Financial penalties – stakeholder feedback summary

May 2022

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Stakeholder feedback summary

Overview

This report summarises the formal consultation feedback to the consultation. It also includes summaries of the public and profession survey, and key similarities and differences between the attitudes of the public and the profession to our consultation proposals. The report also includes an overview of the two public focus groups held in February 2022, as part of our consultation engagement activities.

This report should be read alongside our post consultation position paper – as it sets out more detail of the stakeholder views that are summarised at a higher level within that report.

Responses to the consultation

We received 39 formal consultation responses from stakeholders. This table shows the types and numbers of respondents.

Individual solicitor	13
Individual other legal professional	1
Individual non legally qualified, working in legal services	3
Individual member of the public	3
Law firm or other legal services provider	6
Law society	6
Representative group	5
Statutory tribunal (Solicitors Disciplinary Tribunal)	1
Other	1

Respondents' answers to our questions were as follows.

1. Do you agree that the principles set out under 'Our approach' in the consultation paper should govern our approach?

Yes	No	Other response	No response
21	3	14	1

Most respondents who agreed did not make additional comments in relation to this question, but the Law Society stated 'The principles outlined concerning the SRA's approach are broadly supported. From a principles' perspective, any fining framework should be fair, transparent, proportionate, consistent and be a deterrent to firms or individuals from committing breaches under the SRA Codes of Conduct.' However, they went on to make a number of points relating to our other questions – these comments are set out under the relevant questions below.

Two respondents specifically commented that it is in law firms' and individual solicitors' interests for disciplinary matters to be dealt with quicker and more cheaply, noting that the financial and reputational damage of a long drawn out disciplinary process can have serious implications for a law firm eg in relation to Professional indemnity insurance renewal, CQS/other quality marks, mergers etc and for individual solicitors

One law firm echoed the Law Society's overall view, stating 'The profession wants transparency, consistency, and fairness / proportionality in the regulation of legal services generally. The importance of treating all firms and individuals fairly and consistently is agreed as is the need to have greater predictability around how enforcement and the imposition of sanctions is dealt with by the SRA and SDT.' Similarly, an individual solicitor stated 'In general terms the principles outlined in the consultation paper are supported but the process and the outcome should be fair, transparent, consistent, and be a deterrent to those firms who seek deliberately to flout the rules.'

A law firm stated 'Yes the proposed changes would benefit all involved in the process.' Liverpool Law Society stated 'Yes. However, an additional principle should be the need to provide certainty as the likely penalty that could be imposed.'

Manchester Law Society stated 'It is absolutely right that any such framework is transparent, proportionate, fair and acts as a credible deterrence. We also agree that it is in law firms' and individual solicitors' interests for disciplinary matters to be dealt with quicker and more cheaply.' They went on to say 'We can… see merit in working with the other regulators and the LSB to understand more about the approach each of them takes to identify opportunities for achieving a more consistent approach.'

The Solicitors Disciplinary Tribunal (SDT) did not directly agree or disagree with the principles we set out, but they stated 'The Tribunal considers that an individual, traditional law firm or an alternative business structure… alleged to have committed a serious rule breach should not (be) judged by the same body which has set the rules, investigated the alleged offence, and initiated the prosecution. There remains the need for a meaningful separation of powers to enable the profession and public to be satisfied that breaches of professional conduct will be scrutinised with objective rigour and which maintains trust and confidence in the profession.' They stated that an approach under which the SRA's fining powers would be increased would, in their view, be at odds with the Legal Services Act provision of low levels of SRA fines compared with the wider powers of the SDT.

The Legal Services Consumer Panel (LSCP) broadly agreed with the principles set out to govern the review of the SRA's fining powers. The Panel encouraged the SRA to ensure that the fining framework (and any fines issued under it) are transparent and accessible to consumers in particular. This would add to its ability to be an effective deterrent.

The LSCP also supported a framework that treats all firms and individuals regulated by the SRA in the same way and would encourage all legal services regulators to work towards a consistent approach.

A non-legally qualified person working in compliance stated 'I agree with the principles [of a transparent, proportionate, and effective fining framework that treats all regulated firms and individuals consistently… But in relation to enhancing the SRA's ability to make decisions in house] there needs to be a further justification for why the SRA wants to enhance its ability to make decisions in-house. That must also be accompanied by greater transparency on the right to appeal to the SDT.'

The City of London Law Society stated 'the SRA's approach to financial penalties must sit within the parameters of its statutory functions. The SRA's approach should be compatible with the regulatory objectives and should be transparent, accountable, proportionate,

consistent, and targeted only at cases in which action is needed… We agree that a robust fining framework is one which fits the above qualities and is effective in providing credible deterrence.' However, they went on to say 'As will be set out in our response, we are concerned that the SRA's proposed approach gives insufficient weight to the deterrent effect that any sanction at all may have on a solicitor or law firm.'

Recognition of the SRA's statutory functions was widespread among respondents. An individual member of the public stated 'The SRA's approach is prescribed by sections 1 and 28 of the Legal Services Act 2007. Those sections lay down the regulatory objectives. The regulatory objectives are not referred to anywhere in the consultation paper. They may be reflected in the principles to which the SRA refers, but the consultation paper should have referred expressly to the regulatory objectives and explained how its proposals accord with those objectives.'

A number of respondents made other comments. One law firm stated 'We broadly agree the principles set out in the consultation paper. However, we do have concerns at an approach that seeks to pre-determine particular outcomes for defined categories of behaviours. The SRA must be able to exercise its discretion appropriately in each case having regard to the seriousness of the conduct and the proportionality of any penalty in the circumstances of each case. Rigid categorisation may lead to incompatibility with the SRA's regulatory objectives and/or hinder the SRA's ability to reach rational decisions based on the relevant circumstances in each case.'

TheCityUK did not feel that a convincing case for change had been made. They stated 'We do not feel that the SRA's rationale for the need for these increased powers is adequately substantiated by evidence of any systemic problem of breaches of the rules and regulations applicable to solicitors and their firms going unpunished.'

2. Do you agree that the behaviours demonstrated in cases relating to sexual misconduct, discrimination and non-sexual harassment are not suitable for a financial penalty?

Yes	No	Other response	No response
14	20	4	1

The majority of respondents did not agree, although significant numbers did agree. Agreeing with the question, the Junior Lawyers Division stated 'It is agreed that sexual misconduct, discrimination, and non-sexual harassment are not appropriate for financial penalties. Stronger measures are required to maintain public confidence in the legal system in light of the nature of the misconduct and its impact, and because of the potential risk to the public. It is also agreed that damage to the claimant should not be quantified by relation to a financial penalty, as this has the effect of putting a price on conduct which makes the victim feel as though this is 'their worth'. Trying to quantify this behaviour also has the negative impact that senior people in positions of power may be able to 'buy' their way of our allegations of this nature.'

