ofqual

Guidance

Supporting compliance and taking regulatory action

Published 30 October 2025

Applies to England

Contents

Print this page

Background

About Ofqual

Ofqual is the Office of Qualifications and Examinations Regulation. We are a statutory body, created by the Apprenticeships, Skills, Children and Learning Act 2009, as amended by the Education Act 2011 (the Act). The Act sets out our legal framework.

We regulate to secure the standards of, and promote public confidence in, qualifications. We also regulate to secure efficiency in the provision of qualifications and to raise awareness of the range and benefits of regulated qualifications. When things go wrong, or we anticipate they may go wrong, we take appropriate regulatory action.

We regulate academic and vocational qualifications where some learners are, or are likely to be, assessed in England. We only regulate these qualifications if they are provided by a body we have recognised to provide them. Each recognised body is known as an "awarding organisation". The qualifications we regulate are known as "regulated qualifications". Regulated qualifications remain regulated wherever in the world the learner takes their assessment.

We also review all aspects of statutory assessment arrangements ("regulated assessment arrangements", that is, national curriculum and early years foundation stage assessments.

About this document

This document explains how we intend to use our statutory

powers to take regulatory action as well as describing other less formal action which we take more frequently to support awarding organisations to comply with the conditions to which their recognition is subject (their conditions of recognition). From time to time we will evaluate our approach and revise this document as appropriate. We will consult when we propose to make any changes.

> This is the third version of our Taking Regulatory Action policy. It has been revised to reflect our regulatory strategy and our experience of using our powers to take regulatory action since the policy was last updated in May 2012. We now call the policy 'Supporting Compliance and Taking Regulatory Action'.
>
> The first version of this policy was published in June 2011 and it was amended in May 2012 mainly to reflect the changes that were made to our powers by the Education Act 2011.
>
> For the third version, we have renamed the policy: Supporting Compliance and Taking Regulatory Action, because the focus of our work is preventing non-compliance and minimising the need to take formal regulatory action.

This policy is part of the Qualifications Regulatory Framework, which sets out how we monitor awarding organisations and enforce each awarding organisation's compliance with its conditions of recognition.

The policy relates only to regulated qualifications (including regulated end-point assessment qualifications (EPAs)) and the awarding organisations that provide them. For information about regulated assessment arrangements, see the Regulatory framework for national assessments: National curriculum and early years foundation stage assessments (2018).

How we approach regulatory action

We follow good regulatory practice, particularly the principles of transparency, consistency, proportionality, targeted action and accountability, as well as the Macrory report Regulatory Justice: Making Sanctions Effective (November 2006). In line with these principles, we target our regulatory activities according to our assessment of risks to learners, standards, efficiency and public confidence.

We hold awarding organisations accountable for the quality and standards of their regulated qualifications. We act in the way we consider reflects the best interests of learners, those that rely on qualifications, and the role of qualifications in a productive economy and society at large.

We take action when we believe it is appropriate. This may include acting to prevent something going wrong, such as to stop an awarding organisation from breaching its conditions of recognition. When things go wrong we will consider the action we should take to make sure the situation is put right. In particular, when an awarding organisation is in breach of, or likely to breach, its conditions of recognition, we act as appropriate to:

- make sure the awarding organisation takes a particular course of action to comply with its conditions of recognition, and take further action if it does not
- promote public confidence in qualifications through visible, appropriate and effective regulatory action
- prevent the awarding organisation gaining from any breach of its conditions
- deter the awarding organisation and other awarding organisations from similar breaches, and

When taking decisions, we consider all the circumstances of the case in the light of available evidence. We treat like cases alike,

and we recognise where differences of fact mean that cases should be treated differently.

This does not mean every decision whether to take action or what action to take will be the same, as each set of circumstances may differ. We use our professional judgement and discretion, taking account of relevant factors, which include:

- the nature and impact of a breach (or likely breach) on standards in qualifications, on learners and on public confidence
- whether the awarding organisation identified the issue itself and has taken steps to address the issue
- whether the awarding organisation, and its senior management, acted in good faith,
- the attitude and actions of individuals and managers and the awarding organisation's co-operation with our processes,
- the awarding organisation's acceptance of responsibility, and
- the awarding organisation's compliance history (including whether the non-compliance is a one-off or part of a pattern)

We mainly direct our regulatory activity towards behaviours we consider present the greatest threats to our statutory objectives and the greatest risks to the interests of learners and others that rely on qualifications.

In relation to the breach of a condition by an awarding organisation, we take into account all relevant facts, including:

- the seriousness of the breach including the duration of the breach, the impact of the breach and any harm caused by the breach
- the organisation's compliance history (including whether the non-compliance is a one-off or part of a pattern)
- whether the organisation identified the issue itself and has taken steps to address it

- the organisation's acceptance of responsibility
- its co-operation with our processes, and
- whether it acted in good faith

We have regard to the impact of any regulatory action we take on economic growth.

Range of regulatory actions available

Each awarding organisation must comply with its conditions of recognition. Where an awarding organisation reports a failure to comply to us, it otherwise appears to us that an awarding organisation has failed to comply, or we judge that there is a likelihood that it will fail to comply, we will decide what action is appropriate. We can use the powers explicitly given to us in legislation (statutory powers), but there is a wider range of actions available to us, including measures we can take at an earlier stage, where we identify a risk that an awarding organisation might fail to comply. Depending upon the facts of a particular case, we may use one or more of the actions available to us in order to achieve the best outcome.

Some of the statutory powers available to us are referred to in legislation as 'sanctions' – to give a direction, impose a monetary penalty or withdraw recognition. We have set specific governance arrangements which reflect the gravity of those powers. When we decide whether a case should be escalated so we can consider whether to impose a sanction we apply a 'case to answer' test, which involves considering:

- the strength of the evidence that there has been a breach
- the seriousness of the breach, and
- whether it is likely to be in the public interest for Ofqual to impose a sanction

Non-statutory actions

Our preferred approach is to support awarding organisations to remain in or return to compliance with their conditions of recognition by encouraging them to identify risks and potential issues early and making sure they resolve weaknesses in systems and processes before adverse effects can occur.

We will often use non-statutory means, at least in the first instance, to influence an awarding organisation's behaviour and to support compliance. We will typically use non-statutory approaches where the nature and effect of the issue does not justify formal intervention, which might include where:

- we have not identified any non-compliance with a condition, but consider that early intervention in relation to risks we have identified will reduce the potential for non-compliance to occur in the future
- it appears on the basis of the evidence available to us, that there has been or is likely to be non-compliance, but it is not significant and its impact on learners and others, and on public confidence is low, or
- the awarding organisation has promptly brought an issue, which might include its non-compliance, to our attention and is already taking corrective or investigative actions itself which we deem to be sufficient

There are various non-statutory actions available to us, which include:

- asking an awarding organisation to explain the action it is taking or will take to address an issue, and monitoring its progress in doing so
- giving an awarding organisation a limited period of time to address its failure to comply with its conditions of recognition and to demonstrate to us that it has done so within the timeframe, and taking further action only if we are not satisfied at the end of the period
- making requirements under a condition of recognition

- recording a determination that an awarding organisation has breached a condition of its recognition
- publishing information about circumstances in which we have found, or which have been brought to our attention, that conditions of recognition are not being complied with (whether involving an individual awarding organisation or across a number of awarding organisations) and, where appropriate, making clear our dissatisfaction with the behaviour of the awarding organisation or awarding organisations
- accepting and publishing an undertaking from an awarding organisation under its conditions of recognition, to take a specific course of action
- issuing a rebuke where an awarding organisation has breached a condition

Further information about some of these non-statutory actions is given later in this document.

Statutory actions
We can seek to influence the way an awarding organisation behaves by using our statutory powers to:

- impose or remove General and special conditions of recognition including:
  - an entry and inspection condition
  - a fee-capping condition
- make some or all of an awarding organisation's qualifications subject to an accreditation requirement
- give a direction to an awarding organisation
- impose a monetary penalty (a fine) on an awarding organisation, and
- withdraw an awarding organisation's recognition, in full or in respect of specified qualifications or a description of qualifications

Further information about these statutory actions is given later in

this document.

We may also:

- require an awarding organisation to co-operate with a regulatory review of its activities, documents or processes, or to participate in a market research exercise (which may include a 'mystery shopper' exercise)
- investigate a particular incident or series of incidents that raise concerns about the operation of the wider qualifications system or the behaviour of one or more awarding organisations

We can use our powers in combination. For example, we might direct an awarding organisation to take action to bring itself back into compliance with its conditions of recognition and also decide that a fine is a suitable response to that breach.

We will refer a matter to other bodies to investigate if they are better placed to do so. For example, if we were concerned about fraud we would generally refer the matter to the appropriate investigating authority; unlawful discrimination we would generally refer to the Equality and Human Rights Commission; anti-competitive practice we would generally refer to the Competition and Markets Authority; and we would generally refer concerns about significant personal data infringements to the Information Commissioner.

