

# Malpractice & Maladministration policy

## Introduction

This policy is aimed at our customers, including candidates and apprentices, who are delivering/registered on NCTJ approved qualifications, units or end-point assessments within or outside the UK and who are involved in suspected or actual malpractice/maladministration. It is also for use by NCTJ staff to ensure they deal with all malpractice and maladministration investigations in a consistent manner.

It sets out the steps centres, training providers, candidates and apprentices or other personnel must follow when reporting suspected or actual cases of malpractice/maladministration and our responsibilities in dealing with such cases. It also sets out the procedural steps the NCTJ will follow when reviewing cases.

## Centre's responsibility

It is important that centre/training provider staff involved in the management, delivery, assessment and quality assurance of NCTJ qualifications or end-point assessments, and your candidates, are fully aware of the contents of this policy and that the centre/training provider has arrangements in place to prevent and investigate instances of malpractice and maladministration.

A failure to report suspected or actual malpractice/maladministration cases, or have in place effective arrangements to prevent such cases, may lead to sanctions being imposed on your centre/training provider (see our sanctions policy for details of the sanctions that may be imposed).

If you wish to receive guidance/advice from the NCTJ on how to prevent, investigate, and deal with malpractice and maladministration then please contact us (details below) and we will happily provide you with such advice and/or guidance.

Your centre/training provider's compliance with this policy and how it takes reasonable steps to prevent and/or investigate instances of malpractice and maladministration will be reviewed by the NCTJ periodically through our ongoing centre monitoring arrangements.

## Review arrangements

We will review this policy annually as part of the NCTJ's annual self-evaluation arrangements and revise it as and when necessary in response to customer and candidate feedback, changes in practices, actions from the regulatory authorities or external agencies, changes in legislation, or trends identified from previous allegations.

In addition, this policy may be updated in light of operational feedback to ensure that NCTJ arrangements for dealing with suspected cases of malpractice and maladministration remain effective.

If you would like to feedback any views please contact us via the details provided at the end of this policy.

### **Definition of malpractice**

Malpractice is essentially any activity or practice which deliberately contravenes regulations and compromises the integrity of the internal or external assessment process and/or the validity of certificates. It covers any deliberate actions, neglect, default or other practice that compromises, or could compromise:

- the assessment process;
- the integrity of a regulated qualification or end-point assessment;
- the validity of a result or certificate;
- the reputation and credibility of the NCTJ; or,
- the qualification/end-point assessment or the wider qualifications/apprenticeships community.

Malpractice may include a range of issues from the failure to maintain appropriate records or systems to the deliberate falsification of records in order to claim certificates.

For the purpose of this policy this term also covers misconduct and forms of unnecessary discrimination or bias towards certain or groups of candidates.

### **Examples of malpractice**

The categories listed below are examples of centre/training provider and candidate malpractice. Please note that these examples are not exhaustive and are only intended as guidance on our definition of malpractice:

- Denial of access to premises, records, information, candidates and staff to any authorised NCTJ representative and/or the regulatory authorities
- Failure to carry out internal assessment, internal moderation or internal verification in accordance with our requirements
- Deliberate failure to adhere to our candidate registration and certification procedures.
- Deliberate failure to continually adhere to our centre recognition, apprenticeship delivery and/or qualification approval requirements or actions assigned to your centre/training provider
- Deliberate failure to maintain appropriate auditable records, e.g. certification claims and/or forgery of evidence
- Fraudulent claim for certificates
- The unauthorised use of inappropriate materials/equipment in assessment settings (e.g. mobile phones)
- Intentional withholding of information from us which is critical to maintaining the rigour of quality assurance and standards of qualifications/end-point assessments
- Deliberate misuse of our logo and trademarks or misrepresentation of a centre/training provider's relationship with the NCTJ and/or its recognition and approval status with the NCTJ

