

Ofqual Board

Paper 66/15

Date:

20 January 2016

Title:

Vocational Qualifications Update

Report by:

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Paper for discussion and decision

Open paper



Issue and summary

1. This report updates Board members on the work of VQ Directorate, including the arrangements in Northern Ireland, the statement of compliance exercise, our innovation plan, work on regulatory burden and working with Qualifications Wales.

Recommendation

2. The Board is invited to:-
 - (i) note and discuss the work and issues set out in this report.
 - (ii) delegate to the Chief Regulator final sign-off of:-
 - (a) the proposed MoU with Qualifications Wales (paragraphs 13-15);
 - (b) the innovation plan (paragraphs 9-12);and
 - (c) the response to the Government's Business Impact Target consultation (paragraphs 20-23).

Ofqual's functions in Northern Ireland

3. Board members were updated by email at the beginning of the year about the decision by the Department for Employment and Learning in

Northern Ireland to move to a single Northern Ireland-based qualifications regulator from April. DEL have asked CCEA to pick up this function, and will seek to amend Ofqual's legislation to bring our role regulating vocational qualifications in Northern Ireland to an end.

4. We have had ongoing discussions with DEL and others about the staffing, legal and financial implications of this change. We will update the Board at the meeting on progress with the discussions.

Regulatory update

5. At the November meeting we promised to come back with more detail about the outcomes of the Statement of Compliance exercise. Annex A summarises the AO responses to the exercise and what we have done with them. We will publish shortly a summary of the outcomes of the process, to improve transparency and understanding amongst AOs as they prepare for the 2016 process.
6. Forty of the 160 returns declared some current or future non-compliance – a figure that the Chief Regulator quoted in her speech to the AO conference last month – and we judged a further 12 AOs were at risk of non-compliance, based on other information we held. We took immediate action against five AOs, and reviewed the remaining 47 cases. In about half of those cases we decided to take no further action, for example because the non-compliance was already being addressed. In other cases, we contacted the AO to ask for more information or added the AO to a future audit.
7. There were no particular surprises about the areas of declared non-compliance, which included AOs' resources, issue of certificates, centre controls and risk management. We are reviewing whether there is a need for further guidance in areas where AOs may have had difficulty understanding our requirements.
8. Annex B provides management information on current regulatory activity, building on the report discussed at the last Board meeting.

Innovation plan

9. In the 2015 Budget, the Government made a commitment that all Departments would complete an innovation plan in time for the Budget in March 2016. It is expected that the plan will include details of what we will do to improve the way we regulate to allow awarding organisations to innovate, as well as to improve our own use of technology to streamline our activities and interactions with awarding organisations. We are also expected to make an assessment of how new technology will shape the sector. Even as a non-Ministerial Department, we think it would be worthwhile producing a plan, especially given our duty to have regard to the desirability of facilitating innovation.

10. In recent months we have been gathering evidence and informally consulting to understand what we should include in the plan. The culmination of this was the innovation session which was held as part of the Awarding Organisation Conference last month. This feedback shows that we have already done some things that help support innovation, including the removal of the QCF rules, the consultation on removing the code of practice, and the new awarding organisation portal.
11. There were no specific changes that AOs requested to improve their scope for innovation. We have agreed with JISC, the HE technology organisation, that they will review our Conditions to assess whether they are technology proof. As part of the burden strategy (see below) we will introduce an annual stocktake of our Conditions, where we assess whether they are still relevant and leading to the intended outcomes. Following the feedback, we will also consider whether we can be clearer about when awarding organisations are compliant, and how we will deal with technical breaches.
12. We are requesting that the Board delegates the sign-off of the final plan to the Chief Regulator ahead of publication, which we intend for early March.

