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## POLICY ON HEARING ADJOURNMENT REQUESTS

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### 1. THE HEARING RULES

1.1 The Standards Commission's Hearing Rules ("Rules") provide, at paragraph 3.11, that a Hearing Panel may, at its own discretion or on the application of any of the parties, postpone or adjourn a Hearing. The Rules state that, before any postponement or adjournment is granted, the Hearing Panel will consider:

- (a) the public interest in the expeditious disposal of the case; and
- (b) any inconvenience or prejudice to the parties and to witnesses.

The Rules can be found on the Standards Commission's website at:

<http://www.standardscommissionscotland.org.uk/cases/hearing-rules>.

1.2 The Rules state at paragraph 3.4, that if the decision is to hold a Hearing, one will normally be held no earlier than six, and no later than 12, weeks after the date on which the decision is made. This timescale allows the Standards Commission to conclude cases expeditiously while at the same time providing sufficient notice to those involved, including the Panel Members, Ethical Standards Commissioner (ESC) and Respondent, and anyone else who wishes to attend or observe the Hearing (such as members of the public and press). It also gives the parties time to prepare, which includes submitting any relevant and material evidence, and asking witnesses to appear.

1.3 The Standards Commission must consider, and balance, a number of factors when scheduling Hearings. These include the availability of its part-time Members (who form the Hearing Panels), the parties and suitable premises (if the hearing is to be held in person). In addition, as the Standards Commission only employs four members of staff (full-time equivalent 3.1), it must allow enough time between Hearings for the team to prepare fully for each. The Standards Commission will normally check the Respondent's respective council's or devolved public body's meetings diary to try to avoid scheduling a Hearing on a date where it is due to meet in full.

1.4 The purpose of this policy is to provide guidance and clarity on the factors a Panel may take into account when exercising their discretion in terms of paragraph 3.11 (a) and (b) (reproduced at 1.1 above) and determining whether to grant an adjournment.

1.5 The policy is intended as a guide and, as such, the list of considerations outlined below is not to be read as exhaustive. The decision will depend on the individual and particular circumstances and merits of each case and request.

1.6 Those appearing before a Hearing should be conscious of the Standards Commission's desire to ensure that cases are heard with reasonable expedition, so that the interests of the public as

well as the aims of the ethical standards framework can be protected and upheld. The efficient and timely determination of cases will usually be in the best interests of all concerned, including the Respondent, and the Panel will always need to be convinced that the interests of fairness and justice (including fairness to the Standards Commission, the ESC, the complainant and other stakeholders) in any particular case will be best served by agreeing to an adjournment.

1.7 The Panel will also consider:

- the likely consequences of the proposed adjournment and, in particular, its likely length and the desire to decide the facts while recollections are as fresh as possible;
- whether the reason for the adjournment arises through the action or inaction of the party asking for it; and
- the history of the case including whether there have been earlier adjournments, at whose request and why.

1.8 A Panel can exercise its right under the Rules to reject an application for an adjournment and proceed with a substantive hearing on the date which has been previously fixed. The Rules provide that such a Hearing may take place in the absence of the Respondent. It should be noted that there is a burden on professionals that are subject to a regulatory regime to engage with their regulator. That obligation is in relation to the investigation and the ultimate resolution of allegations made against them. This means that councillors and members of devolved public bodies covered by the ethical standards framework have an obligation to engage with both the ESC and the Standards Commission.

1.9 If either party wishes to apply for the postponement of a Hearing, the application must be submitted in writing at least seven days before the scheduled date of the Hearing. It is a matter for the Chair's discretion as to whether any application submitted later than seven days before the scheduled date of the Hearing will be considered.

1.10 Where time permits, the Standards Commission will always seek the views of the other party on any adjournment request received before a Hearing so that the Panel can make as fully informed a decision as possible on whether agreeing to it will cause any inconvenience or prejudice.