- Collusion or permitting collusion in exams/assessments
- Persistent instances of maladministration within the centre/training provider
- Deliberate contravention by a centre/training provider and/or its candidates of the assessment arrangements we specify for our qualifications and end-point assessments
- A breach of confidentiality in assessment materials by centre tutors involved in the development of NCTJ exams
- A loss, theft of, or a breach of confidentiality in, any assessment materials
- Plagiarism by candidates/staff
- Copying from another candidate (including using ICT to do so)
- Impersonation - assuming the identity of another candidate or having someone assume your identity during an assessment.
- Unauthorised amendment, copying or distributing of exam/assessment papers/materials
- Inappropriate assistance to candidates by centre/training provider staff (e.g. unfairly helping them to pass a unit, qualification or end-point assessment)
- Deliberate submission of false information to gain a qualification, unit or end-point assessment
- Deliberate failure to adhere to, or to circumnavigate, the requirements of our Reasonable Adjustments and Special Considerations Policy
- False ID used at the registration stage
- Creation of false records
- Inappropriate use of technology during assessments (e.g. mobile phone)
- Cheating
- Cash for certificates (e.g. the selling of certificates for cash)
- Selling papers/assessment details
- Extortion
- Fraud
- Unreasonable behaviour for any reason, including bullying, harassment, abusive and threatening behaviour
- Unauthorised people entering or being present in a learner's exam environment (remote exams)
- Navigating away from the exam page and accessing unauthorised materials online e.g. websites, or documents in Microsoft Word, Excel etc. (remote exams)
- Suspicious head and eye movements which may be indicative of candidate malpractice (remote exams)
- Candidates leaving their desk during an exam where this is not permitted (remote exams)

### **Definition of maladministration**

Maladministration is essentially any activity or practice which results in non-compliance with administrative regulations and requirements and includes the application of persistent mistakes or poor administration within a centre/training provider (e.g. inappropriate candidate records).

### **Examples of maladministration**

The categories listed below are examples of centre/training provider and candidate maladministration. Please note that these examples are not exhaustive and are only intended as guidance on our definition of maladministration:

- Persistent failure to adhere to our candidate registration and certification procedures
- Persistent failure to adhere to our centre recognition, apprenticeship delivery and/or qualification/end-point assessment requirements and/or associated actions assigned to the centre/training provider
- Late candidate registrations (both infrequent and persistent)
- Unreasonable delays in responding to requests and/or communications from NCTJ
- Inaccurate claims for certificates
- Failure to maintain appropriate auditable records, e.g. certification claims and/or forgery of evidence
- Failure to adhere to NCTJ exam procedures and requirements (either for remote or in-centre exams)
- Withholding of information, by deliberate act or omission, from us which is required to assure the NCTJ of the centre/training provider's ability to deliver qualifications or end-point assessments appropriately
- Misuse of our logo and trademarks or misrepresentation of a centre/training provider's relationship with NCTJ and/or its recognition and approval status with the NCTJ
- Failure to adhere to, or to circumnavigate, the requirements of our Reasonable Adjustments and Special Considerations Policy
- Taking screen shots or copies of NCTJ exam papers, online exam questions, and/or online exam section information

### **Process for making an allegation of malpractice or maladministration**

Anybody who identifies or is made aware of suspected or actual cases of malpractice or maladministration at any time **must immediately notify the NCTJ**. In doing so they should put the details in writing/email and enclose appropriate supporting evidence (centres/training providers can submit details of potential/actual cases of malpractice or maladministration via the suspected malpractice/maladministration form on our website.)

All allegations must include (where possible):

- centre/training provider's name, address and number
- candidate's name and NCTJ URN number
- centre/training provider or NCTJ personnel's details (name, job role) if they are involved in the case
- details of the NCTJ course/qualification/end-point assessment affected or nature of the service affected
- nature of the suspected or actual malpractice and associated dates
- details and outcome of any initial investigation carried out by the centre/training provider or anybody else involved in the case, including any mitigating circumstances

In addition, we ask that the person making the allegation declares any personal interest they may have in the matter at the outset.

If a centre/training provider is conducting their own investigation into the incident, they must ensure that staff involved in the investigation are competent and have no personal interest in the outcome of the investigation. It is important to note that in all instances centres/training

providers **must immediately notify the NCTJ** if they suspect malpractice or maladministration has occurred as we have a responsibility to the regulatory authorities to ensure that all investigations, including investigations conducted by the centre/training provider, are carried out rigorously and effectively.

