

Title: Economic Crime and Corporate Transparency Bill: Removing the statutory cap on financial penalties for the Law Society (as delegated to the Solicitors Regulation Authority) in relation to economic crime matters IA No: MoJ039/2022 RPC Reference No: Not Applicable Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)
	Date: 10/08/2022
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Primary legislation
	Contact for enquiries: Jasmin Aulakh
Summary: Intervention and Options	RPC Opinion: Not applicable

Cost of Preferred (or more likely) Option			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status NQRP
0.0	0.0	0.0	

What is the problem under consideration? Why is government action or intervention necessary?

The crisis in Ukraine has shone a light on the exposure of professional services sectors to economic crime. We have identified a gap in relation to the fining powers of the Law Society, as delegated to the Solicitors Regulation Authority (SRA) in relation to economic crime. Fixing this will protect wider society and act as a more credible deterrent for individuals and entities who breach the economic crime regime, supporting the UK's political and economic interests.

Unlike other frontline regulators, the SRA, which regulates all solicitors and traditional law firms, is currently limited by statute to imposing a **maximum fine amount of £25,000**. The Solicitors Disciplinary Tribunal (SDT) has unlimited fining powers, therefore if a case warrants a fine above £25,000 the SRA submits a referral application to the SDT. But, the referral process that the SRA has to follow to progress cases to the SDT is time-consuming. Lifting the £25,000 cap will enable the SRA to impose higher fines (when appropriate) for **disciplinary matters relating to economic crime**, aligning the SRA's fining powers with those of other frontline legal services regulators for disciplinary matters relating to economic crime. This will enable the SRA to set credible fines, particularly for larger law firms, for disciplinary matters in relation to the sanctions and wider economic crime regime. This will improve enforcement and deterrence in relation to these potentially very serious matters.

Removing the statutory cap on the Law Society's (as delegated to the SRA) power to direct a person to pay a penalty requires primary legislation, so Government intervention is needed.

What are the policy objectives of the action or intervention and the intended effects?

The policy objective is to support the Government's ambitious economic crime agenda and deter individuals and entities who are or may be breaching the principles that underpin it. Legislative reform will enhance the SRA's enforcement powers, particularly in relation to cases of disciplinary matters relating to economic crime, by giving the SRA the ability to set its own proportionate financial penalty levels.

The intended effect is to deter legal professionals who enable economic crime and to provide the SRA with the necessary enforcement tools to make sure that solicitors and law firms uphold the economic crime and sanctions regimes.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

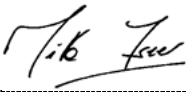
- **Option 0:** Do nothing: Under this option current legislation would continue.
- **Option 1:** Amend the Solicitors Act 1974 and the Administration of Justice Act 1985 to remove the statutory cap on financial penalties for the Law Society, as delegated to the SRA, in relation to economic crime matters.

The preferred option is **Option 1**, as this will best meet the policy objectives.

Is this measure likely to impact on international trade and investment?	No
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Are any of these organisations in scope?	Micro No	Small No	Medium No	Large No
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	
Will the policy be reviewed? No plans to review. If applicable, set review date: N/A				

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible SELECT SIGNATORY:  Date: 02/02/2023

Summary: Analysis & Evidence: Policy Option 1

Description: Remove the statutory cap on financial penalties for the Law Society (as delegated to the Solicitors Regulation Authority) in relation to economic crime matters.

