

## Closed Consultation

# Financial Penalties: further developing our framework

28 June 2024

- The consultation period ended on **20 September 2024**
- Watch our webinar on [Financial penalties: updated proposals \[https://youtube.com/live/1J\\_urL3BS\\_o\]](https://youtube.com/live/1J_urL3BS_o)
- You can [download the consultation paper \[#download\]](#) or read it below [\[#respond\]](#)

## About this consultation

We are seeking views on proposals to update our approach to financial penalties in light of our new powers to issue unlimited fines for certain breaches of our rules under the Economic Crime and Corporate Transparency Act 2023 (ECCTA).

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.

ECCTA gives us unlimited fining powers to sanction certain breaches that involve economic crime. This consultation includes proposed updates to our fining framework to take into account these new powers, such as changes to our fining bands. We are also proposing other changes which arise from our experiences of operating the current guidance. In developing our proposals, we have considered the fining regimes of other regulators, both in and outside of legal services.

We will consider any responses and feedback we receive about our proposals in finalising our position. We will publish a response setting out our final position and next steps.

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## **Background**

With some 200,000 solicitors and around 9,000 law firms covered by our regulatory framework, we oversee around 90 per cent of the overall

regulated legal service market. This makes us the largest regulator of legal services in England and Wales. Our role includes:

- setting the standards required from solicitors and firms.
- acting if things go wrong and enforcing compliance with our standards.
- overseeing education, training and ongoing competency requirements that are necessary to practise as a solicitor.
- working to improve experiences and outcomes for the public, including their access to regulated legal services.

One of our strategic priorities is to deliver high professional standards. This means setting, upholding and promoting high professional standards for those we regulate in a way that is fair, proportionate and robust. Our ability to impose financial penalties when required is central to delivering this priority.

A robust and proportionate fining framework can provide a strong and credible deterrent against breaching our standards. Imposing appropriate fines when we identify serious breaches of our rules, can also help raise awareness and understanding amongst the profession and public of the high standards to which those we regulate are held. Deterring misconduct in the first place and demonstrating that where we identify serious breaches of our rules, we will take robust action that is proportionate to the seriousness misconduct, are key to maintaining public trust and confidence in the profession.

We have been able to fine licensed bodies (alternative business structures or ABS) up to £250m and the individuals who work in them up to £50m. But the vast majority of the firms we regulate are recognised bodies or recognised sole practices (traditional firms). We can fine these firms, their employees and all individual solicitors up to £25,000. The enactment of the ECCTA represents a significant change to our fining powers. It provides us with unlimited fining powers in circumstances where a solicitor or their employees failed to comply with requirements that relate to the prevention or detection of economic crime, or where the failure had the effect of inhibiting the prevention or detection of economic crime. Economic crime defined in ECCTA includes, by way of summary, theft, fraud, false accounting, bribery, tax evasion, money laundering and funding of terrorism, and breach of financial sanction arrangements.

These powers came into effect on 4 March 2024. The types of misconduct for which we now have unlimited fining powers include criminal offences involving the Money Laundering Regulations, violations of international sanctions, financial dishonesty, theft, and the improper use of client monies where this amounted to a fraud, or where there were inadequate controls in place to prevent or detect offences of this kind. To engage this power, the offences must have occurred after 4 March 2024.

In light of the ECCTA, we feel it is important to review our fining framework to make sure that it remains fit for purpose. This includes reflecting on our learning from operating the existing framework.

We have made representations to government to grant us unlimited fining powers in relation to all breaches of our rules. We believe that this would enable us to more effectively deter serious wrongdoing, particularly by firms and individuals of greater financial means. We believe the changes to our fining framework proposed in this consultation will make sure it remains fit for purpose if our powers are increased.

The purpose of our sanctions, including financial penalties, is not to punish wrongdoing. We impose sanctions to:

- protect clients and the public: controlling or limiting the risk of harm, and making sure the individual or firm is not able to repeat the offending or similar behaviour or is, at least, deterred from doing so.
- send a signal to those we regulate more widely with the aim of preventing similar behaviour by others.
- maintain and uphold standards of competence and ethical behaviour.
- uphold public confidence in the provision of legal services.

We set out our approach to enforcement in our [Enforcement Strategy](https://media.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/enforcement-practice/) [<https://media.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/enforcement-practice/>].

To impose a fine, the conduct needs to be sufficiently serious that it is not appropriate to issue a letter of warning or a rebuke. But there must not be circumstances that mean protection of the public/public interest requires action to remove an individual from practice through suspension or a striking off. Where we consider this to be the case, we will make a referral to the Solicitors Disciplinary Tribunal (SDT) which has the powers to impose these sanctions.

In some circumstances, in addition to a financial penalty, we may also impose a regulatory restriction. This will occur when we consider that the misconduct is serious enough to warrant a financial penalty, but there is a continuing risk to clients or the public that we can manage without requiring the individual's removal from practice or the closure of the firm. In these cases, alongside the financial penalty, we may also for example impose conditions on an individual's practising certificate or place restrictions on a firm's authorisation. The SDT can impose a financial penalty alongside any other sanction(s) within its powers.

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

Once we decide that a financial penalty is the appropriate outcome, our [fining guidance](https://media.sra.org.uk/solicitors/guidance/financial-penalties/) [https://media.sra.org.uk/solicitors/guidance/financial-penalties/] assists decision-makers in arriving at the appropriate financial penalty. Fines, unless agreed, can only be imposed by legally qualified adjudicators or an adjudication panel. Our guidance does not fetter the discretion of our decision makers, who will base their decisions on the specific facts of each case. There is therefore a level of subjective judgement in reaching an appropriate outcome. But our published fining guidance helps us to achieve consistency in our decision-making as well as providing clarity and transparency to those we regulate and to the public about how we will determine an appropriate fine. Any departure from guidance must be justified in clear and transparent terms.

The guidance applies to all financial penalties that we impose on individuals and firms (except for fixed financial penalties), and it also informs our decisions about when we might need to refer a solicitor or traditional law firm to the SDT because we consider that the appropriate financial penalty exceeds our fining powers. We also retain the discretion to refer a case to the SDT for a full hearing in all cases where we judge this to be more appropriate. This may be, for example, where there are more serious connected considerations, or the facts are disputed and need to be resolved at a hearing. We worked jointly with the SDT to develop a shared understanding of the types of cases that would be referred to the SDT and those that we alone would deal with. We published [a joint statement in January 2023](https://media.sra.org.uk/sra/news/sra-sdt-statement-2023/) [https://media.sra.org.uk/sra/news/sra-sdt-statement-2023/].

Through this consultation, we are proposing changes to our fining guidance that we believe will help us to deliver a strong and credible deterrent against breaches of our standards. We expect this to help us to uphold public trust and confidence, alongside enhancing the clarity, transparency and consistency of our fining decisions.

We will carefully consider any responses and feedback we receive to this consultation in finalising our fining framework. Our changes will then be subject to approval from the Legal Services Board. Once implemented, we intend to apply the new framework to all cases where we consider a fine is appropriate, except for those where we have 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](https://media.sra.org.uk/solicitors/guidance/disciplinary-regulatory-settlement-agreements/) [https://media.sra.org.uk/solicitors/guidance/disciplinary-regulatory-settlement-agreements/] in which the respondent agrees the case against them, including the appropriate level of fine. Where the misconduct concerns relevant economic crime offences that occurred before 4 March 2024, we will still apply the new framework to determine the appropriate financial penalty, but our previous statutory limits will apply, depending on the individual or type of entity concerned.

