

# **Analysis of responses to our March 2017 consultation on amending statutory guidance for Condition G4**



May 2018

Ofqual/18/6374/2

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## **Executive summary**

Between the consultation closing in April 2017 and publishing our final decisions, we identified further issues that required us to look again at some of the issues relating to Condition G4, in particular maintaining the confidentiality of assessments. As some of these issues were similar in nature to some of those covered in the proposed guidance, we took the decision to postpone the proposed changes until we had completed further work. This analysis document is a factual document setting out the responses to the initial consultation. It does not reflect the subsequent work, which we are reporting on separately.

We conducted a further consultation in March and April 2018 which also addressed Condition G4 and its guidance. A copy of that consultation, the analysis of responses and the decisions we made can be found at <https://www.gov.uk/government/news/consultation-into-strengthening-teacher-examiner-safeguards>.

We consulted on amending our statutory guidance for Condition G4 (Maintaining confidentiality of assessment materials including the conduct of specified training events) between 9 March and 7 April 2017. Respondents could answer the questions online or download them. A copy of the consultation is available at <https://www.gov.uk/government/consultations/consultation-on-amending-statutory-guidance-for-condition-g4>.

We received 12 responses to the consultation, all from organisations. One response, from a union did not comment directly on our proposals, but provided general comments. All other respondents answered the questions asked.

In addition to our formal consultation, we took part in a webinar with approximately 50 awarding organisations (organised by the Federation of Awarding Bodies), and a teleconference with exam boards. These activities were held before we launched our formal consultation and we incorporated feedback from these activities into the draft guidance we consulted on.

Respondents mostly supported our proposed guidance. They found it helpful in understanding what the Condition requires, and welcomed the inclusion of narrative-style guidance in addition to positive and negative indicators. Not all respondents supported the proposed guidance however. Some awarding organisations, including those offering general qualifications, thought there was too much guidance, and that the narrative style was too prescriptive.

We received some specific comments on individual parts of the guidance. These covered a variety of areas, including: interactions other than 'training'; requests for

additional guidance or examples; arrangements for current and former staff; and specific comments relating to the confidentiality of assessment materials.

We set out the responses in more detail below.

## Introduction

In March and April 2017, we consulted on amending the existing statutory guidance for Condition G4<sup>1</sup>. This is about how awarding organisations must maintain the confidentiality of assessment materials, including when they conduct training events for teachers. The guidance we consulted on was intended to replace, in its entirety, the current G4 guidance.

We had decided to amend this guidance following views we received from awarding organisations about our requirements and guidance in this area and work we have undertaken to review<sup>2</sup> how awarding organisations conduct training events for teachers. We decided, in 2017, to make no changes to Condition G4 itself. However, feedback suggested that the current guidance could be clearer and more helpful. Whilst some found our existing guidance useful, others told us they were confused about what is and is not prohibited. The changes we proposed were designed to address these issues.

## Who responded?

We received 12 responses to our consultation, all from organisations based in England, Wales or Northern Ireland.

**Table 1: Breakdown of consultation responses**

Personal/organisation response	Respondent type	Number
Organisation	Awarding organisation	8
Organisation	Other representative or interest group	2
Organisation	Trade association	1
Organisation	Teacher association	1

**Table 2: Location of respondents**

Location	Number
England	10

<sup>1</sup> <https://www.gov.uk/government/publications/guidance-to-the-general-conditions-of-recognition>

<sup>2</sup> <https://www.gov.uk/government/publications/an-interim-evaluation-of-exam-boards-events-for-teachers>

Wales	1
England/Wales/Northern Ireland	1

Appendix A includes a list of the organisations who responded to our consultation.

## **Approach to analysis**

We published the consultation on our website. Respondents could respond online, by email or by post. The consultation asked 9 questions. We presented our draft guidance and asked respondents to provide views on the extent to which the guidance and its style were effective. We asked for specific views on the wording of our draft guidance.

During the analysis, we reviewed every response to each question. In this analysis, we present the responses to the consultation questions in the order in which we asked them.

