NICCY’s advice on CCEA’s appeal process for summer 2020 awarding of GCSE, AS and A level qualifications

21 May 2020

1.0 Introduction

The Commissioner for Children and Young People (NICCY) was created in accordance with ‘The Commissioner for Children and Young People (Northern Ireland) Order’ (2003) to safeguard and promote the rights and best interests of children and young people in NI. Under Articles 7(2)(3) of this legislation, NICCY has a mandate to keep under review the adequacy and effectiveness of law, practice and services relating to the rights and best interests of children and young people by relevant authorities. The remit of the Office is children and young people up to 18 years, or 21 years of age if the young person is disabled or in the care of social services. In determining how to carry out her functions, the Commissioner’s paramount consideration is the rights of the child and NICCY is required to base all its work on the United Nations Convention on the Rights of the Child (UNCRC).

The coronavirus pandemic has had unprecedented impacts on our public services particularly in our education and health systems. So too have the arrangements required to be put in place to control the infection; most notably, the closure of schools and subsequent cancellation of exams. Exceptional times have required exceptional measures; NICCY welcomes the establishment of new arrangements by CCEA to ensure that students will receive GCSE and AS/A level qualification grades this summer. Expedient establishment of these measures was essential to provide clarity and enable young people to plan for the next stage of their educational careers. NICCY also greatly appreciates the time taken by Chief Executive Justin Edwards and other CCEA staff to speak with the NICCY Youth Panel and to respond to their queries and concerns.

The cancellation of exams has understandably led to great uncertainty, frustration and anxiety for young people. As identified through discussions with the NICCY Youth Panel, young people have a range of concerns and queries about the alternative arrangements to award grades this summer. They are understandably concerned about whether the process will be fair, robust, and accurate; have queries about the nature and quality of evidence that will be used by teachers to predict grades; and whether the awards generated will be truly reflective of how they would have performed should they have been to sit their exams. Many young people have expressed frustration that they may be unfairly disadvantaged in the absence of formal assessment whilst others are concerned about lost learning. There has been reflection of the fact that remote learning is not the same as face-to-face engagement with teachers and peers, and concerns regarding the impact of lost teaching time on young people’s learning and development. AS students have particular concerns that their progress this year will not count towards their final A level result; as such, some AS students queried how this year’s appeals process applies to them.

Understandably, young people have felt powerless in influencing the decisions being made regarding their education and exams. They have reflected that this has been compounded by inconsistency in communications between schools and CCEA, gaps in the information available, and complex and confusing communications. **Now, more than ever, it is essential that a robust, fair, and transparent appeals process is provided for young people. This must safeguard the rights and best interests of young people and provide opportunities for their views to be heard and taken into account.**

In this response, NICCY firstly sets out our appraisal of whether CCEA’s proposals fulfil its obligations to children and young people under the United Nations Convention on the Rights of the Child (UNCRC). We then detail NICCY’s response to each of the proposals as set out in CCEA’s consultation paper. Feedback from the NICCY Youth Panel has been integral to informing NICCY’s response.

2.0 General comments on CCEA’s proposals

The UNCRC is a set of legally binding minimum standards and obligations in respect to all aspects of children’s lives that the Government has ratified and must comply with in the discharge of its functions. The Northern Ireland Government Departments, including the Department of Education and its arm’s length bodies, are obliged to comply with the obligations under the UNCRC by virtue of being a devolved administration of the UK Government, signatory to the UNCRC. **The current crisis does not negate these obligations; rather, in response to the pandemic, additional action and effort is required to ensure that children and young people’s rights are protected now and in the weeks and months ahead.**

The UNCRC principles require the Government to ensure that children are not discriminated against - Article 2, that their best interests are upheld - Article 3, they develop to their maximum potential - Article 6, and they are able to meaningfully participate in all aspects of their lives - Article 12. In NICCY’s response to CCEA’s proposals, we have considered the extent to which these principles have been upheld. We have also considered whether the proposals fulfil the obligations of Article 29(1) of the Convention, which reflects that educational experiences should reflect the rights and inherent dignity of the child; insists on the need for education to be child-centred, child-friendly and empowering; and highlights the need for educational processes to be based upon the principles outlined in Article 29(1).

General Comment 1 on the Aims of Education**[[1]](#footnote-1)**also highlights a number of other Convention articles which are relevant to the fulfilment of the aims of education as detailed under Article 29 of the Convention**[[2]](#footnote-2)**, and against which we have considered CCEA’s proposals. These include, but are not limited to, right to freedom of expression (Article 13), freedom of thought (Article 14), the right to information (Article 17), the rights of children with disabilities (Article 23), the right to education for health (Article 24) and the linguistic and cultural rights of children belonging to minority groups (Article 30).

Having reviewed CCEA’s proposals against the aforementioned principles, NICCY is greatly concerned that children and young people’s rights are not protected in the proposed arrangements for this summer’s appeals. NICCY does not think it is acceptable that CCEA’s proposals provide little to no opportunity for young people to exercise their right to appeal. In fact, NICCY feels that the proposed arrangements do not protect young people’s best interests (Article 3) or protect other fundamental rights, including the right of a young person to participate in the issues that affect them (Article 12).

