



The Law Society

Review of the minimum salary requirements for trainee solicitors

Response to the SRA consultation

April 2012



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Introduction

The Law Society is the representative body for more than 140,000 solicitors in England and Wales. The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

The Law Society welcomes the opportunity to comment on the SRA's review of the minimum salary requirement for trainee solicitors and our response to the Consultation Questionnaire is attached at **Annex A**.

In the Law Society's view, it is unfortunate that the Solicitors Regulation Authority (SRA) has chosen to consult on this issue at this time. Consideration of this issue is premature in the light of the ongoing Legal Education and Training Review. It cannot be possible to make a considered decision on this important and emotive matter when, as both the SRA and the Legal Services Board (LSB) have indicated, there is the potential for such radical change in the future landscape of education and training for solicitors in England and Wales. The regulation of the minimum salary for trainee solicitors should not, in our view, be dealt with as a discrete issue. Instead, it would more appropriately be addressed within the wider scope of the Review, or alternatively, post-Review when the SRA consults on any changes to the education and training regime that it proposes to make.

The Law Society has, in the past strongly supported the existence of the minimum salary for trainees and this remains our position. We maintain that the minimum salary provides an appropriate safeguard to ensure that trainees are not exploited and are, as far as possible, able to focus on improving their knowledge and skills without the undue distraction of financial worries. In addition, we feel that the minimum salary provides an important role in promoting equality of opportunity for those from less wealthy socio-economic backgrounds to enter and subsequently progress within the profession.

It is clearly appropriate that the SRA should periodically review its regulatory role, especially in light of its move to outcomes focused regulation (OFR). However, it is also appropriate that the impact of any changes to that role, such as those flowing from the potential deregulation of trainees' salaries, should be fully considered in light of the impact on current and prospective members of the profession, the drive to increase rather than diminish social mobility and in the context of the ongoing holistic review of the education and training regime.

The SRA has stated its intention to undertake a full equality impact assessment (EIA), which will feed into the decision making of their Board. We question why an EIA was not conducted prior to consultation, which would have informed both the SRA in outlining its proposed direction of travel and consultees so that they could make a more informed response.

The Law Society has conducted its own EIA on the issue, which is annexed to our response (**Annex B**). From the impact assessment, it may be foreseen that the increase in university tuition fees may lead growing numbers of potential solicitors to decide that

the debts they will incur in pursuing a career in law make the traditional route impractical for them to follow.

The changes made to the consultation mid-way through the consultation period highlight the lack of understanding that the SRA has of the situation that will result from the de-regulation of the minimum salary. It is unacceptable that a trainee solicitor be paid £2.60 an hour for the first year of their training. The SRA Board itself accepts this, which leads to the contradiction within the consultation document between the argument on the one hand that the SRA has no regulatory responsibility for the minimum salary and on the other, the offer to retain responsibility for regulation in light of the new information, but to reduce the minimum salary in value.

Alternative routes to qualification, which enable students to support themselves whilst they train, may gain favour, but these could lead to a two tier entry system into the profession where the faster entry route, which is most likely to be open to those who are well paid or who can afford to take less well paid posts, will be perceived to be superior to the slower alternative.

The legal profession in England and Wales is one of the most respected in the world and the training of future professionals is key to maintaining this reputation. Whilst it may be that some firms might consider taking on a trainee if the minimum salary requirements were dropped, the SRA should consider fully whether such firms have adequate infrastructure and experience to properly and effectively support a trainee in these circumstances.

Annex A

Review of the minimum salary requirements for trainee solicitors

Consultation questions

Question 1

On the basis of the regulatory principles set down in the Legal Services Act, do you think there is a regulatory role for the SRA in setting a minimum salary for trainees?

The SRA has a regulatory objective under Part 1 of the Legal Services Act 2007 to 'encourage an independent, strong, diverse and effective legal profession'. In this light, we note the SRA's own equality and diversity plan for 2011/12, which states at objective 6, that it will 'seek where possible to reduce...disproportionality' in relation to BME solicitors.

The removal of the regulated minimum salary in favour of the statutory minimum wage may have two effects. It may mean that more training contracts will become available as firms find that they can afford to pay a trainee the lower rate, where they might not have been able to afford the existing minimum salary. On the other hand, it may simply have the effect that firms reduce the amount that they pay their trainees at the lower end of the scale. The difference in amount between the minimum salary and the minimum wage, at which the SRA is now proposing to set the minimum salary either at apprentice or general level, is not great and it may well be thought unlikely that a few thousand pounds would make much difference to a firm considering whether or not to offer a training contract.

