

The Scottish Qualifications Authority
The Optima Building
58 Robertson Street
Glasgow
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By email only

30 March 2021

Re: 2021 National Qualifications Appeals Process Consultation

In advance of our meeting on 16 April 2021 to discuss the plans that the Scottish Qualifications Authority (SQA) are putting in place for appeals in 2021 in Scotland we are writing to you, having reviewed the consultation, to set out some reflections on the relevant data protection issues for your consideration.

As well as monitoring and enforcing the UK General Data Protection Regulation ('UK GDPR') and Data Protection Act 2018 ('DPA 2018'), the Information Commissioner's functions include promoting public awareness and understanding of the risks, rules, safeguards and rights in relation to the processing of personal data.

This correspondence and any response received do not prejudice the potential future use of the Commissioner's regulatory powers should any infringements of data protection law come to light.

The appeals process

It is the ICO's understanding that the consultation relates to three varying models for the appeals process. The following advice is based on the proposals that have been outlined in the consultation. We would request that the SQA kindly notifies the ICO in the event of any significant changes to these proposals as our advice may need to be reviewed.

Lawful basis

Organisations must ensure that they have identified a lawful basis for processing personal data.

It is understood that special category personal data may be processed (as it is in a 'normal' year) as part of the appeals process. For example, the process for assessing and implementing reasonable adjustments will often involve consideration of data concerning health. If the adopted model for appeals arrangements in 2021 result in adaptations to normal procedures, data protection compliance measures will need to be reviewed to ensure special categories of personal data are processed compliantly and that both an Article 6 and Article 9 condition are identified along with the relevant DPA 2018 provision if required. Further information regarding the processing of special category data can be found [here](#).

Transparency and Fairness

Fairness and transparency are fundamental components of the data protection framework. Even if a lawful basis has been identified the processing of personal data must be fair. This means data controllers must not process personal data in a way that is unduly detrimental, unexpected or misleading to the individuals concerned. Ensuring that students are clear about the process and circumstances under which they are able to make an appeal will be key to ensuring fairness.

We also note that provisional results will be given to students in advance of results day on 10 August 2021 meaning there will be a buffer between students receiving their provisional grades and those results being formalised for the purpose of university admissions and other onward opportunities. The ICO can see potential benefits in this approach in terms of the fairness of processing personal data though we note that this is primarily a matter for the SQA and other relevant bodies to consider.

Students as data subjects have the [right to be informed](#) about the processing of their personal data which is intertwined with a data controller's obligations around transparency. Ensuring that students are fully informed about the process by which to make an appeal will be key. We are aware of the guidance leaflet for students, which is welcomed ([What you need to know for 2021 - National 5, Higher and Advanced Higher - SQA](#)), and we would encourage SQA to update this or create a further more specific leaflet around the appeals process which would also support compliance with the UK GDPR.

Article 35 – Data Protection Impact Assessment (DPIA)

As in previous academic years, the appeals process will involve the processing of personal data. UK GDPR Article 35 outlines when a DPIA should be undertaken and there are a range of processing activities where the ICO expect organisations to undertake a DPIA. A DPIA enables a systematic and comprehensive analysis of processing and helps to identify and minimise data protection risks. A good DPIA helps to evidence that risks related to the intended processing have been considered and that the broader data protection obligations have been met.

SQA should consider whether it would need to undertake a DPIA in relation to the appeals process.

Concluding comments

We appreciate the complexity of the circumstances facing the SQA given the impact of the Covid-19 pandemic, as well as your responsibilities to deliver fair and high quality assessments and appeals for students seeking qualifications in 2021. As indicated above, we would emphasise the importance of the data protection principles, in particular fairness and transparency, as well as undertaking a DPIA to assess the compliance of any planned processing of personal data. Should you wish to discuss any other matters of data protection policy with the ICO as you develop your plans, please get in touch. The ICO is also reviewing and intending to refresh as needed the guidance we put in for schools and colleges last year in relations to data subjects' rights and the exam script exemption.

I trust that this information is useful and we look forward to discussing the SQAs approach regarding the appeals process at the meeting in April. We also welcome any further discussion on any of the matters raised above should you have any further questions.

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice