

Maladministration and Malpractice Investigation Guidance

December 2017

MALADMINISTRATION AND MALPRACTICE INVESTIGATION GUIDANCE

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Section 1 - About these guidance notes

1.1 Definitions

Maladministration - is any activity or practice which results in non-compliance with the contents of the Centre Agreement; our centre approval criteria; our qualification or assessment requirements and/or other NCFE regulations and procedures.

Malpractice - is any activity or practice that is unethical and/or illegal which compromises, or could compromise the integrity, reputation and/or the validity of the assessment process, the programme, certificates, NCFE, the centre or the wider education sector. Malpractice could occur at a learner, staff and/or centre level.

Examples of maladministration and malpractice are detailed under Appendix A.

1.2 Scope of guidance notes

This guidance document should, where applicable, be read in conjunction with our:

- Centre Agreement
- Maladministration and Malpractice Policy
- Sanctions Policy
- External Whistleblower Policy
- Complaints Procedure.

We recognise the necessity to provide support and guidance to our centres and this document has been created to support our centres and set out the responsibilities of centre staff, external contractors and NCFE staff when dealing with cases of alleged maladministration or malpractice.

1.3 Purpose of the guidance notes

These guidance notes assist both parties by outlining the framework for investigating and dealing with potential or actual cases of maladministration or malpractice. This is important in situations which could result in a detrimental effect to the learner and/or could potentially compromise the integrity of our qualifications, systems, processes or programmes.

We expect you to identify, minimise and manage risks within your business. In particular, and in support, of both the Centre Agreement and your risk management processes, you must have robust written procedures in place to minimise the risk of maladministration or malpractice from occurring.

We aim to work with you and your learners to prevent incidents of maladministration or malpractice occurring through our supporting visits and documentation. We expect you to do everything possible to assist us in identifying and undertaking all necessary steps outlined during these guidance notes to minimise any risk of reoccurrence.

Section 2 – Individuals’ responsibilities

In the event that either parties are notified of alleged or actual maladministration or malpractice, each party is responsible for ensuring that all facts are established to determine whether or not the allegation can be proven and, if necessary, carry out an investigation and take the appropriate action to minimise the risk of incidents occurring in the future.

In doing so, we will work with the relevant people (including your centre staff and external parties such as our Regulators). We have defined the responsibilities of each party below.

2.1 NCFE staff and external contractors (including under NCFE owned brands) will

- oversee all investigations into alleged or actual maladministration or malpractice
- support you, when requested, and provide you with guidance on how best to investigate, deal with and prevent maladministration or malpractice
- take all reasonable steps to prevent or mitigate the impact and effects of maladministration or malpractice, such as:
 - withhold the issuing of results and certificates until the investigation is concluded, or permanently, where appropriate
 - apply appropriate sanctions in line with our Sanctions Policy
- inform other relevant third parties as appropriate (Regulator(s), Education and Skills Funding Agency, Police, etc)
- provide you with a report/summary on the outcome of the investigation
- retain records and documentation during and after the completion of investigations in line with data protection legislation
- work with you, as appropriate, to ensure that maladministration or malpractice does not reoccur

2.2 Centre staff will

- notify us immediately of any potential maladministration or malpractice, this will usually be through the Head of Centre or another individual as delegated by the Head of Centre
- advise anyone implicated in relation to maladministration or malpractice that
 - an allegation has been made against them
 - they have the right to reply to any allegations
 - they have the right to appeal against any sanctions imposed on them in relation to maladministration or malpractice
- comply with all requests for information in the timescales stated by us
- carry out an investigation, where appropriate and/or as directed by us (*the investigation should be led by the Head of Centre or by another senior member of staff, where appropriate (They should be independent and not connected to the department or learner involved in the investigation. This avoids potential conflicts of interest or the investigation being compromised. All conflicts of interest should be declared at the earliest opportunity.)*)
- provide us with a written report of any investigation you undertake (whether or not the investigation was requested by us), including information on the detail and outcome(s) of that investigation.
- fully co-operate with any investigation(s)
- implement required actions as a result of the investigation

- inform their centre staff, satellites, sub contract centres and learners affected of the implications of any actions and sanctions
- take appropriate action to prevent the incident of alleged or actual maladministration or malpractice reoccurring
- notify us if any personnel involved in the maladministration or malpractice leave the centre
- retain any relevant documentation securely in line with your archiving and retention policies and procedures
- respect the confidentiality of information you handle and comply with any associated data protection legislation
- ensure that their centre has policies and procedures in place to make sure maladministration or malpractice are investigated and managed appropriately internally - where requested they should be provided to us without delay.

