

WIN In-House Counsel Week 2025

Conduct Under Scrutiny: Empowering In-House Counsel to Address Misconduct

Presenters:

Mitch Robertson & Elizabeth Cole

Tuesday, 18 February 2025

13:00 - 14:00 AWST

15:00 - 16:00 AEST

16:00 - 17:00 AEDT





I want to begin by acknowledging the Traditional Custodians of the lands. Here in Sydney, I pay my respects to the Gadigal people. Elders past, present and emerging, and we at DLA Piper also stand alongside Aboriginal and Torres Strait Islander peoples across Australia in supporting the Uluru Statement from the Heart.

What we will cover today

What is misconduct?



What is an investigation?



When do we investigate?

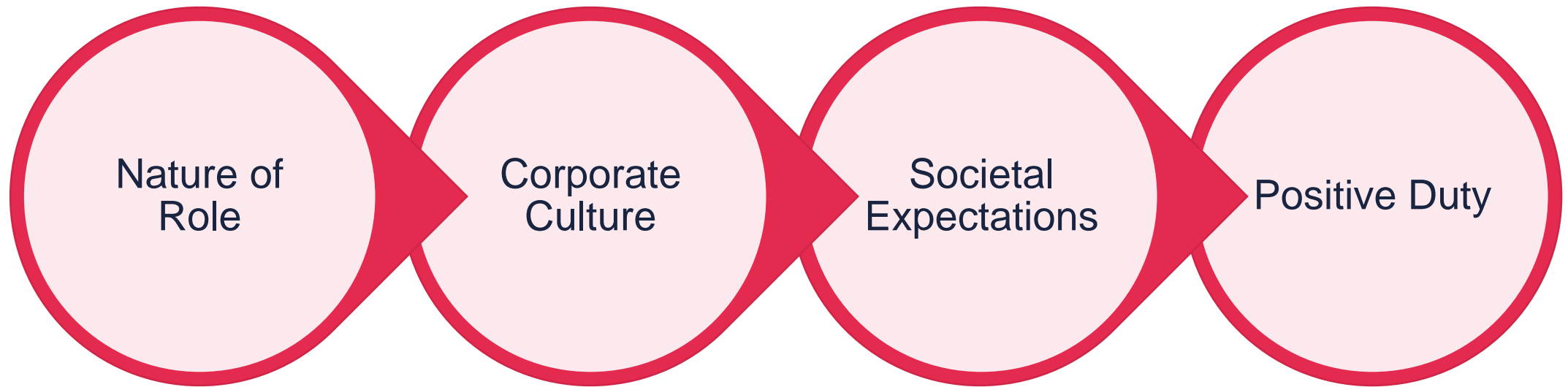


How do we manage the outcome?

