



INTEGRITY IN PUBLIC LIFE

GUIDANCE ON HEARINGS FOR UNREPRESENTED RESPONDENTS

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 Standards Commission staff at any time before the Hearing on 0131 348 6666 or by email to 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 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.

2. THE HEARING PANEL

- 2.1 The Hearing Panel comprises of three members of the Standards Commission, who are chosen on a rotation basis (subject to their availability). One member of the Hearing Panel acts as its Chair. The Hearing Panel is entirely independent of the Ethical Standards Commissioner (ESC) and will reach its own decision on whether there has been a breach of the Code of Conduct.
- 2.2 Hearing Panels are accustomed to conducting Hearings involving unrepresented Respondents, and always strive to ensure they are conducted in a fair, open, and transparent manner.
- 2.3 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 itself, you can also raise these with the Chair or with Standards Commission staff in attendance.

3. PUBLIC NATURE OF HEARING

- 3.1 Unless otherwise agreed, the Hearing will be held in public. This means that members of the public and press may be present. Members of 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 summarising the Hearing Panel's decision and reasoning will be issued and published immediately after the Hearing.

4. PRODUCTIONS

- 4.1 Before the Hearing, you will have the chance to submit any documents or case law in support of your case that you want the Hearing Panel to consider. The Standards Commission will provide the parties and Hearing Panel with a numbered copy of all the documents sent by the parties, being you and the ESC in support of their case, as and when these are received. These are called 'the productions'.
- 4.2 The Hearing Panel may choose not to accept documents if it does not consider them to be relevant to the question of whether you breached the Code as alleged. The Standards Commission has produced Guidance on the Relevancy of Evidence which can be found on the Standards Commission's website at:
<http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.
- 4.3 The Hearing Panel may also choose not to accept productions or case law submitted after the deadline provided unless the party making the request provides a very good reason why the production was not submitted on time.

5. PRE-HEARING MEETINGS

- 5.1 You will normally be invited to attend an online pre-Hearing meeting in advance of the Hearing itself. This will be conducted by the Hearing Panel Chair and the ESC will also be invited. A member of Standards Commission staff will also usually attend. The purpose of the pre-Hearing meeting is to identify and resolve any procedural issues in advance of the Hearing. It also gives both you and the ESC the opportunity to ask any questions you have about how the Hearing will be conducted and the process to be followed.

6. PROCEDURE DURING HEARING

- 6.1 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>.
- 6.2 **The Chair's Introductory Remarks:** 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 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).
- 6.3 **Questions:** The Chair will then ask 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.
- 6.4 The types of questions or matters 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. The Chair will not allow any evidence to be led or submissions on the case itself to be made at this stage.

- 6.5 Case Presentations:** 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.



- 6.6 Introductory Remarks:** The ESC or their representative will be invited to make any brief introductory remarks to introduce their case before they call their witnesses to give evidence. Once the ESC's witnesses have given evidence, you will be invited to make any brief introductory remarks before calling your own witnesses to give evidence on your behalf.
- 6.7 Witness Evidence:** Witnesses should only 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.
- 6.8** As outlined in the Guidance on the Relevancy of Evidence, 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, or are outwith the Panel's remit. A copy of the Guidance can also be found on the Standards Commission's website at: <http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.
- 6.9** 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.
- 6.10** 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 – see paragraph 6.17 below).
- 6.11** 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).
- 6.12** The Hearing Panel may ask the witness questions at any time.

- 6.13 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.
- 6.14 This process will be repeated until the Hearing Panel has heard from all the ESC's witnesses.
- 6.15 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.
- 6.16 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.
- 6.17 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. You should not give your views or present any arguments as to whether you have breached the Code as alleged at this stage, as these are considered to be submissions.
- 6.18 **Submissions:** Once all evidence has been given, the Chair will invite the parties, starting with the ESC or their representative to make submissions as to whether or not you breached the Code as alleged.
- 6.19 Submissions are any arguments, observations and comments about each party's position in respect of whether or not there has been a breach of the Code (including, if relevant, any points you wish to make in respect of your right to freedom of expression under Article 10 of the European Convention on Human Rights). You can refer to the evidence that has been given when you make your submissions. The Standards Commission's Advice Note on the Application of Article 10 can be found at:
<https://www.standardscommissionscotland.org.uk/education-and-resources/professional-briefings>.
- 6.20 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.
- 6.21 The Hearing Panel may put questions to either party when they are making their submissions.
- 6.22 Further Submissions: When you are finished making your submissions, 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.
- 6.23 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.

7. PRODUCTIONS

- 7.1 A copy of the productions will be made available to any witnesses when they are being questioned. You can note the relevant page number if you wish to refer them to a specific document as part of your questioning.
- 7.2 You can also 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.

8. PERMISSABLE QUESTIONS FOR WITNESSES

- 8.1 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.
- 8.2 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.
- 8.3 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.

9. DETERMINATION ON BREACH

- 9.1 When the submissions have 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.
- 9.4 If the Hearing is held online the Panel and parties will be placed in separate breakout rooms while the Panel is making its determination on breach. The livestream will be paused until it is ready to recommence 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 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 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. You are entitled to submit character references in advance of the Hearing. These will only be provided by Standards Commission staff to the Hearing Panel if and when it finds a breach of the Code.
- 10.4 The Hearing Panel will then adjourn the Hearing and retire to a separate room to determine, in private, the sanction to be applied.
- 10.5 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.
- 10.6 If the Hearing is held online the Panel and parties will be placed in separate breakout rooms while the Panel is making its determination on sanction. The livestream will be paused until it is ready to recommence the Hearing.
- 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 14 days of the conclusion of the Hearing. You will also be advised of your right of appeal.