Article 12.6 of the Articles of Association

(Previously Article 4.6)

There is another procedure that can be utilised when information is received about a member, which raises serious questions about the member's suitability for continued membership and often where the Professional Conduct Procedure cannot be used.

Article 12.6 is a separate procedure to that of the Professional Conduct Procedure. It is a discretionary procedure reserved for very serious allegations and requires a higher burden of proof than the Professional Conduct Procedure; with the only sanction available being termination of membership if a complaint is upheld. It is also the procedure whereby third-party information can be submitted. In submitting information it should be as comprehensive as possible with supporting evidence. If you are considering bringing a complaint under this procedure, please contact the Professional Conduct Office to discuss.

The Board of Governors shall have the right for good and/or sufficient reason to withdraw the membership of any member provided that the member concerned shall have a right to be heard before a final decision is made.

This document explains the circumstances in which Article 12.6 may be used, and the procedure that is followed.

Aim

Article 12.6 exists to protect members of the public seeking or using a service provided by an individual or organisational member of the Association and to protect the reputations of counselling/psychotherapy/BACP and the proper functioning of BACP.

Use

The Article 12.6 Procedure can be used at the discretion of the Board of Governors under powers divested in the Registrar, upon receipt of information about a member which raises questions about that member's suitability for continued membership.

Such information might suggest that the member's behaviour:

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- has brought or could bring the reputation of BACP into disrepute
- has brought or could bring the reputations of counselling and/or psychotherapy into disrepute
- results in BACP's private business being brought into the public domain
- impedes the legitimate activities of the Association
- gives good reason to believe the member may be misrepresenting his/her/the organisation's membership status
- gives good reason to believe there has been a serious breach of BACP's Ethical Framework for the Counselling Professions (2018), and where the Association's Professional Conduct Procedure cannot be used and/or its use is not appropriate in the circumstances.

Article 12.6 – Bringing the profession into disrepute

Bringing the profession into disrepute signifies that the practitioner has acted in such an infamous and/or disgraceful way that the public's trust in the profession might reasonably be undermined if they were accurately informed about all the circumstances of the case.

Bringing the profession into disrepute must amount to 'disgraceful conduct in a professional respect'. This involves consideration of three elements:

- conduct that is regarded as 'disgraceful' need not amount to moral turpitude (depravity) or be restricted to acts of serious immorality
- the conduct should have had some connection with a professional role in order to be considered as falling 'in a professional respect'. It ought not to be concerned with matters that can reasonably be viewed as solely personal and private, unless if accurately informed of all the facts of the case, the public's trust in the profession(al) would be adversely affected
- conduct in a 'professional respect' is not confined to the pursuit of the profession in question.

What is not considered to be disgraceful to an ordinary person may be considered to be disgraceful to a professional person.

The following are some examples of good and/or sufficient reasons for implementing Article 12.6:

- Members who are accused of, or who have committed, acts that are deemed incompatible with the values of counselling and psychotherapy including, but not limited to, any criminal, civil or disciplinary matters.

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- Serious allegations of misconduct/malpractice.
- The death of the complainant and where the substantive evidence suggests that it would be appropriate for the case to be considered under Article 12.6 where it could not be considered under the Professional Conduct Procedure.
- Members who have impaired physical, mental or emotional functioning of an extent that a client or others may be adversely affected

The Article 12.6 Panel

Information considered under this procedure will be sent to a panel, known as the Article 12.6 Panel. The Panel is made up of three people and will usually consist of two members of the Association and one lay person. This Panel makes its decision based upon the written evidence only and can either:

- seek further information from the member and/or the Complainant/Informant and/or a third party
- consider the evidence in its entirety and decide whether it is just and reasonable to implement Article 12.6 which will result in membership of BACP being withdrawn in 28 days pending an appeal
- reject the information and close the case.

This Panel decides whether or not Article 12.6 should be invoked. The parties are then notified of this decision in writing within 14 days of the decision being received.

Procedure

Information is received by BACP concerning an individual or organisational member which suggests the matter should be considered under Article 12.6 of the Memorandum and Articles of Association.

- The individual or organisational member must be named and must be a current member of the Association.
- The information submitted must include supporting evidence of the allegations wherever possible.
- The information, as far as possible, should not be anonymous. BACP does not encourage the submission of anonymous information. Any such submissions will be considered in accordance with the relevant protocol and in the interests of public protection.

