



Open Awards Malpractice and Maladministration Policy and Procedures

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Policy Statement

Open Awards is committed to ensuring access to fair assessment for all learners and to protecting the integrity of the award of credit and qualifications.

This document seeks to define malpractice and maladministration, clarify the roles and responsibilities of centres, learners and Open Awards, and outline the procedures that will be followed when there are issues of suspected malpractice or maladministration within a centre.

Reporting Malpractice/Maladministration

A centre **must** report any allegation of suspected malpractice/maladministration to Open Awards. Failure to report allegations of malpractice/maladministration can lead to awards not being conferred and certificates not being issued, and future registrations not being accepted.

Where a centre is found to have not reported allegations of suspected malpractice/maladministration Open Awards may apply sanctions as set out in Open Awards' Sanctions Policy.

Introduction and Guidance

Definition

“Malpractice” means any act, default or practice which is in breach of the Regulations which:

- compromises, attempts to compromise, or may compromise, the process of assessment/examinations, the integrity of any qualification or the validity of an examination result or certificate, including maladministration.
- damages the authority, reputation or credibility of the awarding organisation or centre or any officer, employee or agent of any awarding organisation or centre.
- Involves a failure by a centre to investigate allegations of suspected malpractice in accordance with the requirements set out in this document also constitutes malpractice.

“Maladministration” specifically means any activity, neglect, default or other practice that results in a centre not complying with the specified requirements for delivery of the qualifications as set out in the guidance.

Centre Malpractice

1 Centre Staff Malpractice

This is malpractice committed by a member of staff or contractor (whether employed under a contract of employment or a contract for services) at a centre, or an individual appointed as an oral language modifier, a practical assistant, a prompter, a reader, a sign interpreter, or a scribe to a candidate.

Some examples of staff malpractice are listed below. This list is not exhaustive.

- Tampering with candidates scripts or assessed work after collection.
- Improper assistance to candidates in the production of assessed work
- Fabricating assessment and /or internal verification records or authentication statements.
- Poor invigilation of candidates
- Failing to keep assessment papers secure prior to assessment.
- Failing to conduct a proper investigation into suspected malpractice
- Maladministration including fraudulent claims for credit and qualifications.

2 Learner Malpractice

This is malpractice committed by a learner.

Some examples of learner malpractice are listed below. This list is not exhaustive. Please also refer to Open Awards' Plagiarism Policy.

- The introduction of unauthorised material into the assessment room eg calculators
- Plagiarism
- Collusion
- The deliberate destruction of another's work
- Acting in a disruptive manner
- The inclusion of inappropriate, offensive or obscene material in assessment/examination tasks.

Rights and Responsibilities of Open Awards, Centres and Learners in Relation to Suspected Malpractice

Open Awards will:

- Acknowledge the receipt of any allegation of malpractice/maladministration in writing
- Oversee all investigations into suspected or alleged malpractice/maladministration. Where this requires additional visits to a centre, these will be at the expense of the centre.
- Withhold the issuing of results until the conclusion of the investigation, or permanently, where the outcomes of the investigation warrants it
- Apply the appropriate sanctions, penalties and special conditions in cases of proven malpractice/maladministration. See *Open Awards' Sanctions Policy*.
- Report the matter to the regulators if they find evidence that certificates may be invalid
- Report the matter to the police if a proven malpractice involved the commission of a criminal act
- Have and make readily available a published procedure for considering appeals against any penalties arising from malpractice/maladministration decisions to all centres involved in malpractice/maladministration decisions.

Centres must:

- Have a policy in place for dealing with malpractice, with a named person, normally the Head of Centre having responsibility for reporting all suspicions or actual incidents of malpractice to the Awarding Organisation. Reports should be made using the Open Awards *Form M1* available from Open Awards' website
- Ensure that the Head of Centre normally supervises personally all investigations resulting from an allegation of malpractice, however if it is necessary to delegate an investigation to a member of staff, they must ensure that the member of staff selected is independent, and not connected to the department involved in the suspected malpractice
- Respond speedily and openly to all requests for an investigation into an alleged malpractice, as this is in the best interests of centre staff, candidates and any others involved
- Cooperate and ensure their staff cooperate fully with an enquiry into an allegation of malpractice/maladministration, whether the centre is directly involved in the case or not
- Inform staff members and candidates of their individual rights as set out in these guidelines
- Pass on to the individuals concerned any warning or notification of penalties and to ensure compliance with any requests made by the Open Awards as a result of malpractice.