The Junior Lawyers Division went on to state 'The consultation refers to 'a moment of madness' as a mitigating circumstance. This is not probably defined and there is a real concern that this will be used to excuse behaviour which should be penalised. Should this exception be included, there should be sufficient wording to demonstrate that this was only for truly exceptional circumstances. It should not just relate to a first incident.'

An individual solicitor stated ‘Yes, a financial penalty ought not to be suitable for these matters.’ But most respondents who agreed did not expand on their views.

The Law Society was among those who disagreed, stating ‘Discrimination, non-sexual harassment and sexual misconduct covers a very wide spectrum of behaviours and can arise in a wide range of circumstances and it is right that the individual circumstances of each case should be considered in making a decision about an appropriate penalty. In our view, these very different regimes, types of behaviour and contexts demand that decision-makers should have the flexibility to look across the full range of possible penalties in deciding how to proceed.’

The City of London Law Society took a similar view. ‘Certainly, there will be instances where the appropriate sanction may well be suspension or strike off, which would be a matter for the SDT. However, each case should be considered properly on its own facts. It does not seem logical for the SRA to limit its internal options to a rebuke: all potential sanctions should remain available, given the vast array of behaviours, fact patterns and circumstances that might fall within this category.’

Birmingham Law Society also disagreed, stating ‘It is not for the SRA to prejudge whether these cases are more or less serious than other cases and to predict in advance the sanction that should be applied by the SDT.’ A member of the public stated ‘It is not clear (i) why the SRA regards certain categories of behaviour as suited to financial penalties and other categories of behaviour as unsuited to financial penalties or (ii) how such a distinction is consistent with the regulatory objectives. Each case must be treated on its own facts and merits. The paper contains no clear definition of ‘sexual misconduct’ or ‘non-sexual harassment’… the paper contains no discussion of the Divisional Court's decision in SRA v Beckwith, in which the Court explained to the SRA that not every incident involving sexualised behaviour amounts to a disciplinary offence.’

Cardiff and District Law Society stated ‘the SRA's consultation paper focuses on fines for individuals for certain behaviours, but the SRA can fine regulated firms as well as individuals. There may be instances where a firm bears responsibility for the culture, environment and working conditions within which the individual's behaviour has occurred… excluding fines and imposing minimum penalties in cases of sexual misconduct may have unintended consequences and cause harm to victims. If the matter has to be dealt with by way of suspension or strike off, it will have to be dealt with in the Tribunal, causing maximum publicity. It could also lead to more denials and contested hearings.’

The SDT stated ‘Cases involving allegations of sexual misconduct, discrimination and/or non-sexual harassment are, by their nature, inherently serious and a cause for concern to the public who place their trust in members of the profession and to all those working within the profession itself. By default, such cases should come before the Tribunal in order for the Tribunal to carefully scrutinise the evidence before it and to determine where each case lies on the spectrum of seriousness and, if proved to the requisite standard, to impose a commensurate sanction.’

The LSCP generally agreed that serious misconduct such as sexual harassment, discrimination or non-sexual harassment is not suitable for financial penalties.

They also noted that ‘this type of behaviour has the potential not only to affect colleagues in the workplace, but also how clients are treated and whether they are adequately served, and therefore goes to the heart of whether a solicitor is fit to practise. While low level behaviour in these categories may not warrant a suspension or being struck off, a rebuke that stays on the offender’s record for a definite period of time may be more likely than financial penalties

to communicate the seriousness of the matter and make perpetrators aware that repeated violations may bring much more serious consequences.'

3. Are there any other types of conduct that you consider are or are not suitable for a financial penalty?

Yes	No	Other response	No response
12	18	8	1

The majority of respondents did not agree, although significant numbers did agree. Among those who thought that financial penalties should be available as a sanction in all cases, the Law Society stated 'Outcomes should not be fixed according to broad categories of conduct. Each case should be considered on its individual facts and the outcome based on the facts and any mitigating or aggravating factors.'

The LSCP stated that where a solicitor takes advantage of a vulnerable client, the behaviour moves beyond dishonesty to predatory behaviour that should not be solely addressed with financial penalties. They said 'Similarly, the correspondence discussed in case study 2 [of the consultation] shows a level of cruelty that if present in client dealings, even where discrimination cannot be proven, is a very serious infraction of the public's expectations of a solicitor. Such behaviour toward a client, even absent the discrimination finding, should not solely be addressed with financial penalties, though we would not want to rule this out, especially where an order of restitution is appropriate.'

Similarly, a law firm stated 'Each case will turn on its own facts with mitigating and aggravating factors being applied to determine a fair and proportionate sanction rather than excluding certain categories of conduct from the fining regime.' An individual solicitor who also responded on behalf of their firm and the Lawyers' Defence Group stated '… the arbiter should be free to take account of all relevant circumstances whether aggravating or mitigating and the Tribunal must have unfettered discretion to decide the most appropriate penalty.'

Those who thought certain types of conduct were not suitable for a financial penalty gave these as examples:

- 'Data protection breaches should be considered also.' (non-legally qualified compliance officer)
- 'When the employer discriminates, harassment, fail to pay the wages. fail to obey the employment laws, can be asked to pay compensation which can be collected as if fine.' (individual solicitor)
- 'Lying (deliberately) to cover up mistakes in house' (member of the public)
- 'Theft or reckless loss of client money' (non-legally qualified compliance officer)
- 'Conduct issues where the repercussions can lead to an individual having to cease practising.' (local law society)
- Liverpool Law Society stated 'any offence involving dishonesty is not suitable for a financial penalty but understand that reflects the current position in any event. Also,

misappropriation of client money falling short of dishonesty, as any breach of the absolute obligation to safeguard client money, is extremely serious.'

4. Do you agree that we should introduce fixed penalties for certain, less serious, breaches?

Yes	No	Other response	No response
18	12	8	1

A majority of respondents agreed with this proposal. Among those agreeing, Cardiff and District Law Society stated 'Fixed penalties will mean quicker determination of matters and should reduce the costs of dealing with the matter, for both the solicitor and the regulator. The proposal aids transparency, in that it will be clearer what sort of penalty will be imposed for certain breaches.'

Some respondents agreed with the overall approach but made comments regarding implementation. A law firm stated 'We agree with the approach in principle. However critical to the fairness of this approach would be the opportunity to put right what would otherwise be identified as the non-compliance so that the fixed penalty regime only applies to those who had been given that opportunity and still not complied. It also shouldn't be used to take action in circumstances where no action would currently be taken due to insufficient evidence of misconduct or matters which are deemed insufficiently serious to take action.'

An individual solicitor stated 'I have no problems with fixed penalties for matters that attract no misconduct against the solicitor eg oversight rather than culpable behaviour. There have to be narrow areas where this is allowed and those areas should not be extended by mission creep.'

