

A close-up photograph of a person wearing a light blue dress shirt and a red and black striped tie. The person's hands are visible, holding a black fountain pen and writing on a white document. The background is slightly blurred, focusing attention on the writing action. A large, semi-circular graphic element in the foreground contains the BACP logo and the title of the document.

bacp

Register

of counsellors
& psychotherapists

BACP Register of Counsellors & Psychotherapists

Professional Conduct Procedure

Notification of amendments to the 2010 edition of the Professional Conduct Procedure

Originally notified in September 2012 and further amended effective from 21 January 2013

Amendment – September 2012

1. The term member, where it is used to refer to a member of this Association, is used to denote both members of the Association and registrants of the BACP Register of Counsellors and Psychotherapists.
2. The Head of Professional Conduct is now referred to as the Registrar.

Amendment – 21 January 2013

1. The following change has been made to paragraph 4 under the heading Notification of Findings:
 - 4.10 The decision of the Professional Conduct Panel will be notified in writing to the parties within 28 days of the Professional Conduct Hearing.
2. The following changes have been made to Paragraph 8, under the heading Publication:
 - 8.1 Where a complaint is upheld in whole or in part, the decision of the Professional Conduct and/or Appeal Panel, together with details of any sanction, will be published on the Association's website and may also be published in its journal in such detail as deemed appropriate to the findings.
 - 8.2 The withdrawal of membership/registration under the Professional Conduct Procedure will be published on the Association's website and may also be published in its journal and elsewhere as it considers appropriate and just to do so, and in the interests of public protection.
 - 8.3 Under these procedures, any notification that the Association is entitled to publish on its website or in its journal may be published elsewhere by the Association at its discretion and in the interests of public protection.

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Professional Conduct Procedure

It is the responsibility of all Members/Registrants and Complainants to ensure that they fully understand the Professional Conduct Procedure and the associated protocols. This procedure forms an essential part of BACP's commitment to the protection of the public.

Members/registrants are required to inform any client who indicates that they have a complaint or grievance about the existence of this procedure and any other applicable complaints or disciplinary procedures. If requested to do so, practitioners should inform their clients about how they may obtain further information concerning these procedures.

Further information may be obtained by contacting the Professional Conduct Department at BACP directly; alternatively, all documentation is available on the BACP website at www.bacp.co.uk.

1 Introduction

1.1 Aim

The aim of the Professional Conduct Procedure is to provide complainants with an open and transparent route of remedy where complaints are made against members/registrants of this Association. In processing such complaints, the Association aims to protect members of the public, the name and reputation of BACP and the professions referred to within the Ethical Framework.

1.2 Bringing a complaint

A complaint can be brought by either:

- a) a member of the public who has sought or received a service provided by a member/registrant of the Association; or
- b) a current member/registrant of the Association who may bring complaints for services sought or received directly from another member/registrant; or who has witnessed poor practice delivered by another member/registrant; or on behalf of another where their written permission has been obtained and where that person is unable to bring the complaint on their own behalf (explanation is required in writing as to the nature of the inability); or
- c) a legal guardian or other appropriately authorised adult on behalf of a minor and/or an adult lacking legal capacity for services sought or received; or
- d) a third party who can demonstrate sufficient interest and who has been directly affected by the actions of the practitioner, subject to the protocol on third party complaints.

1.3 Complaints against non-members

The Association cannot deal with complaints against individuals or organisations that were not members/registrants of the Association at the time of the alleged misconduct and/or are not current members/registrants of the Association.

1.4 Complaints against members/registrants

A complaint made against a member/registrant and brought within the timescale detailed below, may cover the entirety of the professional relationship in so far as the member/registrant concerned was a member/registrant of the Association at the time of the alleged professional misconduct.

1.5 Timescale

A complaint must be submitted either:

- a) within three years of the ending of the professional relationship; or
- b) within three years of the date when the Complainant reasonably became aware of the alleged professional misconduct. The Complainant must provide a written explanation as to when/how they became aware and this will be considered by the Pre-Hearing Assessment Panel which will decide if the explanation given is good and/or sufficient; or
- c) within a reasonable time of the alleged professional misconduct.

The Association will not consider any complaints where the substantive matters have previously been considered by the Association under these procedures, unless there is overwhelming and compelling new evidence which suggests that the case should be reconsidered.

1.6 Records

All records will be kept for a period of seven years. The Association reserves the right to reconsider complaints previously submitted when similar/other complaints subsequently arise that give good reason to suggest that the practitioner's continuing membership/registration should be considered under Article 12.6 of the Memorandum & Articles of Association.

