

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 OCR in the sum of **£175,000**.

- i. Ofqual's reasons for proposing to impose such a penalty are set out in the Statement of Reasons attached to this Notice.
- ii. OCR has the opportunity to make written representations in respect of Ofqual's 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.
- iv. Representations [by interested parties] must be made before 4pm on [16 July 2018]. Representations should be addressed to Matthew Humphrey, Director of Legal Moderation and Enforcement and sent by email to EnforcementCommittee@Ofqual.gov.uk.
- v. Ofqual will consider its final decision on or after [16 July 2018].

This decision was made on 4 May 2018 by an Ofqual Enforcement Committee and is signed by Chair of that Committee on behalf of the Committee.

Signed: H. Jones

Date: 18 May 2018

Chair of the Enforcement Committee

Enforcement Committee:

Hywel Jones;

Christine Ryan;

Frances Wadsworth.

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

Statement of Reasons

This Statement of Reasons explains Ofqual's decision to propose the imposition of a monetary penalty on OCR.

The Statement of Reasons has seven sections:

- I. Ofqual's Role and Powers;
- II. Background;
- III. Issues of Fact
- IV. Breach of the General Conditions of Recognition;
- V. Proposed Regulatory Action;
- VI. Burden and Growth;
- VII. Impact.

Note: We have edited this Statement of Reasons for the purposes of publication, to remove information which might identify specific individuals where that information is not already in the public domain.

I. Ofqual's Role and Powers

1 The Office of Qualifications and Examinations Regulation ('Ofqual') is the Regulator of qualifications in England. It was established under the Apprenticeships, Skills, Children and Learning Act 2009 ('the 2009 Act') in 2010 and has five specific statutory objectives as set out in section 128 of the 2009 Act. The objectives include the maintenance of standards in regulated qualifications and promoting public confidence in regulated qualifications.

1.1 Under section 132(1) of the 2009 Act -

Ofqual must recognise an awarding body in respect of the award or authentication of a specified qualification, or description of qualification, to which this Part applies if—

- (a) the awarding body [the awarding organisation] has applied for recognition in the respect in question, and
- (b) the body meets the [Criteria for Recognition].

1.2 Under sections 132(3) and 132(4) of the 2009 Act -

(3) A recognition—

- (a) has effect from such date as Ofqual may specify,
- (b) is subject to the general conditions,
- (c) if in respect of a qualification subject to the accreditation requirement, is subject to an accreditation condition, and
- (d) is subject to such other conditions that Ofqual may impose at the time of recognition or later.

(4) But Ofqual may, at the time of recognition or later, determine that a specified recognition is not to be subject to a specified general condition.

1.3 Under Section 134 of the 2009 Act, Ofqual is required to set and publish General Conditions of Recognition (the Conditions). The version in force at the time of the events which give rise to this Statement of Reasons was dated July 2016 (version 16/6068). In accordance with section 153 of the 2009 Act, Ofqual has also prepared and published guidance on the Conditions to which awarding organisations must

have regard. The current version of this guidance (version 16/6068) is dated July 2016.

- 1.4 Under section 151A(1) and (2) of the 2009 Act, Ofqual may impose a monetary penalty on an awarding organisation where the latter has failed to comply with the Conditions. A monetary penalty is a requirement to pay Ofqual an amount determined by Ofqual in accordance with section 151B.

II. Background

2 This case concerns the alleged failure by Oxford, Cambridge and RSA Examinations Ltd, in May 2017, to set and deliver an assessment for GCSE English literature which was fit for purpose.

A. OXFORD, CAMBRIDGE AND, RSA EXAMINATIONS LTD

2.1 Oxford, Cambridge and RSA Examinations Ltd (OCR) is an awarding organisation regulated by Ofqual (recognised since April 2010 under recognition number RN5193). OCR is recognised in respect of the award of a variety of general and vocational qualifications and is one of four awarding organisations recognised to award reformed GCSE(9-1) qualifications.

B. GCSE ENGLISH LITERATURE

2.2 GCSE English literature is a qualification taken predominately by year 11 students, aged 15-16, in a school setting. GCSE English literature was amongst the first qualifications to be reformed (alongside GCSE Mathematics and GCSE English language) and 2017 was the first year for the award of any reformed GCSE qualification.

2.3 Awarding organisations intending to award reformed GCSE qualifications were required to secure recognition by Ofqual to award such qualifications, in accordance with section 132 of the 2009 Act. OCR was recognised to award reformed GCSE qualifications on 23 May 2014.

2.4 Reformed GCSE qualifications are subject to an accreditation requirement imposed by Ofqual in accordance with section 138 of the 2009 Act. OCR's GCSE English literature qualification was accredited by Ofqual on 20 October 2014.

2.5 OCR's GCSE English literature qualification was assessed by two written examination papers in 2017: Paper 1 and Paper 2. These enforcement proceedings concern Paper 2. Candidates were required to answer two questions on Paper 2,

one from Section A and one from Section B. Section A comprised a choice of questions in respect of clusters of poetry. Section B comprised a choice of questions in respect of Shakespeare's plays. Each section was worth 50% of the marks available for Paper 2, which was itself worth 50% of the marks for the qualification.

- 2.6 Section B (of Paper 2) included questions in respect of four Shakespeare plays but candidates were expected to have studied only one of the four plays. There were two questions in respect of each play and candidates were directed to answer one of the two questions in respect of their chosen play.
- 2.7 Overall, there were 14,261 learners entered for examinations in respect of OCR's GCSE English literature qualification in summer 2017.

C. THE INCIDENT

- 2.8 On Friday 26 May 2017, OCR notified Ofqual that an error had been identified in its GCSE English literature examination paper (Paper 2) sat by candidates on that date. OCR had been made aware of the error following a telephone call from a school which had identified the error during the examination.
- 2.9 The error affected Question 4 on Paper 2, which concerned the Shakespeare play 'Romeo and Juliet'. Question 4 read:

How does Shakespeare present the ways in which Tybalt's hatred of the Capulets influences the outcome of the play? Refer to this extract from Act 1 Scene 5 and elsewhere in the play.

- 2.10 OCR described the error in the following terms:

The work (sic) Capulets should read Montagues. The error appears to have been present since the first draft of the question paper and makes the question unanswerable.

