SRA Consultation

Indicative guidance on financial penalties

January 2013

Introduction

1. The Solicitors Regulation Authority (SRA) is the independent regulatory body of the Law Society of England and Wales. We protect the public by regulating law firms and individuals who provide legal services.

2. As part of this role the SRA has responsibility for investigating failures to meet regulatory standards and imposing fines upon regulated persons. The SRA's effective and proportionate use of its enforcement powers plays an important role in furthering the regulatory objectives and professional principles in the Legal Services Act 2007.

3. We wish to adopt guidance which will sit underneath our existing Financial Penalty Criteria and help decision makers in the SRA to assess what sum of money should be paid by a regulated person as a financial penalty. This consultation paper explains our current thinking about how the guidance should be approached. Annex 1 illustrates what the guidance might look like in practice and includes many of the proposals considered in his paper. However, the draft at Annex 1 is only one possible way forward. This consultation asks stakeholders for their views on a number of options which are being considered. We are particularly keen to seek stakeholder views on the appropriate sums for financial penalties.

4. The SRA already has powers and procedures for imposing financial penalties. The intention of the new guidance is to provide a framework for determining the level of the fine. Our aim is to provide a consistent and transparent mechanism for determining penalties which will support a credible deterrence.

5. At present, the guidance is most relevant to disciplinary decisions made in respect of alternative business structures (ABSs) and those working in ABSs. This is because the SRA's powers to levy fines under the 'traditional' law firm regime are much more limited (up to £2,000).

6. The purpose of this consultation is to obtain your feedback on our proposed approach. Your input will assist us in assessing the impact of such guidance and how the proposals could be developed.

Background

7. From March 2012 the SRA has been responsible for regulating two types of law firm:

   - 'traditional' law firms, which are generally owned and managed by solicitors; and

   - alternative business structures (ABSs), a new type of law firm which is authorised to have investment by non lawyers and non legal businesses.

8. Our powers and procedures differ depending upon whether the firm is a traditional law firm or an ABS.

9. We have powers to fine traditional law firms, and those involved in such firms, up to £2,000. If the SRA considers that a greater fine is appropriate or that the striking off

or suspension of a solicitor is appropriate then we would need to make a referral to the Solicitors Disciplinary Tribunal (SDT) to achieve such an outcome. The SDT now has unlimited fining powers.

10. In contrast, the Legal Services Act 2007 (LSA) permits the SRA to exercise all disciplinary powers in respect of ABSs and managers and employees of ABSs itself. The SRA (Disciplinary Procedure) Rules 2011 ('the rules' or 'the disciplinary rules') set out the framework for how we will exercise our disciplinary powers in respect of ABSs as well as traditional law firms. The SRA can (among other things):

- fine a manager or an employee of an ABS up to £50 million; or
- fine the ABS itself up to £250 million.

11. A decision to impose a fine under both the 'traditional' regime and the ABS regime is appealable to the SDT. Any fine received is payable for the benefit of Her Majesty's Treasury.

12. The SRA disciplinary rules provide for criteria as to when a fine should be imposed. Rule 3 of the rules (see Annex 2) provides that a specific condition (indicative of the seriousness of the matter) must be satisfied but also that the act or omission in question was neither trivial nor justifiably inadvertent and that a fine is a proportionate outcome in the public interest.

13. The new powers to fine ABSs are far in excess of the fining powers which the SRA has exercised in the past. We have therefore previously adopted Financial Penalty Criteria (appendix 1 to the disciplinary rules – see Annex 3) which sets out some high level principles for determining what level of fine is appropriate. In summary, the approach is that the amount of a fine should:

- be proportionate – to the harm done, to the misconduct in question and also to the means of the paying party;
- be likely to deter the repetition of the misconduct by the regulated person and by other regulated persons;
- eliminate any financial gain or benefit which has arisen from the misconduct;
- take account of the intentions, recklessness or neglect of the regulated person;
- take account of aggravating factors, such as failing to correct any harm caused or failing to co-operate with the SRA;
- take account of mitigating factors, such as prompt correction of any harm caused and taking steps to prevent future problems.

14. While the Financial Penalty Criteria (Annex 3) are helpful in setting the overarching principles for arriving at an appropriate sum to fine a regulated person, we feel that fining guidelines which sit underneath these rules will assist decision makers to determine specific figures. We also consider that guidance will maximise

consistency, fairness and transparency and could increase the deterrent value of the financial penalties.

15. We propose that the guidance will be applied to fines imposed under both the 'traditional' law firm regime and the new ABS regime. As there is a £2,000 limit on the SRA's fining powers in respect of the 'traditional' law firm regime, this guidance is currently most relevant to ABSs and those working within ABSs. We have however made a separate proposal that the maximum sum which the SRA can fine traditional law firms and those involved in traditional law firms should be significantly increased. We are currently discussing with the Ministry of Justice (MoJ) what increases, if any, could be made in the short- to medium-term to the SRA's fining powers under the 'traditional' regime and the possible need for changes to primary legislation to achieve longer term reform. Our intention is that one set of indicative guidance would apply to all fines which the SRA has the power to levy in respect of the traditional law firm regime as well as ABSs. While the approach taken in the fining guidance may change depending upon if and how the SRA proposals in respect of its fining powers are taken forward, we are keen to receive your views on our thinking at this stage. As noted above however, the guidance is currently most relevant to the regulation of ABSs.

16. All discussions in this paper and the illustration at Annex 1 assume that a decision maker is satisfied that there has been behavior which requires some level of fine as a regulatory sanction[1]. The purpose of the guidance would be to assist the decision maker in deciding what level of fine is then appropriate.

What form should indicative fining guidance take?

17. We are aware of a variety of approaches to guidelines and guidance on fining levels in other regimes. For example:

- some authorities adopt a very prescriptive approach, where for each type of misconduct which can be envisaged or each rule of the authority the guidance provides a sanction starting point and a list of aggravating and mitigating factors;

- the Office of Fair Trading (OFT) adopts a less prescriptive step-by-step approach to calculating penalties in respect of anti-competitive behaviour. It begins with an initial sum which is calculated by reference to the relevant turnover of the business in question and the seriousness of the conduct. This basic sum is then adjusted to take into account other issues such as mitigating or aggravating factors. The OFT caps its basic fines at 10% of relevant turnover[2] but is currently proposing to increase this to 30%; and

[1] In accordance with Rule 3 of the SRA Disciplinary Procedure Rules (annex 2)

[2] Relevant turnover is the turnover of the undertaking in the relevant product market and relevant geographic market affected by the infringement in the undertaking's last business year.

