



Malpractice and maladministration policy

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1 Introduction

The successful delivery of EduQual assessments relies on the trust and diligence of Centres, Learners, EduQual, our suppliers, and the wider education community – the vast majority of whom take their responsibilities seriously. Normally the qualifications system functions well, but occasionally things go wrong. When this happens, we need to investigate, and – where appropriate – take action, to maintain public confidence, secure accurate results for Learners and ensure assessments remain fit for purpose.

This guidance covers malpractice and maladministration which will often touch upon the fitness for purpose of assessments, or the accuracy of marking or results. In this guidance, we explain how we prevent, detect, and investigate malpractice and maladministration, and what action we take as a result.

2 What is malpractice and maladministration?

Malpractice and maladministration are two distinct, but related, concepts. In broad terms, maladministration will generally cover mistakes or poor process where there has been no intention on the part of the person responsible to do any harm. It may involve some degree of incompetence or ineptitude, or may simply be as a result of carelessness or inexperience. Whilst not an exhaustive list, the following are some examples of maladministration:

- avoidable delay;
- mistakes arising from inattention;
- faulty procedures;
- failure to follow correct procedures;
- poor record keeping;
- inadvertent failure to take action;
- poor communication; and
- inadvertently giving misleading or inadequate information.

By contrast, malpractice will generally involve a person intending to break the rules or cause harm, being negligent or reckless as to the consequences of their actions. Malpractice could comprise of a conscious decision to do anything covered in the list above, and can also include intentional bias or discrimination. Two of the clearest examples of malpractice are:

- cheating, or facilitating cheating, in an assessment; and
- attempting intentionally to manipulate a result so that it does not reflect the Learner's actual performance in an assessment.

Such action could be taken by the Learner themselves, someone within the Centre or someone within EduQual, or any other individual involved in, or with access to, the assessment process. More specific examples of malpractice include:

- revealing the questions on an assessment in advance (where confidentiality is required);
- sharing confidential assessment materials ahead of an assessment;
- claiming to have and/or offering to share confidential assessment materials and/or presenting hoax materials as confidential materials;

- a Learner breaching the rules of the assessment, for example by bringing impermissible materials into the assessment;
- producing a forged certificate, which does not reflect a Learner's actual performance in an assessment;
- a Learner passing off someone else's work as their own;
- a Teacher providing a Learner with answers, providing assistance to Learners beyond what is permitted, or deliberately failing to apply the mark- scheme to a Learner's answer; and
- a Teacher or Learner falsifying a result.

Although maladministration and malpractice are distinct, the two concepts can be on a spectrum. As such, they will sometimes shade into one another. Sometimes, whether a particular incident is best classified as malpractice or maladministration will depend on the context, and it can be a matter of judgement. For example, behaviour that might start as maladministration could become malpractice if the person responsible fails to respond to advice to change their approach.

From EduQual's perspective, it may not be particularly relevant whether a specific incident is classified as malpractice or maladministration – we will take all reasonable steps to prevent both malpractice and maladministration and, if either occurs and could have an Adverse Effect¹, to take all reasonable steps to mitigate it as far as possible and correct it. So long as we suspect malpractice or maladministration or alleged by another person, and there are reasonable grounds for that suspicion or allegation, we will investigate.

It may not always be clear from the outset of an incident what has actually happened. We will seek to establish whether an incident has taken place and what has happened. Indeed, it will sometimes only be through investigation that we can determine the credibility of the allegation and what sort of incident has occurred. Likewise, when deciding what action to take in response to a finding of malpractice or maladministration, it will be more important for us to consider all of the circumstances of the case, rather than what label might be attached to the incident.

3 Identifying risk and preventing malpractice and maladministration

3.1 Identifying risk

We take all reasonable steps to identify the risk of any incidents which could have an Adverse Effect. Where they relate to the integrity of assessments or the accuracy of results, incidents of malpractice and maladministration will always have an Adverse Effect – albeit that the scale of that effect may be higher or lower depending on the circumstances.

