International Journal of the Legal Profession

ISSN: (Print) (Online) Journal homepage: https://www.tandfonline.com/loi/cijl20

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To cite this article: Andrew Boon & Avis Whyte (2021) "Trusted to the ends of the earth?" An analysis of solicitors' disciplinary processes in England and Wales from 1994 to 2015, International Journal of the Legal Profession, 28:2, 129-157, DOI: 10.1080/09695958.2021.1889560

To link to this article: https://doi.org/10.1080/09695958.2021.1889560

Published online: 10 Mar 2021.

INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION
2021, VOL. 28, NO. 2, 129–157
https://doi.org/10.1080/09695958.2021.1889560

Routledge
Taylor & Francis Group

"Trusted to the ends of the earth?" An analysis of solicitors' disciplinary processes in England and Wales from 1994 to 2015

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ABSTRACT
This study deals with misconduct cases involving solicitors, the largest legal profession in England and Wales. It covers a 20 year period and focuses in detail on three points during that period: 1994–1996, 2008 and 2015. These points cover different stages during the evolution of the regulatory system from what was arguably the height of legal professionalism to the post-professional system initiated by the revolutionary Legal Services Act 2007. Drawing on detailed studies of disciplinary cases we examine the relationship between professional demography and modes of regulation in determining the outcomes of regulation.

Introduction

It is now over 25 years since Sir Thomas Bingham MR identified the most fundamental purpose of disciplinary proceedings as ensuring trust in the solicitors' profession (*Bolton v The Law Society* 1994). During that time, theories of lawyer misconduct have been enriched by empirical research from many jurisdictions, including the USA, Canada, Australia and England and Wales. Different approaches, comparative accounts of disciplinary systems (Abel 2012), analysis of regulatory changes (Levin 2006) and records of individual disciplinary proceedings (Abel 2008) justify broad generalisations about, and criticisms of, self-regulating professional processes and their subjects. Despite being a jurisdiction that has moved away from professional self-regulation and experimented with new methods of regulation, there has been relatively little academic evaluation of developments in England and Wales, compared, for example, with New South Wales, Australia (Parker et al, 2010, Schneyer, 2014–15).

Research on lawyer disciplinary processes in most jurisdictions suggests that cases generally derive from consumer complaint, that professions do not seek out misconduct and that the disciplinary process reduces the number of possible disciplinary cases (see, e.g. Levin 2006, Abel 2008, Bartlett 2008 and

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Lokanan 2015). It identifies the predominant subjects of discipline as middle aged men from small firms (ibid, Davies 1998, 1999, Boon, Whyte and Sherr 2013 and Boon and Whyte 2019 but see Piquero et al 2016: 582). Some of the literature explores parallels between theories on lawyer misconduct and theories on white collar crime (Abel 2008, Boon and Whyte 2012, 2019). Some writers identify lack of opportunity as the reason for low levels of offending in some groups (Abel 2008), reasoning that might apply to junior lawyers, women lawyers and lawyers working in larger firms. Few studies use a long time frame over which to examine the disciplinary system and, if they do, they do not consider the impact of demographic and regulatory change over the whole period (e.g. Davies 2005).

Our data for this study derives from published outcomes in the Solicitors Disciplinary Tribunal (SDT) over the 20 year time frame. Our analysis focuses both on the impact of the change of regulator and on more familiar aspects of disciplinary studies: who is subject to discipline; where do they work; what kinds of offence do they commit; how are they dealt with? The context is changes to the solicitors' profession over the period: from self-regulation to independent regulation, doubling of the numbers of practitioners, a trend towards larger firms and an increase in the proportion of women lawyers (Bartlett 2008, Boon and Whyte 2019). Our central question is: to what extent do these massive changes affect the outcomes of regulation relating to disciplinary procedures? Our theoretical perspective is provided by Foucault's notion that regulation in the neoliberal period prefers and encourages regulation of the self, over regimes of punishment (Lemke 2001).

Context and method

The research examines annual statistics for the whole period as set out in Appendix 1. It also looks in detail at three specific periods: 1994–96, 2008 and 2015. Material for the first period was collected by Davies (1998, 1999) using randomly selected SDT transcripts from 1994 to 1996. Boon, Whyte and Sherr (2013) conducted the 2008 study, previously published as a report, and Boon and Whyte (2019) conducted the third study. It will be seen that the three periods examined in depth are broadly consistent with the data in the appendix. Differences are identified and explained insofar as the limits of the data allow. The similarity of the methods used to examine each of the three periods enables us to look beneath the surface of the statistics.

The dramatic difference in the context between each period of study is notable. The first period fell at the end of the golden age of professionalism, during which the SDT was established by the Solicitors Act 1974. This period operates as a benchmark. The second period was marked by increasing government disaffection with solicitor self-regulation, heightened academic interest in professional ethics and the beginning of a new era of independent regulation

brought about by the Legal Services Act 2007 ((LSA) commencing March 2008, see further Boon and Whyte 2019). The third represented a suitable time span after commencement of the LSA to analyse its impact on solicitors' disciplinary processes. It will be noted that the operation of the SDT was essentially the same, even though its formal status changed after 2007. Other features of the disciplinary system changed, as explained in the next section.

The 2008 and 2015 studies involved detailed examination of the published transcripts of all cases heard by the SDT in those two years.[1] Consistently reported categories, for example, the respondents' age, sex and year of admission, were recorded as quantitative data.[2] Other categories, more difficult to verify because details were not reliably reported, were also noted.[3] Because of the importance of organisational type other sources were used to establish the size and type of firm respondents came from. These sources included Chambers and Partners' Guide to the UK Legal Profession and the Law Society website of contemporary law firms. Further quantitative data was obtained from the Law Society's "Find a Solicitor/Firm" web database supplemented by web research.[4] The limitations of these data are described where relevant.

An important source of contextual data is the Law Society Annual Statistics Reports, empirical research on professional demographics published since the 1980s. These are used to contextualise the data and to identify inconsistencies. There are minor differences in the data collected for the three studies. Davies used Law Society demographic data taken from an earlier period[5] whereas we used comparative data taken from the year from which we collected our data. Further, we collected some categories of data which Davies did not, including the origins and investigation of cases, the geographic locations of respondents' firms and the fate of respondents and firms following disciplinary proceedings.

Tribunal cases in context

There was a significant change after the Legal Services Act 2007 in that the role of the Law Society, the professional body of solicitors ended. Thereafter, the investigation and prosecution of misconduct fell to a regulator established independently of the Law Society, the Solicitors Regulation Authority (SRA) and complaints were eventually directed to a Legal Ombudsman (LeO). Over the period of the study the disciplinary jurisdiction for lawyers in England and Wales was separate from complaints. It is important to place disciplinary cases in this wider context, because it is quite unlike the situation in many other countries.

Davies found that in 1995 approximately 19,000 complaints were made to the Solicitors Complaints Bureau (SCB (Davies 1998: 148)).[6] Though he did not detail the success rate of these complaints he explained that between 1986 and 1995 SCB complaints increased by almost a third (ibid). This was against a backdrop of substantial criticism of the Law Society's complaints

handling (ibid: 147). In 2008 there were 14,571 complaints to the Law Society's Legal Complaints Service (2009: 10), a drop of approximately 23%. Only 1,025 were upheld (Freedom of Information Request 2010), meaning that the complaint resulted in a finding, action or sanction against a solicitor or a firm (see WhatDoTheyKnow: undated and Freedom of Information Request FOI BS 319: 2010) and compensation was ordered in only 61 cases over an eleven-month period (Legal Complaints Service 2009: 17).

