



Arts Council

Grievance & Disciplinary

Policy and Procedures

Revision History

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1. Purpose and Principles

The Arts Council endeavours to provide a positive and appropriate forum to facilitate the timely airing of grievances and issues of discipline. The intention is to ensure that natural justice and fairness to all parties are central and that best practice is employed. The aim is to solve the problem internally in an equitable and speedy way, ideally without recourse to a third party.

The Procedures are intended as a statement of current policy in relation to all of the Arts Council's employees, taking consideration of the Workplace Relation Commission Code of Practice in relation to Grievance and Disciplinary Procedures (2000). However the Arts Council reserves the right to make any changes and amendments to this Procedure that it considers necessary from time to time. All parties involved are obliged to resolve issues through exhaustive use of the Grievance and Disciplinary procedures.

2. Applicability

This policy applies to all Arts Council employees. Reference to staff in the document relates to employees.

3. Definitions

A **grievance** is a concern, worry or unhappiness experienced by an Arts Council employee in relation to any aspect of his or her employment.

A **disciplinary situation** arises when the management of the Arts Council feels that the work performance, competence, attendance, conduct or behaviour of an employee falls below the expected standard.

4. GRIEVANCE PROCEDURE

The Arts Council reserves the right to depart from the precise requirements of this Procedure where it is expedient to do so and where the resulting treatment of the employee is no less fair. The Arts Council may discontinue this process where it becomes impractical for either party to continue with it. The Arts Council will inform the employee concerned if either of these situations arise.

Formal grievances raised under this Grievance Procedure will be recorded and placed in the Arts Council's records and on the employee's personnel file. A copy of the Arts Council's grievance records concerning an employee will be supplied to them at their request.

4.1 Informal Procedure

The Arts Council is of the view that an informal approach to solving matters can often be effective. Employees are encouraged, where appropriate, to raise their grievance informally with their line manager in the first instance.

If, however, an employee feels unable to speak with their line manager, for example, because their grievance concerns that manager, then the employee should speak to their senior manager, the HR Director or another appropriate manager. If the informal approach does not resolve the problem, or the employee does not feel that the informal procedure is appropriate, the employee should use the formal procedure set out below. As an alternative or in advance of a formal procedure, parties may wish to pursue mediation (see Appendix 1). Mediation is a voluntary option.

4.2 Formal Procedure

An employee should put their grievance in writing and submit it to their line manager. Where the grievance concerns the employee's line manager then the grievance should be submitted to the senior manager, the HR Director or another appropriate manager. The written grievance should contain as much detail as possible (including, where appropriate/possible, dates, witnesses, steps taken to resolve the grievance to date, and the remedy sought).

The line manager/an appropriate manager will meet with the employee, normally within 10 working days of receipt of the grievance, in order to discuss the matter. The purpose of the meeting is to enable the employee to explain the grievance and discuss the circumstances surrounding it. One or more managers (up to three) may meet with the employee and make a decision on the grievance.

If the employee's grievance is against a specific person, the person investigating the matter or the person's manager may advise them of who has raised the grievance and give them an opportunity to comment on it.

The employee is entitled to be accompanied at the meeting by a fellow consenting employee or a Trade Union representative (see note 1 below).

Following this meeting, the manager may carry out such further investigations or hold such further grievance meetings as are considered necessary in order to fully investigate the grievance. At the discretion of the Arts Council, the manager may, in consultation with the HR Director, engage the services of a suitably skilled external individual to assist with the investigation.

As soon as possible thereafter the employee will be informed in writing of the outcome of the grievance and of the right to appeal.

All parties to a grievance process shall be required to conduct their assigned duties as normal and maintain civil and courteous relations throughout, even if this means working under protest.

4.3 Appeal

The employee has a right to appeal against any grievance decision. They should inform the appropriate manager in writing (*the name will be notified to the employee at decision*

stage) of their wish to appeal within five working days of the date of the decision setting out the grounds of the appeal.

The Appeal Hearing will be conducted as soon as possible thereafter at which the employee will be given an opportunity to state their case. The meeting will not be a full re-hearing of the matter.

The employee will be entitled to be accompanied by a consenting fellow employee of their choice or a Trade Union representative at the Appeal Hearing (see note 1 below).

The outcome of the Appeal Hearing will be final and binding.

