

Performance Audit on the operations of Jobsplus' Law Compliance Unit

January 2024





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Jobsplus' Law Compliance Unit

Report by the Auditor General
January 2024

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List of Abbreviations

ELU	Employment Licensing Unit
HRIU	Human Resources Information Unit
IT	Information Technology
ID	Identity Cards
ILO	International Labour Organisation
LCU	Law and Compliance Unit
LCUS	Law Compliance Unit System
NAO	National Audit Office

Executive Summary

Why this study?

As recognised by the International Labour Organisation (ILO), an effective inspectorate on employment regularity promotes a stable business climate, which in turn is an essential element for competitiveness, economic growth and job creation. These considerations, coupled with a significant increase in the rate of gainfully employed persons being experienced by the country, led NAO to conduct a performance audit on Jobsplus' enforcement function, specifically the Unit entrusted with the detection and deterrence of irregular employment.

What NAO Recommends

This Office suggests that the necessary changes in LCU inspectors' work practices are adopted at the earliest so that the gaps created by having a relatively low inspectorate visibility outside normal office hours are addressed. While acknowledging the upgrades in the progress of Jobsplus' IT system, this Office also urges the Corporation to ensure that these initiatives are as comprehensive as possible and that they include the resolution of any limitations flagged by the LCU. NAO also recommends that the Unit generates and retains adequate and comprehensive records of the process by which it selects, and allocates priority among, inspection candidates. This Office also urges Jobsplus to review its practices of granting a rectification period for defaulters to address identified shortcomings. NAO is of the opinion that, in such instances, Jobsplus should impose applicable penalties or initiate judicial proceedings straightaway.

NAO's Key Observations

During this review NAO observed that the overall performance of the Law Compliance Unit (LCU) inspectors is considered satisfactory. Notwithstanding, this Office is concerned with the fact that this complement is resisting change in its work practices which is evidently required for LCU to broaden and increase its inspectorate presence.

This study also found that IT tools at LCU's disposal do feature some limitations and, while Jobsplus' management noted that workaround solutions exist for these, it further highlighted that upgrades to the current system are in progress.

Concerns materialised as it could not be ascertained whether a comprehensive and documented audit trail of cases investigated by the LCU is maintained or otherwise. NAO perceives risks, even in the best-case scenario of this information being indeed held at Jobsplus but in a fragmented manner, as LCU's inability to collate this in a reasonable timeframe presents obvious negative implications on good practice.

This review also showed that the LCU's current legislative framework needs revising. While acknowledging an increase in applicable penalties, this Office however noted that the Unit did not endeavour to assess whether these can be considered to be set at a sufficient level for effective deterrence. Furthermore, opportunities exist where legislation can also be improved particularly to enable the Unit to prosecute its own cases rather than depending on the Malta Police Force. In line with its observations however, the audit team commended the LCU for identifying the potential improvements which can be made to the mentioned legislation, and for initiating the process for these amendments to be implemented.

The LCU does not document the weekly inspection candidate selection process. Apart from resulting in a lack of audit trail in this part of LCU's operations, this also means that verification of the extent to which the internal guidelines relating to the selection of inspection candidates have been followed is rendered impossible.

This performance audit also showed that the LCU grants a rectification period for identified defaulters of certain infringements. Such a lenient approach, NAO noted, may passively elicit an overall lax attitude towards compliance with employment regulations from those within the local employer cohort who are so inclined, proving unfair towards those abiding with this legislation. This becomes even more pressing when considering that this approach is also afforded to repeat offenders.

Chapter 1 | Introduction

1.1 Why this study?

1.1.1 NAO understands that, as recognised by the International Labour Organisation (ILO), an effective inspectorate on employment regularity promotes a stable business climate, which in turn is an essential element for competitiveness, economic growth and job creation. This enforcement function plays a pre-eminent role, not only on the health of employees, but also on the health of the economy thereby making it a key component in economic and social development. In addition, irregular employment fosters unfair competition and fuels the black economy through the resulting tax and social security contributions evasion, which deprives Government of essential revenue streams. When studying these considerations together with the significant increase in the rate of gainfully employed persons being experienced by the country, NAO resolved to conduct a performance audit on Jobsplus' enforcement function, specifically the Law Compliance Unit (LCU), which is entrusted with the detection and deterrence of irregular employment.

1.2 Background Information

1.2.1 Jobsplus Corporation operates under the Ministry for Finance and Employment and is mainly governed by Chapter 594 of the Laws of Malta. This legislation lists the Corporation's primary functions in relation to employment services as well as provides for the appointment of inspectors to enforce the provisions regarding regular employment listed in the same act.

1.2.2 The officials responsible to carry out this enforcement function form the LCU. The enforcement duties of this Unit are listed in chapter 594 and include the monitoring of the local employment market for detection of;

- Employment of persons who are not Maltese citizens and do not possess the required working license and/or permits;
- Employment of a minor person of compulsory school age without the written permission in terms of the Education Act;
- Employment of persons without submitting an official engagement form;
- Employment of persons without submitting an official engagement form, which persons are registered with Jobsplus as persons seeking employment;
- Termination of employment without informing Jobsplus.

1.2.3 Cases of irregular employment can be triggered through a number of channels, with the LCU inspectors subsequently being deployed to either perform an onsite inspection or conduct a desk investigation with the aim of establishing if the case constitutes a breach of Chapter 594 or otherwise. In the event that the inspection or investigation results in the detection of an employment irregularity, a penalty is issued by Jobsplus which, if not paid by the employer, might result in the case being forwarded to the police for the initiation of court proceedings.

