



The Law Society

## COUNCIL

The Council will meet at 14.00 on Wednesday 22 July 2009 continuing at 09.30 on Thursday 23 July in the Council Chamber at 113 Chancery Lane, London

### AGENDA – PART 1

- 1 Apologies
  - 2 Request(s) for leave of absence
  - 3 Announcements
  - 4 Minutes of the Council meeting on 10 June 2009 Attached
  - 5 Matters Arising from the Minutes
  - 6 Question Time
- Representation*
- 7 Salary Survey 2008 – Results and Project Plan Attached
- Governance*
- 8 Law Society Trust Funds: New Trust Attached
  - 9 Appointment of the SRA Board: Amendments to the General Regulations Attached
- Reports and motions*
- 10 Reports of the Chairs of the Non-Regulatory Boards
    - (i) Membership Board To follow
    - (ii) Regulatory Affairs Board To follow
    - (iii) Management Board Attached
    - (iv) Legal Affairs and Policy Board Attached
  - 11 Council workplan Attached
  - 12 Council member motions
  - 13 Oral reports



## COUNCIL

### Minutes of the meeting on 10 June 2009 in the Council Chamber at 113 Chancery Lane, London

#### PART 1

- Present** Paul Marsh (President)  
Robert Heslett (Vice-President)  
Linda Lee (Deputy Vice-President)
- Peter Adams, Robin ap Cynan, Paul Barnes, Richard Barnett, Richard Barr, Verity Boocock, Grace Brass, Denis Cameron, Andrew Caplen, Sue Carter, Christopher Clark, Helen Clarke, Stuart Collingham, Helen Davies, Paul Davies, Nigel Day, David Dixon, Nigel Dodds, Frank D'Souza, Joe Egan, Keith Etherington, Nicholas Fluck, Jeffrey Forrest, Malcolm Fowler, Michael Franks, Michael Garson, Jennifer Gracie, Philip Hamer, Wendy Hewstone, Andrew Holroyd, Brian Hughes, Anne Jarvis, Ian Kelcey, Carolyn Kirby, Ian Lithman, Patricia Lush, Clare McConnell, David McIntosh, Maria Memoli, David Merkel, Rod Mole, David Morgan, Sue Nelson, Nwabueze Nwokolo, Tim O'Sullivan, David Payne, John Pickup, Basil Preuveneers, Patrick Richards, Jonathan Ripman, Michael Singleton, Jonathan Smithers, David Taylor, Rodney Warren, John Weaver, Chris Welton, John White, Fraser Whitehead, Michael Williams, Stanley Williams, John Wotton, Gaynor Wragg, Peter Wright, Simon Young.
- In attendance** Desmond Hudson, Chief Executive of the Law Society
- By invitation** Stephen Brooker, Chair of the Audit Committee (minute 201)  
Murray Ross, Audit Committee Member (minute 201)  
Laura Devine, Council Member-Elect, Immigration Law  
Anna Sutcliffe, Council Member-Elect, Junior Lawyers Division  
Beth Wanono, Council Member-Elect, Junior Lawyers Division  
Trainee  
Paul Widdup, Council Member-Elect, Law Management Section
- Apologies** Adrian Barham, Christina Blacklaws, John Bleasdale, David Bott, John Calladine, Sara Chandler, Rajshree Chhatrishia, George Curran, Simon Davis, Paul Finch, Derek French, David Greene, Wesley Gryk, Angus King, Kevin Martin, Michael Orton-Jones, Fleur Palmer, Penny Palmer, Tony Prichard, Lucy Scott-Moncrieff, Razi Shah, Jonathan Stephens, Andrew Tucker, Michael Webster.
- Leave of absence** Tim Mutti was granted leave of absence for this meeting.
- 193 ANNOUNCEMENTS**

Council was reminded that the next meeting would start at 14.00 on 22 July and would reconvene at 09.30 on 23 July. The AGM would follow the Council meeting.

Ian Lithman was congratulated on having reached 50 years on the Roll of Solicitors.

The General Counsel Directorate had been fundraising for the Stroke Association as a tribute to the former Director of Equality and Diversity, Manjot Dhanjal. To reach the £1,000 target, members were invited to bid for an original oil painting.

**194 MINUTES OF THE MEETING ON 29 APRIL 2009**

The Council approved the Part 1 minutes of the Council meeting on 29 April 2009, subject to the following amendment:

Flick  
Heron

Minute 163 - The Law Society Group Equality and Diversity Framework

Replacement of the first bullet point ('The Society should press the government for adequate funding for court interpreters'), with the following:

- The Society should press the government to devise viable funding arrangements for training courses in order to salvage continued accredited provision of interpreters and translators where the funding arrangements currently in place frustrate that objective.
- The prominent references to interpreting and translating issues in earlier equality and diversity framework documents produced by the Society should equally feature in an appropriate form in the current documents.'

**195 MATTERS ARISING**

Denis Cameron requested that there be an update on conveyancing at the July Council meeting.

Mark  
Stobbs

**196 QUESTION TIME**

There were no questions.

**197 REVIEW OF THE COMPENSATION FUND**

This item had been withdrawn from the agenda to enable the Management Board to consider the report and provide its advice prior to consideration by the Council.

**198 COMPENSATION FUND CONTRIBUTIONS 2009-10**

This item had been withdrawn from the agenda so that factors which might reduce the necessary contribution could be considered. The Management Board would review the SRA's final proposal and give its advice to the Council in July.

**199 REPORT OF THE CHAIR OF THE MEMBERSHIP BOARD**

The Council noted the mid-year report of the Membership Board which included an update on accreditation, membership structure, special interest groups, stakeholder management, membership services, communications, the Excellence Awards, Council member support and regional visits.

In response to members' questions, Rod Mole and Des Hudson said:

- the transfer of the administration of the Joint Tribunals to the Society was in progress;
- the results of the *Members Perceptions of the Law Society* survey were not yet available;
- the Business Development Unit managed sponsorship, membership benefits and endorsements; there was a procedure for approving endorsements under which Board approval was not currently required, but the process could be reviewed for the future.

Steve  
Jeffrey/  
Des  
Hudson

**200 REPORT OF THE CHAIR OF THE LEGAL AFFAIRS AND POLICY BOARD**

The Council noted the report which covered the Board's work on legal aid, civil justice, advocacy, practice notes, the regulation of will writers, solicitor's law shops, the proposed new committee, interpreters and reports from the Employment Law Committee and the Conveyancing and Land Law Committee.

A conclusion had been reached on the Personal Injury Claims Process and a ministerial statement was expected to be published in the near future.

**201 AUDIT COMMITTEE ANNUAL REPORT 2008**

Stephen Brooker presented his report which highlighted the Committee's work throughout 2008 and the key activities during the first quarter of 2009 which included governance and the management of shared services; IT issues; group risk management and control; and control over purchase ordering.

Governance and the management of shared services

The Committee had been concerned about the management of shared resources since the separation of regulatory and representative functions in 2006 and keenly awaited the outcome of the establishment of the Support Services Resolution Board.

The Committee would continue to monitor the effectiveness of governance across the Law Society Group.

IT issues

The Committee was content with the work undertaken to improve the management of IT projects which included more detailed

customer relationship management plans and change management. It was concerned about the level of impairment of IT systems, although it was satisfied with the information now being provided.

#### Group risk management and control

The Committee welcomed the reports from the Chief Executives of TLS, SRA and LCS which detailed the processes in identifying, evaluating and managing the significant risks faced by the Society. Risk management needed to become an integral part of business planning and monitoring.

The Committee noted that risk assessments appeared in the business planning for 2009 and that those assessments had been used in the Committee's development of the Society's 2009 – 2010 Internal Audit Plan.

#### Control over purchase ordering

The IT department had prepared an improvement programme across the Law Society Group in 2008 to tackle the purchase to pay systems. The results of the internal audit were expected in the autumn.

#### Law Society Trust Funds

The Committee welcomed the review of the Law Society trust funds and commended the work carried out to date. The Committee urged the Council to move forward with the proposal to establish a new trust as soon as possible.

The report also made reference to the Legal Services Act 2007; pensions; work in response to the economic recession; internal audit projects and review; compliance with the Combined Code; LCS Audit and Risk Committee and SRA Scrutiny Committee; and external auditors.

In response to members' questions, Stephen Brooker made the following comments:

- in relation to the Law Society trust funds, he indicated that the Committee's concern was that although the review recommendations had been accepted by the Committee and the Management Board it appeared that no progress had been made;
- the Committee had confidence in the processes being followed to deal with the pension scheme deficit, including the agreement with the Trustees on the schedule for payments;
- the Committee was content that the terms of reference of the Remuneration Committee were being complied with and that decisions were being communicated appropriately;

- the Committee did not routinely oversee decisions on commercial sponsorship. The Committee would look at any matters that were brought to its attention;
- the Committee supported the establishment of the SSRB.

Stephen Brooker thanked Barry Christie, Raymond Tinney and Mark Paulson for their excellent support during his five years as Chair; Senior Management Team and their PA's; Steve Towsey, Head of Internal Audit; and Council.

The President thanked Stephen Brooker on the Council's behalf for all his work and wished him well.

The Council noted the report.

**202**

## **PRIORITIES AND ISSUES FOR THE COMING YEAR**

The Chief Executive and Director of Finance gave a presentation showing cost breakdowns for each Directorate, designed to give the Council background information to enable it to debate what should be the high-level policy priorities for 2010, bearing in mind the projected financial position of the Society under certain assumptions. These assumptions included the level of PC fee renewal, commercial income during the year and the shortfall (if any) between the amount that could properly be spent from PC fee income on representative matters and the amount that was needed.

The Chief Executive indicated that boards would approve directorate bids for funding and, if these exceeded the budget set by the Council, the Management Board and, if necessary, the Council would have to resolve the issue by approving lower funding than that which was requested or by reducing spending in other areas of the business. The Chief Executive emphasised that cost-effectiveness and performance management were key issues in the process.

There then followed a general discussion, during which members suggested that action to secure proper regulation of will writers; Best Value Tendering and its potential to drive down standards; and the need for robust pastoral care arrangements if the over-supply of solicitors coupled with economic conditions led to large numbers being driven out of the profession should be added to the list of policy priorities.

The Chief Executive said that boards would base their bids on a business plan prepared with the help of the Finance team. He envisaged that when bids were being considered, and priorities being identified, the option of re-arranging staff responsibilities would, if necessary, be taken into account. Ultimately, the Management Board and the Council would need to bear in mind the fact that the Society could not do everything and prioritising meant that work on other matters would not take place.

The Council noted the presentation.

**ORGANISATIONAL NOMINATIONS – BYE LAW AMENDMENTS**

The report invited the Council to approve recommendations from the Council Membership Committee (CMC) regarding the procedure for making nominations to organisational Council seats. Proposed amendments to the Bye-Laws, for submission to the AGM, were annexed to the paper.

The Council agreed –

- (1) That the nomination procedure be subject to the possibility of an investigation process, with power for the Society to require that the nomination procedure in any given case be started afresh.
- (2) That the guidelines issued by the CMC be referred to in the Bye-Laws and thereby be given greater authority.
- (3) That candidates for nomination be required to disclose to the nominating organisation and to the Society any convictions, findings and investigations on the same basis as candidates in ballots.
- (4) That Bye-Law amendments (as set out in Annex C to the report) be taken to the AGM in July to give effect to the Council's decisions.

Mark  
Paulson

**SUPPORT SERVICES RESOLUTION BOARD:  
(1) APPOINTMENT OF MEMBERS; (2) OVERSIGHT BY THE  
SCRUTINY AND PERFORMANCE REVIEW COMMITTEE**

Philip Hamer presented this paper, which set out for approval the Management Board recommendations for the Council's membership of the Support Services Resolution Board (SSRB) and invited the Council to make amendments to the General Regulations to include the SSRB in the remit of the Scrutiny and Performance Review Committee and to deal with the term of office of the independent members.

Philip Hamer explained that a handround had been circulated suggesting as an additional recommendation a further General Regulations amendment to provide for alternates to be nominated to attend SSRB meetings if the 'regular' Council or SRA members were not going to be present. A further amendment to that set out in the handround was proposed, which would require that any alternate to a Council member of the SSRB should, wherever practicable, be a Council member.

Philip Hamer briefly explained the background to the proposals, and noted that the recruitment process for the SSRB independent members was well under way.

In debate, several members questioned the proposal that the Deputy Vice-President be Chair of the SSRB ex officio, and argued that it would be burdensome for a new office-holder to have to

undertake this responsibility, whereas the Vice-President would be in a better position to do this. Other members felt that the Deputy Vice-President was elected sufficiently far ahead of taking office that he or she would be in a position to be familiar with the issues, and a disadvantage to the Vice-President undertaking the role was that they would be too close to the Presidency, which should occupy a position above the Boards.

Several members questioned whether members of the Management Board should be ex officio members of the SSRB, and suggested that the members be elected by ballot. It was also suggested that the Management Board were effectively protagonists in any dispute with the SRA that would go to the SSRB for determination. Other members believed that only the Management Board would be as familiar with the issues as the SRA Board representatives. On the question of alternates, it was also suggested that a 'reserve list' be drawn up.

During the debate, two amendments were moved, which were debated together with the principal recommendations –

Paul Davies moved as an amendment to Recommendation (1)(a) (that the Deputy Vice-President chair the SSRB ex officio) that the word 'Deputy' be deleted, and this was seconded.

Peter Adams moved an amendment to delete the 'wherever practicable' proviso to the proposal that a Council alternate to attend an SSRB meeting should be a Council member, and this was seconded.

The Council voted on the amendment proposed by Paul Davies to delete 'Deputy' from Recommendation (1)(a), and this was lost.

*For: 20; Against: 21; Abstentions 1 (lost)*

The Council agreed

(1)(a) to appoint the Deputy Vice-President as Chair of the SSRB ex officio.

Mark  
Paulson

*For: 30; Against: 11; Abstentions 1 (carried)*

(1)(b) to appoint Andrew Caplen and Tim O'Sullivan as the two Council members on the SSRB, serving ex officio as Management Board members.

*For: 21; Against: 20; Abstentions 2 (carried)*

(2) to bring the SSRB within the remit of the Scrutiny and Performance Review Committee by making the changes to the General Regulations as recommended in the paper.

*For: 37; Against: 2; Abstentions 4 (carried by a two thirds majority)*

(3) to give the SSRB independent members a three-year term of office, renewable for one further term of three years only, by making the changes to the General Regulations as recommended in the paper.

*For: 40; Against: 2; Abstentions 1 (carried by a two thirds majority)*

The Council voted on the amendment proposed by Peter Adams to delete the 'wherever practicable' proviso to the proposal that a Council alternate to attend an SSRB meeting should be a Council member, and this was carried.

*For: 27; Against: 10; Abstentions 6 (carried)*

The Council agreed

(4) to provide for the Society and the SRA Board each to nominate alternates to attend SSRB meetings where the 'regular' member was not going to be present, by making the following change to the General Regulations –

At the end of Regulation 14 (Membership of Boards), add the following new paragraph (9) –

- (9) An alternate may be nominated to attend any meeting of the Support Services Resolution Board, with power to act as a member of the Board for the purposes of the meeting and to be counted as such for the purpose of determining whether a quorum is present as if the member of the Board for whom he or she is acting as an alternate were personally present –
- (a) by the Chair (or, in his or her absence, by the Treasurer) if any of the members referred to in (7)(a), (7)(b) and (7)(c) is going to be absent from the meeting, provided that any such alternate shall be a Council member; and
- (b) by the Chair of the SRA Board if any of the members nominated that Board under (7)(d) is going to be absent from that meeting.'

*For: 40; Against: 1; Abstentions 1 (carried by a two thirds majority)*

**205**

## **PRESIDENTIAL PLAN JULY 2009-JULY 2010**

Bob Heslett presented the Plan for his presidential year. The key themes would be:

- The role of solicitors in maintaining the rule of law
- The commitment of solicitors to the rights of the individual
- The vital part played by solicitors in UK commerce

The three themes reflected major aims:

- To secure regulation proportionate to risk
- To provide services to members meeting their needs
- To position solicitors as true professionals

Specific areas of work for the presidential year included:

- a stakeholder engagement strategy to communicate the key themes for the year through a range of channels including meetings, speeches, articles and email updates;
- continuing the regional programme with senior members of large firms and potential investors, local law societies and other stakeholders in the regions;
- influencing policy in the run up to an election and developing government and parliamentary relations with Westminster, Whitehall, Wales and the European Union;
- expanding the Excellence Awards;
- events including opening the legal year with a gala dinner for key external stakeholders and the leading figures in the legal profession;
- promoting the profession through the continued private client campaign; and
- legal aid: conducting a wide-ranging Access to Justice Review considering the provision of publicly funded criminal and civil legal services in England and Wales.

The Plan had been amended by the Management Board to reflect the balance of responsibilities between the Presidency and the Council. There would be an immense amount of work to accomplish in the coming year including settling relations with the SRA, LSB and OLC and supporting the profession during a period of recession. Issues of equality and diversity, education and training and entry to the profession would continue to be addressed.

Members welcomed the Plan, and made the following comments:

- regional meetings should focus not only on senior partners in large firms but should also engage with smaller firms;
- the Association of Women Solicitors welcomed the range and depth of the plan but would welcome measures to engage specifically with women solicitors within firms;
- the independence of the profession should be an overarching principle.

Bob Heslett assured members of his commitment to ensure that the interests of women solicitors were properly represented and his intention to connect the rule of law closely with the profession's sense of identity and importance. He thanked members for their support.

The Council approved the plan.

Nicky  
Edwards

**PRESIDENTS AND SECRETARIES CONFERENCE 2010**

The report explained that the Membership Board had agreed to arrange a Presidents and Secretaries Conference in 2010, similar to the conference held until 2006, to replace the Leadership Summit. All Council members would be invited to attend. The Conference would provide a forum for:

- local law societies and practitioner groups to share best practice and ideas with each other and the national Law Society;
- the national Law Society to brief local law societies on its work and priorities; and
- discussion of key challenges and opportunities facing the profession and how national and local law societies could better support solicitors to meet them.

A Conference Planning Committee would be established, chaired by Robin ap Cynan, who would invite representatives from local law societies and practitioner associations to sit on the Committee.

In response to members' questions, Rod Mole said:

- the Membership Board would consider reinstating the Annual Conference;
- the Board would give thought to reinstating the Presidents and Secretaries dinner on the eve of the conference;
- local law society conferences were aimed at a different audience.

The Council noted the report and supported the reinstatement of the Presidents and Secretaries Conference.

**COUNCIL MEMBERS CONDUCT COMMITTEE MEMBERSHIP**

The report advised that the terms of office of the three non-Council members of the Council Members' Conduct Committee (CMCC) would expire on 31 August 2009 and under the General Regulations they were ineligible for re-appointment.

As the CMCC had met only two or three times since 2004 to review the Code of Conduct and in that time had not been required to consider a specific complaint it was considered disproportionate to engage in a full recruitment process to select three new members for such minimal duties. It was proposed to continue the principle of non-Council member involvement in handling complaints by amending the General Regulations, with effect from 1 September 2009, to disestablish the three positions and provide that in the event of a complaint to the CMCC the panel to deal with the matter

would include a non-Council member drawn from the Council Membership Committee (CMC).

The Council agreed by a two thirds majority that in the event of a complaint to the CMCC the panel to deal with the matter should include a non-Council member drawn from the Council Membership Committee (CMC), and to amend the General Regulations accordingly, as set out in the annex to the report.

Mark  
Paulson

## 208 COUNCIL MEETINGS OUTSIDE LONDON

The report set out the Management Board's response to the Council's request for further consideration to be given to holding meetings in Cardiff and Brussels. The report concluded that:

- the 2008 meeting in Cardiff had been a success as it reinforced the Society's identity as the Law Society for England and Wales, and informed Council members of the significance of devolution and diverging jurisdictions. The benefits had outweighed the additional costs and it was therefore recommended that Council schedule a meeting in Cardiff every three years;
- as very few, if any, issues derived from EU initiatives were debated within the Council, the costs of holding a meeting in Brussels, where there was no significant Law Society constituency to engage with, outweighed any benefits to be gained and it was therefore an impracticable proposition.

The Council agreed:

Mark  
Paulson

(1) to schedule a meeting in Cardiff every three years;

(2) to hold the June 2011 Council meeting in Cardiff (ie three years after the most recent meeting);

(3) that holding a Council meeting in Brussels was an impracticable proposition.

## 209 COUNCIL WORKPLAN

The Council noted the workplan.

## 210 COUNCIL MEMBER MOTIONS

There were no motions.

## 211 ORAL REPORTS

There were no oral reports.

## 212 PRO BONO PRACTISING CERTIFICATES

Des Hudson circulated a paper recommending Society support for a scheme to enable solicitors who had been made redundant to undertake pro bono work and to obtain a 'Pro Bono PC' at nil or minimal cost.

In addition to increasing the pool of providers of pro bono work and enabling redundant solicitors to stay engaged with the profession, volunteers putting in a certain amount of service would be guaranteed interviews for vacancies within participating firms. There were a number of issues to be addressed in setting up the scheme, including ensuring that solicitors who found new employment obtained a full PC and that their pro bono cases were followed through to completion. The Council's agreement was sought in principle so that the President and Chief Executive could settle the details in time for inclusion in the 2009/10 PC fee order which would be submitted to the Master of the Rolls in July.

Some Council members suggested that the profession should be consulted on the scheme and that the detailed arrangements should not be rushed. A Junior Lawyers' Division representative expressed support for the proposal which would help solicitors made redundant just before qualifying.

Des Hudson responded to particular concerns as follows:

- volunteers' rights to unemployment benefit would be affected only if their pro bono work exceeded a given number of hours;
- most of the work undertaken would probably be for clients who would be unable to pay for a solicitor or get legal aid, and so would not significantly impact on work available for practising solicitors;
- Council members would be given as much notice as possible of the proposed final arrangements for the scheme;
- it would be important to manage perception of the scheme given that some of the firms involved would be those who had laid off solicitors;
- the SRA was expected to support the scheme and needed to be involved to deal with the licensing aspect;

The Council agreed that The Law Society fund a number of Pro Bono Practising Certificates in the manner described in the report, to enable the scheme in the immediate term, and that consideration and implementation of the details of the Society's involvement be delegated to the President and the Chief Executive.

Des  
Hudson

*For: 17; Against: 9; Abstentions: 2 (carried)*

Signed: .....  
Paul Marsh, President

Date: .....