FULL ECONOMIC ASSESSMENT

Price Base	PV Base	Time Period	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)	
	Low	Optional		Optional	Optional	
	High	Optional		Optional	Optional	
	Best Estimate					
Description and scale of key monetised costs by 'main affected groups'						
No direct costs as a result of this measure.						
Other key non-monetised costs by 'main affected groups'						
The SRA and the Solicitors Disciplinary Tribunal (SDT) are the main affected groups. The SRA would not incur additional costs to update its guidance or consult the SDT on its financial penalty levels, as this work would be completed using existing resource. The SDT may incur additional costs if additional Policy Committee meetings are required, if payments need to be made to any working party the SDT may convene and if any external legal advice is required. However, the SDT has advised that it is not possible to quantify these costs at this stage.						
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)	
	Low	Optional		Optional	Optional	
	High	Optional		Optional	Optional	
	Best Estimate					
Description and scale of key monetised benefits by 'main affected groups'						
None.						
Other key non-monetised benefits by 'main affected groups'						
The SRA's costs could reduce if less time is spent completing referral applications to the SDT, preparing court bundles, and participating in the hearings, however we cannot isolate these costs at this stage. Based on the SRA's data between 2014 and 2022, the SRA will approximately handle an additional 2-3 cases per year in relation to anti-money laundering, which would have previously gone to the SDT. Whilst this does not take into consideration cases in relation to other forms of economic crime, this figure is unlikely to be significantly more. The previous benefits mentioned, in relation to improved efficiencies, will likely be much larger than the resource required for these additional cases. However, it is not possible to quantify how many cases the SDT would continue to handle following the removal of the statutory financial penalty limit, as this is dependent on the new framework that the SRA introduces.						
This is because there is a risk that more cases may be contested and decisions appealed against, which would involve the SDT, if applicants disagree with the financial penalty set by the SRA in the first instance. In this scenario, contested cases would need to be referred to the SDT, therefore the SDT's caseload may not reduce as much as intended. For this reason, it is difficult to precisely estimate costs and benefits to both the SRA and SDT and thus foresee any indirect impact on the legal sector (for example: the SRA increasing its practising fees).						
Key assumptions/sensitivities/risks					Discount rate	3.5%

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m: N/A			Score for Business Impact Target (qualifying provisions only) £m: N/A
Costs: N/A	Benefits: N/A	Net: N/A	

Evidence Base

A. Background

Regulatory framework

1. The Legal Services Board (LSB) is the oversight body for frontline legal service regulators, including the SRA. The LSB ensures that the SRA is upholding the regulatory objectives, as set out in the Legal Services Act 2007 (“the 2007 Act”).
2. The Solicitors Act 1974 and the Administration of Justice Act 1985 confer a range of powers on the Law Society to regulate solicitors and law firms in England and Wales. These powers are delegated to the SRA as the independent regulator of solicitors and law firms in England and Wales.
3. The 2007 Act does not set out the amount of penalty that the SRA can direct an individual or entity to pay, as this is set out in the Solicitors Act 1974. Part 2 of the Solicitors Act 1974 relates to the professional practice, conduct and discipline of solicitors. Specifically, section 44D relates to the disciplinary powers of the Law Society. Under section 44D(1) and 44D(2)(b) of the 1974 Act, the Law Society has the power to direct payment of a penalty not exceeding £25,000 where a solicitor or employee of a solicitor has failed to comply with a requirement imposed on them by the 1974 Act or by rules made by the Law Society, or where a solicitor has committed professional misconduct. Additionally, the Law Society, under paragraph 14B of Schedule 2 to the Administration of Justice Act 1985, has the power to direct a recognised body or manager/employee of a recognised body, or a sole solicitor or employee in a sole solicitor’s practice, to pay a penalty not exceeding £25,000 where there has been a failure to comply with a relevant requirement under the 1985 Act or rules made by the Law Society.
4. A recognised body is defined in section 9 of the 1985 Act and includes traditional law firms. Section 44D(7) of the 1974 Act requires that the Law Society makes rules around the circumstances in which it will direct a person to pay a penalty, about the practice and procedure in relation to issuing those penalties, the publication of details of action taken and any other rules in connection with the exercise of those powers as appropriate. Any financial penalties issued by the Law Society may be appealed under section 44E(1)(b) to the Solicitors Disciplinary Tribunal (SDT). The decision to impose a penalty or the amount of that penalty can be appealed. The 1985 Act also contains provisions in paragraph 14B requiring the Law Society to make rules and to consult the Solicitors Disciplinary Tribunal before doing so. Persons directed to pay a penalty by the Law Society (as delegated to the SRA) also have a right of appeal to the Solicitors Disciplinary Tribunal.
5. The Lord Chancellor has the power in both the 1974 and 1985 Acts to amend the SRA’s financial penalty limits by Order. However, the Lord Chancellor is required to consult the Law Society before doing so.

Recent amendments to the SRA’s financial penalty limits

6. In May 2022 the Lord Chancellor consulted with the Law Society, SRA and LSB on increasing the limit of financial penalties the SRA can enforce from £2,000 to £25,000, with the intention that it would strengthen the enforcement powers.

