

Information for members/ registrants who are subject to a complaint

Introduction

These notes should be read in conjunction with the Professional Conduct Procedure. The notes address some of the concerns of Members/Registrants who find they have a complaint made against them.

It is acknowledged that it can be very distressing to be the subject of a complaint, whether it is against you as an individual or an organisation that you represent. BACP acts fairly to all parties in a complaint and endeavours to minimise any distress that may arise in the course of these procedures. The Association cannot favour either party in a complaint. It is important for Members/Registrants in this position to seek support from friends or a supervisor. The Professional Conduct Department may only offer guidance on questions of procedure. It is hoped that in these unusual circumstances, you will find your interactions with the BACP Professional Conduct Department both professional and constructive.

The complaint

On receiving the complaint, please check that you or the organisation you represent were a Member/Registrant of BACP at the time of the alleged breaches. BACP does check this information but your records may be different and the position may need to be clarified. Please acknowledge receipt of the complaint.

If you work for an organisational member of BACP, BACP may notify that organisation of the complaint. If your organisation is not a BACP organisational member, it may be wise to notify it of what is happening, either to enlist help, support or information during the process, or to avoid potential late disclosures.

Prior to sending the complaint for the consideration of the Pre-Hearing Assessment Panel, the Member/Registrant Complained Against is provided with a copy of the complaint with the procedure to be followed. The Member/Registrant Complained Against is not requested to respond at this stage but will be given the opportunity at a later stage should the complaint be accepted.

Once a complaint is being processed under the Professional Conduct Procedure, it is the duty of both parties to the complaint to comply with its implementation as detailed at paragraph 3.4 of the Professional Conduct Procedure. As such there is an expectation that parties will not behave in a rude or abusive manner and that parties to a complaint will co-operate in the fixing of a date/s for a hearing. It is also expected that parties to a complaint will supply information to and respond to communications from BACP where required. Any failure to comply with the implementation of the Professional Conduct Procedure by either party may result in termination of the Professional Conduct Procedure, or withdrawal of membership under Article 12.6.

Pre-Hearing Assessment Panel

The Pre-Hearing Assessment Panel will consider the complaint and any supporting evidence. Its task is to decide whether or not, on that evidence, there is a case to answer.

The Panel is independently constituted which means that none of the three people on it have any prior knowledge of the Complainant or the Member/Registrant Complained Against or any of the details of the complaint. The Panel will usually consist of three panellists at least one of whom will be a lay person.

The Panel does not decide whether the complaint is upheld. If the Panel decides there is a case to answer, it will refer the complaint directly to a Professional Conduct Hearing. Where there are insufficient details and/or evidence to make this decision, the Pre-Hearing Assessment Panel can request further information/clarification. If the Panel makes such a request, it is relayed to the appropriate party or parties. If a party fails to respond to the Panel's request for information, the Panel will be made aware of this failure to respond. Upon receipt of further information/clarification, the complaint is re-submitted to the Pre-Hearing Assessment Panel, which will decide whether to accept it to be dealt with at a Professional Conduct Hearing, or reject it on the grounds that there is no case to answer.

Organisational members of BACP

If the complaint is made against an organisational member of BACP, it will be sent to the designated contact person within the organisation. The organisation will be asked to nominate a person, plus an alternative in case of their non-availability, to represent the organisation in relation to the complaint. In response to a complaint, any information on the organisation's contracting arrangements, public information, supervision and managerial practices could be helpful to a panel.

Professional Conduct Hearing

If the complaint is accepted for a Professional Conduct Hearing, you will be notified of that decision and will have 28 days in which to formally respond to the complaint. The Professional Conduct Panel is independently constituted with no member of it having prior knowledge of the case or either party. It is usually made up of three panellists at least one of which will be a lay person. It is the task of the Professional Conduct Panel to consider all the written and verbal evidence presented and relevant to the complaint, that is the complaint and the response, together with any additional submissions received from either party. All evidence and submissions received from either party will be open and available to all parties involved in the complaint.

The onus is on the Complainant to prove his/her case. The Panel has to reach its decision on the balance of probabilities; that is, it has to be satisfied that on the evidence put before it, it is more probable than not that 'x' happened.

Both parties are notified of the outcome of the Adjudication Hearing within 28 days of the completion of the Hearing.

Further information

1. Professional Conduct Panel Members

Where possible, panels are constituted on the basis of one member having the same theoretical orientation as the Member/Registrant Complained Against where the theoretical orientation is relevant to the subject matter of the complaint; one with knowledge and experience of the particular issue being considered; and one will be a lay person.

All panel members are required to declare any interest in either of the parties involved, or the case. Additionally, all panel members are bound by a confidentiality agreement for the purposes of undertaking this work on behalf of the Association.

2. Resignation

A Member/Registrant Complained Against's resignation from membership of the Association will not terminate nor invalidate the hearing of a complaint by the Association.

3. Failure to renew subscriptions

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.

4. Witness statements and submissions

If you believe someone can help you in explaining or defending your actions, do ask them for help. They should be informed that if they provide a written statement, they may be asked to attend the Professional Conduct Hearing, as a witness to answer questions on their written submission. If you intend to have witnesses called to a hearing, you may wish to advise them of the date of the hearing at the earliest opportunity in order to maximise their availability to attend the hearing, should it be required.

5. Recording of Hearings

Please be advised that in all cases, as a matter of best practice and for an accurate record of a hearing to be maintained, hearings are audio recorded. The recordings of these hearings form part of the evidence and are stored confidentially and securely under lock and key as per the Professional Conduct Procedure. The recordings are not delivered to anyone other than the two parties concerned, the Member/Registrant Complained Against and the Complainant, upon written request. A copy will be provided to an Appeal Assessor if an appeal is made. The recordings are transcribed if a case goes to an appeal hearing. They are then destroyed in line with our retention policy after a period of seven years.

