

Changes to the Enforcement Strategy July 2022

Changes made

1.1 Introduction

At the end of the introduction section, add a new section and text on Fixed Financial Penalties as follows:

Fixed financial penalties

As an alternative to our other enforcement options, we may issue a fixed financial penalty (FFP) in the circumstances prescribed in the Fixed Financial Penalty Rules. This Enforcement Strategy does not apply to the imposition of FFPs. We have determined that issuing an FFP in accordance with the Rules can be a proportionate response to the specified breaches in the stated circumstances.

We retain the discretion not to offer an FFP, for example, if we believe that the non-compliance is part of a wider and more serious course of misconduct, or if we believe additional measures such as conditions are necessary.

1.2 Reporting concerns

(No changes)

1.3 What is the purpose of enforcement?

(No changes)

2.1 Our approach to enforcement

(No changes)

2.2 Factors which affect our view of seriousness

The nature of the allegation

We see certain types of allegations as inherently more serious than others: for example, we will always take seriously allegations of abuse of trust, taking unfair advantage of clients or others, and the misuse of client money; as we will sexual and violent misconduct, dishonesty, discrimination, harassment and criminal behaviour (described further below).

Information security is also of high importance to the public and protection of confidential information is a core professional principle in the Legal Services Act 2007⁷.

However, there are some common factors that affect the view we take of how serious an allegation is, as set out below.

At the end of the current section, following on from **Criminal convictions** add a new subsection and text as follows.

Sexual misconduct, discrimination, and non-sexual harassment

We consider that some behaviours demonstrated by individuals - such as those relating to sexual misconduct, discrimination, and non-sexual harassment - are unsuitable for a financial penalty, except in exceptional circumstances.

This is because the underlying attitudes and behaviours displayed present such a risk to the public or to colleagues that they are incompatible with continued unrestricted right to practise, and/or because suspension or removal from the profession is necessary to maintain public confidence in the solicitors' profession and in legal services. It is also often the case that the level of harm cannot be financially quantified and it is not appropriate to do so.

However, there will be exceptional circumstances in which we consider a sanction other than suspension or strike off to be appropriate. We consider such exceptional circumstances are likely to be rare in nature and would not include cases where there is a demonstrable imbalance of seniority or power between the individual and the complainant or abuse of position. Exceptional circumstances might include cases where the complaint has arisen due to inappropriate or insensitive behaviour but we are satisfied there is no ongoing risk. This is likely to reflect a one-off incident or remark that is misjudged but not ill-motivated. In such circumstances, we are more likely to consider a sanction other than suspension or strike off to be appropriate where there is evidence that the person apologised promptly, unprompted, and has accepted the entirety of the allegations.

In such cases, we may impose a rebuke, recognising that the behaviour has breached required standards of behaviour, and that this needs to be sanctioned, or in extremely rare cases, we may impose a financial penalty.

The position for firms is different. It is important that firms create a culture where these types of behaviours are not tolerated, and where incidents are addressed. A financial penalty may be an appropriate sanction where poor systems or controls allowed these types of behaviour to occur or persist. However, where there are serious failings at a leadership level, we may make a referral to the Solicitors Disciplinary Tribunal (SDT) to consider a more serious sanction.

2.3 Interrelationship between factors

(No change)

3 Who is enforcement action taken against?

(No change)

Appendix A – Sanctions and Controls

In table relating to **Rebuke**, replace the current table with an updated version as follows.

Rebuke		
Purpose	Factors in favour	Factors against

<p>To sanction the regulated person for a breach of standards/requirements, but where the issues are only of moderate seriousness and do not require a higher level of response to maintain standards/uphold public confidence.</p>	<ul style="list-style-type: none"> • No lasting significant harm to consumers or third parties • Conduct or behaviour reckless as to risk of harm/regulatory obligations • Breach rectified/remedial action taken, but persisted longer than reasonable/ only when prompted • Low risk of repetition • Some public sanction required to uphold public confidence in the delivery of legal services 	<ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest <p>Where a more serious outcome is warranted to protect the public/public interest, eg:</p> <ul style="list-style-type: none"> • Dishonesty/lack of integrity/abuse of trust • Sexual misconduct/discrimination/ harassment • Evidence of repetition of conduct/behaviour in question, particularly if previously warned/advised to stop • Intentional failure to comply/cooperate with regulatory obligations
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In table relating to Financial Penalty, replace the current table with an updated version as follows:

Financial penalty		
<p>To sanction the regulated firm or individual for a serious breach of standards/ requirements, but where protection of the public/public interest does not require suspension or a striking off.</p> <p>To deter the firm or individual and others from similar behaviour in future.</p> <p>For the level of fine, see the indicative fining guidance published by the SRA from time to time.</p>	<ul style="list-style-type: none"> • Conduct/behaviour caused/had potential to cause significant harm • Direct control/responsibility for conduct/behaviour • Conduct planned/pre-meditated • Wilful or reckless disregard of risk of harm/regulatory obligations • Breach rectified/remedial action taken, but 	<ul style="list-style-type: none"> • Any less serious sanction/outcome would be appropriate to protect the public/public interest • Conduct constitutes sexual misconduct, discrimination or harassment • Evidence of insufficient means of the person directed to pay to pay <p>Where a more serious outcome is warranted to protect the public/public interest, eg:</p>

	<p>persisted longer than reasonable/ only when prompted</p> <ul style="list-style-type: none">• Fine appropriate to remove financial gain or other benefit as a consequence of the breach	<ul style="list-style-type: none">• Continued practice would tend to damage public confidence in the delivery of legal services• The behaviour displayed presents a risk to the public
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