

## **Policy and Procedures for dealing with alleged or suspected Malpractice**

### **Part A: Policy**

#### **1 General Scope**

This document covers malpractice for all provision accredited by OCNSWR, in its capacity as an Open College Network (OCN) and as an Awarding Organisation (AO) approved by Ofqual.

It sets out OCNSWR's policy and procedures for responding to allegations of malpractice and for action where the allegations are upheld.

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

#### **2 Regulatory authority**

The relevant regulatory authority is NOCN. The relevant publications of the regulatory authority are listed in Annex 1. 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 the 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 changes to this document, such changes will be made as soon as practicable, and OCNSWR will inform Centres accordingly.

#### **3 Definitions**

The following definition shall apply

**Malpractice** This is defined by Ofqual as *The deliberate or wilful contravention or ignoring of the regulatory requirements of the QCF by an organisation recognised to operate within the framework.*

For the purposes of these procedures it is defined as any act by an individual (learner, assessor, centre employee, OCNSWR employee, or any other individual involved in providing a qualification), a centre or organisation which, deliberately or wilfully contravenes or ignores the requirements of the regulatory authorities or of OCNSWR, or deliberately or wilfully subverts the integrity, validity or reliability of any assessment and/or its associated certification.

#### **4 Examples of actions that may constitute malpractice**

Examples of actions that may constitute malpractice are listed below. These are exemplars and OCNSWR reserves the right to consider as malpractice other actions not listed but falling under the general definition of malpractice.

##### **4.1 Learners**

- Dishonesty in presenting work for assessment, including

- Introduction of unauthorised material, instruments or devices into the assessment room
- Plagiarism, including the copying of work of another learner
- Collusion between two or more learners
- Deliberate destruction of another learner's work for assessment
- Behaving in such a way as to undermine the integrity of the assessment for themselves or others
- Acting in a disruptive manner during an assessment

#### **4.2 Centre employees**

- Unfair discrimination in assessment (for example, on the grounds of age, sex, ethnicity, marital status etc)
- Deliberate or wilful failure to assess in accordance with
  - the assessment criteria or other assessment requirements
  - the agreed timetable for assessment and certification
- Assisting or prompting learners with the production of answers
- Obtaining unauthorised access to assessment material prior to or after assessment
- Failure to abide by the conditions of supervision designed to ensure the security of assessment.

#### **4.4 Centres**

- Failure to provide appropriate facilities for the security of assessment and of assessment records
- Failure to keep externally set assessment papers secure prior to or after assessment
- Failure to keep learner, computer or other files secure
- Failure to provide assessment records of learners to OCNSWR or any person acting on behalf of OCNSWR
- Failure to register learners with OCNSWR such that learners are prevented from obtaining the units or qualifications that they are taking

#### **4.5 Any persons (including acts by those listed above or by members of the public)**

- Forgery of certificates
- Threats or inducements to any person involved in the assessment process intended to influence the outcomes of assessment

#### **4.6 OCNSWR employees**

- Any of the above

### **5 Relationship with appeals**

A student or a centre, in submitting an assessment appeal, may allege malpractice as the basis, or one of the bases of the appeal, or a suspicion of malpractice may arise in the course of an appeal or an enquiry. In such cases these procedures will

take precedence over the appeals procedures. (see Policy and Procedures for Appeals and Enquiries).

## **6 Investigation and actions**

In accordance with the requirements of the regulatory authority, all allegations of malpractice must be investigated. The nature of the investigation, and of the actions taken if malpractice is proven, will be commensurate with the nature and the gravity of the malpractice.

## **7 Responsibility**

Responsibility for this policy and procedures rests with the OCNSWR Quality Committee acting under delegated responsibility from the OCNSWR Board

## **8 Monitoring and Review**

OCNSWR regards all allegations and suspicions of malpractice as potentially serious issues, and as such all must be investigated and recorded formally, no matter how trivial they may at first appear.

An annual report on any cases of malpractice, including those found not proven, will be made to the OCNSWR Quality Committee. Reports of the Malpractice Panel will be considered by the Quality Committee.

