanda Thomas, Quality, Diversity and Inclusion Manager at the GPhC clarified the position thus:

the GPhC is not one of the listed bodies who are bound by the specific duty set out in the Statutory Instrument 2260 .. However, as a body that exercises public functions we are still required to have due regard to the public sector equality duty Part II, Chapter 1, 149 (1) (a) (b) (c), (2). (Personal Communication (email from Vanda Thomas, 10 June 2013))

The extent to which the GPhC maintains a record of ethnicity of pharmacists in relation to recruitment, promotion or performance management is unclear. The Centre for Pharmacy Workforce Studies carried out a Workforce Analysis in 2011 (Hassell, 2011), which recorded the ethnic origin and other demographic variables of pharmacists on the register, but it did not touch on recruitment, promotion or performance management. Given the way that pharmacists operate in the marketplace, with many running their own businesses, it is difficult to see how ethnicity and diversity could be monitored.

### **Legal Profession**

The Bar Standards Board is the regulator for barristers and is listed in Schedule 19 of the Equality Act 2010. The following is taken from the Bar Standards Board Equality Strategy (The Bar Standards Board, 2013).

#### General Equality Duty

- 1.6 The BSB (as the independent body through which the Bar Council carries out its regulatory functions) is a public body for the purposes of the Equality Act 2010 and is bound by and committed to, meeting the requirements of the general public equality duty.
- 1.7 The general duty requires public bodies to pay due regard to the need to:
  - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - Foster good relations between people who share a protected characteristic and those who do not. The protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, sex, sexual orientation, religion or belief and marriage and civil partnership.
- 1.8 The BSB meets the requirements through its equality impact analyses of all projects, policies and initiatives, equality training of staff, Committee and Board members and collection and examination of equality data both on the profession and those that use the BSB's services.
- 1.9 The BSB engages with a network of stakeholders who are key sources of ideas on equality and provide essential feedback on the BSB's work. This assists the BSB in meeting its duties in relation to the fostering of good relations between groups.

#### Specific Equality Duties

- 1.10 The Equality Act Specific Duties Regulations 2011, imposes specific duties on a number of public bodies including the Bar Council (and therefore the BSB) namely:
  - to publish information to show compliance with the Equality Duty, at least annually; and
  - to set and publish equality objectives, at least every four years.

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<sup>7</sup> The General Pharmaceutical Council is NOT listed with other regulators in Schedule 19 of the Act.

The Solicitors Regulation Authority (SRA) details its equality framework on its website<sup>8</sup> including its responsibilities as a regulator. The Equality framework document cites work undertaken for the SRA on disproportionality (see 6.2.2 below).

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<sup>8</sup>[www.sra.org.uk/sra/equality-diversity/equality-framework.page](http://www.sra.org.uk/sra/equality-diversity/equality-framework.page)

## 5 Misconduct and Fitness to Practise Procedures in the Four Professions

In this section regulatory procedures that govern the behaviour of police, legal, medical and pharmacy practitioners are outlined. The research relied on online resources and verification by practitioners has been gratefully acknowledged.

### 5.1 Police

Unlike lawyers, medical practitioners and pharmacists, members of police services in England and Wales are not constituted as a professional body and individual officers are not regulated by standards, or monitored, or subject to enforcement procedures that are statutorily assigned to an independent body. In this regard, it would be misleading to equate the police with the legal, medical and pharmacy professions. However, it is apparent that an influential and growing body of police opinion is moving in the direction of establishing a police profession, of which the recent creation of the College of Policing is an example (Neyroud, 2011).

The 43 police services of England and Wales are constituted as independent bodies under the direction and control of an operationally independent chief officer (see Section 6.1, below). Although a statutory framework exists under the Police Reform Act 2002 (PRA 2002) and secondary legislation,<sup>9</sup> and national guidance is issued by the Home Office (2012) and the Independent Police Complaints Commission (IPCC 2013) *Statutory Guidance to the police services on the handling of complaints* much discretion is available to police services in regard to the operation of misconduct and unsatisfactory performance procedures. Police officers are not subject to fitness to practise procedures.

Given that different misconduct and performance procedures exist across police services, the system operating in Greater Manchester Police (GMP) is outlined below.<sup>10</sup>

Headed by a Chief Superintendent, the Professional Standards Branch is responsible for the misconduct system and the handling of public (external) and internal complaints. GMP has ownership of all complaints made against service personnel (including officers and civilian staff members) and the IPCC, an independent oversight body, has guardianship of the complaints system nationwide. Under the PRA 2002 the IPCC has powers to investigate incidents of death and serious injury, and arrangements exist for the Commission to independently investigate other complaints or manage or supervise police investigations (IPCC 2013).

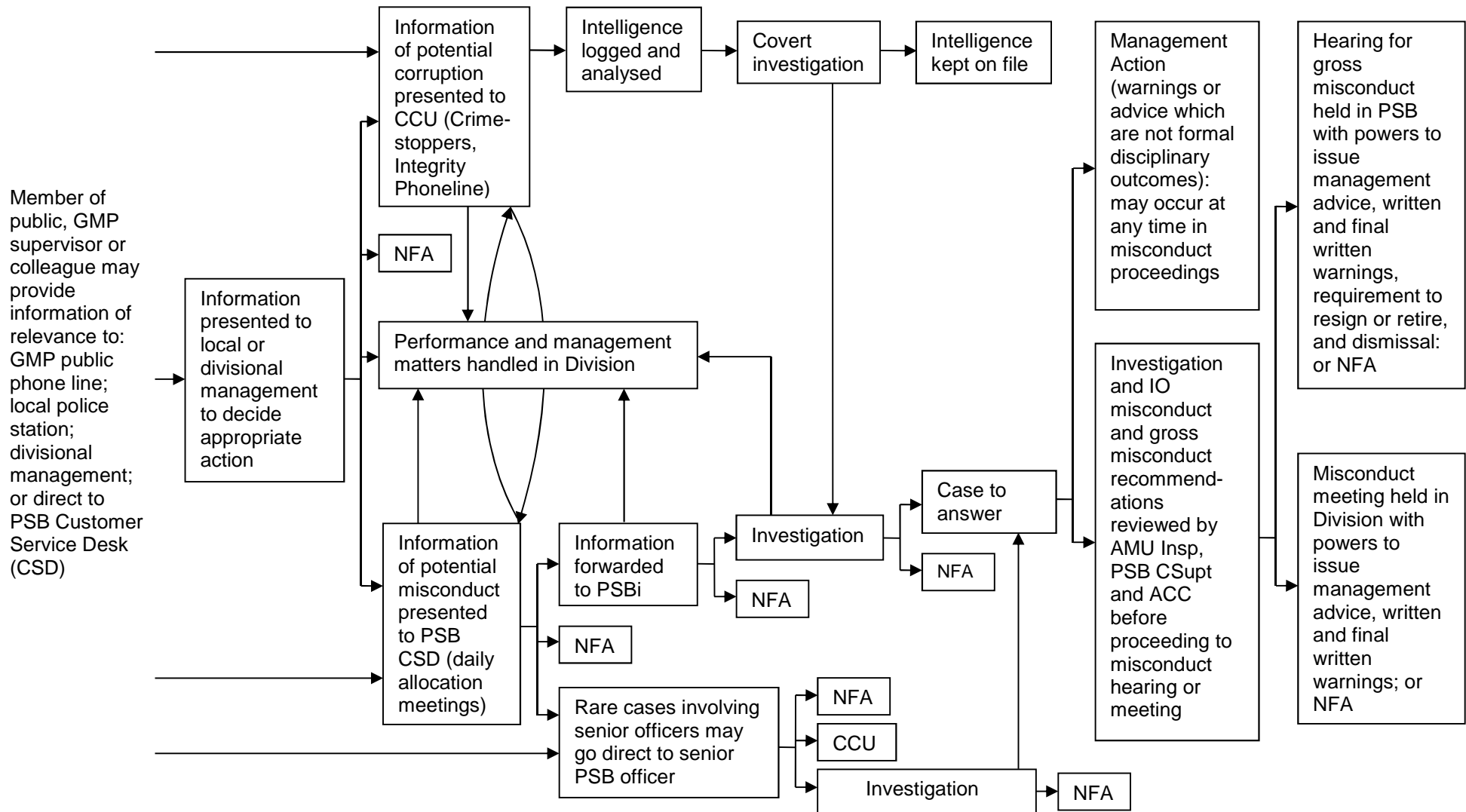
The majority of complaints are investigated by the police<sup>11</sup> and there are several similarities in procedures for dealing with public and internal complaints. The system for dealing with internal complaints in GMP is illustrated in Figure 5.1, below. Information concerning the alleged misconduct of police officers would come into GMP from a variety of sources. A member of the public, the IPCC, a colleague or supervisor could provide information to GMP's public phone line, Crimestoppers, the integrity phone line, or to divisional management.

<sup>9</sup> Police (Complaints and Misconduct) Regulations 2012; Police (Performance) Regulations 2012; Police (Conduct) Regulations 2012; Police Appeals Tribunals Rules 2012.

<sup>10</sup> This section draws extensively on Smith et al. 2012.

<sup>11</sup> This will continue to be the case despite the 2013 decision to transfer resources from police professional standards departments to the IPCC in order that more public complaints may be independently investigated (May 2013 <https://www.gov.uk/government/speeches/speech-by-the-home-secretary-on-police-integrity>).

**Figure 5.1: Flowchart of internally raised misconduct proceedings for police officers below ACPO rank in GMP (excluding public complaints and criminal proceedings)(Smith *et al.*, 2012)**



Police misconduct is defined as 'a breach of the Standards of Professional behaviour' and gross misconduct occurs where the breach is 'so serious that dismissal would be justified' (Home Office, 2012: 27). All potential misconduct matters are passed to the PSB Customer Service Desk (CSD) for consideration. A Complaints Manager is responsible for the management of the CSD, and twice-daily allocation meetings are held where new cases received are discussed. Upon review, a determination will be made as to whether allegations, if proven, would constitute misconduct or gross misconduct. If so, the complaint will be referred upwards in PSB for a formal misconduct investigation. All cases indicating unsatisfactory performance are passed to the relevant division to be dealt with.

PSB misconduct investigations are led by investigating officers (IOs) who have the rank of Inspector. IOs supervise around three or four assistant investigators who are made up of a range of sergeants, constables and police staff. Misconduct investigations are overseen in the traditional hierarchical model of police supervision.

A detective chief inspector and a chief inspector supervise IOs and have a greater involvement as IOs in more serious PSB investigations, those involving deaths or serious injury for example. The chief inspectors also have a greater level of involvement with the IPCC in supervised, managed or independent investigations. Overall responsibility for managing misconduct investigations (known locally as PSBi) rests with a superintendent. The superintendent also oversees the work of the Assessment and Misconduct Unit (AMU).

The AMU is responsible for reviewing investigation recommendations and benchmarking in order to promote consistency and fairness in recommendations. The Unit has responsibility for the review of all investigations where it has been determined that a police officer has a case to answer for misconduct or gross misconduct. IO reports and recommendations are reviewed in conjunction with the full file of evidence collected during the investigation. The inspector in the AMU may direct IOs to seek further evidence or clarify points raised in investigations if they are perceived to be evidentially weak. The Chief Superintendent in charge of PSB and the Assistant Chief Constable responsible for professional standards will conduct further reviews before the AMU Inspector makes arrangements for a misconduct meeting or hearing.

Misconduct meetings are used when it has been determined that an officer has a case to answer for misconduct. All misconduct meetings take place on division and are heard by a senior officer unconnected with the case. The police officer is not entitled to legal representation. Management in divisions have the power to issue management advice, written warnings and final warnings.

Misconduct hearings are used when it has been determined that an officer has a case to answer for gross misconduct. If an officer resigns after the conclusion of a misconduct investigation a misconduct hearing will not be held. All misconduct hearings are administered by PSB who have the power to issue management advice, written and final warnings, requirements to resign or retire and dismissal. The police officer is entitled to legal representation.

On rare occasions, serious cases such as those involving death or serious injury, or involving a senior officer, may go directly to a senior PSB officer and, if necessary, senior PSB officers will liaise with external agencies including the IPCC and, if there is evidence that a criminal offence may have been committed, the Crown Prosecution Service.

The principal differences between internal and public complaints that may lead to unsatisfactory performance, misconduct or criminal proceedings against a police officer are: the IPCC may investigate, manage or supervise police investigations of public complaints; a member of the public has a right of appeal, either to the Chief Constable or the IPCC, in regard to some aspects of the complaints process and outcomes; the IPCC may direct the Chief Constable to act after the conclusion of a complaint investigation; and a misconduct hearing may be held in public.

Unsatisfactory performance is defined as 'an inability or failure of a police officer to perform the duties of the role or rank he [or she] is currently undertaking to a satisfactory standard or level.' (Home Office, 2012: 56) dealing with unsatisfactory performance is the responsibility of divisional or specialist department supervisors and managers, and the

emphasis is on dealing with concerns informally. If this is not possible, the unsatisfactory performance procedure allows for a staged approach to addressing problems. A line manager will arrange a meeting with the officer about his or her performance, and if determined to be unsatisfactory an improvement notice will be issued. If the officer's performance has not improved within the specified period a second line manager will arrange a second meeting and a further improvement notice may be issued. If the officer's performance has still not improved he or she will be required to attend a third meeting at which a panel may issue a sanction. If a single incident is considered to amount to 'gross incompetence' an officer may be called directly to a stage three meeting.

GMP's Counter Corruption Unit (CCU) processes information concerning the alleged criminality or corruption of police personnel. The CCU intelligence team logs and analyses information received against GMP officers and staff. Following receipt of intelligence, a range of evaluation processes are used to determine the reliability of the information provided and to what extent the alleged activities pose a risk to GMP and members of the public. Where it is established that there has probably been misconduct or criminality by an identified police officer, detectives in the CCU Operations Team may be tasked with a formal investigation in liaison with the Crown Prosecution Service.

## 5.2 Legal Profession

Within the legal field in England and Wales, there are two main professions: solicitors and barristers. Before the Legal Services Act 2007 (LSA 2007), the Law Society and Bar Council performed both the regulatory and representative functions for solicitors and barristers, respectively. The Approved Regulators of solicitors and barristers, as defined by the LSA 2007, are the Law Society and the General Council of the Bar (known as 'the Bar Council'). With the introduction of the LSA 2007, there was the need for independent regulation secured through the separation of an approved regulator's representative and regulatory functions. The LSA 2007 places this duty on the Legal Services Board (LSB), which produced the Internal Governance Rules 2009 (Legal Services Board 2009) to ensure adequate separation. These Rules are binding on the Law Society and Bar Council, as Approved Regulators, and on the Solicitors Regulation Authority (SRA) and Bar Standards Board (BSB) as the independent regulatory arms of the Law Society and Bar Council, respectively. Since the separation of their dual functions, the Law Society and Bar Council continue to perform representative functions. Section 1 of the LSA 2007 defines the "regulatory objectives" and the professional principles that the SRA and BSB must uphold.

The Office of Legal Complaints (OLC) was also established under the LSA 2007 and was responsible for setting up an ombudsman scheme for legal services complaints.<sup>12</sup> Whilst the LSB and OLC have independent roles and separate functions, a Memorandum of Understanding (MoU) exists between them which sets out the framework by which each will work together in accordance with the LSA 2007. Equally, MoU's exist between the Legal Ombudsman (LeO) and SRA (SRA and Legal Ombudsmen 2010) and the LeO and BSB (BSB and Legal Ombudsmen 2010). In accordance with these MoU's, the LeO will refer conduct complaints relating to solicitors and barristers to the SRA and BSB, respectively, for investigation.

### Solicitors Regulation Authority

In accordance with the LSA 2007, the Law Society discharges its regulatory functions through the SRA. As the independent professional regulator for solicitors in England and Wales, the SRA has a statutory duty to ensure arrangements are in place to protect and promote the 'regulatory objectives' set out in the LSA 2007, including taking appropriate

<sup>12</sup> The Legal Ombudsman commenced operation on 6 October 2010

action when misconduct occurs. The SRA Disciplinary Procedure Rules 2010 define misconduct:

..when a regulated person has failed to comply with a requirement imposed by the statutes under which the SRA regulate or with professional rules or, more broadly, has committed professional misconduct.

The Principles (Solicitors Regulation Authority 2013a) define the fundamental ethical and professional standards underpinning the practice<sup>13</sup> of individual solicitors and firms. The Code of Conduct (the Code) (Solicitors Regulation Authority 2013b) contains mandatory outcomes that solicitors and firms must achieve to comply with the Principles; however, the Code also contains non-mandatory indicative behaviours in acknowledgement that the mandatory outcomes can be achieved in a variety of ways.

The regulation of individual solicitors and firms has undergone major change in recent years and is in a period of transition (Figure 5.2: The evolution of the SRA): the SRA has replaced rules-based regulation with outcomes-focused regulation (OFR) (Solicitors Regulation Authority 2010). Rather than demand strict compliance with rules, the SRA has decided that regulation should be used to ensure the outcomes contained in the Code are achieved. Whereas the regulation of solicitors was previously reactive to events that had occurred, the SRA adopts a proactive, preventative, risk-based regulatory approach. By 2015, the SRA aims to be an ‘optimised’ outcomes-focused regulator (Solicitors Regulation Authority 2010).

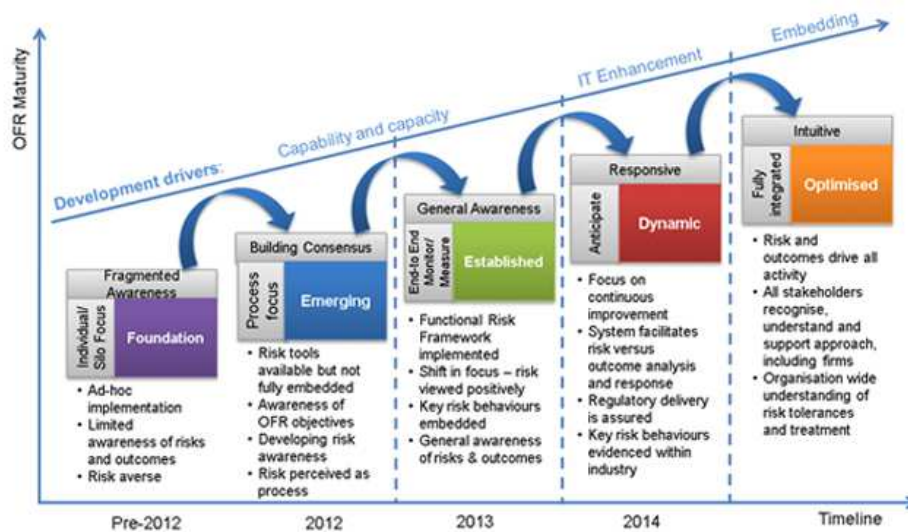


Figure 5.2: The evolution of the SRA (SRA 2012d)

At present, the SRA publishes information about the principles of OFR, a broad description of the regulatory tools at its disposal and its decision-making approach; however, the SRA has not published clear guidance on misconduct procedures. This has made elucidation beyond the scope of this research. For example, the committees that perform the misconduct proceedings are not available at [sra.org.uk](http://sra.org.uk), and the criteria for progression through misconduct proceedings and the publication of indicative sanction guidance are at present significantly less developed than the other professions.<sup>14</sup> This makes it difficult to outline how reports of misconduct progress through the SRA’s misconduct procedure and the reasons for the decisions taken.

<sup>13</sup> Principles 1, 2 and 6 also apply outside of practice.

<sup>14</sup> The SRA closed a consultation on indicative guidance on financial penalties on 19 April 2013. When complete, this indicative guidance will provide the framework for determining the level of a fine (<http://www.sra.org.uk/sra/consultations/financial-penalties.page>).

## Bar Standards Board

As the independent professional regulator for barristers in England and Wales, the BSB have a statutory duty to ensure arrangements are in place to protect and promote the “regulatory objectives” set out in the LSA 2007. The BSB, for example, are responsible for handling complaints against barristers about conduct and taking appropriate action. The BSB delegates this function to the Professional Conduct Committee (PCC). The standards of professional conduct expected of barristers are described in the BSB published Code of Conduct (“the Code”) (BSB, 2013c).. The definition of professional misconduct is defined under paragraph 901.7 of the Code as “any failure by a barrister to comply with any provision of the Code other than those referred to in paragraph 901.1”.<sup>15</sup> Unlike medicine and pharmacy, the term “fitness to practise” is exclusively used in the Bar’s complaints and disciplinary procedure to determine whether a physical or mental condition may be affecting a barrister’s ability to practice (BSB 2013g). As such, Fitness to Practise proceedings are independent of disciplinary proceedings.

The Professional Conduct Department, acting on behalf of the PCC, employs a structured procedure for handling complaints. At the preliminary assessment and formal investigation stages, decisions are made about whether to dismiss or progress a complaint. These decisions, whether taken by staff (under Rule 4 of the Complaints Rules (BSB 2013e), members of the PCC or the full PCC, must be taken in accordance with the “decision making criteria” (BSB 2012f) and the Complaints Rules (BSB 2013e).

In Figure 5.3, below, a flow-chart shows the BSB internal complaints procedure. Internal complaints, raised by the BSB against a barrister, are automatically subjected to formal investigation because they are only raised where it has previously been established that there is evidence of a potential breach of the Code. Complaints can also arise from “external” sources such as ‘clients’ and ‘non-clients’. Since 6 October 2010<sup>16</sup>, “client” complaints i.e. where a client wishes to complain about a barrister acting on their behalf must be sent to the LeO under the LSA 2007. The LeO deals with complaints about services and in accordance with the LSA 2007, where the complaint includes evidence that there may have been a breach of the Code amounting to professional misconduct, the LeO will refer the conduct issue(s) to the BSB (BSB 2012b). A “client” complaint will then follow the same process as a “non-client” complaint. “Non-client” complaints are made directly to the BSB and are referred to the Assessment Team<sup>17</sup> where a preliminary assessment (BSB 2013c) is made of the complaint by applying a “threshold test”.<sup>18</sup> The Assessment Team can refer complaints to other bodies if it is appropriate to do so such as a barrister’s employer or chambers.<sup>19</sup> When a complaint does not reveal a potential breach the Code of Conduct, the Assessment Team will dismiss the complaint.

<sup>15</sup> A new Code of Conduct is due to be introduced in January 2014. (Sara Down, Head of the Professional Conduct Department: personal communication)

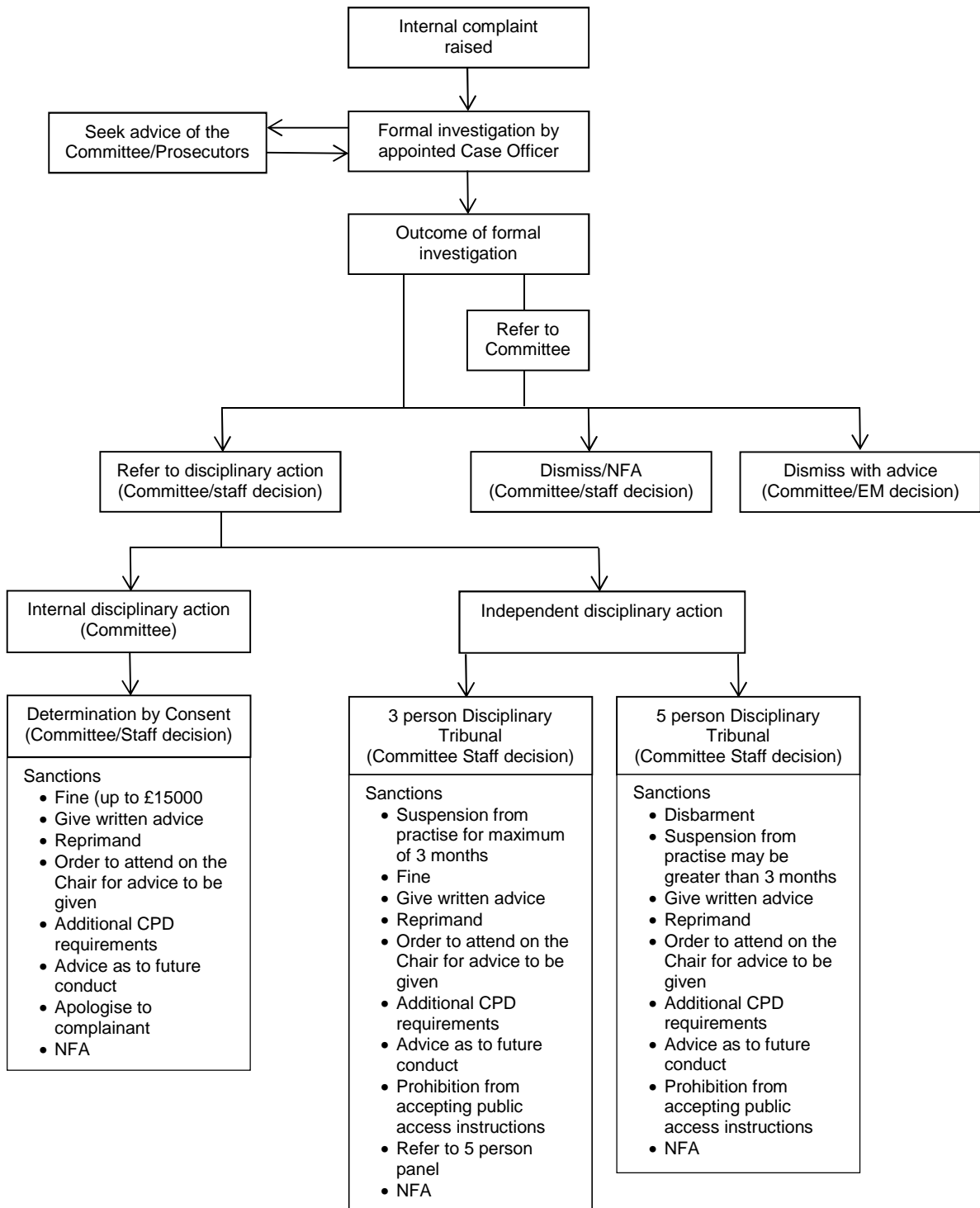
<sup>16</sup> Before 2010, the BSB dealt with complaints about both the conduct of barristers and the service barristers provided to their clients.

<sup>17</sup> The Assessment Team, the Investigations and Hearings Team and the Operational Support Team make up the Professional Conduct Department

<sup>18</sup> “On initial receipt of an external complaint, or notification of information that might give rise to an internal complaint, the primary test for deciding whether to refer the complaint to formal investigation is whether the complaint discloses a “potential” breach of the Code and/or professional misconduct (Rules 7 (c) and 24). A “potential” breach is defined as an allegation or allegations that, if proved, would or might amount to a breach of the Code. Two other factors are also taken into account when deciding whether an external complaint should be referred to formal investigation: when the complaint has been submitted within time and whether further consideration is justified” (BSB 2011).

<sup>19</sup> a) Referral to chambers is only appropriate where: the potential breach is minor; if proved, disciplinary action would be disproportionate; and the chambers has the ability to resolve the complaint (BSB 2011; BSB 2013e; BSB 2013h).





**Figure 5.3: BSB procedure for handling internal complaints BSB, 2011; Solicitors Regulation Authority, 2010.**

If an external complaint reveals a potential breach of the Code of Conduct, the Assessment Team will refer it to the Investigations and Hearings Team, which appoints a Case Officer to conduct a formal investigation (BSB 2012d; BSB 2013e). The purpose of the formal investigation is to gather evidence to establish if a breach has occurred, which then forms the basis of the decision on whether to dismiss the case or refer it for disciplinary action. A "threshold test" and "decision making criteria" (BSB 2012f) are used to reach an objective and transparent decision. Only when there is a "realistic prospect of a finding of professional

misconduct being made" and "the regulatory objectives would be best served" will the complaint be referred for disciplinary action.

In order to handle complaints efficiently, the PCC authorizes (BSB 2012a) staff to take some decisions; however, staff cannot dismiss all complaints or refer them directly for disciplinary action: staff powers are dependent on the specific authorities given. Where there is no staff authority, the complaint will be referred to the PCC or an "Experienced Member"<sup>20</sup> (EM) of the PCC. A system of categorization (BSB 2012e) of complaints describes when a complaint should be referred to the PCC or EM. A member of the PCC and an EM can take decisions outside of a PCC meeting; however, when this is not appropriate, the Operational Support Team appoints a Case Examiner (a member of the PCC), who compiles a written report, which is circulated in advance of a PCC meeting. The Case Examiner orally presents the report to the PCC and, after consideration, the PCC collectively decides, subject to lay *veto*<sup>21</sup>, whether to dismiss or refer the complaint for disciplinary action. The PCC will only refer a complaint for disciplinary action if there is a reasonable prospect of proving misconduct in front of the independent tribunal and it would be in the public interest.

Disciplinary action can be taken by the PCC or an independent disciplinary tribunal (BSB 2013a; BSB 2013b; BSB 2013f). Under the Determination by Consent (DBC) procedure, the PCC, with the consent of the barrister, can issue a range of sanctions (see Figure W) in a limited number of circumstances (BSB 2013d). The PCC cannot suspend or disbar a barrister and the barrister loses their right of appeal. Alternatively, disciplinary action can be handled by an independent disciplinary tribunal (BSB 2013a; BSB 2013f). The members of the disciplinary tribunal are independently appointed by the Bar Tribunals and Adjudication Service (BTAS), which acts on behalf of the Council of the Inns of Court (COIC).

When a complaint is referred to a disciplinary tribunal, the PCC decides whether the BTAS should appoint three or five persons to hear the case (BSB 2013e). The sentence that the tribunal is likely to impose dictates whether a 3- or 5-person panel is appointed (BSB 2013e). The purpose of the disciplinary tribunal is to decide whether there has been a breach of the Code that amounts to professional misconduct. When making this decision, the disciplinary tribunal applies the criminal standard of proof i.e. "beyond reasonable doubt" (BSB 2013f). If the Tribunal finds there has been professional misconduct, it determines which sanctions to impose (BSB 2013f; BTAS 2013). A three person panel has several available sanctions but it cannot suspend for more than three months or disbar a barrister. A 5-person panel can disbar a barrister or suspend the barrister for more than 3 months. Where a barrister is found guilty of professional misconduct (whether by a Disciplinary Tribunal or DBC procedure), this finding is published within seven days of the hearing on the BSB website and currently remains there for a minimum of two years (BSB 2013e; BSB 2013f).

### 5.3 Medicine

#### General Medical Council

The purpose of the General Medical Council (GMC) is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine. The GMC has four main functions under the Medical Act 1983 (Parliament of the United Kingdom 1983):

- keeping up-to-date registers of qualified doctors
- fostering good medical practice

<sup>20</sup> Paragraphs 4.46-4.49 of BSB, 2011 ;Solicitors Regulation Authority, 2010 1484 /id}

<sup>21</sup> A complaint presented to the PCC can only be dismissed if more than half of the lay members present at the time agree

- promoting high standards of medical education and training
- dealing firmly and fairly with doctors whose fitness to practise is in doubt.

The GMC has a structured procedure for handling complaints about registered doctors' fitness to practise. The legal framework for the GMC's Fitness to Practise procedures is set out in the Medical Act 1983 (Parliament of the United Kingdom 1983):

and Fitness to Practise Rules 2004 GMC 2004). In a 2103 policy statement, *The Meaning of Fitness to Practise*, the GMC declares that 'the public is entitled to expect that their doctor is fit to practise, and follows the GMC's principles of good practice described in *Good Medical Practice*.' (GMC 2013e). There are four main domains of good medical practice: (1) knowledge, skills and performance; (2) safety and quality; (3) communication, partnership and teamwork; and (4) maintaining trust.

### **GMC investigation**

The GMC receives complaints from members of the public, public bodies and others ([http://www.gmc-uk.org/about/partners\\_index.asp](http://www.gmc-uk.org/about/partners_index.asp)). The GMC will conduct a preliminary investigation to decide which complaints raise potentially serious issues. If the GMC decide a complaint raises no issues, the case may either be closed, or referred to the doctor's employer, e.g. NHS. If a complaint raises a concern about the doctor's fitness to practise, the GMC will investigate the case (known as 'Stream 1'). The preliminary investigation may obtain further information from the complainant or from the organisation that has referred the matter to them and assess the doctor's performance and/or health.

Once the preliminary investigation has concluded, two GMC staff known as case examiners (one medical and one non-medical) consider the case. If the two case examiners do not agree, the matter will be considered by the Investigation Committee which has the same powers as the case examiners. The GMC publishes guidance to assist case examiners and the Investigation Committee when making a decision of whether or not to refer a case to the Medical Practitioners Tribunal Service (MPTS) (GMC 2013a).

### **The Medical Practitioners Tribunal Service**

The establishment of the Medical Practitioners Tribunal Service<sup>22</sup> (MPTS) was approved by Parliament in 2011 and launched in June 2012. The MPTS is accountable to Parliament and to the GMC Council. It provides a hearings service that is fully independent in its decision-making and separate from the investigatory role of the GMC. The MPTS conducts two types of hearing - Interim Orders Panel (IOP) hearings and Fitness to Practise (FtP) Panel hearings.

#### **Interim Orders Panel**

At any stage of the investigation the GMC may refer a doctor to the MPTS for an IOP hearing. The IOP can suspend or restrict a doctor's practice while the investigation continues if it is necessary for the protection of the public, or is otherwise in the public interest or in the interests of the doctor (GMC 2013d). When deciding whether to refer a case to an IOP, the GMC apply a test criteria (MPTS 2013).

#### **Fitness to Practise Panel**

The FtP Panel hears evidence and decides whether the facts alleged have been proved. Where the allegations are proven, the FtP Panel decides whether the doctor's fitness to practise is impaired and which sanction (see Figure 5.3) should be issued. In order to issue a sanction the FtP Panel must be satisfied that there has been a significant departure from the standards set out in *Good Medical Practice* (GMC 2013b) or where there is cause for concern following an assessment of a doctor's performance. The FtP Panels use GMC guidance on sanctions (GMC 2013c).

For the FtP Panel to make a finding on disputed facts, the civil standard of proof i.e. 'balance of probabilities' is applied (GMC 2004) (Rule 34(12)). The FtP Panel exercises its

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<sup>22</sup> See [www.mpts-uk.org](http://www.mpts-uk.org)

professional judgment<sup>23</sup> to decide whether or not a doctor's fitness to practise is impaired and what sanction should be imposed on a doctor. In cases where a doctor's fitness to practise is not impaired, the FtP Panel exercises its professional judgment on whether to issue a warning to the doctor (GMC 2010) or take no further action. The FtP Panel must be satisfied that any proposed action is sufficient to protect patients and is in the public interest (GMC 2009). In cases where a doctor's fitness to practise is impaired, the FtP Panel can issue a range of sanctions, including erasure from the register, suspension and the issue of warnings.

Doctors have a right of appeal to the High Court (Court of Session in Scotland) against any decision by the FtP panel to restrict or remove their registration. Any doctor whose name is erased from the Medical Register must wait until after a period of five years since the date their name was erased to apply for restoration to the Medical Register. The Professional Standards Authority (PSA) (previously known as the Council for Healthcare Regulatory Excellence (CHRE)) may also appeal against certain decisions if they consider the decision was too lenient and does not protect the public. The PSA monitors the UK's nine health and care professional regulatory bodies (including the GMC and GPhC), audits the initial stages of fitness to practise processes and reviews all final decisions made by the fitness to practise committees ([www.professionalstandards.org.uk](http://www.professionalstandards.org.uk)).

## 5.4 Pharmacy

Prior to September 2010, the Royal Pharmaceutical Society of Great Britain (RPSGB) acted as both the professional body and regulator for pharmacists in Great Britain (the Pharmaceutical Society of Northern Ireland (PSNI) regulates pharmacists in Northern Ireland). The RPSGB was comprised of three committees: the Investigating Committee, Infringements Committee and Statutory Committee. From September 2010, the regulatory functions of the RPSGB were taken over by the newly formed General Pharmaceutical Council (GPhC) and the Royal Pharmaceutical Society (RPS) has solely acted as a professional body since then.

### **General Pharmaceutical Council (Sept 2010-present)**

The GPhC has a structured procedure for handling complaints against pharmacists, pharmacy technicians and pharmacy premises to ensure the pharmacy workforce is fit for practise (Figure 5.4). The GPhC describes fitness to practise "as a person's suitability to be on the register without restrictions" i.e. "maintaining appropriate standards of proficiency ensuring you are of good health and good character, and you are adhering to principles of good practice set out in our various, standards GPhC 2012b), guidance and advice ([www.pharmacyregulation.org/raising-concerns/registrants/definition-fitness-practise](http://www.pharmacyregulation.org/raising-concerns/registrants/definition-fitness-practise)). Like medicine, the term 'fitness to practise' covers pharmacists' conduct and health.

