

Solicitors
Regulation
Authority

Financial Penalties: Equality Impact Assessment

May 2022

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Financial Penalties: Equality Impact Assessment

Executive Summary

1. In November 2021 we published a consultation on our approach to financial penalties. As part of that consultation we published an initial high-level, impact assessment. We asked respondents if they wished to provide further EDI information to help build our understanding in relation to the impacts of our proposals on different groups of solicitors we could access and analyse.
2. Overall, the feedback we received to our consultation (both through formal consultation responses, and through stakeholder feedback), was positive, and following analysis, we have decided to proceed with our proposals. We did not receive any further information from consultation respondents that could help us to build our understanding further. But respondents did not disagree with the high level position we consulted on in relation to EIA.

Increased fining powers and fixed penalties

3. Our post-consultation view is that that an increase in our internal fining powers will provide benefits to everyone that we regulate by dealing with cases in house (reduction in time, stress, and cost), even whilst certain groups (solicitors who are over 65, or male, or from a Black, Asian, or minority ethnic background) continue to be over-represented in our enforcement processes overall.
4. The ongoing over-representation sits outside the scope of this particular project, but we have an ongoing programme of work and research to address this. Any relevant findings from ongoing evaluation of our financial penalties measures will feed into, and help to inform, that wider work stream.
5. We also consider that fixed penalties will benefit those working in smaller firms, providing certainly around regulatory outcomes for more administrative and minor breaches.

Updated guidance

6. Our view is that updated guidance, which takes into account turnover for all firms, and individual means, will again benefit the whole regulated community. Older solicitors, and those working in smaller firms (where older solicitors and those from Black, Asian and minority ethnic solicitors are more likely to work) will benefit from our updated approach, with fines for firms being based on turnover in all cases, and individual means being taken into account when considering fines for individuals, to ensure that the fine is proportionate

We consider that our updated guidance will also specifically benefit women – the majority of sexual misconduct cases reported to us are perpetrated by men against women, and the robust stance that we take should have a positive benefit for women and increase their confidence to report such misconduct to us

Background

7. In November 2021, we consulted on proposals to:
 - Seek an increase to the maximum fine we can issue internally for traditional firms and those working in them from £2,000 to £25,000. This was to reduce the cost, time, and stress for all involved in taking less serious cases to the SDT
 - Take into account the turnover of firms and the means of individuals when setting fines in all cases to ensure our fines are proportionate and act as a credible deterrent. We currently only do this systematically when setting fines for firms with a turnover of £2m or more. We also proposed increasing the maximum percentage of turnover that we can fine from 2.5 per cent to 5 per cent
 - Introduce a schedule of fixed penalties of up to £800 for a first offence rising to £1,500, to enable lesser breaches relating to failure to comply with administrative requirements to be dealt with more efficiently and effectively.
 - Update our sanctions guidance to be explicit in highlighting behaviours that we consider unlikely to be suitable for a financial penalty such as sexual misconduct, discrimination, and harassment
8. We received a total of 39 responses to our consultation. There was a broad range of respondents including solicitors, law firms, and law societies, and representative bodies. Key stakeholders that responded included the Law Society (TLS), Solicitors Disciplinary Tribunal (SDT), and the Legal Services Consumer Panel (LSCP).
9. We also commissioned a survey with 500 members of the public alongside a survey for solicitors, which attracted more than 200 responses. We also held two focus groups with the public, and one with consumer representative groups, as well as discussing our proposals at a range of external meetings and events.

Initial Equalities Impact Assessment

10. As part of the consultation process, we included an initial high level equality impact assessment, and committed to undertake a further assessment of any of the proposals we are taking forward within the consultation paper. We also said that we would engage with groups who we had identified may be more greatly affected by our proposals through the consultation period.
11. We noted that our annual work to monitor the diversity of those involved in our enforcement processes, shows that there is an over-representation of men, solicitors from Black, Asian and minority ethnic backgrounds, and older solicitors in the complaints made to us (and throughout the whole enforcement process).
12. We also noted that the diversity data collected from law firms indicates that, in broad term, compared to the overall solicitors population:
 - Men are overrepresented in small firms compared to the overall population, but women are overrepresented in mid-sized and larger firms, although at less senior levels.
 - Solicitors from Black and Asian groups are overrepresented in small firms and underrepresented in mid-sized and larger firms.

