



INTEGRITY IN PUBLIC LIFE

# **HEARING PROCESS GUIDE & RULES**

**Effective from 12 November 2020**

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## 1. INTRODUCTION

- 1.1 These Rules apply when the Standards Commission, after receiving a report from the Commissioner for Ethical Standards in Public Life in Scotland (ESC) in terms of section 14 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (the Ethical Standards Act), decides to hold a Hearing, in accordance with the options available to it under section 16 of the Act.
- 1.2 These Rules have been agreed by the Standards Commission in terms of section 17 of the Ethical Standards Act and outline the procedures to be followed the Standards Commission, the parties and anyone else who attends a Hearing.
- 1.3 The Hearing Panel may dispense with, or vary any provision in these Rules, where it appears to the Hearing Panel it would be fair and just to do so. The Panel may also choose, in exceptional circumstances, to discontinue the Hearing process and refer the matter back to the Standards Commission to reconsider its decision under Section 16 of the Ethical Standards Act. Such exceptional circumstances may include, but are not limited to, the following:
- (a) There is evidence that the Respondent is incapacitated in the long term; and
  - (b) The ESC advises the Standards Commission of new evidence that demonstrates no breach has occurred.

## 2. DEFINITIONS

In this document the following definitions apply:

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

**balance of probabilities** - the applicable standard of proof to determine whether it is more likely than not that the evidence presented supports an alleged breach of the relevant Code of Conduct.

**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.

**ESC** - the Commissioner for Ethical Standards in Public Life in Scotland (ESC) or appointed representative.

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

**Code of Conduct** - the relevant Code of Conduct applicable to the Respondent(s).

**Complainer** - the person who submitted the complaint to the ESC for investigation.

**complaint** - an allegation submitted to ESC that a councillor or board member of a devolved public body has contravened a provision or provisions in the applicable a Code of Conduct.

**contravention** - a breach of the relevant Code of Conduct.

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

**days** - refers to calendar days.

**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** - proceedings conducted to determine whether there has been a breach of a Code of Conduct.

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

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

**oath** – a solemn promise usually invoking a divine witness, to tell the truth.

**parties** - the ESC and the Respondent.

**productions** – all written documents produced as evidence to be considered at the Hearing.

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

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

### 3. HEARING RULES

#### General Information

- 3.1 The Standards Commission will hold the Hearing at a venue of its choice normally:
- (a) If the Respondent is a councillor, in the area where the Headquarters of the Local Authority (council) where they were elected is located; or
  - (b) If the Respondent is a member of a devolved public body, in the area where the public body holds its meetings.
- 3.2 The Standards Commission may hold the Hearing elsewhere if it determines it is fair, in the public interest and appropriate to do so. If the Standards Commission intends to hold the Hearing elsewhere it will advise the parties and council or devolved public body accordingly and will take into account any submissions made on this before reaching a final decision. The Standards Commission will take into consideration any, or all, of the following factors:
- (a) The views of the ESC, Respondent and the council / devolved public body;
  - (b) Whether or not the Respondent wishes to attend the Hearing and the likely inconvenience/costs they will incur in travelling to the Hearing;
  - (c) Whether or not the Respondent has indicated they accept the facts and conclusions as outlined in the ESC's report;
  - (d) The likelihood of any witnesses being called either to give evidence as to breach or mitigation and the likely inconvenience/costs they will incur in travelling to the Hearing;
  - (e) The likely complainer, public and local press interest in the Hearing;
  - (f) Whether the Standards Commission is, or would be, spending public funds unnecessarily.
- 3.3 The Standards Commission may decide to hold the Hearing online, in cases where it appears there is little dispute between the parties and no witnesses (other than the Respondent) are to be called. If the Standards Commission is minded to hold the Hearing online, it will seek the views of the ESC and Respondent and will take into account any submissions made on this before reaching a final decision.
- 3.4 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.