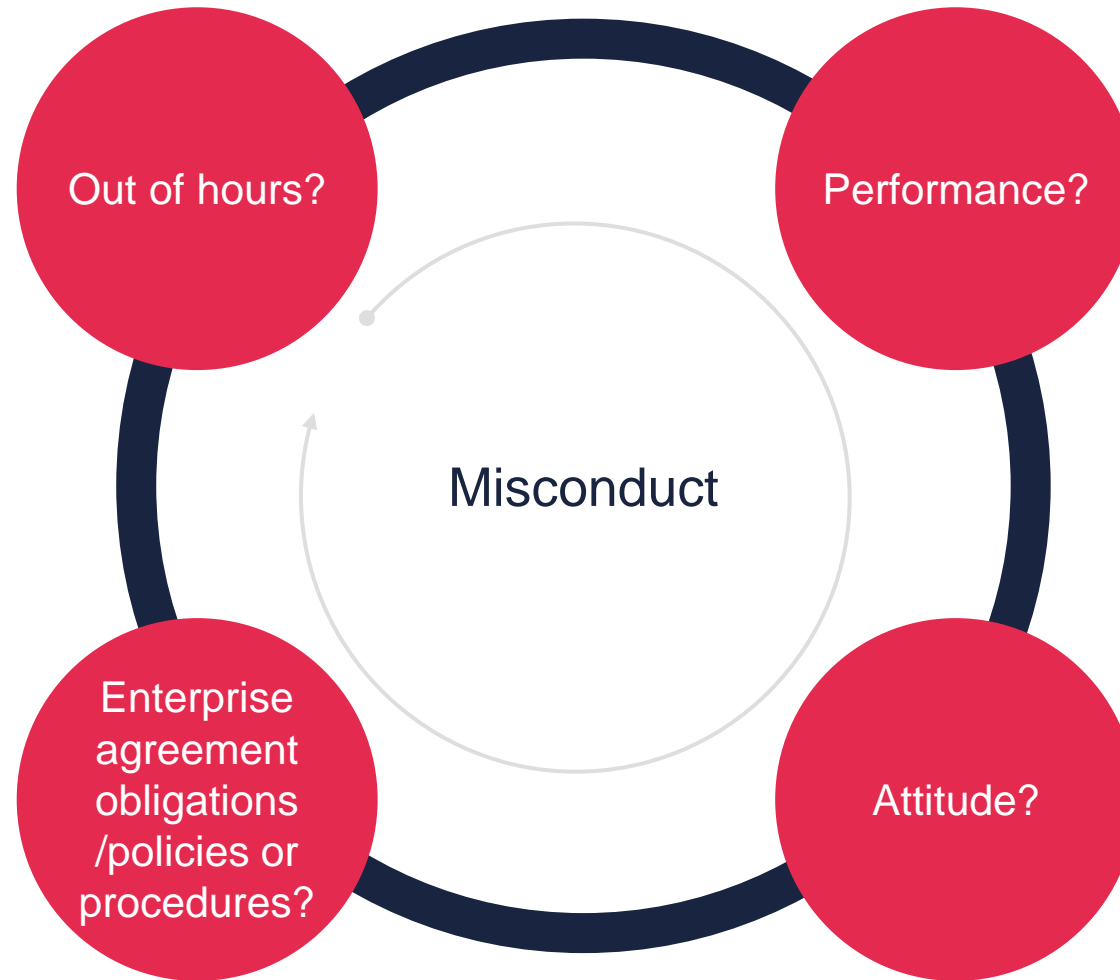


How do we manage the risks?

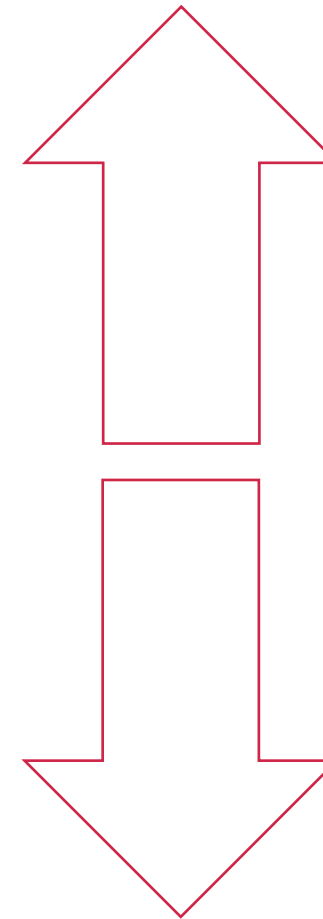
What is misconduct?



What is misconduct?



Understanding misconduct



Where we need to be?

Where are we now?

What are workplace investigations?

A workplace investigation is a fact finding process to assist in decision making about conduct at work

Why manage misconduct? The risks...

Legal obligations

Breach of enterprise agreement / unfair dismissal/general protections risk

Anti-discrimination, bullying allegations and sexual harassment

Workplace health and safety

Workers' compensation

Why manage misconduct? The risks...