- the FSA similarly adopts a step-by-step approach which calculates a sum with reference to the nature, impact and seriousness of the matter. The FSA also provide for the removal of profits arising from the conduct in question and discounts.

18. There are some common factors which appear in the majority of regimes which have a framework for determining financial penalties:

19. a set of overarching principles for the calculation of fines - which, as described above, the SRA already in the Financial Penalty Criteria (Annex 3) which form an appendix to its disciplinary rules;

- a method for calculating a 'basic' sum or 'starting point' for a fine, which takes account of the impact and nature of the regulated person's actions;

- a method for adjusting that figure to take account of other relevant factors such as aggravating circumstances, mitigating circumstances and the desire to remove any benefit attained by the regulated person as a result of the conduct.

20. We feel that it is appropriate to include these three factors within the SRA's approach to fining.

21. One of the big challenges posed by the guidance is how to correctly balance the desire to maximise consistency with the desire to retain an appropriate level of flexibility. Flexibility is important because of the wide variety of factual scenarios which SRA decision makers commonly encounter. Our proposal is to adopt a relatively broad and flexible approach to determining financial penalties rather than distinguishing between different types of offences and misconduct. Our proposal is also to direct decision makers towards 'penalty brackets' or bands rather than requiring more prescriptive calculations. We feel that this is particularly important in the context of outcomes-focused regulation.

22. Annex 1 illustrates the proposed form for the guidance. We consider that this would allow for a simple but effective means of determining penalties which is consistent with our enforcement strategy.

Question 1

Do you agree that the SRA should adopt some form of guidance or guidelines to assist decision makers in determining an appropriate sum for financial penalties? Or do you feel that the existing Financial Penalty Criteria (Annex 3) are sufficient?

Question 2

Do you agree that the guidance should be broad rather than attempting to categorise every type of misconduct which could occur in a law firm?

Question 3

Do you agree that a staged process for assessing penalties, by which a basic penalty is arrived at and then adjusted for relevant factors such as mitigation, is sensible? Or do you favour an alternative approach (if so, please tell us about it)?

A three step fining process

23. We propose that decision makers should approach fines in three steps. Annex 1 details how we envisage that this would work:

Step 1 determine a basic financial penalty taking into account the seriousness of the conduct which has been found by the decision maker (including any aggravating factors). This involves:

- assessing the seriousness of the nature of the conduct and assigning this a 'score';
- assessing the impact or potential impact of the conduct and assigning this a 'score'[3];
- adding the 'nature score' to the 'impact score' to determine which penalty bracket the matter should fall into e.g. £500 - £1,000 or £1,000 - £5,000;
- arriving at a specific basic penalty within that bracket, taking into account the principles set out in the Financial Penalty Criteria; including culpability, impact, proportionality and the desire to deter similar conduct in the future by the regulated person or by others.

Step 2 discount the penalty to take account of any mitigating factors such as early and full self-reporting and admission of misconduct or rectifying any harm caused (for example, promptly reimbursing clients for any losses suffered);

Step 3 check that the penalty has removed any profit or gain which has arisen as a result of the conduct and if not then to consider adjusting the penalty accordingly.

24. We discuss these steps and the issues which we are seeking views on in more detail below.

Step 1

How should a decision maker determine a basic penalty?

25. Our aim is to develop a transparent and consistent method of categorising the seriousness of an act or omission which can be applied to a variety of different factual scenarios. This can then be used case by case to guide the decision maker to a broad penalty bracket for the matter, such as £1,000 - £5,000.

26. A number of regulators describe a list of factors which would characterise a certain level of fine. However, some matters may involve low culpability or 'blameworthiness' on the part of the regulated person but cause significant harm. Others might involve a high level of culpability or 'blameworthiness' but cause little harm. This can make it

[3] It is intended that the impact or potential impact could be upon (among other things) clients, others or the public confidence in the regulation of legal services.

difficult to categorise the seriousness of conduct simply by listing a set of characteristics relevant to each penalty bracket. For this reason we are not in favour of such an approach.

27. In order to maximise the proportionality of a fine to both the harm caused and the nature of the conduct, we are considering a more sophisticated approach.

28. As outlined above, 'Step 1' suggests determining a basic financial penalty by 'scoring' (see Step 1(a) of the illustration at Annex 1):

the nature and character of the conduct as either 'standard' or 'serious'; and

the impact or harm of the conduct as low, medium or high.

29. By adding these two scores together, the conduct will fall into one of four penalty bands where a greater accumulative score indicates more serious conduct. We propose to use these four bands to give a broad penalty bracket to the conduct (see Step 1(b) of the illustration at Annex 1). For example (note that the figures used here are for illustration and that there is a discussion below on what level the fining bands in Step 1 should be set at):

Conduct band	Nature and impact score	Penalty bracket
A	3	£500 or £1,000 (in all cases)
B	5	£1,001 to £5,000; or up to a certain percentage of annual domestic turnover
C	7	£5,001 to £25,000; or up to a certain percentage of annual domestic turnover
D	9	£25,001 to £50,000; or up to a certain percentage of annual domestic turnover

30. Once the broad penalty bracket is known it is proposed that the decision maker would use the principles set out in the Financial Penalty Criteria (Annex 3) to arrive at a specific figure for the fine (see Step 1(c) of the illustration at Annex 1).

For example:

In the hypothetical scenario below the member of staff would also be investigated by the SRA, though this is not considered for the purposes of this hypothetical example.

ABC & Co have set procedures for managing, supervising and monitoring staff and financial transactions but the firm discover that in some areas of the firm the procedures are not being followed (contrary to regulatory requirements). Upon investigating further the firm discover that a new member of staff in the Probate department has overcharged some clients large sums of money and that this would have been discovered much sooner had appropriate procedures been consistently applied. The firm contact the SRA, explain that the partner who had previously been in charge of Probate had left the firm some months earlier and volunteer that it had taken too long to re-establish the required controls in that area. The firm immediately repay the monies to clients upon discovering the problem.

In the hypothetical scenario of ABC & Co a decision maker might reasonably conclude (with reference to the bandings set out in the illustration at annex 1) that the character of the conduct by the firm falls short of being serious (a 'nature score' of 1) but that the errors nonetheless had a high impact (an 'impact score' of 6).