- 3.5 A Hearing will be conducted by a Hearing Panel comprising of three Members of the Standards Commission, with one Member acting as Chair.
- 3.6 Where two or more complaints have been made in respect of the same or related matters, the Standards Commission or the Hearing Panel may, on its own account or on an application by one or more of the parties, conjoin and consider them at the same Hearing. Notice to this effect will be given to the parties.
- 3.7 Notification of the Hearing will be considered to have been given to the Respondent if it is:
- (a) sent to the Respondent's address by recorded delivery post; or
  - (b) delivered to the person personally or left at their address.
- 3.8 The Standards Commission will send the parties, the council or devolved public body and the complainer confirmation of the date, time and venue at least 21 days before the Hearing.
- 3.9 Notice of the Hearing will be published on the Standards Commission's website, along with the name of the Respondent and the date, time and venue of the Hearing.
- 3.10 The Respondent and the ESC will be encouraged to discuss whether any matters, including the facts as outlined in the ESC's Report can be agreed. If so, they should submit a signed joint statement to the Executive Director providing details of those matters which are agreed, and those which are in dispute at least 5 days before the date of the Hearing.

### Changes to Hearing Arrangements

- 3.11 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:
- (a) The public interest in the expeditious disposal of the case; and
  - (b) Any inconvenience or prejudice to the parties and to witnesses.
- 3.12 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 a matter for the Chair's discretion as to whether any application submitted later than 7 days before the scheduled date of the Hearing will be considered.
- 3.13 Where an application for postponement or adjournment is granted, the Executive Director will inform the parties accordingly and will advise them of the date of the re-scheduled Hearing.

### Pre-Hearing Meetings

- 3.14 The Chair may invite the parties, their representatives to a pre-Hearing meeting. The purpose of such a meeting would be to:
- (a) Discuss procedural arrangements;
  - (b) Clarify any issues;
  - (c) Identify who is to be called or cited as a witness;
  - (d) Consider whether it would be appropriate to apply the Standards Commission's Abbreviated Hearing Process; and
  - (e) Provide the parties with an opportunity to discuss whether they can agree any facts as outlined in the ESC's Report.
- 3.15 Pre-Hearing meetings will normally be held in private in Edinburgh and conducted by the Chair sitting alone. The Chair may also consider holding the pre-Hearing meeting online or by video or telephone conference.

- 3.16 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 for the Chair to decide whether any applications submitted later than 2 days before the scheduled date of the meeting will be considered.
- 3.17 If, having been invited to a pre-Hearing meeting, one or more of the parties do not attend, or are not represented, the Chair may proceed with the meeting in their absence, provided they are satisfied that appropriate notice was given.

### **Productions**

- 3.18 Any productions, including any case law that the parties wish to rely on at a Hearing must be submitted to the Executive Director at least 7 days before the Hearing is scheduled to commence. The relevant paragraph or passages in any case law must be highlighted. The Standards Commission will add any documents or case law submitted to the productions and will circulate it to the other parties at the earliest available opportunity. During the Hearing the party presenting the case law will be expected to explain why it is being cited and to lead the Hearing Panel through the relevant points.
- 3.19 The Hearing Panel may decide not to accept any productions submitted less than 7 days before a Hearing, if it considers it would be unfair to the other party to do so.

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

- 3.20 The Hearing Panel may at any time appoint its own legal adviser to assist it before, during and/or after the Hearing. Any appointed legal adviser can assist by identifying and leading the Panel through any relevant case law and by questioning witnesses.

### **The Hearing**

- 3.21 The Hearing will be held in public unless the Hearing Panel determines the Hearing or part of it will be held in private. If it is held online, it may be livestreamed on the Standards Commission's website.
- 3.22 The parties may request that the Hearing, or part of it, be held in private by writing to the Executive Director no less than 14 days prior to the Hearing.
- 3.23 During a Hearing, the Hearing Panel may, at its own discretion, or following a request from one of the parties or a witness, decide to proceed with the Hearing, or part of it, in private. If the Hearing is held online, any part held in private will not be livestreamed.
- 3.24 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 it in public.
- 3.25 The Hearing Panel will also take into account the need to protect any sensitive, personal and confidential material or information when determining what, and how, evidence can be led and/or when deciding whether or not to hold the Hearing or part of it in private.
- 3.26 The Hearing Panel may, at its own discretion or following a request from a party or witness, exclude from the Hearing or part of it any person whose conduct is disruptive to the Hearing.

