

## Guidance: The SRA's approach to financial penalties (2022)

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### The SRA's approach to financial penalties

Updated TBC (Date first published: 13 August 2013)

#### Status

This guidance does not form part of the SRA's Standards and Regulations. However, we will have regard to it when exercising our regulatory functions.

#### Who is this guidance for?

This guidance is intended to provide a practical guide for our decision makers to assist them in arriving at an appropriate financial penalty for individuals and firms we regulate.

It will also help those we regulate and members of the public to understand our approach in setting appropriate financial penalties

This guidance should be read in conjunction with our [Enforcement Strategy](#), including the section of the Sanctions and Controls table that deals with financial penalties, and the [SRA Regulatory and Disciplinary Procedure Rules](#).

This guidance does not apply to fixed financial penalties.

#### Purpose of this guidance

This guidance aims to promote and support appropriate, transparent, and reasoned outcomes. It helps us when exercising our statutory powers to impose financial penalties - whether by an authorised decision maker or by agreement.

The amount of financial penalty we can impose on individuals and entities will depend on the type of regulated individual or firm.

For solicitors, traditional law firms (recognised bodies or recognised sole practices) and the individuals who work in them, the maximum financial penalty we can impose

is £25,000 (introduced in a change to legislation on 20 July 2022).<sup>1</sup> If we consider that a financial penalty of a higher amount is justified or that a restriction on the individual's right to practise which we have no power to impose (such as suspension) is required, we will refer the matter to the Solicitors Disciplinary Tribunal (SDT).

There are also some circumstances where we may refer a case to the SDT even where we consider a fine of up to £25,000 is appropriate. Our approach to referring cases to the SDT is set out in our guidance entitled [Issuing Solicitors Disciplinary Tribunal Proceedings](#).

For licensed bodies (Alternative Business Structures or ABS) and the individuals (including solicitors) that work in them, the maximum financial penalty we can impose is £50 million for an individual or £250 million for the entity. The SDT cannot impose a sanction in respect of these matters and so there is no mechanism for us to refer these to the SDT.

## General

This guidance applies once we decide that a financial penalty is the appropriate outcome for a breach of the SRA's Standards and Regulations. It applies to all financial penalties imposed whether on individuals, firms or both.

Under Rule 3.1(b) of the [SRA Regulatory and Disciplinary Procedure Rules](#), an authorised decision maker may decide to direct the payment of a financial penalty and the amount. Rule 4.1 of those rules states that a financial penalty may be appropriate to:

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

In reaching the decision whether to direct a financial penalty, authorised decision makers will apply the Sanctions Table annexed to the Enforcement Strategy. Some behaviours, such as those relating to sexual misconduct, discrimination, and harassment by an individual are unsuitable for a financial penalty, except in exceptional circumstances (as set out in our Section 2.2 of the SRA's [Enforcement Strategy](#)). The position may be different for firms and this is explained in the Enforcement Strategy.

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<sup>1</sup> This change applies to all cases, where we consider a fine is appropriate, except for those where, we had by 20 July, already sent a notice to the respondent proposing to refer the case to an SRA adjudicator or the SDT. For fairness and consistency, those cases will continue to be dealt with as set out in the notice - unless we are able to agree a regulatory settlement in which the respondent agrees the case against them, including the appropriate level of fine, up to the new level. Prior to 20 July 2022 our fining powers for these individuals and firms was £2,000.

## A three-step fining process to determine the level of penalty

There is a three-step process for the determination of a financial penalty (other than a Fixed Financial Penalty (FFP) issued under Rule 3(h) of the SRA Regulatory and Disciplinary Procedure Rules). The steps are as follows:

- Step 1 - determine a basic penalty taking into account the seriousness of the breach (the nature and impact of the conduct in question), and any aggravating or mitigating factors relating to the breach; benchmarked against the firm's turnover, or individual's income
- Step 2 – adjust the penalty to take into account specific mitigating factors relating to the respondent's conduct after the breach or financial circumstances
- Step 3 - remove any financial benefit arising from the conduct giving rise to the breach.

This three-step process is followed once we have decided that a fine is an appropriate outcome and relates only to determining the appropriate level of the financial penalty. The assessment of seriousness is informed by the principles set out in the [Enforcement Strategy](#) (set out in the next section) and is concerned only with the level of the penalty. Reference to serious conduct and causing a high level of harm are used in that context.

### Step 1 (a): Determining the seriousness of the breach

The first step is to determine the basic financial penalty which is appropriate, taking into account the seriousness of the breach. In deciding on an appropriate financial penalty band, we will take into account all the circumstances of the case, including aggravating and mitigating factors as set out in the Enforcement Strategy.

