

To:

**Mr John Lawton**  
**Responsible Officer**  
**LAMDA (London Academy of Music & Dramatic Art)**  
**155 Talgarth Road**  
**London W14 9DA**

## **Notice of Intention to Impose a Monetary Penalty**

In accordance with its powers under Section 151A(2) of the Apprenticeships, Skills, Children and Learning Act 2009, and pursuant to its obligations under Section 151A(4) and 151A(5) of that Act, Ofqual gives notice that it proposes to impose a monetary penalty in the sum of **£30,000** on LAMDA for the reasons set out below (**Reasons**).

### **Representations**

- i. **LAMDA** may make representations in respect of Ofqual's proposal to impose on it a monetary penalty. Any such representations must be sent by E-mail to [EnforcementCommittee@ofqual.gov.uk](mailto:EnforcementCommittee@ofqual.gov.uk) and must be received before **4pm on 15 December 2017**.
- ii. **Interested parties** may make representations in respect of Ofqual's proposal to impose a monetary penalty on LAMDA. Any such representations must be sent by E-mail to [EnforcementCommittee@ofqual.gov.uk](mailto:EnforcementCommittee@ofqual.gov.uk) and must be received before **4pm on 15 December 2017**.

### **Reasons**

#### Overview

1. The Office of Qualifications and Examinations Regulation ('Ofqual') may impose a monetary penalty on a recognised body (an awarding organisation) if it appears to Ofqual that the awarding organisation has failed to comply with the General Conditions of Recognition set and published by Ofqual (the Conditions).
2. Ofqual may not impose a monetary penalty in an amount which exceeds 10% of the awarding organisation's turnover.

3. LAMDA is an awarding organisation regulated by Ofqual. LAMDA has admitted that it failed to comply with a number of the Conditions in respect of a variety of incidents which occurred between August 2014 and September 2016.

### The Factual Background

#### *The First Notification*

4. On 21 August 2015, LAMDA notified Ofqual that it had issued incorrect results to five learners in respect of an examination session which took place between 27 April 2015 and 1 May 2015.
5. The affected results had been changed from 'pass' to 'fail' as a result of LAMDA's quality assurance process but, by reason of an administrative failure, had been issued as 'pass' results.
6. The error had been brought to LAMDA's attention, on 3 July 2015, by the centre. LAMDA had corrected the results and apologised to the centre, which had submitted a complaint, as well as writing to each affected learner to apologise and provide a voucher for a future examination at no cost. LAMDA had taken steps to prevent any recurrence.

#### *The Second Notification*

7. On the same date, LAMDA notified Ofqual that it had issued 590 incorrect certificates between 1 September 2014 and 10 March 2015.
8. The affected certificates displayed the title of a LAMDA qualification in a form which did not match the title on the Register of Regulated Qualifications.
9. LAMDA had identified the error on 2 March 2015 and had amended its systems by 15 March 2015.
10. LAMDA was in the process of issuing replacement certificates when it made the notification.
11. LAMDA recognised in the notification that it had taken too long to issue replacement certificates and to notify Ofqual that the incident had occurred.

#### *The Third Notification*

12. On 4 September 2015, LAMDA notified Ofqual that it had experienced delays in issuing results for an examination season spanning March and April. The notification recorded that a significant proportion of results were between one and three weeks outside LAMDA's service standard, which required that results be issued within six weeks of the close of the examination session.
13. The incident had occurred because there had been a greater than expected rise in requests for examination sessions in the relevant period, with consequent pressure on results processing. This had coincided with: new individuals working within the operations team who were insufficiently trained and experienced to deal with the workload; the departure of a key member of the operations team, revealing some duties had not been appropriately performed; the departure of a key member of the finance team meaning processing of payment for results was delayed; and an increased level of scrutiny being applied to new qualifications to ensure validity.
14. LAMDA had taken remedial measures. A new operations supervisor had been appointed; additional staff had been deployed for the summer to focus on results processing; an additional administrator had been appointed; additional examiner training had been introduced; and new finance staff had been appointed. LAMDA explained that a full review was to be completed by 1 October 2015, which would include analysis of service levels to improve timely reporting (to Ofqual) against the Conditions.
15. LAMDA provided additional information about the incident on 8 October 2015. As a result of the incident: 4,905 learners received results up to 7 days late; 7,273 learners received results up to 14 days late; 2,688 learners received results up to 21 days late; 649 learners received results up to 28 days late; 438 learners received results up to 35 days late; and 80 learners received results up to 42 days (12 weeks) late.
16. LAMDA subsequently confirmed that it had been aware in late January 2015 that there was an increased risk to compliance with its service standards. It had increased headcount and resources in March and May as a result.
17. LAMDA had received 14 complaints from centres as a result of the incident.