By adding the nature score of 1 to the impact score of 6 the decision maker will arrive at an assessment of the overall seriousness of the matter: 7, which equates to a fine within band C. The decision maker is therefore guided that an appropriate penalty bracket for the basic penalty (so before any adjustments) is, on the basis of the illustration at annex 1, between £5,001 and £25,000.

31. This approach would, in our view, provide a consistent process for assessing the seriousness of a regulated person's conduct in a very wide variety of factual scenarios.

32. The main challenge posed by a more sophisticated approach such as this, and the same issue arises with some of the other proposed adjustments to the fine considered in this consultation, is achieving clarity and transparency about how the process operates. The illustration of what fining guidance might look like at Annex 1 includes examples and talks the reader through a step-by-step process. We feel that this will make the guidance sufficiently clear and simple to use but we invite your views on this.

Question 4

Do you favour categorising conduct as a list of characteristics or do you agree that it is sensible to distinguish between the nature of the conduct and the harm caused as proposed in our guidance?

Question 5

Do you feel that the method for assessing the seriousness of the misconduct is clearly set out in the illustration at Annex 1? Do you have any suggestions on how this might be improved?

Linking penalties to the regulated person's income

33. As discussed above, we believe that the fining guidance should include a process which groups cases or allegations into one of four categories depending upon the seriousness of the conduct. In addition to this assessment of the relative seriousness of the matter, we would also like to provide guidance to the decision maker on what penalty should be levied within each penalty bracket.

34. Some regulators calculate what sum should be imposed on the basis of a percentage of the turnover of a business and others by fixed sums regardless of the financial means of the person.

35. We are considering three different methods for determining a basic penalty:

    a) on the basis of fixed monetary sums, i.e. £1,000 or £5,000 etc;

    b) as a percentage of income or turnover, i.e. n% of the annual turnover of a law firm; or

    c) a mixture of a and b.

Fines as fixed sums

36. In designing penalty brackets to guide decision makers, specific sums such as £500–£1,000 and £1,000–£5,000 have the benefit of being very simple to apply. Fixed monetary fines would reduce the risk of time consuming and potentially disproportionate arguments about how to assess the means of a person.

37. However, the financial means of entities within the legal sector do vary substantially. The turnover in England and Wales ('domestic turnover') of the 25 law firms with the highest domestic turnover is in excess of £115 million per firm and the domestic turnover of the 25 law firms with the lowest turnover is less than £1,300 per firm. Guiding decision makers towards penalties which are fixed monetary sums only could potentially give rise to a risk that either:

    - the fines are too low to deter the highest earning firms from misconduct and to maintain public confidence in the regulation of the whole of the legal sector; or

    - the fines are at a level which, while providing adequate deterrence for all firms, are disproportionately high compared to the means of most law firms.

Fines as a percentage of income

38. Though more complex, determining penalties as a percentage of the income or turnover of the regulated person could deter misconduct more widely. It could also maximise the proportionality of fines to the means of regulated persons in individual cases.

39. The impact of determining fines as a percentage of turnover on the perceived fairness of the regime could be viewed in two ways. Looking only at the percentages of the fines levied as compared with turnover of the regulated person, determining all fines on the basis of fixed percentages may appear to be the most fair approach.

However, in practice the sums fined may in some cases be perceived as comparatively high or low. For example:

- a fine for very serious misconduct of 10% of income of a firm with a turnover of £10,000 would result in a relatively small basic penalty or 'starting point' (£1,000). Such a fine would be unlikely to achieve the desired deterrent effect and may damage the public confidence in regulation; and

- a fine for less serious misconduct of 5% of income of a firm with a turnover of £100 million pounds would result in a comparatively large fine (£5 million).

A mixture of fixed penalties and penalties assessed as a percentage of turnover

40. Our preliminary view is that a mixture of fixed penalty bands and penalties as a percentage of turnover if the regulated person is a law firm of greater financial means would be the best option.

41. In the majority of cases, set monetary fines will be appropriate and is a simple way of determining a penalty.

42. However, the guidance could provide for a different method of assessing the penalty where the paying party is a firm of greater means (which would need to be defined). This would allow for a simple process for levying uniform fines in the vast majority of cases but a more tailored approach where there is a risk that a fixed penalty will not have the desired deterrent effect.

43. The illustration at Annex 1 and the table below sets out how this could work (note that the figures used here are for illustration and that there is a discussion below on what level the fining bands in Step 1 should be set at):

44.

Penalty band	Penalty bracket	Basic penalty	Basic penalty as a percentage of turnover if domestic turnover exceeds a certain threshold	Basic penalty scale
A	£500 or £1,000	£500; £1,000.	- -	A1 A2
B	£1,001 to £5,000	£2,000; £3,500; £5,000.	- - 0.5%	B1 B2 B3
C	£5,001 to £25,000	£7,500; £10,000; £15,000 £20,000; £25,000	0.75% 1% 1.5% 2% 2.5%	C1 C2 C3 C4 C5
D	£25,001 - £50,000	£30,000; £35,000; £40,000; £45,000; £50,000.	3% 3.5% 4% 4.5% 5%	D1 D2 D3 D4 D5

45. Our preliminary view is that where a firm is of greater means, decision makers should be guided towards determining penalties as a percentage of turnover rather than assets or profit, for example. The SRA will already have firm turnover information available to it and we consider that this will generally be a very reliable indicator of financial means. However, we recognise that this will not always be the case and the illustration at Annex 1 therefore encourages the decision maker to take into account other factors in assessing financial means if this is necessary to achieve the

overarching aims of the principles set out in the Financial Penalty Criteria (Annex 3). We would welcome your views, however, on whether turnover is the most appropriate starting point for these purposes.

46. Some hypothetical examples may help to illustrate how this approach might work in practice if a 'firm of greater means' were to be defined as, for example, a firm with a domestic turnover in excess of £1 million[4]:

- law firm GHI Co has an annual turnover of £350,000 and a finding of misconduct is made in respect of GHI Co. as a regulated entity. The decision maker concludes that a fine at level C5 is appropriate. As GHI Co is not a 'firm of greater means' (as its annual domestic turnover is less than £1 million), the fixed basic penalty C5 figure of £25,000 is used to guide the decision maker without the need to calculate the fine as a percentage of turnover;

- law firm XYZ LLP has an annual turnover of £5 million and a finding of misconduct is made in respect of XYZ LLP as an entity. The decision maker concludes that a fine at level C5 is appropriate. In this scenario, the turnover of the firm is such that a fine of £25,000 may not represent a credible deterrent against future misconduct. As the turnover of XYZ **exceeds** £1 million the decision maker would be guided to consider a basic penalty of 2.5% of the firm's annual turnover i.e. £125,000.

