Response to Notice of Intent to Impose a Financial Penalty on IQ

Introduction

This paper provides a provisional response to the publication by Ofqual of its intention to levy a fine on Industry Qualifications for regulatory non-compliance, following the identification of significant qualifications fraud at Ashley Commerce College.

IQ accepts that, with hindsight, it may have inadvertently breached some aspects of the Ofqual Conditions of Recognition and struggled to deal with the media and political attention created by the case at the same time. However, it considers that the analysis of Ofqual is in the most part flawed and fails to address significant weaknesses in policy and operation of the Regulator which were fundamental to this case.

IQ will make further representations to Ofqual, and expects the matter to be the subject of a formal appeal and complaint to the Parliamentary Ombudsman. We consider that many of the issues exposed by the report relate to regulatory failings in the manner in which qualifications fraud is identified and managed and will continue to make representations for an independent review.

Background

In March 2015, the BBC broadcast footage of an under-cover investigation at Ashley Commerce College, a training centre approved by IQ. The BBC had obtained footage of fraud and serious malpractice in some 19 centres providing security training, of which Ashley Commerce College was the only IQ centre. It was however the centre featured in the BBC broadcast.

The subsequent IQ investigation at the centre identified a network of third party trainers, largely working in other training companies, feeding fraudulent assessment paperwork into the legitimate supply chain. The fraudulent paperwork was added after legitimate courses had been completed and the centre knew that those courses would not be the subject of planned or unannounced quality assurance visits.

The fraud was expertly conducted and designed to leave little trace.

It is understood that the Regulator has not secured evidence from the BBC on any of the other centres exposed as a result of the undercover investigation.

Concerns Relating to the Regulatory Response to Fraud

It is a statutory responsibility of Ofqual to promote public confidence in regulated qualifications. It is the contention of IQ that this is only possible in an environment where an effective approach is adopted removing and reducing the risk of qualifications fraud.

IQ has expressed considerable concern about the effectiveness of the regulatory approach to fraud. Of particular concern is:

i. Ofqual, as the largest qualifications regulator in the UK, has commissioned no research on the scale and nature of examination fraud. Evidence is therefore largely anecdotal and fragmented.
The Ofqual Conditions of Recognition, fail to differentiate fraud from more general malpractice. There is a strong argument that the Conditions are not fit for purpose when dealing with fraud.

No guidance is available from the Regulator for Awarding Organisations on dealing with incidents where fraud is suspected. This allows for significant variations in the manner in which the General Conditions of Recognition are interpreted.

No guidance is published or made available to Awarding Organisations on reporting qualifications fraud. It is suspected that the matter is under-reported and only achieves prominence when there is media coverage.

Whilst it is usual for Awarding Organisations to report fraud/malpractice, Ofqual does not maintain records of organisations or individuals involved in fraud or malpractice. The impact of this failure to collate and manage data is that Awarding Organisations do not have real time access to information on those organisations and individuals that have previously been involved in fraud or malpractice. As a consequence, those that are reported are generally free to re-enter the market, working with a different awarding organisation. IQ highlighted this issue to Ofqual in March 2015 and no action has been taken.

The regulator has not developed any protocols with the police or prosecuting authorities to allow awarding organisations access to informed prosecuting expertise. As a consequence, there is very little evidence of prosecution.

There is no policy or guidance on the pursuance of historic fraud when evidence emerges that could have historical significance.

There is little evidence of pro-active action on the part of Ofqual to expose or confront qualifications fraud, leaving the qualification system open to abuse.

The relevance to the situation at Ashley Commerce College is:

IQ has strong circumstantial evidence that at least some of the individuals involved in the fraud were associated with organisations where malpractice/fraud had been previously identified and could/should have been known to Ofqual.

IQ submitted details of individuals involved in the Ashley Commerce fraud, and a list of individuals and organisations where further allegations had been made relating to their involvement in fraud. Ofqual did not work with IQ or other awarding organisations to verify these allegations and indeed refused to consider the allegations.

Ofqual has not contacted awarding organisations to determine whether any of those involved in the Ashley Commerce Case are involved at centres approved by those awarding organisations.

No attempt has been made by the Regulator to use the evidence available as a result of the Ashley Commerce College case to investigate historic fraud.