It seems likely that any decision made will only affect firms currently paying the minimum salary or who do not currently take trainees. BME and female solicitors are currently over represented at this end of the wage scale and it seems very likely that they would be disadvantaged by any reduction in the minimum payable. Equally, there is likely to be a disproportionate impact on potential trainees from disadvantaged economic backgrounds. This is especially true should the SRA Board decide in favour of relinquishing regulatory responsibility altogether. It is likely that many potential solicitors would be unable to undertake a training contract with wages of £2.60 an hour and this would have a knock on effect on the overall profession as the law became seen as a career only for those who were able to self fund their training years. The idea of an elitist profession is one that solicitors have been trying to move away from and the SRA has a regulatory duty to encourage an independent, strong, diverse and effective legal profession supports this aim. This would be undermined if this option were taken.

Under the current arrangements for qualification, in order to get to the point of applying for a training contract, such individuals are likely to have incurred material levels of debt. The prospect of a further two years where they may not be able to earn adequately will be a significant factor for many in influencing their decision as to whether a career in law is an attainable goal, with many potentially concluding that it is not. As a consequence there is a significant risk through these proposals, of a retrograde set in terms of both social mobility and diversity within the profession.

The SRA's principle 9, as set out in the Code of Conduct 2011, requires that solicitors and regulated entities 'run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity'. Given that the SRA requires all regulated person and entities to comply with the Principles as the fundament of ethical and professional conduct, we question the justification for enabling firms to offer conditions of training that are very likely to negatively impact upon these laudable aims.

The rule of law can only be upheld where the public have access to justice and it is appropriate in this regard, that the solicitors' profession should reflect the society that it serves. Should the SRA choose to pursue the option of relinquishing its regulatory responsibility for the minimum salary it will be jeopardising the diversity of the profession and thereby the number and variety of solicitors required to suit the needs of a diverse client base.

Question 2

Do you have any comments on the compatibility of the SRA's strategy of outcomes-focused regulation with the setting of a minimum salary?

As a public authority for the purposes of the Equality Act 2010, the equality duty requires the SRA, in the exercise of its public functions, to have due regard to the need to advance equality of opportunity between people who share a protected characteristic and those who do not. In moving to an outcomes focused regulatory approach the SRA should not lose sight of its responsibilities in this area

We do not accept that the adoption by the SRA of OFR enables it to reduce the scope of its statutory objectives and duties. As was made very clear in the consultations leading towards the adoption of OFR, there will be a number of areas where some outcomes and behaviours are close to mandatory. It is not inconsistent with OFR to require an outcome to provide a minimum salary for what is currently a mandatory element in the process of training to become a solicitor. The current regulatory requirement to pay a minimum salary to trainees is designed to ensure access to the profession and encourage diversity. This sets it apart from other areas where, rightly, the SRA plays no role in setting salaries or other costs.

Question 3

To what extent do you think the removal of the minimum salary requirement will result in employers reducing the salary paid to trainee solicitors?

Without further information and analysis it is not possible to reliably predict the likely implications of removing the minimum salary requirement. However, it is clear that the SRA should not relinquish its role in this area without thorough investigation of the repercussions, to ensure that this move will not be detrimental to the profession and those seeking entry to it in the future.

Information on the number of waivers for the minimum salary requested each year may be a useful indicator of any possible movement down the pay scale that may result from

deregulation of the minimum salary. This information has been repeatedly requested from the SRA but as yet, a full set of data upon which an opinion could be based has not been forthcoming.

As indicated above, the Law Society has completed an EIA, the results of which are outlined in response to question 6 below. This EIA suggests that the removal of the minimum salary requirements would give rise to the potential for further barriers to entry into the profession, namely, that the increased likelihood that salaries at the lower end of the scale will reduce, discouraging people from joining the profession.

