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Open consultation

Introducing principles into the General Conditions of Recognition

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Applies to England

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Foreword by Sir Ian Bauckham CBE, Chief Regulator, Ofqual

Qualifications play a vital role in our education and training system. Every student rightly expects their qualifications to be of good quality, fairly assessed and meaningful. Those who use qualifications, such as employers and higher education institutions, rely on them to provide trustworthy information to inform the decisions they take. A central part of Ofqual's role is to ensure that qualifications fairly reflect students' accomplishments and stand the test of time.

One way we do this is through the rules we set, which awarding organisations must follow. To make sure our rules are as clear and well-understood as possible, we propose to introduce 6 principles, making the underlying expectations which sit behind them more explicit. While the principles would be new, the concepts they articulate already underpin our rules.

The principles will support awarding organisations' decision making. At board level they will support strategic decision-making and accountability. At an operational level they will provide additional clarity and coherence for those designing or running regulated qualifications. Awarding organisations may find them to be particularly relevant if they are faced with new, unexpected or novel situations.

The principles will also strengthen Ofqual's ability to respond in a principles-based manner, in addition to existing approaches, and help ensure Ofqual's rules remain effective, both now and in the future.

These principles will play an important role in helping Ofqual secure standards and public confidence in qualifications, and I am keen to hear your views on them.

Proposals at a glance

Ofqual is proposing to introduce a new Condition, referred to as the Principles Condition, within the General Conditions of Recognition. The Principles Condition contains 6 overarching principles and explains how these principles should be interpreted. Awarding organisations will be required to meet the Principles Condition by operating in a manner that reflects the following principles:

- Principle 1 – An awarding organisation must act with honesty and integrity.
- Principle 2 – An awarding organisation must treat Learners fairly by acting and taking decisions with due impartiality and based on appropriate evidence.
- Principle 3 – An awarding organisation must ensure that each qualification that it makes available, or proposes to make available is, and continues to be, fit for the purposes for which it is intended.
- Principle 4 – An awarding organisation must act in a way that maintains and, where possible, promotes public confidence in qualifications.
- Principle 5 – An awarding organisation must act in an open, transparent and co-operative manner with Ofqual and, as appropriate, with Users of qualifications.
- Principle 6 – An awarding organisation must conduct its activities with a proactive approach to compliance with its Conditions of Recognition.

We are also proposing to introduce statutory guidance to support the Principles Condition and to help awarding organisations understand the principles. All awarding organisations will be required to have regard to this guidance. The proposed guidance includes, where appropriate, examples of behaviours that would indicate whether an awarding organisation is, or is not, acting in line with a principle.

In addition to the principles themselves, the Principles Condition also sets out how an awarding organisation should interpret and apply the principles. In this consultation, the principles and their associated guidance are set out first, in order that each can be considered in turn. Those aspects of the Principles Condition and guidance that relate to their interpretation and application are set out in the sections following the principles. This sequencing in the consultation does not directly follow the way in which the Principles Condition will be structured – the full wording of the Principles Condition and its guidance, as it will appear in the General Conditions, is included in Annex A.

The introduction of the Principles Condition is intended to bring increased clarity to Ofqual's framework and guide an awarding organisation's actions when complying with Ofqual's rules.

Audience

This consultation is open to anyone who may wish to respond but may be of most interest to:

- awarding organisations that must comply with our rules
- students and apprentices, parents, teachers, schools, colleges, independent training providers, employers and other Users of qualifications

Consultation arrangements

Duration

This consultation will be open for 14 weeks starting on 6 November 2024 and ending on 12 February 2025 at 11:45pm.

Respond

Please respond to this consultation by using one of the following methods:

- complete the [online response](#)
- email your response to consultations@ofqual.gov.uk - please include the consultation title in the subject line of the email and make clear who you are and in what capacity you are responding

For information on how we will use and manage your data, please see Annex B: Consultation responses and your data.

Introduction

Ofqual's role and responsibilities

Ofqual is the independent, expert regulator of qualifications for England.

Ofqual is a non-ministerial department, created under the Apprenticeships, Skills,

Children and Learning Act 2009 with responsibilities in relation to regulated qualifications to:

- secure standards in qualifications so they give a reliable and consistent indication of knowledge, skills and understanding
- promote the development and implementation of National Assessments that give a reliable and consistent indication of achievement
- promote public confidence in qualifications and National Assessments
- promote public awareness and understanding of the range and benefits of regulated qualifications
- secure that qualifications are provided efficiently and represent value for money

Ofqual is independent of ministers and is accountable to Parliament for the maintenance of standards in regulated qualifications and assessments.

Independence is important to securing confidence in the standards and Validity of qualifications for students, apprentices, and those who use and rely on regulated qualifications.

Ofqual's additional responsibilities in relation to national assessments are regulated under a different regulatory framework, and are out of scope of this consultation.

Ofqual's regulatory approach

Ofqual regulates the awarding organisations that design, deliver and award regulated qualifications. We control entry to, and exit from, the regulated market, and we create rules, called Conditions of Recognition (or Conditions), and provide guidance for awarding organisations to make sure regulated qualifications are valid, reliable, fair and worthy of public confidence.

Ofqual takes a risk-based approach to its work, monitoring awarding organisations' compliance with the Conditions and prioritising evaluation and monitoring activities to those activities and organisations that pose the greatest risk to our statutory objectives.

In instances of non-compliance, we draw on our enforcement tools to hold awarding organisations to account. Where possible we will make sure an awarding organisation puts a situation right and takes action to prevent reoccurrence. Where appropriate, Ofqual takes punitive action against awarding organisations.

Reviewing our regulatory framework

The General Conditions of Recognition were first introduced in 2011. While we are confident our regulatory framework is effective, as a responsible regulator we want to ensure it remains as effective as possible by keeping it under review and updating it when and where necessary.

As part of this ongoing review process, Ofqual considers both the evolving state of its regulated market and learning from events that have happened since the Conditions were introduced. This includes events such as the pandemic and the many changes in technology over the past 13 years.

