



## Notice of Intention to accept a Settlement Proposal

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*In respect of The City and Guilds of London Institute ("City & Guilds") Animal Management Qualifications in 2018*

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### Notice

1. The Office of Qualifications and Examinations Regulation ("Ofqual") hereby gives notice that it intends to accept a Settlement Proposal from City & Guilds in terms that City & Guilds:
  - a) admits all the breaches set out in this Notice;
  - b) agrees to pay the Monetary Penalty of £50,000;
  - c) agrees to pay Ofqual's reasonable legal costs in respect of this matter.
2. This Notice relates to the following breaches of City & Guilds General Conditions of Recognition, in respect of its Level 3 Animal Management Qualifications that were delivered in Summer 2018:
  - a) B3.1 (as exemplified by B3.2(a))
  - b) G1.1(a)
  - c) G1.2(c)
  - d) G3.1 (as exemplified by G3.2(a) and (c))
  - e) H3.1
  - f) H5.1
3. Further information about Ofqual's statutory powers and the Conditions of Recognition are set out in Annex A of this notice.

### Summary of facts

4. Between December 2018 and February 2019, Ofqual carried out an investigation into the delivery of City & Guilds' Level 3 Animal Management Qualifications following delivery failures in Summer 2018. The investigation report was finalised in March 2019.
5. The investigation related to a synoptic assignment that formed part of four Level 3 Animal Management Qualifications that were delivered by City & Guilds in Summer 2018.
6. The qualifications were sat by 2227 candidates from 27 Centres in England, and by 89 candidates from three Centres in Wales.

7. Following complaints made by Centres about Learners' results and the moderation process, City & Guilds identified that there was an issue with one of five tasks of the synoptic assignment which meant that the task did not function as intended.
8. The synoptic assignment was internally-marked and externally-moderated. The same synoptic assignment was used across all four Level 3 Animal Management Qualifications. The synoptic assignment had 60 marks. The synoptic assignment was compulsory and contributed to the overall grade of the qualification, but the weighting varied across the four qualifications. Summer 2018 was the first occasion on which these qualifications had been awarded by City & Guilds. They were newly-developed qualifications designed to meet DfE requirements for performance tables<sup>1</sup>.
9. Ofqual's investigation found that one of the five tasks in the synoptic assignment was unfit for purpose because one of the tasks was written in a way that potentially made the requirements unclear and ambiguous to candidates. This caused some candidates to struggle to access higher mark bands. The level of demand was also found to have been higher in 2018 than it was in 2017. The lack of clarity was likely to have a greater adverse effect for candidates at new centres, where the qualification was being delivered for the first time.
10. City & Guilds released results on 6 August 2018 for 2,316 Learners of which there were 300 learners whose results did not reflect their level of attainment. It was also found that City & Guilds had not notified Ofqual of the issues with the synoptic assignment at the time they were discovered.
11. On 7 September 2018, following a re-marking exercise, City & Guilds re-awarded the qualification with the following (upward) grade changes, affecting a total of 300 Learners:
  - a) 174 candidate results changed from fail to pass,
  - b) 1 changed from fail to merit,
  - c) 104 from pass to merit,
  - d) 20 from merit to distinction,
  - e) 1 from distinction to distinction\*.

## Evidence of breaches

12. The investigation found the following evidence to indicate that City & Guilds had breached its [General Conditions of Recognition](#):
  - a) B3.1 as exemplified by B3.2(a)

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<sup>1</sup> Information provided by City & Guilds in a letter to Ofqual dated 16 December 2019

*“B3.1 An awarding organisation must promptly notify Ofqual when it has cause to believe that any event has occurred or is likely to occur which could have an Adverse Effect.”*

*“B3.2 For the purposes of this condition, such events may in particular include those where –*

*(a) there is a substantial error in the awarding organisation’s assessment materials,*

*(b) ...”*

The lack of clarity in task 1 of the synoptic assignment was capable of having an Adverse Effect as Learners might not have been able to access higher levels of attainment despite having the required knowledge skills and understanding. City & Guilds did not notify Ofqual promptly of this event.

b) G1.1(a)

*“G1.1 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) ...”*

Following complaints made by Centres about Learners’ results and the moderation process, City & Guilds identified there was an issue with task 1 of the synoptic assignment which had the potential to make the requirements unclear and ambiguous to candidates. This caused some candidates to struggle to access higher mark bands. As such, part of the task did not function as intended.

c) G1.2(c)

*“G1.2 An awarding organisation must take all reasonable steps to ensure that the Level of Demand of an assessment for a qualification which it makes available is consistent –*

*...*

*(c) with the Level of Demand of previous assessments and of any specimen assessment materials which the awarding organisation has published in relation to the qualification.”*

