



# Examination Procedures Review Service

## Terms of Reference

1. The Exam Procedures Review Service (EPRS) is an Ofqual function to review applications in respect of specified regulated qualifications, in accordance with Ofqual's powers pursuant to the Apprenticeships, Skills, Children and Learning Act 2009 (ASCLA).
2. Exams and assessments were cancelled in summer 2020 as a result of the coronavirus pandemic. In the absence of exams and assessments, the qualifications in scope of EPRS were awarded based on information provided by Centres together (in some cases<sup>1</sup>) with a statistical standardisation process. An emergency framework of Conditions, Requirements and Guidance was put in place to regulate those awards (the GQCovid framework). These Terms of Reference concern the way in which the EPRS will operate for the following qualifications awarded in summer 2020<sup>2</sup>:
  - a. General Certificate of Secondary Education (GCSE);
  - b. General Certificate of Education (A level and AS qualifications);
  - c. Project qualifications at Level 3 (EPQ);
  - d. Advanced Extension Award qualifications (AEA).
3. In accordance with Condition I2 of the General Conditions of Recognition, awarding organisations must comply with this process.

<sup>1</sup> On 17 August 2020 we announced that all grades awarded would be the higher of Centre Assessment Grades or standardised grades.

<sup>2</sup> These Terms of Reference will not apply to qualifications awarded following examinations which will take place in autumn 2020 or spring 2021.

## Role

4. For qualifications awarded in summer 2020, the role of the EPRS is to consider applications made and to determine whether, in relation to an eligible application, the awarding organisation has:
  - a. Followed its own procedures (procedural grounds) in respect of:
    - (i) The management of any request for information under Condition GQCov4;
    - (ii) The management of any appeal under Condition GQCov5;
  - b. Secured the outcomes required by the GQCov framework of Conditions and Requirements in relation to any result and / or any appeal (compliance grounds).

## Outcomes

5. In accordance with Condition I2.2 of the General Conditions of Recognition, an awarding organisation must give due regard to the outcome of the EPRS process in relation to any qualification which it makes available.
6. An application to the EPRS may be allowed or dismissed.
7. Without prejudice to paragraphs 9 and 10, below, an application to the EPRS will be allowed where the decision-maker considers it more likely than not:
  - a. that the awarding organisation has failed to follow its own procedures (allowed on procedural grounds); or
  - b. that the awarding organisation has failed to secure the outcomes required by the regulations set and published by Ofqual (allowed on compliance grounds). In particular, the awarding organisation:
    - i. failed to provide necessary information following a request for such information in accordance with GQCov4;
    - ii. failed to provide an effective mechanism for the appeal of a result within the meaning of Condition GQCov5.1;
    - iii. failed to correct data in a manner consistent with Requirements issued under Condition GQCov3.2(a)(i).
  - c. that the awarding organisation has both failed to follow its own procedures and to secure the outcomes required by the regulations set

and published by Ofqual within the meaning of this section (allowed on procedural and compliance grounds).

8. An application to the EPRS will be dismissed in all other circumstances.
9. In relation to the determination of an application to the EPRS, the decision-maker will make the following assumptions (which may be rebutted):
  - a. the necessary information was provided by the awarding organisation (Condition GQCov4) where an appeal proceeded following the provision of information and no issue as to the sufficiency of information was raised as part of that appeal,
  - b. an appeals mechanism was effective (Condition GQCov5) where there is a reasoned decision which demonstrates that all relevant evidence was taken into account when the appeal was decided by a person meeting the requirements of Condition GQCov5.6(b),
  - c. data was corrected in a manner consistent with the Requirements issued under Condition GQCov3.2(a)(i) where the correction is consistent with advice given by the Technical Panel on Appeals.

## **Eligibility Criteria**

10. The EPRS will consider procedural and compliance grounds which relate to:
  - a. results issued under Condition GQCov3;
  - b. the provision of sufficient information under Condition GQCov4;
  - c. the operation and outcome of an awarding organisation's appeals process under Condition GQCov5 in relation to the calculation and issue of results.
11. The EPRS may consider only applications:
  - a. in respect of those qualifications and descriptions of qualifications listed at paragraph 2 to these Terms of Reference; and
  - b. in respect of Learners registered at Centres in England; and
  - c. which are made after the conclusion of the final stage of the awarding organisation's appeals process; and

- d. unless there are exceptional circumstances, which are made within 15 working days of the awarding organisation issuing a final decision in respect of the conclusion of the final stage of its appeals process.

