

## ANALYSIS OF CONSULTATION RESPONSES

# Extraordinary regulatory framework, General Qualifications COVID-19: Guidance

Consultation on statutory guidance in relation to appeals under the GQCovid regulatory framework

**ofqual**

# Contents

<b>Introduction .....</b>	<b>3</b>
<b>Background .....</b>	<b>3</b>
GQCov4 – Information to be provided to Centres .....	3
GQCov5 - Appeals.....	4
<b>Approach to analysis .....</b>	<b>4</b>
Who responded.....	4
<b>Views expressed - consultation response .....</b>	<b>5</b>
<b>Appendix A .....</b>	<b>20</b>

# Introduction

## Ofqual's statutory guidance

We publish guidance to help awarding organisations understand how to comply with their Conditions of Recognition. Awarding organisations that develop, deliver and award regulated qualifications must have regard to the guidance that Ofqual publishes. This means that they must review the guidance and take seriously what it says. Guidance is not a further set of rules, and the approaches set out within it are not the only way to comply. However, if an awarding organisation chooses to take a different approach, it needs to be able to explain why it has done so.

This is the summary of responses to our [consultation](#) that ran between 30 June to 14 July 2020 and which received 130 completed responses.

In this consultation, we sought views on our proposed guidance relating to:

- the information awarding organisations must provide to centres which are considering an appeal in accordance with the exceptional arrangements for awarding GCSE, GCE, Extended Project and Advanced Extension Award qualifications this summer
- further explanation of the circumstances in which an appeal might be allowed because the wrong data has been used in the standardisation process

## Background

We consulted on exceptional arrangements for awarding GCSE, GCE, Extended Project and Advanced Extension Award qualifications this summer between 15 April and 29 April 2020. We announced our [decisions](#) following that consultation on 22 May 2020. On 11 June 2020 we set and published the [GQCOVID-19 Conditions and Requirements](#) which implement those policy decisions.

In this consultation we sought views on our draft statutory guidance to help awarding organisations to comply with two of these new conditions.

- GQCov4 – Information to be provided to Centres
- GQCov5 - Appeals

## GQCov4 – Information to be provided to Centres

Condition GQCov4 requires awarding organisations to have arrangements in place to provide sufficient information, on request, to assist centres to decide whether to appeal on behalf of a student, or students.

The proposed guidance sets out the minimum information which we consider an awarding organisation must provide in order to comply with the requirement to provide 'sufficient information' to a centre (Condition GQCov4.2(a)).

## GQCov5 - Appeals

Condition GQCov5 requires awarding organisations to have in place arrangements to allow a centre to appeal results on behalf of a student or students and explains the grounds of appeal which are available for calculated results in summer 2020. The proposed guidance sets out further explanation and exemplification in relation to appeals on the basis that the 'wrong data' was used for the purposes of standardisation.

## Approach to analysis

The consultation was published on our website and available for response, using the online form, between 30 June and 14 July 2020. The consultation included 6 questions related to our proposals.

We present our summary of responses to the consultation questions in the order in which they were asked. Respondents could choose to answer all or just some of the questions. This means that the total number responding to each question varies; the details are provided for each question.

Some themes emerged in response to more than one question. Wherever possible we have included them in the analysis of one question only and cross-referenced to the theme from other questions.

Respondents were invited to indicate the capacity in which they were responding. The number of responses reported in the tables in Appendix A are based on these unverified self-descriptions.

We read all responses in full, including those that did not follow the format of the consultation. Some respondents chose to express their views without specifically answering the questions asked.

Where we have included comments, to illustrate the main themes identified, we have edited some for clarity, brevity and to preserve anonymity but we have been careful not to change their meaning. Where we reference 'paragraphs', these are as documented in the 'Proposed Guidance' within the consultation.

A number of the responses we received, and many of the comments which were made, concerned issues which were beyond the scope of the consultation. Some of those responses concerned the GQCovid Conditions themselves and others related to the operation of the statistical standardisation process. With limited exceptions, which are included for context, the analysis set out in this document concerns only those representations which directly concern the proposed guidance.

## Who responded

As noted in the introduction we had 129 responses to the online consultation that used the standard response form. In addition, we received 1 response which was submitted by email.

We have given a detailed breakdown of the organisations that responded to the consultation in Appendix A.

The following table is a summary of respondents by types who completed our consultation.