Others have observed this "complaints pyramid", the attrition rate between initial complaint and disposition (e.g. The Royal Commission 1979, Galanter 1983 and Abel 1998). One possible explanation of why the high number of complaints did not result in disciplinary cases could be that the Legal Complaints Service, as a service run by the profession, operated as a funnel limiting the number of cases (Lokanan, 2015). Of around 1,000 outcomes reported to the service in 2009 only four resulted in SDT cases (Freedom of Information Request 2010). Moreover, it appears that the proportion of complaints which became misconduct cases did not increase significantly even when they were handled by an independent Legal Ombudsman.[7] In 2015 the Ombudsman received 18,126 complaints, accepted 7,033 of these for investigation, resolved 6,416 of them and made 310 potential misconduct referrals to the SRA (Legal Ombudsman 2016: 25, the report covers year ending 31 March 2016). While many complainants were therefore successful, the Ombudsman referred few complaints to the SRA as potential misconduct cases. In turn the SRA referred roughly four of these to the SDT.[8] This suggests that the independent system probably produced no more disciplinary cases than the old self-regulatory one. It further suggests that most complaints are about matters, such as service standards or negligence, which do not meet the threshold for misconduct justifying SDT action.[9]

Over the 20 year period of the study, neither the number of complaints nor the prosecution rate for misconduct kept pace with the increasing size of the profession. The number of practising solicitors nearly doubled between 1995 and 2015, from 66,123 to 133,367. Over the first and second time frame of the study, however, the annual number of respondents before the SDT remained relatively consistent, or even declined, over time. So, Davies' database for 1994–96 consisted of findings in relation to 270 respondents (Davies 1998: 143) and the 2008 study, findings in relation to 279 respondents. In contrast there were 132 respondents in 2015, a drop of 52%.

Explanations for why the significant rise in practitioners did not lead to an increased SDT caseload could lie in the growth in use of alternative methods of disposal, or in limiting mechanisms operating at the investigatory and prosecutorial stages. A number of alternative methods of dealing with misconduct have been available to regulators over the period. First, from 1985, the Law Society had a statutory power to impose restrictions on solicitors' current practising certificates (Solicitors Act 1974, s.13A).[10] Second, courts had an inherent summary jurisdiction over lawyers conducting advocacy, litigation and claims

for costs.[11] Third, from around 2007 a number of potential disciplinary cases were dealt with by "Regulatory Settlement Agreements" (RSAs) by which respondents accepted responsibility for a disciplinary offence that could have been referred to the SDT and, typically, a sanction and costs (Solicitors Regulation Authority 2012a). This system became more formalised around 2008 (ibid) and potentially expanded after 2007 when the LSA conferred new powers on the SRA to issue written rebukes and impose fines of up to £2,000 on individual practitioners (SRA Disciplinary Rules 2011). A final factor explaining the declining caseload could be systemic changes occurring in the past twenty years. One of the most notable is a decline in the volume of rules. Those governing solicitors' conduct, including accounts,[12] have reduced considerably, leading to suggestions of a lighter regulatory touch (Legal Finance Professionals 2017); the fewer rules there are, the fewer opportunities there are to breach them.

Davies' data did not deal with alternative disposals. The 2008 study did not consider restrictions on practicing certificates (PCs) but did find that ten cases which might have been referred to the SDT had been dealt with by RSAs (Freedom of Information Request 2015).[13] Since some of these cases involved multiple defendants, not using such agreements would have added a further 26 respondents to the caseload. This would have taken the caseload to just over 300. As stated elsewhere (Boon and Whyte 2019: 7), the total of non-SDT sanctions imposed in 2015 was 369 compared with 26 in 2008 (ibid). This shows that the SRA did increase its use of alternative disposals after 2007 but does not exclude the possibility that the volume of cases is artificially limited by, for example, investigatory capacity or prosecution policy (see further Boon and Whyte 2019).

The increasing powers of the SRA, and declining caseload of the SDT, calls into question the continuing role of the SDT. It cost the Law Society £1,193,000 to operate in 2008 (The Solicitors Disciplinary Tribunal Annual Report 2008/9). The average cost of each case was therefore £6,312 and the average cost of disposition per respondent was £4,276. This was arguably a modest price in order to decide fairly cases that could result in exclusion from professional work. In 2015, however, the costs of the SDT rose dramatically to £2,752,000 (The Solicitors Disciplinary Tribunal Annual Report 2016: 18), a 57% increase on 2008 figures. This translated to an average cost per case of £26,210 and an average cost per respondent of £20,848. Unless there are strong policy reasons for retaining professional disciplinary adjudication, the rising cost per case ultimately calls into question their role as a proportionate response to lawyer misconduct (see Boon and Whyte, 2019).

Tribunal proceedings

(1) Hearings

Lawyers' disciplinary proceedings are a judicial process following procedures set out in the Solicitors (Disciplinary Proceedings) Rules 2007 (S(DP)R).

They require that applications be backed by a statement setting out the allegations, the facts and matters in support (rule 5(2)). The Evidence Acts of 1968 and 1995 apply to proceedings unless rules of evidence are suspended by the SDT in its discretion (rule 13(1)). Although the Tribunal can compel attendance (Solicitors' Act 1974 s.46(11)) and evidence is given on oath, written statements of witnesses can also be accepted (rule 14). In the period of research, the burden of proving charges beyond reasonable doubt lay on the complainant (*Re A Solicitor* 1992, *Campbell v Hamlet* 2005), typically the regulator.

Lawyers guilty of profitable abuses have a strong financial incentive to delay proceedings. This may explain why, despite the low acquittal rate, many of the cases heard by the SDT are fiercely contested (Rose 2014). Delay in holding disciplinary proceedings is a potentially controversial issue (Hilborne 2017), not least because, unless the regulator intervenes in a firm while charges are pending, the public may be exposed to risk for longer.

(2) Types of charges

The charges solicitors face before the disciplinary tribunal are usually very broad and based on the six core principles of the Solicitors Practice Rules (SPR) 1990 (as amended) or the ten Principles of the SRA Code of Conduct 2011.[14] As in other jurisdictions, some respondents are charged under a catch-all category, such as "conduct unbecoming", covering serious infringements not covered by the rules. The criteria for "unbefitting conduct" were laid down in *Re A Solicitor* (1972). In that case, Lord Denning MR said that mere negligence was not enough; a solicitor's "unbefitting" conduct was "such as to be regarded as deplorable by his fellows in the profession" (ibid at 815f) or "a serious and reprehensible departure from the proper standards of a solicitor as a professional" (Swift 1996:12 as cited in Boon 2014: 267 note 84). Honest and genuine decisions on questions of professional conduct would not give rise to a disciplinary offence. However, if the decision was one no reasonable solicitor would make, the only conclusion could be that the solicitor failed, unreasonably, to address the issue (*Connolly v Law Society* 2007). That is then a disciplinary matter.