12. Applications must be made by a Centre.

## Decisions

13. Applications to the EPRS which do not meet the eligibility criteria at paragraphs 10-12 of these Terms of Reference will be rejected. Eligible applications will proceed to the First Review Stage.

### 13.1. First Review Stage:

- a. The purpose of the First Review Stage is to identify cases in which, although eligible for EPRS review, there is no real possibility the application will be allowed;
- b. Applications which proceed to the First Review Stage will be considered by a member of Ofqual's staff at, or senior to, grade 7, as decision-maker;
- c. Where the decision-maker considers there is a real possibility the application may be allowed, the application will proceed to the Second Review Stage;
- d. Where the decision-maker considers there is no real possibility the application will be allowed, the applicant will be given reasonable opportunity to respond to the decision-maker's provisional view, the reasons for which will be explained in writing;
- e. Where, having considered any representations made by the applicant, the decision-maker remains of the view that there is no real possibility the application will be allowed, the application will be dismissed;

### 13.2. Second Review Stage

- a. The purpose of the Second Review Stage is to decide whether an application which has proceeded to that stage should be allowed or should be dismissed;
- b. Applications which proceed to the Second Review Stage will be considered:

- I. by a member of Ofqual staff at grade 6<sup>3</sup> or senior, as decision-maker; or
  - II. by an Independent Person appointed by Ofqual for that purpose.
- c. The applicant and the awarding organisation will usually be invited to attend a meeting with the decision-maker to consider the case. The meeting will take place remotely;
  - d. Where the decision-maker considers it appropriate, an initial view may be issued prior to any meeting with the parties, for the purpose of allowing the parties to respond to that initial view during the meeting;
  - e. Following the meeting, the decision-maker will issue a reasoned provisional view, to which the parties will be given reasonable opportunity to respond;
  - f. A final decision will be issued to the parties following the decision-maker's consideration of any representations made or following the expiry of the deadline for such representations if no representations are made.

## **Case Management**

### Directions

- 14. Ofqual staff at grade 7 or senior may at any time give case management directions to assist in the resolution of an EPRS application. A timeline will be set out in directions for each case which proceeds to the Second Review Stage.
- 15. Where the parties both agree, case management directions may be given which truncate the procedure anticipated in these Terms of Reference, including by the removal of procedural stages and / or the determination of an application by consent.

### Decision-makers – Exclusions

- 16. No member of Ofqual's staff shall act as decision-maker in relation to any application to the EPRS if they attended any meeting of the Technical Panel on Appeals in the post-results period as a member of that Panel.
- 17. No member of Ofqual's staff shall act as decision-maker in relation to an application to the EPRS if that person attended any meeting of the Technical

<sup>3</sup> Grade 6 is senior to grade 7.

Panel on Appeals in the post-results period to assist the Panel and, during a meeting that person attended:

- a. the appeal giving rise to the application was considered by the Technical Panel on Appeals; or
- b. an appeal, or appeals, raising substantially similar issues to those raised in the application was considered by the Technical Panel on Appeals.

### Independent Person

18. The Chief Regulator may appoint an Independent Person in connection with the review and determination of any application to the EPRS where:

- a. the appeal giving rise to the application was considered by the Technical Panel on Appeals; or
- b. an appeal, or appeals, raising substantially similar issues to those raised in the application was considered by the Technical Panel on Appeals.

19. Where an Independent Person is appointed, that person may be appointed:

- a. To advise the decision-maker, or
- b. To act as decision-maker.

20. Where an Independent Person is appointed to act as decision-maker:

- a. the Independent Person may request such advice and assistance from Ofqual, which may include legal and technical advice, as the Independent Person considers necessary;
- b. the Chief Regulator may at any time determine that legal or technical advice will be provided to the Independent Person whether or not a request for such advice has been made.

## **Reporting**

21. The EPRS will report its decisions in writing to:

- a. The applicant;
- b. The affected awarding organisation, at the review stages;
- c. The relevant Ofqual Executive Director;

22. Ofqual will publish a report on the work of the EPRS on an annual basis.

## **Review**

23. These Terms of Reference will be reviewed and amended as necessary.

## **Interpretation**

24. The rules of interpretation and definitions set out in Condition GQCov1 shall apply to these Terms of Reference.

25. The following terms shall have the following meaning in these Terms of Reference:

### **Independent Person**

A person who is not employed by Ofqual or an awarding organisation and who has not been employed by Ofqual or an awarding organisation within the 12 months preceding the date of these Terms of Reference. An Independent Person may be an organisation or body corporate.