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CLLS - PROFESSIONAL RULES AND REGULATION COMMITTEE

RESPONSE TO SRA CONSULTATION

A. INTRODUCTION

1. This is the response of the City of London Law Society ("CLLS") to the SRA's Consultation "Financial Penalties: further developing our framework" issued on 28th June 2024.

2. The CLLS represents City lawyers through individual and corporate membership, including some of the largest international law firms in the world. The CLLS represents over 21,000 solicitors who are members of the profession in the City of London. They represent 12% of all practising solicitors. The CLLS responds to a variety of consultations on issues of importance to its members through its specialist committees. This response has been prepared by the CLLS Professional Rules and Regulation Committee.

Context to the Consultation

3. Historically the SRA (and its predecessors) did not have any power to impose a financial penalty. Where the SRA considered that a disciplinary sanction was appropriate it would make an application to the Solicitors Disciplinary Tribunal ("SDT") which has held such

powers since 1974. The SDT is a well-established public tribunal that determines cases at hearing, often based on oral evidence, in accordance with its own statutory rules.

4. With the introduction of Alternative Business Structures ("ABSs") in the Legal Services Act 2007 ("LSA") the SRA acquired the power in 2011 to fine ABSs up to £250m and their members and owners up to £50m. In respect of traditional lawyer owned law firms (Recognised Bodies) the SRA acquired the power under the LSA in 2011 to fine up to £2000. That was increased to £25,000 in 2023. The SDT has had the power to impose unlimited fines since 2011 and had substantial fining powers before that date.

5. The Economic Crime and Corporate Transparency Act 2023 (ECCTA) further extends the SRA's powers to impose an unlimited fine on all those whom it regulates in respect of economic crime, including Recognised Bodies[1]. It is in relation to these new powers that the consultation arises.

6. We would observe that the processes and procedures adopted by the SRA in its decision making are fundamentally the same as when they had no fining powers. The primary elements being: (1) investigation and evidence gathering; (2) written notification to proposed respondent of its intention to take enforcement action; (3) written submission in response by proposed respondent; and (4) decision taken by employee/contractor of SRA. The statutory scheme for SRA fines and rebukes provides for an appeal to the SDT.

7. In August 2013, the SRA introduced a turnover based model to guide the exercise of its discretion for determining fines in respect of ABSs and their owners and managers. This guidance provided for a maximum figure of 2.5% of turnover in calculating a fine. In November 2021 the SRA consulted on amending its existing financial penalties regime in relation to ABSs which led to the proposals being implemented in revised financial penalties guidance in May 2023. This increased the maximum fine to 5% of turnover and limited the level of discretion that existed in the 2013 scheme. The 2021 Consultation had no direct impact on Recognised Bodies or the solicitors who work for them as the SRA's fining powers were limited to £25,000. Under all of these schemes fines for entities were calculated based on England and Wales turnover only.

[1] The scope of this power is contained in Section 207 of ECCTA although this consultation does not deal with it in any detailed way.

8. The present consultation is therefore the first one to directly impact Recognised Bodies and solicitors who work for them in so far as it relates to turnover or income bases for a fine. We welcome the basis of the current consultation that the SRA: "feel it is important to review our fining framework to make sure that it remains fit for purpose. This includes reflecting on our learning from operating the existing framework." We agree that the SRA needs to undertake an open-minded review as to whether the regime is fit for purpose bearing in mind that it will be extending a regime that has been until now confined to ABSs which represent around 10% of those whom it regulates. In addition, there are distinctions between the general body of ABSs firms and Recognised Bodies in terms of the business model and available capital. The test of fitness for purpose includes assessing whether a scheme designed for one type of regulatory business model can be automatically extended to a larger part of the market.

9. In addition, the current consultation appears to be drafted on the basis that should, at some time in the future, the SRA acquire unlimited fining powers for cases that fall outside ECCTA then the proposed scheme would be used in respect of these additional powers. Many of the illustrative examples used by the SRA do not relate to ECCTA matters. This is unsatisfactory for the following reasons:

    a. The SRA has not apparently considered whether ECCTA cases are distinct from other types of cases. By definition they involve more serious conduct being the inhibition of the prevention and detection of economic crime. There is a case that a separate fining regime should apply to them or at the very least such a possibility should have been considered by the SRA in its policy development and an explanation provided as to why this was rejected by the SRA. The Consultation is silent on the issue;

    b. Purporting to consult on the exercise of powers that do not exist is problematic particularly given our wider concern that successive consultations on financial penalties "salami slice" the relevant considerations in a way that undermines the fairness of the consultation process;

    c. Nowhere in the consultation does the SRA set out in a transparent way its interpretation of the scope of its ECCTA powers. The scope in our view is open to interpretation. We would expect the SRA to be clear to those whom it regulates as to where it considers the boundaries lie. As we set out later in this consultation response we have wider concerns as to the quality of SRA decision making which is made worse by its unclear

and ill-defined financial penalties guidance. Lack of clarity as to the scope of the SRA's approach to ECCTA will only compound these issues.

The CLLS's position in relation to the calculation of fines in general

10. The CLLS agrees that any calculation of fines needs to take account of the size of the entity in question or the means of an individual. Indeed, this is well established in the common law:

"It is permissible to impose larger fines on more substantial or well known firms because of the important purpose of the sanction in sending out a message to promote and maintain the standards in, and standing of, the profession."

"The means available to an individual or a firm can be taken into account in respect of the amount of the fine"

Fuglers LLP v SRA [2014] EWHC 179 (Admin)

11. In addition, the CLLS agrees that any fining regime needs to be robust and support the public purposes set out in Bolton v the Law Society [1994] 1 WLR 512[2]. The SRA focusses on "deterrence" as its primary criteria for its scheme. Not only is it unclear as to what this means, it is also too narrow. The overall purpose of the scheme is to maintain public confidence in the provision of regulated legal services[3]. That means a fair, robust and transparent scheme which should impose substantial fines in serious cases where the SRA is the primary public body dealing with the matter. This is particularly so where there is a strong public interest in ensuring that solicitors and law firms do not inhibit the prevention or detection of economic crime.