Investigation

We will investigate whenever we consider this is the most appropriate way for us to understand more about an event, incident or issue which concerns an awarding organisation.

There are a variety of different ways we can investigate an issue, which range from asking a series of targeted questions or using our powers under the conditions to require an awarding organisation to provide information we specify, to commencing a formal regulatory investigation with a defined and documented scope and which may require the imposition of an Entry and

Inspection Condition (set out later in this document).

Publication and information sharing

We will be transparent in our approach and will report publicly whenever we give a direction, impose a fine or withdraw any part of an awarding organisation's recognition. We will usually publish information about any other statutory regulatory action that we take, unless we say otherwise in this policy or there are exceptional circumstances that justify withholding publication. We consider that public confidence in regulated qualifications will be promoted by being transparent where we have taken action to resolve non-compliance, even where the non-compliance would not otherwise have become known to the public. Publication serves as a safeguard for awarding organisations and the regulator and is in the public interest[footnote 1].

Where we take non-statutory action, our approach to publication will depend on the nature of the action we take. For example, we will normally publish an undertaking and will always publish a rebuke (subject to the conclusion of any appeal process), while we will consider on a case-by-case basis whether to publish other forms of non-statutory action.

Whenever we publish information about regulatory action (statutory or non-statutory), we will notify the awarding organisation in advance of the planned publication and provide details of the timing and content of the publication. In some cases, we may decide it is necessary to notify the awarding organisation only shortly before publication; we will explain why we have done so in any such case.

We may consider delaying the publication of information about statutory or non-statutory regulatory action if, for example, publication at a particular time may exacerbate existing risks to learners or to standards, or might undermine public confidence.

Where we consider it appropriate to do so, and whether or not we take regulatory action, we may share relevant information and work with other public organisations including other qualifications regulators (in accordance with sections 40AA, 156 and 157 of the Act). The main organisations we share information with are the other UK qualifications regulators and any relevant government departments, bodies or agencies.

Non-statutory action

This section explains the main non-statutory actions we can take and the factors we will take into account when we are considering whether to take non-statutory action and which particular action to take.

Some of the factors that might lead us to take non-statutory regulatory action are:

> We have identified a risk that the awarding organisation might fail to comply with its conditions of recognition and we judge that non-statutory intervention is sufficient to minimise or mitigate that risk.
>
> The awarding organisation has identified its own failure to comply with its conditions, has reported the breach to us promptly, has taken swift action to prevent or mitigate any adverse effects and has a robust plan in place to prevent any recurrence.
>
> The incident or event had no or minimal adverse effects and there is no other good reason to take formal regulatory action.

In some cases we might take non-statutory action alongside formal regulatory action. For example, we might impose a

monetary penalty to reflect past non-compliance and accept an undertaking from the awarding organisation which sets out its plan to prevent the incident or event from recurring.

Setting requirements

Some conditions allow us to set requirements that specify actions an awarding organisation must take to comply with the condition. We can also impose special conditions (below) that allow us to set requirements. The conditions that give us this power explain that we can set requirements under that condition and the type of requirements that may be set.

Where we set requirements under a condition, those requirements will specify what the awarding organisation must do and the timescale within which it must do it. Any requirements we set will be put in writing.

Examples of the requirements we can set under the conditions include, but are not limited to:

- providing information we need to perform our functions
- providing information in connection with technical evaluation and taking specific action informed by that evaluation
- revising the number of Total Qualification Time or Guided Learning hours assigned to a qualification
- revising a Centre Assessment Standards Scrutiny strategy, for example by including Moderation where this is not otherwise required
- making specific amendments to a conflict of interest policy
- amending a plan for withdrawing a regulated qualification from the market

In many cases we will provide feedback and advice to the awarding organisation before setting requirements under a

condition. This allows the awarding organisation to take action without the need for requirements, or to address our concerns differently, perhaps by providing more detailed information.

If we set requirements under a condition the awarding organisation must comply with those requirements. If an awarding organisation does not comply with those requirements it will breach the condition under which they are set. We will usually consider a failure to comply with such requirements to be a serious breach of the conditions and will consider taking statutory regulatory action.

Restraining the issue of results

One of the specific actions we can take under the conditions is to set requirements that prevent an awarding organisation from issuing results for a qualification until a particular time, or until it has complied with any other requirements we set in relation to those results.

The circumstances in which we might consider exercising this power include, but are not limited to:

- where we judge it necessary to intervene to ensure results for similar qualifications, which are made available by several awarding organisations, are issued at the same time,
- where we have evidence that the assessments set by an awarding organisation are not fit for purpose
- where we are concerned that an awarding organisation might not have completed, or does not have the resources to complete, sufficient or effective quality assurance in relation to the results it proposes to issue
- where we consider the process an awarding organisation has followed to set standards is inadequate or inappropriate, and intervening will promote consistency in measuring levels of attainment over time and/or between similar qualifications

- where we judge there are reasonable grounds to suspect malpractice or maladministration that might affect the validity of results, and the awarding organisation nonetheless proposes to issue those results before completing an adequate investigation into the suspected malpractice or maladministration

Restraining an awarding organisation from issuing results is a serious step that could cause inconvenience and distress for learners and other users of qualifications. Before taking action that might delay results, we will carefully consider the interests of the cohort of learners affected by our decision and seek to balance this with the need to maintain standards for the qualification in the longer term. Wherever possible we will aim to act early so the awarding organisation has sufficient opportunity to take remedial action, or to provide additional assurance, to allow results to be issued on time or with a minimal delay.

If an awarding organisation is unable or unwilling to take the necessary action after we have given notice restraining the issue of results, we will consider escalating our approach, including by taking statutory regulatory action where we consider this appropriate.

In particular, should an awarding organisation refuse to take an action we have specified then we might give a direction in accordance with this policy, which we can then enforce through the courts. We would also consider whether we can continue properly to regulate the awarding organisation, or whether we should take action to withdraw recognition.

Recording non-compliance

Most incidents of non-compliance with an awarding organisation's conditions of recognition will be isolated, may be unlikely to recur and the awarding organisation will either resolve any underlying issues swiftly, or will ensure any longer lasting

impact on learners will be minimal. In these circumstances we commonly decide it is not necessary to take any action, but we will usually want to record the circumstances of the non-compliance to ensure we have an accurate compliance history for the awarding organisation.

In many cases, the awarding organisation will admit the non-compliance without prompting and in most other cases an agreement is reached following dialogue or correspondence with the awarding organisation .

In the minority of cases where the awarding organisation does not agree with an allegation of non-compliance , we will consider any representations the awarding organisation has made and make a determination whether or not a condition has been breached. We will record the reasons for our decision together with the circumstances of any breach (the determination decision). We will also record the steps we have taken to allow the awarding organisation to admit any non-compliance.

We will retain records of non-compliance and will use these to inform our assessment of risk, our evaluation of the framework of conditions and guidance and where relevant, any future decisions about taking regulatory action in relation to the awarding organisation. We will retain records of an awarding organisation’s past non-compliance throughout the time we regulate it, and for 7 years after we cease to regulate it. However, the relevance of past non-compliance and the weight it might be given in determining the outcome of future cases will usually decrease over time.

Appeals

An awarding organisation that disagrees with a determination decision will have the opportunity to appeal against that decision. We have set appeal rules that explain the procedure for such an appeal and which are published together with this policy. When the appeal is considered, the decision-makers will be able to allow the appeal or dismiss the appeal. Where the appeal is dismissed, the decision-makers may confirm the determination

decision, require further investigation of the issue or take alternative regulatory action, which may be non-statutory action or statutory action.

Accept an undertaking

An undertaking is a commitment by an awarding organisation to take specific actions, or implement an action plan, which it has identified as necessary to secure ongoing compliance with its conditions of recognition. Undertakings are given under the conditions, which means an awarding organisation must comply with any undertaking it gives.

In some cases, we might decide to accept an undertaking in circumstances where we could otherwise give a direction. In particular, an undertaking may be preferable where the awarding organisation admits non-compliance and has put in place a credible plan to secure sustainable compliance within a reasonable period of time.

We may also accept an undertaking where there has not been any non-compliance, for example where the awarding organisation agrees to take measures to prevent an identified risk of non-compliance from materialising, or to secure assurances from an awarding organisation where there is going to be a change to its governance, financial or other relevant arrangements.

An undertaking often includes a detailed action plan, sometimes as a schedule to the undertaking. The awarding organisation must ensure its action plan will address all the issues to which the undertaking relates and should be able to explain to us how the action plan was developed and why it will deliver the necessary outcomes. We will not accept an undertaking if we consider the action plan is clearly inadequate, but the responsibility for ensuring the action plan is sufficient and comprehensive remains with the awarding organisation.

