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## **GUIDANCE NOTE FOR WITNESSES APPEARING AT A STANDARDS COMMISSION HEARING**

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This guidance note outlines what you can expect at a Standards Commission Hearing if you have been asked to appear as a witness for either the Ethical Standards Commissioner (the ESC) or a Respondent, or if you have been cited to appear by the Standards Commission.

The parties involved in a Hearing are the:

- Hearing Panel, comprising of three Members of the Standards Commission. After listening to evidence and submissions, the Panel will make a decision on whether the Respondent breached the applicable Code of Conduct and, if so, on the sanction to be imposed;
- ESC or their representative. It is the responsibility of the ESC to investigate complaints alleging a breach of a Code. At the Hearing, the ESC will then present the findings of the investigation and their reasons why they have concluded the Respondent has or has not breached the Code; and
- Respondent or their representative. The Respondent is the person who is alleged to have breached the Code. They are entitled to attend the Hearing, give evidence and make submissions on whether they have breached the Code.

### **1. On arrival**

- 1.1 If the Hearing is held in person:** when you arrive at reception you should ask for a Standards Commission staff member, who will direct you to a waiting area. You are not permitted to enter the Hearing room until it is your time to give evidence. You will be collected and shown where to sit when the Panel is ready to hear your evidence.
- 1.2 If the Hearing is held online:** when you join the online meeting (held on the 'Zoom' platform), you will be admitted from the waiting room so that Standards Commission staff can check your connectivity, resolve any technical issues and answer any queries you may have. You will then be asked to leave and re-join the meeting where you will be kept in the waiting room until it is your turn to give evidence, at which point Standards Commission staff will admit you to the Hearing. You are not permitted to watch the livestream of the Hearing until after you have given evidence. Standards Commission staff will admit you to the Hearing when the Panel is ready to hear your evidence.
- 1.3** When you are admitted to the Hearing (whether it is held in person or online), the Panel Chair will introduce you to the Panel and parties. You will then be asked to swear an oath or make a solemn affirmation (see section 3 below).

### **2. When will you be called**

- 2.1** It is not possible to give an exact time as to when you will be called to give your evidence, as this will depend on whether there are any preliminary matters that require to be dealt with at the beginning of a Hearing and how long it may take to question any other witnesses. As such, you may be waiting for some time. While Standards Commission staff will try to keep you updated, this may not always be possible.
- 2.2** We ask that you refrain from leaving the waiting area or online waiting room (other than for a comfort break) until you are called. If the Panel adjourns the Hearing for longer than 10 minutes,

you will be advised of the time when you need to be back in the waiting area.

### 3. Oath or Affirmation

3.1 The Standards Commission asks witnesses to confirm that they will tell the truth by swearing an oath or making a solemn affirmation before they give their evidence. When you join the Hearing, you will be asked by the Panel Chair to choose whether you wish to swear an oath or make a solemn affirmation. These are as follows:

**Oath:** "I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth."

Or

**Affirmation:** "I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth."

### 4. Order of Evidence

4.1 If you are called as a witness by the ESC, your evidence will be heard in the following order:

- Evidence in Chief: the ESC (or their representative) will ask you questions about your recollection of what you saw, heard or witnessed in respect of the alleged breach of the Code and the circumstances around it. You may be referred to a file containing numbered documents, known as Productions, which will be on the witness table (or shared on screen if the Hearing is held online). You will not be able to refer to your own notes or other documents when giving evidence.
- Cross-examination: the Respondent (or their representative) may then ask you questions on the evidence you have given.
- Members of the Panel may then ask you questions.
- Re-examination: the ESC (or their representative) will then have the opportunity to ask you questions on any matters arising from what you were asked during any cross-examination, or by the Panel.