Executive Summary of the CLLS Position in Relation to the SRA's Proposals

12. Notwithstanding our shared agreement as to the overall basis of fines, the CLLS has grave concerns in relation to the scheme proposed by the SRA. In particular:

[2] Which is quoted with approval in Section 1.3 of the SRA Enforcement Strategy.
[3] The SRA's own website declares its mission as: "driving confidence and trust in legal services" and Rule 4.1(b) of the SRA Regulatory and Disciplinary Procedure Rules also refers to public confidence as being the purpose of sanction.

a. The SRA does not appear to have developed its scheme with any regard as to the nature of those whom it regulates. It has had no proper regard as to the question of the likely impact of fines on firms and individuals. As such it is difficult to understand how the SRA considers its scheme can be consistent with the SRA's own obligations in Section 28 of the LSA[4] and its own Enforcement Strategy which states: *"the public and the profession have a right to expect that wrongdoing will be met by robust and proportionate sanctions, and that we as a regulator will enforce our standards or requirements evenly, consistently and fairly. We need to be accountable for our actions and to demonstrate that we will act fairly and proportionately"*[5].

b. The SRA's scheme is inconsistent with the underlying and well-established common law in relation to the regulation and discipline of solicitors and the way in which this is applied by the Solicitors Disciplinary Tribunal. The SRA has not explained why it considers that its scheme should be different and therefore inconsistent to those principles of common law. No explanation is provided by the SRA as to whether it considered these issues and if so why it chose to reject them. The consultation, in many respects, falls short of providing relevant information to enable an informed response;

c. The SRA has proposed an arbitrary scheme that on its face leads to disproportionate and unfair outcomes without any apparent recognition by the SRA as to the inherent unfairness and therefore unlawfulness of its scheme;

d. This approach is compounded by an apparent refusal by the SRA to contemplate that the SRA's existing decision making processes are no longer fit for purpose as they were designed at a time when the SRA had no fining power and are significantly less fair and robust than other regulators that have similar fining powers[6].

13. We will develop these points in more detail below. Before doing so we would observe that, without a significant reconsideration of its proposals, the SRA risks placing the LSB in the

[4] In particular 28(3): The approved regulator must have regard to—
(a)the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
(b)any other principle appearing to it to represent the best regulatory practice.
[5] SRA | SRA enforcement strategy | Solicitors Regulation Authority
[6] For example the FCA has a separate Regulatory Decisions Committee with its own staff and advisers and any appeal to the Tribunal of a RDC decision is considered afresh: enforcement-information-guide.pdf (fca.org.uk)

position of being asked to approve a scheme that is vulnerable to challenge by way of judicial review. In addition, any Respondent to the exercise of the SRA's powers under the proposed scheme would be entitled to raise by way of a defence the lawfulness of the scheme[7]. As such the SRA's current course will, absent any reconsideration, lead to years of cost and uncertainly for the profession and thereby undermine the regulatory objectives in Section 1 of the Legal Services Act.

B. RELEVANT ISSUES THAT IMPACT ON THE SRA'S PROPOSALS

The England and Wales Legal Market and its Global Position

14. The City UK Report in December 2023 summarised the legal sector's contribution to the UK economy as follows[8]:

- Total revenue from legal activities in the UK increased to £43.7bn in 2022, much of which was generated by the top 100 UK law firms, who netted more than £33.7bn in 2022/23 – up 8% from previous year.

- TheCityUK's research estimates that the total tax contribution of the legal and accounting sectors to the UK public finances in 2020 was £20.5bn, up by 5.4% from 2018. They also estimate that for every £100 of UK turnover made by UK legal and accountancy firms, an amount equivalent to £33.63 is paid in taxes, and for every £100 of profit, £54.60 is paid in tax by the sector.

- The Legal Services sector employs 368,000 people being 1% of the overall workforce. It contributed £34bn to the UK economy in 2022.

15. The contribution of the legal services market to the UK economy has been recognised by the present government. In a recent letter to the Chair of the CLLS, the Minister of State for Courts and Legal Services said: *"I recognise the vital role that the UK legal profession plays in economic growth. Aside from being a huge contributor to the UK economy in its own right, it is also a facilitator for wider trade and investment across a whole host of sectors. As Minister for Courts and Legal Services, I am keen that the sector continues to play an integral role in the Government's growth mission".*

[7] See for example Boddington v British Transport Police [1999] 2 AC 143.
[8] https://www.thecityuk.com/our-work/uk-legal-services-2023/

16. The regulatory framework in England and Wales has clearly contributed to the success and growth of the sector. In particular:

    a. There is a liberal regime as to the structure and ownership of law firms. Aside from ABSs, the straightforward recognition of foreign lawyers has enabled global law firms to establish offices using a variety of business structures that best suit their commercial needs. The Top 50 global law firms all have offices in London which often serve as their headquarters for Europe and the Middle East;

    b. The regulatory framework allows some legal services businesses to choose to sit outside SRA regulation altogether provided that they do not provide reserved legal activities.

17. As a consequence of the underlying strength of the market and the overarching liberal regulatory regime, the UK has the second largest legal services market after the United States.

18. However, it is important to note that the regulatory regime itself is already more onerous than in other jurisdictions. In particular, few other jurisdictions have entity regulation of law firms and few jurisdictions use fines as an enforcement tool[9]. It follows that any fining regime that exceeds the required threshold to maintain public confidence in the provision of regulated legal services risks causing unnecessary damage to the attraction of England and Wales as a global centre for legal services.

19. Clearly an arbitrary and disproportionate fining regime is likely to drive some providers to locate elsewhere and/or avoid regulation altogether by providing non-reserved activities through an unregulated entity. As observed above it is possible under the England and Wales scheme for entities to decide not to be regulated at all in relation to a wide range of legal work. This would have an impact on client protection.

[9] For example, fines are not used in the US, France and Italy. Generally in other jurisdictions they are limited in level. For example, Germany, UAE.