This was a consultation on the views of those who chose to respond. Whilst we made every effort to ensure that as many respondents as possible could respond, it cannot be considered as a representative sample of the general public or any specific group. Typically, those that respond are those with strong views and/or particular experience or interest in a topic.

## **Consultation response outcomes**

In this section, we report the views, in broad terms, of those who responded to our consultation.

**Question 1. To what extent do you agree or disagree that the proposed amended guidance will help awarding organisations to understand the requirements of Condition G4?**

Seven respondents agreed or strongly agreed with this statement; three disagreed. One respondent provided general comments indicating that they were against guidance in general, but did not indicate the extent to which they considered this guidance to be helpful or not.

Of those that agreed or strongly agreed:

- six (three awarding organisations, three trade associations or interest groups) commented that the guidance will help awarding organisations understand the requirements of Condition G4. Three of these also commented that there were some areas that could be made clearer and had provided comments in response to the next question
- one awarding organisation that agreed commented that given the number of possible circumstances, it was impossible for the guidance to cover all possible scenarios
- one awarding organisation commented that it was important to note that awarding organisations do not have to follow the guidance if they have good reason not to, as some of it may be difficult to follow in small-entry subjects

All those that disagreed were awarding organisations. They commented on the volume of guidance, for this Condition and also more generally

- one commented that the addition of narrative guidance to the positive and negative indicators could cause confusion as to how many different regulatory requirements the Condition is seeking to capture
- one commented that the volume of guidance across all Conditions is excessive and that they believed the Conditions could be written more clearly to remove the need for guidance. They also commented that guidance provides a further level of detail, which could itself lead to differences in interpretation between awarding organisations

**Question 2. Do you have any comments on the proposed amended guidance for Condition G4? For specific comments, please refer to the relevant line numbers in your response.**

Eleven respondents provided comments about our draft guidance. Some of these were specific to parts of the guidance, for example suggesting changes to the way parts of the guidance are written. Other responses were more general, commenting on the general approach or how the guidance relates to the Condition overall.

Below is a summary of the main points respondents made.

### **References to ‘training’ and other interactions**

Respondents commented on the guidance relating to interactions between those with knowledge of the contents of assessments and teachers, in situations other than those that they recognised as training events.

Two respondents commented that the guidance was not clear about whether an awarding organisation could send anyone at all with knowledge of the contents of assessments into a centre. Respondents commented that, particularly in the case of smaller awarding organisations, or in subjects with a limited pool of subject experts, not being able to do this could pose resource issues for awarding organisations. Respondents also requested further clarification about what constitutes ‘prohibited training’, a ‘training event’ and a ‘meeting’.

One respondent felt that the guidance relating to the steps to be taken to prevent disclosure at teacher training events was unnecessary. They felt that if an awarding organisation was complying with the Condition, it would not be offering any ‘prohibited training’.

One respondent commented on the use of the terms ‘interactions’ and ‘visits’ in the guidance. They felt that the guidance needed to be clearer about these terms and that these should only include situations where the purpose relates to training. This respondent commented that the guidance relating to

“providing to Teachers, a direct subject or qualification specific contact who has not had access to confidential information”

should be amended so that it relates only to contexts that relate to training. They felt that otherwise, this could prevent an awarding organisation from providing a contact who, in other parts of their role, may have had access to confidential information.

Two other organisations made similar comments.

One respondent commented that some references to the term ‘training’ were unclear. They commented that references to training could be taken to mean all



training which an awarding organisation provides, such as broader training about assessments, not just training about specific qualifications. Another respondent also made similar comments about the use of the term 'training'.

### **Requests for additional guidance and examples**

While some respondents felt that the additional guidance was helpful, or in some cases excessive, others highlighted areas where they felt it was not detailed enough.

Two respondents commented on our proposed guidance that states:

“Where confidential information is shared, we want awarding organisations to respond effectively to mitigate any risks to the fairness and validity of the assessment.”

They commented that the guidance would benefit from examples of the type of responses that would be effective in such circumstances.

Two respondents commented on our draft guidance that states:

“Where an awarding organisation provides more general information, for example on techniques for responding to questions, it must ensure that this does not include prohibited training”.

