

## CILEx Malpractice Policy and Procedures – CILEx Learners

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## 1. Introduction

- (i) This document sets out the CILEx policy and procedures for dealing with cases of suspected malpractice by learners for all CILEx regulated qualifications, including:
  - Level 3 and Level 6 Professional Qualifications
  - Level 3 and Level 4 Legal Services Knowledge Qualifications
  - Level 3 and Level 4 Legal Services Competence Qualifications
  - Level 3 Diploma in Law and Legal Skills (Tech Level)
  - Level 2 and Level 3 Legal Studies and Legal Secretaries Qualifications
- (ii) This policy addresses reporting suspected malpractice, malpractice investigations, the role of the Qualifications Malpractice Committee and Qualifications Appeals Committee, the penalties which may be imposed if allegations of malpractice are proven and the appeals policy.
- (iii) The policy and procedures for dealing with cases of suspected centre malpractice or maladministration are set out in the Malpractice and Maladministration Policy and Procedures – CILEx Accredited Centres. The most recent version is posted on the CILEx website ([www.cilex.org.uk](http://www.cilex.org.uk)).

## 2. Purpose

- (i) CILEx is a Chartered Professional Body and an Awarding Organisation regulated by Ofqual, Qualification Wales and CCEA. CILEx is required to comply with the General Conditions of Recognition (Ofqual and CCEA) and the Standard Conditions of Recognition (Qualifications Wales). In accordance with the General/Standard Conditions of Recognition, CILEx is required to establish and maintain, and at all times comply with, up to date written procedures for the investigation of suspected or alleged malpractice or maladministration. The General/Standard Conditions of Recognition which relate to malpractice and maladministration are set out in Section 26 Regulatory references.
- (ii) In order to ensure the integrity of CILEx qualifications and be fair to all learners, it is important CILEx identifies and takes action in cases where the integrity of an assessment, examination or qualification has been or could have been compromised. CILEx will, where possible, take appropriate action to protect CILEx learners caught up in malpractice incidents through no fault of their own. However, in some cases, in order to protect the integrity of CILEx qualifications, it may be necessary for CILEx to withhold and/or void and/or revoke the results/certificates of CILEx learners, who were not themselves culpable for the malpractice which took place, where there is evidence that an assessment, examination or qualification has been compromised and/or that results and/or certificates may be invalid.

### **3. Scope**

- (i) This policy applies to CILEx learners, Heads of Centres, Course Tutors and other accredited centre staff and associated contractors, for example invigilators, CILEx staff and assessors, and other CILEx contractors involved in qualification and/or assessment delivery.

### **4. Compliance with CILEx regulations**

- (i) Learners taking CILEx qualifications are required to comply with the examination, assessment and/or qualification regulations governing the qualification. The up to date regulations are available on the CILEx website.

### **5. CILEx definition and examples of malpractice**

- (i) Malpractice means any act, default or practice which is a breach of CILEx regulations governing examinations and assessment and/or which:
  - compromises, attempts to compromise or may compromise the process of assessment, the integrity of a qualification or the validity of a result or certificate; and/or
  - damages the reputation or credibility of CILEx.
- (ii) Learner malpractice may include:
  - Taking unauthorised materials into an examination room (it is acceptable to leave textbooks etc. at the front/side/back of the room in accordance with the Invigilator's instructions). This could include notes written on a piece of paper/back of the learner's examination admission permit/Key Code Slip/ruler/ learner's arm/ back of hand etc;
  - Communicating with another learner during an examination;
  - Using a mobile telephone/pocket computer/programmable calculator/ personal stereo or other unauthorised communication device during the examination;
  - Non-compliance with instructions or advice of an invigilator or supervisor;
  - Disruptive behaviour during an examination;
  - Impersonating another learner or arranging to be impersonated, for example arranging for another person to take an examination or complete an assessment on one's behalf;
  - Colluding with another learner when carrying out research/preparation for the synoptic assessment or producing responses for a Professional Skills assessment/synoptic assessment;
  - Plagiarism: reproducing work from a published source (including the internet) and presenting it as one's own work;
  - Presenting work produced by another individual as one's own work;
  - Copying the work of another learner or allowing one's own work to be copied by another learner;
  - Falsifying evidence to demonstrate competence in relation to assessment criteria;

- Misleading assessors with regard to a learner's competence against CILEx assessment criteria;
- Falsifying results or certificates.

The above list of examples of malpractice is not an exhaustive list and reports of other suspected learner malpractice will be fully investigated by CILEx.

- (iii) Some incidents of malpractice are intentional whereby a learner is seeking to gain an unfair advantage in an assessment. Other incidents of malpractice may be unintentional or are due to circumstances beyond the individual learner's control. However, in all cases of suspected malpractice, CILEx is responsible for taking action to protect the integrity of its qualifications.

## **6. Allegations of suspected learner malpractice**

- (i) Allegations of suspected learner malpractice may be made by accredited centre staff and accredited centre contractors (for example invigilators), CILEx Assessors, CILEx learners, CILEx staff, others involved in the delivery, examination or assessment of CILEx qualifications or others not directly connected with the delivery of CILEx qualifications.
- (ii) All allegations of suspected malpractice must be reported to the CILEx Education Compliance Team.
- (iii) CILEx normally requests that allegations are made in writing to CILEx and include a full account of the incident along with any supporting evidence.
- (iv) In some cases, an allegation of malpractice may be made anonymously. CILEx has in place the *CILEx Whistleblowing Policy – CILEx Qualifications* which addresses whistleblowing disclosures.

