

To:

Mr Mark Bedlow
Responsible Officer
Oxford, Cambridge, RSA Examinations (OCR)
1 Hills Road
Cambridge
CB1 2EU

Notice of Intention to Impose a Monetary Penalty

In accordance with its powers under 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 OCR in the sum of **£125,000** for the reasons set out below (**Reasons**).

Representations

- i. **OCR** may make representations in respect of Ofqual's proposal to impose on it a monetary penalty. Any such representations must be sent by E-mail to EnforcementCommittee@ofqual.gov.uk and must be received before **4pm on 29 March 2018**.
- ii. **Interested parties** may make representations in respect of Ofqual's proposal to impose a monetary penalty on OCR. Any such representations must be sent by E-mail to EnforcementCommittee@ofqual.gov.uk and must be received before **4pm on 29 March 2018**.

Reasons

Overview

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).

2. Ofqual may not impose a monetary penalty in an amount which exceeds 10% of the awarding organisation's turnover.
3. OCR is an awarding organisation regulated by Ofqual. Following an Ofqual investigation, OCR has admitted that it failed to comply with a number of the Conditions in respect of incidents affecting its GCSE Computing qualification between 2014 and 2017.

The Factual Background

GCSE Computing

4. OCR's GCSE in Computing (GCSE Computing) is a 'single science' for the purposes of the English Baccalaureate and the Progress 8 performance measure. The final certifications for GCSE Computing were in summer 2017. The qualification comprised three units:
 - a. Unit A451 (computer systems and programming), a written exam paper which comprised 40% of the assessment for the qualification.
 - b. Unit A452 (practical investigation), a controlled assessment, completed over approximately 20 hours, which comprised 30% of the assessment for the qualification.
 - c. Unit A453 (programming project), a controlled assessment, completed over approximately 20 hours, which comprised 30% of the assessment for the qualification.
5. OCR issued three assessment tasks for each of the controlled assessment units, from which schools chose one for candidates to complete. Each of the tasks consisted of a number of sub tasks.
6. Controlled assessments were marked by teachers using OCR marking criteria, and then moderated by an OCR-appointed moderator.

GCSE Computer Science

7. GCSE Computing has now been replaced by OCR's GCSE (9-1) in Computer Science (GCSE Computer Science). Teaching for GCSE Computer Science began in September 2016. The first certifications will be in summer 2018.

Incidents reported by OCR to Ofqual

8. Between 2014 and the commencement of Ofqual's investigation, OCR notified Ofqual of 18 incidents related to controlled assessments for GCSE Computing. Of the 18 notifications, five related to Unit A452, eight related to Unit A453 and five related to both Units.

Ofqual's Investigation

9. On 25 August 2016 Ofqual formally notified OCR that it had decided to conduct an investigation in respect of the incidents reported by OCR. The investigation took place during October and November 2016.
10. A draft investigation report was sent to OCR on 5 December 2016. OCR responded with its comments on the draft investigation report by way of a letter dated 20 December 2016. Ofqual replied to that letter and closed the investigation on 5 January 2017.
11. On 18 May 2017, Ofqual commenced an enforcement case in light of the issues which came to light during its investigation. OCR has made a number of admissions as part of that enforcement case, which admissions Ofqual has accepted. The admitted facts are summarised below, together with the admissions as to breach of the Conditions.

The Incidents

Textbooks

12. On 29 April 2016, OCR notified Ofqual that a textbook 'OCR Computing for GCSE' which had been published in August 2012 and was endorsed by OCR (the Computing textbook) appeared to include a solution to part 1(a) and 1(c) of the live (2016) controlled assessment task for Unit A452.
13. OCR had been made aware of this issue on 25 April 2016, by a teacher who had noted some similarity between candidates' responses to the controlled assessment task. The teacher had then referred to the textbook and identified that the solution appeared in that resource.
14. As part of its investigation of this issue, OCR identified that, in addition to the solution to the task for Unit A542, an example task appearing within the Computing textbook was similar to the live (2016) controlled assessment task for Unit A453.

