

**PE1484/D**

Petitioner Letter of 31 October 2013

## **RESPONSE FROM IAN THOW IN RELATION TO PETITION 1484**

### **The SQA response**

From the outset of our communications with the SQA in July 2010, my complaints about irregularities in Higher Religious, Moral and Philosophical Studies (RMPS) have been evidence based. That evidence clearly indicates that the SQA failed to adhere to the published Course Arrangements when setting this Higher examination from 2010 onwards. My petition indicates there were 40 examples of examination questions which did not comply with the Course content set down in the Arrangements and a further 156 examples of questions that did not accurately reflect the assessment criteria. All these errors were clearly identified and explained in correspondence with the SQA who were asked to explain them. Over a period of seventeen months the SQA consistently failed to respond to any of these specific questions and denied there were problems without reasons or explanation.

The SQA response to the Petitions' Committee is a theoretical explanation of how they claim to operate in their provision of the administration and service of national examinations. Such descriptions of processes and procedures have been a typical SQA response to date. Consequently, the real issues of maladministration in these examinations have been avoided. While the SQA claim to operate in an open and transparent manner, their responses during our whole correspondence process have not reflected this. It is my view that the SQA could not fail to have been aware of the errors in these examinations (many of which can be objectively proved). In addition, others outwith the SQA were also aware of such problems but failed to complain about them. It is also my view that the SQA have attempted to cover up this whole situation to protect their reputation in examination provision. Accountability has been conspicuously absent from the SQA's self-regulatory position.

The evidence I have provided in Higher RMPS allied to further complaints about errors and issues in the 2012 Higher Politics and Standard Grade Modern Studies examinations, which have also been made with clear exemplification and reasons to the SQA, illustrate a consistently dismissive SQA attitude when confronted with such comments. Unfortunately, the SQA seem to believe that their "rigorous checking and validation processes" eliminate all errors and are not prepared to admit that they make crucial and clearly identifiable mistakes. These errors can have significant effects on candidates' performance in examinations but the SQA have a ready-made remedy. They can adjust the final grade boundaries to take account of any errors they make in examination questions which have not produced appropriate candidate responses so that overall results are not duly affected. This "adjustment procedure" used by the SQA they describe as being "to ensure that no candidate is disadvantaged in examinations." However, this significant SQA advantage means that it can cover up any errors in the examination papers, it ensures that candidate results can "improve" year on year and it allows the SQA to continue to publish examination past papers on their website unaltered and without explanation of errors. It is therefore no surprise that the SQA do not answer complaints about their questions and marking instructions as it not only avoids the need for accountability

but also protects their monopoly status and reputation as sole examination providers in Scotland. There are distinct advantages for an organisation which has a “judge and jury” function in examination provision and award allocation – a problem also identified by the Ombudsman in his response. The fact that SQA officials can deny such errors without explanation is a further reason why the handling of such complaints should be done independently. Why have the SQA, since the outset of our complaints in July 2010, continually refused to do this? This is surely a very significant issue for the consideration of the Petitions’ Committee.

In this respect I refer to correspondence from the SQA to the SPSO in June 2012. “The (SQA’s) concern is the suggestion that it might be appropriate for another organisation without long standing experience in the field of assessment to override SQA’s decisions on the setting and marking of assessment materials.” This clearly indicates an SQA unwillingness to be the subject of independent scrutiny. Any organisation such as the SQA which has enjoyed the status of self-regulation is going to be concerned at the prospect of being scrutinised and regulated. Given an increasing number of issues and complaints made against the SQA in recent times and many such complainants being unhappy with the responses they received, should the SQA continue to enjoy immunity from scrutiny of the specific and detailed issues which emerge from the services they provide as a result of their unregulated status?

There is a strong argument for such a regulator to be set up. The potential issue which the SQA have raised about independent scrutiny is not insurmountable as independent regulators exist in many other spheres of social and political life. As I have discovered, there is no effective means of resolving certain issues which arise in education as the organisation set up to potentially do so does not have the legal or other appropriate powers to fulfil this task. This is a significant anomaly.