## **7. Reporting suspected malpractice to CILEx**

- (i) Centre staff are required to report any suspected cases of learner malpractice to CILEx immediately.
- (ii) In the first instance, the centre should notify the CILEx Education Compliance Team (see section 24 Useful contacts) in writing. Centres should provide CILEx with details of the allegation including:
- Centre's name
  - Details of the learners affected, as appropriate;
  - The CILEx qualification/s affected
  - Nature of the suspected or actual malpractice and associated dates;
  - Details and outcomes of any initial investigation carried out by the centre or anyone else involved in the case.
- (iii) In addition, the person making the allegation should declare any personal interest they may have in the matter to CILEx.

- (iv) Suspected malpractice in Professional Skills assessments identified by the accredited centre before the learner has signed the *Candidate Submission Checklist* to confirm that the work is the learner's own and the learner has complied with the *Professional Skills Assessment Regulations*, does not need to be reported to CILEx but should be dealt with in accordance with the centre's internal procedures.
- (v) Suspected malpractice in relation to CILEx competence qualifications, identified by the accredited centre before the learner has signed the *Evidence Record Sheet* to confirm that the learner has complied with the *CILEx Regulations for Competence Qualifications* and that the evidence provided is a result of the learner's own work, does not need to be reported to CILEx but should be dealt with in accordance with the centre's internal procedures.
- (vi) Centres may request guidance from CILEx regarding how to investigate and deal with malpractice and to prevent future recurrences of malpractice.

## **8. The investigation**

- (i) The CILEx Education Compliance Team considers allegations of suspected malpractice to determine the potential gravity of the malpractice, the risk to CILEx qualifications, the appropriate course of action and the nature of any investigation which may be necessary. The CILEx Education Compliance Team will also consider any action required to prevent or mitigate an adverse effect from occurring.
- (ii) The CILEx Education Compliance Team oversees all investigations into alleged malpractice.
- (iii) In the first instance, the CILEx Education Compliance Team will normally request that the Head of the Centre, at the centre at which a learner alleged to have committed malpractice is registered to study, investigates the allegation of malpractice.
- (iv) The CILEx Education Compliance Team may determine that it is not appropriate for a Head of Centre to carry out a malpractice investigation, particularly in circumstances where the allegation relates to a suspected breach of security (for example the content of examination papers/onscreen tests becoming known before the date of the examination as set out in the CILEx examination timetable). In such circumstances the CILEx Education Compliance Team may decide to carry out its own investigation.

### **Head of Centre investigations**

- (v) The Head of Centre is required to supervise all investigations into allegations of malpractice for learners registered with the accredited centre, as requested by the CILEx Education Compliance Team.
- (vi) The Head of Centre may delegate an investigation to another member of staff at the accredited centre who is competent to conduct the investigation but must be mindful of potential conflicts of interests if the learner accused of malpractice

is known to the member of staff. Where possible, an independent member of staff should be identified to investigate the allegation.

- (vii) Heads of Centres are required to co-operate fully with the CILEx Education Compliance Team and respond promptly and openly to requests from the CILEx Education Compliance Team to investigate an allegation of malpractice.
- (viii) The investigation carried out by the centre must be fair and free from bias concentrating on the collection of evidence which can be evaluated to determine whether malpractice has taken place.
- (ix) The objectives of the investigation are to:
  - establish the facts relating to the allegation to determine whether the allegation of malpractice can be substantiated;
  - identify the cause of any irregularities, the CILEx learners involved and the extent of their involvement;
  - establish the scale of any irregularities;
  - identify any evidence in support of the allegation;
  - identify any evidence which suggests the allegation is unfounded;
  - identify any changes to policy or procedure that needs to be made by the centre.
- (x) Any interviews conducted as part of the investigation should be conducted in accordance with the centre's own malpractice procedures.
- (xi) The Head of the Centre must submit a comprehensive written report of the case to the CILEx Education Compliance Team addressing the following as minimum:
  - A detailed account of the circumstances relating to the suspected malpractice;
  - A detailed account of the investigations carried out by the centre;
  - Information on the centre's procedures for advising learners about CILEx regulations;
  - The findings of the investigation;
  - Any mitigating factors.

Documentary evidence should accompany the report including, where appropriate:

- Records of any interviews or meetings connected with the investigation;
- Evidence collected as part of the investigation including any learner work or associated material which is relevant to the investigation;
- Written statements collected as part of the investigation, for example, from centre staff, contractors or learners;
- Centre records, for example internal verification/quality assurance records;
- Any other relevant evidence identified through the investigation.

- (xii) The Head of Centre report should be submitted to the CILEx Education Compliance Team by the deadline set out by the CILEx Education Compliance Team which will normally be 15 working days from the date of the letter requesting that the centre conducts an investigation.
- (xiii) Centres are required to cooperate fully with any investigations into centre malpractice or learner malpractice irrespective of whether the centre identified and reported suspicions to CILEx, or the allegation was made by another party, for example, a CILEx learner, CILEx Assessor etc. Centres are expected to respond to requests for information from CILEx in a timely manner. The failure of a centre to cooperate with an investigation into centre malpractice or learner malpractice can lead to results or certificates not being issued and future entries and/or registrations not being accepted.
- (xiv) The CILEx Education Compliance Team will decide on the basis of the Head of Centre's report and supporting evidence whether there is evidence of malpractice and whether any further investigation is required, for example, contacting witnesses, learners, centre staff and other individuals who may be able to assist CILEx with its investigation. The Head of Centre is informed accordingly.