1.3 Audit Scope and Objectives

1.3.1 This review sought to determine whether Jobsplus is comprehensively tackling its remit and responsibilities in an efficient and effective manner. In order to establish this, the following three main objectives were set out by this Office;

- a. To determine whether the LCU is adequately resourced to perform its mandate efficiently and effectively;
- b. To establish whether the Unit's inspectorate effort is allocated efficiently; and
- c. To verify if the LCU, through its enforcement operations, is presenting itself as a significant deterrent to irregular employment, across local work industries.

1.3.2 This audit focuses on the LCU, with the Unit being Jobsplus' inspectorate arm. The Unit was analysed solely from a performance perspective and therefore, considerations on financial compliance were scoped out.

1.3.3 Unless otherwise stated, the scoped period for data analysis purposes spanned between January 2019 and December 2022. Findings presented in this report reflect the situation as at July 2023.

1.4 Methodology

1.4.1 After acquiring an overview of the LCU's operations through preliminary research, the audit team held an initial meeting with the inspectorate's management to gather further insight. Through this process, the audit team acquired sufficient information to identify the main audit question and subsequently set the above scope and objectives. In line with performance audit methodology, an Issue Analysis and Audit Design Matrix were compiled, through which several sub-questions, criteria and intended methodologies emerged. These provided the audit team with a clear pathway towards the conduct of this audit.

1.4.2 A series of semi-structured interviews were then held with the different tiers of Jobsplus' management in order to address the various aspects of the exercise. In tandem with these meetings, the audit team meticulously reviewed all documentation that was forwarded by the inspectorate and pertinent analysis was carried out to address the audit's predetermined objectives.

- 1.4.3 The audit team also accompanied the Unit's inspectors on a number of onsite inspections and desk investigations which included a walk-through of the process followed in both. Furthermore, the audit team also attended a court sitting (as observers) during which inspectors were required to present evidence on a number of cases they had investigated.
- 1.4.4 Once all the required information and observations were secured, the audit team proceeded to produce the first draft of the report which was then presented to the auditee for its final feedback before publication.
- 1.4.5 NAO conducted this performance audit in line with the Standard for Performance Auditing, ISSAI 3000.

1.5 Report Structure

- 1.5.1 Following this introductory chapter, this report adopts the following structure
- 1.5.2 **Chapter 2** – This chapter reviews and assesses the support that the LCU receives from the current legislative framework within which it operates. This section also analyses the inspectorate's financial and human resources to determine their adequacy vis-à-vis the Unit's enforcement responsibilities.
- 1.5.3 **Chapter 3** – NAO here presents considerations on the LCU's IT systems and on the audit trail of documentation that the inspectorate maintains for the cases it investigates.
- 1.5.4 **Chapter 4** – This last chapter presents an overview of the salient issues surrounding the inspectorate's allocation of its inspectors' efforts, the performance of onsite inspections and desk investigations, LCU's working hours and the application of a rectification period for perpetrators.
- 1.5.5 **Concluding Remark**

Chapter 2 | LCU's Resources and Legal Environment

Executive Summary

2.1 LCU's Legislative Framework merits revisions

2.1.1 As mentioned in Chapter 1, the LCU's core function within Jobsplus is that of conducting monitoring, and where required applying enforcement, vis-à-vis irregular employment. Given the natural importance of the legal environment related to this operation, NAO went over the relevant legislative provisions to determine the extent to which these position the Unit strongly to detect irregularities as well as act as an effective enforcer.

Chapter 1

2.1.2 Jobsplus is governed by the Employment and Training Services Act (Chapter 594 of the Laws of Malta). This law came into effect on the 26th November 2019 and sets out the duties and responsibilities of employers with respect to the employment of workers on a full-time, part-time basis or otherwise. These include the obligation to notify Jobsplus that an employee has been engaged by the employer or that a contract for employment has been terminated. The Act also stipulates that the employment of minors without the necessary written permission in line with the Education Act is prohibited, and that all employees who are not Maltese or EU citizens must only be employed if they are in possession of a single permit or employment licence. Further to setting these regulations for employers, Chapter 594 also empowers Jobsplus with the capacity to monitor the employment market so as to enforce these regulations.

Chapter 2

Chapter 3

High infringement to interview ratio indicates that there is scope for penalties to be revised

2.1.3 During meetings with LCU, the audit team enquired whether, in the former's opinion, the penalties set out in Chapter 594 present sufficient deterrent for employers not to engage in irregular practices. In reply however, the LCU indicated that it could not conclusively confirm whether the fines and penalties set out by law were sufficient in that respect.

Chapter 4

2.1.4 While NAO notes that with the introduction of Chapter 594 in 2019 these penalties were increased, (Table 1 below compares fines as set in Chapter 594 against the preceding ones as cited in Chapter 343) the audit team still sought to obtain an indication on whether these fines are presenting a sufficient deterrent to potential defaulters. To gauge this, it analysed the number of identified infringements as a ratio to interviews¹ carried out by LCU between 2019 and 2022 to determine whether this ratio is considered high or otherwise. This review showed that figures of identified

