

Consultation questions: Data Protection Fining Guidance

Start date: 2 October 2023

End date: 27 November 2023

About you

Your name:

Email address:

If you are responding on behalf of an organisation, please tell us the name of the organisation, your role and (if applicable) how the views of the members of the organisation have been obtained:

If you are responding as an individual, please tell us if you are responding in a professional or private capacity:

If you are responding as an individual, please tell us if you consent to us publishing your name alongside your response (we will otherwise publish your response anonymously):

Our questions

Answers to the following questions will be helpful in finalising the draft Data Protection Fining Guidance. You do not need to answer all the questions.

The headings refer to the relevant sections of the draft Data Protection Fining Guidance.

Statutory Background

1. Do you have any comments on our approach to the concept of an 'undertaking' for the purpose of imposing fines?

The definition of an undertaking could be clearer. However, I would suggest that fining public sector bodies is likely to do more harm than good in the long term. Obviously, where there is an infraction then something must be done. However, their activity is funded by the public and any fines are therefore paid by the public. It is the public who lose out where a public sector organisation is underfunded. I would suggest a separate set of rules for those organisations that are publicly funded.

- 2.** Do you have any comments on our approach to fines where there is more than one infringement by an organisation?

I do think that where an organisation has committed multiple serious infringements, they should be fined separately for each. It seems vastly unfair otherwise.

- 3.** Do you have any other comments on the section on 'Statutory Background'?

No.

Circumstances in which the Commissioner would consider it appropriate to issue a penalty notice

- 4.** Do you have any comments on our approach to assessing the seriousness of an infringement?

It seems reasonable and proportionate.

- 5.** Do you have any comments on our approach to assessing relevant aggravating and mitigating factors?

None.

- 6.** Do you have any comments on our approach to assessing whether imposing a fine is effective, proportionate and dissuasive?

Whilst I understand that the Commissioner must themselves comply with other laws, I'm unclear why a regulatory body should be responsible for in any way "promoting economic growth". It makes no sense that a publicly funded organisation can receive a fine, that they would pay with public funds and then be unable to provide a public service, but another organisation may not because the Commissioner feels constrained to consider promoting economic growth. Also, I'm unclear when it would and would not be dissuasive or effective to issue a fine. It seems arbitrary. A fine is obviously, in most cases, a very large disincentive. The only exception I can think of might be those small sole traders who will then simply disappear without paying said fine.

7. Do you have any other comments on the section on 'Circumstances in which the Commission would consider it appropriate to issue a penalty notice'?

No.

Calculation of the appropriate amount of the fine

8. Do you have any comments on calculating the starting point for the fine based on the seriousness of the infringement?

No.

9. Do you have any comments on our approach to accounting for turnover when calculating the fine?

No.

10. Do you have any comments on how we apply aggravating and mitigating factors when calculating the fine?

No.

11. Do you have any comments on how we make any necessary adjustments to ensure the fine is effective, proportionate and dissuasive?

No.

12. Do you have any other comments on our five-step approach to the calculation of the appropriate amount of a fine?

No.

Financial hardship

13. Do you have any comments on our approach to financial hardship?

No.

Any other comments

14. Do you have any other comments on the draft Data Protection Fining Guidance?

None.