- Solicitors aged 45 and over are overrepresented in small firms and underrepresented in larger firms.
13. We said that we would look in more detail at the diversity breakdown of those who have received fines, to identify the potential impact on different groups of the various proposals set out in the consultation. The data identified in our Upholding Professional Standards reports (the annual reports that we publish looking at the diversity characteristics of the people involved in our enforcement processes). does not help when considered alone – because the numbers are too small to apply the statistical methodology necessary to understand whether the differences that can be seen are meaningful, or a chance variation.
 14. Furthermore, the data we have for protected characteristics other than age, sex and ethnicity is not sufficient to enable us to determine whether there is likely to be any adverse or positive impact of any changes to our financial penalties framework – the numbers are simply too low.

Our consultation position

15. With this background in mind, our provisional findings in relation to the equality impacts of the four key proposals that we made were set out as follows (in Annex 4 to the consultation):
 - We considered that an increase to our fining powers to £25k should result in positive impacts for all groups – reducing the time, cost and stress involved in taking forward cases the SDT
 - Turnover and means – we set out a view that taking into account the turnover of firms and means of the individual may be a fairer approach for everyone and help to mitigate against the current position where the ability to pay is not a factor
 - On fixed penalties, our consultation position was that these would be positive for all groups by providing certainty and streamlining the process of investigation with a reduction in costs and anxiety. Noting also that much non-compliance takes place in smaller firms – where there are higher levels of older solicitors, men, and Black, Asian and minority ethnic solicitors
 - Sexual misconduct, discrimination, and non-sexual harassment. Our initial view was that taking an approach that these behaviours are unsuitable for a financial penalty should have a positive impact on EDI. This means our penalties act as a credible deterrent and potentially driving up levels of reporting.

Stakeholder feedback

16. Many respondents provided information, although it was mostly in the form of comments and views rather than data. The SDT noted that it does seek to collect data regarding diversity of those related to them, but that this is provided on a voluntary basis only. The SDT would be happy to share this data with us if this would be useful.
17. There were a number of comments relating to diversity, for example ‘Equalities data should be gathered and assessed.’ (individual solicitor) and ‘We think it important for the SRA to look in more detail at the diversity breakdown of those who have received

finest to better identify the impact on different groups before introducing any changes.’ (law firm).

18. The Law Society stated ‘Sole practitioners and small firms make up a high proportion of firms, with a large proportion of Black, Asian and minority ethnic solicitors working in those firms, and frequently serving the most vulnerable clients. Often regulatory costs are more difficult for smaller firms to absorb because they do not have the compliance resources of the larger firms... Small firms would have difficulty in affording representation and advice and may find themselves under an unacceptable level of pressure to accept a 'deal'. This is particularly likely to influence the behaviour of those members of the profession who are most vulnerable, such as those from minority ethnic-owned firms.’
19. In our external stakeholder engagement, including with EDI representative bodies and Cardiff Law Society, we sought information on any other data that we could analyse that were held by other bodies. Participants were not aware of any such data sets, although some referenced earlier reports of which we were already aware.

Our view – stakeholder responses

20. We are aware that we hold potentially the best source of EDI data (and EDI data linked to enforcement processes), but that this is quite limited in the conclusions it allows us to make. There is likely to be a high degree of correlation between our own and the SDTs (as we will have collected this information from the individual).
21. With regard to our own data, we have now collected a further year of EDI data (2020-2021). As some respondents have identified, it will be important for us and the profession to understand the data around EDI characteristics and fines as an outcome in more detail. Since the consultation closed, we have analysed all fines at the SDT and our own internal fines since 2015 against our general population data and made comparisons.
22. What this analysis confirms is that over the period since 2015, there is a very marked trend towards older solicitors receiving a fine at the SDT (either below or above £25,000). Men are also much more likely to receive a fine. Our analysis also indicates that Asian/Asian British solicitors are also much more likely to receive a fine (when compared to the general population of solicitors).
23. Our view is that the data supports the provisional views set out against each of our proposals at consultation stage – and that our proposals will have positive effect on over-represented groups, as well as the general population of solicitors.
24. We will build EDI processes for monitoring and evaluation against all of the proposals we take forward. This will have a particular emphasis on our internal fines (should we receive an increase to our fining powers). But also as we pilot and implement any fixed penalty scheme, identify and action any EDI impacts that are identified through our work. This monitoring and evaluation will feed into our wider EDI work and considerations.

