



# Malpractice and Maladministration

## DETAILS OF POLICY

Original policy created by:	Andy Coates
Date of most recent review:	September 2024
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Adopted by:	SLT

Parties communicated to:	All stakeholders
Methods of Communication:	School intranet, induction

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Persons responsible for audit review of policy:	SLT

# Malpractice and Maladministration Policy and Procedures

## 1. Purpose

SwitchED2 is committed to ensuring access to fair assessment for all learners and to protecting the integrity of the award of credit and qualifications.

This document defines malpractice and maladministration, clarifies the roles and responsibilities of learners and SwitchED2, and outlines the procedures that will be followed when there are issues of suspected malpractice or maladministration within the school.

The purpose of this policy is to ensure that:

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

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

## 2. Scope

This document is applicable for the following SwitchED2 products:

- Ofqual regulated qualifications and units
- Access to HE Diplomas
- Quality Endorsed Courses

## 3. Regulatory Authorities

The relevant regulatory authorities are Ofqual and the Quality Assurance Agency for Higher Education (QAA). Every attempt has been made to ensure that the provisions of this document are consistent with the requirements of the regulatory authorities. Where the requirements of a regulatory authority change, or where inadvertently these procedures conflict with those of the regulatory authority, the latter shall apply. Where the requirements of the regulatory authority are amended and require changes to this document, such changes will be made as once the school has been made aware by Open Awards.

#### 4. Audience

This document is for use by the following:

- users of Open Awards, including learners, who are delivering or registered on Open Awards approved qualifications or units who are involved in suspected or actual malpractice or maladministration or suspect that it may have occurred;
- SwitchED2 staff and individuals working on behalf of SwitchED2 to enable them to deal with all malpractice and maladministration investigations in a consistent manner.

#### 5. Definition[s]

##### **Malpractice**

Any act, default or practice which is in breach of the Regulations which:

- compromises, attempts to compromise, or may compromise, the process of assessment/examinations, the integrity of any qualification or the validity of an examination result or certificate, including maladministration.
- damages the authority, reputation or credibility of the awarding organisation or centre or any officer, employee or agent of any
- involves a failure by a centre to investigate allegations of suspected malpractice in accordance with the requirements set out in this document also constitutes malpractice awarding organisation or centre.

##### **Maladministration**

Any activity, neglect, default or other practice that results in a centre not complying with the specified requirements for delivery of the qualifications as set out in the guidance.

##### **Adverse Effect**

An act, omission, event, incident, or circumstance has an Adverse Effect if it –

- gives rise to prejudice to Learners or potential Learners, or
- adversely affects –
  - the ability of the awarding organisation to undertake the development, delivery or award of qualifications in accordance with regulatory conditions,
  - the standards of qualifications which the awarding organisation makes available or proposes to make available, or
  - public confidence in qualifications.

#### 6. Responsibility of SwitchED2

SwitchED2 will take all reasonable steps to ensure that its staff involved in the management, assessment, administration and quality assurance of SwitchED2 qualifications, and its learners, are fully aware of the contents of the policy and that there are arrangements in place to prevent and investigate instances of malpractice and maladministration.

SwitchED2 are aware that failure to report suspected or actual cases of malpractice or maladministration, or a failure to have in place effective arrangements to prevent such cases, may lead to sanctions being imposed on the school under Open Awards Sanctions Policy where details of the sanctions that may be imposed are set out.

SwitchED2's compliance with this policy and how it takes reasonable steps to prevent and/or investigate instances of malpractice and maladministration. This will be reviewed by SwitchED2 SLT periodically through its monitoring arrangements.

## **7. Policy Statement**

### **7.1 Reporting Malpractice/Maladministration**

SwitchED2 **must** report any allegation of suspected malpractice/maladministration to Open Awards. Failure to report allegations of malpractice/maladministration can lead to awards not being conferred and certificates not being issued, and future registrations not being accepted.

If SwitchED2 is found to have not reported allegations of suspected malpractice/maladministration, Open Awards may apply sanctions as set out in their Sanctions Policy.

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

Examples of actions that may constitute malpractice are listed below. These are exemplars and SwitchED2 reserves the right to consider as malpractice other actions not listed but falling under the general definitions above.

#### **7.2.1 Centre Malpractice**

The following examples could be considered as malpractice on behalf of the management and governance of a centre. This list is not exhaustive.

- Failure to provide appropriate facilities for the security of assessment materials
- Failure to keep externally set assessment papers secure prior to or after assessment
- Failure to keep learner, computer or other files secure
- Failure to register learners with Open Awards such that learners are prevented from obtaining the units or qualifications that they are taking
- Denial of access to premises, records, information, learners and staff to any authorised Open Awards representative and/or the regulatory authorities
- Failure to carry out internal assessment, internal moderation or internal verification in accordance with Open Awards requirements
- Deliberate and persistent failure to adhere to SwitchED2 agreement and associated policies and procedures

- Fraudulent claim for certificates
- Persistent instances of maladministration within the school.

### **7.2.2 Centre Staff Malpractice**

This is malpractice committed by a member of staff or contractor (whether employed under a contract of employment or a contract for services) at a centre, or an individual appointed as an oral language modifier, a practical assistant, a prompter, a reader, a sign interpreter, or a scribe to a learner.

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

- Tampering with learners scripts or assessed work after collection.
- Improper assistance to learners in the production of assessed work
- Fabricating assessment and /or internal verification records or authentication statements.
- Poor invigilation of learners
- Failing to keep assessment papers secure prior to assessment.
- Failing to conduct a proper investigation into suspected malpractice
- Fraudulent claims for credit and qualifications.

### **7.2.3 Learner Malpractice**

This is malpractice committed by a learner. Some examples of learner malpractice are listed below. This list is not exhaustive. Please also refer to SwitchED2's Plagiarism Policy.

- The introduction of unauthorised material into the assessment room eg calculators
- Plagiarism
- Collusion between two or more learners
- The deliberate destruction of another's work
- Acting in a disruptive manner during an assessment
- The inclusion of inappropriate, offensive or obscene material in assessment/ examination tasks.

### **7.2.4 Open Awards Malpractice**

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

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

## **8. Examples of actions that may constitute maladministration**

Examples of actions that may constitute maladministration are listed below. Open Awards reserves the right to consider as maladministration other actions not listed but falling under the general definition of maladministration.

- Administrative fault, such as making a mistake or not following rules or procedures
- Failure to comply with Open Awards procedures for registering learners
- Delay in registering learners, or in issuing certificates
- Unreasonable delay in responding to requests for information or other communications from Open Awards
- Inaccurate claims for certificates
- Incorrect action or failure to take any action
- Failure to provide information when reasonably requested to do so
- Inadequate record-keeping
- Failure to investigate
- Misleading or inaccurate statements
- Providing inaccurate advice to learners.

## **9. Rights and Responsibilities in relation to Suspected Malpractice or Maladministration**

SwitchED2 will:

- Acknowledge the receipt of any allegation of malpractice/maladministration in writing
- Oversee all investigations into suspected or alleged malpractice/maladministration.
- Withhold the issuing of results until the conclusion of the investigation, or permanently, where the outcomes of the investigation warrants it
- Apply the appropriate sanctions, penalties and special conditions in cases of proven malpractice/maladministration.
- Report the matter to the regulators if they find evidence that certificates may be invalid
- Report the matter to the police if a proven malpractice involved the commission of a criminal act
  
- Have and make readily available a published procedure for considering appeals against any penalties arising from malpractice/maladministration decisions

SwitchED2 must:

- Have a policy in place for dealing with malpractice, with a named person, (Andy Coates, Headteacher) having responsibility for reporting all suspicions or actual incidents of malpractice to the Awarding Organisation. Reports should be made using the Open Awards Form M1 available from Open Awards' website

- Ensure that Andy Coates normally supervises personally all investigations resulting from an allegation of malpractice, however if it is necessary to delegate an investigation to a member of staff, they must ensure that the member of staff selected is independent, and not connected to the department involved in the suspected malpractice
- Respond speedily and openly to all requests for an investigation into an alleged malpractice, as this is in the best interests of school staff, learners and any others involved
- Cooperate and ensure their staff cooperate fully with an enquiry into an allegation of malpractice/maladministration
- Inform staff members and learners of their individual rights as set out in these guidelines
- Pass on to the individuals concerned any warning or notification of penalties and to ensure compliance with any requests made by SwitchED2 as a result of malpractice.

### **Rights of the Accused Individual**

When an incident of suspected malpractice is reported to SwitchED2, an individual (whether a learner or member of staff) accused of malpractice must:

- be informed (preferably in writing) of the allegation made against them
- know what evidence there is to support that allegation
- know the possible consequences should malpractice/maladministration be proven
- have the opportunity to consider their response to the allegations (if required)
- have an opportunity to submit a written statement
- have an opportunity to seek advice and to provide a supplementary statement (if required)
- be informed of the applicable appeals procedure, should a decision be made against them.

