

If telephoning please ask for: Simon Lebus

Rt Hon Ed Balls MP
House of Commons
London SW1A 0AA

7 May 2009

Dear Secretary of State,

Thank you for sending out a copy of an indicative determination, dated February 2005 illustrating how you might have used his powers under Section 139 (as at 5 May 2009) of the ASCL Bill - power to determine minimum requirements - had it been in force.

We have tested the specimen determination against qualifications developments from the recent past, particularly the new Diplomas. We have concluded that determinations of this type would be far from exceptional, their scope would extend well beyond essential minimum requirements, they would often directly or indirectly affect assessment design and standards, and they could create time pressure on qualifications development at the expense of quality. We therefore believe that the specimen determination as published strongly supports our contention that Clause 139 will defeat the government's primary aim in creating Ofqual, namely to improve public confidence in qualification standards by putting them beyond any perception of political influence.

Two points arise; the first relates to the timeline and the second to the powers of the Secretary of State.

- 1.1 Firstly, the timeline of Diploma development clearly shows this indicative letter was not capable of being produced at the time:
- 1.2 In February 2005 the White Paper was just being published and at that point the sector was talking about 'specialised Diplomas', CKSA rather than PLTS and an Extended Project at Level 3 (but not projects at levels 1 and 2). Lines of learning were not confirmed until November 2005 or maybe even later. No structure was in place in February 2005. There was still talk about Diplomas being a mix of academic and vocational. We are pretty sure that the notion of 'applied learning' first appeared in the Implementation Plan in November 2005. In July 2005 a presentation by the Head of 14-19 Education at QCA - which indicates what was known at the time - covered: the introduction of specialised diploma in 14 lines (subject to consultation), levels 1 to 3; the first 4 areas by 2008 and the fact that students would need to demonstrate functional English and Maths, specialised learning in the relevant discipline, suitable work experience and any relevant GCSEs or A Levels.

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1.3 This is not nit-picking for the sake of it; all qualifications work in similar ways. It means that, in this model, the Secretary of State would nearly always need to produce several determinations as more information became available. This would undermine the promise that they would be produced in “exceptional circumstances” (Explanatory Notes) and the assurances given by the PUSS Sarah McCarthy-Fry in Committee “...we will not be making determinations every five minutes” and “The first concern might be that Ministers should not make frequent changes to qualifications and therefore that determinations should be made only occasionally. I agree with that view...Ministers should not issue new determinations unless it is appropriate and necessary to do so.”

2.1 Secondly, reading the Bill (as at April 8th 2009) and the Department’s Explanatory Notes I would contend that the indicative determination describes the design criteria for the Diploma, not the ‘subject’ criteria. The Explanatory Notes are clear that the clause “restricts the Secretary of State to specifying minimum requirements relating, in effect, to the content of a qualification.” The Clause does not allow him to reference other qualifications (or parts of qualifications) as examples of minimum content. Apart from anything else, the content of those qualifications changes over time and, indeed, may be changing as a result of Ofqual/QCA action even as the Secretary of State determines something else.

2.2 We believe it is clear that the Secretary of State must specify either high level criteria of “knowledge, skills and understanding” or express them in detail.

2.2. A.1 For instance, **Functional Skills** can be expressed at a high level as:

Learners must have enough Functional Skills in English to be confident and capable when using the skills of speaking, listening, reading and writing; enabling them to communicate effectively, adapting to a range of audiences and contexts, be able to explain information clearly and succinctly in speech and writing, expressing a point of view reasonably and effectively.

Learners must have enough Functional Skills in ICT to use technology in ways which make them effective and involved as citizens and enable them to operate confidently in life and work in a wide range of contexts; being able to find, select and bring together relevant information and use ICT to develop, interpret and exchange information for a purpose.

Learners must have enough Functional Skills in Mathematics to be able to operate confidently in their everyday life, workplace and educational settings by developing and recognising their ability to apply and transfer mathematical skills in ways that are appropriate to their situation.

(OCR descriptors or QCA specifications)

2.2. A.2 At a more detailed level the Secretary of State could express them as, in English for example:

Learners in English must be able to

- Take full part in formal and informal discussions/exchanges.
- Read and understand a range of texts.
- Write documents to communicate information, ideas and opinions using formats and styles suitable for their purpose and audience.

(QCA standards)

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2.2. B.1 Similarly, a **Project** can assess many different skills. At a high level, for example, either:

Learners will have the skills of independent research and investigation, the use of initiative and creativity, and the application of skills and knowledge. They will have a good appreciation of Knowledge and Understanding, Research Skills and Evaluation techniques. (Cambridge International AS syllabus)

OR

Learners must know the basics of project management and must be able to show how that knowledge complements and develops the theme and topics of their other learning and/or how it supports progression. (QCA Diploma specification)

2.2. B.2 Thus, a detailed description of minimum requirements would better meet the requirement of the Bill:

Learners must be able to manage a project having:

- Some limited selection and planning of the project following given instructions; limited individual input during the process of the project
- Limited input to complete the project
- Limited understanding of agreed objectives
- Some limited understanding of the overall organisation of the project

Learners must be able to use resources:

- Using a small range of information and/or variety of information that may be relevant to the topic
- Using more than one source
- Selecting some information that may fit the question/task/brief

Learners must be able to develop and realise a project having:

- Some knowledge exists of what had to be done to achieve the intended outcome
- used tools and equipment (where appropriate) in a safe manner with close guidance and supervision
- used skills and technologies to work towards achieving objectives

Learners must be able to reviewing the project findings

- Using a relevant method to communicate findings
 - Having limited knowledge and understanding of links with other areas of study and/or areas of interest
 - undertaking an evaluation of the project with little attempt at judging its relevance and value
 - having a limited evaluation of experiences and learning with little attempt to provide examples of how this could inform future progress.
- (QCA criteria)

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2.2. C.1 In a similar way, **Principal Learning** would need to be expressed at the higher level on a learning line basis. For example:

Learners must have the skills, knowledge and understanding in 'Creative and Media' as set out in *Criteria for the Specialised Diploma qualifications in creative and media at Levels 1, 2 and 3 (November 2006)*, as developed by the Diploma Development Partnership (DDP) for creative and media."

