

NOTICE OF INTENTION TO IMPOSE A MONETARY PENALTY

In accordance with Section 151A(2) of the Apprenticeships, Skills, Children and Learning Act 2009, and pursuant to its obligations under Section 151A(4) and 151A(5) of that Act, Ofqual gives notice that it proposes to impose a monetary penalty on Industry Qualifications Ltd (IQ) in the sum of **£50,000**.

- i. Ofqual's reasons for proposing to impose such a penalty are set out in the Statement of Reasons which has been served on IQ.
- ii. IQ has the opportunity to make representations in respect of Ofqual's provisional conclusions and its proposal to impose such a penalty.
- iii. Interested Parties have the opportunity to make representations in respect of Ofqual's proposal to impose such a penalty, as set out in the Summary Statement of Reasons.
- iv. Representations must be made before 4pm on 20 March 2017. Representations should be addressed to Matthew Humphrey, Associate Director, Legal Moderation and Enforcement and sent by email to EnforcementCommittee@Ofqual.gov.uk.
- v. Ofqual will consider its final decision on or after 20 March 2017.

This decision was made on 17 February 2017 by an Ofqual Enforcement Committee and is signed by Chair of that Committee on behalf of the Committee.

Signed:

Date: 20 February 2017

Anne Heal

Chair of the Enforcement Committee

Enforcement Committee:

Anne Heal

Maggie Galliers

Tom Taylor

**Proposed decision to impose a monetary penalty in accordance with section
151A(2) of the Apprenticeships, Skills, Children and Learning Act 2009**

Summary Statement of Reasons

Ofqual's Role and Powers

- 1 The Office of Qualifications and Examinations Regulation (Ofqual) may impose a monetary penalty on a recognised body (an awarding organisation) if it appears to Ofqual that the awarding organisation has failed to comply with the General Conditions of Recognition set and published by Ofqual (the Conditions).
 - 1.1 Ofqual may not impose a monetary penalty in an amount which exceeds 10% of the awarding organisation's turnover.
 - 1.2 Industry Qualifications Limited (IQ) is an awarding organisation regulated by Ofqual. Ofqual considers that IQ breached the Conditions in relation to its approval and management of a college, the investigation of suspected malpractice at the college and the actions it took in respect of persons alleged to have been concerned in such malpractice.

The Incident

- 2 On 27 February 2015 IQ notified Ofqual that an event had occurred (or was likely to occur) which could have an adverse effect. IQ explained that the BBC was intending to broadcast footage which alleged that a college had caused IQ to award qualifications to a number of learners in circumstances which the BBC alleged were fraudulent. The awards were said to have been made across four IQ qualifications relevant to the private security industry.
- 2.1 Between 27 February 2015 and 22 April 2015, IQ conducted an investigation into the alleged events at the college. During the course of that investigation IQ was provided with a draft statement, said to have been prepared by the Head of the college, in which it was alleged that 241 learners had been complicit in malpractice.
- 2.2 Between 20 May 2015 and 16 September 2015 Ofqual conducted an investigation into IQ's management of the alleged events at the college.
- 2.3 On 26 February 2016 Ofqual gave a direction to IQ because Ofqual considered that IQ had breached the Conditions in connection with its management of the alleged events at the college and considered that it was necessary for IQ to take specific steps to return to compliance.
- 2.4 On 31 March 2016, IQ was informed that Ofqual had begun the process which might lead to further regulatory action in respect of IQ.
- 2.5 The Ofqual Enforcement Committee considered this case on 4 November 2016, 12 January 2017, 18 January 2017, 25 January 2017 and 17 February 2017.

Provisional Conclusions – Issues of Fact

3 Following consideration of the relevant evidence, the Ofqual Enforcement Committee has reached the following provisional conclusions on the principal issues of fact.

