

## Consultations

### Review of the minimum salary requirement for trainee solicitors

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20 March 2012

Debates about the appropriateness of the Law Society and the SRA intervening in the market for trainee solicitors through the setting of a minimum salary have been continuing since 1992 and the issue has been the subject of a number of previous consultations. The SRA Board has now considered the requirement against its regulatory strategy and objectives and has decided to review its role in this area.

We would value your input into the review.

**Note added 20 March 2012:** please note that since publication of the consultation document, the SRA has received advice that trainees would be apprentices within the terms of the National Minimum Wage Regulations. As a result of this advice, we have amended paragraph 24 of the consultation document to show the minimum rates of pay which would apply under the legislation. We have also added two new questions (7 and 8) to the consultation. The SRA Board will be giving careful consideration to the potential impacts of this advice.

## How to participate in the review

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### Consultation

See consultation paper below.

### Confidential research survey

Go to [www.sra.org.uk/minimum-salary-survey](http://www.sra.org.uk/minimum-salary-survey)

You can read the consultation paper below or download it.

The consultation period ends on **10 April 2012**.

How to respond

### Introduction

1. A compulsory minimum salary for trainee solicitors has been prescribed by the Law Society, and now the SRA, since 1982. The requirement predates the introduction of a national minimum wage<sup>1</sup> and was introduced by the Law Society to protect trainees from exploitation and to encourage high calibre graduates into the profession.
2. Since 2007, the setting of the minimum salary has been the responsibility of the SRA but it is unclear how this requirement fits with the SRA's regulatory remit and current strategic direction.

3. Debates about the appropriateness of the Law Society and the SRA intervening in the market for trainee solicitors through the setting of a minimum salary have been continuing since 1992 and the issue has been the subject of a number of previous consultations. The SRA Board has now considered the requirement against its regulatory strategy and objectives and has decided to review its role in this area.
4. This consultation sets out:
  - i. the background to the minimum salary
  - ii. an analysis of the SRA's role in setting the minimum salary
  - iii. an initial analysis of the potential impact of deregulation in this area.
5. We are seeking your views on the following:
  - o The SRA's role in the setting of a minimum salary for trainee solicitors
  - o The potential impact of deregulation in this area.

## **Background**

6. The minimum salary was introduced by the Law Society in 1982. The original drivers for the introduction of the requirement were:
  - i. to prevent exploitation of trainees and
  - ii. to encourage high calibre graduates into the profession.
7. By 1985, the minimum salary was set at the level of the average graduate starting salary and was increased on an annual basis until 1991. In 1992, the Law Society Council decided to retain the minimum salary, following consultation, but kept the prescribed levels static between 1992 and 1999.
8. A further consultation was issued in 1996 which produced a majority (especially of employers) in favour of abolition of the minimum salary in favour of a recommended minimum on the basis that the prescribed minimum salary was too high, did not recognise geographical differences and was not an appropriate matter for regulation. However, in the end, the Council decided to retain the requirement pending a review of the training contract.
9. The training contract review took place in 1999 and decided to retain the minimum salary requirement and to increase the prescribed minimum salary every two years in line with RPI with an additional supplement so that within six years its real value would be returned to the 1992 level. In 2004, the Law Society Council decided to return to the system of annual increases. The primary reason for this renewed interest in the minimum salary was to continue to attract high quality graduates into the profession.
10. When the SRA took responsibility for prescription of the minimum salary in 2007, a full consultation on the subject resulted in a recommendation by the Education and Training Committee to cease regulating in this area. The SRA Board decided to retain the requirement pending a review of training contract arrangements, although the Board acknowledged that the regulatory arguments around the minimum salary remained unresolved.
11. The current minimum salary levels are £18,590 in Central London and £16,650 outside of London.

## **SRA regulatory aims and the minimum salary requirement**

12. In considering the SRA's role in the setting of a minimum salary, the SRA Board has examined the requirement against:

- i. the regulatory principles of the Legal Services Act<sup>2</sup>
- ii. the SRA's strategy of risk-based, outcomes-focused regulation.

