



Notice of Intention to impose a Monetary Penalty

In respect of Pearson issuing incorrect 'short course' certificates in 2017 and 2018

Notice

1. The Office of Qualifications and Examinations Regulation ("Ofqual") hereby gives notice that it intends to impose a Monetary Penalty on Pearson Education Ltd ("Pearson") in the sum of £150,000.
2. This Notice relates to the following breaches of Pearson's Conditions of Recognition in respect of the issuing of incorrect certificates:
 - a) General Condition I3.2(b),
 - b) General Condition I4.1(d),
 - c) General Condition I4.2(a) and (b),
 - d) General Condition A5.1(a) and (b),
 - e) General Condition A5.2(e),
 - f) General Condition A6.2(a),
 - g) General Condition A7.1(a).
3. This Notice reflects Pearson's admissions to, and Ofqual's Enforcement Committee's findings in relation to the above breaches of the Conditions of Recognition.
4. Further information about Ofqual's statutory powers and the Conditions of Recognition are set out in Annex A (Legal Provisions) of this notice.

Executive summary

5. This case relates to the issuing of incorrect certificates by Pearson, specifically certificates it issued for short course GCSEs.
6. The underlying facts and breaches in this matter were accepted by Pearson.
7. In summary, Pearson accepted that it issued inaccurate qualification certificates for some GCSE qualifications in 2017 and 2018.

8. The affected certificates omitted the words 'Short Course' to reflect the learners' attainment of a shortened rather than 'full' GCSE. The error affected certificates issued to learners who were assessed only for short course GCSEs. Where learners had taken a mix of full and short course qualifications, the learner received an accurate certificate.
9. Pearson discovered the issue in October 2018 when a centre informed it of the error on 2018 certificates. The error was not identified directly by Pearson because the affected certificate type was not included in the quality assurance checks it had put in place (that is, Pearson's sampling process did not include certificates for learners that had only entered for a short course.).
10. In all, Pearson accepted that it had issued:
 - a) 5,285 incorrect 'short course' certificates in 2017.
 - b) 3,076 incorrect 'short course' certificates in 2018.
11. The following number of incorrect certificates were recovered by Pearson:
 - a) 2017 – 2,014 certificates.
 - b) 2018 – 2,950 certificates.
12. Pearson accepted that the root cause of the incident was due to a failure to recognise that all certificate types were not being sampled for errors after it had made changes to their format. Pearson's quality assurance processes had failed to detect the issue over a prolonged period and the issue only came to Pearson's attention after the issue was identified and raised by a centre.
13. Ofqual identified that reasonable steps would have included ensuring it was sampling all certificate types and having periodic reviews of all certificate types to prevent incidents occurring over a prolonged period. Pearson accepted that it did not take all reasonable steps to prevent the issue of incorrect certificates.
14. Pearson attempted to recall the incorrect certificates to mitigate any Adverse Effects¹ arising from the issuing of incorrect certificates. Ofqual expressed

¹ General Condition J1.8 defines Adverse Effect as:

An act, omission, event, incident, or circumstance has an Adverse Effect if it –

- a) gives rise to prejudice to Learners or potential Learners, or
- b) adversely affects –
 - i. the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with its Conditions of Recognition,

concerns with Pearson's incident management. Pearson accepted that some decisions and actions could have been initiated and implemented more promptly than they were, to better mitigate any Adverse Effects that might have occurred.

15. Ofqual has decided to give notice that it intends to impose a Monetary Penalty of £150,000 upon Pearson. Pearson and interested parties may make representations in respect of this Notice.

Summary of facts

16. This Notice relates to the issuing of incorrect certificates by Pearson, specifically incorrect certificates issued for short course GCSEs.
17. Pearson awards both full course and short course GCSEs in a number of subjects.
18. GCSEs are the main qualifications taken by 14 to 16 year-olds in England; they are usually studied full time taking 2 years to complete. GCSEs are available as GCSE qualifications and GCSE short course qualifications (but only in a very small number of subjects).
19. Short course GCSEs are comparable to half a full GCSE. Short course GCSEs cover half of the content or a subset of the full course GCSE.
20. The following are examples of the difference between the title of a GCSE and GCSE short course on Ofqual's published Register²:
- a) Qualification Title: Pearson Edexcel Level 1/Level 2 GCSE (9-1) in Religious Studies A Qualification Number: 603/0079/6
 - b) Qualification Title: Pearson Edexcel Level 1/Level 2 GCSE (9-1) in Religious Studies A (Short Course) Qualification Number: 603/0062/0
21. Pearson discovered the issue in October 2018 when a centre informed it of the error on 2018 certificates. The error was not identified directly by Pearson because the affected certificate type was not included in the quality assurance checks it had put in place. Pearson's sampling process had failed to include certificates for learners that had only entered for a short course.

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- ii. the standards of qualifications which the awarding organisation makes available or proposes to make available, or
 - iii. public confidence in qualifications.

² Ofqual must maintain and publish a register containing information in relation to each awarding body pursuant to s.148 Apprenticeships, Skills, Children and Learning Act 2009.

