



**Social mobility & diversity
in the legal aid sector:
One step forward, two steps back**

**Young Legal Aid Lawyers
October 2013**



ABOUT YLAL

Young Legal Aid Lawyers (YLAL) is a group of junior lawyers who are committed to practising in those areas of law, both criminal and civil, that have traditionally been publicly funded.

YLAL members include students, paralegals, trainee solicitors, pupil barristers and qualified junior lawyers based throughout England and Wales.

We believe that the provision of good quality publicly funded legal help is essential to protecting the interests of the vulnerable in society and upholding the rule of law.



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EXECUTIVE SUMMARY

Background & context

1. Promoting social mobility and diversity in the legal aid sector has always been a central part of the work of the Young Legal Aid Lawyers (YLAL). We believe that the legal profession – like justice itself – should genuinely be open to all.
2. Our February 2010 report entitled “*Legal aid lawyers: the lost generation in the “national crusade” on social mobility*”¹ found that:

“aspiring lawyers from diverse backgrounds are finding it harder than ever to forge a career in legal aid... those from low-income families cannot afford to become legal aid lawyers and the legal aid profession is therefore becoming less and less representative of the people it serves: those without means”.

There have been a number of developments since our first report was published including the Legal Education and Training Review (LETR), the decision of the Solicitors Regulation Authority (SRA) to end the trainee solicitor minimum salary and legal aid cuts brought in by the Legal

Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). All of these will impact to varying degrees on social mobility in the legal aid sector. With these changes in mind, the purpose of this follow-up report – based on a 2012 survey of around 10% of our membership – was to gauge where we are now. Three findings in particular emerged from the survey of our members, which form the basis of this report.

Findings

Finding one – high levels of debt combined with low salaries make legal aid work unsustainable for those from a lower socio-economic background

3. Many members had spent thousands of pounds on their legal education and training, with a significant amount spent on the high (and ever-increasing) fees for the vocational courses: the Legal Practice Course (LPC) and the Bar Professional Training Course (BPTC). The level of debt attributed to education and training was substantial. Sixty five percent of respondents had (or estimated that they will eventually have) over £15,000 worth of debt as a result of their education and 15% had (or will have) over £35,000 worth of debt.

¹ “Legal aid lawyers: the lost generation in the “national crusade” on social mobility”, Young Legal Aid Lawyers, February 2010, p3
http://www.younglegalaidlawyers.org/sites/default/files/YLAL_SOCIAL_MOBILITY_REPORT_FEB_2010_0.pdf



4. Many members commented on how they were struggling with debt liabilities whilst surviving on a very low income from legal aid work. Of the respondents to our survey who were in legal work:

- **5% were earning less than £10,000 per year** (all were paralegals)
- **8% were earning between £10,001 and £15,000** (including 3 pupil barristers and 5 paralegals)
- **37% were earning between £15,001 and £20,000** (including 18 paralegals and 15 trainee solicitors)
- **17% were earning between £20,001 and £25,000** (including 6 paralegals, 6 trainee solicitors and 4 solicitors)
- **15% were earning between £25,001 and £30,000** (including 8 solicitors and 2 barristers)
- **8% were earning between £30,001 and £35,000** (including 7 solicitors and 1 barrister; none were paralegals or trainee solicitors)
- **11% were earning more than £35,000** (4 were solicitors and 7 were barristers though not all were working in the legal aid sector)

5. The combination of prohibitively expensive professional courses, high levels of debt and low salaries makes it extremely difficult for those from a lower socio-economic background to

enter the legal aid profession and then to sustain a career in the sector.

Finding two – unpaid work experience represents a barrier to social mobility

6. A clear trend to emerge from the survey data was the proliferation of unpaid work experience in the legal profession and in the legal aid sector in particular. 89% of respondents to our survey had done unpaid legal work experience. The barrier that unpaid work presents to social mobility is self-evident. Respondents commented that they struggled to afford unpaid work placements for a number of reasons including having adult or child dependants; a lack of contacts (family or friends) in London where many legal aid practices are based and where unpaid work placements are offered; and the small number of part-time work opportunities to top-up a legal aid income.
7. Whether an employer is under a legal obligation to pay someone the National Minimum Wage (NMW) will depend on whether they fall within the definition of a “worker”. Several recent Employment Tribunal cases have held that putative interns in the publishing and film industries were in fact workers. In view of this it seems likely that longer-term unpaid work placements in the legal sector may well be unlawful.



Finding three – work experience is a pre-requisite to entry to the legal aid profession

8. A significant majority of respondents (80%) indicated that work experience (both paid and unpaid) had helped further their career in legal aid. Reasons given for undertaking work experience predominantly split into two interlinked categories. Firstly, employers regard it as essential – respondents consistently cited their experience as a paralegal, volunteer, and so on, as having been critical to securing a training contract or pupillage. Secondly, the vocational courses (the LPC and BPTC) are not preparing candidates sufficiently for the realities of day-to-day practice. Seventy-one percent of respondents who had undertaken the LPC favoured replacement of the course with a form of work-based learning.

Conclusions & recommendations

9. Based on these findings it is clear that the lack of social mobility within the legal aid sector remains a significant concern. Additionally, further cuts to legal aid raise the worrying possibility that a bad situation might become worse. With that in mind we make the following recommendations which we hope will go some way toward

rectifying the specific problems highlighted in the report:

- i. The SRA should reinstate the minimum salary for trainee solicitors.
- ii. Funds should be allocated to facilitate work experience placements in the legal aid sector. Placements should be well-structured to ensure that candidates benefit from their experience and are able to escape the “trap” of unpaid work.
- iii. Robust guidance should be issued to the profession by the Law Society and the Bar Council on acceptable and lawful use of longer term unpaid work placements.
- iv. Professional course fees should be regulated.
- v. The professional bodies should consider replacing the current route to qualification with a form of work-based learning.
- vi. Recruitment guidance dealing with the problems of unpaid work experience should be actively promoted by the legal profession.



THE CONTEXT OF THE REPORT

10. This report has not been produced in a vacuum. Literature and initiatives relating to social mobility abound and policy changes, such as cuts to legal aid and the abolition of the minimum salary for trainee solicitors, have the potential to impact on the demographic of the profession. The purpose of this section is to provide a selected overview of some of this background, to provide context to this report and the recommendations contained within it.

Legal aid lawyers: the lost generation in the “national crusade” on social mobility

11. YLAL’s first report on social mobility in the legal profession, “*Legal aid lawyers: the lost generation in the “national crusade” on social mobility*”, was published in February 2010 as a response to the Government consultation paper “New Opportunities: Fair Chances for the Future”² and: “Unleashing Aspirations”³, a report published by the Panel on Fair Access to the Professions.

12. We concluded at that time that:

² “New Opportunities: Fair Chances for the Future” HM Government, January 2009 <http://www.official-documents.gov.uk/document/cm75/7533/7533.pdf>

³ “Unleashing Aspirations” Panel on Fair Access to the Professions (a cross party panel chaired by the Rt. Hon Alan Milburn), July 2009 <http://webarchive.nationalarchives.gov.uk/+/http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf>

“...aspiring lawyers from diverse backgrounds are finding it harder than ever to forge a career in legal aid. The Government’s “national crusade” to improve social mobility does not appear to have extended to this sector of the legal profession. The reasons why social mobility is particularly lacking in the legal aid sector include the lack of subsidised training opportunities, low salaries, and the almost ubiquitous requirement for entry-level candidates to have copious work experience in legal aid, which inevitably can normally only be obtained on an unpaid basis. The result is that those from low-income families cannot afford to become legal aid lawyers and the legal aid profession is therefore becoming less and less representative of the people it serves: those without means.”⁴

13. Interviews were undertaken with students, practitioners and academics from diverse backgrounds and it was found that social mobility was lacking in the legal aid sector for the following reasons:

- The lack of subsidised training opportunities;
- Low salaries; and
- The requirement for entry-level candidates to have copious amounts

⁴ “Legal aid lawyers: the lost generation in the “national crusade” on social mobility” *op. cit.* 1, p3



of work experience in legal aid, which is generally obtained on an unpaid basis.

lot more...needs to be done.” There was no specific mention of the legal aid sector.