This policy and procedures will be reviewed biennially and whenever the requirements of the regulatory bodies change.

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Revised	N/A

## **Part B Procedures to be followed in cases of alleged or suspected malpractice**

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### **1 Terminology**

In all cases, in order to avoid prejudicial language, until an investigation has been completed and the allegation or suspicion proved, centres and OCNSWR will use the terms 'alleged malpractice' or 'suspected malpractice', as appropriate to the circumstances, in relation to the case in question.

### **2 Allegations of malpractice**

Allegations may be made by any person having knowledge of the assessment process, including learners, assessors, centre employees, OCNSWR employees, and members of the public. Allegations should normally be made in writing. Where an allegation is made orally, the receiver of the allegation should attempt to obtain written confirmation from the person making the allegation, but if this is not possible should make a written record. In such cases, some care will need to be taken in considering the case.

Allegations may be made to centres, centre employees, or OCNSWR. Allegations may also be made indirectly via a third party (for example, the police or the regulatory authority).

### **3 Anonymous allegations**

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.

### **4 Suspected malpractice**

Suspicion of malpractice will normally arise when assessing a learner's work, but may also arise under other circumstances, for example, when analysing assessment records.

### **5 Application of these procedures**

These procedures are designed to cover a wide range of circumstances in relation to: the subject of the allegation or suspicion; the person making the allegation or developing the suspicion; the person or organisation receiving the allegation; the nature and gravity of the alleged malpractice. Examples of malpractice may arise where these procedures are not wholly appropriate and they may therefore need to be adapted in some cases to suit the actual circumstances.

### **6 Penalties**

- The application of penalties in all cases is at the discretion of OCNSWR and will reflect the particular circumstances of each case and any mitigating factors
- Penalties may only be imposed based on the evidence presented
- Penalties must be justifiable and reasonable in the scale and consistent in their application

- For reasons of consistency in the imposition of penalties OCNSWR will not take into account any consequential effects of a particular penalty which might arise from the circumstances of any individual
- Penalties imposed will remain on record at OCNSWR

## **7 Malpractice by learners**

### **7.1 Initial response**

Where a centre suspects a learner of malpractice, or receives an allegation that a learner has committed malpractice, it must inform OCNSWR immediately in writing. The centre must also inform OCNSWR after the investigation is completed and the offence proven or otherwise.

### **7.2 Centre investigation**

The regulatory authority explicitly requires OCNSWR as the awarding organisation to conduct a full investigation of all instances of alleged or suspected malpractice. A centre is deemed to be acting with delegated authority of OCNSWR in conducting the investigation. OCNSWR reserves the right issue advice to the centre on the conduct of the investigation, or to require the involvement of OCNSWR staff in the investigation, or to conduct the investigation itself should the circumstances appear to it to warrant such a course of action, for example, where the suspected or alleged offence is serious, or has potentially wider consequences, (for example, implicates a group or groups of learners).

### **7.3 Procedures**

The centre must undertake the following actions:

- Inform the learner in writing at the earliest opportunity of the nature of the alleged or suspected malpractice, of the procedures that will be followed, and the possible penalties if malpractice is proved
- Undertake an investigation of the allegation or suspicion
- Provide the learner with an opportunity to contest or refute the allegation or suspicion, either in writing, or at a hearing, or both
- Allow the learner to be accompanied by a friend at any hearing
- Make a decision based on the investigation and hearing
- Ensure that the person or persons conducting the investigation, any hearing, and making any decision:
  - are not the same as the person making the allegation or raising the suspicion
  - have sufficient professional standing and authority, and, if necessary have appropriate subject knowledge.
- Inform OCNSWR if it is unable to meet either of the above requirements (for example, if it has a small number of employees), which will advise the centre on how to meet the requirements, if necessary by the involvement of persons external to the centre
- Inform the learner of the outcome in writing
- Where malpractice is proved, immediately inform OCNSWR in writing
- Keep a full case record (see below) and make available such a record to OCNSWR on request
- Ensure that the assessed work is included in any sample of work considered by the Internal Verifier

- Ensure that the work is included in any sample of work provided to the OCNSWR authorised person so that he/she can confirm the outcome.