In their response the SQA have stated that the SPSO has not considered it necessary (or in the public interest) to submit a Report to Parliament following their investigations into complaints about them. The SQA say, in relation to the five SPSO Decision Reports covering the period October 2011 to May 2013 that three were not upheld, one was partially upheld and, in the case relating to this petition, the SPSO acknowledged that the SQA had already taken steps to respond to elements of the complaint. However these “elements” did not relate to the key subject matter of my complaints and the SQA have continued to produce similar invalid questions and marking instructions in subsequent years.

In fact, these SQA comments are misleading. The SPSO decisions referred to by the SQA conveniently overlook the fact that four of the complaints to the SQA had nothing to do with alleged maladministration of the SQA examinations so comparison is invidious. Further, the SQA do not refer to the fact that the essential complaints I made about Higher RMPS were beyond the legal jurisdiction of the Ombudsman so were not actually investigated. The SQA were therefore exempt from independent investigation of these specific complaints, hence their misleading comments.

Finally, the SQA say that they do not think that the proposals (to set up an independent regulatory body for the SQA) are appropriate and say that they already have in place quality assurance mechanisms to regulate quality, accuracy and

validity in national qualifications. Our identification in Higher RMPS of major errors over a four year period and also further issues in other subjects would suggest otherwise. Details of our analysis have already been made available for investigation to

both the SPSO and the Government Minister with responsibility for the SQA. Neither was investigated, the former because of the statutory limitations currently in place and the latter because of a clear refusal to do so. Consequently, the issue of our complaints of maladministration has not yet been tested in the three years since these complaints were made.

### **The response from the Scottish Government Learning Directorate**

In a similar vein to the SQA response, the Scottish Government Learning Directorate (SGLD) does not address the specific issues described in the petition and which directly led to my proposal that an independent regulator should be set up for the SQA. A critical assessment and evaluation of the examination questions is clearly necessary; not merely a restatement by the SGLD of what the SQA **should** be doing but what they **are** actually doing.

The SGLD response also refers to the process of grade boundary setting as an explanation of how the SQA deal with “a small number of questions (which) can occasionally prove to be more difficult or more easy than intended.” If only a “small number” of questions had been involved in Higher RMPS in 2010 (and in subsequent years) then this view might have some validity. The fact that almost 200 questions were involved in this whole subject area is an indication of the seriousness of the issues and also of the total ineffectiveness of the SQA to deal with this. I have already indicated in my response to the SQA that their (grade boundary setting) process can mask real problems in the examinations with reference to inappropriate and invalid examination questions. It is surely the responsibility of “experienced” SQA examination setters to produce questions which, from the outset, are consistent with the appropriate Arrangements without having the need for recourse to adjusting grade boundaries to compensate for inappropriate or incompetent question setting. Additionally, what the grade boundary adjustment process cannot or does not do is to correct invalid examination questions. In the marking process such questions must be marked as they were set whether they are appropriate or not. This is a real problem with the SQA marking process and one of which I have personal experience. This also creates problems for both teachers who prepare candidates and candidates who have to answer questions which are invalid and inconsistent with the rubric of the examination. The impact of such errors on candidates and their teachers is unknown as this area, to my knowledge, has never been investigated in detail – or at all.

The SGLD also state that information about how the questions have performed in one year’s diet is used to review the question papers for the next diet and adjustments are made as required. This includes taking account of feedback from teachers, the SQA examination teams and markers. If this is the case and the supposed practice of the SQA, why is it that, in Higher Religious, Moral and Philosophical Studies (RMPS) from 2010 until 2013 the **same** internal assessment papers were used with no alterations or adjustments to their erroneous content and, in the final, external examination for these years, the same kinds of structural errors were repeated even although the examination questions were different? As I have

previously indicated, this issue has been further illustrated in 2012 when the SQA, despite having been made aware of serious issues in Higher Politics and Standard Grade Modern Studies have not only failed to accept these errors but have continued to reproduce exactly the same questions in past papers on their website. The SGLD's description of SQA theoretical procedures is clearly not reflected in SQA practices.

The SGLD states that the SQA already has adequate checks and balances. If this is the case why are experienced teachers in various subjects able to identify these continuing problems with examinations to the SQA whose only response is to deny that they exist but provide no substantiating evidence to justify or explain their view. The absence of any immediate and effective avenues for these issues to be independently investigated is a serious indictment of the current system. The only independent investigator (the SPSO) who may be able to consider such issues is significantly restricted, not only by the timescale involved, but also by legal and other limitations which presently exist.