2.11 Question 4 was the first of the two 'Romeo and Juliet' questions on Paper 2, candidates were required to answer one of the two questions. The alternative 'Romeo and Juliet' question (Question 5) did not include an extract from the play. 'Romeo and Juliet' was the most popular of the Shakespeare options.

2.12 The error was variously reported on social media on 26 May and on subsequent days, and was reported in conventional and online media. The BBC reported the incident under the headline: 'GCSE exam error: Board accidentally rewrites Shakespeare'.

2.13 On 26 May 2017 Ofqual made a public statement in respect of the error:

We are very disappointed to learn of the error in OCR's English literature exam paper today. Incidents of this nature are unacceptable and we understand the frustration and concern of the students who may have been affected. We will be scrutinising how OCR intends to identify and minimise the impact on these students. We will be closely monitoring OCR's investigation of how this incident occurred and seeking reassurance regarding its other papers this summer.

2.14 At the time of the incident, Ofqual advised OCR that its immediate priority was to understand how OCR intended to manage and mitigate the incident. It would be necessary at some stage to understand how the error occurred, and why that error was not identified before the examination, but it was not appropriate to divert OCR from the process of awarding and incident management by investigating immediately.

D. BRIEF HISTORY OF THIS MATTER

2.15 The process leading to Ofqual giving notice that it intends to impose monetary penalty is summarised below:

- (a) On 26 May 2017, OCR notified Ofqual that an error had been identified in the GCSE English literature examination paper sat by candidates on that date;
- (b) Between 26 May and 24 August 2017, Ofqual liaised with OCR in respect of its management of the incident;
- (c) On 6 June 2017, Ofqual consulted OCR on its proposal to impose additional Conditions on OCR (Special Conditions) to secure that relevant information would be preserved in the event that Ofqual decided to investigate the cause of the error OCR had reported;
- (d) On 15 June 2017, Ofqual imposed on OCR Special Conditions (2017)B6.2 and (2017)B6.3;
- (e) On 24 August 2017, GCSE results were communicated to relevant learners;
- (f) On the same date, Ofqual notified OCR that it was considering enforcement proceedings in connection with the error affecting GCSE English literature and required OCR to disclose to Ofqual its own evaluation of how that incident had occurred;
- (g) On 2 October 2017, OCR submitted relevant reports to Ofqual;
- (h) On 17 October 2017, Ofqual notified OCR that the Executive Director for General Qualifications had decided to commence enforcement proceedings in connection with the incident;
- (i) On 22 November 2017, Ofqual provided to OCR a preliminary draft of the Statement of Case prepared by the Executive Director for General Qualifications in respect of these enforcement proceedings;
- (j) On 12 December 2017, Ofqual served on OCR an Information Notice, in accordance with Condition B4, requiring OCR to produce information

which was necessary to allow the Executive Director for General Qualifications to complete a further draft of the Statement of Case;

- (k) On 18 December 2017, OCR provided the information required by Ofqual;
- (l) On 21 December 2017, Ofqual served on OCR a completed draft of the Statement of Case which had been prepared by the Executive Director for General Qualifications;
- (m) On 18 January 2018, OCR responded to the draft Statement of Case;
- (n) On 16 March 2018, Ofqual served on OCR the final Statement of Case prepared by the Executive Director for General Qualifications and notified OCR that the final Statement of Case, and any response submitted by OCR, would be put before Ofqual's Enforcement Committee for determination;
- (o) On 3 April 2018, OCR submitted a response to the final Statement of Case;
- (p) On 4 May 2018, Ofqual's Enforcement Committee met to consider this matter.

III. The Issues of Fact

3 The Statement of Case set out the Executive Director's understanding of the factual background in respect of:

- (a) OCR's response to the incident;
- (b) OCR's assessment of the cause of the incident;
- (c) The statistical impact of the incident;
- (d) The context of the incident.

3.1 In its response to the final Statement of Case, OCR did not dispute the factual background which was set out in the Statement of Case. In the circumstances, Ofqual has adopted the exposition of the factual background in the Statement of Case as an accurate summary of the relevant facts for the purposes of this Statement of Reasons.

OCR's Response to the Incident – Communications with Schools

3.2 On 2 June 2017, the (then) Chief Executive of OCR, Mr Shapiro, wrote to the head of each school registered for its GCSE English literature qualification apologising for the error and explaining that OCR's 'chief aim' was 'to make sure your students are not disadvantaged'. Mr Shapiro summarised the measures OCR would take as follows:

We will have received all papers by the end of this week (2 June) and will then begin marking them. During the first stage of this process, we will collect data to get a clear picture of the different ways students may have been affected. These may include, for example, students who attempted question 4 as written, students who corrected the question themselves, and those who attempted to answer the question before moving on to the other optional question (question 5). We will brief all our examiners to identify the different ways students tackled question 4 and on how to mark each one.

At the same time, OCR's Research and Technical Standards team is investigating the different ways in which marks can be applied to best reflect students' abilities and their performance in all their GCSE English literature exam papers. Once marking is completed and we know the overall impact of the error, we can then apply the most appropriate solution. In addition to examiner feedback, we can also use statistical analyses to evaluate performance across the whole exam to inform our marking. And when we turn marks into final grades, grade boundaries can be adjusted if necessary.

3.3 In August 2017, OCR sent a package of communications to schools which included:

- (a) A letter to the head of each school at which learners had attempted 'Romeo and Juliet' questions (Question 4 or Question 5);
- (b) A letter to the head of each school at which learners had not attempted 'Romeo and Juliet' questions;
- (c) Two versions of a Student Statement for learners at schools which had attempted 'Romeo and Juliet' questions, which explained how marks had been calculated:
 - (i) a statement for those learners who had been awarded the actual mark given by the examiner; and
 - (ii) a statement for those learners who had been awarded a calculated or assessed mark;
- (d) A FAQ document targeted at schools and learners.

3.4 There were common features to the communications which included:

- (a) Recognition by OCR in each of the communications that the error was 'unacceptable';

- (b) An explanation in each of the communications of the approach taken by OCR to minimise the impact of the error;
- (c) An offer in each of the communications to make available free of charge for every learner copies of their marked examination papers for the OCR GCSE English literature qualification in 2017;
- (d) An apology in each of the communications for schools where learners had attempted 'Romeo and Juliet' questions;
- (e) An offer in each of the communications for schools where learners had attempted 'Romeo and Juliet' questions that OCR would waive the fees associated with a Review of Marking in respect of the OCR GCSE English literature qualification in 2017.