- 3.27 The Hearing Panel may, at its own discretion or following a request from a party, decide that the Hearing will be audio recorded if it is of the view that doing so would be helpful due to the likelihood of the evidence being complex or the likelihood of there being significant discrepancies between evidence given by different witnesses. The Standards Commission will advise the parties if it intends to do so. The recording will be destroyed one month after the 21-day deadline for the submission of an appeal, under Section 22 of the Ethical Standards Act, in respect of a decision made at a Hearing or, where an appeal has been made, within one month of the conclusion of the appeal proceedings.
- 3.28 If the Hearing Panel is satisfied that any party or witness is unable through physical or mental impairment to attend a Hearing, the Standards Commission may make such arrangements as appear best suited in all the circumstances of the matter to dispose fairly of the case.
- 3.29 If any party fails to attend or be represented at a Hearing, the Hearing Panel may:
- (a) adjourn the Hearing to another date if it considers it is appropriate and fair to all parties to do so, in which case the Executive Director will advise the parties accordingly; or
  - (b) proceed to hear the complaint if it is satisfied that notice of the Hearing was properly given in compliance with paragraph 3.8 of these Rules.
- 3.30 The Hearing Panel will deliberate and reach its decision in private. The Hearing Panel will announce its decision on breach and, if applicable, on sanction, verbally at the Hearing if time permits. Where time does not allow for such a decision to be announced at the Hearing, the Executive Director will, within 3 days of the conclusion of the Hearing, provide written notification of the decision on breach and, if applicable sanction, to the ESC, Respondent and Chief Executive of the relevant council or devolved public body
- 3.31 The standard of proof to be applied by a Hearing Panel is the balance of probabilities. This means the Hearing Panel will consider whether it is satisfied, from the evidence and submissions before it, that something being alleged is more likely than not to have occurred.
- 3.32 The Hearing Panel may decide, during the course of its deliberations, to advise parties of, and seek representations from them on, any preliminary view it has in respect of whether there has been a breach of the relevant Code of Conduct for reasons that are different to any identified in the complaint, the ESC's report, any previous correspondence issued by the Standards Commission or in submissions made at the Hearing, if it considers that it would be fair, proportionate and appropriate to do so. The Hearing Panel will consider any requests to adjourn the Hearing in light of this although it will only agree to such a request if it is satisfied that proceeding would be unfair or prejudicial to one or both of the parties. If it decided to proceed, the Panel will then reach a decision in private, having heard any submissions on its preliminary view. It will then announce its decision verbally at the Hearing (if time permits).
- 3.33 The written decision of the Hearing Panel will be issued no later than 14 days after the Hearing is concluded.

### Representation at Hearings

- 3.34 A person whose conduct is being considered by a Hearing is entitled to be heard and 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. For the avoidance of doubt, any costs associated with obtaining representation will be borne by the Respondent.

- 3.35 Where a Respondent attends the Hearing but is unrepresented they can be accompanied by an individual to support them (this person will not be entitled to make representations, provide evidence or question witnesses).
- 3.36 A person appearing as a witness during the Hearing will not be able to act as the Respondent's representative at the Hearing.
- 3.37 The ESC is required to attend or be represented in person at the Hearing and, unless the Hearing is to be held online, it will only be in exceptional circumstances that the appointed Panel will consider a request for the ESC or her representative to be allowed to attend via video conferencing. For the avoidance of doubt, any costs associated with obtaining representation will be borne by the ESC.
- 3.38 Notice of the name of any representative must be provided to the Standards Commission at least 7 days before the Hearing. 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