In reflecting on these changes, we seek to ensure that our regulatory framework is flexible and appropriately positioned to support decision-making when awarding organisations are faced with unexpected or novel events in the future.

Proposals

Ofqual proposes to introduce a new General Condition (the Principles Condition) setting out 6 principles all awarding organisations will be required to meet. The proposed principles will be overarching expectations of an awarding organisation in relation to all of its regulated activities, including the design, development, delivery, award and review of its qualifications, as well as related activities such as governance, interactions with Ofqual, and relationships with third parties. In meeting the Principles Condition, we will expect an awarding organisation to consider the impact of its actions not just in the short-term, but also across the longer-term.

We also propose statutory guidance for the Principles Condition, which awarding organisations will be required to have regard to. The statutory guidance will further support an awarding organisation's understanding of the principles, by providing examples of behaviours that may indicate it is, or is not, acting in a way that is likely to meet them. It will also include some guidance which will apply across all of the proposed principles to help make sure they are understood and applied accurately and consistently.

This consultation explains each of the principles and its guidance, and seeks views on them. It explains how they will take effect in our framework through the introduction of the Principles Condition and seeks views on this. There is also an opportunity to provide views on the proposals as a whole, and the equalities and

regulatory impact of the proposals.

Introducing principles

Ofqual proposes introducing a new Principles Condition into the General Conditions, setting out 6 overarching principles, and statutory guidance to support these. The principles in the Principles Condition will bring increased clarity to Ofqual's framework and guide an awarding organisation's actions when complying with Ofqual's rules.

We expect an awarding organisation will be able to use the principles to support its understanding of Ofqual's rules at all levels within the organisation, both at an operational, and a strategic level. They will help an awarding organisation understand the intent behind the Conditions.

An awarding organisation will also be able to use the principles to help navigate new, unexpected or novel situations. In some contexts, there could be different approaches, none of which are explicitly required, or prohibited, by the related Conditions. Since these situations are new or unexpected, we cannot predict them exactly, but the use of technology in assessments is one possible example. In such circumstances, the principles could provide high-level parameters within which the awarding organisation should operate, to aid its decision-making. Where a specific scenario is not covered by the existing Conditions, the principles may serve as a set of guiderails to guide an awarding organisation's judgements in response to such circumstances. The principles, alongside existing Conditions, may support an awarding organisation to explain and rationalise to Ofqual the judgements it has made about how it has responded to these new or novel situations. They would do this by providing clarity about Ofqual's underlying expectations. Where, Ofqual determines that new or amended requirements are needed, the principles may still serve as an interim measure in advance of any more specific requirements being put in place.

The principles will strengthen Ofqual's ability to respond in a principles-based manner, in addition to existing approaches, and help ensure Ofqual's framework remains effective, both now and in the future. They will do this by enabling Ofqual to tailor its regulatory approach more effectively, in response to specific circumstances.

When taking enforcement action for a breach of the General Conditions, Ofqual may

take action for a breach of a principle, either in isolation or in combination with another Condition.

Impact of introducing principles

The principles have been derived from the expectations that already exist in the General Conditions. The principles are intended to make sure these expectations are made more explicit by setting them out in the Principles Condition. As such, we consider that an awarding organisation that is acting in accordance with our existing Conditions will already be complying with the principles. However, extracting the principles and making them of general application will make it clear that they cover all of an awarding organisation's regulated activities, including where no more specific rules exist.

The principles may have a positive impact for an awarding organisation, as they will help it to better understand its obligations. This should help an awarding organisation respond to situations it faces without reference to the regulator, which is likely to benefit an awarding organisation and reduce the regulatory burden of complying with Ofqual's Conditions.

We consider that the principles work together, and it should be possible to comply with the principles within the Principles Condition, as well as the other Conditions, at the same time. We describe later in this consultation how it would be managed through the Conditions if this were not the case, although we have not identified any instances of this.

The proposed principles and guidance

We set out in this section the proposed principles and guidance. Each principle is set out in turn alongside the guidance which relates to that principle. We seek views on each principle, and on the introduction of the principles overall.

We explain in more detail how the principles and guidance will be incorporated into our regulatory framework through the Principles Condition and the statutory guidance which will apply, in the section of this consultation that follows the principles.

The full wording of all the Principles Condition and statutory guidance can be seen in

Principle 1 – An awarding organisation must act with honesty and integrity.

Proposed principle and guidance

Principle

An awarding organisation must act with honesty and integrity.

Guidance

Under Principle 1, an awarding organisation must act with both honesty and integrity in all of its activities, including in all matters relating to the development, delivery and award of its qualifications and in its interactions with Ofqual and third parties. That will encompass the whole lifecycle of the qualification, including initial design and ongoing review under Condition D3.1. An awarding organisation not complying with this principle may be found to have acted dishonestly, without integrity or both.

Ofqual will view an awarding organisation as having behaved dishonestly if, having established an awarding organisation's actual knowledge and understanding of the relevant facts, its conduct would be considered dishonest by the standards of ordinary decent people.

Indicators of an awarding organisation acting without integrity would include, but are not limited to, the following behaviours:

- intentional and/or reckless breaches of the awarding organisation's Conditions of Recognition,
- failing to remedy non-compliance with its Conditions of Recognition,
- ignoring risks to its ability to comply with its Conditions of Recognition,
- creating or allowing situations where the legitimate interests of Learners

are secondary to the awarding organisation's own interests,

- not taking sufficient care about the accuracy of information that the awarding organisation provides to Ofqual and Users of qualifications;
- behaving in a way that is evasive, misleading or disingenuous when dealing with Ofqual or Users of qualifications; and
- allowing and/or encouraging third parties to behave in a way that would risk bringing the awarding organisation into breach of its Conditions of Recognition.

Users of qualifications is defined at Condition J1.8 of the General Conditions of Recognition.

Rationale for proposal

This principle requires an awarding organisation to act with both honesty and integrity. These are basic standards of behaviour Ofqual expects of all awarding organisations in all activities under the Conditions. This includes the design, development, delivery, award and review of qualifications, as well as related activities such as governance, interactions with Ofqual, and relationships with third parties. An awarding organisation acting without honesty or integrity is likely to risk undermining public confidence in qualifications.

