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## RELEVANCY OF EVIDENCE

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### 1. THE HEARING RULES

- 1.1 The Standards Commission's Hearing Rules state that, while parties to a Hearing are entitled to be heard and to call witnesses, the Hearing Panel may decline to hear evidence that it does not consider to be relevant to the question of whether there has been a breach of the relevant Code of Conduct (Code).
- 1.2 It is in best interests of all parties, as well as in the interest of justice and the public interest, 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 and submissions, as doing so could extend a Hearing needlessly, with the associated time and cost implications.
- 1.3 The issue of relevancy of evidence is a matter for the Hearing Panel's discretion and it is up to the Hearing Panel alone to determine what evidence, if any, must properly be excluded as irrelevant. While the Standards Commission understands that a Respondent has a right to present a full defence, should they wish to do so, this does not mean that a Hearing Panel can or should hear or consider irrelevant or repetitive evidence and submissions that will not assist it in its decision-making.
- 1.4 For these reasons the Standards Commission recommends that the Respondent and the Ethical Standards Commissioner (ESC) try to agree a Joint Statement of Facts outlining the factual matters that are not in dispute. In addition, the Standards Commission will invite both the Respondent and ESC to attend a pre-Hearing meeting so that any procedural issues or questions about the relevancy of any evidence can be discussed and resolved before the Hearing.

### 2. RELEVANCY

- 2.1 The concept of relevancy is fundamental to the law of evidence. Material which a party intends to present as evidence must have a close and logical link with the issues being 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 makes a 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 has occurred. If the Hearing Panel find the Respondent has not contravened the Code, the case will be dismissed, and the Hearing concluded.
- 2.3 If the Hearing Panel finds that the Respondent has breached the Code, it will proceed to hear any representations in respect of mitigation from the Respondent.
- 2.4 The overarching aim of the Hearing Panel is to allow the matters before it to be clarified in a proportionate, just and fair manner. The Panel's remit extends only to considering whether the Respondent has breached the Code in respect of the issues of complaint it is to determine and, if it has found a breach to determine the appropriate sanction to apply. This means the Panel has no remit to consider extraneous matters such as the conduct or performance of others.
- 2.5 In order to be relevant to the question of whether there has been a breach of the Code, any evidence presented by the parties and witnesses must have a close and logical link to the

conduct that is alleged to amount to a breach of the Code and any facts concerning this that are in dispute.

- 2.6 Before a Hearing, the parties will be asked to provide information about their proposed witnesses and the general nature of the evidence that each can provide. The Hearing Panel will be provided with this information so it can decide whether the proposed evidence will be relevant to its considerations. If it declines to hear from a witness, the parties will be advised accordingly. Similarly, the Hearing Panel will be provided with written evidence that the parties have submitted for inclusion in the productions to be considered as part of the Hearing Panel's decision-making. The Hearing Panel will be provided with information about the nature of this written evidence so it can make a decision on whether the proposed evidence will be relevant to its considerations. If it declines to accept any written evidence, the parties will be advised accordingly.
- 2.7 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 how serious the breach was, its impact, and whether there are any aggravating or mitigating factors.
- 2.8 Whether evidence is relevant will depend on the individual facts of each case. The role of the Hearing Panel is to:
  - hear, assess, test and weigh witness evidence and submissions presented by the parties; and
  - deal with any procedural matters which may arise in an impartial and fair way.
- 2.9 While it is not for the Hearing Panel to advise the parties on how they should present their case, it is for the Hearing Panel to determine whether any issues or facts in dispute have a bearing on the issue to be determined. That is a question of judgement, and will involve considering matters of proportionality, fairness and justice.
- 2.10 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, the Hearing Panel may exercise its discretion and prevent, either in advance of or at the Hearing, such evidence being presented, on the grounds of relevancy.
- 2.11 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 to permit such evidence to be led or to continue to be led.
- 2.12 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, a Respondent may adopt a position that it is necessary for them to lead their own witnesses in response to evidence led by the ESC. Similarly, the ESC may adopt a position that it is necessary to lead witnesses in response to evidence led or to be led by the Respondent.
- 2.13 When making decisions on relevancy, the Panel will also consider:
  - the nature and seriousness of the alleged breach; and
  - the extent of other evidence that has been provided or that will be led to support the party's position.

This is to ensure evidence is not being led, and submissions are not being made, that are repetitious and entirely disproportionate to the issue to be considered. For example, if the Respondent does not dispute that they did not declare an interest at a meeting, and the minutes of the meeting record that they participated in the consideration of the agenda item in question, it may not be necessary to hear evidence, from other individuals present, as to whether they declared any interest. Instead, the parties may simply be asked to make submissions on whether the Respondent had a declarable interest, in terms of the Code.

2.14 Examples of evidence and submissions that may be excluded as irrelevant include (but are not limited to) information:

- relating to the Complainer’s motives;
- concerning the Respondent’s conduct that does not form part of the alleged contravention of the Code being considered (unless it concerns a previous breach of the Code by the Respondent or is further evidence of a course of conduct).

### 3. UNREPRESENTED PARTIES

3.1 It is often the case that a Respondent conducting proceedings on their own behalf will be afforded some flexibility in the way in which that case is conducted. The extent of any such flexibility should not be to the detriment of the proceedings as a whole. In all circumstances, the Hearing Panel will ensure that a case is dealt with in a proportionate, fair and just manner.

3.2 The Standards Commission has produced Guidance for Unrepresented Respondents. This Guidance and the Hearing Rules can be found on the Standards Commission’s website at <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.



Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
09/12/2015	LJ	N/A	V1.0	Introduction of Relevancy of Evidence Note
06/11/2018	LJ	V1.0	V1.1	Reviewed in light of changes made to Hearing Rules
29/11/2018	LJ	V1.1	V1.2	Minor amendments in light of comments received on version 1.1
05/03/2019	EM	V1.2	2019 v1	Replace references to CESPLS with ESC.
15/07/2021	RW	2019v1	2021 V1.0	Minor amendments following review.
14/04/2023	LJ	2021 v1.0	2023 v1	Removal of reference to specific paragraph number in Hearing Rules (as numbering has changed)
03/11/2025	LJ	2023v1	2025v1	Wording amended following full review by SCS