7. The SRA and LSB's responses to our consultation were strongly in favour of the increase to £25,000. The Law Society's response, however, raised significant concerns about increasing the SRA's financial penalty limit to £25,000.
8. Following the consultation, the Lord Chancellor made an order under the 1974 and 1985 Acts to increase the SRA's financial penalties from £2,000 to £25,000 for traditional law firms and solicitors.

The removal of the statutory financial penalty cap for the SRA

9. As the SRA cannot impose financial penalties over £25,000, serious cases warranting a financial penalty over this limit are dealt with by the SDT, which takes on average 2.5 years to resolve a case. In contrast, other regulators do not have limits set in statute and have the flexibility to set appropriate financial penalties in relation to economic crime matters.
10. The SRA's existing financial penalties have been referenced by official bodies such as OPBAS, the oversight body for anti-money laundering supervision. OPBAS specifically noted that the SRA's financial penalties are limited by statute in its 2020/21 report in contrast with the majority of other professional body supervisors under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which are not limited by statute.
11. Removing the SRA's statutory financial penalty cap for disciplinary matters related to economic crime will enhance its enforcement powers and will align the SRA more closely with other regulators. It will enable the SRA to increase the financial penalties for solicitors and law firms who breach the economic crime regime, subject to LSB approval, and allow it to carry out faster enforcement, resulting in fewer cases requiring a referral to the SDT. Based on the SRA's data, between 2014 and 2022 the SRA will approximately handle an additional 2-3 cases per year in relation to anti-money laundering, which would have previously gone to the SDT. This is not taking into consideration cases in relation to other forms of economic crime, which are unlikely to significantly increase this figure.
12. Data provided by the SRA indicated that in 2021 the SDT first listed 99% of cases for substantive hearing within 6 months of being issued and determined 80% of cases within 6 months of proceedings being issued. This shows that once the SDT receives a referral from the SRA its concluded in a timely manner, it is the initial referral application that the SRA needs to submit to the SDT which is time-consuming and burdensome. Therefore, reducing the number of cases requiring the SRA to process a referral to the SDT is likely to reduce the average time taken for a case to be resolved. This measure will allow the SRA to carry out faster enforcement with more cases being settled internally rather than being referred to the SDT.
13. This measure addresses the time taken to conclude cases that have been referred to the SDT. If more cases are dealt with by the SRA internally, without the need for a referral to the SDT, this could also reduce costs for respondents. An analysis of the respondent's costs predicts the average cost for resolving an issue by agreement between the respondent and the SRA to be £3,000, compared to an average £10,500 if the respondent agrees to the financial penalty after being referred by the SRA to the SDT.
14. The appropriate safeguards on the SRA's financial penalty framework will still remain. The LSB, through its existing powers, reports annually to ensure that the SRA has a coherent approach to enforcement and to ensure the SRA carry out its duties in line with

regulatory performance standards. The SRA will also (as required) consult the SDT before making any rules in relation to enforcement powers.

B. Rationale and Policy Objectives

15. The primary rationale for the measure detailed in this Impact Assessment (IA) is to improve efficiency of the SRA's investigations of potential breaches of economic crime by reducing the number of referrals to the SDT. Fewer cases requiring the SRA to process a referral to the SDT will result in quicker outcomes, which will save time for all parties involved. This measure may also be more equitable as it allows for increased flexibility in the SRA's powers to amend fining levels in relation to economic crime matters, without requiring a referral to the SDT. This protects wider society and acts as a more credible deterrent for individuals and entities who breach the economic crime regime, supporting the UK's political and economic interests. This measure also supports our other policy intention, which is to introduce a new regulatory objective.

16. The associated policy objectives are to:

- Remove the statutory cap to enable the SRA to enforce financial penalties in relation to economic crime more quickly;
- Increase the SRA's flexibility by allowing them to amend financial penalty levels for disciplinary matters relating to economic crime to align with the powers of other frontline legal services regulators;
- Provide the SRA with an enhanced enforcement tool to deal effectively with disciplinary matters relating to economic crime.