14. Against that backdrop we welcomed the Government’s proposals for the improvement of social mobility, but felt that more should be done in order to promote it, particularly within the legal aid sector.

Fair access to professional careers

15. The coalition Government’s Independent Reviewer on Social Mobility and Child Poverty, Alan Milburn, followed up his 2009 “Unleashing Aspirations,” report with “Fair Access to Professional Careers,”⁵ published in May 2012. The report focuses on the professions, in particular the legal sector, medicine and journalism. The key question posed by the report was “whether growth in professional employment is producing a social mobility dividend for [the United Kingdom]”⁶. The conclusion was “not yet.” The report highlighted that within the legal profession generally, efforts are being made to address fair access and social mobility and that the legal sector is at the forefront of driving activity aimed at changing access to professional jobs. However, progress was described as being “too slow” and the report went on to conclude that “a

The cost of legal education & training

16. It is well known that the cost of qualifying as a solicitor or barrister via the traditional route of a qualifying law degree, a professional post-graduate academic course, and the final training placement is very expensive. Universities can now charge up to £9,000 each year for tuition fees⁷. If a graduate wishes to convert their non-law degree by undertaking the Graduate Diploma in Law they will have to pay between £7,700 and £9,820 for the privilege.
17. In addition, fees charged by the private education institutions for the post-graduate vocational courses (the LPC and BPTC) are extremely high and the tendency has been for fees to rise year on year. A table of course fees for 2013-14 is set out on the following page:

⁵ “Fair Access to Professional Careers”, Rt. Hon Alan Milburn, Independent Reviewer on Social Mobility and Child Poverty, May 2012

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61090/IR_FairAccess_acc2.pdf

⁶ *Ibid.* p1, para 5.

⁷ <http://www.parliament.uk/briefing-papers/SN00917.pdf>



GRADUATE DIPLOMA IN LAW (GDL) – 2013/2014⁸	
University of Law, Manchester	£7,700
BPP, Manchester	£7,750
University of Law, Birmingham	£7,700
BPP, Birmingham	£7,850
BPP, London	£9,700
University of Law, London	£9,820
Kaplan Law School, London	£9,700
LEGAL PRACTICE COURSE (LPC) – 2013/2014⁹ (including £120 SRA registration fee)	
University of Law, Manchester	£11,380
BPP, Manchester	£10,476
University of Law, Birmingham	£11,380
BPP, Birmingham	£11,076
BPP, London	£14,076
University of Law, London	£14,025
Kaplan Law School, London	£13,270
BAR PROFESSIONAL TRAINING COURSE (BPTC) – 2013/2014¹⁰ (including £400 BSB registration fee)	
BPP, Manchester	£14,250
University of Law, Birmingham	£13,155
BPP, London	£17,350
University of Law, London	£17,350
Kaplan Law School, London	£17,350

18. The total cost of legal education and training is therefore a very high burden. For instance, a student studying law at undergraduate level followed by the BPTC in London can now expect to pay in the region of £44,000 for course fees alone.

⁸ See <http://www.law.ac.uk/prospective-students/gdl-course-fees.html> for the University of Law, <http://www.bpp.com/postgraduate-course-details/d/postgraduate/GDL/145> for BPP and <http://law-school.kaplan.co.uk/law-courses/gdl> for Kaplan.

⁹ See <http://www.law.ac.uk/prospective-students/lpc-course-fees.html> for the University of Law, <http://www.bpp.com/postgraduate-course-details/d/postgraduate/LPC/146> for BPP and <http://law-school.kaplan.co.uk/law-courses/lpc> for Kaplan

¹⁰ See <http://www.law.ac.uk/Our-Courses/BPTC/BPTC-course-fees/> for the University of Law <http://www.bpp.com/postgraduate-course-details/d/postgraduate/BPTC/144> for BPP and <http://law-school.kaplan.co.uk/law-courses/bptc-bvc> for Kaplan



The end of the minimum salary for trainee solicitors

19. On 16 May 2012 the SRA board decided to “scrap” the trainee solicitor minimum salary. The board stated that setting a minimum salary level for trainees above the National Minimum Wage (NMW) rate for employees was not in the public interest.
20. At present, the minimum salary rate for central London is set at £18,590 p.a. and the rate recommended by the Law Society is £19,040 p.a. Elsewhere in England and Wales, the minimum rate is £16,650 p.a. and the recommended is £16,940 p.a. The new SRA policy will come into effect on 1 August 2014, from which point the only requirement for employers in terms of trainee salaries will be to pay trainees at least the main rate for employees under the NMW Regulations¹¹, which is £6.31 per hour from 1 October 2013 for those aged 21 years and over.
21. The data within the SRA’s ‘Economic and Equality Impact Assessment’ on the removal of the minimum salary for trainees¹² indicated that the impact of the change in salary levels resulting from removing salary restrictions would disproportionately affect Black and Minority Ethnic (BAME) groups,

¹¹ <http://www.sra.org.uk/sra/news/trainee-minimum-salary-levels-for-2011-2014.page>

¹² “Review of Trainee Minimum Salary: Economic and Equality Impact Assessment”, Solicitors Regulation Authority, April 2012
<http://www.sra.org.uk/sra/news/trainee-minimum-salary-levels-for-2011-2014.page#1>

women, people working outside of London and those who attended state schools.

22. In our response¹³ to the SRA’s consultation on the proposed change we argued that the minimum salary provides an important safeguard that protects against exploitation, helps to ensure equality of opportunity and contributes to social mobility and diversity within the legal profession. We noted that it was surprising and disappointing that the SRA – a body charged with encouraging an independent, strong, diverse and effective legal profession and promoting the public interest – would even contemplate such a course of action. We also noted that there would likely be a knock-on effect on clients since removal or severe reduction of the minimum salary could see an overall decrease in the number of people entering or drawn to legal aid work. A drop in the number of solicitors willing to work in these crucial areas of law for the very poorest in society would be detrimental to the public interest.

Pupillage awards

23. The Bar Standards Board (BSB) imposes a requirement on chambers to pay their pupils a minimum of £1,000 each month of the pupillage (i.e. £12,000 each year). Many chambers reliant on legal aid work pay only this minimum to their pupils. Chambers can employ pupils without any grant or funding or pay, but they must apply to

¹³ <http://www.younglegalaidlawyers.org/node/352>



the BSB for an exemption to the usual rules. We are aware of at least one chambers that has been granted a waiver by the BSB from having to pay the minimum award over the last six months¹⁴.

The Legal Education & Training Review

24. The Legal Education & Training Review¹⁵ (LETR) was jointly conducted by the SRA, the BSB and the Institute of Legal Executives Professional Standards. The remit of the LETR was broad; encompassing the qualifying law degree, the vocational courses (the BPTC and LPC), pupillage, training contracts and continuing professional development. It provided an opportunity for interested groups and individuals to identify those aspects of legal training which work and those which do not.

25. YLAL submitted a response to the review consultation in September 2012. This response (using the same data upon which this report is based) raised the following concerns:

- The prohibitive cost of the LPC and the BPTC;
- The difficulties with unpaid work experience;
- The value of "work-based learning" as an alternative route to qualification; and
- The need for more and better targeted scholarships.

¹⁴ <http://www.legalcheek.com/2013/07/unfunded-pupillages-are-back-2/>

¹⁵ See <http://letr.org.uk/>

26. The conclusions of the LETR were published in June 2013¹⁶. The LETR made a number of recommendations to the relevant professional bodies which related to social mobility¹⁷. These included:

Recommendation 12 – The structure of the LPC ... should be modified with a view to increasing flexibility of delivery and the development of specialist pathways.

Recommendation 20 – In light of the Milburn Reports on social mobility, conduct standards and guidance governing the offering and conduct of internships and work placements should be put in place.

Recommendation 21 – Work should proceed to develop higher apprenticeship qualifications as part of an additional non-graduate pathway into the regulated professions, but the quality and diversity effects of such pathways should be monitored.

