

Consultation response

Guidance on malpractice and maladministration

19 March 2020

Q1: To what extent do you agree or disagree that the draft guidance will help awarding organisations to understand the requirements of Conditions when dealing with malpractice and maladministration, including A8?

Any guidance in support of the Conditions is helpful in further articulating the expectations placed on awarding organisations in order to ensure regulatory compliance. To that end, we agree that the draft guidance, in principle, is helpful. However, it is not as immediately clear and unambiguous as the style generally used of showing positive and negative indicators.

Q2: Do you have any comments on the draft guidance on malpractice and maladministration? For specific comments, please refer to the relevant line number in your response.

Definition of malpractice/maladministration (lines 19 to 64)

The distinction between malpractice being a deliberate act and maladministration being non-intentional causes some concern. It can be difficult to establish intent and, even in cases where it is possible to show something is unintentional, the action can still have very serious consequences. The accidental opening and distribution of the incorrect exam paper, for example, can have far-reaching effects at a national level. Although unintentional, we would not term this as maladministration but a breach of security. Likewise, a lack of understanding of the rules in relation to how much assistance can be provided to students in NEA would not be termed as maladministration but as improper assistance. The distinction as set out therefore suggests a categorising of cases that would not reflect current practice and that may suggest some very serious, albeit unplanned actions, fall into a lesser sub-category of malpractice.

In addition, line 36 brings the notions of intentional bias and discrimination into the definition of malpractice. These are not issues we would usually investigate and the expectation here is unclear.

The examples as to who may commit malpractice in lines 42 to 44 include awarding body personnel. This, along with the current explanation of maladministration and the examples given in lines 25 to 32 suggest a widening of what would be considered to fall under the definition of malpractice/maladministration that the regulator would expect a board to investigate. In reality, any staff issues would be dealt with as a contractual matter and would not be considered by the malpractice team under the auspices of the JCQ suspected malpractice guidance. The procedures and sanctions set out in the JCQ guidance are not applicable to staff or associates, unless they are also teachers who commit malpractice in their role as a teacher.

Line 71 mentions 'reasonable grounds' for an investigation into malpractice. It is very useful to see this set out in the guidance and the acknowledgement that awarding bodies would not necessarily be expected to investigate every allegation made. Lines 234 to 245 then provide additional explanation as to what should be considered in order to determine whether or not there are reasonable grounds. The third bullet point mentions 'any evidence that may reduce the credibility of the allegation'. Further explanation as to what is meant here would be helpful. Is this evidence already in the board's possession? The difficulty is that evidence is collected as part of an investigation so, if there is an expectation to collect evidence in some way, this becomes a rather circular situation.

Again, in lines 74 to 78, it talks about it sometimes only being possible to determine the credibility of the allegation and what sort of incident has occurred through investigation. This reinforces the point made above in relation to what form of evidence-gathering is expected before a board determines whether or not there are reasonable grounds – on one hand, this section suggests only investigating if there are reasonable grounds but, on the other, it suggests that the only way to determine credibility of an allegation, and therefore an element of reasonable grounds, may be through an investigation. This part of the guidance is therefore very unclear.

Lines 190-194 cover monitoring and sampling of areas that may be high risk. As the inspection of higher risk centres is covered under lines 171 to 176, it would be helpful to know whether the monitoring is an additional process that Ofqual expects boards to carry out and, if so, an example as to what this might entail would be helpful. Likewise, regular checks of assessment materials (lines 195-196) is unclear – what is the thought behind this and what would it mean in practice?

Lines 271-273 cover the investigation and the need to carry it out promptly. Lines 276-277 also mention having clear terms of reference on record for an investigation. Both 'promptly' and 'terms of reference' could usefully be defined further, to give a clear understanding as to what is expected here.

In terms of who can investigate (lines 300-307, and 362-379), the expectation from Ofqual seems to be towards more board-led investigations and the definition as to when an individual may have a conflict or personal interest and therefore be conflicted out, seems to be drawn quite widely. Given the fact that most cases will be referred for investigation over a relatively short period of time in the summer, any move towards more board-led investigations must factor in the increasing pressures on resources that this would bring for all boards.

Under the 'competence and capacity' of investigators, lines 342-343 set out that any investigator must have skills and experience in gathering information from minors, vulnerable adults and those with learning difficulties. AQA's malpractice staff are experienced and trained in conducting investigations although this area is not something that has traditionally been covered as a specific training need.

Line 415 suggests that boards should consider the use to which a qualification is to be put and potentially contacting those who may rely on the result directly. This is not information that the board would know so we would need to try to find this out in each situation. Given the number of cases AQA handles, this could become very resource intensive. Allied to this

is the suggestion, in lines 508-512, that boards might gather individual contact details for any Learner investigated. We would be concerned at the GDPR implications of doing this, including the need to collect those details in the vast majority of cases, as well as the additional administrative burden of doing so.

Q3: To what extent do you agree or disagree that the proposed style of guidance will help awarding organisations to understand the requirements when addressing malpractice and maladministration? Please provide any additional comments on the style of the guidance.

See answer to Q1. The style is not as easily followed and clear as when using positive and negative indicators to identify likely signs of compliance or non-compliance.

Q4: To what extent do you agree or disagree that adding specific examples to the proposed guidance would help awarding organisations to understand the requirements of the Conditions when dealing with malpractice and maladministration? If you agree, please indicate the particular sections of the guidance where you feel specific examples would be beneficial.

Due to the style of the guidance, AQA agrees that specific examples would be helpful, with the caveat that they can only ever be examples and recognising that each and every case of malpractice is slightly different and will not necessarily match the examples provided. We have mentioned in the response to Q2 where further clarification and examples would be helpful. This covers: an investigation into intentional bias or discrimination, monitoring/sampling or checks of assessment materials, the definitions of 'promptly' and 'terms of reference'. Examples as to when Ofqual would expect the boards to investigate directly would also be helpful although it is appreciated that some of these are included with other guidance.

Q5: We have not identified ways in which the proposed guidance would impact (positively or negatively) on persons who share a protected characteristic. Are there any potential impacts we have not identified?

Q6: Are there any additional steps we could take to mitigate any negative impact resulting from these proposals on persons who share a protected characteristic?

Q7: Do you have any other comments on the impact of the proposal on Learners who share a protected characteristic?

Q8: Do you have any comments on the estimated costs to awarding organisations, large and small, of following our proposed guidance?

The only comment would be in relation to the expectation from Ofqual as to when it is appropriate for the board to investigate a case directly. Given the increased demands on time and resources of direct investigations, if there is an expectation, as appears to be the

case, that boards should be directly investigating more cases, rather than allowing a school to appoint an information-gatherer on the board's behalf, or appointing a third party to investigate, this would have a cost implication. It would be necessary to review previous cases in light of Ofqual's current guidance in order to understand these costs in more detail.

Q9: Are there any additional steps we could take to reduce the regulatory impact of our proposals?

Q10: Are there any costs or benefits associated with our proposals which we have not identified?

Q11: Do you have any comments on the readability and accessibility of the guidance?

Q12: Do you have suggestions on how it might be improved?

Q13: Do you have any comments on the impact of our proposals on innovation by awarding organisations?

Q14: Please provide any comments you may have on when any new guidance should be introduced.

We would strongly urge any new guidance not to be introduced mid-series so not before this summer. Instead, the guidance should be introduced ready for the new series, allowing time for the awarding organisations to fully process and understand the demands of the guidance, to amend the JCQ and any other documentation accordingly and ensuring no unnecessary or unwelcome changes for schools mid-series. Given this month's announcement on this year's summer series, this may no longer be an issue.