

SRA BOARD

29 April 2025

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**Financial Penalties: Economic Crime and Corporate Transparency Act
2023**

Reason for paper	<p>This paper updates the Board on work to develop technical changes to our fining guidance relating to the Economic Crime and Corporate Transparency Act 2023 (ECCTA), as an interim measure, to enable us to implement the legislation using our existing policy framework.</p> <p>It also seeks the Board’s approval to implement policy changes related to:</p> <ul style="list-style-type: none"> • the use of global turnover to calculate financial penalties for firms • to our approach to offences involving convictions for driving with excess alcohol.
Recommendations	<p>The Board is asked to:</p> <ol style="list-style-type: none"> a) agree that we make technical changes to our financial penalties guidance relating to ECCTA and note our intention to consult with key stakeholders on these changes (paragraphs 14 to 18) b) agree that going forward we use domestic turnover as the basis of all firm fines where this is available, and – in any event - that we do not use global turnover as the basis for determining an appropriate fine (paragraphs 19 to 24) c) agree that we implement our consultation proposal to no longer issue financial penalties in relation to misconduct involving driving with excess alcohol (drink driving), save in exceptional circumstances (paragraphs 25 to 32).
Previous Board and committee consideration	<p>On 4 June 2024 the Board considered our intention to consult on proposed reforms to our financial penalties framework and our proposals. The Chair subsequently approved the consultation for publication.</p> <p>The Board discussed the responses to this consultation at its workshop on 25 February 2025. The Board noted the feedback from stakeholders, and that further work</p>

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	<p>and another consultation would be needed before comprehensive changes to the regime could be made. The Board also supported plans to work with the Solicitors Disciplinary Tribunal (SDT) which was reviewing its own sanctions framework to ensure that in so far as possible the two schemes were complementary.</p> <p>The Board also asked us to consider whether there are interim changes that could be made to give effect to the new fining powers under ECCTA, pending a more comprehensive update of the regime.</p> <p>At its 8 April workshop, the Board discussed our intended approach to make technical changes to existing guidance which would enable us to move more quickly on ECCTA.</p>
Next steps	<p>Subject to the Board's approval, we will consult with key stakeholders on the technical changes to our financial penalties guidance in the coming weeks, before seeking approval from the Legal Services Board (LSB). In relation to drink driving, we will publish an updated Topic Guide which will set out our approach. These revisions will also involve minor consequential changes to the Enforcement Strategy.</p> <p>Subject to Board approval, we will publish an update on our financial penalties work to set out our intention to make these technical changes to our guidance as an interim step ahead of a second consultation on our wider reforms later in the year. We will use this update to signal our intention to no longer consider global turnover as a metric to calculate an appropriate penalty for a firm, as well as implement our approach to no longer issue financial penalties for offences relating to drink driving, save in exceptional circumstances.</p>

If you have any questions about this paper please contact: Aileen Armstrong, Executive Director, Strategy, Innovation and External Affairs

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Financial Penalties: Economic Crime and Corporate Transparency Act 2023

Summary

- 1 At its workshop on 25 February, the Board discussed the responses to our 2024 consultation on proposed changes to the financial penalties framework. The Board supported plans to work with the Solicitors Disciplinary Tribunal (SDT) to explore the extent to which we can achieve alignment between our respective regimes which will mean delaying our further consultation on reforms to our financial penalties framework to later in the year. The Board asked us to consider whether there were any interim steps we could take to be able to impose higher fines as permitted by the Economic Crime and Corporate Transparency Act 2023 (ECCTA) more quickly.
- 2 At its workshop on 8 April, the Board discussed our intended approach to make limited technical changes to our financial penalties guidance. This is as an interim step ahead of wider reforms to the financial penalties framework, which we will discuss further with the SDT and which will require a further, more comprehensive, consultation exercise. The Board discussed our approach to engagement on these changes.
- 3 This paper sets out our proposed approach in more detail and seeks the Board's approval of that approach. It also sets out our proposed final positions and seeks the Board's approval of our approach to convictions arising from drink driving and to using global turnover as the basis of calculating fines for firms, following consultation on both of these matters.

