

Consultation on Complaints and Appeals for Regulated Qualifications



November 2010

Ofqual/10/4778

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1. Ofqual's role as regulator

1.1 Introduction

- 1.1.1 The Office of Qualifications and Examinations Regulation (Ofqual) was established as an independent regulator by the Apprenticeship, Skills, Children and Learning Act 2009 (the Act). It is a non-ministerial government department. Our aim is to secure qualifications, examinations and assessments that are valued and trusted by learners, users and the wider public.
- 1.1.2 We regulate a wide range of qualifications in England and vocational qualifications in Northern Ireland. We do not regulate degrees.
- 1.1.3 The standards of regulated assessments and qualifications, and their fairness to learners, are at the heart of our work. Learners are as diverse as our society. We must make sure all learners receive the recognition they deserve from the qualifications, examinations and assessments they take and that the outcomes are valued.
- 1.1.4 We do this by maintaining standards, improving confidence and distributing information about qualifications and examinations. We regulate organisations that develop and award qualifications and that have responsibilities for assessments.
- 1.1.5 Ofqual was established on 1 April 2010 when part 7 of the Act¹ was commenced.
- 1.1.6 Our authority in relation to complaints and appeals, as defined in the Act, is detailed in section 150. Section 150 gives Ofqual authority to investigate complaints in relation to regulated qualifications and gives permission for this to be remitted to an independent body.
- 1.1.7 The explanatory notes to the Act confirm the intention that the new arrangements will replace the existing arrangements whereby the non-statutory Examinations Appeals Board (EAB) is responsible for dealing with appeals in relation to GCSEs, A levels and the Diploma principal learning and project components. The analysis of responses to the consultation document *Confidence in Standards: Regulating and Developing Qualifications and Assessments* (conducted by the Department for Children Schools and Families in June 2008) found that 75per cent of respondents favoured the

¹ www.opsi.gov.uk/acts/acts2009/ukpga_20090022_en_1

option of the regulator being required to establish an independent panel for appeals.²

1.1.8 In addition, for national curriculum assessments we have the power (section 161) to review the way in which the responsible body concerned has handled complaints that have been referred to it. We do not have the power to investigate these complaints.

1.2 Our work and priorities

1.2.1 Our priorities reflect the five statutory objectives that underpin our work. Our objectives address:

- the standards of regulated qualifications
- the standards of regulated assessments
- public confidence in regulated qualifications and regulated assessments
- awareness of the benefits of regulated qualifications
- the efficient provision and value for money of regulated qualifications.

1.2.2 We have identified seven strategic priorities for 2010/11. We will review and revise these priorities each year. Our 2010/11 priorities are to:

- maintain and establish standards in existing, new and revised qualifications and regulated assessment arrangements
- promote and sustain confidence in regulated qualifications and regulated assessment arrangements through targeted, consistently applied and proportionate interventions
- promote awareness and understanding of regulated qualifications and their benefits to learners, employers and higher education institutions
- promote the efficient and effective provision of regulated qualifications and in particular that any fees represent value for money

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www.education.gov.uk/consultations/downloadableDocs/Confidence%20in%20Standards%20consultation%20report.doc

- introduce and develop regulation in line with the statutory powers and duties as set out in the Act
- develop Ofqual as an independent regulator that follows best regulatory practice
- ensure we use our resources, including the skills and knowledge of staff, efficiently and effectively.

1.2.3 To achieve these priorities effectively we must use our regulatory requirements and approach to promote equality and inclusion. If we successfully achieve these priorities, learners from all communities, regardless of their background, will benefit.

1.3 How are we organised?

1.3.1 The Ofqual Board is responsible for all aspects of our work. It sets our strategic direction and oversees the effectiveness of our operations. Our Board members have a wide range of experiences and roles.

1.3.2 Our main office is in Coventry. We also have an office in Belfast. We are organised into four groups, each headed by a director. The groups are:

- Regulation
- Standards
- Internal and External Affairs
- Corporate Management.

