

CONSULTATION DECISIONS

Guidance on malpractice and maladministration: decisions

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Introduction

It is essential that exams and other assessments run securely and rigorously in order to be fair to all Learners, and allow users of qualifications to be confident that individuals' outcomes genuinely reflect what candidates know, understand and can do. Committing malpractice or maladministration, is simply not acceptable.

Ofqual already requires awarding organisations to take all reasonable steps to prevent malpractice and maladministration in exams and assessments. Our rules require awarding organisations to investigate allegations or suspicions of malpractice or maladministration and to apply appropriate sanctions to anyone found to have committed malpractice and maladministration.

We are now publishing updated and expanded guidance for awarding organisations on how they should comply with our rules, to reinforce our requirements that anyone committing malpractice or maladministration is investigated with the necessary rigour and, where appropriate, action is taken against them. All awarding organisations that are recognised by Ofqual must have regard to this guidance.

From 20 February 2020 to 16 October 2020 we [consulted on the introduction of new and expanded guidance that covers the range of our rules that are concerned with malpractice and maladministration](#).

We extended the consultation period due to the coronavirus (COVID-19) pandemic. We also decided to delay the introduction of this guidance so that awarding organisations did not have to attend to it at the height of the pandemic. The consultation questions were available to complete online or download.

To provide more information on the consultation and the proposed guidance to regulated awarding organisations, we held 2 online events as part of the consultation process. We hosted a webinar for all awarding organisations on 16 July 2020 and a teleconference with the 4 exam boards recognised to deliver GCSE, AS and A levels in England on 12 March 2020.

Background

All awarding organisations must meet Ofqual's regulatory requirements relevant to the qualifications they offer – these are the rules we set to make sure qualifications are valid and fit for purpose. One such set of requirements is the 'General Conditions of Recognition'. All awarding organisations we recognise must comply with these on an ongoing basis.

We publish guidance to help awarding organisations understand how to comply with their Conditions of Recognition. Awarding organisations that develop, deliver and

award regulated qualifications must have regard to the guidance that we publish. This means that they must review the guidance and take seriously what it says.

Guidance is not a further set of rules, and the approaches set out within it are not the only way to comply, however, if an awarding organisation chooses to take a different approach, it needs to be able to explain why it has done so.

Existing guidance on malpractice and maladministration focused on positive and negative indicators in relation to compliance with Condition A8. However, the prevention, investigation and sanctioning of malpractice and maladministration can often be complex, bringing into play several Conditions.

To address this, the proposed new guidance sets out the relevant Conditions and factors awarding organisations should consider as they ensure they are compliant with the Conditions of Recognition. The proposed guidance was informed by a review of alleged and proven incidents of malpractice and maladministration that we have seen. We considered how the awarding organisation involved managed such incidents. The proposed guidance was designed to help awarding organisations better understand what we expect them to do when addressing malpractice and maladministration in order to maintain public confidence, secure fair and accurate results for Learners and ensure exams and other assessments remain fit for purpose.

We set out in this document the decisions we have taken following the consultation and explain how we have taken account of respondents' feedback. Alongside this document, we have published an analysis of consultation responses and the guidance itself.

Summary of decisions

In summary, we have decided to implement revised guidance, largely as set out in the consultation. This will replace the current A8 guidance.

In response to feedback, we have changed the draft on which we consulted to:

- Make the wording clearer in places
- Add non-exhaustive examples to the following sections:
 - Identifying risk and preventing malpractice and maladministration;
 - Detecting malpractice and maladministration;
 - Investigating malpractice and maladministration.

We originally proposed to publish our final guidance in early spring 2020. As a result of the pandemic and the subsequent extension of the consultation we decided to delay publication until now. This recognises the significant demands there have been

on awarding organisations. Awarding organisations should now be better able to turn their attention to the guidance.

The guidance will take effect on publication, and awarding organisations will need to update any centre and student facing documents by 1 September 2022.

Details

In this decisions document, and the accompanying analysis of responses, we have not discussed every point made by those who responded to our consultation. We did, however, consider them all as we finalised the guidance.

Where we reference line numbers in this document, these were line numbers in the proposed guidance on which we consulted.

The introduction of narrative guidance

The majority of respondents (88%) agreed or strongly agreed with the proposal that the draft guidance will help awarding organisations to understand the requirements of Conditions when dealing with malpractice and maladministration, including Condition A8. As a result, we have decided to introduce the guidance largely as set out in the consultation. The guidance will sit within section A of the [General Conditions in the Ofqual Handbook](#), although it relates to a number of different Conditions.

Examples

We asked in the consultation whether the guidance should include more examples, and 86% of respondent strongly agreed or agreed that including specific examples to the proposed guidance would help awarding organisations to understand the requirements of the Conditions when dealing with malpractice and maladministration. Views were mixed on the specific areas of the guidance where examples should be included.

We have added examples to the sections on identifying risk and preventing malpractice and maladministration, detecting malpractice and maladministration, and investigating malpractice and maladministration. The examples are relevant to both academic and vocational & technical qualifications, in line with feedback.