## 2. PREPARATION TIME

2.1 In accordance with the Rules, the Standards Commission will write to the ESC and Respondent within seven days of the decision to hold a Hearing to advise them of the decision to hold a Hearing within the following six to 12 weeks. The Standards Commission will provide the ESC and Respondent with at least 21 days' notice of the exact date of the Hearing and where it is to be held.

2.2 Copies of the Rules are issued to the Respondent with the notification of Hearing letter and the Respondent's attention is drawn to the fact that, under the Rules, they can choose to appear and / or be represented at the Hearing and that they can submit documents (and case law) and call witnesses to support their case and / or in mitigation. The Respondent is required to submit a statement of case, within 21 days of the date of Hearing notification letter, outlining whether they accept the facts and conclusions in the ESC's report. The Respondent is advised that any request for the Standards Commission to require a person to attend the Hearing, give evidence and / or produce documents must also be submitted within 21 days. The Respondent is also advised of their right not to attend the Hearing and to instead rely on their statement of case.

- 2.3 The Rules also require the ESC to provide, within 21 days, any documents to be relied on and the names of any witnesses to be called at the Hearing. The ESC is also required to submit any request for the Standards Commission to require a person to attend the Hearing, give evidence and / or produce documents within 21 days.
- 2.4 A Hearing Panel will take account of the amount of notice provided by the Standards Commission of the date of the Hearing when considering any request from the Respondent or ESC for an adjournment on the basis that they require more time to prepare (for example, so they can seek legal representation, locate and supply evidence and contact potential witnesses).
- 2.5 The Panel will consider the date of the adjournment request, when the Respondent or ESC could reasonably have been aware that they may wish to submit one, and any reason given for any delay in doing so.
- 2.6 The Panel will consider any reasons given for why more time is required and whether this is reasonable. While a Respondent conducting proceedings on their own behalf will be afforded some latitude in the way in which that case is conducted, the extent of any leeway afforded should not be to the detriment of the proceedings as a whole, as the Panel is obliged to ensure that a case is dealt with in a proportionate, fair and just manner. For example, a Panel may consider that an adjournment is appropriate if a Respondent has provided evidence that they have made numerous attempts to contact a key witness, to no avail. On the other hand, a Panel may consider an adjournment is not appropriate if it appears that no attempt was made to contact the witness until the last moment.
- 2.7 The Panel will always consider whether having access to a particular document or hearing from a certain witness may be able to assist it in making a decision as to whether there has been a breach of the relevant Code of Conduct. An adjournment request made on the basis that the ESC or Respondent requires more time to contact a witness or obtain a document is unlikely to be agreed if the Panel does not consider the evidence is likely to be relevant and material to the alleged breach of the Code under consideration. A Panel is also unlikely to adjourn a Hearing if the adjournment request is based on a Respondent requiring more time to gather evidence or arrange for witnesses to appear in respect of mitigation only. This is because Respondents are advised that they can submit a statement in mitigation (and any evidence including character references) before the Hearing, to be provided to the Panel only in the event that a breach of the relevant Code is found.
- 2.8 The Panel will also take into account the complexity of the matter before it. For example, a Panel will be unlikely to grant an adjournment because more time is required to prepare, if there is little or no dispute over the factual basis of the complaint and the ESC's findings.

### **3. AVAILABILITY**

- 3.1 When considering an adjournment request based on the ESC's or Respondent's own unavailability or that of any representative they wish to appoint or witness they wish to call, the Panel will consider carefully the specific circumstances of the case, including any reason given as to why any individual is unavailable, whether it would be reasonable to expect the individual concerned to reschedule the conflicting appointment or event, and whether there is evidence of any attempt to do so.

