



Malpractice, Maladministration and Whistleblowing Policy

Introduction

Malpractice & Maladministration

This policy is aimed at our customers, including learners, who are delivering/registered on ECITB approved qualifications or units within or outside the UK and who are involved in suspected or actual malpractice/maladministration. It is also for use by our staff to ensure they deal with all malpractice and maladministration investigations in a consistent manner.

It sets out the steps that Approved Centres, and learners or other personnel must follow when reporting suspected or actual cases of malpractice/maladministration and our responsibilities in dealing with such cases. It also sets out the procedural steps we will follow when reviewing the cases.

This policy for reporting suspected or actual malpractice and maladministration also applies to the wider stakeholder community. The ECITB welcomes feedback on concerns from any member of the public or organisation in regards to the delivery and award of ECITB qualifications.

This document has been provided by ECITB to help illustrate a possible approach to malpractice and maladministration and whistleblowing investigations. It is not intended to be prescriptive nor indicate that this is the only approach acceptable to ECITB in relation to malpractice and maladministration; nor is it intended to imply that using it will guarantee compliance with ECITB requirements as it is each centre's responsibility to ensure they have in place appropriate internal controls and audit trails and whilst this document may suggest a way of undertaking certain activities, its use alone will not automatically confirm compliance. Approved Centres may decide to use this document and its contents to assist them with the delivery of ECITB qualifications and/or tailor it to reflect internal procedures and operational needs.

Whistleblowing

The Public Interest Disclosure Act 1998 amended the Employments Rights Act 1996 and created a right to redress, enforceable by tribunal, in the event of a worker being subjected to a detriment or dismissed by an employer as a result of whistleblowing.

This policy outlines the protection available if a worker* makes a whistleblowing disclosure. It gives only general information and does not aim to offer definitive legal advice or details of how the whistleblowing provisions work in practice.

A disclosure will not be a protected disclosure if the worker making it:

- does not do so in the interest of the public;
- commits a criminal offence in making it;
- received the information in the course of providing legal advice (legally privileged information).

More detailed information on the law relating to whistleblowing can be found on the Public Concern at Work website: www.pcaw.org.uk

You can also contact Public Concern at Work to discuss any concerns you may have about whistleblowing.

*A worker can include a candidate, member of staff or sub-contractor to an Approved Centre or ECITB.

Centres' Responsibility

It is a requirement of the Regulators that Approved Centre staff (including any contractors/partners), involved in the management, assessment and quality assurance of our qualifications, and your customers/learners, are fully aware of the contents of our policy and the guidance offered, and that the Approved Centre has formal arrangements in place to prevent and investigate instances of malpractice and maladministration.

A failure to report suspected or actual malpractice/maladministration cases, or have in place effective arrangements to prevent such cases, may lead to sanctions being imposed on your centre. See our Sanctions policy for details.

If you wish to receive guidance/advice from us on how to prevent, investigate, and deal with malpractice and maladministration then please contact us (details at the end of this manual) and we will happily provide you with such advice and/or guidance.

Approved Centre's compliance with this policy and how it takes reasonable steps to prevent and/or investigate instances of malpractice and maladministration will be reviewed by ECITB periodically through our ongoing Approved Centre monitoring arrangements.

Review Arrangements

We will review this procedure as part of our continuous improvement arrangements and revise it, as and when necessary, in response to customer, learner or regulatory feedback (e.g. to align with any enquiries process established by the regulators) and to identify any trends that may emerge in the subject matter of enquiries received.

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. If you would like to feedback any views please contact us via the details provided at the end of this manual.

Definition of Malpractice

Malpractice is any activity or practice which deliberately, or by reprehensible ignorance or neglect, default or other practice contravenes regulations, including the applicable qualification regulator's Conditions of Recognition, Regulatory Principles, and/or contravenes established codes of practice.

Malpractice may include a range of issues from the failure to maintain appropriate records or 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 unlawful discrimination, harassment or bias towards individuals or groups of learners.

Definition of Maladministration

Maladministration is essentially any activity or practice which results in non-compliance with administrative regulations and requirements (including ECITB approved centre requirements) and includes the application of persistent mistakes or poor administration within a centre (e.g. inadequate learner records).

Definition of Whistleblowing

Whistleblowing is a term used to refer to an individual who discloses information relating to actual malpractice or maladministration and/or the covering up of such practices. The malpractice or maladministration is often committed by the individual's employer, although this is not always the case. Whistleblowers have protection in law under the Public Interest Disclosure Act in certain circumstances. Ofqual has published guidance on this which can be found at:

<http://ofqual.gov.uk/documents/ofqual-whistleblowing-policy/all-versions/>

Impact of Malpractice and Maladministration

For the purposes of this policy, both malpractice and maladministration cover actions, neglect, default or other practice that compromise or could compromise:

- the integrity of the internal or external assessment process;
- the integrity of a regulated qualification;
- the integrity of the accreditation or quality assurance process;
- the validity of a result or certificate;
- the reputation and credibility of ECITB;
- the reputation and credibility of the regulator of qualifications;
- confidence by the end user, including learners and customers (employers and their clients);
or
- the wider qualifications community.

