



DISCIPLINARY POLICY

POLICY STATEMENT

1. PHSO expects its employees to maintain high standards of conduct and behaviour in accordance with the PHSO Values and Code of Conduct. The Disciplinary Policy is designed to ensure that employees achieve and maintain these standards of behaviour and any failure to meet these standards is dealt with promptly, decisively and fairly through action under this policy.
2. This policy is not intended to apply to issues of poor work performance, which are handled under the Capability Policy. However, in exceptional cases where an employee commits errors and the actual or potential consequences of this are, or could be, extremely serious, for example jeopardise health and safety or relate to financial mismanagement etc, action may be taken under this procedure.

PURPOSE AND SCOPE

3. This policy is designed to:
 - enable employees to understand, achieve and maintain the standards of conduct required by PHSO; and
 - enable PHSO to manage conduct issues effectively.
4. The Disciplinary Policy and procedure does not apply to:
 - termination of employment during the probation period, which is dealt with under the Probation Policy and procedure;
 - termination of employment by mutual consent;
 - action taken in relation to attendance, which is dealt with under the Capability Policy and the Healthy Workforce Policy; and
 - performance issues which are handled under the Capability Policy.
5. This policy applies to all PHSO employees. Individuals on secondment to PHSO may be subject to the procedures of their home organisations. HR, People & Talent will normally consult with the home organisation before formal action is taken.
6. Managers must make clear to agency workers and self-employed contractors the standards of conduct required. Where there are misconduct issues, PHSO reserves the right to remove an agency worker or self-employed contractor from work immediately without recourse to this or any other employment policy.
7. PHSO Trade Union representatives are subject to the same Code of Conduct and Disciplinary procedure as all other PHSO employees. However, their case will be

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discussed with a senior representative or full-time official before formal action is taken.

PRINCIPLES

8. The following principles apply to the Disciplinary Policy and procedure:
- PHSO will not accept conduct that is below the standards expected of its employees and will:
 - clearly establish the required standards of conduct and behaviour;
 - deal firmly and promptly with misconduct issues;
 - make decisions necessary to protect our employees and our reputation for impartiality, to ensure the effective running of the organisation and to maintain a high quality of service to our customers; and
 - seek to maintain the dignity of all employees involved in Disciplinary proceedings.
 - Line managers will take the lead in dealing with conduct issues, unless it is inappropriate for them to do so, and will involve HR, People & Talent for advice, information and support at the earliest stage of any stage of the Disciplinary procedure.
 - the disciplinary process is transparent, taking account of the requirement to maintain strict confidentiality throughout;
 - decisions made will be fair, consistent and appropriate to the particular circumstances.

OUTCOMES

9. The intended outcomes of this policy are that:
- the conduct of PHSO employees is exemplary; and
 - PHSO acts in compliance with relevant statutory requirements, including the ACAS Code of Practice.

MONITORING AND REVIEW

10. HR, People & Talent will keep this policy under review and will monitor formal decisions made under the Disciplinary procedure for fairness and consistency.
11. A formal review of this policy will take place every 3 years unless there is a significant change in relevant legislation or business need which triggers a review before then.

Disciplinary procedure

1. Disciplinary Stages

1.1 The Disciplinary procedure has the following stages:

- Informal Stage
- Formal
 - Investigation
 - Hearing
 - Appeal, as appropriate

1.2 This is not an escalating procedure. Where misconduct is serious it may be appropriate to move to the formal stages of the Disciplinary procedure without having first been through the informal stage. In these circumstances the line manager must seek advice from HR, People & Talent.

2. Key Roles in the Disciplinary Procedure

2.1 In general, those involved in a Disciplinary procedure are as follows:

Stage in procedure	Manager taking action	HR, People & Talent role
Informal Stage	Meetings conducted by the line manager, unless there is a particular reason why it would be inappropriate for this to be the case. In such circumstances it should then be the countersigning manager.	Available for advice and guidance to line management
Formal Meetings/ Investigation	A manager at a Pay Band no lower than the employee and at least Pay Band D2 and who is unconnected with the case.	Where it is not appropriate for the line manager to investigate, the investigator(s) will be appointed by HR, People & Talent. HR, People & Talent will provide support and guidance to the investigator(s).
Disciplinary Panel	Two person panel plus HR, People & Talent: <ul style="list-style-type: none"> ○ Hearing Manager to be at least one Pay Band higher than the employee; ○ second member at a Pay Band no lower than the employee, outside the line management chain. Neither panel member should have been involved with any previous stage of the procedure.	The second panel member will be appointed following consultation, between the Hearing Manager and HR, People & Talent. Support from HR, People & Talent to ensure procedural regularity.

