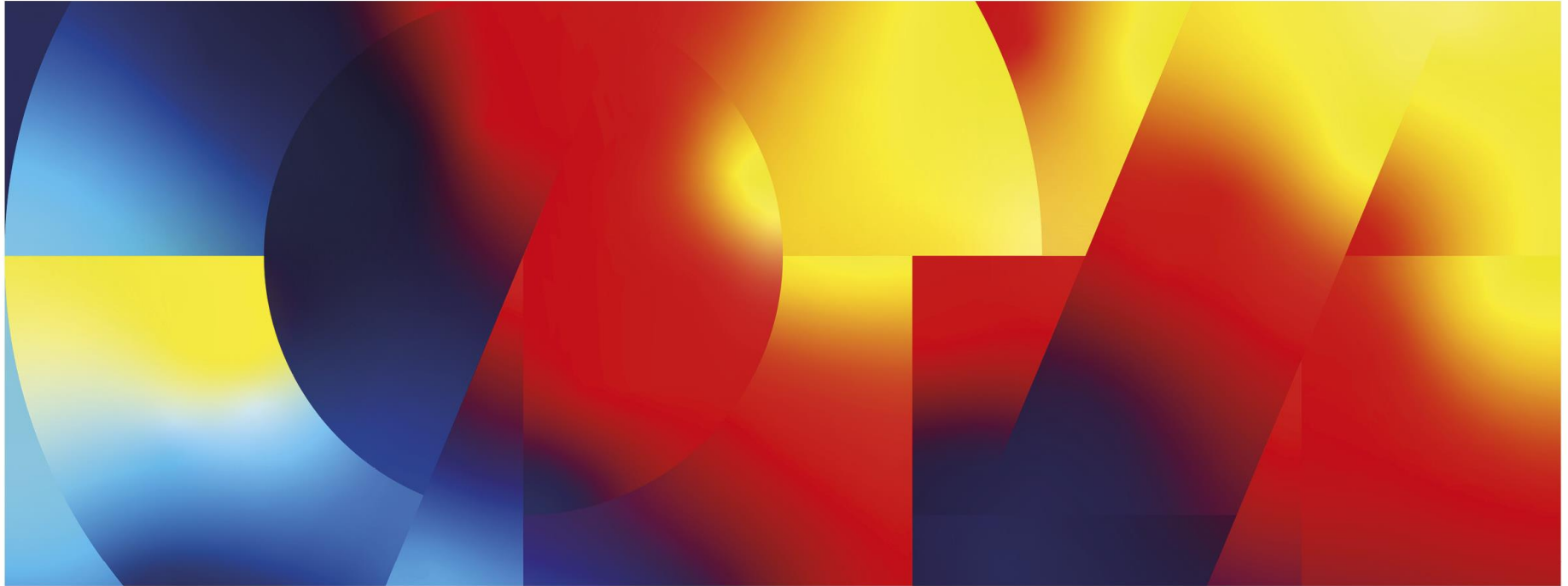


12 May 2022

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CPD: Dealing with misconduct: investigations and disciplinary matters in schools

