

A-Level results: Key Q&As for Students and Schools.

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13 August 2020

PART ONE: STUDENTS

1. Part 1 addresses various questions that may be being asked by students today (13 August 2020). This article includes various hyperlinks to websites.
2. This year is a year like no other. Students have found out how they performed in exams they did not even sit. The Department for Education (“DfE”) changed its approach just days before results day, by stating that mock exam results now can be used in appeals in England; Ofqual’s appeals guidance does not yet include this change of approach, so many do not know how this will work. In Wales, in another "guarantee" over grades, Education Minister Kirsty Williams has promised that "*a learner's final A-level grade cannot be lower than their AS-grade*".
3. After much delay, Ofqual released its [appeal guidance](#) and [student guide to results](#) late last week, before the DfE’s u-turn. [Continue to check these documents every day](#) if you are looking to ask your centre to appeal your grades, as it is extremely likely to change given the DfE’s eleventh-hour shift in approach.
4. Ofqual’s latest press release on 12 August 2020 stated:

“Every grade students receive tomorrow has been based on teachers’ judgements – either wholly, or in combination with the statistics. For example, where adjustments were needed, students were moved up or down according to the centres’ views as to which students were closest to the grade boundary. The vast majority of the grades students receive will be the same as, or within one grade of, their centre’s grade. Adjustments were only made where

*necessary to bring consistency to the standards between schools and colleges. However, that moderation was essential to create a level playing for students.... However, we recognise that any process for calculating grades may produce results that need to be reviewed, which is why we have put in place an appeals process. We believe this process is the fairest for all students in the circumstances. However, we understand why the government has wanted to provide some additional assurance for students, by confirming that evidence from valid mock exams can be considered as part of an appeal. **We are working urgently to operationalise this as fairly as possible and to determine what standards of evidence will be required for the appeal. We will provide more detail early next week.***

5. This morning, Gavin Williamson (the Secretary of State for Education) explained that:

“Ofqual is going to be issuing clarity as to how this is to be done, making sure that valid mock exams can form the basis of that appeal so that that child can be awarded that grade from that mock exam.”

6. He also explained that England will *not* be making the same u-turn as in Scotland, where grades were reverted to what teachers had predicted. But he did say that ‘outliers’ and high achieving students in less-well performing schools are now being encouraged to appeal. For more information about this, see below.

I missed my grades for my chosen University place – what do I do?

7. Try not to panic. We know that UCAS Track has not been working this morning. As at 9am on 13 August 2020, it is back up. If your decision is “pending” on UCAS, it may be because they are waiting on receiving a result or you have missed your offer by a grade, so they have not made a decision yet. They may also see that your grades are completely different to what they expected and might think that your centre will appeal.
8. Bear in mind that Universities know you will be worried. They have been advised by the Government to be as flexible as possible. Following the **new advice issued by the Government** on 11 August regarding the use of mock grades, Professor Julia Buckingham CBE, President of Universities UK and Vice-Chancellor of Brunel University London, said:

“On the eve of A-level results, our advice to students is to carry on as planned, which means if you miss out on the grades for your offer don’t panic. Speak to your teachers for their advice and get in touch with your first choice university as soon as possible – universities will be as flexible as they can in these unusual circumstances – and look at the courses available through Clearing. This last-minute policy change presents a number of challenges for universities and we are seeking urgent clarification from the Department for Education on a range of issues including the likely scale and timing of appeals.”

9. This means that Universities are also going to be uncertain about what to do next, so things may take longer than you expect. Patience is going to be key at the moment.
10. UCAS figures today have also shown that 316,730 of applicants from the UK have been accepted on to their first choice of course today - up 2.7% on the same point in 2019. This is a good sign.

So what steps can I take?

- *Call your first-choice university today or over the next few days via its “contact us” page.*
- *If you cannot get through, send an email to their admissions department asking for a call back, leaving your phone number (and perhaps that of a parent/carer who is with you)*
- *Explain that your grades are below the grades you were expected to obtain*
- *Ask whether they will still offer you a place*
- *If they cannot give you this information yet, ask for a timeframe for a response. This may be several days.*
- *If your teachers or you think that your centre might appeal the grades received by your cohort, tell the University this and tell them that you will keep them informed (Universities are bound to hear this repeatedly today)*
- *Stay calm! Many students will be in the same boat and Universities have said that they are prepared for worried students.*
- *Contact the clearing hotline. Clearing is the process by which universities make available their unfilled courses. For more information about clearing, see the UCAS website: <https://www.ucas.com/undergraduate/results-clearing>. You will need*

your clearing number. If you log onto Track and under My Status, your clearing number will be displayed there.

