

Professional Conduct Procedure

PR3 - Protocol for Letter of Advice

What's a Letter of Advice?

We may decide to send a Letter of Advice when there is evidence that there has (or may have) been a minor or technical breach of professional standards. The breach will generally have had low impact and there must be a low likelihood of repetition. A Letter of Advice provides a proportionate alternative to our full process in appropriate cases.

Statement of Purpose

The introduction of a Letter of Advice, as a conciliatory tool to deal with complaints, is part of the Association's modernisation of the way in which it regulates its Members in matters where allegations of misconduct/complaints have been made. The purpose of a Letter of Advice is to encourage compliance with the professional standards to ensure that Members take full responsibility for the acts, omissions or shortcomings in dealings within their practice and/or with their clients.

The Association consider this is necessary to:

- improve transparency of process and outcome for the public and BACP Members
- enable proportionate outcomes to be reached efficiently, at reasonable cost, and in the public interest
- reflect the Association's role in public protection

This approach enables the Association to focus the use of resources on those whose conduct creates risks to the interests of their clients and the public. It means a proportionate outcome can be reached where the interests of the client or the public are not at substantial risk.

It is important to bear in mind that the facts of individual complaints and the circumstances of the people involved vary considerably and each case must be decided on its own facts.

Criteria for Letters of Advice

Below are some general criteria that may be relevant to our decision to issue a Letter of Advice:

- there have been no or low adverse consequences of the Member's behaviour - for example, it hasn't caused the Member's clients or others material distress, loss or impact on the public's confidence in the regulation of BACP Members
- there is low or no risk to the public
- there has been an early and genuine acceptance by the Member that a breach has occurred
- the Member has apologised, or the breach has otherwise been remedied
- the period over which the breach took place was short or it was stopped as soon as possible
- the breach is no longer continuing
- there is a low likelihood that the breach will be repeated in the future
- the Member has not been the subject of findings of professional misconduct within the previous five years, and is not the subject of any other current complaints through any of the BACP complaints procedures (including Article 12.6)
- the Member has co-operated with BACP
- the Member has shown insight and acknowledged the failings identified
- The breach was minor or technical and not in deliberate disregard of professional standards.

The time elapsed since the breach could also be a relevant factor when deciding whether a Letter of Advice is the most appropriate and proportionate outcome. For example, if the breach might otherwise have led to the matter being processed formally through the Professional Conduct Procedure (PCP) or occurred some time ago, and the Member has had a good record in the meantime, this may influence the decision to issue a Letter of Advice.

A Letter of Advice will generally not be appropriate in the following circumstances

Where the alleged breach:

- was deliberate or reckless
- caused, or had the potential to cause, material loss or distress to the Member's client or clients
- was not remedied promptly or at all
- affected or had the potential to affect a vulnerable person or child
- formed or forms part of a pattern of breaches by the Member
- would amount to serious professional misconduct
- suggests an unfitness to practise

Process

1. Once the Case Manager has decided that a complaint meets the threshold test and might be suitable for a Letter of Advice, they will write to the Member enclosing a copy of this Protocol suggesting that the complaint may be suitable for a Letter of Advice. A copy will be sent to the Complainant. The Member will be invited to confirm:
 - a. that they accept a breach of Professional Standards has occurred; and
 - b. the steps taken to remedy the breach (including where appropriate an apology); and
 - c. their acceptance of the resolution of the complaint with a letter of advice if the registrar intends to issue one
2. If the Member has not already provided a preliminary response to the complaint, the Case Manager may request one pursuant to Paragraph 2.3 c) of the PCP.
3. On receipt of a response from the Member, the Case Manager will make a full assessment in line with the criteria set out in this Protocol.
4. Where appropriate, the Case Manager will put forward a recommendation to the Registrar that the Member should be issued with a Letter of Advice.
5. Should the Registrar agree the recommendation the Member will be issued with a Letter of Advice, which will outline the alleged and/or admitted breach of Professional Standards and a summary of the reasons why a Letter of Advice is appropriate.

6. The Complainant will also be informed of the outcome and reasons.
7. As a Letter of Advice is not a formal finding there is no right of appeal for either the Complainant or the Member.
8. The complaint will be closed at this stage.
9. The Letter of Advice will stay on the Member's record for three years and can be referred to if any future complaint is processed against the Member, it will also be considered where the imposition of a sanction is being considered by a future Professional Conduct Panel, in line with Protocol PR15 'Previous Adverse Findings' on Sanctions.
10. The decision is not subject to publication.
11. If the Registrar does not consider the complaint is suitable for a Letter of Advice, the complaint will be referred to the Investigation and Assessment Committee (IAC).
12. If no Letter of Advice is issued, no communications about a possible resolution by Letter of Advice will be given to the Panel (or will be redacted as appropriate). Any communications concerning a Letter of Advice will be considered on a without prejudice basis, however, all communications will be available to the IAC.