

Malpractice and Maladministration Policy

Introduction

This policy is for the benefit of staff and learners, who are delivering or are registered on a learning programme or approved qualification with Busy Bees Nurseries Ltd. It applies to all who are involved in suspected or actual malpractice/maladministration to ensure a consistent approach to any investigation and subsequent actions.

The policy specifies the procedure, giving clear roles and responsibilities, which apply to any individual or team, at all stages of suspected or actual cases of malpractice/maladministration.

Centre's responsibility

Busy Bees Nurseries Ltd has a responsibility to ensure that all teaching, learning and assessment is of the highest quality and have robust processes in place to mitigate potential malpractice/maladministration. As such, all staff involved in any aspect of the learner journey are aware of the contents, their role and responsibility and the administration of this policy and procedure. All instances, whether actual or suspected Malpractice or Maladministration will be thoroughly investigated and appropriate actions taken thereafter.

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 achievement.

It covers any deliberate actions, neglect, default or other practice that compromises, or could compromise:

- the assessment process;
- the integrity of a regulated qualification;
- the validity of a result or certificate;
- the reputation and credibility of Busy Bees Nurseries Ltd; or,
- the qualification or the wider qualifications community.

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 achievement.

For the purpose of this policy this term also covers misconduct and forms of unnecessary discrimination or bias towards certain or groups of learners.

Examples of malpractice

- Failure to carry out internal assessment, internal moderation or internal verification in accordance with our requirements
- Deliberate failure to adhere to Busy Bees Nurseries Ltd learner registration and certification procedures.
- Deliberate failure to continually adhere to Busy Bees Nurseries Ltd centre recognition and/or qualification approval requirements or actions assigned to Busy Bees Nurseries Ltd
- Deliberate failure to maintain appropriate auditable records, e.g. certification claims and/or forgery of evidence
- Fraudulent claim(s) for achievement
- Intentional withholding of information from Busy Bees Nurseries Ltd which is critical to maintaining

the rigour of quality assurance and standards of qualifications

- Collusion or permitting collusion in exams/ assessments
- Learners still working towards qualification after certification claims have been made
- Plagiarism by learners/staff
- Copying from another learner (including using ICT to do so).

Definition of Maladministration

Maladministration is essentially any activity or practice which results in non-compliance with administrative regulations and requirements and includes the application of persistent mistakes or poor administration.

Examples of maladministration

- Persistent failure to adhere to Busy Bees Nurseries Ltd learner registration and certification procedures.
- Persistent failure to adhere to Busy Bees Nurseries Ltd 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 Busy Bees Nurseries Ltd
- 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 Busy Bees Nurseries Ltd.

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 the appropriate Head of Sector and the Systems and Compliance Manager. In doing so they should put them in writing/ email and enclose appropriate supporting evidence.

All allegations must include (where possible):

- Learner's name and registration number
- The name of staff member(s) and job role - if they are involved in the case
- Details of the 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

The Head of Sector and Systems and Compliance Manager will then co-ordinate and conduct an initial investigation prior to the full investigation to ensure that staff involved in the initial investigation are competent and have no personal interest in the outcome of the investigation.

In all cases of suspected malpractice and maladministration reported, the identity of the 'informant' will be protected in accordance with our "whistle-blowing policy, duty of confidentiality and/or any other legal duty.

Confidentiality and whistle blowing

Sometimes a person making an allegation of malpractice or maladministration may wish to remain anonymous. Although it is always preferable to reveal your identity and contact details to us; if you are concerned about possible adverse consequences you may request that the Head of Sector/Systems and Compliance Manager does not divulge your identity.

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 allegation relates to.

Responsibility for the investigation

In accordance with regulatory requirements, all suspected cases of maladministration and malpractice will be examined promptly by Busy Bees Nurseries Ltd to establish if malpractice or maladministration has occurred and will take all reasonable steps to prevent any adverse effect from the occurrence.

We will acknowledge receipt, as appropriate, to external parties within 48 hours.