Qualifications Wales

13. The relationship with Qualifications Wales remains good. Ann Evans, Chair of QW, will be visiting Ofqual next month.
14. We want to agree a MoU with QW to reflect how we plan to work together, and to provide reassurance to AOs that we will be seeking jointly to minimise unnecessary burden. We have prepared a draft which is at a higher level than the one we had with QW's regulatory predecessor, the Welsh Government. This is attached at Annex C. QW have indicated that they are broadly happy with it, but want to do some final legal checks, and we will have separate discussions with them about information sharing arrangements.
15. The Board is asked to agree the draft, and to delegate to the Chief Regulator the sign-off of the final version of the MoU once it has been agreed, provided that any changes are not significant.

Office of the Independent Adjudicator

16. At the Board meeting last May, we reported that we had been discussing with the Office for the Independent Adjudicator for Higher Education (OIA) the implications of a recent amendment to the 2004 Higher Education Act. The legislative change (which came into force on 1st September 2015) extended the OIA scheme to providers of one or more HE courses designated to receive student support funding and to providers with degree awarding powers. This meant students studying some courses leading to Ofqual-regulated qualifications now also had a right of complaint to the OIA, risking overlap and confusion.

17. Following discussions with OIA, we sent a letter to awarding organisation Responsible Officers last month clarifying that, in such cases, an initial triage by OIA will direct complaints about the student experience and centre delivery to the OIA, and complaints about design, delivery of assessment, moderation and awarding of the qualification to the AO in question, with recourse to Ofqual. In May we thought it would be necessary to agree a Memorandum of Understanding with the OIA. We have now concluded that we do not need this, because the number of students and complaints is likely to be small. However, we will meet the OIA regularly and keep the operation of the new arrangements under review.

Regulatory Burden Strategy

18. We are required (by s170 of the ASCL Act) not to impose or maintain any burden we consider has become unnecessary. We must, and do, take this into account in how we regulate. In line with this, in March 2015, we published our first regulatory burden statement where we defined what we mean by burden.
19. In 2015, as part of the wider strategy work, we developed our Level 1 Strategy on Regulatory Burden. Given that we do not currently have evidence that we are imposing disproportionate or unnecessary regulatory burdens, we judge that the key challenges are to make our approach to monitoring and assessing burden more coherent and systematic; to manage the correct balance between supporting Government's de-regulation agenda and achieving our statutory objectives; and to develop appropriate metrics for reporting regulatory burden. We will now be implementing the agreed approach including publishing our next regulatory burden statement.

BIS Consultation on the Business Impact Target etc

20. Deregulation is a core part of the Government's commitment to boost UK productivity and support business. The Government has a Manifesto commitment to cut £10 billion of red tape over this Parliament, and this has been agreed as the Business Impact Target (BIT).
21. Government has recently announced that, through the provisions of the Enterprise Bill 2015, it will extend the scope of the BIT (and also the Growth Duty and Small Business Appeals Champion) to include the actions of statutory regulators, including Ofqual. A consultation is due to take place with all affected regulators in early 2016 intending that the de-regulation initiatives come into force in Autumn 2016. We will update the Board at the meeting if the consultation has been launched by then.
22. We have seen a copy of the draft consultation document, and we are reassured that there are no significant risks to our independence from the proposals. There are, though, a number of other issues in meeting these duties that we would want to comment on in our response.

23. Annex D provides more background and salient points about the forthcoming consultation, and based on our analysis of the draft consultation, the areas we propose to highlight in our response. The Board is invited to comment on the issues raised and, given that the closing date for responses to the consultation is likely to be before the next Board meeting, agree to delegate the sign-off of the final consultation response to the Chief Regulator.

Functional skills in English and maths

24. The functional skills reform programme is gathering pace. The first reform board, chaired by David Russell of the Education and Training Foundation and on which we sit, will have been held by the time of the Board meeting, and ETF is planning to launch its initial consultation shortly after that.
25. We are still awaiting confirmation that BIS/DfE will provide the resources we need to support our work on the programme. We expect that in the next month.