When the SRA last consulted on this issue, in 2007, and provided an accompanying Impact Assessment, the economy was relatively buoyant as compared to the present day. Since then, the economy has entered a severe recession and as a result we are living in a time of widespread economic difficulties for both individuals and business alike. In light of these changes, we would suggest that statements made by a number of firms in 2007, to the effect that that, given the opportunity to do so, they would not reduce the salary of trainees, can no longer be relied upon. Increased financial pressures on small firms, in particular, many traditional high street practices, legal aid lawyers and small conveyancing practices, may well drive the reduction of trainee salaries as a cost saving measure.

In response to the consultation conducted by the SRA in 2007, 49% of respondents felt that removal of the minimum salary would cause undue hardship and/or exploitation of trainees and 20% felt there would be a reduction in diversity as a result of removing a minimum salary. The nature of these responses tends to suggest that the respondents felt that the removal of the minimum salary would result in the reduction of the overall salary for trainees.

Question 4

To what extent do you think the removal of the minimum salary requirement will discourage individuals from less wealthy backgrounds from pursuing a career as a solicitor?

In the absence of reliable evidence and further analysis, it is not possible to state with any certainty to what extent individuals from less wealthy backgrounds may be disadvantaged. However, although it would not seem likely on face value that the reduction of the minimum salary by a few thousand pounds, bringing it into line with the national minimum wage, would make a significant difference to employment levels in the overall context of hiring, training and remunerating trainees, the factors set out in our responses to questions 3 and 6 suggest that the removal of the minimum salary would have a negative impact on social mobility. As stated in questions 1 and 7, the effect of removing the minimum salary and relying on the minimum wage for apprentices, would however likely have an even more negative impact on social mobility for those seeking to enter the profession.

The extent of any potential discouragement that might result from these proposals would depend on the individual concerned, the prevailing economic circumstances at the time and possibly on the amounts involved, but as things stand within the current economic climate, they cannot be expected to be conducive to encouraging the aspirations of this

group of potential solicitors. Higher tuition fees for university and postgraduate training will result in far higher levels of debt for future graduates. Without the benefit of parental or other sources of financial support, employment opportunities will need to command relatively higher rates of pay in the early years, in order to be attractive to those of this demographic looking to embark on a professional career.

Where the solicitors' profession is concerned, the additional costs associated with completing the LPC and the disparity in the number of training contracts available to those who do will likely compound this situation. The additional financial burden of not being in receipt of an adequate wage during the two mandatory years of the training contract, will surely impact on the decisions of those from less wealthy economic backgrounds as to whether they pursue a career as a solicitor, with many potentially deciding that they simply cannot afford to take the financial risk.

The argument, posited in question 5 below, that the removal of the minimum salary might benefit the wider trainee pool through encouraging firms to offer more training opportunities and thereby increase access and social mobility, is not tenable in the context of the financial pressures alluded to above. Any increase in training provision as a result of the removal of the minimum salary would most likely occur at the bottom end of the pay scale, as firms previously unable to afford to take on a trainee might do so if the expense was lessened. This is unlikely to encourage individuals from less wealthy backgrounds, as it will only increase the number of placements for which an individual is likely to need outside financial support in order to take up.

Question 5

To what extent do you think the removal of the minimum salary requirement will encourage some employers to take on trainees or to take on more trainees?

It may be that a small number of firms would decide to take on a trainee, as they may consequently be required to pay them less. However, the interaction with the national minimum wage needs to be carefully considered. Most trainees will work more than 35 hours per week and, therefore, the costs to the employer are unlikely to be significantly lower than the present minimum salary and, therefore, it must be doubtful that the number of additional training places will be very great. In any case, this is likely to be at most a small number, as the drop in salary cost is likely not as significant to a business as the cost of training and supervising that trainee. Taking on a trainee is not the same as taking on another employee and it is clear that some firms will employ LPC graduates as paralegals rather than trainees, thus gaining the skills, knowledge and output of a trainee without the associated responsibilities.

The SRA has not produced any evidence to support its assertion that the potential for a small uplift in available training positions at the lowest end of the salary scale justifies the retrograde step of reducing the minimum salary across the board. The rationale that the SRA has put forward for its proposed policy is predominately founded on its overarching strategy of moving to an outcomes focussed regulatory approach. The potential for any increase in the number of training contracts resulting from this policy is evidently an incidental rather than a targeted result and should not be relied on to justify this proposed policy approach.

Question 6

Are there any potential equality issues we should consider in deciding on our future role in regulating minimum salaries for trainees?