The Law Society

**COUNCIL**  
**22-23 July 2009**

**Item 7**

**Classification – Public**

**Purpose – For noting**

## **SALARY SURVEY 2008 – RESULTS AND PROJECT PLAN**

### **The Issues**

This paper sets out proposals for a project plan for the Law Society to take action in response to the 2008 survey of salaries across the solicitors' profession. The proposals were agreed by the E&D Committee at its April meeting.

### **Policy Position**

There is not a current policy position on the issues raised by the salary survey.

### **Financial and Resourcing implications**

Resources for the project outlined in this paper are provided for in the budget of the Society's equality and diversity function.

### **Equality and Diversity implications**

Very significant. The salary survey has revealed significant inequalities within the profession and the Society must support solicitors in addressing them.

### **Consultation**

This report was considered by the Equality and Diversity Committee in April.

**Director:** Stephen Ward  
**Author:** Stephen Ward  
**Date of report:** 7 July 2009

## **SALARY SURVEY 2008 – RESULTS AND PROJECT PLAN**

### **1. Introduction**

In late 2008 the Strategic Research Unit (SRU) of the Law Society undertook the annual salary survey of the solicitors' profession. Attached are the 2008 Salary Fact Sheet and reports of the highlights of the analysis of findings by gender and ethnicity.

### **2. Project Plan**

The key question is how best to act on these challenging findings. While we will all certainly have strong ideas about some of the causes of the pay inequalities across the profession, there is a lack of consensus about how they can be addressed most effectively. It is vital that the Society works with the profession to develop a shared understanding of the causes and a commitment to action to address them.

Because of the resources that are now available to us in the form of the BME Forum and the Firms Diversity Forum, we can hope to move reasonably quickly with a view to holding a major event in the autumn to launch a profession-wide commitment to working towards true equality in the profession.

This is also an important opportunity for the Society to engage more closely with practitioner associations representing demographic groups within the profession and demonstrate our role both supporting individual solicitors and legal businesses.

The project plan has three stages:

- i. Engagement and analysis - May, June, July
- ii. Development and agreement of recommendations - August, September, October
- iii. Launch of commitment to action – November

*NB. Dates will slip because the post of Head of Equality and Diversity will not be filled until mid-August 2009. However, the Association of Women Solicitors (AWS) has already held a round table event which will provide a basis for future work in this area.*

#### **i. Engagement and analysis - May, June, July**

- Discussions with practitioner groups, BME Forum, Firms Diversity Forum to finalise plans
- Public announcement of project plan
- A series of confidential focus groups/round tables with members of individual demographic groups in collaboration with the relevant practitioner association(s) e.g. women with AWS, Muslim solicitors with AML, etc.
- Confidential focus groups/round tables with employers of solicitors
- Parallel desk research into existing knowledge
- Publication of anonymised reports of each event highlighting key points
- Associated PR

#### **ii. Development and agreement of recommendations - August, September, October**

- A reference group drawn from practitioner associations and representatives of employers oversee drafting of a report drawing together key learning from the engagement and analysis and making recommendations for action

- Presentation of draft report to groups of solicitors, BME Forum, Firms Diversity Forum, practitioner associations
- Final version of report and action plan agreed October

**iii. Launch of commitment to action - November**

- High profile conference bringing together all parties to commit to the action plan and to hold working groups to start planning delivery.
- Associated PR
- Start of annual cycle of action and joint reporting on progress?

**GENDER AND EARNINGS IN PRIVATE PRACTICE**  
**Findings from the 2008 salary survey**

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# GENDER FINDINGS FROM THE SALARY SURVEY 2008

## EXECUTIVE SUMMARY

This report on the findings of the 2008 salary survey provides evidence of a persistent differential in the average earnings of male and female private practitioners, as well as a detailed account of the possible causes of gender pay inequality in private practice.

Women private practitioners earned 28.9% less than men in 2008, on average, without taking into account any differences in their working lives. However, after controlling for a range of factors, such as PQE and grade, the fact of being female alone resulted in women earning 6% less than men, on average. Analysis of the data suggests that the vast majority of the gender pay gap in private practice is ascribable to differences in the attributes of men and women such as experience, grade, and type of firm worked in, leaving around 8% attributable to direct discrimination by employers.

Consideration of some of the standard policy approaches to dealing with gender pay inequalities reveals some of the drawbacks associated with such proposals; the range of issues that combine to explain variations in private practitioners' earnings also suggest that some of the standard responses might not be sufficiently nuanced to make a substantive improvement in the context of solicitors working in private practice.

### 1. Earnings and gender pay gaps for all private practitioners for 2007/08

Average earnings for all solicitors in private practice were estimated as follows for the financial year 2007/2008.

#### *Yearly earnings*

- Median yearly earnings - £55,000
- Mean yearly earnings - £74,033

#### *Hourly earnings*

- Median hourly earnings - £23.08
- Mean hourly earnings - £30.06

#### *Earnings per hour billed*

- Median earnings per billed hour - £45.83
- Mean earnings per billed hour - £65.08
- Taking no account of other factors that might be related to earnings, the median gender pay gap in yearly earnings was 28.9% for 2007/08; the figure derived from the 2007 sample was 31.85%. However, care must be taken in making any comparison between the two years because of the differences in the quality of the sample responses on earnings. Hourly and per billed hour gaps were smaller at 23.08% and 22% respectively.
- Overall, analysis demonstrates the existence of multiple gender pay gaps of varying size. In particular, they highlight clearly that the gender pay gap is wider, at present, for more experienced and more senior solicitors than it is for less experienced solicitors and associates. Since the data is not based on tracking

the same or similar individuals over time it cannot be said, on the basis of these data anyway, that pay inequities increase with age or over time. Another striking point is that, although the largest firms do not display the widest median gender pay gaps, their mean pay gap indicates wide variation between men and women in the highest earning brackets.

## **2. Reasons for the gender pay gap in private practice**

- Taking account of a wide range factors, gender was *only narrowly a significant determinant* of earnings. The optimal regression model for 2008 indicated that female solicitors earned 6% less than male solicitors, on average, in 2008.
- Lack of comparability between the 2007 and 2008 data aside, the overall indication from both years is that once a number of relevant factors are taken into account, there remains a gendered difference in pay that disadvantages women. The 6% reduction in average annual salary for women solicitors could be a result of any one or more of the following: direct discrimination, different preferences, or different motivations and attitudes to the labour market of female and male solicitors; and account needs to be taken of the possibility that even differences in motivation and preferences may, in part, be attributable to indirect discrimination or systematic disadvantage.
- The results of applying a standard econometric approach to the 2008 data indicated that 92% of the gender pay gap can be attributed to differences in attributes between male and female solicitors (in experience, in grade, in the types of firms worked in, practice areas), leaving 8% attributable to possible discrimination (either male advantage and/or female disadvantage). In particular, differences in the proportions of women and men at equity level, and differences in PQE appeared to account for 82% of the earnings gap.
- The evidence taken as a whole seems to point to elements of direct discrimination (for which there are indications but no concrete evidence) but, most of all, to barriers to achieving partnership status - and, within that, the highest echelons - that have greater adverse impacts on women than men. These appear to be tied up with firms' structures and cultures as well as differences in some women's and men's attitudes and preferences regarding progression and areas of practice.

## **3. Policy implications**

On the basis of the current model for solicitors in private practice in order to achieve equal pay – assuming that this is indeed possible – the following areas would need to be addressed.

- An element of direct discrimination (in particular male advantage)
- PQE – in a sense nothing can be done about the fact that women are more recent entrants to the market but the analysis suggests that women and men receive different rates of return for each year of PQE
- Although the under-representation of women at partnership level is related to PQE, to some degree there is evidence that women are less likely to achieve partnership status. The problem here is that although direct and indirect

discrimination are probably at play, it must be accepted that some women associates and assistants appear to be less likely to want partnership for reasons which may not be attributed to systematic disadvantage. Some solicitors simply do not want the stress, and the data suggest that women are more likely than men to take this view.

- Hours billed – this year's data appears to show that women do not earn the same for each hour billed, all other things being equal, and, worse still, that they are as productive as men despite working fewer hours, but doubts about the validity of respondents' data – because they are self-reported - mean that we cannot be confident about this finding.
- The area of law issue is fairly complex because not all of the obvious variations by area of law were in fact significant determinants of overall variation. However, the area of business and commercial is consistently prominent, whatever the analysis. An obvious solution might be to encourage more women into these areas but the impact of such a shift on provision in other areas would need to be considered. Furthermore, the rationales that might determine partnership ambitions might also be relevant here: some people, and some women in particular, may simply not be willing to work the longer hours often associated with business and commercial areas; others may value different service ethics and ideals more highly.
- The gendered ownership of firms explained some of the gap and since it is not yet clear why this is an important factor, it is difficult to imagine what might be done.
- Notably, family responsibilities did not stand out as disadvantages to women solicitors but this factor may well be tied up with the differences in hours worked. A better, robust understanding of real motivations and choices in this regard might be useful.

## **GENDER AND EARNINGS IN PRIVATE PRACTICE FINDINGS FROM THE SALARY SURVEY 2008**

Data on the earnings and working lives of solicitors in private practice were collected in October 2008 for the financial year 2007 to 2008. This report presents the findings relating to gender differences in earnings for that period, based on a sample of 1,200 individuals. The analyses seek to provide some measures of the size of the gender pay gap in 2008, for solicitors working full-time, though arguably not definitively, as well as some explanation as to the reasons for the gap.

The salary values used in the analyses were a combination of exact-value responses and estimates based on the mid-point range-value responses where absolute values were refused<sup>1</sup>. This is far from ideal for the purposes of estimating earnings differentials<sup>2</sup> and means that comparisons between the 2007 and 2008 samples must be made with caution.

The basic gender pay gap between average earnings, for a range of features of private practice, are described in section one. Section two presents the findings of more sophisticated approaches to determining the relationship between gender and earnings, and highlights relevant insights from other sources. Finally, section three outlines some of the policy implications of these findings.

### **1. Earnings and gender pay gaps for all private practitioners for 2007/2008**

#### **1.1 Earnings**

Details of the median earnings for all private practitioners (by grade, firm size, category of law and PQE) are detailed in the web fact sheet *Private Practice Solicitors' Salaries*<sup>3</sup>. Average earnings for all solicitors in private practice were estimated as follows for the financial year 2007/2008.

##### *Yearly earnings*

- Median yearly earnings - £55,000
- Mean yearly earnings - £74,033

##### *Hourly earnings*

- Median hourly earnings - £23.08
- Mean hourly earnings - £30.06

##### *Earnings per hour billed*

- Median earnings per billed hour - £45.83

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<sup>1</sup> This is because the response rate to questions inviting exact values was poor (39%) and much worse than the response rate achieved in 2007. This strategy provided a bigger and more stable sample. Low response rates are generally assumed to produce biased samples which can substantially increase the potential for error in estimating. Range values were also accepted from respondents as a safeguard and therefore it has been possible to include estimates based on mid-points of those ranges.

<sup>2</sup> However, it is preferable to reliance on the exact values only - repeated testing on the exact values only merely revealed the instability of those data.

<sup>3</sup> <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/factsheets.law>

- Mean earnings per billed hour - £65.08

## 1.2 Pay gaps

Taking no account of other factors that might be related to earnings, the median gender pay gap in yearly earnings was 28.9% for 2007/08; the figure derived from the 2007 sample was 31.85%. However, care must be taken in making any comparison between the two years because of the differences in the quality of the sample responses on earnings. Hourly and per billed hour gaps were smaller at 23.08% and 22% respectively.

**Table 1 The average gender pay gap(s)**

	<b>Annual earnings Gap</b>	<b>Hourly earnings gap</b>	<b>Earnings per billed hr Gap</b>
<b>Median</b>	28.94%	23.08%	22.00%
<b>Mean</b>	37.17%	29.41%	38.96%

The gender pay gap is a measure of the difference between the earnings of men and women and is determined by calculating women's overall average pay as a percentage of men's<sup>4</sup>. The pay gap figure does not relate to identical employment and does not, in isolation, prove that discrimination exists, nor does it describe the extent of any discrimination that might be present in the labour market.

Most official statistics compare the average hourly earnings of men and women working full-time as the best way to compare like with like; international comparisons usually involve the mean as the measure of averages. The mean, however, does not necessarily describe the typical picture because, relative to the median, it is affected by extreme scores (high and low). The median – the earnings figure below which half the sample population falls – is the measure preferred by the Office for National Statistics and is generally used in this report to describe average earnings and to measure basic gender pay gaps. The more sophisticated analyses used to generate the findings detailed in section two are necessarily based on mean values<sup>5</sup>.

Although the pay gap indicator for the general population most commonly used in the UK is the gap in median hourly earnings (excluding overtime), annual earnings figures are thought to provide the most reliable basis for estimating the salaries of solicitors in private practice<sup>6</sup>.

Examination of the gender pay gap by grade, employer-firm size, PQE and region revealed both expected and more interesting findings (see Appendix 1 for detailed tables).

### *Grade*

<sup>4</sup> For example, the pay gap is said to be 15% where women's pay is 85% of men's.

<sup>5</sup> The median is not mathematically tractable – since the median is only concerned with the middle scores and not every score in a distribution it is not sufficiently flexible to support more advanced statistical techniques.

<sup>6</sup> There is reason to believe that there is at least some tendency amongst solicitor respondents to Law Society surveys to exaggerate the number of hours worked and/or billed - indicated by discrepancies between the two and/or seriously incredible responses for average hours worked in a week or billed in a month (when aggregated or disaggregated, exceeding maximum possible values).

The median gender pay gap was smallest, at 10%, for associates and assistants, and highest for salaried partners (24%) - but large differences for equity partners and sole practitioners were apparent judging by the mean pay gap of 34% in that group.

#### *Firm size*

The median gender pay gap was lowest for single solicitors (12.5%) and highest in firms with 41 to 170 solicitors (i.e. large firms, but not the largest) with a gap of 38%. The single solicitor gender gap serves to illustrate the point that simple pay gap calculations say little, by themselves, about discrimination since employer discrimination cannot, by definition, be a relevant causal factor in the difference in earnings for this group.

Median and mean values for the pay gap were close for the 41-170 solicitor-count firms, but in the largest firms, although the median pay gap was comparatively low at 23%, the mean gap was the widest of all at 45%. This indicates that the highest earners in the largest firms are more likely to be men than women.

#### *PQE*

Median pay gaps increased in size as PQE increased: ranging from 11% for those with 1 to 4 years PQE to 26% for those men and women with 16 or more years of PQE.

#### *Region*

The gender pay gap was lowest in the North, at just 7%, and the highest in London (26%).

Overall the figures demonstrate multiple gender pay gaps of varying size. In particular, they highlight clearly that the gender pay gap is wider, at present, for more experienced and more senior solicitors than it is for less experienced solicitors and associates. Since the data is not based on tracking the same or similar individuals over time it cannot be said, on the basis of these data anyway, that pay inequities increase with age or over time. Another striking point is that, although the largest firms do not display the widest median gender pay gaps, their mean pay gap indicates wide variation in pay between men and women in the highest earning brackets.

### **1.3 Gender differences in private practice**

Summary statistics of the 2008 sample highlighted numerous gender differences in private practice (Appendix 2). In particular, the following distinctions between female and male solicitors were statistically significant.

- Women are much more likely to be associates (74% of women compared to 41% of men);
- And less likely to be equity partners or sole traders (12% compared to 36% of men).
- Female solicitors were less likely than male solicitors to practise in business and commercial, commercial property, consumer problems, crime, and probate wills and trusts, but more likely to practise in family law.<sup>7</sup>
- However, of those working in particular areas, female solicitors spent more time than male solicitors on commercial property, employment, family law, personal injury and probate, wills and trusts.

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<sup>7</sup> This is borne out by analysis of REGIS data on practice areas by gender.

- Notably, men and women were fairly evenly distributed amongst firms of different sizes.
- Men and women were little different in the average number of hours billed but women, on average, worked fewer hours than men<sup>8</sup>.
- Female solicitors were also more likely to work in firms with majority female ownership (15% of women worked in majority female-owned firms compared to 2% of men).
- Average PQE was nine years for women and sixteen for men – as a whole, therefore, women are less experienced (as measured by PQE).
- Women are, on average, younger - the average age for male solicitors was 43 and 36 for women.

## 2. The reasons for the gender pay gap in private practice

Statistical techniques can be used to answer two related questions regarding the causes of a gender pay gap. The first stage involves identifying, through regression modelling, what the important determinants of variation in solicitors' earnings are. The second stage uses regression analysis as the basis upon which to build a decomposition model to try to ascertain how much of an existing gap can be attributed (i) to differences between men and women's possession or display of important earnings determinants, and (ii) to direct discrimination.

Regression analysis seeks to explain variation in solicitors' earnings by considering the independent impact of each of a number of explanatory factors simultaneously. A good regression model is one that fits the observed data well, meets various statistical assumptions, and explains as much of the variation in earnings as possible.

### 2.1 What are the important determinants of solicitors' earnings for 2007/08

Taking account of a wide range of factors, gender was *only narrowly a significant determinant* of earnings. The optimal model for 2008 indicated that female solicitors earned 6% less than male solicitors, on average, in 2008<sup>9</sup>.

#### 2.1.1 What does the optimal model for 2007/08 data look like?

The questionnaire used in 2008 refined measures of certain variables: billable hours, hours worked, types of career break, as well as time spent on career breaks and working part-time. New data were also gathered on the gender and ethnic make-up of the ownership of firms.

The optimal model for 2008<sup>10</sup> data, which explains 70% of the variation in earnings, included the following variables in addition to gender:

<sup>8</sup> Although the concern about the veracity of responses relating to hours must be borne in mind.

<sup>9</sup> The same regression model applied to absolute values only results in gender not being a significant contributor to earnings outcomes. That is, according to actual responses (39% of sample), there is no difference in male and female earnings once all of the factors mentioned above have been taken into account.

<sup>10</sup> Adjusted Rsq of 69.8% p=.090

- Grade (relative to equity partners);
- region (three super regions relative to London);
- firm size (solicitor count – relative to those working in firms with over 170 solicitors);
- PQE (as well as the fact that the influence of PQE tails off over time);
- number of hours billed per year;
- career breaks (paid maternity, unpaid family care, other reasons relative to no breaks);
- gender make-up of firm ownership (majority female relative to majority male ownership); and
- the amount of time spent on thirteen different areas of law: business and commercial; commercial property; consumer problems; crime; employment law; family law; housing landlord and tenant; personal bankruptcy & personal insolvency; personal financial managements and advice; probate wills and trusts; residential conveyancing; welfare benefits and social security rights; and personal injury and medical negligence.

The results of the optimal regression model on 2008 data indicated the following, all other characteristics being equal (see Appendix 3 for the full equation).

- Women earned 6% less than male solicitors.
- Relative to equity partners:
  - Associates earned 5.7% less
  - Consultants earned 3.3% less
  - Salaried partners earned 3.6% less
  - Sole practitioners earned 2.9% less
- Relative to solicitors working in firms with more than 170 solicitors those working in smaller firms earned less
  - One-man bands earned 70.5% less
  - Solicitors in firms with 2 to 5 solicitors earned 57% less
  - Those in firms with 6 to 12 solicitors earned 41% less
  - Those in firms with 13 to 40 solicitors earned 32.5% less
  - Those in firms with 41 to 170 solicitors earned 20.2% less
- For each additional year of PQE annual earnings increased by 5% (averaged out)
- Those receiving paid maternity earned 12% more than those not taking breaks (but other breaks taken were not significant determinants of pay). This is counterintuitive given general population findings but a better understanding of firms' maternity arrangements and their correlation with firm size and other factors, as well as the extent to which women solicitors simply leave the profession rather than juggle career and family, might possibly yield some useful insight.
- Not all areas of law were significant determinants of earnings but the thirteen major areas surveyed were included as controls. Of the areas which proved to be important determinants, the following can be said:
  - For every 10 percentage point increase in time spent on business and commercial, annual earnings rose by 2%
  - For every 10 percentage point increase in time spent on consumer problems, annual earnings decreased by 8%

- For every 10 percentage point increase in time spent on personal bankruptcy, insolvency and debt earnings decreased by 8%
- For every 10 percentage point increase in time spent on personal financial management & advice annual earnings 6%
- For every 10 percentage point increase in time spent on residential conveyancing, annual earnings decreased by 4%
- Finally, solicitors working in firms in which women made up the majority of the ownership earned 13.6% less than those working in majority male-owned firms.

Running the model separately on women and men revealed some interesting insights. (See Appendix 3 for detail.)

- The fact that male sole partners earned 26% less than male equity partners but female sole partners earned 44% less than female equity partners might suggest that female sole traders either undervalue themselves or, relative to their equity partner equivalents, work in less profitable areas<sup>11</sup>.
- Men earned what seems like only a little more than women (0.6 percentage points), on average, for each additional year of PQE – men earned 5.7% more for each year and women 5.1%. Since men, on average, have 7 more years PQE than women this small increment makes a relatively substantial difference.
- Although single male solicitors earned 61% less than men working in the largest firms, single female solicitors earned 90% less than their counterparts in the largest firms. This, again, suggests undervalue for female sole solicitors but that which cannot be attributed to employers.
- For solicitors in all other firm sizes, however, the premiums associated with working in the largest firms were greater for men than for women (for example, men in firms with 2-5 solicitors earned 65% less than men in the largest firms but women in these small firms earned only 35% less than women in the largest firms). This indicates that women in the largest firms do not, on average, earn as much as men in these firms, all other things being equal.
- On the other hand, the gains for working in more commercial areas of law appeared to be no greater for men than for women, all other things being equal.
- Interestingly, men working in majority-female-owned firms earned 21% less than men in male-owned firms, whereas women in majority-female owned firms earned just 6% less than those in male-owned firms. One obvious inference that was drawn from the overall regression, is that female-owned-firms pay less relative to male-owned firms, controlling for all other factors. Another conclusion that can be drawn from this fact is that majority-male-owned firms are probably underpaying women relative to men or, vice-versa, over-paying men relative to women – all other things being equal.
- Whereas women appeared to gain nothing for additional hours billed per year, men earned 0.9% more for every 100 extra hours billed per year.

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<sup>11</sup> With only 59 sole partners in the sample, further analysis is not possible.

Lack of comparability between the 2007 and 2008 data aside, the overall indication from both years is that, once a number of relevant factors are taken into account, there remains a gendered difference in pay that disadvantages women. The 6% reduction in average annual salary for women solicitors could be a result of any one or more of the following: direct discrimination, different preferences, or different motivations and attitudes to the labour market of female and male solicitors; and account needs to be taken of the possibility that even differences in motivation and preferences may, in part, be attributable to indirect discrimination or systematic disadvantage.