For our analysis, each charge as stated on the transcript was entered into an SPSS (Statistical Package for Social Sciences) database. Therefore, if a respondent breached ten accounts rules, ten charges were entered. The number of charges was significant because at that time the SDT could impose a maximum fine of £5,000 in relation to each proven charge. In total, the 279 respondents before the SDT in 2008 faced 854 charges, an average of 3.06 charges per respondent. This compares with Davies' 270 respondents yielding 974 separate charges, an average of 3.6 charges per respondent.

There are different ways of classifying the detailed charges brought in disciplinary cases. Most attempts generate multiple categories.[15] The SDT annual report uses seven broad categories of charge,[16] incorporating 28 sub-categories. According to SDT figures for 2008–9 the most frequent allegations involved, in equal measure, Solicitors Account Rule (SAR) breaches and general "breaches", at 34% each (Solicitors Disciplinary Tribunal 2008–9: 31–32).[17] These are followed at 17% by the various "failures" (ibid).[18] For the calendar year 2015, breaches of the SAR fell to 19% of the total charges with "failures" at 29% being the largest category and almost matched by general breaches at 27% (Solicitors Disciplinary Tribunal 2014–2015: 32–33). Next came criminal convictions and irregular dealings with client money at 11% and 10% respectively, a significant increase on the 2% and 5% reported in 2008–2009 (Solicitors Disciplinary Tribunal 2008–9: 31–32).

The three studies considered here used fewer categories, with the aim of being more explanatory. This is the reason for differences between the studies and the "official" data. Davies found that account rules breaches constituted nearly 44% of the whole of his sample, failure to reply to correspondence was next, at nearly 9%, followed by misappropriation of client funds at just over 8% (Davies 1998: 144). The quantitative data from 2008 suggests that breach of the SAR was still the most frequent charge type, representing nearly 41% of the total charges brought. A further 11% of charges involved failures surrounding information and advice giving. The quantitative data from 2015 shows that 63% of cases involved financial impropriety; 60% being straightforward breaches of the account rules. The high number of charges relating to account rule breaches and compliance failures is also reflected in the international literature (e.g. Haller 2001). Based on these data, we surmise that the official data under-represents financial misconduct.

One noticeable difference between the 2008 data and Davies' related to the second largest category of charges; failures around advice giving. This category was not included in Davies' study, although "misleading clients or others" represented 4.21% of charges. Other examples might have been included in his category of delay (Davies 1998: 144). The increase in the proportion of the SDT caseload represented by advice failures might be explained by the increased emphasis on client care over the period between the two studies. The concept of client care was introduced by the Solicitors Practice Rules 1990, in a rather brief rule 15. The issue became more salient in subsequent years, partly as a result of concern over increasing numbers of complaints. Provisions requiring that clients be informed about complaints handling procedures and kept up to date on the progress of their matter, were supplemented by the Solicitors Costs Information and Client Care Code 1999. A new rule was introduced to *The Guide to the Professional Conduct of Solicitors*, the notes to which warned that serious or persistent breaches of this code "of a material nature will be a breach of the rule" (rule 13.01, guidance note 1, as cited by

Taylor 1999). We conclude that making customer service a feature of codes of conduct leads to increases in related offences.

The general consistency in major charge type over time is remarkable, but professional discipline also reflects distinctive periodic crises and remedies. Davies' research took place during an explosion of conveyancing fraud, fuelled by competition in the lenders' market. At that time, around 59% of claims against the Solicitors Indemnity Fund arose out of conveyancing matters (Skordaki and Willis 1991). Three types of offence were prevalent; using client money to support the business, theft and mortgage fraud (Davies 1999: 153–9). These problems were tackled, if not resolved, by improved mortgage procedures (Boon 2014: 403–4). In 2008 the signal crisis generating offences was the so-called miners' costs scandal, the payment of banned referral fees and abuse of conditional fee arrangements, resulting in 14 cases in 2008 alone (Boon and Whyte 2012). In 2015, there was an apparent increase in solicitors involved in client fraud (see SRA 2016: 2) and failing to secure professional indemnity insurance (PII).[19]

(3) Previous appearances

Davies did not consider previous appearances, but it was found, both in 2008 and 2015, that some solicitors appearing before the SDT had appeared before. These instances tended to have occurred either a long time previously, when the solicitor faced different types of charges, or more recently, when the instant case and the previous offences were connected. Following a finding against a respondent, the tribunal heard about these previous findings and may have taken them into account in determining the sanction. Recidivism may be further evidence of the impact of certain kinds of practice context on behaviour. It may also, as Wald suggests, be the result of failure to learn from previous discipline and internalisation of poor practices rather than "innate badness" (Wald 2009: 315).

(4) Mitigation

Before the Tribunal determines a sanction, respondents are invited to disclose any mitigating factors. In *Bolton* it was said, however, that "considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases" (1994: 519). Despite this, mitigation was offered in most cases and did seem to have an effect; there was a strong correlation between providing no mitigation and being struck off (see next section), although this could be explained by other factors, such as the seriousness of offences or failure to defend the proceedings (e.g. *Asare* 2008). Solicitors were also more likely to be fined when accused of less serious offences which

they admitted or where there was no real risk that they would practice again (e.g. *Housiaux* 2008).

(5) Sanctions

The tribunal has the power to make such order as it thinks fit (S(DP)R 2007 (SI 2007 No. 3588) rule 18), including, striking off the roll of solicitors[20] (permanently or for a fixed period), suspension from practice, fine, imposing conditions on a PC, exclusion from legal aid work (permanently or for a fixed period), reprimand and an order for payment of costs (Solicitors' Act 1974 s. 47).

A striking off order means the solicitor may no longer practise (Swift 1996: 80). The SDT is under strong pressure to strike off where it finds a solicitor guilty of dishonesty. In *Bolton* the Court of Appeal said that

> [a]ny solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal … In [cases involving proven dishonesty] the tribunal has almost invariably, no matter how strong the mitigation, ordered [that the solicitor] be struck off … (1994: 518b-519c *per* Sir Thomas Bingham MR)

During the period covered by the later studies, the SDT applied the two-stage test for dishonesty set out in *Twinsectra v Yardley* (2002: para. 27 *per* Lord Hutton). First, it asked whether the conduct was dishonest according to the ordinary standards of reasonable and honest people and, second, whether the respondent realised that it was dishonest by those standards.[21]

As demonstrated in the Appendix, the incidence of sanctions did differ over time. Some differences can be explained by changes in the sanctions regime. There are, however, some anomalies. One such is the relative consistency of numbers struck off despite massive growth of the profession. Striking off falls within a narrow range: the minimum being 48 in 2014 and the maximum 84 in 2010. There was a dip in the percentage for striking off in 2008 compared with 1994–6 and 2015, the difference being made up by large increases in fines and reprimands rather than by an increase in suspensions, the most obvious alternative at that time. When the LSA empowered the SRA to impose small fines and reprimands on solicitors it allowed the SDT to impose unlimited fines (SDT 2014: para. 24). Since striking off usually follows a finding of dishonesty, and even a large fine is not a substitute sanction, the use of alternative sanctions should not be a satisfactory explanation of the phenomenon.

