

Article 12.3 Making a Disclosure

Guidance for Applicants

If you apply to become a member of BACP, you'll be asked if you have any disclosures to make. Section 4 of the application form asks the following questions:

- Do you have a conviction which is not spent under the Rehabilitation of Offenders Act 1974 (as amended)?
- Have you ever been struck off, erased, removed or suspended from membership of any professional body or register on the grounds of professional misconduct?
- Have you ever been refused membership or registration by a professional body or register on the grounds of professional misconduct?
- Have you ever been the subject of any civil claim brought against you, other disciplinary action, investigation, proceeding or enquiry?
- Are you currently or likely to be the subject of any disciplinary action, investigation, proceeding or enquiry?
- Is your fitness to practise impaired for any reason including health or personal circumstances?
- Are there any other factors which could call into question your suitability for membership?

What happens if I make a disclosure?

If you answer 'yes' to any of the questions above, at the time you submit your application form you should also provide a full and detailed statement about the disclosure. For example, if you are making a disclosure about a criminal conviction or disciplinary action by your employer you may wish to include your learning from the experience and any mitigating factors.

The Membership department will pass your application form, and any information you have provided, to the Register (Professional Conduct) where it will be allocated to a Case Manager for review and assessment. In order to carry out a full assessment of your disclosure, the Case Manager may ask you to provide further information.

The Case Manager will assess all information provided and decide whether the application can proceed or whether it needs to be referred to an Article 12.3 Panel (the Panel) to consider the application.

An Article 12.3 Panel can make the following decisions on an application:

- a. accept the application; or
- b. decline the application.

Before making a decision the Panel can request further information or invite an applicant to interview.

What is Article 12.3?

Under Article 12.3 of BACP's Articles of Association, BACP can decline "*any application for membership, registration or admittance to grades of membership*".

An application for membership **may** be refused pursuant to Article 12.3 where the information provided is such that:

- a. If a member of the public was accurately informed of the disclosure and the applicant was admitted to membership it is likely to:
 - bring the reputation of the counselling professions into disrepute, or
 - undermine the public's trust in and/or the reputation of the Association, or
 - undermine public confidence in the Association's regulatory function
- b. There is good reason to believe that the applicant's conduct could have constituted a serious breach of professional standards, having regard to BACP's Ethical Framework for the Counselling Professions and/or the Professional Conduct Procedure, had the applicant been a member of BACP at the time it occurred
- c. There is good reason to believe that, if admitted to membership, the applicant is unlikely to work within professional standards, having regard to BACP's Ethical Framework for the Counselling Professions and/or the Professional Conduct Procedure.
- d. There is good reason to believe that, if admitted to membership, the applicant would be a risk to the public.

Why am I being asked for this information?

BACP has an overarching duty to protect the public; the reputation of the Association and that of the counselling professions. In order to do this, it needs to ensure that applicants and members are safe to work with clients and are able to work within the remit of the Ethical Framework for the Counselling Professions.

Where BACP is in receipt of information that suggests an applicant is not suitable for BACP membership, an application may be rejected under the Article 12.3 procedure.

It's important that BACP makes sufficient enquiries with an applicant who makes a disclosure, so that it can make a fully informed decision.

I don't know if I need to make a disclosure, what should I do?

If you're unsure whether you need to make a disclosure to BACP, you may need to seek advice from organisations such as the Citizens Advice Bureau as they may be able to help or signpost you to the right direction.

If information comes to light once you're in membership that you should have disclosed on application, but didn't, it may result in action being taken and your membership being withdrawn.

Conviction disclosures

BACP can only consider convictions which are not “spent” as defined by the Rehabilitation of Offenders Act (1974), as amended by the Police, Crime, Sentencing and Courts Act 2022.

BACP can’t provide you with any legal advice as to whether your conviction is spent or unspent, and you should make enquires before you make a disclosure to BACP. Organisations such as NACRO or the Citizens Advice Bureau may be able to assist you, but BACP doesn’t endorse any organisation. For further information please see the guidance on disclosing criminal convictions.

If you disclose a conviction which appears to be spent, BACP may ask you to make further enquiries to confirm the status of that conviction.

Fitness to practise disclosures

BACP has a duty to ensure that all applicants and members can provide a safe and effective service to their clients and work within the remit of the Ethical Framework for the Counselling Professions. An applicant is required to tell BACP if their fitness to practise is impaired for any reason including physical or psychological health. For further information please see the Fitness to Practise FAQs.

Where a disclosure is made that an applicant has an impairment relating to physical or psychological health, BACP will make further enquiries with that applicant to make sure they are fit to practise.

What information will I be asked for?

You should have already submitted a comprehensive statement about the disclosure along with your application. However, we may ask you for more information if we don’t have enough to carry out a full assessment. We would encourage you to be as open as possible and to take the opportunity to provide information to allow BACP to assess your application.

