

REGULATION AND THE QUALIFICATIONS MARKET

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1 INTRODUCTION

The Apprenticeship, Skills, Children and Learning (ASCL) Act 2009 established Ofqual as the regulator of qualifications, examinations and tests in England. It commenced work as a fully independent non-ministerial government department on 1 April 2010, having operated in interim form as a distinct part of QCA for two years before that. This Act marked the latest in a long, but increasingly active, history of regulatory activity in the public examinations and qualifications industry in England. (Similar, largely parallel, activity had been going on in Wales and Northern Ireland, under their devolved jurisdictions. Although this paper will focus on England only, most of what is described is equally applicable to those parts of the United Kingdom. Scotland has a separate education system altogether. In addition, only regulation that applies to general qualifications will be the focus of this paper, although all qualifications, general, applied and vocational, are within Ofqual's remit.) The purpose of this paper is to consider the implications of this latest regulatory activity from a theoretical perspective based on market economics, allied to an historical survey of regulatory practice over the past 150 years.

The paper is in four main sections. After this introduction, Section 2 ("**A theoretical framework from economics**") introduces the conceptual framework of economics, in which the qualifications industry is seen as an operational market. Part 1 of this section describes the metaphors used to describe qualifications and their uses, and how these metaphors form, as well as reflect, how educational qualifications are perceived, understood and managed. Part 2 then summarises four typical market models as a background to understanding the market context of the qualifications industry. Part 3 defines this context more closely, drawing particular attention to the external influences and constraints on it, from both the supply and demand sides.

In that light, Section 3 ("**Where have we been?**") is a survey of general qualifications provision in England since the mid 19th century, indicating how the industry has evolved through different types of market context, and, latterly, how statutory intervention and regulation has increased. Part 1 describes the early years of public examining in England, rooted in the universities. Part 2 describes the post-war years as education provision and entitlement expanded rapidly as a result of the 1944 Education Act (Butler), and Part 3 describes the last twenty years since the reforming 1988 Education Act (Baker) which, *inter alia*, introduced the national curriculum.

Section 4 ("**Where are we now?**") describes the 2009 Education Act and its implications and aftermath, particularly the significant changes to regulatory powers it introduced and how, via various subsequent consultation exercises, it appears these are intended to be applied.

Drawing on some of the information and issues raised explicitly or implicitly in the previous sections, Section 5 ("**Where are we going? Regulation in a Market Context**") considers the issues facing Ofqual following the 2009 Act, and looks to the possible direction, nature and implications of future regulatory practice.

Finally, Section 6 comprises a conclusion, which particularly addresses the role and responsibility of the regulator in guaranteeing standards – the economic currency – in what is an increasingly free qualifications market.

2 A THEORETICAL FRAMEWORK FROM ECONOMICS

A) METAPHORS

In their book, “Metaphors We Live by”, Lakoff and Johnson (1980) argue that, rather than being simply a device of the poetic imagination, a characteristic of language alone, metaphors are pervasive in everyday life, in thought and action as well as in language. Thus:

“Our ordinary conceptual system, in terms of what we both think and act, is fundamentally metaphorical in nature ... If we are right in suggesting that our conceptual system is largely metaphorical, then the way we think, what we experience, and what we do every day is very much a matter of metaphor.” (p3, Lakoff and Johnson, 1980.).

In the same vein, Foucault (1981) argues:

“We must conceive of discourse as a violence which we do to things, or in any case as a practice which we impose on them; and it is in this practice that the events of discourse find the principle of their regularity.” (p67, emphasis added).

In short, metaphors not only describe our reality, but – via our conceptual framework – also form it. As an example of what it could mean for a concept to be metaphorical and to structure an everyday activity they suggest the idea of “argument”, and the metaphor of “argument as war”, suggesting that this metaphor is reflected in our everyday language by a variety of expressions:

- Your claims are *undefensible*.
- He *attacked every weak point* in my argument.
- His criticisms were *right on target*.
- I *demolished* his argument.
- If you use that *strategy*, he'll *wipe you out*.
- He *shot down* all of my arguments.

They then point out that we don't just talk about arguments in terms of war; many of the things we do when arguing are partially structured by the concept of war. Thus we actually win or lose arguments, we see the person with whom we are arguing as an opponent, there is a verbal battle. *“It is in this sense that the “argument as war” metaphor is one that we live by in this culture”* (p4, *ibid*). They go on to suggest that arguments could be seen in terms of other metaphors, offering dancing as an example. In such a culture, arguments would be viewed, experienced and carried out differently: *“Perhaps the most neutral way of describing this difference ... would be to say that we have a discourse form structured in terms of battle and they have one structured in terms of dance”* (p5, *ibid*).

By a similar token, the conceptual framework, of educational assessment and qualifications in this country is now one of a market economy. Thus, as with the example of “argument as war”, the language of educational assessment is replete with various expressions which indicate a

“conceptual framework and dominant discourse form” structured in terms of “qualifications as economy”.

For example:

- The GCE A level “*gold standard*”;
- The *market* for qualifications;
- *currency* of qualification grades;
- *grade inflation*;
- *competition* between awarding organisations;
- *exchange rates* between qualifications.

It could be informative to consider what alternative metaphors might be applied to the English qualifications system, and what an education culture that adopted this perspective would resemble.

The term “qualification” implies that the holder is in some sense qualified for something, or at least has achieved a certain level or standard of attainment in a subject area. In this sense, the qualification has intrinsic worth. As will be seen, in the early days of public educational qualifications, this view of qualifications prevailed: the assessment industry grew out of candidates’ meeting a particular university’s required matriculation standard - even though, paradoxically, the awarding mechanisms tended to be statistically referenced. Despite – or perhaps because of – failed attempts to define qualification outcomes in terms of grade attainment criteria¹, nowadays, the prevailing conceptual framework has made more debatable the notion of a qualification outcome indicating a certain level or standard of attainment in a subject area, and thus having intrinsic worth. Rather, a qualification is seen more as a unit of currency, whose value is determined in terms of exchange, and supply and demand factors on a free and open (or often not so free and open, see later) market, as by intrinsic worth. As in the real economy, the qualifications market no longer operates according to a “gold standard”, if it ever did.

A consequence of this conceptual framework is that the focus of those employed in the various branches of education tends to be on educational qualifications (as currency), and less on educational attainment in general, and education - in a broader sense - in particular. This is similar to the focus on the financial markets which, of themselves, do not produce any wealth, although their operations purportedly ensure the efficient working of the markets in the “real economy”. Education has come to be seen as a commodity whose value is measured in the currency of qualifications. Thus people talk of “getting a good education” (note the acquisitive verb), meaning being awarded qualifications which carry value in the education/employment market place. Again, whether those qualifications describe anything of intrinsic educational value may be a secondary concern to what they are worth in the market place. As we shall see, it is not only candidates who, to some extent at least, act as “economic men/women” in the qualifications market place; schools and colleges too – in the light of performance tables – also “play the market” to their advantage, regardless of wider educational concerns.

¹ For example, in the early stages of the national curriculum, a primary school teacher could have been required to judge pupils against a total of 1,000 national curriculum “statements of attainment” in a single year.

It is not the purpose of this paper to undertake a wider debate about the beneficial or detrimental effects on education of the “qualifications as currency” conceptual framework, much less what education is for. Many have done this, for example, Postman (1996) in his deliberately ambiguously entitled, *The End of Education: Redefining the Value of School*. In it, he states: “But what [these questions] have in common is that they evade the issue of what schools are for. It is as if we are a nation of technicians, consumed by our expertise in how something should be done, afraid or incapable of thinking about why” (p.x). To a large extent that issue hinges on how education is perceived and what values underpin that perception. For example, is education primarily the fuel to run the engine of the real (knowledge?) economy efficiently and produce growth, or does it have some other, less utilitarian purpose? The former approach is served by the use of targets, performance tables etc., and in this respect the words of Robert McNamara, the US Secretary of Defence in the 1960s, are salutary. Drawing on his successful introduction of production targets as CEO of the Ford Motor company, he applied a similar approach to the bombing campaigns in the Vietnam war, with disastrous consequences. Later in life, he famously confessed: “We set out to measure what was important, but ended up making important what was measurable”. (The Fog of War: Eleven Lessons from the Life of Robert S. McNamara. 2003 Film.).

B) MARKET TYPES

To sharpen the focus of this economic framework it would be helpful to consider some market concepts and models which underpin classical economic theory; the extent to which aspects of each model apply (or do not apply) to the current qualifications market should be apparent. When considering markets, economists are primarily interested in issues of the price and quantity of production of a good/service (via the operation of the price mechanism), and how these are affected by - and come to a position of equilibrium in - particular market conditions and structures. Although these are pertinent to suppliers in a qualifications market, other, secondary issues, which will also be identified, are also important.

Economists define a market as anywhere “where buyers and sellers are brought together and negotiate the exchange of a well-defined commodity” (via the operation of the price mechanism). (p69, Lipsey, 2). A market is said to be “free” to the extent to which there is no intervention and regulation by the state, except to enforce private contracts and the ownership of property. To the extent to which a market is “controlled”, on the other hand, the state directly regulates the use, prices, resources or distribution of goods and services. A free market has some important features and underpinning assumptions associated with it which allow the price mechanism to function:

- private ownership of property;
- the market is responsive to the collective decisions of buyers/sellers, such that prices, resource allocation and the distribution of goods/services are not consciously coordinated by anyone;
- sellers are free to enter and leave the market, and aim to maximize profits and produce accordingly.

Within this broad context of a free market, economists typically identify four “ideal types” of market (or “market forms”): Perfect Competition; Monopolistic Competition; Oligopoly and Monopoly. The characteristics of each are described in more detail in Appendix A, but are summarised in Table 1; each model assumes many buyers, but not always many sellers.

TABLE 1. SUMMARY OF TYPES OF MARKET

Market competition type	Number of sellers	Ease of market entry/exit	Homo/heterogeneity of sellers' goods	Seller's control over price	Examples
Perfect	Many	Easy	Homogeneous	None	Internet
Monopolistic	Few to many	Quite difficult	Seemingly hetero, but may be quite homogeneous	Some	Fast-food restaurant
Oligopoly	Very few	Difficult	Either	Some	Car companies
Monopoly	No direct competition	Difficult	No directly competing products	Considerable (but little if regulated)	Power company

The features of the market in which the general qualifications awarding bodies operate are thus various, but are generally a mixture of monopolistic (i.e. very similar products, potentially differentiated by non-price considerations) and particularly oligopolistic (few, large suppliers, high barriers to entry with the product being homo- or heterogeneous). Of course, these models do not so much describe in detail the actual operations of the qualifications market in this country, but they do provide a theoretical framework in which to consider the role and purpose of the regulator.

When an imperfection arises in a market or industry, classical economists tend to identify the solution as being found in a freer market (i.e. aiding a movement towards the features of perfect competition, often by encouraging more sellers) - i.e. *de*-regulation - rather than seeking a solution via increased regulatory intervention.² They point to the advantages of perfect competition in ensuring an optimal allocation of resources, efficiency of industry, low prices and consumer sovereignty, i.e. a change in demand leading to a change in supply, often using the term "the invisible hand", to describe the beneficial self-regulating nature of the marketplace. The term was first coined by the economist Adam Smith in *The Theory of Moral Sentiments* (1759) to describe the conjunction of the forces of self-interest,³ competition, and supply and demand, which he noted as being capable of allocating resources in society. It is the founding justification for the *laissez-faire* economic philosophy.

The perfect market does, however, also embody disadvantages even in its pure, theoretical form. Thus it can produce insufficient profits for investment and a lack of product variety. Not all economists agree that all market problems are best solved by a deregulated market. In the middle of last century, for example, one eminent economist, Joseph Schumpeter (1950) argued that the beneficial effects of innovations and lower costs of production resulting from an *imperfect* (monopolistic or oligopolistic) market have a larger effect on output per head and economic growth than any detrimental effects of misallocated resources. Empirical evidence collected since his writings have tended to support his theory. He also argued that innovation is functionally related to market forms such that more innovation is likely under a monopoly and

² A recent, significant example is the Independent Commission on Banking's Interim Report (April 2011) on the recent banking crisis, a dominant theme of which is the need rapidly to increase competition in this sector.

³ "It is not from the benevolence of the butcher, the brewer or the baker, that we expect our dinner, but from their regard to their own self interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages." Smith, A. (1776) *An Inquiry into the Nature and Causes of the Wealth of Nations*.

oligopoly than under perfect or even monopolistic competition, as they provided a more conducive climate for the (necessary) risks of innovation to be taken.

Finally, some would argue that some sectors of the economy (e.g. public utilities) are not conducive to competition because it would leave potential economies of scale unexploited. Lipsey describes this scenario as follows:

“Such industries are regarded as “natural monopolies” since competition among many suppliers would be unstable and quickly give way to oligopoly or monopoly. The advantage of having one or a few large firms producing at a lower cost than could be achieved by many small firms is evident but, in order to prevent monopolistic exploitation, the policy advice was that the central authorities should regulate prices in such a way that the industry would only earn the normal rate of return on its capital. Thus costs would be lowered by the monopolization, but the price would be held to its competitive level by the State’s intervention. ... Many countries exercise a great deal of this sort of regulation of naturally monopolistic industries particularly in the case of public utilities such as gas, electricity, transportation and communications.” (p300, Lipsey, 1963).

This brief analysis suggests a continuum of viewpoints of how markets should operate. At one extreme is the *laissez faire* position which argues that markets tend to self-regulate, produce the optimum allocation of scarce resources and drive down prices, and that any external regulation or intervention is counter-productive. At the other extreme is what might be called the interventionist position, which views a free market as inherently unstable, and thus risky, and favours external regulation and intervention to control it, and plan and manage the desired outcomes. Few people are found at either extreme; most harbour a mixture of each viewpoint, an issue which will be revisited later.

C) THE QUALIFICATIONS MARKETS

Although reference is often made of “the qualifications market place”, there are, in fact, two distinct, albeit closely linked, markets in the qualifications industry (each with several sub-markets or segments according to, for example, subject or qualification type).

In the **first market** the sellers are awarding organisations and the buyers are students, although schools and colleges typically act as buyers on behalf of their candidates. The amount of consumer influence exerted by individual students depends on the level of examination – at GCE, for example, they tend to have greater influence on subject choice than they do at GCSE. The currency in this market is the legal tender: pounds sterling. But what is it that awarding organisations are selling when candidates (via their centres) submit their fees? Formally, it is neither a good nor a service but the *opportunity* or entitlement to be assessed and considered for a grade award in a given qualification. It is not - presumably! - a market in certificates or grades *per se*, but in the right to be awarded one.⁴ In one sense, it is analogous to buying a raffle ticket; the ticket does not give you a right to a given prize but it does give you the right to be considered for a prize of some sort. The analogy is not complete, of course, in that one’s reward in a raffle is determined purely by chance, whereas in this qualification market it is (or

⁴ A parallel situation obtains in the inspection and testing services industry, run by companies such as SGS, Intertek Plc, and Bureau Veritas, which compete to issue certificates of compliance with ISO standards. They also have had to resolve the contradiction between selling (where the buyer is supposed to have the power) and being an authority (where the provider grants, or does not grant, certification).

should be) determined on merit, although there is much research (for example Raffe *et al* (2006)) that it is heavily influenced by “life chances”: for example birth, health and type of schooling but not, presumably, the awarding organisation of entry.

The **second market** also deals in opportunity or entitlement, but for entry into a course of further or higher education or into a contract of employment. It is to this market that the metaphors of the “qualifications market place” generally refer. The sellers in this market are, therefore, colleges/universities and employers, and the buyers are, once again, students. The currency of this market comprises the grades achieved by students, and the market is becoming increasingly nuanced in its demands of, and sensitive to, grades from particular subjects.

The two markets are clearly intimately connected, not least in that the final outcomes of the first market become the currency of the second. In the interests of both fairness and efficient market functioning, therefore, students need confidence that the value of the currency with which they hope to be rewarded as a result of their activity in the former market enables them to make their desired purchases in the latter.

It is, of course, the former market which is subject to regulation and so will be the main focus of this paper, although, as will be argued, regulation - in its broadest sense - has a significant impact on the second market too. Before proceeding, it is therefore worth briefly applying the claims of two extreme market models to the former market: a totally deregulated market (perfect competition) and a state regulated monopolistic market.

