

# Grievance and Disciplinary Policy

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*Currently Being Updated*

BADA follows the ACAS code of practice to help deal with disciplinary and grievance situations at work.

This procedure is designed to help and encourage all staff and faculty to achieve and maintain standards of conduct, attendance and job performance. The aim is to ensure a fair and consistent method for resolving individual grievances within a reasonable time. This procedure sets out the action which will be taken when disciplinary rules are breached. BADA will endeavour at all stages to use mediation to deal with disciplinary issues.

For the purpose of this policy, any reference to 'staff member' also refers any freelance contracted staff or faculty for the duration of their contract period with BADA.

There are two main areas where a disciplinary system may be used:

*Capability/ Performance:*

If BADA encounters difficulties with the performance of one of their staff members, it is good practice and more efficient that such issues are addressed informally, as and when they arise. Only when all informal options have been exhausted and where there is no other alternative should BADA enter a more formal disciplinary or capability procedure assuming no health issues, in which case the sickness policy (Section A) applies for full time employees.

*Conduct:*

Misconduct could range from continued lateness, failure to follow a reasonable management instruction, abuse of the organisation's computer system or Internet access, bullying or harassing behaviour or creating a hostile work environment through theft, violence and committing criminal offences. The graver offences may constitute gross misconduct. In all cases, even gross misconduct will follow the recommendations in the ACAS code of practice.

The Disciplinary Procedure

*Informal Discussion/ Counselling:*

Minor cases of misconduct or poor performance will be dealt with on an informal basis and this will not form part of the disciplinary procedure

BADA hopes that the majority of concerns will be resolved at the stage. When this fails to bring about the desired improvement, formal action should be taken. An informal warning may be referred to in the event of any future recurrence.

*Formal Procedure – Stage 1:*

First formal action

If conduct/performance fails to meet acceptable standards, the staff member will be given 48 hours' notice in writing of a disciplinary meeting in the form of a letter in which they will be advised of the details of the alleged breach of discipline including any relevant evidence. This time can be reduced by mutual agreement.

The letter will enclose supporting documents e.g. copies of paperwork, details of performance etc. as appropriate and the staff member will be given time to prepare their case. The letter will

also remind the staff member of their right to be accompanied by a fellow worker or trade union representative.

#### The disciplinary hearing/meeting

The staff member and their representative should make every effort to attend the meeting. However, BADA will also make every effort to accommodate the schedules of the staff member and their representative. BADA reserves the right to hear a case in their absence if, after several attempts to reschedule, they have failed to attend the hearing.

The Managing Director or one of the Joint Deans, accompanied by the General Manager (or an external advisor if necessary) will conduct the disciplinary hearing. Throughout the hearing, minutes will be taken for the record. At the hearing the following will occur;

- The staff member will be advised of their rights
- The staff member will be advised of all known facts relevant to the case.
- The staff member will be given every opportunity to put forward their case and views. Their witness will be invited to make representations on their behalf.

At the hearing BADA will explain the complaint brought against the staff member and go through the evidence that has been gathered. The staff member will be allowed to set out their case and answer any allegations that have been made. They will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given the opportunity to raise points about any information provided by witnesses. Where they intend to call relevant witnesses they should give advance notice that they intend to do this.

There will be an adjournment to consider facts.

At the end of the hearing, the staff member will be advised of the decision in writing.

#### Representatives:

BADA deems that all staff members have a right to be accompanied by representatives where the disciplinary meeting could result in:

- A formal warning being issued; or
- The taking of some other disciplinary action; or
- The confirmation of a warning or some other disciplinary action (appeal hearings).

The chosen representative may be a fellow staff member, a staff representative, a trade union or an official employed by a trade union. To exercise the right to be accompanied you must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for a staff member to insist on being accompanied by a representative whose presence would prejudice the hearing, nor would it be reasonable for a staff member to ask to be accompanied by a representative from a remote geographical location if someone suitable and willing was available on site.

The representative will be allowed to address the hearing to put and sum up the staff member's case, respond on behalf of the staff member to any views expressed at the meeting and confer with the staff member during the hearing.

The representative does not, however, have the right to answer questions on behalf of the staff member, address the hearing if the staff member does not wish it or prevent the employer from explaining their case.