In all cases of suspected malpractice and maladministration reported to the NCTJ we will protect the identity of the 'informant' in accordance with our duty of confidentiality and/or any other legal duty.

### **Confidentiality and whistleblowing**

Sometimes a person making an allegation of malpractice or maladministration may wish to remain anonymous. Although it is always preferable to reveal your identity and contact details to us, if you are concerned about possible adverse consequences you may request for us not to divulge your identity.

While we are prepared to investigate issues which are reported to us anonymously, we shall always try to confirm an allegation by means of a separate investigation before taking up the matter with those to whom the allegation relates. We will consider each disclosure of information sensitively and carefully, and decide upon an appropriate response.

We will always aim to keep a whistle-blower's identity confidential where asked to do so although we cannot guarantee this and we may need to disclose your identity to:

- the police, fraud prevention agencies or other law enforcement agencies (to investigate or prevent crime, including fraud)
- the courts (in connection with court proceedings) another person to whom we are required by law to disclose your identity.
- other third parties where we consider it necessary to do so (e.g. the regulator Ofqual or the Institute for Apprenticeships).

A whistle-blower should also recognise that he or she may be identifiable by others due to the nature or circumstances of the disclosure (e.g. the party which the allegation is made against may manage to identify possible sources of disclosure without such details being disclosed to them).

In most cases, we will keep you updated as to how we have progressed the allegation (e.g. undertaken an investigation) but we won't disclose details of the investigation details. In addition, it may not be appropriate for us to disclose full details of the outcomes of the investigation due to confidentiality or legal reasons (e.g. disclose full details on the action that may be taken against the parties concerned).

Further information regarding whistleblowing can be found in the NCTJ whistleblowing policy.

### **Responsibility for the investigation**

In accordance with regulatory requirements all suspected cases of maladministration and malpractice will be examined promptly by the NCTJ to establish if malpractice or

maladministration has occurred and will take all reasonable steps to prevent any adverse effect from occurring as defined by our regulators.

All suspected cases of malpractice and maladministration will be passed to the NCTJ head of quality and assessment and we will acknowledge receipt, as appropriate, to external parties within two working days.

The head of quality and assessment is responsible for ensuring the investigation is carried out in a prompt and effective manner, in accordance with the procedures in this policy, and will lead the investigation, review any supporting evidence received or gathered by the NCTJ and establish whether or not the malpractice or maladministration has occurred.

At all times we will ensure that any NCTJ personnel assigned to the investigation have the appropriate level of training and competence and they have had no previous involvement or personal interest in the matter being investigated. Please refer to the NCTJ conflicts of interest policy for further details.

### **Notifying relevant parties**

In all cases of suspected or actual malpractice, the NCTJ will notify the Head of Centre involved in the allegation that we will be investigating the matter, and/or in the case of candidate malpractice, we may ask the centre to investigate the issue in liaison with our own personnel – in doing so we may withhold details of the person making the allegation if to do so would breach a duty of confidentiality or any other legal duty.

Where applicable, the head of quality and assessment will inform the appropriate regulatory authorities if we believe there has been an incident of malpractice or maladministration which could either invalidate the award of a qualification/end-point assessment or if it could affect another awarding organisation or end-point assessment organisation (EPAO).

Where the allegation may affect another awarding organisation or EPAO and their provision the NCTJ will also inform them in accordance with the regulatory requirements and obligations imposed on the NCTJ by our regulators Ofqual, Qualifications Wales, CCEA and the Institute for Apprenticeships (IfA). If we do not know the details of organisations that might be affected we will ask the appropriate regulatory authority to help us identify relevant parties that should be informed.

Where an allegation of malpractice is proven against a centre with regard to the disclosure of confidential assessment information, the NCTJ will ensure that, where appropriate, the Teaching Regulation Agency (TRA), or any organisation that carries out the same function in England or another jurisdiction, is notified. In considering whether or not such a referral is appropriate, the NCTJ will consider whether:

- the staff member involved in the incident is subject to professional regulation by the TRA or other teaching regulator
- the malpractice identified is serious based on the facts of the case and the seriousness of the sanction imposed by the NCTJ.

Where the NCTJ finds that a person not subject to regulation by the TRA or another teaching regulator has disclosed confidential assessment information, it will notify any other professional regulator to which that person is subject, where appropriate.