## **Proposed changes to our fining guidance**

We are proposing a number of changes to our fining guidance. These are:

- introducing two new fining bands (bands E and F)
- providing more detail about how we determine the level of an indicative fine
- taking into account all mitigating factors when identifying an indicative fine, rather than having a separate step for considering discounts
- introducing minimum fine levels for each penalty band
- clarifying when we will issue fines based on metrics other than annual domestic turnover or annual income from legal work
- explaining how our fines are increased to remove any financial gain obtained from the misconduct
- clarifying our position on imposing financial penalties following convictions for driving with excess alcohol.

In the rest of this section, we outline the rationale for each of these proposed changes to our fining guidance. We intend to use case studies to illustrate how we will implement the guidance in practice and we have included examples at the end of the consultation document.

### **Introducing fining bands E and F**

Our current fining guidance has four penalty bands, A-D, with A for the least serious misconduct that is suitable for a fine and B, C, and D for progressively more serious misconduct. We use these bands to set an indicative penalty based on the nature and impact (or potential impact) of misconduct, taking into account aggravating and mitigating factors. The reference figures within the bands range from 0.2 per cent to 5 per cent of a firm's annual domestic turnover and from 2 per cent to 97 per cent of an individual's income.

As previously explained, the guidance does not fetter the discretion of our authorised decision makers who are able to impose fines up to our statutory limits. This means that our authorised decision makers may impose fines that are above 5 per cent of a firm's annual domestic turnover or above 97 per cent of an individual's income where this is necessary to maintain professional standards or uphold public trust and confidence in the solicitors' profession.

For many of the firms and individuals we regulate, a fine of more than 5 per cent of annual domestic turnover or 97 per cent of annual income, will exceed £25,000. This means that where we impose fines for very serious misconduct using our powers under the ECCTA, we will likely be imposing fines on traditional law firms and individuals at levels that would have previously required a referral to the SDT. The legislation will likely have less of an impact on the fines we issue to ABSs, as we already

had the power to impose fines of up to £250 million on ABSs and £50 million on the individuals who work for them. As such, it is likely that fines imposed by us of more than 5 per cent of a law firm's turnover, though still uncommon, will become more frequent in the future.

We intend to update our published fining guidance to cover how we will determine the correct level of fine in these cases. This will provide more clarity for those subject to our decisions and it will help our authorised decision makers to identify when a fine of more than 5 per cent of a firm's annual domestic turnover or more than 97 per cent of an individual's income is appropriate. And if so, what the appropriate level of fine is.

We propose amending our fining guidance to introduce two new penalty bands, bands E and F. The percentages in Bands A-D would remain unchanged. Band E would range from 6 per cent to 10 per cent of a firm's annual domestic turnover, and 113 per cent to 145 per cent of an individual's income. Band F would be for fines higher than these percentages and would only be applied for the most serious misconduct where a fine is appropriate. The tables below set out our proposed new fining bands.

We have previously consulted on the principle of including fines between 113 per cent and 145 per cent of an individual's income in our fining guidance. In our [previous consultation on financial penalties \[https://media.sra.org.uk/sra/consultations/consultation-listing/financial-penalties-new-approach/\]](https://media.sra.org.uk/sra/consultations/consultation-listing/financial-penalties-new-approach/), we suggested including fines within this range in band D4. In the table for individuals below, we have proposed to include the percentages we previously consulted on in band E.

## Firms

<b>Penalty Band</b>	<b>Penalty as a % of annual domestic turnover (Firms)</b>	<b>Indicative penalty scale</b>
A	0.2%	A1
	0.3%	A2
	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
E	6%	E1
	7%	E2
	8%	E3
	9%	E4
	10%	E5
F	11%	F1
	15%	F2
	20	F3
	25%	F4
	>25%	F5

### Individuals

<b>Penalty Band</b>	<b>Penalty as a % of annual gross income</b>	<b>Indicative penalty scale</b>
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%
81%		D2
97%		D3
E	113%	E1
	129%	E2
	145%	E3
F	>145%	F1

Many of the cases in bands E and F are likely to be for serious misconduct involving economic crime, although other serious misconduct might also fall into these bands. The misconduct will still need to be suitable for a fine rather than requiring a different response such as referral to the SDT to consider a suspension or striking off. At the end of





the consultation document. we have provided illustrative examples for some of the kinds of misconduct that are likely to lead to a fine in band E or F, along with detailed information as to how we will determine the indicative fine.

Introducing two new penalty bands into our fining guidance will help to make sure that our financial penalties act as a credible deterrent against the most serious breaches of our rules that are suitable for a fine. It would deter future misconduct by those directed to pay a high fine and would help deter others from committing similar breaches. In turn, this will instil public confidence in the solicitors’ profession by demonstrating that serious misconduct will be met with significant penalties.

**Q1: Do you agree that we should update our guidance on financial penalties to include two new fining bands - bands E and F?**

**Q2: Do you agree that our proposed approach will provide a credible deterrent against the most serious breaches of our rules?**

### **Updating our scoring framework**

We use a scoring framework in our fining guidance to determine the appropriate penalty band and therefore set the indicative fine. In determining a score, we take into account the seriousness of the breach (the nature and impact or potential impact of the conduct in question), and any aggravating or mitigating factors relating to the breach. In our current guidance, the highest score leads to an indicative financial penalty in band D. We are proposing to amend this scoring framework.

We have developed our proposed new framework by carefully considering the circumstances of possible cases and the level of fine that would deter similar breaches and uphold public trust and confidence. Our proposed framework builds on our experience of determining appropriate fines but is set out in this document for consultation in order to test it with stakeholders before finalising the framework.

Our proposed new scoring framework is shown in the tables below.

<b>Nature of the conduct by the regulated person</b>	<b>Nature score</b>
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>	1





Conduct demonstrates one or more of the following factors:

- been intentional or arisen as a result of recklessness or gross negligence. 5
- continued after it was known to be improper.
- formed part of a pattern of misconduct.

<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>	2
<ul style="list-style-type: none"> <li>• Causing a moderate loss or having a moderate impact, or</li> <li>• Having the potential to cause moderate loss or have a moderate impact.</li> </ul>	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>	6
<ul style="list-style-type: none"> <li>• Causing severe loss or having a severe impact, or</li> <li>• Having the potential to cause a severe loss or to have a severe impact.</li> </ul>	8
<ul style="list-style-type: none"> <li>• Causing very severe loss or having a very severe impact, or</li> <li>• Having the potential to cause a very severe loss or to have a very severe impact.</li> </ul>	10

### Penalty bands

We are proposing to amend the way in which we score the nature of the misconduct. By nature, we mean whether or not the conduct was intentional, grossly negligent, or reckless, continued after it was known to be improper, or formed part of a pattern of conduct. Currently, conduct that does not demonstrate at least one of these factors is given a nature score of one, whereas conduct that does demonstrate at least one of these factors is given a nature score of three. Scoring the nature of the conduct in this way results in the indicative fine falling into one of two adjacent penalty bands depending on the impact of the misconduct. For example, where the impact of misconduct is moderate, the appropriate penalty band may be band B or band C, depending on the nature of the conduct.

We consider that conduct which intentional, grossly negligent or reckless is inherently much more serious than conduct which was unintentional and brought to an end as soon as it was known to be improper. We do not think this distinction is adequately reflected in the current scoring framework. We are therefore proposing that we amend the nature score to five, creating a greater differential for conduct that is intentional, grossly negligent, or reckless, continued after it was known to be improper, or formed part of a pattern of conduct.