Apprenticeships

26. Since the last meeting, the Government has announced details of the apprenticeship levy which will be introduced from April next year, and the set-up of a new Institute for Apprenticeships to oversee the standard-setting process and keep under review the quality of apprenticeships. The Government published a '2020 vision' document for apprenticeships last month, which is a helpful summary of its plans¹.
27. Nick Boles, the skills Minister, wrote to the Chief Regulator when the announcement was made (see Annex E). The letter confirms that Ofqual's responsibilities are unaffected. We met the Minister in early December and he encouraged us to engage with the plans to set up the Institute. There are some risks to the quality and credibility of end-point assessments for the new apprenticeships, which we want to work with the new Institute and Government to manage.
28. All organisations with paybills over £3 million will be liable to pay the levy, which therefore includes Ofqual. Our first two apprentices started with us this month.

FE funding

29. The Government published just before Christmas a letter from Nick Boles to the Skills Funding Agency setting out funding and priorities for skills funding in England for 2016/17. The headline allocation to 19+ FE in 2016/17 is fixed at 2015/16 levels, with a 25% increase in apprenticeship funding and a small increase in the loans allocation. The apprenticeship levy is forecast to raise £3 billion a year by 2020. Overall, this means by 2020 there will be around twice as much funding

¹ <https://www.gov.uk/government/publications/apprenticeships-in-england-vision-for-2020>

within the 19+ FE system as in 2015/16. The detailed figures from the letter are at Annex F.

30. Based on the direction set out in the Funding Letter and in other announcements, we should expect to see:
- **Further attempts to streamline the qualifications offer**, in particular for learners aged 19-23, linking in with DfE-led work to establish up to 20 'technical and professional routes'.
 - **Changing patterns in the uptake of qualifications and in the extent to which the market becomes customer driven.** Funding will be increasingly routed through bodies who will choose what to purchase for themselves (loans-funded learners), their employees (Levy-funded apprentices) or their local economy (local bodies with devolved responsibility for skills).
 - **Possible displacement of qualifications by an increase in Job Centre Plus referrals** arising from the Youth Obligation. Removing the link between qualifications and funding should reduce pressure on the qualifications. We have been discussing the implications of this with the SFA.
 - **Continued emphasis on maths and English** – comprising GCSE, Functional Skills, and DfE approved 'stepping stone' qualifications.

Digital skills qualifications

31. As reported at the meeting last May, I joined a steering group reviewing publicly funded digital skills qualifications for adults, organised by the Skills Funding Agency and chaired by Liz Williams of BT. The review is due to publish its final report in the coming weeks. Many of the recommendations about prioritisation of funding are not directly relevant to Ofqual, though they may have an impact on the qualifications market, and we will discuss with SFA and Government the implications of the proposals. The review may also help to clarify the future of ICT functional skills.

Finance and Resource

32. The work set out is funded from existing resources. We have in place governance arrangements to help us to prioritise commissions and other work to make sure we are using resources as effectively as possible.

Impact Assessments

Equality Analysis

33. No specific issues.

Risk Assessment

34. There are no major new areas of risk set out in this report. A number of VQ-related risks are reflected in the strategic risk register.

Regulatory Impact Assessment

35. The discussions with BRE about the Enterprise Bill are noted above.

Timescale

36. Timescales for each area of work are set out above.

Communications

37. The main focus of our communications has continued to be the awarding organisations, though there continues to be some wider stakeholder interest in the changes to the qualifications framework and functional skills.

Internal Stakeholders

38. All other Directorates have an interest in the work set out in this report, notably the Strategic Policy and Risk team, the Regulatory Compliance team and the Communications team.

External Stakeholders

39. Relationships with stakeholders remain generally positive.

Paper to be published	Yes, except for annexes B, C and D.
Publication date (if relevant)	Following the meeting
If it is proposed not to publish the paper or to not publish in full please outline the reasons why with reference to the exemptions available under the Freedom of Information Act (FOIA), please include references to specific paragraphs	Publication of annexes B, C and D would be prejudicial to the effective conduct of public affairs. Annex C will be published when it has been finalised and signed.