1.4 Scope for regulated qualifications

1.4.1 This consultation addresses the arrangements we propose to put in place in order to handle and investigate both complaints and appeals. For the purposes of this consultation a complaint is an expression of concern about an aspect of a regulated qualification, its provision or a related service. An appeal is a formal request for a review of an awarding or grading/level decision. An appeal will be heard once the complainant has exhausted the awarding organisation's own processes.

1.4.2 There is no duty on Ofqual to retain the EAB or to set up an alternative independent body to investigate complaints. We could fulfil this function ourselves.

1.4.3 Anyone may report directly to us any issues that have arisen about the quality or implementation of a regulated qualification or regulated assessment that will

have an impact on the integrity or validity of the outcomes. They should be able to do so without fear of consequence from their employer. Such a report may be protected under the Public Interest Disclosure Act 1998 subject to the person having complied with the requirements of the Act.

- 1.4.4 Currently Ofqual has an Investigations Team that considers complaints and the EAB exists to consider appeals about grading decisions for GCSEs, A levels and the Diploma principal learning and project components across England, Wales and Northern Ireland. The EAB is independent of the awarding organisations and of the qualifications regulators³. The availability of an independent panel such as the EAB is highly valued. Any new arrangements must retain the strengths of the current system.

1.5 Complaints

- 1.5.1 Complaints that our Investigations Team currently considers include those about the following awarding organisation activities or functions:

- awarding organisation malpractice
- customer service
- complaints procedures
- quality assurance procedures
- procedures for inclusion, diversity and equal opportunities
- investigation procedures
- registration procedures for candidates and centres
- certification procedures.

