

**Consultation on teacher involvement in the development of
confidential assessment materials**

**A response by
The Chartered Institute of Legal Executives**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 qualified Chartered Legal Executive lawyers.
- 1.2. CILEx is also a nationally recognised Awarding Organisation, regulated by Ofqual, Qualifications Wales and CCEA.
- 1.3. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform.
- 1.4. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.

2. 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

- 2.1. It is important that the integrity of confidential assessment materials is protected. Maintaining up to date records of conflicts of interest in relation to the development of confidential assessment materials is essential to identifying and managing potential risks to the integrity of confidential assessment materials. CILEx welcomes the clarity in relation to Ofqual requirements.

3. 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

- 3.1. It is appropriate that individual awarding organisations decide the best approach for their own organisation. CILEx would not make public information about the assessors involved in developing confidential assessment materials

as there can be unintended consequences of doing so, for example, learners may choose to study at a particular centre because a tutor at a centre is working for the awarding organisation. However, CILEx acknowledges that other awarding organisations may have legitimate reasons for making this information public. As long as awarding organisations can justify the approach they have taken, this should satisfy Ofqual.

4. Question 3: for awarding organisations only: Do you already maintain an up to date record of all conflicts of interests?

- 4.1. No – CILEx maintains records of conflicts of interests in relation to the majority of assessor roles involved in the production of confidential assessment materials. However, up to date records are not kept for all persons who have sight of confidential materials.

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

- 4.2. CILEx does record the interests of teachers involved in developing assessment materials for the majority of assessor roles.

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?

- 4.3. The records include the qualification unit/s the teachers teach and the centre at which they teach.

5. 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.

- 5.1. Ofqual is clearly seeking to put significant emphasis on the responsibilities of awarding organisations to manage the risks of teachers disclosing information about confidential assessment materials. Therefore, whilst this is arguably addressed in condition G4, to ensure that there is no ambiguity, CILEx agrees that Ofqual should make it explicit in G4.1 that awarding organisations need to manage this risk. Ofqual is not prohibiting awarding organisations from using ‘teachers’ in assessment development rather requiring awarding organisations to manage the associated risks.

6. 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

- 6.1. CILEx agrees that an awarding organisation should be able to tailor the safeguards it puts in place to its own qualifications. The risks will vary depending on the qualifications an awarding organisation delivers, for example, whether the qualification is high stakes or not. Therefore, it is appropriate that the safeguards are tailored accordingly. We would expect the guidance to be unambiguous and facilitate an awarding organisation reaching appropriate judgements. However, since we have not seen the precise wording of the statutory guidance, we cannot comment further.

7. 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

- 7.1. CILEx would argue that it is for each awarding organisation to assess the risks and decide on the appropriate safeguards. It is helpful for Ofqual to set out in the statutory guidance a range of safeguards which an awarding organisation may adopt. CILEx has disagreed with this proposal because it is implied in the question that an awarding organisation will have to apply particularly safeguards, as specified by Ofqual. Awarding organisations should be able to identify the risks and the safeguards required to mitigate those risks, having regard to the statutory guidance, rather than being required to adopt a particular safeguard as set out in the statutory guidance.

8. 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. If yes provide them here:

- 8.1. Ofqual has set out a range of safeguards in relation to assessment production, some of which if adopted would mean that teachers are not used in the production of confidential assessment.
- 8.2. Ofqual has identified a number of the potential consequences of the various safeguards. In particular, CILEx notes that if teachers involved in the production of confidential assessment materials are not allowed to teach on the qualification, these teachers are unlikely to continue their involvement with

the production of assessment materials because it would impact on their job role or changing jobs. There are also challenges for an awarding organisation in terms of enforcing this safeguard. For example, an assessor involved in the production of assessments may subsequently change jobs to teach on the qualification before the assessments they developed are taken by the learners. Whilst this may be a breach of contract with the awarding organisation, there are implications, including potential costs, in enforcing this.

- 8.3. In relation to paragraphs 57 – 60, it is noted that CILEx qualifications contain a number of units across different areas of law. Each unit is tested by an examination. Learners undertake the examinations for the units over a period of time and not at a single examination session. Therefore, the option set out at paragraph 59 would be problematic for CILEx because learners do not sit all the assessments for a qualification at one examination session.

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

- 9.1. Yes

If yes, please describe them and the circumstances in which they might be used...