Recommendation 22 – Within regulated entities, there is no clearly established need to move to individual regulation of paralegals. Regulated entities must however ensure that policies and procedures are in place to deliver adequate levels of supervision and training of paralegal staff, and regulators must ensure that robust audit mechanisms provide assurance

¹⁶ "Setting standards; the future of legal services education and training regulation in England and Wales" LETR, June 2013 <http://www.letr.org.uk/wp-content/uploads/LETR-Report.pdf>

¹⁷ *Ibid.* 289-293.



that these standards are being met. To ensure consistency and enhance opportunities for career progression and mobility within paralegal work, the development of a single voluntary system of certification/licensing for paralegal staff should also be considered, based on a common set of paralegal outcomes and standards.

Recommendation 23 – Consideration should be given by the Legal Services Board and representative bodies to the role of voluntary quality schemes in assuring the standards of independent paralegal providers outside the existing scheme of regulation. The Legal Services Board may wish to consider this issue as part of its work on the reservation and regulation of general legal advice.

Recommendation 24 – Providers of legal education (including private providers) should be required to publish diversity data for their professional or vocational courses, Qualifying Law Degrees and Graduate Diplomas in Law and their equivalents.

27. In response to the LETR recommendations the SRA has announced a “radical programme of reform”¹⁸. Likewise the BSB has responded by publishing a framework for the development of its future approach to education and training¹⁹.

¹⁸ “Responding to the Legal Education and Training Review”, Anthony Townsend (Chief Executive), 8 October 2013

<http://www.sra.org.uk/sra/news/events/speeches/antony-townsend-legal-policy.page>

¹⁹ “Education and strategy framework” Bar Standards Board

<https://www.barstandardsboard.org.uk/regulatory->

Both programmes of reform are in the early stages and the detail of what is to change and when, is not yet known.

Legal aid cuts 1: The Legal Aid Sentencing and Punishment of Offenders Act 2012

28. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) came into force on 1 April 2013 and brought significant changes to the civil legal aid system. LASPO removed a large number of areas of law from the scope of legal aid. These areas included immigration (save for asylum claims or work carried out for those in immigration detention); employment (except where there is a discrimination claim); education (except for Special Educational Needs work); welfare benefits (except for appeals to the Upper Tribunal and onwards); debt; clinical negligence for the majority of adults and children; and personal injury.

29. Six months after the changes came in we are beginning to see the impact of these changes on clients who are no longer able to access legal advice and representation. But the reduction in scope has also affected the financial viability of chambers and firms whose clients tend to rely on legal aid. Many are now reviewing their business plans and in some cases limiting the training and qualification opportunities offered

[requirements/changes-to-regulation/legal-education-and-training-review/education-strategy-framework/](https://www.barstandardsboard.org.uk/regulatory-requirements/changes-to-regulation/legal-education-and-training-review/education-strategy-framework/)



to junior lawyers. In addition the reduction in income is likely to result in an increased reliance on lower-paid, junior, practitioners.

Legal aid cuts 2: Transforming Legal Aid

30. More recently, the Government has proposed further legal aid cuts²⁰. Included in the proposals are plans to reduce the fees paid in criminal, family, immigration and civil cases to varying degrees. Again, it seems likely that these fee reductions will impact on social mobility and diversity in the profession. The Bar Council observed in their response to *Transforming Legal Aid*²¹ (in relation to the proposed civil reforms) that:

“...the Equalities Impact Assessment recognises that those members of the Bar who will be affected by this proposal are more likely to be “female or BAME and younger barristers”.

The Bar has worked hard in recent years to improve access to the profession and ensure it is more representative of the society we

²⁰ “Transforming Legal Aid: Delivering a more credible and efficient system” Ministry of Justice, April 2013; “Transforming Legal Aid: Next Steps” Ministry of Justice, September 2013; and “Judicial Review Proposals for Further Reform” Ministry of Justice, September 2013

²¹ “Bar Council response to the Transforming Legal Aid: delivering a more credible and efficient system consultation”, the General Council of the Bar of England and Wales, June 2013
http://www.barcouncil.org.uk/media/213901/the_bar_council_response_to_moj_transforming_legal_aid_consultation_040613.pdf p21, para 92

serve. This proposal would particularly affect those groups we have worked hard to attract”²²

31. The BSB made similar comments in their response to the criminal aspects of the consultation:

“With the increase in University fees and the cost of the BPTC it is inevitable that many potential advocates who may have been well suited to practising publicly funded criminal law will not seek to do so given the question over whether they would be able to sustain themselves as practitioners on the fees to be earned. At particular risk are persons from socially diverse backgrounds and those with families to support or other caring responsibilities...it creates a risk that only those who are financially better off will be able to afford to enter or remain in this area of work and hence a barrier to entry by those who are socially disadvantaged.”²³

32. The Law Society also raised a particular concern in their response about the effect of the criminal cuts on BAME practitioners:

“Data shows that black and minority ethnic solicitors practice

²² *Ibid* p135-136, para 23

²³ “Transforming legal aid: delivering a more credible and efficient system - Response of the Bar Standards Board”, Bar Standards Board, June 2013
https://www.barstandardsboard.org.uk/media/15099/96/transforming_legal_aid_-_delivering_a_more_credible_and_efficient_system_-_response_of_the_bar_standards_board.pdf p6 , para 28.



disproportionately in small firms, and that therefore any proposal that impacts adversely on small firms will have a disproportionate adverse impact on BAME solicitors. It is quite clear that although under these proposals, a small firm may be able to survive as a member of a consortium or as a subcontractor, such firms will be in a weaker position... The proposals will therefore inevitably weaken the position of BAME practitioners within the profession.”²⁴

Bar Council Fair Recruitment Guide

33. The Bar Council has compiled a Guide aimed at promoting fairness and best practice in recruitment and selection at the bar, the “Fair Recruitment Guide 2012: A best practice guide for the Bar”²⁵. This Guide covers all elements of the recruitment process, from drafting selection criteria to making offers to candidates. The Guide is predicated on four principles of fair and effective selection: reliability, validity, objectivity and transparency. The intention is that a focus on these aspects will enable socially disadvantaged candidates to be

assessed meritoriously and holistically, without excessive significance placed on, for example, a candidate's ability to undertake unpaid work experience.

34. We are not aware of the Law Society producing similar guidance for the recruitment of trainee solicitors.

Conclusion

35. It is against this backdrop of on-going investigations into social mobility by the Government, possible future changes to the education and training system by the regulators, and cuts to legal aid, that junior lawyers and students face the task of establishing a career as a legal aid lawyer.

²⁴ “‘Transforming legal aid: delivering a more credible and efficient system’ – MOJ consultation paper - Law Society response to chapters 4 and 5: ‘Introducing competition in the criminal legal aid market’ and ‘Reforming fees in criminal legal aid’”, The Law Society, June 2013

<http://www.lawsociety.org.uk/representation/policy-discussion/transforming-legal-aid-consultation-law-society-response/> p24, para 6.1.

²⁵ http://www.barcouncil.org.uk/media/165213/recruitment_guidev22_18sept_merged_readonly.pdf



FINDINGS

Finding 1: High levels of debt combined with low salaries make legal aid work unsustainable for those from lower socio-economic backgrounds

36. The first finding to emerge from our data was that those entering legal aid often have extremely high levels of debt from their studies. This leaves many in unsustainable financial situations when they start work in low-paid legal aid jobs.