<b>Respondent description</b>	<b>Number of respondents</b>
Organisation	56
Academy Chain	1
Awarding body or exam board	5
Local Authority	1
Other representative or interest group	4
Private training provider	1
School or College	44
University of higher education institution	1
Personal	71
Exams officer or manager	16
Parent or carer	7
SLT (Senior leadership team)	3
Student	6
Teacher (responding in a personal capacity)	39
<b>Total</b>	<b>130</b>

This was a public consultation on the views of those who wished to participate. We recognise that the responses are not necessarily representative of the general public or any specific group.

## Views expressed - consultation response

In this section we report the views, in broad terms, of those who responded to the consultation document. Responses to the individual consultation questions were as follows.

### **Q1. Do you have any comments on the draft guidance on Condition GQCov4 – Information to be provided to Centres?**

Sixty-five respondents commented on the draft guidance on Condition GQCov4.

### **Sufficient information (Paragraphs 4 and 5)**

The proposed guidance set out the minimum information which we consider an awarding organisation must provide in order to comply with the requirement to provide 'sufficient information' to a centre which makes an application under Condition GQCov4.2(a).

Five awarding organisations commented on this section of the guidance and were broadly supportive of the proposal, although 3 raised concerns about the provision of prior attainment data, either because they do not hold the data or because they had concerns about how to present the data to centres.

“Although we support the inclusion of relevant prior attainment data, centres will struggle to make sense of this data because of the use of normalised scores for KS2. However, the data could still be useful in reassuring a centre that the data used was linked to their candidates. Data should be provided at candidate level where available but an incomplete match (one that does not include all candidates) should not be grounds for an appeal...” (Awarding body or exam board)

One awarding organisation suggested that a common approach should be agreed for provision of data to centres, to ensure the awarding organisations operate in a consistent way and make the appeals process as simple and accessible as possible for centres.

Of the few teachers and schools that commented directly on the guidance on what would constitute sufficient information, there was overall agreement with the proposals or suggestions for additional information that could be included:

“Seems very sensible” (Exams Officer – responding in a personal capacity)

“This is reasonable” (Teacher – responding in a personal capacity)

“Is it possible to provide historical comparison to national data including 2020?” (Teacher – responding in a personal capacity)

“...We would argue that paragraph 5 needs to be expanded to include reference to sufficient information that would need to be disclosed in the situation where there is no historical GCSE data or prior attainment data...” (Other representative of interest group)

Several respondents suggested that awarding organisations should provide information concerning the calculation of results to all centres, rather than upon request to centres who are considering whether to appeal.

“My concerns with Condition GQCov4 are the timings - can the awarding bodies cope with the inevitable high demand on information, and return the information swiftly enough for centres to make informed decisions ahead of the appeals deadline. I would expect all awarding bodies to have the relevant information prepared and therefore they might as well send to all centres. What centre will not question the information used for purposes of standardisation?” (School or college)

“...It would be extremely useful to centres to know in advance of results embargo days the historical and cohort data which is to be used, so that it can be retrieved from the centre's MIS system and be ready if there is a query.” (Exams Officer – responding in a personal capacity)

“...We consider that the following information can be provided to centres on results day:

- the centre assessment grades and rank order information used by awarding organisation as recorded and used for standardisation;
- the historical results information used by the awarding organisation for the purposes of standardisation - in the format of the grade distribution derived from a centre’s historical results

Should the centre require further information this will be provided upon request. Prior attainment data is not included in the information that will be made available on results day. We would welcome clarity in the guidance of the information that should be available on results day and which information should be available upon request to ensure consistency across awarding bodies...” (Awarding body or exam board)

### **Further information (Paragraphs 6 and 7)**

The proposed guidance allows for awarding organisations to disclose further information to centres, in appropriate cases, and suggests that a centre explains in its request for information why or where it considers an error might have been made, so that the awarding organisation will be better able promptly to identify any further information which might assist the centre.

All of the awarding organisations that responded to the consultation asked for further clarification or exemplification about what further information should be provided to centres, and raised concerns about the manageability of dealing with such requests.

“...This case by case consideration of what might best support an individual centre to decide on whether to appeal would be valuable, but we are concerned that it is not manageable, at scale...” (Awarding organisation)

Other respondents who commented on this section of the guidance suggested that the standardisation model should be shared so that centres could see exactly how awarding organisations had used the data above to produce results.

