



**KING EDWARD VI
SHELDON HEATH
ACADEMY**

Educational excellence for our City

MALPRACTICE POLICY

Other related policies:

Behaviour Policy

Non-Examination Assessment Policy

Examination Appeals Procedures

Access Arrangements Policy

Word Processor Policy

BTEC Policy

Head of Centre: Ms R Elcocks

Examinations Manager: Ms J Jones

SLT Responsible for Examinations – Mrs B Collister

This policy was adopted by the Curriculum and Student Welfare Committee in March 2020.

Next review due Spring Term 2024, or earlier if the need arises.

1. Rationale

The purpose of this policy is to ensure that the assessment of all qualifications at the Academy fully complies with JCQ policies and regulations. This policy is to be used in conjunction with the Academy's examinations and assessment policy and a range of guidance available at the JCQ website.

2. Definitions Malpractice

'Malpractice', which includes maladministration and non-compliance with the JCQ Regulations, means any act, default or practice which is a breach of the Regulations or which:

- compromises, attempts to compromise or may compromise the process of assessment, the integrity of any qualification or the validity of a result or certificate; and/or
- damages the authority, reputation or credibility of any awarding body or centre or any officer, employee or agent of any awarding body or centre.

Failure by a centre to notify, investigate and report to an awarding body all allegations of malpractice or suspected malpractice constitutes malpractice in itself.

Also, failure to take action as required by an awarding body, as detailed in this document, or to co-operate with an awarding body's investigation, constitutes malpractice.

Suspected malpractice

Suspected malpractice means all alleged or suspected incidents of malpractice.

Centre staff malpractice

'Centre staff malpractice' means malpractice committed by:

- a member of staff, contractor (whether employed under a contract of employment or a contract for services) or a volunteer at a centre; or
- an individual appointed in another capacity by a centre such as an invigilator, a Communication Professional, an Oral Language Modifier, a practical assistant, a prompter, a reader or a scribe.

Candidate malpractice

'Candidate malpractice' means malpractice by a candidate in connection with any examination or 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.

3. Instances of malpractice

Instances of malpractice arise for a variety of reasons:

- some incidents are intentional and aim to give an unfair advantage in an examination or assessment; some incidents arise due to ignorance of the regulations, carelessness or forgetfulness in applying the regulations;

- some occur as a direct result of the force of circumstances which are beyond the control of those involved (e.g. a fire alarm sounds and the exam is disrupted).

The individuals involved in malpractice are also varied. They may be:

- candidates;
- teachers, lecturers, tutors, trainers, assessors or others responsible for the conduct, the administration or the quality assurance of examinations and assessments including examination officers and invigilators;
- assessment personnel such as examiners, assessors, moderators or internal and external verifiers;
- other third parties, e.g. parents/carers, siblings or friends of the candidate.
- Irrespective of the underlying cause or the people involved, all allegations of malpractice in relation to examinations and assessments need to be investigated. This is to protect the integrity of the qualification and to be fair to the centre and all candidates.

4. Individual responsibilities

The regulators' General Conditions of Recognition state that awarding bodies must:

- establish and maintain, and at all times comply with, up to date written procedures for the investigation of suspected or alleged malpractice or maladministration; and
- ensure that such investigations are carried out rigorously, effectively, and by persons of appropriate competence who have no personal interest in their outcome.

The awarding body will normally authorise the head of centre, acting on behalf of the awarding body, to carry out the investigation or to collect evidence on its behalf. The awarding body reserves the right to conduct any investigation where it feels it is the most appropriate course of action. Where allegations are made against the head of the centre, or the management of the centre, the awarding body will decide how the investigation will be carried out. The awarding body may authorise another person, such as one of the following to carry out the investigation:

- the Chair of the Governing Body of the centre; or
- the responsible employer (or his/her nominee) e.g. Director of Education; or
- another suitably qualified individual such as an Ofsted Inspector or head of another school.

The individual, as above, will then report to the awarding body when the investigation has been completed. Awarding bodies may use their own personnel to investigate cases involving a breach or suspected breach of security (e.g. the content of examination material becomes known before the scheduled date of the examination). This is in addition to, and not a substitution for, the requirement for centres to provide full details of alleged, suspected or confirmed breaches of security.

The Academy will thus:

- oversee all investigations into suspected or alleged malpractice;
- withhold the issuing of results until the conclusion of the investigation, or permanently, where the outcome of the investigation warrants it;
- apply the sanctions and penalties listed in this document in cases of proven malpractice;

- report the matter to the regulators and other awarding bodies in accordance with the regulators' General Conditions of Recognition ;
- consider reporting the matter to the police if suspected or proven malpractice involves the committing of a criminal act;
- consider reporting the matter to other appropriate authorities where relevant, e.g. Funding Agencies and Teaching Regulation Agencies.

