



Notice of Intention to impose a Monetary Penalty

In respect of AQA's GCE French Examination Paper in 2018

Notice

1. The Office of Qualifications and Examinations Regulation ("Ofqual") hereby gives notice that it intends to impose a Monetary Penalty on AQA Education ("AQA") in the sum of £50,000.
2. This Notice relates to the following breaches of AQA's Conditions of Recognition, in respect of its GCE French Examination Paper in 2018:
 - a) General Condition G1.3
 - b) General Condition H5.1
 - c) General Condition H5.2(a) and (b)
 - d) General Condition A7.1 (a) and (b)
 - e) General Condition A6.1
3. This Notice reflects Ofqual's decision to accept AQA's Settlement Proposal that it will:
 - a) admit all of the breaches set out in this Notice;
 - b) agree to pay the Monetary Penalty of £50,000; and
 - c) agree to pay Ofqual's reasonable costs in respect of this matter.
4. Further information about Ofqual's statutory powers and the Conditions of Recognition are set out in Annex A of this notice.
5. This Notice should be read in conjunction with:
 - a) the Notice of Intention to impose a Monetary Penalty on AQA in respect of its reviews of marking and moderation in 2016, 2017 and 2018; and
 - b) the letter to AQA from Ofqual's Chief Regulator in respect of AQA's GCSE English Literature Examination Paper in 2018.

Executive summary

6. AQA's GCE French Examination Paper in summer 2018 contained a 'gap fill' question which required Learners to follow instructions in French and identify the correct word for each space from a table of possible answers, each of which had a reference letter.
7. The empty spaces were underlined and were big enough to allow Learners to input a word, rather than just a letter. Questions of this type usually include a box, rather than an underlined space. This caused confusion for 10% of the Learners, who input words rather than letters.

8. The mark scheme made no reference to the use of words by Learners. When queries were raised, examiners were instructed to give zero marks to Learners who had input a word, even if the Learner had demonstrated an understanding of the instructions by using the correct words in the correct order.
9. Following complaints and appeals, AQA decided to change this approach and award marks to Learners who had input the correct words. This resulted in 527 Learners' marks being affected, with 135 of those receiving an upward grade change. A small number of Learners' university choices were initially affected but AQA was able to liaise with UCAS and the relevant universities to ensure that no Learner ultimately missed out on their university of choice.
10. AQA accepts that the mark scheme was not fit for purpose¹ because the mark scheme should have given markers instructions as to the approach they should adopt where Learners used words rather than letters and this is something that AQA could have reasonably anticipated would occur.
11. AQA accepts that its original decision not to credit Learners who had used the correct words was the wrong approach. This meant that the initial results issued to those Learners did not reflect the level of attainment demonstrated by those Learners in the assessment². The marking of the assessment and awarding of the qualification had not taken into account all admissible evidence generated by those Learners as part of that assessment³.
12. AQA's approach to changing the results did not take a consistent approach to the range of comprehension displayed by Learners. AQA did not give priority to the provision of assessment which accurately differentiated between Learners on the basis of the level of attainment they had demonstrated⁴.
13. AQA communicated the reasons for the change of results as being a 'goodwill gesture' when in fact it should have been to correct the approach set out in the mark scheme which AQA subsequently accepted was not fit for purpose. This approach did not mitigate as far as possible the Adverse Effect on public confidence in qualifications⁵.
14. AQA also missed a number of opportunities to identify the risk of an Adverse Effect occurring⁶.
15. Ofqual has decided to give notice that it intends to impose a Monetary Penalty of £50,000 on AQA and accept a Settlement Proposal that AQA will pay Ofqual's

¹ In breach of Condition G1.3

² In breach of Condition H5.1

³ In breach of Condition H5.2 (a) and (b)

⁴ In breach of Condition A7.1(b)

⁵ In breach of Condition A7.1(a)

⁶ In breach of Condition A6.1

reasonable costs in respect of this matter. Interested parties may make representations in respect of this Notice.

