Solicitors Regulation Authority

Financial penalties: detail of new approach

Consultation response

February 2023

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Financial Penalties consultation response

Executive Summary

This document outlines our response to our second consultation on financial penalties. In our consultation we set out detailed proposals to implement the decisions we made in relation to our financial penalties framework following on from our first consultation which focused on the principles of the framework.

Our proposals included:

- Enhancements to our decision making procedures following an increase to our fining powers for traditional law firms from £2000 to £25,000 in July 2022
- A pilot on personal impact statements in relation to sexual misconduct, discrimination and harassment
- Updated fining frameworks for firms and individuals.

Details about the implementation of our fixed penalty regime – which breaches to include, the process, and the level of fines to impose.

We also shared the wording of our guidance to implement our policy position that fines are not appropriate. This is where an individual is found to have committed sexual misconduct, discrimination and harassment, save in exceptional circumstances.

Alongside this response, we have published a summary of the consultation responses we received. This document should be read alongside that report.

Having carefully considered each consultation response and engaged with a variety of key stakeholders, we will take forward proposals that:

- all fines can only be imposed (unless agreed) by functionally separate adjudicators
- the most serious fines (those falling into Band D according to our published guidance) must be imposed by adjudication panels, rather than single adjudicators
- all reviews must be dealt with by a different authorised decision maker to the one who made the original decision
- we streamline our ability to revoke a referral we have made to the Solicitors Disciplinary Tribunal (SDT) that has not yet been certified
- our rules make the circumstances in which we can hold a hearing clear – limited to where we are unable to refer a matter to the SDT and a hearing is necessary to decide the case – and enable all adjudicators to direct that a hearing should take place
- our rules enable adjudicators or panels to interview respondents before making first-instance and review decisions
- we take forward a pilot on personal impact statements in sexual misconduct, discrimination and harassment cases
- we implement our proposed updated fining frameworks for firms and individuals
- we implement the fixed financial penalty regime.

We will not proceed with our proposal to allow adjudicators or adjudication panels to interview witnesses.

This document explains the rationale for our decisions and our next steps.

Background

Our ability to impose financial penalties when required is central to maintaining professional standards and public confidence in the profession.

In reforming our financial penalties framework, we aim to resolve cases much more quickly, potentially reducing the costs, delays, resource, and stress for those subject to our procedures, as well as improving public protection and providing consistent outcomes which deliver a credible deterrent to reduce future risk of repeated behaviour.

Following our first consultation on our approach to financial penalties, we decided that we would move forward with plans to:

- seek an increase to the maximum fine we can issue internally to traditional firms, and those working in them, from £2,000 to £25,000. This was introduced in a change to legislation on 20 July 2022
- amend our guidance to make it clear that for any case involving sexual misconduct, discrimination or any form of harassment, a financial penalty will only be considered in exceptional circumstances
- take into account, in all cases, the turnover of firms and income of individuals when setting fines
- introduce a fixed penalties regime for specific breaches of our rules.

This second consultation set out our detailed proposals to implement those decisions.

Who did we hear from?

Our second consultation launched on 22 August 2022 and closed on 14 November 2022. There were 13 respondents:

- the Legal Services Consumer Panel
- the Law Society
- the Junior Lawyers Division
- four local law societies
- two law firms
- two individual solicitors
- two members of the public

We also engaged directly with key stakeholders during the consultation period, including the Law Society, and the Legal Services Consumer Panel. We are grateful to all the individuals and organisations who responded to the consultation and have engaged with us about the

proposals. We have carefully considered all of the feedback we received in developing our final positions.

Our final positions

In this section we outline each consultation proposal. We set out a high-level summary of the responses we received, our next steps and our rationale. Our summary of responses document sets out a more detailed analysis of the responses we received to each proposal.

Enhancements to our decision making processes in light of increase to maximum fine levels

In July 2022 our fining powers for traditional law firms and those who work in them increased from £2,000 to £25,000.

