Solicitors Regulation Authority

Financial penalties: detail of new approach

Consultation

22 August 2022

Contents

About this consultation

This consultation is our second on our financial penalties framework.

We have powers to impose a financial penalty when a regulated firm or individual does not meet the professional standards we expect of them.

The purpose of a financial penalty is to:

- maintain professional standards
- uphold public confidence in the solicitors' profession and in legal services provided by authorised persons.
- remove any financial or other benefit arising from the conduct

This consultation builds on our November 2021 consultation and seeks views on detailed plans to implement the decisions made following that consultation – including:

- guidance to clarify behaviours that are unsuitable for a fine
- taking the means of respondents (both firms and individuals) into account when setting a fine
- raising the maximum fine we will impose on a firm to 5 per cent of turnover
- the introduction of a fixed penalties scheme for a limited number of low-level breaches of our rules.

This consultation includes proposed updated fining bands for firms and individuals and detailed proposals regarding the implementation of the fixed financial penalty scheme – which breaches we propose to include, the process we intend to follow, and the level of fines we are proposing to impose.

As with our previous consultation, the aims of our reforms are to resolve cases much more quickly, potentially reducing the costs, delays, resource and stress for those subject to our procedures, as well as improving public protection and providing consistent outcomes which deliver a credible deterrent to reduce future risk of repeated behaviour.

We do now have the increased fining powers on which we consulted during our first consultation. Our power to fine traditional law firms and solicitors and others working there was increased from £2,000 to £25,000 from 20 July 2022. We recognise the concerns raised by some during the consultation regarding the transparency and robustness of our processes. To address these concerns, we have published an explanation of the detailed procedures and safeguards we already have in place and the proposed enhancements we plan to make to provide additional assurance. Where those enhancements involve changes to our rules, they are also included in this consultation.

We particularly welcome views from solicitors, firms we regulate, consumers, consumer representative groups and other regulators.

We are seeking views on our approach from 22 August to 14 November 2022.

How to respond

Online questionnaire

Our online consultation questionnaire is a convenient, flexible way to respond. You can save a partial response online and complete it later. You can download a copy of your response before you submit it.

Start your online response now

Reasonable adjustment requests and questions

We offer reasonable adjustments. Read our policy to find out more

Please contact us if you need to respond to this consultation using a different format or if you have any questions about the consultation.

Publishing responses

We will publish and attribute your response unless you request otherwise.

Background

We are the largest regulator of legal services in England and Wales, covering around 90 per cent of the regulated market and overseeing 212,000 solicitors and some 10,000 law firms.

We work to protect members of the public, and to support the rule of law and the administration of justice. We do this by:

- overseeing all education and training requirements necessary to practise as a solicitor
- licensing individuals and firms to practise
- setting the standards of the profession
- regulating and enforcing compliance against these standards.

The purpose of our enforcement work is to protect consumers and the public interest, and to uphold the rule of law and the administration of justice. We set out our approach to enforcement in our Enforcement Strategy. We also publish information about our enforcement work in our Upholding Professional Standards reports.

Our ability to impose financial penalties when required is central to maintaining professional standards and public confidence in the profession. Our powers to impose fines varies depending on the type of entity. We are responsible for regulating:

- 'traditional' law firms, which are generally owned and managed by solicitors or other regulated lawyers, and their employees
- alternative business structures (ABSs), a law firm where the ownership and management involves non-lawyers or non-legal businesses and their employees
- All solicitors, registered lawyers from overseas jurisdictions and individuals working in law firms.

In 2021 we consulted on changes to our financial penalties framework. Following consultation, we adopted the following principles:

- We want to ensure we have a robust fining framework that is transparent, proportionate and effective in providing credible deterrence.
- We want a framework where all firms and individuals we regulate are treated consistently. Further, we are committed to achieving consistency in approach across all legal services regulators to an appropriate and achievable extent.
- Our sanctions guidance should be focused on different types of behaviours. Certain types of behaviour should not normally attract a fine, where more serious sanctions or controls are required to ensure public confidence or protect against risk.

- We want to enhance our ability to make decisions in house on straightforward, and agreed, cases by increasing the threshold at which we can fine solicitors and traditional law firms.

- We want to work collaboratively with key stakeholders, including the Solicitors Disciplinary Tribunal (SDT), Legal Services Board, other legal regulators, and Ministry of Justice to develop a joint understanding and approach to financial penalties.

In May 2022, we announced we were moving forward with plans to:

- seek an increase to the maximum fine we can issue internally to traditional firms, and those working in them, from £2,000 to £25,000 – this was introduced in a change to legislation on 20 July

- amend our guidance to make it clear that for any case involving sexual misconduct, discrimination or any form of harassment, a financial penalty will only be considered in exceptional circumstances

- take into account, in all cases, the turnover of firms and income of individuals when setting fines

- introduce a fixed penalties regime for specific breaches of our rules.

This consultation sets out proposals on the detail of how we intend to take these forward.