Our view is that the concept of honesty is clear and capable of being interpreted consistently by awarding organisations, in the context of their own activities. In our guidance, we have adopted the standard test for dishonesty by reference to the standards of ordinary decent people. We consider this to be the appropriate test in the context of our framework, particularly in view of the need to maintain public confidence in regulated qualifications. In deciding whether an awarding organisation has acted dishonestly, Ofqual will have consideration to any relevant case law and its [Taking Regulatory Action policy](#).

We consider that what is meant by acting with integrity may be more likely to be interpreted differently because Users of qualifications may have different expectations of what integrity means for different organisations. They may hold some types of organisation to a higher standard than others. Awarding organisations play an important role in the education sector, delivering qualifications that are often publicly funded using taxpayers' money. These qualifications play a vital role in the lives, future progression and employment opportunities of young people and other

Learners. Some qualifications will also serve as an indication that individuals have been trained in important safety requirements. As such, it is likely Users of qualifications will, rightly, hold awarding organisations to a high standard of integrity.

To support a consistent understanding, we propose to introduce guidance on integrity. The guidance provides examples of behaviours that would indicate an awarding organisation is not acting with integrity. The examples are not exhaustive, and we would welcome views on whether there are additional examples we should include.

We have considered whether also to provide indicators of behaviours that would indicate an awarding organisation is acting with integrity. We do not propose this, because we consider any positive indicators would largely mirror the negative ones, so be of limited additional value. They would also reflect behaviours an awarding organisation complying with the Conditions should already be demonstrating.

Question 1

Do you have any comments on Principle 1 or the supporting guidance?

Principle 2 – An awarding organisation must treat Learners fairly by acting and taking decisions with due impartiality and based on appropriate evidence.

Proposed principle and guidance

Principle

An awarding organisation must treat Learners fairly by acting and taking decisions with due impartiality and based on appropriate evidence.

Guidance

An awarding organisation is likely to treat Learners fairly where it acts and/or takes decisions using appropriate evidence and without undue discrimination or bias. This is applicable to all aspects of an awarding organisation's activities that it undertakes to meet its Conditions of Recognition. Such activities include, but are not limited to, management of incidents, complaints, appeals, Special Consideration and operational processes.

When an awarding organisation is considering how to ensure fairness for an individual Learner, or a cohort of Learners, it should not allow its approach to

- result in unfairness to other Learners (which may include past and future Learners),
- negatively impact upon standards for that qualification, or
- negatively impact upon public confidence in a particular qualification or the qualifications system.

In the context of results, fairness to Learners means an awarding organisation ensuring that each Learner receives a result which is an accurate reflection of the level of attainment demonstrated by that Learner in the assessments for the relevant qualification.

Decisions should be based on objective consideration of appropriate evidence and be independent of a Learner's identity or personal characteristics. This will include, but is not limited to, a Learner's Characteristics.

Rationale for proposal

Ofqual aims to ensure all Learners are treated fairly, through the obligations placed on awarding organisations in the Conditions. Given the importance of Learners being treated fairly, and the consequences if they are not, it is important for the concept of fairness to be reflected in the principles. This will support an awarding organisation in considering fairness throughout the design, development, delivery, award and review of its qualifications.

We recognise that fairness can mean different things to different people, and in different contexts. What one person considers fair in one set of circumstances may

be different to what someone else does. There are also aspects of fairness which are outside Ofqual's regulation. We propose guidance on fairness in the context of the lifecycle of qualifications. In this context, fairness relates to the need for an awarding organisation to act impartially, and take decisions on the basis of appropriate evidence. In particular, each Learner should receive a result that is an accurate reflection of the level of attainment they have demonstrated in their assessments. Those assessments should take place within an overall system of assessment that produces valid and reliable outcomes.

When considering fairness, it is important an awarding organisation considers the need to treat individual Learners fairly, and to treat other Learners fairly. We would expect an awarding organisation, for example, to balance the impact of its decisions on an individual Learner, with the impact on other Learners, including those who have taken assessments in the past or who will do in the future. We would also expect an awarding organisation to act impartially and take decisions based on objective consideration of appropriate evidence, and which are independent of a Learner's identity or personal characteristics, including, but not limited to, their protected characteristics in equalities law. We would expect an awarding organisation to ensure its approach to ensuring fairness does not negatively impact on standards or public confidence for the qualification. The proposed guidance sets out these expectations.

Question 2

Do you have any comments on Principle 2 or the supporting guidance?

Principle 3 – An awarding organisation must ensure that each qualification that it makes available, or proposes to make available is, and continues to be, fit for the purposes for which it is intended.

Proposed principle and guidance

Principle

An awarding organisation must ensure that each qualification that it makes available, or proposes to make available is, and continues to be, fit for the purposes for which it is intended.

Guidance

Fitness for purpose should be assessed at all stages of the qualification lifecycle. This will include ensuring that a qualification meets its objective under Condition E1.1 and is fit for purpose under Condition D1, as well as ensuring that assessments are fit for purpose under Conditions E4, G1.1 and G9.

An awarding organisation must keep each qualification it makes available under review to ensure that it remains fit for the purposes for which it is intended for as long as the awarding organisation continues to make that qualification available. For example, we will expect the content of qualifications to be kept under review and revised as appropriate, for the assessment approach to be modified as needed based on evidence from delivery, and for question banks to be refreshed.

Rationale for proposal

Condition D1 requires an awarding organisation to ensure each qualification it makes available is fit for purpose. The Condition sets out that a qualification will only be fit for purpose, where it secures, as far as is possible, the requirements of Validity, Reliability, Comparability, Manageability and Minimising Bias. These terms are defined in [Condition J1.8](#). The concept of fitness for purpose is relied on elsewhere in the General Conditions, including:

- Condition E4 which requires an awarding organisation to ensure an assessment is fit for purpose and can be delivered
- Condition G1 which requires an awarding organisation to ensure the content of an assessment is fit for purpose when setting an assessment
- Condition G9 which requires an awarding organisation to ensure that each assessment is fit for purpose when an assessment is delivered

Fitness for purpose is important, and applies at all stages of the design, development, delivery, award and review of a qualification. It should be kept under review, so a qualification remains fit for purpose over time. We propose that in addition to the specific obligations in the Conditions, fitness for purpose should be an overarching principle, across all an awarding organisation's activities.