Coping with high course fees - family background and debt

37. As set out in the context chapter above, the cost of qualifying as a solicitor or barrister via the traditional route of a qualifying law degree, a professional post-graduate vocational course (LPC or BPTC (previously the Bar Vocational Course (BVC)), and the final training placement (training contract or pupillage) is very expensive. Universities can now charge up to £9,000 each year for tuition fees and the GDL can cost between £7,700-£9,820. However, it is the vocational courses that represent the highest level of fees that students must undertake. Of the respondents to our survey:

- **The majority (56%) of those who studied the LPC paid fees of between £9,000 and £12,000**

- **The majority of those who studied the BPTC/BVC paid over £9,000 in course fees, with 28% paying between £9,000 and £12,000, and 35% paying over £15,000.**

38. This is a problem which is only getting worse, as the cost of these courses continues to rise year on year.

39. A number of respondents to our survey felt that the cost of law school in itself represents a significant barrier to social mobility. When asked how university tuition fees and law school fees were paid respondents confirmed that they had relied on a number of different sources for help:

- **Over half said that they relied on financial support from family;**
- **A third relied on loans;**
- **Almost a third had used personal savings; and**
- **14% relied on part-time employment.**



40. Given these figures it is clear that for many, training to become a legal aid lawyer is simply not an option unless you come from a background where financial support is readily available. One respondent, when asked to identify barriers to social mobility that he or she had faced answered:

“Huge financial barriers: I have lived a very frugal life in an attempt to fund my legal training, have taken extra jobs, borrowed money from my parents, decimated my savings, and all this coming from a middle-class background.”

41. For those without familial support, or with insufficient help to cover the full cost of law school, taking out a loan is often the only way to finance their way through their education. The result is that many start their working life with high levels of debt. As one respondent stated:

“So much debt is accumulated on completing the education that we are not able to afford to live or pay the debt back.”

42. Such high levels of debt were a prevalent theme to emerge from the survey and it is clear that many individuals are starting work with significant financial liabilities. Sixty six percent of respondents had (or estimated that they will eventually have) over £15,000 worth of debt as a result of their education and 15% had (or will have) over £35,000 worth of debt. Although not exclusively, this debt included student loans from graduate

degrees, law school fees and the costs of living whilst studying.

Low salaries

43. The debt burden of entrants to the profession needs to be considered in the context of the earnings of junior legal aid lawyers. Many responses to our survey focused on the issue of low pay set against high levels of debt:

“A legal aid salary in my experience is unpredictable, unreliable and low”

“High debts from studies ... are very difficult to pay from legal aid wages.”

“I will have a high level of debt, a young family and no significant increase in my income with which to pay the debt off.”

“Even the trainee minimum barely allows for us to meet basic living expenses whilst paying back course fees.”

44. Low pay pervades all levels of the junior end of the profession. Many need to undertake unpaid experience as a stepping stone to paid employment (see Finding 2), while others spend years working in low-paid paralegal jobs before being taken on as a trainee or securing pupillage.

“There are very few trainee jobs, and it is often a requirement to be a paralegal first. This means people can spend a year or more at a law firm hoping it turns into a training contract without any job security.”



Then if [you] do not get one [you] have to start as a paralegal again somewhere else, also with no security. This would be extremely difficult with dependents, especially with the ridiculously low paralegal wages in some firms.”

45. The need to undertake low-paid paralegal work prior to securing a training contract or pupillage was a common theme among respondents:

- **61% of respondents have worked or were working as a paralegal** at the time of the survey

46. Even once in formal training, trainee salaries (for trainee solicitors) and pupillage awards (for trainee barristers) are often set at an extremely low level.

“Now, as a pupil, my principal worry is not getting paid. Criminal solicitors’ firms who instruct chambers rarely pay for the work which pupils do. This is just about sustainable while I still receive a pupillage grant of £1,000 a month. When this grant terminates, unless the situation changes, it is difficult to see how I will be able to continue.”

47. Wages in the legal aid sector remain low in comparison both to other areas of the law and other professions. The majority of respondents to our survey earned less than £20,000 each year. A more detailed analysis is set out below.

48. Of the respondents to our survey who were in legal work:

- **5% were earning less than £10,000 per year** (all were paralegals)
- **8% were earning between £10,001 and £15,000** (including 3 pupil barristers, 5 paralegals)
- **37% were earning between £15,001 and £20,000** (including 18 paralegals, 15 trainee solicitors)
- **17% were earning between £20,001 and £25,000** (including 6 paralegals, 6 trainee solicitors, 4 solicitors)
- **15% were earning between £25,001 and £30,000** (including 8 solicitors, 2 barristers)
- **8% were earning between £30,001 and £35,000** (including 7 solicitors and 1 barrister; there were no paralegals or trainee solicitors)
- **11% were earning more than £35,000** (4 were solicitors and 7 were barristers though not all were working in the legal aid sector)

49. As well as inhibiting less well-off individuals from entering the profession



in the first place, high debts and low salaries can have the effect that individuals may be unable to continue to work in the legal aid sector.

“I often feel like leaving. There are days when I cannot even get to my place of work because I don't have enough money to get there. I earn hardly anything and I am told that eventually I will. My quality of life is awful.”

50. Indeed, several respondents indicated that they had already been forced to move away from legal aid work to an area where the financial difficulties are less pronounced because of these problems.

“...No bank now lends enough to pay for tuition and cost of living for these two courses, so it is impossible to do unless you go for a sponsored training contract with a

private firm or your family can afford to pay for it all. For this reason I am going to qualify in private practice before moving into legal aid. The second barrier is the low pay. Even with full sponsorship and a grant I have a £20,000 loan to pay back, and I can't afford to manage repayments on low pay.”

“I have actually had to leave the legal aid sector all together at the moment due to a training contract being offered at a private firm... I have two young children and cannot afford to live on a paralegal wage forever.”

51. The trend underpinning these responses was clear. The combination of prohibitively expensive professional courses, high levels of debt and low starting salaries represents a significant barrier to social mobility within the profession.



Finding 2: Unpaid work experience represents a significant barrier to social mobility

52. A clear trend to emerge from the survey data was the proliferation of unpaid work experience in the legal profession.

- **89% of respondents to our survey had done unpaid legal work experience;**
- **Only 40% of respondents had done any paid work experience; and**
- **42% had undertaken work experience that was expenses-only.**

53. The nature and length of these unpaid work placements varied. Typical unpaid placements included internships at charities and Non-Governmental Organisations (NGOs), paralegal positions at law firms and volunteering at legal advice centres. A number of these placements only required a short-term commitment, for example, a one-week mini-pupillage at barristers' chambers, or a limited ongoing commitment of say, one day a week volunteering at a Law Centre.

54. These might be regarded as the "acceptable" end of the spectrum. However, a proportion of respondents had undertaken significantly more substantial unpaid work placements. For instance, several respondents had undertaken full-time unpaid placements lasting between four and eight months,

while others had committed to part-time placements in excess of a year. Some respondents indicated that the unpaid work placements they had undertaken such as, volunteering for legal charities did not even cover travel expenses meaning that it cost them money to undertake the placement.

Unaffordable

55. The barrier that unpaid work presents to social mobility is self-evident. Those from lower income backgrounds simply cannot afford to work for free as a stepping-stone to qualification. This was a recurrent theme to emerge in the responses to the survey, with a number of respondents highlighting the difficulties of trying to support children at the same time:

"Pupillages are won and lost on unpaid internships and placements. As the full time mother to a toddler, I cannot viably take up the opportunities I'd like to in order to set my CV apart."

"...graduates are expected to work for 6 months with the 'promise' of a paid position at a later date. This is extremely unfair on graduates who for example have dependants or those who do not have working parents to rely on for financial assistance."



“I found it really hard to find work experience and during my studies I couldn't afford to work for free. In the end I had to, when it became painfully obvious there was no other way I would get a job without experience.”

“I cannot afford to work for free; this limits the type and amount of work experience I am able to obtain.”

“As an adult with bills to pay, it is very difficult to work for free.”

“I'd like a training contract with a legal aid firm but need it to be part time and ideally flexible, given my commitments as a parent with two young children. I also can't afford to work for free.”

Difficult to fit around paid work

56. Those unable to afford to undertake unpaid work were left with limited options. A number of respondents observed that they had tried to combine unpaid legal work with paid non-legal work, but had found this difficult:

“For those who are working, often more than one job, and studying, there is a lack of opportunities to gain experience at weekends. Many struggle to obtain the experience needed to obtain paid paralegal posts.”

“I found it very difficult whilst working full time to get the required work experience needed to apply for paralegal posts.”

“Prior to pupillage, I struggled to accrue legal experience. Working for free was not an option and any experience needed to be fitted around paid work and studies. This limited me to volunteering for one day a week making it difficult to build up my experience and my CV.”

