



Regulatory Appeals Policy

APRIL 2019



This is Version 3 of the Regulatory Appeals Policy and was approved by Qualifications Wales' Board on 28 March, 2019. The policy was updated following a review in 2018 and replaces the previous Version (2) of this policy.

Feedback on this policy is welcomed at any time. Please send your comments to policy@qualificationswales.org

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Introduction

This policy sets out the rights awarding bodies have under the Qualifications Wales Act 2015 to request an appeal of our regulatory decision in respect of the following:

- i. directing an awarding body to make arrangements for a form of qualification that it offers to be transferred to another awarding body (Transfer Condition);
- ii. proposing a cap on the fees that an awarding body can charge for services in relation to the award of a qualification (Fee Capping Condition); and
- iii. withdrawing recognition from an awarding body.

It also outlines our approach to regulatory appeals, which includes both an internal and independent review of the decision and explains the process we will follow.

The aim of this policy is to:

- ensure that the awarding body to whom the regulatory decision was directed has an opportunity to request for that decision to be reviewed, in accordance with the Qualifications Wales Act 2015;
- provide a transparent process for dealing with the above; and
- provide public confidence in Qualifications Wales' decisions.

As a regulator, we also take other types of regulatory decisions which are not subject to a regulatory appeal. These include, but are not limited to:

- the determination of an application for recognition;
- a decision not to Approve or Designate a form of a qualification;
- a decision to withdraw approval in respect of an Approved qualification;
- a decision to revoke designation in respect of a Designated qualification;
- a determination that an awarding body is non-compliant with a Condition of Recognition; and
- a Direction given to an awarding body.

When taking such regulatory decisions relating to individual awarding bodies, we will notify an awarding body of our intention to do so. We will give the awarding body an opportunity to make written representations to us and will include in the notice the date by which representations must be received.

After we have considered any representations made, we will decide whether to withdraw, vary or confirm our decision. We will confirm our decision in writing and what action, if any, is required of the awarding body.

This policy does not cover:

- i. decisions to impose a monetary penalty or the amount of that penalty. Awarding bodies have the right to appeal to the First-tier Tribunal, in accordance with section 39 of the Qualifications Wales Act 2015;
- ii. decisions to recover Qualifications Wales' costs for enforcement action. Awarding bodies have the right to appeal to the First-tier Tribunal, in accordance with section 41 of the Qualifications Wales Act 2015;
- iii. complaints about an awarding body. We describe these types of complaints and how we will respond to them in our [Complaints about Awarding Bodies Policy](#);
- iv. disclosures made by workers of awarding bodies. We describe these types of complaints and how we will respond to them in our [Regulatory Whistleblowing Policy](#);
- v. complaints about the ways in which Qualifications Wales exercises its functions. We describe these types of complaints and how we will respond to them in our [Corporate Complaints Policy](#).
- vi. legal proceedings or judgements. These should be [forwarded to](#) the Executive Director, Finance and Corporate Services;
- vii. complaints relating to the offer or award of a contract for goods, works or services should be [directed to](#) the Head of Procurement;
- viii. complaints raised by employees. These will be dealt with through our internal HR policies.

Scope of Regulatory Appeals

1. An awarding body can request a regulatory appeal where it has been subject to the following decisions by Qualifications Wales, once these decisions have been confirmed:
 - i. directing an awarding body to make arrangements for a form of qualification that it offers to be transferred to another awarding body (Transfer Condition);
 - ii. proposing a cap on the fees that an awarding body can charge for services in relation to the award of a qualification (Fee Capping Condition); and
 - iii. withdrawing recognition from an awarding body.
2. When we correspond in writing regarding the decisions listed above, we will inform the awarding body of their right to request a review of that decision and by when they must make such a request.