The proposed principle builds on Condition D1, rather than replicating it. The Condition represents a specific application of the proposed principle. The principle sets out that qualifications should continue to be fit for purpose, including where the original purposes or the design of a qualification may need to change over time (for example if the needs of the sector to which it relates change). It is important an awarding organisation keeps fitness for purpose under review throughout the life of the qualification. These expectations are included in the proposed guidance.

Question 3

Do you have any comments on Principle 3 or the supporting guidance?

Principle 4 – An awarding organisation must act in a way that maintains and, where possible, promotes public confidence in qualifications.

Proposed principle and guidance

Principle

An awarding organisation must act in a way that maintains and, where possible, promotes public confidence in qualifications.

Guidance

An awarding organisation must at all times act in a way that maintains and,

where possible, promotes public confidence in qualifications. It must not act in a way which is likely to diminish public confidence in qualifications.

One of the key ways that public confidence is maintained is by having a robust system of assessment that ensures that each Learner receives a result which is an accurate reflection of the level of attainment that the Learner has demonstrated in the relevant assessment.

Indicators that an awarding organisation is acting in a way that is likely to diminish public confidence in qualifications might include, but are not limited to:

- significant, widespread or repeated instances of:
 - assessment material errors
 - inefficient delivery of assessments
 - delayed or inaccurate results
 - failure to promptly and comprehensively identify and remedy errors or adverse effects
 - failure to anticipate risks and have appropriate contingency plans in place
 - failure to properly investigate suspected malpractice
 - failure to ensure it has robust arrangements with third parties
- acting dishonestly or without integrity
- disorderly withdrawal of qualifications
- poor communications with Users of qualifications and other stakeholders, particularly where issues have arisen with a qualification. This includes a failure to be transparent, where appropriate

An awarding organisation must consider public confidence at every stage of the development, delivery and award its qualifications, and when reviewing its approach under Condition D3.1.

An awarding organisation must consider the impact of its actions, not only on public confidence in the short term, but also on the maintenance and promotion of sustained public confidence in the longer-term. This will include ensuring that the standards of its qualifications are maintained over time in compliance with Condition H3.1, and that its results give a reliable indication of knowledge, skills and understanding.

Rationale for proposal

Ofqual has a statutory objective to promote public confidence in regulated qualifications. One way we do this is by setting Conditions which, when met, are intended to ensure qualifications are designed, developed and delivered in a way that means they are fit for purpose. Both fitness for purpose and public confidence rely on qualifications being an accurate reflection of learning and assessment undertaken and retaining their value to remain a trusted currency of achievement over time. The proposed principles, in combination, are intended to support this happening.

If the public aren't confident in the system, they may not consider it a fair system, nor think that regulated qualifications are fit for purpose. And if qualifications are not fit for purpose, the public may not think it is a fair system, nor have confidence in it. It is important therefore that the need to maintain, and where possible promote public confidence, is set out through the principles. This will mean it must be considered by an awarding organisation at all stages of the design, development, delivery, award and review of its qualifications, as well as more widely, such as in its engagement with stakeholders. It is important that public confidence is considered not just in the short-term, but also longer term. This means an awarding organisation meeting this principle must consider how its approach will impact both.

The proposed principle requires an awarding organisation to maintain public confidence in all cases. We consider it reasonable to expect an awarding organisation, as a minimum, to act in this way, as it can control this through its own actions.

The principle requires an awarding organisation to also promote public confidence, where possible. The reason this is expected 'where possible' is because promoting public confidence is part of Ofqual's role, and there is a limit on the extent to which an individual awarding organisation can do this on its own. An awarding organisation can do everything in its control, but system-wide factors, over which it has limited control, could still affect public confidence. But it can make sure it does not do anything in relation to its own qualifications, which might cause public confidence to diminish or not be maintained.

The principle requires an awarding organisation to maintain public confidence in qualifications, rather than in a specific qualification. This is because public confidence is unlikely to relate only to a single qualification. An incident with one qualification, such as the late issuing of results, may negatively affect public confidence in qualifications generally, rather than just in the qualification for which results were late.

We recognise that an awarding organisation will be limited in the extent to which it can affect public confidence in qualifications that are offered by other awarding organisations. However, a particular marketing campaign that sought to criticise a competitor's qualifications could, for example, diminish public confidence in those qualifications.

The proposed guidance sets out our view that one of the main ways in which an awarding organisation can maintain public confidence is by issuing results that are an accurate reflection of how a Learner has performed in their assessment, and that standards are maintained over time. The guidance includes examples of behaviours that are likely to reduce public confidence in qualifications, such as making assessment material errors, issuing delayed or inaccurate results, or not promptly correcting issues that do occur. We do not propose examples of actions which would promote public confidence, as these would likely mirror the negative indicators, so be of limited additional value. Additionally in meeting the requirements of the Conditions, an awarding organisation is likely already to be demonstrating behaviours which would maintain or promote public confidence.

Question 4

Do you have any comments on Principle 4 or the supporting guidance?

Principle 5 – An awarding organisation must act in an open, transparent and co-operative manner with Ofqual and, as appropriate, with Users of qualifications.

Proposed principle and guidance

Principle

An awarding organisation must act in an open, transparent and co-operative

manner with Ofqual and, as appropriate, with Users of qualifications.

Guidance

An awarding organisation must engage proactively and constructively with Ofqual. This means providing all information that Ofqual requires to discharge its statutory functions. Relevant information must not be withheld from Ofqual unless required or permitted by law. Ofqual will continue to ensure that the information it requests from awarding organisations is proportionate and in line with its statutory objectives.

