

Section 400 Licence Fees and Penalties Accounts

Year ended 31 March 2020

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A Section 400 Accounts

Review of 2019/20

Introduction

These accounts present receipts collected on behalf of Parliament and surrendered to the Exchequer. The receipts and payments shown in these accounts are not included in Ofcom's corporation accounts. The administrative costs of maintaining the Section 400 accounts are borne by, and shown in, the main corporation accounts which can be found here:

<https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans>

Background

Under Section 400 of the Communications Act 2003, Ofcom is required to collect fees and payments. The revenue collected is from five main sources:

- Wireless Telegraphy Act (WT Act) licence fees
- Government Department spectrum fees
- Financial Penalties
- Additional Payments from television and radio licensees; and
- Geographic Numbering

The Digital Economy Act 2017 introduced legislative amendments which permit Ofcom to retain sums received in connection with its functions under the WT Act. Ofcom may retain such sums to fund its general spectrum management functions, as well to meet the costs of undertaking its other functions for which it cannot levy fees and charges.

The remaining revenue collected is passed to the UK Consolidated Fund at HM Treasury, the Department of Finance and Personnel - Northern Ireland (DFPNI) and to the Treasuries of the Isle of Man, the Bailiwick of Jersey and the Bailiwick of Guernsey under Statutory Instrument 1991, Numbers 998, 1710 and 1709 respectively, directly or via the Department for Digital, Culture, Media, and Sport (DCMS) as Ofcom's sponsoring body.

Wireless Telegraphy Act licence fees – excluding Auction receipts

In 2019/20 there were 367,650 (2018/19: 360,921¹) WT Act licences in issue. WT Act licences are held by a wide variety of spectrum users, from taxi companies and amateur radio providers to mobile phone operators and television and radio broadcasters.

Total receipts 2019/20

£373.3m

WT Act Retention

£57m

Payments to the Exchequer

£323.8m*

*of which £10.5m is to be transferred to the Exchequer in 2020/21

¹ Previously stated as 360,468 in the 2018/19 accounts

In 2019/20 Ofcom passed £312.8m (2018/19: £239.9m) collected from WT Act licensees and the interest earned on cash balances to DCMS. The increase in 2019/20 is primarily due to higher annual licence fees paid by mobile operators for the public wireless networks. These fees increased from 31 January 2019.

Ofcom retained £56.8m (2018/19: £54.3m) to fund its general spectrum management functions. This retention amount also includes £1.1m for legal costs relating to the Annual licence fees following a Court of Appeal judgement in November 2017. Please refer to Note 4 for details.

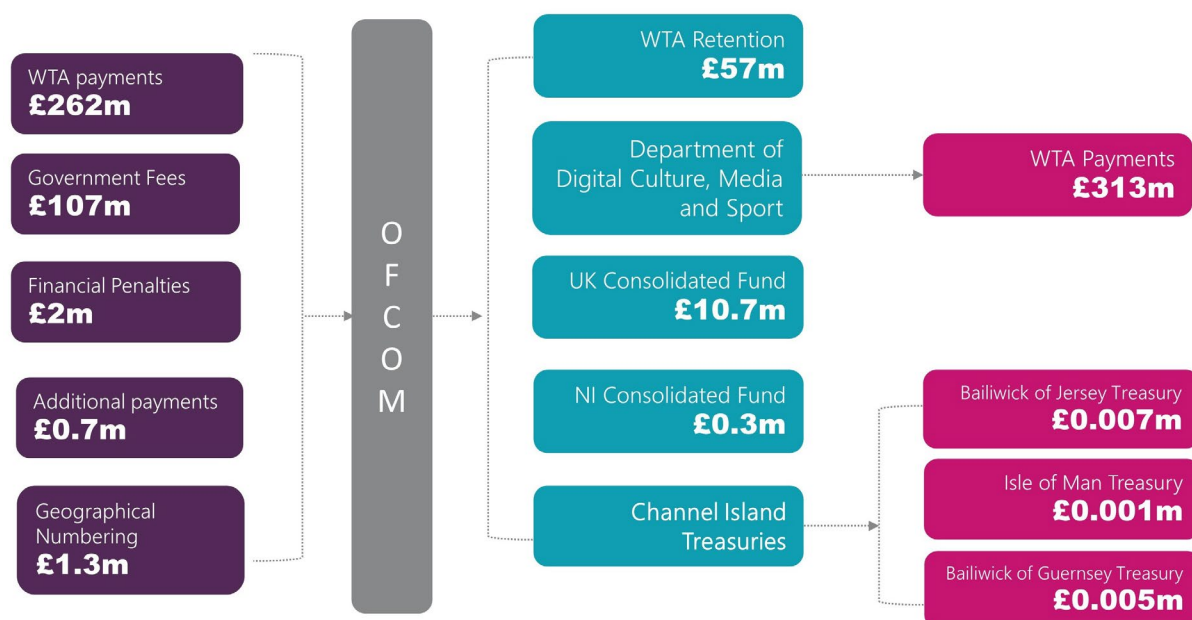
Figure 1 summarises the total receipts and payments for Section 400.

