



# Taking Action When Things Go Wrong



Version (2) of Taking Action When Things Go Wrong was approved on 26 June 2018. This replaces version (1.1) which was published on 25 June 2016.

Qualifications Wales will aim to review this document every three years. Feedback on this policy is welcomed at any time. Please send any comments to [policy@qualificationswales.org](mailto:policy@qualificationswales.org)

## **General Principles of Taking Action When Things Go Wrong**

This policy is for recognised awarding bodies and for members of the public to enable them to understand how Qualifications Wales (“we”) might use enforcement powers and sanctions defined in Part 7 (*Enforcement Powers of Qualifications Wales*) and Schedule 3 (*Further provision about recognition of awarding bodies*) of the Act.

We set out Conditions of Recognition for all recognised awarding bodies and monitor compliance against these and other published conditions as relevant. Enforcement action will therefore be taken in respect of an awarding body’s non-compliance with its Conditions of Recognition. We will be mindful of the demand that regulation may place on awarding bodies and have developed this policy in line with the principles of transparency, consistency, proportionality, accountability and targeting. In order to ensure proportionality, this policy also outlines the stages that will be used before implementation of enforcement powers as defined by the Act.

## Context

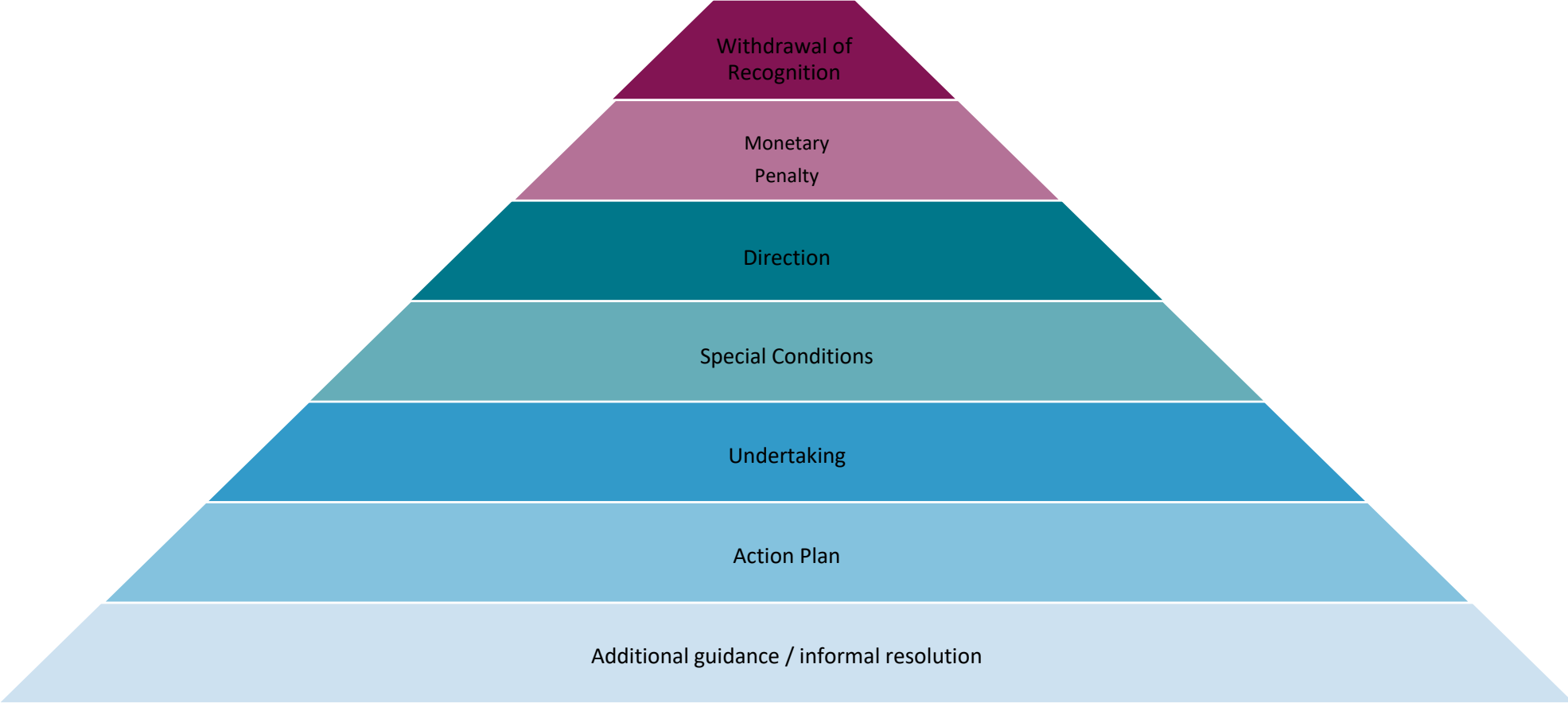
1. Our [Regulatory Framework and Approach](#) explains our approach to regulation. We take a risk-based approach to regulation in order to uphold our principal aims of maintaining public confidence in the qualification system in Wales and protecting the reasonable interests of learners. We will always seek to prevent and mitigate things going wrong in line with these principal aims.
2. The qualification system is complex and, whilst we will endeavour to take risk assessment approaches to prevent problems, on occasions problems will occur that affect qualifications we regulate. In such situations, we will consider our actions carefully, taking into account the circumstances and, in particular, the cause of the problem. Where appropriate we will use the powers we have to determine the actions necessary to prevent a recurrence of the problem and to put matters right. This policy sets out the ways that we intend to deal with non-compliance and use our enforcement and sanction powers.