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- The member will be forwarded a copy of the information and given 14 days to make a formal written response, together with a copy of the procedure to be followed. Any written response must be submitted to the Registrar. The response will also be made available to the other party.
- The information together with any formal response will be forwarded to an Article 12.6 panel. The panel will exercise its powers as outlined above. If any further information is requested by the panel from any source, this too will be circulated to the member and complainant/informant, who will be given an opportunity to respond to it by a given deadline.
- Any further responses will be considered by the panel before a decision is made.
- The parties will be notified of the Article 12.6 panel's decision in writing within 14 days of the decision being received.
- If the panel decides not to implement Article 12.6, the case will be closed and the parties notified of this decision, which will be final.
- If the panel decides to implement Article 12.6, the parties will be given the reasons why Article 12.6 has been implemented and notified that membership will be withdrawn in 14 days from the date of notification of the panel's decision, subject to the member's right to appeal.
- The member may exercise his/her/the organisation's right to be heard by lodging an appeal in writing within 14 days of the date of notification of the decision. The appeal must be submitted to the Registrar. An appeal can only be made against the decision of the Article 12.6 panel's decision to implement Article 12.6 in that it was unjust and unreasonable in all the circumstances.
- On receipt of an intention to appeal, the Registrar will arrange an appeal panel, which will include independent lay representation. All panel members will have had no previous involvement in the matter, be unknown to the appellant or any other person involved in the case to the extent that there may be a conflict of interest. An appeal date will be set at the earliest opportunity and the relevant parties notified.
- The parties will be given a deadline for submission of any further supporting evidence. This date will be fixed no later than 28 days prior to the date set for the hearing.
- The parties are entitled to be accompanied by someone to support and/or represent them. If the appellant is an organisational member, a representative must be nominated by the organisation, who will be entitled to be accompanied at the hearing.
- Any further written submissions from the parties must be received by the Registrar not less than 28 days prior to the date set for the appeal hearing. A folio of papers will be circulated to the appeal panel and the parties not less than 14 days prior to the date set for the appeal hearing. The chair of the appeal panel may take advice on these papers and procedural matters from the Registrar, who may in turn seek advice from a relevant person as may be deemed appropriate.

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- Any new information arising within the final 14 days will be made available to the parties and the appeal panel and must be in the form of short oral or written submissions. However, this will only be accepted in accordance with the Protocol on New Evidence and the final decision on acceptance will be made by the appeal panel and notified to the parties at the hearing.
- The chair of the appeal panel and the parties may call witnesses to attend the appeal hearing. If either of the parties wish to call any witness(es), they must notify the Registrar of the names and details of such witnesses not less than 28 days prior to the date fixed for the appeal hearing.
- Attendance will only be permitted by the chair of the appeal panel if a witness has supplied a written statement which requires further examination/clarification. The appeal panel has discretion to refuse attendance by a witness if it reasonably believes that such attendance is not relevant or will not add any weight to the issue(s) being considered. Witnesses may be questioned by the appeal panel and either party or their representative.
- The refusal or failure of the appellant to attend the appeal hearing without good and/or sufficient reason and without good and/or sufficient notice in the circumstances will be notified to the chair of the appeal panel. What constitutes good and/or sufficient reason and/or notice shall be solely at the discretion of the chair of the appeal panel, who may take advice on the matter from the Registrar. The appeal panel will decide what course of action to take in these circumstances, i.e. either continue in the absence of the appellant, defer the hearing to another date, or terminate the proceedings.
- The refusal or failure of the complainant/informant to attend the appeal hearing, if called, without good and/or sufficient reason and without good and/or sufficient notice in the circumstances will be notified to the chair of the appeal panel. What constitutes good and/or sufficient reason and/or notice shall be solely at the discretion of the chair of the appeal panel, who may take advice on the matter from the Registrar. The appeal panel will decide what course of action to take in these circumstances, i.e. either continue in the absence of the complainant, defer the hearing to another date, or terminate the proceedings.
- A member's resignation from membership or a failure to renew membership by a member complained against during the course of a matter being dealt with under Article 12.6, will not normally terminate the procedure nor invalidate the hearing of a matter by the Association. For the purposes of dealing with this matter under this procedure, the individual or organisational member will continue to be regarded as a member of the Association.

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Article 12.6 – Appeal hearings: Guidelines for an appeal hearing

Aim

The aim of the Appeal Panel is to decide whether the decision of the Article 12.6 Panel to implement Article Witnesses.

