

# Decisions on our rules and regulations for safeguards for the confidentiality of assessment materials



In September 2017 we announced we would review:

- the risks and benefits of the long-established practice whereby some Teachers<sup>1</sup> who write or contribute to exam papers also teach the qualification; and
- the effectiveness of the safeguards used to reduce the risk of a teacher who has this dual role disclosing or otherwise misusing information about confidential assessments.

Following research and evidence gathering, we consulted on our policy proposals to improve the safeguards around the development of confidential assessment materials between 14 March and 25 April 2018. We announced our decisions following that consultation on 11 May 2018.<sup>2</sup>

We subsequently consulted on the strengthened Conditions of recognition and expanded guidance necessary to implement our policy decisions between 11 May and 8 June 2018.<sup>3</sup> This document sets out our decisions following that consultation.

## Summary of our decisions

Our consultation included proposals for new or revised text in two of our General Conditions of Recognition, and four sections of our guidance to the General Conditions.

In each case, we have decided to adopt most of the wording on which we consulted. However, we have made minor changes in response to suggestions made to us

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<sup>1</sup> 'Teacher' is a defined term in our General Conditions of Recognition. The definition is 'A person who prepares any Learner, or any person likely to become a Learner, for assessment for a qualification and who does so – (a) as a lecturer, supervisor, tutor or other appropriate provider of education or training, or (b) in circumstances in which that preparation takes place primarily at home.'

<sup>2</sup> <https://www.gov.uk/government/consultations/consultation-teacher-involvement-in-the-development-of-confidential-assessment-materials>

<sup>3</sup> <https://www.gov.uk/government/consultations/rules-and-regulations-on-teacher-involvement-in-exam-development>

during the consultation. These suggestions have in places improved how effective we think the Conditions and guidance will be. We have also improved the clarity and consistency of our Conditions and guidance, making them easier to read and more helpful for awarding organisations.

## **Condition A4 – Conflicts of interest**

There were two points of concern raised in response to our proposed change to Condition A4.3. Several respondents asked for clarification on whether the use in our draft of the single “register” of interests would preclude a number of registers fulfilling this requirement. We have decided to change the word ‘register’ to ‘record’, and make clear in our guidance to this Condition that a record can comprise one or more documents.

The other chief concern was with the idea that the record should capture all conflicts of interest that apply to an awarding organisation, rather than only those of which it is aware. However, Condition A4.2, which has been in place since July 2011, already requires an awarding organisation to identify and monitor all conflicts, not just those of which it is aware. The revised Condition A4.3 will require an awarding organisation to keep a record of the conflicts which it has always been required to identify under Condition A4.2.

## **Guidance to Condition A4 – Conflicts of interest**

We have made a number of minor changes to our proposed wording for the guidance to Condition A4. We have replaced ‘register’ with ‘record’ to bring the guidance in line with the Condition, and, as noted above, we have made it clear that this record can take the form of more than one document.

We have also improved the readability of some sections.

## **Guidance to Condition A8 – Malpractice and maladministration**

We consulted on changing the guidance for Condition A8 to encourage awarding organisations to consider referring cases of Teacher malpractice to the Teaching Regulation Agency (TRA). One respondent queried the nature of Ofqual’s relationship with the TRA. There is no such relationship; TRA is an executive agency, sponsored by the Department for Education, with responsibility for the regulation of the teaching profession, including misconduct hearings and the maintenance of the database of qualified teachers. Ofqual is a non-ministerial department which regulates qualifications, examinations and assessments in England.

Four of our respondents indicated that they would expect a school or college to make referrals to TRA rather than an awarding organisation. We have modified our

guidance to be clear that if an awarding body has evidence that a centre has made a referral, then it does not need to make a referral itself.

Some respondents indicated that they were unclear as to the scope of this guidance, particularly where it refers to other regulatory organisations. We believe the guidance is clear on this point. We do not wish to list the types of organisation to which it would be appropriate for an awarding organisation to refer cases of malpractice, either in England or beyond, as these will be numerous and may vary over time.

## **Condition G4 - Maintaining confidentiality of assessment materials**

We received no comments on our proposal to remove the second clause of the title of the Condition, and we have decided to adopt the proposal.

We received very few comments on our proposal to change the wording of the Condition. Two respondents disagreed with our proposal but we do not agree with their respective contentions that G4.3 is a circular definition or that the new G4.5b is redundant.

A third respondent suggested that G4.5b be expanded to change the scope to include third parties who have any form of access to confidential exam materials as well as those who are involved in their development. We have decided to change the wording of the Condition to reflect this.