NICCY acknowledges that due to the exceptional arrangements that have been put in place this summer, it is challenging for CCEA to operate its usual appeals process. Nonetheless, it is more essential than ever that processes enable young people to exercise their right to appeal. For the first time, grades are being based almost entirely on teacher and centre judgement. Whilst NICCY wishes to acknowledge teachers’ professionalism, expertise, and hard work, particularly in these challenging times, we cannot overlook the potential risks associated with this approach to grading. Furthermore, the uniqueness of this year’s arrangements means that the usual processes to moderate students’ grades are not available. NICCY recognises that CCEA is developing a model to standardise centre assessed grades; nonetheless, this does not negate the necessity and, indeed, right of students to appeal on the basis of teacher’s judgement or on centres’ procedures. For these reasons, it is vital that CCEA’s appeals process is not simply limited to appeals on the grounds of administrative or procedural error. **The alternative arrangements must fulfil the usual aims of the appeals process i.e. provide the opportunity for review and challenge of assessment judgements.**

In its proposals, CCEA acknowledges that students may be concerned that their centre has not followed an appropriate and fair process in arriving at the assessment grade to be submitted, and that students may wish to appeal this part of the process. Feedback from the NICCY Youth Panel has fully corroborated these concerns. As reflected throughout this response, young people are concerned about the potential for teacher bias; about the variation and range in evidence upon which teachers and centres will make their assessments; about how schools and CCEA will standardise grades; and whether the final grades will be a fair and accurate representation of what students would have achieved, had they been able to sit their exams. Young people not only require clarity on what basis their grades are being calculated, but also opportunity to review and appeal.

Furthermore, NICCY is disappointed about the inaccessibility of CCEA’s consultation process for young people. NICCY recognises that CCEA has had limited time to prepare for its consultation on appeals, and that the short timeframe for response was set to provide early certainty and allow sufficient time for the arrangements to be put in place. Nonetheless, discussions with NICCY Youth Panel emphasised the complexity of the process, as outlined below.

When engaging the perspective of the panel on CCEA’s proposals, we asked young people for their views on the consultation process. Many had been sent web links to the consultation by their school, but the link went directly to the survey rather than the consultation paper which caused initial confusion, followed by more confusion as they attempted to answer the questions. The panel overwhelmingly felt that the consultation was extremely inaccessible for young people; they reflected that this was especially challenging at a time of already heightened anxiety when young people are feeling very uncertain about the impact of the current situation on their future prospects. Some of the specific concerns about the format of the consultation was that the questions were much too long and used “unnecessarily complicated language”, the use of double negatives made questions confusing, and key concepts such as ‘rank order’ and the statistical standardisation model were not explained clearly.

The young people felt that it would be extremely difficult for most young people to respond to the consultation without being involved in a facilitated process and that it would have been more useful to have the proposals explained in short videos rather than documents alone. The panel shares NICCY’s concern that this consultation process does not meet CCEA’s obligation to consult young people in decisions that affect them. NICCY is concerned that this inaccessibility has deterred young people from fully understanding and responding to the process.

3.0 Detailed response to CCEA’s proposals

In the remainder of this paper, we outline our response to each of the questions set out in CCEA’s consultation paper. Our response has been heavily informed by consultation with the NICCY Youth Panel who provided their feedback via a range of mechanisms including: a facilitated online discussion, an adapted version of CCEA’s survey, and via email. 21 young people participated in the discussion and 17 in the survey. The views and concerns expressed by the panel are fully supported by NICCY and must be taken into consideration by CCEA in developing its appeals process.

Q1. To what extent do you agree or disagree that CCEA should provide for a centre to appeal to CCEA AO on the grounds that CCEA AO used the wrong data through its own administrative error or failure to follow its own procedures when calculating a grade, and/or incorrectly allocated or communicated the grades calculated because of this?

NICCY resolutely agrees that pupils and schools should be able to appeal on the basis of CCEA awarding procedure. CCEA has a duty to ensure fairness by allowing errors in the process of awarding, if identified, to be rectified[[3]](#footnote-3). NICCY believes it is essential that schools should be able to appeal a pupil's result if they think CCEA has made a mistake in how it has standardised grades after receiving them from teachers. NICCY can also see no reason why the usual conditions, that require CCEA to provide for the effective appeal of results on the basis that it did not apply its procedures consistently, properly or fairly in arriving at those results, should not apply this summer. In fact, given the uniqueness of this summer’s awarding arrangements, it is more important than ever that a robust mechanism for scrutiny and appeal is enabled.

Feedback from NICCY’s Youth Panel reflected their whole hearted agreement of the need for appeals on the basis of CCEA procedure. As one Youth Panel member advised:

*“Yes because this [administrative error] could result in pupils getting lower grades than they deserve and possibly missing out on moving up or progressing such as to university.”*

In its proposals, CCEA has noted that it will need to specify the information it will use for the purposes of statistical standardisation, as well as the broad principles of the model itself. CCEA also notes that it will have in place, and follow, a process to make sure the relevant information is taken into account for each student. **NICCY agrees that this is absolutely critical in enabling full transparency in the process and must be provided urgently.**

Q2. To what extent do you agree or disagree that for results issued this summer, CCEA AO should only consider appeals submitted by centres and not those submitted by individual students?

NICCY recognises that CCEA’s proposals allow for a student to raise an appeal through a centre which may then proceed to appeal on their behalf. Nonetheless, we are concerned that this may limit the candidate’s right to appeal. Whilst we acknowledge the practical benefits, and recognise that centres will have additional information that may make them better positioned to identify where an error has arisen, we disagree that CCEA should only consider appeals submitted by centres. We feel strongly that young people should have the opportunity to make an informed consideration and to challenge whether their results are incorrect, should their centre not wish to do so.

Feedback from the NICCY Youth Panel corroborates our position. The panel largely recognised that schools were likely to have more relevant information that would allow them to identify where an administrative or procedural error had been made but highlighted that they would like to reserve the right to make direct appeals if they felt they really needed to.

