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Michael Gove

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Dear Michael

Data protection and qualifications issues

I would like to draw your attention to a matter related to data protection legislation and arrangements being put in place currently for the award of qualifications across the UK this summer.

The NASUWT accepts that for qualifications to be awarded fairly and reliably, it will be necessary for centre assessed or estimated grades, bands, other assessment outcomes and rankings to be submitted to awarding bodies.

So that the process for generating such information is rigorous, equitable and objective, it must not be shared with any individuals outside centres, including candidates and their parents. Regulators across the UK have recognised rightly that centre staff must be protected from pressure to provide assessments or estimates that do not reflect their considered professional judgements.

The NASUWT notes that paragraph 25(2) of Schedule 2 of the Data Protection Act 2018 provides an exemption for centres in respect of personal data requests that relate to qualification information, if such requests are made before the publication of final outcomes. Centres must be confident of the legal basis on which they can decline any access requests and the Union has drawn attention to these provisions in the Act in its advice to members.

However, while the Act provides an exemption for data requests made before publication, this exemption only continues to apply for a period of 40 days after the announcement of results. It is not clear that centres would have any legitimate grounds on which to decline a request made after this period has elapsed.

There is, therefore, a significant risk that candidates or their parents who are unhappy with final awards may seek disclosure of centre assessed or estimated grades, bands, other assessment outcomes or rankings. Notwithstanding the fact that responsibility for final outcomes will rest with awarding bodies and that these outcomes may not be the same as centre assessed or estimated outcomes due to the application of statistical standardisation, candidates or their parents may blame teachers for awards that fall below their expectations. Not only could disclosure of centre assessed or estimated outcomes in such circumstances result in candidates or their parents expressing their dissatisfaction in inappropriate ways but the anticipation by teachers of such behaviour could lead them to conclude, with good reason, that they are not in the best possible position to provide assessed or

estimated outcomes and rankings based on their professional evaluation of potential candidate performance alone.

Consequently, there is an evident need to secure the trust of teachers in these processes by providing a permanent exemption for all requests made for centre assessed or estimated outcomes in respect of summer 2020 qualifications.

The NASUWT recognises that such an extension would require changes in primary legislation, although I recognise that the powers available to Ministers in each UK jurisdiction in the Coronavirus Act 2020 may be relevant in this regard. In any event, given that competence for data protection legislation is reserved to Westminster, I would urge you to take all possible steps to ensure that a permanent exemption can be secured across the UK.

More broadly, this issue serves to highlight the NASUWT's call for teachers and school leaders to benefit from indemnification arrangements comparable to those introduced for health service professionals in the Coronavirus Act.

While there is no question that best efforts are being made to implement effective qualification awarding processes in difficult circumstances, it is unavoidable that the levels of risk that teachers and school leaders face in this respect is higher than would normally be the case. Indemnification for centre staff would provide some important reassurance in this area.

I have copied this letter to the Secretary of State for Education, as I have written to him in similar terms about arrangements in England. The letter is also copied to the Secretary of State for Digital, Culture, Media and Sport given his UK-wide responsibility for data protection matters.

I look forward to your response.

Best wishes

Yours sincerely



Chris Keates (Ms)
General Secretary (Acting)

cc. Rt. Hon. Gavin Williamson CBE MP
Rt. Hon. Oliver Dowden CBE MP

