

SRA Response to the consultation on the review of the minimum salary for trainee solicitors

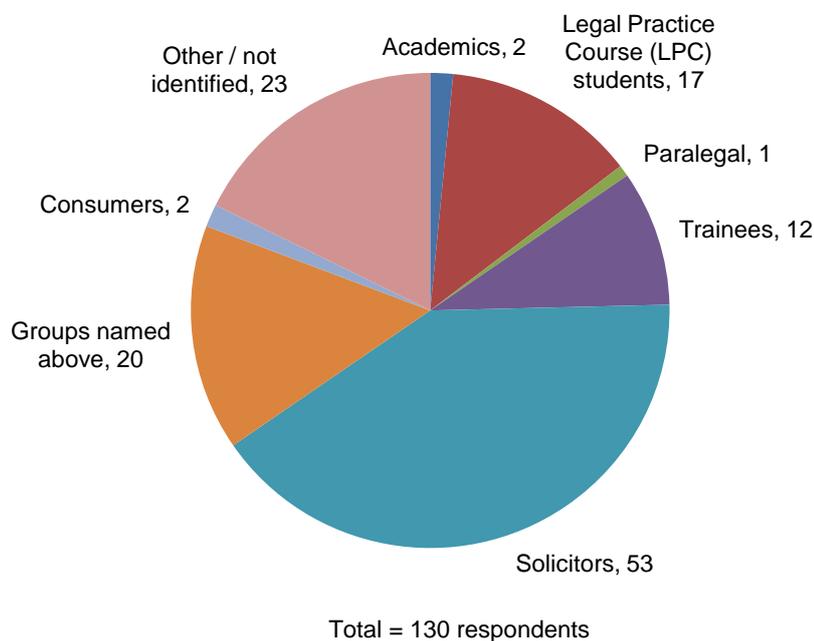
Introduction

1. At its meeting in January 2012, the SRA Board decided to review its role in the setting of a minimum salary for trainee solicitors. The Board's initial view was that there was no clear regulatory justification for the SRA intervening in the market in this way but, in order to make a final and fully informed decision on this issue, the Board needed to explore the potential impacts of a policy change in this area.
2. The Board embarked on a programme of evidence gathering and stakeholder engagement which included:
 - a formal consultation
 - a series of focus groups with employers, trainees and would-be solicitors (approximately 60 attendees at 9 events)
 - publication of an online survey targeted at employers, trainees and would-be solicitors (1,309 responses)
 - in-house, desk based research
 - meetings with representative stakeholder groups
 - publication of a full Economic and Equality Impact Assessment (EEIA), which can be read at <http://www.sra.org.uk/minimum-salary/>.
3. Having given full consideration to the consultation responses and the evidence gathered through the other engagement activities, the SRA Board decided that, from August 2014, the SRA would no longer set a minimum salary above the main rate of the national minimum wage. This report summarises stakeholder responses to the formal consultation and sets out the SRA's policy position on the issues raised and the reasons for the Board's decision. It should be read alongside the full EEIA.

Respondents

4. Formal consultation responses were received from the following representative groups:
 - Advice Services Alliance
 - Association of Revenue and Customs
 - The Association of Women Solicitors
 - Birmingham Trainee Solicitors' Society
 - Cardiff and District Law Society
 - Carlisle and District Law Society

- On behalf of careers advisers associated with the Association of Graduate Careers Advisory Services
 - The Junior Lawyers' Division
 - The Law Society
 - The Lawyers with Disabilities Division
 - Leicestershire Junior Lawyers' Division
 - Newcastle-upon-Tyne Law Society
 - Nottinghamshire Junior Lawyers
 - Oldham Law Society
 - The Society of Asian Lawyers
 - Sole Practitioners' Group
 - Solicitors in Local Government
 - Tunbridge Wells, Tonbridge and District Law Society
 - West London Law Society Junior Lawyers Division
 - Young Legal Aid Lawyers
5. A number of individuals also responded to the consultation but the majority chose not to identify themselves or requested anonymity.
6. Numbers of respondents, categorised by type, were as follows.