Failure to comply with the requirements above may itself constitute as malpractice.

Section 3 – Procedures for submitting a notification of alleged or actual maladministration or malpractice

Notification by a centre and third parties

To ensure that we have all the correct details and facts please complete our 'Notification of Maladministration/Malpractice' form, or 'Whistle-blowing' form, both of which may be downloaded from our website. If you have already completed your own internal investigation or have collated evidence to support or refute an allegation, please also send this to us when you submit the form.

If we ask you to conduct an investigation in to alleged or actual maladministration or malpractice we will ask you for some basic information, for example the dates of the alleged or actual maladministration or malpractice; your centre details; the people involved; the title and number of the programme affected and/or the details of the alleged or actual maladministration or malpractice. We will need to understand whether other learners, centres and/or Awarding Organisations may have been affected by the incident, as we may be required to inform our Qualification Regulator(s). An investigation report form will be provided to assist with your investigation.

You can also contact us via phone and/or send us a written report of the alleged or actual maladministration or malpractice using the contact details listed in section 8 of this document.

Section 4 - Responding to alleged or actual maladministration and malpractice

This section outlines the actions to be taken by us and you when responding to notifications of alleged or actual maladministration or malpractice.

Once we receive a notification of alleged or actual maladministration or malpractice a review of the notification and any evidence submitted will take place by our Quality Assurance department, usually within 5 working days.

From this, an informed decision can be made and a decision reached to

- take no further action; or
- instruct the Head of Centre, who may delegate this responsibility to another senior member of centre staff to conduct a full or further investigation in to the alleged or actual maladministration or malpractice, and submit a written report; or
- refer the incident to relevant parties; or
- investigate the incident directly.

During this stage if we have not been provided with sufficient evidence to substantiate the alleged or actual maladministration or malpractice we may undertake additional monitoring activities in order to ensure the integrity of, and public confidence in our qualifications.

Section 5 - Conducting an investigation

All investigations should be undertaken by persons of appropriate competence who have no personal interest in the outcome of the investigation. We would normally expect that the investigation is conducted by the Head of Centre, or where appropriate another senior member of centre staff who is independent and not associated to the department(s) or learner(s) involved in the investigation.

The Head of Centre will retain overall responsibility for the investigation, unless implicated in the incident, and should ensure that any potential or actual conflicts of interest are avoided to prevent the investigation being compromised. In the event that a conflict of interest is identified it should be reported to us immediately.

If we are made aware of any concerns which could compromise or prejudice the investigation, we will take appropriate and proportionate action to ensure the integrity of the investigation is preserved.

We may also investigate any allegation of maladministration or malpractice directly. This may be in addition to your investigation. In line with the Centre Agreement, you are required to cooperate with us during our investigation.

5.1 Your investigation

If we have asked you to carry out an investigation, the Head of Centre is responsible for organising an investigation into the alleged or actual maladministration or malpractice, and submitting a full and detailed report within the timescales as determined by us.

The purpose of the investigation is to determine

- who was involved in the incident, including learners, members of staff and/or invigilators
- the facts of the case, as established from evidence and statements from those involved.

The report submitted to NCFE should include

- a clear account of the circumstances surrounding the maladministration or malpractice
- details of your internal investigation and actions carried out, for example:
 - signed and dated statements from the staff concerned (eg invigilators, assessors, tutors) on the centre's official letterhead paper
 - signed and dated statements from the learners(s) concerned or a clear indication that they have been given an opportunity to make a statement (in circumstances which make it inappropriate to interview the learners, the centre should discuss the reasons in confidence with NCFE)
 - a signed and dated statement from the learner's employer (where appropriate)
 - the procedures for advising learners of the regulations concerning the conduct of examinations and/or assessments
 - seating plans of the examination room (including images of the room, where each learner sat and where the invigilator was situated)
 - assessment and internal quality assurance records
 - details of any unauthorised material found during an examination (if applicable)
- any other evidence relevant to the allegation.