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<sup>23</sup> The FtP Panel must exercise its professional judgment within the relevant legislation (the Medical Act 1983, the General Medical Council (Fitness to Practise) Rules Order of Council 2004 and various other Rules) and framework set out by the Indicative Sanctions Guidance.

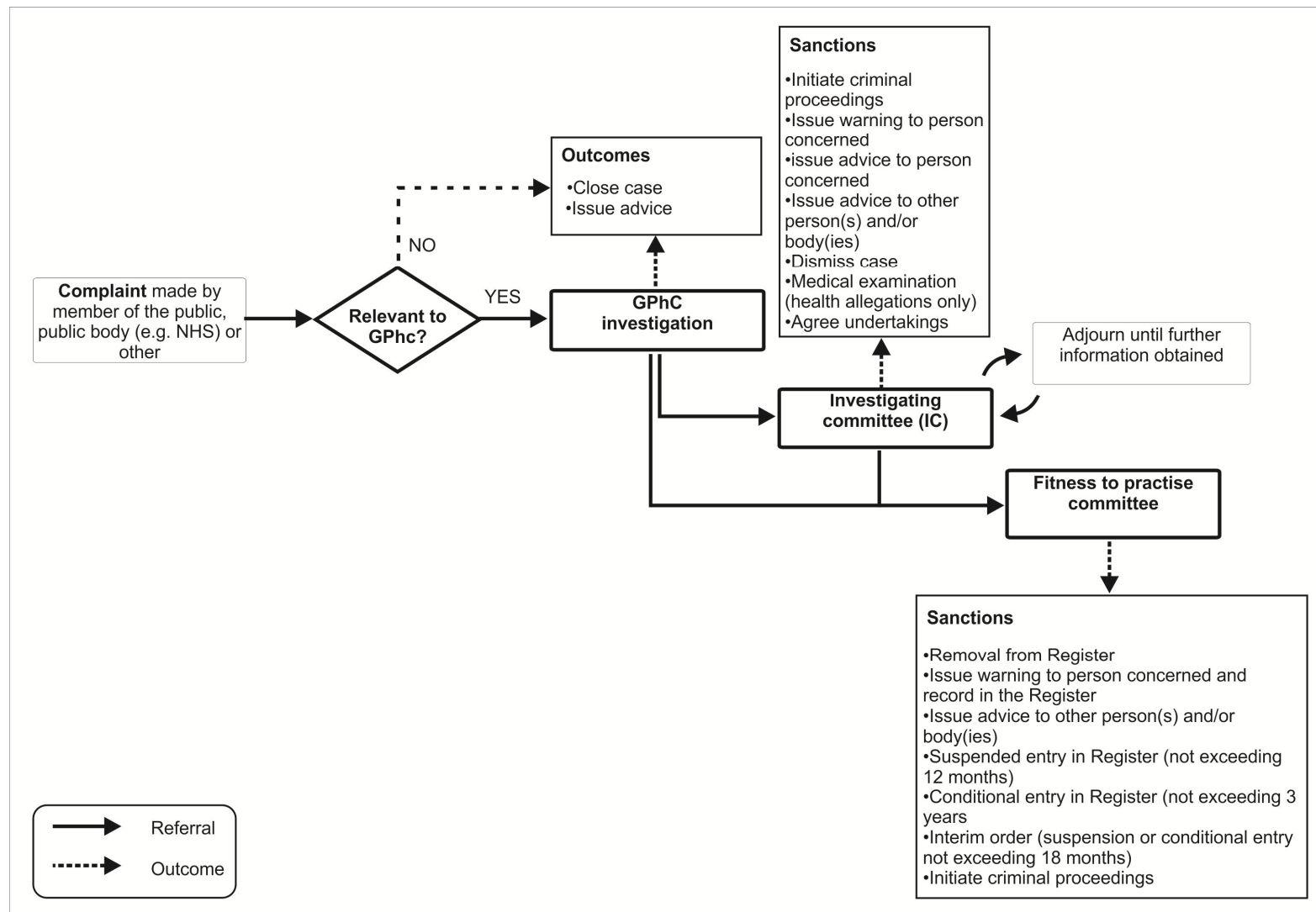


Figure 5.4: The GPhC's Fitness to Practise procedures<sup>24</sup>

<sup>24</sup> Verified by Quality, Diversity and Inclusion Manager at the General Pharmaceutical Council, Vanda Thomas.

## Disproportionality in the professions

Complaints may be made to the GPhC by a member of the public (almost half of all complaints), public bodies (such as NHS organisations), law enforcement agencies and GPhC inspectors (Council for Healthcare Regulatory Excellence). All complaints are initially assessed by a manager within the Fitness to Practise (FtP) department to determine whether the case falls within the GPhC's jurisdiction. A case is within its jurisdiction if it:

- questions a registrant's fitness to practise
- relates to registered pharmacy premises
- disqualification of the body corporate
- misuse of a restricted title limited to pharmacy.

If a case falls outside the GPhC's jurisdiction, it will be closed at the initial review stage. When a case is within the GPhC's jurisdiction, GPhC Inspectors perform an investigation to obtain further information. GPhC staff then consider this information against a threshold\_criteria (GPhC, 2013) to determine whether or not to refer the case to the Investigating Committee (IC), or in some circumstances, the FtP Committee. Cases that fall within the GPhC's jurisdiction but do not meet the threshold criteria will be closed and/or the inspector may issue advice to the registrant.

The IC considers allegations that a pharmacist's fitness to practise is impaired and must decide whether there is a case to answer to. The IC screens cases and assesses whether there is a 'real prospect' that the FtP Committee would find that the registrant's fitness to practise is impaired. The IC may suggest further investigation, obtain advice from a legal, clinical or other specialist adviser and adjourn consideration of the allegation until any further information has been obtained. After consideration of the allegation and any relevant information in relation to it, the IC, using 'Referral Criteria' GPhC 2012a), can refer the case to the FtP Committee, or issue sanctions (see sanctions in Figure 5.4).

The FtP Committee hears cases where a registrant's fitness to practise is in question and issues sanctions. Cases can be referred to the FtP Committee at either the investigation stage or from the IC. The FtP Committee must determine whether or not the fitness to practise of the registrant in respect of whom the allegation is made is impaired. The FtP Committee may take a breach of the standards of conduct, ethics and performance into account when deciding whether or not the registrant's fitness to practise is impaired. The FtP Committee uses the civil standard of proof i.e. 'balance of probabilities'.

A pharmacist can appeal the fitness to practise decisions outlined in Section 58(1) of the Pharmacy Order 2010 to either the Court of Session (in a case where the pharmacist is domiciled in Scotland) or to the High Court (in any other case)(Anon. 2010). Any pharmacist whose name is erased from the GPhC Register must wait until after a period of five years since the date their name was erased to apply for restoration to the GPhC Register. The PSA may also appeal against certain decisions if they consider a decision is too lenient and does not protect the public.

## 6 Findings of the literature reviews

In this section the findings of the literature reviews are presented. The research on the police and legal professionals was conducted by School of Law researchers and on medical and pharmacy professionals by Pharmacy School researchers. The methodological approaches used are presented above in Section Two. Findings in each practice sub-section are broken down into employment and regulation areas, and employment findings are further broken down into recruitment, progression and retention.

### 6.1 Police

#### Background

This examination of the literature of police employment and regulatory practice is restricted to England and Wales. The primary functions of the police are to keep the peace and enforce the law, and the individual police officer, who serves in the office of constable (also referred to as a warranted officer), is the basic building block of the 43 independent police services. Under the office of constable, the police officer exercises an original authority by virtue of the oath he or she swears to the Crown, and does not formally have an employer. Police services are under the direction and control of the Chief Constable (the Commissioner in the Metropolitan Police Service and the City of London Police) and, under the convention of constabulary independence s/he has operational responsibility for law enforcement in her or his police district. The police are not constituted as a profession in the same way as the other professions researched in this study: they are not represented by a single professional body<sup>25</sup> or regulated in the same way as the legal, medical and pharmacy professions.

The landscape of policing has undergone, and continues to undergo, significant change (Home Affairs Committee 2011; Savage 2007).<sup>26</sup> In 2012 the first Police and Crime Commissioners were elected to oversee local police services and assumed responsibility for some of the tasks previously performed by the Home Office. Her Majesty's Inspectorate of Constabulary, the body that most resembles an independent regulatory body, which used to report primarily to the Home Office on police efficiency and effectiveness, has become more public facing in recent years. Also in 2012, the College of Policing, which is planned to become the police's professional body, commenced operations prior to legislative change. Finally, the Independent Police Complaints Commission (IPCC), which commenced operations in 2004, was granted additional powers for the purpose of investigating the police (Police Complaints and Conduct Act 2012) and police services have been required to transfer professional standards resources to the IPCC (Travis 2013). In the early 2000s recruitment of Police Community Support Officers, (introduced under the Police Reform Act 2002), who are not sworn police officers, commenced across England and Wales. This research does not examine evidence of disproportionality in the employment and regulation of staff employees working in police services. Since introduction of the 1999 police conduct and efficiency regulations (Smith 2001), the traditional courts martial style of disciplinary proceedings have been gradually replaced by more standard employment type misconduct and inadequate performance arrangements (Smith 2012). 1999 was also the year the *Stephen Lawrence Inquiry Report* {MacPherson, 1999 36 /id}, which found that there was institutional racism in the police services of England and Wales, Targets for the recruitment, progression and retention of ethnic minority officers were included in the Report's 70 recommendations, and the Home Office published targets later that year (Home Office 1999). Labour Force Survey data were used to set a 10 year national recruitment target of

<sup>25</sup> There are three police staff associations: the Police Federation of England and Wales (for officers up to and including the rank of chief inspector), Police Superintendents Association of England and Wales and the Association of Chief Police Officers (ACPO).

<sup>26</sup> For a recent round up of developments in policing and explanation of the current situation see ACPO's Policing in the UK: A brief guide (ACPO, 2012).

7% and specific targets, related to the multi-racial make-up of policing districts, were set for each service (Home Office 1999).

A career in the police always begins as a constable. No formal qualifications are required to join, but an assessment process, which includes competency tests, is required.

All police constables must complete a two-year probationary period, irrespective of any prior qualifications or experience. The police have a clearly defined rank structure for officers:

- constable;
- sergeant;
- inspector;
- chief inspector;
- superintendent;
- chief superintendent;
- assistant chief constable;
- deputy chief constable;
- chief constable (Commissioner in the Metropolitan Police Service and City of London Police).

After successful completion of the probationary period, constables are eligible to apply to work in specialist units such as the criminal investigation department (CID), fraud squad, drugs squad, fire arms, child protection, traffic, mounted branches, dog handlers, and underwater search units. Officers can take qualifying examinations for promotion to sergeant and similar examinations or assessment days for progression from sergeant to inspector. There are no qualifying examinations to ranks above inspector and promotion is by selection only. Entry to Command or Association of Chief Police Officer (ACPO) ranks is after completion of the College of Policing Strategic Command Course.

The Police High Potential Development Scheme (HPDS) is designed to identify and develop the future leaders of the police service. Training and support are available to help individuals move through the ranks into senior positions within each service. Promotion is not automatic. Candidates applying for these schemes are expected to demonstrate a commitment to operational policing as well as having the ability to assimilate knowledge, provide leadership and make effective decisions. Candidates must be sworn in as constables through the usual route and complete both probation and post-probation qualifications before being promoted to sergeant. As a consequence of a recent review of police pay and conditions (Winsor 2012) the College of Policing is reviewing these arrangements (College of Policing 2013).

### **Statistics**

There were 131,837 full-time equivalent (FTE) police officers in the 43 police forces of England and Wales as at 30 September 2012. Information on the gender and ethnicity of police service staff is only published once a year in the Police Service Strength bulletin published in July. Within the 43 police forces, 6,664 officers (5%) were from a minority ethnic group, compared to 9% in the general population. The proportion of officers from a minority ethnic group has increased steadily from 2% in 1997. Of those officers who classified themselves as from a minority ethnic group, 39% were Asian or Asian British; Black or Black British accounted for 21%; Mixed 28%; and 'Other' 12% (March 2012 data, taken from Police service Strength briefing note (House of Commons Library 2013). The majority of ethnic minority officers serve in the rank of constable and few progress into the promoted ranks, as illustrated in Table 7.1., below:



**Table 6.1. Minority Ethnic police officer strength (including Central Service secondments) by rank as at 31 March 2012, England and Wales**

Rank	Percentage of Minority Ethnic officer strength
ACPO ranks	2.8
Chief Superintendents	3.2
Superintendents	3.9
Chief Inspectors	3.7
Inspectors	3.4
Sergeants	3.6
Constables	5.4
<b>Total Minority Ethnic strength</b>	<b>5.0</b>

**Source: Police Office Strength, Home Office Statistical Bulletin, March 2012, p. 11.**

Within the Police Service data is collected and sent through to the Home Office on a biannual, annual, or quarterly basis. Budgen (2013) has compiled a list of data collected for the Annual Data Return (ADR) and examined whether the data is collected by protected characteristic.

### 6.1.1 Employment

Literature identified in this area is not readily classified as either about recruitment, progression or retention; rather research studies, reports and news items encompass more than one, if not all of these themes.

In 1999, research for the Home Office, which examined disproportionality on grounds of ethnicity in eight participating police services, was published (Bland et al. 1999). Although focussed on career progression the independently assessed research, which included analysis of 990 officer career profiles (52.2% (n=517) were from a BME background), semi-structured individual interviews and focus groups, also examined recruitment and retention. In regard to recruitment, the authors found that people from BME backgrounds were less likely to join the police, be invited for interview, receive a formal offer of employment, and be appointed on completion of probation, compared to their white peers. In regard to retention: BME officers were twice as likely to resign and the rate of dismissal was two to three times higher than for white officers. In regard to promotion: on average, BME officers took 12 months longer than white officers to reach the rank of sergeant and, although numbers were small, the disparity was higher for promotion to inspector. Although the numbers were too small to reach definite conclusions, BME officers were also found to be under-represented in specialist units and spent less of their service in specialist roles.

The study points to differences in the careers of ethnic minority and white officers - in recruitment, retention, promotion and selection for specialist posts. According to the definitions used in the Lawrence Inquiry, this is enough in itself to conclude that institutional racism has played a part in defining the careers of ethnic minority officers. (Bland *et al.*, 1999: viii)

The authors noted that their ability to draw conclusions was limited by the quality and completeness of personnel records kept by the police services.

### Recruitment

Our review did not locate much academic research on this topic. Much work of importance was contained in reports (grey literature), some of which was located through a search of Lexis Library news items, which helped to find reports not indexed in academic databases.

In 1999, following the publication of the Macpherson report, the Home Office announced that recruitment targets were to be introduced so that police services would reflect the overall ethnic composition of surrounding areas. (Home Office, 1999).

With these targets as a backdrop (Cashmore 2001) focused on under recruitment of ethnic minority officers. The central aim of the study project was to investigate the reasons for the chronic and persistent under-recruitment of police officers from ethnic minority backgrounds. The study involved 80 in depth interviews and four focus groups with African Caribbean and South Asian officers in five British police services, The BME officers believed that, if they protested against either their own treatment or that of ethnic minority civilians, they may damage their careers. Cashmore also reported how BME officers are subject to racist abuse as a way of 'testing' them.

An African Caribbean female recounted how at her first station a sergeant made a mock warrant card and holder (in which British officers carry their badges). 'He had this kind of cartoon of a gorilla in it where the picture goes and he thought it was hysterical. He'd show it off to everybody at the station and they had great fun with it. He used to say: 'Look here, *coonstable!*' Even with me, he'd show it me'. (Cashmore, 2001: 649)

In another episode, an ethnic minority officer of twelve years' standing reflected on his early experience in the service: At first, I thought it was because they could see I was Asian and they didn't think I'd mind if they used 'nigger' in front of me. Then they'd start using 'paki' while I was there. And it was as if they were testing me, to see how far they could go before I snapped. I think I was wrong to take it, but at the time, I was a minority of about two, I think, so I admit I was timid, or worse. (Cashmore, 2001: 650)

There are two hotly debated topics in relation to police recruitment and the need for the police services to be representative of the communities they serve. The first is direct entry: Leischman and Savage (1993) discussed direct entry and it remains topical twenty years later (Holdaway 2013; House of Commons Home Affairs Committee 2013). As explained above, anyone who joins the police service as a warranted officer must start their career as a Constable. Direct entry is a means for people to enter a police service at a higher rank. Kernaghan (2013) provides a historical perspective on this debate in an article that follows the recommendation to introduce direct entry presented in the Winsor Report (2011). Serving police officers of all ranks responded critically to this idea (Dodd, 2013; Hills, 2013; Laville 2013; Peachey 2013). Direct entry can play a part in addressing disproportionality in the Police.

The section on progression, below, uses data (National Policing Improvement Agency 2010) which show that while the number of BME officers has been improving since 1999 (when a national target was set), progress on the proportion of BME officers in higher ranks is still poor.

The second hotly debated topic relates to different ways to address ethnic balance within a workforce. In the United States, affirmative action programmes have been favoured to increase the number of BME officers (Sklansky, 2008; Sklansky, 2007). This type of initiative is referred to in the UK and Europe as positive action (Waddington, 2011), and has been suggested as a means to increase the number of BME officers in England and Wales (Cashmore 2001). A Dutch study (De Vreis and Pettigrew 1994) focused on a programme for BME employment modelled on affirmative action in the United States. This involved 100 interviews with sets of three officers; the minority officer, his or her White co-workers and their immediate supervisor. The author's conclusions were that when researching this area it is important to test for positive effects of such programmes as well as any negative impacts. The research also showed that while being the only black minority ethnic person in a staff group can be stressful, it can be more problematic pairing up two BME officers: 'Our minority respondents explained how such a situation raises special problems of its own. Each minority officer may culturally share far more with the general Dutch culture than with that of the other ethnic group.' (De Vries and Pettigrew, 1994, p.192).

In England and Wales, there have been calls from a number of senior police officers to implement positive discrimination (including legislative change if needed) to address the imbalance in police services (Hills 2013; Muir 2013). Discussions have been taking place between the Metropolitan Police Service and the Home Office to enable a 50/50 approach to

recruitment which would allow a BME recruit to be employed whenever a white recruit is appointed. The Police Service of Northern Ireland took action of this description when recruiting one Roman Catholic officer for every Protestant appointed in order to address a Protestant bias (Dodd, 2013).

### **Progression**

Limited academic research was identified on progression within the police service. Fielding (1999) responded to the Macpherson Inquiry into the police investigation of the murder of the black teenager Stephen Lawrence by assessing the prospects for the recruitment and progression of BME officers. Fielding highlighted aspects of police culture which have obstructed the career advancement of both female and ethnic minority officers and compared experiences in England and Wales with the U.S.A. Fielding also considered the importance of career progression of those ethnic minority officers who have been recruited, and notes a lack of research into their career pathways.

The Report *Equality in Employment: Policing in England and Wales 2010* (National Policing Improvement Agency, 2010) analysed recruitment, retention and progression data. The Report has separate sections on gender and ethnicity, dealing with each area in detail. The Report found that for any officer, given the single entry point (i.e. constable) it would not be possible for new BME entrants to progress to the rank of Chief Constable in much less than 25 years. The research stated that in order to achieve the national target of 7% across all ranks, it would take the following amounts of time:

Constable; 6 years  
Sergeant; 22 years  
Inspector; 7 years  
Chief inspector; 16 years  
Superintendent; 13 years  
Chief superintendent; 23 years  
ACPO; 3 years

(The calculations were estimates and based on the existing rates of progression without wastage.) (National Police Improvement Agency, 2010, p.117)

### **Retention**

Little academic research was identified in this area during the literature search. A range of relevant reports were reviewed. In 2004 the Home Office published a report that looked generally at recruitment and retention across ten police forces. Within this a small section discusses ethnic minority officers.

Only a small number (16) of respondents to the survey were from minority ethnic groups. However, at 5% of the sample this was similar to their representation among all leavers from the ten forces at the time of the study. It was possible to bring together the limited information from the interviews with information from the database to begin to build up a picture of minority ethnic leavers from the service. Nearly twice the proportion of minority ethnic officers resigned from the service than their white counterparts and they were more likely to have had fewer years of service and to be older than other resigners. The service is losing many of these officers in the early stages of their careers and it could be argued that these officers would be particularly valuable to the service in having joined with levels of experience in other areas of work. There was some evidence from the study that bullying and discrimination were relevant to the decision to resign for a higher proportion of minority ethnic than white officers (Cooper and Ingram 2004 p.4).

To help understand why officers leave the police service an exit interview and questionnaire were introduced in 2006. However, the Report *Policing Minister's Assessment of Minority Ethnic Recruitment, Retention and Progression in the Police Service* (Coaker 2008) stated that the first returns from this new procedure were too incomplete to make generalisations. 2008 data findings for police officers were:

Minority ethnic officers leave the service for training and/or career reasons at a rate of more than double that of their white counterparts (21% as opposed to 9% respectively).  
 White officers leave the service to take up another job at a rate of more than double that of their minority ethnic counterparts (30% as opposed to 13% respectively).  
 More work needs to be done to look in more detail at: the reasons for leaving; what stage officers and staff leave the service; and what practical interventions can be put in place to retain staff. (Coaker, 2008, p. 4)

Coaker (2008) summarised the situation on retention as follows:

National minority ethnic officer retention is currently worse than retention of white officers at all lengths of service.  
 The gap is most notable for the officers with less than five years service.  
 Separate analysis of retention by forces show that the situation is generally similar across forces with both high and low minority ethnic officer populations. (Coaker, 2008, p.3)

Budgen (2013) collated details of data collected by each police service for the Home Office as part of the Annual Data Return (ADR), which are not reported in the Police Service Strength bulletins. Data relevant to retention are one area that are collected but not published. Table 6.2., below, gives details of the data collected.

**Table 6.2. Police retention data collated by the Home Office**

<b>ADR Code</b>	<b>Data Collected</b>	<b>Ethnicity breakdown</b>
ADR580	Volume of resignations and transfers by role type, length of service and reason for leaving (annual)	Yes
ADR 581	Volume of leavers by type (Officer, Staff, Special), length of service and reason for leaving during period (annual)	Yes
ADR 582	Officer and Staff volume by length of service (detailed, year by year) (annual)	Yes
ADR442 SPI3f (KDI)	Officer resignation ratios by ethnic group (quarterly)	Yes

## 6.1.2 Regulation

### Misconduct

Early signs of BME officers' discontent with internal misconduct procedures emerged in the Metropolitan Police Service with a number of high profile employment tribunals and internal reviews or Police Authority inquiries, In response to Sergeant Gurpal Viridi's successful race discrimination claim (*Viridi v The Commissioner of Police of the Metropolis* [2000] ET/2202774/98) the Metropolitan Police Authority commissioned an independent inquiry (Muir, 2001). Although the inquiry primarily dealt with Sergeant Viridi's case and the surrounding circumstances it concluded that the existing misconduct proceedings regulations 'when complied with mechanistically and without common sense can lead to disadvantage to minority groups.' (Muir, 2001: 76-7). A few years later, the Metropolitan Police Service conducted an internal review of procedures (Ghaffur 2004) and concluded:

With regards to the analysis of internal complaints data, it is of considerable concern that black and Asian officers are one and a half to two times more likely to be the subject of internal investigations and written warnings... Some of the reasons for this include a tendency for managers to initiate formal processes quickly, a lack of knowledge of how to

resolve complaints locally, and a difference in the interpretation of the codes of conduct by diverse groups within the organisation. (Ghaffur, 2004: para. 7.3.1)

A limitation of the 2004 Review was that the research methodology was not outlined in the Report. A second Metropolitan Police Authority inquiry was appointed to look again at the Viridi case and circumstances surrounding misconduct proceedings involving Superintendent Ali Dizaei (Morris 2004), The Report reiterated Ghaffur's finding of the tendency to deal with BME officers formally and presented statistical research completed by the Internal Consultancy Group), which found that the complaint profiles of Black and Asian officers were in excess of those expected (Morris, 2004). The Inquiry was unmoved by the Metropolitan Police Service's argument that the evidence pointed to the Directorate of Professional Standards Bureau's effectiveness in managing disproportionately, because the data did not show disproportional outcomes, and recommended the Service 'takes urgent steps to eliminate discriminatory management practice' (Morris, 2004: para 5.76).

Following the BBC's broadcast of the fly on the wall documentary, *The Secret Policeman*, (Daly 2003) the Commission for Racial Equality investigated employment practice in the police services of England and Wales (Calvert-Smith 2004; Calvert-Smith 2005). The CRE conducted questionnaires with police services followed up with visits, met stakeholders and took evidence from individual witnesses. After, observing that there was more to disproportionality than an imbalance of numbers, the Commission found 'there was a widely held perception that there was disproportionate treatment' (Calvert-Smith, 2005: para. 6.49), although there was little hard evidence. Smith *et al.* (2012) carried out a detailed analysis of disproportionality on grounds of ethnicity in internally raised misconduct proceedings commissioned by Greater Manchester Police, West Midlands Police and other policing stakeholders.<sup>27</sup> The report made an important distinction between numerical disproportionality, which is evidenced by statistical disparities between a population and sub-population, and procedural disproportionality, differential treatment of a member of a sub-population compared to the majority. Research of professional standards data, between April 2007 and March 2011, and counter corruption data, for April 2010 to March 2011, revealed a mixed picture of disproportionality in the three police services. Ethnicity was a factor in internal misconduct proceedings in the West Midlands and British Transport police services, and counter-corruption intelligence processes in Greater Manchester Police (over-representation of BME officers was also found in the West Midlands Police counter-corruption data, but the research was unable to test for significance) (Hagger Johnson *et al.* 2013; Smith *et al.* 2012),

The study also included interviews with 34 Greater Manchester Police personnel and Police Authority members, including eight BME officers (various ranks) who had been subject to internally raised misconduct proceedings between 1999 and 2010. The research found that there was compelling evidence of procedural disproportionality, primarily arising from the preference of supervisors to refer BME officers to the Professional Standards Branch for misconduct investigation whereas white officers would be dealt with immediately and informally. BME officers believed they had been subjected to unjust and punishing treatment, which ethnic minority staff association members held to be racist, whereas investigators and managers interviewed, who were all white, explained that they adhered to formal procedures when dealing with allegations involving BME officers for fear of being accused of racism. The authors argued that the existence of disproportionality in recruitment, progression, retention and misconduct proceedings was symptomatic of a flawed approach to dealing with difference (Smith *et al.* 2012, forthcoming).

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<sup>27</sup> The report also includes statistical analyses of West Midlands Police, British Transport Police and counter corruption intelligence data in the three services.  
[http://www.gmp.police.uk/live/Nhoodv3.nsf/WebAttachments/89FA8B8058B6E43780257ADB004AA038/\\$File/DIPPS\\_Final2012.pdf](http://www.gmp.police.uk/live/Nhoodv3.nsf/WebAttachments/89FA8B8058B6E43780257ADB004AA038/$File/DIPPS_Final2012.pdf)

### **Performance monitoring**

Performance monitoring is a relative newcomer to police procedures and only four peer reviewed articles, which did not address disproportionality, were found in a search of the literature. . The National Policing Improvement Agency (2010) Report, Equality in Employment, only devoted one paragraph to individual appraisal. The need for performance monitoring, including performance development review, has been picked up in police circles in recent years (College of Policing 2011; Hunton et al. 2009; Neyroud 2011; Winsor 2012).

#### **6.1.3 Summary of findings**

This literature review presents evidence on disproportionate treatment of police officers in relation to employment and regulatory practice in England and Wales. The review focused on evidence published between 1993 and 2013.

In the area of employment, although there have been some notable peer reviewed articles, the majority of work identified on police has been from reports which are classified as grey literature. This may partly be a consequence of access to police personnel. Cashmore's article published in 2001 described in detail how difficult it was to negotiate access to officers. Smith et al (2012) also had lengthy negotiations before the study was agreed with access to data also taking time to negotiate. Independent empirical research in this area is important, so this issue needs to be addressed.

Changes in the landscape of policing also impact on being able to assess progress on disproportionality. The excellent report produced by the National Policing Improvement Agency (2010) was intended as a baseline from which to measure progress. The detailed data collection and analysis process has not been repeated following the replacement of the NPIA with the College of Policing. Furthermore, the recommendations in that report about additional data collection and analysis, which were suggested to enable more effective monitoring of progress on disproportionality, have not been implemented. Budgen (2013) commented on the difficulty of obtaining information collected by forces for the Home Office (as part of the annual data return exercise) which were not published as part of the annual Police Service Strength reports.

In the area of regulation, the range of evidence identified was even more limited, particularly independent academic research. Again, this is partially due to access to data. Data access is linked to the way the police are regulated. Other professions examined in this review have an external regulator that collects data, whereas the police are self-regulated with each of the 43 forces free to monitor and report on progress in relation to equality, and acknowledge the existence of disproportionality, as they wish.

More academic research on the police is needed in all areas considered in this review. The PSED offers the possibility of being able to access data which previously would not have been available. While this is no substitute for in depth studies, including interviews with officers, secondary analysis of data collected can evidence disproportionality. This is discussed in Section 7 of this report.

## **6.2 Legal Profession**

### **Background**

The legal profession of England and Wales comprises some 119,000 solicitors and 15,000 barristers (Legal Services Board 2013). These two limbs of the legal profession are regulated by the Solicitors Regulation Authority (SRA) and Bar Standards Board (BSB), respectively (see Section 5.2, above).

The SRA maintains the Roll of Solicitors, a register of qualified practitioners. In 2010, 122,760 solicitors were registered: this included practising certificate-registered solicitors, registered European lawyers and registered international lawyers. 95,760 solicitors were

white, 14,289 solicitors were from a BME background and the ethnicity of 12,760 solicitors was unknown (Solicitors Regulation Authority 2012).

In 2011, 15,581 barristers were registered with the BSB. 12,039 barristers were white, 1,594 barristers were from a BME background, and the ethnicity of 1,948 barristers was unknown. All barristers with practising certificates may be self-employed or employed, and most choose to be self-employed. In 2011 there were 12,674 self-employed barristers: 10,114 barristers were white, 1,235 were from a BME background and there was no ethnicity data available for 1,325. There were 2,907 employed barristers: 1,925 barristers were white, 359 recorded themselves as BME and data was not available for 623 (Sauboorah 2012). The number of peer-reviewed articles available on disproportionality is limited, and the literature reviewed in this section of the report is primarily from secondary sources, including Law Society, SRA and BSB reports, online materials and case law. Particular importance attaches to two reports. Firstly, the Law Society's *Ethnic diversity in law firms: Understanding the Barriers* (Law Society 2010) originated in the findings of a 2008 Salary Survey (Rice 2008); (Law Society 2010). The research indicated that there was a pay disparity between BME and white solicitors. Focus groups were subsequently held with BME practitioners in October and November 2009 (n=42), which examined access and entry into the profession, transparency of pay structures and measured performance and progression (Law Society 2010). Secondly, research funded by the Legal Services Board (LSB) by Sommerlad *et al.* (2010), *Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices* investigated recruitment and progression. The research included a biographical approach; respondents (n=77: 33 white and 44 BME) were asked to provide accounts of their original interest in law and their career path. Current, former and aspiring solicitors and barristers were interviewed in addition to a small group of other legal practitioners, i.e. paralegals or legal executives (Sommerlad *et al.* 2010).

### **Equality and diversity**

Nicholson (2005) looked into the demography, discrimination and diversity of the legal profession. He argued that, rather than existing as a discriminatory profession, it was in the processes of selecting the right applicants (recruitment and progression) that discrimination could be identified. Hidden beneath the appearance of formally neutral selection criteria (for example status of university attended or whether employment interrupted), certain groups were affected disproportionately. The resultant indirect discrimination, he posited, could also be linked to physiological or social factors, which the profession was unable to control (Nicholson 2005).

Braithwaite (2010) examined whether demand-side diversity pressure from the Law Society generated changes within the legal profession. The research looked into a 'business-case' argument for diversity and quantitative research examined empirical data from City law firms.

A number of initiatives have been launched in the legal profession to address equality and diversity problems in response to concerns that law students and lawyers failed to 'fit in' with the majority group. Braithwaite (2010) and Nicholson (2005) have described the dominant group as middle-class, masculine and Eurocentric, and found selection and promotion criteria produced a bias based on gender, race and class.

The LSB established a Diversity Forum to bring together collaborators from approved regulators and professional/representative bodies. Four key problems were identified: (1) lack of data on diversity within the legal workforce; (2) inadequate systematic evaluation of diversity initiatives; (3) limited progression and retention of senior level practitioners from diverse backgrounds; and (4) questions concerning the failure of corporate consumers to seek more information from legal service providers of their equality and diversity performance (Legal Services Board 2013; Law Society 2010).

The SRA responded to equality and diversity reports by Lord Ouseley (Ouseley 2008), which looked into how BME solicitors were treated by the SRA, and research by Pearn Kandola, which explored the underlying reasons for disproportionality against BME solicitors (Pearn Kandola 2009) (see below), with a number of initiatives (Solicitors

Regulation Authority 2011); (Solicitors Regulation Authority 2013d). In 2013 the Authority commissioned an independent case review by Professor Gus John, which will include a review of 160 SRA disciplinary cases (Solicitors Regulation Authority 2013e). The SRA has a record of monitoring and publishing on equality and diversity since 2008 (Solicitors Regulation Authority 2009; Solicitors Regulation Authority 2010; Solicitors Regulation Authority 2011; Solicitors Regulation Authority 2012; Solicitors Regulation Authority 2013f; Solicitors Regulation Authority 2013g; Solicitors Regulation Authority 2013h).

The BSB and the General Council of the Bar have also launched a number of equality and diversity initiatives (Bar Standards Board, 2013i; Bar Standards Board, 2013j; Bar Standards Board, 2012g; Bar Standards Board, 2013k; Bar Standards Board, 2013l; Carney, 2011; Carney, 2011; Electoral Reform Research, 2011; Sauboorah, 2011; Sauboorah, 2011; Sauboorah, 2012; Pike, 2012).

## 6.2.1 Employment

### Recruitment

In recent years there has been an increase in the proportion of BME lawyers within the legal profession. In 2009, 13% of the Roll of Solicitors, 24% of admissions to the Roll and 16% of barristers were from BME backgrounds (Sommerlad et al. 2010). Despite this, the Report by Sommerlad et al. argued that the opportunities given to young lawyers were not equally distributed. Sommerlad et al. (2010) highlighted that within the legal profession, private practices are in control at the point of entry. This was established in the first instance as a result of private practice control of the issue of training contracts and, then, their control of workplace training. Research has indicated that whilst many law firms have recognised the need to develop a more diverse workforce, their entry requirements generally discriminated against graduates from new universities and went beyond straightforward attainment of degree and professional qualifications. It was found that selection processes took into account a range of attributes and practices, many of which were implicit, and often required some insider knowledge (Sommerlad et al. 2010).

### Solicitors

The Law Society's 2010 report supported the argument that there are problems entering the legal profession. In focus groups BME participants believed that after completing the Legal Practice Course there would be a 'level playing field' among candidates irrespective of their gender, ethnicity or social background. However, they experienced obstacles to recruitment. Typically, participants failed to secure a training contract on their first attempt and, for some, this took several years and involved hundreds of applications. The clear perception of these BME practitioners was that law firms judged their capabilities according to whether they had obtained their academic qualifications from particular institutions. Consequently, the Report found that highly skilled graduates were passed over because of their social background (Law Society 2010).

Of the participants that responded online, only 18% (n=12) thought that recruitment processes were fair, and some claimed that law firms were more concerned about their image than promoting a fair and transparent recruitment process based on equality and diversity (Law Society 2010). One participant stated:

It did strike me every time I would go to court that there was never any other Asian solicitors. I'm aware that I'm probably just the token Asian solicitor in the firm and there's been recruitment since I've been there, sort of admin staff to solicitors, and they've only recruited white people. (Legal Services Board 2012:35)



The majority of BME participants in the research rejected the notion that their appointment was tokenistic or in order to meet quotas, their perceptions were that they had been recruited on merit alone. Other participants saw the benefits of the quota systems of large law corporations, which could provide better opportunities for BME students/trainees. Some were sceptical of such schemes and warned that too much emphasis on 'tick-box' exercises may undermine BME solicitors' efforts to entry the profession on merit. These focus groups identified barriers to entering the profession (Law Society 2010).

Braithwaite found that minority ethnic entry to the profession had been erratic. The proportion of solicitors with BME backgrounds increased from 1.3% in 1990, to 4.1% in 1996 and 10% in 2008 (Braithwaite, 2010).