Background

- 4 Between June and September 2024, we conducted a consultation on revised guidance for decision-makers on our approach to imposing financial penalties. We developed the 2024 consultation to reflect the introduction of ECCTA, which removes the limit on our fining powers for certain offences relating to economic crime. But we also wanted to take account of our experience of operating the existing penalties framework since May 2023. We are concerned that the current framework does not always deliver decisions which are consistent and of a sufficient level to deter misconduct and command public trust and confidence in the profession.
- 5 Our consultation proposals prompted detailed and critical comments from individual solicitors, firms and their representative bodies. Having reflected on points made by respondents, we are working on a revised package of proposals.
- 6 At its workshop on 25 February 2025, the Board supported plans to work with the SDT to explore the extent to which we can achieve alignment between its sanctions framework and our financial penalties framework, as we both seek to develop our respective frameworks.

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- 7 As this will mean delaying our own further consultation on our financial penalties regime to later this year, the Board asked us to consider whether we could take more immediate action to be able to impose higher fines as permitted by ECCTA, that has been in force since 4 March 2024.
- 8 At its workshop on 8 April 2025, the Board discussed our proposed approach to make limited technical changes to our guidance enabling us to impose higher fines under ECCTA using our existing financial penalties framework. This is in advance of consulting on wider changes to the penalties framework later this year.
- 9 We have discussed our intended approach with staff at the LSB. They will need to take a definite view once we submit our application, but agree that as long as our changes are limited to those necessary to give effect to the change in legislation (the enactment of ECCTA), it is likely to be suitable to be approved through an exemption to its formal process.
- 10 Subject to the Board's agreement to our proposed approach, we will consult key stakeholders on our proposed technical changes to the guidance including: the Law Society (TLS); the City of London Law Society (CLLS); the SDT and several local law societies in both England and Wales. We will then finalise the guidance and seek approval from the LSB before implementation. If the LSB determines that the changes we are making to the guidance are not suitable to be approved through an exemption to its formal process, we would instead submit a full application.
- 11 Our guidance on financial penalties guides decision makers to determine the appropriate financial penalty for a firm as a percentage of that firm's annual domestic turnover. However, our guidance sets out that in exceptional circumstances, we can use an alternative metric. The guidance does not elaborate on what such an alternative metric might be. One of our proposed reforms to our financial penalties guidance, on which we consulted in 2024, was to publish case studies to clarify when we might use global turnover as a basis of calculating a fine for a firm. Having reflected on the feedback provided by respondents, we do not consider we should proceed with this proposal. When we implement the technical changes to our financial penalties guidance, we should take the opportunity to clarify that, going forwards, we will use domestic turnover as the basis of all firm fines where this is available and – in any event – we will not use global turnover as the basis for calculating a financial penalty.
- 12 In the same 2024 consultation, we proposed that we would no longer impose a financial penalty for misconduct relating to convictions for drink driving. This proposal was uncontroversial and sits outside the fining framework itself. We therefore consider it would be appropriate to implement this change alongside an update on our financial penalties work, which will set out our intention to

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make technical changes to our guidance as an interim step ahead of a second consultation on our wider reforms later in the year.

- 13 Formal LSB approval of our change of approach to convictions for drink driving is not required as this is not a change to regulatory arrangements, but we will notify the LSB and SDT as a matter of courtesy. This reflects the approach we adopted in 2023 towards a policy change to no longer impose financial penalties for misconduct involving sexual misconduct, discrimination and harassment. We will need to make minor consequential change to the Enforcement Strategy, and this will be implemented alongside our amended topic guide on which we consulted.

Discussion**i) Making limited technical changes to our financial penalties guidance**

- 14 Ahead of wider reforms to the financial penalties regime and as an interim step, we propose to make a number of technical adjustments to our existing guidance to explain how the current regime will apply in respect of cases meeting the criteria in ECCTA, where our fining powers were previously capped but are now unlimited.
- 15 We would adjust our guidance to ensure that it makes our new statutory limits clear and makes clear the circumstances in which ECCTA applies, including by providing illustrative case studies. Making these adjustments will enable us to make immediate use of the unlimited fining powers granted by ECCTA for relevant misconduct which occurred after 4 March 2024 and avoid us having to make referrals to the SDT in such cases.
- 16 Decision-makers would continue to use our existing scoring framework to determine the appropriate indicative fine. Applying existing percentages in bands A-D (up to 5% of firm turnover and up to 97% of individual income) may well produce penalties in excess of £25,000 in economic crime cases. Additionally, the regime already foresees that fines above 5% of firm turnover may be appropriate to deal with the most serious cases. Our guidance makes it clear that our decision-makers have the discretion to impose fines at these higher percentages and we will add further clarity through the publication of case studies.
- 17 A consultation on these changes is not necessarily required because the changes we are making are limited technical changes to reflect legislation and do not relate to a change to policy with an impact on those we regulate or consumers. However, we would like to engage with stakeholders to fully explain these technical changes and provide an opportunity for input. We therefore propose to consult with the key stakeholders who responded to our consultation: CLLS; TLS; Liverpool, Manchester and Birmingham local law societies and the SDT. We will also reach out to other local law societies in both England and Wales who did not respond to our previous consultation.

