



openawards

Malpractice and Maladministration Policy and Procedures

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Version history

Version	Date	Section(s)	Change(s) made
14.0	08/21	All	"Centre" replaced with "provider" throughout
14.0	08/21	All	Arrangements for End-point assessments added throughout
14.0	08/21	7	Examples of malpractice updated.
14.0	08/21	B3	Investigation processes outlined in greater detail
14.0	08/21	B4	Report structure updated

Part A: Malpractice and Maladministration Policy

1. Purpose

Open Awards is committed to ensuring that its qualifications, units and end-point assessments are developed, delivered and awarded accurately and that all reasonable steps are taken to prevent the occurrence of any malpractice or maladministration.

This document defines malpractice and maladministration, clarifies the roles and responsibilities of providers, learners/ apprentices and Open Awards; and outlines the procedures for the investigation and management of suspected or alleged malpractice or maladministration, which will be kept up to date, maintained, and complied with at all times.

The purpose of this policy is to ensure that:

- potential malpractice and maladministration is identified, prevented, corrected and/or mitigated
- any event that could lead to an Adverse Effect is identified, prevented, corrected and/or mitigated

It replaces all previous maladministration and malpractice policies and procedures as from the operative date.

2. Scope

This document is applicable for the following Open Awards products:

Ofqual regulated qualifications and units	<input checked="" type="checkbox"/>
Access to HE Diplomas	<input checked="" type="checkbox"/>
Apprenticeship End-point assessment	<input checked="" type="checkbox"/>
Quality Endorsed Courses	<input checked="" type="checkbox"/>
Badge of Excellence	<input checked="" type="checkbox"/>

3. Regulatory Authorities

The relevant regulatory authorities are Ofqual and the Quality Assurance Agency for Higher Education (QAA). As an approved End Point Assessment Organisation (EPAO), Open Awards also commits to meet the requirements of the Institute for Apprenticeships and Technical Education (IfATE) and Education and Skills Funding Agency (ESFA).

Every attempt has been made to ensure that the provisions of this document are consistent with the requirements of the regulatory authorities. Where the requirements of a regulatory authority change, or where inadvertently these procedures conflict with those of the regulatory authority, the latter shall apply. Where the requirements of the regulatory authority are amended and require

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changes to this document, such changes will be made as soon as practicable and Open Awards will inform providers accordingly.

4. Audience

This document is for use by the following:

- Approved providers delivering Open Awards approved qualifications and units.
- Learners registered on Open Awards qualifications and units at an approved provider.
- Private learners/ apprentices registered on Open Awards qualifications and units.
- Apprentices registered with Open Awards for End-point assessment.
- Employers of apprentices registered with Open Awards for End-point assessment.
- Open Awards staff and Trustees.

5. Definition[s]

Malpractice	<p>Any deliberate action, neglect, default or other practice which compromises, or may compromise:</p> <ul style="list-style-type: none"> • the process of assessment • the integrity of a qualification • the validity of a result or certificate • the authority, reputation or credibility of Open Awards or provider or any officer, employee or agent of Open Awards or provider • public confidence in qualifications <p>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.</p>
Maladministration	<p>Any activity, neglect, default or other practice that is not deliberate but which results in a provider or learner/ apprentice not complying with the specified requirements for delivery of the qualifications as set out in relevant guidance.</p>
Suspected malpractice	<p>For the purposes of this document, suspected malpractice means all alleged or suspected incidents of malpractice.</p>
Provider malpractice	<p>Malpractice normally committed by more than one individual at a provider (including apprenticeship training providers), or a senior manager of the provider acting in a manner that creates systemic malpractice.</p> <p>Failure by a provider to notify, investigate and report to Open Awards body all allegations of malpractice or suspected malpractice constitutes malpractice in itself. Failure to take</p>