We recognised that with this increase we needed to provide additional assurance about the transparency and robustness of our decision making processes. Alongside our consultation, we published a statement setting out the detailed procedures and safeguards we already had in place. And further enhancements we were going to make.

We also proposed to amend our rules to further enhance the transparency and robustness of our decision making. These proposals are considered below.

Approach to adjudication

What did we propose?

Introducing explicit rules to clarify that all fines are imposed (unless agreed) by functionally separate adjudicators, rather than relying on our published Schedule of Delegation. The exception would be fixed penalties which would be imposed by Investigation Managers following the process set out in the revised rules consulted upon.

We also proposed that for the most serious rule breaches that are suitable for a fine (those which according to our published fining guidance fall in Band D), fines would only be imposed by panels of appointed adjudicators.

Respondents' views

Most respondents were supportive of our proposals. Some however questioned whether always referring the most serious breaches that are suitable for a fine to adjudication panels would introduce additional cost and/or delay to our processes.

In response to a statement that panels would usually consist of lay and legally qualified members. But that on rare occasions, panels may consist of all lay members, a significant number of respondents raised strong objections to all lay member adjudication panels.

Many argued for all panels to consist of a majority of legally qualified members, mirroring the set-up of the Solicitors Disciplinary Tribunal (SDT), with a legally qualified chair. The main reason provided was that those that are legally qualified understand the realities of practice whereas lay members do not. And that the profession would have greater confidence in our decision making if a solicitor was chair.

Our response

Given the broad support we received to these proposals, we will implement these changes to our rules, subject to approval from the Legal Services Board (LSB).

We have carefully considered any impact of only allowing fines within Band D to be imposed by adjudication panels. And believe this can be accommodated within our existing resources without causing any additional costs or delay.

We recognise that having a solicitor member on our adjudication panels is important for the profession to have confidence in our decision making process. We always seek to have a least one legally qualified panel member and one lay panel member on each panel. And will make sure that this is the case going forwards.

We do not agree that there is a need for the majority of panel members to be legally qualified, or that the chair must be legally qualified. It is not the role of legally qualified members to provide expert evidence about the realities of practice.

The role of the panel is to apply our rules within the regulatory framework, and all panel members receive the same training to enable them to do this. Legally qualified members do not offer expert advice on the application of our rules in their capacity as a lawyer. A panel adviser, who is a lawyer, supports the panel for this purpose.

Conducting reviews

What did we propose?

Introducing a rule that requires reviews of our first instance decisions be dealt with by a different authorised decision maker to the one who made it originally. This is our current practice to make sure appropriate independence, but we felt having an explicit rule would provide assurance.

We also proposed to make clear in our rules that decisions of an adjudicator or adjudication panel may only be reviewed by a different adjudicator or panel. This is to strengthen the separation between those investigating allegations and those determining sanctions.

Respondents' views

Respondents generally supported this proposal. A small number questioned whether adjudicators could impartially review the decisions of colleagues and suggested that a panel should review all single adjudicator decisions.

Our response

Given the support we received from respondents, we will implement these changes to our rules, subject to LSB approval. We do not consider it is necessary for a panel to review all single adjudicator cases. All adjudicators are appropriately trained and able to review decisions impartially.

Hearings

What did we propose?

We have the ability to hold hearings, but we have not previously used this power. In most cases where a hearing is required it will be most appropriate for the case to be determined by the SDT. This is because of their experience and infrastructure to support hearings.

However, we are not able to refer all cases to the SDT and so we proposed to amend our rules to make the circumstances in which we would hold a hearing clear. This would limit this to cases where we are not able to refer a case to the SDT and either:

- there are material disputes of fact which cannot be determined without a hearing in which the parties are cross-examined, or
- there is an exceptional public interest in matters being ventilated in public.

We proposed that the decision to hold a hearing would be in the discretion of our adjudicators.