Concluding Remark

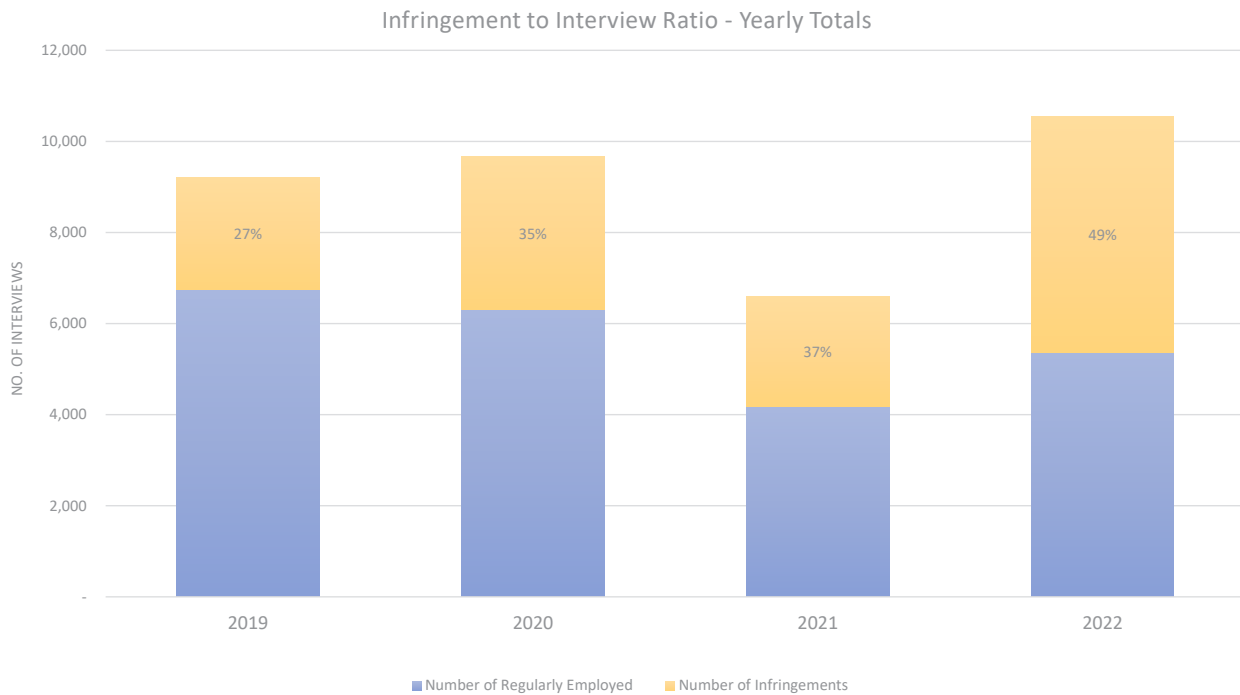
¹ The term 'interviews' means the total number of individuals who were approached by the Unit, either as they were suspected to work irregularly or as part of a routine inspection.

irregularities were substantial and resulted in an uninterrupted annual upward trend between 2019 and 2022. As can be seen in Figure 1, in 2019 27% of conducted interviews resulted in identified infringements, with this percentage reaching 49% in 2022. NAO notes that this indicates that the level of penalties is still not serving as an adequate deterrent to curb irregular employment.

Table 1 - Revision of fines through new legislation

Offence	Fine (on conviction) stipulated in Cap. 343 (L.N. 110.93)	Fine (on conviction) stipulated in Cap. 594
Article 42 (from Cap. 594) – Employing a minor of compulsory school age without the written permission in terms of the Education Act	Article 6 (2) – Fine between €232.94 and €2,329.37	Article 51 – Fine between €1,000 and €5,000
Article 43 (from Cap. 594) – Employment of a foreign person who is not in possession of a single permit or employment license	Article 7 – Fine between €1,164 and €2,329.37	Article 52 – Fine between €2,500 and €5,000
Articles 36 and 37 (from Cap. 594) – Notification by employers and Self-employed persons	Article 10 – Fine between €116.47 and €1,164.69 and possible suspension or cancellation of licence	Article 53 (b) – Fine between €500 and €2,500
Article 40 – Termination of contract of employment	Article 8 – Fine between €116.47 and €1,164.69	Article 50 – Fine between €2,500 and €15,000
Article 53 (a) – Administrative fine for offences in contravention of articles 36, 37 and 40 (Cap.594)	Article 10 (2nd Par.) – Penalty of €58.23	Article 53 (a) – Penalty of €500

Figure 1 - Infringement to Interview Ratio between 2019 and 2022



Executive Summary

Chapter 1

Chapter 2

Some improvement could be made to LCU’s legal coverage

2.1.5 Apart from the issue of penalty levels, discussions were held with LCU to determine whether local legislation endows the Unit with sufficient powers to execute its mandate adequately. During these the audit team was informed that improvements could be made to local legislative provisions to further strengthen LCU’s position. Specifically, the latter highlighted that it had proposed a number of amendments to local law which, among others, included proposals for an increase in fines for specific offences, and further empowerment to the Unit’s inspectorate (particularly the legal capacity for LCU to be able to prosecute judicial cases itself rather than depending on the Malta Police Force). When queried on the progress of these proposals however, the LCU stated that it is still discussing them with its legal adviser. Once these are better formalised, they would need to be then presented to the Ministry for further deliberation and consequent approval.

Chapter 3

Chapter 4

Concluding Remark

NAO Observations

- 2.1.6 While NAO acknowledges the increases in applicable penalties brought about through changes in legislation, it feels it as a shortcoming that the Unit did not endeavour to assess whether the current penalties can be considered to be set at a sufficient level for effective deterrence or otherwise. This fact becomes even more pressing when one considers the significant number of identified infringements per interviews carried out by the LCU over the past few years.
- 2.1.7 NAO commends LCU for identifying improvements which can be made to the local legislation governing its operations, and for initiating the process for these amendments to be implemented.

2.2 LCU's annual financial allocation is only adequate to sustain its current setup and operations

- 2.2.1 Since any department like the LCU needs finances to operate, the audit team enquired with the Unit's management on the annual financing levels it is allocated, with LCU management stating that this allocation was considered adequate for the running of the Unit's current operational level. For further insight, the audit team asked for an account of the Unit's annual financial allocation. Forwarded documentation showed that this Unit was allocated with approximately €390,000 for the year 2022. In its analysis, the audit team observed that this figure is adequate to sustain LCU's current staff complement (in terms of salaries) but would not be sufficient should the Unit materially expand in terms of additional human resources (section 2.3 refers). Notwithstanding, when presented with this issue, Jobsplus top management asserted that, should additional human resources within the LCU be deemed required, funds may be diverted from other cost-centres from the Corporation's overall operating budget.

