

# 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, in the first instance please refer to our Malpractice and Maladministration Guidance for Centres which is available on our website. If you require further support, then please contact us (details below) and we will happily provide you with additional 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 cheating in assessments, failure to maintain appropriate records or systems, to the deliberate falsification of records in order to claim certificates. It may also include circumstances where an individual has been negligent or reckless as to the consequences of their actions.

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

### **Examples of malpractice**

Two of the clearest examples of potential malpractice are:

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

Such action may be taken by the candidate themselves, a tutor, a member of centre staff, an exams officer, or any other individual involved in, or with access to, the assessment process. More specific examples of potential malpractice include:

- collusion or permitting collusion in exams/assessments
- plagiarism by candidates or centre staff
- copying or paraphrasing sections of Artificial Intelligence (AI) generated content so that the work is no longer the candidate's own
- copying from another candidate (including using electronic equipment to do so)
- impersonation i.e. assuming the identity of another candidate or having someone assume a candidate's identity during an assessment

- a candidate breaching the rules of the assessment, for example by unauthorised use of inappropriate materials, equipment or technology in assessment settings, such as a mobile phone or the use of generative AI
- failing to reference the source of materials used in the creation of assessments, including where AI tools may have been used
- deliberate contravention by a centre/training provider or its candidates of the assessment rules and 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 our exams
- a loss, theft of, or a breach of confidentiality in any assessment materials, including selling assessment materials for monetary gain
- claiming to have and/or offering to share confidential assessment materials and/or presenting hoax materials as confidential assessment materials
- unauthorised amendment, copying or distributing of assessment materials
- centre staff providing a candidate with answers, or providing assistance to candidates beyond what is permitted
- a candidate or centre staff member falsifying a result
- deliberate submission of false information to gain a qualification, unit or end-point assessment, or the creation of false records
- creation or use of a fraudulent certificate by a candidate or a fraudulent claim for certificates
- selling certificates for monetary gain
- 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
- deliberate failure by centre staff to carry out internal assessment, internal moderation or internal verification in accordance with our requirements
- denial of access to premises, records, information, candidates and staff to any authorised NCTJ representative and/or the regulatory authorities
- deliberate failure to adhere to our candidate registration and certification procedures
- deliberate failure to continually adhere to the our centre recognition, apprenticeship delivery and/or qualification approval requirements or actions assigned to a centre/training provider
- deliberate failure to maintain appropriate auditable records e.g. certification claims and/or forgery of evidence
- intentional withholding of information from the NCTJ which is required to maintain the rigour of quality assurance and standards of qualifications/end-point assessments
- deliberate failure to adhere to, or an attempt to circumnavigate, the requirements of our reasonable adjustments and special considerations policy
- persistent instances of maladministration within the centre/training provider
- presenting or using false identification to register on an NCTJ course, or to sit an NCTJ exam/assessment
- extortion
- fraud
- unreasonable behaviour for any reason, including bullying, harassment, abusive and threatening behaviour
- unauthorised people entering or being present in a learner's environment during remote exams

- navigating away from the exam page and accessing unauthorised materials online during remote exams e.g. websites, or documents in Microsoft Word, Excel, or similar
- suspicious head and eye movements during remote exams which may be indicative of candidate malpractice
- candidates leaving their desk during a remote exam where this is not permitted in the exam rules and procedures

Please note that the above examples are not exhaustive and are intended as guidance on our definition of malpractice.

### **Definition of maladministration**

Maladministration is essentially any activity or practice which results in non-compliance with administration regulations and requirements within a centre/training provider. It generally covers mistakes of 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 result from carelessness or inexperience.

### **Examples of maladministration**

General examples of maladministration include:

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

More specific examples of potential maladministration include:

- failure to adhere to our candidate registration and certification procedures
- failure to adhere to our centre recognition, apprenticeship delivery and/or qualification/end-point assessment requirements and/or associated actions assigned to a centre/training provider
- late candidate registrations
- unreasonable delays in responding to requests and/or communications from the NCTJ
- inaccurate claims for certificates
- failure to maintain appropriate auditable records, e.g. certification claims
- failure to adhere to our procedures and requirements for exams/assessments (either for remote or in-centre exams)
- omitting or withholding information from the NCTJ 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 the NCTJ and/or its recognition and approval status with the NCTJ

- failure to adhere to 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

Please note that the above examples are not exhaustive and are intended as guidance on our definition of maladministration.

