

Conduct LIA

Based on the ICO template

Part 1: Purpose test

You need to assess whether there is a legitimate interest behind the processing.

This assessment only covers personal data being processed by BACP (not special category data). When the BACP professional conduct team processes personal data, it does so under the legal basis of consent where this is appropriate. Where BACP wishes to process personal data without consent, legitimate interest will be used as the legal basis. This may happen where BACP have identified a need to process the data in order to protect its reputation or to protect the public when carrying out its protective functions.

Please note that special category information is processed in accordance with Article 9 of the UK GDPR. Details are available in the relevant Data Protection Impact Assessment (DPIA).

- Why do you want to process the data?

The reason for the BACP conduct team to process data is to uphold professional standards of BACP members to protect the public. Also, to protect the reputation of BACP.

Statistical data will also be collected so it can be analysed to identify trends and potential improvements to conduct related services. If specific issues are identified, mitigating actions can be taken to reduce the associated risk (e.g. through additional training or resources for members).

- What benefit do you expect to get from the processing?

The main objective of processing conduct related data is to carry out BACP's protective function and to protect the reputation of BACP. Data will also be analysed to help improve services and guidance provided to members, which should result in better counselling practices and better protection of the public.

- Do any third parties benefit from the processing?

The benefits are better protection of the public (BACP member clients), protection of BACP's reputation and appropriate action being taken in the event of a complaint by a client.

- Are there any wider public benefits to the processing?

An additional benefit of the processing is improved counselling practices in general.

- How important are the benefits that you have identified?

The benefits are vital to BACP to ensure protection of its reputation and the reputation of its members. The results of the processing also help to ensure protection of the public who engage with BACP members as clients.

- What would the impact be if you couldn't go ahead with the processing?
It is unlikely the above benefits would be achieved if the processing did not happen. This could lead to unsafe practices with regard to counselling.

- Are you complying with any specific data protection rules that apply to your processing (eg profiling requirements, or e-privacy legislation)?

The relevant areas of data protection legislation have been considered and are detailed in the data protection impact assessment.

- Are you complying with other relevant laws?

There is a requirement for BACP to adhere to the standards set by the Charity Commission. BACP are also registered with the Professional Standards Authority (PSA).

- Are you complying with industry guidelines or codes of practice?

See above regarding the Charity Commission and the PSA.

- Are there any other ethical issues with the processing?

There are additional considerations with regard to ethics. A Data Protection Impact Assessment has been carried out with regard to this processing.

Part 2: Necessity test

You need to assess whether the processing is necessary for the purpose you have identified.

- Will this processing actually help you achieve your purpose?

The processing is required in order to achieve the intended purpose

- Is the processing proportionate to that purpose?

The processing is proportionate with appropriate controls implemented to protect the data being processed.

- Can you achieve the same purpose without the processing?

It is unlikely the same benefits could be achieved without processing the data.

- Can you achieve the same purpose by processing less data, or by processing the data in another more obvious or less intrusive way?

Specific personal data is required in order to achieve the intended benefits, it is unlikely in this case that less data could be processed to achieve a representative and proportionate outcome.

Part 3: Balancing test

You need to consider the impact on individuals' interests and rights and freedoms and assess whether this overrides your legitimate interests.

A DPIA has completed for this processing activity.

Nature of the personal data

- Is it special category data or criminal offence data?

Some of the data is likely to be special category data and/or criminal offence data. The legal basis for processing this data is not legitimate interest and is covered by the DPIA. This legitimate interest assessment only covers the use of personal data.

- Is it data which people are likely to consider particularly 'private'?

See comments above.

- Are you processing children's data or data relating to other vulnerable people?

This is possible. The legal basis for processing this personal data is not legitimate interest and is covered by the DPIA.

- Is the data about people in their personal or professional capacity?

The data is likely to be about members in their professional capacity and about members of the public in their personal capacity. Please refer to the DPIA for further details.

Reasonable expectations

- Do you have an existing relationship with the individual?