The free marketeer would claim that the current market is too distorted and constrained, and in need of liberating in many ways and for many reasons, apart from economic efficiency. S/he would argue that not only is a free market desirable in that it disseminates economic power, spreads risk, welcomes new sellers, improves efficiency, increases competition, drives down prices, promotes innovation, incentivises responsive service and support, but crucially that it is a self-regulatory mechanism. On the basis that “you can’t buck the market”, the free marketeer will argue that it is always best in the long run to work with the powerful forces of the market, rather than try to combat or overly constrain them⁵. They will eventually bring the market into a new equilibrium; whilst it is tempting to intervene and to regulate and control matters, this will only make matters worse in the long run. Thus, for example, if sellers charge too high fees or offer insufficient support or make awards which are out of line, they will lose custom, in the latter case either by “pricing” their grades out of the market if they are too severe, or by irreparably damaging their reputation if they are too lenient such that their grade currency will become devalued in the marketplace and potential buyers will steer clear of it. Moreover, in the second market, the value of qualifications and their grades would not be imposed arbitrarily and externally but be decided by the interaction of impersonal market forces. To some degree this already happens with respect to the values assigned to the same grades in different subjects. There is much discussion and analysis about whether ‘Your chemistry equals my French’ (Wood, 1976), but ultimately the market (buyers) will decide what equals what and compensate accordingly. As Wolf (2003) argued, *“We currently maintain the polite fiction that all A levels are equivalent (and so a given grade gets the same UCAS points whatever the subject.) No-one believes this, but it doesn’t matter because offers for most degrees are tied to specific grades in specific subjects.”* Free marketeers would argue that these polite fictions are inimical to the free and efficient working of the market, and that to the extent that candidates may or do believe

⁵ The phrase, “You cannot buck the market”, was made famous by Prime Minister Margaret Thatcher when addressing the House of Commons in 1989 as Britain, after two years shadowing the Deutsche Mark, prepared for its ill-timed and ill-judged, brief membership of the European Exchange Rate Mechanism (ERM).

them, they adversely affect candidates' subject choices. Moreover, they are suspicious of statutory intervention to solve these problems. In his commentary on Tattersall's (2007) chapter on regulation, Kingdon - not necessarily a free marketer - argued, "*Readers may assume that ever-tighter regulation will have produced increasing levels of comparability but this argument has yet to be demonstrated*" (p93).

The monopolist would, on the other hand, argue for a state, or heavily regulated, monopoly in order to eliminate many of the supply side discrepancies and misalignments, not least by rendering obsolete debates about inter-awarding organisation standards and the allegations that awarding organisations compete in a "race to the bottom" in pursuit of more entries. This allegation is regularly made, from the notorious Channel 4 Despatches programme in 1995 to, more recently, the claim by Mick Walters (former director of curriculum at the QCA), who claimed that "*the system is diseased, almost corrupt. We've got a set of awarding bodies who are in a market place*". In the same book, the author, John Bangs (2010), former head of education at the National Union of teachers, opined that, "*I personally think there should just be a single examination board.*" In a culture of rising importance of examination grades - for candidates, their teachers, subject departments, schools, governments - the argument for a single awarding body on these grounds is increasingly being heard. Additionally, a single provider would be able to capitalise on economies of scale, eliminate wasteful duplication, would require less market knowledge by the buyers, and should be able to provide a central, and more streamlined and straightforward, administrative service to candidates and centres. The monopolist would also point to the existence and successful operation of many monopolistic assessment organisations - state and independent (the closest to home being the Scottish Qualifications Authority) - which apply this model with no obvious disadvantages.

Market distortions

The above brief descriptions paint a somewhat simplistic picture of how the markets operate in practice. Implicitly it has been assumed, for example, that a perfect competition model has many sellers (awarding bodies/universities/employers) meeting many buyers (students), the actors on each side freely interacting with those on the other, and making autonomous choices to pursue their own best personal interests. (This has echoes of Adam Smith's "invisible hand", see earlier.)

In reality, however, the actors operate in markets heavily affected by influences and constraints. Some of these are intrinsic to, and some external to, the market; some are explicit, many are covert; some are statutory, others organisational; some are direct, others less so. Some could, perhaps, be defined as "regulation by stealth". All, however, arguably inhibit the freedom with which the actors operate, and thus - from a free marketer's perspective - the efficient working of the market itself, and are inimical to both buyers' and sellers' best interests.

All markets comprise demand and supply sides. As qualifications suppliers in the first market, awarding organisations are primarily interested in supply-side factors and the regulation and constraints operating there. However, it is important also to recognise the constraints which operate on **demand side** of the market too. Most of these influences are in the form of equivalences and values assigned to grades by powerful external players (government, regulator, universities) which influence market demand.

Some examples of these:

- The requirements embodied in DfE school and college Performance (“League”) Tables. (For example, the IGCSE used not to count in these tables, now it does; this will influence market activity⁶.)
- The introduction of the English baccalaureate in 2010 will undoubtedly create more demand for those subjects included in it.
- The external assignment of UCAS points to grades.
- Perceived, or actual, ease of certification, especially between awarding bodies for the same qualification.
- Price and available income; the current economic climate and public sector cuts, for example, are likely to affect market activity.

Newton (2007) cites some twenty two uses to which qualification outcomes are put, mainly for accountability purposes which are thus demand-side influences. Each of these, intentionally or unintentionally, imposes value and equivalence by fiat and will, to a lesser or greater degree, influence actors’ behaviour in the market place. Of course, it could be argued that at least some of these “distorting factors” are put in place to correct the implicit values assigned to grades by the awarding bodies. To the extent that these are awry is largely why constraints on the supply side of the equation are introduced.

It is thus primarily on the **supply side** of the market that the new legislation and regulatory requirements are focused. Indeed, making the regulator a truly independent body in itself represents a move away from a demand-side player (government) to a more supply-side focus.

The following history of regulation clearly demonstrates an increasing and accelerating, intervention by the regulator into the supply side of the market, determining how and, to some extent, at what price, the product should be produced and sold. For example, as recently as 1997 the government, in its consultation document on the structure of awarding bodies, *Guaranteeing Standards*, toyed with the possibility of having a single awarding body (as exists in so many jurisdictions worldwide) but eschewed the idea. (Interestingly, only 7 *per cent* of responses to the consultation supported the introduction of a single awarding body for the United Kingdom.) Nevertheless, the number of awarding bodies (three in England⁷) is the smallest ever, and far fewer than even twenty years ago.

Another supply side factor is the National Qualifications Framework (NQF) and the Qualifications and Credit Framework (QCF) which respectively provide a structure within which the level of a qualification (its difficulty) can be identified, and within which learners’ achievements can be represented and recorded. The latter provides for a common approach to identifying not only levels, as in the NQF, but also volumes of learner achievement, allowing for the transferability of credit.

⁶ More famously (or notoriously) was the case of Thomas Telford school in 2002 which topped the Guardian’s league table of top comprehensives at GCSE for the third year running, all its pupils being awarded the equivalent of five Cs or better at GCSE. However, as the Guardian itself somewhat knowingly acknowledged, “Some have criticised the weighting given to the ICT GNVQ, which is regarded for league table purposes as equivalent to four Cs at GCSE.” The Guardian, 23 August 2002

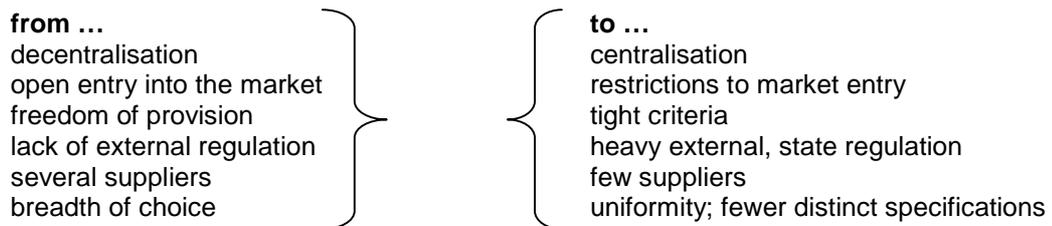
⁷ Strictly speaking there are now more than three with other awarding organisations, e.g. The International Curriculum and Assessment Agency (ICAA), offering GCSEs in specific subjects on a small scale.