We will expect an undertaking to explain how and when the awarding organisation will assure us that it is delivering its action plan effectively and that the plan is having the necessary impact. Where the awarding organisation considers its action plan is not having the intended effect, it should talk to us about how it proposes to amend the action plan.

In some cases we might decide we can only accept an undertaking if it includes a commitment by the awarding organisation to engage a third-party organisation or individual to support it. This might involve the third-party reviewing the awarding organisation's systems and supporting the creation of an action plan, or providing us with assurance by auditing the implementation and impact of the awarding organisation's action plan (or both).

An awarding organisation that fails to comply with an undertaking it gives will breach the condition under which it is given. We will usually regard the failure to comply with an undertaking as a serious breach of the conditions that will require statutory regulatory action. Typically, we will consider the imposition of a monetary penalty (a fine) where an awarding organisation fails to comply with its undertaking.

Undertakings will normally be published on our website. In appropriate cases we might delay publication – for example if the undertaking identifies weaknesses that could be exploited if we publish before remedial measures are in place – and we will consider redacting information that is materially commercially sensitive. Where the undertaking incorporates an action plan, we will not normally publish the action plan because it is likely to include detailed information about the awarding organisation's systems and processes which may not be suitable for publication.

Issuing a rebuke

Where we consider an occurrence of non-compliance is sufficiently serious that just recording the breach would not adequately promote public confidence or deter future non-compliance, we will normally consider the imposition of a monetary penalty (a fine). In some circumstances we might instead decide to issue a rebuke to the awarding organisation.

We will only issue a rebuke where we consider this to be a proportionate response to the particular circumstances surrounding an awarding organisation's failure to comply with its conditions of recognition. In particular, we will issue a rebuke where we consider it is necessary to publicise the fact that we are aware of a particular incident, that the circumstances have been managed and that we consider the occurrence to be unacceptable, albeit we do not consider it is appropriate to impose a fine. Before issuing a rebuke, we will tell the awarding organisation that this is our intention and allow an opportunity for representations in respect of the allegation it has failed to comply and about the proposed rebuke. Once we have considered any representations we will either confirm our decision to issue a rebuke or decide not to proceed. In exceptional cases we might decide at this stage to consider taking statutory regulatory action instead of proceeding with the rebuke.

A rebuke will be set out in a notice explaining the circumstances of the non-compliance and why we consider those circumstances to be sufficiently serious for a rebuke. A rebuke will be known as a 'Chief Regulator's Rebuke'. The notice will summarise any representations which were made by the awarding organisation, together with our response. We will publish any rebuke we issue.

Appeals

An awarding organisation that disagrees with a rebuke issued to it will have the opportunity to appeal against that decision. We have set Appeal Rules that explain the procedure for such an appeal and these are published alongside this policy. When the appeal is considered, the decision-makers will be able to allow

the appeal or dismiss the appeal. Where the appeal is dismissed, the decision-makers may confirm the rebuke or decide to take alternative regulatory action, which may be non-statutory action or statutory action.

We will treat the rebuke as confidential until the time for an appeal has passed and will not publish or disclose the rebuke where an appeal is brought, until the appeal has concluded. Where the appeal is dismissed, we will normally publish the outcome of the appeal as well as the rebuke itself.

Statutory action

Imposing conditions of recognition

Each awarding organisation must comply with its conditions of recognition. Most of these conditions of recognition will apply to all awarding organisations and all qualifications (we call these the General Conditions of Recognition). However, different general conditions might also be applied to different types of awarding organisation, different qualifications or types of qualification or components of qualifications. We have set and published general conditions which apply to qualifications of particular descriptions, called Qualification Level Conditions, and general conditions which apply to qualifications of particular descriptions in specific subjects, called Subject Level Conditions.

We may also place additional conditions on an individual awarding organisation. We call these additional conditions “special conditions”.

Two particular types of special conditions which we can impose are:

- entry and inspection conditions, and
- fee-capping conditions.

We can also impose other types of special condition on an individual awarding organisation where appropriate.

Setting or revising general conditions
When we set new general conditions, or revise those we have already set, we will consult on the changes we propose. We will then publish any changes we make.

Imposing a special condition
We may impose a special condition when we first recognise an awarding organisation, when we recognise it for additional qualifications or descriptions of qualifications, or at any later time.

When we are considering imposing an entry and inspection condition, we will follow the procedure set out in this policy.

Special conditions at recognition
Special conditions may be imposed at the time of recognition to address relatively minor and/or discrete areas of risk or weakness that have been identified during the recognition process and which we consider the awarding organisation has the capability to resolve within a reasonable time.

Special conditions cannot be used to enable an application for recognition to be approved where an awarding organisation does not meet our criteria for recognition, but we can impose controls to minimise risks that might otherwise prevent us from recognising the organisation. For example, where an awarding organisation has limited resources we might restrict the number of learners it can assess in a given period, or restrict the number of registered learners it can have, where we consider it would not have adequate resources to meet the criteria for recognition with larger numbers of learners.

Where we decide a special condition is necessary to allow us to

recognise an awarding organisation, or expand a current organisation's recognition, that decision forms part of the recognition decision. As such, we will not usually give notice of our intention. We will, however, explain how the awarding organisation can seek a review of the special condition.

Special conditions at other times

When we are considering imposing a special condition on an awarding organisation at other times we will give the awarding organisation written notice of our intention. We will normally allow the awarding organisation to make representations to us. Where we do this, we will tell the awarding organisation in the notice the date by which it must make its representations. The time we allow will be determined by the urgency with which we need to put the condition in place in order for it to have the impact intended, and the actions the condition requires. For example, where we impose special conditions that require an awarding organisation to suspend the destruction of records and information in advance of an investigation, we will usually allow only a very short period for representations.

When might we impose special conditions on an awarding organisation?

We may use a special condition to address a particular issue with the awarding organisation's performance, behaviour or activities, and this may follow other regulatory action we have taken.

The range of circumstances in which it would be appropriate to impose a special condition is wide and might include, but is not limited to, the following:

> A need to mitigate risks or address weaknesses identified during the recognition process. The condition might include a duty on the awarding organisation to demonstrate specific matters to our satisfaction before introducing any qualification into the market, or might limit the number of assessments the awarding organisation can deliver for a

period of time.

A concern that the awarding organisation is putting learners, standards or public confidence in qualifications at risk by entering into arrangements with schools or colleges without doing adequate checks, or without putting controls or safeguards in place. The condition might require that, before it enters into any new arrangement with a school or college, the awarding organisation shows to us that it has undertaken appropriate checks and put in place appropriate controls and safeguards.

A need to mitigate a risk where an awarding organisation tells us that it might fail to comply with its conditions of recognition over the following year. The condition might impose a duty on the awarding organisation to complete regular assessments of its state of compliance and report to us.

A need to make sure an awarding organisation retains information connected with an incident or event when we are considering whether to investigate that occurrence.

Specific failings in an awarding organisation's IT systems that put at risk its ability to award qualifications properly. The condition might require the awarding organisation to report to us at specified intervals on what it is doing to address the defects and oblige it to put in place specified IT systems.

Publication

We will not normally publish special conditions we impose at the time of recognition but may do so where we judge this to be necessary.

We will normally publish special conditions we impose at other times on our website. In appropriate cases we might delay publication – for example if the special condition identifies weaknesses which could be exploited if we publish before remedial measures are in place – and we will consider redacting

information which is materially commercially sensitive.

Monitoring and escalation process

Special conditions imposed at recognition or later may specify requirements that an awarding organisation must demonstrate to Ofqual's satisfaction that it has met by a specified date (the 'evaluation date').

If after evaluation we consider that the awarding organisation has demonstrated the requirements to our satisfaction, the relevant requirements in the special condition will be removed.

If we consider that the awarding organisation has not demonstrated the requirements to our satisfaction we may consider one or more of the following options:

- setting a new evaluation date
- introducing more active and/or more frequent monitoring of the awarding organisation
- amending the terms of the special condition (by adding and/or removing requirements)
- determining whether there has been a breach of a special condition
- taking any regulatory action set out in this policy

These options may be used in isolation or combination, simultaneously or at different stages. The decisions we make will depend on the level of risk presented by the awarding organisation, our evaluation of the progress it has made against the requirements of the special conditions and our assessment of the likelihood of it being able to meet the requirements of the special conditions within a reasonable time.

If we intend to amend the terms of the special conditions we will give the awarding organisation notice of our intention to do so and allow it an opportunity to make representations before we decide what action we will take. If we consider the awarding organisation has breached the special conditions and/or we are

contemplating taking regulatory action, we will follow the relevant process set out in this policy.

The awarding organisation may be required to provide periodic reports to us demonstrating its progress against the special conditions before the evaluation date and we may provide feedback to the awarding organisation of our monitoring. The general conditions require an awarding organisation to have due regard to any feedback we provide to it, including feedback provided in relation to a special condition.