¹ An act, omission, event, incident, or circumstance has an Adverse Effect if it –

(a) gives rise to prejudice to Learners or potential Learners, or

(b) adversely affects –

(i) the ability of the awarding body to undertake the development, delivery or award of qualifications in a way that complies with its Conditions of Recognition,

(ii) the standards of qualifications which the awarding body makes available or proposes to make available, or

(iii) public confidence in qualifications.

Other forms of malpractice or maladministration may also have an Adverse Effect depending on the circumstances. An integral part of our compliance with regulatory requirements will therefore be identifying the risks of malpractice and maladministration. In considering those risks, we take into account the following factors:

- The types of malpractice or maladministration that are relevant to our qualifications – for example, whether confidentiality in assessment questions is required, or whether it would unfairly benefit a Learner to bring a particular prohibited item into the assessment;
- Any aspects of the qualification's design or delivery, or the processes we use that could increase the likelihood of malpractice or maladministration – for example, whether:
 - Learners have the opportunity to obtain inappropriate assistance from Teachers or others in completing assessments;
 - the security of assessment materials relies on the competence and integrity of Centre staff; or
- whether the marking process makes it possible to falsify marks;
- Who might become involved in malpractice or maladministration – for example, whether the risks lie with those designing, printing or delivering assessment materials, Learners, Teachers, administrative staff involved in the delivery of exams, exams officers, or particular Centres or Assessors;
- The likelihood that malpractice or maladministration will take place – for example, the benefit to the perpetrator of engaging in a particular type of malpractice, the motivation / incentive that may exist to engage in such behaviour and the perceived likelihood of being caught and the subsequent consequences;
- The likely impact of any malpractice or maladministration on our ability to comply with regulatory requirements – for example, whether the design of a particular assessment means that the leak of a question would require the entire assessment to be substituted for all Learners, and the ease with which that could be accomplished; and

3.2 Preventing malpractice and maladministration

Having identified any risks of malpractice or maladministration, we take all reasonable steps to prevent any malpractice or maladministration from occurring. We have in place, and adhere to, ways of working that reduce the risk of incidents of malpractice or maladministration, ensuring our workforce understands and follows the relevant arrangements. We ensure that third parties involved in the development, delivery and award of our qualifications understand and routinely follow such ways of working. We also monitor the work undertaken by third parties under such arrangements. The arrangements include coverage of the following, as relevant:

- plagiarism, collusion, tampering, breach of confidentiality of assessment materials; and
- incidents that could occur outside of England.

Our arrangements are as effective as reasonably possible – it is not enough for us to have an arrangement in place if it is not appropriate to the risks of malpractice and maladministration to which a particular qualification gives rise. Depending on the qualification, reasonable steps to prevent malpractice or maladministration may include, but not be limited to, the following:

- Education and information – we provide appropriate training and/or information on ways of working and arrangements in place to prevent malpractice and maladministration to, amongst others:
 - Our workforce;
 - Learners;
 - Centres, including specific training and/or information for key members of staff such as the head of Centre, and exams officers;
 - Teachers; and
 - users of the qualification.

For example, we consider the level of guidance given to those conducting assessments to ensure they are fully aware of the rules and conditions under which non-exam, work-based, or practical assessments must be conducted. This might include information for Centres on the support and feedback a Teacher may provide. It might also include information for Learners on what constitutes plagiarism and the consequences if they plagiarise.

