

## SDT RESPONSE TO SRA CONSULTATION RE: PROPOSALS TO UPDATE ITS APPROACH TO FINANCIAL PENALTIES

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	<b>SRA QUESTION</b>	<b>SDT RESPONSE</b>
Q1:	Do you agree that we should update our guidance on financial penalties to include two new fining bands - bands E and F?	<p>Neither agree nor disagree.</p> <p>However, the SDT queries the necessity of the proposed update.</p> <p>With an eye to protecting the public, maintaining public confidence in the profession and demonstrating transparency of decision making, the SDT asks whether matters of the seriousness attracting punitive fines at the levels proposed in E and F should, on principle, be retained in-house by the SRA?</p> <p>The SDT considers that it does not, and that it and not the SRA is the appropriate forum for matters of the seriousness envisaged in bands E and F.</p> <p>The SDT already has the power to issue unlimited fines, in addition to a full range of other sanctions.</p> <p>The SDT is independent of the investigatory process. Its processes are transparent, its judgments are carefully thought out and add to the body of jurisprudence in regulatory law, and it enjoys the confidence of the profession and the public in its ability to dispense justice .</p> <p>One rationale for the SRA extending its internal powers has been to reduce the number of cases referred to the Tribunal. The impact, however, could be the exact opposite.</p> <p>Firms and solicitors may have preferred to settle with the SRA rather than risk the trouble, expense and negative publicity of a</p>

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		<p>hearing at the Tribunal. However, it has been noted that the methodology used by the SDT to calculate fines would result in lower penalties than under the SRA's proposed new scheme. There could be some cases in which individual solicitors and law firms take the view that the difference in potential fine is so great that it is worth facing the risks of a Tribunal hearing rather than settling.</p>
Q2:	<p>Do you agree that our proposed approach will provide a credible deterrent against the most serious breaches of our rules?</p>	<p>Disagree.</p> <p>The risk of falling foul of matters attracting fines at levels E and F would be likely viewed by those with the deepest pockets as an arithmetical problem to be treated on a cost/ benefit basis.</p> <p>There is a significant risk that the profession and the public will not see this as a credible deterrent but the reduction of justice to something akin to a transactional and commercial event.</p> <p>A single form of sanction cannot, on its own, be a credible deterrent and a range of different forms of sanction, (of which fining is only one) is required to deter the most serious breaches of the rules.</p> <p>Serious breaches should not, as a matter of principle, be retained by the investigator and summarily disposed of in the way envisaged.</p>
Q3:	<p>Do you agree that the new nature and impact scores provide greater clarity as to how we determine the appropriate penalty within the bands?</p>	<p>Disagree. It will add a layer of complexity.</p>
Q4:	<p>Are there any further steps you think we could take to provide clarity on how we determine the appropriate penalty band when imposing financial penalties?</p>	<p>None which are immediately obvious other than not implementing the proposed updates.</p>
Q5:	<p>Do you agree that we should take into account aggravating and mitigating factors at one stage, when setting an appropriate fine, and therefore remove the standalone discounting process?</p>	<p>Agree but subject to our answers Q1, Q2, Q3 and Q4.</p>

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Q6:	Do you agree with the list of aggravating and mitigating factors that we have set out above?	Agree but subject to our answers Q1, Q2, Q3 and Q4.
Q7:	Do you agree that cooperating with our investigation and remedying harm caused by a breach of our rules are not mitigating factors?	Disagree. Full co-operation is clearly a mitigating factor and one which in fairness should be taken into consideration.
Q8:	Do you agree with our proposal to introduce minimum fine levels in each penalty band in our fining guidance?	Neither agree nor disagree.
Q9:	Do you agree with the proposed levels of minimum fine?	Neither agree nor disagree.
Q10:	Do you think providing illustrative examples such as this will be a helpful addition to our guidance on financial penalties?	Neither agree nor disagree. However, if the proposed regime was sufficiently clear illustrative examples would not be required.
Q11:	In identifying the appropriate metric on which to base a fine, are there any key considerations we should take into account, for example regarding the corporate structure of the firm?	None which are immediately obvious.
Q12:	Do you agree with our proposal to clarify our position by stating in our guidance that all financial penalties will be the sum of the indicative fine and the amount of any financial gain obtained from the misconduct?	Neither agree nor disagree.
Q13:	Do you agree with our proposal that we should not impose a financial penalty following a conviction for driving with excess alcohol?	This would depend on the underlying circumstances. It should not be ruled out if the circumstances reveal misconduct of a degree and nature deserving of such a response in order to maintain the confidence of the public and the reputation of the profession.
Q14:	Are there any additional potential impacts, either positive or negative, of our proposals on any group of solicitors with protected characteristics?	None which are immediately obvious. Though the greater impact will be felt with those of more limited means.

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Q15:	Do you think providing illustrative examples such as these will be helpful additions to our guidance on financial penalties	Neither agree nor disagree.