



INTEGRITY IN PUBLIC LIFE

# HEARING PROCESS GUIDE & RULES

Effective from 28 June 2016

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## 1. STATUTORY FRAMEWORK

**The Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 and the Public Services Reform (Scotland) (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 ('the Ethical Standards Act')**

- 1.1 In terms of sections 1-3 of the Ethical Standards Act separate Codes of Conduct for Councillors and for Members of Devolved Public Bodies have been issued and approved by Scottish Ministers.
- 1.2 Where any person is of the opinion that a Councillor or a Member of a Devolved Public Body has contravened the relevant Code of Conduct, they may submit that allegation to the Commissioner for Ethical Standards in Public Life Scotland (CESPLS) for investigation in terms of sections 12-13 of the 2000 Act.

### **Any investigation into a complaint is completed by the CESPLS**

- 1.3 The procedures for the investigation of allegations of misconduct made against Councillors or Members of Devolved Public Bodies is available to download from the CESPLS website at: <http://www.publicstandardscommissioner.org.uk/make-a-complaint/investigation-procedures:-councillors-and-members-of-devolved-public-bodies/>.

### **Actions available to the Standards Commission where the CESPLS reports the outcome of an investigation to the Standards Commission**

- 1.4 Following an investigation, the CESPLS may decide to report to the Standards Commission on the outcome of that investigation in terms of section 14 of the Ethical Standards Act.
- 1.5 On receiving any such report, the Standards Commission may, in terms of section 15 of the Ethical Standards Act, publish that report and send it to whomever it thinks fit.
- 1.6 In terms of section 16 of the Ethical Standards Act, the Standards Commission may, at any time, decide to:
  - a) direct the CESPLS to carry out further investigations
  - b) hold a Hearing
  - c) do neither

Where the Standards Commission acts under paragraph a) or b) above it may do so at any time.



## 2 DEFINITIONS

In this document the following definitions apply:

**affirmation** – solemn undertaking to affirm the truth.

**balance of probabilities** - the test applicable to determine whether it is more likely than not that the evidence presented supports the alleged breach

**case** - a complaint or a number of complaints which have been investigated together as the subject matters of the complaints are the same or related.

**CESPLS** - the Commissioner for Ethical Standards in Public Life in Scotland or, where appropriate, a member of the CESPLS's staff or an appointed agent representing the CESPLS at any stage of the proceedings.

**Chair** - a Member of the Standards Commission appointed by the Convener as the Chair of a Hearing Panel.

**Code of Conduct** - the relevant Code of Conduct applicable to the activities of either Councillors or Members of Devolved Public Bodies.

**Complainant** - the person who submits a complaint to the CESPLS for investigation.

**complaint** - an allegation submitted to CESPLS that a councillor or board member of a devolved public body has contravened an identified section of a Code of Conduct.

**contravention** - conduct which would be a breach of the relevant Code of Conduct.

**Convener** - the Convener of the Standards Commission.

**Council** - the local authority of an area of which the councillor is an elected member as defined by the Local Government (Scotland) Acts.

**Councillor** - unless the context otherwise states, this means a councillor against whom a complaint has been made.

**days** - refers to calendar days.

**Devolved Public Body** - the devolved public body of which the person complained of is a member listed in Schedule 3 to the Ethical Standards Act.

**document** - includes all information held in hard copy or generated by means of any digital medium.

**the Ethical Standards Act** - the Ethical Standards in Public Life etc. (Scotland) Act 2000 as amended.

**the Executive Director** - the Executive Director of the Standards Commission or a member of staff representing the Executive Director.

**Hearing** - a Hearing conducted into an alleged breach of a code of conduct under the terms of the Ethical Standards Act.



**Hearing Panel** - Members of the Standards Commission selected by the Convener to conduct a Hearing.

**Member** - unless the context otherwise requires, means a Member of the Standards Commission.

**oath** – a solemn undertaking to affirm the truth of a statement involving a sacred being as witness.

**parties** - the CESPLS and/or their representative and the Respondent and/or their representative.

**the Respondent** - The person against whom an allegation of misconduct has been made.

**Rules** - these Rules which relate to the procedures to be followed by: Members and staff of the Standards Commission; the CESPLS and any party representing the CESPLS during Hearings; and any person or persons attending a Hearing. The Rules also apply to any person or persons (the Respondent and any party representing the Respondent) who are subject to a report submitted to the Standards Commission by the CESPLS in relation to breaches of the Councillors' or Members' Codes of Conduct.

**the Standards Commission** - the Standards Commission for Scotland.



### 3 HEARING RULES

#### Background

- 3.1 These Rules apply when the Standards Commission, after receiving a report from the CESPLS in terms of section 14 of the Ethical Standards Act, decides to hold a Hearing.
- 3.2 These Rules have been agreed by the Standards Commission in terms of section 17 of the Ethical Standards Act, which is reproduced below, and relate to the procedures to be followed by Members and staff of the Standards Commission, the parties and any person or persons who attend a Hearing.
- 3.3 The Hearing Panel may from time to time dispense with or vary any requirement of these Rules, other than those set by the Ethical Standards Act, where it appears to the Hearing Panel it would be fair and just to do so.

#### Section 17 Hearings before Commission

- (1) **Subject to subsections (2) to (10) below, the procedure at a hearing held under section 16(b) above shall be such as the Commission determines.**
- (2) **The Commission may, at any one hearing, consider alleged contraventions of the councillors' code by more than one councillor or of the members' code by more than one member of a devolved public body.**
- (3) **A hearing shall be conducted by not fewer than three members of the Commission selected by the convener of the Commission.**
- (4) **A councillor or member of a devolved public body whose conduct is being considered by a hearing is entitled to be heard there either in person or represented by counsel or a solicitor or any other person.**
- (5) **The members of the Commission conducting a hearing may—**
  - (a) **require any person to attend the hearing, give evidence and produce documents;**
  - (b) **administer oaths.**
- (6) **A person shall not, however, be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.**
- (7) **A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (5)(a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.**
- (8) **The Commission may pay persons appearing at a hearing or attending it for the purpose of giving evidence or producing documents such expenses or allowances as it thinks fit.**
- (9) **A hearing shall be held in public unless the members of the Commission conducting it determine that it is in the public interest that it, or such part of it as they specify for the purposes of this subsection, be not so held.**
- (10) **In this section, "documents" shall be construed as in section 13 above.**

#### General Information

- 3.4 The Standards Commission will hold the Hearing at a venue of its choice
  - (i) where the Respondent is a Councillor, in the area where the Headquarters of the Local Authority where they were elected is located; or
  - (ii) where the Respondent is a Member of a Public Body, in the area where the Public Body holds its meetings



unless, taking into account all of the circumstances, the Standards Commission determine it is appropriate not to hold it in that area.

- 3.5 Hearings will normally be held no earlier than 6 weeks and no later than 12 weeks after the date on which the Standards Commission decides to hold a Hearing.
- 3.6 A Hearing will be conducted by no fewer than three Members of the Standards Commission who are selected by the Convener. The Convener will appoint from the Hearing Panel a Member who will Chair the Hearing Panel. In selecting the Members to sit on a Hearing, the Convener will take into account the skills, experience and availability of Members of the Standards Commission.
- 3.7 Where two or more complaints have been made in respect of the same facts or related facts, the Standards Commission or the Hearing Panel may, on its own account or on an application by one or more of the Respondents or the CESPLS, order that the complaints be conjoined and considered at the same Hearing. Notice to this effect will be given to the Respondents and the CESPLS. The Hearing Panel will consider any representations made in consequence of such notice.
- 3.8 Any document required or authorised by these Rules to be sent or delivered to, or served on, any person will be deemed to be duly sent or delivered to or served if:
  - (i) it is sent to the person's address by recorded delivery post;
  - (ii) it is sent to the person by fax, email or other similar electronic means, which produce a document that it is received in a legible form; or
  - (iii) it is delivered to the person personally or left at their address.
- 3.9 At least 28 days prior to the commencement of the Hearing, parties and the complainant(s) will receive confirmation of the date, time and location of the Hearing.
- 3.10 Notice of the Hearing will be posted on the Standards Commission's website and provide the name of the Respondent, the purpose, date, time and place of the Hearing.
- 3.11 Notice of the Hearing may be published in the area in which the Hearing is to be held with the name of the Respondent, the purpose, date, time and place of Hearing. The notice will confirm that the Hearing will be held in public, unless the Hearing Panel has determined that it will be held in private.
- 3.12 If possible, the Respondent and the CESPLS should prepare a joint statement of facts and provide details of those matters which are agreed and those which are in dispute. This statement should normally be submitted by the CESPLS to the Executive Director at least 7 days before the date of the Hearing.