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- 18 Once we have consulted with these stakeholders, we will finalise the guidance and seek approval from the LSB before implementation.

Recommendation: the Board is asked to:

- (a) agree that we make technical changes to our financial penalties guidance relating to ECCTA and note our intention to consult with key stakeholders on these changes.**

ii) Using global turnover to calculate the appropriate fine for firms

Our consultation proposal

- 19 Our 2024 consultation reflected that in most cases, we calculate a fine based on a firm's annual domestic turnover or an individual's annual income from legal work, but there may be some rare circumstances where this approach is not appropriate. Our guidance sets out that decision-makers have the ability to calculate penalties based on alternative metrics. However, the guidance does not say what these alternatives might be. In our previous consultation, we sought views on providing illustrative examples and published one such example relating to global turnover alongside the consultation.

Respondents' views

- 20 Our proposal generated a mixed response. There were few concerns in principle about providing illustrative examples and indeed some support for this approach. However, many respondents, including TLS and the CLLS, expressed concerns about the use of global turnover itself and the risk that this might deter international investment or participation in the legal services sector in England and Wales.
- 21 Some of the most forceful arguments related to use of global turnover and the structure of firms and their relationship to calculating fines. The fairness and legality of taking into account non-domestic turnover was called in question. Whilst some global entities will have a UK branch, others will have established their England and Wales business as a separate entity. Some queried whether it is right either in principle or in law for us to calculate fines based on global turnover, particularly in circumstances where the regulated entity is not owned by the overseas entity or entities. Some considered that a range of factors would need to be taken into account, such as the corporate structure of the firm (including whether there is a common profit pool between offices or jurisdictions), how our regulatory remit interacts with the firm's corporate structure, particularly in respect of overseas offices, and which offices were involved in the misconduct, including whether the misconduct is attributable to systems or policy failures in place across multiple offices.
- 22 A full analysis of the responses to this proposal is attached at annex 1.

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Our view

- 23 Consultation responses have highlighted the complexity of this issue and the difficulty in providing illustrative examples which are properly representative of the rare cases in which decision-makers may need to look beyond domestic turnover or income to alternative metrics when calculating penalties.
- 24 We recognise the difficulties highlighted by the feedback provided to our consultation and propose that going forward we use domestic turnover as the basis of all firm fines where this is available. Global turnover will not be used due to the complexities involved. Decision makers will in all cases need to consider whether the indicative fine is sufficient to provide a credible deterrent and command public trust and confidence and may adjust the fine where necessary.

Recommendation: the Board is asked to:

- (b) agree that going forward we use domestic turnover as the basis of all firm fines where this is available, and – in any event – that we do not use global turnover as the basis for determining an appropriate fine.**

iii) Convictions for driving with excess alcohol

Our consultation proposal

- 25 We proposed to no longer impose financial penalties on those we regulate following convictions for drink driving. Instead, we proposed that, depending on the circumstances, we would issue a warning or rebuke, or in cases where a warning or rebuke is not appropriate such as those involving repeated criminal behaviour, or serious aggravating factors in addition to the commission of the offence, we would make a referral to the SDT. The SDT 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.

Respondent's views

- 26 A majority of respondents agreed with our proposal.
- 27 Two respondents felt the proposal unnecessarily fettered our discretion and that given the wide variety of circumstances in which drink driving occurs, a fine may be appropriate in some cases. TLS sought reassurance that all cases would be considered individually and not all cases with aggravating factors would automatically be referred to the SDT.
- 28 Another respondent was concerned that the guidance created a regulatory gap by singling out drink driving and not addressing drug-related driving convictions. Similarly, TLS were concerned that our proposal singled out one type of motoring offence.