Respondents commented that it would be helpful if the guidance provided further information about how far an awarding organisation can go in clarifying the exam techniques required to support a learner in passing an assessment.

Two respondents commented on the guidance relating to an awarding organisation taking

“...all reasonable steps to ensure that its training is reasonably available to all Teachers preparing Learners to take assessments for that qualification...”

These respondents queried whether a financial charge for a training session would be seen as a barrier to them being considered 'reasonably available'.

### **Monitoring training events**

Two respondents commented that the guidance on how an awarding organisation manages the risk of the disclosure of confidential information by those that are also Teachers of the qualification, those who train Teachers or those who train others. They commented said it would be helpful to have examples of the type of activity that might be relevant to manage the risks in these situations.

Two respondents commented on our draft guidance that states:

“An awarding organisation should consider whether to monitor data about assessments to identify and/or investigate potential breaches of confidentiality”.

They queried whether this suggested that an awarding organisation should monitor data, even where it has no reason to believe a potential breach of confidentiality has taken place. They commented that this would be onerous on awarding organisations, and that it would be difficult to attribute any anomalies to a breach of confidentiality.

### **Current and former staff**

Our draft guidance included statements relating to actions to be taken for former staff or contractors, to ensure that the confidentiality of assessments was not breached.

Four respondents commented on our guidance requiring:

“...current staff and contractors (and former staff and contractors as far as is reasonable) who have had access to confidential information to seek its agreement before preparing training materials.”

They commented that it is not clear what action an awarding organisation would be required to take in relation to former staff. They said that although they can impose contractual obligations, they could not actively monitor whether a former employee adheres to this. One respondent also commented on whether it was realistic to expect that current or former staff would seek agreement before producing training materials, even if the awarding organisation required them to do so. Another respondent made similar comments.

### **Confidentiality of assessment materials**

One respondent commented on the meaning of the term ‘confidentiality’. They interpreted the Condition such that they believed only certain types of confidentiality are covered by the Condition, implying that there may be other types of confidentiality that are not. They commented that in most parts, the guidance refers to confidentiality more generally, which they feel is slightly different to the type of confidentiality relating specifically to training events, which they said is implied by parts of the Condition.

One respondent commented that whilst the section on “*When does information about an assessment need to be kept confidential*” provides useful guidance, it could benefit from being more direct in places. They commented that the guidance should explicitly state whether certain types of material are confidential, particularly for those that the respondent considered would always be confidential.

One respondent commented on the guidance that a negative indicator of compliance could be that an awarding organisation:

“allows people who have or have had access to confidential information to attend training events for Teachers”.

The respondent commented that as some writers of assessments are also teachers, it is unrealistic to think that some of the information they retain may not unwittingly be used in teaching. They commented that whilst they may not know what would be in the final live exam, they might have a broad knowledge of topics to be covered.

### **General comments**

One respondent commented that it felt the guidance offered no benefit to larger awarding organisations, who already have a detailed understanding and extensive operational experience of the areas covered by the Condition.

One respondent commented that the volume of the proposed guidance was significantly higher than the existing guidance for this Condition. They felt the addition of narrative style guidance makes the guidance more prescriptive than the usual positive and negative indicator style of guidance.

One respondent commented on the guidance on “*How should an awarding organisation ensure that training and information about training that is makes available to Teachers is accessible*”. They commented that this does not relate to confidentiality, although noted that it does relate to the Condition.

### **Useful guidance**

The majority of comments related to areas where the guidance could be improved. Some respondents did however also comment on parts of the guidance that they found to be helpful.

Two respondents commented that the guidance on the extent to which different types of assessments materials or information about assessments could be considered to be confidential was helpful. One respondent commented that the proposed guidance covering the use of pre-recorded information at training events was useful.

**Question 3. To what extent do you agree or disagree that the proposed style of guidance will help awarding organisations to understand the requirements of Condition G4? Please provide any additional comments on the style of the guidance.**

Eight respondents who answered this question agreed or strongly agreed; two disagreed.