### ***Training contracts***

Fletcher (2012) carried out research on trends within the legal profession. The main source relied upon was the Law Society's REGIS database maintained by the SRA. Fletcher argued that improvements have been made in regard to solicitors' training contracts. Between 1 August 2010 and 31 July 2011, 5,441 new traineeships were registered, which represented a rise of 11.6 % compared with the previous year (2009-2010). Of these new traineeships, 63.5% were given to women and 22.1% to BME applicants. In the same year (2011), there was a marginal decrease of 0.1% (n=8,480) in admissions to the Roll of solicitors. Of these admissions, 59.1% were women, and 22.1 % were from BME groups (Fletcher 2012) .

According to Sommerlad et al. (2010), some elite firms had a higher percentage of BME trainees than the percentage of BME solicitors on the Roll. In 2008, 30% or more trainee solicitors were recorded as BME at both Clifford Chance and Allen & Overy: this compares with 24 % of admission of BME trainees to the Roll in 2008-2009. Yet, Sommerlad et al (2010) stated that in addition to overrepresentation in these large firms there was underrepresentation in smaller firms. Furthermore, there was a lack of data concerning the nationality of law graduates recruited. International recruits from a BME background may have been from higher socio-economic groups and, therefore, may not have faced the same barriers as British BME lawyers, who often come from lower socio-economic groups (Sommerlad et al. 2010).

### ***Barristers***

According to Sullivan (2010), the LSB recognised that there are cumulative problems to recruitment which go further back than gaining a training contract. These concern decisions not to recruit particular types of person with a specific profile, such as failing to get the right 'A' Levels, not having work experience in law firms while at school, attending the wrong university and training in the wrong firm (Sullivan 2010). Russell Group universities have a reputation for being the progression route for white, middle class, privately educated individuals and new universities do not enjoy the same status (Sullivan 2010); Zimdars (2010). Sullivan found that BME law graduates were significantly more likely to have studied at a new university: 87% of African Caribbean law students graduated from a new universities, which effectively disadvantaged them from the beginning of their career (Sullivan, 2010).

Zimdars (2010) argued that meritocratic principles were an integral part of fair selection processes, and the Bar has been under scrutiny regarding how they manage to match these ideals. Her analysis covered four years of the 'Pupillage Survey' administered by the BSB between 2004/05 and 2007/08 (n= 2,052; including 1,935 post-Bar Vocational Course pupils)<sup>28</sup>. The overall findings showed that the Bar compared favourably on aggregated statistics in terms of gender and ethnicity with other professional employment groups. However, this was not always consistent with the university population at large. Earnings, choice of employment status and the geographical location were highly associated with attainment patterns. These factors gave an earning premium for those having graduated

<sup>28</sup> The Bar Vocational Course has been re-named the Bar Professional Training Course (BPTC) for students enrolling from 2010 onwards. The BPTC is the next part of training after the academic stage.

from Oxbridge and with higher grades. Moreover, the geographical location was also influenced by minority status Zimdars (2010).

In a Report commissioned by the Bar Council to examine diversity and equality problems in gaining entry to the Bar, Lord Neuberger (2007) highlighted that equality and diversity were not only related to gender, ethnicity, disability, religious belief, sexual orientation and age, but also to social, economic and educational circumstances and backgrounds.

Of the 2,965 participants in the Biennial Survey of the Bar 2011 (Pike 2012), 30% attended Oxbridge, 34% attended Russell Group universities and 13% attended 1994 Group universities; and only 14% of barristers had attended the old polytechnic sector of higher education. Further, more white barristers were educated at Oxbridge (31%) compared with BME barristers (22%) (Pike 2012).

### ***The Bar Professional Training Course***

The Bar Professional Training Course (BPTC) is the second stage of academic training to become a barrister. In order to apply for the BPTC, students need to have completed, or except to complete, an accredited law degree at undergraduate level or a conversion post-graduate professional qualification (Common Professional Examination or Graduate Diploma in Law). There are approximately 3,000 applicants each year for the BPTC, and approximately 1,800 of these applicants are successful (Carney 2011).

In 2009/2010, 3,099 applied to study for the BPTC (Carney 2011; Sauboorah 2010) BME applicants accounted for 60.1% (1,862), and white applicants accounted for 36.8% (1,140): 3.1% (97) did not declare their ethnicity in their application. 1,509 applicants were enrolled on the course, of which 48.2% (727) were white, 42.9% (647) were BME, and 8.9% (135) had not recorded their ethnicity (Sauboorah 2010).

### ***Pupillage applications and registrations***

The BSB's Portal received 2,841 online pupillage applications in 2010. 66% (1,874) were from white applicants, 25.8% (732) from BME applicants, and 8.2% (235) did not disclose their ethnicity (Carney 2011). Analysis of the backgrounds of pupils registered in 2010/11 showed that 62.2% (1,983) were white, 24.3% (695) were from BME groups, and 6.5% (187) did not report their ethnicity (Carney 2011).

The BSB Pupillage Report (Sauboorah 2012) showed that 460 pupils were registered in 2009/2010. Of these, 72% (333) were white, 15% (71) were from a BME background and 12% (56) did not declare their ethnicity (Sauboorah 2011). In 2010/2011, the total number registered was 446. Of these, 79% (349) were white, 13% (58) were BME and 8% did not disclose their ethnicity Report (Sauboorah 2012).

### **Progression**

Nicholson (2005) reached similar conclusions in his research. He found that ethnic minority lawyers faced different forms of discrimination on their entry into a law firm, including insults, social exclusion, being overlooked in work distribution and not given the same support as white colleagues. As a result, a number of BME barristers ended up in predominantly ethnic minority 'ghetto' chambers and most of their work came from their own communities or they specialised in areas such as criminal defence and immigration, rather than more lucrative commercial and civil work.

### ***Solicitors***

In the Law Society's research (Law Society 2010), many of the participants said they did not realise that pre- and early career choices disadvantaged them until they had been in the profession for several years. Problems often emerged when they tried to move to a different type of firm, area of law or negotiate a higher salary. BME trainees found that they were pushed towards areas of law where they would earn less, and it was difficult for BME solicitors to attract new business. The research found that low salaries and stalled career progressions amounted to double-discrimination (Law Society 2010). Some BME

practitioners said they attempted to fit into the working environment in the expectation that this would allow them to develop their careers the same as their white colleagues (Law Society 2010). However, they experienced similar difficulties 'fitting in' to the law firm as when they attempted to enter the legal profession. Their perception was that the same criteria that were used to exclude BME applicants also served to limit career development, which was the cause of much professional frustration (Law Society 2010: 41),.

The Law Society research highlighted two reasons for the decisions of BME solicitors to become self-employed: (1) they have no interest in becoming partners in the firms they worked for and (2) they felt the barriers to partnership were too difficult to overcome (Law Society 2010). The Law Society argued firms could do more to keep these solicitors, which would promote equality and diversity. By forcing this group out, however, the opposite happened and equality and diversity were damaged. A negative spiral existed where a BME solicitor's only opportunity to progress was to set up a sole practice (Law Society 2010).

In the research already cited above, Sommerlad *et al.* (2010) found that obstacles to diversity derive from informal cultures associated with personal relationships and networking. One problem related to informal mentoring systems, where powerful senior figures (usually white men) fostered and promoted the careers of young white men. Another problem related to networking outside of the law firm in order to attract new clients, which was a principal means of achieving promotion (see above) (Sommerlad *et al.* 2010). As criteria for promotion, business development and procurement of new clients are alternatives to professional expertise and technical excellence. Strategic activities of this type involve networking and client fishing, which tend to take place outside the law's sphere, and often to the disadvantage of BME practitioners. White solicitors are more likely than BME solicitors to have the time and opportunity to invest in building relationships within the firm and tend to be in the best position to progress (Sommerlad *et al.* 2010).

Braithwaite (2010) concluded that, despite the growing number of BME solicitors entering the profession, they remained less likely to progress after recruitment. Solicitors with BME backgrounds were less likely to become partners (22.2%) compared to white (including European) solicitors (36%). BME solicitors were also more likely to become sole practitioners (7.9%) compared to white solicitors (5.1%).

### **Barristers**

An Electoral Reform Research 2011 Exit Survey for the Bar Council (Electoral Reform Research 2011), see further below) included a series of questionnaires and in-depth telephone interviews. The data were drawn from six surveys between 2001 and 2010 and the response rate to questionnaires was 31% (n=1514). The total number of self-employed barristers who left the Bar in 2011 was 773 and 448 employed barrister left. 11% (n=84) of the self-employed leavers were from a BME background and 8% (n=41) of employed leavers. 22% of the 773 self-employed leavers claimed that the lack of career progression was the reason behind the decision to leave the Bar. 31% of these leavers were members of a BME group and 21% were white. 18% of the 488 employed barristers who left the Bar claimed that lack of career progression had influenced their decision to leave; of which were from a BME background and 18% were white (Electoral Reform Research 2011).

### **Retention**

Little research has been published on retention in the legal profession. The study by Sommerlad *et al.* found that inequalities in pay and status were among the factors that led BME lawyers to abandon their career in higher numbers than white lawyers (Sommerlad *et al.* 2010).

Employment Tribunal case law provides some insight into disproportionality in this area. In *Aziz v Crown Prosecution Service* [2006] EWCA Civ 1136 (2013) (see Appendix 3, below, for further details) the Employment Appeal Court held that the Employment Tribunal had been justified in holding that Aziz had suffered detriment because of suspension and transfer to other duties. The Tribunal found that the employer's breaches of its disciplinary code were serious and obvious and the employer had known this at the time. It was also

stated that the employer would not have treated a white solicitor in their employment in the same way (2013). Aziz's lawyer said afterwards that this case raised questions about the ability of the Crown Prosecution Service (CPS) to handle race discrimination cases in the future McDermott 2006). (See also *The Law Society v Bahl* [2003] IRLR 640 (2013) and *Bijlani v Stewart and others* [2012] UKEAT/0228/11/RN (2013) in Appendix 3, below).

### **Solicitors**

BME solicitors who participated in the Law Society research stated that raising grievances in regard to misconduct proceedings would lead to irreparable damage to their careers (Law Society 2010).

### **Barristers**

The above mentioned Report by Lord Neuberger stated there was evidence that BME practitioners in self-employed practices also leave the profession in disproportionate numbers in the early part of their careers (Neuberger 2007). Anecdotal evidence suggested that the experiences of some female, BME and disabled barristers were of prejudice and stereotyping in regard to their abilities and aspirations. These experiences arose in interactions with other barristers, clerks, solicitors and clients (Neuberger 2007).

In the Biennial Survey of the Bar referred to above, 6% of self-employed respondents indicated that they personally experienced bullying and harassment in the previous two years, which was consistent with the proportion that said they had experienced discrimination (Pike 2012). Ethnicity was not found to be a factor in regard to bullying and harassment, yet there were different responses in regard to discrimination: 12% of BME barristers said that they had personally experienced discrimination compared with 6% of white respondents. It was reported that 84% of participants agreed that bullying and harassment was not a problem where they worked (Pike 2012).

In the same Biennial Survey of the Bar it was found that more than twice the proportion of employed BME barristers (20%) reported that they had personally experienced discrimination to white barristers (9%) (Pike 2012).

The Bar Council Exit Survey referred to above found that 12% of employed BME barristers and 5% of white barristers said that discrimination or harassment was a factor in their decision to leave the Bar or transfer (Electoral Reform Research 2011). Irrespective of ethnicity 4% of self-employed barristers who left the Bar said that discrimination affected them while working at the Bar (Electoral Reform Research 2011).

## **6.2.2 Regulation**

In their research Sommerlad *et al.* (2010) referred to an extensive range of studies that stressed the importance of reliable data at the workplace level to effective regulation. There were particular problems in regard to internal misconduct within the legal profession, which often went unreported. Sommerlad *et al.* argued that there should be an obligation on frontline regulators to publish aggregated diversity data for each area of the legal profession, which could be incorporated into annual statistical reports produced by the Law Society and the Bar Council (Sommerlad *et al.* 2010).

### **Solicitors**

The SRA commissioned Lord Ouseley to conduct an independent review into disproportionate regulatory outcomes for black and minority ethnic solicitors (Ouseley Report). He found that there was not disproportionality in regulatory outcomes and sanctions issued by the SRA. However, the report declared that (1) there may have been disproportionality in the early decision making of the SRA and, (2) this may be as a result of bias in the intelligence and information received by the SRA. The report criticised the SRA for failing to give sufficient priority to equality and diversity (Ouseley, 2008).

The Ouseley Report highlighted the significant role played by the SRA in assessing applications for student enrolment and admission to the Roll. In 2007, there were 17,904 student applications, of which 67% were white and 19% were from a BME background. 3% of applications (n=532) were referred to the SRA, of which 170 concerned BME applicants and 12% (n=20) of these resulted in a negative outcome. 278 white student applications were referred to the SRA, of which 5% (15) resulted in a negative outcome (Ouseley, 2008 513). Of those who were barred from admission to the Roll, the numbers of BME applicants with a negative outcome in 2007 increased from 20% to 29%. It was reported that decisions to exclude applicants were based on intelligence received and not as a result of character or suitability assessment (Ouseley, 2008).

The SRA's Equality and Diversity Strategy (2009-2011) was drafted in response to the recommendations set out in the Ouseley Report (Solicitors Regulation Authority, 2009; Solicitors Regulation Authority, 2013). In a subsequent Report to the SRA Lord Ouseley found that significant progress had been made and the ethos of the Authority was changing: instead of being defensive, people were more open to discussing equality and diversity issues (Lord Ouseley 2011). He also found that the Board and senior management team had improved and were providing clear leadership in driving the equality and diversity agenda forward (Lord Ouseley 2011; Solicitors Regulation Authority, 2013).

The SRA Equality Impact Assessment detailed that there had been the same number of applications to allow individuals removed from the Roll of Solicitors to work under Section 41 of the Solicitors Act 1974 in 2009 and 2010. There was a slight disparity in the number of applications granted in 2010, and the SRA reported that BME applicants were less likely to have their application granted compared with their white counterparts (Solicitors Regulation Authority 2013). In contrast, slightly more white applicants were allowed to work in 2011. Between 2009 and 2011 approximately 13% of Section 41 applications involved BME solicitors. The SRA concluded that this could be due to the fact that a disproportionate number of BME solicitors were referred to the Solicitor Disciplinary Tribunal and, therefore, BME solicitors were more likely to be suspended or struck off the Roll. As a result, the SRA commissioned Professor Gus John to carry out a comparative case review in order to enhance understanding of this trend (Solicitors Regulation Authority 2013).

Research by Pearn Kandola (Pearn Kandola 2010) found that the SRA referred more conduct cases involving BME solicitors for investigation and had played a role in promoting disproportionality. These cases were also more likely to be decided at a higher level (Pearn Kandola, 2010). The research report stated that in relation to initial assessments, fewer BME solicitors had their case 'not upheld' and more were internally referred for further investigation. In the cases closed in the three-year period, 2007-2009, 30% were conduct cases and the Report concluded that BME solicitors were less likely to have their case 'not upheld'. Finally, in two types of regulatory cases, solicitors accounts and practising restrictions, BME solicitors were more likely to have their applications rejected (Pearn Kandola 2010).

The SRA's 2011 Diversity Monitoring Statistics Report (Solicitors Regulation Authority 2012) concluded that there was continuing overrepresentation of male and BME solicitors in both new conduct matters reported and regulatory outcomes. The data were similar to those identified in 2009 and highlighted in the Pearn Kandola Report (Pearn Kandola 2010). The SRA report also highlighted that for the last three years a consistently disproportionate number of BME solicitors and male solicitors had been referred to the Solicitors Disciplinary Tribunal (SDT). The number increased from 311 individuals in 2010 to 390 in 2011, and 35% of referrals in the latter year were BME solicitors. Yet, this group only comprised 27% of the comparator group and 14% of the practising population (Solicitors Regulation Authority, 2012). The number was still higher than the practising population (Solicitors Regulation Authority, 2012). Moreover, the data from 2011 showed that there was disproportionality in the imposition of practising conditions for 34% BME solicitors. (Solicitors Regulation Authority, 2012 ).

In the 2012 Diversity Monitoring Statistics 180 solicitors were referred to SDT and 32% (45) were BME solicitors (Solicitors Regulation Authority, 2013). The number of BME

solicitors referred to the SDT was similar to the comparator population (31%) but it was higher than the practising population (14%) Data from 2012 showed that the proportion of practising conditions imposed decreased for BME to 31% (81) which are proportionate with the comparator population (Solicitors Regulation Authority, 2013).

### **Barristers**

In the BSB Report on diversity and complaints (Bar Standards Board, 2013k 488 /id) internal (n=692) and external complaints (n=2,019) between 2007 and 2011 were analysed. They concluded that BME barristers were overrepresented in the external complaints process and were more likely to have a complaint referred, 'upheld' and be subjected to disciplinary action. In comparison, 28 (12.7%) BME barristers and 81 (5.2%) white barristers had their complaint referred. The data showed that BME barristers also were overrepresented in internal complaints proceedings. BME barristers comprised 10.2% of the practising Bar and accounted for 20.7% of internally recorded complaints. White barristers accounted for 59% of complaints and 77.2% of the practising Bar. Ethnicity data was not available for 12.6% of the practising Bar and 20.4% of the internally recorded complaints (Bar Standards Board, 2013k). There was no evidence that BME barristers were subjected to a larger number of internal complaints for any reason other than their ethnicity. The report concluded that the reasons for this disproportionality were unknown and, therefore, they recommended that an external equality expert should be commissioned to investigate how complaints are handled and to examine the possibility of discrimination in the complaints system (Bar Standards Board, 2013k).

### **6.2.3 Summary of findings**

The number of peer-reviewed articles identified on disproportionality was limited, and the literature reviewed in this section of the report was primarily from secondary sources, including Law Society, SRA and BSB reports, online materials and case law. Two key reports which focused on recruitment and progression were discussed. Firstly, the Law Society's *Ethnic diversity in law firms: Understanding the Barriers* (Law Society 2010). The research indicated that there was a pay disparity between BME and white solicitors. The second report, funded by the Legal Services Board (LSB), *Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices* (Sommerlad *et al.* 2010) investigated recruitment and progression. Both the SRA and the BSB research discussed in this section focused more on external complaints rather than internal complaints within the legal profession. There was very little research identified in relation to retention.

## 6.3 Medicine

### Background

#### UK Qualifications and pre-registration training

Before specialisation, all doctors must have completed a General Medical Council (GMC)-accredited university course in medicine and a (2-year) foundation programme. To obtain a place at Medical School, grades from AAA (which must be in specified subjects) at A-level, or equivalent, are required. At present, the GMC has accredited 30 bodies and combinations of bodies that can award UK primary medical qualifications (PMQ). Having obtained a UK PMQ, a 2 year foundation programme is undertaken in practice, one prior to GMC registration and one after. The GMC sets out specific competencies that are assessed during this training, thereby maintaining its regulatory role. It therefore generally takes 7 years before a doctor will specialise in general practice or another clinical speciality.

#### Applications for registration from European Economic Area / Switzerland

European law means that the registration process for doctors from the European Economic Area (EEA) is quite straightforward. Citizens from an EEA member state or Switzerland who have completed basic medical training within an EEA member state or Switzerland and hold a recognised medical qualification are entitled to full registration with the GMC. EEA/Swiss applicants must have an acceptable PMQ, and will be expected to have completed appropriate (overseas) experience or an internship of at least 12 months equivalent to foundation year 1 (FY01). If an applicant has not completed an internship prior to coming to the UK, they will only be entitled to provisional registration and will have to undertake a FY01 post. Applicants who are new to full registration and not eligible for entry to the specialist or GP register will be required to work in an approved practice setting (APS) for at least 12 months.

#### Applications for registration from International Medical Graduates (IMGs)

International Medical Graduates (IMG) -qualified outside the EEA- can apply for two types of registration: provisional registration or full registration, both with a license to practise. To obtain registration with a license to practise an IMG has to provide a number of items of evidence, including an acceptable PMQ (as set out by the GMC), English language capability, registration and licensing history in all countries where they have practised, certificates of good standing, a pass in the Professional and Linguistic Assessments Board (PLAB) test and a period of pre or postgraduate clinical experience.

#### Characteristics of registered doctors in the UK

The List of Registered Medical Practitioners (LRMP) contains details of doctors registered to practise medicine in the United Kingdom, and is updated monthly.<sup>29</sup> The GP register contains a list of doctors who are registered to practise as General Practitioners in the UK. The Specialist register is a register of doctors who are eligible to work as substantive, fixed term or honorary consultants in the NHS. To work as a GP or consultant, doctors must be registered on the GP/Specialist register as well as the LRMP. Doctors must also have a license to practise in order to perform the duties of a doctor and treat patients.

As of 5<sup>th</sup> July 2013, there were 252,607 doctors registered on the LRMP, of whom 234,711 (92.9%) were licensed to practise medicine in the UK. Thirty percent of those on the LRMP (n=76,387) were on the Specialist register and 24.7% (n=62,369) on the GP register. The figures for licensed doctors were similar (30.5% for the Specialist register and 25.3% for the GP register respectively).

The gender split for those on the LRMP is 56.6% male (n=143,092); 68.7% of those on the specialist register are male (n=52,454), compared with 51.9% (n=32,370) for those on

<sup>29</sup> Data available on the GMC website [http://www.gmc-uk.org/doctors/register/search\\_stats.asp](http://www.gmc-uk.org/doctors/register/search_stats.asp). Accessed 05/07/13

the GP register. The modal age group for all doctors was 36-45 years. Sixty three percent of doctors on the LRMP gained their primary medical qualification (PMQ) in the UK (n=158,887), 26.7% (n=67,452) were International Medical Graduates (IMGs) and 10.4% (n=26,268) gained their PMQ in an EEA country (or Switzerland). The majority of registrants qualified in the UK, although 1 in 10 qualified in India, with a further 3.7% gaining their PMQ in Pakistan.

Where ethnicity is known (23.6% unknown, n=59,670), 63.9% classified themselves as white (n=123,329), 36.1% (n=69,607) were from a BME background. Doctors from Asian backgrounds represented 25.2% (48,519) of those on the LRMP where ethnicity was known (192,581); Indian backgrounds constituted 15.3% (n=29,470) of those where ethnicity was known) and 4.9% (9,505) were from a Pakistani background.

Analysis of recently published data from the September 2012 NHS Workforce Census indicates that there is variation in grade according to BME status. Of the 97,198 doctors for whom data was available, 57,131 (58.8%) were white and 40,067 (41.2%) were from a BME background (Health and Social Care Information Centre 2013). Although the data should be approached with caution, as confounding factors, such as year of qualification, have not been accounted for, there is some evidence that BME doctors are under-represented at consultant level, where they represent 31.2% of all consultants. Conversely, BME doctors appear to be over-represented at associate specialist grade (56.3%), specialty grade (60.5%) and staff Grade (58.1%).

### **Equality and diversity**

The GMC is classed as a public authority for the purposes of the Equality Act 2010 and is therefore bound by the public sector equality duty, which came into effect on 5 April 2011. The 'general duty' requires public bodies like the GMC to have 'due regard' to the need to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010; to advance equality of opportunity between people from different groups and to foster good relations between people from different groups.

### **Summary of items identified in the review**

Using the search strategy outlined in the methodology in Section 2.2, above, we identified 355 items that were considered to be of possible relevance to the review. Of these items, 102 were immediately excluded as they did not relate to UK evidence. Of the remaining 253 items, 96 were regarded as being of direct relevance to the review.

The 96 items included in the review were broken down as follows according to the hierarchy of evidence described in Figure 2.2, above.

- 13 peer-reviewed journal articles
- 23 published reports
- 19 editorials or commentaries
- 1 book
- 2 book chapters
- 1 item of case law
- 27 journal letters (in response to published work or editorials)
- 10 news items

In practice, it was difficult to determine whether a report was peer-reviewed or not; in the absence of evidence to the contrary, we have assumed that the majority of the reports in this review were non-peer-reviewed. Two of the journal letters contained research evidence.

## **6.3.1 Employment**

### **Recruitment**

One of the earliest pieces of work identified in this review was undertaken by Esmail and Everington in 1993 (Esmail and Everington 1993). In order to explore the hypothesis that UK-trained doctors with foreign sounding names were less likely to be shortlisted for hospital



posts, they sent matched applications (same gender, educated and trained in Britain, similar length of experience) for 23 advertised senior house officer posts in otolaryngology, paediatric medicine, general surgery, psychiatry and geriatric medicine in non-teaching hospitals. The authors found that 18 of the applicants were shortlisted, but that doctors with an English-sounding name were twice as likely to be shortlisted and that candidates with an Asian-sounding name were never shortlisted unless an English candidate was also shortlisted. The researchers had planned a larger survey of 100 hospitals for all specialties, but were arrested by the Fraud Squad for deception before this could be done (the charges were later dropped). The authors suggested that the disparity between doctors with Asian-sounding names and those with English-sounding names would have been greater had they been able to complete their study and include teaching hospitals, as at least two of the specialties in the sample, psychiatry and geriatric medicine, are specialties in which BME doctors predominate and the proportion of BME doctors is also higher in district general hospitals. The authors recommended that all applications for medical posts be standardised so that information on ethnic origin could be removed and that ethnic monitoring should be standard practice (Esmail and Everington 1993).

The article prompted considerable debate, with the majority of responses supporting and confirming the authors' findings (Main 1994; Johnson 1993; Moodley and Dinesh 1993; Rao 1993; Watkins 1993), and an editorial supporting the use of deception as a research method (Smith 1993). However, one respondent did suggest that prejudice had been exaggerated and questioned the authors' methodology (James and Esmail 1993). The suggestion that ethnic origin should be removed from the application at the shortlisting stage was also criticised, with respondents suggesting that this would only delay discrimination to the shortlisting stage (Chong 1993), would be impossible to disguise (particularly for higher grade posts) (Wight 1993), would not help overseas doctors (Singh 1993) and that it would be best to have full transparency, including post-interview analysis of why candidates were not chosen for the post (Dewey 1993).

In order to explore progress on disproportionate treatment in recruitment, and concerned that direct policy initiatives to tackle the issue of racism in medicine were lacking, Esmail and Everington repeated the CV exercise five years later and found that discrimination was still 'endemic' (Esmail and Everington 1997). For this study, the authors sent matched pairs of applications for 50 advertised posts in paediatrics, general medicine, geriatrics, psychiatry, obstetrics and gynaecology, general surgery, orthopaedics and vocational training schemes. Again, doctors with Asian-sounding names were less likely to be shortlisted (36% vs. 52%). The authors suggested that these results indicate that racism in shortlisting was still prevalent and being practised by Consultants. The authors also criticised the levels of ethnic monitoring in NHS Trusts. Despite the NHS Management Executive requiring employers to carry out ethnic monitoring, only 5 of the 50 trusts sent an ethnic monitoring form to the applicants (Esmail and Everington 1997).

In 1996, in response to complaints that BME doctors felt discriminated against when applying for senior positions in hospital, the Commission for Racial Equality (CRE) published the findings of a formal investigation of consultant and senior registrar appointments in the NHS, (Commission for Racial Equality 1996). The investigation looked at the success rates of black, Asian and white applicants for consultant and senior registrar vacancies in three specialties where it was known that BME doctors were under-represented (general medicine, general surgery, obstetrics and gynaecology) and two specialties (psychiatry and geriatrics) where BME doctors were concentrated. A total of 418 vacancies were advertised, 251 for consultants and 167 for senior registrars. A total of 47 NHS employers were sent questionnaires and asked to provide a breakdown by ethnic group for all of the vacancies, and information on those that were shortlisted and those appointed. The results indicated that black and Asian doctors applied for more than half of consultant vacancies and more than three quarters of the senior registrar vacancies. Overall, 42% of candidates were shortlisted for consultant posts (56% white; 28% BME) and 12% of applicants were appointed; this figure was 18% for white applicants and 6% for BME applicants. A similar pattern emerged for the senior registrar posts, with 29% shortlisted (35% white; 19% BME)

and 7% appointed (11% white successful compared with 4% for BME candidates). These patterns held, regardless of specialty and the authors noted that where a shortlist only contained BME candidates, on some occasions no appointment was made. The authors argued that “we cannot rule out the possibility that applications from ethnic minority doctors are not being fully and fairly considered.” (Commission for Racial Equality 1996). They also suggested that “taken together with consistently low success rates for minority ethnic applicants for senior medical posts, selection practices...can give little confidence to minority ethnic applicants that their applications will be treated fairly.” (Commission for Racial Equality 1996).

In qualitative focus groups (n=33) undertaken to explore the impact of ethnicity in career progression for the British Medical Association (BMA) in 2003, BME doctors reported that they felt certain specialties were not available to them due to their ethnic background. They also reported situations in the short-listing and appointment of candidates where they felt there was a clear preference for white candidates (Cooke et al. 2003). Some of the participants argued that discrimination was related to country of qualification rather than ethnicity *per se*. The authors also found evidence that BME doctors were reluctant to complain for fear of damaging their career prospects. In order to overcome discrimination, the authors recommended the establishment of objective and transparent selection criteria for training posts (Cooke et al. 2003).

A further qualitative study by the BMA, which explored the experiences of career barriers in medicine of four groups of doctors, including BME doctors who trained overseas (n=6), found evidence of discrimination (BMA 2004). These BME doctors reported situations where they had been discriminated against in applying for posts, with less-qualified white candidates being appointed in their place. They also reported making hundreds of applications for posts and described how the application process, in particular the application form and interview itself, could discriminate against overseas candidates (BMA 2004).

A small-scale questionnaire survey of internationally trained consultant psychiatrists (n=42, 97% from India), explored their experiences of the recruitment process to the NHS (Gupta et al. 2008). One respondent (3%) reported they had experienced racial discrimination from Trust management and three (7%) had experienced discrimination by colleagues. The authors did not make clear what form this discrimination took (Gupta et al. 2008).

In 2008, the Health Service Journal undertook a survey of every NHS Trust and Primary Care Trust in England, n=231 (Santry 2008). They found that BME staff represented 39% of all applicants for jobs, 24% of those shortlisted and 17% of those appointed (Santry 2008).

The South East Coast Black and Minority Ethnic Network Race Equality Service review also explored recruitment, using data provided by 18 of the 27 trusts in the region to study applications, shortlisting and appointments, of whom 67% had a minimum of 12 months data (South East Coast BME Network 2008). They found that a significant proportion of applicants for NHS posts were from BME backgrounds, with rates varying from 74% of all applicants to just 24%. The authors found that there were significant differences between the number of white and BME applicants who were shortlisted for interview; this could however, be due to large numbers of overseas applicants (many of whom were likely to be from BME backgrounds), who were not eligible to work in the UK. The majority (85%) of NHS organisations in the region reported significant differences in the numbers of white and BME applicants offered posts, with only 4 of the 18 organisations demonstrating no evidence of bias in appointment. In light of their findings, the authors argued that NHS organisations need to explore the issues of over-representation in disciplinary, grievance, capability, bullying and harassment procedures/tribunals and to look more carefully at their recruitment processes for evidence of discrimination (South East Coast BME Network 2008)

In 2013, the results of a survey of publicly-available selection data from 30 randomly-selected NHS Trusts were published (Kline 2013). The study was designed to explore whether BME NHS staff were being discriminated against at different stages of the recruitment process (applications, shortlisting and appointment) and had originally been

intended to include 60 Trusts, but the authors found that only 30 trusts had the data available in an analysable format (Kline 2013). The results from the 30 Trusts indicated that a white shortlisted candidate was almost twice as likely (odds ratio: 1.78) to be appointed than a BME shortlisted candidate. A white candidate was over three times more likely (odds ratio: 3.48) to be appointed to a post than a BME candidate. In all but one trust, the likelihood of being shortlisted was lower for a BME candidate and in one Trust, no BME candidates were appointed. The data on recruitment were not broken down by professional group, so it is not possible to determine to what extent BME doctors were affected by disproportionate treatment in recruitment.

Kline argued that some of the disproportionality in appointments could be explained by the fact that some of the BME applicants for NHS posts may have been from overseas and therefore lacked the necessary work permits or relevant qualifications for the job ((Kline 2013). However, he argued that this explanation did not account for the two-fold difference in appointments for shortlisted candidates, as unsuitable candidates would have been removed at this stage and argued instead that “racial discrimination is being practised in some form.” (Kline 2013). Kline cautioned against extrapolating the data he collected to the wider NHS but did, however, argue that there was nothing to indicate that the studied Trusts’ recruitment practices were unusual. Indeed, the fact that they had published and analysable data was available may indicate that they were more aware of such issues (Kline 2013). Kline compared his results to the early Health Service Journal Survey and the South East Coast Black and Minority Ethnic Network reports and concluded that the situation regarding discrimination was largely unchanged Santry 2008; South East Coast BME Network 2008).

### **Employment tribunals**

In the search of Case Law, two employment tribunal cases in regard to recruitment were identified (*Hussain v. Kings College Hospital* [2001] All ER (D) 230 (Dec); *Tasneem v Dudley Group of Hospitals NHS Trust* [2010] UKEAT 0496\_09\_1801). See Appendix 3, below, for further details.

### **Progression**

In 2000, the Department of Health published research, undertaken by Lemos and Crane, which explored the qualitative experiences of BME staff working in the NHS (Lemos and Crane 2000). This study, which grouped the medical and dental professions together, used qualitative and quantitative methods to explore the experiences of 494 NHS staff in 52 Trusts in England. Approximately 8% of respondents were medical or dental professionals. Half of all front line staff (including doctors) had experienced racial harassment within the previous 12 months, most notably from colleagues (Lemos and Crane 2000). The most commonly reported form of racial harassment by managers was being overlooked for training, development or promotion opportunities. Few BME NHS staff complained about their treatment and when they did, they reported that often the complainant was moved to another department or position. Participants also drew attention to the lack of BME professionals in senior management positions, a situation that has been described as ‘snowcapping’ (Carvel 2003). Unfortunately the results of this research were not presented by professional group, so it is not possible to determine what proportion of participating BME doctors had experienced harassment.

In a chapter in the Kings Fund book on *Racism in Medicine*, Shahid Dadabhoy, a second-generation Asian doctor, reported his experiences of career progression (Dadabhoy 2001). He went into general practice as he found that, as a practising Muslim who did not drink, he was unable to socialise with colleagues “on their terms” and felt he was denied access to posts, promotions and rotations in other areas of practice. He argues that general practice became “his default pathway” (Dadabhoy 2001).

In a questionnaire-study exploring the experiences of bullying amongst a sample of junior doctors working in the NHS (n=594, 62% response rate), Quine (2002 and 2003) found that 37% had experienced bullying and 15% had been discriminated against on the grounds of race or gender (Quine 2002; Quine 2003). Of those who had experienced

bullying, 34% had been bullied by a senior manager, 53% by colleagues and 60% by their immediate team leader. BME doctors were more likely to be bullied (45% vs. 34%) and also reported significantly more 'persistent attempts to belittle and undermine their work' (33% vs. 21%). Twenty-nine percent of BME junior doctors reported discrimination on the grounds of race or gender and a third had experienced 'unreasonable refusal of applications for leave, training or promotion', significantly more than their white peers (21%) (Quine 2003). Quine found that doctors who reported being bullied had significantly lower levels of job satisfaction and significantly higher levels of psychological distress (Quine 2003). Seventeen percent of respondents reported that they had experienced '*intimidatory*' use of discipline or competence procedures, with BME junior doctors significantly more likely to report this than their white peers (Quine 2002).

In a questionnaire-survey of 476 doctors (16% BME background, n=76), who formed part of a cohort of UK-trained doctors who qualified in 1995, the BMA found evidence that ethnicity may be a factor in career progression (Cooke et al. 2003). A significant proportion of BME doctors reported that ethnicity had a significant effect on training (62%), early career opportunities (70%), access to specialities (87%) and career advancement (86%). The authors stated that senior medics rationalised their treatment of BME doctors, or more particularly those who trained overseas, by citing factors such as lack of understanding of English culture.

In the qualitative BMA study of career barriers in medicine cited earlier, BME participants (n=6), who trained overseas discussed how they and other BME doctors found themselves 'trapped' in staff grade and associate specialist posts and discussed the 'glass ceiling' that prevented them from progressing up the career ladder (BMA 2004). In response, the authors argued that under-represented groups (including BME doctors) should be supported into leadership and management roles and that those working in staff and specialist grades should have opportunities for career development.

A study into the nature, extent and effects of racist behaviours experienced by BME healthcare staff in Northern Ireland (Betts and Hamilton 2006), used a similar methodology to that of Lemos and Crane (2000). This study found that 46% of respondents (n=557, of whom 118 were doctors) had experienced racial harassment at work. Half stated that work colleagues were the most likely source of the harassment, and 19% experienced racist harassment from a manager or supervisor (Betts and Hamilton 2006). One in 10 respondents also reported that they had been denied access to training and 8% had been passed over for promotion. However, this study did not differentiate between doctors and other healthcare staff (including nurses and support staff), so it is not possible to determine what proportion of those denied access to training or promotion were doctors.

