

Live Art Development Agency Grievance and Disciplinary Procedures

Approved by the Live Art Development Agency's Board of Directors on 16 September 2019

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Introduction

Live Art Development Agency (LADA) recognises that the broader contemporary context is one of social hierarchy governed by asymmetrical relations of power, frequently rooted in identity binaries. LADA is committed to undertaking the ongoing work required in understanding the operation of unconscious bias and in cultivating a complex understanding of power and difference.

LADA's Grievance & Disciplinary Procedures have been created to promote respectful and dignified working conditions, to protect everyone, and especially those with marginalised identity subject positions, from harassment, bullying and other discriminatory behaviours, whilst ensuring that LADA acts swiftly and appropriately if such behaviours arise.

Everyone in the United Kingdom is protected by equality laws. The "protected characteristics" under the 2010 Equality Act are (in alphabetical order):

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion and belief
- Sex
- Sexual orientation

LADA is committed to going beyond these 'protected characteristics' and to protect those with a marginalised identity subject position, such as their class and educational backgrounds, against any oppressive or anti-emancipatory behaviour.

Grievance Procedures

In the event of an employee, associated freelance staff, independent artist or others that we work with having a grievance related to their work at or with LADA, it should initially be addressed to LADA's Director for resolution. LADA's Director is Lois Keidan, and their contact email address is lois@thisisliveart.co.uk. They will act as quickly as possible, but shall have one month in which to resolve the grievance, unless external circumstances or the gravitas of the grievance requires additional time.

If the aggrieved party is not satisfied with the response of the Director, or felt it was inappropriate to address their grievance with the Director, they may consult the Chair of LADA's Board of Directors, who may ask for a summary of the grievance to be put in writing (or other more appropriate recorded format) by the aggrieved party. The Chair of the Board of Directors is Cecilia Wee, and their contact email address is newartonmondays@yahoo.co.uk. This Board representative may then present the aggrieved party's case to either a meeting of the Board of Directors or via email to the Board of Directors. If, after a written (or other more appropriate recorded format) representation has been submitted by the aggrieved party and one month has elapsed, no satisfactory solution has been found, the matter may be resolved by the arbitration of a mutually agreed third party. The findings of this third party shall be final and binding.

Prior to the resolution of, and up to the conclusion of, the grievance process, the details of the grievance shall be treated as confidential by the Director, Board of Directors and the aggrieved party. At any stage, the aggrieved party is entitled to be supported in this process by an external third party, internal colleague, or union representative. Once the

grievance has been resolved LADA and/or the aggrieved party are entitled to challenge this previous confidentiality – why is it needed and who is it protecting?

This internal grievance procedure does not replace the right of aggrieved employees to also pursue complaints to an Industrial Tribunal, the Fair Employment Tribunal or to the courts. Those who wish to consider that option may obtain advice from the Equality Commission in relation to incidents of harassment or from the Labour Relations Agency in relation to incidents of bullying.

Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Harassment & Bullying

In everyday language, bullying, victimisation and harassment can be used almost interchangeably to mean similar things. But in the Equality Act 2010, victimisation and harassment have quite specific meanings - while 'bullying' doesn't feature as a legal term at all. As this is the case, LADA will outline what it defines as Bullying and Harassment, their implications, and how LADA will proactively implement both its own policy and intervene where possible.

LADA highly recommends that, with regards to the law, the simplest thing to do which will help in any situation is WRITE DOWN WHAT HAPPENED. Include as much detail as possible but not less than: everyone who was involved, what happened, its impact on you, the time, the date.

What is Harassment?

By law, 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. LADA is committed to looking beyond these 'protected characteristics', as mentioned previously.

Many forms of misbehaviour may amount to harassment. Examples include:

- Physical conduct such as making obscene gestures.
- Verbal conduct such as ageist, ableist, transphobic, racist, xenophobic, religious sectarianism, homophobic, sexist, marital and maternal discriminatory comments, words or pictures (e.g. in posters, graffiti, letters or emails).
- Isolating a person (e.g. "send them to an isolated town") or refusing to co-operate or help them at work or by excluding them from work-related social activities.
- Forcing or coercing a person to take part in religious or political activities.

