



Notice of Intention

Imposition of a monetary penalty on NCFE

Executive summary

- i. On 16 September 2022, Ofqual took action to require NCFE to withdraw, redetermine and reissue every student's result for its Technical Qualifications in Healthcare, Healthcare Science, and Science. Technical Qualifications form part of T Levels.
- ii. Ofqual intervened because it had identified issues with the assessment papers which, as NCFE acknowledged, meant those assessments were not fit for purpose. Ofqual has never previously found it necessary to intervene to this extent.
- iii. Two subsequent Ofqual investigations identified repeated failures by NCFE to follow its own policies in respect of the production of assessment materials in 2022, as well as in the way it identified and managed risks which could affect the delivery of valid assessments and results.
- iv. NCFE encountered further issues with the delivery of assessments in summer 2023 and experienced complications in the management of some evidence it received from colleges; this caused some results to be delayed whilst a number of other results were put at risk.
- v. A further Ofqual investigation identified that NCFE had not adequately considered the risks associated with the new systems it put in place for summer 2023 and that other issues were again caused by a failure to make sure its staff followed the processes it had put in place. NCFE had also failed to report to Ofqual when an issue occurred which could adversely affect its ability to get results to students on time.
- vi. NCFE has admitted it failed to comply with the Conditions in relation to these incidents. NCFE has commissioned an independent review to evaluate and report on the systems and processes affected by the incidents in 2022 and 2023. NCFE has now committed to a multimillion-pound transformation programme by which it will implement improvements to its systems and processes to guard against the possibility that any similar issues will recur in the future. NCFE has given a regulatory undertaking in respect of the transformation programme and its ongoing review.

- vii. NCFE has agreed that Ofqual should impose a Monetary Penalty which reflects its failure to comply in connection with the award of qualifications in summer 2022 and summer 2023. The proposed amount of that penalty is £300,000.

Overview

1. The Office of Qualifications and Examinations Regulation (“Ofqual”) gives notice that it intends to accept a settlement proposal from NCFE in terms that the awarding organisation:
 - a) admits the breaches set out in this Notice;
 - b) agrees to pay the Monetary Penalty of £300,000;
 - c) agrees to pay Ofqual’s reasonable legal costs in respect of this matter.
2. This Notice relates to breaches of NCFE’s Conditions of Recognition in 2022 and 2023, which were identified during the course of three regulatory investigations conducted by Ofqual, and in respect of which NCFE has made admissions.

Summer 2022 – The T Level Incident

3. In June 2022 NCFE delivered Core Examination question papers for the Core Assessment component of its Technical Qualifications in Healthcare, Healthcare Science and Science. A Technical Qualification forms part of a T Level. The Core Examinations form at least 60% of the learner’s grade for the Core Assessment.
4. NCFE, Ofqual, IfATE and the Department for Education received a number of complaints from learners and centres in relation to NCFE’s Core Examination assessments in summer 2022. A large proportion of those complaints were received after NCFE issued results for the Core Assessments.
5. On 16 September 2022, following a rapid technical review it completed in response to the emerging T Level Incident, Ofqual imposed Special Conditions NCFE1 and NCFE2, which required NCFE to reissue results for its Core Assessments in Healthcare, Healthcare Science and Science. Ofqual set requirements as to the determination of the replacement results, which meant that over 700 learners received an improved result. More than 300 of those learners received a new result which was 2 or more grades higher than the original.

