



Decision to Impose a Monetary Penalty on Industry Qualifications

Updated

January 2019

We first published this notice in September 2018, at which time IQ had started proceedings to appeal against our decisions to impose a fine and to recover our costs. IQ abandoned those appeals on 26 November 2018, the day before the proceedings would have been considered by the First Tier Tribunal.

IQ has paid £7000 towards the costs Ofqual incurred preparing to defend the appeal proceedings.

Background

On 23 May 2018, Ofqual imposed a £50,000 fine on Industry Qualifications Ltd (IQ) following its failure to comply with the General Conditions of Recognition ('the Conditions').

History

Ofqual gave notice that it intended to impose a fine on IQ on 20 February 2017 and allowed the opportunity for representations. We published a summary of our reasons.

IQ made representations on several occasions between March 2017 and January 2018. We made findings, which form part of the final decision, in October 2017 and we held an Enforcement Committee Hearing in November 2017, to allow IQ to make oral representations.

Our final decision in this case is set out in four documents which together cover just under 250 pages. We do not think it is necessary to publish that level of detail about this case, but have published this summary with the key points.

Overview

Ofqual imposes fines to deter awarding organisations from breaching the Conditions and to promote public confidence. In this case, we identified five linked episodes of non-compliance, each of which was serious and which together required a substantial fine.

The case was about IQ's interaction with a college which it approved to deliver qualifications in the security sector, and in particular investigation of alleged malpractice at the college. Security sector qualifications are necessary to secure and retain a licence to practice in security occupations from the Security Industry Authority (SIA).

The risks surrounding security sector qualifications mean it is particularly important for awarding organisations to be careful when they approve centres and to monitor closely centres' delivery of assessments to make sure qualifications remain valid. We found that IQ failed to meet the standards we require, through the Conditions, in both of these respects.



Awarding organisations must do all they reasonably can to prevent malpractice occurring and when allegations of malpractice are made they must investigate rigorously and effectively. We found that IQ's investigation, into the possibility that it might have awarded a large number of licence-linked qualifications which were false because of malpractice, was inadequate and IQ had failed to take a number of basic investigative steps.

In April 2015, IQ told us and the SIA that it had withdrawn qualifications from 241 people because it had established their qualifications were fraudulently obtained. It published a news story confirming that 139 SIA licences had been withdrawn because of its actions.

We later found that the only evidence IQ had was an unsigned statement with a list of names. IQ had not tested the allegations made in the documents and had not asked the people named to comment on the accusations. There was no record of IQ's decision-making process and no evidence that it had identified the possibility that the allegations might have been false or mistaken, or that it had considered the possible consequences of its actions for the people concerned, who might have been innocent. IQ admitted that it had treated the allegations as conclusive proof of malpractice by the people named on the list.

We found that IQ compounded its errors by putting in place an ineffective appeals process, requiring aggrieved learners to prove to the original decision maker that their decision was wrong 'beyond reasonable doubt'.

We gave a direction in February 2016 requiring IQ to confirm that it had not revoked any qualifications, and told it that it should investigate properly if it still considered the allegations made in the statement might be true. We told IQ that further enforcement action might be taken.

Our Enforcement Committee reviewed this case in November 2016 and initially considered that IQ's failings were so serious that withdrawal of recognition was required. We began this process by proposing a direction to control IQ's activity as an awarding organisation.

In December 2016, IQ produced evidence to persuade the Enforcement Committee that it had begun a comprehensive programme of change to make sure the incidents in this case did not occur again. Having considered that evidence, the committee decided to propose the fine instead of withdrawal, because IQ had shown the potential to operate in compliance with the Conditions.

The Breaches

Conflicts of Interest

We found that IQ had failed to identify conflicts of interest affecting an assessor when it approved the centre in February 2012. The assessor later admitted he had been involved in malpractice at the centre.

The assessor had a conflict of interest because he was also the head of the centre and the owner of the centre. It was in his financial interest for the college to be successful, and for learners to pass assessments and obtain qualifications. As an assessor, he controlled the marking of assessments and decided whether or not learners had passed (subject to



moderation by IQ). His personal financial interest therefore conflicted with his obligation to make sure assessments were marked according to the standards required by IQ.

The Conditions don't prevent people with a financial interest in centres from being assessors, but awarding organisations must identify all potential conflicts of interest and monitor to make sure those conflicts don't cause an adverse effect. IQ failed to identify the potential for the assessor to have a conflict of interest and therefore failed to monitor that conflict of interest and to make sure it didn't have any adverse effects. These failures meant IQ breached Conditions A4.2 and A4.3.

A fine was appropriate because this breach meant standards were at risk as soon as the centre started to mark assessments for IQ qualifications.

Quality Assurance

IQ's main method of quality assurance was to arrange for its external verifier to visit the centre. IQ's policy required external verifiers to review a 10% sample of the assessments which had been marked by the centre, to make sure IQ's standards were being met. IQ awarded over 5,000 qualifications to learners at the centre in a three-year period, all of which included internal assessments, but their records showed the external verifier had only considered 41 portfolios in the same period.

IQ's failure to make sure it met the minimum moderation sample required by its policy meant its approach to moderation was not effective and it had therefore breached Condition H2.

Effective moderation is an important control to make sure conflicts of interest are not undermining qualification standards and to identify potential malpractice. A fine was appropriate because IQ's breach put standards at risk and lasted for a period of years.

IQ had also breached Condition A4.5, by allowing tutors to assess their own learners when it failed to notice those tutors had a personal interest in the learners passing those assessments, but it was not considered necessary to impose a fine for this breach.

Investigation of Malpractice - General

When malpractice allegations were made in February 2015, IQ suspected that all of the (over 5,000) qualifications it had issued through the centre might have been affected by malpractice. The conditions required it to investigate rigorously and effectively to establish as far as possible whether that malpractice had occurred.