47. This approach would allow one consistent method of assessing financial penalties, with exceptions where appropriate.

48. We are considering whether it is appropriate to provide for an adjustment of the percentage of turnover to be used where firms are of greater means. When calculating sums (practising fees and Solicitors Indemnity Fund contributions) on the basis of turnover in the past the SRA has tapered the percentage used. For example, a 2.5% fine may be tapered to a lesser percentage where the firm's turnover exceeds £25 million. This, or a cap, may be appropriate to address likely stakeholder concerns that fines levied in respect of firms of greater means would be disproportionately high. Again, we welcome your views on this.

49. The illustration at Annex 1 also includes draft wording which would remind decision makers to have regard to whether regulated individuals or entities are of low financial means and to adjust the penalty accordingly if appropriate. It may be beneficial to go further than this however and to guide decision makers not to impose a penalty which represents more than a certain percentage of the firm's turnover.

50. We do not favour determining penalties for individuals (such as solicitors) as a percentage of income as we consider that fixed monetary sums will provide adequate deterrence. We also consider the time involved in calculating penalties as a percentage of an individual's income could be disproportionate.

[4] This would meant that approximately one third of law firms would be classed as firms of 'greater means'.

51. More broadly, we do not propose to distinguish between fining entities and individuals as a significant number of ‘firms‘ regulated by the SRA are sole practitioner solicitors.

Question 6

What do you think is the best way to determine financial penalties:

- as fixed monetary sums;
- as a percentage of income or turnover;
- a mixture of the two as described above; or
- some other way (please provide details).

Question 7

Do you agree that a distinction should be made between firms of greater means and other firms?

If so, what level of domestic turnover do you think should be used to distinguish firms of greater means from other firms?

Or do you think that there should be different categories which taper the percentage applied?

Question 8

Do you agree that one approach to fines should be adopted for firms and individuals?

Question 9

Do you agree with the proposal that individuals such as solicitors should not usually be fined a percentage of their income?

The level of the basic penalties

52. Setting an appropriate level for penalties is critical to our enforcement strategy and in particular to delivering a credible deterrence against conduct which poses a risk to clients and others.

53. With the exception of those cases where there has been substantial gain from the conduct by the regulated person which the SRA proposes to remove, it is anticipated that the basic penalty will be highly determinative of the broad level of the penalty to be imposed. Setting the level of fines for determining the basic penalty in Step 1 (i.e. before any adjustments for mitigating factors or improper gain or profit form the conduct) is therefore a very important policy decision.

The position in the Solicitors Disciplinary Tribunal

54. In 2011 in the Solicitors Disciplinary Tribunal (SDT):

- the mean average fine was £7,471 and the median average fine was £5,000;

- the highest fine was £35,000;
- the highest combined fine and costs order was £82,500.

55. We understand the highest fine levied by the SDT in 2012 was £50,000.

56. The fact the Legal Services Act has created a separate disciplinary regime for ABSs means that there is a risk of perceived inconsistency between the firms regulated as an ABS (fined by the SRA) and those regulated as 'traditional' law firms (generally speaking, fined by the SDT).

57. We have considered whether it would be appropriate to seek to align the fines levied by the SRA in respect of ABSs with those levied by the SDT under the 'traditional' law firm regime in an attempt to minimise these risks. However, there are a number of problems with this approach, including that:

- the costs incurred under the ABS regime are likely to be considerably lower than those incurred under the traditional law firm regime, which would defeat any attempt to 'level the playing field' in terms of the financial impact of a fine; and
- while the SDT has recently published a broad position on how it will approach penalties (PDF 14 pages, 121K), there is not a framework as such which could be adopted by the SRA to determine penalties.

58. Our preliminary view is that the inherent differences between the current 'traditional' law firm and ABS fining regimes means that it would not be beneficial to seek to align the SRA's fining levels generally with those of the SDT at this stage. We feel that attempting to do so, without more significant reform of how the two regimes co-exist (see below), would not resolve the issues. For example, a fine of £5,000 in respect of an ABS would generally be resolved much sooner and with less legal cost being incurred than in respect of a traditional firm at the SDT, even if the same sum fine were levied[5]. Though in individual cases this may give rise to stakeholder concern, the two fining regimes are distinct. We consider that our focus should therefore be on developing the most appropriate regime for the SRA. Depending upon how the proposals in this paper develop, we will also consider ways to minimise inconsistency such as drawing the attention of the SDT to the SRA's approach to determining the level of a fine when the SDT is considering a fine under the 'traditional' regime.

59. The Legal Services Board (LSB) is currently reviewing appeal mechanisms and the effectiveness of enforcement processes for all approved regulators more generally. We have also been in discussions recently with the MoJ, LSB, The Law Society and SDT regarding our proposal to increase SRA fining powers under the 'traditional' law firm regime. We are keen to continue engagement with the LSB and the SDT in this area to explore how the differences between the two regimes can best be mitigated. Our preferred option would be for the SRA to have greater fining powers in respect of the 'traditional' regime and apply one approach to fines levied in respect of all

[5] An ABS would have a right of appeal to the SDT (which would also apply the SRA Financial Penalty Criteria) if it were dissatisfied with the outcome.

regulated persons. We feel that this would address these risks and provide for a more efficient, effective and proportionate means of addressing conduct which can appropriately be dealt with by a fine.

60. However, it is not yet clear if and when the SRA's proposals for increased fining powers under the 'traditional' regime will be taken forward. In the meantime, we are keen to develop our thinking in this area and to work towards an effective, efficient and proportionate fining regime within the SRA, even if the approach is largely limited to the regulation of ABSs for the moment. The approach to the guidance may need to change however depending upon the outcome of current discussions and reviews.

The position in other regulatory regimes

61. We have considered the levels of financial penalties imposed in other regulatory regimes and have noted that these vary dramatically. In some regulatory regimes multi-million pound fines are common and in others very modest fines are imposed. While considering the position in other regimes has been helpful and informative, we have not been heavily influenced by the approach in any one regime.

