

**Federation of Awarding Bodies – DRAFT response to the  
Ofqual consultation on teacher involvement in the  
development of confidential assessment materials, April 2018**

**Overview of the Federation of Awarding Bodies**

The Federation of Awarding Bodies is the trade association for vocational and technical awarding organisations (AOs) with over 125 organisations in full membership ranging from large generic AOs to those working in specific occupational areas, including professional bodies.

Our members operate across a wide range of vocational/technical sectors and provide a range of qualifications to support learners to qualify and progress in their chosen sector. Some of our members work with teachers in the development of confidential assessment materials. We therefore have an interest in this consultation and welcome the opportunity to respond.

This evidence submission is provided on behalf of the Federation's membership following consultation with them and with the Federation's Board of Directors. However, AOs are a diverse community and our members may wish to make their own individual submissions containing their own perspectives and emphases, in addition to any comments forwarded to the Federation for inclusion in this overall response.

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## Consultation questions

### Question 1: To what extent do you agree or disagree with the following proposal?

We should make it an explicit requirement in our General Condition of Recognition A4 that all awarding organisations must hold up to date records of all conflicts of interest, including conflicts relating to anyone who develops or otherwise sees information about confidential assessment materials.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give reasons for your answer

The Federation believes that the General Conditions of Recognition (GCRs) should be clear and explicit in their requirements. Awarding organisations (AOs) devote a significant amount of time to ensuring their compliance with the GCRs and are keenly aware that they operate in a regulated sector where the potential for regulatory action, including significant fines, is a very real possibility. It is therefore only fair that the regulations are articulated in a way that makes the requirements clear.

The Federation is, therefore, concerned that over seven years after their launch, neither the GCRs nor the supporting Guidance for A4 currently make any reference to the expectation that AOs will maintain a Register of conflicts of interest. This is the type of specific requirement that we would have expected to be clearly stated and its absence from the GCRs and the Guidance documentation is particularly concerning. We do not believe that implied regulatory requirements are desirable or fair to AOs.

We would consequently support the explicit inclusion of this requirement in the GCRs and the Guidance so that AOs are aware of the need to have this Register in place. We would also request, in the interests of fairness, that Ofqual communicates this requirement broadly across the regulated AO sector and also provides AOs with a reasonable timescale with which to comply with this 'new' requirement. As this will be a requirement that relates to all AOs and will not only relate to those who use teachers in the development of confidential assessment materials (the subject of this consultation) the communication of this requirement should be targeted at all regulated AOs to ensure they are aware of this.

We would further request that Ofqual makes clear any other implied requirements within the GCRs so that AOs can be confident that they are working with a clear set of regulations and have a fair chance to comply with them.

We are generally mindful of the impact that changing the GCRs has on AOs and, wherever possible, we encourage the use of Guidance to clarify requirements. However, in this case we believe this requirement should be articulated in the GCRs as well as the guidance.

**Question 2: To what extent do you agree or disagree with the following proposal?**

Awarding organisations should be free to decide whether to make public information about the people who are involved in developing their confidential assessment materials.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

Please give reasons for your answer

The consultation document and supporting documentation clearly identify some of the difficulties that could arise if the details of the people who are involved with the development of confidential assessment materials are made public. We therefore agree that this decision should be made by the AO, taking into account the advantages and disadvantages of making this information public. It would, however, be useful if Ofqual could use the information it collected as part of its research into this area to provide AOs with some guidance on the issues they may wish to consider when reaching their decision on this matter.

**Question 3: for awarding organisations only:**

**Do you already maintain an up to date record of all conflicts of interests?**

Not applicable to the Federation. Individual members will respond. However, given that the consultation document has indicated that this is already viewed as being an implied requirement of compliance a negative response may be seen as being a risk for an AO in terms of any resulting regulatory action that Ofqual may instigate.

**If yes, does the record include conflicts of interest that relate to the interests of teachers involved with developing confidential assessment materials?**

Not applicable to the Federation. Individual members will respond.

**Does the record include information about:**

- (a) The qualification(s) the teachers teach?

(b) The schools and/or colleges in which they teach and have taught when they held information about confidential assessment materials?

(c) Any other roles held they hold?