Other comments from those who were generally in favour were that the SRA should undertake a separate, discrete, consultation on fixed penalties before considering whether to introduce, with one respondent suggesting that if actual numbers of fixed penalty fine matter are relatively low, the SRA may wish to think again about whether to introduce a scheme. Another respondent noted that they thought that a fine of £800 was too high for a first offence.

The Law Society stated '…without specific data about the numbers of such matters handled by the SRA or the range of fines imposed, it is difficult to place this proposal in its proper context.' Similarly, the City of London Law Society stated 'The SRA has not provided sufficient information about the proposed scheme, for example how fixed penalties would be set and what savings would be achieved in terms of time or cost.'

The Sole Practitioners Group disagreed with the proposal, stating 'It isn't understood what constitutes such a breach and how it is assessed. Breaches involve a huge range of behaviours from the intentional to the unintentional and a wide range of reasons. A fixed penalty regime would cast these aside. Fixed penalties work for low level 'offending' in certain circumstances - certain strict liability road traffic offences, car parking and littering. This is not suitable for a regulatory regime. It would encourage box ticking and swift 'justice'.'

Among those respondents who disagreed with the proposal, a number stated that each case should be considered on its own merits. Another comment from an individual solicitor was 'You need to have an encouraging/ supportive approach rather than a punitive one.' Another individual solicitor stated 'It reverses the burden of proof by requiring the solicitor to apply for

a review after the fine has been imposed - these are not parking tickets, the amounts of money involved are significant and there are implications beyond merely a financial penalty.'

The SDT's view was that 'It is the Tribunal's understanding that the proposal to introduce fixed penalties relates to matters that would not be referred to the Tribunal. The imposition of sanction for such matters is for the SRA to determine and it would not be appropriate for the Tribunal to comment on the proposal to introduce fixed penalties for certain matters disposed of internally by the SRA.' For this reason, the SDT did not provide responses to some of the subsequent questions.

The LSCP agreed with the plan to introduce fixed penalties for specific and less serious breaches of SRA rules. They believe that if solicitors and firms are given the opportunity to correct their actions prior to being fined, this course of action will promote compliance. The panel said 'We are pleased to see that transparency rules around price and quality will form part of this regime to further encourage all firms to be compliant with these guidelines that aim to provide consumers with very basic information about the solicitors they may be considering hiring. The closer the SRA can get to 100 per cent compliance, the more effective this information will be to prospective consumers'.

5. Do you have any comments on the proposed criteria and process?

Yes	No	Other response	No response
25	10	2	2

Most respondents gave comments. Positive comments included:

- 'The proposed criteria and process appears to be fair and sensible as long as the timescale for remedying a breach is agreed with the firm/individual, and reasonable and proportionate in the circumstances. Most firms and individuals are trying to do the right thing and want to comply. There will be many instances where breaches have arisen due to a genuine misunderstanding, misinterpretation, or oversight that firms/individuals will be keen to put right once identified but with the SRA's understanding and support.' (Law firm)

- 'These seem eminently sensible' (Individual solicitor)

- 'I agree with them both [criteria and process]' (Individual solicitor)

Negative comments included:

- 'Fines should not be attributed according to means and should not be imposed by the SRA. Until the SRA has a fair adjudication process in place they should not be allowed to impose any penalties upon firms or individuals.' (Individual solicitor)

- 'The illustrative examples which are set out in the consultation relate to lack of compliance and/or administrative failings. Those areas are going to be handled by the firm at an operational level so to target specific individuals appears to be inappropriate when the root cause of such non-compliance is likely to stem from the firm's process/practice rather than some individual failing. It is therefore not clear that fixed penalties for these breaches are appropriate against individuals unless they are sole practitioners.' (Junior Lawyers Division)

- ‘Failure to have in place all the administrative procedures required to ensure Anti-Money laundering Compliance' is too vague and undermines fairness because it is not an objective test.’ (Individual solicitor)

- ‘There is a danger of insufficient levels of challenge by internal adjudicators and decision makers’ (Compliance Director)

- A law firm commented ‘We consider the right to review to be an important safeguard which should be carried out by an independent assessor.

Another respondent noted ‘I am concerned that while other aspects of the SRA's proposal carefully consider the question of the means of the individual to pay, this aspect does not. £800 is a huge amount to a solicitor in a legal aid firm at the beginning of their career - it could easily represent half or more of a month's salary. By contrast, an equity partner earning many thousands of pounds a month will not feel the same impact. There is diminishing impact the further up the earning scale you go, which seems very unfair to me.’ (non-legally qualified Compliance Manager)

A further respondent commented: ‘The process is not sufficiently robust. Where a respondent is given a timeframe in which to respond and fails to do so the SRA should contact to tell the respondent that since he/she has failed to respond in the timeframe a penalty will be imposed at a set date unless the respondent is able to demonstrate a valid reason for not responding or lodging an appeal.’ (non-legally qualified Compliance Manager).

Liverpool Law Society stated ‘LLS notes that the process includes an opportunity for the relevant person to remedy the breach. LLS considers it important that any timescale given is realistic, in view of the specific corrective action required. Clearly, this will vary on a case by case basis, so LLS would not be in favour of a fixed period of, say, seven days, in all cases. LLS notes that ‘...there would be a right to request a review of the issuing of the fixed penalty and the level of the fine imposed...’. LLS would like to understand more about the procedure that will be adopted for such reviews and what timescales the SRA will commit to in that regard.’

The City of London Law Society stated ‘In the event that a fixed penalty regime were introduced, we agree that the relevant person should first be informed of what action is required to remedy the breach and the timescale for doing so. That timescale should be fair in the context of the action required and applied consistently. The SRA should maintain flexibility where appropriate around the timescale… The SRA should ensure that any fixed penalty regime features certainty around which actions fall within it. We suggest that such actions should be limited to those that are more summary in nature and capable of objective determination, such as not displaying required information on a website (where no harm is caused).’

The LSCP agreed with the SRA’s approach, especially providing a clear timeline for the solicitor or firm to correct its failings because the ultimate goal is to have the firm comply with SRA rules.

They went on to say, ‘We are also happy that cases that involve specific clients will not be subjected to this fixed fine approach because those are the cases that will demand more attention and investigation by the SRA. Many of the types of rules discussed would directly benefit consumers by bolstering competence through encouraging professional development compliance, transparency with regards to price and quality indicators and even encouraging

cooperation with the SRA's requests or investigations so it can efficiently ensure standards are maintained. Therefore, fixed penalties will put timely and proportionate teeth behind the SRA's rules so that solicitors and firms are aware of the clear and immediate consequences to their failure to comply.'

6. Do you have any comments on what an appropriate value for fixed penalties might be in different circumstances?

Yes	No	Other response	No response
25	6	4	4

Most respondents gave comments. There were varying comments regarding appropriate values. For example, a non-legally qualified compliance officer stated '£2,000 for firms is too low to act as a deterrent' whereas an individual solicitor stated 'not more than £2,000 in any case. Any case which merits a penalty above that should be for the SDT to decide.'