The most common order made by the SDT in 2008 was a fine (n.102) with an order to pay costs and reprimand (n.50). At the time, fines were limited to £5,000 for each proven charge (Harris 2009, 2011). The 67% decrease in fines (n.33) and 84% decrease in reprimands (n.8) in 2015 could be explained by

the SRA's new powers to impose these sanctions. It is, however, inconsistent with the long-term trend revealed in our Appendix. This shows that from 1994 the SDT's use of fines remained relatively steady at around 37% of total sanctions, then in 2007 the SDT increased its use of fines. This increase continued quite steadily, at approximately 42% of total sanctions, until a sharp decrease in 2014 which continued in 2015. This coincides with a significant decrease in the number of cases brought to the SDT. It probably also accounts for the increase in the rate of striking off, since serious cases are a more significant proportion of the smaller caseload.

When fines were imposed, they tended to be modest, despite the increase in the SDT's powers. In 2015, for example, the average fine was £15,800. The average order for costs in 2015 was £15,152, but it was not uncommon for costs to run to tens of thousands.[22] That year just over 94% of respondents were ordered to pay the costs of prosecution to the SRA. The regulator is rarely ordered to pay costs in the absence of dishonesty or bad faith since this might have "a chilling effect on the exercise of its regulatory obligations, to the public disadvantage" (*Baxendale Walker v Law Society* 2007: para. 39 *per* Judge J).

In most of the cases concluded by an RSA the costs were under £1,000. In most of these agreements the solicitor accepted a reprimand. The SDT practice of making high awards of costs creates a strong incentive for respondents to accept charges, thereby limiting the length of hearing and the amount of any costs payable. This is likely to be a serious pressure for solicitors facing financial problems or for those whose practices are in financial difficulty.

Regression analysis on 2008 and 2015 data found no significant correlation between a party's status and the severity of the SDT sanction; respondents were no more likely to be struck off if they were principals or associates. There were, however, significant correlations between striking-off and misuse of client money and dishonesty and for breaches of the accounts rules when substantial sums were involved (see also Case 2013: 96). We found some support in 2008 and 2015 for Cases' observation that the SDT sometimes avoided making dishonesty findings. This may be because the courts consider that striking off is appropriate for all but the least serious cases of dishonesty (see e.g. *SRA v. Dennison* 2012).

Respondents

The respondents' personal data available in SDT transcripts is gender, date of birth and date of admission to the Roll. The respondent's employment status is also usually noted. Where employment status is not mentioned it is generally discoverable in The Law Society's "Find a Solicitor" database. Other potentially relevant personal information, for example, the ethnic origin of respondents, is not recorded because it is sensitive personal data. Nor is such information

included in the database or the SDT transcripts. Below is an analysis of the available information in relation to respondents.

(1) Age and sex

It is difficult to compare Davies' data with the 2008 figures because he used age from the respondent's First Infraction Date (FID), which he argued was a more revealing indicator (Davies 1998: 152) than age at time of appearance. The 2008 study used the more conventional age at time of hearing, but the 2015 study also looked at the FID. Noting this qualification, across our time period, most respondents were in the 40–60 age group. Interestingly the over-60s group grew, relatively, since Davies' study. In 1996 it provided only 5.79% (ibid) of respondents but, in 2008, it provided 16.7% increasing to 29% in 2015. Between the 2008 and 2015 studies however, there do not seem to have been such dramatic shifts, except possibly in the increase in the over 70s age group, which rose by approximately 6%.

The preponderance of respondents in their forties is conventionally explained by life pressures, from families and firms, finance, disillusionment and opportunity, all of which can peak in middle age (Abel 2008: 46). Solicitors in this group may also be key workers in firms and therefore under greater pressure, increasing the risk of errors and misjudgements. Because they are workers with supervisory responsibility, they have greater opportunity for serious infractions (Abel 2008: 520–21). Solicitors in their forties made up the second largest group of PC holders in 2008 and 2015. The disproportionate increase in the number of practitioners over 60 is consistent with solicitors retiring later. There may also be tendency to 'end of career' risk-taking. Further research would be needed to discover the reasons for the shift and whether it is persistent. Table 1 compares Davies' finding on the FID with that of the 2015 study.

These data still suggest that the bulk of offences occur when respondents are middle aged, but there are some surprises in looking at the date of first infraction. For example, in 2015 the FID in nearly 6% of cases occurred before respondents had reached the age of thirty and in 3.4% of cases when the respondent was over seventy.

Table 1. Age Bracket of Respondents on First Infraction Date.

	1994–6		2015		
Age	%	Nos	%	Nos	%Change
20–29	2.15	6	5.9	7	+3.75
30–39	32.6	88	16.8	20	−15.8
40–49	46.4	125	33.6	40	+12.8
50–59	12.44	34	31.9	38	+19.46
60–69	5.79	16	8.4	10	+2.61
70–79	0		3.4	4	+3.4
Total	99.38	269	100	119	

Another area of importance is gender. In the international literature on lawyer discipline, respondents before lawyer disciplinary tribunals tend to be middle aged and male (Arthurs 1970, Abel 2008). Women entered the profession in increasing numbers from 1984 (Sommerlad et al. 2010: 10) and, although many subsequently left (ibid 6) overall numbers of women practitioners continued to climb. Over the period covered, women went from around 30% of the total number of practitioners in 1995 (Jenkins & Lewis 1995: 2) to nearly 45% in 2008 (Cole 2008: 5) and then to nearly 50% in 2015 (Law Society 2016: 7, ASR 2015: 7). Yet there was little increase in the proportion of women respondents before the SDT. Davies unfortunately did not note numbers of female offenders in his sample, possibly because there were none, but in the subsequent studies the proportion of women offenders were consistent: 19.2% of total offenders in 2008 (n.45) and 20.8% in 2015 (n.25), see Table 2.

Though there was a similar "middle years" pattern in the offending of men and women, there are also differences worth noting. These differences are less extreme in the lower age groups. In the 30s age range the numbers of women and men holding PCs in 2008 are within a thousand of each other and the number of women respondents is only half that of men. In 2015 the number of 30 something women holding PCs is over 8,000 more than the number of men, but they still represent only half of respondents before the tribunal. This gap increases in the higher age range. In 2008 there were roughly one third more male PC holders in the 50–59 age range than there were women and roughly one and a half more such men to women in 2015. Men, however, represent five times the number of SDT respondents in 2008 and nearly four times the respondents in 2015. Before concluding that women make more ethical lawyers, it is necessary to consider other explanations of these data.

The under-representation of women amongst practitioners in the higher age-brackets, which contain most offenders, may help to explain the significant under-representation of women overall. If one accepts the link made by criminologists between age, opportunity and misconduct (Weisburd et al (1991), cited by Abel 2008: 41) women are less likely to be present in practice at the age when serious offending typically occurs. This may also be linked to the kind of opportunity which only those in senior positions have. The current rate of growth of female partners remains sluggish with virtually two and a half male partners for every one female (19,884 compared to 8,241 ASR 2017 as cited by Baker 2018). Nor is it possible to rule out the possibility of systemic "chivalry bias" (Hatamyar and Simmons 2004: 827) in professional disciplinary matters; a tendency of investigators, prosecutors and tribunals to agonise before prosecuting or sanctioning women. Indeed, the qualitative work in both the 2008 and 2015 studies tended to confirm Case's (2013) hints at chivalry bias (Boon and Whyte 2019: 472). However, the 2015 study of "alternative

Table 2. Sex and age group of respondents appearing before the SDT and as a percentage of the population of practising solicitors.