### **Investigation timelines and summary process**

We aim to action and resolve all stages of the investigation within **20 working days** of receipt of the allegation. Please note that in some cases the investigation may take longer; for example, if a centre visit and/or interviews are required. In such instances, we'll advise all parties concerned of the likely revised timescale.

The fundamental principle of all investigations is to conduct them in a fair, reasonable and legal manner, ensuring that all relevant evidence is considered without bias. In doing so investigations will be based around the following broad objectives:

- To establish the facts relating to allegations/complaints in order to determine whether any irregularities have occurred.
- To identify the cause of the irregularities and those involved.
- To establish the scale of the irregularities.
- To evaluate any action already taken by the centre/training provider.
- To determine whether remedial action is required to reduce the risk to current registered candidates and to preserve the integrity of the qualification or end-point assessment.
- To ascertain whether any action is required in respect of certificates already issued.
- To obtain clear evidence to support any sanctions to be applied to the centre, and/or to members of staff, in accordance with our sanctions policy.
- To identify any adverse patterns or trends.

The investigation may involve a request for further information from relevant parties and/or interviews with personnel involved in the investigation. Therefore, the NCTJ will:

- Ensure all material collected as part of an investigation must be kept secure. All records and original documentation concerning a completed investigation that ultimately leads to sanctions against a centre be retained for a period of not less than five years. If an investigation leads to invalidation of certificates, or criminal or civil prosecution, all records and original documentation relating to the case will be retained until the case and any appeals have been heard and for five years thereafter.
- Expect all parties, who are either directly or indirectly involved in the investigation, to fully co-operate with us.

Either at notification of a suspected or actual case of malpractice or maladministration and/or at any time during the investigation, the NCTJ reserves the right to impose sanctions on the centre/training provider in accordance with the NCTJ sanctions policy, in order to protect the interests of candidates and the integrity of the qualifications or end-point assessments.

The NCTJ also reserves the right to withhold a candidate's, and/or cohort's, results for all the NCTJ course/qualifications/apprenticeships and/or units/assessments they are studying at the time of the notification or investigation of suspected or actual malpractice/maladministration.

If appropriate, the NCTJ may find that the complexity of a case or a lack of cooperation from a centre/training provider means that we are unable to complete an investigation. In such circumstances we will consult the relevant regulatory authority in order to determine how best to progress the matter.

Where a member of the NCTJ's staff is under investigation we may suspend them or move them to other duties until the investigation is complete.

Throughout the investigation the head of quality and assessment will be responsible for ensuring that due process is being followed, appropriate evidence has been gathered and reviewed and for liaising with and keeping informed relevant external parties.

### **Investigation report**

After an investigation, the NCTJ will produce a written report. Where appropriate, the report may be sent to the relevant parties involved in the investigation to check the factual accuracy. Any subsequent amendments will be agreed between the parties concerned and ourselves. The report will:

- Identify where the breach, if any, occurred
- Confirm the facts of the case
- Identify who is responsible for the breach (if any)
- Confirm an appropriate level of remedial action to be applied.

The NCTJ will make a final report/summary/concluding email available to the relevant parties involved in the investigation (where appropriate) and to the regulatory authorities and other external agencies, as required. The NCTJ reserves the right not to provide a copy of the report to third parties affected by the investigation, such as candidates affected by centre or training provider malpractice/maladministration but not under investigation, if we do not consider it appropriate to do so. In all circumstances, third parties affected by the investigation will be notified of the outcome.

If it was an independent/third party that notified us of the suspected or actual case of malpractice, the NCTJ will also inform them of the outcome – normally within 10 working days of the final decision. In doing so we may withhold some details if to disclose such information would breach a duty of confidentiality or any other legal duty.

If it is an internal investigation against a member of our staff the report will be agreed by the chief executive with the relevant internal managers and appropriate internal disciplinary procedures will be implemented.

### **Investigation outcomes**

If the investigation confirms that malpractice or maladministration has taken place the NCTJ will consider what action to take to:

- Minimise the risk to the integrity of certification now and in the future
- Maintain public confidence in the delivery and awarding of qualifications and end-point assessments

- Discourage others from carrying out similar instances of malpractice or maladministration
- Ensure there has been no gain from compromising our standards.