In responding to other questions – a small number of respondents suggested that £800 was a high penalty for a first offence – with one pointing out that for a junior legal aid solicitor, this could amount to around half of a month's salary.

There were a number of other comments about relating fines to means. An individual solicitor stated 'the income of the individual ought to be taken into account' and a non-legally qualified compliance officer stated 'Important to link the fine to income/turnover/ability to pay at higher and lower end.'

A law firm stated 'It is unclear whether the fixed penalty suggestion would apply to both firms and individuals. If it applies to individuals then there should be a lower starting point and more of a sliding scale particularly where means assessment will not be undertaken. When applying to firms, it would seem unfair to impose the same level of fixed penalty on a sole practitioner as compared to a large national firm so consideration should be given to a scale depending on size of the organisation.'

The Law Society stated 'Without any data and an exhaustive list of the proposed breaches covered by such a scheme, as well as information about how the SRA has dealt with such matters in the past, we are unable to comment.'

The LSCP felt the SRA is best placed to determine the appropriate value for each offence but stressed the need to ensure that they are not simply seen as a cost of doing business.

A small number of respondents used this question to set out their views on the types of breach that should be covered – broadly reflecting our consultation approach that fixed penalties should apply to clearly defined administrative breaches only.

7. Do you agree that we should introduce a turnover based assessment for all firms when calculating the level of financial penalty?

Yes	No	Other response	No response
17	10	11	1

A majority of respondents agreed. Most respondents who agreed did not expand on their views, but one stated 'Yes this is to ensure that fines are proportionate and fair.'

However, the Law Society stated ‘A model based exclusively on turnover will not necessarily incentivise better compliance. Instead, we believe that concern for reputation is the prime motivator of good behaviour, and that this will operate regardless of the level of any potential fine.’

Another respondent noted ‘This assumes that the firm (not an individual solicitor) is the respondent or that the firm will pay the fine imposed upon an individual solicitor. The paper does not explain how the SRA decides whether to pursue the individual solicitor or the firm (or both). It also appears to assume that turnover is the same as disposable profit, which is not correct.’ (Member of the public).

Another respondent disagreed with our proposal, saying ‘No. Whereas poverty can be a relevant factor, profitability should not unless related to the misconduct. In addition, turnover does not always mean profitability.’ (Individual solicitor – in house)

One respondent took the opportunity to highlight the disparity in our fining powers – pointing out that turnover is not relevant at the moment to traditional law firms – and that applying turnover to a proportion of a maximum fine of £2k is not relevant.

The City of London Law Society stated: ‘Focussing on turnover ignores material relevant considerations which the SRA in the proper exercise of its functions must take into account such as the specific facts of the case, the extent to which any profit can be attributed to the conduct, and the degree to which direct harm is localised.’

A non-legally qualified person working in compliance stated ‘The financial penalty should be assessed in accordance with the seriousness of the conduct that gives rise to the penalty. Any penalty imposed by the SRA should be consistent with the approach adopted by the SDT. Furthermore a firms last reported turnover may not be reflective of the financial position at the time of the disciplinary proceedings. It is the latter that should be taken into account.’

Another respondent said ‘No. Fines should be proportionate to the misconduct, not to turnover. Turnover is not a reliable indicator of the financial position of a firm because it takes no account of profit margins. (Law firm)

A further respondent commented: ‘The SRA has not provided any comparisons with other regulators in the legal services industry and those they have compared with to justify an increase in the percentage of turnover are completely different in industry type, size, and impact on consumers. We can see an attraction in principle to applying a percentage of annual domestic turnover threshold to all firms, not just those with turnover of more than £2m. However, the SRA will no doubt recognise that turnover is not a reliable indicator of profit and does not adequately take into account a person's/firm's ability to pay so applying this test alone is potentially as arbitrary as the approach which the SRA is seeking to change.’ (Law firm)

The SDT stated ‘For matters that the SRA sanctions internally, the Tribunal considers that the approach the SRA takes when calculating the level of financial penalty is a matter for the SRA.’

The LSCP generally agreed with the turnover based assessment of fines that regulators in other sectors have used to reign in undesirable conduct, saying ‘It aligns with the Panel’s thinking that penalties need to be more than a cost of doing business so that more than dealing with the one individual or firm involved, these penalties serve as a strong deterrent for the whole sector. As the regulator responsible for the majority of the reserved legal services sector, the Panel is pleased to see the SRA taking a stronger approach in this regard.’

8. Do you agree that we should set the maximum proportion of turnover we can take into account when applying financial penalties across the different levels of seriousness at 5 per cent?

Yes	No	Other response	No response
13	19	6	1

Views were mixed, with significant numbers of respondents either agreeing or disagreeing. Most respondents who agreed did not expand on their views, although one stated 'Yes, there has to be a minimum level of penalty.' An in-house solicitor said 'Only to the extent this would increase your fining powers against larger firms such as national or magic circle ones.' – we categorised this as 'other response.'

The Junior Lawyers Division stated '5 per cent seems reasonable. The JLD query whether this can be extended to international turnover rather than domestic turnover, given that the top firms often view their turnover globally.'

Disagreeing, Liverpool Law Society stated '[We are] unconvinced that some of the regulators listed in Annex 1 of the consultation are suitable comparators… the consultation paper does not consider the running costs and/or profit margins of the traditional law firm in arriving at this figure… much more research is needed as to how the proposed fining structure could affect the provision of legal services and the likelihood of it leading to disorderly/distressed firm closures etc.'

Other respondents who disagreed gave their reasons as follows:

- 5 per cent is twice the current maximum fine for ABSs - it seems too far a jump at once. Setting the maximum percentage lower will still mean the SRA can apply significant penalties, but it will be more widely accepted by the profession. (non-legally qualified Compliance Manager)

- The financial penalty should be assessed in accordance with the seriousness of the conduct that gives rise to the penalty. Any penalty imposed by the SRA should be consistent with the approach adopted by the SDT. Furthermore a firms last reported turnover may not be reflective of the financial position at the time of the disciplinary proceedings. It is the latter that should be taken into account. (non-legally qualified Compliance Manager)

- Another respondent suggested we should increase the maximum turnover taken into account to 6 per cent but did not give a reason for this. (Individual solicitor)

- Another suggested the threshold should be limited to 0.5 per cent, saying 'anything higher gives the SRA far too much power - it is not a court of law' (Individual solicitor)

Cardiff and District Law Society gave detailed reasons for disagreeing, stating 'we do not agree, because the turnover of a firm may not reflect its profitability. Five percent of a firm's turnover will represent a much greater proportion of its profits for the year. Taking 5 per cent of a firm's turnover may seriously erode a firm's profits to the point that it will be forced out of business. This is likely to impact small firms in particular, perhaps exacerbating advice deserts and affecting access to justice. Even with larger firms, the existence of the deterrents of suspension and striking off (of the solicitors within them) mean that increased penalties for the firms are not necessary. We do not think that the SRA has made a

sufficiently strong case, therefore, for increasing the percentage maximum from the current limit of 2.5 per cent.'

