

Conditions and guidance

1. Condition A4

Condition A4 Conflicts of interest

Definition of conflict of interest

A4.1 For the purposes of this condition, a conflict of interest exists in relation to an awarding organisation where –

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- (a) its interests in any activity undertaken by it, on its behalf, or by a member of its Group have the potential to lead it to act contrary to its interests in the development, delivery and award of qualifications in accordance with its Conditions of Recognition,
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- (b) a person who is connected to the development, delivery or award of qualifications by the awarding organisation has interests in any other activity which have the potential to lead that person to act contrary to his or her interests in that development, delivery or award in accordance with the awarding organisation's Conditions of Recognition, or
- (c) an informed and reasonable observer would conclude that either of these situations was the case.

Identifying conflicts of interest

15 A4.2 An awarding organisation must identify and monitor –

- (a) all conflicts of interest which relate to it, and
- (b) any scenario in which it is reasonably foreseeable that any such conflict of interest will arise in the future.

20 A4.3 An awarding organisation must establish and maintain an up to date record of all conflicts of interest which relate to it.

Managing conflicts of interest

A4.4 An awarding organisation must take all reasonable steps to ensure that no conflict of interest which relates to it has an Adverse Effect.

25 A4.5 Where such a conflict of interest has had an Adverse Effect, the awarding organisation must take all reasonable steps to mitigate the Adverse Effect as far as possible and correct it.

Interests in assessment

- A4.6 An awarding organisation must take all reasonable steps to avoid any part of the assessment of a Learner (including by way of Moderation) being undertaken by any person who has a personal interest in the result of the assessment.
- 30 A4.7 Where, having taken all such reasonable steps, an assessment by such a person cannot be avoided, the awarding organisation must make arrangements for the relevant part of the assessment to be subject to scrutiny by another person.

The written conflict of interest policy

- 35 A4.8 An awarding organisation must establish, maintain, and at all times comply with an up to date written conflict of interest policy, which must include procedures on how the awarding organisation intends to comply with the requirements of this condition.
- A4.9 When requested to do so by Ofqual in writing, an awarding organisation must promptly submit to Ofqual its conflict of interest policy, and must subsequently ensure that the policy complies with any requirements which Ofqual has communicated to it in writing.

2. Guidance for Condition A4

Guidance on Condition A4 – Conflicts of interest

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

The awarding organisation:

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- ensures that its contractual arrangements with staff and third parties who have access to confidential assessment information¹ clearly set out any obligations on those staff and third parties to manage conflicts of interest arising from other activities that they undertake;
 - puts in place contractual arrangements which require, at a minimum, staff and third parties who have, or have had, access to confidential assessment information through the assessment development process (including quality assurance) to provide details to the
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- awarding organisation of –

¹ In this guidance 'confidential assessment information' refers to both the contents of assessment materials and information about the assessment in relation to which confidentiality must be maintained under Condition G4.1.

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- all instances in which such a person is, or has been, a Teacher for the relevant qualification, or is employed by a Centre at which that qualification is taught or delivered (even if that person does not themselves teach or deliver the qualification); and
 - all other conflicts of interest including personal conflicts such as, for example –
 - where a child, sibling, or other close family member is due to take the assessment in relation to which the person has confidential assessment information, and
 - where a partner or other close family member is teaching, or is due to teach, the relevant qualification;
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- requires such details to be provided on an ongoing basis for as long as the relevant assessment information remains confidential;
 - maintains records of all conflicts (using one or more documents) and retains relevant entries for as long as the relevant assessment information remains confidential or as long as required to undertake effective monitoring, whichever is later;
 - puts in place contractual arrangements requiring staff and third parties who have had access to confidential assessment information to promptly notify it if they have been, or are currently, involved in the preparation of a resource designed to support the preparation of Learners for assessments for that qualification. One example of such a resource would be a textbook for the specification. This does not apply to the preparation of teaching resources or materials by a Teacher exclusively for Learners that he or she teaches (although the awarding organisation may choose to look at such materials in order to deter and detect any breach of confidentiality);
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- monitors assessments set by staff and third parties who have been involved in the preparation of a resource designed to support the preparation of Learners for assessments for that qualification, to ensure that the fitness for purpose of those assessments has not been compromised by that resource. One example of such a resource would be a textbook for the specification. This does not apply to the preparation of teaching resources or materials by a Teacher exclusively for Learners that he or she teaches (although the awarding organisation may choose to monitor such materials in order to deter and detect any breach of confidentiality);
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- investigates credible concerns which come to its attention in relation to conflicts of interest.
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45 **Examples of ‘negative indicators’ that would suggest an awarding organisation is not likely to comply**

The awarding organisation:

- did not know that the partner of a staff member involved in the development of confidential assessment information was employed at the time as a Teacher for the qualification for which the assessment would be taken;

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- did not know that a third party who it contracted to develop or quality assure confidential assessment materials was employed at the time as a Teacher for the qualification for which the assessment would be taken;
 - did not know that a third party who it contracted to assist with the development of confidential questions for an assessment – who did not teach the relevant qualification at the time – later
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- became a Teacher of that qualification before the assessment was taken;
 - did not know that a third party who modified confidential assessment materials worked at the time as a private tutor in respect of the qualification for which the assessment would be taken;
 - where a current Teacher holds confidential assessment information, deletes relevant information from its conflicts register where the Teacher stops teaching the relevant
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- qualification before the assessment is taken or before any monitoring takes place.