Where the outcome of a complaint has resulted in withdrawal of membership/registration of the Association, all records will be kept unless and/or until such time as the person concerned has successfully re-applied for membership/registration of the Association. Such records will be considered in any re-application for membership/registration of the Association.

1.7 Administration

The administration of the Professional Conduct Procedure will follow the protocols laid down and as amended from time to time by the Association. These will be administered by the Registrar.

There is benefit in furthering the charitable aims of the Association by carrying out audits and/or research into complaints. The data from complaints will be processed for the purposes of research and statistical analysis. Where this work is carried out, either by BACP or a third party, under strict protocols of confidentiality, the confidentiality of the parties concerned will be respected and any published research and/or analysis will not contain any personally identifiable information.

1.8 Expenses

The Association is not responsible for travel or any other expenses incurred either by the Complainant or the Member/Registrant Complained Against or any support person/representative in connection with any stage of the complaint. The Association cannot order one party in a complaint to pay another party's costs.

However, where a witness is called by the Chair of the Panel, BACP will reimburse reasonable travel expenses upon the production of valid receipts and completion of an expense claim form.

1.9 Dual accountability

The Association may decide to hear a complaint against a member/registrant when another organisation is involved in a similar process arising out of the same substantive matters. Where information is received for consideration under the Professional Conduct Procedure and where it is known that the member/registrant concerned is also a member/registrant of another professional body, the Association reserves the right to formally notify any other organisation of the issues being considered.

1.10 Resolution

Before submitting a complaint to BACP, the Complainant is expected to attempt to resolve the issue with the individual or organisational Member/Registrant Complained Against and details of any attempt at resolution should be included with the complaint. If local resolution is not possible/feasible or is considered inappropriate in the particular circumstances of the case, the Complainant will be required to provide a written explanation as to why this is the case.

1.11 Complaints and findings

The Association reserves the right to notify other professional bodies and/or agencies about complaints and to distribute any findings upheld against a member/registrant, where it considers it right and just to do so in all circumstances.

2 Making a Complaint

2.1 The complaint

The complaint must satisfy the following conditions:

- a) The Complainant must provide a detailed account of the practice giving rise to the complaint, together with details of dates when the event(s) occurred. Reference may be made to the standards of practice outlined in the Ethical Framework for Good Practice in Counselling and Psychotherapy and/or the relevant Codes of Ethics and Practice in force at the time, together with all supporting evidence as appropriate. Reference may also be made to the Ethical guidelines for researching counselling and psychotherapy, as appropriate.
- b) The individual or organisational Member/Registrant Complained Against is named and is a current member/registrant of the Association and was a member/registrant of the Association at the time the alleged breach occurred.
- c) It is in writing, dated, signed and received by the Registrar.

A complaint not satisfying the above conditions will not be accepted or processed under these procedures.

2.2 Notification

The Member/Registrant Complained Against will be notified that a complaint has been received, given a copy of that complaint and details of the procedure to be followed. The Member/Registrant Complained Against is not required to respond at this stage, but will be given an opportunity at a later stage if the complaint is accepted under the formal Professional Conduct Procedure (as set out in section 3).

2.3 Receipt of a complaint

The complaint will be submitted to a Pre-Hearing Assessment Panel, whereupon the Panel will decide:

- a) whether to accept the complaint to be dealt with at a Professional Conduct Hearing, refer it back for further information/clarification or reject it. The Panel has discretion to interview the Complainant and/or Member/Registrant Complained Against if deemed appropriate;
- b) if further information/clarification is requested, upon receipt of same, the complaint will be re-submitted to the Pre-Hearing Assessment Panel which will decide whether to accept it or reject it;
- c) once the complaint is accepted, the Complainant and Member/Registrant Complained Against will be formally notified of this decision in writing. The Registrar will then start the formal Professional Conduct Procedure (as set out in section 3);
- d) if the complaint is not accepted by the Pre-Hearing Assessment Panel, the Complainant and Member/Registrant Complained Against will be formally notified of this decision in writing.

2.4 Appeal following decision of the Pre-Hearing Assessment Panel

The Complainant may appeal against the decision of the Pre-Hearing Assessment Panel. An appeal must be received by the Registrar within 14 days of notification of the Panel's decision. The Complainant can appeal on the following grounds:

- a) the decision was made against the weight of evidence;
- b) there is new evidence that was not available at the time of the Pre-Hearing Assessment Panel (subject to the conditions laid down in the relevant protocol).

The intention to appeal must be accompanied by the evidence to support the submission.

The ground(s) of appeal, together with the original submissions and any new evidence considered by the Pre-Hearing Assessment Panel, will be considered by an independent Appeal Assessor. The Appeal Assessor's decision will be final.