Government Department spectrum fees

Under Section 163 of the Communications Act, Ofcom receives fees for spectrum use from certain Government departments. 2019/20: £106.9m (2018/29: £135.8m) These include Ministry of Defence, Department for Transport, Department for Business, Energy and Industrial Strategy and the Home Office. The fees are agreed with the departments by HM Treasury as part of the spending review settlements. These receipts are not Wireless Telegraphy Act payments but are treated in the same manner with cash received from commercial licensees.

Wireless Telegraphy Act licence

Figure 1: Section 400 Total Receipts and Payments



Additional Payments

Television

Holders of the Channel 3 and Channel 5 television licences and the national radio and additional services licences are required to make an annual fixed payment (known as cash bids).

In 2019/20 Ofcom received £0.2m (2018/19: £0.2m) in additional payments from TV broadcasters.

In February 2014, Ofcom announced that it had renewed the Channel 3 and Channel 5 licences for a further ten years from 1 January 2015. Ofcom determined that the financial terms for each licence in the renewed period would be set an annual cash bid of £10,000. The cash bid amount will increase by RPI each year. Details of the financial terms can be found on the Ofcom website at:

<http://stakeholders.ofcom.org.uk/broadcasting/tv/c3-c5-financial-terms>

Radio

National radio licensees (Classic FM, Absolute Radio and Talk Sport) are required to pay a cash bid of £10,000 annually.

In February 2017 Ofcom awarded the additional service licence by auction to INRIX UK Ltd. As part of the licence condition, the licensee is required to pay a fee based on percentage of its qualifying revenue in addition to the annual cash bid

payment. Details of the financial terms can be found on the Ofcom website at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0034/97756/Additional-Services-Licence-Statement.pdf

In 2019/20 Ofcom received £0.6m (2018/19: £0.5m) in additional payments from Radio broadcasters.

Financial Penalties

Under the Communications Act 2003 and the Broadcasting Act 1990 and 1996, Ofcom has the power to issue a penalty to individuals and organisations for breaches of a code or licence terms.

During 2019/20, Ofcom issued penalties totaling £2.3m (2018/19: £13.5m).

Penalties totaling £1.9m (2018/19: £13.4m) were collected in 2019/20. The higher balance in 2018/19 resulted from fines paid by both EE & Virgin.

In 2018/19, Ofcom issued penalties to Virgin Media. A penalty of £7.0m principally for overcharging customers who wanted to leave their contracts early.

Virgin Media appealed Ofcom's contravention finding and the penalty. In January 2020, the Competition Appeal Tribunal dismissed Virgin Media's appeal in the entirety. Ofcom also issued a separate penalty to Virgin Media for £0.025m for contravening requirements relating to the provision of information to Ofcom.

