

# 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?

Makes perfect sense.

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

No.

**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?

I had hoped for greater emphasis on those infringements which relate to rights and freedoms. I feel this is needed if organisations are to be persuaded to understand their obligation to safeguard people's rights and freedoms and that data protection law is not simply about IT security.

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

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

Perhaps it would be useful to include some regard to the industry or sector of the company, its customer base and the wider impact a fine could have - reputational or brand damage is a significant fear in some sectors but not so much in others, and while a fine may seem high in financial terms it may not be high enough to really impact a business and thus bring about a change of behaviour.

**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'?

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### 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?

A higher minimum amount would be more dissuasive.

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

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

It would perhaps be useful to consider whether an infringement results from the lack of a data protection culture within the business or a failure to take data protection seriously and allocate sufficient attention to it. There are many organisations who, even after 20+ years of data protection regulation and two significant legislative regimes, have largely ignored it and will continue to do so until they are forced to do otherwise. If the underlying data protection culture of the organisation was a known aggravating or mitigating factor in calculating fines, this might help to make them want to start taking it seriously.

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

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

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## Financial hardship

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

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## Any other comments

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

Overall very positive indeed, although I feel higher starting points and a harsher view on aggravating factors is needed if businesses are ever to truly take data protection seriously. [REDACTED]

[REDACTED] fines remain on the whole low (by the standards of many businesses with a significant turnover). For some, a fine is simply the cost of doing business the way they want to do it and the ICO is seen as a 'soft touch' because its fines are relatively low. This helps to perpetuate the problem!