Oikelome and Healy (2007) used data from a questionnaire survey (n=2,596, response rate 28%) distributed by the BMA in 2004 to staff and associate Specialist grade doctors and dentists to compare the experiences of overseas-qualified and UK qualified doctors and dentists (Oikelome and Healy 2007). These type of grades, which are sometimes referred to as Non-Consultant Career Grades (NCCG), include posts such as associate specialists, clinical assistants, hospital practitioners and community health doctors and are permanent career grades that a doctor can move to from a senior house officer grade, instead of undertaking further specialist training. According to recent workforce census data, doctors from BME backgrounds are over-represented in these roles; BME doctors represented 48.1% of associate specialist roles and 50.1% of staff grade roles, despite only constituting just over a third of the workforce (Health and Social Care Information Centre 2013). Similarly, overseas doctors, particularly those who qualified outside the EEA, make up ~70% of associate specialist and staff grade posts, despite constituting only a third of the hospital workforce. Clearly there will be some overlap between these two groups.

Oikelome and Healy (2007) compared the responses for full-time overseas-qualified doctors to UK-qualified doctors on a number of factors including salary, discretionary points, workload, autonomy and morale (Oikelome and Healy 2007). While they found no evidence to suggest disproportionality in salary (in fact, overseas-qualified doctors earned significantly

more than UK-qualified) or the awarding of discretionary points, the authors found evidence to suggest that overseas-qualified doctors work longer hours, have less autonomy and lower morale than those who qualified in the UK. This paper did not discuss ethnicity *per se* and did not differentiate between EEA doctors and those who qualified outside the EEA (Oikelome and Healy 2007). In a further analysis of the BMA data, Oikelome and Healy (2013) found that there was a significant correlation between perceptions of inequality and morale and a number of other factors, including career aspirations (Oikelome and Healy 2013). The authors argued that if a doctor in an NCCG post had high aspirations for their career, and then perceived that they were not being treated equally, they were likely to feel frustrated and demoralised. Oikelome and Healy noted that the majority of NCCG doctors in the BMA study did not feel that they were adequately recognised and morale levels were low (Oikelome and Healy 2013).

Raghuram et al. (2009) undertook qualitative research with BME doctors who were working in geriatrics (Raghuram et al. 2009). Although 14% of all consultants were from a BME background, 21% of all consultants appointed to geriatrics between 1992 and 2001 were from a BME background and had trained overseas (Goldacre et al. 2004). Raghuram and colleagues interviewed BME consultant geriatricians who had trained in South Asia (n=48) about their career experiences, in particular looking at issues of progression. In the interviews some of the South Asian geriatricians reported on their repeated failure to secure consultant or specialist registrar posts in their chosen specialty, in some cases being advised by mentors to “not bother applying, as they did not stand a chance of success” (Raghuram et al. 2009). Instead, many of those interviewed described how they had gone into geriatrics, seeing this specialty as their route to becoming a consultant. There was also some evidence that these doctors found it easier to get posts in district general hospitals rather than teaching or metropolitan hospitals and that they were advised to avoid certain geographical locations, such as the South of England. Raghuram et al. argued that discrimination affected these doctors’ career choices, suggesting that they were ‘*doubly marginalised*’ by their ethnic status and their position in a neglected specialty. However, Raghuram et al. also noted that by moving into the specialty this group of doctors had “*created a professional niche with opportunities for career development*” (Raghuram et al. 2009).

The most recent NHS Staff Survey (2012), the tenth annual survey, asked NHS staff (including doctors) working in England about their experiences of racism. They were asked whether they had experienced discrimination at work on the basis of ethnicity and whether the organisation acted fairly with regard to career progression/promotion regardless of ethnic background (Care Quality Commission 2013). Of the 101,169 NHS staff who responded, 12% reported they had been discriminated against at work, 8% reported that the discrimination had come from other colleagues and 4% reported that this was on the basis of their ethnicity. Thirteen percent of survey respondents did not believe that their employing trust provided equal opportunities for career progression or promotion, a fall of 2% from the previous survey. It is interesting to note that the proportions of NHS staff reporting discrimination have been largely unchanged over the past few years (Care Quality Commission 2009; Care Quality Commission 2010; Care Quality Commission 2011).

Raw data for all trusts is available for specific employment groups. Amongst the medical and dental staff, 6% did not feel that their organisation acted fairly in relation to career progression or promotion for protected groups (i.e. ethnicity, gender, religion, sexual orientation, age, disability), 7% had personally experienced discrimination from a manager, team leader or other colleagues and 6% had experienced discrimination based on ethnicity (Care Quality Commission 2013). Data is also available for different ethnic groups and shows that BME staff are more likely than white staff to disagree that their trust acts fairly with regard to career progression (15% vs. 7%), and some ethnic groups, particularly black British, black African and black Caribbean, more likely to disagree with the statement. BME staff were more likely than white staff to have experienced discrimination from managers, team leaders or other colleagues (14% vs. 6%) and 20% reported that they had been discriminated against on the basis of ethnicity. Some groups, notably black British and black

African members of staff reported higher levels of discrimination (27% and 28%, respectively).

### **Performance-based payments for consultants**

One area of research where evidence of disproportionality has been identified is in the performance pay review system for NHS consultants: the Distinction and Discretionary Points awards scheme. Originally conceived over 60 years ago at the beginning of the NHS, the system was introduced initially to attract doctors into the new service and allay fears about the loss of income (Abel and Esmail 2006). The current system, reframed as the Clinical Excellence Awards in 2002, is designed to recognise and reward NHS consultants (and academic GPs) who perform 'over and above' the standard expected of their role. The scheme has attracted much criticism, particularly in relation to unfairness in the allocation of awards, and a government review in 2001 suggested that many consultants felt discriminated against on a number of bases, including ethnicity (Department of Health 2001).

A number of studies have sought to explore discrimination in the allocation of awards and the findings indicate that discrimination may exist. In 1998, Esmail et al. explored this issue by doing a surname analysis of current award holders; consultants with Asian, Chinese or African sounding names were classified as non-white (Esmail et al. 1998). Comparisons were made according to type of award, specialty and NHS region. The authors found evidence of disparity in the allocation of awards, with white consultants three times more likely overall to get an award than their BME peers, and this rose to six times more likely for an 'A' award. The disparity between white and BME consultants was even greater in some specialties, with white doctors eight times more likely to get an award in cardiology, six times more likely in orthopaedic surgery, and five times more likely to get an award in radiology or neurology. There were also regional variations in awards to white and BME consultants (Esmail et al. 1998). The authors identified two areas where they thought discrimination existed; (i) in the nomination of consultants for these awards and (ii) in the awarding process itself. In the absence of information about the composition of award committees and a lack of transparency, Esmail et al. suggested that charges of racial discrimination could be made against the scheme (Esmail et al. 1998).

An editorial in the same issue of the journal challenged Esmail et al.'s findings (Rubin 1998). It was suggested that the disparity could be due to the type of hospital, as teaching hospitals select consultants with the best academic CVs who are then able to engage in the types of activity necessary to receive an award. Rubin suggested that the findings merely reflect a 'skewed' distribution and historical employment opportunities, rather than genuine prejudice, a view supported by a number of commentators (Bedi 1998; Joseph 1998; White 1998; Williams 1998). Other commentators also suggested that the analysis needed to be adjusted for age, as BME consultants are, on average, younger than white consultants (Patterson 1998; Tunstall-Pedoe 1998). A number of commentators also supported Esmail's findings (Adiseshiah 1998; Boddington 1998; Dudley 1998; Harper 1998).

In 1998, the Commission for Racial Equality conducted an investigation of the workings of the Distinction Awards scheme. Their report to the Advisory Committee on Distinction Awards (ACDA) found no evidence of direct discrimination but concluded that there might be some "indirectly discriminatory effects arising from the application of the current criteria." (Advisory Committee on Distinction Awards 1998).

In 2003, Esmail et al. returned to explore discrimination in the awarding of discretionary points. They used Advisory Committee on Distinction Awards (England and Wales) and the Scottish Advisory Committee on Distinction Awards (Scotland) data from 2000-2001 to compare awards to white and BME consultants (Esmail et al. 2003). In contrast to the previous research (Esmail et al. 1998), the authors had access to ethnic origin data. They found that white consultants had 1.37 and 1.34 times as many awards as BME consultants in England and Wales, and Scotland, respectively. The authors noted that BME consultants tend to be older when appointed, indicating that their eligibility period for the awards was likely to be shorter than for white consultants (Esmail et al. 2003). The concentration of BME consultants in specialties such as geriatrics (Goldacre et al. 2004),

where less awards are available, may also offer an explanation for the finding of disproportionality. However, Esmail et al. argued that discrimination could also be the cause (Esmail et al. 2003). As with the earlier work, the findings prompted discussion and rebuttals (Cave 2003; Joseph 2003; Lack 2003; Notcutt 2003), with some support for Esmail's hypothesis (Larsson 2003).

In 2004, the ACDA commissioned further research exploring the allocation of distinction awards in England and Wales (Lambert et al. 2004). The results indicated that BME doctors were under-represented among award holders, before confounding factors such as year of first appointment, contract type and type of hospital were taken into account. When these factors were included in the analysis, the authors found that many of the differences were reduced. In terms of ethnicity, the odds ratio for any award for a BME consultant who trained abroad compared with a white consultant was 0.45 and there were significant differences in odds ratios for overseas-trained BME consultants for a number of the different types of award. Although the authors concluded that some of the under-representation of BME consultants in the holding of distinction awards could be explained by the length of their career, they argued that doctors who trained abroad, both white and BME, were under-represented for certain types of award (Lambert et al. 2004).

### ***Examinations for entry to the Royal Colleges***

Research undertaken prior to 1993 (and therefore outside the remit of this review) had explored whether Asian doctors were discriminated against when sitting the Royal College of General Practitioners (RCGP) examination (Wakeford et al. 1992). The authors concluded that, although the examination did not systematically discriminate against this group of doctors, Asian doctors who trained overseas performed poorly in the examination (Wakeford et al. 1992; Roberts et al. 2000). In 2000, Roberts et al. published the results of a direct observation of 24 oral examinations (30 minutes) for membership of the Royal College of General Practitioners (RCGP), in which candidates were from BME background, interviewed 14 BME candidates post-exam and also studied video of 11 oral examinations with BME candidates (Roberts et al. 2000). Using ethnographic and sociolinguistic discourse analysis, the authors argued that their results indicate that "minority candidates from different ethnic and linguistic backgrounds may be disproportionately disadvantaged [by the examination]" and that there was clear potential for discrimination. This paper was the subject of a commentary by Esmail and May who argued that candidates for the examination need to be convinced that processes are fair and that the criteria for passing or failing are explicit (Esmail and May 2000).

Earlier this year (2013), the British Association of Physicians of Indian Origin (BAPIO) reported that they were calling for a judicial review of the RCGP examination, arguing that it is flawed and discriminates against internationally-trained GPs (Robinson Francesca, 2013). The BAPIO reported that in 2011/2012 65.3% of internationally-trained doctors failed the clinical skills assessment part of the RCGP examination at the first attempt, in comparison with just 9.9% of UK-trained doctors. The BAPIO argues that these differential pass rates demonstrate that the RCGP is discriminating unlawfully against internationally-trained graduates under the Equality Act 2010. The BAPIO also reported that they will be supporting individual doctors at employment tribunals, where doctors have lost training posts due to failing the exam.

Bessant et al. analysed the predictors of success in the MRCP (membership of the Royal College of Physicians) Practical Assessment of Clinical Assessment Skills (PACES) examination among a sample of 483 candidates who had attended a PACES revision course in 2002 (Bessant et al. 2006). The authors sent a questionnaire to course attendees and found that 45.3% of candidates passed the course, with UK graduates more likely to pass than overseas graduates (67.0% vs. 26.2%; odds ratio: 5.72). For UK graduates, white candidates were more likely to pass than BME candidates (73% vs. 56%, odds ratio: 2.15). The authors argued that the apparently poor success rate for UK-trained BME candidates requires further research to determine whether the differences reflect genuine issues with ability, or whether discrimination could be occurring (Bessant et al. 2006).

### **Employment tribunals**

A number of BME doctors have taken their employer to employment tribunals, citing racial discrimination in the allocation of discretionary points. In 2000, as Dr Nasr, a consultant in genito-urinary medicine took his employer, Salisbury Healthcare NHS Trust, to an employment tribunal alleging racial discrimination in the awarding of discretionary points (*Nasr v Salisbury Healthcare NHS Trust* [2000] ET/3102492/99: 2000). The tribunal noted a lack of objectivity from members of the Discretionary Points Committee and argued that “such a high level of subjectivity is anathema to the successful application of equal opportunity guidelines since it works to the disadvantage of ethnic minorities, both in operation and perception.” (*Nasr v Salisbury Healthcare NHS Trust* [2000] ET/3102492/99: 2000). Several of the cases relating to discretionary points, including *Mohan v Plymouth Hospitals NHS Trust*, *Halawa v Plymouth Hospitals NHS Trust* and *Kumar v Plymouth Hospitals NHS Trust* and *DaCruz v South Devon Healthcare Trust* (all unreported) have been settled out of court (BBC 2007a; DaCruz 2000).

The search for case law found an employment tribunal where a BME doctor took the Specialist Training Authority to tribunal in 2001, alleging racial discrimination (*Chaudhary v The Specialist Training Authority of the Medical Royal College* [2005] EWCA Civ 282; [2001] All ER (D) 294 (Nov)). See Appendix 3, below, for brief summary of this case.

### **Retention**

Published research on disproportionality relating to the retention of doctors appears to be limited. Sibbald et al. explored job satisfaction and intentions to leave direct patient care in a random sample of 2000 GPs in 2001, comparing their findings with a previous study of GPs in 1998 (Sibbald et al. 2003). The results of the study (n=1332, response rate 67% in 2001; and n=974, 47% response rate in 1998) indicated that BME GPs recorded significantly lower job satisfaction. GPs working in deprived areas also reported lower job satisfaction and there was evidence that BME doctors predominated in these types of practice. Sibbald et al. found that BME GPs were more likely to intend quitting than white GPs, however this result was only statistically significant in 2001 (Sibbald et al. 2003). It should be noted that this study did not provide evidence of disproportionality *per se*, as there could be a number of reasons that explain lower levels of job satisfaction among BME doctors.

In 2003, the Society of Clinical Psychiatrists Study Group published data on suspensions (n=325) collected over a 15-year period (Tomlin 2003). The group had access to data on ethnicity for 291 of the 325 suspension cases and defined ‘ethnic minority’ very broadly, including Slavic, Jewish and Irish doctors, as well as more traditional BME groups, Asian and Black for example. Of these 291 hospital doctors, 80 (27%) had qualified outside the European Union (EU) or, if EU-qualified, were from an ethnic minority (Tomlin 2003). Tomlin (2003) found that, despite the majority of BME doctors being exonerated, only 50% (16/31) of those found not guilty were reinstated, compared with 71% (35/49) of white doctors who were similarly found not guilty. Tomlin notes that, although less than 15% of the investigations were proven, the impact of suspension pending the conclusion of an investigation could be extremely harmful to individuals. Of the 5 deaths within the 325 suspension cases in the study, two were ethnic minority doctors who were unable to cope with the ‘loss of face’ and committed suicide (Tomlin 2003).

### **Employment tribunals**

A number of high profile cases have been reported where BME doctors have successfully taken their employer to employment tribunals, alleging racial discrimination, including the cases of Dr Feyi Awotona, who was awarded compensation of £1.6 million (*Awotona v South Tyneside Healthcare NHS Trust* [2005] All ER (D) 221 (Feb); Dyer 2005) and Dr Eva Michalak, a Polish consultant who was awarded £4.5m (*Michalak v Mid Yorkshire Hospitals NHS Trust* ET/1810815/08; Dyer 2011). For further details on both cases, see Section 3 on Case Law, above, and Appendix 3, below. In a recent case, the outcome of which has yet to be determined, a black GP, Lucia Gibson has accused her employer, the Surrey NHS



Primary Care Trust, of racial discrimination, arguing that she was forced out of a 'very white English' surgery because she did not 'fit' the racial profile of the practice (Anon 2013) .

A number of unsuccessful claims of race discrimination were identified in the case law search, including *Issa v Sandwell Healthcare NHS Trust* [2002] All ER (D) 212 (Jul); *Effa v Alexandra Healthcare NHS Trust* [1999] All ER (D) 1229; *Ahari v Birmingham Heartlands and Solihull Hospitals NHS Trust* [2008] UKEAT 0355\_07\_0104, and *Igboaka v The Royal College of Pathologists* [2009] UKEAT 0036\_09\_0312. For further details on these cases, see Appendix 3, below.

As with the tribunals regarding discretionary points, some cases relating to retention are settled out of court, such as *Adeniran v Plymouth Hospitals NHS Trust* (2007) unreported (BBC 2007b).

### 6.3.2 Regulation

#### Misconduct

##### **General Medical Council Processes**

Using surname to identify BME doctors, Esmail *et al* explored the minutes of the Professional Conduct Committee (PCC) of the General Medical Council (GMC) between 1982 and 1991, (Esmail and Everington 1994). During this period, 294 cases of professional conduct were assessed. The authors calculated the odds ratios of the risk of being charged with a specific offence and found that BME doctors were significantly more likely to be charged with specific offences; including, 12 times more likely to be charged with indecent behaviour, 32 times more likely to be charged with making improper demands for fees and 4 times more likely to be charged with improperly prescribing drugs. The authors also found that, once before the PCC, there was no significant difference in outcome for white and BME doctors. The authors also found that more complaints were being made against BME doctors. The authors recommended safeguards be established to prevent racially motivated complaints going before the PCC. They also argued that the GMC should publish a breakdown of complaints against doctors by ethnic group (Esmail and Everington 1994).

In 1994, in response to concerns that the GMC's procedures were discriminatory (Esmail and Everington 1994), the GMC established the Racial Equality Group, which commissioned the Policy Studies Institute (PSI) to conduct an independent review of GMC regulatory procedures. Led by Professor Isobel Allen, the PSI undertook a retrospective review of GMC data for a 12-month period prior to August 1994, looking for evidence of racial bias (Allen et al. 1996). Overseas-qualified doctors represented 29% of all complaints received, at a time when they accounted for approximately a quarter of the profession. However, Allen found that doctors who had qualified overseas were significantly more likely than their UK-trained peers to be referred through the GMC procedures, rather than having their case closed at an early stage. The main difference between UK-trained and overseas doctors was in the proportions being referred by the Preliminary Proceedings Committee (PPC) to the PCC. Overseas-qualified doctors represented 50% of all cases considered by the PPC and 58% of those referred to the PCC.

In terms of outcomes, UK-trained doctors were more likely than overseas-trained to be struck off (48% compared to 31%), which could indicate that UK-trained doctors had to reach a higher threshold of serious misconduct before they were referred to the PCC (Godlee 1996). Allen was unable to account for this difference, largely due to what was described as the 'opacity' of the GMC procedures at the time. Although Allen was careful to state that this did not necessarily prove the existence of racial bias – the complaints made against overseas doctors could, of course, be more serious in nature – she argued that the lack of transparency in the procedures meant that bias could not be ruled out. Allen made a number of recommendations on the basis of her findings, relating to the transparency of procedures, and noted the importance of maintaining and establishing accurate databases (Allen 1996).

In 1998 Professor Allen was commissioned to perform a follow-up study on the GMC's procedures, looking for factors that could explain the over-representation of overseas-qualified doctors at different stages of the fitness-to-practise procedures (Allen 2000). In contrast to the 1996 study, Professor Allen was able to design a prospective study to explore complaints made to the GMC in 1997, 1998 and 1999. In each of the three years Allen found evidence of discrepancies in the number of overseas qualifiers sent to the PCC by the PPC. In 1999, 33% of UK-qualified doctors were sent to the PCC by the PPC, compared to 54% of overseas-qualified doctors. As the PPC did not keep contemporaneous records of their discussions or provide details of their decisions, there was no way of explaining these decisions. There were also unexplained differences in outcomes of the cases heard by the PCC. In 1999, 50% of overseas-qualified doctors appearing before the PCC were erased from the medical register, compared with 38% of UK qualified doctors (Allen 2000).

Overseas doctors accounted for approximately half of all complaints made to the GMC by public bodies (the police, courts, NHS, etc), but only 20% from the public (Allen 2000). Allen noted that complaints from public bodies were taken more seriously by GMC screeners, regardless of where the doctor trained. This was largely because the evidence supplied to them was greater than a complaint from a member of the public, and doctors who were reported by public bodies may also have been found guilty of a misdemeanour in another context. After performing statistical analysis to control for all the variables influencing the outcome of complaints against doctors, Allen determined that the higher proportion of complaints from public bodies made against overseas doctors was the most important factor accounting for the higher proportion of referrals of overseas-qualified doctors to the PCC by the PPC. Allen cautioned against accusing public bodies of bias, arguing that many complaints from public bodies originated with members of the public. The report of the findings, which was published in 2000, made recommendations relating to the development of standards and criteria and the importance of defining serious professional misconduct and settling on an agreed interpretation (Allen 2000).

In 2002, the PSI was commissioned to carry out further work, performing a preliminary analysis of data on complaints received in 1999, 2000 and 2001. As with the earlier PSI studies Allen et al. 1996; Allen 2000), Allen found marked differences in the relative proportions of UK and overseas-qualified doctors referred to the PPC by individual GMC screeners (Allen 2003). In some cases, screeners sent equal proportions of UK and overseas-qualified doctors to the PPC and in some cases screeners sent as many as three times as many overseas-qualified doctors to the committee. Allen concluded that the screeners were applying different standards to their decisions. The proportion of overseas-qualified doctors sent by the PPC to the PCC was greater than that of UK-qualifiers and there were also differences in outcomes (Allen 2003).

The findings from Allen's three separate analyses provided evidence of unexplained differences in the treatment of overseas-qualified doctors at all stages of the GMC's procedures and indicated a lack of transparency. Although no evidence of overt racial bias was identified in any of the three investigations, Allen argued that the GMC would only be able to refute allegations of racial discrimination if the decisions taken could be measured against objective criteria and through the "consistent application of agreed standards"(Allen 2003)..

West et al. undertook a descriptive analysis of complaints under the GMC's new Fitness to Practise procedures in 2005, analysing 4,128 complaints against doctors: 64% were UK qualified; 27% qualified overseas; 8% qualified in the EEA; and 1% were European doctors who qualified outside the EEA (West et al. 2006). The GMC only held ethnicity data for 13% of cases and the authors did an analysis to suggest that there was only a limited association between ethnicity and country of qualification, suggesting that this is not a good proxy for ethnicity (Humphrey et al. 2009). The authors found that at the case examiner stage (see Section 5.3, above), twice as many overseas qualified doctors were referred for adjudication. Twelve percent of complaints against UK qualified doctors proceeded to investigation, compared with 26% for overseas doctors and 28% of EEA doctors, which led

the authors to suggest that more serious complaints were being made against overseas and European doctors. The authors suggested that this may have been due to a higher proportion of complaints against overseas doctors being made by public bodies. Previous research on the GMC procedures presented above (Allen 2000) indicated that complaints by public bodies were more likely to progress, compared with complaints from the public. However, the authors argue that they would expect similar outcomes between UK-qualified and overseas-qualified, regardless of who made the complaints, as differences in severity of the complaint should have been reduced at the Initial assessment stage (West et al. 2006).

Humphrey et al. (2009 & 2011) explored the way in which the GMC handled cases involving overseas-qualified doctors in order to evaluate whether country of qualification was associated with 'higher impact' (referred for investigation) decisions at various stages of fitness-to-practise procedures (Humphrey et al. 2009 ; Humphrey et al. 2011). The authors looked at evidence from 2006 to 2008 relating to 7526 inquiries to the GMC concerning 6954 doctors. At the initial triage stage, 46% of doctors who qualified outside the EU received a 'high impact' decision, compared to 43% of doctors from the EU and 30% who trained in Britain (Humphrey et al. 2011). The adjusted relative odds of an inquiry being referred for further investigation were 1.67 for EU doctors and 1.61 for those who qualified outside the EU. At the investigation stage, doctors who qualified outside the UK were twice as likely to have their case referred for adjudication. Although the higher impact decisions for non-GB trained doctors were not explained by factors either related to the inquiry or the doctors' characteristics, the authors argued that residual confounding factors could be excluded.

Humphrey et al. (2009 & 2011) had access to self-reported data on ethnicity for 59% of inquiries that progressed to further investigation. They found that inquiries relating to UK qualified doctors showed no association between ethnicity and decision outcome at any stage of the process. However, inquiries involving non-UK qualified doctors, including both white and BME groups, were associated with high impact outcomes at triage and investigation stages. There were no significant differences in outcomes for non-UK qualified doctors according to ethnicity. The authors offered two possible explanations for differences between UK-trained and non-UK trained doctors: that there could be genuine differences in the fitness to practise of the two groups or, alternatively, that the GMC's processes were discriminatory. The authors argue that, due to limitations in the data, they cannot support either explanation, although Humphrey states that "our findings do not support the hypothesis that ethnicity is a risk factor for high impact outcomes, in and of itself" (Humphrey et al. 2009). The authors recommended qualitative work to look at GMC decision-making and also research to explore decision-making in external organisations, who are responsible for a significant proportion of enquiries about doctors Humphrey et al. 2009.

When considering the findings from all of the studies of the GMC processes, it is important to distinguish between BME doctors and overseas-qualified. Although a significant proportion of such doctors are likely to have a BME background, it has been shown that place of qualification cannot be used as a proxy for ethnicity (West et al. 2006; Humphrey et al. 2009).

A recent Freedom of Information (Fol) request by the *Sunday Telegraph* revealed that 63% of the 669 doctors struck off or suspended by the GMC over the past five years were trained abroad; this compares with figures indicating that just over a third of doctors qualified overseas (Leach and Donnelly 2012) . Figures obtained under the Fol request indicated that of the 39 doctors struck off by the GMC in 2012, 29 were trained outside the UK (74%). In response, Dr Umesh Prabhu, Vice Chairman of the British International Doctors Association argued that the reasons for the over-representation of overseas-trained doctors were complex and suggested they were more likely to be related to racial discrimination and the fact that more complaints about overseas-trained doctors originate with NHS Trusts rather than patients (Leach and Donnelly 2012).

### **Employment tribunals**

The search for case law identified a number of cases where BME doctors had taken the GMC to employment tribunal alleging racial discrimination (*Kahn v General Medical Council*

[1994] IRLR 646; EAT [1993] IRLR 378; *Hassan v General Medical Council* [2005] UKEAT/0807/04/MAA; *Bhadra v General Medical Council* [2005] All ER (D) 15 (Sep); and *Uddin v General Medical Council* [2013] All ER (D) 360 (Feb)). For details of these cases, see Appendix 3, below.

### **NHS Disciplinary procedures**

All doctors working within the NHS will also be subject to the disciplinary procedures of their employing trust. This section reports on evidence of possible disproportionality in the application of NHS disciplinary procedures.

In 2003, the National Audit Office (NAO) published a report looking at the management of suspensions of clinical staff in NHS Hospital and Ambulance Trusts in England (National Audit Office 2004). Over a 14-month period (April 2001 to July 2002), the NAO found that more than 1,000 clinical staff were excluded for more than one month, with annual costs to the NHS of £29 million. Several years prior to the report, the Society of Clinical Psychiatrists Study Group had raised concerns that ethnicity, and gender, were risk factors for exclusions (Jacobs and Tomlin 1999). The NAO surveyed all doctor exclusions lasting longer than 6 months and found that, although a slightly higher proportion of BME doctors were excluded, the difference was not statistically significant (59% white vs. 39% BME, similar to workforce figures). However, when the analysis was applied to consultants, a significantly higher proportion of BME consultants were excluded; they represented 36% of all consultants excluded, despite representing just 19% of the consultant population. The NAO recommended that the ethnicity of exclusions should be kept under review by the monitoring of referrals by the National Clinical Assessment Authority (NCAA) (National Audit Office 2004).

Analysis of the Society of Clinical Psychiatrists Study Group data on suspensions, collected over a 15-year period, indicated that in 80 (27%) of the 291 cases for which data were available the doctor involved had qualified outside the EU or, if EU-qualified, was from an ethnic minority (Tomlin 2003). Tomlin (2003) suggested that, as the percentage of doctors from an 'ethnic minority' during the period under study averaged ~18%, ethnic minority doctors were over-represented in suspensions. There were significant differences in who was accusing doctors of professional incompetence: 60% of suspended ethnic minority doctors were accused by fellow doctors, compared with 37% of white or majority ethnic doctors (Tomlin 2003). Of the 215 cases where the outcome had been determined at the time of publication, an 'excess number' of false allegations of professional incompetence were made against ethnic minority doctors. As noted previously, suspended BME doctors were less likely to be reinstated, even when they were found not guilty (Tomlin 2003).

In a publication for the Workforce Directorate on Equality and Diversity in the Medical Workforce, Dr Umesh Prabhu, a member of the Medical Workforce (Equality and Diversity) Reference Group, drew attention to the fact that 70% of doctors charged with manslaughter were from BME backgrounds (Department of Health 2004). Prabhu argued that racial bias could account for this over-representation and he highlighted issues with cultural difference and communication. He also noted that BME GPs tend to work in deprived areas with fewer resources available to them (Anon 2004). The Medical Workforce (Equality and Diversity) Reference Group called for disciplinary bodies to remove bias from their systems (Anon 2004).

In the 2008 *Health Service Journal* survey cited previously (Santry 2008), the authors found that BME staff comprised 16% of the NHS workforce, but were involved in 44% of bullying and harassment cases, 34% of capability reviews, 29% of disciplinary proceedings and 31% of grievance cases. These data were not broken down by staff group.

In the same year, the South East Coast Black and Minority Ethnic Network undertook a Race Equality Service Review, looking at the compliance of all NHS Trusts, Primary Care Trusts and Strategic Health Authorities in their region with the Race Relations (Amendment) Act 2000 (South East Coast BME Network 2008). The authors looked at evidence on disciplinary, grievance, bullying and harassment, capability procedures, employment tribunals and recruitment: they found evidence of variance in the proportions of BME staff

that were subject to the various procedures. BME staff were 72% more likely to be involved in bullying and harassment procedures (risk ratio: 1.72); 69% more likely to be subject to a disciplinary procedure (risk ratio 1.69); 53% more likely to be involved in a grievance procedure (risk ratio: 1.53); and 34% more likely to be subject to capability procedures (1.34). BME staff were also twice as likely as white staff in the region to lodge an employment tribunal claim (risk ratio: 1.96) (South East Coast BME Network 2008). These data were not broken down by staff group.

Recent evidence, based on a web audit of 398 NHS Trusts, exploring disciplinary data and qualitative workshops and also focus group discussions (n=91) with BME staff, suggested that staff from BME backgrounds were twice as likely to be disciplined, compared with their white peers (Archibong and Darr 2010). The research did not differentiate between doctors and other NHS employees, so it was not possible to determine whether BME doctors were over-represented in disciplinary proceedings (Archibong and Darr 2010). The authors found that within the NHS there was a perception that managers were more likely to discipline BME staff over 'insignificant' matters. They argued that there was some evidence to suggest that managers lacked confidence in dealing with BME staff informally and, therefore, used disciplinary procedures inappropriately to address performance issues. The authors argued that organisational culture may account for the over-representation of BME staff in disciplinary procedures and recommended improved ethnic monitoring, including robust systems for data collection and analysis, root cause analysis, independent reviews of cases, post case reviews and exit interviews (Archibong and Darr 2010).

### **Performance monitoring**

The National Clinical Assessment Service (NCAS, previously named the NCAA) was established in 2001 to help the NHS deal with concerns about the performance of doctors, dentists (2003) and pharmacists (2009). An NHS manager can refer a doctor (dentist or pharmacist) about whom there are concerns to NCAS. NCAS advisors follow this up with telephone support, meetings, case conferences or other interventions as necessary. Approximately one doctor in 190 is referred annually to NCAS (National Clinical Assessment Service 2009). In 2009, NCAS published a review of eight years of case work, which included an analysis of referees, based on ethnicity and place of first qualification (UK or overseas) (National Clinical Assessment Service 2009). The data were split into three grades; training grades, consultants and other career grades. NCAS reported that in each grade there were proportionally more overseas-qualified, non-white referrals than would be expected, given the constitution of the workforce. For all three grades, white doctors were under-represented among referrals, while non-white doctors were over-represented, regardless of whether they had trained in the UK or overseas. The proportion of non-white doctors referred who had trained overseas was significantly above what was expected for all career grades, particularly for 'other grade' posts. NCAS used statistical modelling to explore the relative risk of being referred, which was significantly higher among overseas-qualified than UK-qualified doctors (National Clinical Assessment Service 2009). The authors of the report argued that the fact that non-white UK-qualified doctors were not disproportionately at risk of referral indicated that the referral process was ethical, although NCAS did make a commitment to monitoring equality and diversity issues (National Clinical Assessment Service 2009).

Following on from the publication of the NCAS data, a number of doctors' groups approached NCAS, challenging the findings which suggested that non-white, UK-qualified doctors were not being referred or excluded disproportionately. NCAS responded to this challenge with a briefing paper, in which they expanded the analysis to differentiate between EEA-qualified doctors compared with those who qualified outside the EEA (National Clinical Assessment Service 2010) The results of the analysis of EEA-qualified doctors led NCAS to suggest that there was over-representation among this (largely white) group of doctors, with the report stating that this group was "experiencing more than its workforce share of performance concerns" (National Clinical Assessment Service 2010). Data on doctors who qualified outside the EEA were not presented in this paper. In light of concerns about the

association between performance, place of qualification and ethnicity, NCAS produced a further analysis of 2009/10 data, which found that non-white overseas doctors were still more likely to be referred, although again, non-white UK qualified doctors did not show higher rates of referral (National Clinical Assessment Service 2011). The referral rate for those qualifying outside the EEA was actually lower than those qualifying in the EEA.

### **Editorials and commentaries on disproportionality**

The disproportionate treatment of BME doctors within medicine has prompted considerable discussion, most notably in the British Medical Journal (BMJ), with a large number of editorials and commentaries discussing various aspects of disproportionality. In an editorial published in the wake of the Stephen Lawrence Inquiry (Macpherson, 1999), McKenzie noted that, there had been 358 mentions of racism or racial discrimination in the BMJ in the three years from 1993 to 1996, which showed the level of debate about the issue (McKenzie 1999). Some of the editorials were written in response to specific events. For example: publication of the Allen report on the GMC handling of complaints against doctors (Godlee, 1996); a BMA conference exploring racism in medicine (Esmail and Carnall 1997); publication of the findings of the Stephen Lawrence Inquiry (McKenzie 1999); publication of the King's Fund book on racism in medicine (Coker 2001; Bhopal 2001; Sheikh 2001; and publication of the Blofeld report on the death of David Bennett (Esmail 2004).

A number of the editorials were written in response to published work on disproportionality, including: editorials on racial discrimination in the recruitment process for junior doctors (Smith 1993); bias in the selection process for medical school (McKenzie 1995 1007); and discrimination in the awarding of distinction awards/discretionary points to consultants (Rubin 1998; Raftery 2003). Other subjects of editorials published include: discussion of the role of Asian GPs, with specific reference to the Royal College of General Practitioners (Murfin and Hungin 1993); careers advice editorial, advising BME doctors how to circumvent racism in the recruitment and selection process (Carnall 1997); discussion of the Overseas Doctors Training Scheme (Welsh 2000); discussion of racism in general practice (De Wildt et al. 2003); the disproportionate number of BME doctors suspended or referred to the GMC (Esmail and Abel 2006); overseas-trained doctors and the fitness-to-practise process (Nunez-Smith 2013); challenging the 'canteen culture' in medicine (Esmail 2003); and the danger that BME NHS management staff may be discriminated against in the current drive for austerity (McLellan 2012).

