



INTEGRITY IN PUBLIC LIFE

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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 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 about:
  - the conduct and management of Hearings;
  - the Hearing Rules;
  - what is expected of them both before and during the Hearing; or
  - any other Hearing-related matters.
- 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 procedure that will be normally followed at a Hearing is outlined in the Hearing Process Guide and Rules, which can be found on the Standards Commission's website at <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.
- 2.2 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. If the Hearing is held online, it will be livestreamed on the Standards Commission's website (but no video recording will be made and retained). A press release will be issued and published after each Hearing.
- 2.3 The Hearing Panel Chair will open the Hearing by introducing members of the Hearing Panel, any Standards Commission's staff in attendance and the parties (being you and the Ethical Standards Commissioner (ESC) or their representative). 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). The Chair will identify any witnesses who have been cited to appear by the Standards

Commission (if any witnesses have been cited, you will have been advised accordingly in advance of the Hearing).

### **3. QUESTIONS ABOUT THE PROCESS**

- 3.1 Any questions or 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 questions or issues may arise on the day of the Hearing itself. The Chair will, therefore, commence the Hearing by asking both parties, starting with the ESC or their representative, if they have any questions or matters 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 and reaching a decision.
- 3.3 The types of matter that should be raised at this stage concern 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 this stage.
- 3.5 Late productions (such as documentary evidence or case law) 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 invite the parties, starting with the ESC or their representative, to present the outcome of the investigation, and the case in respect of whether there has or has not been a breach of the Code of Conduct.
- 4.2 The parties can make some brief introductory remarks about their case before they call any 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 You are entitled to both give evidence and to make submissions. If you decide to give evidence, you will be asked to take an oath or make an affirmation, just like any other witness. If the Hearing is being held in person, you will be asked to sit at the witness table while giving evidence.

- 4.5 Witnesses should give evidence about what they saw, heard, did or understood to have happened. They should not give their views or present any arguments, as these are considered to be submissions.
- 4.6 Submissions are observations and comments about each party's position in respect of whether or not there has been a breach of the Code. You can refer to the evidence that has been given when you make your submissions, but you cannot give evidence yourself when you are making a submission.
- 4.7 If you decide 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. You can then explain what happened and what you did, saw or heard. You may then be asked questions by the Panel and the ESC or their representative.
- 4.8 Parties are entitled to object to evidence being led (i.e. the questions being put to a witness) and submissions being made on the grounds of any potential answer to be given, or argument being made, is irrelevant. It is up to the Hearing Panel to decide whether or not to allow the evidence to be led or argument to be made, and / or whether to take this into consideration when reaching a decision as to whether or not there has been a breach of the Code of Conduct.

## 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 note the relevant page number if you wish to refer them to a specific document 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 ESC's witnesses will be called first. The Standards Commission's staff will then collect the witness and ask them to take the witness stand (or admit them to the Hearing meeting if it is being held online). 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 (or to view the livestream if it is being held online) 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 ask the witness questions at any time.

- 6.5 The ESC or their 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 call any witness cited to appear by the Standards Commission at the Hearing Panel's request. The ESC or their representative and the Hearing Panel can ask the witness questions. You will then have the opportunity to do so.
- 6.8 The Chair will then invite you to give evidence (if you are to do so) and call your witnesses (if applicable). After you have completed questioning each witness, the ESC or their 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 these should only be any new matters raised in any questions asked by the ESC or their representative or by the Hearing Panel.

## **7. PERMISSABLE QUESTIONS**

- 7.1 As noted above, you are only entitled to ask witnesses questions that are relevant to the issues being considered and 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 their 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 polite and fair manner and that you allow the witness time to answer. The Hearing Panel will not permit witnesses to be harassed or 'badgered' by either party.

## **8. FURTHER SUBMISSIONS**

- 8.1 When all the evidence has been heard, the Chair will give the ESC or their representative the opportunity, should they wish, to make further brief submissions in response to any new arguments raised or in respect of any questions the Panel has asked. You will then be given the same opportunity.
- 8.2 The parties should not, at this stage, make any points on 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 the Panel's decision as to whether or not there has been a breach of the Code of Conduct. The Chair will provide brief verbal reasons for the Panel's 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 AND SANCTION

10.1 If the Hearing Panel finds that you have breached the Code of Conduct, the Chair may read out the substantive and relevant parts of any impact statement received from anyone directly affected by your conduct. In doing so, the Chair will note that the Hearing Panel will take into account the fact that the statement was not given under oath or tested.

10.2 The Chair will then ask you whether you wish to make any verbal representations, submit any written representations and/or call any witnesses, in respect of mitigation and the sanction to be imposed. It should be noted that the Hearing Panel is obliged to impose a sanction if a breach of the Code of Conduct has been found.

10.3 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.

10.4 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.

10.5 The Hearing Panel will then adjourn the Hearing and retire to a separate room to determine, in private, the sanction to be applied.

10.6 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.

10.7 A full written decision, outlining the Panel's findings and reasoning, will be sent to you and published on the Standards Commission's website within 21 days of the conclusion of the Hearing. You will also be advised of your right of appeal.