



Information Commissioner's Office

Internal Audit Report: Civil Monetary Penalty Recording
March 2023

FINAL REPORT

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This report ("Report") was prepared by Mazars LLP at the request of the Information Commissioners Office (ICO) and terms for the preparation and scope of the Report have been agreed with them. The matters raised in this Report are only those which came to our attention during our internal audit work. Whilst every care has been taken to ensure that the information provided in this Report is as accurate as possible, Internal Audit have only been able to base findings on the information and documentation provided and consequently no complete guarantee can be given that this Report is necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

The Report was prepared solely for the use and benefit the ICO and to the fullest extent permitted by law Mazars LLP accepts no responsibility and disclaims all liability to any third party who purports to use or rely for any reason whatsoever on the Report, its contents, conclusions, any extract, reinterpreted, amendment and/or modification. Accordingly, any reliance placed on the Report, its contents, conclusions, any extract, reinterpreted, amendment and/or modification by any third party is entirely at their own risk. Please refer to the Statement of Responsibility in Appendix A1 of this report for further information about responsibilities, limitations and confidentiality.

01 Introduction

As an addition to the Internal Audit Plan for 2022/23, we have undertaken a review of the Information Commissioner's Office's (ICO) key controls in relation to civil monetary penalty recording. This audit was a request by management due to the change in process in 2022/23 whereby the ICO could retain a portion of monetary penalty income to cover legal costs. Full details of the risks covered are included in **Appendix A1**.

Originally, we planned to review the processes in place in relation to the new finance system, ERP Workday. However, the implementation of this system was delayed from November 2022 to April 2023 and management wanted to continue with the audit in order to provide assurance on current processes.

The audit did not assess or provide assurance on the accounting treatment of monetary penalty income. We understand the ICO are seeking assurance from the external auditors on the accounting treatment.

We are grateful to the Director of Finance, Head of Finance, Group Finance Manager and Financial Transactions Team Manager. This report summarises the results of the internal audit work and, therefore, does not include all matters that came to our attention during the audit. Any such matters have been discussed with the relevant staff.

02 Background

Under the Data Protection Act 2018 (DPA), the ICO has the power to raise monetary penalties for breaches in General Data Protection Regulations (GDPR) or Privacy and Electronic Communications Regulations (PECR) and GDPR fines for late payment of the data protection fee.

Prior to 2022/23, all penalties and fine income raised by the ICO was collected on behalf of the Department of Culture Media and Sport (DCMS) and subsequently HM Treasury. Penalties and fines were accounted for off ledger with the balances showing only in the receivables and payables area of the ICO's Statement of Financial Position (SOFP) at year end.

As of 2022/23, the DCMS granted the ICO the ability to retain a portion of monetary penalty income raised to cover the costs of legal expenditure carried out by the ICO in the course of raising the penalty. This is subject to an annual cap of £7.5m.


The change has made it necessary to account for such penalties, utilising both the SOFP and the Statement of Comprehensive Net Expenditure (SoCNE) in a new entity to track what is owed to the ICO. To ensure that the ICO's SoCNE is not misrepresented in terms of income and expenditure balances, a new accounting entity has been created in the ICO's accounting system to account for these separately. This entity is known as ICO2 (Penalties and Fine Collections), and the previous entity known as ICO1 (ICO Operations). The balances for receivables and payables will be consolidated in the Annual Report and Accounts (ARA) for the ICO as in previous years.

The ICO's Financial Recovery Unit (FRU), send details of any civil monetary penalties (CMPs) via email to the Finance Team, including key documentation such as the notice. The Finance Team add the penalties to the finance system, GP, and record these in a CMP register in Microsoft Excel.

Payment can be received either in full or by payment plan. When payment is received, the Finance Team record this in the sales ledger against the fined organisation, as well as in the CMP register. As per the CMP register, the ICO has raised £15.2 million in CMPs since April 2022 when the process has been in place.

The ICO is in the process of implementing a new finance system, ERP Workday. The system will go live in April 2023, replacing the current system, GP. The ERP Workday system will change the way that CMPs are recorded, with the FRU recording CMPs directly in the system, and the Finance Team processing. This will remove the need for the use of the CMP tracker.