The LSCP stated that it was 'pleased to see a substantial increase in the maximum proportion of turnover as a measure of fines in the SRA's proposed changes to its penalty framework. However, when compared with other regulators, this maximum percentage is still low. Therefore, the Panel would encourage the SRA to consider increasing this percentage further. In any event, appropriate monitoring and evaluation must be put in place to determine whether the policy change has the desired deterrent effect, or whether the SRA needs to employ an even higher maximum proportion of turnover in fining the most serious transgressions.'

A law firm stated 'The SRA is not comparing like for like when considering the other regulators' fining powers and they do not provide any justification for increasing the percentage above the 2.5 per cent currently in place. To increase it in the way proposed could also have significant impact on the cost of D & O/Management Liability insurance and such increased overheads could end up being passed on to clients… We do agree though that it would seem more fair and proportionate for the SRA to take into account the means of individuals in a consistent way.'

Another law firm stated 'It doesn't appear from the level of financial penalties currently being issued that the current 2.5 per cent limit is a blocker to the level of fines which have be issued compared to what they would have been if the level had been raised. There isn't a consistent approach by other regulators to which it would be appropriate for the SRA to be in line with as each regulator has their own specific and varying approach.'

9. Do you agree that we should take into account individual means when determining a financial penalty?

Yes	No	Other response	No response
30	2	6	1

A significant majority of respondents agreed to this proposal. Almost all comments supported the approach – for example, a law firm stated 'Yes. Fines can only be proportionate and fair if the means of the individuals concerned are taken into account because the impact will be different in each case dependent upon personal circumstances.' Other respondents who agreed, commented as follows:

- Yes, where the respondent is an individual and the SRA is sure that the penalty will not be paid by his/her firm (Member of the public)

- Yes. Low income and lack of assets are relevant factors to reduce a financial penalty (Individual solicitor)

- Yes, critically important that we don't bankrupt individuals or firms employing people for breaches which would not otherwise get people struck off or firms intervened (non-legally qualified Compliance Manager)

The Law Society stated 'We believe that caps should be set on financial penalties but also that an individual's means should be considered when determining a financial penalty, especially when the person is applying for a reduction due to his or her means.'

The Junior Lawyers Division stated 'The consultation rightfully notes the disparity in pay for trainees as one example, but of course there are many more examples of disparity which

should be taken into account. Any fines for individuals should involve a consideration of the individual's personal financial circumstances. This will ensure that they still act as a credible deterrent for all solicitors, but while still being proportionate and fair.'

Manchester Law Society stated 'Our members do think it right to take into account individual means when determining a financial penalty. It is unclear though how an individual's financial position will be properly means tested and how the SRA will ensure that the published sanction will not inadvertently reveal an individual's financial circumstances.'

Cardiff Law Society stated 'We do think it right to take into account individual means when determining a financial penalty. It isn't clear however how an individual's financial position will be properly means tested/how the SRA will ensure that the published sanction will not inadvertently reveal an individual's financial circumstances.'

The LSCP generally agreed that an individual's means should be considered when determining a financial penalty. They said 'Like taking a firm's turnover into account, it will also ensure that where appropriate, fines can be levied that are large enough to provide a deterrent against continued misconduct for that particular individual and larger fines will also provide a strong deterrent for others. However, care needs to be taken to ensure that individuals of low means (or low traceable earnings) do not feel that they can get away with behaviour that should attract a meaningful financial penalty.

They also agreed that 'assessing an individual's income as well as net worth is important. Income alone may not accurately reflect an individual's ability to pay a fine (or their likelihood to be deterred by standardised fines).'

10. Do you have any comments on the proposed features for assessing an individual's means? What other features do you think we should consider, if any?

Yes	No	Other response	No response
25	5	2	7

Most respondents had comments. A non-legally qualified Compliance manager commented 'Assessing based on the previous financial year seems reasonable on the face of it, but the SRA should think about cases where that would cause significant financial hardship - eg where an individual no longer has employment due to their conduct, but did have employment in the previous financial year. It is not so much about consideration of the individual whose conduct has incurred the penalty, but of those who may depend on them. In general, the interests of the individual's dependants should be taken into consideration. The SRA should also consider taking into account the financial impact on the individual where other regulators have applied or may apply penalties.'

An individual solicitor said 'Assessing an individual's means creates privacy concerns. SRA should not have any right to see information from individual's tax returns nor information on assets unrelated to employment.'

Another individual solicitor thought that 'There should not be an obligation to provide a statement of means. If a solicitor wants to 'plead poverty', the burden properly shifts to the solicitor to validate his/her assertions.'

The Junior Lawyers Division considered that 'Ideally, both gross income and net worth would be considered, as both are relevant to the level of fine which would be appropriate. In terms of the timing, gross income from the time of the misconduct appears to be appropriate. The

opportunity for individuals to apply for the financial penalty to be reduced if they are of low means should be maintained.'

Birmingham Law Society commented on the length of time taken to conduct an investigation, concluding that 'the SRA has referred to the fine being based upon the income related to the employment in which the misconduct occurred in the first place. We disagree with this proposal. The fine should be judged upon the financial position of the individual when the fine is applied not at some earlier imaginary point in time.'

An individual solicitor considered that 'The individual's net worth should not be taken into account as the penalty should be referable to the individual's role as a solicitor and therefore their earnings therefrom rather than their net worth the source of which may be entirely unrelated and consideration of which could potentially lead to penalties of dramatically different levels for similar seriousness of conduct as a result of factors entirely extraneous to the individual's role as a solicitor.

Liverpool Law Society stated 'net income from the previous tax year is a good starting point. However, the process ought to allow solicitors to submit a statement of means to contend for a lower penalty than would be the norm. This should enable people who are of low means because of child support payments etc to have that taken into account.'

A law firm commented 'The means assessment undertaken should properly reflect the individual's ability to pay. None of the suggestions identified which are focussed simply on income would do this effectively. The Courts use a means assessment which may provide a useful point of reference.'

11. Do you agree that we should seek an increase to our internal fining powers for traditional law firms and solicitors to the level of £25k?

Yes	No	Other response	No response
18	8	12	1

Most respondents agreed with increasing fining powers, although some did not agree with the £25k upper limit.

Agreeing, an individual solicitor stated 'Yes, the present fining powers are woefully inadequate, and the ability to levy higher fines may shorten investigations in that the defence may more willingly negotiate.'