“In order for a centre to check whether the standardisation process has been applied correctly, they will need to know exactly how the data held by exam boards is used to produce the results. The data listed in this proposal should form the basis of the information that exam boards issue but should also be supplemented by the exact process by which the data was used to produce the grades. Paragraph 6 mentions further information but is not very specific. I think exam boards should expect to share the details of how the information mentioned in paragraph 5 was used to standardise the grades.” (Teacher - responding in a personal capacity)

### **Disclosure of information to students (Paragraph 7)**

The proposed guidance explains that it is for each centre to decide whether or not to share any of the information provided by the awarding organisation with students, including whether or not sharing any of the information is compatible with data

protection law. Awarding organisations will not be required to provide advice to centres in this regard.

Four awarding organisations commented on this section of the guidance, and all agreed that they should not be required to give advice to centres on the disclosure of information to students. However, they did emphasise the need for some source of guidance for centres, signposted by Ofqual. Three of the awarding organisations also noted that learners may be able to obtain some or all of the data through a subject access request following the issue of results.

“Whether or not it features in this proposed guidance, we would strongly recommend that Ofqual signposts to centres the requirements set out by the [Information Commissioner’s Office] in relation to centre assessment grades and rank orders.” (Awarding body or exam board)

A small number of other respondents commented on the disclosure of information to students, but there was no consensus on the right approach.

“I think that it is good that you are showing the schools the data from previous years that has been used because then they can see why the data has been used, however this may anger students and parents more when they receive results because if grades are reduced, they will be angry that their grades have been reduced because of someone else's work in previous years, not their own hard work that they have spent years developing and using.”  
(Student)

“... schools should not be put in the position of potentially having to enter into a discussion with every parent about every grade. What will it achieve?”  
(Teacher – responding in a personal capacity)

“We are pleased to see that the proposal is for centres to be able to determine whether or not to share any such information with candidates”.  
(School of college)

“It will be helpful if centres can be provided with specific guidance for handling Subject Access Requests (SARs) following the publication of results. a) to minimise the administrative burden of responding to a SAR; b) to avoid potential data breaches e.g. through revealing the CAGs or names of other candidates through disclosure of the centre’s process for determining the CAG and the rank order.” (Local authority)

## **Standardisation model**

Many respondents commented on the historical and prior attainment data that would be used by awarding organisations in the standardisation model, rather than on the information that would subsequently be provided to centres. Those responses are not within the scope of this consultation. For example, concerns were raised by new or very small centres who considered that their historic performance would not be representative of the current cohort, and by independent schools where key stage 2 and GCSE prior attainment data may not be available for their students. Similar comments were made in response to question 2 and these responses are considered more fully in that section of this analysis.



## **Q2: Do you have any comments on the draft guidance on Condition GQCov5 – Appeals?**

Eighty-eight respondents commented on the draft guidance on Condition GQCov5.

### **Guidance on compliance with Condition GQCov5 (Paragraphs 8 - 9)**

Three awarding organisations commented that, in their view, there is inconsistency between the published Condition GQCov5.1 and the draft guidance. They suggested that the Guidance sets out Ofqual’s intended meaning.

“(Within Condition GQCov5.1) The word 'BASIS', is in the singular, suggesting that there is only one basis upon which an appeal may be brought. The word "AND" at the end of 5.1(b) means that all three conditions set out at (a), (b) and (c) need to be present for an appeal to be valid within the condition.

However, the draft Guidance at paragraph 8 says: ...a centre may appeal on procedural grounds, on the basis that the wrong data was used to calculate results for Learners, OR where there was an administrative error in the issuing of results by an awarding organisation.

The use of the word "OR" means that there are three alternative bases upon which an appeal may be brought (procedural, wrong data, or administrative error). This does not match the words of GQCov5.1.” (Awarding body or exam board)”

### **The wrong data (Paragraphs 10 - 11)**

The proposed guidance includes three specific examples of wrong data that could be put forward as grounds for an appeal.

Some respondents, mainly from schools and colleges, were concerned that the details of the standardisation model might not be published when A level results are released.

“This means that when A level results are issued on 13th August centres and candidates will not know whether any concerns about the grades awarded are the result of ‘wrong data’ or the standardisation model adopted. If it turns out to be the latter, then any appeals process will be delayed by a week.” (Other representative or interest group)

Some respondents, as mentioned above, suggested that as the standardisation model does not take into account prior attainment data from candidates who have taken International GCSEs, this should be grounds for an appeal.