### **CILEx investigations**

- (xv) If the CILEx Education Compliance Team decides it is not appropriate for a Head of Centre to carry out a malpractice investigation, a CILEx investigation will take place, carried out by the CILEx Education Compliance Team or investigators appointed by the CILEx Education Compliance Team. CILEx will ensure that any person appointed to carry out an investigation is competent to do so and has no personal interest in the matter.
- (xvi) The Head of Centre and centre staff are required to comply fully with the CILEx Education Compliance Team investigation.
- (xvii) The scope and activities undertaken as part of each malpractice investigation conducted by the CILEx Education Compliance Team will depend on the nature of the suspected malpractice.
- (xviii) The CILEx Education Compliance Team investigations will involve the gathering of evidence relating to the suspected malpractice. This may include but not be limited to contacting potential witnesses and collecting witness reports, conducting interviews (face-to-face or via telephone) with witnesses, including learners, centre staff or others connected with the alleged malpractice, where appropriate, reviews of learner work, consideration of other work a learner has undertaken with a centre, consideration of the work (examination responses/assessments) produced by other learners at the accredited centre.
- (xix) The objectives of investigations conducted by CILEx are to:
  - establish the facts relating to the allegation to determine whether the allegation of malpractice can be substantiated;

- identify the cause of any irregularities which occurred, the CILEx learners involved and the extent of their involvement;
  - establish the scale of any irregularities;
  - evaluate any action already taken by the centre;
  - determine whether remedial action is required to reduce the risk to current learners and to preserve the integrity of the qualification/s;
  - determine whether any action is required in respect of CILEx results and/or certificates already issued;
  - obtain evidence to support any penalties to be applied to the CILEx learners;
  - identify any patterns or trends;
  - identify any changes to policies or procedures that need to be made by CILEx and/or the centre.
- (xx) Where it is considered necessary to conduct face-to-face interviews with learners, centre staff or others connected with an alleged malpractice, these individuals may be accompanied at interview by a companion, for example a family member or friend. The companion is not permitted to take an active part in the interview and should not answer questions on the interviewee's behalf.
- (xxi) In the event that it is necessary to conduct a face-to-face interview with a learner who is a minor or a vulnerable adult, the interview will be conducted in the presence of an appropriate adult such as the learner's parent or carer or the Head of Centre. The person accompanying the learner should not take an active part in the interview and should not answer questions on the learner's behalf.
- (xxii) The involvement of legal advisors is not considered necessary, however, if an interviewee wishes to be accompanied by, for example a lawyer or trade union official, the CILEx Education Compliance Team must be informed beforehand in order that arrangements can be made for the interviewer to be similarly supported. In this situation the person accompanying the interviewee should not take an active part in the interview and should not answer questions on the interviewee's behalf. CILEx will not be liable for any professional fees incurred.
- (xxiii) Individuals involved in interviews may be requested to provide a written statement.
- (xxiv) The Education Compliance Team aims to complete investigations within 25 working days. However, depending on the availability of evidence, for example the return of marked examination scripts for review, or if a centre visit is required, some investigations may take longer. In such cases, the learner will be advised of the likely timescale.
- (xxv) Following the conclusion of the investigation, the CILEx Education Compliance Team will determine whether there is sufficient evidence to indicate that the CILEx regulations have been/could have been breached and/or the integrity of a CILEx qualification/assessment has been/could have been compromised and/or the validity of a result or certificate has been/could have been compromised and/or the reputation or credibility of CILEx has been/could have been damaged and/or whether there is sufficient evidence to implicate a learner in malpractice. Subject to the findings of the investigation, the CILEx Education



Compliance Team will decide whether to take no further action or to proceed with an allegation of malpractice.

## **9. Withholding results**

- (i) The CILEx Education Compliance Team will withhold the examination/ assessment results for any learner involved in a malpractice investigation until the investigation has been concluded and, where applicable, subject to the Qualifications Malpractice Committee's decision. This may include learners who are caught up in a malpractice investigation through no fault of their own.

## **10. Informing learners**

- (i) In the event that the CILEx Education Compliance Team decides to proceed with an allegation of malpractice, the CILEx Education Compliance Team will ensure that the learner accused of malpractice:
  - is informed in writing of the allegation made against him or her;
  - is provided with the relevant CILEx malpractice policy;
  - knows what evidence there is to support the allegation;
  - knows the possible consequences should malpractice be proven;
  - has the opportunity to consider their response to the allegation;
  - has an opportunity to submit a written statement;
  - has the opportunity to seek advice (as necessary) and to provide a supplementary statement (if required);
  - is informed about the appeals procedure, should the Qualifications Malpractice Committee decide that malpractice is proven;
  - is informed of the possibility that the information relating to a serious case of malpractice may be shared with other awarding organisations, the regulators or the police.
- (ii) Learners will normally be given 10 working days, from the date of the CILEx Education Compliance Team letter setting out the details of the allegation, to provide their written response. If a response is not received by the deadline, a further letter will be sent to the learner giving the learner a further 5 working days to provide a response. If a response is still not received from the learner, the CILEx Education Compliance Team will progress the allegation without a learner response.
- (iii) The CILEx Education Compliance Team will carry out any further investigation, considered necessary, following the receipt of the response from the learner, or if a response is not received by the timelines set out above.
- (iv) In the event that the CILEx Education Compliance Team identifies any further evidence in support of the allegation following a further investigation into the learner's response, this additional evidence will be provided to the learner in order that the learner may provide a further written response.