Where malpractice is suspected or identified, the head of centre must:

- notify the appropriate awarding body immediately of all alleged, suspected or actual incidents of malpractice. The only exception to this is candidate malpractice discovered in coursework or non-examination assessments before the authentication forms have been signed by the candidate (see section 4.3). If staff malpractice is discovered in coursework or non-examination assessments, the head of centre must inform the awarding body immediately, regardless of whether the authentication forms have been signed by the candidate(s);
- complete Form JCQ/M1 (suspected candidate malpractice) or Form JCQ/M2a (suspected malpractice/maladministration involving centre staff) to notify the awarding body/bodies whose qualifications are involved in an incident of malpractice. Each form is available from the JCQ website <http://www.jcq.org.uk/examsoffice/malpractice> Notifications in letter format will be accepted providing the information given covers the same points as Form JCQ/M1 or JCQ/M2a;
- supervise personally, and as directed by the awarding body, all investigations resulting from an allegation of malpractice unless the investigation is being led by the awarding body or another party;
- ensure that if it is necessary to delegate an investigation to a senior member of centre staff, the senior member of centre staff chosen is independent and not connected to the department or candidate involved in the suspected malpractice. The head of centre should ensure there is no conflict of interest which can otherwise compromise the investigation;
- respond speedily and openly to all requests for an investigation into an allegation of malpractice. This will be in the best interests of centre staff, candidates and any others involved;
- speedily and openly make available information as requested by an awarding body;
- co-operate and ensure their staff do so with an enquiry into an allegation of malpractice, whether the centre is directly involved in the case or not;
- inform staff members and candidates of their individual responsibilities and rights as set out in these guidelines;
- forward any awarding body correspondence and evidence to centre staff and/or provide staff contact information to enable the awarding body to do so;
- pass on to the individuals concerned any warnings or notifications of penalties and ensure compliance with any requests made by the awarding body as a result of a malpractice case.

The above apply to instances of suspected malpractice involving private candidates entered through the Academy. Heads of centre failing to comply with the requirements set above may itself constitute malpractice.

5. Procedures for dealing with allegations of malpractice

The handling of malpractice complaints and allegations involves the following phases.

a) The allegation

- Examiners, moderators, monitors and external verifiers who suspect malpractice in an examination or assessment will notify the relevant awarding body immediately using the procedures and forms provided by the awarding body.
- Where suspected malpractice is identified by a centre, the head of centre must submit full details of the case at the earliest opportunity to the relevant awarding body.
- Malpractice by a candidate in a controlled assessment, coursework or nonexamination assessment component discovered prior to the candidate signing the declaration of authentication need not be reported to the awarding body, but must be dealt with in accordance with the centre's internal procedures. The only exception to this is where the awarding body's confidential assessment material has been breached. The breach must be reported to the awarding body.
- If a candidate has not been entered with an awarding body for the component, unit or qualification, malpractice discovered in controlled assessment, coursework or non-examination assessment must also be dealt with in accordance with the centre's internal procedures.
- The Academy will not give credit for any work submitted which is not the candidate's own work. If any assistance has been given, a note will be made of this on the cover sheet of the candidate's work or other appropriate place.
- Where malpractice by a candidate in a vocational qualification is discovered prior to the work being submitted for certification, the Academy will refer to the guidance provided by the awarding body.
- Allegations of malpractice are sometimes reported to awarding bodies by employers, centre staff, regulators, funding agencies, candidates, other awarding bodies and members of the public. Sometimes these reports are anonymous. Where requested, awarding bodies will not disclose the identity of individuals reporting cases of suspected malpractice, unless legally obliged to do so.

Employees/workers making allegations of malpractice within centres may be protected by the Public Interest Disclosure Act 1998, if:

- the disclosure amounts to a "protected disclosure" (as set out in the relevant legislation);
- the employee/worker is raising a genuine concern in relation to malpractice; and
- the disclosure is made in compliance with the guidelines set out in the legislation and/or the centre's own Whistleblowing Policy.

When an awarding body receives an allegation from someone other than the head of a centre (including anonymous reports), the awarding body will evaluate the allegation in the light of any available information to see if there is cause to investigate.

b) The awarding body's response

In the case of notifications of suspected malpractice received from examiners, moderators, monitors, external verifiers, the regulators or members of the public, (including informants) the awarding body will consider the information provided and decide to:

- take no further action; or
- ask the head of centre, or another suitably qualified individual, to conduct a full investigation into the alleged malpractice and to submit a written report; or
- investigate the matter directly.