Respondents' views

Some consultation respondents, including the Junior Lawyers Division and the City of London Law Society supported our proposals. Some sought assurance that respondents would be able to request a hearing. However, many consultation respondents raised concerns that it was not appropriate for us to hold a hearing, urging us to refer all appropriate cases to the SDT.

Our response

Having carefully considered the views expressed by respondents, we will implement our proposed rules in relation to hearings. This will be subject to approval from the LSB.

Whilst we agree that the SDT will usually be the most appropriate body to hold a hearing, we are not able to refer all cases to them. For example, where the respondent firm is a licensed body (also known as an Alternative Business Structure or ABS).

This is because the SDT does not have the statutory powers to hear cases about ABS. These are a firm that has non-lawyers in its ownership and management structure, whereas a traditional firm is wholly owned and managed by authorised lawyers.

In cases where we are not able to refer to the SDT and a hearing is necessary, we must be able to hold one in the interests of justice.

We will update our rules and guidance to make the circumstances in which we will consider holding a hearing clear. We will clarify in this guidance that the person subject to the decision is able to request that we hold hearing.

Any request, whether from us or the person subject to the decision, will be referred to an adjudicator to make a decision as to whether a hearing should be held.

We will publish guidance that sets out the procedures we adopt when holding a hearing. This will address the detailed questions raised by some respondents such as notice periods and

special measures that may be appropriate to enable vulnerable witnesses to make representations.

All of our adjudicators and panel members have undergone training covering the hearings process and associated skills. And we have an on-going training programme to make sure their knowledge and skills remain up to date. All new adjudicators and panel members will receive this training as part of their induction.

Interviews

What did we propose?

Adjudicators and panels currently interview the person subject to the decision, where appropriate, to clarify evidence or test credibility prior to reaching a decision.

We proposed to make this explicit in our rules and enable adjudicators and panels to also interview a witness to events to:

- clarify their evidence
- test their credibility
- clarify the impact of the events in question on them.

We proposed that interviews with the person subject to the decision or witnesses could take place at the first-instance or review stage. This is rather than just at the first-instance stage as is current practice.

Were a witness to be interviewed, we proposed that the person subject to the decision would be sent a copy of the evidence obtained during the interview. They will also be given an opportunity to make representations on this evidence. They would not be present at the interview.

Respondents' views

Respondents expressed mixed views in relation to this proposal. However, there were some very strong objections on two grounds:

- a view that the interview is part of the investigation process, and therefore should not be conducted by an adjudicator at the decision-making stage

- it is unfair to the respondent to not be present at an interview of a witness.

Our response

We will make express provision in our rules for adjudicators or panels to interview respondents at the first instance and review stage of our processes. We will not proceed with our proposal to allow adjudicators or panels to interview witnesses. This is following carefully consideration of the views expressed by consultation respondents.

Interviews at the first instance and review stage are to test the credibility of the respondent's evidence gathered during the investigation stage, not to seek new evidence. The High Court has held that there are circumstances where fairness requires us to hear orally from a respondent. This includes when a significant explanation is advanced which needs to be

heard orally in order to fairly determine its credibility (*Yussouf v SRA [2018] EWHC 211 (Admin)*).Further, the respondent sometimes requests to speak to the adjudicator or panel.

We consider that interviews can form an important part of the decision making process. We are therefore making provision for adjudicators to be able to interview respondents is essential to ensure robust, quality decisions in all cases.

In relation to interviews, we consider that providing the respondent with details of what the witness says and the opportunity to make representations on it, would ensure fairness.

However, we recognise the strength of feeling from those respondents who objected to this proposal. The need to interview witnesses will arise rarely and therefore, in those circumstances we will refer the case to the SDT for a hearing. Or we will hold a hearing where we are unable to make such a referral.

Revoking a referral to the SDT

What did we propose?

Amending our rules so we can revoke a referral we have made to the SDT more quickly and at a lower resource cost. Sometimes we receive new evidence or legal advice that means it is no longer appropriate that a matter is referred to the SDT. It is not uncommon for this to come from the respondent.