Removing a specified condition

We may decide that an individual awarding organisation is not to be subject to a specified general condition at the time of recognition. We may also decide that an awarding organisation is to cease to be subject to a specified general condition or to a special condition at any later time.

We will do so either on considering a request from an awarding organisation to remove a specified condition or by initiating ourselves a review of the application of a specified condition. We will review the special conditions we have in place from time to time to make sure that the burdens we are placing on awarding organisations are appropriate.

When we determine whether or not a particular condition should be removed, we will consider a range of evidence, including:

- the risks to learners, standards, public confidence and/or efficiency of removing the condition
- the effectiveness or likely effectiveness of the condition in the case of the awarding organisation
- whether the behaviours or risks that the condition was imposed to address are present or continuing
- any changes the awarding organisation has made to its behaviour and ways of working since the condition was first imposed, and
- any costs or other adverse impact that compliance with the

condition has had or will have on the awarding organisation

Entry and inspection

We expect that an awarding organisation will normally co-operate with any reasonable request we might make for information or documentation, or to allow us access to its premises. Each awarding organisation is subject to a general condition to respond to information requests we might make to help us in connection with performing our functions.

However, in appropriate cases we will impose an entry and inspection condition. This is a type of special condition.

Entry and inspection conditions
An entry and inspection condition requires an awarding organisation to allow us to enter premises it controls so that we can inspect and copy documents.

We are subject to certain statutory limitations relating to the situations in which an awarding organisation would be required to allow us entry under an entry and inspection condition.

These are that:

- we can only require entry to premises that are not being used as a private dwelling
- entry must be by an authorised person (a member of our staff who is authorised for the purpose of entry and inspection)
- reasonable notice must have been given to the awarding organisation, and
- entry must be at a reasonable time

Setting of an entry and inspection condition
We will use a risk-based approach when considering whether to set an entry and inspection condition for an awarding

organisation. We might set such a condition where, for example:

- we have reasonable grounds to believe that there is an ongoing risk to the maintenance of standards in relation to an awarding organisation's own qualification design, development or assessment arrangements
- the awarding organisation has a history of non-compliance with its conditions of recognition
- the awarding organisation has a history of financial difficulty, or
- we have other reasons to believe that the awarding organisation might not co-operate with us by providing us with the full and accurate information we require for the purposes of effective regulation

When we will seek to exercise entry and inspection powers

In appropriate cases, we will seek to exercise our powers under an entry and inspection condition, so far as is necessary to satisfy ourselves that the appropriate standards are being maintained by an awarding organisation in relation to the award of any of its regulated qualifications.

Appropriate cases may, for example, include those in which:

- we have grounds to believe that an awarding organisation has been involved in malpractice or maladministration in relation to the award of a regulated qualification, and it is important for us to preserve the integrity of evidence
- we need to inspect or copy documents that have been requested previously but which the awarding organisation has been unable or has refused to supply. (But an awarding organisation would be able to exclude from inspection any documents that were subject to legal privilege, that is, certain communications with its lawyers.)
- we are responding to an incident, for example a security breach with live question papers, which could affect the maintenance of standards and undermine public confidence –

in this case we may wish to visit at short notice to inspect the awarding organisation's arrangements for the storage of live question papers

- we need to gain access to computer records that are key to the maintenance of standards of a regulated qualification and that can only be accessed at the awarding organisation's premises

Procedure for exercise of an entry and inspection condition

Before we seek to exercise our powers under an entry and inspection condition, we will consider the:

- information we are seeking
- reason why a visit to the awarding organisation's premises is necessary, and
- the amount of notice we should give the awarding organisation

Notice

Where we require information, we will give an awarding organisation reasonable notice and, where possible, details of the information required.

The urgency with which we need to visit will determine how we deliver the notice. The notice will set out the reasons for entry. If entry is required specifically in order to access computer systems, we will normally give notice of the need to provide suitably trained personnel to enable us to access records.

Authorised persons

Entry to an awarding organisation's premises must be by an authorised person. An "authorised person" is defined as being a member of our staff who is authorised (generally or specifically) for this purpose.

We will maintain a record of all staff who are authorised to enter awarding organisations' premises. Authorisation will normally be restricted to staff who are routinely engaged in regulatory or

complaint investigation activities. All staff visiting an awarding organisation will have information on the purpose of the visit. The awarding organisation can contact us for confirmation that the members of staff are authorised by us to enter premises under an entry and inspection condition.

Reasonable notice

The amount of notice we give to an awarding organisation of our intention to enter and inspect depends on the reasons why we wish to do so.

When we give an awarding organisation notice that we wish to enter its premises, we have to balance the awarding organisation's interests against the need to preserve the integrity of the information or evidence being sought and the urgency of any subsequent action that may need to be taken.

This will be particularly important in cases where we may have grounds to believe that there is a significant risk that an awarding organisation will remove, amend or destroy the information or documentation that we may wish to inspect and copy.

We would normally ensure that the awarding organisation is given a minimum of 2 working days' notice of the arrangements for the visit, but this may need to be reduced if we urgently need to access information.

In instances where we need to enter premises urgently, for example in response to allegations of serious malpractice, we may need to give as little as one hour's notice.

Reasonable hours

We would normally expect to be given access whenever an awarding organisation is conducting its business. We would expect to have access during office hours, but we would also expect to be given access when an awarding organisation is holding meetings or undertaking other activities earlier or later in the day or at the weekend.

Access to other premises

Where an entry and inspection condition exists, we will expect to have access to any premises where an awarding organisation conducts its business, but not to a private dwelling. If we are unable to access premises because the awarding organisation is operating out of a private dwelling, we will consider whether we should use other regulatory actions available to us.

Where the information or documentation that we require is held by a centre or a third party contracted by the awarding organisation to support the delivery of qualifications, we would expect the awarding organisation to obtain the necessary information or documentation from these parties.

Under General Condition C2.3(b) and (c), to enable us to carry out our normal monitoring and enforcement functions, and to enable an awarding organisation to carry out its review and quality assurance activities, the awarding organisation must ensure that each centre agrees to co-operate with both the awarding organisation and with us. The awarding organisation must also ensure that each centre agrees to provide both it and us with access to premises, people and records.

Failure to comply

An awarding organisation which fails to comply with an entry and inspection condition will breach that condition. We are likely to regard breaching such a condition as a serious breach and a significant failing by the awarding organisation which adversely affects our ability to regulate it going forward. It is likely that we will take further regulatory action in response to such a breach.

Accreditation requirements

Making a qualification subject to an accreditation requirement

We can impose an accreditation requirement to prevent qualifications being offered or awarded to learners until we consider those qualifications meet certain specified

requirements.

We can impose an accreditation requirement:

- on all awarding organisations in respect of all qualifications
- on all awarding organisations in respect of qualifications of a particular description
- on all awarding organisations in respect of specified qualifications
- on a specific awarding organisation in respect of specific qualifications, a particular description of qualifications or in respect of all qualifications

As well as explaining the process of accreditation, this policy sets out how we will determine which qualifications will be subject to an accreditation requirement.

Where an accreditation requirement applies, an awarding organisation is subject to a statutory accreditation condition, which states that the awarding organisation can only award a form of the specified qualification if we have first accredited it.

The general or special conditions on an awarding organisation will continue to apply when a qualification is subject to an accreditation requirement.

Process of accreditation

An awarding organisation that is subject to an accreditation condition for a qualification must first submit to us for accreditation the form of the qualification it wishes to provide. We will review the qualification before it can be entered on the Register and offered or awarded to learners.

We will accredit the qualification only where the form of the qualification submitted meets the criteria for accreditation we have set and published for that qualification. Once it has been accredited, we will allow the qualification to be entered on to the Register. An accredited qualification can be offered to learners from the date we specify.

If we refuse an application for accreditation of a qualification we will inform the applicant awarding organisation in writing of the reasons for that refusal. The awarding organisation cannot make that form of the qualification available.

When might we impose an accreditation requirement?
We will impose an accreditation requirement to reduce a risk connected with either the qualification or the awarding organisation.

We may apply an accreditation requirement to a specific qualification because of its complex nature, particular characteristics, or because of the wider impact if the qualification is not well designed, delivered and assessed. For example, we have imposed an accreditation requirement on all GCSE and GCE qualifications, which means no GCSE or GCE qualification can be awarded unless that form of the qualification has first been accredited by Ofqual.

We may also apply an accreditation requirement where we do not have full confidence in an awarding organisation's own qualification design, development, approval or quality assurance arrangements.

Consulting with the awarding organisations awarding the relevant qualifications
Where we are considering applying an accreditation requirement to a specific qualification, or description of qualifications, we will consult publicly on our intention to do so.

Where we intend to impose an accreditation requirement only to a specific awarding organisation's qualifications – either to all or some of its qualifications – we will consult the awarding organisation in question. We will explain the reasons why we intend to make one or more of its qualifications subject to an accreditation requirement and invite the awarding organisation to make any representations to us, giving it reasonable time to do so.

