



Notice of Monetary Penalty

In respect of the issuing of incorrect ‘short course’ certificates

In accordance with its powers under Section 151A(2) of the Apprenticeships, Skills, Children and Learning Act 2009 (“the Act”), and pursuant to its obligations under Section 151A(7) and 151A(8) of the Act, the Office of Qualifications and Examinations Regulation (“Ofqual”) gives notice that it has imposed a Monetary Penalty in the sum of **£150,000** on Pearson Education Limited (“Pearson”) for the reasons set out below.

Contents

Summary	2
Representations	2
Proportionality	3
Pearson’s Representations.....	3
Enforcement Committee’s consideration	3
Comparison with other similar cases.....	5
Pearson’s Representations.....	5
Enforcement Committee’s consideration	5
Pearson’s Representations.....	7
Enforcement Committee’s consideration	7
Size and turnover.....	8
Pearson’s Representations.....	8
Enforcement Committee’s consideration	8
Admissions and settlement	10
Pearson’s Representations.....	10
Enforcement Committee’s consideration	10
Compliance history	11
Pearson’s Representations.....	11

Enforcement Committee’s consideration	11
Deterrent factor	12
Pearson’s Representations.....	12
Enforcement Committee’s consideration	12
Final Decision.....	13
Payment.....	13
Appeals.....	13

Summary

1. On 27 June 2022, a [Notice of Intention](#) to impose a Monetary Penalty was issued to Pearson.
2. The Notice stated that the amount of the Monetary Penalty shall be **£150,000**.
3. Pearson was given the opportunity to make representations about the Notice of Intention. Pearson submitted representations to Ofqual on 25 July 2022. Those representations are summarised below.
4. On 31 August 2022, Ofqual published the Notice of Intention on its website. Interested parties were given the opportunity to make representations about the Notice of Intention. No representations were received.
5. On 7 November 2022, Ofqual’s Enforcement Committee had regard to the representations made by Pearson on 25 July 2022, as required under section 151A(7) of the Act. The Enforcement Committee’s consideration of those representations is summarised below. Following consideration of those representations, the Enforcement Committee decided that there should not be any variation to the amount of the Monetary Penalty.

Representations

6. On 25 July 2022, Pearson submitted representations to Ofqual in response to the Notice of Intention dated 27 June 2022. Those representations are summarised below (**in bold**) followed by a summary of the Enforcement Committee’s consideration.

Proportionality

Pearson's Representations

7. **Pearson submits that proportionality, which is one of the Better Regulation Executive's five principles of good regulation, has not been properly considered. Pearson identifies several points where it submits that inadequate or inappropriate weight has been applied including:**
 - a) **The scale of the fine cannot be justified as a proportionate response to the concerns and the limited impact of the breach on Learners.**
 - b) **That the scale of errors has not been appropriately considered, Pearson asks Ofqual to consider whether and how the number of incorrect certificates issued is deemed to be an aggravating factor.**
 - c) **That the number of certificates that have not been recovered has been given disproportionate weight as an aggravating factor.**
 - d) **That Pearson acted in good faith when determining the steps taken to rectify the breach and it should not be penalised for coming to a reasonable, albeit different, conclusion as to what was proportionate in all the circumstances.**

Enforcement Committee's consideration

8. The Enforcement Committee found there was some evidence of impact on Users of qualifications as a result of Pearson's non-compliance (at paragraph 96(b)) and took into account wider considerations beyond a direct impact on individual Learners.
9. One of Ofqual's statutory objectives is to promote public confidence in regulated qualifications (section 128(4) of the Act) and Ofqual's Taking Regulatory Action (TRA) policy notes (at page 6) that in line with the Better Regulation Executive's five principles of good regulation, our assessment of risk to public confidence is one of the ways in which we target our regulatory activities and, in particular, we "promote public confidence in qualifications through visible, appropriate and effective regulatory action". Ofqual's TRA policy also notes (at page 29) that the seriousness of the breach in relation to its effect on public confidence is also one of the factors that we will consider when deciding whether to impose a fine.
10. The Notice of Intention (at paragraph 94(c)) notes that the root cause of the incident was a circumstance fully within the control of Pearson and related to an

area that is integral to the effective functioning of any awarding organisation. The issuing of correct certificates is fundamental to securing standards and public confidence in GCSE and GCE qualifications. A failure to have adequate checks in place and to issue large volumes of incorrect certificates over a significant period of time, is therefore likely to seriously undermine public confidence in regulated qualifications.