3.1 **Approval of the college:** Ofqual considers that IQ's approval of the college to deliver its qualifications was defective, because:

- (a) IQ failed to identify the potential for conflicts of interest to arise because the Head of the college, who was both an assessor and moderator in respect of IQ qualifications taken by learners at the college, also had a financial interest in the college, such that it was in his interest for learners to pass assessments;
- (b) Having failed to identify potential conflicts of interest, IQ failed to take any steps to manage such conflicts of interest or to prevent those conflicts of interest from having adverse effects.

3.2 **Monitoring of the college:** Ofqual considers that IQ's monitoring of the college prior to the incident was defective because:

- (a) Between February 2012 and the date of the incident, the External Verifier engaged by IQ to monitor the delivery of qualifications at the college reviewed only 41 examples of learner work which had been marked by the college in respect of the 5000 qualifications which IQ had awarded to the centre's learners;
- (b) The proportion of learner work reviewed by the External Verifier was substantially less than was required by IQ's policy at the material time in respect of the moderation of learner work marked by the college;

- (c) IQ failed to recognise that its External Verifier had not complied with its policy in respect of the moderation of learner work marked by the college;
- (d) IQ failed to recognise from the reports submitted to it by the External Verifier that learners were being assessed on particular content by the tutor who had delivered that content and in circumstances where the tutor had a personal interest in the outcome of the assessment.

3.3 Investigation of the incident: Ofqual considers that IQ's investigation of the alleged malpractice at the college was defective because:

- (a) IQ's investigation should properly have included (at least) the following further steps:
 - (i) Requiring the college to deliver-up all relevant evidence in respect of the potentially affected qualifications, including learner details, records, portfolios and other assessment evidence;
 - (ii) Reviewing more than approximately 200 of the 5000 potentially affected learner portfolios;
 - (iii) Developing an effective sampling methodology prior to selecting learner portfolios for review;
 - (iv) Reviewing the college's financial records in respect of more than 70 of the 5000 potentially affected learners.
- (b) IQ did not put in place adequate systems for recording key governance elements, in that it had not maintained and could not produce to Ofqual:
 - (i) Records of its investigative methodology;
 - (ii) Records of the decisions it made during the investigation;

- (iii) Records of the findings it made during or following the investigation.

3.4 **The allegations made by the Head of the college:** Ofqual considers that IQ's response to the allegations made by the Head of the college was flawed because:

- (a) IQ wrote to each of the learners affected by those allegations, in April 2015, stating that the qualifications previously awarded to those learners had been withdrawn;
- (b) IQ told the Security Industry Authority (SIA) that it had withdrawn qualifications previously awarded to the learners affected by the allegations;
- (c) When it wrote to the affected learners and to the SIA, IQ had seen only an unsigned draft of the statement made by the Head of the college. No signed version was available until 7 December 2015;
- (d) When it wrote to the affected learners and to the SIA, IQ had not adequately investigated whether or not the allegations made in the (draft) statement were true, and in particular:
 - (i) IQ had not notified the learners named in the (draft) statement that an allegation of malpractice had been made against them and had not permitted those Learners to respond to that allegation;
 - (ii) IQ had not reviewed portfolios in respect of each of the learners named in the (draft) statement;
 - (iii) IQ had not sought to fill or reconcile the significant gaps and inconsistencies in the (draft) statement;

- (iv) IQ had not reviewed the documentary evidence referred to in the (draft) statement.

3.5 **Appeals process:** Ofqual considers that the process IQ put in place to consider appeals by those learners to whom it sent its (April 2015) letter was flawed because:

- (a) The standard of proof required by IQ was disproportionately high;
- (b) IQ did not give adequate and individual consideration to the arguments raised in each of the appeals which were made;
- (c) Appeal decisions were taken by the persons who made the decisions being appealed against;
- (d) Appeal decisions did not involve any person independent of IQ;
- (e) The appeals process was not reasonably accessible to all of those learners who might have wished to appeal.

Provisional Conclusions – Breach of the Conditions

4 Following consideration of the relevant evidence, Ofqual has provisionally concluded that IQ breached the Conditions as a result of the defects and failings summarised in the preceding section.