From all the information contained in the consultation document it does not seem that the SRA fully understands the impact that this change will bring. This is especially true given that the drop in potential wages is now exacerbated by the status of trainee solicitors as apprentices, on vastly reduced wages. This was not a consideration when the SRA put out the consultation, or when engagement events were held with equality and diversity groups. Whilst a number of potential outcomes have been stated, there is currently insufficient information to judge which of these is the most likely.

The Society welcomes the intention of the SRA to conduct a full equality impact assessment to gain a fuller picture on which to base its decision, but it is unacceptable to issue a consultation on a proposal that may have such a significant effect on the future of the profession without including this essential information within the consultation document, so that respondents may have the opportunity to comment.

The concept of due regard, as described in the general equality duty requires the SRA to "remove or minimise disadvantage suffered by persons who share a relevant protected characteristic". Where disproportionate adverse impact is identified, as it must be here, even given the partial equalities data in the consultation document, it is required that the degree and extent of any disadvantage for protected groups is fully considered and the impacts eliminated, mitigated and/ or justified if possible. The consultation does not outline any way in which this has been done.

The Law Society's own equality impact assessment recommends that the minimum salary should be retained. It concludes that the removal of the minimum salary has the potential to exacerbate the existing equality problems in respect of entrance and progression within the profession. By retaining the minimum salary, positive equality impacts for trainees from BME or economically disadvantaged backgrounds as well as for women can be maintained. Whilst it may be true that the issues of inequality of pay for BME and female trainees have not been solved by the minimum salary there is scope for the disparity to be increased by its removal.

The end of a minimum salary for trainee solicitors would impact upon the profession as a whole and especially the diversity of the future profession. Socio-economically, the potential impact could result in far fewer entrants into the profession from less wealthy backgrounds. BME trainees are over represented at the less wealthy end of the socio-economic scale and would therefore be disproportionately affected.

Question 7

In light of the amendment to paragraph 24 of the consultation document - see also the introductory note to this consultation - is there anything further you would add regarding the potential impacts of the proposed changes?

As is detailed in the responses to questions 4 and 6 it is the opinion of the Law Society, based on our own Equality Impact Assessment that the impacts of this change upon the

profession and future entrants to the profession, will be negative. Potentially reducing the wage upon which trainees would have to rely to £2.60 an hour will only increase the risk of negative consequences.

Many people on the minimum wage have to seek additional employment to pay living costs. It could be seen that without reasonable financial payment, such as the current minimum salary represents, this may be the only recourse for some trainees. The effect of this on their ability to devote themselves fully to their training are clearly negative. There is also the side effect that trainees would qualify for housing benefits. This is not the type of image that benefits the profession and it is not the path to promoting social mobility and diversity within the profession.

Question 8

In light of the amendment to paragraph 24 of the consultation document, would you be in favour of an option to retain an SRA prescribed minimum salary set at the level of the standard national minimum wage?

The addition of this question directly contradicts the position put forward in the consultation paper that the SRA does not believe that it bears regulatory responsibility for setting the minimum salary for trainee solicitors, having reviewed the issue in the context of its move to an outcomes focused approach to regulation. For the reasons highlighted in the answer to question 1, the Law Society does not agree with this position and it would seem that the SRA Board are also rethinking it. By suggesting that the minimum salary would be retained as a regulatory responsibility in the amendments to the consultation document, albeit at a lower rate, the SRA is now suggesting that it might in fact believe that it has a regulatory responsibility in this area. If so, we would then question the somewhat arbitrary decision to decrease the regulated level of the minimum salary and the basis for doing so.

If, as the Law Society would suggest, the SRA maintains the regulation of the minimum salary it should be done at a level that encourages entrants into the profession. As outlined above the Society does not believe that the national minimum wage of £6.08 per hour is an acceptable level.

The SRA has also not given consideration to how to work out what the new minimum salary would then be. Anecdotal evidence is that very few trainees do 35 hour weeks, or even 40 hour weeks. The consultation does not suggest whether they would attempt to regulate hours worked, in setting a salary to ensure that this hourly wage measure was being met, or whether they would leave the setting of the salary to each training contract provider, who would then ascertain the hours a trainee works and set a salary accordingly. If they chose the latter the SRA would have to ensure that this was being met, which would increase the regulatory burden in this area.