Other workplace benefits

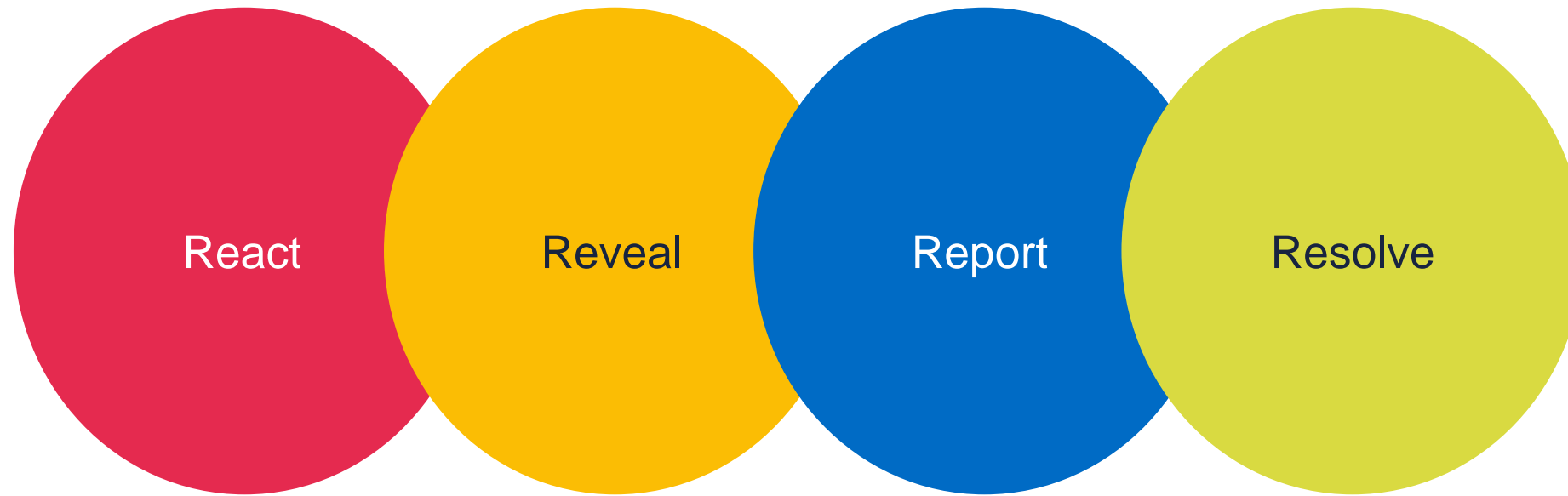
Establishing and monitoring a positive corporate culture

Fostering employee confidence that management "walks the walk" when dealing with misconduct

Revealing hidden operational issues

Being well placed to respond to any subsequent litigation

Key stages of the investigation life cycle



When do we investigate?



Who should conduct the investigation?

Is an internal or external investigator more appropriate?

Who has the necessary skills and experience to conduct the investigation?

Is the investigator impartial and unbiased?

Legal professional privilege?

Privilege

Dominant Purpose

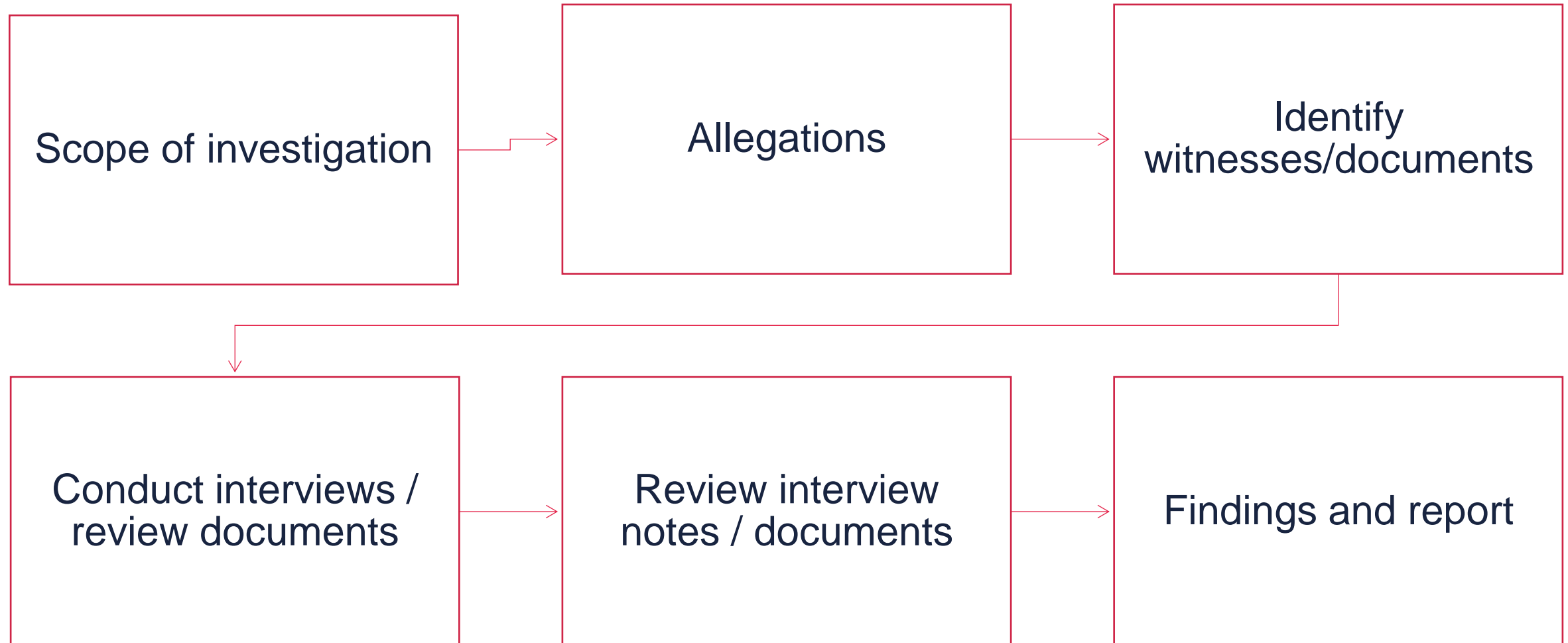
Confidentiality

Waiver
(implied or express)

Dual Role
(IHC / CoSec)

Risks
(improper claims)

How do we investigate?



