

Regulation, Risk and Reputation

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Introduction

This paper approaches the question of risk toleration in the regulation of qualifications from both a theoretical and empirical perspective. After a brief description of the expansion of regulation of qualifications it will explore how theoretical perspectives on risk and regulation can help to understand the current world of regulation and qualifications. The paper will argue that a regulatory response to address reputational risk is at least as valid, if not more so, than a response to a more concrete or consequential risk. The paper will conclude that the pragmatic approach to regulation that is adopted as a result is one which has much to offer to regulation in other sectors.

Qualification regulation

The body responsible for the regulation of qualifications in England is the Qualifications and Curriculum Authority (QCA). Its functions are set out in the 1997 Education Act and subsequent amendments². In summary, QCA maintains and develops the national curriculum and associated tests, and regulates examinations and qualifications offered in schools, colleges and workplaces. Its regulatory role covers all qualifications except those awarded by Higher Education institutions. QCA's role is restricted to England but it works jointly with its regulatory partners in Wales and Northern Ireland, and increasingly closely with Scotland³.

QCA is the most recent embodiment of qualification regulation – the history of which goes back some 100 years⁴. The scope and focus of regulation of qualifications have developed in recent decades to an extent broadly similar to that experienced in other regulated sectors. However, the motivation behind the perceived need for a regulator of qualifications contrasts in some ways with that behind establishing regulatory frameworks for the privatised utilities in the UK, although the latter is frequently used as a paradigm of “regulation”. Historically in England, qualifications have always been “privatised” - there has been a multiplicity of (private or charitable) providers of academic qualifications for young people leaving school and an even greater multiplicity of vocational qualifications run by literally thousands of organisations ranging in size from tiny niche providers for highly specialised trades to large organisations of international reputation. This involvement of a middle layer of “awarding bodies” offering qualifications frequently baffles commentators from other countries. In England, the 20th century saw concerns around bringing some coherence to the system and ensuring that standards be maintained.

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² Appendix 1: The statutory provisions in The statutory regulation of external qualifications in England, Wales and Northern Ireland, published 2004 – pp 33-4

³ Qualifications in Wales are regulated by the Department for Children, Education, Lifelong Learning and Skills (DCELLS), a Department of the Welsh Assembly Government. In Northern Ireland, the main regulatory body is the Council for the Curriculum, Examinations and Assessment (CCEA). In Scotland, the main academic examinations for young people are provided by the Scottish Qualifications Authority (SQA). SQA also regulates vocational qualifications in Scotland.

⁴ For a fuller description of the history of qualifications regulators see Educational Qualifications Regulation in the CRI 2006/7 Regulatory Review.

The regulation of qualifications has largely been “quality” regulation, rather than “economic” regulation. However, concerns to control prices for qualifications – many of which are paid out of public expenditure – has led to QCA being given statutory power to set conditions limiting prices for specific qualifications⁵. Government has from time to time expressed a wish to promote “an effective, competitive market” among awarding bodies⁶, but this has been tempered with a concern to avoid the “wrong” type of competition – for example, through making qualifications easier to pass than their counterparts provided by other awarding bodies.

In recent decades, four key events have had a marked effect on the way in which qualifications are regulated:

1. The introduction of the GCSE in 1986 (first examinations in 1988) had come at the end of a long debate about the replacement of the bipartite system of O levels and CSEs with a single all-through examination. It was the first time the government had intervened on such a scale and led to the introduction of the first key instrument of regulation – qualification criteria – which set out the requirements that needed to be met if an awarding body wanted to offer a GCSE.
2. In October 1976 James Callaghan in a speech at Ruskin College argued for the opening up of the ‘secret garden’ of the curriculum. This led to the introduction of a national curriculum and, as an essential association, the introduction in the 1990s of compulsory tests taken by children at the ages of 7, 11 and 14.
3. In the early days of GCSEs Her Majesty’s Inspectors of schools (HMI) produced a report critical of standards in GCSEs⁷ and John Major famously made a speech about the disadvantages of coursework. Both these events led to demands for more stringent regulation. There were tighter prescriptions on the amount of coursework that was allowed and a Code of Practice was put in place specifying in some detail how awarding bodies were to go about setting, marking and grading qualifications.
4. Finally the introduction of QCA itself brought with it the notion of ‘accreditation’ by the regulator. Qualifications were to be submitted to QCA for accreditation. QCA applied this function by first considering whether the submitting body (the awarding body) was fit and capable of offering the qualification and then considering the qualification against criteria devised for the purpose.

