



# Consultation on Monetary Penalties Policy

Report of decisions taken following consultation

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# 1. Introduction

Between November 2017 and February 2018, we ran a 12-week consultation on five policies:

- Complaints About Awarding Bodies Policy;
- Regulatory Whistleblowing Policy;
- Taking Action When Things Go Wrong;
- Monetary Penalties Policy; and
- Fee Capping Policy.

Four of the policies – Complaints About Awarding Bodies, Regulatory Whistleblowing, Taking Action When Things Go Wrong and Fee Capping - were published policies and this consultation sought views on revisions to these policies.

Monetary Penalties Policy was a new policy and will be published in 2019 following Regulations being laid before the National Assembly for Wales and after arrangements are in place to establish a First Tier Tribunal.

We have a [Regulatory Framework and Approach](#) which sets out how we regulate, and all of the policies consulted upon form part of a range of regulatory actions that are available to use as appropriate in each given situation. Our overall aim is to protect the interests of learners and to promote public confidence in qualifications. All our regulatory policies are underpinned by the [five principles of good regulation](#) (2003). These principles are:

- Proportionality;
- Accountability;
- Consistency;
- Transparency; and
- Targeting.

Therefore, the aim of the consultation was to help us to ensure that the policies presented meet these principles, thereby improving the quality of our regulation and enforcement.

For the purposes of this consultation, all five policies were presented together to provide a fuller picture of the range of actions Qualifications Wales might take as part of our regulatory role. Both the Complaints and Regulatory Whistleblowing policies form an important part of our regulation, as our monitoring of the system is informed by information received by stakeholders from across the system. Similarly,

the power to impose fee capping and monetary penalties are significant, and ones which we take seriously and wish to set out clearly how we might use these.

We published a [report](#) summarising our decisions following that consultation in March 2018. In that report, we presented our intended actions in respect of the five policies consulted on. Three of these policies were revised and published following the publication of that report in April 2018:

- Complaints About Awarding Bodies Policy;
- Regulatory Whistleblowing Policy; and
- Taking Action When Things Go Wrong

A further two policies have been reviewed since then:

- Monetary Penalty Policy
- Fee capping Policy

This report outlines our decisions relating to our **Monetary Penalties Policy**.

## 2. Summary of consultation responses

In total, we received 24 responses from a range of stakeholders and organisations. Twenty-two responses were through the online form and two were received via email. One response was from the Federation of Awarding Bodies (FAB), the trade association, responding on behalf of its members, who are professional and technical awarding organisations.

**Table 1: Number of consultation responses by respondent type**

<b>Respondent category</b>	<b>Number</b>
Awarding body	17
Other organisations	3
As an individual	2
Not disclosed	2
Total	24

The majority of responses to this consultation were presented on behalf of awarding bodies and due to the nature of the content of the policies being discussed, we acknowledge the importance of these issues to awarding bodies. In considering all consultation responses, we have carefully weighed up the principles of good regulation and the potential impacts on awarding bodies. We will seek at all times to protect the interests of learners and promote confidence in, and the health of, the qualification system in Wales.

### **3. Monetary Penalties Policy - Decisions following consultation**

In general, the responses were supportive of the need for Qualifications Wales to have this power and to subsequently have a policy in place. The following section outlines the areas in which respondents provided feedback and where we have made revisions to the policy in light of those consultation responses.

#### **Further detail on the circumstances in which we would impose a monetary penalty**

Most respondents felt that the policy clearly explained the circumstances in which we would consider imposing a monetary penalty. However, some requested greater clarity in relation to some areas. We have revised this section of the policy and whilst we are not able to provide an exhaustive list of circumstances, we do provide an extensive list and acknowledge the potential significance of a monetary penalty.

We have made it clearer that the imposition of a monetary penalty would be considered in relation to non-compliance with a Condition of Recognition or Condition of Approval.

In line with our Taking Action When Things Go Wrong Policy, we would always consider the most appropriate actions to take in response to each individual case of non-compliance. We would therefore consider a range of factors in determining whether a Monetary Penalty was an appropriate response to a particular case of non-compliance. We have included an indicative list of this in paragraph 2 of our revised policy.

In our consultation we had stated that we would consider monetary penalties in instances where there was a substantial detrimental effect. Some respondents asked if we could clarify this term. We have refined this in paragraph 2 to refer to the seriousness of the non-compliance, including its effect on learners, on the standards of qualifications and/or on public confidence in the Welsh qualification system.

We noted in our consultation that we would expect awarding bodies to cooperate with us in our investigation to determine any non-compliance. Some respondents queried whether non-cooperation would be used as evidence to propose a monetary penalty. In the revised policy, we have made clearer in paragraph 22 that whilst we expect awarding bodies to cooperate with our investigation, this would form part of our practice and ways of working, rather than the factor in determining whether to impose a monetary penalty.

## **The factors we will take into account when determining the amount of a monetary penalty**

Most respondents agreed with all of the factors we would take into account when determining the amount of a Monetary Penalty.

In the consultation, we had stated that we would consider the extent of an awarding body's business in determining the amount of any monetary penalty. Some respondents interpreted this to mean that we would only use monetary penalties for larger awarding bodies. Our intention was to show the amount of a monetary penalty would be proportionate to that awarding body's business, and we have re-worded this section to make this clearer.

## **The cap on monetary penalties**

The Welsh Government undertook a consultation between 22 October 2018 and 7 January 2019 on Regulations to determine the upper limit of any monetary penalty that we could impose.

The Regulations were approved by the National Assembly for Wales on 12 April 2019. These Regulations have determined that the maximum limit of any monetary penalty we may impose is 10% of the relevant awarding body's turnover.

These Regulations are legally binding, and we will not be able to exceed this limit.

As was outlined in the Welsh Government's consultation report on the introduction of these Regulations, the maximum limit on the amount of Monetary Penalties is not intended to be an indication of the levels that monetary penalties will be set at.

As we have stated in our policy, once we have determined that a monetary penalty is an appropriate course of action, we will consider a range of factors in order to determine the actual amount of a monetary penalty and will determine that amount on a case by case basis.

## **Double-fining**

Some respondents to our consultation highlighted the potential for awarding bodies to be subject to Monetary Penalties in Wales and by Ofqual in England, in respect of the same non-compliance. Whilst there is nothing in law to prevent such an event from occurring, Qualifications Wales will take into account any other monetary penalties imposed by fellow regulators for the same case.

The Regulatory Enforcement and Sanctions Act 2008 clearly sets out to achieve the co-ordination of regulatory enforcement and the reduction and removal of

regulatory burdens. Failure to take into account other regulators' decisions would be in contravention of the provisions of this Act.

Our policy clearly states that we will take into account if the same case of non-compliance is being considered by our fellow regulator.

## **Appeals**

In our consultation, we had noted that awarding bodies who were subject to a Monetary Penalties Notice and/or Cost Recovery Notice were able to make an appeal of our decision through the First Tier Tribunal. Some respondents suggested that greater levels of detail should be provided about the process for doing so, including minimum time frames.

We have engaged with the First Tier Tribunal during the development of our Monetary Penalties Policy and are currently in the process of setting up this arrangement.

The policy provides details to awarding bodies on how to submit an appeal to the First-tier Tribunal. However, the procedures for these appeals are determined by the Tribunal and awarding bodies will need to contact the Tribunal to follow such arrangements.

New arrangements for our Monetary Penalties will be published on the First Tier Tribunal website in due course.

Further information is available from HM Courts and Tribunals Service at:

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-general-regulatory-chamber>