

DECISION TO WITHDRAW RECOGNITION

TO: (1) Chair of Governing Body
(2) Responsible Officer

OF: Accrediting & Assessment Bureau for Post-Secondary Schools Limited (AABPS)
Floor 1
224-226 Walworth Road
London
SE17 1JE

The Office of Qualifications and Examinations Regulation (Ofqual) has determined that the Accrediting & Assessment Bureau for Post-Secondary Schools Limited (AABPS) has failed to comply with the General Conditions of Recognition ('the Conditions') to which its recognition is subject.

AABPS has:

- 1) been given **Notice of Ofqual's intention to Withdraw its Recognition**
- 2) been provided with **reasons for Ofqual's proposal to Withdraw Recognition**
- 3) been **notified of the period during which, and the way in which, it may make representations about the proposal**; and
- 4) **has made written and oral representations which Ofqual has had regard to**

In accordance with its powers under s152 (2)(b) of the Apprenticeships, Skills, Children and Learning Act, 2009 ('the 2009 Act') Ofqual has decided to Withdraw AABPS' recognition in respect of every qualification or description of qualification which it is recognised to award or authenticate.

Ofqual gives notice that:

1. AABPS recognition in respect of every qualification or description of qualification which it is recognised to award or authenticate will be withdrawn on **Friday 2 May 2014**, effective from 24:00 (Midnight).
2. This date may be deferred in the event that AABPS seeks an Independent Review of Ofqual's decision to Withdraw Recognition.
3. The **grounds and reasons** on which Ofqual has based its decision to Withdraw Recognition are set out in the '**Reasons**' document labelled Appendix 1.
4. A bundle of the supporting evidence referred to has previously been served on AABPS. A further copy is available on request by contacting: enforcementcommittee@ofqual.gov.uk.

5. If you wish to make any representations concerning the factual accuracy of this notice you must notify Ofqual by 17:00 on **Monday 7 April 2014** in writing to enforcementcommittee@ofqual.gov.uk setting out the issue you consider is incorrect and your reasons.
6. Subject to any representations you wish to make regarding the factual accuracy of matters contained in the Notice and Reasons, **Ofqual intends to publish the Notice of Withdrawal of Recognition on or after Tuesday 8 April 2014** and will directly notify each of AABPS' approved centres.
7. **You may seek an independent review of Ofqual's decision to Withdraw your Recognition.**
8. If you wish to seek a review you must notify us in writing to: enforcementcommittee@ofqual.gov.uk within 30 days of the date of this Notice, before 17:00 on **Thursday 1 May 2014**.
9. Any request for a review must set out the reasons why you consider the process used to consider the decision to withdraw your recognition was unfair, or the decision was not reasonable, taking into account all the evidence available. You must provide any supporting materials that you seek to rely on as part of an independent review with your request.
10. New evidence will not normally be accepted unless it was not reasonably available at the time the decision was made.
11. **Ofqual has decided not to make saving or transitional provisions** in this case.

Dated **31 March 2014**

Signed Dennis Opposs, Director of Standards, Chair of the Enforcement Committee

NOTE:

- (1) If you choose not to make comments on the factual accuracy of the Notice and Reasons by the time and date specified above, we will publish them in their current form.
- (2) Ofqual has appointed a person to act as its Independent Reviewer who is not a member of Ofqual or Ofqual's staff. Any Independent Review, where requested, will normally take no more than 60 days. There is no further right of appeal to Ofqual following the determination of the Independent Review.
- (3) Service of a Notice of Withdrawal of Recognition does not affect your obligation to comply with the General Conditions of Recognition, any Regulatory Action currently in force, and other relevant regulatory documents.
- (4) All Ofqual's regulatory documents, including its Taking Regulatory Action Policy are available on our website at www.ofqual.gov.uk

REASONS FOR WITHDRAWAL OF RECOGNITION (31 MARCH 2014)

1 INTRODUCTION

1.1 Further to issuing a Notice of Intention to Withdraw Recognition to the Accrediting and Assessment Bureau for Post-Secondary Schools Limited (**AABPS**) on 19 December 2013 (the **Notice**) and having had regard to written representations made in response to the Notice by AABPS, centres and learners and oral representations made by AABPS at a hearing before Ofqual's Enforcement Committee on 5 February 2014, the Office of Qualifications and Examinations Regulation (**Ofqual**) has decided to Withdraw AABPS' recognition in respect of every qualification or description of qualification which it is recognised to award or authenticate.