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	<p>action required by Open Awards, or to cooperate with an Open Awards investigation also constitutes malpractice.</p>
<p>Provider staff malpractice</p>	<p>Malpractice committed by:</p> <ul style="list-style-type: none"> • a member of staff, contractor (whether employed under a contract of employment or a contract for services) or a volunteer at a Provider; or • an individual appointed in another capacity by a provider such as an invigilator (on site or remote), practical assistant, prompter, reader or a scribe. <p>Provider staff malpractice will normally involve an individual not complying with the Provider's normal code of conduct and procedures.</p>
<p>Learner/ apprentice malpractice</p>	<p>Malpractice by a learner/ apprentice attempting to gain an unfair advantage in connection with any assessment, including the preparation and authentication of any controlled assessments coursework or non-examination assessments, the presentation of any practical work, the compilation of portfolios of assessment evidence and the writing of any examination paper.</p>
<p>Awarding Organisation/ End Point Assessment Organisation malpractice</p>	<p>Malpractice by Open Awards whereby it did not follow its own documented procedures.</p>
<p>Adverse Effect</p>	<p>An act, omission, event, incident, or circumstance has an Adverse Effect if it –</p> <ul style="list-style-type: none"> • gives rise to prejudice to learners/ apprentices or potential learners/ apprentices, or • adversely affects – <ul style="list-style-type: none"> ○ the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with regulatory conditions, ○ the standards of qualifications which the awarding organisation makes available or proposes to make available, or ○ public confidence in qualifications.

6. Policy Statement

Open Awards prefers to prevent malpractice wherever possible rather than investigate and mitigate the impacts once it has occurred. Open Awards will work with providers to ensure clear, effective procedures are in place to reduce the likelihood of malpractice occurring. Any person who discovers or suspects malpractice is responsible for reporting it immediately to the appropriate person.

Allegations may be made to provider staff, who must escalate it to the Head of Provider or to Open Awards directly. Allegations may also be made via a third party (e.g. regulatory authority or the police). On receiving notification of suspected or alleged malpractice, Open Awards will determine, based on the severity and associated risk of the suspected or alleged malpractice, whether it is appropriate to request an appropriate person at the provider to carry out an initial investigation or whether it is appropriate for Open Awards to carry out the entire investigation.

The Responsible Officer is responsible for notifying the regulators if Open Awards believes that there has been an incident of malpractice or maladministration which could either invalidate the award of a qualification or end-point assessment which Open Awards makes available, could affect another awarding organisation or cause any other adverse effect.

Following a rigorous and effective investigation of suspected malpractice, in cases where malpractice has been confirmed, Open Awards will impose sanctions and penalties proportionate to the severity and associated risk of the suspected or alleged malpractice. We reserve the right to escalate to the relevant regulator and/ or funding body where applicable.

Where appropriate, Open Awards will seek the cooperation of third parties in taking such action. Where malpractice by a member of staff in a provider is established, any disciplinary action is the responsibility of the provider as the employer. The action taken should be appropriate and proportionate.

7. Individual Responsibilities

7.1 Open Awards

The Responsible Officer is responsible for ensuring that Open Awards complies with requirements as stipulated by regulators in cases of suspected or alleged malpractice.

Open Awards will:

- Take all reasonable steps to prevent the occurrence of any malpractice or maladministration in the development, delivery and award of qualifications/ End-point assessments which it makes available or proposes to make available
- Establish, maintain and all times comply with up to date written procedures for the investigation of suspected or alleged malpractice or maladministration
- Acknowledge the receipt of any allegation of malpractice/ maladministration in writing, normally by email
- Where malpractice or maladministration is suspected by Open Awards or alleged by another person, and supported by reasonable grounds:
 - establish, as far as possible, whether or not the malpractice or maladministration has occurred
 - promptly take reasonable steps to prevent any potential adverse effects
 - mitigate any adverse effects that do occur as far as possible and correcting them in a timely manner
- Ensure that investigations are carried out rigorously, effectively, and by suitably competent individuals with no personal interest in the outcome. Where deemed appropriate, an independent investigator may be engaged.
- Where a provider undertakes any part of the delivery of a qualification which Open Awards makes available, take all reasonable steps to keep under review the arrangements put in place by a provider to prevent and investigate malpractice and maladministration
- Provide guidance to providers as to how best to prevent, investigate and deal with malpractice and maladministration.
- Where Open Awards establishes that any malpractice or maladministration has occurred in the development, delivery or award of qualifications which it makes available, or proposes to make available, promptly take all reasonable steps to:
 - prevent that malpractice or maladministration from recurring
 - take action against those responsible which is proportionate to the gravity and scope of the occurrence, or seek the co-operation of third parties in taking such action
- Where there is cause to believe that an occurrence of malpractice or maladministration, or any connected occurrence:
 - may affect a provider undertaking any part of the delivery of a qualification which Open Awards makes available, inform that provider
 - may affect an apprentice undertaking an end-point assessment, inform

- the provider and employer
- may affect another awarding organisation, inform that awarding organisation
- may cause an adverse effect, inform the regulator
- may be deemed to constitute a criminal act, inform the police.
- Withhold the issuing of results until the conclusion of the investigation, or permanently, where the outcomes of the investigation warrants it.
- In cases of proven malpractice/ maladministration, apply the appropriate sanctions as outlined in Open Awards Sanctions Policy.

Examples of instances where Open Awards could be considered to have been subject to malpractice are listed below. This list is not exhaustive.

- General failure to comply with own procedures
- Failure to keep assessment materials secure
- Complicity with others to make false claims for certification
- Failure to remain impartial in making assessment decisions
- Failure to declare a conflict of interest
- Substantial error in assessment materials
- Failure to meet published timelines for assessment or award of certificates
- Issue of incorrect results or certificates.

7.2 Providers

A provider must take all reasonable steps to ensure that Open Awards is able to comply with the requirements of its regulators as laid out in the Provider Agreement signed by all Open Awards providers.

Such reasonable steps include:

- Having in place robust procedures for preventing and investigating incidents of malpractice or maladministration which are up to date and communicated across the provider.
- Regularly reviewing procedures for preventing and investigating incidents of malpractice or maladministration and making any improvements necessary to ensure they remain relevant and fit for purpose.
- Taking all reasonable steps to prevent incidents of malpractice or maladministration from occurring.
- Taking reasonable steps to investigate any suspected incidents of malpractice or maladministration and rectify any negative impact of these incidents
- Developing and implementing an action plan for managing and rectifying the negative impact of any incidents of malpractice or maladministration, along with associated areas for improvement to avoid recurrence. This plan must be made available to Open Awards on request.
- Taking appropriate and proportionate action against those responsible for the malpractice or maladministration to ensure it does not re-occur in the future.

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- Promptly notifying Open Awards of any incidents of malpractice or maladministration in line with the requirements of this malpractice and maladministration policy
- Providing timely access to documents, records, data, staff, third parties, sub-contractors, learners, satellite providers or any other resource required by Open Awards during an investigation of malpractice or maladministration
- Cooperate and ensure their staff cooperate fully with an enquiry into an allegation of malpractice/maladministration, whether or not the provider is directly involved in the case
- Pass on to the individuals concerned any warning or notification of penalties and to ensure compliance with any requests made by Open Awards as a result of malpractice.

Failure by a provider to report suspected or actual cases of malpractice or maladministration, or a failure to have in place effective arrangements to prevent such cases, may lead to sanctions being imposed on the provider under Open Awards Sanctions Policy where details of the sanctions that may be imposed are set out.

A 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 Open Awards periodically through its provider compliance monitoring arrangements.

Examples of provider malpractice are listed below. This list is not exhaustive.