OCR's Response to the Incident – Communication with Ofqual

- 3.5 Following the notification there were a variety of communications between Ofqual and OCR.
- 3.6 On 7 June 2017, there was a telephone conference between representatives of Ofqual and OCR. The purpose of that telephone conference was to inform Ofqual's understanding of how OCR proposed to ensure the application of the mark scheme to secure fair outcomes for candidates affected by the error in Question 4, including those who might have answered Question 5 only after giving up an attempt to answer Question 4.
- 3.7 On the same date, Ofqual wrote to OCR setting out a number of concerns in respect of the information imparted during the telephone conference. In summary, the Executive Director for General Qualifications was concerned that it was not clear from the telephone conference that OCR had sufficiently considered all of the options available to mitigate the incident and prevent prejudice to learners which might occur.

3.8 In a letter dated 9 June, OCR provided a comprehensive summary of its approach, including setting out a number of the options it had identified alongside its rationale for the choices it had made. The overriding principle was that standard processes and procedures would be followed for marking Question 4 and Question 5. OCR considered that the risks associated with significant deviation from standard procedures outweighed the potential benefits in most instances. Changes had been made, however:

- (a) More time was allocated for discussion of Question 4 and Question 5 at the standardisation day for examiners;
- (b) The impact of the error had been considered at every stage of the standardisation process and clear guidance had been given to markers;
- (c) The final mark scheme had been modified following the Lead Marker's extensive browsing of scripts;
- (d) Enhanced monitoring had been put in place for the paper, and in particular Question 4;
- (e) Statistical analysis and modelling activity had been commissioned to evaluate the impact on learners and consider the impact on learners of different approaches to awarding.

3.9 OCR had identified several ways in which learners had approached Question 4:

- (a) Some appeared to have recognised the mistake and answered the question as if it had referenced hatred of the Montagues;
- (b) Some answered the question as written, discussing:
 - (i) The consequences of Tybalt's quarrel with Capulet in the extract provided and how this made his hatred and destructive energies fatal to Mercutio and ultimately to Romeo and Juliet;

(ii) Tybalt's hatred more generally and specifically his hatred of Romeo as expressed in the extract and later in the play;

(c) Some started a response to the question as written then crossed-out that response and began a response to the question as if it had referenced hatred of the Montagues;

(d) Some started a response to Question 4 then stopped and completed a response to Question 5.

3.10 In view of the wider range of possible responses to Question 4, OCR had considered using a small group of examiners to mark responses to that question. In the event, it had decided not to do, instead it put in place an enhanced approach to monitoring which would allow it swiftly to identify any assessors having difficulty with responses to Question 4, so that remedial measures could be taken; which might include preventing some assessors from marking scripts which included an answer to Question 4.

3.11 As at the date of the letter (9 June), OCR had identified two potential approaches to awarding the qualification, the appropriate approach would be informed by the modelling and analysis as marking progressed. The potential approaches were:

(a) Using different grade boundaries for those learners affected by the error – effectively carrying out different awards for those affected and those not affected;

(b) Producing assessed scores for Questions 4 and 5 (and potentially Section A) in a variety of ways in order to award as normal, but with adjusted marks for some learners.

3.12 The letter noted that 'Romeo and Juliet' was one of the more popular options for the assessment and set out OCR's estimate as to the number of learners likely to be affected:

	Figure
Total entry for J352/02	14,261
Number of "Romeo and Juliet" scripts	c. 4,000 – 5,000 (approx. 1/3 of scripts)
Number of Q4 v Q5 scripts	c. 2,000 – 2,500 each (half and half)

3.13 On 16 June 2017, Ofqual wrote to OCR setting out a number of specific questions arising as a result of the information in OCR's letter of 9 June and seeking updated information in several respects. As part of that letter, the Executive Director for General Qualifications noted that concerns had been raised by schools in respect of OCR's management of the incident:

We have already provided you with feedback from ASCL on this matter. Their view is that, to date, some of the information from OCR has oversimplified the issue (for example by suggesting that no students would be disadvantaged) and therefore has not reassured schools. They feel strongly that a more detailed communication to schools before the end of term would be helpful. We have also this week been sent a copy of a letter to OCR from a number of schools expressing similar concerns.

3.14 On 20 June 2017, OCR responded to the questions which Ofqual had raised. Update meetings between Ofqual and OCR took place through the marking period, on 23 June, 7 July, 14 July, 21 July, 25 July, 26 July and 1 August. In particular:

- (a) A telephone conference took place on 25 July, at which time OCR was in the process of making final decisions in respect of grade boundaries, in advance of the Data Exchange. OCR had provided a variety of documents in advance of the telephone conference setting out the decisions it had made and the rationale for those decisions. OCR had by this stage decided that the most appropriate approach was to use the same grade boundaries for all GCSE English literature options, assessed marks would be used in a variety of ways for learners affected by the error in Question 4.

- (b) During a conversation on 26 July 2017, OCR confirmed that it would give assessed or calculated marks for learners affected by the error, where this was higher than the actual mark. OCR noted in a subsequent email that Ofqual had been sufficiently assured by this approach.

3.15 On 22 August 2017, OCR wrote to Ofqual summarising the communications it had put in place to support schools and learners in respect of GCSE English literature, in readiness for the issue of results on 24 August.

OCR's Response to the incident – Awarding the Qualification

3.16 In a letter and enclosures dated 15 September 2017, OCR provided its final update in respect of the award of the qualification. In an appendix to that letter, OCR described the categories of learners affected by the error. The majority of learners fell into one of four categories which OCR described as follows:

A Candidate is affected by the error because they answered a 'R+J' question. We calculated a mark (z-score) for Section B based on Paper 1 and Section A of Paper 2, but it was lower than the mark given by the examiner, so the candidate received the original mark.

B Candidate is affected by the error because they answered a 'R+J' question. We calculated a mark (z-score) for Section B based on Paper 1 and Section A of Paper 2, and it was higher than the mark given by the examiner, so the candidate received the assessed mark.

C Candidate is affected by the error because they didn't answer a 'R+J' question, but 'R+J' questions were most popular in their centre (i.e. they come from a 'R+J centre'). We calculated a mark (z-score) for Section B based on Paper 1 and Section A of Paper 2 and the candidate received the assessed mark.

