



Introduction

This is Young Legal Aid Lawyers' (YLAL) submission to the Junior Lawyer Division's survey on introducing a recommended minimum salary for trainee solicitors.

YLAL is a group of lawyers who are committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded. YLAL members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales. We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.

YLAL's objectives are:

- To campaign for a sustainable legal aid system which provides good quality legal help to those who could not otherwise afford to pay for it.
- To increase social mobility and diversity within the legal aid sector.
- To promote the interests of new entrants and junior lawyers and provide a network for likeminded people beginning their careers in the legal aid sector.

YLAL recognises the importance of a minimum salary to be able to maintain new entrants coming into the profession, and to encourage social mobility across different sectors in the legal industry. YLAL considers that those trying to enter the legal aid sector will be at a greater disadvantage in not having a regulated minimum salary for trainees, than in other areas, for example, corporate law.

Previous empirical and anecdotal research has revealed that prospective legal aid lawyers are incurring large debts in order to pay their way through legal education, followed by extended periods working in jobs with low (or sometimes no) wages to gain relevant experience before entering into a training contract. Without a baseline salary as a security, junior lawyers are likely to be deterred from pursuing a career in law and specifically in publicly funded work. We consider in further detail our findings that relate to the removal of the minimum salary.

YLAL's views on initial scrapping of minimum salary

YLAL has been consistently opposed to the abolition of the minimum salary safeguard for trainee solicitors. In our response to the Solicitors Regulation Authority (SRA) consultation on

removing the regulated minimum salary¹ we emphasised that the importance of this threshold was to provide protection against exploitation and promote social mobility and diversity in the profession. We said:

“The certainty of the minimum salary has also allowed a degree of security and financial planning for those looking to embark on a career as a solicitor. These factors are important for individuals thinking of changing careers or starting the route to qualification part way through their adult lives. It is particularly important to encourage these late-entrants to the profession as they bring with them a wealth of experience. This is significant as solicitors require transferable skills and experience to provide an effective service to clients. In this respect the minimum salary contributes to protecting and promoting the interests of consumers.

We believe it is vital that the profession is open to all, no matter what an individual’s financial circumstances might be. The minimum salary plays an integral role in ensuring that there is equality of opportunity. This has wider consequences both for clients and for society as a whole. For example, in the context of criminal practice it is important for young people who become involved in the criminal justice system to understand and trust their solicitors. Without a relationship of trust and understanding it is not possible for the solicitor to effectively represent the young person. From the young person’s point of view this may fuel their disenfranchisement with the criminal justice system. To counteract this it is important that lawyers reflect the ethnic and socio-economic make-up of society as a whole. It is our view that the safeguard of the minimum salary contributes to this goal (see also answers to questions three and six). In this respect the minimum salary, as well as encouraging an independent, strong, diverse and effective legal profession, is promoting a public interest as well as protecting “consumers”.

Against this background, it is clear that if firms and organisations are able to reduce costs to try to ensure a continuing service to individuals, they will do this. There is no evidence or reason to believe that a reduction in salaries will be balanced by an increase in the number of training contracts being offered (see below).

Any reduction in the level of wages paid to trainee solicitors will hit those individuals hard. However, for those working in the legal aid sector, we believe it will be doubly difficult for them to accept a reduction in salary. This is because in the main, trainee solicitors working in the legal aid sector do very difficult and crucial work for vulnerable individuals. Often they have their own caseload and regular client contact. They negotiate and litigate. They deal with key rights and entitlements, including helping to defend individuals charged with serious criminal offences; advising parents whose children have been taken into care by the state; or defending tenants against eviction.

Further, many trainees in legal aid firms work over 35 hour weeks and some work up to 45- 50 hours a week on a regular basis with no additional salary. The removal of the trainee minimum salary is likely to mean that trainees will, in effect, be working for less than the national minimum wage when overtime is taken into account.”

We argued that removing the regulatory minimum salary could only have a negative impact on the make up of a profession that in our view, should reflect the people it serves. There is a high proportion of women and those from black and ethnic minority backgrounds among legal aid users. Junior lawyers from a lower income demographic and with caring responsibilities would be disadvantaged by a reduction in the salary they could expect while training. Our concern was that good people would be deterred from entering the profession if they knew

¹http://www.younglegalaidlawyers.org/sites/default/files/YLAL%20SRA%20min%20salary%20final%2009041_2_0.pdf

their salary would be unlikely to cover living costs and financial responsibilities such as debt repayments. In our response to the SRA Economic and Equality Impact Assessment, produced as part of the review of the trainee minimum salary², we said:

“For the reasons set out in our consultation response of 9 April 2012 we strongly oppose the removal of the trainee minimum salary. We believe that it would constitute a retrograde step undermining social mobility and diversity within the legal profession. This would run counter to the public interest. The SRA’s own EEIA justifies our concerns. Therefore we urge the SRA to abandon the proposal or at the very least delay making a decision on this issue until the LETR publishes its recommendations.”

