

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?

We agree in principle, however would need assurance that the organisation that is deemed to be non-compliant with provisions of UK GDPR or DPA 2018 would understand in advance what recourse is available to them to challenge the proposed sanction.

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

Definitions for the words 'intentionally and 'negligently' would be helpful.

Information on what an investigation looks like in terms of the commissioner investigating one infringement and then beginning to look into another infringement, e.g will they inform an organisation of timelines/guidelines for this to enable an organisation to resource and prepare for the second investigation whilst the first is still ongoing.

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

No comments.

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?

Clarity on how the 'likelihood' of a data subject suffering harm is calculated when there is no evidence harm has occurred but it is possible.

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

No comments.

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

Proportionality should take into account the sector the organisation is acting in as well as the service or products the organisation provides, as any fine could have a disproportionate impact on the organisation and therefore the people it supports through its services/products.

- 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 comments.

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 comments.

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

No comments.

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

No comments

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

Information on what objectivity and quality assurance standards will be in place by the Commissioner to ensure fines are applied consistently in being effective, proportionate and dissuasive

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

The approach must be applied consistently with a form of redress available to organisations.

Financial hardship

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

The guidance for financial hardship should be expanded to take into account the sector the organisation is acting in/the type of business as well as the service or products the organisation provides, as any fine could have a disproportionate impact on the organisation and therefore the people it supports through its services/products.

Any other comments

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

Macmillan would like to thank the ICO for providing organisations the opportunity to review and feedback on it proposed guidance in this area.