Summary of facts

16. This Notice relates to the reformed GCE French Paper 1 (7652/1) which was sat on 18 June 2018.

17. The entry for the assessment was 5655 Learners over 1202 Centres.

18. Question 5 was worth 10 Raw Marks (20 in total). It was a 'Gap Fill' type question that comprised a paragraph in French with missing words. It required the Learner to identify the correct word for each space from a table of possible answers. Each possible answer in the table had a reference letter.

19. The Learner was instructed in French to write the reference letter ('lettre') in the empty spaces, as follows:

“Remplissez les blancs avec la lettre qui correspond au bon mot choisi dans la liste sur la page suivante”.

20. This translates in English to:

“Fill in the blanks with the letter that corresponds to the correct word chosen from the list on the next page”.

21. The empty spaces (or blanks) were underlined and were big enough to allow Learners to input a word, rather than just a letter.

22. The mark scheme for Assessors stated:

Accept 1 mark for each letter – the order of letters is provided for. The scheme explains:

‘Letters must be in this order’.

23. The mark scheme made no reference to the use of words by Learners.

24. Some Learners entered words instead of letters into the spaces. Initially, AQA did not credit marks to those Learners, even if the Learner had demonstrated that they had understood the passage in French by inserting the correct words in the correct order.

25. AQA's rationale for this was that this question was testing Assessment Objective AO2: 'Understanding and responding in writing to written language'. By inputting a word instead of a letter, the Learners had failed to follow the French instructions (rubric) correctly.

26. On 3 July 2018, AQA received two contacts from Centres that had identified evidence that some Learners were responding by inputting words instead of

letters. A query was raised internally as to whether the Learners should receive a mark or not. The advice from the Lead Examiner at that time was that only letters should be accepted. This was because Learners who used words had not followed the rubric.

27. On 3 September 2018, there were internal AQA communications regarding two customer queries on the marking of question 5. These communications highlighted a number of concerns about question 5 and the mark scheme.
28. An AQA incident meeting took place in which it was concluded that the rubric had been consistently applied in general marking and in reviews of marking. It found that relaxing the application of the rubric at this stage would be inappropriate.
29. On or around 24 September 2018, AQA received two formal appeals. The appeals related to the marking of question 5 and questioned the fairness of the approach adopted by AQA.
30. The incident was escalated and, on 3 October 2018, a further incident meeting was arranged to review the issues initially considered in the incident meeting on 3 September 2018. After further consideration, the group agreed to 'mobilise and eyeball' Learners' papers, starting with those that received zero marks for question 5. This was in order to gather data on what mark and grade changes would result if marks were awarded for the use of correct words rather than letters.
31. A decision was subsequently made by AQA that marks should be awarded where the correct words had been used.
32. The rationale for this decision was recorded by AQA as follows:

'As this is a reading comprehension paper, students need to understand both the content and instructions for the questions, which are all in French. Where students failed to understand and follow the instructions on a question, they weren't originally given marks for it.'

'After concerns from a number of schools, though, we've decided as a goodwill gesture to give this/these student(s) marks where they didn't understand the instructions, but showed they'd still understood the content of the question.'

33. This change in approach had the following impact:
 - a) 527 Learners' marks were affected;
 - b) Of those, 135 Learners received an upward grade change;
 - c) A small number of Learners' university choices were initially affected but AQA was able to liaise with UCAS and the relevant universities to ensure that no Learner ultimately missed out on their university of choice.

34. AQA completed an analysis of the impact of the revised marks on grade boundaries and concluded that no changes were required.
35. On 10 October 2018, AQA notified Ofqual of the incident through an Event Notification.
36. In response to questions from Ofqual, AQA explained that the question was presented to Learners in the same format as it was submitted in the first draft of the question paper (i.e. an underlined blank space in the block of text). The formatting was not discussed further during the production of the paper and there was no formal or conscious decision on the format used.
37. Examples of other 'gap fill' type question in French and other Modern Language Specimen Assessment Materials used boxes where letters were required and lines where written words or sentences were required.
38. The paper went through AQA's quality assurance process which included scrutineer checks. One of the scrutineers began to misapply the instruction for question 5 and began to enter words into the line space rather than letters. They realised their mistake after the second space and started to enter letters thereafter.
39. The Scrutineer report form was signed off on 10 October 2017 with the declaration that no questions were difficult to respond to because of the way they were expressed.