#### **7.4 OCNSWR action**

The OCNSWR authorised person will confirm the outcome of the investigation and recommend the appropriate penalty. The recommendation will be considered and confirmed by the OCNSWR Director of Quality. Where the nature or gravity of the malpractice appears to warrant it, and the proposed penalty is severe, the case may be referred to OCNSWR's Malpractice Panel (see section 9.3) for a decision.

#### **7.5 Penalties: learner malpractice**

The following penalties may be imposed, depending on the nature and gravity of the malpractice

- A written warning
- Loss of credit in the unit concerned
- Loss of credit in all units in the qualification concerned
- Disqualification from the qualification concerned
- Learner is barred from entering one or more assessments for a set period of time
- A combination of two or more of the above

Other actions

- Where the malpractice appears to involve a criminal offence, it may, after advice from OCNSWR, be appropriate to report the case to the police

#### **7.6 Case records: learner malpractice**

- A statement of facts
- A detailed account of the circumstances
- Names of all persons involved and their roles in the case
- Copies of any written statements by learners and staff
- Details of the investigation carried out by the centre
- A record of any hearing
- Copies of any learner's work that is the subject of the allegation or suspicion of malpractice
- Details of any unauthorised material found in the assessment room
- A record of the decision
- A record of the proposed penalty imposed if the allegation or suspicion is upheld (and a record of the confirmed penalty once this is agreed)
- Copies of the centre's procedures for informing learners of assessment regulations

#### **7.7 Appeals**

Where a learner wishes to appeal against the decision, he/she should use OCNSWR's Appeals procedures. In such circumstances, it would normally be appropriate for the appeal to be heard under Stage 2 of the Appeals Procedures, unless the case has been considered by the Malpractice Panel, in which case it would normally be appropriate for the appeal to be heard under Stage 3.



## **8 Malpractice by centre employees**

### **8.1 Initial response**

Where a centre employee is suspected of malpractice, or is alleged (whether by another employee of the centre, a learner or a member of the public) to have committed malpractice, the centre must immediately inform OCNSWR in writing. Where a member of staff of a centre is suspected by OCNSWR of malpractice, or OCNSWR receives an allegation of malpractice by an employee of a centre, the OCNSWR Director of Quality will immediately inform the centre (normally the Principal or Chief Executive, or some other senior member of staff nominated by the centre) in writing.

### **8.2 Centre investigation**

Upon receipt of an allegation or suspicion, it is the responsibility of the centre as the employer of the employee concerned:

- to conduct an investigation;
- to determine the outcome;
- to determine the appropriate penalty;
- to comply with the centre's own employment and disciplinary procedures;
- to comply with appropriate employment legislation.

In conducting the investigation, the centre should seek the advice of OCNSWR, and should consider any evidence that OCNSWR may provide. Subject to agreement between the centre and OCNSWR it may be considered appropriate for an OCNSWR member of staff to give evidence at any hearing called as part of the investigation.

### **8.3 OCNSWR investigation**

The regulatory authority explicitly requires OCNSWR as the awarding organisation to conduct a full investigation of all instances of alleged or suspected malpractice. In these circumstances OCNSWR will deem its duty to have been fulfilled in part by the centre conducting an investigation and providing OCNSWR with full details of its investigation and the outcome, subject to any legal restrictions on disclosure that may apply.

Where the malpractice appears to involve a criminal offence, the centre and OCNSWR should consult about whether it is appropriate for the centre to report the case to the police.

### **8.4 OCNSWR action**

The regulatory authority explicitly requires OCNSWR as the awarding organisation to take such action, with respect to the learners and centres concerned, as is necessary to maintain the integrity of the qualification. The actions taken should be commensurate with the gravity of the malpractice. Notwithstanding the decision of the centre in respect of the individual member of staff concerned, where malpractice is proven, OCNSWR may deem the centre responsible for the malpractice.

OCNSWR may inform the Regulatory Authority of the case and progress in investigating it, and may be required to act on any advice received from the Regulatory Authority.