E Candidate is affected by the error because:

either they answered a 'R+J' question

or 'R+J' questions were most popular in their centre (i.e. they come from a 'R+J centre')

However, they did not answer every section across the two papers and fall into three groups:

1) they got '0' for paper 1, but scored marks on paper 2

2) they got '0' for paper 2, but scored marks on paper 1

3) they got '0' on both papers

This is the most complicated group

3.17 OCR described additional categories for learners where Special Consideration had been given:

[Edited]

3.18 OCR had identified a small number of learners who had been absent for Paper 1 and in respect of whom it was necessary to have further categories:

[Edited]

3.19 The 15 September letter also specified:

- (a) That all learners would be granted access to their marked scripts free of charge for GCSE English literature (both papers), this was a service for which a fee was usually charged;
- (b) That centres would not be charged a fee where a request for Review of Marking (Enquiry about Results) was made in respect of a learner who had attempted a 'Romeo and Juliet' question (regardless of the outcome of the Review);
- (c) That a bespoke process had been designed to manage the Review of Marking process, to ensure those instances in which part of the learner's result reflected calculated marks, rather than the examiner's marks, were properly taken into account.

3.20 Finally, the letter noted the costs incurred by OCR in connection with the incident:

We took this incident very seriously and have invested substantial resources to mitigate the effect of the error as far as possible. The direct costs incurred include incentive payment to markers, logistics and systems, while indirect costs include considerable staffing overheads and lost revenue from enquiries about results and requests for access to scripts. We estimate the total cost of the actions taken to be a minimum of £150,000.

OCR's Assessment of the Cause of the Incident

3.21 On 27 June 2017, OCR disclosed to Ofqual a number of documents relating to a meeting of its Assessment Material Challenge Board for GCSE English literature which had taken place on 22 June 2017.

3.22 The outcome of the Assessment Material Challenge Board was summarised in a document entitled 'AM Challenge Board Actions'. The following particular matters were noted in the summary:

Q4 in the first draft appeared to the [OCR role] to be ambiguous; *'How does Shakespeare present the ways in which the conflict influences the outcome of the play? Refer to this extract from Act 1 Scene 5 and elsewhere in the play.'* The [OCR role] on the second draft removes the word 'the' – the [OCR role] confirms the ambiguity has been resolved, however the question now appears too broad. At this point the [OCR role] asks the [OCR role] to consider focusing Q4 on *'the ways in which Tybalt's hatred of the Capulets influences...'* at no point is the [OCR role] recorded challenging this incorrect reference. On 29 March 2016 sections A and B of the QP are merged together (noted on the Audit Log) and by 8 April 2016 the consolidated QP is loaded for the next stage of the production process using the erroneous Q4.

The [OCR role] and [OCR role] roles are held by the same person here, this is not unusual. The [OCR role] is responsible for setting up the blueprint of

the QP while the **[OCR role]** has responsibility for creating suitable assessment items and related mark schemes. The **[OCR role]** would have seen the QP at the Word version stage (type set proof) and the final PDF print proof. 8 April 2016 saw the end of the creation of the QP content and by Autumn 2016 the QP had been printed.

The **[OCR role]** saw the final PDF print proof version to sit the QP as the candidate and failed to see the error. When asked recently by the **[OCR role]** about Q4, the **[OCR role]** reportedly stated that *'it didn't say Capulets in my version'*. The **[OCR role]** 4 bullet points in response to the question do not make it clear if they are answering the question as if they had read 'Capulets' or 'Montagues'. In RFT if the **[OCR role]** reports an error the QP is sent back to the **[OCR role]** and repeats the RFT Quality Assurance loop after necessary changes have been made. The **[OCR role]** is responsible for ensuring that the candidate can sit the QP in the given time, that there are no errors and those that hold the role are either subject specialists or familiar with all set texts."

The document further recorded that there was no remote training for the **[OCR role]** and there was no requirement to sit a paper before taking on the role. The challenge board recorded:

This does leave OCR relying on CV information and previous experience only to evaluate the suitability of a new **[OCR role]** or the continuation of an **[OCR role]**. There was a comment that training was not held for this role to ensure that they were not over-prepared to sit 'as a candidate would'.

3.23 The challenge board concluded:

Agreed: That all three roles here have failed to complete their task descriptors. The responsibility of the QP content sits solely with the **[OCR role]**. It was noted that the **[OCR role]** and **[OCR role]** have a good relationship and this is not the reason why a challenge was not made when the erroneous Q4 was put forward.

3.24 On 2 October 2017, OCR wrote to Ofqual providing two documents:

- (a) Assessment Material Errors – Summer Series 2017;
- (b) Plans for Reduction in Errors in Assessment Material.

3.25 The document 'Assessment Material Errors' included the following narrative summary of the circumstances which gave rise to the error affecting Question 4:

The AMCB meeting (22 June 2017) concluded that the root cause of the error was the result of human failure, not the change in production process from EAMP to RFT, which was the process used to produce the R&J paper. This conclusion was based on the following key points:

- roles of each participant in the RFT process were clearly defined with specific responsibilities ascribed to each role;
- the team responsible for producing this question paper comprised of very experienced English literature teachers and assessment setters;
- it was evident from the audit log that in trying to eliminate ambiguity in question 4, the **[OCR role]** introduced the error and was not challenged on the change by the author on its accuracy;
- the mark scheme also carried the error as it was created at the same time as the question paper; and
- all other quality checks continued to miss the error in both the question paper and mark scheme. Even the **[OCR role]** who worked the question paper as the candidate, failed to spot the error.

The meeting had no other evidence to support any explanation other than those holding the roles 'simply' read what they expected to see rather than what was actually written. The accumulated experience of ACMB over three years also supported this conclusion as this is not an uncommon root cause for obvious errors such as this.

ACMB considered whether the lack of specialist knowledge on the part of the **[OCR role]** had any impact, as this would be an 'extra pair of expert eyes'. It concluded that the role of the **[OCR role]** was to ensure that the quality assurance process had been correctly followed and that all assessment requirements had been met; it was for the setting team to be responsible for

the provision of an error free and content-correct paper. It is for the QP Error Reduction Programme to identify and implement improvements to the quality controls to ensure that the combined setting team can meet this expectation.

