

New Statutory Guidance

Consultation on New Statutory Guidance to
Support the General Conditions of Recognition



December 2015

Ofqual/15/5800

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1 Introduction

1.1 Scope of this consultation

This consultation is about guidance to help awarding organisations understand how to comply with our rules and assess whether they are doing so.

The Apprenticeships, Skills, Children and Learning Act (the Act) requires that recognised awarding organisations have regard to the guidance we publish. This means that they must review the guidance and take seriously what it says. But guidance is not a further set of rules. An awarding organisation does not have to follow it if it has good reason not to; it may find different ways to meet a General Condition.

We have so far published guidance for a number of General Conditions of Recognition. This guidance has taken the form of positive and negative behaviours which might indicate whether an awarding organisation is complying with the Conditions. This guidance explains what 'good' and 'bad' might look like, with reference to the Conditions. For example, if an awarding organisation does 'X' we are likely to find that it is compliant with the relevant Condition and if they do 'Y' we are likely to find it is non-compliant.

We have written guidance for a further 11 Conditions and we would welcome your feedback on the drafts. We also propose to amend the guidance for two Conditions which already have guidance.

1.2 Summary of our proposals

We are seeking views on draft guidance for the following Conditions. These are conditions for which there is not currently any guidance.

- C2 – Arrangements with Centres
- D3 – Reviewing approach
- D7 – Management of the withdrawal of qualifications
- E3 – Publication of a qualification specification
- E5 – Assurance that qualifications comply with the conditions
- G1 – Setting the assessment
- G3 – Use of language and Stimulus Materials
- G6 – Arrangements for Reasonable Adjustments

- G7 – Arrangements for Special Consideration
- G8 – Completion of the assessment under the required conditions
- G9 – Delivering the assessment

We are also seeking views on changes to existing guidance for the following two Conditions.

- B3 – Notification to Ofqual of certain events
- A5 - Availability of adequate resources and arrangements

We also plan to put in place guidance about what an awarding organisation should do where it discovers it has issued a wrong result. The guidance on this issue will not apply to a single condition; it will set out the relevant obligations on awarding organisations and the factors they should consider when deciding what action to take in such a situation. This guidance is presented in a different format.

1.3 How to respond to this consultation

The closing date for responses is 31st January 2016.

You can respond to this consultation in one of three ways:

- Complete the online response at <http://www.surveygizmo.com/s3/2480928/consultation-on-new-statutory-guidance-to-support-the-general-conditions-of-recognition>.
- Email your response to consultations@ofqual.gov.uk. Please include the consultation title Statutory Guidance in the subject line of the email and make clear who you are and in what capacity you are responding.
- Post your response to Statutory Guidance Consultation, Ofqual, Spring Place, Coventry Business Park, Herald Avenue, Coventry, CV5 6UB, making clear who you are and in what capacity you are responding.

1.4 Evaluating the responses

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity. We will therefore only consider your response if you complete the information page.

A third party may evaluate the responses on our behalf. Any personal data (such as your name, address and any other identifying information) will be processed in

accordance with the Data Protection Act 1998 and our standard terms and conditions.

We will publish the evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us that you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

2 Background

2.1 Ofqual's regulatory framework

All awarding organisations must meet our regulatory requirements – the rules we set to make sure qualifications are valid and fit for purpose. One such set of requirements are the General Conditions of Recognition. All awarding organisations we recognise must comply with these on an ongoing basis.

To help awarding organisations understand how to comply with the Conditions, we publish statutory guidance. Awarding organisations are required to have regard to any guidance that we publish.

2.2 Developing the guidance

In developing this guidance, we have sought the views of the awarding organisations that use this guidance. In our awarding organisation newsletter in December 2014, we asked for awarding organisations' views on the Conditions for which we planned to develop guidance. We said that we would develop guidance in batches, based on this feedback about which Conditions were the greatest priority. This consultation is for the first batch of guidance we have produced since making that request. We will continue to develop guidance for further Conditions and we will consult on more guidance next year.

We have held a series of workshops with awarding organisations, to seek their input as we have developed this guidance. We invited all recognised awarding organisations to attend one of three workshops to provide feedback on the most of our draft guidance and to contribute ideas and suggestions.

Approximately 75 awarding organisations attended. At the sessions, we shared drafts of the guidance and invited attendees to comment. We received suggested amendments to our drafts; suggested additions covering areas that were not sufficiently covered; suggested removals of sections of guidance; and examples of positive and negative behaviour that would be seen in an awarding organisation that was complying or otherwise with the Conditions.

We amended the drafts to reflect the feedback we received.

The draft guidance on correcting results was not considered at these workshops. It does not relate to just one Condition. We include some background to the guidance to explain its origin.

2.3 Implementing the guidance

This consultation will run for nine weeks. We will consider the responses we receive and make any further amendments before publishing the final guidance.

3 Draft guidance

Our draft guidance is below.

3.1 A5 – Availability of adequate resources and arrangements

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- identifies and has in place the resources it needs to develop, deliver and award its qualifications;
- accurately forecasts the demand for its qualifications and puts in place resources to meet this demand;
- acts quickly to address any shortcomings that it could not reasonably have foreseen in its capacity or ability to develop, deliver or award any of its qualifications;
- collects and retains data that will allow it to meet its Conditions of Recognition, which would include, but not be limited to:
 - evidence of support for its qualifications (Condition E1);
 - qualitative and/or quantitative information from its monitoring of qualifications for features that could disadvantage particular Learners (Condition D2);
 - data that enables it to review the specified levels of attainment previously set for the qualification and similar qualifications it makes available (Condition H3);
 - monitors its financial position and takes reasonable steps to address any issues identified.

As part of its obligations under this condition an awarding organisation should retain sufficient data from previous awards to inform the setting of specified levels of attainment for a qualification. Although the precise data retained by an awarding organisation for this purpose will vary depending on the qualification, examples of data which may be retained to meet the requirements of this Condition include –

- Learners’ work exemplifying specified levels of attainment previously set for the qualification;

- specifications and syllabus material;
- assessment materials, for example question papers, tasks, mark schemes and assessment grids; and
- technical information, for example mark distributions, mean marks, standard deviations, item level statistics.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not identify or address inefficiencies in the development, delivery and award of its qualifications;
- cannot cope with demand for its qualifications;
- fails to make appropriate amendments to the size and competence of its Workforce when it makes significant changes to the qualifications it offers;
- relies on IT systems that are prone to poor performance and/or repeated error;
- cannot access the up-to-date data it needs to be able to meet its conditions.

Question 1: Do you have any comments on our proposed guidance for A5?

3.2 B3 – Notification to Ofqual of certain events

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- identifies and notifies Ofqual promptly of an event that has occurred or is likely to occur that could have an Adverse Effect;
- has staff who understand their roles and responsibilities when managing events and notifying Ofqual;
- trains appropriate staff so they take timely, informed decisions and exercise good professional judgement when deciding when and how to report events to Ofqual and when managing events;

- has clear decision-making and timely escalation processes for identifying and determining whether an event could have, or has had, an Adverse Effect; and for notifying Ofqual;
- where appropriate and taking into account the evidence it has and any requirements relating to the protection of such evidence, reports to other relevant bodies, including for example, but not limited to: the Information Commissioner's Office, Ofsted, the Charity Commission, funding bodies and other awarding organisations;
- balances the need to gather sufficient evidence to identify whether an Adverse Effect has occurred or is likely to occur, with the need promptly to notify Ofqual of the event, prioritising prompt notification over waiting for all evidence to be available, taking account of:
 - the actual or potential impact on Learners;
 - its assessment of the seriousness of the event, taking account of the factors set out in the guidance on making a notification below;
 - the urgency of any actions required to mitigate the actual or potential Adverse Effect (for example, because of proximity to an assessment on a specific date, or to the issuing of results or certificates);
 - how long it will take the awarding organisation to gather evidence and decide on, and take, key decisions or actions;
 - the actual or potential impact on public confidence, such as if the event has been or is likely to be reported in the media or on social media;
- provides information to Ofqual when making a notification that includes:
 - what has happened or is likely to happen and why;
 - how and when it became aware of the event;
 - its assessment of the seriousness of the event and of its actual or potential Adverse Effect, and the basis on which this assessment was made, taking account of any requirements from Ofqual about how particular types of event should be reported;
 - the possible or actual impact of the event on Learners or public confidence, including any impact on the standards or validity of qualifications;

- the actions it has taken or plans to take to prevent, correct or mitigate any actual or potential Adverse Effect and to prevent the event from reoccurring;
- the qualifications, subjects and units affected, including the dates and details of any affected assessments;
- its assessment of the scale of the event including, where possible, the number of Centres and Learners affected, with a country (England, Wales, Northern Ireland, Overseas) location breakdown;
- any relevant supporting information or documents relating to the event, for example, copies of assessment materials in the case of question paper errors or details of system failures in the event of an issue with an online assessment system;
- how it is monitoring the event to ensure its assessment of the seriousness remains accurate and that its actions remain appropriate;
- whether Centres, Learners, media or other stakeholders are aware and details of any complaints or correspondence it has received about the event;
- the actions it has taken or plans to take, to identify and address causes and effects, and to mitigate any Adverse Effect and to prevent it from reoccurring;
- the expected timescales for resolving and/or mitigating the impact of the event;
- how it will keep Ofqual informed throughout its management of the event;
- any other organisations or agencies that are involved;
- provides sufficiently detailed information to enable Ofqual to understand the nature of the event and the actions taken by the awarding organisation;
- where full information is not available at the point when the awarding organisation notifies Ofqual, provides an indication of what further information will be provided and when;
- in supplying information to Ofqual, takes account of requirements relating to the protection of personal information, and where relevant, the need to protect the confidentiality of assessment materials;

- provides regular updates and relevant information as agreed with Ofqual, throughout its management of the event;
- keeps its decisions about whether or not an event has an actual or potential Adverse Effect under review as circumstances and/or its understanding of the event change;
- notifies Ofqual of any event under B3.3 sufficiently far ahead of any changes taking place and provides relevant supporting evidence as required by Ofqual, which could include:
 - a description of any changes which are being made;
 - relevant documents which confirm any changes or the likely nature of potential changes;
 - plans for how the awarding organisation will ensure that no Learners are unfairly advantaged or disadvantaged as a result of any change;
 - the steps it will take to make sure it will remain compliant with its Conditions of Recognition;
- notifies Ofqual of its plans to offer qualifications which are substantially different before it starts marketing, promoting or offering them, for example when it intends to offer qualifications:
 - of a nature which it does not have experience offering;
 - in a sector for which it has not previously offered qualifications;
 - at a level which it has not previously offered qualifications;
 - using a method of assessment it has not previously used.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not have a clear and effective process for managing event notifications;
- fails to inform Ofqual promptly and provide sufficient detail of events which have had, or could have an Adverse Effect;
- is aware of, but does not notify Ofqual of an event which could have an Adverse Effect;

- does not notify Ofqual of an event before it becomes aware of it through other means, for example through complaints by Learners or Centres, media reports or reports from other agencies;
- does not provide regular and timely updates for an event which it has reported, as it manages the event;
- does not manage event notifications effectively, leading to a delayed or inappropriate resolution which adversely impacts Learners, public confidence or standards;
- experiences reoccurrences of the same or similar event;
- does not respond fully or accurately to requests from Ofqual for further information;
- provides inaccurate reports of events that could have an Adverse Effect, such as:
 - inaccurate reporting of the number of events which occur;
 - inaccurate or misleading assessments of the seriousness of the event;
- does not alert Ofqual to a material change in its governance or ownership or until after the event;
- does not alert Ofqual when it becomes evident its financial security is at risk;
- does not alert Ofqual to its plans to introduce substantially different qualifications sufficiently far ahead of submitting them to the Register, or where an accreditation requirement applies, before it submits them for accreditation;
- starts marketing a qualification that is substantially different in type or content to any qualification it has previously made available before notifying Ofqual of its intentions.

Question 2: Do you have any comments on our proposed guidance for B3?

3.3 C2 – Arrangements with Centres

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- sets out clearly to Centres what it requires them to do, making necessary information available and providing appropriate training and support, including:
 - the requirements the Centre must meet, including those relating to the capacity and capability of Centre staff;
 - its requirements for the delivery of any part of a qualification that a Centre undertakes on its behalf, for example arrangements for security of assessments, conduct of examinations, managing examination timetabling and authentication of Learners;
 - its arrangements for a Centre to report to the awarding organisation instances where its requirements are not being met;
 - any service level agreements between the awarding organisation and the Centre (for example entry requirements, registration of learners and applications for Reasonable Adjustments and Special Consideration);
 - any requirements relating to the use of third parties by Centres (for example satellite centres or training providers);
 - its arrangements for Centres to identify, investigate and report cases of suspected or actual malpractice or maladministration to the awarding organisation and its procedures for taking action;
- uses a Centre approval process which ensures it only enters into an agreement with a Centre that has the capacity and capability to comply with its arrangements for all qualifications it will deliver. The approval process should include an assessment of the Centre's:
 - ability to comply with the awarding organisation's requirements;
 - capacity, capability and resources to deliver the qualification to the number of Learners it aims to register;
 - internal management controls;
- maintains an up-to-date record of the Centres it has agreements with;
- uses an agreement with a Centre which:
 - requires the Centre to seek written approval from the awarding organisation before permitting a third party (for example training

- providers or satellite centres) to deliver any part of its qualifications, including its assessments;
- places responsibility on the Centre to monitor whether any third party involved with the delivery and assessment of the qualification has appropriate capacity and capability;
- requires the Centre to agree in writing to its requirements before the awarding organisation approves the use of a third party;
- before agreeing to a Centre's request that a third party should be involved with the delivery of any part of its a qualifications, assures itself that the involvement of the third party will not put at risk the Centre's ability to comply with the agreement or the awarding organisation's ability to comply with its Conditions of Recognition;
- monitors Centres' adherence to the agreements to identify Centres that are not compliant, or that are at risk of failing to comply including through routine and/or unannounced visits to Centres;
- does not approve a Centre that it cannot monitor, for example because of its location;
- ensures that Centres only register Learners for qualifications whom they reasonably expect to complete the qualification and that they have the resources, capability and capacity to deliver the qualification to this number of Learners;
- checks that Centres take appropriate steps to identify and notify the awarding organisations of any disabled Learners for whom the awarding organisation may need to make a Reasonable Adjustment, in time for such adjustment to be made;
- collects and analyses data from Centres (for example the number of students expected to be registered and the number actually registered) which helps inform its view of the risk that the Centre will not comply with its requirements;
- identifies and addresses potential or actual Centre non-compliances in a timely way;
- investigates Centres which it believes might not be, or are not, complying with its Centre agreement;

- where it identifies Centres which are not acting in accordance with the agreement, takes appropriate action to secure compliance, or where necessary, applies appropriate and proportionate sanctions;
- has a credible and effective approach to the use of sanctions that encourage compliance;
- notifies other awarding organisations and relevant agencies with a role in protecting the interests of Learners where it identifies concerns with the actions of Centres (subject to any requirements relating to the protection of such data);
- maintains records of interactions with Centres, including for example those relating to inspections or malpractice investigations and monitors and manages the risks presented by these Centres;
- identifies risks to Learners arising from Centre closures or withdrawals and puts in place effective arrangements to manage risks to Learners, including arrangements to allow Learners to complete assessments, in line with its contingency plans;
- seeks feedback and keeps its arrangements with its Centres under review, using feedback to improve its procedures and ensuring that these do not impose unnecessary burdens on Centres.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- enters into agreements with Centres which do not have the capability, capacity or resources to act in accordance with its agreement;
- does not have written agreements with its Centres, or has agreements between the Centre and the awarding organisation which do not include all the provisions listed under C2.3;
- does not monitor Centres’ compliance with the agreement in a way which would enable it to identify and take action to correct or mitigate any issues;
- does not take responsibility for the way in which assessments are delivered by Centres, including the marking and moderation of assessments;
- does not enforce the agreement or impose appropriate sanctions when a Centre has breached the agreement;

- has Centres which:
 - are not aware of their responsibilities under this agreement;
 - do not meet the requirements set by the awarding organisation and deliver qualifications in a manner other than that set out in their agreement;
 - register Learners for the qualification where the Centre does not have the capacity, capability or resources to deliver the qualification to these Learners;
 - do not enable the awarding organisation to comply with the requirements of the General Conditions, for example by misrepresenting or mis-selling qualifications;
 - have not properly dealt with complaints or appeals from Learners;
- does not have suitable arrangements in place to ensure that Learners are not unfairly disadvantaged if a Centre withdraws from its role in delivering the qualification.

Question 3: Do you have any comments on our proposed guidance for C2?

