

13 May 2020

Lesley Sawers  
Scotland Commissioner  
Equalities and Human Rights Commission

Contact: [Fiona.Robertson@sqa.org.uk](mailto:Fiona.Robertson@sqa.org.uk)

Dear Lesley

Following media coverage over the weekend, and your public statement, I thought it was very important that I write to you to ensure there is a shared understanding of the approach SQA is taking to certification, to ensure we meet our obligations to the Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. I have given a public commitment to ensuring we meet our obligations through an equality impact assessment (EIA) of our approach to certification this year, and we take this commitment very seriously. It is also, of course, our intention to publish the assessment.

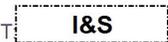
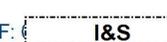
I am disappointed that this work has been called into question through the media, particularly given my correspondence with Lynn Welsh and our offer to engage with you. I suggested a meeting with EHRC in my letter of 23 April and this took place on 1 May. Your latest position was only relayed to me directly by email on the morning of 11 May by Lynn Welsh, following press coverage on Sunday. At that time, we had no record of any follow-up from you on 6 May. I now know that was sent directly to a member of staff who is unwell and off work, so we only had sight of this after the receipt of your 11 May email.

Headlines around the legal standing of the certification, and the differing interpretation of statements made, provides little reassurance to the thousands of young people and their parents and carers, who are concerned about exams being cancelled and the impact this will have on their futures. Nor does it help the teaching profession with the important work that they are doing to provide us with estimates, in this extraordinary year.

As I outlined in [my statement of 20 April](#), the alternative certification model is an end-to-end process of four steps. The first step, providing estimates, has been communicated and is now underway. We considered our Public Sector Equality Duty (PSED) under s149 of the

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2010 Act, prior to publishing this first step in a refined process. However, as you know, when deciding that we should carry out an EIA, we have taken the view that the new or revised practice that we are assessing is the whole alternative certification model that remains in development and not just the first step. The steps are interrelated, and each is an integral element of the overall model. Considering one element in isolation would not be helpful.

You have said that SQA has been unable to demonstrate that we have considered any equality issues in our work or that we have met our legal duties. We would strongly disagree with that statement. The 2012 Regulations require us to take account of the results of our EIA in developing the new model. That is inevitably an iterative process, with the assessment process feeding into the development of the proposed model. The remaining steps of the proposed model are being finalised and for that reason the EIA is not yet complete. When the model is in near final form, the assessment will be completed, and we will take account of the outputs of the assessment before publication of the finalised four step model.

We will also, in line with the 2012 Regulations, publish the results of our impact assessment. We are required to do that within a reasonable period of adopting the new model and we will do so.

We ask teachers and lecturers to submit estimates to us every year, and we expect schools and colleges, at every point in the process, to discharge their responsibilities under the Equality Act 2010. For the refined estimates that we require this year, we have specifically adapted our guidance and supporting training materials to stress the need for schools and colleges and local authorities to ensure that their learners are treated fairly. In our SQA Academy course, we also encourage head teachers and college principals to check that their estimates comply with their own inclusion and quality assurance policies. To date, this course has been accessed over 10,000 times and we estimate around 3,000 teachers and lecturers have completed the course.

Through the development of the estimates process, the information document and the online course, we have consulted with and taken on board feedback from a wide range of stakeholders in the education sector, including professional associations, practicing teachers and lecturers, local authorities and head teachers. We also took advice from our policy and equalities team and ensured that relevant additional information and advice on equalities and implicit bias was provided in our materials. Relevant extracts can be found in the appendix to this letter.

To help you better understand the steps we took prior to the publication of our information to centres, I have asked my equalities and policy team to document these steps. We will provide this to you as soon as we can, and it will be information relevant to our overall EIA that will cover all the interrelated stages of the process. We will also, in advance of the 29 May deadline for the submission of estimates, provide some additional information to centres about equalities issues via our regular centre communications and targeted FAQs via the SQA website.

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I hope this letter reassures you of our commitment to meet our obligations to the Equality Act 2010 and the 2012 Regulations. In the interests of learners, I want to ensure that there is a constructive dialogue between us on these matters moving forward in order that appropriate assurance can be provided and that any further unnecessary worry or distress can be avoided.

As a helpful next step, I am happy to arrange a further discussion.

Yours sincerely

**Personal Data**

Fiona Robertson  
Chief Executive

CC: Lynn Welsh, Head of EHRC Scotland Legal and Compliance

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## Appendix

Appropriate extracts from the [SQA Academy course](#)

### Estimates and equity for all candidates

There may be a range of factors that impact on candidates' access to learning. When making judgements on individual estimates, it is important to bear this in mind, especially in the following cases:

- Candidates who have assessment arrangements or who would have reasonable adjustments (for example a reader, or scribe).
- Candidates who may have difficulty working from home, or working independently, perhaps for reasons associated with deprivation.
- Candidates, including those who may have caring responsibilities, who are care experienced, who may have further interrupted learning due to illness or disability, which at this time present barriers to learning.
- Candidates who have reduced or no access to specialist support for learning staff, resources or assistive technology that they would normally have in school or college.

For these candidates especially, it is important that they are not disadvantaged for being unable to complete any work set after the closure of centres. The SQA statement of [2 April 2020](#) made it clear that there was no requirement to set additional mock/prelim or homework tasks to help with estimates.

For candidates who have assessment arrangements, or who would have reasonable adjustments, estimates should be based on likely achievement with the reasonable adjustments/assessment arrangements in place. When reviewing prelims or mock assessments, reflect on whether appropriate support was in place, or whether the assessment was used as a 'baseline' indicator for future support. It is worth emphasising that these candidates may have been unable to access their usual levels of support in home learning situations.

These candidates may normally be taught by peripatetic teachers or support for learning specialists. You may wish to include these staff in estimate discussions.

### Bias

Any discussion of fairness must take account of the possibility of bias. When coming to a decision about a candidate's estimate, you must try to detach yourself from the individual in order to be as objective and as 'standard' in your decisions as possible.

Special mention must be made of what might be called 'implicit bias'. Implicit bias originates from assumptions or stereotypes based on characteristics such as background, gender, disability, race and ethnicity. Research has strongly suggested that implicit bias may be a contributing factor to assessment judgements, and it is for this reason that SQA's normal e-marking procedures includes the suppression of personal candidate data. In the absence of these procedures this year, we need you to think about potential bias in relation to the

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estimates you are providing. Candidate evidence should be valued for its own worth and merit as an indicator of course assessment, and a conscious effort should be made to consider and avoid the negative impact of potential implicit bias. You should do this as you finalise your estimates and ranking by considering the accuracy of the decisions you make alongside candidate data on background, gender, disability, race and ethnicity, at both class and cohort presentation level.

Moderation across departments, learning areas and faculties will ensure fairness for all candidates and ensure that robust standards are maintained.

**Sign-off process for head teachers and college principals**

As part of the quality assurance steps, we ask head teachers and college principals the following question:

“Have all judgements been made after consideration of inclusion, equality and any additional support needs of candidates?”