Clearly, as the title implies, these criteria were built by the DDP so we must assume EITHER that the Secretary of State would set out criteria he thought the DDP had missed at the end of the process. For example, he might take the view that the skills and knowledge in the electronic games industry, with its huge foreign earnings, should have a greater place in the Diploma and determine that a greater level of knowledge of that sector was needed.

OR the Secretary of State would set out criteria for an industry sector in advance of the industry making its own decisions, perhaps insisting (as above) that the electronic games industry should have a greater place in the Diploma. This overrides the Government's claim that the Diplomas should be industry-led.

ALTERNATIVELY, the Secretary of State could adopt the criteria laid out by the DDP (as a minimum). Since Ofqual can only reject those criteria on standards grounds, would this not place the Secretary of State in the invidious position of choosing between the standards regulator and the content developers? This might have the effect of curtailing negotiation between the two to reach a sensible conclusion as both sought to get the Secretary of State to adjudicate in their favour.

Would that be a fair summary of the situation?

3.1 Notwithstanding the above, it is our understanding that the original aim of the Clause was to enable the Secretary of State to pick up on learning that had been overlooked by the subject community – either because it was no longer in sympathy with the broader aims of society or out of step with a pedagogic approach favoured by Government.

3.2 Thus, we would have thought a more likely use of the powers was to ensure, for instance, in history, the assessment of theories relating to the British Empire or the place of the Labour Movement in 20th century Britain. In geography one might specify that theories of Immigration or the Counties of England and their principal products were taught and assessed.

3.3 Determinations along these lines will put any Secretary of State in direct conflict with subject communities consisting of teachers, H.E. and learned societies as he picks and chooses from the range of options offered by various sectors within each discipline. Awarding bodies have historically held the ring in these discussions, protecting the Secretary of State from the non-stop lobbying of every subject group and section and balancing the competing interests. Single determinations backing one part of one community at any one time, dependent upon the interests of the Secretary of State, can only be inimical to good education and make the standard every more difficult to uphold.

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4.1 In addition, the impact of determinations on “knowledge, skills and understanding” (content) are not so separate from design criteria as the Explanatory Notes implies. Some examples are:

- If a minimum requirement is that all must know mental arithmetic then the Secretary of State has created a non-calculator paper.
- If, in Business Studies there is a minimum requirement to understand and explain in some detail profit & loss accounts, these will have to be examined on paper which then squeezes out a knowledge of business plans which can only really be examined through coursework.
- If the Secretary of State requires a large amount of atomistic content to be remembered (e.g. counties of England, MFL vocabulary, Latin and Greek conjugations) this will crowd out more stretching assessment requiring synthesis and the application of knowledge. Alternatively, multiple choice papers might be created for the atomistic content in order to allow for more stretching papers to be created. In essence, the minimum requirement has created multiple choice papers which may, or may not, be educationally useful.

5.1 Finally, I note that the indicative determination contains a timeframe (end Para 5). The PUSS, Sarah McCarthy-Fry, was quite clear in Committee: “Nobody – neither the Government nor the awarding bodies – should be able to bounce it into decisions with which it is not comfortable. If time is needed to get something right, Ofqual will be able to allow for that under the Bill.” The Bill, and this statement, seems to imply that the Secretary of State would be *ultra vires* if he used a determination to deliver a timeline.

5.2 Of course, Section 127 - General duties could be used, completely separately, to indicate a time by which the Secretary of State would prefer a qualification to be ready – but this would be a hope rather than an instruction.

6.1 I think we have demonstrated that these reserve powers, without any checks or balances, will place the Secretary of State at the heart of qualifications debates on a consistent basis. This will serve to undermine claims to have separated out standards from politics and will undermine “Confidence in Standards.”

The Secretary of State already has extensive powers to ensure the delivery of an education that meets with his approval. The National Curriculum is the main driver with the QCDA design and JACQA funding advice, together with Ofqual accreditation, acting in support. And there is no doubt that, were the content of any particular subject wholly out of line with public expectations, the media would assist the Secretary of State in getting his point across. This is precisely what the media did in relation to English GCSE and the negative effects of its ‘win’ in relation to Shakespeare have been felt ever since.

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In view of the Department's refusal to make any serious attempt to address these issues in the Commons Committee stage, Cambridge Assessment will request the House of Lords to have the clause removed from the Bill in its entirety as unnecessary, potentially educationally damaging and inimical to the Secretary of State's own policy objective of restoring "Confidence in Standards".

I look forward to your response to this letter, preferably before the Lords Committee stage.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'S. Lebus', with a long horizontal flourish extending to the right.

Simon Lebus
Group Chief Executive

Cc: Jeremy Benson, Head of QCA, Ofqual and Exams Delivery Division