3. Guidance for Condition A8

Guidance on Condition A8 – Malpractice and maladministration

Examples of ‘positive indicators’ that would suggest an awarding organisation is likely to comply

- 5 The awarding organisation:
- has ways of working that reduce the risk and incidents of malpractice or maladministration occurring;
 - makes sure that individuals involved in the development, delivery and award of its qualifications understand and routinely follow these ways of working;
- 10
- takes all reasonable steps to ensure that current (and former) staff and third parties do not provide information about its qualifications which is inaccurate or misleading;
 - follows policies, practices and/or procedures that reduce the risk of malpractice and maladministration, covering, among other things:
 - plagiarism, collusion, tampering, breach of confidentiality of assessment materials;
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- incidents that occur outside of England (if it operates elsewhere);
 - knows what to do if evidence of malpractice or maladministration comes to light, whether in the organisation itself or within a third party involved with the design, delivery or award of a qualification;
 - acts quickly when it has evidence of malpractice or maladministration;
- 20
- investigates promptly any allegations for which there are reasonable grounds that current (or former) staff or third parties have provided inaccurate or misleading information to Centres or Teachers about its qualifications and, if the awarding organisation establishes that Teachers have been misinformed, takes reasonable steps to correct any misunderstandings with the Centres or Teachers that are affected;
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- captures, logs and addresses all suspicions and evidence of malpractice.

The awarding organisation uses and regularly reviews a standardised investigations policy and approach that sets out:

- who investigates concerns about malpractice or maladministration;
- how an investigation is undertaken;

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- how whistleblowers will be treated, and in such a way that individuals will not be prejudiced;
 - when and how interested parties will be notified lawfully;
 - how any interviews should be conducted;
 - how facts will be gathered and evidence found, collated and stored;
 - how evidence will be verified;

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- how confidentiality of investigation materials is assured;
 - how the records of its investigations will be presented and their accuracy assured;
 - how and when any visits to Centres will be announced and undertaken;
 - which principles will be followed when it undertakes an investigation with other bodies.

The awarding organisation has on record:

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- clear terms of reference for the investigations that it has undertaken;
 - a log of all allegations, including those that were not investigated, that it can cross-reference if new information is provided.

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Where the awarding organisation finds that a Teacher has disclosed confidential assessment information, the awarding organisation ensures that, where appropriate, the Teaching Regulation Agency (TRA), or any organisation that carries out the same function in England or another jurisdiction, is notified. In considering whether or not such a referral is appropriate the awarding organisation considers whether:

- the Teacher in question is subject to professional regulation by the TRA or other teaching regulator; and
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- the malpractice identified is serious based on the facts of the case and the seriousness of the sanction imposed by the awarding organisation.

The awarding organisation takes into account any guidance issued by the appropriate regulator. In general, a referral should be made where there was a deliberate or persistent disclosure in contravention of the requirements for the conduct of the assessment, or in breach of confidentiality of confidential assessment information, particularly where the action had, or was intended to have, a significant impact on the outcome of the assessment for at least one Learner.

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The awarding organisation reminds any Centre at which the Teacher is employed of its obligation to consider a referral to the TRA. Where an awarding body has evidence that a Centre has made a referral, then it does not need to make a referral itself. If in doubt, an awarding organisation should err on the side of making a referral itself.

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- 30 G4.4 An awarding organisation must, in respect of any training it provides to Teachers in relation to such a qualification (and, in relation to any such training provided by any person connected to it, must take all reasonable steps to) –
- (a) ensure that the training is reasonably available to all Teachers preparing Learners, or persons likely to become Learners, for assessments for that qualification,
 - (b) advertise to Teachers the availability of the training, including in particular by publishing details of the training, and
 - 35 (c) publish the content of any training materials which have been provided to Teachers in connection with the training, as soon as reasonably practicable after the training has been held.
- G4.5 An awarding organisation must take all reasonable steps to ensure that –
- (a) no person connected to it, or previously connected to it, and
 - (b) in particular, no Teacher or other third party who has had access to assessment materials,
 - 40 discloses, or offers to disclose, information about any assessment or the content of any assessment materials where that information is (or is said or implied to be) confidential.
- G4.6 Where any breach of such confidentiality (including through the loss or theft of confidential assessment materials) is either suspected by an awarding organisation or alleged by any other person and where there are reasonable grounds for that suspicion or allegation, the awarding organisation must:
- 45 (a) investigate that breach,
 - (b) ensure that such an investigation is carried out rigorously, effectively, and by persons of appropriate competence who have no personal interest in its outcome, and
 - (c) so far as possible, establish whether or not a breach of such confidentiality has occurred.