Our post consultation position

Behaviours unsuitable for a fine

25. We consider that the post consultation position we have adopted (that the SRA will update our sanctions guidance to be explicit in highlighting behaviours that we consider

unlikely to be suitable for a financial penalty such as sexual misconduct, discrimination, and harassment) will send a clear message that the SRA takes such matters seriously.

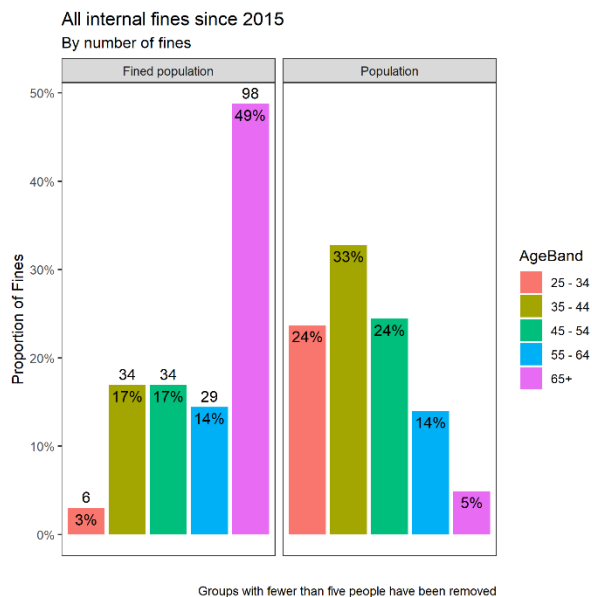
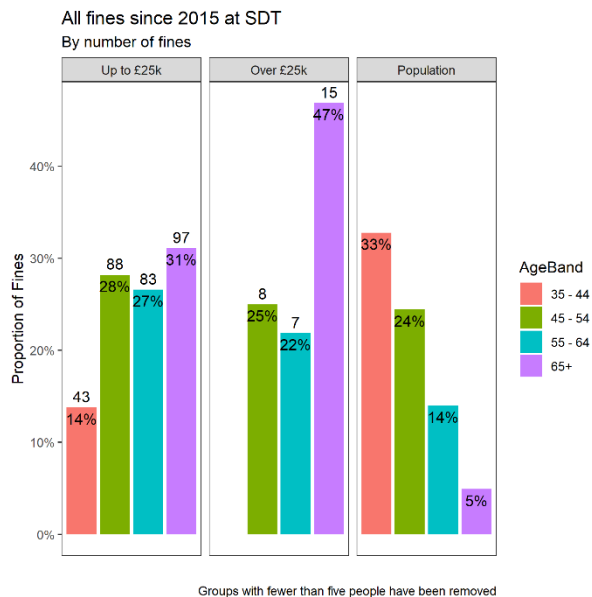
26. We do not anticipate any negative impact to our post-consultation position on behaviours unsuitable for a fine in relation to any protected characteristics. Our proposal to further incorporate evidence of further education and training alongside sanctions when required will provide sufficient flexibility to allow for an individual to evidence change. We think that this proposal will have a positive effect for anyone who has experienced any of these behaviours.
27. In terms of the impact of our changes on women, as we noted in the original EIA, the majority of reports of sexual misconduct we receive are from women. This sends the message that we take such behaviour seriously may encourage more people to report such misconduct to us. We will also give further consideration as to whether we should, and if so, how we might, systematically consider the impact on victims in all our disciplinary cases. This will benefit all groups equally.
28. We will evaluate the impact of all of the changes we introduce, but consider that, overall, our agreed position on behaviours unsuitable for a fine will positively impact all of the regulated community