This principle, together with the requirement for a proactive approach to compliance in Principle 6 and Condition B3.1 where relevant, means that an awarding organisation should not take a reactive approach to the provision of information by merely providing information where asked by Ofqual to do so. Rather, we expect an awarding organisation to seek to provide information to us which it considers Ofqual is likely to want to have for the fulfilment of its functions, even where Ofqual is not aware of the existence of that information.

As appropriate, awarding organisations must be open, transparent and co-operative with Users of qualifications. This may, for example, require an awarding organisation to provide sufficient relevant information to allow Users of qualifications to make informed decisions about its qualifications. We would not expect an awarding organisation to provide commercially sensitive information to other awarding organisations, for example, or to provide confidential assessment material to Learners ahead of an assessment.

The requirement to be open and transparent with Users of qualifications, where appropriate, together with Principles 2 and 4, will also mean that the decisions made by an awarding organisation must be as explainable to Users of qualifications as possible. This is particularly important with respect to results, which should be fully explainable, as the effectiveness of an appeal process may depend on Learners and Centres having sufficient understanding of the rationale for a result to decide whether to request a review or appeal.

Users of qualifications is defined at Condition J1.8 of the General Conditions of Recognition.

Rationale for proposal

An awarding organisation is required, to provide information to Ofqual which it requires, to carry out its regulatory functions. For example:

- Condition B3 requires an awarding organisation to promptly notify Ofqual and provide information relating to events that could have an [Adverse Effect](#)
- Condition B4 requires an awarding organisation to provide any information to Ofqual which Ofqual might request for the purpose of performing its functions

An awarding organisation is also required, throughout the Conditions, to make information available to Learners and other Users of qualifications. This includes publishing a qualification specification, publishing various policies, and issuing results that are clear and accurate and capable of being understood. Such requirements typically relate to specific information.

It is important, that in addition to providing required information, the way an awarding organisation acts is open, transparent and cooperative. This is likely to support public confidence in qualifications, as well as being one way an awarding organisation might demonstrate acting with honesty and integrity.

This proposed principle relates to information an awarding organisation provides to Ofqual, and information it makes available to other Users of qualifications. The nature of the information provided to Ofqual is likely to differ from that provided to other Users of qualifications. The principle requires an awarding organisation to always act in an open, transparent and cooperative manner with Ofqual, but this will be qualified in relation to other Users of qualifications, where it will be expected where appropriate, rather than in all cases. For example, we would not expect an awarding organisation to provide commercially sensitive information to other awarding organisations, nor to provide confidential assessment material to Learners ahead of an assessment. The proposed guidance highlights the differences between these respective expectations.

The proposed guidance explains how this principle will be applied, so it does not fundamentally alter existing obligations for awarding organisations to provide information to Ofqual, nor impose onerous expectations on awarding organisations. Awarding organisations will continue, for example, not to be required to provide information that they are permitted or required to withhold by law. Ofqual will continue to ensure that any information it does request is proportionate and in line with its statutory objectives.

Awarding organisations will be expected to ensure information provided is as

explainable to Users of qualifications as is possible. It would not be appropriate for an awarding organisation to merely provide information to Users of qualifications, if it was obvious they would not be able to understand it. This would be particularly important, for example, where information about results needs to be understood to inform decisions about whether to submit an appeal.

Question 5

Do you have any comments on Principle 5 or the supporting guidance?

Principle 6 – An awarding organisation must conduct its activities with a proactive approach to compliance with its Conditions of Recognition.

Proposed principle and guidance

Principle

An awarding organisation must conduct its activities with a proactive approach to compliance with its Conditions of Recognition

Guidance

We will expect an awarding organisation to proactively understand and act in compliance with its Conditions of Recognition.

As part of this, an awarding organisation should have in place effective processes and systems to allow it to comply with its Conditions of Recognition as required by Condition A5.

An awarding organisation acting in a way that facilitates compliance with the principle is likely to demonstrate behaviours including, but not limited to:

- seeking to understand how its Conditions of Recognition apply to its actions and its qualifications
- being accountable for compliance with Ofqual's regulatory framework
- endeavouring to do things right first time
- promptly and openly acknowledging when things go wrong
- ensuring that its policies and processes are fit for purpose, effective, and properly followed by the awarding organisation
- promptly remedying any breaches of its Conditions of Recognition which do occur
- learning from its mistakes, and the mistakes of other awarding organisations
- being alive to emerging risks and putting relevant mitigations in place
- having processes in place that allow it to effectively manage change
- maintaining appropriate technical assessment expertise.

Rationale for proposal

We expect an awarding organisation to take a proactive approach to complying with the Conditions. This could mean where an awarding organisation is required by the Conditions to have a policy, it should not only have a policy, but the policy should be effective, be followed, and kept under review. While this is expected in the Conditions, we propose to make it clearer through this principle.

The proposed guidance explains these expectations. It provides a non-exhaustive list of behaviours an awarding organisation meeting this principle might demonstrate, such as:

- seeking to understand how the Conditions apply to its actions and qualifications
- endeavouring to do things right first time
- acknowledging and promptly fixing things when they do go wrong, and
- maintaining the necessary technical assessment expertise for its activities.

Question 6

Do you have any comments on Principle 6 or the supporting guidance?

Question 7

Are there any principles you would expect to see but which have not been proposed?

Incorporating the principles into Ofqual's regulatory framework

The proposed principles will be a General Condition, and the proposed guidance will be statutory guidance. This means, as for all Conditions, an awarding organisation will be required to comply with the principles and where it does not, Ofqual may take enforcement action. An awarding organisation will have to have regard to the guidance. This means that it should only be departed from where an awarding organisation has a clear, logical and convincing reason for doing so.

We will monitor and enforce against the Principles Condition using the same approach as for the rest of our regulatory framework, and in line with our [Taking Regulatory Action policy](#). Where we find non-compliance, we may choose to enforce against one or more principles within the Principles Condition in isolation, or in conjunction with enforcement against other specific Conditions. We may for example, in the event of an awarding organisation failing to comply with a request to provide information to Ofqual under General Condition B4, also consider whether it has failed to meet Principle 5, which requires the awarding organisation to act in an open, transparent and co-operative manner with Ofqual.

