

Office of Communications Section 400 Licence Fees and Penalties Accounts

Year ended 31 March 2023

Office of Communications Section 400 Licence Fees and Penalties 2022-2023

**Presented to Parliament pursuant to Section 400(6) of the
Communications Act 2003**

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A. Section 400 Accounts: Review of 2022/23

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 at: <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 2006 (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 2022/23 there were 388,757 (2021/22: 385,344) 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.

In 2022/23 Ofcom passed £989.1m (2021/22: £1,710.7m) collected from WT Act licensees, and the interest earned on cash balances to DCMS. The balance of £56.3 m was passed on to the consolidated funds.

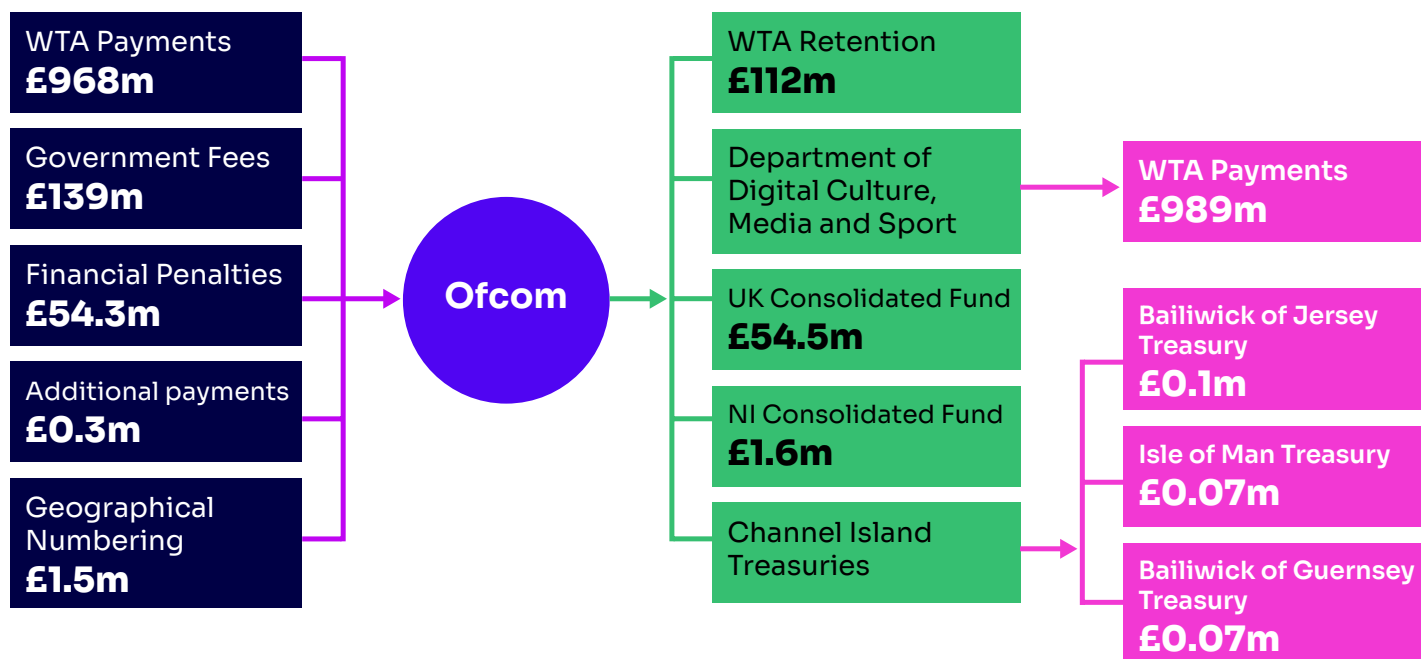
Ofcom retained £112m (2021/22: £84.5m) primarily to fund its general spectrum management functions, Telecoms Security and preparatory work for the Online Safety duty.

Total receipts 2022/23	WT Act Retention	Payments to the Exchequer
£1,163m	£112m	£1,045.4m

Government Department spectrum fees

Under Section 163 of the Communications Act 2003, Ofcom receives fees for spectrum use from certain Government departments. 2022/23: £139m (2021/22: £100.1m) These include Ministry of Defence, Department for Transport, Department for Business, Energy and Industrial Strategy and the Home Office. The fees are agreed 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 as cash received from commercial licences.

Figure 1 summarises the total receipts (exc auction) and payments for Section 400.



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 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>

In 2022/23 Ofcom received £0.2m (2021/22: £0.2m) in additional payments from TV broadcasters.

Radio

National radio licensees (Classic FM, Absolute Radio and Talk Sport) are also required to pay a cash bid of £10,000 annually. The cash bid amount will increase by RPI each year.