20. In none of its consultations on Financial Penalties has the SRA ever grappled with the question of how law firms work and as a consequence properly addressed: (1) what level of fine might achieve the intended purpose and (2) at what level might a fine tend to undermine the economic viability of a law firm and therefore cause economic damage. We infer that the SRA accepts that its regime needs to establish a fine that does not have the purpose of making a firm or an individual insolvent. If it did then the fine would only impact creditors and dependents. A fining regime that has the effect of making a firm or individual insolvent would also exceed the role of a fine in the regulatory framework where the SRA has to power to withdraw authorisation and/or intervene. It is difficult to understand how the SRA could satisfy itself as to the effectiveness of its scheme without asking the relevant questions and therefore ensure its scheme is lawful.

21. Furthermore, the SRA has proceeded on the assumption that law firms are the same as corporate entities such as banks or corporate providers in other regulated sectors. In their 2021 Consultation they took as their comparators for regulators: Ofwat, FCA, ICO and GEMA. The SRA even commissioned and published as part of its 2021 consultation response a report that erroneously stated that as long as a firm has a profit margin of 5% it could afford to pay a fine of 5% of turnover without affecting its viability[10]. It is troubling that this misconceived report formed part of the SRA's policy development.

22. At the risk of stating what we consider to be obvious, law firms and professional services firms do not have the same business model as a corporate entity and a clear understanding of what the SRA actually regulates is essential in shaping the design of any regime in a manner that is fair, proportionate and achieves its objective. This is more important now that unlimited fines are being extended to recognised bodies where professional services models are almost universal.

23. Law firms are in substance partnerships although they are now mostly Limited Liability Partnerships. They generate revenue through the provision of legal services. The majority of that revenue pays the salaries of those it employs, premises, insurance and other costs. What is left is "profit". However, unlike in in a corporate where the profit is mainly paid as a dividend to shareholders, the profit pool in a law firm is shared amongst its partners. It

[10] See Financial Penalties -a Report for the SRA para 1.17.

is important to emphasise that the only source of income for the partners is the profit pool. They are self employed and cannot be paid a salary[11]. Any monthly drawings also need to be deducted from the profit pool. Capital in the business is not derived from shareholder investment but comes from capital contributions from partners. The firm is likely to be funded by bank borrowing.

24. Another feature in law firms (particularly large firms) is that the composition of the partnership and shares in it will change from year to year. That limits the ability to amortise events that happen in a given year because that would cause unfairness to future partners. These issues are common in terms of debt provisions, claims and the like. It also causes the practical issue in relation to fines. It is entirely possible that those partners who are financially affected by the fine may not have been partners at the time of the relevant events. Conversely those partners who may have contributed to the relevant events may well have left the firm and will be unaffected by any fine. In large firms this is inevitable. These difficulties are compounded if, between the relevant events and the SRA decision, the firm has merged.

25. The level of profitability of law firms varies. In broad terms the range is from 20-40%. Smaller firms tend to have a smaller percentage of profit.

26. It is important to emphasise that this "profit" is in reality the collective income of the partners. If the SRA imposes a fine at the level it is proposing, it may have one or more of the following consequences:

    a. Publication of the fine will cause reputational damage both in terms of clients and in relation to the firm's own staff. Each firm's client base is different but a fine may impact on a firm's ability to satisfy the criteria for panels or tenders and clients might be lost. Partners and employees may leave either as a result of the loss of those clients or because of wider reputational issues. It is a notable feature of SRA's approach that it appears to entirely discount the deterrent effect of reputational impact of its enforcement action even though it is often the most important issue for firms, those that work for them, and their clients.

[11] This is another fundamental misunderstanding in Financial Penalties -a Report for the SRA above, see 1.5, third bullet point. This further demonstrates that the SRA's policy development has been based on its own factual misunderstanding of how those whom it regulates operate their business.

b. It will depress the profit pool disproportionately. A fine of 5% of turnover is of course 25% of the profit of a firm with a 20% profit margin. That means partners will earn 25% less. Profit will not be divided equally and it is possible the loss to partners will not reflect their involvement in the relevant matters;

c. The fine may cause the firm to cut costs. This may result in reducing the number of employees as these are its largest cost category. It will reduce the amount available for investment in improving systems and processes and IT, which may cause the firm to become less competitive. It is also likely to reduce the resources available to improve risk and compliance procedures. It may also impact on bank covenants which could lead to a firm having its lending withdrawn or reduced. Given the time it takes the SRA to investigate and determine matters, a firm is likely to have a contingent liability in its accounts for a period of time which will impact on its ability to obtain funding from banks and make the terms of such funding more onerous;

d. High performing partners may leave and others may decide not to join because their income has dropped below their market level. This creates even further costs pressures on the firm. This may at worst lead to insolvency or a merger followed by a further reduction in staff;

e. The impacts set out above are likely to be greater for smaller firms. That is therefore likely to lead to a disproportionate impact on diversity in the profession.

27. In short, the threshold at which a fine has the effect intended by the SRA's scheme, in particular for Recognised Bodies, is much lower than the SRA understands it to be. Because the SRA has not explored these issues in its policy development it has developed a scheme that is disproportionate to the purpose of the scheme.

Global Law Firms

28. The SRA's lack of appreciation of how law firms work has extended into their proposal, in appropriate circumstances, to take account of the global revenue of a law firm in assessing fines.

29. In a corporate setting it is common for companies to operate under a common brand in different jurisdictions. Normally these companies will sit within a group with common

ownership in a hierarchical structure. It is therefore understandable that regulators of those types of organisations might consider fines in relation to global revenue in appropriate cases given the benefit that will accrue to parent companies.

30. Clearly a number of global firms also operate under the same branding in different jurisdictions. However there the similarity ends. Unlike in England and Wales, many jurisdictions limit the ownership of law firms to individuals regulated as lawyers in that jurisdiction. Global law firms will have a variety of different structures that reflect the regulations in the jurisdictions in which they operate. These structures have often evolved over time and depend on that firm's individual history. However, a predominant theme is that firms are composed of interlocking partnerships where costs and profits of the individual entity is not normally shared across other firms which form part of the same group. A common profit pool is difficult to achieve given ownership restrictions. This also applies to Swiss verein structures and English companies limited by guarantee which are often ways of sharing cost, not profit.

