

Conclusions on Pearson Education's business separation measures – awarding and publishing



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1. Introduction

Last year we conducted research into the potential for conflicts of interest between publishing arrangements and standards of qualifications.¹ We identified particular concerns arising from the combination of Pearson's awarding and publishing activities.

Pearson Education Ltd (Pearson) is both a major awarding organisation and a publisher of study aids such as textbooks and other materials (resources)² for students taking exams in England. This combination of activities gives rise to potential risks to the standards of qualifications we regulate and to the availability of resources to support good teaching and learning.

We were concerned that:

- the common house style used in Pearson's assessments and textbooks may lead to more predictable assessments;
- the availability of resources to students may be limited because:
 - Pearson's marketing and branding approaches could create the perception that branded resources are the official necessary text, which limits resources available to students;
 - Pearson's own branded resources would be promoted over those from other publishers on its qualifications website, through promotion in qualification specifications and at marketing events;
 - Pearson could get its own resources to market more quickly than external publishers could;
- the business separation measures between awarding organisation and publishing activities, in particular, regarding joint sales and marketing functions, were insufficient.

¹ Our Action Plan on Textbooks: Risks and Opportunities set out a number of next steps including this review.

² In the rest of this report we use the term "resource" to refer to a range of materials including textbooks and study aids produced or endorsed by Pearson to support teaching and studying for its qualifications.

We committed to reviewing Pearson's arrangements focusing on the effectiveness of the business separation measures between the awarding organisation and publishing activities.

The Education Select Committee also asked us to investigate whether "Pearson has sufficient firewalls in place to ensure that its publishing and examining activities are separate, including syllabus development"³, and report on this publicly.

This report sets out our conclusions following this review.

2. Approach

We assessed three areas of risk in this review to decide whether Pearson is managing each of these risks effectively. They are:

- Whether conflicts of interest that exist between maintaining qualification standards and the design and content of resources are identified and actively managed.
- Whether qualification standards are vulnerable to wider commercial pressures because business separation measures are not sufficient.
- Whether Pearson's business model could limit the choice of resources available to support the good teaching and learning of Pearson's qualifications.

We were aware that Pearson was already addressing some of our concerns. We also had existing evidence of schools' purchasing behaviours in relation to qualifications, learning resources and training events.⁴

To enhance this evidence-base we therefore required Pearson to provide us with detail of the measures and controls it has in place to separate its qualifications and publishing activities. Where changes were already underway we asked for evidence for these too.

We also required Pearson to engage an external party to review independently the key controls and processes that are in place and report on them. Pearson also

³ House of Commons Education Committee, *The administration of examinations for 15–19 year olds in England, First Report of Session 2012–13, volume I, Para 157*. See www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/141/141.pdf

⁴ Ofqual (2012), *Summary of Host Research on Textbooks, Study Aids and Support Services*. See www.ofqual.gov.uk/files/2012-11-07-textbooks-study-aids-and-support-services-research-summary.pdf

provided a review undertaken by a firm of competition economists of the areas of risk from a competition perspective.

Once we had received the new information from Pearson we carried out several activities to reach our conclusions. We met separately with Ernst & Young to review its findings and carried out site visits to monitor Pearson's governance arrangements including for the business development function. We then evaluated all the evidence to decide whether the current controls and processes mean that the risks we had identified are being managed by Pearson to an acceptable level.

A review of the evidence we evaluated is set out in Section 4.

Some of the data Pearson disclosed to us was commercially sensitive. For this reason we are unable to present all of the detailed evidence in this report.

Pearson's own summary of its review is published alongside our report⁵.

3. Regulatory framework

Our job is to make sure that qualifications are of the right standard and that the qualification system works well so that those who take or rely on qualifications can have confidence in them.

We would take action if particular business models or arrangements were impacting on the standards of qualifications or the market to limit or constrain the range of resources available to support the good teaching and learning of the qualifications we regulate.