**Question 4: To what extent do you agree or disagree with the following proposal?**

We should make explicit in our Condition G4.1 that awarding organisations need to manage the risks of teachers disclosing information about confidential assessment materials.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give reasons for your answer

The Federation believes that the General Conditions of Recognition (GCRs) should be clear and explicit in their requirements. However, we are also mindful of the impact that changing the GCRs has on AOs and, wherever possible, we encourage the use of Guidance to clarify requirements. In this case we believe this is an example of the type of situation that an AO would need to consider if it was applicable to the qualifications it offers and it could, therefore, be effectively articulated in the Guidance that supports the GCRs. However, if the decision was taken to make explicit reference to this in the GCRs themselves, we would not view this as being problematic.

**Question 5: To what extent do you agree or disagree with the following proposal?**

The safeguards an awarding organisation uses to protect the confidentiality of its assessment materials need to be tailored to its particular qualifications, having had regard to the statutory guidance.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give reasons for your answer

The Federation agrees that AOs should be able to tailor the safeguards it puts in place to its own particular qualifications. This will ensure that the arrangements are appropriate, effective and no more burdensome than is needed. The supporting statutory Guidance should be clear and presented in a way that helps AOs to make sound decisions on what safeguards are/are not appropriate in a range of different scenarios.

**Question 6: To what extent do you agree or disagree with the following proposal?**

We should publish expanded statutory guidance that makes clear the safeguards we would expect an awarding organisation to apply to different types of qualifications.

Strongly agree

Agree

Neither agree nor disagree

Disagree

Strongly disagree

Please give reasons for your answer

The Federation agrees that it will be useful to have guidance on the safeguards that could be applied to different types of qualifications. However, this would need to allow AOs the flexibility to tailor the safeguards as appropriate and should be as flexible and non-prescriptive as possible. We therefore have a concern about the use of the word 'expect' as it indicates a prescriptive approach which may not suit the needs of a particular AO in some circumstances.

**Question 7: Do you have any comments on the examples of safeguards we propose an awarding organisation should consider using during assessment production to reduce the risk of inappropriate disclosure of confidential information?**

**Yes**

The Federation's comments are:

- 1- In relation to paragraph 47, we agree that this would be the surest way to avoid conflicts of interest but we do not believe it is the best option for ensuring the quality of the assessments that are developed. Depending on recently retired teachers only may well limit the number of people an AO can find to engage with.
- 2- In relation to paragraph 49, it is unlikely that an AO would want to prohibit a teacher from delivering a specific qualification, either as part of their job or any private tutoring work that they may undertake. Such a requirement would be likely to be viewed as being too restrictive for the teacher and very difficult for the AO to track in terms of whether the teacher moved into a role where such teaching was part of their role.
- 3- Paragraph 51 offers a useful safeguard but each AO would need to be able to consider if/how this option would work for them and make a decision about the implications and resource investment that would be needed to adopt this approach.

- 4- We welcome paragraph 54 for its recognition of the value of providing guidance which identifies issues that AOs would find it useful to consider in relation to introducing an approach where teachers do not know when their items will be used.

**Question 8: Are there any other safeguards that we have not suggested that awarding organisations could consider?**

The Federation has not identified any additional safeguards but individual member responses may provide an indication of what additional safeguards could be considered.

**Question 9: To what extent do you agree or disagree with the following proposal?**

The types of measures we set out would support teachers who had seen information about confidential assessment materials to meet their obligations in respect of those materials

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

The Federation agrees that clear contractual arrangements that set out the teacher's obligations with respect to information about confidential assessment materials would be useful in helping teachers to be aware of their obligations. An annual declaration to remind them of their obligations would also be useful to ensure their memory of these does not fade over time. This does, however, add an administrative burden onto AOs who will need to issue the declaration, track which teachers have signed and returned it and chase up those who haven't. It might be more manageable if the requirement was for AOs to send out an annual reminder to teachers. The requirements of bullet 3 add to this burden considerably and we do not feel this is a manageable activity for AOs to implement. It is not clear what bullet 2 in this section would require and what the AO would be expected to do to support the teachers to behave appropriately. This would benefit from clearer articulation which explicitly states what Ofqual means by this statement.

**Question 10: Are there any other types of support an awarding organisation might provide to a teacher to reduce the risk they will misuse information about confidential assessment materials?**

Yes/No. If yes, please describe there here.....

No- the Federation has not identified any other types of support.