Rights of the Accused Individual

When an incident of suspected malpractice is reported to Open Awards, or on receipt of a report from Open Awards, an individual (whether a candidate or a member of staff) accused of malpractice must:

- be informed (preferably in writing) of the allegation made against them
- know what evidence there is to support that allegation
- know the possible consequences should malpractice/maladministration be proven
- have the opportunity to consider their response to the allegations (if required)
- have an opportunity to submit a written statement
- have an opportunity to seek advice and to provide a supplementary statement (if required)
- be informed of the applicable appeals procedure, should a decision be made against them.

Procedures for Dealing with Malpractice

This will involve the following stages:

- The Allegation
- Open Awards' Response
- The Investigation
- The Report
- The Decision
- The Appeal

Communication throughout the process

Throughout the process Open Awards will normally communicate with the Head of Centre except where the Head of Centre is under investigation.

Open Awards may communicate directly with members of centre staff who have been accused of malpractice, if the circumstances warrant this, e.g. the staff member is no longer employed or engaged by the centre.

Open Awards may also communicate where it is appropriate and relevant.

The Allegation

Suspected malpractice discovered by Examiners, Quality Reviewers and Verifiers

Any suspicion of malpractice should be reported immediately to Open Awards using the *Form M1* provided by Open Awards together with full supporting evidence and an indication of which specification requirement(s) have been broken. It is not necessary to inform the Head of Centre of this report as this will be communicated directly from Open Awards.

Suspected malpractice identified by the Centre

The Head of a Centre must report any suspected malpractice/maladministration to Open Awards using *Form M1*.

Malpractice in course work discovered prior to the candidates signing the authentication declaration should not be reported to Open Awards but should be dealt with in accordance with the centre's own internal procedures. Centres should not normally give credit for any work submitted which is not the candidates own work, but if any assistance is given a note must be made of this on the work. (If an assignment or portfolio submitted for internal assessment is rejected by the centre on the grounds of malpractice, candidates have the right to appeal against the decision, and this must be included in the centre's procedures).

Suspected Malpractice reported by Others

Allegations of malpractice may be reported to Open Awards by employers, centre staff, candidates and other members of the public. Sometimes anonymous reports are received. If the reporting of malpractice by a member of staff or a candidate will cause difficulties for them in the centre, Open Awards will protect the identity of the informant if this is asked for when the report is made.

Open Awards will require any reports made by telephone to be put in writing.

When Open Awards receives a report of suspected malpractice from someone other than the Head of Centre (including anonymous reports) it will evaluate the situation in the light of other available information, to see if there is a case to investigate further.

Whistleblowing

Whistleblowing is a term used to refer to an individual who discloses information relating to malpractice, maladministration or wrongdoing and/or the covering up of malpractice, maladministration or wrongdoing. Whistleblowing is distinct from appeals, complaints and employment disputes.

Open Awards would expect individuals to raise the concern(s) with the centre in the first instance with a view to resolving through their own Malpractice/Maladministration and Complaints Policies. Where the individual feels the concern(s) raised have not been addressed, they may feel it appropriate to notify Open Awards.

Examples of whistleblowing may include:

- a worker for a centre making a disclosure about the centre's malpractice/maladministration.
- a learner making a disclosure about a centre's malpractice/maladministration.

Where a disclosure is received, Open Awards will send an initial acknowledgement that we have received the disclosure.

We will normally ask you to provide as much of the evidence you have seen as possible to support your disclosure.

Open Awards will consider anonymous whistleblowing disclosures however it may not be possible to investigate or substantiate anonymous disclosures.