#### The Decision

After the meeting, the employer will decide whether or not disciplinary or any other actions are justified and inform the staff member in writing.

#### First Warning

Where misconduct is confirmed or the staff member is found to be performing unsatisfactorily BADA will give a written warning in the first instance. This written notice will set out:

- The performance problem
- What improvement is required and by when
- Any support to be provided to the employee
- The possible outcomes if the required level of performance is not reached

This warning will be recorded, but disregarded for disciplinary purposes after 6 months of satisfactory service.

Repetition of this or any other matter of misconduct during the life of the warning will result in an escalation to the next stage of the disciplinary procedure.

The staff member has the right to appeal against the decision (see 'Appeals' section below).

#### *Formal Procedure Stage 2 – Final Written Warning:*

If the offence is of a serious nature or there is no improvement in standards, or if a further offence occurs, a final warning will be given to the staff member which will give details of the complaint, the improvement required and the timescale for expected improvement. It will also warn that failure to improve may lead to action under Stage 3, and will refer to the right to appeal. A copy of this warning will be retained on file but will be disregarded for disciplinary purposes after 12 months subject to achievement and maintenance of satisfactory conduct or performance.

#### *Formal Procedure Stage 3 – Dismissal:*

If there is still a failure to improve or if further serious misconduct occurs, the employee will be dismissed. The staff member will be provided within 5 working days, with written reasons for dismissal, the date on which the employment terminates and the right of appeal. The decision to dismiss will be confirmed in writing.

If a staff member is accused of an act of gross misconduct, BADA reserve the right to suspend the staff member on their normal hourly rate, normally for no more than 5 working days, while the alleged offence is investigated. The staff member must remain available to answer any questions the Academy might have during a period of suspension.

If on completion of the investigation, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

*Examples of Misconduct*

These are the kinds of issues which may result in disciplinary action. This list is for guidance and does not include all situations that may result in disciplinary action. Whether an issue is misconduct or amounts to gross misconduct is generally a question of degree.

Persistent poor timekeeping

Failure to perform to a reasonable and acceptable standard

Frequent short-term absence due to sickness and/or for no explainable reason

Absence from work without medical certificate/unauthorised absence from work

Falsely claiming that absence from work is due to illness

Smoking on Academy premises

Failure to comply with Health and Safety regulations

Unauthorised use of the Academy's computers and IT equipment

Disregard of legitimate management instructions

Abusive and/or inappropriate language or behaviour towards other staff members, students or BADA visitors

Failure to follow policies and procedures

*Examples of Gross Misconduct*

If, after investigation it is confirmed that a staff member has committed an offence of the following nature (the list is not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice:

Dishonesty, theft, fraud or the falsification of records

Fighting, aggressive behaviour or language, bullying, assault or harassment on another person

Misuse of the Academy's property or name. Deliberate damage to Academy property

Serious negligence, which causes unacceptable loss, damage or injury

A serious act of insubordination

Serious misuse of IT (e.g. downloading/emailing of inappropriate material, loading or downloading unauthorised software)

Unauthorised disclosure or leaking of information (subject to the Public Interest Disclosure Act 1998). Unauthorised entry to computer records or database.

Keeping a web log in which BADA is identified or capable of being identified and comments are made about the Academy or any of its staff members or students that, in the opinion of the Managing Director are detrimental.

Serious infringement of equal opportunities e.g. sexual, racist or other harassment.

Serious breach of health and safety

Serious breach of confidence

Serious incapability or behaving in an inappropriate manner through alcohol or illegal drugs

Taking illegal drugs or unauthorised drugs during working hours or on the Academy's premises or attending work under the influence of illegal or unauthorised drugs or alcohol.

A criminal offence committed inside or outside employment that renders the staff member unsuitable for employment by the Academy

Failure to disclose an unspent criminal conviction, which could affect suitability for employment with the Academy

Accepting a gift which could be considered a bribe

Behaviour whether inside or outside work which could bring BADA's name and reputation into disrepute.