6. Ofqual subsequently investigated the way in which NCFE delivered assessments for its Technical Qualifications in summer 2022. NCFE has had the opportunity to review Ofqual's findings from the rapid technical review and the subsequent investigation and has admitted that it failed to comply with its Conditions of Recognition in connection with those assessments.
7. In particular, NCFE has admitted:
 - a) It failed to ensure the question papers it delivered for Core Examinations in Healthcare, Healthcare Science and Science were fit for purpose, and it therefore breached Conditions G9.2(a) and G9.3(a),
 - b) Although it had in place mandatory training for its assessors, it failed to ensure all assessors completed that mandatory training, and it therefore breached Conditions A5.1 and A5.2(a),
 - c) Although it had procedures in place for the development and delivery of Core Examination question papers, it failed to ensure its staff followed those procedures when developing question papers for summer 2022, and it therefore breached Conditions A5.1 and A5.2(e),
 - d) Although it had identified a number of individual risks in relation to Core Examinations which might affect learners in summer 2022, NCFE did not sufficiently recognise the potential cumulative impact of those risks, and it therefore breached Condition A6.1,
 - e) It did not have in place adequate contingency arrangements in respect of the risks affecting summer 2022, and it therefore breached Condition A6.4.
8. Ofqual's intervention, through the imposition of Special Conditions NCFE1 and NCFE2, was necessary because NCFE breached its Conditions of Recognition in relation to the assessments it delivered, as specified above. In particular, the assessments NCFE delivered in summer 2022 did not reflect the standard of the sample assessment materials reviewed by Ofqual when it accredited NCFE's Technical Qualification. Had Ofqual not intervened, 707 learners would have been prejudiced by the determination of results based on assessments which were not fit for purpose.
9. In October 2022 and May 2023, NCFE gave regulatory undertakings to Ofqual in which it explained the actions it would take to secure the safe delivery of valid Core Examination assessments in the 2022 autumn series and the 2023 summer series. Ofqual put in place enhanced monitoring of NCFE's approach, to support the safe and timely delivery of valid results.

Summer 2022 – wider issues

10. Ofqual conducted a second investigation following the conclusion of its investigation into the causes of the T Level Incident. The second investigation was necessary because Ofqual was concerned that some of the breaches identified during the first investigation might also affect the delivery of other qualifications. In particular, Ofqual was concerned that there were risks to the safe delivery of NCFE's Functional Skills qualifications and Technical Award qualifications. The report of the second investigation was finalised in April 2023.
11. NCFE has had the opportunity to review Ofqual's findings from the second investigation and has admitted that it failed to comply with its Conditions of Recognition in relation to those findings. In particular, NCFE has admitted:
 - a) Although it had in place procedures for the development of assessments, NCFE failed to ensure its staff followed those procedures in respect of the development of the assessments reviewed during the investigation, and it therefore breached Conditions A5.1, A5.2(a), A5.2(b) and A5.2(e),
 - b) Although it had processes in place to identify and manage risks arising during the lifecycle of its qualifications, NCFE was unable to produce evidence that it had followed those processes in relation to the assessments reviewed during the investigation, and it therefore failed to comply with Condition A6.1,
 - c) Although it had processes in place to guard against the risk that it might produce assessments which were not fit for purpose, NCFE was unable to produce evidence that it had followed those processes in relation to the assessments reviewed during the investigation, and it therefore breached Condition A6.2(a),
 - d) Although it had processes in place to report to Ofqual occurrences which could have an adverse effect, 3 of the 6 event notifications reviewed during the investigation were submitted late, and NCFE therefore breached Condition B3.1 on each occasion,
 - e) Having determined that it would change its approach to the award of special consideration, NCFE failed to ensure its staff were aware of and gave effect to that decision, and it therefore failed to comply with Condition G7.1.
12. On 11 May 2023, Ofqual notified NCFE that it had commenced a case to consider whether regulatory action should be taken to impose a sanction on

NCFE as a consequence of the breaches of the Conditions identified in the first and second investigation reports.

13. On 27 July 2023 NCFE gave an undertaking in which, through an Action Plan, it set out how it would address the problems identified in the second investigation report. Unlike the first undertaking, which focussed on materials for TQ Core Assessments, this third undertaking encompassed the full range of NCFE's VTQ provision.