The SGLD say that the current remit of the SPSO whereby people who have been harmed by maladministration or service failure by the SQA may have their complaints investigated by the SPSO is reasonable and proportionate. However, in practice, this does not work. The Scottish Government ought to be aware of the deficiencies of the current system which required, in my case, more than a two year process to complete and which achieved nothing because of the SQA's failure to respond appropriately to our complaints and the restriction on the ability of the SPSO to investigate these issues.

The SGLD concludes by saying that they recognise that the SPSO is not subject to the direction or control of any member of the Scottish Government and that its remit is ultimately a matter for the Ombudsman and Parliament. Consequently, given the limitations of the SPSO, it would seem that the setting up of some form of independent regulatory body with appropriate powers to investigate such issues would ensure a legally constituted procedure to deal with the kinds of complaints I have made. It would appear that, presently, the SQA, the Ombudsman and the Scottish Government cannot resolve such issues.

As I have indicated in my petition, when the Government Minister with responsibility for the SQA was asked in 2012 to initiate an independent investigation of these issues, he did not even ask for the evidence of these allegations which was offered to him. Instead, in his response he accepted at face value and, in his reply, reproduced a letter from the SQA which totally avoided reference to these specific allegations of maladministration. Consequently, nothing was resolved. The SGLD response also refers to there being "no groundswell of professional opinion that perceives qualification standards are deteriorating" and uses this to justify why the Government have no plans to establish an independent regulator. I wish to make three comments about this. Firstly, if the Minister with responsibility for the SQA does not even look at the evidence I have submitted concerning alleged SQA maladministration, how can the SGLD be secure in this belief of a problem-free SQA? Secondly, given the freedom that the SQA have to "adjust" grade boundary settings in relation to candidates' responses in examinations, could this not explain how annual examination performance by candidates can continue to rise despite

identified errors in question setting and marking instructions? The SQA “judge and jury” issue is prominent here once again. My third comment is in relation to the problems that potential complainants have should they wish to question the SQA. I refer to this in more detail later.

The openness of the SQA and justice to candidates who have had to answer invalid questions makes it difficult not to be critical of such an attitude from a Government Minister who showed complete disregard for a reasonable request from both an experienced teacher and member of the public who wished to alert him to serious issues in relation to the SQA.

### **The response from the Ombudsman**

The Ombudsman’s response refers to the unusual position of the SQA having a dual role, of being both an awarding and an accrediting body. It is my view that this creates a significant anomaly whereby the SQA are effectively both judge and jury of their assessments and the marking instructions they provide. Additionally, the absence of independent scrutiny to investigate complaints about these examinations gives the SQA a privileged and protected status from the need to respond to specific and detailed complaints made in relation to their administration of national examinations. This has led, in our case, to a lack of transparency and accountability by the SQA which appears to be inconsistent with an open, democratic and accountable society.

The Ombudsman refers to the Crerar and Sinclair reviews which highlight several principles to govern the application and use of external scrutiny. Of the five principles he identifies, four of them do not appear to be reflected by the SQA with respect to correspondence we had with them over a period of seventeen months in 2010/11. I have detailed this, both in the content of my petition and the considerable documentary correspondence on which it is based and which cannot be included because of the limitations set down by the Petitions’ process. The fact is that the SQA are not subject to independent scrutiny and public focus in relation to the services they provide nor have they exhibited transparency and accountability in their responses to us. I have previously indicated how these errors have been exacerbated by their inclusion on the SQA website.

While the Ombudsman states that the SPSO have agreed with the SQA to keep signposting complaints arrangements under review, it appears that the SQA have failed to adhere to this by appropriately answering complaints of the nature we have made.

In relation to the 2002 SPSO Act, the Ombudsman refers to the limitations and restrictions he faces when investigating complaints made by individual teachers and schools. In stating that certain categories are set out in section 5 (6) of the 2002 Act which, in practical terms, prevent one public organisation complaining to the SPSO about another public organisation, this effectively means that the SPSO could not take a complaint from a school or (local authority) council about the SQA.