### **2.1.2 What progress since 2007?**

The 2007 optimal model applied to 2008 data indicates that female solicitors earned, on average, almost 10% less than male solicitors (9.9%).<sup>12</sup> It is probably not safe to assume, however, that gender disadvantage has increased relative to 2007 when the same model indicated that gender accounted for 7% of the variation in earnings. There are two reasons for this caution: (i) the poorer quality of the 2008 sample relative to 2007 must be borne in mind; and (ii) better models, with more explanatory power, were found for the 2008 dataset.

Following regression analysis of 2006/07 data, female solicitors were found to earn 7% less than male solicitors after controlling for:

- Grade
- Firm size
- PQE
- Region (10)
- Gender
- Breaks (family and other relative to none)
- Hours worked (in bands)
- Whether or not family law or residential conveyancing were undertaken

Returning to the 2007 data and adding a component to the model to allow for the fact that the influence of PQE tails off as its magnitude increases improved the explanatory power of the 2007 model on 2007 data, but reduced the significance of gender to the model<sup>13</sup>, and indicated that female solicitors earned 5.9% less than male solicitors (taking all relevant factors into account), this compared to 7% without the correction on PQE. So, in retrospect, a better point estimate from 2007 data is that women earned 6% less than men rather than 7% less<sup>14</sup>.

## **2.2 How much of the gender gap in private practice is caused by discrimination?**

### **2.2.1 How is direct discrimination identified**

The figures derived from the regression analysis represent the relative importance of the explanatory factors for earnings for all solicitors. Taking PQE as an example, the

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<sup>12</sup> Adjusted Rsq fell was 60.5% in 2007 and 61.5% on logsalEST and 58.6% on logsal.

<sup>13</sup> Gender was significant at 90% confidence rather than 95% confidence.

<sup>14</sup> But the figure falls within the confidence interval estimated for 2007 data.

model measures the part of the earnings gap due to differences in average PQE between men and women, as well as the effects on earnings of PQE. Further analysis using decomposition techniques can focus more specifically on the nature of the gender pay gap, and can attempt to determine how much of the overall gap, or the gap specific to PQE for example, is attributable to (i) differences in PQE (the explained component) rather than (ii) differences in the rates of return to men and women for their PQE (the unexplained component). This provides a means of partitioning the gap in earnings between men and women into a part attributable to the fact that women have fewer years of PQE than men, and a part attributable to the fact that, in theory, they earn less for PQE than men.

Gender-specific differences in the rate of return to characteristics (the unexplained part) suggest that wage decisions by employers are made for non-productivity – i.e. discriminatory - reasons. The unexplained part inevitably includes the effects of factors that have not been included within the model (i.e. data that has not been collected or that is simply not measurable). It is also possible for the ‘explained’ part to include discrimination such as pre-market discrimination (so, for example, barriers against entry of women to more profitable areas). Crucially, such decomposition approaches cannot provide a measure for any indirect discrimination or systematic disadvantage that female solicitors might face in obtaining the attributes attracting the highest rewards (for example, partnership).

Nevertheless, the results of applying a standard econometric approach<sup>15</sup> to the 2008 data indicated that 92% of the gender pay gap can be attributed to differences in attributes between male and female solicitors (in experience, in grade, in the types of firms worked in, practice areas), leaving 8% attributable to possible discrimination (either male advantage and/or female disadvantage). In particular, differences in the proportions of women and men at equity level, and differences in PQE appeared to account for 82% of the earnings gap. (The model is described in full in Appendix 4).

### **2.2.2 Modelling limits**

The results of the statistical analyses show that a basic gender pay gap of around 28% exists within private practice but that, once a number of factors are controlled for gender on its own explains around 6% of the variation in earnings for solicitors in private practice and, furthermore, that the vast majority of the pay gap can be accounted for by differences in the possession of key attributes between women and men. The current decomposition model indicates that around 8% of the gap can be attributed to direct discrimination. Direct discrimination occurs when one person’s wage is different from another otherwise identical person’s related to non-productivity related characteristics, such as gender, so that different amounts are paid to men and women for identical skills and abilities. The cause is often attributed to the conscious or unconscious behaviour of employers.

Three theories explain why employers might choose to discriminate.

- Becker suggested that employers are willing to give up some profit to pay for their taste in discrimination but that in a properly free market (comprising discriminators and non-discriminators and one without intervention of unions or governments protecting particular groups) discrimination should be eliminated over time.

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<sup>15</sup> Oaxaca-Ransom pooled approach

- Statistical discrimination describes the situation where employers make statistical assumptions based on averages – whether accurate or not – to reduce their perceived risk. Discriminating employers resort to these assumptions because they have imperfect information about the productivity of individuals; it covers the application of, for example, an assumption that a woman aged 30 is likely to go on maternity leave in the near future to all women.
- Crowding models which lead to occupational segregation suggest that some occupations may be more attractive to women and, therefore, all other things being equal, the increased supply of labour will lead to reduced wages within those occupations. In the context of law, the predominance of men in business and commercial areas and that of women in family law are the closest examples.

The problem for anyone concerned with gender pay inequality is that there is limited evidence of direct discrimination, and so much reliance is placed on the type of econometric modelling described in section 2.2.1 in order to assess the extent of discrimination in labour markets. However, traditional decomposition techniques do not provide perfect and infallible results. The main problems with the technique can be outlined as follows.

- In the first place, findings are highly dependent on the sample used and the specific variables included. So, for example, the same approach taken by McNabb and Wass using a different specification on 1999 and 2001 Law Society data, which was obtained through different sampling methods, suggested that men earned 14% more than women solicitors and that 25% of the gender wage gap was due to discrimination. The wider literature suggests that, in theory, the inclusion of measures of motivation, career choices and education could all improve the existing model and possibly explain gender out of the equation entirely.
- Secondly, such decomposition models are unable to incorporate the complexity of institutional and other societal-specific factors in the shaping of wage structures. For instance, it is difficult to see how the complexities of pensions and performance related pay systems could be built into the model going forward, and these are highly relevant considerations in the context of comparing earnings.
- Thirdly, the models equate earnings with productivity when, in reality, salaries are also used as a tool of internal personnel management to motivate and control effort levels, or to enhance recruitment and retention strategies. Furthermore, different organisations have different abilities to use high wages for the purposes of motivation and retention and, therefore, managerial strategies impact upon wage structures in ways that are not directly related to the potential productivity of the workers employed. European studies demonstrate that the work environment – i.e. the general wage structure, job and workplace characteristics – shapes gender pay inequality.

### ***2.2.3 The detail of the relative disadvantages that women solicitors might face***

Since evidence of direct discrimination is hard to come by there is little alternative but to explore some of the more likely claims of indirect discrimination, and the extent to which there is empirical evidence to support those contentions. The most common

explanations for the gender earnings gap amongst solicitors working in private practice are the historical under-representation of women in the profession, differences in preferences, and discrimination. McNabb and Wass found, using 1999 and 2001 Law Society data, that a significant part of the pay gap was due to women's limited access to partnership status and lower earnings growth once promoted; fewer hours worked and billed, and lower post qualification experience were also important. The 2008 model mainly confirms those findings but with a tweak: the 2008 data suggests that, although women work fewer hours on average, there is no difference in the hours billed between men and women; however, men receive a better rate of return for hours billed, all other things being equal.

If the historical legacy theory were the only explanation then salary inequalities in private practice ought to decline with time as more women solicitors reach senior positions with associated high salaries. Bolton and Muzio suggest that the increasing supply of female solicitors has been opportunistically deployed by predominantly male partnerships in order to retain traditional privileges and rewards. They argue that internal or organisational closure regimes, which dictate access to partnership and certain prestigious segments of the profession, are still dominated by informal and gendered criteria which serve to exclude women solicitors. They suggest a pattern of gendered internal closure mechanisms in the legal profession which mean that female solicitors are denied access to senior positions within the profession (stratification), and are confined, in an increasingly gendered division of labour, to low-prestige/income areas of the law (segmentation).

### ***Access to partnership***

Given that a major part of the overall gender earnings gap for solicitors in private practice reflects under-representation of women in more senior posts, McNabb and Wass's analysis of earlier Law Society data included consideration of whether gender differences exist in the probability of promotion to partner, other things being equal. Both tenure within the firm and PQE were found to be important to promotion, lending some support for the idea that historical under-representation might play some part; however, even after controlling for PQE, tenure and other productivity-related attributes they found that women were significantly less likely to be promoted to partner. Their results also showed that chances of promotion were smaller in larger law firms.

McNabb and Wass's analysis refers to several explanations of how professional labour markets operate consider the requirement of long work hours in high-paying firms. In models of firms in which the promise of future promotion and higher salaries is made in exchange for demonstrable commitment and performance in the form of long hours, salaried solicitors are paid less than they are worth in the early stages of their careers but more than they are worth in the later stages. Agency models whereby firms end-load compensation to motivate workers also tend to result in employees overworking in the early part of their careers. In models which seek to ensure that only those employees with a true long-term commitment to long hours are selected for promotion, work norms will be established that involve working beyond the time necessary for the effective performance of the job.

Research from the 1990s brought to the fore issues of the long-hours culture and tournament style promotion systems in the highest paying law firms. In those arenas commitment was increasingly associated with being present for long hours; commercial ability (winning clients and earning fees) was thought to be replacing seniority and technical competence as the main avenue for career progression. In

such situations apparently neutral policies to promote lawyers who, for example, generate revenues three times over their salaries and who exceed billing targets are more likely to disadvantage women than men because of women's greater family responsibilities. However, a different perspective on the long-hours requirement is that, on the assumption that it is a necessary part of the work, it is an unattractive working requirement in some areas of law and therefore salaries/drawings reflect an element of compensation - added to which, employers will only pay higher wages in these jobs if they need to do so to attract enough and the 'right' recruits. The obvious problem in transferring the supply-and-demand argument to solicitors' earnings is that a distinction needs to be made between salaried solicitors and those who own or have a share in the profits of their businesses.

The 2008 salary data demonstrates that women work fewer hours than men. On the presumption that there are more constraints on women's time than men' (mainly in terms of family care), or that they do not accept the requirement as sufficiently valid to make the sacrifice, their access to high-paying jobs will be restricted. Operation of statistical discrimination (on the basis of working hours or probability of taking leave) might also encourage firms to place higher requirements on women for promotion than they do for men.

Bolton and Muzio point out that the design and operation of mechanisms deployed in promoting salaried solicitors to partnership are open to gender biases and compound social and cultural assumptions about gender. The 2008 salary data can neither prove nor disprove this thesis; a better and up-to-date understanding of firms' promotion and pay structures is required to make that judgement. However, the 2008 data lend some support for the idea that some men and women differ in their fundamental preferences, motivations and expectations in ways that have not necessarily been influenced by systematic disadvantage.

Another theory of female disadvantage in accessing partnership, discussed in the literature, is that, in law, male characteristics and behaviours are regarded as the norm. Activities such as introducing new clients, marketing the firm's services and generally developing the earnings potential of the practice normally take place outside standard working hours and revolve around male-dominated social and cultural activities. This 'cultural capital' is more costly for all women solicitors to acquire but especially so for women who have children. It also follows that this probably leads women lawyers to be over-represented in areas of the law which are less commercially orientated and less competitive and in which cultural capital is less important (such as family law and the small 'high street' practice). Although parts of this argument are borne out through Law Society data, other elements are not.

### ***Segmentation within law***

Two well rehearsed explanations are possible for the finding that female partners earn less than male partners: discrimination if partners within, for example, business and commercial law are found to earn different amounts according to their gender (either direct or indirect if based on neutral criteria that affect men and women differently); and segmentation – i.e. the overrepresentation of men in the best paid areas of law and the overrepresentation of women in one of the worst paying areas – assuming that overall overrepresentation of either gender is mirrored at equity level (which is not the case within management in the nursing or teaching professions, for example).

Segregation has been found to be an important feature of the gender pay gap in the wider population but there are difficulties in transposing that explanation to solicitors. In the first place, it is not clear that segregation in terms of areas of law practised is as pronounced as it is in the wider population in occupations such as engineering, nursing or teaching or that it can be as easily identified; where a non-lawyer typically works in one occupation in the main, solicitors may, and very often do, practise and specialise in more than one area of law. According to the 2008 salary data, the areas of law in which lower than average pay was statistically demonstrable were<sup>16</sup>:

- Crime
- Family
- Probate, wills and trusts
- Residential conveyancing, and
- Personal injury

Business and commercial specialists earned, as expected, way above average earnings.

Judging by REGIS data on practice areas identified by individuals, there is no main area of practice that women are 'confined' to. The issue is more about the extent to which women and men are over or under-represented relative to the overall make-up of private practice. Against that context, the only area in which the representation of women and men is about similar to the proportion they make in the population as a whole is probate, wills and trusts (one of the lower than average paying areas). Other than that, relative to constituency, men are over-represented in: all business and commercial areas; crime; consumer problems; landlord and tenancy; residential conveyancing; and personal injury – so men are overrepresented in three of the five lower-than-average paying areas. Women are over-represented in employment, and dominate (i.e. form the majority of practitioners) in family and welfare benefits and are seriously underrepresented in business and commercial areas.

The subgroup of partners within the salary data is too small to examine by area of law and thus it is not possible to explore this proposition more fully.

### ***Aspirations about partnership***

New questions about partnership hopes were posed in the 2008 questionnaire. Of the 710 non-equity-partner participants, 60% overall hoped to become equity partners at some point and men were more likely than women to aspire to this goal (67% of male salaried solicitors compared with 53% of female salaried solicitors). On average, men hoped to reach equity status within 6 years and women within 7 years (it must be remembered, though, that, on average, female solicitors are younger than men and have fewer years PQE).

For those not aiming for equity (223) reasons given, in descending order of frequency, included:

- Too stressful (23%)
- Too much financial risk (14%)
- Previous experience of equity (13%)
- Retiring/leaving the profession (12%)
- Not prepared to accept the long hours (12%)
- Not interested/ambitious (12%)
- Prefer a better work-life balance/more time with family (12%)

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<sup>16</sup> On the basis of those claiming to be specialists in particular areas.

- Happy with current position (8%)
- Other career plans (4.5%)
- Market instability (3.4%)

Gendered differences were apparent for only some of those reasons. Women were more likely than men to reason that equity status was too stressful (27% compared to 16% of men); to want a better work-life balance (17% compared to 4%); but less likely than men to have been put off from previous experience of equity status (5% compared to 24%), and less likely to be leaving the profession (6% compared to 20%).

The evidence taken as a whole seems to point to elements of direct discrimination (for which there are indications but no concrete evidence) but, most of all, to barriers to achieving partnership status - and, within that, the highest echelons - that have greater adverse impacts on women than men. These appear to be tied up with firms' structures and cultures as well as differences in some women and men's attitudes and preferences regarding progression and areas of practice.

### **3. Policy implications of these findings**

The main policy levers currently used in the UK to address equal pay issues include:

- Equal pay legislation and its enforcement through employment tribunals
- Collective bargaining initiatives, particularly in the public sector
- Voluntary initiatives by employers, promoted by government and/or the Equal Opportunities Commission (EOC) – such as equal pay audits
- Minimum wage legislation
- Government policy to address the impact of segregation, lack of quality part-time work and family responsibilities on the pay gap
- Public sector service agreements, the forthcoming gender duty on public organisations to promote gender equality and the introduction of gender equality issues into public procurement.
- Strengthening the right to request flexible working
- Improved childcare provision

On the basis of the current model for solicitors in private practice (though we know that it is not perfect), in order to achieve equal pay – assuming that this is indeed possible – the following areas would need to be addressed.

- An element of direct discrimination (in particular male advantage)
- PQE – in a sense nothing can be done about the fact that women are more recent entrants to the market but the analysis suggests that women and men receive different rates of return for each year of PQE
- Although the under-representation of women at partnership level is related to PQE, to some degree there is evidence that women are less likely to achieve partnership status. The problem here is that although direct and indirect discrimination are probably at play, it must be accepted that some women associates and assistants appear to be less likely to want partnership for reasons which may not be attributed to systematic disadvantage. Some

solicitors simply do not want the stress thought to be associated with partnership, and the data suggest that women are more likely than men to take this view.

- Hours billed – this year's data appears to show that women do not earn the same for each hour billed, all other things being equal, and, worse still, that they are as productive as men despite working fewer hours, but doubts about the validity of respondents' data – because they are self-reported - mean that we cannot be confident about this finding.
- The area of law issue is fairly complex because not all of the obvious variations by area of law were in fact significant determinants of overall variation. However, the area of business and commercial is consistently prominent, whatever the analysis. An obvious solution might be to encourage more women into these areas but the impact of such a shift on provision in other areas would need to be considered. Furthermore, the rationales that might determine partnership ambitions might also be relevant here: some people, and some women in particular, may simply not be willing to work the longer hours often associated with business and commercial areas; others may value different service ethics and ideals more highly.
- The gendered ownership of firms explained some of the gap and since it is not yet clear why this is an important factor, it is difficult to imagine what might be done.
- Notably, family responsibilities did not stand out as disadvantages to women solicitors but this factor may well be tied up with the differences in hours worked. A better, robust understanding of real motivations and choices in this regard might be useful.

Of the levers available to governments in terms of the whole population, only a small number could possibly be adapted by, for example a regulator, or lobbied for by campaigners. These are probably: mandatory or voluntary pay audits for the private sector; procurement policies; or gender quotas. Some drawbacks to these popularised solutions, described by Shackleton, are highlighted below.

### ***On pay audits***

- Pay audits rest on the idea that the work process should determine pay, but tend to ignore the influence of market forces and differences in individuals' performances.
- Some evaluation schemes carried out by local authorities under the Single Status Agreement have produced examples of major cuts in pay for some council workers (mainly male but some female), many of whom were not particularly highly paid in the first place.
- Notably, the governments' proposed package of measures on gender pay equality, launched in June 2008, avoided mandatory audits for the private sector.
- Evidence from Ontario, where mandatory pay audits were legislated suggests that the effort did not succeed in reducing the gender pay gap. Problems included:
  - lack of compliance among smaller firms;
  - deadlines missed by larger firms;
  - relatively little 'undervalued' female work was found in large firms;

- there was a general lack of male comparators for female jobs;
- firms found the pay equity process an administratively onerous with significant indirect costs;
- any advantage to women in traditionally female occupations was partly offset by disadvantages to the minority of women in traditionally 'male' occupations where pay was held to be too high.

Suggested solutions of centralising wage determination or imposing external evaluations on firms were not taken up by the Ontario government.

### ***Procurement policies***

- Although gender pay equality could be emphasised more strongly in procurement policies, a generalised commitment to equality is already common in government procurement offers; other important social factors often included are: community employment creation, environmental sustainability, innovation, fair trade.
- Compliance with a wide range of non-technical criteria is thought to add considerably to the burdens of those submitting tenders; and the additional criteria can deter smaller, start-up firms that have less experience of form-filling and are less likely to have developed policies relating to a full range of social issues.

### ***Gender quotas for top jobs***

Gender quotas for senior posts in the private sector were imposed in Norway in 2008.

- Although the number of women on company boards rose dramatically when quotas were imposed, the expansion was largely in non-executives;
- the women themselves were disproportionately recruited from politics and the civil service, with the best qualified women often holding multiple directorships.

### ***What else?***

There is a criticism (Rubery et al) that the traditional approach takes the institutional arrangements and structures for determining pay as a given and that sustained progress in reducing the gender pay gap is unlikely to be achieved without a new demand-side approach, and without 'gender mainstreaming' of general pay policy. The European Economic Strategy now includes the need to address pay structures and systems and to promote transparency.

Gender mainstreaming shifts policy focus from deficits or deficiencies in female characteristics, behaviour and preferences to the investigation and elimination of gender pay discrimination rooted in institutional arrangements, market systems and pay policies. The objective of gender mainstreaming is to examine apparently gender-neutral policies and practices with the aim of uncovering and, if possible, removing hidden gender discrimination effects. In the case of private practice this would require, for example, limits placed on the maximum number of hours worked by solicitors and review of the fees-to-salary target ratios placed on aspiring associates and other salaried staff.



## APPENDIX 1

### Gender pay gaps by grade, firm size, PQE and region

#### Grade

	Annual earnings Gap %	Hourly earnings Gap %	Earnings per billed hr Gap %
<b>Associates/assistants</b>			
Median	10	9.5	5.13
Mean	14.2	8.33	12.8
	N=546	N=544	N=429
<b>Equity partners incl sole partners</b>			
Median	22.98	25.7	1.8
Mean	33.68	23.9	28.4
	N=217	N=270	N=187
<b>Salaried partners</b>			
Median	24.9	13.8	21.7
Mean	24.5	17.6	29.1
	N=113	N=113	N=80

Separating equity partners and sole partners results in small bases for the female groups of both, which, in turn, means that we cannot be greatly confident about the reliability of those statistics. As a result, equity partners and sole partners are combined.