The Statistical Impact of the Incident

3.26 Having categorised learner responses as set out in paragraphs 3.16 – 3.18 (above) the number of learners falling into each category was:

Category	Learners	Category	Learners	Category	Learners
A	2916	F	[edited]	J	[edited]
B	2642	F1	[edited]	K	[edited]
C	80	G	[edited]	L	[edited]
E	49	H	[edited]	M	[edited]
		I	[edited]		

The Context of the Incident

3.27 In the Assessment Material Errors document, OCR observed that the GCSE English literature error was one of several errors affecting assessment materials for the 2017 summer assessment series. OCR had introduced additional processes to identify errors for 2017, and therefore expected to identify more errors in 2017 than previous years. OCR summarised the number of errors occurring in GCSE, AS and A level assessment materials in 2017 and previous years as follows:

Series	Number of assessment materials produced	Pre- & Post-exam errors	% items with errors
Nov & June 2014	1687	21	1.2
Nov & June 2015	2047	32	1.6
Nov & June 2016	1881	11	0.6
June 2017	2012	77	3.8

Breach of the General Conditions of Recognition;

4 The Statement of Case contended that by reason of, and in connection with, the error affecting Question 4, OCR had breached three of the Conditions:

- (a) Condition G1.1
- (b) Condition G9.3
- (c) Condition H5.1

4.1 In its response to the draft and final Statement of Case, OCR has argued that the error affecting Question 4 does not demonstrate that it breached any of the Conditions. Ofqual has carefully considered the various arguments OCR has raised and has set out its provisional conclusions on the questions of breach below.

4.2 In particular, OCR's argument that it has not breached Conditions G1.1 or G9.3 is based on three contentions:

- (a) That Ofqual has accepted OCR did not breach Conditions A5.1 and A5.2, by reason of the Executive Director's decision not to allege breaches of those Conditions in the final Statement of Case when such breaches had been alleged in the draft Statement of Case;
- (b) That a determination that OCR had breached Conditions G1.1 and G9.3 would, in the context of Ofqual's acceptance that there was no breach of A5.1 or A5.2, be possible only were Ofqual to interpret those Conditions as imposing a strict rule against single, non-fault based errors, which rule would be disproportionate;
- (c) That an objective reading of the guidance published by Ofqual in respect of Condition G1.1 indicates that Ofqual intended Condition G1.1 to be concerned with, and directed to, decisions as to the structure and content of questions which awarding organisations make when setting examination questions and not to errors in a specific question.

4.3 Ofqual does not agree with OCR's analysis:

- (a) Ofqual does not agree that it follows from the Executive Director's decision, not to allege a breach of Condition A5.1 or A5.2 in the final Statement of Case, that the Executive Director considers OCR did not breach those Conditions. There are a variety of possible explanations for the Executive Director's decision and there is no evidence that the Executive Director formed any settled view on OCR's compliance with those Conditions. In any event, whether OCR breached Conditions A5.1 and A5.2, or any other Condition, is a question for Ofqual (in this instance acting through its Enforcement Committee) to determine on the basis of the available evidence, regardless of the allegations of breach made by the Executive Director. In the event, having carefully considered Conditions A5.1 and A5.2, Ofqual takes the view that the error affecting Question 4 indicates that there were failures in OCR's quality assurance processes for Paper 2 – in particular failures by the **[OCR roles]** - which might indicate that OCR had failed to comply with Conditions A5.1 and A5.2. However, Ofqual does not consider it necessary or expedient in the circumstances of this case to undertake the investigation which might be necessary to establish sufficient evidence formally to determine that question.
- (b) Ofqual does not agree that determining the questions of breach requires any particular interpretation of Condition G1.1 and G9.3. Put shortly, the primary issue is whether or not the assessment which OCR set and delivered was fit for purpose, which is a question of fact for Ofqual to determine on the evidence.
- (c) OCR has not identified any particular aspect of the guidance which might support the interpretation of the guidance for which it contends and nor has it explained why it has arrived at that interpretation. Ofqual has carefully considered the guidance and does not consider the interpretation preferred by OCR to be sustainable.

4.4 Condition G1.1 provides:

In setting an assessment for a qualification which it makes available, an awarding organisation must ensure that the content of the assessment is –

- (a) fit for purpose,
- (b) appropriate for the method of assessment chosen, and
- (c) consistent with the specification for that qualification.

4.5 Condition G9.3 provides:

An awarding organisation must ensure that, on delivery of every assessment for a qualification that it makes available, the content of the assessment:

- (a) is fit for purpose,
- (b) is appropriate for the method of assessment chosen, and
- (c) is consistent with the specification for that qualification.

Fit for purpose

4.6 Ofqual considers that by reason of the error affecting Question 4, OCR failed to ensure the content of the Paper 2 assessment it set for GCSE English literature in 2017 was fit for purpose.

4.7 Question 4 referred to hatred of the 'Capulets' when it should have said 'Montagues'. As a result of the erroneous reference to 'Capulets', Question 4 was impossible properly to answer and did not measure the knowledge, skills and understanding which OCR had intended that part of the assessment to measure. OCR itself acknowledged in its notification of 26 May 2017 that, as written, the question was 'unanswerable', which Ofqual considers to be synonymous with 'not fit for purpose'.

4.8 Moreover, Ofqual considers that as a result of the error affecting Question 4, the assessment discriminated between learners on the basis of factors other than the

knowledge, skills and understanding being measured by the qualification. That is, as written and experienced by learners, Question 4 discriminated between learners with a comparable level of relevant knowledge, skills and understanding on the basis of the ability of those learners to see past the error, to discern (or attempt to discern) the question OCR might have intended to ask, and to do so sufficiently swiftly to compose a response to that question within the available time.

- 4.9 The factors listed in the guidance published by Ofqual in respect of Condition G1.1 and G9.3 which indicate that an awarding organisation is likely to fall into non-compliance include that the awarding organisation sets and / or delivers assessments which:

... discriminate between Learners on the basis of factors other than the knowledge, skills and understanding being measured by the qualification.

- 4.10 In the circumstances, Ofqual considers that the content of the Paper 2 assessment was not fit for purpose by reason of the error affecting Question 4.

Condition G1.1

- 4.11 The error affecting Question 4 was introduced during the process of setting the assessment. OCR did not prevent that error and, as a result, Ofqual considers that OCR failed when it set the assessment to ensure the content of that assessment was fit for purpose.