What is Bullying?

LADA believes bullying is similar to harassment in the sense that it too is offensive, hostile or oppressive behaviour. The main difference is that bullying behaviour need not be related to the equality grounds, but may be done for other, potentially personal reasons.

Bullying and harassment are not necessarily face to face. They may also occur in written communications, email, phone, and online. An employee can also make a complaint against their employer where they are bullied by someone who doesn't work for that employer such as a partner, associate, customer or artist. They should let LADA know if they are being bullied in this way so LADA can then take steps to prevent it from happening again.

Please refer to **LADA's Reporting Structure below for more information.**

Implicit Bias, the Perception of Aggression & Microaggressions

LADA acknowledges that historical imbalances of power can influence perceptions of harm and offence, or the perception that an offensive act is commonplace and therefore harmless, often in ways which replicate stereotypes and other kinds of prejudice.

LADA aspires to demonstrate leadership that takes into consideration its own implicit bias, and the trauma that can subconsciously or unwittingly be caused by those in positions of power and who may even seem to behave sympathetically in order to avoid accountability and or even accuse their accuser. LADA understands that to avoid accountability is a form of emotional and psychological control that reinforces the very systems LADA strives to oppose, and will strive to remain aware of the privileges LADA itself carries.

Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages. Microaggressions can reflect the active manifestation of oppressive worldviews that create, foster and enforce marginalisation. LADA will remain open and receptive to sharing and learning, and ultimately challenge ourselves to try to embrace social transformation.

If you feel like you have experienced this, please refer to LADA's Reporting Structure below for more information.

Breadth & Scope

Live Art can and should be challenging, experimental, exploratory and bold. Artistic freedom of expression is essential, but LADA's creative space must be a 'braver space'. LADA's Grievance Procedures is designed in part to highlight particular areas of risk.

LADA recognises that students, freelancers, early-career artists and junior staff are also particularly vulnerable to abuses of power.

LADA recognises that abuses of power can happen across all working relationships.

LADA's Grievance Procedures aims to take responsibility and empower all staff, associated artists and others across the entire scope of our activities and associations.

Implications of Harassment & Bullying

Harassment and bullying can damage the physical and mental health, confidence, morale and performance of employees and others who are affected by it.

Harassment is unlawful under the Equality Act 2010. Harassment and bullying may also be civil or criminal offences and may contravene health and safety law; under the Health and Safety at Work Act 1974, employers are responsible for the health, safety and welfare at work of all employees.

Apart from the legal implications, both harassment and bullying are not acceptable and do not represent LADA's core values or the standards of behaviour that LADA expects from its employees. Bullying or harassment may be by an individual against an individual (perhaps by someone in a position of authority such as a manager or supervisor) or involve groups of people. It may be obvious or it may be insidious. All types of such behaviour are unacceptable in LADA's workplace and are not permitted or condoned. LADA will treat such behaviour as misconduct which may warrant formal warnings or even dismissal from employment.

Rights

LADA's employees, freelance staff, independent artists and others that LADA works with have a right to work in a dignified, safe and harmonious environment that is free from harassment and bullying, whilst also feeling supported with the power to formally complain about such behaviour should it occur.

LADA's Grievance Procedures are designed to deal with such complaints and LADA encourages aggrieved parties to use it. All complaints will be dealt with seriously, promptly and confidentially, where appropriate.

Aggrieved parties who make complaints, and others who give evidence or information in connection with such complaints, will not be victimised (i.e. they will not be discriminated against, harassed or bullied in retaliation for their actions). Victimization is also discrimination contrary to the equality laws and this policy. LADA will treat this as misconduct which may warrant formal warnings or even dismissal from employment.

LADA sees this work as an opportunity to see its blind spots and continue to work proactively on issues of equality, social justice and workers' rights. Where possible, LADA will use grievances to serve as opportunities to bring in further training, staff development and revise its internal policy.

