

This note summarises our findings in relation to the follow-up questions raised in relation to individual fines after the Solicitor Regulation Authority's (SRA's) consultation on the details of the new approach to financial penalties.<sup>1</sup>

## 1 Introduction

The SRA has asked Economic Insight to provide:

- a. An assessment of whether gross or net income should be used as a basis to set individual fines; and as part of this, whether savings and / or outgoings should also be considered. This is set out in Section 2 below.
- b. An assessment of whether a maximum individual fine level ought to be introduced; and as part of this, whether there ought to be an overall cap (subject to adjudicator discretion to go over this in appropriate circumstances). This is set out in Section 3 below.

## 2 Individual fines based on gross vs net income

Overall, our conclusion is that individual fines based on *gross* income are likely to be the most proportionate and fair. We note that this is consistent with the approach that other regulators adopt.

Our understanding is that some stakeholders have suggested that the SRA should base the fine on *net* income instead of *gross* income. The argument is that the former could better reflect an individual's ability to pay the fine because it takes account of their national insurance and income tax liability.

The SRA's proposals already take account of ability to pay in three ways:

- a. First, the SRA is proposing to set the fine as a percentage of gross income, rather than a fixed £ value that is invariant to income. This means that the amount any individual pays depends on their gross income, as well as the severity of the relevant breach, and hence reflects, at least to some extent, ability to pay.

---

<sup>1</sup> See: <https://www.sra.org.uk/sra/consultations/consultation-listing/financial-penalties-new-approach/>

- b. Second, the SRA provides individuals who have been fined with the ability to provide a Statement of Means. Here, the regulator will consider fine reductions where significant hardship will be caused to dependents.
- c. Third, where the fine exceeds £25k for individual solicitors, or £50m for individual solicitors working in ABS firms, the individual who has been fined is referred to the Solicitors Disciplinary Tribunal (SDT) for a hearing. Here, the Tribunal *may* consider the solicitor's means when setting the financial penalty, but "[i]n the absence of evidence of limited means, the Tribunal is entitled to assume that the respondent's means are such that they can pay the Fine which the Tribunal decides is appropriate."<sup>2</sup>

Since the proposals already take account of ability to pay, there is not a "gap" in the proposals that using net income would fill.

Nevertheless, we have considered other possible "ability to pay" related reasons for using net income instead of gross income.

- a. One possible reason for using net income instead of gross income relates to the fact that net income is typically lower than gross income. That is, *without a change to the level of the percentage fine*, using net income would result in lower £ fines than using gross income. Our view is that this is not a compelling reason to use net income instead of gross income. Instead, to the extent that the SRA considers that using gross income would result in £ fines that are "too high", this would point to reconsidering the level of the percentage fine (as discussed further in Section 3 below).
- b. Another possible reason for using net income instead of gross income is that using net income takes account of the fact that higher and additional rate income taxpayers pay a greater proportion of their gross income in tax than basic rate taxpayers and hence retain a smaller proportion of their gross income for expenditure. Again, our view is that this is not a compelling reason to use net income instead of gross income.
  - (i) There is no reason to believe that higher and additional rate income taxpayers would be unable or less able to pay the fines than basic rate taxpayers.
  - (ii) Moreover, while higher and additional rate income taxpayers pay a greater proportion of their gross income in tax, they may pay a smaller proportion of their gross income on other "non-discretionary" expenditure, such as utilities.
  - (iii) Therefore, there is no reason to believe that using net income instead of gross income would better reflect "ability to pay".

Related to the above, the SRA asked us to consider whether accounting for an individual's savings or other outgoings should be considered alongside an individual's income.

---

<sup>2</sup> Solicitors Disciplinary Tribunal (June 2022), '[Guidance note on sanctions, 10th edition](#)'; para. 28.

Our view is that it is likely to be challenging to properly “codify” such an assessment into the fine structure, without replicating the case-by-case assessment that is undertaken if / when individual solicitors submit a Statement of Means. It raises many of the similar issues we considered in our first report in relation to the use of “net wealth”, which we do not repeat here.<sup>3</sup>

For example:

- Do “savings” include all unspent income available to an individual at the time when the fine is levied, or just certain types of unspent income?
- If two individuals have a similar level of “other outgoings”, but they are spent on different things, will the SRA seek to evaluate whether the associated expenditure should be viewed as “necessity” or “discretionary” – and if so, how?

