



Regulatory Appeals Policy

FEBRUARY 2021



Version control

This is Version 4 of the Regulatory Appeals Policy by Qualifications Wales, published in February 2021.

This document is available in **Welsh**.

We keep our policies under review and welcome feedback at any time. Please send any comments to policy@qualificationswales.org.

General Principles of the Regulatory appeals policy

This policy is for anyone who wishes to raise an appeal against the regulatory functions of Qualifications Wales and incorporates regulatory decisions and schedule 3 reviews as defined under the Act. The aim of the policy is to:

- Provide a transparent process for handling regulatory appeals;
- Ensure that those affected by our actions have an opportunity to have that/those action(s) reconsidered; and
- Provide public confidence that Qualifications Wales' actions are sound and justifiable.

This policy should be read in conjunction with our [Unacceptable Actions by Complainants Policy](#).

CONTENTS

SCOPE OF THE POLICY

WHO CAN APPEAL?

MAKING AN APPEAL

APPEALS PROCESS

INITIAL REVIEW

CONSIDERATION OF THE APPEAL

REQUESTS FOR REVIEWS OF DECISIONS

SCOPE OF THE POLICY

1. This policy is intended to cover appeals about or against the regulatory functions of Qualifications Wales and incorporates regulatory decisions and schedule 3 reviews as defined under the Act. These include but are not restricted to actions on, about, or related to:
 - whether to approve, designate or revoke a qualification
 - recovering costs for the imposition of sanctions
 - directing an awarding body to take action
 - the implementation of regulatory policy decisions
 - removing, revising, creating or applying criteria for recognition or approval

The following decisions have a right to independent review as stipulated in the Act and as such will be referred directly to the Independent Review stage of this policy outlined in points 33-39.

- the surrender or withdrawal of recognition
- direction in accordance with a transfer condition
- capping a fee

The principles for conduct of an appeal outlined in points 10-11 will also apply to the process outlined in points 33-39.

2. This policy does not cover:
 - Legal proceedings or judgements
 - Previously concluded appeals by Qualifications Wales
 - Complaints against Qualifications Wales that do not relate to regulatory functions. Such complaints should be raised through the Corporate Complaints Procedure.
 - Complaints against awarding bodies. Such complaints should be referred in the first instance to the relevant awarding body or, where relevant, the learning provider. When the awarding bodies' complaints procedure has

been exhausted you may submit a complaint to us in accordance with the Qualifications Wales 'Complaints about Awarding Bodies policy.'

WHO CAN APPEAL?

3. An appeal may be made by any person and can be made by individuals or by a group, providing that one individual is identified as the main contact for the purposes of communications with the group.
4. Appeals submitted on behalf of another individual must have their written permission for you to act on their behalf.¹

MAKING AN APPEAL

If you wish to make an appeal, please email the Head of Corporate Governance at corporategovernance@qualificationswales.org or policy@qualificationswales.org or write to us at:

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

5. In submitting your appeal, you should include the following information:
 - relevant dates and details of the appeal;
 - a clear explanation of the nature of your appeal and its basis;
 - a chronology of facts on which the appeal is based;
 - copies of any relevant supporting documents (if you are awaiting documents for submission please indicate this and when you intend to submit them)²;

¹ Appeals made on behalf of persons under the age of 18 may be made by parents or carers without the requirement for written permission.

² 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

- the remedy you are seeking;
 - your full name; and
 - contact information.
6. In submitting an appeal you are expected to submit a full and frank disclosure of all relevant facts.
 7. We will only hear an appeal if it has been received by us within 20 working days of the occurrence of the issue raised.
 8. On receipt of the appeal we will acknowledge the appeal and, if it is not made by an awarding body, we will inform any affected awarding bodies as appropriate. Awarding bodies may be contacted to provide relevant information as part of the review process and where appropriate will be advised of the outcome of the appeal.

APPEALS PROCESS

9. Appeals will be considered in a fair and transparent way. As such the people reviewing the appeal will ensure that you will be informed of and kept up to date of:
 - The names of the people reviewing the appeal;
 - When we expect to complete the review and, if there are unexpected delays or deferrals, any revised timescales. Qualifications Wales will aim to provide a prompt response but will provide regular updates and rationales for any delays;
 - The evidence or key documents that influence the final decision and the right to request a copy and rebut or dispute the honesty or accuracy of that evidence³; and
 - The final decision in the form of a written report or statement.
10. All involved in a complaint are required to:
 - Alert the Appeals Officer if there are any potential conflicts of interest. Such issues can be raised either by the complainant or by those reviewing the appeal.
 - Meet the reasonable requests of those reviewing the appeal, including requests for meetings and information. You have the right to refuse to meet the reviewers or provide evidence but decisions will be taken on the

receipt of the documents. Please note that delay in submitting documents may impact on the timescales for review of your appeal.