4.1 **Approval of the college:** Ofqual considers that IQ breached the following Conditions in connection with its decision to approve the college to deliver IQ qualifications:

(a) Condition A4.2(a) – because it did not identify conflicts of interest concerning a person connected to the delivery of its qualifications at the college;

(b) Condition A4.2(b) – because it did not identify scenarios in which it was reasonably foreseeable that a conflict of interest would arise in future in connection with the college;

(c) Condition A4.3 – because it did not take steps to ensure that a conflict of interest which related to it, in respect of the college, would not have an adverse effect.

4.2 **Monitoring of the college:** Ofqual considers that IQ breached the following Conditions in connection with its monitoring of the college:

(a) Condition A4.5, because it failed to take steps to avoid aspects of assessment being undertaken by tutors with a personal interest in the result of such assessments;

(b) Condition H2.1, because it failed to have in place effective arrangements for the moderation of assessments marked at the college.

4.3 **Investigation of the incident:** Ofqual considers that IQ breached the following Conditions in connection with its investigation of the alleged events at the college:

- (a) Condition A5.2(b), because IQ did not establish and maintain adequate data and information;
- (b) Condition A8.2(a), because IQ did not establish so far as possible whether the malpractice which it suspected might have occurred had taken place;
- (c) Condition A8.3(a) and A8.3(b) because:
 - (i) IQ's written procedures for the investigation of malpractice were not at the material time up to date (A8.3(a));
 - (ii) IQ did not ensure that its investigation into the malpractice it suspected at the college was rigorous and effective (A8.3(b)).

4.4 **The allegations made by the Head of the college:** Ofqual considers that IQ breached the following Conditions in connection with its response to the allegations made by the Head of the college:

- (a) Condition A6.1, because IQ did not take all reasonable steps to identify the risks associated with its response to those allegations;
- (b) Condition A7.1(a), because IQ failed to take all reasonable steps to mitigate adverse effects once it had been notified that a relevant incident had occurred in connection with its response to those allegations;
- (c) Condition A8.2(a), because IQ did not establish so far as possible whether the malpractice alleged by the Head of the college had taken place;
- (d) Condition A8.3(a) and A8.3(b) because:
 - (iii) IQ's written procedures for the investigation of malpractice were not at the material time up to date (A8.3(a));

- (iv) IQ did not comply with the written procedures it had established for the investigation of malpractice (A8.3(a));
- (v) IQ did not ensure that its investigation into the allegations made by the Head of the college was rigorous and effective A8.3(b).

4.5 **Learner Appeals:** Ofqual considers that IQ breached the following Conditions in connection with the arrangements it put in place for appeals to be made by learners affected by the decision set out in its (April 2015) letter:

- (a) Condition 1.1(c) - because the appeals procedure it had in place did not provide for the matters specified in Condition I1.2;
- (b) Condition I1.3 – because the appeals procedure it had in place was not published.

Proposed Regulatory Action

- 4.2 Ofqual has published its policy *Taking Regulatory Action (2012)* (the TRA policy) which provides that in addition to considering its statutory objectives and duties where an awarding organisation is in breach of its Conditions, Ofqual will act as appropriate to:
- (a) Make sure the awarding organisation takes a particular course of action to comply with the Conditions;
 - (b) Prevent the awarding organisation from gaining from any breach of the Conditions;
 - (c) Deter other awarding organisations from similar breaches; and
 - (d) Promote public confidence in qualifications through visible, appropriate and effective regulatory action.
- 4.3 Ofqual considers that the breaches in this case indicate that it is necessary to take action to make sure IQ does not breach its Conditions in the future, to prevent IQ from gaining from its breaches (though avoided costs), to deter other awarding organisations from similar breaches and to promote public confidence.
- 4.4 Ofqual considers that, in view of material disclosed by IQ, it is not necessary to take action in this case in respect of IQ's breach of Condition A4.5.
- 4.5 The TRA policy states that having established that an awarding organisation has breached a Condition, Ofqual will go on to consider:
- (a) whether, in consideration of all actions available to Ofqual, it is appropriate to impose a monetary penalty, and
 - (b) if so, what amount is reasonable in all the circumstances of the case.

