



Notice of Intention to accept a Settlement Proposal

In respect of a proposal that the City and Guilds of London Institute should pay a monetary penalty of £200,000

Overview

1. The Office of Qualifications and Examinations Regulation (“Ofqual”) gives notice that it intends to accept a Settlement Proposal from City & Guilds in terms that City & Guilds:
 - a) admits the breaches set out in this Notice;
 - b) agrees to pay the Monetary Penalty of £200,000;
 - c) agrees to pay Ofqual’s reasonable legal costs in respect of this matter.
2. This Notice relates to breaches of City & Guilds’ Conditions of Recognition which occurred in 2018 and 2019, and further breaches which occurred in 2022 and 2023.
3. Ofqual considers, and City & Guilds agrees, that the occurrence of the breaches in 2022 and 2023 reflects the failure by City & Guilds to develop a sufficiently robust action plan in connection with an Undertaking given to Ofqual in May 2021.
4. Ofqual considers, and City & Guilds agrees, that its earlier decision, in May 2021, to take no action in relation to the 2018 and 2019 breaches other than accepting City & Guilds’ Undertaking, should be set aside by reason of the City & Guilds’ action plan not being sufficiently effective.
5. Ofqual considers, and City & Guilds agrees, that it should impose on City & Guilds a monetary penalty which reflects the totality of the 2018 /19 and 2022 / 23 breaches.
6. Ofqual considers, and City & Guilds agrees, that City & Guilds’ failure to develop a sufficiently effective action plan is an aggravating factor in relation to such a monetary penalty.
7. City & Guilds submits, and Ofqual agrees, that the steps it has taken since March 2022 to transform its business operations in relation to the development, delivery and award of qualifications, represents a substantial mitigating factor. Ofqual notes also the further measures City & Guilds intends to take over a period of years.



8. Interested parties now have the opportunity to make representations in respect of Ofqual's proposal, by agreement, to impose a monetary penalty on City & Guilds in the sum of £200,000.
9. Further information about Ofqual's statutory powers and the Conditions of Recognition is set out in Annex A to this notice.

Summary of facts

The Undertaking

10. On 19 May 2021, Ofqual accepted an [Undertaking](#) from City & Guilds in accordance with Condition B8 of the General Conditions of Recognition. The Undertaking had a number of purposes, including:
 - a) To assure Ofqual that City & Guilds would implement the measures it identified following an independent review of its systems and processes and which were set out in its action plan,
 - b) To settle an enforcement case in respect of 74 Event Notifications submitted to Ofqual by City & Guilds during 2018 and 2019, in relation to which City & Guilds admitted 63 breaches of 8 Conditions,
 - c) To ensure the defects in City & Guilds's governance, systems and processes which gave rise to the Event Notifications to which the Undertaking pertained would be remedied, and
 - d) To minimise the repetition of similar incidents in future years.
11. In particular, in giving the Undertaking to Ofqual, City & Guilds recognised that the breaches it had admitted demonstrated there were underlying problems with its governance, its approach to the management of incidents – including reporting such incidents to Ofqual - and with its development of assessment materials.
12. The action plan City & Guilds developed to explain the steps it would take in compliance with the Undertaking was targeted at these underlying problems and was informed by an independent, external review of City & Guilds' systems and processes which it had commissioned at Ofqual's request.
13. On 31 March 2022, City & Guilds provided a statement of assurance to Ofqual, as specified in the Undertaking, which confirmed that it had completed each of the actions set out in its action plan. City & Guilds identified three actions which it could not be confident had been effective, concerning quality assurance for assessment materials, the implementation of a risk management software tool and its Event Notification process.



Monitoring

14. Between April 2022 and June 2023, Ofqual monitored the Event Notifications which were submitted by City & Guilds. Had the Undertaking had the desired impact, Ofqual would have expected to see a decrease over that period in Event Notifications which had as their root-cause problems with City & Guilds' governance, its approach to the management of risk and the development of its assessment materials. However, Ofqual noted an apparent overlap between the Event Notifications submitted during that period and the Conditions which formed the basis of the 2021 Undertaking.
15. Ofqual was particularly concerned that although there had been an improvement in the timeliness of Event Notifications in the period immediately after the completion of the action plan, there were several examples of Event Notifications between March 2022 and April 2023 which were submitted significantly later than is required by Condition B3.