Members’ views on removal of the minimum salary

Comments made by our members suggest that they would be in favour of the reinstatement of the minimum salary (and would agree that the Law Society recommending a minimum salary would be a good first step).

In YLAL’s response to the Legal Education and Training Review³, we set out the results of a survey conducted of our members in 2012. Of the respondents who answered whether they would have undertaken their training contract had the minimum salary not been in place, 34% said yes, 27% said no and 39% were unsure.

The factors to cause uncertainty were charted in the responses to other parts of the survey. The general climate for junior lawyers, particularly those entering the legal aid sector, was already very challenging in 2012, before the cuts brought in under the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) came into force, or the abolition of the regulatory minimum salary for trainee solicitors. Members reported the impact of high course fees and how commercial bank loans were not enough to cover the cost of graduate training and living expenses. One respondent stated:

“[The] largest barrier is the cost of the GDL and LPC. No bank now lends enough to pay for tuition and cost of living for these two courses, so it is impossible to do unless you go for a sponsored training contract with a private firm or your family can afford to pay for it all... The second barrier is the low pay. Even with full sponsorship [due to choosing to take a training contract with a commercial practice] and a grant I have a £20k loan to pay back, and I can’t afford to manage repayments on low pay.”

Another respondent said:

“Even the trainee minimum barely allows for us to meet basic living expenses whilst paying back course fees. So much debt is accumulated on completing the education that we are not able to afford to live or pay the debt back.”

In the legal aid sector, the effect of high course fees and low salaries must also be seen in the context of the prevalence of unpaid work experience, which is viewed as essential by many seeking entry to the legal aid sector, where firms expect junior lawyers to “hit the ground running” even in a non trainee position. The vast majority of respondents to our 2012 survey (89.1%) had done some unpaid legal work experience. Only 40% of respondents had done any paid work experience. 42% had undertaken work experience that was expenses-only.

²www.younglegalaidlawyers.org/sites/default/files/YLAL%20SRA%20min%20sal%20EIA%20response%5B1%5D%20%281%29.pdf

³ <http://www.younglegalaidlawyers.org/sites/default/files/LETR%20general%20response%20-%20Young%20Legal%20Aid%20Lawyers.pdf>

The problems cited above were reiterated in further research undertaken for a report on social mobility⁴ within the legal aid profession, in 2013. Our report, 'One Step Forward, Two Steps back' found that there was an increasing trend towards junior lawyers working as paralegals before being able to progress to a training contract. 89% respondents to this report said that they had had to undertake unpaid work experience in order to gain access to the profession.

A further survey conducted in 2014, as part of YLAL's contribution to the 'Paralegal Enquiry' led by the Chartered Institute of Legal Executives, found that this situation had not improved. Respondents reported that they were working as paralegals from anywhere between 1.5 years and 8.5 years, as a stepping stone to enable them to progress to training contracts or obtain pupillages. We found that people were taking on full casework responsibilities, or were otherwise heavily involved in casework support. We noted that there was a certain reliance on paralegals as more cost effective fee earners than trainees or solicitors. It is concerning too that 15% reported that they felt unsupported or inadequately trained for their roles as paralegals.

The fears expressed to us in 2012 were echoed in responses to a survey we conducted in 2014 to gather views of junior lawyers on government plans for implementing a two tier system for duty solicitor contracts in criminal law.⁵ We think it is worth quoting some of their replies in full, to show the current pressures faced by those at the bottom of the chain in legal aid:

"For instance, one of our members stated that she is a trainee solicitor with an income of £17,000 each year. She has approximately £30,000 of student debt. She has just managed to secure a training contract. She comments that, her "...income is much, much lower than most of my peers in other professions and other areas of law. I am aware that my office made fee earner redundancies earlier in the year and this is concerning for my future as I wish to practice in legally aided areas."

"I work in a criminal law firm and have had to work on £13,000 in Central London as a paralegal with the promise of a training contract. No training contract came after a year until they eventually decided to give me one and I am only being paid £16,550 for the next two years. It's pretty appalling considering I live in London. I have to walk everywhere and eat very little to survive the prices here."

"As a trainee solicitor I am very worried that if the proposed changes come in I may lose my job (a position which can only afford to pay me minimum wage) and I will be unable to gain a training contract elsewhere given the high levels of competition in this area."