Increase to maximum fine levels

We now have powers to fine traditional law firms, and those involved in such firms, up to £25,000. We also have the power to impose similar fines on all individual solicitors, regardless of what type of entity or employer they work for. We introduced this change on 20 July as set out in our published statement.

In respect of ABSs and their managers and employees, we can fine:

- a manager or an employee up to £50 million

- the ABS itself up to £250 million.

There is a right to appeal to the SDT for all fining decisions we make with respect to traditional law firms and ABSs. All fines are paid to the Treasury regardless of whether the fine was imposed by us or by the SDT.

Improvements we have put in place or that are in progress

We recognise the need to address questions raised during our first consultation regarding the transparency and robustness of our processes and we recognise that higher fining powers bring with them the need for greater accountability. We agree that it is important that we ensure that we meet high standards in our case handling, and that we can demonstrate a

clear separation between those carrying out an investigation and those determining the outcome and sanction.

Our recently published statement sets out how we make sure that we make fair decisions. And the improvements we plan to make to bolster the transparency of our processes. In addition to the safeguards we highlighted in this statement, we will also put in place the following:

- Since 20 July 2022, all Regulatory Settlement Agreements [1](RSAs) of more than £2,000 must be approved at a more senior level than was previously required. That means they will be approved by two of Heads of Investigation or Heads of Legal and Enforcement (or alternatively the Director or Executive Director in those units). These are senior roles held by individuals with significant prior experience at handling and resolving high-profile, high-value enforcement matters.

- In autumn 2022, we will publish an updated version of our Schedule of Delegation (which sets out who makes which decisions) in a format which is more accessible for an external audience

- In autumn 2022, we will also publish guidance on our decision-making processes and procedures to demonstrate the existing functional separation and independence of our adjudication function, as well as the safeguards in place to ensure a fair and transparent process

- In early 2023, we will implement changes made as a result of our consultation on the publication of our regulatory decisions, which closed on 2 August 2022

- We will provide additional detail on the fines we issue in our annual Upholding Professional Standards report, including on how we have used our increased fining powers and fines issued under the new fixed penalty regime.

Additional improvement proposals

We propose to amend our rules to further enhance the robustness and transparency of our decision making. We would welcome views on these proposals which are detailed below.

Approach to adjudication

We propose to introduce explicit rules (rather than solely relying on the Schedule of Delegation) to clarify that all fines are imposed (unless agreed) by functionally separate adjudicators. The most serious cases that are suitable for a fine (those which according to our published fining guidance fall in Band D) would be imposed by panels of appointed adjudicators, consisting of lay and legally qualified individuals (although on rare occasions panels may consist of all lay members). Cases falling into Band D involve conduct that is more serious in nature, for example conduct that was intentional, arose as a result of

[1] A Regulatory Settlement Agreement is where the respondent and the SRA agree an appropriate outcome to deal with the misconduct, without the case being determined by an adjudicator. The outcome agreed will not always be a fine and can include other sanctions which the SRA can impose.

recklessness, or formed part of a pattern of misconduct. The misconduct will also have caused significant loss, or had a significant impact, or had the potential to do so.

Fines may otherwise be agreed between the respondent and the SRA by way of an RSA - reaching an appropriate outcome swiftly, efficiently, and at proportionate cost. As set out above, we have enhanced our approval requirements for RSAs so that RSAs above £2,000 have to be approved at a more senior level. With the exception of fines for ABS, fines that are agreed between the respondent and the SRA by way of RSA above £25,000 are approved by the SDT.

We are also proposing to introduce low level fixed penalties, which would be imposed by Investigation Managers, rather than adjudicators. Fixed penalties are discussed in more detail below.

Conducting reviews

We are able to review a regulatory decision which we have made, either on our own initiative (for example if we consider we may have made a mistake) or on receipt of an application from the person subject to the decision. As a matter of practice, to ensure appropriate independence, reviews are dealt with by a different authorised decision maker to the one who made the original decision. However, we propose to introduce an explicit rule to require this. Finally, to strengthen the separation between those investigating allegations and those determining sanctions, we propose to make it clear in our rules that decisions of an adjudicator (or adjudication panel) may only be reviewed by a different adjudicator/adjudication panel (or a different adjudication panel).

Hearings

We propose to amend the rules setting out the process followed by our adjudicators when deciding whether to hold a hearing. These rules currently provide that when an allegation is considered by an adjudication panel, the proceedings will generally be conducted in private by way of a meeting; however the panel ‘may decide to conduct a hearing, which it may decide should be held in public, if it considers it in the interests of justice to do so’.

We propose to amend our rules to enable all adjudicators, rather than just adjudication panels, to decide there should be a full hearing - held by the SRA, attended by both parties and in which witnesses provide oral evidence and are subject to examination/cross-examination - and to make clear the circumstances in which the adjudicator may decide that a full hearing would be necessary in the interests of justice.

We anticipate this will be rare. In the majority of cases where we consider that a public hearing should be held, we will make a referral to the SDT given their established role as a body which is designed to administer public hearings, and their associated experience, and the established processes and infrastructure in place to support these. In 2020 (the most recently published available figures) the SDT held 68 substantive hearings.