Certain key messages emerge from the editorials and commentaries on race discrimination in medicine. One of these is that discrimination against certain groups of doctors is damaging to the profession itself. McKenzie (1995) argued that medicine will suffer if it is not recruiting the best candidates for the job, a sentiment echoed by Esmail (Esmail and Carnall 1997), who argued that there was a clear business case for the eradication of discrimination. In a similar vein, Sheikh (2001) talked about a 'double loss' to specialties caused by the 'glass ceiling' which prevented BME doctors from entering their chosen specialty: the specialty in which the doctor wanted to practise being deprived of a talented candidate, while the specialty the doctor entered had a candidate whose morale and commitment to the specialty may be low. McKenzie (1999) was critical of the manner in which attention focused on the intent behind discrimination rather than finding solutions and argued that the focus should be on the role of institutions, rather than individuals (McKenzie 1999). Esmail (2003) argued that the 'canteen culture' in medicine must be challenged and suggested that the onus was on institutions, such as the GMC, to prove that they were institutionally 'colour-blind', by opening up their processes and decision-making to scrutiny (Esmail 2003). Many of those commenting agreed that there was a need for greater openness and transparency in selection and recruitment processes, the awarding of discretionary points to consultants and in the regulatory process (Godlee 1996; Esmail and Carnall 1997; Rubin 1998; Bhopal 2001; Sheikh 2001; Esmail 2003)

### 6.3.3 Summary of findings

This literature review presents evidence on the disproportionate treatment of BME doctors, published between 1993 and 2013. Items identified of relevance for the research included peer-reviewed journal articles, published reports, journal letters, editorials and commentaries. In terms of the chronology of research into disproportionality in medicine, the early to mid-nineties saw a number of articles published, although fewer items were identified in the late 90s. Since 2000 there has been a steady flow of articles on the topic. In addition to the published articles and reports, the issue of disproportionality has prompted a considerable number of editorials and commentaries and letters in response to specific research.

In terms of the focus of the research on disproportionality in medicine, the majority of the articles or reports identified in this review relate to issues of recruitment, progression and regulation. Within these broad areas, certain topics, such as discretionary point/distinction awards and GMC regulatory processes, have been popular topics for research. The results of this review indicate that the disproportionate treatment of BME professionals in relation to retention is clearly an under-researched area.

The quality of evidence available to researchers, particularly in the earlier period under review, was poor, with data on ethnicity often lacking. In a number of the pieces of research reported here, researchers had to make assumptions on ethnicity based on surname for example. Whilst this approach may successfully identify BME professionals with an Asian-sounding name, Black professionals may be under-represented and this should be taken into account when considering these findings. The research undertaken by the Policy Studies Institute on behalf of the GMC looking at discrimination in GMC proceedings was also compromised by the poor quality of some of the materials available for review. The result of this was that the authors were unable to either confirm or deny the existence of disproportionate treatment of either BME or overseas-trained doctors. We understand that the GMC has commissioned further research on this topic.

One of the methodological issues relating to much of the research on regulatory procedures has been the conflation of overseas-trained and BME doctors, despite evidence to suggest that place of qualification cannot be effectively used as a proxy for ethnicity. This issue needs to be disentangled to determine whether the cause of disproportionate treatment is ethnicity or other factors, such as quality of training, communication issues, etc, which are primarily related to having qualified outside of the UK.

Another weakness of some of the evidence identified in the review is that a number of the published reports that found evidence of disproportionate treatment of BME staff working in the NHS in recruitment, progression and in disciplinary procedures did not break down their findings by staff group. It is therefore difficult to determine whether BME doctors are affected by disproportionality.

The fact that many of the race discrimination employment tribunals brought by BME doctors against employing NHS Trusts settled out of court, means that it is difficult to get an accurate picture of the number of BME doctors taking action against their employers.

Overall, the picture presented by this review suggests that, while there is some evidence supporting the view that BME doctors working in the UK may be subject to disproportionate treatment in recruitment and in areas of progression, it is not possible to determine, either due to methodological flaws with existing research or a lack of research, whether BME doctors are being disproportionately treated in relation to regulatory procedures or retention. It is clear that further research is required in these areas.

## 6.4 Pharmacy

### Background

#### Qualifications and pre-registration training

To become a pharmacist in the UK, individuals must successfully complete a four-year full time Master of Pharmacy (MPharm) degree course in an accredited UK school of pharmacy. This is followed by 52 weeks of preregistration training, usually in one of the main pharmacy sectors (i.e. community or hospital), but sometimes split between more than one sector (e.g. between the pharmaceutical industry and community pharmacy). A written registration examination must be passed before being eligible to register as a pharmacist.

There are two additional routes that allow internationally trained pharmacists to register with the GPhC or the PSNI. Due to free movements and arrangements for the equivalency of qualifications obtained in the European Union (EU), there is a relatively straightforward entry route for pharmacists from the EEA. For those who qualified in non-EEA countries, a one-year Overseas Pharmacists Assessment Programme (OSPAP) is offered at five (as in 2013) schools of pharmacy in England and Scotland<sup>30</sup>. Following successful completion of the OSPAP, non-EEA pharmacists must complete 52-weeks of pre-registration training, and the above mentioned registration assessment before being eligible to register with the GPhC<sup>31</sup> or PSNI<sup>32</sup>.

#### Pharmacy provision in the UK

Delivering publicly funded services through a contract with the National Health Service, community pharmacists constitute the largest group of registered pharmacists (>70%,) in GB (Seston and Hassell 2009). Community pharmacies operate in the private sector and range in size from independent or small local chains owned by a single pharmacist, or partnership, to large national multiples or supermarkets, many of which are owned or corporately managed by non-pharmacists. A multiple pharmacy chain is defined as five or more stores (Seston and Hassell 2009). The majority of pharmacists, whether working in the retail environment or elsewhere, are now employees, rather than self-employed owner contractors, as was once the case (Seston and Hassell 2009). The most recent data (from 2011) indicates that there are in the region of 14,000 registered community pharmacies in the United Kingdom, with the majority of pharmacies located in England (11,236),<sup>33</sup> and smaller numbers in Scotland (1,243)<sup>34</sup>, Wales (720)<sup>35</sup> and Northern Ireland (534).<sup>36</sup>

Hospital pharmacists make up roughly a fifth of registered pharmacists and most are directly employed by the NHS (Seston and Hassell 2009). A small minority of pharmacists work in primary care, academia, for government or professional bodies, in the prison service and in industry.

#### Characteristics of registered pharmacists (including ethnic origin)

Contemporary data available from the GPhC indicates that there were 47,821 pharmacists on the GPhC Register of Pharmacists in September 2012 (General Pharmaceutical Council 2012). A register analysis in 2011 showed that 59.4% of pharmacists were female; one third of the pharmacists on the Register were aged under 40 years and female pharmacists as a group were younger than males – 58.5% were aged under 40 years, compared with 47.9%

<sup>30</sup><http://www.pharmacyregulation.org/education/pharmacist/overseas-pharmacists-assessment-programme>

<sup>31</sup> [www.pharmacyregulation.org.uk](http://www.pharmacyregulation.org.uk)

<sup>32</sup> [www.psni.org.uk](http://www.psni.org.uk)

<sup>33</sup> NHS Information Centre for Health and Social Care. General Pharmaceutical Services in England. 2002-2003 to 2011-2012. Published 22nd November, 2013, accessed 1st July 2013.

<sup>34</sup> ISD Scotland. Prescribing & Medicines: Minor Ailments Service (MAS). Published 25th June 2013, accessed 1st July 2013.

<sup>35</sup> Welsh Government. Community Pharmacy Services 2011-2012. Published 30th October 2012, accessed 1st July 2013.

<sup>36</sup> <http://www.hsrbusiness.hscni.net/services/1806.htm> . Accessed online 1st July 2013.



of males (Hassell 2011). Of all registered pharmacists for whom ethnicity data was available (90%) 61.3% were white (British, Irish or other); over a quarter (26.9%) were Asian, with Indian being the single predominant group (17.4%), followed by Pakistani (6.3%); 5% of were of black origin; 3.7% were of Chinese origin; and 2.8% were from mixed and other backgrounds (General Pharmaceutical Council 2012). Figures from the 2011 GPhC register analysis indicate that 11.8% of those on the register in 2011 (the most recent figures available) qualified overseas (49.5% entered from the EEA/Switzerland, with 33% coming from outside the EEA and 17.5% entering via 'reciprocal' agreements (Hassell 2011).

Analysis of pharmacy workforce data has demonstrated different patterns of practice, according to ethnicity and gender. BME pharmacists are more likely to work in the community sector than white pharmacists and are over-represented among owners of community pharmacies (Hassell 1996; Hassell et al. 1998). Data from the most recent pharmacist workforce census, conducted in 2008, indicates that 23% of white pharmacists work in the hospital sector, compared with just 14% of BME pharmacists (Seston and Hassell 2009).

### **Equality and diversity**

The GPhC is not classed as a public authority for the purposes of the Equality Act 2010, which came into effect on 5 April 2011. However, the GPhC has confirmed that, as a body that exercises public functions it pays due regard to the requirements of the Public Sector Equality Duty under Section 149 of the Equality Act 2010 (see Chapter 4, above).

Summary of items identified in the review

Using the search strategy outlined in the methodology in Section 2.2, above, 78 items were identified that were considered of possible relevance to the review. Of these items, 19 were immediately excluded from the review as they did not relate to UK evidence. Of the remaining 59 items, 13 items were regarded as being of direct relevance to the review.

The 13 items included in the review were broken down as follows according to the hierarchy of evidence described in Figure 2.2, above.

- 6 peer-reviewed journal articles
- 3 published reports
- 2 conference papers
- 1 PhD thesis
- 1 House of Commons question
- Two of the published reports were peer-reviewed.

## **6.4.1 Employment**

### **Recruitment**

In 1994, Hassell sent a structured self-completion questionnaire to a 10-year institutional cohort (n=469, response rate 71%), of whom approximately 10% (n=45) were from a BME background (Hassell 1996). The author identified participants' ethnicity by looking at their student record photograph. The majority of BME pharmacists were from an Asian background (73%). Pharmacists were asked a series of questions about their experiences of working in pharmacy and their current practice patterns. Hassell found that a higher proportion of BME pharmacists reported 'some' or 'great difficulty' getting their first job after training than white pharmacists (24.4% and 2.2% compared with 10.7% and 0.5% respectively), but the sample size was too small to permit statistical analysis.

Survey data from a five-year longitudinal cohort study of the early career choices and pathways of pharmacists who graduated from GB pharmacy schools in 2006 (n=558, response rate: 52.4%; 39.8% BME) indicated that BME pharmacists were less likely to find it easy to find their first job than their white peers (75.2% vs. 88.2%) and significantly less likely to have been successful in securing their first choice of job (80.4% compared to

93.0%) (Willis et al. 2009). This result only held for the community sector; there was no significant difference in the hospital setting.

### **Employment tribunals**

The search for Case Law identified two cases of employment tribunals alleging race discrimination in the recruitment of the same BME pharmacist (*Berry v. Bethlem & Maudsley Trust* [1996] EAT/478/95; *Berry v Lambeth, Southwark and Lewisham Health Commission* [1997] EWCA Civ 1253). See Appendix 3, below, for further details.

### **Progression**

Hassell (1996) found that BME pharmacists were under-represented in management positions compared to their white peers (32.5% vs. 53.6%), and over-represented in non-management roles (Hassell 1996). BME pharmacists were also over-represented among pharmacy owners: 12.5% of BME pharmacists owned their own pharmacy, compared to 2.9% of white pharmacists. Hassell also found that BME pharmacists were significantly more likely than white pharmacists to have been influenced in their choice of current practice situation by the difficulty of finding their preferred choice of job (18% compared to 8%) (Hassell 1996). Hassell argues that, while BME status may have contributed to differences in practice patterns, the study was not able to establish whether certain patterns, such as high levels of BME pharmacy ownership, were the result of cultural preferences for entrepreneurship or whether discriminatory practices were pushing BME pharmacists in this direction. Hassell recommended that the professional and regulatory body (at the time of the research, the RPSGB) should undertake ethnic monitoring.

In 1997, Platts et al. published the findings of a postal survey of BME and white pharmacists (n=1,867) working in the community sector and interviews with BME community pharmacists (n=27), exploring whether ethnicity was a factor in career profiles and ambitions of UK-trained pharmacists (Platts et al. 1997). The authors sent a self-completion survey to a sample of 5000 BME and 5000 white pharmacists and received 1,867 usable responses (response rate 18.7%): individual responses for BME and white pharmacists were 20.9% (n=1,047) and 16.4% (n=820), respectively. BME pharmacists were identified using surname analysis, which the authors noted may under-represent black pharmacists Platts et al. 1997. In common with Hassell's research (Hassell 1996), the authors found that BME pharmacists were over-represented in pharmacy ownership positions and were under-represented as managers in multiple pharmacy chains (Platts et al. 1997). Platts *et al.* suggested that increased ownership among BME pharmacists could be due to them having stronger motivations to start their own business.

During the qualitative interviews, some of the BME pharmacists talked about perceived poor promotion prospects within multiple pharmacies and, in some cases, gave this as a reason for them leaving to open their own business (Platts et al. 1997). Platts *et al.* argued that “disenchantment with career prospects in pharmacy multiples and motivation to create an enterprise in which the business owner can avoid discrimination might push [BME] pharmacist out of employment in multiples” (Platts et al. 1997). They also suggested that differences in career ambitions between BME and white pharmacists may be influenced by perceptions that they were likely to be subject to prejudice or that they were not being adequately rewarded for their efforts.

In 1998, Hassell et al. published further work exploring BME pharmacists' practice patterns (Hassell et al. 1998). A self-completion survey asking questions about career choices, practice intentions and career progression was sent to a matched sample of 1,305 BME and white pharmacists who qualified during 1975, 1985 and 1991. A small number of in-depth interviews (n=5) were also undertaken with pharmacy owners and managers. The overall survey response rate was 64% (836), although the response rate was higher for white pharmacists (n=550, RR 74%) than for BME pharmacists (n=286, RR=51%). As with her previous work (Hassell 1996), Hassell *et al.* found that BME pharmacists were over-represented in the community sector, compared to their overall workforce presence, and were over-represented as self-employed owners. They were also less likely to be found in

management positions in multiples. Hassell *et al.* (1998) questioned whether self-employment was a positive choice or labour market discrimination.

One of the BME pharmacists interviewed for Hassell *et al.*'s study reported that he felt that there were limited places for BME pharmacists in the hospital sector and identified racial discrimination as a reason for him moving into the community sector. Among pharmacists from an Indian background, who represent a considerable proportion of all BME pharmacists (Seston *et al.* 2009), 31% reported that they went into business (i.e. bought a pharmacy) because they felt they had fewer opportunities elsewhere (Hassell *et al.* 1998). Hassell argued, however, that for the majority of BME pharmacists, blocked opportunities were not an over-riding factor for their career choices. Some of the BME pharmacists who were interviewed appeared reluctant to discuss their own experiences of discrimination, but were happy to discuss the experiences of their BME pharmacist friends and colleagues. Hassell *et al.* argued that the perception or fear that a BME pharmacist may be subject to discrimination may prompt some pharmacists to go into ownership.

All of the written comments on the survey that touched on discrimination were made by employee pharmacists (rather than owners) and were predominantly from younger (post 1991 qualified) pharmacists. One hospital pharmacist reported a situation in which he knew that he was the best qualified (and only) internal candidate for a position but was still not appointed. This pharmacist, who was Indian, was very clear that he had been discriminated against and reported that many of his BME colleagues in hospital pharmacy had had similar experiences, with their ethnicity acting as a barrier to progression. An industrial pharmacist reported that none of the top jobs in his company went to BME candidates (Hassell *et al.* 1998).

Hassell *et al.* argued that the fact that younger pharmacists were experiencing (or at least reporting) discrimination could be because they were moving away from traditional occupational niches, such as ownership and trying to get into hospital pharmacy or corporate management, where they were starting to come up against career barriers. Some of those interviewed mentioned perceptions that BME, particularly Asian, pharmacists were more likely to appear before the Statutory Committee of the RPSGB (Hassell *et al.* 1998).

In 1999, Platts and Tann published an update of their 1997 paper on ethnic minority practice research referred to above (Platts and Tann 1997), which also looked at the practice patterns of BME hospital pharmacists. Platts and Tann looked at the age and gender distribution of different posts in the community sector and found that, although male BME pharmacists in the sample did progress into management positions (as did their white peers), they did not appear to stay in these posts for long, and moved into ownership roles (Platts and Tann 1999). By the age of 45 years, 82% of BME male pharmacists owned their own pharmacy. One of the BME pharmacists interviewed reported: "I would have preferred to climb the company promotion ladder but was hindered from doing so; therefore I left to work for another company, then bought my own business."

Platts and Tann found that BME pharmacists who went into hospital were highly ambitious in regard to promotion, but that there was a gap between these ambitions and the interviewees' perceptions of the likelihood of achieving success. Both male and female BME hospital pharmacists had significantly lower perceptions of success than their white peers (Platts and Tann 1999). BME pharmacists working in both hospital and community pharmacy multiples raised concerns about discrimination, with those working in hospital describing the 'narrowing' of higher grade posts, making it difficult for them to achieve promotion. Platts and Tann argued that it was difficult to determine from their research to what extent the careers of BME pharmacists were being 'shaped' by racial discrimination, although they did suggest there was some evidence of discrimination and limited career opportunities, particularly in the hospital sector.

Evidence from the five-year longitudinal cohort study of the early career choices cited previously (Willis *et al.* 2009) supports previous research suggesting that BME pharmacists were over-represented in the community setting and under-represented in hospital pharmacy (Hassell, 1996; Hassell *et al.* 1998; Platts and Tann 1999; Platts *et al.* 1997). The Pharmacy Practice Survey was sent to the cohort participants in 2008, a year after they had registered

as a pharmacist. The findings indicated that BME pharmacists scored lower on overall job satisfaction and other items, including opportunities for career and advancement in both community and hospital pharmacy. Again, the differences between BME and white pharmacists in job satisfaction only held for community; there were no significant differences in the hospital sector. BME pharmacists were less likely to feel that their current job offered opportunities to advance their career (58.4% vs. 74.8%) and were less likely to agree that the job opened up new opportunities in their careers (55.4% vs. 68.8%). Willis *et al.* questioned why BME pharmacists working in community reported lower job satisfaction than their white peers and argued that further research is needed in this area.

In 2009, a further survey, 'Wellbeing at work', was distributed to members of the same longitudinal cohort study, who were now in the early stages of their pharmacy career (Willis *et al.* 2010). The survey was completed by 417 pharmacists (42.1% response rate), of whom 36.2% were from a BME background. Willis *et al.* found that, as with the previous study (Willis *et al.* 2009), BME respondents were significantly less likely than their white peers to believe that their current job "offered opportunities to advance their careers" (47.9% vs. 68.8%) and were also less likely to agree that their job increased their opportunities to get ahead in the profession (38.3% vs. 52.2%). These differences were statistically significant. The authors also found that hospital pharmacists were more likely to have "favourable perceptions" of career opportunities than those working in community pharmacy. Other significant differences were identified between BME and white pharmacists in the cohort, BME pharmacists were significantly less likely than their white peers to perceive that their pay was fair (26.6% vs. 39.3%) and less likely to agree that they were able to rely on their line manager (41.3% vs. 62.8%). White pharmacists in the cohort were significantly more likely to report feeling supported at work, to perceive that their job provided career opportunities and believe that they were being fairly rewarded. However, in the multivariate logistic regression the authors performed, ethnicity was not a statistically significant factor. Willis *et al.* (2010) argued, however, that pharmacy careers were 'ethnicised' and that current structural and occupational segregation were likely to persist, with BME pharmacists continuing to predominate in the community sector and white pharmacists in the hospital sector.

In a doctoral study, Rowe (2010) used a mixed methodology of qualitative interviews with female pharmacists (n=28, 18 BME, 10 white) and a questionnaire survey to both male and female pharmacists (n=1,649, response rate=37.5%) to explore workforce participation of female BME pharmacists (Rowe 2010). Survey responses indicated that BME pharmacists were significantly more interested in career progression than their white peers (68.3% vs. 40.7%) and more likely to believe that they had a good chance of progressing further in pharmacy (46.7% vs. 33.2%). Rowe also found that both male and female BME pharmacists were significantly more likely to disagree with the statement "ethnic minority and white pharmacists have equal chances for career progression" (30.3% compared to 9.1% and 22.6% compared to 7.6%, respectively) (Rowe 2010).

A small number of the BME pharmacists interviewed believed that their ethnicity had limited their career progression (Rowe 2010). One female Pakistani pharmacist felt that her career progression was limited because, as a practising Muslim, she was unable to socialise with senior colleagues. She felt this denied her useful networking opportunities. A black African female pharmacist reported that, although she had initially been interested in going into hospital management, and indeed had obtained management qualifications to this end, had been discouraged from applying for posts, having seen the kind of candidates who had been appointed. She argued that she did not 'fit in' with their 'crowd', and later went on to describe how they tended to be people of the same race (i.e. white). Rowe also argued that BME pharmacists may seek to avoid certain roles or sectors of pharmacy in order to avoid perceived discrimination and, further, that the overwhelmingly 'white' organisational culture in the hospital sector may push BME pharmacists into the community sector.

Six percent of survey respondents reported that they had been refused a job, training opportunity or promotion for reasons relating to their ethnicity; BME hospital pharmacists were more likely to report this than BME community pharmacists (14.1% compared to

10.4%). BME (both male and female) respondents were more likely to have experienced bullying from management (20.4% and 22.6%), although approximately a third of both groups who had experienced bullying did not report it, because they 'did not want to make a fuss'. Twenty percent of BME males and 12.6% of BME females who reported bullying were disappointed with the management response to their complaint (Rowe 2010).

Rowe argued that it was difficult to infer from her research to what extent racial discrimination shaped the pharmacists' choices. Although the majority of those interviewed hadn't experienced racism themselves, they were aware of its existence and Rowe argued that this could have had a negative effect on their career choices (Rowe 2010).

Raw data from the 2012 NHS staff survey is available for pharmacy staff working in the NHS (NB: this may include pharmacy technicians). Eight percent of pharmacy staff disagreed with the statement that their employing trust acted fairly with regard to promotion/progression, 6% had been discriminated against in the previous 12 months by a manager, team leader or other colleagues and 2% had been discriminated against on the basis of ethnicity (Care Quality Commission 2013). Data on ethnicity was not available for pharmacists.

### **Retention**

In Platt et al.'s research on community and hospital pharmacists cited earlier, some of the BME pharmacists who were interviewed reported negative career experiences while working for a multiple pharmacy, and at least one interviewee said that he had left a post because of discrimination (Platts et al. 1997). The authors argued that they received written comments on the survey questionnaire, which they said supported the theory that male BME pharmacists leave the hospital sector after several years when they fail to get promotion and then move into the community pharmacy sector (Platts and Tann 1999).

In the five-year longitudinal of early career pharmacists cited previously (Willis et al. 2009), BME pharmacists were significantly more likely to be intending to leave the profession; showed significantly lower career commitment at each career stage; were significantly less likely to be satisfied with their job; and were significantly less likely than white pharmacists in the cohort to rate their future career opportunities highly (Willis et al. 2009). In the subsequent 'Wellbeing at work' survey BME pharmacists were significantly more likely than their white peers to want to do something other than being a pharmacist (42.4% compared to 26.9%) (Willis et al. 2010).

In Rowe's PhD research, some of the BME pharmacists who had reporting bullying from a manager had reacted by leaving their job (28.8% females, 19.8% males) (Rowe 2010).

In 2010 Ferguson et al. undertook a large-scale survey to explore job satisfaction in a randomly selected sample of community and hospital pharmacists (n=1762, response rate: 46.8%) (Ferguson et al. 2013). The questionnaire assessed 10 different aspects of job satisfaction, including autonomy, skill utilisation, recognition and respect, workload, professional support and promotion on a 5 point Likert scale (very satisfied to very dissatisfied). Pharmacists were also asked about their intentions to leave their current employer, organisation or profession. Ferguson *et al* found that community pharmacists scored consistently lower on overall job satisfaction and all subscales of job satisfaction than their contemporaries in hospital pharmacy, with the exception of workload. BME pharmacists were less satisfied with their jobs and scored lower on all of the subscales of job satisfaction with the exception of workload and autonomy. Those pharmacists who reported lower levels of job satisfaction were significantly more likely to be thinking about finding another job. Ferguson suggested that lower levels of job satisfaction among BME pharmacists could be due to them experiencing discrimination and recommended further research to determine why BME pharmacists experienced lower levels of job satisfaction (Ferguson et al. 2013).

### **Employment tribunals**

In the search of case law, one case was identified where a pharmacist had claimed racial discrimination in retention (*Berry v Ravensbourne NHS Trust* [1995] EAT/578/94). For details, see Appendix 3, below.

The main trade union for pharmacists, the Pharmacists' Defence Association (PDA), was approached and asked for details of any race discrimination tribunals their members had been involved in. The only case they were aware of related to a white, Muslim pharmacist (*Woods v Pasab Ltd t/a Jhoots Pharmacy* [2012] All ER (D) 264 (Oct)) who had been accused of making a racist comment to her Sikh employer (2013). See Appendix 3, below, for details. The PDA commented that they had not supported any members in claims of race discrimination, although they had received a number of queries where pharmacist trainees felt that they had experienced discrimination during their pre-registration training year. However, on each occasion, the complaint was made out of time, so the PDA was unable to support its members in a tribunal (Pharmacists' Defence Association, Personal Communication, June 2013).

## 6.4.2 Regulation

### Misconduct

Only a small number of studies have explored the representation of BME pharmacists in disciplinary proceedings. An important point to note is that all of the studies took place when pharmacists were regulated by the Royal Pharmaceutical Society of Great Britain (RPSGB) before their regulatory functions were taken over in 2010 by the GPhC. A study by the Council for Healthcare Regulatory Excellence (CHRE) in 2012 audited 100 cases that the GPhC had closed at the initial stages of its fitness-to-practise processes and concluded that there was "no cause for concern about the GPhC's responsibilities for public protection and maintaining the reputation of the profession." (Council for Healthcare Regulatory Excellence 2012). It should be noted that there was no mention of the ethnicity or place of qualification of pharmacists in this report.

Hassell (1996) studied the representation of BME pharmacists among those who appeared before the Statutory Committee of the RPSGB between 1986 and 1995 (Hassell 1996). Interest in the area had been piqued by a report from the British Pharmaceutical Students Association in 1987, presented at their annual conference, which had found that 37% of cases appearing before the Statutory Committee were Asian, at a time when Asian pharmacists represented just 6.7% of the workforce (Anon 1987). Hassell reviewed reports of Statutory Committee inquiries published in the *Pharmaceutical Journal*, the weekly professional journal of the RPSGB, using surname analysis to identify BME pharmacists who appeared before the committee.

Of the 306 pharmacists who appeared before the committee, 44% (n=136), were from a BME background (74% of whom were Asian). Hassell found that the proportion of BME pharmacists who appeared before the committee varied from 34% in 1989 to 76% in 1993. BME pharmacists were significantly more likely to be charged with offences of a pharmaceutical nature, 12 times more likely to be charged with supervision offences and 6 times more likely to be charged with controlled drug offences (Hassell 1996). Although Hassell found that a disproportionate number of BME pharmacists were being referred to the Statutory Committee, she found no evidence to suggest disproportionality in the outcomes of inquiries that reached the committee. The study was limited by the use of surname analysis (ethnicity data was not available at the time) and does not provide evidence of disproportionality, because other reasons could not be discounted for the difference in referral rates. In order to explore the issue further, Hassell recommended a retrospective study with pharmacists involved in the process and a prospective study to identify why these apparent differences in referral rates existed (Hassell 1996)

In a subsequent study, Tullett et al. (2003), also explored the published records of pharmacists who appeared before the Statutory Committee over a 12-year period between October 1988 and September 2000, using surname recognition to identify pharmacists from a BME background (Tullett et al. 2003). Of the 344 cases identified during this period, 44%

were Asian and the majority of misdemeanours were committed by community pharmacists who worked either in small chain or independent pharmacies (78.5%). Male pharmacists also predominated among those appearing before the committee (89.2%). BME pharmacists were found to be at greater risk of committing a professional offence ((Tullett et al. 2003). Although there was evidence that BME pharmacists were over-represented in disciplinary proceedings, the authors argued that this could be explained by the high proportion of BME pharmacists who work in community, small chain or independent pharmacies, where pharmacists may lack both support and opportunities for continuing professional development. The authors concluded that they found no evidence of disproportionality in the regulation of pharmacists (Tullett et al. 2003).

The most recent study to explore the representation of BME pharmacists in disciplinary procedures was undertaken by Phipps et al. (2011). Using a case-control design, Phipps *et al.* identified 117 pharmacists who had been referred to the RSPGB between April 2007 and December 2009 and then randomly matched them with a quota sample (n=580) from the register, giving a total sample of 697. The authors performed univariate and multivariate analysis, including a logistic regression that used independent variables such as age, country of qualification, ethnicity and sector (community or hospital) to determine which factors affected a pharmacist's likelihood of being disciplined. Although in the univariate analysis, the odds ratios for being disciplined were approaching significance for both place of qualification (UK compared to. non-UK) and ethnicity, in the multivariate regression, the only statistically significant predictor of being disciplined was working in the community sector (Phipps et al. 2011). The authors recommended further follow-up to confirm the trends identified in their research and to explore issues around overseas-qualified pharmacists. They also noted the limitations of their research; notably that the study was retrospective, representing only a small subset of pharmacists who were under investigation. The authors also noted that some data (such as job role at the time of the offence) were not available for their analysis (Phipps et al. 2011).

In January 2013, the issue of fitness-to-practise and overseas-qualified pharmacists was the subject of a question in the House of Commons (Lee 2013). Dr Phillip Lee, a Conservative MP, asked the Secretary of State for Health how many pharmacists who had failed their fitness-to-practise assessment were a) trained in a foreign country and b) had a foreign qualification (Lee 2013). In response, the Secretary of State presented data, provided by the GPhC, showing the number of pharmacists in England and Wales who had gained their qualification outside the UK and whose fitness-to-practise had been found to be impaired by the GPhC Fitness-to-Practise committee between 2010 and 2012. The proportions of overseas-qualified pharmacists whose fitness-to-practise was found to be impaired as a proportion of all disciplined pharmacists ranged from 10.4% in 2010 to 17.8% in 2011. Given that overseas-qualified pharmacists constitute approximately 12% of the total pharmacist workforce (Hassell 2011); this suggested that overseas-qualified pharmacists may be slightly over-represented among disciplined pharmacists. This data should be treated with caution however, as the findings related to overseas-qualified pharmacists not ethnicity. Although a large proportion of these pharmacists may be from a BME background, this cannot be determined, particularly as the figures presented do not break down overseas qualifiers into EEA-trained and non-EEA-trained.

Pharmacists who work in the NHS are subject to NHS disciplinary procedures. A number of the reports cited previously (Santry 2008; South East Coast BME Network 2008; Archibong and Darr 2010) have highlighted how NHS staff from BME backgrounds are disproportionately represented in disciplinary proceedings. However, these pieces of work do not differentiate between different professions within the NHS, so it is not possible to determine whether BME pharmacists are disproportionately represented in such proceedings. No other studies were found that investigate the representation of pharmacists in disciplinary or misconduct proceedings. It should also be noted that the majority of community pharmacists in the UK work for private employers, for whom comparable employment data is not available.

### **Performance monitoring**

To our best knowledge, no data has been published on performance monitoring of pharmacists. The NCAS started providing services for pharmacists in 2010 and has previously published data on the ethnicity of doctors and dentists referred to them (National Clinical Assessment Service 2009), but no data on the ethnicity of pharmacists who are referred to the service have been published to date.

### **6.4.3 Summary of findings**

This literature review presents evidence on the disproportionate treatment of BME pharmacists, published between 1993 and 2013. A small number of items were identified as being of relevance to the review, including peer-reviewed journal articles, published reports and a PhD thesis. In terms of the chronology of research into disproportionality in pharmacy, the first article, on the RPSGB disciplinary procedures, was published in 1994, with the most recent work (again on RPSGB disciplinary procedures) published in 2011.

In terms of the focus of the research on disproportionality in pharmacy, the majority of the articles or reports identified in this review relate either to regulation (specifically the RPSGB disciplinary procedures) or progression, although it should be noted that none of the studies were designed to identify disproportionality. There was a small amount of evidence on recruitment and retention issues. As with the earlier literature on medicine, pharmacy researchers looking for possible evidence of disproportionality in regulatory processes by the then regulator, the RPSGB, were disadvantaged by poor quality data, in particular in relation to ethnicity. In even the most recent work (published in 2011), the authors noted that some of the data they would have liked to use in the analysis were lacking. In several of the studies that looked at pharmacists' practice patterns, the researchers were forced to use surname analysis, or in one study, photographs, to identify the ethnicity of those in their sample.

As mentioned in the medicine literature review, a number of published reports on BME staff working in the NHS are suggestive of disproportionality on the grounds of race/ethnicity, but it is not possible to determine how pharmacists working in the NHS fare in terms of recruitment, progression, retention or involvement in disciplinary proceedings.

In contrast to the medicine review, we found very little evidence of pharmacists bringing their employers to tribunal for discrimination. This is not to say that discrimination does not exist, merely that pharmacists who feel that they have been discriminated against may take alternative routes (for example, changing posts, leaving sector, etc). Indeed, some of the evidence in the review indicated that some of the BME pharmacists who felt they had been bullied by management either did not report the bullying or left their job. The issue is further complicated by the fact that the majority of pharmacists work for private employers rather than the NHS and employment data is therefore not publicly available.

The evidence as to whether BME pharmacists are disproportionately treated is equivocal. Although there is some evidence that BME pharmacists are under-represented in senior management roles in both community and hospital sectors and over-represented among pharmacy owners in community, it is hard to say on the basis of the evidence available whether this is due to career preference, time in the profession or blocked progression. In terms of pharmacy ownership, it is difficult to determine whether BME pharmacists are 'pulled' into ownership for positive reasons (such as entrepreneurship) or 'pushed' into it because of (perceived) lack of progression, although there is limited evidence to support both explanations. Overall, it could be argued that the issue of disproportionality in pharmacy is an under-researched area that has not generated the level of debate seen in medicine. Further research is clearly needed in this area.



## 7 Discussion

In Table 7.1, below, the functions, powers and procedures of professional regulatory bodies are presented (summarising some of the detail in Section 4, above).

**Table 7.1. Functions and procedures of professional regulatory bodies**

Profession	Medicine	Pharmacy	Solicitors	Barristers	Police
Regulatory body (date established)	General Medical Council (1983)	General Pharmaceutical Council (2010)	Solicitors Regulation Authority ( <a href="#">2007</a> )	Bar Standards Board (2006)	None
Representative professional body	British Medical Association	Royal Pharmaceutical Soc	Law Society	Bar Council	None
Standard of proof	Civil	Civil	Civil	Civil	n/a
Does the regulator deal with complaints from the public?	✓	✓	✓	✓	n/a
Does the regulator deal with complaints from public bodies?	✓	✓	✓	✓	n/a
Who handles non-conduct/FtP complaints?	<a href="#">NHS Trusts or Clinical Commissioning Group</a>	<a href="#">?</a>	Legal Ombudsman	Legal Ombudsman	n/a
Does the regulator have an investigatory role?	✓	✓	<a href="#">✓</a>	<a href="#">✓</a>	n/a
Is there a right to appeal?	✓	<a href="#">✓</a>	?	✓	n/a
Does the regulator regulate premises?	<a href="#">Not stated</a>	<a href="#">✓</a>	✓	<a href="#">Not stated</a>	n/a
Composition of the regulator	<a href="#">6 doctor members and 6 lay members</a>	<a href="#">7 pharmacist members and 7 lay members</a>	<a href="#">7 solicitor members and 8 lay members</a>	<a href="#">Chair, Vice Chair, 5 barrister members and 8 lay members</a>	n/a
Jurisdiction	<a href="#">UK</a>	England, Scotland and Wales	England and Wales	England and Wales	n/a
Indicative sanctions available online	Yes	Yes	No	?	n/a
Disciplinary powers (highest sanction available to regulator)	? refer to MPTS	Erasure from register	Refer to Solicitors Disciplinary Tribunal	Refer to Disciplinary Tribunal	n/a

The absence of an independent regulatory body (and representative professional body) that serves to regulate officers sets the police apart from the other professions investigated in this study. At first glance, Table 7.1 suggests that the police have a long way to go before they achieve professional status. However, the College of Policing has been recently created to progress this goal and the bodies that currently regulate pharmacists, solicitors and barristers have not long been part of the regulatory landscape. Similarities in the functions, powers and procedures of the GMC, GPhC, SRA and BSB suggest that knowledge sharing and policy transfer play an important part in the development of regulatory practice in this domain. The indications are that constructive engagement between the College of Policing, and policing stakeholder partners, and professional and regulatory bodies in other sectors would significantly advance police professionalisation.

This difference between the police and the other professions studied here is of particular importance because the internal processes of one group of service providers, the

43 independent police services of England and Wales, were examined alongside the external processes of four national (although of different jurisdictional reach) regulatory bodies. Another difference between the police and the other professions relates to recruitment: members of ethnic minority groups are under-represented in the police services and over-represented in the medical, legal and pharmacy professions. Our research did not identify grounds for this difference and it is suggested that further research is required in this area.