#### *The Fourth Notification*

18. On 4 September 2015, LAMDA notified Ofqual that it had issued 96 incorrect certificates between 12 December 2014 and 1 September 2015.
19. The affected certificates displayed the title of a LAMDA qualification in a form which did not match the title on the Register of Regulated Qualifications, to the extent

that a unit reference number was incorrect. Affected centres were being written to with a copy of the corrected certificate.

20. The error had been identified in late August 2015, as part of the remedial action in connection with the second notification.

#### *The Fifth Notification*

21. On 8 September 2015, LAMDA notified Ofqual that it had cancelled an examination session at short notice because it could not identify an examiner to run the session.
22. The affected examination session was one of several which it had scheduled on 27 and 28 June 2015. It had been unable to run one of the sessions on 28 June because no examiner was available. Learners could not be re-allocated because existing sessions were at capacity.
23. LAMDA had telephoned and emailed the centre and learners to confirm cancellation. It had written to apologise and offer a future examination free of charge, having refunded the fees paid.
24. The situation had occurred because of a reduction in the size of the examiner panel due to illness and retirements; an administrative error in failing to identify availability early enough; and a higher than expected demand for the summer examination sessions. LAMDA had commenced a review of its operations in July 2015 which would be completed in October, and was expanding its panel of examiners.
25. On 23 May 2016, in response to questions from Ofqual, LAMDA confirmed that it had decided to cancel the session in question on 26 June, having been aware prior to that date of the risk that an examiner might not be found, despite significant efforts having been made to secure an alternative. Twenty-two learners were affected by the cancellation. LAMDA had received one complaint.

#### *The 2015 Statement of Compliance*

26. On 28 September 2015, LAMDA submitted an annual statement to Ofqual. It recorded LAMDA's belief that it had not been fully compliant with the Conditions and purported to set out a number of ways in which LAMDA had not complied. The details of each of the matters set out were vague and limited.
27. The annual statement referred to the five notifications which LAMDA had made, and identified that each had involved breaches of the Conditions.

28. The annual statement recorded that three of the five notifications should have been made more promptly (without specifying which). The delay was said to have been caused by competing workloads and the lack of clarity over the extent of the issue or the adverse effect.
29. In addition, the annual statement disclosed a further incident, in that LAMDA had not been able to respond to all the complaints it had received during the year in a timely fashion. This was said to be because of the need for investigation, and the workloads on the operations team in processing results, which meant a consequential delay in responding to complaints about the delays in processing those results
30. Finally, the annual statement certified that LAMDA had no cause to believe that it was likely to fail to comply with any of the Conditions over the following 12 months.

#### *The Sixth Notification*

31. On 30 September 2015, LAMDA notified Ofqual that it had issued 789 incorrect certificates between January 2011 and the date of the notification.
32. The affected certificates displayed the title of a LAMDA qualification in a form which did not match the title on the Register of Regulated Qualifications. Replacement certificates would be issued during October 2015 and systems had been reviewed and updated to ensure accuracy in future.

#### *The Seventh Notification*

33. On the same date, LAMDA notified Ofqual that between 1 August 2014 and 31 July 2015 it had postponed 53 examination sessions (of 4,195 which it had scheduled) because of a shortage of examiners, an increase in demand and an administrative failure to identify sufficiently early the extent of examiner availability.
34. LAMDA had refunded examination fees and rescheduled the examinations, which would be at no cost to the learners or teachers. It had introduced revised arrangements to identify availability earlier and monitor capacity and would recruit additional examiners.
35. LAMDA provided further information on 23 May 2016. It corrected the number of cancelled sessions from 53 to 47, and explained that only three (including the session identified in the Fifth Notification) had been cancelled without a

rescheduled date being offered. The number of affected learners was 1,666. The last date on which rescheduled examinations took place was 28 November 2015. Fourteen complaints had been received.