11. The Enforcement Committee does not agree that the scale of errors have been inappropriately considered. Simply put, the higher volume of incorrect certificates issued, the greater impact on Users of qualifications and public confidence. On any analysis, the issuing of 8,361 incorrect certificates is a large-scale non-compliance with the General Conditions of Recognition. The wider context regarding Pearson was fully considered and outlined in the Notice of Intention (at paragraph 95(b)), whereby it was acknowledged that the issue affected a limited subset of certificates and Pearson was compliant with the Conditions regarding award titles for the other 1.2 million GCSE certificates it issued in 2017 and 2018.
12. The Enforcement Committee does not agree that disproportionate weight was given to the fact that certificates had not been recovered. Ofqual regulates GCSEs more closely because they are higher risk qualifications. Pearson issued incorrect certificates to learners for a national GCSE qualification to which they do not have an entitlement. The number of outstanding certificates is an aggravating factor in this case because of the nature of the error and what the certificates incorrectly indicate.
13. The Enforcement Committee does not agree that inappropriate weight was given to the steps taken by Pearson to rectify the breach and that Pearson came to a reasonable albeit different conclusion (i.e. the decision not to initially recover the 2017 certificates). Had Pearson come to a reasonable albeit different conclusion it would have complied with A7.1 in relation to its incident management. The Enforcement Committee found, and Pearson accepted that it failed to comply with A7.1. However, as set out in the Notice of Intention (at paragraph 95(c)), the sum was determined on the basis that Pearson's incident management fell short of what was required under the Conditions and was an error of judgment rather than any deliberate attempt to avoid compliance with Condition A7. The Enforcement Committee considers that it correctly considered the basis upon which Pearson failed to comply.
14. The Enforcement Committee considers that the interests of Users of qualifications and public confidence were undoubtedly undermined by Pearson failing to comply with its Conditions of Recognition in relation to the issuing of incorrect certificates. The Enforcement Committee remains of the view that appropriate weight was given to the factors and the scale of the fine proposed is

proportionate and in line with the Better Regulation Executive's principles of good regulation.

Comparison with other similar cases

Pearson's Representations

15. Pearson highlighted that Ofqual had not compared any similar cases in the Notice of Intention in this case. Pearson submits there are a number of similarities with the LAMDA case in which a fine of £30,000 was issued and asked that Ofqual consider that case in particular (along with any other similar cases which have not yet been made public).

16. Pearson further submitted that:

- a) Overall LAMDA breached significantly more conditions than Pearson (17 compared to 9), and over an extended period of time (up to 6 years in some instances), which would indicate a more factually serious case in both effect and nature.**
- b) A mitigating factor for LAMDA was that they undertook a 'root and branch' review, but it is not noted whether or not Pearson received mitigation for its 'lessons learned' review. Equally, more weight should be given to Pearson's acceptance of facts and prompt admissions of non-compliance which have not been listed as a mitigating factor, as they have been in the LAMDA (and other decisions).**
- c) That LAMDA were provided with a range in which their monetary penalty would fall at the same time that they were notified that a monetary penalty was appropriate, so that they could consider and respond to both. The factors which Ofqual used to justify a fine on the lower end of the penalty spectrum for LAMDA also apply to Pearson.**

Enforcement Committee's consideration

17. The Enforcement Committee has considered the LAMDA case and notes significant differences between that case and the Pearson case. LAMDA issued incorrect results to 47 learners and incorrect certificates to 1018 learners, the majority of the errors regarding incorrect certificates in LAMDA's case were minor and affected qualification titling, in that case Ofqual found that the errors did not in fact give rise to any appreciable risk to standards, and are and were unlikely to

have caused distress or inconvenience to learners ([see paragraph 87.a of the LAMDA Notice of Intention](#)) - although there are additional and different serious breaches in that case.