5. Guidance for Condition G4

5 Guidance on Condition G4 – Maintaining confidentiality of assessment materials

Third party activities covered by Condition G4

An awarding organisation must ensure that it takes appropriate steps to meet the requirements of Condition G4 in relation to its own employees.

10 Awarding organisations are also likely to contract with a variety of third parties in relation to the development and delivery of assessments, many of whom will have access to confidential assessment information². This will include not only those persons who set questions and quality assure the assessments but also those involved in printing assessments and distributing them to Centres. For online assessments it may also include any third party that hosts the platform through which an assessment is provided.

15 Condition G4.1 requires an awarding organisation to take all reasonable steps to ensure confidentiality is not breached by anyone during any part of the assessment development and delivery process.

20 For the purposes of Conditions G4.3 to G4.5, awarding organisations should also remember that the term 'Teacher', as defined in Condition J1.8, includes not only qualified teaching staff in schools and colleges, but also covers home-schooling parents, private tutors and employers providing training to Learners in relation to vocational qualifications.

Confidential information

25 Condition G4.1 refers to confidentiality in respect of:

- (a) the contents of assessment materials, and
- (b) information about the assessment for a qualification.

30 This covers any information which, if divulged inappropriately, could impact on the validity and/or reliability of an assessment. Information about when or how particular knowledge, skills or understanding will be assessed will be confidential if the assessment was designed in a way that assumes the Learner will not know that information before taking the assessment.

35 For some assessments, it might be enough to maintain confidentiality in relation to information about specific questions. For other assessments, knowledge of a broad overview about the topics to be set or the general structure of the paper might compromise the ability of the assessment to measure the Learner's attainment effectively.

Examples of training that is not prohibited

² In this guidance 'confidential assessment information' refers to both the contents of assessment materials and information about the assessment in relation to which confidentiality must be maintained under Condition G4.1.

Provided that confidentiality, as defined by Condition G4.1, is not breached and all other regulatory requirements are met, training for Teachers can be delivered if it:

- does not relate to a particular regulated qualification; or
- 40 ■ is about a particular regulated qualification but does not involve the presence of anyone with information about that qualification that must not be shared with Teachers and Learners. This could include where the training is attended by persons who:
 - had sight of the contents of previous assessments that are part of the current specification but have no confidential information on assessments that have yet to be
 - 45 taken; or
 - had confidential information about assessments for an earlier specification for the same qualification but do not have confidential assessment information in relation to the current specification.

Where a staff member with confidential information about qualification A attends a training event in relation to qualification B, that training will not become prohibited training simply because an attendee asks, or might ask, a question about qualification A. If the answer to the question would involve the staff member breaching confidentiality, he or she should simply decline to answer it, and could refer the questioner to publicly available information.

Condition G4.2 concerns the provision of training. 'Training' should be given its ordinary meaning and, in general terms, will usually encompass meetings – attended either in person or remotely – at which attendees are either taught a particular skill or provided with information in relation to a particular regulated qualification, with the aim of better equipping them to deliver that qualification. The obligations in Conditions G4.2 and G4.4 will not, therefore, apply to meetings with Teachers where the purpose is to facilitate the development or design of a particular regulated qualification by an awarding organisation.

However, it is important to note that meetings with Teachers, at which the primary purpose is not to provide training, may incorporate a training element. We expect awarding organisations to consider carefully whether each particular meeting with Teachers will provide training to them and, if so, whether any such training will adhere to the requirements in Conditions G4.2(a) and G4.4.

Likewise, a staff member with confidential information will not automatically be providing prohibited training if he or she takes a telephone call from, or otherwise talks to, a Teacher. However, prohibited training will include one-to-one training where all of the elements of the definition in Condition G4.2 are met. The staff member, therefore, must not disclose confidential information when answering a question.

Pre-recorded training – such as a webinar – from someone with confidential information will not fall within the definition of 'prohibited training' under Condition G4.3 because that person would not be

'present' under the definition of that term in Condition G4.3(b), which concerns the use of simultaneous electronic communication.

75 The awarding organisation would, of course, need to comply with Condition G4.2(a) in that the pre-recorded training could not disclose information that would breach Condition G4.1. It must also comply with the obligation under Condition G4.4(c) concerning the publication of training materials.

The above examples are for illustrative purposes only and are not exhaustive.

