



INTEGRITY IN PUBLIC LIFE

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## GUIDANCE NOTE FOR WITNESSES APPEARING AT A STANDARDS COMMISSION HEARING

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This guidance note aims to outline what you can expect at a Standards Commission Hearing if you have been asked to appear as a witness for either the Ethical Standards Commissioner (the ESC) or a Respondent, or if you have been cited to appear by the Standards Commission.

There are three parties involved in a Hearing:

- The Hearing Panel, comprising of three Members of the Standards Commission, who after listening to evidence and submissions, will make a decision on whether the Respondent breached the applicable Code of Conduct and, if so, what sanction should be imposed;
- The ESC or their representative. It is the responsibility of the ESC to investigate complaints alleging a breach of a Code of Conduct, and to present the findings of the investigation and a case as to whether or not a breach has occurred at the Hearing; and
- The Respondent or their representative. The Respondent is the person who is alleged to have breached the Code of Conduct.

### 1. On arrival

- 1.1 If the Hearing is held **in person**: when you arrive at reception you should ask to speak with a Standards Commission staff member, who will direct you to a waiting area. You are not permitted to enter the Hearing room until it is your time to give evidence. You will be collected when the Panel is ready to hear your evidence and shown where to sit.
- 1.2 If the Hearing is held **online**: when you join the meeting, you will be admitted from the waiting room so that Standards Commission staff can check your connectivity, resolve any technical issues and answer any queries you may have. You will then be placed back in the waiting room until it is your turn to give evidence. You are not permitted to watch the livestream of the Hearing until it is your time to give evidence. A staff member of the Standards Commission will admit you to the Hearing when the Panel is ready to hear your evidence.
- 1.3 When you are admitted to the Hearing (whether it is held in person or online), the Chair will introduce you to the Panel and the parties. You will then be asked to swear an oath or make a solemn affirmation (see section 3 below).

### 2. When will you be called

- 2.1 It is not possible to give an exact time as to when you will be called to give your evidence, as this will depend on whether there are any preliminary matters that require to be dealt with at the beginning of a Hearing, how long the parties' submissions take, and how long it may take to question any other witnesses. As such, you may be waiting for some time. While the Standards Commission's staff will endeavor to keep you updated, this may not always be possible.
- 2.2 We ask that you refrain from leaving the waiting area (other than for a comfort break) until you are called. If the Hearing Panel adjourns the Hearing for longer than 10 minutes, you will be advised of the time when you need to be back in the waiting area.

### 3. Oath or Affirmation

3.1 The Standards Commission asks witnesses to confirm that they will tell the truth by swearing an oath or making a solemn affirmation before they give their evidence. When you join the Hearing, you will be asked by the Chair of the Hearing Panel to remain standing (if possible) and to choose whether you wish to swear an oath or make a solemn affirmation, as follows:

**Oath:** "I swear by Almighty God that I will tell the truth, the whole truth and nothing but the truth."

Or

**Affirmation:** "I solemnly, sincerely and truly declare and affirm that I will tell the truth, the whole truth and nothing but the truth."

### 4. Order of Evidence

4.1 If you are called as a witness by the ESC, your evidence will be heard in the following order:

- Evidence in Chief – the ESC (or their representative) will ask you questions about your knowledge of the alleged breach of the Code and the circumstances around it. You may be referred to numbered documents, known as Productions, which will be on the witness table (or shared on screen if the Hearing is held online). You will not be able to refer to your own notes or other documents when giving evidence.
- Cross-examination - the Respondent (or their representative) may then ask you questions on the evidence you have given.
- Re-examination - the ESC (or their representative) will then have the opportunity to ask you questions on any matters raised during cross-examination.
- Members of the Hearing Panel may ask you questions at any time. The ESC and Respondent (or their representatives) may then be allowed to ask you further questions on any new matters arising as a result of any questions Members of the Hearing Panel have asked.