3 The Formal Professional Conduct Procedure

3.1 Acceptance of complaint

The Complainant and Member/Registrant Complained Against will be notified in writing that the complaint will proceed to a Professional Conduct Hearing.

3.2 Responding to a formal complaint

The Member/Registrant Complained Against will be notified of the acceptance of the complaint and will have 28 days to respond to it, having previously been supplied with a copy of the complaint. The Member/Registrant Complained Against will also be furnished with any further information submitted by the Complainant and considered by the Pre-Hearing Assessment Panel. Any response to the complaint must be forwarded to the Registrar.

3.3 Evidence

All evidence submitted for the purpose of the Professional Conduct Hearing, by either the Complainant or the Member/Registrant Complained Against, shall be available to the parties involved in the complaint. The Registrar will distribute to the parties copies of all submissions made.

3.4 Conduct

It is the duty of the parties taking part in the Professional Conduct Procedure to comply with the implementation of the Professional Conduct Procedure. Such persons shall comply with the relevant protocols as laid down by the Association. Any failure to comply may result in the termination of the Professional Conduct Procedure or withdrawal of membership/registration under Article 12.6 of the Memorandum and Articles of Association.

3.5 Lapsed membership/registration

Failure to renew membership/registration by a Member/Registrant Complained Against during the course of a complaint will not normally terminate the Professional Conduct Procedure.

A member/registrant's resignation from membership/registration of the Association will not normally terminate nor invalidate the processing and/or hearing of a complaint by the Association.

4

The Professional Conduct Hearing

4.1 Venue

Professional Conduct Hearings will be held at a neutral venue within the vicinity of the Association's headquarters, other than in exceptional circumstances.

4.2 Professional Conduct Panel

The Registrar will appoint an independently constituted panel of not less than three persons, including lay representation, to hear the complaint.

4.3 Declaration of interest

Members of the Professional Conduct Panel have a duty to declare any interest which may be considered by the Registrar to affect their impartiality, or likely to be thought so to do.

4.4 Purpose

The purpose of the Professional Conduct Hearing is for the Professional Conduct Panel to examine all the written and oral evidence presented by both parties and decide whether the complaint is proved or not. If proved, the Panel will decide whether or not any sanction should be imposed.

4.5 Presence of a representative/support person

When appearing at the Professional Conduct Hearing, the Complainant and Member/Registrant Complained Against may each be accompanied by a representative who may support and/or speak on behalf of the party concerned. Such details of a representative/support person must be received by the Registrar not less than 28 days prior to the date fixed for the Professional Conduct Hearing.

4.6 Additional evidence

Written evidence and/or submissions and witness statements must be submitted in advance by the Complainant and the Member/Registrant Complained Against. Such papers must be received by the Registrar not less than 28 days prior to the date fixed for the Professional Conduct Hearing. Such papers will be circulated to the Professional Conduct Panel, the Complainant and the Member/Registrant Complained Against, within a reasonable period prior to the Hearing. The Chair of the Professional Conduct Panel may take advice on these papers and/or procedural matters from the Registrar or such relevant person as may be deemed appropriate.

4.7 New evidence

The Chair of the Professional Conduct Panel will determine whether or not new evidence will be accepted on the day of the Hearing. The decision will be based on the conditions laid down in the relevant protocol. The Chair of the Professional Conduct Panel may take advice on such matters from the Registrar.

4.8 Attendance by witnesses

A witness can only be called if the witness has supplied a written statement contained within the parties' submissions to BACP. Parties wishing to call witnesses must notify the Registrar of the names and details of such witnesses not less than 28 days prior to the date fixed for the Hearing. The Chair of the Panel will only permit the attendance of a witness if the Panel considers their written statement requires further clarification. The Professional Conduct Panel, Complainant and Member/Registrant Complained Against may call witnesses to attend the Hearing. The Chair of the Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered. Witnesses may be questioned by the Panel and by either party connected with the case.

4.9 Failure to attend the Professional Conduct Hearing

Where a Complainant or Member/Registrant Complained Against fails or refuses to attend a Professional Conduct Hearing, the Registrar has the power to decide to either:

- a) proceed with the Hearing in the absence of one or both of the parties; or
- b) adjourn the Hearing to a date not less than 28 days in advance; or
- c) terminate the proceedings; or
- d) refer the matter for consideration under Article 12.6 of the Memorandum & Articles of Association.

4.10 Notification of findings

The decision of the Professional Conduct Panel will be notified in writing to the parties within 28 days of the Professional Conduct Hearing.