The investigation report records that the Principal Moderator appointed by City & Guilds to oversee the 2017 and 2019 assessments for the qualification, considered that the Summer 2018 assessment had a greater level of demand than in 2017. According to the Principal Moderator, there were two reasons why the level of demand in Summer 2018 was greater

than in 2017: the reduction in scaffolding and the change to the number of assessment objectives.

d) G3.1 as exemplified by G3.2(a) and (c)

*“G3.1 An awarding organisation must ensure that assessments for qualifications which it makes available use only appropriate language and Stimulus Materials.”*

*“G3.2 Language and Stimulus Materials are only appropriate if they –*

- (a) enable Learners to demonstrate their level of attainment,*
- (b) ...,*
- (c) are clear and unambiguous (unless ambiguity forms part of the assessment),*
- (d) ...”*

The issue with the language used in task 1 of the synoptic assignment had the potential to make the requirements of the task unclear and ambiguous. City & Guilds acknowledged the ambiguity and that candidates were prevented from accessing high marks as a result.

e) H3.1

*“H3.1 Before setting a specified level of attainment for a qualification which it makes available, an awarding organisation must review the specified levels of attainment set for –*

- (a) the qualification previously,*
- (b) similar qualifications it makes available, and*
- (c) similar qualifications made available by other awarding organisations,*

*and must use the results of this monitoring to ensure that the specified level of attainment it sets for the qualification will promote consistency in measuring the levels of attainment of Learners over time and between similar qualifications.”*

City & Guilds decided to re-award the grades and set lower grade boundaries at pass and distinction. This demonstrates that City & Guilds considered that the grade boundaries were incorrect and would not promote consistency over time.

f) H5.1

*“H5.1 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.”*

On 6 August 2018, City & Guilds released results to Centres. On 7 September 2018, it made qualification grade changes. 300 of the 2,316 original results therefore did not reflect the level of attainment demonstrated by those Learners in the assessment.

# Settlement Proposal

13. In March 2020, City & Guilds made a Settlement Proposal to Ofqual in which it:

- a) formally admitted to a failure to comply with the following General Conditions of Recognition, as evidenced above:
  - i. B3.1 (as exemplified by B3.2(a))
  - ii. G1.1(a)
  - iii. G1.2(c)
  - iv. G3.1 (as exemplified by G3.2(a) and (c))
  - v. H3.1
  - vi. H5.1
- b) offered to pay a Monetary Penalty of £50,000; and
- c) offered to pay Ofqual's reasonable legal costs in connection with this matter.

## Determination of a Monetary Penalty

14. In January 2021, Ofqual's Enforcement Committee considered all of the evidence and the admissions made by City & Guilds, and found that City & Guilds had breached the following General Conditions of Recognition in relation to its Level 3 Animal Management Qualifications that were delivered in Summer 2018:

- a) B3.1 (as exemplified by B3.2(a))
- b) G1.1(a)
- c) G1.2(c)
- d) G3.1 (as exemplified by G3.2(a) and (c))
- e) H3.1
- f) H5.1

15. The Enforcement Committee also considered the Settlement Proposal from City & Guilds.

16. 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 aggravating and mitigating factors.

## Aggravating factors

17. The incident had the potential to undermine the standards of, and public confidence in, City & Guilds Level 3 Animal Management Qualifications. The synoptic assignment was compulsory and contributed to the overall grade of the qualification. Summer 2018 was the first occasion on which these qualifications had been awarded by City & Guilds. They were newly-developed qualifications

designed to meet DfE requirements for performance tables. The incident provoked complaints from Centres about Learners' results and the moderation process.

18. 300 Learners (out of a total of 2316 who sat the qualification) were initially awarded with an incorrect result that did not reflect their level of attainment.
19. The issue was initially identified through complaints from Centres about Learners' results and the moderation process, rather than having been picked up by City & Guilds.
20. The fact that City & Guilds failed to promptly notify Ofqual of the incident gives rise to concerns about its management and control systems when responding to incidents.
21. The circumstances of the breaches appear to be within the control of City & Guilds.
22. City & Guilds received a [fine](#) of £38,000 in August 2016 for failing to ensure the timely issue of results for 22,229 Learners. One of the issues in that case was a delay in notifying Ofqual about the incident, which is also a feature of this incident.

## Mitigating factors

23. The matter arose from one task in a synoptic assignment where the wording of the task could have been clearer. There were no other errors on the synoptic assignment and therefore overall the qualifications remain robust.
24. Once the issue had been identified, City & Guilds took significant steps to rectify the issue and issued upward grade changes to all affected Learners within a month to ensure that no Learners were disadvantaged.
25. City & Guilds fully co-operated with Ofqual's investigation and subsequently voluntarily engaged with Ofqual in settlement discussions resulting in admissions and a Settlement Proposal to pay a fine and reasonable legal costs.
26. There is no evidence to suggest that the breach happened intentionally but City & Guilds acknowledged that the question in one task could have been worded more clearly. No attempt was made to conceal the incident and it was reported to Ofqual within six working days of it being identified.
27. There is no evidence of any adverse effect on purchasers or users of the qualifications.

