

Children and Young People's Commissioner Scotland.

Education and Skills Committee

SQA Exams and Appeals 2020

Submission of the Children and Young People's Commissioner Scotland.

Established by the Commissioner for Children and Young People (Scotland) Act 2003, the Commissioner is responsible for promoting and safeguarding the rights of all children and young people in Scotland, giving particular attention to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner has powers to review law, policy and practice and to take action to promote and protect rights.

The Commissioner is fully independent of the Scottish Government.

Thank you for providing us with an opportunity to update you on outstanding issues relating to a group of young people in Scotland, whose rights and lives have been adversely affected by the cancellation of the Scottish Qualification Authority (SQA) examination diet, and the Alternative Certification Model (ACM), put in place in 2020. This submission provides an update since our last submission to this Committee in November 2020¹.

We are particularly concerned about a group of young people, some of whom have contacted our office, who have experienced disadvantage due to disability, being care experienced or young carers, living in poverty or experiencing mental or physical illness have not been provided with a right to remedy if they disagree with their centre estimated grades. When the Deputy First Minister announced that results generated by the discriminatory ACM would be replaced by centre estimated grades, it became clear that the exceptional circumstances process would no longer be available to 2020 students. This meant that some students whose 'estimated grades' under the ACM had failed to take account of students' individual, personal circumstances were told they had no right of appeal.

We repeatedly explained in our communications, including in a letter to the Deputy First Minister on 17th August 2020, that the issue is not case specific, but rather is a clear example of a systemic incompatibility with international human rights law and standards, including but not limited to, the United Nations Convention on the Rights of the Child (UNCRC)².

As Professors Laura Lundy and Jeanette Elwood have stressed,

'there can be little doubt that international human rights law applies to assessment practices. The validity of an assessment method is based upon

¹ <https://cypcs.org.uk/resources/sqa-exam-diet-2020-and-the-priestly-review/>

² For example, the European Convention on Human Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention against Discrimination in Education; the United Nations Convention on the Rights of Persons with Disabilities.

whether it is the best way to assess in the circumstances as well as the social consequences of the specific assessment method.”³

We have explained to SQA that they are bound by the UNCRC, to protect, respect and fulfil children’s rights, notwithstanding that the Convention is not yet incorporated into domestic law. Where a State puts in place a system of formal assessment and certification, this must be considered as part and parcel of its delivery on the right to education, irrespective of age. As such, within that process, children and young people have the right to participate in decision-making, to access to an effective remedy, to procedural fairness and due process in accordance with natural justice.

The State must ensure that in fulfilling its human rights and legal obligations and the wider right to education, all methods of assessment, examination and accreditation are underpinned by a human rights compliant framework which includes key principles of international law, namely accessibility, participation, fairness, deliberation, counter-majoritarian adjudication and effective remedy. We referred to the evidence and work of Dr Katie Boyle who has explained the importance of these principles in the context of incorporation of international treaties, specifically the UNCRC, and within the wider work of the Human Rights Taskforce.⁴

The 2020 certification and qualification accreditation system operating in Scotland has failed to provide adequate human rights protections by the State, as it does not permit individuals access to justice through appeals or reviews, or to any form of redress or remedy. Specifically:

- Within the first part of the ACM, teachers (on the guidance of the SQA), entirely excluded young people from the estimation, moderation and ranking process. There was no opportunity within this part of the process for the young person to raise considerations that might legitimately have influenced the estimated grade.
- This failing was then exacerbated as no process was put in place by Scottish Government or SQA for young people to challenge the Centre on their estimated grade before it was submitted to the SQA.

We note that the revised second stage of the ACM originally included provision and resource for thousands of potential appeals. As Professor Priestley notes in his review, the appeals system as originally envisaged was:

“intended for large scale application to ‘fix’ problems that are a consequence of the system of awarding grades itself...rather than its usual function as a separate post-award process affecting only small numbers of candidates.”⁵

Professor Mark Priestley, informed by the views and lived experiences of these young people, concluded that:

“The decision to limit grounds for appeal seems to us to be both unnecessary and counter-productive.”

³ <https://journals.oslomet.no/index.php/human/article/download/2560/2849/10276>

⁴ Boyle K, evidence to Equality and Human Rights Committee in the UNCRC (Incorporation) (Sc) Bill

⁵ M. Priestley, M. Shapira, A. Priestley, M. Ritchie, C. Barnett, [Rapid Review of National Qualifications Experience 2020](#), September 2020

We have consistently reiterated our calls for direct appeals as a human right to an effective remedy and procedural fairness to be permitted (for example in our evidence to the Priestley Review⁶ and this Committee), but the SQA and Deputy First Minister have, to date, failed to provide access to justice for these young people.

We are concerned to note an assertion in the Deputy First Minister's letter to the Committee last week that he was waiting for information from our office before making a decision on the 2020 appeals, and that our office is 'working closely' with SQA on the new 2021 appeals model. On the contrary, we have undertaken one meeting in which we set out to SQA staff our significant concerns that the SQA has so far failed to ensure compliance with its international human rights obligations and our expectations about what needs to be in place to remedy this.

We had presumed from our conversations and the Deputy First Minister's parliamentary evidence that this matter had been under active consideration by the Deputy First Minister since September. Yet, despite this level of engagement and the reassurances from the Deputy First Minister that young people's rights to appeal were 'under consideration', a decision appears to have already been taken. On 19 February 2021 in joint correspondence from the SQA and Education Scotland, this Committee was informed:

*'Information on the 2020 appeals process was published on 2 December 2020 and is now closed as we focus on arrangements for 2021.'*⁷

We continue to call on the Deputy First Minister to direct SQA to accept appeals for the 2020 cohort on the following grounds (as we set out in September 2020):

1. There is evidence that the centre's estimated grade is inconsistent with previous attainment and/or the teacher's estimate to UCAS
2. Evidence is available that did not form part of the centre's assessment (for example returned unmarked coursework, or failure to take account of exceptional personal circumstances including bereavement, illness, care experience, disability, etc...)

We urge the Committee to defend and uphold the human rights of these young people by calling upon the Deputy First Minister to direct the SQA under section 9 of the Education (Scotland) Act 1996 to accept direct appeals from young people in the 2020 cohort.

26th February 2021

⁶ <https://cypcs.org.uk/resources/sqa-exam-diet-2020-and-the-priestly-review/>

⁷ [SQA and Education Scotland. Joint Response.](#)