At this point in time we will also consult with the awarding

organisation on the accreditation criteria that we propose to apply to the relevant qualifications.

Publishing use of an accreditation requirement and accreditation criteria

Where we decide that all forms of a qualification or of a description of qualifications are subject to an accreditation requirement, we will publish details of our decision.

We will not usually publish details of where an accreditation requirement is applied in respect of an individual awarding organisation's qualifications. However, we may do so in an appropriate case and/or we may include in our public reports the fact that we have applied an accreditation requirement to specified awarding organisations' qualifications.

We will also publish our accreditation criteria.

Revising the accreditation criteria

We may revise accreditation criteria. Before we do so, we will consult with the relevant awarding organisations.

Where we revise the accreditation criteria, the accreditation of an existing form of the relevant qualification ceases to have effect on a date specified by us. After this date the form of the qualification will be removed from the Register. The awarding organisation must submit a new form of the qualification, which meets the revised criteria, and seek re-accreditation if it wishes to continue to provide the qualification. However, in appropriate cases, we may make and publish:

- a decision that this normal consequence of the revision to the criteria does not have effect, and/or
- an exemption or transitional provisions connected with the effect of revisions to the accreditation criteria

The duration of the accreditation requirement

We will review, from time to time, the application of an accreditation requirement that is applied to a qualification or a

description of qualifications, taking into account responses to a public consultation.

We will also review, from time to time, the application of any accreditation requirement where it applies to a specific awarding organisation's qualifications. We will take into account:

- the quality of the qualifications the awarding organisation has submitted for accreditation
- the quality of its other regulated qualifications
- the robustness of its own qualification design, development, approval and quality assurance arrangements
- any evidence that the awarding organisation is behaving in accordance with its conditions of recognition, and
- representations from the awarding organisation that the requirement should be lifted

If an accreditation requirement has been applied to a specific awarding organisation's qualifications and we are confident that the awarding organisation's own arrangements will ensure that its qualifications meet the appropriate regulatory requirements, without the need for further scrutiny by us, we will lift the accreditation requirement.

Giving a direction

Power to give a direction
We may direct an awarding organisation to take, or not to take, specified steps if it appears, on the evidence available to us, that the awarding organisation has failed or is likely to fail to comply with a condition of its recognition.

We impose directions in order to try to secure compliance with the relevant condition, or to prevent non-compliance.

A direction is enforceable in the courts.

When might we give a direction?
In deciding whether to use our power to give a direction, we may consider the following:

- any actions already taken by us to secure the awarding organisation's compliance with the relevant condition of its recognition
- whether the awarding organisation accepts that it has failed or is likely to fail to comply with the relevant condition of its recognition
- any actions taken by the awarding organisation to comply with the relevant condition of its recognition, and the reasonableness and timeliness of any actions it has taken or plans to take
- whether there is a need to ensure that action is taken rapidly or in a co-ordinated way, across a number of awarding organisations

We will keep a record of the evidence considered.

We might consider giving an awarding organisation a direction in a wide range of scenarios. These scenarios might include, but are not limited to, directions to:

- make sure the standards of its qualifications are in line with those of other awarding organisations awarding a comparable qualification
- take steps which we have specified in requirements, which the awarding organisation has failed to take
- withdraw approval from a centre that has been acting fraudulently or which has been responsible for serious malpractice
- withhold, or take reasonable steps to revoke, certificates from learners who have been guilty of misconduct in an assessment
- take steps to address behaviour that discriminates against

particular learners

- require an awarding organisation to provide us with relevant information, where it has not met a request to do so
- make changes to its governance arrangements to bring them into line with its conditions of recognition, or
- take reasonable steps designed to reduce the adverse effect on public confidence of an incident relating to qualifications

Giving notice of our intention to give a direction
Before we issue a direction, we will give notice to an awarding organisation of our intention to do so. We will send to the awarding organisation's responsible officer:

- the reasons why we propose that a direction should be given, and a summary of the facts on which we have based this decision
- the nature of the proposed direction (including any timescale for compliance with the direction)
- information about the period in which the awarding organisation may make representations to us about the proposed direction, and the procedure for making representations (including the details of the designated officer at Ofqual dealing with the matter), and
- information about the steps that we will take to enforce the direction, if it is given

We will send the notice in writing. Where we send the notice by email or through a Portal communication, we will assume that the notice was received on the date the email or Portal communication was sent, unless there is evidence to the contrary.

We may, in appropriate cases, publish the notice of intention and consult with other interested parties.

Representations by the awarding organisation
We will give the awarding organisation an opportunity to make

written representations to us, addressed to the relevant officer. We will include in the notice the date by which representations must be received by us.

Most of the directions we propose to give are urgent directions, because less urgent cases are often resolved by agreement and/or with an undertaking. In these urgent cases we may specify a short, and sometimes very short, period of time for the awarding organisation to make representations, in particular in order to protect the interests of learners and to maintain standards. For example, where an awarding organisation has failed to confirm it will comply with a requirement restraining the issue of results, or a requirement to make adjustments to a specified level of attainment, the period which we allow for representations is likely to be very short.

If it is not urgent for action to be taken, representations must normally be received by us no later than 14 days from our issue of the notice.

The awarding organisation's representations should address the reasons for the proposed direction included in the notice, the accuracy of our summary of the facts, the reasonableness of the nature of the proposed direction and/or the timescale proposed for compliance.

Response to representations by the awarding organisation

We will consider any representations received from an awarding organisation.

We may decide that:

- the proposed direction should be given
- a different direction should be given
- no direction should be given
- further information should be provided by the awarding organisation, within a given time period, to support its

representations, which we will consider before we make a final decision about whether to impose a direction

- the notice of intention to give a direction should be substituted with a notice of intention to impose a fine, or
- the notice of intention to give a direction should be substituted with a notice of intention to withdraw recognition

In some cases, an awarding organisation might respond to a notice of intention by agreeing to take the actions we specified in the proposed direction. We will decide in each case whether the awarding organisation's proposal means we no longer need to give the direction. Agreeing to take the actions we have specified will not prevent us from imposing the direction and we will decide whether to do so depending on the facts of the particular case.

We will publish information about any decision to impose a direction and we will consider whether to publish the direction itself.

Enforcing compliance with a direction

Where we use our power to direct an awarding organisation and the awarding organisation fails to comply with the direction, we may apply to the court for an order stating that it must do so. A failure to comply with a court order compelling the awarding organisation to comply with a direction may result in it being in contempt of court.

Amendment or revocation of a direction

We may amend or revoke a direction after it is given. We will usually first try to agree proposed amendments with the awarding organisation. Where this is not possible, or we do not consider it appropriate, we will follow the same process as for giving a direction, in particular:

- we will give notice of our intention to amend a direction before taking any further action
- the notice of intention to amend a direction will follow the

same process and contain the same information as if we were intending to give a direction (see above), and

- in making our decision as to whether to amend a direction, we will consider any representations made by the awarding organisation during the period given for representations in the notice

We will publish any decision to amend or revoke a direction.

Imposing a fine

Power to fine

We can impose a monetary penalty (a fine) on an awarding organisation if it appears, on the evidence available to us, that it has breached a condition of its recognition. A fine may be for an amount up to 10 per cent of an awarding organisation's annual turnover. This limit applies to each fine we decide to impose and is not a cumulative limit for a financial year. We will decide what the appropriate amount of the fine should be taking into account all the circumstances of the case.

We will impose a fine on an awarding organisation when this represents a suitable response to non-compliance with one or more of its conditions of recognition.

We will always provide an opportunity for an awarding organisation to make proposals for a fining case to be resolved by agreement (settlement) and have set out our approach to settlement in fining cases in the next section of this document.

Approach to using the fining power

We will follow a 4-stage approach in considering whether to impose a fine:

1. It must appear to us, on the basis of the evidence available, that the awarding organisation has failed to comply with a condition of its recognition (which may be a general condition, an accreditation condition or a special condition),

2. If it appears to us that there has been a breach of a condition, we will consider all the actions available to us and decide whether a fine is an appropriate sanction for the breach in the light of the principles outlined in this policy and our statutory objectives and duties,

3. If we decide that a fine is appropriate, we will determine the appropriate amount of the fine for this breach, again considering the relevant factors set out in this policy and our statutory objectives and duties, and

4. Before we impose a fine we will check that the amount we intend to impose does not exceed 10% of an awarding organisation's annual turnover.

We do not expect awarding organisations to pass the costs of fines onto their customers. In a competitive market there should be an incentive for awarding organisations not to do so, as this would make them less competitive. After imposing a fine on an awarding organisation, we will, if appropriate, monitor the fees that it charges for qualifications to see if they represent value for money.

Decision to impose a fine

When we are deciding whether to impose a fine, we will consider a number of factors, including:

- the seriousness of the breach, particularly in relation to its effect on standards of qualifications, public confidence or the efficiency of the qualifications system

- the effect of the breach (both in terms of the seriousness of the impact and the number of people affected) on purchasers, learners and users of qualifications
- the effect of the breach on our ability to regulate the awarding organisation effectively in the future
- whether the breach was prolonged or repeated
- whether the awarding organisation has breached regulatory requirements in the past, and, if so, how frequently
- the extent to which the circumstances of the breach were within the control of the awarding organisation
- the behaviour of the awarding organisation in relation to the breach, including whether it happened intentionally, whether there was any negligence on the part of the awarding organisation, and whether the breach gives rise to concerns about the organisation's management or control systems
- whether the breach gave rise to financial gain or competitive advantage, and
- whether a fine is likely to improve compliance with regulatory conditions in the future (including by other awarding organisations)

We will also consider any financial sanctions that have been imposed in relation to the breach by another regulatory body, such as Qualification Wales, as a factor in determining whether to impose a fine.

When might we use our power to fine?
We might consider imposing a fine on an awarding organisation in a wide range of scenarios in which the awarding organisation has breached one or more of its conditions of recognition. These scenarios might include, but are not limited to, cases in which an awarding organisation has:

- made a serious error when setting an assessment which affects a significant number of candidates
- demonstrated significant failings in its marking of

assessments which has undermined the standard of the qualification

- knowingly reduced the scale of its quality assurance activity which has resulted in significant negative consequences for learners, standards and/or public confidence
- benefited financially from a breach of its conditions of recognition
- given us assurances about specified steps that it will take or not take, which it has deliberately or negligently not carried out
- deliberately or negligently allowed the confidentiality of its assessments to be compromised
- intentionally misled us
- made serious and persistent failings in the service it offers to its customers, such as failing to provide the appeals arrangements required by its conditions of recognition
- failed to take action to avoid or prevent a breach when the circumstances leading to the breach could reasonably have been foreseen
- demonstrated significant failings in the handling of malpractice and/or maladministration arrangements
- made significant failings in relation to cases concerning Reasonable Adjustments or Special Consideration which has had an impact on Learners

In instances where no breach of its conditions of recognition has taken place but we are concerned that a breach is likely, we cannot impose a fine on an awarding organisation. In such cases, we may choose to issue a direction requiring an awarding organisation to take or not to take specified steps.

In certain circumstances we may decide not to impose a fine because we consider an alternative action to be more appropriate. For example, in a situation in which, in our judgement, an awarding organisation does not have the resources and expertise to continue to offer some or all of the

qualifications for which it is recognised, we may instead seek to withdraw its recognition in respect of those qualifications.

In circumstances where another body, such as Qualifications Wales, has used its power to fine in relation to the same breach, we may decide that the action taken by that regulator is sufficient and no further action by us is needed.

Determining the amount of a fine

Any fines we impose cannot exceed 10% of the annual turnover of the awarding organisation, as defined in secondary legislation. Providing fines are within this limit, we are not required to determine the amount of a fine by reference to a percentage of an awarding organisation's annual turnover. We will determine an amount we judge is appropriate, and then check that it is within the 10% limit.

When we decide the amount of the fine, we will take into account all the circumstances of the case. The factors we will take into account will include all those set out above under 'Decision to impose a fine'.

We will also take into account all other relevant factors, which could be aggravating factors, which may lead us to decide to increase the amount of the fine, or mitigating factors, which may lead us to decide to reduce the amount of the fine. Further factors that we will consider in determining the amount of a fine include:

- the extent to which the non-compliance has impacted learners and affected public confidence in qualifications
- steps taken by the awarding organisation to rectify and/or prevent any recurrence of the breach
- whether the breach was reported promptly to us by the awarding organisation, and whether there was any attempt to hide the breach from us
- the level of co-operation with any investigation we have carried out

- the likely impact of the fine on the awarding organisation's provision of regulated qualifications
- the provision of restitution and compensation (where appropriate) to those affected by the breach
- the circumstances of the breach in comparison to similar breaches for which fines have been imposed, and
- the awarding organisation's turnover from regulated activities in relation to its total turnover

We will also take into account any financial sanctions that have been imposed in relation to the breach by another regulatory body.

All money received in payment of a fine is paid into the Government's Consolidated Fund. There is no financial incentive on us to impose a fine.

Imposing a fine

Preliminary decision

When we seek to impose a fine on an awarding organisation, we will first make a preliminary decision to impose a fine and the amount the fine should be. We will keep a record of the evidence considered. We will decide on a case by case basis whether the preliminary decision should be issued by our internal legal team or by the Enforcement Panel.

At this point, we will serve a written notice on the awarding organisation, stating the amount of the fine we intend to impose. This might be expressed as a specific amount or might be expressed as a range within which we expect the fine to be set.

We will set out in the notice the reasons for the proposed fine and the way in which the awarding organisation may make representations to us. Where we send the notice by email or through the Portal, we will assume that the notice was received on the date the message was sent, unless there is evidence to the contrary.

We will specify a period in which the awarding organisation may make written representations to us. This will be at least 28 days from the date of the issue of the notice.

We will publish the notice if we consider there is a good reason to do so. This includes where we think it is important to allow interested parties to make representations. Where we decide to publish the notice we will do so on our website and will usually allow an interval between serving the notice on the awarding organisation and publishing the notice. We will specify a period for interested parties to make representations which will usually be less than the period we allowed the awarding organisation.

Final decision

When we have considered any representations, we will decide whether to withdraw, vary or confirm the proposed fine. The final decision will always be made by our Enforcement Panel, following its consideration of the evidence, the preliminary decision and any representations received.

If we confirm our decision to impose a fine (including where the amount is varied), we will serve a written notice on the awarding organisation. This will state the grounds for imposing the fine, how payment should be made and the consequences of non-payment. The notice will explain the awarding organisation's right of appeal and specify the period within which it must lodge any appeal. This will normally be 28 days from the date of our decision. The notice will also state when payment is due, which will be no later than 28 days from receipt of the notice unless we decide that exceptional circumstances mean that a longer time for payment should be given or unless an appeal is made. Where we send the notice by email or through the Portal, we will assume that the notice was received on the date the message was sent, unless there is evidence to the contrary. We will publish the final notice on our website.

Awarding organisations may appeal against our decisions to impose fines to the First-tier Tribunal. If an awarding organisation appeals to the Tribunal, the fine is suspended

pending the appeal. The appeal may relate to the imposition of a fine, the amount of the fine, or both. Full details of how to make an appeal to the First-tier Tribunal are provided in the appeals section of this policy.

The tribunal may withdraw, vary (increase or decrease) or confirm the fine. It may also impose a different or additional sanction (available to us) on the awarding organisation, or remit the decision on any matter relating to the fining decision back to us to consider. If the tribunal decides to withdraw or vary a fine, we will publish this decision on our website.

If an organisation does not pay a fine, it becomes liable for interest on the debt and we will recover the debt with interest through the courts, if appropriate.

Settlement of fining cases

The benefits of settlement
Most awarding organisations recognise when they have breached their conditions of recognition. When we think the imposition of a fine might be a suitable response to an incident or to our findings following a regulatory investigation or other review, we will first explain this to the awarding organisation as early as we reasonably can and offer an opportunity for the awarding organisation to make proposals for a negotiated settlement.

Negotiating a settlement with an awarding organisation allows us to focus our resources more effectively, which helps us to deliver our priorities on behalf of learners and society. For awarding organisations, settlement means any fine will be less than it would be following a contested case and our costs – which we will usually recover from the awarding organisation – will be lower. In appropriate cases, settlement might also allow an awarding organisation to pay some of the money it would have paid as a fine in the form of compensation, where we

consider this is a better way to protect learners.

Suitability for settlement
Not all cases will be suitable for a negotiated settlement. Those which are likely to be suitable will have the following features:

- the awarding organisation admits the non-compliance
- the awarding organisation agrees to pay a fine
- the amount of the proposed fine is sufficient, taking into account the factors set out in this policy
- the awarding organisation agrees to pay our costs
- the awarding organisation agrees to a shortened procedure

If attempts to reach a negotiated settlement are unsuccessful, the case will proceed using the normal (contested) procedure set out in the preceding section of this document. Details of the unsuccessful negotiations will not be shared with the Enforcement Panel until after it has made a final decision whether or not to impose a fine, and in what amount.

Settlement discount
The amount of any fine determined using the settlement procedure will depend on the facts of the particular case. There is no fixed discount amount or proportion, just as we do not have a fixed tariff or starting point for fines in contested cases. The fine will always be lower than it would have been in a comparable case without a settlement.

We want to encourage settlement as early as possible because this helps us to manage our resources most effectively. This means a fine agreed early in the process will be lower than where the awarding organisation enters discussions only at a later stage.

This is because in general the earlier an admission and an offer of settlement is made, the greater the impact the admission will have as a factor in mitigation.

Where admissions are made at a very late stage those admissions are likely to have very little impact on the level of the fine, but might have an impact on any costs payable.

Costs

Where we reach a settlement agreement, we will expect the awarding organisation to agree to pay an amount towards our costs. Our power to recover the costs associated with regulatory action from an awarding organisation is explained later in this policy.

Reaching a settlement agreement reduces the costs we need to recover from the awarding organisation because it reduces the amount of time we spend preparing and presenting the case. The earlier a settlement agreement is reached, the greater the impact on our overall costs.

Although early settlement will have the greatest impact, an awarding organisation that decides to stop contesting a case later in the process will reduce its potential liability for costs to some extent, even where it makes that decision at a late stage.

Ratifying the settlement

Every settlement agreement must be approved by the Enforcement Panel . If the agreement is not approved, we will first seek to agree a revised proposal with the awarding organisation. If a suitable revised proposal cannot be agreed the case might need to proceed on a contested basis.

Imposing the fine

The process of imposing a fine after a settlement agreement has been approved follows the same stages as any other fine; we must issue a written notice explaining our preliminary decision, allow a period for representations and issue a final notice imposing the fine.

The notice explaining the preliminary decision will be shorter where that decision reflects a settlement agreement and will explain the decision by reference to agreed facts. Although we must allow the awarding organisation a 28-day period in which to

make representations from receipt of the notice, we will expect the awarding organisation promptly to confirm that it has no representations to make. In some cases, with the agreement of the awarding organisation, we expect to be able to make the preliminary decision and final decision on the same day.

We will decide on a case-by-case basis whether instead of making the final decision straightaway, we should publish information explaining the preliminary decision. We will publish this information where we think there is a good reason to allow interested parties an opportunity to make representations about the proposed settlement. We do not expect regularly to publish information about preliminary decisions made in settled cases.

If we intend to publish information about the preliminary decision, we will first explain that intention to the awarding organisation and share the information we propose to publish. The published information will explain why we intend to impose the fine and that the amount of the fine reflects a settlement agreement. We will specify the period of time for interested parties to make representations.

We will take into account any representations received from interested parties and either confirm the fine or vary it. If we think it may be appropriate to vary the fine we will disclose the representations to the awarding organisation and may decide to reopen the settlement discussions.

We will publish the final decision explaining the amount of the fine we imposed together with our reasons.

Before we publish either an initial decision or a final decision we will first give a copy of the decision to the other UK qualifications regulators where the awarding organisation is also regulated by those organisations and notify any relevant government departments, bodies or agencies.

Withdrawing recognition

Decision to withdraw recognition from an awarding organisation

We may withdraw recognition from an awarding organisation – in full or for specified qualifications or descriptions of qualifications – if the awarding organisation has failed to comply with any of its conditions of recognition.

Withdrawing recognition from an awarding organisation in full, which means it can no longer make any regulated qualifications available, is the most significant regulatory action we can take. We do not expect to use the power often.

Withdrawing recognition for specified qualifications or descriptions of qualifications, so the awarding organisation remains able to operate in the regulated sector, but in a more restricted way, is a less serious sanction. This approach may more often be a proportionate response to manage risks we identify in connection with an awarding organisation's failure to comply with a condition of its recognition.

Decision to give a notice of intention to withdraw recognition

We will first give notice to the awarding organisation of our intention to withdraw recognition.

The factors we consider when we are deciding whether to take action will include:

- the impact a failure to withdraw recognition might have on learners, standards and/or public confidence in regulated qualifications
- the impact the withdrawal of recognition would have on learners
- whether the awarding organisation has a track record of similar

failings, especially where we have taken regulatory action in the past

- any actions taken by us to encourage the awarding organisation to comply with the condition(s) of its recognition that it has breached, including whether a direction has been given
- whether the awarding organisation accepts it has breached its conditions of recognition
- any actions taken by the awarding organisation to comply with its conditions of recognition, any direction(s) we have given it, and the reasonableness and timeliness of any actions it has taken or plans to take
- whether the awarding organisation is recognised in relation to qualifications which present particular risks
- the nature of any saving or transitional provisions to be made to protect the interests of learners or for any other reason

We will keep a record of the evidence considered.

When might we withdraw recognition from an awarding organisation?

The situations in which withdrawal of recognition in full might be a proportionate response to a breach by an awarding organisation of one or more of its conditions of recognition might include, but are not limited to those in which there is:

- a repeated failure by an awarding organisation to take appropriate sanctions against a centre that delivers one or more of its regulated qualifications and that has been or is acting fraudulently
- a major failure by an awarding organisation
- a failure to comply with a special condition imposed at or around the time of recognition in relation to risks we identified at that time
- a failure to take or refrain from taking particular action which we have notified the awarding organisation we would consider

to be a serious failure

- a serious or repeated failure to co-operate with us that has prevented or could prevent us from regulating the awarding organisation effectively
- a failure to address malpractice within the awarding organisation
- a repeated failure to make the awards to learners that they deserve
- a serious concern about whether the awarding organisation's governance arrangements will secure the provision of high-quality qualifications
- action taken by an awarding organisation that is unlawful or in some other way may be seen to bring the qualifications system into disrepute and/or seriously undermine public confidence in the system, or
- evidence that the awarding organisation does not have the resources or capability to put in place the actions required to ensure its compliance with its conditions of recognition

Where the condition that is breached is a condition that reflects a recognition criterion (something that a person or body who is applying for recognition must demonstrate in order to become recognised by us), withdrawal of recognition is likely to be much more strongly indicated as the appropriate action.

The circumstances in which withdrawal of recognition for specific qualifications or descriptions of qualifications may be a proportionate response are broader and include, but are not limited to:

- evidence that the awarding organisation does not have the resources or capability to ensure compliance with its conditions of recognition across the full range of its current recognition
- a failure to notify us before making available for the first time a high risk or high profile qualification for which it is recognised

but which is substantially different in type or content to any which it has previously made available

- evidence that the awarding organisation does not have the resources or capability to put in place arrangements which are required for specific qualifications or descriptions of qualifications, for example arrangements for reviews of marking, reviews of moderation or for appeals
- a repeated failure to deliver effective quality assurance which, if repeated in relation to a high volume, high risk or high profile qualification, could have a significant detrimental impact on standards or public confidence

Giving the notice of intention to withdraw recognition
Before we take a decision to withdraw recognition, we will give the awarding organisation notice of our intention to do so. We will send this notice of intention to the awarding organisation's chair (or equivalent) and to its responsible officer.

The notice of intention to withdraw recognition will include:

- the reasons why we propose that recognition should be withdrawn, and a summary of the facts on which we have based our decision
- the date of the proposed withdrawal, and whether the proposed withdrawal is for all or only particular qualifications or descriptions of qualifications for which the awarding organisation is recognised
- our initial view of the need to make any saving or transitional provisions, should the recognition be withdrawn as proposed, and
- information about the period in which the awarding organisation may make representations about the proposal to us, and the procedure to be followed to make representations (including the details of the designated officer at Ofqual dealing with the matter)

We will send the notice in writing. Where we send the notice by

email, we will assume the notice was received on the date the email was sent, unless there is evidence to the contrary.

We may, in appropriate cases, publish the notice of intention and consult with other interested parties. Whether or not we publish the notice, we will send a copy of the notice of intention to the other UK qualifications regulators where the awarding organisation is also regulated by those organisations and notify any relevant government departments, bodies or agencies.

Representations by the awarding organisation
When an awarding organisation chooses to make representations to us, these representations must be made in writing to the appropriate officer. The representations should address the reasons for the proposed withdrawal of recognition included in the notice, the accuracy of our summary of the facts, the reasonableness of the proposal and any potential saving or transitional provisions, and/or the date for the proposed withdrawal.

Representations must normally be received by us no later than 30 days from receipt of the notice. If we judge that there is an urgent need to take action, this period may be reduced to a length of time we will set out in the notice. We may need to reduce the time for representations for a variety of reasons, in particular to protect the interests of learners and/or to secure that the standard of, and public confidence in, qualifications is maintained. In such cases the time allowed for the awarding organisation to make representations might be very limited.

Response to representations by the awarding organisation
We will consider any representations received from an awarding organisation.

We may make the following decisions:

- the withdrawal should proceed as proposed in the notice
- the withdrawal should proceed subject to an amendment to

the timing of the withdrawal and/or the scope of the withdrawal

- the withdrawal should not proceed, but should be replaced with a notice of intention to give a direction
- the withdrawal should not proceed, but further efforts should be made to secure compliance with a direction previously given
- the withdrawal should not proceed, but should be replaced with a notice of intention to impose a fine
- the withdrawal should not proceed, but should be replaced with a notice of intention to impose special conditions
- the withdrawal should not proceed, or
- further information should be provided by the awarding organisation, within a given time period, to support its representations, which we will consider before we make a final decision

Final decision notice

If we decide to withdraw recognition from an awarding organisation, we will give notice in writing to the awarding organisation of our decision, of the date on which withdrawal is to take effect, and of any saving or transitional provision we have decided to make.

We can make saving or transitional provisions for a wide range of purposes, which include but are not limited to protecting learners and maintaining standards, for example by:

- requiring the awarding organisation to comply with some conditions of recognition for a period of time after recognition has been withdrawn
- allowing another awarding organisation to give learners transferring to it credit for assessments completed with the awarding organisation from which recognition has been withdrawn, where this would otherwise be prohibited by its conditions of recognition

By giving further notice, we may vary the date on which the decision is to take effect.

We will publish any final decision we make to withdraw recognition from an awarding organisation, whether that is in full or in part.

Independent review of a decision to withdraw recognition
An awarding organisation may request a review of a decision to withdraw recognition. If such a request is made, an independent reviewer, appointed by us, will undertake the review. The reviewer may be a single person, a body or a panel of people.

A request for a review must be submitted by the awarding organisation in writing to the designated officer no later than 30 days after receipt of the confirmed decision to withdraw recognition. The review of the decision would normally be completed within 60 days of the receipt from the awarding organisation of a request for a review of the decision. Once a decision to withdraw recognition has taken effect, unless we decide otherwise, that decision will continue to have effect while the independent review is taking place.

The independent reviewer will consider the evidence that informed the original decision, and any representations made by the awarding organisation. The independent reviewer may also decide to consider new evidence, if that evidence could not reasonably have been provided to us before our decision to withdraw recognition.

The independent reviewer may also seek advice from other experts with skills relevant to the review, but the final recommendation would be made by the reviewer alone.

The independent reviewer will consider whether:

- the process we used to make our decision to withdraw recognition was fair, and
- the decision was reasonable, taking into account all the

relevant evidence

The independent reviewer may:

- confirm that the process by which our decision was taken was fair and that our decision was reasonable, or
- remit the matter to us to be reconsidered and make recommendations for us to consider particular evidence or correct any weaknesses in our process

Recovering the costs of enforcement action

We can require an awarding organisation to pay the costs we incur in relation to statutory sanctions we have imposed on it. This is where we have:

- directed an awarding organisation
- fined an awarding organisation, or
- withdrawn recognition from an awarding organisation

Although we have the power to recover our costs in every case in which we undertake statutory enforcement actions, we will do so only where we consider this is proportionate. We will normally expect the awarding organisation to agree to pay our costs in settled, and we may agree to limit the amount of those costs as part of the settlement agreement. If we wish to recover our costs, we must issue a costs recovery notice even in settled cases.

The costs that we will seek to recover are those we have incurred in taking statutory enforcement action against an awarding organisation. This includes, in particular, investigation costs, administration costs and the costs of obtaining expert advice (including legal advice). We will recover the cost of time

spent by our internal legal team at the rates set from time to time by the Government Legal Department.

Although we will not disclose information about any unsuccessful settlement discussions to a decision-maker during a contested case, we will usually expect to recover our costs in connection with such discussions where this is possible. Information about the confidential discussions will therefore be disclosed to the decision-maker at the costs-recovery stage.

When we decide to recover enforcement costs, we will serve written notice on the awarding organisation, specifying the amount of the costs we require the awarding organisation to pay. The notice will include a detailed breakdown of those costs, state how payment should be made and set out the consequences of non-payment. Where we send the notice by email, we will assume that the notice was received on the date the email was sent, unless there is evidence to the contrary. We will publish the notice on our website.

The notice will also explain the awarding organisation's right of appeal and specify the period within which it must lodge any appeal.

Awarding organisations may appeal against our decisions to recover costs to the First-tier Tribunal. If an awarding organisation appeals to the tribunal, the payment of costs is suspended pending the appeal. The appeal may relate to the imposition of a requirement to pay costs, the amount of the costs, or both.

The deadline to appeal will normally be 28 days from the date of our decision. The notice will also state when payment is due, which will be no later than 28 days from receipt of the notice unless we decide that exceptional circumstances mean that a longer time for payment should be given or unless an appeal is made. Full details of how to make an appeal to the First-tier Tribunal are provided in Annex B.

The tribunal may withdraw, vary or confirm the amount of costs

an awarding organisation should pay. It may also take such other action as we could take in relation to the breach that led to the enforcement action (including imposing a sanction on the awarding organisation) or remit the decision on any matter relating to the decision to recover enforcement costs back to us to consider. If the tribunal decides to withdraw or vary the amount of the costs an awarding organisation should pay, we will publish this decision on our website.

If an organisation does not pay its costs it becomes liable for interest on the debt and we will recover the debt with interest through the courts, if necessary.

Appeals

Where we have imposed a monetary penalty or required an awarding organisation to pay our costs, an appeal may be made to the General Regulatory Chamber of the First-tier Tribunal. Appeals should be made by sending a notice of appeal to the tribunal so that it is received within 28 days of the date on which the notice of the sanction or other decision was sent to the awarding organisation. The First-tier Tribunal's address and contact details are:

> First–tier Tribunal
> General Regulatory Chamber (Exam Boards) PO BOX 9300
> Leicester
> LE1 8DJ
>
> Telephone: 0300 1234 504
>
> Email: grc@justice.gov.uk
>
> Guidance on how exam boards can appeal to a tribunal against a fine

The First-tier Tribunal (General Regulatory Chamber) rules, together with any practice directions given by the Senior President of Tribunals or the Chamber President, govern the practice and procedure to be followed by the tribunal. The overriding objective of the rules is to enable the tribunal to deal with cases in the interest of justice and minimising parties' costs, which includes dealing with cases in ways that are proportionate to the importance of the case and the complexity of the issues.

Section 151C of the Apprenticeships, Skills, Children and Learning Act 2009 (the Act) confers a right of appeal against:

- a decision to impose a monetary penalty
- a decision as to the amount of the penalty

There is no right of appeal against a notice of intent to impose a monetary penalty.

Section 152B of the Act confers a right of appeal against:

- a requirement to pay enforcement costs
- the amount of the costs

If the question of whether a breach of a condition of recognition has or has not been committed is one that the tribunal needs to determine in any appeal, we will carry the burden of proof. This means that it will not be for the awarding organisation to prove that it did not breach a condition upon which it is recognised. Instead, we will need to prove on the balance of probabilities that the awarding organisation did breach such a condition.

The grounds on which an appeal can be brought against any particular decision, as set out in the Act, are:

- that the decision was based on an error of fact
- that the decision was wrong in law
- that the decision was unreasonable

The rules give the tribunal judge wide case management

powers, which include the power to strike out proceedings if they consider that there is no reasonable prospect of the appellant's case, or any part of it, succeeding. The rules also allow the tribunal to award costs against a party, but only where a party has acted unreasonably in bringing, defending or conducting the appeal.

We do not expect an awarding organisation that has entered into a settlement agreement to appeal against a fine or a requirement to pay our costs which is contemplated in the settlement agreement. In the unlikely event of such an appeal, we will produce the settlement agreement as evidence of the agreement and will carefully consider making an application that the awarding organisation should pay our costs in connection with the appeal.

The Lord Chancellor has the capacity to charge fees for appeals to the First-tier Tribunal, for example an application fee. Where he is proposing to introduce fees, he is required to consult the Senior President of Tribunals and the Administrative Justice and Tribunals Council, and must conduct a public consultation. Any decision to charge fees could then only take effect if contained in secondary legislation approved by both Houses of Parliament. At the date of this guidance no formal proposal to charge fees for appeals relating to the imposition of monetary penalties under the Act has been made by the Lord Chancellor.

Either party can ask for permission to appeal against the decision of the tribunal but only on a point of law arising from the tribunal's decision. Such an application for permission must be provided to the tribunal within 28 days of the date on which the tribunal gave its decision in writing.

The tribunal will consider the application, and may also undertake a review of its own decision. If, on undertaking such a review, it is satisfied that there was an error in law in the tribunal's decision, the tribunal will notify the parties. Alternatively, the tribunal can give permission to appeal to the Upper Tribunal or refuse to give permission.

Where permission is given, the further appeal would be heard by the Administrative Appeals Chamber of the Upper Tribunal.

If an appeal against a decision of the tribunal reaches the Upper Tribunal, the latter can set aside that decision and give a new decision, or it can refer the case back to the tribunal for re-hearing.

More information about the First-tier and Upper Tribunals can be found here.

---

1. The Macrory report Regulatory Justice: Making Sanctions Effective (November 2006) ↩

↑ Back to top

Births, death, marriages and care

Business and self-employed

Childcare and parenting

Citizenship and living in the UK

Crime, justice and the law

Disabled people

Driving and transport

Education and learning

Employing people

Environment and countryside

Housing and local services

Money and tax

Passports, travel and living abroad

Visas and immigration

Working, jobs and pensions

Departments

News

Guidance and regulation

Research and statistics

Policy papers and consultations

Transparency

How government works

Get involved