



Department for
Digital, Culture
Media & Sport

Jenny Hall
Interim Director
Data Policy Directorate
4th Floor, 100 Parliament Street
London SW1A 2BQ
www.gov.uk/dcms

To: Paul Arnold, Chief Operating Officer, ICO
From: Jenny Hall, Director, Data Policy, DCMS

Dear Paul,

ICO - HM Treasury Netting-Off Agreement

I am writing to confirm that HM Treasury has approved a netting-off agreement for the ICO to cover selected data protection litigation costs. This is subject to a cap of £7.5m per financial year.

Scope

The netting-off agreement covers selected data protection litigation costs, including those related to Privacy and Electronic Communications Regulations (PECR). The costs in scope are:

- External experts, for example technical reports, forensic analysis – audited through itemised invoices.
- External counsel - audited through itemised invoices.
- External paralegals - audited through itemised invoices.
- External solicitors - audited through itemised invoices.
- Internal staff costs directly attributable to litigation – audited through management account reports.
- Court fees – audited through invoice.
- Costs of court proceedings – audited through invoice.
- Settlement of adverse costs – audited through invoice.
- Specific training for staff – audited through invoice.

The agreement will cover all data protection legal costs associated with the above, including cases which do not end in litigation. For example, if an appellant withdraws their case but costs have already been incurred or if no litigation results from a regulatory intervention.

The agreement came into force for the 2022/23 financial year. These changes to your financial arrangements should be communicated to Parliament within your Annual Report.

Monitoring

As requested by HM Treasury, fine income will be monitored by DCMS Finance Business Partners to ensure that there is not a disproportionate increase in enforcement for the purpose of revenue raising.

On a quarterly basis DCMS Finance requires the ICO to report on the amounts retained by the ICO under this arrangement to ensure that the costs retained are within the scope set out above. DCMS retains the right to request further supporting evidence as necessary.

Review

This agreement is subject to review, at which point HM Treasury can decide to suspend, amend, or revoke the agreement. Initially the agreement will be reviewed annually. From 2024-25, it is anticipated that the agreement will be reviewed on a multi-year basis as part of the Spending Review process.

You will be expected to provide a short, qualitative overview of the enforcement actions that the ICO has decided to take versus those it has not. This summary should provide details of how the ICO has carried out upstream activity and support to organisations to aid compliance with the law and prevent enforcement action being required.

You will also be required to provide information against the following metrics:

- % of appeals upheld.
- % of cases taken to enforcement action and/or fined.
- Number of fines issued.
- Fines collected.
- Fines written off in-year.
- Overall cost of enforcement activity year on year.

This information should be provided to DCMS and HMT on an annual basis. Ahead of a review, DCMS will provide further detail of what any returns need to cover if it differs from what is set out above. DCMS Finance should be the first point of contact for all aspects of the monitoring and review of the agreement.

Thank you for your cooperation in providing information over the last few months whilst we have confirmed the details of the agreement with HM Treasury.

Yours sincerely,

Jenny Hall