3.4 D3 – Reviewing approach

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- reviews its approach to developing, delivering and awarding its qualifications in a regular and systematic manner, for example by annually refreshing its approaches in light of experience and feedback over the previous 12 months and undertaking in-depth periodic reviews every three to five years;
- changes its approach to developing, delivering and awarding qualifications where it has identified a need, for example because:
 - it finds a systemic problem with its approaches through monitoring, its investigation into an event that has resulted in an Adverse Effect or through complaints it has received;

- it has submitted qualifications for accreditation which were found not to comply with the accreditation criteria;
- it has received information about an Adverse Effect (for example from another awarding organisation) that could potentially have an impact on the way it develops, delivers or awards its own qualifications;
- reviews each of its qualifications in a regular and systemic way, for example by annual monitoring of the performance of a qualification and more in-depth reviews every three to five years;
- during its review of a qualification includes an independent element to ensure objectivity and challenge. This could be, for example, through one or more of:
 - employers from the sector the qualification is designed for;
 - organisations that rely on the qualification, for example further or higher education institutions;
 - other external stakeholders including Centres;
 - internal staff who were not involved in originally developing, delivering or awarding the qualification;
- during its review of the development, delivery and award of a qualification takes into account and acts, as necessary, on any feedback received from Ofqual (for example, decisions from a previous accreditation submission, or outcomes of relevant audits);
- seeks feedback from Users of qualifications (including, for example, employers and professional bodies who have an interest in the qualification and who may generate evidence about whether or not a qualification is meeting its objective). The awarding organisation records and analyses such feedback and takes it into account during its review of a qualification;
- evaluates, records and, where appropriate, implements any improvements to its approach to developing, delivering and awarding a qualification in a timely and effective way. The awarding organisation ensures that, as far as possible, Learners are not unfairly advantaged or disadvantaged as a result of the way in which it implements any changes;
- takes all reasonable steps, after a review following an Adverse Effect occurring, to revise its approach to the development, delivery and award of

qualifications so as to reduce the likelihood of the Adverse Effect reoccurring in respect of any of its qualifications.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not routinely review its approach to developing, delivering or awarding a qualification;
- does not consider whether it should review its approach in light of information of which it should be aware of Adverse Effects affecting another awarding organisation;
- does not seek or respond to feedback from Users of qualifications;
- does not consider and act on information received from Users of qualifications or from Ofqual that identifies potential or actual issues with its approach to developing, delivering or awarding a qualification;
- does not, without good reason, make necessary changes to a qualification that its review of that qualification has highlighted;
- changes its approach to developing, delivering or awarding a qualification in a way that has, or may have, an adverse impact on Learners, unless it has good reason for doing so;
- fails to consider, when dealing with an issue that arises in respect of one of its qualifications, whether the issue may affect other qualifications too.

Question 4: Do you have any comments on our proposed guidance for D3?

3.5 D7 – Management of the withdrawal of qualifications

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

In respect of the withdrawal of qualifications:

The awarding organisation:

- at least annually (or more regularly, as appropriate) monitors the extent to which its qualifications are taken by Learners (such as reviewing registration

and certification data). After analysing this information or the outcome of any other review of its qualifications, the awarding organisation puts in place steps to withdraw any qualifications:

- for which it is not currently making awards, or has never made an award for and which it is unlikely to make an award in the near future; or
 - that are no longer fit for purpose; or
 - that no longer meets its regulatory requirements; or
 - that it has replaced with an alternative qualification;
- gives notice to Ofqual of its intention to withdraw a qualification as soon as possible after it has made this decision;
- promptly sets an operational end-date and certificate end-date when it decides to withdraw a qualification and provides this information, where relevant and taking into account the uptake and purpose of the qualification, to Centres, Learners, purchasers, funding bodies and other relevant Users;
- includes in its withdrawal plan:
 - clear timescales;
 - an explanation of why the qualification is being withdrawn;
 - information about the numbers of Learners or Centres that may be affected;
 - information about how the interests of Learners taking the qualification will be protected;
- delivers the withdrawal plan effectively, keeps the plan under review (including seeking and analysing feedback from Centres about how the withdrawal is progressing) and makes changes to the plan, as necessary;
- provides relevant and timely information to Users about the qualification being withdrawn. This information is proportionate to the impact of the withdrawal, and could include (where applicable):
 - which qualifications are being withdrawn and why;
 - how the withdrawal could affect Learners;

- dates for final registrations for new Learners, and assessments and retake opportunities for existing Learners;
- information about deadlines for completing particular actions;
- arrangements for Learners to switch to alternative qualifications, if appropriate;
- taking into account the uptake and purpose of the qualification, provides timely and relevant information to Learners, Centres and purchasers of qualifications about alternative or replacement qualifications that are available and how these differ from the qualification(s) being withdrawn;
- where a qualification is withdrawn as a regulated qualification but continues to be available as an unregulated one, communicates the changed nature of its regulatory status to avoid Users of qualifications being confused or misled and ensure it complies with the requirements of Condition B5.1.

In addition to the guidance above, in relation to withdrawal or surrender of recognition which will lead to the withdrawal of qualifications (D7.1(c) and (d)), compliance will be indicated where:

The awarding organisation:

- approaches Ofqual at an early stage to discuss its action plan relating to the surrender of its recognition;
- uses staff who have the necessary expertise to operate the Register of Regulated Qualifications to manage the withdrawal or surrender of its recognition and the associated withdrawal of the qualifications.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not act upon a requirement to withdraw one or more of its qualifications following a decision by Ofqual to withdraw its recognition in respect of those qualifications;
- does not give appropriate notice to Users of qualifications of its plan to withdraw a qualification to allow them time to make suitable plans ahead of the withdrawal;

- does not put in place reasonable steps to protect the interests of Learners where a qualification is being withdrawn;
- does not provide sufficient information for affected Users when it withdraws a qualification, for example about timelines or possible alternative available qualifications;
- does not provide sufficient resources to deliver, mark or award a qualification that is being withdrawn;
- allows a Learner to enrol for a qualification that they are unlikely to be able to complete before the qualification is withdrawn;
- does not make clear what arrangements (if any) are in place for Learners to re-take assessments for a qualification that is being withdrawn;
- continues to offer the withdrawn qualification and certificates it as a 'regulated qualification';
- promotes or allows others to promote any qualification which it has withdrawn from the Register as a regulated qualification.

Question 5: Do you have any comments on our proposed guidance for D7?

3.6 E3 – Publication of a qualification specification

Examples of 'positive indicators' that would suggest an awarding organisation is likely to comply

The awarding organisation's specifications:

- are developed using a clear approach and are subject to appropriate quality assurance and sign-off arrangements;
- set out the learning aims and objectives for the qualification, so that Users are able to take informed decisions about the suitability of the qualification for their purposes;
- are readily available to Users, for example through the awarding organisation's website, and provide clear contact information where queries about the specification can be raised;

The awarding organisation:

- engages with Users of qualifications (for example through employer forums or external focus groups) about the specification (for example about the qualification's content, structure, purpose and accessibility), and considers the feedback as part of its ongoing review of the specification and the development of future specifications.

Examples of 'negative indicators' that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- makes implausible, unjustifiable or misleading claims about a qualification relating to progression of Learners to other qualifications or employment;
- publishes specifications which are not accessible, clear and accurate.

Question 6: Do you have any comments on our proposed guidance for E3?

3.7 E5 – Assurance that qualifications comply with the conditions

Examples of 'positive indicators' that would suggest an awarding organisation is likely to comply

The awarding organisation:

- before submitting a qualification to the Register or for accreditation, ensures it is reviewed against the relevant Conditions by someone who can take an objective view of the proposed qualification, taking account and recording the outcome of:
 - feedback from Users on their views about the benefit the qualification would provide to Learners;
 - the clarity of the qualification's objective and the extent to which the qualification is likely to meet its objective;
 - the rationale for the proposed assessment framework, and the extent to which it would facilitate the valid assessment of the required knowledge and skills;
 - the achievability of the plans for the awarding organisation and/or Centres to recruit, train, standardise and monitor the performance of Assessors to facilitate valid assessment;

- makes any improvements to a qualification highlighted by the reviewer before it is submitted to the Register or for accreditation;
- authorises only a person of appropriate seniority and competence (such as a Senior Officer or the responsible officer) to confirm that the qualification complies with the requirements of its Conditions of Recognition and is ready to be submitted to the Register or for accreditation;
- uses any lessons learned from previous accreditation decisions to strengthen its approach to reviewing and signing off its proposals prior to their submission for accreditation or to the Register.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not subject a qualification to review before submitting it to the Register or for accreditation;
- does not, without justification, make any changes to the qualification that are highlighted by the review process;
- submits a qualification to the Register or for accreditation even though (including but not limited to):
 - it does not have evidence that the qualification has support from employers, employer representatives or relevant professional bodies;
 - there is no rationale for the proposed assessment framework;
 - it cannot demonstrate how assessments marked by Centres would be effectively moderated; or
 - it does not have evidence to support any claims about progression to another qualification or employment;
- makes errors in the information it submits to the Register or submits incomplete information.