### **10. Monitoring and Review**

A report on any cases of malpractice or maladministration including those found not proven, will be made available to the SwitchED2 Senior Leadership Team meeting.

SwitchED2 will review this policy bi-annually as part of its self-evaluation arrangements and revise it as and when necessary in response to learner feedback, changes in its practices, advice from the regulatory authorities or external agencies, changes in legislation, or trends identified from previous instances of malpractice or maladministration.

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

## **11. Regulatory Requirements**

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

### **Ofqual General Conditions of Recognition**

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

### **QAA AVA Licensing Criteria**

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



## **Part B: Procedures for Dealing with Alleged or Suspected Malpractice or Maladministration**

### **1. Overview**

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 or maladministration. Examples of malpractice or maladministration 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. In all cases where there is an allegation or suspicion of malpractice or maladministration, SwitchED2 will immediately inform the regulatory authority, irrespective of whether the investigation has been completed.

### **2 Terminology**

In all cases, in order to avoid prejudicial language, until an investigation has been completed and the allegation or suspicion proved, SwitchED2 will use the terms ‘alleged malpractice or maladministration’ or ‘suspected malpractice or maladministration’, as appropriate to the circumstances, in relation to the case in question.

### **3 Allegations of malpractice or maladministration**

Allegations may be made by any person having knowledge of the assessment process, including learners, assessors, SwitchED2 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.

### **4 Stages of the process**

SwitchED2 has defined six stages in the process for dealing with alleged or suspected malpractice or maladministration.



Throughout the process SwitchED2 will normally communicate with the Headteacher except where the Head of Centre is under investigation.

SwitchED2 may communicate directly with members of school staff who have been accused of malpractice, if the circumstances warrant this, e.g. the staff member is no longer employed or engaged by SwitchED2.

## 6. The procedures

### Stage 1: Allegation



SwitchED2 will acknowledge receipt of any allegations to the person making the allegation, with the exception of anonymous allegations.

#### **Suspected malpractice discovered by Open Awards**

Any suspicion of malpractice should be reported immediately to Open Awards using the *Form M1* provided by Open Awards together with full supporting evidence and an indication of which specification requirement(s) have been broken. This report will be communicated directly to the Headteacher.

#### **Suspected malpractice identified by SwitchED2**

The Headteacher must report any suspected malpractice/maladministration to Open Awards using *Form M1*.

Malpractice in coursework discovered prior to the learners signing the authentication declaration should not be reported to Open Awards but should be dealt with in accordance with the school's own internal procedures. School should not normally give credit for any work submitted which is not the learners own work, but if any assistance is given a note must be made of this on the work. (If an assignment or portfolio submitted for internal assessment is rejected by SwitchED2 on the grounds of malpractice, learners have the right to appeal against the decision, and this is included in the school's procedures).

#### **Suspected malpractice reported by others**

Allegations of malpractice may be reported to SwitchED2 by employers, learners and other members of the public. Sometimes anonymous reports are received. If the reporting of malpractice by a member of staff or a learner will cause difficulties, SwitchED2 will protect the identity of the informant if this is asked for when the report is made.

SwitchED2 will require any reports made by telephone to be put in writing.

When SwitchED2 receives a report of suspected malpractice it will evaluate the situation in the light of other available information, to see if there is a case to investigate further.

#### **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. While SwitchED2 is prepared to investigate issues which are reported anonymously and/or by whistleblowers it will always try to confirm an allegation by means of a separate investigation before taking up the matter with

those persons about whom the complaint or allegation relates.

## Whistleblowing

Whistleblowing is a term used to refer to an individual who discloses information relating to malpractice, maladministration or wrongdoing and/or the covering up of malpractice, maladministration or wrongdoing. Whistleblowing is distinct from appeals, complaints and employment disputes.

SwitchED2 expect individuals to raise the concern(s) with the school in the first instance with a view to resolving through their own Malpractice/Maladministration and Complaints Policies. Where the individual feels the concern(s) raised have not been addressed, they may feel it appropriate to notify Open Awards.

Examples of whistleblowing may include:

- a worker for the school making a disclosure about the school's malpractice/maladministration.
- a learner making a disclosure about the school's malpractice/maladministration.

Where a disclosure is received, SwitchED2 will send an initial acknowledgement that we have received the disclosure. We will normally ask you to provide as much of the evidence you have seen as possible to support your disclosure.

SwitchED2 will consider anonymous whistleblowing disclosures however it may not be possible to investigate or substantiate anonymous disclosures.