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29 A full analysis of the responses to this proposal is attached at annex 1.

Our view

- 30 Given that our proposal received wide support and having carefully considered the various circumstances in which we would take regulatory action following a conviction for drink driving, we consider that we should implement our proposal.
- 31 We recognise that our policy approach must not fetter the discretion of our decision makers who are able to impose any sanction within our powers. We have therefore made a minor amendment to the draft topic guide on which we consulted to make it clear that in exceptional circumstances, a decision maker may impose a financial penalty. The topic guide is also clear that not all cases with aggravating factors would automatically be referred to the SDT. It explains that “the appropriate sanction will depend on the nature of the aggravating factors...where aggravating factors are so serious that a rebuke is not appropriate, we will refer the matter to the Solicitors Disciplinary Tribunal...”
- 32 The guidance does focus on drink driving but explains that it “may also be relevant to driving whilst under the influence of drugs”. However, the guidance explains that in these cases there are additional considerations because taking illegal drugs is in itself against the law. We do recognise however that there may be other types of conduct for which a financial penalty may usually be inappropriate. We reviewed our approach to drink driving because of stakeholder feedback and because we had published specific guidance about our approach to determining the appropriate sanction in these cases. Subject to resource prioritisation, we may in the future want to review whether there are other types of misconduct for which it would be helpful to clarify our approach to determining the appropriate sanction.

Recommendation: the Board is asked to:

- (c) agree that we implement our consultation proposal to no longer issue financial penalties in relation to misconduct involving driving with excess alcohol (drink driving), save in exceptional circumstances.**

Next steps

- 33 Subject to the Board’s approval, we will:
- Consult key stakeholders on our intended technical guidance changes to implement ECCTA and finalise that guidance before seeking LSB approval.
 - Implement the proposed change to convictions relating to drink driving change.

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- Develop an update covering these issues and to commit publicly to conducting a further consultation later this year on wider changes to the financial penalties framework. In this update, we will clarify that going forward we will use domestic turnover to calculate the appropriate fine for firms where this is available and that we will not use global turnover.

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Supporting information

Links to the Corporate Strategy and/or Business Plan and impact on strategic and mid-tier risks

- 34 This project is of relevance to priority 1 of the Corporate Strategy. A framework that reflects legislative powers and the intention of Parliament is a vital tool for enforcing our standards.
- 35 The proposals in this paper would enable us to implement ECCTA as quickly as possible, ensuring we have an effective response to misconduct involving economic crime. They would also enable us to implement the 2024 consultation proposal on drink driving and amend a policy which has caused concern and a sense of unfairness within the solicitors' profession.

How the issues support the regulatory objectives and best regulatory practice

- 36 A robust fining framework contributes directly to our objectives to protect the public interest and promote and maintain adherence to the professional principles.

Public/Consumer impact

- 37 Having the right fining framework in place is vital to uphold public confidence in the profession and protect the public from potential harm.

What engagement approach has been used to inform the work and what further communication and engagement is needed?

Drink driving

- 38 We have formally consulted and engaged key stakeholders on our proposal to no longer issue financial penalties for misconduct convictions for involving drink driving, save in exceptional circumstances. We will publish an amended topic guide to reflect this change.

Revisions to guidance to reflect SRA's ability to impose higher fines as permitted by ECCTA

- 39 Consultation with key stakeholders over the next two months will be required. This will include focused workshops with regional and national Law Societies.

What equality and diversity considerations relate to this issue?

- 40 The overrepresentation of black and minority ethnic solicitors in our enforcement processes is relevant here. However, there is no evidence that we are discriminating unlawfully in determining who should receive a financial penalty and in calculating the amount, and our proposed changes are unlikely to change the fundamental position of black and minority solicitors in relation to

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the penalty scheme. Some solicitors and firms may receive higher fines from us for misconduct related to economic crime under ECCTA rather than being referred to the SDT, but it will be the misconduct rather than the person's protected characteristics which will determine the penalty outcome. Our change on drink driving will mean that we no longer impose financial penalties for misconduct relating to convictions for drink driving. Serious cases will be referred to the SDT for action, but it would be the facts of the case rather than their characteristics which will determine whether such a referral is appropriate.

How the work will be evaluated

- 41 We will work with Research and Analysis colleagues and with the monitoring and evaluation group on diversity data to assess the impact of the changes we propose to make this summer.