None of those involved in fraud at Ashley Commerce College have been prosecuted and the Regulator cannot confirm if any of those involved are still involved in education and assessment. We can confirm that they are not working with IQ.

The BBC indicated that it had information on 19 training centres involved in fraud/malpractice of which one, Ashley Commerce College, was an IQ centre. Ofqual has not obtained evidence on the remaining organisations from the BBC.

It is the contention of IQ that if the regulator deployed strategy and systems that were fit for purpose in combattting fraud, it is very likely that Ashley Commerce College would not have gained entry into the market.
IQ has made a case for an independent expert panel to review the issue of qualifications fraud. The need for this has been dismissed by Ofqual.

Involvement of the Police

IQ initially reported the matter to the police in April 2015. The police advised that it had combined a complaint from IQ and another from the SIA, and were liaising with the member of the Ofqual team managing the Ofqual response.

IQ has in its possession an email trail with the police in which the police contend that they did not pursue a prosecution for fraud for any of those involved in wrong doing at Ashley Commerce College due to an intervention from Ofqual. The police have stated that Ofqual had advised that the matter was a case of college malpractice and not fraud*. At the time, Ofqual had been appointed as the contact lead with the police. IQ approached Ofqual with a Freedom of Information request for copies of correspondence between Ofqual and the police to verify the claim made by the police. The FoI request was refused by Ofqual.

* A redacted copy of the email chain can be viewed here.

Concerns Relating to the Investigation Conducted by Ofqual


IQ submitted a detailed complaint to Ofqual in October 2016, which referenced the following concerns:

1. A failure of the regulator to adhere to its own policy, or provide suitable guidance in key areas.

   During the investigation of Ashley Commerce College by IQ, Ofqual was in breach of this policy (Taking Regulatory Action, Version 2 May 2012) which states that Ofqual’s approach to regulatory action “includes acting to prevent something going wrong, such as to stop an awarding organisation from breaching its conditions of regulation”. This did not happen and IQ took some actions in the full knowledge of Ofqual, to which the regulator would later object.

   IQ also contends that Ofqual is in breach of Macrory, Hampton and Better Regulation principles and has evidenced the same.

2. A failure to recognise, declare or manage clear conflicts of interest at individual and organisational level.

   a. Ofqual does not possess a conflict of interest policy, in breach of National Audit Office recommendations for public bodies.

   b. The senior manager responsible for liaison with IQ during its investigation has played a leading role in the subsequent investigation of IQ. This individual was also responsible for liaison with the police. IQ have complained about the individual concerned and contend that he was in breach of Ofqual policy and had a material and damaging effect on the investigation at Ashley Commerce College. Despite clear and obvious concerns relating to conflict of interest that have been raised with the Regulator, no action has been taken.

   c. IQ requested independent oversight of the Ofqual investigation as the regulator itself was conflicted through the risk of additional media coverage and litigation. No action was taken.

3. A failure to consider public safety and in so doing, bringing the qualification system into disrepute.
The initial outcome of the Ofqual Investigation was to Direct IQ in February 2015 to re-issue certificates that it had revoked. The decision was taken despite no evidence emerging that IQ had withdrawn certifications from any person who had legitimately completed the qualification. IQ contends that Ofqual failed to:

a) Recognise the safety critical nature of the qualifications in its assessment of the actions taken by IQ.

b) Consider the safety of the public as well as the individuals to whom it Directed IQ to return certificates.

c) Act in a responsible manner when IQ requested the opportunity to re-test prior to the return of certificates. Ofqual refused a request from IQ for re-testing, before certificates were re-issued, stating that no evidence had been provided to justify that the qualification was safety critical.

d) Consult with the Security Industry Authority on the safety critical nature of the qualification, and applied judgement in the absence of any impact analysis.

Whilst no evidence is publicly available on assaults, injuries or deaths caused by Door Supervisors, concerns relating to violence were a primary driver for the Private Security Industry Act (2001).

However, the most rudimentary of investigations on the internet, or discussion with the SIA, provides evidence of assaults on Door Supervisors. Research has identified that:

- 85% had experienced verbal abuse;
- 74% had experienced physical assault not involving a weapon;
- 34% had been attacked with a weapon;
- 38% had required first aid;
- 20% had been hospitalised.