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

SwitchED2 will update as to what action is being taken in response to a whistleblower's disclosure and will advise when their investigations have been concluded.

## Stage 2



### Reports made to SwitchED2 by contractors or Members of the Public

In the case of notifications of suspected malpractice received from SwitchED2 staff and contractors or members of the public, the headteacher will consider the information provided, and either:

- conduct an investigation and submit a written report for SLT consideration, or

- in the case of alleged fraud or a serious breach of security, inform the regulator immediately, and other awarding organisations that have approved the school, and/or other stakeholders, as appropriate.

### Stage 3



### Investigations carried out by Head of Centre

SwitchED2 will normally expect an investigation to be carried out by the Headteacher in a timely manner.

The investigation should seek to establish the full facts and circumstances of any alleged malpractice. It should not be assumed that because an allegation has been made it is true. If it is necessary to delegate the responsibility for the investigation to another manager it is essential that this person does not have any responsibility for the department involved in the suspected malpractice. Conflicts of interests which may arise may compromise the investigation.

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

If the Headteacher deems it necessary to conduct an interview with a learner or a member of staff, the interviews must be conducted in line with the school's own policy for conducting disciplinary enquiries.

The Headteacher will make available a suitable venue for such interviews. Interviews may also be conducted by telephone.

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

The individual being interviewed may be requested to make a written statement.

## Investigations carried out by Open Awards

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

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

If the investigation reveals that a learner had prior knowledge of the content of an examination or an assessment, Open Awards will establish whether or not information could have been divulged to learners at other centres or to other unauthorised persons.

It may be necessary for Open Awards to interview a learner during an investigation. If the learner is a minor and a face to face interview is to be undertaken Open Awards will ensure that this only takes place in the presence of the Headteacher or other senior member of staff, or the learner's parent/guardian/carer.

Interviews may also be conducted by telephone.

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

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

If it is necessary for Open Awards to visit a centre, this will be at the expense of the centre. The Headteacher must make available a suitable venue for such interviews.

The individual being interviewed may be requested to make a written statement.

### Stage 4



After investigating any complaint or allegation of malpractice the Headteacher must submit a full written report of the case to Open Awards using *Form M1*.

The report should be accompanied by the following documentation, as appropriate:

- a statement of facts, detailing the circumstances of the alleged malpractice, and details of any investigation carried out by the school
- the evidence relevant to the allegation, such as written statements from the invigilator(s), assessor, internal verifier(s) or other staff involved
- written statements from learner(s)
- any mitigating circumstances (e.g. relevant medical certificates)
- information about the school's procedures for advising learners and centre staff of the awarding organisation's regulations
- examination seating plans (where relevant)
- unauthorised material found in the examination room (where relevant)
- any work of the learner and any associated material (e.g. source material for coursework) which is relevant to the investigation.

Normally *Form M1* provided by Open Awards should form the basis of the report. Reports in letter format will be accepted providing the information covers all the same points covered by *Form M1*.

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

### Stage 5



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

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

The Head of Quality and Standards will:

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

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

- establish who is responsible for this
- consider any points in mitigation
- determine appropriate measures to be taken to protect the integrity of the examination or assessment and to prevent further breaches

- determined an appropriate level of sanction to be applied

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

### Reaching a Decision

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

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

### Communicating Decisions

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

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

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

### Stage 6



The following individuals have a right to appeal against malpractice and maladministration decisions of Open Awards:

- Heads of Centre appealing against sanctions imposed on the Centre.
- Heads of Centre appealing on behalf of learners registered through the Centre.
- Centre staff who may appeal against sanctions imposed on them personally.

Appeals must be based on reasonable grounds which relate to the incident in question. SwitchED2 accepts the following as reasonable grounds:

- the incident was not dealt with in accordance with the published procedures
- the decision was unreasonable in light of the evidence presented to SwitchED2
- further evidence (including medical evidence) has come to light which changes the basis of the decision
- the sanction imposed is disproportionate to the seriousness of the case.

The following do not, by themselves, constitute grounds for an appeal:

- the individual did not intend to cheat
- the individual has an unblemished academic record
- the individual could lose a university place
- the individual regrets his/her actions.

SwitchED2 reserves the right to reject an appeal application there is no further evidence to consider and if the grounds for the appeal are weak or unjustified.

### **The Appeals Process**

The appellant should put their appeal in writing to SwitchED2 following the Enquiries and Appeals Policy and Procedures.

**Appeals must be made within five working days of receiving the malpractice decision.**