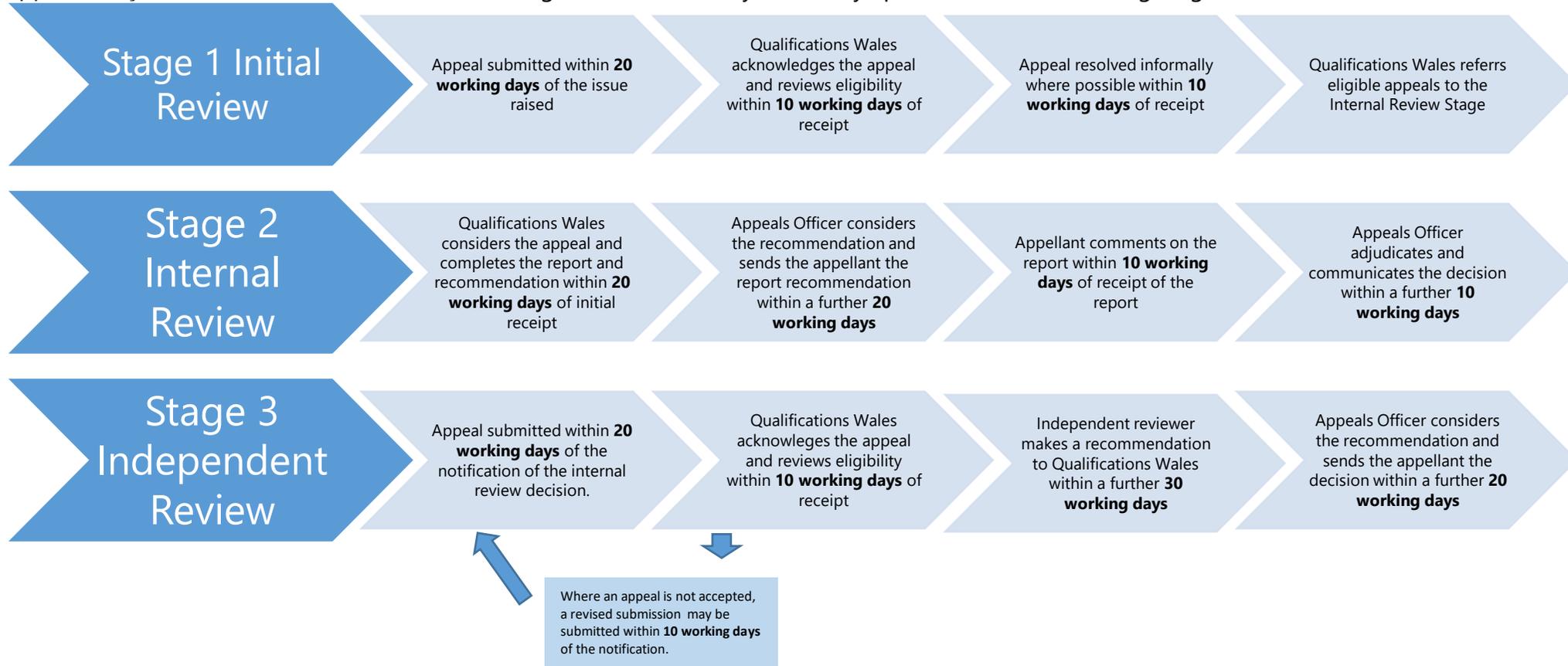
³ At the independent review stage, the appellant and the Qualifications Wales decision maker shall have access to the same information.

information provided and you will have no further opportunity to state that the evidence considered was incomplete.

- Behave in a manner which complies with our Unacceptable Actions by Complainants policy.

Appeals are managed in the following way⁴:

Appeals may be resolved or dismissed at each stage and as such may not always proceed to the following stage.