NAO Observation

- 2.2.2 While this Office acknowledges LCU's statement that the latter is being allocated with sufficient financial resources from the yearly Government budget to run its current operations smoothly, it is still concerned that this may not be sufficient should the Unit materially expand. Even so, NAO acknowledges Jobsplus' top management statement that additional funds could be redirected from other cost-centres if additional human resources with the LCU are deemed necessary.

2.3 LCU's Human Resources performing acceptably yet questions persist on whether they are sufficient in number

2.3.1 During its fieldwork, the audit team observed that the LCU comprised of 12 officials, eight of whom² possess an inspector's warrant³. Inspectors are endowed with the legal rights required to carry out physical inspections onsite, to ensure that the regulations stipulated in Chapter 594 are being adhered to. At the time of writing, the LCU also employed three desk investigators who work on specific cases, primarily those involving third country nationals suspected of being employed without submitting the necessary engagement form to Jobsplus. The remaining official is the Unit's Head of Department, who is responsible for the overall management of the Unit. It must be noted that during the latter stages of this study, the Head of Department ceased providing services to Jobsplus.

2.3.2 As part of its review on the LCU's human resources situation, NAO sought to determine the adequacy of the inspectorate's complement. To do so, the audit team needed to assess if the number of inspectors employed is sufficient to cover the local labour market, as well as whether their respective performance enables the inspectorate to carry out its mandate effectively.

Overall performance of LCU Inspectors considered acceptable but they are resistant to change

2.3.3 During meetings with the audit team, LCU Management explained that the performance of the Unit's inspectors is measured annually through a performance appraisal process. NAO was also informed that, while the performance of inspectors is not tied to any remuneration benefits, the results from the appraisals are considered when the relative inspector is due for a progression in scale or applies for a promotion. In order to obtain an indication of the inspectors' performance, the audit team enquired with LCU management on its opinion in this respect. In reply, the Unit stated that the overall performance of its inspectors was considered satisfactory. To verify this, NAO reviewed the officials' performance appraisal reports for 2021 and 2022 and noted that the average mark obtained by the inspectors in 2021 was 67% while that in 2022 was 71%. The audit team also assessed the performance and overall quality of the inspectors' work while accompanying them during site inspections, and found itself in agreement with LCU management's transmitted opinion on this issue, as well as the cited marks in the reviewed performance appraisals. Further details on the audit team's observations when accompanying inspectors on site visits are presented in point 4.2 of this report.

² One of these eight inspectors occupies the position of Principal Executive (entrusted with the day to day running of the Unit's operations), with the remaining seven occupying the position of Senior Inspector.

³ According to Chapter 594, for an individual to be officiated as an LCU Inspector, his/her appointment has to be endorsed, in writing, by the incumbent Minister. NAO reviewed copies of such endorsements for all inspectors deployed with LCU as at time of writing and found them in order.

2.3.4 Further discussion, however, saw LCU management asserting that there was still room for improvement among its complement's quality and attitude, particularly with regard to the Unit's disposition towards change. For instance, with ever expanding parameters in the labour market, particularly those related to working times beyond what is traditionally considered as normal office hours, NAO enquired how the Unit is addressing the need for the inspectorate to have a presence during these time-windows. In reply, LCU stated that, while it agrees with this perceived need, it has as yet not managed to come to an agreement with its inspectors to change their work schedule. The audit team also discussed this issue with the inspectors themselves, with the latter acknowledging the need for inspections to be carried out beyond normal working hours but, seeing that this would most likely mean that a shift-based schedule would have to be introduced, not all of them were willing to adopt this significant change in their working practices. During further meetings with the Unit's management, NAO was informed that as an attempt to have an inspectorate presence after office hours, overtime is made use of. From information forwarded to this Office regarding overtime hours for the years 2020 to 2023 however, the latter calculated that these would not amount to more than an average of 6.5 inspection hours a week.

NAO questions whether LCU's inspectorate complement is sufficient

2.3.5 A review of registered employment statistics published by the NSO for 2020, 2021 and 2022 shows that gainfully employed persons rose by 5% between 2020 and 2021 and a further 7% between 2021 and 2022, resulting in a registered working population of 334,810⁴ for this latter year. As this means that the LCU's area of operations is expanding, the audit team enquired with the former on whether it feels the number of inspectors employed with it are sufficient to cover this workforce. This was particularly asked as LCU's on-the ground inspectorate complement had, over the years, remained largely the same. In reply, Jobsplus top management stated that, in its opinion, the current number of LCU inspectors is sufficient, but believes that desk-based investigations is the area in which more investment is needed. Specifically, Jobsplus management asserted that, through desk-based investigations and the judicious use of big data, large amounts of infringements could be identified through processes which are significantly less laborious than on-the ground inspections, resulting in increased efficiency. In fact, NAO noted that five desk investigators were engaged in the third quarter of 2022⁵.

2.3.6 In view of Jobsplus' assertion that the LCU does not need additional on the ground inspectors, the audit team enquired with the former whether it has any documented studies which substantiate this claim. In this respect however, the Corporation replied in the negative.

⁴ This figure refers to total full time as well as part time positions held in the local market. This means that a single individual can be represented more than once if he/she holds more than one registered job. For the sake of this study, the audit team is gauging the need for LCU inspectorate effort on the number of jobs registered, rather than the number of individuals employed as it is the former not the latter which determines the amount of inspectorate effort required.

⁵ Two desk investigators have resigned from the LCU during this audit's fieldwork stage (i.e. in 2023).

NAO Observations

2.3.7 NAO acknowledges that the overall performance of the LCU Inspectors is considered satisfactory. Notwithstanding, this Office is concerned with the fact that this complement is resisting change in its work practices which are evidently required for LCU to broaden and increase its inspectorate presence. This situation is undoubtedly resulting in the Unit not achieving all of its effective potential and creates gaps in this enforcement function which could be easily identified and exploited by potential defaulters.