Any witness called to attend this Hearing can be questioned by the Appeal Panel and any of the parties and/or their representatives. Questions must relate to the issues under consideration, more specifically to any written statement supplied by the witness.
12.6 was just and reasonable in all the circumstances and to then decide whether the appeal should be allowed or denied. The Appeal Panel's decision will be final.

Attendance by complainants/informants at appeal hearings

Information can be received by BACP, under Article 12.6, from varied sources, i.e. clients, third parties, other sources, i.e. employers, courts etc. The source of the information can therefore have a bearing on whether or not the 'complainant/informant' will be in attendance at an appeal hearing. Although in most cases attendance will be requested, BACP does not have the power to subpoena such persons to attend.

The following will therefore normally be observed:

- If the client is the complainant, they will be called to the hearing and will be present throughout the whole proceedings and in receipt of a bundle of evidence.
- If the information has been supplied by a third party, dependent upon the proximity of the relationship with the member, the third party may be called to the hearing as a witness in respect of their written submission.
- If the Association is in receipt of information from other sources, i.e. evidence of criminal, civil and/ or disciplinary matters, witnesses may be called if they are identifiable and available, and if the panel considers it necessary in the particular circumstances.

The above is for illustrative purposes only and each case will be considered on its own particular merits.

The following procedure is based on the premise that the client is the complainant and must be read in accordance with the above. Attendance by a complainant/informant will be notified in writing to the member as soon as such confirmation of attendance is received by BACP.

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Support/representation

Each party is entitled to bring a 'friend' to the Hearing who may support and/or represent them.

Witnesses

Any witness called to attend this Hearing can be questioned by the Appeal Panel and any of the parties and/or their representatives. Questions must relate to the issues under consideration, more specifically to any written statement supplied by the witness.

Recesses

A request for a recess may be made at any time, by any party and this will be granted at the discretion of the Chair.

Article 12.6 – The Appeal Panel

The Appeal Panel is independently constituted and is normally made up of three people: usually two members of the Association and an independent lay person.

The task of the Appeal Panel is to decide whether the decision of the Article 12.6 Panel to implement Article 12.6 was just and reasonable in all the circumstances and to then decide whether the appeal should be allowed or denied. The Appeal Panel's decision will be final.

Format of appeal hearing

On the day of the Appeal Hearing the following protocols will normally be observed and may vary in accordance with the attendance of certain parties at the Hearing. This format is therefore set out for illustrative purposes only.

- The Clerk opens the Hearing and details the reasons why Article 12.6 was implemented by the Association.
- The Appellant has the opportunity to verbally present his/her/the organisation's case as to why the implementation of Article 12.6 was unjust and unreasonable in all the circumstances.
- The Complainant/Informant has an opportunity to verbally present their case as to why the implementation of Article 12.6 was just and reasonable in all the circumstances.
- The Appellant may question the Complainant Informant. All questions must be put through the Chair.
- The Complainant/Informant may question the Appellant. All questions must be put through the Chair

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- The Appeal Panel and the parties may question any witnesses called in relation to their written submission. These questions are put directly by the parties to the witness.
- The Appeal Panel will question the Appellant.
- The Appeal Panel will question the Complainant/ Informant.
- The Appellant has an opportunity to make a closing statement.
- The Complainant/Informant has an opportunity to make a closing statement.
- When the Chair is satisfied that the Appeal Panel has gained all the clarification required, the parties withdraw.
- The Appeal Panel deliberates on the written and oral submissions made and decides whether the Appeal should be allowed or denied.
- The Chair of the Appeal Panel formally notifies the Registrar in writing of the decision of the Panel.
- If the Appeal is allowed, the Registrar will formally notify the Appellant and Complainant/Informant in writing of the Panel's decision and the case is closed.
- If the Appeal is denied and membership of BACP is to be withdrawn, the Registrar will formally notify the Chair of BACP of the Panel's decision.
- The Chair of BACP will then formally notify the Appellant and Complainant/Informant in writing of the Appeal Panel's decision within 14 days of the Appeal Hearing. This decision is final.

Publication

Where the Appeal is denied, the decision to withdraw membership of BACP will be published on the Association's website and in its journal. The Association reserves the right to publish this information elsewhere in the interests of public protection.

Confidentiality

This procedure is confidential. All parties in receipt of information in connection with this Hearing must ensure that all papers are kept securely and destroyed at the finalisation of the proceedings.

Expenses

BACP accepts no liability for travel, or any other expenses incurred by an Appellant or a Complainant/ Informant in connection with any stage of this Procedure.

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