### **Changes to Hearing Arrangements**

- 3.13 The Hearing Panel may, at its own discretion or on the application of any of the parties, postpone or adjourn a Hearing. Before any postponement or adjournment is granted, the Hearing Panel will consider:
  - (i) The public interest in the expeditious disposal of the case; and
  - (ii) Any inconvenience or prejudice to the Parties and to witnesses.



- 3.14 If either Party wishes to submit an application for the postponement of a Hearing, the application must be submitted in writing to the Executive Director at least 7 days before the scheduled date of the Hearing. It is at the discretion of the Chair as to whether any applications submitted later than 7 days before the scheduled date of the Hearing will be considered.
- 3.15 Where an application for postponement is granted, the Executive Director will inform the parties of the date of the re-scheduled Hearing.

### Pre-Hearing Meetings

- 3.16 The Chair at their own discretion, or on application by the Respondent or CESPLS, may at any time before the Hearing takes place decide to hold a pre-Hearing meeting with the Respondent and the CESPLS (and/or their representatives) if they consider such a meeting would assist the Standards Commission in its functions to;
- (i) Discuss procedural arrangements;
  - (ii) Clarify the issues;
  - (iii) Consider con-joining cases.
- 3.17 Pre-Hearing meetings will normally be held in private in Edinburgh and conducted by the Chair sitting alone. The Chair may also consider if the pre-Hearing meeting could be conducted online or by telephone.
- 3.18 Notice of the pre-Hearing meeting will be given to any person the Chair considers is appropriate.
- 3.19 If a pre-Hearing meeting is held, the timescales for the submission of documents prior to the pre-Hearing meeting will be such as is determined by the Chair and intimated to the Respondent and CESPLS.
- 3.20 The Executive Director will endeavour to give the parties 7 days' notice of the pre-Hearing meeting and inform the parties of:
- (i) The date, time and venue of the meeting;
  - (ii) The reason for the meeting; and
  - (iii) The right to attend or be represented and make oral submissions.
- 3.21 Where either Party wishes the pre-Hearing meeting to be postponed an application must be made in writing to the Executive Director at least 2 days before the date of the meeting. It is at the discretion of the Chair as to whether any applications submitted later than 2 days before the scheduled date of the meeting will be considered.
- 3.22 If the Respondent does not attend or is not represented at the pre-Hearing meeting then, provided that the Chair is satisfied that notice of the pre-Hearing meeting was served in accordance with these rules, the Chair may proceed with the pre-Hearing meeting.

### Case Law

- 3.23 Where parties intend to present case law a copy of the relevant documents must be submitted to the Executive Director at least 7 days before the Hearing is scheduled to commence. The Standards Commission will copy this to the other parties at the earliest available opportunity. The documents





should be highlighted to show the relevant points that the party will refer to at the Hearing. During the Hearing the party presenting the case will be asked to explain why the case law is being cited and to lead the Hearing Panel through the relevant points.

### **Appointment of legal advisors by the Standards Commission**

- 3.24 The Hearing Panel may at any time appoint its own legal advisors to assist it before, during and/or after the Hearing.