2 REASONS SUMMARY

2.1 The Enforcement Committee (the **Committee**) has given full consideration to the written and oral representations made by AABPS and third parties in response to the Notice. Nothing in the representations has however provided any arguable reason for the Committee to revise its proposal to Withdraw AABPS' Recognition in full.

2.2 A description of Ofqual's role and powers, a summary of the background to this matter and full reasons for the decision to issue the Notice, are set out in full in Appendix 1 to the Notice. The reasons set out in Appendix 1 to the Notice are repeated and adopted in full as reasons for the Committee's decision to now Withdraw AABPS' Recognition.

2.3 A summary of the representations made by AABPS and the Committee's consideration of those representations is set out in section 3 below. The Committee's consideration of those representations and the specific reasons why they have not led the Committee to revise its proposal to Withdraw Recognition are set out in section 4.

2.4 In particular, the Committee has determined that AABPS has failed to comply with material parts of the four Special Conditions:

- (a) H7 assessment and awarding of relevant qualifications,
- (b) D5.3 requirements for regulated qualifications,
- (c) A9 implementation of revised policies and procedures that support the development, delivery and award of AABPS qualifications, and
- (d) G5.2 registration of new learners,

issued to it on 26 and 28 February 2013 (the **Special Conditions**), together with a large number of the General Conditions of Recognition (the **Conditions**) including matters in relation to the development of qualifications and standards of assessments, the ability to comply with regulatory documents, and dealing with Adverse Effects. Specific information in relation

to these non-compliances is set out in detail in **Tab 38** of the bundle of evidence which accompanied the Notice.

2.5 In summary, the Committee proposes to Withdraw AABPS' Recognition on the basis of:

- a) AABPS' failure to comply with the Special Conditions, Conditions and other Regulatory Documents such as the Regulatory Arrangements for the Qualifications and Credit Framework (the **QCF**);
- b) the apparent lack of AABPS' understanding of the effect of the Special Conditions and the Conditions and the requirement for recognised awarding organisations to comply with the Conditions and other regulatory documents;
- c) the previous regulatory actions Ofqual has taken to bring AABPS into compliance, in particular the failure by AABPS to comply with the Special Conditions, which were designed to allow AABPS an opportunity to resume their operations by implementing the policies and processes they had developed and to allow these together with their proposed awarding processes to be tested in a controlled manner with the oversight of Ofqual;
- d) AABPS' failure to cooperate with Ofqual, as evidenced by AABPS' failure to provide the full and accurate information requested of it and in particular the failure to notify Ofqual that it was holding an Academic Board meeting on 19 April 2013 to discuss the award of qualifications;
- e) the evidence that the qualifications offered by and awarded by AABPS to date are below the standard expected of those qualifications with the associated implications that this has both for the maintenance of standards in regulated qualifications, and for those learners who have registered to take these qualifications;
- f) AABPS' apparent unwillingness or inability to appoint a workforce with appropriate skills and experience to develop suitable qualifications and assessments which will address the issues with their qualifications identified by their own Academic Board and experts appointed by Ofqual; and
- g) the concern that although it has made some progress AABPS has been unable to take the necessary action to bring itself into compliance with the Special Conditions and Conditions indicating a lack of appropriate governance arrangements to oversee the necessary changes and/or a lack of capability to put such changes in place.