5.2 Our investigation

We reserve the right to conduct any investigation directly, where we deem this as the most appropriate course of action. We will appoint NCFE staff and, if necessary, external contractors who are independent of the normal day to day working relationships with the centre and with any individuals who are under investigation.

Our investigation may include one or more of the following approaches, however are not intended to be exhaustive:

- telephoning and/or visiting you to establish facts
- reviewing or collecting information to help us with our investigation
- arranging for NCFE's external contractors to carry out a centre visit (we may charge you a fee for this visit)
- carrying out interviews (either face to face or by telephone) with people relevant to the investigation
- requesting in writing any further information as necessary.

5.3 Rights of individuals

We expect that individuals accused of maladministration or malpractice are made fully aware, at the earliest opportunity, of the nature of the allegation. This should be in writing, outlining the possible consequences if maladministration or malpractice is proven.

The individual(s) must

- know what evidence there is to support the allegation
- have the opportunity to consider their response to the allegations
- have an opportunity to submit a written statement
- be informed that he/she will have the opportunity to read the submission and make an additional statement
- be informed of the appeals procedure, should a decision be made against them
- be informed of the possibility that information relating to a serious case of malpractice may be shared with other Awarding Organisations, the regulators, the Police and/or other relevant third parties
- ensure that any centre personnel or learners being interviewed are informed that they can be accompanied by another person (the person to be interviewed must be advised of that right in sufficient time in advance of the interview to allow them to make such arrangements)
- ensure that children/young persons (under the age of 18) and vulnerable adults, are accompanied by an appropriate adult at all times during an interview
- make us aware, in sufficient time, if any person giving legal representation or advice to any party is to be present in an interview.

In some situations the Head of Centre may exercise discretion, taking into consideration the investigation, as to how and when an allegation of maladministration or malpractice is presented to the individual(s) involved.

Section 6 – Investigation review

In order to determine the outcome of alleged or actual maladministration or malpractice we will conduct a full review of all available information and evidence, for example

- the evidence relevant to the allegation, such as written statement(s) from the learner(s), invigilator(s), assessor, internal quality assurers or other staff who are involved
- any plausible evidence and/or mitigating factors
- information about the centre's procedures for advising learners and centre staff of our regulations
- seating plans showing the exact position of learners (if applicable)
- any unauthorised material found during the external assessment (if applicable)
- any of the learner(s) work and any associated material (eg external source materials) which may be relevant to the investigation.

We aim to establish during our review that the correct procedures and guidance have been followed during your/our investigation, and that all individuals have been given the opportunity to make a written statement.

If you have conducted the investigation, we will review your draft investigation report for points of factual accuracy. Should this review result in required substantial change, ie we do not agree with your stated content or the root cause has not been identified, we will advise you of this in writing and retain this information on record. We will refer to this retention within any investigation we may subsequently conduct.

If we investigate directly, we will provide you with a draft report detailing the outcome and findings from our investigation. You have 5 working days from receipt to review and comment on the report for factual accuracy. Should your review of this information result in required substantial changes, ie you do not agree with our stated content, please advise us in writing. If we do not agree to amend the information as stated, we will retain your comments on record and we will refer to this within our own investigation.

In summary, a record of factual accuracy, with any disagreements noted by either party, will be retained. This record will be referred to in any subsequent investigations and may be provided as required to relevant persons, eg our Regulators.

If we are not satisfied that the root cause has been identified, beyond reasonable doubt, we will

- advise the Head of Centre in writing if further investigation is required by either party
- provide further guidance and/or evidence to support with the further investigation.

Section 7 – Investigation conclusion

NCFE personnel dealing with the investigation will aim to make a unanimous decision (or majority decision if this is not possible) when determining

- whether maladministration or malpractice has occurred
- who is responsible for the maladministration or malpractice
- appropriate measures to be taken to ensure the integrity of, and public confidence in our qualifications
- whether a sanction should be applied.

We will produce a final summary report outlining the outcome and/or findings of the investigation(s), including which regulation, policy or specification requirement was breached.

We will inform you of our decision and any action we will take and/or need you to take.