Question 7: Do you have any comments on our proposed guidance for E5?

3.8 G1 – Setting the assessment

Examples of 'positive indicators' that would suggest an awarding organisation is likely to comply

The awarding organisation:

- sets assessments, or where applicable, ensures that its Centres set assessments, which:
 - include content that is drawn from the knowledge, skills and understanding in the specification and which ensure that the Level of Demand of the assessment is consistent with previous assessments;
 - make it possible for Learners to demonstrate, and the awarding organisation or Centre to measure, the extent to which they have the knowledge, skills and understanding required by the qualification;
 - allow the specified level of attainment set out in the specification to be reached by a Learner who has attained the required level of knowledge, skills and understanding;
 - use methods of assessment that are valid and are appropriate to the knowledge, skills and understanding being measured;
 - effectively differentiate between Learners (that is, solely on the basis of the knowledge, skills and understanding being assessed);
 - accurately measure the knowledge, skills and understanding it intends to measure;
- additionally, for graded qualifications, sets assessments, or ensures its Centres set assessments, which:
 - cover the full range of demands targeted by the assessment;
 - enable the full range of Learners targeted by the assessment to demonstrate the extent to which they have the knowledge, skills and understanding required by the qualification;
 - enable the awarding organisation to differentiate effectively between Learners (that is, solely on the basis of the knowledge, skills and understanding being assessed) across the range of attainment targeted by the assessment;
- ensures its assessments are manageable for Learners and Centres, by taking into account:

- the practical constraints under which Centres operate;
- the availability and cost to Centres of equipment, materials and other resources required for the assessments;
- the time required to undertake the assessments;
- the risks of failure, for example through service interruptions to online assessments;
- has a clear rationale for any optional routes through a qualification, combinations or pathways and can explain how, as far as is possible, these are comparable in terms of the Level of Demand and the amount of subject content required to be taught and on which Learners will be assessed;
- keeps its assessments under review, amending them where necessary, to ensure they remain fit for purpose, for example by reflecting new requirements, good practice or legislation.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- sets assessments which:
 - do not allow it to measure the extent to which Learners have the knowledge, skills and understanding required by the qualification;
 - are not manageable for Centres or Learners, for example because of the availability of equipment, materials or resources;
 - do not cover the full range of demands targeted by the assessment;
 - discriminate between Learners on the basis of factors other than the knowledge, skills and understanding being measured by the qualification, for example because of the context in which questions/tasks are set;
 - include content which is not covered by the specification;
 - have options, routes or pathways through the qualification which are not of the same Level of Demand;

- uses an assessment procedure which does not measure the knowledge, skills and understanding required by the qualification with sufficient accuracy;
- does not take appropriate corrective action where it identifies assessments which do not meet these requirements.

Question 8: Do you have any comments on our proposed guidance for G1?

3.9 G3 – Use of language and Stimulus Materials

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- ensures that language and Stimulus Materials are clear, precise and understandable for Learners, unless understanding ambiguous and/or complex language is part of the knowledge, skills and understanding being assessed by the qualification. This could include, but is not limited to:
 - using straightforward sentence structures with accurate punctuation;
 - using language and vocabulary suitable for the level, context and subject of the assessment and for the expected age and ability of Learners;
 - avoiding unnecessarily dense text, unnecessary words, metaphors or redundant information;
 - avoiding unnecessary pictures or diagrams;
 - only using Stimulus Materials where these are required to support valid assessment of the knowledge, skills and understanding being measured;
 - using command words which are appropriate to the level, context and subject of the assessment and using these consistently and correctly;
- ensures that, where it uses Stimulus Materials, these:
 - are error-free, clear and easy to understand (unless dealing with ambiguity and/or understanding complex language are part of the knowledge, skills and understanding being assessed);

- have a clearly defined purpose;
- are presented in a format that is likely to be familiar to Learners (unless the interpretation of unfamiliar formats is part of the assessment);
- use contexts that, as far as possible, do not advantage Learners that have had a particular experience over those that have not, where this experience is not a requirement of the assessment;
- uses language and Stimulus Materials which allow a valid assessment of the knowledge, skills and understanding being assessed and which, as far as possible, allow Learners to demonstrate their level of attainment in these;
- uses language and Stimulus Materials which do not unfairly advantage or disadvantage Learners, including those who share a particular characteristic or experience, on grounds other than their attainment of the knowledge, skills and understanding being assessed by the qualification. Such characteristics and experiences could include, but are not limited to:
 - the Protected Characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation;
 - experiences that are more likely to be familiar to particular cultural or social groups;
 - prior knowledge that does not form part of the knowledge, skills or understanding being assessed;
 - language comprehension where this is not part of the knowledge, skills or understanding being assessed;
- ensures that, as far as possible, assessments are free from discrimination on the basis of Protected Characteristics, stereotyping, or language which may cause offence;
- seeks feedback from Centres, gathers and analyses information (for example about complaints received) to identify issues with its use of language or Stimulus Materials, such as unintended sources of difficulty;
- uses feedback to inform its development of valid assessments and qualifications and to provide feedback and training for staff who develop assessment materials.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- uses language or Stimulus Materials which:
 - include unnecessary negative, narrow or stereotypical representations of particular groups;
 - are unnecessarily complex or irrelevant to the knowledge, skills or understanding being assessed;
 - include pictures or diagrams which are not relevant to the knowledge, skills and understanding being assessed or which are not required to be able to answer questions;
 - include unclear information;
 - are open to different interpretations by Learners where such interpretation does not form part of the assessment;
- uses language or Stimulus Materials which advantage or disadvantage Learners on grounds other than the knowledge, skills and understanding being assessed by the qualification;
- is not aware of, or does not act appropriately to consider and where possible mitigate, circumstances where Learners or groups of Learners have been disadvantaged as a result of language or Stimulus Materials;
- does not take action to reduce or remove any disadvantage that has been caused by its use of language or Stimulus Materials for current and future Learners.

Question 9: Do you have any comments on our proposed guidance for G3?

3.10 G6 – Arrangements for Reasonable Adjustments

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- is aware, and ensures that its staff are aware, of its responsibilities under Equalities Law (including maintaining an up-to-date knowledge of any changes);
- engages with relevant stakeholders and representative groups to make sure its arrangements for Reasonable Adjustments meet its responsibilities on an on-going basis;
- has arrangements in place to enable it to consider the needs of any disabled Learner and the Reasonable Adjustments they might need;
- where decisions about Reasonable Adjustments are delegated to Centres, ensures that, through its agreement with the Centre, its arrangements for Reasonable Adjustments are delivered effectively;
- makes information available to Centres and Learners about:
 - entitlements under equalities law for disabled learners to request a Reasonable Adjustment and any restrictions that apply to this;
 - how to apply for a Reasonable Adjustment;
 - the evidence that should support the application for a Reasonable Adjustment;
 - the timelines for applying for a Reasonable Adjustment;
 - how the awarding organisation will decide whether a Learner should be given a particular Reasonable Adjustment;
 - how a Reasonable Adjustment will be made and any information, such as about equipment or time, the Centre needs to be able to do this; and
 - the process for Centres or Learners to appeal against an awarding organisation's decision not to make a Reasonable Adjustment or a specific Reasonable Adjustment;
- makes Reasonable Adjustments available so that disabled Learners can demonstrate their knowledge, skills and understanding;
- considers each application or request for a Reasonable Adjustment on the basis of relevant information, or ensures that Centres do this where the decision has been delegated and:

- applies appropriate criteria, which are clear and consistent for determining each application;
- where it rejects an application, provides a clear reason to the Centre or Learner and, where appropriate, suggests suitable alternative Reasonable Adjustments to those requested;
- provides a process for the Centre to appeal against its decision;
- keeps a record of the decisions it makes;
- does not make, or allow Centres to make, a Reasonable Adjustment which:
 - would prevent the qualification from providing a reliable indication of the extent to which a Learner has the knowledge, skills and understanding being measured;
 - would alter the knowledge, skills and understanding being measured as opposed to the way they are demonstrated; or
 - unfairly advantages or disadvantages any Learner or group of Learners, whether or not they have had a Reasonable Adjustment applied;
- collects and analyses data on the number of requests for Reasonable Adjustments made and approved. This could include, for example, requests for each qualification or Centre;
- collects and analyses information about complaints about Reasonable Adjustments or about decisions relating to them;
- uses information, intelligence and data to identify and prevent potential misuse of Reasonable Adjustments by Centres and acts on any findings;
- monitors each Centre's application and use of Reasonable Adjustments and takes action where it is not seeking or making appropriate Reasonable Adjustments and where it is seeking or making inappropriate Reasonable Adjustments. The checks are regular and detailed enough to identify potential failures to make and misuse of, Reasonable Adjustments;
- reviews and evaluates the effectiveness of its arrangements for Reasonable Adjustments, taking account of its own data and monitoring, information from Centres, Learners, Users of qualifications, Ofqual requirements and any other relevant guidance (for example from the Equality and Human Rights Commission) or case law. It uses this information to inform the design of its

qualifications and makes necessary improvements in a timely and effective manner.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- fails to:
 - make its approach to Reasonable Adjustments clear;
 - make appropriate Reasonable Adjustments available;
 - determine requests for Reasonable Adjustments in a fair, timely and consistent way;
 - consider requests for Reasonable Adjustments from Centres or Learners;
 - respond appropriately to complaints about its arrangements for Reasonable Adjustments;
 - ensure that where it delegates decisions on Reasonable Adjustments to Centres, the Centre follows its requirements;
- does not make appropriate Reasonable Adjustments available that allow Learners to demonstrate their knowledge, skills and understanding being measured;
- does not understand or comply with its duties under Equalities Law to make Reasonable Adjustments;
- makes a Reasonable Adjustment which is prohibited by Ofqual’s specifications under section 96 of the Equality Act 2010;
- does not monitor, in a way that would enable it to identify any misuse, how centres are using Reasonable Adjustments;
- approves, or allows Centres to approve, requests for Reasonable Adjustments which:
 - are not based on sufficient evidence of how the Learner’s disability affects their ability to demonstrate the knowledge, skills and understanding being measured; or

- unfairly advantage or disadvantage any Learner or group of Learners, whether or not they have had a Reasonable Adjustment applied;
- rejects, or allows Centres to reject, requests for Reasonable Adjustments which meet the criteria it has set out for that Reasonable Adjustment to be applied, or does not provide a clear reason to the Centre or Learner where it rejects a request.

Question 10: Do you have any comments on our proposed guidance for G6?

3.11 G7 – Arrangements for Special Consideration

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- sets out clearly the types of Special Consideration, if any, that are appropriate for each qualification for Learners who have suffered an illness, injury or other event outside of their control. Special Consideration could include, but is not limited to:
 - an adjustment to a Learner’s mark for a Learner whose performance in an assessment has been affected;
 - an adjustment to the arrangements for accessing an assessment for a Learner who is not disabled, but whose ability to access the assessment has been affected by an injury or illness;
- has clear and consistent processes, which it communicates clearly to Centres or Learners, setting out:
 - whether Special Consideration is available for a particular qualification or assessment;
 - the point in the assessment process at which Special Consideration will be applied;
 - where Special Consideration is available for Learners who have not completed all of the assessments, the minimum amount of assessment evidence the Learner must have completed before a qualification can be awarded;

- the eligibility criteria and evidence requirements to support a request for Special Consideration;
- the process and timelines for applying for Special Consideration;
- how the eligibility criteria will be applied in each case to make a decision about whether to approve Special Consideration for a Learner;
- the process for Centres or Learners to appeal against a decision not to grant Special Consideration;
- ensures that in each case where it allows Special Consideration, it is applied appropriately and consistently, balancing the need to ensure that qualification gives a reliable indication of the knowledge, skills and understanding being measured, with the need to ensure that as far as possible, Learners are not disadvantaged because of an illness, injury, or other event outside of their control;
- takes into account the qualification's objective when it decides the types of Special Consideration, if any, that should be available – types of Special Consideration available could include, but are not limited to:
 - awarding additional marks where a Learner has been able to take an exam but where their performance has been affected by an illness, injury or other exceptional event outside of their control;
 - making arrangements to allow a Learner to access an exam, such as providing assistance to write in a written exam for a Learner that has suffered an injury which prevents them from writing;
 - making an alternative assessment opportunity available for the Learner at a later date;
- does not make Special Consideration available where this would alter or prevent the qualification from providing a reliable indication of the knowledge, skills and understanding being measured by the assessment objectives;
- does not make Special Consideration available where this would unfairly advantage or disadvantage Learners;
- ensures that Learners who have experienced an illness, injury or other event outside of their control, which will affect their ability to demonstrate their knowledge, skills and understanding, are not unfairly advantaged or disadvantaged, as far as is possible, where Special Consideration is applied;

- considers each application for Special Consideration and:
 - applies clear and consistent criteria for determining each application;
 - where it rejects an application, provides a clear reason to the Centre or Learner;
 - provides a process for the Centre or Learner to appeal against its decision;
 - keeps a record of the decisions it makes;
- collects and analyses data on the number of requests for Special Consideration made and approved. This could include, for example, requests by qualification, subject and Centre and the impact of any requests approved, for example changes to overall results;
- uses data to identify and prevent potential misuse of Special Consideration by a Centre and acts on any findings;
- monitors each Centre's applications for Special Consideration and takes action where a Centre is not using the provision appropriately. The checks are regular and detailed enough to identify misuse of Special Consideration;
- reviews and evaluates the effectiveness of its arrangements for Special Consideration, taking account of its own monitoring, information from Centres, Learners, Users of qualifications and any Ofqual requirements.

Examples of 'negative indicators' that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- fails to:
 - make its approach to Special Consideration clear, including, where relevant, being clear about where Special Consideration is not available;
 - determine requests for Special Consideration in a fair, timely and consistent way;
 - consider requests for Special Consideration, where it is allowed, from Centres or Learners;

- respond appropriately to complaints about its arrangements for Special Consideration;
- does not monitor, in a way that would enable it to identify any misuse, how centres are using Special Consideration;
- approves requests for Special Consideration which:
 - are not based on sufficient evidence; or
 - unfairly advantage any Learner or group of Learners, whether or not they have had a Special Consideration applied;
- rejects requests for Special Consideration which meet the criteria it has set out for that Special Consideration to be applied.

Question 11: Do you have any comments on our proposed guidance for G7?

3.12 G8 – Completion of the assessment under the required conditions

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- designs its qualifications so that:
 - the conditions under which assessments or tasks must be completed are able to be delivered by Centres and Assessors;
 - as far as is possible, the awarding organisation, Centres or Assessors can determine whether work has been produced by the Learner being assessed;
- considers the possible risks to assessments being completed under the specified conditions or to being able to authenticate Learners’ work and designs assessments (for each assessment or subject) and tasks to mitigate these risks;
- sets clear requirements for the conditions under which Learners must complete the assessment, consults with Centres on these and communicates them clearly to Centres, ensuring appropriate training is provided, including

for relevant Centre staff. These could include, but are not limited to, requirements for:

- the resources or materials required for Learners to complete the assessment;
- its expectations of Centres and their staff in relation to ensuring the assessment is completed under the required conditions and that work is completed by the Learner for whom it is submitted;
- conducting the assessment, including where appropriate, the environment/location and conditions under which it must be completed;
- any relevant administrative and security arrangements, such as restrictions on the timing of access to assessment materials;
- any invigilation, supervision or verification arrangements;
- the way in which any practical elements must be assessed;
- any restriction on the number of occasions on which the assessment can be undertaken;
- the way in which group work is assessed and how the part of each individual Learner should be identified;
- the extent to which Learners can redraft or refine their work and that Centres can provide feedback during this process, where this is allowed;
- how it will enforce its requirements, check that Centres follow them and the possible sanctions if they do not;
- where Centres set and deliver assessments, ensures that Centres have in place appropriate arrangements to meet the awarding organisation's requirements;
- takes all reasonable steps to ensure that the Learner has produced the work being assessed. These could include, but are not limited to:
 - requiring Centres to identify Learners using methods such as photographic identification, signatures or other unique identifiers to confirm that the Learner is who they say they are;

- requiring declarations that the work has been produced by the Learner for whom it is being submitted, for example a statement by the Learner, the Centre or an Assessor, depending on the nature of the assessment;
- determining the contribution made by individual Learners to group tasks and assessments;
- making arrangements to ensure that work submitted by private/external candidates has been produced by the Learner;
- ensuring relevant Centre and awarding organisation staff are trained on how to identify where a Learner's work may not be their own and what to do where this is the case;
- checks that the assessment is completed under the required conditions and that Learners have produced the work being assessed, for example by carrying out regular checks, including some unannounced, on Centres delivering assessments;
- investigates cases where it believes its requirements are not being met and takes appropriate action where it finds evidence that this is the case. The actions it takes, combined with its monitoring arrangements, are an effective incentive for Centres to comply with their obligations;
- keeps its processes for ensuring the assessment is completed under the required conditions and that work is produced by the Learner under review. It reviews and acts on feedback from its own monitoring, from Centres, from Ofqual and other relevant sources to improve its arrangements as necessary.