Our approach

62. Instead, we have identified three objectives for the basic penalty bands. These are that basic penalties should be at such a level which generally speaking are likely to:

- deter repetition of the conduct by regulated persons;
- be proportionate to the risks posed by, the nature and the impact of the conduct which the SRA encounters; and
- be proportionate to the means of the persons which the SRA regulates.

63. These objectives are heavily informed by the existing Financial Penalty Criteria (Annex 3).

64. Provided that the basic penalty bands are consistent with these objectives, we believe that the decision maker will be able to exercise his or her discretion to arrive at an appropriate penalty in each case.

65. We would welcome your views on whether the following penalty ranges as a 'starting point' in Step 1 of the guidance will achieve the three objectives identified above:

a) fines of between £250 and £25,000 as a starting point;

b) between £500 and £50,000 as a starting point;

c) between £1,000 and £100,000 as a starting point.

66. The illustration at Annex 1 uses (b) as the suggested fining range where the regulated person is not a firm of 'greater means'.

67. If the SRA is to determine penalties as a percentage of turnover for firms of 'greater means' then a corresponding range of percentages would be needed. We would welcome your views on whether the following penalty ranges as a percentage of turnover as a 'starting point' in Step 1 of the guidance will achieve our objectives:

    a) up to 2.5% of domestic turnover;

    b) up to 5% of domestic turnover; or

    c) up to 10% of domestic turnover.

68. By determining basic penalties by reference to the turnover of a firm in appropriate circumstances as well as fixed monetary sums we consider that proportionality to the means of the paying party and credible deterrence can be achieved.

69. However, as discussed above, consideration is also being given to whether a form of tapering, cap or similar adjustment should be included in the guidance to adjust the level of a basic penalty where a regulated person is of especially low or high means.

70. We welcome your views on the options which we are considering for setting the basic penalty levels.

Question 10

What do you feel is the appropriate range within which the SRA should impose fines on regulated persons taking into account the SRA's three objectives in this respect?

Step 2

Discounting basic penalties to account for mitigating factors

71. 'Step 1' of the guidance, where the decision maker arrives at a basic penalty for the conduct in question, will include consideration by the decision maker of aggravating factors. 'Step 2' will therefore encourage decision makers to consider whether the basic penalty arrived at in 'Step 1' should be discounted in recognition of mitigating factors.

72. We are considering allowing discounts of up to 40% in financial penalty matters where the regulated person has:

    - admitted the misconduct fully and reported it to the SRA; and
    - has taken prompt action to remedy any loss or inconvenience caused to others by the conduct in question.

73. The proposed approach is illustrated at Annex 1.

74. The purpose of these provisions would be to encourage:

    - early and open reporting of potentially harmful conduct to the SRA;

- early acceptance that conduct constitutes a failure to meet the regulatory requirements; and

- the prompt remedying of any harm which has been caused, by immediately repaying any monies which have been lost by clients, for example.

75. This could lead to faster outcomes for both the SRA and also consumers, in that regulated persons would mitigate and minimise the impact of their conduct at the earliest stage.

76. We are conscious that there are conduct obligations placed upon regulated persons to report to the SRA misconduct or a serious failure to meet regulatory requirements. There is a policy consideration therefore as to whether the SRA should discount penalties where a matter has been self-reported as arguably this is the minimum standard required by the regulatory requirements. However, it is possible that some regulated persons will attempt to report matters to the SRA as a potential problem without actually admitting that the conduct in question was a failure to meet the regulatory requirements. The draft wording proposed in the illustration at Annex 1 only proposes to regard self reporting as a mitigating factor if the conduct in question is admitted.

77. Discounting financial penalties in this manner may also result in information being provided to the SRA, and in turn public interest risks being mitigated, which would not otherwise have been the case.

78. Overall, our preliminary view is that there should be a process for discounting penalties where a regulated person fully and openly self-reports an issue but we would welcome your views on this.

79. The illustration at Annex 1 sets out in a little more detail how we believe that discounts could operate.

Question 11

Do you agree that the SRA should discount financial penalties to take account of mitigating factors? In particular, do you agree that the SRA should discount penalties for:

- the early reporting and full admission of conduct?

- promptly correcting any harm which has been caused?

Question 12

Do you consider that the percentages proposed for discounts are set at an appropriate level? Or do you consider that some or all of the percentages set out in the illustration at Annex 1 should be higher or lower?

Step 3

Removing any profit or other gain arising from the misconduct

80. The SRA's existing Financial Penalty Criteria (Annex 3) provide that, as far as practicable, a financial penalty should remove any benefit or gain which would otherwise arise from the conduct in question. This approach is consistent with good regulatory practice and in particular the penalty principles set out by Professor Richard B. Macrory in his 2006 report to the government entitled 'Regulatory Justice: Making Sanctions Effective' — http://www.berr.gov.uk/files/file44593.pdf (PDF 133 pages, 463K)

81. This approach is reflected in the illustration at Annex 1.

82. For example, if an individual improperly charges monies to clients then one consideration for the decision maker should be that the individual should not normally be permitted to profit from that improper conduct. If the improper charges have not been repaid to clients then the decision maker would be encouraged to include a sum equivalent to the improper gains made within the financial penalty.

83. We anticipate the highest fines which we will impose will be where we are seeking to remove improper profits or gains made by the regulated person as a result of misconduct.

Question 13

Do you have any comments on our proposed approach to removing profit or gain which has arisen as a result of misconduct?

Diversity and inclusion

84. We believe the guidance will have a positive impact in that it will provide a consistent and transparent approach to levying financial penalties, within the existing regulatory framework for doing so.

85. We do not anticipate at this stage that the publication of indicative fining guidance will have a negative impact in terms of diversity and inclusion considerations. However, we are conscious that:

- fines paid by small- and medium-sized law firms may represent a higher percentage of the turnover of the firm that for larger law firms (in common with all fining regimes based in whole or part on using fixed sums rather than a percentage of income); but that also
- fines paid by larger firms, if calculated as a percentage of turnover, will in some cases be significantly higher than those for medium and small firms.

86. We feel the proposals made in this consultation will provide for a consistent and fair fining regime and will not have a negative impact in terms of equality and diversity. However, we are very keen to receive your feedback on the potential impact of the proposed approach and how this might be mitigated. This will assist us in assessing the impact of the proposals before guidance is finalised and planning how best to review and monitor the impact of the guidance once in place.