Despite these differences, the research on disproportionality on grounds of ethnicity in employment and regulatory practices found significant commonalities between the four sectors in the spheres of recruitment, progression, retention and regulation. For example, separate research on internal police misconduct proceedings (see above Section 6.1.2), SRA conduct proceedings and BSB complaints proceedings (see above Section 6.2.2), and GMC conduct proceedings (see above Section 6.3.2), reached similar findings relating to disproportional referrals. Findings that police and GMC proceeding outcomes were not disproportional were also similar, but different to findings of disproportionality in SRA and BSB outcomes.

Rather than trawl through the research findings above, three general areas are selected for brief discussion below: disproportionality as an under-researched but developing research area; the importance of theoretical research to the development of understanding of disproportionality; and the opportunities for research arising from the public sector equality duty (PSED).

Although disproportionality in employment and regulatory practices are currently under-researched areas, this situation appears to be changing. The lack of research was most apparent in pharmacy (in contrast, the highest number of peer reviewed research publications was in medicine). No research designed to identify disproportionality was found in the pharmacy literature review (see above Section 6.4); the least number of cases were found involving pharmacists, four, in research of employment tribunal case law (see above Figure 3.1); and no media reports were found relating to the research in the last ten years (see Appendix 4, below).

At the Manchester 26 March conference and 21 May seminar, practitioners consistently argued that employers, regulators and professional bodies have been uncomfortable with allegations of disproportionality and, therefore, have sought to suppress or hide evidence that pointed to the existence of disparities between ethnic groups. A common complaint raised by researchers, which lends support to practitioners' concerns, is that limited access to data creates major difficulties for the conduct of academic research.

In spite of the paucity of peer reviewed academic research, a growing number of policy documents, including research reports commissioned by regulators and service providers and statutory statistical reports, have been invaluable for evidencing the existence of disproportionality. This was particularly the case in the policing, medicine and legal professions, where resources have been devoted to identifying the perception or existence of disproportionality, possible causes and how to address problems. During the course of this research it became apparent that this is a developing area of research. The GMC and SRA have recently commissioned independent research and Police Scotland are currently scoping research (2013: <http://www.holyrood.com/2013/08/police-scotland-to-assess-link-between-ethnicity-and-misconduct-issues/>).

Policy initiatives have also been undertaken in response to the growing body of research evidence, and independent inter-disciplinary research is likely to play a significant role in the future. Another common view expressed by practitioners at the Manchester conference and seminar was that, rather than focus on whether or not disproportionality exists, research should ask why it persists and how to eradicate it.

Secondly, theoretical approaches to understanding the causes of disproportionality have been developed, primarily in US research. Two approaches, unconscious or implicit bias theory and tokenism, informed the short discussion of employment tribunal case law above (Section 3.3). It is suggested that further research on theoretical approaches of this nature will help overcome the difficulties experienced with evidencing the causes of

disproportionality. For example, although the research indicates that disproportionality does not exist in recruitment to solicitors firms and the Bar, the experiences of BME lawyers were that non-academic and non-professional factors were important factors to their entering the profession and subsequent progression. Understanding of these types of experience, and strategies for tackling elitism and prejudice, are likely to benefit from a broader theoretical awareness of the reasons for bias. Similarly, theoretical approaches to research are likely to improve knowledge about whether pharmacists enter private practice primarily in order to escape bullying in the public sector or for personal, entrepreneurial reasons.

Thirdly, research on the Equality Act 2010 and PSED (see above, Section 4) commenced partway through this project, partly as a consequence of identification of different approaches to meeting the statutory requirements. Two issues that were repeatedly mentioned at the 26 March Conference in relation to effectively tackling disproportionality concerned problems with organisational culture and leadership. Organisational culture was considered to pose significant obstacles to equality and diversity objectives, and inadequate leadership was unable or unwilling to overcome these barriers to progress. When looking at compliance with the PSED across the professions, it became apparent that that the Equality Act 2010 is capable of providing a framework that can focus on organisational culture and leadership both in policy and practice. A requirement of the PSED is that organisations provide Equality objectives. These can be examined in relation to the practice of achieving those objectives, through close examination of the data that organisations are required to gather. It would be possible to design research (see further Appendix 6, below) that looks at organisational culture throughout an organisation; because to truly assess whether the Equality objectives have been met requires close examination of data at all levels within the organisation. A focus on recruitment, retention, promotion and performance management would be possible, because these are all areas that organisations are required to report on.

## 8 Outputs

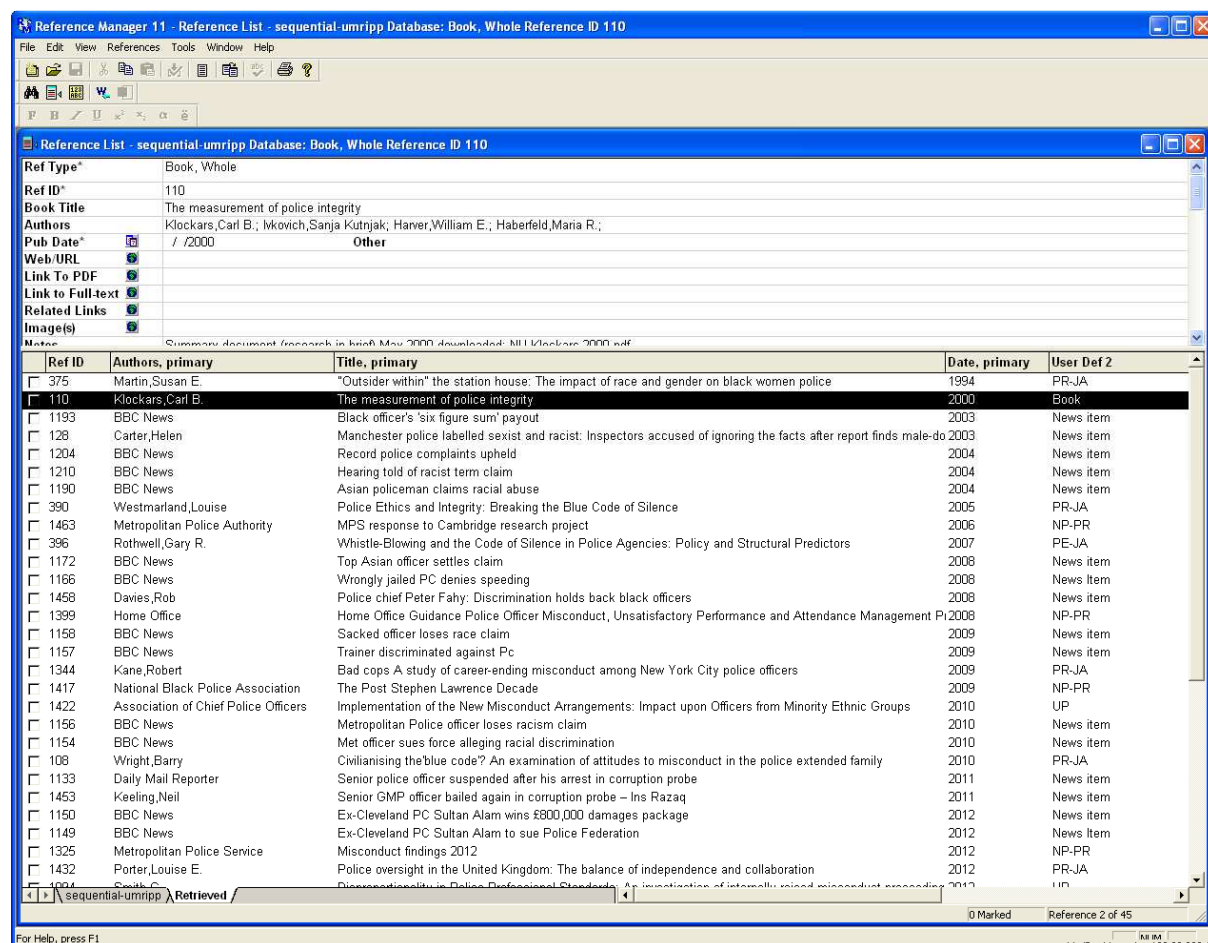
### 8.1 Research report

This online report is the principal output of the research.

### 8.2 Reference Manager online database

Funding has been secured to place the Reference Manager database developed for this project on the ManReg web pages (<http://www.law.manchester.ac.uk/research/centres/manreg/>). Currently, more than 1500 records are held on the database. Resources are available to maintain the database for a one year period. It will not be a static resource; rather it will develop and hopefully prove valuable to researchers and practitioners in the field.

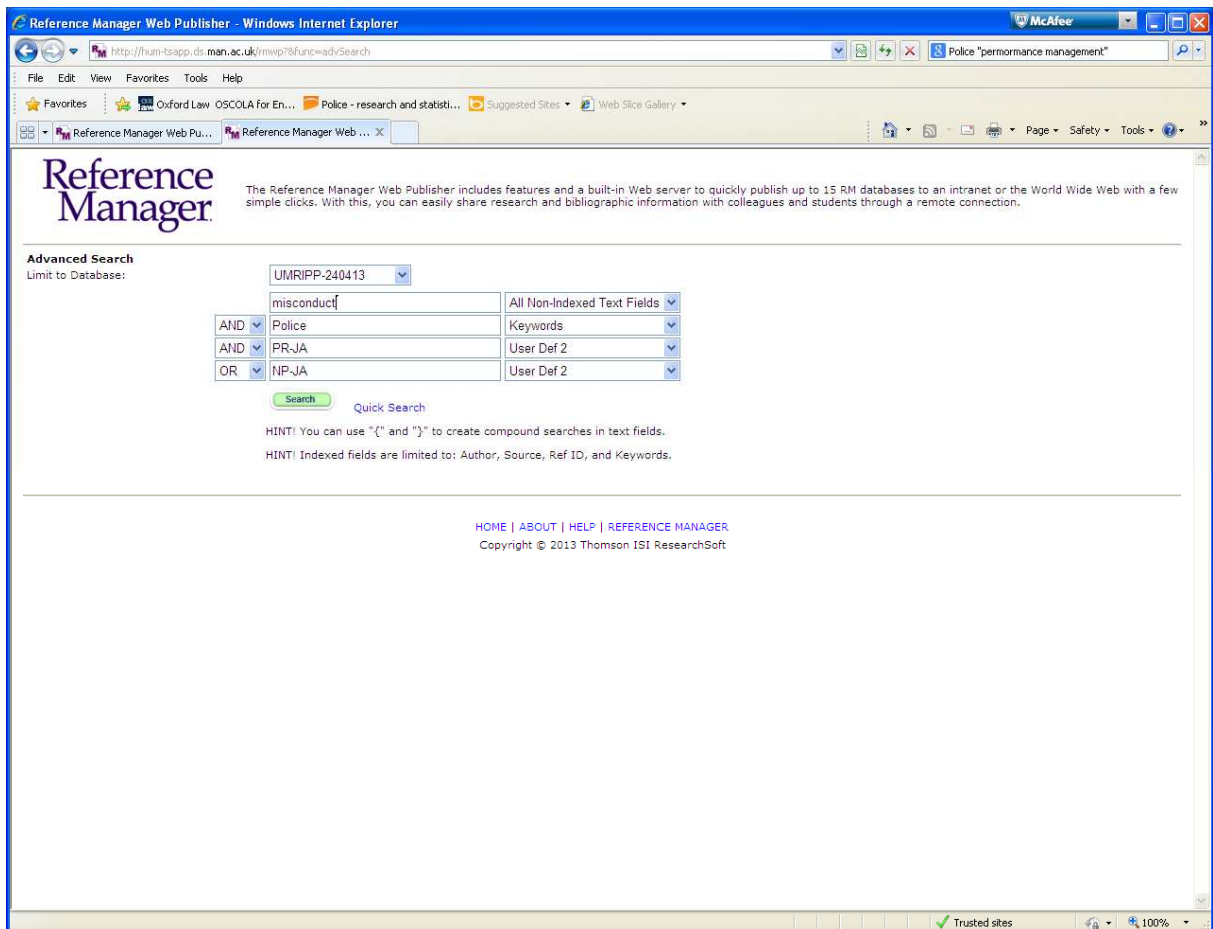
As outlined above in Section 2.1 the database was created to manage the references located as part of the project. This enabled the team to share one database of literature reviewed on a shared drive. Figure 8.1, below, provides a view of the interface following a query searching for all records assigned a keyword misconduct and UMRIPP-Police and the term misconduct in all non-indexed fields. The figure also shows the user defined field 2 which was used to record the type of evidence (see Section 2.1, above, for more information). The records can be sorted by any field shown in this view – reference number (ID) Author, Title, Date or Type of evidence. Once sorted they can then be used as an output to create a bibliography.



As an online resource this database will enable other researchers to utilize a collection of resources on this under researched area. It is intended that the ManReg Disproportionality

Database will serve as a pilot, and the potential to expand the collection to other areas will be explored. The database will be searchable from both inside and outside of the University. Researchers will be able to interrogate the database by keyword, author, as well as explore the user defined fields that were developed as part of our review of the literature. While locating information on this topic is 'easy' online, the volume of information available can be overwhelming, and filtering it is time consuming.

The screen capture below shows what a researcher will see.



With this example, the classification of relevant items in User defined field 2 enables fast searching for different types of evidence. If a researcher initially wants to see what has been referenced from peer reviewed journals and non-peer reviewed journals for Police and misconduct, this search will provide results across any document meeting these search criteria. Equally, if a researcher is interested in news items and case law then a similar search would be possible.

Once the search has been completed the returned records will be displayed as below.

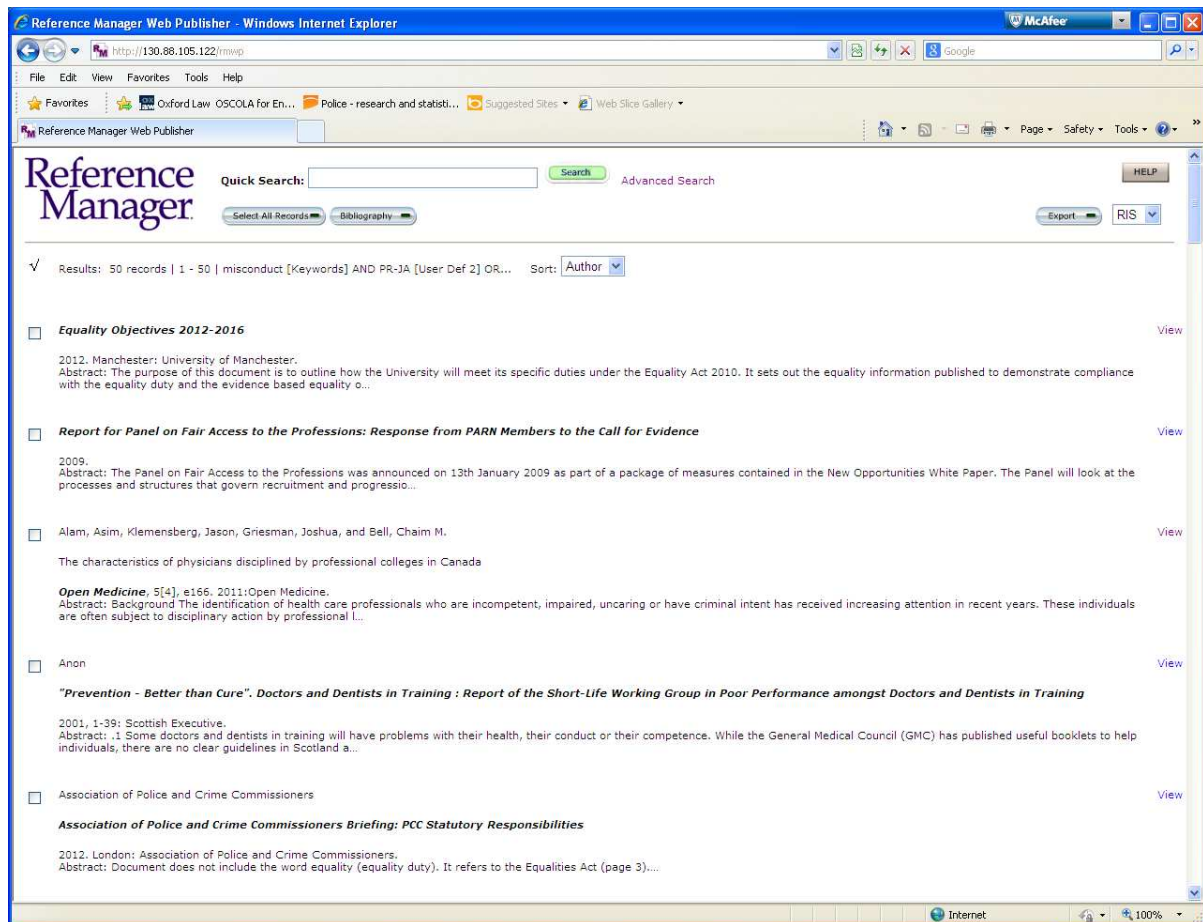
The screenshot shows a web browser window titled "Reference Manager Web Publisher - Windows Internet Explorer". The address bar shows the URL: <http://130.88.105.122/mwp?func=view&id=2&recordID=20>. The browser's Favorites bar includes "Oxford Law OSCOLA for En...", "Police - research and statisti...", "Suggested Sites", and "Web Slice Gallery".

The main content area displays the "Reference Manager" logo and a search bar with a "Quick Search:" field and a "Search" button. Below the search bar, the record title is "UMRIPP-240413a Database: Herman Ouseley - Ref ID 528".

The record details are as follows:

- Ref Type:** Report
- Ref ID:** 528
- Title:** Interim Review of Equality, Diversity and Inclusion Policy Implementation by the Solicitors Regulation Authority. Report to the Equality Implementing Group.
- Authors:** Herman Ouseley;
- Pub Date:** 2009/6/0 **Other:**
- File:** <http://www.sra.org.uk/ouseley/>
- Attachments:**
- Notes:** In File: The Solicitors Regulation Authority. Interim Review of Equality, Diversity and Inclusion Policy Implementation by the Solicitors Regulation Authority.pdf
- Keywords:** culture; Discrimination; ethnicity; Impact Assessment; Improvements; leadership; regulation; Solicitors; SRA; Time; United Kingdom;
- Reprint:** In File
- Start Page:**
- End Page:**
- Pub Place:** The Solicitors Regulation Authority
- Publisher:** The Solicitors Regulation Authority
- Abstract:** The SRA is committed, over the foreseeable future, along with the EIG, to having an external independent audit and assessment of progress made of the implementation of its Equality and Diversity strategy, policies and action plan. This is the first of a number of review reports expected by the EIG. Its theme is drawn from one of the main recommendations set out in the original Review of 2008 and one of the Equality and Diversity strategy objectives: "to provide visible and demonstrable leadership to ensure that equality and diversity is embedded into the culture and work of the SRA". This report has a specific focus on matters of leadership, culture change, access to information and communications. There is also scrutiny of discrimination complaints examining, in particular, the new processes and outcomes of cases and recommending the improvements that are required as part of fine-tuning the new protocol. This report has been produced following a review of policy documents, scrutinising change practices and procedures, attending and observing meetings, assessing reports, one-to-one meetings with key staff, including senior managers and directors and analysing attitudes, behaviours and language used. The main aim at this stage has been to answer the question: "What has changed and what difference has it made/is making?". The primary focus of this review has been on EDI change in organisation culture and practices, led from the top of the SRA by the Board, its members, senior managers and directors, influencing similar actions across the entirety of the organisation. Commentary is provided on the leadership performance to date, transparency and disclosure, internal and external communications, transformational change and discrimination complaints- handling. The follow-up report from this one will provide coverage of HRD and Staff issues arising from EDI policy implementation. It is hoped that this may be accompanied by any available comments on behaviours, attitudes and opinions available from the staff survey. In addition, there will be some analysis on available data to shed light on the issue of disproportionality in regulation activity affecting BME and other equality disadvantaged groups of solicitors.
- Availability:** The Solicitors Regulation Authority
- Date Accessed:** 2013/5/17 **Other:**
- User Def 1:** United Kingdom
- User Def 2:** NP-PR
- User Def 3:** Desk research, One to one meetings with staff.
- User Def 4:** this report follows up on a previous report made by Herman Ouseley in 2008. In this report, the research show improvement in equality and diversity in the SRA. it is stated: 'This review has observed evidence of change occurring in the SRA through one to one interviews, attending meetings, analysing views, examining documents and listening to the way in which leaders and managers now talk about EDI matters and absorb it in their work in an integral way. Culture change is being driven in the SRA through decision-making arrangements that now incorporate EDI considerations as a matter of course. There is also a realisation that this progress must be sustained if the full benefits for the SRA and the profession are to be achieved'. Culture and leadership is important issues, which we should focus more on in relation to recruitment, retention and progression in all the professions.

The browser's status bar at the bottom shows "Done" and "Internet" with a 100% zoom level.



By clicking the Export option in the top right hand corner on the advanced search page, any search can also be output as a bibliography through the online database...

...and by clicking View on the right of the screen each record can be examined.

Reference Manager Web Publisher - Windows Internet Explorer

http://130.88.105.122/rwp78Func=view&id=29&recordID=20

Reference Manager Web Publisher

Quick Search:  Search Advanced Search HELP

Return to Results

UMRIPP-240413a Database: Herman Ouseley - Ref ID 528

<Record | Record>

**Ref Type:** Report  
**Ref ID:** 528  
**Title:** Interim Review of Equality, Diversity and Inclusion Policy Implementation by the Solicitors Regulation Authority, Report to the Equality Implementing Group.  
**Authors:** Herman Ouseley;  
**Pub Date:** 2009/6/0 **Other:**  
**File:** http://www.sra.org.uk/ouseley/  
**Attachments:**  
**Notes:** In File: The Solicitors Regulation Authority, Interim Review of Equality, Diversity and Inclusion Policy Implementation by the Solicitors Regulation Authority.pdf  
**Keywords:** culture; Discrimination; ethnicity; Impact Assessment; Improvements; leadership; regulation; Solicitors; SRA; Time; United Kingdom;  
**Reprint:** In File  
**Start Page:**  
**End Page:**  
**Pub Place:** The Solicitors Regulation Authority  
**Publisher:** The Solicitors Regulation Authority  
**Abstract:** The SRA is committed, over the foreseeable future, along with the EIG, to having an external independent audit and assessment of progress made of the implementation of its Equality and Diversity strategy, policies and action plan. This is the first of a number of review reports expected by the EIG. Its theme is drawn from one of the main recommendations set out in the original Review of 2008 and one of the Equality and Diversity strategy objectives: "to provide visible and demonstrable leadership to ensure that equality and diversity is embedded into the culture and work of the SRA". This report has a specific focus on matters of leadership, culture change, access to information and communications. There is also scrutiny of discrimination complaints examining, in particular, the new processes and outcomes of cases and recommending the improvements that are required as part of fine-tuning the new protocol. This report has been produced following a review of policy documents, scrutinising change practices and procedures, attending and observing meetings, assessing reports, one-to-one meetings with key staff, including senior managers and directors and analysing attitudes, behaviours and language used. The main aim at this stage has been to answer the question: "What has changed and what difference has it made/is making?". The primary focus of this review has been on EDI change in organisation culture and practices, led from the top of the SRA by the Board, its members, senior managers and directors, influencing similar actions across the entirety of the organisation. Commentary is provided on the leadership performance to date, transparency and disclosure, internal and external communications, transformational change and discrimination complaints- handling. The follow-up report from this one will provide coverage of HRD and Staff issues arising from EDI policy implementation. It is hoped that this may be accompanied by any available comments on behaviours, attitudes and opinions available from the staff survey. In addition, there will be some analysis on available data to shed light on the issue of disproportionality in regulation activity affecting BME and other equality disadvantaged groups of solicitors.  
**Availability:** The Solicitors Regulation Authority  
**Date Accessed:** 2013/5/17 **Other:**  
**User Def 1:** United Kingdom  
**User Def 2:** NP-PR  
**User Def 3:** Desk research, One to one meetings with staff.  
**User Def 4:** this report follows up on a previous report made by Herman Ouseley in 2008. In this report, the research show improvement in equality and diversity in the SRA. it is stated: "This review has observed evidence of change occurring in the SRA through one to one interviews, attending meetings, analysing views, examining documents and listening to the way in which leaders and managers now talk about EDI matters and absorb it in their work in an integral way. Culture change is being driven in the SRA through decision-making arrangements that now incorporate EDI considerations as a matter of course. There is also a realisation that this progress must be sustained if the full benefits for the SRA and the profession are to be achieved". Culture and leadership is important issues, which we should focus more on in relation to recruitment, retention and progression in all the professions.

Done Internet 100%

### 8.3 Poster presentation: University of Bradford

Members of the research team in the two schools (Ellen, Fegan, Munk and Seston) prepared a poster, *Disproportionality in Employment and Regulatory Practices: A Pressing Policy Issue*, which was presented by Ellen and Munk to the *Making Diversity Interventions Count 3rd Annual International Conference*, held at the University of Bradford on 18 June 2013 (see Appendix 5, below).

### 8.4 Academic papers

At the time of writing it is not known whether articles will be submitted for publication in academic journals. Academic publications will be discussed after completion of this Report.

### 8.5 Research proposals

The School of Law research team presented two research proposal ideas to the 21 May 2013 seminar (see Section 1.4, above). Dr Dewhurst led on one idea: a proposal to the Economic and Social Research Council to research the role and impact of the equality duties and corporate social responsibility on disproportionality in the professions (see Appendix 6, below). Dr Ellen led on another idea to conduct longitudinal research in collaboration with police services that were exploring the possibility of introducing positive action. Despite the investment of a lot of time and commitment in the working up of these ideas, they were not developed further after the seminar.



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## Appendix 1

### Proposal to University of Manchester Research Institute Pump Priming Programme

#### DISPROPORTIONALITY IN THE PROFESSIONS: WORKING TOGETHER TO UNDERSTAND AND RESPOND TO DISCRIMINATION AND PREJUDICE

##### Proposers (project partners)

Dr Graham Smith (ManReg, School of Law, point of contact: graham.r.smith@manchester.ac.uk); Professor Karen Hassell and Dr Ellen Schafheutle (Centre for Pharmacy Workforce Studies, School of Pharmacy and Pharmaceutical Science); Professor Chris Roberts (Centre for Biostatistics, Institute of Population Health); and Professor Aneez Esmail (Institute of Population Health)

##### Proposed project

Disproportionality (i.e., disparate treatment) in employment and regulatory practices, especially on ethnicity grounds, is a pressing public policy issue. There has been much interdisciplinary research published on the subject in the US; but less in the UK. In the recent past University of Manchester researchers, based in the Faculties of Medical and Human Sciences (FMHS), and Humanities, have collaborated at different times on a number of interdisciplinary projects to investigate various aspects of disproportionality in the recruitment, promotion, misconduct or performance monitoring practices in professional occupations such as the police, law, medicine, pharmacy and higher education. Evidence however, that disproportionality exists in all of these professions appears to be mixed; in addition the proportion of minority ethnic groups in each of the professions varies; in some cases the research is dated; stakeholder responses in individual professions to understanding the causes of and dealing with any accusations of disparate treatment have been varied; furthermore, recent changes in some of the regulatory functions and procedures of the respective professional bodies have changed since some of this work was conducted.

Thus, a small team of researchers has been established to explore opportunities to update and develop further work around the core theme of disproportionality in the professions. We are seeking pump priming funds to enable the team to synthesise existing evidence on disproportionality research and regulatory activity and outcomes in at least five professions (medicine, law, pharmacy, policing and higher education). This will help us identify gaps in knowledge and establish similarities and differences in employment practices and approaches to regulation that could then be used to inform the design of an outline proposal for further empirical work. While the exact nature of this empirical work will emerge as a result of the evidence synthesis, supplemented by findings from a stakeholder conference which the proposers are currently organising (see below), it is hoped that partnership working will help us develop cross-cutting and cross-sectoral research and share learning that will take forward our understanding of disproportionality in employment practice and regulation in professional occupations.

Funding is sought for two experienced research associates (grade 6), both full-time for 6 months. One research associate will be based in the School of Law, and one in the School of Pharmacy and Pharmaceutical Science, both will work under the guidance of the project team to:

- a) prepare a literature review of recently published research evidence on disproportionality in employment practices in the five professions identified above;
- b) gather and collate information into the regulatory procedures and functions that currently operate in the five professions (e.g. statutory committees that investigate complaints and fitness to practise);
- c) establish what data is available on regulatory procedures and outcomes and whether there are likely to be any access problems;

- d) present an interim research report to the stakeholder conference (see below) and collate the feedback from the stakeholder conference;
- e) identify additional partners/collaborators through existing links with researchers in related fields across the University; and
- f) work-up a skeleton interdisciplinary research proposal, with the help of the university team identified here and any additional partners, for an application to a relevant Research Council or other appropriate funding body.

### **Interdisciplinary conference**

The proposers are collaborating to organise a conference – Disproportionality and misconduct in the professions: understanding and responding to difference – at the University on 26 March 2013 in partnership with Greater Manchester Police and the National Black Police Association. Underwritten by GMP, the conference intends to bring together employers, practitioners, regulators and representative staff associations from the fields of medicine, law, pharmacy, policing and higher education to discuss the research evidence of, and responses to, disproportionality in misconduct proceedings.

### **Interdisciplinary aspects**

Disproportionality may be understood in several ways and is open to investigation by different analytic and research methods. It may be understood in numerical terms, where frequencies or proportions serve as indicators of disparity. Disproportionality may also be understood in interactional terms, where identification of different procedural measures applied to members of a given group compared with another group signifies disparity. Statistical research methods are required to identify 'numerical' disproportionality and a range of qualitative research methods are required to identify 'procedural' disproportionality (which may also explain the cause of numerical disproportionality). Interdisciplinary research of disproportionality in employment practices draws on methods developed in the social sciences, psychology, business studies and law. Within each of these disciplines separate branches and different analytics and methods also contribute to understanding. In legal research, for example, employment, discrimination, equality, human rights and regulation law, are relevant to the study of disproportionality. University of Manchester researchers, applying interdisciplinary methods with specialist knowledge of medicine, pharmacy, policing and higher education practice, have already contributed to understanding of disproportionality in employment practice. Common to each of these sectors, perceptions of disproportionality on grounds of ethnicity have been identified in either recruitment, promotion, misconduct or performance monitoring practice, and the underlying causes which give rise to these perceptions, including allegations of discrimination and prejudice, have been contested by stakeholders.

### **Likely outcomes**

Submission of a funding proposal to a Research Council; peer reviewed paper; interim and final research report to conference delegates, and other stakeholders likely to collaborate in, or support, further research.

### **Longer term goals**

Creation of a research and practice network, possibly based on the existing FMHS and Humanities led Healthcare Workforce Research Network, which will serve to develop understanding of disproportionality on the grounds of ethnicity in employment and regulatory practices and disseminate good practice.



## Appendix 2

### DISPROPORTIONALITY AND MISCONDUCT IN THE PROFESSIONS: UNDERSTANDING AND RESPONDING TO DIFFERENCE

**Conference organisers:** ManReg (Manchester Centre for Regulation, Governance and Security, University of Manchester School of Law); Greater Manchester Police; and National Black Police Association

**Tuesday 26 March 2013**

**Barnes Wallis Building, Sackville Street, Manchester M1 7JR**

**Registration: Early bird £90 (£60 NGO concession) [www.meeting.co.uk/confercare/dmp2013](http://www.meeting.co.uk/confercare/dmp2013). Any enquiries please contact Andy Tickle (tel. 0161 306 4089: email [mcc.reg@manchester.ac.uk](mailto:mcc.reg@manchester.ac.uk))**

*Perceptions of disproportionality in misconduct proceedings have been researched in several professions. In response, employers, professional bodies and regulators have taken action in the interest of ensuring adherence to principles of equality, diversity and human rights. This conference brings together stakeholders from a range of services to discuss their common experiences, share best practice and consider future challenges.*

## Programme

9.00am – 9.30am: Registration

9.30am – 10.45am Keynote speakers: Chaired by Aneez Esmail

Greater Manchester Police Chief Constable: Sir Peter Fahy

Solicitors Regulation Authority Chief Executive: Antony Townsend

Wrightington, Wigan and Leigh Foundation Trust Medical Director and British International Doctors' Association

Vice Chairman: Dr Umesh Prabhu

Equalities and Human Rights Commission: Evelyn Asante-Mensah OBE

10.45am - 11.15am: Tea and coffee

11.15am – 12.15pm: Research evidence: Chaired by Karen Hassell

Presentation of short academic papers followed by discussion

ManReg: Dr Graham Smith

Centre for Inclusion and Diversity Director and University of Bradford School of Health Studies Strategic Lead for Equality and Diversity: Professor Uduak Archibong

12.15pm – 1.15pm: Lunch

1.15pm – 2.45pm: Responses to the evidence: Chaired by Raju Bhatt

Panel discussion of responses to the research evidence

National Black Police Association President: Charles Crichlow

General Medical Council Deputy Chief Executive and Director of Fitness to Practise: Paul Philip

College of Policing, Head of Equality, Diversity and Human Rights: Everett Henry

Solicitors Regulation Authority Director for Inclusion: Mehrunnisa Lalani

NHS North West Associate Director and Director of Equality, Inclusion and Human Rights: Shahnaz Ali OBE

2.45pm – 3.00pm: Tea and coffee

3.00pm – 4.00pm: The way forward: Chaired by Graham Smith

University of Manchester Associate Vice President, Social Responsibility and Diversity and Equality: Professor

Aneez Esmail

Police and Crime Commissioner for Greater Manchester: Tony Lloyd



## Appendix 3

### Summary of 46 reported race discrimination employment tribunal cases

Summaries of the cases discussed in Section 3 are presented below in the four categories of recruitment, progression, retention and regulation. They are listed in date order.

#### Recruitment

*North West Thames Regional Health Authority v. Noone* [1987] IRLR (Anon 2013e). A qualified BME doctor failed to secure a post as consultant. Even though the successful candidate had less qualifications and experience than Dr. Noone. Employment Appeal Tribunal. Appeal allowed.

*Palayiwa v Thames Valley Police* [1996] EAT/761/94 (Anon 2013). A BME barrister failed to be appointed for the post as full-time Equal Opportunities Officer despite an extensive experience in the area. The claim of racial discrimination was related to the selection process, where a number of references are made in the statements of the respondents' witnesses to be 'fitting in' with 'the Police culture' and the fact that the successful applicant was white, less qualified and with no experience in the area. Employment Appeal Tribunal. Appeal dismissed.

*Berry v Bethlem & Maudsley Trust* [1996] EAT/478/95 (Anon 2013e). BME pharmacists applied for a post at the trust, but were not shortlisted. She therefore claimed that she was unlawfully discriminated against by way of victimization. She claimed that she was not successful due to dispute with Ravensbourn Trust where she had filed a complaint of racial reasons in a redundancy situation. She claimed that she was not shortlisted because the trust was aware of the previous proceedings. Employment Appeal Tribunal. Appeal allowed.

*Berry v Lambeth, Southwark & Lewisham Health Commission* [1997] EWCA Civ 1253 (Anon 2013f). A BME pharmacist claimed she was discriminated on racial grounds by not being offered a 12 months position at Health Commission. She claimed that she was given unfavourable conditions at the interview; the interview was 10 minutes shorter than the interview of the other applicants, she was better qualified and the panel-members were all white, which did not mirror reality where one third of all chemists and doctors in practice in the area were non-white. Court of Appeal, Civil Division. Appeal dismissed.

*Hussain v Kings College Hospital NHS Trust* [2001] EAT/1345/01 (Anon 2013y). A BME doctor transferred to a different trust. He wanted to get back to King's, but a representative of KCH said that they did not want him back due to the disturbance he caused when employed. Nevertheless, the BME doctor applied for three-locum trainee post at KCH, but he failed to be appointed. Employment Appeal Tribunal. Appeal allowed.

*Osborne Clarke Services v Purohit* [2009] UKEAT/0305/08/ZT (Anon 2013 ). A BME (Non-EEA national) applied online for a solicitor-training contract. Through the application process, he went through a set of questions launched to filtering the applicant. He did not manage to go through the process, as he was Non-EEA national and therefore, he would require a work permit. He was automatically rejected by a computer saying he did not meet the entry requirements. Employment Appeal Tribunal. Appeal dismissed.

*Chief Constable of Wiltshire Constabulary v Masih* [2010] UKEAT/0443/09/CEA (Anon 2013m). A BME applicant (staff) brought a claim of race discrimination and victimization against the Authority and Hayes Recruitment Specialist. She had applied on several occasions. However, her claim was related to two unsuccessful applications for two positions

advertised by the Authority: The position of Equality and Diversity Officer and the position of HR Partner (Diversity). She had previously been employed by the Authority, and had been poorly treated by at least one person during her period of employment. Employment Appeal Tribunal. Judgment upheld.