However, there may be certain circumstances in which it is necessary for us to hold a hearing (in private or public) in the interests of justice. We propose that this will be limited to

the situation where a hearing is necessary and we are unable to make a referral to the SDT, for example when imposing a fine on an ABS and either:

- there are material disputes of fact which cannot be determined without a hearing in which the parties are cross examined, or
- there is an exceptional public interest in matters being ventilated in public.

The decision to hold a hearing would be entirely in the discretion of our adjudicators.

Interviews

We propose to amend these rules further to make it clear that in any event, an adjudicator or adjudication panel is able to interview the respondent, or witness to events, in order to clarify their evidence, test their credibility and/or clarify the impact of the events in question on them, prior to reaching a decision. This would generally be done in a confidential meeting attended by the adjudicator or adjudication panel and the person being interviewed, who may be supported by a representative.

Adjudicators currently – regularly if not frequently – carry out interviews with the regulated person when making first-instance decisions. To date, we have only held such interviews with the subject individual.

Where the interview is held with a third party witness, the person subject to the decision would be sent a copy of the evidence obtained during the interview and given an opportunity to make representations on this evidence.

This approach would also apply to review decisions. The SRA may review a decision either on its own initiative or when requested to do so by the person or firm subject to the decision. In undertaking a review, the decision-maker will consider if the original decision was materially flawed, or if there is new information which would have had a material influence on the first-instance decision.

We believe that being clear on the circumstances in which they can conduct an interview and widening the people who can be interviewed will help to improve transparency and lead to better decisions.

Revoking a referral to the SDT

Sometimes, following the receipt of new evidence or legal advice and before a matter is certified by the SDT, we decide that it is no longer appropriate that a matter is referred to the SDT. In fact, it is not uncommon (more than twice a month) for a respondent to request that we reconsider our decision to refer their case to the SDT. Where we decide to revoke a referral, our current rules require us to follow a process that involves notifying the respondent of our intention and inviting them to make representations (even where they requested the referral be revoked). We consider this to be unnecessarily burdensome to us and the respondent, and therefore propose to remove this requirement from our rules, allowing us to take this decision more quickly and at a lower resource cost.

The draft rules are published in **Annexes 1 and 2**.

Question 1: Do you agree with our proposed rule that fines in band D will be decided by adjudication panels? Please provide comments to explain your reasons.

Question 2: Do you agree with our proposals to change our rules to clarify the circumstances in which we will consider holding hearings or conducting interviews?? Please provide comments to explain your reasons.

Question 3: Do you agree with our proposals around revoking referrals to the SDT? Please provide comments to explain your reasons.

Question 4: Are there any other specific measures that you would like to see us take to provide further assurance as to the transparency and robustness of our decision making?

Updated financial penalties guidance

Behaviours unsuitable for a fine

Following on from our first consultation we have proposed an update to our Enforcement Strategy to make it clear that, where an individual is found to have committed sexual misconduct, harassment, or discrimination, a financial penalty is highly unlikely to be an appropriate sanction. Typically, those cases are serious in nature and raise attitudinal issues that present a risk to others. This suggests that restriction on practice is required to protect others, and to maintain public confidence in the profession. We will therefore usually refer such cases to the SDT to consider a suspension or a strike off. A draft of our revised Enforcement Strategy is included at Annex 3 and new guidance on our approach to financial penalties at Annex 4.

However, there will be exceptional circumstances in which we would impose a sanction ourselves (a rebuke or more exceptionally a fine), rather than making a referral to the SDT. We consider such exceptional circumstances are likely to be rare in nature and would not include cases where there is a demonstrable imbalance of seniority or power between the individual and the complainant or abuse of position. Exceptional circumstances might include cases where the complaint has arisen due to inappropriate or insensitive behaviour but we are satisfied there is no ongoing risk. This is likely to reflect a one-off incident or remark that is poorly judged but not ill-motivated.

Our revised financial penalties guidance also recognises the consultation feedback that the position for firms will be different, where a financial penalty is likely to be an appropriate sanction where poor systems or controls allowed these types of behaviour to occur or persist. However, it is important that firms create a culture where these types of behaviour are not tolerated and where there are serious failings at a leadership level, we may make a referral to the SDT.

Question 5: Does the updated Enforcement Strategy provide clarity as to the outcomes for firms and individuals for these types of behaviour?

Personal impact statements

In our post-consultation position paper we noted feedback (particularly from the Legal Services Consumer Panel) that we should consider introducing personal impact statements. We said that we would consider how we might, systematically consider the impact on victims in all of our disciplinary cases.

Having considered this carefully, we propose that we will pilot the introduction of personal impact statements in relation to cases that relate to sexual misconduct, discrimination, and harassment. We already seek this information as part of our investigation; the pilot will explore doing this in a consistent way and standardise the processes for doing so. The personal impact statement will be taken into account by the authorised decision-maker when considering the appropriate sanction.

These cases tend to have in common that the personal impact is at the core of the harm caused by the conduct and therefore at the core of the seriousness of the conduct itself.