4.2 If you are called as a witness by the Respondent, your evidence will be heard in the following order:

- Evidence in Chief: the Respondent (or their representative) will ask you questions about your recollection of what you saw, heard or witnessed in respect of the alleged breach of the Code and the circumstances around it. You may be referred to a file containing numbered documents, known as Productions, which will be on the witness table (or shared on screen if the Hearing is held online). You will not be able to refer to your own notes or other documents when giving evidence.
- Cross-examination: the ESC (or their representative) may then ask you questions on the evidence you have given.
- Members of the Panel may then ask you questions.
- Re-examination: the Respondent (or their representative) will then have the opportunity to ask you questions on any matters arising from what you were asked during any cross-examination, or by the Panel.

4.3 You must not discuss your evidence with any other witnesses involved in the case, either before the Hearing or while you are waiting to give evidence.

### 5. Giving your evidence

5.1 When you give your evidence, you should listen carefully to each question, and try to answer it as clearly as you can. Some answers will be a simple yes or no. Other questions will need you to provide more explanation.

- If you do not understand a question, you should ask for it to be repeated or clarified.
- Please make sure that the Panel and the person asking the question can hear your answers.
- You should answer any questions honestly and accurately, to the best of your recollection.
- Do not guess - if you do not know the answer to a question, you should just say so.

- 5.2 The Panel may decline to hear evidence which is not directly relevant and material to the question of whether there has been a breach of the Code of Conduct. The Panel Chair may, therefore, intervene and prevent you from answering a question, if the Panel is of the view that your answer will not be relevant.
- 5.3 The party calling you as a witness should not put leading questions (which are questions that invite a witness to give a particular response) to you, unless they are on introductory matters. The Panel can choose to disregard any evidence elicited from a leading question.
- 5.4 You should only be asked to give evidence about what you witnessed (i.e. what you saw, heard or understood to have happened). You should not be asked, or attempt, to give your opinion or views on the Respondent or anyone else's conduct, including whether you consider a breach of the Code occurred.
- 5.5 When you are being cross-examined, it may be that the ESC or Respondent (or their representatives) will challenge your recollection of events. The Panel will not, however, allow them to 'badger' you by, for example, antagonising or mocking you deliberately, or by asking insulting or derisive questions in an attempt to provoke an emotional response. The Panel will ask any party doing so to desist and may prevent them from asking you any further questions.
- 5.6 Once you have completed giving your evidence, the Panel Chair will confirm that you are able to step down from the witness table (or leave the meeting if the Hearing is being held online). You are welcome to take a seat in the public area and listen to the remainder of the Hearing (or watch the livestream if the Hearing is being held online), should you wish.
- 5.7 When you have finished giving your evidence, you cannot go back into the witness waiting room or discuss the case with any witnesses who are yet to give evidence.

## 6. Contact Before the Hearing

- 6.1 **If the Hearing is held in person:** As noted above, you will have been asked to appear as a witness for either the ESC or Respondent, or cited to appear by the Standards Commission. If you have been asked to appear, the ESC or Respondent (or someone representing them) and/or the Standards Commission will contact you to advise you of the date and time of the Hearing and of any other arrangements.
- 6.2 **If the Hearing is held online:** As noted above, you will have been asked to appear as a witness for either the ESC or Respondent, or cited to appear by the Standards Commission. If you have been asked to appear, the Standards Commission will contact you to send you information about how the Hearing will be conducted (including a Guidance note on Zoom) and a joining link.
- 6.3 The party who has asked you to appear may also contact you to discuss the general nature of your evidence (for example, that you will be giving evidence about what you observed at a meeting on a certain date). You should not, however, discuss the specifics of your evidence with anyone before the Hearing. If anyone approaches you before the Hearing to:
  - ask you what you intend to say; or
  - try to influence your testimony in any way (by persuasion, threats or any other means) you should contact the Standards Commission immediately.

## 7. Assistance

- 7.1 If you need assistance to give evidence because of physical or mental impairment, language difficulty or any other substantial reason, you should ask the party calling you to advise Standards Commission staff accordingly, at least 14 days before the Hearing, so that they can put appropriate supportive measures in place prior to the Hearing (as far as is reasonably practicable).