“[I] cannot afford to work for free, [I] have dependents and [a] mortgage to pay, [with] three jobs to work.”

“[It is] very hard to afford unpaid work experience and to fit it around unrelated paid work.”

Geographical barriers

57. Geographical issues were also highlighted as a barrier to obtaining work experience. Many opportunities are in London and for those without family in the city, this adds significantly to the cost, particularly where the placements do not reimburse travel expenses:

“The cost of completing mini-pupillages was a huge barrier: they are a prerequisite to pupillage but are limited by geography. To complete mini-pupillages in the Northwest I had to borrow money from my parents to commute to Liverpool, Manchester and Birmingham, and rely on their generosity in letting me stay at home rent-free during the holidays. As the more specialised chambers are based in London, I knew it would boost my CV if I had undertaken



mini-pupillages there. However, with no family in London or friends able to host me for the three weeks, I had to draw on my overdraft to cover rent and transport...The mini-pupillage process is so London centric. I feel students outside of London are at a real disadvantage in gaining experience, and those with family in London often do not realise how lucky they are.”

“Unpaid or expenses only internships [are] often a long way away from where my accommodation is, forcing me to rely on staying with friends / family.”

58. It is trite to observe that requiring individuals to work for free represents a barrier to those from low-income backgrounds. To establish that such a large proportion of our membership have been required to do exactly that is a trend we find concerning.



Finding 3: Work experience is an essential prerequisite to finding a job in the legal aid sector

59. The trends observed in finding two, are question begging. Given the problems presented by unpaid work placements, why are individuals doing it? Is it really necessary? To try and answer this we asked respondents to comment on what impact, if any, previous work experience had played in their careers.

- **A significant majority of respondents (80%) indicated that work experience had helped further their career in legal aid.**

60. It should be noted that of this majority, a number of respondents highlighted the positive aspects of legal work experience in helping them make career decisions, developing their skills and knowledge and giving them a feel for professional working environments.

“It has provided me with some valuable legal experience both practical and academic and has helped me to shape my views about the kind of firms I want to work with, the kind of law I want to practice and has also given me a valuable understanding of the challenges facing firms including the current changes to the legal aid system...”

61. Other respondents were less positive about the experience.

“...as a trainee you would be learning all of this anyway. Some may say it is a way of giving lower wages for a prolonged period to a person keen on joining the profession.”

62. Reasons given for undertaking work experience predominantly split into two interlinked categories. Firstly, employers regard it as essential. Secondly, the vocational courses (the LPC and BPTC) are not preparing candidates sufficiently for the realities of day-to-day practice.

Employers require work experience

63. Respondents consistently cited their experience as a paralegal, volunteer, and so on, as having been critical in securing a training contract or pupillage. They noted that at interviews recruiters were much more interested in the skills candidates had picked up in the course of their employment rather than through education.

“I think it was the main thing that attracted my employers to me. My experience was the focus of questions in my training contract interviews, both experience I had done and projected experience and voluntary work that I was



undertaking. Partners have subsequently told me that they look for ability and commitment in the people they take on and this is best demonstrated by experience.”

“... employers expect it and your application doesn't look serious without it”

“It is useful experience in terms of exposing you to more areas of law and how to deal with clients. But more than that, it is the case that without this experience chambers would not give my application a second look.”

64. Some respondents felt the significance of this requirement was not appreciated by prospective employers:

“It was raised in my Training Contract interview that all my experience had been in commercial firms in a different geographic area. I argued that most legal aid firms (this one included) were not in a position to offer [paid] work experience.”

Barristers also noted that some chambers require work experience as part of “points allocation” when going through applications.

Work experience is necessary to prepare individuals for practice

65. The second of the two factors underpinning the need to undertake work experience was that it was essential to prepare candidates for practice:

“I now possess a better appreciation of the business aspect of a legal aid firm, including billing, LGFS/AGFS, upper and lower limits, fixed fees etc. Without practical experience, I would be walking into a training contract completely blind and unappreciative of my worth as an individual to my firm for new business and profit.”

“Although pay was ridiculously low (£7,500 pa in 2000-01) this experience gave invaluable insight into work in practice. [I] learned far more about legal practice in this year than I did on the LPC.”

“I do not think I would have secured pupillage without the skills and experience which I picked up working as a paralegal - e.g. drafting, knowledge of public law litigation, ability to deal with vulnerable clients, knowledge of niche areas of law (e.g. prison law and community care), ability to negotiate/deal with Defendant Local Authorities and judgment. All of these are essential elements of every day practice but are not aspects which can be picked up to a



sufficient standard, if at all, on the BPTC”.

66. Inherent in this was a feeling among respondents that the vocational stages of training were not sufficiently relevant to day-to-day practice in legal aid:

- **80% of respondents who had undertaken the BVC/BPTC only found some parts relevant to their employment.**
- **82% of respondents who had undertaken the LPC only found some parts relevant to their employment; 13% found none of it relevant at all.**

67. Specifically, respondents tended to the view that the professional courses were not sufficiently practical and (in respect of the LPC) were too focussed on business and commercial law to provide a basis for work in the legal aid sector.

“Even at the time, very little of the LPC was useful or relevant... I think learning practical skills whilst working would be much more useful, even if it still involved some combined college time. Practical things, like the Civil Procedure Rules, only have real meaning when you have to use them.”

“Business/company law [on the LPC is] completely irrelevant.”

“I am working in mental health, which didn't even get a mention.”

“[The] LPC is particularly geared towards corporate work and so I felt the vast majority of the compulsory modules were not relevant to me as someone who wanted to practice in legal aid”

“The civil litigation module [was] the most relevant. Although... taught in the abstract it was less useful than if it had been combined with the workplace.”

A vicious circle?

68. It should be noted at this point that neither of the factors highlighted above – neither the demand for work experience from employers nor the need to gain practical experience to prepare oneself for practice – necessarily require individuals to undertake *unpaid* work experience. Clearly, paid work experience would also provide a solution to these problems. However, the experience of respondents to the survey indicates that often unpaid experience is the only way to get a “foot in the door” to obtain paid experience.

“Unpaid work experience [is] vital to getting paid legal work.”

One can only get work experience, it seems, if one already has work experience. This is a cycle that is difficult to break unless one is willing and able to work for free.



Work-based learning: an alternative?

69. One possible alternative, which might break this cycle, would be to replace the vocational stages of training with a form of “on-the-job” or work-based learning. Hitherto this option has only been considered in respect of the LPC. A majority of respondents were in favour of this course of action:

- **71% of respondents who had undertaken the LPC favoured replacement of the course with work-based learning**

70. Respondents observed that:

“After endless studying people find themselves in office environments and cannot cope. It is utterly artificial to conceive of law as an academic subject. People need the skills to get on with the job and cope in the environment they will eventually enter into.”

“There should be a wider diversity of entry routes into the profession, with less ability for firms and existing members of the profession to prevent new entrants from progressing.”

“This would give students the chance to learn practical skills on

the job whilst making some money rather than paying a lot to learn practical skills in a theoretical environment. From what I have heard, the LPC is not like practice anyway, so there is no point in paying so much for skills that can't be taught in the classroom.”

Taking stock

71. Pausing to take stock, the theme explored in finding two was that unpaid work experience is prevalent and for many respondents it is simply unaffordable, representing a significant barrier to the legal profession. The theme explored in this third finding is that this work experience is felt to be an essential prerequisite to entry into the profession either because employers require it or because it provides the necessary foundation to succeed in day-to-day practice. While work experience does not need to be unpaid to meet these requirements, the reality is that candidates are unlikely to secure a paid position unless they already have work experience on their CV. Unpaid work may therefore be the only opportunity to get a “foot in the door”. A body of respondents felt that work-based learning may provide a solution to this problem.