We regulate Pearson's qualifications business and require Pearson⁶ to manage any conflict of interest between its business model and maintaining the standards and public confidence of the qualifications it offers.

Responsibility for enforcing competition law in the UK under the Competition Act, the Enterprise Act, and Articles 101 and 102 lies with the Office of Fair Trading (OFT). There is no presumption in competition law that vertical integration⁷ is inherently

⁵ See Pearson's summary of its review at www.ofqual.gov.uk/files/2013-08-12-pearson-summary-of-review.pdf

⁶ Ofqual (2012), *General Conditions of Recognition*. See www.ofqual.gov.uk/files/2012-11-20-general-conditions-of-recognition-november-2012.pdf

⁷ A situation where different parts of a supply chain, for example a supply and delivery function, are united by a common owner.

problematic. Generally for Pearson's business model to raise competition concerns it would have to be shown that:

- either the qualifications business or the publishing business has significant market power; and
- this power is resulting in behaviours that cause harm to consumers.

4. Evidence review

Pearson provided detailed and commercially sensitive information on its revised qualification development processes. This identified who is responsible, accountable, consulted and informed at each stage of its qualification development process; how and when different teams and staff interact; and the policies in place to separate its awarding and publishing activities.

A number of new measures and policies have recently been put in place. We explain them here against each risk.

To manage the conflicts of interest between publishing and awarding to maintain qualification standards:

- A policy on *Using Examiners as Authors* to be fully implemented by September 2013 means that no author of a textbook produced or endorsed for Pearson's qualifications has any access to material that will appear in a future exam paper. This policy now prevents any individual with access to secure assessments from authoring a resource that links to that qualification.
- In addition, the effect of this policy, once fully operational, is that students sitting Pearson's exams will not have come across an exam paper author's writing style before in any endorsed textbook.

Adequacy of business separation measures to protect qualification standards from commercial pressures:

- Following a review of its qualification development process sole accountability for qualification design within Pearson has been transferred to a team that has no responsibility for the commercial performance of the qualification.
- Other, organisational structural changes have split a team previously responsible for the product management of qualifications and resources – including sales and marketing – into separate teams.

Choice in resources to support Pearson qualification

- Pearson's [Endorsement](#) policy means that Pearson and external publishers are now treated in the same way when seeking endorsement of resources for Pearson's qualifications. Both internal and external publishers must go through the Publisher Relationships team to get information about qualifications.
- Third party publishers can also sign up to a mailing list to receive information on new qualifications which are being developed, through the [Notification of New Qualifications policy](#).
- This policy also prescribes at which point information on new qualifications should be shared with third-party publishers so that Pearson's in-house publishers do not have access to information before any other third-parties.
- Changes have been made to marketing and messaging approaches meaning that third-party publishers are also allowed to [attend customer-facing events](#), qualification brochures no longer advertise any resources and event presentations state that Pearson textbooks are not necessary for the delivery of the qualification.
- A webpage on [edexcel.com](#) is now dedicated to Pearson and third-party resources.
- The standardised design across Pearson's resources and qualification specifications has been removed.
- There is no "bundling"⁸ of qualification fees and textbook sales.

Ernst & Young independently reviewed the measures and controls that Pearson now has in place to separate its business activities. They did not identify any systematic failings in these controls and found them robust in protecting the standards of Pearson's qualifications. They found that Pearson is now proactive in its relationship with third-party publishers.

The Ernst & Young report identified a large scale of change in enhanced procedures and further work needed by Pearson to fully embed them and monitor their effectiveness.

The review undertaken from a competition perspective argued that Pearson is compliant with competition law and it operates an open endorsement approach. It also provided market data on competition in the publishing market:

⁸ This is where qualifications and other products and services relevant to the delivery of the qualification are offered as a package.