4.2 If you are called as a witness by the Respondent, your evidence will be heard in the following order:

- Evidence in Chief – the Respondent or their representative will ask you questions about your knowledge of the alleged breach of the Code and the circumstances around it. You may be referred to numbered documents, known as Productions, which will be on the witness table (or shared on screen if the Hearing is held online). You will not be able to refer to your own notes or other documents when giving evidence.
- Cross-examination - the ESC (or their representative) may then ask you questions on the evidence you have given.
- Re-examination - the Respondent (or their representative) will then have the opportunity to ask you questions on any matters raised during cross-examination.
- Members of the Hearing Panel may ask you any questions at any time. The ESC and Respondent (or their representatives) may then be allowed to ask you further questions on any new matters arising as a result of any questions Members of the Hearing Panel have asked.

4.3 You must not discuss your evidence with any other witnesses involved in the case, either before the Hearing or while you are waiting to give evidence.

### 5. Giving your evidence

5.1 When you give your evidence, you should listen carefully to each question, and try to answer it as clearly as you can. Some answers will be a simple yes or no. Other questions will need you to provide more explanation.

- If you do not understand a question, you should ask for it to be repeated or clarified.
- Please make sure that the Panel and the person asking the question can hear your answers.
- You should answer any questions honestly and accurately, to the best of your recollection.
- Do not guess - if you do not know the answer to a question, you should just say so.

- 5.2 The Hearing Panel may decline to hear evidence which is not directly relevant and material to the question of whether there has been a breach of the Code of Conduct. The Hearing Panel Chair may, therefore, intervene and prevent you from answering a question, if the Panel is of the view that your answer will not be relevant.
- 5.3 The party calling you as a witness should not put leading questions (i.e. questions which invite a witness to give a particular response) to you, unless they are on introductory matters or facts that are not in dispute. The Hearing Panel can choose to disregard any evidence elicited from a leading question.
- 5.4 You should only be asked to give evidence about what you witnessed (i.e. what you saw, heard or understood to have happened). You should not be asked, or attempt, to give your opinion or views on the Respondent or anyone else's conduct, including whether you consider a breach of the Code occurred.
- 5.5 When you are being cross-examined, it may be that the ESC or Respondent (or their representatives) will dispute your account or try to undermine your credibility as a witness. The Hearing Panel will not, however, allow them to 'badger' you, for example by deliberately antagonising or mocking you, or by asking insulting or derisive questions in an attempt to provoke an emotional response. The Hearing Panel will ask any party doing so to desist and may prevent them from asking you any further questions.
- 5.6 Once you have completed giving your evidence, the Chair of the Hearing Panel will confirm that you are able to step down from the witness table. You are welcome to take a seat in the public area and listen to the remainder of the Hearing (or watch the livestream if the Hearing is being held online) should you wish to.
- 5.7 When you have finished giving your evidence, you cannot go back into the witness waiting room or discuss the case with any witnesses who are yet to give evidence.

## 6. Contact Before the Hearing

- 6.1 As noted above, you will have been asked to appear as a witness for either the ESC or Respondent, or cited to appear by the Standards Commission. If you have been asked to appear, the ESC or Respondent (or someone representing them) and/or the Standards Commission will contact you to advise you of the date and time of the Hearing and of any other arrangements.
- 6.2 The party who has asked you to appear may also contact you to discuss the general nature of your evidence (for example, that you will be giving evidence about what you observed at a meeting on a certain date). You should not, however, discuss the specifics of your evidence with anyone before the Hearing. If anyone approaches you before the Hearing to:
- ask you what you intend to say; or
  - try to influence your testimony in any way (by persuasion, threats or any other means)
- you should contact the Standards Commission immediately.

## 7. Assistance

- 7.1 If you need assistance to give evidence because of physical or mental impairment, language difficulty or any other substantial reason, you should ask the party calling you to advise the Standards Commission accordingly, at least 14 days before the Hearing, so that it can put appropriate supportive measures in place prior to the Hearing (as far as is reasonably practicable).