31. It follows from this that the SRA's proposal will have one of two effects depending on the structure of an individual firm. Either it will multiply the damaging effect on the SRA regulated law firm's profit pool. This is because all of the enhanced fine will fall on that group of partners and not affect other firms in the group. This will therefore make much worse the effects described above. Alternatively, it may be that partners in other jurisdictions who have was not involved in the SRA entity or the conduct at issue will have their profit share reduced. It does not appear that the SRA has taken any advice upon whether such an approach is lawful. Nor does it appear to have considered whether it has the power to cause such an effect outside England and Wales. More broadly the SRA has not explained why, as a matter of principle, it would be fair and proportionate to use turnover other than for the relevant SRA regulated entity.

Individuals

32. The concerns that we have set out above also extend to individuals. We remain concerned that the SRA's approach of using gross income is excessive as it produces figures that it would be beyond the means of individuals and will impact on the individual's family life bearing in mind they are likely to have other commitments such as tax, mortgage and childcare. In relation to partners in law firms, income is variable and therefore using one specific year risks unfairness.

33. However, another aspect of fines for individuals is where they sit in the overall range of enforcement steps open to the SRA. In contrast to an entity where the sole realistic enforcement step is a fine[12], individuals can also be the subject of suspension and strike off.

34. The SRA has not explained as part of its approach why fining someone an amount that would be equivalent to say 12 months' gross salary is an appropriate exercise of their statutory power when Parliament has provided for the SDT to have not only unlimited fining powers but also the power to suspend and to strike off a solicitor.

35. This is particular so given that the SRA's proposed financial penalties includes behaviours that the common law (and the SDT's sanctions guidance) would regard as suitable for a suspension or strike off:

"been intentional or arisen as a result of recklessness or gross negligence";
"continued after it was known to be improper"
"formed part of a pattern of misconduct".

36. In many cases such behaviour will lack integrity or be dishonest[13]. The statutory scheme for the regulation of individual solicitors provides for a range of sanctions according to seriousness[14]:

- no action;
- a reprimand;
- a fine;
- a suspension from practice; this suspension: may itself be suspended; or may be for a definite period; or may be for an indefinite period;

[12] It is of course open to the SRA to withdraw authorisation but we are not aware of any such step being taken and it is more likely that in the case of smaller entities an intervention would take place which is regulatory not disciplinary.
[13] Although as we make clear below not all behaviour that falls within these categories will have these features which makes the criteria inconsistent with the common law.
[14] See Fuglers v SRA [2014] EWHC 179 (Admin) para 33

- striking off the roll.

37. The SRA's proposals are inconsistent with this scheme as they seek to put into a category of a fine conduct that should be the subject of a suspension or a strike off. The role of each of these sanctions was set out by Lord Bingham Bolton v The Law Society [1994] 1 WLR 512:

"*In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission."*

38. Of course, the SRA does not have the power to suspend as a sanction or to strike off. Those powers are reserved to the SDT. However, that does not mean that it is open for the SRA to develop a scheme that is inconsistent with the underlying statutory scheme and the common law. Fines should be limited to cases where a suspension or fine would not be appropriate. In any case where the level of seriousness might lead the SDT to exercise its statutory discretion to suspend then the matter should be referred to the SDT. Yet the present scheme purports to be a comprehensive scheme for dealing with all levels of serious conduct by individuals. This is inconsistent with the overall statutory scheme.

39. There is a further aspect of the individual fining regime that is both unsatisfactory and inconsistent with the common law. By making the amount of fines for individuals entirely dependent on income it is, as a consequence, not possible for either the public or the legal profession to understand the seriousness of the conduct. A solicitor may be fined say £11,000 for drink driving with no aggravating features whilst a less well off solicitor might be fined a similar amount for serious breaches of the Solicitors Accounts Rules.

40. In contrast, the common law position (and that adopted by the SDT) is to assess a tariff related to the conduct and then reduce the fine in the light of the means of the individual[15]. This approach leads to a transparent understanding of the relevant level of seriousness and also assists both the SRA and others to establish a consistent approach to similar facts. It is also consistent with the SRA's statutory obligation to be: "transparent, accountable, proportionate, consistent"[16]. Again the SRA has failed to explain why it considers that it is appropriate to depart from the statutory scheme, the common law and its own statutory obligations. Indeed, it does not appear to have considered the point at all in its policy development.

Understanding Misconduct

41. A further unfortunate feature of the SRA's approach is that it has not adequately considered the common law basis of its approach in relation to professional misconduct and the established case law on seriousness of such conduct.

42. It is well established that in common with other professional regulators the SRA needs to deal with serious cases but should not use its disciplinary powers for cases that do not involve professional misconduct. There are a number of bases upon which this can be put.

a. First professional misconduct requires that a sanction is only imposed in respect of acts that are "*sufficiently serious and culpable*" or "*whether [the conduct] would be regarded as serious and reprehensible by competent and responsible solicitors*"[17]

b. This approach is adopted in the SRA's own Enforcement Strategy which states: "*We focus our action on the most serious issues: our codes of conduct confirm that we will take action in relation to breaches which are serious, either in isolation or because they demonstrate a persistent failure to comply or a concerning pattern of behaviour. The concept of "serious breach" is described further below. However, this includes within it matters that can be described as serious "misconduct" - or conduct that is improper and falls short of ethical standards. It also includes other serious breaches of our*

[15] see see D'Souza *v* Law Society [2009] EWHC 2193 (Admin); Matthews *v SRA* [2013] EWHC 1525 (Admin) at 22
[16] See Section 28 of the LSA
[17] See SRA v Day and others [2018] EWHC 2726 (Admin) paras 156-157.

standards or requirements - for example, those relating to failures of firms' systems and controls."

c. It is also reflected in the SRA's own statutory obligations that its "*regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed.*"[18]

43. It follows that there is a range of matters where things have gone wrong which are not the proper territory for SRA enforcement action. For example, mere negligence is not misconduct even if it impacts clients nor are matters that are determined by the Legal Ombudsman. Claims are brought on a daily basis against solicitors by their clients where redress is sought. None of these are inherently professional misconduct. A properly conceived scheme needs to ensure that the decision maker addresses these considerations as part of their assessment of the facts.