IQ's investigation into the suspected malpractice was not effective. IQ failed to secure relevant evidence when it started to investigate and lost access to that evidence when the centre went into liquidation. IQ only reviewed a small proportion of the learner work which might have been affected by malpractice and spoke to a limited number of people. IQ had not made records of the lines of enquiry it decided to pursue, or those it decided not to follow, had not recorded its strategy for sampling learner work and conducting interviews and did not make any notes of any of the investigation work it undertook or the interviews it conducted. IQ admitted there were several lines of enquiry which it could have followed but did not follow.



IQ breached the Conditions because it did not ascertain as far as possible whether or not the malpractice which it suspected had occurred (Condition A8.2) and did not make sure its investigation into the suspected malpractice was rigorous and effective (Condition A8.3). IQ also breached Condition A5.2 because it had no proper records of its investigation and decision-making.

IQ conducted some further investigation after we proposed a direction in November 2015, but admitted that the information it reviewed, which it found left in an office, was incomplete. We considered that its investigation was not sufficiently rigorous to overcome the failures in its earlier investigation.

A fine was appropriate because it is not now possible to know whether or not malpractice occurred in relation to these 5,000 or so qualifications. This undermines public confidence and could undermine standards.

Investigation of Malpractice - Specific

During IQ's investigation of the alleged malpractice at the centre, it was given a draft statement and a list of names which together alleged that a number of individuals had obtained qualifications because of malpractice.

In April 2015, IQ wrote to the people named on the list to say that it had withdrawn their qualifications. At the same time, IQ told the SIA that the qualifications it had awarded to those people were not valid. The SIA took away 139 industry licences as a result of the information received from IQ.

We found that IQ's approach, between receiving the allegations and sending its letters, was significantly flawed:

- There were several gaps and inconsistencies in the statement but there was no evidence that IQ had looked into the gaps or tried to reconcile the inconsistencies;
- The statement said records had been kept which corroborated the allegations, but there was no evidence IQ had reviewed those records;
- IQ did not test any of the allegations in the statement by reviewing assessment evidence or any other relevant learner records;
- The statement was not signed when IQ sent its letters, it didn't have a signed copy until 8 months later, in December 2015;
- IQ did not give any of the affected learners the opportunity to comment on the allegations before it sent its letters;
- IQ did not follow its own policy on investigating malpractice, because that policy said it would allow people accused of malpractice to respond to the allegations before it took any action.



IQ breached the Conditions relating to the investigation of alleged malpractice (Conditions A8.2 and A8.3) because it had not properly investigated the allegations made in the draft statement and had not followed its own policy.

IQ told us that it had had to act quickly and decisively when it received the draft statement, because there were risks to public safety if people had qualifications to work in the security industry which they did not deserve. However, there was no record of IQ's decision-making and we considered that there were other risks which it should also have identified and balanced before it acted on the allegations.

In particular, there was no evidence that IQ had identified the possibility that the allegations might be false, inaccurate or mistaken and that acting on those allegations without proper investigation would cause prejudice – potentially including the loss of employment – for any learner who was wrongly accused.

IQ's failure to identify and balance the relevant risks meant it breached Condition A6.1. IQ then breached Condition A7.1 in November 2015, because we told it that it had created an incident when it sent its letters and IQ did not take corrective or mitigating action until we later gave a direction telling it what action to take.

A fine was appropriate because IQ caused prejudice to learners and undermined public confidence that due process will be followed where malpractice is alleged.

Appeals

IQ told learners who received its letter that they could only appeal if they could show 'beyond reasonable doubt' that they had attended all of the necessary training and assessment. This standard of proof was disproportionately high which meant IQ's appeals process was not effective.

All of the appeal decisions IQ made were taken by the same person, or small group of people, who had made the original decision; there was no-one independent involved in considering the appeals. IQ breached Condition I1.1 because of these failures.

A hyperlink to IQ's appeals process was included in its letter to learners but this link did not work properly and the process was not reasonably accessible to those wanting to appeal. IQ breached Condition I1.3 because of this failure.

A fine was appropriate because a proper appeals process should have identified that IQ had acted unfairly towards learners and allowed it to rectify that failure.

IQ asked us to take into account the relatively low number of appeals (14) as evidence that it was right to believe the allegations in the unsigned statement. IQ argued that if recipients of the letter were wrongly accused it would have received more appeals. However, we considered that IQ's analysis overlooked the real difficulties learners would have faced trying to access its appeals process, and attempting to meet the high standard of proof IQ put in its letter, particularly where the qualifications had been awarded 1 or 2 years earlier, as well as the possibility that some of the affected learners might have relocated in the intervening period and not received its letter.



We also didn't agree with IQ's argument that some of the appeals it received corroborated the allegations made. IQ was not able to explain why it thought the appeals supported the allegations and we couldn't identify a link when we looked at all of the evidence.

The amount of the fine

We considered that each of the five aspects of this case would have required a fine. We proposed a starting point of £60,000, but reduced this to £50,000 once we had taken into account IQ's turnover.

We invited IQ to make representations and produce evidence about affordability and the impact of the proposed fine on its business, but it did not produce that evidence. We required IQ to produce its accounts and made our own determination that it could afford to pay a fine of £50,000.

Costs

We have also required IQ to pay £50,000 towards our costs for this case, which were over £84,000.

Appeal

IQ submitted an appeal to the First Tier Tribunal in respect of the fine and the order for costs recovery. Ofqual opposed those appeals and IQ abandoned the proceedings on 26 November 2018.

Matthew Humphrey

Director of Legal Moderation and Enforcement

Ofqual

January 2019