Examples of Malpractice

The categories listed below are examples of centre and learner malpractice. Please note that these examples are not exhaustive and are only intended as guidance on our definition of malpractice:

- Denial of access to premises, records, information, learners and staff to any authorised ECITB representative and/or the regulator(s)
- Failure to carry out internal assessment, internal moderation or internal verification in accordance with our requirements
- Deliberate failure to adhere to our learner registration and certification procedures.
- Deliberate failure to continually adhere to our Approved Centre recognition and/or qualification approval requirements or actions assigned to the Approved Centre
- Deliberate failure to maintain appropriate auditable records, e.g. certification claims and/or forgery of evidence
- Fraudulent claim for certificates
- The unauthorised use of inappropriate materials / equipment in assessment settings (e.g. mobile phones)
- Intentional withholding of information from us which is critical to maintaining the rigour of quality assurance and standards of qualifications
- Deliberate misuse of our logo and trademarks or misrepresentation of a centre's relationship with ECITB and/or its recognition and approval status with ECITB
- Collusion or permitting collusion in questioning/assessments
- Learners still working towards qualification after certification claims have been made
- Persistent instances of maladministration within the centre
- Deliberate contravention by a centre and/or its learners of the assessment arrangements we specify for our qualifications
- A loss, theft of, or a breach of confidentiality in, any assessment materials or candidate personal information

- Plagiarism – Submission of another’s evidence or work by learners/staff
- Personification – Assuming another person’s identity or allowing someone to assume the learner’s identity during assessment.
- Copying from another candidate (including using ICT to do so).
- Unauthorised amendment, copying or distributing of exam/assessment papers/materials
- Inappropriate assistance to learners by centre staff (e.g. unfairly helping them to pass a unit or qualification)
- Deliberate submission of false information to gain a qualification or unit
- Deliberate failure to adhere to, or to circumnavigate, the requirements of our Reasonable Adjustments and Special Considerations Policy or Equal Opportunities Policy.

Examples of Maladministration

The categories listed below are examples of centre and learner maladministration. Please note that these examples are not exhaustive and are only intended as guidance on our definition of maladministration:

- Persistent failure to adhere to our learner registration and certification procedures.
- Persistent failure to adhere to our Approved Centre recognition and/or qualification requirements and/or associated actions assigned to the centre
- Late learner registrations (both infrequent and persistent)
- Unreasonable delays in responding to requests and/or communications from ECITB
- Inaccurate claim for certificates
- Failure to maintain appropriate auditable records, e.g. certification claims and/or forgery of evidence
- Withholding of information, by deliberate act or omission, from us which is required to assure ECITB of the centre’s ability to deliver qualifications appropriately
- Misuse of our logo and trademarks or misrepresentation of a centre’s relationship with ECITB and/or its recognition and approval status with ECITB
- Failure to adhere to, or to circumnavigate, the requirements of our Reasonable Adjustments and Special Considerations Policy or Equal Opportunities Policy.

Process for Making an Allegation of Malpractice or Maladministration

Anybody who identifies or is made aware of suspected or actual cases of malpractice or maladministration at any time **must immediately notify ECITB.**

You can report your concerns to ECITB verbally in person or by telephone, in writing or by email. Contact details are provided at the end of this manual. You should address any written communication as confidential and for the attention of the Responsible Officer.

All allegations must include (wherever possible):

- centre’s name, address and number
- learner’s name and ECITB registration number
- centre/ECITB personnel’s details (name, job role) if they are involved in the case
- details of the ECITB course/qualification affected or nature of the service affected
- nature of the suspected or actual malpractice and associated dates
- details and outcome of any initial investigation carried out by the centre or anybody else involved in the case, including any mitigating circumstances

If a centre has conducted an initial investigation prior to formally notifying us, the centre should ensure that staff involved in the initial investigation are competent and have no personal interest in the outcome of the investigation. However, it is important to note that in all instances the centre

must immediately notify us if they suspect malpractice or maladministration has occurred as we have a responsibility to the regulators to report any potential adverse effect and to ensure that all investigations are carried out rigorously and effectively.

Confidentiality and “Whistle Blowing”

Ofqual states that centre staff who wish to make a whistleblowing disclosure to someone outside their organisation should normally do so to the relevant awarding organisation. If the issue is about the awarding organisation itself, the disclosure should be directly to Ofqual.