THE LEGAL FRAMEWORK

72. One of the key themes to emerge from the findings above was the prevalence of unpaid work placements. The length and nature of these placements varied. Some respondents reported working for a few hours or a day each week at a legal charity. Others reported working unpaid full-time, for periods in excess of six months as a “paralegal” or “legal intern”. At the former end of the spectrum the practices are not a particular concern. Many charities and Not-for-Profit organisations (NfPs) in particular rely on a base of dedicated volunteers. And it is entirely right that committed individuals should be able to dedicate their time and accrue experience with these organisations if they choose. However, at the other end of the spectrum, the longer, more intense placements have the feel of exploitation about them. With this in mind it is useful to consider the legal framework governing paid and unpaid work.

I know my rights...

73. Under s1 of the National Minimum Wage Act 1998 a “worker” is entitled to be paid the National Minimum Wage (NMW). The point of departure then is to consider whether or not the individual is a worker. The term “worker” in this context is defined by s54(3) National Minimum Wage Act 1998:

(3) In this Act “worker” (except in the phrases “agency worker” and “home

worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)—

- (a) a contract of employment; or*
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.*

74. The definition of worker used in the National Minimum Wage Act 1998 is identical to that which is used in the Working Time Regulations 1998/1833. Accordingly, a worker will be entitled not only to the NMW but also the additional rights and benefits under those Regulations. These include:

- The right not to work above 48 hours in any 7 day period, unless the worker has signed a written waiver (reg 4);
- The right to withdraw their consent to any waiver on giving 7 days notice (reg 4);
- The right to adequate rest breaks where the pattern of work carried on by the employer would put the health and safety of a worker at risk, e.g. where the work is monotonous or



the work-rate is predetermined (reg 8); and

- The right to annual leave pro rata as well as the right for any annual leave not to be replaced by payment in lieu (unless the employment has terminated) (reg 13).

When is an intern a “worker”?

75. Unpaid work placements in the legal profession are given a variety of labels. Some unpaid positions are described as internships, others as paralegal or legal assistant positions. But the label which is chosen is not particularly important. If a particular paralegal or intern falls within the legal definition of a worker, then the individual in question will be entitled to NMW and the other rights and benefits outlined above. Whether or not an individual is a worker will always be a question of fact, taking into account a variety of factors. There are no hard and fast rules.

76. As can be seen from s54(3) National Minimum Wage Act 1998, quoted above, one of the first points to consider is whether there is a contract of employment in existence, either express or implied. The case of *Ready Mixed Concrete Ltd v. Minister of Pensions and National Insurance* [1968] 2 QB 497 gives guidance in relation to whether there is a contract of employment. The judgment shows that the following factors will be relevant:

- Whether the individual agreed to provide his own work and skill in

return for a wage or other remuneration.

- Whether there was a sufficient degree of control to enable the individual fairly to be called an employee.
- Whether there were any other factors inconsistent with the existence of a contract of employment.

In the *Ready Mixed* case, the putative employees were a group of drivers paid mileage for transporting concrete. They provided and maintained their own vehicles and were responsible for making sure they had the appropriate licences and training. The court held that they were independent contractors and not employed by the company in question.

77. More recently there have been a number of cases where the Employment Tribunal has had to consider specifically whether a putative intern was in fact a worker. In *Keri Hudson v TPG Web Publishing Ltd* 12th May 2011, the Claimant was a 21 year old graduate who spent six weeks interning without pay for an online review site. She worked every day from 10am- 6pm and was responsible for a team of writers; for training and delegating tasks; collecting briefs; scheduling articles and for hiring new interns. The Tribunal held that she was a worker despite not having a written employment contract and that she was, therefore, entitled to £1,025 for five weeks’ work at NMW, plus pro rata holiday pay.



78. Another example of a successful claim by an intern to be paid NMW, was the case of *Vetta v London Dreams Motion Pictures Ltd* (2008). In that case, Ms Vetta was awarded £2,000 for unpaid wages and accrued holiday pay for a period of around two months working full-time as an intern for a self-employed production designer engaged by a production company on an “expenses-only basis.” The Employment Tribunal found that she was a worker and was therefore entitled to the NMW from the production company on the basis that they had paid her expenses and that it was clear that she had “carried out all of the tasks that one would have expected

of an assistant in that position and should have been paid at least NMW.”

79. Applying these principles it seems likely that the longer-term unpaid work placements referred to in finding two above may well be unlawful. Drawing together the threads from the cases referred to above, the following table provides a guide – and it is simply a guide – to the kind of placements which might legitimately be regarded as internships and those where the individual is a worker and entitled to NMW. We would encourage employers to consider their practices against this guidance.

Condition	Worker	Intern
Length of time	Approx 2 months plus	Less than 2 months
Working hours	Full-time/almost full-time Set working hours	Part-time or short hours Flexible working hours
Place of work	At the employer’s offices	No fixed place of work
Time off	Required to request/notify times when unable to attend work	No duty to notify the employer if you cannot attend work
Responsibility	Managing others or responsible for training	Only responsible for own work Not responsible for any training
Role	A vital role which would usually be paid e.g. secretary	Performs extra activities, not essential to working of firm
Equipment	Provided with equipment	Provides own equipment



BEST PRACTICE

80. The intention of this report is not to castigate employers and recruiters trying their best to survive in the increasingly fraught legal aid sector. Rather, the point is to highlight the barriers to social mobility and diversity within the profession and to try and provide some constructive suggestions as to how the current situation might improve. With this in mind, it is worth considering examples of “best practice” in the legal aid sector. The following examples have been provided by a number of employers who we contacted during the course of our research.

Remuneration

81. In view of the findings set out earlier in this report, the first issue to consider is the remuneration of work placements. London firm Bhatt Murphy provided a particularly good example in this respect, showing that even in the current financial climate it can be possible for legal aid firms to pay individuals for undertaking work placements. Unpaid work need not be essential:

“In 2013 we took four undergraduates for two week work placements. We paid all of our placement students in accordance with the London living wage (£8.55 per hour) and we paid travel and accommodation expenses for one of the students who lives outside of

London. Students are mentored by one of the firm’s solicitors for the duration of their placement and are given a programme of work which we hope will give them a reasonable insight into the work of the firm and the reality of being a solicitor. We try to ensure the placement is challenging and to take into account the interests of individual students.”
(Diane Fisher, Bhatt Murphy)

82. Similarly, Stephenson’s LLP (a firm with a number of offices in London and the north of England), offered paid work experience in the summer months as a way of “talent spotting” potential trainees. Candidates are paid the national minimum wage:

“We have the normal expectations that come with being paid but we are not looking to take advantage of those on a placement. We would expect interns to observe standard office hours but have no particular expectation beyond that. If we ask people to work beyond 9-5 we would generally pay them for that.”
(Janine Turner, Stephenson’s LLP)

83. For the Public Law Project (PLP), a small but highly respected legal charity based in London, paying everyone who assisted with their legal work was simply not an option. But to alleviate the impact of this they explained how they focussed instead on providing a quality placement, covering all reasonable expenses so that the individual did not lose out and – most



importantly – giving equal preference to those who could only afford to volunteer for shorter periods:

“In an ideal world we would be able to pay everyone that works for us, but for a small charity like PLP, that has unfortunately not been possible. We are keenly aware that our volunteers are giving their time for free, and we do our best to make their experience fulfilling, so that a placement is mutually rewarding. To this end, we pay travel expenses and lunch costs, and we only ask that our volunteers commit to a minimum of one day per week, with flexible working hours and the possibility of working remotely. Anyone who cannot commit to more than one day per week is not disadvantaged in the recruitment process. We also do what we can to ensure that volunteer placements are open to as wide a cross section of the community as possible.”

(Ravi Low-Beer, Public Law Project)

84. Turpin and Miller LLP, a firm based on Oxford and Reading, operated a similar arrangement, paying reasonable expenses only, but being flexible in the level of commitment required and focussing on the quality of the placement provided.

