

Paul Philip
Chief Executive Officer
Solicitors Regulation Authority

By email: paul.philip@sra.org.uk

26 April 2019

Dear Mr Philip

Re: Deregulation of training contracts / JLD resilience and wellbeing survey results 2019 / minimum salary for trainee solicitors

Thank you for your thorough response to our letter dated 13 February 2019 and for highlighting the work that the SRA is currently undertaking to ensure positive mental health within the profession.

We have dealt with the issues raised in turn below.

1. Deregulation of training contracts

Within your letter dated 5 March 2019 we note the following:

'we no longer regulate training contracts directly, by directing or enforcing the terms of the contract, or approve training principals. But we do authorise firms as training providers and can take action if they fall below standards in that respect, as well as the standards in our code of conduct.'

We consider that the problem lies therein. The SRA does not become aware of the '*unhealthy culture, work, or training environment*' until after the event which is too late.

We urge the SRA to reconsider its decision to no longer regulate training contracts and training principals. We are particularly concerned that with the Solicitors Qualifying Examination ("SQE") coming into force, no action will be taken by the SRA in this respect. We therefore take this opportunity to urge the SRA to consider how it will regulate the work experience element of the SQE. We must stress, and again bring to the SRA's attention, that if no action is taken to regulate the work experience element of the SQE then junior lawyers will be exploited in unhealthy cultures, work and training environments and inadequate training will be provided. This will lead to solicitors qualifying on the basis of work experience that falls below the standard that should be expected of the profession and could ultimately be detrimental to users of legal services and damage the reputation of the profession. There may also be ethical issues which affect junior lawyers as a result of such failures which would not be in line with the SRA's competency statement.

The SRA must consider the ramifications of the SQE proposals and ensure that a mechanism is in place to regulate the work experience element of the SQE, the training principals and the training providers. We would be happy to discuss this with the SRA further, including our proposals as to how such regulation can be put in place whilst adhering to the SRA's objectives in implementing the SQE.

2. JLD resilience and wellbeing survey results

The results of the Junior Lawyers Division's ("JLD") third resilience and wellbeing survey have now been published and you may have seen that we received over 1,800 responses. This is the largest response to our resilience and wellbeing survey to date and the keynote findings are as follows:

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- Over 93% of respondents reported feeling stressed in their role in the month before completing the survey, with almost a quarter of those individuals being severely/extremely stressed as a result of their work.
- The key stress factors for junior lawyers were high workload, client demands/expectations, lack of support and ineffective management.
- Over 77% of respondents said that their firm could do more to support the levels of stress they were experiencing at work.
- One in 15 junior lawyers (6.4%) experienced suicidal thoughts as a result of stress at work, in the month leading up to taking the survey.
- The number of junior lawyers experiencing mental ill-health increased significantly from the previous year, with nearly half (48%) experiencing mental ill-health in the month leading up to the survey.

We acknowledge, and welcome, that the SRA has launched its 'Your Health, Your Career' campaign to assist solicitors facing difficulties and is *'working closely with a wide range of organisations'*. However, the findings from the latest JLD resilience and wellbeing survey make it clear that the legal profession as a whole needs to do more to support positive mental health and working environments, including regulators, representative bodies and those employing junior lawyers. This includes the SRA holding firms to account and taking all necessary action against firms and others who employ junior lawyers and solicitors that are fostering toxic work environments.

The JLD would welcome the opportunity to work with the SRA in this respect.

We annex a copy of the JLD resilience and wellbeing survey report 2019 to this letter. In light of the recent results we are also updating our best practice guidance for employers in supporting resilience and wellbeing in the workplace. We will also provide you with an updated copy once it is finalised in the next month.

3. Minimum salary for trainee solicitors

We also take this opportunity to, again, raise concerns about the SRA's decision to remove the requirement for a mandatory minimum salary for trainee solicitors (on 1 August 2014).