Penalties collected in 2019/20

£1.9m

81%

Incurred by
Networks &
Services

19%

Incurred by
Post, TV and
Radio

The total of £7.025m was transferred to the Consolidated Funds in 2019/20.

A list of penalties imposed during 2019/20 is published on Ofcom's website and can be found at:

<https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans/other-financial-reporting>

Geographic Telephone Numbers

Ofcom has a duty under section 63(1) of the Communications Act 2003 to secure the best use is made of numbers and encourage efficiency and innovation for that purpose. Ofcom's power to charge for the allocation of geographic numbers is based principally on section 58(1)(g) of the Act and is implemented by way of requirements in the General Condition relating to the allocation, adoption and use of telephone numbers (General Condition B1).

The annual charging year runs from 1 April to 31 March and invoices are generated one year in arrears. In 2019/20 Ofcom collected £1.3m (2018/19: £1.4m).

Forward look: Impact in 2020/21

Auction

Our preparatory work on the award of the 200 MHz of spectrum: 80 MHz in the 700 MHz band and 120 MHz in the 3.6-3.8 GHz band; is progressing. However, we will not hold the auction until we are certain that stakeholders will either not seek to challenge our policy decisions on the auction, or any such challenges have been disposed of.

Our main objectives in this award are to secure the optimal use of spectrum, sustain strong competition in mobile markets, encourage investment and innovation and ensure the timely availability of spectrum.

Financial Penalties

In August 2018 Ofcom imposed a financial penalty of £50m on Royal Mail for a serious breach of competition law, after the company abused its dominant position by discriminating against its only major competitor delivering letters. In November 2019 the Competition Appeal Tribunal dismissed Royal Mail's appeal against the unlawfulness finding and the penalty. In April 2020, the Court of Appeal granted Royal Mail permission to appeal the Tribunal's judgment. The obligation to pay the penalty is effectively suspended pending the determination of the appeal.

B Accountability

Governance

The Section 400 accounts share the same governance arrangements as Ofcom's main accounts. The Ofcom Board leads the organisation and its core activities. The Board meets regularly and is provided with regular strategic updates and reports on Ofcom's operational and policy activities.

The Board is responsible for ensuring that proper records are maintained, which disclose with reasonable accuracy, at any time, the financial position of Ofcom, and enable it to ensure that the Statement of Accounts complies with the Communications Act 2003.

In addition, the Board is responsible for safeguarding Ofcom's assets and hence; for taking reasonable steps for the prevention and detection of fraud and other irregularities.

Full details on Ofcom's Board and full governance structure can be found in the main accounts.

Statement of Ofcom's Responsibilities with respect to the Financial Statements

Under Section 400(4) of the Communications Act 2003 Ofcom is required to prepare a statement of accounts for each financial year in respect of the Licence Fees and Penalties listed in Section 400(1), and the payment of such receipts to the Consolidated Funds of the United Kingdom and Northern Ireland respectively. The accounts also show payments to the Treasury of the Bailiwick of Jersey, the Treasury of the Bailiwick of Guernsey, and the Treasury of the Isle of Man.

The accounts are prepared on a cash receipts and payments basis and must properly present the receipts and payments for the financial year, and the cash balances held at the beginning and end of the year.

As the senior full time official of Ofcom, the Chief Executive is the Accounting Officer for these accounts. Her relevant responsibilities as Accounting Officer include responsibility for the propriety and regularity of the public finances for which she is responsible and for the keeping of proper records. The Chief Executive has specific responsibilities for ensuring that the terms of the Framework Document issued by the Secretaries of State are complied with.

Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

Opinion on financial statements

I certify that I have audited the financial statements of the Office of Communications Section 400 Fees and Penalties Account for the year ended 31 March 2020 under the Communications Act 2003. The financial statements comprise: the Receipts and Payments Account, Statement of Cash Balances and the related notes, including the significant accounting policies. These financial statements have been prepared under the accounting policies set out within them.