- 3.39 The parties are entitled to call witnesses to give relevant evidence. The Hearing Panel may decline to hear any evidence it considers is not relevant to the question of whether there has been a breach of the Code of Conduct. The Standards Commission will provide the parties with guidance on the relevancy of evidence before the Hearing. This guidance is also available on the Standards Commission's website at: <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>. The Hearing Panel may also decline to hear evidence on matters covered in any Joint Statement of Facts agreed by the parties.
- 3.40 Other than when giving evidence, witnesses are not allowed to be in the Hearing room until after they have been discharged by the Hearing Panel.
- 3.41 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 following an application to do so by the Respondent or the ESC, require any person to:
- (a) Attend as a witness at the Hearing at such time and place as may be specified in the summons and to answer any questions.
  - (b) Produce any documents or other material in their custody or under their control which relate to any matter in question at the Hearing.
- 3.42 No person will be required to attend as a witness unless they have been given at least 7 days' notice of the Hearing and a copy of Section 17 of the Ethical Standards Act, which provides that:
- (a) a person who, without reasonable excuse, fails to comply with a requirement imposed under subsection 3.41 above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; and
  - (b) 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.
- 3.43 The Chair will administer oaths or affirmations to each witness prior to evidence being heard.
- 3.44 A Respondent can give evidence as a witness. If so, the Chair will administer an oath or affirmation prior to their evidence being heard.
- 3.45 When they are giving evidence, witnesses will be provided with a copy of the numbered productions. Witnesses, including the Respondent, will not be allowed access to any other paperwork or notes while they are giving evidence. The Respondent can, however, refer to their own notes or paperwork while making submissions.

- 3.46 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-examine 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.
- 3.47 The Hearing Panel or any legal adviser it appoints, may question witnesses at any point. Parties may question witnesses on matters arising out of any question asked by the Hearing Panel or its legal adviser. If a witness has been called or cited by the Standards Commission at the Hearing Panel's request, the Panel will question the witness first before inviting the parties to question the witness on any matters arising out of any question asked by the Hearing Panel.
- 3.48 The parties will not be allowed to 'badger' a witness i.e. by deliberately antagonising or mocking them or by asking insulting or derisive questions in an attempt to provoke an emotional response. The Hearing Panel will ask any party doing so to desist and may prevent them from asking further questions of the witness or excuse the witness.
- 3.49 If either party believes any witness is vulnerable and/or may need particular assistance because of physical or mental impairment, language difficulties or any other substantial reason, they should advise the Executive Director accordingly at least 14 days before the Hearing. The Hearing Panel will consider all the relevant information and will ensure that appropriate supportive measures, as far as is reasonably practicable, are in place prior to the Hearing.

## 4. PROCEDURE PRIOR TO THE HEARING

### Information to be provided to the Respondent

- 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 page numbered copy of the ESC report, for ease of reference during the Hearing.
- (b) A copy of any other document received and considered by the Standards Commission when deciding to hold a Hearing.
- (c) Copies of the Standards Commission's Hearing Rules, Guidance on the Relevancy of Evidence, Guidance for Unrepresented Respondents (if applicable) and Policy on the Application of Sanctions.
- (d) A copy of section 19 of the Ethical Standards Act, which confirms that a sanction must be applied if the Hearing Panel finds a breach of the Code and the options available.

#### **Advise the Respondent in writing of:**

- (a) The Standards Commission's decision to hold a Hearing and its reasons for doing so.
- (b) The complaint made and the relevant section(s) of the Code of Conduct that are alleged to have been breached.
- (c) The fact that the ESC (or any representative she appoints) will present the findings of her investigation, that she is entitled to make submissions to the effect that there has, or has not, been a breach of the Code and that she may choose to submit documents and case law to be added to the productions.
- (d) Their entitlement to give evidence in person and/or be represented, to call witnesses to give evidence on their behalf and to submit documents and case law to be added to the productions.
- (e) Their entitlement to choose not to appear at the Hearing, but to instead 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.

- (f) The terms of section 17(6) of the Ethical Standards Act, which states 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.
- (g) That if the Hearing Panel finds a breach of the respect and/or bullying and harassment provisions in the applicable Code, it may take into account information provided on the impact on those affected when determining the sanction to be applied.