2.6 In making the decision to Withdraw AABPS' Recognition, the Committee gave particular weight to:

- a) the seriousness and extensive nature of AABPS' breaches of the Special Conditions and Conditions;

Appendix 1 - Reasons for Withdrawal of Recognition

- b) AABPS' history of non-compliance, the opportunities it has had to become compliant and the therefore reduced likelihood that AABPS is able to become compliant;
 - c) the wider adverse implications for the maintenance of standards and public confidence of allowing AABPS to continue to operate as a recognised awarding organisation; and
 - d) the risk of prejudice to future learners of permitting AABPS to continue to operate as a recognised awarding organisation when there was no reasonable prospect of AABPS becoming compliant with the Special Conditions and Conditions.
- 2.7 The Committee recognised that the decision to Withdraw Recognition could have a number of potentially adverse impacts on AABPS and third parties specifically:
- a) as there are current registered learners who would not be awarded a regulated qualification as a result of a decision to Withdraw AABPS' Recognition there is a consequential risk of prejudice to those learners, including risk of financial loss;
 - b) a risk of an adverse effect on AABPS' ongoing business, including risk of financial loss, of the decision to Withdraw Recognition; and
 - c) a risk of financial loss to centres who currently offer AABPS' qualifications
- 2.8 In making its decision the Committee determined that there are no further steps that can reasonably be taken by Ofqual in order to bring AABPS into compliance with its Special Conditions and Conditions.
- 2.9 The Committee has also considered whether there are any actions which could mitigate the effect on learners and centres. The Committee acknowledges that there is a risk that AABPS and some third parties could suffer financial loss as a result of this decision however in light of the factors set out in paragraph 2.6 above and Ofqual's statutory objectives to maintain standards and promote public confidence it has concluded that it remains reasonable and proportionate to Withdraw AABPS' recognition in full.

3 SUMMARY OF REPRESENTATIONS

- 3.1 AABPS made a number of written representations in response to the Notice and made oral representations as to why Recognition should not be Withdrawn at a hearing before the Committee on 5 February 2014.
- 3.2 AABPS' representations were extensive and are not repeated in full here. A summary of the main arguments made by AABPS is set out below.
- 3.3 The Committee has considered and had regard to all of the representations made by AABPS but does not consider that they provided any reasons for it to

revise its proposal. Details of the Committee's specific consideration of each of the points raised along with the reasons why the arguments made have not persuaded the Committee to revise its proposal are set out below in section 4.

- 3.4 AABPS made a range of representations. In order to respond to each representation and provide reasoning the Committee has summarised AABPS' representations as follows:
- (a) That Ofqual acted disproportionately, inconsistently and unfairly in its interactions with AABPS prior to February 2013;
 - (b) That in deciding to withdraw the regulatory actions which were in place prior to February 2013 (which were the subject of Judicial Review action) and subsequently imposing the Special Conditions, Ofqual created a legitimate expectation that it would allow AABPS to operate. AABPS acted to its detriment in investing in IT and other aspects of its business in reliance that it would be able to operate;
 - (c) That AABPS is not, in fact, in breach of the Conditions or Special Conditions as identified by the Committee;
 - (d) That Ofqual acted disproportionately, inconsistently and unfairly in imposing, monitoring and taking regulatory action to enforce the Special Conditions imposed in February 2013;
 - (e) That AABPS has wrongly been denied the opportunity to demonstrate that it has complied with the Special Conditions and/or effectively to challenge specific assertions made by Ofqual as to its continuing non-compliance;
 - (f) That AABPS was recognised by Ofqual as a regulated awarding body and therefore deemed to be able to operate at an appropriate level;
 - (g) The AABPS's qualifications were accredited and therefore were deemed fit for purpose;
 - (h) That AABPS will suffer financial loss as a result of a decision to Withdraw; and
 - (i) That the Committee should exercise its discretion and allow AABPS more time to bring itself into compliance.
- 3.5 The Committee also received letters of representation from two centres namely St. Stephen's College and Forbes Graduate School, of the same address in Hayes, Middlesex. Both sets of representations were signed by Prof R. K Gupta. Both letters stated that Prof. Gupta had been delegated to make representation on behalf of all AABPS' centres. On 29 January 2014, Mr Gupta was contacted by the clerk to the Committee and asked to confirm which centres the representation covered; however no evidence of any delegation from other AABPS centres was received.