## **The regulatory principles of the Legal Services Act**

13. The Board's provisional view is that there is no evidence that the setting of a minimum salary promotes any of the regulatory objectives of the Legal Services Act. As is explained in paragraphs 22–26 below, while there is some data to suggest that the minimum salary requirement has some impact on salary levels, it does not follow that the requirement supports the regulatory objective to "encourage an independent, strong, diverse and effective legal profession"—indeed, it is possible that it has the reverse effect.

## **The SRA's strategy of outcomes-focused regulation**

14. The SRA's strategy of outcomes-focused regulation is based on regulating only in areas of identified risk to the public interest and the rule of law. The prescription of a minimum salary does not address any identified risk to the public interest or the rule of law and, as such, is out of step with our OFR strategy.
15. There was a view put forward in the 2007 consultation by a significant number of respondents that removal of the minimum salary could result in a lowering of standards (on the basis that low pay might encourage low calibre graduates into the profession). There was also a view that standards would be maintained only if those who could afford to pay "a proper salary" were able to take on trainees.
16. The SRA Board does not accept these arguments, however, as it is through the standards set at the academic and vocational stages of training that quality is maintained. Furthermore, it would run contrary to the SRA's objectives to justify retention of the requirement on the grounds that it might limit access to the profession and make it more difficult for potential entrants who might otherwise meet the standards to enter the profession.
17. In considering its role in the setting of a minimum salary for trainee solicitors, the Board has taken into account the fact that the SRA does not attempt to control the legal employment market in any other way. We do not, for example, set minimum salaries for anyone else providing legal services in a firm we might regulate or minimum salaries for the provision of particular legal services.
18. We have also looked at the practice in other professions which shows that, with the exception of the Bar Standards Board, no other regulator included in the sample prescribes, or suggests, a minimum salary for trainees. The National Minimum Wage Regulations 1999 do not apply to pupil barristers.
19. The SRA Board is of the view, therefore, that there is no clear regulatory justification for the SRA to continue to set a minimum salary for trainees and we would welcome your views on the prospect of deregulation in this area.

**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?

**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?

## **The potential impacts of change**

20. In order to inform a decision about regulation in this area, the SRA Board needs to consider both the positive and negative impacts of change to the regulatory requirements. It will not be possible to say with certainty how the market, through

employers, will react to a decision to remove the minimum salary requirement. However, we intend to explore some of the potential impacts through this consultation period and will publish a full equality impact assessment to inform our final decision. Data held by the SRA and responses to previous consultations give an indication of some of the potential impacts and these are the areas we intend to explore more fully.

21. The three key areas to explore are:

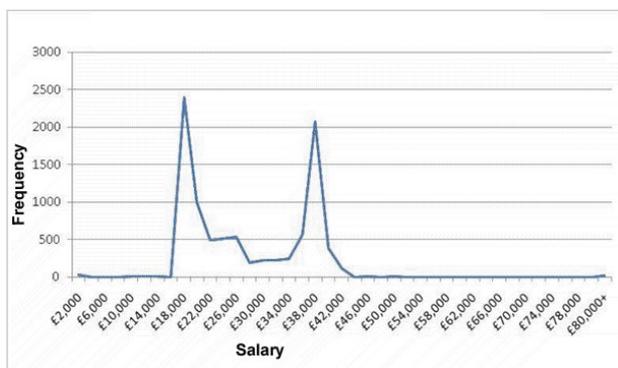
- i. salary levels
- ii. access to the profession
- iii. equality.

### **Impact on salary levels**

22. There are currently 9088 trainees registered with the SRA. An examination of the distribution of salary levels amongst the current trainee population shows a peak at the level of the minimum salary which suggests that the SRA's prescription in this area has an impact on the market at the lower salary levels and it is the impact on this group which we need to explore more fully.

### **Profile of training contract salaries (2011)**

{Source: SRA Training contract salary data 2011}



### Profile of training contract salaries (between range £15k–£21k)(2011)

{Source: SRA Training contract salary data 2011}



23. The distribution also shows a peak at the higher end of the spectrum (c.£38k) which demonstrates that for a large number of firms and trainees it is the market rate, sector or region that determines the salary levels rather than the SRA's intervention. It is very unlikely that removal of the minimum salary will affect these trainees and the firms employing them.
24. The key impact of the removal of the requirement which we want to explore more fully is the potential reduction in salary levels amongst trainees paid at the minimum salary. This group represents 30% of all trainees. As there is a peak in the distribution at the level of the minimum salary, it is reasonable to assume that employers and trainees operating in this segment of the market will be more sensitive to changes in the SRA's policy on minimum salaries. Trainees still would be protected by the National Minimum Wage Regulations 1999 which cover not only permanent employees but also apprentices and freelance, temporary and agency staff. Since the publication of this consultation, the SRA has received advice that trainees would be apprentices within the terms of the National Minimum Wage Regulations. The Regulations apply a rate of £2.60 per hour for apprentices in their first year and £6.08 per hour—the same as the standard rate of the minimum wage—for subsequent years.