18. In contrast Pearson issued in excess of 8000 incorrect GCSE certificates to learners that were entitled to those certificates. These were for national qualifications that factor into league tables that Ofqual regulates more tightly, this put at risk the maintenance of standards as well as causing inconvenience to Users of qualifications, and would undoubtedly undermine public confidence. Although LAMDA breached more Conditions and there were systemic failings, the current case involves Pearson breaching General Condition I4 on a larger scale and in a more serious way than LAMDA.
19. Whilst LAMDA were provided with a range of penalties and a fine was imposed at the lower end of the range, the Enforcement Committee notes that LAMDA entered into settlement discussions and the proposed penalties reflected that Ofqual took a unique approach by setting a range based upon LAMDA successfully completing a review and reform programme in connection with an Undertaking. The lower settlement sum reflecting that LAMDA successfully brought itself back into compliance and spent in excess of £950,000 in restitution and compensation to learners and centres with additional resourcing for the purposes of compliance, it also incurred costs which were likely to have exceeded the costs associated with compliance. The Enforcement Committee notes that the costs incurred by Pearson rectifying the non-compliance were equally considered when determining the sum in this case (see paragraph 96(a)).
20. Pearson states that LAMDA received mitigation because they undertook a “root and branch” review, the Enforcement Committee notes that the actions taken by Pearson to prevent a recurrence were equally considered in this case (see paragraph 95(f)).
21. Pearson states that more weight should be given to Pearson's acceptance of facts and prompt admissions of non-compliance which have not been listed as a mitigating factor, as they have been in the LAMDA (and other decisions). The Notice of Intention (see paragraph 96(f)) sets out that accepted facts and prompt admissions were considered. The Enforcement Committee accepts this could be placed within the mitigation section, however full weight was given to this as a mitigating factor when determining the sum.
22. In summary, it is correct to say that LAMDA breached more Conditions and there were systemic failings present in that case that are not present in the current case. However, the current case involves Pearson breaching General Condition I4 on a larger scale and in a more serious way than LAMDA. Furthermore, the LAMDA sum was a settlement case with a first-time monetary penalty imposed on an awarding organisation with a significantly smaller turnover than Pearson in

circumstances where it had spent a significant sum of money rectifying the incident and bringing itself back into compliance. Ofqual further recognised 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.

23. Having reviewed the LAMDA case, the Enforcement Committee considers that it is difficult to see any material inconsistency between the cases, the fine in this case is proportionate and reflects the seriousness of issuing incorrect certificates, the economic realities of Pearson and has the desired economic impact.
24. The Enforcement Committee has considered other investigations in relation to incorrect certificates and remains confident that the proposed fine is appropriate in this case.

Pearson's Representations

- 25. Pearson asked that Ofqual look holistically at the Monetary Penalties they have issued across all AOs to determine whether this fine is appropriately benchmarked. In particular, to look at the two closest in value issued against OCR in 2018 for £175,000 and £125,000 which Pearson submits were much more serious in effect and nature when considering the overarching objectives and impact on public confidence.**