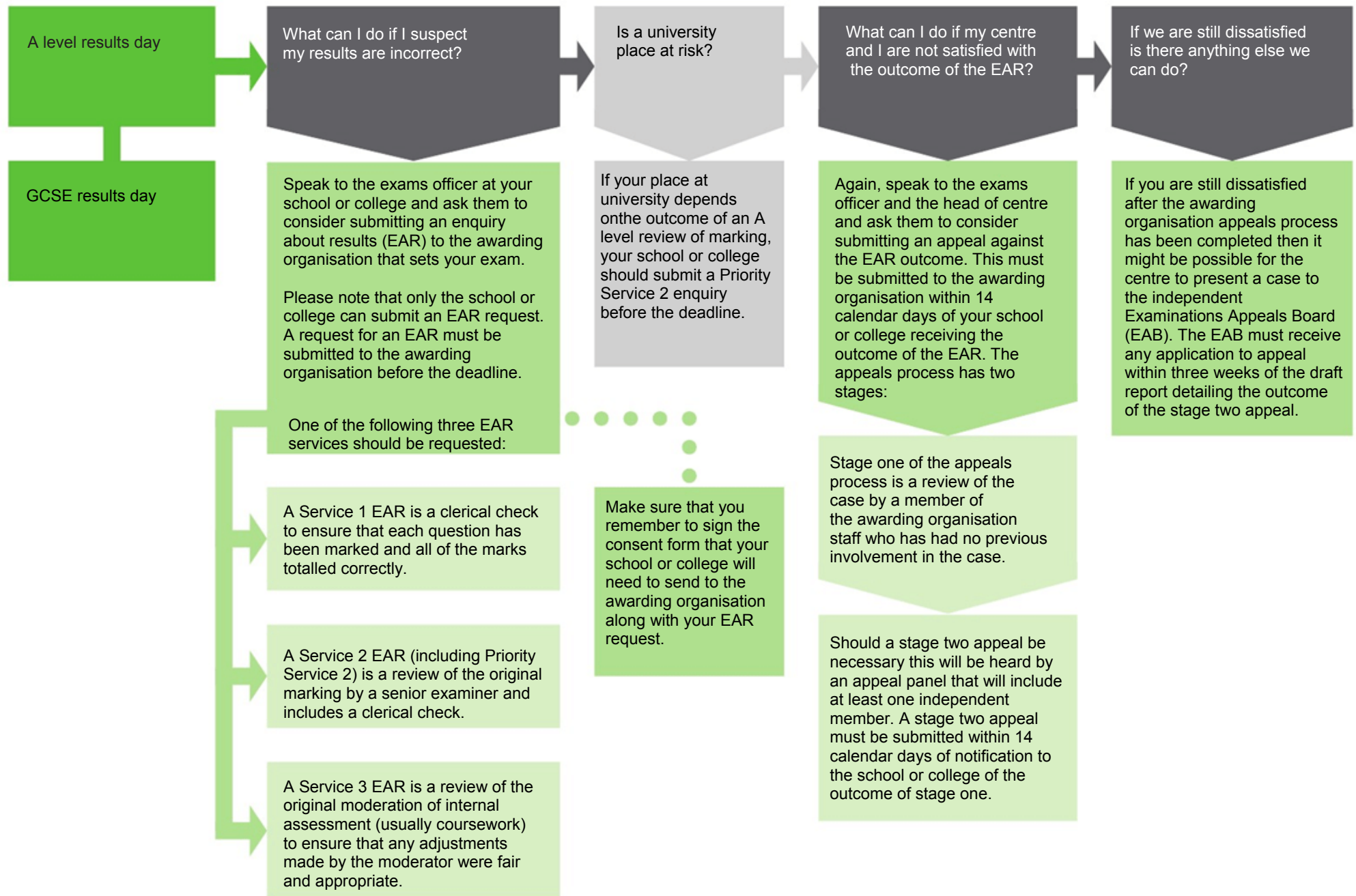
1.6 Appeals

- 1.6.1 Appeals against assessment decisions are in the first instance the responsibility of the awarding organisation that offers the qualification; that is the organisation that sets the examination paper, trains and standardises its examiners to mark consistently and accurately, and sets the grade boundaries. The EAB is currently the final avenue of appeal for GCSE, A level and Diploma principal learning and project components only.

³ The qualifications regulators are Ofqual, CCEA and DCELLS

- 1.6.2 Currently where centres or private (external) candidates wish to query results they must follow the awarding organisation's enquiry about results processes. Following this, should the centre or private candidate remain dissatisfied with the outcome they may appeal the outcome of the enquiry about results, initially to the awarding organisation's appeals office and then to an appeal panel convened by the awarding organisation.
- 1.6.3 Should a centre or private candidate remain dissatisfied with the outcome of the awarding organisation's appeals process, further, final recourse is available through the EAB. An EAB panel does not make judgements on the quality of candidates' work but determines whether the awarding organisation has complied with both its own policies and the regulators' requirements. Figure 1 illustrates the full process.

Figure 1: Appeals process



1.7 National assessments

- 1.7.1 Under current arrangements, should a school wish to query national assessment marking it should request a review through the responsible body, which is currently the Qualifications and Curriculum Development Agency (QCDA). This review is carried out by the test operations agency (currently Edexcel). QCDA reports the outcome of a review of marking to the school.
- 1.7.2 Review outcomes are final, but should a school be dissatisfied with the outcome of a review because the school feels the review procedures were not followed correctly, a school may request a process review through QCDA. As with a marking review, a process review is carried out by the test operations agency and reviewed by independent monitors appointed by QCDA. Ofqual has a duty to keep under review all aspects of the national curriculum assessment arrangements (section 161 (1) of the Act).
- 1.7.3 The Act is silent on the position of Ofqual to remit an independent body to carry out the appeals function for national assessments. Given the timing of this consultation in relation to the abolition of QCDA and the need to consider the matter further, this consultation does not cover matters relating to national assessment appeals. We will therefore maintain the current processes, described in paragraphs 1.7.1 and 1.7.2, for such appeals.

2. Examinations Appeals Board

2.1 Remit

2.1.1 The Examinations Appeals Board (EAB) is a non-statutory independent body, set up by Ministers in 1999, to help give confidence to schools and colleges, and through them, to candidates and parents, that the grades awarded are fair and accurate. The EAB is governed by its remit and procedures.⁴ Appeals can be referred to the EAB by or on behalf of learners in England, Wales and Northern Ireland.