5 Sanction

- 5.1** The Professional Conduct Panel, having regard to the findings, may impose one or more of the sanctions detailed in the relevant protocol.

The Registrar will appoint an independently constituted Sanction Panel which will consist of not less than three people, usually two members/registrants of the Association and one lay member/registrant, to consider any evidence of compliance.

5.2 Lifting of sanction

The Sanction Panel will decide if the requirements of the sanction have been fulfilled and thus, whether the sanction should be lifted.

The Member/Registrant Complained Against will be notified in writing of any decision made. Where a sanction has been successfully complied with and, thus, lifted, a Sanction Compliance Notice will be published on the Association's website and in its journal.

5.3 Failure or refusal to comply with sanction

Failure or refusal to comply with a sanction may result in membership/registration of the Association being withdrawn immediately. The Chair of the Association will notify the Member/Registrant Complained Against of any such decision in writing. In such circumstances, a Withdrawal of Membership/Registration Notice will be published on the Association's website and in its journal.

6 Formal Appeal Procedure

6.1 The Member/Registrant Complained Against may appeal on the ground(s) detailed in paragraph 6.5. An appeal against the decision of the Professional Conduct Panel must be submitted in writing by the deadline given (see paragraph 6.6), be accompanied by any supporting documentation and submitted to the Registrar.

6.2 The ground(s) for appeal will be considered by an independent Appeal Assessor who will decide whether the appeal should be accepted to go forward to an Appeal Hearing or not.

6.3 If leave to appeal is accepted under paragraph 6.2, a notice to that effect shall be given to the Registrar and the case will proceed to an Appeal Hearing, where the appeal will be considered by an independent Appeal Panel, as set out in Section 7. The Appellant and the Complainant will be notified of this decision and given details of the procedure to be followed.

6.4 If there is insufficient evidence to satisfy any of the ground(s) for appeal, the leave to appeal will be rejected. The Appellant and the Complainant will be notified in writing of this decision which will be final.

6.5 An appeal will be considered on any of the following ground(s):

- a) the facts were found against the weight of evidence;
- b) the sanction is disproportionate to the findings and decision of the Professional Conduct Panel and is unjust in all the circumstances;
- c) there is evidence to suggest that a procedural impropriety may have had a material affect on the findings and decision of the Professional Conduct Panel;
- d) there is new evidence which was not available at the time of the Professional Conduct Hearing, subject to the conditions laid down in the relevant protocol.

6.6 Timescale for appeal

An appeal must be in writing, and must specify which ground(s) it is submitted under and be accompanied by any supporting documentation and served upon the Registrar within 28 days of notification of the findings and decision and/or sanction of the Professional Conduct Panel.

7 Appeal Hearing

7.1 Venue

Appeal hearings will be held at a neutral venue within the vicinity of the Association's headquarters, other than in exceptional circumstances.

7.2 Appeal Panel

The Registrar will appoint an independently constituted panel of not less than three persons, including lay representation, to decide the appeal.

7.3 Declaration of interest

Members of an appeal panel have a duty to declare any interest which may be considered by the Registrar to affect their impartiality, or likely to be thought so to do.

7.4 Purpose

The purpose of an appeal hearing is for an appeal panel to examine all the written and oral evidence presented by both parties to decide whether the appeal is upheld or not.

7.5 Format of the Appeal Hearing

The Appeal Hearing will be by way of a review of the Professional Conduct Panel's decision in light of the evidence put before it. The Appeal Panel will then consider the appeal documentation in its entirety, together with any verbal submissions and mitigating factors before reaching its decision.

7.6 Presence of a representative/support person

When appearing at the Appeal Hearing, both parties may be accompanied by a representative who may support and/or speak on behalf of the party concerned. Such details of a representative/support person must be received by the Registrar not less than 28 days prior to the date fixed for the Appeal Hearing.

7.7 Additional evidence

Written evidence and/or submissions and witness statements must be submitted in advance by the Appellant and the Complainant. Such papers must be received by the Registrar not less than 28 days prior to the date fixed for the Appeal Hearing. Such papers will be circulated to the Appeal Panel, the Appellant and the Complainant, within a reasonable period prior to the Hearing. The Chair of the Appeal Panel may take advice on these papers and/or procedural matters from the Registrar, or such relevant person as may be deemed appropriate.

7.8 New evidence

The Chair of the Appeal Panel will determine whether or not new evidence will be accepted on the day of the Appeal Hearing. The decision will be based on the conditions laid down in the relevant protocol. The Chair of the Appeal Panel may take advice on such matters from the Registrar.