Training on Centre-marked assessment

Condition G4 allows a distinction to be made between:

- 80 (a) information that can be shared with Teachers that they must not then pass on to their Learners (for example, in the context of training on how to conduct Centre-marked assessments); and
- (b) information that neither Teachers nor Learners should see because this would breach the requirement of confidentiality in Condition G4.1.

85 So, for example, if an awarding organisation was to share model answers or exemplar work at a training event where Teachers were being standardised in relation to Centre-marked assessments, this would be permissible under Condition G4.2(b). This is because the event falls outside the definition of 'prohibited training'.

90 However, although the disclosure of such information to Teachers would not breach confidentiality as defined by Condition G4.1, an awarding organisation must take all reasonable steps to ensure that such information is not passed on to Learners where this would affect the ability of the assessment to reflect an accurate measure of attainment.

A person can attend a training event if he or she holds only confidential information in relation to the qualification that, if disclosed to Teachers, would not breach the requirement of confidentiality in Condition G4.1. One such example would be if the person held confidential information in relation to the standardisation of marking in Centre-marked assessment only.

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However, a person could not attend such training if he or she holds confidential information in relation to external assessment for that qualification as that information, if disclosed to Teachers, would breach the requirement of confidentiality in Condition G4.1.

100 **Examples of 'positive indicators' that would suggest an awarding organisation is likely to comply**

The awarding organisation:

- is clear which assessment materials and information are confidential;

- 105 ■ monitors who has had access to confidential assessment information and the extent to which this is the case (for example if they have seen entire assessments or parts or assessments), for each of its qualifications;
- trains relevant staff about how to protect confidential assessment information, including during interactions with Teachers;
- 110 ■ puts in place and monitors the application of confidentiality policies and processes for its staff and third parties, which include –
 - details on how to maintain confidentiality during interactions with Teachers; and
 - provision in relation to the protection of confidentiality by staff and third parties who have access to confidential assessment information through the assessment development process, including quality assurance (in relation to which, see our
- 115 overarching guidance on safeguarding confidentiality where Teachers are involved in developing assessments);
- makes sure that, where it provides training to Centres about how to set, deliver or mark assessments, the Centre is trained on how to protect confidential assessment information and maintain confidentiality, and the training itself is designed and delivered to minimise the risk of
- 120 a breach of confidentiality by the future disclosure of materials provided in connection with the training;
- monitors the training and training materials that it delivers to make sure confidential information is not shared at events, for example by:
 - reviewing training materials before they are used;
- 125 ○ reviewing recordings of training events;
- sending observers to monitor samples of training events;
- requires all current (and former) staff and third parties who have had access to confidential assessment information in relation to a particular qualification to apply in writing for the
- 130 awarding organisation's permission before providing, endorsing or attending any Teacher training events in respect of that qualification, and only gives permission where doing so would not lead to prohibited training taking place;
- puts all presentations and other training materials used at its Teacher training events on its website (or in a secure area of its website accessible to all Teachers for the qualification), clearly linked from the pages containing the relevant qualification specifications;
- 135 ■ has on record clear terms of reference for the investigations it has undertaken into suspected or alleged breaches of confidentiality;

- has on record a log of all allegations of breaches of confidentiality, including those that were not investigated, that it can cross-reference if new information is provided.

The awarding organisation:

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- takes all reasonable steps to ensure that resources designed to support the preparation of Learners³ which are prepared by current (and former) staff and third parties who have confidential assessment information in relation to that qualification do not compromise the confidentiality of assessments for that qualification;
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- trains relevant staff about how to protect confidential assessment information, including during the preparation of any resources designed to support the preparation of Learners, for a qualification in respect of which they have access to confidential assessment information;
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- requires all current (and former) staff and third parties who have confidential assessment information to notify the awarding organisation promptly of all instances in which they have been, or are currently, involved in the preparation of a resource designed to support the preparation of Learners for a qualification in respect of which they have access to confidential assessment information. This does not apply to the preparation of teaching resources or materials by a current (or former) third party exclusively for Learners that he or she teaches;
- 155
- monitors assessments set by all current (and former) staff and third parties who are, or have been, involved in the preparation of a resource designed to support the preparation of Learners for assessments for the same qualification in respect of which they have confidential assessment information, to ensure that the confidentiality of those assessments has not been compromised by that resource. This does not apply to the preparation of teaching resources or materials by a current (or former) third party exclusively for Learners that he or she teaches.

160 **Examples of 'negative indicators' that would suggest an awarding organisation is not likely to comply**

The awarding organisation:

- does not make sure its confidentiality policies and processes for staff and third parties are up to date and followed;
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- does not ensure that its conflict of interest records maintained under Condition A4.3 are up to date and contain details of all relevant conflicts in relation to staff and third parties who hold confidential assessment information;

³ In this guidance, references to 'Learners' includes people likely to become Learners.