The Director of Operations 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 and will allocate a relevant member of staff to lead the investigation and establish whether or not the malpractice or maladministration has occurred, and review any supporting evidence received or gathered by Busy Bees Nurseries Ltd.

Notifying relevant parties

Where applicable, the Director of Operations will inform the appropriate regulatory authorities, including SQA accreditation, Awarding Organisations, if we believe there has been an incident of malpractice or maladministration which could either invalidate the

award of a qualification or if it could affect another awarding organisation.

Where the allegation may affect another awarding organisation and their provision we will also inform them in accordance with the regulatory requirements and obligations imposed by the regulator Ofqual. If we do not know the details of organisations that might be affected we will ask Ofqual 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 investigation within 10 working days of receipt of the allegation.

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.
- To identify the cause of the irregularities and those involved.
- To establish the scale of the irregularities.
- To evaluate any action already taken
- To determine whether remedial action is required to reduce the risk to current registered learners and to preserve the integrity of Busy Bees Nurseries Ltd and the qualification.
- To identify any adverse patterns or trends.

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 must be kept secure.
- 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 withhold a learner's, and/or cohort's, results.

Where a member of Busy Bees Nurseries Ltd's staff or a Busy Bees Nurseries Ltd associate is under

investigation, we may suspend them or move them to other duties until the investigation is complete.

Throughout the investigation the Director of Operations 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.

Investigation report

After an investigation, we'll produce a draft report for the parties concerned to check the factual accuracy. Any subsequent amendments will be agreed between the parties concerned and ourselves. 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 an appropriate level of remedial action to be applied.

We'll make the final report available to the parties concerned and to the regulatory authorities and other external agencies as required.

If it was an independent/third party that notified Busy Bees Nurseries Ltd of the suspected or actual case of malpractice, we'll 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's an internal investigation against a member of Busy Bees Nurseries Ltd staff the report will be agreed by the Director of Operations, along with the relevant internal managers and appropriate internal disciplinary procedures will be implemented.

Investigation outcomes

If the investigation confirms that malpractice or maladministration has taken place Busy Bees Nurseries Ltd will consider what action to take in order 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 action we take may include:

- Imposing actions in order to address the instance of malpractice/maladministration and to prevent it from reoccurring
- In cases where certificates are deemed to be invalid, inform the Awarding Organisation concerned and the regulatory authorities why they're invalid and any action to be taken for reassessment and/or for the withdrawal of the certificates. Busy Bees Nurseries Ltd will also let the affected learners know the action being taken and that their original certificates are invalid and ask - where possible - to return the invalid certificates to Busy Bees Nurseries Ltd.
- Informing relevant third parties (e.g. funding bodies) of findings in case they need to take relevant action in relation to the centre.

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

If the relevant party/ parties wish to appeal against our decision to impose sanctions, please refer to our Complaints Procedure.

All records of suspected Malpractice or Maladministration must be kept for a minimum of 6 years.

Appendix 1

Types of Discrimination

Direct Discrimination - This occurs when someone is treated less favourably than another person because of a protected characteristic.

Associative Discrimination - This is direct discrimination against someone because they associate with another person who possesses a protected characteristic (for example, a mother of a disabled child).

Perceptive Discrimination - This is direct discrimination against an individual because others think they possess a protected characteristic. It applies even if the person does not actually possess that characteristic.

Indirect Discrimination - Indirect discrimination can occur when an employer has a condition, rule, policy or a practice in the company that applies to everyone but which particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if employers can show they acted reasonably in managing their business.

Harassment - Harassment is "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual". Employees will now be able to complain

of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.

Third Party Harassment - The Equality Act makes employers potentially liable for harassment of their employees by people (third parties) who are not employees of the company, such as customers or clients. Employers will only be liable when harassment has occurred on at least two previous occasions and they were aware that it has taken place but did not take reasonable steps to prevent it from happening again.

Victimisation- Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

Failure to make reasonable adjustments - the duty to make reasonable adjustments comprises three requirements for service providers and those exercising public functions. These requirements are: Where a provision, criterion or practice puts disabled people at a substantial disadvantage compared with those who are not disabled, to take reasonable steps to avoid that disadvantage.