- 4.12 OCR therefore breached Condition G1.1(a) when it set the (Paper 2) assessment for GCSE English literature in 2017.

Condition G9.3

- 4.13 Having introduced the error affecting Question 4 during the process of setting the assessment, OCR did not identify or remedy the error before the assessment was delivered to learners. As a result, Ofqual considers that OCR failed when it delivered the (Paper 2) assessment to ensure the content of that assessment was fit for purpose. OCR therefore breached Condition G9.3(a) when it delivered the (Paper 2) assessment for GCSE English literature in 2017.

Condition H5.1

4.14 Condition H5.1 provides:

An awarding organisation must ensure that the result of each assessment taken by a Learner in relation to a qualification which the awarding organisation makes available reflects the level of attainment demonstrated by that Learner in the assessment.

- 4.15 The error affecting Question 4 caused OCR to put in place different approaches to determining results for affected learners. In 2,735 instances, the effect was that the learner was given a result which did not reflect the level of attainment which that learner had demonstrated in respect of 'Romeo and Juliet' questions but reflected a result calculated on the basis of the learner's performance in other components of the GCSE English literature qualification.
- 4.16 Ofqual recognises that OCR's approach is likely to have mitigated some of the adverse effects associated with the error affecting Question 4 and further recognises that the approach taken by OCR is likely to have been the only practical option out of all the options available.
- 4.17 Nonetheless, Ofqual considers that in each of the instances that OCR issued a result which did not reflect the level of attainment demonstrated by the learner in the assessment, OCR breached Condition H5.1.

IV. Proposed Regulatory Action

- 5 In any case where it considers that an awarding organisation has breached the Conditions, Ofqual may decide to take no action, to take informal action or may decide to take regulatory (enforcement) action.
- 5.1 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.
- 5.2 Ofqual considers that OCR's breaches of Conditions G1.1 and G9.3 in this case indicate that it is necessary to take action: to make sure OCR does not breach its Conditions in the future, to deter other awarding organisations from similar breaches and to promote public confidence. Ofqual does not consider it is necessary to take action in respect of OCR's breaches of Condition H5.1 because those breaches were the inevitable consequence of the potential courses of action available to OCR as a result of the incident created by the error affecting Question 4.
- 5.3 In particular, Ofqual does not consider the requirements of deterrence or public confidence would be met were it to take no action or to take informal action. Ofqual does not consider it is necessary to take action, beyond deterrence, to ensure OCR takes specific steps to secure compliance with any of the Conditions.

5.4 Section 6 of the TRA policy concerns monetary penalties. That section states that having established that an awarding organisation has contravened a relevant 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.

Whether a Monetary Penalty is Appropriate

5.5 The TRA policy states that when deciding whether to impose a monetary penalty, Ofqual will consider a number of factors, including –

- (a) the seriousness of the breach, particularly in relation to its effect on standards of qualifications, public confidence or the efficiency of the qualifications system;
- (b) the effect of the breach (both in terms of the seriousness of the impact and the number of people affected) on purchasers, learners and users of qualifications;
- (c) the effect of the breach on Ofqual's ability to regulate the awarding organisation effectively in the future;
- (d) whether the breach was prolonged or repeated;
- (e) whether the awarding organisation has breached regulatory requirements in the past, and, if so, how frequently;
- (f) the extent to which the circumstances of the breach were within the control of the awarding organisation;
- (g) the behaviour of the awarding organisation in relation to the breach, including whether it happened intentionally, whether there was any negligence on the part of the awarding organisation, and whether the breach gives rise to concerns about the organisation's management or control systems;
- (h) whether the breach gave rise to financial gain or competitive advantage;

- (i) whether a fine is likely to improve compliance with regulatory conditions in the future (including by other awarding organisations), and
- (j) any financial sanctions that have been imposed in relation to the breach by another regulatory body, such as [Qualifications Wales].

5.6 Further, the TRA policy goes on to outline a list of scenarios in which Ofqual may consider imposing a monetary penalty on an awarding organisation. These scenarios might include, but are not limited to, cases in which an awarding organisation has –

- (a) made a serious error when setting an assessment which affects a significant number of candidates;
- (b) demonstrated significant failings in its marking of assessments which has undermined the standard of the qualification;
- (c) knowingly reduced the scale of its quality assurance activity which has resulted in significant negative consequences for learners, standards and/or public confidence;
- (d) benefited financially from a breach of its conditions of recognition;
- (e) given Ofqual assurances about specified steps that it will take or not take, which it has deliberately or negligently not carried out;
- (f) deliberately or negligently allowed the confidentiality of its assessments to be compromised;
- (g) intentionally misled Ofqual; or
- (h) made serious and persistent failings in the service it offers to its customers, such as failing to provide the appeals arrangements required by its conditions of recognition.

5.7 Ofqual has considered the factors set out above in light of the circumstances of this case. Ofqual has also carefully considered the representations made by OCR in response to the draft and final Statement of Case, to the effect that a monetary penalty should not be imposed in this case. In the event, Ofqual considers:

- (a) The error affecting Question 4, by which OCR breached the Conditions, was a serious error because Question 4 was unanswerable as a result of that error;
- (b) OCR's breaches are likely to have a serious adverse impact on public confidence in qualifications, because the error occurred during the first assessment series for a 'flagship' qualification, which had been reformed, which had been subject to significant regulatory scrutiny through recognition and accreditation by Ofqual and which was developed using OCR's 'Right First Time' process, which was intended to prevent errors;
- (c) Although OCR acted to mitigate the breach, 2735 of the learners directly affected by the breach were awarded a result which had been calculated based on their performance in other GCSE English literature questions, because they had performed less well in relation to 'Romeo and Juliet' questions than those other components. Whilst OCR's approach is likely to have mitigated adverse effects for learners who had a consistent level of knowledge, skills and understanding across those matters tested on Paper 1 and Paper 2, the adverse impact of OCR's breaches will have persisted for any learners who favoured 'Romeo and Juliet' over other aspects of the specification, who had anticipated securing higher marks for Question 4 than for questions relating to other aspects of the specification, but who in fact answered Question 4 poorly as a result of the error. A mark calculated based on a learner's performance in their least-favoured questions would not restore that learner to the position they might have been, in terms of level of attainment, had the error not been made;
- (d) 2919 learners who answered a 'Romeo and Juliet' question were given the examiner's mark because this was higher than a calculated mark would have been. However, Ofqual considers it is likely those learners were nonetheless affected adversely by the error, albeit potentially to differing degrees, because in composing a response it was necessary

first for each of those learners to consider what question OCR might have intended to ask, in order to discern how best to demonstrate the extent of their knowledge, skills and understanding. The examination time and intellectual energy expended in that initial exercise is likely in some of the 2919 instances to have caused learners to perform less well than would have been the case had OCR not made the error.

