

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?

There is reference to: The Commissioner can also issue penalty notices for a failure to comply with an information notice, an assessment notice or an

enforcement notice given under Part 6 DPA 2018. – it would be useful to be more explicit here so even those with very little knowledge of the regulations would be able to understand, along with some examples or scenarios.

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

There is reference to: The Commissioner may impose a fine where a person has failed:

- or is failing, to comply with certain provisions of the UK GDPR or DPA 2018³; or – it would be useful to potentially give clear examples of these certain provisions so individuals understand and have more clarity and whether these provisions vary

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

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 would be useful to give further scenarios/examples so individuals with less knowledge of the regulations would be able to understand. Also, what do we mean by gravity of situation? Be useful to understand what they define as being serious. Further examples would be useful and an outline of suitable mitigating factors.

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

Although we can see previous consideration in regard to infringements will be considered – would it be possible to also consider how organisations have cooperated in terms of previous infringements, fines and the lessons they have learned and whether they genuinely were making a considerable effort to avoid future infringements and the steps they have taken.

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

It would be useful if the ICO published some examples on what mitigations for certain types of incidents they would deem appropriate – this might help organisations develop a better understanding and avoid potentially breaches in future.

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

Calculation of the appropriate amount of the fine

- 7.** Do you have any comments on calculating the starting point for the fine based on the seriousness of the infringement? Have we considered how other countries have calculated fines and whether this is proportionate?
- 8.** Do you have any comments on our approach to accounting for turnover when calculating the fine?
- 9.** Do you have any comments on how we apply aggravating and mitigating factors when calculating the fine?
- 10.** Do you have any comments on how we make any necessary adjustments to ensure the fine is effective, proportionate, and dissuasive?
- 11.** Do you have any other comments on our five-step approach to the calculation of the appropriate amount of a fine?

Financial hardship

- 12.** Do you have any comments on our approach to financial hardship?
What is involved in the claim process? What types of documentation/proof is required? How long does this process take?

Any other comments

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