

Indicative sanctions guidance

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Remit of guidance

This guidance is to be used alongside the Professional Conduct Procedure and the Protocol on Sanctions to assist Professional Conduct Panels and Appeal Panels in deciding (i) whether to impose a sanction on a member where it has been identified a member's practice has fallen below the professional standards expected of them and (ii) what the most appropriate sanction is in the circumstances.

This guidance is intended to assist panels to make fair, consistent and transparent decisions. It provides all parties and members of the public with insight into a panel's approach in considering the imposition and appropriateness of a sanction. The Clerk to the panel will be able to advise and guide the panel on any questions arising when considering the imposition of sanctions.

Purpose of sanctions

The purpose of a sanction is to protect the public and to safeguard public interest by improving a member's practice and to remedy any shortcomings. Sanctions are not intended to be punitive but are designed to educate and assist a member in returning to safe practice. Deciding panels may issue sanctions to members where it has been identified that a member's practice has fallen below the professional standards expected of them.

Where a risk to the public is identified, the panel must then determine what degree of public protection is required, ensuring that it is both proportionate to remedy the shortcomings identified and that it does sufficiently protect the public. In some cases, even where a panel is satisfied that the conduct of a member has fallen below the professional standards expected, it does not have to impose a sanction: this might happen for example, if a member has already remedied the shortcoming.

Protecting the public

The main purpose of a sanction is to address the possible risk the member poses to public safety, but this must be balanced against the wider public interest.

In deciding whether to impose a sanction, the panel will consider:

- the protection of the safety and wellbeing of the complainant, clients and the wider public

- maintaining public confidence in and the reputation of the counselling profession
- promoting and maintaining proper professional standards and conduct for members of the profession
- the deterrent effect to other members

If a sanction is considered necessary to protect public safety, then it must be imposed.

Assessing sanctions

In deciding whether a sanction is appropriate and proportionate, the panel may have regard to:

- whether the member has admitted to, and apologised for, the behaviour which led to the complaint
- whether the member has shown insight into their own behaviour or practice and taken steps to address any deficiencies through appropriate training, coaching or similar
- what steps, if any, the member took to remedy the practice or behaviour that is the subject of the complaint
- the member's previous professional history
- any relevant personal or professional issues raised by the member or the complainant
- the time that has passed since the incident took place
- whether the member knew, or reasonably should have known, that their actions or omissions did or could have caused harm to the complainant
- the seriousness of the harm suffered by the complainant and the extent to which that was caused by the member's actions or omissions
- whether the member is likely to repeat or compound that wrongdoing
- the impact the misconduct may have on public confidence in the profession
- any public interest factors
- whether the member discriminated against the complainant on the basis of race, gender, religion, sexual orientation, gender reassignment, marital status, age, disability or any other characteristic protected by law
- any other circumstance which could reasonably be seen as a mitigating factor
- any other circumstance which could reasonably be seen as an aggravating factor

It is for the panel to decide which factors to consider and how much weight to attach to each factor. The above list is not exhaustive. The panel may give regard to specific factors which relate to a specific category of complaint.

Breach of confidentiality

It is important that members do everything they can to protect and develop clients' trust and maintaining confidentiality is a fundamental part of this. The panel should take care when deciding what sanction is appropriate to remedy a proven breach of confidentiality.

In making its decision a panel may wish to consider:

- the reason or reasons for the breach

- whether there is evidence to suggest a lack of understanding and training in matters of confidentiality
- whether there appears to have been any purposeful intent behind the breach
- any evidence of remorse or insight on the part of the practitioner

Breach of boundaries

Members must establish and maintain appropriate professional and personal boundaries in their relationship with clients. Boundaries may be breached in a number of ways during a therapeutic relationship and some are more serious than others. For example, excessive out of session contact through to an inappropriate and/or sexual relationship with the client.

In some instances, breaches of professional boundaries could be due to a lack of experience or training around maintaining boundaries. In such circumstances, an appropriate and suitable sanction may be a requirement to undertake specific training.

However, in some cases the boundary breach may be considered so serious as to warrant an alternative sanction. For example, where the evidence suggests the breach was intentional and/or caused serious harm, the panel may consider suspending or withdrawing membership.

When considering the most appropriate sanction the panel should consider:

- the way in which the breach occurred
- the surrounding circumstances of the breach
- the member's supervisory arrangements at the time of the breach
- whether there was a lack of knowledge or understanding leading to the breach
- whether there appears any other motive
- the impact and harm caused
- the protection of the public

Probity

Members are expected to maintain high standards of honesty and probity in all aspects of their work and to act in the best interest of their clients.

Where there is evidence that a member has acted dishonestly, the most likely sanction would be withdrawal of membership. On deciding the appropriate sanction, a panel should consider:

- the position of trust the member was in at the time of the conduct
- the vulnerability of the client
- the circumstances of the breach and the reasons behind it
- given the dishonest conduct, the likelihood of the member complying with any sanctions imposed
- the protection of the public

Sexual misconduct

Members should not have sexual relationships with or behave sexually towards their clients, supervisees or trainees. Where sexual misconduct has been found, the resulting

sanction will almost always be suspension or withdrawal of membership as such conduct seriously jeopardizes public confidence in the profession.

If a panel considers imposing a lesser sanction, it must give sufficient detailed reasons for doing so to allow the public, who have not heard all the evidence, to easily understand.