Investigation

16. On 27 June 2023, Ofqual notified City & Guilds that it intended to investigate the circumstances relating to each of the Event Notifications City & Guilds had submitted between 1 April 2022 and 31 May 2023. Ofqual described the purpose of the investigation in the following terms:

In summary, Ofqual is concerned that City & Guilds continues to encounter incidents which we would not have anticipated would occur, or which would occur much less frequently, had City & Guilds's earlier action plan had the effect it was intended to have. This causes us to doubt the efficacy of that action plan, which in turn brings into doubt Ofqual's decision not to take formal action in relation to the breaches which gave rise to that action plan, as well as causing Ofqual to consider whether action should be taken in respect of any or all of the recent incidents.

In the circumstances, we have suggested, and the VTQ team has agreed, that Ofqual should complete a full retrospective review of each Event Notification submitted by City & Guilds since 1 April 2022. This will allow Ofqual greater insight into the current state of City & Guilds's compliance, as well as identifying any specific failure to comply with the action plan and / or any parts of that action plan which have been ineffective. The output of the investigation will inform the choices Ofqual makes as to any regulatory action.

17. Ofqual completed its investigation on 31 July 2023 and allowed City & Guilds a period of time to review the draft report from 15 August 2023. The final investigation report was issued on 26 September 2023.
18. The findings from the investigation were set out in the report in the following terms:
 7. This investigation finds that there is evidence to indicate that:



- a. City & Guilds has continued to breach its Conditions of Recognition
 - b. such breaches, in connection with incidents reported between April 2022 and May 2023, are similar in nature to those which prompted City & Guilds' Action Plan
 - c. such breaches have occurred despite the actions set out in the Action Plan
8. Having reviewed evidence retained in the Ofqual Portal for 75 event notifications submitted by City & Guilds, the investigation considers there is evidence indicating non-compliance with the following Conditions of Recognition:
- A5.1(a), A5.2(a), (b), (c), B3.1, EPA3.1, B3.6 C1.1(a) C2.5(a) D3.3 EPA1.1 EPA3.4 G1.1(a), (c) G3.1 G3.2(c) G4.1(a) G9.1 G9.2(a), (e) G9.3(c) H1.1(b) H2.8 H5.1 H5.3(b) H6.1(a), (d), (e), (f) I4.1(b), (d) TQ6.1
9. Overall, there is evidence to indicate that City & Guilds' Action Plan has not been successful in preventing further repeated breaches of its Conditions of Recognition since the Action Plan was introduced on 19 May 2021, and since City & Guilds advised Ofqual of its progress in implementing the Action Plan on 31 March 2022. The relevant actions in the Action Plan have not successfully prevented:
- a. incidents involving assessment material errors in paper and online assessments – 28 of the 75 event notifications reviewed relate to errors introduced during the development of assessment materials that went undetected by City & Guilds' quality assurance during the development process(es).
 - b. delays in notifications to Ofqual by City & Guilds under Condition B3 – 45 of the 75 event notifications reviewed had delays in reporting to Ofqual which was included in the incident management workstream of the Action Plan. These delays indicate breaches of Conditions B3.1 and EPA3.1.
10. There are indications that City & Guilds' reviews have not been effective in identifying the root causes of incidents. Our review has identified that 60 of the 75 event notifications reviewed were similar in nature to issues that prompted the Action Plan and occurred despite the actions set out in the Action Plan, and therefore indicates that the actions did not address the root causes sufficiently.
11. Given the issues set out in the notifications reviewed by the investigation and given that these are similar in nature to those which prompted City & Guilds' Action Plan, there are indications that City & Guilds did not effectively review its approach to the development, delivery, and award of qualifications when producing the Action Plan in 2019 and since. This indicates a breach of Condition D3.3.
12. Because City & Guilds' review and Action Plan were ineffective, it failed to properly notify Ofqual of events, and it did not identify all of its non-compliance in the event notifications, there is evidence to indicate City & Guilds did not ensure it had the capacity to undertake the development, delivery and award of



its qualifications in a way that complied with its Conditions of Recognition. This indicates a breach of Condition A5.1(a).

