

Landmark Chambers Webinar: “Public Examinations 2020” – answers to questions

**INTRODUCTION**

1. On Monday 20 April 2020, Landmark Chambers hosted the “Public Examinations 2020” Webinar, with Fiona Scolding QC, Samantha Broadfoot QC and Leon Glenister as speakers.
2. During the webinar, attendees submitted a number of questions, and for those that were not answered at the end of the webinar, we have provided answers here. We have not been able to provide answers to questions involving particular cases or particular sites, but rather have grouped the questions together into the following topics. As with all these things, the answers represent our views on these issues and do not constitute legal advice, but we are happy to be contacted via the clerks on [clerks@landmarkchambers.co.uk](mailto:clerks@landmarkchambers.co.uk) if specific advice is needed.

**UNFAIRNESS TO INDIVIDUAL STUDENTS FROM THE STATISTICAL MODEL**

3. This is an issue that is exercising many, particularly where a student is predicted a high grade but so are others. The impact of this is likely to depend on two things: the historical results of the institution and the rank of the student in question. To take an example, if student X is properly assessed to be predicted an A in maths, ranked 5<sup>th</sup> for that grade, in circumstances where historically the institution has only ever had 2 As, 2 Bs and the rest Cs – on the face of the model being consulted upon, she is at risk of having her grade reduced.
4. It is unclear what the historical model will be based upon (e.g. flat grades or value added curves for example) but the bottom line is that parents, schools and others should, if they are concerned, respond to the consultation flagging up this issue.

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## HOW SHOULD A SCHOOL ACCOUNT FOR A PARENT ALSO BEING A TEACHER AT THE SCHOOL?

5. The aim of the scheme is to protect the integrity of the professionals assessing the students and ranking them. It is for this reason that schools have been told that they must not disclose either the assessed grade or the ranking of any individual student.
6. If the parent-teacher does not teach their own child, then the school should ensure that files containing the assessment and ranking are protected from inadvertent disclosure and that they are only available to staff members who need to be able to have access to them.
7. If the parent-teacher does teach their own child it is likely (unless most of the teaching in that subject is done by other teachers) that the parent-teacher will need to be involved in the assessment process. This may give rise to a concern that the parent-teacher would not be able to be objective and may (unconsciously or otherwise) favour their own child (which may then be to the detriment of others, because of the ranking system and the statistical modelling). Whilst each setting will vary, it would be sensible to have a system which tried to meet the concern regarding the lack of objectivity: it might be by ensuring that others are involved in agreeing the prediction and rank and at the very least having a system to cross check the assessed grade and rank against other objective measures such as mock results, to ensure that the mark is in line with those matters. The Head of Centre should be alive to the issue and be confident that appropriate steps have been taken to minimise bias, before they sign their declaration.

## WILL APPEALS BE LIMITED TO ADMINISTRATIVE MATTERS? WILL SCHOOLS BE ABLE TO APPEAL DOWNGRADING BY THE EXAM BOARD?

8. The proposal at present is that the only appeal available is to a centre, on the grounds that either:

*“the exam board used the wrong data when calculating the grade of all, some or just one of a centre’s students, including because the centre erroneously submitted the wrong data and/or*

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• *the calculated grades generated by the model were incorrectly allocated or communicated to all, some or just one of a centre's students*"

9. The appeal is therefore limited. There is no appeal right against professional judgment, or against the standardisation model. Therefore it is very unlikely that any downgrade would be appealable.
10. Another question asked about what information you could receive about the rank and predicted grade. The proposal is that this can only be obtained via a subject access request, which states such information need only be disclosed before the end of 40 days from the date the exam results are announced. That request can only be made for "personal data" and therefore would be the student's own rank and predicted grade, and not the ranks of other students.

### **STUDENTS IN 'YEAR 14' – re-sits via their old school but not at school eg private tutoring**

11. If one starts from the basic principles underpinning the scheme, the question is whether the Head of Centre can sign the declaration attached to the submission. Accordingly, as with many of these things, it will depend on the circumstances. Some schools may have retained links with the student and feel able to consider the student's performance over the course of study and make a realistic judgement of the grade that student would have been most likely to get if they had taken their exam this summer and rank them along with the current year 13 cohort (bearing in mind that they will have known them the previous year(s)), but others will not. If they can't, then the student is in the same position as other children for whom no judgment can be made i.e. home-schooled children or others without established links to a centre such that a secure judgment could be made e.g. those who have only recently arrived in the UK. The current proposal is that the only remedy for those students would be to sit the Autumn exam series.

### **EA CLAIM – WOULD THE FTT HAVE JURISDICTION?**

12. The question was whether the FTT would have jurisdiction to consider an EA claim against Schools regarding the assessed grade where there is concern over disability discrimination / reasonable adjustments etc? If the claim is

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being made against the school for its prediction and rank, then that would be made to the FTT pursuant to section 116 of the Equality Act 2010. However, a claim against an exam board would be made to the County Court pursuant to section 114.

13. However, the guidance and consultation documents make it clear that the centre is required to assess the grade and rank on the assumption that the student would have sat the exam with such reasonable adjustments as were required for sitting the exam – e.g. extra time. They are not to make an adjustment for the existence of the disability itself. Accordingly it is important that the schools direct themselves correctly to ensure that the assessment is being made on the correct basis. Failure to do so might found a claim under the EA. However, a straightforward challenge to the professional assessment of the teachers against the grade and rank awarded would not.

#### **FINALLY...**

14. Thank you again for participating and for the interesting questions. We anticipate that this will remain a hot topic in the education sphere for a few months yet.

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Tuesday 28<sup>th</sup> April, 2020

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