44. There is extensive case law in relation to the seriousness of the conduct of individual solicitors. Broadly such conduct has been grouped into three categories in order of seriousness: (1) dishonest conduct; (2) conduct that lacks integrity; and (3) breaches of rules or principles. The Court's general approach to sanction in relation to dishonesty and lack of integrity is exemplified by the following passage in Bolton v The Law Society, [1994] 1 WLR 512, 518 to 519:

"Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to

[18] See Section 28 of the LSA.

strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension."

45. The position of assessing seriousness in relation to entities is more nuanced. The SRA only started taking enforcement action against entities after 2011[19] and therefore the legal landscape is less clear. In particular, an entity cannot be vicariously liable in conduct for the actions of those that work in it[20]. Absent a specific statutory obligation placed on the entity, its conduct responsibilities need to be considered in the light of attribution principles relevant to other areas of law.

SRA Decision Making

46. Before dealing with the structure of the SRA's proposal it is also relevant to make clear that the CLLS has a collective concern in relation to the quality of the SRA's decision making in relation to its enforcement cases. Not only do cases take an excessive amount of time to resolve but there seems to be a general institutional drive to assess facts as being at the most serious end of the spectrum. There is clearly a difficulty in evidencing these concerns in a public consultation but later in the paper we will examine the case examples relied upon by the SRA which are indicative of this approach. We note that a decision-making process that was conceived when the SRA did not have any power to fine is being used to make decisions that will involve substantial fines which in some cases could be into the multiple of millions. This casual approach to procedural fairness which is inconsistent with the approach by other regulators such as the FCA causes us deep concern.

47. We would also add that the approach of the SRA to drink driving offences since the implementation of the 2023 guidance demonstrates the point. It has been our experience that the SRA had a settled approach to drink driving offences over a number of years whereby, absent aggravating features, a first offence was likely to lead to a rebuke or warning. Indeed the SRA's current guidance states: "*The presence of mitigating features*

[19] Whilst the SRA has had a power to authorise entities since the Administration of Justice Act 1985 it only enforced against individuals.
[20] See Akodu v SRA [2009] EWHC 3588 (Admin);

will indicate a less serious sanction. Strong mitigating features combined with a lack of aggravating features is likely to result in either a warning or a rebuke".

48. The introduction of the 2023 Financial Penalties Guidance coincided with the SRA having its fining powers extended to £25k in respect of individuals. Whilst the underlying guidance on drink driving and the Enforcement Strategy did not change, for the first time the SRA started to impose income-based fines. This was clearly wrong and has now been dealt with as part of this consultation. However, the need to introduce guidance to clarify the position would not have arisen if the SRA's decision making reached the necessary quality threshold. In particular, caseworkers have conflated the existence of a greater power with the question of whether it should be used on the relevant facts. This is a further indicator of an overall tendency by caseworkers to over prosecute in their assessment of facts. One can only speculate about the number of other cases which are not as obvious where this has happened.

Deterrence and the Public Interest

49. In its consultation the SRA refers to deterrence as being the purpose of its scheme. However, it does not make clear what it means by deterrence. In our view it could mean one of two things:

    a. That in considering a course of action a firm may perform a cost benefit analysis as to whether it is better to pay a fine rather than take the steps necessary to ensure compliance and therefore the fine needs to exceed the cost of implementing appropriate compliance;

    b. That the consequences of an act are so adverse that a firm will do everything it can to avoid an outcome that results in a fine.

50. In relation to the former possibility, we have not encountered any firm taking such an approach. As the SRA is aware CLLS's members have invested heavily in ensuring compliance with the SRA's regulatory scheme. Such a cost benefit analysis would be alien to those dealing with such matters. Again, there is no evidence advanced by the SRA as to whether this is an issue that they have identified as being sufficiently widespread to form the basis of the scheme.

51. In relation to the second potential meaning, there is a substantial risk of "over deterrence" in that a concern as to adverse consequences will lead to an overly risk adverse approach which could inhibit innovation and services to clients. It may also affect internal behaviours. The point is neatly made in the SRA's own Enforcement Strategy: "*We recognise that both human and system error are unavoidable. And that to adopt a blanket response to non-compliance that does not take into account ethical behaviour, and the underlying purpose for the standard or requirement in question, can be counterproductive. Not only does it increase the regulatory burden, but risks inhibiting the development of shared values, the exercise of judgment and a culture of openness which allows for learning from mistakes*." Yet, as we make clear below, some of the Illustrative Examples relied upon by the SRA are entirely inconsistent with the Enforcement Strategy.

52. The focus on deterrence is too narrow. It is well established under the common law and the SRA's own rules that the purpose of sanction is to maintain public confidence in the delivery of regulated legal services and that is the objective that the SRA should adhere to in its fining regime[21].

C. POINTS IN RELATION TO THE SRA'S SPECIFIC PROPOSALS

Turnover and income

53. For the reasons we have set out above we do not consider that the SRA's approach takes adequate or any account of the types of businesses it regulates in order to properly design a scheme that is lawful.

54. The SRA has also not set out the basis upon which it considers it appropriate to move from a position where a fine of over 5% of turnover is an exception to one where a fine of over 25% of turnover is an exception. There is nothing in the consultation that provides a cogent basis for this shift in policy. The SRA has not set out any cases where this has been an issue. Indeed, we are not aware of any published case where the SRA has reached the 5% threshold. With all due respect it is incumbent upon the SRA as a public body to set out in its consultation what is driving the change, the purpose of the changes, the options that have been considered and why the proposal adopted is the preferred one. Such basic requirements are missing from this and many other aspects of this consultation which

[21] See Rule 4.1(b) of the SRA Regulatory and Disciplinary Procedure Rules

means that those responding to the consultation do not have sufficient information to respond. Instead, the SRA's approach seems to be with each consultation to ratchet up the turnover notwithstanding the fact that there is no evidence to support it. Indeed, when the SRA consulted on increasing the turnover figure from 2.5% to 5% it relied upon a fundamentally flawed report[22]. The justification for a further increase is put forward with no evidence at all save for the assertion that: "the ECCTA fining power mean it is likely that fines imposed by us of more than 5 per cent of a law firm's turnover, though still uncommon, will become more frequent in the future." As we have made clear such a regime where fines at such a level are "more frequent" as opposed to truly exceptional is likely to create an arbitrary and disproportionate regime which undermines the competitiveness of the domestic market and England and Wales' position in the global legal services market. It is extraordinary that the SRA considers that it can take this step without any analysis as to the impact.