Other respondents who agreed said:

- 'the case for this is very reasonable' (non-legally qualified Compliance Manager)
- '£50,000 would be more realistic and sustainable than £25,000' (Individual solicitor)
- 'the present fining powers are woefully inadequate, and the ability to levy higher fines may shorten investigations in that the defence may more willingly negotiate' (Individual solicitor)
- 'I have no problem with it being higher for firms with high turnover - it has to be high enough to act as a deterrent' (non-legally qualified Compliance Manager)

A law firm agreed with our proposal but added that this was 'subject to the SRA being satisfied that there are sufficient safeguards to minimise the risk that it leads to the weakening of independent scrutiny of serious misconduct and provided the SRA is able to

handle an increased workload that may arise as a result. Consideration ought to be given to how the SRA will manage consistency of approach if negotiating disciplinary outcomes.'

Another law firm considered that £25k was too high based on the data of fines being imposed by the SDT. They went on to say 'As the SRA would be acting as judge and jury, it needs to ensure that it is being seen to act fairly and consistently. Increasing fining powers is not the only way to achieve efficiencies, proportionality, consistency, and fairness - improved quality of caseworkers dealing with the investigations would assist in reaching sensible resolution quicker and cheaper for the SRA and the respondent. These are potentially life-changing decisions being made about people's careers, reputations and financial circumstances and each investigation must be treated with the necessary care, attention to detail and in a consistent and fair way irrespective of which band of seriousness the conduct falls into and whether the firm is a traditional law firm or ABS.

Manchester Law Society noted that 'Our members can understand why the SRA would like to see an increase in their internal fining powers for traditional law firms and solicitors and in principle, we agree to an increase.' Whilst appreciating the benefits of less costs, time and stress of dealing with cases inhouse, and the benefits of the SRA and the regulated person being able to negotiate a fair and reasonable sanction above £2k, they raised concerns about the SRA's current levels of transparency and said that for that reason they did not currently support an increase to £25k. Adding to this, they said that the route of Appeal to the Tribunal should be clear to the profession.

They noted that the profession would need to be confident that the SRA would take a reasonable approach in negotiations and highlighted the importance of applying updated fining guidance to 'ensure a reasonable and consistent approach is achieved.'

Setting out their view that firms may take a commercial view and reach a settlement (particularly smaller firms), and based on the SDT's data, the view of the Manchester Law Society was that an increase to a maximum of £10,000 would 'have a significant impact in reducing the numbers of referrals to the SDT but …also prevent the SRA from seeking to impose hefty fines which are disproportionate but which a firm accepts so as to avoid incurring further significant costs.' They also suggested that the SRA and SDT could agree a form of 'fast track' process for agreeing outcomes above this level.

The Junior Lawyers Division stated 'Yes. This would free up the SDT for more serious cases as detailed above and reduce the length of time for an average case which can stretch years, effectively pausing the person's career for what could be considered 'straightforward' claims. This would also be likely to reduce the amount of fees which are incurred in defending claims, which often cannot be recouped even if the defendant is successful.'

The Law Society stated '…an appropriate increase to the threshold is reasonable and would assist the regulator in making decisions in a greater number of straight forward cases, which is likely to speed up the process, save costs as well as reduce the stress on all parties.' They went on to say that they disagreed with the £25k level – 'An inflationary rise to the current maximum fine level of £2,000 from 2009 would result in a modest increase only to £3,011…It is, therefore, accepted that the inflationary rise would not achieve the benefits indicated by the SRA. 50. Fines above £15,000 are relatively rare at the SDT and thus we are unclear as to why the SRA would seek fining powers well above that level.'

The SDT stated 'the Tribunal wishes to work collaboratively with the SRA to ensure both consistency of approach and that those cases involving technical regulatory breaches, short of misconduct not requiring the Tribunal's oversight, are subject to a penalty in keeping with the profession as it stands in 2022 and for some years ahead. Recognising the passage of time since the introduction of fining powers, along with the increased value of the legal

profession, as said above, the Tribunal would support a proposal that the SRA should have at its disposal a fine range up to £7,000 for individual solicitors and increased fining powers in keeping with those powers it has with respect to an ABS.'

The LSCP agreed that 'the SRA should seek an increase in its internal fining powers for traditional law firms and solicitors to a level of £25k, which is still very low compared to its fining powers for Alternative Business Structures'.

They went on to say 'We believe this increase will have the effect of speeding up the average time to resolve penalty cases. This means that penalties must be paid closer to the time of commission or discovery which improves their ability to act as a deterrent. In addition, and in our view, more importantly, it means that consumers may be made aware of these penalties in a more timely fashion, which is always better than information provided long after the event.

In turn, by allowing the SDT to focus on the most serious cases that require their expertise and hearing capability, their ability to handle cases in a more timely fashion will also improve. Of course, the Panel would like to see a clear monitoring and evaluation plan attached to this policy change to ensure that this is the case, and also to observe any other unintended effects.'

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

Yes	No	Other response	No response
18	11	2	8

Many respondents provided information, although it was mostly in the form of comments and views rather than data.

The SDT stated 'The Tribunal does seek to collect data regarding diversity of those referred to the Tribunal (but this is provided on a voluntary basis only) which it would be happy to share with the SRA if this would be helpful.'

There were a number of comments relating to diversity, for example 'Equalities data should be gathered and assessed.' (individual solicitor) and 'We think it important for the SRA to look in more detail at the diversity breakdown of those who have received fines to better identify the impact on different groups before introducing any changes.' (law firm).

The Law Society stated 'Sole practitioners and small firms make up a high proportion of firms, with a large proportion of Black, Asian and minority ethnic solicitors working in those firms, and frequently serving the most vulnerable clients. Often regulatory costs are more difficult for smaller firms to absorb because they do not have the compliance resources of the larger firms… Small firms would have difficulty in affording representation and advice and may find themselves under an unacceptable level of pressure to accept a 'deal'. This is particularly likely to influence the behaviour of those members of the profession who are most vulnerable, such as those from minority ethnic-owned firms.'

One individual solicitor commented 'I strongly support suspension as a solicitor for a minimum of 12 months or striking off, rather than financial penalty, for proven sexual misconduct or discrimination so as to act as a credible deterrent. The impact of this proposal would be to help end violence and discrimination against women and girls and help end inequality.'

Consumer and profession survey summary report

Overview

To support our consultation and capture views on our proposals on the approach to financial penalties, two online questionnaires were issued. One aimed at the public, the other for the profession. Both were available towards the end of the consultation period which took place between 19 November 2021 and 11 February 2022.

Both questionnaires contained many of the same questions. The profession questionnaire was shorter and intended to capture a snap-shot of views, the public questionnaire contained several free-text boxes so that reasons for responses could be captured. 560 members of the public completed the public questionnaire, the sample being a good reflection of the population. 210 respondents completed the profession questionnaire. Findings from each questionnaire are set out in sections two and three of this report. The comparative analysis of the two surveys is explained in this section.