In February 2022 Ofcom awarded the additional service license by auction to INRIX UK Ltd. As part of the license condition, the licensee is required to pay a fee based on percentage of its qualifying revenue in addition to the annual cash bid payment.

In 2022/23 Ofcom received £0.04m (2021/22: £0.4m) 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 2022/23, Ofcom issued penalties totalling £1.6m (2021/22: £0.7m). The higher balance in 2022/23 relates to fines levied on Sepura Limited for breaking competition law. Penalties totalling £54.3m were collected in 2022/23 (2021/22: £0.6m). This includes Royal Mail's payment of its 2018 fine of £50m plus interest following the Supreme Court's refusal of its application to appeal.

A list of penalties imposed during 2022/23 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 2022/23 Ofcom collected £1.5m (2021/22: £1.7m).



Penalties collected in 2022/23

£54.3m

97%

received from the
Post sector

3%

received from
Networks & Services
and Broadcasting
sectors

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 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. Other responsibilities include, ensuring that the Annual Report and accounts as a whole is fair, balanced and understandable; internal controls are in place to enable the preparation of financial statement to be free from material misstatement, and assessing the Office of Communications' Section 400 account's ability to continue as a going concern.

The 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 Licence Fees and Penalties Account for the year ended 31 March 2023 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.

The financial reporting framework that has been applied in the preparation of the financial statements is applicable law and the Communications Act 2003.

In my opinion, the financial statements:

- properly present the Office of Communications Section 400 Licence Fees and Penalties Account's receipts and payments for the year ended 31 March 2023; and
- have been properly prepared in accordance with the Communications Act 2003.

Opinion on regularity

In my opinion, in all material respects, the income and expenditure 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 for opinions

I conducted my audit in accordance with International Standards on Auditing (UK) (ISAs UK), applicable law and Practice Note 10 Audit of Financial Statements and Regularity of Public Sector Bodies in the United Kingdom (2022). 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 2019. I am independent of the Office of Communications in accordance with the ethical requirements that are relevant to my audit of 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

In auditing the financial statements, I have concluded that the Office of Communications use of the going concern basis of accounting in the preparation of these financial statements is appropriate.

Based on the work I have performed, I have not identified any material uncertainties relating to events or conditions that, individually or collectively, may cast significant doubt on the Office of Communications' ability to continue as a going concern for a period of at least twelve months from when the financial statements are authorised for issue.

My responsibilities and the responsibilities of the Accounting Officer with respect to going concern are described in the relevant sections of this certificate.

Other information

The other information comprises information included in the Section 400 Licence Fees and Penalties Accounts, but does not include the financial statements and my auditor's certificate. The Accounting Officer is responsible for the other information.

My opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in my certificate, I do not express any form of assurance conclusion thereon.

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 I identify such material inconsistencies or apparent material misstatements, I am required to determine whether this gives rise to a material misstatement in the financial statements themselves. 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

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:

- whether adequate accounting records have been kept by Ofcom, and returns adequate for the audit have been received from any third parties;
- whether we have obtained all the information and explanations which we consider necessary for the purposes of our audit; and
- a material uncertainty exists related to events or conditions which may cause doubt on the Section 400 Licence Fees and Penalties Accounts ability to continue as a going concern for a period of at least 12 months from the date of the approval of the financial statements.

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:
 - maintaining proper accounting records;
 - ensuring such internal controls are in place as deemed necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error;
 - preparing Section 400 financial statements, which properly present the receipts and payments, in accordance with the Communications Act 2003 and with directions made by HM Treasury; and
 - preparing the Section 400 Annual Review in accordance with the Communications Act 2003 and with directions made by HM Treasury

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.

My objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue a certificate that includes my opinion. 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.

Extent to which the audit was considered capable of detecting non-compliance with laws and regulations, including fraud

I design procedures in line with my responsibilities, outlined above, to detect material misstatements in respect of non-compliance with laws and regulations, including fraud. The extent to which my procedures are capable of detecting non-compliance with laws and regulations, including fraud is detailed below.

Identifying and assessing potential risks related to non-compliance with laws and regulations, including fraud

In identifying and assessing risks of material misstatement in respect of non-compliance with laws and regulations, including fraud, I:

- considered the nature of the sector, control environment and operational performance including the design of the Office of Communications Section 400 Licence Fees and Penalties Account accounting policies.
- inquired of management, the Office of Communications' head of internal audit and those charged with governance, including obtaining and reviewing supporting documentation relating to the Office of Communications' policies and procedures on:
 - » identifying, evaluating and complying with laws and regulations;
 - » detecting and responding to the risks of fraud; and
 - » the internal controls established to mitigate risks related to fraud or non-compliance with laws and regulations including the Office of Communications' controls relating to the Office of Communications Section 400 Licence Fees and Penalties Account's compliance with the Communications Act 2003.
- inquired of management, the Office of Communications' head of internal audit and those charged with governance whether:
 - » they were aware of any instances of non-compliance with laws and regulations;
 - » they had knowledge of any actual, suspected, or alleged fraud,
- discussed with the engagement team regarding how and where fraud might occur in the financial statements and any potential indicators of fraud.

