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## RELEVANCY OF EVIDENCE

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### 1. THE HEARING RULES

- 1.1 In terms of the Hearing Rules, while parties to a Hearing are entitled to be heard and to call witnesses, the Hearing Panel may decline to hear evidence which is not relevant to the question of whether there has been a breach of the relevant Code of Conduct (Code).
- 1.2 It is in the interest of all parties 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.
- 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. The overarching aim of the Hearing Panel is to allow the issues before it to be clarified in a proportionate, just and fair manner.
- 1.4 For these reasons the Standards Commission recommends that the Respondent and the Commissioner for Ethical Standards in Public Life in Scotland (ESC) try to agree a Joint Statement of Fact or, where appropriate, discuss contentious evidence or procedural matters at a pre-Hearing Meeting.

### 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 In order to be relevant to the question of whether or not there has been a breach of the Code of Conduct, 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.
- 2.5 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 whether there are any mitigating factors.
- 2.6 Whether evidence is relevant will depend on the individual facts of each case. It is for the Hearing Panel to determine whether disputed facts have a bearing on the issue to be determined. That is a question of judgment, and will involve considering matters of proportionality, fairness and justice.

- 2.7 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 such evidence being presented, on the grounds of relevancy.
- 2.8 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 or not to permit such evidence to be led.
- 2.9 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.
- 2.10 Examples of evidence that may be excluded as irrelevant are:
- Evidence relating to the complainant's motives;
  - Evidence relating to the Respondent's conduct which 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. However, 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 role of the Hearing Panel when hearing evidence is not generally a proactive one. It is not the Hearing Panel's function to give advice to a party as to how that party should present their case. The main role of a Hearing Panel in determining whether or not there has been a breach of the Code during the course of a Hearing is:
- a) to listen to, note and assess the evidence of the witnesses called by the parties; and
  - b) to deal with any procedural matters which may arise in an impartial and fair way
- 3.3 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.
14/4/22	LJ	2021 v1.0	2023 v1	Removal of reference to specific paragraph number in Hearing Rules (as numbering has changed)