The SIA have advised that they attend Coroners Courts on average, 4 times per year as a result of deaths relating to activities relating to door supervision.

In responding to the Direction, IQ raised the issue of the safety critical nature of the qualifications, which was summarily dismissed by the senior member of Ofqual staff concerned.

In refusing to countenance re-testing, IQ contends that Ofqual has:

- Placed the safety of the public at risk.
- Placed the safety of up to 241 people who have had their certificates re-issued at risk.
- Placed members of the teams with whom those who have received re-issued certificates work at risk.
- Reduced the opportunity for re-testing, which is likely to have confirmed those that had had their certificates revoked had not completed their training and qualifications legitimately.
- Exposed the regulator to future claims of negligence, should any of those with certificates gained fraudulently suffer or cause injury.
- Brought the qualification system into disrepute through the re-issue of qualifications to 241 individuals where, at the very least, significant doubt exists about the legitimacy of those qualifications.
- Placed an interpretation of its own conditions before the interests of public safety.

IQ has also raised concerns relating to:
4. The failure of Ofqual to conduct investigative activity in a fair, proportionate or timely manner, and a failure to adhere to ‘Better Regulation Principles’.

5. The competence and professional integrity of the investigation team.

Throughout the process:

- IQ has been denied the right to present its own evidence orally to the Enforcement panel.
- No member of Ofqual staff has visited IQ, over a period of 20 months or discussed the situation with IQ.
- No attempt has been made to audit IQ. The company received a very positive audit report from the Scottish Qualifications Authority December 2016.
- No attempt has been made to interview any of those involved at Ashley Commerce College.

IQ has raised a substantial complaint which is germane to many of the issues surrounding the Ashley Commerce Case. Ofqual has refused to consider the complaint whilst enforcement action is underway. The recommendation not to consider the complaint was made by a member of the Enforcement team and approved by the Chief Executive.

IQ has no right of appeal in relation to the refusal to consider the complaint, other than to submit a complaint to the Parliamentary Ombudsman. The Parliamentary Ombudsman cannot consider a complaint until Ofqual has completed enforcement action.

IQ considers that the oversight of a significant public body is wholly ineffective.

Substance of Allegations Made by Ofqual

Approval of the College

IQ does not accept that it allowed a potential conflict of interest to arise between the Owner of the training centre, who also functioned as an assessor and moderator, on the following grounds:

i. The allegation fails to reflect Ofquals’ own guidance on the definition and management of conflict of interest.

ii. Ofqual does not provide guidance on whether centre owners can function as assessors or moderators. The interpretation that has been applied by the Regulator to this case is new, and one that would disadvantage all smaller training centres. It is the position of IQ that such a reinterpretation in established policy should be implemented in a considered manner, and as a result of significant consultation.

iii. The percentage of the qualifications where the assessor functioned as a moderator was less than 25% of the assessment for 83% of the qualifications effected. The overlap in role never exceeded 33% with all remaining work marked independently by IQ.

iv. The practices adopted by IQ, are largely common to all awarding organisations operating in the sector, and known to the Security Industry Authority.

Monitoring of the College

IQ does not accept that its monitoring of the college was defective prior to the incident being reported. The absence of detailed records of each candidate assessment record sheet (a two page tick sheet for 83% of the qualifications concerned) by candidate name, has allowed Ofqual to advance a case against IQ, which is incorrect and not proven.

Centre monitoring visits were conducted on a regular basis and documented. Three visits to the centre were conducted in the year before exposure of fraud by the BBC. All qualifications had at least 66%
of their assessments marked by IQ independently and some 83% had over 75% of assessments marked independently by IQ.

It was the practice of the External Verifier at the time to sample cohorts of learners, recording the name of one candidate to demonstrate that the cohort had been checked. This has been widespread practice amongst awarding organisations. This has allowed Ofqual to significantly under-report the level of activity.

Investigation of the Incident

IQ accepts that it did not record key investigative decisions. It recognises that it was overwhelmed by the media and political interest in the story. It has subsequently revised its investigation procedures in light of the experience gained.

