



Mr John Swinney MSP
Deputy First Minister and Cabinet Secretary for Education
Via email: scottish.ministers@gov.scot

17 August 2020

Dear Deputy First Minister

I am writing in relation to the ongoing situation around SQA certification and grading as a follow up to my letter of Friday 7th August. I appreciate that things have moved on considerably since then and very much welcome the decisions taken by the Scottish Government to direct the SQA to amend awards for children and young people who had been disadvantaged by the moderation process. However, there are three particular matters which continue to require attention.

In your statement to the Scottish Parliament on Tuesday 11th August you confirmed that detail on appeals would be provided “by the end of the week”. I note that the SQA published limited information on appeals late on the afternoon of Friday 14th August, having removed the existing appeals guidance from their website following your statement. This provides that appeals can only be undertaken by a centre and only covers the following situations:

- Where an administrative error was made when the estimate was submitted
- Where the centre is of the view that a candidate's estimate was affected by discrimination or other conduct by the centre that is unacceptable under the Equality Act 2010

- Where the Head of Centre believes that there has been an error within SQA's internal processes for confirming results to centres following the 11th August announcement

These limited grounds of appeal fail, as the whole system has done, to respect children's rights to participate in all decision-making and for their views and individual circumstances to be taken into account through the teaching, assessment, estimation, examination and certification processes in educational provision. There remains a need therefore to provide a route for appeal which is directly accessible to young people who disagree with their teacher's estimate, or who have been subject to discrimination, unequal or unfair treatment. I would be grateful if you could confirm when that process will be put in place.

In your statement you promised to "make provision for enough places in universities and colleges to ensure that no one is crowded out of a place that they would otherwise have been awarded." This commitment was very welcome. You will have heard, as we have, from many young people who have lost university or college places in the time period between the announcement of their downgraded results on Tuesday 4th August and the Scottish Government's decision to remedy that injustice on Tuesday 11th August. You will appreciate the considerable anxiety and distress that this has caused for many young people and the importance of alleviating this as quickly as practicable.

You may be aware that our office, along with the UK's other Children's Commissioners, has written to Universities UK asking them to encourage their members to take as flexible an approach as possible to offers of places to students. I hope this supports your own work and look forward to confirmation of the Scottish Government's proposals in this area.

Finally, I would like to reiterate the importance of clear public messaging on this issue. The decision to reverse the downgrading was made in order to remedy a systemic injustice. Moderation through an algorithm which resulted in significant unfairness was a

potential violation of the fair processing requirements of the General Data Protection Regulation, the Public Sector Equality Duty, the Fairer Scotland duty, and children's rights to respect for private life and to a fair hearing as protected by Articles 8 and 6 of the European Convention on Human Rights. It left the Government and the SQA vulnerable to potential legal action.

It had appeared from the First Minister's apology on Sunday 9th August that the Government recognised this and understood that young people *felt* the system was unfair because it *was* in fact unfair. This acknowledgement, and the apology that accompanied it, are important parts of respecting children's human rights, providing an effective remedy and ensuring lessons are learned.

I was concerned therefore that in some subsequent communications, including the statement to Parliament, the issue was defined as "a feeling of unfairness in the minds of young people". This was compounded on 12th August, when the BBC quoted you as saying that the moderation process had been "a perfectly fair model". These kinds of statements unhelpfully undermine the apology made just a few days prior, as does any continuing denial of the disproportionate unfairness experienced by those from the most deprived communities.

The very welcome decision to revert to teacher estimates was a remedial one, not an act of good will undertaken by the Government to make up for this cohort of young people having experienced a difficult and unprecedented year. It would be deeply unfortunate if the choice of language contributed to precisely the situation we all wish to avoid; where the reversal of the downgrade diminishes the value of those grades in the eyes of colleges, universities and employers. Instead it is important it is recognised as a decision taken in the interests of justice to rectify inherent systemic unfairness, and which has resulted in young people being awarded the grades they deserved.



I encourage you to focus now on those young people who remain disadvantaged and who require further action from the Scottish Government to remedy that disadvantage. Our office would be happy to discuss further with you or your officials.

Your sincerely

A handwritten signature in black ink, appearing to be 'NH' with a flourish.

Nick Hobbs

Head of Advice and Investigations

Children and Young People's Commissioner Scotland