Internal management and systems	Training, assessment and IQA
<ul style="list-style-type: none"> • Failure to adhere to Open Awards provider agreement, policies, procedures and associated documentation. • Failure to provide staff with adequate resources and support in order for them to perform their role effectively. • Failure to appropriately induct and train staff members into their roles, including training on the provider's policies, procedures and systems. • Allowing individuals to train and assess learners/ apprentices on Open Awards qualifications who are not suitably qualified or experienced to perform their role. • Failure to respond to requests for information as well as access to premises, records, information, learners/ apprentices and staff when requested to do so by Open Awards. 	<ul style="list-style-type: none"> • Failure to keep controlled assessment materials secure. • Excessive and improper direction from assessors to learners/ apprentices on how to meet assessment criteria, including prompts or model answers. • Provision of learning resources and materials which provide learners/ apprentices with an unfair advantage regarding their assessment of the qualification. • Failure to implement a robust initial assessment process to ensure learners/ apprentices meet the minimum entry requirements for the qualification they are registered against. • Failure to ensure that all gateway requirements are met before putting

<ul style="list-style-type: none"> • Failure to ensure quality and consistency across multiple sites and/or third parties • Failure to notify Open Awards where instances of suspected or proven malpractice have been identified within the Provider • Deliberate falsification of records to claim learner/ apprentice achievements. • Failure to comply with requirements of accurate and safe retention and storage of learner/apprentice evidence and assessment records. • Knowingly providing Open Awards with false or inaccurate information regarding provider practices, including those regarding malpractice investigations. • Persistent instances of maladministration. 	<p>an apprentice forward for End-point assessment.</p> <ul style="list-style-type: none"> • Providing reasonable adjustments or special considerations to learners/ apprentices which have not been approved by Open Awards¹. • Fraudulent production of learner/ apprentice evidence, records of observations, witness testimonies or any other assessment records. • Using live assessment materials for any other reason than the controlled assessment of learners/ apprentices • Failure to use appropriately trained and competent invigilators for controlled assessments. • Improper assistance or invigilation during assessments, including provision of mark schemes, prompts or model answers. • Failure to address identified cases of collusion or plagiarism between learners/ apprentices during assessments. • Failure to provide an appropriate environment conducive to fair assessment. • Failure to conduct controlled assessments in line with Open Awards instructions. • Manipulating or falsifying IQA records, such as sampling records.
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7.3 Provider Staff

Whilst providers have a responsibility to ensure that their staff do not undertake activities that could be considered to be malpractice, Open Awards may decide that malpractice that does occur may be the direct responsibility of a named individual. This would apply where an investigation concludes that a member of staff has acted alone in committing malpractice. Depending on the control measures put in place by the provider, confirmed cases of malpractice may result in malpractice being recorded against member(s) of staff and the provider as a whole.

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

¹ See Open Awards Reasonable Adjustments and Special Consideration Policy (via Secure Portal)

- Tampering with learners'/apprentices' assessed work.
- Improper assistance to learners/ apprentices in the production of assessed work.
- Fabricating assessment and /or internal verification records or authentication statements.
- Failure to ensure controlled conditions are maintained during assessments being undertaken under controlled conditions.
- Failing to keep assessment papers secure prior to assessment.
- Failing to conduct a proper investigation into suspected malpractice
- Fraudulent claims for credit and qualifications.

7.4 Learners/ Apprentices

Providers must ensure that each learner's/ apprentice's induction includes an explanation of malpractice and maladministration which includes examples and informs them of the consequences of committing such acts.

Provider staff must reinforce the learner's/ apprentice's understanding of malpractice and maladministration throughout the course. Learners/apprentices must complete statements of authenticity for all coursework and presentation of practical work within a portfolio of evidence. They should be reminded of malpractice and the consequences before the start of a formal assessment and prior to the submission of a completed portfolio.