Enforcement Committee's consideration

26. The Enforcement Committee has considered the two cases in question. In the first case, Ofqual imposed a monetary penalty of £125,000 after partial answers to GCSE computing exam questions were found in textbooks OCR had endorsed. Ofqual found that OCR had failed to identify and monitor conflicts of interest in that the authors of some GCSE computing controlled assessments had also written textbooks. In that case, Ofqual factored in £300,000 spent resolving the incidents when determining the impact of the fine. Ofqual notes that OCR received a settlement discount indicating a starting point above the figure imposed in this case for an awarding organisation with a smaller turnover.
27. In the second case, Ofqual imposed a monetary penalty of £175,000 for the "Romeo and Juliet" assessment material error. The Enforcement Committee notes the amount imposed for an awarding organisation with smaller turnover was greater than the fine imposed in this case, Ofqual also factored in £150,000 spent resolving the incidents when determining the level of the fine.
28. The Enforcement Committee considers the closest previous case to the present matter was Pearson's previous monetary penalty in 2016. Upon settlement for a

first-time monetary penalty, £85,000 was imposed for issuing inaccurate results to 551 learners (Condition H5.1 and H6.1(d)), issuing certificates with incorrect names to 41 learners and certificates with inaccurate results to 1,566 learners (Condition I4.1(d)). Pearson failed to issue results on time for 1,648 qualifications (Condition H6.1(e)). Pearson failed to issue certificates on time for 10,851 qualifications (Condition I4.1(b)). As noted in that case, £5 million was spent by Pearson resolving the incident. The current case involves a larger number of incorrect certificates and took place shortly after a previous fine for issuing incorrect certificates.

29. Having reviewed the previous cases, the Enforcement Committee considers that the sum is appropriate.

Size and turnover

Pearson's Representations

30. Pearson also requested specifically that the following is considered:

- (a) Pearson's relative turnover from regulated activities. Pearson stated that it is unclear whether its turnover from regulated activities in relation to its total turnover were factored in the decision;**
- (b) Pearson's total market share compared to others;**
- (c) The number of certificates issued by Pearson; and**
- (d) Pearson's GCSE, AS and A level market share.¹**

31. Pearson also states that size is not listed as a factor under 'Decision to impose a fine' in Ofqual's procedures.

Enforcement Committee's consideration

32. Following Pearson's representations, a B4 Information Notice was issued for details of Pearson's total and regulated activity turnover. Pearson's turnover for the year ending 31 December 2021 was £374m. Pearson's turnover from regulated activities in relation to its total turnover for the year ending 31 December 2021 was £165m.

¹ Following a request for clarification on whether and how Pearson was requesting the Enforcement Committee take market share information into account in the "Short Course" case. Pearson stated "...We can confirm that we believe that information was particularly pertinent to the ROM case." Ofqual has therefore considered (a) and (c) but not (b) and (d) in the "Short Course" case.

33. Ofqual considers that the proportion of regulated activity is likely to be most relevant in cases where the proposed fine exceeds or comes close to 10% of an awarding organisation's turnover from regulated activity or, for example, where its regulated activities make up only a very small proportion of its turnover and is not the organisation's primary source of income and therefore it would be disproportionate to impose a fine that did not take regulated activity into account. The Enforcement Committee does not consider that to be the case here.
34. The Enforcement Committee has taken into account Pearson's regulated activity as a proportion of its total turnover. Having reviewed the sums provided, the Enforcement Committee considers the monetary penalty is of such a size that the sum proposed is not significant in relation to either total or regulated activity turnover. In percentage terms, a monetary penalty of £150,000 equates to 0.04% of £374m or less than 0.1% of £165m. The Enforcement Committee does not consider the proposed level of penalty is such where the awarding organisation's turnover from regulated activities in relation to its total turnover is a relevant factor. This is not a case where the fine eclipses the turnover from regulated activity and the factor may be relevant. In respect of the request to consider the number of certificates issued by Pearson, the Enforcement Committee acknowledged in the Notice of Intention (at paragraph 95(b)) that the issue affected only a limited subset of GCSEs, this factor was therefore noted and taken into account when determining the sum.
35. Pearson has queried whether size should be a relevant factor in the decision to impose a fine. Pearson accepts that a monetary penalty is warranted in this case, the Enforcement Committee considers that when a monetary penalty is deemed appropriate, it must reflect the seriousness of the non-compliance. A monetary penalty must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with Ofqual's rules. In doing so, it is clearly appropriate for Ofqual to consider the economic realities of the organisation and the most efficacious way of giving effect to the purposes of imposing a penalty. The sum in this case reflects the economic realities of Pearson and the fact that it issued a significant number of incorrect certificates, the type of error and the fact that it was issuing incorrect certificates over a prolonged period without detection with no quality assurance process in place to detect the issue until it was brought to Pearson's attention by a User of regulated qualifications.
36. Factors that could warrant adjustment to the level of a penalty are set out from page 31 of the TRA policy, to which the Enforcement Committee has had regard when determining the appropriate amount. There is no suggestion from the representations of any wider impacts of the fine on the awarding organisation's ability to improve or comply with its Conditions or impact of the fine on