Employees' Responsibilities

All LADA employees must comply with this policy. They must treat each other with dignity and respect. They must not themselves commit any acts of harassment or bullying against any person, such as their co-workers, freelance staff, and independent artists as well as all others that LADA works with, LADA's job applicants or its customers or audiences. Such behaviour will not be permitted or

condoned. LADA will treat this behaviour as misconduct which may warrant formal warnings or even dismissal from employment.

All LADA employees should discourage harassment and bullying by making it clear that they find such behaviour unacceptable and by supporting co-workers who suffer such treatment. Any employee who is aware of any incidence of harassment or bullying should follow LADA's reporting structure to enable us to quash it.

Employer's responsibilities

LADA will continually make good faith efforts to implement this policy. The main responsibility for this will be carried out by the Director, but all employees are responsible for enforcing this policy on a day-to-day basis, especially in setting a good example for other employees to follow and for intervening where necessary to protect and reassure all those LADA works with.

Both employer and employees will endeavour to remain aware of power imbalances, with the understanding that actions which do not have racist (transphobic, sexist, ableist etc) intentions may still have oppressive, anti-emancipatory results. LADA will take a proactive, 'difference-conscious' approach and recognise that many normalised actions are actually abusive, and challenge itself with open dialogue using regular training for development.

To implement this policy, LADA will:

- Provide all employees with a copy of this policy as part of their contract of employment and ensure they understand and agree with it.
- Provide appropriate training or support to everyone who works for LADA.
- Ensure that all complaints of harassment and bullying are dealt with swiftly and appropriately, and in accordance with our Grievance Procedures.
- Set a good example by treating employees with fairness, dignity and respect.
- Be alert to unacceptable behaviour and take appropriate action to stop it.
- Monitor all incidents of harassment and bullying and review the effectiveness of this policy yearly.

LADA will hold an 'Incident Report' book – recording the date, time, incident, parties involved, witnesses, mental/emotional experience felt by the individual – that will be made available to anyone that wishes to report an incident. Anonymity processes are in place, and the IR book will be reviewed by the Director and Board of Directors quarterly to check for reoccurrences and act as a learning tool for challenging ourselves, rather than be used as a formal process of complaint.

Sexual Harassment & Abuses Of Power

Legal Definitions & Terms

"Sexual Harassment" is unwelcome conduct of a sexual nature, including but not limited to unwelcome sexual advances; requests for sexual favours; or other verbal or nonverbal conduct of a sexual nature, sexual assault, and sexual exploitation. In addition, depending on the facts, dating violence, domestic violence, and stalking may also be forms of sexual harassment.

“Unwelcome Conduct” - Conduct is considered “unwelcome” if the person did not request or invite it and considered the conduct to be undesirable or offensive. Unwelcome conduct may take various forms, including name-calling, graphic or written statements (including those via mobile phones or social media) or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that a person may have welcomed some conduct does not necessarily mean that a person welcomed other conduct. Also, the fact that a person requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.

LADA understands ‘enthusiastic consent’ as a helpful term to delineate between wanted advances and harassment; enthusiastic consent is a mutual verbal, physical, psychological and emotional agreement that happens without manipulation, threats, or coercion, it is a whole body experience. It is not just a verbal “yes” or “no” – it involves paying attention to the other individual as a person and checking in with physical and emotional cues. Consent must be continuous. You can stop at any time, you can change your mind, and just because you said yes to one thing doesn’t mean you have consented to anything else. “Yes” should come from an engaged and consensual individual.

LADA recognises that experiencing and even undertaking nudity and explicit sexual content are part of some Live Art practices. LADA respects and upholds artists’ right to express themselves without being made to feel vulnerable or threatened when experiencing or presenting this kind of work as an essential part of an artists’ aesthetic integrity and personal safety.

Responsibilities

The responsibility for preventing abuse lies with the abuser. It is not incumbent on anyone to take defensive measures (changing their way of dressing, ensuring they are not alone with a potential abuser) to prevent being abused. Without an abuser, abuse will not take place.