#### **Information the Respondent is required to provide**

- 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) A written statement of case outlining whether they accept the facts in the ESC's report and if not, which facts are in dispute and why. The statement should also state whether they accept any conclusion reached by the ESC that there has been a breach of the relevant Code.
  - (b) Any documents they intend to refer to, or rely on, at the Hearing, 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 Respondent may rely on documents previously submitted to the Executive Director or ESC.
  - (c) An indication of whether they plan to attend the Hearing and give evidence. If they are to be represented at the Hearing, the Respondent is required to provide their representative's name and contact details.
  - (d) Details of the names and contact details of any witnesses whom they propose to call, the generality of the subject matter of their evidence and confirmation that they have been contacted and are able and willing to attend the Hearing.
  - (e) Any request for 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 the person has not agreed to appear voluntarily.
  - (f) An indication of how long they or their representative will need to present their case.
- 4.3 Where the Respondent does not intend to appear or be represented at the Hearing, they must then send any relevant information they wish the Hearing Panel to consider to the Executive Director at least 21 days before the Hearing. This includes any submissions or character references to be considered in mitigation should a breach of the Code be found.

#### **Information to be provided to the ESC**

- 4.4 Within 7 days of the Standards Commission's decision to hold a Hearing, the Executive Director will write to the ESC providing notification of the Standards Commission's decision to hold a Hearing.

#### **Information the ESC is required to provide**

- 4.5 The ESC is required, within 21 days of the date of the Executive Director issuing the letter referred to in Rule 4.4, to send to the Executive Director
- (a) Details of the names and contact details of any witnesses whom they propose to call, the generality of the subject matter of their evidence and confirmation that they have been contacted and are able to attend the Hearing.
  - (b) Any documents they intend to refer to, or rely on, at the Hearing, 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.
  - (c) Any request for 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 the person has not agreed to appear voluntarily.

- (d) An indication of how long they will need to present the findings of the investigation and any submissions as to whether or not there has been a breach of a Code of Conduct.

#### Further Information to be provided by the Standards Commission

- 4.6 The Executive Director will provide the parties with the names of the Members of the Hearing Panel and the Chair, the date or dates of the Hearing and the venue where it is to be held, at least 21 days before the Hearing.
- 4.7 The Executive Director will, within 5 days of receipt, advise the other party and Hearing Panel of any new and relevant information received from a party in respect of how they intend to conduct their case at the Hearing and will also provide them with page numbered copies of any documents added to the productions. The Executive Director will also advise the parties of any decision to require any person to attend the Hearing, give evidence and produce documents, within 5 days of such a decision being made.
- 4.8 The Standards Commission will advise the Respondent and ESC, as soon as is practicable, of any relevant information or intelligence it requires or that has emerged between receipt of the ESC's report and the Hearing, if such information or intelligence has not previously been referred to in any productions or submissions lodged or made by either party (including the ESC's report). The Standards Commission will only do so if the Hearing Panel considers that there is a possibility it will rely on or take into account the information or intelligence in question as part of its decision-making on either breach or sanction. If time permits, the parties will be advised of the information or intelligence before the Hearing, with any relevant documents being added to the productions and circulated. If time does not permit, the parties will be advised of the information or intelligence on the day of the Hearing and will be allowed time to consider this before the Hearing commences.
- 4.9 The Executive Director will advise the relevant Chief Executive, Monitoring or Standards Officer and any complainer of the Standards Commission's decision to hold a Hearing within 7 days of such a decision being made. The Executive Director will also provide these individuals with written notification of the date, time and location of the Hearing when finalised. The Executive Director will provide the complainer with a full or redacted (if it contains any confidential information, personal data, or information relating to another complaint) copy of the ESC's report on request where appropriate.

#### Failure by the Respondent or ESC to comply

- 4.10 If the Respondent or ESC fails to take any action or provide any information as required under paragraphs 4.2, 4.3 and 4.5 above, the Hearing Panel may refuse to consider any evidence, documents and arguments they wish to lead, submit or make, if it considers that insufficient advance notice of these has been provided to the Panel or other party and, as such, it would be unfair to allow any such evidence, documents and submissions to be considered.