One or more of the awarding organisations raised the following points relating to this part of the guidance:

- one awarding organisation suggested that the guidance needed to more clearly set out the basis on which an error in the data should be considered to have been made
- two awarding organisations mentioned that it would be useful to add guidance to clarify whether a learner can be named in an appeal (as opposed to

request the appeal) and still retain the grade protection referenced in footnote 3

- two awarding organisations responded that in the event that more than one appeal (either over time or across different grounds for appeal) was successful, it is possible that, in correcting the data, the individual effects on a centre's results are incompatible or contradictory at the level of specific learners

“It is conceivable, though clearly undesirable, that the results issued to a centre in relation to one successful appeal could be subsequently amended by the outcome of another (particularly in light of the requirement to resolve appeals in short-order (GQCov5.7)).”  
(Awarding body or exam board)

- one of these awarding organisations also requested that the guidance should encourage centres to submit all appeals (for a given centre subject cohort) at the same time easing the administrative burden on awarding organisations and reducing the possibility of multiple changes to a single learner's grades
- one awarding organisation responded that, as currently drafted, paragraph 11 appears inconsistent with Condition GQCov5.8, which states that where an awarding organisation discovers a failure in its assessment process it must take "all reasonable steps" to identify affected learners and "without prejudice to Condition GQCov5.9, correct, or where it cannot be corrected, mitigate as far as possible the effect of the failure". It suggested that paragraph 11 of the draft guidance overstated the obligation of awarding organisations in this situation

“Consistent with Condition GQCov5.8 and the above, we suggest that paragraph 11 be amended to: "In any appeal where one or more of these errors is shown to have occurred, the awarding organisation must take all reasonable steps to, without prejudice to Condition GQCov5.9, correct, or where it cannot be corrected, mitigate as far as possible the effect of that error and issue results which reflect this.”  
(Awarding body or exam board)

- the same awarding organisation suggested that footnote 3 is also inconsistent with Condition GQCov5.9

“Footnote 3 is also inconsistent with Condition GQCov5.9 as the requirement there is not absolute. Instead, GQCov5.9 states that awarding organisations must "take reasonable steps" to ensure that no correction lowers the result of a Learner who did not "consent" to the request of the appeal that led to discovery of the relevant failure. We suggest that this footnote should be amended to: "Provided always that awarding organisations take reasonable steps to ensure that the results for Learners who did not consent to the request of the appeal are not lowered.

Further elaboration from Ofqual on this specific point in the guidance would be very welcome as (we) are still concerned as to how Condition GQCov5.9 can be achieved in practice given the inevitable knock on effect which changing one learner's grades will have upon the centres' results profiles. In addition, if revisions are required on a large scale then it could even have knock-on effects on national results profiles." (Awarding body or exam board)

### **Incorrect Centre Information (Paragraphs 12 – 15)**

The proposed guidance explains that a centre may appeal on the basis that it made an error in the information it submitted to the awarding organisation.

Two awarding organisations commented that it would be helpful if the guidance could give an indication of the type of evidence which centres would be expected to submit in support of such appeals.

"Again, a proposed approach by Ofqual would help to ensure consistency between awarding organisations and would make the appeals system more transparent and accessible for those navigating it." (Awarding body or exam board)

One awarding organisation also requested further guidance on the 'shortened process'.

"Whilst each initial review may not take a significant time to resolve the volume of appeals may mean that the response to an appeal may not be swift. A shortened process may raise expectations that the appeal will have a short turn-around time to respond to the centre." (Awarding body or exam board)

### **Errors in data sets (Paragraphs 19 – 24)**

The proposed guidance explains that a centre will be able to identify from the information disclosed under Condition GQCov4 whether there are differences between the information held by the centre and the information used by awarding organisations for standardisation.