Fixed penalties/level of fines

29. We considered that there could be a potential positive benefit from the introduction of fixed penalties (with a right of review) and said these should lead to a streamlined and transparent approach to low-level non-compliance. We said that many non-compliant firms are smaller firms where we know there is a higher proportion of Black, Asian and minority ethnic solicitors, so they may benefit.
30. Our post consultation recommendation is that we proceed to a further consultation on fixed penalties – and we will ask specific EDI questions as part of that consultation. As well as building EDI into developing and evaluating an evidence base as we implement the new arrangements. There was no feedback from the first consultation that this proposal would have any detrimental effect on any particular group.
31. We consider that our proposals will benefit all those that we regulate, and not just be limited to older solicitors, male solicitors, or Black, Asian and minority ethnic solicitors working in smaller firms. Having fixed penalties (set at an appropriate and affordable level) will provide some certainty and reduce stress and anxiety. Furthermore, we will initially limit fixed penalties to firms for minor breaches, and will pilot our approach before rolling out fully, or considering whether to extend fixed penalties for individuals.
32. In terms of levels of fines, our proposed approach considers the means of firms and individuals could be a fairer approach for everyone and help to mitigate against the current position where the ability to pay is not a factor. We were not able to identify differential impact on any particular group at the time of consultation. Stakeholders agreed with our position – with a number commenting on this (but mainly in relation to more junior individuals who are much less likely to be fined as can be seen from our data).
33. In our consultation, we said that an increase in our fining powers would reduce the number of cases referred to the SDT, therefore reducing stress, costs, and delays. We still hold this view and consider that this will lead to positive impacts on the whole regulated community, but particularly on the groups that are over-represented throughout our disciplinary work.

Fines at the SDT and internal SRA fines since 2015

Age

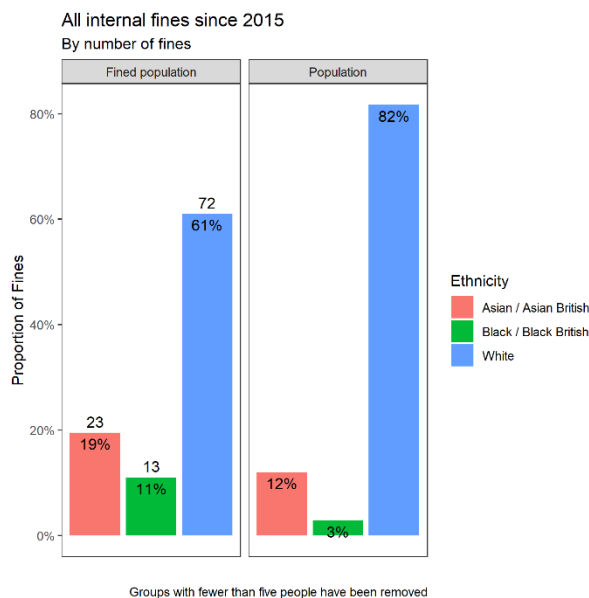
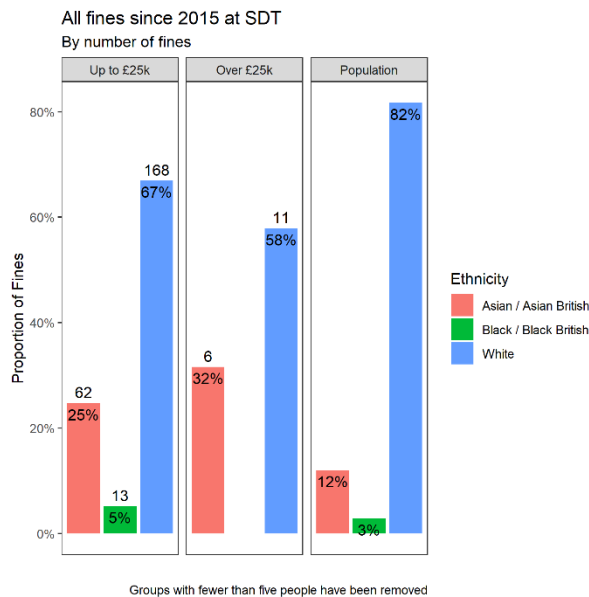


34. The two plots above set out a profile of all fines at the SDT (both below and above £25,000) over the period from 2015-2021 inclusive, and an analysis of our own internal fines. The internal fine analysis is not cut by value, as most fines are within our current fining power of £2,000 (the number of fines by ABS is considerably lower).
35. It is clear there is a very strong correlation between increasing age, and the chances of receiving a fine at the SDT (particularly a fine of over £25,000). Solicitors over the age of 45 are far more likely to receive a fine. Those over the age of 65 make up 5% of the general population but receive 31 per cent of all fines up to £25k, and 47% of all fines over £25,000 at the SDT. If we were to increase our internal fining powers to £25,000, then a significantly higher number of fines for older solicitors would be dealt with by the SRA – on average a financial penalty issued by the SRA takes over a year less than a

similar case decided by the SDT (because of the additional steps and processes needed to refer a case to the SDT).

