



# MALPRACTICE AND MALADMINISTRATION POLICY (Internal)

Version 4 9<sup>th</sup> May 2022 RG

Review date May 2023

## **Aim**

- To identify and minimise the risk of malpractice by apprentices training providers or employers
- To respond to any incident of alleged malpractice promptly and objectively
- To standardise and record any investigation of malpractice to ensure openness and fairness
- To impose appropriate penalties and/or sanctions on apprentices or staff/assessors where incidents (or attempted incidents) of malpractice are proven
- To protect the integrity of this EPAO and of end point assessments across the sector.

## **Scope**

This policy is aimed at Marshall Assessment (MA) staff. EPAOs are required to take reasonable steps to prevent the occurrence of malpractice and maladministration. This policy applies to each process associated with end-point assessments: registrations, Gateway, assessment planning, assessment delivery, results, and post-results processes.

## **EPAO's Responsibility**

All staff/assessors involved in the management, assessment and quality assurance of end point assessments and apprentices should be made fully aware of the contents of the policy and that arrangements are in place to prevent and investigate instances of suspected malpractice and maladministration. A failure to report suspected or actual malpractice/maladministration cases including plagiarism, cheating and collusion or have in place effective arrangements to prevent such cases, may lead to sanctions being imposed on the organisation

Should an investigation be undertaken, the Director of Assessment will:

- Ensure the investigation is carried out promptly by competent investigators who have no personal involvement in the incident or personal interest in the matter.
- Ensure the investigation is carried out in an effective, prompt and thorough manner and that the investigator(s) look beyond the immediate reported issue to ensure that arrangements are appropriate for all Standards.
- Respond timely and openly to all requests relating to the allegation and / or investigation.
- Co-operate and ensure that individuals co-operate fully with any investigation and / or request for information.

Non-adherence to our policies may constitute maladministration, malpractice and/or a breach of Contract. Please ensure all policies are read and implemented carefully.

This policy should be read in conjunction with Marshall Assessment's:

- **Assessment and Internal Quality Assurance policies and procedures**
- **Ofqual guidance on malpractice and maladministration**
- **Appeals**
- **Complaints**
- **Conflict of Interest**
- **Reasonable Adjustments**
- **Sanctions**
- **Whistleblowing policy**

### **Definition of Malpractice**

Malpractice is essentially any activity or practice, which deliberately contravenes regulations and compromises the integrity of the internal or external assessment process and / or the validity of grades and certificates. It covers any deliberate actions, neglect, default or other practice that compromises, or could compromise:

- The assessment process
- The integrity of a regulated apprenticeship Standard
- The validity of a result or certificate
- The reputation and credibility of Marshall Assessment.

Malpractice may also include a range of issues from the failure to maintain appropriate records of systems, to the deliberate falsification of records in order to claim certificates. For the purpose of this policy this term also covers misconduct and forms of unnecessary discrimination or bias towards certain groups of students.

### **Definition of Plagiarism**

Plagiarism is the presentation of someone else's work, words, images, ideas, opinions or discoveries, whether published or not, as one's own, or alternatively taking for one's own use, the artwork, images or computer-generated work of others without properly acknowledging the source, with or without the owner's permission. Plagiarism by students can occur in examinations, but is most likely to occur outside sat, unseen exams, i.e. in coursework, assignments, portfolios, essays and dissertations.

### **Definition of Cheating**

The term cheating includes, without limitation:

- Being in possession of notes, 'crib notes', or textbooks during an assessment other than where the rubric permits such usage
- Communicating during the 'exam' hurdle of the end point assessment with another apprentice
- Having prior access to the examination questions unless permitted to do so by the rubric of the assessment plan
- Substitution of assessment materials
- Unfair or unauthorised use of an electronic calculator/device
- Impersonation
- Use of a communication device during the assessment
- Any deliberate attempt to deceive.

### **Definition of Collusion**

Collusion is an example of unfair means because, like plagiarism, it is an attempt to deceive the assessors by disguising the true authorship of an assessment, or part of an assessment.

## Examples of Malpractice

The categories listed below are examples of malpractice. These examples are not exhaustive and are only intended as guidance on our definition of malpractice:

- Failure to carry out assessments, internal quality assurance (i.e., internal verification or moderation) in accordance with Marshall Assessment's requirements
- Deliberate failure to adhere to our apprentice registration and certification procedures
- Deliberate failure to maintain appropriate auditable records (e.g., certification claims) and / or forgery of evidence
- Fraudulent claims for certification
- The unauthorised use of inappropriate personnel, materials and / or equipment for assessments
- Intentional withholding of information which is critical to maintaining the rigour of quality assurance and standards of assessment decision
- Collusion or permitting collusion in assessments, including online assessments
- Apprentices working towards EPA or undertaking EPA before Gateway sign off is complete
- Improper assistance to apprentices
- Inventing or hanging marks for internally assessed work where there is insufficient evidence of the apprentice's achievement to justify the marks given or assessment decisions made
- Failure to keep apprentice assessment evidence secure
- Assisting apprentices in the production of work for assessments, where the support has the potential to influence the outcomes of assessment, for examples where the assistance involves producing work for the learner
- Allowing evidence, which is known by the staff/assessor not to be the apprentices own, to be included as evidence towards EPA result
- Facilitating and allowing impersonation
- Misusing the conditions for special learner requirements, for example where apprentices are permitted support, such as a scribe, this is permissible up to the point where the support has the potential to influence the outcome of the assessment
- Falsifying records/certificates, for example by alteration, substitution, or by fraud
- Fraudulent certificate claims, that is, claiming for a certificate prior to the apprentice completing all the requirements of assessment.

- Anyone failing to cooperate with an investigation or act as requested by MA

### **Definition of Maladministration**

Maladministration includes any actions, neglect, default, or other practice that compromises the assessment or quality assurance process, including the integrity of the EPA, the validity of any results or certificate requests or the reputation and credibility of MA

### **Examples of Maladministration**

- Failure to adhere to the administration protocols regarding the conduct of assessments and examinations and/or the handling of information for end-point assessment that do adversely affect the assessment outcome or decision, but could cause issues such as data breaches, or delay the assessment or the issuing of results
- Failing to maintain and keep accurate records about apprentices Gateways
- Failure to provide accurate information on apprentices to MA, such as the correct Apprenticeship standard
- Inaccurate recording of apprentice's name or other vital information, resulting in delays with certification
- Incidents of not complying with EPA Invigilation requirements
- Failure to respond to information requests or addressing minor actions in line with service level contracts, enforceable agreements and any monitoring and review activities, as conducted by MA on third parties
- Failure to provide correct information for applications of reasonable adjustments, in isolated cases

### **Reporting Assessment Malpractice or Maladministration**

Any individual who suspects malpractice or maladministration in any aspect of an assessment by Marshall Assessment is required to inform the Compliance Director using the following email address: [malpractice@marshall-assessment.com](mailto:malpractice@marshall-assessment.com). The Compliance Director will declare any conflicts of interest at this point. If they are conflicted, then they will be replaced by another unconflicted member of the board.

Using the above email address, you can request a template to complete a record of the incident. If you choose not to use our template, your report should set out the details of the alleged malpractice and / or maladministration and be sufficiently detailed and include any evidence that supports the allegation to enable an investigation to commence.

**Allegations must include (where relevant):**

- Names of those involved in the allegations (this may be the Employer, Apprentice or Provider details)
- Apprentice Name and Unique Learning Number (ULIN) (either/ or information)
- Apprenticeship standard
- Assessment methods impacted
- Dates and locations that suspected or actual malpractice and maladministration occurred
- A full written description of the events and circumstances of the suspected or actual malpractice and maladministration that has alleged to have occurred
- Witness statements from those involved/impacted
- Reporting persons contact details

All email correspondence will be securely stored in the MA Maladministration folder on an access restricted area of MA's SharePoint site. Data will be kept for 6 months after the investigation is complete and then digitally shredded.

Where requested, we will not disclose an informant's identity, unless legally obliged to do so. As our investigations are confidential, we will not be able to disclose to informant's details of the outcome of the investigation is or what action has been taken.

If a member of MA finds or suspects malpractice when conducting an EPA or during any quality control of quality assurance activity this will be referred to MA's Compliance Director who will then report the incident to our EQA. If the Compliance Director and RO is ruled out, due to conflict, then the deputy RO will be notified, and they will contact our EQA.

**NB:** Our ability to investigate is dependent on the availability and quality of evidence. The ability to collect viable evidence diminishes over time, post alleged event. We therefore encourage anyone who suspects malpractice/ maladministration to notify us as soon as possible after the incident.

**The Investigation**

When MA receives information of an alleged or actual case of maladministration or malpractice an independent investigation will be launched. The investigation will be conducted by an external nonbiased third party. Investigator/s will have the necessary skills to conduct the investigation and will not be an individual cited in any part of the investigation.

When dealing with alleged malpractice / maladministration within MA the independent investigator will normally work with the Compliance Director (unless that person is cited in the allegations- then a non-conflicted member of the board will be the point of liaison)

**During the investigation, MA may:**

- Involve the apprentice in the investigation process
- Contact staff members and the apprentice (or a representative) directly

**Pending the outcome of the investigation MA may also:**

- Withhold assessment materials
- Request a pause on release of certificates
- Refuse EPA bookings

If MA is made aware of an alleged incident of malpractice or maladministration following certification, then again, a full investigation will be triggered. Depending on the results of the investigation certificates may be recalled by the apprenticeship service and declared invalid. Our regulator may require MA to report the case and the actions we are taking to safeguard the reputation of independent EPA to other EPAO's who provide EPA services for the same standards.