IQ accepts that in hindsight, its investigation at Ashley Commerce College could have been more extensive, but contends that the analysis by Ofqual fails to consider context and the reasons for the decisions taken. Industry Qualifications:

i. Was aware early in its investigation that it was dealing with systemic multi-site fraud, exercised in a calculated and competent manner. The BBC broadcast and subsequent transcript evidence confirmed this to be the case.
ii. Targeted its investigation on assessment evidence from candidates in the period before the date of the BBC undercover investigation, and at courses identified in that investigation.
iii. In the absence of evidence emerging, IQ made a judgement that evidence would not be forthcoming and that the fraud had been carefully masked.
iv. Recognised that most of the fraud was largely conducted off-site by individuals not employed by Ashley Commerce College and unknown to IQ. The Centre itself closed within days of the BBC broadcast and staff were not forthcoming with information.
v. Had assumed that the profile and scale of the issue would lead to a police enquiry and probable prosecution activity. It was concerned that issues surrounding continuity of evidence could be an issue and along with the Security Industry Authority reported the matter to the police.
vi. A subsequent review of 2207 files seized in December 2015, confirmed that wrong doing had been masked. Only 8 presented even trace signs of fraud and even this was not conclusive.

Throughout its investigation, IQ was open and transparent with Ofqual:

i. It invited Ofqual to attend the centre to confirm that it was satisfied with the conduct of the investigation. This was declined.
ii. It obtained agreement from the BBC that Ofqual could access transcript evidence. It is our understanding that this offer was never taken up by Ofqual.
iii. It explained in detail why a police enquiry was necessary. This was not challenged by the regulator and against this backdrop, the statement of the police that its investigation was terminated due to Ofqual intervention/lack of support, is a concern.

Allegations made by the Head of College

IQ contends that the analysis presented by Ofqual fails to identify context, or recognise the contribution of the regulator to the situation.

i. IQ considered that its first responsibility was to public safety, and it remains firmly committed to this position.
ii. The Statement of Truth provided by the centre owner through legal representatives was detailed and large parts of that statement were confirmed in the early stages of the appeals process. No evidence has emerged since the statement was made in April 2015, that any part of the statement was untrue.

iii. The decision to revoke certificates on the basis of the word of the centre owner and see what, if anything, emerged in the appeals process was known by Ofqual in advance of action being taken. No objection or concern was raised.

iv. No evidence has emerged or been presented by Ofqual of any certification having been withdrawn that had legitimately been achieved. It is 22 months since the action was taken.

v. Ofqual did not raise concerns about the action to remove certification until November 2015, 7 months after the action was taken with the knowledge of Regulator, despite being aware of that action in advance.

IQ has raised the following concerns with Ofqual:-

i. It failed to follow both its own and public policy in allowing a situation to occur which it would later claim to be a non-compliance.

ii. In its criticism of IQ for revoking 251 certificates and then instructing IQ to re-instate those certificates, it has failed to consider issues relating to public safety.

Appeals Process

IQ accepts that its management of appeals fell short of its own policy, but rejects significant aspects of the finding.

i. IQ requested that individuals affected by the withdrawal of certification provided evidence of attendance. In the absence of written evidence, IQ asked those that made contact about the location of the centre and basic information about the course.

ii. IQ were contacted by 14 individuals. In eight cases, the individual had been the unwitting victim of fraud and were able to confirm how that fraud was commissioned, four individuals were unable to provide the most rudimentary information about the course, and were not able to provide corroborating evidence.

iii. Ofqual received 1 complaint, from a person that IQ were able to confirm had been an unwitting victim of fraud.

Next Steps

It is the intention of IQ to provide a detailed rebuttal to the reasons for the imposition of a penalty.

IQ has written to the Ofqual Chief Executive requesting the opportunity to make its case in person and orally to the Enforcement Committee and raising concerns that the Enforcement Committee is conflicted. The Chief Executive has refused to address or respond to these concerns.

IQ will re-submit a formal complaint to the Ofqual Chief Executive Officer. The complaint will also be submitted to the Parliamentary Ombudsman.

It is the intention of IQ to appeal any monetary penalty lodged against it, and continue to lobby for a thorough review into qualification fraud.