A significant consequence of this is that local authorities and councils, who pay millions of pounds annually to the SQA to enable them to present candidates for national examinations, do not have any right to complain to the Ombudsman about

the services provided by the SQA. That this is currently the case is also a matter of serious concern, if not injustice.

The Ombudsman also states that, given this restriction in taking a complaint from a school, the SPSO have to be able to ensure that a complaint from a teacher is not, in effect, the school's complaint. He also states that the requirement for a member of the public to show that they can claim that they have suffered an injustice or hardship becomes critical. However, while teachers may complain to the SPSO on the basis of personal impact of the alleged maladministration of examinations on them, it is much more likely, both in theoretical and practical terms, that teachers (if not schools) would complain about the injustices suffered by their pupils who have to answer questions which do not comply with the examination Arrangements. This was the basis on which I had initially complained to the SQA and then to the Ombudsman.

The Ombudsman also states that I have suggested in my petition that no teacher could ever complain about the SQA as they did not sit the exam (and hence did not suffer from alleged maladministration). He also adds that, while it is difficult for a teacher to bring a complaint about the SQA that they could look at, it is theoretically possible that a teacher could meet the SPSO criteria of detrimental impact on them. He also states that the SPSO have not yet had a complaint from a teacher that they were able to pursue (through their employer for example) and suggests that this may be because there are other routes a teacher could follow in order to make such claims. In reality, this is very unlikely, if not impossible. For example, I know of some head teachers who would not allow members of their staff to complain to the SQA; in addition, complaints cannot be made via the local authority (who employs them). But perhaps the most serious issue of all is that teachers do not complain as they believe that nothing can or will be done about such situations and that the SQA "will not do anything about it anyway, so why bother." Such, unfortunately, is the culture which has been created in Scotland with regard to complaints procedures under current legislation. Perhaps if the avenues for complaint were more open and accessible to teachers, the SQA would experience more instances of having to be transparent and accountable to those who both use and pay for their services.

The remedy for complaints in relation to national examinations should not be restricted to an individual complainant. If there are problems with the setting and marking of examination questions then it is obviously the case that all candidates who sat the examination will have been affected. In other words the problem is systemic, not individual. Given their nature, such problems and complaints require to be fully investigated within a very short period of time. Pupils need their accurate grades confirmed for admission to further and higher education as a matter of priority. The current complaints process clearly does not meet this need and is therefore inappropriate.

The Ombudsman also states that an unintended consequence of current legislation is that some important issues cannot be raised with the SPSO. While he notes that, theoretically, these issues could be raised by a student or by a representative, including a teacher, on behalf of a student with the student's consent, or by a teacher who could show a direct, personal impact, the major problem here is that, by the time these complaints remain unresolved by the SQA and then reach the SPSO resulting

in an even more delayed decision, even if it were theoretically possible for a student, or a representative (with the student's consent) to raise these issues, the timescale involved would not produce any impact on the student's examination result and, just as significantly, their consequent further education. The current situation is totally ineffective in arriving at a just, appropriate and immediate resolution to such issues. That is why it is necessary for an independent body to be set up to deal with these problems within a matter of a few weeks following the examination diet. This can be done south of the border, so why not in Scotland?

The Ombudsman also refers to one thread of my complaints which he was able to pursue as it related to the manner in which the SQA had handled the situation via their complaints process. While this thread of complaint was upheld, the consequence of this, which was recommended by the SPSO, was for the SQA to write a letter of apology to me for failing to "adequately address the issues" and for the "unacceptable delays" in responding on several occasions during the correspondence process. The fact was that, not only had the SQA failed to adequately address the issues, they had not addressed them at all. Meanwhile, all the issues I had initially raised continued over subsequent years as the SQA had done nothing to change even the most obvious of errors. Again, the SQA have been effectively protected from independent scrutiny by current practices.

The Ombudsman concludes that the SPSO are a body supported by and accountable to Parliament and it is legitimate for Parliament to review whether the limitations they have placed on the SPSO remain appropriate. Given the present system's failure to resolve these complaints, this would suggest that there are significant deficiencies in the current processes which do not fulfil the needs of an increasingly open, democratic and accountable society. Independent regulation of the SQA would be a major step to resolve the significant issues which presently exist in the SQA's administration of national examinations.

Ian Thow