- (e) Learners who read through the examination paper before beginning to answer questions and who noted the 'unanswerable' Question 4, might have been affected by the error in their response to questions in Section A, because the error might have undermined confidence in their ability subsequently to answer questions in Section B. That impact is likely to have been compounded for any learner favouring in their preparation the 'Romeo and Juliet' question supported by the extract from the text, rather than the discursive Question 5;
- (f) **[edited]** learners who were absent for Paper 1 through no fault of their own, where special consideration was granted for that paper, and who anticipated answering 'Romeo and Juliet' questions on Paper 2, were awarded a mark based solely on their performance in respect of the questions concerning an anthology of poetry. Learners favouring, in their preparation and revision, questions concerning 'Romeo and Juliet' are likely to have been disadvantaged in this respect. Further disadvantage might have been caused for any such learner who read through the examination paper before attempting Section A and who was affected in their response to Section A by concerns about their ability subsequently to answer questions from Section B.

5.8 OCR argues that to impose a monetary penalty in this instance would reflect a selective and inconsistent approach to enforcement, such that imposing a penalty would be arbitrary. In particular, OCR refers to the occurrence of other errors, affecting assessment materials produced by other awarding organisations, which have not led to the imposition of a monetary penalty. OCR has asked that Ofqual explain to it the relevant features of any other instances in which assessment

material errors have occurred, so that it might fully appraise the differences between this case and those other instances.

5.9 Ofqual recognises that it has not previously imposed a monetary penalty in connection with an assessment material error. Ofqual considers, however, that the error in this case stands apart from other errors which occurred during the 2017 assessment series, including (but not limited to) the examples to which OCR has referred in its submissions, by reason of the cumulative effect of the following factors:

- (a) As a result of the error, Question 4 was fundamentally flawed because the question was unanswerable; it could not be answered, as written, so as to demonstrate the knowledge, skills and understanding which OCR had intended that question to test;
- (b) On OCR's own analysis, 5703 learners were directly affected by the fundamentally flawed question;
- (c) For relevant learners, the question affected by the fundamental flaw represented half of the marks available on the assessment and a quarter of the marks available for the qualification as a whole;
- (d) The error occurred during the first assessment series for a 'flagship' reformed qualification. Exam Boards had been, and were generally known to have been, subject to a high degree of regulatory scrutiny during the design and delivery process for reformed qualifications and members of the public might therefore have reasonably expected such errors to be unlikely to occur.

5.10 Ofqual considers that none of the other assessment material errors occurring in 2017 had the combination of features which affected the error made by OCR in its GCSE English literature qualification.

- 5.11 For completeness, Ofqual considers that none of the assessment material errors which occurred in other recent exam series' exhibited the combination of features which are present in this case. However, Ofqual does not accept that it would be arbitrary or unfair were it to decide to impose a monetary penalty in connection with an error even had there been previous comparable cases where no such penalty was imposed. Ofqual considers such an occurrence might properly be regarded as a consequence of the evolution of its enforcement strategy.
- 5.12 Having detailed the particular features which have caused it to take the view that the error affecting OCR's GCSE English literature qualification stands apart from other errors, Ofqual does not consider it necessary or appropriate to set out in detail its analysis of other assessment material errors, as OCR suggests.
- 5.13 Finally, in this respect, OCR argues that Ofqual's decision-making in respect of these enforcement proceedings has been influenced more than any other factor by the wide media coverage the error received. Ofqual rejects entirely any suggestion that media coverage has had or might be given any disproportionate weight in its decision making in respect of this case. However, media coverage is one of the barometers of public confidence to which Ofqual might reasonably have regard when it decides how it might most effectively deploy its resources in accordance with its objectives and duties. To that extent, therefore, Ofqual does not agree that media coverage is wholly irrelevant to its considerations in any particular case.
- 5.14 In all of the circumstances, having had regard to the matters set out above and in consideration of its statutory objectives and duties, Ofqual considers that this is a case in which it is appropriate to propose the imposition of a monetary penalty.

The Amount of Any Monetary Penalty

The initial figure

- 5.15 The TRA policy provides that when determining a baseline amount (or initial figure) for the particular penalty, in addition to considering the factors outlined in the

preceding section, Ofqual will take into account all other relevant factors. Such factors include (but are not limited to) –

- (a) the steps taken by the awarding organisation to rectify and prevent recurrence of the breach;
- (b) whether the breach was reported promptly and whether there was any attempt to hide the breach;
- (c) the level of cooperation with Ofqual's investigation;
- (d) the likely impact of the penalty on the awarding organisation's provision of regulated qualifications;
- (e) the circumstances of the breach in comparison to similar breaches for which fines have been imposed, and the awarding organisation's turnover from regulated activities in relation to its total turnover.

5.16 Ofqual recognises that OCR reported the error to Ofqual as soon as it was made aware of that error, that it managed the impact of the error effectively in the circumstances, that it investigated how the error occurred with a view to minimising the possibility of recurrence and that it co-operated with Ofqual's request that it should disclose the outcome of that investigation.

5.17 Nonetheless, Ofqual considers this to be a serious case by reason of the matters set out at paragraph 5.7 and 5.9 (above). Ofqual considers the primary impact of OCR's breaches was to put at risk public confidence in qualifications, for those learners directly affected by the error and for the public at large who might reasonably have expected errors to be less likely in connection with a 'flagship' reformed qualification. That is, Ofqual does not consider OCR's breaches undermined standards in qualifications, which instances might be expected to attract larger penalties.

5.18 In the circumstances, Ofqual considers the initial figure must take into account the desirability of restoring public confidence, by demonstrating that Ofqual will take action where assessment material errors occur, and must also take into account the

need to deter OCR, and other awarding organisations from similar breaches in the future.

