



# Monetary Penalties Policy



This policy is about monetary penalties that we are able to impose on recognised awarding bodies.

This document is available in [Welsh](#)

This is Version 1 of the policy and was published following a public consultation on a draft policy and Regulations being approved by the National Assembly for Wales.

We keep our Regulatory Documents under review and welcome feedback at any time. Please send any comments to [policy@qualificationswales.org](mailto:policy@qualificationswales.org)

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## Background

In order to carry out our functions, the Qualifications Wales Act 2015 (“the Act”) provides us with a number of powers which permit us to take enforcement action, where it is reasonable and necessary to do so. Section 38 of the Act provides us with the power to impose a monetary penalty on any awarding body we recognise.

This policy statement relates to all awarding bodies that have been recognised by us under Section 4 (Recognition of awarding bodies) of the Act.

The aim of this policy is to:

- set out the circumstances in which Qualifications Wales (“we”) is likely to impose a monetary penalty under section 38 of the Act; and
- the factors we are likely to take into account in determining the amount of that penalty.

## General Principles of the Policy

A "monetary penalty" is a requirement on an awarding body to pay a sum of money as a result of it failing to comply with its Conditions of Recognition or [Conditions of Approval](#).

Our [Regulatory Framework and Approach](#) explains our approach to regulation. We take a risk-based approach in order to uphold our principal aims of maintaining public confidence in the qualification system and protecting the reasonable interests of learners in Wales. We will always seek to prevent and mitigate things going wrong in line with these principal aims.

The qualification system is complex, and on occasion, things may go wrong. In such situations, we will consider the suite of actions available to us carefully, taking into account the circumstances. The imposition of a monetary penalty is a significant power which we explain in our [Taking Action When Things Go Wrong Policy](#).

The maximum monetary penalty we can impose is determined in Regulations made by the Welsh Ministers. These Regulations set the upper limit of the monetary penalty that we are able to impose on recognised awarding bodies. The actual amount we impose would be determined on a case-by-case basis using an evidence-based approach and would not exceed the upper limit. The circumstances and factors we would take into account to determine the actual amount of any monetary penalty are set out in this policy.

The monetary penalty will not be paid to us but will be paid into the Welsh Consolidated Fund (established by the Government of Wales Act 2006 and controlled by HM Treasury). In addition, and as set out in Section 41(1) of the Act, we may recover costs that we reasonably incur in imposing a monetary penalty and these are payable directly to us.

We do not expect awarding bodies to pass the costs of monetary penalties on to purchasers. After imposing a monetary penalty on an awarding body, we will, if appropriate, monitor fees for qualifications in the interests of purchasers, learners and value for money.

## Circumstances in which we are likely to impose a Monetary Penalty

1. In accordance with the Act, it is in the following circumstances that we are able to consider imposing a monetary penalty:
  - i. an awarding body has failed to comply with a Condition to which its recognition is subject;
  - ii. an awarding body that awards an approved qualification has failed to comply with a Condition to which approval is subject.
  
2. In deciding whether to impose a monetary penalty, we will consider factors such as the following:
  - i. the impact of the non-compliance, including on learners, on the standards of qualifications or on public confidence in the Welsh qualification system;
  - ii. whether the non-compliance was deliberate;
  - iii. whether the non-compliance was as a result of negligence, incompetence or inefficiency;
  - iv. whether the awarding body was aware of the non-compliance but did not notify us or relevant learners, or did notify the appropriate persons but not in a timely manner;
  - v. whether the non-compliance resulted in financial gain or competitive advantage;
  - vi. whether the non-compliance was a one-off occurrence;
  - vii. whether the non-compliance was as a result of wider systemic failure;
  - viii. the extent to which the awarding body was aware of (or was made aware of) the non-compliance but did not take all reasonable steps to prevent, mitigate or correct its effects;
  - ix. whether any steps taken by the awarding body to prevent, mitigate or correct its effects were inefficient;
  - x. whether or not we had already provided guidance in an area relating to the non-compliance;
  - xi. the likelihood, in our judgement, of a repeat of this non-compliance or something similar;
  - xii. whether imposing a monetary penalty will encourage future compliance; and
  - xiii. whether other forms of action and/or combinations of actions available to us might better mitigate the effects of the non-compliance.

