

Presidential Guidance: Anonymity

This guidance is not legally binding and is provided to assist monitoring officers, the parties, relevant authorities and their members, and the wider public to understand their role within Adjudication Panel for Wales (“APW”) proceedings. Nothing within this guidance constitutes legal advice and those considering this guidance are reminded that this guidance does not supersede their own duties, the requirements of their own Code of Conduct if applicable or their professional obligations.

Power to anonymise

1. The APW does not have the power to issue restricted reporting orders or control what is reported by the press or through social media. However, it does have the power to control its own proceedings and give directions to the parties, witnesses and third parties.
2. The law on the reporting of sexual offences and the naming of alleged victims (s.1 of the Sexual Offences (Amendment) Act 1992) applies to those publishing information about APW proceedings where relevant; where possible, the tribunal considering such matters will remind those in attendance of these provisions, but they apply whether or not such a reminder is given. The APW will give consideration about how to approach matters involving the possible commission of sexual offences and give the necessary directions to the parties prior to the start of the final hearing.
3. While in appropriate cases, the identity of a complainant, witness or third party may be anonymised at the direction of a APW tribunal or the President for the purposes of the hearing and decision, the identity of that individual will be known to the parties and the tribunal. The identity of the member subject to the proceedings will not be anonymised.

European Convention on Human Rights

4. The paramount object of the APW is to do justice in accordance with the right to a fair hearing, but if it is strictly necessary to withhold either evidence or the identity of an individual from public consideration because it is in the interests of justice to do so, this can be directed following a balanced consideration of the various rights of those involved and the open justice principle. The Convention entitles parties to a fair and public hearing, but the press and public may be excluded from all or part of the hearing where the interests of the parties so require, or to the extent strictly necessary where publicity would prejudice the interests of justice.

5. Rights that may be engaged include the right to privacy and the right to a family life, as well as the right to freedom of expression, which is generally always engaged in APW proceedings. Examples of when such rights may be engaged could include the disclosure of medical information pertaining to a witness (such information being confidential), painful and humiliating disclosure of personal information about a witness where there is no public interest in its being publicised, or disclosure of information affecting minors.

The approach of the APW

6. APW final hearings take place in public, except where the tribunal considers that publicity would prejudice the interests of justice. However, anonymisation can allow all or the majority of the hearing to take place in public, enabling the public to fully understand the proceedings without breaching the rights of the individual whose identity has been concealed. This is compliant with the open justice principle; it is less restrictive to anonymise individuals than to have a private hearing in whole or in part.
7. It is appreciated that some complainants will only make a complaint if anonymisation at the hearing is likely. The quality of the evidence given at a hearing may be diminished due to fear or distress if anonymity is not granted. Only the tribunal hearing the case or the President can make such a direction – no party can guarantee anonymity to a complainant, witness or third party.
8. When considering whether to direct anonymisation, the tribunal will consider and balance the rights of the individual involved against the open justice principle and the right to a fair hearing in public, and the likely effect of anonymisation (or failure to do so) on the evidence to be adduced. It will also consider whether the identity of the individual is already widely known, rendering anonymisation pointless. Reasons will be provided to the parties for its decision.
9. If an interested person, such as the press, wishes to apply to set aside the anonymity order, they may apply to the tribunal for the application to be heard. It is a matter for the tribunal when the application is considered, but the views of the parties will be sought and considered. The view of the individual themselves may or may not be sought, depending on the approach adopted by the tribunal.

Practical measures

10. To guard against inadvertent disclosure, at the outset of the hearing and at the start of a relevant witness' evidence the chair will remind the parties, witnesses and the public that a particular individual's identity has been anonymised and they should be referred to as "Witness A/B/C/ etc" or "Mr/Ms A/B/C etc".
11. The hearing bundle may be redacted or altered to ensure that the name of the anonymised person is as directed, depending on the directions of the tribunal. The witness bundle and any press bundle (if prepared) must be so redacted or altered to avoid disclosure of the identity if inspected by the press or public.

12. The tribunal may direct use of special measures, such as a screen or video link, to enable the witness to give their evidence without disclosure of their identity.
13. Prior to the commencement of APW proceedings, if the parties anticipate that it is highly likely the identity of a witness or third party will be anonymised while gathering evidence, they may submit a suitably redacted version of the evidence (only anonymising the name of the individual and replacing with an appropriate anonymised name) to the APW for inclusion within the bundle. However, the original evidence must be disclosed to the other party, either before the matter is sent to the APW or when the redacted evidence is disclosed to the APW. The redaction must be brought to the tribunal's attention in a covering letter, and the letter must also include the reasons for the redaction and an application for directions permitting the anonymisation as sought.
14. The APW expects the parties to attempt to agree the issue of anonymisation before submitting an anonymised bundle to the panel, but if agreement cannot be reached, provided the process outlined above is followed, one party may request anonymity for an individual/s and submit an anonymised bundle for the approval of the panel or President.

Claire Sharp

Llywydd, Panel Dyfarnu Cymru/ President, Adjudication Panel for Wales

September 2020