The Principles Condition will apply across the design, development, delivery, award and review of qualifications, as well as related activities such as governance, interactions with Ofqual and third parties. The Principles Condition will be at the beginning of the General Conditions and we envisage it being numbered PR1, PR2 etc, to avoid renumbering existing General Conditions.

The Condition requires an awarding organisation to conduct its activities in a way that is designed to facilitate its adherence with the principles. The proposed wording of the Condition is below:

PR1.1 An awarding organisation must conduct its activities in a way that is designed to facilitate its adherence to the following principles:

- a) Principle 1 – An awarding organisation must act with honesty and integrity.
- b) Principle 2 – An awarding organisation must treat Learners fairly by acting and taking decisions with due impartiality and based on appropriate evidence.
- c) Principle 3 – An awarding organisation must ensure that each qualification that it makes available, or proposes to make available is, and continues to be, fit for the purposes for which it is intended.
- d) Principle 4 – An awarding organisation must act in a way that maintains and, where possible, promotes public confidence in qualifications.
- e) Principle 5 – An awarding organisation must act in an open, transparent and co-operative manner with Ofqual and, as appropriate, with Users of qualifications.
- f) Principle 6 – An awarding organisation must conduct its activities with a proactive approach to compliance with its Conditions of Recognition.

The Principles Condition explains how the principles should be interpreted. An awarding organisation will be required to comply with all the principles and there will not be a hierarchy. Where some principles are more relevant than others for a specific scenario, it will be for an awarding organisation to determine this. The principles should not conflict with one another, and we do not envisage a situation where compliance with one would make it impossible to comply with others. But if this did happen, the Principles Condition requires an awarding organisation to comply with all the principles to the greatest extent it can, and to decide on any trade-offs, based on the specific circumstance it is facing.

The proposed principles have been designed not to conflict with other General, Qualification, or Subject Level Conditions. The principles have been drawn from the General Conditions, so it should be possible to comply with the Principles Condition, and other Conditions at the same time. The Principles Condition sets out that in complying with the principles, an awarding organisation must also comply with all the other Conditions to which it is subject. The Principles Condition does though provide for the event that a principle does conflict with a Condition, in which case an awarding organisation is required to comply with the other Condition over the Principles Condition.

The proposed Conditions setting out these expectations are below:

PR1.2 In any case where there is a conflict between two or more of the principles in Condition PR1.1, an awarding organisation must secure compliance with all of the principles to the greatest extent possible.

PR1.3 So far as it is possible to do so, an awarding organisation must comply with its Conditions of Recognition in a way which is compatible with Condition PR1.1.

PR1.4 Where there is any inconsistency between Condition PR1.1 and any other of its Conditions of Recognition, an awarding organisation must comply with the other Condition of Recognition.

Question 8

Do you have any comments on the Principles Condition which will be used to incorporate the principles into Ofqual's General Conditions of Recognition?

We propose statutory guidance to the Principles Condition, to which an awarding organisation must have regard, to help it understand the principles. While the principles are intended as simple overarching concepts, the guidance will help support consistent understanding. The guidance for each principle is included in the relevant sections of this consultation.

In addition to the guidance for each principle, we propose general guidance explaining how the principles should be used. This explains how the principles interact with one another. It explains that in some cases, principles may overlap, so should be considered as a whole, rather than in isolation. The guidance explains what an awarding organisation should do where it does not consider it possible to comply with both a principle, and a Condition. It also explains that where an awarding organisation uses a third party to carry out any part of the development, delivery and award of a qualification on its behalf, it should ensure the principles continue to be met. The guidance highlights the need for an awarding organisation to consider not only the impact of its approach to meeting the principles in the short-term, but also across the longer-term.

The proposed general guidance is set out below:

General

Condition PR1.1 requires an awarding organisation to conduct its activities in a way that is designed to facilitate its adherence to the principles set out in the condition. The principles apply to all of an awarding organisation's actions in relation to its regulated activities.

Each of the principles in Condition PR1.1 is discussed in turn in the guidance below. However, the principles in Condition PR1.1 will often overlap in practice. For example, a failure by an awarding organisation to act honestly is also likely to damage public confidence in qualifications. Likewise, the concept of integrity will often be encompassed within Principles 2 to 6 such that a breach of those principles may also be a breach of the requirement to act with integrity in Principle 1.

The principles in Condition PR1.1 are intended to assist an awarding organisation as it seeks to comply with its other Conditions of Recognition. As such, Condition PR1.3 requires an awarding organisation to comply with its Conditions of Recognition in a way which is compatible with the principles, so far as it is possible to do so.

There may be times when it is not possible to comply with a principle and to also meet an obligation in another Condition of Recognition. In those circumstances, Condition PR1.4 ensures that the specific obligation will take precedence over the broader principles. This reflects the fact that the other conditions in our framework are designed to deal with specific situations and issues in relation to which we have considered it necessary to place particular requirements on an awarding organisation.

For example, an awarding organisation may be required to maintain the confidentiality of assessment materials under Condition G4.1. Condition PR1.4 ensures that Condition G4.1 takes precedence as this is necessary to maintain the accuracy of results in the relevant qualification. It thus ensures that there is no conflict between the requirement to maintain confidentiality and the requirement of openness and transparency in Principle 5 and that an awarding organisation is clear on which obligation it must meet.

The principles in Condition PR1.1 do not form a hierarchy and no one principle is any more important than the others. Therefore, where two or more principles in Condition PR1.1 are in tension, Condition PR1.2 requires an awarding organisation to seek to comply with all of the principles in

Condition PR1.1 to the greatest extent possible.

In complying with the principles, we will expect an awarding organisation to consider not just short-term consequences, but the impact of its actions across the longer-term.

Where an awarding organisation arranges for a third party to undertake on its behalf, any part of the development, delivery or award of its qualifications under Condition C1, the awarding organisation should not encourage or permit the third party or Centre to act in a manner that offends the principles in Condition PR1.1. Where an awarding organisation discovers that a third party acting on its behalf has acted in a manner that offends the principles in Condition PR1.1, it should take appropriate action where necessary to comply with Condition C1.1(b).