- 3.6 The representations made by Prof. Gupta can be summarised as follows:
- (a) The Withdrawal of AABPS' recognition will cause financial loss to students as they will have paid tuition fees but will not then be awarded a regulated qualification; and
 - (b) It is not possible to transfer these students to alternative qualifications providers.
- 3.7 The Committee accepted as implicit in this representation that there is also a risk of financial loss to this centre and other AABPS' centres of the decision to Withdraw AABPS' recognition.
- 3.8 An undated and unsigned email representation was received purportedly on behalf of a student. The student representation indicates that the letter was written on behalf of all AABPS students but no evidence of any delegation or authority has been provided. The representation was received from AABPS not from the student's personal e-mail account.
- 3.9 The representations made by the purported student can be summarised as follows:
- (a) The Withdrawal of AABPS' recognition will cause financial loss to students in relation to tuition fees already paid.
 - (b) Students will incur further tuition costs of enrolling with a new provider.

4 THE COMMITTEE'S CONSIDERATION OF AABPS' AND THIRD PARTY REPRESENTATIONS

- 4.1 The Committee has considered each of the above representations in turn. The reasons why they are not accepted as persuasive so as to lead the Committee to change its proposal to Withdraw AABPS' Recognition are set out in this section.
- (a) That Ofqual acted disproportionately, inconsistently and unfairly in its interactions with AABPS prior to February 2013
- 4.2 In making its decision to Withdraw Recognition, the Committee first considered whether AABPS had failed to comply with one or more of the Conditions or Special Conditions which it is subject to. The breaches which have been identified are set out in full at **Tab 38** of the bundle of evidence which accompanied the Notice. These non-compliances have all occurred since February 2013.
- 4.3 AABPS has made extensive representations in relation to matters which took place prior to February 2013. Although these matters are relevant when considering AABPS' past history of compliance for the purposes of considering the proportionality of the Committee's decision to Withdraw Recognition, they are not otherwise directly relevant and the Committee has

not taken them into account in relation to considering the extent of AABPS' current non-compliance.

- 4.4 The Committee also notes that AABPS issued judicial review proceedings against Ofqual in relation to regulatory decisions made during 2012. Permission to bring those proceedings was refused by the Court on a number of grounds. In its decision, the Court adopted Ofqual's grounds of defence as the reasons for dismissing the application. The Committee does not therefore accept that Ofqual made any factual or procedural errors in relation to its decisions during 2012 that should lead the Committee to consider any of that action to be inappropriate or to place any less weight on that history with regard to AABPS' long history of non-compliance.
- 4.5 The Committee does not therefore consider that AABPS' representations with respect to matters that pre-date February 2013 provide any reasons to reconsider the proposal to Withdraw Recognition.
- (b) That in deciding to withdraw the regulatory actions which were in place prior to February 2013 (which were the subject of Judicial Review action) and subsequently imposing the Special Conditions, Ofqual created a legitimate expectation that it would allow AABPS to operate. AABPS acted to its detriment in investing in IT and other aspects of its business in reliance that it would be able to operate.
- 4.6 This is not itself a ground for objection to Withdrawal of Recognition. The Committee is satisfied that the issue of Special Conditions was a genuine attempt to allow AABPS to test the policies and procedures it had developed during the period of the previous regulatory action and for AABPS to be able to award qualifications under the supervision of Ofqual. The matter did not proceed as AABPS did not comply with the Special Conditions.
- (c) That AABPS is not, in fact, in breach of the Conditions or Special Conditions as identified by the Committee
- 4.7 AABPS has made representations in both in its written and oral submissions that it is not, in fact, in breach of the Conditions or Special Conditions as identified by in the Notice.
- 4.8 The Committee accepts the Notice was not made on the basis that AABPS is in breach of every aspect of the Conditions and Special Conditions however this is not relevant to its decision. This is because Conditions and Special Conditions must be complied with in full. The Committee needs to be satisfied that AABPS has failed to comply with at least one Condition. The Committee has seen ample evidence that AABPS has failed to comply with a number of Conditions and multiple elements of the Special Conditions. AABPS has been provided with a full analysis of the range of breaches along with supporting evidence.
- 4.9 Although AABPS has made representations that it is not in breach, despite having had every opportunity to do so, no substantive evidence of compliance