### *The Eighth Notification*

36. On 17 May 2016, LAMDA notified Ofqual that it had assigned an examiner to assess learners she had previously taught, which contravened its conflict of interest policy. The examiner had notified LAMDA verbally before the examination, which had gone ahead, and LAMDA had subsequently identified the conflict of interest when the necessary form was submitted.
37. LAMDA had concluded that the examination was compromised and results for four learners were void.
38. LAMDA explained that it had offered to re-examine the learners at a convenient time, to bear the cost of additional tuition and to reimburse the examination fees. It explained that it had appropriate conflict of interest policies in place, but that these had not been followed; staff had been thoroughly re-trained.
39. The affected centre had submitted a complaint to Ofqual on 13 May 2016 and, on 20 July 2016, LAMDA confirmed that the centre was following its appeal process.

### *The First Undertaking*

40. On 23 May 2016, Ofqual notified LAMDA that it was contemplating taking regulatory action because it considered LAMDA had breached the Conditions in connection with the eight notifications and the 2015 annual statement, and considered that LAMDA was likely to breach the Conditions in future. Ofqual was considering giving a direction to secure future compliance and imposing a monetary penalty in respect of past non-compliance.
41. On 17 June 2016, LAMDA wrote to Ofqual recording that it considered significant progress had been made through its own review processes, but that there remained some areas where additional work was required and an action plan was in place in those respects.
42. On 11 August 2016, following a period of negotiation, Ofqual formally accepted an Undertaking from LAMDA, the terms of which required LAMDA to:
  - a. Immediately review and where necessary amend its standard operating procedure for the notification of events to ensure the process allowed prompt notification to Ofqual;

- b. Review (before 31 July 2016) its internal processes for the management of examination sessions, and implement any necessary changes before 30 September 2016;
- c. Implement, before 30 September 2016, its revised IT system;
- d. Increase the number of examiners available, in stages, to 150 before 31 December 2017; whilst maintaining the rigour of its approach to recruitment, training, monitoring and retention of examiners.

#### *The First Statement of Assurance*

43. On 29 July 2016, after the Undertaking had been agreed but before it had formally been accepted, LAMDA provided a Statement of Assurance confirming that it had reviewed and amended its standard operating procedure for the notification of events and had conducted appropriate staff training.

#### *The Ninth Notification*

44. On 8 September 2016, LAMDA notified Ofqual that it had issued incorrect results and incorrect certificates to a small number of learners.
45. The incident had been discovered after a query had been raised by a centre relating to one of the certificates which recorded an incorrect grade. LAMDA explained that it would re-issue the certificates and correct the results on its systems, as well as providing a voucher to the affected learners for future examinations.

#### *The Tenth Notification*

46. On 12 September 2016, LAMDA notified Ofqual that it had, between 1 August 2015 and 31 July 2016, issued incorrect results and certificates which affected 77 learners. This was discovered as the result of an investigation triggered by the incident reported on 8 September.
47. As part of that investigation, LAMDA had identified that its officers had not properly recorded occurrences of incorrect results; those occurrences had been recorded only where an incorrect certificate had also been issued. This reflected a failure to follow procedures, the impact of which was that management were not aware of the incorrect results and consequently had not notified Ofqual at the appropriate time. Further documentation would be developed and further training delivered.

### *The Eleventh Notification*

48. On 30 September 2016, LAMDA notified Ofqual that it had, between August 2015 and July 2016, failed to publish results in accordance with its timescales for 317 centres. When it made the notification, LAMDA was not able to identify how many learners had been affected or the reasons for the delay. An investigation had been launched and LAMDA would update Ofqual with the result of that investigation by 30 November 2016.
49. On 4 November 2016, LAMDA clarified that the notification should more accurately have concerned a failure to issue certificates (and not results) within published timescales. LAMDA had issued 8,627 certificates outside its published timescales in 2015/16.

### *The Twelfth Notification*

50. Also on 30 September 2016, LAMDA notified Ofqual that it considered the first Statement of Assurance, in connection with the Undertaking, was not accurate. This was because LAMDA recognised that the notifications of 8 September and 30 September (above) were not timely.
51. LAMDA considered the delay affecting those notifications demonstrated that its process for the notification of relevant events was not yet operating adequately. LAMDA recognised that this called into question the adequacy of its compliance with the Undertaking.
52. LAMDA explained that it would immediately review its standard operating procedures to identify the underlying cause of the delay as well as investigating thoroughly the circumstances surrounding the issue of the first Statement of Assurance.
53. LAMDA referred in the notification to the engagement of an external consultant to conduct an audit of the organisation's systems and processes, which was to commence on 3 October 2016.