As a result of these procedures, I considered the opportunities and incentives that may exist within the Office of Communications Section 400 Licence Fees and Penalties Account for fraud and identified the greatest potential for fraud in the following areas: revenue recognition, posting of unusual journals and complex transactions. In common with all audits under ISAs (UK), I am required to perform specific procedures to respond to the risk of management override.

I obtained an understanding of the Office of Communications Section 400 Licence Fees and Penalties Account's framework of authority and other legal and regulatory frameworks in which the Office of Communications Section 400 Licence Fees and Penalties Account operates. I focused on those laws and regulations that had a direct effect on material amounts and disclosures in the financial statements or that had a fundamental effect on the operations of the Office of Communications Section 400 Licence Fees and Penalties Account. The key laws and regulations I considered in this context included the Communications Act 2003.

Audit response to identified risk

To respond to the identified risks resulting from the above procedures:

- I reviewed the financial statement disclosures and testing to supporting documentation to assess compliance with provisions of relevant laws and regulations described above as having direct effect on the financial statements;
- I enquired of management, the Audit and Risk Committee and in-house legal counsel concerning actual and potential litigation and claims;
- I reviewed minutes of meetings of those charged with governance and the Board; and internal audit reports;
- in addressing the risk of fraud through management override of controls, I tested the appropriateness of journal entries and other adjustments and evaluated the business rationale of any significant transactions that are unusual or outside the normal course of business; and

I also communicated relevant identified laws and regulations and potential risks of fraud to all engagement team members including and remained alert to any indications of fraud or non-compliance with laws and regulations throughout the audit.

A further description of my responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website at: www.frc.org.uk/auditorsresponsibilities. This description forms part of my certificate.

Other auditor's responsibilities

I am required to obtain evidence sufficient to give reasonable assurance that the expenditure and income 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.

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 I identify during my audit.

Report

I have no observations to make on these financial statements.

Gareth Davies

7 July 2023

Comptroller and Auditor General

National Audit Office

157-197 Buckingham Palace Road

Victoria

London

SW1W 9SP

C. Financial Statements

Receipts and Payments Accounts

For the year ended 31 March 2023

	Notes	Year ended 31 March 2023 £'000	Year ended 31 March 2022 £'000
Payments under the Wireless Telegraphy Act		967,969	318,136
Fees received from Government Departments	3	138,981	100,094
Interest Received		113	-
WT Act Auction Receipts	2B	-	1,379,400
Interest Received on Auction Receipts		-	-
Total Spectrum Fee Payments received		1,107,063	1,797,630
Additional Payments by licensees		278	596
Net Additional Payments by licensees received		278	596
Financial Penalties received	5	54,345	570
Geographic Numbering receipts		1,505	1,695
Total Receipts for the year		1,163,191	1,800,491
WT Act Payments to DCMS	2A	(989,113)	(331,273)
Auction Receipt Payments to DCMS	2B	-	(1,379,400)
WTA Act Receipts Retention (s.401)	4	(112,147)	(84,481)
Payments to the United Kingdom Consolidated Fund		(54,496)	(2,683)
Payments to the Northern Ireland Consolidated Fund		(1,570)	(8)
Payments to the Treasury of the Isle of Man		(68)	-
Payments to the Treasury of the Bailiwick of Jersey		(99)	-
Payments to the Treasury of the Bailiwick of Guernsey		(66)	-
Net Payments to Consolidated Funds and Treasuries		(56,299)	(2,691)
Total Payments for the year		(1,157,559)	(1,797,845)
Excess of Receipts over Payments for the year		5,632	2,646

Statement of Cash Balances

For the year ended 31 March 2023

	Notes	Year ended 31 March 2023 £'000	Year ended 31 March 2022 £'000
Balance at beginning of the year		20,213	2,709,785
Refund to auction bidders	2B	-	(1,312,818)
Auction proceeds transferred to DCMS		-	(1,379,400)
Excess/(Deficit) of receipts over payments for the year		5,632	2,646
Total Cash Balance (exc. Spectrum auction deposits)		25,845	20,213
Spectrum Auction Deposits	2B	-	-
Total Cash Balance		25,845	20,213
Cash balance owed to			
UK Department of Digital Culture, Media and Sport		15,207	10,956
Consolidated Funds and Treasuries		0	171
Amount to be retained by Ofcom (April 23)		10,638	9,086
	6	25,845	20,213

The Notes on pages 13 to 14 form part of these accounts.