has been provided to Ofqual during the last 12 months and no evidence of compliance has been provided to the Committee in response to the information set out in the Notice. AABPS notified the Committee at the start of the hearing that it had brought evidence of its comprehensive review of all its qualifications.

- 4.10 The Committee exercised its discretion not to permit late evidence to be considered. AABPS had been given sufficient time to submit evidence and had been advised of the time limits, AABPS had not previously referred to these documents; the volume of documents which AABPS proposed to be submit at the hearing was excessive; no reference was made to the completion of these reviews at earlier stages and in order to effectively deal with these Ofqual would have needed to defer the hearing and refer the documentation to subject experts which the Committee considered would be disproportionate in view of the other evidence available.
- 4.11 The Committee does not therefore place any weight on these representations in relation to its decision and has determined that the breaches detailed in the Notice and as set out in more detail in the breaches and evidence document at **Tab 38** of the bundle of evidence which accompanied the Notice have been adequately made out and are sufficiently supported by evidence.
- (d) That Ofqual acted disproportionately, inconsistently and unfairly in imposing, monitoring and taking regulatory action to enforce the Special Conditions imposed in February 2013
- 4.12 AABPS have made a number of representations that can be categorised as allegations that Ofqual has not acted appropriately in relation to the regulatory action that it has taken. These are representations that substantially relate to allegations of purported failures in Ofqual's processes and procedures rather than in relation to the specific breaches that are identified in the Notice and supporting documents.
- 4.13 In particular AABPS has made a representation that Ofqual stated that it would review the Special Conditions after a period of 3 months. In fact this review was completed just before the expiry of 3 months. AABPS has argued that this was unfair.
- 4.14 Special Conditions H7, D5.3 and A9 were imposed on 26 February 2013. Special Condition G5.2 was imposed on 28 February 2013 (**tab 2**). The document which confirmed the decisions to impose these Special Conditions noted that they would be reviewed after 3 months. The review was completed at a pre-arranged meeting on 22 May 2013, less than one week before the expiry of 3 months.
- 4.15 It appears that AABPS has interpreted the 3 month review as a time period from when Ofqual carried out its first monitoring visit to allow AABPS to become compliant. This is not however a reasonable interpretation: AABPS was obliged to become compliant with its Special Conditions as soon as possible. It is clearly stated in the Special Conditions that they take effect

from 26 February 2013 (Special Conditions H7, D5.3 and A9) and 28 February 2013 (Special Condition G5.2). Their effect was therefore immediate. The purpose of the 3 month review was to consider whether the Special Conditions were still required, whether these could be removed or amended and what, if any, further action could be required.

