

Financial Penalties Q&As

28 January 2022

The aim of our changes

Open all [#]

Why have you suggested these changes?

If implemented these changes would benefit all involved in the disciplinary process. They would see certain cases being resolved more quickly and without a hearing before the Solicitors Disciplinary Tribunal (SDT), potentially reducing the costs, burden and stress placed upon all involved. This in turn could also free up time at the SDT meaning more time can be spent there on progressing more serious cases.

How transparent will SRA decisions be?

All decisions made by the SRA are based on criteria and processes transparently outlined in guidance, including our fining guidance (as amended following the consultation) and our enforcement strategy [<https://www.sra.org.uk/sra/corporate-strategy/sra-enforcement-strategy/>] and accompanying topic guides. All decisions and the reasons for them are published – and are of course appealable to the SDT.

How has the figure of £25,000 been arrived at?

We have undertaken detailed analysis of all fines issued by the SDT over the last five years. Based on this analysis, our initial view is that fines up to this level are generally more straightforward and less serious in nature, and many of these are resolved by Agreed Outcome. This is where the facts and appropriate outcome are agreed between us and the solicitor or firm in question, but currently must be approved by the SDT where the outcome is a fine over £2,000.

Who gets the money paid in fines?

Any money paid to us in fines goes directly to HM Treasury, exactly as it does with the SDT.

Take account of income

Won't you end up fining two solicitors different amounts for the same misconduct?

One size does not fit all – the market is hugely diverse and taking a homogenous approach to all solicitors in terms of fine level does not feel fair. We believe that for financial penalties to be fair and act as a credible deterrent, they must take account of the income/resources of the individual being fined. This is the only way that fines for otherwise identical offences can, for example, have a similar impact on a newly-qualified junior solicitor as on a senior equity partner in a global firm. Our proposal cuts both ways – whilst highly paid partners may attract a higher fine as a result, very junior solicitors would be fined less.

Fixed penalties

*Taking account of income and also levelling fixed penalties sounds like a conflicting approach.
How will it work in practice?*

The fixed penalty proposal would attach only to certain types of case – for example, non-cooperation with requests from us for information or documents, or non-compliance with administrative requirements. It will only apply where the issues and appropriate fining level can be standardised and the facts straightforward.

Fixed penalties would involve an automatic fine (following appropriate warnings), from which there will be a right of review.

This is not about introducing new types of offence but dealing with these issues in a more streamlined way than is currently the case. Other fines will be assessed following an investigation and in accordance with our guidance.

Types of misconduct

Why do you think certain types of misconduct require more than a fine?

We are asking for views about the types of misconduct that are particularly suitable or unsuitable for a financial penalty. We believe that some cases require restrictions on practice to protect the public or maintain confidence in the profession.

We are not the only regulator asking these questions. This includes, for example, the Bar, which has recently moved to a starting point that all proven cases of sexual harassment involving a barrister should result in a suspension of 12 months or more as a starting point. We think the time is right to revisit this area and seek wider views which may help us and the SDT, understand public expectations and views on such issues.