

Fiona Robertson
Chief Executive & Scotland's Chief
Examiner
Scottish Qualifications Authority

SENT BY EMAIL

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Tuesday 19 May 2020

Dear Fiona,

SQA compliance with the public sector equality duty

Thank you for your letter of 13 May, addressed to our Commissioner Dr. Lesley Sawers, explaining the approach being taken by SQA to meet your obligations under equality law in the development of the alternative certification model for 2019-20. I am responding on behalf of the Commission.

As you will be aware, the Commission is mandated by Parliament to independently promote equality, encourage good practice and enforce the Equality Act 2010. At this challenging time, we are particularly focused on the equality and human rights implications facing our communities, and this includes learners and their families affected by the cancellation of the 2019-20 exam diet. It is for these reasons that we wrote to you on the 9 April to highlight

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the importance and value of meeting your legal obligations under the public sector equality duty to your fullest ability and to offer our help.

I have to respectfully disagree with you that the Commission has called your work into question through the media. Our public statement was made in response to a request from the media about your evidence to the Scottish Parliament Education and Skills Committee. In particular, it concerned a question from the Committee about whether an equality impact assessment (EIA) of the alternative certification model had been done, and your reply that yes one had been done and that you were in discussions with the Commission to assure yourself that the approach is fair.

We have made every effort to raise our concerns with you and give you the opportunity to discuss them with us. When we did not receive a response to our letter of 9 April, the Commission contacted your office on 20 April to check whether the guidance on estimating grades and the accompanying EIA was going to be published. We wrote to you again on 28 April raising concerns that, despite our earlier advice, SQA did not appear to have carried out the required EIA and suggested we meet with you urgently. We were then contacted by the Head of Research, Policy, Standards and Statistics at SQA taking up our offer to discuss our concerns. 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.

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Despite **NR** advising that a draft EIA had been done and that it would be shared with us, this has not been forthcoming and, regrettably, the information provided in your letter to Dr. Sawers has confirmed the Commission's concerns that the SQA has not complied with its obligations under the public sector equality duty.

Regulation 5 of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 requires SQA to assess the impact of applying any proposed new or revised policy against the needs set out in the public sector equality duty and to take account of the results of the assessment in developing that policy. In your statement on 19 March, you explained that work had started to develop an alternative certification model. At that time an EIA should also have been started so that it would assist in your development of the model. In order to be rigorous, the EIA should have considered the:

- available equality evidence,
- likely effect of the proposed alternative model on groups with protected characteristics and the
- measures which might mitigate any adverse impact and alternative policies or practices which might better promote equality of opportunity or foster good relations.

Regulation 5 also requires SQA to publish the results of the EIA within a

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reasonable period. Given the need for transparency in decision making in these difficult times best practice would have been for SQA to have published the results of the EIA as soon as possible after the decision was taken to apply the alternative certification model. Even though we have asked on several occasions, you have failed to share or publish the EIA or to provide written evidence to demonstrate that the needs of the public sector equality duty were considered in deciding the alternative certification model and the revised estimation process.

Since it appears that no EIA has been undertaken, it is of critical importance that SQA now reviews the model against the needs in the public sector equality duty and, if necessary, revises parts of the model not yet implemented. This should include, in particular, a review of the implementation of the revised estimation process to consider whether there are immediate steps that can be taken to mitigate any disparate impact on particular protected characteristic groups. This will ensure that when you decide and award exam results, you will have complied with your public sector equality duty.

While our regulatory status remains paramount, our focus continues to be on ensuring that fundamental issues of equality underpin the alternative certification model. Therefore, we require you to urgently provide us with details of the steps you will take to ensure SQA meets its duties to review the alternative certification model and assess it against the needs in the public

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sector equality duty. If this information is not immediately forthcoming we will have no option but to consider use of our enforcement powers.

I am pleased that you want to ensure there is a constructive dialogue between us and I hope the information in this letter has clarified our position. I look forward to receiving your response by return.

We remain willing to work constructively with SQA to ensure that you understand and meet your public sector equality duty going forward. Once we have your assurance that the necessary EIA will be done, we would be happy to arrange a call with Dr. Sawers to discuss how can move forward positively in the best interests of learners. I remain happy to discuss our concerns and the action we need to see taken, if that would be helpful.

Yours sincerely,

Personal Data

Lynn Welsh
Head of Scotland

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