*“Appeals put forward by centres will have a stronger backing and more information readily available in most cases. At the same time, there are fringe cases where students have a good case for an appeal but are being denied by their centre and so their concerns should be facilitated."*

Some panel members were concerned that schools would be discouraged from making appeals due to the amount of additional work this would give them or if the school disagreed that there was a mistake in the data. Therefore it is important to have the option for students to initiate an appeal directly with CCEA.

*“If going through school is the normal procedure that’s fair enough, but from past experience I think there should be opportunity for students to appeal. I was previously told too much paperwork and effort to appeal and told your grade was good enough. It was brushed under the carpet and I never got to appeal it, but if I had had the opportunity myself I could have appealed it so I think students should have the opportunity.”*

*“I agree that appeals should go through centres as they have more information and will better be able to determine if an error of this nature has occurred but I think there need to be strict guidelines in place to ensure that any appeals that want to be placed after checking with all the available information are made and not ignored by centres. If the school refuses to put forward an appeal then I think students should be able to contact CCEA directly in order to get this appeal put forward.”*

NICCY understands young people’s concern that they may be discouraged to appeal by their school, particularly in light of the integral role that centres have this year in generating pupils’ results. **NICCY therefore strongly calls for a process that enables students the right to directly appeal to CCEA should centres not be willing to progress an appeal on their behalf.**

Q3. To what extent do you agree or disagree that CCEA Regulation should not make it a regulatory requirement for CCEA AO to ensure consent has been obtained from all students who might be affected by the outcome of an appeal before that appeal is considered?

As noted earlier in our response, one of the fundamental principles of the UNCRC is that children and young people are able to meaningfully participate in all aspects of their lives. Article 12 establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. The child, however, has the right not to exercise this right. Expressing views is a choice for the child, not an obligation. States parties have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests.[[4]](#footnote-4)

NICCY’s response to question 3 is centred on the realisation and protection of this right. As such, we emphasise that it is absolutely imperative that young people are informed, before submitting any application for appeal, that their results may be negatively affected by that appeal. So too, must students be informed if a centre considers a mistake has been made which may affect the grades of an entire cohort or group of students at a school. NICCY is firmly of the position that it is vital that young people are given all necessary information to enable them to make informed decisions and to be able to contribute to issues that may affect them.

In preparing for our response, NICCY engaged the perspective of the Youth Panel on whether consent should be obtained from all students who might be affected by the outcome of an appeal before that appeal is considered. Young people’s responses were very much influenced by concern that an appeal that leads to a change in rank order for one student, may affect the grades of others in the centre; a comprehensive consideration of these concerns is provided at question 4. It should be noted that concern about this issue is very much compounded with respondents support, or lack thereof, for obtaining student consent before considering an appeal.

Survey responses to this question were fairly balanced with seven respondents agreeing and seven disagreeing with this proposal. However, respondents leaned toward stronger feeling (i.e. strongly agreed or disagreed) at either end of the scale. There were two main issues that determined whether the young people were likely to agree or not with this proposal. Those who felt strongly that consent should be obtained highlighted the importance, and indeed the right, of young people having a say in decisions that affect them.

*“Consent is essential if it will impact on other grades.”*

*“I think this is wrong, I think the schools should be required to obtain all necessary consent and that this should be checked before any investigations are carried out by CCEA. If someone does not give consent then their data should not be looked at or affected in any way.”*

Those who agreed that consent should not have to be sought before considering an appeal, highlighted concerns about the difficult situation this would cause for both the young person requesting the appeal, and for their peers who would likely be conflicted about agreeing to a process that may result in them getting a lower grade.

*“Instead of students being able to veto their classmates, peers, and friends, from getting the grades that they deserve through student consent to an appeal, surely students should be able to opt out of a classmates appeal so that regardless of a change to rank order etc the appeal will not change your grade if you opt out. Student consent allowing a veto to an appeal places too much pressure on relationships between schools, teachers, and students.”*

Some queried the practicalities of gaining consent from a large number of pupils sitting compulsory GCSEs such as English and Mathematics:

*“Would that mean that everyone would have to agree that I can get my grade checked? I would be concerned about this. If for Languages, English or Maths, or anything where there’s almost an entire year group doing a subject, if one person was to disagree [to give their consent] it does mean your grade could suffer.”*

As with many other aspects of CCEA’s proposals, the lack of clarity and perceived transparency of the process also caused concern. Young people expressed confusion at how a change in rank order could impact on a student’s overall grade and on the final grades of others. They sought clarity on why this may be the case:

*“I would need to know whether an appeal made by one person would affect the rank order only or the grade of other people. I would want to know if everyone would be affected or not. For example, if there is a class of 10 and there are 5A, 3B and 2C and the person in rank 7 overall or the second B appealed and moved to an A would they become rank 6, thus moving the original person in rank 6 to 7 but leaving all the other grades the same? So in the end there would be 6A, 2B and 2C? If consent was required would that mean that I could not make an appeal if I wanted to without everyone else in my class or my subject in my centre’s permission?”*

*“I would just like clarification on what happens if you don’t give consent or someone else doesn’t give consent. It is wrong that everyone’s grades are interlocked and interdependent as they have never been in previous years. If CCEA make an error then other students shouldn’t suffer after their grades have officially been submitted.”*

Such concerns highlight the need for more information to be provided to young people on the process for rank ordering, how this is used to inform CCEA’s standardisation model and students’ final grades, and how and for what reasons an appeal on rank order can affect a student’s final grade and those of others.

**NICCY reiterates that expressing views is a choice for a child, not an obligation. Authorities have to ensure that the child receives all necessary information and advice to make a decision in favour of her or his best interests. This is essential in ensuring that young people can make informed decisions on issues that may affect them.**

Q4. To what extent do you agree or disagree that should an appeal result in a change of rank order, the rank order position and potentially the grades of other candidates in the centre should also change?