### *The 2016 Statement of Compliance*

54. On 30 September 2016 LAMDA submitted an annual statement to Ofqual. LAMDA declared that, by reason of the notifications made during that period, it had failed to comply over the preceding 12 months with thirteen of the Conditions.



55. LAMDA explained in the annual statement that it had engaged the services of an external consultant to conduct a 'root and branch' review of its operating procedures as a result of the notifications it had made. LAMDA anticipated that further past failures to comply might subsequently come to light as a result of that comprehensive review. Any such matters would promptly be declared as notifications.
56. LAMDA further explained that it anticipated that it might be non-compliant with nine of the Conditions until the findings of the external review had been implemented.

#### *The Second Statement of Assurance*

57. On 3 October 2016, LAMDA provided to Ofqual a second Statement of Assurance in respect of its performance against the Undertaking.
58. LAMDA declared that it had completed the actions in respect of the booking of examination sessions by centres and had completed the implementation of its new IT system. LAMDA provided an update as to the progress of examiner recruitment, which was proceeding as anticipated.
59. LAMDA referred to the first Statement of Assurance and the subsequent notifications which demonstrated that the relevant measures had not been successfully implemented. LAMDA confirmed that it had commissioned an external audit of its operations in this connection.

#### *The Thirteenth Notification*

60. On 13 October 2016, LAMDA notified Ofqual that it had issued twenty incorrect results and thirteen incorrect certificates. It had become aware of the incident following a complaint from a centre on 27 September 2016. The results were to be corrected and revised certificates issued, along with a voucher for the learners redeemable against a future examination.
61. The incident had arisen in connection with results processed by a temporary worker (also responsible for the matters reflected in the Notification of 8 September 2016). In future, only permanent members of staff would support the processing of examination results. The temporary staff member no longer worked for LAMDA and a full audit of the temporary staff member's work was being carried out.
62. On 11 November 2016, LAMDA informed Ofqual of the outcome of the audit. LAMDA explained that a further 48 learners at 16 examination centres had been

affected by results processing errors. LAMDA had offered credit vouchers to the affected learners.

#### *The Fourteenth Notification*

63. On 3 November 2016, LAMDA notified Ofqual that it had identified as part of its 'root and branch' review that between August 2015 and July 2016, six complaints were not acknowledged within its published timescale and 18 were not answered within published timescales.
64. LAMDA further accepted that it had necessarily failed to notify Ofqual of the individual failings within a prompt timescale. The notification itself had, however, been made shortly after the relevant information came to light.

#### The Enforcement Process

65. On 2 September 2016, Ofqual gave LAMDA the opportunity to make representations in respect of the matters which the Executive Director for Vocational Qualifications was considering putting before the Enforcement Committee in support of a proposal that a monetary penalty should be imposed on LAMDA in view of the notifications which had been made to that date.
66. On 7 November 2016, LAMDA made a number of admissions, in respect of the matters set out by the Executive Director, and detailed its immediate assessment of the circumstances which had caused it to breach its Conditions of Recognition. LAMDA provided further details of the 'root and branch' review and explained that the notifications which had been made from September 2016 reflected the product of that review, which had brought to light earlier incidents, rather than suggesting a deterioration in LAMDA's state of compliance.
67. LAMDA had prepared a draft Compliance Action Plan, which would evolve as part of the 'root and branch' review. LAMDA's intention was that it would be confident of full compliance from April 2017 at the latest. Significant changes had already been made, including the appointment of a new responsible officer, and resources had been set aside for the appointment of external experts as part of the review and to ensure necessary changes were implemented promptly.
68. LAMDA recognised that its disclosure of incidents in 2015 and early 2016 had not consistently been sufficiently fulsome, there had been failures to disclose information within its own governance arrangements and in its reporting to Ofqual. There had been a change of approach from September 2016 which was characterised by full and frank disclosure internally and externally. In the immediate term, LAMDA anticipated that the 'root and branch' review might bring

to light additional instances of past non-compliance, which would be reported as further notifications. In the event, in addition to the notifications summarised in these reasons, LAMDA made further notifications to Ofqual on 22 November, 2 December, 9 December, 13 December (three notifications) and 21 December 2016 (three linked notifications).