Where we revoke a referral, the process required by our current rules involves notifying the respondent of our intention. And inviting them to make representations (even where they requested the referral be revoked).

We proposed to remove this requirement from our rules so this decision to be made more quickly and to reduce the burden on us and the respondent.

Respondents' views

Most consultation respondents were supportive of our proposal. Although some felt that where the respondent has not requested the revocation we should still notify them of our intention and invite them to make representations.

Our response

Given the benefits to us and the respondent in terms of time and cost, we will amend our rules in line with our proposal.

We do not envisage a situation in which a respondent would oppose us revoking a referral to the SDT given the inevitable savings in time, cost and stress. However, as a precaution, we will maintain provision for the respondent to seek a review of our decision.

Further suggestions put forward by consultation respondents

In our consultation, we asked for suggestions of other measures that may provide further assurance as to the transparency and robustness of our decision making.

Respondents' views

One of the most common suggestions was that we publish biographical information about our adjudicators and details of their training on our website.

Some respondents expressed concerns that adjudicators have access to a respondent's regulatory history. They felt this may unduly influence that adjudicator's decision about the case.

Our response

We will provide more information on our website about the recruitment, selection and training programme for our adjudicators. We believe this will provide assurance that all adjudicators have the required knowledge and skills to carry out their role. We do not agree that publishing the names and biographies of individual adjudicators is necessary to provide this assurance.

Adjudicators are provided with information about the regulatory history of the person subject to the decision. This is so they are able to take into account patterns of behaviour and history of offending. They will use this to inform their decision about the appropriate sanction, which will be made in line with our Enforcement Strategy.

Adjudicators do not have unfettered access to our systems, which some respondents were concerned about. The information they see about a respondent's regulatory history is disclosed to them as part of the case bundle. This information is also disclosed to the respondent so that they can make representations on both the allegations and their regulatory history.

It would not be practical or efficient to separate out the bundle as this would involve asking the respondent to make separate representations. And providing separate bundles to the adjudicator or panel.

Our adjudicators are professionally trained, including around the appropriate considerations at each stage of the decision-making process. It is well recognised in caselaw (for example in the case of R. (on the application of Mahfouz) v General Medical Council [2003] EWHC 1695 (Admin); [2004] EWCA Civ 233) that professional decision-makers are able to apply their minds in this way and not be unduly influenced by material of this nature.

Updated Financial Penalties guidance

Behaviours unsuitable for a fine

What did we propose?

Updating our Enforcement Strategy to reflect the position we reached following our first consultation. This was that where an individual is found to have committed sexual misconduct, harassment, or discrimination, a financial penalty is highly unlikely to be an appropriate sanction.

Given the typical nature of these cases, we will usually make a referral to the SDT to consider a suspension or a strike off. However, we acknowledged in our updated strategy that there will be exceptional circumstances in which we would impose a sanction ourselves. We also give examples of what those circumstances might be.

We also proposed a revision to our financial penalties guidance to recognise that the position for firms will be different. And that a financial penalty may be appropriate where poor systems or controls allowed these types of behaviour to occur or persist.

Alongside our consultation we published a draft of our updated Enforcement Strategy and guidance on our approach to fining. We sought views on whether our revisions provided clarity on the outcomes for firms and individuals for these types of behaviour.

Respondents' views

Many respondents were supportive of our proposed revisions. Some respondents however suggested that the range of such behaviours is very broad and should be considered on a case by case basis. Some also questioned the use of 'exceptional circumstances' in this context. They felt in the broad range of behaviours covered, those with ill intent were most likely to be exceptional.

Our response

We have updated our Enforcement Strategy following this consultation.

We have also published the new guidance that will come into effect alongside the new rules on 30 May 2023 (subject to LSB approval). This is designed to assist decision makers and provide clarity to those subject to our decisions and other stakeholders. However, it cannot fetter the discretion of our decision makers, who will consider each case on its own facts.