Piloting personal impact statements on these specific cohorts of cases will allow us to embed and evaluate our approach, before taking any decision as to whether to apply personal impact statements more widely.

Question 6: Do you agree with our proposal to pilot personal impact statements in cases relating to sexual misconduct, discrimination and harassment and take these into account when considering the appropriate sanction?

Taking income into account when setting fines

Fines for Firms – Taking turnover into account

We have developed a new framework for setting levels of fines that take into account the turnover of firms at all times. This is based on the annual domestic turnover of all firms we regulate and determines the fine as a percentage of that turnover (to a maximum of 5 per cent of turnover). Fines of this level are within the normal range of many other regulators and was supported by the independent economic consultancy we engaged to advise us on the best metric to use for calculating the means of firms.

Our proposed new fines table for firms (below) sets out the percentages that would apply in each of the penalty bands. The four penalty bands (A to D) have been retained from the current fining guidance, with Band A reflecting the least serious misconduct, and Band D the most serious. These bands are used to set a basic penalty based on the nature and the impact (or potential impact) of the conduct, taking into account aggravating and mitigating factors in relation to the conduct itself. The new table spreads the percentage increases evenly across each band, and within each band there are a range of points where the basic penalty can be set (depending on the aggravating or mitigating factors present in the case).

The start and end point of each penalty bracket is higher than in the current fining table, as we believe our fining bands have become out of step with what we are trying to achieve through the imposition of fines. As we set out in our post-consultation position paper, higher fines have the potential to increase the deterrent effect of the fine if firms consider there is a real risk of being fined at the highest level in the relevant band. The new bands reflect our updated approach and are in line with other regulators such as Ofcom who also fine up to 5 per cent of revenue. Other regulators have higher limits – for example Ofwat (up to 10 per cent of revenue) and the Financial Conduct Authority (up to 20 per cent of revenue).

Table 1: Basic Penalty Amounts: Firms

Penalty Band	Penalty as a per cent of annual domestic turnover (Firms)	Basic penalty scale
A	0.2 per cent	A1
	0.3 per cent	A2
B	0.4 per cent	B1
	0.8 per cent	B2
	1.2 per cent	B3
C	1.6 per cent	C1
	2.0 per cent	C2
	2.4 per cent	C3
	2.8 per cent	C4
	3.2 per cent	C5
D	3.6 per cent	D1
	4 per cent	D2
	4.4 per cent	D3
	4.8 per cent	D4
	5 per cent	D5

Applying percentages to turnover

Table 2 below shows how our current bandings compare with our proposed framework.

Table 2: comparison between our current and proposed bandings

Band	Proposed basic penalty	Proposed fine amount based on firm's turnover				Current basic penalty (for firms with >£2m turnover)	Current fine amount based on firm's turnover			
		£500k	£2m	£10m	£50m		All <£2m	£2m	£10m	£50m
A	0.2%	£1,000	£4,000	£20,000	£100,000	N/A	£500	£500	£500	£500
A	0.3%	£1,500	£6,000	£30,000	£150,000	N/A	£1,000	£1,000	£1,000	£1,000
B	0.4%	£2,000	£8,000	£40,000	£200,000	N/A	£2,000	£2,000	£2,000	£2,000
B	0.8%	£4,000	£16,000	£80,000	£400,000	N/A	£3,500	£3,500	£3,500	£3,500
B	1.2%	£6,000	£24,000	£120,000	£600,000	0.50%	£5,000	£10,000	£50,000	£250,000
C	1.6%	£8,000	£32,000	£160,000	£800,000	0.60%	£7,500	£12,000	£60,000	£300,000
C	2.0%	£10,000	£40,000	£200,000	£1,000,000	0.70%	£10,000	£14,000	£70,000	£350,000
C	2.4%	£12,000	£48,000	£240,000	£1,200,000	0.90%	£15,000	£18,000	£90,000	£450,000
C	2.8%	£14,000	£56,000	£280,000	£1,400,000	1.10%	£20,000	£22,000	£110,000	£550,000
C	3.2%	£16,000	£64,000	£320,000	£1,600,000	1.30%	£25,000	£26,000	£130,000	£650,000
D	3.6%	£18,000	£72,000	£360,000	£1,800,000	1.50%	£30,000	£30,000	£150,000	£750,000
D	4.0%	£20,000	£80,000	£400,000	£2,000,000	1.75%	£35,000	£35,000	£175,000	£875,000
D	4.4%	£22,000	£88,000	£440,000	£2,200,000	2.00%	£40,000	£40,000	£200,000	£1,000,000
D	4.8%	£24,000	£96,000	£480,000	£2,400,000	2.25%	£45,000	£45,000	£225,000	£1,125,000
D	5.0%	£25,000	£100,000	£500,000	£2,500,000	2.50%	£50,000	£50,000	£250,000	£1,250,000

As is currently the case, once the basic penalty has been identified, the adjudicator may apply a discount to take into account an early admission of the misconduct, whether the harm was remedied and whether the respondent co-operated with our investigation. These discounts can be a maximum of 40 per cent in total.