Increasing fining powers

When asked whether the SRA's fining powers should be increased, almost three quarters of the public agree compared with just under a third of the profession. Almost a third of the profession 'strongly disagree' that our fining power should increase, this figure being 2 per cent for the public. These differences are significantly different at the 99 per cent confidence interval meaning we can be 99 per cent confident that the difference is real and not due to sampling error. These differences continue when respondents were then told that we are proposing our fining powers should increase from £2,000 to £25,000 for traditional law firms. Whilst almost two thirds of the public agree with the proposed increase under a third of the profession agree.

Members of the public agreeing with the increase in fining power feel that given the amount solicitors charge and earn, £2,000 does not represent a deterrent to rule breaking, many stating it's simply a slap on the wrist. They feel £25,000 was more likely to encourage compliance. Some noted the advantages of the regulator being able to issue higher fines speeding up the process offering greater flexibility.

The means of the individual

The views of the public and the profession are more closely aligned regarding the proposal to consider the means of an individual when issuing a fine. Around three quarters in each sample agree with this proposal. However, there is a significant difference (at the 99 per cent confidence interval) between those 'strongly agreeing' as 49 per cent of the profession strongly agree compared with 26 per cent of the public.

Respondents to the public survey agreeing that income should be considered when a fine is issued feel it is fairer giving the same deterrent to each person, not being worse for those on lower incomes. Being able to establish whether the fine is affordable, not leading to financial difficulty was also deemed sensible. Respondents disagreeing with this proposal feel punishments should be the same for everyone, that doing something wrong should have the same consequences irrespective of income.

Although there is agreement between the public and the profession about considering the means of an individual when issuing a fine, there is a significant difference (99 per cent confidence interval) in views regarding the proposal to consider an individual's net worth

from the previous tax year when setting fines. When ‘don’t know’ responses are removed, 81 per cent of the public think net worth should always or sometimes be considered compared with 50 per cent of the profession.

The public feel looking at net worth would reflect ability to pay and almost a fifth feel high earners would hide their wealth to reduce the fine, with this approach preventing that. Amongst the public who think it is inappropriate to consider net worth, they feel the fine should fit the crime not the individual and that everyone should be equal.

Turnover

Levels of agreement (strongly agree/agree) with proposals to consider the turnover of the firm whenever we set a fine are not significantly different (95 per cent confidence interval) between the public and the profession with just over two thirds agreeing in each sample. However, levels of disagreement (strongly disagree/disagree) with the proposal to consider turnover are significantly different (99 per cent confidence interval) as 4 per cent of the public disagree compared with 22 per cent of the profession.

Reasons given by the public for agreeing that turnover should be considered when fines are set are that everyone pays the same percentage and that it ensures ability to pay. Some indicated this approach is fair and more equitable providing an incentive for all firms to comply. A small proportion indicated that turnover is more difficult to hide. Those disagreeing that turnover should be considered when setting fines feel fines should be the same for everyone; that the fine should fit the crime. A minority suggested profit would be a more suitable measure.

When advised we are considering setting the maximum fine level at 5 per cent of annual domestic turnover, views between the public and the profession differ. When ‘don’t know’ responses are removed, 60 per cent of the profession feel 5 per cent is too high, 36 per cent feel it’s about right and 4 per cent feel it’s too low. These figures are 5 per cent (too high), 66 per cent (about right) and 29 per cent (too low) for the public. Each are significantly different at the 99 per cent confidence interval.

Amongst the public that think 5 per cent of annual domestic turnover is too low a figure for a maximum fine, a higher figure is seen to be more of a deterrent, with ten percent, or more being suggested.

Fixed penalties

There is no significant difference in levels of agreement (strongly agree/agree) regarding fixed penalties for minor breaches between the public and the profession; 58 per cent of the public agree compared with 51 per cent of the profession. However, lower proportions of the profession answered ‘neither agree nor disagree’ with more opting to disagree (strongly disagree/disagree) than the public – 12 per cent of the public disagreed with fixed penalties compared with 25 per cent of the profession. This difference is significant at the 99 per cent confidence interval.

Reasons given by members of the public that agree with fixed penalties for minor breaches were that it seemed a fair penalty, it would speed up the process saving time and provides an incentive to follow the rules acting as a warning allowing people to learn from their mistakes. Those disagreeing suggest fixed penalties would not act as a deterrent, especially to larger firms, only punishing smaller firms.

When respondents that agree with fixed penalties were shown a range of behaviours and asked to select which ones should lead to a fixed penalty fine, the majority of the public and the profession, selected all but one behaviour (the majority of the public selected fixed

penalties for all behaviours listed). There was no significant difference between the public and the profession relating to the need for fixed penalties for the following:

- failure to provide us with an accountant's report when required (public 80 per cent/profession 74 per cent)
- failure to respond to anti-money laundering risk assessment requests (public 77 per cent/profession 66 per cent)

The two behaviours bulleted above were the two most supported by the profession as requiring fixed penalties. The public's top two behaviours for generating fixed penalties are:

- failure to pay regulatory fees (85 per cent)
- failure to update records when required (81 per cent)

Whilst the majority of the profession that support fixed penalties agree that the above two bullets should generate fixed penalties, the difference is significantly lower (99 per cent confidence) than the public – 58 per cent of the profession feel these behaviours warrant fixed penalties compared with over 80 per cent of the public. The same is also true for failure to display required information on a firm's website – 74 per cent of the public feel this should generate a fixed penalty compared with 56 per cent of the profession (significant at 99 per cent confidence interval).

Failure to provide proof of continued professional development was the only behaviour that most of the profession do not feel warrants a fixed penalty. Forty one percent of the profession feel this should generate a fixed penalty compared with 61 per cent of the public. This difference is significant at the 99 per cent confidence interval.

When asked to determine what the fine should be for a first offence, the profession tended to opt for lower-level fines of up to £200 with the highest proportion of the public choosing fines of between £201 and £499 for the same behaviours. However, these differences are not statistically significant at the 95 per cent confidence interval meaning the difference is unlikely to be real. There is a significant difference (99 per cent confidence interval) for providing proof of continued professional development; 69 per cent of the profession feel a fine of up to £200 is warranted whereas the largest proportion of the public (39 per cent) allocated a fine of between £201 and £499 for the same behaviour.

Whilst the profession had larger proportions favouring a specific fine band, the public were less clear cut with no clear majority of fine level for all bar one behaviour. The only behaviour where the majority of the public agreed on a fine band was failing to respond to anti-money laundering risk assessment requests where a fine of between £500 and £800 was felt to be appropriate by two thirds of respondents, this figure being 44 per cent for the profession (the difference is significant at 99 per cent confidence interval).

Appropriate penalties

There was a large discrepancy between the public and the profession when asked for their agreement with the statement 'Large fines are an effective deterrent for firms from breaking the rules.' Eighty one percent of the public agree (strongly agree/agree) compared with 37 per cent of the profession. Just 4 per cent of the public disagree (strongly disagree/disagree) compared with 41 per cent of the profession – these differences are significant at the 99 per cent confidence interval.