#### *The Third Statement of Assurance*

69. On 20 December 2016 LAMDA provided a third Statement of Assurance confirming the actions it had taken to secure compliance with the Undertaking.
70. In respect of the first element of that Undertaking, LAMDA confirmed that the external audit referred to in the second Statement of Assurance had reported and a revised process for the investigation of issues and adverse effects, to facilitate prompt reporting, had been developed and was being embedded. LAMDA confirmed its compliance with the second, third and fourth elements of the Undertaking.

#### *The Compliance Action Plan*

71. On 4 January 2017, LAMDA submitted an updated Compliance Action Plan. Arrangements were made for a series of meetings at which LAMDA would present evidence of its progress against the action plan to demonstrate to Ofqual that it was moving effectively towards sustainable compliance.

#### *The Second Undertaking*

72. On 25 January 2017, Ofqual's Enforcement Committee considered LAMDA's admissions that it had breached the Conditions in connection with the notifications made during 2015 and 2016.
73. The Enforcement Committee agreed that Ofqual should accept a second Undertaking from LAMDA. The second Undertaking would set out how LAMDA intended to secure sustainable compliance on or before 31 March 2017 and how it intended to demonstrate through a series of presentations between 31 January 2017 and 31 August 2017 (the compliance presentations), that it had put effective systems in place to secure compliance, and well as how those systems had performed through the 2017 examination and assessment season.

#### *The Provisional Enforcement Decision*

74. The Enforcement Committee considered, and LAMDA recognised, that it would be appropriate to impose a monetary penalty on LAMDA in view of its past failures to comply with the Conditions.

75. The Enforcement Committee considered that the amount of the monetary penalty should be determined by reference to LAMDA's ability to secure sustainable compliance in accordance with the second Undertaking. The amount of the monetary penalty which would be proposed in accordance with section 151A of the 2009 Act would be determined following LAMDA's final compliance presentation which would take place on or before 31 August 2017. In the circumstances of the case, the amount of the penalty was likely to be between £30,000 and £125,000.

*February – September 2017*

76. The first compliance presentation took place on 31 January 2017.

77. On 21 February 2017, LAMDA submitted a further update to its Compliance Action Plan, in accordance with the (then draft) second Undertaking, and arrangements were made for a further presentation by LAMDA to Ofqual on 13 March 2017.

78. The second Undertaking was formally accepted by Ofqual on 7 March 2017.

79. Compliance presentations took place on 13 March 2017, 6 April 2017, 3 July 2017 and 21 August 2017.

*The letter of 12 September 2017*

80. On 12 September 2017, Ofqual's Executive Director for Vocational and Technical Qualifications wrote to LAMDA explaining the outcome of the series of compliance presentations. The Executive Director concluded:

I note that you tracked your progress through a Compliance Action Plan which was mapped to the requirements of the Second Undertaking and this was reviewed with the Standards Team at the start of every meeting. Over the series of meetings this year, you told us about improvements to key processes and procedures, the introduction of a new IT system, improving scrutiny of the examinations function through the external governance review, how you manage risk and your future business plans. I note in Annex A the key points and evidence that you presented at each meeting.

In view of all the evidence presented, I am satisfied that LAMDA has demonstrated compliance and I will be recommending to the Enforcement Committee that Ofqual should discharge the Second Undertaking.

81. The Executive Director noted particularly the open and candid way in which LAMDA had engaged throughout the compliance presentations:

I would like to thank you and your colleagues for meeting with us throughout 2017, in order to review your progress towards achieving compliance. We appreciate the way in which you have engaged with us throughout this process, both willingly and transparently, being prepared at every meeting to talk in detail and provide relevant supporting documentation. Colleagues have found these meetings helpful and they have given the understanding and assurance needed to form the basis of the recommendation I will now make to the Enforcement Committee.

### *The 2017 Statement of Compliance*

82. On 23 September 2017, LAMDA submitted an annual statement to Ofqual in which it declared that it was compliant with the Conditions and had no cause to believe that it was likely to fail to comply over the following 12 months.

### Resolution

#### *Breach of the Conditions*

83. Having considered the available evidence, including the admissions which LAMDA has made, the Enforcement Committee has concluded that LAMDA breached seventeen Conditions in connection with the notifications and the declarations made in its annual statements for 2015 and 2016.