One or more of the awarding organisations raised the following points relating to this part of the guidance:

- one awarding organisation commented that further guidance on prior attainment and how it has been used for standardisation would be beneficial, together with examples of what aspects of prior attainment data can be appealed
- another awarding organisation responded regarding quality assurance expectations (at paragraph 19)
- two awarding organisations suggested that centres should be required to support any appeal with evidence showing where a difference exists between the information held by the Centre and the information in the systems used by

the awarding organisations for statistical standardisation. Where such evidence is not provided, it should, they argued, be acceptable for an awarding organisation to refuse to accept an appeal

“Where such evidence is not provided, we will not be able to accept the appeal and would request clarification in the guidance that it is acceptable for an awarding organisation to not accept an appeal on this basis.” (Awarding body or exam board)

“We request that the last sentence (in paragraph 20) be amended to: *“A centre must support its appeal with evidence showing that such a difference exists”*. The burden of proof is on centres so we suggest that this is appropriately clear.” (Awarding body or exam board)

- one of these awarding organisation’s went on to comment that:

“For the reasons set out above, we suggest that this sentence should be amended to “If the awarding organisation.....using the shortened process specified at Condition GQCov5.7 and the awarding organisation must take all reasonable steps to, without prejudice to Condition GQCov5.9, correct, or where it cannot be corrected, mitigate as far as possible the effect of that error and issue results which reflect this.

We suggest that footnote 6 should be amended to: “Provided always that awarding organisations take reasonable steps to ensure that the results for Learners who did not consent to the request of the appeal are not lowered.” (Awarding body or exam board)

- paragraph 23 refers to a centre being able to amend the basis for its appeal where it is found that the error was in the data it submitted and not, as it thought, an error made by the awarding organisation. One awarding organisation suggested that it should be for each awarding organisation to decide how it can most effectively process an appeal when the basis of the appeal changes

“The important principle that the regulator should aim to ensure is that awarding organisations provide a route to appeal in cases where the basis for the appeal changes. How this is achieved should be a matter for each awarding organisation to determine.” (Awarding body or exam board)

### **Other examples of the wrong data – exceptional cases (Paragraphs 25 – 36)**

The proposed guidance explains that the specific examples in the GQCovid conditions are not the only circumstances in which an awarding organisation might conclude that the wrong data was used and explores some exceptional circumstances in which using a default data set for statistical standardisation might be shown through an appeal to amount to using the wrong data.

One respondent commented that the examples set out in the consultation were significant differences which would be clear and identifiable prior to the release of results, therefore negating the need for an appeal:

“I would suggest such significant differences such as those identified in paragraph 30 are clear now and could be identified prior to the release of results, thus feeding into the results system prior to release, preventing the need for appeals of this nature.” (Teacher, responding in a personal capacity)

Another respondent, from a comprehensive or non-selective academy, also queried whether circumstances of the type set out in paragraph 30(b) could be addressed before results were issued.

“Our fear is that because (i) we only have one set of GCSE results, making it impossible for Ofqual’s standardisation model to use a three-year average, and (ii) the one set of results we do have are anomalous and inconsistent with the actual standards in the school, there is a risk that standardisation is going to unfairly disadvantage our students... my request that we are able to address this issue in advance and not through a retrospective appeal.” (Official, Comprehensive or non-selective academy)

Several respondents, including two awarding organisations, also noted that (paragraph 30), ‘exceptional cases’ only refers to 2019 and 2018. They suggested that 2017 should be added, as the model used for results includes results from 2017.

One or more of the awarding organisations raised the following points relating to this part of the guidance:

- all awarding organisations welcomed the inclusion of examples of valid or invalid grounds of appeal in respect of exceptional cases. However, they requested further clarification on ‘substantive difference’, ‘significantly disrupted’ and further examples of ‘extraordinary’ and ‘momentous’ incidents, each of which terms is used in the proposed guidance

“It is likely that centres will consider that their own circumstances meet a definition of rare and exceptional that is not anticipated by the guidance (what amounts to an extraordinary or momentous incident will inevitably be interpreted differently by those who wish to challenge perceived unfairness by any means), which may in turn lead to large volumes of appeals, all of which will require careful consideration, even if they are ultimately unsuccessful.

Examples of such cases could include: a centre entering candidates for MFL with a 2020 cohort which includes a large number of native speakers, which was not the case in that schools’ prior entries. Another example, currently getting considerable press coverage, would be a previously failing school that had undertaken a major improvement strategy designed to address the weaknesses of prior years’ cohorts.” (Awarding body or exam board)

- one awarding organisation suggested that changes to the senior leadership team including a new Head of centre, poor teaching or teaching resource in previous years would not constitute evidence of the expectation of improved performance in 2020

“We consider that these reasons should also be invalid as the JCQ General Conditions notes: 5.3 (m): ‘It is the responsibility of the head of centre to ensure that his/her centre: ‘retains a workforce of an appropriate size and competence, including sufficient managerial and other resource, to undertake the delivery of the qualification as required by an awarding body. This includes taking reasonable steps to ensure occupational competence where this is required for the assessment of specific qualifications’ (Awarding body or exam board)