We recognise that a broad range of behaviours fall under sexual misconduct, harassment and discrimination. However, any case in which a sanction will be imposed will have already crossed a significant threshold of seriousness.

The guidance makes clear that in these cases a fine will be insufficient to protect the public, except in exceptional circumstances. We have included examples of such circumstances.

Personal impact statements

What did we propose?

Pilot the use of personal impact statements in cases relating to sexual misconduct, discrimination and harassment. This is to gather information about the impact of misconduct on any identified victim(s) in a structured and consistent way. This followed a suggestion put forward by the Legal Services Consumer Panel.

Respondents' views

Most respondents were broadly supportive, but some were concerned of a risk of abuse of the process if an identified victim was not honest. Or of unfairness to the respondent if the statement was not disclosed to them.

Our response

Having carefully considered the views of consultation respondents, we will take forward a three year pilot on the use of personal impact statements. Given that many of these cases will be referred to the SDT, a pilot of this length will be necessary to test the process.

We already gather information regarding the impact of misconduct on any identified victim(s) as part of our investigation. We will now develop a template to help us to draw out the key information in a more structured and consistent way for cases of this nature.

The personal impact tends to be at the core of the harm caused by the conduct in these cases and therefore at the core of the seriousness of the conduct itself. Understanding the personal impact is therefore critical to determining the appropriate outcome.

Personal impacts statements will be disclosed to the respondent as part of the case bundle on which they will be invited to make representations.

Taking income into account when setting fines

Fines for firms – taking turnover into account

What did we propose?

Following our first consultation, we confirmed that we would develop a new framework for setting levels of fines, taking into account the turnover of firms at all times. And increasing the maximum amount we would usually fine firms to 5% of annual domestic turnover.

In this consultation, we published our proposed new fines table and set out how our new model would operate in practise.

Respondents' views

The majority of respondents raised concerns about our plans to update our fining framework for firms. Many of these concerns focused on decisions we had previously made and which were not part of this consultation, such as whether turnover was the right metric to use and whether a fine of 5% of annual turnover would always be unreasonably high.

Some respondents raised concerns about the amount of discretion the new framework gives to authorised decision makers, feeling there was too much and some too little discretion.

Others also felt that the new fining table would lead to disproportionately high fines for large firms for relatively minor misconduct. Some objected to a provision in our draft guidance that enables authorised decision makers to take into account means other than annual domestic turnover. For example, global turnover or average turnover over a number of years.

Our response

We have reflected on the responses we received to this part of our consultation. We will implement the new fining table on which we consulted but will amend our guidance to provide additional clarity.

We consider that our new approach strikes the right balance between providing certainty and transparency whilst maintaining the discretion of adjudicators. Our guidance provides a clear framework for how an adjudicator will reach a decision. But they will consider each case on its own facts and apply their discretion accordingly, issuing fines up to the limits allowed by legislation in appropriate cases.

As a result of the changes to our fining bands, many firms will face higher penalties. This is because we believe these bands had become out of step with what we are aiming to achieve

through our financial penalties framework, particularly providing a credible deterrent. We were also concerned that our fines were often much lower than those of other regulators.

The largest firms we regulate will face high fines for misconduct that falls into the least serious band for offences that are suitable for a fine (Band A). We consider this to be necessary, given the scale of their operations and turnover, to provide a deterrent effect and to uphold public confidence in the profession.

It is important to note that for a fine to be imposed, the misconduct will have already crossed a significant threshold of seriousness.

We currently have and will maintain the discretion to, by exception, decide that another measure other than annual domestic turnover may be appropriate to meet our objectives. (These are maintaining standards, deterrence and public confidence.) And this would be identified with reasons and the respondent given the opportunity to comment, in advance.

We have not to date had a case in which an adjudicator has used an alternative to annual domestic turnover.

