

Ofqual Board

Paper 87/17

Date:

28 March 2018

Title:

Membership of the Enforcement Committee

Report by:

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Responsible Director:

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Paper for Information and Decision

Open Paper



Issue

1. An Enforcement Committee is currently considering two cases which are expected to conclude before 31 March 2018. The particular constitution of the Enforcement Committee in those cases includes two Board members who will retire from the Board on 31 March 2018. This paper makes proposals to secure continuity of decision-making in the event the cases do not conclude before 31 March.

Recommendations

2. The Board is asked to agree the following recommendations:
 - a. That membership of the Enforcement Committee should be extended to include former Board members where those Board members are part of an Enforcement Committee on the date their board term expires;
 - b. That former Board members taking part in the Enforcement Committee should be remunerated;

- c. That decisions as to the revision of the Terms of Reference and as to the Terms and Conditions of appointment should be delegated to the Chief Regulator.

Analysis

3. The Board is aware that the use of Ofqual's statutory enforcement powers has increased substantially over the past two years. That increase appears likely to be sustained.
4. The Board has delegated the use of its power to impose a monetary penalty and its power to withdraw recognition to the Enforcement Committee.
5. The Terms of Reference provide that the Enforcement Committee will usually consist of three members and that the membership of the Enforcement Committee may consist of:
 - a. members of the Ofqual Board;
 - b. members of the Ofqual Strategic Management Group (SMG); and
 - c. other members of Ofqual staff with appropriate expertise and experience.
6. Four Board members have experience of the Enforcement Committee, three of those Board members will retire from the Board on 31 March 2018. There are two cases involving Board Members due to retire. Those cases are anticipated to conclude before 31 March 2018 but it is possible those cases will be ongoing on 31 March.
7. The Terms of Reference provide that a Board member's appointment to the Enforcement Committee will end if that Board member's board term expires. In the unlikely event that the two live cases do not conclude before 31 March, therefore, it will be necessary for new members to be appointed to take final decisions.
8. One of the live cases is long-running and complex, there has already been one change of committee membership and a Hearing was held in November to allow the awarding organisation to make representations in person. In all of the

circumstances, it would not be efficient for final decisions to be made by a different committee. In particular, that committee would not have heard the representations made by the awarding organisation.

9. The Board is empowered to decide that any committee of the Board may include persons who are neither members of the Board nor members of staff, provided a Board member or member of staff is part of the committee.
10. The two cases in which an Enforcement Committee has been convened and which should, but might not, conclude before 31 March 2018 will after that date include one Board member and two recently retired Board Members. The Board will recognise, therefore, that the committee would meet the requirements to be a committee of the Board, but would not be quorate in accordance with the Terms of Reference for the Enforcement Committee.
11. The Board is therefore recommended to agree that the Terms of Reference for the Enforcement Committee should be extended to allow continuity of decision-making where a Board member is part of an Enforcement Committee and their board term ends before the committee has made a final decision.

Finance and Resource

12. Costs for meetings of the Enforcement committee are included in the appropriate budgets.

Impact Assessments

Equality Analysis

13. Not applicable.

Risk Assessment

14. If the appointments are not extended, and final decisions in affected cases are not made before 31 March 2018, there is a risk that decisions will be delayed and decision-making will be less effective.

Regulatory Impact Assessment

15. Not applicable.

Timescale

16. The terms of reference will be amended on or before 31 March 2018.

Communications

17. Decisions taken by the Board on this matter will be communicated appropriately to those involved with the committees.

Paper to be published	Yes
Publication date (if relevant)	
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA), please include references to specific paragraphs	