
ABBREVIATED HEARING PROCESS

1 INTRODUCTION

- 1.1 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 no substantive 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, it will be appropriate to follow an abbreviated procedure in order to ensure Hearings are conducted in the most efficient manner.
- 1.2 This document outlines the abbreviated process to be followed at such Hearings. The abbreviated process will only be used with the agreement of the Hearing Panel Chair, the Respondent and the Commissioner for Ethical Standards in Public Life in Scotland (ESC).
- 1.3 The Hearing Panel Chair will retain a discretion to alter the process during the Hearing if he or she considers it necessary to do so in order to ensure that any issues before the Hearing Panel are determined in a just and fair manner.

2 APPLICATION

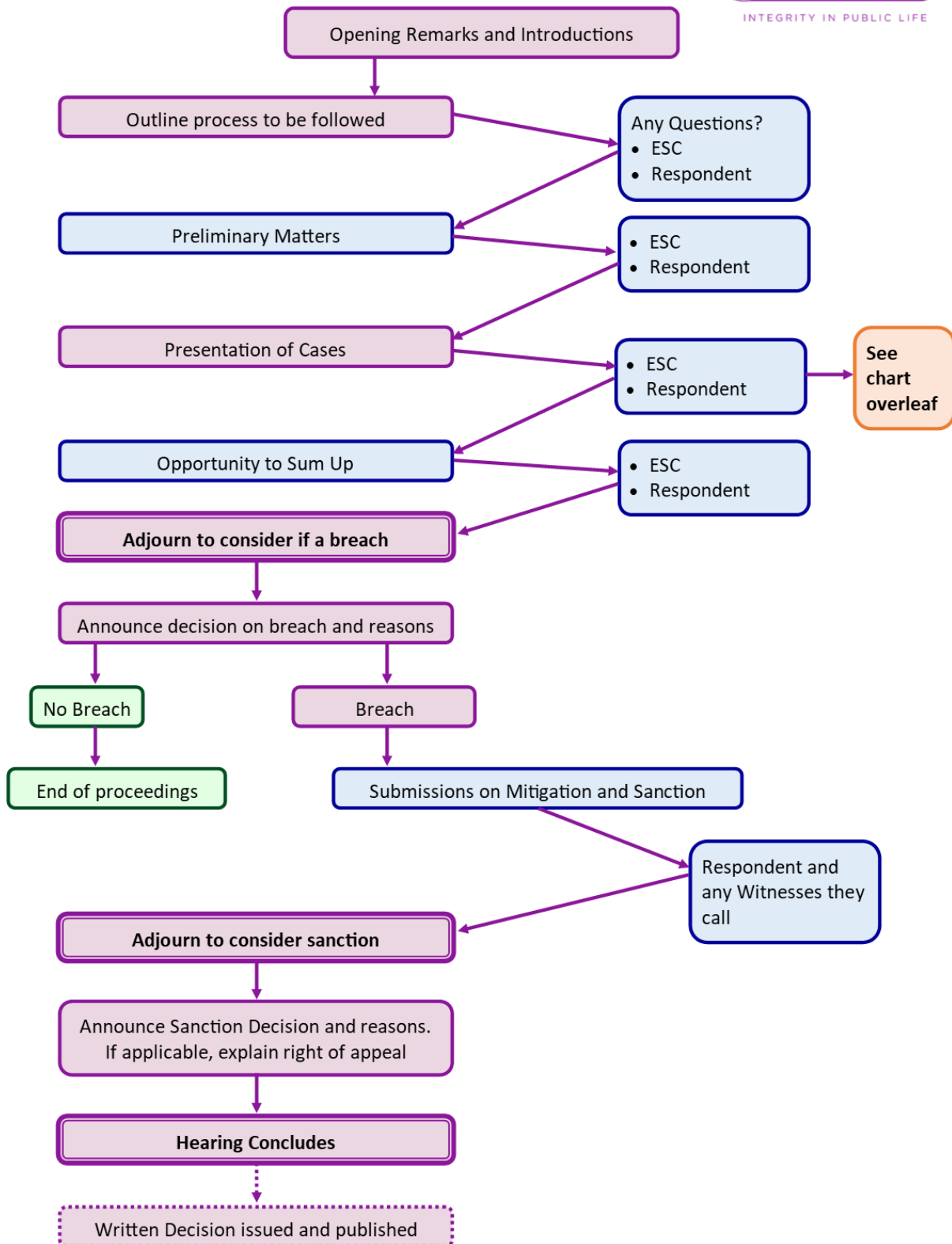
- 2.1 The abbreviated process can be used in circumstances where a breach of either the Councillors' Code of Conduct or the Devolved Public Body's Code of Conduct has been admitted and/or where there is no substantive dispute between the parties as to the factual circumstances behind the alleged breach.
- 2.2 The process can also be used in circumstances where the parties have indicated that they do not intend to call any witnesses (other than in respect of mitigation should a breach be found) or where it has been established in advance that any witnesses being called will simply provide further information or an explanation about the circumstances that led to the alleged breach.
- 2.3 If the Chair considers it is appropriate to use the abbreviated process, the Executive Director will issue both parties with a copy of this document and will seek their approval for the abbreviated process to be used. If no such agreement is reached, the normal process, as outlined in the Hearings Process Guide & Rules will be followed.
- 2.4 If the parties agree the abbreviated process is to be used, the Hearing will NOT be audio recorded.

3 PROCESS

- 3.1 The abbreviated process will be used instead of the process outlined in Section 5 of the Hearings Process Guide & Rules. The Standards Commission will continue to follow the process outlined in Sections 1-4 and 6 of the Hearings Process and Guide, in respect of actions taken before and after Hearings.

- 3.2 At the commencement of the Hearing, the Chair will outline the procedure and will also provide:
- an outline of the complaint that has been made;
 - a statement as to whether, in terms of section 17(5)(a) of the Ethical Standards Act, the Standards Commission has required any person to attend the Hearing, give evidence and produce documents; and
 - an explanation that the allegation can only be upheld if the ESC establishes to the satisfaction of the Hearing Panel that, on the balance of probabilities, there has been a contravention of the relevant Code of Conduct.
- 3.3 Starting with the ESC or their representative, the Hearing Panel Chair will invite both parties to raise any preliminary matters.
- 3.4 When the Chair is satisfied that any preliminary matters have been dealt with, he / she will invite both parties, starting with the ESC or their representative, to present their case by making submissions on whether the facts agreed amount to a breach of the relevant Code of Conduct.
- 3.5 The Hearing Panel may ask questions of the party or their representative at the end of each presentation.
- 3.6 The Hearing Panel Chair will then ask the parties, starting with the ESC or their representative, about whether they have any further comments to make in light of each other's presentation and/or the questions asked by the Hearing Panel.
- 3.7 The Hearing Panel will deliberate in private to determine whether, on the balance of probabilities, a breach has been established.
- 3.8 If the Hearing Panel find the Respondent has not contravened the relevant Code of Conduct, the case will be dismissed and the Hearing will conclude.
- 3.8 If the Hearing Panel finds that the Respondent has breached the Code of Conduct, the Chair will announce the decision and reasons for it before proceeding to hear representations in respect of mitigation from the Respondent.
- 3.9 If a breach is found and the Respondent is not in attendance and not represented at the Hearing, the Hearing Panel will proceed to move straight to considering the sanction to be applied. It will take into account any written submissions provided by the Respondent when doing so.
- 3.10 The Respondent will be entitled to call witnesses when making representations as to mitigation.
- 3.11 At any time, the Chair and Members of the Hearing Panel may question the Respondent and any witnesses.
- 3.12 The Hearing Panel will thereafter deliberate in private to consider sanction.
- 3.13 The Chair will then re-convene the Hearing to deliver the sanction orally.
- 3.14 The Chair will outline the appeals process. The Hearing will then conclude.

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

ABBREVIATED HEARINGS PROCESS – INDICATIVE MILESTONE DATES

Data control and version information				
Date	Action by	Version Updated	New Version number	Brief Description
01/03/17	SCS	N/A	2017 V1.0	Process agreed.
02/03/17	SCS	2017 V1.0	2017 V1.1	Minor changes to ensure wording as clear as possible.
19/12/17	SCS	2017 V1.1	2017 v1.2	Minor change to reflect that Hearing Panel might proceed to move straight to considering sanction to be applied if breach found and Respondent not in attendance or represented.
05/03/19	BM	2017 v1.2	2019 v1.0	Review, minor changes to para. 2.2, update CESPLS to refer to ESC, insert Hearing process flowchart,



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