Despite regular reinforcement throughout the course by provider staff, a learner/ apprentice registered at an Open Awards provider may still commit learner/ apprentice malpractice. Examples include, but are not limited to:

- Failure to acknowledge sources properly and/or copying from another learner's/ apprentice's work or notes (either electronically or in person) and submitting the work as if it were the learner's/ apprentice's own (also known as plagiarism).
- Collusion with one or more others when an assessment must be completed by individual learners/apprentices.
- Assuming the identity of another learner/ apprentice or having someone assume their identity during an assessment (also known as impersonation).
- Use of unauthorised aids or physical possession of unauthorised materials (including mobile phones, MP3 players, notes, etc.) in an assessment room (including where assessments take place remotely)
- Introduction of unauthorised material into the End-point assessment room, for example, notes, textbooks, reference material.
- Fabrication of results and/or evidence.
- Failing to abide by the instructions or advice of an assessor, supervisor, invigilator or any conditions, regulations and security in relation to the End-point assessment.

- Communication with other learners/ apprentices during controlled assessments.
- Obtaining, receiving, exchanging or passing on information (or attempting to) by talking or through written papers/ notes during controlled assessment.
- Dissemination of controlled assessment materials.
- Providing a false declaration of authenticity regarding the completion of their assessment evidence.
- The deliberate destruction of another's work.
- Acting in a disruptive manner during an assessment.
- Behaving in such a way as to undermine the integrity of the assessment.
- The inclusion of inappropriate, offensive or obscene material in assessment tasks.

8. Maladministration

Maladministration is an activity of poor practice that results in the provider, or learner, not complying with the specific requirements for the delivery of a qualification. Maladministration is often a reflection of poor rather than improper practice and therefore may require Open Awards to place actions on the provider's improvement action plan. Open Awards is unlikely to investigate an individual case of maladministration through this policy, repeated cases of maladministration and failure to work towards the prevention of further instances will be considered to be malpractice.

Examples of issues that may constitute maladministration include, but are not limited to:

- Failure to comply with Open Awards procedures for registering or certifying learners/apprentices.
- Failure to keep the provider's record up to date on the Open Awards portal.
- Inaccurate claim for a certificate for a learner.
- Inaccurate claim that an apprentice has met all gateway requirements.
- Failure to provide/ unreasonable delay in providing information when reasonably requested to do so.
- Inadequate record-keeping.
- Making misleading or inaccurate statements about Open Awards products and services in published materials, including online.
- Providing inaccurate advice to learners/ apprentices.

9. Identification and Notification of Malpractice and Maladministration

9.1 Identification

Incidents of malpractice and maladministration may be identified in a number of different ways, for example through:

- External quality assurance activity and monitoring undertaken by Open Awards
- End-point assessment of apprentices
- Investigations in response to the identification of incidents or errors
- Ongoing internal quality assurance activity and monitoring, at provider level
- Intelligence, complaints or feedback received, for example from learners/ apprentices, provider staff, employers, whistle-blowers or other stakeholders
- Information from other organisations, for example funding agencies, providers or end-point assessment organisations.

9.2 Notification

All allegations of suspected or proven **malpractice** must be reported to Open Awards immediately. Notifications must be submitted on Form M1 for learner/ apprentice malpractice; or Form M2 for provider/ provider staff malpractice within 2 working days of the issue coming to light.

Completed forms must be submitted to quality@openawards.org.uk along with any support evidence related to the allegation. Template forms can be downloaded from the Open Awards website.

Forms submitted by providers, must be completed, or endorsed by, an appropriate senior manager at the provider. Failure to report allegations of suspected malpractice or maladministration in a timely manner may result in sanctions being applied on the provider in line with Open Awards Sanctions Policy.

Where Open Awards identifies an incident that may constitute malpractice or maladministration, the Head of Provider will be advised to submit a completed an M1 or M2 form within two working days.

Where a provider becomes aware of poor practice that constitutes as **maladministration**, they should follow their own internal policy and procedure for dealing with such incidents. A quality improvement plan should be discussed and implemented internally to prevent further instances. Where the maladministration may have affected an apprentice's ability to meet gateway requirements, the provider must advise Open Awards as soon as we have been identified as the End-point assessment Organisation or upon identification of this issue, whichever is sooner. For all other Open Awards products and services, the details of the maladministration should be shared with Open Awards at the next external quality assurance or compliance activity.

