

Framework for determining the appropriate amount of a monetary penalty

Once it has been decided that a monetary penalty should be imposed, the ICO must then consider what would be the appropriate amount, given the circumstances the case.

In determining the appropriate amount of a monetary penalty the ICO will have regard to the underlying objective to promote compliance with the Act and to the general approach set out in paragraphs 3.1 to 3.3 of the Information Commissioner's guidance about the issue of monetary penalties.

A number of issues are likely to be relevant to the decision as to what would be an appropriate monetary penalty in a particular case and these issues are incorporated in a five-step framework, which can be summarised as follows:

Step 1 – seriousness of the contravention

A Case Working Group comprising the Head of the Enforcement Department, the Group manager, the case owner and a lawyer, will determine a starting figure that reflects the seriousness of the contravention of section 4(4) DPA by the data controller.

This will involve looking at the nature of the contravention together with the scope of the harm caused by the contravention and a consideration of what is reasonable and proportionate given the circumstances of the case.

The initial view is based on the sanction available based on the statutory maximum of £500,000, which will be considered against a seriousness rating as follows:

- Serious = £40,000 to £100,000;
- Very serious = more than £100,000 but less than £250,000;
- Most serious = more than £250,000 up to the maximum of £500,000.

Once the level of seriousness has been determined, the starting figure will be set at the mid-way point within each band.

Therefore a contravention that is considered to be serious will attract a starting figure of £70,000; a contravention that is considered to be very serious will attract a starting figure of

£175,000; and a contravention that is considered to be most serious will attract a starting figure of £375,000.

Step 2 – aggravating and mitigating factors

The Case Working Group may increase or decrease the amount of the monetary penalty arrived at after Step 1 to take into account factors which aggravate or mitigate the contravention. The factors that may have the effect of aggravating or mitigating the contravention are set out in Section 4 of the Information Commissioner's guidance about the issue of monetary penalties, although they are not exhaustive. However, the likely financial impact of a monetary penalty on the data controller will not be considered at step 2.

Step 3 – financial impact on the data controller

The Case Working Group may increase or decrease the amount of the monetary penalty arrived at after step 2 to take into account the likely financial impact of a monetary penalty on the data controller. In particular, the Case Working Group will take into account any proof of genuine financial hardship which has been supplied by a data controller. Any such evidence will also be taken into account when the data controller makes representations to the Information Commissioner in response to a notice of intent referred to in Section 5 of the Information Commissioner's guidance about the issue of monetary penalties.

Step 4 – underlying objective

If the Case Working Group considers that the figure arrived at after Step 3 is insufficient to promote compliance with the Act having regard to the underlying objective in imposing a monetary penalty, then the Case Working Group may increase the monetary penalty.

Step 5 – final determination

The Information Commissioner or the Deputy Commissioner (Data Protection) will then determine a final figure bearing in mind what is reasonable and proportionate given the particular facts of the case and the underlying objective in imposing the monetary penalty.

The notice of intent referred to in Section 5 of the Information Commissioner's guidance about the issue of monetary penalties will set out the proposed amount of the monetary penalty.

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