Similarly, the general and subject specific criteria with which GCSE and GCE specifications have to comply substantially affect the supply side of the market, as does the statutory Code of Practice which stipulates detailed requirements for all aspects and stages of the examining process, from syllabus design to awarding. Other supply-side factors include production costs e.g. small entry subjects, and the quality of administrative and educational service and support to centres.

Which factors are the proper areas for regulatory intervention, and which should be left to the free market is the essence of much debate about regulatory powers overseeing educational assessment. The question facing all regulators is what is the appropriate position to take? This question will be returned to later, but first a brief survey is made of the history of public examination provision in England over the last century and a half, with particular emphasis on how the market has operated and how the regulatory function has developed.

3. WHERE HAVE WE BEEN?

The history of the past 150 years of public examinations, and their regulation, has generally been characterised as a progressive march towards increased external, state regulation, as exemplified in the following diagram:



Charting this progression is both interesting and instructive. Viewed from a contemporary perspective, this history can, perhaps, provide some useful pointers about the best way forward.⁸

A) EARLY DAYS

Public examining has its roots in the mid 19th century with individual universities setting their own matriculation examinations and conditions of entry – initially London (1838), closely followed by Oxford, Cambridge and Durham, and later the newer universities, for example, Manchester, Leeds, Liverpool and Bristol. A consequence of this independent provision was that candidates needed to take several examinations depending on which university(ies) they applied for.

Although the 1868 Schools Inquiry (Taunton) Commission had recommended a central examinations authority - regionally administered - to govern the embryonic examination system, and prevent such duplication, its proposal was ignored and, by the time the Bryce Commission (1894) had successfully recommended the establishment of a Board of Education (1899), the older universities had become too well established as examination boards to be replaced.

⁸ I am indebted to several excellent histories of the examining of general qualifications, notably those of Steinberg (2002) and Tattersall (2000, 2003), which are drawn on particularly.

However, the effect of this duplication on students, the comparability of standards, and the (limited) currency of the certificates concerned head teachers, causing them in 1904 to lobby for a codification of examinations and a system in which certificates would have widespread acceptance.

As an example of unnecessary duplication, in its 1911 report on its investigation into examinations, the Board of Education's Consultative Committee on Examinations noted that ...

"... of the twenty-nine candidates who entered for Bedford College scholarships in 1909, eight had already taken three public examinations, eight had taken four, three had taken five, two had taken six and one had taken seven examinations" (p65, Petch, 1953)

... and recommended the establishment of a two tier system of school examinations. So it was that, in 1917, the School Certificate (SC) and Higher School Certificate (HSC) were launched by the Board of Education as measures of general attainment. Certification was subject to demonstrating attainment across a group of subjects (see Appendix B) – the SC bearing a fairly close resemblance to the new English GCSE baccalaureate. Although intended to replace the universities' customised entrance examinations, in reality the HSC was accepted only as a basic standard for matriculation, with universities continuing to specify their own entry requirements.

The eight university examination boards were invited by the Board of Education to become 'approved' providers who would set, mark and certificate this new examination, under the central coordinating authority of the Board's newly formed (1917) Secondary Schools Examination Council (SSEC). The Board had intended that the SSEC would *"... lay down regulations as to the scope, time, method [of examinations] ... control their organisation, fix the fees to be charged for admission to them, and approve the examiners ... No external examinations would be permitted except those held under [its] authority ... and [the SSEC] would bring order to the present confusion. It would replace a multiplicity of standards by unity of control."* (p46, Steinberg, 2002).

Although this appears to be an early example of the statutory accreditation and regulation of awarding bodies, the SSEC's role was merely to oversee the examinations (not syllabus content), ensuring there was 'reasonable' equivalence in the demands of the constituent subjects of each certificate, and in the examination standards of the examining boards. 'Reasonable' was not defined, nor did the SSEC have the powers to enforce an interpretation on, or regulate the activities of, the examining boards, which remained under the control of the autonomous universities. By adopting this solution, the Consultative Committee therefore effectively reinforced the universities' oligopoly of provision (which would obtain until 1953, when the AEB became a player) and established general (academic), external examinations as the main mode of assessment. Nevertheless, even the SSEC's coordinating function was a small step towards central regulation and control, although the system was more characterised by self, as opposed to external, regulation.

A long period of organisational stability during the inter-war years ensued, accompanied by a steady rise in entries resulting from a broadening of access to secondary education. However, although schooling opportunities expanded, a common school leaving age of 14 ensured entries for public examinations remained relatively modest. There were, however, several forward-thinking commissions and committees (e.g. Hadow (1926), Spens (1938)) few of whose

recommendations were implemented. Hadow, for example, recommended a system of local examination boards, represented by various stakeholders (universities, schools, LEAs, businesses etc.), but as this was not introduced, universities retained their control over the curriculum and assessments.

The potentially influential 1943 Norwood Enquiry, appointed by the SSEC to investigate curriculum and examinations, recommended that assessments at 16 should be subject based (thus allowing freedom of subject choice), largely internally assessed (allowing A level students to bypass assessment at that age⁹) and based on a statutory core curriculum. Such proposals would, effectively, reduce the influence and independence of the examination boards¹⁰. However, despite the many radical changes wrought by the 1944 Education Act, it only enshrined the first of Norwood's above three recommendations, and made no reference to curriculum matters. These were, therefore, effectively left in the hands of the universities which, both directly (via entrance examinations), and indirectly (via their GCE examination boards) used their freedom to devise syllabuses and examinations relatively unregulated. However, the subject-based system meant centres and candidates had more autonomy in curriculum matters, which were now freed up.

B) POST WAR

In the immediate post-war period, entries to qualifications continued to remain small, albeit growing, despite the major expansion of free educational opportunity which the 1944 Act introduced. This was partially due to the school leaving age having been set at 15, the Education Minister discouraging secondary modern schools from offering GCE courses, and their lack of resources to do so anyway. Thus, by the early 1950s, LEAs and schools began to introduce self-regulated, local examinations to provide external accreditation for secondary modern students. This decade also provided concrete evidence of the GCE examining boards taking seriously their responsibility for rigorous self-regulation in the form of their conducting marking reliability research, cross-moderation exercises and inter-board agreement trials.

By the end of the decade, three important reports were published which were to affect substantially the provision of secondary education and general qualifications. These were the Crowther (15 to 18, (1959)) and Newsom (Half our Future, (1963)) reports, which paved the way for comprehensive education, and the Beloe Report (Secondary School Examinations other than GCE (1960)) which led to the introduction of the CSE examination 1965, which was intended for students in the 40 per cent of the ability range below the top 20 per cent, for whom the GCE was designed.

The CSE was overseen by the Schools Council, which replaced the SSEC in 1964. Whereas the SSEC had essentially been a facilitator for a group of self-regulatory boards, the Schools Council (1964) which replaced it had the remit to be more proactive in coordinating the system. To this end, it formed partnerships with the many education stakeholders (subject associations, LEAs, teacher unions etc.), as seen by the membership of its governing council, and was active in encouraging diversity and innovation, and in sponsoring research.

⁹ A proposal which has recently been revived; see, for example, the lead story in the Times Educational Supplement on 18 March 2011: "*Ministers' plan for elite: forget GCSE and go straight to A-level*".

¹⁰ Controversially, the Norwood report was submitted directly to the President of the Board of Education, by-passing its commissioning body, the SSEC, altogether. When the SSEC did formally discuss the report in 1943, the university-based examination board representatives raised objections to it, their reward for which was to be removed from the SSEC!