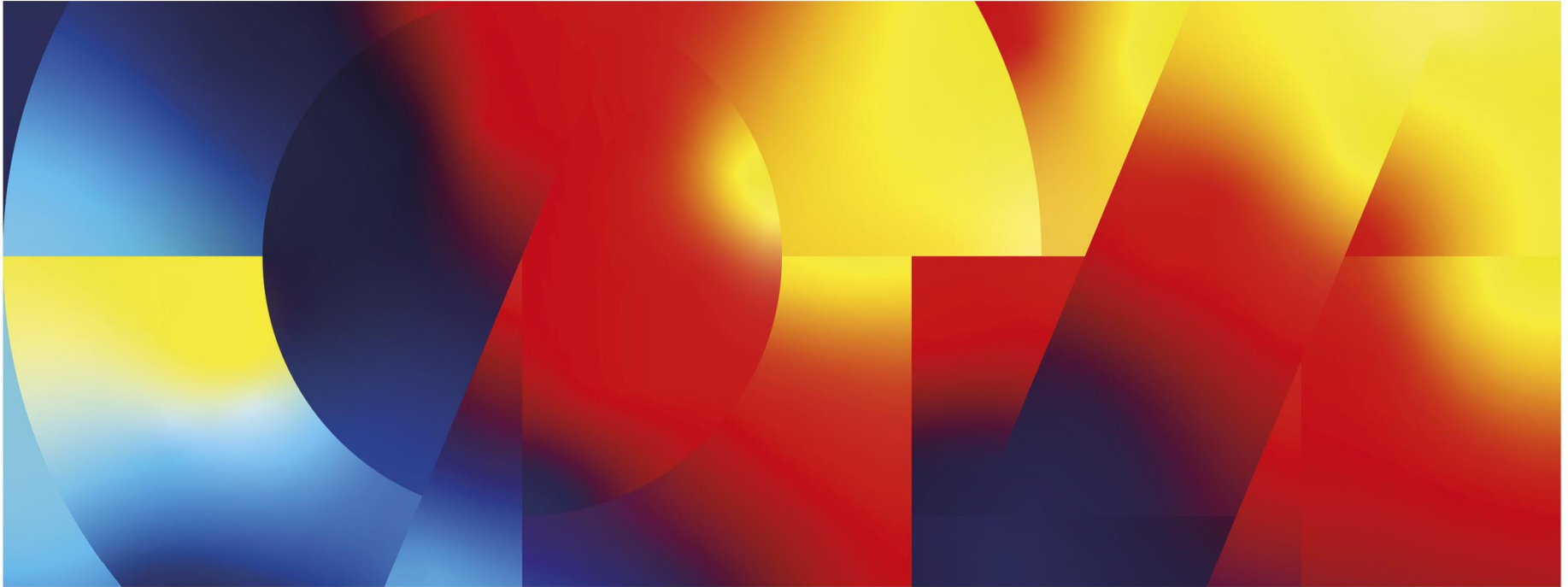


What we will cover

Dealing with misconduct issues:

- The disciplinary process generally
- Conducting investigations
- Disciplinary hearings
- Common schools-specific issues

The disciplinary process generally



Conduct or Performance



Disciplinary procedure

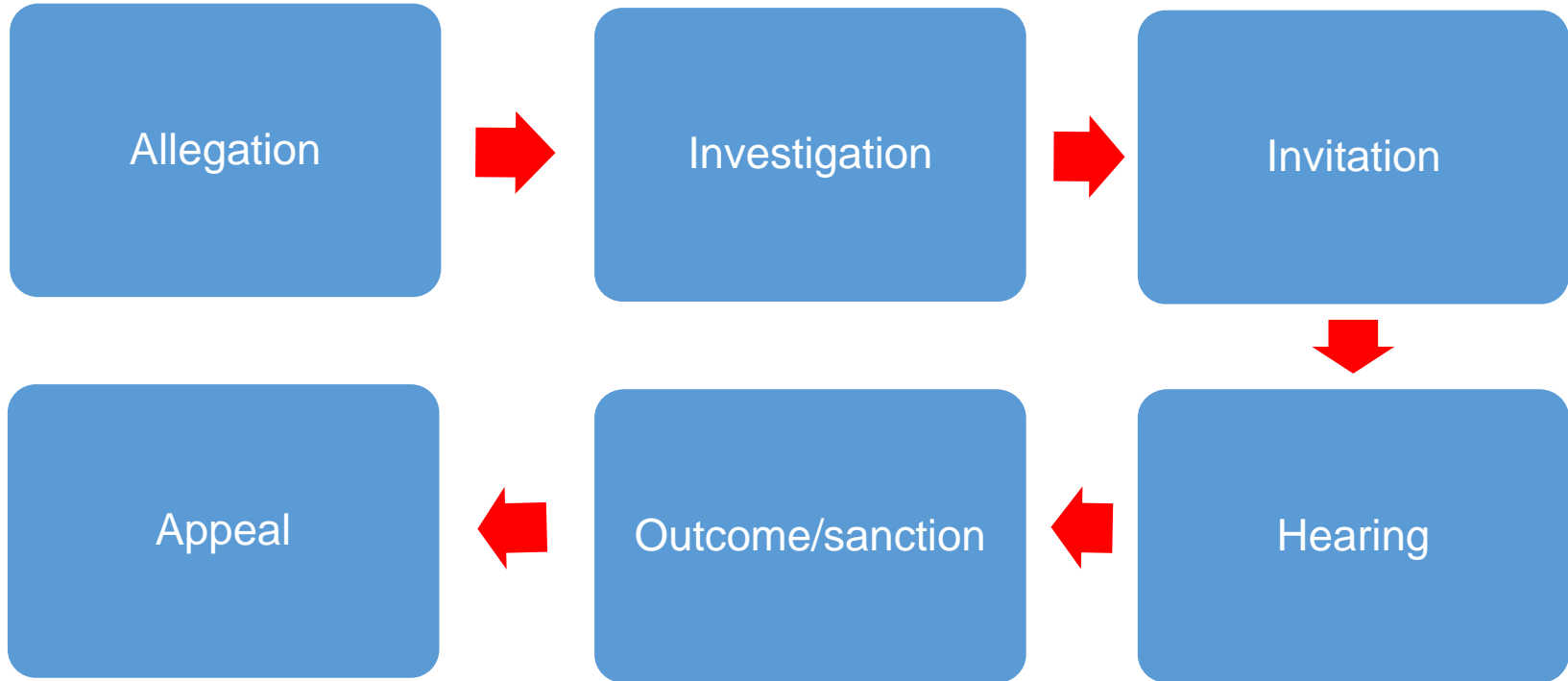
- All schools should have a written policy setting out how disciplinary matters will be handled.
- These should be reviewed regularly – every few years.
- Academies using local authority policies should consider whether they are still appropriate for them.
- Contractual policies and trade union consultation.
- Failure to follow your disciplinary procedure may render a dismissal unfair.