15. On 5 May 2016, OCR notified Ofqual about two stories on social media which referred to candidates for GCSE Computing finding the answers to the controlled assessment tasks in the Computing textbook.
16. As part of its investigation, Ofqual commissioned an expert review of the materials which had appeared in the Computing textbook and which were similar to the controlled assessment task for Unit A452. The two experts instructed by Ofqual each concluded that the code set out in the Computing textbook was identical to the 'mystery code' forming part of the controlled assessment. The experts took the view that candidates who had access to the textbook would have been advantaged. Ofqual understands that 49,961 copies of the Computing textbook were sold.
17. On 12 August 2016, OCR notified Ofqual that a further textbook 'OCR GCSE (9-1) Computer Science' which had been published in May 2016 and which was endorsed by OCR (the Computer Science textbook), appeared to contain a solution to part of task 1(a) for the live (2017) controlled assessment task for Unit A453 (GCSE Computing).
18. Ofqual commissioned an expert review of the relevant sections of the Computer Science textbook as part of its investigation. The two experts agreed that the type of calculation set out in the textbook would assist candidates working through the 2017 controlled assessment task for GCSE Computing. One of the experts considered that candidates with access to the textbook would have been slightly advantaged, the other considered that candidates with access to the textbook would have been considerably advantaged. Ofqual understands that 5,670 copies of the textbook had been sold at the relevant time.
19. The incidents concerning the textbooks appear to have occurred because the textbook authors were the Principal Moderators for Unit A452 and A453 and, in that capacity, had been instructed to devise the 2016 and 2017 controlled assessment tasks for GCSE Computing.
20. At the material time, OCR had in place a standard form for the declaration of interests by persons it invited to write assessment materials: the Assessor Declaration of Interest form. The Principal Moderators for Unit A452 and A453 had each completed Assessor Declaration of Interest forms for OCR. The Principal Moderator for Unit A452 had declared his work creating resources for the publisher of the Computing and Computer Science textbooks. The Principal Moderator for Unit A453 had declared that he had previously authored a textbook for the publisher and was involved with the creation of resources on behalf of OCR.
21. OCR has admitted that it did not have a clear or sufficient process in place to follow-up declarations made by persons who had been invited to write assessment

materials. In June 2016, an internal regulatory compliance report prepared by OCR recorded that:

“there are no assurances to confirm that OCR’s controls to manage conflicts of interest of its assessor personnel are sufficient... Non-compliance with Condition A4 may impact across the group”.

22. In an internal review report dated 17 October 2016, OCR concluded:

“no assurance can be given that the controls associated with the declaration of assessment specialists’ interests are working effectively”.

23. Specifically, OCR has admitted that material from OCR endorsed textbooks was not considered by its Assessment Material Evaluation Committee when it reviewed proposed controlled assessment tasks, even where the assessor had declared their authorship of a textbook.

24. OCR has further admitted that it did not have in place sufficient guidance or controls to assist assessors and potential assessors to make accurate and comprehensive declarations.

Moderation and Malpractice

25. On 27 January 2016, OCR notified Ofqual that it had identified 72 instances from the 2015 assessment series in which its moderators had suspected malpractice had occurred in respect of controlled assessments and which should therefore have been referred to its compliance team for investigation, but which were not referred for investigation. Twelve of the 72 cases related to GCSE Computing.

26. The incident had come to light following a joint process review meeting on 7 January 2016. The meeting was scheduled because during the autumn of 2015, whilst evaluating applications for review of moderation, OCR had identified three cases which should have been, but were not, referred for investigation.

27. The incident occurred because OCR did not have in place at the material time any procedures to identify cases which moderators considered required investigation but which were not successfully referred to the compliance team. OCR has admitted, and Ofqual has accepted, that the failure promptly to investigate the affected cases reflected a failure in its moderation arrangements.

28. The impact of the delay in identifying these cases was that the investigation of whether there had been malpractice was impossible or materially more difficult, for example because candidates’ work was no longer available to be reviewed.

Guidance to Centres

29. On 10 August 2016, OCR notified Ofqual that it had identified an inconsistency between the GCSE Computing specification and the Guide to Controlled Assessment for GCSE Computing which it produced to help schools ensure that controlled assessment tasks were completed under the appropriate conditions.
30. The specification provided that schools would be required to ensure candidates completed controlled assessment tasks under 'formal supervision' by teachers, which required a high level of supervision and control. The guide, however, incorrectly stated that the controlled assessment should be produced under 'medium control' which allowed that responses might be produced under informal or partial supervision.
31. OCR had identified the issue on 5 August 2016 as part of an investigation into suspected malpractice. The guide had been removed from OCR's website and a correction had been issued to schools.
32. The specification had been finalised in September 2010, and the guide finalised in September 2011 following a pilot phase. OCR had not formally reviewed the specification or the guide in the intervening period, and had instead relied on an annual informal review of the information on its website by its subject experts. A comprehensive review was undertaken as a result of the incident and no similar inconsistencies were identified.
33. OCR identified 10 suspected malpractice cases from the 2016 series which included allegations that the controlled assessment had been undertaken in conditions other than 'formal supervision'. OCR considered that three of these cases might have been affected by the inconsistent guidance, because the school thought only medium control was necessary. In two of those cases OCR considered the relevant conduct in any event fell below the standard of medium control. In one case, OCR took the inconsistent guidance into account as a mitigating factor, and reduced the sanction, where a staff member had given feedback which it considered too detailed.