Question 9

Do you have any comments on the proposed statutory guidance to the Principles Condition?

Question 10

Are there any other aspects of the Principles Condition for which you consider guidance to be necessary and if so, what are these?

Overall views

This consultation has set out Ofqual's proposals to introduce the Principles Condition into the General Conditions. The Principles Condition is intended to bring increased clarity to Ofqual's framework and guide an awarding organisation's actions when complying with Ofqual's rules. It sets out 6 principles which articulate the underpinning overall intent behind Ofqual's requirements.

The consultation has sought views on the Principles Condition, the individual principles and the statutory guidance. Here we would like to understand your views on the proposals as a whole.

Question 11

To what extent do you agree or disagree with Ofqual's proposals to introduce these principles into the regulatory framework? Please provide any comments.

Question 12

Do you have any other comments about the introduction of the principles which you have not yet made?

Equalities impact assessment

Ofqual is a public body, and therefore the public sector equality duty in the Equality Act 2010 applies. Within this consultation, the impacts on Learners (positive and negative) have been considered in relation to the proposals, including for those who share a particular protected characteristic^{[footnote 1](#)} and reasons such as their socio-economic background.

We have not identified any negative impacts caused by the proposed principles. The principles set out expectations that should lead to all Learners being treated more fairly, and should have a positive impact on all Learners, including those who share a protected characteristic.

Principle 1 requires awarding organisations to act with honesty and integrity. It provides guidance of indicators that an awarding organisation is not doing this, which include intentional or reckless breaches of the General Conditions. This would include any breaches of its equalities-related obligations, for example those set out under Condition G6, requiring an awarding organisation to have a policy for Reasonable Adjustments. The guidance also refers to an example of an awarding organisation placing its own interests above the legitimate interests of Learners. This includes those interests that relate to a Learner's protected characteristics.

Principle 2, which requires an awarding organisation to treat all Learners fairly by acting and taking decisions with due impartiality and based on appropriate evidence should have a positive impact on all Learners. The guidance to this principle sets out that a Learner is likely to be treated fairly, where an awarding organisation acts and/or takes decisions without undue discrimination or bias. The use of the term 'undue' reflects that assessments will inevitably discriminate between Learners, based on

whether or not they know or can do something. But these decisions should be based on appropriate evidence, be impartial, and Learners should not be discriminated between for other reasons, including because of sharing a particular protected characteristic.

It is possible Principle 2 may have a positive impact on Learners who share a particular protected characteristic. Such Learners, by virtue of sharing a protected characteristic, are potentially at greater risk of being treated unfairly, hence why they have been identified under the Equality Act as protected characteristics. Therefore, the principle requiring all Learners to be treated fairly, is likely to positively impact these Learners, potentially to a greater degree than Learners who do not share a particular protected characteristic.

Question 13

Are there other potential equality impacts that have not been identified? If yes, what are they?

Question 14

If you have identified any negative impacts of these proposals, do you have any suggestions for how those potential negative impacts on particular groups of Learners could be mitigated?

Regulatory impact assessment

In developing these proposals, we have been mindful of the potential impact of imposing additional requirements on awarding organisations. As the proposed principles and guidance will become part of our regulatory framework, there will be an impact on awarding organisations in making sure they understand and adhere to the principles.

We do not anticipate the impact of these proposals to be significant, although we acknowledge that by imposing the Principles Condition, there will inevitably be some impact on awarding organisations. The principles have been designed to articulate expectations that already exist, albeit not always explicitly, in the Conditions. Therefore, any additional steps an awarding organisation needs to take to meet the principles should be minimal if it is already meeting the requirements of the

Conditions. An awarding organisation complying with the Conditions is likely to be doing many of the things that would also be required to meet the principles. We do however acknowledge, that initially at least, there may be additional work for an awarding organisation to review and ensure this. They may make changes to processes and procedures to ensure it acts in a way that meets the principles, and the other Conditions to which it is subject.

The impact of the proposed principles may be felt differently by different awarding organisations. For those who are already meeting the Conditions, and acting largely in line with the proposed principles, the impact is likely to be minimal. Awarding organisations who find it necessary to change processes and procedures may see a bigger impact.

For newer awarding organisations, who may be establishing processes and procedures, the proposed principles may help them develop these, by helping them understand what is meant by a particular Condition, where they may be deciding between different approaches.

Overall, our view is that while there will be some additional burden because of the proposed principles, this will not be significant. We consider it justified, and the long-term benefits to awarding organisations, and to Ofqual, of a clearer understanding and more consistent interpretation of the framework will outweigh the potential short-term burden of familiarising and ensuring the principles are met.

Question 15

Are there any regulatory impacts that have not been identified arising from the proposals? If yes, what are they?

Question 16

Are there any additional steps that could be taken to reduce the costs or burdens of the proposals?

Innovation

Ofqual has a duty under the Apprenticeships, Skills, Children and Learning Act 2009 to have regard to the desirability of facilitating innovation relating to the provision of

regulated qualifications. Ofqual has committed to surveying awarding organisations' views of the impact of its regulatory requirements on innovation and to consider any revisions required in response.

Ofqual has not identified any negative impacts on innovation as a result of these proposals. The principles may have a positive impact on innovation as they will provide clarity by supporting an awarding organisation's understanding of Ofqual's framework. The principles may also have a positive impact by supporting an awarding organisation in responding to new or novel situations, for example by reducing the regulatory uncertainty an awarding organisation might experience when considering when and how to implement new approaches or technology.

Question 17

Do you have any comments on the impact of the proposals on innovation by awarding organisations?

Next steps

This consultation will be open for 14 weeks until 12 February 2025. During this time, we plan to engage with awarding organisations and other interested stakeholders, to ensure we get a range of views about these proposals.

Following the consultation, we will consider responses received to both the consultation and through the engagement activities.

We intend to publish the final Principles Condition which will include the principles, and the statutory guidance to the Principles Condition, and for these to become part of our framework. We will provide further information about the exact timelines for this work during and following the consultation period.