## **11. Notice of Qualifications Malpractice Committee meeting**

- (i) Following the conclusion of the investigation and the decision by the CILEx Education Compliance Team to proceed, the case will be referred to the Qualifications Malpractice Committee.
- (ii) The CILEx Education Compliance Team shall request that the Clerk of the Qualifications Malpractice Committee convenes a meeting of the Qualifications Malpractice Committee.
- (iii) The Clerk will subsequently advise the CILEx Education Compliance Team and the learner of the date of the meeting.

## **12. Qualification Malpractice Committee Meeting**

### **Documentation**

- (i) Not less than 15 working days before the meeting date, the CILEx Education Compliance Team shall produce and provide the Clerk with papers for the Qualifications Malpractice Committee meeting comprising:
  - (a) the allegation;
  - (b) the evidence to be presented by the CILEx Education Compliance Team;
  - (c) the learner's written response including all supporting evidence provided by the learner with their written response.
- (ii) The information provided in the committee papers will only be that which is directly relevant to the case and which has been made available to the learner accused of malpractice.
- (iii) Where any material is considered by CILEx to be of a confidential nature, CILEx may make any such material available to the Qualifications Malpractice Committee under such circumstances as are necessary to protect the confidentiality of the material.
- (iv) The Clerk is responsible for distributing the papers to the Committee members approximately 10 working days before the meeting.

### **Composition of the Committee**

- (v) Malpractice cases shall be considered by a committee of three members from the pool of committee members.
- (vi) Committee members are appointed to the pool for a term of three years which may be extended by a further term of three years.
- (vii) The Committee members for each meeting shall have no personal interest<sup>1</sup> in any of the cases being considered.

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<sup>1</sup> The definition of a conflict of interest is set out in the Conflicts of Interest Policy and Procedures – CILEx Awarding Organisation and End-Point Assessment Activities

- (viii) The members of the Committee shall choose one of the members present to act as Chair for the purposes of the meeting.

### **Conduct of meetings**

- (ix) Normally Qualifications Malpractice Committee meetings shall be held at the offices of CILEx unless the Committee decides otherwise. Meetings will not be held outside the United Kingdom. Meetings may be held remotely using video or telephone conferencing, as appropriate.
- (x) The Committee's meetings are held in private. Neither the learner nor the CILEx Education Compliance Team Officer/s responsible for the investigation are permitted to be present at the meeting.
- (xi) The Clerk is responsible for arranging Qualifications Malpractice Committee meetings and providing administrative support to the Committee including producing the meeting record and reporting the findings of the Qualifications Malpractice Committee to the CILEx Education Compliance Team and the learner.

### **13. The decision: Qualifications Malpractice Committee**

- (i) The Qualifications Malpractice Committee will establish whether the correct procedures have been followed during the investigation of the case, and that the learner accused of malpractice has been given the opportunity to provide a written statement.
- (ii) The Qualifications Malpractice Committee will then decide whether malpractice (as defined in Section 5) is proven.
- (iii) If the Qualifications Malpractice Committee determines that malpractice is proven, it will determine:
- the penalty to be applied in accordance with the penalties criteria;
  - any action to be taken to protect the integrity of CILEx qualifications and/or examinations/assessments and to prevent a future recurrence of malpractice, where appropriate.
- (iv) The standard of proof as to whether the malpractice allegation is proven shall be on the balance of probabilities (i.e. that it is more likely than not).
- (v) Decisions of the Qualifications Malpractice Committee shall be made by a majority vote of the committee members present.
- (vi) The Qualifications Malpractice Committee must set out the reasons for its decision, including the regulation/s which have been breached.
- (vii) In the event that the Qualifications Malpractice Committee requires further information in order to reach a decision, the Committee may defer its decision. Both the CILEx Education Compliance Team and the learner will be advised about the further information which is required.

- (viii) In cases where it is not possible to establish that malpractice is proven and where the Committee determines that the integrity of the examination or assessment has been compromised, the Committee must take action to protect the integrity of the assessment/examination/CILEx qualifications. Therefore, the Committee may determine that the work submitted (e.g. examination response, synoptic assessment) cannot be accepted as evidence to demonstrate a learner's achievement. In such cases 'Did Not Accept' (DNA) will be recorded on the learner's record and the learner may retake the examination or assessment at the next available opportunity. The Committee must set out the reasons for its decision.
- (ix) A record of the decisions of the Committee is made by the Clerk.
- (x) The learner and the CILEx Education Compliance Team will be notified of the Qualifications Malpractice Committee's decision within 5 working days of the meeting.