2.1.2 Currently an EAB hearing is the final stage of the GCSE, A level and Diploma principal learning and project components results enquiry and appeals process. The hearing follows the completion of the awarding organisation procedures where there has been no satisfactory resolution for the centre or private candidate. The EAB's remit ensures that where disputes cannot be resolved between centres or private candidates and the awarding organisations, there is a fully independent avenue of appeal to review the correct application of procedures governing the setting, marking and grading of these regulated qualifications.

2.1.3 The EAB has heard 112 appeals and has allowed 32% of them over ten years. If an appeal is allowed, the case is returned to the awarding organisation with a request for further work to be carried out; this may involve a request to re-mark candidates' scripts.

2.1.4 The EAB has three Board members (one chairperson and two deputy chairpersons) and a pool of seven panellists. Two panellists sit with an EAB Board member to hear each appeal.

2.1.5 The EAB will consider:

- in relation to the award of A level and GCSE grades:
 - whether the awarding organisation concerned has used procedures that are consistent with the regulators' code of practice
 - whether it has applied procedures properly and fairly in arriving at judgements
- in relation to the award of principal learning and project grades:

⁴ www.theeab.org.uk/index.php?option=com_content&view=article&id=55&Itemid=64

- whether the awarding organisation concerned has used procedures that are consistent with the regulatory arrangements and operating rules
- whether it has applied procedures properly and fairly in arriving at judgements.

2.1.6 The procedures open to investigation include the full range of processes involved in and leading to the award of grades:

- the setting of papers
- marking and moderation
- the grade award
- enquiries about results and appeals
- special consideration
- access arrangements
- administrative arrangements.

2.1.7 The appeals process is not concerned with making judgements about candidates' work in the examination since that is properly the responsibility of the senior examiner of the awarding organisation concerned.

2.1.8 The EAB is not authorised to re-mark candidates' work, nor can it change grades issued by an awarding organisation. It has powers to direct an awarding organisation to reconsider a case and may offer recommendations. If the Board is dissatisfied with an awarding organisation's response to its direction for a reconsideration of a case, it will report the matter to the appropriate regulatory authorities, setting out the reasons for the referral.

2.1.9 The EAB is the final avenue of appeal for centres and private candidates and its decisions, therefore, are final.

3. Structural options for consideration

3.1 Recommendation

3.1.1 The Ofqual Board has considered a number of structural options for the future processes for complaints and appeals in relation to regulated qualifications. The Ofqual Board recommends that option 4 is adopted. Building upon the very positive reputation that the current EAB has within the sector has real benefits. Option 4 provides the right balance between independence for appeal hearings, value for money and any increase in the number of appeals due to any revised remit, if required.

3.2 Options

Option 1 – awarding organisations to take on all responsibility

3.2.1 We considered the option that the awarding organisations could undertake all complaints and appeals handling. However, the Ofqual Board decided that taking no responsibility and not utilising the power given to Ofqual by the Act:

- would not be in the spirit of the legislation
- may undermine public confidence in regulated qualifications if complaints can only be made to the awarding organisation
- would undermine our ability to achieve our objective to promote the awareness of the benefits of regulated qualifications
- may lead to greater referral of matters to the courts, which could be costly for learners and lead to delays.

3.2.2 We need to ensure that whatever the agreed future structure is, it must only be enacted after the awarding organisations' arrangements have been completed but without satisfactory resolution to the centre or private candidate.

Option 2 – Ofqual to take on all responsibility

3.2.3 We could investigate complaints and hear appeals. This option would see the continuation of complaints investigation by our Investigations Team, but appeals against assessment, grading, level or awarding outcomes would be heard by panels of experts retained by us for this purpose. Under this option the EAB would not be retained, but to meet these requirements there would be a need for greater resourcing within Ofqual. The cost of the EAB is currently £80,000 annually, including staff costs.

3.2.4 The risk associated with this option is that because we regulate awarding organisations, we may be perceived as not being sufficiently independent and rigorous in identifying and dealing with failures in our own regulation, especially where an appeal is not allowed.