Summer 2023 – delivery failures

14. On 23 June 2023, NCFE notified Ofqual that an onscreen version of the Core Assessment for its Technical Qualification in Health had not operated as intended. 126 learners were affected by the incident, which prevented most learners progressing beyond the fourth question.
15. As a contingency measure, NCFE asked its centres to provide learners with a paper version so they could complete the assessment. However, 42 learners affected by the issue did not attempt the paper assessment and received a calculated result based on their performance in other assessments for the qualification.
16. During July and early August 2023 NCFE experienced issues with the marking of assessments and the aggregation of results from different assessments to determine grades. These issues reflected delays and errors in some of the evidence submitted to NCFE by centres, and further issues caused by the interaction of two NCFE systems involved in the process of submitting and marking evidence when that evidence was submitted later than anticipated.
17. On 3 August 2023, Ofqual wrote to NCFE explaining that on the information then available it considered NCFE was at risk of breaching its Conditions of Recognition. In particular, it appeared likely that NCFE might fail to issue results on time, by reason of a failure to take all reasonable steps in that connection, and Ofqual had concerns about the timing and content of the notifications NCFE had submitted to Ofqual about the emerging issues which could affect results. Ofqual liaised very closely with NCFE in the lead up to results day in 2023, so it could be satisfied NCFE was doing everything it could to deliver results on time.
18. In the event, a combination of issues meant that NCFE was unable to upload 341 results for Core Assessments to the relevant DfE system by its deadline of 7 August 2023 (DfE is responsible for providing T Level results to learners).
19. On 31 August 2023, Ofqual:

- a) commenced the first phase of a further investigation (the third investigation) to examine the issues NCFE experienced during summer 2023 in relation to the delivery and award of Technical Qualifications, and
- b) notified NCFE that it intended to conduct a second phase of the third investigation, looking into the issues NCFE had experienced in relation to other qualifications in summer 2023, which would begin after the conclusion of the first phase, and
- c) advised NCFE that it had determined further activity in the proceedings for the imposition of a sanction (begun on 11 May 2023) would be suspended pending the outcome of the third investigation.

20. Ofqual's strategy in late August 2023 reflected a significant concern at that time that the occurrence of issues in two consecutive years might indicate fundamental and potentially wide-ranging problems with NCFE's ability to deliver and award qualifications at the scale to which it had expanded.

21. The first phase of the third investigation concluded on 12 February 2024. NCFE has had the opportunity to review the findings of that phase of the investigation and has admitted that it failed to comply with its Conditions of Recognition in respect of those findings, as follows:

- a) NCFE developed an on-screen version of the Core Assessment for Health which learners could not complete, and therefore breached Conditions G9.1 and G9.2(a),
- b) The ineffective on-screen assessment was caused by NCFE's failure to ensure its staff followed the procedures it had in place for assessment delivery, in which connection NCFE breached Conditions A5.1 and A5.2(e),
- c) NCFE failed to ensure it had sufficient quality assurance processes in place, and that such processes as it did have were followed, to prevent the ineffective on-screen assessment being delivered to learners, and it therefore further breached Conditions A5.1 and A5.2(e),
- d) Although NCFE began experiencing issues with the evidence submitted to it by centres in April 2023 and convened an Incident Management Team in this connection on 30 May 2023, it did not notify Ofqual about the issues it had experienced until 24 July 2023, and it therefore breached Condition B3.1,

- e) NCFE experienced delays because its new third-party-supplier system failed to operate properly or efficiently in respect of evidence that was submitted to NCFE by centres after marking had commenced. NCFE had not tested the way the new system would operate under those conditions, and it therefore breached Conditions A5.1 and A5.3(b),
- f) NCFE's failure to test the new system, above, reflected a failure to identify a foreseeable risk that centres might submit evidence later than instructed, as they had in 2022, and NCFE therefore breached Condition A6.1,
- g) As a consequence of the issues it experienced, above, NCFE was unable to upload Core Assessment results for 341 learners to the relevant DfE portal on time, and NCFE therefore failed to comply with Condition H6.1(e).
- h) NCFE misinterpreted part of an Information Notice sent to it by Ofqual on 3 August 2023 which led to it failing to comply with that part of the Notice, and therefore breaching Condition B4.1.