- Designing out malpractice and maladministration – we design qualifications and processes to reduce, as far as reasonably possible, the opportunity for malpractice and maladministration to occur. For example, requiring a second check on assessment materials before they are handed out, or clearly labelling and promptly removing outdated assessment materials from our website in order to reduce the risk of maladministration.
- Centre checks being undertaken with appropriate regularity and rigour – this is likely to include more regular checks for Centres that may be deemed at higher risk of malpractice or maladministration, such as new Centres or those where particular issues have been identified. We might decide not to work with certain Centres where we deem the risks of malpractice and maladministration to be too great.
- Securing the behaviour and action we would expect from Centres – we support a culture of risk identification, prevention and reporting concerns by and within our Centres.
- Any other appropriate safeguards – we use appropriate safeguards for each qualification we provide to prevent malpractice and maladministration. We look to test, evaluate and develop these safeguards over time to ensure they are fit for purpose.

We take appropriate steps to ensure that our policies and practices are working effectively to prevent malpractice as part of our risk management process. We might test the effectiveness of such measures by, for example:

- Monitoring and sampling – we appropriately monitor and sample areas that may be high risk, focussing our monitoring on qualifications and/or Centres with a history of malpractice or maladministration and taking into account relevant information provided by other awarding bodies.
- Scrutiny of materials – we carry out regular checks of assessment materials to ensure that any potential malpractice or maladministration can be identified. Again, there may be more regular checks, or more in-depth scrutiny, where it is felt that there is a greater risk.
- Using data, feedback and internal audits to make sure our processes are working well – the process of preventing, detecting, investigating and sanctioning malpractice and maladministration can be viewed as cyclical. Where, despite measures in place, malpractice or maladministration does occur, we use this to inform a new risk analysis and to decide how to reduce the risk of reoccurrence.

4 Supporting Centres in their approach to malpractice and maladministration

We provide effective guidance to our Centres on how the qualifications should be delivered which includes guidance on malpractice and maladministration. Additionally, we will provide additional, and more focused, guidance on request by Centres. We will always respond to a request from a Centre to provide it with guidance on how best to prevent, investigate and deal with malpractice and maladministration. However, sometimes we do more than provide guidance – for example, where we decide the Centre cannot manage the issue itself, we will step in, to take all reasonable steps to prevent malpractice and maladministration.

5 Detecting malpractice and maladministration

Where malpractice or maladministration is suspected by EduQual or alleged by any other person, and where there are reasonable grounds for that suspicion or allegation, we, so far as possible, establish whether or not the malpractice or maladministration has occurred. We have a structured approach to dealing with whistleblowers, including clear policies and procedures to allow information from whistleblowers to be used effectively.

When an allegation or suspicion comes to light, we act quickly to secure any relevant evidence and information to support our judgements. When deciding whether reasonable grounds for a suspicion or allegation exist, we consider any relevant factors, including the following:

- the initial information provided with the allegation or which gives rise to the suspicion;
- the source of any allegation;
- any evidence that may reduce the credibility of the allegation;
- any previous allegations, suspicions or evidence that may support, or contradict, the facts or information presented; we cross-reference allegations made against existing records;
- any previous relevant investigations in relation to a Centre, whether or not a finding of malpractice or maladministration was made; this should also include details it holds of any investigations by other awarding bodies; and
- the time between the alleged malpractice or maladministration and the date the allegation was made.

We keep a log of all allegations and suspicions of malpractice and maladministration, along with records of investigations, eventual decisions on the existence of malpractice and maladministration and how this decision was reached. We retain any additional information to allow us to identify patterns of behaviour relating to malpractice and maladministration over time to take all reasonable steps to identify the risk of the occurrence of any incident which could have an Adverse Effect.

6 Notifying regulatory authorities

We promptly – before completing an investigation – notify the regulatory authorities when we have cause to believe that an event has occurred, or is likely to occur, which could have an Adverse Effect.

We have a particular obligation promptly to notify the regulatory authorities where we have cause to believe that there has been an incident of malpractice or maladministration, which could either invalidate the award of a qualification which we make available, or could affect another awarding body. Where the suspected malpractice or maladministration could constitute criminal activity, we will promptly report concerns to the police.