A good experience for all concerned

85. So long as unpaid or low paid work experience remain a stepping-stone to practice it is vital that they provide a

genuinely useful experience for participants, as opposed to just an opportunity to help with the photocopying. This is the only way in which participants will pick up the skills they need to thrive in practice. One participant describing her positive experiences on the Bhatt Murphy scheme noted that:

“It worked well having a mentor as you build a relationship with them which makes it easier to ask questions if there’s any confusion. Working with different departments was very good experience as I was able to gain an understanding of different areas of law. Attending meetings and listening to new enquiries worked well as you get an aspect of different stages of work. Also doing work relating to those meetings and new enquiries e.g. writing up attendance notes, letters of claim and deciding what the causes of actions were in new inquiries, made the experience much more interesting. There was a lot of work, but no pressure.”²⁶

86. Speaking from the employer’s perspective, this need to focus on providing a good experience was echoed by Tom Giles of Turpin and Miller:

“I always make clear that our work has a lot of admin and their placement will involve that. But we try to give the opportunity to be involved with casework and sit in on

²⁶

www.bhattmurphy.co.uk/media/files/Feedback_from_2012_placement_students.pdf



appointments. We're fortunate that we do a variety of work as this allows us to give a variety of tasks. You wouldn't want to spend all day photocopying. The department here is very busy and there are lots of different things to do."

87. By the same token, the provision of references at the end of a work experience placement can be a real boon to participants. The point being that at the end of their time, participants should be able to come away with something tangible which will improve their prospect of employment. Bhatt Murphy and Turpin and Miller LLP both provided references to participants following the completion of work experience placements.

88. The employers we spoke to were clear that focusing on providing a good quality placement reaped dividends for them in the longer term:

"We get access to high quality legal assistance from our volunteer schemes. When it works well we get very good people, young lawyers with drive, commitment and a way of looking at problems with fresh eyes. They are generally a great asset for us... Taking on people for work experience is an opportunity to establish ties with lawyers at the start of their legal careers and interest them in PLP's perspective on access to justice, which they will hopefully take further once they become practitioners. We are still in touch with many of our former volunteers, who have now

established successful public law practices. We benefit from the solidarity and support that we are fortunate to receive from them."
(Ravi Low-Beer, Public Law Project)

"The interns we have are highly motivated, bright people. They are valued by everybody. There is also something less tangible. When we have people who come in and you have to explain something to a person, stand back and look at the case, you reflect and appreciate it in a fresh way. It gives you a bit of an energy boost and keeps it fresh for yourself."
(Tom Giles, Turpin and Miller LLP)

"We often hope very much that work experience will be the start of a longer term relationship between the firm and them. It doesn't work out with everyone but we've got people who have come in on placements and come back to us when they have finished studying and joined us as paralegals and secured training contracts. You get a better look at people than relying on one interview for a training contract. It is part of a whole strategy to talent spot and offer people the opportunity to show their stuff.... Some of our equity partners today are people who came through these schemes. A great number of people started with us this way. It makes perfect sense."
(Janine Turner, Stephenson's LLP)

"The firm benefits from the relationships we are building with placement students who we hope will be future candidates for



vacancies with Bhatt Murphy after graduation. We hope that the scheme contributes... towards improving diversity within the profession by giving opportunities to candidates who might not be in a position to undertake unpaid work experience. We would strongly encourage other firms to set up a similar scheme if they are not already doing so. Although running the scheme is time consuming and there are costs involved, we think the benefits far outweigh these concerns. All of the students we have worked with have been excellent and some of them have been truly inspirational.”
(Diane Fisher, Bhatt Murphy)

Recruitment

89. The examples given above all relate to how work placements are conducted. But there is another side to the coin, and this is how work experience is viewed by recruiters. One of the themes to emerge in finding three of this report was that many recruiters regard a high level of legal work experience – which as we have established will often be unpaid – as an essential requirement. Respondents to our survey felt that applications simply were not taken seriously without it. Such entrenched attitudes are concerning. However the Bar Council, in their “Fair Recruitment Guide 2012: A best practice guide for the Bar”²⁷, which provides guidance to chambers

on their recruitment practices reminds chambers that:

Opportunities for extensive travel or study abroad and to take unpaid work experience will be affected by family, cultural and socio-economic background. Ensure experience related criteria do not build bias into the selection process.

90. Garden Court Chambers’ recruitment policy provides a good illustration of how this approach can be implemented in practice:

Please note there are an increasing number of candidates who are not fortunate enough to be able to take time out without pay to do volunteer work. A string of unpaid internships is not a realistic option for many candidates. To that end, while of course potential is intangible to some extent and therefore difficult to mark, markers can offset potential against a lack of legal or related experience. For example, someone might be from a poorer background, would have had to work whilst studying and therefore did not have time to get a plethora of legal experience. It is not unreasonable to expect them to have some legal or other experience – but if for example they had been working in Tesco to get through University and Bar School then they should not be penalised for that.

²⁷ The Bar Council recruitment guide, *op cit* p16



Taking stock

91. The examples above illustrate that even in legal aid it can be possible to pay individuals for undertaking work placements. Where this is not possible dividends can still be reaped by all concerned through the provision of good quality placements taking account

that candidates may only be able to afford a limited commitment such as one day a week. At the other end of the spectrum from the recruiter's perspective the Bar appears to be alive to the problems that insistence on unpaid work can cause and are taking steps to amend practices accordingly.



DISCUSSION & RECOMMENDATIONS

92. A little over 3 years ago we published our first report on social mobility. Based on interviews with lawyers and students from a variety of backgrounds, we concluded that “...aspiring lawyers from diverse backgrounds are finding it harder than ever to forge a career in legal aid.”²⁸ In producing this latest report, based on a survey of our membership, one of our main goals was to try and gauge what, if anything, has changed? The short, stark, answer to this question is: very little.

Finding 1:

High levels of debt combined with low salaries make legal aid work unsustainable for those from lower socio-economic backgrounds

93. The first finding to emerge overwhelmingly from our survey data was that individuals in the legal aid sector frequently find themselves contending with very high levels of debt set against comparatively low salaries. Putting this in context, 50% of respondents working in the legal sector were working for less than £20,000 per year while 15% had (or will have) over £35,000 worth of debt.

²⁸ “Legal aid lawyers: the lost generation in the “national crusade” on social mobility”, *op cit*

94. This is perhaps no great surprise when one considers the cost of training. The BPTC now sets applicants back by as much as £17,350 while the LPC can cost as much £14,076. And this may be in addition to undergraduate tuition fees of £9,000 per annum. A student studying law at undergraduate level degree followed by the BPTC in London can now expect debt in the region of £44,000 course fees alone.

95. It is self-evident that this ratio of debt to salary presents a barrier to those from poorer backgrounds. Tellingly 54% of respondents to our survey had financial support from their families in completing their legal education. Those who are not so fortunate face a considerably harder struggle to get started. As one respondent emotively commented:

“I often feel like leaving. There are days when I cannot even get to my place of work because I don't have enough money to get there. I earn hardly anything and I am told that eventually I will. My quality of life is awful.”

96. There are two obvious issues that underpin this finding. The first is the high cost of the vocational courses. We will return to this point below. The second is the relatively low level or remuneration for junior lawyers



working in legal aid. This is a difficult issue. Legal aid lawyers undertake publicly funded work ultimately at the expense of the taxpayer. We cannot expect or demand lucrative salaries; nor do we ask for them. However, if the profession is to be sustainable in the long-term and accessible to those from less well-off backgrounds, then there does need to be a floor below which salaries should not fall. In this context our firm view is that the decision of the SRA to abolish the trainee minimum salary for solicitors was mistaken. Adjudged against the average debt burden of a junior lawyer the minimum salary set at £18,590 in London and £16,650 elsewhere, was, in our view, a reasonable one. We consider that the abolition of the minimum salary leaving only NMW as a safeguard is not in the public interest. It represents a step backward toward a less diverse profession. Against this backdrop our first recommendation is that:

- **The SRA should reinstate the minimum salary for trainee solicitors**

Finding 2:

Unpaid work experience represents a significant barrier to social mobility

97. Our second finding, mirroring the conclusions in our original social mobility report was that unpaid work experience represents a significant barrier to social mobility. Of the respondents to our survey, 89% had undertaken unpaid legal work

experience. The nature and length of these unpaid work placements varied.