#### Firm size

	Annual earnings Gap %	Hourly earnings Gap %	Earnings per billed hr Gap %
<b>1 sol</b>			
Median	12.5	0	47.4
Mean	24.1	9.5	50
	N=41	N=40	N=24
<b>2 to 5 sols</b>			
Median	16.2	0	9.8
Mean	22.7	24	18.2
	N=121	N=121	N=64
<b>6 to 12 sols</b>			
Median	26.6	20	28.2
Mean	34	28.6	42.6
	N=144	N=144	N=81
<b>13 to 40 sols</b>			
Median	25.8	17.4	25
Mean	37.9	31	28.6
	N=172	N=172	N=133
<b>41 to 170 sols</b>			
Median	38	26.9	40
Mean	39.9	35.1	48.8
	N=129	N=129	N=111
<b>171 plus sols</b>			
Median	23.3	22.9	23.3
Mean	44.8	37.5	43
	N=242	N=238	N=219

#### PQE

	Annual earnings Gap %	Hourly earnings Gap %	Earnings per billed hr Gap %
<b>1 to 4 yrs</b>			
Median	11.1	10	8.6

Mean	17.5	9.1	2.6
	N=304	N=2-3	N=164
<b>5 to 8 yrs</b>			
Median	15.4	4.5	11.4
Mean	13.4	12	11.5
	N=193	N=190	N=108
<b>9 to 15 yrs</b>			
Median	24.3	14.8	30.2
Mean	38.3	17.02	48.5
	N=308	N=305	N=251
<b>16+ yrs</b>			
Median	30.2	18.2	11.4
Mean	24.7	17.1	20.6
	N=195	N=195	N=141

### Region

	Annual earnings Gap %	Hourly earnings Gap %	Earnings per billed hr Gap %
<b>Midlands &amp; Wales</b>			
Median	22.8	21.7	34.04
Mean	36.8	32.1	38.3
<b>London</b>			
Median	26.4	22.2	21.9
Mean	44.2	38.3	44.2
<b>North</b>			
Median	6.7	0	15.4
Mean	24.2	19.2	23.08
<b>South</b>			
Median	19.7	16.7	28.6
Mean	27.9	10.34	38.09

**APPENDIX 2**  
**Descriptive statistics (means and proportions)**

	Whole FT sample	FT Male sols	FT Female sols
<b>Income measures</b>			
Annual income	74032.57	87520.14	55084.26**
Natural log of annual income	10.98388	11.126335	10.783739**
Hourly earnings (hours worked)	30.09	34.11	24.42**
Natural log of hourly earnings	3.20412	3.31174	3.05248**
Earnings per billed hour	65.19	77.41	47.06**
Natural log of earnings per billed hour	3.8843	4.0256	3.6746**
<b>Individual work role</b>			
<i>Grade</i>			
Assistant/associate	.539	.41	.74**
Equity partner	.265	.36	.12**
Salaried partner	.126	.14	.10**
Consultant	.013	.02	.005
Sole practitioner	.056	.07	.04
<i>Legal aid</i>			
Legally aided clients	.166	.158	.178
Over 50% of time on legal aid	.08	.495	.50
<i>Generalist v specialist</i>			
Generalist	.152	.182	.106**
Specialist	.769	.734	.822**
Manager or other	.07	.076	.06
<i>Areas of law</i>			
Does business and commercial	.473	.599	.416**
Does commercial property	.686	.358	.248**
Does consumer problems	.894	.127	.075*
Does crime	.088	.111	.053**
Does employment law	.171	.169	.173
Does family law	.153	.12	.202**
Does housing, landlord & tenant	.213	.245	.166**
Does personal bankruptcy, insolvency and debt	.096	.114	.067*
Does personal financial management & advice	.061	.065	.055
Does probate wills and trusts	.214	.237	.178*
Does residential conveyancing	.244	.261	.219
Does welfare benefits and social security rights	.024	.022	.027
Does personal injury and medical negligence	.162	.165	.159
<b>Proportion of time spent on business &amp; commercial</b>			
Proportion of time spent on business & commercial	.551	.5535	.5455
<b>Proportion of time spent on commercial property</b>			
Proportion of time spent on commercial property	.415	.3768	.4985**
<b>Proportion of time spent on consumer problems</b>			
Proportion of time spent on consumer problems	.0762	.695	.936
<b>Proportion of time spent on crime</b>			
Proportion of time spent on crime	.6398	.6296	.6721
<b>Proportion of time spent on employment law</b>			
Proportion of time spent on employment law	.3464	.2587	.4727**
<b>Proportion of time spent on family law</b>			
Proportion of time spent on family law	.6405	.4757	.7856**
<b>Proportion of time spent on housing, landlord &amp; tenant</b>			
Proportion of time spent on housing, landlord & tenant	.1557	.1485	.1715
<b>Proportion of time spent on personal bankruptcy, insolvency and debt</b>			
Proportion of time spent on personal bankruptcy, insolvency and debt	.1086	.1193	.082
<b>Proportion of time spent on personal financial</b>			
Proportion of time spent on personal financial	.1414	.1733	.0866

management & advice			
Proportion of time spent on probate wills and trusts	.3337	.2672	.4657**
Proportion of time spent on residential conveyancing	.3974	.3724	.4417
Proportion of time spent on welfare benefits and social security rights	.0404	.0393	.0417
Proportion of time spent on personal injury and medical negligence	.6610	.5893	.7767*
Hours worked	47.02	48.52	44.73**
Hours billed	1396.17	1393.81	1399.91
<b>Firm characteristics</b>			
<i>Size</i>			
1 sol	0.05	.06	.04
2-5 sols	.147	.16	.13
6-12 sols	.161	.15	.17
13-40 sols	.202	.21	.20
41-170 sols	.154	.15	.16
Over 170 sols	.286	.28	.30
<i>Ownership</i>			
In majority female-owned firm	.071	.022	.146**
In majority male-owned firm	.803	.872	.698**
Equally distributed gender ownership	.126	.105	.156
In majority BME-owned firm	.031	.022	.044
In majority white-owned firm	.942	.954	.924
In equally distributed ethnic ownership	.027	.015	.013
<b>Work history</b>			
PQE in yrs	12.75	15.94	7.83**
Years since admission	12.76	11.34	8.014**
NonPQE yrs since admission	5.9617	3.1776	10.2015
Tenure in current job role	7.01	8.87	4.17**
Taken a break of 3+ months from profession	.166	.1	.26**
Break for family reasons	.07	.006	.169**
Break for other reasons	.096	.10	.089
Have worked part-time	.057	.017	.116**
Time spent working part-time (months)	3.04	.50	6.91**
<b>Demographics</b>			
Age	40.11	42.98	35.70**
Married or Cohabiting	.755	.817	.66**
Single	.204	.148	.289**
Divorced, separated, widowed	.04	.035	.051**
Dependent children	.369	.749	.230**
Avg no. of children for those with children	2.02	2.12	1.67
Dependent others	.067	.086	.039*
Disability	.028	.032	.024

\*\*Significance at 1% level

\* significance at 5% level

For those taking career breaks (174)

Months on career break	All	FT male	FT female
Paid maternity	7.67(63)	1 (1)	7.79 (62)
Unpaid maternity	7.683(25)	1.87(2)	8.1615(23)
Child care not covered by maternity	26.4114(11)	2(2)	30.4778(10)
Care of other dependents	4.0759(2)	4.6695(2)	
Sickness	5.7099(18)	5.79(9)	5.6(9)
Travelling	8.4961(51)	7.3856(28)	9.8691(23)
Trying alternative career	33.3024(26)	38.36(16)	25.35(10)
Redundancy	8.7436(13)	10.69(9)	3.85(4)
Personal	11.5099(9)	14.55(5)	8.12(4)

### APPENDIX 3

Earnings equations for solicitors	Whole sample coeff	Male coefficients	Female coefficients
Constant	11.462	11.521	11.28
<b>Grade ref equity partner</b>			
associate/assistant	-0.576***	-0.586***	-0.508***
consultant	-0.333**	-0.321*	-0.437**
salaried partner	-0.366***	-0.316***	-0.407***
sole partner	-0.295**	-0.261	-0.435**
<b>Experience</b>			
PQE	0.055**	0.058***	0.052***
PQE squared	-0.001***	-0.001***	-0.001
<b>Hours billed</b>	0***	0.00009197*	0***
<b>Firm size sol count ref 170 plus</b>			
sole solicitor	-0.705***	-0.614**	-0.896***
2-5 sols	-0.57***	-0.647***	-0.352***
6-12 sols	-0.41***	-0.401***	-0.364***
13-40 sols	-0.325***	-0.34***	-0.276***
41-170 sols	-0.202***	-0.23***	-0.147***
<b>Areas of law</b>			
Business & commercial	0.002**	0.001	0.001
Commercial property	0.001	0.001	0.001
Consumer problems	-0.008	-0.012	0.006
Crime	0	-0.001	0
Employment law	0	-0.001	0
Family law	-0.001	-0.002	-0.001
Housing, landlord and tenant	0.001	0.001	0.001
personal bankruptcy, personal insolvency & debt	-0.008**	-0.007	-0.01**
Personal financial management & advice	0.006**	0.005	0.003
Probate wills and trusts	0	0	0
Residential conveyancing	-0.004***	-0.004***	-0.004**
Welfare benefits & social security rights	-0.015	-0.02	-0.008
Personal injury & medical neg	0	-0.001	0
<b>Majority female ownership</b>	-0.136**	-0.214	-0.059
<b>Female</b>	-0.059*		
<b>Region</b>			
North	-0.398***	-0.429***	-0.377***
South	-0.405***	-0.468***	-0.341***
Midlands and Wales	-0.425***	-0.409***	-0.488***
<b>Breaks ref no breaks</b>			
Other reasons	-0.015	-0.082	0.06
Paid maternity	0.123*	-0.05	0.153**
Unpaid family	-0.131	0.173	-0.265**

F sat: 44.973; p=.000; Adjusted R<sup>2</sup>: .698; \*\*\* p=99% significance, \*\*=95% significance, \*=90% significance (no asterisk means the factor was not significant)

## APPENDIX 4

### Decomposition of difference in average log male-female earnings

	All solicitors
Differential (£)	22,527
<b>% due to differences in rates of return to attributes</b>	<b>8%</b>
Of which differences due to male advantage	8%
Of which differences due to female disadvantage	0%
<b>% due to differences in attributes</b>	<b>92%</b>
Percentage at grades lower than equity	40.5%
Post qualification experience	44.6%
Firm size	-2.8%
Area of law	6.6%
Working in majority-female-owned firm	3.05%
Regional breakdown	2.8%
Career breaks	-2.3%

Figures derived from Oaxaca-Ransom method for decomposition

Negative numbers denote that the particular characteristic is more favourable for women than

The model does not include a Heckit correction for selection bias.

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**ETHNICITY AND EARNINGS IN PRIVATE PRACTICE**  
**Findings from the 2008 salary survey**

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## **ETHNICITY AND EARNINGS IN PRIVATE PRACTICE**

### **Findings from the 2008 salary survey**

#### **EXECUTIVE SUMMARY**

This report on the findings of the 2008 salary survey provides evidence of a persistent differential in the average earnings of white and black and minority ethnic (BME) group private practitioners as well as some explanation of the causes of variations in earnings between the two groups.

The findings suggest that a basic ethnic pay gap of around 18% exists in private practice but provide no evidence, once a number of factors are controlled for, that ethnicity on its own explains any part of the variation in pay. On the basis of the 2008 data, the overall pay differential appears to be accounted for by differences between white and BME solicitors in their work situations and the type of work undertaken.

Inequality for BME private practitioners in obtaining employment, either at all or in different types or firm, or areas of law, is likely to be the root problem that has to be tackled before inequality in pay per se.

#### **1. Earnings and ethnic pay gaps for all private practitioners for 2007/08**

Median annual earnings for White solicitors were £55k and £45k for BME solicitors.

Taking no account of other factors that might be related to earnings, the median ethnic pay gap in yearly earnings was 18% for 2007/08 - hourly and per billed hour pay gaps were very slightly bigger.

There was no evidence of an ethnic pay gap based on yearly earnings at associate/assistant grade, but for equity partners including sole practitioners the median pay gap was 39%. Amongst women no median pay gap for annual earnings was evident but amongst men the gap between White solicitors' annual earnings and BME solicitors earnings was 33%<sup>1</sup>.

#### **2. Reasons for the ethnic pay gap in private practice**

The results of the statistical analyses show that a basic ethnic pay gap of around 18% exists within private practice but that, once a number of factors are controlled for, there is no evidence that ethnicity makes a significant contribution to explaining variation in earnings. As such, the analysis provides no evidence of direct discrimination against BME solicitors with respect to pay – though data quality issues must be considered, and these are outlined in the main report.

Assuming the validity of the finding, the lack of evidence of direct discrimination in pay does not mean that BME solicitors face no discrimination in private practice, or that discrimination plays no role in the pay outcomes that result. The analysis as a

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<sup>1</sup> The BME sample size is too small to support any reliable analysis of pay gaps between white and BME groups by firms size, PQE or Region – results would be based on sub-samples always smaller than 50 and often as low as ten.

whole highlights differences in the situation and type of work undertaken by BMEs, relative to white solicitors, which result in BME solicitors being paid less on average. The question becomes whether or not, and to what extent, direct and/or indirect discrimination play a role in these distributive patterns.

The model included the following variables in addition to ethnicity:

- grade (relative to equity partners);
- region (three super regions relative to London);
- firm size (solicitor count – relative to those working in firms with over 170 solicitors);
- PQE (as well as the fact that the influence of PQE tails off over time);
- number of hours billed per year;
- ethnic make-up of firm ownership (majority female relative to majority male ownership); and
- time spent on legal aid work
- the amount of time spent on thirteen different areas of law: business and commercial; commercial property; consumer problems; crime; employment law; family law; housing landlord and tenant; personal bankruptcy & personal insolvency; personal financial managements and advice; probate wills and trusts; residential conveyancing; welfare benefits and social security rights; and personal injury and medical negligence.

### **3. Insights from other sources**

Findings from other sources lend support to the notion that inequality for BME solicitors in employment might in fact be a bigger problem than inequality in pay – and that the former contributes to resulting pay differences.

### **4. Implications of the findings**

A substantial part of the problem can be traced back to the emphasis placed by larger and City firms on academic performance from A levels onwards. This is not news but it still presents a difficulty for policy and campaign activity because the two sides of the problem require extensive programmes of work that may be beyond the reach of individual lobbying and representative bodies. Finding and implementing ways of improving the connections, work experience and performance of BME students aspiring to become solicitors are big tasks involving many players; persuading City and large firms that there is more to judging aptitude for practice in large firms than academic performance probably requires some evidence base and suggestions about contextualised, practicable alternatives.

The following issues identified by the research might, if explored, yield some interesting answers:

- The concentration of BME solicitors in the smallest firms and their under-representation in the largest (and highest paying) has, according to TLS Cohort studies from the late 90s, a lot to do with levels of interest in the various types of private practice at the time of applying for training contracts, as well as prior academic performance and type of institution attended. As with gender, a nuance that is important to understand is the extent to which choices and interests are genuine or reflect external factors that limit options available.

- The overrepresentation of BME solicitors in the provision of legal aid services (both the fact of undertaking legal aid work and the greater proportion fee earning time spent on it) is another area that might be worth exploring to understand the motivations, choices and/or imperatives at play.
- It would be helpful to know what factors other than firm size, and perhaps an emphasis on legal aid, that result in majority-BME firms paying, on average, less than majority-ethnic firms. A better understanding, more generally, of firms, their profitability and the business of law would be beneficial in any event and this is one feature of that bigger issue.

## **ETHNICITY AND EARNINGS IN PRIVATE PRACTICE**

### **Findings from the salary survey 2008**

Data on the earnings and working lives of solicitors in private practice were collected in October 2008 for the financial year 2007 to 2008. This report presents the findings relating to ethnic differences in earnings for that period, based on a sample of 1,200 individuals. The analyses seek to provide some basic measures of the size of the ethnic pay gap in 2008, for solicitors working full-time, as well as some explanation as to the causes of variations in pay between White and Black and Minority Ethnic (BME) group solicitors.

The salary values used in the analyses were a combination of exact-value responses and estimates based on the mid-point range-value responses where absolute values were refused because the response rate to questions inviting exact values for both salaries and pre-tax drawings was poor (39%)<sup>2</sup>; this is far from ideal for the purposes of estimating earnings differentials.<sup>3</sup> An additional problem for the ethnicity-based analysis was that the resulting BME sample size was too small for some purposes.

The basic ethnic pay gap between annual earnings for a range of features of private practice, are described in section one. Section two presents the findings of more sophisticated approaches to determining the relationship between ethnicity and earnings. Further exploration based on other sources of information are explored in section three. Finally, section four outlines some of the practical implications of these findings.

## **1. Earnings and ethnic pay gaps for all private practitioners for 2007/2008**

### **1.1 Earnings**

The web factsheet<sup>4</sup> details the median annual earnings for all full-time, private practitioners by grade, firm size, category of law and PQE. Average earnings for all solicitors in private practice for the financial year 2007/2008 are summarised below.

#### *Yearly earnings*

- Median yearly earnings - £55,000
- Mean yearly earnings - £74,033

#### *Hourly earnings*

- Median hourly earnings - £23.08
- Mean hourly earnings - £30.06

#### *Earnings per hour billed*

- Median earnings per billed hour - £45.83
- Mean earnings per billed hour - £65.08

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<sup>2</sup> Low response rates are generally assumed to produce biased samples which, in consequence, substantially increase the potential for error in making estimates. As a safeguard, range values (e.g. £40k to £50k) were also accepted from respondents and therefore it has been possible to include estimates for salaries based on the mid-points of those ranges where absolute values were refused.

<sup>3</sup> However, it is preferable to reliance on the exact values only - repeated testing on the exact values only merely revealed the instability of those data.

<sup>4</sup> <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends/factsheets.law>

Median annual earnings for White solicitors were £55k and £45k for BME solicitors.

**Table 1**

	<b>White £</b>	<b>BME £</b>
Yearly earnings		
Median	55,000	45,000
Mean	75,919	57,871
Hourly earnings		
Median	24	19
Mean	31	24
Earning per billed hour		
Median	46	37
Mean	66	53

## 1.2 Ethnic pay gaps

Taking no account of other factors that might be related to earnings, the median ethnic pay gap in yearly earnings was 18% for 2007/08 - hourly and per billed hour pay gaps were very slightly bigger. Although the median pay gap for annual earnings in 2007 was 20%, a comparison between the two figures is inadvisable because of the differences in the quality of the two samples' responses on earnings.

**Table 2 The average ethnic pay gap(s)**

	<b>Annual earnings Gap</b>	<b>Hourly earnings Gap</b>	<b>Earnings per billed hr Gap</b>
<b>Median</b>	18.18%	20.83%	19.56%
<b>Mean</b>	23.78%	22.58%	19.70%

There was no evidence of an ethnic pay gap based on yearly earnings at associate/assistant grade, but for equity partners including sole practitioners the median pay gap was 39%. Amongst women no median pay gap for annual earnings was evident but amongst men the gap between White solicitors' annual earnings and BME solicitors earnings was 33%<sup>5</sup> (see appendix 1).

The ethnic pay gap is a measure of the difference between the earnings of White solicitors and one aggregated group of all BME group solicitors and is determined by calculating the BME group's overall average pay as a percentage of white solicitors<sup>6</sup>. The pay gap figure does not relate to identical employment and does not, in isolation, prove that discrimination exists, nor does it describe the extent of any discrimination that might be present in the labour market.

Most official statistics compare average hourly earnings of individuals working full-time as the best way to compare like with like, and international comparisons usually

<sup>5</sup> The BME sample size is too small to support any reliable analysis of pay gaps between white and BME groups by firms size, PQE or Region – results would be based on sub-samples always smaller than 50 and often as low as ten.

<sup>6</sup> For example, the pay gap is said to be 15% where BME's pay is 85% of White solicitors.

involve the mean as the measure of averages. The mean, however, does not necessarily describe the typical picture because, relative to the median, it is affected by extreme scores (high and low). The median – the earnings figure below which half the sample population falls – is the measure preferred by the Office for National Statistics, and is generally used in this report to describe average earnings and to measure basic pay gaps between the white and BME groups. The more sophisticated analyses used to generate the findings detailed in section two are, however, necessarily based on mean values<sup>7</sup>. Although the pay gap indicator for the general population most commonly used in the UK is the gap in median hourly earnings (excluding overtime), annual earnings figures are thought to provide the most reliable basis for estimating the salaries of solicitors in private practice<sup>8</sup>.

### 1.3 Ethnic differences in private practice

Summary statistics of the 2008 sample (Appendix 2) highlighted numerous differences between ethnic and BME solicitors in private practice. In particular, the following distinctions were statistically significant.

- BME solicitors, on average, had less post qualification experience: the mean for White solicitors is 13.26 compared to 7.88 for BME solicitors.
- BME solicitors tended to be younger with an average age of 36.7 compared to an average of 40.5 for the white group. (Both the PQE and age differences confirm lower levels of BME participation in the market historically.)
- Tenure in current job was also lower, on average, for BME solicitors than for white solicitors (4.51 years compared with 7.28).
- BME solicitors were much more likely to work in smaller firms with 2-5 solicitors and less likely than White solicitors to work in larger firms with 41 to 170 solicitors.
- Over one-quarter of BME solicitors worked with legally aided clients in the preceding 12 months compared to 16% of White solicitors; and of those working with legal aid clients, BME solicitors were much more likely to spend over 50% of their time on legal aid than White solicitors – 80% of BME legal aid solicitors spent more than 50% of their time on legal aid compared to 44% of ethnic legal aid solicitors (but this calculation is based on an unweighted base of just 39 BME solicitors).
- BME solicitors were more than twice as likely to work in majority-female-owned firms.
- Over one-quarter of BME solicitors (29%) worked in firms which were owned by a majority of BME partners/owners but this was the case for just 0.2% of White solicitors.
- BME solicitors were less likely to undertake work in business and commercial affairs cases and more likely to work in the areas of crime, family and personal and financial management.

Interestingly, no significant difference was evident in the distribution of White and BME solicitors within different grades from the sample of full-time practitioners, but

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<sup>7</sup> The median is not mathematically tractable – that is, since the median is only concerned with the middle scores and not every score in a distribution it is not sufficiently flexible to support more advanced statistical techniques.

<sup>8</sup> There is reason to believe that there is at least some tendency amongst solicitor respondents to Law Society surveys to exaggerate the number of hours worked and/or billed - indicated by discrepancies between the two and/or seriously incredible responses for average hours worked in a week or billed in a month (when aggregated or disaggregated, exceeding maximum possible values).

data from the Annual Statistical Report indicates that BMEs are less likely to be equity partners and slightly more likely to be sole practitioners. Other elements of the profile are, however, generally borne out by what is known from annual statistics drawn from REGIS.

## **2. The reasons for the ethnic pay gap in private practice**

Statistical techniques can be used to answer two related questions regarding the causes of an ethnic pay gap. The first stage involves identifying, through regression modelling, what the important determinants of variation in solicitors' earnings are. A second stage uses regression analysis as the basis upon which to build a decomposition model to try to determine how much of an existing gap can be attributed (i) to differences between the two groups' possession or display of important earnings determinants (an explained part), and (ii) to direct discrimination (an unexplained part). Regression analysis seeks to explain variation in solicitors' earnings by considering the independent impact of each of a number of explanatory factors simultaneously. A good regression model is one that fits the observed data well, meets various statistical assumptions, and explains as much of the variation in earnings as possible. The limitations of the BME sample mean that, although the first stage of explanatory analysis could be undertaken, the second stage – i.e. the decomposition – could not produce robust findings and therefore that analysis and results are not reported.