- *Be prepared to wait. If you place a query with a university, it is unlikely they will reply immediately. You will need to be patient, but also you will need to be ready to keep seeking updates and getting in regular contact.*

I do not think that my grades are fair – what do I do?

11. At the moment, only your school / your exam centre can bring an appeal. You cannot bring an individual right to appeal. But you can ask the centre to appeal on your behalf.

What is the appeal process?

12. Appeals guidance

(Please note that these *will* change over the coming days.)

- For students in England, information about the appeals process is set out in the guidance by **Ofqual**.
- For students in Northern Ireland, information about the appeals process will be published by **CCEA** on their website in due course
- For students in Wales, the appeals process is set out in guidance by **Qualifications Wales**
- For students in Scotland, the appeals process is set out in guidance by the **Scottish Qualifications Authority**

13. Support phonelines

Exam Results Helpline

- **Telephone** 0800 100 900
- **nationalcareers.service.gov.uk**

The Exam Results Helpline can provide information on appeals, complaints, or what your next steps may be once you've received your results.

Ofqual

- **Telephone** 0300 303 3344
- Contact the Ofqual student support phoneline if you want to find out more about how you were graded, the autumn exams series, how to make an appeal or raise a concern about bias or discrimination.

The Mix (mental health support)

- If you're under 25, you can call **The Mix** on 0808 808 4994 (Sunday-Friday 2pm–11pm) request support by email [using this form on The Mix website](#) or [use their crisis text messenger service](#).

Can I obtain information about what my teachers said about me?

14. Issue a "Subject Access Request"¹ to find out information to support you in pushing for an appeal. Young people can make requests themselves, though you may be asked by the school whether you want your parent/carer involved and that you understand what is involved with this request:

- a. Under the GDPR you have the right to request information about you and your performance. This may include the teacher assessment, written comments about the provisional grade or rank order, records of past performance.
- b. You don't have the right to access information you have recorded yourself. This means that you cannot get copies of your answers from mock exams, assignments or assessments.
- c. As long as the results have been announced, the organisation (for example your school or college) must respond to your request within one month.

¹ <https://ico.org.uk/global/data-protection-and-coronavirus-information-hub/exam-script-exemption-students/>

What if I am a high achieving student in a less well achieving school, can I appeal then?

15. Yes, you can now. In an Ofqual press release dated 06 August 2020, Ofqual clarified that appeals could be brought for slightly wider reasons than previously. Before 6 August, it was explained that a Centre may appeal only on procedural grounds, on the basis that the wrong data was used to calculate results for students, or where there was an administrative error in the issuing of results by an awarding organisation. In short, centres were only able to appeal students' grades on the basis of procedural not substantive grounds. This is likely to change as a result of last-minute announcements by the government.
16. Gavin Williamson also stated on LBC radio that the standardisation process "tends to" disadvantage high-achieving pupils in low-performing schools - and has said he has asked exam boards to contact these schools, to ask them to mount appeals on those children's behalf: *"What we've asked the exam boards is, where they think there may be outliers, is actually to be contacting the schools to talk with them to make sure that appeals are put forward."*
17. In our opinion, despite previous ambiguity from Ofqual, appeals can be brought now on the basis of an unusually high ability compared to that student's cohort and to previous years.

18. What the press release says:

"Schools and colleges can appeal:

- *if they can evidence grades are lower than expected because previous cohorts are not sufficiently representative of this year's students*

For example:

- *if a single-sex school has changed to co-educational*
- *if the centre has had a significant change in leadership or governance and can provide objective evidence that its previous grades are not a reliable indicator of its 2020 results*
- *where a centre experienced a monumental event (flooding or fire which meant students has to re-locate) which affected one year's results in the historical data used in the model*

- or where – because of the ability profile of the students - a centre was expecting results this year to show a very different pattern of grades to results in previous years. That could include where the grades of unusually high or low ability students been affected by the model because they fall outside the pattern of results in that centre in recent years. In most cases, this will only be apparent by reviewing centre wide data. Therefore centres, rather than individual students, will be best placed to consider whether this has occurred.”

19. Schools should therefore be encouraged to appeal in cases involving academic ‘outliers’. For more information about legal proceedings that are being brought against Ofqual on this issue, see this [Guardian](#) article about Michael Bell and his daughter, Lexie, who may have been in part responsible for the inclusion of outliers in the appeals process.²
20. **On what grounds can an appeal be brought?** Now for some technical stuff, taken from the latest Ofqual appeals guidance: if the above scenario applies, a school will be able to bring an appeal under *Condition GQCov5.1(b)*.
21. This will be on the basis that the use of a default data set would not be a reliable basis to calculate results for one or more of its high or low ability students in the 2020 cohort – those at the top or bottom of the rank order, for example. On that basis, if a centre/school considered that the historical attainment data from the relevant previous cohorts is not a reliable basis for calculating a student’s results it can request an appeal with the relevant awarding organisation on that basis under *Condition GQCov5.1(b)*.
22. It will then be for each of the awarding organisation’s to decide whether or not any such appeal should be allowed. Under *Condition GQCov5.4(a)*, an awarding organisation may charge a fee for an appeal. This provision provides a power for awarding organisations rather than imposing an obligation.
23. As such, it will be for each awarding organisation to decide whether to charge for an appeal. We do not know yet whether all will do so.

² Ms de Coverley was their barrister, instructed by Amara Ahmad of Doyle Clayton.

PART TWO: GUIDANCE FOR SCHOOLS

24. Part 2 addresses various questions that schools and colleges might have today.

A PUPIL'S RIGHTS TO ACCESS DATA AND TIPS ON DEALING WITH REQUESTS

Centre Assessment Grades – are we obliged to provide them to students?

25. Yes. Students can request personal information through a Subject Access Request. The Information Commissioner's Office has confirmed that such requests may include seeking:

- a. The teacher assessment;
- b. Written comments about the provisional grade and/or rank order;
- c. A record of a student's past performance.

As such, this information is liable to be disclosed.

26. Students do not have the right to access information that they have recorded themselves, for instance, copies of answers from mock exams or assessments.

27. Where a student makes a Subject Access Request, a school or college must provide the information within one month from the date of the request.

Do students have the right to find out data about other students?

28. No, students only have a right to access personal data that you as the school or college process where they are the data subject.

29. Students may consider making Freedom of Information Act requests in order to access information about pupil performance generally. Where such a request is made, you must respond to it within 20 days.

30. Schools or colleges are only obliged to provide recorded information that they hold, as opposed to any information you hold for a separate public body. There are some

circumstances in which information can be withheld however, none of these are likely to apply to a request for centre data.

Subject Access Requests (“SAR”) and Freedom of Information (“FOI”) requests will take up valuable time to deal with – any advice on this?

31. Just because information can be provided by way of a SAR or FOI does not mean you must provide the information in that way. If you suspect that a large body of students are going to request the data, you could consider preparing template responses to save you time in the future.
32. Bear in mind the deadline to appeal grades (see below) is 17 September 2020 and therefore it is likely that students will not be content if institutions go over the statutory timescales for a response. This may attract a complaint to the Information Commissioner’s Office.
33. In relation to SARs, your database/ICIMS system may already allow you to narrow down results per student allowing you to easily identify the teacher assessment grade provided and a record of the student’s past performance.
34. Insofar as the rank ordering is concerned, there is nothing to stop a school or college providing a suitably redacted version of the entire rank list of the institution, leaving only the student’s name and rank number visible.
35. In relation to FOI requests, prepare an editable document containing key statistics as soon as possible. This can then be amended per request that comes in.
36. In relation to both SAR/FOI requests, prepare template covering letters.

Who can we speak to for further information?

37. The key contact for information law queries is the Information Commissioner’s Office. It provides a number of invaluable guides on its website:
www.ico.org.uk/for-organisations/
It can also be contacted by telephone – 0303 123 1113

B APPEALS

We have been asked by a student to submit an appeal on their behalf. What are the available options?

38. Students cannot appeal their results themselves, they must go through their school or college.
39. There are three situations in which an appeal may be submitted.
- a. The institution may appeal to the exam board on behalf of a student where the school realises it made an administrative mistake in its processes;
 - b. The institution may appeal to the exam board on behalf of a student where the school believes the exam board has made a mistake when calculating, assigning or communicating grades;
 - c. The institution may appeal if it can evidence that it's cohorts grades are lower than expected because previous cohorts were not sufficiently representative of the current cohort.

What about if we are not happy with the exam boards response to our appeal?

40. Institutions can request that Ofqual's Exam Procedures Review Service reviews the decision.

Can student's appeal against the centre assessment grades that we awarded?

41. No.

We have been asked by a student to appeal on their behalf but do not think there is merit in their appeal, must we comply with their request? What risks are there if we do not comply?

42. Institutions are not obliged to submit an appeal simply because they are asked to do so. In light of the limited nature of the grounds of appeal, it is well within an institutions

remit and professional judgement to consider the merits of a potential appeal. Where the student's potential appeal is deemed to have insufficient merit institution an appeal can be refused.

43. Institutions should have a review process that student's can utilise where their request for an appeal has been refused. This should allow an independent decision maker to consider the request for an appeal again and the way in which the initial request for an appeal was handled.
44. Regrettably, there is a risk of legal action following the review stage.
45. For those schools in the maintained sector, as public bodies, the risk of judicial review proceedings will inevitably be threatened. Where this happens, independent legal advice should be sought immediately as, due to strict timescales, it is likely that you will not have much time to respond to the threat.
46. Schools in the independent sector cannot be subject to a judicial review challenge however, may be threatened with applications for civil injunctions. Again, legal advice should be sought.

Where can I find out further information?

47. Ofqual has helpfully published a table containing links to all the exam boards appeals information. A copy can be found at the following link: <https://www.gov.uk/government/publications/awarding-organisation-appeals-and-complaints-links>

C COMPLAINTS / LITIGATION RISK

Can students complain about their exam results?

48. As with all aspects of school life, students and their parents can complain. Below some potential grounds of challenge are set out as well as the potential response. It is worth bearing in mind that general complaints about the way Ofqual has determined grades were to be awarded this year, or how institutions were to make its professional judgments are a matter for challenge against Ofqual, not the institution.

I have/my child has SEN and the institution breached the Equality Act 2010 by failing to put in place reasonable adjustments through the examination process.

Ofqual was clear in its guidance to institutions that its centre assessment grades must have taken into account a pupil's likely achievement with their reasonable adjustment in place. Where this was done it should have been recorded by the institution when considering the provisional grade. As part of any subject access request, an institution should ensure that these notes are provided to aggrieved students. It would be for the student to demonstrate that an institution failed to record their provisional grade in line with their expected grade with reasonable adjustments. As long as there are accurate notes, schools may be able to protect themselves.

Similarly, where centre assessment grades have taken into account a disabled student's previous performance in examinations or from work where reasonable adjustments were granted, this will also help support a school's case.

The institution was negligent, or otherwise failed to provide accurate information to the exam board in relation to my performance. It also failed to give good examples of my previous work to the exam board.

Firstly, institutions did not have to send work to exam boards.

Secondly, as long as the school can demonstrate it provided accurate information from previous work, that should be enough. Students cannot seek to get around previous poor grades through this argument – schools should be able to demonstrate with

references to the relevant pieces of work if necessary, the reasoning behind the centre assessment grades provided.

I and/or my family got Covid-19, had difficulty working through lockdown, or had other mitigating circumstances that need to be taken into account.

As no physical examinations were taken mitigating circumstances do not come into consideration this academic year. Schools were obliged to consider how students would perform under normal conditions.

Similarly, Ofqual confirmed in its guidance to institutions that schools may not have a full picture of a student's capabilities, in which case judgments had to be made based on the evidence available.

Is there a risk of litigation?

49. Unfortunately yes, even the most prudent institution cannot escape the risk.
50. For maintained schools, the likely challenges, alongside that set out above in respect of appeals, are claims in negligence for how centre assessment grades were awarded and claims of bias/breaches of the Equality Act 2010.
51. For independent schools the above apply plus there is the additional risk of a claim in breach of contract.

Is such litigation likely to be successful?

52. This is an entirely fact dependent question and independent legal advice should be sought where litigation is threatened.
53. In relation to claims in negligence, as long as institutions have correctly followed Ofqual's advice, and kept accurate records of the same, it is questionable whether a student would be able to show a breach of your duty of care, bearing in mind that the standard of care you will have been required to comply with will likely be deemed to fall in line with Ofqual requirements for this year under the ongoing exceptional situation.

54. In relation to claims of breaches of the Equality Act 2010, students will almost certainly have to make a FOI request to try and secure evidence for such a claim. Any such requests that seek information regarding the makeup of results with reference to protected characteristics should be approached with caution and advice may need to be sought at that juncture. That said, it is unlikely that students will be able to demonstrate discrimination from such requests alone bearing in mind the limitations of what has to be provided.
55. In respect of a claim for breach of contract against an independent school, the first thing to note is that an independent school's contract, unless it has been exceptionally well drafted, is unlikely to have foreseen the present circumstances. Therefore students are likely to have to rely on the statutory implied terms of reasonable care and skill in bringing a claim. As with a maintained school defending a claim in negligence, as long as the institution has complied with the Ofqual guidance and made accurate recordings, then a student is unlikely to be able to demonstrate that the school failed to act with reasonable care and skill in determining its centre assessment grade.

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