10. Penalties for Cases of Malpractice

If malpractice is identified, or if there is reasonable cause to believe malpractice has occurred, Open Awards will consider the required sanction based on the severity of the incident. Details can be found in the Open Awards Sanctions Policy.

11. Monitoring and Review

A report on any cases of malpractice or maladministration including those found not proven, will be made available to the Open Awards Board of Trustees at each Board meeting.

Open Awards will review this policy biennially as part of its self-evaluation arrangements and revise it as and when necessary in response to customer and learner/ apprentice feedback, changes in its practices, advice from the regulatory authorities or external agencies, changes in legislation, or trends identified from previous instances of malpractice or maladministration.

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

12. Regulatory Requirements

The Malpractice and Maladministration Policy is designed to fulfil the requirements of our regulators. In particular:

Ofqual General Conditions of Recognition

- A4 Conflicts of interest
- A6 Identification and management of risks
- A7 Management of incidents
- A8 Malpractice and maladministration
- B3 Notification to Ofqual of certain events
- C1 Arrangements with third parties
- C2 Arrangements with Centres
- G4 Maintaining confidentiality of assessment materials
- H2 Moderation where an assessment is marked by a Centre
- I1 Appeals process

QAA AVA Licensing Criteria

- Complaints and appeals
 - 30a, 30c, 31a, 31b, 31c
- Certification
 - 48
- Provider and course recognition
 - 56, 57

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Institute of Apprenticeships and Technical Education
End-point Assessment Reasonable Adjustments Guidance

Education and Skills Funding Agency
Conditions for being on the register of End-point assessment organisations.

<i>Originator:</i>	<i>Director of Quality and Standards</i>
<i>Date of latest review:</i>	<i>August 2021</i>
<i>Date of last approval:</i>	<i>August 2021</i>
<i>Approved by:</i>	<i>Management Team</i>
<i>Review interval:</i>	<i>Biennial</i>
<i>Next review due by:</i>	<i>July 2023</i>

Part B: Procedures for Dealing with Alleged or Suspected Malpractice

Open Awards has defined six stages in the process for dealing with alleged or suspected malpractice.

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

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

Stage 1: Allegation



Open Awards will acknowledge receipt of any allegations to the person making the allegation, with the exception of anonymous allegations.

Any suspicion of learner/ apprentice malpractice must be reported to Open Awards **within 2 working days** of being made aware of the incident using *Form M1* together with all appropriate supporting evidence.

Allegations against a provider, or provider staff must be reported to Open Awards within 2 working days of being made aware of the incident using *Form M2* together with all appropriate supporting evidence.

Malpractice in coursework discovered prior to the learners signing the authentication declaration should not be reported to Open Awards but should be dealt with in accordance with the provider's own internal procedures.

Allegations of malpractice may be reported to Open Awards by employers, provider staff, learners and other members of the public. In such instances, Open Awards will use the information provided instead of a completed M1 or M2 form, where necessary. Open Awards will require any reports made by telephone to be put in writing.

Sometimes anonymous reports are received. If the reporting of malpractice by a member of staff or a learner/ apprentice will cause difficulties for them in the provider, Open Awards will protect the identity of the informant if this is asked for when the report is made.

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

An anonymous allegation should normally only be acted upon if there is sufficient supporting evidence, but may require investigation without such evidence depending on the nature of the allegation. While Open Awards is prepared to investigate issues reported anonymously and/or by whistle-blowers it will always try to confirm an allegation by means of a separate investigation before taking up the matter with those persons about whom the complaint or allegation relates.

Open Awards will consider anonymous whistle-blowing disclosures however it may not be possible to investigate or substantiate anonymous disclosures. Where a disclosure is received, Open Awards will send an initial acknowledgement that the disclosure has been received. Whistle-blowers will normally be asked to provide as much evidence as possible to support the disclosure.