**Question 11: To what extent do you agree or disagree with the following proposal?**

Measures such as we propose would enable an awarding organisation to detect the inappropriate use of information about confidential assessment materials by a teacher

- Strongly agree  
 Agree  
 Neither agree nor disagree  
 Disagree  
 Strongly disagree

The measures proposed could, to some extent lead to detection of the possible inappropriate use of information but there are a number of issues with these proposals:

- Bullet 1 would require careful tracking by the AO of where the teacher was currently teaching and the details of the cohort they were teaching. We do not believe this is a manageable approach, especially not on any scale, and would require significant AO resources. It is important to remember that the situations that have set this review in motion are very rare and we therefore need to strengthen safeguards but also be proportionate. We do not believe the proposal in bullet 1 is proportionate.
- Bullet 2 – as with bullet 1, we do not believe this level of granularity is proportionate and represent activity that would not be manageable on scale. AOs do not have access to this information and introducing it as a requirement or expectation would be problematic.
- Bullet 3 – we believe most AOs would already monitor social media for indications of malpractice but Ofqual would need to be reasonable in how far they would expect this monitoring activity to go.
- Bullet 4 – this is more manageable but it is important to note that an unusual pattern of results may not be because of any malpractice on the teacher's part.

Paragraph 65 refers to an AO notifying the National College for Teaching and Leadership 'where appropriate'. The Federation believes that much more information should be provided to AOs about this, how they would report it, when it would/would not be 'appropriate' and any risks that this presents to the AO in terms of sharing this information about an individual with a third party. This is potentially a legal minefield for AOs and the regulator should provide much more in-depth information about this before it requires AOs to embark upon such reporting.

**Question 12: To what extent do you agree or disagree with the following proposal?**

A teacher who had information about confidential assessment materials would be deterred from misusing information if they knew the awarding organisation would take measures such as we propose to detect wrong-doing

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

It seems logical that any measures which make it more likely that malpractice would be detected would make teachers less likely to knowingly misuse the information they have at their disposal. It may not, however, have an impact on teachers who do not realise that their knowledge has skewed their teaching towards a particular area of the curriculum. Teachers who worry that they may inadvertently 'give something away' and then be accused of malpractice may feel this is too great a risk to their career and opt not to work with AOs in the development of assessment material.

**Question 13: Are there other steps an awarding organisation could take to detect or deter a teacher from inappropriately using information about confidential assessment materials that we should include in our statutory guidance?**

No- the Federation has not identified any other steps that AOs could take.

**Question 14: Are all the factors we have identified for awarding organisations to consider when deciding which safeguards to use appropriate?**

Yes, the Federation believes this are appropriate.

**Question 15: Are there other factors which might affect which safeguards are appropriate for a qualification which we have not identified?**

Yes

An AO might also want to consider if there has been any previous malpractice in the centre that the teacher is based in as this might, in some cases, indicate a culture where malpractice is tolerated or in extreme examples, encouraged.

**Question 16: To what extent do you agree or disagree with the following proposal?**

Including examples in our statutory guidance would be useful for awarding organisations to understand the factors they need to take into consideration and the range of safeguards which would be appropriate.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree

The Federation agrees this would be useful as long as the AO could decide the most appropriate approach to take, with reference to the Guidance.

**Question 17: If you are responding on behalf of an awarding organisation to help us assess the burden awarding organisations might experience in responding to our proposals, please indicate for how many of your qualifications:**

- you involve teachers who teach a qualification in developing confidential assessment materials for that qualification and
- for how many of these qualifications you do NOT already use safeguards of the type described above at the assessment materials development stage and
- how many of these qualifications you consider to be high stakes and/or particularly vulnerable to malpractice.

Not applicable to the Federation. Individual members will respond.

**Question 18: If you are responding on behalf of an awarding organisation please provide us with an indication of any additional costs you estimate you will incur if we amend the Conditions as we propose and please tell us how you have arrived at this estimate.**

Not applicable to the Federation. Individual members will respond.

**Question 19: If you are responding on behalf of an awarding organisation please provide us with an indication of any additional costs you estimate you will incur if we expand our statutory guidance as proposed and please tell us how you arrived at this estimate.**

Not applicable to the Federation. Individual members will respond.

**Question 20: Are there any steps we could take to reduce the regulatory impact of our proposals while making sure awarding organisations are taking all reasonable steps to protect the confidentiality of their assessment materials that have been developed or otherwise seen by teachers?**

Yes/No If yes please describe the steps you believe we should take.

**Question 21: Are there any costs or benefits associated with our proposals which we have not identified?**

The Federation has not identified any additional costs or benefits.