### **2.1 What are the important determinants of solicitors' earnings for 2007/08**

The optimal model explaining variation in earnings, using the data captured, and accounting for ethnicity, provided no evidence that ethnicity on its own was a significant determinant of earnings in 2008<sup>9</sup>. The model included the following variables in addition to ethnicity:

- grade (relative to equity partners);
- region (three super regions relative to London);
- firm size (solicitor count – relative to those working in firms with over 170 solicitors);
- PQE (as well as the fact that the influence of PQE tails off over time);
- number of hours billed per year;
- ethnic make-up of firm ownership (majority female relative to majority male ownership); and
- time spent on legal aid work
- the amount of time spent on thirteen different areas of law: business and commercial; commercial property; consumer problems; crime; employment law; family law; housing landlord and tenant; personal bankruptcy & personal insolvency; personal financial managements and advice; probate wills and trusts; residential conveyancing; welfare benefits and social security rights; and personal injury and medical negligence.

The results of that model on 2008 data indicated the following, all other characteristics being equal, (see Appendix 3 for the full equation).

- Ethnicity on its own did not account for any of the variation in earnings.

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<sup>9</sup> Adjusted Rsq of 70.7%

- Relative to equity partners:
  - Associates earned 6.2% less
  - Consultants earned 3.5% less
  - Salaried partners earned 3.5% less
  - Sole practitioners earned 3.8% less
  
- Relative to solicitors working in firms with more than 170 solicitors those working in smaller firms earned less:
  - One-man bands earned 63.7% less
  - Solicitors in firms with 2 to 5 solicitors earned 49.5% less
  - Those in firms with 6 to 12 solicitors earned 37.9% less
  - Those in firms with 13 to 40 solicitors earned 29.6% less
  - Those in firms with 41 to 170 solicitors earned 19.4% less
  
- For each additional year of PQE annual earnings increased by 5% (averaged out)
  
- For every additional 10% of fee earning time spent on legal aid, earnings decrease by 3%.
  
- Not all areas of law were significant determinants of earnings but the thirteen major areas surveyed were included as controls. Of the areas which proved to be important determinants, the following can be said:
  - For every 10 percentage point increase in time spent on business and commercial, annual earnings rose by 1%
  - For every 10 percentage point increase in time spent on consumer problems, annual earnings decreased by 9%
  - For every 10 percentage point increase in time spent on personal bankruptcy, insolvency and debt earnings decreased by 7%
  - For every 10 percentage point increase in time spent on personal financial management & advice annual earnings increased by 6%
  - For every 10 percentage point increase in time spent on residential conveyancing, annual earnings decreased by 4%
  
- Finally, solicitors working in firms in which BME solicitors made up the majority of the ownership earned 42% less than those working in majority-white-owned firms.

Overall this means that, once the facts that BME solicitors are more likely to work in smaller, lower-paying firms and to cluster in BME-owned firms (which also pay comparatively less), are more likely to undertake and spend more time on legal aid, and are less likely to practise in business and commercial affairs, there is no evidence that simply being a BME solicitor in private practice results in pay disadvantage.

### **2.1.2 What progress since 2007?**

In 2007, BME solicitors were found to earn 17% less than male solicitors after controlling for:

- Grade
- Firm size
- PQE
- Region (10)
- Ethnicity
- Gender
- Hours worked (in bands)<sup>10</sup>

The 2007 optimal model applied to 2008 data indicates that BME solicitors earned, on average, 9% less than White solicitors in 2008. This is a fairly substantial shift from the 17% difference estimated in 2007 but, as with the gender analysis, it is probably not safe to draw any conclusions from this comparison because of the differences in the quality of samples with respect to earnings data. However, given samples of equal quality, a different model specification is demonstrably better at explaining variation in earnings in the context of ethnic differentials. The 2008 model has been able to take into account an important explanatory variable which had not previously been measured (ethnic make-up of firms' ownership), and includes legal aid as an important control. This new model specification explains an extra 10% of the total variation in earnings amongst private practitioners<sup>11</sup>.

The results of the statistical analyses show that a basic ethnic pay gap of around 18% exists within private practice, but that, once a number of factors are controlled for, there is no evidence that ethnicity makes a significant contribution to explaining variation in earnings. As such, the analysis provides no evidence of direct discrimination against BME solicitors with respect to pay. The analysis has certainly been constrained by the small BME sample available, and may well have suffered from the use of estimated salary values. Assuming the validity of the finding, the lack of evidence of direct discrimination in pay does not mean that BME solicitors face no discrimination in private practice, or that discrimination plays no role in the pay outcomes that result. The analysis as a whole highlights differences in the situation and type of work undertaken by BMEs, relative to white solicitors, which result in BME solicitors being paid less, on average. The question becomes whether or not, and to what extent, direct and/or indirect discrimination play a role in these distributive patterns.

### **3. Insights from other sources**

Much of the research into racial labour market discrimination in the UK is quite dated and has been largely descriptive rather than explanatory. A small number of studies apply decomposition techniques to estimate and explain labour market discrimination. The unexplained (or 'discrimination') component in the decompositions is generally assumed to contain elements of ethnic discrimination and cultural attitudinal differences, as well as disadvantage based on country of birth. Wider population studies have shown that discrimination can play a part in

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<sup>10</sup> After correcting for the diminishing advantage of PQE the differential stood at 16%.

<sup>11</sup> Relative to the 2007 model applied to 2008 data.

determining pay. For example, research cited in Fang and Heywood (2006) confirmed that supervisors' performance evaluations are influenced by the race of their subordinates; when pay systems are less formal and depend on judgement, the characteristics of the workers and the composition of the workforce tend to play a greater role in determining levels of compensation (Elvira and Graham, 2002). However, the lack of evidence from the 2008 salary data for direct discrimination on the basis of ethnicity in pay should not, perhaps, be totally surprising because ethnic pay disadvantage in the wider population is not an invariable fact.

Although Elliot and Lindley (2006) provide evidence that ethnic-based pay disadvantage in most occupations persists, relative to white natives they found no evidence of an ethnic pay disadvantage for south Asian professional workers. This is interesting because, of BME solicitors in private practice, Asians (though this group combines Indian, Pakistani and Bangladeshi groups) form the largest BME group, comprising over 50% of all BME solicitors whose ethnicity is known. Fang and Heywood's (2006) estimations also showed that, whereas non-Europeans in Canada paid by time rates received lower earnings than Europeans paid by time rates, non-Europeans paid by output pay received almost identical earnings to their European counterparts. They hypothesise that output pay tying earnings to productivity makes discrimination more difficult for employers since they increase the cost of discrimination; all else being equal this ought to reduce its extent<sup>12</sup>. Nevertheless, the authors find the fact that BME Canadians do not crowd jobs with output-based pay - and may in fact be under-represented in them - telling. The reality however is likely to be that those who wish to discriminate, once constrained by formal pay systems, may well choose to be more active in discriminating in employment. So, although it is possible that the existence of formal pay systems and bonus schemes could help to reduce direct pay discrimination against BME solicitors in legal practice, discrimination at recruitment stages remains a distinct possibility, and may even be exacerbated by such schemes.

Studies using linked employee-employer datasets have found strong firm effects in explaining wage differentials (Pudney et al, 2006) and these lend support to the findings of the regression based on the salary survey data of the importance of firm size and ownership in determining solicitors' earnings. Pudney et al's findings are also useful in the context of the link between firm ownership and levels of pay. They found that the higher the percentage of female and BME employees at the establishment, the lower is pay for all employees, but female employees experienced less pay disadvantage in establishments with high densities of female employees. Two interpretations offered are that bargaining power for women is higher in establishments where women are overrepresented, or that women are attracted to employers who do not discriminate. BME employees, on the other hand, faced greater disadvantage in establishments with a high density of BME employees. The authors hypothesise that, whereas women are a large, widely dispersed group, BMEs are small, locally concentrated and less integrated in wider society. For a member of a BME group, working in a BME dominated establishment may be a symptom of weak integration and poor access to the opportunities offered by wider society. The poor outside option counteracts the bargaining power that a large group of workers might otherwise have (Pudney et al, 2006).

Studies by Blackaby et al attempting to measure both wage and employment discrimination, found that lack of employment opportunities appeared to be more

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<sup>12</sup> Bonuses tied to productivity or profitability were considered to be profit sharing or gain sharing schemes and thus part of more formalised pay systems and were included as broader measures of output pay (i.e. those in which the cost of discrimination ought to reduce its extent).

problematic than earnings disadvantage for ethnic minorities (Blackaby et al, 1994). For solicitors in private practice this translates to (i) securing any training contract and (ii) securing training contracts and qualified posts in the larger and higher paying firms. The Law Society Entry Cohort studies confirmed this finding in the context of law towards the end of the 1990s. The studies provided evidence of bias against BME candidates in the allocation of training contracts and evidence of indirect discrimination in the allocation of jobs in different types of firm. City and large firms' preferences for Oxbridge and old-university graduates were disadvantageous to BME students; higher grades at A-level and degree were also associated with increased probabilities of working in City and large firms. Although initial higher education participation rates are higher for BME students than for White students, BME students generally cluster mainly in new universities in London and tend to have lower entry qualifications on average; BME groups also tend not to do as well in degree performance as White students (Connor et al, 2004).

#### **4. Practical implications of these findings**

The regression output provides no evidence of direct discrimination in pay in the context of ethnicity but the salary data itself points to clustering of BME solicitors in private practice in small firms, in BME-owned firms and in legal aid. The wider evidence points to problems for BMEs in labour market access and TLS's past research confirms the barriers facing BME students in access to large firms and more lucrative areas of practice. A substantial part of the problem can be traced back to the emphasis placed by larger and City firms on academic performance from A levels onwards. This is not news but it still presents a difficulty for policy and campaign activity because the two sides of the problem require extensive programmes of work that may be beyond the reach of individual lobbying and representative bodies. Finding and implementing ways of improving the connections, work experience and performance of BME students aspiring to become solicitors are big tasks involving many players; persuading City and large firms that there is more to judging aptitude for practice in large firms than academic performance probably requires some evidence base and suggestions about contextualised practicable alternatives.

The findings raise many more questions than they answer, and some issues that might be worth pursuing are as follows.

- The concentration of BME solicitors in the smallest firms and their under-representation in the largest (and highest paying) has, according to the Cohort studies, a lot to do with levels of interest in the various types of private practice at the time of applying for training contracts as well as prior academic performance and type of institution attended. As with gender, a nuance that is important to understand is the extent to which choices and interests are genuine or reflect external factors that limit options available.
- The overrepresentation of BME solicitors in the provision of legal aid services (both the fact of undertaking legal aid work and the greater proportion fee earning time spent on it) is another area that might be worth exploring to understand the motivations, choices and/or imperatives at play. On its own, the fact is something BME solicitors can be proud of.
- The great unknown is why majority-BME firms pay less. It would be helpful to know what factors other than firm size, and perhaps an emphasis on legal aid,

that result in majority-BME firms paying, on average, less than majority-ethnic firms. A better understanding, more generally, of firms, their profitability and the business of law is necessary for TLS in any event, and this is one feature of that bigger issue.

## APPENDIX 1

### Ethnic pay gaps by grade and gender

Many of the earnings comparison made to explore gender differences in pay were not possible to replicate in this analysis of ethnic pay differentials, simply because the BME sub-samples were too small to generate robust statistics.

#### Grade

	Annual earnings Gap %	Hourly earnings Gap %	Earnings per billed hr Gap %
<b>Associates/assistants</b>			
Median	0	10	5.26
Mean	4.54	8.70	-6.82
<b>Equity partners incl sole partners</b>			
Median	38.89	37.14	28.92
Mean	39.01	36.96	27.68
<b>Salaried partners</b>			
Median	35.71	21.43	67.24
Mean	40.40	30.30	66.67

Separating equity partners and sole partners results in small bases for the BME groups of both, which, in turn, means that we cannot be greatly confident about the reliability of those statistics. As a result, equity partners and sole partners are combined. The small base of 10 for BME salaried partners is a threat to the utility of the resulting figure.

#### Gender

	Annual earnings Gap %	Hourly earnings Gap %	Earnings per billed hr Gap %
<b>Male</b>			
Median	32.84	25.93	25
Mean	25.29	25.71	19.23
<b>Female</b>			
Median	0	9.52	12.82
Mean	10.65	12	6.38
<b>Total</b>			
Median	18.18	20.83	18.57
Mean	23.77	22.58	19.70

**APPENDIX 2**  
**Descriptive statistics (means and proportions)**

	Whole FT sample	FT Ethnic sols	FT BME sols
<b>Income measures</b>			
Annual income	74032.57	75,919.48	57,870.94***
Natural log of annual income	10.98388	11.01	10.72***
Hourly earnings (hours worked)	30.09	30.74	24.09***
Natural log of hourly earnings	3.20412	3.23	2.99**
Earnings per billed hour	65.19	66.24	53.47*
Natural log of earnings per billed hour	3.8843		
<b>Individual work role</b>			
<i>Grade</i>			
Assistant/associate	.539	.533	.59(ns)
Equity partner	.265	.269	.229(ns)
Salaried partner	.126	.132	.76(ns)
Consultant	.013	.013	.143(ns)
Sole practitioner	.056	.053	.086
<i>Legal aid</i>			
Legally aided clients	.166	.156	.26***
Over 50% of time on legal aid	.08	.441	.80***
<i>Generalist v specialist</i>			
Generalist	.152	.157	.114(ns)
Specialist	.769	.772	.769(ns)
Manager or other	.07	.064	.125**
<i>Areas of law</i>			
Does business and commercial	.473	.544	.371***
Does commercial property	.686	.317	.288
Does consumer problems	.894	.107	.105
Does crime	.088	.078	.189***
Does employment law	.171	.17	.181
Does family law	.153	.146	.21*
Does housing, landlord & tenant	.213	.213	.210
Does personal bankruptcy, insolvency and debt	.096	.093	.114
Does personal financial management & advice	.061	.066	.019*
Does probate wills and trusts	.214	.220	.154
Does residential conveyancing	.244	.243	.257
Does welfare benefits and social security rights	.024	.022	.038
Does personal injury and medical negligence	.162	.157	.210
<b>VERY SMALL BASES FOR THE FOLLOWING</b>			
Proportion of time spent on business & commercial	.551	55.85	45.35
Proportion of time spent on commercial property	.415	42.14	35.21
Proportion of time spent on consumer problems	.0762	7.6	7.83
Proportion of time spent on crime	.6398	61.25	74.93
Proportion of time spent on employment law	.3464	34.35	37.10
Proportion of time spent on family law	.6405	67.00	45.01**
Proportion of time spent on housing, landlord & tenant	.1557	14.98	20.78
Proportion of time spent on personal bankruptcy, insolvency and debt	.1086	11.62	5.67**
Proportion of time spent on personal financial	.1414	14.07	16.05

management & advice			
Proportion of time spent on probate wills and trusts	.3337	34.53	18.28**
Proportion of time spent on residential conveyancing	.3974	38.90	46.63
Proportion of time spent on welfare benefits and social security rights	.0404	3.41	6.88
Proportion of time spent on personal injury and medical negligence	.6610		
Hours worked	47.02	47.30	48.13
Hours billed	1396.17	1392.67	1503.83
<b>Firm characteristics</b>			
<i>Size</i>			
1 sol	0.05	.05	.07
2-5 sols	.147	.13	.32***
6-12 sols	.161	.16	.17
13-40 sols	.202	.21	.17
41-170 sols	.154	.16	.07***
Over 170 sols	.286	.30	.20
1 prtnr	.76	.069	.136***
2-4 prtnrs	.212	.195	.359***
5-10 prtnrs	.167	.173	.107
11-25 prtnrs	.162	.166	.126
26+ prtnrs	.345	.396	.272***
<i>Ownership</i>			
In majority female-owned firm	.071	.06	.173***
In majority male-owned firm	.803	.816	.692***
Equally distributed gender ownership	.126	.124	.135***
In majority BME-owned firm	.031	.975	.635***
In majority ethnic-owned firm	.942	.002	.288***
In equally distributed ethnic ownership	.027	.023	.077***
<b>Work history</b>			
PQE in yrs	12.75	13.26	7.88***
Years since admission	12.76	13.28	8.06***
NonPQE yrs since admission	5.9617	6.60	.18
Tenure in current job role	7.01	7.28	4.51***
Taken a break of 3+ months from profession	.166	.163	.190 (ns)
<b>Demographics</b>			
Age	40.11	40.47	36.72***
Disability	.028	.03	.03(ns)

\*\*\*Significance at 1% level

\*\* significance at 5% level

\* significance at 10% level

### APPENDIX 3

<b>Earnings equations for solicitors</b>	<b>Whole sample coeff</b>
Constant	11.485
<b>Ethnicity</b>	-.025(ns)
<b>Grade ref equity partner</b>	
associate/assistant	-0.620***
consultant	-0.348**
salaried partner	-0.357***
sole partner	-0.381**
 <b>Experience</b>	
PQE	0.055***
PQE squared	-0.001***
 <b>Hours billed</b>	 .000***
 <b>Legal aid time</b>	 -.003**
 <b>Firm size sol count ref 170 plus</b>	
sole solicitor	-0.637***
2-5 sols	-0.495***
6-12 sols	-0.379***
13-40 sols	-0.296***
41-170 sols	-0.194***
 <b>Majority BME-owned</b>	 -.420***
 <b>Areas of law</b>	
Business & commercial	0.001*
Commercial property	0.001
Consumer problems	-0.009**
Crime	.001
Employment law	0.000
Family law	0.000
Housing, landlord and tenant	0.001
personal bankruptcy, personal insolvency & debt	-0.007**
Personal financial management & advice	0.006**
Probate wills and trusts	.00006162
Residential conveyancing	-0.004***
Welfare benefits & social security rights	-0.006
Personal injury & medical neg	0.000
 <b>Majority female ownership</b>	 -0.136**
 <b>Region</b>	
North	-0.413***
South	-0.436***
Midlands and Wales	-0.458***

significance, \*\*=95% significance, \*=90% significance (no asterisk means the factor was not significant)  
F sts: 49.719; p=.000; Adjusted R<sup>2</sup>: .707

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**2008 SALARY FACT SHEET**  
**(absolute values combined with mid-point estimates)**

**Table 1 Earnings in private practice 2008**  
**Analysed by gender and grade**

		<b>Male</b>	<b>Female</b>	<b>Total</b>
		<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>
<b>Assistant/Assoc</b>	Percentile 25	37000	35000	35000
	Median	50000	45000	45000
	Percentile 75	70000	58284	67335
	Valid N	N=249	N=306	N=555
<b>Equity prtnr</b>	Percentile 25	50000	35000	45000
	Median	90000	69317	85185
	Percentile 75	150000	111581	150000
	Valid N	N=216	N=63	N=279
<b>Salaried prtnr</b>	Percentile 25	55000	45000	48743
	Median	70000	53139	70000
	Percentile 75	110000	86926	102156
	Valid N	N=76	N=35	N=111
<b>All grades</b>	Percentile 25	42000	35000	38500
	Median	64000	45000	55000
	Percentile 75	95000	69000	85101
	Valid N	N=541	N=404	N=945

**Table 2 Earnings in private practice 2008  
Analysed by size of firm and grade**

		<b>1</b>	<b>2 – 4</b>	<b>5 – 10</b>	<b>11 – 25</b>	<b>26 – 80</b>	<b>More than 80</b>	<b>All firm sizes</b>
		<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a.</b>	<b>£ p.a.</b>
<b>Assistant/Assoc</b>	Percentile 25	25000	30454	29601	35000	41000	55000	35000
	Median	34881	36241	35000	40000	53000	70000	45000
	Percentile 75	45372	46680	43054	45411	70000	90000	65000
	Valid N	N=17	N=94	N=81	N=81	N=118	N=117	N=507
<b>Equity prtnr</b>	Percentile 25	25000	40000	59655	90000	104175	197202	45000
	Median	40430	55000	90000	110000	141235	200000	85000
	Percentile 75	70000	90000	123760	150000	200000	316182	150000
	Valid N	N=52	N=79	N=49	N=35	N=26	N=31	N=271
<b>Salaried prtnr</b>	Percentile 25	.	32558	44422	52821	70000	79895	48217
	Median	.	43047	48591	65103	101361	109501	70000
	Percentile 75	.	58280	58807	77645	126594	150000	95846
	Valid N		N=17	N=23	N=29	N=19	N=24	N=112
<b>All grades</b>	Percentile 25	25000	35000	34316	38890	45000	63817	38000
	Median	35000	45000	45000	50000	65000	80499	55000
	Percentile 75	60000	55641	70000	89102	90067	120000	85000
	Valid N	N=73	N=198	N=152	N=146	N=162	N=174	N=904

The total and subtotal bases on this table do not equal those on Table 1 because solicitor count data is incomplete.

Table 3a

**Earnings in private practice 2008  
Analysed by location and grade**

		East Mids	Eastern	Greater London	North West	North East	South East	South West	Wales	West Midlands	Yorkshire & Humberside	Total
		£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a
<b>Assistant/Assoc</b>	Percentile 25	32197	31467	50000	33820	29608	35000	35000	34937	35249	33368	35000
	Median	40000	41480	70000	37957	36819	40690	41000	38856	45000	42299	45000
	Percentile 75	45000	45708	90000	45000	48228	49667	49278	45000	50555	51074	67335
	Valid N	N=24	N=30	N=205	N=76	N=21	N=56	N=44	N=18	N=40	N=40	N=555
<b>Equity prtnr</b>	Percentile 25	41663	55689	70000	50000	31442	47427	38694	40000	42186	39499	45000
	Median	87115	90000	150000	76157	57552	82934	56610	50786	80392	70000	85185
	Percentile 75	128696	172627	200000	115039	101773	124050	97424	61613	102547	112647	150000
	Valid N	N=12	N=23	N=82	N=30	N=10	N=39	N=22	N=12	N=23	N=23	N=279
<b>Salaried prtnr</b>	Percentile 25	40235	47300	68763	41112	36229	49450	56053	38021	42000	35004	48743
	Median	60510	68500	105418	50000	60243	63400	70000	55500	55000	37138	70000
	Percentile 75	70000	86475	150000	70000	101634	79191	125000	68898	104055	70000	102156
	Valid N	N=9	N=4	N=30	N=17	N=4	N=17	N=12	N=4	N=13	N=3	N=111
<b>All Grades</b>	Percentile 25	37319	36505	55000	35000	30000	38560	35576	36000	38144	35000	38500
	Median	45000	45000	75000	45000	40000	49649	45000	45000	50000	45000	55000
	Percentile 75	70000	82839	110000	60000	53700	75030	67059	55000	70000	70000	85101
	Valid N	N=45	N=57	N=317	N=123	N=35	N=112	N=78	N=34	N=78	N=66	N=945

Table 3b

**Earnings in private practice 2008  
Analysed by location and grade**

		<b>Mids &amp; Wales</b>	<b>Greater London</b>	<b>North</b>	<b>South</b>	<b>All regions</b>
		<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>
<b>Assistant/Assoc</b>	Percentile 25	35000	50000	33000	35000	35000
	Median	41512	70000	39000	41000	45000
	Percentile 75	46000	90000	48000	49055	67335
	Valid N	N=113	N=205	N=137	N=100	N=555
<b>Equity prtnr</b>	Percentile 25	45000	70000	40994	45000	45000
	Median	70000	150000	70000	76037	85185
	Percentile 75	110533	200000	110000	110000	150000
	Valid N	N=73	N=82	N=63	N=61	N=279
<b>Salaried prtnr</b>	Percentile 25	42362	68763	36289	54478	48743
	Median	57269	105418	49069	70000	70000
	Percentile 75	70000	150000	70000	92735	102156
	Valid N	N=28	N=30	N=24	N=29	N=111
<b>All grades</b>	Percentile 25	37000	55000	35000	37000	38500
	Median	45000	75000	44982	48000	55000
	Percentile 75	70000	110000	60000	70000	85101
	Valid N	N=214	N=317	N=224	N=190	N=945

Table 4

**Earnings of salaried partners 2008  
Analysed by years of post qualification experience (PQE)**

		<b>1 to 4</b>	<b>5 to 8</b>	<b>9 to 15</b>	<b>16 plus</b>	<b>Total</b>
		<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>
<b>Salaried prtnr</b>	Percentile 25	32608	35000	55000	60000	48743
	Median	41000	45000	70000	80000	70000
	Percentile 75	60870	60395	107904	125000	102156
	Valid N	N=6	N=24	N=37	N=43	N=110

**Table 5 Earnings in private practice and associate solicitors in 2008  
Analysed by years of PQE**

		<b>1 yr</b>	<b>2 yrs</b>	<b>3 to 4 yrs</b>	<b>5 to 10 yrs</b>	<b>11 or more</b>	<b>All levels</b>
		<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>of PQE</b>
							<b>£ p.a</b>
<b>Assistant/Assoc</b>	Percentile 25	28298	32916	35000	40000	39798	35000
	Median	37000	44604	45000	50000	50000	45000
	Percentile 75	62498	65000	67985	70000	70000	67335
	Valid N	N=98	N=74	N=143	N=174	N=65	N=554

Table 6

**Earnings in private practice 2008**  
**Analysed by grade and tenure with current firm**

		0 to 1 yrs	2 to 3 yrs	4 to 5 yrs	6 to 10 yrs	11 to 20 yrs	21 plus yrs	All levels of tenure
		£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a	£ p.a
<b>Assistant/Assoc</b>	Percentile 25	35000	35000	37643	39000	41024	75000	35000
	Median	42000	45000	48000	48458	50000	75000	45000
	Percentile 75	60000	66437	70000	70000	57221	75000	67335
	Valid N	N=162	N=196	N=95	N=84	N=17	N=1	N=555
<b>Equity prtnr</b>	Percentile 25	35000	38986	35219	60000	50059	45000	45000
	Median	69142	70000	56044	100000	104607	70000	85185
	Percentile 75	106012	150473	112647	188701	170000	110000	150000
	Valid N	N=21	N=36	N=23	N=78	N=59	N=62	N=279
<b>Salaried prtnr</b>	Percentile 25	60000	53118	42000	45000	55000	51959	48743
	Median	70000	70000	55873	58209	70000	110000	70000
	Percentile 75	130689	90000	106301	99448	90000	166404	102156
	Valid N	N=15	N=28	N=16	N=34	N=13	N=5	N=111
<b>Others in private practice</b>	Percentile 25	31963	35193	55000	60911	14686	.	37031
	Median	47036	76224	55000	120000	32810	.	55000
	Percentile 75	78055	.	55000	139079	.	.	117861
	Valid N	N=4	N=3	N=1	N=4	N=2		N=14
<b>All grades</b>	Percentile 25	35000	37000	40000	44750	46366	45115	38500
	Median	45000	49361	48000	63901	76413	70000	55000
	Percentile 75	70000	70000	75549	105588	134396	110000	85290
	Valid N	N=202	N=263	N=135	N=200	N=91	N=68	N=959

**Table 7 Earnings in private practice 2008  
Analysed by grade and area of specialism**

		<b>Assis/Assoc £ p.a</b>	<b>Equity prtnr £ p.a</b>	<b>Salaried prtnr £ p.a</b>	<b>All £ p.a</b>
<b>Business and commercial affairs</b>					
Non-specialist	Median	43452	75725	60000	48000
	Valid N	N=349	N=151	N=77	N=577
Specialist	Median	68983	124369	97658	75000
	Valid N	N=133	N=74	N=24	N=231
<b>Commercial property</b>					
Non-specialist	Median	45000	100000	62421	55000
	Valid N	N=396	N=181	N=80	N=657
Specialist	Median	45000	90000	75513	55406
	Valid N	N=86	N=44	N=21	N=151
<b>Crime</b>					
Non-specialist	Median	45318	94225	70000	55000
	Valid N	N=451	N=211	N=94	N=756
Specialist	Median	38902	62165	48545	45000
	Valid N	N=31	N=14	N=7	N=52
<b>Employment law</b>					
Non-specialist	Median	45000	90380	70000	55000
	Valid N	N=443	N=211	N=94	N=748
Specialist	Median	45706	98773	72367	60000
	Valid N	N=37	N=14	N=7	N=60
<b>Family law (incl matrimonial &amp; child care law)</b>					
Non-specialist	Median	47000	100000	70000	55499
	Valid N	N=436	N=189	N=92	N=717
Specialist	Median	36027	70000	44815	45000
	Valid N	N=46	N=36	N=9	N=91
<b>Probate wills and trusts</b>					
Non-specialist	Median	45159	100000	70000	55000
	Valid N	N=441	N=204	N=86	N=731
Specialist	Median	42000	50000	60000	49403
	Valid N	N=41	N=21	N=15	N=77

<b>Residential conveyancing</b>					
Non-specialist	Median	47085	100000	70000	55000
	Valid N	N=428	N=187	N=85	N=700
Specialist	Median	40000	59737	60000	45000
	Valid N	N=54	N=38	N=16	N=108
<b>Personal injury &amp; medical injury</b>					
Non-specialist	Median	46000	95000	70000	56121
	Valid N	N=422	N=200	N=86	N=708
Specialist	Median	39000	58211	70000	45000
	Valid N	N=60	N=25	N=15	N=100

Table 8

**Earnings in private practice 2008**  
**Analysed by grade and whether or not legal aid work is undertaken**

		<b>Not legally- aided clients</b>	<b>Legally-aided private clients</b>	<b>All</b>
		<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>
<b>Assistant/Assoc</b>	Percentile 25	38734	29556	35000
	Median	48000	35000	45000
	Percentile 75	70000	40000	67335
	Valid N	N=462	N=93	N=555
<b>Equity prtnr</b>	Percentile 25	50171	39841	45000
	Median	90000	55464	85185
	Percentile 75	170000	86000	150000
	Valid N	N=223	N=56	N=279
<b>Salaried prtnr</b>	Percentile 25	53375	42520	48743
	Median	70000	48085	70000
	Percentile 75	110000	64598	102156
	Valid N	N=89	N=22	N=111
<b>All grades</b>	Percentile 25	41248	32588	38500
	Median	58000	40000	55000
	Percentile 75	90000	55000	85101
	Valid N	N=774	N=171	N=945

**Table 9 Earnings in legal aid work 2008**  
**Analysed by proportion of time spent with legally-aided clients**

<b>Table 9 Earnings in private practice 2008</b>					
	<b>1-25%</b>	<b>26-50%</b>	<b>51-75%</b>	<b>76-100%</b>	<b>Total</b>
	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>	<b>£ p.a</b>
Percentile 25	33011	32794	29900	32098	32500
Median	41820	45000	36375	36000	40000
Percentile 75	55000	69028	51691	50000	55000
Valid N	N=48	N=32	N=25	N=60	N=166

## **LAW SOCIETY TRUST FUNDS AND CONFLICTS OF INTEREST**

1. The Law Society is trustee of various bursary, scholarship and prize funds ("the Trust Funds"). This means that when proposals in respect of these funds are discussed in Council, Council members are acting in the capacity of trustees.
2. The Law Society is not a trustee of the Law Society Charity ("the Charity"), nor does it appoint the Charity's trustees.
3. Council members who are trustees of the Charity have separate interests as trustees of the Charity and (acting as the Council of the Law Society) trustees of the Trust Funds.
4. The interests of the Charity and the Trust Funds are not identical. Where the decision favoured by the Charity is not, or may not be, in the best interests of the Trust Funds, Council members who are also trustees of the Charity are conflicted and may not participate or vote on Council decisions in the matter.

Frances Low  
General Counsel  
27 April 2009



## The Law Society

**COUNCIL**  
**22-23 July 2009**

**Item 8**

**Classification – Public**

**Purpose - For decision**

### **LAW SOCIETY TRUST FUNDS: NEW TRUST**

#### **The Issues**

The Law Society has administered, and has been the Trustee for, various bursary, scholarship and prize funds for over a century. The funds are a collection of donations and bequests made to the Law Society broadly for the purpose of furthering the education of those seeking to become solicitors. Following a legal audit and a review by an external consultant, the Management Board recommends that a new governing charity (The Law Society Educational Trust) is created to administer the Law Society bursary and prize funds to increase legal and financial compliance and improve administrative efficiency, whilst continuing to deliver as closely as possible to the original aims of the funds.

#### **Decision**

The Council is invited to approve the creation of a charity, The Law Society Educational Trust, to accept bursary, scholarship and prize funds for which the Law Society is currently the trustee; to authorise the execution of the Trust Deed and adopt a Delegation Framework accordingly; and to delegate to the Management Board decisions on individual funds.

(The Trust Deed and Delegation Framework are on Corporate Business. They were presented to the Council in April – paper 16a).

#### **Policy Position**

There is no existing policy in this area – the position of the trust funds has not been reviewed for many years.

#### **Financial and Resourcing implications**

The cost of this project is included in the Constitutional Affairs budget for 2009 and is forecast to be within budget. In the longer term the proposals will provide efficiency savings in time (reduced legal and administrative processes) and money (through reduced audit and investment management fees). In addition, improved compliance will reduce risk.

## **Equality and Diversity implications**

None arising directly from this report, but there could be long-term benefits from the creation of the new charity in facilitating increased access to the profession.

## **Consultation**

Detailed proposals which were supported by the Management Board and the Audit Committee were put before the Council in April. In the light of questions raised by the Chair of the Law Society Charity those proposals were withdrawn.

Advice on the Charity's questions was subsequently sought from charity law specialists at Bates Wells and Braithwaite (BWB), who had advised on the Trust Deed for the new Fund. This advice is referred to in the paper at paragraph 8.

Paper 16b which went to the Council in April set out a series of detailed fund transfers to be made to the new Trust. BWB's most recent advice is that there is scope for further simplification beyond that which we had originally envisaged. In the light of that advice, the Council is invited to delegate to the Management Board the detailed decisions on the individual funds.

**Director:** Frances Low  
**Author:** Mark Paulson  
**Date of Report:** 10 July 2009

## **Background**

1. The Law Society has administered various bursary, scholarship and prize funds over the last century. The funds are a collection of donations and bequests made to the Law Society broadly for the purpose of furthering student solicitors' education. Most of these funds are invested in an equity based portfolio and the dividends used to fund the annual grants and other costs. There are almost 40 trust funds in some form of active state. A list was provided to the Council in April.
2. Management of the funds has been inconsistent over the years due to limited resources to administer the programmes, inadequate record keeping and the handover from the SRA to the Law Society leading to variable compliance with the trust terms and Charity Commission regulations. The funds are now administered by the Constitutional Affairs team and the Finance team.
3. A number of the funds were originally held under a registered charity created by a Scheme as a Pool Charity, while the others are currently unregistered charities. A Pool Charity is a particular charity structure which is typically used by local parishes who might be administering a number of small charities/trusts in a wide variety of causes. It is unusual to see it for trusts which have the same charitable objects due to the additional administration that it causes and the lack of flexibility for development. Owing to the way the current structure was created in 1965, there is no proper constitution for the trusts overall which would allow for any changes to be made. This means that all changes, including adding or removing funds, need to have a Charity Commission Scheme. This is impractical and inefficient.
4. An in-house legal audit first identified the risks to the Society of not taking steps to improve compliance. In response to this, and to requests from the Audit Committee, an external consultant was engaged to carry out and implement a thorough review.
5. A number of areas of improvement have been identified during the review, especially compliance with trust terms, financial management, record-keeping and governance. Requirements of the Charities Acts and the Charity Commission are not being met consistently. The inefficiencies of the current structures have increased costs to the Society and management time spent on administration.
6. As the Trustee of the current trust funds, the Law Society has a duty for the effective management of these funds and is liable for their use. Although the trust funds are small in comparison to the overall Law Society accounts (total value of the funds is about £1m), it is important to resolve these issues now, for compliance, business efficiency and reputational reasons. It would be difficult to address these issues satisfactorily without first addressing the fundamental problem of the governance structure.

## **Benefits**

7. The current arrangement of individual trust funds with individual governing documents is hugely unwieldy and the proposal will streamline and simplify administration as well as conferring other advantages such as allowing joint investment. Many of the unregistered trust funds should have been registered

as charities on the Register of Charities and the proposal provides an opportunity for the position of these funds to be regularised.

### **The Law Society Charity**

8. Several options were considered for the new structure to resolve the compliance and efficiency issues, including merging the funds with the Law Society Charity. Our initial view was that given the limited liability of the Charity Trustee Board, it would not be possible to transfer bursary funds to the Charity; but external legal advice is that a transfer would be possible because the Charity is not itself a limited liability company. However, such a transfer would take a good deal of work, and time, to effect.

There is to be a review of the Charity's relationship with the Society with the following scope:

- (a) The role of the Law Society Charity and its relationship with the Law Society
  - (b) The financial and efficiency gains that could be achieved by the Law Society in delivering its pastoral care, educational, human rights and similar potential charitable functions through a charitable arm.
  - (c) The governance, managerial and financial implications of matters within the terms of reference.
9. In the light of this review, a transfer of funds to the Charity at a later date should not be ruled out: any transfer would require a decision by the Council.



The Law Society

**COUNCIL**  
**22-23 July 2009**

**Item 9**

**Classification – Public**

**Purpose – For decision**

## **APPOINTMENT OF THE SRA BOARD: AMENDMENTS TO THE GENERAL REGULATIONS**

### **The Issues**

Bringing the General Regulations into line with the Council's decisions about appointments to the SRA Board.

### **Decision**

The Council is invited to approve the amendments to the General Regulations set out in Annex A.

### **Policy Position**

This paper aims to take forward policy decisions which have already been taken.

### **Financial and Resourcing implications**

None arising from this paper.

### **Equality and Diversity implications**

There are no specific equality and diversity implications.

### **Consultation**

This paper has been considered by the Management Board at their meeting on 29 June.

**Director:** Russell Wallman, Director of Government Relations  
**Author:** Russell Wallman  
**Date of report:** 7 July 2009

### Introduction

1. This paper invites the Council to approve draft General Regulation changes to implement the Council's decisions concerning the size and terms of office of the SRA Board.

### General Regulation changes

2. The Council decided earlier this year that the SRA Board should consist either of 12 or 16 members, the final decision to be taken in consultation with the incoming SRA Chair. The Council also decided that half the SRA Board members should be appointed for a four year term, and half for a two year term.
3. These changes need to be incorporated in General Regulations. A draft of suggested Regulations is attached at Annex A. The Council is invited to approve the proposed changes.

### Recommendation

4. The Council is invited to approve the amendments to the General Regulations set out in Annex A.

## SRA BOARD TERMS OF OFFICE

### PROPOSED AMENDMENTS TO GENERAL REGULATIONS

Delete Regulation 14(6) and replace with the following new Regulation 14(6) -

- "(6) The Solicitors Regulation Authority Board shall consist of -
- (a) a Chair, who shall be a solicitor but not a Council member, appointed by the Council following an open recruitment process taking into account Guidelines issued by the Commissioner for Public Appointments;
  - (b) **no fewer than five and no more than** seven non-Council members, who shall not be solicitors, appointed in the manner described in (a);
  - (c) **no fewer than six and no more than** eight non-Council members, who shall be solicitors, appointed in the manner described in (a)

**provided that the number of solicitor members of the Board (excluding the Chair) shall at all times (other than where there is a casual vacancy) be one more than the number of non-solicitor members."**

[words in bold indicate amendments]

Delete Regulation 16(4) and replace with the following new Regulation 16(4) –

- "(4) Without prejudice to the position of the Chair and members holding office at the time of coming into effect of this provision and whose terms will expire in any event on 31 December 2009, the terms of office of the Chair and members of the Solicitors Regulation Authority Board shall be up to four years, running from the date of appointment and as determined prior to the commencement of the term, and they shall be eligible for re-appointment for one or more further terms, up to a maximum total of eight years."



## The Law Society

**COUNCIL**  
**22-23 July 2009**

**Item 10 (iv)**

**Classification – Public with Confidential Annex**

*Annex C to this paper concerns formulation of policy and is restricted under paragraph 14.7 of the revised Code of Practice on Freedom of Information to members of the Council.*

**Purpose – For noting**

### REPORT OF THE CHAIR OF THE LEGAL AFFAIRS AND POLICY BOARD

**The Issues**

This is the report of the Chair of the Legal Affairs and Policy Board highlighting issues which the Board has considered since the last report to Council

**Policy Position**

Not applicable.

**Financial and Resourcing Implications**

None arising directly from this report.

**Equality and Diversity Implications**

None arising directly from this report.

**Consultation**

This report has been prepared for the Council directly.

**Author** Linda Lee, Chair of the Legal Affairs and Policy Board  
**Date of report** 9 July 2009

The Legal Affairs and Policy Board met on Wednesday 1 July 2009.

### **Contingency Fees**

The Lord Chancellor has indicated that he intends to take powers to regulate contingency fee agreements in non-contentious matters. This is being proposed as part of the Coroners and Justice Bill and appeared to be without consultation. Initially, the Lord Chancellor proposed to take the powers and then consult on how they should be exercised.

The President had written to the Lord Chancellor complaining about the lack of consultation and seeking further details.

On the day of the Board's meeting, a consultation paper and details of the proposed amendments were published.

The Government is arguing that the fact that contingency fee agreements are unregulated gives advisers the opportunity to disadvantage members of the public. The consultation document appears to be critical of unregulated representatives and of the profession for failing to abide by its own professional rules in relation to contingency fees based on a very small survey.

The amendments to the Coroners and Justice Act would provide wide powers to regulate the wording of any agreement and set a maximum percentage allowed. Rules over and above those required under the Conduct Rules could determine what information should be given to the client at the outset.

It also provides the power to extend contingency fees to contentious work.

The initial view is that this would not be the appropriate way to deal with any perceived difficulties and, in any event, there should be major consultation before legislation is introduced.

### **Jackson Review on Costs**

The Board considered the draft response to the review of civil costs by Lord Justice Jackson. The draft response was at an early stage and will be considerably revised before it is submitted.

### **Legal Aid**

The Board received updates on the current work of the Legal Aid Team. Particular concerns included:

- The continued determination of the government to roll out best value tendering and the progress of the Law Society campaign;
- The government's decision in respect of Crown Court means testing and awards of costs from central funds, where the intention is to cap the latter at legal aid rates;
- Very high cost cases. The Board approved the priorities for work on very high cost cases;

- The Access to Justice Review. The Board was informed that the initial reviews were progressing as per the schedule and that the majority of the working groups had met and were considering a wide range of options, although as yet there was no written report from the groups.

### **Advocacy**

The Board settled the further steps to be taken promote an appreciation of the high standards of solicitor advocates. It was also felt that it was particularly important that the Society should explore training options for solicitor advocates.

### **Local Authority Chief Legal Officer**

In conjunction with Solicitors in Local Government (SLG), the Board had consulted on a proposal that it should be compulsory for a Local Authority Chief Monitoring Officer to be a qualified lawyer.

The response to the consultation paper had been mixed and the Board's view was that, while it endorsed the view that Local Authority Monitoring Officers should be legally qualified, it recognised that there were difficulties in achieving this immediately. It would look for appropriate occasions to lobby for this and also for other ways of working with SLG, including promoting the value to local government of employing legally qualified Chief Monitoring Officers.

### **Constitutional Renewal Bill and Bill of Rights**

The Board noted that the Constitutional Renewal Bill had not yet been introduced but was part of the Queen's Speech for the 2009/2010 Session. It agreed that a reference group should be established to provide advice for staff in respect of lobbying on this Bill and also to provide advice on concerns arising over the Human Rights Act.

### **EU Issues**

The EU future priorities – Law Society Manifesto for 2009 prepared by the EU Committee was approved by the Board.

The Board considered the EU plan for increasing access to information and its aim to launch an e-Justice portal by December 2009. It is anticipated that the portal's initial functionalities would provide a database of lawyers, access to information by linking existing systems at European and national level, introduce a best practice guide for video conferencing and a database of interpreters. The Board were most concerned that no additional cost burden should be placed on the profession.

The Board had a number of queries about the relationship between the Society and the CCBE. The part 2 position paper received by the Board is attached at Annex C for general information. A further paper will be brought to the Board to ensure that the Society is fully utilising its involvement.

### **Conveyancing**

The Board considered the paper that will be presented to Council on this agenda.

## **Practice Notes**

The Board approved a practice note on articles of association and on making gifts of assets.

## **Committee Appointments**

A number of issues arose which the Board felt it would be appropriate to refer to the best practice group of committee chairs.

## **Committee Updates**

The updates from the Housing Law Committee and the Immigration Law Committee are attached at Annex A and B.

## **Priorities for the LAPB 2010**

The Board considered its likely priorities for 2010. It seemed clear that the following areas would be important and require significant work carrying over from 2009:

- Legal Aid
- The Access to Justice Review
- Conveyancing
- Judicial Appointments
- The Review of the Civil Procedure Rules
- Advocacy
- Anti-Money Laundering

In addition, it would be important to hold discussions with Committee Chairs and these were scheduled over the summer. Committees should, on the whole, seek to identify, ideally, a significant project for work each year, a couple of practice notes and events. Committees should be asked to stress the need to connect with the profession and, in particular, employed solicitors.

