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Dear Gavin

Data protection and qualifications issues

When we met earlier this week, I raised an issue relating to data protection and arrangements for the award of qualifications this summer and said that I would set out the NASUWT's concerns in this respect in writing.

The NASUWT accepts that in order for qualifications to be awarded fairly and reliably, it will be necessary for centre assessed grades and candidate rankings to be submitted to awarding bodies. So that the processes for generating centre assessed grades and rankings are rigorous, equitable and objective, grades and rankings must not be shared with individuals outside centres, including candidates and their parents. As Ofqual has noted, centre staff must be protected from pressure to submit centre assessed grades and rankings that do not reflect their professional judgements faithfully.

The NASUWT, therefore, welcomes the confirmation in Ofqual's guidance that paragraph 25(2) of Schedule 2 of the Data Protection Act 2018 provides an exemption for centres in respect of personal data requests for examination information that are made before the publication of final grades. Ofqual has rightly emphasised that under no circumstances should this information be shared and it is important that centres are confident of the legal basis on which they can decline access requests. The Union has already drawn attention to this provision in the Act in its advice for members, and it would also be helpful for the DfE to do so in its public communications on this matter.

However, it should be recognised that this exemption only continues to be available to centres for 40 days after the official announcement of results. It is, therefore, not clear that centres would have any legitimate grounds on which to decline requests made after this period has elapsed.

As I am sure you will appreciate, there is a significant risk that candidates or their parents who are not content with the grades that have been awarded may seek disclosure of centre assessed grades or rankings. Notwithstanding the fact that responsibility for final grades will rest with awarding bodies and that these grades may not reflect the information submitted by centres due to the application of statistical standardisation, candidates or their parents may blame teachers for final

grades that fall below their expectations. I am concerned that not only could disclosure of centre assessed grades and rankings result in candidates or their parents expressing their dissatisfaction in inappropriate ways, but also that 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 grades and rankings based only on their professional evaluation of candidates' potential performance.

There is, therefore, an evident need to secure the highest possible levels of trust by teachers in these arrangements by providing a permanent exemption for all access requests made for centre assessed grades and rankings in respect of the summer 2020 series. The NASUWT recognises that such an extension would require changes in primary legislation that fall outside your direct remit as Secretary of State for Education, although the powers available to you in the Coronavirus Act 2020 may be relevant in this regard. In any event, I would urge you to take all possible steps to ensure that such a permanent exemption can be secured.

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 raise this issue with you in respect of arrangements in England. However, as comparable issues arise concerning arrangements for qualifications in the devolved administrations, I have written in similar terms to the Minister for the Cabinet Office given his responsibility for UK-wide public policy matters during the COVID-19 outbreak.

I look forward to your response.

Best wishes

Yours sincerely



Chris Keates (Ms)
General Secretary (Acting)