As reflected in response to question 3, NICCY’s Youth Panel had great concern that, should an appeal result in a change in rank order for a candidate in a centre post results period, this could have an adverse impact on the statistical outcomes and therefore standards across the cohort. The majority of the panel felt very strongly that rank order, and in particular grades, of other candidates in a centre should not change following an appeal that results in change of rank order. There was a lot of concern about the potential for students to move to a lower grade than that which they had previously been awarded.

*“For a student's grade to change, there must be a high degree of certainty of the exact point where one grade begins and another ends, and usually there is direct evidence (say, 1% out from a grade boundary) for this. For a student's grade to change as a result of rank order would assume this degree of certainty, however during these circumstances this could not be possible. The highest certainty we have is the opinions of unbiased teachers, to allow this to be overruled by a shift in rank which would normally be inconsequential is illogical and should not be the case.”*

*“I believe that everything would be a lot simpler if CCEA just ensured other people’s grades would not be affected by any changes.”*

All young people felt that it would be extremely unfair for an appeal to cause another candidate’s rank order to change and potentially receive a lower grade, particularly for those who had since accepted university offers or places in 6th form.

*“I would feel really cheated by the system that somebody else can decide whether or not I get into 6th form [by appealing and causing an adverse impact on another’s grade]”.*

Again, a lack of clarity on the standardisation process caused confusion and anxiety for the young people. The young people felt unclear why a change in rank order position for one candidate in a subject should affect the rank order of other candidates in the centre, and frustrated and disadvantaged that this differed from the usual awarding process. A few queried why a tied rank couldn’t be permitted.

*“Usually grades are not interlocked and so they shouldn’t be now. If someone’s rank has to be changed, there should be a tied rank (possible solution) and so no one external to the appeal benefits/hinders from someone appealing.”*

*“Why should my grade change for someone else's appeal? And if I did want to appeal my grade why should someone else stop me from not getting the grade I believe I should get [if they don’t provide consent for my appeal in case it changes the rank order]? I just don't believe it's fair that everyone's grade should be affected, surely it should only affect the student who submitted the appeal.”*

Feedback from young people also reflects uncertainty about how CCEA will use the centre assessed and rank order to generate students’ final grades. There was some confusion about how the overall grade could be affected by a change in rank order. Some felt that there was conflicting information on how final grades would be determined.

*“I don’t see how the grade itself would be affected but if it could then I would want to be informed and to be allowed to give consent.”*

*“If the rank order changes does it even need to impact the grade you would get?”*

As is evident throughout this response, young people have significant concerns and are strongly opposed to the proposal that, should an appeal result in a change in rank order for a candidate in a centre post results period, this could have an adverse impact on the statistical outcomes across the cohort. **It is imperative that young people’s concerns are taken into consideration by CCEA in further developing its appeal process**. Feedback from the NICCY Youth Panel also further emphasises the need for clear information to be shared with young people about (1) how the final grades issued to students will be generated from the information provided to CCEA by centres and (2) on the statistical standardisation model developed by CCEA.

Q5. To what extent do you agree or disagree that CCEA AO should be permitted to ask persons who were involved in the calculation of results to be involved in the evaluation of appeals in relation to those results?

NICCY recognises the practical challenges for CCEA, operating in exceptional circumstances as a result of the pandemic, to make sure that sufficient members of staff are available who are familiar with the results process this year but also had no involvement in the calculation of a particular result, or set of results. NICCY also accepts that members of staff involved in the operation of the model are perhaps the most likely to identify whether a mistake has been made and quickly correct it. However, NICCY feels that further information is required before making a consideration on whether CCEA should be permitted to ask persons who were involved in the calculation of results to be involved in the evaluation of appeals related to those results. For example, further information is needed on:

* the extent of the involvement in the evaluation of appeals by those who had a role in the calculation of results;
* whether there will be staff to evaluate appeals who are independent from the standardisation model / had no prior involvement in the calculation of results;
* assurance that staff have no personal interest in the decision being appealed.

NICCY feels that there must be staff involved in the evaluation of appeals who were not involved in the calculation of results, particularly in light of CCEA’s proposals that centres should not be allowed to appeal on the basis of CCEA’s statistical standardisation model. As expressed throughout this response, **further clarity on the operations of CCEA’s statistical standardisation model must be provided as a matter of urgency.** Without this information, it is challenging to make a true assessment of issues such as resourcing of staff and how this may impact on the appeals process.

Q6. To what extent do you agree or disagree that CCEA AO should be able to run a different appeals process (i.e. compared to the normal process) this summer?

NICCY firmly believes that a formal appeal process must be available that considers appeals from centres that are concerned a mistake has persisted or been caused by any correction after an administrative review, but CCEA considers no mistake has been made. NICCY agrees that this formal appeals process is in the best interests of students. However, to be fully in the best interests of students, **NICCY believes that the formal appeal process should also consider requests for appeal by a student where these have been turned down or not progressed by the student’s centre**.

**NICCY agrees that the formal process should involve a decision-maker who is not an employee of the awarding organisation, an assessor working for it, or otherwise connected to it.** Whilst understanding of the exceptional arrangements this summer, the formal process shouldn’t be any less robust than the current JCQ Stage 2 appeal. Therefore the characteristics of this decision maker should be consistent with the independent members of the JCQ Stage 2 appeal and the process should take the form of an examination of all evidence pertaining to the student or students. It is imperative that the young person’s views and best interests are at the centre of the formal process and, where possible, that young people’s views are represented.

Q7. To what extent do you agree or disagree that CCEA should not provide for appeals in respect of the operation or outcome of the statistical standardisation model?

NICCY notes that CCEA proposes not to allow centres to appeal where there has been no error in the process followed by CCEA but the results issued are significantly out of line with the centre’s expectations. Our concern with this proposal lies in that fact that insufficient information has yet to be made available about the statistical standardisation model; it is not clear what information CCEA will use for the purposes of statistical standardisation nor is there sufficient clarity regarding the broad principles of the model itself. In previous discussions, the NICCY Youth Panel called for more information to be provided on the statistical standardisation model[[5]](#footnote-5). These calls were echoed during our more recent discussion with the panel on CCEA’s proposals for appeals; young people reiterated that they remain unclear about the model and need more information:

*“We don’t know what the statistical model is. How can we respond if we don’t know what it is? There needs to be more information.”*

In the proposals, CCEA has reflected that it considers the statistical standardisation model to be analogous to it setting grade boundaries in normal years. As appeals are not permitted on the basis that grade boundaries are incorrect, CCEA has proposed a similar prohibition on appeals in relation to the statistical standardisation model. However, without sufficient information on the model, NICCY is not assured that this is a wholly ‘like-for-like’ comparison. NICCY believes that students and centres should have the opportunity to scrutinise the model and, should no error have been made in the process followed by CCEA but results be significantly out of line with the centre expectations, for evidence-based reasoning to be given for that discrepancy, as well as opportunity to review and appeal. This is all the more necessary given that this summer’s awards process is premised on the knowledge, judgement, and professional expertise of teachers and centres.

**NICCY reiterates the need for clarity regarding the processes that will be applied to arrive at final grades for students, including further detail on the statistical standardisation model**. Greater explanation is needed about:

* how the model operates; the type and range of evidence that it combines;
* how it combines the evidence to accurately standardise centre assessment grades including how and the extent to which it removes potential bias; and
* the balance of weight given to historical evidence of centre performance (given the prior attainment of learners) versus the submitted centre assessment data (a grade and a rank, supported by a Head of Centre declaration).

Q8. To what extent do you agree or disagree that CCEA should not provide for a review or an appeals process premised on scrutiny of the professional judgements on which a centre’s assessment grades are determined?

NICCY has grave concerns about CCEA’s proposal not to provide for a review or appeals process premised on the scrutiny of the professional judgements on which a centre’s assessment grades are determined. These concerns were reinforced by members of NICCY’s Youth Panel. Only 3 of the 16 respondents felt it was appropriate not to allow appeals based on teachers’ professional judgement. Just over half the group strongly disagreed that CCEA should not provide an appeals process based on teachers’ judgements.

*“I am very concerned about this because this is very subjective as it down to the teacher’s professional opinion. As there is no framework of how they will allocate grades I think this leaves room for bias, mistakes and unfair judgements.”*

NICCY recognises that CCEA’s reasoning for not putting such a process in place is that there is no common benchmark or standard against which teachers’ professional judgements can be evaluated and, as such, ‘this makes an appeals process based on the teacher judgements in the centre assessment grades impractical’. Practicalities notwithstanding, NICCY feels this is not an acceptable reason for preventing student appeals based on the teacher judgements in the centre assessment grades. In fact, the absence of a common set of criteria against which teacher judgements are based makes it all the more essential that students reserve the right to appeal on this basis. It is not fully clear from CCEA’s proposals how the current arrangements will mitigate the effects of conscious or unconscious bias by teachers when making assessments nor the potential variation in the type and range of evidence considered by teachers in making their judgements. Both issues were reflected in discussion with the NICCY Youth Panel.

Feedback from the young people highlighted great unease about the potential of teacher bias in making their judgements on student grades. Young people expressed concern that the usual checks and balances to prevent this, such as using anonymised codes and moderation aren’t available in this summer awards:

*“The whole point of having anonymous codes was to prevent bias and subjectivity when marking, and now there is only subjectivity as teachers are always going to be subjective since they’re not machines. They can’t help it. Also with schools in charge of sending appeals, they are going to obviously side with their staff’s judgement against the students to protect their own credibility.”*

Subjectivity, particularly in art, music and drama, was also a great concern. The panel felt that they could be at a disadvantage as they would not have the same amount of time as students in previous years to hone their skills because of school closures.

*“Teacher's judgements are the main part of our grades and many subjects, like creative subjects like art or music, can be very biased.”*

Members of the NICCY Youth Panel who are studying additional qualifications outside of their host school, felt they could be at a significant disadvantage compared to students in that school as teachers would want to prioritise their own students for higher grades. One student was told by a teacher in another school that their grade did not concern the teacher as it would not affect the outcomes for the host school.

NICCY also notes that the risk of bias in teacher assessments was revealed in a literature review[[6]](#footnote-6) conducted by Ofqual to inform its proposals[[7]](#footnote-7). Whilst the evidence on bias was mixed, Ofqual recognised that centre assessment grades will, by their very nature, be more subjective than grades based on results of formal assessments. Ofqual also could not rule out the risk that teachers contributing to the determination of grades might exhibit a degree of unconscious bias in centre assessment grades. Such risks yield significant concerns about the subjectivity of teachers’ assessment. It highlights the need for greater scrutiny and the opportunity to challenge teachers’ judgements through the appeals process.

NICCY Youth Panel also felt that a perceived transparency on the process used by centres was problematic. The young people felt that it was important for schools to clearly communicate their procedures and the evidence assessed in making judgements so that learners could understand how teachers and centres determined their grades.

*“I also think that to be able to appeal the teacher's judgement, the students need to understand what evidence the teachers used to base our grades off.”*

NICCY recognises that the arrangements for this summer’s awards allow for wide variability in the type and range of evidence used by teachers in making judgements. Unlike usual arrangements, there is no defined marking criteria or means of ensuring that this is being accurately and consistently applied. In its proposals, CCEA notes that there has been no opportunity to train teachers to make consistent judgements for centre assessment grades this summer, other than any ongoing standardisation within individual centres. NICCY has great concerns that the range and amount of evidence that teachers will consider when making judgements will vary. So too will the ‘completeness’ of the evidence.

Consultation with NICCY’s Youth Panel further corroborated these concerns. Many pointed to inconsistencies, even within schools, about how much work had been completed for particular subjects, and how teachers could assess fairly. They queried how teachers would make equitable judgements if some had less evidence than others. There was also concern from young people who had been taught by, in some cases multiple, supply teachers throughout the year about how a fair grade could be determined. Young people called for further information on the processes used by schools to verify and standardise teachers’ judgements before submitting to CCEA. They noted the importance of young people getting access to the information they need to help them to understand how their grade was determined.

Young people also expressed concern about the quality of the evidence being considered by teachers and the extent to which it is a fair representation of their attainment, particularly if it is incomplete. They noted that they would have benefited from further learning and development, had schools not had to close, and that this further learning may have reflected in their grades. Some expressed concern about not having been able to complete practical assessments and that they may have gotten a higher grade had they had the time and opportunity to complete these assessments.

A small number of the young people had concerns about how A\* grades would be determined as these are only awarded to very small numbers of students and the margins tend to be very small.

*“This is a particular problem for awarding the higher-tier grades of A and A\* which are only achieved through a lot of scrutiny which is no longer possible.”*

While there was broad recognition that teachers have the professional skills to make pupil assessments there was a lot of concern that omitting this main component of determining grades from the appeals process was unjust.

*“Generally teachers will have plenty of experience with the student and the grades they are likely to achieve and so will be able to accurately judge a predicted grade. However, once more, there are cases in which some teachers' assessments are more subjective and other cases where teachers lack sufficient evidence to award grades.”*

There was also some concern surrounding the teachers’ ability to determine how extenuating circumstances might have led students to underperform at certain points during the year.

*“Subject teachers don’t know any other extenuating circumstances that have occurred throughout the year, e.g. counselling, bullying, bereavement etc. Which may have affected the student’s tracker grades at certain points in the year. So if you feel the teacher grade doesn't reflect the true grade you would have gotten you should be able to appeal, obviously with evidence.”*

NICCY understands that requests for special consideration do not apply this summer. Rather, CCEA guidance states that “judgements should reflect how students would have performed under ordinary circumstances.”[[8]](#footnote-8) NICCY is deeply concerned that students who have experienced illness or trauma will not have these circumstances taken into account. The potential disadvantage for these students will be all the more exacerbated if they do not have the right to appeal. This must be addressed as a matter of priority.

NICCY also seeks further clarity on the right of appeal for private candidates. NICCY recognises that private candidates can appeal directly to CCEA should they consider an error in the processing of their data. However, it is not clear if private candidates can appeal a centre’s assessed grade and rank order. NICCY Youth Panel members also queried whether this was the case. Whilst NICCY acknowledges that assessments of private candidates should only be made by Heads of Centres who are confident they, or their staff, have seen sufficient evidence of the student’s work to form a judgement, nonetheless, there must be a mechanism to facilitate an appeal on the basis of teacher judgement by private candidates and, indeed, other students.

*“I think the students should get access to the information they need to help them understand how their grade was determined. For private candidates and collaboration students this may have to be reconsidered and a more detailed procedure outlined or even an exception made for these circumstances or other similar circumstances.”*

Of significant concern is that, despite the fact that CCEA guidance was issued to schools on 27th March explaining that all internal assessment activities must stop, some Youth Panel members have highlighted that teachers continued to direct students to submit coursework and engage in other internal assessment activities after this date. **Such practices and inconsistencies in the evidence considered by teachers raises serious concerns about the equity and transparency of the process. It is all the more reason why a review premised on scrutiny of the professional judgements on which a centre’s assessment grades are determined should be enabled.**

Q9. To what extent do you agree or disagree that CCEA should not provide for a student to challenge their position in a centre’s rank order?

As reiterated throughout this response, in light of the exceptional arrangements in generating results this summer, it is more essential than ever that students’ right to appeal is upheld, and that they have clear information on the processes employed by teachers and centres when deciding students’ grades. However, as noted previously, there are a number of aspects that young people felt needed to be clarified.

NICCY Youth Panel expressed uncertainty about the procedure used to rank order students. They noted that teaching approaches differ even within subjects. Again, they highlighted that some subject teachers may have more evidence than others upon which to base their assessment of students’ likely performance. Some queried whether private candidates would be placed in a school’s rank order, and also how teachers would make an assessment if students are almost indistinguishable in terms of their subject performance. Youth Panel members asked how the rank ordering could be a wholly fair and equitable process should teachers have varying types and levels of evidence even within subjects. This is understandably more concerning for students who have had a number of different teachers within the year.

In considering the opportunity to appeal the rank order position, some young people queried how CCEA will use the centre assessed grade and rank order to generate students’ final grades. Young people also expressed how and in what circumstances a student’s overall grade could be affected by a change in rank order:

*“I was under the impression that you would not be able to find out your rank order so I don’t see why you would need to appeal it unless I am incorrect in saying this. I also do not understand the importance of the ranking, I took it to be an equivalent of UMS marks or where you are in terms of grade boundaries. Can this affect things like university places? What is the relevance of it? I would like more information regarding this.”*

As noted previously, young people have great concern that, should an appeal result in a change in rank order for a candidate in a centre post results period, this could have an adverse impact on the statistical outcomes and therefore standards across the cohort. However, they did not feel that this should preclude the opportunity for a student to appeal; rather, that there must be a means to ensure that a change in one student’s rank order does not affect the entire cohort.