- 4.16 The Committee acknowledges that the review of the Special Conditions was completed just prior to the expiry of 3 months. The Committee does not however consider that this is material or that it gave rise to any prejudice to AABPS. This is because having considered this point, the Committee's view is that:
- (a) AABPS should have taken steps to comply with the Special Conditions as soon as possible. The three month review date was an administrative checkpoint for Ofqual to consider if any further action might be required.
 - (b) The review found that AABPS remained non-compliant with Special Conditions H7, D5.3 and A9 and part of Special Condition G5.2 and identified a range of further breaches of Conditions that were of a degree of seriousness to warrant further regulatory action;
 - (c) In light of this, even if the review had taken place a week later, there is no reasonable prospect that there would have been a different outcome; and
 - (d) had AABPS been able to demonstrate compliance it could have requested that the Special Conditions be reviewed and lifted at any point after May 2013 and this did not happen.
- 4.17 The reasons why the Special Conditions were not revoked was explained in a letter to AABPS from Ofqual's Head of Entry, Exit and Enforcement dated 22 May 2013 (**Tab 16**). AABPS has remained non-compliant with its Special Conditions and Conditions since that point.
- 4.18 This persistent non-compliance led Ofqual to issue a Direction to AABPS on 1 August 2013 in order to secure compliance with Special Condition D5.3.
- 4.19 AABPS has not provided any material evidence that Ofqual has acted in any way improperly. The Committee also notes that at the time of the hearing, AABPS had issued judicial review proceedings claiming a number of procedural improprieties by Ofqual and that Ofqual had filed a defence to this claim refuting these allegations. The Committee was therefore satisfied that AABPS' claim was without merit. The details of the claim are not repeated here as they are well known to AABPS. However, the Committee notes that the Court refused permission for the judicial review on 5 March 2014. It is the Committee's view therefore that Ofqual has acted properly and gives no weight to any of AABPS' representations that Ofqual acted improperly.
- (e) That AABPS has wrongly been denied the opportunity to demonstrate that it has complied with the Special Conditions and/or effectively to

challenge specific assertions made by Ofqual as to its continuing non-compliance.

- 4.20 AABPS has made a number of representations that it was effectively denied opportunities to demonstrate compliance or to challenge Ofqual's analysis of the standards of its qualifications.
- 4.21 In particular AABPS has made representations that it considered the letter from Ofqual's Head of Entry, Exit and Enforcement, dated 22 May 2013 (tab 16), to be an instruction not to provide any further information to Ofqual.
- 4.22 The Committee has reviewed the letter and does not accept that this can be a reasonable interpretation of its content. The letter states that:
- "For the avoidance of doubt, we do not require any further information from you at this time. We anticipate we will complete our review of the information you have supplied so far and make a decision regarding possible further action by 14 June 2013"*
- 4.23 This statement was clearly made in the context of decisions in relation to further regulatory action and cannot be reasonably interpreted as a direction not to supply further information.
- 4.24 AABPS has made a representation that they were unable to challenge the content of an Ofqual report based on subject expert reviews who were commissioned by Ofqual to consider candidate work provided by AABPS. AABPS contend that Ofqual did not allow AABPS to challenge the report. The Committee notes however that in the covering email to AABPS enclosing the report, AABPS was invited to make comments and was given adequate time to do so (**Tab 21**). AABPS did not however make any comments.
- 4.25 AABPS has made representations that Ofqual only reviewed AABPS' Level 5 qualifications and not AABPS' level 6 and 7 qualifications. Ofqual did however review AABPS' level 6 and 7 qualifications. Ofqual's report was sent to AABPS on 12 July 2013 and AABPS was invited to make comments but did not do so (**tab 26**).
- 4.26 AABPS have further argued that it should have been entitled to make representations directly to Ofqual's subject experts. Ofqual's subject experts are not however decision makers. They provide advice to Ofqual to assist Ofqual in assessing levels of compliance. Decisions remain with Ofqual. AABPS clearly had an opportunity to make comments on these reports but did not do so. The Committee does not therefore consider that AABPS can reasonably argue that they were disadvantaged by not having direct access to the subject experts particularly when AABPS clearly had the opportunity to comment on Ofqual's reports and did not do so.
- 4.27 The Committee is satisfied that AABPS has had the opportunity both to engage with Ofqual and to demonstrate compliance if it had been capable of doing so.