3. We will work with other regulators, where appropriate to do so, to determine where non-compliance has occurred across jurisdictions. We will take into account financial sanctions that have been imposed by another regulator in relation to the same case of non-compliance.
4. The power to impose a monetary penalty is one of a number of enforcement powers and sanctions given to us in the Act, and which are outlined in our [Taking Action When Things Go Wrong Policy](#). Consideration of how the suite of powers work as a whole is set out in that policy.
5. We can only impose a monetary penalty on an awarding body in relation to cases of non-compliance. Where there are concerns about possible future non-compliance, we will closely monitor ongoing compliance.
6. Similarly, there may be circumstances where we may consider an alternative action to be more appropriate. For example, where we determine that an awarding body may not have sufficient resources or capacity, we may instead decide to withdraw the awarding body's recognition in respect of those qualifications (*Schedule 3 Section 19- Withdrawal of Recognition*).

## **Factors we are likely to take into account in determining the amount of a Monetary Penalty**

7. Any monetary penalty we impose cannot exceed 10 per cent of the annual UK turnover of the awarding body, as defined in [Regulations](#) which were approved by the National Assembly for Wales on 2 April 2019. These Regulations came into force on 12 April 2019.
8. When determining the amount of a monetary penalty, we will consider the circumstances which led to non-compliance and the potential impact of the amount if we were to impose it. We will determine the amount of each monetary penalty on a case-by-case basis.
9. Depending on the case, the factors we are likely to consider in determining the amount include:
  - i. the steps taken by the awarding body to correct and/or prevent the recurrence of non-compliance or mitigate its effects;
  - ii. any costs incurred by the awarding body in attempting to correct and/or prevent the recurrence of non-compliance or mitigate its effects;
  - iii. whether the awarding body reported the non-compliance promptly to us or whether we identified it as a result of a complaint, whistleblowing or monitoring / audit activity;

- iv. the nature of the non-compliance in comparison to similar cases, where available, for which monetary penalties have been imposed;
- v. the likely impact of the monetary penalty on the awarding body's ability to develop, deliver and award regulated qualifications;
- vi. the potential impact of a monetary penalty on the awarding body and its ability to comply with its Conditions of Recognition in future; and
- vii. the awarding body's turnover from regulated activity in relation to its total turnover.

## Recovering costs

10. As set out in Section 41 (1) of the Act, we may recover our costs from the awarding body costs reasonably incurred in imposing that monetary penalty.
11. In deciding whether or not to recover these costs, we will have regard to the extent of these costs.
12. We anticipate that we would consider recovering our costs in the following circumstances:
  - i. where the cost of investigating non-compliance exceeds that which we anticipated or deemed to be reasonable as part of our regulatory activity;
  - ii. where the cost to us of imposing a monetary penalty exceeds that which we anticipated or deemed to be reasonable; and
  - iii. where we have incurred costs in obtaining legal advice in relation to imposing the monetary penalty.

## Appeals

13. When we write to the awarding body with a Monetary Penalty Notice we will state that the awarding body can appeal to the First-tier Tribunal ("Tribunal") against that decision.
14. Section 39 of the Act states that an appeal can be made to the Tribunal regarding:
  - i. a decision to impose a monetary penalty on the body; and/or
  - ii. a decision as to the amount of the penalty.
15. When we write a Costs Recovery Notice imposing a requirement on an awarding body to make payments in relation to costs, we will state that the awarding body can appeal to the Tribunal against that decision.
16. Section 42 of the Act states that appeals can be made to the Tribunal regarding:

- i. a decision to require the body to pay Qualification Wales costs of imposing a monetary penalty; or
  - ii. a decision as to the amount of those costs.
17. If an appeal is made to the Tribunal, the requirement to pay the penalty or costs recovery (and any subsequent requirement to pay interest if this payment is not made) is suspended until the appeal is withdrawn or confirmed.
18. The Tribunal may withdraw or confirm the penalty imposed by us. It may also impose a different or additional sanction on the awarding body or refer the decision on any matter relating to the decision to impose a monetary penalty back to us to consider.
19. We will normally publish our decisions on our website.