*Tasneem v Dudley Group of Hospitals NHS Trust* [2011] UKEAT/0232/10/CEA (Anon 2013%). A BME locum consultant claimed he was disadvantaged in applying for a post as consultant due to proposed changes. He was shortlisted for interviews but failed to succeed. He claimed he was discriminated against by virtue of his fixed term status, his racial origin and his age. Employment Appeal Tribunal. Appeal dismissed.

*Iteshi v General Council of the Bar* [2011] UKEAT/0161/11/DM (Anon 2013). A BME applicant had a good degree before coming to the UK and had trained as a lawyer. He wished to practise as a barrister after completed the bar vocations course. In total, he made about 150 applications, but did not receive any interviews. Therefore, he failed to meet the requirement of pupillage, which is a compulsory part of a barrister's training and a prerequisite to being entitled to practise. Employment Appeal Tribunal. Appeal dismissed.

## Progression

*Somjee v Merseyside Regional Health Authority* [1996] EAT/87/90, EAT/88/90 (Anon 2013). A BME doctor claimed that she had been racial discriminated in three cases; she was asked to consider to follow another line in a progression-interview, she was treated less favourable on racial grounds as she was not shortlisted for temporary training post for rotating registrars, and she received inadequate training for speciality. Employment Appeal Tribunal. Appeal dismissed.

*R v Department of Health, ex parte Gandhi* [1991] 4 All ER 547 (Anon 2013...). A BME medical practitioner in General Practice applied along a large number of other doctors to take over a practice of a retiring doctor. He also applied to be included on the medical list in the area in order to open a branch surgery to take over a part of another vacant practice. He was shortlisted and interviewed, but other doctors were appointed. Gandhi claimed that both applications were refused because of racial discrimination. Queen's Bench Division. Appeal dismissed.

*Commissioner of Police of Metropolis v. Locker* [1993] 3 All ER 584 (Anon 2013n). A BME officer complained that she has been discriminated on the grounds of race and gender in respect of an application for a post a CID. She also instigated an internal grievance under the procedure established to cover unlawful discrimination. Furthermore, she issued an application alleging victimization because of the presentation of her discrimination complaint. Employment Appeal Tribunal. Appeal dismissed.

*Qureshi v Victoria University of Manchester and Another* [2001] I.C.R. 863 (Anon 2013,,). A BME Academic (Law) at the School of Law claimed discrimination and victimization on racial grounds against the University and the leader of the Law School as they fail to progress promotion and unfavourable treatment in general. Dr.Qureshi also claimed victimization because of his complaint to the registrar in 1989 about racial discrimination in university recruitment practice for professors. Employment Appeal Tribunal. One claim upheld (promotion).

*Chief Constable of West Yorkshire Police and others v Khan* [2001] UKHL 48 (Anon 2013). A BME police officer made a number of unsuccessful applications for promotion to Inspector. Following a further rejection, he complained to the employment tribunal that he had been discriminated on racial grounds. Before the complaint was heard, he applied for another

post, which was not supported. Instead, it was outlined that the applicant had an outstanding industrial application against the chief constable for failing to support his promotion application. The applicant thereafter amended his application to add a complaint of victimization. Court of Appeal, Civil Division. Appeal dismissed.

*Fearon v Chief Constable of Derbyshire* [2004] UKEAT/0445/02/RN (Anon 2013s). A BME police officer claimed that he was treated less favourable on racial grounds and victimization in form of his lack of advancement during his time with the constabulary. In total, he launched 47 complains spanning the length of his career. Employment Appeal Tribunal. Appeal allowed.

*Virdi v Commissioner of Police of the Metropolis* [2008] All ER (D) 67 (Jul) (Anon 2013CE). A BME police officer applied for promotion to the rank of detective inspector, which was unsuccessful. After proceeding the complaint through the internal processes, he presented a claim for the employment tribunal alleging that the rejection of his application was influenced by a previous tribunal proceeding on race discrimination and that had amounted to victimization.

*Pimienta v The Metropolitan Police Commissioner and Ors* [2012] EWCA Civ 405 (Anon 2013f). A BME police officer claimed racial discrimination and various at of victimization and harassment resulting from the procedures adopted in relation to completion of the Performance Development Review, and the objectives identified in it. Supreme Court. Appeal dismissed.

## Retention

*Berry v Ravensbourne (NHS) Trust* [1994] EAT/578/94 (Anon 2013g). A BME pharmacist was made redundant due to structural changes. She claimed racial discrimination as the Trust has failed to secure her work due to the personnel policy of the hospital, which was designed to avoid redundancy by re-deployment, retraining and a restriction on recruitment. However, the employer went on recruiting and did not consider that re-training was an option. Three possible jobs became available, which contrary to the procedure was advertised in national papers. Employment Appeal Tribunal. Appeal Allowed.

*Rostant v Commissioner of Police for the Metropolis* [1997] EWCA Civ 1432 (Anon 2013‡). A BME police probationary constable was considered to be under-achieving and ill-disciplined at a review. She claimed she was expected to conform to the behavioural norms of the white ethnic majority of the force, which was an unreasonable and unconstitutional constraint of her operational independence. She made a complain of discrimination on racial grounds. Court of Appeal. Civil Division. Appeal dismissed.

*Issa v Sandwell Healthcare NHS Trust* [2002] EAT/0929/01 (Anon 2013{). A BME doctor suspended whilst investigated. The Audit found that the employee had a higher compilation rate than his colleague. However, he could return to work under certain conditions, e.g. under supervision and licence. The BME filed three complaints about the condition for returning to work, the process, and in the end, against unlawful dismissal, racial discrimination and victimization. Employment Appeal Tribunal. Appeal dismissed.

*Effa v Alexandra Healthcare NHS Trust and another* [1999] All ER (D) 1229 (Anon 2013r). A BME doctor got his three months contract as locum senior house officer terminated after complaints by a senior ward nurse. He claimed that he was treated less favourable than others on racial grounds, and that the Trust had treated him unfairly and unreasonable by summery termination of his appointment in a manner, which according to Dr. Effa, was not in accordance with professional guidelines as attempts were not made to establish the facts

before actions was taken. The question is whether a white doctor would have been treated similarly. Court of Appeal. Civil Division. Appeal dismissed.

*Chief Constable of The Kent Constabulary v Kufeji* [2001] EAT/1135/00 (Anon 2013k). A BME police officer was the only black in the case investigation team. After two years, the senior officer became concerned about his performances and attached another officer to support him. Two incidents made Kufeji proceed a complaint on racial grounds: harassment from one of his colleagues, and a verbal attack from a superior officer, who rebuked and attacked him verbally in a way he would not have done with white officers. Employment Appeal Tribunal. Appeal dismissed.

*Liversidge v. Chief Constable of Bedfordshire Police* [2002] EWCA Civ 894 (Anon 2013 ). A BME police officer became aware of constables racial abuse towards her as she was prescribed as PM (Porch Monkey). The constable made counter allegations against her of sexual harassment. An inquiry was launched and this brought disciplinary charges against her. The claim primarily asserted that the Chief Constable was vicariously liable for the acts of his constables. Moreover, she alleged that the investigation into her complaint had been inadequate and that disciplinary charges against her were discrimination and/or victimization. She further alleged that the Chief Constable did not investigate her complaint with the same energy, commitment and competence compared with the way the counter allegations had been investigated. Employment Appeal Tribunal. Case dismissed.

*The Law Society v Bahl* [2003] IRLR 640 (Anon 2013Š). A BME Lawyer, who was the Vice-president of the Law Society and it was believed, she would become the first female BME President of the Society. She claimed she had been racial discriminated. The case concerned the handling of the complaints of bullying made against her, and the way in which those complaints had been dealt with and investigated. Dr. Bahl brought complaints of discrimination by way of victimization against the Law Society and certain other officers in relation to the manner in which she was treated following the lodging of her application alleging sex and race discrimination. Employment Appeal Tribunal. Appeal dismissed.

*Hendricks v Metropolitan Police Commissioner* [2002] EWCA Civ 1686 (Anon 2013w). A female BME police constable with several years' service brought complaints of sex and race discrimination against the respondent police commissioner, claiming that she have been subjected to less favourable treatment during most of her service. She succeeded at the Employment Tribunal, but was overruled by the Employment Appeal Tribunal. The Constable appealed. Court of Appeal, Civil Division. Appeal allowed.

*Ranjan v Commissioner of the Metropolitan Police* [2002] All ER (D) 158 (Dec) (Anon 2013†). A BME police officer brought a complaint of race discrimination against the Commissioner of the Metropolitan Police on the grounds that the commissioner was vicariously liable for the discrimination against him. He alleged, subsequently, that the acts of discrimination relied on were sufficiently within the control of the commissioner that he could have prevented them or reduced their extent but had failed to do so. Employment Appeal Tribunal. Appeal allowed.

*Awotona v South Tyneside Healthcare NHS Trust* [2005] EWCA Civ 217 (Anon 2913). Dr. Awotona was employed by the Trust as a consultant in obstetrics and gynaecology from 1 February 1995. On 1 December 1998 she was dismissed, allegedly for gross misconduct. She brought a number of complaints before the Employment Tribunal. Not all of them were successful, but the Tribunal found that she had been unfairly dismissed and had been racially discriminated against by way of victimisation. Court of Appeal. Civil division. Appeal Allowed.

*Dattani v. Chief Constable of West Mercia Police* [2005] IRLR 327 (Anon 2013o). The BME officer was the only ethnic minority officer in the Hereford division of West Mercia Constabulary. He was permanently transferred to a smaller police station to fill a vacancy, which he had not requested and therefore, he claimed it was unlawful discrimination on grounds of race. Employment Appeal Tribunal. Appeal partly allowed.

*Aziz v Crown Prosecution Service* [2006] EWCA Civ 1136 (Anon 2013b). A BME solicitor employed as prosecutor allegedly made some remarks to a member of the security staff and later to the court usher. It was considered that the remarks has been offensive and a complaint about the solicitors conduct was made. She was first suspended and later transferred to another town. She claimed that the suspension and the transfer constituted unfavourable treatment on racial grounds as this constituted serious procedural breaches of the employer's disciplinary code, and that the employer would not have treated a white solicitor in the same way. Employment Appeal Tribunal. Appeal allowed.

*Bayode v Chief Constable of Derbyshire* [2008] All ER (D) 302 (May) (Anon 2013d). A BME police officer claimed racial discrimination because of a close monitoring by colleagues. In his time in the police force, there had been difficulties with his peer group when he was at training school, there were then further problems during his initial posting as a probationer constable .He claimed that he had been treated less favourably on racial grounds and/or victimization though harsh monitoring and overly close supervision by superiors and colleagues. Employment Appeal Tribunal. Appeal dismissed.

*Ahari v Birmingham Heartlands and Solihull Hospitals NHS Trust* [2008] All ER (D) 09 (Apr) (Anon 2013a). A BME specialist registrar anaesthetist presented a claim before the employment tribunal alleging, inter alia, that the employer has subjected him to unlawful direct discrimination. The claim of discrimination derived after the BME had given evidence at a Fitness to Practise Panel. Employment Appeal Tribunal. Appeal dismissed.

*Barwick v Avon & Somerset Constabulary* [2009] UKEAT/0009/09/DM (Anon 2013c). A BME police officer claimed racial discrimination as he was forced to resign because of racially instituted discrimination. He had commenced two claims for discrimination while he was still employed as a police constable, he also he raised a grievance in relation to certain documents. These allegations were dismissed. He resigned later on as he claimed that he has been a victim of several very serious incidents of racially motivated discrimination, harassment and bullying. In the end, he felt he has no option other than to resign. Employment Appeal Tribunal. Appeal allowed.

*Hewage v Grampian Health Board* [2012] UKSC 37 (Anon 2013x). A BME who was the head of the orthodontist department resigned from her employment at the board and commenced proceedings claiming unfair dismissal and discrimination. She alleged that she had been treated less favourable than two white male comparators. Hewage claimed that she was bullied and harassed by employees of the Board. Counter-allegations came from her fellow employees. After that, she instigated a grievance procedure. Supreme Court. Appeal dismissed.

*Woods v Pasab Ltd t/a Jhoots Pharmacy & another* [2012] All ER (D) 264 (Oct) (Anon 2013 ). A multi-racial and multi-faith employer (Pasab Ltd) employed a white employee. The employee was employed for a short period before concerns were raised about her time keeping and absence reporting. In a meeting, it was claimed that the employee had stated that the employer was 'a little Sikh club that only looked after Sikhs' (the comment). The employee denied making the comment. However, she was subsequently dismissed. Court of Appeal. Appeal dismissed.

*Bijlani v Stewart and others* [2012] UKEAT/0228/11/RN (Anon 2013i). A BME barrister claimed she was discriminated on racial grounds. Dr. Bijlani considered that her practice did not flourish, as it should and that she was subjected to the discrimination, victimization and harassment of which she complained in thirty-two complaints. Among those was a complaint about the failure to prevent, abate or condemn the racist conduct of the three clerks against third parties. Employment Appeal Tribunal. Appeal dismissed.

## Regulation

*General Medical Council v Goba* [1988] ICR 885, [1988] IRLR 425 (Anon 2013t). A BME doctor, trained overseas, had repeatedly failed the English language test seven times. This test was necessary for doctors qualified abroad who wished to obtain registration as a medical practitioner in the UK. He filed an originating application alleging discrimination under Section 12 of the Race Relations Act 1976. Employment Appeal Tribunal. Appeal Dismissed.

*Dr Hosny v General Medical Council* [1992] EAT/275/90 (Anon 2013q). The BME doctor (Egyptian born) claimed direct racial discrimination in the way in which the PLAB examination was conducted. Moreover, He claimed that it was discriminatory contrary to the provisions of the Race Relations Act 1976, to require him to pass a test Employment Appeal Tribunal. Appeal dismissed.

*Khan v General Medical Council* [1994] IRLR 646 (Anon 2013~). A BME doctor unsuccessful applied for full registration as a medical practitioner. Claimed that the requirement for full registration indirectly discriminated against Asian/Black Overseas Doctors in comparison with white graduates from the UK and EEC countries. Court of Appeal. Appeal dismissed.

*Chaudhary v The Specialist Training Authority of the Medical Royal Colleges and others* [2001] EAT/1410/00 (Anon 2013j). A BME doctor wanted to become a consultant. Therefore, he needs to have his name entered on the Special Registrar. The Application was rejected. Dr. Chaudhary claimed that he had suffered unlawful racial discrimination. Court of Appeal, Civil Division. Permission to appeal.

*Hassan v General Medical Council* [2004] UKEAT/0807/04/ (Anon 2013v). A BME doctor was qualified outside the UK and had applied for registration from the GMC since early 2001. He made seven complaints to the Employment on racial grounds arising from his dealings with the GMC in respect of, or related to, registration. All his complaints were dismissed. Employment appeal tribunal. Appeal dismissed.

*Bhadra v General Medical Council* [2005] All ER (D) 15 (Sep) (Anon 2013h). A BME locum was charged by professional misconduct and his employment was terminated. The professional conduct committee (PCC) of GMC found him guilty and suspended his registration as medical practitioner for 12 months. In 2000 the PCC reconsidered the case and imposed conditions on his registration for 12 months this continued the following years. In 2004, the employee commenced proceedings alleged that he had been discriminated and victimized on racial grounds. Employment Appeal Tribunal. Appeal dismissed.

*Hasan v Commissioner of Police of the Metropolis* [2006] EAT/0437/06 (Anon 2013u). A BME police officer was a probationary police constable. Shortly before he was due to be confined in his post, internal proceedings were launched against him (2005). Hasan instituted proceedings for various acts of racial and religious harassment and discrimination in relation to his training and first posting. The claim contained two specific allegations. (1) The decision to institute Regulation 13 proceeding (2) the subsequent decision to dismiss him – dispense his services in the language of the regulation amounted to direct

discrimination and/or victimization discrimination contrary to the Race Relations Act. Employment Appeal Tribunal. Appeal allowed.

*Igboaka v Royal College of Pathologists* [2009] UKEAT/0036/09/SM (Anon 2013z). A BME doctors claimed racial and age discrimination after his name was erased from the Medical register because of a fitness to practice case. Employment Appeal tribunal. Appeal dismissed.

*Jooste v General Medical Council and others* [2012] UKEAT/0093/12/SM (Anon 2013}). A doctor (South African Boer) claimed he has been subjected to racial discrimination in a misconduct investigating, as he was suspended. Employment Appeal Tribunal. Appeal dismissed.

*Depner v General Medical Council* [2013] UKEAT/0457/11/KN (Anon 2013p). German-born doctor challenged the GMC's 9-months suspension of her registration and her immediate suspension as a result of a fitness to practice case based on poor performance and misconduct. She claimed that the GMC had discriminated her on the grounds of race (race and victimization). Employment appeal Tribunal. Appeal Dismissed. Case linked to the Uddin-case.

*Uddin v General Medical Council* [2013] UKEAT/0078/12/BA (Anon 2013). A BME doctor was suspended and an 18-month suspension from the register due to misconduct and poor performance Dr. Uddin claimed that the GMC chose and pursued disciplinary proceedings against him in a way they would not respect people of different ethnic origin. The Employment Appeal Tribunal. Appeal Allowed. Case considered together with Depner).



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1997<sup>‡</sup>.  
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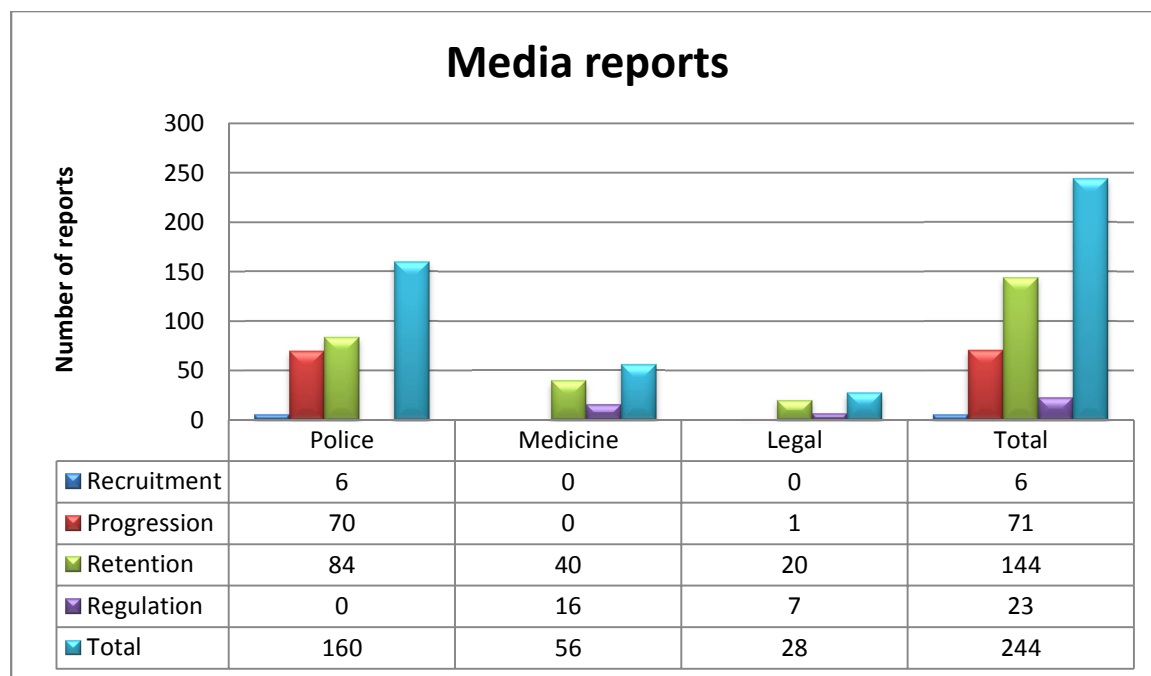
## Appendix 4

### Media reports

Lexis Library and BBC News search engines were used to retrieve data. Search words were: 'race discrimination' AND 'employment tribunal' in Lexis Library and 'racial discrimination' on

the BBC website. Media reports included covering employment tribunal cases involving the police, medicine and legal professions. No reports were found of cases involving pharmacists. All of the employment tribunal cases involved internal complaints, e.g. employer- employee or employee-employee. Searches covered the period 1 January 2003 to 31<sup>st</sup> August 2013.

Number of media reports	244	Recruitment media reports	6
Number of employment tribunal cases in reports	71	Progression media reports	71
		Retention media reports	144
		Regulation media reports	23



Media report ref. no.	ET media report ref. no.	Profession	Date	Employment Tribunal case	Publication title	Headline	Sub-category
1	1	Police	21.10.2012	PCSOs Khalid Akhtar and Joy Shoker v. West Midlands Police	BBC News	PCSOs Khalid Akhtar and Joy Shoker lose bullying case appeals (BBC News 2012e)	Retention
2		-	29.10.2012	-	Birmingham Mail	Officers appeal at nude pics sacking upwardly mobile. exclusive (Oldham 2012)	Retention
3	2	Police	19.03.2008	PC Sultan Alam v. Cleveland Police	BBC News	Wrongly jailed PC denies speeding (BBC News 2008c)	Retention
4		-	03.03.2008	-	BBC News	Wrongly jailed PC returns to duty (BBC News 2008d)	Retention
5		-	29.03.2012	-	BBC News	Ex-Cleveland PC Sultan Alam to sue Police Federation (BBC News 2012a)	Retention
6		-	16.04.2012	-	BBC News	Ex-Cleveland PC Sultan Alam wins £800,000 damages package (BBC News 2012b)	Retention
7		-	16.04.2012	-	MailOnline	Asian policeman who lost wife after he was jailed for crime he didn't commit gets £850,000 compensation after being framed by 'racist' colleagues (Watson and Leon 2012)	Retention
8	3	Police	26.02.2009	PCSO Wayne Bell and Clint Charles v. The Metropolitan	Evening Standard	PC 'taunted black officers with ape impressions' (Stewart	Retention



				<b>Police</b>		<b>and Tim 2009)</b>	
<b>9</b>		-	29.02.2009	-	London Lite	Pc's 'monkey taunts' at black colleagues; Two PCSOs claim £100k (Stuart and Tim 2009a)	Retention
10		-	29.02.2009	-	Metro	Pc's 'monkey taunts' at black colleagues; Two PCSOs claim £100k (Stuart and Tim 2009b)	Retention
11		-	11.03.2009	-	Asian Image	Race claim officers reach settlement (Anon 2009b)	Retention
12	<b>4</b>	<b>Police</b>	<b>03.04.2005</b>	<b>PC Nathaniel Brathwaite v. The Metropolitan Police</b>	<b>Sunday Express</b>	<b>Black policeman 'ordered to take a rapist DNA test': Ex-officer says he was a victim of racist campaign over night stalker. (Perry 2005)</b>	<b>Retention</b>
<b>13</b>	<b>5</b>	<b>Police</b>	<b>13.01.2004</b>	<b>Insp. Bill Cole and PC Ken Anderson v. The Metropolitan Police</b>	<b>BBC News</b>	<b>White officers sue Met for racism (BBC News 2004j)</b>	<b>Retention</b>
<b>14</b>		-	27.07.2004	-	-	Officers' race claims dismissed(BBC News 2004f)	Retention
<b>15</b>	<b>6</b>	<b>Police</b>	<b>23.11.2004</b>	<b>PC Charles Crichlow v. Greater Manchester Police</b>	<b>Express</b>	<b>Black policeman faced a 'torrent' of racist e-mails and jokes, judge told. (Broster 2004a)</b>	<b>Retention</b>
<b>16</b>		-	23.11.2004	-	Express	Police were racist, black officer claims at tribunal (Broster 2004b)	Retention
<b>17</b>		-	30.03.2005	-	Guardian	Police officer's race bias claim 'ignored': Force	Retention

## Disproportionality in the professions

						failed to investigate allegations, says tribunal (Tilden 2005)	
<b>18</b>	<b>7</b>	<b>Police</b>	<b>14.09.2003</b>	<b>Supt Ali Dizaei v. The Metropolitan Police</b>	<b>Independent on Sunday</b>	Met to end case against police chief (Goodchild 2003b)	<b>Retention</b>
<b>19</b>		-	14.11.2003	-	Independent on Sunday	Case against police should be dropped (Goodchild 2003a)	Retention
<b>20</b>		-	15.09.2003	-	BBC News	Officer cleared of dishonesty (BBC News 2003h)	Retention
<b>21</b>		-	16.09.2003	-	BBC News	Cleared officer slams 'witch-hunt'(BBC News 2003e)	Retention
<b>22</b>		-	16.09.2003	-	Evening Standard	Don't join Met, say black police (Edwards 2003)	Retention
<b>23</b>		-	08.10.2003	-	BBC News	Senior Met officers 'spread racism'(BBC News 2003i)	Retention
<b>24</b>		-	17.06.2004	-	Birmingham Post	Panel rules the Met bungled investigation into top black officer Ali Dizaei (Anon 2004f)	Retention
<b>25</b>		-	17.12.2008	-	BBC News	Met Commander begins race claim(BBC News 2008a)	Retention
<b>26</b>		-	17.02.2008	-	Asian Image	Dizaei due to launch Met race claim (Anon 2008b)	Retention
<b>27</b>		-	18.12.2008	-	Morning Star	Britain - Dizaei files Met race discrimination claim (Anon 2008a)	Retention
<b>28</b>	<b>8</b>	<b>Police</b>	<b>26.06.2008</b>	<b>Assistant Commissioner Tarique Ghaffur v. The Metropolitan</b>	<b>The Sun</b>	<b>Top cop race row (Anon 2008l)</b>	<b>Progression</b>

## Disproportionality in the professions

				<b>Police</b>			
<b>29</b>		-	26.06.2008	-	Evening Standard	Fall into line or you're out; Sir Ian Blair challenges top Asian officer who accuses Met of racism. (Singh and Bentham 2008c)	Progression
<b>30</b>		-	26.06.2008	-	Daily Mail	'Sidelined' officer in race claim against Met chief (Wright 2008c)	Progression
<b>31</b>		-	30.06.2008	-	Daily Mail	Met chief faces Asian officer's dossier of discrimination' (Wright 2008b)	Progression
<b>32</b>		-	11.08.2008	-	Daily Mail	Top Asian police chief will lodge racism claim (Anon 2008k)	Progression
<b>33</b>		-	28.08.2008	-	The Guardian	Met police vows to challenge Ghaffur's race discrimination claims (Anon 2008d)	Progression
<b>34</b>		-	29.08.2008	-	The Western Mail	Officer accuses Met police of racism (Anon 2008f)	Progression
<b>35</b>		-	29.08.2008	-	London Lite	Fellow officers turn on racism row police chief; Ghaffur should step down, say senior Met colleagues (Davenport 2008a)	Progression
<b>36</b>		-	29.08.2008	-	Evening Standard	Step down, colleagues tell Asian officer accusing Met chief of racism (Davenport 2008e)	Progression
<b>37</b>		-	29.08.2008	-	Birmingham Post	Race row flares as Yard's No3 accuses Blair of discrimination (Anon 2008h)	Progression

## Disproportionality in the professions

38		-	10.09.2008	-	Daily Mail	Yard chief puts his accuser on gardening leave (Wright 2008d)	Progression
39		-	10.09.2008	-	Daily Mail	Yard chief casts out race case accuser (Anon 2008m)	Progression
40		-	20.10.2008		Evening Standard	Ghaffur rejects payout because he won't deny Sir Ian is a racist (Singh 2008b)	Progression
41		-	20.10.2008	-	London Lite	Race row cop turns down a six-figure deal to settle claim; Payout offer to get Ghaffur to back down on Sir Ian. (Singh 2008i)	Progression
42		-	21.10.2008	-	Daily Mail	Race-row Met officer rejects six-figure deal (Anon 2008i)	Progression
43		-	18.11.2008	-	Evening Standard	Met 'racks up fees to force Ghaffur out of race claim' (Davenport 2008b)	Progression
44		-	25.11.2008	-	BBC News	Top Asian officer settles claim(BBC News 2008b)	Progression
45		-	26.11.2008	-	The Sun	£ 300,000 payout in top cop's race row (Sullivan and Mike 2008)	Progression
46	9	Police	30.06.2008	Mr. Laurence Gouldbourne v. The Metropolitan Police Authority	Evening Standard	Met's ethnic watchdog to sue for 'racial bias'; ... as civil servant is named in 'plot to sideline' Asian officer (Davenport 2008c)	Retention
47	10	Police	08.06.2005	Det. Con. Tom Hassell, Acting Det. Insp. Paul Whatmore, 39, and	The Times	Police race and sex bias claim (Anon 2005c)	Retention

Disproportionality in the professions

				<b>Det. Sgt. Colin Lockwood v. the Metropolitan Police</b>			
48		-	08.06.2005	-	Times	White policemen in race bias claim (Smith 2005)	Retention
49		-	28.06.2005	-	Daily Telegraph	Race case officers 'hung out to dry' by Met chief (Martin 2005a)	Retention
50		-	28.06.2005	-	Daily Mail	The Police Chief who hung his officers out to dry (Taylor 2005)	Retention
51		-	30.06.2005	-	The Independent	White police win race bias payout (Anon 2005e)	Retention
52		-	30.06.2005	-	Birmingham Post	White officers win Met race case (Anon 2005d)	Retention
53		-	30.06.2005	-	Daily Telegraph	Race case policemen share pounds 90,000 (Martin 2005b)	Retention
54		-	30.06.2005	-	Daily Mail	Race-ordeal police get smaller payout than their accuser (Sears 2005)	Retention
55		-	01.07.2005	-	Birmingham Post	Police Chief attacks handling of tribunal (Anon 2005a)	Retention
56		-	03.07.2005	-	Daily Star	Police facing copout (Anon 2005b)	Retention
57	11	Police	03.06.2004	<b>PC Joy Hendricks v. The Metropolitan Police (Anon 2013c)</b>	<b>Independent</b>	<b>Met pays pounds 500,000 after woman PC drops race and sex claim (Gray 2004)</b>	<b>Retention</b>
58		-	03.06.2004	-	Daily Mail	Black WPC wins Pounds 1/2m for Met's race bias (Hall 2004)	Retention
59		-	10.06.2004	-	UK Newsquest	Policewoman secures	Retention

## Disproportionality in the professions

					Regional Press - This is local London	£500 000 race payout (Anon 2004g)	
60	12	Police	11.11.2003	Ms. Noella Huggins v. Gwent Police	Daily Post	Police worker withdraws race bias claim (Anon 2003e)	Retention
61		-	01.04.2004	-	BBC News	Police clerk wins race payout (BBC News 2004g)	Retention
62	13	Police	03.09.2003	PC Sadruddin Husain v. Merseyside Police	Liverpool Daily Echo	Asian PC's win on race claim (Martin 2003)	Retention
63	14	Police	07.04.2006	Shujaat Husain v. Avon and Somerset Constabulary	BBC News	Force tightens racism procedures (BBC News 2006b)	Recruitment
64	15	Police	24.06.2008	Commander Shabir Hussain v. The Metropolitan Police	Evening Standard	'My face didn't fit with Met chief because I am not white'; Race case police officer claims Sir Ian Blair has 'golden circle' of promotion favourites (Brierley 2008)	Progression
65		-	26.06.2008	-	Times	Ian Blair wouldn't promote me because I am not white, says top Asian policeman (Mostrous 2008)	Progression
66		-	01.07.2008	-	Evening Standard	Police watchdog tells of distress at racist claim; Chief at centre of bias row has Indian grandmother (Singh and Bentham 2008a)	Progression
67		-	01.07.2008	-	Evening Standard	Police watchdog: I'm distressed at claims of	Progression

## Disproportionality in the professions

						racism (Singh and Bentham 2008b)	
68		-	10.07.2008	-	Times	A 'golden circle' of white senior officers held me back, claims Asian commander (Fresco 2008)	Progression
69		-	10.07.2008	-	Evening Standard	Met chief will face his race accuser at tribunal (Moore-Bridger 2008)	Progression
70		-	10.07.2008	-	Evening Standard	I shouted at race claim officer admits Met chief (Singh 2008e)	Progression
71		-	10.07.2008	-	London Lite	Blair: I yelled at Asian cop but that doesn't make me racist (Singh 2008a)	Progression
72		-	11.07.2008	-	Times	Clash of egos has murder as a backdrop (O'Neill 2008)	Progression
73		-	11.07.2008	-	Metro	Race claims rubbished by police chief (Steele 2008)	Progression
74		-	02.09.2008	-	Metro	Top Asian officer loses racism claim (Anon 2008j)	Progression
75		-	02.09.2008	-	Daily Mail	Asian officer's race claim against Yard boss is thrown out (Wright 2008a)	Progression
76		-	11.03.2009	-	London Lite	Racism case cop in promotion bid; In brief (Anon 2009c)	Progression
77		-	11.03.2009	-	Evening Standard	Failed race-claim officer is shortlisted for promotion (Davenport 2009c)	Progression
78	16	Police	24.08.2010	PC Mark Jones ,Sgt William Wilson, PC Steven White, PC Giles Kitchener, PC	BBC News	Babar Ahmad case officer sues Met for discrimination (BBC News 2010a)	Retention

Disproportionality in the professions

				<b>Simon Prout and PC Neil Brown v. the Metropolitan Police</b>			
<b>79</b>		-	17.10.2011	-	BBC News	White officers accuse Metropolitan Police of racism (BBC News 2011)	Retention
<b>80</b>	<b>17</b>	<b>Police</b>	<b>27.07.2009</b>	<b>PC Amandeep Kaur Grewal v. The Metropolitan Police/ Hendon training school</b>	<b>BBC News</b>	<b>Trainer discriminated against Pc (BBC News 2009d)</b>	<b>Progression</b>
<b>81</b>	<b>18</b>	<b>Police</b>	<b>07.05.2004</b>	<b>Custody Sgt. Andrew Lewin v. West Midlands Police</b>	<b>BBC News</b>	<b>Police officer to get settlement(BBC News 2004h)</b>	<b>Retention</b>
<b>82</b>	<b>19</b>	<b>Police</b>	<b>13.11.2003</b>	<b>Chief Insp. Leroy Logan v. The Metropolitan Police</b>	<b>BBC News</b>	<b>Black officer's 'six figure sum' payout (BBC News 2003d)</b>	<b>Retention.</b>
<b>83</b>		-	<b>13.11.2003</b>	-	The Sun	Pounds 100,000 payout for cop (Anon 2003g)	<b>Retention</b>
<b>84</b>		-	14.11.2003	-	Morning Star	Met settles discrimination claim out of court (Anon 2003d)	Retention
<b>85</b>	<b>20</b>	<b>Police</b>	<b>22.02.2012</b>	<b>Det. Con. Kevin Maxwell v. The Metropolitan Police</b>	<b>BBC News</b>	<b>Met officer Kevin Maxwell wins discrimination case (BBC News 2012c)</b>	<b>Retention</b>
<b>86</b>	<b>21</b>	<b>Police</b>	<b>02.04.2004</b>	<b>Chief Insp Mulligan v. Greater Manchester Police</b>	<b>Guardian</b>	<b>News roundup: Police: Force taken to tribunal over race (Carter 2004a)</b>	<b>Retention</b>
<b>87</b>		-	02.04.2004	-	Guardian	Senior officer takes police to tribunal over race bias claim (Carter 2004b)	Retention
<b>88</b>		-	02.04.2004	-	Independent	Black woman police chief takes force to tribunal for	Retention



						racism. (Herbert 2004)	
89		-	02.04.2004	-	Daily Star	Police shunned me for being black and female (Mahoney 2004)	Retention
90	22	Police	09.07.2009	Police Community Support Officer Noble v. North Wales Police	Daily Post	They sacked me because I'm Asian; Claims cop fired for showing porn on his mobile phone (Hughes 2009)	Retention
91		-	10.07.2009		BBC News	Sacked officer loses race claim (BBC News 2009c)	Retention
92	23	Police	11.03.2007	Chief Supt Norman v. The Metropolitan Police	Sunday Mirror	White Yard Chief who proved top Muslim cop gets secret pound 40K payout as a victim of racism. (Penrose 2007)	Progression
93		-	13.03.2007	-	Times	White detective in Dizaei case was given payout for race bias (Tendler 2007)	Progression
94	24	Police	22.09.2006	Mr. Matt Powell v. Avon and Somerset Police	BBC News	Force admits rejecting white men (BBC News 2006a)	Recruitment
95	25	Police	29.09.2008	PC Derrick Quarm v. Metropolitan Police	Evening Standard	Black Pc 'rejected for promotion eight times' (Singh 2008k)	Progression
96	26	Police	12.05.2012	PC Abdul Rahman v. The Metropolitan Police	Telegraph	MI5 feared British police attended terrorist camps; MI5 warned Scotland Yard that policemen in its ranks were suspected of attending terrorist training camps, it can be disclosed. (Leach and Barrett 2012b)	Retention