**NICCY reiterates the need for further information for young people on the approaches that centres will follow in arriving at judgements of their learners’ attainment, the impact of students’ rank order on their overall grade, and processes used by CCEA to standardise centres’ judgements.** **This information is essential in enhancing young people’s understanding of the impact of an appeal whilst not deterring them from exercising their right to appeal.**

Q10. To what extent do you agree or disagree that CCEA should not provide for an appeal in respect of the process or procedure used by a centre?

NICCY profoundly disagrees that CCEA should not provide for an appeal in respect of the process or procedure used by a centre. This was backed up by two thirds of NICCY’s Youth Panel who disagreed that CCEA should not provide a process for appealing the centre process used. Similar to the issue of appeals based on teacher judgement, young people had great concerns about potential discrepancies in the type and range of evidence considered by teachers, and the resultant lack of standardisation in approach within and across centres.

Whilst NICCY acknowledges that there needs to be a level of flexibility given the exceptional circumstances of this summer, there are nonetheless inherent risks in the fact that CCEA has not specified in detail and uniformly how individual centres must arrive at their judgements. **In order to be transparent it is imperative that CCEA publish the criteria and guidance that centres are required to adhere to.** Young people have legitimate concerns that centres may not follow appropriate or fair processes; there must be a mechanism for students to review those processes, and for students to appeal if they are found lacking. The comments below reflect that there needs to be an opportunity to address perceived unfairness.

*“I can understand that appeals on this process would be time consuming, but if there is a genuine problem with a particular centre's procedure there should always be an avenue of complaint to pursue.”*

*“If a student feels that their school has not acted fairly towards them there should be a way for them to challenge said unfairness.”*

Feedback from the Youth Panel also reflected a lack of clarity about the mechanisms used by CCEA to ensure the validity of the centre assessment grades. Young people have the right to know that the process of generating centre assessment grades is rigorous, objective and fair. However, as acknowledged by NICCY’s Youth Panel, in absence of clear information on centre procedures, there is uncertainty and lack of confidence amongst some young people with regards the robustness of the process. The young people felt that it was important for schools to be transparent about the criteria they used to determine grades so that students could challenge grades if they felt these were unjust. They also reiterated inconsistencies in the information provided to learners about how their marks would be determined.

*“Although I don’t think we should get to appeal procedures as it is too much hassle we should definitely know what that procedure was. We have a right to know exactly how our grade was derived.”*

*“I disagree [that students shouldn’t be able to appeal on procedure] as no set criteria is being used as a standard for all centres and so it’s purely subjective.”*

NICCY Youth Panel members queried whether CCEA would seek additional evidence from centres on how they arrived at their judgements, to verify the decisions made. They felt this was important for the purposes of quality assurance. NICCY understands that there is no requirement on schools to send any supporting evidence to CCEA[[9]](#footnote-9),however that CCEA may elect to request and inspect supporting evidence at its discretion. It is not clear on what grounds further evidence could or would be requested.

NICCY understands that CCEA will standardise the judgements across and within centres once they have been submitted using an agreed statistical methodology. Nonetheless, NICCY considers that the absence of a robust moderation mechanism is further grounds for young people to make an appeal on centre procedure. NICCY Youth Panel reinforced this point; some felt that it would be difficult for them to have to directly question teachers about their assigned grade and that CCEA should therefore have a process of moderating centre evidence:

“*I strongly disagree with this but I feel like it would be very difficult to appeal it if individuals can’t appeal results themselves. I think there has to be a way to appeal it such as have evidence sent to CCEA or have an sample sent originally so CCEA can see how grades are being determined, as would normally be done with coursework and practical elements.”*

*“The appeal must be open to scrutiny to allow for it to be fair and take everything into account.”*

*“I think that this is the area that most needs questioned and that some evidence should be given. Even if teachers had to give in evidence for a small number of students, just to see how grades were calculated and ensure they were done fairly.”*

**NICCY reiterates our opposition to CCEA’s proposals not to provide for an appeal in respect of the process or procedure used by a centre. This must be redressed as a matter of priority.**

Q11. To what extent do you agree or disagree with CCEA’s proposal to make the EPRS available to centres for results issued this summer and with the proposed functions?

**NICCY fully supports the proposal that the Examination Procedures Review Service (EPRS) is available for results issued this summer.** In light of the exceptional circumstances surrounding this year’s summer awards, it is critical that all relevant measures are available to support a young person’s right to appeal. Therefore the option to apply to EPRS must be available should it be considered that a mistake remains uncorrected. Throughout this response, NICCY has called for an appeals process that is robust, fair, and transparent. **Therefore, NICCY believes that the option to apply to EPRS should be extended to all students, not just centres and private candidates.** Furthermore, NICCY believes that the EPRS should consider applications in relation to the professional judgements underpinning centre assessment grades and the process followed by centres.

Q12: Do you agree with CCEA’s Equality Impact Assessment i.e. that it found no impact of its proposals (positive or negative) on persons who share protected characteristics? If no, please outline any potential equality impacts which you feel CCEA should consider.

Throughout this response, NICCY has repeatedly flagged concern about the proposed exclusion of young people from various aspects of its appeals process. Given the lack of proposed opportunity for young people to appeal, it is quite evident that CCEA’s proposals do not provide equality of opportunity for young people. NICCY is also concerned about the potential exclusion of young people with SEN and disability, who have not been mentioned within the proposals, and yet are at risk of being particularly affected by the uncertainty caused by the cancellation of this summer’s exams and the arrangements for appeal.

