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Dear Policy Team,

Consultation: Financial Penalties

The Legal Services Consumer Panel (Panel) welcomes the opportunity to respond to the Solicitor Regulation Authority's (SRA's) consultation on financial penalties. We further welcome this review of the SRA's fining powers and have endeavoured to answer the consultation questions below.

Q1 Do you agree that these principles should govern our approach?

The Panel broadly agrees with the principles set out to govern the review of the SRA's fining powers. On ensuring a transparent fining framework, the Panel would encourage the SRA to ensure that the fining framework (and any fines issued under it) are transparent and accessible to consumers in particular. This would add to its ability to be an effective deterrent.

We are also supportive of a fining framework that treats all firms and individuals regulated by the SRA in the same way and would encourage all legal services regulators to work towards a consistent approach. Similarly, the Panel would welcome a sector-wide understanding and approach to financial penalties in order to strengthen enforcement of ethical conduct and standards for all lawyers. In fact, this type of collaborative approach is necessary if the SRA is to succeed in ensuring more serious sanctions for behaviour that negatively affects the public's confidence in the profession or increases the risk of harm. Committing to taking stark transgressions seriously is important to reaffirm the public's trust in solicitors and all lawyers.

Finally, the Panel agrees that increasing the maximum fines for solicitors and traditional law firms will allow for increased efficiencies in the enforcement mechanism handled jointly by the SRA and the Solicitors Disciplinary Tribunal (SDT). The only thing that may be missing from the enunciated principles in this review is pulling through the idea expressed more fully in the SRA Enforcement Strategy that the SRA's fining powers are to be used to ensure a trustworthy profession and to protect the consumer.

Q2 Do you agree that the behaviours demonstrated in cases relating to sexual misconduct, discrimination and non-sexual harassment are not suitable for a financial penalty?

Generally, the Panel agrees that serious misconduct such as sexual harassment, discrimination or non-sexual harassment is not suitable for financial penalties. It is crucial that all solicitors are aware that this type of behaviour (and what constitutes it) is not tolerable in the profession. Such awareness should be promoted through multiple avenues that may include education at admission to the profession, measuring ongoing competence as well as strong penalties to support deterrence. This type of behaviour has the potential not only to affect colleagues in the workplace, but also how clients are treated and whether they are adequately served, and therefore goes to the heart of whether a solicitor is fit to practise. While low level behaviour in these categories may not warrant a suspension or being struck off, a rebuke that stays on the offender's record for a definite period of time may be more likely than financial penalties to communicate the seriousness of the matter, and make perpetrators aware that repeated violations may bring much more serious consequences.

It is important to remember that legal services consumers often become vulnerable due to the legal problem that causes them to seek a solicitor's services in the first place. In this situation, they are relying on a solicitor's advice in connection to an important issue that affects their lives but which they cannot deal with on their own, thereby introducing a power imbalance. For these reasons, protecting legal services consumers from this type of exploitative behaviour is especially pressing.

Q3 Are there any other types of conduct that you consider are or are not suitable for a financial penalty?

The Panel believes that where a solicitor takes advantage of a vulnerable client, the behaviour moves beyond dishonesty to predatory behaviour that should not be solely addressed with financial penalties. Similarly, the correspondence discussed in case study 2 shows a level of cruelty that if present in client dealings, even where discrimination cannot be proven, is a very serious infraction of the public's expectations of a solicitor. Such behaviour toward a client, even absent the discrimination finding, should not solely be addressed with financial penalties, though we would not want to rule this out, especially where an order of restitution is appropriate.

Q4 Do you agree that we should introduce fixed penalties for certain, less serious, breaches?

The Panel agrees with the plan to introduce fixed penalties for specific and less serious breaches of SRA rules. We believe that if solicitors and firms are given the opportunity to correct their actions prior to being fined, this course of action will promote compliance. We are pleased to see that transparency rules around price and quality will form part of this regime to further encourage all firms to be compliant with these guidelines that aim to provide consumers with very basic information about the solicitors they may be considering hiring. The closer the SRA can get to 100% compliance, the more effective this information will be to prospective consumers.

Q5 Do you have any comments on the proposed criteria and process?

