

# **Policy and Procedure for Payment Plans for Fixed Penalties issued for Non-Payment of the Data Protection Fee.**

## **General Introduction**

Payment plans are a cost effective means of enabling the Information Commissioner to collect Monetary Penalties. When granted, they allow organisations and individuals who cannot pay in full by the due date, to make payment(s) over an affordable period.

Payment plans are based upon the organisation or individual's ability to pay, which must be balanced by the ICO's over-riding requirement to collect the money due under the penalty.

A payment plan may comprise a single deferred payment or a series of staged payments over a period of months. Payment promises, whereby an organisation/individual is late in paying and advises of a date when they can pay is not a payment plan. In the absence of a payment plan being agreed, the Payments and Penalties Team will advise the organisation/individual that enforcement action will continue irrespective of the promise made by the debtor.

The Data Protection (Charges and Information) Regulations 2018 requires organisations that process personal data electronically to pay a data protection fee to the Information Commissioner unless all of the processing of personal data they undertake is exempt.

Failure to pay the requisite data protection fee when required to do so is punishable by a fixed civil monetary penalty amount.

The Commissioner's Regulatory Action Policy (RAP) provides for a 3 tier fee system and penalty amounts. Organisations assess which tier they are in dependent on their annual turnover and the total number of employees.

The data protection fee and penalty amounts for each tier are set out below:

	<b>Fee</b>	<b>Penalty Amount</b>
Tier 1 (small organisations)	£40	£400
Tier 2 (medium organisations)	£60	£600
Tier 3 (large organisations)	£2,900	£4,000

## **Principles**

Payment plans are at the absolute discretion of the Commissioner, or person with delegated authority, and subject to the below principles:

- Payment plans should be considered and agreed on a case-by-case basis;
- A payment plan will only be considered for the penalty amount. The data protection fee element of any Penalty Notice must be paid in full and will not form any part of a payment plan.
- A payment plan will only be considered once the relevant data protection fee/s have been paid and the registration is up to date and is current.
- The onus is on the debtor to satisfy the ICO that payment of the penalty in one lump sum will cause hardship;
- A payment plan will only be agreed where the Commissioner, or person with delegated authority, is satisfied the organisation/individual cannot pay the full penalty amount by the due date.
- The payment plan period is as short as possible, and must be paid in full before the next renewal of the data protection fee is due.
- Organisations/individuals requests for payment plans should contain the best payment proposals but also be genuinely affordable.
- If the financial circumstances of the organisation/individual improve then they should advise the Commissioner in order to increase their payments or settle the debt in full.
- Repeated late payments, or evidence of further contraventions, may mean the cancellation of the payment plan and action taken to recover the remaining penalty amount.

As noted above, the Information Commissioner reserves the right to withdraw payment plans if:

- The organisation/individual defaults on the payment plan;
- The organisation/individual has withheld or provided false or incomplete information;
- Information or intelligence is subsequently received that doesn't support the need for a payment plan

### **Receipt of payment plan proposals**

All payment plan proposals in relation to monetary penalties issued for non-payment of the data protection fee will be managed by the Payments and Penalties Team.

### **Establishing ability to pay**

A principle of the penalty regime is not to cause 'undue' financial hardship to an 'otherwise responsible person'. However, the underlying objective of the Commissioner's penalty regime is that it acts as an effective sanction and a deterrent to future non-compliance.

Debtors who want to make payment but don't currently have the means to do so are defined as those who can't pay. This may include debtors that have available funds but, if they were to pay the debt in full at once, they would have insufficient cash flow remaining in order to continue trading and/or paying other creditors.

The Payments and Penalties Team should always ask how much the organisation/individual can pay immediately in addition to the data protection fee.

The debtor's current legal situation will determine the format of the information requested in establishing the ability to pay; i.e. individual, partnership, limited company etc. Information may include:

- Annual accounts; including details of Trading and Profit & Loss Accounts.
- Management Accounts; recent management accounts;
- Bank statements; bank statements for the individual/organisation for the past 3 months detailing business income and expenditure.