- 4.6 Ofqual has considered the factors set out in the TRA policy which it will take into account in deciding whether to impose a monetary penalty. Ofqual has provisionally concluded that this is a case which is so serious that it is necessary to impose a monetary penalty.
- 4.7 Ofqual has identified five separate but linked episodes of non-compliance in this case: two reflect serious failures adequately to investigate potential malpractice, two reflect serious failures to take action which might conceivably have prevented malpractice or caused it to be detected at an early stage and one of which deprived learners of the opportunity to appeal.
- 4.8 Ofqual considers that any monetary penalty in this case must reflect the five episodes of non-compliance and must incorporate the recovery of any costs which IQ avoided by reason of its breaches.
- 4.9 Taken together, the individual elements would suggest an initial figure, for an awarding organisation of IQ's size and scope, in the range £74,000 to £124,000. That figure would include Ofqual's estimate that IQ avoided costs of £14,000.
- 4.10 However, Ofqual considers that it is necessary for the initial figure also to take into account:
- (a) The fact that IQ has commenced a comprehensive review its processes and procedures to secure ongoing compliance, and the desirability of allowing IQ to commit resources to that review;
 - (b) The fact that Ofqual proposes to impose a single monetary penalty in respect of the five episodes of non-compliance.
- 4.11 In the circumstances, Ofqual will adopt an initial figure of £60,000.
- 4.12 Ofqual has considered whether the initial figure should be adjusted in light of any mitigating or aggravating factors in this case.

4.13 The TRA policy sets out a number of factors which may increase the amount of the penalty, although the policy recognises that there might be other aggravating factors. In this case, Ofqual considers the following to be aggravating factors:

- (a) The longevity of the breach in respect of the moderation of centre marked assessment, particularly because the failure to comply with IQ's policy for a period of years was not detected by IQ during that period;
- (b) That IQ's breaches in respect of the allegations made by the Head of the college involved a failure to comply with IQ's own malpractice policy;
- (c) That each of IQ's breaches involved decisions taken by members of its senior management team;
- (d) That IQ took no proactive steps to remedy the effect of its breaches in respect of the 241 learners named by the Head of the college, and took such steps only when Ofqual gave a direction requiring it to do so.

4.14 Ofqual considers that the following mitigating factors might be available in this matter:

- (a) That IQ has begun a comprehensive review of its operations in response to this case;
- (b) That IQ co-operated with Ofqual's investigation and made admissions in respect of issues of fact and questions of breach during the course of the enforcement case;
- (c) That IQ has a good history of regulatory compliance.

4.15 Ofqual considers, however, that the weight of those factors in respect of the amount of any monetary penalty is limited as follows:

- (a) Ofqual has already taken into account the fact that IQ has begun a comprehensive review, in its decision that a monetary penalty was the appropriate outcome and in respect of the calculation of an initial amount;
- (b) The weight of IQ's admissions is undermined by subsequent correspondence in which IQ sought to resile from a number of those admissions, which has required Ofqual to make specific determinations in respect of some questions of fact and issues of breach.

4.16 In the final analysis, although Ofqual considers the aggravating factors outweigh the mitigating factors, Ofqual has decided to make no adjustment to the initial figure of £60,000 on the basis of those factors.

4.17 Finally, Ofqual has considered whether a monetary penalty of £60,000 might exceed 10 per cent of IQ's annual turnover.

4.18 Ofqual has established that such a penalty would not exceed 10 per cent of IQ's annual turnover. However, Ofqual considers that the sum of £60,000 may nonetheless be too high in view of the statutory maximum penalty in this case. In the circumstances Ofqual has decided to propose the imposition of a monetary penalty in the sum of **£50,000**.