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Stage in procedure	Manager taking action	HR, People & Talent role
Appeal	Conducted by the countersigning manager or a manager at the same Pay Band or above as the Hearing Manager who was not involved with any previous stage of the procedure.	To ensure procedural regularity.

2.2 The Role of the Line Manager

The line manager may be asked to undertake the role of Disciplinary Manager, Investigator, or Hearing Manager in a disciplinary case but this will depend on the circumstances of the case. Consideration will be given to ensure that they do not carry out a role which presents a conflict of interest. For example it would not be appropriate for a manager to conduct an investigation and be on a Hearing Panel, or to undertake any formal role when they should be interviewed as a "witness".

2.3 All employees taking part in the formal stages of a Disciplinary procedure (including investigation meetings) may be accompanied to a meeting by a PHSO colleague or Trade Union representative. For further information on the right to be accompanied please see section 9.

3. Informal Stage

3.1 In cases of minor misconduct, the line manager should address any concerns regarding an employee's conduct informally, normally through a one-to-one meeting.

3.2 At the informal meeting:

- the manager should outline the conduct causing concern and where possible provide times and dates of when the misconduct has occurred;
- the manager should explain why the conduct is unsatisfactory and ensure that the employee is aware of, and understands, the required standards of conduct;
- the employee should have the opportunity to explain their conduct or ask questions;
- the manager should ascertain whether the employee has any work-related difficulties which could cause, or contribute to the unsatisfactory conduct, or if there are any personal or health related problems.

3.3 The manager should keep a written record of the meeting. The length and format of the notes will depend on the nature of the conduct issue and the circumstances around each case. The note should be copied to the employee. Managers should be aware that any records kept are likely to fall within the Data Protection Act. As this is informal action these notes are not saved on the employee's personal file in HR, People & Talent. If the misconduct recurs within a reasonable period of time, these notes may be referred to when deciding the most appropriate action.

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- 3.4 Where discussions at the informal stage indicate a more serious misconduct may have occurred, the line manager should halt the meeting and advise the employee that further investigation may be appropriate, following which the manager should contact HR, People & Talent for guidance.
4. **Formal Stage 1 - Investigation**
- 4.1 If it is suspected, or reasonably believed, that a matter contravenes any of PHSO's policies or standards of behaviour or may otherwise be a matter which should be subject to formal procedures, the employee or line manager identifying the issue will promptly notify HR, People & Talent.
- 4.2 The line manager, with HR, People & Talent, will consider whether suspension is appropriate. See section 8 for further information.
- 4.3 HR, People & Talent, in conjunction with relevant managers, will appoint a Disciplinary Manager. Once appointed the Disciplinary Manager is responsible for ensuring the prompt progress of the investigation and for keeping all relevant parties informed as to progress.
- 4.4 The Disciplinary Manager will initiate an investigation to establish the facts and gather information. The Investigator (this may be the Disciplinary Manager but for clarity through the investigation stages of this procedure this person will be called the Investigator) will work with HR, People & Talent to carry out the investigation. Depending on the particulars of the investigation in complex cases it may be appropriate for more than one person to investigate the complaint, but this will be the exception. In some cases, an investigation may be carried out by an individual who is not a PHSO employee. This will be arranged by HR, People & Talent if the investigation requires specialist knowledge or skills or if the circumstances of the case require the Investigator to be independent of PHSO.
- 4.5 The Disciplinary Manager will write to the employee informing them that the Formal Disciplinary procedure has been initiated. The letter will inform them of the issues under investigation and the name of the Investigator.
- 4.6 The investigation should be given high priority by all concerned in order that it may be expedited as quickly as possible. The investigation will usually consist of the following steps:
- meet with the disciplinary case originator;
 - meet with any other employee involved in the case, as a participant or witness;
 - meet with the employee who is the subject of the investigation;
 - invite the employee to identify any relevant witnesses;
 - review relevant documentation.
- 4.7 Investigation meetings are formal meetings which should be noted.
- 4.8 On completion of the investigation, a report must be prepared; this report should detail the thorough investigation which has taken place and set out the facts of the investigation. The report is expected to identify: key pieces of evidence, areas where evidence is not available or cannot be substantiated and conflicting

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evidence. However, it will not include a recommendation for action to be taken with regard to the individual. The completed investigation report will be sent to the Hearing Manager.

4.9 The Hearing Manager will review the investigation report and decide whether:

- the allegation has not been substantiated and there is no case to answer; or
- there appears to be a case to answer and a formal Disciplinary Hearing should be convened.