## **Requests for payment plans from third parties**

The Payments and Penalties Team must make sure that the debtor has provided specific written authority before divulging any details of the case, including discussing payment proposals.

## **Requests for payment plans to our external solicitors**

Payment plans can be requested to our external solicitors in cases where we have asked that they attempt to collect outstanding monies owed to us on our behalf when the organisation has failed to respond to the Penalty Notice.

In these instances, the external solicitors will advise the Payments and Penalties Team of the repayment proposals and the same procedures will be followed as set out in this Policy to determine whether or not we will accept those proposals.

## **Consideration and authorisation of payment plans**

The Payments and Penalties Team will initially assess the payment plan proposal and then submit their recommendations to the designated authority.

## **Rejecting payment plan proposals**

Payment plan requests that do not meet the required conditions will be rejected. The Payments and Penalties Team should confirm that the proposals have been rejected in writing. The reasons why the proposals have been rejected should be clearly explained. A template of the letter is available [here](#)

The individual/organisation will be also advised what the next course of enforcement action may entail should payment in full not be made immediately. It should also make it clear that this does not prevent the individual/organisation from making payments in the meantime and that these will be accepted without prejudice.

## **Accepting payment plan proposals**

The Payments and Penalties Team can advise a debtor that a payment plan has been authorised. The payment plan should also be confirmed in writing detailing the agreed payment instalments and conditions of the payment plan. A template of the letter is available [here](#).

A copy of this written confirmation should also be sent to our Finance Team to enable them to allocate the relevant repayments to the correct registration.

### **Conditions of payment plans**

The Commissioner will cancel the payment plan if:

- The organisation/individual is subsequently found to have either been dishonest or has not provided full disclosure about their need for a payment plan and their ability to pay in full;
- Payment(s) are repeatedly late and/or missed;

Further conditions include;

- The organisation/individual must inform the Payments and Penalties Team of any change in their circumstances and their ability to pay. Payment plans will be cancelled if the organisation/individual has the ability to clear the debt in full.
- If payments are repeatedly late or missed resulting in the cancellation of the Payment Plan the matter will be referred to third party external solicitors to collect the outstanding amount owed.

### **Payment methods**

The preferred method of immediate payment is either by BACS or cheque. Payment by Direct Debit is not an option.

The Payments and Penalties Team should confirm the amount, dates and method of payment in writing.

The Payments and Penalties Team must ensure that the organisation/individual is aware of the correct reference to use and that they make payment to the correct account.

Finance will advise the Payments and Penalties Team of all payments received.

### **Recording and noting of payment plans**

The Payments and Penalties Team will record all details of accepted or rejected payment plans on the appropriate registration in ICE; including telephone records, letters, emails and payment plans.

For authorised payment plans the following should be recorded:

- date payment plan was agreed;
- total amount of the penalty included in the arrangement, and details of the instalment amounts and dates;
- manager's authorisation.

In the event that a payment plan is rejected the reasons should also be recorded on the registration in ICE.

### **Late payments**

The designated Lead Fees Officer should contact the debtor as soon as possible to chase payment.

The debtor will have seven days to resume payments. If payment is not received then the plan will be in default and a payment plan cancellation letter will be issued. The payment plan cancellation letter will also advise that the matter will now be passed to our external solicitors for collection of the outstanding amount. The payment plan cancellation template letter is available [here](#).

### **Payment plan satisfied**

Once all payment instalments have been received and cleared, the Payments and Penalties Team will issue a letter to the organisation / individual confirming payment in full and the closure of the case. The closure of the payment template letter is available [here](#).

### **Decision-Making**

The relevant level of authority required for the approval of a payment plan in relation to non-payment of the data protection fee is to be determined by either the Team Manager or Group Manager.

If the payment plan total is less than £5,000 the approval is by the Team Manager.

If the payment plan total is more than £5,000 the approval is by the Group Manager.

A payment plan checklist in relation to this policy can be found [here](#).

**Version control**

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