

**National Police Chiefs' Council (NPCC) – Response to ICO Consultation on Draft Data Protection
Fining Guidance**

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

We agree with the proposed approach in paragraphs 23-31 as it diminishes the opportunity for Controllers to reduce the scale of fines by attempting to insulate themselves from their subordinate entities.

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

We agree with the proposed approach in paragraphs 35-45.

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

Greater clarity on how fines will work in cases of joint controllership would be welcomed.

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

We agree with the proposed approach in paragraphs 54-72 but suggest an additional category of 'nature of processing' should be added to those three introduced under the bullets of paragraph 54.

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

We agree with the proposed approach. However, we suggest gravity should also involve consideration of:

- previous interactions with the ICO regarding the controller's compliance with DP law
- whether or not the processing which was non-compliant was required by law or was a choice by the controller using their discretion

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

We agree with the proposed approach subject to the guidance recognising the differences between controller that are commercial enterprises and those that are public authorities. A penalty on a commercial enterprise rightly affects shareholders, one on a public authority inappropriately diverts funding used for services carried out in the public interest.

- 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.

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

We agree with the proposed approach.

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

We agree with the proposed approach.

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

We agree with the proposed approach.

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

We agree with the proposed approach.

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

No.

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

We agree with the proposed approach, subject to financial hardship also taking into account, for public authorities, the levels of funding and trend of funding over previous years.

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

Suggest that the title of the guidance might be 'Data Protection Fines Guidance' rather than 'Data Protection Fining Guidance'.