4.10 If following their review of the investigation report the Hearing Manager decides that the allegation has not been substantiated, instead of meeting with the employee they may decide to write to the employee to advise them of the outcome and notify them that the case is closed. Advice must be sought from HR, People & Talent if this option is to be pursued and the employee's line manager should be informed.

5. Formal Stage 2 - Disciplinary Hearing

5.1 Where there appears to be a case to answer, a panel will need to be convened. The second panel member will be identified and appointed following consultation between the Hearing Manager and HR, People & Talent.

5.2 The Hearing Manager will write to the employee inviting them to a Hearing. Enclosed with the letter should be a copy of the investigation report along with all information and documentation to be considered by the Panel. This should be sent at least 5 working days before the Hearing. The Hearing Manager may ask the investigator to attend the Hearing to present their findings and clarify aspects of the report.

5.3 If an employee cannot attend the Disciplinary Hearing on the date advised for reasons outside of their control, the Hearing Manager should consider a further date. However, a decision may be taken in the employee's absence if they fail to attend the re-arranged meeting without good reason.

5.4 At the Hearing the Hearing Manager should:

- introduce those present and their roles in the meeting;
- explain the purpose of the Hearing;
- state the allegation(s) made;
- explain how the Hearing will be conducted and ensure all participants are aware they can request an adjournment at any time during the proceedings.

5.5 Only allegations communicated to the employee in advance of the Hearing can be discussed at the Hearing.

5.6 The purpose of the Disciplinary Hearing is to:

- give the employee the opportunity to provide any additional information;
- give the employee the opportunity to raise any mitigating factors;
- allow the employee/Panel to ask questions;

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- raise points about evidence provided by the witnesses.
- 5.7 Following the above, the Panel will adjourn to consider the outcome of the hearing. The Disciplinary Panel must decide whether disciplinary action is justified or not, and if so what level of disciplinary action is appropriate.
- 5.8 Before reaching a decision the Panel should take account of the employee's disciplinary record, their length of service, actions taken in previous similar cases and whether the intended disciplinary action is reasonable under the circumstances.
- 5.9 Disciplinary action may include one or more of the following:
- No penalty but remedial action required (eg. coaching, change in work practices);
 - Noted Oral Warning;
 - First Written Warning;
 - Final Written Warning;
 - Demotion; following a First or Final Written Warning;
 - Redeployment; following a First or Final Written Warning;
 - Dismissal (with notice or summarily).
- 5.10 If practicable, the Hearing Manager will communicate the outcome of the Hearing to the employee by reconvening the Hearing. The Hearing Manager will always write to the employee advising the outcome, this letter will contain:
- the decision of the Hearing Panel;
 - the nature and duration of any penalty;
 - details of other any actions agreed;
 - a warning of potential action should further or other misconduct occur;
 - confirmation of the right of appeal, including timescales and to whom an appeal should be sent.
6. Duration of warnings
- 6.1 A warning is considered to be live for a fixed duration, after which it will be disregarded for disciplinary purposes:
- Noted Oral warning - 6 months;
 - First Written warning - 9 months;
 - Final Written warning - 12 months.
- 6.2 In very exceptional circumstances and after discussion with the member of HR, People & Talent supporting the Hearing Panel, a Final Written Warning may be extended to 18 months or 24 months.
- 6.3 A record of the warning stays on an employee's file after it is spent. If similar misconduct occurs within a short time of the warning being spent, the misconduct decision may take account of the previous warning.

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6.4 An employee who has a live warning on their file may not apply for secondment opportunities or promotion for the duration of the warning. Live warnings may also be taken into account for other management decisions such as selection for redundancy.

7. Formal Stage 3 - Appeal

7.1 The employee has the right to appeal against the outcome of the Disciplinary Hearing. The appeal should be submitted in writing within 10 working days of the date of the disciplinary decision letter, following which an Appeal Manager will be appointed. If the disciplinary decision has been taken by a Leadership Team member, the appeal will usually be heard by an alternative Leadership Team member, or exceptionally by an Advisory Board member(s).

7.2 The appeal letter should set out the full grounds of appeal as the content of this letter will be the basis on which the appeal is considered. All documentary evidence which the employee considers relevant to the appeal should accompany the appeal letter or be submitted within 5 working days of the appeal being lodged.

7.3 The Appeal Manager will write to invite the employee to an Appeal meeting.

7.4 At the meeting, the Appeal Manager will consider the representations made by the employee. The purpose of the appeal is not to re-hear the case. However, the Appeal Manager will consider:

- whether the procedure has been followed;
- any new evidence that was not previously available;
- whether the decision was reasonable in the circumstances.