The examples are not intended to be either exhaustive or prescriptive, they are illustrative. Awarding organisations will need to consider the actual context in which any malpractice and maladministration has or is alleged to have occurred when deciding how to act.

We have presented the examples as hyperlinks in the guidance and users can navigate to and from the examples should they wish to read them. Therefore, they can easily be read without adding to the length of the document. The examples will still form part of the guidance.

Drafting

We have made some other minor drafting changes to the guidance to improve its readability.

In response to feedback, we have introduced hyperlinked headers at the start to allow readers to navigate it quickly. Where Conditions are referenced we have provided hyperlinks to that Condition in the handbook, again for ease of navigation.

General feedback

One respondent suggested that the guidance should specifically reference the extraordinary arrangements in place for awarding grades as a result of the pandemic. The guidance supports awarding organisations in complying with Ofqual's General Conditions. It does not consider the specific assessment arrangements in place, which vary across the range of qualifications offered by the awarding organisations we regulate. It is therefore not appropriate to reference the extraordinary assessment arrangements in place (or that have in the past been in place).

One respondent asked if they would need to provide evidence of compliance with the guidance as part of the statement of compliance. The statement of compliance is about the Conditions themselves, rather than the guidance. We publish guidance to help awarding organisations understand how to comply with their Conditions of Recognition.

Content of the guidance

Introduction

Some respondents suggested that we should expand the list of those on whom successful delivery of examinations and assessments relies. We have not done so as it is not intended to be exhaustive.

We have included in the introduction the approach to the use of examples and explained they are not exhaustive.

What is malpractice and maladministration?

In response to requests, we have edited the guidance to make it explicit that the guidance relates to malpractice and maladministration in the context of the design, delivery and award of regulated qualifications.

Malpractice and maladministration are distinct concepts that can shade into one another. We give clear examples of malpractice and maladministration in the guidance. We have decided not to produce a single, regulatory definition of malpractice which encompasses maladministration, despite some requests to do so.

Malpractice and maladministration are well understood terms. We regulate awarding organisations that provide a range of qualifications, examinations and assessments. There are many different ways in which malpractice or maladministration could occur, including novel ways that we have not yet seen. Malpractice and maladministration are case, context and fact specific. Care has been taken to ensure that no behaviours that we would expect awarding organisations to address are inadvertently excluded. Therefore, we have not provided regulatory definitions of the terms as these could be unduly restrictive.

The guidance does not preclude awarding organisations from defining malpractice and maladministration in relation to their own qualifications as appropriate.

We have removed the reference in line 43 of the draft guidance, to 'someone within the awarding organisation', to recognise that malpractice or maladministration by an employee might be dealt with as a contractual matter.

Identifying risk and preventing malpractice and maladministration

We have edited the text to highlight that incidents of malpractice and maladministration may 'almost always have an Adverse Effect', to reflect that this will not be the case in every context. For example, a centre that makes a small error in its exam administration might strictly be found to have committed maladministration, however, no harm might result. In response to questions, we have confirmed that Adverse Effect is a defined term in the [Conditions of Recognition](#).

We have added a reference to our guidance on General Condition A6.1 to which awarding organisations must also have regard when identifying and managing risks.

We have added an example to those in lines 95 to 127 to reflect that an awarding organisation may also need to consider where assessments are taken, in line with the suggestions made by respondents to the consultation. This reflects the

importance of considering and mitigating any risks that may arise where qualifications are sat outside of the UK, for example.

We have also edited line 142 to emphasise that this relates to any location where regulated qualifications are taken. This clarifies but does not change the meaning of the guidance as originally drafted.

Supporting centres in their approach to malpractice and maladministration

There was a request for greater clarity as to when an awarding organisation might be expected to step in where a centre is not able to manage an issue itself. We have edited line 217 to emphasise that it is for the awarding organisation to judge when it would be appropriate to step in given each situation and context.

Detecting malpractice and maladministration

We have edited lines 227 to 229 to replace the term 'whistle-blowers', and reflect that this relates to allegations and suspicions from all sources.

Notifying Ofqual

We have added to the text in line 266 to reiterate our expectation that an awarding organisation should notify Ofqual where it has cause to believe that malpractice or maladministration has, or is likely to, occur which could have an Adverse Effect, rather than waiting to undertake any investigation. We also edited the text on lines 268 to 269 to highlight that in cases which may involve criminal behaviour, awarding organisations should consider whether a credible allegation should be reported to the police.

Investigating malpractice and maladministration

Several respondents expressed concerns that line 272 of the draft guidance suggested that awarding organisations must directly undertake all investigations. We have edited this slightly to reflect that whilst awarding organisations are not necessarily required directly to conduct all investigations, the obligation is on them to ensure that investigations are conducted rigorously and effectively, by persons of appropriate competence with no personal interest in their outcome.

We have removed lines 276 to 277 to better align the guidance with the relevant Conditions.

We have added to the list on lines 281 to 299 to make clear that awarding organisations should address any other relevant factor in their investigations policy and approach as required, as the list provided is not exhaustive.

We have added the term 'as appropriate' to line 340 to reiterate that awarding organisations must judge the required skills and experience of the investigator depending on the specific context and circumstances of the case.