### **The Hearing**

- 3.25 The Hearing will be held in public unless the Hearing Panel determines the Hearing or part of it will be held in private.
- 3.26 Any of the Parties may apply to the Hearing Panel to request that the Hearing or part of it be held in private by writing to the Executive Director not less than 14 days prior to the Hearing.
- 3.27 Representations will be sought from both parties before the Hearing Panel decides to hold a Hearing or part of it in private. To hold a Hearing or part of it in private, the Hearing Panel would have to be satisfied that:
- a. A decision to exclude the public causes no prejudice or unfairness to either party; and
  - b. The particular circumstances of the case outweigh the public interest in holding a public Hearing.
- 3.28 With the consent of the Respondent and the CESPLS, the Hearing Panel may permit any other person to attend any part of a Hearing that is held in private.
- 3.29 The Hearing Panel may, upon the application of a witness or any of the Parties or at its own discretion, decide that persons not connected with the Hearing should withdraw from the whole or any part of the proceedings.
- 3.30 The Hearing Panel may, at its own discretion, exclude from the Hearing or part of it any person whose conduct is disruptive to the Hearing.
- 3.31 The Standards Commission will take into account the need to protect any sensitive personal, commercial or financial information communicated or obtained in confidence, and matters of national security.
- 3.32 The Hearing will be recorded. The recording will be destroyed at the end of the period for submitting a valid appeal as indicated within section 22 of the Ethical Standards Act or, where an appeal is submitted to a sheriff principal, following the conclusion of that appeal process.
- 3.33 If the Chair is satisfied that any party or witness is unable through physical or mental impairment to attend a Hearing, the Chair, in consultation with the Members of the Hearing Panel, may make such arrangements as appear best suited in all the circumstances of the case to fairly dispose of the matter.
- 3.34 If the Respondent fails to attend or be represented at a Hearing of which they have been notified in accordance with Rule 3.9 above, the Hearing Panel may:



- (i) on cause shown, adjourn the Hearing to another date, in which case the Executive Director will advise the Respondent accordingly; or
- (ii) proceed to hear the complaint if it is satisfied that notice of the Hearing was properly given in good time and in compliance with these rules.

- 3.35 If any other person required to appear fails to appear, the Hearing Panel may proceed as per Rule 3.34 above
- 3.36 The Hearing Panel will deliberate and reach its decision in private, although its decision, where time allows, will be announced in public at the Hearing.
- 3.37 In reaching the decision, the standard of proof will be on the balance of probabilities.
- 3.38 The written decision of the Hearing Panel will be issued no later than 14 days after the Hearing is concluded.

### Representation of Respondent

- 3.39 A person whose conduct is being considered by a Hearing is entitled to be heard and to choose to be represented. The Respondent's representative can call the Respondent to give evidence as a witness. If the Respondent is represented all questions must be put to, and answered by, the representative unless they are put to the Respondent when the Respondent is giving evidence as a witness. Only the representative will be entitled to make submissions.
- 3.40 Where a Respondent attends the Hearing but is unrepresented they may be accompanied by an individual to support them. This individual will not be entitled to speak on behalf of the Respondent, address the Hearing Panel, provide evidence during the Hearing, or question witnesses or the CESPLS.
- 3.41 A person appearing as a witness during the Hearing will not be able to act as the Respondent's representative during the Hearing.
- 3.42 The Hearing Panel may refuse to allow a particular person to support the Respondent at the Hearing, if it is satisfied that there are good reasons for doing so.

### Witnesses

- 3.43 The parties are entitled to call witnesses to give relevant evidence. The Hearing Panel may decline to hear evidence which is not relevant to the question of whether there has been a breach of the Code of Conduct.
- 3.44 Other than when giving evidence, witnesses will not be present during the Hearing until after they have been discharged by the Hearing Panel.
- 3.45 In terms of section 17(5)(a) of the 2000 Act, the Standards Commission or the Hearing Panel may, at any time, on its own account or on an application by the Respondent or the CESPLS, by notice, require any person to:-
- (i) Attend as a witness at the Hearing at such time and place as may be specified in the summons and to answer any questions.