- 3.2 The Panel will consider the date of the adjournment request and when the Respondent or ESC could reasonably have been aware that they, the representative or any witness would be unavailable.
- 3.3 If the adjournment request is made on the basis of a representative's unavailability, the Panel will consider whether any compelling reason has been given as to why the ESC or Respondent cannot present their cases themselves or appoint another representative. For example, if the Respondent is represented by a solicitor who is unavailable, a Panel may question whether another solicitor from the firm could provide cover. The Panel may consider whether there is evidence that reasonable attempts have been made to seek alternative representation.
- 3.4 If it is the Respondent who is unavailable, the Panel will consider whether they were to give evidence (and whether such evidence was likely to be relevant and material evidence as to the facts of the matter), as opposed to simply making submissions on whether there was a breach of the Code (and / or in respect of mitigation). The Panel will note that while a representative can be appointed on a Respondent's behalf to make arguments or outline their position, and / or while any submissions can be made in writing and sent to the Standards Commission before the Hearing, a representative cannot give evidence on a Respondent's behalf. The Respondent is, however, entitled to submit their written recollection of events for consideration at the Hearing if they are unable or unwilling to attend. A Panel will nevertheless take into account, when considering this possibility as part of any decision-making on an adjournment request, that less weight may attach to evidence given in writing, rather than in person (which is given under oath or on affirmation and can be tested under cross-examination or through Panel questioning).
- 3.5 Again, the Panel will also take into account the complexity of the matter before it. For example, a Panel will be unlikely to grant an adjournment because a representative or potential witness is unavailable, if there is little or no dispute over the factual basis of the complaint and the ESC's findings.
- 3.6 An adjournment request made on the basis that a witness is unavailable is unlikely to be agreed if the Panel does not consider the evidence they could provide is likely to be relevant and material to the alleged breach of the Code under consideration. Similarly, a Panel is also unlikely to adjourn a Hearing if the adjournment request is a witness being unavailable if they were to appear to give evidence in respect of mitigation only. This is because Respondents are advised that they can submit a statement in mitigation (and any evidence including character references or statements from witnesses) before the Hearing, to be provided to the Panel only in the event that a breach of the relevant Code is found).
- 3.7 In considering any adjournment request a Panel will bear in mind the possibility that the Rules allow for the normal order of proceedings to be varied, if it is fair and appropriate to do so. This means that the Panel can, on request or at its own volition, choose to hear from a certain witness at a particular time, regardless of the stage of proceedings that have been reached. For example, if the Panel knows a particular witness for the Respondent is going to be unavailable in the afternoon, they can choose to hear from them in the morning, regardless of whether the ESC has completed their presentation. A Panel can also consider alternative arrangements (again on request or at its own volition), such as changing the Hearing venue or start time, if it considers this will assist in terms of an individual's availability.

## **4. UNABLE TO SECURE REPRESENTATION**

4.1 If an adjournment request is made on the basis that the ESC or Respondent are unable to secure representation at the Hearing, the Panel will take into account the fact that while the Hearing is a formal and ordered process, there is no requirement for either party to be represented. The Standards Commission provides information about the process to be followed and what information is required when notifying the parties of the decision to hold a Hearing. It also sends Respondents a copy of its Guidance on Unrepresented Respondents. In addition, pre-Hearing meetings are held, as a matter of course, to ensure the parties are aware of the procedures to be followed and what is expected of them, and to give them the opportunity to ask any questions in advance. The Panel Chair will explain the process to be followed at the start of the Hearing and will again give both parties the opportunity to ask questions and raise any concerns they may have. The Standards Commission's Guidance for Unrepresented Respondents can be found on its website at:

<https://www.standardscommissionscotland.org.uk/cases/hearing-rules>.

4.2 While a Panel will consider the complexity of the matter and whether there is an 'inequality of arms' (for example, if the ESC has appointed an advocate as a representative), when considering any adjournment request based on an inability to secure representation. The Panel will, however, consider whether there is evidence that the Respondent tried to secure representation and, if so, at what stage. The Panel will also note that, while this does not apply to all Respondents, some political parties offer representation at Hearings as a matter of course.