The awarding body will notify the relevant regulator as soon as it receives sufficient evidence of suspected malpractice; on receipt of a notification of suspected malpractice, submitted by a head of centre, the awarding body will consider the information provided and decide:

- to take no further action; or
- if the notification takes the form of a Report, to make a decision on the case in accordance with the procedures, (where the evidence permits) • to ask the head of centre to carry out a further investigation
- to investigate the matter further itself.

Regardless of whether the allegation of malpractice is proven or not, in order to ensure the integrity of, and public confidence in, future examinations/assessments, the awarding body may undertake additional inspections and/or monitoring, and/or require additional actions.

The awarding body reserves the right to notify the police or other law enforcement/ investigating bodies should the allegation disclose the potential commission of a crime.

c) The investigation

Investigations carried out by the head of centre/appointed investigator

It will normally be expected that investigations into allegations of malpractice will be carried out by the head of centre. The head of centre must deal with the investigation in accordance with the deadlines and requirements set by the awarding body. Those responsible for conducting an investigation should seek evidence from which the full facts and circumstances of any alleged malpractice can be established. It should not be assumed that because an allegation has been made, it is true. The head of centre should consider that both staff and candidates can be responsible for malpractice.

If the investigation is delegated to another senior member of centre staff, the head of centre retains overall responsibility for the investigation. In selecting a suitable senior member of centre staff the head of centre must take all reasonable steps to avoid a conflict of interest.

Where a conflict of interest may be seen to arise, investigations into suspected malpractice should not be delegated to the manager of the section, team or department involved in the suspected malpractice. In the event of any concerns regarding conflicts of interest or the suitability of the potential investigator, the head of centre must contact the awarding body as soon as possible to discuss the matter.

If the Academy is reporting the suspected malpractice, the awarding bodies recommend that, as a minimum, the centre provides the accused individual(s) with a completed copy of the form or letter used to notify the awarding body of the malpractice.

Where the person conducting the investigation deems it necessary to interview a candidate or member of staff in connection with alleged malpractice, the interviews must be conducted in accordance with the centre's own policy for conducting 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 involvement of legal advisors is not necessary, at least where there is no allegation of criminal behaviour. However, if any party wishes to be accompanied, for example by a solicitor or trade union official, the other parties must be informed beforehand to give them the opportunity to be similarly supported. The person accompanying the interviewee should not take an active part in the interview, in particular he/she is not to answer questions on the interviewee's behalf. An awarding body will not be liable for any professional fees incurred. The head of centre is required to make available an appropriate venue for such interviews. Interviews may also be conducted over the telephone. Individuals involved may be requested to provide a written statement.

Investigations carried out by the awarding body

The awarding body reserves the right to conduct any investigation where it feels that it is the most appropriate course of action at any stage. The decision as to who investigates always rests with the awarding body.

An awarding body will not normally withhold from the head of centre information about material obtained or created during the course of an investigation into an allegation of malpractice.

However, it must comply with data protection law and specifically it may do so where this would involve disclosing the identity of an informant who has asked for his/her identity to remain confidential. In such cases, the awarding body will withhold information that would reveal the person's identity, and will explain why the withheld information cannot be provided.

Any material or evidence not provided to the accused (and their head of centre, if applicable,) will not be provided to a Malpractice Committee and will not be considered when deciding whether an allegation of malpractice is proven or not.

If investigations reveal that candidates had prior knowledge of the content of an examination or assessment, the awarding body must attempt to establish whether information could have been divulged to candidates at other centres or to other unauthorised persons.

Sometimes it is necessary for the awarding body to interview a candidate during an investigation. If the candidate is a minor or a vulnerable adult, and if the interview is to

be conducted face to face, the awarding bodies undertake to do this only in the presence of an appropriate adult such as the candidate's parent/carer, the head of centre, or other senior member of staff with the permission of the head of centre or parent/carer.

When it is necessary for an awarding body member of staff to conduct an interview with a staff member, the member of staff being interviewed may be accompanied by a friend or advisor (who may be a representative of a teacher association or other association).

If the individual being interviewed wishes to be accompanied by a legal advisor, the other parties must be informed beforehand to give them the opportunity to be similarly supported.

The head of centre will be required to make available an appropriate venue for such interviews.

The person accompanying the interviewee should not take an active part in the interview, in particular he/she is not to answer questions on the interviewee's behalf.