7 Investigating malpractice and maladministration

Once we have established that there are reasonable grounds for the suspicion or allegation, we promptly conduct a rigorous and effective investigation.

- We have established, maintain and comply with up-to-date written procedures for investigating such allegations or suspicions. We also have on record clear terms of reference for any investigation that we undertake. We use, and regularly review, our written procedures, which address:
 - who investigates concerns about malpractice or maladministration;
 - how an investigation is undertaken, including how it will be conducted so as to ensure the preservation and integrity of evidence;
 - how whistleblowers will be treated, and how prejudice towards them will be avoided;
 - when and how anyone suspected of malpractice or maladministration will be notified about the investigation and given a right to supply evidence and respond to any preliminary findings;
 - when and how interested parties will be notified of any issues which may affect them and given an opportunity to make submissions;
 - how any interviews will be conducted;
 - how facts will be gathered and evidence found, collated and stored;
 - how evidence will be verified;
 - how the confidentiality of investigation materials will be ensured;
 - how the outcomes of its investigations will be presented and their accuracy assured;
 - how and when any visits to Centres will be announced and undertaken; and
 - what principles will be followed when we undertake an investigation with other bodies.

We do not presume that the Centre is always best placed to complete an investigation. We ensure that investigations are carried out rigorously, effectively, and by persons of appropriate competence who have no personal interest in their outcome. This requires consideration of a number of issues on a case-by-case basis, including the potential scale and scope of the investigation, and the competence, capacity and personal interest of anyone that will complete any part of the investigation.

7.1 Scale and scope of the investigation

- The scale and scope of the investigation will have an impact on who is best placed to complete the investigation. We take into account:

- The nature of the possible malpractice or maladministration, for example, whether the issue relates to a breach of confidentiality in the design stage, cheating in assessments or problems at the marking or grading stage;
- The number of Learners involved, if any, in the alleged malpractice or maladministration and the number directly advantaged, or disadvantaged, by the alleged malpractice or maladministration;
- The degree of potential advantage or disadvantage to Learners involved in or affected by the alleged malpractice or maladministration;
- The extent to which Teachers or other professionals may be involved in the alleged malpractice or maladministration as this may also have implications when considering the degree of personal interest, as outlined below;
- The extent to which the allegation or suspicion suggests any level of knowledge or awareness of the suspected malpractice or maladministration at Centre level;
- The number of Centres involved;
- The impact on public confidence in regulated qualifications of the suspected issue;
- Any potential impact on public confidence when considering any role for Centre staff in the investigation;
- The degree to which alleged malpractice or maladministration may disadvantage other Learners; and
- The number of other Learners that may be affected by the alleged malpractice or maladministration, along with the potential impact on other Learners, as this might influence the effect on public confidence.
- The extent to which each factor is relevant, and whether any others should be considered, will vary, as will the appropriate weight to be given to any relevant factor.

7.2 Competence and capacity

We make sure our investigators are competent to complete the investigation in line with its potential scale and complexity. We make sure our investigators have appropriate skills and experience including in:

- gathering and recording evidence from interviews;
- gathering evidence from minors, vulnerable adults and those with learning difficulties;
- protecting, gathering and retaining evidence from documentation and electronic sources;
- the information that should be given to those suspected of being engaged with malpractice;
- when and how to involve other authorities including the police where criminal activity is suspected; and
- safeguarding.

For an investigation to be both rigorous and effective, where an individual has the appropriate competence, we also consider the capacity of the individual to undertake an investigation i.e.

- the ability of the individual to undertake the investigation promptly; and

- the time required and available capacity of the individual.

We establish and maintain a workforce of appropriate size and competence. As a result, we seek to have appropriate and sufficient access to trained investigators so that this resource is available should it be required.