The issuing of incorrect certificates

22. On 25 October 2018, Pearson notified³ Ofqual that it had cause to believe that an event had occurred which could have an Adverse Effect.
23. Pearson informed Ofqual that on 17 October 2018, a centre had notified it that a qualification certificate for a short course GCSE did not contain the correct qualification title.
24. The certificate was incorrect because it did not identify that the certificate related to a short course subject rather than a full GCSE.
25. Pearson identified to Ofqual that the possible or actual Adverse Effect was that candidates had received certificates with no sub-heading to state that the certificate was for a short course, it could therefore be interpreted as a full GCSE.
26. The issue did not affect all learners that had taken short course GCSEs. Whether a learner received an incorrect certificate was dependent upon what mix of courses had been taken. Specifically:
 - a) Where the learner had only taken a short course subject - the 'Short Course' subheading was not displayed on the certificate. The certificates did show the correct Qualification Number, subject and grade.
 - b) Where the learner had taken both a short course GCSE and full GCSE – the 'Short Course' subheading was being displayed and the certificate was accurate.
27. On 1 November 2018, Pearson notified Ofqual that its investigation established that the error was introduced in 2017; this was following a change to the certificate format to accommodate additional grades for subjects with endorsements.
28. The list of subjects affected in 2017 were:
 - Level 1/Level 2 GCSE in Arabic: Spoken Language (Short Course);
 - Level 1/Level 2 GCSE in Arabic: Written Language (Short Course);
 - Level 1/Level 2 GCSE in Business Studies (Short Course);
 - Level 1/Level 2 GCSE in Chinese: Spoken Language (Short Course).
 - Level 1/Level 2 GCSE in Chinese: Written Language (Short Course);

³ General Condition B3.1 – An awarding organisation must promptly notify Ofqual when it has cause to believe that any event has occurred or it likely to occur which could have an Adverse Effect.

- Level 1/Level 2 GCSE in Citizenship Studies (Short Course);
- Level 1/Level 2 GCSE in Art & Design: Fine Art (Short Course);
- Level 1/Level 2 GCSE in French: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in French: Written Language (Short Course);
- Level 1/Level 2 GCSE in Greek: Written Language (Short Course);
- Level 1/Level 2 GCSE in German: Written Language (Short Course);
- Level 1/Level 2 GCSE in Italian: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Italian: Written Language (Short Course);
- Level 1/Level 2 GCSE in Japanese: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Japanese: Written Language (Short Course);
- Level 1/Level 2 GCSE in Physical Education (Short Course);
- Level 1/Level 2 GCSE in Art & Design: Photography-Lens and Light-Based Media (Short Course);
- Level 1/Level 2 GCSE in Religious Studies (Short Course);
- Level 1/Level 2 GCSE in Russian: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Russian: Written Language (Short Course);
- Level 1/Level 2 GCSE in Spanish: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Spanish: Written Language (Short Course);
- Level 1/Level 2 GCSE in Art & Design: Three-Dimensional Design (Short Course);
- Level 1/Level 2 GCSE in Art & Design: Textile Design (Short Course);
- Level 1/Level 2 GCSE in Urdu: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Urdu: Written Language (Short Course).⁴

29. The 2018 Pearson certificates affected by this issue were:

- Level 1/Level 2 GCSE in Arabic: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Business Studies (Short Course);
- Level 1/Level 2 GCSE in Arabic: Written Language (Short Course);
- Level 1/Level 2 GCSE in Greek: Written Language (Short Course);

⁴ Pearson confirmed that there was a corresponding full course GCSE for each of the short course GCSEs affected by the certificate error (for both 2017 and 2018).

- Level 1/Level 2 GCSE in Italian: Written Language (Short Course);
- Level 1/Level 2 GCSE in Japanese: Written Language (Short Course);
- Level 1/Level 2 GCSE in Japanese: Spoken Language (Short Course);
- Level 1/Level 2 GCSE (9-1) in Religious Studies A (Short Course);
- Level 1/Level 2 GCSE (9-1) in Physical Education (Short Course);
- Level 1/Level 2 GCSE in Chinese: Written Language (Short Course);
- Level 1/Level 2 GCSE in Urdu: Spoken Language (Short Course);
- Level 1/Level 2 GCSE in Russian: Spoken Language (Short Course);
- Level 1/Level 2 GCSE (9-1) in Religious Studies B (Short Course);
- Level 1/Level 2 GCSE in Russian: Written Language (Short Course);
- Level 1/Level 2 GCSE in Chinese: Spoken Language (Short Course)

30. In all, Pearson issued:

- a) 5,285 incorrect certificates in 2017.
- b) 3,076 incorrect certificates in 2018.

31. The following number of incorrect certificates recovered were:

- a) 2017 – 2,014 certificates.
- b) 2018 – 2,950 certificates.

Root cause

32. Pearson informed Ofqual that in both 2017 and 2018, its certificate checking process involved a physical check of a sample of certificate types. This included those certificates that contained a mixture of full and short course GCSEs - which were correct. However, Pearson's sampling process did not include certificates for learners that had only entered for a short course. This is where the error had occurred.

33. Pearson staff involved in these checks had checked the accuracy of short course award titles on one certificate type, but made the incorrect assumption that the short course award title would appear in the same way on certificates that only featured short course awards. The short course only certificate was the only certificate type not sampled.

34. In response to the incident, Pearson amended the process to include all certificate types. Pearson confirmed to Ofqual that having a full set of certificates to review would prevent a recurrence.