Thus the country has acquired a system of compulsory testing of school children and a system of regulating public examinations and qualifications based on the production of criteria, the accreditation of qualifications against those criteria and the monitoring of awarding bodies’ work against codes of practice. No wonder the international committee on standards over time said in their report *Examination Standards*⁸ that “no examination system at the school or other level is so tightly or carefully managed”.

⁵ Education Act 1997, Section 26(4)(a)

⁶ *Further Education: Raising Skills, Improving Life Chances*, Cm 6768, Department for Education and Skills, London, 2006, paragraph 7.16

⁷ GCSE Examinations: Quality and Standards, Summer 1992. A report by HM Inspectorate, HMSO, 1992

⁸ *Examination standards: Report of the independent committee to QCA*: McGaw.B, Gipps.C, Godber,R published December 2004 – Page ii

Risk and qualification regulation

These major step-changes in the level of qualifications regulation had less to do with responses to real or perceived risks than to do with social and political changes. The demand for more public accountability was a key driver for the introduction of the national curriculum and its assessment. The GCSE was also seen as an instrument for reducing inequality of attainment. There was a move by Governments of both political parties to see qualifications attainment as a key indicator of the performance of the education system. Thus qualifications and test results featured in performance tables and became high-stakes for schools and colleges as well as for individual candidates. In such a turbulent socio-political climate, it became increasingly important for QCA, as regulator, to have at its heart the interests of individual learners, the end-users of the system.

In a recent article⁹ we suggested a distinction between ‘consequential risk’ (harm that would be caused if something goes wrong) and ‘reputational risk’ (harm to the reputation of an organisation or system). Of course, loss of reputation can be seen as just one kind of consequence, but the distinction is helpful for discussions of regulatory risk.

Writing in 2006 about risk¹⁰, the Better Regulation Commission (BRC) tended to see risk in consequential terms, with examples such as the risk of obesity or of repeats of accidents in sports or transport. The BRC talked of the “regulatory spiral” that occurs after a specific incident, usually involving a public response calling for more regulation.

As can be seen from the description of the growth of qualification regulation above – with the possible exception of the Major intervention on coursework – the events were less about perceived risk than about changed societal norms and expectations. Of course that does not mean that qualifications regulation is immune to the ‘regulatory spiral’ posited by the BRC. We shall return later to examples of such pressure in the world of qualifications.

Before leaving the BRC study of risk it is worth pointing out that around a quarter of BRC’s case studies have a training or qualifications dimension within the response and, perhaps the supreme irony, one of the commission’s own recommendations is about improved training in risk management. Whenever there is a response to a consequential risk one of the most frequently adopted solutions involves training and qualifications which inevitably begs the question of who (if anyone) is to ensure that the training and qualifications are effective and secure.

Another angle on risk is provided by the work of John Adams¹¹. He proposes a “risk thermostat” with “perceptual filters” (the fatalist, the individualist, the hierarchist and the egalitarian). This analysis is useful in two ways. First there is little doubt that his typology of perceptual filters could be transposed onto key players in the qualifications regulation system to get a better understanding of motivations and behaviours. But second it is even more useful to consider his point that the weaker

⁹ Nisbet I and Greig A, “Educational qualifications regulation” in Regulatory Review 2006/07, Centre for the Study of Regulated Industries, University of Bath, 2007

¹⁰ Risk, Responsibility and Regulation – Whose risk is it anyway?, Better Regulation Commission, London, October 2006

¹¹ <http://john-adams.co.uk>. The authors are grateful to Tom May for drawing our attention to this typology.

the scientific understanding (of a risk) the greater the influence of perception. In the world of qualifications 'scientific' understanding is exceedingly poor. There are few real experts in educational assessment; general understanding about how tests, examinations and qualifications work is poor. This has serious implications for how qualifications regulation responds to risk.

Consequential risk

We indicated earlier that the BRC scenario of increasing regulation in response to an event, or fear of an event, occurring is less of a factor in understanding the increase in qualifications regulation. There are nevertheless some examples worth considering.