⁴Appeals relating to fee capping, surrender or withdrawal of recognition or direction in accordance with a transfer condition will be referred directly to the independent reviewer stage as outlined in points 33-39

INITIAL REVIEW- Stage 1

11. All appeals will be received by the Head of Corporate Governance who will appoint an Appeals Officer. The Appeals Officer will review the appeal to consider whether, at first appearance, it falls within the scope of this policy and send an acknowledgement within 10 working days of receipt of the appeal. Examples of appeals which would **not** fall in the scope of this policy include:

- Appeals against action not taken by us
- Appeals that do not relate to our regulatory functions
- Repeated appeals about the same issue

12. The appeal may be summarily dismissed if:

- It was submitted out of time

13. If some elements of the appeal do not fall within the scope of this policy, we will inform the appellant of the matters that will be formally considered and those that will not. Where the matters raised fall within the scope of another policy (e.g. complaints against awarding bodies or corporate complaints) the appellant will be advised of the relevant procedure but such notification will not result in automatic consideration under another procedure. The requirements of alternative procedures will have to be met and the appellant will have to formally request consideration under an alternative procedure. Where two procedures are simultaneously initiated, Qualifications Wales may suspend one pending the completion of the other.

14. If the appeal does appear to fall within the scope of this policy you will be notified that it will be formally considered and referred to the relevant named person to review the case.

15. Where the appeal can be informally resolved at this stage, Qualifications Wales will write to the appellant outlining any proposed remedy. In such cases the appeal will not be automatically referred to the internal review stage and the appellant must inform the Appeals Officer if they are dissatisfied with the outcome of the informal resolution within 20 days of the notification of the decision in order to refer the matter to the internal review stage.

CONSIDERATION OF THE COMPLAINT

Internal review- Stage 2

16. The internal review will consist of a full and documented investigation. Those reviewing the case will be asked to raise any potential conflicts of interest as they become apparent. For appeals made on the basis of prejudice or bias, the named persons will not be part of the review of the decision.
17. Your appeal will normally be considered within 20 working days and the internal reviewer(s) will provide a statement to the Appeals Officer. This statement will include a recommendation to either dismiss your appeal (thereby upholding the original regulatory decision) or to uphold your appeal (either in full or in part) and outline the proposed course of action. The report will be provided to you within a further 20 working days and you will be provided with the opportunity to comment on the report within a further 10 working days. After this deadline the Appeals Officer will review the information and comments provided and will adjudicate the decision and notify you of the outcome within a further 10 working days.
18. Where an appeal is upheld Qualifications Wales will endeavour to explain what happened and why. Where possible we will aim to provide an appropriate remedy.
19. Where it is agreed that the original decision or action shall stand, reasons for the decision and supporting documentation will be provided to the appellant. This information shall act as Qualifications Wales' formal response to the appeal and will be provided if required in subsequent stages of the process to the Independent Reviewer.

Independent review- Stage 3

20. If you believe that the result of the internal review has been unfair or inappropriate, then you may appeal the stage 2 decision and escalate the complaint to the independent review stage. You must confirm your intention in writing or email to the Head of Corporate Governance within 20 working days of the final notification from the internal review stage. You should also provide a commentary on the statement of the internal review report/statement including an outline of any inaccuracies you believe are in it. You may also provide additional evidence, but any additional evidence 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.

21. Disagreement with a decision taken by Qualifications Wales does not automatically provide a right to escalate to the independent review stage. Appeals must be made according to one of the following grounds:

- 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 different⁵
- C. That there was prejudice or bias by one or more decision makers.

22. Appeals will not be accepted on any other grounds. If you do not clarify which grounds you are appealing on, your appeal may not be accepted.

23. The Head of Corporate Governance will appoint an Appeals Officer. The Appeals Officer may be the Head of Corporate Governance or an Executive Director or above but will not be the Appeals Officer who reviewed the case and made the Stage 2 decision.

24. If the appeal does not fall within the scope of this policy we will inform the appellant within 10 working days of receiving the appeal that the appeal has been dismissed and will include the reasons for our decision. The appellant will then have a further 10 working days to resubmit the appeal demonstrating clearly how the grounds for appeal have been met in a revised submission. If the grounds have not been met following resubmission, subsequent appeals about the same decision will be automatically dismissed. In such cases the timescales for review will start from the resubmission date.

25. If the Appeals Officer determines that there is a prima facie case on the basis of the grounds outlined above, you will receive an acknowledgement and the appeal and any supporting evidence provided by you or by any other affected parties will be provided to an independent reviewer who will be external to Qualifications Wales and will normally have no former knowledge or involvement in the decision taken. The purpose of the independent

⁵ 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.

reviewer is to take an independent view of the Stage 2 decision taken by Qualifications Wales.

26. The independent reviewer will consider the case on the basis of the documentation provided by the appellant and by Qualifications Wales and, in some cases, ask relevant parties for more information. The independent reviewer has the right to interview any persons they believe are relevant to completing their investigation but they are not required to conduct any interviews. The independent reviewer will normally consider the case within 30 working days of receipt of the appeal and will provide a full report to the Appeals Officer.

