

Maladministration and Malpractice Policy.

August 2016

MALADMINISTRATION AND MALPRACTICE POLICY.

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Section 1 Overview of the policy

1.1. Scope of the Policy

This policy covers both NCFE (we, us, our etc) qualifications which are subject to scrutiny and enforcement by our qualification regulators (regulated qualifications) and unregulated products which are owned and / or offered by NCFE. All NCFE products include those which may be offered and / or delivered under an NCFE-owned brand name (such as 'CACHE').

This policy forms part of a suite of awarding policies, all of which are designed to:-

- protect learners who are registered with us;
- minimise the risk of an Adverse Effect occurring (see section 2);
- help support us and you in risk management and risk minimisation;
- help ensure we and you comply with all relevant legislation and guidance;
- help improve and refine our products and services.

This policy supports your compliance with the Centre Agreement. It does not replace any of the requirements contained within that Agreement. Non-adherence to our awarding policies may constitute maladministration, malpractice and / or a breach of the Centre Agreement. Please ensure you read our policies carefully and implement them fully.

This policy should be read in conjunction with:

- The Centre Agreement
- Our Sanctions Policy
- Our Whistle-blower Policy; and
- Our Complaints Policy.

These policies are available on our website and from your Customer Support Assistant.

We are an awarding organisation that works internationally. Maladministration and / or malpractice will be considered for overseas centres in line with this policy.

1.2. Purpose of the policy

Our policy assists us¹ and you² by outlining the framework for investigating and dealing with potential or actual cases of maladministration and / or malpractice. This is important in situations which could result in a detrimental effect to the learner and / or could potentially compromise the integrity of our qualifications, systems, processes or programmes.

We expect you to identify, minimise and manage risks within your business. In particular and in support of both the Centre Agreement and your risk management processes, you must have robust written procedures in place to minimise the risk of maladministration and / or malpractice from occurring. These procedures will include details of how you will investigate and deal with any alleged, suspected or proven cases of maladministration and / or malpractice.

¹ 'Us' refers to NCFE and associated brands

² 'You' refers to any person authorised to act on behalf of your centre.

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

1.3. Who needs to know about the policy?

You must make your staff (including centre, satellite, sub-contract centres or contractual staff) who are involved in the design, delivery, management, assessment and quality assurance of our products and your learners aware of, and familiar with, the contents of the policy.

1.4 Obtaining copies of the policy

You can download copies of the policy from our website or request copies from your Customer Support Assistant.

1.5. Reviewing the policy

In accordance with the General Conditions of Recognition we regularly review our systems and procedures. We'll review this policy regularly and may revise it as required in response to the findings of any review. We'll also review the policy where there has been: an incident which has occurred and highlighted 'lessons learned' which has required us to review in line with our risk management practices; a change in legislation or statutory guidance; changes in our practices; actions or guidance from our regulatory or external agencies, and / or in response to customer and stakeholder feedback.

1.6 Complaints and Appeals

You have the right to express your dissatisfaction regarding our actions, products or services. Our Complaints Policy in particular outlines when we will and will not accept a complaint, and when our decisions are final. Please see our Complaints Policy for more information.

You have the right to appeal a decision we make to take action following an investigation into maladministration or malpractice. Please see Section 7 for information on when and how such an appeal may be made.

Section 2 Defining and outlining maladministration and malpractice

Maladministration and malpractice may disadvantage learners and may negatively affect the integrity of awarding. Below is a brief overview as to what may constitute maladministration or malpractice.

2.1. Maladministration

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

Where possible, we will work with you in preventing maladministration from occurring. However, we expect you to have adequate systems in place and adhere to these systems. Reoccurring instances may be considered as malpractice and we reserve the right to investigate as such.

2.2. Malpractice

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

Malpractice may be more likely than maladministration to have greater implications for the centre and / or learners. As such, we treat all cases of potential malpractice very seriously.

2.3. Risks and Notifications

We are required under the General Conditions of Recognition to consider risks caused by Adverse Effects, maladministration and malpractice.

'Adverse Effect' is defined in the General Conditions of Recognition in the following terms:-

'An act, omission, event, incident or circumstance has an Adverse Effect if it:-

(a) Gives rise to prejudice to Learners or potential Learners; or

(b) Adversely affects –

- I. The ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with its Conditions of Recognition,*
- II. The standards of qualifications which the awarding organisation makes available or proposes to make available, or*
- III. Public confidence in qualifications'.*

Should we fail to meet our obligations under the General Conditions of Recognition, including those relating to notification of Adverse Effects and in relation to maladministration and malpractice, we are required to notify our Qualifications Regulators. We may also be required to identify this within our Annual Statement of Compliance submission.