Analysis

The mark scheme

40. AQA accepts that the use of an underlined space rather than a box caused confusion for 10% of Learners who sat the exam. However, AQA undertook a detailed analysis to assess the validity and fitness for purpose of the assessment which concluded that there was unambiguous support for the argument that the paper as a whole had criterion-related validity and construct validity. In particular, question 5 was found to manifest the underlying assessment objective reliably.
41. AQA accepts that the mark scheme was not fit for purpose because it did not allow for the award of marks for the correct interpretation of the rubric (the first task required of a Learner) to be separate from the award of marks for the identification of the correct letter to be inserted into each space (the second task). The mark scheme should have given markers instructions as to the approach they should adopt where Learners infringed the rubric by using the words in the

list rather than letters and this is something that AQA could have reasonably anticipated would occur.

42. AQA has therefore admitted that it was in breach of Condition G1.3 in this respect.

The first issue of results

43. AQA later sought to rectify this issue by changing the results that had been issued to Learners who had used words, by awarding marks where the correct corresponding word had been used instead of the letter.

44. AQA accepts that its original decision not to credit Learners in instances where they used the correct words rather than the correct letter was the wrong approach. The initial results issued to Learners who had used words rather than letters did not reflect the level of attainment demonstrated by those Learners in the assessment. The marking of the assessment and awarding of the qualification had not taken into account all admissible evidence generated by those Learners as part of that assessment.

45. AQA has therefore admitted that it has breached Conditions H5.1 and H5.2(a) and (b) in this respect.

Incident Management

46. AQA's approach to changing the results failed to take a consistent approach to the range of comprehension displayed by Learners. For example, a Learner who had understood the rubric together with providing 9 out of 10 correct letters would receive 9 marks under the original mark scheme. In contrast, a Learner who had failed to fully understand the rubric but had provided 10 out of 10 correct words would receive 10 marks under the revised approach, post-incident. This means that AQA did not give priority to the provision of assessments which accurately differentiated between Learners on the basis of the level of attainment they had demonstrated in the assessment, as required by Condition A7.1(b).

47. AQA's rationale for changing the marks was recorded at the time of the incident as a 'goodwill gesture'.

48. The Conditions do not provide for marks and results, or the change of marks and results, to be based upon a 'gesture of goodwill'. The evidence indicates that AQA should have been aware at this stage that the mark scheme was not fit for purpose and it should have communicated this to explain the rationale for changing the marks.

49. Under Condition A7.1(a), AQA is required to mitigate as far as possible any Adverse Effect, which includes mitigating the effect of the incident on public

confidence in qualifications. The term 'gesture of goodwill' did not reflect a rationale that would have been compliant with the Conditions. The Adverse Effect on public confidence in relation to this incident would have been more effectively mitigated by AQA communicating the fact that it was correcting an error in its mark scheme that meant it was not fit for purpose, which AQA should have identified as the cause of the issue by this stage.

50. AQA has admitted that it has breached Conditions A7.1 (a) and (b) in this respect.

Identification and management of risks

51. AQA failed to take all reasonable steps to identify the risk of the occurrence of an Adverse Effect in relation to question 5 because:

- a) AQA failed to consider whether the format of question 5 (i.e. the use of an underlined space rather than a box) created a risk that Learners might input words rather than letters even if they had understood the instructions. It failed to make provision for this possibility in the mark scheme.
- b) AQA was aware, through the Scrutineer report, that a Learner may use words as opposed to letters. AQA did not give that any consideration or take any action in response to that information.
- c) As early as 3 July 2018, AQA was aware of queries being raised about Learners using words instead of letters. AQA maintained its advice to markers to award zero marks in these circumstances. These concerns continued in September 2018 and AQA continued to maintain its position.
- d) During the incident meeting in September 2018, AQA was aware of the full facts and should have identified the risk of the occurrence of an incident which could have an Adverse Effect. At this time, AQA's internal staff were finding it hard to justify the rationale for not awarding marks, however this approach was maintained.
- e) It was not until 9 October 2018, that AQA made a decision to change its approach to the marking of question 5. This decision was based upon information that had been available to AQA earlier, and that it should have acted upon sooner.