We are also proposing to amend the framework to include two new sections for misconduct that causes - or has the potential to cause - severe or very severe impact or loss.

<b>Conduct band</b>	<b>Penalty band</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
The nature and impact scores add up to 11	E
The nature and impact scores add up to 13 or 15	F

### **Arriving at an impact score**

We have built up considerable experience of imposing fines under the existing fining bands and consider that it would be helpful to provide more clarity on how we determine the impact score in any particular case. At Annex 1, we provide examples of the types of cases that would fall into each of our penalty bands.

In determining an impact score, we consider the actual or potential loss or other impact, which was caused, or could have been caused by the misconduct. Whether or not loss or harm actually occurred may well be due to luck or circumstance rather than demonstrative of the inherent riskiness of the conduct. Potential harm or loss is therefore relevant in understanding the seriousness of the misconduct and therefore the appropriate level of the fine.

We currently categorise the impact or potential impact as low, moderate or significant. We are proposing to add two further categories of severe or very severe. The actual or potential impact will vary widely depending on the circumstances of each case. However, we are proposing to introduce a clear framework to provide certainty and consistency for those we regulate and our decision makers.

Sometimes, serious misconduct will have an impact on public trust and confidence in solicitors and in regulated legal services. Where we believe this has been the case, we will take it into account in determining the appropriate impact score.



Some types of misconduct impact on the wider public interest. For example, money laundering is often used to fund organised crime or terrorism. Similarly, Strategic Lawsuits Against Public Participation (SLAPPs) are a type of abusive litigation that can have a chilling effect on investigative journalism. Therefore, we are likely to determine that the impact of misconduct that enabled money laundering to take place or SLAPPs to occur had a very severe impact.

Our proposed framework is below.

Impact of harm or risk of harm	Criteria	Score
<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>	<p>From the evidence we have, <b>all</b> of the following apply:</p> <ul style="list-style-type: none"> <li>No more than ten clients, employees or third parties were directly impacted.</li> <li>The actual financial impact to any individual was no more than £500 and was rectified within three months (or within one month of the respondent becoming aware of it).</li> <li>No individual has suffered a non-financial impact that is greater than being inconvenienced.</li> <li>There was a low likelihood of the misconduct having a greater impact than that described in the three bullets above.</li> <li>The misconduct did not take place over a period of more than 12 months.</li> <li>The likely impact on public trust and confidence is minimal.</li> <li>There is no demonstrable impact on the wider public interest.</li> </ul>	2
<ul style="list-style-type: none"> <li>Causing a moderate loss or having a moderate impact, or</li> <li>Having the potential to cause moderate loss or have a moderate impact</li> </ul>	<p>From the evidence we have, <b>all</b> of the following apply:</p> <ul style="list-style-type: none"> <li>No more than 25 clients, employees or third parties were directly impacted.</li> </ul>	4



- The financial impact to any individual was no more than £1500 and was rectified within six months (or within three months of the respondent becoming aware of it).
- No individual has suffered a non-financial impact that is greater than short term stress (lasting no more than three months).
- There was a low likelihood of the misconduct having a greater impact than that described in the three bullets above.
- The misconduct did not take place over a period of more than 12 months.
- The likely impact on public trust and confidence is minimal.
- There is no demonstrable impact on the wider public interest.

- Causing a significant loss or having a significant impact, or
- Having the potential to cause significant loss or to have a significant impact

From the evidence we have, **all** of the following apply: 6

- No more than fifty clients, employees or third parties were directly impacted.
- The financial impact to any individual was no more than £3,000 and was rectified within six months (or within three months of the respondent becoming aware of it).
- No individual suffered a non financial impact that is greater than short term stress (lasting no more than three months).
- There was a low likelihood of the misconduct having a greater impact than that described in the three bullets above.
- The misconduct did not take place over a period of more than 12 months.



- The likely impact on public trust and confidence is not more than significant (this means that it can be more than minimal but cannot be serious)
- here is no demonstrable impact on the wider public interest

From the evidence we have, **all** of the following apply:

- No more than one hundred clients, employees or third parties were directly impacted.
  - The financial impact to any individual was no more than £5,000.
  - No individual suffered a non financial impact that is greater than short term stress (lasting no more than three months).
  - There was a low likelihood of the misconduct having a greater impact than that described in the three bullets above.
  - The misconduct did not take place over a period of more than two years.
  - There was no more than a limited identifiable wider societal impact and a low likelihood of having a greater wider societal impact.
  - The likely impact on public trust and confidence is no more than significant.
- 8

- Causing severe loss or having a severe impact, or
  - Having the potential to cause a severe loss or to have a severe impact
- Any** of the below:
- More than one hundred, employees or third parties were directly impacted.
  - The financial impact to any individual was more than £5,000.
  - Any individual suffered serious distress or other serious impact on their mental health.
- 10



- Any individual suffered a serious negative impact on their lifestyle.
- There was a high likelihood of the misconduct having any of the impacts described in the three bullets above.
- The misconduct took place over a period of more than two years.
- The likely impact on public trust and confidence is serious
- There is a demonstrable impact on the wider public interest

**Q3: Do you agree that the new nature and impact scores provide greater clarity as to how we determine the appropriate penalty within the bands?**

**Q4: Are there any further steps you think we could take to provide clarity on how we determine the appropriate penalty band when imposing financial penalties?**

### **Determining the level of the indicative fine**

Once we decide that a fine is an appropriate sanction, we determine the appropriate penalty band by adding together scores for the nature of the misconduct (whether or not it was intentional or reckless, continued after it was known to be improper, or formed part of a pattern of conduct) and the impact or potential impact.

Once the appropriate penalty band has been determined, we take into account the factors relevant to the nature and impact, to consider a starting point within that fining band. Take for example two cases involving a particular breach of our rules where the nature and impact scores add up to five, meaning the appropriate penalty band for both cases will be band B. In the first case, the breach went on for two weeks, in the second the breach took place over a period of 11 months. The decision maker will take factors such as the duration of the breach into account in setting a starting point within the penalty band, and in this example, the starting point (B1, B2 or B3) could be different for each of these cases.

We then consider any aggravating or mitigating factors to determine whether we should adjust the place within the penalty band from the original starting point.

### **Our approach to aggravating and mitigating factors**

Under our current approach, our decision makers consider separate mitigating factors at two different stages of the fining process. Firstly, they take into account mitigating factors when determining the appropriate indicative fine. Secondly, after the indicative fine level has been set, they assess whether it is appropriate to reduce (discount) the penalty to take account of further specific mitigating factors. These factors are:

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

The decision maker can discount a basic penalty by a sum of up to 40 per cent, but will take into account the need to make sure that the penalty remains appropriate and proportionate to uphold public confidence.

We consider that our current approach, where mitigating factors are considered at two separate stages, is unnecessarily complex and reduces the clarity and transparency of our fining guidance. We are also concerned that offering potentially substantial discounts on fines that have been carefully determined in accordance with our fining framework, could undermine both the deterrent effect of the fine and public trust and confidence in the solicitors' profession.

We have compared our approach with that taken by other legal regulators. The Council for Licensed Conveyancers, CILEx Regulation and the Bar Tribunals and Adjudication Service, all determine the appropriate level of fines taking into account aggravating and mitigating factors, including the respondent's conduct after the breach. None of these regulators has a separate step in their process to consider discounting the fine.

