The Boleyn Trust

Disciplinary Policy

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1. POLICY STATUS AND REVIEW

Policy Owner:	Chief Finance and Operating Officer
Policy Author:	Chief Finance and Operating Officer
Approver:	Board of Trustees
Last Review:	October 2022
New Review:	September 2023
Ratified:	26 September 2022

The Board of Trustees has agreed to this Policy and, as such, it applies to all Boleyn Trust entities. Please note that should any further national guidance be issued by external agencies that are relevant to this policy, it will be updated accordingly prior to the review date shown below and re-circulated.

Please Note:

Boleyn Trust CEO and Accounting Officer: **Tom Canning CBE**
Boleyn Trust Chief Finance and Operating Officer: **Steven Lock**

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Chair of the Board of Trustees

2. INTRODUCTION

This Disciplinary Policy and Procedure applies to all school based and central employees of Boleyn Trust (the "Trust").

The Trust recognises it has a statutory obligation to adopt formal policies and to establish workplace procedures for managing staff behaviour and conduct. A high standard of staff conduct is essential for the effective and efficient management of schools and the safety and wellbeing of all staff in the Trust. The Trust recognises that a disciplinary policy and procedure promotes positive behaviour and employment relations, as well as demonstrating the Trusts commitment to dealing with conduct in a fair and consistent way.

At all stages within this policy and procedure, and in accordance with the Equality Act 2010, provision will be made for any reasonable adjustments to accommodate the needs of the individuals attending meetings and Hearings.

This policy and procedure will be applied consistently and fairly to all employees, based on the circumstances of their case. No-one will be treated less favourably on the grounds of their gender, disability, age, race, creed, colour, religion, nationality, ethnic or national origin, Trade Union membership or activity, sexual orientation, gender reassignment, medical condition, marital status or any other protected characteristic. Furthermore, the Trust recognises its responsibility to ensure the implementation of the rules of natural justice as part of this policy and procedure; i.e.

- The employee should know the nature of the allegation(s) against them;
- The employee should have an opportunity to state their case;
- Management should act in good faith;
- A decision maker must give the employee a fair Hearing in advance of the decision being made;
- A decision maker may not be biased or prejudiced.

This policy and procedure is not intended primarily as a means of imposing disciplinary sanctions. Its primary aim is to ensure that employees of the Trust are treated fairly and consistently, ensuring that proper and adequate procedures are observed before any decision is taken

All proceedings under this procedure shall be held in private and shall remain confidential.

The Trust is committed to providing high quality advice to assist Headteachers and governing board in carrying out their complex personnel responsibilities. In addition to the requirement on Trust schools to consult the Chief Executive Officer (or representative) when a determination to dismiss is under consideration, Headteachers and governing bodies are recommended to seek advice from Trust HR in the operation of disciplinary procedures.

3. GENERAL POLICY STATEMENT

The Trust strives to achieve the best possible, efficient and effective service to the public, and to provide this service so as to achieve equality of opportunity, both in the delivery of its services and in employment.

The Trust believes in providing opportunities for training and development for all staff to allow them to develop fully and to encourage them to achieve the highest possible standards of performance and conduct.

Managers and supervisors of staff have a duty to set good standards of performance and conduct by their own example and similarly to expect high standards of performance and conduct from staff. Managers and supervisors should encourage their staff to achieve high standards by giving support, training and opportunities for self-development. Managers have a duty to explain the Trust's requirements to staff and to explain in detail any requirements in particular areas which may be relevant to that employee.

3.4. Counselling

3.4.1 The need to carry out disciplinary action will be lessened by managers and supervisors setting good standards and making it clear that the same standards are expected of employees. Management Action explaining the Trust's requirements will frequently be an effective way of improving behaviour and will reduce the need for disciplinary action. This should be seen as part of the normal responsibilities of management and supervision. Care should be taken to ensure that reasonable standards of privacy and confidentiality are maintained.

3.4.2 Where there are concerns about the capability of a teacher, remember that the Trust has adopted a separate capability procedure which sets out in detail arrangements for the management of staff counselling in such circumstances. Otherwise, this section applies where counselling is required.

3.4.3 Where concerns about performance and/or work conduct have been identified the first most appropriate step is to discuss the problem with the employee. The manager and/or supervisor should speak to the employee concerned, explain their perception of the problem and explain what the required standard of conduct or behaviour is.

3.4.4 Similarly employees should be given the opportunity to explain their perceptions of the problem and be given the opportunity to discuss the problem with their manager or supervisor.

3.4.5 Where improvement is required, it is important that the employee understands what needs to be done, how performance or conduct will be reviewed and over what period.

3.4.6 It may be necessary to keep a formal record of discussions of this nature, especially if there have been previous conversations or where an improvement or action is required. This note should be kept on the school's confidential personnel file and a copy given to the employee. If the employee chooses, they may record their point of view similarly.

3.4.7 It should be emphasised that explaining the Trust's requirements and the standards of performance or conduct required of employees is a normal part of the responsibility of managers and supervisors and should be handled in such a way as to not intimidate employees, but to give them the information about what the Trust's requirements are and to support and encourage them to meet these requirements.

3.5 The Trust believes that this positive approach will normally facilitate the high standards expected. In some cases, however, it will be necessary to take disciplinary action and in order to provide a clear framework for this with clear written rules; the Trust has set out the following disciplinary procedure. The procedure provides a fair and effective method of dealing with any shortcomings in performance and conduct and will have as its aim the achievement by the employee of the standards required.

3.6 Disciplinary action will only be taken where a breach of disciplinary rule(s) has been substantiated after full and fair consideration. Each case will be dealt with individually after taking into account the nature of the 'offence', attendant circumstances and any current disciplinary warnings.

3.7. The Trust recognises the right of all employees to be represented by their trade union or work colleague of their choosing at all stages of the investigation and formal disciplinary procedure. Up to two representatives may attend a hearing, only one being allowed to speak and present the case. Employees will be provided with copies of papers to be produced at disciplinary hearings for passing on to their representative, who will be allowed reasonable time during working hours to meet the employee concerned.

In exceptional circumstances, employees may be accompanied by a legal professional such as a solicitor but only where dismissal is likely and they are unlikely to practice their profession again as a result of the dismissal. Please consult Trust HR for further advice.

3.8 Exclusions

This policy and procedure does not apply to notice of termination of employment given:

- on termination of a contract of employment for which an employee has been specifically engaged;
- in the event of redundancy;
- where the probationary period has not been satisfactorily completed and dismissal

arises from unsuitability for confirmation of appointment. Probationary periods are as follows:

- First appointment as a qualified teacher: one year
- Support Staff (first local government appointment): six months

3.9 Headteachers

This policy and procedure apply to all staff employed by the Trust including the Headteacher. However, for Headteachers in schools with delegated powers, the procedural detail of investigation and hearing needs to be varied as follows:

Investigating Officer role (paragraphs 3.12 - 3.15): The Chair of Governors will request an officer of the Trust to carry out the investigation after consultation with the Chief Executive Officer.

Suspension (paragraph 3.11): Chief Executive Officer in consultation with the Chair of Governors.

Hearing Officer role: up to final written warning (paragraph 3.27): Committee of the local governing board.

Hearing officer role: where dismissal is under consideration (paragraph 3.27): Staffing Committee of the governing board.

Appeal: against written disciplinary warning or dismissal (paragraph 5.2): Committee of the governing board.

3.10 Disciplinary Committee

In order to operate these procedures, the governing board of each Trust school will establish a Disciplinary Committee. Staff employed to work at the school will not be members of this Committee. To hear any disciplinary case or appeal as required by this procedure, a panel of 3 members of the Committee will be convened. No member will hear both a disciplinary case and an appeal on the same issue.

4. DISCIPLINARY RULES

Introduction

4.1 Disciplinary rules are needed for the benefit of both the Trust and its employees. These rules set standards of conduct at work and make clear to employees what is expected of them. They are written down to ensure that all employees know what is required and to avoid any misunderstanding. Any breach of the Trust's disciplinary rules will lead to an investigation, and, where necessary, a hearing which may result in disciplinary action being taken.

4.2 It is unlikely that any set of rules can cover all circumstances that may arise. In drawing up these rules the emphasis is placed on the standards of performance and behaviour which are expected and not on making a complete list of all possible 'offences'. Good sense and judgement is required in the fair and consistent application of these rules to all employees and this places demands for good management.

4.3 It is important that any problems are dealt with quickly and effectively and that matters are not allowed to run on so that a fairly small transgression of discipline becomes a much larger problem. Prompt appropriate action will frequently help an employee to meet required standards.

4.4 General Conduct

The Trust has a commitment to providing services to the pupils of the school which are of good quality, effective and efficient.

4.4.1 Employees are expected to carry out all reasonable and authorised instructions and in so doing to set a good standard of conduct and to behave politely and reasonably to colleagues, pupils, parents and to members of the public.

4.4.2 Employees should not abuse their authority either in relation to a colleague, or to a member of the public.

4.4.3 Employees should achieve an acceptable standard of dress, neatness and personal hygiene. For example, care should be taken to ensure that tattoos and piercings are congruent with the professional image of staff and with the Trust's image as determined by the Trust or Headteacher. Ethnic dress is acceptable wear unless there are specific health and safety reasons for this not being so.

4.4.4 Employees should not be under the influence of alcohol or drugs whether prescribed or not, during working hours to the extent that the performance of their duties or the image of the service is detrimentally affected.

4.4.5 Employees should take due care with Trust / School property and equipment and ensure that it is only used for authorised purposes.

4.4.6 Employees should not deliberately misuse or falsify information.

4.4.7 Employees should make themselves aware of and comply with the rules relating to the use of Trust and School facilities, including information technology and photocopying equipment, postage, telephones, etc. Such information is to be made available to all staff in appropriate guidance, e.g. staff handbook.

4.5 Work Performance

The Trust expects employees to carry out the full duties set out in their job description, (and the School Teachers' Pay and Conditions Document for teachers) at an acceptable level of performance and to co-operate with reasonable requests from managers.

4.5.1 Teachers are expected to meet the teacher's standards set by the Department for Employment

4.6 Attendance and Timekeeping

Employees have entered into a contract of employment with the Trust to carry out a job for the Trust. Regular attendance at work is essential to undertake the duties of that job.

4.6.1 Employees are expected to adhere to their contractual hours and leave procedures.

4.6.2 If employees are unable to attend work for any reason they should notify their school of any absence from duty, including non-attendance at an approved course of training and give the reason for absence as soon as possible and should make every effort that this is no later than 9.00 am on the first day of absence.

4.63 If the reason for absence is sickness, employees must comply with the sickness notification arrangements operating in their School.

4.6.4 Persistent poor timekeeping is unacceptable and has an adverse impact on colleagues and the functioning of the school/Trust. Employees should arrive for work and leave at the prescribed times

4.6.5. Persistent absence is unacceptable because it adversely affects the functioning of the school. Trigger points describing thresholds for length and frequency of absence will normally indicate at what point persistence absence has become an issue.

4.7 Honesty and Hospitality

The Trust expects employees to have high standards of honesty and integrity and not to use their positions to their own advantage. Employees supervising contracts and having close contact with the contractors and suppliers to the Trust should be particularly careful. Employees are reminded to be especially careful when gifts or hospitality are offered by such companies and individuals. The intention behind these acts is often to buy the goodwill of the Trust. Employees in any doubt whether an offer is reasonable should discuss this with their line manager before accepting or, where this is not practical, discuss with their manager immediately afterwards. If

any offer is clearly unacceptable, this matter should also be reported. (In the case of Headteachers, reference may be made to the Chief Operating Officer).

Unacceptable:

- Meals (other than simple meals taken during the course of a meeting), free admission to sporting functions, personal invitations to have an evening out with representatives of an organisation having dealings with the Trust, hotel, theatre and travel tickets, use of a company flat.
- Placing oneself in debt for money or services (under a pecuniary obligation) to any person where this might affect, or be thought to affect, the proper performance of one's duties.
- Gifts or gratuities other than small items worth less than £30.00
- Improper relationships with clients of the Trust, contractors or suppliers to the Trust or colleagues, which might lead to conflict of interest in relation to the employee's work responsibilities.

4.8 Secondary Employment / Private Work

The Trust recognises that some employees will take additional employment outside of their employment with the Trust, or, in some cases, unpaid voluntary work. However, the following rules must be borne in mind:

4.8.1 This work must not be carried out under any circumstances during the hours under which employees are contracted to work for the Trust. This includes doing work during any absence from work during normal working hours.

4.82 Private work within the Borough which might involve any dealings with the Council must be disclosed and can only be done with the Headteacher's approval (or Chair of Governors, following consultation with the Chief Executive Officer, in the case of the Headteacher).

4.8.3 APT & C staff above Scale 6 are subject to a condition of service which says that they shall devote their whole time service to the work of the Trust and shall not engage in any other business or take up any other additional appointment without the express consent of the Trust. Staff at the scale or above employed by a school should obtain this consent in writing from the Headteacher.

4.9 Loyalty to the Trust's Interests

Employees should be careful not to pass on information to the Trusts competitors and not to take on private work from other organisations or individuals where there may be a conflict of interest. Employees should report any contacts which may compromise the Trusts interest to the Chief Operating Officer.

4.10 Health and Safety

Employees have legal duties under Sections 7 and 8 of the Health and Safety at Work Act.

4.10.1. Employees must wear appropriate protective clothing provided by the Trust for particular duties.

4.10.2. Employees must comply with accident reporting procedures.

4.10.3. Employees must follow safety instructions and codes of practice.

4.10.4. Employees must comply with hygiene requirements.

4.10.5. Employees must not engage in dangerous or reckless behaviour involving risk of injury to themselves or other persons.

4.11 Violence / Verbal Abuse

Acts of violence or threatening behaviour and verbal abuse will not be tolerated.

4.12 Adherence to Policies and Procedures

Employees should be provided by their Headteacher with details of the Trust's rules standing orders, financial regulations, health and safety procedures, personnel and equal opportunities policies and any other appropriate policies and procedures as they affect their job. Employees should familiarise themselves with this relevant information as it affects their job.

4.13 Maintaining the Trust's Image

Employees should ensure at all times, and particularly in any dealings with the public, that their words, appearances and actions do not bring the Trust into disrepute.

4.13.1 Conduct, whether during working hours or not and including conduct of a criminal nature, is a legitimate concern of the Trust and disciplinary action may be taken where conduct has been prejudicial to the Trust's interest. This does not however preclude employees who consider they have been unfairly treated or discriminated against by the Trust from pursuing their case. Employees should notify their Headteachers of conviction (including receiving a caution), who in turn should notify the Trusts Human Resources Manager, for any criminal offence however apparently minor during their employment with the Trust.

4.13.2 Employees should declare to their Headteacher any family, business or personal relationship with any Trustee or member of the Governing Board of

the school at which they are based. A Headteacher should disclose any such relationship to the Chief Operating Officer.

4.13.3 Employees should not engage in employment, including self-employment, during off-duty hours when such employment conflicts with their main contract of employment and thereby with the interests of the Trust or in any way undermines public confidence in the conduct of the Trust's business.

4.14 Confidentiality of Personal Information

Personal information, whether information about clients of the Trust, other employees or members of the public gained through the job or in any other way, must not be maliciously spread or become a subject of gossip either by means of social media or face to face contact.

Images of colleagues, children, parents and vulnerable adults must only be obtained with the consent of the subjects and should be stored, processed and disposed of only in accordance with data protection principles. Proper authorisation is also required for the collection, processing, storage and disposal of work-related data that identifies individuals or is of a sensitive or confidential nature.

Please refer to the Trust's Data Protection (GDPR) Policy.

4.15 Equal Opportunities

The Trust wishes to create through the adoption of its equal opportunities policy a working environment which is supportive to everyone and does not illegally or unfairly discriminate against any employee or member of the public as a client of the Trust.

4.15.1 Employees and relevant bodies will be expected to pursue actively the Trust's policies on equal opportunities.

4.15.2 Employees are not to discriminate against or harass any colleague or member of the public on the grounds of a person's race, religion, gender, marital status, disability, sexual orientation, age, or any other form of discrimination. Harassment can be behaviour by one or more people against any other person(s) which causes offence or embarrassment, or creates fear, stress, tension or any other detriment in the workplace. This definition includes racist or sexist remarks and stalking. Even if these are intended as a joke, they are offensive and will not be tolerated.

4.15.3 Managers have a special responsibility to ensure that the workplace is free from discrimination and harassment, and to take appropriate action at the earliest possible opportunity.

4.15.4 Employees must not display material which is likely to offend.

4.15.5 Employees are required to undergo any training associated with equal opportunities.

4.15.6 Managers with a senior role are reminded of their special responsibility to conduct themselves properly in accordance with these rules and the spirit of the policies. This is emphasised because of the importance of managing by example, and because junior colleagues are likely to find it harder to make a complaint about their manager's conduct, should they find it offensive.

4.16 Gross Misconduct

Some acts by their nature are so serious that they destroy the employment relationship between the employee and the employer and make any further working relationship and trust impossible. These acts are considered to be gross misconduct and will normally lead to summary dismissal (dismissal without notice following a hearing). So that all employees are aware of the actions which will jeopardise their employment with the Trust, examples of the 'offences' which may be regarded as gross misconduct are listed below. This list is not exhaustive.

4.16.1 Improper use of an official position for private gain or the private gain of some other person including soliciting or accepting bribes.

4.16.2 Fighting with or physical assault on students, members of the public or other employees, including maltreatment of persons in the Trust's care.

4.16.3 Deliberate misrepresentation as to personal information required by the Trust, e.g. date of birth, status, qualification, experience and health.

4.16.4 Deliberate falsification of time sheets, claim forms, letters, etc.

4.16.5 Theft, misappropriation, unauthorised possession or malicious damage to property, materials or equipment of the School / Trust, its clients or other employees.

4.16.6 Non-compliance with a safety code such as to endanger life or cause serious permanent injury.

4.16.7 Unauthorised use of School / Trust materials (including waste food), equipment, vehicles or School / Trust facilities whether during or outside the working day.

4.16.8 Use of School / Trust labour for private purposes.

4.16.9 Conduct, including conduct of a criminal nature, prejudicial to the Trust's interest whether:

a) committed at work; or
b) committed outside working hours, having regard to the nature of the offence, the duties of the employee's post and any damage to the reputation and integrity of the Trust.

4.16.10 Doing private work during hours when contracted to work for the Trust this includes unpaid voluntary work unless it has been approved by the Headteacher (or Chair of Governors in consultation with the Chief Executive Officer in relation to a Headteacher).

4.16.11 Serious or persistent acts of discrimination against employees, clients or members of the public, on grounds of race, religion, gender, marital status, disability, sexual orientation, age, or any other form of discrimination.

4.16.12 Serious or persistent failure to comply with the Trust's equal opportunity policy.

4.16.13 Serious or persistent acts of harassment, for example:

- Verbal abuse which incorporates derogatory language relating to a person's race, religion, gender, disability, marital status, sexual orientation, age or other discriminatory terms;
- Unwelcome and intentional touching of another person's intimate body area; and
- Behaviour which cannot be justified, is in conflict with equal opportunities policy, is found to be offensive by the victim, is perceived by the victim to be harassment and which persists despite the victim making it clear to the harasser that they object to the behaviour in question, or continues despite the offence caused being apparent to a reasonable person.

This type of behaviour need not involve direct abuse but could include stalking or general remarks about gender, race, etc., which are offensive, including the use of patronising terminology, "jokes", or other words or actions detrimental to a good working environment.

4.16.14 Use of unofficial software on, or attachment of modems to, School / Trust computers. While the use of games and bulletin boards, etc., outside of work time may appear harmless and the use of personal copies of business software may be thought to be to the Trust's advantage, the risks arising from such uses are potentially very serious indeed. These risks include the possible introduction of computer viruses, breaches of security of confidential information and possible action against the Trust for breach of copyright. Unauthorised activities which give rise to such risks will be regarded as potentially gross misconduct, warranting summary dismissal.

4.16.15 Use of social media that brings the Trust or school into disrepute.

4.16.16 Use of the internet that brings the Trust or school into disrepute.

4.16.17 Use of the internet that seriously undermines confidence and trust in an employee's suitability to perform their work-related tasks and/or is likely to cause a reasonable person to question an employee's suitability to hold their position of employment. For example, regularly viewing, disseminating, uploading or downloading child pornographic content.

4.16.18 Serious or persistent breaches of child safeguarding principles, practice or policy including conduct out of working hours that harms a child or vulnerable adult or puts a child or vulnerable adult in harm's way.

4.16.19 Cumulative misconduct. For example, where a warning for misconduct has not expired and a further act of misconduct has been committed and the conduct in its totality provides a sufficient reason for dismissal.

4.16.20 Failure to inform the school of any criminal arrest or conviction or orders relating to child care whilst employed at the school.

4.16.20 Failure to disclosed if a member of your household is disqualified from working with children under the childcare disqualification working regulations 2009

5. DISCIPLINARY PROCEDURE

Introduction

5.1 This disciplinary procedure has been carefully designed to ensure that standards of performance and conduct are met and to ensure that there is a fair and consistent method of dealing with problems of performance and conduct. Clear guidelines are set out in Part 2 concerning what the Trust's disciplinary rules are and what constitutes acceptable standards of performance and conduct. All employees will be given access to and should make themselves aware of the Trust's requirements.

5.2 It is not the prime objective of the disciplinary procedure to inflict punishment. The main purpose is to encourage an employee whose performance or conduct is unsatisfactory to improve. The procedure serves to ensure that this is done in a fair and consistent manner. Before managers attempt to use the disciplinary procedure, careful note should be taken of the guidance given in Part 1.

5.3 If employees do not achieve the standards expected of them in the Trust's

disciplinary rules, then disciplinary action may be necessary to achieve corrective action.

5.4 There is a difference between a fairly minor breach of acceptable behaviour and a more serious breach. The procedure recognises these differences and the level used in the procedure must take account of these differences

5.5 Employees will only be dismissed without previous warnings in cases of gross misconduct. Offences considered to come into this category are so serious that they destroy the fundamental trust between employer and employee. Examples of gross misconduct are set out in Part 2 (paragraph 2.16).

FIRST STEPS - WHAT A MANAGER NEEDS TO DO

5.6 Where a manager has concerns about an employee's conduct or when a complaint about an employee's conduct has been received, the manager should gather sufficient initial information to form a view as to whether their concerns can be adequately addressed through normal management processes, or whether to carry out a formal disciplinary investigation.

5.7 If the manager decides that a disciplinary investigation should be carried out, it needs to be decided who will do this. Whilst it is desirable that this is not the officer who will hear the case, there may be circumstances where it is not possible to separate the roles. Advice should be taken from Trust HR before finalising who the investigation officer should be.

5.8 The manager must then notify the employee that a disciplinary investigation is to take place and that they may be requested to give evidence to the appointed investigating officer. The employee has the right to be accompanied by a trade union representative or work colleague at any interviews. Employees are responsible for notifying their representatives.

5.9 Employees and their representatives will also need to carry out their own enquiries. Once the management investigation has been completed, the employees should be allowed access to relevant documents and may on request be given a letter of introduction from the Trust to assist him/her in approaching other employees, clients of the Trust or members of the public.

SUSPENSION TO ALLOW INVESTIGATION

5.10 Where dismissal is being considered on the grounds of gross misconduct, the employee should normally be suspended on full pay to allow full investigation of the facts. Periods of suspension should be kept to the minimum. Where dismissal is being considered on the grounds of previous warnings, it may still be appropriate to consider transferring the employee to other duties to allow the investigation to proceed.

5.11 The decision to take either of these courses of action should be taken by the Headteacher (or the Chief Executive Officer in consultation with the Chair of Governors in the case of the Headteacher). If the action is taken by either party, they must inform the other party and the Chief Executive Officer. Only the governing board may end a suspension. This is delegated to the Headteacher who suspended the employee, Suspension and the ending of suspension will be confirmed in writing to the employee.

Staff for whom personnel powers do not rest with a local governing board, the decision to suspend or temporarily transfer an employee will be made by the Chief Executive Officer or Chair of the Board of Trustees (in the case of the Chief Executive Officer).

DUTIES OF INVESTIGATING OFFICER

5.12 The investigation will normally be carried out by an appropriate line manager within the school. Where this is not appropriate or impracticable, then an external independent investigating officer will be appointed to undertake the investigation. Trust HR should be consulted beforehand.

5.13 The duties of the investigating officer will be:

a) to establish the facts of the case, including interviewing the employee, experts/specialists and witnesses. At the interview the employee has a right to be accompanied by a union representative or if he/she so wishes: The notes or transcript of the interview should be sent to the employee, with the opportunity to comment on their accuracy ideally within 5 working days.
b) to prepare a report which should contain all evidence relevant to the matter, which may include records of interviews, details of dates and times, statements, records of attendance, CCTV footage, emails and other computer-related data, organisational rules, policies and procedures and should set out the details of the alleged misconduct.
c) to decide whether or not the facts are sufficient to justify holding a disciplinary hearing;
d) to keep the employee regularly informed of the progress of the investigation;
e) to present the investigation report to the Headteacher (or Chair of Governors and Chief Executive Officer, if the allegation is about the Headteacher).

If there is any allegation of discrimination or harassment, the investigating officer should, wherever possible, be supported by a colleague of the other gender/race, as appropriate.

5.14 If any disciplinary action is to be taken against an employee who is also a trade union representative, the Chief Executive Officer (or representative) should be consulted who will inform the full time officer/official of the trade union concerned.

5.15 It is important that all stages of the disciplinary procedure are completed as quickly as possible in the interests of both management and employees, particularly in cases of gross misconduct.

5.16 DISCIPLINARY ACTION

5.16.1 The potential outcomes of a disciplinary hearing are as follows:

- complaint not substantiated; therefore, no papers placed on the employee's personal file.
- complaint substantiated. It may be appropriate to:

  I. To take management action;
  II. To take formal disciplinary action.

5.16.2 Formal Disciplinary action may be taken at one of 4 levels:

I. First Written Warning
II. Second Written Warning
III. Final Written Warning
IV. Dismissal

5.16.3 The level of action to be taken in response to a substantiated failure to comply with the disciplinary rules will depend on:

a) the seriousness and nature of the complaint;
b) any mitigating circumstances;
c) in some circumstances - the nature of the job;
d) the employee's previous record.

FIRST WRITTEN WARNING

5.17 The first written warning is normally the first level of formal disciplinary action. The procedure set out in 4.1 to 4.12 will be followed to hear the case.

5.18 There is a right of appeal against a first written warning. The appeal arrangements are set out in Parts 5 and 6.

5.19 First written warnings will remain on the employee's school file for a period of six months. The papers placed on the file will consist of the papers submitted at the hearing, the warning letter and the note of the hearing. Access to those papers is a matter for school management to determine. The papers will be removed if there is no further cause for disciplinary action. Please refer to the Trusts Data Protection (GDPR) Policy.

SECOND WRITTEN WARNING

5.20 The second written warning is normally the second level of formal disciplinary action. The procedure set out in 4.1 to 4.12 will be followed to hear the case.

5.21 There is a right of appeal against a second written warning. The appeal arrangements are set out in Parts 5 and 6.

5.22 Second written warnings will remain on the employee's school file for a period of one year. The papers placed on the file will consist of the papers submitted at the hearing, the warning letter and the note of the hearing. Access to those papers is a matter for school management to determine. The papers will be removed if there is no further cause for disciplinary action. Please refer to the Trusts Data Protection (GDPR) Policy.

FINAL WRITTEN WARNING

5.23 The final written warning is normally the third level of formal disciplinary action. A final written warning should be considered if within the twelve-month period that a first written warning remains on the school file the employee's performance has not improved or there has been a further act of misconduct. A final written warning may also be considered if an act of misconduct is sufficiently serious to justify action at a level above first written warning. The procedure set out in 4.1 to 4.12 will be followed to hear the case. In certain circumstances instead of a final written warning a second written warning may be issued for one year. This should only be considered in relation to the nature of the breach of the disciplinary rules and where some extenuating or mitigating circumstances make it appropriate.

5.24 There is a right of appeal against a final written warning. The appeal arrangements are set out in Parts 5 and 6.

5.25 Final written warnings will remain on the employee's school based file for a period of two years. The papers placed on the file will consist of the papers submitted at the hearing, the warning letter and the note of the hearing. Access to those papers is a matter for school management to determine. The papers will be removed if there is no further cause for disciplinary action. Please refer to the Trusts Data Protection (GDPR) Policy.

DISMISSAL

5.26 Dismissal is the final level of disciplinary action. Dismissal may only be considered in one of three circumstances:

I. If within the two-year period that a final written warning remains on the school file, the employee's performance has not improved or there has been a further act of misconduct; or
II. If an act of misconduct is so serious that there has been a fundamental breach of

trust in the employment contract (gross misconduct); or

III. If there is no realistic prospect that the employee will be able to perform his/her duties to an acceptable standard.

5.27 The procedure set out in 4.1 to 4.12 must be followed to hear such a case.

5.28 There is a right to appeal against dismissal. The appeal arrangements are set out in Parts 5 & 6

5.29 Exceptionally, an alternative to dismissal may be:

I. extend, for up to two years, the final written warning. This should only occur where some extenuating or mitigating circumstances make it appropriate.

II. to relegate the employee with a final written warning. This involves the compulsory imposition of lower level duties and lower pay except where this is not permissible under national conditions.

DECIDING WHO HEARS THE CASE

5.30 Staff for whom personnel powers rest with a governing body, who hears the case will depend on who is involved in the issue, the nature of the case and the management structure of the School. The following is set out as a guide but a reasonable decision will need to be taken in each case:

Where action is anticipated up to	Hearing Officer/Body
final written warning level:	Headteacher/ Deputy Headteacher
dismissal or relegation:	Headteacher

The Staffing Regulations and Guidance under the Education Act 2002 states that the initial dismissal decision should be delegated to the Headteacher with the exception of where the existing Headteacher is unwilling to perform this, or where there are proven concerns about the Headteacher's performance, or "where he/she has been directly involved in disciplinary procedures leading to dismissal, has instigated a proposal to dismiss, or is a witness of particular conduct giving grounds for the dismissal in question". In these cases, the dismissal case will be considered by a panel of governors sitting as a Committee of the governing board.

The Chief Executive Officer will be notified of all hearings at which dismissal is to be considered and is entitled to be present and give advice.

5.31 Staff for whom personnel powers do not rest with a governing body, the case is likely to be heard as follows:

- written warnings: Headteacher/ Chief Executive Officer
- dismissals or relegation is under consideration: Trustees

6. THE DISCIPLINARY HEARING

Arrangements

6.1 Where, following an investigation of the facts (as detailed in paragraphs 3.12 to 3.15), the investigating officer considers that a disciplinary hearing is required, the employee should be informed that a disciplinary hearing is to be called. At least 10 working days' notice of the date, time and place of the hearing and of the right to be accompanied by a trade union representative or work colleague should be given. It is the responsibility of the employee to arrange the attendance of their trade union representative or work colleague.

6.2 In determining which witnesses and which documents to produce at a hearing, it is for the presenting officer to determine how he/she will only call those witnesses and produce those documents which advance their case.

6.3 There will also be situations where witnesses are not called by the presenting officer, either because that witness does not want to attend (e.g. because they wish to remain anonymous or for some other reason do not want to give their evidence to the hearing in person) or because the presenting officer does not consider it appropriate to call them. As a matter of general policy it is normally considered undesirable to call vulnerable clients of the Trust such as pupils, to give evidence at disciplinary hearings if this is felt to be in conflict with the Trusts duties as a career of such persons. However, it should be noted that the weight given to an absent or anonymous witness by the hearing officer may be less than that given to first hand evidence from a witness who attends in person and is available for cross questioning.

6.4 At least 10 working days before the date of the hearing copies of papers which are to be produced in evidence at the hearing by the presenting officer and the names of any witnesses to be called shall be supplied to the employee. The employee should also be advised of who will conduct the hearing and who will present the case.

6.5 At least 5 working days prior to the hearing, the employee shall supply copies of any documents which he/she intends to produce in the case and the names of any witnesses to be called. It is the responsibility of the employee to arrange for the attendance of his/her witnesses. School management will not unreasonably refuse time off with pay for witnesses, where appropriate.

6.6 The officer conducting the hearing should in all cases be accompanied by another officer. This may be a member of the school management and/or the Trusts Human Resources Manager depending on the circumstances. A third officer may be present to take notes of the hearing.

6.7 Documentary evidence should be restricted to that which has been previously circulated to both sides, unless for good reason a document is submitted at the hearing. This is at the discretion of the hearing officer.

Procedure

6.8 The procedure to be followed at the hearing is as follows:

6.8.1 The officer who is presenting the case will set out the alleged facts supported by any documentary evidence and witnesses. Witnesses will be asked questions in the following order:

- presenting officer;
- employee or representative:
- hearing officer.

Witnesses will withdraw having completed their evidence

6.8.2 At the conclusion of his/her case, the presenting officer will be asked questions in the following order:

- employee or representative;
- hearing officer

6.8.3 The employee or his/her representative shall then state his/her case and similarly refer to documentary evidence and call witnesses. Witnesses will be asked questions in the following order:

- employee or representative
- presenting officer
- hearing officer

Witnesses will withdraw having completed their evidence

6.8.4 At the conclusion of his/her case, the employee or representative will be asked questions in the following order:

- presenting officer
- hearing officer

6.8.5 Both sides shall have the opportunity to sum up if they so wish without introducing any new facts or new evidence, with the employee always going last.

6.8.6 At the conclusion of the hearing, all except the hearing officer and the supporting officer(s) shall withdraw. If it is necessary for the hearing officer to clarify any points of uncertainty, both sides must be recalled together.

6.9. The hearing officer must take due care and consideration in coming to a decision. The standard of proof required is to decide whether it is more likely on “the balance of probability” that the complaint has been substantiated. It is not necessary for the

complaint to be proved 'beyond a reasonable doubt'. If appropriate, the decision of the hearing can be given on the day after the hearing to allow sufficient time for full consideration of the case. Once a decision has been reached the employee should be informed of the decision in writing, within 5 working days.

6.10 If the complaint is substantiated, the appropriate disciplinary action will be decided. Descriptions of the sanctions available and the context in which they should be used are set out earlier in the procedure. (Paragraphs 3.16 to 3.29.) If the decision is to issue a warning the employee must be advised that the warning will be placed on their personal file. Within 5 working days of the decision, a letter confirming the decision must be supplied to the employee with a copy for their representative. The letter must state:

a) the names and titles of the people present at the disciplinary hearing;
b) the level of penalty applied under the disciplinary procedure;
c) the reasons for taking disciplinary action;
d) details of improvements required in performance and conduct together with time limits/review dates as necessary;
e) the length of time that the disciplinary matter will remain on the employee's school file;
f) the likely consequences of further misconduct or lack of performance;
g) details of the rights of appeal.

6.11 Notes of the hearing must be produced and sent to the employee within 10 working days of the hearing. The employee may register a note of dissension with the officer who conducted the hearing within 10 working days of the date of receipt of the notes. The note of dissension shall be placed with the notes of the hearing on the file.

6.12 If it becomes apparent during the hearing, due to information becoming available for the first time in the course of the hearing, that the case is sufficiently serious to merit the consideration of a higher penalty in the disciplinary procedure than that which the hearing officer is authorised to give, then the hearing officer may decide to adjourn the hearing and reconvene it before the appropriate officer/body. The procedure set out above shall again be followed. The officer who heard the first hearing has no further involvement in the disciplinary process other than as a witness if this should be necessary or if they were the investigating officer who now presents the case.

Dismissal Procedures

6.13 If the decision of the Headteacher or the Committee of the governing body is to dismiss the employee, the employee will be advised in writing of this decision and of his/her right to appeal to the Committee of the governing board.

6.14 All proceedings of the disciplinary hearing are strictly confidential. Copies of papers will only be supplied to those entitled to attend the whole hearing. Any dismissal decision by a committee or a Headteacher will be reported as a matter of confidential

information to the next Trustee Meeting and local governing board meeting.

6.15 The Trust's responsibilities in relation to the dismissal are as follows:

- For a person working solely at the school, the Trust will issue within 14 days after the governing body or Headteacher notifies the Trust, the formal notice of dismissal. In appropriate cases contractual notice will be given. For a person not employed solely to work at the school, the Trust will withdraw that person from work at the school.
- The dismissal decision will be actioned by the Trust, even if an appeal process is taking its course.
- The Board of Trustees has the right to determine the size of any payments to a departing member of staff in excess of statutory or contractual obligations. Costs incurred by the Trust arising from the dismissal of any member of staff of the school will be met outside the school's budget share unless the Trust has good reason for deducting the whole or part of those costs from that share. Good reason is considered to be at least one of the following circumstances:

  a) in the case of premature retirement/redundancy/severance, if a governing body's payments exceed those laid down in the Trust's policies, the additional cost will be charge to the school budget.
  b) if the Head/governing body has exercised its staffing powers in taking a particular decision that was against the advice of the Chief Executive Officer, any subsequent costs of an Employment Tribunal case (the costs of defending the case and any award which may be made) will be charged to the school budget.

7. APPEALS

7.1 There are rights of appeal against written warnings and dismissal under the procedure. Employees who wish to appeal must do so within 5 working days of receipt of the written confirmation of the disciplinary action taken. Within 5 working days after receipt of the notes of the hearing, the employee should also state the grounds on which he/she is appealing.

7.2 The appeal should be heard as soon as possible and ideally by no later than twenty working days after the date of the original hearing. The appeal is not a re-hearing of the original disciplinary case.

Deciding who hears the appeal

7.3 Appeals will be heard by an appeals Committee of the governing board. Employees wishing to appeal should write to the Human Resources Manager, Boleyn Trust, Tollgate Primary School, Barclay Road, London E13 8SA, who will inform the Headteacher.

When considering an appeal against dismissal, the quorum of the Committee will, where applicable, be no less than the number of governors who attended the original Committee hearing (if appropriate) and will not include any governors who may have originally heard the case.

Staff for whom personnel powers do not rest with a governing board, the appeal will be as follows:

- against written warnings: Headteacher (if applicable)/Chief Executive Officer
- against dismissal/relegation: Board of Trustees or nominated officer

Employees wishing to appeal should write to the Human Resources Manager with a copy to the hearing officer.

Grounds for appeal

7.4 The appeal should be based on one or more of the following grounds:

a) The employee considers that the officer/body conducting the hearing unjustly found against them.
b) The employee contends that a matter of fact referred to at the disciplinary hearing has not properly been taken into account by the officer/body conducting the hearing.
c) The employee contests the appropriateness of the type of disciplinary action decided upon.
d) New information has come to light since the date of the hearing. (In exceptional circumstances the five working days' time limit may be waived by the chair of governors where new information has come to light.)

8. PROCEDURE FOR HEARING APPEAL AGAINST WRITTEN WARNING, DISMISSAL OR REGULATION

8.1 The employee must be given at least 12 working days' notice in writing of the date, time and place of the hearing, and advised of the right to be accompanied by a trade union representative or work colleague, whom it is the responsibility of the employee to arrange.

8.2 At least 7 working days before the date of the hearing, the employee shall supply copies of papers which are to be produced in evidence at the hearing and the names of any witnesses to be called.

8.3 At least 5 working days prior to the hearing, management shall supply copies of any documents which they intend to produce in their case and the names of any witnesses to be called.

8.4 The hearing will be conducted by the committee/officer as set out in paragraph 5.3 supported by an appropriate representative of the Chief Executive Officer and an officer taking notes.

8.5 The employee making the appeal or his/her representative will make his/her case for appeal based solely on the grounds previously submitted, referring to any new documentary evidence and calling witnesses with new information as necessary.

8.5.1 Witnesses will be asked questions in the following order:

- employee or representative
- responding officer
- hearing officer

Witnesses shall withdraw after giving evidence.

8.5.2 When the employee or his/her representative has concluded the presentation of the case for appeal, he/she may be questioned in the following order:

- responding officer
- hearing officer

8.5.3 The officer responding to the appeal will normally be the officer who heard the original disciplinary case. He/she will present the response, similarly referring to the documentary evidence and calling witnesses as necessary.

8.5.4 Witnesses will be asked questions in the following order:

- responding officer
- employee or representative
- hearing officer

Witnesses shall withdraw after giving evidence.

8.5.5 When the responding officer has concluded, questions will be asked in the following order:

- employee or representative
- hearing officer

8.5.6 Both sides will have the opportunity to sum up without introducing further new evidence if they so wish, with the employee always going first.

8.5.7 At the conclusion of the hearing, all except the hearing officer and supporting officer shall withdraw. If it is necessary to clarify any points of uncertainty, both sides must be recalled together.

8.6 The hearing officer must take due care and consideration in coming to a decision. If appropriate the decision of the hearing can be communicated on another day to allow sufficient time for full consideration of the appeal. Delays should however be avoided and only in exceptional circumstances be more than one working day. The options available are:

- to confirm the original disciplinary action
- to reduce the level of warning / period of time
- to remove all reference to disciplinary action
- in the case of a dismissed employee, to reinstate them to their post from the date of dismissal

8.7 Within five working days of the hearing, a letter confirming the decision will be sent to the employee with a copy for the representative. A decision to reinstate a dismissed employee will be actioned at the earliest practical opportunity.

8.8 Notes of the hearing will be produced and sent to the employee no later than 10 working days after the hearing date. If any amendment is required to these notes, the employee or his/her representative may register a note of dissension within 10 working days of receipt of the notes. The note of dissension shall be placed with the notes of the hearing on the employee's personal file.

8.9 No further appeal is allowed.

8.10 All proceedings of the appeal hearing are strictly confidential. Any decision of a Committee of a governing body should be reported as a matter of confidential information to the next Trustee meeting and local governing board meeting.

9. DISCIPLINARY PROCEDURES AND PAPERWORK

Introduction

This pack contains framework letters that can be used by Headteachers and managers in dealing with staff whose conduct is causing concern.

Each letter needs to be adapted to reflect the actual circumstances of the case. For instance, it will usually be necessary to refer back to previous events, conversations, correspondence etc. bearing on the matter now being considered.

It is not necessarily the Headteacher who should deal with these cases alone. Particularly in a secondary school, other senior managers could have a significant role, especially guidance and counselling at the early stages and as investigation officers.

Schedule of Model Paperwork

DP1 Letter inviting employee to formal counselling meeting.

DP2 File not of formal counselling meeting
DP3 Letter advising employee that an investigation has been started and to invite them to an investigation interview.
DP4 Framework Disciplinary Investigation Report.
DP5 Letter to invite to disciplinary hearing, up to written warning letter.
DP6a Disciplinary warning letter.
DP6b Disciplinary hearing outcome when case not substantiated.
DP7 Letter to accompany notes of disciplinary hearing.
DP8 Disciplinary Suspension of employee letter.

10. APPENDICES

DP1: LETTER INVITING EMPLOYEE TO FORMAL COUNSELLING MEETING

Please ask the CFOO for the latest version

DP2: FILE NOTE OF FORMAL COUNSELLING MEETING

Please ask the CFOO for the latest version

DP3: LETTER ADVISING EMPLOYEE THAT AN INVESTIGATION HAS BEEN STARTED

Please ask the CFOO for the latest version

DP4: FRAMEWORK DISCIPLINARY INVESTIGATION REPORT

Please ask the CFOO for the latest version

DP5: LETTER TO INVITE TO DISCIPLINARY HEARING

Please ask the CFOO for the latest version

DP6A: DISCIPLINARY WARNING LETTER

Please ask the CFOO for the latest version

DP6B: DISCIPLINARY HEARING OUTCOME: NO ACTION

Please ask the CFOO for the latest version

DP7: LETTER TO ACCOMPANY NOTESOF DISCIPLINARY HEARING

Please ask the CFOO for the latest version

DP8: DISCIPLINARY SUSPENSION OF EMPLOYEE LETTER

Please ask the CFOO for the latest version