In my opinion:

- the financial statements properly present the receipts and payments of the Office of Communications for the year ended 31 March 2020; and
- the financial statements have been properly prepared in accordance with the Communications Act 2003 and Secretary of State directions issued thereunder.

Opinion on regularity

In my opinion, in all material respects the receipts and payments recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Basis of opinions

I conducted my audit in accordance with International Standards on Auditing (ISAs) (UK) and Practice Note 10 'Audit of Financial Statements of Public Sector Entities in the United Kingdom'. My responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of my certificate. Those standards require me and my staff to comply with the Financial Reporting Council's Revised Ethical Standard 2016. I am independent of the Office of Communications in accordance with the ethical requirements that are relevant to my audit and the financial statements in the UK. My staff and I have fulfilled our other ethical responsibilities in accordance with these requirements. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my opinion.

Conclusions relating to going concern

I have nothing to report in respect of the following matters in relation to which the ISAs (UK) require me to report to you where:

- the Office of Communications use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Office of Communications have not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the Office of Communication's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Responsibilities of the Accounting Officer for the financial statements

As explained more fully in the Statement of Ofcom's Responsibilities, the Accounting Officer is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view.

Auditor's responsibilities for the audit of the financial statements

My responsibility is to audit, certify and report on the financial statements in accordance with the Communications Act 2003.

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. Reasonable assurance is a high level of assurance but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists.

Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

As part of an audit in accordance with ISAs (UK), I exercise professional judgment and maintain professional skepticism throughout the audit. I also:

- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for my opinion. The risk of not detecting a material misstatement resulting from fraud is higher than for one

resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.

- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office of Communications' internal control.
- evaluate the appropriateness of accounting policies used and the reasonableness of accounting estimates and related disclosures made by management.
- evaluate the overall presentation, structure and content of the financial statements, including the disclosures, and whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation.
- conclude on the appropriateness of the Office of Communications' use of the going concern basis of accounting and, based on the audit evidence obtained, whether a material uncertainty exists related to events or conditions that may cast significant doubt on the Office of Communications' ability to continue as a going concern. If I conclude that a material uncertainty exists, I am required to draw attention in my report to the related disclosures in the financial statements or, if such disclosures are inadequate, to modify my opinion. My conclusions are based on the audit evidence obtained up to the date of my report. However, future events or conditions may cause the Office of Communications to cease to continue as a going concern.

I communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including any significant deficiencies in internal control that I identify during my audit.

I am required to obtain evidence sufficient to give reasonable assurance that the receipts and payments recorded in the financial statements have been applied to the purposes intended by Parliament and the financial transactions recorded in the financial statements conform to the authorities which govern them.

Other Information

The Accounting Officer is responsible for the other information. The other information comprises information included in the Review of 2019/20, other than other than the financial statements and my auditor's report thereon. My opinion on the financial statements does not cover the other information and I do not express any form of assurance conclusion thereon. In connection with my audit of the financial statements, my responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or my knowledge obtained in the audit or otherwise appears to be materially misstated. If, based on the work I have performed, I conclude that there is a material misstatement of this other information, I am required to report that fact. I have nothing to report in this regard.

Opinion on other matters

In my opinion:

- the information given in the Review of 2019/20 for the financial year for which the financial statements are prepared is consistent with the financial statements and have been prepared in accordance with the applicable legal requirements.

Matters on which I report by exception

I have nothing to report in respect of the following matters which I report to you if, in my opinion:

- adequate accounting records have not been kept or returns adequate for my audit have not been received from branches not visited by my staff; or
- the financial statements are not in agreement with the accounting records and returns; or
- I have not received all of the information and explanation I required for my audit.

Report

I have no observations to make on these financial statements.