We propose to move away from a standalone discounting process. Instead, our decision makers will consider all aggravating and mitigating factors at one stage, when setting the indicative fine level.

We will also amend our guidance to set out the types of factors which we will consider as aggravating or mitigating factors. Although this list will not be exhaustive, we think it will provide clarity to those we regulate and to our decision makers.

We propose to make it clear in our guidance that we may consider the following aggravating factors when setting the indicative fine:

- Demonstrating a lack of insight or remorse regarding the misconduct.
- Harm or potential harm to vulnerable clients.
- Disregarding our published guidance or warning notices.
- Hindering our investigation.





- Failure to cooperate with our investigation.
- Failure to remedy harm.
- Previous regulatory findings.

And that we may consider the following mitigating factors:

- Taking steps to prevent further misconduct
- Making an early admission

We have reflected on the specific factors that decision makers currently consider as part of our discounting process:

- Respondents who make an early admission of misconduct to us can save costs and stress to witnesses and others involved in the process as well as saving us considerable time and resources. We therefore consider this to be a mitigating factor. We recognise that everyone subject to our investigations has the right to fully understand and consider the allegations that have been made against them before responding to the allegations. An early admission is therefore one which is made promptly once we have provided the respondent with relevant details of the complaint/matters in question.
- We expect all those who have breached our rules to remedy any harm caused by that breach. We will therefore not consider doing so to be a mitigating factor. We will consider a failure to do so to be an aggravating factor.
- Cooperation with our investigation is a regulatory obligation under paragraph 7.3 of the Code of Conduct for Solicitors, RELs and RFLs and paragraph 3.2 of the Code of Conduct for Firms. Meeting this obligation is not a mitigating factor. A failure to cooperate with our investigation would be an aggravating factor. Similarly, deliberately hindering our investigation would be a more serious aggravating factor and may be misconduct in its own right.

**Q5: Do you agree that we should take into account aggravating and mitigating factors at one stage, when setting an appropriate fine, and therefore remove the standalone discounting process?**

**Q6: Do you agree with the list of aggravating and mitigating factors that we have set out above?**

**Q7: Do you agree that cooperating with our investigation and remedying harm caused by a breach of our rules are not mitigating factors?**

## **Minimum fine levels**

Since May 2023, we have calculated almost all financial penalties (except for fixed financial penalties) based on annual domestic turnover for firms or annual gross income from legal work for individuals. In exceptional

circumstances, we may take into account other forms of revenue and income, for example, if the firm or individual has significant financial means beyond their domestic turnover or income from legal work (we provide further details on this below). But in the vast majority of cases we have used our penalty bands (currently A-D) to determine the percentage of annual domestic turnover or annual gross income that is an appropriate financial penalty. We have not set minimum fine levels within each of these bands.

Following our consultation on financial penalties in 2022, we introduced fixed financial penalties so we could deal with lower-level and administrative breaches of our rules more swiftly and effectively. We have set the level of these fixed financial penalties at £750 for a first breach and £1,500 for a subsequent breach within three years. We arrived at these figures because we concluded they were the minimum level necessary to deter lower-level breaches of our more administrative requirements.

Any fines issued that are not fixed financial penalties will be for more serious misconduct and should therefore be higher than these amounts. However, the lack of minimum fine levels in our guidance means that we may impose fines for an amount less than a fixed financial penalty. Consider the following hypothetical example. A proactive AML review has found that a firm with an annual domestic turnover of £100,000 has failed to have a proper client/matter risk assessment in place on six files, though there is no evidence of any impact. The firm's conduct was placed in band B1 which has an indicative financial penalty of 0.4 per cent of annual domestic turnover. In this scenario, the fine might be £400, significantly less than a fixed financial penalty, even though the breach is much more serious than the types of breaches for which fixed financial penalties are imposed.

More crucially, the lack of minimum fine levels in our guidance means that some of the fines we currently impose may not be high enough to provide a credible deterrent or uphold public trust and confidence in the profession. In the above scenario, a fine of £400 is not large enough to provide an adequate deterrent against a further breach of our AML rules and is unlikely to give the public confidence that serious breaches of our rules are met with an appropriate sanction.

To make sure our approach to financial penalties upholds public confidence and acts as a credible deterrent, we propose introducing minimum fine levels in each penalty band in our guidance. We have given careful thought to the appropriate level of minimum fine for each penalty band for firms and individuals. We have used both previous cases and hypothetical scenarios to consider at what level we think a fine would both act as a credible deterrent and give the public confidence that serious wrongdoing will be met with significant penalties.

For firms, we propose that the minimum fines should be:



- Band A - £5,000
- Band B - £10,000
- Band C - £25,000
- Band D - £50,000
- Band E - £200,000
- Band F - £500,000

For individuals, we propose the minimum fines should be:

- Band A - £2,500
- Band B - £5,000
- Band C - £10,000
- Band D - £25,000
- Band E - £50,000
- Band F - £100,000

We recognise that minimum fine levels will have the greatest impact on smaller firms and individuals with lower salaries. However, we consider that minimum fines are necessary to reflect the seriousness of the misconduct for which the fine is being imposed.

Our fining guidance provides for our decision makers to adjust the indicative fine to take into account affordability by the paying party. We will make this a more explicit step in our guidance and specifically invite both firms and individuals to provide representations on their ability to pay a recommended fine. These representations will be taken into account by our decision makers when determining the final fine amount. As a general guide, decision makers should be satisfied that the fine could be paid within five years.

**Q8: Do you agree with our proposal to introduce minimum fine levels in each penalty band in our fining guidance?**

**Q9: Do you agree with the proposed levels of minimum fine?**

### **Fines based on metrics other than annual domestic turnover or annual income from legal work**

In most cases, we calculate a fine based on a firm's annual domestic turnover or an individual's annual income from legal work. However, there will be some circumstances where this approach is not appropriate. This may be the case if the firm or individual has significant financial means beyond their domestic turnover or income. For example, an individual solicitor might have a small income from their legal work but own other non-legal businesses that generate significant income. Or, they might have previously had a high income from their legal work but no longer be in practice. Moreover, a firm might have a large global presence but a small turnover in England and Wales. In these scenarios, a fine based solely on domestic turnover or legal work income, even with

the introduction of minimum fines, might not provide a credible deterrent or uphold public trust and confidence in the solicitors' profession.

Our fining guidance already states that in exceptional circumstances, we might use 'a different metric to determine an appropriate fine. In these rare cases, the decision maker will provide full reasons in their decision.' This is a complex area and we recognise that there are many different corporate structures or ways of managing brands. The circumstances in which we depart from using annual domestic turnover will be rare. However, to provide additional clarity and certainty to those we regulate, we believe it would be helpful to include some illustrative examples in our guidance of what those exceptional circumstances might be. We have included an illustrative example below to demonstrate what these examples might look like.

### **Illustrative example 1 - fine based on global rather than domestic turnover**

A law firm has failed to scrutinise the source of funds and perform enhanced customer due diligence across multiple conveyancing transactions in breach of our AML rules. There are no mitigating factors. The firm's domestic turnover was £1,000,000 last year. However, the firm has a significant global presence, far larger than its operations in the UK and last year this generated a further £25 million in revenue (giving a global turnover of £26 million). Our investigation reveals that senior managers based overseas have questioned the extent to which they should invest in compliance with regulatory regimes in the UK given the relatively small size of its operations here compared to overseas.