Option 3 – Ofqual as a gatekeeper

3.2.5 In this option we would act as a gatekeeper and decide which matters we should investigate and which we should refer to an independent appeals body. This option would enable us to see the full range of matters that an independent appeals body was dealing with and to filter out any that could be dealt with elsewhere. This would help to ensure that matters are dealt with at the appropriate level.

3.2.6 There would be a need for transparency about the gatekeeping decisions made. This may also generate a further layer of complaints specifically about the conduct of this process, including possible delays and the reasons for not referring matters to the independent appeals body, as well as introducing an additional layer of bureaucracy. Again there are cost implications of setting up an independent body (as in option 2) plus our internal costs in looking at each case.

Option 4 – an independent appeals body hosted by Ofqual (the EAB model)

3.2.7 Appeals that meet certain specific criteria would be referred directly to an independent appeals body by the complainant or centre, without the need for referral by Ofqual. We would retain responsibility for investigating complaints that did not constitute appeals against assessment, grading, level or awarding outcomes. This would allow the appeals body to be demonstrably independent of Ofqual and to comment, without prejudice, on the interpretation and implementation of our regulations by awarding organisations.

3.2.8 For this option to be successful there would need to be effective reporting to ensure we were gathering intelligence and acting in a timely way to address emerging problems.

3.2.9 This option avoids any risk that we are perceived to favour or disadvantage awarding organisations, or learners, or that we will be subject to accusations of a lack of independence and not being sufficiently independent and rigorous in identifying and dealing with failures in our own regulation. But it would create a remit for a separate organisation.

3.2.10 This option is the current situation with the EAB. The EAB invites the regulator and other bodies to send an observer to appeal hearings. All appeal decision letters are copied to regulators.

3.2.11 The costs in the current model are kept to a minimum by Ofqual hosting the EAB. That is, we provide accommodation and support services such as human resources/payroll, finance, facilities management, legal services and office management.

The remainder of this consultation is written with the assumption that we will adopt option 4.

4. Features for consideration

On the basis of the Ofqual Board’s recommendation for option 4, we invite respondents’ views on the features of an independent appeals body.

4.1 Scope

4.1.1 The EAB currently considers appeals about GCSE and A level examinations and the Diploma principal learning and project components. We would extend this scope so that an independent appeals body was able to consider appeals about any qualification regulated by us.

4.1.2 Currently the EAB only considers appeals about grading decisions. This scope would consequently have to be extended for an independent appeals body as many vocational qualifications are not graded/levelled, but are pass/fail.

Question

A: Do you agree that the scope of an independent appeals body should be extended to include all qualifications that we regulate whether graded/levelled or pass/fail?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.1.3 Requests for reasonable adjustments considered by awarding organisations can lead to complaints. Currently the EAB only considers the application of reasonable adjustments once the grade has been awarded. An appeal against an awarding organisation’s response to a request for a reasonable adjustment cannot be considered before the learner takes the examination or assessment.

4.1.4 Care would need to be taken to avoid accusations of discrimination by the independent appeals body. It is appropriate for the independent appeals body to consider whether an awarding organisation has followed regulatory requirements and its own procedures when considering a request for a reasonable adjustment.

Question

B: Do you agree that an independent appeals body should consider appeals relating to reasonable adjustments? We would welcome comments on the quality of service required for diverse learners.

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.1.5 The EAB does not currently consider matters arising from a finding of malpractice by a centre or candidate. The regulators require awarding organisations to investigate incidents of centre and candidate malpractice in the first instance. Should matters be unresolved to all parties' satisfaction they can be referred to the appropriate regulator's investigations team by any of the parties for further guidance or investigation.

Question

C: The regulators continue to investigate malpractice once the awarding organisation's procedures have been exhausted. This falls within the definition of complaints and it is therefore not necessary to remit this work to an independent appeals body. Do you agree?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.2 Who can appeal?

4.2.1 Appeals are currently made by centres or by private (external) candidates. Most learners cannot appeal directly. This is because a contract exists between the awarding organisation and the centre and not with the learner.