- two awarding organisations stated that the list of grounds mentioned in paragraph 28 that would not be accepted should be presented as examples, rather than a definitive list, or extended to be more useful in clarifying the types of cases that would/would not be dealt with under the exceptional factors category
- one awarding organisation commented that the examples given in paragraph 30 are very broad

“The examples given in the proposed guidance are very broad and could lead to many challenges to the data sets which would, ultimately, be rejected. To avoid this, we strongly recommend that the guidance includes examples of instances where an exceptional case could or couldn’t be made. We believe that the technical panel proposed in paragraph 36 should be convened before results day to conduct some work which sets out potential scenarios in which an exceptional case could or couldn’t be made.” (Awarding body or exam board)

- four awarding organisations requested further clarification on ‘substantive difference’ and ‘sufficiently measurable’ in paragraphs 31 and 32

“where technical evidence indicates that the differentiating factor would be likely to have actually affected the calculated results for the 2020 cohort to a sufficiently measurable degree’, if a “sufficiently measurable degree” means grade changes, it would be useful to specify this.” (Awarding body or exam board)

“Please can Ofqual therefore set out what is expected of awarding organisations as clearly as possible and how Ofqual expects them to consider and assess such appeals given that the appeal scenario is entirely novel and unprecedented. Awarding organisations have no existing system or processes to a) consider and draw conclusions regarding whether a substantive difference “to a sufficiently measurable degree” arises; b) identify alternative standardisation methods; or c) apply said adjusted models. This presents a potential regulatory and litigation risk should it later be deemed that (we) did not deal with such a matter appropriately. (We) would welcome specific reassurance from Ofqual on this point given that awarding organisations are, again, being asked to take on a high level of risk in carrying out this function.” (Awarding body or exam board)

- one awarding organisation queried whether, in relation to paragraph 35, if an awarding organisation reaches a position after dealing with a number of cases

where it knows that it is not able to identify an effective method to standardise results, will it be permitted to advise centres that it is no longer able to accept appeals on this basis. This would negate the need for centres to spend time in compiling a case/application only to have it quickly rejected by the awarding organisation

- all awarding organisations welcomed the suggestion of the Technical Panel but requested further clarification on the arrangements for the Technical Panel including timelines, remit, terms of reference, threshold for appeals and whether advice of the Panel could be included in outcome decision letters to centres

There were a number of responses that commented on matters that fall outside the remit of this consultation. These included, as noted in Question 1, comments on the standardisation model, the level of support and guidance that should be given to schools, colleges and students and, in one case, comments on the arrangements for the autumn series of examinations.

**Q3. We have not identified any ways in which the proposed guidance would impact (positively or negatively) on persons who share a protected characteristic. Are there any potential impacts we have not identified?**

There were 40 responses to this question.

**Disadvantaged students and students with special educational needs and disabilities (SEND)**

A few respondents raised concerns about the difficulties SEND students and students who do not speak English as a first language may have navigating their way through the appeals process.

“The Equality Impact Assessment does not recognise the difficulties that students with SEND will face in trying to prove that discrimination has taken place. The onus is put on disabled students to provide evidence that they have been treated unfairly rather than centres to prove they have acted fairly. Providing additional guidance for students does not go far enough to support students in gathering the evidence they will need to understand if they have been treated unfairly. Deaf students will need to know what evidence teachers have relied on to determine a student's grade and ranking and whether the advice of specialist teachers was taken on board. However, this information may not be available to students (through a Subject Access Request) until up to 40 days after the results have been released.” (Other representative)

One respondent highlighted that students from disadvantaged backgrounds may be impacted if they attended schools which did not have sufficient resources to submit an appeal.

“Students from disadvantaged backgrounds are more likely to be in schools that may not have the resources to submit a technically demanding and

resource-intensive appeal on behalf of their students. Every effort should be made therefore to make the appeals process as straightforward and efficient as possible.” (University or higher education institution)

## **Data**

A few respondents noted the potential impact on specialist schools when using historical data to compare one cohort to another.

“Great care needs to be taken that students with disability are not disadvantaged by being statistically levelled with children in mainstream. Comparison of our results with those for a previous cohort are simply not applicable. As a small special school we have a widely differing ability in cohorts from year to year, and the general profile of our children has varied greatly.” (School or college)

Some respondents, as noted above, were concerned about the impact that not using historical data from International GCSEs in the statistical model, would have on students’ grades, highlighting a potential impact on international students.