#### **14. Penalties criteria**

- (i) Penalties are imposed to:
  - minimise risks to the integrity of CILEx qualifications, examinations and assessments;
  - prevent or mitigate an adverse effect;
  - ensure that learners do not benefit from breaching CILEx regulations;
  - deter other learners from breaching CILEx regulations;
  - maintain confidence in CILEx qualifications.
- (ii) Where the Committee's decision is that one or more of the allegations against the learner has been proved, the Committee must determine the penalty to be imposed on the learner commensurate with the gravity of the malpractice proven and in accordance with the penalties criteria as set out in Appendix 1.
- (iii) The penalties criteria inform the level of penalty imposed on a learner. The criteria are **not exhaustive** but provide a benchmark against which individual cases are considered.
- (iv) CILEx reserves the right to apply penalties flexibly, if particular mitigating or aggravating circumstances are identified.

#### **Referral to CILEx Regulation Ltd**

- (v) In the event that the Committee finds that:
  - malpractice is proven, and
  - the learner is a member of CILEx

the Committee may refer the case to CILEx Regulation Ltd which considers whether the conduct of CILEx members is a breach of the CILEx Code of Conduct.

- (vi) CILEx Regulation Ltd may conduct a further investigation and determine what action to take against the CILEx member. CILEx Regulation Ltd may:
- decide there is no case to answer and reject the allegation
  - decide there is a case to answer and either:
    - i refer the case to the Disciplinary Tribunal or
    - ii where the CILEx member admits the misconduct (and it is appropriate to do so in the circumstances) and they consent the matter can be concluded by deciding:
      - to impose conditions in relation to their future conduct or on their employment.
      - to require undertakings to be given in relation to their future conduct.
      - to reprimand and/or warn.
  - If the matter is referred to the Disciplinary Tribunal it, additionally, can impose a fine on a member and/or exclude them from membership of CILEx.
- (vii) CILEx Regulation Ltd will notify the CILEx Education Compliance Team of any finding made by CILEx Regulation Ltd.

## **Appeals**

- (i) A learner, or a centre acting on behalf of a learner, may appeal against:
- (a) a finding of the Qualifications Malpractice Committee that one or more allegations has been proved; or
  - (b) any penalty imposed by the Qualifications Malpractice Committee; or
  - (c) a decision of the Qualification Malpractice Committee that the integrity of an examination or assessment has been compromised and therefore learners' work cannot be accepted.
- (ii) CILEx may appeal against:
- (a) a finding of the Qualifications Malpractice Committee; or
  - (b) any penalty imposed by the Qualifications Malpractice Committee; or
  - (c) a decision of the Qualifications Malpractice Committee that the integrity of an examination or assessment has not been compromised and therefore learners' work can be accepted.
- (iii) A written request for an appeal must be made within 20 working days of the date of the correspondence from the Qualifications Malpractice Committee Clerk confirming the Qualifications Malpractice Committee's decision and the penalty agreed by the Committee. This deadline will normally be set out in the letter confirming the decision of the Qualifications Malpractice Committee.
- (iv) The appeal request must be addressed to the Qualifications Appeals Committee at the offices of CILEx and include:

- (a) the name and address of the appellant;
  - (b) the date, nature and other relevant details of the decision which is the subject of the appeal;
  - (c) a concise statement of the grounds of the appeal.
- (v) The request for an appeal must be signed by the appellant and be accompanied by a copy of any documents on which the appellant proposes to rely for the purposes of the appeal. It is important that all relevant documentation is included at this point as there will be limited opportunities to submit additional information later in the process.

## **15. Grounds for appeal**

- (i) Appellants must set out the grounds on which they rely. The grounds must be reasonable and relate to the case in question. The following are examples of reasonable grounds:
- the case was not dealt with in accordance with the published CILEx policy and procedures;
  - the Qualifications Malpractice Committee decision was unreasonable in light of the evidence presented to the Committee;
  - the penalty/sanction was not appropriate in accordance with the CILEx penalties/sanctions criteria; or
  - the evidence supporting a decision by the Qualifications Malpractice Committee to accept/not to accept the work of a learner is sufficient/insufficient.
- (ii) The following are examples which by themselves do not constitute grounds for an appeal:
- The learner regrets his/her actions;
  - The learner has a previously unblemished record with CILEx (or other awarding organisations).
- (iii) Requests for appeals are checked by a CILEx Officer. The grounds for appeal are checked for their validity. Subject to the grounds for appeal being valid the appeal will be submitted for formal consideration by the Qualifications Appeals Committee.

## **16. Notice and arrangements for the Qualifications Appeals Committee hearing**

- (i) The Clerk to the Qualifications Appeals Committee shall as soon as reasonably practical organise a Qualifications Appeals Committee hearing.
- (ii) The Clerk shall contact the appellant to confirm whether the appellant wishes to attend the Qualifications Appeals Committee hearing prior to finalising a date for the hearing.

- (iii) The appellant may be accompanied by a relative or friend. In such cases, the appellant must provide the Clerk with the name and address of the person to accompany them no later than 10 days before the date of the hearing.
- (iv) Legal representation is not normally permitted at Qualifications Appeals Committee hearings, as a Qualifications Appeals Committee hearing is not a legal function.
- (v) If the appellant wishes to be legally represented, this must be discussed with the Clerk before a hearing date is finalised. In the event that legal representation for the appellant is agreed, CILEx reserves the right to also be legally represented. CILEx will not be liable for any professional fees incurred by the appellant.
- (vi) Appeals are normally considered by the Qualifications Appeals Committee within 50 working days of receipt of the written request for an appeal.