Dealing with issues informally

- It will often be appropriate to deal with misconduct issues informally – typically low-level concerns requiring no investigation e.g. minor timekeeping concerns.
- Keeping appropriate records.
- Letters of management advice and verbal warnings.
- Some issues will never be appropriate to be dealt with informally e.g. serious safeguarding allegations – even if no disciplinary action is taken after a thorough investigation.
- Where issues persist after taking an informal approach, consider a formal approach.

Formal disciplinary process

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Suspension

- Reserved for serious cases where there is no alternative such as allowing the employee to remain in work on full or restricted duties.
- Justification must be considered in each individual case. Typical justifications:
 - Allegations of a very serious nature which would make it inappropriate for them to remain in work.
 - Risk to the integrity of the investigation if they remain in the workplace.
- Avoid 'knee-jerk' suspensions. Is it possible to carry out some initial investigation before making decision on suspension?
- Suspension should be reviewed periodically, and left in place for the shortest time possible.

Framing the allegations

- Sometimes it will be possible to draft detailed allegations at the investigation stage. In other cases which are more complex and/or where there is little information available prior to the investigation stage, the description of the alleged misconduct will need to be more general.
- Allegations should be set out individually. Don't automatically group everything into a single allegation.
- Consider level of detail required in allegations (e.g. dates) – avoid a potential argument that the individual can't prepare because the allegations are vague.
- Allegations can be added, changes or dropped as the investigation progresses.