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

Stage 2: Initial Response



Within 2 working days of the receipt of the notification, a member of Open Awards staff will be allocated to the investigation. This individual will have general oversight and coordination of the investigation process and will decide on the best course of action:

A) Ask the Provider to conduct an internal investigation into the allegation.

- If it is deemed that the Provider was not complicit in the act of malpractice, the investigator may instruct the provider to conduct their own initial investigation into the allegation.

B) Undertake an Open Awards investigation into the allegation under one of the following circumstances:

- If the investigator considers that the provider was, or may be, complicit with the incident.
- If Open Awards believes the person nominated to undertake the internal investigation has a personal interest in the outcome of the investigation.
- The provider's policy for dealing with malpractice or maladministration was not followed or was not effective in dealing with the alleged case.
- Open Awards was not promptly notified by the provider when the case was identified.
- Evidence of proven malpractice has been identified.

- There is potential for an Adverse Effect (An act, omission, event, incident or circumstance which gives rise to prejudice to learners/ apprentices or which compromises the standards of, or public confidence in, qualifications)

If Open Awards decides that informing the provider of malpractice or suspected malpractice has the potential to impede the investigation outcome, it may decide not to inform the provider immediately.

Stage 3: Investigation



Within five working days, Open Awards will advise the provider what actions need to be taken during their investigation.

The person carrying out an investigation into an allegation of malpractice at a provider must collect the evidence and report to Open Awards Director of Quality and Standards to agreed timelines.

The investigation should seek to establish the full facts and circumstances of any alleged malpractice. It should not be assumed that because an allegation has been made that it is true. The investigator should consider that both staff and learners/ apprentices can be responsible for malpractice.

If it is necessary to delegate the responsibility for the investigation to another manager it is essential that this person does not have any responsibility for the department involved in the suspected malpractice. Both Open Awards and the provider must take all reasonable steps to avoid a conflict of interest. In the event of any concerns regarding conflicts of interest, or the suitability of the potential investigator, the Head of Provider must contact Open Awards as soon as possible to discuss the matter.

When the investigator deems it necessary to conduct an interview with a learner/ apprentice or a member of staff, the interviews must be conducted in line with the provider's own policy for conducting disciplinary enquiries. A full note of the interview should be made and kept. The interviewee should be asked to confirm the accuracy of the note. The individual being interviewed may be requested to make a written statement.

If it is necessary for Open Awards to visit a provider, this will be at the expense of the provider. The Head of Provider must make available a suitable venue for such interviews. Interviews may also be conducted by telephone or video conferencing tools.

It may be necessary to interview a learner/ apprentice during an investigation. If the learner/ apprentice is a minor or vulnerable adult and a face to face interview is to be

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undertaken, this must take place in the presence of an appropriate adult.

If the investigator needs to conduct an interview with a staff member, the member of staff may be accompanied by a friend or advisor (who may be a representative of a teacher association or other association).

Legal advice is not normally required where there is no allegation of criminal behaviour. However, if an individual wishes to be accompanied by a solicitor the other parties should be informed.

The Provider should keep all relevant individuals fully informed of the allegations and as a minimum should provide them with a copy of the completed form being sent to Open Awards. Individuals should also be made fully aware of their rights.

If, in the view of the investigator, there is sufficient evidence to implicate an individual in malpractice, that individual (a learner/ apprentice or a member of staff) must:

- be informed (preferably in writing) of the allegation made against them.
- be advised of the contents of malpractice and maladministration policies and procedures for Open Awards and the provider.
- know what evidence there is to support the allegation.
- know the possible consequences should malpractice be proven.
- have the opportunity to consider their response to the allegations (if required).
- have an opportunity to submit a written statement;
- be informed that he/she will have the opportunity to read the submission and provide additional evidence, including mitigation, as required.
- have an opportunity to seek advice (as necessary) and to provide a supplementary statement (if required).
- be informed of the applicable 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 bodies, the regulators and other appropriate authorities.