Upon receipt of the report from the centre OCNSWR will refer the matter to a Malpractice Panel (see section 9.3)

## **9 Malpractice by Centres**

### **9.1 Initial response**

Where a centre is suspected by OCNSWR of malpractice, or OCNSWR receives an allegation from a learner, an employee or a member of the public of malpractice by a centre, the OCNSWR Director of Quality will immediately inform the centre (normally the Principal or Chief Executive, or some other senior member of staff nominated by the centre) in writing.

### **9.2 Centre investigation**

The centre will be required to conduct a full investigation into the alleged or suspected malpractice and a senior person (Principal, Chief Executive or some other senior person nominated by the centre) will be required to submit a written report to OCNSWR.

The report must include:

- full details of the investigation
- the conclusions of the centre,
- whether the centre accepts that the allegation is well-founded
- if so what actions the centre proposes to take, to prevent a recurrence of the malpractice.

Depending on the nature of the allegation or suspicion, OCNSWR may require the centre to provide records, files or other documents as part of the report. Where the malpractice is the result of the actions of an individual employee of the centre, rather than a result of the systems or procedures at the centre, the report must include the report of the investigation into the member of staff referred to in section 8.2.

Where a Centre declines to cooperate with OCNSWR in the investigation, this will be reported to the Malpractice Panel.

### **9.3 OCNSWR investigation: Malpractice Panel**

The regulatory authority explicitly requires OCNSWR as the awarding organisation to conduct a full investigation of all instances of alleged or suspected malpractice. In these circumstances OCNSWR will deem its duty to have been fulfilled in part by the centre conducting an investigation and providing OCNSWR with full details of its investigation and the outcome, subject to any legal restrictions on disclosure that may apply.

Where the malpractice appears to involve a criminal offence, the centre should consult with OCNSWR about whether it is appropriate for the centre to report the case to the police.

The report of the centre investigation will be considered by a Malpractice Panel constituted as a sub-committee of the Quality Committee, consisting of three persons:

- The Chair of the OCNSWR Quality Committee who will chair

- A member of the OCNSWR Quality Committee (other than its chair)
- The OCNSWR Director of Quality

The Chair of the Panel may delegate responsibility to the Director of Quality where the case is straightforward or the offence is minor.

The role of the Panel is

- To consider all the evidence presented to it, including the report of the investigation;
- To establish that correct procedures have been followed in the investigation of the case
- To confirm that it has sufficient evidence to come to a conclusion and if not to take such steps as it consider necessary to acquire further evidence, in particular where the Centre has declined to cooperate with the investigation
- To establish whether malpractice has been committed
- To agree a penalty
- To agree appropriate measures to be taken, or conditions to be imposed on the centre, to protect the integrity of assessment and to prevent further incidences at the centre; these will be appropriate to the nature and gravity of the case, and may include, but will not be confined to:
  - Withdrawal of Centre approval;
  - Suspension of approval for a specified period, or until specified actions have been taken by the centre;
  - Suspending the issuing of units, awards or certificates for Learners at the Centre;
  - Conditions in respect of the future involvement of a named member of staff of the centre in the conduct, supervision or administration of assessments of OCNSWR units or qualifications
- To agree where necessary appropriate measures to be taken more widely across OCNSWR, including measures to discourage others from committing malpractice
- To agree such steps as may be necessary to ensure that no individual may gain from the malpractice committed in the particular case
- To agree such steps as may be necessary, as agreed with the regulatory authority, where there is evidence the results or certificates may be invalid

The Panel will normally conduct its business on the basis of written evidence, but a representative of the centre is entitled to attend if the centre request it to present its report, and the Panel may require a representative of the centre to attend.

Where a case of learner malpractice has been referred to the Panel (see section 7.4) it may use its discretion about the nature of any penalty imposed, but will have regard to the penalties listed in section 7.5.

The decision will be communicated to the following within one week of the decision being taken:

- The centre

- The OCNSWR Chief Executive
- The OCNSWR Board via the chair
- NOCN (in the case of OCN provision)
- The learner (where learner malpractice has been considered)

OCNSWR may inform the Regulatory Authority of the case and progress in investigating it, and may be required to act on any advice received from the Regulatory Authority.