Overview of responses

7. The views of stakeholders from the consultation responses received can be summarised as follows (and are set out in more detail at paragraphs 8 – 17)
- the majority of stakeholders believed the SRA has a remit in the setting of a minimum salary for trainee solicitors because of its obligations to

"encourage an independent, strong, diverse and effective legal profession" (Legal Services Act 2007, s.1)

- stakeholders were concerned that removal of the minimum salary would have a disproportionate impact on women and Black and Minority Ethnic (BME) groups who tend to be paid at the lower end of the market
- stakeholders believed that the minimum salary promotes access to the profession for individuals from a range of backgrounds and that the SRA has a remit in that respect
- stakeholders believed that there is a link between the salary an employer pays a trainee and the quality of the training it provides and that the potential for employers to offer lower salaries might produce less competent solicitors
- many stakeholders called for a deferral of a decision about the minimum salary until the findings of the Legal Education and Training Review (LETR) are known
- a minority of stakeholders responding to the consultation, including the Sole Practitioners' Group, were in favour of deregulation. The basis of their support for deregulation was the potential for deregulation to open up the market for training contracts and create more opportunities for individuals currently excluded from qualification due to difficulties securing a training contract.

Responses to specific issues raised through the consultation

8. *Stakeholders believed that the SRA has a remit in the setting of a minimum salary because of its obligations to "encourage an independent, strong, diverse and effective legal profession".* The Board gave full consideration to this point and discussed, at length, the SRA's obligation to encourage, in particular, a diverse legal profession. The Board concluded that the aim of encouraging an independent, strong, diverse and effective legal profession is not effectively addressed through the setting of a minimum salary. In coming to this decision, the Board noted the complexity of the evidence presented in the EEIA. The evidence suggested that the impacts of deregulation were likely to be multifaceted. On the one hand, there was some evidence to suggest that some individuals or specific groups might be negatively impacted. On the other hand, there was also potential for increased training contract opportunities that would be likely to benefit those same individuals or groups.
9. The Board also noted the evidence that suggested that the most diverse professions tend to be those with a diversity of pathways to qualification. The SRA has been aware of this fact for some time and has already begun to explore different pathways to qualification through our work based learning pilot. We will also be considering the question of diversified pathways further through the LETR.
10. In considering the SRA's regulatory role in the setting of a minimum salary for trainee solicitors, the Board also considered our current and future role as a regulator of legal services. The SRA regulates not only solicitors and trainee solicitors but, since the introduction of entity based regulation in 2009, all other individuals in a firm, encompassing the broader legal workforce (e.g. paralegals - including students who have completed the LPC and are unable to obtain a

training contract) and quite possibly, in the near future, a newly created authorised person category - will writer. The Board discussed the fact that, if the SRA continues to set salaries for trainee solicitors, the rationale for this decision could imply a need, for reasons of consistency and fairness, to consider whether we should set salaries for others within the organisations we regulate. The Board also considered the question of whether the SRA should, and could, set minimum salaries for all future pathways to qualification. The nature of the potential pathways (i.e. individual led, flexible, possibly through a variety of employers) and the desire to minimise regulatory restrictions on employers that might discourage them from supporting their workforce to progress towards professional qualification could make the setting of a minimum salary for all pathways both difficult and contrary to our desired strategic objective.

11. The Board concluded that the aim under the Legal Services Act of encouraging an independent, strong, diverse and effective legal profession is not effectively addressed through the setting of a minimum salary. The Board also concluded that the setting of salary levels for one type of individual regulated by the SRA has become increasingly anomalous in a modern regulatory environment where there are different types of professionals regulated by the SRA and where there will be different routes to qualification in the future.
12. *Stakeholders were concerned that removal of the minimum salary would have a disproportionate impact on women and Black and Minority Ethnic (BME) groups who tend to be paid at the lower end of the market.* The impact on diversity in the profession was central to the Board's discussions. In considering this issue, the Board noted again the complex range of potential, interrelated impacts. Whilst the EEIA suggested that any new training contracts created as a result of a change in policy are likely to be paid below the current minimum, it is less likely that salary levels for existing training contracts will decrease. The potential for the availability of more training contracts at the lower end of the market could have a positive impact on women and BME groups who, as is already widely documented, tend to work in smaller firms and find it more difficult to secure a training contract. Having considered the balance of potential positive and negative impacts, the Board concluded that there are clear regulatory and public interest arguments for the SRA not setting a minimum salary for trainee solicitors. The Board decided to continue to require a minimum salary at the Main Rate of the National Minimum Wage Regulations 1999, to prevent negative impacts of what may be an unintended consequence of the application of the NMWR by ensuring that trainees are paid at the minimum rate for employees as opposed to apprentices. The Board also decided to defer implementation of its decision for a period of two years, in order to minimise impact for individuals already within the training system and allow individuals seeking to qualify to plan and make career choices based on knowledge of the future situation. The Board also undertook to carefully review the actual impact of its decision on an ongoing basis.
13. *Stakeholders believed that the minimum salary promotes access to the profession for individuals from a range of backgrounds and that the SRA has a remit in that respect.* As has already been noted, access and diversity were

central to the Board's discussions. The Board noted the evidence presented in the EEIA which indicated that the minimum salary is only one of many complex factors affecting individuals' desire and capability to enter the profession. Other factors play a larger part in encouraging, allowing and preventing individuals entering the profession. The Board concluded that setting a minimum salary is not an effective way to encourage diversity in the profession and that this aim should be pursued in other ways.

