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Open consultation

# Annex A – Draft Principles and Statutory Guidance

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**Applies to England**

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## Annex A – Draft Principles and Statutory Guidance

### Principles

**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.

**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.

## Guidance

### 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).

### **Principle 1 - An awarding organisation must act with honesty and integrity.**

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.

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

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.

**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.**

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.

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

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.

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

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.

### **Principle 6 - An awarding organisation must conduct its activities with a proactive approach to compliance with its Conditions of Recognition**

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

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