



**Live Art
Development
Agency**

Grievance and Disciplinary Procedures

2021 update

Approved by Trustees in July 2021.

This policy has been updated by Megan Vaughan, Finance & Administration Manager, but all LADA staff have a responsibility to implement it across all our work and operations.

Reviews are undertaken annually, and compliance monitored by LADA's Board of Trustees.

If you have any questions about this policy or suspect it may have been breached, please contact pandp@thisisliveart.co.uk.

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.

PART 1: 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 Leadership for resolution. LADA's Leadership is [NAMES], and their contact email addresses are [EMAILS].

In the absence of LADA's Leadership, or if the aggrieved party feels it is inappropriate to contact them about the matter, grievances should be addressed to Megan Vaughan, Finance & Administration Manager, via megan@thisisliveart.co.uk.

The aggrieved party will receive an acknowledgement within one week of raising the grievance, and the Leadership (or Finance & Administration Manager) shall have four weeks in which to offer an appropriate resolution, unless either external circumstances or the seriousness of the grievance require additional time.

If the aggrieved party is not satisfied with the response, they may consult LADA's Co-Chairs, who may ask for a summary of the grievance to be put in writing (or other more appropriate recorded format). LADA's Co-Chairs are Ansuman Biswas and Gill Lloyd, contactable via ansuman.biswas@gmail.com and gillathay@icloud.com.

The Co-Chairs will then present the aggrieved party's case to the Board of Trustees, who will agree an appropriate course of action within a further four weeks. If, after that point, 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 Leadership, Board of Trustees, the aggrieved party and, where appropriate, the Finance and Administration Manager. 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, and details may be shared by mutual agreement.

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.

PART 2: 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, and '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.

Wherever a colleague suspects that bullying, victimisation or harassment have occurred, LADA highly recommends that the specific events are recorded, in writing, as soon as possible after they have occurred. Colleagues should include as much detail as possible but not less than: the names of those involved, the names of anyone else present, details of what happened, its impact, the time, and the date. These written notes can then be used for further correspondence and clarity during the disciplinary processes.

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. (As mentioned previously, LADA is committed to looking beyond these 'protected characteristics'.)

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 do not necessarily happen 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. This may manifest as the demonstration of sympathy in order to avoid accountability, or potentially as counter-accusation. 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, non-verbal, 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 in order to embrace social transformation.

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

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 nor the standards of behaviour that LADA expects from its employees. Bullying or harassment may be obvious or it may be insidious, but either is unacceptable in LADA's workplace and will not be 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 them. All complaints will be dealt with seriously, promptly and confidentially.

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). Victimisation 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 and staff development, and to revise its internal policy.

Employees' Responsibilities

All LADA employees must comply with this policy, treating one another with dignity and respect. They must not commit any acts of harassment or bullying against any person, including their co-workers, freelance staff, and independent artists as well as everyone they come into contact with as part of their work with LADA.

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.

Employer's Responsibilities

LADA will implement this policy in good faith. The Leadership will have primary responsibility to ensure the policy is followed, closely supported by the Finance & Administration Manager, but all employees are responsible for enforcing this policy on a day-to-day basis (see above).

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 annually

PART 3: Sexual Harassment & Abuses of Power

'Sexual Harassment' refers to unwelcome conduct of a sexual nature, including but not limited to: unwelcome sexual advances; requests for sexual favors; 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' refers to conduct that the recipient did not request or invite, making it 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 consenting individual.

LADA recognises that experiencing and even undertaking nudity and explicit sexual content are part of some Live Art practices. LADA respects and uphold artists' right to express themselves without being made to feel vulnerable or threatened when experiencing or presenting this kind of work.

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 are 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 aim to take responsibility and empower all staff, associated artists and others across the entire scope of our activities and associations.

Responsibility

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.

Targets and victims are not expected to be responsible for managing sexually offensive behaviour. You do not have to do or say anything; sometimes the only thing you can do is physically remove yourself. It's a way to indicate that the behaviour is unacceptable. If you do feel able to address the situation verbally, try using this language: 'That is not appropriate – it makes me feel uncomfortable.'

