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Revised Guidance on Malpractice and Maladministration

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Overview:

- We consulted on proposed new guidance for awarding organisations on our rules around malpractice and maladministration - this was extended as a result of the pandemic
- We delayed introducing the guidance so that awarding organisations didn't have to attend to it at the height of the pandemic
- We published the decisions from our consultation on 26 November 2021, and at the same time published the revised guidance in our handbook
- The guidance came into effect on publication- the changes will need to be reflected in any student- and Centre- facing documentation by 1 September 2022
- The guidance replaces existing A8 guidance, in the form of positive and negative indicators, for a more narrative approach

Objectives of the sessions:

- Outline the key influences on the revised guidance
- Reinforce the status of the guidance
- Outline the key content and structure of the guidance
- Provide an opportunity for questions on the guidance

Key influences:

- Our reviews of assessment arrangements undertaken prior to the pandemic highlighted issues related to assessment security and malpractice, particularly around the process of appropriately identifying and investigating suspected malpractice or maladministration, and sanctioning confirmed malpractice.
- We have been considering the need for changes to our guidance for a while, but decided not to progress further until we could consider the recommendations of JCQ's commission and any issues highlighted in event notifications over the period immediately before the start of the pandemic.
- In 2019 we consulted on additional guidance as part of our 3 countries consultation on the General Conditions. This included areas related to these issues. Our decisions on this consultation were published in October 2020.
- In particular, we published guidance on Condition A4 around Conflicts of Interest, which links to the proposed guidance, specifically around investigating suspected malpractice or maladministration, with examples provided.
- As we move into the pandemic recovery phase, with exams being reintroduced more widely following adaptations and the awarding of Teacher Assessed Grades in a number of qualifications, it is particularly important that issues around assessment security and malpractice are appropriately addressed.

Status of the guidance:

- Our guidance on malpractice and maladministration has been revised, rather than our Conditions; there are no new obligations for awarding organisations.
- The guidance is statutory guidance; awarding organisations must have regard to it. This means you must review the guidance and consciously consider it when making decisions about your approach.
- The guidance does not represent the only way to comply with the Conditions, but if an awarding organisation chooses to take a different approach, it needs to be able to explain why it has done so.
- The guidance itself, and the wider work we are doing on malpractice and maladministration is designed to complement, rather than restrict, any actions awarding organisations may choose to take in response to the Report of the Independent Commission on Examination Malpractice.

Content of the Guidance:

- Defining malpractice and maladministration;
- Identifying risk and preventing malpractice and maladministration;
- Preventing malpractice and maladministration;
- Detecting malpractice and maladministration;
- Investigating malpractice and maladministration;
- Taking appropriate action where malpractice and maladministration is suspected or alleged;
- Taking appropriate action once malpractice or maladministration is established;
- Reviewing decisions relating to malpractice and maladministration.

Defining malpractice and maladministration

- We have decided not to define the terms malpractice and maladministration, nor remove the latter from our Conditions. We are not planning to remove the latter from our conditions, nor to make either a defined term.
- In our guidance, we highlight some potential examples of both malpractice and maladministration.
- Our interest is on whether incidents are appropriately investigated and dealt with by awarding organisations rather than what label is given to the incident.
- Our approach to these concepts, and our decision as a regulator not to define, does not preclude an awarding organisation from creating their own formal definitions.

Identifying risk and preventing malpractice and maladministration

- The risks identified around malpractice and maladministration should take into account, amongst other things, the type of qualifications offered, the design and delivery of qualifications and the likelihood of malpractice, for example the potential motivation to engage in malpractice.
- It is not enough to have a generic risk assessment, it should carefully consider the specific features of the qualifications offered.

Detecting malpractice and maladministration:

- Awarding organisations should consider not only the reasonable steps that it can take to prevent malpractice and maladministration, but it should also test the effectiveness of the measures in place.
- It is not enough to have arrangements in place to reduce the risk of malpractice and maladministration; they should be appropriate to the specific risks around the particular qualification.

Detecting malpractice and maladministration:

- Awarding organisations should pay careful consideration to whether reasonable grounds for a suspicion or allegation exists, considering a range of relevant features, as highlighted in the guidance.
- Awarding organisations should also keep a log of allegations, along with records of investigations, eventual decisions, and how the decision was reached.

Investigating malpractice and maladministration:

- Awarding organisations *should not* presume that the Centre is always best placed to complete an investigation.
- As highlighted in the guidance, the requirement under Condition A8.3 (b) the investigations must be carried out “by persons of appropriate competence who have no personal interest in their outcome”.
- Both the degree of competence which is deemed appropriate, and the level of personal interest can be influenced by the scale and scope of the investigation, and we have provided factors to consider when judging this.
- With regards competence, there are a number of skills/ knowledge that we consider relevant, again in line with scale and scope.
- Personal interest is also a key consideration, which is supported by our recently published guidance on A4 Conflicts of Interest. Whilst alleged or suspected involvement in the malpractice/ maladministration is clearly a personal interest, this is not the only consideration for awarding organisations.

Taking appropriate action where malpractice and maladministration is suspected or alleged

- There is an absolute obligation under Condition H5.1 and H6.1 (d) to ensure that results issued are correct, which is a stronger obligation than the duty to take reasonable steps to comply with a timescale for issuing results in Condition H6.1 (f).
- As such, awarding organisations should carefully consider a range of factors, including the use of the qualification, timescales involved, and legal implications when deciding what action to take, for example whether to withhold results where malpractice is suspected.
- Results can't be withheld indefinitely, however where malpractice or maladministration is subsequently proven, the withdrawal of results may be an proportionate sanction, depending on the specific details of the case.

Taking appropriate action once malpractice or maladministration is established:

- Once malpractice or maladministration is established, awarding organisations must take all reasonable steps to take action against those responsible that is proportionate.
- In order to be proportionate, action should be taken on a case-by-case basis, and should consider consequential effects- the potential impact of the proposed sanction on the individual. We don't specify the weight that should be given to the consideration of consequential effects, which should also be considered on a case-by-case basis.
- Awarding organisations should look to balance the consequential effects with the seriousness and impact of the malpractice and maladministration.
- This does not preclude the use of a sanction matrix, or similar, but this should be applied in line with a consideration of consequential effects in each case.

Reviewing decisions relating to malpractice and maladministration:

- Awarding organisations must take all reasonable steps to contact learners to allow them to appeal decisions relating to action taken as a result of malpractice or maladministration. This is often done through Centres.
- Where this is difficult, for example due to Centre closure, this obligation for the awarding organisation remains. Awarding organisations might choose to gather individual contact details of any Learners investigated for malpractice or maladministration- this might be a reasonable step, though is not a requirement under our Conditions.
- Where appropriate, the Centre should refer Teachers who are found to have committed malpractice or maladministration to the Teacher Regulation Agency. This is not a requirement under our Conditions, but should be something that an awarding organisation considers where appropriate.

Examples

- Feedback from the consultation was in support of providing further examples in the guidance (86% of respondent strongly agreed or agreed)
- Examples are included in the sections on identifying risk and preventing malpractice and maladministration, detecting malpractice and maladministration, and investigating malpractice and maladministration.
- The examples are not intended to be either exhaustive or prescriptive, they are illustrative.

Any Questions?