Respondents were shown a range of misconduct situations and were asked to allocate a suitable penalty ranging from no action through to being struck off. For most situations, the public felt some action should be taken, the profession being significantly more likely to suggest no action in all bar two situations (fails to provide information requested by the

regulator and using client money for personal use returning funds without the client knowing).

The public tended to have a clearer idea regarding which penalties to allocate with the majority opting for either no fine (no action/warning), a fine (up to and above £25k) or something more serious (suspension/strike off) for most behaviours. The majority of the public felt fining was appropriate for:

- providing false or misleading information to the regulator
- failing to provide information requested by the regulator
- providing incorrect information to clients about their right to complain

Amongst the profession there was no clear majority for which behaviours should result in fines although the largest proportion of the profession cited fines for each of the three bulleted behaviours above. Interestingly, every member of the public feels some action should be taken for providing incorrect information to clients about their right to complain; 9 per cent thinking a warning is required for this action. Amongst the profession, 3 per cent feel no action is required and 42 per cent feel a warning is appropriate.

Several behaviours generated differing views on the appropriate penalty between the public and the profession. No action or a warning is felt by two thirds of the profession to be appropriate for making sexual comments to a colleague about their appearance compared with just over a third of the public. Bullying another person at work also generates contrasting views. Just under half of the public feel this behaviour should lead to suspension or strike off, just over a fifth of the profession hold this view with the largest proportion of the profession advocating no action or a warning.

Just over half of the public think suspension or strike off is most appropriate for inappropriately touching a colleague once; this figure being just under a quarter for the profession. The same is true for making discriminatory comments about colleagues at work – just over half of the public think this warrants suspension or strike off whereas under a third of the profession hold this view. The largest proportion of the profession (40 per cent) feel the appropriate action for when an employment tribunal finds someone has discriminated against an employee is no action/warning; the figure is 7 per cent amongst the public. Again, the largest proportion (45 per cent) of the profession feel no action/warning is appropriate for using discriminatory language about individuals on social media; just over a quarter of the public share this view.

Two areas where the majority of the public and profession agree are repeatedly touching a colleague after being asked to stop and using client money for personal use returning funds without the client knowing. In these instances, the majority of both groups feel something greater than a fine is required with suspension/strike off being appropriate. Here the profession (62 per cent) is significantly more likely (at the 95 per cent confidence interval) than the public (52 per cent) to suggest suspension or strike off for using client funds for personal use returning it without the client knowing.

Using offensive language at work is seen by the majority of the public and the profession as not requiring a fine or more serious action. However, the profession is significantly more likely (99 per cent confidence interval) to suggestion no action than the public for this behaviour.

Overall views

Views on how effective our reforms will be differed between the public and the profession. Just over three quarters of the public feel our reforms will be effective compared with 30 per cent of the profession. Just one percent of the public think the reforms will in ineffective

compared with 25 per cent of the profession – a further 11 per cent of the profession think they will be very ineffective.

At the end of questionnaire respondents were asked to make any further comments they had on fines or our proposals. The public mentioned the proposals are thorough and fair and they agree with them; that they give an important message that breaches will be taken seriously. Some mentioned the need for fines to be fair and that each case should be dealt with on its own merit.

The profession cited the need to take other factors into account when considering fixed fines such as the culture of the organisation, experience and standing in the firm adding that one size does not fit all. They mentioned that penalties should be commensurate with the gravity of the offence. A common suggestion by the profession was rather than punishing behaviour, education about how to behave should be improved and support offered when things go wrong.

Several members of the profession doubted the SRA's ability to impose sanctions and others did not think it appropriate that the regulator should cover all roles. There was mention that some of the issues raised should be dealt with by the employer and not the regulator.

Public focus groups

Overview

We ran two focus groups with up to ten members of the public per group. The groups comprised individuals with different demographic profiles from across England and Wales.

Participants were asked general questions about us and the role of financial penalties followed by a set of specific questions on each of our consultation proposals.

The majority of participants recalled seeing examples of high profile fines in the media and felt that financial penalties help to send a clear message to the public that misconduct is taken seriously. On the other hand, they also pointed to the limitations of financial penalties and a few participants stated that they did not always think they acted as a credible deterrent.

All focus groups participants were surprised that we are only able to fine traditional law firms up to £2000 and ABS firms up to £250 million and individuals within them up to £50 million. A few respondents pointed to the large disparity in our fining powers for different bodies and highlighted that they felt this undermined our effectiveness as a regulator.

The majority of participants agreed that we should have increased fining powers. There was also unanimous support for our proposals to take into account the means of individuals and firms when setting fines. One participant stated that they felt it would be unfair if a financial penalty would lead to bankruptcy.

There was also general support for our proposal to introduce a schedule of fixed penalties for less serious breaches of our rules. One participant was worried that fixed penalties might lead to individuals taking on responsibility for firm failures.

Behaviours suitable and unsuitable for a fine

The groups were shown a range of different scenarios setting out misconduct across a spectrum of seriousness. Some of the scenarios were more nuanced than others.

Scenario 1: Sexual misconduct (a solicitor convicted of rape)

Participants were unanimous that the appropriate penalty in this situation would be strike off. They did not consider sexual misconduct of this type suitable for a financial penalty.

Scenario 2: Racism (eg racist jokes, comments)

This scenario prompted a mixed response from participants. Half felt that it would not be suitable for a financial penalty whereas the other half felt that it might be. A participant commented that remarks may be misconstrued and a financial penalty may be an appropriate outcome.

Scenario 3: Bullying (eg shouting at staff)

Across both of the groups there was general consensus that a rebuke/warning or less would be the most appropriate outcome. This scenario also generated interesting discussion around education as an important tool to deter individuals from behaving in this way in future.

Scenario 4: Sexual misconduct (eg inappropriate touching of a colleague)

Across both groups there was a general view that this conduct was unsuitable for a financial penalty. A few participants questioned the SRA's role in taking action if the victim had not pursued a criminal conviction.

Scenario 5: Sexual misconduct (outside of work at a private party)

This scenario prompted mixed feedback. On balance the majority of participants did not feel that it would be suitable for a financial penalty and thought that it should result in a more serious sanction such as suspension or strike off. A minority of participants felt that it ought to attract a warning or rebuke.

Scenario 6: Sexual misconduct (threatens a colleague after having advances rejected)

The majority of participants felt that a financial penalty was inappropriate and that suspension or strike off was more appropriate.

Scenario 7: Non-sexual harassment (offensive comments on social media)

This scenario prompted a mixed response. The majority of participants felt that it should attract a greater sanction than a financial penalty although a minority felt that a financial penalty or rebuke/warning may be appropriate. One participant stated that, because the remarks were made in a public way, the conduct ought to attract a more serious sanction than if the remarks were made privately.