Incident management

35. On 1 November 2018, Pearson informed Ofqual that:
- a) It was recalling and reissuing affected certificates for the Summer 2018 learners as it was likely that centres would be easily able to contact learners and retrieve them.
 - b) For those learners who received their certificates in Summer 2017, Pearson stated that it had given regard to Ofqual's guidance regarding correcting results when considering what action to take. Pearson stated that it had weighed the impact of recalling the certificates for 2017 against any potential Adverse Effect. Pearson concluded that not recalling the certificates would result in the least adverse impact.
36. On 21 November 2018, in response, Ofqual requested that Pearson reconsider its approach to the 2017 certificates. Ofqual highlighted that the Guidance⁵ Pearson was referring to related to correcting incorrect results; in this case Pearson was correcting certificates – not results.
37. Ofqual requested that Pearson consider which certificates it was able to correct and those which would require an unreasonable effort to correct. In summary, Ofqual requested that Pearson provide assurance that it had fully considered how best to correct or mitigate the Adverse Effects.
38. On 3 December 2018, Pearson confirmed it would write to all affected centres in relation to the 2017 certificates. Pearson stated that it intended to send out this communication in early 2019.
39. On 6 February 2019, Ofqual requested an update.
40. In response, Pearson informed Ofqual that it had not contacted centres until 30 January 2019 because it was considering data protection issues. Pearson stated it had requested that centres record whether certificates had been retrieved and destroyed for each candidate, or whether the centre had not been able to contact the candidate. Pearson further explained that where centres were unable to contact candidates and confirm that the original incorrect certificates had been destroyed, it would not replace those certificates.
41. On 21 February 2019, Pearson stated that because February was the summer entry deadline, it would not be sending further reminders to centres until March 2019.

⁵ Page 109 Ofqual handbook – Guidance on making changes to incorrect results

42. On 15 April 2019, during a meeting, Ofqual queried whether the communications went out in March.
43. Pearson subsequently informed Ofqual that reminders had not been sent in March. Ofqual raised the possibility of Pearson issuing a recall notice on the website and/or making a statement as a potential step to help retrieve the outstanding certificates.
44. On 17 April 2019, Ofqual wrote to Pearson outlining that Pearson was potentially in breach of several General Conditions due to the issuing of incorrect certificates.
45. Ofqual also outlined concerns regarding Pearson's incident management. Ofqual explained that Condition A7.1 required Pearson to promptly take all reasonable steps to prevent an Adverse Effect arising from an incident and where any Adverse Effect occurs, to mitigate it as far as possible and correct it.
- a) Ofqual stated that its immediate priority was that action should be taken quickly and effectively to mitigate the Adverse Effect of Pearson having issued incorrect certificates to a substantial number of candidates during both 2017 and 2018.
 - b) Ofqual outlined that it considered that the incorrect certificates had the potential to give rise to an appreciable risk to standards by not giving a reliable indication of the learner's knowledge and skills and an appreciable risk to public confidence.
 - c) Ofqual also outlined actions Pearson could take to mitigate the Adverse Effects; actions included Pearson making a public statement about the error and its plan to recall and replace certificates on Pearson's website. Ofqual considered doing so would ensure that the issue became more widely known and reduce the potential risk of the certificates being interpreted and relied on as relating to full course GCSEs; it would also potentially inform students that Pearson was recalling certificates.
 - d) Ofqual informed Pearson of a previous published case where Ofqual had accepted an undertaking from BCS. In that case, BCS (The Chartered Institute for IT) put in place arrangements to publicise its intention to issue replacement certificates by including a relevant notice on its website.⁶
46. On 18 April 2019, Pearson sent a reminder to centres for the 2017 certificates.
47. On 24 April 2019, Pearson posted a website message regarding certificate recalls.

⁶ [BCS undertaking February 2016](#)

48. On 25 April 2019, Pearson sent a reminder to centres for 2018 certificates.
49. On 29 April 2019, Pearson responded to provide assurance that it had acted in good faith in dealing with the matter of recalling and replacing certificates and that whilst it had originally determined that it would not recall the 2017 certificates, it had understood and had due regard to Ofqual's viewpoint on that matter and took the necessary action to recall those certificates.
50. Pearson explained that the delay was as a result of its intention to ensure it was proportionate and reasonable in its request to centres and demonstrated that it was anxious to minimise the administrative impact on them. Pearson further explained that it took any incident which has or could have consequences for its customers, or the integrity of our qualifications, very seriously. Pearson stated that the approach it took to this incident was, and continued to be, consistent with its assessment of the risk balanced against the proportionality of any action to be required of centres or learners.
51. On 20 May 2019, Pearson issued letters to the head of each centre that had not responded to previous correspondence.
52. On 10 June 2019, Pearson made further calls to centres that had not responded.
53. On 9 October 2019, Pearson provided an update on the position in relation to recovery of the certificates. Pearson explained that it considered it had taken all reasonable steps to try and recover the certificates. Pearson had also conducted a lessons learnt exercise following the identification of the error in the certificates and had implemented changes to prevent a recurrence.
54. On 18 December 2021, Pearson accepted that some decisions and actions could have been initiated and implemented more promptly than they were, to better mitigate any Adverse Effects that might have occurred. Pearson stated that it believed that this may be connected with what was termed to be 'reasonable' in this instance, and in future it will ensure there is a discussion with Ofqual where such things are in doubt. Pearson stated that it had assessed the extent of any likely adverse effect arising from this issue, and it did not believe any significant Adverse Effect was likely to have arisen for learners, other stakeholders or public confidence more generally. Pearson further stated that no new evidence had come to light which has changed its assessment since April 2019.
55. Pearson confirmed that the total number of incorrect certificates issued and recovered were:
 - a) 2017 – 5,285 incorrect certificates issued and 2014 recovered.
 - b) 2018 – 3,076 incorrect certificates issued and 2950 recovered.