03 Key Findings

Assurance on effectiveness of internal controls			
		Substantial Assurance	
Rationale			
<p>The internal audit work carried out has provided Substantial Assurance. Please see Appendix A1 for the detailed scope and definitions of the assurance ratings. Our audit has two recommendations in relation to:</p> <ul style="list-style-type: none"> Developing procedural guidance; and Timely recording of CMPs and reconciliations. <p>Please see Section 04 for further detail in respect of the recommendations made.</p>			
Number of recommendations			
High	Medium	Low	Total
-	-	2	2

3.1 Examples of areas where controls are operating reliably

- CMPs are issued by the Legal Team and sent to the FRU for enforcement. The FRU provide information regarding the CMP and paperwork to the Finance Team via email so the Finance team can input into the GP system. We selected a sample of eight CMPs from the Finance Team email inbox, issued since April 2022, with a value of £8.2million. We confirmed the figure on the CMP notice matched the figure recorded in the finance system, GP.
- For the same sample of CMP, we confirmed that the Finance Team added these to the finance system in a timely manner, with an average of one day following receipt. On one occasion, we identified that the FRU had not notified Finance of a CMP. We have raised a recommendation regarding this in Section 04.
- CMPs originate from the Legal/Financial Recovery Unit (FRU) team and are added to the finance system, GP, by the Finance Team, enforcing segregation across teams.
- As part of the month-end checklist, there is a reconciliation between the general ledger and the bank account to confirm that CMP income has been accurately received. We selected the months of June 2022, November 2022 and January 2023 and confirmed reconciliations had taken place by the Financial Transactions Team Manager. The Group Finance Manager had signed off the reconciliation as reviewed within the checklist. We confirmed that the figures reconciled and there were no variances identified.
- As part of the setup of the new accounting entity to record CMPs, the Head of Finance completed a reconciliation in January 2023. This reconciled ICO2 to the CMP register, and ICO2 to ICO1 and the bank.
- We reviewed all 33 enforcement actions published on the ICO website since April 2022 and confirmed these were present on the CMP register.

04 Areas for Further Improvement and Action Plan

Definitions for the levels of assurance and recommendations used within our reports are included in **Appendix A1**.

We identified areas where there is scope for improvement in the control environment. The matters arising have been discussed with management, to whom we have made recommendations. The recommendations are detailed in the management action plan below.

Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
4.1	<p>Policies and Procedures</p> <p>At the time of the audit (March 2023), there were no policies and procedures in place in relation to civil monetary penalty recording. However, we noted that during our audit interviews and walkthroughs, staff were clear on their roles and the process.</p> <p>We were advised that the Head of Finance plans to draft policies and procedures in the 2023/24 financial year.</p> <p><i>Risk: Staff are unaware of the correct process to follow regarding recording CMPs, leading to recording errors. If key staff members are absent, there may be delays or errors in the CMP recording process.</i></p>	<p>As planned, the ICO should create policies and procedures in relation to civil monetary penalty recording.</p> <p>The policies and procedures should cover key aspects of the CMP process including recording of penalties, roles and responsibilities, retention of fine income and reconciliations.</p>	Low	<p>The ICO will create a procedure for recording and reconciling the CMPs as part of the wider finance procedural review in 2023/24.</p> <p>The procedure will identify roles and responsibilities, processes map and segregation of duties.</p>	<p>31 December 2023</p> <p>Head of Finance</p>
4.2	<p>FRU Reconciliations</p> <p>Prior to April 2022, quarterly reconciliations were undertaken by the Finance Team and Financial Recovery Unit (FRU), to ensure that CMPs were recorded accurately. These reconciliations have not taken place in this financial year (2022/23).</p> <p>Since April 2022, 33 CMPs have been recorded on the spreadsheet tracker. When a CMP is raised, the FRU notify the Finance Team via email. We reviewed the finance inbox and selected eight fines, to test whether they had been recorded accurately, and in a timely manner. On one occasion, we identified a CMP which had not been notified to the Finance Team. This had already</p>	<p>The ICO should reintroduce regular reconciliations between FRU and the Finance Team, until the implementation of ERP Workday.</p>	Low	<p>The Finance team will reconcile CMPs with FRU on a monthly basis.</p> <p>From Q2 with FRU being set up on the ERP system this reconciliation will be live data between both teams.</p> <p>A reconciliation always takes place prior to any payment being made to DCMS as part of our control process for</p>	<p>30 June 2023</p> <p>30 September 2023</p> <p>Head of Finance</p>