Since we launched our consultation, the government has drafted the Economic Crime and Corporate Transparency Bill. If this Bill is enacted into legislation, we may be given unlimited fining powers in some circumstances. This may make it necessary for us to review our position on the setting of fines.

Individual income

What did we propose?

Following our first consultation, we confirmed that we would develop our fining approach for individuals. This is so that the level of fine imposed is informed by the income of the individual subject to the decision.

We said this would help us to achieve our aims of ensuring that fines serve as a credible deterrent. And uphold public confidence through fines that are proportionate to the means of the individual.

In this second consultation, we set out the detail of our proposed approach. This was that the basic penalty would be calculated as a percentage of the individual's gross income from the previous tax year. (This is once the misconduct had been placed into one of our fining bands based on seriousness.)

Our proposed framework allows for individuals to provide alternative evidence of their income where there has been a significant change since the latest available P60 or tax return. And to provide a statement of means in exceptional circumstances.

We published a proposed fining table and a draft update of our fining guidance to illustrate how this would work in practise.

Respondents' views

Many respondents to the consultation raised concerns about our proposals. A key concern was that gross income is not a good measure of affordability. And would create unfairness due to the different levels of income tax applied to different gross salaries. Suggested alternatives included using net income or disposable income.

Some respondents also felt that the percentage of gross salary that an individual could be fined for the most serious breaches could be ruinous. And suggested that we should voluntarily cap fines at a lower level.

Consistency with the SDT was also raised by a number of respondents, with some fearing two disciplinary systems depending on wealth. A fining regime based on income inevitably means that in some cases, the appropriate fine would exceed our legislative limit and others, with similar circumstances would not. The concern is then that SDT fines will be lower than our own, meaning those of greater means may be fined lower amounts.

Our response

Having carefully considered the points made by respondents and having received further advice from an economic consultancy, we will implement the updated fining framework for individuals on which we consulted.

In taking an individual's gross income into account when determining the basic level of a fine, we are seeking to provide a meaningful deterrent. And providing confidence to the public that solicitors doing wrong are fined at a level that is meaningful given their position and financial standing. Individuals are able to make representations about affordability. This may inform the length of time an individual is given to pay a fine, or more exceptionally, the adjudicator may decide to lower the final level of the fine.

Given some of the concerns raised in responses, we reviewed our proposed approach. Returning to Economic Insight, who provided advice to us during our first consultation, income is the best measure to use to deliver proportionate and fair outcomes when setting fines.

Economic Insight then considered whether net income or disposable income would be fairer metrics than gross income. Their view is that gross income is the fairest metric to use.

Net income would not be a better metric. Higher and additional rate taxpayers pay a larger proportion of tax but a lower proportion of their gross salary is likely to on non-discretionary expenditure, such as utility bills.

They advised that using disposable income, or taking account of savings, would lead to inconsistencies. This points to the challenges we would face in determining what is necessary and what is discretionary spending.

Economic Insight considered whether our proposed bands were too high or too low at the top end. Their view is that there is no evidence to suggest this is the case.

They have considered that the new framework means, in the majority of cases, fines will represent roughly the same percentage of the gross income of an average earning solicitor. This means an increase for higher earning solicitors and a decrease for solicitors earning lower salaries.

They also looked at the fining frameworks of other regulators. They found that the Financial Conduct Authority cap fines for individuals at 40% of gross income. While other organisations have frameworks which, as a percentage of gross income, are broadly in line with or higher than the bands we have proposed. This includes the SDT, the Council of Licensed Conveyancers and Bar Tribunal and Adjudication Services. We have published Economic Insight's full report alongside this response.

As a result of the concerns raised by some respondents, we have clarified in our fining guidance. This means that any respondent may provide a statement of means as evidence of whether the level of fine based on gross income is affordable.

In most cases this will be used to consider whether to give the individual additional time to pay the fine. But in exceptional circumstances, an adjudicator may reduce the final amount of the fine.