- provides Teacher training events where current (or former) staff or third parties are present in the audience who have had access to assessment information in relation to that qualification which is still confidential
- 170 ■ provides material information about an assessment to Teachers at a training event that is additional to, or contradicts, its published information regarding the relevant qualification, without publishing that information as soon as reasonably practicable after the training event;
- does not take all reasonable steps to establish whether its staff or third parties with access to confidential assessment material provide, or intend to provide, Teacher training relating to the qualification (whether privately or through another organisation);
- 175 ■ has not properly considered evidence collected during an investigation into a suspected or alleged breach of confidentiality;
- has not contacted relevant parties that are critical to an investigation into a suspected or alleged breach of confidentiality, or to the outcomes of that investigation;
- 180 ■ has not kept records and documents relating to the breach of confidentiality and the investigation for an appropriate period.

6. Guidance on safeguarding confidentiality where Teachers are involved in developing assessments

Guidance on safeguarding confidentiality where Teachers are involved in developing assessments

Introduction

5 Many awarding organisations use Teachers in the development of assessments, and there can be clear benefits to doing so. Experienced Teachers have detailed subject knowledge and understand how Learners are likely to respond to questions. It requires skill and experience to develop successful exam papers and other forms of assessment. Assessments must be comprehensible to Learners while allowing appropriate differentiation between them. Assessments must not be too predictable, but neither must they stray from what has been taught. They must be capable of being completed
10 within the allocated time and must be of the same level of demand whenever they are taken.

However, we expect awarding organisations to be alive to the risks to confidentiality to which the use of practising Teachers gives rise, and to use appropriate safeguards to ensure compliance with the Conditions.

15 This guidance identifies a number of Conditions that place obligations on awarding organisations which are relevant to this issue. It also outlines some of the factors that will be relevant in an awarding organisation's analysis of the strength of the safeguards it needs and gives some examples of the types of safeguards that might be used.

20 There is no 'one size fits all approach' to mitigating the risks of a Teacher misusing confidential information about assessments. Each awarding organisation must use safeguards that are appropriate for each of its qualifications. Responsibility for taking a suitably robust approach to complying with the Conditions sits with each awarding organisation, having had regard to this statutory guidance, as well as the specific guidance in relation to the relevant Conditions.

25 In the guidance below 'confidential assessment information' refers to both the contents of assessment materials, and information about the assessment, in relation to which confidentiality must be maintained under Condition G4.1.

What requirements must an awarding organisation meet?

The Conditions below are especially relevant to the risks around the involvement of Teachers in the development of assessments.

- 30 ▪ **Condition A4.2** requires an awarding organisation to identify and monitor all current and reasonably foreseeable conflicts of interest (as defined in Condition A4.1) that relate to it. This will include identifying any relevant teaching roles held by Teachers involved in the development of assessments, and monitoring any such conflict.
- 35 ▪ **Condition A4.4** requires an awarding organisation to take all reasonable steps to ensure that no conflict of interest that relates to it has an Adverse Effect. An awarding organisation is thus required to do everything that it can to ensure that no Teacher involved in developing assessments breaches confidentiality. Where an Adverse Effect does occur, **Condition A4.5** requires an awarding organisation to take all reasonable steps to mitigate that effect as far as possible and correct it.
- 40 ▪ **Condition A6.1** requires an awarding organisation to take all reasonable steps to identify the risk of occurrence of any incident that could have an Adverse Effect. This will include an awarding organisation's assessment of risk in relation to breaches of confidentiality by Teachers involved in assessment development. **Condition A6.2** requires an awarding organisation to take all reasonable steps to prevent any such incident from occurring and prevent (or if it cannot be prevented, mitigate) any Adverse Effect that the incident would have if it occurred.
- 45 ▪ Where an incident occurs which could have an Adverse Effect, **Condition A7.1** requires an awarding organisation to promptly take all reasonable steps to prevent the Adverse Effect – or, where it occurs, to mitigate and correct it as far as possible and give priority to making sure the assessments accurately differentiate between Learners.
- 50 ▪ **Condition A8.1** requires an awarding organisation to take all reasonable steps to prevent the occurrence of malpractice in the development, delivery or award of qualifications. A deliberate breach of confidentiality in relation to assessments will almost certainly constitute malpractice. Where any such malpractice is reasonably suspected or alleged, **Condition A8.2** requires an awarding organisation to investigate it.
- 55 ▪ Where malpractice is established, **Condition A8.6** requires an awarding organisation to take all reasonable steps to prevent it from reoccurring and to take proportionate action against those responsible, or seek the cooperation of third parties in taking such action.