Dame Melanie Dawes DCB

Chief Executive and Accounting Officer
Office of Communications

03 July 2023

D. Annex:

Notes to the Accounts

For the year ended 31 March 2023

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.

2.a. WT Act licence fees

In the period of these accounts, Ofcom paid £989.1m (2020/21: £331.3m) collected from WT Act licensees and the interest earned on any cash balances held to DCMS. The increase is due to a one-off lump sum payment in respect of alignment of terms of spectrum licences in the 3.4 3.8 GHz band by the stakeholder; Three.

Spectrum Fees Transferred	31 March 2023 £'000	31 March 2022 £'000
Wireless Telegraphy Act Cash Transferred to DCMS	850,132	231,177
Fees received from Government Departments	138,981	100,094
Total spectrum fees transferred by Ofcom	989,113	331,271

2.b. Wireless Telegraphy Act - Licence Fees received from the Auction of spectrum in 2021/22

There was no spectrum auction in 2022/23. This note relates to the auction that took place in the 2021/22 financial year. Ofcom awarded 80 MHz of spectrum in the 700 MHz band and 120 MHz of spectrum in the 3.6-3.8 GHz band through an auction for a total of £1,379.4m in 2021/22. A total of £1,379.4m was transferred to Government on 28 April 2021 once the licences were issued. Excess deposits of £1,313m were returned to bidders. The table below provides details of the winning bidders and the prices they paid for licences.

Name of bidder to whom licence granted	Frequencies	Total base price £'000	Additional price £'000	Total licence fee £'000
EE Limited	723-733 MHz and 778-788 MHz	£280,000	£23,000	£307,000
	738-758 MHz	£4,000	0	-
	3680-3720 MHz	£168,000	0	£168,000
Hutchison 3G UK Limited	713-723 MHz and 768-778 MHz	£280,000	0	£280,000
Telefónica UK Limited	703-713 MHz and 758-768 MHz	£280,000	0	£280,000
	3760-3800 MHz	£168,000	0	£168,000
Vodafone Limited	3720-3760 MHz	£176,400	0	£176,400

Full details including the licences granted and the licence fees paid can be found on the Ofcom website: <https://www.ofcom.org.uk/spectrum/spectrum-management/spectrum-awards/awards-archive/700-mhz-and-3.6-3.8-ghz-auction>

3. Fees Received from Government Departments

During the period under review, £139m (2021/22: £100.1m) was received from Government departments.

4. Sums Retained from Wireless Telegraphy Act Payments

Under Section 401 of the Communications Act 2003, 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 £112.1m (2021/22: £84.5m) was retained to fund its general spectrum management functions and other relevant activities including our new Online Safety and Video Sharing Platform duties.

Spectrum Fees Transferred	31 March 2023 £'000	31 March 2022 £'000
Spectrum Management	59,351	49,472
VSP and Online safety	48,149	21,079
Orphan expenditure (inc. Nuisance Calls)	697	4,115
Section 105, Communications Act 2003 related costs ¹	-	5,246
Telecoms Security Regulation	3,950	4,569
Total Wireless Telegraphy Act receipts retained	112,147	84,481

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

1. Costs for our security related work for the Networks & Services sectors but which the 2003 Communications Act did not provide Ofcom with the power to recover costs. Thus, these costs must be funded via the retention of WTA receipts.

5. Financial Penalties

Penalties received in the year were as follows:

Sector	31 March 2023 £'000	31 March 2022 £'000
Broadcasting TV	49	333
Radio	0.3	19
Post	52,796	10
Networks & Services	1,500	208
Total	54,345	570

During 2022/23, Ofcom issued penalties totalling £1.6m (2021/22: £0.7m) and collected penalties totalling £54.3m (2021/22: £0.6m). Details of all the penalties issued in 2022/23 can be found on the Ofcom website at:

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

6. Balance at End of the Financial Year

The cash balance of £25.8m (2021/22: £20.2m) at the end of the year relates to funds due to be transferred to the relevant stakeholders in April 2023. £10.6m was retained from March 2023 Wireless Telegraphy Act receipts relating to April 2024 budgeted expenditure.

- £15.2m: Wireless Telegraphy Act fees of transferred to DCMS in April 23
- £10.6m: Ofcom's April 23 retention amount to fund relevant expenditure.
- £192.80: Additional Payments to be transferred to the Consolidated Fund.

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