Analysis

The incorrect certificates

56. Pearson accepted that it issued incorrect certificates. Pearson accepted that the omission of the words 'Short Course' made the certificates non-compliant with the following General Conditions of Recognition.

Condition I3.2

57. Condition I3.2(b) requires awarding organisations to ensure that all certificates which it issues clearly display the title of the qualification as it appears on the Register.

58. Pearson has accepted, and the Enforcement Committee found that there has been a breach of I3.2(b) in each instance where the title of the qualification failed to identify the certificate was for a 'Short Course' GCSE – in total 8,368 non-compliant certificates.

Condition I4.1

59. Condition I4.1(d) requires Pearson to issue only certificates which are accurate and complete.

60. The certificates Pearson issued displayed the incorrect qualification title and were therefore inaccurate. Pearson has accepted, and the Enforcement Committee found that the certificates failed to comply with I4.1(d).

Condition I4.2

61. General Condition I4.2(a) requires Pearson to take all reasonable steps to ensure it issues certificates to learners with a valid entitlement to those certificates.

62. It was an agreed fact that the Learners had a valid entitlement to certificates for short course GCSEs only, which they did not receive. As such, by issuing certificates omitting the words 'Short Course' the learners:

- a) Failed to receive a 'Short Course' certificate that they had a valid entitlement to; and
- b) Received a certificate for a full course GCSE to which they did not have a valid entitlement.

63. It was also agreed that Pearson's review processes did not include examples of all certificate types and that Pearson also failed to detect it was issuing certificates with the incorrect qualification title over a prolonged period.
64. It was further agreed, and the Enforcement Committee found that it would have been reasonable for Pearson to sample all certificate types, in particular after it had been making changes; it would have been reasonable for Pearson to have periodic reviews of all certificate types to ensure that it cannot issue incorrect certificates over a prolonged period.
65. As such, Pearson has accepted, and the Enforcement Committee found that Pearson was not taking all reasonable steps to ensure it issued certificates to learners with a valid entitlement to that certificate, and therefore a failure to comply with I4.2(a).

The root cause

66. Pearson accepted that it failed to ensure it maintained the ability to develop, deliver and award qualifications in a way that complied with its Conditions of Recognition. Pearson also accepted that it was failing to prevent incidents.

Condition A5

67. Condition A5.1 requires Pearson to ensure that it has the capacity to undertake the development, delivery and award of qualifications which it makes available, or proposes to make available, in accordance with its Conditions of Recognition and to take all reasonable steps to ensure that it undertakes the development, delivery and award of those qualifications efficiently.
68. The Enforcement Committee interpreted Condition A5.1(a) on the basis that 'capacity' should not only be read in narrow terms as meaning numbers or amounts of a particular resource (although it does encompass those interpretations), but also in the more general sense of an awarding organisation making sure that it has the ability to comply with the Conditions.
69. In respect of A5.1(b), the requirement to take all reasonable steps to ensure that it develops, delivers and awards qualifications efficiently, the word 'efficient' does not primarily mean 'economical', but rather 'effective', 'efficacious', or 'achieving what it is meant to'.
70. For the purposes of Condition A5.1, under A5.2(e) Pearson was required to establish and maintain appropriate systems of planning and internal control.

71. Pearson accepted, and the Enforcement Committee found that Pearson has breached both Condition A5.1 and Condition A5.2(e) in terms of both the way that the Conditions are drafted to interlink, and on the facts of this case.
72. The agreed facts are that Pearson established a system of control that involved the sampling of certificates - the purpose of sampling being to assure itself that it was only issuing certificates in accordance with its Conditions of Recognition. However, Pearson failed to recognise that its sampling process did not cover all certificate types. Pearson also failed to detect that it was issuing incorrect certificates over a prolonged period.
73. As set out above, the Enforcement Committee found that it would have been reasonable for Pearson to ensure that it was sampling all certificate types in particular after it had been making changes. It would also have been reasonable for Pearson to ensure it had periodic reviews of all certificate types which would ensure that it was not able to issue incorrect certificates over a prolonged period – this is particularly important step given that users rely upon the accuracy of certificates and the potential difficulties in retrieving certificates once issued.
74. Pearson accepted that it did not have such systems in place, it was an agreed fact that Pearson was not establishing and maintaining appropriate systems of planning of systems of control over the issuing of certificates in breach of Condition A5.2(e).
75. In failing to establish and maintain adequate systems of control over the issuing of certificates, Pearson accepted, and the Enforcement Committee found that that failure at a systemic level meant that Pearson was in breach of Condition A5.1. This was because Pearson had failed to ensure it had the capacity to undertake the award of qualifications in accordance with its Conditions of Recognition and failed to take all reasonable steps to ensure that it undertakes the award of those qualifications efficiently in breach of A5.1(a) and (b) - within the meaning set out above.
76. When considering what action to take in this matter, on the facts the Enforcement Committee has considered this a single non-compliance of A5.1, rather than 3 separate non-compliances (A5.1(a), A5.1(b) and A5.2(e)).