## Disproportionality in the professions

97		-	13.05.2012	-	<b>The Sunday Telegraph</b>	M15 feared British police attended terrorist camps; EXCLUSIVE Policeman lost his job 'to protect national security' (Leach and Barrett 2012a)	Retention
98		-	17.05.2012	-	Docklands and East London Advertiser	Muslim cop who quits over MI5 'terrorist camp' warning sues police (Anon 2013h)	Retention
99	27	Police	10.09.2008	Head of diversity, Yasmin Rehman v. The Metropolitan Police	<b>Evening Standard</b>	<b>Met is sued by its top muslim woman; (1) Ian Blair's head of diversity off work for a year after 'bullying' (2) EXCLUSIVE (3) Yasmin's a shining star but feels she has been targeted for being Asian' (Singh 2008g)</b>	Retention
100		-	10.09.2008	-	Evening Standard	Now Met is facing race bias claim by its top Asian woman (Singh 2008h)	Retention
101		-	10.09.2008	-	London Lite	Top Muslim woman sues Yard bosses; Ian Blair's head of diversity 'bullied' (Singh 2008j)	Retention
102		-	11.09.2008	-	Huddersfield Daily Examiner	New race row hits the Met (Anon 2008e)	Retention
103	28	Police	16.06.2005	Chief Insp. Julia Pendry v. the Metropolitan Police	<b>Evening Standard</b>	<b>The woman detective who is suing the Met for race and sex slurs (Millar 2005)</b>	Retention
104	29	Police	29.05.2003	Det. Con. Gareth	<b>BBC News</b>	<b>Black officer 'victim of</b>	<b>Progression</b>

Disproportionality in the professions

				<b>Reid v. the Metropolitan Police</b>		<b>police racism'(BBC News 2003c)</b>	
<b>105</b>		-	06.06.2003	-	BBC News	'Notes altered' in race bias claim (BBC News 2003a)	Progression
<b>106</b>		-	15.02.2010	-	BBC News	Metropolitan Police officer loses racism claim (BBC News 2010c)	Progression
<b>107</b>	<b>30</b>	<b>Police</b>	<b>19.07.2007</b>	<b>PC Richmond v. West Yorkshire Police</b>	<b>BBC News</b>	<b>White police officer sues force (BBC News 2007f)</b>	<b>Progression</b>
<b>108</b>		-	18.10.2007	-	UK Newsquest regional press - This is Lancashire	Police officer loses race case (Meneaud 2007a)	Progression
<b>109</b>		-	18.10.2007	-	Asian Image	Police officer loses race case (Meneaud 2007b)	Progression
<b>110</b>		-	13.02.2008	-	UK Newsquest Regional Press - This is Bradford	Officer claims mail was opened (Meneaud 2008a)	Progression
<b>111</b>		-	14.02.2008	-	Yorkshire Post	Police probe tampered mail claims. (Anon 2008g)	Progression
<b>112</b>		-	13.05.2008	-	Bradford Telegraph and Argus	PC fights on in wrangle with authorities (Meneaud 2008b)	Progression
<b>113</b>	<b>31</b>	<b>Police</b>	<b>24.02.2009</b>	<b>PCSO Asad Saeed v. the Metropolitan Police/ Belgravia Police station</b>	<b>The Evening Standard</b>	<b>'Apartheid' row rocks the Met police. (Davenport 2009a)</b>	<b>Retention</b>
<b>114</b>		-	24.02.2009	-	Metro	'Met's vans for white police only'; Force hit by 'apartheid' bullying row 'Apartheid Met' row. (Davenport 2009b)	Retention
<b>115</b>		-	24.02.2009	-	Evening	Met rocked by 'apartheid'	Retention

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					Standard	row. (Davenport 2009d)	
116		-	25.02.2009	-	Daily Telegraph	Black support officer 'told to go in separate van' (Edwards and Richard 2009)	Retention
117		-	25.02.2009	-	Times	Police 'segregated officers into black and white vans' (O'Neill and Sean 2009)	Retention
118		-	26.02.2009	-	Evening Standard	Officer accused in race case (Davenport 2009e)	Retention
119		-	27.02.2009	-	Evening Standard	Police support officer accused of assault at 'apartheid' station (Razaq and Davenport 2009)	Retention
120			04.03.2009	-	BBC News	PCSO 'made boasts of beating man' (BBC News 2009b)	Retention
121	32	Police	10.07.2012	Sgt. Zulfiqar Ali Sher v. Chief Constable of Derbyshire Constabulary	Burton Mail	Cop in race claim (Richardson and Peter 2012)	Retention
122		-	11.07.2012	-	Burton Mail	Race claim cop agrees settlement with police force (Smyth and Rob 2012)	Retention
123	33	Police	09.02.2004	PC Jeffrey Sidhu v. Northumbria Police	BBC News	Asian policeman claims racial abuse (BBC News 2004a)	Retention
124		-	10.02.2004	-	Daily Post	Asian PC claims racism by force (Anon 2004a)	Retention
125		-	12.02.2004	-	BBC News	Hearing told of racist term claim (BBC News 2004d)	Retention
126		-	14.02.2004	-	Evening Chronicle	Race case link tribunal told (Neil 2004b)	Retention
127		-	17.02.2004	-	Evening	PC denies targeting	Retention

					Chronicle	accuser for abuse (Neil 2004a)	
128		-	12.05.2004	-	BBC News	Officer loses racial abuse case (BBC News 2004e)	Retention
129	34	Police	16.02.2007	Insp. Bal Singh v. Greater Manchester Police	BBC News	Inspector sacked for misconduct (BBC News 2007a)	Retention
130	35	Police	15.10.2011	Retired police officer Jason Singh v Cleveland Police	Evening Gazette	Race claim is dropped; Ex-officer pulls out of case (MacFarlane and Neil 2011)	Retention
131	36	Police	26.02.2008	PC Sangram Singh-Bhacker v. Greater Manchester Police	Daily Telegraph	Sikh Pc may get payout for race discrimination (Borland 2008)	Recruitment
132		-	20.03.2008	-	Manchester Evening News	GMP guilty of race bias (Dowling 2008)	Recruitment
133	37	Police	11.10.2005	Sgt. Leslie Turner v. The Metropolitan Police	Daily Mail	Camilla's guard sues for racial bias after job switch (English and Wright 2005)	Progression
134		-	11.10.2005	-	Daily Telegraph	Camilla's guard sues the Met for race bias	Progression
135	38	Police	06.02.2002	Det. Sgt. Guralp Virdi v. The Metropolitan Police (Anon 2013g)	BBC News	Final settlement for Asian Officer(BBC News 2002)	Retention
136	39	Police	22.04.2006	Det. Sgt. Guralp Virdi v. The Metropolitan Police ( 2013g)	The Times	Met bias alleged (Anon 2006d)	Progression
137		-	27.04.2006	-	Evening Standard	Officer told race claim too late (Edwards 2006)	Progression
138		-	19.07.2007	-	BBC News	Met rejects race conspiracy claim(BBC News 2007c)	Progression

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139		-	10.10.2007	-	BBC News	Officer wins discrimination case (BBC News 2007d)	Progression
140		-	10.10.2007	-	BBC News	Ethnic minorities warned off Met(BBC News 2007b)	Progression
141		-	11.10.2007	-	Daily Mail	£14m race case detective wins new payout from Met (Wright 2007)	Progression
142		-	11.10.2007	-	Guardian	National: Asian detective was victimised by Met bosses, tribunal finds: Officer not promoted after race discrimination case: Lawyer criticises top managers' failure to act (Dodd 2007)	Progression
143		-	04.06.2008	-	Evening Standard	Sikh officer wins third race prejudice payout from Yard (Cheston 2008)	Progression
144		-	04.06.2008	-	London Lite	Asian officer gets THIRD race payout from the Met; Sergeant gets £70 after being snubbed for promotion (Cheston and Chest 2008)	Progression
145		-	12.06.2008	-	Daily Star	GMP 300k Compo 'not enough' for Sikh Cop (Hutchison 2008)	Progression
146		-	10.07.2008	-	Evening Standard	Payout to Sikh detective is overturned (Singh and Singh 2008)	Progression
147		-	18.09.2008	-	Evening Standard	Race claim detective wins another Met payout (Davenport 2008d)	Progression
148		-	18.08.2009	-	BBC News	Asian detective loses race claim (BBC News 2009a)	Progression

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149		-	19.08.2009	-	Daily Mail	Sergeant loses Met race bias claim (Anon 2009d)	Progression
150		-	19.08.2009	-	Birmingham Post	Detective loses race discrimination row; police (Anon 2009a)	Progression
151	40	Police	14.02.2006	Mr. Ralph Welsman v. Somerset and Avon Police	The Bristol Post	£4.6m (Anon 2006f)	Recruitment
152		-	15.02.2006	-	The Times	White man wins payout over police job race bias (Bruxelles 2006)	Recruitment
153	41	Police	07.05.2009	Supt Paul Wilson v. The Metropolitan Police	BBC news	Met officer sues force alleging racial discrimination (BBC News 2010b)	Progression
154		-	07.05.2010	-	Evening Standard	Met faces another claim of racism (Davenport 2010)	Progression
155		-	08.05.2010	-	The Sun	Black cop sues Met (Anon 2010a)	Progression
156		-	10.05.2010	-	Your Local Guardian	Police officer sues Met over alleged race discrimination (Watts and Matt 2010)	Progression
157		-	10.05.2010	-	Asian Image	Met officer withdraws Race Discrimination claims (Anon 2010b)	Progression
158	42	Police	12.01.2006	PC Zaheer Zamir v. The Metropolitan Police School	Daily Mail	Asian PC sues over boss who told him to shave (Camber 2006)	Progression
159		-	11.02.2006	-	BBC News	Police recruit 'racially abused' (BBC News 2006d)	Progression
160		-	12.02.2006	-	BBC News	Muslim officer 'treated the same' (BBC News 2006c)	Progression
161	43	Medicine	23.04.2007	Dr Adeniran v.	BBC news	Doctor claims race	Regulation

				<b>Plymouth Hospitals Trust</b>		<b>discrimination (BBC 2007a)</b>	
162		-	16.10.2007	-	BBC News	Surgeon's racism tribunal stopped (BBC 2007b)	Regulation
163	44	<b>Medicine</b>	<b>07.03.2003</b>	<b>Dr Feyi Awotona v. South Tyneside District Hospital (Anon 2913)</b>	<b>Evening Chronicle</b>	<b>Sacked doctor's victory (Armstrong 2003)</b>	<b>Retention</b>
164		-	25.11.2003		BBC News	'Sacked' doctor returns to work(BBC News 2003b)	Retention
165		-	06.06.2003	-	BBC News	Doctor sacked after exposing blunder (BBC News 2003f)	Retention
166		-	24.09.2004		Evening Chronicle	Doctor in new work battle (Cartmell 2004)	Retention
167		-	29.09.2004	-	BBC News	Sacked doctor's fight continues (BBC News 2004i)	Retention
168		-	20.06.2005	-	BBC News	Race row doc in compensation bid(BBC News 2005b)	Retention
169		-	21.06.2005	-	Evening Chronicle	Race row doctor "unable to work" (Thompson 2005)	Retention
170		-	15.09.2005	-	BBC News	Doctor awarded £1m compensation (BBC News 2005a)	Retention
171	45	<b>Medicine</b>	<b>18.05.2004</b>	<b>Dr Ami Banerji v. George Eliot Hospital, Nuneaton, Warwickshire.</b>	<b>Birmingham Post</b>	<b>Doctor tells tribunal of race abuse from midwives and nurse (Anon 2004d)</b>	<b>Retention</b>
172		-	18.05.2004	-	<b>Birmingham Evening Mail</b>	Race hate on wards; I was forced to resign - Doc (Anon 2004h).	<b>Retention</b>
173	46	<b>Medicine</b>	<b>09.09.2011</b>	<b>Dr Abdel Bari v. the</b>	<b>Guardian</b>	<b>They'd not dare to stop a</b>	<b>Retention</b>



				<b>Betsi Cadwaladr University Health Board</b>		<b>white doctor like that; NHS board denies race claim at tribunal. (Hughes 2011)</b>	
<b>174</b>	<b>47</b>	<b>Medicine</b>	<b>20.05.2003</b>	<b>Dr Chaudhary v. British Medical Association</b>	<b>Independent</b>	<b>Law report: Requirements for approval of registrar post was not an act extending over a period; 21 May 2003 British Medical Association v Chaudhary and linked (O'Hanlon 2003)</b>	<b>Regulation</b>
<b>175</b>		-	21.05.2003	-	The Times	Tribunal cannot hear race bias claim (Anon 2003h)	Regulation
176		-	01.04.2004	-	Manchester Evening News	but doc row goes on (Camber 2004)	Regulation
<b>177</b>		-	27.07.2007	-	BBC News	Racism claim payment overturned(BBC News 2007e)	Regulation
<b>178</b>		-	28.07.2007	-	Yorkshire Post	Judges overturn surgeon's £800,000 award for 'race bias' (Anon 2007b)	Regulation
<b>179</b>		-	28.07.2007	-	The Western Mail	Doctor's race bias payout taken away (Anon 2007a)	Regulation
<b>180</b>		-	28.07.2007	-	Birmingham Post	Surgeon's pounds 800,000 race case payout overturned (Anon 2007d)	Regulation
<b>181</b>		-	28.07.2007	-	Manchester Evening News	£800,000 race-claim payout is overturned (Crook 2007)	Regulation
<b>182</b>	<b>48</b>	<b>Medicine</b>	<b>02.12.2003</b>	<b>Dr Booth Danesh v. North Glasgow University Hospitals NHS Trust</b>	<b>Evening Times</b>	<b>Pop star's dad in job fight (Anon 2003f)</b>	<b>Retention</b>

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183		-	02.12.2003	-	The Herald	Darius's father brings hospital race claim ;Ex-consultant files complaint against Glasgow health trust (Henderson and Davidson 2003)	Retention
184		-	02.12.2003	-	The Scotsman	Hospital Racism clam by Pop Idol star's father (Thompson 2003)	Retention
185		-	14.09.2006	-	Evening Times	Darius' dad takes on hospital in job fight; Doctor's race claim to be heard by city tribunal (Anon 2006c)	Retention
186	49	Medicine	10.05.2004	Dr Fahtima Farook, Dr Sheedhar Vaidya, Dr Kumar Ghosh, Dr Vanlila Bera and Dr Vijay Jadhav v. the British Medical Association (BMA)	BBC News	Doctors settle in race bias case(BBC News 2004c)	Regulation
187		-	04.05.2004	-	BBC News	Doctors accuse the BMA of racism(BBC News 2004b)	Regulation
188	50	Medicine	25.06.2012	Dr Sumithra Hewage v. NHS Grampian (Anon 2013d)	BBC News	NHS Grampian loses Supreme Court Sumithra Hewage ruling (BBC News 2012d)	Retention
189	51	Medicine	19.12.2003	Dr Jadhav v. the Department of Health	BBC News	Doctor wins record racism payout (BBC News 2003g)	Regulation
190		-	19.12.2003	-	Guardian	£635,000 payout for racism in NHS: Indian doctor awarded record damages for discrimination	Regulation

						(Muir 2003)	
191	52	Medicine	18.02.2012	Dr Gladys Johnson-Ogbuneke v. the University Hospital of North Staffordshire (UHNS)	The Sentinel	Hospital faces new race-claim lawsuit; I lost my job because I'm black, doctor tells hearing (Blackhurst 2012)	Retention
192	53	Medicine	24.03.2011	Dr Magda Khalil v. Royal Cornwall Hospitals Trust	West Briton	Sacked doctor is suing trust saying reference was unfair (Mann and Petra 2011)	Retention
193		-	31.03.2011	-	West Briton	Sacked doctor to learn fate next month in trust lawsuit (Coumbe and Beverly 2011)	Retention
194	54	Medicine	08.07.2005	Dr Ihab Korashi v. Swansea NHS Trust	South Wales Evening Post	Appeal rejected in trust race bias case (Davis 2005)	Retention
195	55	Medicine	16.12.2011	Dr Eva Michalak v. Mid Yorkshire Hospitals NHS Trust	Yorkshire Evening Post	Fired pregnant Leeds doctor wins £4.5 million (Anon 2011a)	Retention
196		-	16.12.2011	-	The Telegraph	Woman doctor wins £4.5 million for being fired after having a baby; Dr Eva Michalak has won £4.5 million in compensation after her bosses mounted a campaign against her when she fell pregnant. (Bowater and Donna 2011)	Retention
197		-	17.12.2011	-	The Guardian	Record £4.5m for the hospital consultant who was 'hounded out' for having a baby: Tribunal 'outraged' by behaviour of	Retention

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						NHS trust Doctor traumatised by colleagues' campaign (Booth and Robert 2011)	
198		-	17.12.2011	-	Express	Hounded doctor wins £4.5million after being fired for having a baby (Jeeves 2011b)	Retention
199		-	17.12.2011	-	Scottish Express	Doctor bullied for having a baby awarded £4.5m payout (Jeeves 2011a)	Retention
200		-	17.12.2011	-	Times	£4.5 million for consultant who was bullied after taking maternity leave (Jenkins 2011)	Retention
201		-	17.12.2011	-	I-Independent	Doctor 'hounded' after having baby wins £4.5m (Laurance 2011)	Retention
202		-	17.12.2011	-	Independent	£4.5m payout for doctor hounded out of job for having baby; (Laurance 2013)	Retention
203		-	17.12.2011	-	Express	Bullied over baby: Doc's £4.5 m compensation (Lawton 2011)	Retention
204	56	Medicine	20.11.2006	Dr Tapash Saha v. NHS Dumfries and Galloway	BBC News	Sacked doctor makes racism claim (BBC News 2006e)	Retention
205		-	20.11.2006	-	Daily Mail	Doctor jailed over groping case claims unfair dismissal (Davidson 2006)	Retention
206	57	Medicine	12.05.2010	Dr Harira Syed, Dr Abdul Saeed, Dr Gowri, Dr Mohammed	Manchester Evening News	Doctors win battle over race discrimination case (Manchester Evening News 2010)	Regulation

				<b>Humayun, Dr James Anglin and Dr Sajid Khan v. Greater Manchester Health Trust</b>			
<b>207</b>	<b>58</b>	<b>Medicine</b>	<b>03.12.2003</b>	<b>Dr Tasneem Tariq v. Dewsbury District Hospital, West Yorkshire</b>	<b>Daily Mail</b>	<b>200,000 bill after hospital boss tells doctor: I'll kick your **se all the way to Islamabad (Anon 2003a)</b>	<b>Retention</b>
<b>208</b>		-	03.12.2003	-	Yorkshire Post	Payout for Asian doctor in race claim (Waugh 3 A.D.)	Retention
<b>209</b>	<b>59</b>	<b>Medicine</b>	<b>27.10.2008</b>	<b>Dr Mohammed Tasneem v. Russells Hall Hospital (Anon 2013e)</b>	<b>Dudley News</b>	<b>Doc alleges discrimination over job loss (Anon 2008c)</b>	<b>Regulation</b>
<b>210</b>	<b>60</b>	<b>Medicine</b>	<b>24.04.2004</b>	<b>Dr Sushant Varma v. North Cheshire NHS Trust</b>		<b>Junior doctor suing trust in race case (Anon 2004e)</b>	<b>Retention</b>
<b>211</b>		-	25.04.2004	-	Sunday Mirror	Hospital Chief suspend a top doctor for two years and pay him punds 48,000 to do nothing his crime? He pretended he'd appeared on blind date with tv's Cilla Black when he was a student; Exclusive: Another example of barmy Britain. (France 2004)	Retention
<b>212</b>		-	26.04.2004	-	Daily Post	Blind date fib cost my career, says Doctor; hospital denies lie about tv dating games how was reason for (Anon 2004b)	Retention

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213		-	26.04.2004	-	Liverpool Daily Post and Echo	Doctor says tv lie cost him job (Anon 2004c)	Retention
214		-		-	Daily Post	Doctor lied about blind date show appearance; 'Grim Reaper' in lost job claim changed name to James Bond. (Brown 2004)	Retention
215		-	24.06.2004	-	Daily Star	The Grim Reaper's TV 'lies' (Anon 2004i)	Retention
216		-	20.08.2004	-	Daily Post	Fantast doctor loses job claim: Panel told of bizarre behaviour (Hookham 2004)	Retention
217	61	Legal	18.06.2004	Halima Aziz v. the Crown Prosecution Service (Anon 2013a)	Daily Mail	Pounds 200,000 for lawyer suspended over Bin Laden row (Finney 2004)	Retention
218		-	01.08.2006	-	Birmingham Post	CPS guilty in Muslim solicitor race case (Anon 2006b)	Retention
219		-	01.08.2006	-	Halifax Courier	Victory for the Bin Laden joker (Anon 2006e)	Retention
220		-	01.08.2006	-	Morning Star	Britain - CPS found guilty of race discrimination (Anon 2006a)	Retention
221		-	01.08.2006	-	Yorkshire Post	Asian solicitor wins race battle (Murphy 2006)	Retention
222	62	Legal	16.10.2009	Dr Aisha Bijlani v. Stewart and others (Anon 2013b)	Evening Standard	Barrister in £33m race claim: I had to find my own work (Cheston 2009)	Retention
223		-	16.10.2009	-	Daily Mail	I want 633m (Greenhill and Sam 2009)	Retention
224		-	17.10.2009	-	Daily Telegraph	Barrister 'has history of race-related complaints'	Retention

						(Gammell 2009)	
225	63	Legal	12.05.2003	Bahl v. The Law Society (Anon 2013f)	Morning Star	Law Society faces tribunal action by Bahl (Anon 2003c)	Retention
226		-	13.05.2003	-	Birmingham Post	Ex-Law Society chief in fresh discrimination claim (Anon 2003b)	Retention
227	64	Legal	18.05.2004	Peter Herbert v. The Bar Council	Independent	Black barrister takes bar to tribunal over race discrimination (Verkaik 2004)	Regulation
228		-	25.05.2004	-	Guardian	G2: Law: A matter of opinion: Peter Herbert is facing a tribunal for giving interviews after the Victoria Climbié case. Clare Dyer on the rules that stop barristers speaking to the media (Dyer 2004)	Regulation
229		-	26.05.2004	-	Evening Standard	Climbié lawyer 'broke code by giving opinion' (Leapman 2004)	Regulation
230		-	28.05.2004	-	Guardian	News Roundup: Legal Bar Council in race bias claim (Taylor 2004)	Regulation
231	65	Legal	31.03.2005	Simrit Parmar v. The Law Society	Independent	Law Society official dismissed Asians as 'reliable little workers' (Verkaik 2005)	Retention
232			01.04.2005		Daily Mail	Law Society in Pounds 1m race claim over its 'reliable little workers' (Cook 2005)	Retention
233	66	Legal	16.11.2007	Madhu Rai v. The Crown Prosecution Service	South Wales Argus	Top lawyer's race discrimination claim (Anon 2007e)	Retention

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234		-	06.12.2007	-	Daily Mail	Racism allegations are outrageous, says DPP (Anon 2007c)	Retention
235		-	06.12.2007	-	Daily Mail	Racism allegations are outrageous, says DPP (Anon 2007c)	Retention
236		-	07.12.2007	-	Western Mail	Top prosecutor denies racial bias against lawyer (Anon 2007f)	Retention
237	67	Legal	22.02.2010	<b>Tyica Riley and Aniere Ebuzoeme v. The Crown Prosecution Service</b>	<b>Independent</b>	<b>CPS 'segregated black and white lawyers'; Crown Prosecution Service faces eight racism cases brought by employees (Verkaik and Robert 2010)</b>	<b>Retention</b>
238	68	Legal	08.10.2011	<b>Christina Mwitta v. Hammonds LLP</b>	<b>Yorkshire Evening Post</b>	<b>Payout for Leeds race row solicitor is overturned (Anon 2011b)</b>	<b>Progression</b>
239	69	Legal	18.07.2008	<b>Shahrokh Mireskandari v. the Solicitors Regulation Authority</b>	<b>Evening Standard</b>	<b>Lawyer in Ghaffur's Met battle is fighting his own £10m race case (Singh 2008f)</b>	<b>Regulation</b>
240		-	18.07.2008	-	Evening Standard	Ghaffur's lawyer is fighting his own £10m race case (Singh 2008d)	Regulation
241		-	18.07.2008	-	London Lite	Ghaffur's lawyer in his own race battle (Singh 2008c)	Regulation
242	70	Legal	05.05.2005	<b>Jitendra Sharma v. Arani &amp; Co</b>	<b>Daily Star</b>	<b>Abu Hamza's brief is a racist bully (Bellamy 2005)</b>	<b>Retention</b>
243		-	05.05.2005	-	Express	Hamza's Lawyer is a racist bully, say worker (Twomey and John 2005)	Retention
244	71	Legal	13.02.2011	<b>Anjulika Vatish vs.</b>	<b>Daily Mail</b>	<b>Stalking barrister</b>	<b>Retention</b>



				<b>James O'Donnell</b>		<b>slapped my bottom with his briefcase (Evans and Rebecca 2011)</b>	
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Appendix 5

Poster presented to the Making Diversity Interventions Count 3rd Annual International Conference, University of Bradford, 18 June 2013

# Disproportionality in Employment and Regulatory Practices: A Pressing Policy Issue

A team of researchers in the Schools of Law and Pharmacy at the University of Manchester are undertaking a literature review to develop further work around the core theme of disproportionality on the grounds of ethnicity across 5 professions.

The review includes Police, Law, Medicine, Pharmacy and Higher Education taking in recruitment, promotion and career development, misconduct proceedings and professional regulation. Our review includes examining statistical evidence, reviewing case law, cross sectoral searching of existing academic literature as well as newspaper, reports etc.

Evidence of disproportionality on grounds of ethnicity in these professions is mixed.

- \*Overrepresentation of minority ethnic groups within some of the professions
- \*There are different stakeholder responses and understanding of disproportionality
- \*There are ad hoc changes in legislation, regulatory frameworks and practices.

These problems makes analysis of policy and practice challenging

The research involves a literature review of recently published research evidence on disproportionality in employment and regulatory practices to gather and collect information on regulatory processes and functions. The team are also identifying data available on regulatory processes and outcomes and identifying potential partners/collaborators.

**Regulatory bodies and processes:**

Professional regulation serves a common purpose: public protection.

Each regulator safeguards the highest standards of professional practice and ensures that registered professionals are 'fit-to-practise', thereby representing the interests of clients/the public/patients.

The regulatory bodies for medicine, pharmacy, law and higher education are:  
The General Medical Council, General Pharmaceutical Council, Solicitors Regulation Authority, Bar Standards Board, and Higher Education Funding Council for England, respectively. Secondary legislation underpins the regulation of the police.

**The Public Sector Equality Duty, The Equality Act (2010), requires organisations to:**

- \*Eliminate unlawful discrimination, harassment and victimisation
- \*Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- \*Foster good relations between people who share a protected characteristic and those who do not.

Within this project we have looked at how this duty is being used by regulatory bodies.

Recruitment	Progression	Retention	Regulation
<p><b>Case Law (1976-2013):</b></p> <ul style="list-style-type: none"> <li>*Police (Staff): 2</li> <li>*Medicine (Doctors): 9</li> <li>*Higher Education (Academics): 8</li> <li>*Law (Barristers): 1</li> <li>*Total: 9 court cases.</li> </ul> <p><b>Medicine and Pharmacy:</b></p> <ul style="list-style-type: none"> <li>*Evidence that BME doctors are discriminated against in the recruitment process. CV with English name twice as likely to be selected for short listing than those with Asian names (Esmail and Everington, 1993 and 1997)</li> <li>*In qualitative research BME doctors reported discrimination in short listing and interview process (Cook et al., 2001; BME Equal Opportunities Committee, 2004)</li> <li>*Some indicators that BME Pharmacists experience difficulty in finding a first job (Hassall, 1996)</li> </ul> <p><b>Police:</b></p> <ul style="list-style-type: none"> <li>*Some interesting work identified from Netherlands on position action. It may be possible to undertake a longitudinal study in the UK.</li> </ul> <p><b>Higher Education:</b></p> <ul style="list-style-type: none"> <li>*The University of Manchester is examining data from its online recruitment system to look about listing rates across different ethnic groups (results expected late June 2013).</li> </ul> <p><b>Law:</b></p> <ul style="list-style-type: none"> <li>*The Barristers Standards Board (BSB) and the Solicitors Regulation Authority (SRA) focuses on improving the conditions for pupillage and newly trained solicitors.</li> </ul>	<p><b>Case Law (1976-2013):</b></p> <ul style="list-style-type: none"> <li>*Police (Officers): 6</li> <li>*Medicine (Doctors): 6</li> <li>*Higher Education (Academics): 1</li> <li>*Total: 11 court cases.</li> </ul> <p><b>Medicine and Pharmacy:</b></p> <ul style="list-style-type: none"> <li>*BME consultants discriminated against in the awarding of distinction awards (Esmail, 1996; Abel and Esmail, 2000)</li> <li>*Evidence that BME doctors (including foreign trained) stuck in staff grade or associated specialist post (Coker, 2001; BMA, 2004)</li> <li>*BME pharmacists are over-represented in lower grade positions and under-represented in management positions in community and hospital and over-represented in pharmacy ownership/partnership (Hassall, 1996; Plebs and Teon, 1998)</li> </ul> <p><b>Police:</b></p> <ul style="list-style-type: none"> <li>*Percentage of BME constables is 5% but the figures for more senior ranks are poor. Chief Constable Sir Peter Faly (GMP) wants to address this (see recruitment panel)</li> </ul> <p><b>Higher Education:</b></p> <ul style="list-style-type: none"> <li>*Equality Duty data available enables analysis of progression within. The University of Manchester offering the possibility to track the organisation's practice against its equality objectives.</li> </ul> <p><b>Law:</b></p> <ul style="list-style-type: none"> <li>*BSB and SRA recognises that there is a problem with progression – and they are monitoring it closely due to their equality duty. This is linked to recruitment.</li> </ul>	<p><b>Case Law (1976-2013):</b></p> <ul style="list-style-type: none"> <li>*Police (Officers): 10</li> <li>*Medicine (Doctors): 3</li> <li>*Pharmacy: 1</li> <li>*Law (Barristers): 1, (Solicitors): 2</li> <li>*Higher Education (Academics): 1, (Staff): 3</li> <li>*Total: 22 court cases</li> </ul> <p><b>Medicine and Pharmacy:</b></p> <ul style="list-style-type: none"> <li>*A number of tribunal cases have been identified where BME doctors feel that they have been forced out of their job. In some cases, the issue has been settled out of court.</li> <li>*BME consultant obstetrician was awarded £1.6m in compensation from her employer, who she accused of racial discrimination (Avotona vs. South Tyneside NHS Foundation Trust, 2003)</li> <li>*To our best of knowledge, there is no peer-reviewed literature that indicates disproportionality on grounds of ethnicity affects the retention of pharmacists.</li> </ul> <p><b>Police:</b></p> <ul style="list-style-type: none"> <li>*Little recent research identified focusing on retention. There is an overlap with research in progression.</li> </ul> <p><b>Higher Education:</b></p> <ul style="list-style-type: none"> <li>*See progression panel.</li> </ul> <p><b>Law:</b></p> <ul style="list-style-type: none"> <li>*BSB and SRA recognise the problem, but it does not fall under their duty as regulators. The firms need to develop processes internally.</li> </ul>	<p><b>Case Law (1976-2013):</b></p> <ul style="list-style-type: none"> <li>*Medicine (Doctors): 12</li> <li>*Higher Education (Academics): 1</li> <li>*Total: 13 court cases</li> </ul> <p><b>Medicine and Pharmacy:</b></p> <ul style="list-style-type: none"> <li>*Foreign-trained doctors over-represented amongst those facing disciplinary proceedings, although no evidence of overt bias (General Medical Council, 1996, 2000, 2003; Humphrey et al., 2011)</li> <li>*NHS BME staff (including doctors) twice as likely to be disciplined compared with non-BME peers (Arshibong and Durr, 2011)</li> <li>*BME Pharmacists more likely to appear before a disciplinary committee, no evidence to suggest overt bias (Hassall, 1996; Tullett et al., 2005)</li> <li>*Study looked at factors increasing likelihood of pharmacists being disciplined (including ethnicity) only factor of statistical significance was working in community pharmacy (Phipps et al., 2011)</li> </ul> <p><b>Police:</b></p> <ul style="list-style-type: none"> <li>*What role will Police and Crime Commissioners play?</li> <li>*Currently each of the 42 forces is accountable under the equality duty.</li> </ul> <p><b>Higher Education:</b></p> <ul style="list-style-type: none"> <li>*HEFCE is the regulator for Higher Education, but each university governing body is responsible for meeting the Equality duty.</li> <li>*How proactive is HEFCE as a regulator?</li> </ul> <p><b>Law:</b></p> <ul style="list-style-type: none"> <li>*As regulatory bodies, both the BSB and the SRA have an interest in improving this area to ensure a diverse workforce and to remove barriers for Black and minority ethnic staff.</li> </ul>

University of Manchester.  
ManReg/UMRIPP  
Dr. Debbie Egan, Mr. Tom Fagan, Mr. Tim Munk, Dr. Elisabeth Sexton

Appendix 6  
Draft funding proposal presented to 21 May 2013 Seminar, School of Law,  
University of Manchester



## **Disproportionality in the Professions: The Role and Impact of Equality Duties and Corporate Social Responsibility Models**

May 21, 2013

A Draft Outline of a Funding Proposal  
to be Submitted to the Economic and  
Social Research Council 2013

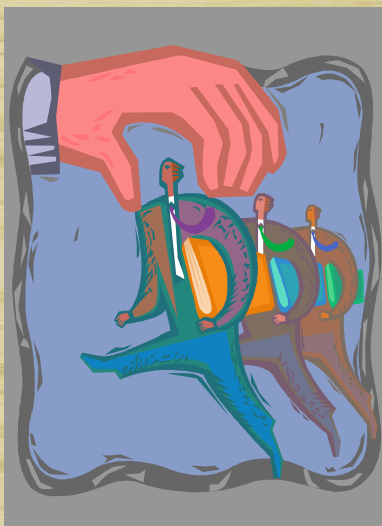
## The Four Professions and the Four Areas of Research

We propose to study the:

- police,
- higher education,
- law (barristers and solicitors)
- pharmacy

In particular, we propose to focus on four areas where disproportionality may arise:

- recruitment
- retention
- progression
- promotion



## Research Outline

### OVERVIEW

The aim of the research is to examine disproportionality in the recruitment, retention, progression and promotion of professionals in law (solicitors and barristers), police, higher education and pharmacy with a view to reforming existing procedures to reduce and/or remove disproportionality.

### WHO ARE WE?

We are a team of researchers at the University of Manchester made up of researchers from the School of Law and the School of Pharmacy. The current members of the working group include:

- *Law, Police and Higher Education:* Graham Smith; Tine Munk; Debbie Ellen; Elaine Dewhurst
- *Pharmacy:* Karen Hassell; Ellen Schafheutle; Elizabeth Seston; Thomas Fegan

### FUNDING

We propose to seek research funding from the Economic, Social and Research Council to the value of approximately £1 million to conduct this research over a period of 3-5 years. The research proposal is to be completed by 31<sup>st</sup> July 2013 and will be submitted in August 2013.

This funding will cover the costs of conducting the research through the hiring of researchers and the funding of PhD studentships.



## Objectives and Methodology

The main objective of the research is to seek to reduce disproportionality in the professions particularly in the areas of recruitment, retention, promotion and progression. This analysis will be carried out through the lens of the equality duties and / or corporate social responsibility models operating in each profession with particular focus on organizational culture and leadership.

The research will be conducted in three stages:

- Evidencing disproportionality in the professions
- Evaluating Equality Duties / Corporate Social Responsibility Models
- Evaluating Impact of such duties on disproportionality and recommending reforms

## THE ROLE AND FUNCTION OF PROFESSIONAL BODIES: HOW YOU CAN HELP

We view this research as being intimately connected with the professional bodies and their work and your support of this research is central to its successful development, conduct and eventual impact. We are, therefore, very keen to secure:

- Your support for the conduct of the research (this will be invaluable to the success of the funding application and the conduct and development of the research)
- Your ideas for the design of the research
- Your ideas as to the potential results of the research
- Your ideas for the potential impact of the research (how the research can have the greatest impact)

If you would like more information about the project or if you would like to contribute to the project in some way, please contact:

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0161 2755785  
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### QUESTIONS TO CONSIDER?

- Would you like to support this research?
- What do you think of the design of the research and would you change or alter it in any way?
- What results would you be expecting and how can we best achieve this?
- What do you think the impact of the research would be and how could the research have the greatest impact?

University of Manchester





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