84. Specifically, LAMDA breached Conditions A4.3, A4.4, A4.5, A4.7, A5.1(a), A5.1(b), A5.2(a), H6.1(d), H6.1(e), H6.1(f), I4.1(b), I4.1(d), I4.1(e), D4.1, D4.3, B2.4 and B3.1, in the following respects:

- a. Conditions A4.3, A4.4, A4.5 and A4.7, in connection with the Eighth Notification, because it had not taken all reasonable steps to ensure a conflict of interest would not have an adverse effect, had not managed the adverse effects which arose sufficiently swiftly, had failed to take all reasonable steps to avoid an assessment being examined by a person with a personal interest in the outcome of that assessment and had failed to comply with its written policy in respect of conflicts of interest;
- b. Conditions A5.1(a)&(b) and A5.2, because the following notifications reflected incidents which arose because LAMDA did not have the necessary capacity at the relevant time: the First Notification, the Third Notification, the Fifth Notification, the Seventh Notification, the Eleventh Notification and the Fourteenth Notification;
- c. Condition B2.4, because it had failed to ensure it submitted an accurate annual statement to Ofqual in 2015;

- d. Condition B3.1, because the following notifications were not prompt: the First Notification, the Second Notification, the Third Notification, the Fifth Notification, the Seventh Notification;
- e. Conditions D4.1 and D4.3, because it had failed to answer complaints within the timescale anticipated in its policy: in 150 instances during 2014/15 and 24 instances in 2015/16, as set out in the 2016 annual statement and the Fourteenth Notification;
- f. Condition H6.1(d), because it had issued incorrect results in connection with the matters recorded in the First Notification, the Ninth Notification, the Tenth Notification and the Thirteenth Notification;
- g. Condition H6.1(e) and H6.1(f), because it had issued results which were not timely and which were outside its published timescale, which deadline it had not taken all reasonable steps to meet, in connection with the matters recorded in the Third Notification and the Eleventh Notification;
- h. Condition I4.1(b), because the Eleventh Notification concerned a failure to ensure that the issue of certificates was timely;
- i. Condition I4.1(d), because it had issued certificates which were not accurate in connection with the matters recorded in the Second Notification, the Fourth Notification, the Sixth Notification, the Ninth Notification, the Tenth Notification and the Thirteenth Notification;
- j. Condition I4.1(e), because the matters recorded in the Tenth Notification demonstrated a failure to maintain adequate records in respect of certificates.

### *Regulatory Action*

- 85. The Enforcement Committee has had regard to Ofqual's policy, *Taking Regulatory Action* (2012), as well as to Ofqual's objectives and duties as set out in the Apprenticeships, Skills, Children and Learning Act 2009.
- 86. The Enforcement Committee considers that the cumulative impact of LAMDA's failure to comply with the Conditions is such that Ofqual should impose a monetary penalty. In particular, the following specific matters indicate that a monetary penalty is an appropriate outcome:

- a. LAMDA issued incorrect results to 47 learners and incorrect certificates to 1018 learners. Incorrect results and certificates can put at risk the maintenance of standards as well as causing distress and inconvenience, and undermining public confidence;
- b. LAMDA issued results late in approximately 16,000 instances and issued certificates late in approximately 8,600 instances. Late results and certificates cause distress and inconvenience and can undermine public confidence;
- c. LAMDA cancelled a number of examination sessions at short notice, causing inconvenience to 1,666 learners and undermining public confidence;
- d. Customer confidence in LAMDA has been adversely affected, as evidenced by it having received 236 complaints in 2014/15 and 81 in 2015/16;
- e. The breaches occurred over an extended period of time (dating back to January 2011 in some limited instances), but have been particularly prevalent during the 2014/15 and the early part of the 2015/16 years;
- f. The underlying causes of many of the incidents appears to have been systemic failings in LAMDA's allocation and provision of resources, compliance with its own procedures, and training and monitoring of staff;
- g. Better planning and a clearer willingness and ability to learn from earlier incidents would have prevented at least some of the later incidents from occurring;
- h. LAMDA provided an annual statement in 2015 which was shown to be inaccurate in view of the notifications which were subsequently made. The annual statement is an important part of Ofqual's supervisory regime, which informs the allocation of relevant resources and activity. An inaccurate annual statement gives rise to a risk that Ofqual might misdirect its resources and undermines regulatory confidence in the awarding organisation;
- i. LAMDA was unable to comply fully with the first Undertaking and provided a Statement of Assurance in that connection which has not proved to be accurate in all respects;

- j. LAMDA failed to notify Ofqual promptly in respect of a number of incidents, which deprived Ofqual of the opportunity to intervene in the management of those incidents or to supervise LAMDA's management of those incidents.