One respondent had concerns about any additional information not being taken into consideration during an appeal process and the disadvantage this could have on some students.

## **Guidance**

A few respondents suggested we should provide students with our policies on malpractice and complaints alongside the appeals process to ensure students used the correct process for their concerns. One respondent thought a common guide would be useful for both students and their families.

“Should learners or their families believe that their calculated grades and the initial CAGs were affected by bias on the grounds of race, religion or any other protected characteristic, this regulatory framework does not provide for appeal on these grounds. The learners should appeal to the centre and the awarding body, through the route of malpractice. I think it is very important that guidance on this process is provided to learners, alongside guidance (to be published by the end of July) on the appeals process. I am concerned that as these types of 'appeals' will be separate from appeals on the basis of errors in data or use of the wrong data, that they will be marginalised and access to them limited. This is important to ensure that families have confidence in the system and the ability of the system to investigate and correct any instances of bias.” (Teacher (responding in a personal capacity))

A common guide will be useful to learners and their parents. It would be helpful for the guide to clarify lower-level instances where complaints to the centre would be inappropriate (this will be harder for a centre to say!).” (School or college)



**Q4. Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic?**

There were 33 responses to this question.

One respondent welcomed guidance on the appeals process but thought, in the interest of wider fairness, the reasons for not upholding an appeal should be made transparent.

“We believe that the public trust in the fairness of the appeals process will be enhanced if when receiving responses that turn appeals down centres are able to understand this in the context of wider fairness. To this end, we suggest that Ofqual needs to make available to ABs and the technical panel a comprehensive list of the decisions taken about the data sets used by the model and the rationale for these.” (Awarding body or exam board)

**Q5. Do you have any other comments on the impact of our proposals on persons who share a protected characteristic?**

There were 26 responses to this question.

**Special schools and those for students with special educational needs and disabilities (SEND)**

Respondents noted the potential impact on specialist schools when using historical data to compare one cohort to another.

“Data sets (19). All our students are considered disabled within the definition of the Equality Act 2010 - all have special educational needs and EHCPs. To use historical results data when each years' cohort varies from year to year could be considered discriminatory.” (Exams Officer)

**Q6 Do you have any comments on the regulatory impact of our proposals? For specific comments, please refer to the relevant paragraph**

Sixteen respondents commented on the regulatory impact of our proposals.

One parent who did not consider the approach of exceptional regulatory arrangements put in place for summer 2020 was fair to students argued that students should be able to appeal on an individual basis. Some respondents expressed views on the use of prior attainment data and how this would have an impact on centres and individual students, however this is not in scope of the regulatory impact for this consultation.

Two awarding organisations considered that there were differences in approach to general qualifications and vocational qualifications, which could place greater regulatory burden on awarding organisations as well as creating potential confusion for centres and learners.

“The approach for cases where “there is evidence that the information provided by the centre was affected by bias or discrimination, or the centre wrongly failed to take into account reasonable adjustments which would have been provided had exams taken place” is described in paragraph 15. The approach, that the candidate can “make a complaint to the centre and / or an allegation of malpractice or maladministration to the awarding organisation” is different to the approach for VTQs. That is described in the VQ Covid guidance on “compliance with Condition I1 in relation to VTQs”, which states: “Condition I1.2(a) will encompass whether a centre has followed a procedure properly and fairly, where relevant, including any issue in relation to bias or discrimination on the part of a centre in following a procedure.”

This difference is potentially very confusing for centres and candidates, especially for qualifications that are very similar to GQ qualifications, with a similar approach to calculated results. It also places a greater regulatory burden on awarding organisations who are offering a range of qualifications, with different qualifications falling under each set of rules. It does not seem desirable for the Awarding Organisation to develop and implement two different procedures on the same issue or to ask centres to do the same”.  
(Awarding body or exam board)

One awarding organisation said that it would want as much support and guidance from Ofqual as possible. It would also welcome descriptions of behaviour which Ofqual considers might or might not comply with a general condition and factors which Ofqual will take into account.

“Whilst awarding organisations can reasonably be expected to exercise a level of discretion in their interpretation of regulatory requirements in normal conditions, this is the case because they have knowledge and understanding from which to work from based on prior experience. Such prior experience does not exist this summer and (we) welcome a high level of guidance /support from Ofqual to help awarding organisations comply with the GQCovid regulatory framework.