We determine that the appropriate penalty band is E4 (nine per cent of annual turnover). Based on the firm's annual domestic turnover, the indicative fine would be £90,000. If we implement our proposal for minimum fines, this would be increased to £200,000. However, this would represent a very small amount to a firm with such a large global turnover and rather than providing a credible deterrent against further breaches of our rules, might reinforce its view that compliance with our requirements is not a priority. In these circumstances, we decide that we should determine the fine based on global turnover. This means that we fine the firm £2,340,000, an amount which we consider does provide a credible deterrent.

**Q10: Do you think providing illustrative examples such as this will be a helpful addition to our guidance on financial penalties?**

**Q11: In identifying the appropriate metric on which to base a fine, are there any key considerations we should take into account, for example regarding the corporate structure of the firm?**

## **Increasing our fine levels by the amount of any financial gain obtained from the misconduct**

One of the key principles of our approach to financial penalties is ensuring that those who breach our rules do not benefit financially from their actions. Our current guidance states that any fine must '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'. For instance, if a fine of £8,000 is deemed appropriate, but the firm has gained £10,000 from breaking our rules, the final fine amount will be raised to at least £10,000. If however, it is only raised to £10,000 it could be argued that the firm has offset the cost of the fine with the financial gain from the misconduct. As a result, the fine may not provide a credible deterrent, as the firm will not have incurred any financial loss overall. This could undermine public confidence in the profession and cast doubt on whether our financial penalties will act as a deterrent against future misconduct.

To address this issue, we propose amending our guidance to make sure clarity and consistency, by stating that all financial penalties issued to firms and individuals will be the sum of:

- the indicative fine, and
- the amount of any financial gain or other benefit that resulted from the misconduct.

In the scenario mentioned above, the total fine would be £18,000. This proposal would make sure that firms and individuals cannot offset the cost of a fine with any financial gain obtained by breaching our rules. It would make sure that our fines act as a credible deterrent when misconduct has led to significant financial gain. In turn, this would uphold public confidence that those who breach our rules will not benefit from their actions.

This proposal would apply equally to firms and individual solicitors since both could potentially offset part or all of a fine with the financial benefits derived from misconduct.

**Q12: Do you agree with our proposal to clarify our position by stating in our guidance that all financial penalties will be the sum of the indicative fine and the amount of any financial gain obtained from the misconduct?**

### **Convictions for driving with excess alcohol**

Following feedback from stakeholders about the levels of fine we have imposed on solicitors following convictions for driving under the influence

of alcohol (drink driving), we have reviewed and reflected on our approach.

Drink driving presents a risk of serious harm or death to individuals. This is a serious offence which the criminal courts will consider. However, we also have a role. A conviction for any offence is likely to require a regulatory response, given the impact on public trust and confidence in the profession when a solicitor breaks the law. For drink driving, depending on the circumstances, a warning or rebuke is often appropriate. There may however have been factors which make the case more serious, for example, the particular circumstances of the case, or repeated convictions for drink driving. Or an individual might have committed other breaches of our rules, such as failing to act in a way that upholds the constitutional principle of the rule of law, and the proper administration of justice.

Having carefully considered the range of circumstances under which a solicitor may be convicted of this offence, we consider it is no longer appropriate to impose a financial penalty for drink driving. This is because cases in which a warning or rebuke were not appropriate were those that involved repeated criminal behaviour, or serious aggravating factors in addition to the commission of the offence. We consider that this type of conduct raises serious concerns about integrity and public trust in the profession which we consider are matters best dealt with by the SDT. It can determine whether the individual should be suspended or removed from practice, in order to uphold public trust and confidence in the profession and in legal services. We have provided illustrative examples below of the types of circumstances that would warrant a referral to the SDT.

We have drafted a revised topic guide to clarify our approach to convictions for driving with excess alcohol which we have published alongside this consultation ([annex 2](#) [[#download](#)]).

## **Illustrative example 2**

A solicitor has been convicted of drink driving after colliding with two parked cars. When police arrived, the solicitor apologised for the damage which they said their insurance company would pay for, but insisted they must continue their journey as they were due to represent a client at court and did not want to be late. Police officers explained that they would need to do a roadside breath test, to which the solicitor told them they were being ridiculous, they may have had a couple of drinks but were perfectly fit to drive the car. When the police officers explained that unless the solicitor complied with the roadside test, they would be arrested, the solicitor said that unless they were allowed to continue immediately, they would be making a complaint about wasting a solicitor's time. They did ultimately comply and were found to be over the legal limit. This is their first offence, but given the aggravating

factors, the court disqualified them from driving for 40 months and imposed a community order.

The aggravating factors in this case are serious enough that we decide to refer the matter to the SDT to consider whether this solicitor should continue to practise given the harm caused to the public's trust in the solicitors' profession.

### **Illustrative example 3**

A solicitor has two previous convictions for drink driving in the last five years. We issued them with a letter of warning after their first conviction and a rebuke after their second. The solicitor reports a third drink driving conviction to us after deciding to drive home after a few drinks with friends.

The number of convictions this solicitor has received for drink driving shows a propensity to break the law which could have a serious impact on public trust and confidence in the profession. Solicitors also have a duty to uphold the constitutional principle of the rule of law, and the proper administration of justice. Multiple convictions for drink driving display a disregard for this duty and so we decide to make a referral to the SDT.

**Q13: Do you agree with our proposal that we should not impose a financial penalty following a conviction for driving with excess alcohol?**

### **Potential impact of these changes**

None of our proposals would directly discriminate against any group based on their protected characteristics. If implemented, our proposals would have impacts felt by all groups. At the same time, our proposed changes will provide greater certainty to those we regulate about how we will use our new fining powers. Providing a clear framework for how we assess the impact of misconduct and consider aggravating and mitigating factors will also increase transparency for all groups.

We have identified some potential indirect impacts on particular groups arising from our proposals.

### **Introducing minimum fining levels**

There is the potential that our proposal to introduce minimum fining levels will have a greater impact on firms with lower annual turnover and individuals on lower incomes. This is because the minimum fine in each band is likely to represent a larger proportion of the annual turnover or annual salary for these groups when compared to other firms. Our data shows that are males, those aged over 45, or those from a Black, Asian,



or minority ethnic background are typically over-represented in firms with a lower annual turnover.

Further, there is evidence that solicitors from a Black, Asian, or minority ethnic background are more likely to have lower incomes. According to The Law Society's 2020 Race for Inclusion research report, solicitors from Black, Asian, or minority ethnic backgrounds overall occupy fewer senior positions and have lower incomes. The report calculated that the ethnicity pay gap in the solicitors' profession is 25 per cent when comparing hourly pay (the ethnicity pay gap is the difference in the average pay between all Black, Asian and minority ethnic staff in a workforce and all white staff). This gap adds up to a difference of more than £20,000 per year on average. As a result, there is the potential that our proposal for minimum fine levels is more likely to affect solicitors from a Black, Asian, or minority ethnic background.

To reduce the potential for disproportionate impacts on those with lower incomes, we will invite all respondents to provide representations on their ability to pay a recommended fine. These representations will be taken into account by our decision makers when determining the final fine amount.

We will proactively monitor whether our proposed changes have any disproportionate impacts on any particular groups. Furthermore, to make sure transparency, we will publish data on fines imposed at the new minimum levels in our annual Upholding Professional Standards reports. These reports set out how we handle complaints, conduct investigations and decide whether and what sort of regulatory action is necessary.

## **Increasing the levels of our fines**

An increase in our internal fining powers in relation to economic crime has the potential to provide benefits to everyone that we regulate by enabling us to deal with more cases internally, resulting in a decrease in the number of cases referred to the SDT and a consequential reduction in the length of time taken to conclude a case. However, we expect that the combination of our proposals will result in fining levels increasing overall, meaning that fines are likely to exceed our statutory limits more often. This may lead to an increased number of referrals to the SDT.

We do not yet fully know the impact of our changes on the number of referrals we make to the SDT. An overall decrease would have a positive impact, in particular on those groups that we know are over-represented in reports made to us and cases taken forward to investigation, while an overall increase would have a negative impact, in particular on those same groups.

For individuals, this is men, solicitors from Black, Asian and minority ethnic backgrounds and those over 45. For firms, this is those with lower annual turnover. We also know that men, solicitors from Black and Asian

groups and solicitors aged over 45 are over-represented in smaller firms.

We believe that our approach is both reasonable and proportionate. In this consultation we have carefully explained the reasons for our proposed changes, which we think are needed to provide a strong and credible deterrent against breaches of our rules.

## **Monitoring, safeguards and assurance**

We recognise that with the increase in our fining powers under the ECCTA, we need to provide further assurance about the transparency and robustness of our decision-making processes when issuing financial penalties. To do this, we will establish dedicated monitoring and reporting in relation to reports relating to economic crime. Our Anti-money Laundering team will still investigate the majority of reports relating to money laundering or sanctions but, recognising that we receive other reports relating to economic crime, dedicated monitoring will enable us to understand trends across the cases, build experience and expertise, respond to any issues that arise, and make sure consistency.

Currently, where a penalty in band D is recommended, to provide additional assurance, the fine can only be imposed by an adjudication panel. We propose that we extend this requirement to include recommendations that fall into the new bands E and F. Our proposed amendment to the SRA Regulatory and Disciplinary Procedure Rules is at annex 1.

Since July 2022, in all cases where an investigation officer is considering recommending a fine, or entering into a regulatory settlement agreement, of more than £2,000, they must attend a higher fining surgery where staff carefully consider the rationale for the fine. All meetings of the group must have several senior members of staff present, including an investigation manager, a head of department, a knowledge & development manager, and a legal or senior legal advisor. This provides an additional safeguard and assurance that we are exercising our fining powers consistently and proportionately.

Building on this, we will require that any recommendations for a financial penalty in either Band E or F be approved by one of the following SRA employees:

- Director of Legal and Enforcement
- Deputy Executive Director Investigations and Enforcement
- Deputy General Counsel
- General Counsel.

We will also monitor the impact of our proposed reforms through the work of our financial penalties internal monitoring group. This group includes colleagues from our investigation, adjudication, legal and policy

areas. They meet regularly to review the implementation of our financial penalties framework and assess its effectiveness. These meetings will provide an opportunity to discuss any unforeseen challenges that may arise with our proposed reforms, allowing us to take prompt action to resolve them.

Currently we collect data on fining outcomes, which this group reviews monthly. However, this data set is relatively new and therefore limited. The data set doesn't yet facilitate detailed equalities analysis due to its small size. However, we can say in general terms that small firms, and individuals who are male, aged over 45, or from a Black, Asian, or minority ethnic background are currently overrepresented in our enforcement processes.

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.

We recognise there are gaps in our current EDI data collection and acknowledge there needs to be more comprehensive demographic data collection. This includes gathering more data covering a wider range of characteristics such as socio-economic background, and disability.

Other than the potential impact described above, we have not identified any adverse impacts nor any further potential adverse impacts on any other protected groups due to the proposals in this consultation.

**Q14: Are there any additional potential impacts, either positive or negative, of our proposals on any group of solicitors with protected characteristics?**

**Further illustrative examples**

We have provided illustrative examples to show both how the fining framework will work in practise, and the types of cases that may fall into each of our penalty bands.

**Illustrative example 4**

For a six-month period, Solicitor A failed to keep accurate, contemporaneous and chronological accounting records. This allowed cash shortages to arise on the firm's client account on two separate occasions within the same month, each totalling just under £200. As soon as they become aware of the problem Solicitor A rectifies it.

**Nature, score 1**

The conduct will:



- not have been intentional or arisen as a result of recklessness or gross negligence
- not have continued after it was known to be improper
- not have formed part of a pattern of misconduct.

The breach was caused by poor record keeping.

### **Impact, score 2**

Causing inconvenience but no/minimal loss and having no other direct material impact, or having the potential to cause no more than minimal loss or having no more than a minimal impact.

Relevant factors:

- Two clients were impacted.
- The financial impact was under £200 to each client, although they were unaware of the issue. It was rectified within a month.
- There was no identifiable non-financial impact.
- The conduct did not take place over a period of more than 12 months.
- The likely impact on public trust and confidence is minimal.
- There is no demonstrable impact on the wider public interest.

### **Aggravating factors**

- We have previously issued a rebuke for a failure to keep clients properly updated on matters.

### **Mitigating factors**

- The solicitor makes a full admission to us at the earliest opportunity.

Weighing up the aggravating and mitigating factors, we adjust the position of the matter to the top of Band A – A2, which means that an indicative fine of 3 per cent of the solicitor's annual income would be appropriate.

The solicitor has an income of £85,000, therefore a fine of £2,550 is appropriate.

### **Illustrative example 5**

Solicitor B was instructed on a conveyance by the buyer. Firm S acted for the seller. During the course of the conveyance, Solicitor B gave Firm S an undertaking to pay specified expenses on behalf of the seller within 14 days of completion.

On completion Firm S sent an invoice to Solicitor B for these expenses totalling £1,500, as agreed. Solicitor B had not obtained money on account from their client to fulfil the undertaking and so forwarded the invoice to their client five days after completion asking for the funds as soon as possible.

Their client did not provide the funds for several months. Solicitor B did not have the funds to make the payment immediately and so they breached the undertaking. Solicitor B paid the expenses 28 days after completion out of their own funds. They kept Solicitor S fully informed of the situation and of when they would have sufficient funds if their client did not provide them. However, in the meantime, the seller was under pressure from the company to whom the expenses were owed to settle those costs and did so out of the sale proceeds. This delayed the seller from completing on their onward purchase.

### **Nature, Score 4**

The conduct will:

- not have been intentional or arisen as a result of recklessness or gross negligence.
- not have continued after it was known to be improper.
- not have formed part of a pattern of misconduct.

Solicitor B did not intend to breach the undertaking and had expected their client to provide the funds more quickly than they did.

### **Impact, score 4**

Causing a moderate loss or having a moderate impact, or having the potential to cause moderate loss or have a moderate impact.

Relevant factors:

- The seller (a third party) was impacted by Solicitor B's conduct in that they had to unexpectedly pay £1,500 from their sale proceeds.
- The further impact of Solicitor B's conduct in breaching the undertaking was to delay the seller's onward purchase, causing short-term stress to the seller.
- This was a one-off incident and it continued for a short period of time (significantly less than 12 months).
- Confidence in undertakings is fundamental to transactional matters such as conveyancing. A failure to comply with an undertaking not only undermines trust and confidence in that solicitor but also in the system of completing transactions based on the promises offered by others. In this case, the solicitor explained the reason for the breach and kept the other party fully informed as to when it would be rectified, which was within 28 days. The impact on public trust and confidence is therefore likely to be minimal.

- There is no demonstrable impact on the wider public interest.

### **Determining the penalty band**

Adding together the score of 1 for Nature and 4 for Impact, means an overall score of 5 and places this matter in Band B. Given there was only one individual directly impacted by the conduct and the conduct persisted for a short period of time, the decision maker determines that an appropriate starting point is B1.

### **Arriving at a specific indicative fine**

#### **Aggravating factors**

- The solicitor failed to co-operate with our investigation.

#### **Mitigating factors**

- None

Taking into account the aggravating factor, we adjust the position of the matter to the middle of Band B – B2, which means that an indicative fine of 8 per cent of the solicitor’s income would be appropriate.

The solicitor has an income of £46,000, and so an indicative fine based on their annual salary is £3,680. However, the minimum fine at band B is £5,000 and so this is the level of the indicative fine.

### **Illustrative example 6**

Firm C discovers that an outage in its IT system which lasted for a period of 48 hours led to errors in financial transactions. Invoices had to be calculated by staff manually and this led to the inadvertent overcharging of some clients. The delay in getting the IT system back up and running also meant that there were delays in making distributions to beneficiaries on other matters. In total, 19 clients were overcharged. The amounts by which clients were overcharged varied between £1,000 and £2,500 and the total overcharge was £28,500. Six other client matters were affected by delays in making distributions to beneficiaries of between four and 12 months.

Once Firm C identified these issues, all 19 clients were reimbursed within two months. An apology was given to the beneficiaries of the six matters impacted by delay and distributions were made promptly and in parallel. Firm C carried out a ‘look back’ exercise and found a senior team member had been warned previously that failure to upgrade the firm’s software might lead to a complete outage and that outages of shorter



duration had already occurred. The wider firm was not made aware of the specific warning but were aware of the outages of shorter duration.

The firm have now updated their IT systems with the help of an external expert in IT.

**Nature**, score 1

The conduct will:

- not have been intentional or arisen as a result of recklessness or gross negligence.
- not have continued after it was known to be improper.
- not have formed part of a pattern of misconduct.

The firm was initially unaware that the supervision system had not been working effectively. Likewise, in a three-month period, the firm's recruitment department had overlooked the falling numbers of qualified staff when recruiting more unqualified staff.

**Impact**, score 6

Causing a significant loss or having a significant impact, or having the potential to cause significant loss or to have a significant impact.

Relevant factors:

- 25 client matters were impacted in total.
- No individual suffered a financial impact greater than £3,000. This was rectified within three months of the respondent becoming aware of it.
- There was no identifiable non-financial impact as the clients were unaware that they had been overcharged.
- Save for one matter, the delays in making distributions to beneficiaries caused inconvenience and stress to those individuals but no financial loss or other harm.
- In the one exception, the beneficiary required the distribution in order to maintain their care home fees. They fell into default as a result. Although they felt stress at the prospect of being removed from the care home, this possibility was never indicated to them by the owners of the care home and it did not happen. All arrears were settled within three months.
- The impact on public trust and confidence is minimal.
- There is no demonstrable impact on the wider public interest.

**Determining the penalty band**

Adding together the score of 1 for Nature and 6 for Impact, means an overall score of 7 and places this matter in Band C. Taking into account the high number of cases involved, but the relatively low impact on each



client, the decision maker determines that an appropriate starting point is C2.

## **Arriving at a specific indicative fine**

### **Aggravating factors**

- One of the beneficiaries was vulnerable.
- There was a failure to ensure robust systems and reporting.

### **Mitigating factors**

- The firm make a full admission to us at the earliest opportunity.
- The firm carried out a look back exercise and were candid about system errors.
- The firm have taken steps to ensure that there is no repetition of events.

Taking into account the mitigating factors, we adjust the position of the matter to the bottom of Band C- C1, which means that an indicative fine of 1.6 per cent of the firm's annual domestic turnover would be appropriate.

The firm has an annual domestic turnover of £2,500,000 and so the indicative fine is £40,000.

### **Illustrative example 7**

The firm, a licensed body, was reported to us by two defendant firms about the quality of the claims being submitted in relation to mis-sold credit agreements). The defendant firms had notified the firm of their concerns a year previously, but report still seeing the same issues arise. Since we notified the firm of the report it has taken remedial action to address concerns to ensure no repetition in future.

The firm handled approximately 35,000 matters between 30 September 2019, and 30 September 2020.

We reviewed 50 files (25 selected by the defendant firms). We identified the following issues:

- The firm did not carry out sufficient client due diligence, which led to the firm submitting some claims with inaccurate information.
- The firm failed to comply with court directions in respect of two matters which caused two clients to suffer financial loss (which the firm compensated them for).
- The firm used standard template wording, sometimes resulting in differences from the information supplied by clients to the firm.



- There were numerous instances where supervision of non-legally qualified staff was not effective.

### **Determining the indicative fine**

#### **Nature, score 5**

Conduct demonstrates one or more of the following factors:

- Ineffective systems and processes constituted a pattern of misconduct that continued for a prolonged period of time.
- There was an element of gross negligence and/or recklessness in the lack of supervision for non-legal employees.

There was an element of negligence in the lack of supervision for non-legal employees.

#### **Impact, score 6**

Causing a significant loss or having a significant impact, or having the potential to cause significant loss or to have a significant impact.

- Two clients were impacted by the failure to meet court directions.
- Each client's loss was less than £3,000.
- Failures appear systemic.
- Given the number of matters the firm was dealing with there was a potential of greater impact, although it is relevant that we reviewed identified by the defendant firms.
- Impact on time and resources of defendant firms, court and clients due to errors in information provided.
- Save for the two clients above, no evidence that customers suffered a financial detriment, but some claims took 2-3 months longer to conclude that necessary because of the errors causing additional stress to clients involved.
- The conduct did not take place over a period of more than 12 months.
- Due to the number of cases involved, there is potential for a significant impact on public trust and confidence.
- There was no demonstrable impact on the wider public interest.

### **Determining the penalty band**

Adding together the score of 5 for Nature and 6 for Impact, means an overall score of 11 and places this matter in Band E. Taking into account the high number of cases involved, the wasted time and resources on the part of the banks and the likely impact on public trust and confidence, the decision maker determines that an appropriate starting point is E4.

#### **Aggravating factors:**

- None

**Mitigating Factors:**

- The firm took swift action to review its procedures and due diligence procedures once shortcomings were identified such that the risk of repetition is judged to be low.

Taking into account this mitigation, we adjust place the position of the matter to D3, which means that an indicative fine of eight per cent of the firm's annual domestic turnover would be appropriate.

The firm has an annual domestic turnover of £5,000,000 and so the indicative fine is £400,000.

**Illustrative example 8**

A managing partner and experienced COLP at a law firm retires after many years in the role. The firm makes a decision to replace the COLP with a much less experienced solicitor.

At a partnership meeting, they discuss how this move should make life easier for everyone given how conscientious the previous COLP was. They specifically decide not to commission next year's annual accountants report to save the firm much needed money. They also agree to be more 'light touch' on financial checks, agreeing that they know they can trust each other.

Eighteen months later, a senior partner is found to have been involved in a scheme to embezzle client funds. This partner, who also holds significant managerial responsibilities, uses their position to influence other employees to participate in or cover up these activities.

The lack of systems and controls within the firm since the retirement of the previous COLP meant that the embezzlement was not identified sooner. An internal investigation by the firm finds a pattern of fraudulent transactions affecting 35 clients and continuing over a period of 14 months. The amount of embezzled funds total £25,000.

Following an investigation, we refer the partner concerned to the SDT, and they are struck off. We consider that a financial penalty is an appropriate sanction in respect of the failures within the firm that enables the embezzlement to take place.