NICCY is also concerned that Ofqual’s literature review[[10]](#footnote-10) found evidence that questioned the accuracy of teacher predictions for students with protected characteristics. NICCY accepts that patterns of bias tended to be inconsistent across contexts and subjects, and that the size of the effects have not been properly estimated. Nonetheless, it must be noted that the Ofqual review found:

* predictions for black, and some Asian, students may be less accurate, and show a greater tendency towards over-prediction
* predictions for students with a range of different disabilities do not show clear patterns, which may be due to the low proportion of students who declared a disability in the studies
* predictions may be less accurate – and show a greater tendency to over-prediction – for students from more disadvantaged backgrounds

Whilst NICCY notes that these impacts were found relative to the provision of centre assessment grades and not appeal arrangements per se, nonetheless, the potentially significant equality impacts must be noted. Ofqual and Qualifications Wales[[11]](#footnote-11) have highlighted that mechanisms will be available to monitor for evidence of attainment gaps linked to learner characteristics (such as socio-economic status (SES), special educational needs and/or disabilities (SEND), ethnicity and gender), and whether this has substantially changed compared to previous years. **NICCY seeks assurance that CCEA will implement similar mechanisms.**

Ofqual and Qualifications Wales also both identified potential equality impacts on learners who may not be able to receive a centre assessment grade and rank order position. This includes:

* learners who are not attending schools/colleges (for example, because they are being home-educated, or they are adult learners who are studying by themselves); and
* learners who have not been at their current centres for long enough for teachers to make a judgement (for example, learners from Gypsy Roma and Traveller communities or refugee / asylum seekers).

Both bodies have provided assurances that they are considering what to do to mitigate this disadvantage for these students. **NICCY has not seen similar information from CCEA and seeks confirmation that similar mitigations are being considered for these students.**

Finally, central to compliance with the statutory equality obligations under section 75 is the obligation on designated public authorities to carry out consultation with children and young people, and ensure the removal of barriers to meaningful consultation with this group.

NICCY recognises that CCEA have had limited time to prepare for the consultation on appeals, and that the timeframe for response is short to provide early certainty and allow sufficient time for the arrangements to be put in place. Nonetheless, NICCY notes the complexity of the consultation process, which is characterised by the use of technical and difficult language, and a lack of clear information for young people. As noted earlier in our response, these issues were highlighted by NICCY Youth Panel, and present significant barriers to young people’s participation in the consultation process. **NICCY is concerned that the vast majority of young people will not have had the opportunity to have their say in the development of arrangements for this summer’s appeals process, and recommends that this is taken into consideration in CCEA’s Equality Impact Assessment**.

4.0 Conclusion

The Commissioner acknowledges the challenging circumstances within which CCEA is developing its appeals process for this summer’s awards. NICCY also wishes to reiterate our gratitude to CCEA for engaging with the NICCY Youth Panel and for the expedient nature within which CCEA developed alternative exam arrangements and communicated these plans.

Whilst NICCY understands that challenges exist, it is more important now than ever that children and young people’s rights are promoted and protected. The recommendations contained in this submission reflect the revisions to CCEA’s proposals that are necessary in ensuring an appeals process that fulfils this duty.

1. United Nations Committee on the Rights of the Child, General Comment No. 1 (2001) ‘The aims of education’ CRC/GC/2001/1. [↑](#footnote-ref-1)
2. Ibid, Paragraph 6. [↑](#footnote-ref-2)
3. CCEA Regulation Consultation - Appeal process for summer 2020 awarding of GCSE, AS and A level qualifications offered by CCEA awarding organisation. [↑](#footnote-ref-3)
4. United Nations Committee on the Rights of the Child, General Comment No. 12 (2009) ‘The right of the child to be heard’. CRC/C/2009/12. [↑](#footnote-ref-4)
5. During discussion between CCEA and NICCY Youth Panel on the 24th April 2020. [↑](#footnote-ref-5)
6. Ofqual (2020) *Equality Impact Assessment: literature review*

   https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/879605/Equality\_impact\_assessment\_literature\_review\_15\_April\_2020.pdf [↑](#footnote-ref-6)
7. Ofqual (2020) *Exceptional arrangements for exam grading and assessment in 2020.* Available at:

   https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/879627/Exceptional\_arrangements\_for\_exam\_grading\_and\_assessment\_in\_2020.pdf [↑](#footnote-ref-7)
8. CCEA (2020) Awarding for GCSE, AS and A Level Qualifications Summer 2020. Head of Centre Guidance <https://ccea.org.uk/downloads/docs/cceaasset/Examinations/Head%20of%20Centre%20Guidance%20%20Awarding%20for%20GCSE%2C%20AS%20and%20A%20Level%20Qualifications%20Summer%202020.pdf> [↑](#footnote-ref-8)
9. CCEA (2020) Awarding for GCSE, AS and A Level Qualifications Summer 2020. Head of Centre Guidance <https://ccea.org.uk/downloads/docs/cceaasset/Examinations/Head%20of%20Centre%20Guidance%20%20Awarding%20for%20GCSE%2C%20AS%20and%20A%20Level%20Qualifications%20Summer%202020.pdf> [↑](#footnote-ref-9)
10. Ofqual (2020) *Equality Impact Assessment: literature review*

    https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/879605/Equality\_impact\_assessment\_literature\_review\_15\_April\_2020.pdf [↑](#footnote-ref-10)
11. Qualifications Wales (April 2020) Consultation – Arrangements for Summer 2020 Exam Series https://qualificationswales.org/media/5870/consultation-arrangements-for-summer-2020.pdf [↑](#footnote-ref-11)