Examples of 'negative indicators' that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- does not take appropriate steps during the design of the qualification to remove or reduce risks that the assessment is not completed under the required conditions or that Learners' work cannot be authenticated;
- does not set, or make available to Centres, clear requirements setting out:
 - the conditions under which assessments must be completed;
 - arrangements for ensuring and confirming that the work being assessed is produced by the Learner;

- sets requirements which are not manageable for Centres;
- does not provide appropriate training or support to Centres on its requirements;
- sets assessments which require group work where it is not possible to determine the contribution of each individual Learner;
- credits, or allows Centres to credit Learners for an assessment for which it cannot be satisfactorily verified that the work has been produced by that Learner;
- allows an assessment to be taken under conditions other than those it has specified, except where a Reasonable Adjustment applies;
- does not effectively monitor, to enable it to identify instances where Centres are not meeting its requirements;
- does not promptly investigate or take appropriate action where there is evidence that its requirements are not being met, or takes ineffective or inconsistent action;
- does not make appropriate changes or improvements to its requirements where it has identified issues with its arrangements.

Question 12: Do you have any comments on our proposed guidance for G8?

3.13 G9 – Delivering the assessment

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

- clearly sets out how its assessments must be delivered to ensure that they are valid and delivered effectively and efficiently and communicates its requirements clearly to Centres;
- ensures that, as far as is possible, all assessments are delivered consistently within and across Centres and in accordance with its requirements, for example by:

- providing consistent guidance and training for Centres delivering assessments and tasks;
- providing guidance to Centres about the conditions that are required to ensure that the Learner has an opportunity to demonstrate their knowledge, skills and understanding under realistic/operational conditions (where this is a requirement);
- ensures that all assessments delivered:
 - include content that covers the knowledge, skills and understanding in the specification to the extent required for a particular assessment;
 - use assessment arrangements which deliver valid assessments, whilst ensuring as far as is possible that equipment or materials required are reasonably obtainable for Centres;
 - enable Learners to demonstrate the extent to which they have the knowledge, skills and understanding required by the qualification – for graded qualifications, this should be for the full range of Learners targeted;
 - enable the awarding organisation to differentiate effectively between Learners (that is, on the basis of the knowledge, skills and understanding being assessed) – for graded qualifications this should be across the range of attainment targeted by the assessment;
 - award marks or credits that are representative of the demands of the questions/tasks;
 - can be consistently applied by both internal and external examiners, moderators and verifiers to ensure accurate and consistent judgements are made about the attainment of Learners;
- ensures that the way assessments are delivered makes it possible to identify and authenticate each Learner's work;
- only uses group assessments where it is an effective way to assess the skills being measured and where the contribution of each Learner can be authenticated;
- monitors the delivery of assessments to ensure its requirements are being met, for example by carrying out regular checks on Centres' practice, and takes action where this is not the case;

- keeps its arrangements for delivering assessments under review, making changes to its arrangements where necessary to address any issues.

Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply

The awarding organisation:

- delivers assessments, or permits Centres to deliver assessments which cannot be delivered efficiently or effectively, for example because:
 - procedures or assessments add unnecessary costs (including those which are not directly incurred) to Centres or Learners;
 - resources and equipment required are not reasonably obtainable for Centres;
 - insufficient information is provided to Centres about the requirements they have to meet;
 - there is insufficient time available for Centres to deliver assessments or tasks to all Learners in line with the awarding organisation’s requirements;
- uses assessment types in which the work of individual Learners cannot be authenticated, for example:
 - setting assessments or tasks which are completed without supervision without suitable alternative safeguards in place;
 - setting group tasks where the contribution of individual Learners cannot be distinguished;
- delivers assessments which do not allow it to measure the extent to which Learners have the knowledge, skills and understanding required by the qualification or which do not differentiate validly between the full range of attainment by Learners;
- delivers assessments which discriminate between Learners on the basis of factors other than the knowledge, skills and understanding being measured by the qualification, for example:
 - as a result of the language or vocabulary used in an assessment preventing a Learner from understanding what is being assessed;

- due to a context being used which is not related to the skills being assessed, but where a Learner that is familiar with this context would be unfairly advantaged over a Learner who is not.

Question 13: Do you have any comments on our proposed guidance for G9?

3.14 Making changes to incorrect results

Awarding organisations are required by our Conditions to issue results which accurately and completely reflect the marking of assessments. In most cases, this happens. Sometimes, however, they discover that they have given a Learner the wrong result – that is, a result that does not reflect how well they have done in their assessment. This is never acceptable, but where it does happen, it is important that the awarding organisation takes appropriate action to try and minimise any negative effect on Learners or other Users of the qualification.

We wrote to all awarding organisations in August 2014¹ to tell them what we expect them to do when they find they have made such a mistake. The guidance in this consultation is intended to formalise this approach.

Our rules for all awarding organisations offering regulated qualifications are set out in the General Conditions. When there is an error, we expect awarding organisations to identify who it affects and decide what to do. They should consider the circumstances of the case and consider the actual and potential impact on all students. They should balance any actual or potential Adverse Effect² caused by allowing an incorrect result to stand, with that caused by correcting it, the impact on other Users of the qualification, and the impact on public confidence.

In addition to these, for some qualifications (GCSE, AS and A levels, Principal Learning and the Project) a Code of Practice³ (the Code) sets out some specific rules for the qualifications it covers. The Code contains two specific rules⁴ about

¹ <http://webarhive.nationalarchives.gov.uk/20141031163546/http://ofqual.gov.uk/news/regulatory-letter-ro232014-making-changes-incorrect-results-issued/>

² An act, omission, event, incident or circumstance has an Adverse Effect if it – (a) gives rise to prejudice to Learners, or (b) adversely affects – (i) the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with its Conditions of Recognition, (ii) the standards of qualifications which the awarding organisation makes available or proposes to make available, or (iii) public confidence in qualifications.

³ GCSE, GCE, Principal Learning and Project Code of Practice, Ofqual, Welsh Government, CEA, May 2011

⁴ Paragraph 9.10 of the Code provides that: “Where the outcome of a post-results review of marking brings into question the accuracy of results for other candidates in the same examination, subject

what an exam board should do, following an enquiry about results, if it has given a Learner a wrong result. In some circumstances, the Code prevents exam boards from lowering grades, even if they are wrong.

The Code requires that where an enquiry about results (EAR) for one Learner reveals an error that affects other Learners who have not submitted an EAR, or consented to being part of the process, only the Learner for whom the EAR was requested can have their subject grade lowered. The other Learners can only have their results confirmed or raised. In the case of a review of moderation, then subject grades for all Learners are protected from being lowered. These protections apply to errors found through the enquiry about results process, but not to errors found in other ways.⁵ These rules in the Code mean that exam boards could make different decisions for two groups of Learners, who are affected by the same type of error.

We will be consulting on our proposals to withdraw the Code. If we withdraw the Code we will remove these rules. We propose instead to introduce guidance that will apply to all awarding organisations and all qualifications. This will mean that awarding organisations make decisions for all students in the same way. The guidance will make it clearer for awarding organisations what we expect them to do when they find they have issued a wrong result.

As this guidance is not restricted to compliance with one specific Condition, we have taken a different approach to presenting it. Instead of providing positive and negative indicators, the guidance sets out the relevant Conditions and the factors awarding organisations should consider when ensuring they comply with these.

Introduction

- We expect an awarding organisation to issue correct results to Learners. But where an awarding organisation discovers that, despite its controls, it has issued an incorrect result, it must have regard to this guidance.

grades already awarded to candidates who were not part of the initial enquiry can only be confirmed or raised.”

Paragraph 9.11 of the Code provides that “In cases where a post-results review of moderation reveals inaccurate moderation, subject grades already awarded can only be confirmed or raised. Marks for modules, units or components may be confirmed, raised or lowered, and these marks will be carried forward to any subsequent subject grade. It is not necessary to obtain candidates’ permission before a centre requests re-moderation.”

⁵ The 2012 Addendum to the Code states that: “The requirement only to confirm or raise subject grades applies only where: the outcome of a post-results review of marking brings into question the accuracy of marking for candidates who were not part of the initial inquiry [or] a post-results review of moderation reveals inaccurate moderation. In other cases where results issued are found to be incorrect, unit and subject grades must be confirmed, raised or lowered as appropriate.”

- An incorrect result is a result that does not accurately reflect the performance of a Learner in his/her assessment. An incorrect result could be one that is higher or lower than the level of attainment which the Learner demonstrated in the assessment.
- An awarding organisation may discover that it has issued an incorrect result in different ways, including:
 - through the application of its own quality assurance processes;
 - through its investigations into malpractice or maladministration; or
 - where a review of marking or an appeals process reveals an issue which is relevant to other Learners' assessments.
- Regardless of how an incorrect result is discovered and regardless of whether the incorrect result is higher or lower than the level of attainment demonstrated by the Learner, an awarding organisation must decide what action to take, and whether or not to correct the result. We expect awarding organisations to take a consistent approach when making these decisions and to do so in a way which meets their obligations under the Conditions.
- This guidance identifies a number of Conditions that place obligations on awarding organisations which are relevant to the issue of incorrect results. It also explains how an awarding organisation decides what action to take where it has issued an incorrect result and some of the factors which the awarding organisation should consider. The importance of these factors will vary between cases, but awarding organisations should adopt a consistent approach to determine which factors are relevant and how to balance them in coming to a decision.
- In particular, this guidance focuses on an awarding organisation's decision whether or not to correct an incorrect result that has been issued. It is for the awarding organisation to take this decision in each case, ensuring that it meets the requirements of the Conditions and has regard to this guidance. Having taken this decision, the awarding organisation should always consider whether it should take any other action to comply with the requirements of the Conditions.

What happens where an incorrect result is discovered as part of Review Arrangements or an appeals process?

- Awarding organisations are required to have in place an appeals process for the appeal of results. In some qualifications, awarding organisations are also

required to have Review Arrangements in place. As well as this, Ofqual can put in place an appeals process and has done so for some qualifications.

- Where an appeal (or a review) is requested by or on behalf of a Learner, the result must be changed or confirmed in accordance with the relevant requirements. The changing of results as part of these processes falls outside the scope of this guidance.

What requirements must an awarding organisation meet?

- Awarding organisations must comply with all of the Conditions which apply to the qualifications they offer at all times. While it is for awarding organisations to ensure that they do this, the Conditions below are likely to be particularly relevant to the issuing of an incorrect result and the action which an awarding organisation subsequently takes.
- Condition A6.1 requires an awarding organisation to take all reasonable steps to identify the risk of the occurrence of any incident which could have an Adverse Effect. Since the issuing of an incorrect result could (in many cases) have an Adverse Effect, an awarding organisation should actively consider any risks which might lead to an incorrect result being issued.
- Condition A6.2 requires that where such a risk is identified, the awarding organisation must take all reasonable steps to (a) prevent the incident from occurring or, where it cannot be prevented, reduce the risk of that incident occurring as far as is possible, and (b) prevent any Adverse Effect that the incident could have were it to occur or, where it cannot be prevented, mitigate that Adverse Effect as far as possible. An awarding organisation that has identified a risk of an Adverse Effect must include this in its written contingency plan (in accordance with Conditions A6.3 and A6.4).
- Condition H5.1 requires an awarding organisation to ensure that the result of each assessment taken by a Learner in relation to a qualification which it makes available reflects the level of attainment demonstrated by that Learner in the assessment.
- Condition H6.1(d) requires an awarding organisation to issue results which accurately and completely reflect the marking of assessments (including the outcome of any Moderation and other quality assurance process).
- Where an awarding organisation issues an incorrect result, it will have failed to comply with one or both of Conditions H5.1 and H6.1(d). There are a number of further requirements that could be relevant once an awarding organisation has issued an incorrect result.

- Condition A7.1 requires that where any incident occurs which could have an Adverse Effect, an awarding organisation must (whether or not it has previously identified a risk of that incident occurring) promptly take all reasonable steps to – (a) prevent the Adverse Effect and, where any Adverse Effect occurs, mitigate it as far as possible and correct it, and (b) give priority to the provision of assessments which accurately differentiate between Learners on the basis of the level of attainment they have demonstrated and to the accurate and timely award of qualifications. In many cases, where an awarding organisation has issued an incorrect result, an Adverse Effect could occur.
- Condition A8.2 requires that where malpractice or maladministration is suspected by an awarding organisation and there are reasonable grounds for that suspicion, the awarding organisation must promptly take all reasonable steps to prevent any Adverse Effect which may occur and, where an Adverse Effect occurs, mitigate it and correct it as far as possible. This obligation may be relevant where an incorrect result has been issued as a result of malpractice or maladministration.
- Condition I1.4 or (where Condition I1 does not apply to a qualification) the relevant Qualification Level Condition, requires that where the application of an appeals process leads an awarding organisation to discover a failure in its assessment process, it must take all reasonable steps to (a) identify any other Learner who has been affected by the failure, (b) correct or, where it cannot be corrected, mitigate as far as possible the effect of the failure, and (c) ensure that the failure does not recur in the future. Where the relevant qualification is required to have Review Arrangements in place, the relevant Qualification Level Conditions include similar requirements where a review leads an awarding organisation to discover a failure in its assessment process. An awarding organisation would need to meet these requirements where an appeals process or a review reveals a failure in its assessment process which may have led to incorrect results being issued.
- Where an awarding organisation has failed, or is likely to fail, to comply with its Conditions, we may take regulatory action.

What should an awarding organisation do when it discovers it has issued an incorrect result?

- Where an awarding organisation discovers that it has issued an incorrect result, we expect it to:
 - identify what steps it needs to take to understand what has happened. The awarding organisation should make sure it has adequate

information on which to base any decision about what to do next and whether to correct the result. Where it does not have adequate information on which to base its decision, the awarding organisation should gather any further information it requires to do so;

- determine whether the issue of the incorrect result has caused any Adverse Effect and whether there is the potential for any Adverse Effect to occur going forwards;
- notify Ofqual, where any Adverse Effect has occurred or could occur (in accordance with Condition B3.1);
- determine what action to take to, including whether or not to correct the result and whether any other action should be taken;
- keep a record of the decision it makes on whether any Adverse Effect has occurred or is likely to occur, its decision on whether or not to correct the result and its decision on any other action it takes to prevent, mitigate or correct any Adverse Effect. It should be able to explain, on a case-by-case basis, what action it has taken and why.

What should an awarding organisation consider when deciding what action to take?

- Where an awarding organisation discovers that it has issued an incorrect result, it must take all reasonable steps to prevent any Adverse Effect which could be caused or, where this is not possible, to mitigate and correct any Adverse Effect which occurs. In accordance with the definition set out in the Conditions, an Adverse Effect is most likely to be caused because the issuing of the incorrect result:
 - gives rise to prejudice to the Learner who has been issued with the result or prejudice to other Learners;
 - adversely affects the standard of the qualification; or
 - adversely affects public confidence in regulated qualifications.
- We expect awarding organisations to be aware that, in some instances, issuing an incorrect result could cause more than one Adverse Effect and that Adverse Effects may occur at different times.
- Where the issuing of the incorrect result has had or could have an Adverse Effect, the default position is that the awarding organisation should correct the result. This is because correcting the result will in most cases be the

course of action to either prevent the Adverse Effect from occurring or otherwise mitigate or correct an Adverse Effect which has occurred.

- However, we recognise that correcting the result may have a negative impact (which may include prejudice to an affected Learner). In this particular context, there will be some cases where this negative impact will be such that, balancing this impact against the Adverse Effect(s) involved, it would not be a reasonable step for the awarding organisation to correct the result.
- Even where the awarding organisation does not consider that the issuing of the incorrect result has had or could have an Adverse Effect, we generally expect the awarding organisation to correct the result, because this will go toward remedying the previous breach of the Conditions. Again, we recognise that in some cases the negative impact of correcting the result may be such that this would not be a reasonable course of action for the awarding organisation to take.
- We expect an awarding organisation to consider all relevant factors in order to:
 - identify any Adverse Effects caused (or potentially caused) by an incorrect result being issued; and
 - decide what action it would be reasonable to take, balancing any Adverse Effect against any negative impact which may be caused by correcting the result.
- The list below sets out some of the main factors which we expect an awarding organisation to consider (alongside any other relevant factors).
 - **Impact on the Learner who has been issued with an incorrect result** – The awarding organisation should consider the prejudice to the Learner of allowing an incorrect result to stand and whether correcting the result could lead to any prejudice. For example, prejudice may be caused in correcting a result where a result has already been used by a Learner to make decisions, such as whether to re-take a qualification, enrol in further or higher education, or enter employment. Conversely, in some situations allowing a Learner to rely on a result which he/she has not actually achieved may prejudice that Learner.
 - **Impact on other Learners** – In addition to prejudice to the Learner who has been issued with an incorrect result, the awarding organisation should consider whether allowing an incorrect result to stand could cause prejudice to other Learners. For example, Learner A could miss

out on a progression opportunity to Learner B because Learner B has incorrectly been given a higher result than his/her performance merited.