## **17. Qualification Appeals Committee documentation**

- (i) The documentation presented to the Qualifications Appeals Committee will be:
  - the documentation presented to the Qualifications Malpractice Committee;
  - the record of the Qualifications Malpractice Committee's decision;
  - the appellant's statement of the grounds of appeal;
  - the documents provided by the appellant on which the appellant is relying for the purposes of the appeal.
- (ii) Where any material is considered by CILEx to be of a confidential nature, CILEx may make any such material available to the Qualifications Appeals Committee under such circumstances as are necessary to protect the confidentiality of the material.
- (iii) The Clerk will provide the Qualifications Appeals Committee, appellant and the other party (i.e. the learner or the CILEx Education Compliance Team, as appropriate) with the hearing documentation approximately 10 working days prior to the hearing.
- (iv) It will not normally be possible for additional materials to be tabled on the day of the hearing. The decision whether to allow any additional materials to be tabled will be made by the Chair at the hearing, with the consent of the other party.

## **18. Qualifications Appeals Committee**

### **Composition of the Committee**

- (i) Appeals shall be heard by a committee of three members from the pool of Qualifications Appeals Committee members. A minimum of one member will be an independent member (i.e. not a member of CILEx staff or an assessor working for CILEx or otherwise connected to CILEx).

- (ii) Committee members are appointed to the pool for a term of three years which may be extended by a further term of three years.
- (iii) The Committee members attending a hearing shall have no personal interest<sup>2</sup> in the appeal/s being considered.
- (iv) The Committee members attending a hearing must not have been members of the Qualifications Malpractice Committee which considered the case.
- (v) The members of the Qualifications Appeals Committee present at the hearing shall choose one of their number to act as Chair for the purposes of the appeal.

### **Conduct of meetings**

- (vi) Qualifications Appeals Committee hearings shall be held at the offices of CILEx unless the Committee decides otherwise. Hearings will not be held outside the United Kingdom.
- (vii) The Clerk is responsible for arranging Qualifications Appeals Committee hearings and providing administrative support to the Committee including producing the hearing record and reporting the decision to the appellant and the other party.
- (viii) In the event that the appellant has chosen not to attend the hearing or has failed to confirm their attendance at the hearing, the Committee will continue to consider all the documentary evidence supplied by the appellant.
- (ix) The Qualifications Appeals Committee shall give the appellant and the other party the opportunity of being heard, if either party wishes. Both the appellant and the other party can choose not to present their evidence to the Committee.
- (x) In the event that either party has stated it wishes to attend the hearing and be heard by the Committee, and the party does not present itself at the hearing on the given date and time, the hearing will proceed in the party's absence.
- (xi) The hearing will take the form of a re-examination of the evidence and reports and other relevant documentation presented to the Qualifications Malpractice Committee and the appellant's appeal statement and supporting documentation.
- (xii) The Chair and the Committee members will have the opportunity to question the appellant and the other party if these parties have chosen to attend the hearing.
- (xiii) Neither the appellant nor the other party are permitted to be present for the Committee's deliberations and decision-making process.

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<sup>2</sup> The definition of a conflict of interest is set out in the Conflicts of Interest Policy and Procedures – CILEx Awarding Organisation and End-Point Assessment Activities



## **The decision: Qualifications Appeals Committee**

- (xiv) The Qualifications Appeals Committee will decide, on the balance of probabilities:
  - whether there was sufficient evidence to support a finding of Qualifications Malpractice Committee; and
  - the appropriateness of the original penalty in light of the CILEx malpractice penalties criteria for learners (Appendix 1).
- (xv) The Qualifications Appeals Committee may determine that malpractice is proven and/or confirm or amend the penalty imposed by the Qualifications Malpractice Committee.
- (xvi) In the event that a decision by the Qualifications Malpractice Committee to accept or not to accept the work of a learner is being appealed, the Qualifications Appeals Committee will determine whether there was sufficient/insufficient evidence to support the decision.
- (xvii) Decisions shall be made by a majority vote of the committee members present at the hearing.
- (xviii) The Qualifications Appeals Committee must set out the reasons for its decision.
- (xix) A record of the decisions of the Committee is made by the Clerk.

## **After the hearing**

- (xx) The appellant will be notified of the Committee's decision within 5 working days of the meeting.
- (xxi) The other party (i.e. the learner or the CILEx Education Compliance Team, as appropriate) will be notified of the Qualifications Appeals Committee's decision within 5 working days of the meeting.
- (xxii) A report of the hearing will be prepared and may be provided to the appellant and the other party within 25 working days. This report is confidential to the parties to the appeal.
- (xxiii) The appellant and the other party will be offered the opportunity to correct errors of fact made in the report. The decision whether to accept these amendments will be at the discretion of the Chair of the Qualifications Appeals Committee.
- (xxiv) The Qualifications Appeals Committee may make recommendations to CILEx in relation to any issues/concerns which emerged during the appeals hearing. The Clerk will provide the CILEx Education Compliance Team with the Committee's recommendations and this team is responsible for disseminating the Committee's recommendations to the appropriate members of CILEx staff.
- (xxv) The decision of the Qualifications Appeals Committee is final, and no further appeal is permitted.

## **19. Fees and payments**

- (i) Learners must enclose the relevant fee with their request for an appeal.
- (ii) In the event that a centre requests an appeal on behalf of a learner, the centre will be invoiced for the appropriate fee within 5 working days of a request for an appeal. Payment terms will be strictly 28 days from the date of the invoice. Non-payment of invoices may result in CILEx services being suspended.
- (iii) The fee is refunded if the Qualifications Appeals Committee upholds the appeal.