ECITB will always endeavour to keep a whistleblower’s identity confidential where asked to do so, although we cannot guarantee this and we may need to disclose your identity to the police or other law enforcement agencies, the courts or another person to whom we are required by law to disclose your identity. A whistleblower should also recognise that he or she may be identifiable by others due to the nature or circumstances of the disclosure.

While we are prepared to investigate issues which are reported to us anonymously, we shall always try to confirm an allegation by means of a separate investigation before taking up the matter with those the complaint/allegation relates to. It is not always possible to investigate or substantiate anonymous reports.

ECITB appreciate that you will be concerned to find out about the outcome of an investigation, and we will endeavour to keep you informed, in general terms, of any progress as far as we are able to. However, we may only be able to provide limited feedback to you about the outcome of any investigation. For example, we may only report back that we have looked into the matter and have taken appropriate action. This is due to reasons of confidentiality and legal restrictions.

Responsibility for the Investigation

In accordance with regulatory requirements, all suspected cases of maladministration and malpractice will be examined promptly by ECITB to establish if malpractice or maladministration has occurred and we will take all reasonable steps to prevent any adverse effect from occurring.

Cases of suspected malpractice and maladministration will be passed to an appropriate member of staff, usually the Responsible Officer who will appoint a nominated investigator and we will endeavour to acknowledge receipt, as appropriate, to the whistleblower within 2 working days.

The Responsible Officer will be responsible for ensuring the investigation is carried out in a prompt and effective manner and in accordance with the procedures in this policy. The nominated investigator will conduct the investigation and establish whether or not malpractice or maladministration has occurred, and review any supporting evidence received or gathered by ECITB.

At all times, we will ensure that ECITB personnel assigned to the investigation have the appropriate level of training and competence and they have had no previous involvement or conflict of interest in the area investigated.

Notifying Relevant Parties

In all cases of suspected or actual malpractice, we will notify the Head of the Approved Centre involved in the allegation that we will be investigating the matter. In the case of learner malpractice, we may ask the Approved Centre to investigate the issue in liaison with our own personnel – in doing so we may withhold details of the person making the allegation if to do so would breach a duty of confidentiality or any other legal duty.

Where applicable, The Responsible Officer will inform the appropriate qualifications regulator if we believe there has been an incident of malpractice or maladministration which could either invalidate the award of a qualification or cause any adverse effect.

Where the allegation may affect another awarding organisation and their provision we may also inform them. If we do not know the details of organisations that might be affected we will ask the regulator to help us identify relevant parties that should be informed.

Investigation Timelines and Summary Process

We aim to action and resolve all stages of the initial investigation within 10 working days of receipt of the allegation. Please note that in some cases and for reasons beyond our control, the investigation may take longer; for example, where witnesses are unavailable. In such instances, we will advise all parties concerned of the likely revised timescale.

The fundamental principle of all investigations is to conduct them in a fair, reasonable and legal manner, ensuring that all relevant evidence is considered without bias. In doing so investigations will be based around the following broad objectives to:

- establish the facts relating to allegations/complaints in order to determine whether any irregularities have occurred;
- identify the cause of any irregularities and those involved;
- establish the scale of the irregularities;
- evaluate any action already taken or being undertaken by the approved centre;
- determine whether immediate action is required to reduce the risk to current registered learners and to preserve the integrity of the qualification (i.e. precautionary application of sanctions in accordance with our Sanctions Policy);
- ascertain whether any action is required in respect of certificates already issued;
- obtain clear evidence to support any punitive sanctions to be applied to the centre, and/or to members of staff, in accordance with our Sanctions Policy;
- identify any adverse patterns or trends;
- identify and implement any corrective actions required.

The investigation may involve a request for further information from relevant parties and/or interviews with personnel involved in the investigation. Therefore, we will:

- ensure all material collected as part of an investigation is kept secure. All records and original documentation concerning a completed investigation that ultimately leads to sanctions against a centre will be **retained for a period of not less than five years**. If an investigation leads to invalidation of certificates, or criminal or civil prosecution, all records and original documentation relating to the case will be retained until the case and any appeals have been heard and for five years thereafter;
- expect all parties, who are either directly or indirectly involved in the investigation, to fully co-operate with us.

Either at notification of a suspected or actual case of malpractice or maladministration and/or at any time during the investigation, we reserve the right to impose sanctions on the centre in accordance with our Sanctions Policy in order to protect the interests of learners and the integrity of the qualifications, ECITB and the qualifications regulator.