This is done firstly by assessing the nature of the conduct as either less or more serious and the impact of harm or risk of harm as low, medium, or high:

**Table 1: Identifying the seriousness of the breach to arrive at a Fining Band**

Nature of the conduct by the regulated person	Nature score
In all cases the conduct will: <ul style="list-style-type: none"><li>• not have been intentional or arisen as a result of recklessness or gross negligence</li><li>• not have continued after it was known to be improper, and</li><li>• not have formed part of a pattern of misconduct.</li></ul>	Less serious  (1)
Conduct demonstrates one or more of the following factors:	More serious (3)

<ul style="list-style-type: none"> <li>• been intentional or arisen as a result of recklessness or gross negligence</li> <li>• continued after it was known to be improper</li> <li>• formed part of a pattern of misconduct.</li> </ul>	
<b>Impact of harm or risk of harm</b>	<b>Impact score</b>
<ul style="list-style-type: none"> <li>• Causing inconvenience but no/minimal loss and having no other direct material impact, or</li> <li>• Having the potential to cause no more than minimal loss or having no more than a minimal impact.</li> </ul>	Low (2)
<ul style="list-style-type: none"> <li>• Causing a moderate loss; having a moderate impact, or</li> <li>• Having the potential to cause moderate loss or have a moderate impact.</li> </ul>	Medium (4)
<ul style="list-style-type: none"> <li>• Causing a significant loss or having a significant impact, or</li> <li>• Having the potential to cause significant loss or to have a significant impact.</li> </ul>	High (6)

### Step 1(b) arriving at a broad penalty bracket for the matter

The decision maker will now have a score for both the 'nature' of the conduct and also its 'impact' or potential impact. The decision maker should add these scores together to arrive at an overall band for the seriousness of the matter and a broad penalty bracket using the table below.

**Table 2: Penalty Brackets**

<b>Conduct band</b>	<b>Penalty bracket</b>
The nature and impact scores add up to 3	A
The nature and impact scores add up to 5	B
The nature and impact scores add up to 7	C
The nature and impact scores add up to 9	D

## Step 1(c) arriving at a specific basic penalty for the matter

Once the conduct has been placed into one of the broad penalty brackets set out above, the decision maker will need to determine which band within that bracket the penalty should be placed into. No two cases are the same and having these bands enables the decision maker to take into account the individual facts and circumstances of each case and consider where in the broad penalty bracket the conduct most appropriately sits. The approach to this is illustrated in the case studies below.

## SRA regulated firms and individuals

### Firms

For all firms, where a fine is to be imposed, the decision maker will determine the penalty as a percentage of annual domestic turnover, up to a maximum of 5% of domestic turnover from SRA authorised activities, taken from the most recent year's firm submission prior to referral to the decision maker.

This approach to firm turnover is intended to assist the decision maker in determining a penalty which will:

- i. as far as practicable be of an amount that is likely to deter the repetition of the misconduct by the firm directed to pay the penalty and to deter the misconduct by others
- ii. be proportionate to the means of the firm directed to pay the penalty
- iii. uphold public confidence in the solicitors' profession and in regulated legal services.

### Basic Penalty Bands SRA regulated firms

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

The term 'annual domestic turnover' means the turnover in England and Wales of the body from SRA authorised activities. This figure will generally be a good indicator as to the financial means of the firm in question. However, if there is evidence that a firm is of significantly different means to that suggested by the annual domestic turnover figure, we can look instead at other information, for example, global turnover, or average turnover. We will then use this alternative figure when applying the table above (eg taking into account up to 5% of global turnover). Where this is the case, we will set out the approach we have taken, and the reasons why, in our published decision.

### Example case study

ABC & Co are a firm with an annual domestic turnover of £5m. The firm has set procedures for managing, supervising, and monitoring staff and financial transactions but the firm discovers that in some areas of the firm, the procedures are not being followed. Upon investigating further, the firm discovers that the probate department has overcharged a number of clients large sums of money and that this would have been discovered much sooner had appropriate procedures been consistently applied. The firm contacts the SRA, explains that the partner who had previously been in charge of probate had left the firm some months earlier and that it had taken too long to re-establish the required controls in that area. The firm immediately repay the money to clients upon discovering the problem.

In this scenario, the decision maker might reasonably conclude that the nature of the conduct by the firm is less serious (a 'nature score' of 1) but that the errors nonetheless had a high impact (an 'impact score' of 6). The scores add up to 7 which gives an assessment of the overall seriousness of the matter: misconduct band C. The decision maker notes that a number of clients have been overcharged large amounts, and the poor systems and controls in place in the firm that allowed this to happen over a period of time. Although the money has now been repaid, this could have had a serious impact on clients. This places the appropriate fine at the higher end of Band C. The decision maker is therefore guided that an appropriate penalty bracket for the basic fine is £160,000 (3.2% of annual turnover).

### Individual

For individuals, where a fine is to be imposed, the decision maker will determine the basic penalty as a percentage of gross annual income in the most recent tax year prior to submission to the decision maker. This figure will generally be a good indicator as to the financial means of the individual in question and is the most robust measure of ability to pay. However, this may not always be the case. If there is evidence that an individual is of significantly different means to that suggested by the income figure provided, we can seek further clarification and evidence from the individual. This is also the case where remuneration from employment may be taken in other ways than salary. Where this is the case, we can use this additional evidence to determine an alternative income figure. We will set out clear reasons in our regulatory decision.