Executive
Summary

2.3.8 Jobsplus' assertions that the LCU has sufficient on-the-ground inspectors is not supported by formal studies or needs assessments. In view of the foregoing, this concern becomes particularly pressing when one considers the registered continual increase in the gainfully occupied population as well as the evident developing complexities and expanding parameters in the local labour market, which put inevitable strain on LCU's inspectorate capacity.

Chapter 1

2.4 Recommendations

2.4.1 While NAO commends LCU for identifying improvements which can be made to the local legislation governing its operations, and for initiating the process for these amendments to be implemented, it still observes that the significant number of identified infringements per interview carried out by the Unit, clearly indicate that the applicable penalties set by law are not serving as sufficient deterrent and are therefore due for additional revisions. In view of this, NAO strongly suggests that LCU exerts the necessary pressure, through appropriate channels, for this process to be initiated and completed in a timely manner.

Chapter 2

2.4.2 While it is acknowledged that industrial relations could prove challenging, having a relatively low inspectorate visibility outside normal office hours is, in NAO's opinion, a serious cause for concern. It is therefore being suggested that working hours of LCU's inspectors are adapted at the earliest so that the gaps created by this shortcoming are addressed.

Chapter 3

2.4.3 It is also being recommended that the Unit conducts an internal exercise to accurately determine the optimal number of inspectors it requires to better fulfil its mandate. Should this study show that additional on-the-ground inspectors are needed, this Office further encourages the Unit to make the necessary efforts to obtain such additional resources at the earliest, both in terms of recruiting the additional personnel as well as securing the necessary increase in its financial allocation to cover the associated increase in costs.

Chapter 4

Concluding
Remark

Chapter 3 | LCU's Information Management Systems

3.1 IT system at LCU's disposal can be improved

- 3.1.1 The key information management tool used by the LCU is a module added on Jobsplus' main IT system which serves as the Corporation's main electronic repository storing data on all registered employers and employees in Malta. While this is used by the LCU solely as a reference point, it also hosts what is referred to as the Technical Platform, which is specifically designed for LCU to input all details and generate related reports as necessary, regarding all stages of the inspection process. This module, LCU management highlighted, was designed in 2017 and brought into use in 2019. Through this technical platform, the audit team observed, LCU manages the information inputted by its inspectors when conducting onsite inspections and desk investigations and monitors the progress of each case from the date of commencement up until the same case is either closed or referred to the police for legal proceedings. This system also provides LCU with the possibility to upload documentation (such as photographs, correspondence with stakeholders, emails and others) to each individual case. This information is held online with the inspectors being able to access and update details as necessary.
- 3.1.2 During meetings with LCU on this system, the audit team held walkthroughs of how the Unit utilises these tools to conduct its day-to-day operations, particularly in the identification of candidates for inspections, report generation and the retention of digital information related to inspections. During this review however, the LCU highlighted a number of limitations within this system which impact on process efficiency. The audit team proceeded to discuss these issues with Jobsplus' top management who, while stating that workaround solutions do exist to the identified limitations, highlighted that upgrades to the current LCU IT system are in progress, as is the introduction of additional IT tools specifically designed to assist LCU in data management vis-à-vis its inspectorate function. Furthermore Jobsplus was, as at the time of writing, undergoing an all-encompassing digital transformation exercise. Amongst others, the objectives of this initiative include the overhaul of all IT systems (as well as business processes re-engineering) within Jobsplus, including that used by the LCU. The development and implementation of this project however is expected to run over a span of years and is not foreseen to be completed in the short term.

NAO Observation

- 3.1.3 This Office acknowledges and commends Jobsplus for the initiatives which are currently in the pipeline regarding its IT systems. Nonetheless, despite the workaround solutions available,

concerns still remain on prevailing limitations being experienced by LCU when using these tools for its day-to-day operations. NAO observes that these result in process inefficiencies, which inevitably limit the LCU's coverage of the employment market.

3.2 NAO could not fully determine the completeness of documented audit trail in LCU case files

3.2.1 As part of this review, NAO sought to determine if the LCU maintains an adequately complete documented audit trail of the process followed for each of the cases the inspectorate investigates. To do so the audit team opted to review a sample of related case files to determine whether, as an outsider, it could reasonably and comprehensively follow the details of each reviewed case. A sample of case files, rather than the whole population, was chosen due to the large number of inspections carried out by LCU (Chapter 2 refers). Specifically, NAO opted to review 50 randomly chosen files from the 5,110 cases which were investigated without the need for legal proceedings in 2022. In addition to this 50-case sample, the audit team also reviewed the six cases for which legal proceedings were initiated by the police in the same year. It is important to highlight that the selected sample included both desk-based investigations as well as others relating to onsite inspections.

3.2.2 To conduct this exercise, the audit team requested a copy of all the documentation retained by the inspectorate pertaining to the selected sample cases. Having received the information from the LCU, this Office conducted its review and observed that almost all the cases (53 out of the 56 reviewed case files) were missing significant documentation. Given the high number of cases with a seemingly incomplete audit trail, the audit team reverted to the inspectorate for an explanation. In reply, NAO was informed that in addition to the forwarded documentation, which is hosted within the LCU's technical platform, supplementary documents related to the sample cases were stored in other IT systems owned by the Inspectorate or even stored in hard copy format. These, NAO was informed were the main reasons that the information forwarded to NAO was incomplete.

3.2.3 In view of this, the audit team put forward another request for all the missing documentation pertaining to the sample cases, with the LCU forwarding further information accordingly. Having reviewed the additional information, the audit team however noted that 38 of the 56 forwarded copies of case files still did not have sufficient documentation to constitute an adequate audit trail of the process pursued by LCU officers. By way of an example, for a significant number of the sample cases, NAO observed that the interview sheets filled in by the inspectors conducting an onsite inspection, were missing. Other cases were missing photographic evidence and in some of the cases, the audit team could not determine the outcome of the case from the provided documentation. The audit team also observed that the cases which included legal proceedings did not feature any information documenting the evidence given by the LCU's inspectors during the court sitting itself.