## **Guidance for Condition G4 - Maintaining confidentiality of assessment materials**

We proposed extensive changes to our guidance to Condition G4, and we received detailed comments from a number of respondents. Most of the comments were around specific points of drafting. Some of these we have reflected in the final version, where the suggestions made the guidance clearer, more precise and easier for awarding organisations to interpret and use.

Notably, we have responded to a comment which suggested that the section setting out the scope of Condition G4 in terms of who is covered be moved to the top of the guidance.

## **Guidance on safeguarding confidentiality where Teachers are involved in developing assessments**

The guidance on which we consulted was completely new, and attracted a number of comments from respondents.

In general respondents supported this guidance, but there were three key areas in which there was some disagreement with our proposals. In various places in our proposals we say 'we expect' or words to that effect. For example:

For qualifications such as GCSEs, A levels and the main alternatives, the stakes of the qualification, for both Learners and Centres, are sufficiently high that **we will normally expect** an awarding organisation to manage its assessment development in such a way so no Teacher of the relevant qualification knows with certainty the content of any specific assessment. Where it does not do so, we will expect an awarding organisation to be able to offer a compelling justification for any alternative approach.

A number of respondents indicated that by including such expectations in guidance we are setting de facto requirements, and that these should be better placed as Conditions. We do not agree with these comments. We are clear in our guidance that appropriate responses to our Conditions will vary depending on the nature of the qualification in question. By using such language we are saying that where there are specific risks in certain qualifications we cannot see how else awarding organisations could adequately safeguard their assessments. However, there may be innovative solutions which we have not considered which would be just as robust, and awarding organisations would be free to use those instead.

Another criticism of our proposal was in a similar vein, regarding the 'strength' of the measures we propose and the complexity of some the 'packages' of safeguards. These concerns appear to stem from a misreading of our guidance as a list of measures which must be adopted, which is not the case. We have decided not to remove or reduce the examples of measures and packages we have included in our guidance. We have been clear that it is for each awarding organisation to decide on the measures it puts in place for each of its qualifications.

There were specific criticisms levelled at some of the examples of types of monitoring an awarding organisation could undertake. Some respondents voiced doubts over their effectiveness and warned that some of them would be overly burdensome – particularly, for example, the proposal that awarding organisations might sometimes look at the teaching materials of Teachers who wrote exam papers. We have acknowledged that some of the examples would be more appropriate to support an investigation into concerns of malpractice, rather than for routine monitoring. We have also now made clear in the guidance that in many cases only a combination of evidence from different sources would be reliable.

We have also made other minor changes to our drafting to highlight that we are aware of the multiple benefits derived from using Teachers in the development of assessment materials for many qualifications, and to make the guidance easier to read.

## **Equalities impact assessment**

We said in our consultation proposals that we “did not identify any positive or negative impacts of our proposed amended Conditions or guidance for people because of their protected characteristics.”

We invited respondents to bring to our attention any impacts which we had not identified, but we received no responses on these questions.

## **Regulatory impact assessment**

In our policy consultation we asked awarding organisations to estimate the costs they would incur if we amended the Conditions and guidance as we proposed. It is important to note that awarding organisations are not required to follow our statutory guidance, but need to have regard to it. In considering the regulatory impact we have assumed awarding organisations will, broadly, take the full range of appropriate steps suggested in the guidance.

### **Record of conflicts of interest**

On recording third parties’ conflicts of interest, two awarding organisations confirmed they already did this, so no incremental burden would be imposed; a further awarding organisation indicated they would incur an extra cost of £96,000 per annum. A large awarding organisation indicated a cost of £20,000 per annum and a further exam board indicated the cost of employing a single member of staff to maintain such records would be £25,000 per annum

This would suggest an average incremental burden of £50,000 per annum for larger awarding organisations. For the remaining, smaller awarding organisations the impact would be significantly less, since the number of third parties they employ will be lower, however none provided specific figures in their responses. We have taken the view that the cost to smaller awarding organisations will be between zero and the figure for the larger awarding organisations. We have decided to use an average figure half way between these points of £25,000.

It is worth noting that the General Conditions of Recognition have, of course, always required awarding organisations to identify and manage conflicts of interest; it would have been difficult for an awarding organisation to do this effectively unless they had up to date records.