"All of my work prior to commencing my training contract has been in criminal law. I believe I am a talented young lawyer. I am also a single parent with two young children who are completely dependent upon me. I qualify in January. At that point I will have to leave legal aid work behind. I would be no worse off living on benefits (as I see when I fill out applications for legal aid and legal help) than I have been the last few years working for a pittance and juggling postgraduate courses and childcare. I am furious with this government's short sighted approach to the administration of justice and the rule of law, and also to their ability to wipe out a career thousands of talented students have worked hard for, for many years and at great personal and financial cost."

"Specifically, my main concern is with diversity in the legal profession and attracting the best candidates, from all backgrounds. Coming from a family who couldn't financially support me to

⁴<http://www.younglegalaidlawyers.org/sites/default/files/One%20step%20forward%20two%20steps%20back.pdf>

⁵www.younglegalaidlawyers.org/sites/default/files/TLA%20crime%20duty%20contracts%20YLAL%20response.pdf

any great extent after the age of 18, I was only able to get internships or work experience in relevant fields because of scholarships at my undergraduate university, which I know aren't available to most people. There were still plenty of things I'd have loved to have done that I couldn't afford to do. Money is already so tight in so many areas of criminal justice that paid internships are a rarity; and if they pay, they don't pay enough for an individual living outside of that city (usually London) to attend. This would be a surmountable setback - loans and overdrafts can be utilised - if it wasn't also the case that studying today comes with tens of thousands of pounds worth of debts and the profession itself comes with a warning label that you're - at best - likely to 'break even' in terms of living costs vs income, especially in the early years. I'm not sure how anybody aside from those with some sort of independent wealth can afford to enter the profession and I believe this will decrease the rate of economic and racial diversity, in particular, in the legal profession. A diverse profession is a stronger profession and ensures the best candidates are getting the jobs - something so crucial to such an important area."

Impact of scrapping minimum salary

It is hard to assess the impact of removing the regulated minimum salary as it took place less than one year ago and there is insufficient research to show that the full effects have been realised. The removal of the minimum salary also coincided with major changes to the legal aid market, including cuts to the legal aid scheme under LASPO, with further government proposals to remove and reduce the scope of legal aid throughout 2014 and 2015. This has meant greater uncertainty for firms, who are less willing and able to commit to taking on trainees over a two year period in an increasingly insecure economic environment.

There has been a new charitable measure introduced to support those committed to working in social welfare law, although only nine individuals have so far benefited from this scheme. The Justice First Fellowship has been set up to fund trainee solicitor placements. It is an initiative we wholly support, although it is some way off the numbers assisted under the former Legal Services Commission training contract grant scheme where, for example, 150 people were helped in 2008 alone⁶.

It is also important to raise the wider regulatory context. Since removing the regulated minimum salary the SRA has also decided to withdraw from regulation of the marketplace, which in our view leaves trainee solicitors with even less protection against employers. We recorded our concerns about reduced supervision arrangements and recourse for trainees against employers to obtain help from the regulator in our response to the SRA consultations on a review of regulation⁷ and competencies⁸.

YLAL's views for reinstating minimum salary

YLAL fully supports the campaign to reinstate the minimum salary for trainee solicitors and agrees with the Law Society's proposal.

The unique situation of those working in predominantly legal aid firms, where salaries are low, opportunities for future progression scarce and training costs borne entirely by the individual without firm or government help means that a salary safeguard is the only way to protect against a race to the bottom in salary levels, and in both quality of trainee experience and recruitment. Responsible firms will always pay at a responsible level, but cumulative government cuts to legal aid experienced from 2013 to the present mean that even those who

⁶ <http://www.lawcareers.net/Information/News/20012009-LSC-again-offers-grants-for-training-contracts>

⁷ <http://www.younglegalaidlawyers.org/sites/default/files/YLAL%20SRA%20T4T%20response.pdf>

⁸ www.younglegalaidlawyers.org/sites/default/files/YLAL%20SRA%20response%20competence%20.pdf

are ethical employers may have to radically reconsider their practices if they wish to stay financially viable.

This has also contributed to the paradigm of paralegal practice and extended paid or unpaid work experience before candidates are able to obtain a training contract. The effect of this shift in the market is now no longer mitigated for the individual by a minimum salary, to safeguard against further exploitation.

We agree with the suggestion by the Law Society to propose a recommended minimum salary of £19,821 for trainee solicitors in London and £17,455 for trainee solicitors outside of London under formula (c) which would implement the recommended salary calculated using the Living Wage and LPC adjustment. We think this is a fair proposal for both employees and employers. We would ask for the proposal to come with a built in year on year increase as both Living Wage and LPC adjustments rose.

We do however acknowledge the extreme pressure that employers are under and ask the Law Society to strongly advocate for reinstatement of government funding for those from the lowest income backgrounds who can commit to a set period of work in publicly funded law, as well as to continue its opposition to legal aid cuts as a whole.