Failure to comply with the Conditions

19. In its response to the draft investigation report and in subsequent correspondence City & Guilds has admitted that it failed to comply with the Conditions of Recognition identified in the investigation report. In addition, in its annual statement for 2022 (the statement of compliance), City & Guilds admitted that it had failed to comply with Conditions H2, A5, G3 and G9.

Settlement Proposal

20. On 22 November 2023 City & Guilds made a settlement proposal to Ofqual by which it:

- a. Agreed that it had breached its Conditions of Recognition as set out in the investigation report and as set out in its statement of compliance for 2022,
- b. Agreed that Ofqual was at liberty to take regulatory action in respect of the breaches of the Conditions in 2018 and 2019 which it had admitted when it gave its Undertaking in May 2021,
- c. Agreed to pay a Monetary Penalty in the sum of £200,000 in settlement of the breaches set out above,
- d. Agreed to pay Ofqual's reasonable legal costs in relation to this matter.

Determination of a Monetary Penalty

21. On 8 March 2024, Ofqual's Enforcement Committee considered the evidence and the admissions made by City & Guilds and determined that City & Guilds has breached its Conditions of Recognition, as follows:

- a. Conditions A5, A6, A7, G8, G9, H1, H5, H6 – as set out in City & Guilds' Undertaking dated 19 May 2021
- b. Conditions A5.1(1), A5.2 (a)-(c), B3.1, EPA3.1, B3.6, C1.1(a), C2.5(a), D3.3, EPA1.1, EPA3.4, G1.1(a) (c), G3.1, G3.2(c), G4.1(a), G9.1, G9.2(a)-(e), G9.3(c), H1.1(b), H2.8, H5.1, H5.3(b), H6.1(a), (d)-(f), I4.1(b), (d), and TQ6.1 – as set out in the investigation report dated 26 September 2023
- c. Conditions A5, G3, G9 and H2 – as set out in City & Guilds' statement of compliance for 2022.



22. The Enforcement Committee has considered the Settlement Proposal presented by City & Guilds. 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 has had regard to Ofqual's Taking Regulatory Action policy (2012).
23. The Enforcement Committee notes the aggravating and mitigating factors set out below.

Aggravating Factors

24. The investigation reviewed 73 Event Notifications and identified breaches of 24 Conditions in relation to those incidents. The Event Notifications included incidents which affected the production of assessment materials (28 ENs), the delivery of assessments to learners (16 ENs) and the issue of results or certificates (13 ENs).
25. The investigation identified that 60 Event Notifications concerned incidents which were similar in nature to the 2018/19 incidents which gave rise to City & Guilds' Undertaking and action plan. It is not possible to identify specific incidents which would not have occurred had the action plan been sufficiently robust, but City & Guilds has admitted that the action plan did not prevent all of the incidents which it was designed to prevent. The Enforcement Committee considers that at least some of the 2022/23 incidents would not have occurred if City & Guilds' action plan had been sufficiently robust.
26. The occurrence of avoidable incidents affecting assessment materials, results and certificates, which had the potential to have an adverse effect on learners, is a significant aggravating factor. Where the awarding organisation has given an Undertaking in terms which would lead users of qualifications reasonably to consider that such incidents will be less likely to occur, as here, and potentially to act in reliance on that belief, the aggravating factor assumes even greater significance.
27. The investigation identified 45 Event Notifications which were not submitted promptly, as required by Condition B3.1 or EPA3.1. Of these, 26 were submitted at least 21 days after City & Guilds became aware of the incident, and 5 incidents were reported more than 6 months late. The requirement promptly to notify Ofqual in respect of incidents which could have an adverse effect is of central importance to Ofqual's ability effectively to exercise oversight of the management of incidents which could have a detrimental impact on learners or on standards in qualifications.
28. Ofqual has twice before imposed a monetary penalty on City & Guilds, in August 2016 (£38,000) and in July 2021 (£50,000). Each of those cases included a failure promptly to notify Ofqual of relevant events. The number of incidents in this case, the duration of the delay in several instances and the repetition of



failings which were a feature of previous cases is a significant aggravating feature in this instance.