4.2.2 This is not currently problematic. However, there is always the possibility that there may be a breakdown in the relationship between the learner and the centre if the centre was suggested to be in some way implicated in the matter connected with the appeal.

4.2.3 Also, if the scope of the qualifications and assessments considered by an independent body was extended to include work-based vocational qualifications, the situation might become more complex in terms of who has the right to appeal.

4.2.4 For geographical coverage see section 4.4.

Question

D: Do you agree that a centre or private candidate can decide whether an appeal should be taken to the independent appeals body?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.3 Governance

4.3.1 Under current arrangements, appeals are heard by two panel members sitting with one EAB Board member. EAB Board members are involved with each individual hearing. This is in contrast to, for example, the Board of the Office of the Independent Adjudicator for Higher Education where Board members oversee the process and do not, therefore, get involved with individual hearings.

4.3.2 An independent appeals body would need to have appointments made to it, daily fees set and so on. Currently Ofqual oversees this for the EAB. We would continue with this role for an independent appeals body.

Questions

E: Do you agree that we should oversee the running of an independent appeals body?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

F: Do you agree that an independent appeals body should have a board and panellists who are involved in the hearings?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.4 England, Wales and Northern Ireland

4.4.1 Under the current system, an appeal can only be referred to the EAB by or on behalf of learners in England, Wales and Northern Ireland – although the Chair of the EAB can exercise discretion to accept an appeal not falling within this category because wider matters of principle have been raised by the case.

4.4.2 So, for example, an independent centre in Scotland (Scotland operates a different general qualifications system within the maintained sector to England, Northern Ireland and Wales) submitting an appeal on behalf of any one of its learners may find that appeal is rejected on the basis of jurisdiction.

4.4.3 The explanatory notes to the Act explain, at paragraph 449, that “Ofqual will be free to work jointly with its counterparts in other parts of the UK in relation to the investigation of complaints should it and they wish to do so”. This would require agreement at a country level.

Question

G: DCELLS, CCEA and Ofqual wish to continue the agreed current three-country geographical scope of the appeals mechanism. Is the three-country scope sufficient?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.5 Value for money

4.5.1 Appellants are not currently charged a fee. The EAB reimburses the expenses incurred by centres or private candidates travelling to/from an appeal hearing. The legislation is silent on charging the parties involved with an appeal. There is a risk that the introduction of a fee for the appellant could act as a disincentive or a barrier to those who might otherwise make an appeal. There is also a risk in requiring the awarding organisations to cover the cost of an appeal that more appeals may be allowed through the awarding organisation's appeal process to avoid this cost and that would create a standards issue.

Question

H: Do you agree that any parties involved in appeals should not be charged a fee by an independent appeals body?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

4.6 Redress

4.6.1 If an appeal is upheld by the EAB it currently requests the awarding organisation to reconsider the case. Such reconsideration may include requiring a further re-mark. The EAB does not have the power to make grading decisions. The EAB does publish a summary of all appeals held.

Questions

I: Do you agree that we should build into our general conditions of recognition a requirement that awarding organisations must have regard to any findings of an independent appeals body?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

J: Do you agree that findings against a particular awarding organisation should not be limited to that awarding organisation but should be regarded as a precedent that all awarding organisations should observe (where appropriate)?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree

Comments

K: Do you have any other comments to make on the consultation?

Responding

Thank you for taking the time to consider responding to our consultation on the complaints and appeals process. You can respond online, by completing the form by hand or downloading a version that you can complete using a word processing program.

Please feel free to respond to as few or as many questions as you wish.

The deadline for receipt of responses is 5pm 31st January 2011. Responses not submitted through the online platform can be returned by email to consultations@ofqual.gov.uk or by post to Consultations, Ofqual, Spring Place, Herald Avenue, Coventry CV5 6UB.

We will publish the report on the responses, the final complaints and appeals processes and the implementation timelines in the spring of 2011 after they have been considered and approved by Ofqual's Board.

Ofqual wishes to make its publications widely accessible. Please contact us if you have any specific accessibility requirements.

First published by the Office of Qualifications and Examinations Regulation in 2010

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