Under the Centre Agreement all centres are made aware of their obligations, including the specific duty not to put us in breach of our ability to fulfil our obligations under the General Conditions of Recognition. It is therefore important that Adverse Effects (as defined above), maladministration and / or malpractice are notified to us and appropriately dealt with.

Section 3 Identifying possible maladministration or malpractice

3.1 Who can identify potential maladministration or malpractice?

Anyone can come across an issue that they think could constitute potential maladministration or malpractice, including, but not restricted to staff, contractors and external agencies such as Skills Funding Agency, Ofsted and the Police. Individuals, such as anonymous informants and whistle-blowers² may also highlight potential cases.

We may identify cases of maladministration and / or malpractice through our routine awarding processes eg examinations and / or external quality assurance. We may also identify instances when we apply our processes and policies, eg when considering an enquiry about a result or when hearing an appeal.

Unless there is a reason for us not to do so, we will notify you when we receive an allegation of maladministration or malpractice. If the notification implicates you, we may notify another suitable person at the centre.

3.2. Anonymous allegations

We may receive allegations of maladministration and / or malpractice from a person who wishes to remain anonymous and / or does not disclose any contact details to us. As long as we are provided with enough information, we may still investigate the allegation.

Section 4 Informing NCFE of potential maladministration or malpractice

4.1 Informing NCFE

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

You can also contact us via phone and / or send us a written report of the alleged maladministration or malpractice. Please note that calls may be recorded for training and quality purposes.

4.2. What information will we need from you?

We'll ask you for some basic information, eg the dates of the alleged or suspected maladministration or malpractice; your Centre details; the people involved; the title and number of the programme affected and / or the details of the alleged or actual maladministration or malpractice. We will need to understand whether other Learners, Centres and / or Awarding Organisations may have been affected by the incident, as we may be required to inform our Qualifications Regulators.

4.3. When must you notify us?

You must notify us immediately after you identify or are made aware of potential maladministration or malpractice or as soon as possible thereafter. If you have not been able to tell us immediately, please let us know why when you contact us.

4.4 What will we do when we receive a notification?

We will review the notification and any evidence and determine whether any further action is needed by you or us, such as carrying out an investigation. This review period will **usually be complete within 10 working days** of receipt of the notification. Where this is likely to take longer than 10 working days, for example if a centre visit is required, we'll advise you of the likely revised timescale.

Section 5 Investigation of potential maladministration or malpractice

5.1. What is an investigation?

An investigation comprises a review of the notification together with any additional relevant data. From this, an informed decision can be made on whether any further action or investigation is needed or if a sanction is required.

5.2 General principles of investigations

We expect all investigations undertaken, whether by us or by you, to be rigorous, effective, proportionate, transparent and risk-based.

Our investigations will be undertaken by persons of appropriate competence who have no personal interest in the outcome of that investigation.

5.3 Types and stages of investigation

5.3.1 Your initial investigation

In line with the Centre Agreement you must take all reasonable steps to prevent maladministration and malpractice. We expect you to have robust procedures outlining how cases of maladministration or malpractice will be investigated. If asked by you, we'll provide you with the guidance and support you need to develop your procedures and / or undertake such investigations.

You must immediately advise us of allegation(s) of maladministration and / or malpractice. Any investigation undertaken must be impartial, thorough and conducted by someone with sufficient seniority who is independent from the incident. It is important that evidence relating to investigations is preserved.

You must keep us up to date with your progress in line with our stated requirements, including adhering to any timescales we outline to you. We would normally expect an update from you at least **every 5 working days**. We can advise you further in relation to support and timescales when you notify us of the allegation.

5.3.2 If we ask you to investigate further

We may ask you to carry out a further internal investigation and produce a report for us. If so, we will tell you what we need you to do.

5.3.3 If we carry out an investigation

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

Our investigation may include one or more of the following approaches:

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

We will aim to access and retain original evidence or information. If original records cannot be retained, we will photocopy the original and record the copy as authentic.

5.4 Interviews

Please note that for interviews either conducted as part of your and / or our investigation(s):-

- any centre personnel or learners being interviewed can be accompanied by another person. The person to be interviewed must be advised of that right in sufficient time in advance of the interview to allow them to make such arrangements
- you must ensure that children, young persons and vulnerable adults are accompanied by an appropriate adult at all times during an interview
- we must be made aware in sufficient time, if any person giving legal representation or advice to any party is to be present in an interview.

5.5 Our rights

We reserve the right at any time and in particular during an investigation to:

- suspend your approval for the qualification / award in question and any other qualification / award that may be affected
- suspend and / or withdraw your rights to Direct Claim Status (DCS)
- withhold results for external assessments
- withhold claims for learner certification
- suspend your centre approval
- take any other necessary, appropriate and proportionate action.