(f) That AABPS was recognised by Ofqual as a regulated awarding body and therefore deemed to be able to operate at an appropriate level

- 4.28 One of AABPS' representations is that because AABPS was recognised as an awarding organisation this should be sufficient to show that AABPS has met all the necessary requirements and that it has resources and capability to award qualifications that it was recognised for.
- 4.29 It is firmly the Committee's view that this representation fundamentally misunderstands the role and purpose of recognition. For context a summary of Ofqual's role and powers can be found at paragraphs 2 – 17 of Appendix 1 to the Notice.
- 4.30 AABPS was recognised before the current Criteria for Recognition and General Conditions of Recognition came into force in July 2011. From that time, all awarding organisations regardless of when they were recognised were obliged to become and remain compliant with the Conditions. Ofqual held extensive workshops during summer 2011 and visited all regulated awarding organisations, including AABPS, to discuss the new requirements. An AABPS representative attended the workshop on the General Conditions which were held when they were introduced.
- 4.31 All recognised awarding organisations will have been recognised by Ofqual or its predecessor. This fact clearly has no bearing on the degree to which those organisations may or may not be compliant with the Conditions at any point in time. Recognised awarding organisations, including AABPS, are obliged to comply with the Conditions on an on-going basis.
- 4.32 The Committee has therefore concluded that this argument is misconceived, is not relevant to its decision and places no weight on it.

(g) AABPS's qualifications were accredited and therefore were deemed fit for purpose

- 4.33 AABPS has made a representation that as its qualifications were accredited by Ofqual and approved by a Sector Skills Council and that they have therefore been deemed fit for purpose.
- 4.34 Paragraphs 9 and 10 of the reasons for proposing to Withdraw Recognition issued on 19 December 2013 (Appendix 1 to the Notice) explains the role and purpose of accreditation and how, regardless of an accreditation decision, awarding organisations including AABPS are obliged to ensure that their qualifications remain compliant with the Conditions. In this case, there is clear evidence that AABPS qualifications are not compliant with the Conditions. The fact that at a point in the past they were accredited is not therefore relevant.
- 4.35 AABPS has also argued that it is the Sector Skills Council that determines standards in vocational qualifications and they have approved AABPS qualifications, and that Ofqual's duty is to ensure that the awarding body has robust quality assurance. AABPS has stated that it is for the Sector Skills

Council to ensure that AABPS' qualifications and assessment strategies meet the required standard. AABPS is incorrect in its position in this regard.

4.36 It is one of Ofqual's statutory objectives to secure standards in qualifications, and requirements to deliver fit for purpose qualifications are fundamental requirements of the Conditions. In addition, the Committee notes a matter of fact that it is not the role of Sector Skills Councils to ensure that AABPS qualifications and assessment strategies meet the required standard but that this is an obligation on AABPS itself.

4.37 The Committee considers that AABPS' clear lack of understanding of Ofqual's requirements that these representations demonstrate clearly illustrates the general lack of ownership and responsibility by AABPS of the quality of its qualifications.

(h) That AABPS will suffer financial loss as a result of a decision to Withdraw

4.38 The Committee notes AABPS' representation that one effect of Withdrawing Recognition will be that its overseas students would not want to take AABPS' qualifications. The Committee can see that this would potentially have a negative effect on AABPS' business.

4.39 The Committee understands that any decision to Withdraw Recognition from an awarding organisation could damage its business in a potentially significant way. The Committee takes any such decision very seriously and in line with Ofqual's Taking Regulatory Action policy will only make such a decision if it is proportionate to do so, taking into account the potential detriment to the awarding organisation.

4.40 In this case, for the reasons set out in this Appendix and for the reasons in Appendix 1 to the Notice, the Committee is satisfied that it remains proportionate to Withdraw AABPS' Recognition.

(i) That the Committee should exercise its discretion and allow AABPS more time to bring itself into compliance

4.35 AABPS has asked the Committee to exercise discretion to allow AABPS further time to become compliant. Representations were made that it has completed its review of qualifications and had recruited staff with expertise.