Gareth Davies

Date 20 July 2020

Comptroller and Auditor General
National Audit Office

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Victoria
London
SW1W 9SP

C Financial Statements

Receipts and Payments Accounts

Year ended 31 March 2020

	Notes	Year ended 31 March 2020 £'000	Year ended 31 March 2019 £'000
Payments under the Wireless Telegraphy Act		262,274	166,856
Fees received from Government Departments	3	106,978	135,792
Interest Received		51	36
WT Act Auction Receipts	2B	-	1,369,979
Interest Received on Auction Receipts		-	375
Total Spectrum Fee Payments received		369,303	1,673,038
Additional Payments by licensees		734	701
Net Additional Payments by licensees		734	701
Financial Penalties	6	1,931	13,395
Geographic Numbering receipts		1,316	1,420
Total Receipts for the year		373,284	1,688,554
WT Act Payments to DCMS	2A	(312,800)	(239,942)
WT Act Auction Payments to DCMS		-	(1,370,354)
WTA Act Receipts Retention (s.401)	4	(56,828)	(54,305)
Payments to the United Kingdom Consolidated Fund		(10,697)	(8,282)
Payments to the Northern Ireland Consolidated Fund		(275)	(200)
Payments to the Treasury of the Isle of Man		(1)	(0)
Payments to the Treasury of the Bailiwick of Jersey		(7)	(7)
Payments to the Treasury of the Bailiwick of Guernsey		(5)	(4)
Net Payments to Consolidated Funds and Treasuries		(10,985)	(8,493)
Total Payments for the year		(380,613)	(1,673,094)
(Deficit)/Excess of Receipts over Payments for the year		(7,329)	15,460

Statement of Cash Balances

Year ended 31 March 2020

	Notes	31 March 2020 £000	31 March 2019 £000
Balance at beginning of the year		22,223	1,497,003
Additional auction deposits received in the year		-	239,279
Refund to auction bidders		-	(359,540)
Auction proceeds transferred to DCMS		-	(1,369,979)
Excess/(Deficit) of receipts over payments for the year		(7,329)	15,460
Total Cash Balance		14,894	22,223

CASH BALANCE OWED TO

UK Department of Digital Culture, Media and Sport		10,499	10,856
Consolidated Funds and Treasuries		23	7,027
Amount to be retained by Ofcom (April)		4,372	4,340
	7	14,894	22,223

The Notes on pages 11 to 14 form part of these accounts.

Dame Melanie Dawes DCB
Chief Executive
Office of Communications

Date 17 July 2020

D Annex

Notes to the Accounts

For the year ended 31 March 2020

1. Basis of Accounting

These accounts are prepared on a receipts and payments basis in accordance with the provisions of Section 400(4) of the Communications Act 2003. They also show the amounts paid to the Treasury of the Isle of Man, the Treasury of the Bailiwick of Jersey, and the Treasury of the Bailiwick of Guernsey under Statutory Instrument 1991, Nos. 998, 1710, and 1709 respectively.

2. Payments under the Wireless Telegraphy Act 1998

Section 400(2) of the Communications Act requires that, subject to any refunds and the retention of funds to cover costs as described in Note 5, all amounts from the list in Section 400(1) paid to Ofcom, including payments under the Wireless Telegraphy Act 1998 (c.6), should be passed to the appropriate Consolidated Fund. The exception to this is Wireless Telegraphy Act receipts, which are paid to DCMS, as directed by the Treasury in accordance with its powers under the Government Resources and Accounts Act 2000 and the annual Appropriation Act.

2a. WT Act licence fees

In the period of these accounts, Ofcom paid £312.8m (2018/19: £239.9m) collected from WT Act licensees and the interest earned on any cash balances held to DCMS. The increase in the 2019/20 balance is mainly due to an increase in the annual licence fees paid by mobile operators for the public wireless networks.