Annex B: Consultation responses and your data

Why we collect your personal data

As part of our consultation process, you are not required to provide your name or any personal information that will identify you. However, we are aware that some respondents would like to provide contact information. If you or your organisation are happy to provide personal data, with regard to this consultation, please complete the details below. We would like to hear as many views as possible and ensure that we are reaching as many people as possible. In order for us to monitor this, understand views of different groups and take steps to reach specific groups, we may ask for sensitive data such as ethnicity and disability to understand the reach of this consultation and views of specific groups. You do not have to provide this information and it is entirely optional.

If there is any part of your response that you wish to remain confidential, please indicate at the appropriate point in the survey.

Where you have requested that your response or any part remains confidential, we will not include your details in any published list of respondents, however, we may quote from the response anonymously in order to illustrate the kind of feedback we have received.

Your data

Your personal data:

- will not be sent outside of the UK unless there are appropriate safeguards in place to protect your personal data
- will not be used for any automated decision making
- will be kept secure

We implement appropriate technical and organisational measures in order to protect your personal data against accidental or unlawful destruction, accidental loss or alteration, unauthorised disclosure or access and any other unlawful forms of processing.

Your rights: access, rectification and erasure

As a data subject, you have the legal right to:

- access personal data relating to you
- object to the processing of your personal data
- have all or some of your data deleted or corrected
- prevent your personal data being processed in some circumstances
- ask us to stop using your data, but keep it on record

If you would like to exercise your rights, please contact us using the details below. You can also find out [more about Ofqual's privacy information](#).

Freedom of Information Act and your response

Please note that information in response to this consultation may be subject to release to the public or other parties in accordance with access to information law, primarily the Freedom of Information Act 2000 (FOIA). We have obligations to disclose information to particular recipients including members of the public in certain circumstances. Your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance requests for disclosure against any obligation of confidentiality. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response and assess this in accordance with applicable data protection rules.

Members of the public are entitled to ask for information we hold under the Freedom of Information Act 2000. On such occasions, we will usually anonymise responses, or ask for consent from those who have responded, but please be aware that we cannot guarantee confidentiality.

If you choose 'no' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we won't make your personal name and private contact details publicly available.

How we will use your response

We will use your response to help us shape our policies and regulatory activity. If

you provide your personal details, we may contact you in relation to your response. We will analyse all responses and produce reports of consultation responses. In the course of analysis, we will where possible avoid using your name and contact details. We will only process the body of your response, but we are aware that in some cases, this may contain information that could identify you.

Sharing your response

We may share your response, in full, with The Department for Education (DfE) and The Institute for Apprenticeships & Technical Education (IFATE) where the consultation is part of work involving those organisations. We may need to share responses with them to ensure that our approach aligns with the wider process. Where possible, if we share a response, we will not include any personal data (if you have provided any). Where we have received a response to the consultation from an organisation, we will provide the DfE and IFATE with the name of the organisation that has provided the response, although we will consider requests for confidentiality.

Where we share data, we ensure that adequate safeguards are in place to ensure that your rights and freedoms are not affected.

We use Citizen Space, which is part of Delib Limited, to collect consultation responses and they act as our data processor. You can view [Citizen Space's privacy notice](#).

Your response will also be shared internally within Ofqual in order to analyse the responses and shape our policies and regulatory activity. We use third party software to produce analysis reports, which may require hosting of data outside the UK, specifically the US. Please note that limited personal information is shared. All personal contact information is removed during this process. Where we transfer any personal data outside the UK, we make sure that appropriate safeguards are in place to ensure that the personal data is protected and kept secure.

Following the end of the consultation, we will publish an analysis of responses on [our website](#). We will not include personal details in the responses that we publish.

We may also publish an annex to the analysis listing all organisations that responded but will not include personal names or other contact details.

How long will we keep your personal data?

Unless otherwise stated, Ofqual will keep your personal data (if provided) for a period of 2 years after the consultation closing date.

Our legal basis for processing your personal data

Where you provide personal data for this consultation, we are relying upon the public task basis as set out in Article 6(1)(e) of UK GDPR to process personal data which allows processing of personal data when this is necessary for the performance of our public tasks. We will consult where there is a statutory duty to consult or where there is a legitimate expectation that a process of consultation will take place. Where you provide special category data, we process sensitive personal data such as ethnicity and disability, we rely on Article 9(2)(g) of UK GDPR as processing is necessary for reasons of substantial public interest.

The identity of the data controller and contact details of our Data Protection Officer

This privacy notice is provided by The Office of Qualifications and Examinations Regulation (Ofqual). The relevant data protection regime that applies to our processing is the UK GDPR^[footnote 2] and Data Protection Act 2018 ('Data Protection Laws'). We ask that you read this privacy notice carefully as it contains important information about our processing of consultation responses and your rights.

How to contact us

If you have any questions about this privacy notice, how we handle your personal data, or want to exercise any of your rights, please contact our data protection officer at dp.requests@ofqual.gov.uk

We will respond to any rights that you exercise within a month of receiving your request, unless the request is particularly complex, in which case we will respond within 3 months.

Please note that exceptions apply to some of these rights which we will apply in accordance with the law.

You also have the right to lodge a complaint with [the Information Commissioner](#) (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at:

ICO,

Wycliffe House,

Water Lane,

Wilmslow,

Cheshire,

SK9 5AF

Tel: 0303 123 1113

1. The protected characteristics under the Equality Act 2010 are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. With respect to the public sector equality duty under section 149 of the Equality Act, we are not required to have due regard to impacts on those who are married or in a civil partnership. [↵](#)
2. Please note that as of 1 January 2021, data protection laws in the UK have changed. The General Data Protection Regulation (EU) 2016/679(GDPR) no longer applies to the UK. However, the UK has incorporated GDPR into domestic law subject to minor technical changes. The Data Protection, Privacy and Electronic Communications (Amendment etc.) EU exit Regulations (DPPEC) came into force in the UK on 1 January 2021. This consolidates and amends the GDPR and UK Data Protection Act 2018 to create the new UK GDPR. [↵](#)

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