- (ii) Produce any documents or other material in their custody or under their control which relate to any matter in question at the Hearing.
- 3.46 No person will be required to attend unless they have been sent a copy of Section 17 of the Ethical Standards Act and given at least 7 days' notice of details of the Hearing or they have informed the Standards Commission that they accept such notice that has been given.
- 3.47 A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection 3.46 above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 3.48 A person will not be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- 3.49 The Chair will administer oaths or affirmations to each witness prior to evidence being heard.
- 3.50 Witnesses will be questioned by the Party calling them and may then be cross-examined by the other Party. The Party calling the witness may then re-question the witness but only on new matters raised during cross-examination. The Party calling the witness should not put leading questions (i.e. questions which invite a witness to give a particular response) to the witness unless they are on introductory matters or facts that are not in dispute. The Hearing Panel can choose to disregard any evidence elicited from a leading question.
- 3.51 The Hearing Panel may question witnesses at any point. Parties may question witnesses on matters arising out of the Hearing Panel's question.
- 3.52 If either Party believes any witness is vulnerable and/or may need particular assistance because of physical or mental impairment or any other substantial reason, where possible the Executive Director should be advised at least 14 days before the Hearing to allow the matter to be considered. The Hearing Panel will consider all the relevant information and, if necessary, allow appropriate supportive measures to be put in place prior to the Hearing.



## 4 PROCESSES AND PROCEDURES PRIOR TO THE HEARING

### Notification Actions by the Standards Commission

4.1 Within 7 days of the Standards Commission's decision to hold a Hearing, the Executive Director will:

Provide the Respondent with:

- (a) A numbered copy of the CESPLS report, for ease of reference during the Hearing;
- (b) A copy of any other document received from any party other than the Respondent and taken into account by the Standards Commission in deciding to hold a Hearing.
- (c) A copy of the Hearing Rules.
- (d) A copy of section 17 of the Ethical Standards Act, setting out that a person who, without reasonable excuse, fails to comply with a requirement to attend the Hearing, give evidence and/or produce documents is guilty of an offence.

Write to the Respondent advising them of:

- (a) The Standards Commission's decision to hold a Hearing.
- (b) The complaint made and the relevant section of the Code of Conduct that is alleged to have been breached.
- (c) The names of the Members of the Hearing Panel and the Chair, where available.
- (d) The date and the location the Standards Commission has provisionally arranged for the Hearing and an estimate of the likely duration of the Hearing.
- (e) The fact that the case against the Respondent will be conducted by the CESPLS, who may appoint counsel, a solicitor or any other person, to assist or present the complaint before the Hearing, and who may produce and make available documents.
- (f) Their entitlement to give evidence in person and/or be represented, and to call one or more witnesses to make representations on their behalf.
- (g) Their entitlement to choose not to appear at the Hearing, but instead to rely on documents previously submitted and/or a written statement of case and/or other documents; unless the Standards Commission requires otherwise in terms of section 17(5)(a) of the Ethical Standards Act.
- (h) The Standards Commission's decision to require any person to attend the Hearing, give evidence and produce documents and, if so, who they are; if such a decision is made.
- (i) The terms of section 17(6) of the Ethical Standards Act, which state that the Respondent is not required to give any evidence or produce any documents which they could not be compelled to give or produce in civil proceedings in the Court of Session.
- (j) The Standard Commission's preference that they and the CESPLS should, where possible, prepare a joint statement of facts that are agreed and facts that are in dispute, and such a statement should normally be submitted by the CESPLS to the Executive Director at least 7 days before the Hearing takes place.