#### Failure by the Respondent to give evidence

- 4.11 No adverse inference will be drawn in respect of a failure by a Respondent to give evidence at a Hearing unless the Hearing Panel is satisfied:
  - (a) There is a factual dispute about the Respondent's conduct;
  - (b) There is a *prima facie* case to answer;
  - (c) The Respondent has been given appropriate notice and an appropriate warning that an inference may be drawn (as well as an opportunity to explain why it would not be reasonable to give evidence and, if it is found that they have no reasonable explanation, an opportunity to give evidence);
  - (d) There is no reasonable explanation for them not giving evidence; and

- (e) There are no other circumstances in the particular case which would make it unfair to draw such an inference.

## **5. PROCEDURE AT THE HEARING**

- 5.1 Except as otherwise stated in these Rules, the procedure at the Hearing will be determined by the Chair at his or her 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 start of the Hearing, the Chair will outline the procedure the Hearing Panel proposes to follow. A flowchart which provides an overview of the Hearing process is provided at the end of this document.

### **Abbreviated Procedure**

- 5.3 The Standards Commission recognises that it will not always be proportionate to follow its full procedure, as outlined in the Hearings Process Guide & Rules, at Hearings. In certain circumstances, where there is little or no dispute between the parties as to the factual circumstances behind an alleged breach of either the Councillors' Code of Conduct or the Devolved Public Body's Code of Conduct, and with the agreement of the parties, an abbreviated procedure may be followed, to ensure Hearings are conducted in the most efficient manner. The Abbreviated Hearing Process can be found on the Standards Commission's website at:  
[www.standardscommissionscotland.org.uk/cases/hearing-rules](http://www.standardscommissionscotland.org.uk/cases/hearing-rules).

### **Procedure where some or all facts are disputed**

- 5.4 The Chair will start the Hearing by asking the parties whether they have any preliminary matters they wish to raise. After any such matters have been raised and addressed, the Chair will invite the ESC to present the findings of the investigation, to lead any witnesses and to make any submissions they wish to make as to whether there has been a breach of the relevant Code of Conduct.
- 5.5 After giving evidence, any witness led by the ESC or the Hearing Panel's legal adviser may be questioned by the Respondent. The witness may then be re-examined but only on new matters raised during the questioning by the Respondent and/or the Hearing Panel.
- 5.6 The Chair will then ask the Respondent to present their case by leading any witnesses and making submissions as to why there has not been a breach of the relevant Code of Conduct.
- 5.7 After giving evidence the Respondent and any witness they call may be questioned by the ESC. The Respondent and each witness may be re-examined but only on new matters raised during the questioning by the ESC and/or the Hearing Panel.
- 5.8 The Chair may, at his or her discretion, change the sequence of this process. The Hearing Panel may put questions to the ESC, the Respondent and any witnesses at any time.
- 5.9 In deciding whether or not to hear or allow evidence and submission, the Hearing Panel will follow the Standards Commission's Guidance on the Relevancy of Evidence. If a Joint Statement of Facts has been agreed by the parties, the Hearing Panel will be entitled to rely on the accuracy of any matters contained within it. The Hearing Panel will not normally allow evidence to be led on matters agreed within a Joint Statement of Facts.
- 5.10 When all evidence has been heard, the ESC and then the Respondent will be given an opportunity to sum up what has been presented, if they so wish.

- 5.11 The Hearing Panel will deliberate in private to determine whether, on the balance of probabilities, a breach of the relevant Code of Conduct has occurred.
- 5.12 Subject to paragraph 3.30 above, if the Hearing Panel find that the Respondent has not contravened the Code of Conduct, the Chair will announce this decision verbally and conclude the Hearing.

### **Mitigation and the determination of sanction**

- 5.13 If the Hearing Panel finds there has been a breach of the Code of Conduct, the Chair will ask the Respondent or their representative to make any submissions in respect of mitigation. The Hearing Panel may also consider information provided by those affected in cases concerning a breach of the respect and/or bullying and harassment provisions in the applicable Code. The Respondent will be provided with any such information at the mitigation stage, before they are given the opportunity to make submissions on mitigation or on the sanction to be applied.
- 5.14 The Respondent is entitled to call witnesses and submit written representations and character references in respect of mitigation.
- 5.15 After giving evidence in respect of mitigation the Respondent and any witnesses called may be questioned by the Hearing Panel. The Respondent and each witness may be re-examined but only on new matters raised during the questioning by the Hearing Panel.
- 5.16 The Chair may, at their discretion, change the sequence of this process.
- 5.17 The Hearing Panel will thereafter deliberate in private to consider sanction.
- 5.18 Subject to paragraph 3.30 above the Chair will then re-convene the Hearing to announce the decision on sanction. The Chair will advise of any right of appeal.

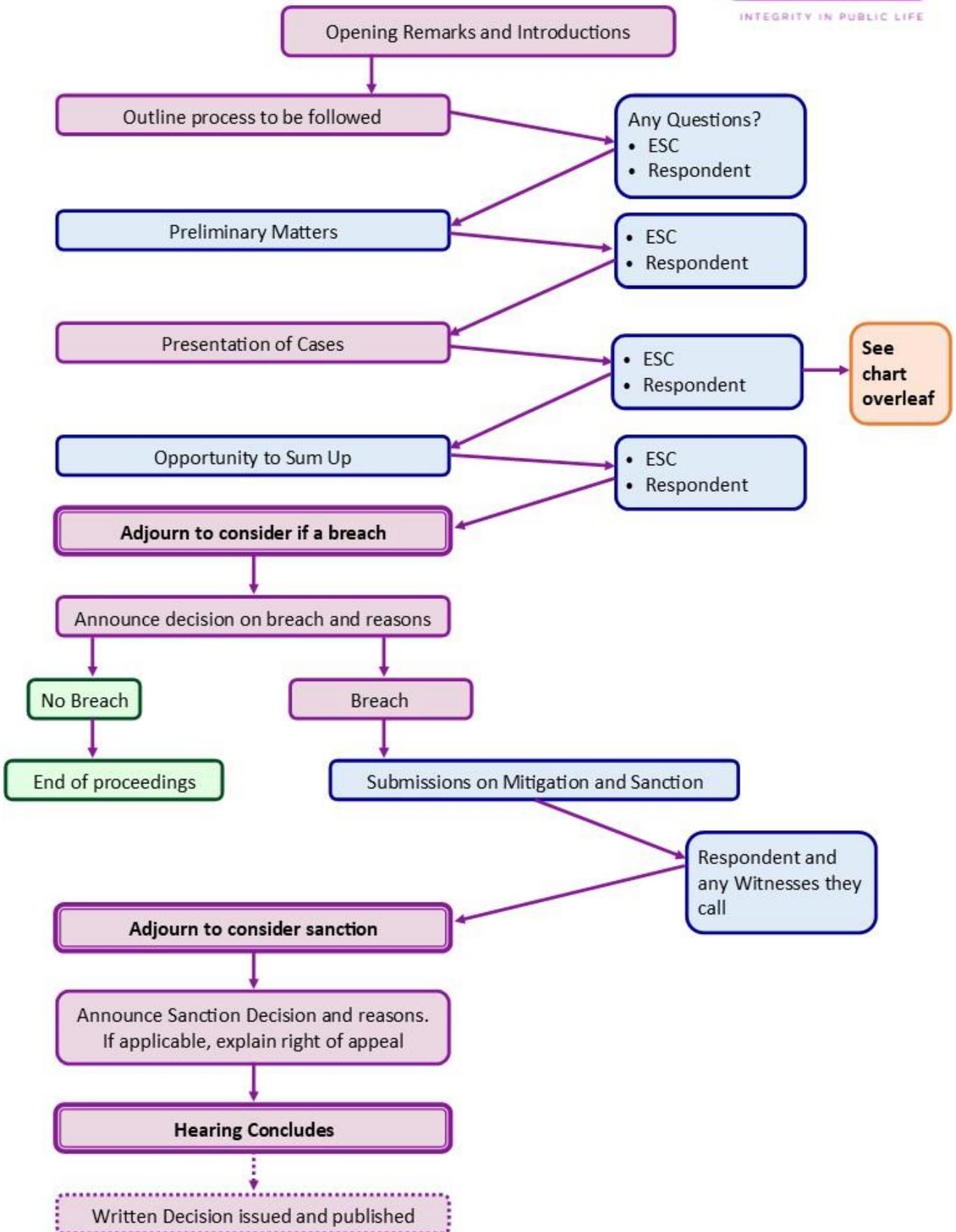
## **6. AFTER THE HEARING**

### **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 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:
- (a) An overview of the complaint and outcome of the ESC investigation;
  - (b) A description of the Joint Statement of Facts (if applicable);
  - (c) A summary of the evidence presented at the Hearing;
  - (d) Whether or not the Hearing Panel found that there had been a breach of the Code of Conduct, and the reasons for that decision;
  - (e) Any sanction imposed including, where applicable, the date on which the sanction will take effect;
  - (f) The reasons for sanction applied;
  - (g) Any right of appeal.
- 6.3 The Executive Director will, within 14 days of the conclusion of the Hearing, send the written decision to the Respondent, the ESC, the relevant council or devolved public body, the complainer and any other person the Standards Commission considers should receive a copy.
- 6.4 Where the Standards Commission has determined there has been a breach, the Respondent will be sent a copy of section 22 of the Ethical Standards Act, which outlines the Appeal procedure.

- 6.5 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, 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, as required by section 23(2) of the Ethical Standards Act.
- 6.6 On issuing the written decision to the Chief Executive of the council or devolved public body, and in terms of section 18 of the Ethical Standards Act, the Executive Director will confirm that:
- (a) the council or devolved public body 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
  - (b) such consideration can only be discharged by the council or devolved public body and not by a committee, sub-committee or an officer.
- The Executive Director will ask the council or devolved public body to confirm that the decision has been considered.
- 6.7 Within 21 days of the conclusion of the Hearing, the Executive Director will publish the decision on the Standards Commission's website and may also take other steps to make the decision available to the public.

# Hearing Process



## Presentation of Cases

```
graph TD; A[Presentation of Cases] --> B[ESC: Outline background to complaint and outcome of investigation  
Lead any witnesses  
Opportunity to cross examine witnesses by Respondent/Respondent's representative  
Opportunity to re-examine by ESC  
Any questions from Hearing Panel  
Any submissions as to whether there has been a breach of the Code  
Panel: Question any witnesses Standards Commission has cited, opportunity to cross examine by Respondent / Respondent's representative]; B --> C[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];
```

**ESC:** Outline background to complaint and outcome of investigation

Lead any witnesses

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

Opportunity to re-examine by ESC

Any questions from Hearing Panel

Any submissions as to whether there has been a breach of the Code

**Panel:** Question any witnesses Standards Commission has cited, opportunity to cross examine by Respondent / Respondent's representative

### **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

## DOCUMENT CONTROL

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
15/11/19	LJ	2019v1.2	2019v1.3	Addition of new paragraph 4.11 noting that Panel can draw adverse inference from failure of a Respondent to give evidence provided certain specified criteria are met.
26/02/20	LJ	2019v1.3	2020v1.0	Amendment to clarify paragraph 3.31. Inclusion of new paragraph 3.36 to make it clear the ESC must attend or be represented in person at a Hearing.
31/03/20	LJ	2020v1.0	2020v1.1	Paragraph 1.3 extended to provide that, in exceptional circumstances, a Panel can decide to discontinue proceedings and refer the case back the Standards Commission to reconsider its Section 16 decision to hold a Hearing.
28/05/20	JS	2020v1.1	2020v1.2	Minor typographical and formatting amendments.
29/07/20	LJ	2020v1.2	2020v2.0	Inclusion of references to possibility of impact statements being considered by the Panel at the sanction stage should a breach of the respect or bullying and harassment provisions in a Code of Conduct be found. Inclusion of reference to possibility of holding the Hearing online if little or no facts are in dispute and no witnesses (other than the Respondent are to be called).
29/09/20	LJ	2020v2.0	2020v3.0	Section 4 of the Hearing Rules, which concerned the nature and timing of information to be provided by the Standards Commission and parties before Hearings.
12/11/20	LJ	2020v3.0	2020v4.0	Changes made to reflect Direction issued to ESC on the Outcome of Investigations.



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