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Conducting investigations



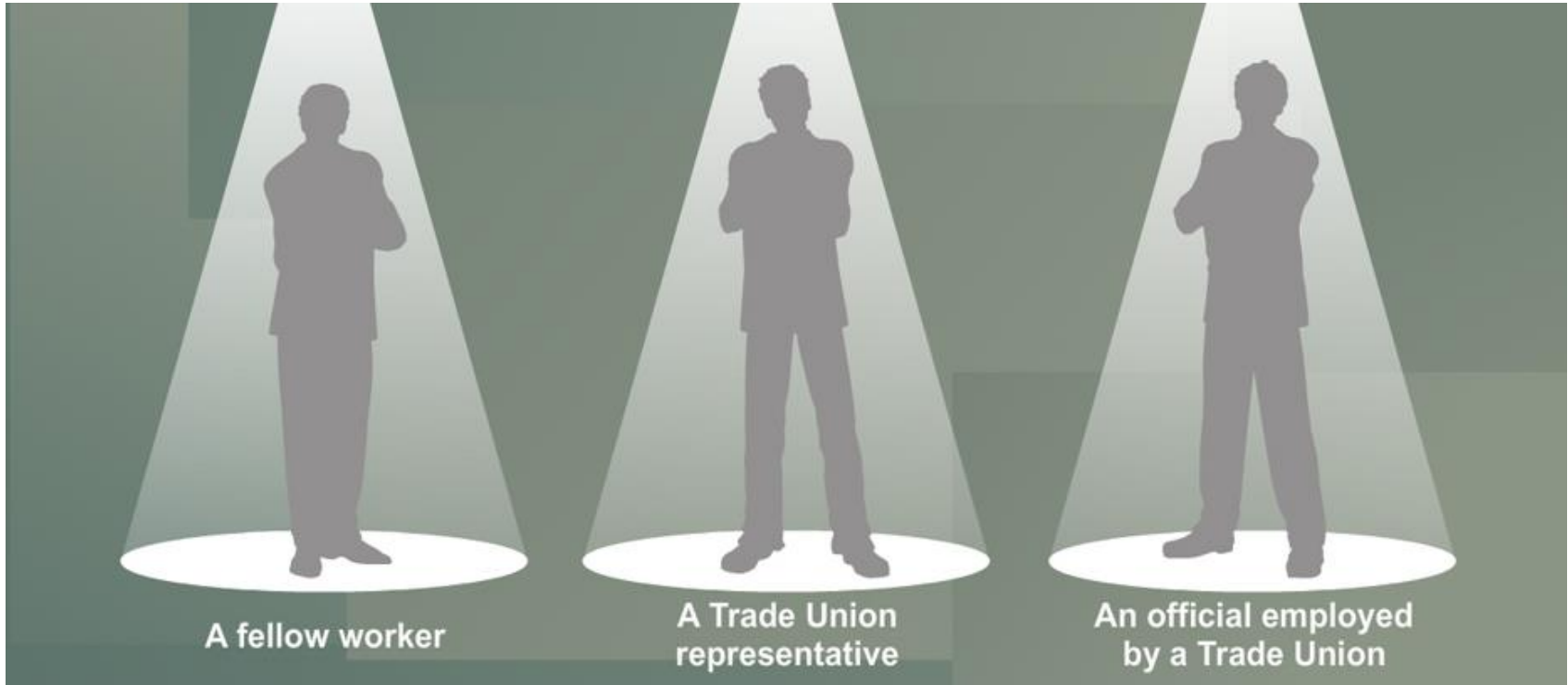
Investigating – general principles

- Amount of investigation conducted should be proportionate to the seriousness and complexity of the allegations, the evidence in question and the extent to which the employee disputes the allegation.
- In theory some straightforward issues may need no investigation – however, school policies may well require an investigation meeting in all cases.
- Appointing an investigating officer:
 - Who has authority to appoint under your policy?
 - Ensuring that you have sufficient senior personnel who are not involved at the investigation stage who can then conduct disciplinary or appeal hearings.
 - Approach with an open mind.

Conducting an investigation

- Gather relevant documents e.g. e-mails and notes (possibly CCTV?)
- Consult any relevant policies e.g. Code of Conduct, Safeguarding Policy
- Identify any relevant guidance or regulations e.g. KCSIE, Teachers Standards, DfE guidance (such as “the use of reasonable force”)
- Speaking to witnesses
 - Always the employee in question to get their version of events and any relevant further information
 - Other witnesses relevant to the allegation
 - Avoid giving assurances of confidentiality to witnesses (only in exceptional circumstances)

Right to be accompanied



Concluding an investigation

- Produce an investigation report setting out key findings
- Include copies of relevant documents and notes of investigation meetings with the investigation report
- **Avoid** being seen to reach any conclusion of guilt even if it seems obvious – this is **not** the role of the investigating officer
- Consult your policy for any specific requirements, such as:
 - Whether the investigating officer makes a recommendation on whether there is sufficient evidence to proceed to a disciplinary hearing
 - Who is responsible for deciding whether to proceed to a disciplinary hearing

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Disciplinary hearings



Disciplinary hearing – invite letter

- Set out allegations
- Practical arrangements – time, date, venue etc
- Include all relevant evidence gathered during the investigation
- Request any further documents before the hearing
- Right to be accompanied
- Potential sanction

Disciplinary hearing

- Disciplinary policy may set out specific order of play
- Ensure that the employee is questioned thoroughly on the allegations and the evidence
- Ensure that the employee has the opportunity to put forward and sum up their case
- Calling live witnesses and/or the investigating officer to give evidence
- Be prepared to challenge unlikely explanations in the employee's case – but do not be too combative. This is an internal hearing and not a court case.

Reaching an outcome

- Adjourn to consider the evidence and reach a decision.
- Stage 1 – are allegations upheld? Reasonable belief
- Stage 2 – deciding on sanction.
 - Consider starting point – seriousness of misconduct
 - Consider examples of misconduct and gross misconduct in disciplinary policy
 - Consider whether any mitigating factors warrant a lesser sanction
- Any dismissal must be with notice (or payment in lieu of notice) unless gross misconduct