Question 14

Do you consider that guidance of this nature is likely to have a negative impact upon a specific section of the legal service market and in particular a specific equality strand?

How to respond

You can respond to this consultation in a variety of ways.

Complete an online form

The quickest way to submit your response is to use our online questionnaire. You can save your progress through the survey by using the save and continue option on the top page and supplying an email address. We recommend this option if you are an individual respondent with well-formed views and can state them concisely.

Go to the online questionnaire https://forms.sra.org.uk/s3/indicative-fining-guidance

Download and complete an electronic form

Download a Consultation questionnaire form and an About you form , which can be completed offline, at your convenience, using MS Word. We recommend this option to anyone who plans to deliberate over their response at length, needs to discuss their views with colleagues or wishes to include extensive comments or arguments on specific issues.

1. Download a consultation questionnaire form
2. Save the files locally—before and after completing them
3. Return your completed forms as email attachments to consultation@sra.org.uk.

Download the forms

- www.sra.org.uk/documents/SRA/consultations/about-you-financial-penalties.doc
- www.sra.org.uk/documents/SRA/consultations/consultation-questionnaire-financial-penalties.doc

Download and submit a printed form

If you wish to submit your response by post, please follow steps 1 and 2 above. Then, print your completed forms and send them to:

Legal Policy
Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Send us an email or letter

If you prefer not to use our forms, simply detail your comments or concerns in an email or letter. Send your email to consultation@sra.org.uk, or post your letter to the address provided above.

Please ensure that, in your email or letter, you identify yourself and state on whose behalf you are responding (unless you are responding anonymously), identify the consultation you are responding to, and if you wish us to treat any part or aspect of your response as confidential, state this clearly. We will generally assume that a response can be published unless we are informed that the response or any part of it is confidential.

Deadline for this consultation

Please send your response by 19 April 2013.

List of consultation questions

Question 1

Do you agree that the SRA should adopt some form of guidance or guidelines to assist decision makers in determining an appropriate sum for financial penalties? Or do you feel that the existing Financial Penalty Criteria (Annex 3) are sufficient?

Question 2

Do you agree that the guidance should be broad rather than attempting to categorise every type of misconduct which could occur in a law firm?

Question 3

Do you agree that a staged process for assessing penalties, by which a basic penalty is arrived at and then adjusted for relevant factors such as mitigation, is sensible? Or do you favour an alternative approach (if so, please tell us about it)?

Question 4

Do you favour categorising conduct as a list of characteristics or do you agree that it is sensible to distinguish between the nature of the conduct and the harm caused as proposed in our guidance?

Question 5

Do you feel that the method for assessing the seriousness of the misconduct is clearly set out in the illustration at Annex 1? Do you have any suggestions on how this might be improved?

Question 6

What do you think is the best way to determine financial penalties:

- as fixed monetary sums;
- as a percentage of income or turnover;
- a mixture of the two as described above; or
- some other way

Question 7

Do you agree that a distinction should be made between firms of greater means and other firms?

If so, what level of domestic turnover do you think should be used to distinguish firms of greater means from other firms?

Or do you think that there should be different categories which taper the percentage applied?

Question 8

Do you agree that one approach to fines should be adopted for firms and individuals?

Question 9

Do you agree with the proposal that individuals such as solicitors should not usually be fined a percentage of their income?

Question 10

What do you feel is the appropriate range within which the SRA should impose fines on regulated persons taking into account the SRA's three objectives in this respect?

Question 11

Do you agree that the SRA should discount financial penalties to take account of mitigating factors? In particular, do you agree that the SRA should discount penalties for:

- the early reporting and full admission of conduct?
- promptly correcting any harm which has been caused?

Question 12

Do you consider that the percentages proposed for discounts are set at an appropriate level? Or do you consider that some or all of the percentages set out in the illustration at Annex 1 should be higher or lower?

Question 13

Do you have any comments on our proposed approach to removing profit or gain which has arisen as a result of misconduct?

Question 14

Do you consider that guidance of this nature is likely to have a negative impact upon a specific section of the legal service market and in particular a specific equality strand?

ANNEX 1

DRAFT: Guidance on the SRA's Approach to Financial Penalties

1. This guidance should be read in conjunction with the SRA's Enforcement Strategy ('the strategy') and the SRA Disciplinary Procedure Rules 2011 ('the disciplinary rules'), in particular appendix 1 of the rules, the Financial Penalty Criteria.

2. Financial penalties provide a flexible method of deterring misconduct by those who are directed to pay them but also to others who may be considering similar conduct. The disciplinary rules set out the criteria for when a fine is appropriate following a finding of misconduct by a regulated person, including that a fine must be a proportionate outcome in the public interest. The Financial Penalty Criteria in the disciplinary rules sets out the key principles which determine what level of fine will be appropriate.

3. This guidance sits underneath the rules and criteria and is intended to provide a practical approach for decision makers to determine financial penalties which fulfil the requirements of the Financial Penalty Criteria. Decision makers ultimately retain discretion to determine an appropriate penalty in any individual case having regard to all of the circumstances and in particular in order to achieve the objectives of the Financial Penalty Criteria. This is broad guidance and should not be interpreted strictly as if it were legislation.

4. This guidance applies to fines imposed upon individuals and firms ('traditional' and ABS), though consideration may be given by decision makers to the means of the paying party in accordance with the Financial Penalty Criteria.

A three step fining process

5. To maximise consistency and transparency, there is an indicative three step process for the practical determination of a financial penalty:

   Step 1 – determining a basic penalty taking into account the seriousness of the conduct;

   Step 2 – adjusting the penalty to account for mitigating factors;

   Step 3 – eliminating profit or gain made by the regulated person as a result of the conduct.

   The three step process is informed by the principles set out in the Financial Penalty Criteria. It follows that the decision maker is already satisfied that the conduct of the regulated person meets the test set out in the disciplinary rules[6] as to whether a financial penalty is appropriate. The three step process is concerned only with the level of penalty.