87. The Enforcement Committee has identified a number of mitigating factors in this case. The Enforcement Committee considers that the following mitigating factors would exist even had there not been an appreciable change in LAMDA's approach from September 2016:

- a. Although LAMDA issued incorrect certificates, the majority of the errors were minor and affected qualification titling, those errors did not in fact give rise to any appreciable risk to standards, and are unlikely to have caused distress or inconvenience to learners;
- b. In respect of each incident which might have caused inconvenience or distress to learners, LAMDA has taken steps to minimise such inconvenience and in particular to secure that learners did not suffer financial loss;
- c. In respect of some of the incidents, LAMDA notified Ofqual promptly. LAMDA co-operated with Ofqual in providing updates and information as requested;
- d. LAMDA has, prior to matters affecting this case, had a good history of compliance with the Conditions;
- e. LAMDA has admitted non-compliance with the Conditions at various points, including within some of the notifications to Ofqual;
- f. LAMDA voluntarily entered into the first Undertaking, including making commitments to review several internal processes and procedures which reviews led, in part, to LAMDA's subsequent decision to undertake the 'root and branch' review from September 2016;
- g. LAMDA did not benefit from its failure to comply and, particularly by reason of the restitution and compensation it voluntarily put in place in respect of each incident which affected learners, incurred costs which are likely to exceed the costs associated with compliance.

88. The Enforcement Committee considers the following further mitigating factors arise as a result of LAMDA's approach since September 2016:



- a. LAMDA has notified Ofqual promptly in respect of every past incident which has come to light as a result of its root and branch review;
- b. LAMDA has made full and frank disclosure to Ofqual of the circumstances and events which contributed to its past non-compliance and its failure prior to September 2016 to identify and notify Ofqual of relevant incidents;
- c. LAMDA has invested significantly in the review of its processes and procedures to secure that becomes and remains compliant, including engaging expert external resources to provide objective review and practical assistance;
- d. LAMDA voluntarily entered into the second Undertaking, which reflected its commitment to an ambitious programme of review and reform to secure ongoing and sustainable compliance;
- e. LAMDA has complied in full with the second Undertaking and has been open and transparent with Ofqual throughout the process of review and reform reflected in the second Undertaking, including demonstrating that it has in place effective systems and processes to secure ongoing compliance;
- f. LAMDA has demonstrated by its performance in the 2017 examination and assessment season that it has in fact secured ongoing compliance with the Conditions;
- g. LAMDA has spent in excess of £950,000 in respect of restitution and compensation to learners and centres, and additional resourcing for the purposes of compliance;
- h. LAMDA has made full and frank admissions in respect of this enforcement case, has acknowledged that a monetary penalty is a proportionate outcome and has agreed to pay such a penalty.

89. In addition, Ofqual recognises that LAMDA is an educational institution and a registered charity and that a substantial monetary penalty might impact adversely on LAMDA's educational and charitable objectives. Ofqual has had regard also to evidence in respect of the proportion of LAMDA's annual turnover which is attributable to the award and authentication of regulated qualifications.

#### Proposed Monetary Penalty

90. LAMDA has accepted that Ofqual intends to impose a monetary penalty in this case and that the proposed penalty will be in the range between £30,000 and £125,000.

91. The Enforcement Committee is satisfied, in accordance with section 151B of the 2009 Act, that a monetary penalty in the sum of £125,000 would not exceed 10% of LAMDA's turnover.
92. Having considered the totality of the mitigation, and in particular the evident success of LAMDA's programme of review and reform in connection with the second Undertaking, the Enforcement Committee considers that a monetary penalty at the lower end of the relevant range is proportionate in this case.
93. The Enforcement Committee has therefore decided to propose the imposition of a monetary penalty in the sum of **£30,000**.

### **Next Steps**

94. The Enforcement Committee will consider this case again on or after 15 December 2017.
95. The Enforcement Committee will consider any representations made as specified in this Notice (Representations) and will decide whether to make a final order for the payment of a monetary penalty, and if so in what amount, and / or whether any other order should be made.

Signed: Anne Heal

Anne Heal

Chair of the Enforcement Committee

Date: 16 November 2017

Enforcement Committee:

Anne Heal

Barnaby Lenon

Hywel Jones

NOTE:

- 1) If Ofqual does not receive representations it may determine this matter after the date for representations is given, alternatively it may agree a different date for the receipt of representations.
- 2) Ofqual will publish Notice of Intention to impose a monetary penalty on its website.