52. AQA accepts that it missed a number of opportunities to identify the risk and to fully review its original decision not to award marks. It has admitted that it has breached Condition A6.1 in this respect.

Determination of a Monetary Penalty

53. On 18 September 2019, Ofqual's Enforcement Committee considered all of the evidence and the admissions made by AQA, and found that AQA has breached the following Conditions of Recognition in relation to its GCE French Examination Paper in 2018:

- a) General Condition G1.3
- b) General Condition H5.1
- c) General Condition H5.2(a) and (b)
- d) General Condition A7.1 (a) and (b)
- e) General Condition A6.1

54. The Enforcement Committee also considered a Settlement Proposal from AQA which offered to:

- a) admit all of the breaches set out in this Notice;
- b) pay a Monetary Penalty in the sum of £50,000;
- c) pay Ofqual's reasonable costs in respect of this matter.

55. 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 factors:

Aggravating factors

- a) The question format caused confusion for 10% of Learners who sat the paper;
- b) The application of a mark scheme that was not fit for purpose caused a number of queries and concerns to be raised about the approach and the fairness to Learners;
- c) 527 Learners' marks were affected with 135 of those Learners requiring an upward grade change. A small number of Learners' university choices were initially affected. Whilst AQA took steps to rectify this to ensure that no Learner ultimately missed out on their university of choice, it did not change the results until October 2018, after Learners had taken up University places. AQA could have acted sooner based on the information available to it at the time;
- d) AQA failed to act upon a number of clear opportunities to prevent and/or mitigate the Adverse Effects arising from this incident;
- e) AQA gave a flawed rationale for changing the results, which had the potential to undermine public confidence in qualifications.

Mitigating factors

- a) AQA worked closely and effectively with UCAS and the relevant universities to substantially mitigate the initial impact on Learners' university places such that no Learner ultimately missed out on their chosen university course;
- b) AQA has since made changes to the Scrutineer process which include the fact that:
 - i. The Lead Assessment Writer is now required to mark the question paper completed by Scrutineer 1 using the mark scheme to determine whether the answers are correctly anticipated by the mark scheme. The Lead Assessment Writer should then make any changes that are essential to the mark scheme;
 - ii. Scrutineer 2 no longer receives the mark scheme. Any comments raised by the Scrutineer are sent to the Lead Assessment Writer for consideration.
- c) AQA has since revised its in-house question paper drafting guidelines (the 'house style guide') to ensure that boxes, rather than underlined spaces, are used going forward for this type of assessment.
- d) AQA has since carried out an end-to-end review of its incident management process and has provided Ofqual with assurances (and supporting documentation) that show it now has in place clear, documented accountabilities and escalation routes across all departments to mitigate the risk of similar incidents recurring.

56. The Enforcement Committee has also considered:

- a) the need to deter AQA and other awarding organisations from making similar failings in the future;
- b) the need to promote public confidence in qualifications through visible, appropriate and effective regulatory action;
- c) the nature and circumstances of these breaches in comparison to other similar breaches for which fines have been imposed by Ofqual on other Awarding Organisations;
- d) AQA's relative size and turnover as an awarding organisation;
- e) The admissions and Settlement Proposal made by AQA in this case;

- f) The decision to impose a Monetary Penalty and accept a substantial Settlement Proposal from AQA in respect of a separate case which relates to AQA's review of marking and moderation arrangements in 2016, 2017 and 2018.