Again, without repeating our reasoning set out in our previous report in relation to an individual’s net wealth, we consider that the moment one starts to net off elements from gross income, the potential for an inconsistent approach in practice is opened up.

In summary, we consider that for the purposes of setting a financial penalty to act as a credible sanction and deterrent, basing this on an individual’s gross income from the employment related to the breach (without any further allowances) is appropriate.

### 3 Introducing a maximum level for individual fines

Our conclusion is that there is no evidence to suggest that the level of the individual fines is set “too high” or “too low”, and therefore there is no evidence to suggest that the SRA would better meet its regulatory objectives by altering the level of the fines set out in its proposals.

Our understanding is that some stakeholders have suggested that the SRA should cap the maximum level for an individual fine at an appropriate percentage of income. For example, one stakeholder suggested that individual fines should be capped at a percentage of their income, ensuring they would not bankrupt them (similar to the percentage turnover applied to firm fines, ensuring firms are not put out of business). This therefore suggests that some stakeholders currently think that the maximum level of the individual percentage fine could be reduced.

The proposals impose fines up to 97% of gross income with the discretion for adjudicators to exceed this for the most serious offences and so the relevant question is whether this percentage should be increased or reduced.<sup>4</sup>

- a. The argument for increasing the percentage would be to increase the deterrent effect of the fines.

---

<sup>3</sup> *Economic Insight (April 2022), ‘Financial penalties: A report for the Solicitors Regulation Authority’.*

<sup>4</sup> *As above, where the fine exceeds £25k for individual solicitors, or £50m for individual solicitors working in ABSs, the individual who has been fined is referred to the SDT.*

- b. The arguments for reducing the percentage could include: (i) the fine is “disproportionate” to the harm caused by the breaches; or (ii) imposing the fine could result in unintended consequences / harm for users of legal services or the fined solicitors.

We are not aware of any evidence to suggest that the level of existing fines is too high or too low, and insofar as the proposals set the level of fines at a similar (albeit not identical) level, the same observation would apply to the proposals.

We note that the currently proposed individual fine percentage bandings are broadly aligned with the fine £ levels prior to the proposed new approach – with the main difference being that higher earning individuals could pay more under the current proposals.

- For example, taking a solicitor’s median salary in 2013 (when the initial fine bandings were set), the highest fine that the SRA could impose (£50,000) represented 131% of their gross annual income, whereas the currently proposed equivalent level of fine (D3) is set at 97%. This is illustrated in Table 1 below, as well as the implied proportions based on the latest available data on median solicitors’ salaries from 2021.<sup>5</sup>

Table 1: SRA previous penalty bands

Penalty band	Penalty bracket	% fine range - median solicitor salary (2013)	% fine range - median solicitor salary (2021)
A	£500 or £1,000	1% - 3%	1% - 2%
B	£1,001 to £5,000	3% - 13%	2% - 11%
C	£5,001 to £25,000	13% - 65%	11% - 53%
D	£25,000 to £50,000	65% - 131%	53% - 106%

Source: <https://www.sra.org.uk/solicitors/guidance/financial-penalties/>

Notwithstanding the above, we note that the SRA’s ‘maximum’ fine (97%) is set at a higher percentage of gross income than some other regulators. For example, the FCA’s maximum fine for individuals is 40% of gross income, as illustrated in Table 2

Table 2. This does not of itself mean that the SRA’s maximum fine is “too high” (or indeed that the FCA’s maximum fine is “too low”) but may indicate that there is value in the SRA considering whether its maximum fine is proportionate to the harm caused by the breaches in question.

<sup>5</sup> As per the ONS ASHE Table 14.7a, SOC 2412: Solicitors and lawyers.