- 60 ▪ Where an awarding organisation arranges for a third party – such as a Teacher – to undertake any part of qualification development on its behalf, **Condition C1.1** requires the awarding organisation to (i) ensure that those arrangements enable the awarding organisation to comply with the Conditions, and (ii) to monitor and enforce those arrangements where necessary to ensure compliance with the Conditions.
- 65 ▪ **Condition G4.1** requires an awarding organisation to take all reasonable steps to maintain the confidentiality of the content of, or information about, assessment materials where this is required to ensure the qualification reflects an accurate measure of attainment. In particular, **Condition G4.5(b)** requires an awarding organisation to take all reasonable steps to ensure that no Teacher or other third party involved in the development of assessments breaches, or offers to breach, such confidentiality.

Factors in deciding what safeguards are appropriate

Each awarding organisation must use safeguards that are appropriate for each of its qualifications.

70 In determining the package of safeguards that would be appropriate, we expect an awarding organisation to consider all relevant factors. In particular, we expect an awarding organisation to consider the following:

- 75 ▪ **The nature and amount of confidential assessment information held by a Teacher** – We will expect that the more confidential assessment information that a Teacher has about an assessment – or the greater the effect that its disclosure would have on the fitness for purpose of the assessment – the stronger the package of safeguards an awarding organisation will need to use to meet the requirements of the Conditions.
- 80 ▪ **The Teacher's role in delivering qualifications** – We expect that the more directly a Teacher is involved with delivering the qualification for which he or she holds confidential assessment information, the stronger the package of safeguards that will be needed. A stronger package of safeguards should be used for a Teacher currently involved in teaching the relevant qualification, including as a private tutor, than for a Teacher who teaches an alternative qualification (such as one offered by a different awarding organisation), or who is no longer actively teaching.
- 85 ▪ **Potential pressures on Teachers to misuse confidential assessment information** – We expect that an awarding organisation will take stronger steps to prevent a Teacher inappropriately using confidential assessment information about a qualification used for school or college accountability purposes, or which is particularly high stakes because it directly affects a Learner's progression options or life chances. This will include, in particular, qualifications that are used for progression to higher education, or which confer a licence to practise.
- 90 ▪ **The impact if confidential assessment information is misused** – In considering what safeguards to put in place, we expect an awarding organisation to consider the ease with which it could replace assessment materials, or Learners could re-take an assessment, should a Teacher be found to have made inappropriate use of confidential assessment information.

95 For example, it is likely to be more difficult for an awarding organisation to mitigate the impact of an inappropriate disclosure in relation to a qualification that is assessed once annually, is taken

by large numbers, and for which there is a pre-determined results date (such as GCSEs and A levels) than for a qualification for which there are regular assessment opportunities.

100 Some qualifications will be awarded on the basis of one assessment only, whereas for others, a number of assessments will contribute to the final result. In qualifications for which there are multiple assessments, if one assessment is compromised, a result might be awarded based on a Learner's performance in the other assessments. The number of assessments that contribute towards a qualification is therefore a further factor for an awarding organisation to consider when determining the ease with which it could mitigate the impact of a breach of confidentiality.

Potential safeguards

105 Below are some examples of the potential safeguards that an awarding organisation may use to prevent the disclosure of confidential assessment information or to limit any Adverse Effect resulting from such a disclosure.

The examples we provide relate to:

- assessment development and design;
- 110 ▪ support for Teachers and Centres; and
- detection and deterrence.

Each awarding organisation must consider what (if any) safeguards will be required in relation to each of its qualifications, taking into account all relevant factors, including those outlined in the previous section.

115 We expect an awarding organisation to consider the appropriate balance between up-front measures to prevent and (if necessary) mitigate the disclosure of confidential assessment information, and end-point measures which allow it quickly to identify and mitigate any disclosure that takes place.

Assessment development and design

120 ▪ **Teachers are not involved in developing confidential assessment materials** – The surest way for an awarding organisation to guard against Teachers inappropriately using confidential assessment information is to make sure no Teachers have such information. An awarding organisation could choose to keep its assessment production process entirely in-house and not contract services from currently employed Teachers. It could secure any necessary Teacher insights and expertise from recently retired Teachers or Teachers who are taking a break from teaching.

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130 ▪ **Teachers involved with developing confidential assessment materials cannot teach the qualification** – An awarding organisation might stipulate that any Teachers it engages to develop confidential assessment materials must not themselves teach the qualification for which those materials would be used, while those materials remained confidential. Its contractual provisions would need to address the risks of disclosure to teaching colleagues and address the opportunities for the Teacher to work as a private tutor, for example.

135 While the above two approaches might work well for some qualifications, an awarding organisation would need to balance their use against the different risks to which they could give rise, including to the quality of the assessments developed. In relation to the second example, Teachers might not wish to develop assessments for qualifications they are not allowed to teach. Such a prohibition could limit their ability to change jobs and the options of their Centre to change awarding organisation.