The relationship is likely to be initiated by a complainant (through submitting a complaint) and those being complained against are provided with full details of the process being used. Members who disclose information to BACP already have a relationship with BACP in the context of processing personal data.

- What's the nature of the relationship and how have you used data in the past?
- This is one of the core functions carried out by BACP. Members should be aware of the professional conduct function and complainants initiate contact.

- Did you collect the data directly from the individual? What did you tell them at the time?

Data is collected directly from individuals and a privacy notice is provided to individuals before the data is processed where possible. It is possible for a complainant to provide personal data to BACP via email or similar without any previous interaction. This is discouraged and if it happens, privacy information is

provided to data subjects as soon as possible.

- If you obtained the data from a third party, what did they tell the individuals about reuse by third parties for other purposes and does this cover you?

This is unlikely to be applicable in this case. If a member wishes to include evidence provided by a third party they will be asked to let that party know how the data will be used (by providing them with access to the main BACP privacy notice).

- How long ago did you collect the data? Are there any changes in technology or context since then that would affect expectations?

The data is collected directly from individuals just before it is processed.

- Is your intended purpose and method widely understood?

The process should be understood as guidance is provided to stakeholders as part of the process. That guidance is also published on the BACP website.

- Are you intending to do anything new or innovative?

Well established processes and technologies are used to process the data.

- Do you have any evidence about expectations – eg from market research, focus groups or other forms of consultation?

Data is processed in a manner that is similar to other organisations carrying out a protective function.

- Are there any other factors in the particular circumstances that mean they would or would not expect the processing?

Parties should be aware of the processing that is likely to occur.

Likely impact

- What are the possible impacts of the processing on people?

There may be a significant impact to individuals should the special category data be compromised, please refer to the DPIA.

- Will individuals lose any control over the use of their personal data?

Once a member and complainant provide data as part of a conduct process it is likely to be retained by BACP (to defend against potential legal challenges). It is unlikely that information will be rectified or erased as part of a data subject request. The data subject has control over the data that is provided but loses full control over their data when the complaint is referred to an independent panel for the first review (Investigation and Assessment Committee - IAC). After a complaint has been heard by the IAC, withdrawal depends on what track the

complaint was allocated to. If it is the Disciplinary Proceedings Track, BACP takes ownership of the complaint and so the Complainant is not able to withdraw. If the complaint is referred to the Practice Review Track, the Complainant may be able to withdraw up until the hearings stage but that will depend on the reasons and what point the process is at. If a complaint reaches the hearing stage, an independent panel would be asked to make the decision to close the complaint or continue in the Complainant's absence. Regardless of all times and scenarios, we do retain complaints, related evidence and all correspondence in line with our retention policy – six years at the time of writing.

- What is the likelihood and severity of any potential impact?

Please refer to the relevant DPIA for more details.

- Are some people likely to object to the processing or find it intrusive?

There may be occasions where data subjects will complain about the use of the data. Where processing can be stopped (see control section above) it will be. However, there are occasions where processing may be carried out despite objection from the data subject (when it needs to be carried out as part of BACP's protective function).

- Would you be happy to explain the processing to individuals?

The processing is explained as part of standard processes.

- Can you adopt any safeguards to minimise the impact?

Safeguards can be adopted, please refer to the DPIA for further details.

| | |
|---------------------------------------|---|
| Can you offer individuals an opt-out? | In certain cases (see control section above) |
|---------------------------------------|---|

Making the decision

This is where you use your answers to Parts 1, 2 and 3 to decide whether or not you can apply the legitimate interests basis.

| | |
|---|-----|
| Can you rely on legitimate interests for this processing? | Yes |
| <p>Legitimate interests can be relied upon to process personal data (not special category data) in the circumstances where BACP needs to protect its reputation or when it needs to do so in line with its protective function.</p> <p>Please refer to the DPIA for details about processing special category data.</p> | |

| | |
|------------------|--|
| LIA completed by | Register team and Data Protection Lead |
| Date | 14 Jun 2021 |