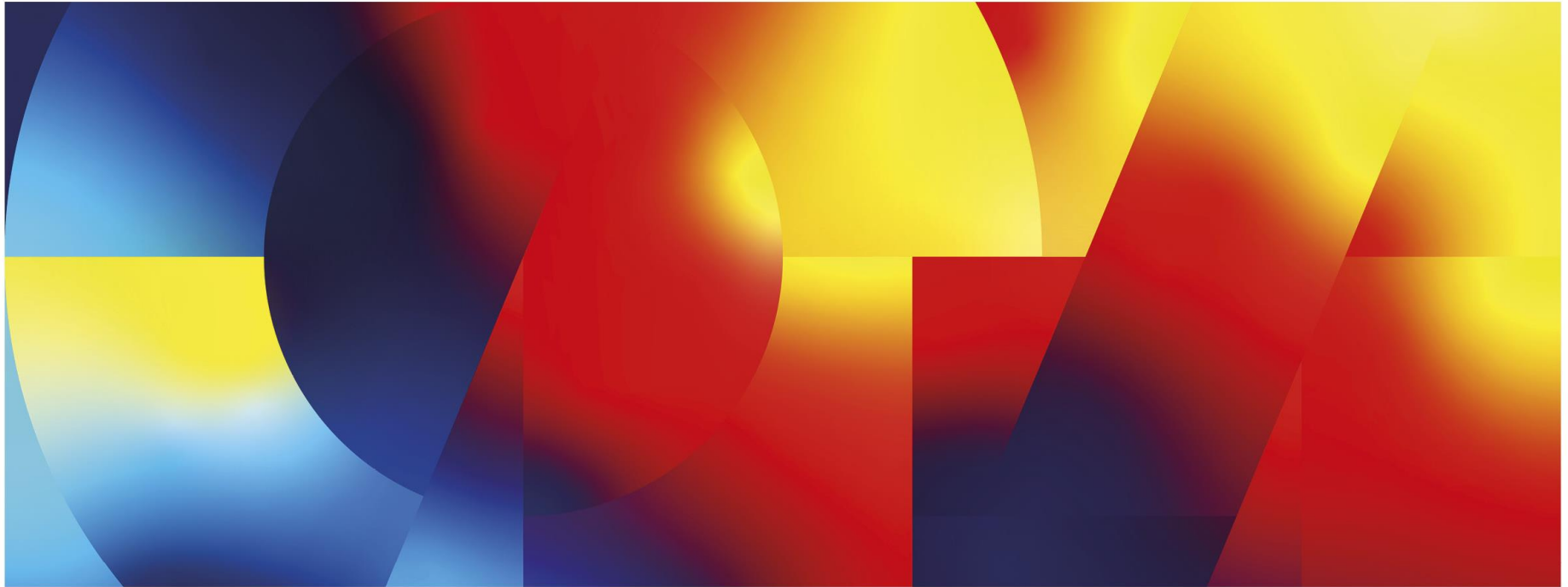
Delivering the outcome

- In straightforward cases and lower level sanctions, it might be appropriate to deliver an outcome 'on the day'
- In more complex and/or serious cases, it is generally best to adjourn and deliver the outcome later that day or a few days later
- Prepare an outcome letter which:
 - Summarises the key evidence;
 - Sets out whether each allegation is upheld or not with reasons;
 - Explains the sanction;
 - In the case of written warnings, confirms the period for which these are 'live'; and
 - Notifies the employee of their right to appeal against the sanction

Appeals

- Will normally be heard by governors or trustees depending on your policy and/or scheme of delegation
- Will normally be a case of considering specific grounds of appeal
- Not normally a full re-hearing unless there is a specific reason such as:
 - Policy requires this; or
 - Fundamental issues with original disciplinary process.
- Same principles apply to delivering the outcome – adjourn and decision letter

Common schools-specific issues



- Teacher notice periods in Burgundy Book mean that cost of dismissals with notice vary significantly depending on timescales e.g. 31 May vs 1 June
- Employee going on sick leave in response to serious disciplinary allegations:
 - Look to obtain Occupational Health advice if necessary:
 - Attending OH is a condition of occupational sick pay for teachers;
 - Seek advice on fitness to participate in meetings and/or hearings in addition to usual questions about fitness to work etc
 - Explore alternatives such as employee being represented at the hearing by a trade union representative or submitting written representations **where appropriate**
 - Don't forget to follow sickness absence procedure – it may ultimately be more appropriate to dismiss on sickness absence grounds in some circumstances

Safeguarding issues

- Ensure that all staff have updated safeguarding training and that you have records
- Take immediate advice from LADO
- Treat safeguarding issues seriously but do not assume that suspension should be the automatic response to a safeguarding allegation
- Where police are involved, understand the extent to which they will allow you to progress investigation and/or disciplinary process

Regulators and references

- Keeping Children Safe in Education is clear that:
 - Settlement agreements are generally not appropriate where allegations are of a safeguarding nature; and
 - Employers must complete investigations and disciplinary process wherever possible in safeguarding cases – cannot simply agree to allow employee to resign in exchange for taking no further action
- Must refer to DBS where an employee is dismissed (or would have been dismissed if they hadn't resigned) as a result of safeguarding concerns.
- Must refer teachers to TRA where misconduct is so serious that it warrants a decision on whether they should be banned from teaching.
- Obligations to disclose disciplinary issues and safeguarding concerns on references – including 'agreed references'.

Questions and answers

Thank you

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