We will endeavour to keep a whistleblower's identity confidential and to consider each disclosure of information sensitively and carefully, and decide upon an appropriate response. However we may need to share with third parties information received in the disclosure where we consider it necessary to do so. A whistleblower should recognise that he/she may be identifiable by others due to the nature/circumstances of the disclosure.

Open Awards will update as to what action is being taken in response to a whistleblower's disclosure and will advise when their investigations have been concluded.

Open Awards' response to an allegation of malpractice

Reports made to Open Awards by Examiners, Quality Reviewers, External Verifiers or Members of the Public

Open Awards will inform the Head of Centre of alleged malpractice and either:

- ask the Head to conduct a full investigation and to submit a written report, or
- in the case of alleged fraud or a serious breach of security, investigate the matter directly. In such cases Open Awards will inform the regulator immediately, and may also inform other awarding organisations that have approved the centre, and/or other stakeholders, as appropriate.

Reports received from the Head of Centres

Open Awards will consider the report and may decide to:

- take no further action
- take a decision on the case in line with the procedures
- ask the Head of Centre to carry out further investigation and provide further evidence
- investigate the matter further itself.

The Investigation

Investigations carried out by Heads of Centres

Normally Open Awards will expect an investigation to be carried out by the Head of Centre and in a timely manner (see Responsibilities of Centres).

The investigation should seek to establish the full facts and circumstances of any alleged malpractice. It should not be assumed that because an allegation has been made it is true. If it is necessary to delegate the responsibility for the investigation to another manager it is essential that this person does not have any responsibility for the department involved in the suspected malpractice. Conflicts of interests which may arise may compromise the investigation.

The Centre should keep the accused individuals fully informed of the allegations and as a minimum should provide them with a copy of the completed form being sent to Open Awards. Individuals should also be made fully aware of their rights. (*See Rights and Responsibilities Section*).

When the Head of Centre deems it necessary to conduct an interview with a learner or a member of staff, the interviews must be conducted in line with the centre's own policy for conducting disciplinary enquiries.

Legal advice is not normally required where there is no allegation of criminal behaviour. However if an individual wishes to be accompanied by a solicitor, the other parties should be informed. The Head of centre must make available a suitable venue for such interviews. Interviews may also be conducted by telephone. Individuals involved may be requested to make a written statement.

Investigations carried out by Open Awards

Normally if an allegation involves fraud or a serious breach of examination security, it will be expected that the investigation will be carried out by Open Awards and /or the regulators acting in conjunction with the Head of Centre (or the Governing Body or Management Board). The funding agencies may also conduct their own investigation if fraud is suspected.

Open Awards will not normally withhold from Heads of Centres any evidence pertinent to cases of suspected malpractice (except where this may cause difficulties in the workplace for the informant). In such cases Open Awards will provide summaries of evidence and a statement as to why the evidence itself cannot be presented in its original form.

If the investigation reveals that a candidate had prior knowledge of the content of an examination or an assessment, Open Awards will establish whether or not information could have been divulged to candidates at other centres or to other unauthorised persons.

It may be necessary for Open Awards to interview a candidate during an investigation. If the candidate is a minor or a vulnerable adult and a face to face interview is to be undertaken Open Awards will ensure that this only takes place in the presence of the Head of Centre or other senior member of staff, or the candidate's parents/guardians/carers or with the permission of the Head of Centre or parent/guardian/carer. If the candidate is an adult this qualification does not apply.

Interviews may also be conducted by telephone. Individuals involved may be requested to make a written statement when it is necessary for Open Awards to conduct an interview with a staff member, the member of staff may be accompanied by a friend or advisor (who may be a representative of a teacher association or other association).

If it is necessary for Open Awards to visit a centre, this will be at the expense of the centre.

Legal advice is not normally required where there is no allegation of criminal behaviour. However if an individual wishes to be accompanied by a solicitor the other parties should be informed. The Head of Centre must make available a suitable venue for such interviews. The individual being interviewed may also be requested to provide a written statement.

The Report

After investigating any complaint or allegation of malpractice the Head of Centre must submit a full written report of the case to Open Awards using form M1.