Failure to disclose correct information on your CV or application

## **Appeals Procedure**

If the staff member is not content with BADA's response, they may request an appeal in writing to the General Manager within five working days of receiving the decision. An appeal meeting will be heard by the Managing Director or one of the Joint Deans who has not been previously involved in the case where possible. During the meeting the disciplinary penalty which has been imposed will be reviewed.

The Managing Director or one of the Joint Deans, who has not previously been involved in the matter, or an independent third party, will be appointed to hear the appeal and their decision in final.

In the event that new evidence comes to light during the appeal, which was not available at the original hearing, the matter will be passed back to the original members of the first hearing.

The staff member has a right to have an independent, impartial witness present, such as an external mediator provided through The Civil Mediation Council ([www.civilmediation.org](http://www.civilmediation.org)), ACAS ([www.acas.org.uk](http://www.acas.org.uk)), or a member of BADA's Board of Governors who has had no previous involvement in the case. If requested, BADA can organise an independent mediator on the employee's behalf.

BADA will inform the employee in writing of the results of the appeal hearing within five working days.

### *What if I am unhappy with the outcome of the appeal meeting?*

If, having followed this code of practice through all its stages, the staff member receives what they consider to be an unsatisfactory outcome, or that the grievance expressed has not been satisfactorily resolved, they may wish to consider legal action, for example in the case of employees or contractor, through a workplace tribunal. Such claims should be made within three months of the grievance. ACAS offer guidance on this, and other employment matters.

## **Special Cases**

If a staff member is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the staff suitability to do the job and their relationship with other staff members and the students.

## **The Grievance Procedure**

The purpose of this procedure is to provide fair and effective method for resolving individual grievances within a reasonable time. A Grievance is a serious concern or complaint about any aspect of your employment or contract with BADA.

All formal grievances raised under this procedure must be put in writing. Notes relating to any grievance issue will be retained on your personal staff file or contract file.

If a staff member has a grievance about any aspect of their employment, they should follow the procedure as laid out below:

### *Informal Discussion*

If a staff member has a grievance about their employment they should in the first instance discuss it informally with their direct line manager. BADA hopes that the majority of concerns will be resolved at this stage. There is no right to be accompanied by a representative at such an informal discussion.

### *Step1 – Letter*

If the staff member feels that the matter has not been resolved through informal discussion, they should put their grievance in writing to their direct line manager. If the grievance is concerning their direct line manager address it to the General Manager or the Managing Director.

### *Step 2 – Meeting*

BADA's General Manager will arrange a formal meeting to be held within five working days after a grievance is received. The staff member and their representative (if required) should make every effort to attend this meeting.

The staff member will be given the opportunity to explain their grievance and how they think it should be resolved. Consideration will be given to adjourning the meeting for any investigation that may be necessary.

A staff member has a right to be accompanied by a representative where the grievance meeting deals with a complaint relating to:

- An employer not honouring the employment contract,
- Or is in breach of legislation

The chosen representative may be a fellow staff member, a trade union representative or an official employed by a trade union.

The staff member must make a reasonable request to be accompanied. What is reasonable will depend on the circumstances of each individual case. The representative will be allowed to address the hearing to put to or sum up the staff member's case, respond on the staff member's behalf to any view expressed at the meeting and confer with the staff member during the hearing. The representative may not, however, prevent the employer from explaining their case or answer questions on the behalf of or address the hearing if the staff member does not wish it.

### *Step 3 – Decision*

The staff member will be notified in writing of the outcome within five working days or as soon after the hearing as is reasonably possible. If the staff member is unhappy with the outcome they may appeal against the decision and must do so within five working days of receiving the decision.

### *Step 4 – Appeal*

Appeals give the opportunity for the staff member to take the grievance further if not resolved by the original decision. The appeal must be requested in writing to the General Manager.

The appeal will, where possible, be conducted by the Managing Director, or one of the Joint Deans not involved in the original hearing who will have responsibility to try and resolve the matter and provide an answer within ten working days. They will review the facts and carry out any additional investigations if appropriate before reaching a conclusion

All staff members have a right to be accompanied to any appeal hearing that may take place. The alternative person appointed to hear the appeal has the ultimate authority in the grievance matters and their decision will be taken as final.

## **Overlapping Grievance and Disciplinary Cases**

Where a staff member 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 concurrently.