### **Unpredictability of assessments**

On ensuring the unpredictability of assessments, the responses focused on the cost of producing additional assessments in the implementation period, with ongoing costs then largely unchanged compared to the present. One awarding organisation indicated that they were already compliant with the proposals, so no additional burden would be incurred. One exam board estimated a one-off cost of £2 million

and another suggested a £1.0-1.2 million cost. One exam board estimated its direct costs would be in the region of £1 million. It also noted however that “there are additional opportunity costs and risks associated with implementing requirements linked to this guidance.” One large awarding organisation indicated a one-off cost of £130,000 for its affected qualifications, as it already operates with a pool of potential papers and simply intends to extend the size of the pool.

One exam board gave two alternatives for costs of producing exam papers. Its current budget for question paper production averages £2,950 per paper; additional costs would be incurred as multiples of this figure. It did not, however, indicate how many papers it produces currently, or how many it might need to produce in the future. It said that: “The introduction of a process and system for item banking would involve system development or licencing at a potential cost of between £60,000 per annum for a licence arrangement and up to £2.5 million for system development (although this potential cost has not been fully researched at this point)”. We feel it is unlikely the £2.5 million option would be selected in favour of the £60,000 per annum licence option, so we have disregarded the £2.5 million estimated cost.

This would suggest exam boards would incur one-off costs of £1 million each. Other awarding organisations could incur additional costs of up to £130,000 each, depending on the number of qualifications where conflicts could arise, so we have assumed a cost of £65,000 on average for these smaller entities.

### **Staff training**

An exam board gave some indicative costs of the training involved in implementing all the changes, estimated as the cost of an additional member of staff at £25,000 and the training of 700 members of staff at a cost of £175,000.

A further exam board indicated training costs of between £50,000 and £100,000.

An average one-off training cost for exam boards, across their various sizes, has therefore been estimated at £150,000 each.

We received no information on likely training costs from the other awarding organisations, but a reasonable figure would be no more than £25,000 on average, given many have small numbers of staff.

Another awarding organisation noted that the increased costs which our proposed Conditions and guidance would incur might lead to it having to reconsider the fees charged to centres, although it offered no specifics. This awarding organisation mentioned particular concerns about potential negative impacts for low-entry subjects.

The only other responses we received were from two smaller awarding organisations which said that the changes would incur minor administrative costs, but did not put a figure on these.

## Total impact

- For four exam boards = £1.2 million one-off plus £50,000 per annum
- For other awarding organisations = £90,000 one-off plus up to £25,000 per annum
  - For these, if 30 awarding organisations are affected (because they develop and use confidential assessment materials) this would equate to a combined impact of £2.7 million one-off plus £0.75 million per annum.

### **The total impact across the regulated entities is estimated to be £7 million upfront and £1 million per annum.**

We do not know precisely how many awarding organisations will be affected by our revised Conditions and guidance beyond the four exam boards which offer GCSEs, AS and A levels.

We estimate 30 based on the number of awarding organisations offering qualifications which we are aware require external assessment. There may be other awarding organisations which use external assessment, and we are aware that in some cases awarding organisations already have safeguards in place which would be in line with our guidance.

We are certain that the full extent of our revised Conditions and guidance will not affect all awarding organisations because we know that many do not rely on assessments which must remain confidential, and many of which do not use Teachers or third parties to develop them.

We also note that only eight awarding organisations other than the exam boards responded to our consultations.

Three respondents also commented on the timescales in which our Conditions and guidance will be introduced. One said:

It will be important for Ofqual to consult awarding organisations on implementation timescales for the proposals, and on transitional periods where any aspects of the new requirements need to be phased in over time. This will help us to manage the impact and risks of the regulatory changes. It is not clear how quickly Ofqual expects us to comply with revised conditions or to take account of new guidance on existing conditions

*Awarding organisation*

We explain our approach to timescales in the following section.

## Timescales

Our revised Conditions and guidance take effect from the 6 August 2018. However, in many cases assessment materials for 2019 will have already been prepared. We said in our previous consultation:

For some qualifications, such as GCSEs and A levels, development of assessments to be taken in summer 2019 is likely to have already started, and will definitely have done so by the time the revised Conditions and statutory guidance are published. We recognise that it will not be possible for awarding organisations to have fully revised all their approaches at the assessment production stage by then without introducing an unacceptable degree of risk to the safe delivery of qualifications.

To reflect this, we have decided to send all awarding organisations a regulatory letter<sup>4</sup> when we publish the revised conditions<sup>5</sup>, which sets out that we accept that awarding organisations will need some time to put in place a complete package of appropriate safeguards and that we will take this into account when considering any regulatory action.

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<sup>4</sup> <https://www.gov.uk/government/publications/letter-to-awarding-organisations-confidential-assessment-materials>

<sup>5</sup> <https://www.gov.uk/government/news/final-decisions-on-confidential-assessment-material-development>



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