The report should be accompanied by the following documentation, as appropriate:

- a statement of facts, a detailed account of the circumstances of the alleged malpractice, and details of any investigation carried out by the centre, written statements from the invigilator(s), assessor, internal verifier(s) or other staff involved
- written statements from candidate(s)
- any mitigating circumstances (e.g. relevant medical certificates)
- information about the centre's procedures for advising candidates of the awarding organisations regulations
- examination seating plans
- unauthorised material found in the examination room
- any work of the candidate and any associated material (e.g. source material for coursework) which is relevant to the investigation.
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Normally *Form M1* provided by Open Awards should form the basis of the report. Reports in letter format will be accepted providing the information covers all the same points covered by *Form M1*.

The Decision

In order to determine the outcomes in cases of alleged malpractice Open Awards will appoint a Malpractice Committee. This Malpractice Committee will be made up of the a member of the Open Awards' Senior Management Team (usually the Head of Quality) plus two members experienced in examination and assessment processes drawn from the Committee with responsibility for the licence under which the qualification is regulated.

The following will apply to the activities of this committee:

- the work of the committee is confidential
- Members of the committee will be required to identify any cases of which they have personal knowledge, or might be said to have some interest which could lead to an inference that the committee could be biased. Any member with a close interest will take no part in the discussion of the case and will not be present when the Malpractice Committee discuss the matter
- Accused individuals, Heads of Centre and their representatives are not entitled to be present at meetings of the Malpractice Committee
- Meetings of the Malpractice Committee may be held in person or virtually/electronically.

Reaching a Decision

An overview of the Remit of the Malpractice Committee

In making a decision regarding the alleged malpractice the Malpractice Committee will establish that correct procedures have been followed in the investigation of the case, and that all individuals involved have been given the opportunity to make a written statement.

The Malpractice Committee will seek to determine:

- whether the examination or assessment regulations have been broken
- where the culpability lies for the breach of regulations.

It will then determine:

- appropriate measures to be taken to protect the integrity of the examination or assessment and to prevent further breaches
- the nature of any penalty to be applied.

In reaching their decision the Malpractice Committee will:

- consider and judge each case on an individual basis
- consider as separate issues, whether or not there has been malpractice, and if malpractice is established, whether a Sanction should be applied.

When making a decision the Committee will:

- identify the regulation or specification which has been broken
- establish the facts of the case, where there are conflicting statements the decision as to whether or not there has been malpractice is made by reference to the facts as disclosed by the papers, independent of any decisions on sanctions
- decide whether the facts so established actually breach the regulations or specification requirements
- if a breach has occurred decide who is responsible
- determine an appropriate level of Sanction. (*See Sanctions Policy*)

The Malpractice Committee must be satisfied on the balance of probabilities that the allegation is substantiated.

Possible Sanction and Penalties

Please see Open Awards Sanctions Policy for indicative Sanctions/Penalties.

Communicating Decisions

Open Awards will inform the Head of Centre in writing **within 3 working days** of the decisions being made. It is the responsibility of the Head of Centre to communicate the decision to the individual(s) concerned, and to pass on warnings in cases where this is indicated, in a timely manner.

Open Awards will ensure that in most cases alleged malpractice is kept confidential between itself and the centre except in cases of serious malpractice (eg where centre recognition is withdrawn) where the threat to the security of the qualification is such as to outweigh a duty of confidentiality.

Open Awards will submit a report on cases of centre malpractice, together with details of the action taken by the Head of Centre, the governing body, or the responsible employer to the regulators, if Open Awards decides that the circumstances of the case are sufficiently serious to warrant such action. The report may also be shared with other awarding organisations.

Appeals against Decisions Made in the Cases of Malpractice and Maladministration

The following individuals have a right to appeal against decisions of the Malpractice Committee, or officers acting on its behalf:

- Heads of Centres, who may appeal against sanctions imposed on the centre
- Members of Centre staff, or examining personnel contracted to a centre, who may appeal against sanctions imposed on them personally
- Third parties who have been barred from examinations of the Awarding Organisations.

An appeal must be based on reasonable grounds which relate to the incident in question. Open Awards accepts the following as reasonable grounds:

- the incident was not dealt with in accordance with the published procedures
- further evidence (including medical evidence) has come to light which changes the basis of the decision.

