

26 May 2020

Lynn Welsh
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EHRC Scotland

By email: Lynn.Welsh@equalityhumanrights.com

Dear Lynn

SQA compliance with the public sector equality duty

Thank you for your letter of 19 May to Fiona Robertson regarding the approach SQA is taking to meet our obligations under equality law in the development of the alternative certification model for 2020. I have been asked to respond both to follow up on the issues raised in your letter and also to provide the information requested in support of our approach to estimates which, as you are aware, forms the first stage in a four stage certification model, of which the latter stages are currently being finalised.

Given the role of SQA is to support and recognise the achievement of all learners (as we do year in, year out) we are fully committed to fulfilling that role in 2020 under what are extremely challenging circumstances and for which we have had to respond quickly. Where possible we have sought to build on existing practice and evidence and to consider alternative approaches to certification with fairness at the heart of our consideration. As part of our ongoing commitment to all learners we both accept, and are taking appropriate actions to fulfil, our obligations in relation to the public sector equality duty.

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In order to address comments that have been made publicly by the Commission and the Commission's previous correspondence, and following the commitment I gave at last Thursday's meeting to [NR] I attach our draft EIA, and a timeline covering the development of the EIA relative to the issuing of estimates guidance.

You will see from the information attached that, when Fiona Robertson gave evidence to the Education and Skills Committee on 1 May, it was correct to say that work on the EIA had in fact been done, that SQA had considered equalities issues in the formulation of our estimates guidance and that we had established online training resource which incorporates guidance on the avoidance of bias. This online resource has (as of today's date) been viewed 9,818 times by 2,652 users. At that stage we were, and continue to be in discussions with the Commission, and indeed the meeting you referred to in your letter, happened on the same date as the evidence session.

We have taken, and continue to take, the view that our EIA will continue to develop and be informed as we further develop the detail of our Alternative Certification Model (ACM). From my discussion with [NR] last Thursday my understanding is that this approach does not raise any issues for the Commission. We will, at each stage continue to refine our approach based on lessons learned and acknowledge that the full EIA will only be "completed" when all four stages of the ACM are fully developed (and that before sign off the fully developed ACM will be reviewed against the EIA for a final time). We fully believe that this approach is consistent with our obligations.

We clearly both want to move forward positively on this important issue and last Thursday's discussions between myself and [NR] are, I hope, a helpful step in that regard.

Nevertheless I feel it important to respond to some of the statements in your letter of 19 May to put our position clearly. Your letter refers to exchanges during April and your "concerns" articulated in your letter of 28 April that "despite our earlier advice, SQA did not appear to have carried out the required EIA and suggested we meet with you urgently". Our position has been clear throughout that what we had prepared, at the time, was an assessment relating to the estimates stage of the ACM (stage 1 of a 4 stage process) and that until we had developed the full ACM, a full EIA could not be developed.

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I would like to respond also to the statement in your letter that “it is perhaps unfortunate that neither of the SQA staff who met with the Commission appear to have informed you of the gravity of our concerns, which we explained in detail at this meeting.”

I have indeed received feedback on the meeting of 1st May and I am advised that whilst the Commission’s concerns were expressed, SQA officials also described the initial paper produced and the ongoing work to complete the EIA as the ACM model develops. I am further advised that SQA officials also explained our ongoing work and monitoring of equalities issues in qualifications (work that contributes to the development of the EIA). The attached draft EIA and EIA timeline reflect our approach. We have responded to the Commission's view that whilst SQA was in fact were considering equalities issues, our public facing information didn't make this clear. We are now publishing message reinforcement communications about this.

SQA officials explained that issues around the potential for bias were raised in the initial CoPPG paper (reflected in the timeline) and that SQA's consideration of this issue had already influenced the Academy estimates course and guidance. Since then, we have considered this issue further in the draft EIA by (i) exploring possible gender bias which our own data might be able to reveal, (ii) exploring the potential for joint work with Scottish Government to explore risks of bias related to ethnicity and SIMD categories, and (iii) considering how we might respond to candidates who are awarded their estimate grade but are concerned that it has been affected by bias (although this last point is principally a matter for centres rather than for SQA directly).

With regard to consultation, SQA colleagues also advised that we regard consideration of equalities issues not as an "event", but as an ongoing process, and that we are using our body of knowledge gained through past and current engagement and monitoring to inform our continuing EIA work. Finally with regard to the meeting of 1 May, the recollection of SQA officials was that their agreement was that the CoPPG paper of 14 April would be shared with the Commission at that stage (which had influenced the estimates guidance and development of the Academy course) which has subsequently been superseded by the draft EIA (which is attached).

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SQA have also committed publicly to publication of the EIA in order to fulfil our statutory duty and in the spirit of transparency. Your letter refers to this requirement to publish “the results of the EIA as soon as possible after the decision was taken to apply the alternative certification model”. As we have explained in previous letters the ACM is a four stage process, of which the estimates are only the first stage. The latter stages of the process are still being finalised and I hope you will see from our approach that we are taking our equalities duties extremely seriously in developing the ACM under very difficult circumstances. I am therefore sharing our draft EIA for the model as developed to date and this will be further refined and developed as we move through the remaining three phases of the model and I am happy to commit to working positively with the Commission as we move through that process. I should be grateful if the Commission would clarify whether the documents we are now providing are subject to the protections from further disclosure (by the Commission) contained in the Equality Act 2006. If not, we should be grateful if you would confirm that you will hold these documents in confidence.

Given the foregoing whilst I would disagree with the suggestion that the SQA has not complied with its obligations under the public sector equality duty, I look forward to colleagues engaging positively to move forward this issue as this fundamentally is about the interests of learners. I genuinely welcome the offer of support and advice communicated to me by NR last Thursday and we will, of course, engage positively on this matter moving forward. On review of the information I have provided I would suggest NR and I engage with relevant SQA colleagues to follow up on any issues and I am of course happy to discuss with either yourself or Dr Sawers if that would be helpful.

Yours sincerely,

Personal Data

Mike Baxter
Director of Finance and Corporate Services