

GPEW guidance on responding to a request for anonymity from a complainant

Introduction

A balance needs to be met between the concerns of those who wish to remain anonymous for good reasons, such as a genuine fear of retaliation, with the universally recognised need to be fair to the respondent. Usually, the wish for anonymity on the part of the complainant will be inconsistent with the overarching requirement of fairness to the respondent and the complaint cannot therefore proceed. The complainant's wish to remain anonymous must be closely examined, however. If safeguarding issues lie behind the wish for anonymity, they must be investigated under the GPEW Safeguarding Policy. Evidence in the complaint may also be considered under the GPEW Whistleblowing Policy. Consideration should be given as to how to preserve the complainant's anonymity, as a witness in either a Safeguarding or a Whistleblowing investigation.

1. All complaints brought to the national Green Party of England and Wales (GPEW) about members of the Party are dealt with in accordance with the Party's Standing Orders for Party Discipline (SOPD). Clause 3.7 of SOPD states: 'The Complainant's personal details should not be shared with the Respondent without the Complainant's explicit consent. The name of the complainant should be disclosed to the respondent unless the complainant has requested anonymity, with reasons. The Referral group shall consider and determine any request for anonymity'.
2. In the course of the Disciplinary Committee (DC) considering a complaint, the investigators need to know who the complainant is so that the investigators can do their job. The members of the DC will also need to know the identity of the complainant so that they can properly consider whether it is necessary to recuse themselves from decisions about a complaint. Further, the complainant has the right to attend the hearing, as does the respondent. In view of this, complaints received anonymously will not be considered or further progressed by the Complaints Manager. (This is in line with SOC rulings).
3. Usually, the wish for anonymity on the part of the complainant will be inconsistent with the overarching requirement of fairness to the respondent. Before granting anonymity in the complaints process, natural justice therefore requires careful consideration of the need for anonymity in the case. Legal opinion would counsel that it would not normally be appropriate for the GPEW to deal with a complaint on its merits if the identity of the complainant is not known to the respondent. Disciplinary proceedings in the context of GPEW where the ultimate sanction is expulsion from the party is one category of adjudicative procedures where fairness is a cardinal requirement. The Green Party does respect the rule of law and it is a paramount requirement of the law that the procedure of a disciplinary process should be fair to the respondent. The two most important aspects of that paramount requirement are that -

4. (a) the person alleged to have done something wrong, referred to here as the respondent, is entitled to be told clearly what he or she is said to have done wrong, and to be told what evidence there is to support that charge; and
(b) the respondent is entitled to know who has made the complaint (ie, who is the accuser). This is virtually impossible if the complainant's identity is kept from the respondent. It is conceivable but unlikely that there will be special facts which make the second aspect sufficiently unimportant for an anonymous complaint to proceed to a hearing.
5. There is a general rule of law that the person who makes an allegation, must prove it. It is necessary and important to distinguish between the *burden* of proof and the *standard* of proof. In a tribunal, such as the DC, the burden of proof is on the complainant and the standard of proof is the balance of probabilities.
6. In practice it is likely to be very rare for a complaint to proceed as far as a hearing without the respondent knowing the identity of the complainant. The decision to anonymise must be balanced with the need properly to investigate the details of a Complaint and there are commonly circumstances in which details of the Complainants and any witnesses need to be shared with the Respondents during the complaints procedure. For example, often it will not be possible to fully investigate a Complaint without providing personal details about the Complainants to the Respondents. If the complainant's wish to remain anonymous means that the respondent's ability to prepare and present his or her defence is compromised, then the respondent's position takes precedence and normally the complaint will proceed no further, unless the complainant is prepared to waive the request for anonymity.
7. In some people's eyes, the issue of safeguarding may be seen as a sufficient reason for granting anonymity. If a complainant wishes to remain anonymous to the respondent, because, for example, the complainant fears that the respondent will take revenge for reporting their actions in a complaint, the GPEW may have a duty to safeguard the complainant in various ways. GPEW may also investigate the matter on the basis of the information provided by the complainant on a whistle-blowing basis.
8. The respondent may have grounds for maintaining that the complainant is guilty of unlawfully harassing the respondent, and that the complaint itself is evidence of that harassment. It may also be that the respondent has evidence that the complainant has brought the complaint out of malice, or has a collateral objective in mind when pursuing the complaint.
9. Most public or professional bodies do not have complaints procedures which allow for anonymous complaints. However, some organisations do allow anonymity in the sense that the respondent is not to know the identity of the complainant. Although political parties do not regulate their members in the same formal sense as professional bodies, they have a natural interest in the way in which their members conduct themselves. In the case of the Green Party, when someone becomes a member, he or she agrees to be bound by the constitution and the structures that flow from it, including the DC and the SOPD.

Procedure for considering a complainant's request for anonymity

1. If the member of staff who is tasked by the Complaints Manager with managing complaints, usually the Governance Officer, receives a complaint with a request for anonymity, they will:
 - a) indicate this specific request when the complaint is passed to the DCRG for consideration.
 - b) send the complaint to the Complaints Manager for their consideration.
2. In considering the request for anonymity the DCRG and the Complaints Manager will separately assess the evidence in the complaint and decide whether GPEW should consider the complaint under either the Safeguarding or Whistleblowing policies. If information given anonymously relates to serious and credible concerns about a member, GPEW may consider taking further action, if it can do so fairly.
3. If the complaint does not contain evidence of Safeguarding concerns, or the need for it to be considered under the Whistleblowing Policy, the Governance Officer should make the Complainants aware of the details that may need to be shared with the Respondent during an investigation and allow the Complainant to decide whether they wish to prioritise their anonymity or continuing the Complaint. If the Complainant prioritises their anonymity, then the investigation and the complaints procedure as a whole may have to cease and the complaint may be dismissed by the DCRG, taking into account advice from the Complaints Manager.
4. If it is felt that the physical or mental well-being of the complainant must be protected by making an anonymity order to protect the complainant from the respondent, careful thought would be needed to make sure that nevertheless the respondent's ability to put up a defence is not compromised. If it would be, then the only appropriate response is not to proceed with the complaint and to dismiss it.
5. Under exceptional circumstances, a complainant may be afforded anonymity, and the complaint given further consideration.
 - a) A checklist of the specific and exclusive reasons why anonymity may be granted during the complaints process will be made available to all members in the GPRC Handbook.
 - b) If the complaint is passed to DC, or another party body, there will need to be a further consideration of the extent to which witnesses' details, in particular, can remain anonymous during the investigation. The DCRG will provide appropriate advice on this to DC. In the most sensitive cases, the DCRG shall determine the extent to which names and details can continue to be withheld and, in doing so, will seek to strike an appropriate balance between the Complainants' or witnesses' request for anonymity and the Respondent's ability to submit a defence in the absence of full details of the allegations.
 - c) It will not usually be possible to provide anonymity at the Disciplinary Committee hearing, but this will again be determined by the DCRG.
 - d) There are a number of ways in which individuals' anonymity can be protected following a complaint. Examples include: Complainants' and witnesses' names and personal details being redacted from any details of the Complaint provided to Respondents and their representatives; and not sharing

Respondents' and Complainants' names and personal details with potential witnesses or interviewees during the investigation stage.

- e) Further measures may also be taken, depending on the Complaint, and shall be subject to agreement between the Complainants or witnesses, the Complaints Manager and the DCRG.
6. The decisions made by the DCRG to grant anonymity, or not, should be properly recorded, together with the (anonymised) specific grounds for granting.

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This guidance will be available in the GPRC Handbook and will be reviewed by GPRC at least biennially.