Condition A6

77. Conditions A6.1 requires Pearson to take all reasonable steps to identify the risk of the occurrence of any incident which could have an Adverse Effect.
78. Under Condition A6.2(a), where Pearson identifies such a risk, Pearson must take all reasonable steps to prevent the incident from occurring or, where it

cannot be prevented, reduce the risk of that incident occurring as far as is possible.

79. Pearson accepted, and the Enforcement Committee found that Pearson failed to comply with Condition A6.2(a).

80. In summary, the agreed facts in respect of this Condition were that:

- a) Pearson had taken steps to mitigate the risk of issuing incorrect certificates by using a sampling process to quality assure certificates.
- b) Pearson failed to ensure that its sampling covered the full range of certificates it issued.
- c) Pearson failed to recognise that it was not sampling all certificate types.
- d) Pearson's quality assurance processes failed to detect the issue over a prolonged period.
- e) Pearson explained to Ofqual that staff involved in the sampling had checked the accuracy of short course award titles on one certificate type, but made the incorrect assumption that the short-course award title would appear in the same way on certificates that only featured short course awards. Therefore, at the time that the quality assurance checks were conducted they were believed to be sufficient to address the risk of incorrect award titles on all certificate types, although this was subsequently found not to be the case.

81. Pearson had identified a risk of issuing incorrect certificates in general, the question was whether Pearson took all reasonable steps to prevent or reduce that risk. As has been set out previously, the Enforcement Committee considered that there were reasonable steps that Pearson should have been taking in respect of the issuing of certificates.

82. It has been accepted by Pearson, and the Enforcement Committee found that it was not reasonable for Pearson to assume that having checked one type of certificate, the short course title would appear correctly on other types. It would be a reasonable step to sample all certificate types as failure to do so presumes the very accuracy that the check is intended to ensure, as such Pearson breached Condition A6.2(a).

Incident management

83. Pearson accepted that its management of the incident fell short of what was required under the Conditions of Recognition.

Condition A7

84. Condition A7.1(a) requires that where any incident occurs which could have an Adverse Effect, an awarding organisation must (whether or not it has previously identified a risk of that incident occurring) promptly take all reasonable steps to –
(a) prevent the Adverse Effect and, where any Adverse Effect occurs, mitigate it as far as possible and correct it.
85. Pearson accepted, and the Enforcement Committee found that Pearson failed to comply with Condition A7.1(a).
86. Pearson itself recognised that the incorrect certificates could be interpreted as a full GCSE. It was agreed that there were 2 particular Adverse Effects that Pearson was required to promptly prevent, correct and mitigate as far as possible:
- a) That the incorrect certificates it issued had the potential to give rise to an appreciable risk to standards by not giving a reliable indication of the learner's knowledge and skills; and
 - b) That the incorrect certificates it issued had the potential to give rise to an appreciable risk to public confidence noting that Users of qualifications⁷ rely upon certificates being accurate; Users may rely upon certificates that do not give a reliable indication of the learner's knowledge and skills.
87. Pearson accepted and the Enforcement Committee found that Pearson failed to comply with Condition A7.1(a) in relation to the 2017 certificates for the following reasons.
88. Firstly, in relation to the promptness of steps taken to recall certificates.
- a) Pearson became aware that it issued certificates containing an incorrect qualification title on or around the 1 November 2018.
 - b) Pearson initially decided not to recall those certificates.
 - c) It was not until around the 3 December 2018 that Pearson decided it would recall the incorrect certificates following correspondence with Ofqual.
 - d) Pearson only wrote to centres to start recalling these certificates on the 30 January 2019.
 - e) The Enforcement Committee considers that Pearson failed to act promptly to prevent, correct and mitigate as far as possible the Adverse Effects in this case. The Enforcement Committee considers that given the nature of the incorrect certificates and the risk of confusion that they presented. Pearson was required to promptly take action to prevent, correct and mitigate as far as possible and the Adverse Effects from the time it

became aware that it had issued the incorrect 2017 certificates - namely on or around the 1 November 2018.

- f) There was a substantial delay of nearly 2 months after deciding to recall certificates before Pearson wrote to centres (3 December to 2018 - 30 January 19).
- g) Although Pearson explained that this delay was due to the need to obtain data protection advice, the Enforcement Committee did not consider that this should result in almost a 2 month delay where Pearson was required to act promptly to correct the incorrect certificates in accordance with regulatory requirements. Pearson is a large organisation which is likely to have good access to professional advice in respect of its data protection responsibilities.
- h) The Enforcement Committee observed that there was an additional substantial delay in relation to reminders sent to centres. On 21 February 2019, Pearson informed Ofqual that, it would be sending further reminders to centres in March 2019. The evidence shows that the reminders for the 2017 certificates were not sent until 18 April 2019 - and only after Ofqual requested an update on whether reminders had been sent. In summary, having identified the problem with the 2017 certificates on or around 1 November 2018, Pearson took no external facing action at all for 91 days and then took no follow-up action until a further 78 days had passed.
- i) In light of the above, Pearson accepted and the Enforcement Committee found that Pearson failed to promptly take all reasonable steps to prevent, correct and mitigate as far as possible Adverse Effects that arose from the issuing of incorrect certificates.

89. Secondly, in relation to the steps taken to recover the certificates:

- a) The agreed facts were that Pearson decided to recall certificates on or around the 3 December 2018.
- b) Pearson's initial approach was to contact centres to recover certificates, however it was also aware that there would be extra difficulty in retrieving the 2017 certificates through centres.
- c) The Enforcement Committee considered that there was an additional reasonable step that Pearson could have promptly taken to prevent, correct and mitigate as far as possible the Adverse Effects at that time.
- d) One such reasonable step was outlined by Ofqual in its letter dated the 19 April 2019. In that letter, Ofqual raised concerns about Pearson's incident management. Ofqual highlighted that Pearson could make a public statement.

- e) On 1 November 2019, Pearson explained that one of the reasons for not recalling certificates was:

“Since we do not have direct contact information for learners, we are reliant on centres to track them down in order to recall certificates. This would represent a significant administrative burden for those centres, which would be disproportionate for the very low level of risk that we have identified - given that centres would then be asked to re-send replacements which are, in all essential details, the same. In addition it is probable that centres will no longer have contact details for learners that have moved on since last year.”

- f) Ofqual highlighted that taking such a step would ensure that the issue became more widely known and reduce the potential risk of the certificates being interpreted and relied on as relating to full course GCSEs. It would also have potentially informed students that Pearson was recalling certificates and reduced burden on centres.
- g) Although Pearson took this step on the 24 April 2019, the Enforcement Committee considered that Pearson was ultimately responsible for proactively taking all reasonable steps to prevent, correct and mitigate as far as possible the Adverse Effects. The Enforcement Committee considered that Pearson should itself have decided to take this step, rather than doing so only at Ofqual's suggestion.

90. The Enforcement Committee noted the fact that Pearson accepted non-compliance with Condition A7.1 explaining that some decisions and actions could have been initiated and implemented more promptly than they were, to better mitigate any Adverse Effects that might have occurred. Pearson also explained that it believes that this may be connected with what was termed to be 'reasonable', and in future it will ensure there is a discussion with Ofqual where such things are in doubt. Pearson further explained that it had assessed the extent of any likely Adverse Effect arising from this issue, and it did not believe any significant Adverse Effect was likely to have arisen for learners, other stakeholders or public confidence more generally. Pearson stated that no new evidence has come to light which has changed its assessment since April 2019.

91. The Enforcement Committee agreed with Pearson's analysis that the steps it took should have been initiated and implemented sooner, however the Enforcement Committee considered that the reasonable steps should have been apparent to Pearson and taken earlier in particular when noting the type of error with the certificates. However, the Enforcement Committee considered there to be no evidence to suggest any bad faith or deliberate attempt to fail to comply with Condition A7, and found that this breach was down to an error in judgment. The

Enforcement Committee also noted that there is no evidence to suggest the delay in Pearson taking reasonable steps resulted in any additional Adverse Effect.

Determination of a Monetary Penalty

92. On 26 April 2022, Ofqual's Enforcement Committee considered all of the evidence and the admissions made by Pearson, and found that Pearson has breached the following Conditions of Recognition in this case:

- a) General Condition I3.2(b),
- b) General Condition I4.1(d),
- c) General Condition I4.2(a) and (b),
- d) General Condition A5.1(a) and (b)
- e) General Condition A5.2(e),
- f) General Condition A6.2(a),
- g) General Condition A7.1(a).

93. In determining whether or not a Monetary Penalty is an appropriate regulatory outcome in this case, and if so, what amount would be proportionate to impose, the Enforcement Committee had regard to Ofqual's Taking Regulatory Action policy (2012) and, in particular, the following aggravating and mitigating factors:

Aggravating factors

94. The Enforcement Committee found that this case is sufficiently serious to warrant the imposition of a Monetary Penalty for the following reasons:

- a) A significant number of incorrect certificates were issued to learners (8361).
- b) A significant proportion of incorrect certificates have not been recovered, there will remain a risk that these certificates could be used by a learner to indicate that they had completed a full course GCSE - when that was not the case.
- c) The incident occurred as a result of a process gap. The root cause of the incident was a circumstance fully within the control of Pearson and related to an area that is integral to the functioning of any awarding organisation.
- d) The Enforcement Committee noted that the issuing of incorrect certificates occurred in both 2017 and 2018, the breaches were therefore prolonged.

- e) The Enforcement Committee also noted that Pearson's own quality assurance processes failed to detect the fact that it had been issuing incorrect certificates over a prolonged period. This matter only came to the attention of Pearson following a query from a centre. There was therefore a risk that further incorrect certificates could have been issued, and this was only avoided by a centre detecting the issue, rather than out of any process or quality assurance measure put in place by Pearson.
- f) In respect of Pearson's incident management, Pearson attempted to recover the 2017 certificates only following intervention from Ofqual. Pearson also only made a public statement in respect of the issue following intervention from Ofqual. As set out above, the Enforcement Committee considered steps Pearson did not initially take were reasonable steps which should have been considered and implemented earlier.
- g) Pearson received a £85,000 Monetary Penalty from Ofqual in 2016. The Enforcement Committee noted that the underlying circumstances are different to this case, however the Enforcement Committee considered the previous Monetary Penalty to be relevant noting that both incidents include the incorrect issue of certificates, involved prolonged non-compliances, and both incidents would have been prevented by better checks by Pearson. The Enforcement Committee did however note that the previous Monetary Penalty was not imposed that recently when considering taking this factor into account.