22. Overall, the evidence identified during the investigation allayed some of Ofqual's concerns about NCFE's ability to deliver and award the breadth and volume of qualifications for which it is recognised. In particular, Ofqual considered that the issues which affected NCFE's delivery in summer 2023 were different in nature to those which occurred in 2022. The principal concern in 2022 had been NCFE's failure to deliver assessments which were fit for purpose, which necessitated unprecedented intervention by Ofqual, whereas the issues NCFE experienced in 2023 concerned the efficient and effective delivery of assessments which were otherwise valid.

23. However, Ofqual was concerned to note that some of the issues identified during the first phase of the third investigation had a similar cause to issues identified during the first and second investigations. In particular, in each of its investigations Ofqual had identified examples of NCFE failing to ensure its workforce followed the processes it had in place to ensure safe and effective delivery.

24. Having considered the balance of its findings, on 22 February 2024 Ofqual notified NCFE that it had determined it was no longer necessary to conduct the proposed second phase of the third investigation at public expense. Instead, Ofqual required NCFE to commission an Independent Review into why NCFE encountered difficulties in issuing accurate and timely results for qualifications in Summer 2023.

25. Ofqual also notified NCFE that it intended to recommence the enforcement proceedings which had been suspended on 31 August 2023.

26. On 7 March 2024, NCFE confirmed that it had commissioned an independent review and on 8 March it confirmed it would give an undertaking to Ofqual in connection with that review.

Failure to comply with the Conditions

27. NCFE was given the opportunity to respond to each of Ofqual's investigation reports when that report was in draft. In respect of each report, NCFE made some admissions and explained why it disagreed with Ofqual's analysis in some regards. Ofqual issued final reports which took into account the representations made.

28. NCFE made further admissions in respect of the first two investigation reports in March 2023, following a request from Ofqual that it should clarify its position to inform Ofqual's future conduct of the case.

29. On 19 April 2024, as part of the enforcement proceedings, NCFE made further admissions during negotiations with a view to the imposition of an agreed sanction as part of Ofqual's settlement process.

30. In summary, NCFE has admitted breaching the following Conditions:

- a) **In respect of the first investigation report:** Conditions A5.1, A5.2(a), A5.2(e), A6.1, A6.4, G9.2(a) and G9.3(a),
- b) **In respect of the second investigation report:** Conditions A5.1, A5.2(a), A5.2(b), A5.2(e), A6.1, A6.2(a), B3.1 and G7.1,
- c) **In respect of the third investigation report:** Conditions A5.1, A5.2(a), A5.2(e), A5.3(b), A6.1, B3.1, B4.1, G9.1, G9.2(a), H6.1(e).

Settlement Proposal

31. On 26 March 2024, NCFE confirmed its intention that the enforcement case concerning the imposition of a sanction should be concluded by agreement.

32. Between 26 March 2024 and 13 May 2024, discussions took place with a view to securing a settlement agreement.

33. On 25 June 2024, NCFE signed a settlement proposal by which it:

- a) Agreed that it had breached its Conditions of Recognition as set out in this Notice,
- b) Agreed to pay a monetary penalty in the sum of £300,000 in settlement of those breaches,
- c) Agreed to pay Ofqual's reasonable legal costs in relation to this matter.

Determination of a Monetary Penalty

34. On 1 July 2024, Ofqual's Enforcement Panel considered the evidence set out in the first, second and third investigation reports alongside the admissions made by NCFE. The Enforcement Panel determined that NCFE has breached its Conditions of Recognition, as follows:

- a) In respect of the first investigation report: Conditions A5.1, A5.2(a), A5.2(e), A6.1, A6.4, G9.2(a) and G9.3(a),
- b) In respect of the second investigation report: Conditions A5.1, A5.2(a), A5.2(b), A5.2(e), A6.1, A6.2(a), B3.1 and G7.1,
- c) In respect of the third investigation report: Conditions A5.1, A5.2(a), A5.2(e), A5.3(b), A6.1, B3.1, B4.1, G9.1, G9.2(a), H6.1(e).