27. The independent reviewer will consider the grounds for appeal and review:

- Whether there was a defect or irregularity in the conduct of the process followed in reaching the decision
- Whether the decision made by Qualifications Wales' Appeals Officer was based on incomplete or inaccurate evidence, to the extent that it is reasonable to conclude that the decision might have been different. Whether there is new/additional information which was not available to Qualifications Wales at the time and for which there is good reason for non-declaration or non-submission at the time.
- Whether all relevant evidence was considered in coming to the Stage 2 decision.
- Whether the impact of the Stage 2 decision was disproportionate to the aim.
- Whether Qualifications Wales was prejudiced or biased in making the Stage 2 decision including any undisclosed conflicts of interest.

28. The independent reviewer will make a recommendation to Qualifications Wales either to:

- Uphold the Stage 2 decision
- Uphold the Stage 2 decision partially (including by virtue of the same outcome but on a different basis)
- Overturn and reconsider the Stage 2 decision

29. Qualifications Wales will inform the appellant and relevant parties of the independent reviewer's recommendations and Qualifications Wales' subsequent actions within a further 20 days. Qualifications Wales will normally strive to follow the independent reviewer's recommendations. Where Qualifications Wales does not implement the recommendation a

written statement will be provided to justify this decision. The decision will be taken by the Appeals Officer.

30. Where the independent reviewer has recommended that Qualifications Wales reconsider the decision, this will not necessarily result in a different outcome from the original decision. Appeals upheld on the grounds of procedural defects will ensure that the published procedure is followed in remaking the decision but may not preclude the original outcome from being made again.
31. After the review has been conducted, with the exception of a decision to impose a monetary penalty or to recover costs for the imposition of sanctions, any decision made by Qualifications Wales will be final and our procedures will be deemed complete.

REQUESTS FOR REVIEW OF DECISIONS

Independent review- fee capping, direction in accordance with a transfer condition and withdrawal of recognition requests for reviews⁶

32. Your request will be received by the Head of Corporate Governance who will appoint an Appeals Officer. The Appeals Officer may be the Head of Corporate Governance or an Executive Director or above. You will receive an acknowledgement of your request for review. The review request and any supporting evidence provided by you or by any other affected parties will be provided to an independent reviewer who will be external to Qualifications Wales and will normally have no former knowledge or involvement in the decision taken. The purpose of the independent review is to take an independent view of the merits of the case and to review the original decision.
33. The independent reviewer will consider the case on the basis of the documentation provided by the complainant and by Qualifications Wales and, in some cases, ask relevant parties for more information. The independent reviewer has the right to interview any persons they believe are relevant to completing their investigation but they are not required to conduct any interviews. The independent reviewer will normally consider the

⁶This section of the appeals process relates to requests for reviews for specified decisions and follows from the processes of notification, representation and notification of the outcome and right for review as defined in schedule 3 of the Act.

case within 30 working days and will provide a full report to the Appeals Officer.

34. The independent reviewer will review:

- Whether there was a defect or irregularity in the conduct of the process followed in reaching the decision;
- Whether the decision made by Qualifications Wales was based on incomplete or inaccurate evidence, to the extent where it is reasonable to conclude that the decision may have been different. Whether there is new/additional information which was not available to Qualifications Wales at the time and for which there is good reason for non-declaration or non-submission at the time;
- Whether all relevant evidence was considered in coming to the initial decision;
- Whether the impact of the decision was disproportionate to the aim; and
- Whether Qualifications Wales were prejudiced or biased in making the decision including any undisclosed conflicts of interest.

35. The independent reviewer will make a recommendation to Qualifications Wales either to:

- Uphold the decision;
- Uphold the decision partially (including by virtue of the same outcome but on a different basis); or
- Overturn and reconsider the decision.

36. The Appeals Officer will inform the appellant and relevant parties of the independent reviewer's recommendations and Qualifications Wales' subsequent actions. Qualifications Wales will normally strive to follow the independent reviewer's recommendations. Where Qualifications Wales does not implement the recommendation a written statement will be provided to justify this decision.

37. Qualifications Wales will confirm its decision within a further 20 working days to impose a condition/ direction/ withdrawal and:

- Set out the decision as confirmed or altered;
- Provide reasons for the confirmation or alteration; and
- State the date on which the confirmed or altered decision will take effect.

38. Where the independent reviewer has recommended that Qualifications Wales reconsider the decision, this will not necessarily result in a different outcome

from the original decision. Appeals upheld on the grounds of procedural defects will ensure that the published procedure is followed in remaking the decision but may not preclude the original outcome from being made again.