Where an individual refuses to provide us with evidence of their salary, the misconduct will be moved to the next highest band of seriousness in our published fining table. And we will assign the individual a default salary, as set out in our consultation.

We are developing these default salaries using datasets of recruitment companies that focus on different segments of the legal services market. We will publish these ahead of implementation of the new framework. It is important that in developing these salaries we do not incentivise non-disclosure of actual salaries. And so the default salaries will be at the top end of the range of salary brackets we obtain.

Finally, we acknowledge the importance of ensuring, as far as possible, a consistent approach between us and the SDT and we will continue to engage with them about this.

Publication

What did we propose?

We proposed that when we impose fines for individuals that considers their income, we would publish the fine level and the percentage of income taken into account. This is to make sure of transparency, uphold public confidence and ensure our fines act as a credible deterrent.

We recognised that this would make it possible to calculate the income of an individual, which is personal data protected by the General Data Protection Regulation (GDPR). We also proposed to publish similar information in relation to firms that would make it possible to calculate the firm's turnover.

Respondents' views

Many respondents strongly opposed our proposals in relation to publication. For individuals, many felt that the publication of information that enables a gross salary to be calculated would be disproportionately intrusive. And may be a breach of GDPR and/or Article 8 of the Human Rights Act.

In relation to firms, some respondents were concerned that publishing information that enables turnover to the calculated may cause instability. This could be both within and outside the business and that it may have an adverse competitive impact on a firm.

Our response

We acknowledge the strength of feeling expressed by some respondents about this issue. And understand that both firms and individuals will find it uncomfortable for this information to be put into the public domain. We have carefully considered the legal position, alternative options and the right balance between privacy and our regulatory objectives.

We consider that our proposed approach is both proportionate and the only option that would enable us to achieve the public interest benefits of being transparent. This is about both about the sanction imposed and the reasons for that sanction being appropriate. This includes our view on the seriousness of the misconduct and how this is affected by any aggravating and mitigating factors. This is essential in order that our fining decisions are able to maintain standards and uphold public confidence.

We are able to withhold publication of this information if the respondent is able to demonstrate that it would be disproportionate. For example causing real and significant prejudice or harm.

We will make sure that this is clarified in our publication guidance. We will also consider any objections to the publication of personal data under GDPR provisions on a case by case basis.

Fixed Penalties

What did we propose?

Following broad support in our first consultation, we confirmed that we would take steps to introduce a fixed penalties scheme for specified breaches of our rules. For example non-compliance with our more administrative requirements or failure to respond to our requests. We said that we would develop a scheme that in the first instance, covers a small number of breaches and limits the breaches in scope of the scheme to firms.

In this consultation, we identified the breaches that we proposed to include in the scheme. As well as provided details about how the process would work, including the amount of the penalties we proposed to impose.

Respondents' views

We received broad support for the introduction of fixed financial penalties for the breaches we identified. However, some respondents thought that the penalties should be lower, or questioned whether we should charge costs in relation to a fixed penalty.

Our response

We will implement the fixed financial penalty scheme in relation to the small number of breaches of our rules that we identified in the consultation.

We have reviewed the levels of fixed penalty that will be imposed and consider that these are set at the right level. We have taken into account the fact that the firm will be given an opportunity to bring themselves into compliance before a penalty is issued.

We also consider that a firm who has breached our rules should pay for our enforcement costs, rather than these costs being borne by the profession as a whole.

We plan to evaluate the scheme two years after implementation to consider whether to expand the scheme more widely, including to individuals. As this is a new scheme, we will also put in place monitoring so that we can resolve any issues as they arise. And may make minor changes to the process if necessary.

Next steps

We will submit an application to the LSB seeking approval of the SRA Financial Penalties and Adjudication (Amendment) Regulations 2023. These revised regulations will implement the required changes to our rules to implement our post-consultation positions.

Subject to LSB approval, our new rules will come into force on 30 May 2023. If approval is later than this, the new rules will come into force on the date of that approval.