7.5 The Appeal Manager will be supported through the process by a member of HR, People & Talent. The Appeal Manager will consider whether there is a need to call for further evidence before reaching a decision.

7.6 Following consideration of the evidence, the Appeal Manager will communicate their decision to the employee in writing. The letter will include:

- the outcome of the appeal and the reasons for the decision;
- any actions agreed to resolve the situation if the appeal is upheld;
- a reminder that there is no further appeal.

7.7 The outcome of the appeal may be one of three options:

- the appeal is fully upheld, no penalty to be imposed and no further action to be taken;
- the appeal is partially upheld, a reduced/alternative penalty to be imposed and/or further action to be taken;
- the appeal is dismissed and the outcome stands.

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8. Suspension

8.1 In certain circumstances an employee may be suspended from work. Other than in exceptional circumstances, suspension will be on full pay and should only be for a limited period of time to enable an investigation to be completed and for a hearing to determine the outcome of the allegations. A decision to suspend does not imply guilt and is not a disciplinary penalty. In some situations an employee may be transferred to another location or job whilst an investigation takes place.

8.2 Suspension may be the appropriate action where:

- the matter to be investigated may be gross misconduct; and/or
- PHSO feels that the employee's continued presence at work is not possible/appropriate; and/or
- there is a perceived threat to the safety or wellbeing of the employee concerned, or other employees, should they remain in the workplace.

In all instances advice must be sought from HR, People & Talent.

8.3 If at any stage of the investigation it becomes clear that the alleged misconduct cannot be substantiated, then the suspended employee will be instructed to return to work, unless such a return would impede the prompt conclusion of the investigation. Conversely, if an employee has not been suspended but the investigation provides information that indicates suspension is the appropriate course of action this decision can be taken part way through the process.

8.4 The steps for suspending an employee are:

- the line manager should discuss with their Director/Head of Function (or in their absence, another Senior Manager) whether suspension is appropriate, seeking advice from HR, People & Talent;
- if authorisation is received from the Director/Head of Function, an appropriate manager, with HR, People & Talent, will meet with the employee, to inform them of the suspension and explain the reason;
- the employee will normally be permitted to collect personal belongings before being escorted from the premises immediately; and
- details of the suspension will be sent in writing (normally by HR, People & Talent or the line manager) to the employee as soon as possible detailing the reason for suspension and the process to be followed thereafter.

8.5 In exceptional circumstances, a suspension may be carried out over the telephone, if the employee is not on the premises. The telephone call must take place in the presence of a member of HR, People & Talent (or another manager) and will be followed by a letter, as described above.

8.6 A suspended employee will not usually be permitted to interact with other employees without permission from their line manager/countersigning manager. Certain facilities, such as remote access to PHSO intranet and email, will normally be removed during suspension.

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8.7 Suspension can be difficult for the employee and disruptive for the team. It should not be a decision which is taken lightly and should be kept to the shortest period possible. Disciplinary procedures following a suspension should, therefore, be dealt with as a matter of urgency.

9. Right to be accompanied

9.1 All employees who are subject to the formal stages of the Disciplinary procedure have a right to be accompanied to meetings by a PHSO colleague or Trade Union representative (but not a solicitor, family member or friend outside PHSO).

9.2 PHSO also allows employees to be accompanied at investigation meetings if they wish.

9.3 When arranging formal meetings employees will be reminded of the right to be accompanied. Every effort will be made to accommodate the availability of the colleague accompanying the employee. However, where this causes the process to be unduly delayed, the employee may be requested to seek an alternative.

9.4 During the meeting the colleague or Trade Union representative may:

- address the meeting but not answer questions on behalf of the employee;
- confer with the employee during the meeting, requesting an adjournment if necessary.

9.5 During the formal stages of the Disciplinary procedure the manager will be accompanied by a member of HR, People & Talent.

10. Property and computer searches

10.1 In some disciplinary cases it may be necessary to search the employee's desk, or other cupboards and storage units; this will normally be done in the presence of the employee.

10.2 In cases of suspected gross misconduct it may not be possible or appropriate to obtain permission or search in the employee's presence. In such cases, PHSO reserves the right to conduct a search which will be carried out by a member of HR, People & Talent and in the presence of a witness. The employee will always be informed that a search has been conducted and the reason for it.

10.3 It may also be necessary to interrogate other computer held data as part of the disciplinary investigation. This will be done in accordance with the relevant PHSO policies, including the ICT Acceptable Use Policy.