In addition, the Board considered that particular projects that could also be looked at in 2010 included:

- Regulation of Will Writing;
- The Constitutional Renewal Bill and the Future of Human Rights in the UK;
- Jurisdiction of choice – Promoting England and Wales as a jurisdiction to choose for overseas clients;
- Freedom of choice of solicitor and other work on the relationship with insurers;
- Collective redress;
- Technology and issues in respect of data protection and freedom of information.

The Board will consider these proposals, together with proposals from the various committees at its meeting in November.

## **Family Mediation Council**

The Law Society is a member of the Family Mediation Council (FMC), a body that has been established as a consultative body in respect of issues affecting mediation in family cases. It includes most of the main specialist bodies including

- ADR Group
- College of Mediators
- Family Mediators Association
- National Family Mediators
- Resolution

The FMC has been considering a proposal that it should be a requirement for membership of the FMC that bodies should require those members who undertake family mediation work to abide by particular requirements in terms of qualification and CPD. Resolution is expected to be subscribing to the Code. The Law Society has been asked for its views.

The Board considered

1. opposing the proposal altogether and, if necessary, leaving the FMC;
2. making adjustments to the Family Mediation scheme and negotiating an agreement whereby this is deemed to be sufficient for membership of the FMC;
3. proposing to the SRA that the mediation should be brought within the Code and these requirements imposed.

The Board favoured option 2 but sought the views of the Family Law Committee.

## Annex A



The Law Society

### Item 22

#### LEGAL AFFAIRS AND POLICY BOARD 1 July 2009

#### Classification – Public

#### Purpose – For noting

#### HOUSING LAW COMMITTEE

#### The Issues

This paper briefs the Board on the work of the Housing Law Committee. The Board is invited to note the report.

#### Remit

The Board's Terms of Reference (4): *'to set and oversee implementation of policy to promote the Society as a leading voice on law reform'*.

#### Financial and Resourcing implications

None

#### Equality and Diversity implications

None

#### Consultation

The paper has been prepared for the Board.

**Director:** Mark Stobbs  
**Author:** Emily McCarron  
**Date of report:** 22 June 2009

1. The Housing Law Committee's terms of reference are to keep under review and promote improvements in law and practice relating to residential letting in the public and private sectors (including security of tenure, rent control, repairing obligations, harassment/illegal eviction and homelessness). To monitor and promote improvements in the practice and procedure of courts and tribunals relating to housing cases. To promote and develop legal services and awareness of legal issues in the housing field. To develop support initiatives for solicitors providing services in the housing field
2. The five key work areas for the committee include:
  - The Equality Bill
  - Respond to Law Commission papers on responsible letting;
  - Monitoring any legislative proposals that arise;
  - Monitor the Equalities Bill to see if it has implications for housing practitioners;
  - Reconsider the 2006 Rent Arrears Protocol to see if it needs to be updated;
  - Review the existing practice notes in the light of recent House of Lord judgments
  - Organise conferences on housing law, possibly in the regions.
3. The key objectives for the committee include:
  - Respond to relevant consultation papers in time;
  - Provide briefing and lobbying material on the Equality Bill as necessary;
  - Complete the revision of the existing practice notes by April 2009;
  - Organise 4 events.
4. In conjunction with the Mental Health and Disability and Employment Law committees, the Housing Law committee has provided briefing on the Equality Bill for the Lords 2<sup>nd</sup> Reading. It will continue to provide briefing and conduct analyses in conjunction with these other committees as the Bill progresses through Parliament. It has also responded to the Office for Disability Issues Consultation on *Improving Protection from Disability Discrimination*, and to the Work and Pensions Committee inquiry into the *Equality Bill: What Steps should DWP take to achieve greater equality*.
5. In January 2009 the committee drafted a practice note on the pre-action protocol on mortgage repossession and the issues it raises for solicitors acting for borrowers facing mortgage possession proceedings and the loss of their homes. It has been updated to include information on Homeowners Mortgage Support and the position of the borrower's tenants.
6. The committee will contribute as a stakeholder on the upcoming MOJ review of Pre-Action Protocols. It has a specific interest in the Pre-Action Protocol for Housing Disrepair Cases, Pre-Action Protocol for Possession claims based on Rent Arrears, Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property
7. It has recently responded to a number of consultations including:

- Response to Community and Local Governments Consultation paper, tolerated trespassers: Successor Landlord cases
  - Communities consultation: before disposal to Private Sector Landlord
  - OFT consultation on Second Charge Lending
8. The Housing Law committee is currently working on:
- The private rented sector: professionalism and quality - The Government response to the Rugg Review Consultation
  - A review of Right to Buy Rules

## Annex B



The Law Society

### Item 23

#### LEGAL AFFAIRS AND POLICY BOARD 1 July 2009

#### Classification – Public

#### Purpose – For noting

#### IMMIGRATION LAW COMMITTEE

#### The Issues

This paper briefs the Board on the work of the Immigration Law Committee. The Board is invited to note the report.

#### Remit

The Board's Terms of Reference (4): *'to set and oversee implementation of policy to promote the Society as a leading voice on law reform'*.

#### Financial and Resourcing implications

None

#### Equality and Diversity implications

None

#### Consultation

The paper has been prepared for the Board.

**Director:** Mark Stobbs  
**Author:** Emily McCarron  
**Date of report:** 22 June 2009

1. The Immigration Law Committee's remit is to keep under review and to promote improvements in immigration and asylum law practice and procedure.
2. The key work areas for the committee include:
  - Continue to monitor the Points Based System and, in particular, the extent to which the requirements of UKBA on solicitors accredited by them cause a tension with the duties owed to clients;
  - Provide a practice note for solicitors on the new offences created by the Act;
  - Seek to establish stronger relations with UKBA and establish solicitors as key, expert stakeholders;
  - Assist the Law Society in dealing with the immigration accreditation scheme and provide proposals for revisions to the scheme;
  - Respond to consultations from the Home Office on the system.
3. The key objectives for the committee include:
  - To provide 2 practice notes of interest to practitioners;
  - To complete an assessment of the implementation of the Act, identifying key areas for further work by September 2009;
  - Provide proposals for the accreditation scheme by October 2009;
  - Respond to at least 3 consultation papers from the Home Office;
  - Identify and organise a training event or other educational seminar for immigration practitioners;
  - Establish liaison meetings with the UKBA and have held at least two by the end of the year.
4. Of primary concern to the Immigration Law Committee is the impact of the new Immigration Points Based System on practitioners. Chair of the Committee, Gulay Mehmet and Policy Adviser Emily McCarron met with UKBA officials last October to discuss the committee's concerns. The committee continues to monitor the impact of the scheme and plans to produce guidance for the profession this year.
5. The committee has also drafted a practice note on Immigration Judicial Review, which was produced for solicitors acting for clients in immigration cases, particularly judicial review of removal decisions by the UK Border Agency. Another practice note on children in the Immigration system is currently being drafted.
6. The committee provided briefing on the Borders, Immigration and Citizenship Bill which is currently moving through Parliament. The committee were successful in lobbying for the amendment of a clause in the bill which removed the restriction on transferring judicial review applications in England and Wales, Scotland and Northern Ireland. This meant that subject to other specified restrictions, judicial review applications relating to immigration or nationality decisions could be transferred to the Upper Tribunal. The Society opposed this because in the highly politicised and controversial field of immigration, it considered that the legal issues here require appropriate levels of representation, and therefore in the Law Society's opinion, senior judicial input. Following scrutiny in Committee, an amendment was tabled to reverse this withdrawal.

7. The committee contributed to the overall Law Society response to the Migration Advisory Committee call for evidence for its Forthcoming Analysis of Tier 1, Tier 2 and dependants under the Points Based System for immigration. MAC were asking for evidence on whether there should be further changes to Tier 1 and Tier 2, in particular, that Tier 2 should be restricted to shortage occupations. The committee submitted that although restrictions to these categories would reduce the number of people entering the UK, the long-term impact on business and the provision of legal services would be significant.
8. The committee is currently drafting a response to the UK Border Agency consultation on Oversight of the Immigration Advice Sector, which is consulting on the shape of future regulation of the Immigration advice and services sector.
9. Although originally intended the draft Borders, Immigration and Citizenship Bill will not replace all ten Immigration Acts. Instead, the Government has announced the Immigration Simplification Bill which will replace all the current immigration Acts. Once a full draft of the Immigration Simplification Bill becomes available, it will be divided up into sections and allocated to members of the ILC who have already volunteered for analysis. UKBA will publish a draft before the end of the 08/09 Parliamentary session and will publish a further draft of the Protection Rules at the same time.



The Law Society

**COUNCIL**  
**22-23 July 2009**

**Item 11**

**Classification – Public**

**Purpose – For discussion**

## **COUNCIL WORKPLAN 2008 -2009**

### **The Issues**

This paper presents the workplan showing progress up to the end of the 2008-9 Council year. A report will be brought to the Council in September to set the 2009-10 workplan.

### **Policy Position**

Not applicable.

### **Financial and Resource implications**

None arising directly from this paper. The substantive debates may well have significant financial and resourcing implications.

### **Equality and Diversity implications**

None arising directly from this paper. The substantive debates may well have significant equality and diversity implications.

### **Consultation**

The Council reviews the workplan at each meeting.

<b>Director</b>	Frances Low, General Counsel
<b>Author</b>	Flick Heron
<b>Date of report</b>	6 July 2009

<b>Meeting</b>	<b>Matters for decision</b>	<b>Reports</b>
8 October 2008	<p>Law Society membership structure (Membership Board)</p> <p>Council size and composition (CMC)</p> <p>Committee structures (LAPB)</p>	<p>CEO and Board reports (to be given individually)</p> <p>SRA/LCS Board reports</p>
12 November 2008	<p>Draft 2009 budget and business plan (Management Board)</p> <p>Committee structures-follow up to October (LAPB).</p> <p>Council size and composition-follow up to October (CMC)</p> <p>Law Society membership – postal ballot results (Membership Board)</p> <p>Board workplans for 2009 and year-end reports on 2008 (all Boards)</p> <p>Legal aid: the impact of the settlement (LAPB)</p> <p>Contingency funding (LAPB)</p>	<p>CEO and Board reports</p> <p>SRA/LCS Board reports</p>
17 December 2008	<p>Final 2009 budget and business plan (Management Board)</p> <p>Oversight of SRA (Management Board)</p> <p>Indemnity insurance renewals (RAB)</p> <p>Accreditation schemes (RAB/Membership Board)</p> <p>SRA Board appointments (Management Board)</p>	<p>CEO and Board reports</p> <p>SRA/LCS Board reports</p>

28 January 2009	<p>Accreditation schemes – follow up to December (RAB/ Membership Board/LAPB)</p> <p>SRA Board appointments – follow up to December (Management Board)</p> <p>SRA Support Services Issues – New Decision Making Mechanism (Management Board)</p> <p>Compensation Fund - recharging and reserve setting (Management Board)</p>	<p>CEO reports</p> <p>SRA Board report</p> <p>TLS committee reports: the Conveyancing and Wills and Equity Committees <i>(NB – hereafter, TLS Committees will report via the LAPB report)</i></p>
11 March 2009	<p>Legal Regulation Review: TLS Response to the Call for Evidence (RAB)</p> <p>SRA Support Services Issues – New Decision Making Mechanism (Management Board)</p> <p>Co-options to the SRA Board (Management Board)</p> <p>SRA Board appointments (Management Board)</p>	<p>CEO and Board reports</p> <p>SRA/LCS Board reports</p> <p>Annual report of the Scrutiny Committee</p>
29 April 2009	<p>Conveyancing: the Society's strategy and new developments (LAPB).</p> <p>Fees for Recognised Sole Practitioners, RELs and RFLs (SRA/Management Board)</p> <p>The Council's E&amp;D Framework (E&amp;D Committee)</p> <p>Draft Response to LSB Consultation on Regulatory Independence (Management Board)</p> <p>SRA Enabling Programme (SRA/Management Board)</p> <p>Audit Committee Chair: Extension of Term (Management Board)</p>	<p>CEO and Board reports</p> <p>SRA/LCS Board reports</p> <p>Annual report of the Remuneration Committee</p> <p>Annual report of the Equality and Diversity Committee</p> <p>Five Year Financial Projection (Management Board)</p>

10 June 2009	<p>Approval of the annual accounts for 2008 (Management Board)</p> <p>Priorities and Issues for the Coming Year</p> <p>Deadline for Bye-Law changes to go to the AGM (CMC)</p> <p>Response to LSB Consultation on Regulatory Independence (Management Board/ RAB)</p> <p>Council Meetings Outside London (Management Board)</p> <p>2009-10 Presidential Plan (Management Board)</p>	<p>Non-Regulatory Board reports</p> <p>Annual report of the Audit Committee</p> <p>Review of 2009 Budget (Management Board)</p> <p>Presidents and Secretaries Conference (Membership Board)</p>
22-23 July 2009	<p>PC fee-setting (Management Board)</p> <p>Compensation Fund contributions (SRA/ Management Board)</p> <p>Conveyancing (LAPB)</p> <p>Response to LSB Consultation on ABSs (RAB)</p> <p>Law Society Trust Funds (Management Board)</p>	<p>CEO and Non-Regulatory Board reports</p> <p>Salary Survey 2008 – Results and Project Plan (E&amp;D Committee)</p>

**COUNCIL**  
**22-23 July 2009**

**Item 19 Annex**

**Classification – Public**

**Purpose – For decision**

## **COMPENSATION FUND CONTRIBUTION 2009-10**

### **The Issues**

- (1) This paper sets out the recommendation of the Solicitors Regulation Authority Board (“the Board”) for Compensation Fund contributions for the 2009-10 year. The Council has not delegated the setting of Compensation Fund contributions so the primary role of the Board is to make a recommendation to the Council.
- (2) The Board has previously decided that it should primarily be concerned with ensuring that the Compensation Fund reserve is maintained at a level sufficient to ensure public protection. Whilst there appears to be a healthy reserve held in the Fund this has to be set against a worsening position for the Fund. Relevant factors are:
  - The number of interventions continues to rise.
  - A significant rise in claims by value over the last 12 months.
  - Experience shows that a rise in claims is followed by a commensurate increase in grants paid in the subsequent 12 to 24 months.
  - A high value of notified claims which are not currently progressing whilst the applicants exhaust other remedies.
- (3) At their meeting in January 2009, the Council set a low point reserve minimum equal to one and a half times the average value of grants paid in a rolling seven-year period, plus the estimated value of three months’ recharges. This gives a planned low point reserve for 31 October 2010 of £20.5 million. This £20.5m is the contingency against claim payments between now and 31 October 2010 being higher than estimated.
- (4) It is estimated that the opening balance as at 1 November 2009 will be £42.5 million i.e. £22 million above the planned low point reserve. The issue for the Council is whether, and if so how much of, this extra £22 million should be kept in reserve for the 2010-11 year.
- (5) Because there can be no certainty about future demands on the Fund, there is no contribution figure which guarantees against the exhaustion of the reserves and the need to seek an additional in-year contribution from the profession. In view of the continuing uncertainties facing the Fund, the Financial Protection Committee recommends holding back half of the £22 million so aiming for a low point reserve of around £30 million as at 31 October 2010. This would have the effect of smoothing the contribution requirements over the next two years. It would reduce the risk of the Fund’s reserves dipping below the planned low point reserve.

Adopting the Committee's recommendation would necessitate setting a full contribution rate of £450.

- (6) If, however, the profession is prepared to run a higher risk, the Board considers that £270 is the lowest figure which it could support in the public interest. Council will wish to consider the extent to which it considers that seeking a contribution above £270 would be justified as a means of smoothing contributions over the next two years, and of reducing the risk of increased administrative costs and other risks set out in paragraphs 33-36.
- (7) To assist the Council **Annex 2** sets out the effect on the 2010-11 contribution for each of the two options. The first table shows the impact assuming grants paid remain the same as predicted in 2009-10 i.e. £24 million, the second table is based on an increase in grants paid to £32 million (in line with the pattern shown in **Table 3**).
- (8) To further assist the Council, the tables in **Annex 2** also show the effects of setting a full contribution part way through the range. The example used is £360.

### **Decision**

The Council is invited to set a full Compensation Fund contribution rate for 2009-10 in the range £270 to £450. The Council is invited to agree the full schedule of contributions as set out in **Annex 3**, subject to the insertion of the figures for the 'full contribution rate' and the 'one third of the full contribution rate' in the places indicated in the Annex.

To reduce the costs of administration both within the SRA and the profession, it is recommended that the Council set a full contribution rate that is divisible by 30.

### **Policy position**

Detailed in paragraph (3) above.

### **Financial and resourcing implications**

Detailed within the report.

### **Equality and diversity implications**

The purpose of the Compensation Fund is to provide public protection in the event of solicitors' dishonesty or failure to account for monies held. It is important that sufficient reserve is held in the Fund to ensure public protection. The Fund is maintained by contributions from solicitors so any change in the level of contribution will have a financial impact across the profession. The greatest impact is likely to be upon small firms. Statistically there is likely therefore to be a proportionately higher than average impact upon BME solicitors.

### **Consultation**

An early version of this paper was considered by the Law Society Management Board on 20 May 2009.

**Director:** Rob Adams  
**Authors:** Andrew Darby / Rob Adams  
**Date of report:** 9 June 2009

## Introduction

1. This paper sets out the recommendation of the Solicitors Regulation Authority Board (“the Board”) for Compensation Fund contributions for the 2009-10 year based on advice from the Financial Protection Committee (“the Committee”). The Council has not delegated the setting of Compensation Fund contributions so the primary role of the Board is to make a recommendation to the Council.
2. The Board has previously decided that it should primarily be concerned with ensuring that the Compensation Fund reserve is maintained at a level sufficient to ensure public protection. Whilst there appears to be a healthy reserve held in the Fund this has to be set against a worsening claims position. In 2007 amounts claimed against the Fund totalled £14.5 million rising to £67.0 million claimed in 2008 as shown in **Annex 1**. The claims being actively considered amount to £51.7 million which compares to £26.6 million a year ago. In addition there are applications totalling £69 million where claims are not being actively pursued whilst applicants are exhausting other remedies. **Annex 1** shows that there is a time lag of between 12 and 24 months in the pattern of grants paid as compared to applications made which must be taken into account.
3. There has been a rise in the number of interventions over the last 2 years from 48 in 2007 to an estimated 100 in 2009. Whilst there will be a mix of dishonesty and non-dishonesty interventions, experience has shown that interventions on grounds other than suspected dishonesty can and do result in claims on the Compensation Fund.
4. To arrive at a figure for the contribution requirement it is necessary to estimate the following: the opening balance, the net movements in the Fund during the year other than contributions, and the planned closing balance. Contributions to the Compensation Fund are due on 1 November each year but payments start to come in before that date. For the 2008-09 year the low point reserve should properly be calculated as at the 31 October 2009 ignoring any 2009-10 year contributions received before 1 November 2009. The same applies for the target low point reserve in 2010. The contribution requirement can be expressed as a simple equation in the following way:  
  
$$\begin{array}{r} \text{Contribution} = \text{Low pt reserve} - \text{Projected net cash flow between} - \text{Low pt reserve} \\ \text{Requirement} \quad 31 \text{ Oct } 2009 \quad 1 \text{ Nov } 2008 \text{ and } 31 \text{ Oct } 2009 \quad 31 \text{ Oct } 2010 \\ \text{for } 2009-10 \end{array}$$
5. The contribution requirement can be determined once the other three elements have been quantified.

## Factors to be taken into account

6. Over the last 12 months we have seen falling house prices, a collapse of the conveyancing market and a general economic slow down. Periods of recession tend to result in an increase in interventions, an increase in the value of applications and a corresponding increase in the value of grants paid out of the Fund. Such turbulence increases the difficulty of making projections as to the future position of the Fund. Relevant factors include the following.

### Rise in interventions

7. In 2007 there were 48 interventions rising to 71 in 2008 (an increase of 48%). It is currently forecast that intervention numbers will exceed 100 for 2009 (an increase of 41%). External demands on the organisation have increased significantly more than

was forecast last year. There is substantial growth in workload within inspection and investigation functions. It is expected that this will be reflected in further growth in interventions, and therefore applications to the Fund, over the next 12 to 24 months. In addition new patterns are emerging, in particular solicitor mortgage fraud followed by abandonment. In one case a solicitor arranged around 10 mortgages in favour of himself and once the advances were received the solicitor disappeared with the mortgage money. This is a growing trend involving around 10 such interventions this year with an estimated shortfall of £25 million. When assessing applications for grants from the Fund, the SRA has a policy of taking into account the extent to which an applicant's own acts or omissions have contributed to the loss. This can result in applications being rejected or the amount of any grant being reduced.

### Rise in claims by value

8. Whilst there has been a slight rising trend in the number of claims received each month over the last 2 years the most significant development is the increase in the amounts claimed. **Table 1** shows the claims received by number and the amounts claimed each month since January 2008.

**Table 1**

<b>Claims received and, of these, the number of claims referred back to claimants to pursue other remedies first.</b>				
Month of notification	Claims received	Amount claimed (£)	Claims deferred	Deferred claim amount (£)
January 2008	134	3,021,831	1	0
February 2008	221	2,196,917	1	0
March 2008	128	3,089,325	2	3,775
April 2008	146	5,962,491	5	1,205,261
May 2008	138	5,261,200	5	22,285
June 2008	132	6,205,316	9	735,886
July 2008	143	13,055,411	8	1,471,125
August 2008	225	15,850,906	22	7,325,001
September 2008	125	12,844,275	21	7,465,452
October 2008	155	4,282,941	11	1,909,334
November 2008	178	10,409,332	29	5,071,088
December 2008	143	27,724,310	38	24,105,692
January 2009	236	18,916,954	67	12,545,544
February 2009	154	6,377,210	7	1,207,487
March 2009	188	6,058,340	11	2,096,738
April 2009	194	8,002,803	98	4,001,933
<b>Totals</b>	<b>2640</b>	<b>149,259,562</b>	<b>335</b>	<b>69,166,600</b>

9. The table shows that from March 2008 there has been a significant increase in the value of applications received. In the highlighted period December 2008 to April 2009 it should be noted that of a total of £67.1 million that has been claimed, £43.9 million of this is not currently being pursued with the Compensation Fund. The claimants have been advised to explore other remedies before following up on their applications to the Fund.