98. These unpaid work placements generally fall into two categories. In the first category, typical placements included short-term internships at charities and NGOs, and volunteering at legal advice centres requiring a short-term commitment, for example, a one-week mini-pupillage at barristers' chambers, or a limited ongoing commitment such as one day a week volunteering at a Law Centre. These might be regarded as the "acceptable" end of the spectrum.
99. From the examples given in our "Best Practice" chapter, it was clear that some firms, Bhatt Murphy and Stephenson's LLP in particular, were committed to paying those on work experience despite the pressures on their finances. This is laudable and should be acknowledged. On the other hand, the Public Law Project candidly admitted that as a small charity, paying their volunteers and work experience candidates a wage was simply not possible. Instead, they ensured that volunteers were paid fully for their expenses, that placements were as rewarding and useful as possible – so that candidates gained from their experience – and that those individuals who could only afford to volunteer for short periods, for example, a day a week, were not disadvantaged. Turpin and Miller LLP operated a similar arrangement, offering a flexible commitment, paying reasonable expenses and focusing on



the quality of the experience. As such, the negative effects of unpaid work are kept to a minimum. Strikingly, all of the firms we spoke to operated transparent policies published on their websites meaning that candidates could be clear about what was expected of them and what they would get out of the placement, allowing them to make an informed choice before proceeding.

100. In an ideal world all work placements would be paid. However, we recognise the pressures placed on small legal aid firms, charities and NFPs. Ultimately the goal should be to boost social mobility and diversity within the profession without placing an unsustainable burden on firms. This gives rise to two recommendations:

- **Funding should be allocated to facilitate work experience placements in the legal aid sector, at smaller firms, charities, Not for Profits and Law Centres. This could either be a central Government initiative, in-line with the present Government's commitment to Small and Medium-sized Enterprises, or a fund made up of contributions from private sector law firms as part of their corporate social responsibility agenda.**
- **Where firms offer unpaid work experience placements, as a minimum such**

placements should be open to those who can only afford to offer their services for short periods, should be structured to ensure that candidates benefit from their experience and are able to escape the “trap” of unpaid work, and expenses should be paid. Such schemes should be transparently advertised: individuals should know in advance what will be required of them and what they stand to gain from the placement. To facilitate this, oversight and/or guidance from the Law Society or SRA should be considered.

101. In the second category of work experience placements were those - often describing themselves as internships – where individuals were required to work full-time, for periods of several months or more, undertaking legal casework and fee-earning. These placements are more problematic. The barrier that they present to social mobility is clear. Individuals from low-income backgrounds have no prospect of undertaking these placements. They simply cannot afford to work for free. One respondent to our survey noted:

“Pupillages are won and lost on unpaid internships and placements. As the full time mother to a toddler, I cannot viably take up the opportunities I'd like to in order to set my CV apart.”



Finding 3:

Work experience is an essential prerequisite to finding a job in the legal aid sector

102. What is more, it seems likely that many such placements may be unlawful. The legal framework governing the NMW is clear: workers should be paid. While cases should be judged on their facts the table set out earlier in the report provides some guidance on the distinction between a worker and an intern. We encourage employers to consider this guidance.

103. Applying this guidance and judging by the early cases on internships at the Employment Tribunal dealing with putative internships, it seems probable that those respondents to our survey who had worked long term as full-time unpaid paralegals, were in fact workers. A distinction needs to be drawn between working practices which inhibit social mobility and those which are actively unlawful. The former are to be discouraged and we should work together to change them. The latter are unacceptable. This is something which the profession needs to take responsibility for. Law firms should not be adopting these practices. And nor should barristers be relying on unpaid assistants to facilitate their work. This forms the basis of our next recommendation:

- **Robust guidance should be issued to the profession by the Law Society and Bar Council on acceptable and lawful use of unpaid work placements. Adherence to this guidance should be monitored.**

104. Our third and final finding was that, despite the barrier which unpaid work experience represents, it is regarded as an essential prerequisite to gaining paid employment. In the words of one respondent:

“It is useful experience in terms of exposing you to more areas of law and how to deal with clients. But more than that it is the case that without this experience chambers would not give my application a second look.”

105. The rationale for this finding was two-fold. First, it appears that the professional courses (the BPTC and LPC) are simply not preparing individuals for practice, at least in the legal aid sector. Of those respondents who had undertaken the BPTC, 80% found only certain aspects of the course relevant to their employment. The equivalent figure for the LPC was 82%. One barrister respondent noted:

“I do not think I would have secured pupillage without the skills and experience which I picked up working as a paralegal - e.g. drafting, knowledge of public law litigation, ability to deal with vulnerable clients, knowledge of niche areas of law (e.g. prison law and community care), ability to negotiate/deal with Defendant Local Authorities and judgment. All



of these are essential elements of every day practise but are not aspects which can be picked up to a sufficient standard, if at all, on the BPTC”.

106. In respect of the LPC, one solicitor respondent observed:

“[The] LPC is particularly geared towards corporate work and so I felt the vast majority of the compulsory modules were not relevant to me as someone who wanted to practice in legal aid”

107. Against this backdrop and in the context of a recent pilot of work-based learning for solicitors conducted by the SRA, 71% of respondents who had undertaken the LPC favoured replacement of the course with a form of work-based learning.

108. The fact that the professional courses are not preparing candidates sufficiently for practice is particularly concerning when one considers the cost of these courses. This links back to finding one: that junior legal aid lawyers are burdened with high levels of debt while receiving relatively low salaries. If the professional courses are not fit for purpose then it is difficult to see how such prohibitive expense can be justified.

109. In a market-based economy it might be thought that this problem would correct itself. Individuals it might be thought would “vote with their feet” and refuse to pay for a course that was not fit for purpose. The problem

with this is that the regulators have made these courses compulsory and the level of competition between the providers is clearly not sufficiently effective to bring prices down. Indeed a number of providers charge identical fees.

110. Scholarships such as those provided by the Inns of Court may provide one answer to the cost of course fees. And undoubtedly scholarships do have a role to play in opening up the legal profession to those from poorer backgrounds. But this is not a long-term solution. Providing more scholarships will simply prop up the cost of the professional courses. It will not address the underlying problem that they appear not to be providing value for money.

111. This leads us to two further recommendations:

- **Consideration should be given to regulation of the fees charged by the professional course providers. This could either be in the form of statutory regulation or best practice guidance issued by the professional bodies.**
- **Consideration should be given to the replacement of the professional courses with a form of work-based learning.**

112. The second factor underpinning the “requirement” for unpaid work is that



many recruiters (and we include barristers' chambers within this) regard it as essential. There was a definite perception among respondents that their applications stood little prospect of success unless they had undertaken a body of unpaid work experience.

113. This is clearly an issue of which the Bar Council is aware and to which they have referred in their recruitment guidance. Some chambers have clearly taken steps to amend their recruitment policies accordingly. The example from the Garden Court Chambers recruitment policy cited above was one example of good practice.

114. We are not aware of any equivalent guidance issued by the Law Society. But in any event, if such guidance exists, our view is that the effect of the guidance is not yet filtering down to benefit aspiring solicitors or barristers. This needs to change:

- **Recruitment guidance dealing with the difficulties of unpaid work experience should be actively promoted by both sides of the legal profession. Adherence to this guidance should be monitored. Data should also be gathered to monitor its effectiveness.**

Concluding thoughts

115. In his 2012 report “Fair Access to Professional Careers” writing on the subject of social mobility within the legal profession, Alan Milburn noted that significant progress had been made but that:

“There is... a lot more that needs to be done. The further up the profession you go, the more socially exclusive it becomes. Even more worryingly, entry to the law – and therefore the lawyers of the future – is still too socially exclusive.”²⁹

116. We agree. Significant progress has been made. The legal profession is considerably more diverse than it was thirty years ago. Nevertheless real obstacles remain. Our concern – and one of the principal reasons that we embarked on this research and this report – is that as further cuts to legal aid take their toll, these problems will worsen. In our view this would be damaging both to the profession and to society as a whole. While political commitment to social mobility and diversity may ebb and flow, the underlying importance of having a legal profession representative of our society, remains constant. We hope that the recommendations contained within this report may go some small way toward achieving this.

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October 2013**

²⁹ “Fair Access to Professional Careers”, *op cit* 6