Section 6 The outcome and / or findings of an investigation

6.1 Communicating the outcomes and / or findings from the investigation(s)

6.1.1 Draft report / summary of the findings of the investigation(s)

If we've asked you to carry out an investigation, you'll provide us with a draft report detailing your findings and outcome, within the timescales as determined by us (usually 5 working days). If you request, we can provide you with a report template.

We will review your draft report for points of factual accuracy within **5 working days** of receipt. Should this review result in required substantial change, ie we do not agree with your stated content, we will advise you of this in writing and retain this information on record. We will refer to this retention within any investigation we may subsequently conduct.

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

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

6.1.2 Final report / summary of the findings of the investigation(s)

We will produce a final summary report outlining the outcome and / or findings of the above investigation(s). We will make an informed decision in determining whether or not maladministration and / or malpractice has occurred and, if so, the appropriate action to be taken and / or sanction(s) to be imposed. For further information, please see our 'Sanctions' Policy.

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

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

6.2 The decision from the investigation(s)

The decision from the investigation(s) and / or action(s) to be taken based on the following may include:-

- **Maladministration or malpractice not demonstrated to have occurred**
In this case no further action will be taken under this policy.
- **Maladministration or malpractice likely to have occurred**
If we do not have sufficient evidence to prove the occurrence of maladministration and / or malpractice, but we do have enough to suggest either may have occurred, we may still take action and / or direct you to take action.

- **Maladministration or malpractice demonstrated, or on the balance of probabilities, is highly likely to have occurred**

Under these circumstances, we will take action proportionate to the seriousness, impact and / or frequency of occurrence. We may also direct you to take action.

6.3 What can happen as a result of the investigation(s)?

If we establish that maladministration and / or malpractice has occurred or, on the balance of probabilities, is highly likely to have occurred, we will take proportionate action to protect the learner(s); our product(s) and / or our reputation. We refer to these actions as Sanctions. For further information, please refer to our Sanctions Policy, available on our website.

Section 7 Appeals against our decision or action

7.1 Appealing our decision or action

You may appeal against our decisions relating to any action to be taken against a learner or a centre following an investigation into maladministration and / or malpractice. As outlined, we refer to such actions, where they are punitive, as sanctions. You cannot appeal a sanction imposed for any other reason (such as a financial sanction) but you may be able to make a complaint against such decisions. Please see our Complaints Policy for further details.

To appeal against a sanction, you should submit a report as to why you believe that an appeal should be considered, together with any supporting evidence. Please note that appeal applications without supporting evidence may not be accepted. Your report should include the following:

- Your centre name, address and number
- Your learner's name(s) and NCFE registration number(s)³, where appropriate
- The date of the assessment
- The date(s) you or the learner received notification of our assessment decision
- The nature of the service affected and / or the title and number of the NCFE programme affected
- The full nature of the appeal
- The contents and outcome of any investigation carried out by you or the learner(s) relating to the issue
- The date of the report
- Your name, position and signature.

Please email or post your completed report and any supporting evidence to us as soon as possible. The latest time we will accept an appeal is **30 working days** from the date we informed you about our original decision.

If at any point you, or your staff or learners wish to be legally represented in relation to any aspect of an appeal, this **must** be discussed with us. We reserve the right to also be legally represented.

7.2 How an appeal is dealt with

If we agree your appeal should be heard, we'll arrange for a Panel, consisting of, as a minimum, an NCFE Manager and an independent person⁴ to review the case and to make a decision based on the

³ A learner registration number can be obtained from your Centre's Examinations Officer or your NCFE Customer Support Assistant.

evidence presented, including any evidence you submit in support of your appeal. The Panel will consider how appropriate the original sanction was in light of the evidence presented; any readily available regulators' advice on similar matters and any readily available awarding precedents.

7.3 Timescales following the acceptance of an appeal

We aim to action and resolve an appeal within **20 working days**. Please note that in some cases, particularly where the case may be complex and / or an independent person is not available within this timescale, the appeal may take longer than 20 working days. In such instances, we'll advise you of the reasons why and the revised timescale.

The Panel may decide that:

- the appeal is unfounded, or
- the sanction imposed is unreasonable and / or disproportionate; in which case the level of sanction must be reviewed; and / or
- we did not apply our procedures consistently, properly or fairly; in which case the relevant procedure(s) must be appropriately applied.

We'll let you know of this outcome from the appeal within **one working day** of the decision being made.

The Panel's decision is final and will complete NCFE's internal appeals procedures. No further appeal will be accepted. Should you disagree with the decision; you may have the right to lodge a Formal Complaint (please see Stage 3 of our Complaints Policy).

Where your appeal relates to our actions or decisions regarding a regulated qualification and you remain dissatisfied, you may contact our qualifications regulators. Our regulators would require evidence that you have fully exhausted our internal appeals procedure. Please see Appendix A for details of our regulators.