28. The impact on qualification results was limited to 175 candidates who moved from a fail to pass or merit (out of a total in the year of 2316, so 7.5% of total annual Learners). The other 125 achieved a better grade, but had already passed on the original grade boundaries.
29. City & Guilds did not receive any financial gain or competitive advantage as a result of this incident. City & Guilds incurred additional costs to resolve the incident which related to the re-standardisation and re-award and additional staff time.
30. There is no evidence of any concern about the management of systems for assessment development, but a lack of clarity on one of the tasks.
31. The previous breach was over three years ago following which City & Guilds has continued to engage in open and honest dialogue with Ofqual on all activities relating to its regulatory compliance.

## Other considerations

32. The Enforcement Committee also considered:
  - a) the need to deter City & Guilds 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) City & Guilds' relative size and turnover as an awarding organisation;
  - e) The admissions and Settlement Proposal made by City & Guilds in this case.

## Decision

33. Taking all of the above into account, the Enforcement Committee has decided that it intends to accept a Settlement Proposal from City & Guilds in terms that City & Guilds:
  - a) admits all the breaches set out in this Notice;
  - b) agrees to pay the Monetary Penalty of £50,000;
  - c) agrees to pay Ofqual's reasonable legal costs in respect of this matter.

The figure of £50,000 reflects the fact that a Settlement Proposal has been put forward by City & Guilds.

34. 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 City & Guilds' total annual turnover.

## Representations

35. City & Guilds 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.

36. Interested parties may make representations in respect of Ofqual's proposal to accept a Settlement Proposal from City & Guilds. 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 Friday 25 June 2021**.

## Next Steps

37. The Enforcement Committee will consider this case again on or after **25 June 2021**.

38. The Enforcement Committee will consider any representations made as specified in this Notice and will decide whether to accept a Settlement Proposal from City & Guilds in the terms proposed or whether any other order should be made.

Signed: H Jones

Name: Hywel Jones  
**Chair of the Enforcement Committee**  
Date: 27 May 2021

**Enforcement Committee:** Hywel Jones and Richard Garrett

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. The City and Guilds of London Institute (“City & Guilds”) 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.
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. City & Guilds 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. City & Guilds has a legal obligation to have regard to this guidance.
2. The relevant General Conditions of Recognition in this case are:
  - a) B3.1 (as exemplified by B3.2(a))
  - b) G1.1(a)
  - c) G1.2(c)
  - d) G3.1 (as exemplified by G3.2(a) and (c))
  - e) H3.1
  - f) H5.1

3. **Condition B3.1** provides that:

*“An awarding organisation must promptly notify Ofqual when it has cause to believe that any event has occurred or is likely to occur which could have an Adverse Effect.”*

4. **Condition B3.2** provides specific examples of events which could have an Adverse Effect, which may in particular include those where –

- (a) *“there is a substantial error in the awarding organisation’s assessment materials,*
- (b) *...”*

5. An Adverse Effect is defined under **Condition J1.8** 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.”*

6. **Condition G1.1(a)** provides that:

*“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) *...”*

7. **Condition G1.2(c)** provides that:

*“An awarding organisation must take all reasonable steps to ensure that the Level of Demand of an assessment for a qualification which it makes available is consistent –*

*...*

*(c)with the Level of Demand of previous assessments and of any specimen assessment materials which the awarding organisation has published in relation to the qualification.”*

8. **Condition G3.1 and G3.2 (a) and (c)** provide that:

*“G3.1 An awarding organisation must ensure that assessments for qualifications which it makes available use only appropriate language and Stimulus Materials.”*

*“G3.2 Language and Stimulus Materials are only appropriate if they –*

- (a) enable Learners to demonstrate their level of attainment,*
- (b) ...,*
- (c) are clear and unambiguous (unless ambiguity forms part of the assessment), and*
- (d) ...”*

9. *Condition H3.1 provides that:*

*“Before setting a specified level of attainment for a qualification which it makes available, an awarding organisation must review the specified levels of attainment set for –*

- (a) the qualification previously,*
  - (b) similar qualifications it makes available, and*
  - (c) similar qualifications made available by other awarding organisations,*
- and must use the results of this monitoring to ensure that the specified level of attainment it sets for the qualification will promote consistency in measuring the levels of attainment of Learners over time and between similar qualifications.”*

10. *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.”*