Taking appropriate action where malpractice or maladministration is suspected or alleged

We have removed lines 389 to 393 of the proposed guidance to better reflect the requirements of the Conditions.

We have removed the example in 415 to 420 of the draft, in response to a concern that it might be perceived that awarding a grade to a Learner to allow them to progress to further study is the appropriate action in all cases.

Taking appropriate action once malpractice or maladministration is established

We have edited lines 476 to 477 in line with feedback to clarify the obligation placed on awarding organisations by our Conditions.

Review of decisions relating to malpractice and maladministration

We have edited the text on lines 504 to 507 to emphasise that awarding organisations should consider what information they are lawfully able to share where the outcomes of malpractice or maladministration investigations involve third parties.

Some respondents suggested that we add examples as to what reasonable steps awarding organisation might take to contact Learners to inform them of the outcome of a malpractice investigation and any sanctions against them, but we do not feel this would be necessary. Such steps would vary given the context of the case. There appeared to be some misinterpretation, with some respondents expressing concerns that the draft guidance suggested awarding organisations are required to gather all Learners' details. This is not required under our Conditions and, as such, while it might be a reasonable step for an awarding organisation to take, we have removed text on lines 510 to 512 to avoid any potential misinterpretation.

We have edited the text on lines 513 to 516 to reflect that while our Conditions do not require an awarding organisation to notify the Teaching Regulation Agency (or any organisation that carries out the same function in England or another jurisdiction) when it finds a teacher has committed malpractice, this is something it should consider in appropriate cases.

Implementation timescales

The guidance will come into effect when it is published, at the same time as this decisions document. We expect awarding organisations to look at their systems and processes in line with the guidance. The guidance should help awarding organisations to understand their obligations under existing Conditions – it does not introduce new obligations.

We appreciate the need for some lead time for awarding organisations to update any centre, and student-facing documents. As such, whilst we expect awarding organisations to have regard to the guidance on publication, we will expect this to be reflected in any centre and student-facing documents by 1 September 2022.

Equalities impact assessment

We asked in our consultation whether there would be any positive or negative impacts caused by our proposals on people who share particular protected characteristics¹.

No further impacts on people who shared particular protected characteristics were identified.

Some respondents' comments were out of scope for the consultation as they did not relate to the proposed guidance.

One respondent suggested that it may be helpful to provide some guidance on the use of translators and advocates for vulnerable persons during investigations. However, as the guidance presented relates to how awarding organisations might comply with the Conditions of Recognition in relation to the prevention, detection, investigation and sanctioning of malpractice and maladministration we felt that this was beyond the scope of the guidance.

¹ For the purposes of the public sector equality duty, the 'protected characteristics' are disability, racial group, age, religion or believe, pregnancy or maternity, sex, sexual orientation, gender reassignment.

Regulatory impact assessment

We set out our view of the potential regulatory impacts of the proposed guidance in the consultation. We have set out our updated impact assessment below.

We stated in our draft regulatory impact assessment that awarding organisations would incur minimal additional cost when having regard to the guidance. Whilst awarding organisations will have to familiarise themselves with the new guidance, they will already have regard to the existing guidance, some of which is directly integrated into the proposed guidance.

We estimated the one-off cost of familiarisation with the new guidance to be in the region of £19,000 across 160 awarding organisations (meaning an average of around £120 per awarding organisation, with some incurring higher or lower costs according to their size)².

Our analysis of responses shows that 22% of respondents felt that this cost estimate was too low.

We still consider the impact of the guidance to be proportionate and necessary to ensure that malpractice and maladministration are addressed appropriately. The guidance is designed to help awarding organisations understand what we expect them to do when addressing malpractice and maladministration; the guidance does not place any additional obligations on awarding organisations.

A range of opinions were expressed regarding when the guidance should be implemented. 27% of respondents were keen for the guidance to be put in place as soon as possible. Other respondents would prefer some lead time, particularly to allow any awarding organisation documentation to be updated, and for any implementation to take account of the ongoing impact of the pandemic.

Having considered these views we have decided that the guidance will be implemented as soon as it is published. We need to allow awarding organisations sufficient time to make any changes to published documents. We will expect awarding organisations to have due regard to the guidance on publication but will allow until 1st September 2022 for awarding organisations to have reflected any changes in their published documents.

Whilst we acknowledge the volume of work undertaken by awarding organisations as a result of the revised frameworks for awarding in 2021 and the adaptations to

² This calculation is based on the model published in Ofqual's business impact target document, '[Guidance to the General Conditions of Recognition](#)', updated to reflect the current number and profile of recognised awarding organisations and more recent average awarding organisation staff costs.

assessments in 2022 for both general qualifications and vocational and technical qualifications, we consider the guidance to be proportionate and necessary to ensure that malpractice and maladministration are addressed appropriately.

Regarding the impact on innovation, there were some concerns from awarding organisations that the guidance and the resources needed for investigations might have an impact on innovation. Whilst the guidance provides some detail and examples as to how to comply with the Conditions, the nature of the statutory guidance provides scope for awarding organisations to be innovative as they decide how to comply with the Conditions.



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