Note 1 (re accompanying colleague / Trade Union representative): The employee must inform the Arts Council of the name of the colleague or trade union representative in advance of the Grievance Hearing. The Arts Council reserves the right to refuse the employee's chosen accompanying colleague or trade union representative attendance at the Grievance Hearing where, for example, in the reasonable opinion of the Arts Council, their attendance would hinder the effective running of the Grievance Hearing, might create a conflict of interest or a breach of confidentiality or otherwise be considered inappropriate. In such a situation, the employee will be given the opportunity to change their accompanying colleague or trade union representative. The employee's chosen colleague or trade union representative may address the hearing to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the Grievance Hearing. The employee's chosen colleague or trade union representative does not have the right to answer questions on behalf of the employee, address the hearing if the employee does not wish them to, or prevent the Arts Council from explaining its case. It is the responsibility of the employee to ensure that their chosen companion is willing to accompany the employee as there is no obligation to accept an invitation to act as an accompanying colleague. Accompanying colleagues will be permitted to take a reasonable amount of time off to accompany employees at grievance hearings.

5. DISCIPLINARY PROCEDURE

The delivery of a quality service in support of the statutory remit and obligations of the Arts Council requires all employees to adhere to high standards of work performance, competence, attendance, conduct, behaviour and integrity around ethical matters. The Arts Council is committed to treating all staff fairly and equitably and to helping staff perform effectively. The purpose of the Disciplinary Policy and Procedure is to ensure that all staff maintain the required standards by making them aware of their shortcomings and identifying how the necessary improvements can be achieved.

Line managers are responsible for making staff members aware of the standards of work performance, competence, attendance, and conduct expected from them and for dealing with shortcomings promptly and fairly.

All cases of disciplinary action under this Procedure will be recorded and placed in the Arts Council's records and on the employee's personnel file. A copy of the Arts Council's disciplinary records concerning an employee will be supplied to that individual at their request.

5.1 General Principles

The following principles apply to the Disciplinary Procedure:

- Every effort will be made by the staff member's immediate manager to address shortcomings in work standards or conduct through the informal procedure outlined below without invoking the formal disciplinary procedure.
- While the formal disciplinary procedure will normally be operated on a progressive basis through the identified stages, the Arts Council reserves the right to skip any stage of this Disciplinary Procedure in terms of potential sanctions to be implemented, where, in the Arts Council's opinion, it is appropriate to do so, either due to the seriousness of the allegation or complaint or severity of performance deterioration.

- Whilst fair procedures will be applied in all circumstances, this Disciplinary Procedure will only apply to employees who have successfully completed their probationary period (or any extension thereof).
- No disciplinary action will be taken before a proper investigation has been undertaken by the Arts Council into the matter complained of (refer pages 6/7).
- If appropriate, the Arts Council may, on written notice, suspend an employee on full pay pending the outcome of the investigation and disciplinary hearing. If an employee is so suspended their contract of employment will continue together with all rights including the payment of salary, but during the period of suspension they will not be entitled to access any of the Arts Council's facilities or represent the Arts Council at any events, except at the prior request or with the prior consent of the Arts Council and subject to such conditions as the Arts Council may impose. The decision to suspend the employee will be notified to the individual and confirmed in writing. Such a suspension in no way implies guilt or wrong doing. A period of suspension will be for no longer than is necessary.
- The staff member will be advised, in advance of the hearing, of the precise nature of the complaint against him or her and will be given copies of any relevant documentation.
- The staff member will be advised of her or his right to be accompanied by a consenting work colleague or trade union representative at any meeting under the formal Disciplinary Procedure (refer page 7).
- The staff member will be afforded the opportunity to state her or his case and challenge any evidence that may be relied upon in reaching a decision.
- Every effort will be made to carry out the disciplinary process without undue delay and to adhere to the agreed timescales. However, the timescales may be extended in exceptional circumstances e.g. due to unavailability of key witnesses or the need for further investigation.

5.2 Examples of conduct which may lead to disciplinary action under this procedure include:

- Failure to meet Arts Council performance standards.
- Refusal to carry out reasonable duties.
- Refusal to obey reasonable instructions.
- Unsatisfactory attendance record including regular lateness, not adhering to contractual hours, persistent unexplained sickness absence, an unacceptably high level of sickness absences/occurrences (per public sector guidelines).
- Breach of organisation policies and procedures, including Code of Governance Framework and Staff Code of Conduct.
- Breach of health and safety rules.
- Bullying, harassment or sexual harassment, victimisation.
- Breach of internet/e-mail policy.
- Negligence.
- Demonstrating lack of respect for colleagues.
- Misuse of Arts Council, customer or suppliers' property or premises.
- Gross misconduct (see examples detailed under this heading below).