### **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 via 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 available 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/maladministration 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 in relation to an NCTJ qualification, assessment or service 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 or 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 whistleblower'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) or 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. our qualification regulator(s) or the Institute for Apprenticeships)

A whistleblower 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 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. disclosing 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 malpractice and maladministration will be examined promptly by the NCTJ to establish if malpractice or maladministration has occurred. The NCTJ will also 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 awarding and we will acknowledge receipt, as appropriate, to external parties within two working days.

For all suspected cases of malpractice and maladministration, the NCTJ will consider the following factors to decide whether reasonable grounds for the suspicion or allegation exist:

- the initial information provided with the allegation or other information which has given rise to the suspicion;
- the source of the 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;
- any relevant previous investigations in relation to the centre(s) or candidate(s) involved in the allegation, and whether or not a finding of malpractice or maladministration was made;
- any investigations into the centre(s) or candidate(s) involved in the allegation we have been made aware of by another awarding organisation; and
- the time between the alleged malpractice or maladministration and the date of the allegation

If the NCTJ establishes that there are reasonable grounds for the suspicion or allegation, an investigation will be carried out. The head of awarding 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, reviewing any supporting evidence received or gathered by the NCTJ, to establish whether or not the malpractice or maladministration has occurred or is likely to have occurred.

If the head of awarding is not available to lead the investigation, or is themselves the subject of a malpractice/maladministration investigation, the investigation will be assigned to another NCTJ manager or senior manager, overseen by the chief executive.

At all times we will ensure that any NCTJ personnel assigned to the investigation have the appropriate level of training and competence and that 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**

If an investigation is undertaken, the NCTJ will notify the head of centre at the centre/training provider 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.

The NCTJ will notify anyone being investigated for suspected or actual malpractice/maladministration about the investigation in writing via email, usually within seven working days of the date the investigation was opened. Whilst the investigation is in progress, they will be given the opportunity to supply evidence in relation to the investigation and to respond to any preliminary findings. This may take the form of a written statement, an interview, and/or the submission of any documents or materials relevant to the case of suspected or actual malpractice/maladministration.

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), the NCTJ will inform the appropriate regulatory authorities if we believe there has been a serious incident of malpractice or maladministration which could have an adverse effect.

In accordance with these same regulatory obligations, where we have cause to believe that an incident of malpractice or maladministration may affect a centre, awarding organisation or end-



point assessment organisation undertaking any part of the delivery of an NCTJ qualification or end-point assessment, we will inform that centre, awarding organisation or end-point assessment organisation. 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 the NCTJ establishes that any malpractice or maladministration has occurred in relation to the development, delivery or award of an NCTJ qualification or end-point assessment, we may seek the cooperation of third parties, where required, to take action against those responsible.

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 severity 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 NCTJ qualification or end-point assessment.
- To ascertain whether any action is required in respect of results or certificates already issued.
- To obtain clear evidence to support any sanctions to be applied to the candidate, centre, and/or to members of centre staff, in accordance with our sanctions policy.



- To identify any adverse patterns or trends.

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

- ensure all material collected as part of an investigation is kept secure
- ensure all records and original documentation concerning a completed investigation that ultimately leads to sanctions against a candidate or centre are retained for a period of not less than five years
- will ensure that if an investigation leads to the invalidation of certificates, or criminal or civil prosecution, all records and original documentation relating to the case are 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 a candidate, or 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 affected.

The NCTJ also reserves the right to withhold a candidate's, and/or cohort's, results for the NCTJ course/qualifications/apprenticeships and/or units/assessments being studied 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 the lack of cooperation from a centre/training provider or candidate 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 awarding 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 all relevant external parties. If the head of awarding is not available or is themselves the subject of an investigation, this responsibility will fall to another NCTJ manager or senior manager, overseen by the chief executive.

### **Interviews and centre visits**

If interviews are required with relevant parties or personnel involved in the investigation, they will be led by the head of awarding, with support from another NCTJ senior manager or an NCTJ senior board member/chief examiner. If the head of awarding is unavailable to conduct the interview or is themselves the subject of an investigation, another NCTJ senior manager with the appropriate competence will lead in their place. Any individual(s) interviewed will be given the opportunity to be accompanied. The person accompanying the interviewee should not take an active part in the interview. In particular, they must not answer questions on the

interviewee's behalf. The interview may take place in-person, at a centre or training provider's premises, or it may take place remotely, via Zoom.