Statement of Compliance

34. On 8 July 2016, OCR submitted an annual statement to Ofqual. OCR has admitted that the annual statement was inaccurate because:
 - a. OCR's regulatory compliance team had identified in a report produced in June 2016:

“there are no assurances to confirm that OCR’s controls to manage conflicts of interest of its assessor personnel are sufficient... Non-compliance with Condition A4 may impact across the group”

- b. The annual statement submitted on 8 July 2016 did not declare that OCR was non-compliant with Condition A4;
- c. The annual statement submitted on 8 July 2016 did not declare that OCR was likely over the following 12 months to be non-compliant with Condition A4.

Breach of the Conditions

35. Having considered the available evidence, including the admissions which OCR has made, the Enforcement Committee has concluded that OCR breached fifteen of the Conditions in connection with the matters set out in this Notice.

Textbooks

36. OCR has admitted, and Ofqual considers, that OCR breached the following Conditions in respect of the incidents summarised under the heading ‘Textbooks’:

- a. Condition A4.2(a), because:
 - i. OCR failed to identify that the authors of controlled assessment tasks for GCSE Computing in 2016 and 2017 were each affected by a conflict of interest, within the meaning of Condition A4.1(b) and (c), in that the same persons had been concerned in the preparation of textbooks for GCSE Computing and GCSE Computer Science; and
 - ii. Having failed to identify the conflicts of interest, OCR failed to monitor those conflicts of interest.
- b. Condition A4.3, because OCR failed to take steps to prevent conflicts of interest which affected the authors of controlled assessment tasks for GCSE Computing from having an adverse effect. Specifically, OCR failed to identify before adopting proposed controlled assessment tasks that solutions and partial solutions to the proposed tasks appeared in the textbooks;

- c. Condition A5.2(e), because OCR's failures in respect of the identification and management of conflicts of interest reflected inadequate or insufficient systems of planning and internal control in that respect;
- d. Condition G4.1, because OCR failed to take all reasonable steps to maintain confidentiality in respect of the controlled assessment tasks for GCSE Computing in 2016 and 2017, by reason of its failure to identify that those tasks had been prepared by the authors of the textbooks and to consider the possibility that solutions or partial solutions to those tasks might appear in the textbooks;
- e. Condition G4.2(a), because OCR failed to take all reasonable steps to ensure that the confidentiality of controlled assessment tasks was not compromised in circumstances where those tasks were prepared by persons who had created training materials, specifically textbooks,
- f. Condition B3.1, because OCR identified in June 2016 that it did not have in place adequate controls in respect of the identification and monitoring of relevant conflicts of interest, an occurrence which could have an adverse effect, but failed to notify Ofqual of that occurrence.

Moderation and Malpractice

37. OCR has admitted, and Ofqual considers, that OCR breached the following Conditions in respect of the incidents summarised under the heading 'Moderation and Malpractice':

- a. Condition H2.1, because the failure of its moderators during the 2015 assessment series to refer for investigation 72 controlled assessment responses in respect of which malpractice was suspected constituted a failure by OCR to have in place clear and effective arrangements for moderation;
- b. Condition H2.2(b), because the same facts constituted a failure by OCR to ensure the moderation it undertook allowed it effectively to determine whether assessors were accurately and consistently applying the criteria against which it required learners' performance to be differentiated;
- c. Condition H2.3(a), because the same facts constituted a failure by OCR to ensure that it was able to make any changes to the marking of learner evidence which might have been necessary in connection with the malpractice which its moderators suspected had occurred;

- d. Condition A5.2(a), because the failure of OCR's moderators to follow appropriate procedures reflected a failure by OCR to ensure it had a workforce of appropriate competence;
- e. Condition A5.2(e), because OCR's failure to monitor its moderators to ensure instances of suspected malpractice would be properly reported reflected a failure to have in place adequate systems of internal control;
- f. Condition A6.1, because OCR did not identify the risk that its moderators might fail to refer instances of suspected malpractice for investigation;
- g. Condition A7.1, because by failing to refer instances of suspected malpractice for investigation, OCR failed to take all reasonable steps to prevent or mitigate adverse effects associated with that suspected malpractice;
- h. Condition A8.2(a), because by failing to refer instances of suspected malpractice for investigation, OCR failed to establish whether or not the suspected malpractice had occurred.

Guidance to Centres

38. OCR has admitted, and Ofqual considers, that OCR breached the following Conditions in respect of the incidents summarised under the heading 'Guidance to Centres':

- a. Condition G8.1(b), because by publishing a Guide for Controlled Assessment which permitted that controlled assessment tasks should be completed under 'medium control', OCR failed to take all reasonable steps to ensure that the controlled assessment would be produced under 'formal supervision' as required by its specification.