Note: This list is not exhaustive.

5.3 Informal Procedure

In the first instance, where the Arts Council considers it appropriate, the Arts Council will attempt to resolve any complaint in an informal manner with the employee. In general, the employee's immediate line manager will deal with short

comings on an informal basis through discussion, counselling and appropriate assistance (training, coaching, more supervision etc.) and, if necessary, putting in place a performance improvement plan (in consultation with the Head of HR), rather than through the formal disciplinary procedure.

Where such a discussion is either not appropriate in the circumstances, or fails to resolve the issue, the formal procedure will apply.

6. Investigation

No disciplinary action will be taken before a proper investigation has been undertaken by the Arts Council into the matter complained of. Wherever possible, the investigation into an allegation of a breach of Arts Council's policy will be carried out by a line manager, senior manager, HR manager or another appropriate manager who is not in any way involved with the allegation which is being investigated. At the Arts Council's discretion, the manager may, in consultation with the HR Director, engage the services of a suitably skilled external individual to assist with the investigation.

Where appropriate, on completion of the investigation, the investigator(s) will submit a written report of its findings to a senior manager, HR Director or another appropriate manager and the staff member. If, following consideration of the report, the manager considers it appropriate, a disciplinary hearing will be convened under the disciplinary procedure below.

The Arts Council reserves the right to use a pre-existing investigation as a basis for considering whether to proceed with a disciplinary hearing in circumstances where the Arts Council has already carried out an appropriate investigation into the same allegation under a separate policy or procedure (for example, the Good Faith Reporting Policy, or the Bullying and Harassment Policy and Procedure).

6.1 Formal Procedure

In all cases, following appropriate investigation, before any disciplinary action (including warnings) is carried out, the employee will be called to a Disciplinary Hearing to discuss the allegations against him/her. One or more managers (up to

three), may meet with the employee to conduct the disciplinary hearing and make a decision arising from same. In advance of the Disciplinary Hearing the employee will be:-

- given prior notice of the date of the proposed Disciplinary Hearing;
- informed of the complaint(s) against them;
- advised of the right to be accompanied; and
- given a copy of any supporting evidence which the Arts Council will refer to and/or rely on at the Disciplinary Hearing.

The employee may be accompanied at the Disciplinary Hearing by a consenting fellow employee (other than an employee the subject of current disciplinary action in respect of the same complaint) or a trade union representative. The employee must inform the Arts Council of the name of the colleague or trade union representative in advance of the Disciplinary Hearing. The Arts Council reserves the right to refuse the employee's chosen accompanying colleague or trade union representative attendance at the Disciplinary Hearing where, for example, in the reasonable opinion of the Arts Council, their attendance would hinder the effective running of the Disciplinary Hearing, might create a conflict of interest or a breach of confidentiality or otherwise be considered inappropriate. In such a situation, the employee will be given the opportunity to change their accompanying colleague or trade union representative.

At the Disciplinary Hearing the employee will again be informed of the complaint against them and will be given an opportunity to state their case.

The Disciplinary Hearing may be adjourned if necessary to make further enquiries or for any other reason.

If the employee fails to attend the Disciplinary Hearing when notified, the Disciplinary Hearing may continue in their absence unless there are exceptional circumstances that prevent their attendance.

After the Disciplinary Hearing the employee will be notified in writing of the decision and the nature of any disciplinary action (if any) to be taken within a reasonable period of time. They will also be notified of their right to appeal.

NOTE: The Arts Council reserves the right to continue with a disciplinary process notwithstanding the fact that an employee raises a grievance in relation to the subject matter of the disciplinary process or otherwise.

Where the Arts Council considers that a disciplinary sanction is appropriate, there are four possible sanctions which could result:

Verbal Warning: The employee will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of their right to appeal. A note of the warning will be kept on the employee's personnel file. The warning will remain on file for **6 months** after which time it will lapse subject to satisfactory attendance, conduct and performance. The employee will be advised if they commit a further offence during the period specified in the warning, further disciplinary action will be taken.

First Written Warning: The employee will be advised in writing of the reason for the warning. They will also be advised of their right to appeal. A copy of the warning will be kept on the employee's personnel file. The warning will remain on file for **12 months** after which time it will lapse subject to satisfactory attendance, conduct and performance. The employee will be advised if they commit a further offence during the period specified in the warning, further disciplinary action will be taken.