- 9.2. Subject to the rubric of an examination paper, there may be an option to restrict a teacher to only setting part of an examination paper. This could apply where there are different sections to an examination paper. The teacher would only have sight of part of the examination paper.

10. 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

- 10.1. CILEx agrees that having clear contractual arrangements with teachers producing assessment materials and requiring annual declaration are sensible measures.
- 10.2. In relation to 'supporting the teacher to behave appropriately' – this is rather vague as to what Ofqual is expecting. Awarding organisations may consider setting out a range of scenarios to facilitate the teachers' understanding of what is and is not acceptable as part of induction and ongoing training.
- 10.3. In terms of having direct contact with the centre, it is not clear to what extent this would provide further support for the teacher.

11. 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?

11.1. No.

If yes, please describe there here.....

12. 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

- 12.1. CILEx considers that the measures proposed could facilitate detection of the inappropriate use of information about confidential assessment materials by a teacher. However the proposed measures are not in all cases practical or, depending on the circumstances, effective. For example, in terms of statistical monitoring, small cohorts will impact on the extent to which statistics can be

used to identify 'unusual' results. Further, 'unusual' results do not necessarily mean that a teacher has shared confidential information.

- 12.2. In relation, to the proposal that awarding organisations sample teaching plans, materials and formative assessments, this is not considered practical. In reality, if such measures were utilised, the use of teachers in the production of confidential assessment materials would be reconsidered.
- 12.3. CILEx would also be interested in the advice Ofqual is taking on ways social media can monitored.

13. 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 wrongdoing.

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

- 13.1. As Ofqual has noted, cases of teachers misusing information about confidential assessment materials are rare. The majority of teachers would not seek to misuse this information. However, in the rare cases where a teacher may seek to misuse information, they are likely to be deterred if they consider they may be caught. The measures Ofqual propose may detect wrong doing but they will not in all cases. If a teacher is intent on behaving unethically they are likely to still do so.

14. 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?

- 14.1. No.

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

15.1. Yes.

15.2. Ofqual has addressed the key factors ie the extent of the teacher's knowledge of the assessment materials, the extent to which they are involved in the qualification delivery, whether the qualification is high stakes, the frequency the qualification is assessed and the number of assessments.

If no, please explain your answer.

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

16.1. Yes.

If yes please describe the other factors we should consider?

16.2. A situation could arise whereby the centre at which the teacher works offers the qualification but not that actual unit/module for which teacher has been involved in the development of confidential assessment materials.

16.3. In addition, an awarding organisation may want to factor in the risk status of the centre at which the teacher works. For example, if there have been previous concerns, particularly in relation to malpractice, these concerns may inform an awarding organisation's safeguards.

17. 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

17.1. CILEx welcomes the inclusion of examples to help awarding organisations understand the range of factors Ofqual considers it appropriate to take into account when deciding on the appropriate safeguards. However, it is important that these are examples only and an awarding organisation is able to decide on the most appropriate safeguards for its qualifications.

18. 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**

18.1. CILEx has teachers involved in developing assessment materials for 7 of its qualifications.

- **for how many of these qualifications you do NOT already use safeguards of the type described above at the assessment materials development stage, and**

18.2. CILEx has some safeguards in place for all the qualifications using teachers to contribute to the development of confidential assessment materials. However, CILEx would want to review its approach in relation to Ofqual's proposals.

- **how many of these qualifications you consider to be high stakes and/or particularly vulnerable to malpractice.**

18.3. CILEx considers that none of the qualifications are high stakes/vulnerable to malpractice

19. 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.

- 19.1. CILEx does not consider that the change to A4 will lead to any additional costs for CILEx. To a greater extent, CILEx already complies with the proposed changes to this condition.
- 19.2. There may be some costs involved in relation to the changes to condition G4. Whilst CILEx currently has measures in place to manage this risk, it will be necessary to revisit these measures in light of further statutory guidance. However, at this stage CILEx is not in a position to estimate any additional costs.

20. 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.

- 20.1. As noted above, in light of the statutory guidance, CILEx will revisit the current safeguards it has in place to manage the risk of teachers disclosing confidential information. At this point, CILEx has not confirmed any additional safeguards it will put in place having taken into account the proposed statutory guidance and therefore is not in a position to advise on additional costs.

21. 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?

- 21.1. No.

If yes please describe the steps you believe we should take.

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

- 22.1. No.

If yes please give reasons for your answer

For further details

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further
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