**Article 12.3**

**Disclosing Criminal Convictions**

**FAQs**

This document provides guidance on how BACP (the Association) will deal with your application if you disclose that you have an unspent conviction.

An unspent conviction is defined in the Rehabilitation of Offenders Act 1974, as amended by the Legal Aid and Sentencing Punishment Act.

**What convictions need to be disclosed?**

The Rehabilitation of Offenders Act 1974, as amended (the RHO), sets out details of when a conviction is “**spent**” or “**unspent**”. If you have a conviction which is **unspent** under the RHO you are required to disclose this to BACP.

BACP cannot consider convictions or cautions which are **spent** under the RHO and therefore you don’t need to disclose these to BACP.

**Is my conviction spent or unspent?**

BACP can’t provide you with legal advice as to whether your conviction is spent or unspent, and you should make your own enquires if you have any doubts.

Organisations such as NACRO or the Citizens Advice Bureau may be able to assist you, or you may wish to seek your own legal advice in relation to the status of your conviction.

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

**If my conviction appears on my Disclosure Barring Service (DBS) Form, does this mean it is unspent?**

The appearance of a conviction on a DBS form doesn’t mean your conviction is unspent. A DBS can be basic, enhanced or filtered, and depending on the level of DBS check, may show spent and unspent convictions.

**When should the disclosure be made?**

Sections 4 and 5 of the BACP membership application form asks you about any relevant criminal convictions. If you disclose any unspent convictions at this point, you’ll be asked to provide a full and detailed statement about the circumstances of the conviction, any learning you have taken from this and any steps you have taken since then to remediate.

Your application form and the disclosure should be sent to the Membership department at BACP, who will refer it to the Professional Conduct department, to be considered under the Article 12.3 process.

If you are already a member of BACP at the time you disclose an unspent conviction, it will be considered under the Article 12.6 process, which allows BACP to withdraw membership if it becomes aware of serious concerns about the suitability of a member’s ongoing membership. In those circumstances, you should send a signed, written statement, with full details of the conviction and the learning you have taken from this, to the Professional Conduct department for consideration under Article 12.6.

**Do I need to tell BACP if I am under investigation or have been charged but not convicted?**

Yes, you’re required to inform BACP if you’re currently or likely to be the subject of any disciplinary action, investigation, proceeding or enquiry. This duty applies on joining and continues during your membership.

**Obligations differ between employers and BACP**

### As a professional membership body, BACP can only consider convictions which are unspent under the Rehabilitation of Offenders Act (1974), as amended. However, different obligations may apply in your work. If you’re working with vulnerable client groups or are seeking employment which is covered by [The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975](http://www.legislation.gov.uk/uksi/1975/1023/contents/made), your employer, placement or training provider may require you to have an enhanced DBS check and to disclose all convictions, both spent and unspent.

**Is it sufficient for me to tell BACP’s ethics helpline and/or the Customer Services department about my conviction?**

No. Even if you have discussed any ethical considerations with the Ethics department, or spoken to Customer Services about the conviction, you must also make the disclosure, in writing, for the attention of the Professional Conduct department. A verbal disclosure can’t be accepted and won’t be considered as having been disclosed.

**What information do I need to provide to BACP?**

Your application and disclosure will be referred to the Professional Conduct department for assessment. Unless you’ve already done so, you’ll be asked to provide the following information:

1. Full details of each the conviction, including:
2. *The date on which each offence(s) occurred;*
3. *The date you were convicted;*
4. *The legislation (i.e. the law) under which you were convicted for example Section 1 of the Theft Act 1968;*
5. *The date you were sentenced;*
6. *The complete sentence you received (including any fines/costs/compensation/licence end date, endorsement on your licence); If you received a community order or any other court order, the length of that order;*
7. *A full description of the offence(s) for which you were convicted and the circumstances which led to it;*
8. *The Court at which you were sentenced.*
9. A comprehensive signed statement, giving further details of the circumstances surrounding the conviction(s), the steps you have taken to turn your life around and what you have learnt from your experiences.
10. You may also be asked to provide letters of support from a tutor, supervisor or placement, who are aware of your conviction(s) and can comment on your suitability for membership. These should be signed and dated and addressed to BACP. The author should also state they are aware of your conviction.
11. BACP may also request any other information which it considers relevant.

**Where can I find information about my conviction?**

This information may appear on your DBS or on a certificate of conviction. If you don’t have a DBS or certificate of conviction, you may wish to obtain one from the Court at which you were sentenced. You can then extract the key information and include it in your written statement to BACP.

**Information which is in the public domain**

BACP may search for information which is in the public domain. If any news articles come to light in respect of your criminal conviction, or other information comes to light which is relevant to assessing your suitability for membership, BACP will ask for your comments and may take this into account when assessing your membership application.

If your application is referred to an Article 12.3 Panel, BACP may refer any publicly available information, together with your response, to an Article 12.3 Panel.

**How will BACP deal with my conviction disclosure?**

The Professional Conduct department will review any information provided in line with its guidelines to assess:

1. whether the application and disclosure need to be referred to an Article 12.3 Panel;
2. whether it is satisfied that your disclosure doesn’t need further consideration under Article 12.3 and can be accepted.

BACP has drawn up guidelines *‘Guidance on Making Disclosures’* for deciding whether your application needs to be referred to a 12.3 Panel and the Professional Conduct department will take these into account in making its decision.

**Does having an unspent conviction mean I cannot join BACP?**

Each disclosure is assessed under the Article 12.3 Procedure and guidelines and considered on its own merits. If your conviction is so serious that it will never be spent, it will be referred to an Article 12.3 Panel. The starting point for a panel, when considering a conviction that which will never be spent, is that the application may not be accepted, unless the applicant can demonstrate exceptional circumstances.

**Further Guidance**

If you have any questions in relation to the Article 12.3 Procedure, please contact the Professional Conduct department.

Guidelines to be taken into account by BACP in deciding whether to refer a conviction disclosure to an Article 12.3 Panel

**Guidelines**

**Referral to an Article 12.3 Panel**

If the disclosed conviction is one of those shown below, it is probable that the answer to one or more of the overarching questions will be ‘Yes’ and that the application will be referred to an Article 12.3 Panel.

* A criminal conviction which will never be spent under the Rehabilitation of Offenders Act (1974) (as amended by LASPO);
* An unspent criminal conviction where the applicant received a custodial sentence, (including a suspended sentence);
* An unspent criminal conviction where the applicant has been convicted of an offence of dishonesty, serious violence or a sexual offence, or which questions integrity;
* Where an applicant is on the sex offender’s Register/subject to notification requirements or subject to a Sexual Offences Prevention Order or Sexual Harm Prevention Order -providing the conviction is unspent.

**Return of application to membership, without referring to a 12.3 panel**

If the disclosure type appears on the list below, it is an indicator that the answer to one or some of the overarching questions may be ‘No’ and it should not be referred to an Article 12.3 Panel.

* A conviction which is spent under the Rehabilitation of Offenders Act (1974), as amended by LASPO;
* An unspent conviction which is so minor that it wouldn’t bring BACP and/or the counselling profession into disrepute, and which is reflected by a low-level sentence being imposed;
* A minor motoring conviction e.g. speeding, traffic light offence.