Following an investigation by the independent third party, a report of the alleged events will be produced and all concerned parties can check this for factual accuracy. Any amendments will be agreed between all parties involved.

A malpractice review committee will be set up (consisting of a MA board member a subcommittee member and the independent third-party investigating officer) to review and sign off the report. Unless advised otherwise, the report will be sent via email to provided email addresses. Marshall Assessments responsible officer and or deputy responsible officer will be appraised of the investigation and the committees ruling and will advise the EQA accordingly. The Compliance Director will advise all parties of the decision by sending out the full report with details of decisions and any sanctions to be applied as recommended by the committee. No one from the review committee can be cited in any part of the original allegation.

If malpractice or maladministration is established MA will consider whether the integrity of our EPA assessments are at risk if the member of staff in question were to be involved in future MA EPA's. If the integrity of our EPA service is at risk MA may take the following action\*:

**Refusing to issue EPA results**

**Barring staff member from involvement in any aspects of delivery of our EPA**

**Disciplinary action for the staff member**

**Potential dismissal of staff member**

**Invalidating claims for an apprenticeship completion certificate**

**\*This list is not exhaustive these are examples, and appropriate actions will be fully considered by the committee**

**Notification of EQA and ESFA/ DfE**

MA will notify the relevant regulatory body of any allegations of malpractice where it deems the situation may give rise to an adverse effect. The responsible officer / deputy responsible officer will provide the EQA with the outcome of any malpractice maladministration investigation in the form of the final written report following review by committee.

## **Grounds for Appeal against the outcome of an assessment malpractice investigation**

Appeals must be based on reasonable grounds which relate to the incident in question and the following are accepted as reasonable grounds:

- The incident was not dealt with in accordance with the Malpractice and Maladministration policy.
- The decision was unreasonable in light of the evidence presented to the Investigating Officer. Further evidence (including medical evidence) has come to light which could change the basis of the investigation outcome.
- The sanction imposed is disproportionate to the seriousness of the malpractice in line with internal policy and policy related to the relevant awarding organisation.

Please refer to Marshall assessments Appeals policy for further detail



## **Appendix 1: Stages involved in the investigation process**

### **Notification**

**Where malpractice / maladministration allegations involve MA personnel the MA compliance director will work an independent MA investigating officer.**

The regulatory conditions require MA to arrange an investigation where MA suspects, its alleged by another person/ organisation and there are reasonable grounds for that allegation.

MA will appoint an investigator that is independent from the any involvement in the alleged malpractice event

Terms of reference for the investigation will be set by the nominated independent investigator and confirmed by the assessment director.

The Assessment director will provide secure storage will ensure that there is secure storage arrangements for all materials associated with the investigation

MA will monitor the progress of the investigation and ensure all parties are informed of progress (where possible)

MA will advise the relevant regulators of any activity that could cause or has caused an adverse effect and is in breach of regulatory conditions. The responsible or deputy responsible officer will report such an event through the required communication channels

### **Interviews**

Investigations will normally include interviews. Interviewee's will be informed that they may have another individual of their choosing present. All parties should introduce themselves. All interviews should be conducted in private locations free where all parties will be free from distraction.

Interviewer should explain the reason for the interview and let the interviewee know that the interview will be recorded and how and where any evidence will be stored. The interviewer must confirm the date and time The independent investigating officer will also take accurate notes of the recorded interview. If it's not possible to conduct a face-to-face interview online software should be used.

### **Gathering Evidence**

The investigator should review relevant evidence in conjunction with the investigation (e.g., quality assurance documents associated with the apprenticeship standard). Issues to be determined:

What occurred (nature of malpractice/substance of the allegations)

Why the incident occurred

Who was involved in the incident?

When it occurred

Where it occurred – there may be more than one location

What action, if any, has been taken

### **The Committee**

In all cases of alleged internal Malpractice and Maladministration, the committee will consist of an independent third-party investigating officer who will lead the committee in reviewing all the evidence provided and decision making regarding investigation outcomes. The committee consist of one board member (Normally the Compliance Director) and member of the subcommittee (normally the Assessment Quality Manager) and the independent investigating officer. The committee will be chaired by the third- party investigating officer. The independent investigator will be available to MA

for 3 investigations. After this number of investigations, the named independent investigator will be replaced.

### **Reporting**

The final outcomes will be submitted to the relevant parties in a report, to include any sanctions and actions required. The relevant regulatory bodies will be notified.