- **Maladministration or malpractice not demonstrated to have occurred**
In this case no further action will be taken.
- **Maladministration or malpractice likely to have occurred**
If we do not have sufficient evidence to prove the occurrence of maladministration or malpractice, but we have enough to suggest either may have occurred, we may still take action and/or direct you to take action.
- **Maladministration or malpractice demonstrated, or on the balance of probabilities, is highly likely to have occurred**
Under these circumstances, we will take action proportionate to the seriousness, impact and/or frequency of occurrence. We may also direct you to take action.

If an external party notified us of the allegation, we will inform them of the outcome of the investigation, but not any information which may unduly breach confidentiality.

Section 8 - How to contact us

If you have any queries about the contents of this guidance document please contact our Quality Assurance team:

NCFE

Quality Assurance team

Q6 Quorum Business Park

Benton Lane

Newcastle upon Tyne

NE12 8BT

0191 239 8000¹

QualityDevelopment@ncfe.org.uk

¹ *To continue to improve our levels of customer service, telephone calls may be recorded for training and quality purposes.

Appendix A – Illustrative examples of maladministration and malpractice

Please note the examples below are for illustrative purposes only and not intended as an exhaustive list.

Centre Maladministration

Examples of centre maladministration are shown below for indicative purposes only:

- failure to adhere to our policies, regulations and mandatory documents
- failure to train invigilators adequately
- the introduction of unauthorised material into assessments, either prior to or during the assessment
- failure to invigilate assessments in accordance with our Regulations for the Conduct of External Assessments
- granting access arrangements to learners who do not meet the requirements of our policies
- granting access arrangements to learners where prior approval has not been obtained from us
- failing to maintain the security of learner assessments prior to returning to us
- failing to return learners' assessments in a timely manner
- failing to notify us at the earliest opportunity of all suspicions or actual incidents of malpractice
- failing to conduct a thorough investigation into alleged or actual maladministration or malpractice when asked to do so by us
- inappropriate withholding or destruction of certificates.

Centre Malpractice

Examples of centre malpractice are shown below for indicative purposes only:

- failure to maintain the security of assessment materials prior to and after an assessment
- failing to adequately supervise or invigilate learners
- permitting, facilitating or obtaining unauthorised access to assessment material prior to or after an assessment
- fabricating learner assessments and/or internal quality assurance records or authentication statements
- entering fictitious learners for assessments, or otherwise subverting the assessment or certification process with the intention of financial gain (fraud)
- assisting or prompting learners during assessments
- permitting learners in an assessment to access prohibited materials
- failure to make available information reasonably requested by us during the course of an investigation, or in the course of deciding whether an investigation is necessary
- failing to conduct a thorough investigation into alleged or actual maladministration or malpractice when asked to do so by us
- failure to investigate or provide information according to agreed deadlines
- failure to report all allegations of malpractice.

Learner malpractice

Examples of learner malpractice are shown below for indicative purposes only:

- the alteration or falsification of any results document, including certificates
- collusion (working collaboratively with other learners, beyond what is permitted)
- copying from another learner
- allowing work to be copied eg posting work on social networking sites prior to an assessment
- disruptive behaviour during an assessment
- making a false declaration of authenticity in relation to the authorship of assessments
- being in possession of confidential material in advance of an assessment
- the inclusion of inappropriate, offensive or obscene material during assessments
- impersonation (pretending to be someone else, arranging for another person to take one's place in an assessment)
- plagiarism (unacknowledged copying from or reproduction of published sources or incomplete referencing)
- theft or use of another learners work;
- bringing into the assessment room unauthorised material, for example: notes, study guides, mobile phones, smartwatches or other similar electronic devices
- behaving in a manner so as to undermine the integrity of the assessment.

Appendix B - Guidance on interviewing

To support you when conducting investigative interviews we have provided a few examples of types of interview techniques for your consideration.

The purpose of investigative interviewing is to obtain honest, accurate and reliable information. Interviewers should approach all interviews with an open mind and test information against what is known or can be established. The interviewer does not have to accept the first answer given, and still has the right to ask further questions even where the right of silence is exercised by the interviewee.

The Cognitive Interview is a very successful and practical method for obtaining reliable, full and accurate accounts from cooperative witnesses and suspects. This style of interview is normally used with witnesses and or those who may offer relevant supporting information.