A full note of the interview will be made and the interviewee asked to confirm its accuracy. The individual being interviewed may also be requested to provide a written statement.

d) The report

After investigating an allegation of candidate malpractice, or gathering evidence for a staff malpractice investigation, the head of centre must submit a full written Report of the case to the relevant awarding body. The Report should be accompanied by the following documentation, as appropriate:

- a statement of the facts, a detailed account of the circumstances of the alleged malpractice, and details of any investigations carried out by the Academy;
- the evidence relevant to the allegation, such as written statement(s) from the teacher(s), invigilator(s), assessor, internal verifier(s) or other staff who are involved;
- written statement(s) from the candidate(s);
- any exculpatory evidence and/or mitigating factors;
- information about the centre's procedures for advising candidates and centre staff of the awarding bodies' regulations;
- seating plans showing the exact position of candidates in the examination room;
- unauthorised material found in the examination room or photographs of material which cannot be submitted to an awarding body;
- any candidate work and any associated material (e.g. source material for coursework) which is relevant to the investigation;
- any teaching resources/material relevant to the investigation.

The awarding body will decide on the basis of the Report, and any supporting documentation, whether there is evidence of malpractice and if any further investigation is required. The head of centre will be informed accordingly.

e) The decision

Malpractice committee

In order to determine the outcomes in cases of alleged malpractice awarding bodies may appoint a Panel or Committee composed of internal and/or external members experienced in examination and assessment procedures. Alternatively, this function may be allocated to a named member or members of awarding body staff. In this document the Committee (or awarding body personnel responsible for making decisions in malpractice cases) is referred to as the "Malpractice Committee". The Committee may be assisted by an awarding body member of staff who has not been directly involved in the investigation.

The following applies to the activities of the Malpractice Committee (or to the personnel acting in this capacity):

- The work of the Malpractice Committee is confidential.
- Members of the Malpractice Committee are required to identify any case of which they have personal knowledge, or might be said to have some interest, which could lead to an inference that the Committee had been biased. Any member with a close personal interest will take no part in the discussion of the case and will not be present when the Malpractice Committee discusses the matter.
- Accused individuals, heads of centre and their representatives are not entitled to be present at meetings of the Malpractice Committee.

The key principle underpinning the composition of the Malpractice Committee is that it is independent of those who have conducted the investigation. Awarding body staff who have directly investigated the case will play no role in the decision-making process.

No-one who declares an interest in the outcome of the case will be present in the room when the case is considered.

Information supplied to the Malpractice Committee will be only that which is directly relevant to the case under consideration and which has been made available to the person against whom the allegation has been made. For the avoidance of doubt, where the person against whom the allegation is made receives material that has been subject to redaction (for example of individuals' names), the material that the Malpractice Committee receives will also be redacted.

The person against whom the allegation has been made will be given the opportunity to make a written statement to the Malpractice Committee in light of the material provided.

Making the decision - overview

In making a decision on any Report, the Malpractice Committee will first 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. Where individuals have had the opportunity to make a written statement, but have declined this opportunity, the case will proceed on the basis of all other information received. If satisfied, the Malpractice Committee will then seek to determine:

- whether malpractice has occurred;

- where the culpability lies for the malpractice.

If the Malpractice Committee is satisfied that there is sufficient evidence that malpractice has occurred, the Committee will then determine:

- appropriate measures to be taken to protect the integrity of the examination or assessment and to prevent future breaches;
- the nature of any sanction or penalty to be applied.

Each case of suspected malpractice will be considered and judged on an individual basis in the light of all information available. Where there is an established, clearly evidenced, repeated pattern of behaviour this may be taken into consideration when determining whether a sanction should be applied.

The Malpractice Committee will seek to make decisions unanimously, but if necessary may decide by a majority. The Malpractice Committee will consider, as separate issues:

- whether or not there has been malpractice; and
- if malpractice is established, whether a sanction should be applied.

When making a decision in a case the Malpractice Committee will:

- identify the regulation or specification requirement which it is alleged has been broken;
- establish the facts of the case. Where there are conflicting statements the decision as to whether or not there has been malpractice is made by reference to the facts as disclosed by the case papers;
- decide whether the facts as so established actually breach the regulations or specification requirements.

If malpractice has occurred, the Malpractice Committee will establish who is responsible for this and;

- consider any points in mitigation;
- determine an appropriate level of sanction or penalty, considering the least severe penalty first.

f) Sanctions and penalties

Awarding bodies impose sanctions and penalties on individuals and on centres responsible for malpractice in order to:

- minimise the risk to the integrity of examinations and assessments, both in the present and in the future;
- maintain the confidence of the public in the delivery and awarding of qualifications;
- ensure as a minimum that there is nothing to gain from breaking the regulations;
- deter others from doing likewise.