	Women Appearing before the SDT				Women with PCs as a percentage of all PC holders				Men Appearing before the SDT				Men with PCs as a percentage of all PC holders			
	2008		2015		2008		2015		2008		2015		2008		2015	
Age	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
20s	1	0.4	0	0	12,694	11.34	9,877	7.4	1	0.4	0	0	7,497	6.7	5,875	4.4
30s	11	4.7	6	5	20,321	18.16	28,308	21.2	21	9	13	10.7	19,336	17.3	19,914	14.9
40s	19	8.1	7	5.8	11,663	10.42	16,636	12.5	70	30	28	22.8	16,304	14.6	19,157	14.4
50s	12	5.1	8	6.7	4,492	4.01	8,451	6.3	60	25.6	30	24.4	13,428	12	14,263	10.7
60s	2	0.9	4	3.3	570	0.51	1,765	1.3	35	15	17	13.8	4,793	4.3	7,720	5.8
70s	0	0	0	0	57	0.05	108	0.08	2	0.9	8	6.5	742	0.7	1,290	1
80s	0	0	0	0	0	0	0	0	0	0	2	1.6				
Total	45	19.2	25	20.8	49,797	44.49	65,145	48.8	189	80.9	98	79.8	62,100	55.6	68,219	51.2

disposals" found no evidence of a propensity of the regulator to deflect women from SDT appearances (ibid: 461).

(2) Post qualification experience

Analysis of the length of time between qualification and appearance before the SDT reveals a different picture to that produced by age analysis. In our samples we found that transgression peaks in middle age (40–60), whereas the post-qualification graph indicates that the period around five years after qualification is also important (see figures 1 and 2). Although Davies calculated post-qualification time-lag to the relevant conduct, rather than to the date of the hearing, his data suggests a similar early bunching for years since qualification compared to age (Davies 1998: 152: figures I and II).

This bunching suggests a possible link between late qualification and offending. Explanations of late qualification as a causal factor could include the background of respondents, their route into practice or personal circumstances. Late qualifiers may experience difficulty obtaining a training contract, enter less stable firms or practice alone. The spike at five years following qualification may be because solicitors cannot practice alone within three years of qualifying (SRA Practice Framework Rules 2011, rule 12.4).

Figure 1. Number of Years of Post Qualification Experience at Appearance in 2008.

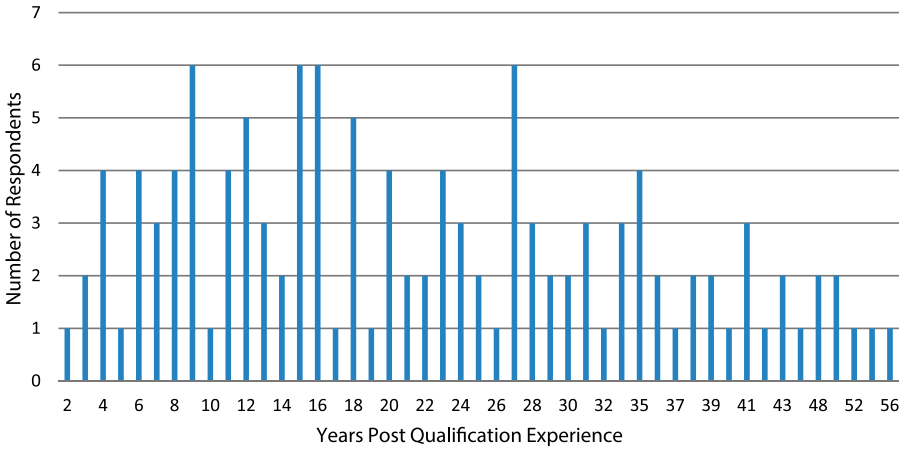

Figure 2. Number of Years of Post Qualification Experience at Appearance in 2015.

(3) Employment status and organisational type

Early criminological studies established that the type of organisation to which white-collar offenders belong is an important factor in transgressive behaviour (Sutherland 1983, Schlegel and Weisburd 1992). The same is true of lawyers. From Carlin's work on the Chicago Bar in the 1960s (Carlin 1962), numerous studies found the disproportionate representation of sole practitioners and small firm attorneys in disciplinary cases. The phenomenon is so marked that Abel has suggested forbidding sole practice as a simple way of reducing lawyer transgression (Abel 2008: 525). In interpreting the influence of organisational setting on offending it is necessary to have data on respondent status, which is reliably included in SDT transcripts, and firm size and type, which is not.

There are considerable shifts in relation to the data on respondents of different status compared to the proportion of respondents of that status in the general population. As depicted in Table 3, Davies found that sole practitioners were significantly over-represented, comprising over 50% of respondents (Davies 1998: 154: Figure IV) and only about 8% of practitioners (ibid, 155: Figure VII). Partners were, however, under-represented. In both 2008 and 2015 it was found that sole practitioners continued to be over-represented in proceedings before the SDT, but so too were partners. Another notable feature of these later data sets was that the number of non-principals, associate and assistant solicitors had climbed steadily over the period, from 8.2% of total respondents in 1994–6 to 27.3% in 2015.

These differences may be partly explained by changes in the size of solicitor practices over the period considered and, in particular, by a decline in sole practice. Davies suggested that in 1990 sole practitioners represented 7.94% of all practising solicitors (Davies 1998: 155: Figure VII). From 2000, there was a

Table 3. Comparison of SDT Respondent Employment Status Between 1994–6, 2008 and 2015.

	Percentage by status in 1994–6		Percentage by status in 2008		Percentage by status in 2015	
Employment Status	SDT Respondents	General Population	SDT Respondents	General Population	SDT Respondents	General Population
Partners	37.14	49	56.2	38.1	57	31.5
Sole practitioners	53.21	8	24.3	5.5	23.5	4.6
Associates/ Assistants	8.21	39	13.4	48.8	27.3	47.4
Others (e.g. consultants and trainees)	1.46	4	6.2	7.6	6.1	16.5
Total Population	270	53,731	279	83,329	132	91,062

small but steady annual decline in the percentage of sole practitioners from 6.8% of the total population of practitioners (Cole 2000: 19: Table 2.9) to a low point of 5.1% in 2006 (Cole 2007: 17: Table 2.9). By 2008 the proportion of sole practitioners had recovered slightly, to 5.5% of solicitors in private practice (Cole et al. 2009: 15: Table 2.9). Over the period there was also a large increase in numbers of associate solicitors, reflected in increased numbers appearing before the SDT. As Table 4 shows, however, firms tended to get bigger over the period, apparently leading to a decline in the total and relative number of 5–10 partner firms and 11–25 partner firms.