1. In the late 1980s the Manpower Services Commission (MSC) and later the employment department, working with the Further Education Funding Council put large amounts of money into the education and training system to stimulate work-based training. As a consequence some individuals were attracted to the notion that a quick profit could be made at the expense of providing a quality service. There were a few, but unfortunately high profile, cases of fraud involving, for example, overstating the number of registrations on a course and thereby claiming funds to which they were not entitled, or offering qualifications on the back of a minimal training programme. One of the responses was to introduce a rule¹² for National Vocational Qualifications (NVQs) that NVQ candidates must be registered with the awarding body for at least ten weeks before a certificate can be awarded. Administering the "10 week rule" adds to the complexity of the system for trainers and awarding bodies and while the incidences of fraud have considerably reduced the rule remains in place.
2. When modular A levels began to be introduced in the late 1980s there was growing concern that the apparent ability for candidates to re-sit modules repeatedly until they had either passed or achieved the desired level of pass. The specific concern was that this activity was consequentially lowering the A level standard. By the time A levels were being revised in the late 1990s the concerns had reached such a pitch that it was decided to limit the number of re-sits allowed to one per module. The application of this rule was administratively complex for awarding bodies, hard for centres and students to understand (when is a resit different from a whole new attempt?) and the rule was eventually abandoned. In fact, the number of candidates re-sitting more than once has always been extremely small.
3. A continuing theme in debates about the English qualification system is the question of vocational qualifications available for 14-19 year olds. There have been a number of central attempts to introduce a qualification that is of high quality, has parity of esteem with academic qualifications and is supported by industry. The Certificate of Pre-Vocational Education (CPVE) failed to take off and was a signal failure; the General National Vocational Qualification (GNVQ) had some success but ultimately failed when it was forced into an academic straightjacket. The latest attempt, the Diploma, has by far the strongest industry backing to date and many of the earlier lessons have been applied in its introduction. This qualification is being tested in the real world at an early stage – students will be taking the qualification for the first time

¹² NVQ Code, revised 2006, QCA and Welsh Assembly Government

without the benefit of testing, trialling or piloting. The natural regulatory response (to protect these learners) is heavy-duty regulation – intensive accreditation, detailed codes and heavy monitoring.

These examples help to illustrate that the world of qualifications regulation is not immune from the malign influence of a regulatory spiral. But we want to argue that reputational risk is a far more powerful driver.

Reputational risk

Clearly reputational risk can operate at a number of levels.

1. At the level of the individual a response or action may be driven by fear of loss of reputation. A politician breaking their summer holiday in order to put in an appearance at a local event or disaster is a common example. The fear of adverse media coverage for failing to turn up is a key motivator. The classic militaristic response to a potential problem – ‘...not on my watch....’ - is another dimension. The role of the individual’s reputation is normally relatively unimportant in the qualification system (although events in 2002, which we refer to later, may provide a counter-example)
2. At the institutional level reputation becomes more important. In the public mind institutions are often indistinguishable from their product. Manufacturers act rapidly to remove faulty or inferior products when problems are likely to have a reputational impact. In the qualifications world reputation is vital for awarding bodies. If the public does not have confidence that the awards are made fairly at the right standard then the whole of the awarding body’s operation comes under threat.
3. It is at the system level that reputation – and the risk of its loss – really bites. Qualifications are a form of currency – a medium of exchange – which serves the purposes of individual learners, employers and the education system. And all mediums of exchange owe their existence to trust. So, as with financial currencies, if the public have no confidence in the qualifications system then the system will rapidly break down.

We have described the world of the regulation of qualifications in England as one in which ‘the complex interaction between consequential and reputational risk, and the intensely political climate in which a spark with consequences for comparatively few people can light a reputational bonfire’¹³

A well-known example of such an incendiary spark was in 2002, when concerns about A level standards led to a major enquiry, the dismissal of the Chair of QCA and the resignation of the Secretary of State. Five candidates had grade changes that affected where they went to university. Other examples of disproportionate public response abound: cheating in examinations; errors in examination papers; unreliable marking; administrative errors. In each case there is a high level of public reporting and concern but the actual incidence of the event or impact on candidates is low.

¹³ see note 9

Regulatory response

There is a tendency for regulators, and those who write about regulation, to regard reputational risk as inappropriate for serious consideration – particularly when the response may interfere with market forces or impose additional regulatory burden. There is also a temptation to see any systemic response to individual incidents as disproportionate, and hence a breach of one of the Government’s principles of good regulation.

We suggest that such views are short-sighted. While it would not be appropriate for regulators to intervene just to serve the reputation of individuals (even Government Ministers) or organisations, reputational risk at the system level is a legitimate focus for regulation. For QCA, that means that the regulator should be worried if public confidence in the qualifications system is shaken. And a range of factors can influence public confidence, for example research reports, the experiences of individuals and their families, stories from the media or from friends and so forth. The BRC report criticises action “based on emotion”, and it is true that rushed regulatory responses to, for example, a child’s mauling by a dangerous dog, can be ineffective. However, we suggest that in a democracy it is right for the public’s emotions to cover services such as health and education which go to the heart of their families’ lives.