Awarding bodies will endeavour to protect candidates who, through no fault of their own, are caught up in a malpractice incident. When considering the action to be taken, awarding bodies will balance responsibilities towards the rest of the cohort and the individuals caught up in the malpractice incident.

Awarding bodies reserve the right to apply sanctions and penalties flexibly, outside of the defined ranges, if particular mitigating or aggravating circumstances are found to exist.

- Sanctions and penalties will be based only on the evidence available.
- All sanctions and penalties must be justifiable and reasonable in their scale, and consistent in their application.
- If the examination is one of a series, sanctions and penalties will only apply to the series in which the offence has been committed and possible future series.

A permanent record will be kept of the impact of any sanctions or penalties on an individual's results. For this reason centres must not withdraw candidates after malpractice has been identified, even if they have not completed the assessments in question.

All other information relating to specific instances of malpractice or irregularities will be destroyed after seven years.

Heads of centre should inform those individuals found guilty of malpractice that information may be passed onto other awarding bodies and/or other appropriate authorities.

This information will typically include the names, offences and sanctions applied to those found guilty of breaching the published regulations.

Sanctions and penalties for centre staff malpractice – individuals

In cases of centre staff malpractice, the primary role of the awarding body is to consider whether the integrity of its examinations and assessments have been placed in jeopardy. The awarding body will consider whether that integrity might be jeopardised if an individual found to have committed malpractice were to be involved in the future conduct, supervision or administration of the awarding body's examinations or assessments. In determining the appropriate sanction or penalty, the awarding body will consider factors including:

- the potential risk to the integrity of the examination or assessment;
- the potential adverse impact on candidates;
- the number of candidates and/or centres affected; and
- the potential risk to those relying on the qualification (e.g. employers or members of the public).

The awarding body may consider, at its discretion, mitigating factors supported by appropriate evidence. Ignorance of the regulations will not, by itself, be considered a mitigating factor.

Where a member of staff or contractor has been found guilty of malpractice, an awarding body may impose one or more of the following sanctions or penalties:

- **Written warning:** Issue the member of staff with a written warning that if he/she commits malpractice within a set period of time, further specified sanctions will be applied.
- **Training:** Require the member of staff, as a condition of future involvement in its examinations and/or assessments, to undertake specific training or

mentoring within a particular period of time and a review process at the end of the training.

- Special conditions: Impose special conditions on the future involvement in its examinations and/or assessments by the member of staff, whether this involves the internal assessment, the conduct, supervision or administration of its examinations and assessments.
- Suspension: Bar the member of staff from all involvement in the delivery or administration of its examinations and assessments for a set period of time. Other awarding bodies and the regulators may be informed when a suspension is imposed.

These sanctions will be notified to the head of centre who will be required to ensure that they are carried out. If a member of staff moves to another centre while being subject to a sanction, the head of centre must notify the awarding body of the move. Awarding bodies reserve the right to inform the head of centre to which the staff member is moving to, as to the nature of, and the reason for, the sanction.

Sanctions and penalties applied against candidates

The awarding bodies will determine the application of a sanction or penalty according to the evidence presented, the nature and circumstances of the malpractice, and the type of qualification involved. Not all the sanctions and penalties are appropriate to every type of qualification or circumstance. Awarding bodies may, at their discretion, impose the following sanctions against candidates.

- Warning: The candidate is issued with a warning that if he/she commits malpractice within a set period of time, further specified sanctions will be applied.
- Loss of all marks for a section: The candidate loses all the marks gained for a discrete section of the work. A section may be part of a component, or a single piece of non-examination assessment if this consists of several items.
- Loss of all marks for a component: The candidate loses all the marks gained for a component.
- Loss of all marks for a unit: The candidate loses all the marks gained for a unit. This penalty can only be applied to qualifications which are unitised.
- Disqualification from a unit: The candidate is disqualified from the unit. This penalty is only available if the qualification is unitised.
- Disqualification from all units in one or more qualifications
- Disqualification from a whole qualification
- Disqualification from all qualifications taken in that series
- Candidate debarred: The candidate is barred from entering for one or more examinations for a set period of time.

g) The appeal

The awarding bodies have established procedures for considering appeals against penalties arising from malpractice decisions. The following individuals have a right to appeal against decisions of the Malpractice Committee or officers acting on its behalf:

- Heads of centre, who may appeal against sanctions imposed on the centre or on centre staff, as well as on behalf of candidates entered or registered through the centre.
- Members of centre staff, or examining personnel contracted to a centre, who may appeal against sanctions imposed on them personally.

- Private candidates.
- Third parties who have been barred from examinations or assessments of the awarding body.

Further information may be found at - <http://www.jcq.org.uk/exams-office/appeals>