55. Furthermore, as the profit margin of firms tends to relate to size, then the SRA's approach to turnover in general is likely to have a greater impact on smaller firms. We do not consider the impact of this is adequately addressed in the consultation. In particular the SRA asserts: "*We believe that our approach is both reasonable and proportionate. In this consultation we have carefully explained the reasons for our proposed changes, which we think are needed to provide a strong and credible deterrent against breaches of our rules*." For the reasons set out in this Consultation Response we do not consider that the SRA has properly addressed the issues in a way that suggests that it has carried out a proper impact assessment.

56. Our observations above also apply to the proposals in relation to income with the additional point that the scheme for individuals is flawed as it is inconsistent with the overall statutory scheme (see above).

Nature of conduct

57. The SRA's scheme only provides for two categories of misconduct. In contrast the SDT has 5 categories of misconduct. By having only two categories the SRA's scheme has the effect of creating an arbitrary assessment that will force less serious misconduct into the

[22] See Financial Penalties: A Report for the Solicitors Regulation Authority, Economic Insight, 14th April 2022 for example paragraph 1.17: "*Increasing the fine from 2.5% to 5% could compromise a firm's viability if it…does not earn sufficient profit to pay the fine (ie earns a profit margin of more than 2.5% but less than 5%"*.

most serious category and/or fail to distinguish between serious and more serious conduct. For example, a set of facts that contain one of the features in the more serious category is treated as being the same as facts where all of the features are present.

58. This unfairly simplistic approach is compounded by the use of ambiguous and undefined phrases which are expressed in a loaded way. These are then left to a caseworker or decision maker to interpret. As we have observed, our experience is that the most adverse interpretation will be reached as that is less likely to attract criticism. This view is evidenced by the SRA's approach to drink driving and the Illustrative Examples they rely upon and which we deal with below.

59. Here the following are problematic:

The conduct will "not have been intentional or arisen as a result of recklessness or gross negligence"

60. Before any action is appropriate the SRA needs to be satisfied that the matter is sufficiently serious to amount to professional misconduct. Whist it is to be inferred that by this stage of the process the SRA has decided to impose a penalty there does not appear to be anything in the process that requires the decision maker to apply their mind to the question of whether something is sufficiently serious to amount to professional misconduct and worthy of a financial sanction. There was some wording to this effect in the 2013 Guidance but this seems to have been dropped by the SRA even though it is an essential part of fair decision making.

61. The SRA's Enforcement Strategy[23] is clear as to how the SRA should approach sanction:

"Even where we have opened an investigation and may have made a finding of a breach, we will not necessarily impose a sanction. We will take into account all the circumstances, including any aggravating and mitigating factors, while ensuring that the wider public interest (including the protection of the public) is upheld. This means that if the circumstances indicate that there is no underlying concern in terms of the public interest, we can decide to close the matter with no further action or with advice or a warning."

[23] SRA | SRA enforcement strategy | Solicitors Regulation Authority

"Where a formal response is required, we will take action that is proportionate to the risk, weighing the interests of the public against those of the individual or firm involved. We will consider the available sanctions and controls in turn, starting with the least restrictive."

62. The approach set out in the SRA's Enforcement Strategy is also reflected in the underlying common law.[24]. It is difficult to understand how the SRA could have devised a framework that is not only inconsistent with the common law but also inconsistent with its own Enforcement Strategy. The first question a decision maker is asked to address under the framework is a leading one. Essentially: "Is this less serious misconduct?" The questions should start with whether there is a breach, and if so, is that breach so serious that the public interest is engaged and, if so, is there is a need to consider what is the lowest sanction that will address that public interest. In addition, it is far from clear as to why the SRA has focused on "recklessness" or "gross negligence". These are two concepts that have been used in the authorities to describe some of the features of lack of integrity but other criteria are ignored in the framework.

63. Equally, whether something is "intentional" may point towards dishonesty if it was improper. However, it is also well-established law that a bona fide judgment by a solicitor on matters of conduct does not of itself amount to misconduct[25]. As such it is possible to act intentionally in a way that might be a breach of the SRA's regulatory framework but for that not to be misconduct. The way the question is framed will lead the decision maker to make the wrong decision in such cases. As such the SRA's approach is inconsistent with the law.

64. Finally, the question of whether something: "formed part of a pattern of misconduct" is unclear as to its meaning. Whilst in some cases this may be highly material, such as in the case of multiple withdrawals from client account in breach of the SRA Accounts Rules, in other cases the facts may be less clear cut. For example, a firm undertaking large volume litigation may take a step which is replicated on a number of occasions before it is spotted and rectified. Whether something happened more than once is clearly relevant to impact but it is important to distinguish that from whether a "pattern" exists which means that the conduct itself was more serious. Our experience is that caseworkers conflate

[24] The authorities on professional discipline provide that a tribunal starts at the least serious penalty and works through each level until it arrives at one that satisfies the seriousness of the case. Raschid v General Medical Council [2006] EWHC 886 (Admin). The SRA's scheme starkly fails to impose any safeguards to make sure that a fair and proportionate decision making process is implemented.
[25] Connolly v Law Society [2007] EWHC 1175 (Admin)

these two issues. The framework does not give them the tools to make correct and fair decisions.

65. A better approach would be to assess the nature of the conduct, at least for individuals against the pre-existing law being is it: (1) dishonest; (2) lacking in integrity or (3) a breach. If it falls into the first two categories for an individual then it should be referred to the SDT as a suspension or strike off may be an appropriate order.

66. We consider that entities should have separate criteria to assess their conduct. Such criteria are likely to focus on whether the firm had the appropriate systems and processes in place prior to the breach.