	31 March 2020 £'000	31 March 2019 £'000
Spectrum Fees Transferred		
Wireless Telegraphy Act Cash Transferred to DCMS	205,822	104,150
WT Act Auction Receipts transferred to DCMS	-	1,370,354
Fees received from Government Departments	106,978	135,792
Total spectrum fees transferred by Ofcom	312,800	1,610,296

2b. Wireless Telegraphy Act - Licence Fees received from the Auction of spectrum in 2018/19

Ofcom awarded the license for the 2.3 GHz band, and 3.4-3.6 GHz band through an auction for a total of £1,370.0m in 2018/19 (2017/18: nil). It received a further £0.4m (2017/18: nil) of interest on deposits during the auction. A total of £1,370.4m (2017/18: nil) was transferred to Government on 16 April 2018 once the licences were issued. Excess deposits of £0.4m (2017/18: nil) were returned to bidders. The table below provides details of the winning bidders and the prices they paid for licences. It does not include a non-refundable deposit of £0.1m from a bidder.

Winning bidders to whom licence granted	Frequencies	Total base price £'000	Additional prices £'000	Licence fees paid £'000
EE Limited	3540 – 3580 MHz	302,592	1,002	303,594
Hutchison 3G UK Limited	3460 – 3480 MHz	151,296	13,133	164,429
Telefonica UK Limited	2350 – 2390 Mhz	205,896	N/A	205,896
	3500 – 3540 Mhz	317,720	-	317,720
Vodafone Limited	3410 – 3460 Mhz	378,240	-	378,240

3. Fees Received from Government Departments

During the period under review, £107m (2018/19: £135.8m) was paid by Government departments. The total fees received have been included in these accounts, although this is not specifically required by Section 400 of the Communications Act.

4. Sums Retained from Wireless Telegraphy Act Payments

Under Section 401 of the Communications Act, Ofcom has the power, subject to Treasury approval, to make a statement of principles under which any or all the amounts collected under the Wireless Telegraphy Act, can be retained to offset the costs of carrying out the spectrum functions detailed in subsection 401(4) of the Act.

The Digital Economy Act 2017 introduced legislative amendments which permit Ofcom to retain sums received in connection with its functions under the Wireless Telegraphy Act. A total of £56.8m (2018/19: £54.3m) was retained to fund its general spectrum management functions and other relevant activities.

	31 March 2020 £'000	31 March 2019 £'000
Spectrum Management	54,185	52,320
Orphan expenditure (inc. Nuisance Calls)	1,497	
Annual Licence Fees	1,146	1,985
Total Wireless Telegraphy Act receipts retained	56,828	54,305

The Statement of Principles underpinning this funding model can be found at:

https://www.ofcom.org.uk/_data/assets/pdf_file/0017/107702/statement-principles-wta.pdf

5. Grant in Aid Received:

Section 400(1)(c) of the Communications Act requires the inclusion within these accounts of Grant in Aid received for our ongoing spectrum clearance and awards programme.

During the year under review, grants totalling £79.6m (2018/19: £68.8m) were received from DCMS to cover the costs of Spectrum Clearance and Awards Programme. A full disclosure of the Income can be found in the Ofcom main accounts.

6. Financial Penalties

Penalties received in the year were as follows:

	31 March 2020 £'000	31 March 2019 £'000
Sector		
Broadcasting TV	100	8
Radio	86	9
Post	185	-
Networks & Services	1,560	13,378
	1,931	13,395

During 2019/20, Ofcom issued penalties totaling £2.3m (2018/19: £13.5m), and collected penalties totaling £1.9m (2018/19: £13.4m). Details of all the penalties issued in 2019/20 can be found on the Ofcom website at:

<https://www.ofcom.org.uk/about-ofcom/annual-reports-and-plans/other-financial-reporting>

7. Balance at End of the Financial Year

The cash balance of £14.9m (2018/19: £22.2m) at the end of the year relates to funds transferred to the relevant stakeholders in April 2020. A further £4.4m was retained from March 2020 Wireless Telegraphy Act receipts relating to April 2020 budgeted expenditure.

- £10.5m: Wireless Telegraphy Act fees of transferred to DCMS
- £4.4m: Ofcom's retention amount to fund relevant expenditure;
- £0.002m: Geographical Numbering;
- £0.02m: Penalties transferred to the Consolidated Funds.