Conducting an Appeal

3. When we conduct appeals, we will always seek to act in accordance with the principles of good regulation, and appeals will be considered in a fair and transparent way. In accordance with our principal aims, we will seek to meet the reasonable needs of learners and maintain public confidence in the qualifications system and in us as a regulator.
4. In this regard, the Corporate Governance team will be the main point of contact for the appellant and will oversee the arrangements of any appeals.
5. We will ensure that the appellant will be informed of and kept up to date with:
 - i. the name of the Appeals Officer;
 - ii. when we expect to complete the review and, if there are unexpected delays or deferrals, any revised timescales. We will aim to provide a prompt response but will provide regular updates and rationales for any delays;
 - iii. evidence or key documents that influence the final decision and the right to request a copy of and rebut or dispute the honesty or accuracy of that evidence¹; and
 - iv. the final decision in the form of a written report or statement.
6. The Appeals Officer will be an individual who was not involved in the regulatory decision which is subject to the appeal.
7. An internal review will be conducted by staff who were not directly involved in the regulatory decision and do not have a conflict of interest that cannot be managed or mitigated.
8. We will also have independent reviewers in place whom are contracted to undertake this role and are independent of us.

Making an Appeal

9. We will consider an appeal if it has been received by us within 20 working days of the date of the regulatory decision.
10. When requesting an appeal, the appellant must state on which grounds they are doing so, such as the following:

¹ At the independent review stage, the appellant and the Qualifications Wales decision maker shall have access to the same information.

- a. that the decision was not carried out in accordance with the relevant policy, regulations, legislation or other information published or communicated by Qualifications Wales;
 - b. that the decision was based on incomplete or inaccurate evidence, to the extent that it is reasonable to conclude that the decision may have been different²; or
 - c. that there was prejudice or bias by one or more decision makers.
11. We may refuse to consider, or delay the consideration of, appeals which are the subject of formal legal proceedings or investigation by another regulatory body.
 12. We will acknowledge the appeal within five working days of receipt.
 13. In submitting an appeal, you are expected to submit a full and frank disclosure of all relevant facts. You should include the following information:
 - i. your full name;
 - ii. contact information;
 - iii. a clear explanation of the nature of your appeal and its basis;
 - iv. relevant dates and details of the appeal;
 - v. a chronology of facts on which the appeal is based;
 - vi. copies of any relevant supporting documents (if you are awaiting documents before submitting please indicate this and when you intend to submit them)³; and
 - vii. the remedy you are seeking.
 14. All appellants are required to:
 - i. alert us if there are any potential conflicts of interest;
 - ii. meet the reasonable requests of those reviewing the appeal, including requests for meetings and information. Appellants do have the right to refuse to meet the reviewers or provide evidence, but should note that decisions will be taken on the information provided and no subsequent

² If you are appealing on this ground and the appeal relates to information that you did not provide at the time of the initial decision you must include a statement to explain why it was not made available before. Failure to provide valid reasons may result in your appeal being dismissed. You may be required to provide additional evidence

³ In order to ensure that appeals are submitted within the published timescales, appellants may submit appeals with the supporting documents pending, providing a rationale and anticipated timescales for receipt of the documents. Please note that delay in submitting documents may impact on the timescales for review of your appeal.

- opportunity will be available to state that the evidence considered was incomplete; and
- iii. behave in a polite and courteous manner. We believe that all appellants should have the right to be heard, understood and respected and that our staff have the same rights. We will not tolerate aggressive or abusive behaviour, unreasonable demands or unreasonable persistence.
15. We will refuse to deal with unreasonably persistent or vexatious appeals. Unreasonably persistent and/ or vexatious appeals are those where the appellant is deemed to be pursuing an appeal without merit and/ or intends to cause inconvenience, harassment or expense to the organisation. If we deem a matter to be unreasonably persistent or vexatious, we will contact the appellant to identify this and explain why.
16. If you wish to submit an appeal, please email the Corporate Governance Team at:

corporategovernance@qualificationswales.org or write to us at:

Qualifications Wales
Q2 Building
Pencarn Lane
Imperial Park
Coedkernew
Newport
NP10 8AR

Regulatory Appeals Process

17. Appeals will be handled through a process with three defined stages. These are illustrated in Annex 1 of this policy.
18. We will handle regulatory appeals through a formal appeal process and our regulatory decisions will either be confirmed, revised or overturned as a result. Throughout this process, we will encourage open dialogue with relevant awarding bodies and would be amenable to reaching a resolution. The appellant can withdraw at any stage within the process.