4.36 The Committee notes AABPS' long history of non-compliance despite the numerous opportunities AABPS has had to bring itself into compliance. The Committee's also lacks confidence that AABPS has either the competence or capacity to bring itself into compliance. The Committee considers that there is a serious risk of adverse consequences to qualifications standards and public confidence in regulated qualifications if AABPS was to continue to be recognised. For these reasons the Committee is not minded to exercise its discretion to allow AABPS further time to become compliant.

Third party representations

- 4.37 The third party representations received by the Committee are summarised at paragraphs 3.5 to 3.9 above. The Committee had given an opportunity for third parties who had made representations to attend the hearing as observers but this had been declined. The Committee notes that the one representation sent in by AABPS was from a Learner and that the two Centre representations received were made by the same named individual. The Committee therefore treats these representations with some caution.
- 4.38 The Committee does however accept that there is a risk that third parties could suffer financial loss and that Learners may need to enrol on different qualifications, possibly at different Centres, in order to complete their studies. The Committee accepts that Withdrawal of Recognition could therefore disadvantage some Learners and Centres.
- 4.39 However, given the evidence before the Committee of AABPS' failure to comply with the Conditions and Special Conditions, its lack of capability to provide regulated qualifications that are fit for purpose, there would be a far greater impact if the Committee did not Withdraw AABPS' Recognition.
- 4.40 The Committee also understands that our decision could have an impact upon any overseas Learners registered to take ABBPS' qualifications or Learners who may be present in the UK with a Tier 4 student visa. This group is likely to comprise persons of minority ethnic or national origin. We have considered our duties under section 149 of the Equality Act 2010 with regard to these learners and have concluded that, in view of the seriousness of the issues outlined above; the withdrawal of the recognition outweighs any adverse impact.
- 4.41 In this case, for the reasons set out in this Appendix and for the reasons in Appendix 1 to the Notice, the Committee is therefore satisfied that it remains proportionate to Withdraw AABPS' Recognition.

5 Saving or transitional provisions

- 5.1 Ofqual has not received representations regarding any saving or transitional arrangements. Ofqual wrote to all centres and awarding organisations informing of them of its proposal to Withdraw Recognition from AABPS and suggested potential transfers to other awarding organisations but has not received any expressions of interest from other awarding organisations to accept Learners onto alternative courses of study.
- 5.2 The Committee has therefore decided not to make any saving or transitional provisions in this matter.
- 5.3 The Committee is aware that should a learner, centre or another awarding organisation approach Ofqual regarding the possible transfer of learners to another awarding organisation's qualifications this will be directed to the appropriate section of Ofqual and considered as part of our normal business.

6 PUBLICATION OF NOTICE AND TIMESCALES

- 6.1 Ofqual will normally publish its regulatory action and propose to publish the decision to Withdraw Recognition. The Committee however considers that AABPS should have a brief opportunity to make comments on the factual accuracy of the decision notice and the reasons before publishing.
- 6.2 The Committee have accordingly set the following timescales:
- a) AABPS recognition in respect of every qualification or description of qualification which it is recognised to award or authenticate will be withdrawn on **Friday 2 May 2014**, effective from 24:00 (Midnight).
 - b) This date may be deferred in the event that AABPS seeks an Independent Review of Ofqual's decision to Withdraw Recognition.
 - c) If you wish to make any representations concerning the factual accuracy of this notice you must notify Ofqual by 17:00 on **Monday 7 April 2014** in writing to enforcementcommittee@ofqual.gov.uk setting out the issue you consider is incorrect and your reasons.
 - d) Subject to any representations you wish to make regarding the factual accuracy of matters contained in the Notice and Reasons, Ofqual intends to publish the Notice of Withdrawal of Recognition on or after **Tuesday 8 April 2014** and will directly notify each of AABPS' approved centres.
 - e) You may seek an independent review of Ofqual's decision to Withdraw your Recognition. If you wish to seek a review you must notify us in writing to: enforcementcommittee@ofqual.gov.uk within 30 days of the date of this Notice, before 17:00 on **Thursday 1 May 2014**.