

White Paper Conference

Emma Burrows – Trowers & Hamlins

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Question

How do you establish "reasonable" grounds from statements where one employee has accused the other of misconduct – one word against another?



Going back to the basics where "he said/she said"

- Role of the investigator
- A disciplinary allegation is proven on the balance of probabilities
- What tips that balance?



Context

"Carry out as much investigation as is reasonable"

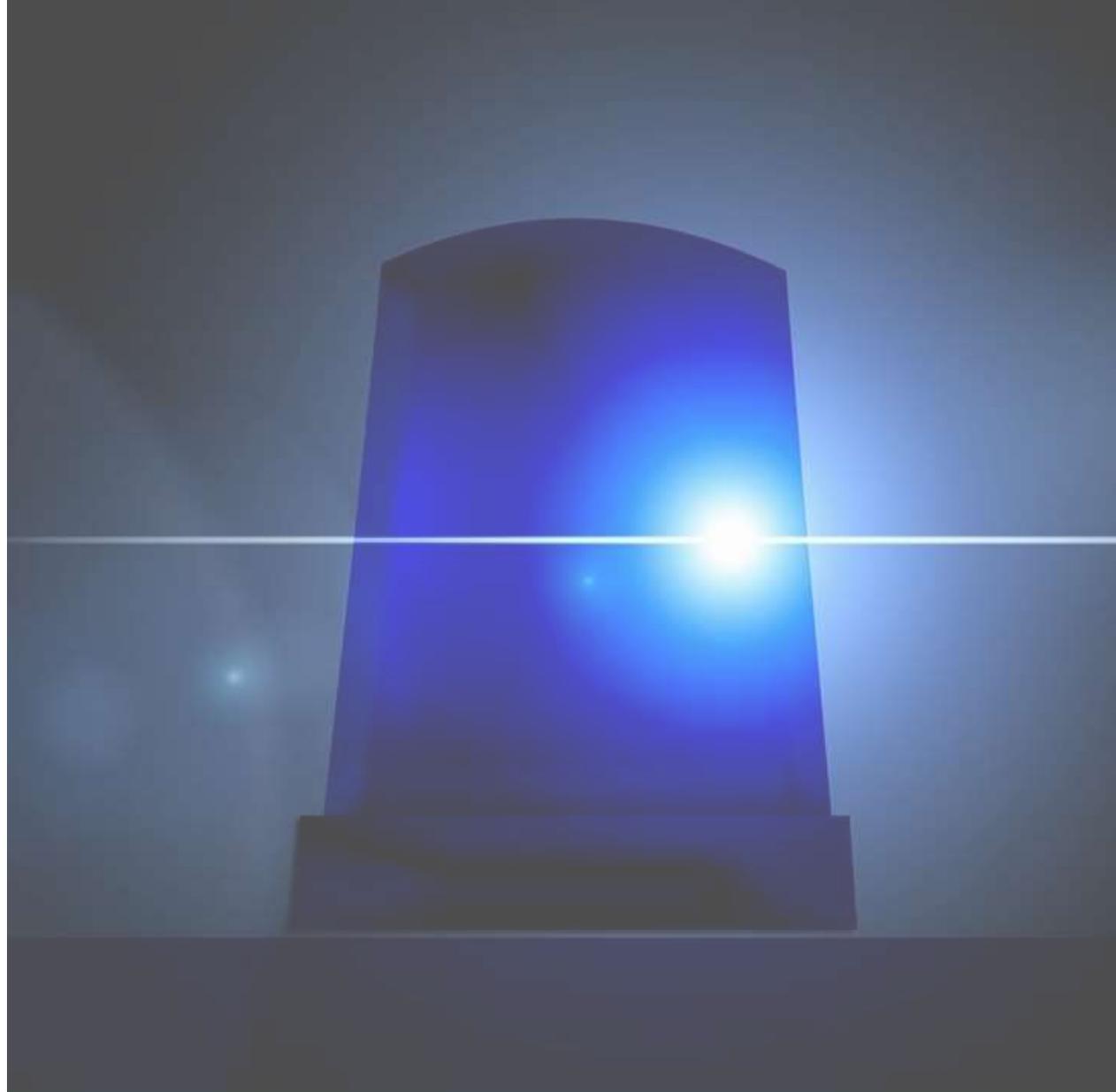
ACAS Codes

Policies and procedures

Think about what you say to employees at this stage and how that will affect the investigation