ANNEXES:

Annex A: 2015 statement of compliance update

Annex B: Management information (closed)

Annex C: Draft Memorandum of Understanding with Qualifications Wales (closed)

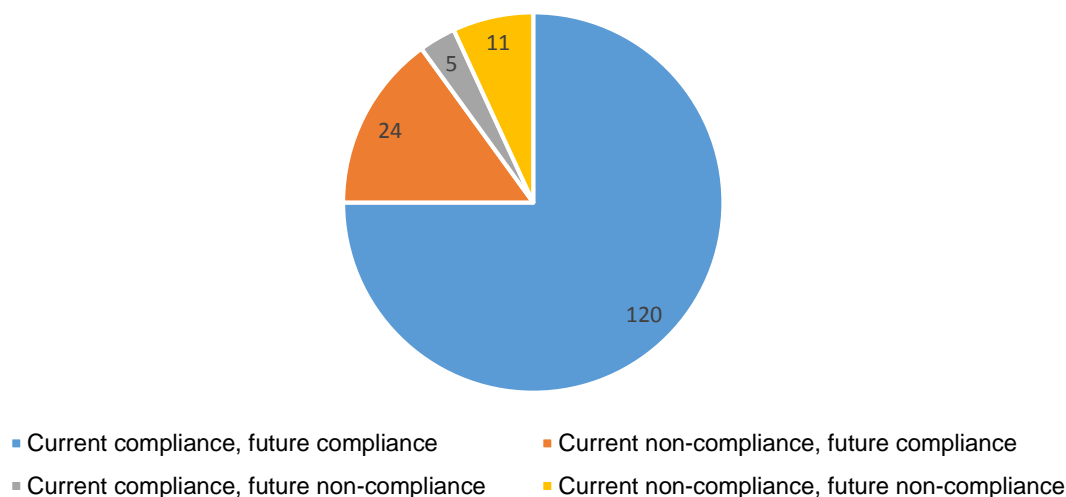
Annex D: BIS Consultation on scope of the Business Impact Target, Growth Duty and Small Business Appeals Champion (closed)

Annex E: Letter from Nick Boles to Glenys Stacey about the Institute for Apprenticeships

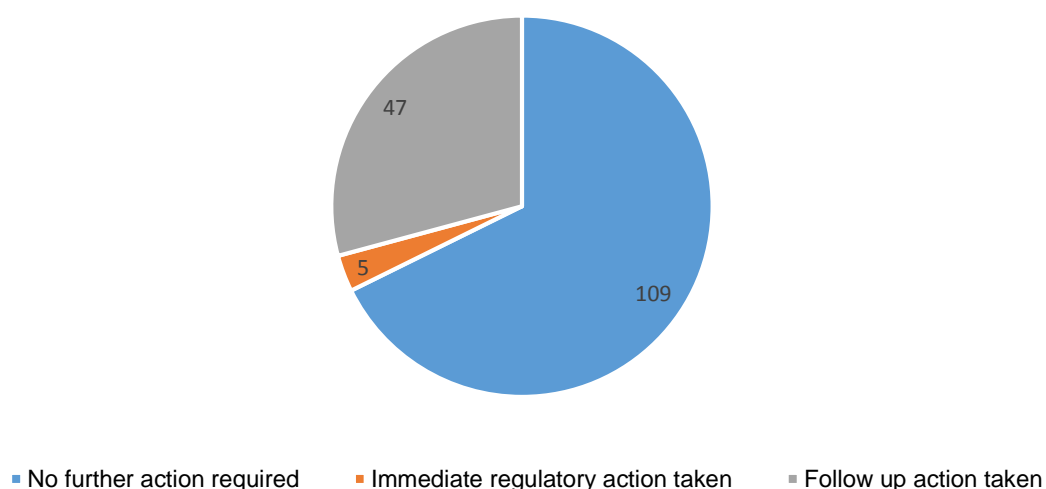
Annex F: Skills funding plans 2016/17

Annex A: Regulatory action taken as a result of the 2015 SoC

High level summary of declarations of compliance and non-compliance received from AOs