- Analysis which looked at when Pearson released its publications compared with those published by endorsed competitors showed that Pearson published first for approximately half the subjects compared.
- Analysis of data on direct sales of resources to schools shows that on average over a four year period, a third of those schools who bought qualifications from Pearson bought a set⁹ of textbooks for that qualification.

Our own research on purchasing behaviours¹⁰ highlights the extensive use of resource materials endorsed or produced by awarding organisations but also that teachers supplement books with other resources. It found that teachers purchase resources on a range of criteria but principally that the match to the specification is the biggest factor. Experienced teachers told us that they are not swayed in a material way by awarding organisations marketing materials.¹¹

A survey of teachers¹² carried out by independent researchers (commissioned by Pearson) reported teachers bought resources on a range of criteria and that 70 per cent research a range of possible resource providers before making the final decision¹³.

5. Our conclusions

Pearson has made significant changes over the last 18 months to create a greater degree of separation in its business activities.

⁹ 10 or more copies

¹⁰ Nearly 65% of those questioned reported purchasing textbooks published by the awarding organisation or from a publisher endorsed by the awarding organisation, Ofqual (2012), *Summary of Host Research on Textbooks, Study Aids and Support Services*. See www.ofqual.gov.uk/files/2012-11-07-textbooks-study-aids-and-support-services-research-summary.pdf

¹¹ Ofqual (2012), *Summary of Host Research on Textbooks, Study Aids and Support Services*. See www.ofqual.gov.uk/files/2012-11-07-textbooks-study-aids-and-support-services-research-summary.pdf

¹² The online survey was sent to 10,000 Pearson contacts, all of whom were Heads of Department/Faculty and taught EBacc subjects. There were just over 700 responses, of which 80 per cent bought Pearson textbooks or qualifications.

¹³ When asked if they agreed with the statement "I research all of the publishers available and then decide" 40 per cent strongly agreed and 30 per cent slightly agreed.

Pearson has acknowledged that it had operated a passive approach to third-party publisher contact and has introduced new structures and policies to address this. Pearson has also undertaken a review of its qualification development process and the roles and responsibilities of different teams in that process. As a result, to protect qualification standards from commercial pressures, it has changed how it designs and develops qualifications and resources going forward.

These enhance the existing business separation measures and controls to protect qualification standards.

Taken together the available market data and evidence on purchasing behaviours suggests that teachers are informed about the choice of resources available to support the teaching and studying of Pearson's qualifications and use a variety of resources in the classroom.

We have evaluated all the evidence against the risks set out in this report. The evidence provided assures us that Pearson now has in place sufficient business separation measures and controls to mitigate the risks from its business model to an acceptable level. We have decided that no further regulatory action is warranted at this point.

However, as some of the changes to business processes are very recent and will take time to become established, it is important that we continue to monitor the situation to confirm that they are working in practice. We have asked Pearson to commission a further independent review in 2014. We expect that review will confirm that Pearson's controls and enhanced business separation measures have been completely embedded and will provide evidence of this.

We will continue to monitor the risks that arise from Pearson's business model including any impacts of the change in its future titling of qualifications.¹⁴

6. Next steps

In September we will be asking for views on whether we should regulate the exam boards' endorsement of resources for specific qualifications. This consultation will take into account our review of the approaches to textbook endorsement already happening across the industry, including the other exam boards' arrangements. We are already engaging with the exam boards and publishers on this. We will consult on

¹⁴ In April 2013 Pearson changed the branding to be used for its qualifications to include Pearson in the title, so Edexcel will become Pearson Edexcel (and BTEC will become Pearson BTEC). This change was acknowledged in its report to us.

whether regulatory controls are necessary to protect qualification standards, improve the design and content of textbooks to support good teaching and learning and to facilitate an appropriate level of choice of resources in the interest of learners.

We will be working with all exam boards to review their conflict of interest policies that are required as part of our recognition conditions to make sure that they adequately reflect the specifics of each exam board's governance structures and business models.

We wish to make our publications widely accessible. Please contact us if you have any specific accessibility requirements.

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