The following do not, by themselves, constitute grounds for an appeal:

- the individual did not intend to cheat
- the individual has an unblemished academic record
- the individual could lose a university place
- the individual regrets his/her actions.

Open Awards reserves the right to reject an appeal application at this point if there is not further evidence to consider and if the grounds for the appeal are weak or unjustified.

The Appeals Process

All appeals will be heard by an Appeals Committee that includes independent members. The Appeals Committee will consist of the chair of Open Awards Board and two independent members. Independent in this context relates to someone who has not been a member of the Open Awards Board or Committees, or who is an employee, verifier, assessor or marker at any time during the last seven years. In addition the independent member will have no interest or involvement in the complaint/appeal.

Stage One Appeal

The appellant should put their appeal in writing to Open Awards. Appeals must be made within five working days of receiving the malpractice decision.

The appellant must set out as clearly as possible the grounds for the appeal and must submit any further evidence relevant to supporting the appeal.

When an appeal is received by Open Awards it is acknowledged within five working days and then initially checked by the Quality Manager (Regulation and Standards) or other Senior Officer to determine whether or not the context and grounds of the appeal are valid, as per the grounds for appeal listed above.

At this stage certain types of appeals may be resolved without the need for a formal hearing.

Where the appeal is not valid, Open Awards will write to the appellant giving the reasons why the appeal cannot be acted upon. If the appellant should follow an alternative appeals procedure, the matter will be referred as appropriate.

Stage Two Appeal

Within 15 working days, Open Awards will seek further relevant information and documentation from both the appellant and any other parties, for example quality reviewer.

Within ten working days of receiving the full documentation, Open Awards will consider whether the evidence presented is sufficient to reach a decision. If it is not, further documentation may be requested from relevant parties, or further clarification from the appellant.

Once Open Awards is satisfied that all the relevant documentation is present, an initial conclusion on the matter will be reached, and Open Awards will write to the appellant, providing a judgement on each point raised and referencing the judgement with relevant evidence. The initial conclusions will, if appropriate, identify any recommendation or implications of the outcome.

The appellant will be invited to comment of the factual accuracy of Open Awards' initial conclusion within ten working days.

Open Awards will consider any additional information provided before reaching a final conclusion. A final conclusion will be confirmed to the appellant within ten working days of receipt of the appellant's comments relating to factual accuracy, or, if none are received, within ten working days of the deadline for such comments to have been submitted.

Appeals Panel (Independent Review)

If the appeal is unresolved or if the appellant is dissatisfied with the conclusion, he/she may request in writing within five working days that the appeal be referred for independent review at an Appeals Panel.

A member of Open Awards' Senior Management Team and/or a member of the Open Awards Board with an independent member will undertake the review. The Appeals Panel will respond within ten working days. The decision of the Appeals Panel is **final**, however centres or candidates are entitled to complain to the qualifications regulators.

Outcomes of an Appeal

The results of all appeals will be reported to Open Awards' Senior Management Team. If the outcome of the appeals process highlights the possibility of the integrity of other awards being compromised, Open Awards will undertake a full investigation, which will also be reported to the regulatory authorities.

This full investigation may involve a further review of the work of learners at the centre, a review of the qualification(s)/unit(s), and/or other actions identified by Open Awards appeal process and/or the regulatory authorities.

Where the appeal is valid, the appeal will go forward to a formal hearing. The formal hearing is designed to ensure that the appellant has a formal opportunity to present their case to an impartial body appointed.

For a formal hearing Open Awards will convene a panel. All appeals will be heard by an Appeals Panel that includes independent members. The Appeals Panel will consist of the chair of Open Awards Board and two independent members. Independent in this context relates to someone who has not been a member of the Open Awards Board or Committees, or who is an employee, verifier, assessor or marker at any time during the last 7 years. In addition the independent member will have no interest or involvement in the complaint/appeal.

Open Awards will liaise with the centre to determine an appropriate time and venue for the hearing and whether the appellant will be required to attend or not. In cases where the appellant is required to attend the procedure to be followed will be: