



INTEGRITY IN PUBLIC LIFE

## RELEVANCY OF EVIDENCE

### 1. THE HEARING RULES

- 1.1 While the Parties to a Hearing are entitled to be heard and to call witnesses, 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 proportionate, just and fair manner. This means that the Hearing Panel will not wish to hear irrelevant or unnecessarily repetitious evidence. For these reasons the Commission recommends that the Respondent and the Commissioner for Ethical Standards in Public Life in Scotland try to agree a Joint Statement of Fact or, where appropriate, discuss contentious evidence or procedural matters at a Pre-Hearing Meeting.
- 1.2 Paragraph 3.44 of the Hearing Rules states that while 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.
- 1.3 Therefore, the issue of relevancy is a matter for the Hearing Panel's discretion and it is up to the Hearing Panel to determine what evidence, if any, must properly be excluded as irrelevant with the aim of allowing the issues before it to be clarified in a proportionate, just and fair manner.

### 2. RELEVANCY

- 2.1 The concept of relevance is fundamental to the law of evidence. Facts which a party wish to present as evidence must have a close and logical link with the issues to be determined in the case at hand. The ultimate test of relevance is whether the material presented has a reasonably direct bearing on the subject or which makes the matter which requires proof, more or less probable.
- 2.2 The role of the Hearing Panel is to determine whether, on the balance of probabilities, a breach of the Code of Conduct has or has not occurred. If the Hearing Panel find the Respondent has not contravened the Code of Conduct the case will be dismissed and the Hearing concluded.
- 2.3 If the Hearing Panel finds that the Respondent has breached the Code of Conduct, it will proceed to hear any representations in respect of mitigation from the Respondent.

- 2.4 This means that in order to be relevant to the question of whether or not there has been a breach of the Code of Conduct, any evidence presented by the parties and witnesses must have a close and logical link to the provision(s) of the Code of Conduct under consideration.
- 2.5 If the Hearing Panel determines there has been a breach of the Code of Conduct, any evidence presented by the parties and witnesses may be taken into account in the imposition of an appropriate sanction if it has a close and logical link to the question of whether there are any mitigating factors.
- 2.6 Questions of relevance will depend on the individual facts of each case. It is for the Hearing Panel to determine whether disputed facts have a bearing on the issue to be determined. That is a question of degree, and will involve considering matters of proportionality, fairness and justice.
- 2.7 If any lines of questioning, or evidence sought to be presented, by the parties are plainly irrelevant and have no bearing on whether there has been a breach of the Code of Conduct, the Hearing Panel may exercise its discretion and prevent such evidence being presented on the grounds of relevancy.
- 2.8 If either party consider any lines of questioning or evidence sought to be presented by the other party is irrelevant, they can make submissions to the Hearing Panel as to the relevancy of such evidence to the allegation. The Hearing Panel will then decide whether or not to permit such evidence to be led.
- 2.9 In determining the degree of latitude permitted, the Hearing Panel will take into consideration evidence presented by the other party. For example, in order to refute the allegation(s) made, the Respondent may adopt a position that it is necessary for them to lead their own witnesses in response to evidence led by the CESPLS. Similarly the CESPLS may adopt a position that it is necessary for him to lead witnesses in response to evidence led by the Respondent.
- 2.10 Examples of evidence that may be excluded as irrelevant are:
- Evidence relating to the complainant's motives;
  - Evidence relating to the Respondent's conduct which does not form part of the alleged contravention of the Code of Conduct being considered.

### **3. UNREPRESENTED PARTIES**

- 3.1 It is often the case that a Respondent conducting proceedings on their own behalf will be afforded some latitude in the way in which that case is conducted. However, the extent of the leeway afforded should not be to the detriment of the proceedings as a whole and the Hearing Panel will ensure that a case is dealt with in a proportionate, fair and just manner.
- 3.2 The role of the Hearing Panel when hearing evidence is not generally a proactive one. It is not the Hearing Panel's function to give advice to a party as to how that party should present their case. The main role of a Hearing Panel in determining whether or not there has been a breach of the Code of Conduct during the course of a Hearing is to listen to, note and assess the evidence of the witnesses called by the parties and to deal with any procedural matters which may arise in an impartial and fair way.