- **Public confidence** – The awarding organisation should consider the impact on public confidence in regulated qualifications of issuing incorrect results and of the action it takes on discovering that it has issued an incorrect result.
- **Standards** – The awarding organisation should consider the impact on the standard of the qualification caused by allowing an incorrect result to stand.
- **Number of Learners affected** – The impacts on other Learners, standards and public confidence are likely to be greater if a large number of Learners are affected.
- **Reliance on the incorrect result by third parties** – Where third parties have relied on the incorrect result, the awarding organisation should consider whether that reliance increases the possibility that an Adverse Effect could arise. For example, if a qualification is a licence to practise, the awarding organisation should consider whether allowing a Learner who may not have demonstrated the level of competence indicated by the incorrect result to keep that result could have an Adverse Effect. The awarding organisation should also consider the impact of correcting the result on parties which have relied on the incorrect result.
- **Timing** – The length of time since the result was communicated to the Learner, and any indication that an awarding organisation has given that the result may or may not be final, is likely to affect consideration of what is a reasonable course of action.
- **Malpractice** – If the Learner was found after due process to be involved in malpractice which contributed to the incorrect result being issued, this is likely to affect consideration of what is a reasonable course of action.
- The extent to which each of these factors is relevant, and whether there are any other factors that should be considered, will vary. This could depend, for example, on the purpose of the qualification and how it is used by the Learner or other Users of qualifications. Consideration of all the factors may not all point towards taking the same action.

- Awarding organisations should determine which factors are relevant and to give appropriate weight to these in each case to come to a reasonable course of action.

What should an awarding organisation do after deciding what action to take?

- After deciding what action to take, an awarding organisation should promptly implement its decision, including communicating any change in result to any affected Learners in an appropriate manner and, where appropriate, reissuing results and/or certificates.
- Condition I4.2(a) requires awarding organisations to take all reasonable steps to issue a certificate and any replacement certificate to any Learner who has a valid entitlement to that certificate or replacement certificate. Where an awarding organisation has decided to correct the result, it should take action to ensure that this requirement is complied with.
- An awarding organisation should consider any further actions that need to be taken as a result of implementing its decision. In accordance with Condition B3.5, the awarding organisation should notify Ofqual of any steps that it has taken or intends to take to prevent an Adverse Effect, or to correct or mitigate any Adverse Effect that occurs.
- In accordance with Condition A6, an awarding organisation should consider whether or not its contingency plan should be updated.
- Condition D3.3 requires that where an event relating to an awarding organisation has had an Adverse Effect, it must review and revise where necessary its approach to the development, delivery and award of qualifications to ensure it remains appropriate. Where an incorrect result has been issued and an Adverse Effect has occurred, the awarding organisation should ensure that it takes appropriate action in line with this requirement.

Question 14: Do you have any comments on our proposed guidance on correcting incorrect results?

Equality analysis

We have considered the potential impact on students who share protected characteristics⁶ of the draft guidance included in this consultation.

We are putting in place guidance for General Condition G6 – Reasonable Adjustments. This guidance provides examples of positive and negative indicators that would indicate compliance with this Condition. This should help ensure a more consistent approach to Reasonable Adjustments by awarding organisations so should have a positive impact in students who share protected characteristics. We are also proposing guidance for Condition G3 – Use of language and Stimulus Materials. This guidance will help promote a consistent approach across awarding organisations in this area and have a positive impact on students with protected characteristics.

In addition, our guidance for a number of other Conditions will have a positive impact on students who share protected characteristics by promoting a consistent approach across awarding organisations offering regulated qualifications. Specifically, our guidance for Condition C2 - Arrangements with Centres, G8 – Completion of the assessment under the required conditions, and G9 – Delivering the assessment should have a positive impact on students who share protected characteristics.

The guidance applies equally to all awarding organisations offering regulated qualifications. Awarding organisations must have regard to this guidance; they do not have a duty to follow it directly in all cases. This guidance will not prevent awarding organisations from making adjustments to their processes for students who share protected characteristics.

We have not identified any negative impacts of our proposed guidance for students who share protected characteristics.

⁶ For the purposes of the public sector equality duty, the 'protected characteristics' are disability, racial group, age, religion or belief, pregnancy or maternity, sex, sexual orientation, gender reassignment.

Responding to the consultation

Your details

To evaluate responses properly, we need to know who is responding to the consultation and in what capacity. We will therefore only consider your response if you complete the following information section.

We will publish our evaluation of responses. Please note that we may publish all or part of your response unless you tell us (in your answer to the confidentiality question) that you want us to treat your response as confidential. If you tell us you wish your response to be treated as confidential, we will not include your details in any published list of respondents, although we may quote from your response anonymously.

Please answer all questions marked with a star*

Name*

Position*

Organisation name (if applicable)*

Address

Email

Telephone

Would you like us to treat your response as confidential?*

If you answer yes, we will not include your details in any list of people or organisations that responded to the consultation.

Yes No

Is this a personal response or an official response on behalf of your organisation?*

Personal response (please answer the question 'If you ticked "Personal response"...')

Official response (please answer the question 'If you ticked "Official response"...')

If you ticked "Personal response", which of the following are you?

Student

Parent or carer

Teacher (but responding in a personal capacity)

Other, including general public (please state below)

If you ticked "Official response", please respond accordingly:

Type of responding organisation*

Awarding organisation

Local authority

School or college (please answer the question below)

Academy chain

Private training provider

University or other higher education institution

Employer

Other representative or interest group (please answer the question below)

School or college type

- Comprehensive or non-selective academy
 - State selective or selective academy
 - Independent
 - Special school
 - Further education college
 - Sixth form college
 - Other (please state below)
-

Type of representative group or interest group

- Group of awarding organisations
 - Union
 - Employer or business representative group
 - Subject association or learned society
 - Equality organisation or group
 - School, college or teacher representative group
 - Other (please state below)
-

Nation*

- England
- Wales
- Northern Ireland
- Scotland
- Other EU country: _____

Non-EU country: _____

How did you find out about this consultation?

Our newsletter or another one of our communications

Our website

Internet search

Other

May we contact you for further information?

Yes No

Questions

Question 1: Do you have any comments on our proposed guidance for A5?

Yes No

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Question 2: Do you have any comments on our proposed guidance for B3?

Yes No

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Question 3: Do you have any comments on our proposed guidance for C2?

Yes No

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Question 4: Do you have any comments on our proposed guidance for D3?

Yes No

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Question 5: Do you have any comments on our proposed guidance for D7?

Yes No

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Question 6: Do you have any comments on our proposed guidance for E3?

Yes No

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Question 7: Do you have any comments on our proposed guidance for E5?

Yes No

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Question 8: Do you have any comments on our proposed guidance for G1?

Yes No

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Question 9: Do you have any comments on our proposed guidance for G3?

Yes No

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Question 10: Do you have any comments on our proposed guidance for G6?

Yes No

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Question 11: Do you have any comments on our proposed guidance for G7?

Yes No

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Question 12: Do you have any comments on our proposed guidance for G8?

Yes No

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Question 13: Do you have any comments on our proposed guidance for G9?

Yes No

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**Question 14: Do you have any comments on our proposed guidance on
correcting incorrect results?**

Yes No

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Accessibility of our consultations

We are looking at how we provide accessible versions of our consultations and would appreciate it if you could spare a few moments to answer the following questions. Your answers to these questions will not be considered as part of the consultation and will not be released to any third parties.

Do you have any comments or suggestions about the style of writing?

Yes No

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Do you have any special requirements to enable you to read our consultations? (for example, screen reader, large text, and so on)

Yes No

Which of the following do you currently use to access our consultation documents? (select all that apply)

- Screen reader / text-to-speech software
- Braille reader
- Screen magnifier
- Speech-to-text software
- Motor assistance (blow-suck tube, mouth stick, and so on)
- Other

Which of the following document formats would meet your needs for accessing our consultations? (select all that apply)

- A standard PDF
- Accessible web pages
- Large-type PDF (16 point text)
- Large-type Word document (16 point text)

- eBook (Kindle, iBooks, or similar format)
- Braille document
- Spoken document
- Other

How many of our consultations have you read in the last 12 months?

- 1
- 2
- 3
- 4
- 5
- More than 5

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