Mitigating Factors

29. City & Guilds has identified a number of factors by way of potential mitigation which the Enforcement Committee agrees are relevant to the level of the monetary penalty which is appropriate in this case. Those factors are set out in this section.
30. City & Guilds' action plan was developed in good faith, but was not based on a sufficiently deep root cause analysis which meant the actions did not fully address the issues that had arisen. However, the action plan was fully implemented and resulted in some improvements to processes.
31. Since March 2022, City & Guilds has undertaken a series of deep root cause analyses which have resulted in the Awarding Organisation ("AO") transformation programme which aims to further assure regulatory compliance: the programme is already addressing issues.
32. Over the last 18 months City & Guilds has remained focused on taking steps to achieve compliance and the safe delivery of reliable results to learners. This has been achieved through taking short-term improvement actions whilst also committing significant resources to the AO transformation programme.
33. City & Guilds has spent approximately £1 million on the AO transformation programme in the last year and intends to make a further multi-million pound investment over the next 3 years. In addition, City & Guilds expects a multi-million pound spend on technology and systems development and redevelopment.
34. City & Guilds has made significant changes to its operations in terms of:
 - a. senior leadership, including the recruitment of a new Responsible Officer with extensive knowledge in regulation, assessment and research;
 - b. strengthened governance of the AO executive and leadership teams with clear Terms of Reference;
 - c. improved risk management;
 - d. hiring of new competency and capacity such as a Head of Assessment, a Head of Development and Head of Technical Standards and Operational Research;
 - e. investment in training;
 - f. investment in systems and processes and supporting specialist software which will help address the number of assessment material errors;



g. implementation of new standards for process and standard operating procedure as a foundation for the implementation of a new quality management policy, strategy and system.

35. City & Guilds has operated the last 2 years of spring and summer exam series with very limited issues and has delivered reliable and accurate results on time not only in the readjustment period immediately after the pandemic but concurrently with the start of the AO transformation programme.
36. City & Guilds has not received any significant complaints or claims from learners, centres or other users of qualifications, suggesting that these groups have not experienced significant impact from the incidents covered by the proceedings. Although City & Guilds recognises that there have been learners who have been impacted, the overall impact has been relatively low.
37. The longevity of the issues is in part due to the impact of the pandemic: for two years the vast proportion of resources of the AO were diverted to alternative assessment and certification models to ensure that learners were not disadvantaged and that assessments could continue in a way that the outcomes were valid and reliable.
38. There has been no indication from Ofqual that the issues arising have had an impact on its ability to regulate City & Guilds in the future: City & Guilds has cooperated fully and openly with Ofqual at all stages of the process.
39. Although City & Guilds has been subject to two other monetary penalties, the 2021 penalty arose from an incident which occurred concurrently with the 2018/19 incidents in the current case and the earlier penalty dated back over 7 years.
40. In each incident, City & Guilds has acted with integrity and with the interests of the learners at the forefront ensuring that thorough incident management has been implemented to minimise the effect on learners.
41. There has been no financial gain: as a charity, any surplus is reinvested in furtherance of the charitable objectives.
42. Although a number of the event notifications were not sufficiently prompt, there has been no attempt to hide any breach or any allegation to that effect from Ofqual.

Other considerations

43. 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

44. 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 £200,000;
- c) agrees to pay Ofqual's reasonable legal costs in respect of this matter.

The figure of £200,000 reflects the fact that a Settlement Proposal has been put forward by City & Guilds.

45. The Enforcement Committee is satisfied, in accordance with section 151B of the 2009 Act, that a Monetary Penalty in the sum of £200,000 would not exceed 10% of City & Guilds' total annual turnover.

Representations

46. 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.

47. 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 and must be received before **4pm on 5 April 2024**.



Next Steps

48. The Enforcement Committee will consider this case again on or after **8 April 2024**.

49. 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.

Enforcement Committee: Hardip Begol CBE, Michael Hanton

Date: 8 March 2024

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. Section 151A(4) provides that Ofqual must give notice to an awarding organisation of its intention to impose a monetary penalty. S151A(5) and (6) set further requirements in respect of such notice.
5. 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

6. City & Guilds has a legal obligation to comply with its Conditions of Recognition (s132(3) of the 2009 Act), which includes the General Conditions of Recognition and any other relevant Conditions set by Ofqual. In particular, Ofqual has published Qualification Level Conditions and Subject Level Conditions.
7. The General Conditions of Recognition, Qualification Level Conditions and Subject Level Conditions [can be found on Ofqual’s website](#).