140 **No serving Teacher knows whether or when the assessment materials they have developed or seen will be used** – An awarding organisation might commission Teachers to write whole or parts of assessments, but the decision on whether or when the materials would be used would be tightly controlled and not be known to any Teacher. The use of a question bank, or question paper bank, may achieve the necessary degree of uncertainty, although consideration would need to be given to the size of the question bank and the frequency with which it is updated (and it would still need to be made clear to Teachers that information in relation to each question or task within the bank was confidential⁴).

145 The form and degree of unpredictability needed to make this approach an effective safeguard will vary by qualification. An awarding organisation should consider the number and the nature of the assessment tasks/questions, whether the tasks/questions would be memorable if seen in advance, and whether a Learner who had prior information about the task/question would likely be advantaged over others.

150 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.

155 **No serving teacher is involved with developing all of the assessments for any one qualification** – Where the confidentiality of one assessment has been compromised by a Teacher, an awarding organisation might disregard the affected Learners' performance in that assessment and estimate their overall mark based on their performance in the other assessments for the qualification, relative to the performance of other Learners who completed all of the assessments (an 'assessed result'). This will only be possible where there is more than one assessment for the qualification, and not all of those assessments have been compromised by the Teacher's actions.

165 An awarding organisation that allows Teachers to develop assessments for qualifications they also teach might ensure that no such Teacher sees all the assessments to be taken by a Learner for that qualification (for example, both exam papers). This would limit the impact, including on Learners, of a Teacher inappropriately using confidential assessment information. It could also assist with the awarding organisation's monitoring activities as it would allow the awarding

⁴ We will view each individual item in a bank as confidential. However, the number of items in the bank, and the structure of the relevant assessment, will be relevant to the risks arising from any breach of confidentiality in relation to an individual item, and how easily the Adverse Effect arising from any such breach can be mitigated.

170 organisation to consider whether Learners performed better than expected in the assessment their Teacher had developed or otherwise seen, relative to their performance in their other assessments.

Support for Teachers and Centres

The types of support an awarding organisation might give to a Teacher who holds confidential assessment information include:

- 175
 - clear contractual arrangements setting out the Teacher's obligations with respect to confidential assessment information and any limitations on other roles the Teacher could undertake while information he or she held remained confidential,
 - providing training and advice to the Teacher in relation to maintaining confidentiality of assessment materials and information,
- 180
 - having direct contact with the Teacher's Centre to emphasise the importance of ethical practice, the potential consequences of wrong-doing and the support the Centre might provide the Teacher to avoid deliberately or sub-consciously using the information they hold in an inappropriate way, and
- 185
 - requiring annual declarations from the Teacher that he or she understands and will at all times comply with their obligations to protect confidential assessment information.

Where a Teacher has access to confidential assessment information, we will expect an awarding organisation's contract with that Teacher to at least provide for termination in the event of any deliberate disclosure of such information.

Detection and deterrence

190 An awarding organisation is required to actively monitor all conflicts of interest that apply to it (Condition A4.2), as well as its contractual arrangements (Condition C1.1(b)). It is also required to take all reasonable steps to prevent (i) any conflict of interest having an Adverse Effect (Condition A4.4), (ii) the occurrence of any incident that could have an Adverse Effect (Condition A6.2(a)), (iii) any malpractice in relation to the development and award of qualifications (Condition A8.1), and (iv) any breach of confidentiality in relation to confidential assessment information (Condition G4.1).

195 A Teacher who holds confidential assessment information may be deterred from using that information inappropriately if he or she knows that such use is likely to be detected. We will therefore expect an awarding organisation to consider whether, in view of the risks it faces in relation to a particular qualification, the transparent use of any monitoring procedures will be a reasonable step to take to meet the requirements of the above Conditions.

200 We will expect awarding organisations to undertake some level of monitoring in relation to high stakes qualifications in relation to which Teachers hold confidential assessment information. We also expect them to investigate thoroughly any allegations or evidence of malpractice.

205 The monitoring undertaken by an awarding organisation may be shaped by the safeguards that it has put in place at the development stage. For example, more robust upfront safeguards may mean that

less rigorous monitoring is required. However, an awarding organisation must always be alive to the risk of a breach of confidentiality – no matter how robust its upfront safeguards – and the need to swiftly identify and deal with any breach that occurs.

210 Some examples of the types of monitoring and investigation that an awarding organisation could undertake are as follows:

- reviewing the evidence generated in the relevant assessment by Learners whose Teacher had confidential assessment information to look for any unusual patterns in their responses;
 - in response to allegations of a breach of confidentiality by a Teacher, looks for signs in their teaching plans, teaching materials and formative assessments that they had inappropriately narrowed their teaching or disclosed confidential information;
- 215
- monitoring social media to look for signs that confidential assessment information has been disclosed; and
 - undertaking statistical monitoring to look for unusual results or patterns of results in Centres where Teachers with confidential assessment information are teaching.

220 In each case an awarding organisation should consider whether a particular type of monitoring or investigation will yield reliable information, whether in isolation or as part of a wider range of evidence.