The CSE examination clearly exemplified this collaborative and “light touch” approach. It was administered on a decentralised basis: schools entered candidates locally for one of fourteen regional examination boards (which were run by teachers and LEAs), and were granted more freedom and autonomy in the content and assessment of the syllabuses. Moreover, the Beloe Report had emphasised that the CSE should reflect, not impose on, the developing secondary school curriculum, with scope for local variations and experiments, and recognition of the results of coursework, special studies and practical work. As Gillan reports:

“The proposals were enthusiastically received in most quarters. ... The examination was to be firmly school and teacher based, with substantial freedom for schools to develop and examine a curriculum appropriate to their pupils, especially via the Mode 3 assessments. ... Thus was released into the secondary sector an unprecedented wave of imagination and curriculum thinking which was to have far-reaching repercussions and influence examinations right through to the present day.” (p96, Gillan, 2003)

Despite the popularity of the CSE, the national assessment system at 16+ embodied structural issues relating to comparability of standards and esteem, both within each qualification and between them. Moreover, with the ever greater pressure for a comprehensive secondary education structure, the existing examination system came to be seen as anachronistic. As early as 1970, just five years after the inception of the CSE, the Schools Council established a Working Party (1971) to consider the feasibility of a unified system and this led to pilot Joint 16+ exams some of which were retained until 1987, usually overtaking GCE and CSE combined entries. In 1978, the year that LEAs were required to submit plans for comprehensive education, The Waddell Committee, established to investigate the feasibility of a single examination system, recommended that one should be introduced, administered by groups of existing GCE and CSE boards. Five such groups were established, each being allowed to make its own constitutional arrangements. After some delay, in 1984 the GCSE was approved by the Secretary of State, Sir Keith Joseph for first examination in 1988.

At the same time, it had become apparent that localised autonomy of both the curriculum and assessment, as encouraged by the Schools Council in general, and embodied in the design and practice of the CSE in particular, had become politically unpopular. Thus, in 1984 the Schools Council was replaced by the Schools Curriculum Development Committee (SCDC) and the Secondary Examinations Council (SEC) which gave government more control over both aspects. The SEC, in particular, *“was given a stronger remit than any of its predecessors to approve syllabuses and coordinate examination provision.”* (p 68, Tattersall, 2007)

This increased centralisation and control was exemplified in the criteria with which the new GCSE syllabuses had to comply: all syllabuses had to meet a set of general criteria, and twenty subjects had to satisfy subject-specific criteria before being approved by the Secretary of State.

As Tattersall states:

“The introduction of GCSE criteria thus opened the door to greater control of the system from the centre, including the rationalisation of syllabuses (and later of providers), a dominant theme of the last years of the century. GCSE proved to be the Trojan Horse which brought Government squarely into both the curriculum and assessment arenas...” (p16-17, Tattersall, 2003).

Elsewhere, Tattersall described these developments as the government entering “*the secret garden of the curriculum*” and the accompanying regulatory framework as a “*seismic shift from ... one of loose coordination to tight regulation*”. (p70, 72, Tattersall, 2007)

C) MODERN TIMES

It was, however, the 1988 Education Reform Act (Baker) which more radically realigned the relationships between the government and education stakeholders, including the examination boards. In prescribing, for the first time, a statutory, national curriculum and assessment system at four key stages, state control of education took a large step forward. The agencies for overseeing and administering these newly accrued powers were the National Curriculum Council (NCC) and the Schools Examination and Assessment Council (SEAC), replacing the SEDC and SEC respectively.

The impact on examination boards was direct. As the assessment vehicle for Key Stage 4 of the national curriculum, GCSE syllabuses were required by SEAC, under the powers granted to it, to embody, *inter alia*, detailed and specific learning outcomes and strict limits on the amount of coursework. It was indicative of these changes that, by the time of the GCE Curriculum 2000 reforms, the term “syllabuses” had been replaced by “specifications”.

In 1993 the SEAC and NCC were replaced by the School Curriculum and Assessment Authority (SCAA) which was merged with the National Council for Vocational Qualifications (NCVQ) in 1997 to become the Qualifications and Curriculum Authority (QCA), covering both general and vocational qualifications, in an attempt to promote parity of esteem. In addition to maintaining and developing the national curriculum and its associated assessments, QCA was granted further powers and duties under Section 24 of the 1997 Education Act (which established it), to regulate all external qualifications in England. (In 1992 Ofsted, with enhanced powers, replaced HMI to inspect the operation of the education system.) In 2007, however, it was announced that responsibility for regulating examinations and qualifications would move from the QCA to a new independent regulator, the Office of Qualifications and Examinations Regulation (Ofqual), and both bodies would become statutorily independent and report to Parliament rather than to ministers.

The increased powers of the regulator were no more clearly illustrated than by the introduction of the Code of Practice. Following an HMI report on the quality and standards of A/AS level examinations in 1993, a voluntary code for the GCE was drafted in 1994, complementing the 1993 mandatory code for GCSE with which it was merged in 1997. The codes stipulated strict procedures for all stages of the examining process, from syllabus design to awarding, and the GCE Code limited the contribution of coursework to 20 per cent in most A level subjects. This was a consequence of a speech by Prime Minister John Major in 1991, in which he had signalled the same limit to most GCSE subjects. The intervention of a Prime Minister in the details of the assessment structure gave a significant indication of how centralised and regulatory the administration of the system had become.

As increasing numbers of post-16 students began to remain in full-time education, the government’s attention began to focus on provision at 18+ in general, and on GCE A level in particular. In his 1996 report, “A Review of Qualifications for 16-19 year olds”,¹¹ Sir Ron Dearing covered many areas, four of which in particular signalled increased central control. First, a

¹¹ Other reports by Capey (1996) on GNVQs, and by Beaumont (1996) on NVQs/SVQs, were published at the same time.

national framework for qualifications at three clearly defined levels and three pathways: general (GCSE and A level), applied, and vocational. Second, a substantial rationalisation of GCE syllabus provision and the specification of the content of the subject cores which, together with a new Advanced Subsidiary examination, paved the way for the GCE Curriculum 2000 reforms. Third, a rationalisation of awarding bodies¹² and new joint arrangements for awarding the GCSE, A level and GNVQ in order to tighten comparability of standards, not least across the general/applied divide, and to eliminate wasteful duplication. (It also called for a rationalisation of NVQ – vocational – awarding bodies.) Fourth, a single, statutory body to be responsible for the school curriculum from 4-19.

Thus Dearing signalled what had been increasingly clear, that the awarding bodies were now largely agencies of government and that its control of curriculum and assessment had moved into the post-statutory school leaving age. The government's response to Dearing, significantly entitled "Guaranteeing Standards" (1997), eschewed the possibility of a single awarding body in England, instead opting for three unitary (across the general/applied divide) awarding bodies.

After a delay of one year to allow more preparation time, the new-style GCE specifications were approved for courses starting in 2000, such that the first AS awards were made in 2001 and the first new, modularised A levels were awarded in 2002. As per Dearing's recommendations, and as an example of tighter central control of GCE, far fewer specifications had been approved than had previously been available. Despite their delayed introduction, the new GCE reforms proved problematic to implement, and led to problems in the awarding of the new GCE A levels in 2002. The phased, two-report Tomlinson Enquiry (2002) into these problems argued for greater commonality of administrative procedures, standards of service and, not least, awarding standards. Historically, voluntary self-regulation of this type had been undertaken by the Joint Council for General Qualifications (JCGQ)¹³, but the problems of 2002 adversely affected public confidence in the system and strengthened the case of those arguing for greater central regulation and control of the assessment system.

However, commenting on the events of 2002, Tattersall seems to suggest that the regulatory tightening which had preceded them may, partially at least, have been one of their causes:

"However, I would be alarmed if the chapter were to be read as support for a further tightening of the regulation noose. Indeed, I would hope that the juxtaposition of tighter regulation and the 2002 crisis of public confidence in A levels would raise questions about the role and purpose of regulation." (p95, Tattersall, 2007)

It was suggested earlier than the awarding organisations had, in effect, become agents of government, partially via the regulator's activities. The provision, content, assessment structure, recognition and accreditation requirements, fees, etc. are all directly imposed by the regulator, not to mention the huge indirect influences on the market via imposed equivalences in Performance Tables. Apart from these concrete indicators which can be identified, a less tangible mentality has developed in awarding organisations in recent years, which might be described as one of "corporate compliance". The grading of recent GCSE Science awards is a

¹² As Tattersall (2003) perceptively indicates, "the term awarding body" reflects the separation of curriculum responsibility from the assessment process" (p28)

¹³ The JCGQ, comprising the main general qualifications awarding bodies in the UK, had been established in 1998 as a voluntary, self-regulatory and administrative body. It was superseded in 2004 by the Joint Council for Qualifications (JCQ).

small but poignant example of this mentality in action: how the focus on compliance with the processes and requirements of the Code of Practice arguably deflected awarding bodies from the more important issue of maintaining standards. The former was not a sufficient, nor arguably a necessary, condition for the latter.