Stage 1 - Assessment

19. All requests for an appeal must be received by the Corporate Governance Team and in the first instance, we will assess whether the request falls within the scope of this policy.
20. Following this assessment, we will write to the appellant within 10 working days of receipt of the request, to confirm whether it falls within the scope of this policy. If it does, the appellant will be notified that the appeal will be formally reviewed under stage 2 outlined below.

Stage 2 – Internal Review

21. The Appeals Officer will review the regulatory decision which is the subject of the appeal, the evidence provided by the appellant in their request for the appeal and any other relevant supporting evidence.
22. The Appeals Officer will normally send the appellant a draft Appeal Decision within 40 working days of date of the letter confirming the outcome of the appeal. The draft Appeal Decision will state whether we intend to dismiss the appeal (thereby upholding the original regulatory decision), to revise the original regulatory decision, either fully or in part, or to uphold the appeal (either in full or in part) and give reasons for the decision.
23. The appellant will be invited to submit their comments on the factual accuracy of the draft Appeal Decision within 10 working days.
24. After this deadline, the Appeals Officer will review the comments received, finalise the decision and notify the appellant of the outcome within a further 10 working days.

25. Where an appeal is upheld, we will endeavour to explain what happened and why. The regulatory decision will be annulled. Where possible we will aim to provide an appropriate remedy.
26. Where a regulatory decision is upheld, we will provide reasons for the decision and supporting documentation will be provided to the appellant. We will include in our response the right to request an independent review. The information supplied in our response will act as our formal response to the internal review and will be provided, if required, in subsequent stages of the process to the Independent Reviewer.

Stage 3 – Independent Review

27. If the appellant is dissatisfied with the outcome of our Internal Review, they can request an Independent Review.
28. The appellant must submit a written request to the Corporate Governance team within 20 working days of the outcome of the Internal Review stage.
29. The appellant may provide additional evidence, but this must be accompanied by a statement to explain why it was not provided at an earlier stage. Without a valid reason, additional evidence may be deemed inadmissible.
30. The request, and any supporting evidence provided by the appellant or by any other affected parties will be provided to an Independent Reviewer.
31. The purpose of the Independent Reviewer is to take an independent view of the Stage 2 decision taken by Qualifications Wales. The Independent Reviewer:
 - i. will not be a member of our staff or of our Board;
 - ii. will not have a conflict of interest with any persons related to the case;
 - iii. will not have been involved in the decision previously;
 - iv. will not have been employed by a relevant awarding body recognised by us in the past four years; and
 - v. will be selected on the basis of relevant expertise.
32. The Independent Reviewer will consider the case based on the documentation provided by the appellant and by us. Where appropriate, they may also ask relevant parties for more information.
33. The Independent Reviewer can interview any persons they believe are relevant to completing their investigation but are not required to conduct any interviews.

The Independent Reviewer will normally consider the case within 30 working days of receipt of the request and will provide a full report to Qualifications Wales.

34. The Independent Reviewer will make a recommendation to Qualifications Wales either to:
 - i. uphold the Stage 2 decision;
 - ii. uphold the Stage 2 decision partially (including by virtue of the same outcome but on a different basis); or
 - iii. overturn and reconsider the Stage 2 decision.
35. We will inform the appellant of the Independent Reviewer's recommendations and of our subsequent actions within 20 working days.
36. We will give due regard to any recommendations made by the Independent Reviewer and we will normally strive to follow the Independent Reviewer's recommendations. Where we do not implement some or all of the recommendations, we will explain the reasons why to the appellant.

Actions following a Regulatory Appeal

37. After a Regulatory Appeal has been exhausted, our decision will be final and we will require the awarding body to comply with our decision.
38. We will normally publish our regulatory decisions on our website.

Annex 1 - Regulatory Appeals Process