Examples

We have set out above some general indications as to when we will expect to see stronger safeguards depending on the risks associated with a particular qualification.

225 The following examples illustrate the different safeguards that an awarding organisation may choose to put in place for qualifications with different risk profiles. These examples are not intended to mandate any particular approach in relation to any particular type of qualification but rather – when read together with the sections above – to aid an awarding organisation's own consideration of how best to comply with the Conditions.

230 Example 1

The qualification and associated risks

- A high stakes qualification used for school accountability purposes, taken by c. 250,000 Learners annually and used to support progression to employment or higher education.
 - The assessments comprise two unseen written exam papers, each containing six questions from which Learners must attempt three questions.
- 235
- The nature and number of questions on each paper makes them memorable and, if known in advance, teaching and learning could be narrowed.
 - The impact of a breach would be high, including because of the numbers of Learners who could be affected and the damage to public confidence.

240 *One possible approach*

- The awarding organisation considers that Teacher input to developing the assessment materials will enhance the quality of the assessments and, because risks can be managed as set out below, it decides to retain that input.
- 245 ▪ In light of the potential impact of any breach of confidentiality, and the opportunities to narrow teaching and learning if the exam questions are known in advance, the awarding organisation:
 - commissions three Teachers to each write questions on specific aspects of the curriculum and requires them to document the assessment objectives and their relative weightings that will be assessed for each question, for use when the exam paper is put together;
 - 250 ○ ensures that no one Teacher knows which of his or her questions will be used in any particular exam paper in any particular assessment series and does not see the questions developed by the other Teachers;
 - 255 ○ identifies a permanent member of staff, advised by a recently retired Teacher of the qualification, to select the questions to be used in the two exam papers for any assessment series.
 - sets out in their contracts the Teachers' obligations with regard to the confidential materials, and provides for the termination of the contract in the event of disclosure of confidential assessment information by the Teacher;
 - 260 ○ makes sure each Teacher's head of Centre knows the role the Teacher has played and that he or she will not know whether or when the questions they have written will be used; and
 - reviews the Learners' scripts of at least one of the Teachers each year to look for unusual patterns of responses.

265 **Example 2**

The qualification and associated risks

- A high stakes qualification used for school accountability purposes, taken by c.100,000 Learners annually and used to support progression to employment or higher education.
- 270 ▪ The assessments comprise three unseen written exam papers, each covering different aspects of the curriculum. Learners must attempt all questions on each paper.
- The nature and number of questions on each paper means they are not particularly memorable. The nature of both the subject content and of the exam questions means that, even if the questions were known in advance, teaching and learning the whole of the curriculum would be needed to secure a good mark.

- 275
- The impact of a breach would be high, including because of the numbers of Learners who could be affected and the damage to public confidence.

One possible approach

- 280
- The awarding organisation has had difficulties recruiting people with appropriate subject and assessment expertise to develop the assessments. In the longer term it commits to commissioning the writing of multiple papers so no Teacher currently teaching the qualification who develops assessments knows if or when any particular assessment will be used.
- 285
- In the short term it is concerned the extra workload of such an approach would deter anyone considering applying for an examiner role. It therefore engages two Teachers who currently teach the qualification to each write one of the papers. The third paper is written by a full-time employee who, until recently, had taught the specific aspects of the curriculum assessed by that paper. Neither of the Teachers sees the two papers that they have not written, only the employee sees all three.
- 290
- The awarding organisation reviews the exam scripts of the Learners who were taught by the two Teachers to look for any unusual patterns of response. It also undertakes a statistical analysis to determine whether the Learners' performance in the paper their Teacher had developed was out of line with their performance in the other papers, relative to the performance of all Learners taking the qualification. It interviews the Teacher and the Learners, where appropriate, to understand the reasons for any unusual patterns.
- 295
- Each Teacher's contract with the awarding organisation sets out the Teacher's obligations with regard to the confidential assessment information, and provides for the termination of the contract in the event of disclosure of such information by the Teacher.
- 300
- The awarding organisation makes sure each Teacher's head of Centre knows the role they have played and advises them of the steps it will take to detect any inappropriate use of the information held by the Teacher.

Example 3

The qualification and associated risks

- 305
- A high stakes qualification for the Learner and for those who rely on the qualification as an indication of competence to practise.
 - Assessment is by observation of the Learner undertaking a predetermined set of tasks which are well known and will have been practised extensively before undertaking the assessment.
 - The nature of the assessment is intentionally highly predictable, as the Learners are assessed on their competence in performing a known set of tasks.

310 *One possible approach*

- As Learners know they will be assessed on their full range of skills, and the assessments are intentionally predictable, the awarding organisation does not consider it necessary to limit who can write the tasks or to use particular safeguards where practitioners who write the tasks also employ people who are preparing for the assessments. It does not therefore adopt any additional safeguards.