Whilst the SRA Board does not believe that this advice affects the regulatory arguments for a review of its role in the setting of a minimum salary, the Board is mindful of the fact that this advice may affect the potential impacts of deregulation in this area. The Board is keen, therefore, to canvass views on the potential impact as well as on an option to retain a prescribed minimum salary which is set at the level of the standard national minimum wage.

25. The potential for employers to reduce salary levels in the event of deregulation must be balanced against the fact that the existence of a prescribed minimum salary level that is higher than the national minimum wage could also be acting as a deterrent to some firms taking on trainees. Deregulation could have a positive effect if some firms decide to start taking trainees or decide to take on more trainees than they might have done if the minimum requirement remained in force. Currently, many LPC graduates do obtain legal employment, but as paralegals rather than trainees. The minimum salary requirement may be a factor in employers choosing to employ graduates in this way.

26. It is also possible that some employers use the minimum salary as a reference point for the value of a trainee to their business. In a competitive environment without imposed controls, some trainee salaries might rise.

**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?

## Access to the profession

27. Whilst an analysis of the SRA's regulatory role in relation to the minimum salary suggests that there is little evidence to support the SRA's intervention in this area, before taking a decision we will need to establish whether removal of the minimum salary has the potential to affect access.
28. During the consultation on this issue in 2007, 70% of respondents felt that removal of the prescribed minimum salary would reduce access to the profession. The reason for this view was the perception that removal of minimum salary levels could result in lower salaries being available to trainees and, as a result, prospective trainees from less wealthy backgrounds might be deterred from pursuing a career in law.
29. There was also a substantial body of opinion in 2007 that suggested that access would not be affected by a reduction in salary levels on the basis that potential trainees would accept lower pay in order to open up the possibility of higher earning power after qualification. Some also thought that access might be increased as a result of an increased number of firms being willing to take on trainees. If this was the case, we could see a positive impact from deregulation.
30. Any potential negative impacts on access must be considered against the opportunities which will remain to enter a highly desirable profession and:
- the distribution of actual salary levels amongst trainees which shows that 71% are paid above the minimum prescribed levels
  - the existence of the national minimum wage legislation
  - the continuing high demand for traineeships in the legal profession and
  - the potential for the removal of the minimum salary requirement to result in an increase in the number of training contracts available.

**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?

**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?

## Equality

31. A full equality impact assessment will be undertaken to inform the Board's decision on its continuing role in the regulation of minimum salaries. The assessment will be published, and we will invite comments. In advance of that full assessment, we have examined existing data on the current trainee population. Any potential impacts will most likely apply to future rather than existing trainees but examination of the existing trainee population can act as a starting point for consideration of possible impacts.
32. Data is available on the ethnicity and gender of current trainees but limited data is available for trainees with a disability and none is available on religion. It is reasonable to assume that trainees who are currently paid above the minimum

salary level are unlikely to be affected by any deregulation as market conditions rather than regulation will determine these salary levels. The group which we have examined, therefore, is the group that are currently paid at the level of the minimum salary.

33. The data shows that there are currently significantly more female trainees (60%) than male trainees (40%) which reflects the recent trend in training contract registrations. BME trainees (19%) are also well represented amongst the trainee population.
34. The data also shows that a slightly higher proportion of the total population of female trainees (32%) are paid at the level of the minimum salary than males (27%) and that a far higher proportion of the total population of BME trainees (42%) are paid at the minimum salary level compared to the proportion of white trainees (27%). Although there is a potential for salaries at the lower end of the scale to fall, as discussed above, this is by no means certain. We will be looking at this further as the diversity monitoring data suggests that any reduction in salary at the lower end of the market may affect women and BME trainees who are over-represented in this group.