Based on Law Society statistical reports, Davies estimated that 10.7% of Principals were sole practitioners and 37.8% were partners in firms with between two and four partners (Davies 1998: 155: Figure VI).[23] In 2008, sole practitioners made up 12.5% and those in two to four partner firms were 27.5% of the total number of principals (ASR 2008: 25 Table 4.1). While the proportion of solicitors in small firms (i.e. sole practitioners and 2–4 partner firms) decreased, from 48.5% in Davies' study (1998: 155: Figure VI) to 40% in 2008, the numbers of these firms, and the proportion of the profession they represented, actually increased over the period. The increase in partners appearing before the SDT, from 37% (Davies 1998: 154: Figure IV) to 56.2% (Table 3, above) between 1994–6 and 2008 (and remaining at 57% in 2015, ibid) could be the result of marginal and under-capitalised sole practitioners and small firm lawyers, the stereotypical disciplined lawyers, seeking greater security in small partnerships. This conclusion may be borne out by the decrease in the average number of respondents per case between 2008 and 2015. In 2008 there were 59 cases with more than one respondent, with a mean of 1.75 respondents per case. In 2015 there were only 18 cases with more than one respondent, with a mean of 2.5. One explanatory hypothesis is that transgressing lawyers in small firms may involve others in misconduct.

Table 4. Private Practice Firms in 2008 by Government Office Region (GOR) compared with Respondents in SDT by GOR and as a percentage of the resident population.

Region	Private Practice Firms (per cent) in the region			SDT Respondents' Firms (per cent of total SDT pop.)		Percentage difference between GOR of SDT respondent firms and Private Practice Firms		Percentage of Resident population	
	1995	2008	2015	2008	2015	2008	2015	2008	2015
London (City & Greater)	23.4	27.8	31.9	31.2	35.1	+3.4	+3.2	*14.0	14.8
South East	22.8	14.8	12.4	10.4	10.6	−4.4	1.8	15.3	15.5
South West	9.2	6.7	7.0	5.2	8.5	−1.5	+1.5	9.5	9.4
Wales	5.9	5.0	4.5	3.5	4.3	−1.5	−0.2	5.5	5.4
West Midlands	8.4	7.9	8.0	8.7	7.5	+0.8	−0.5	10.1	10.0
East Midlands	5.3	5.6	5.7	2.9	1.1	−2.7	−4.6	8.1	8.1
Eastern	2.8	10.3	7.4	10.4	7.5	+0.1	+0.1	10.4	10.5
North West	11.0	12.0	13.4	11.6	17.0	−0.4	+3.6	12.9	12.4
Yorks & Humberside	6.6	6.9	6.9	11.6	6.4	+4.7	−0.5	9.5	9.3
North East	4.7	3.2	2.8	2.9	2.1	−0.3	−0.7	4.8	4.6
Abroad	0	0	0	1.7	0	+1.7	+1.7		
Total number of: private practice firms, SDT respondents' firms, and resident population	8,622	10,267	9,403	173	94			52,994 million	57.4 million

*The city of London represents less than 0.05%.

(4) location of practice

In order to see whether the location of firms was a factor in transgression, the firm at which the respondent worked was recoded into a Government Office Region (GOR).[24] This showed a rough correspondence between the numbers of private practice firms in GORs and the numbers of firms from those regions producing SDT respondents, as set out in Table 4. The most noticeable features of these data are that major conurbations have a proportion of SDT numbers relative to the number of firms in an area. Greater London is, for example, over-represented in both 2008 and 2015 by a similar percentage, whereas the East Midlands, the North West and Yorkshire and Humberside are over-represented in one of the periods only.[25]

A tentative explanation of these data is that areas with high populations of firms may have fewer repeat interactions between firms and hence there may be less surveillance of solicitors by solicitors than would occur in a smaller market. In Yorkshire and Humberside, for example, dysfunctional firms could be more visible. Similarly, the density of firms in the South East and no doubt, strong competition between them, may encourage reporting of suspicions about firms by other solicitors. A further consideration is that metropolitan areas may provide a cloak of anonymity to malfunctioning firms.

Consequences

The 2008 and 2015 studies tracked respondents using the Law Society's "Find a Solicitor" database.[26] This should be a reliable indicator of whether solicitors are practising; the SRA informed us that they could only be removed from the database if the circumstances are extremely serious (Burns 2012).[27] Three years after the appearance of individual respondents at the SDT in 2008, only 40% could be identified as still in practice, leaving nearly 60% who seem to have disappeared from the profession. These percentages remained high in 2015 where, a year and a half after appearance, around 70% of respondents were apparently no longer practicing and of the, roughly, 30% remaining, 5% of these did so as non-practicing solicitors. This may be explained by the fact that, in both years, these percentages include respondents who were struck off (17% in 2008 and 42% in 2015) and those sanctioned in their 60s and older (17% in 2008 and 25% in 2015) and who may then have retired from the profession. There were more respondents whose whereabouts were unaccounted for in 2008 (26%) than in 2015 (3%). In 2015 Company House checks found that some respondents had taken up directorships, generally in companies unconnected with legal services.

To ascertain how many of the firms associated with respondents were still in existence, we used the Law Society's "Find a Firm" database, supplemented by a Google search and, for 2015 firms, we also searched the SRA's "Law Firm

Search" database. We found that only 26.5% of the firms whose members appeared before the SDT in 2008 were either on the database or had their own, active web sites. Therefore, it appeared that 73.4% of firms had either changed their name, had limited web presence or ceased to exist.[28] In 2015 38.5% of the firms seemed to be still operating with 61.5% of firms unaccounted for. The SRA was surprised by this conclusion and explained it by suggesting that firms could opt out of being shown on the "Find a Firm" database (email correspondence on file with the authors). Given the disciplinary backdrop to some of these firms, it is a concern that they are given this opportunity. It appeared from a list of what the SRA calls interventions (closures) it undertook in 2008 (on file with the authors) that action was taken against 43 of the 181 firms. In 2015 the SRA intervened in 17 of the 94 firms involved in disciplinary proceedings and a further 41 of these firms closed independently.

One hypothesis for the disappearance of so many firms implicated in disciplinary proceedings is that that the financial and organisational difficulties that caused solicitors to breach professional rules in the first place, drove their firms out of business. It is disturbing that disciplined solicitors can disappear from the profession but reappear in the unregulated sector provided they are not held out as solicitors. Surprisingly there appears to have been no systematic tracking of such individuals or attempts to prevent them working for entities offering legal services.

Conclusion

From 1974 the solicitors' profession in England and Wales operated a regulatory system built around a disciplinary tribunal as part of a regime of professional self-regulation. Davies (2005) considered aspects of this system to be deeply unsatisfactory. He suggested that solicitors suspected of failings were investigated tardily and inefficiently, those struck-off for dishonesty offences were re-admitted to the roll and some went on to commit further offences. The retrospective role of the disciplinary tribunal meant that consumers often continued to be exposed, even while solicitors were under investigation.

In 2007 the LSA introduced independent regulation of the legal professions. This involved a number of structural innovations. An agency for independent investigation of complaints against all regulated lawyers (Legal Ombudsman) was introduced. Regulation of two vital areas, admissions and practice, was placed in the hands of an independent regulator, the SRA. While the disciplinary tribunal was retained as the final resort in disciplinary matters, the investigation and prosecution of cases was also placed in the hands of the SRA. It went on to introduce several changes across its areas of regulatory responsibility.