We also reserve the right to withhold a centre's learner's, and/or cohort's, results for all the ECITB qualifications or units they are studying at the time of the notification or investigation of suspected

or actual malpractice/maladministration until such a time as the investigation is positively concluded to the satisfaction of the ECITB.

If appropriate, we may find that the complexity of a case or a lack of cooperation from a centre means that we are unable to complete an investigation. In such circumstances we will consult with the relevant regulatory authority in order to determine how best to progress the matter.

Where evidence of criminal acts are found or suspected during our investigation, we will report the relevant facts to the appropriate authority.

Where a member of ECITB's staff is under investigation we may suspend them or move them to other duties until the investigation is complete.

Throughout the investigation the Responsible Officer will be responsible for overseeing the work of the investigation team to ensure that due process is being followed, appropriate evidence has been gathered and reviewed and for liaising with and keeping informed relevant external parties. Where any potential conflict of interest affecting the ability of the Responsible Officer to carry out these duties impartially and independently exists, an alternative senior member of staff will be appointed to manage the investigation and reporting.

Rights of individuals

All individuals involved, or alleged to be involved, in cases of malpractice/maladministration will be informed of the allegation and given access to any supporting evidence (wherever possible, the identity of a whistleblower will be protected where this has been requested). They will be given an opportunity to respond. They will be informed of the potential consequences if the allegation is proven and of the possibility other parties might have to be informed.

Individuals can exercise the right to be accompanied by a person of their choice if interviews are held.

Investigation Report

Following an investigation we will produce, where relevant, a written response for affected parties to check the factual accuracy where appropriate. Any subsequent amendments will be agreed between the parties concerned and ourselves. All parties have the right to appeal any decisions or conclusions reached during the investigation and reporting process (see Appeals Policy).

Any final report may be made available to the regulator concerned and in any event, ECITB are obliged to inform the relevant regulator of any malpractice or maladministration identified within any of its approved centres or by any ECITB Awarding Organisation staff or contractors.

The report will:

- Identify where the breach, if any, occurred;
- Confirm the facts of the case;
- Identify who is responsible for the breach (if any);
- Confirm the appropriate level of corrective action to be applied.

We will make the final report available to the parties concerned and to the regulator and other external agencies as required.

If it was an independent/third party that notified us of the suspected or actual case of malpractice, we will also inform them of the outcome – normally within 10 working days of making our decision -

in doing so we may withhold some details if to disclose such information would breach a duty of confidentiality or any other legal duty.

If it is an internal investigation against a member of our staff, the report will be agreed by the Responsible Officer and their ECITB Director and any appropriate internal corrective action procedures will be implemented.

Investigation Outcomes

If the investigation confirms that malpractice or maladministration has taken place we will consider what action to take to:

- Minimise the risk to the integrity of certification now and in the future;
- Maintain public confidence in the delivery and awarding of qualifications;
- Discourage others from carrying out similar instances of malpractice or maladministration;
- Ensure there has been no gain from compromising our standards.

The actions we may take include:

- impose actions in relation to the Approved Centre with specified deadlines in order to address the instance of malpractice/maladministration and to prevent it from recurring;
- impose sanctions on the Approved Centre – if so these will be communicated in accordance with our Sanctions Policy along with the rationale for the sanction(s) selected;
- in cases where certificates are deemed to be invalid, inform the Approved Centre concerned and the regulators why they are invalid and any action to be taken for reassessment and/or for the withdrawal of the certificates. We will also require the Approved Centre to let the affected learners know the action we are taking and that their original certificates are invalid and request the centre/individuals to return the invalid certificates to ECITB. We will also amend our database so that duplicates of the invalid certificates cannot be issued and we expect the centre to amend their records to show that the original awards are invalid;
- review and if necessary, amend aspects of our qualification development, delivery and awarding arrangements and where appropriate, assessment and/or monitoring arrangements and associated guidance to prevent the issue from recurring;
- inform relevant third parties (e.g. funding bodies or public authorities) of our findings in case they need to take relevant action in relation to any Approved Centre;
- in proven cases of malpractice and/or maladministration by a centre, ECITB reserves the right to charge the centre for any re-assessment and reissuing of certificates and/or additional External Quality Assurer visits.

In addition to the above, the Responsible Officer will record any lessons learned from the investigation and pass these onto relevant internal colleagues to help ECITB prevent the same instance of maladministration or malpractice from reoccurring.

If the relevant party(ies) wishes to appeal against our decision to impose sanctions, please refer to our Appeals Policy.

Contact us

If you have any queries about any aspect of this process, please contact:

VQ Administrator
Engineering Construction Industry Training Board
Blue Court
Church Lane
Kings Langley
Hertfordshire
WD4 8JP

☎: 01923 260 000

@: Qualifications@ecitb.org.uk

💻: www.ecitb.org.uk