**Table 1: Male and female comparisons**

	Total trainees	At or below minimum	%	Above minimum	%
Female	5485	1747	32%	3738	68%
Male	3603	958	27%	2645	73%
Total	9088	2705	30%	6383	70%

**Table 2: White & BME comparisons**

	Total trainees	At or below minimum	%	Above minimum	%
White	6667	1805	27%	4862	73%
BME	1753	729	42%	1024	58%
Unknown	668	171	26%	497	74%
Total	9088	2705	30%	6383	70%

35. These results are perhaps not surprising given the fact that inequality in salary levels between men and women and amongst BME groups in the profession is already well documented<sup>3</sup>. It is also commonly known that female and BME trainees and solicitors tend to be over-represented in smaller firms which are more likely to pay lower salaries<sup>4</sup>. This inequality is part of a wider problem which exists in the recruitment and employment of trainees and solicitors which has not been remedied by the existence of a minimum salary and which is outside the scope of this review. This wider problem is a longer term challenge for the profession and, as the representative body, the Law Society has identified a number of initiatives to tackle the culture and practices within the profession which have led to the current situation. As the regulator, we have elevated equality and diversity to one of the Principles within the new Handbook and one of our equality objectives for 2012 will be working on improved ways to promote compliance with this Principle and the outcomes set out in Chapter 2 of the Handbook.
36. We intend to explore any potential equality impacts more fully and would welcome your views on this aspect.

**Question 6.** Are there any potential equality issues we should consider in deciding on our future role in regulating minimum salaries for trainees?

**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?

**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?

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## Notes

1. National Minimum Wage Regulations 1999

2. protecting and promoting the public interest, supporting the constitutional principles of the rule of law, improving access to justice, protecting and promoting the interest of consumers, promoting competition in the provision of services, encouraging an independent, strong, diverse and effective legal profession, increasing public understanding of the citizen's legal rights and duties, promoting and maintaining adherence (by authorised persons) to the professional principles

3. Barriers to the legal profession (PDF), Legal Services Board July 2010, Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices (PDF)' University of Westminster October 2010, Ethnic diversity in law firms (PDF), The Law Society May 2010, Obstacles and barriers to the career development of woman solicitors, The Law Society March 2010

4. Diversity monitoring statistics report for 2010, Solicitors Regulation Authority 2010, A firm decision: the recruitment of trainee solicitors, The Law Society 2002

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## How to respond

You can respond to this consultation in a variety of ways.

### Complete an online form

The quickest way to submit your response is to use our online questionnaire. You'll need to complete the questionnaire in a single session; it comprises seven substantive questions. We recommend this option if you are an individual respondent with well-formed views and can state them concisely.

Go to the online questionnaire

### Download and complete an electronic form

Download a Consultation questionnaire form and an About you form , which can be completed offline, at your convenience, using MS Word. We recommend this option to anyone who plans to deliberate over their response at length, needs to discuss their views with colleagues or wishes to include extensive comments or arguments on specific issues.

1. Download a Consultation questionnaire form and an About you form .
2. Save the files locally—before and after completing them.
3. Return your completed forms as email attachments to [consultation@sra.org.uk](mailto:consultation@sra.org.uk) .

Download the forms

### Download and submit a printed form

If you wish to submit your response by post, please follow steps 1 and 2 above. Then, print your completed forms and send

them to

Tim Pearce  
Education and Training Unit  
Solicitors Regulation Authority  
Ipsley Court  
Redditch  
Worcs  
B89 0TD

### **Send us an email or letter**

If you prefer not to use our forms, simply detail your comments or concerns in an email or letter. Send your email to [consultation@sra.org.uk](mailto:consultation@sra.org.uk), or post your letter to the address provided above.

Please ensure that, in your email or letter, you

- identify yourself and state on whose behalf you are responding (unless you are responding anonymously),
- identify the consultation you are responding to, and
- if you wish us to treat any part or aspect of your response as confidential, state this clearly.

### **Deadline for this consultation**

Please send your response by **10 April 2012**.

### **Summary of 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?

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?

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?

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?

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?

Question 6. Are there any potential equality issues we should consider in deciding on our future role in regulating minimum salaries for trainees?

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?

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?