An obvious area which is indicative of the influence of increased regulation is that of innovation. Before the expansion of regulatory activity, innovative syllabuses and assessment schemes flourished. Although some of these were supported and facilitated by the then regulator, e.g. the Schools' Council, the characteristic of them all is that they were "bottom-up" developments, demand led and implemented by groups who were enthusiastic about, and knew the curriculum requirements of, their subject areas. In addition to the locally-developed CSE syllabuses, examples of such successful innovations range from the JMB's GCE General Studies syllabus to the Nuffield and Salters' science suites, the SMP mathematics developments, NEAB's hundred per cent GCSE English coursework syllabus, and OCR's successful Computer Literacy and Information Technology (CLAIT) qualification. Doubtless there were failures too, but in the decades when these, and other innovative, qualifications were developed, a spirit of creativity prevailed. It is hard to think of similar schemes in recent years. Indeed, such developments which do come to mind are "top-down", supply-led and implemented by political will, as opposed to local knowledge and enthusiasm. The Diploma would appear to be a classic case in point; one cannot imagine an awarding organisation, on its own volition, designing such a qualification.

4. WHERE ARE WE NOW?

The latest development in the story of examinations regulation begins with the Apprenticeship, Skills, Children and Learning (ASCL) Act 2009 that established Ofqual as the regulator of qualifications, examinations and tests in England. It commenced work as a fully independent non-ministerial government department on 1 April 2010 (having operated in interim form as a distinct part of QCA for two years before that), the same date that the Act had provided for the dissolution of the QCA, its responsibilities for the handling of qualifications and recognition being transferred to Ofqual, in addition to its regulatory functions. (Thus, in a short time Ofqual at least partially subsumed its progenitor, QCA). The remaining work of the QCA - to promote quality and coherence in education and training, review curriculum and assessment arrangements, and assist Ofqual in setting assessment criteria - was transferred to the Qualifications and Curriculum Development Agency (QCDA), which was to be abolished in the 2011 Education Bill.

The first indications of how Ofqual would interpret and utilise the substantial new powers granted to it have been in the form of three main consultations: Regulating for Confidence in Standards (RCS) (2009), From Transition to Transformation (FTT) (2010) and Consultation on Economic Regulation and the Fee-capping Process (2010).

The new regime

It is in Part 7 of the 2009 Apprenticeships, Skills, Children and Learning Act that the statutory duties and requirements of Ofqual are laid out. It has been given five overall objectives, described in RCS (p9):

The first two are directly focused on maintaining standards:

1. The **qualifications standards objective** is to secure that regulated qualifications:
 - a) give a reliable indication of knowledge, skills and understanding, and
 - b) indicate a consistent level of attainment (including over time) between comparable regulated qualifications.

Regulated qualifications will be subject to the following principles: validity; reliability; comparability; manageability; minimising bias.

2. The **assessment standards objective** is to promote the development and implementation of regulated assessment arrangements which:
 - a) give a reliable indication of achievement, and
 - b) indicate a consistent level of attainment (including over time) between comparable assessments.

(N.B. This objective relates only to statutory national curriculum, excluding GCSE, and Early Years Foundation Stage (EYFS) assessments.)

A next two objectives are directed towards public confidence in regulated qualifications and assessments and public understanding of the benefits of regulated qualifications:

3. The **public confidence objective** is to promote public confidence in regulated qualifications and regulated assessment arrangements.
4. The **awareness objective** is to promote awareness and understanding of:
 - a) the range of regulated qualifications,
 - b) the benefits of regulated qualifications to learners, employers and institutions within the higher education sector, and
 - c) the benefits of recognition to bodies awarding or authenticating qualifications.

The final objective is concerned with economic regulation:

5. The **efficiency objective** is to ensure that regulated qualifications are provided efficiently, and in particular that any relevant sums payable to a body awarding or authenticating a qualification in respect of which the body is recognised represent value for money.

Ofqual is committed to realising these objectives by utilising the government's principles of good regulation.¹⁴

¹⁴ These are:

- proportionality: policy solutions should be appropriate for the perceived problem or risk
- accountability: regulators and policy officials must be able to justify the decisions they make and should expect to be open to public scrutiny

Whilst this broad range of objectives and duties appears unexceptionable, how they are to be realised and applied signals a potentially significant change of direction for regulatory activity. As the RCS itself states:

The new legislation marks a *step-change in the way that qualifications and assessments are regulated*. It sets out a structure within which Ofqual, as the independent regulator, will maintain standards and public confidence *largely by making sure that the organisations which award regulated qualifications have the right systems in place* to control the quality of their qualifications. Ofqual will have specific powers to intervene, where necessary, but such interventions will need to be *justified by risk*. (p8, emphases added.).

However, it is how these broad objectives are realised, and how the new powers are applied, that will determine the extent of the step-change, and how different the qualifications industry in general, and those parts pertaining to the regulator in particular, will appear. The above consultation documents, RCS (2009) in particular, give a good indication of how the regulation is to be applied. It is not easy to summarise a 140 page document but the following are some of its key features:

- The regulatory focus will shift from the accreditation of the individual qualifications towards the recognition of awarding organisation. Prior to the 2009 ASCL Act the regulator was required to accredit each individual qualification separately; this is no longer necessary.
- Thus an awarding organisation intending to enter the qualifications market must become recognised by demonstrating to Ofqual that it satisfies certain “recognition requirements” and can be trusted to control the quality and standards of its qualifications. To this end, Ofqual will develop a risk profile of each awarding organisation and monitor compliance with the recognition conditions. A corollary of this is that, previously, if something was amiss or problematic, Ofqual's focus was on solving the problem with the qualification. Henceforth in such situations, the focus will be on the awarding organisation as a whole, and will include specifically the systemic source of the problem, e.g. the quality assurance and control processes, development design procedures or assessment arrangements.
- However, Ofqual retains the right to use its discretion to apply “accreditation requirements” to individual qualifications. This discretion will be used for qualifications embodying particularly high levels of risk, for example because the awarding organisation is new, has experienced a problem in the previous series, has a very large number of subject entries and/or is a high profile subject.
- Whereas previously, regulation was limited to qualifications awarded by an ‘external’ organisation, qualifications offered by teaching and training organisations can now be regulated;

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- consistency: rules and standards must be joined up and implemented fairly and consistently
 - transparency: regulations should be open, simple and user friendly. Policy objectives, including the need for regulation, should be clearly defined and effectively communicated to all stakeholders
 - targeted: regulation should be focused on the problem. Regulators should aim to minimise side-effects and ensure that no unintended consequences will result from the regulation being implemented. (RCS, p.39)

- The qualifications market will be reviewed to secure efficiency and value for money, with Ofqual having the power to cap the fees to that end. Although the former provisions are new, the ability to cap fees has existed previously, but has not been used.

These changes are designed with the expressed intentions that Ofqual will become a more strategic and risk-based regulator by:

- focusing more on product, rather than process;
- protecting the interests of learners;
- securing standards and promote confidence in those standards;
- diverting scarce regulatory resources to areas of highest risk and in the interests of learners;
- making a wider range of regulated qualifications available to learners;
- enabling awarding organisations to be more responsive to learners' and employers' needs and to encourage opportunities for innovation;
- facilitating greater transparency about the operation of the market.

5. WHERE ARE WE GOING? REGULATION IN A MARKET CONTEXT

The recent changes in regulatory arrangements purport to effect some significant changes to the way regulation will occur. However, do they in reality simply comprise a bureaucratic re-arrangement and tidying up or do they signal a fundamental change to the way qualifications will be administered and in the way the market operates, and in what direction should future regulatory arrangements be aimed?

Ofqual is placed somewhere on the continuum between the two extremes of a monopoly and a perfect market, presumably trying to apply the best of both models as it sees them. There appears to be something of a paradox, or at least a tension, in recent developments and the way they are being implemented. On the one hand, more powers have been centralised, yet devolved to the independent regulator, than ever before. On the other hand these powers are being used with a less interventionist, light-touch, approach, and in the interests of expanding and liberating the market to make it more competitive. (It is, perhaps, illustrative of this change of approach that in the 140 pages of RCS, "monitor" (or its derivatives) appears 112 times, whereas "enforce" appears a mere 29 times.)