Approach to investigation

**Cannot make a decision or ...
AC12?**



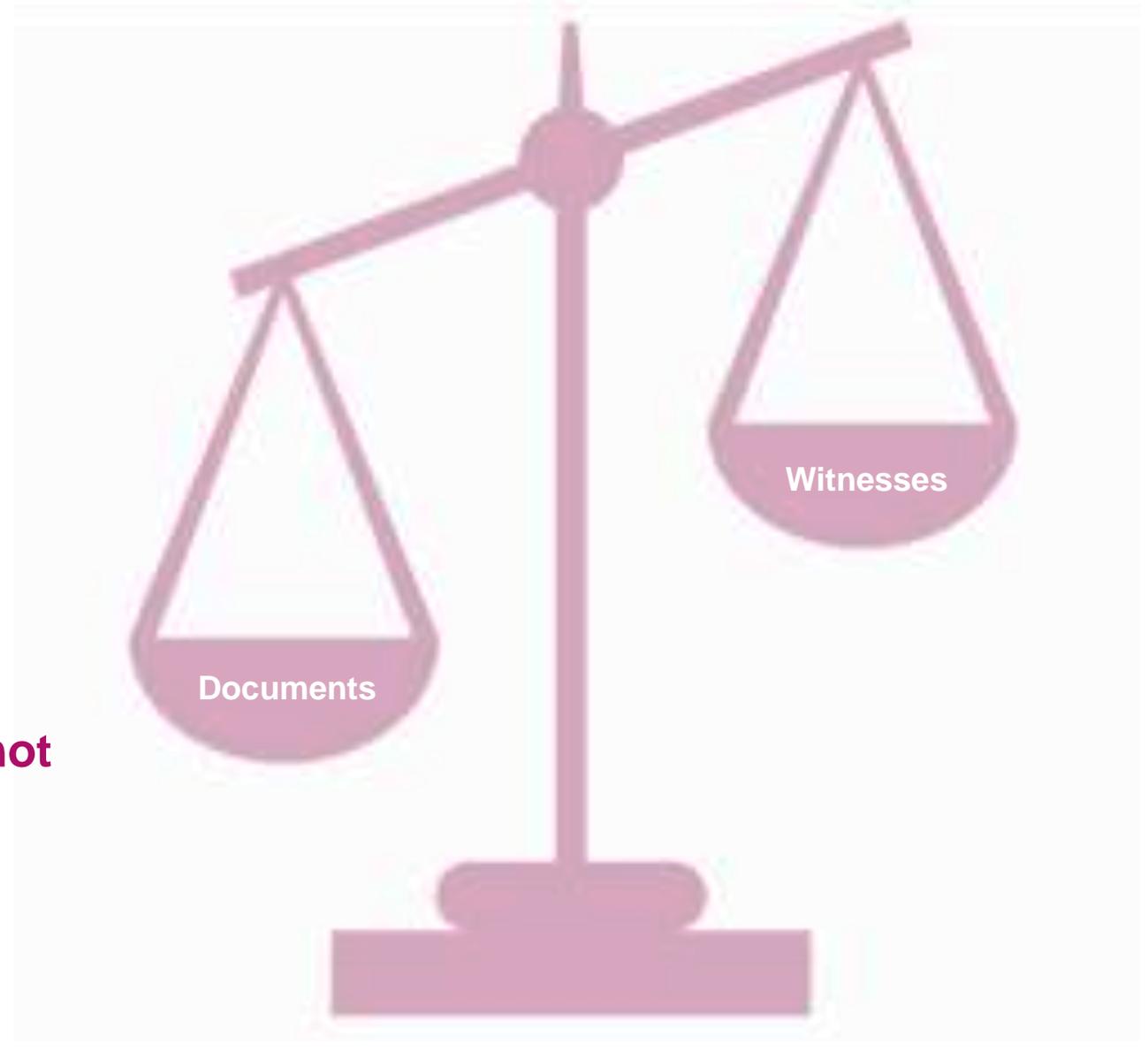
Top tips

- Follow your procedure
- Identify the allegations
- Make a plan, and analyse evidence you have
- Test the complainant
- Take into account employee motives
- Test the witnesses
- Stick to the facts...



What tips the balance?

- Documents
 - Phone data
 - Texts
 - What's app
 - CCTV
- Witnesses
 - To the incident
 - Happened before?
- **A question of fact but remember if not proven, the complaint fails**



Common issues that arise

Should you suspend?

Covert recordings Y/N

Confidential witnesses

Tracking allegations in correspondence from investigation – disciplinary – dismissal

Not sticking to the facts

After the event



How you feel when it's done?



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