C. Affected Stakeholder groups, organisations and sectors

17. A list of the main groups that will be most affected by these measures is shown below:

- The Ministry of Justice (MoJ) will be affected through new legislation, supporting the removal of the cap, being introduced.
- Legal service providers being investigated for disciplinary matters in relation to economic crime, especially barristers and solicitors who provide legal advice and representation to defendants, will be affected as they may have originally been referred to the SDT for disciplinary matters warranting a financial penalty higher than £25,000.
- The Law Society of England and Wales (TLS) will be affected by having to make changes to the guidance and advice it provides to the legal services sector.
- The Solicitors Regulation Authority (SRA) will be affected as cases of disciplinary matters relating to economic crime warranting a financial penalty over £25,000 fall to it where appropriate; and it will need to create a new framework for financial penalties that will need to be agreed with both the SDT and LSB.
- The Solicitors Disciplinary Tribunal (SDT) will be affected as it will need to work collaboratively with the SRA to design the new framework for financial penalties. The new framework is likely to reduce the number of cases referred to it.

- The Legal Services Board (LSB) will be affected as it has a statutory obligation to lead the review of the SRA's disciplinary arrangements, including a review of any changes to the SRA's financial penalty framework. This may potentially require additional resource.

D. Description of options considered

18. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0:** Do nothing.
- **Option 1:** Amend the Solicitors Act 1974 and the Administration of Justice Act 1985 to remove the statutory cap on financial penalties for the Law Society, as delegated to the SRA, in relation to economic crime matters.
- The preferred option is **Option 1**, as this will best meet the policy objectives.

Option 0: Do nothing

19. Under this option, the SRA would continue to be able to fine a solicitor or traditional law firm only up to £25,000 for all disciplinary matters, including those related to economic crime. This option would therefore fail to meet the policy objective of aligning the SRA more closely with other frontline legal service regulators whose financial penalties are not limited by primary legislation, and who can therefore adjust financial penalties through governance processes rather than by amending legislation.

20. Therefore, this option has been rejected as it would not address the policy objectives.

Option 1: Amend the Solicitors Act 1974 and the Administration of Justice Act 1985 to remove the statutory cap on the Law Society's, as delegated to the SRA, power to issue financial penalties in relation to economic crime matters.

21. This measure would improve the consistency of enforcement processes across legal services as the LSB will, through its oversight, be able to ensure regulators have a coherent approach to enforcement in relation to economic crime. When the fining power limit in primary legislation has been removed, the SRA will be able to revise the financial penalties it issues to tackle disciplinary matters relating to economic crime, subject to the approval of the LSB.

22. The LSB will continue to have oversight over the SRA's discipline arrangements, and the SRA will still be required to consult the SDT before issuing rules on process and procedure relating to financial penalties.

23. This measure would require two clauses to be amended: Section 44D of the Solicitors Act 1974 and paragraph 14B of Schedule 2 to the Administration of Justice Act 1985. Currently, under powers in the Solicitors Act 1974 (Section 44D(2)(b)) and the Administration of Justice Act 1985 (Schedule 2, 14B (2)(b)), if it is found that a solicitor or a traditional law firm, or those involved in such firms, have failed to comply with a requirement imposed by those Acts, regulatory rules, or there has been professional misconduct on behalf of a solicitor, the SRA can impose a financial penalty of up to £25,000. Cases warranting a financial penalty over this value are dealt with by the Solicitors Disciplinary Tribunal, which takes on average 2.5 years to resolve a case.

24. The Bill will remove the £25,000 limit on the SRA's (as delegated from the Law Society) power to issue financial penalties set out in section 44D(2)(b) of the Solicitors Act 1974 and paragraph 14B(2)(b) of Schedule 2 to the Administration of Justice Act 1985, but only in relation to disciplinary matters relating to economic crime. Amendments to the process contained within the 1974 and 1985 Acts are not required as the requirement to

make rules, consult the SDT and the right of appeal to the SDT will remain. The change will simply amend the power in section 44D of the Solicitors Act 1974 and paragraph 14B of Schedule 2 to the Administration of Justice Act 1985 so that the Law Society's power to direct a financial penalty in response to a breach of economic crime rules is not limited to a certain amount set out in legislation.

E. Costs and Benefits Analysis

25. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with Her Majesty's Treasury Green Book guidance.
26. This IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in Great Britain with the aim of understanding what the overall impact on society might be from the proposals under consideration. IAs typically place a strong focus on monetisation of costs and benefits. There are often, however, important impacts which cannot sensibly be monetised. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are not monetised.
27. The costs and benefits of each option are usually compared to the 'do nothing' or 'counterfactual' option. As the counterfactual is compared to itself, its costs and benefits are zero, as is its Net Present Value (NPV).
28. Option 1 may increase the SRA's activity as it is likely to deal with more cases and has to update guidance for the sector. As a result, the SRA was approached for its best estimate of these costs. The SRA advised that approximately three pieces of guidance would need to be updated once the consultation process has concluded, but that existing resource would be reallocated to do this rather than additional resource being required. In addition, resourcing costs associated with preparing court bundles and hearings would reduce if fewer cases were referred to the SDT. This would give the SRA the capacity to carry out enforcement more quickly and efficiently.