Initial movements in this direction can already be seen. The forthcoming, new style Code of Practice for 2012 will, for instance, be based on principles, rather than detailed rules and procedures as has been the case hitherto, signalling a shift of focus from process to product (outcomes). The experience of GCSE Science awards in recent years has been a salutary reminder of the deficiencies of the process-focussed approach: although none of the awarding organisations could have been accused of non-compliance with the Code of Practice, there were, at the initial, provisional stages of each series at least, significant discrepancies in standard between awarding organisations, leading to, arguably, a corresponding drift in national standards over time.

The encouragement of more sellers to enter the market for qualifications is also becoming apparent. The International Curriculum and Assessment Agency (ICAA) already offers a suite of GCSE Business, D&T and ICT qualifications, and McDonalds, Flybe and National Rail were the first companies to be granted awarding body status by QCA in 2008 allowing them to develop their own in-house qualifications equivalent to GCSEs and GCEs. This marks a clear change in

policy from the government's Guaranteeing Standards (1997) report (made in the light of the Dearing Review (1996)) which reduced the number of English awarding bodies.

Whilst the above examples signal a less interventionist approach, indications relating to the efficiency and value for money objective hint at increased intervention in awarding organisations' arrangements. Although it is too early to see any specific intervention by Ofqual in pursuit of this objective, its intentions are laid out in its consultation on Economic Regulation and the Fee-capping Process (2010). Ofqual has traditionally monitored fee levels and market efficiency, for example via its annual Ofqual Annual Qualification market reports (2008, 2009, 2010) and its Report on Awarding Body Fees for the revised GCE A levels (2008). It has also had the power to intervene and cap fees since before the 2009 ASCL Act, but this has not yet been used. However, it is interesting to note that - probably independent of changes in regulatory design and practice - recent years have seen an increase in differential pricing policy for GCSE and GCE qualifications. Thus the Report on Awarding Body Fees for the revised GCE A levels could report:

The largest fee differentials between awarding bodies are seen in design and technology, music, and art and design with differences of 121 per cent, 84 per cent and 80 per cent respectively between the highest and lowest fee. The fees charged for an A level range from £67.20 for the lowest to £148.40 for the highest. Awarding bodies differ in the services and specifications they provide for the fee charged and this should be taken into consideration when making comparisons. (p.4)

Moreover, a range of fees exists between awarding bodies' for the same subject. In 2008/9, for example, AQA's fee for a GCE A level modern language was £67, whereas Edexcel's was £102. The rationales for each awarding body's pricing of this subject are unknown, but it is possible that the converse occurred in other subjects. In an attempt to increase the fluidity of the market, the report concludes:

However, a comparison of fees for the same subjects across awarding bodies reveals considerable differences. Centres should consider these fee differentials as well as the specifications and services when deciding which awarding bodies to use. (p.4)

Anecdotal and AQA market survey evidence suggests, however, that the market is price insensitive and (because?) those who decide which specification/awarding body to choose are heads of subject departments who are often ignorant of the fees. In a period of severe financial constraint, this pattern may soon change.

The more recent consultation on Economic Regulation and the Fee-capping Process (2010) has, however, caused some concern about potentially inappropriate interventions in awarding bodies' business. The full introductory comments of AQA's response to this consultation (2010) are included as Appendix C, but a few brief extracts are as follows:

AQA would argue that economic regulation as outlined by Ofqual is not appropriate because the market is complex with normal competitive functioning hugely distorted by public funding activity and with many of the awarding organisations operating as registered charities or not for profit businesses. Additionally, we consider that this statutory objective of Ofqual's will not prove to be cost effective ... there is little evidence of a level of inefficiency that, if driven out, could lead to a reduction in fees.

AQA questions the approach being taken by Ofqual to the objectives, duties and powers it has under the ASCL Act of 2009. Although Ofqual may be described as an economic regulator as regards the efficiency objective, it appears to be taking an overly prescriptive approach as to how it discharges that function.

6. CONCLUSION: THE REGULATION OF STANDARDS

This paper concludes that, for two, closely related reasons, not only do the recent reforms not appear fundamentally to change the arrangements, but that they do not sufficiently address a central aspect of regulation, that of standards, thus potentially increasing risk and undermining users' confidence in the currency, a vital assumption underpinning any market.

The first reason is simply that the most influential "regulatory" forces in the qualifications industry are not at work the first market (see earlier), which is within Ofqual's sphere of control, but in the second market which is beyond it. Thus the influences of, for example DfE School and College Performance ("League") Tables requirements and UCAS points are far more pervasive and influential than most factors related to the first market. This is a point also identified by the Sykes Review (2010) which was commissioned by the Conservative Party to review "the major examinations taken at 16 and 18, with a particular focus on academic qualifications". The following extract relates to the second market, and points to the distorting market effects of arbitrarily-imposed values and argue a reduction in the "equivalence claims" they embody.

We think it is important that the limitations of current equivalence claims be fully understood, and action taken to reverse their current distorting effects as soon as possible, for example by disseminating information about the relative difficulty of qualifications more widely.

The second reason relates to the difficult, but core, issue of standards and their regulation, which has so far not been specifically addressed. Although the powerful players in the second market define and impose the value of qualification grades (currency) in an arbitrary fashion on that market, it remains incumbent on the regulator and awarding organisations to ensure a fair and stable currency in the first market, although as will be seen, that might be informed by cooperating with those bodies which impose the assigned values of the second market.

All market models are underpinned by certain assumptions which are usually implicit and only specified when, in a particular context, they are relaxed. One of the main ones is that the good/service which is being traded is homogeneous, that is, competition between sellers is on price alone. The apparent price insensitivity of this market suggests that this is not the case and that important factors other than entry fees are at work. Awarding organisations compete, as far as regulatory requirements allow, on quality of specification, teacher support activities etc., but it is extremely controversial to suggest that they should also be allowed to compete on the standard of the awards provided. The questions are, whether, how much, and how, the regulator should intervene in these areas?

It was argued earlier that the intangible "good" traded in the first market was an opportunity or entitlement, and that the eventual product of that trading - qualification grades - became the currency of the second market. Theoretically, the market could be left entirely free, with the second market compensating for any differences in perceived value accruing from the workings

of the first market, as arguably currently exists to some extent (Wolf (2003)), and appears to be at least partially advocated by Sykes (2010):

This means that they (awarding organisations) should be free to offer qualifications at varying levels of difficulty without interference from Ofqual or any other government body unless there is specific cause for concern.

Awarding bodies should not be required to have post-16 qualifications accredited, although they may wish to do so.

Unless there is a clear contrary indication, it should be assumed that qualifications offered by an accredited awarding organisation are of an acceptable standard.

However, few would think that this approach would work, even in the long term, and it would certainly not in the short term, thus rendering the system not only inefficient but also deeply unfair, when candidates' life chances are at stake. Moreover, it would likely be undermining of confidence in the system in general, and in candidates' grades in particular.

It must, perforce, be the regulator's role to ensure, in the interest of fairness and efficiency, that buyers in this market (and its sub-markets), have equal opportunities to be awarded a given grade, whatever the year, awarding body and specification. Another way of saying this is that they must have the same standards applied.

This is what Ofqual currently has to say about standards maintenance in para. 4.2 in From Transition to Transformation (2010):

"We will secure standards by:

- a) requiring that the level of demand required of learners taking different qualifications is clear*
- b) requiring each awarding organisation to define clearly the knowledge, skills and understanding required of the learner for each of its regulated qualifications*
- c) requiring each awarding organisation to use methodologies that provide assessments that minimise bias and are valid, reliable, comparable and manageable*
- d) requiring each awarding organisation to put in place safeguards to make sure the standards of its qualifications are consistent with other comparable qualifications and consistent over time*
- e) undertaking direct checks on the standards an awarding organisation is applying*
- f) making specified qualifications subject to an accreditation requirement where we judge it is necessary to do so*
- g) intervening when standards are at risk.*

We currently work in each of these ways. We will continue to develop and strengthen our approach using our new statutory powers."