As part of our evaluation framework for the financial penalties work, we will monitor the operation of our bands in practice and remain open to making further changes in the future if we think that this is necessary.

Question 7: Do you agree that our proposed model of fines for firms is effective in applying our decision to take into account the turnover of a firm across our fines and to increase fines for up to 5 per cent of turnover for all firms?

Individual Income

We have decided that, in the case of individuals, the basic penalty level will be set as a percentage of the individual's gross income, which will help us to achieve our aim of ensuring that the fine serves as a credible deterrent and upholds public confidence through fines that are proportionate to the means of the individual.

There are four fining bands (A-D) that range from the least serious offences at A through to the most serious offences that would result in a fine imposed at band D. Each breach is given a score to determine its seriousness. The score is dependent on the facts of the case, the aggravating and mitigating factors as well as the impact of the breach. This score determines which penalty bracket is most appropriate, Although we are able to fine individuals in ABSs up to £50 million, our current guidance sets an upper limit of a fine of £50,000, which does not necessarily act as a credible deterrent for high earners.

Table 3 shows the level of fine that would be imposed according to each of our current fining bands compared with the level of fines that would be imposed on those with different salaries, for illustrative purposes.

Table 3: Comparison between our current and proposed income-based fining bands.

Current fining band	Level of fine	New fining band	Proposed basic penalty	Income based basic penalty					
				21k	30k	50k	100k	150k	500k
A	£500	A1	2 per cent	£420	£600	£1,000	£2,000	£3,000	£10,000
	£1,000	A2	3 per cent	£630	£900	£1,500	£3,000	£4,500	£15,000
B		B1	5 per cent	£1,050	£1,500	£2,500	£5,000	£7,500	£25,000
	£1,001 -	B2	6 per cent	£1,260	£1,800	£3,000	£6,000	£9,000	£30,000
	£5,000	B3	8 per cent	£1,680	£2,400	£4,000	£8,000	£12,000	£40,000
		B4	11 per cent	£2,310	£3,300	£5,500	£11,000	£16,500	£55,000
C		C1	16 per cent	£3,360	£4,800	£8,000	£16,000	£24,000	£80,000
		C2	24 per cent	£5,040	£7,200	£12,000	£24,000	£36,000	£120,000
	£5,001 -	C3	27 per cent	£5,670	£8,100	£13,500	£27,000	£40,500	£135,000
	£25,000	C4	32 per cent	£6,720	£9,600	£16,000	£32,000	£48,000	£160,000
		C5	40 per cent	£8,400	£12,000	£20,000	£40,000	£60,000	£200,000
		C6	49 per cent	£10,290	£14,700	£24,500	£49,000	£73,500	£245,000
D		D1	65 per cent	£13,650	£19,500	£32,500	£65,000	£97,500	£325,000
	£25,001-	D2	81 per cent	£17,010	£24,300	£40,500	£81,000	£121,500	£405,000
	£50,000	D3	97 per cent	£20,370	£29,100	£48,500	£97,000	£145,500	£485,000
		D4 higher fines in the more serious cases	113 per cent	£23,730	£33,900	£56,500	£113,000	£169,500	£565,000
	NA		129 per cent	£27,090	£43,500	£64,500	£129,000	£193,500	£645,000
	NA		145 per cent	£30,450	£43,500	£72,500	£145,000	£217,500	£725,000
	NA		161 per cent	£33,810	£48,300	£80,500	£161,000	£241,500	£805,000

The table shows how the bands would work for those on a range of incomes. At the lower end, £21,000 (which reflects the latest 2022 recommendation by the Law Society for a trainee salary outside London) to a level of £500,000. We consider this approach will deliver proportionate and fair fines for individuals of differing means.

Under the new table, for the highest earning solicitors, fines would be higher than at present, whereas they would be decreased for lower earners for the same offence. We think this is the right approach.

At present, our fining powers mean that the maximum we can fine solicitors not working in an ABS is limited to £25,000. In practice, this means that we will be able to deal with more serious misconduct for individuals with lower salaries, whereas individuals on the highest salaries are more likely to be referred to the SDT for breaches of a similar nature.

Applying the new model to individual fines

Again, the adjudicator may apply a discount to the basic penalty to take into account an early admission of the misconduct, whether the harm was remedied and whether the respondent cooperated with our investigation. These discounts can be a maximum of 40 per cent in total.

As set out in our response to the previous consultation, income is a good indicator of the affordability of a fine and the ability of the individual to pay, and so we will no longer routinely

invite an individual to submit a statement of means. However, as we said in our post-consultation position, we recognise that there may have been a significant change in income since the latest available P60 or tax return, for example, the individual's employment circumstance might have changed. In cases such as these, individuals can provide evidence of their current income.

Illustrative examples:

Example 1: Band A fine with salary of £30,000

Scenario: Solicitor C authorised a transfer of more than £100,000 from client account for the purchase of a boat on behalf of the client This amounted to using client account as a banking facility. However, this was an isolated breach, there was no ongoing risk and the individual co-operated with our investigation.