employment of staff, service users, or customers. The Enforcement Committee does not consider an adjustment is required in this case.

Admissions and settlement

Pearson's Representations

- 37. Pearson submits that more weight should be given to its full cooperation, early and full admissions and acceptance of facts.**
- 38. Pearson has further submitted that it should not be penalised twice in respect of its decision not to engage in settlement discussions, noting that any costs Ofqual has incurred as a result of settlement not being further discussed are likely to be covered via a Notice of Costs Recovery.**

Enforcement Committee's consideration

- 39. The Notice of Intention (at paragraph 96(f)) sets out that Ofqual considered the prompt admissions of Pearson. The Notice of Intention (at paragraph 100) further acknowledges that the decision of Pearson not to enter settlement discussions was not a factor taken into account in respect of the decision to impose a Monetary penalty but was recorded to reflect that Pearson is not entitled to a settlement discount on the level of penalty imposed..
- 40. The purpose and benefits of settlement procedures are not solely in relation to the time and expense saved by the regulator. Settlement allows us to focus our resources more effectively and can save costs for the awarding organisation as well as reducing the uncertainty of a contested procedure. A settled case brings a degree of finality to the case as an awarding organisation is highly unlikely to appeal a Monetary Penalty that it has agreed to pay.
- 41. Separately, Ofqual has the power to recover its costs under section 152(A) of the Act when it imposes a Monetary Penalty on an awarding organisation. This is not punitive and it is right that as a public body, Ofqual seeks to recover the costs it has incurred when taking statutory enforcement action against an awarding organisation that has failed to comply with its Conditions of Recognition.
- 42. The Enforcement Committee remains of the view that appropriate weight was given to all of the relevant factors in this case.

Compliance history

Pearson's Representations

- 43. Pearson has submitted that inappropriate weight has been given to its previous breach in 2016.**
- 44. Pearson further highlights that it has never failed to comply with undertakings or special conditions made by Ofqual. Pearson further states that it has always been open and transparent with Ofqual, and has worked tirelessly and in partnership positively with Ofqual and DfE throughout Covid-19 to put in place measures to protect Learners. Pearson states it is not a recalcitrant Awarding Organisation and seeks at all times to be in full compliance with the Conditions of Recognition.**

Enforcement Committee's consideration

45. In respect of Pearson's previous fine in 2016, the Notice of Intention (at paragraph 94(g)) sets out that although the root causes may be different, in both cases Pearson failed to ensure it issued accurate certificates and breaches occurred over a prolonged period. The 'short course' incidents took place in 2017 and 2018, a year after Ofqual had imposed a fine upon Pearson for an incident where incorrect certificates had been issued. In determining the weight, the Enforcement Committee noted that the fine was imposed several years ago and there has not been further serious incidents resulting in regulatory action against Pearson for issuing incorrect certificates. The Enforcement Committee considers it appropriate to take the previous fine into account, the context has been appropriately considered when determining this as an aggravating factor.
46. The Notice of Intention contains no suggestion that Pearson has previously failed to comply with undertakings or special conditions made by Ofqual and this issue is not considered further.
47. The Enforcement Committee notes the representations Pearson has made in respect of its conduct and co-operation with Ofqual throughout the pandemic, however it does not consider this is directly relevant to the amount of the fine in this case given that the events pre-date the pandemic.