7.3 Personal interest

We ensure that investigations are also carried out by individuals with no personal interest in their outcome. Personal interest is an example of a wider Conflict of Interest². A personal interest is a Conflict of Interest that relates to a particular individual. Whilst we ensure that anyone who conducts the investigation has no personal interest in its outcome, particular care must be taken when judging whether an individual within the Centre is best placed to conduct an investigation given the greater risk of a Conflict of Interest in that context.

We consider the scale and scope, competence, and personal interest both when identifying who is best placed to investigate a suspicion or allegation and when deciding who should gather evidence to support an investigation into suspected or alleged malpractice. As judgements about malpractice and maladministration are based on any evidence gathered, these considerations are as relevant to who collects evidence as they are to who takes decisions based on that evidence.

8 Taking appropriate action where malpractice or maladministration is suspected or alleged

When deciding what action to take where malpractice is suspected or alleged, a key consideration is to ensure that the result of each assessment reflects the level of attainment demonstrated by a Learner and to issue results which accurately and completely reflect the marking of assessments –

the Learner's performance must not be dishonestly manipulated (through cheating in an exam, for example). The action we take in a suspected or alleged case of malpractice must be geared towards achieving this overarching objective, in particular:

- to promptly take all reasonable steps to prevent any Adverse Effect to which it may give rise;
- where such an Adverse Effect nonetheless arises, to promptly take all reasonable steps to mitigate the Adverse Effect as far as possible and correct it; and
- because cases of suspected or alleged malpractice are (necessarily) examples of an incident that could have an Adverse Effect, to 'give priority to the provision of assessments which accurately differentiate between Learners on the basis of the level of attainment they have demonstrated and to the accurate and timely award of qualifications'.

We take all reasonable steps to prevent any Adverse Effect that may result, or where an Adverse Effect occurs, mitigate it as far as possible.

² A conflict of interest exists in relation to an awarding body where –
 (a) its interests in any activity undertaken by it, on its behalf, or by a member of its Group have the potential to lead it to act contrary to its interests in the development, delivery and award of qualifications in a way that complies with its Conditions of Recognition,
 (b) a person who is connected to the development, delivery or award of qualifications by the awarding organisation has interests in any other activity which have the potential to lead that person to act contrary to his or her interests in that development, delivery or award in a way that complies with the awarding organisation's Conditions of Recognition, or
 (c) an informed and reasonable observer would conclude that either of these situations was the case.

8.1 Factors to consider

Where malpractice or maladministration is suspected but no determination has yet been made, we consider whether to take any precautionary steps to reduce the potential for an Adverse Effect. We take into account:

- The intended use of the qualification – for example, where an individual is relying on a qualification in order to move onto further study, we might choose to award the qualification to allow the individual to progress, but mitigate some of the risk in this case by committing to contact those who may rely on the result directly should the case subsequently be proven. Alternatively, in the case of a professional qualification, including any instances when qualifications confer a licence to practise, suspected malpractice may call into question whether an individual has demonstrated the required level of competence – where this is the case, the potential Adverse Effect of allowing the individual to practise may outweigh any Adverse Effects on the individual of delaying their entry into their profession. Any health and safety or safeguarding issues will be relevant in this regard.
- Any time scales involved, for example, where the qualification may be used to apply for or enter higher education.
- The scale and scope of the possible malpractice or maladministration.
- Any potential risk to other qualifications as a result of the possible malpractice or maladministration.
- Whether there are additional risks that might arise as a result of the suspected malpractice or maladministration. For example, where a Teacher is suspected of malpractice, whether allowing them to continue to deliver assessments increases the risk of further incidents.
- Any legal implications arising from actions in each case.

Where any incident occurs which could have an Adverse Effect, we promptly take all reasonable steps to give priority to the provision of assessments which accurately differentiate between Learners on the basis of the level of attainment they have demonstrated and to the accurate and timely award of qualifications. In the case of malpractice or maladministration, we give priority to ensuring that we provide assessments that are fit for purpose. For example, should a large scale security breach of assessment materials occur prior to an assessment, we may initially focus on distributing alternative materials where possible.