Mitigating factors

95. The Enforcement Committee considered that the following mitigating factors are present.

- a) The Enforcement Committee accepted Pearson's explanation that the decision to not check all certificate types did not arise as a consequence of an attempt to save money, but rather as a result of a misplaced assumption.
- b) It was an agreed fact that the short course certificate was the only certificate type not sampled. The issue affected only a limited subset of GCSE certificates. Pearson has stated that this was an isolated incident affecting only a specific type of certificate, and Pearson was compliant with the Conditions regarding award titles for the other 1.2 million GCSE certificates that it issued in 2017 and 2018, and for the 4 million certificates it issued in total across all qualification types.
- c) The Enforcement Committee considered that Pearson's incident management fell short of what was required under the Conditions. As

explained above, it considered that this was as a result of an error in judgment rather than a deliberate attempt to avoid compliance with Condition A7. Furthermore, although there has been a breach of Condition A7.1(a) in relation to the 2017 certificates, there was no evidence to suggest that the delay resulted in an increased Adverse Effect and Pearson did respond to Ofqual's concerns about its approach when they were raised with it.

- d) That Pearson has stated that it does not believe any significant Adverse Effect was likely to have arisen for learners, other stakeholders or public confidence more generally. The Enforcement Committee accepted that there is no evidence suggesting that a User8 has erroneously relied on one of the certificates. However, the Enforcement Committee considered that this possibility could not be ruled out given that all the certificates were not recovered.
- e) In respect of certificates issued for the 2018 series, Pearson took prompt action to resolve that issue.
- f) Pearson has taken steps to prevent any recurrence.
- g) Pearson reported the incident to Ofqual promptly.

96. The Enforcement Committee also considered:

- a) That Pearson has incurred costs in the total sum of £12,627 in remedying the breaches. This consisted of printing, mailing and staff time costs of recovering and replacing 4,964 certificates across 317 centres, including reimbursement of postage fees to return certificates where centres requested this.
- b) The Enforcement Committee considered that centres will have diverted resource to retrieving certificates. Learners will have also been inconvenienced by the incident. There is therefore some evidence of impact on Users as a result of Pearson's non-compliance.
- c) The need to deter Pearson and other awarding organisations from making similar failings in the future.
- d) The need to promote public confidence in qualifications through visible, appropriate and effective regulatory action.
- e) Pearson's relative size and turnover as an awarding organisation.
- f) The accepted facts and prompt admissions of non-compliance by Pearson.

Decision

97. Taking all of the above into account, the Enforcement Committee has decided to give notice of its intention to impose a Monetary Penalty on Pearson in the sum of £150,000.
98. The Monetary Penalty takes into account the principle of totality in the context that Ofqual has also imposed a Monetary Penalty on Pearson for a separate incident. The Enforcement Committee noted the 2 incidents are distinct and relate to separate areas of serious non-compliance, therefore each matter should attract a separate Monetary Penalty.
99. In reaching the decision on the level of Monetary Penalty in this case, the Enforcement Committee observed that there are breaches of several Conditions; however certain facts cut across more than one Condition. For example, I3.1 and I4.1 relate to the issuing of incorrect certificates, I4.2, A5.1 and A5.2 and A6 in relation to the inadequate steps and quality assurance Pearson had in place for issuing certificates. The Enforcement Committee decided that it would be inappropriate to factor in the individual number of non-compliances (that is, the number of Conditions breached) when determining the level of penalty in this case. The Monetary Penalty reflects 3 key areas of non-compliance. Specifically, the issuing of incorrect certificates, root cause and incident management. As a result, the Monetary Penalty has not been increased for a breach of both A5.1 and A5.2 (for example). This approach avoided double counting non-compliances when considering the level of penalty on the facts in this case.
100. Whilst Pearson has made admissions to the alleged breaches, it has not at any stage during the enforcement process taken up the opportunity to enter into settlement discussions with Ofqual or make any form of settlement proposal. This was not a factor taken into account in respect of the decision to impose a Monetary Penalty but is recorded to reflect that Pearson is not entitled to a settlement discount on the level of penalty imposed.
101. The Enforcement Committee is satisfied, in accordance with section 151B of the 2009 Act, that a Monetary Penalty in the sum of £150,000 would not exceed 10% of Pearson's total annual turnover.

Representations

102. This Notice has been served on Pearson in accordance with section 151A(4) of the Apprenticeships, Skills, Children and Learning Act, 2009 and Pearson now has the opportunity to make representations in respect of Ofqual's intention to impose a Monetary Penalty of £150,000 on it. Any such representations must be

made in writing and sent by email to Enforcement@ofqual.gov.uk and must be received before **4pm on 25 July 2022**.

103. Ofqual will consult with Pearson regarding the proposed date for publication of this Notice on its website and the Portal. Once this Notice has been published, interested parties will also have the opportunity to make representations in respect of Ofqual's intention to impose a Monetary Penalty on Pearson, in accordance with Ofqual's Taking Regulatory Action policy (2012).

Next steps

104. The Enforcement Committee will consider this case again once Pearson and interested parties have had the opportunity to make representations.
105. The Enforcement Committee will consider any representations made as specified in this Notice (Representations) and will decide whether to make a final order for the payment of a Monetary Penalty, and if so in what amount, or whether any other order should be made.
106. If Ofqual does not receive representations it may determine this matter after the date for representations is given, alternatively it may agree a different date for the receipt of representations.