14. *Stakeholders believed that there is a link between the salary an employer pays a trainee and the quality of the training it provides and that the potential for employers to offer lower salaries might produce less competent solicitors. We argued in the consultation paper that our regulatory objective to encourage an independent, strong, diverse and **effective** legal profession is not secured by a minimum salary but by the SRA's standard setting and enforcement activities which*
 - ensure compliance with the SRA principles and other ethical duties set out in the SRA Handbook
 - deliver an education, training and qualification process that ensures that, from day one of practice, solicitors are competent to deliver effective legal services.
15. We also suggested that it would run contrary to our objectives to justify retention of the minimum salary 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. Despite the strength of feeling on this issue, the Board concluded that there was no compelling evidence which demonstrated a direct link between standards and salaries.
16. *Many stakeholders called for a deferral of a decision about the minimum salary until the findings of the Legal Education and Training Review (LETR) are known.* The Board gave careful consideration to this feedback. The overall view of the Board was that the question of whether or not the SRA should set a minimum salary is a high level strategic decision for the Board based on an analysis of the SRA's regulatory objectives and the role of the minimum salary in relation to these objectives. The EEIA does not provide any evidence for delaying a decision on this issue and, notwithstanding the work that is progressing through the LETR, the SRA is already committed to exploring alternative pathways to practice. Now the potential impacts of a policy change in this area are more fully understood (and set out in the EEIA), the question of whether or not the SRA should continue to set a minimum salary for trainee solicitors can be settled ahead of any reform programme. Additionally, the Board concluded that it would be better to debate the question of setting a minimum salary separately from the wider discussions about reform of the qualification framework through the LETR, to enable stakeholders, at the appropriate time, to focus fully on the important education and training issues which will inevitably arise out of the review.
17. *A minority of stakeholders responding to the consultation, including the Sole Practitioners' Group, were in favour of deregulation. The basis of their support*

for deregulation was the potential for deregulation to open up the market for training contracts and create more opportunities for individuals currently excluded from qualification due to difficulties securing a training contract. The EEIA confirmed that deregulation would give employers the opportunity to offer more training contracts and that some employers would at least seriously consider this opportunity. We will monitor the impacts of the change when it comes into effect in August 2014.

Responses to individual consultation questions by number of respondents

18. The following tables set out the number of responses to each question in the consultation document.

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?	Number of respondents
Yes - the SRA has a regulatory role to set a minimum salary	100
No - the SRA does not have a regulatory role to set a minimum salary	19
Don't know	0
No response	11

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?	Number of respondents
The current minimum salary policy is compatible with OFR	51
The current minimum salary policy is not compatible with OFR	31
Don't know	47
No response	1

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?	Number of respondents
Deregulation will result in employers reducing trainees' salaries	98
Deregulation will not result in employers reducing trainees' salaries	4
Don't know	6
No response	22

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?	Number of respondents
Deregulation will discourage individuals from less wealthy backgrounds pursuing careers as solicitors	86
Deregulation will not discourage individuals from less wealthy backgrounds pursuing careers as solicitors	20

Don't know	3
No response	21

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?	Number of respondents
Deregulation will encourage employers to take on more trainees	55
Deregulation will not encourage employers to take on more trainees	39
Don't know	10
No response	26

Question 6. Are there any potential equality issues we should consider in deciding on our future role in regulating minimum salaries for trainees?	Number of respondents
Deregulation creates potential equality issues	85
Deregulation does not create potential equality issues	14
Don't know	3
No response	28

Question 7. In light of the amendment to paragraph 24 of the consultation document, is there anything further you would add regarding the potential impacts of the proposed changes?*	Number of respondents
There are additional issues raised by the NMWR Apprentice Rate for trainees	36
There are no additional issues raised by the NMWR Apprentice Rate for trainees	7
Don't know	1
No response	86

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?*	Number of respondents
I would be in favour of a minimum salary prescribed at the NMWR Main Rate	15
I would not be in favour of a minimum salary prescribed at the NMWR Main Rate	34
Don't know	0
No response	81

19. Questions 7 and 8 were added after the commencement of the consultation period. 20 respondents had responded to the consultation prior to the addition of questions 7 and 8. All those respondents were contacted and given the opportunity to add responses to questions 7 and 8 if they wished.