Respondents that agreed or strongly agreed commented that the guidance was generally clearer than the previous guidance. They commented that the 'question-style' headings were helpful, and felt that the examples provided were practical in nature. Respondents also welcomed the removal of duplication between positive and negative indicators.

One respondent who disagreed, commented on the volume of guidance and that it could be confusing because it includes indicators and narrative guidance. Another respondent commented on the structure of the Condition itself, suggesting an alternative approach to structuring the Condition, which they suggested the guidance could then follow.

**Question 4. We have not identified any ways in which the proposed amended guidance would impact (positively or negatively) on persons who share a protected characteristic. Are there any potential impacts we have not identified?**

Two respondents provided comments on this question.

One respondent commented that if an awarding organisation uses experts to support accessibility of assessment formats, they may also need to meet teachers in other contexts to learn and improve on the mediums used for delivering assessments, which could be considered 'prohibited training'.

One respondent commented that consideration should always be given to what support is provided to avoid giving away too much information and advantaging disabled students to the detriment of others.

**Question 5. Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic?**

No respondents provided any comments in response to this question.

**Question 6. Do you have any other comments on the impacts of the proposals on students who share a protected characteristic?**

No respondents provided any comments in response to this question.

**Question 7. We have not identified any ways in which the proposed amended guidance will unduly increase the regulatory impact of our proposals. To what extent do you agree or disagree with this assessment?**

Six respondents agreed with our assessment; one disagreed. One organisation neither agreed nor disagreed. Three respondents provided comments, without indicating the extent to which they agreed or disagreed.

Respondents who agreed commented that the guidance will improve clarity and that as guidance, awarding organisations were not required to follow it. They commented that as the Condition was not changing, there would be no increase in the regulatory impact.

The respondent that disagreed referred to their earlier comments about specific parts of the guidance under question 2.

Those that provided comments without indicating the extent to which they agreed or disagreed made the following comments:

- one commented that whilst they did not think the guidance was necessary, they did not think it would unnecessarily increase the burden on awarding organisations
- one commented that as there are no proposed changes to the Condition, and the proposed guidance is clearer, there would be no increase in the regulatory impact
- one commented that whilst it felt the narrative style of guidance could be confusing, it does not go beyond the scope of the Condition. They commented that changing the style does increase the burden as staff will have to familiarise themselves with the new style and awarding organisations would need to monitor staff to make sure they had understood the new guidance. They felt that this is because the narrative guidance is more prescriptive than the previous guidance

**Question 8. Are there any additional steps we could take to reduce the regulatory impact of our proposals?**

Five respondents provided comments in response to this question.

Two respondents commented that we should revise Condition G4 to remove the notion of 'prohibited training', which they felt was disproportionate to the regulatory need.

One respondent commented that they did not believe there was a requirement for extensive narrative guidance in this area. They commented that the system of positive and negative indicators in place for other Conditions was established and would be suitable in this area.

**Question 9. Are there any costs or benefits associated with our proposals which we have not identified?**

Four respondents provided additional comments in relation to this question.

Respondents commented that, as there were no changes to the Condition, there should not be any additional costs or benefits. Respondents did note some limited costs associated with having to read and understand the new guidance and any related changes to systems and processes. But they did not consider these costs to be disproportionate and noted that such costs apply to any regulatory change. Respondents commented that the new guidance should make it clearer to awarding organisations how to comply with the Condition.

**Other comments**

One respondent did not comment directly on our proposals, commenting that our proposals were of most significance to awarding organisations.

One respondent provided additional comments that it welcomed the action to try to clarify this guidance as it felt there was a lack of clarity around the Condition, which the existing guidance does not resolve. This respondent also commented that it welcomed the opportunity to comment, ahead of the consultation, on our drafts through the webinar.

## **Appendix A: List of organisational consultation respondents**

We asked respondents to tell us the capacity in which they were responding.

We have listed below, those organisations that submitted a response to our consultation. We have not included a list of those responding in a personal capacity, however all responses were considered during the analysis.

ASCL

Awarding First

City & guilds

CIE

CPCAB

FAB

OCR

Pearson

RAD

Voice

WJEC

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