This approach to individual income is intended to assist the decision maker in determining a basic penalty which will:

- i. as far as practicable be of an amount that is likely to deter the repetition of the misconduct by the person directed to pay the penalty and to deter the misconduct by others
- ii. be proportionate to the means of the person directed to pay the penalty
- iii. uphold public confidence in the solicitors' profession and in regulated legal services.

Income will generally be assessed on the basis of the latest available P60 or self-assessment tax return. An individual may demonstrate that this is not an accurate reflection of their current income, for example because their employment circumstances are very different to the previous tax year, through alternative evidence (for example recent bank statements or payslips or a copy of their employment contract which shows their current salary). The SRA may request this information from their employer.

If the individual refuses to provide the requested evidence of their income, this will be an additional breach of our rules, which will mean that the misconduct, taken as a whole, will generally be assessed as being in a higher category of seriousness (for example escalated from Band B to Band C due to the refusal to provide evidence of income). The decision maker will also use a default salary for the individual based on the best information about market rates we have for their current role. For any particular role, the market rate will be a range of salaries that might be appropriate based on the level of skill and experience of the roleholder. In any case where an individual refuses to provide evidence of their income, the default salary we will use to determine a fine will be based on the higher end of the range of indicative salary information we have for the individual's role.

**Table 2: Basic penalty amount – individuals**

Penalty Band	Penalty as a % of annual gross income	Basic penalty scale
A	2%	A1
	3%	A2
B	5%	B1
	8%	B2
	11%	B3
C	16%	C1
	24%	C2
	27%	C3
	32%	C4
	40%	C5
	49%	C6
D	65%	D1
	81%	D2

	97%	D3
	Higher fines in the most serious cases	D4

The basic penalty table illustrates fining levels up to D3. However, for individuals working in an ABS, our fining powers for individuals are up to £50m. It is likely to be rare that we will fine above the levels set out, however, we may do so where public confidence requires it, for example due to the exceptional nature of losses sustained or where a significant financial advantage has been gained as a result of the misconduct, to ensure that the fine removes that benefit (in line with Step 3 of the fining guidance).

### Example case study

AB is a solicitor in a small high street firm and is the Compliance Officer for Legal Practice and the Compliance Officer of Finance and Administration. AB was also the Money Laundering Compliance Officer. As such, AB 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 quite some time, despite engagement from the SRA. Following further engagement, AB came into compliance and has remained compliant since.

In this scenario, the decision maker might reasonably conclude that the nature of the conduct by the individual falls is high (score of 3). In terms of the nature being high this is because the misconduct continued after it was known to be improper (through the initial engagement that the SRA had with the firm) and was arguably reckless or grossly negligent. The score for harm is low (2), although there was the potential for harm to be caused, this was not realised. Together, this gives an impact rating of 4 – and an overall score of 5.

This places the starting point for the fine in Band B. AB's actions persisted for some time, despite ongoing engagement from the SRA. In this case the decision maker decides that a fine at the mid-point of Band B is the appropriate starting point, attracting a basic penalty of 8% of income. AB provides a P60 that shows their income in the previous year was £46,000, and therefore a basic penalty of £3,680 is set.

## Step 2 - Adjusting the penalty to account for mitigating factors relating to conduct after the breach, and affordability

Having determined a specific figure for the basic penalty, the decision maker will assess whether it is appropriate to reduce the penalty to take account of further specific mitigating factors:

- Making an early admission
- Remedying any harm caused
- Cooperating with our investigation



The level of discount given will be considered on a case by case basis, for example a firm who fully admits the misconduct from the outset of our investigation can expect a higher discount than a firm who makes such an admission a few months into our investigation. A firm who makes an admission only once a matter has been referred to an adjudicator is unlikely to receive any discount.

If all three factors listed above are present, the decision maker can discount a basic penalty by a sum of up to 40%, but will take into account the need to ensure that the penalty remains appropriate and proportionate to uphold public confidence.

In the hypothetical scenario of ABC & Co, the decision maker might conclude on the facts that the basic penalty of £160,000 arrived at by following step 1 should be reduced by 40% (the maximum discount recommended in this guidance) to account for the fact that the firm self-reported the problem, admitted the misconduct to the SRA and promptly remedied the harm caused to clients. After step 2 the penalty would be adjusted to £96,000.

### **Affordability by the paying party**

Where affordability is an issue, then our usual approach in all cases will be to arrange a payment schedule with the individual – ability to pay is taken into account when setting the fine levels by reference to income. Fine reductions will only be considered in exceptional circumstances, for example, where significant hardship will be caused to dependents.

In these exceptional circumstances, we can invite the individual to complete a Statement of Means, and the decision maker can take this into account when considering a reduced fine.

### **Step 3: Removing benefit arising from the misconduct**

The final step is to consider whether the penalty arrived at in steps 1 and 2 will adequately eliminate financial gain or other benefit obtained as a direct or indirect consequence of the misconduct. If not, the decision maker should consider increasing the penalty to a level which achieves this.