Cognitive Interviews

- Set the scene.
- Obtain an uninterrupted account from the interviewee (as a guide, the interviewee should talk for about 80% of the interview).
- During the uninterrupted account, identify 5 or 6 topic headings ready to be used for further questioning.
- Once the interviewee has finished their account, the interviewer is free to refer to the topics raised. Each topic should be referred to separately through open probing questions using **who, when, what, where, why and how**.
- Previous evidence may be referred to given the need for relevant confidentiality.
- The notes taken during the interview should be simple bullet points, used as memory prompts. The interviewer should strongly focus on the interviewee's body language for clues as to which areas should be probed.
- Each topic should be summarised and read back to the interviewee to confirm accuracy in case amendments are required.

The Conversation Management Interview is normally used with suspects, though it can also be used with reluctant witnesses/interviewees. After the first account, the interviewer decides on the relevant sections of the interview to be probed and developed in further detail.

Conversation Management

- Start with a planned opening question such as 'Tell me why.....?' or 'Explain what you were doing '. If the interviewee chooses not to comment, move to the next stage of introducing own topics.
- During the interviewee response, look for and identify 5 or 6 main areas/key points you would like to probe further...clues as to which area may be given by the interviewee's body language and verbal/non-verbal signals
- Once response to opening question/prompt is given the interviewer is free to introduce their own topics, for example these could centre on issues arising from witness statements. The interviewer can read sentences from the witness statements and prompt responses through 'what is your comment?'
- Exhibits can be introduced (ensure they are hidden until they are to be used), and comments upon them solicited.

- After the account has been obtained, the interviewer should take a short break to review the information obtained and establish a priority with respect to key points emerging.

Core Interview skills (all methods of interviewing)

Whatever the style of interviews, there are some core, common principles to all interviewing:

Listening skills

- Listen to the interviewee and take it in turns to speak.
- Express interest with the use of eye contact and body language.
- Summarise throughout the interview.
- Seek clarification from the interviewee to confirm understanding.
- Show that you have listened to responses given and don't rush in with your next question as soon as the first one has been answered

Questioning skills

- Consider the type of questions being used. Open questions are key, as they generate more detail, and focus on; **who, when, why, what, where and how.**
- Ensure that multiple questions are not asked at once, as only the answer to the last question will be received.
- Avoid asking leading questions as they will direct the interviewee.
- Avoid using closed questions throughout the interview, as they will not provide sufficient information.
- It is more appropriate to use closed questions nearer to the end of the interview for confirmation.
- Probe wherever appropriate throughout the interview in order to generate more detail. For example 'What exactly did you mean by ...?' and 'Tell me more about...'

The Investigative Interviewing model - PEACE

The acronym **PEACE** is derived from the Investigative Interviewing model by following the 5 stages of an interview, these are listed below:

1. Planning and preparation

Preparation and planning supports the fluency of interviews and the purpose of the interview must be set and understood. All available information and evidence should be scrutinised to prompt the identification of further evidence. It is vital to consider the interview context, environment and the most effective way of accessing information from any documentation you will use at interview (eg arranging it beforehand).

In summary:

- Consider the aims and objectives of the interview.
- Scrutinise the available evidence.
- Consider the setting of the interview in terms of comfort, privacy, distractions and layout.
- Consider support needs, for example, it is essential that individuals under 18 years of age to be accompanied by an adult (such adults may not speak for the individual, but simply advise and support).

- Monitor progress against time scheduled.
- Ensure breaks particularly where interviews are of two hours duration or so.
- Remember that interviews may be recorded but the permission of the interviewee is required.

2. Engage and explain

Interviewees should be put at ease and know the reason for the interview as well as how the interview is to be conducted. They will need to understand that when taking notes the interviewer might not make eye contact but that does not mean they are not listening. When two people are interviewing the second person may take notes.

In summary:

- Explain the purpose of the interview to the interviewee and emphasise the need for the truth and honesty.
- Set the interviewee at ease within the context above and establish rapport through an approachable manner.
- Consider ethics as well as any racial and/or cultural issues, where appropriate.
- Ensure availability of water to drink if needed.
- The purpose of the interview would normally stress the understandable need to protect the status and worth of the qualifications concerned to assure their value to learners and end users such as employers.
- Inform the interviewee of your rules for the interview and explain the procedure that will be followed, including time to be taken.