[6] The test is set out in Rule 3(1) of the SRA Disciplinary Rules 2011

6. All fines are subject to the limits placed on the SRA's fining powers in law from time to time.

Step 1 – Determining the basic penalty

Step 1(a) – assessing the seriousness of the misconduct

The first step is to determine the basic penalty which is appropriate taking into account the seriousness of the misconduct. This is done firstly by assessing the nature of the conduct as either standard or serious and its impact as low, medium or high:

Nature of the conduct by the regulated person	Nature score
Standard – the regulated person will have co-operated fully in the investigation(s) and the conduct or omission will have not: • been intentional or arisen as a result of recklessness or gross negligence; • continued after it was known to be improper; and • formed, or formed part of, a pattern of misconduct.	1
Serious – including circumstances where the regulated person has failed to co-operate in the investigation(s) or where the conduct: • had been intentional or arisen as a result of recklessness or gross negligence; • continued after it was known to be improper; or • formed (or formed part of) a pattern of misconduct.	3

Harm or risk of harm, including to clients or others	Impact score
Low – including: • causing inconvenience but no loss and having no other direct material impact; • causing minimal loss or having a minimal impact;	2

Medium – including: • causing a moderate loss; • having a moderate impact; • having the potential to cause moderate loss or to have a moderate impact;	4
High – including: • causing a significant loss or having a significant impact; • causing significant loss or harm to a vulnerable person; • having the potential to cause significant loss or to have a significant impact;	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.

Fines imposed upon individuals will generally be assessed as a fixed monetary sum. If a fine is to be imposed upon a firm with annual domestic turnover of £1 million or more ('a firm of greater means') then the decision maker is guided to determine the penalty as a percentage of annual domestic turnover[7].

[7] The suggested approach for firms with an annual domestic turnover of £1 million or more is intended to assist the decision maker in determining a penalty which (in accordance with the Financial Penalty Criteria annexed to the SRA Disciplinary Procedure Rules 2011) 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 and (ii) be proportionate to the means of the person directed to pay the penalty.

The term 'annual domestic turnover' is intended to refer to the most recent figure which the SRA holds prior to the matter being submitted to the first instance decision maker as to the turnover in England and Wales of the body. This figure will generally be a good indicator as to the financial means of the firm in question. However, this will not always be the case and the decision maker may consider other data and other means of determining the basic penalty in step 1 if there is a risk that the approach outlined in this guidance will not achieve the objectives of the Financial Penalty Criteria. For example, assets, global turnover, average turnover over a number of years, yearly expenditure and the turnover of any parent undertaking may indicate that a firm is of quite different means to that which is indicated by reference only to the firm's most recent annual domestic turnover. Ultimately the decision maker may deviate from the three step approach if to do so would better achieve the aims of the Financial Penalty Criteria.

Conduct band	Nature and impact score	Penalty bracket
A	3	£500 or £1,000 (in all cases)
B	5	£1,001 to £5,000; or up to a certain percentage of annual domestic turnover
C	7	£5,001 to £25,000; or up to a certain percentage of annual domestic turnover
D	9	£25,001 to £50,000; or up to a certain percentage of annual domestic turnover

For example:

ABC & Co have set procedures for managing, supervising and monitoring staff and financial transactions but the firm discover that in some areas of the firm the procedures are not being followed (contrary to regulatory requirements). Upon investigating further the firm discover that a new member of staff in 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 contact the SRA, explain that the partner who had previously been in charge of Probate had left the firm some months earlier and volunteer that it had taken too long to re-establish the required controls in that area. The firm immediately repay the monies to clients upon discovering the problem.[8]

In the hypothetical scenario of ABC & Co a decision maker might reasonably conclude that the character of the conduct by the firm falls short of being serious (a 'nature score' of 1) but that the errors nonetheless had a high impact (an 'impact score' of 6). By adding the nature score of 1 to the impact score of 6 the decision maker will arrive at an assessment of the overall seriousness of the matter: misconduct band C. The decision maker is therefore guided that an appropriate penalty bracket for the basic fine is between £5,001 and £25,000. If annual turnover of ABC and Co is in excess of £1 million then the decision maker should consider whether a fine determined as a percentage of the firm's UK turnover is more appropriate as otherwise the fines in this bracket may not have the desired deterrent effect.

8 For the purposes of this guidance consideration is only given to the conduct of the firm ABC & Co. In the hypothetical scenario provided the member of staff would also be investigated by the SRA.

Step 1(c) – arriving at a specific figure for the basic penalty

Once the misconduct grade has been ascertained and the decision maker has arrived at a broad penalty bracket (such as £5,000–£25,000), the decision maker should determine a specific basic penalty within that bracket. In order to maximise consistency and fairness, decision makers are encouraged to select a specific basic penalty in accordance with the simple figures below:

Penalty band	Penalty bracket	Basic penalty	Basic penalty as a percentage of turnover if domestic turnover exceeds a certain threshold	Basic penalty scale
A	£500 or £1,000	£500;	-	A1
		£1,000.	-	A2
B	£1,001 to £5,000	£2,000;	-	B1
		£3,500;	-	B2
		£5,000	0.5%	B3
C	£5,001 to £25,000	£7,500;	0.75%	C1
		£10,000;	1%	C2
		£15,000	1.5%	C3
		£20,000;	2%	C4
		£25,000	2.5%	C5
D	£25,001 to £50,000	£30,000;	3%	D1
		£35,000;	3.5%	D2
		£40,000;	4%	D3
		£45,000;	4.5%	D4
		£50,000	5%	D5

In determining whether conduct is appropriate for a fine towards the lower, mid or upper part of a penalty bracket, decision makers should be guided by the principles set out in the Financial Penalty Criteria in the disciplinary rules. In particular the decision maker should consider:

- **the culpability of the regulated person** – deliberate or grossly reckless conduct will, for example, be liable to fines at the higher end of a penalty bracket;

- **the impact of the conduct and any harm caused** – similarly the greater the impact or harm caused (to clients or to others) the more likely it is that a fine at the higher end of a penalty bracket would be appropriate;

- **proportionality to the means of the paying party**[9] – if a regulated person is of low means then a lower than usual basic penalty may be appropriate. This should be balanced however with the desire for a penalty to act as a credible deterrent against misconduct by others and should not be interpreted as meaning that the regulated person must have the means readily available to pay a penalty; and

- **achieving credible deterrence** – penalties should be of such an amount that they are capable of deterring future misconduct by the person directed to pay and by others who may be engaged in similar conduct.

In the case of ABC and Co, a decision maker on the full facts may conclude that a basic penalty of £15,000, for example, is appropriate (assuming that ABC and Co is not a 'firm of higher means').