### **Actions Required by the Respondent**

- 4.2 The Respondent is required, within 21 days of the date of the Executive Director issuing the letter referred to in Rule 4.1, to send to the Executive Director:
- (a) Their written statement of case and any documents to which reference is to be made, together with any other documents that the Standards Commission has required them to produce in terms of section 17(5)(a) of the Ethical Standards Act. The statement should state whether they accept the facts in the CESPLS's report and if not, which facts are in dispute and why. The statement should also state whether they accept the conclusions reached by the CESPLS either in full or in part. The Respondent may rely on documents previously submitted to the Executive Director or CESPLS.
  - (b) An indication whether they plan to attend the Hearing, give evidence and/or produce documents, in the event that the Standards Commission has not required them to do so in terms of section 17(5)(a) of the Ethical Standards Act.
  - (c) Details of the names and addresses of any witnesses whom they propose to call, and the generality of the subject matter of their evidence.
  - (d) Any request that the Respondent may wish to make to the Standards Commission to require a person to attend the Hearing, give evidence and/or produce documents in terms of section 17(5)(a) of the Ethical Standards Act, including reasons why this person has not agreed to appear voluntarily.
  - (e) An indication as to whether they intend to prepare a joint statement of facts with the CESPLS that are agreed and facts that are in dispute (if so this should be provided within 7 days of the Hearing date by the CESPLS.)
  - (f) An indication of how long they will need to present their case.
- 4.3 Where the Respondent does not intend to appear or be represented at the Hearing, they may send to the Executive Director such additional relevant information as they wish, provided that this is received by the Executive Director at least 21 days before the Hearing takes place. This includes any submissions as to mitigation where the Respondent has accepted and or all of the CESPLS's conclusions.

### **Follow up action by the Standards Commission**

- 4.4 The Executive Director will, within 5 days of receipt, provide copies of new/additional documentation received to the CESPLS and the Hearing Panel.
- 4.5 If no response is received from the Respondent after the expiry of the 21 days, the Hearing Panel may, at its discretion, proceed with the Hearing on the date previously notified.

### **Actions by the Standards Commission and the CESPLS**

- 4.6 Within 7 days of the Standards Commission's decision to hold a Hearing, the Executive Director will:
- 4.6.1 Write to the CESPLS providing notification of the Standards Commission's decision to hold a Hearing and of the provisional date, time and location.
  - 4.6.2 Advise the CESPLS they will be provided with a copy of any documents that the Members have taken into account and which the CESPLS has not previously had the opportunity to consider.



### **Actions Required by the CESPLS**

- 4.7 The Standards Commission will write to the CESPLS within 5 days of the receipt of the information required from the Respondent under 4.2 above or within 5 days of the expiration of the 21 day period outlined in 4.2. The CESPLS is required to send, to the Executive Director and the Respondent within 7 days of receipt of the Standards Commission's correspondence,:
- (a) An indication of the names of any witnesses whom the CESPLS proposes to call, and the generality of the subject matter of their evidence.
  - (b) Any additional documents to which reference is to be made, together with any other documents that the Standards Commission may require the CESPLS to produce in terms of section 17(5)(a) of the Ethical Standards Act.
  - (c) Any request that the CESPLS may wish to make to the Standards Commission to require a person to attend the Hearing, give evidence and/or produce documents in terms of section 17(5)(a) of the Ethical Standards Act, including reasons why this person has not agreed to appear voluntarily.
  - (d) An indication as to whether the CESPLS intends to prepare a joint statement of facts with the Respondent that are agreed and facts that are in dispute (if so, and where possible, this should be provided within 7 days of the Hearing date by the CESPLS.)
  - (e) An indication of how long the CESPLS will need to present their case.

### **Actions by the Standards Commission to provide notification of Hearing to the Chief Executive/Monitoring Officer or Standards Officer and the Complainant**

- 4.8 The Executive Director will write to the Chief Executive / Monitoring Officer or Standards Officer and the Complainant within 7 days of the Standards Commission's decision to hold a Hearing, to notify them of the Standards Commission's decision to hold a Hearing and provide, if available, the provisional date, time and location. When finalised, the Executive Director will send the Chief Executive / Monitoring Officer or Standards Officer and the Complainant confirmation of the date, time and location of the Hearing.