6. Professional Indemnity and Legal Action/Support

Practitioners in private practice and organisations offering therapeutic and training services usually maintain professional indemnity insurance. It is in the interests of Members/Registrants who have a complaint against them, to notify their insurance company immediately that they are the subject of a complaint. Your insurance company may be able to provide some financial or other support in responding to the complaint. In the great majority of cases, complaints are resolved without recourse to legal proceedings and thus without the need for any legal services or financial support which professional indemnity insurance can provide. However, outcomes cannot be predicted and the advice of an insurance company may be helpful to you. It will also assist the insurance company if it knows the complaint is being handled in line with BACP's published procedures.

The BACP Professional Conduct Procedure is a quasi-judicial process. You are entitled to bring a 'friend' with you to the Hearing who can support and/or represent you. You may decide that you

wish to be legally represented in this matter. This is your choice. If you decide to have legal representation, you are advised to ensure that the legal representative has a good understanding of the Ethical Framework for Good Practice in Counselling and Psychotherapy/Codes of Ethics and Practice and the Professional Conduct Procedure. Brookfields Professional Conduct Services Limited is an organisation that provides advocacy services that you might find of assistance. Its website can be located at: www.professionalconduct.co.uk; the contact telephone number is 0845 3880803. Brookfields Professional Conduct Services Limited is completely independent of BACP. However, you may wish to choose a solicitor to assist with a response. The Psychotherapy and Counselling Union is an organisation that offers support to its members which may be of assistance if you are one of its members, and is completely independent of BACP. Its website can be located at <http://pandcunion.ning.com/>. BACP does not endorse or recommend any legal or support organisation and any such arrangement is a matter for the party concerned.

BACP will not accept or process complaints whilst legal action concerning the subject matter of the complaint is in process, is proposed or initiated whilst the complaint is being processed by BACP. Any legal action should be completed before the complaint is submitted to BACP, or initiated after the BACP procedures have been concluded. If you are concerned about that possibility, you are advised to consult a solicitor. Many insurers provide their clients with access to legal helplines.

7. Confidentiality/Data Processing

BACP keeps records of complaints separately and confidentially from general membership records. All identifying enquiries about potential or actual complaints are dealt with by the Professional Conduct Department in the strictest confidence. All BACP staff have a confidentiality clause in their terms of employment and Members/Registrants of the Association are bound by BACP's Ethical Framework for Good Practice in Counselling and Psychotherapy. Although BACP asks non-members bringing complaints to observe confidentiality in the process, BACP has no control over the actions of non-members. Every effort is made to use non-identifying information in reports. Papers are returned to BACP Headquarters for destruction after hearings. All documentary records of complaints will be kept for a period of 7 years from the finalisation of the Professional Conduct Procedure. Where the outcome of a complaint has resulted in withdrawal of membership of the Association, all records will be kept for a minimum of 7 years and until such time as the person concerned has successfully re-applied for membership of the Association. Such records will be considered in any re-application for membership of the Association.

The Professional Standards Authority for Health and Social Care (the Authority) oversees statutory bodies that regulate health and social care professionals in the UK. It assesses their performance, conducts audits, scrutinises their decisions and reports to Parliament. It does this to promote the health, safety and well-being of users of health and social care services and the public.

The Health and Social Care Act 2012 established that the Professional Standards Authority (the Authority) also sets standards for organisations holding voluntary registers for health and social care occupations and accredits those that meet them. Accreditation means that a voluntary register is managed effectively and adheres to good practice. It enhances consumer protection and helps consumers to make informed decisions.

The British Association for Counselling and Psychotherapy (BACP) submitted an application for accreditation to the Authority and achieved accredited status for its Register. As part of our commitment to standards and to assist the Authority to monitor those standards, it may be necessary for the Authority, from time to time, to observe a hearing and assess the process by which the Hearing is run. The presence of the Authority would be subject to the consent of both parties to the complaint. We appreciate the sensitivity of information that may be disclosed in a Hearing, but can assure you that the confidentiality of that information will be respected and the information not disclosed elsewhere.

Further to this, the presence of the Authority will be governed by a confidentiality agreement providing you with the same level of confidentiality as you would enjoy with both the adjudicators and the officers of BACP.

8. Reporting

Notification of findings against Members/Registrants, along with any sanction, is published on the Association's website and may also be published in its journal *'Therapy Today'* in such detail as deemed appropriate to the findings and at BACP's discretion in accordance with clause 8 of the Professional Conduct Procedure. When a sanction has been successfully met, the lifting of the sanction will also be reported in accordance with clause 8 of the Professional Conduct Procedure. This information is public information and can be given to enquirers. No information on complaints in progress or details, other than those printed, is given out by BACP. Members/Registrants who have a complaint upheld against them are advised to inform other bodies with whom they may be in contact. This will, or may, pre-empt other enquiries from those organisations in light of their own Codes of Conduct.

9. Media Publicity

Occasionally a Complainant writes to the press about their experiences or information relating to the complaint becomes available to the papers in other ways. Almost inevitably media stories are incomplete and may misrepresent the facts. Seek advice before making a public rejoinder. In most cases silence is the best response or, if pressed, wording such as 'I am a Member/Registrant of BACP and am unable to comment because the matter is currently being considered by the Association' may serve your and BACP's purposes best.

10. Expenses

Members are reminded that BACP is not responsible for travel or other expenses incurred by any party in connection with any stage of the complaint.

These notes are intended to be of assistance to you. They are periodically reviewed and your comments are welcomed as part of that process.

Latest review: September 2013,2018