36. The same can be seen from our internal fines date. Almost half of all fines issued internally (49%) are against solicitors aged 65 or over. At present, these are fines of up to £2,000. Age is one of the over-represented areas that we are looking at in our wider work. As noted above, an internal fine as a sanction generally takes half the time for a sanction that is decided at the SDT.

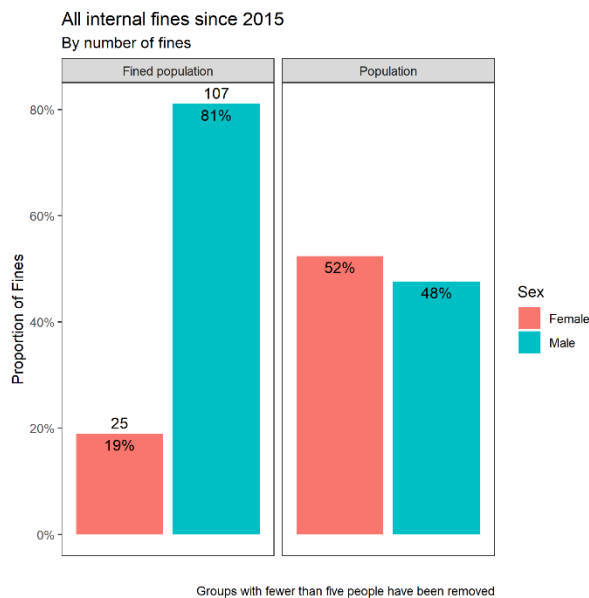
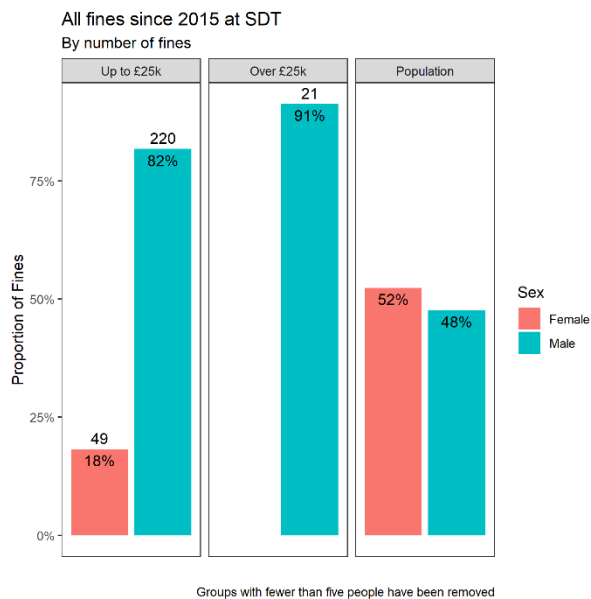
Ethnicity



37. The two plots above set out a profile of all fines at the SDT (both below and above £25k) over the period from 2015-2021 inclusive, and our own fines over the same period. Again, our own fines are not cut by fine banding (as the majority of fines are in the bracket of up to £2,000).

38. It is clear that the majority of fines in both categories (and overall) are against white respondents, however, Asian, and Asian British solicitors are more likely to receive a fine than Black/Black British at the SDT.
39. Within the SRA's fines over the period, both Asian/Asian British and Black/Black British solicitors are more likely to receive a fine when compared to the general population of solicitors.
40. Whilst overall numbers of fines are relatively low, in line with the reasons set out against age, we believe that an increase to our fining powers to £25,000 will mean that these cases are heard more quickly.

Sex



41. The tables above show that men are significantly more likely than women to be fined at the SDT, in both fine categories, when compared to the general population of solicitors. The same marked difference can be seen when looking at our internal fines over the

same period. Again, with an increase to £25,000 more of these cases could be handled in house.