## **5. ONGOING POLICE OR COURT PROCEEDINGS**

5.1 As the Standards Commission's remit, in terms of Hearings, is limited to adjudicating on whether a breach of a Code of Conduct has occurred and, if so, to determine the sanction to be applied, the fact that there may be ongoing police or court proceedings relating to the alleged conduct or incident will not automatically result in an adjournment request being granted. The Panel will, instead, consider the specific circumstances of the case and request.

5.2 The Standards Commission accepts, nevertheless, that there may be circumstances where it is appropriate for a Panel to adjourn, either on request or at its own volition, if it receives evidence that police or court proceedings relating to the same or substantially the same underlying facts as form the basis of the proceedings before the Hearing are underway or imminent, and that there is a genuine risk that proceeding with the Hearing may prejudice these. For example, it may not be appropriate for a Panel to consider an allegation that a councillor was biased or acted unfairly when considering an application at a Planning or Licensing Committee if any ongoing court appeal against the Committee's decision is based solely on concerns about the individual councillor's conduct. On the other hand, an appeal against a planning decision based on arguments that the Committee did not have all material and relevant information before it, would not necessarily prevent a Panel from proceeding to consider allegations that a councillor was disrespectful to the applicant at the meeting.

## **6. HEALTH**

6.1 The Panel understands that mental and physical health issues outwith the control of participating parties may arise prior to Hearings.

6.2 Where such issues arise, and where such issues may affect a party's ability to participate fully in a Hearing, said party should make the Panel aware of these issues in writing as soon as

practicable in order that the Panel may make any adjustments that may be deemed necessary (“health adjustments”).

- 6.3 Where any party wishes to apply for an adjournment on health grounds (“health adjournment”), such an application must be made in writing. The written application must:
- (a) indicate the full reasons why a health adjournment is being requested; and
  - (b) provide any documentary evidence in support.
- 6.4 The question of whether to grant a health adjournment remains a discretionary matter for the Panel. It should be noted that the existence of medical evidence is just one factor that a Panel will weigh up when deciding how to dispose of a case. While every such application for either a health adjustment or health adjournment will be considered on its own merits, it should be noted that the following will not generally be regarded as providing sufficient justification for a health adjustment or health adjournment:
- (a) a claimed medical condition of the party in question which is unsupported by a reasoned opinion of an appropriate medical adviser;
  - (b) a doctor’s (or other) certificate issued for social security/statutory sick pay purposes only;
  - (c) a doctor’s (or other) certificate merely indicating that the party is unable to attend work.
- 6.5 Any submitted medical evidence which purports to explain an inability to attend a Hearing should comply at the very minimum with the following criteria:
- Identify the medical attendant and give details of familiarity with the party's medical condition detailing all recent consultations;
  - Specify the health condition assessed, detailing the nature and extent of any medical condition from which they are suffering;
  - Specify how long the condition has been suffered and for how long it might continue;
  - Provide a reasoned prognosis; and
  - Identify with particularity the features of that condition that in the opinion of the doctor prevent attendance at, or participation in, the process. It should specify why the health condition renders the party unfit to attend.
- 6.6 In considering any health adjournment or health adjustment request a Panel will bear in mind the possibility that the Rules allow for the normal order of proceedings to be varied, if it is fair and appropriate to do so. The Panel can also consider alternative arrangements (again on request or at its own volition), such as holding the Hearing in private or changing the Hearing venue or start time, if it considers this will assist in terms of the Respondent’s health.
- 6.7 When considering a health adjournment, the Panel will also take into account the fact that a Respondent is not obliged to attend in person and can, instead, be represented and / or submit a statement of case outlining their version of events, position and any factors they may wish the Panel to take into account in mitigation, should a breach of the Code be found.
- 6.8 As noted under section 1 above the Standards Commission will, when time permits, seek the views of the other party on any adjournment request received before a Hearing so that the Panel can make as fully informed a decision as possible on whether agreeing to it will cause any inconvenience or prejudice. The Standards Commission will, however, only disclose that an adjournment request has been made on health grounds. It will not disclose or share any specifics about the health condition or share any supporting evidence received.



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