Decision

57. Taking all of the above into account, the Enforcement Committee has decided to:
- a) impose a Monetary Penalty on AQA in the sum of £50,000; and
 - b) accept a Settlement Proposal from AQA in terms that AQA:
 - i. admits all of the breaches set out in this Notice
 - ii. agrees to pay the Monetary Penalty in the sum of £50,000;
 - iii. agrees to pay Ofqual's reasonable costs in respect of this matter.
58. The figure of £50,000 includes a significant discount to reflect the fact that a Settlement Proposal has been put forward by AQA in this case.
59. It also takes into account the principle of totality in the context of the decision to impose a Monetary Penalty and accept a substantial Settlement Proposal from AQA in respect of a separate case which relates to AQA's review of marking and moderation arrangements in 2016, 2017 and 2018.
60. The Enforcement Committee is satisfied, in accordance with section 151B of the 2009 Act, that a Monetary Penalty in the sum of £50,000 would not exceed 10% of AQA's total annual turnover.

Representations

61. AQA has waived its right to make representations in respect of Ofqual's intention to impose a Monetary Penalty by way of making the Settlement Proposal.
62. Interested parties may make representations in respect of Ofqual's proposal to impose a Monetary Penalty on AQA. Any such representations must be sent by E-mail to EnforcementCommittee@ofqual.gov.uk and must be received before **4pm on 12 November 2019**.

Next Steps

63. The Enforcement Committee will consider this case again on or after 13 November 2019.

64. 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 whether to accept a Settlement Proposal from AQA in the terms proposed or whether any other order should be made.

Signed: F Wadsworth

Name: Frances Wadsworth

Chair of the Enforcement Committee

Date: 15 October 2019

Enforcement Committee:

Frances Wadsworth

Christine Ryan

David Wakefield

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 this Notice of Intention on its website.

Annex A

Legal provisions

Statutory powers

1. AQA Education (“AQA”) 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

1. AQA 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. AQA has a legal obligation to have regard to this guidance.
2. The relevant General Conditions of Recognition in this case are:
 - a) General Condition G1.3
 - b) General Condition H5.1
 - c) General Condition H5.2(a) and (b)
 - d) General Condition A7.1 (a) and (b)
 - e) General Condition A6.1
2. **Condition G1.3 provides that:**

“An awarding organisation must produce a written document in relation to an assessment which sets out clear and unambiguous criteria against which Learners’ levels of attainment will be differentiated.”

3. Ofqual has set Guidance in relation to Condition G1. The Guidance describes the following examples of circumstances which indicate an awarding organisation is likely to comply with Condition G1:

The awarding organisation sets assessments, or where applicable, ensures that its Centres set assessments, which:

- *‘accurately measure the knowledge, skills and understanding they are intended to measure;*
- *effectively differentiate between Learners (that is, solely on the basis of the knowledge, skills and understanding being assessed);*
- *make it possible for Learners to demonstrate, and the awarding organisation or Centre to measure, to which they have the knowledge, skills and understanding required by the qualification;*

4. Condition H5.1 provides that:

“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.”

5. Condition H5.2 provides that:

“An awarding organisation must ensure that:

(a) the marking of an assessment in relation to, and

(b) the awarding of,

a qualification which it makes available takes into account all admissible evidence generated by a Learner as part of that assessment.”

6. Condition A7.1 provides 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, and

(b) give priority to the provision of assessments which accurately differentiate between Learners on the basis of the level of attainment they have demonstrated and to the accurate and timely award of qualifications.”

7. Condition A6.1 provides that:

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

3. The associated guidance for Condition A6 provides examples of positive indicators that would suggest an awarding organisation is likely to comply with this Condition. In particular, 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.*
4. The guidance also provides examples of negative indicators that would suggest an awarding organisation is not likely to comply with this Condition. In particular, the awarding organisation:
 - *does not systematically consider the range and type of risks that may have an impact on its regulated activities;*
 - *fails to identify a foreseeable risk where it might be reasonably expected to do so that could result in an Adverse Effect.*
5. **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.”*