Approach: This scenario is likely to be assessed as fitting into the lower end of Band A. Under our current guidance this would result in a penalty of £1,000. Under our new approach this would attract a basic penalty of 2 per cent of income. Solicitor C earns an annual salary of £30,000 and therefore the basic penalty would be £600. In both cases, the basic penalty may be discounted by up to 40 per cent as set out above.

Example 2: Band B2 fine with salary of £62,000

Scenario: Solicitor D was responsible for their firm's compliance with anti-money laundering requirements. However, they failed to put in place a firm-wide risk assessment and this failure persisted for some time despite our engagement.

Approach: This aggravating factor means the scenario is likely to be assessed as being at the lower end of Band B. Under the current guidance, the basic penalty would be between £1,000 and £5,000. Under the new approach a fine at B2 would be 6 per cent of income. As solicitor D earns a salary of £62,000 their basic penalty would be £3,720 before any potential discounts are applied.

Example 3: Band C2 fine with £80,000 salary

Scenario: Solicitor E failed to pay a beneficiary and subsequently failed to co-operate with both us and the Legal Ombudsman as we both tried to investigate and resolve the matter. There was no allegation that the solicitor was dishonest.

Approach: Given the harm caused to the beneficiary and the lack of co-operation with two regulatory bodies, this scenario is likely to be assessed as being in Band C. Under our current approach this would result in a fine of between £5,001 and £25,000. Under our new approach a fine at C2 would be 24 per cent of income. Solicitor E has a salary of £80,000 and so the basic penalty in this case is £19,200, before any discounts are considered.

Example 4: Band D1 fine with salary of £50,000

Scenario: Solicitor F was the owner and manager of an ABS firm. Over a 10-month period, Solicitor F breached multiple accounts rules, as well as money laundering regulations. These

included using the firm's client account as a banking facility, failing to carry out monthly reconciliations, retaining significant residual client balances, and failure to notify clients. The firm also operated with a shortage on client account. Solicitor F had previously been fined £2,000 for more minor accounts rules breaches in the last three years. Aggravating factors were recklessness, lack of integrity and the repeat nature of the offence. It was not possible to ascertain the exact extent of any harm caused to clients.

Approach: Based on these aggravating factors, this scenario is likely to be assessed as being in Band D. A fine at D1 would be 65 per cent of income and so for a solicitor taking £50,000 in salary from the firm, the basic penalty would be £32,500 before any discounts are applied. As solicitor F works in an ABS, we are able to issue this fine internally.

We may also consider imposing conditions on a solicitor's practising certificate to prevent any repeat of this conduct. We may also take action against other individuals and/or the firm.

Publication

We propose that when we impose fines under the new tables, we publish the level of the fine and the percentage of income. This is to ensure transparency, uphold public confidence and ensure our fines act as a credible deterrent. We recognise that in publishing our regulatory decisions, it is possible to ascertain the income of the individual subject to the decision, which is personal data protected by the General Data Protection Regulation (GDPR). However, we consider that we have a permissible legal basis for publishing this information, since it is necessary to the exercise of our functions in the public interest. In the absence of this information, there is a risk that the public will not be able to understand why a fine of a certain amount has been imposed. Other regulators such as the Financial Conduct Authority and Prudential Regulation Authority publish the gross salary of the individual, the percentage of salary considered for the fine and the exact level of fine.

Question 8: Do you agree that the percentage bands successfully enable us to take into account the income of individuals across all of our fines?

Question 9: Do you have any further comments on our approach to fining individuals?

Fixed penalties

Following consultation, we confirmed that we would take steps to introduce a fixed penalties scheme for specified breaches of our rules, for example non-compliance with our more administrative requirements or failure to respond to our requests. The majority of respondents were supportive and indicated that they thought fixed penalties would result in quicker resolutions and aid transparency around the penalty applicable to different types of more minor breach.

We said that we would develop a scheme that, in the first instance, covers a small number of breaches and limits the breaches in scope of the scheme to firms. We have identified the following breaches for inclusion in the scheme:

- failure to publish the required costs or complaints information, or display a clickable logo, in accordance with the SRA Transparency Rules

- failure to provide information or documentation to us in response to any requests or requirements, for example failure to provide us with firm diversity data or to comply with requests for declarations of compliance with AML requirements

- failure to ensure approval of role holders, for example managers, Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA)

- failure to notify us of role holders, for example managers and owners who need to be approved by us for these positions.

This will allow us to monitor the operation of the procedures before considering other breaches that might be suitable for fixed penalties, for example straightforward breaches of anti-money laundering compliance requirements.

The fixed-penalty process

Our proposed process will involve writing to the firm once a breach has been identified asking it to bring itself into compliance within a specified time. If after this time, the firm has not complied, the matter will be referred to an Investigation Manager who will issue a fixed penalty at level 1 (£750).

The firm will be able to request a review of the fixed penalty only on the grounds that it was compliant within the specified time or that it did not receive our initial letter through no fault of its own. This would not apply if for example a firm had not updated its contact details or checked its email/spam folders. The firm also has the right to appeal to the SDT.