3.2.4 Despite the fact that the audit team was not furnished with complete audit trails for the majority of the selected sample, this Office cannot conclude if this stems from the fact that the requested documentation was not generated by the LCU, or as a result of the Unit not being able to trace the said documents while compiling information for this exercise.

NAO Observation

3.2.5 While this Office could not ascertain whether a comprehensive and documented audit trail is maintained by the LCU or otherwise, it is still concerned that the inspectorate was unable to forward such documentation, irrespective of the reason. NAO perceives risks even in the best-case scenario of this information being indeed held at Jobsplus but in a fragmented manner, as LCU's inability to collate this in a practical timeframe presents obvious negative implications on good practice.

3.3 Recommendations

3.3.1 NAO welcomes the upgrades in progress to Jobsplus' IT system including those intended to assist LCU in its operations. This Office urges the Corporation to ascertain that these initiatives are as comprehensive as possible, and that they include the resolution of any limitations flagged by LCU. This will ensure that any related operational inefficiencies within the LCU are mitigated which will in turn enhance the Unit's effectiveness in terms of increasing the Unit's ability to broaden its monitoring function of the labour market

3.3.2 In implementing the preceding recommendation, NAO also urges Jobsplus to ascertain that any upgraded IT system would support a comprehensive collation of investigation related documentation for every LCU case file. This should be done with the view that an adequate documented audit trail is retained on every case, and that this information could be retrieved in a practical timeframe.

Chapter 4 | Salient Issues Surrounding LCU Operations

4.1 LCU's process of candidate selection for inspection is not documented

4.1.1 During this review, the audit team enquired how the LCU determines the level of risk to be allocated when it comes to selecting candidates for inspection and how it assigns related priorities. In reply, this Office was forwarded with an internal set of guidelines which lays out risk factors that have to be taken into account when reviewing potential candidates for inspection. Amongst others, this memo takes into consideration the severity of the potential infringement, operational sector and geographic area. During discussions with the audit team, LCU explained that these guidelines, together with the Unit's collective operational experience are the main instruments used to shortlist candidates for inspection.

4.1.2 In view of the above, the audit team sought to verify the manner by which this process is carried out. However, when requesting documentation related to this process, the Unit stated that no such records are held, and that candidates for inspections are selected (in line with the above-mentioned guidelines) in a weekly internal and informal meeting within LCU.

NAO Observation

4.1.3 The fact that no documented trail is held on how candidates are selected for inspection raises concern to this Office. Specifically, such a shortcoming puts the inspectorate in a weak position should its inspection targeting procedure be challenged. In addition, the lack of a documented trail also limits internal and external reviews of the LCU's operations should verification on whether the Unit is implementing the set guidelines consistently and comprehensively be sought, as was the case in this performance review.

4.2 Desk Investigations and onsite Inspections are generally carried out diligently

4.2.1 LCU's core inspectorate functions can be mainly categorised into two, that is, desk-based investigations and on-the-ground inspections. Figure 2 and Figure 3 show the related processes of these two functions respectively.