## **20. CILEx Certificates**

- (i) In the event that CILEx has awarded a certificate/result to a learner and, following a malpractice investigation, the Qualifications Malpractice Committee has determined that the learner's result for a unit for which the certificate/result has been awarded is void, CILEx will revoke the relevant certificate/result.

## **21. Retention of materials**

- (i) CILEx retains all documentation and records in relation to a malpractice investigation which resulted in penalties being imposed on a learner for five years following the decision and confirmation of penalties.

## **22. Reporting cases of proven learner malpractice**

- (i) CILEx notifies Ofqual, Qualifications Wales, CCEA (as applicable) of all cases of learner malpractice which could either invalidate the award of a CILEx qualification or could affect another awarding organisation. In such cases CILEx will agree appropriate action with the regulatory authorities.
- (ii) CILEx will inform other awarding organisations in cases where an occurrence of malpractice may affect another awarding organisation.
- (iii) In the event that it is identified that a centre undertaking the delivery of a CILEx qualification may be affected by an occurrence of malpractice/ maladministration, CILEx will inform the centre accordingly.
- (iv) CILEx will report cases of learner malpractice to the relevant authorities if proven malpractice involves a criminal act.
- (v) CILEx reports cases of learner malpractice to CILEx Regulation Ltd if the learner is a member of CILEx.
- (vi) CILEx reserves the right to report cases of learner malpractice to the learner's accredited centre.
- (vii) All cases of proven learner malpractice are reported to the CILEx Qualifications Committee for monitoring purposes.

## 23. Useful contacts

Amanda Pipe  
T: 01234 845758

Education Compliance Manager  
E: [amanda.pipe@cilex.org.uk](mailto:amanda.pipe@cilex.org.uk)

Debbie Harris  
T: 01234 844360

Compliance Officer  
E: [debbie.harris@cilex.org.uk](mailto:debbie.harris@cilex.org.uk)

CILEx, Kempston Manor, Kempston, Bedford, MK42 7AB

## 24. Review arrangements

- (i) Following each investigation, the CILEx Education Compliance Team will review the investigation and findings to identify any lessons learnt to inform reviews of relevant policies and procedures.
- (ii) The Education Compliance Manager has overall responsibility for this policy and will ensure it is reviewed at least annually as part of the annual self-evaluation arrangements to take account of stakeholder feedback, actions from the regulatory authorities, changes in legislation, or issues emerging from previous allegations.
- (iii) The policy may be reviewed more frequently in light of operational feedback to ensure the arrangements for dealing with cases of alleged malpractice and maladministration remain effective.

## 25. Regulatory references

- (i) CILEx is required by Ofqual and CCEA to demonstrate ongoing compliance with the General Conditions of Recognition and by Qualifications Wales to demonstrate ongoing compliance with the Standard Conditions of Recognition.
- (ii) This policy addresses the following General/Standard Conditions of Recognition:

<b>A8.1</b>	An awarding organisation must take all reasonable steps to prevent the occurrence of any malpractice and maladministration in the development, delivery and award of qualifications which it makes available or proposes to make available.
<b>A8.2</b>	Where any such malpractice or maladministration is suspected by an awarding organisation or alleged by any other person, and where there are reasonable grounds for that suspicion or allegation, the awarding organisation must –  (a) so far as possible, establish whether or not the malpractice or maladministration has occurred, and (b) promptly take all reasonable steps to prevent any Adverse Effect to which it may give rise and, where any such Adverse Effect occurs, mitigate this as far as possible.

<b>A8.3</b>	<p>For the purposes of this condition, an awarding organisation must –</p> <ul style="list-style-type: none"> <li>(a) establish and maintain, and at all times comply with, up to date written procedures for the investigation of suspected or alleged malpractice or maladministration, and</li> <li>(b) ensure that such investigations are carried out rigorously, effectively, and by persons of appropriate competence who have no personal interest in their outcome.</li> </ul>
<b>A8.4</b>	<p>Where a Centre undertakes any part of the delivery of a qualification which an awarding organisation makes available, the awarding organisation must take all reasonable steps to keep under review the arrangements put in place by the centre for preventing and investigating malpractice and maladministration.</p>
<b>A8.5</b>	<p>An awarding organisation must, following a request from such a Centre, provide guidance to the Centre as to how best to prevent, investigate, and deal with malpractice and maladministration.</p>
<b>A8.6</b>	<p>Where an awarding organisation establishes that any malpractice or maladministration has occurred in the development, delivery or award of qualifications which it makes available, or proposes to make available, it must promptly take all reasonable steps to –</p> <ul style="list-style-type: none"> <li>(a) prevent that malpractice or maladministration from recurring, and</li> <li>(b) take action against those responsible which is proportionate to the gravity and scope of the occurrence or seek the cooperation of third parties in taking such action.</li> </ul>
<b>A8.7</b>	<p>Where an awarding organisation has any cause to believe that an occurrence of malpractice or maladministration, or any connected occurrence –</p> <ul style="list-style-type: none"> <li>(a) may affect a Centre undertaking any part of the delivery of a qualification which an awarding organisation makes available, it must inform that Centre, and</li> <li>(b) may affect another awarding organisation, it must inform that awarding organisation.</li> </ul>