Impact

67. The problematic approach in relation to conduct is compounded by the SRA's approach to impact.

68. The first category is:

- *Causing inconvenience but no/minimal loss and having no other direct material impact, or*
- *Having the potential to cause no more than minimal loss or having no more than a minimal impact*

69. It is difficult to see how actions falling into this category could lead to any finding of misconduct. This is because it would be unlikely to satisfy the legal test in relation to conduct, the SRA's Enforcement Strategy, or satisfying the SRA statutory obligations to be *"targeted only at cases in which action is needed*". Indeed, the first three categories used by the SRA all include an assessment: *"There is no demonstrable impact on the wider public interest*." This is entirely inconsistent with the SRA's Enforcement Strategy which states: "*This means that if the circumstances indicate that there is no underlying concern in terms of the public interest, we can decide to close the matter with no further action or with advice or a warning*."

70. At the very least, the decision maker should be carefully considering whether any sanction is appropriate where there is no demonstrable impact on the public interest. Instead the framework is directing the decision maker only to consider whether the impact score is between 2 and 6. This is a further example of how, at every turn, the framework drives the decision maker down a route that is contrary to the SRA Enforcement Strategy, the common law and the SRA's statutory obligations.

71. Conversely, it is of course possible that the underlying conduct was very serious but had no impact, for example where a solicitor forged a signature on a land registry document but this was noticed by their supervisor before it was submitted. However, such cases show how inadequate the framework is in reaching the right decision. In that case the conduct is so serious that the impact is immaterial. It is also conduct that should be referred to the SDT.

72. We also have serious concerns that the SRA's attempts to define levels of impact in a way that takes no account of the nature of its regulated community. By inserting arbitrary numbers of clients, and amounts involved the SRA seems to be determined to bake arbitrary outcomes into its system. At one end of the spectrum a firm with 15 clients would be assessed as the lowest impact if 10 of those clients were affected by a breach, at the other end of the spectrum the following would appear to be the manner in which the SRA intends to approach the following facts based on its Illustrative Examples.:

- A client of a large firm with a turnover of £50m is over-billed £5001 due to an error in the firm's IT system. The error is a one off but the client complains to the SRA. The Firm immediately reimburses the clients and fixes the IT and cooperates fully with the SRA. The SRA assesses this as a conduct score of 1, the lowest possible.

- As this is a matter in which an individual suffers an impact of more than £5000, the SRA scheme states that the firm has caused a very severe loss with an impact score of 8.

- The overall score therefore is 9, Band D.

- Given the firm's turnover that would lead to a fine of between £1,800,000 and £2,500,000 depending on how the SRA weighted any mitigating and aggravating factors.

73. We could of course cite similar examples in relation to the other criteria to assess impact but self evidently the scheme as devised by the SRA is not fit for purpose.

74. As with the phrases used in relation to conduct, they are ill defined and do not assist decision makers in making a careful assessment based on nuanced facts. Words and phrases such as "inconvenience", "impact", and "minimal impact" are all very unclear. We also do not agree that the potential to cause loss and causing actual loss are the same. In some cases, they may overlap but in others they may not. In any event the wording invites the decision maker to imagine a theoretical potential impact no matter how fanciful and then equate it to actual impact.

Determining the overall level of fine

75. We note that the SRA appears to be suggesting that aggravating and mitigating factors will only shift a penalty "within the band"[26]. In common with other aspects of the consultation there is no explanation as to why this approach has been taken and what alternatives were considered. We are not aware of any similar scheme which limits the impact of aggravating and mitigating factors in this way and it is notable that not only is this aspect of the consultation made in a Delphic way but also no comparables are relied upon for this approach.

76. This approach is so fundamentally wrong it is difficult to understand how it can be advanced by a public interest regulator. The purpose of the scheme should be to guide a decision maker in reaching fair, proportionate and lawful decisions. Within that process there is a need at the end of the decision making process to take a step back and assess whether the outcome is fair overall bearing in mind the seriousness of conduct, its impact and aggravating and mitigating factors. This step is common to all of the schemes of which we are aware.

77. In this context it is wrong to limit the discretion of the decision maker in such a way that is contemplated by only allowing a movement within a band. It is notable that the existing scheme permits up to 40% mitigation and no explanation has been provided as to why this

[26] See page 15 paragraph 3.

is wrong and a more arbitrary scheme is appropriate. It is also wrong to seek to proscribe mitigating factors so that those that should be properly considered are excluded. In this context it is wrong to limit the discretion of the decision maker to reach a fair decision based on the facts and in most cases limiting the impact of mitigating factors to within a band builds into the scheme an unfair and disproportionate outcome.

78. The SRA's approach to those factors it says it will now exclude is also flawed. We note that the SRA says that it will only give credit for an early admission where it: "is made promptly once we have provided the respondent with relevant details of the complaint/matters in question." This wording is inexcusably vague. The SRA is obliged under its Disciplinary Rules to write to a firm or solicitor and inform them that they are subject to investigation. Such notifications set out in outline terms what is being investigated and could fall within the wording above. However, the respondent may then be subject to a FI inspection and further enquiries by correspondence before a formal notice is served. Often the focus of the SRA's investigation will shift. In any event it is not until the service of a notice that the proposed respondent will be notified of the allegations and the facts relied upon and be able to formally respond. We do not understand why the SRA has used such vague and unclear language rather than making it clear that it is at the notice stage that any admission can be properly made.

79. In relation to co-operation being a mitigating factor, this has always been a mitigating factor in SRA decision making. It remains one in the SDT[27]. There is no proper explanation in the consultation as to why the SRA considers a change is necessary or what issue it is attempting to address. This again forms part of a wider picture of the SRA seeking to remove by design features that lead to a fair result.

Minimum fines

80. It is not clear to us why the SRA considers that minimum fines are necessary. Again, there is no explanation by the SRA of the issues they are trying to address in their policy development and what alternatives they considered. We do not find the SRA's example of a small firm with a turnover of £100,000 being fined £400 for not having a client/matter risk assessment on 6 files at all compelling. Indeed we would consider that, under the SRA Enforcement Strategy, this would be more appropriate on the facts for guidance or a

[27] "open and frank admissions at an early stage and/or degree of cooperation with the investigating body." SDT Sanctions Guidance 10th edition.

warning given there is no evidence of a systemic issue. The SRA would propose to fine such a firm a minimum of £10,000 for such a breach. A firm of that size is unlikely to exceed a 20% profit margin so effectively the SRA considers that a fine of half the profit or more accurately the annual income of the principal of the firm is proportionate for such a breach. It seems that it will be inevitable that firms that fall into the higher bands will be automatically made insolvent by the proposed minimum fines. No explanation is provided as to why this is appropriate and it again fits into the wider picture an unfair and arbitrary scheme. That does not accord with the SRA's statutory obligations under Section 28 of the LSA or the SRA's Enforcement Strategy.