As well as providing your written statement to BACP, you may be asked for a letter or reference from your supervisor or tutor, or an independent person who is aware of your disclosure and can comment on your suitability for membership.

If your disclosure relates to health or disability, you may be asked to provide a letter from your GP or healthcare professional, if appropriate. BACP will not ask for information from a health care practitioner unless absolutely necessary.

If you have disclosed a dismissal or were disciplined or expelled from a membership organisation (including another statutory regulator or accredited register) or by an employer, you may be asked to provide a letter or the decision confirming the reasons for your dismissal.

BACP may undertake an online search in relation to information about you that is available in the public domain, if appropriate.

The information that BACP requests will depend on what you have disclosed.

What if I cannot obtain the information BACP has requested?

It's important that you provide BACP with the information it requires so that your application can be fully assessed. If key information is missing or unclear, your application may be put on hold or terminated by a Case Manager or rejected by a Panel.

If you no longer have relevant letters and paperwork, you may be asked to take steps to obtain copies or provide evidence of your attempts. However, please note if the requested information is confidential, you may need to seek permission to disclose it to BACP.

If your application is terminated because you are unable to provide the necessary information, or you decide to withdraw your application, you can re-apply for membership at a future date and, if so, you'll need to make appropriate disclosure at that time and provide all the necessary information.

What happens once BACP has all the information?

A Case Manager in the Professional Conduct department will review the information to assess whether:

- a) your disclosure can be processed by membership without further consideration; or
- b) your disclosure needs to be referred to an Article 12.3 Panel.

Can a Case Manager reject my application?

No, only an Article 12.3 Panel can reject an application. However, if you fail to respond to BACP's requests for information, your application may be terminated. You can re-apply for membership at a later date but, if you do so, you'll need to re-submit the information required in support of your application, as BACP won't retain information previously supplied for more than 28 days.

How does a Case Manager decide whether my application should be referred to a Panel?

The Case Manager will make an assessment based on the three overarching assessment questions set out below:

1. Is there anything within the disclosure, which is so serious it could bring BACP into disrepute or leads you to believe the applicant cannot work to the Ethical Framework?
2. Is there anything in this disclosure which suggests the applicant is not able to practise safely or ethically with clients?
3. Is there a possibility the Panel may reject this applicant having taken into account the objective and subjective evidence available?

If the answer to any of these questions is 'Yes', it is probable a referral to a Panel will be made.

What happens if my application is referred to an Article 12.3 Panel?

You'll be told if your application needs to be referred to an Article 12.3 Panel, along with brief reasons why. The Panel will be provided with copies of your application and disclosure and any other relevant information. You will have an opportunity to provide any further information for the Panel to consider if this happens.

What options does the Article 12.3 Panel have?

The Article 12.3 Panel can:

- request further information from you
- interview you
- accept your application for membership
- reject your application for membership

On what grounds could my application be rejected by the Article 12.3 Panel?

The role of the Panel, as set out in Article 12.3, is to consider whether there is anything within your disclosure which makes you unsuitable for membership and whether there is anything that is likely to pose a risk to the safety of clients or the reputation of BACP and the counselling profession.

An Article 12.3 Panel may decline an application for membership, where the information disclosed raises questions about an applicant's suitability for membership. An application for membership may be refused where the information provided is such that:

- a. If a member of the public was accurately informed of the disclosure and the applicant was admitted to membership it is likely to:
 - bring the reputation of the counselling professions into disrepute, or
 - undermine the public's trust in and/or the reputation of the Association, or
 - undermine public confidence in the Association's regulatory function
- b. There is good reason to believe that the applicant's conduct could have constituted a serious breach of professional standards, having regard to BACP's Ethical Framework for the Counselling Professions and/or the Professional Conduct Procedure, had the applicant been a member of BACP at the time it occurred
- c. There is good reason to believe that, if admitted to membership, the applicant is unlikely to work within professional standards, having regard to BACP's Ethical Framework for the Counselling Professions and/or the Professional Conduct Procedure.
- d. There is good reason to believe that, if admitted to membership, the applicant would be a risk to the public.

Can I appeal if the Panel rejects my application?

If a panel rejects your application for membership, you have the right to appeal within 28 days of being notified of the decision. You'll be expected to attend an appeal hearing and tell the Article 12.3 Appeal Panel why the decision to reject was unjust and unfair in all the circumstances.

Supporter

You'll have the option to be accompanied by a support person at the hearing. The optional role of Supporter is to provide emotional support and this individual will not be called upon to represent you during the hearing.

Character Witnesses

You may also submit further character references/statements in support of your appeal application which address your suitability for BACP membership. Should you wish to bring any witnesses to the hearing, please be advised that it will be for the Panel Chair to agree to any such request, and they will only do so if they feel the written statements require further clarification in person. Please let me know if you would like to submit such a request and we will liaise with the Chair on your behalf.

The Appeal Panel can accept your appeal and allow you into membership or agree with the original Panel's decision to reject your application.

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