3. Account

This is the main component of the interview. For friendly witnesses/those not believed to be suspects, the interview style allows the interviewee to provide his/her account largely uninterrupted. The interviewer may prompt and recap to help ensure the veracity of statements and the facts therein but would generally keep such intervention to a minimum. Such interviews can be referred to as **Cognitive Interviews**.

For more 'hostile' witnesses, alleged or perceived perpetrators, a more directed technique may be used which is started by a direct question from the interviewer. Careful note is made of witness responses so that focussed challenges may be made through more exploratory questions. Such a style of interview can be referred to as **Conversation Management**.

4. Closure (both styles of interview)

Closure should be led by the interviewer and would normally summarise key points and ensuring all agree on these. The interviewee should be advised of the next steps and how to make contact if

- any relevant, further information comes to light.
- there is a desire to share further information.

For all interviewees, it is useful to remind them of your organisations whistle blowing procedure and the extent of protection/confidentiality that may be offered.

5. Evaluate

Post interview evaluations and/or de-briefs should review

- the quality of information obtained and what is still needed
- the overall state of the investigation and what conclusions may be drawn so far
- the effectiveness of the interview/interview tactics and suggested improvements
- next steps.

Appendix C - Guidance on taking witness statements

A witness statement is a signed testimony/evidence as given by an interviewee to an interviewer. Witness statements normally record what the witness has seen/experienced and should not reflect information given to the witness by third parties.

The witness statement should present facts concisely, clearly, accurately and in a logical order. Otherwise the information/facts therein may not be accepted as evidence by third parties including courts of law. This could jeopardise what might otherwise be the logical outcomes and ensuing judgement of an investigation.

Taking a witness statement – key points

Witness statements would normally be taken (written up and signed) immediately following an investigation interview.

In general, the interviewer needs to

- obtain as accurate and reliable information as possible
- keep an open mind and act fairly and consistently throughout the interview
- compare information given against known facts, contexts wherever possible
- not be tied/bound to the first response given, questioning is not unfair because it is persistent
- pose questions wherever appropriate and even when the right of silence is exercised (by the interviewee)
- treat vulnerable people with particular consideration at all times (please refer to separate guidance on dealing with vulnerable witnesses).

In dealing with the witness, the interviewer needs to

- set witnesses at ease and treat them with courtesy
- conduct interviews and the taking of witness statements in a private room
- help witnesses to understand that the main purpose of a statement is to establish what happened
- take notes during any interview preceding the taking of a witness statement, this helps to cross refer for the sake of accuracy.

In taking the witness statement, the interviewer should

- ensure the statement is written or word processed, and signed in ink
- draft statements so they are concise, to the point and reflect only the direct knowledge of the witness, matters of information and belief should be identified as such
- ensure the statement is expressed in the first person
- as far as possible, record the witness's own words even where the witness has used unfamiliar words or expressions
- cross reference any document(s) mentioned (this is normally done in the margins of the statement)
- ensure there is a declaration by the witness that the facts stated are true
- read the completed statement to the witness once it is complete, any alterations should be initialled by the witness
- check with the witness they have not discussed their evidence with anyone else
- ensure the witness has signed the statement and that the statement is dated (If the witness cannot read or sign, a statement may be provided on their behalf, subject to authentication checks)
- make a note of any information which reflects on the integrity of the witness's evidence
- record the witness's home address, telephone numbers (including home), employment details and dates to avoid (if known)
- record the witness's date of birth on the statement where indicated (this is a legal requirement if the witness is under 18).

Note:

Witness statements should be taken at the earliest moment, normally at the end of an interview to ensure that

- events are still fresh in the mind of the witness
- evidence is recorded before any opportunity to discuss evidence with others.

Releasing copies of witness statements

You can comply with a witness request to supply a copy of the witness statement to them. However, you have discretion to refuse this in appropriate circumstances. Examples might be where the statement is sought

- to enable the witness to lie consistently
- where others are bringing pressure on the witness to obtain a copy of the statement with a view to collusion with others and/or intimidation and with prejudice to the truth
- where you fear for the safety of that witness given sight of the statement to others
- where there are grounds to believe the statement will be passed to a suspect or their representative.

Conflicting Witness Statements

Where there are conflicting statements from different witnesses further questioning may be appropriate, though discretion will often be required.