High level summary of action taken against AOs



1. 160 SoC returns were received in 2015, and one AO failed to do a return. Each return was reviewed twice by different members of staff in the Standards teams. The first review took place to ensure any high risk cases were quickly escalated. The second review was conducted by the relevant lead. Each return was considered alongside other information held on the AO. The Legal and Standards teams worked together closely, firstly to develop the review process, and subsequently to form evidence-informed regulatory opinions on the declarations received.
2. Five cases were recommended for immediate regulatory action. These took the form of:

- Special Conditions being introduced (2 AOs)
 - a referral to an enforcement panel (1 AO)
 - supplementary information being requested to inform next steps (1 AO)
 - subsequent surrender of recognition (1 AO).
3. 47 cases were referred to the Legal, Moderation and Enforcement team, with recommendations for follow-up action. Subsequent action was taken to prevent or mitigate Adverse Effects. These took the form of:
- adding the AO to a forthcoming audit (11 AOs), demonstrating risk-based targeting of our supervisory regime. This applied where the information provided in the SoC return for 2015 was not consistent with other information held on the AO.
 - taking no further action (18 AOs). This applied where the declaration of non-compliance was not, in our view, deemed to represent actual non-compliance. It also included instances where Ofqual was already aware of the non-compliance declared in the SoC, and subsequent action was already underway.
 - contacting the AO about their declared non-compliance (13 AOs). This applied where, for example, the information provided in the declaration did not clearly explain either the circumstances of non-compliance, or what steps the AO had in place to overcome this non-compliance.
 - taking follow up action at a later date (5 AOs). This applied where the AO provided clear detail of the circumstances of non-compliance, and how compliance will be achieved. These AOs have been, or will be, contacted to see if compliance has been achieved, dependent on the deadline specified in their individual SoC declarations.
4. In 109 cases, there was no need for further action at this time. However, the SoC return enables us to make judgements about levels of awareness and governance of the compliance process within each AO. This will be tested on a risk basis through the regular cycle of audit looking at AOs' controls.

Areas of concern

5. There were no substantial trends or patterns in the declarations of non-compliance, and no significant new areas of risk identified across AOs from this exercise, though some AOs appeared to have some difficulty assessing their compliance. The most frequent declarations of non-compliance were against Conditions A5 and I4. A5 relates to an AO's resource availability and arrangements, while I4 is about issuing certificates and replacement certificates. A number of AOs also declared non-compliance against Conditions relating to their systems and processes for identifying risks (A6), and their arrangements with centres

(C2), which ties in with the wider concern we have discussed with the Board about centre controls.

6. For some of the declarations of non-compliance, we considered that the information provided did not represent actual non-compliance. This occurred across eight AOs, against 14 Conditions. This evidence has been shared with the Regulatory Policy team, who are considering whether to refine, or introduce, guidance for the Conditions concerned. Four of the Conditions affected either currently have guidance out for consultation, or have guidance being prepared for upcoming consultation.

Lessons from the 2015 SoC process

7. The statement of compliance process in 2015 supported a consistent and evidence-based regulatory approach. Although taking action against declarations of non-compliance could potentially deter AOs from making such declarations, this risk is greatly outweighed by the benefits of the approach:
 - improving the Standards teams' knowledge of the AOs we regulate, and promoting a stronger regulatory presence
 - encouraging the governing bodies of the AOs to engage with the Conditions and be accountable for their judgements about compliance, with target-based follow up action where appropriate
 - highlighting areas of risk, leading to a more informed risk model
 - giving a basis for potential regulatory action if we discover subsequently through audit or other evidence that AOs have knowingly misled us in their SoCs
 - identifying Conditions where AOs may not fully understand the content, and may have incorrectly declared non-compliance. This has been passed to the Regulatory Policy Team to consider for future guidance.