If after the issue of the fixed penalty, the firm does not bring itself into compliance within a specified time, or it is found to be non-compliant again for the same type of breach, within three years from the initial penalty, we will follow the same process set out above, but the penalty issued will be at level 2 (£1500). If after this, the firm continues not to comply, or is found to be in breach for a third time, the matter will be referred to our investigation and supervision team for further investigation and consideration of any appropriate sanction.

We will also retain the discretion not to follow our fixed-penalty process in appropriate circumstances. This might arise for example where we have concerns about the systems and controls in place at a firm, meaning a wider investigation and a bespoke sanction is appropriate, or where we identify a pattern of non-compliance over a period of time.

We propose that we will charge a fixed cost of £150 in relation to all fixed-penalty decisions. This reflects the minimum cost to the SRA in each case – some cases might cost more. We think it is appropriate that we recover these costs (which would otherwise fall on the wider profession to meet) from the respondent firm.

Question 10: Do you have any comments on our proposed approach to fixed financial penalties?

Stakeholder engagement

We have agreed joint work with the SDT with the aim of developing a shared understanding of how each organisation determines what represents a serious case and agreeing what our criteria for referring a matter to the SDT should be. We have begun those discussions. We have also begun discussions with other legal services regulators to understand how closely our proposals align with their own approach to financial penalties and to investigate opportunities for future joint working. In the longer term, we would like to be aligned with the other legal regulators, whose fining powers are not limited in the way ours are.

These discussions will continue throughout our consultation period.

Evaluation

We plan to establish an internal monitoring group made up of colleagues from our investigation, adjudication, legal and policy areas to regularly review how our changes are working. This will provide an opportunity to discuss any issues in working with our increased fining limits, updated guidance, or fixed penalty regime so that these can be resolved swiftly.

We will also put in place a formal evaluation of our reforms in relation to financial penalties, including how we have used our increased fining powers and new fining bands. Our evaluation will particularly focus on the impact of our new approaches on different groups given that older solicitors, men, and those from Black, Asian and minority ethnic backgrounds, are currently over-represented at certain stages in our enforcement processes.

We anticipate that the fixed-penalties regime will be in place at the beginning of 2023. We plan to formally evaluate the fixed penalties regime after 12 months to review how it is working and consider whether it should be extended to other breaches, including breaches by individuals. The firm diversity data collection exercise in summer 2023 will provide us with valuable information about how and whether the fixed penalty regime has had an impact on compliance with those requirements.

Equalities impact assessment

This consultation paper includes some new proposals, and we consider the potential equality impact of these new proposals in more detail in this section of our paper. These new proposals include the proposed enhancements to our internal decision making in the light of our increased fining powers and the introduction of personal impact statements.

The paper also includes a greater level of detail about how we are planning to implement some of the proposals put forward in our earlier consultation. For these proposals we are relying on our earlier impact assessment, which we will summarise here, noting the additional points for consideration. We will engage with groups who we have identified might

be more greatly affected by our proposals through the consultation period. This will help us build our detailed understanding of the equality impacts of this work.

Background evidence we have taken into account

The diversity profile of individuals in our enforcement work compared to the practising population

We are using the diversity data we collect directly from solicitors to inform our equality impact assessment of these proposals. The data which we used as a baseline for monitoring the profile of individuals in our enforcement work, shows the following breakdown for the profession as a whole as at 1 November 2021:

- There are slightly more women than men in the profession overall, 52 per cent compared to 48 per cent.
- The overall population of Black, Asian and minority ethnic solicitors in the profession is 19 per cent, made up of 12 per cent Asian, 3 per cent Black, 2 per cent Mixed and 2 per cent Other ethnic groups.
- The age breakdown shows that the majority of solicitors are between 35 and 54 years (33 per cent in the 35 to 44 group and 24 per cent in the 45 to 54 group) with 24 per cent aged 34 and under, and 19 per cent aged 55 and over.

The diversity breakdown of firms by size

In addition, we collect diversity data from law firms, indicating that there are differences in the diversity breakdown of firms by size. Our firm diversity data tool indicates in broad terms compared to the overall solicitors' population:

- Men are over-represented in small firms compared to the overall population, but women are over-represented in mid-sized and larger firms, although at less senior levels
- Solicitors from Black and Asian groups are over-represented in small firms and underrepresented in mid-sized and larger firms
- Solicitors aged 45 and over are over-represented in small firms and underrepresented in larger firms.

We have focused on the protected characteristics of sex, ethnicity, and age because these are the categories where we also have meaningful data about those involved in our enforcement processes.

The diversity breakdown of individuals in our enforcement process

Compared to the profile of the profession as a whole, there is a continued over-representation of men, solicitors from Black, Asian and minority ethnic backgrounds and those over 45 in complaints made to us and the cases taken forward for investigation. This was evidenced in our Upholding Professional Standards Diversity Monitoring Supporting Reports for 2018/19 and 2019/20 and in our most recent report for 2020/21. This reflects

patterns in other professions and regulated communities. We have commissioned independent research into this long standing picture.

