

## 5.1.13 Disciplinary Guidance

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#### England

- Regulation 33: Employment of staff

#### Wales

- Regulation 38: Information for staff  
<https://www.legislation.gov.uk/wsi/2017/1264/regulation/38/made>
- Regulation 39: Disciplinary procedures  
<https://www.legislation.gov.uk/wsi/2017/1264/regulation/39/made>

### 1. General

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Examples of misconduct and gross misconduct are listed below. The lists are neither exhaustive nor exclusive and, at all times, staff must:

- Take account of the principles and provisions of children's and other relevant legislation, regulations and guidance and all relevant organisational policies and procedures;
- Maintain positive customer relations ensuring that they have real opportunities to participate in service planning, make representations and, where appropriate, to have their complaints considered.

### 2. Misconduct

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Examples of breaches of standards which may constitute misconduct, are:

- a. Poor time keeping;
- b. Insubordination;
- c. Abusive language;
- d. Inefficient performance of duties, falling below the required standard
- e. Misuse/neglect of company property;
- f. Failure to co-operate in health and safety precautions;
- g. Failure to obey reasonable instructions by senior staff;

- h. Unbecoming conduct, likely to adversely affect the interests of the company;
- i. Offensive behaviour;
- j. Disclosure of confidential information;
- k. Discrimination on the grounds of sex, race, colour, religion, disability, nation/ethnic origin, sexual orientation, marital or parental status or social class;
- l. Deliberate leaking of confidential information;
- m. Misappropriation of funds/petty cash;
- n. Unauthorised possession of company property;
- o. Falsification of records or documentation;
- p. Incapacity to work due to drink or drugs;
- q. Conduct likely to bring the company into disrepute;
- r. Unprofessional conduct with a young person or a member of a young person's family;
- s. Alcohol consumption without management authorisation whilst caring for a young person;
- t. Facilitate the consumption of alcohol by any young person without management authorisation;
- u. Assist or facilitate the obtaining of any illegal stimulants or substances by any young person except as prescribed by a Doctor.

### **3. Gross Misconduct**

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Gross misconduct is misconduct of such a nature that we are justified in no longer tolerating the continued presence at that place of work, of the employee who commits such an offence. Examples of gross misconduct which could lead to the dismissal of employees with or without notice include:

- a. Aggravated offences from the above list;
- b. Gross Dereliction of Duty;
- c. Endangering the safety of children in our care;
- d. Offences of dishonesty;
- e. Sexual offences;
- f. Sexual misconduct at work;
- g. Fighting or provoking a fight;
- h. Harassment or intimidation;
- i. Physical assault of young people/fellow employees/employers/ or others, (e.g. visitors);
- j. Falsification of time sheets, subsistence and expense claims, etc.;
- k. Falsification of qualifications which are a stated requirement of employment or which result in financial gain;
- l. Theft;

- m. Malicious Damage to company property;
- n. Criminal conviction (except minor motoring offences).

#### **4. Guidelines for Managers**

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Supervisors/Managers must avoid dealing with concerns in the heat of the moment.

Prepare before you meet, discuss issues with other colleague managers/supervisors. When raising concerns with staff, explain in clear terms:

- How the conduct/behaviour is unacceptable or the standard unmet;
- The impact or likely impact on the service.

Unless there is a suggestion or evidence to the contrary, assume that staff, are committed to getting the job done effectively and help them find ways to improve their practice. Listen to explanations made by staff for their under-performance. If there are temporary domestic or health problems, suggest measures to lessen the problem or seek external counselling. If there are problems relating to stress or relationships between staff, act to mediate or offer support. If there are skill or competency related factors, seek to offer training, coaching, mentoring or other forms of development.

Restate the standard required and set out the measures to be undertaken and by whom to ensure things change.

Set a reasonable time limit for improvement.

You must routinely keep accurate records of your dealings with staff to protect them and yourself. This principle is critical where matters of concern have been raised. Copies should be handed to staff who should have the opportunity to make comment if they feel they have been misrepresented, and a copy should be retained on the personnel or supervision file.

Following a reasonable period of time, meet staff to review and establish whether there has been improvement. If so, it provides an ideal opportunity for you to acknowledge and express appreciation but, where improvement does not occur, it also gives you the chance to consider other measures including use of formal disciplinary or incapability procedures.

#### **Revision History**

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Date last updated: October 2020

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**End**