Table 2: FCA financial penalty levels

	Firms: relevant revenue	Individuals, non-market abuse: relevant income	Individuals, market abuse: relevant income
Level 1	0%	0%	0%, profit multiple of 0
Level 2	5%	10%	10%, profit multiple of 1
Level 3	10%	20%	20%, profit multiple of 2
Level 4	15%	30%	30%, profit multiple of 3
Level 5	20%	40%	40%, profit multiple of 4

Source: FCA (December 2022), *The Decision Procedure and Penalties manual: Chapter 6 – Penalties*.

Other regulators, or sanctioning bodies, do not impose individual fines based on a % of income, but provide general bandings. In summary, we find that:

- The Solicitors Disciplinary Tribunal’s (SDT’s) financial penalties range from £0 to unlimited.
- The Chartered Institute of Legal Executives’ (CILEx’s) individual fines range from £100,000 to £50 million, equivalent to 211% and 105,677% of a solicitor’s median salary in 2021.
- Similarly, the Council for Licensed Conveyancers (CLC) caps individual fines at £50 million.
- The Bar Tribunals & Adjudication Service (BTAS) sets fines between £1,000 and £50,000, equivalent to between 2% to 106% of a solicitor’s median salary in 2021.

We provide more details on each of these overleaf.

## SDT financial penalties

The SDT's financial penalties range from 0% to 4% of a solicitor's median salary in 2021, to 106% to unlimited, as illustrated in Table 3.

Table 3: SDT financial penalty levels

Fine band	Overall Assessment of Seriousness of Conduct	Fine range	% fine range - median solicitor salary (2021)
1	Lowest level for conduct assessed as sufficiently serious to justify a fine (rather than a reprimand)	£0 - £2,000	0% - 4%
2	Conducts assessed as moderately serious	£2,001 - £7,500	4% - 16%
3	Conduct assessed as more serious	£7,501 - £15,000	16% - 32%
4	Conduct assessed as very serious	£15,001 - £50,000	32% - 106%
5	Conduct assessed as significantly serious but not so serious as to result in order for suspension or strike off	£50,001 - unlimited	106% - unlimited

Source: Solicitors Disciplinary Tribunal (June 2022), '[Guidance note on sanctions, 10th edition](#)'; page 13.

## CILEx financial penalties

CILEx caps the financial penalties as follows:<sup>6</sup>

- CILEx Member: up to £100,000;
- CILEx Practitioner: up to £50 million; and
- Approved Managers: up to £50 million.

Compared to the fines proposed by the SRA, proportionally these fine levels would make up 211% and 105,677% of a solicitor's gross median annual income in 2021, respectively.

## CLC financial penalties

Similarly, the CLC sets fines for CLC lawyers which are "**fair and proportionate, and do not exceed £50 million.**"<sup>7</sup>

<sup>6</sup> CILEx Regulation (October 2018), '[Annex 6: CILEx Regulation – Fines Policy](#)'; page 3.

<sup>7</sup> CLC (March 2018), '[Sanctions Guidance](#)'; page 10.

## BTAS financial penalties

The BTAS sets levels of fines for barristers across three levels:<sup>8</sup>

- Low level: up to £1,000;
- Medium level: over £1,000 up to £3,000; and
- High level: over £3,000 up to £50,000.

The above three fine levels imply the following % fine levels, again, based on the median gross annual salary of a solicitor in 2021: (i) up to 2%; (ii) 2% - 6%; and (iii) 6% - 106%.

## Whether individual and firm fine bandings ought to be aligned

Finally, the SRA asked us to consider whether the individual and firm fine bandings ought to be similar or the same. Our view is that there are no *a priori* reasons to believe that individual and firm fine bandings ought to be aligned or the same.

- Firstly, they are based on different metrics – income for the former, and revenue for the latter.
- Secondly, we note that neither the SRA, nor the SDT have imposed any fines in the upper bandings for individuals. This therefore suggests that those (currently) high bandings act as a credible deterrent for the most serious offences.
- Finally, we also note that other regulators apply different fine bandings for individuals and firms.

Therefore, we consider that there is no “in principle” reason for individual and firm fine bandings to be similar or the same.

---

<sup>8</sup> *The Bar Tribunals & Adjudication Service (October 2019), 'Sanctions Guidance: Breaches of the BSB Handbook Version 5'; page 34.*