7.9 Attendance by witnesses

A witness can only be called if the witness has supplied a written statement contained within the parties' submissions to BACP. Parties wishing to call witnesses must notify the Registrar of the names and details of such witnesses not less than 28 days prior to the date fixed for the Hearing. The Chair of the Appeal Panel will only permit the attendance of a witness if the Panel considers that their written statement requires further clarification. The Appeal Panel, Appellant and Complainant may call witnesses to attend the Hearing. The Chair of the Appeal Panel has discretion to refuse attendance by a witness if it is reasonably believed that such attendance is not relevant and/or will not add any weight to the issue(s) being considered. Witnesses may be questioned by the Panel and by either party connected with the case.

7.10 Failure to attend the Appeal Hearing

Where an Appellant fails or refuses to attend an Appeal Hearing, the Registrar has the power to decide to either:

- a) proceed with the Hearing in the absence of the Appellant; or
- b) adjourn the Hearing to a date not less than 28 days in advance; or
- c) refer the matter for consideration under Article 12.6 of the Memorandum & Articles of Association.

7.11 Notification of decision

The decision of the Appeal Panel will be notified to the parties in writing within 28 days of the Appeal Hearing.

Where an Appeal has not been successful, in whole or in part, the decision of the Appeal Panel, including details of any sanction, incorporating any amendment(s) made by the Appeal Panel, will be published on the Association's website and in its journal.

If the decision is that the Appellant's membership/registration of the Association should be withdrawn, the Registrar will communicate this decision to the Chair of the Association who, in turn, will formally notify the Appellant in writing and implement the Panel's decision. This decision will be final.

8 Publication

- 8.1** Where a complaint is upheld in whole or in part, the decision of the Professional Conduct and/or Appeal Panel, together with details of any sanction, will be published on the Association's website and may also be published in its journal in such detail as deemed appropriate to the findings.
- 8.2** The withdrawal of membership/registration under the Professional Conduct Procedure will be published on the Association's website and may also be published in its journal and elsewhere as it considers appropriate and just to do so, and in the interests of public protection.
- 8.3** Under these procedures, any notification that the Association is entitled to publish on its website or in its journal may be published elsewhere by the Association at its discretion and in the interests of public protection.

9 Effective Date

This Professional Conduct Procedure 2010, as amended in September 2012 and January 2013, will apply to all complaints received by the Association from 21 January 2013.

Heads of Complaint

The Professional Conduct Panel is responsible for determining whether the ground(s) of the complaint are upheld or not, according to the standards of civil law. If upheld, the Panel has to consider its decision and make a finding under one or more of the following heads of complaint. The decision about the head must ultimately rest upon consideration of all the circumstances in the case. The information that follows is intended to inform the choice between the three heads of complaint available to the Panel. These are:

1. Professional Misconduct
2. Professional Malpractice
3. Bringing the Profession into Disrepute

Professional Misconduct

A finding of professional misconduct signifies that the practitioner has contravened the ethical and behavioural standards that should reasonably be expected of a member/registrant of this profession. Misconduct is defined as acting in contravention of the written and unwritten guidance of the profession.

A finding of serious professional misconduct is appropriate if the misconduct is of sufficient seriousness to merit a period of suspension of rights of membership/registration and/or the withdrawal of membership/registration of the Association.

Professional Malpractice

A finding of professional malpractice signifies that the service(s) for which the practitioner is responsible have fallen below the standards that would reasonably be expected of a practitioner exercising reasonable care and skill. Examples of malpractice include, but are not restricted to:

1. Incompetence
2. Negligence
3. Recklessness
4. The provision of inadequate professional services

A finding of serious professional malpractice is appropriate if the malpractice is of sufficient seriousness to merit a period of suspension of rights of membership/registration and/or the withdrawal of membership/registration of the Association.

Bringing the Profession into Disrepute

A finding of bringing the profession into disrepute signifies that the practitioner has acted in such an infamous or disgraceful way that the public's trust in the profession might reasonably be undermined, or might reasonably be undermined if they were accurately informed about all the circumstances of the case.

A finding under this head must amount to 'disgraceful conduct in a professional respect'. This involves consideration of three elements:

Conduct that is regarded as 'disgraceful' need not amount to moral turpitude or be restricted to acts of serious immorality.

The conduct must have had some connection with a professional role in order to be considered as falling 'in a professional respect'. It ought not to be concerned with matters that can reasonably be viewed as solely personal and private.

Conduct 'in a professional respect' is not confined to the pursuit of the profession in question.

What is not considered to be disgraceful to an ordinary person may be considered to be disgraceful to a professional person.

A finding of bringing the profession into disrepute will result in withdrawal of membership/registration.



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British Association for
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