Ref	Observation/Risk	Recommendation	Priority	Management response	Timescale/ responsibility
	<p>been identified by the Financial Transactions Team Manager noticing an enforcement notice posted on the intranet.</p> <p>The Head of FRU advised that the FRU should be notified by Finance when a payment is received, however, they do not always get a notification. This means the data FRU have can be incorrect, leading to unnecessary chases to debtors</p> <p>We were informed that these two issues should be resolved as a result of the ERP Workday implementation. As of April 2023, the FRU will be able to add CMPs to the ERP system directly and will have access-only visibility of payment received.</p> <p><i>Risk: Civil monetary penalties are not recorded leading to lost or incorrectly recorded income. Staff are chasing non-payment of CMPs incorrectly, unnecessarily using staff resources.</i></p>			correct payments being made.	

A1 Audit Information

Audit Control Schedule	
Client contacts:	Angela Donaldson, Director of Finance Craig Morton, Head of Finance Ian Greatorex, Group Finance Manager Hilary Sanders, Financial Transactions Team Manager
Internal Audit Team:	Peter Cudlip, Partner Hannah Parker, Associate Director Jessica Holt, Assistant Manager
Finish on site/ Exit meeting:	10 March 2023
Last information received:	14 March 2023
Draft report issued:	27 March 2023
Management responses received:	28 March 2023
Final report issued:	29 March 2023

Scope and Objectives

Audit objective: To evaluate and assess the adequacy and effectiveness of the ICO's arrangements for civil monetary penalty recording.

- **Policies and procedures-** The ICO does not have policies and procedures in place regarding civil monetary penalty recording. Staff are therefore unaware of the correct process to follow, leading to recording errors.
- **Recording of penalties-** Civil monetary penalties are not recorded accurately, or in a timely manner, leading to lost or incorrectly recorded income.
- **Segregation of duties-** Transactions can be raised and approved by the same user, with no segregation of duties in place, leading to fraudulent recording of income and misappropriation of funds.
- **Reconciliation-** Regular reconciliations between the ICO1 (ICO Operations) and ICO2 (Penalties and Fine Collections) systems do not take place to identify recording errors. When reconciliations are undertaken, variances are not identified and addressed.

The scope for the audit is concerned with assessing whether the ICO has in place adequate and appropriate policies, procedures and controls to manage the above risks. We reviewed the design of controls in place and, where appropriate, undertook audit testing of these to confirm compliance with controls, with a view to forming an opinion on the design of, compliance with and effectiveness of internal controls.

Our audit did not assess or provide assurance on the accounting treatment of monetary penalty income.

Testing will be performed on a sample basis, and as a result our work does not provide absolute assurance that material error, loss or fraud does not exist.

Definitions of Assurance Levels	
Level	Description
Substantial	The framework of governance, risk management and control is adequate and effective.
Adequate	Some improvements are required to enhance the adequacy and effectiveness of the framework of governance, risk management and control.
Limited	There are significant weaknesses in the framework of governance, risk management and control such that it could be or could become inadequate and ineffective.
Unsatisfactory	There are fundamental weaknesses in the framework of governance, risk management and control such that it is inadequate and ineffective or is likely to fail.

Definitions of Recommendations		
Priority	Definition	Action required
High	Significant weakness in governance, risk management and control that if unresolved exposes the organisation to an unacceptable level of residual risk.	Remedial action must be taken urgently and within an agreed timescale.
Medium	Weakness in governance, risk management and control that if unresolved exposes the organisation to a high level of residual risk.	Remedial action should be taken at the earliest opportunity and within an agreed timescale.
Low	Scope for improvement in governance, risk management and control.	Remedial action should be prioritised and undertaken within an agreed timescale.

Statement of Responsibility

We take responsibility to the Information Commissioner's Office (ICO) for this report which is prepared based on the limitations set out below.

The responsibility for designing and maintaining a sound system of internal control and the prevention and detection of fraud and other irregularities rests with management, with internal audit providing a service to management to enable them to achieve this objective. Specifically, we assess the adequacy and effectiveness of the system of internal control arrangements implemented by management and perform sample testing on those controls in the period under review with a view to providing an opinion on the extent to which risks in this area are managed.

We plan our work in order to ensure that we have a reasonable expectation of detecting significant control weaknesses. However, our procedures alone should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify any circumstances of fraud or irregularity. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud.

The matters raised in this report are only those which came to our attention during our work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of our work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices.

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