Action the NCTJ may take includes:

- Imposing actions in relation to your centre/training provider with specified deadlines in order to address the instance of malpractice/maladministration and to prevent it from reoccurring
- Imposing sanctions on your centre/training provider – if so these will be communicated in accordance with our sanctions policy along with the rationale for the sanction(s) selected
- Take action against a candidate(s) in relation to proven instances of malpractice or maladministration such as some or all of the following (which may be communicated to the candidate by the NCTJ and/or the candidate's centre/training provider):
  - Issuing a written warning that if the offence is repeated further action may be taken
  - Loss of all marks/credits for the related work/unit
  - Disqualification from the end-point assessment, unit and/or qualification
  - Placing a ban for a set period of time from taking any further assessments and/or qualifications with the NCTJ
- In cases where certificates are deemed to be invalid, inform your centre/training provider concerned and the regulatory authorities why they're invalid and any action to be taken for reassessment and/or for the withdrawal of the certificates. The NCTJ will also ask the centre/training provider to let the affected candidates know the action we are taking and that their original certificates are invalid and ask the centre/training provider – where possible – to return the invalid certificates to the NCTJ. The NCTJ will also amend its database so that duplicates of the invalid certificates cannot be issued and we expect the centre/training provider to amend their records to show that the original awards are invalid.
- Amending aspects of NCTJ qualification/end-point assessment development, delivery and awarding arrangements and if required assessment and/or monitoring arrangements and associated guidance to prevent the issue from reoccurring.
- Informing relevant third parties (e.g. funding bodies) of the NCTJ's findings in case they need to take relevant action in relation to the centre.

In proven cases of malpractice and/or maladministration by a centre/training provider the NCTJ reserves the right to charge the centre/training provider for any re-sits and reissuing of certificates and/or additional external verifier visits. The fees for which will be the current NCTJ prices for such activities at the time of the investigation.

In addition, to the above the head of quality and assessment will record any lessons learnt from the investigation and pass these onto relevant internal colleagues to help NCTJ prevent the same instance of maladministration or malpractice from reoccurring.

If the relevant party(ies) wishes to appeal against our decision to impose sanctions, please refer to our appeals policy.

## **Remote exams**

From May 2020, the NCTJ is running diploma exams remotely so that candidates can sit their exams securely at home during the coronavirus pandemic. Exams held online in Cirrus are delivered remotely using Proctorio, a secure proctoring platform. Exams held outside of Cirrus will be delivered remotely using Zoom and a centre invigilator.

For exams sat on Cirrus, suspicious activity flagged by the Proctorio software will be reviewed by a member of the NCTJ exams team. Any incidents flagged as suspected or actual malpractice will be escalated to the head of quality and assessment for a second review.

If the candidate is cheating or attempting to cheat e.g. they are seen using their mobile phone, accessing exam materials or leaving their desk, this will result in immediate disqualification. If the candidate breaches the exam procedures during the exam, this will result in immediate disqualification. For mobile phone use, the assessment manager will first check if the candidate had to phone their centre contact because of a technical issue. If the phone was used for this purpose this will not be treated as malpractice and will not result in disqualification.

For all other incidents, if these are still considered to be suspicious following a second review by the head of quality and assessment, it will be escalated to a panel review where a panel of three will decide if the behaviour should be treated as suspected malpractice and the candidate disqualified from the exam. It will be taken into consideration whether the incident is repeated throughout the exam or whether it occurs infrequently.

The panel of three will consist of the head of quality and assessment, the head of qualifications and may also include the NCTJ principal examiner or other member of the NCTJ quality assurance and standards committee.

Where suspected/actual malpractice is confirmed, the candidate will be disqualified and the head of quality and assessment will be responsible for communicating this decision to the candidate(s) in question on behalf of the NCTJ.

If the relevant party(ies) wishes to appeal against the NCTJ's decision to disqualify, please refer to the relevant section of the NCTJ's appeals policy.

## **Contact us**

If you've any queries about the contents of the policy, please contact our head of quality and assessment on 01799 544014 or by email; details are available from our website [www.nctj.com](http://www.nctj.com).