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## **GUIDANCE ON HEARINGS FOR UNREPRESENTED RESPONDENTS**

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### **1. INTRODUCTION**

- 1.1 The Standards Commission understands that being the subject of a Hearing can be daunting, particularly for Respondents who are not represented.
- 1.2 This Guidance is intended to assist unrepresented Respondents in understanding the format of the Hearing and how it will be conducted.
- 1.3 Respondents are invited to contact the Standards Commission's Executive Director at any time before the Hearing on 0131 348 6666 or by email to [enquiries@standardscommission.org.uk](mailto:enquiries@standardscommission.org.uk) if they have any questions on the conduct and management of Hearings, including any queries on the Rules and what is expected of them both before and during the Hearing.
- 1.4 While the Hearing Panel cannot give Respondents advice on how to present their case, it wishes to ensure cases are dealt with in a proportionate, fair and just manner. If you have any questions or concerns at the Hearing, you can also raise these with the Chair or with Standards Commission staff in attendance, provided you do not do so in an overly disruptive manner.

### **2. PROCEDURE DURING HEARING**

- 2.1 The procedures that will be normally followed at Hearings are outlined in Section 5 of the Hearing Process and Rules, which can be found on the Standards Commission's website at <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>. The procedure is also demonstrated in a flow chart at the end of this document.
- 2.2 In certain circumstances, and only if there is agreement from both parties to do so, the Standards Commission will instead follow its Abbreviated Hearing Process. Further information and a copy of the Abbreviated Hearing Process can be found at [www.standardscommissionscotland.org.uk/uploads/files/1488450053AbbreviatedHearingProcessv.1.1.pdf](http://www.standardscommissionscotland.org.uk/uploads/files/1488450053AbbreviatedHearingProcessv.1.1.pdf)
- 2.3 Unless otherwise agreed, the Hearing will be held in public. This means that members of the public and press may be present. The press are allowed to take photographs and make video recordings before proceedings commence but will be asked to refrain from doing so when the Hearing is underway. A press release will be issued after each Hearing.
- 2.4 The Hearing Panel Chair will open the Hearing by introducing the Hearing Panel, any Standards Commission's staff in attendance and the parties. The Chair will then outline the complaint under consideration and explain the procedure that will be followed. The Chair will also ask the parties to confirm the number and names of witnesses they intend to call (this information should have been provided to the Standards Commission in advance of the Hearing).

### **3. PRELIMINARY MATTERS**

- 3.1 Issues relating to the way the Hearing is to be conducted, including requests for any special assistance, should be made to the Standards Commission as far in advance of the Hearing as possible so that, where appropriate and possible, arrangements can be made to accommodate them.
- 3.2 The Standards Commission recognises, however, that some issues may arise on the day of the Hearing itself. The Chair will, therefore, commence the Hearing by asking both parties, starting with the Commissioner for Ethical Standards in Public life in Scotland (ESC), or their representative, if they have any preliminary issues they wish to raise. Depending on the nature of any issues raised, the Chair may invite the other party to comment before noting the matter being raised / reaching a decision.
- 3.3 Preliminary matters may be issues concerning the arrangements in place for how the Hearing will be conducted. For example, a party may wish to ask the Hearing Panel to hear evidence from a witness at a particular time, if they know that the witness will be unavailable later in the day. Another example may be if a party wants to request regular comfort breaks.
- 3.4 The Chair will not allow any evidence to be led or submissions on the case itself to be made at the preliminary stage.
- 3.5 Late productions or requests to change the timetabling of the Hearing are unlikely to be accepted unless the party making the request provides a very good reason why the production was not submitted or the request made in advance of the Hearing.

### **4. EVIDENCE AND SUBMISSIONS**

- 4.1 When any preliminary matters have been dealt with, the Chair will then invite the parties, starting with the ESC or their representative, to present their case in respect of whether there has or has not been a breach of the Code of Conduct.
- 4.2 Parties, in presenting their case, can make submissions outlining the basis of their case before calling witnesses to give evidence on their behalf.
- 4.3 The Hearing Panel will only allow relevant evidence to be led. This is evidence which has a direct bearing on the issues in hand. The Hearing Panel will not wish to hear irrelevant or unnecessarily repetitive evidence, which may include evidence on matters that are not in dispute. Parties will be sent guidance produced by the Standards Commission on the Relevancy of Evidence in advance of the Hearing. A copy of this guidance can also be found on the Standards Commission's website at:  
<http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.
- 4.4 Parties are entitled to object to submissions being made, evidence being led or a line of questioning on the grounds that it is irrelevant. It is up to the Hearing Panel to decide whether or not to allow the evidence to be led and / or whether to take it into consideration when reaching a decision as to whether or not there has been a breach of the Code of Conduct.
- 4.5 If you wish, or are asked, to give evidence on the matters in question (in addition to making any submissions), you will be treated as a witness and asked to take an oath or make an affirmation before being asked any questions.

## **5. PRODUCTIONS**

- 5.1 Before the Hearing, the Standards Commission will provide the parties with a numbered copy of all the documents sent by the parties in support of their case. These are called the productions. The Hearing Panel will have copies of the productions. This means that you can draw the Hearing Panel's attention to any documents you wish to refer, to or rely on, when making your submissions, by using the specific page number.
- 5.2 A copy of the productions will also be made available to any witnesses when they are being questioned. This means you can again refer to page numbers if you wish to refer them to specific documents as part of your questioning.

## **6. WITNESSES**

- 6.1 Witnesses will be asked to wait in a separate room until the Hearing Panel is ready to hear their evidence. The Standards Commission's staff will then collect the witness and ask them to take the witness stand. The Hearing Panel Chair will invite the witness to take an oath or make an affirmation before they are asked any questions.
- 6.2 Witnesses are only entitled to be present at the Hearing after they have given their evidence and have been excused by the Hearing Panel. As the Respondent, however, you are entitled to be present at all times even if you give evidence as a witness.
- 6.3 When the ESC or their representative has finished asking questions of a witness, you will be given the opportunity to ask that witness any questions you may have (provided the question [is relevant]).
- 6.4 The Hearing Panel may then also ask the witness questions.
- 6.5 The ESC or representative may then re-examine the witness by asking them further questions. Such questions can only relate to any new matters raised by any questions you or the Hearing Panel has asked.
- 6.6 This process will be repeated until the Hearing Panel has heard from all the ESC's witnesses.
- 6.7 The Chair will then invite you to call your witnesses. After you have completed questioning each witness, the ESC or representative will be given the opportunity to ask them questions. The Hearing Panel will also be able to do so. You can then re-examine the witness by asking further questions but only on any new matters raised in any questions asked by the ESC or their representative or the Hearing Panel.

## **7. PERMISSABLE QUESTIONS**

- 7.1 As noted above, you are only entitled to ask witnesses questions that are relevant to the matters at issue and/or which could elicit a response which may assist the Hearing Panel in determining whether or not there has been a breach of the Code of Conduct. You are entitled to object if you consider the ESC's line of questioning to be irrelevant. Similarly, the ESC or representative will be entitled to object if they consider your line of questioning to be irrelevant. It will be for the Hearing Panel to determine whether or not to allow the question.
- 7.2 Leading questions are ones that prompt the answer wanted, suggest a particular answer, or contain information the person asking the question is looking to have confirmed. The party calling the witness should not put leading questions to the witness unless they are introductory matters or facts that are not in dispute. The Hearing Panel can choose to disregard any evidence elicited from a leading question.

- 7.3 You should ensure that you are asking questions in a fair manner and are allowing the witness time to answer. The Hearing Panel will not permit witnesses to be harassed or badgered by either party.

## **8. SUMMING UP**

- 8.1 When all the evidence has been heard, the Chair will invite the ESC or their representative to sum up their case. You will then be asked to sum up your case.
- 8.2 The summing up should not contain any new matters or issues that have not been raised in previous submissions made or evidence led.

## **9. DETERMINATION ON BREACH**

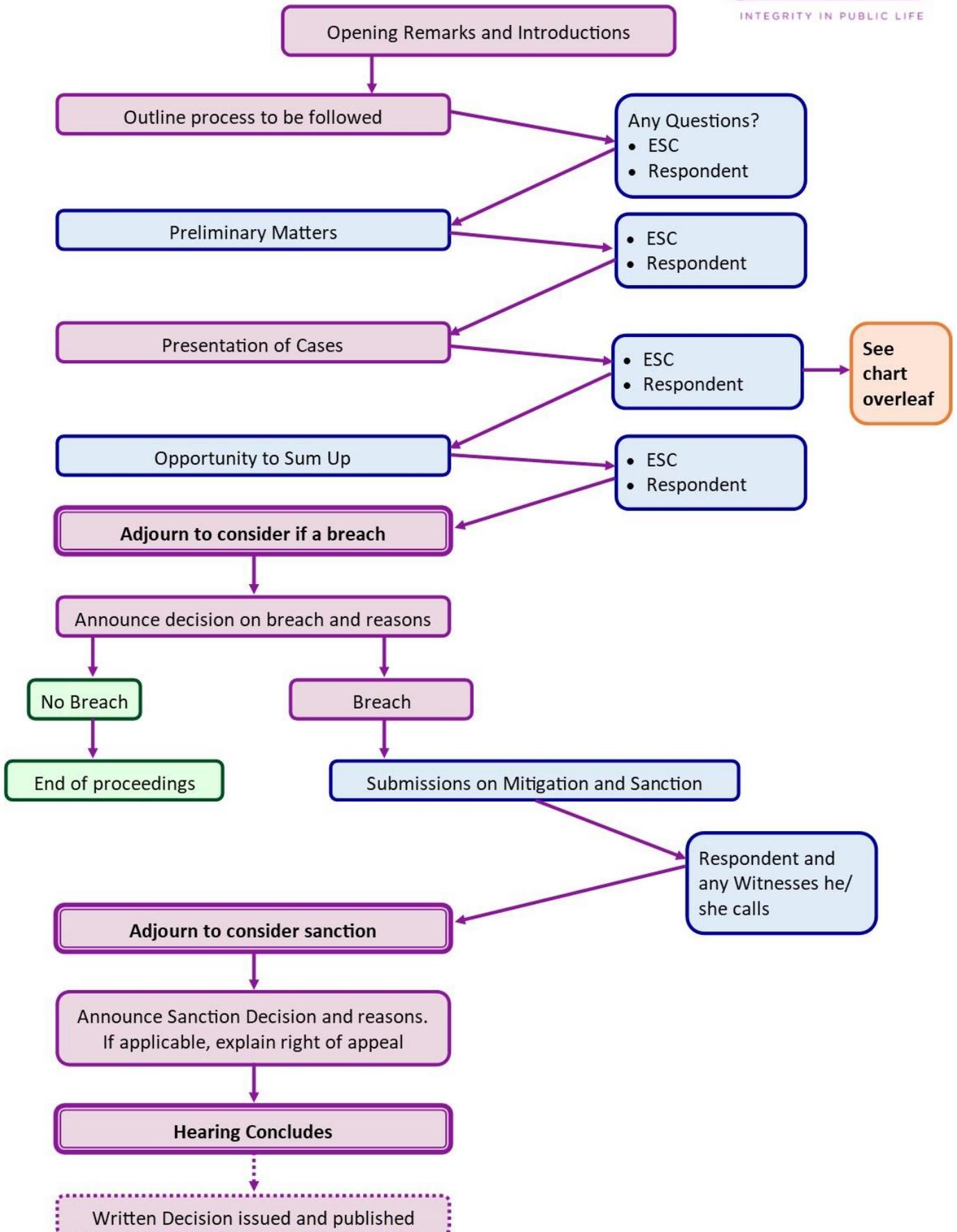
- 9.1 When the summing up has concluded, the Hearing Panel will adjourn the Hearing and retire to a separate room to determine, in private, whether or not a breach of the Code of Conduct has been established on the balance of probabilities.
- 9.2 The Hearing Panel will then return to the room and the Chair will announce its determination as to whether or not there has been a breach of the Code of Conduct. The Chair will provide brief verbal reasons for its decision.
- 9.3 If the Hearing Panel determines there has not been a breach of the Code of Conduct, the Chair will conclude the Hearing.

## **10. MITIGATION**

- 10.1 If the Hearing Panel finds that you have breached the Code of Conduct, the Chair will ask you whether you wish to make any verbal representations, submit any written representations and/or call any witnesses, in respect of mitigation.
- 10.2 Evidence in respect of mitigation will include any circumstances you wish the Hearing Panel to be aware of before it determines the sanction to be applied. This could include factors that contributed to the breach occurring or any character references.
- 10.3 After giving evidence in respect of mitigation both you and any witnesses you have called may be questioned by the Hearing Panel. If so, you will then be entitled to re-examine the witness, but only on new matters raised during the questioning by the Hearing Panel.
- 10.4 The Hearing Panel will then adjourn the Hearing and retire to a separate room to determine, in private, the sanction to be applied.
- 10.5 The Hearing Panel will then return to the room and the Chair will announce the Panel's decision in respect of sanction. The Chair will provide brief verbal reasons for its decision and will advise you of your right of appeal. The Hearing will then conclude.

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## Hearing Process



## Presentation of Cases

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graph TD; A[Presentation of Cases] --> B[ESC:]; B --> C[Respondent:];
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### **ESC:**

Outline background

Lead any witnesses

Opportunity to cross examine witnesses by Respondent/Respondent's representative

Opportunity to re-examine by ESC

Any questions from Hearing Panel

Submissions as to whether there was a breach of the Code

### **Respondent:**

Outline background

Lead any witnesses

Opportunity to cross examine witnesses by ESC

Opportunity to re-examine by Respondent/Respondent's representative

Any questions from Hearing Panel

Submissions as to whether there was a breach of the Code

**GUIDANCE ON UNREPRESENTED RESPONDENTS – INDICATIVE MILESTONE DATES**

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
30/03/17	LJ	N/A	V1.0	Introduction of Guidance
29/11/18	LJ	V1.0	V1.1	Minor revisions to make contents as clear as possible.
05/03/19	EM	V1.1	2019 v1.0	Update reference to CESPLS, replace with ESC
06/03/19	JS	2019 v1.0	2019 v1.1	Changes to ESC pronoun, updated Flowchart