In practice regulation, the SRA required that firms nominate individuals to be responsible for the behaviour of their employees in relation to the areas of professional conduct and finance. This could be seen as part of a move towards a different system of regulation, Proactive Management-based Regulation (PMBA) (Schneyer, 2013–14), which has been advocated as a means of building the ethical infrastructure of law firms (Chambliss and Wilkins, 2002) and therefore consistent with professionalism. In the context of England and Wales, at least, we have argued that, rather, this is part of a systematic shift towards new means of "regulating the self" consistent with neo-liberal regulatory philosophy (Boon and Whyte 2019). Thus, some features of regulatory strategy are consistent with Foucault's observation that modern notions of discipline are more likely to focus on regulating the locus for misconduct, the *environment*, rather than punishing the offender (Lemke, 2001).

While PMBA has arguably showed some results (Boon and Whyte 2019), we also find possible support for our interpretation. An example is the LSA provision allowing the SRA to impose relatively small fines (£2,000 maximum) for minor misconduct, which arguably had more demonstrable impact. This new power, which was part of a suite of "administrative sanctions", was generally used with RSAs, growing numbers of which allowed individuals accused of misconduct to agree to relatively minor sanctions in order to avoid a tribunal appearance. Growing use of these administrative sanctions points to move towards a more informal and less juridical system of professional discipline. Some evidence for such a conclusion may be found in Appendix 1. Cases presented to the SDT fell below 200 for the first time over the 20 year period in 2013 and remained there for the next two years. There was also a significant reduction in the numbers of fines imposed by the SDT in 2014 and 2015. In both these examples, it is too early to say whether the decline will continue.

The new approach enabled the SRA to be more pro-active in disciplinary matters. It could deal more swiftly and effectively with minor breaches of rule, such as failure to file accounts, which are often symptomatic of deeper failings within firms. This enabled more targeted interventions across a spectrum of behaviour using a suite of regulatory controls. These went from noting and monitoring minor infractions up to prosecuting more serious cases in the disciplinary tribunal. Consequently, more cases of misconduct could be dealt with swiftly and proportionately at an earlier stage. Early action is more likely to prevent consumer harm. Our data do not suggest, however, that there has been significant change brought about by ending self-regulation. There has been a fall in the numbers of SDT cases, but it seems implausible that this has been achieved by improvements in behaviour. Indeed, some features of the profession present challenges to establishing ethical infrastructures in firms.

Over the period we examined, the largest category of SDT respondent are men in their 40s to 50s, either sole practitioner or small firm partner. This is consistent with most international data (e.g. the series of studies by Levin, 1998, 2004, 2012 and 2013 and Arnold and Hagan as cited by Sklar, Taouk et al. 2019). Law Society data (ASR 2018) shows that women practitioners now comprise 50.1% of the profession in England and Wales. Davies' data did not mention women offenders, possibly because there were none. This has certainly changed, but the number of female offenders has not increased proportionate to their number in the profession. Above we note possible reasons for this, some of which are also reflected in the international literature.

The predominance of small firm lawyers in disciplinary cases is usually explained by factors inherent in sole practice: lack of firm infrastructure, the absence of peer and hierarchical controls, business and personal financial pressures and the presence of greater opportunity for undiscovered transgression. The continuation of previous trends in relation to small firms suggests that they may also be resistant to establishing internal ethical infrastructure. These difficulties could be linked to other features of such firms such as the type of work conducted.

We found that, over time, particular areas of lawyer work are linked with disciplinary action. Although each period tended to have a category of entirely novel cases, other classes of infraction persisted. Breaches of the SAR were the most frequent charges brought to the SDT in 1995, 2008 and 2015. This complicates analysis of misconduct by area of work. Reliance on SAR charges may be because accounts breaches are the easiest offences to prove. The rules can be complex, confusing and difficult to comply with, leading to many technical breaches (Hyde 2017). The SRA's continuing efforts to simplify financial regulation (SRA 2019) may lead to fewer such cases. Each period had a number of cases in an entirely novel category. We suspect that a long view of misconduct cases in other jurisdictions would find caseloads demonstrating both predictable mundanity and unpredictable exceptions (Witte 2018, Covington 2018).

Schneyer (2014–15) argues that there is no need to end self-regulation in order to adopt a more proactive regulatory system. We agree this is so. Indeed, many of the measures used by the SRA, such as RSAs, were initiated under self-regulation. The new regime shows marked developments from the old one. There may be a question about whether a self-regulatory regime would be persistent in applying the new methods in order to achieve results reported here. Davies (2005) argued that regulators drawn from the regulated profession may be "self-deluded" regarding the transgressive propensities of their peers.

While proactive measures can be adopted by self-regulated professions, our data shows that some new systems may not co-exist easily with existing

structures. There is, for example, tension between the SRA's use of administrative sanctions and the use of disciplinary tribunals. Although, over the period of our study the numbers of solicitor practitioners nearly doubled, the SDT caseload shrunk to a current low of fewer than 150 per annum. The increase in "alternative disposals", such as regulatory settlement agreements, may partially explain this. This proactivity by the practice regulator increased the cost of each tribunal case. If the SRA continues to gain increases in its power to sanction, even in the level of fine, the resulting decline in caseload may call into question the viability of a permanent disciplinary tribunal.

Notes

1. This included cases initiated in previous years and excluded initiated in but concluded after the years in question.
2. The Statistical Package for Social Scientists, IMB SPSS 19, was used to analyse the data. Each line of SPSS represented one SDT case, and variables were categorised, coded and recoded to allow the information to be collapsed and combined. All percentages cited here are valid percentages (calculated by excluding missing data).
3. For example, whether a firm's accounts books had been inspected or the exact process by which respondents came to appear before the SDT.
4. Though the Law Society's database contains details of practising certificate holders and thousands of law firms (UK and worldwide), a supplemental Google search was also made in relation to all firms.
5. For example, the national distribution of solicitors by position and by type of firm was based on the Law Society's Annual Statistical Reports 1985–90 (Davies 1998: 155).
6. Set up in 1986 the SCB was replaced by the Office for the Supervision of Solicitors (OSS) on 1st Sept 1996 (Davies 1998: 147 and note 42, p.170). This was renamed the Consumer Complaints Service (CSS) in April 2004 and in January 2007 the CSS was replaced by the Legal Complaints Service. The Office for Legal Complaints (OLC) was established under the LSA (Slapper and Kelly 2009: 327) and established the Legal Ombudsman (LeO) to resolve complaints about lawyers and claim management companies. LeO began accepting complaints on 6th October 2010, see www.legalservicesboard.org.uk/about_us/office_for_legal_complaints.
7. A creation of the LSA established in 2010.
8. Information on the source of referrals in 2015 was missing in 27 cases.
9. The potentially significant difference between justified complaints and misconduct could be material in comparing international data.
10. A former employee of the Law Society informed us that employment restrictions were widely used instead of disciplinary proceedings.
11. In 2008 the SRA successfully asked High Court judges to summarily strike off solicitors in the course of litigation (Interview 3: regulatory professional).
12. The new SRA Account Rules 2019 are six pages comprising thirteen rules (www.sra.org.uk/solicitors/standards-regulations/accounts-rules/).
13. The SRA supplied copies of nine agreements following a freedom of information request reference FOI/BS/1367 (2015) and provided details of the remaining agreement.
14. This reduced to seven on 25th November 2019 when the new *SRA Standards and Regulations* replacing the *SRA Handbook* came into force, see www.sra.org.uk/handbook/ accessed 8 May 2019.