**Determining the indicative fine**

**Nature**, score 5

Conduct demonstrates one or more of the following factors:



- has been intentional or arisen as a result of recklessness or gross negligence.
- continued after it was known to be improper.
- formed part of a pattern of misconduct.

The firm demonstrated some intentional behaviour, for example, failing to arrange an annual accountant's report and some elements of gross negligence in their lack of systems and controls.

### **Impact, score 8**

Causing very severe loss or having a very severe impact, or having the potential to cause a very severe loss or to have a very severe impact.

Relevant factors:

- Impact on 35 clients.
- Evidence that five members of staff were coerced into participating or covering up the activity.
- Average loss to clients was £845. No individual lost more than £1,200.
- Coercive behaviour negatively impacted the wellbeing of some employees who reported feeling stressed over a short period.
- The conduct did not take place over a period of more than two years.
- There were no identifiable wider societal impacts.
- The actions are likely to have had a serious impact on public confidence in the legal profession.

### **Determining the penalty band**

Adding together the score of 5 for Nature and 8 for Impact, means an overall score of 13 and places this matter in Band F. Considering the concerning attitude of the firm to compliance on the retirement of their previous COLP the decision maker determines that an appropriate starting point is F3.

### **Arriving at a specific indicative fine**

#### **Aggravating factors**

- Some of the firm's clients who lost money were vulnerable.

#### **Mitigating factors**

- The firm immediately dismissed the solicitor and put steps in place to prevent a repeat of the misconduct.
- The firm make full admission to us at the earliest opportunity.

Weighing up the aggravating and mitigating factors, we adjust the position of the matter to F2, which means that an indicative fine of 15 per cent of the firm's turnover would be appropriate.

The firm has an annual domestic turnover of £1,000,000. Fifteen per cent of this turnover is £150,000. However, the minimum fine at band F is £500,000 and so this is the level of indicative fine.

In the 18 months since the previous COLP retired, the firm failed to obtain two annual accountant's reports, which would have cost £5,000 each, meaning that the firm has received a financial benefit of £10,000 from their misconduct. We therefore add £10,000 to the indicative fine, giving a total fine amount of £510,000.

### **Illustrative example 9**

Firm A is a large, multi-national service firm providing a range of high-value transactional services to overseas clients from high-risk jurisdictions. The firm was found over a period of five years to have failed to have in place any firm-wide AML risk assessment. The firm did not have any policies, procedures and controls to prevent money laundering and the firm had consistently failed to assess money laundering risk at a matter level.

The lack of firm-wide controls led to money laundering risk having crystallised on a large number of transactions by fee-earners in different departments throughout the firm. In a large number of matters, inadequate or no customer due diligence had been undertaken and this led to the firm having enabled money laundering by a number of clients.

## **Determining the indicative fine**

### **Nature, score 5**

Conduct demonstrates one or more of the following factors:

- been intentional or arisen as a result of recklessness or gross negligence
- continued after it was known to be improper
- formed part of a pattern of misconduct.

Relevant factors:

- The breaches arise from gross negligence in that the firm failed in their duty to have AML risk assessments, practices, procedures and controls in place.
- There is evidence that employees at the firm tried to raise concerns about the firm's failures but these were not adequately actioned (so the firm continued to work in this way when they knew it was improper to do so).

**Impact**, score 10

Causing very severe loss or having a very severe impact, or having the potential to cause a very severe loss or to have a very severe impact.

Relevant factors:

- The firm enabled money laundering in at least 750 matters.
- This has resulted in £900 million inappropriately passing through the firm's client account.
- The conduct occurred over a period of five years.
- There is likely to be a serious impact on public trust and confidence in the profession.
- There is a demonstrable impact on the wider public interest.

**Determining the penalty band**

Adding together the score of 3 for Nature and 10 for Impact, means an overall score of 15 and places this matter in Band F. Taking into account the large number of transactions and huge sums of money involved, the decision maker determines that an appropriate starting point is F3.

**Arriving at a specific indicative fine****Aggravating factors**

- The firm hindered our investigation.
- We provided widely publicised guidance and warnings about the obligation for in-scope firms to comply with the Money Laundering Regulations, to have necessary documentation, training and relevant policies, controls and procedures in place. The firm persistently disregarded this guidance.
- At least three of the transactions involved a politically exposed person (PEP).

**Mitigating factors**

- None

Given the number of aggravating factors, we adjust the position of the matter to close to the top of Band F – F4, which means that an indicative fine of 25 per cent of the firm's turnover would be appropriate.

The firm has an annual domestic turnover of £15 million. This gives an indicative fine of £3,750,000.

**Q15: Do you think providing illustrative examples such as these will be helpful additions to our guidance on financial penalties?**

## Consultation questions

Q1: Do you agree that we should update our guidance on financial penalties to include two new fining bands - bands E and F?

Q2: Do you agree that our proposed approach will provide a credible deterrent against the most serious breaches of our rules?

Q3: Do you agree that the new nature and impact scores provide greater clarity as to how we determine the appropriate penalty within the bands?

Q4: Are there any further steps you think we could take to provide clarity on how we determine the appropriate penalty band when imposing financial penalties?

Q5: Do you agree that we should take into account aggravating and mitigating factors at one stage, when setting an appropriate fine, and therefore remove the standalone discounting process?

Q6: Do you agree with the list of aggravating and mitigating factors that we have set out above?

Q7: Do you agree that cooperating with our investigation and remedying harm caused by a breach of our rules are not mitigating factors?

Q8: Do you agree with our proposal to introduce minimum fine levels in each penalty band in our fining guidance?

Q9: Do you agree with the proposed levels of minimum fine?

Q10: Do you think providing illustrative examples such as this will be a helpful addition to our guidance on financial penalties?

Q11: In identifying the appropriate metric on which to base a fine, are there any key considerations we should take into account, for example regarding the corporate structure of the firm?

Q12: Do you agree with our proposal to clarify our position by stating in our guidance that all financial penalties will be the sum of the indicative fine and the amount of any financial gain obtained from the misconduct?

Q13: Do you agree with our proposal that we should not impose a financial penalty following a conviction for driving with excess alcohol?

Q14: Are there any additional potential impacts, either positive or negative, of our proposals on any group of solicitors with protected characteristics?

Q15: Do you think providing illustrative examples such as these will be helpful additions to our guidance on financial penalties?





## Downloads

- [Financial Penalties - further developing our framework consultation \(PDF 32 pages, 398KB\)](https://media.sra.org.uk/globalassets/documents/sra/consultations/2024/financial-penalties--further-developing-our-framework-consultation.pdf)  
[<https://media.sra.org.uk/globalassets/documents/sra/consultations/2024/financial-penalties--further-developing-our-framework-consultation.pdf>]
- [Annex 1 - SRA RDPR \(Amendment\) Rules 2024 \(PDF 1 page, 96KB\)](https://media.sra.org.uk/globalassets/documents/sra/consultations/2024/annex-1---sra-rdpr-amendment-rules-2024.pdf)  
[<https://media.sra.org.uk/globalassets/documents/sra/consultations/2024/annex-1---sra-rdpr-amendment-rules-2024.pdf>]
- [Annex 2 - Updated drink driving topic guide \(PDF 5 pages, 116KB\)](https://media.sra.org.uk/globalassets/documents/sra/consultations/2024/annex-2---updated-drink-driving-topic-guide.pdf)  
[<https://media.sra.org.uk/globalassets/documents/sra/consultations/2024/annex-2---updated-drink-driving-topic-guide.pdf>]

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