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25 November 2015

Dear Glenys,

Following the Chancellor's announcement in the Autumn Statement on the Government's plans to establish the Institute for Apprenticeships and further detail on the apprenticeship levy, I am writing to provide you with some more information about the scope and purpose of the new quality body.

The Institute will build on the reforms led by our employer-driven trailblazer programme to support the quality of apprenticeships standards. It will support implementation of the levy by ensuring that employers remain in the driving seat in determining what constitutes a high quality apprenticeship. The Institute will approve apprenticeship standards and assessment plans within the context of achieving three million starts by 2020 (and any future commitments set by successive Governments) and will provide advice and guidance during their development. It will take decisions independently of government Ministers and will be led by employers.

It is our intention that the Institute will be established by April 2017 to fulfil an initial core set of apprenticeship functions but we expect it to begin operating in shadow form in 2016, taking on functions in a phased transition. It will have a central role in advising on how much funding Government should make available to pay for training and assessment under each standard. The Institute will not be responsible for the operational functions associated with funding for apprenticeships and the administration of the levy which will, instead, be fulfilled by the Government's operational agencies through the Digital Apprenticeships System.

While the levy is UK wide, Apprenticeships policy is a devolved matter so the Institute will operate in England only. We recognise the benefit of alignment in the skills system across the United Kingdom, particularly for employers with staff in more than one area but it is for the devolved administrations of Northern Ireland, Scotland and Wales to determine how they manage their programmes.

The Institute will assume the functions which Government has so far undertaken in relation to expressions of interest in creating new apprenticeships, standards and assessment plans and will thus be responsible for:

- Approving/rejecting expressions of interest in creating new apprenticeship standards
- Providing guidance on the development of standards and assessment plans
- Approving/rejecting standards and assessment plans, including expert and peer review as part of the decision making process
- Maintaining an overall picture of apprenticeships available across all sectors
- Determining policy on when standards may need to be refreshed or closed
- Advising government on how much funding should be allocated to each apprenticeship standard

Ensuring that the quality of qualifications and assessments used in Apprenticeships is maintained remains a priority for both Government and employers. As we move towards a fully reformed apprenticeship system, therefore, we will want Ofqual to continue to conduct the regulatory activities it currently offers to trailblazers. We would welcome a further conversation with you to discuss your future interaction with the new body.

More detail about the Institute and the Government's plans to deliver 3 million apprenticeships in 2020 will also be published shortly.

Finally, I would like to take this opportunity to thank you for your continued commitment to the quality of apprenticeships and I look forward to working with you as we enter this next important stage of reform.



NICK BOLES MP

Annex F: Skills funding plans 2016/17

The table below, which is drawn from the December 2015 skills funding letter, shows the adult skills funding available in England for the 2016-17 financial year and indicative projections for 2017-18 to 2019-20 (actual budgets will be set each year), along with 1 estimates of what the Apprenticeship Levy will generate across the UK.

Skills funding plans

All figures are £000's

	Baseline	Funding	Indicative		
	2015-16	2016-17	2017-18	2018-19	2019-20
19+ Apprenticeships	£740,000	£926,019	£1,076,004	£1,246,996	£1,422,999
Adult Education Budget	£1,494,000	£1,494,000	£1,503,000	£1,511,000	£1,512,000
Advanced Learner Loans	£202,000	£260,000	£325,000	£440,000	£480,000
Offender Learning & Skills Service	£130,350	£130,350	£130,350	£130,350	£130,350
Funding to Support*	£373,113	£390,324	£339,921	£266,809	£239,427
GRAND TOTAL	£2,939,463	£3,200,693	£3,374,275	£3,595,155	£3,784,776
Apprenticeship Levy estimates (please note - UK wide)			£2,730,000	£2,845,000	£2,970,000

*covers National Careers Service, Apprenticeship Grant for Employers, data collection etc.