Figure 2: LCU's Desk Investigation Process

Desk Investigations

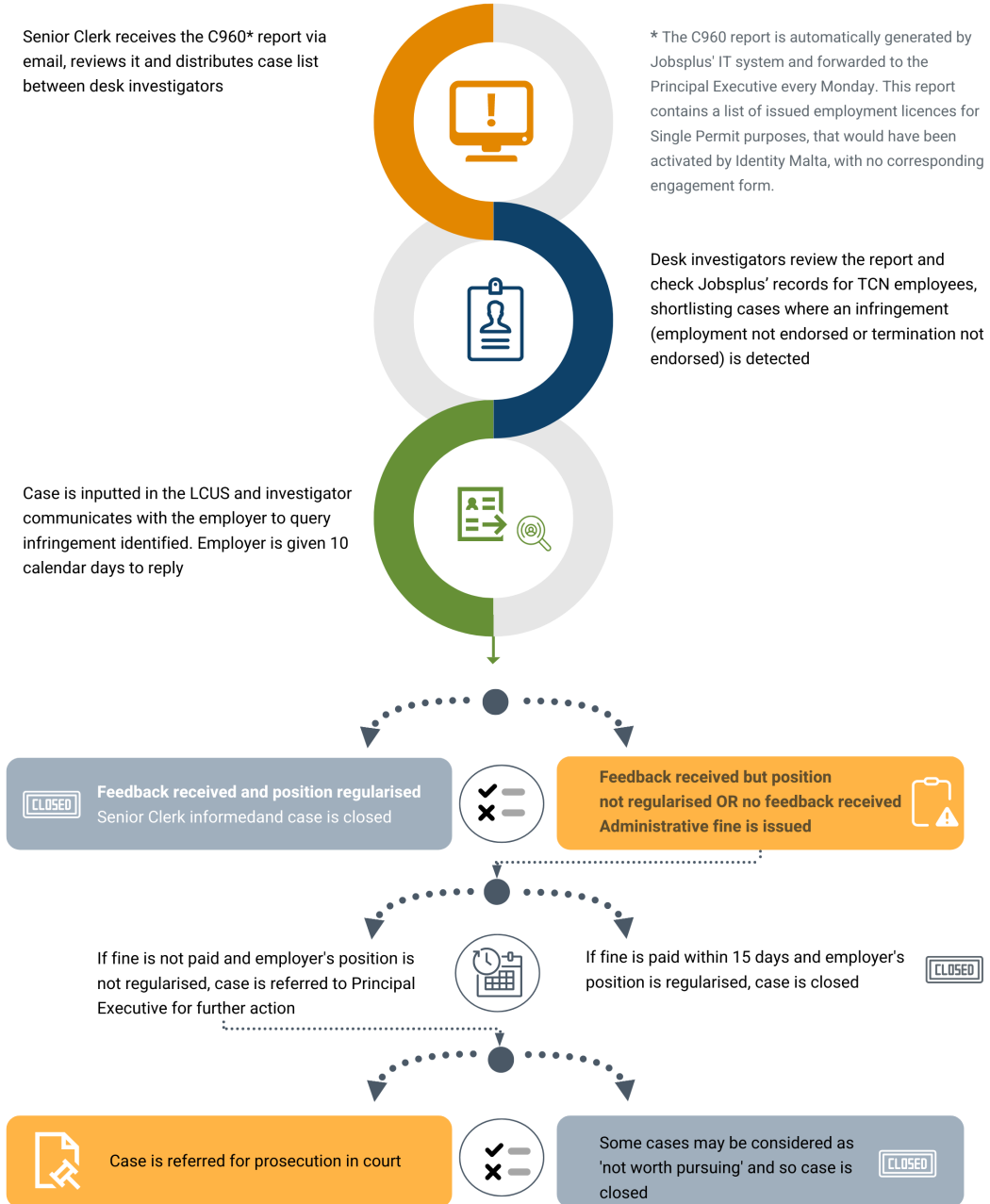


Figure 3: LCU's Onsite Inspection Process

Onsite Inspections

Report of illegal employment is received*, inputted in the LCUS (Law Compliance Unit System) and desk-based check is carried out. If inspection is required, case is forwarded to the Principal Executive

* Reports can be received via:

- Phone
- Email
- Online reporting system
- Internal Referrals
- Anonymous
- Correspondence
- Third Party Informants
- Routine Inspections



Principal Executive instructs Inspectors to conduct inspection



Inspection is conducted by the inspectors onsite and inspectors gather the necessary details



Back at the Office, inspectors input case details in the LCUS and cross-check them with info from the Employment Records and ELU (Employment Licensing Unit) Databases



No Infringement Detected
 Details are updated in the LCUS and case is closed



Infringement Detected
 Infringement Notice issued to employer



Rectifiable infringement
 Employer is given a 10 working day period to regularise position



Non-rectifiable infringement
 If infringement cannot be regularised (i.e. employment of minors and employed while registering for employment), employer is prosecuted in court

Employer regularises position and case is closed



If position is not regularised, administrative fine is issued

If fine is not paid and employer's position is not regularised, case is referred to Principal Executive for further action



If fine is paid within 15 days and employer's position is regularised, case is closed



Case is referred for prosecution in court



Some cases may be considered as 'not worth pursuing' and so case is closed



Executive Summary

Chapter 1

Chapter 2

Chapter 3

Chapter 4

Concluding Remark

4.2.2 In examining the desk-investigation function, the audit team attended a walkthrough of how a desk-based investigation is carried out as per the process laid out in Figure 2. During this assessment, NAO noted that LCU officials tasked with this function were adequately knowledgeable and worked through the relevant processes fluently.

4.2.3 Insofar as on-the-ground inspections are concerned, the audit team accompanied each of the two LCU inspectorate teams, both made up of three officials, while conducting their work as per Figure 3. Onsite inspections carried out by LCU can be mainly categorised into three, namely routine, referrals or joint. Table 2 below explains each of these inspection types and presents each of their respective occurrences between 2019 and 2022.

Table 2 - Types of LCU onsite inspections and occurrence between 2019 and 2022

Type of onsite Inspection	Description	Number of Inspections			
		2019	2020	2021	2022
Routine Inspections	Routine inspections are carried out pro-actively, with candidates for inspection being selected through a risk-based matrix (process discussed in section 4.1.1)	3,711	3,255	2,925	3,517
Hotline and Referrals	These inspections are reactively carried out following receipt of a report (usually received via email, telephone or post) from a third party. These are generally focused to assess alleged infringement on the received report.	201	266	459	381
Joint Inspections	These are carried out in conjunction with other Government entities (such as the Malta Police Force, Transport Malta or Identita'). During these inspections, Jobsplus inspectors conduct an interview with the employees while the other entities perform checks to ensure that their entity's respective legislation is being complied with.	7	19	3	0

4.2.4 As part of its fieldwork, the audit team accompanied these two inspectorate teams on a number of randomly selected inspections of each of the abovementioned types. Specifically, the audit team observed routine inspections in four locations⁶, one joint inspection and two inspections triggered by a third-party report⁷. These inspections involved employers from various sectors, including transportation, catering, hospitality and vehicle servicing.

4.2.5 While accompanying LCU’s officials during routine inspections as well as those carried out following a report received by third parties, the audit team noted that these conducted the interviews in a professional manner and sought to collect information which would be required in their subsequent investigation. The audit team also noted that the modus operandi adopted during the inspection which LCU officials conducted jointly with the Malta Police Force and Identita’ took a more investigative stance. Specifically, NAO observed LCU officials being even more thorough in the preparatory work performed before conducting this visit, as well as during the inspection itself.

NAO Observation

4.2.6 NAO positively notes that LCU’s inspectors and desk investigators largely conduct their work fluently and in a diligent manner, which elevates the image of the inspectorate and leads to obvious positive outcomes.