Step 2 – Adjusting the penalty to account for mitigating factors

Having determined a basic penalty (which includes consideration of aggravating factors), the decision maker is encouraged to assess all of the circumstances to decide whether it is appropriate to reduce this sum to take account of mitigating factors. The decision maker will not generally discount a basic penalty by a sum of more than 40% or to an extent which, on the facts of the case, would otherwise be contrary to the objectives of the Financial Penalty Criteria.

Some examples of mitigating factors and guidelines for discounts if such factors are present are set out below.

[9] Failure by a regulated person to provide information as to financial means where the process for doing so under the SRA Disciplinary Rules is followed may also be taken into account more generally – see paragraph 6 of the Financial Penalty Criteria.

Discounting the basic penalty for an early admission of the misconduct

The decision maker may discount the basic penalty for early admission as follows[10]:

- up to 25% where the misconduct is fully and frankly reported by the regulated person to the SRA before any investigation has been disclosed and the misconduct is expressly admitted by that regulated person at the time of reporting or immediately afterwards;

- up to 20% where the misconduct is expressly admitted by the regulated person within 6 weeks of the issue coming (formally or informally) to their attention;

- up to 15% where the misconduct is expressly admitted by the regulated person before the matter is referred to the decision maker.

Discounting the basic penalty for remedying harm caused

The decision maker may discount the basic penalty by the amounts specified below where the harm is corrected by the regulated person or, a scheme satisfactory to the SRA is implemented to do so, within the period specified below[11]:

- within 6 weeks of the harm coming to the attention of the regulated person (formally or informally) or sooner – up to 25%;

- before the matter is referred for adjudication – up to 20%.

In the hypothetical scenario of ABC and Co, the decision maker might conclude on the facts that the basic penalty of £15,000 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 basic penalty would be adjusted to £9,000.

Step 3 – removing any benefit arising from the misconduct

The final step is to consider whether the penalty arrived at in steps 1 and 2 will adequately remove any financial gain or benefit arising from the misconduct on the part of the regulated person. If not, the decision maker should consider increasing the penalty to such a level which also achieves this. This approach is consistent with the requirements of the Financial Penalty Criteria and the principles of better regulation.

This step is intentionally placed at the end of the process to ensure that the principle of removing any benefit arising from misconduct is not diluted by any discounts which may be applied for mitigating factors, such as prompt admission.

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[10] The discounts outlined in the bullet points which immediately follow are not cumulative and the recommended maximum discount of the basic penalty for early admission alone is 25%

[11] The discounts outlined in the bullet points which immediately follow are not cumulative and the recommended maximum discount of the basic penalty for remedying harm caused alone is 25%.

In the hypothetical scenario of ABC & Co, the firm have already repaid the monies (which they might otherwise have benefited from) to clients. As such the three step fining process would be complete and a penalty of £9,000 would be imposed.

Annex 2

Rule 3 Disciplinary powers

3.1 The circumstances in which the SRA may make a disciplinary decision to give a regulated person a written rebuke or to direct a regulated person to pay a penalty are when the following three conditions are met:

(a) the first condition is that the SRA is satisfied that the act or omission by the regulated person which gives rise to the SRA finding fulfils one or more of the following in that it:

(i) was deliberate or reckless;

(ii) caused or had the potential to cause loss or significant inconvenience to any other person;

(iii) was or was related to a failure or refusal to ascertain, recognise or comply with the regulated person's professional or regulatory obligations such as, but not limited to, compliance with requirements imposed by legislation or rules made pursuant to legislation, the SRA, the Law Society, the Legal Ombudsman, the Tribunal or the court;

(iv) continued for an unreasonable period taking into account its seriousness;

(v) persisted after the regulated person realised or should have realised that it was improper;

(vi) misled or had the potential to mislead clients, the court or other persons, whether or not that was appreciated by the regulated person;

(vii) affected or had the potential to affect a vulnerable person or child;

(viii) affected or had the potential to affect a substantial, high-value or high-profile matter; or

(ix) formed or forms part of a pattern of misconduct or other regulatory failure by the regulated person;

(b) the second condition is that a proportionate outcome in the public interest is one or both of the following:

(i) a written rebuke;

(ii) a direction to pay a penalty; and

(c) the third condition is that the act or omission by the regulated person which gives rise to the SRA finding was neither trivial nor justifiably inadvertent.

3.2 Where the SRA has decided to direct a regulated person to pay a penalty:

(a) in considering the level of penalty to direct the SRA shall take into account the financial penalty criteria in appendix 1 to these rules; and

(b) the penalty shall not exceed the maximum permitted by law.

Annex 3

Financial Penalty Criteria (Rule 3.2)

1 In this appendix, the term "misconduct" shall mean conduct or behaviour resulting in an SRA finding.

2 In deciding the amount of a financial penalty, the SRA will take into account all relevant circumstances, including that any financial penalty should, so far as practicable:

(a) be proportionate to the misconduct;

(b) be proportionate to any harm done;

(c) be of an amount that is likely to deter repetition of the misconduct by the person directed to pay the penalty and to deter misconduct by others;

(d) eliminate any financial gain or other benefit obtained as a direct or indirect consequence of the misconduct;

(e) be proportionate to the means of the person directed to pay it;

(f) take into account the intent, recklessness or neglect that led to the misconduct;

(g) take into account any mitigating or aggravating circumstances; and

(h) take into account indicative guidance published by the SRA from time to time.

3 Aggravating circumstances include:

(a) failure to correct, or delay in correcting, any harm caused as a result of the misconduct;

(b) failure to co-operate with the SRA investigation or the investigation of any other regulator or ombudsman;

(c) failure to admit, or delay in admitting, any misconduct;

(d) that the regulated person has been the subject of other findings by the SRA, the Tribunal, or any other approved regulator or the appellate body.

4 Mitigating circumstances include:

(a) prompt correction of any harm caused as a result of the misconduct;

(b) prompt admission of any misconduct;

(c) taking steps to prevent future misconduct.

5 When considering a regulated person's means the SRA shall take into account:

(a) all relevant information of which the SRA is aware; and

(b) any statement of means, verified by a statement of truth, which has been provided by the regulated person.

6 The SRA may take into account in considering a regulated person's means any failure to provide a statement of means following a reasonable request by the SRA to do so under rule 8(1).