The Joint Council of Qualifications (JCQ) is agreeing a single appeal process in respect of which we reiterate that as much clarity and guidance from Ofqual on this subject as possible would be appropriate – not to guard against the possibility of later enforcement action, but to ensure that the system adopted is right and as fit for purpose as it can be in the circumstances.” (Awarding body or exam board)

Two awarding organisations commented on the guidance relating to cases of bias or discrimination and allegations of malpractice or maladministration of the centre.

“(We) would be grateful if our points in relation to the numerous issues which arise from the suggestion that learners’ disquiet with teachers’ professional judgements be directed to awarding organisations by way of allegations of malpractice and maladministration be very carefully considered. It has been raised on numerous occasions that without substantial qualification, this falls outside of awarding organisations’ reasonable capacity (as recognised by Ofqual and Ministers by reference to appeals on this basis) and would

comprise an extraordinary burden on awarding organisations that would likely impact the efficacy of the autumn series as well as subject awarding organisations to the risk of third party claims. Whilst not incumbent on Ofqual to seek to assert control over third parties, of course, (we) note that awarding organisations are ultimately reliant on Ofqual to ensure that the regimes adopted do not have consequences that are inappropriate and excessively burdensome.” (Awarding body or exam board)

“A single approach to how awarding organisations are required to categorise bias and discrimination cases would be useful. It will avoid confusion for centres/learners and ensure awarding organisations can apply a consistent, robust approach to all such cases. This streamlining will help to reduce regulatory burden.” (Awarding body or exam board)

One awarding organisation welcomed the proposed panel for reviewing exceptional appeals but acknowledged that this will represent a new burden.

“The content of this proposed guidance is intended to provide clarity in the interpretation of statutory regulations which are already in place, and as such the proposals do not, in themselves, add significantly to the regulatory burden. However, the proposed panel for reviewing exceptional appeals is welcome, but we anticipate contributing to its work will represent a new burden not already accounted for.” (Awarding body or exam board)

One awarding organisation requested action to be taken now to manage the potential for high volumes of Subject Access Requests (SAR).

“Information for learners and centres which provides clarity about how learners can access their CAG and Rank Order information without the need for a SAR will be particularly valuable. It is not in the interests of centres, learners, awarding organisations or Ofqual to have SARs used as the primary mechanism for accessing this information. Learners need to be supported to understand that they should approach their centre for this information and that a SAR may not be required. We believe the regulator can provide clarification which will ease the potential burden on the sector as a whole.” (Awarding body or exam board)

The same awarding organisation commented that the guidance should not require awarding organisations to design their appeals process in specific ways adding to potential burden on systems development.

# Appendix A

List of organisations that responded:

Abingdon School  
Access Creative College  
Allerton High School  
AQA  
Ardingly College  
Bablake  
Bedford School  
Boston College  
Brentwood School  
Canford School  
City & Guilds  
Cranleigh School  
Dame Allan's Schools  
EHRC (Equality and Human Rights Commission)  
Epsom College  
Essex County Council  
Fettes College  
Godolphin and Latymer School  
Hampton School  
Headmasters' and Headmistresses' Conference  
Holy Cross School  
Immanuel College  
Independent Schools Council  
Kensington Aldridge Academy (KAA)  
Longridge Towers School  
National Deaf Children's Society  
New Hall School  
OCR  
Oundle School  
Pearson

Queen Marys School  
Raines Foundation  
St Albans School  
St Anselm's School, Bakewell  
St Edward's School  
Stepping Stones School  
Testwood School  
The British School of Kuwait  
The Cedars School  
The Kemnal Academies Trust  
The Royal Grammar School, Newcastle  
Tring Park School for the Performing Arts  
University of Oxford  
Wildern School  
WJEC  
Wolverhampton Grammar School



© Crown Copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated.

To view this licence, visit

[www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/)

or write to

Information Policy Team, The National Archives, Kew, London TW9 4DU

Published by:

**ofqual**

Earlsdon Park  
53-55 Butts Road  
Coventry  
CV1 3BH

0300 303 3344  
[public.enquiries@ofqual.gov.uk](mailto:public.enquiries@ofqual.gov.uk)  
[www.gov.uk/ofqual](http://www.gov.uk/ofqual)