## Appendix 1

Penalty	Criteria
Written warning	<p><b>Minor breach of the regulations which does not affect the integrity of an examination/assessment, for example:</b></p> <ul style="list-style-type: none"> <li>▪ Mobile telephone makes noise for a short period during an examination but is not in candidate's possession.</li> <li>▪ Tearing out pages from answer booklet.</li> <li>▪ Bringing in pre-released case study materials which are not annotated into the examination and which are removed during the reading time of a practice examination.</li> <li>▪ Minor refusal to adhere to invigilator's instructions which does not disrupt other candidates.</li> <li>▪ Unauthorised materials in possession, including an annotated statute book, during the examination (including the reading time) which did not give candidate an advantage over other candidates.</li> <li>▪ Plagiarism – a limited amount of material from a published source not referenced in an assessment but which does not call into question the learner's achievement of the assessment requirements.</li> <li>▪ Failing to keep a learner's own work for the Professional Skills or synoptic assessment secure which does not have an adverse impact on the integrity of the assessment.</li> <li>▪ Minor breach of the supervisor's instructions during a supervised synoptic assessment session which does not compromise the integrity of the assessment.</li> <li>▪ Failure to use scheme documentation in the way indicated in the Qualifications Handbooks, which does not affect the integrity of the assessment.</li> </ul>
One assessment task for a Professional Skills assessment declared void	<p><b>Significant breach of the Professional Skills Assessment Regulations which affects the integrity of the assessment for one task only, for example:</b></p> <ul style="list-style-type: none"> <li>▪ Drafts or final versions for one Professional Skills task shared with another learner.</li> <li>▪ Copying another learner's work for one Professional Skills task only.</li> <li>▪ Working together with another learner (or other learners) to produce the response for one Professional Skills task only.</li> <li>▪ Learner work for one Professional Skills task only is not individual and original.</li> <li>▪ Plagiarism – a substantial amount of material from a published work (including the internet) not referenced for one task only.</li> <li>▪ Where the malpractice proven in relation to one Professional Skills assessment task is considered to have a significant impact on the integrity of the whole assessment, CILEx reserves the right to void the complete assessment and not just one task.</li> </ul>
Assessment result declared void	<p><b>Significant breach of the regulations which compromises, attempts to compromise or may compromise the process of assessment, the integrity of a qualification or the validity of a result or certificate, and/or damages the reputation or credibility of CILEx, for example:</b></p>

- Refusal to comply with Invigilator's instructions which compromises the integrity of the examination.
- Severely disruptive behaviour during an examination (including during reading time).
- Unauthorised materials found on the learner during an examination (including reading time) which would have given learner an advantage over other learners.
- An annotated statute book found in the learner's possession during an examination (including reading time) which would have given the learner an advantage over other learners.
- Learner in possession of an unauthorised device (e.g. mobile phone, personal stereo, MP3 player, e-reader, PDA or similar communication/recording/storage/listening devices) during an examination (including reading time).
- Security breach of an examination paper (hardcopy or online) with evidence that learner had accessed confidential examination materials prior to an examination.
- Refusal to handover suspected unauthorised materials or device when asked or refusal to demonstrate that any suspected materials or device is not in learner's possession.
- Arranging to be impersonated by another individual in an examination/assessment.
- Using programmable calculator in an examination (including reading time).
- Using learner's own paper in an examination (including reading time).
- Communicating or attempting to communicate with other learners during an examination (including reading time).
- Attempting to copy or copying the work of another learner during an examination (including reading time).
- Leaving the examination during the first 45 minutes or last 15 minutes or leaving the examination room without the permission of the Invigilator unless there are justifiable mitigating circumstances (for example, serious illness, fire alarm).
- Removing question papers from the examination room.
- Failing to comply with the procedures for examination clashes including the rules requiring learners to be supervised.
- Altering or interfering with CILEx assessment documentation, for example, examination permits, key code slips, results notifications or certificates.
- Notes, research, drafts, final versions or similar materials shared with another learner for an assessment.
- Copying the notes, research, drafts, final versions or similar materials of another learner for an assessment.
- Working together with another learner (or other learners) when making notes, carrying out research or similar preparation for an assessment.
- Learner work for an assessment is not individual and original.
- Colluding with another learner (or other learners) when producing assessment responses.
- Accessing the internet during an examination or a supervised synoptic assessment session.
- Accessing the CILEx e-assessment platform outside of the supervised synoptic assessment sessions.
- Serious failure to comply with a supervisor's instructions during a synoptic assessment supervised session.

	<ul style="list-style-type: none"><li>▪ Taking part in more than 10 hours of synoptic assessment supervised sessions unless additional hours had been approved by CILEx, for example, in relation to a reasonable adjustment or access arrangement.</li><li>▪ Plagiarism – a substantial amount of material from a published work (including the internet) not referenced for an assessment.</li><li>▪ Failing to keep a learner’s own work for an assessment secure, thereby jeopardising the integrity of the assessment.</li><li>▪ Engaging in activities which undermine the integrity of the assessment and/or qualification.</li><li>▪ Falsifying evidence of competence.</li><li>▪ Failure to disclose that work undertaken to demonstrate competence was undertaken collaboratively with one or more parties.</li><li>▪ Misleading accredited centre staff or CILEx representatives regarding competence against the CILEx assessment criteria.</li></ul>
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