10.4 Records and other assets may need to be secured, particularly where these may be required as evidence.

11. Criminal offences and convictions

11.1 Some acts of misconduct may constitute criminal offences; where this is the case, PHSO will involve the police. Internal procedures may run concurrently with

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criminal proceedings, HR, People & Talent will seek legal advice to ensure that any internal action does not prejudice the employee's right to a fair trial.

11.2 Where an employee is charged or convicted of a criminal offence outside PHSO they must inform HR, People & Talent immediately. This will not automatically result in disciplinary action. Factors which will influence the decision include:

- the nature of the (alleged) offence;
- the Court's decision;
- any sentence imposed; and
- whether the (alleged) offence:
 - brings or has the potential to bring PHSO into disrepute and/or impair its effective functioning;
 - indicates the individual is unsuitable for continued employment;
 - prevents the employee from carrying out their duties.

11.3 Failure to report a conviction is regarded as serious misconduct and may result in disciplinary action regardless of any action arising from the conviction itself.

12. Timescales

12.1 Timescales have largely been left open in order to provide a degree of flexibility. All those concerned in the Disciplinary procedure should try to strike a balance between the (often conflicting) needs to:

- expedite the matter as quickly as possible;
- provide sufficient notice to allow participants to prepare for a meeting (and arrange accompaniment, as appropriate);
- deal with work pressures and deadlines; and
- allow for other commitments (such as annual leave).

13. Grievance during Disciplinary procedure

13.1 If a grievance is raised in writing during a Disciplinary process, the aim will be to avoid an unnecessary duplication of procedures and to ensure that the matter is dealt with speedily. The issues will be dealt with as one process where it is appropriate to do so and where this will expedite matters.

13.2 In exceptional cases, where a complaint is made during the disciplinary process which impacts directly on the conduct of the process (specifically where the complaint is that disciplinary action is discriminatory or that the real cause of action is other than that specified by the manager), the process may be halted and the grievance may be considered separately.

13.3 The decision to halt the disciplinary process will be taken by a manager at Director level or above, in conjunction with HR, People & Talent. Employees should be aware that if such a grievance is found to be vexatious or raised with the intention of disrupting the disciplinary process, they are likely to be subject to further disciplinary action.

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14. **Sickness absence during Disciplinary procedure**

- 14.1 PHSO aims to deal with disciplinary matters as quickly as is practicable. A brief period of sickness absence may delay the process but if there are repeated short periods or one long period of sickness absence then at least part of the process may continue in the employee's absence. Alternatively, the Panel may wish to consider written representations from the employee or their representative, in the employee's absence.

Conduct likely to lead to disciplinary action

1. Levels of misconduct

1.1 There are three levels of misconduct:

- Gross misconduct - behaviour that damages the relationship between PHSO and the employee to the extent that continued employment may no longer be possible. May result in dismissal without notice (summary dismissal).
- Serious misconduct - behaviour that damages trust and confidence between PHSO and the employee but the damage is not irretrievable. May result in a First or Final Written Warning. Continued repeated serious misconduct can lead to dismissal;
- Minor misconduct - unacceptable behaviour which, as an isolated incident, requires corrective action but does not in itself damage the employment relationship. May result in a noted Oral Noted warning or a First Written Warning.

1.2 The types of behaviour that are likely to be considered as gross misconduct are given below for guidance purposes only. This list is not intended to be exhaustive.

- violent, abusive or intimidating conduct
- bribery, theft or fraud
- wilful damage to PHSO's property or reputation, including any action which is likely to bring PHSO to disrepute
- serious negligence which has, or has the potential to, cause significant loss, damage or injury
- serious and/or persistent bullying, harassment or discrimination
- conviction for a serious criminal offence which affects the reputation or credibility of PHSO
- serious acts of insubordination
- unauthorised use or disclosure of confidential information
- deliberate falsification of PHSO's records
- failure to comply with relevant statutory or regulatory requirements
- breach of Health and Safety regulations which endangers others
- a serious or wilful breach of the Code of Conduct.

1.3 In some cases, the level of misconduct escalates in stages. Behaviour which is considered minor misconduct the first time it occurs may be viewed as serious misconduct or as gross misconduct the second time it occurs.

1.4 Incidents of gross misconduct whether a first instance or escalated in stages, may result in dismissal, with or without notice.

1.5 Where a manager identifies conduct which is inappropriate they should contact HR, People & Talent with regard to following the Disciplinary procedure.

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Annex 1: DISCIPLINARY PROCEDURE FLOWCHART