Annex A

Legal provisions

Statutory powers

1. Pearson Education Ltd ("Pearson") is recognised as an awarding body by The Office of Qualifications and Examinations Regulation ("Ofqual") under section 132(1) of the Apprenticeships, Skills, Children and Learning Act, 2009 ("the 2009 Act") and is subject to the General Conditions of Recognition ("the Conditions") which Ofqual is required to set and publish under Section 134 of the 2009 Act.
2. Under Section 151A(2) of the 2009 Act, Ofqual may impose a Monetary Penalty on an awarding body if it appears to Ofqual that the awarding body has failed to comply with its Conditions of Recognition (General and/or Qualification Level).
3. Under Section 151B(3) of the 2009 Act, the amount of any Monetary Penalty may be whatever Ofqual decides is appropriate in all the circumstances of the case, subject to Section 151B(1), which provides that Ofqual may not impose a Monetary Penalty in an amount which exceeds 10% of the awarding body's turnover.
4. Ofqual's Taking Regulatory Action Policy (2012) sets out how it will use its powers to take regulatory action, including the factors it will take into account when deciding whether to impose a Monetary Penalty and how it will determine the amount of any Monetary Penalty to be imposed.

General Conditions of Recognition

5. Pearson has a legal obligation to comply with the General Conditions of Recognition on an ongoing basis. The General Conditions of Recognition include guidance on how to comply with the rules. Pearson has a legal obligation to have regard to this guidance.
6. The relevant General Conditions of Recognition in this case are:
 - a) General Condition I3.2(b),
 - b) General Condition I4.1(d),
 - c) General Condition I4.2(a) and (b),
 - d) General Condition A5.1 (a) and (b)
 - e) General Condition A5.2(e),

- f) General Condition A6.2(a),
- g) General Condition A7.1(a).

7. General Condition I3.2(b) provides that:

"I3.2 An awarding organisation must ensure that –

- a)
- b) all certificates which it issues clearly display the title of the qualification as it appears on the Register (and any Endorsement known after the qualification is submitted to the Register) and do not include any other title for the qualification."

8. General Condition I4.1(d) provides that:

"I4.1 An awarding organisation must, in relation to qualifications which it makes available –

- a)
- b)
- c)
- d) issue only certificates which are accurate and complete and which reflect accurate and complete results.
- e)"

9. General Condition I4.2(a) and (b) provide that:

"I4.2 An awarding organisation must take all reasonable steps, including having procedures in place, to ensure that it –

- a) issues a certificate and any replacement certificate to any Learner who has a valid entitlement to that certificate or replacement certificate,
- b) does not issue any certificate to a Learner who does not have a valid entitlement to that certificate,
- c)
- d)"

10. General Condition A5.1 and A5.2(e) provide that:

"A5.1 An awarding organisation must –

- a) ensure that it has the capacity to undertake the development, delivery and award of qualifications which it makes available, or proposes to make available, in a way that complies with its Conditions of Recognition, and

- b) take all reasonable steps to ensure that it undertakes the development, delivery and award of those qualifications efficiently.

A5.2 For the purposes of Condition A5.1, an awarding organisation must establish and maintain –

- a)
- b)
- c)
- d), and
- e) appropriate systems of planning and internal control.”

11. General Condition A6.2(a) provides that:

“A6.1 An awarding organisation must take all reasonable steps to identify the risk of the occurrence of any incident which could have an Adverse Effect.”

A6.2 Where such a risk is identified, the awarding organisation must take all reasonable steps to –

- a) prevent the incident from occurring or, where it cannot be prevented, reduce the risk of that incident occurring as far as is possible, and
- b)’

12. Ofqual has set Guidance in relation to Condition A6. The Guidance describes the following examples of circumstances which indicate an awarding organisation is likely to comply with Condition A6.

“Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- identifies events that might have an Adverse Effect using risk management approaches;
- knows where ownership for its approach to risk management lies within the organisation;
- reviews and updates its risks using a systematic and consistent approach;
- takes action to prevent or deal with risks that might have an Adverse Effect;
- has a contingency plan that covers:
 - the triggers for implementation of the plan;
 - the impact on other parts of the business of implementing the plan;
 - the minimum requirements to maintain development, delivery and award of its qualifications;
- communication plans for relevant external parties;
- what needs to be done to return to business as usual;

- tests its contingency plan to make sure it can mitigate Adverse Effects, covering areas such as key business systems and processes, and makes any necessary changes following the tests.”

“Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not systematically consider the range and type of risks that may have an impact on its regulated activities;
- has an ad hoc or inconsistent approach to identifying and managing risks that relate to preventing or mitigating Adverse Effects;
- does not actively take steps to mitigate risks it has identified;
- fails to identify a foreseeable risk (where it might be reasonably expected to do so) that could result in an Adverse Effect.”

13. General Condition A7.1(a) provides that:

“A7.1 Where any incident occurs which could have an Adverse Effect, an awarding organisation must (whether or not it has previously identified a risk of that incident occurring) promptly take all reasonable steps to –

- a) prevent the Adverse Effect and, where any Adverse Effect occurs, mitigate it as far as possible and correct it, and
- b)

14. Condition J1.8 defines an Adverse Effect as:

“An act, omission, event, incident, or circumstance has an Adverse Effect if it –

- a) gives rise to prejudice to Learners or potential Learners, or
- b) adversely affects –
 - i. the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with its Conditions of Recognition,
 - ii. the standards of qualifications which the awarding organisation makes available or proposes to make available, or
 - iii. public confidence in qualifications.”