Statement of Compliance

39. OCR has admitted, and Ofqual considers, that OCR breached the following Conditions in respect of the incidents summarised under the heading 'Statement of Compliance':

- a. Condition B2.4, because in July 2016 OCR submitted to Ofqual an annual statement which was not accurate and which it knew, or ought reasonably to have known, was not accurate because it had identified in June 2016 that it could have no assurance in respect of its management of conflicts of interest affecting assessors and was therefore likely to be non-compliant with Condition A4.

Regulatory Action

40. The Enforcement Committee has had regard to Ofqual's policy, *Taking Regulatory Action* (2012), as well as to Ofqual's objectives and duties as set out in the Apprenticeships, Skills, Children and Learning Act 2009.
41. The Enforcement Committee considers that the impact of OCR's failure to comply with the Conditions is such that Ofqual should impose a monetary penalty. In particular, the following specific matters indicate that a monetary penalty is an appropriate outcome:
- a. OCR's failure to comply includes the submission of an inaccurate annual statement to Ofqual. The annual statement is an important part of Ofqual's supervisory regime, which informs the allocation of relevant resources and activity. An inaccurate annual statement gives rise to a risk that Ofqual might misdirect its resources and undermines regulatory confidence in the awarding organisation. In this instance, the impact is compounded because the undeclared non-compliance had been identified by OCR's regulatory compliance team in the month before the annual statement was submitted;
 - b. OCR's failures to comply in connection with the textbooks undermined public confidence in qualifications regulated by Ofqual, at least to the extent that stories appeared on social media about candidates finding solutions to controlled assessment tasks in textbooks which had been endorsed by OCR;
 - c. OCR's failures to comply in connection with the textbooks put at risk the maintenance of standards in qualifications regulated by Ofqual, because the necessary confidentiality of information in respect of controlled assessment tasks was compromised by the textbooks;
 - d. The breach of confidentiality in respect of the textbooks is likely to have conveyed an unfair advantage on candidates with access to those textbooks, in circumstances where over 55,000 textbooks had been sold;
 - e. OCR's failures to comply in respect of moderation and malpractice put at risk the maintenance of standards in qualifications regulated by Ofqual, because the delay occasioned by those failures compromised OCR's ability to establish whether or not suspected malpractice had occurred in 72 instances;

- f. OCR's failure to ensure controlled assessment was completed under the conditions it considered necessary to secure the maintenance of standards, by publishing incorrect information in the guide, put at risk the maintenance of standards in qualifications regulated by Ofqual;
- g. OCR's breaches in respect of the guide to centres, and the consequent risk to the maintenance of standards, occurred over a number of years, between 2011 and 2016.

42. The Enforcement Committee has identified a number of factors in this case which mitigate the sanction which it might otherwise have imposed, which include:

- a. OCR co-operated with Ofqual's investigation and with this enforcement case and has made full and frank admissions in respect of the facts and breaches set out in this Notice;
- b. OCR took steps to mitigate the impact of its breaches promptly once the relevant incidents came to light;
- c. OCR has spent over £300,000 addressing and resolving the incidents summarised in this Notice;
- d. OCR has given to Ofqual a regulatory undertaking, within the meaning of Condition B8, setting out the measures it will take to prevent any recurrence of the incidents summarised in this Notice;
- e. OCR has agreed to pay a monetary penalty in this case.

43. In addition, Ofqual recognises that OCR is a registered charity and that a substantial monetary penalty might impact adversely on OCR's charitable objectives.

Proposed Monetary Penalty

44. OCR has accepted that Ofqual intends to impose a monetary penalty in this case and that the proposed penalty will be in the sum of £125,000.

45. The Enforcement Committee is satisfied, in accordance with section 151B of the 2009 Act, that a monetary penalty in the sum of £125,000 would not exceed 10% of OCR's turnover.

46. Having considered the totality of the mitigation, the Enforcement Committee considers that a monetary penalty of £125,000 is proportionate in this case.

47. The Enforcement Committee has therefore decided to propose the imposition of a monetary penalty in the sum of **£125,000**.

Next Steps

48. The Enforcement Committee will consider this case again on or after 29 March 2018.

49. 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, and / or whether any other order should be made.

Signed:

Anne Heal

Chair of the Enforcement Committee

Date: 1 March 2018

Enforcement Committee:

Anne Heal;

Thomas Taylor;

Hywel Jones

NOTE:

- 1) 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.
- 2) Ofqual will publish Notice of Intention to impose a monetary penalty on its website.