Section 8 Roles and responsibilities

8.1. What you need to do:-

- notify us immediately of any potential maladministration and / or malpractice
- unless we inform you otherwise:
 - advise anyone implicated in relation to maladministration and / or malpractice that an allegation has been made against them
 - advise those persons that they have the right to reply to any allegations
 - advise those persons that they have the right to appeal against any sanctions imposed on them in relation to maladministration and / or malpractice
- comply with all requests for information in the timescales stated by us
- carry out an investigation, where appropriate and / or as directed by us
- provide us with a written report of any investigation you undertake (whether or not the investigation was requested by us), including information on the detail and outcome(s) of that investigation
- fully co-operate with any investigation
- implement required actions as a result of the investigation

⁴ The 'independent person' will not be a member of NCFE's Board or committees, an NCFE employee or an NCFE External Contractor

- inform your centre staff, satellites, sub contract centres and learners affected of the implications of any actions and sanctions
- take appropriate action to prevent the incident of suspected or actual maladministration and / or malpractice reoccurring
- notify us if any personnel involved in the maladministration and / or malpractice leave your centre
- retain any relevant documentation securely in line with your archiving and retention policies and procedures
- respect the confidentiality of information you handle and comply with any associated data protection legislation.

8.2. What we will do:-

- take all reasonable steps to prevent or mitigate the impact and effects of maladministration and / or malpractice
- support you and where requested provide you with guidance on how best to investigate, deal with and prevent maladministration and / or malpractice
- provide you with a report / summary on the outcome of the investigation
- apply appropriate sanctions in line with our Sanctions Policy
- work with you, as appropriate, to ensure that maladministration and / or malpractice doesn't reoccur
- inform other relevant third parties as appropriate
- retain records and documentation during and after the completion of investigations in line with data protection legislation.

Section 9 Mandatory disclosure and confidentiality

9.1 Mandatory disclosures

It is imperative that in Awarding the integrity of qualifications is maintained; for example, by ensuring learners who are awarded a certificate have a legitimate right to that certificate. We are aware that centres often work with more than one Awarding Organisation (AO) in delivering qualifications, and that therefore more than one AO may be at risk when things go wrong.

Our qualifications regulators have outlined some specific conditions that we must meet to protect the integrity of regulated qualifications across the awarding community. This includes the requirement that where certain things are identified (such as malpractice), or certain actions taken (such as when sanctions are applied) the Regulators and other relevant AOs who may be affected (eg those offering similar types of qualifications via the Centre) must be informed.

Depending on the seriousness of the matter, we may be required to declare to our regulators that we are no longer compliant with the requirements of the General Conditions of Recognition, due to an act or omission by you which has put us in breach. In this event, we may have regulatory action directed against us, such as Monetary Penalties. In accordance with the Centre Agreement, we reserve the right to direct such financial penalties against you, should they be as a result of your act or omission (please see the Centre Agreement under 'Remedies' and 'Indemnity').

9.2 Confidentiality

We may need to access confidential information. We will ensure that such information is kept secure and only used for the purposes of the investigation and in line with relevant data protection legislation. We will not normally disclose the information to third parties unless required to do so, eg to our Regulators and / or the Police or other relevant and / or Statutory Bodies.

Section 10 Termination for convenience

Our actions under this Policy and any sanctions imposed in line with our Sanctions Policy will be proportionate. Where possible, we will always try to work with you in resolving issues. However, nothing within this policy precludes us from invoking our right under the Centre Agreement to terminate our relationship with you.

Section 11 Contact details

If you've any queries about the contents of the policy, please contact our Customer Support Team:

Email: service@ncfe.org.uk
Telephone: *0191 239 8000

Post: NCFE
Q6, Quorum Business Park
Benton Lane
Newcastle upon Tyne
NE12 8BT

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

Appendix A Our Qualifications Regulators' Details

Where your appeal relates to a regulated qualification and you remain dissatisfied with our actions, you may contact our qualifications regulators. Our regulators would require evidence that you have fully exhausted our internal Appeals Procedure.

England:

Ofqual

Spring Place
Herald Avenue
Coventry
CV5 6UB
Email public.enquiries@ofqual.gov.uk
Telephone 0300 303 3344

Wales:

Qualifications Wales

Q2 Building
Pencarn Lane
Imperial Park
Coedkernew
Newport
NP10 8AR
Email enquiries@qualificationswales.org
Telephone 0333 077 2701

Northern Ireland:

CCEA Regulation

The Council for Curriculum, Examinations and Assessment (CCEA)
29 Clarendon Road
Clarendon Dock
Belfast BT1 3BG
Email ccearegulation@ccea.org.uk
Telephone +44 (0)2890 261200