#### **9.4 Appeals**

Where a centre wishes to appeal against the decision, it should write to the OCNSWR Chief Executive setting out the ground for its appeal. It should do so within three weeks of receipt of the decision of the Malpractice Panel.

The appeal will be considered and determined by a Malpractice Appeal Panel of four persons as follows:

- A member of the OCNSWR Board who will chair
- A member of the OCNSWR Board
- The OCNSWR Chief Executive
- An external member, who shall have had no involvement with OCNSWR during the previous seven years.

OCNSWR will seek nominations for the external member from appropriate organisations, such as another OCN or NOCN.

In order to avoid a conflict of interest no member of the Quality Committee may serve on the Appeal Panel

The centre should provide sufficient information so as to enable the panel to make a decision. However, where the panel considers it necessary at any point in the process, it may seek additional information before making a decision.

Where it appears to the appeal panel that the process of obtaining additional information will take, or is likely to take, more than two weeks, the centre will be informed of progress and the anticipated date on which the panel will meet to hear the appeal.

The appeal panel will agree a date to meet to hear the appeal, which will be, so far as is practicable and reasonable, at a time and place where a representative or representatives of the centre may attend, to present their appeal. If no mutually agreed date can be agreed, the appeal panel shall be entitled to meet without representatives of the centre present; the absence of whom shall not invalidate the proceedings.

The decision of the Malpractice Appeal Panel is final.

The decision will be communicated to the following within one week of the decision being taken:



- The centre
- The OCNSWR Board
- the Regulatory Authority
- NOCN (in the case of OCN provision)

## **10 Malpractice by OCNSWR employees**

### **10.1 OCNSWR investigation**

Where an employee of OCNSWR is suspected of malpractice, or is alleged (whether by another employee of OCNSWR, a learner or a member of the public) to have committed malpractice, it is the responsibility of OCNSWR as the employer of the member of staff concerned:

- to conduct an investigation;
- to determine the outcome;
- to determine the appropriate penalty;
- to comply with OCNSWR's own employment and disciplinary procedures;
- to comply with appropriate employment legislation.

In conducting the investigation, OCNSWR may seek the advice of the Regulatory Authority and may be required to act on any such advice.

Where the malpractice appears to involve a criminal offence, it may be appropriate to report the case to the police.

### **10.2 Malpractice Panel**

Upon conclusion of the investigation, and the expiry of any time limits for the member of staff concerned to submit an appeal where the malpractice was found proven, a report will be made to the OCNSWR Malpractice Panel, constituted as set out in Section 9.3.

The role of the Panel is not to reopen the investigation, but rather to consider what lessons may be learned from the case and what actions need to be taken by OCNSWR as an awarding organisation, including:

- appropriate measures to be taken to protect the integrity of assessment and to prevent further incidences, appropriate to the nature and gravity of the case;
- appropriate measures to be taken more widely including measures to discourage others from committing malpractice

The conclusions and recommendations of the Panel will be considered by the OCNSWR Board. Following this, the OCNSWR Chief Executive will report as appropriate to:

- OCNSWR centres
- the Regulatory Authority
- NOCN (in the case of OCN provision)

## Annex 1

### Relevant publications by Regulatory authorities

Ofqual	2004	The Statutory Regulation of External Qualifications in England, Wales and Northern Ireland: - Dealing with malpractice (paragraphs 31)	<a href="http://www.ofqual.gov.uk/files/6944_regulatory_criteria_04%281%29.pdf">http://www.ofqual.gov.uk/files/6944_regulatory_criteria_04%281%29.pdf</a>
Ofqual	2008	Regulatory arrangements for the Qualification and Credit Framework (2008) - Dealing with malpractice (paragraphs 5.29 – 5.32)	<a href="http://www.rewardinglearning.org.uk/regulation/reform_of_vocational_qualifications/qcf_regulations.asp">http://www.rewardinglearning.org.uk/regulation/reform_of_vocational_qualifications/qcf_regulations.asp</a>