As you are aware the JLD represents the interests of Legal Practice Course ("LPC") students, LPC graduates, trainee solicitors and solicitors up to five years (and 364 days) post qualification experience in England and Wales. The SRA's decision in 2014 to abolish the minimum salary for trainee solicitors therefore directly and detrimentally impacted upon our membership. Access to the profession is, and always has been, a key priority for the JLD so much so that when the SRA proposed its changes, the JLD fiercely defended the minimum salary and stressed the negative impact the SRA's decision would have upon social mobility, equality and diversity in the profession. Under the Legal Service's Act 2017, section 1(1) (f), the SRA has an obligation in *'encouraging an independent, strong, diverse and effective legal profession'* and the removal of the minimum salary, in our opinion, is contrary to this statutory obligation.

Once the SRA confirmed it would no longer support the mandatory minimum salary for trainees, despite the JLD's best efforts to persuade the SRA otherwise, the Law Society, with the support of the JLD, ran a survey on the introduction of a recommended minimum salary for trainee solicitors.¹ The results of that survey were strongly in favour of the introduction of a recommended minimum salary, and a summary of the findings noted the following:

- Support for the Law Society recommending a minimum salary for trainees was almost unanimous among individuals, both qualified and unqualified.

¹ Data was collected through a web survey live from 26 March to 26 April 2015

- Explanations for why a minimum salary should be introduced focused on the need to:
 - maintain the status of the profession by ensuring the best candidates are able to qualify and practise regardless of socio-economic background;
 - protect trainee solicitors from exploitation;
 - support trainee solicitors; and
 - ensure the diversity within the profession.
- Of those agreeing to a Law Society recommended minimum salary, 88% of individuals and 26 out of the 33 (79%) responding law firms agreed this should be based on the Living Wage plus an adjustment for an average yearly LPC repayment.
- Other possible options mentioned for addressing the detrimental ramifications of removing the mandatory minimum trainee salary were:
 - bursaries or grants provided by the Law Society or organisations such as the Legal Education Foundation;
 - making bank loans for the LPC affordable (lobbying for a reduction on the 10% interest rate);
 - one set wage for all trainee solicitors, in all regions;
 - earnings set with reference to size of firm (number of employees); and
 - a set minimum, but with discretionary waivers.

Given the results of this survey, the JLD and the Law Society therefore sought to develop a method of calculating the recommended minimum salary. The calculation was based on the living wage plus an adjustment for the average yearly LPC repayment. The JLD felt that it was important that the LPC repayments were taken into account in the calculation given that it is a required course to qualify as a solicitor and a cost that trainees will be burdened with in addition to their usual living costs (and therefore represents the realistic subsistence costs faced by trainee solicitors).

In November 2015, the Law Society announced that it would recommend, as a matter of good practice, that providers of training contracts should pay their trainees a minimum salary of £20,276 in London and £18,183 outside of London. This figure is reviewed annually in November and most recently the recommended minimum salary was increased to £22,121 in London and £19,619 outside of London (with effect from 1 May 2019). The Law Society however cannot impose a mandatory minimum salary on training contract providers and therefore the minimum salary has always remained a *recommended* amount that employers should pay their trainee solicitors.

We note that in 2018 the Bar Standards Board introduced a mandatory minimum pupillage award whereby salaries are based on pay recommended by the Living Wage Foundation (LWF) and will be adjusted each year in line with the LWF's new recommended hourly rate. The rate for the minimum pupillage award from 1 September 2019 will be £18,436 per annum for pupillages in London and £15,728 per annum for pupillages outside London.

The 2019 Salary and Benefits Benchmark conducted by Douglas Scott, legal recruiter, revealed that 25% of trainees are still being paid below recommended levels.^[1]

Further, in May of 2018, the SRA's own impact study^[2] revealed that the abolishment of the minimum salary had led to a fall in average pay (by £560 on average) and seen the gender pay gap widen. The results of this study also revealed that, on considering the median salaries, both black and Asian

^[1] <https://www.douglas-scott.co.uk/storage/downloads/CWQh93HvwaFXTMEXjiCwy3mriGIAQHKIHHwckV7z.pdf>

^[2] <https://www.sra.org.uk/sra/how-we-work/reports/minimum-salary-trainees.page>

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trainees still earn less than white trainees. We understand that to obtain these statistics the SRA analysed the data of 33,000 trainee solicitors, who started their training between January 2011 and December 2016.