QCA’s published aims as a regulator include ensuring that “public confidence is sustained”. QCA also has a statutory function¹⁴ to provide information about the qualifications system. The linked roles of promoting public confidence and promoting understanding are shared with other regulators. For example, the statutory functions of the Financial Services Authority include “maintaining confidence in the financial system” and “promoting understanding of the financial system”¹⁵. We suggest that this does not mean telling lies or concealing bad news to keep the public happy. Rather it involves the regulator taking an active role of explaining the true position if something has apparently gone wrong, and telling the public what it is doing to put matters right. Where public concern is disproportionate, then the regulator should say so. However, it is right for regulators to use news stories, and individual complaints or incidents, as prompts to dip into the system in greater detail than usual to put the matter right, ensuring that it is less likely to recur, and assuring the public that their qualifications system is secure. Regulators should not feel coy or ashamed of such actions.

In the world of qualifications, there are examples where consequential risk and reputational risk do not match. For example, press headlines about very small increases or decreases in marks or about tiny increases in malpractice in GCSEs and A levels have virtually no consequential risk but can have a significant effect on public confidence. In such instances, the regulator’s role must be both to educate the public debate and to ensure that action is taken in the small number of individual cases that have created the alarm.

In other cases, problems which have a significant effect on learners may carry little or no reputational risk. Thus, for example, technical problems around standards in some vocational assessments, or examination questions which are dull and do not inspire good teaching may not grab headlines. However, it is appropriate for regulators to address those issues too, and to report its actions to the public.

¹⁴ Education Act 1997, S24(e)

¹⁵ Financial Services and Markets Act 2000, Ss 2(2), 3(1) and 4(1)

Dealing with consequential and reputational risk involves a degree of versatility and the ability to address reputational issues at the level of detail required, without being driven into a regulatory spiral of pulling all regulation down to the same level of detail all of the time. We believe that this principle may be transferable to other sectors.

QCA's need for versatility as a regulator

QCA has committed itself to the broad regulatory direction of travel being signalled at the national level:

- We are aiming to regulate at a higher level, by avoiding focussing on the detail of particular qualifications and moving our focus to the level of the organisation – the awarding body. Self-assessment by awarding bodies now plays a key part in our regulatory processes;
- We are mindful of the bureaucratic burden posed by regulation and are now committed to putting in place codes of practice – operating rules – that are written in terms of desired outcomes rather than prescribing particular processes;
- We have adopted a risk-based approach to our monitoring activities, only intervening when there is cause to do so and managing our monitoring programme around the notion that the greatest risks are posed by the high volume, high status qualifications;
- We are working to find ways of reducing the information demands we place on awarding bodies by using evidence they supply for other purposes.

However this approach is not being adopted unthinkingly. Where reputational factors come into play the response has to be uncompromising and occasionally more subtle.

- The despatch of the incorrect examination paper that affects relatively few students has been dealt with firmly and robustly – the awarding body was left in no doubt that a similar error will not be tolerated in the future
- Concerns raised by centres about the cost of their examination entries is leading for the first time to the construction of procedures to allow regulation of examination fees.
- An issue raised in letters from a few parents about their ability to appeal about an examination result when they are not supported by the school has led to a careful and thorough review involving the full range of stakeholders and will result in a report which will help inform the debate.

Regulators must be prepared to justify interventions of this kind, and they are far removed from a regulatory system consisting of knee-jerk reactions to newspaper headlines. Critics will often criticise regulatory action in response to public concerns as disproportionate. Also, it remains important to ensure that regulatory interventions do not have unintended consequences far beyond the problem which prompted them. However, reputational risk at the level of the system regulated is important for regulators, and for QCA.

Conclusion

In this paper we have described the emerging role of QCA as the regulator of qualifications in England. In considering risk, we have used the distinction between

consequential and reputational risk and argued that QCA needs to address both, particularly where there is a risk of reduced public confidence in the regulated system. This requires some versatility on the part of regulators, combining a commitment to high-level, low-burden regulation with willingness to intervene in more detail where public confidence so requires, while at the same time educating the public debate and avoiding dragging the whole regulatory system into the same level of detail across the board. QCA has learned this lesson in the world of qualifications. We commend it to regulatory colleagues in other sectors.

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