## Actions we could take

3. The options available to us as defined in the Act are:
  - i. to direct the awarding body to take a particular action or to achieve a particular outcome (Section 37- *Power to give directions*);
  - ii. to impose a fine (Section 38- *Power to impose monetary penalties*);
  - iii. to impose additional requirements, as special conditions of recognition, on an awarding body (Schedule 3 Section 4- *Special conditions to which recognition may be subject*). These conditions may relate to:
    - directing an awarding body to make arrangements for a form of qualification that it offers to be transferred to another awarding body (transfer conditions); or
    - proposing a cap on the fees that an awarding body can charge for services (fee capping conditions).
  - iv. to withdraw the awarding body's recognition (Schedule 3 Section 19- *Withdrawal of Recognition*).
4. Prior to the application of enforcement powers, we may, as appropriate:
  - i. provide an awarding body with additional guidance;
  - ii. seek informal resolution;
  - iii. agree an action plan proposed by an awarding body;

- iv. accept a formal undertaking from the awarding body; or
  - v. communicate an issue publicly.
5. Given our aim of ensuring that the Welsh qualification system is effective for meeting the reasonable needs of learners, we may, where it can be anticipated, intervene to prevent a problem occurring by directing an awarding body to take, or refrain from taking, specified steps in order to secure compliance with the relevant conditions of recognition. Otherwise, we may take action after an event to direct an awarding body to take action in order to prevent further non-compliance.
6. A Direction given to an awarding body is enforceable through the courts.
7. In some instances, we may decide to use more than one of the options presented in Figure 1 below to achieve our desired outcome. The options below may be used in escalation but are not intended to be indicative of defined stages.

**Figure 1 – Options available to Qualifications Wales**



## Factors we will take into account

8. Our aim is to always use our enforcement powers in a proportionate, transparent and targeted way to achieve compliance by an awarding body or address problems that have occurred.
9. These are the factors we envisage taking into account in determining our course of action:
  - i. the timing and the manner in which the issue was first brought to our attention. For example, whether the awarding body reported the issue or whether we identified it as a result of a complaint, whistleblowing or monitoring / audit activity;
  - ii. the nature of the issue, including whether it was intentional or unintentional;
  - iii. the likelihood, in our judgement, of a repeat of this issue or something similar;
  - iv. the urgency of the actions required;
  - v. whether an awarding body has failed or is likely to fail to comply with a condition;
  - vi. where the issue is likely to have an adverse effect on learners and, if so, how significant this effect might be;
  - vii. the root cause of the problem:
    - whether the awarding body was aware, or not, of the risks being taken;
    - whether or not we had already provided guidance in this area; and whether that was complied with; and
    - whether it was a one-off occurrence or the result of some wider systemic failure.
  - viii. the response of the awarding body when the problem came to light;
  - ix. the impact that any regulatory action may have on learners studying for qualifications with the same awarding body;
  - x. any relevant action taken by any other regulatory body in respect of this same or related matter; and
  - xi. the impact on public confidence.
10. In addition to these, there are other factors we would take into account before deciding on any particular regulatory actions. These are set out in our other policies:
  - i. the imposition of Monetary Penalties will be undertaken in line with our [Monetary Penalties Policy](#); and
  - ii. the imposition of Fee Capping Conditions will be undertaken in line with our [Fee-Capping Policy](#).

11. We will endeavour to be proportionate, appropriate, and mindful of risks in taking enforcement action. We will also be mindful of any other actions being taken by other regulators in respect of the same, or a related, matter.
12. Should we decide to use any of the enforcement powers available to us, we will do so, where possible, with the full knowledge of the awarding body concerned. We will publish a notification of our intention to undertake enforcement action and will invite the awarding body to make representations. An awarding body will normally have an opportunity to comment in private on the findings of any investigation and proposed course of action. Awarding bodies may propose alternative remedies that we may consider. The time available for such engagement with the awarding body concerned will depend on the urgency and nature of the action. Our enforcement actions that have a right of appeal are outlined in our [Regulatory Appeals Policy](#).
13. In the unlikely event that an awarding body is unwilling to provide the information or access that we require, the Qualifications Wales Act gives us the power to gain entry and inspection of an awarding body's premises. If we believe that it is necessary to undertake this action we would apply to a Justice of the Peace for permission, setting out the justification for doing so. We would only do this where not to do so would, in our view, bear a risk of adverse effect to learners or to the qualification system.
14. We will review the actions taken in the event of taking any enforcement action in order to consider lessons learnt.
15. We may at our discretion publish details of enforcement action taken such as in the annual report to the Assembly or on our website. We will always publish regulatory actions we have taken, including of undertakings, special conditions, directions, monetary penalties and the removal of recognition.