How do we investigate?

Communicate
next steps
clearly

- Acknowledge there's an investigation underway
- Clarify expectations during the investigation
- Explain the investigation process and outline if/how they will be included
- Reminder of confidentiality
- Provide access to resources and space for a safe conversation

Managing the outcome

Advisor or
decision
maker?

Testing?

Privilege?

Balance of probabilities

Findings in
favour of the
Subject

Findings in
favour of the
Complainant

Witnesses'
version of events

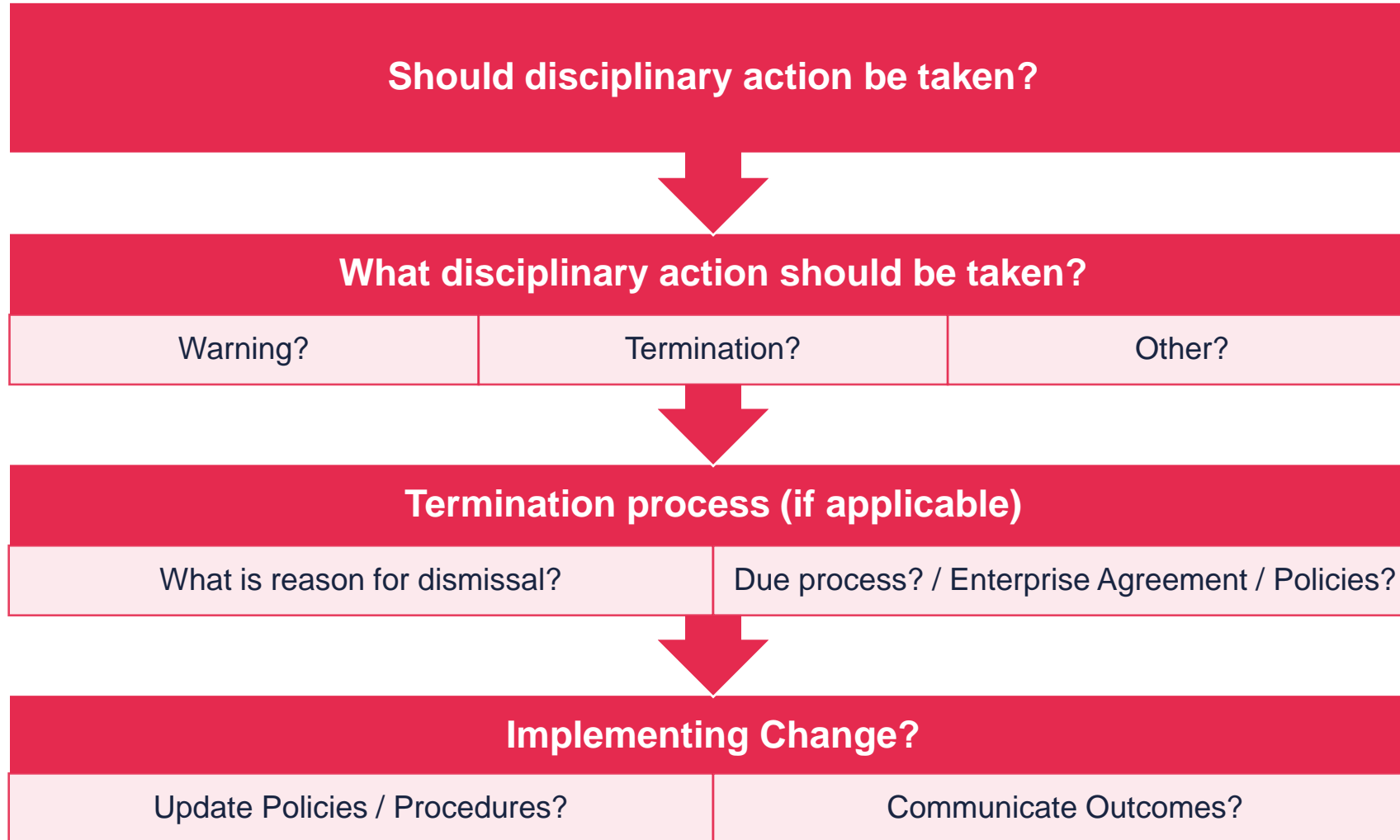
Documentary
evidence

Witnesses'
version of events

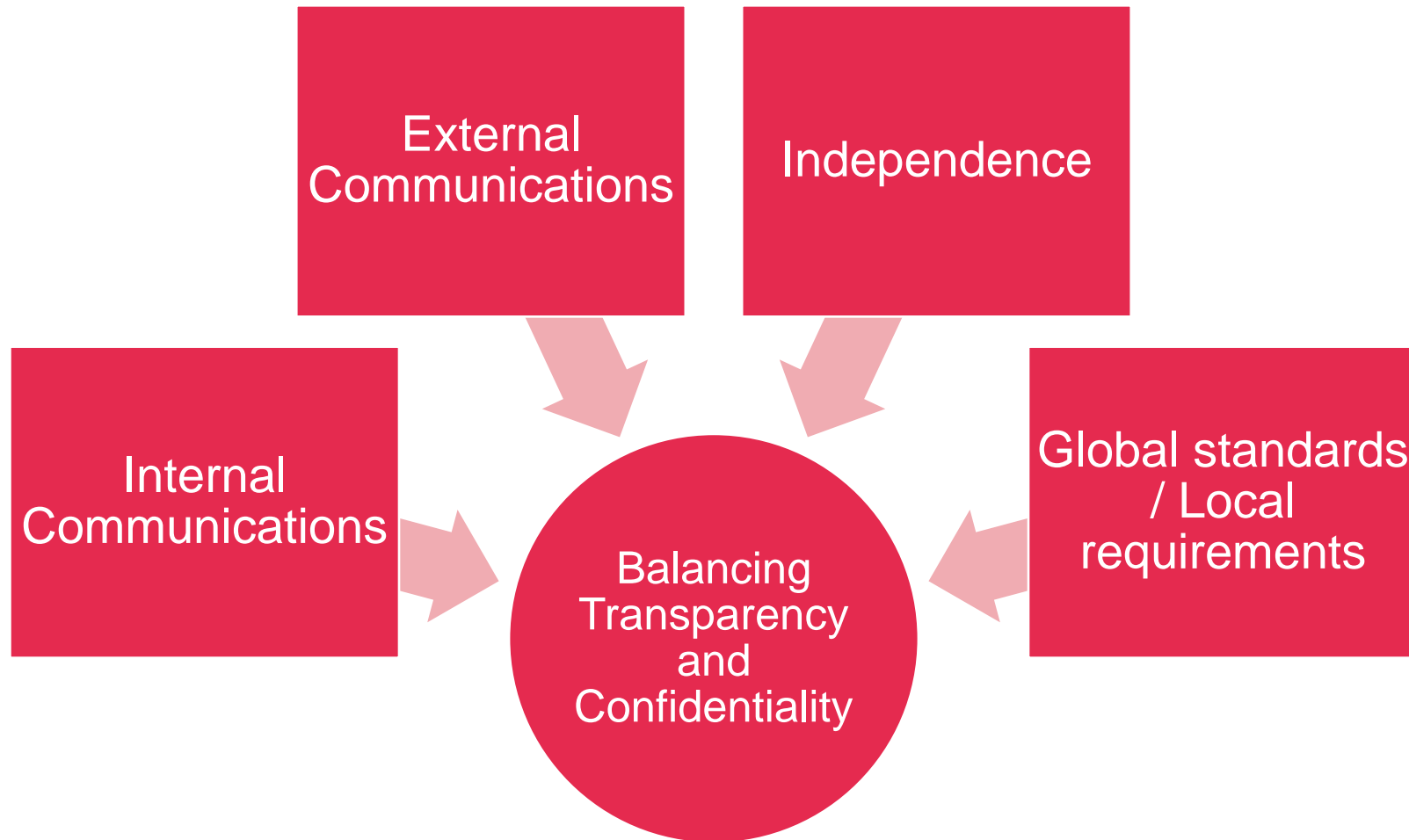
Subject's version
of events

Complainant's
version of events

Managing the outcome



How do we manage the risks?



How do we manage the risks?



WIN In-House Counsel Week

Thank you for joining our webinar:
Conduct Under Scrutiny: Empowering
In-House Counsel to Address Misconduct

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