15. Haller's study of disciplinary hearings in Queensland, Australia between 1930 and 2000 produced 81 individual charge types (Haller 2001).
16. Criminal conviction, accounts rule breaches, clients' money, failures (e.g., failure to pay counsel's/agent's fees, comply with undertaking, or provide costs information), general breaches, delays and other.
17. Note, general "Breaches" included, for example, breach of the Solicitors Practice Rules, breach of the Solicitors Publicity code and breach of the Solicitors Introduction and Referral Code.
18. Failure to: pay counsel's/agent's fees, comply with undertaking, comply with OSS direction/resolution, failure to account, provide costs information, supervise, comply with Solicitors Separate Business Code, respond to OSS/others and comply with Solicitors Indemnity Rules. By 2015 reference to the OSS had been replaced by reference to the SRA.
19. This followed the 2011 decision to close the Assigned Risks Pool, the safety net for solicitors' firms unable to obtain client liability insurance on the open market. See, SRA Indemnity Insurance Rules 2012 as amended by the SRA Indemnity Insurance Rules 2013 (www.sra.org.uk/solicitors/handbook/indemnityins/content.page) and R Collins "Why the SRA Replaced the Assigned Risks Pool" LSG 21 July 2011, https://www.lawgazette.co.uk/analysis/why-the-sra-replaced-the-assigned-risks-pool/61455.article (accessed 16 October 2017).
20. The SRA keeps a list of all solicitors of the Senior Courts of England and Wales, called "the roll" (SRA 2011).
21. See now, *Ivey v Genting Casinos* [2017] UKSC 67, which has made both limbs of the test objective.
22. This tended to happen in cases of joint liability. For example, *In the Matter of Brian William Copley et al.,* (2008) ten parties were each fined £1,000 and were jointly and severally liable for costs of £24,000. Individual respondents have also been liable for costs disproportionate to fine, such as, *In the Matter of Clive Arthur Sharples* (2008) a fine of £5,000 was handed down and costs awarded of £17,000.
23. Davies figures cover 1985–90 and are thus different to the Law Society's figures for 1995. We include the Law Society's figures in our table to ensure consistency with of use of the Society's figures throughout our article.
24. Government Office Regions (GOR) in England and Wales closed on 31 March 2011 but the Office of National Statistics retains the GOR coding. Since April 2011 GORs are referred to as Regions (Office of National Statistics: Undated).
25. Law Society Annual Statistical Reports (1995) Table 3.16 p.28, (2008) Table 3.5 p.23, (2015) Table 3.5 p.25. Location was not a factor considered by Davies and thus data is missing for 1995.
26. For 2008, tracking took place during November and December and for 2015 during June and July 2016.
27. We are grateful to the SRA, and particularly to Chris Burns, for details.
28. Firms have "a limited web presence" where they could only be found in web directories such as The Law Directory (2015) and The Independent Directory (2015). These are not necessarily up to date and are unreliable indicators that firms still exist.

Disclosure statement

No potential conflict of interest was reported by the author(s).

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Appendix. Key Statistics on Solicitor Discipline 1994–96 and 2000–2015[a].

Table A1.

	1994–96	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Struck off the roll		73	62	77	78	52	54	63	67	61	57	84	79	52	75	48	56
	44.9%	35.78%	30.54%	37.94%	35.45%	29.38%	26.47%	32.81%	31.60%	22.59%	19.93%	23.08%	25.32%	21.22%	32.47%	48%	47.06%
Suspended (indefinite & fixed period)		38	29	39	39	38	42	39	33	47	37	44	52	60	43	14	15
	16.54%	18.60%	14.29%	19.21%	17.73%	21.47%	20.59%	20.31%	15.57%	17.41%	12.94%	12.09%	16.66%	24.49%	18.61%	14%	12.61%
Fined		72	78	75	83	70	79	64	86	110	122	172	119	102	81	29	33
	37.13%	35.29%	38.42%	36.95%	37.74%	39.55%	38.73%	33.33%	40.57%	40.74%	42.66%	47.25%	38.14%	41.63%	35.06%	29%	27.73%
Reprimanded		14	29	4	14	12	17	16	20	37	55	49	36	19	18	2	8
	1.5%	6.86%	14.29%	1.97%	6.36%	6.78%	8.33%	8.33%	9.43%	13.70%	19.23%	13.46%	11.54%	7.76%	7.79%	2%	6.72%
No order/		7	5	8	6	5	12	10	6	15	15	15	26	12	14	7	7
Costs only order/ Case dismissed	0.74%	3.43%	2.46%	3.94%	2.73%	2.82%	5.88%	5.21%	2.83%	5.55%	5.24%	4.12%	8.33%	4.90%	6.06%	7%	5.88%
Total Number of Disciplinary Orders[b]	?	204	203	203	220	177	204	192	212	270	286	364	312	245	231	100	119
Total Number of 'Cases' (Applications received by the SDT / Hearings Determined)[c]	270	276	207	227	205	215	235	212	249	262	268	273 (259)	227 (227)	239 (202)	166 (125)	117 (91)	140 (126)
Number of Solicitors Holding Practising Certificates (PCs)[d]	66,123	82,769	86,603	89,045	92,752	96,757	100,938	104,543	108,407	112,433	115,475	117,862	121,933	128,778	127,676	130,382	133,376
Percentage of Applications received to Number of Solicitors with PCs	0.40%	0.33%	0.24%	0.25%	0.22%	0.22%	0.23%	0.20%	0.23%	0. 23%	0. 23%	0. 23% (0.22%)	0. 19% (0.19%)	0. 19% (0.16%)	0.13% (0.10%)	0.09% (0.07%)	0. 10% (0.09%)

[a]1994–96 figures were taken from Davies (1998: 143 and 160). The remaining figures for the disciplinary actions against solicitors are taken from the Solicitors Disciplinary Tribunal Annual Reports 2000–2015. Until 2013 the SDT collated its figures from 1st May to 30th April. From 2014 onwards, the tribunal adopted the calendar year 1st January to 31st December. For the purposes of comparison, we maintain the statistical year to 30th April.

[b]'Orders' include very small numbers where no order was made, a costs only order was made or the case was dismissed. They exclude applications for restoration to the roll, where no allegations sustained and orders with regard to clerks, the figures for wich are small.

[c]We used the annual number of applications received by the SDT as an indicator of the total number of disciplinary actions it heard. The SDT's 2010/2011 report introduced a new performance measure for the determination of hearings (the figures appearing in brackets). There are minor differences between the two measures.

[d]These figures are taken form the Law Society's Annual Statistical Reports 2001–2016. The reports collate annual figures to 31st July of the year in question. It states that 2013 and 2014 figures are not directly comparable due to changes in the way ASR data was sourced, but that the increase is consistent with growth in practising certificates holders (LS ASR 2015: 7).