Where malpractice or maladministration is suspected or alleged prior to the issue of results, we consider whether we should delay the issue of any or all results. In this respect, our obligation to ensure that results are correct outweigh our duty to take all reasonable steps to comply with a timescale for issuing results i.e. it may not be reasonable to issue a result which is highly likely to be incorrect simply to meet a published date. We strive to issue results at the earliest appropriate time, not simply as soon as possible. The use to which a qualification is put will be a relevant factor in considering timeliness.

We issue results for all units and qualifications and do not withhold results indefinitely. However, we may conclude that a result should not be issued where the malpractice affected the level of attainment demonstrated by the Learner. We carefully consider the balance between our obligations when deciding whether to withhold results, using some of the factors highlighted above when making such decisions. A similar balancing exercise is required where malpractice or maladministration is alleged or suspected following the issue of results but prior to the issue of certificates. We are obliged to notify the regulatory authorities as soon as possible of any steps that we have taken or intend to take to take to prevent an Adverse Effect, or to correct or mitigate any Adverse Effect that occurs.

9 Taking appropriate action once malpractice or maladministration is established

Where malpractice or maladministration is established, we take action, or seek the cooperation of others in taking such action, to sanction those responsible. We ensure that the action is proportionate to the gravity and scope of the malpractice or maladministration found. Proportionate action can only be taken once the facts of the case have been established. We therefore consider all relevant information when determining what action to take on a case-by-case basis. In all cases when judging which action(s) are proportionate, we consider consequential effects, including the effect of the proposed sanction on the individual. We balance the consequences for the individual against the seriousness and effects of the malpractice or maladministration – this does not preclude the use of a sanctions tariff, but does require the consequential factors in each individual case to be considered when judging whether or which sanction(s) are proportionate.

Where we discover that a result is incorrect, we consider whether to correct it. We take all reasonable steps to ensure that we revoke any certificate if the result on the certificate is false because of malpractice or maladministration. We consider how we will contact the Learners involved to notify them of the status of their certificates and of any arrangements for re-assessment and/or certification, as well as their right of appeal.

10 Review of decisions relating to malpractice and maladministration

We have established, maintain and comply with an appeals process in relation to our qualifications – this provides for the appeal of decisions relating to any action to be taken against a Learner or a Centre following an investigation into malpractice or maladministration. Learners are informed of the outcomes of a malpractice investigation and any sanctions taken against them, together with the supporting reasoning. We might inform the Learner directly or require the Centre to do so.

Where we face difficulties contacting Learners – once results have been issued, for example, due to Centre closure, or other factors – we take all reasonable steps to contact them. To provide for this, we will gather individual contact details for any Learner investigated.

Where we find that a Teacher has committed malpractice or maladministration, we ensure that, where appropriate, the Teaching Regulation Agency (TRA), or similar, is notified. In considering whether such a referral is appropriate, we consider whether:

- the Teacher is subject to professional regulation by the TRA or other teaching regulator; and
- the malpractice or maladministration is serious based on the facts of the case and the seriousness of the sanction imposed.
- If we have evidence that any Centre at which the Teacher is employed has made a referral to the TRA, we do not make a referral. Where there is doubt, we make a referral ourselves. Where confidential information is disclosed by an individual who is not subject to regulation by the TRA or another teaching regulator, we will notify any other professional regulator to which that person is subject, where appropriate.

11 What we do after deciding what action to take

Where an event relating to EduQual has had an Adverse Effect, we review, and revise where necessary, our approach to the development, delivery and award of qualifications to ensure it remains appropriate. This could include, for example, putting in place new safeguards, changing a qualification, revising how we develop new qualifications and/or providing further information and/or guidance. We consider, in particular, if we should improve our controls or approach to malpractice or maladministration. This is a cyclical process where we use the incident to inform the identification of future risks and updating our contingency plan.