## **How to Appeal to the First-tier Tribunal**

20. Appeals are made to the General Regulatory Chamber of the First-tier Tribunal. Appeals should be made by sending a notice of appeal to the Tribunal so that it is received within a minimum time frame set by that Tribunal. This time frame relates to the date on which the notice of the decision to impose a monetary penalty was sent to the awarding body. Information on the First-Tier Tribunal General Regulatory Chamber can be found below, which includes a link to a section on exam boards:

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

The First-tier Tribunal's address is:

First-tier Tribunal  
General Regulatory Chamber (Exam Boards)  
PO BOX 9300  
Leicester  
Leicestershire  
LE1 8DJ  
Tel: 0300 1234 504  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

21. The First-tier Tribunal (General Regulatory Chamber) Rules, together with any practice directions given by the Senior President of Tribunals, govern the practice and procedure to be followed by the tribunal.

More information about the First-tier and Upper Tribunals can be found here:  
[www.legislation.gov.uk/uksi/2009/1976/made](http://www.legislation.gov.uk/uksi/2009/1976/made)

## Procedure for imposing a monetary penalty

22. Prior to imposing a monetary penalty, we will engage with the relevant awarding body. We will approach this evidence-gathering in an impartial way. We expect awarding bodies to cooperate with us at this stage.
23. Following our determination that a monetary penalty is an appropriate course of action, we will seek to determine the appropriate amount. This is designed to ensure that the amount determined is within the upper limit. This upper limit of 10 per cent of turnover is prescribed in the [Qualifications Wales \(Monetary Penalties\) \(Determination of Turnover\) Regulations 2019](#).
24. In determining this upper limit, we would draw on various sources, including discussions with the awarding body.

### Stage 1: Notice of Intent

25. Before imposing a monetary penalty, we will give notice to the awarding body concerned of our intention to do so.
26. The Notice of Intent will:
  - i. set out the reasons for proposing to impose the penalty; and
  - ii. specify the proposed amount of the penalty.

### Representations to us before final decision is made

27. An awarding body that receives a Notice of Intent has the following two options:
  - i. submit representations or objections in writing to us about the proposal to impose the monetary penalty and/or about the amount of the monetary penalty. The awarding body has a period of up to 28 days to do so (from the date of the Notice of Intent) and when we decide whether to impose the penalty, we will have regard to any representations made by the awarding body;
  - ii. do nothing, in which case, we will wait until the period in the Notice of Intent (being a minimum of 28 days) has expired, and then proceed to impose the monetary penalty.

## **Stage 2: Monetary Penalty Notice**

28. When we have considered any representations, we will decide whether to withdraw, vary or confirm the monetary penalty.
29. If we confirm our decision to impose the monetary penalty (including where the amount is varied), we will give the awarding body concerned a Monetary Penalty Notice specifying:
  - i. the grounds for imposing the monetary penalty;
  - ii. the amount of the monetary penalty;
  - iii. how payment should be made;
  - iv. the period within which the payment must be made;
  - v. the consequences of non-payment; and
  - vi. rights of appeal (see section on Appeals above).
30. Any sums paid by way of a monetary penalty will be paid into the Welsh Consolidated Fund.
31. We will publish details of all Monetary Penalty Notices.

## **Costs Recovery Notice**

32. If we decide to require an awarding body to pay reasonable costs that we have incurred in imposing a monetary penalty, we will issue that awarding body with a Costs Recovery Notice. This notice will include information about:
  - i. the amount of the costs, including a breakdown of the total amount;
  - ii. how payment should be made;
  - iii. the date by which payment must be made;
  - iv. the consequences of non-payment; and
  - v. rights of appeal (see section on Appeals below).
33. We may charge interest to an awarding body on the amount of the monetary penalty or costs recovery if all or part of that amount is unpaid by the specified date. The applicable date that interest may apply from is the latest of:
  - i. the last date as set out in the Monetary Penalty and/or Costs Recovery Notice on which payment must be made; or
  - ii. the last date on which an awarding body may appeal, (if no appeal is made on or before then); or
  - iii. if an appeal against a Monetary Penalty and/or Costs Recovery Notice has been made:
    - I. the final day of the period of 14 days, beginning with the date on which the appeal is determined, or

- II. if the appeal is withdrawn before being determined, the final day of the period of 14 days beginning with the date on which the appeal is withdrawn.
- 34. Any sums paid by way of costs recovery will be paid to Qualifications Wales.
- 35. The interest to be applied is that specified in section 17 of the [Judgments Act 1838 \(c.110\) from time to time](#). At the time of publication of this policy, the rate specified is 8% per annum. The amount of interest imposed will not exceed the amount of the penalty or of the costs to be recovered.