LADA encourages bystander intervention. Disrupt. Defuse. Deflect. Delegate. Show support. Verbally or nonverbally, in the moment or later.

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.

Behaviours to be avoided:

- It is never appropriate for someone in a senior role to invite someone in a junior role to work with them in their private home
- It is never appropriate to comment on anyone's body
- It is never 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 rarely appropriate to require people to share their personal experiences in the development or presentation of art. If it is offered, it has to be treated respectfully, remain within the trust of the working space, and the individual must provide informed and enthusiastic consent if it is to be shared publicly

PART 4: Reporting an incident

LADA aims to have an accessible, supportive and confidential reporting structure, where all participants can draw on the advice and support of colleagues, third parties, or union representatives where appropriate. Independent artists working with LADA will be empowered to use the same reporting structures as LADA staff.

LADA's Reporting Structure

Step 1: remove yourself from the harmful situation, or, if you feel confident to, calmly attempt to diffuse it

Step 2: record the incident in writing, including the names of those involved, the names of anyone else present, details of what happened, its impact, the time, and the date

Step 3: report the incident to LADA's Leadership (or, if preferred, the Finance & Administration Manager)

Step 4: the issue will be acknowledged within one week, and a formal response prepared within four weeks. If more time is required to investigate fully, you will be notified at the earliest opportunity and given a clear and specific timeline for resolution

Step 5: if you feel the incident has not been dealt with appropriately, you can refer it to LADA's Co-Chairs for further investigation

Step 6: the Co-Chairs will respond within a further four weeks

Step 7: if you still feel the incident warrants further action, external facilitation or mediation will be employed to help all parties mutually agree an appropriate course of action

PART 5: Disciplinary Procedures

Disciplinary action may be necessary for numerous different reasons, including but not limited to: unauthorised absence, persistent lateness, bullying or harassment, negligence, misconduct, breach of contract, or failure to otherwise meet their obligations to the organisation. LADA will always support staff to address problems through advice or training in the first instance, but accepts that on some occasions disciplinary action will be required.

Informal warnings

In most cases, it may be possible to resolve matters informally. An informal warning and discussion can often lead to greater understanding and provide the tools for employees to address the issues raised.

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

Formal disciplinary actions

Formal disciplinary actions will not be taken until an informal warning has been given, and sufficient time provided to allow the employee to respond.

Should disciplinary action be considered necessary by the employer, the employee shall be advised in writing prior to any hearing. This notification should contain sufficient information about the alleged misconduct or poor performance, and its possible consequences, to enable the employee to prepare a defense.

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 Leadership, Board of Trustees and all the parties involved. Afterwards, LADA and/or any aggrieved party are entitled to challenge this previous confidentiality.

A hearing shall be arranged at which the employer shall be represented by LADA's Co-Chairs, or by one Co-Chair and one other member of the Board. The employee shall be notified of their right to be accompanied at the meeting with a colleague, third party, 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) details of the offence(s);

- b) details of improvement required; and
- c) the date of a subsequent review.

Should there be a recurrence of the issues cited before the date of the subsequent review, a second written warning may be issued after a further disciplinary hearing has been held. Behaviour still giving cause for 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.

If an employee is to be dismissed, they will 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 dependent 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 quorate meeting of the Board of Trustees. The employee may be represented by a colleague, third party, or union representative. Any appeal must be lodged within seven days of disciplinary action being taken. The findings of the appeal hearing shall be 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.

PART 6: Further 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.

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.

The Advisory, Conciliation and Arbitration Service (ACAS)

If you can't access help from Citizens Advice or free legal help, ACAS may offer useful advice. They are an impartial organisation that aims to help people solve problems at work.

ACAS helpline

Telephone: 0300 123 1100

Text relay: 18001 0300 123 1100

The Equality Advisory and Support Service (EASS)

You can also contact the 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