35. The Enforcement Panel has considered the settlement proposal presented by NCFE. 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 Panel has had regard to Ofqual's Taking Regulatory Action policy (2012).

36. The Enforcement Panel notes the aggravating and mitigating factors set out below.

Aggravating Factors

The T Level Incident

37. The T Level Incident caused alarm, distress and inconvenience for learners who received results which were substantially lower than they anticipated. Although Ofqual required NCFE to recalculate those results, the distress persisted during the intervening period and led some learners to reconsider their options for the next academic year. 25 learners (or their representatives) contacted Ofqual seeking to make complaints in relation to T Level qualifications delivered by NCFE in summer 2022.
38. The need for Ofqual to intervene, requiring NCFE to recalculate and reissue results for an entire cohort of learners affected by the T Level Incident was unprecedented. That Ofqual had to specify how the replacement result was established was similarly exceptional.
39. The T Level incident occurred during the first full examination series for those qualifications – the previous series' having been affected by the pandemic. T Levels are a flagship government programme which attracts considerable public attention and the Technical Qualifications affected by the incident had been subject to significant regulatory scrutiny, through Ofqual's recognition and accreditation processes. NCFE's failure to deliver Core Examinations that were fit for purpose inevitably undermined public confidence in those Technical Qualifications and in the T Level programme overall. The detrimental effect on public confidence is compounded by the background of regulatory scrutiny; the public was entitled to expect NCFE to deliver assessments which met the quality standard set by Ofqual's accreditation decision. NCFE's failure to do so is a significant aggravating factor.
40. The impact on public confidence was illustrated through stakeholder engagement activity, led by DfE, with which Ofqual was involved. Nearly all the T Level providers contacted expressed that they had less confidence in T Levels as a consequence of the incident, with many reporting negative impacts for staff, students and parents, who had less confidence in T Levels following the incident.

Repeated failure

41. Ofqual's third investigation identified evidence of failures to comply with the conditions which had also been identified in the first or second investigation. In particular, the on-screen assessment issue in summer 2023 was caused by

NCFE's failure to ensure relevant processes were followed, in circumstances where a failure to follow processes relevant to assessment delivery was identified in both the first and second investigation reports.

42. In addition, the first and second investigations identified evidence of failures in NCFE's identification of risks to delivery in summer 2022 and similar failures were identified in the third investigation concerning summer 2023.
43. The occurrence of issues in summer 2023 which were caused by breaches of conditions which had been identified during Ofqual's investigations into NCFE's performance in summer 2022, and which NCFE had at the material time admitted, is a significant aggravating factor. Had NCFE taken adequate action in response to the earlier findings the 2023 issues might not have occurred.

Transparency

44. The second and third investigations identified that NCFE had failed to comply with Condition B3.1, which requires an awarding organisation to notify Ofqual of events which could have an adverse effect. The mechanism provided by that condition is a vital part of Ofqual's co-regulatory approach, which relies on awarding organisations to bring relevant matters to Ofqual's attention, often before learners are affected by an incident.
45. A failure to comply with Condition B3.1 creates a lack of transparency through an imbalance in the information available to the awarding organisation and Ofqual. This undermines Ofqual's ability to plan and respond to emerging events and issues.

Regulatory oversight

46. The combination of the issues NCFE experienced in 2022 and the issues which arose in the spring of 2023 caused Ofqual to divert significant resources to the close monitoring of NCFE's delivery, to make sure accurate results would be issued on time. In particular, Ofqual held 14 additional meetings with representatives of NCFE between 31 July and 17 August 2023 to resolve concerns that results would not be delivered on time and sent at least 10 requests for information during the same period.
47. The need to commit a high level of resource, including senior resource, to monitoring one awarding organisation inevitably diminishes Ofqual's ability to anticipate and react to issues occurring which affect other awarding organisations.