The Panel agrees with the SRA's approach, especially providing a clear timeline for the solicitor or firm to correct its failings because the ultimate goal is to have the firm comply with SRA rules. We are also happy that cases that involve specific clients will not be subjected to this fixed fine approach because those are the cases that will demand more attention and investigation by the SRA.

Many of the types of rules discussed would directly benefit consumers by bolstering competence through encouraging professional development compliance, transparency with regards to price and quality indicators and even encouraging cooperation with the SRA's requests or investigations so it can efficiently ensure standards are maintained. Therefore, fixed penalties will put timely and proportionate teeth behind the SRA's rules so that solicitors and firms are aware of the clear and immediate consequences to their failure to comply. Not

having to commit staff resources to determining case-specific fines will be more efficient, and strengthen the SRA's ability to ensure high standards with fewer resources.

Q6 Do you have any comments on what an appropriate value for fixed penalties might be in different circumstances?

The Panel feels the SRA is best placed to determine the appropriate value for each offence but would stress the need to ensure that they are not simply seen as a cost of doing business.

Q7 Do you agree that we should introduce a turnover based assessment for all firms when calculating the level of financial penalty?

The Panel generally agrees with the turnover based assessment of fines that regulators in other sectors have used to reign in undesirable conduct. It aligns with the Panel's thinking that penalties need to be more than a cost of doing business so that more than dealing with the one individual or firm involved, these penalties serve as a strong deterrent for the whole sector. As the regulator responsible for the majority of the reserved legal services sector, the Panel is pleased to see the SRA taking a stronger approach in this regard.

Q8 Do you agree that we should set the maximum proportion of turnover we can take into account when applying financial penalties across the different levels of seriousness at 5%?

The Panel is pleased to see a substantial increase in the maximum proportion of turnover as a measure of fines in the SRA's proposed changes to its penalty framework. However, when compared with other regulators, this maximum percentage is still low. Therefore, the Panel would encourage the SRA to consider increasing this percentage further. In any event, appropriate monitoring and evaluation must be put in place to determine whether the policy change has the desired deterrent effect, or whether the SRA needs to employ an even higher maximum proportion of turnover in fining the most serious transgressions.

Q9 Do you agree that we should take into account individual means when determining a financial penalty?

Again, generally the Panel does agree that an individual's means should be considered when determining a financial penalty. Like taking a firm's turnover into account, it will also ensure that where appropriate, fines can be levied that are large enough to provide a deterrent against continued misconduct for that particular individual and larger fines will also provide a strong deterrent for others. However, care needs to be taken to ensure that individuals of low means (or low traceable earnings) do not feel that they can get away with behaviour that should attract a meaningful financial penalty.

We also agree that assessing an individual's income as well as net worth is important. Income alone may not accurately reflect an individual's ability to pay a fine (or their likelihood to be deterred by standardised fines).

Q10 Do you have any comments on the proposed features for assessing an individual's means? What other features do you think we should consider, if any?

No.

Q11 Do you agree that we should seek an increase to our internal fining powers for traditional law firms and solicitors to the level of £25k?

The Panel agrees that the SRA should seek an increase in its internal fining powers for traditional law firms and solicitors to a level of £25k, which is still very low compared to its fining powers for Alternative Business Structures. We believe this increase will have the effect of

speeding up the average time to resolve penalty cases. This means that penalties must be paid closer to the time of commission or discovery which improves their ability to act as a deterrent. In addition, and in our view, more importantly, it means that consumers may be made aware of these penalties in a more timely fashion, which is always better than information provided long after the event. In turn, by allowing the SDT to focus on the most serious cases that require their expertise and hearing capability, their ability to handle cases in a more timely fashion will also improve. Of course, the Panel would like to see a clear monitoring and evaluation plan attached to this policy change to ensure that this is the case, and also to observe any other unintended effects.

Q12: Do you have any information that will help us to build our understanding in relation to the impacts of our proposals on different groups of solicitors?

No.

The Panel appreciates the opportunity to provide input from the vantage point of legal services consumers. We hope you find these comments helpful. Please contact Heidi Evelyn, Consumer Panel Associate (Heidi.Evelyn@legalservicesconsumerpanel.org.uk), with any enquiries.

Yours sincerely,



Sarah Chambers
Chair
Legal Services Consumer Panel