## Large claims and claims that may or may not be covered by insurance

10. There is a further sum of £69 million made up of claims applications notified that are not active primarily because applicants are exhausting other remedies. There is insufficient information held by Claims Management on which to judge what payments are likely to result from the bulk (£54m) of these claims. Of the £15m of claims on which there is detailed information, 50% (£7.5m) is likely to result in payments by the Compensation Fund if the claims are not paid by others (e.g. insurers). **Table 2** shows a summary of these claims by month received.

**Table 2**

<b>Notified claims where the claimant is not currently progressing the claim with the fund</b>		
Month of notification	Number of claims	Notified claim amount (£)
June 2006	1	49,002
December 2006	1	4,900
March 2007	1	0
September 2007	1	0
November 2007	1	192,100
January 2008	1	0
February 2008	1	0
March 2008	2	3,775
April 2008	5	1,205,261
May 2008	5	22,285
June 2008	9	735,886
July 2008	8	1,471,125
August 2008	22	7,325,001
September 2008	21	7,465,452
October 2008	11	1,909,334
November 2008	29	5,071,088
December 2008	38	24,105,692
January 2009	67	12,545,544
February 2009	7	1,207,487
March 2009	11	2,096,738
April 2009	98	4,001,933
<b>Totals</b>	<b>340</b>	<b>69,412,602</b>

11. The Compensation Fund has been put on notice by a lender of its intention to make claims relating to over 600 property transactions involving mortgage advances of around £90 million. At this point in time it is not possible to quantify the amount that will be claimed.

## Comparing with the position in the early 1990s

12. The pattern of applications made and grants paid in the period 1987 to 2008 is shown in **Annex 1**. The closest match to the current economic environment is that found in

the early 1990s. At that time the property market collapsed which was followed by an increase in applications to the Compensation Fund. A summary of this period is set out in **Table 3**.

**Table 3**

Year	Applications made	Applications made adjusted to present day value	% change in applications in relation to 1992	Grants paid	Grants paid adjusted to present day value	% change in grants paid in relation to 1992
1991/92	£58.5m	£88.7 m	-	£14.9m	£22.6m	-
1992/93	£39.3m	£58.7 m	-32%	£22.7m	£33.9m	52%
1993/94	£47.0m	£68.6 m	-20%	£29.0m	£42.3m	95%

13. There was a similar but smaller spike in 2000 with claim applications rising to £48.36 million. In 2000 grant payments totalled £12.2 million rising to £17.3 million (equivalent to £21.0m in 2009) in 2001 (an increase of 42%). What emerges from the data is that where claim application values rise significantly in one year there is a corresponding increase in grants paid in the following one to two years.

### Projected low point reserve 2009

14. The October 2009 low point reserve can be estimated by looking at the balance of the Fund at the quarter ended 31 March 2009 and then projecting the cash flow to 31 October 2009 (excluding advance contributions for the 2009-10 year). Various methods have been used to estimate the grants to be paid in the remaining months of the 2008-09 year. The Committee have concluded that the most reliable method is to look at the grants made in the first 6 months of the 2008-09 year, to look at the applications outstanding and to extrapolate. This involves a detailed look at the outstanding claims that may be settled before 31 October 2009 and the settlement pattern of grants paid as compared to the amount claimed.
15. The result is a forecast of a further £10.6 million giving a total of £15.8 million for 2008-09 – nearly double that for the previous year. Together with forecasts for recharges, recoveries from Statutory Trusts and interest, this gives a projected low point reserve in October 2009 of £42.47 million.
16. A comparison of the current estimate for October 2009 low point reserve, the estimates produced in May 2008 based on contribution level of £300 (as recommended by the SRA) and a revision of that estimate to reflect the contribution set by the Council of £150 is as follows:

**Table 4**

Estimates of the October 2009 low point reserve	
May 2008 estimate based on a contribution of £150 (the actual contribution)	£33.02m
May 2008 estimate based on a contribution of £300 (SRA recommendation)	£40.63m
May 2009 estimate	£42.47m

17. **Table 4** shows a positive variance of £9.45 million between the May 2008 estimate and May 2009 estimate. The main elements of the variance are:

- An extraordinary recovery of £4.87 million was paid into the Fund relating to one intervention.
- Statutory trust recoveries to 31 October 2008 exceeded estimate by £2 million and are expected to exceed by a further £2 million by October 2009.
- Received contributions exceeded estimate by £550,000
- Grants paid out in the 6 months leading up to 31 October 2008 were higher than estimate and reduced the variance by £400,000.

### Forecast cash flows 2009-10

18. The Committee considered a number of methods for estimating the likely value of grants to be paid in 2009-10. The Committee concluded that none of the methods was reliable. The method favoured by the Committee is based on the experience gained in the early 1990s. The Committee's best estimate is for grants payments of £24.0 million in 2009-10 but the Committee acknowledges that the ultimate figure could be much higher.
19. The total value of recharges against the Compensation Fund to cover the direct cost of administering the Compensation Fund and the wider costs of regulation are estimated at £16.8 million for 2009-10.
20. The projected inflows to the Compensation Fund for 2009-10 amount to £5.6 million made up of estimated recoveries from Statutory Trust accounts of £5 million and interest to be received on the Fund of £0.6 million.
21. This gives a projected net outflow from the Fund in 2009-10 of £35.2 million (ignoring any contributions).

### Estimated closing reserve in 2010 (excluding any contributions)

22. Using the estimates above produces an estimated closing reserve as at 31 October 2010 of £7.3 million as set out in **Table 5**.

**Table 5**

Item	Value (£ million)
<b>Opening balance at 1 November 2009</b>	42.5
<b>Projected Outflows -1 Nov 2009 to 31 Oct 2010</b>	
Grants	-24.0
Recharges	-16.8
<b>Projected Inflows - 1 Nov 2009 to 31 Oct 2010</b>	
Statutory Trust Payments	5.0
Interest	0.6
<b>Closing balance (before 2009-10 contributions)</b>	<b>7.3</b>

## Low point reserve as at 31 October 2010

23. At its meeting of 20 November 2008, the SRA Board considered options for establishing a mechanism for reserve setting to ensure public protection and to reduce volatility of contribution requests levels year on year.
24. The Board decided that it should primarily be concerned with ensuring that the reserve was maintained at a level sufficient to ensure public protection; and that it was for the Council to determine whether a higher level of contribution, to facilitate a smoothing approach to funding requests, would be economically beneficial to the profession.
25. At their meeting in January 2009, the Council set a low point reserve minimum equal to one and a half times the average value of grants paid in a rolling seven-year period, plus the estimated value of three months' recharges.
26. The average sum of grants paid over the seven year period 2001/02 to 2007/08 is £11.1 million. One and a half times the average sum of grants paid is therefore: £16.6 million. The monthly recharge figure for 2009 is £1.3 million. The three month recharge figure is therefore £3.9 million; this gives a planned low point reserve for 31 October 2010 of £20.5 million.

## Maintaining a minimum balance of £20.5 million

27. **Table 5** summarises the projected outturn of the 2009-10 year excluding 2009-10 contributions. To restore the balance to a minimum of £20.5 million would need contributions of £13.2 million or about £270 as a full contribution rate. This is the minimum level of contribution that the Board recommends is required to meet reasonably predicted grant payments in 2009-10. It should be noted that this option assumes that all of the reserves above the planned minimum reserve are to be used to offset contributions in just one year.
28. For the purposes of calculating contribution requirements it has been assumed that the contribution that would be collected in respect of all the various contribution levels is equivalent to 52,000 full contributions.
29. A summary of the contribution rates is set out below:

### Option 1: Compensation Fund Contributions 2009-10 @ full rate of £270

Circumstance	Contribution (£)
Solicitor holding client money (CM) 7th practising year and above	270
Solicitor holding client money 4th to 6th practising year	135*
Solicitor holding client money 1st to 3rd practising year	0
Solicitor not holding CM 7th practising year and above	90*
Solicitor not holding client money 4th to 6th practising year	45*
Solicitor not holding client money 1st to 3rd practising year	0
Registered European lawyers (RELs), and registered foreign lawyers (RFLs) practising mainly in England & Wales, will pay the same scale of contributions as solicitors, based upon the number of years they have been qualified in their home jurisdiction. The same basis will be applied to solicitors who have been RELs or RFLs and have transferred in.	
RFLs practising mainly outside England and Wales will pay a flat, fixed rate	25**

\* This figure is calculated as a proportion of the full contribution rate.

\*\* This figure is fixed.

30. There are a number of risks to the profession associated with this minimum contribution level, that are set out below.

## **Risk Factors**

### **Risk that grants paid in 2009-10 will exceed the estimate**

31. This paper demonstrates that a planned low point reserve calculated using the previous 7 years works in fairly benign periods but when there is a hump in the grants paid graph the planned reserve figure will tend to be insufficient when grants are rising and too high when grants are falling. The current year has seen a dramatic increase in the total amount claimed which will inevitably lead to a surge in grants in the forthcoming year.
32. As shown in the above analysis there is considerable uncertainty about the levels of grants that may have to be paid out in the next 18 months. These have been estimated at a total of £34.6 million (£10.6 million + £24.0 million) but it is not inconceivable that they could be as much as £50 million. If this was to be the case then the actual reserve would fall well short of the planned minimum reserve and could possibly necessitate an additional contribution part way through the 2009-10 practising year.

### **Risk of having to have an additional contribution part way through 2009-10**

33. Under the new Compensation Fund Rules that came into force on 31 March 2009 it is possible to have an additional contribution part way through a practising year. However, there are various risks associated with having an additional contribution, so the Board's view is that additional contributions should be avoided if at all possible and should only be used to deal with unforeseen extraordinary calls on the Fund's reserves. The risks are as follows:
- There would be an additional collection cost to the SRA of at least £280,000.
  - There would be additional costs to members of the profession in making contributions.
  - The SRA would need to divert staff resources at a time of major reform
  - There would be the reputational risk of being seen to have under-estimated the original contribution requirement.
  - There would be increased risk of non-payment as there would be no threat of the withholding of practising certificate(s).

### **Risk that the minimum reserve is insufficient**

34. The minimum reserve has been based on the average during a benign period compared to now and the 1990s. If it had been calculated over a seven year period including the 1990's peak, it would have been at least £10 million higher.

### **Risk of a deteriorating position in 2010-11**

35. We are starting to see the consequences of an economic downturn of unprecedented severity. It could have consequences even worse than the early 1990s when grants peaked at £42.3 million in today's values.

36. If the grants paid in 2010-2011 remain at the same level as estimated for 2009-10 (i.e. £24 million), a contribution of at least £700 would be needed for 2010/11 to cover those grants without using more of the reserve.

### Contribution recommended by the Financial Protection Committee - £450

37. The best estimate is that the 2009-2010 year will start with a low point reserve about £20 million above the previous view of an absolute minimum. In view of the risks set out above, the Financial Protection Committee considers that it would be very unwise to forgo all this in one year when times could be tougher still in the next couple of years. The recommendation of the Committee, supported by the Board, is that the contributions should be set at a full rate of £450 for 2009-2010. This will reduce the albeit small risk to public protection and is likely to leave some additional provision in for 2010-2011 which will mitigate the need for high contributions in that year. It provides smoothing over a two year period rather than a one year period as provided by Option 1.

#### Option 2: Compensation Fund Contributions 2009-10 @ full rate of £450

Circumstance	Contribution (£)
Solicitor holding client money (CM) 7th practising year and above	450
Solicitor holding client money 4th to 6th practising year	225*
Solicitor holding client money 1st to 3rd practising year	0
Solicitor not holding CM 7th practising year and above	150*
Solicitor not holding client money 4th to 6th practising year	75*
Solicitor not holding client money 1st to 3rd practising year	0
Registered European lawyers (RELs), and registered foreign lawyers (RFLs) practising mainly in England & Wales, will pay the same scale of contributions as solicitors, based upon the number of years they have been qualified in their home jurisdiction. The same basis will be applied to solicitors who have been RELs or RFLs and have transferred in.	
RFLs practising mainly outside England and Wales will pay a flat, fixed rate	25**

\* This figure is calculated as a proportion of the full contribution rate.

\*\* This figure is fixed.

### Conclusion

38. It is for the Council to set the contribution rate at some point within the range dependent on the level of risk it feels the profession is comfortable in bearing. To assist the Council **Annex 2** sets out the effect of setting a contribution at £270 (the lowest that the SRA Board would support) and £450. The first table shows the impact assuming grants paid remain the same as predicted in 2009-10 i.e. £24 million, the second table is based on an increase in grants paid to £32 million (in line with the pattern shown in **Table 3**).
39. To further assist the Council, the tables in **Annex 2** also show the effects of setting a full contribution part way through the range. The example used is £360.

## **Recommendation**

The Council is invited to set a full Compensation Fund contribution rate for 2009-10 at £450 or, if it is prepared to run a higher (albeit small) risk, to set a lower figure not below £270. The Council is invited to agree the full schedule of contributions as set out in **Annex 3**, subject to the insertion of the figures for the 'full contribution rate' and the 'one third of the full contribution rate' in the places indicated in the Annex.

To minimise the administration costs both within the SRA and the profession, it is recommended that the Council set a full contribution rate that is divisible by 30.

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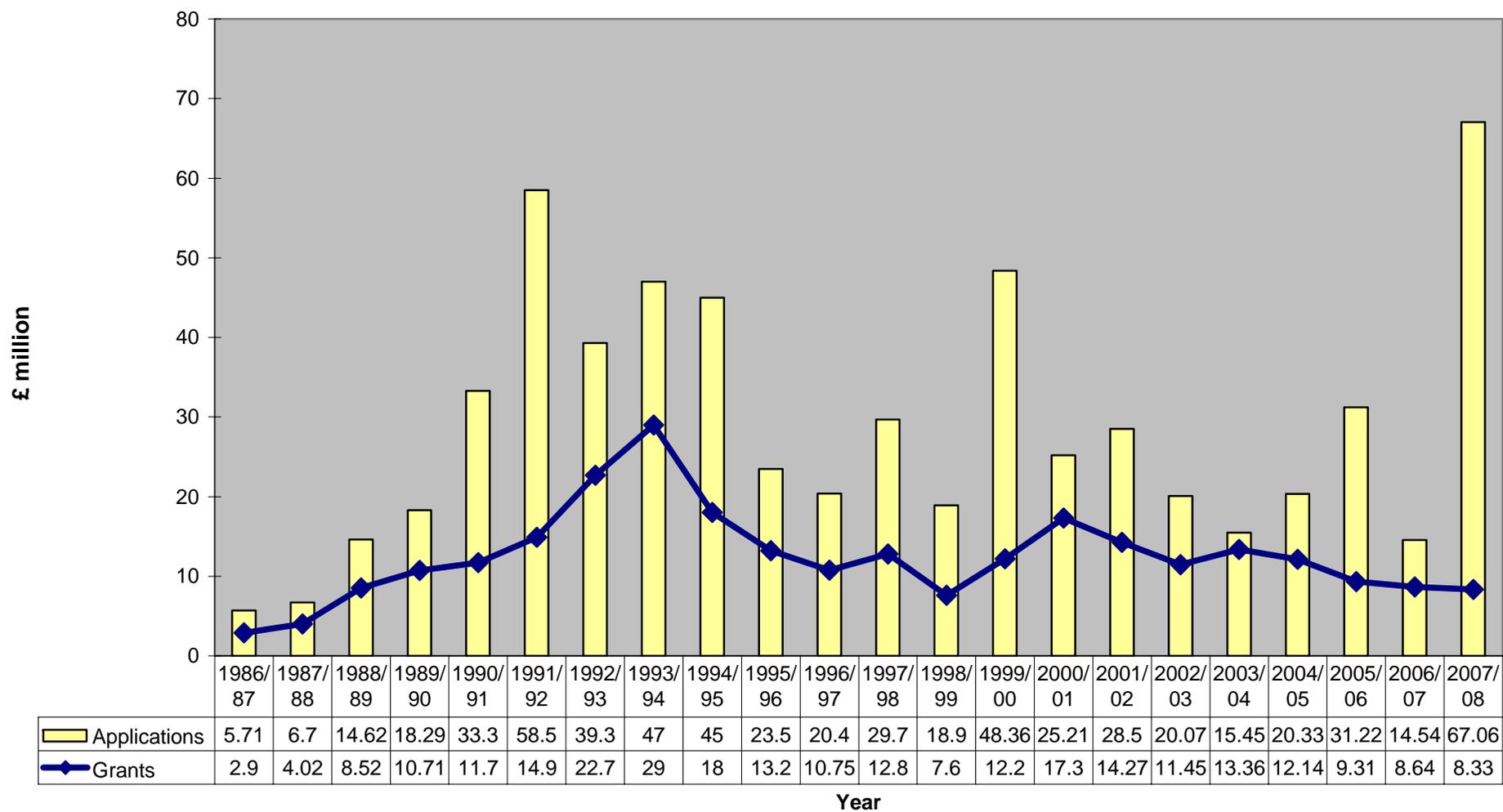
## **Annexes**

- Annex 1: Compensation Fund applications and grants 1986/87 to 2007/08**
- Annex 2: Predicted effect on 2010-11 contributions**
- Annex 3: Proposed Council determination of solicitors', RELs' and RFLs' Compensation Fund contributions as from 1 November 2009**

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**This paper is for decision**

### Compensation Fund Applications and Grants 1986/87 to 2007/08



### Predicted effect on 2010-11 contributions

Contribution estimates based upon £24million grants in both 2009-2010 and 2010-2011

	2009-2010 Contribution	Low point reserve @ 2009-2010 year end	2010-2011 Contribution	Minimum Low point reserve @ 2010-2011 year end
<b>Option 1</b> - Minimum Contribution required for public protection in 2009-10. No smoothing.	£270	£21.6m	£710	£22m
Balance between public protection and some degree of smoothing.	£360	£26.4m	£620	£22m
<b>Option 2</b> -Provides public protection and smoothing over a two year period.	£450	£30.8m	£530	£22m

Contribution estimates based upon £24million grants in 2009-2010 and an uplift to £32million in 2010-2011

	2009-2010 Contribution	Low point reserve @ 2009-2010 year end	2010-2011 Contribution	Minimum Low point reserve @ 2010-2011 year end
<b>Option 1</b> - Minimum Contribution required for public protection in 2009-10. No smoothing.	£270	£21.6m	£870	£22m
Balance between public protection and some degree of smoothing.	£360	£26.4m	£780	£22m
<b>Option 2</b> -Provides public protection and smoothing over a two year period.	£450	£30.8m	£680	£22m

**Proposed Council determination of solicitors', RELs' and RFLs'  
Compensation Fund contributions as from 1 November 2009**

- (1) Subject to (2), (3), (4), (5), (6), (7), (8) and (9) below, every person who applies for a practising certificate to commence on or after 1 November 2009, or who applies for initial registration or renewal of registration as an REL or RFL to commence on or after 1 November 2009, shall pay with the fee payable in respect of that application, a contribution of **£[Insert full contribution rate]** to the Fund.
- (2) **No** contribution is required from a Crown Prosecutor in respect of his or her practice as a Crown Prosecutor.
- (3) Subject to (4), (5), (6), (7), (8) and (9) below, if a person has **not** at any time during the period specified in the application:
- (a) in respect of practice in England and Wales as a solicitor, REL or RFL:
- (i) held or received client money (as defined in the Solicitors' Accounts Rules 1998);
- (ii) been a manager of, or directly or indirectly owned the whole of or any part in, a recognised body which held or received client money;
- (iii) been a manager of, or directly or indirectly owned the whole of or any part in, a body which was a manager of a recognised body which held or received client money; or
- (iv) operated a client's own account as signatory;
- (b) in respect of practice as a solicitor come within rule 15.27(1) of the Solicitors' Code of Conduct 2007 (practice outside the UK - accounts); or
- (c) in respect of practice as a solicitor or REL come within rule 15.27(2) of the Solicitors' Code of Conduct 2007 (practice in Scotland or Northern Ireland - accounts);
- the contribution required shall be **£[Insert one third of the full contribution rate]**.
- (4) (a) If in a person's first, second or third practising year he or she is certificated as a solicitor, **no** contribution shall be required.
- (b) Subject to (7) below, If in a person's second or third practising year he or she is registered as an REL or RFL, **no** contribution shall be required.
- (5) Subject to (8) and (9) below, when a person first applies to be registered with the SRA (whether as an REL or RFL), the contribution required shall be **£25**.
- (6) Subject to (5) above and (7) below, in a person's fourth, fifth or sixth practising year, he or she shall pay one half of the figure which would otherwise be required.
- (7) Subject to (8) below, if in any practising year a person is registered as an RFL, and he or she is practising mainly from an office or offices outside England and Wales, the contribution required is **£25**.
- (8) If a person changes status from RFL to REL, or from RFL to certificated solicitor, or from REL to certificated solicitor, or vice versa, in the course of a practising year, **no** contribution shall be payable in respect of the transfer.
- (9) If an applicant for initial registration or renewal of registration as an REL would, apart from this provision, be required to pay a contribution, and satisfies the SRA that, by way of a compensation fund, indemnity fund or indemnity insurance

under his or her home rules, there is cover for the applicant's practice in the UK completely equivalent, or partially equivalent, to the cover provided by the Fund, the SRA shall exempt the applicant from any contribution, or specify an appropriate percentage reduction as the case may be, provided that:

- (a) exemption will not be granted if the applicant will be in partnership with a solicitor on the date the initial registration or renewal of registration takes effect;
  - (b) the SRA may specify a nil percentage reduction on the basis that the reduction in risk to the Fund is *de minimis*; and
  - (c) a percentage reduction will not be granted in respect of the £25 payable under (5) above.
- (10) A “practising year” means:
- (a) any period of 12 months, commencing 1 November, during which a practising certificate commences, or initial registration or renewal of registration as an REL or RFL takes effect, and
  - (b) in the case of an REL or RFL, or a solicitor who has been an REL or RFL, any previous period of 12 months, commencing 1 November, in which the lawyer has been qualified in their own jurisdiction.
- (11) A person's first, second, third, etc., practising years are so counted regardless whether the status of the person in any particular practising year is as a certificated solicitor, an REL or an RFL, or whether the person has more than one status at different times in a single practising year.
- (12) Any period of 12 months, commencing 1 November, during which no practising certificate commences, and no initial registration or renewal of registration as an REL or RFL takes effect, in respect of the person concerned is not counted as one of the person's practising years **unless** it counts as a practising year under (10)(b) above.
- (13) The count of a person's practising years may resume after a break.
- (14) “Manager” has the meaning given in the Solicitors' Code of Conduct 2007.