



## Response to SRA Fining Powers Paper: "Arbitrary, not fit for purpose, and inconsistent with its obligations in common law and statute"

**The City of London Law Society (CLLS) – the professional representative body for solicitors and law firms in the City of London – has today raised a wide range of concerns over the Solicitors Regulation Authority’s (SRA) proposals to extend its fining powers as set out in “Financial Penalties: further developing our framework”. While not opposed to a scheme that provides for substantial fines, as that is clearly what Parliament intended, the CLLS considers that the way the SRA has gone about this is flawed.**

In a detailed response, the CLLS has published a series of robust points about the flaws it has identified in the SRA’s proposals, which it finds in places to be arbitrary, not fit for purpose, and inconsistent with its obligations in common law and statute.

Iain Miller, Chair of the CLLS Professional Rules and Regulatory Committee which drew up the submission, said: “The more we went into the SRA paper, the more confused it became. It looks as if the SRA has offered a policy without thinking through its ramifications, without a clear grasp of the essentials, and without any proper consideration of the underlying law. We urge the SRA to reconsider its proposals.”

Colin Passmore, Chair of the CLLS, added: “The CLLS cannot agree with a policy which so many of our specialist lawyers consider is fundamentally flawed. We cannot see how the SRA can now continue to proceed with its proposed approach. That said, we are more than prepared to work with the SRA to help produce a more sensible and proportionate policy.”

### *Executive Summary of CLLS Response*

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:

- 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 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”;
- 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;

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- 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.

We observe that, without a significant reconsideration of its proposals, the SRA risks placing the LSB in the 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. As such the SRA's current course will, absent any reconsideration, lead to years of cost and uncertainty for the profession and thereby undermine the regulatory objectives in Section 1 of the Legal Services Act.

\*\*\*ENDS\*\*\*

#### NOTES TO EDITORS

The City of London Law Society is the professional representative body for solicitors and law firms in the City of London, including all the largest national and international practitioners. Our membership takes in more than 21,000 solicitors and 64 corporate member firms.

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