Where a physical feature puts disabled people at a substantial disadvantage compared with people who are not disabled to avoid that disadvantage or adopt a reasonable alternative method of providing the service or exercising the function. Where not providing an auxiliary aid puts disabled people at a substantial disadvantage compared with people who are not disabled, to provide that auxiliary aid.

Appendix 2

Other Key Changes in the Equality Act 2010

Positive Action - As with previous equality legislation, the Equality Act allows Employers to take positive action if they think that employees or job applicants who share a protected characteristic suffer a disadvantage connected to that characteristic, or if their participation in an activity is disproportionately low.

Pre-Employment Health-Related Checks - The New Equality Act limits the circumstances when employers (or agencies) can ask health related questions (of the applicant or in a reference request letter) before they offer an individual a job. Now, before a job offer, employers can only ask health-related questions that help them:

- Decide whether they need to make any reasonable adjustments, for the person, during the selection process
- Decide whether an applicant can carry out a function that is essential ('intrinsic') to the job
- Monitor diversity among people making applications for jobs
- Take positive action to assist disabled people and assure themselves that a candidate has the disability where the job genuinely requires the jobholder to have a disability.

Once a person has passed the interview and has been offered a job then it is permitted for the employer to ask appropriate health-related questions.

Extension of Employment Tribunal Powers - Under previous legislation, an employment tribunal could recommend that an employer must eliminate or reduce the effect on the claimant of any discrimination.

The Act extends this power so that it will now be possible for a tribunal to make recommendations that an organisation takes steps to eliminate or reduce the effect of discrimination on other employees, not only on the claimant (even if the claimant has left their employ). For example, the tribunal might specify that an employer needs to train all staff about the organisation's bullying and harassment policy. This power does not apply to equal pay cases.

Equal Pay - Direct Discrimination the Equality Act retains the previous framework that was in place. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still must be made by comparison with a real person of the opposite sex in the same employment.

However, a change in the Equality Act allows a claim of direct pay discrimination to be made, where no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration from their employer if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work in the organisation. This would be a claim under sex discrimination. The Act carries provisions to introduce compulsory pay audits for employers with more than 250 employees from 2013 (if felt legislatively necessary). Public sector bodies with more than 150 employees will be required to report on gender pay (as well as other equality data) by April 2011.

Pay Secrecy - The Act makes it unlawful for an employer to prevent or restrict their employees from having a discussion to establish if differences in pay exist that are related to protected characteristics and outlaws pay secrecy clauses in contracts of employment. An employer can require their employees to keep pay rates confidential from some people outside the workplace, for example a competitor organisation.

Procurement - The Equality Act contains a specific measure on procurement, making provision: "to enable duties to be imposed in relation to the exercise of public procurement functions". The Act: "makes it clear public bodies can use procurement to drive equality" and creates a more explicit connection between procurement and the new Public Sector Equality Duty.

The Act will 'encourage' and 'enable' Busy Bees Education and Training to use its procurement activities to further equality objectives and seeks to invoke a cultural shift in how public authorities pursue equality objectives through their procurement activities.

Local authorities are explicitly permitted to take non-commercial matters into account during the procurement process, when they consider it is 'necessary' or 'expedient' to do so. This is in order to comply with the Equality Duty.

Useful Contacts and Publications

- ACAS National Euston Tower 286 Euston Road London, NW1 3JJ Web Site: www.acas.org.uk
Tel: 0300 123 1100
 - Equality & Human Rights Commission FREEPOST Equality Advisory Support Service FPN4431
Tel: 0808 800 0084 Web Site: www.equalityhumanrights.com
 - Multifaithnet Web site: www.multifaithcentre.org
 - Gay & Lesbian Humanist Association Web site:www.galha.org
 - Stonewall Tower Building York Road London SE1 7NX
Tel: 0207 593 1850 Web site:www.stonewall.org.uk
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