Mitigating factors

Improvement

48. Although the third investigation identified some repeated failures to comply and notwithstanding the importance of the issues which affected NCFE's delivery of assessments and results in summer 2023, Ofqual recognises that the issues affecting NCFE in 2023 were less serious than those which occurred in 2022. Overall, Ofqual considered the third investigation indicated that there had been improvements in NCFE's approach, and it was for this reason Ofqual decided not to proceed with the planned further phase of that investigation.

Transformation

49. In response to the incidents and issues which it has experienced, NCFE has now developed and committed to a multi-million-pound transformation programme, to ensure year on year improvement in the quality, efficiency and effectiveness of its arrangements for the development, delivery and award of its qualifications.

50. NCFE has shared details of its multi-year transformation plan with Ofqual, as well as explaining the significant investment it has made since summer 2022 to minimise the occurrence of issues in 2023 and 2024.

51. NCFE has given an undertaking to Ofqual through which it will provide a series of action plans setting out how it will deliver the objectives of the undertaking, and in particular its transformation plan, the way it will keep its progress under review and how it will provide assurance to Ofqual. The undertaking also encompasses the way NCFE will complete its self-evaluation (in lieu of the second phase of the third investigation) and how it will implement the findings of that review.

Co-operation

52. NCFE has co-operated with Ofqual as the incidents outlined in this Notice emerged, whilst Ofqual developed its response to the incidents and during the enforcement proceedings. In particular, NCFE did not resist Ofqual's proposal that it should require affected results in 2022 to be withdrawn and reissued and it made constructive representations in respect of the recalculation of those results, particularly where certain information was known only to NCFE.

Other considerations

20. The Enforcement Panel has also considered:

- a. the need to deter NCFE 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 breaches for which fines have been imposed by Ofqual on other awarding organisations;
- d. NCFE's relative size and turnover as an awarding organisation,;
- e. the admissions made by NCFE, its engagement with the enforcement process and its proposals for the settlement of this action settlement proposal.

Decision

21. Taking all of the above into account, the Enforcement Panel has decided that it intends to accept a settlement proposal from NCFE in terms that NCFE:

- a) admits all the breaches set out in this Notice;
- b) agrees to pay the Monetary Penalty of £300,000;
- c) agrees to pay Ofqual's reasonable legal costs in respect of this matter.

The figure of £300,000 reflects the fact that a settlement proposal has been put forward by NCFE.

22. The Enforcement Panel is satisfied, in accordance with section 151B of the 2009 Act, that a Monetary Penalty in the sum of £300,000 would not exceed 10% of NCFE's total annual turnover.

23. Accordingly, Ofqual gives notice that it intends to impose on NCFE a Monetary Penalty in the sum of £300,000.

Representations

24. NCFE has confirmed that it will not make representations in respect of Ofqual's intention to impose a Monetary Penalty, as part of its settlement proposal.

25. Interested parties may make representations in respect of Ofqual's proposal to accept a settlement proposal from NCFE and impose a monetary penalty in the sum of £300,000. Any such representations must be sent by E-mail to EnforcementCommittee@ofqual.gov.uk and must be received before 4pm on 23 July 2024.

Next Steps

26. The Enforcement Panel will consider this case again on or after 24 July 2024.

27. The Enforcement Panel will consider any representations made as specified in this Notice and will decide whether to accept a settlement proposal from NCFE in the terms proposed or whether any other order should be made.

Signed:

Chris Paterson

Chair of the Enforcement Panel

Enforcement Panel:

Chis Paterson

Susan Barratt

Cindy Leslie

Annex A

Legal provisions

Statutory powers

1. NCFE 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. NCFE 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 [here](#).