Responsibility for informing the accused individual(s) rests with the Head of Provider.

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

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

If the investigation reveals that a learner/ apprentice had prior knowledge of the

content of an examination or an assessment, Open Awards will establish whether or not information could have been divulged to learners/ apprentices at other providers or to other unauthorised persons.

Stage 4: Report



The investigator investigating an allegation of malpractice must submit a full written report of the case to quality@openawards.org.uk within agreed timescales.

The report must include:

- a clear account, as detailed as necessary, of the circumstances.
- who was involved in the incident, including learners, members of staff and/or invigilators.
- details of the activities carried out by the provider.
- written statements from any teachers, invigilators or other members of staff concerned, which must be signed and dated.
- any mitigating circumstances (e.g. relevant medical certificates).
- details of the actions the provider proposes to take to mitigate the impact on learners.
- details of the actions the provider proposes to take to prevent a recurrence of similar incidents in future.
- any other evidence relevant to the allegation.

Where appropriate, the report should also include:

- information about how the provider makes learners/ staff aware of Open Awards' regulations.
- written statements from learner(s) (for learner/ apprentice malpractice allegations), which must be signed and dated.
- seating plans for assessments;
- any unauthorised material found in the assessments room;
- photographic evidence of any material written on hands/clothing etc;
- any work of the learner/ apprentice and any associated material (e.g. source material for coursework) which is relevant to the investigation.
- evidence of source material for allegations of plagiarism
- any other relevant evidence.

Open Awards will review the content of the Report and any supporting documentation, and decide whether there is evidence of malpractice and if any further investigation is required. The Head of Provider will be informed accordingly.

Stage 5: Decision



In order to determine the outcomes in cases of alleged malpractice, the Director of Quality and Standards will, in the first instance, establish that correct procedures have been followed in the investigation of the case, and that all individuals involved have been given the opportunity to make a written statement.

Each case of suspected malpractice must be considered and judged on an individual basis in light of all available evidence.

The Director of Quality and Standards will:

- identify the regulation it is alleged has been broken
- establish the facts of the case
- decide whether malpractice has occurred

If there is deemed to be sufficient evidence that malpractice has occurred, the Director of Quality and Standards will then:

- establish who is responsible for this
- consider any points in mitigation
- determine appropriate measures to be taken to protect the integrity of the examination or assessment and to prevent further breaches
- determined an appropriate level of sanction to be applied (refer to Open Awards Sanctions Policy)

If the Director of Quality and Standards has a conflict of interest, is a named party in the allegation, or has directly investigated the case, an alternative Open Awards senior manager will undertake this review.

Reaching a Decision

In more serious cases of suspected or alleged malpractice, based on the severity, scope and associated risk of the suspected or alleged malpractice, the Director of Quality and Standards may escalate the case to the Chief Executive of Open Awards, who in turn may escalate the case to the Chair of the Board.

Open Awards must be satisfied on the balance of probabilities that the allegation is substantiated. In complex or inconclusive cases, Open Awards may decline to accept the work of learners/ apprentices in order to protect the integrity of the qualification. In such cases, the relevant regulator will be advised of the outcome.

Communicating Decisions

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

Malpractice and Maladministration Policy and Procedures



Open Awards will ensure that in most cases alleged malpractice is kept confidential between the provider, the individual who engaged in the malpractice and itself. However, in cases of serious malpractice, Open Awards may exchange information with the regulators, other awarding organisation and other appropriate authorities.

It is the responsibility of the Head of Provider to inform the accused individual that information may be shared as outlined above.

Stage 6: Appeal



it is not possible to appeal the findings of a malpractice investigation, although an appeal can be made against the decision taken as a result of the investigation.

The appellant should put their appeal in writing to Open Awards following the Enquiries and Appeals Policy and Procedures which can be found on our website [here](#).