If a visit to a centre/training provider is required as part of the investigation, the NCTJ will liaise with the centre/training provider directly in writing to arrange a suitable date/time for the visit to take place. Visits will be led by the head of awarding, with support from another NCTJ senior manager or an NCTJ senior board member/chief examiner. If the head of awarding is unavailable to conduct the visit or is themselves the subject of an investigation, another NCTJ senior manager with the appropriate competence will lead in their place.

If the individual being interviewed wishes to be accompanied by a legal advisor the NCTJ will not be liable for any professional fees incurred.

### **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 letter/concluding email available to the relevant parties upon completion of the investigation. The final investigation report will be made available to the relevant parties on request, and will be made available to the regulatory authorities and other external agencies, as required. The NCTJ reserves the right not to provide a copy of the investigation 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 investigation progress and outcome.

If it was an independent/third party that notified us of the suspected or actual case of malpractice or maladministration, 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 or is likely to have 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 NCTJ qualifications and end-point assessments
- discourage others from carrying out similar instances of malpractice or maladministration
- ensure the incident cannot be repeated
- ensure there has been no gain from compromising our standards

The NCTJ will ensure that any action taken is proportionate to the gravity and scope of the occurrence. Action the NCTJ may take includes:

- Imposing actions in relation to a centre/training provider with specified deadlines in order to address the instance of malpractice/maladministration and to prevent it from reoccurring
- Imposing sanctions on a centre/training provider – if so these will be communicated in accordance with our sanctions policy along with the rationale for the sanction(s) selected
- Imposing sanctions on a candidate(s) – if so these will be communicated in accordance with our sanctions policy along with the rationale for the sanction(s) selected
- In cases where certificates are deemed to be invalid, inform the centre/training provider concerned and the regulatory authorities why they are 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 records 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. regulatory authorities, external agencies, other centres, awarding organisations or end-point assessment organisations) of the NCTJ's findings in case they need to take relevant action in relation to the centre or candidate(s)

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 or accreditation visits. Fees will be based on the current NCTJ prices for such activities at the time of the investigation.

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

### **What if I am not happy with the outcome?**

If the relevant party(ies) are unhappy with an investigation outcome and wish to appeal against our decision to impose sanctions, they are entitled to submit an appeal under section B of the NCTJ's appeals policy which is available on our website. A stage 1 section B appeal must be submitted to the NCTJ in writing no later than **two weeks** from the date the NCTJ informs you of the decision. If a centre or training provider appeals on behalf of a candidate, it must ensure that

it has obtained the written permission of the candidate concerned. Please refer to the NCTJ's appeals policy for full details.

### **Remote exams**

In May 2020, the NCTJ introduced remote exams to ensure candidates could sit NCTJ exams securely at home during the coronavirus pandemic. Remote exams continue to be available to national candidates and apprentices, and to individual candidates on accredited courses on a case by case basis only, if they are unable to travel to sit their exams at their centre.

Exams held online in the NCTJ's online assessment platform (Cirrus) are delivered remotely using Proctorio, a secure proctoring platform. Exams held outside of Cirrus are delivered remotely using Zoom and a centre invigilator.

Any suspicious activity flagged by the Proctorio software or identified in Zoom exam recordings will be reviewed by a member of the NCTJ assessment team. Any incidents flagged as suspected or actual malpractice will be escalated to the head of awarding for a second review, to establish whether there are reasonable grounds for the suspicion/allegation and whether an investigation is required.

If it is determined that there are reasonable grounds and an investigation is required, this will be conducted by the head of awarding in line with the requirements detailed in this policy. In such cases, as part of the investigation candidates will be offered the opportunity to view any evidence held in Cirrus/Proctorio/Zoom and to discuss this evidence with the NCTJ, even in cases where a candidate interview is not required, in the interests of transparency and fairness. The NCTJ will not provide a copy of the Proctorio footage of the exam under any circumstances to ensure security of the assessment and the NCTJ copyright.

If a candidate is found to have breached the NCTJ's procedures put in place for remote exams, this will result in immediate disqualification from the assessment, even if malpractice is not suspected. If the relevant party(ies) wishes to appeal against the NCTJ's decision to disqualify in the event of a procedure breach, they should refer to section B of the NCTJ's appeals policy (page 9, point 8).

### **Contact us**

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