## 5 PROCEDURE DURING THE HEARING

### Procedure (General)

- 5.1 Except as otherwise stated in these Rules, the procedure at the Hearing will be determined by the Chair at their discretion with the aim of ensuring that any issues before the Hearing Panel are determined in a just and fair manner.
- 5.2 At the commencement of the Hearing, the Chair will outline the procedure which, subject to consideration of any submission from the Respondent and/or the CESPLS, they propose to adopt. The Chair's opening remarks will include:
- an explanation of the purpose of the Hearing and the order in which it will be conducted;
  - an outline of the complaint that has been made;
  - a statement as to whether, in terms of section 17(5)(a) of the Ethical Standards Act, the Standards Commission has required any person to attend the Hearing, give evidence and produce documents along with confirmation as to whether such a person is present and whether the relevant documents have been produced;
  - a statement that the Hearing Panel will require all witnesses to swear an oath or make an affirmation before giving their evidence;
  - an explanation that the allegation can only be upheld if the CESPLS establishes to the satisfaction of the Hearing Panel that, on the balance of probabilities, there has been a contravention of the relevant Code of Conduct;
  - an explanation that the Hearing Panel will, if the breach of the Code of Conduct is found to have been proved, hear representations from the Respondent as to mitigation;
  - an indication as to whether a joint statement of facts is agreed;
  - a request that both parties indicate whether they have any preliminary matters to be discussed.

### Procedure where all facts are agreed and joint statement of facts is agreed

- 5.3 Where a joint statement of facts is agreed and the Respondent does not dispute the CESPLS's conclusions, the Hearing Panel, at their discretion, may or may not hear any evidence. The Chair will, however, invite both parties to make any submissions they wish on whether the facts agreed amount to a breach. The Hearing Panel will then determine whether a breach has been established.

### Procedure where some or all facts are disputed

- 5.4 Where some or all facts are disputed the Chair will commence the Hearing by having the CESPLS present their case as to why there has been a breach of the relevant Code of Conduct.
- 5.4.1 After giving evidence each witness may be questioned by the Respondent.
- 5.4.2 Each witness may be re-examined but only on new matters raised during the questioning by the Respondent.
- 5.5 The Chair will then move to have the Respondent present their case as to why there has not been a breach of the relevant Code of Conduct.
- 5.5.1 After giving evidence the Respondent and each witness may be questioned by the CESPLS.



5.5.2 The Respondent and each witness may be re-examined but only on new matters raised during the questioning by the CESPLS.

- 5.6 The Chair at their discretion may change the sequence of this process.
- 5.7 At any time, the Chair and Members of the Hearing Panel may question the CESPLS, the Respondent and any witnesses.
- 5.8 When all evidence has been heard, the CESPLS and then the Respondent will be asked to sum up their cases.
- 5.9 The Hearing Panel will deliberate in private to determine whether, on the balance of probabilities, a breach has or has not occurred.
- 5.10 If the Hearing Panel find the Respondent has not contravened the Code of Conduct the case will be dismissed and the Hearing concluded.

#### **Procedure in respect of mitigation and the determination of sanction**

- 5.11 If the Hearing Panel finds that the Respondent has breached the Code of Conduct the Chair will move to hear representations in respect of mitigation from the Respondent.
- 5.12 The Respondent will be entitled to call witnesses when making representations as to mitigation.
- 5.13 After giving evidence in respect of mitigation the Respondent and witnesses may be questioned by the CESPLS.
- 5.14 The Respondent and each witness may be re-examined but only on new matters raised during the questioning by the CESPLS.
- 5.15 The Chair at their discretion may change the sequence of this process.
- 5.16 At any time, the Chair and Members of the Hearing Panel may question the Respondent and any witnesses.
- 5.17 The Hearing Panel will thereafter deliberate in private to consider sanction.
- 5.18 Wherever possible the Chair will then re-convene the Hearing to deliver the sanction orally.
- 5.19 The Chair will outline the appeals process.