Deterrent factor

Pearson's Representations

48. In the Notice of Intention Ofqual cited the need to deter Pearson and other awarding organisations from making similar failings in the future. Pearson submitted that limited weight should be attributed to this because no deterrent factor is required for Pearson, a deterrent is not required when it has sought to be compliant, and the breaches arose from an error which was immediately corrected as soon as it was discovered to prevent a recurrence.

Enforcement Committee's consideration

49. One of Ofqual's statutory objectives is to promote public confidence in regulated qualifications (section 128(4) of the Act) and Ofqual's Taking Regulatory Action (TRA) policy notes (at page 6) that in line with the Better Regulation Executive's five principles of good regulation, our assessment of risk to public confidence is one of the ways in which we target our regulatory activities and, in particular, we "promote public confidence in qualifications through visible, appropriate and effective regulatory action".

50. A large fine is considered to have a deterrent effect, not only on the awarding organisation receiving the fine, but also on other awarding organisations who will be aware of the fine when it is published. If no action was taken, there would be no incentive for awarding organisations to comply. Ofqual needs to take enforcement action against awarding organisations that fail to comply with their conditions of recognition so that other awarding organisations know what the requirements are and know that Ofqual is willing to take action when those requirements are breached.

51. Ofqual's TRA policy (v2 page 6) states that:

"We take action when we believe it is appropriate... In particular, when an awarding organisation is in breach of, or likely to breach, its conditions of recognition, we act as appropriate to:

- deter other awarding organisations from similar breaches"

52. The Enforcement Committee considers that awarding organisations should anticipate significant regulatory action where large volumes of incorrect GCSE certificates failing to reflect the knowledge, skills and understanding of learners are issued over a prolonged period, and in circumstances where inadequate quality assurance was taking place. A significant fine is considered to have a

deterrent effect to ensure that awarding organisations have adequate checks in place in relation to their issuing of certificates.

53. The Enforcement Committee considers that the interests of Users of qualifications and public confidence were undoubtedly undermined by Pearson's failure to comply with its Conditions of Recognition in relation to the issuing of incorrect certificates and considers that appropriate weight has been given to this factor.

Final Decision

54. For the reasons set out in the Notice of Intention to impose a Monetary Penalty dated 27 June 2022, and having had regard to Pearson's representations dated 25 July 2022, as required under section 151A(7) of the Act, the Enforcement Committee has decided that Pearson will be required to pay a Monetary Penalty in the sum of **£150,000** in relation to the 'short course' incident.

Payment

55. Pearson must pay the Monetary Penalty within 28 days of the date of this Notice, in accordance with the Payment Instructions provided with this Notice.
56. In the event of non-payment, interest may be charged and the outstanding amount may be recovered as a debt, in accordance with section 151D of the Act.

Appeals

57. Pearson may appeal to the First Tier Tribunal in respect of Ofqual's decision to impose the Monetary Penalty and / or in respect of the amount of that penalty, in accordance with section 151C of the Act.
58. An appeal may be made on the grounds that:
- a) The decision was based on an error of fact;
 - b) The decision was wrong in law;
 - c) The decision was unreasonable.
59. Any appeal must be made within 28 days of the date of this Notice. Further information is available from HM Courts and Tribunals Service at: <https://www.gov.uk/guidance/exam-boards-appeal-to-a-tribunal-against-a-monetary-penalty>.

Name: Susan Barratt

Chair of the Enforcement Committee

Date: 29 November 2022

Enforcement Committee:

Susan Barratt (Chair)

Mike Thompson

Matt Tee

NOTE: Ofqual will publish this Notice on its website