Option 1: To remove the statutory cap on the SRA's financial penalties in relation to economic crime

Costs of Option 1

29. The SRA and the Solicitors Disciplinary Tribunal (SDT) are the main affected groups.
30. The SRA would not require additional costs to update its guidance or consult the SDT on its financial penalty levels, as this work will be completed using existing resource.
31. The SDT may incur transitional costs if additional Policy Committee meetings are required, if payments need to be made to any working party the SDT may convene and if any external legal advice is required. However, the SDT has advised that it is not possible to quantify these costs at this stage.

Benefits of Option 1

Solicitors Regulation Authority

32. The SRA will see a benefit from fewer cases requiring a referral to the SDT and the resource needed to support that, in particular less time being spent on preparation and participation in hearings. Based on the SRA's data, it is estimated that it would handle approximately 2 to 3 additional cases per year in relation to anti-money laundering matters, which would have previously been referred to the SDT. This is not taking into account other economic crime cases, which are unlikely to significantly increase this

figure. The SRA will still benefit from a reduction in time taken as they previously would have required a referral to the SDT.

33. But, whilst the number of cases referred by the SRA to the SDT may decrease, the number of appeals to the SDT may increase if respondents disagree with the financial penalty set by the SRA. Given this, it's not possible to quantify how many cases could be contested as a result of the SRA's amending its financial penalty levels.

Solicitors Disciplinary Tribunal

34. The SDT will see a benefit from a reduction in the number of cases requiring its involvement. If more cases are contested and decisions are appealed against this would reduce these benefits for both SRA and SDT. Given this it's not possible to quantify the overall impact that the SRA's amended financial penalty levels will have for both the SRA and SDT.

Legal services providers

35. We anticipate that the measure may reduce costs for respondents if the financial penalty is set by the SRA, rather than the SDT. This is because it is costly for respondents to prepare for court bundles and any hearings with the SDT, which in some instances requires the respondent to seek external legal advice. The benefit for respondents may be limited if the respondent disputes the financial penalty set by the SRA, as they will then be required to appeal to the SDT.

Legal Services Board

36. The ability for the SRA to amend the levels of financial penalty in relation to economic crime will benefit the LSB to exercise its obligation to ensure that the SRA enforces the economic crime regime with the use of more proportionate financial deterrents. The LSB may incur transitional costs if it requires additional resource to review the SRA's new financial penalty framework.

The Law Society of England and Wales

37. The Law Society monitors the creation of new guidance to support the legal services sector to comply with the UK's domestic regulatory framework. Creating or updating guidance is unlikely to incur costs for the Law Society as it is a part of professional bodies' day to day activity. However, data to support this assumption is unavailable at the time of the analysis.

F. Risks and Assumptions

38. The key assumptions and risks underlying the analysis above are described below.

Assumptions and risks underlying Option 1

39. Data on potential costs and benefits to the SRA of this option is limited as it is not clear which cases in relation to economic crime will be referred to the SDT and which cases would not be. As such, it is difficult to precisely estimate any additional cost to the SRA if it requires additional resource to manage any increases in its caseload.
40. The main risk is that it is unknown how many respondents will appeal to the SDT following the new financial penalty framework set up the SRA.
41. Data on the potential impacts of the measure on professional bodies, such as The Law Society or the Bar Council, who are tasked with monitoring the creation of new guidance, is unavailable at the time of the analysis. However, as the monitoring of new guidance is part of professional bodies' day to day activity, it is unlikely the measure would create an additional cost.

G. Wider Impacts

Equalities

42. An Equalities Statement has been carried out in addition to this IA.

Better Regulation

43. This proposal is exempt from the Small Business Enterprise and Employment Act 2015 and does not count towards the department's Business Impact Target.

Environmental Impact Assessment

44. We expect there to be no environmental impacts as a result of the options within this IA.

International Trade

45. There are no international trade implications from the options considered in this IA.

Monitoring and Evaluation

46. There are no further plans to monitor the impacts of this policy.