- You must take responsibility for the power you have. Do not use it abusively over others more vulnerable than you. Think about what you want, why you want it, what you are doing to get it, and what impact it will have.
- There must be ‘enthusiastic consent’.
- Where possible, call it out. You shouldn’t be ashamed. Try to use this language: “That is not appropriate – it makes me feel uncomfortable.”
- Targets and victims are not expected to be responsible for managing sexually offensive behaviour. You do not have to do or say anything. It’s not your fault. When you’re frozen, sometimes the only thing you can do is physically remove yourself. Just walk away. It’s a way to say, without a word being said, ‘This is not safe, and it’s unacceptable.’
- No one is alone. Everyone has responsibility to stand up for each other, to call behaviour out and to report it. LADA encourages bystander intervention. Disrupt. Defuse. Deflect. Delegate. Show support. Verbally or nonverbally, in the moment or later.
- Once the harassment or abuse has been proven LADA and/or the aggrieved party are entitled to challenge any previous confidentiality – why is it needed and who is it protecting?

Suggested Avoidable Acts of Behaviour:

- It is rarely appropriate for someone in a junior role to be asked by someone in a senior role to work with them in their private home.
- It is never appropriate to verbally sexually objectify anyone's body.
- It is rarely appropriate to send overly personal or suggestive communications to a colleague, especially junior colleagues.
- It is never appropriate to initiate unwanted intimate physical contact.
- It is never appropriate to force people to share their personal experiences to deepen an artwork. If it is offered, it has to be treated respectfully, remain within the trust of the working space and receive the consent of the individual if it is to be included in the public artwork.

Reporting

- LADA hopes that independent artists working with LADA will be empowered to use the same reporting structures as LADA staff.
- LADA aims to have an accessible, supportive and confidential reporting structure.
- LADA agrees that anyone needing to act upon this reporting process can be supported by an external third party, internal colleague, or union representative.
- LADA affirms that logging behaviour in the Incident Report (IR) book is important, even if no further action is wished for. In this way, patterns of behaviour may be identified.

LADA's Reporting Structure

- **Remember, you do not have to do or say anything. It's not your fault. When you're frozen, sometimes the only thing you can do is physically remove yourself. Just walk away. It's a way to say, without a word being said, 'This is not safe, and it's unacceptable.'**
- **If you feel safe and confident to do so, challenge the perpetrator yourself. You could ask a friend, LADA employee or union rep to be there when you do.**
- **If you feel safe and confident to do so, write it in the Incident Report book.**
- **Get advice - where appropriate you can talk to a LADA employee, the Director, local union rep, or police.**
- **Keep records - make a note of incidents, dates, witnesses and any action you have taken. This will be useful if you decide to take formal action and can help you see the problem clearly.**
- **If you can't resolve the problem yourself, you can raise it formally. It's a good idea to thoroughly read these Grievance and Disciplinary Procedures. Your union or a third party can support you through this process.**

Raising Awareness

- LADA ensures that all staff, freelancers and independent artists working with/for LADA and Board members are aware of these guidelines.
- LADA expects the same awareness of colleagues' personal boundaries and safety during off-site, out-of-hours events as we do on normal working days.

Disciplinary Procedures

Informal Warnings

In some cases, it may be possible to resolve matters informally. Sometimes people are not aware that their behaviour is unwelcome and an informal warning and discussion can lead to greater understanding and an agreement that the behaviour will cease. It may be that the individual will choose to do this themselves, or they may need support by an external third party, internal colleague, or union representative.

Such informal warnings shall constitute no part of the formal disciplinary procedure.

Misconduct

Should disciplinary action over an employee's alleged misconduct be considered necessary by the employer, the employee shall be advised in writing prior to any hearing of the grounds of the complaint. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare a defence. Prior to and up to the resolution or conclusion of the disciplinary process, the details of the alleged misconduct shall be treated as confidential by the Director, Board of Directors and all the parties involved. Afterwards, LADA and/or an aggrieved party are entitled to challenge this previous confidentiality – why is it needed and who is it protecting?