We also note that the Young Legal Aid Lawyers (“YLAL”), who have lobbied the SRA alongside the JLD since the removal of the mandatory minimum salary in 2014, have recently called upon the SRA, raising concerns that a lack of a required minimum salary is having an adverse impact upon social mobility. YLAL’s research reveals that low salaries in the legal aid sector were consistently the main barrier to social mobility within the profession and one of the biggest challenges facing junior lawyers. The JLD echoes the concerns of YLAL.

We welcome the ongoing support of the Law Society, however given the stark consequences occurring since 2014, we are obliged to highlight these again and strongly urge the SRA to reconsider its position and reinstate the minimum salary as an obligation on those firms who offer training to future solicitors.

As mentioned above, the SQE is due to commence from Autumn 2021. The SRA recognises that social mobility and access to the profession remains an issue and therefore expects that the new SQE should ensure access to the profession is widened to encourage diversity and more entrants from a lower socio-economic background. However, the JLD notes that the SRA cannot improve social mobility and access to the profession while it allows firms who provide training to aspiring solicitors, to pay as little as the National Minimum Wage (£14,814.80² **before** tax and national insurance contributions as at April 2019).

Under the current proposed format, aspiring solicitors could gain the work experience required to pass SQE 2 without receiving any remuneration. This is even more concerning when considering that the SRA has recently indicated that the likely cost of the SQE is expected to be in the region of £3,000 to £4,500 for the examinations alone.

The JLD has previously undertaken research in this area and found, from a survey of its members in 2014, that 23% of respondents had worked unpaid for more than six months, while 3% had worked unpaid for two years or more. This is a grave concern and one of which we are reminded with the impending SQE and the two-year work placement requirement. If there are no safeguards on the salary a trainee solicitor is paid now, or in the future format of the SQE, the SRA will be placing a significant barrier on entry to the profession for those from lower socio-economic backgrounds. There is also a serious concern that aspiring solicitors could be exploited under the work experience element of the SQE. It is important that access to the profession is based on merit alone and that aspiring solicitors do not face unnecessary financial barriers.

We therefore urge the SRA to reconsider its position and ensure the protection of future solicitors, and the diversity of the profession, which is within the consumer interest. We urge the SRA to (1) reinstate a mandatory minimum salary in the interim for trainee solicitors and (2) consider how to build in a mandatory minimum salary for future solicitors undertaking work experience as part of the SQE (and we would be happy to discuss our proposals on this with you). The SRA should ensure that a mechanism is in place which means that aspiring solicitors gaining their 'work experience' under the SQE are not working for less than the National Living Wage (any calculation should also take into consideration all financial outlays associated with obtaining the solicitor title) and that entry to the profession genuinely is open to all.

² based on an individual aged 21-24 contracted to working 37 hours per week

4. Next steps

As set out above, the JLD calls upon the SRA to review its position on both the move to deregulate training contracts and training principals and the removal of the mandatory minimum salary for trainee solicitors. Further, safeguards must be put in place to protect junior lawyers undertaking the work experience element of the SQE and the JLD therefore requests that the SRA confirms how it intends to ensure that aspiring solicitors are not exploited during this work experience.

The JLD also calls upon the SRA to take action against organisations employing junior lawyers and solicitors that permit toxic and unhealthy working environments to subsist.

We should be grateful to receive a response from the SRA of its position on these important issues and look forward to hearing from you.

Yours sincerely



Amy Clowrey
Chair, Junior Lawyers Division
Email: juniormlawyers@lawsociety.org.uk

Enc. JLD resilience and wellbeing survey results 2019