Illustrative Examples

81. We do not propose to deal with all of the illustrative examples in this response we will however deal with those that raise particular concerns:

Illustrative Example 1

82. This example clearly demonstrates the SRA's lack of understanding of the businesses it regulates. For present purposes we accept that a firm in those circumstances should be fined. It is likely that the SRA regulated entity is a separate partnership from the global partnership and there will be no obligation on other entities in other jurisdictions to contribute to the fine. Clearly each partnership within the global firm would be expected to be self-sustaining and if it was considered that any one office was not contributing to its costs then it is likely that the office would be closed. On the basis of a £1m UK domestic turnover the profit of the London partnership is likely to be around 40%, (ie £400,000). The SRA's suggestion that it should fine the SRA regulated firm £2,340,000 (ie 6 times its annual profit) is likely to lead to the closing of the London office.

Illustrative Example 4

83. We do not understand why the SRA considers that any fine is necessary on the facts it describes. We have set out above the relevant principles to be found in the caselaw, the SRA's Enforcement Strategy and the SRA's statutory obligations. This example (amongst others) demonstrates a mindset that all errors or mistakes must be punished rather than focusing on serious misconduct. That is not proper regulation and raises deep concerns around the SRA's own culture.

Illustrative Example 5

84. Whilst we accept that the solicitor breached an undertaking by paying the amount due 28 rather than 14 days after required by the undertaking, the overall facts suggest that this is a case where a warning or a small fine is the appropriate outcome. In that context a fine of £5,000 is excessive for the purpose of maintaining public confidence in the provision of legal services and underlines the arbitrary nature of the SRA's proposed scheme.

Illustrative Example 6

85. This case is a further illustration of the concerns we have about the SRA's approach. Clearly all firms now rely heavily on IT to support their services to clients. The existence of outages is universal and broadly beyond the control of a firm. The reliance on IT comes from the need to fully support the demands and needs of clients and is of course to be encouraged as it is in the public interest. An outage of itself should not be a matter of professional discipline. On the facts of this case it appears that one member of the senior team was warned that the lack of a software upgrade **"might"** lead to an outage but this was not otherwise known within the firm. Equally there is nothing in the example that suggests that the impact of an outage was clear. There have been other instances where upgrades have in themselves led to outages.

86. Whilst different facts might lead to a different conclusion, this illustrative example is likely to have a chilling effect on the market and those considering becoming regulated, although we can see that the example will be used by software developers to market software updates on the basis that a failure to upgrade would place a firm in breach of its regulatory obligations, which perhaps underlines the ludicrous nature of this example in the context of professional misconduct. Instead of recognising the challenges of running a business in the modern age where there are often complex decisions to be taken on priorities for investment the SRA seems to consider anything less than perfection (aided by the benefit of hindsight) is misconduct. Again, this is inconsistent with the SRA's statutory obligations and its Enforcement Strategy.

87. That the SRA considers that a fine, likely to equate to 10% of the drawings of each partner in the firm, is appropriate on these facts is very concerning and will of course further undermine the firm's ability to invest in IT. The wider concern is of course allowing a

regulator with such a limited understanding of its sector and poor assessment and decision making to have such wider powers.

Response to Consultation Questions

Q1: Do you agree that we should update our guidance on financial penalties to include two new fining bands - bands E and F?

For the reasons set out above we do not consider that the SRA has set out any proper or legal basis for it to update its guidance in the manner proposed. We consider that it should review its guidance in the light of the concerns raised and re-consult on any new proposals.

Q2: Do you agree that our proposed approach will provide a credible deterrent against the most serious breaches of our rules?

For the reasons set out above we consider the scheme is arbitrary, unfair and poorly conceived. As such it will undermine public confidence in the regulation of legal services and is contrary to the regulatory objectives in Section 1 of the Legal Services Act.

Q3: Do you agree that the new nature and impact scores provide greater clarity as to how we determine the appropriate penalty within the bands?

The proposals result in an unfair disproportionate and arbitrary scheme and as such cannot in any way be beneficial.

Q4: 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?

We consider that the SRA needs to reconsider its scheme based on a clear understanding of how those whom in regulates practice, the established common law principles and its own statutory obligations. This will enable it to develop a lawful scheme.

Q5: 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?

For the reasons set out above we consider the SRA's approach is flawed.

Q6: Do you agree with the list of aggravating and mitigating factors that we have set out above?

No, for the reasons set out above.

Q7: Do you agree that cooperating with our investigation and remedying harm caused by a breach of our rules are not mitigating factors?

No, for the reasons set out above.

Q8: Do you agree with our proposal to introduce minimum fine levels in each penalty band in our fining guidance?

No, for the reasons set out above.

Q9: Do you agree with the proposed levels of minimum fine?

No, for the reasons set out above.

Q10: Do you think providing illustrative examples such as this will be a helpful addition to our guidance on financial penalties?

For the reasons set out above we consider that the illustrative examples only serve to demonstrate that the SRA's understanding of its statutory and common law obligations is flawed.

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?

We consider that the SRA's approach is wrong for the reasons set out above.

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?

It is clearly well established that the amount of any financial gain should be reflected in a financial penalty. However, the SRA's proposals are unclear as to its scope.

Q13: Do you agree with our proposal that we should not impose a financial penalty following a conviction for driving with excess alcohol?

Yes

Q14: Are there any additional potential impacts, either positive or negative, of our proposals on any group of solicitors with protected characteristics?

For the reasons set out above we do not consider that the SRA has demonstrated that it has adequately considered the impact of its proposals on those with protected characteristics.

Q15: Do you think providing illustrative examples such as these will be helpful additions to our guidance on financial penalties?

Whilst we have set out above our grave concerns as to the content of the illustrative examples we consider that in principle such examples, correctly formulated, would be helpful.