Whilst these are unexceptionable, it is debatable whether they are sufficient to guarantee and define standards. This is one area where it is vital that Ofqual not only do not apply a light touch but be transparent about what are its definitions and expectations of standards. In a sense, it is not so important *how* they are defined in each instance, but *that* they are defined is the main priority. In this respect, it is para. d) in the above list which is most important but most of the

points in the list appear somewhat passive and reactive. Indeed, in risk log parlance, e), f), and g) are, in effect, Ofqual's counter measures and contingency arrangements in this area. One action which is already being taken in relation to points a) and b) above is that sellers in the second market are being encouraged to work closer with those in the first market to ensure fitness for purpose and closer correspondence between the grade values assigned in the two markets. Thus universities, in particular, are being encouraged to play a more central part in GCE specification and assessment determination, ironically signalling something of a return to the early years of this qualification. As Sykes (2010) advocated:

Universities, employers and other relevant bodies should be fully involved in qualification design and implementation. Awarding bodies, which will have considerably more freedom, should be fully transparent as to which bodies they work with in qualification design and implementation.

It is, perhaps, unfair at this stage to anticipate Ofqual's actions and requirements, but the current wording does not suggest a strong proactive intervention in relation to standards setting and equating is to be expected. The hard lessons of recent years are there to be learnt. This is not to say that the definition and expectation of standards will always be easy, especially as the (first) market place is opened up to more sellers and a variety of provision. It is not easy defining standards and many, notably Cresswell (1996), have shown that this can be done in several ways. They could, for example, even be defined by quotas, or be norm, cohort¹⁵ or criterion-based, although AQA has some fairly strong views on preferred methods supported with a substantial evidence base. The current expansion of the Functional Skills market (currently thirteen separate awarding organisations¹⁶, one of which comprises three separate consortia, have been accredited to offer (156) Functional Skills qualifications) and the diverse nature of their provision and assessment designs is a contemporary and salutary example of the challenge to be faced.

In the light of its avowed risk-based approach, permitting the devaluation of, or loss of confidence in, the currency of qualification grades represents perhaps the biggest risk of all to Ofqual. This specific example of Functional Skills exemplifies the tension that Ofqual faces: how to expand and liberate the market while adopting a robust and transparent approach to ensuring the value and equivalence of the product of that market.

B E Jones
April 2011

¹⁵ There is an analogy between the role of awarding organisations and the private issuing banks in Scotland (Bank of Scotland, RBS, Clydesdale Bank) and Northern Ireland (Bank of Ireland, First Trust, Northern Bank and Ulster Bank). Both sets of organisations issue a form of currency whose volume needs to be restrained lest confidence erode. This has been done traditionally by linking the currency to a 'fixed stock' of value: gold in the case of banks, and 'ability' in the case of awarding organisations. A 'fixed stock of ability' model finds its expression in norm- or cohort-referenced awarding. However, the growing meritocratic instinct eventually manifested itself in a shift towards criterion referencing, the belief being that achievement should not be defined as relative success against one's peers. The acceptance of an element of consequent grade inflation has a parallel with the gradual acceptance of economic inflation: anathema to the pre-1914 era but now accepted as a motive force in the economy.

¹⁶ 1st4Sport, AQA, Ascentis, Bhest (Non-Pilot AO), C&G, EAL (3 consortia), EDI, Edexcel, NCFE, NOCN, OCR, VTCT, WJEC

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Appendix A. Four “ideal types” of an Economic Market

Perfect competition

It is often said that, “In a free market the consumer is king”, but this is only really true in the case of perfect competition, where prices are determined by both demand and supply – sellers and buyers. The main features of a perfectly competitive market are as follows:

- There are many sellers, each of whom produces an insignificant proportion of total market output, and many buyers. As no actor exercises control over the price, market power is diffused.
- Buyers have perfect knowledge about prices and products from competing sellers.
- The product is homogeneous and perfectly substitutable, leading each seller to be a passive “price taker” at a lowest equilibrium price.
- Resources are allocated efficiently and optimally (no waste).
- There is freedom of entry and exit from the industry.

Monopoly

At the other extreme lies the market model of monopoly (into which, incidentally, most qualifications systems fall), the main features of which are as follows:

- There is a single seller who produces all the output, and thus comprises the industry.
- The monopolist has market power in being able to affect the terms and conditions of exchange (e.g. the price can be set by the seller, not impersonally by the market as in perfect competition), but this power is limited as a price increase will result in the loss of some sales.
- For a market to remain monopolistic, there must be a barrier to other sellers’ entry.

Monopolistic competition

Monopolistically competitive markets have the following characteristics:

- There are many sellers and buyers, but buyers perceive product differentiation.
- In the short term, sellers can behave like a monopolist by setting their price and quantity without affecting the market as a whole.
- In the long term more sellers enter the market, which becomes more competitive except that competition is based on product differentiation, not price. However, because of brand loyalty, sellers can raise prices without losing all of their buyers, thus giving them some influence over the market. Sellers thus have a degree of control over price.
- There are few barriers to market entry and exit.

Oligopoly

Oligopoly is defined as “competition among the few” and has the following characteristics:

- There are few sellers, any of whose actions will affect the market price and competitors’ behaviour. The distinctive feature of an oligopoly is thus interdependence; sellers must take competitors’ reactions into account (e.g. by not triggering a mutually destructive price war).
- Sellers benefit from economies of scale; goods cannot be produced on a small scale.

- Barriers to market entry are high, so oligopolies can retain long run profits. Important barriers are economies of scale, patents, access to expensive technology and strategic actions by incumbent firms designed to discourage nascent firms. Sellers have an incentive to engage in research & development to lower costs and capture a larger market share.
- The product may be homogeneous or differentiated.

Appendix B. School Certificate subject groupings**School Certificate Group Subject 1918-1949**

Group	Subject	
I	English Comprehension & Literature, History, Geography, Scripture Knowledge, Greek.	At least one subject
II	Greek, Latin, French, German, Spanish.	At least one subject
III	Mathematics, Mechanics, Physics Chemistry, Biology or Botany, Physics with Chemistry, General Science.	At least one subject
IV	Art, Music, Handicraft, Domestic Subjects, Commercial Subjects, Geometrical & Machine Drawing, Mechanical Science.	Not compulsory, only one subject allowed

Higher School Certificate

Group	Subject
I	Greek, Latin, Ancient History
IIA	English, History, Pure Mathematics, Languages (including Latin)
IIB	History, Languages (excluding Latin), Geography, Economics
III	Mathematics subjects, Physics, Chemistry, Botany, Zoology*
IV	Mathematics subjects

*Biology was added in 1925, Art and Music in 1931, Scripture Knowledge in 1940 and Geology in 1943.

Appendix C. Introductory Comments to AQA's response to the Ofqual's consultation on Economic Regulation and the Fee-capping Process (2010)

AQA recognises Ofqual's statutory objective to secure efficiency and value for money in the provision of regulated qualifications.

We have fully contributed to earlier studies commissioned by Ofqual as identified below and have previously argued against the inclusion of this objective in Ofqual's remit.

The Frontier Economics report – The market for Regulated Qualifications in England, Wales and Northern Ireland which proposes a starting point for market – wide analysis.

The Grant Thornton report – Collection of Economic and Financial Information which recommends that Ofqual routinely collects data on fees, revenue, costs and key financial ratios from each awarding organisation for the UK regulated qualifications business only.

The Reckon report – Increasing the Transparency of Qualification Fees which looks at different standardised methods of comparing prices that could be introduced.

AQA would argue that economic regulation as outlined by Ofqual is not appropriate because the market is complex with normal competitive functioning hugely distorted by public funding activity and with many of the awarding organisations operating as registered charities or not for profit businesses. Additionally, we consider that this statutory objective of Ofqual's will not prove to be cost effective. While expenditure on qualifications fees has grown, the many assertions relating to the increase have not been backed up with any quantitative analysis of the underlying reasons for this. AQA would suggest that there is little evidence of a level of inefficiency that, if driven out, could lead to a reduction in fees.

As a general observation, AQA questions the approach being taken by Ofqual to the objectives, duties and powers it has under the ASCL Act of 2009. Although Ofqual may be described as an economic regulator as regards the efficiency objective, it appears to be taking an overly prescriptive approach as to how it discharges that function.

Furthermore, we would argue that much of detail relating to economic regulation has still to be defined and wish to take this opportunity to express concern that awarding organisations are being consulted on such an important aspect when so much remains unclear.