Final Written Warning: The employee will be advised in writing of the reason for the warning. This warning will state, if they commit a further offence during the period specified in it, their employment will be terminated. A copy of the warning will be kept on the employee's personnel file. The warning will remain on file for **18 months** after which time it will lapse subject to satisfactory attendance, conduct and performance.

Dismissal or other sanction: If conduct, attendance or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, or the offence is so serious, employment may be terminated. The employee will be provided, within 14 days, with the written reason for the dismissal and the date on

which their employment will terminate. The employee will also be told that they have a right to appeal against the decision.

As an alternative to dismissal, the Arts Council reserves the right instead, and/or in conjunction with a written warning, to:

- impose a deferral of an increment or a reduction in pay;
- impose a reduction in annual leave allowance (provided the minimum requirements of the Organisation of Working Time Act 1997 are met);
- implement a debarment from recruitment competitions, from specified competitions or from promotion for a specified period of time;
- redeploy the employee to another role within the Arts Council;
- impose a withdrawal of concessions or allowances;
- place the employee on a lower rate of remuneration (including the withholding of an increment);
- demote the employee to a specified lower grade or rank;
- re-allocate area/s of responsibility/duties;
- suspend the employee without pay for a period.

In instances of **gross misconduct**, the Arts Council reserves the right to dismiss an employee summarily without notice or pay in lieu of notice. The following is a non-exhaustive list of what the Arts Council considers to constitute gross misconduct:

- Attempted/actual theft fraud, embezzlement, misappropriation of funds, bribery, corruption or falsification of records (e.g. Arts Council documentation, expense claims, attendance records etc.);
- Breach of Health and Safety rules which endanger the health and safety of oneself or others;
- Failure to disclose conflicts of interest or follow Arts Council procedures in relation to same;
- Exercising improper influence for the purpose of making a personal/family gain, failure to follow Arts Council guidelines regarding receipt of gifts, acceptance of improper gifts/hospitality, e.g. from commercial organisations, individuals, artists or arts organisations;
- Unauthorised use or disclosure of confidential information;

- Actions that damage the reputation of the Arts Council or bring it into disrepute
- Malicious damage to the Arts Council's, its clients or other employees' property;
- Flagrant disregard of Arts Council procedures, rules and regulations;
- Serious act of sexual, racial or other harassment;
- Violent, abusive, intimidating or disruptive conduct;
- Acts of victimisation;
- Being in possession of or being under the influence of non-medically prescribed drugs whilst on Arts Council premises, at work or on Arts Council business;
- Being under the influence of alcohol whilst at work or on Arts Council business;
- Unauthorised entry/access to computer and/or other records/files;
- Gross negligence;
- Engaging in prohibited / unlawful activities;
- Serious breach of duty;
- Serious breach of trust;
- Acts of dishonesty;
- Any action constituting a criminal offence that makes an employee unsuitable for employment;
- Failure to disclose correct information or inclusion of incorrect information on an Application Form or C.V.;
- Breach of the Staff Code of Conduct.

6.2 Appeal

The employee has a right to appeal against any disciplinary decision. They should inform the manager in writing (*name will be advised in the disciplinary decision letter*) of their wish to appeal within five working days of the date of the decision, setting out the grounds of the appeal. The employee will be informed of the person/s conducting the appeal. This person will not have been previously involved in this process.

The Appeal Hearing will be conducted as soon as possible thereafter at which the employee will be given an opportunity to state their case and will be entitled to be accompanied at the Hearing by a consenting fellow employee of their choice (other than an employee the subject of current disciplinary action in respect of the same complaint) or a trade union representative. As above, the Arts Council reserves the right to refuse the employee's chosen accompanying colleague or trade union representative attendance at the Appeal Hearing where, for example, in the reasonable opinion of the Arts Council, their attendance would hinder the effective running of the Appeal Hearing, might create a conflict of interest or a breach of confidentiality or otherwise be considered inappropriate. In such a situation, the employee will be given the opportunity to change their accompanying colleague or trade union representative.

The appeal will normally only consider the appropriateness of the decision or sanction. A further investigation into the alleged misconduct will not be held unless new evidence is provided which was not available to the original investigation.

Disciplinary sanctions will take effect automatically pending the outcome of any Appeal Hearing. For the avoidance of doubt where a decision to terminate is appealed and the dismissal is upheld, the date of termination of employment is the date of the original decision and not the date of the appeal.

7. Review of Policy

The Arts Council reserves the right to review this policy at any time to ensure it is in line with any new or revised employment practices, regulations, guidance and in light of the experience of the policy in practice. Any proposed changes connected with a review will be communicated in advance with employees during a period of engagement to discuss the proposed changes.

Appendix 1

About Workplace Mediation

(Selected overview from CIPD best practice and advice guide 2013)

'Mediation is based on the principle of collaborative problem-solving, with a focus on the future and rebuilding relationships, rather than apportioning blame.' **from University of Central Lancashire mediation policy**

Mediation is where an impartial third party, the mediator, helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediation distinguishes itself from other approaches to conflict resolution, such as grievance procedure and external dispute resolution mechanisms including rights commissioner, in a number of ways. Mediation is:

- less formal
- flexible
- voluntary
- morally binding but normally has no legal status
- confidential
- (generally) unaccompanied
- owned by the parties

Models of mediation

The way in which a mediator conducts the mediation process will depend on the particular style of mediation involved. Various models exist, although it is common for

mediators to draw on more than one. The most common style in Ireland and the U.K. is **facilitative** mediation. The mediator normally plays an active role in guiding the process. Using joint problem-solving approaches, the mediator asks questions to identify the interests and real issues of disagreement, and helps parties to identify and evaluate options for resolution and settlement. The mediator does not suggest solutions, although they may float ideas.

What happens during a mediation?

There are distinct phases in the mediation process with the following essential elements:

Separate meeting

- **First contact with the parties** – the mediator will meet parties separately. The aim of this first meeting is to allow each individual involved to tell their story and find out what they want from the process.

Joint meeting

- **Hearing the issues** – the mediator generally brings the participants together and invites them to put their side of the story during a period of uninterrupted time. At this stage the mediator will begin to summarise the main areas of agreement and disagreement and draw up an agenda with the parties for the rest of the mediation.
- **Exploring the issues** – having identified the issues to explore, the mediation is now about encouraging communication between the parties, promoting understanding and empathy and changing perceptions. The aim of this part of the meeting is to begin to shift the focus from the past to the future and begin to look for constructive solutions.
- **Building and writing an agreement** – as the process develops, the mediator will encourage and support joint problem-solving by the parties, ensure the solution and agreements are workable and record any agreement reached.
- **Closing the mediation** – once an agreement has been reached, the mediator will bring the meeting to a close, provide a copy of the agreed statement to those involved and explain their responsibilities for its implementation. In some cases no agreement is reached and other procedures may later be used to resolve the conflict. However, nothing that has been said during the mediation can be used in future proceedings.

Confidentiality

Anything said during the mediation is confidential to the parties, and anything said that the parties would not otherwise have known cannot be used in any other context. They may choose to reveal some or all of what has occurred during the mediation to colleagues, or their managers, but only if all parties agree to the disclosure. Typically this agreement to share would cover situations where others need to be involved as part of the agreement, for example if a manager needs to agree training. The only non-voluntary exceptions are where, for example, a potentially unlawful act has been committed or there is a serious risk to health and safety.

When to use mediation

There are no hard and fast rules for when you can or cannot use mediation. In general, mediation is more likely to be successful if it is used at an early stage before attitudes have hardened. However, it can also be used when other attempts to resolve an issue have failed.

Who? It can be used for conflict involving colleagues of a similar job or grade, or between a line manager and their staff. It can be used, exceptionally, where there is conflict between teams, or between a trade union or groups of employees and management.

When? It can be used at any stage in the conflict as long as any ongoing formal procedures are put in abeyance, or where mediation is a stage in the procedures themselves. It can be used before a formal grievance has been identified. It can be used after a formal dispute has been resolved to rebuild relationships.

What? It can be used to address a range of issues including relationship breakdown, personality clashes, communication problems, bullying and harassment.

Timelines

Once the mediator has spoken to the parties they may have a clearer idea of the minimum time needed. It may be that several different meetings are needed over a period of a few weeks, but it is advisable to set aside a whole day in the first instance.

It may be preferable to leave some time (from a couple of days to a week) between the separate meetings and the joint meeting to give the parties (and the mediator) time to reflect on what happened in the first meeting and to consider how they wish to proceed at the joint meeting.

For further information or to discuss the option and process of mediation, contact the HR Director.

*The full CIPD report on mediation best practice and advice is available via http://www.cipd.co.uk/publicpolicy/policy-reports/mediation-resolving-issues.aspx?utm_medium=email&utm_campaign=&utm_content=research