A hearing shall be arranged at which the employer shall be represented by the Chair of the Board of Directors and by one other member of the Board. The employee shall be notified of their right to be accompanied at the meeting with an external third party, internal colleague, or union representative.

The companion should be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

LADA will notify the employee of the date, time and location of the hearing (which should be reasonable for the employee and LADA). It will aim to ensure that, before the hearing, the employee has a reasonable opportunity to consider their response to the information provided to them. In most circumstances, a minimum of 5 working days' notice of the hearing date will be given.

Should the representatives of the employer, having heard all evidence, consider that disciplinary action is justified, the employee will be given a first written warning. This warning will contain:

- a) offence complained of;
- b) improvement required; and
- c) date of subsequent review of the employee.

Should there be a recurrence of the behaviour complained of before the date of the review, a second written warning may be issued after a further disciplinary hearing has been held. Behaviour still giving rise to a complaint may warrant a third and final written warning which may be issued after a further disciplinary hearing. Should there be a further occurrence of the behaviour, this will result in immediate fair dismissal. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation or any of its employees.

No written warning shall exist for more than 12 months, after which time it shall be deemed to have lapsed and shall be removed from the employee's personal file.

Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer will make a decision on the evidence available.

The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Gross Misconduct

In cases of alleged gross misconduct the employer shall have the right to suspend the employee on full pay and in writing (or most appropriate format dependant on the individual) set out the principal reasons for suspension, which will be given to the employee. In such circumstances a disciplinary hearing constituted as above will be convened within five working days of the suspension. If the representatives of the employer consider, having heard all evidence, that gross misconduct has occurred, the employee will be subject to summary dismissal.

Appeal

An employee subject to disciplinary action shall have the right to appeal to a full meeting of the Board of Directors. The employee shall be represented by an external third party, internal colleague, or union representative. Any appeal must be lodged within seven days of disciplinary action being taken. The findings of the appeal hearing shall be internally final and binding; although the employee subject to this disciplinary action has the right to pursue further redress through an Employment Tribunal.

Unfair Dismissal

Employers have a 'duty of care' for all their employees. If the mutual trust and confidence between employer and employee is broken – for example, through bullying and harassment at work – then an employee can resign and claim 'constructive dismissal' at an Employment Tribunal on the grounds of breach of contract. Employers are usually responsible in law for the acts of their workers.

Health & Safety

Breach of contract may also include the failure to protect an employee's health and safety at work. Under the Health and Safety at Work Act 1974, employers are responsible for the health, safety and welfare at work of all employees.

Advice

Counselling

LADA believes counselling can provide a confidential and alternative approach to many stressful situations. LADA will always seek to support any individual who feels counselling is an appropriate and helpful framework, such as attending counselling sessions at times during working hours, or employees needing time of work for mental health reasons.

Trade Union

Contact your local representative or check your trade union's website for how to get in touch. They'll help you decide what to do and might be able to come to meetings with your employer to support you.

Contact Citizens Advice

Contact your nearest Citizens Advice - they can help with your discrimination problem and any other problems you have. For example, if you were unfairly dismissed you can get advice about money problems you might have if you're not working.

Free Legal Help

You might be able to get free legal help as part of your home insurance, or through legal aid or a law centre.

Contact ACAS

If you can't get help from Citizens Advice or free legal help, contact Acas. They are an impartial organisation that aims to help people solve problems at work. They can be helpful if discrimination isn't your only problem, for example if you're being discriminated against and also being paid late.

ACAS helpline

Telephone: 0300 123 1100

Text relay: 18001 0300 123 1100

If you're not comfortable speaking English, you can say which language you prefer when you call.

Contact the EASS Helpline

You can also contact the Equality Advisory and Support Service (EASS) with discrimination problems - they can help you find a way forward but can't give legal advice.

EASS helpline

Telephone: 0808 800 0082

Text relay: 0808 800 0084

Calls to these numbers are free.