4.3 LCU Grants Rectification Period prior to Enforcing Penalties

4.3.1 While referring to Chapter 594, the audit team noted that in the case of an offence against any provision in this law (with the exception of article 15 of this act, which lays out the conditions for the engagement of employees by Government and Government owned or controlled bodies and companies), perpetrators have the opportunity to avoid judicial proceedings if an administrative penalty, as assigned in this Act, is paid within a determined period. During meetings with the LCU however, NAO was informed that before issuing this administrative penalty, the inspectorate forwards an infringement notice to the respective defaulter, thereby giving the latter the opportunity to regularise the identified shortcoming within 10 days. LCU explained that, should the individual rectify the issues highlighted in the infringement notice within the stipulated time, no fines, penalties or proceedings are imposed. When queried by the audit team, the Unit confirmed that this opportunity is also afforded to repeat offenders. NAO was however further informed that this approach is only adopted in cases where the employer’s position can be regularised, such as cases of engagement of employment not being endorsed by Jobsplus, or termination of

⁶ One of these locations involved the LCU inspectorate team visiting the Malta international Airport to carry out inspections on taxi drivers. During this visit, the audit team observed 15 such inspections. It must be noted that, though carried out in the same location, each of these inspections essentially covers a distinct workplace.

⁷ The audit team planned to accompany LCU inspectors on three inspections triggered by a third-party report but one of these proved unsuccessful as the workplace in question could not physically be found.

employment being not duly declared. LCU further explained that other infringements such as working while registering, or employment of minors, are considered as non-rectifiable offences and, in such cases, the rectification period is not afforded to the defaulter, with Jobsplus proceeding with the relevant enforcement action straightaway.

- 4.3.2 The audit team however noted that the abovementioned rectification period is not supported by Chapter 594, with this law containing no related provisions. Discussing this issue with the audit team, LCU stated that this policy has been long adopted by Jobsplus following a decision by the then Board of Directors. When NAO asked for any documentation which would give further insight on the reasoning behind this policy, the inspectorate was not in a position to produce any to the audit team.

NAO Observation

- 4.3.3 It is of concern that the NAO was not provided with policy documentation regarding Jobsplus' practice of affording a rectification period to identified defaulters. This Office believes that such a lenient approach by the inspectorate may passively elicit an overall lax attitude towards compliance with employment regulations from those within the local employer cohort who are so inclined, proving unfair towards those abiding with this legislation. This becomes even more pressing when considering that this approach is also afforded to repeat offenders.

4.4 NAO Recommendations

- 4.4.1 This Office urges LCU to generate as well as to retain adequate and comprehensive records of the process by which it selects, and allocates priority, among inspection candidates. In so doing the Unit would be ensuring a complete and documented audit trail by which the consistent and comprehensive adherence to the set internal guidelines could be verified.
- 4.4.2 This Office highly recommends that Jobsplus reviews its practices related to the granting of a rectification period for defaulters to address identified shortcomings, as NAO perceives this to be diluting Jobsplus' function as a deterrent against irregular employment.

Concluding Remark

NAO understands that detection of and enforcement against irregular employment within the local scenario is a significantly challenging undertaking. Amongst the more prominent of these, is the fact that it is practically impossible for Jobsplus to have full visibility over all irregular employment engagements. This becomes even more problematic when one considers that the legislative framework within which the LCU operates can be improved as current work being undertaken in this regard by the Corporation also affirms. The foregoing implies that the Unit may not be positioned as strongly as it could be to optimally detect and process cases as required.

This Office is however concerned that Jobsplus Senior Management could not support its claims that it considers the number of its on-the-ground inspectors as sufficient with robust technical studies. While the NAO commends Jobsplus in its vision to strengthen the desk investigation element, it firmly believes that some cases of irregular employment can only be detected through on-the-ground inspections, particularly those which would be operating entirely under-the-radar. In view of this, even if NAO acknowledges that on-the-ground inspections are laborious and may, in instances, yield limited success for the effort employed, it considers this function as central to LCU's operations. To this end, while it urges the Unit to continuously endeavour to develop ways by which this could be carried out more cost-effectively, it also believes that this function needs to be bolstered. This Office also notes that this augmentation needs to also encompass the operational hours covered by the Unit. Likewise, Jobsplus needs to revisit its practice of allowing a rectification period for identified infringements, as it is NAO's considered opinion that this impinges significantly on the deterring effect that the inspectorate should be working to convey.

The above considerations coupled with initiatives currently underway (particularly insofar as the overhaul of the Corporation's IT systems is concerned) would significantly enhance Jobsplus' inspectorate function, making it an even more effective enforcer and, by implication, deterrent against irregular employment.

2023-2024 (to date) Reports issued by NAO

NAO Annual Report and Financial Statements

July 2023 National Audit Office Annual Report and Financial Statements 2022

NAO Audit Reports

February 2023 IT Audit: Active Ageing and Community Care – Ministry for Active Ageing

April 2023 Performance Audit: An assessment of capital projects at the University of Malta

April 2023 Performance Audit: Ensuring fair Non-Contributory Social Benefits and safeguarding against related fraud

May 2023 An audit of matters relating to the concession awarded to Vitals Global Healthcare by Government Part 3 | Steward Health Care assumes control of the concession

May 2023 An audit of matters relating to the concession awarded to Vitals Global Healthcare by Government Part 3 | Steward Health Care assumes control of the concession [Abridged]

June 2023 Follow-up Audits Report by the National Audit Office Volume I 2023

June 2023 IT Audit: Malta Food Agency

July 2023 A review of the implementation of Sustainable Development Goal 2: Addressing pre-obesity and obesity

October 2023 Review by the Auditor General on Fixed Assets and Stocks

November 2023 Follow-up Audits Report by the National Audit Office Volume II 2023

November 2023 Report by the Auditor General on the Workings of Local Government for the year 2022

November 2023 A review of the employment agreement of the Consultant to the Chief Executive Officer, Institute of Tourism Studies

December 2023 IT Audit: A Follow-up on the 2020 IT Audit – ICT Across Local Councils

December 2023 Report by the Auditor General Public Accounts 2022

January 2024 An audit of the contract for the provision of food and beverage services at the Malta Life Sciences Park