- 5.19 OCR has argued that a monetary penalty will not have a deterrent effect. In particular, OCR argues that the error was caused by human error rather than a system failure or lack of competence. Baldly, it states that a monetary penalty will not reduce errors caused by human error.
- 5.20 Ofqual does not agree. It is for awarding organisations to design and operate systems for the production of assessment materials which eliminate the consequence of human error so far as possible. In this case, OCR's own evaluation of the incident was that errors were made by **[OCR roles]**, none of whom, in OCR's own assessment, performed their roles effectively. Ofqual considers that imposing a monetary penalty is likely to have a deterrent effect in the context of repeated, cumulative, human error such as occurred in this case. In particular, imposing a monetary penalty as a result of this error might realistically cause OCR and other awarding organisations to re-emphasise to persons with responsibility for aspects of quality assurance the crucial importance of their work in ensuring the secure delivery of qualifications.
- 5.21 Ofqual has considered as part of its determination of the initial amount OCR's observation that Ofqual has never before imposed a monetary penalty as a result of an assessment material error. Although Ofqual has concluded that its decision not to act in other cases does not prevent it imposing a penalty in this case, Ofqual considers the initial amount in this case should be lower than the initial amount might be were errors with a similar impact to occur in future.
- 5.22 In all of the circumstances, Ofqual considers that the initial figure necessary in this case to meet the requirements of deterrence and public confidence is £175,000.

Adjustment

5.23 Ofqual has considered whether the proposed initial figure should be adjusted in light of any mitigating or aggravating factors in this case. Ofqual does not consider that there are any aggravating factors in this case.

5.24 The following mitigating factors, some of which are set out in the TRA policy, may reduce the amount of the penalty and include (but are not limited to) –

- (a) steps being taken to rectify the breach;
- (b) steps being taken to prevent the recurrence of the breach;
- (c) the breach being reported promptly to Ofqual;
- (d) the provision of restitution or compensation to those affected by the breach;
- (e) full co-operation with Ofqual's investigation;
- (f) a history a good compliance with conditions of recognition;
- (g) the breach being limited to a small number of employees acting without the knowledge of senior management;
- (h) a monetary penalty having been imposed by another regulator in relation to the same breach.

5.25 Ofqual has considered the representations made by OCR in respect of mitigation. OCR argues that it was quick to notify Ofqual in respect of the error and that it co-operated fully with Ofqual in providing information initially about how it would mitigate the impact of the error and subsequently about its evaluation of why the error occurred. Ofqual accepts OCR's submissions in this regard. However, Ofqual notes that OCR has contested these enforcement proceedings and, in particular, has not admitted its breaches. Although OCR is entitled to resist enforcement proceedings and to put Ofqual to proof, the corollary of doing so is that the benefit of earlier cooperation, in terms of mitigation, is lost.

5.26 OCR states that it spent £150,000 in attempting to mitigate the impact of the error as far as practicable. However, Ofqual considers that the money spent was not over and above that which was required as a direct result of the error, in effect OCR had

no option but to spend those sums. This is not, for example, a case in which compensation has been paid to learners or centres or in which OCR has put in place any other effective mechanism for recompense. Moreover, the amount spent by OCR is small in relation to OCR's relevant turnover.

5.27 OCR has also highlighted that there have been errors in other papers in the past, by OCR and other examination providers. These errors did not attract a monetary penalty. Ofqual has, however, already taken this factor into account in setting the initial amount.

5.28 Finally, OCR observes that it is a charity and any surplus funds are diverted to Cambridge University to further the university's charitable objectives for the benefit of learners. A monetary penalty might, therefore, operate to the disadvantage of learners. However, OCR has produced no evidence in respect of the proportion of the charitable works undertaken by the university which might be funded by surplus funds generated by OCR (although it says in the past three years there have been no such surplus funds) and Ofqual is unable therefore properly to assess how realistic the unintended consequence for which OCR contends might be.

5.29 In the final analysis, Ofqual has decided to make no adjustment to the proposed initial figure of £175,000 on the basis of the aggravating and mitigating factors.

Turnover

5.30 In compliance with section 151B of the 2009 Act, Ofqual may not impose a monetary penalty that exceeds 10 per cent of the annual turnover of the awarding organisation. Provided that penalties are within this limit, Ofqual is not required to determine the amount of a penalty by reference to a percentage of an awarding organisation's annual turnover and the amount of the fine may be whatever Ofqual decides is appropriate in all the circumstances of the case.

5.31 The turnover of an awarding organisation is determined in accordance with Regulations 3 and 4 of the Office of Qualifications and Examinations Regulation

(Determination of Turnover for Monetary Penalties) Order 2012/1768 (as in force from 6 July 2012).

5.32 For the business year 2015/2016 OCR's turnover was **[edited]**.

5.33 Ofqual does not consider the proposed monetary penalty to be excessive in light of turnover. It is well below 10 per cent of the annual turnover of OCR.

VI. Burden and Growth

6 Ofqual recognises that imposing a monetary penalty on OCR would represent a regulatory burden. Ofqual has considered its obligations pursuant to section 170 of the 2009 Act, not to impose any unnecessary regulatory burdens. For the reasons given generally in this Statement of Reasons Ofqual considers that the regulatory burden associated with the imposition of the proposed monetary penalty in this case would be a necessary such burden, in the context of Ofqual's statutory objectives and duties, and that any such burden would therefore be proportionate. OCR is at liberty to make representations in this connection.

6.1 Ofqual has had regard to the desirability of promoting economic growth, in accordance with the Deregulation Act 2015. Imposing the proposed monetary penalty has the potential to have an adverse impact on OCR's economic growth but Ofqual considers that impact is likely to be significantly limited in view of the small proportion of OCR's turnover which the proposed penalty reflects. Moreover, the macro impact of imposing the proposed monetary penalty is likely to be positive. In particular, the proposed penalty may promote growth for compliant awarding organisations by demonstrating that Ofqual will hold to account awarding organisations which do not comply. OCR is at liberty to make representations in this connection.

VII. Impact

7 Ofqual has considered whether a decision to impose a monetary penalty on OCR in the sum of £175,000, or any other amount, would give rise to any equalities implications. Ofqual has not identified any evidence that there might be any such implications associated with a decision to impose a monetary penalty and invites representations in this connection.