## 6 AFTER THE HEARING

### The Decision of the Hearing Panel

- 6.1 The decision of the Hearing Panel will be deemed to be the decision of the Standards Commission.
- 6.2 Where, due to time constraints, it is not possible for the sanction to be declared orally at the conclusion of the Hearing, the Executive Director will provide written notification to the CESPLS, the Respondent and the Chief Executive of the relevant council or devolved public body of the Hearing Panel's determination. In the event of a breach being found the notification will confirm the sanction imposed and be issued no later than 2 days after the conclusion of the Hearing.
- 6.3 Within 14 days of the conclusion of the Hearing, the Chair will finalise the full written decision of the Hearing Panel. The written decision will include the following information:
- (i) An overview of the complaint and outcome from CESPLS investigation;
  - (ii) The Joint Statement of Facts (if applicable);
  - (iii) A summary of the evidence presented at the Hearing;
  - (iv) Whether or not the Hearing Panel has found that there has been a breach of the Code of Conduct, and the reasons for that decision;
  - (v) Any sanction imposed and the date on which the sanction will take effect;
  - (vi) The reasons for sanction applied;
  - (vii) The Appeal procedure, if appropriate.
- 6.4 The written decision will be agreed and approved by the Hearing Panel and thereafter signed and dated by the Chair of the Hearing Panel. If agreed by the Chair the Chair's signature may be inserted into the document using their electronic signature.
- 6.5 Subject to Rule 6.8 below, the Executive Director will, within 14 days of the conclusion of the Hearing, send the written decision of the Standards Commission's Hearing Panel to the Respondent, the relevant council or devolved public body, the CESPLS, the complainant and any other person the Standards Commission considers should receive a copy.
- 6.6 Where the written statement of the decision refers to evidence which has been given in private, persons other than the Respondent and the CESPLS will instead be sent a copy of the summary of the reasons, having regard to the circumstances in which the evidence was taken.
- 6.7 Where the Standards Commission has imposed a sanction the Respondent will be sent a copy of the Appeals procedures as laid out in section 22 of the Ethical Standards Act.
- 6.8 In the event that the Hearing Panel determines a sanction be imposed on a person who has been appointed to a devolved public body by the Crown in terms of section 23 of the Ethical Standards Act, the Executive Director will submit to the First Minister a recommendation in relation to the level of sanction determined by the Hearing Panel within 14 days of the conclusion of the Hearing in terms of section 23(2) of the Ethical Standards Act.
- 6.9 The Executive Director will intimate the decision of the Hearing Panel in writing to a council or devolved public body, and in terms of section 18 of the 2000 Act, and notify:



- (i) the council or devolved public body that it is required to consider the decision within 3 months of receiving written notice of it (or such longer period as the Standards Commission may determine); and that
  - (ii) such consideration can only be discharged by the council or devolved public body and not by a committee, sub-committee or an officer.
  
- 6.10 The Executive Director will also direct that the Standards Commission require to be advised of any decision made by the council or devolved public body in terms of (i) above and, on receipt of that information, will advise the Standards Commission.
  
- 6.11 The Standards Commission may make such arrangements for the publication of its decisions as it considers appropriate, but in doing so will have regard to the need to preserve the confidentiality of any evidence heard in private and for that purpose may make any necessary amendments to the text of the decision.
  
- 6.12 Within 21 days of the conclusion of the Hearing, the Executive Director will make a record of the decision in the on-line register held by the Standards Commission. The Executive Director will also take such other steps as directed by the Standards Commission to make the decision available to the public.
  
- 6.13 The on-line register of cases is used to record details about complaints where the CESPLS reports to the Standards Commission on cases where a councillor or member of a devolved public body is alleged to have contravened the councillors' or the Members' code. The register will include confirmation of the action taken by the Standards Commission, in relation to the cases submitted by the CESPLS, including the outcome of any Hearing.



**HEARINGS RULES – INDICATIVE MILESTONE DATES**

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
19/01/16	SCS	2015 V2	N/A	Removal of former paragraph 5.17 and inclusion of data control & version information.
23/5/16	SCS	2016 V1	2016 v1.1	Removal of reference to witnesses from paragraph 3.9.
23/6/16	SCS	2016 v1.1	2016 v1.2	Changes made to timescales in respect of actions to be taken by Standards Commission and parties.



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