The key findings from our monitoring for the period 2020/21 shows:

- There is an over-representation of men throughout our enforcement process - men made up 48 per cent of the practising population, 62 per cent of reports raised with us and 68 per cent of cases taken forward for investigation. Of the cases which were concluded with a sanction in this period, 66 per cent of the cases concluded internally and 73 per cent of those concluded at the SDT involved men.

- The Black, Asian and minority ethnic group, as a whole, made up 19 per cent of the practising population, 25 per cent of individuals reported to us and 33 per cent of those taken forward for investigation over this period. Of the cases which were concluded with a sanction, 36 per cent of the cases concluded internally and 34 per cent of those concluded at the SDT involved Black, Asian and minority ethnic individuals. Asian and Black individuals make up 12 per cent and 3 per cent of the practising population, respectively, yet are over-represented when looking at the number of reports made to us, at 18 per cent and 4 per cent and those taken forward for investigation at 25 per cent and 5 per cent.

- There is an under-representation of people in the younger age categories (44 and under) named on reports to the SRA and the opposite is true for those in the older age categories (45 and over) who are over-represented when compared with the practising population. The 45 to 54 age group is largely proportionate with the practising population. There is little difference for any of the age groups, when looking at cases involving individuals taken forward for investigation. With some exceptions the picture is similar for those sanctioned internally by the SRA and by the SDT.

Because of the limited numbers of individuals who are sanctioned each year, we also looked at the diversity breakdown of all individuals who were fined (internally by the SRA and by the SDT) over the period from 2015 to 2021. This data was published in our post consultation EIA and in summary, shows that men, solicitors from Black or Asian background and solicitors 45 and over were over-represented among those receiving fines over this period. This was the case for both internal fines and fines imposed by the SDT.

Enhancements to our internal decision making in the light of our increased fining powers

We believe the collective impact of the actions we are taking and the proposals we have set out in the consultation paper will make our internal decision making more transparent and will benefit all groups.

We have not identified any particular groups who will be adversely impacted. In relation to our proposals to hold hearings and interviews to assist with our decision making, solicitors and others with a disability will be provided reasonable adjustments, as is currently the case. We are currently updating our Reasonable Adjustments Policy and will make sure the policy addresses these matters appropriately.

Personal impact statements

We believe the use of personal impact statements will benefit all groups, in particular those who have been subjected to harassment, discrimination and sexual misconduct and will assist us in coming to a fair and appropriate sanction.

We have not identified any particular groups who will be adversely affected by this proposal.

Guidance on behaviours unsuitable for a fine

Our proposal to provide guidance on behaviours unsuitable for a fine provides more detail on our original view that harassment, discrimination, and sexual misconduct are serious and generally not suitable for a fine. We have taken account of feedback received during the consultation and believe we have taken a proportionate approach to this matter.

Our view remains that this proposal will have a positive impact in encouraging equality, diversity, and inclusion in the profession by sending a clear message we take these matters serious and will particularly benefit those groups who are more likely to be impacted by the behaviours identified, which includes women, people from a Black, Asian and minority ethnic background, disabled people, and people within the LGBTQ+ community. We welcome comments on the guidance proposed in particular to make sure this will deliver the potential benefits identified.

We will be monitoring the impact of these proposals to make sure there are no unanticipated adverse negative impacts – for example, driving reports of these behaviours down.

Framework for fines taking into account turnover and individual means

We concluded that our proposal to take into account the turnover of firms and means of individuals in setting financial penalties is likely to have a positive impact on smaller firms and those working in them since means will be taken into account in all cases. This will have the impact of fines being lower for those individuals with lower salaries and firms with smaller turnovers. We believe that it is likely that this will positively impact a higher proportion of Black, Asian and minority ethnic solicitors, solicitors agreed 45 and over and men, either on an individual basis or through the firms in which they work.

We welcome comments on the details of the framework proposed so we can make sure its implementation does not introduce any unforeseen adverse impacts.

Fixed-penalties scheme

We concluded that our proposals to introduce fixed penalties for certain types of less serious non-compliance has potential positive impacts that would be felt by all groups by providing certainty and a swift sanctioning process with the associated reduction in costs and anxiety.

We noted however, that many firms which are currently sanctioned for the types of breach we have identified for the pilot are smaller firms where we know there is a higher proportion of men, Black, Asian and minority ethnic solicitors, and solicitors aged 45 and over. We identified there were benefits for these groups through the introduction of a fixed-penalty scheme - a transparent approach which would ultimately be concluded more quickly than our current process.

There is however a risk that a greater number of small firms which in theory merit a sanction under our existing framework but in practice may not have been brought within our enforcement processes, might come within our fixed-penalty scheme. We think the scheme is proportionate and will help us achieve greater compliance, and the proposal is therefore justifiable. We will look in more detail at the profile of law firms more likely to be affected by this pilot scheme and welcome further comments on this aspect of our impact assessment. We will be monitoring the diversity of those impacted by the pilot and so we can evaluate the overall impact of the scheme.

Q11: Do you have any information that will help us to build our understanding in relation to the impacts of our proposals on different groups of solicitors?