

Rapid Review of National Qualifications experience 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.

We welcome this review into the arrangements put in place by the Scottish Government and the SQA following the cancellation of the 2020 exam diet due to the Covid-19 pandemic. It is critical that lessons are learned ahead of the 2021 diet. We also welcome the opportunity provided to our Young Advisers Group (YAG) to meet with the review team and provide their individual experiences of the process. As noted, we encourage the review to engage with the broadest possible range of young people in order to secure a representative sample of views.

We are concerned that, at no point, from the decision to cancel the exam diet onwards, were children and young people recognised as rights holders and no meaningful assessment of the impact on their rights appears to have been undertaken when decisions were made. We wish therefore to encourage the review team to adopt a children's human rights-based framing to its work. The following Articles of the UNCRC are relevant and were identified in the rapid impact assessment conducted by our YAG:

- Article 2 – non-discrimination
- Article 3 – best interests of the child
- Article 12 – the right to participate and have views taken into account
- Article 17 – the right to information
- Article 24 – the right to good quality healthcare
- Article 28 – the right to an education
- Article 29 – the right to an education which develops personality, respect for others' rights and the environment.

Whilst the YAG focussed on UNCRC rights, these are complemented by young people's rights under other treaties, including:

- European Convention on Human Rights (ECHR)¹
 - Article 13 – right to an effective remedy
 - Article 14 – prohibition of discrimination
- UN Convention on the Rights of People with Disability²
 - Articles 5 – non-discrimination
 - Article 7 – the rights of children with disabilities
 - Article 13 – effective access to justice
 - Article 24 – the right to education

The YAG met with the SQA on 13th July and shared their rapid CRIA with them at that time.

¹ European Convention on Human Rights

² Convention on the Rights of People with Disabilities

Since the Deputy First Minister announced the cancellation of the 2020 exam diet in March, we have engaged with Scottish Government and the Scottish Qualifications Authority (SQA). This has included regular meetings with the Acting Director of Children and Families and with Scottish Government officials, as well as significant correspondence, which we have attached as an appendix. We also highlighted the impact these decisions had on children and young people in our evidence to the Education and Skills Committee of the Scottish Parliament in May 2020³ and in the Independent Children Rights Impact Assessment (CRIA) we commissioned from the Observatory of Children's Human Rights Scotland⁴, published on 16th July 2020.

We have consistently highlighted our concerns that the Alternative Certification Model, including the grade estimation and moderation/ranking guidance as well as both the existing and revised appeals and post-certification review (PCR) policies were not compatible with children's rights as expressed in the UNCRC.

We urged the SQA to undertake Children's Rights Impact Assessments (CRIA) in relation to their decisions. To be effective, a CRIA must be developed and considered before decisions are made and reviewed at every stage, to ensure that children's rights are taken into account in all decisions that impact children's lives.⁵ Similar concerns were raised by the Equality and Human Rights Commission (EHRC) in relation to Equality Impact Assessments. We note that the SQA NQ 2020 Awarding Decision Timeline indicates that the draft CRIA was not considered by the SQA Board until 30th July⁶ and the published document does not address the full range of rights engaged or properly assess the impact of decisions. This meant that the predictable negative impacts of the alternative certification model were not identified and no mitigations were put in place. In particular, the application of a statistical modelling approach at school level resulted in clear and obvious unfairness and disadvantage for many young people. The CRIA should have identified this.

Children have the right to participate in all decisions affecting them as outlined in Article 12 of the UNCRC and the UN Committee on the Rights of the Child's General Comment No. 12 (2009) on the right of the child to be heard.⁷ The views of children and young people should be given due weight, taking into account their age and maturity and evolving capacities⁸. The young people affected by this decision were 15-18 years of age and candidates for external examinations – it would be expected that significant weight be given to their views but this did not happen. The young people from 'SQA, Where's Our Say', supported by Dr Tracy Kirk, campaigned effectively on young people's rights to participation in the SQA process and we hope that this review will take account of their submissions.

However, the SQA's decision not to publish any information until results day meant that there was no opportunity for young people to contribute to decision making on the alternative certification model.

³ Education and Skills Committee - Evidence of the Children and Young People's Commissioner

⁴ Independent Children's Rights Impact Assessment

⁵ See Scottish Government: Children's rights and wellbeing impact assessments: guidance

⁶ SQA NQ 2020 Awarding Decision Timeline

⁷ The right of the child to be heard

⁸ Lansdown, Gerison (2005). The Evolving Capacities of the Child, Innocenti Insights no. 11, UNICEF

We understand that the SQA instructed centres not to discuss the assessment process with young people, excluding them from the decisions and preventing them from challenging the assessment prior to receiving their results. Disabled young people, those with care experience and those with young carers should have been given particular attention by schools and colleges when estimating grades. To avoid discrimination, estimation of grades for these young people should have taken place in the context of holistic assessments, in line with the Education (Additional Support for Learning) legislation and Getting it Right for Every Child (GIRFEC)⁹, to ensure estimates were informed by their individual circumstances. As a Corporate Parent, the SQA had an obligation to give particular attention to the needs of children of care experienced children and young people¹⁰. And in all cases, the young person's views should be taken into account and given due weight in line with their evolving capacities.

In both the existing SQA Appeals and PCR processes and the revised 'Appeals' process announced on 19th August, individual young people have no rights to appeal or seek a PCR on their results, nor to have their personal circumstances taken into consideration. Only a school or college can lodge an appeal¹¹. This is despite reassurances given to young people by the First Minister on 5th August and to the Scottish Parliament by the Deputy First Minister on 11th August¹².

Through our advice line and in our other work, we have heard from young people (and their parents) who are concerned that their result was under-estimated due to a failure to take account of circumstances such as disability, absence due to ill health, their looked after or immigration status, or the fact that they are a young carer or home educated, all of which may result in barriers to learning or interruption of education. In this situation young people are dependent upon the school or college agreeing that they have discriminated against the young person or have made an administrative or procedural error and submitting an appeal.

Being denied a direct right of appeal, where they believe they have experienced discrimination, breaches not only the young person's right to an effective remedy under Article 13 and the prohibition on discrimination in Article 14 of the ECHR, and Article 2 of the UNCRC and in the case of disabled young people Article 23 of the UNCRC.

Many of the negative impacts relating to the cancellation of the 2020 exam diet are the result of a failure to recognise young people as rights holders and as the key stakeholders of the Scottish education system.

Similar failings must be avoided in the future through transparent and pro-active consideration of children's human rights at all stages of SQA and Scottish Government decision-making in future models for assessment and certification of young people's achievements.

For further information, please contact Megan Farr, Policy Officer at megan.farr@cypcs.org.uk or 07803 874 774

⁹ GIRFEC National Practice Model and Education (Additional Support for Learning)(Scotland) Act 2004, as amended

¹⁰ Children and Young People (Scotland) Act 2014

¹¹ SQA: Appeals. Wednesday 19 August

¹² Scottish Parliament Official Report 11th August 2020