In deciding whether a suspension or withdrawal is the appropriate sanction, a panel must consider:

- the risk to public protection if the member were to remain in membership
- the position of trust the member was in at the time of the conduct
- the vulnerability of the client
- whether the misconduct was a one-off incident or prolonged
- whether deliberate steps were taken by the member to facilitate the sexual misconduct
- whether the member has demonstrated insight into their misconduct and any steps to address their behaviour

Where the sexual relationship was with a former client, the panel should also consider:

- the time that has passed since the therapeutic relationship and whether that time is considered reasonable in all the circumstances
- the vulnerability of the former client
- the impact of the relationship on the client's well-being

It is the panel's decision whether the passage of time since being in a therapeutic relationship is reasonable or not and the panel should consider whether there has been sufficient time for the client to achieve proper closure. As a guiding principle in deciding this, the panel should weigh the length of the therapeutic relationship against the passage of time between the ending of the therapeutic relationship and the start of the personal relationship, and any other relevant factors that inform the question of what is a reasonable passage of time.

Mitigating factors

The panel needs to consider and balance any mitigating factors presented by the member against the aim of sanctions. The panel is less able to take mitigating factors into account when the concern is about public safety or is of a more serious nature.

Mitigation may include evidence from the member of their insight into the proven misconduct, and any learning they have demonstrated. A panel may also consider any attempts the member may have made to address the wrongdoing, for example, admitting their conduct early on and apologising to the complainant.

A panel could also take into account a member's, otherwise, good practice; for example, previous record of good character, references and demonstrable evidence of appropriate supervision and continuing professional development. Other personal mitigating factors such as mental or physical ill-health and hardship, may also be considered.

The panel may take into account the time that has lapsed since the conduct occurred. The member's level of training and experience at the time of the conduct compared to their current experience, may also be a mitigating factor.

Aggravating factors

Aggravating factors may increase the impact of a member's conduct and so may lead to a harsher sanction than might otherwise have been imposed.

For example, a member's poor behaviour and lack of cooperation throughout the complaints process might be considered by the panel as an aggravating factor. Where a panel finds that a member has abused their position of trust or where the client is particularly vulnerable, may also be considered aggravating factors. The panel may also take into account previously upheld complaints against the member.

If an Interim Suspension order was imposed by the Investigation and Assessment Committee (IAC), the panel should not apply much weight to this as IAC's do not make findings of fact when imposing suspensions. However, where there was a breach of the terms of an Interim Suspension the panel may take this into account. This may assist the panel in assessing a member's insight, their overall approach to the Professional Conduct process and whether they are likely to comply with any sanctions given.

Applicable sanctions

In deciding what sanction, if any, to impose the panel should consider the sanctions available, starting with the least restrictive.

Written apology

This form of sanction will usually only be used in cases where there has been a minor breach of professional standards and/or it is considered the conduct was an isolated incident where the likelihood of repetition is low. A panel may consider that where a member has demonstrated genuine remorse, a formal written apology is the appropriate sanction. The panel should also take into account whether the complainant would be willing to receive such an apology.

Requirement to demonstrate change or improvement

This form of sanction could comprise one or all the following:

1. demonstrating a change in practice
2. an immediate reflection
3. a written report

1. Demonstrating a change in practice

A panel may consider using this form of sanction in cases where a simple change to a member's practice would remedy the shortfall identified in their practice. For example, where it has been determined that a member's written contract with their clients is not sufficient to meet the required professional standards, the member may be required to demonstrate changes they have made to their written contract.

2. An immediate reflection

A panel may consider that, following the conclusion of the complaint process, a member may benefit from submitting a report of their immediate reflections of the process and any immediate learning they may have had.

This form of sanction may be used in cases where the member has found it difficult to accept the complaint being made and that a panel has identified shortcomings in their practice. By submitting their immediate reflections, a member will have the opportunity to process the outcome of a complaint in a beneficial and constructive

way. This form of sanction will often be used in conjunction with providing a more detailed written report of their learning at a later stage.

The panel will determine the appropriate length of time required for the member to consider, prepare and submit their reflections. Usually, this will be between 1 and 3 months, taking into account that the aim is to present immediate reflections.

3. A written report

A panel may require the member to complete a written report where it considers the member needs to explore any failings identified, in further detail. The panel may use this sanction as a way of making sure a member fully understands the effect their actions have had on the client and the profession.

Any report should focus on the areas of complaint that have been identified as falling below the professional standards. The panel should give the member clear direction about what needs to be addressed in the report. It will be for the panel to determine the length of time for the member to consider, prepare and submit the report.

Requirement to undertake training

A panel may consider using this form of sanction in cases where the facts of the case suggest the breach of professional standards was a result of the member's limited experience, knowledge and/or training. This form of sanction would, therefore, allow the member to address that shortcoming with the aim of preventing reoccurrence in the future. Further education which enables safe practice, will also promote public protection.

When requiring a member to undertake further training, the panel should consider whether the training would help prevent the member from repeating the failings identified in future practice; whether such training is readily available; as well as the timing and cost of such training. The panel should also take into account any training which has already been undertaken by the member.

The panel must clearly set out how the training will address the areas of concern raised in the conduct process and how the training will protect the public.

Suspension of membership

Where there is a finding of professional misconduct, a panel may consider that suspension of membership is appropriate. While the intention of imposing sanctions is not to punish, suspension of membership may be punitive in nature as it may affect the member's ability to practise their profession on an interim basis. Therefore, a panel must carefully balance the interests of the member with the duty to protect the public and the profession.

One purpose of suspending membership is to ensure that the member does not have the opportunity to repeat the conduct concerned for a limited period. The intention is that the experience will help the member to be more careful in future practice and will encourage compliance with the required standards. This purpose is achieved for a longer period, or possibly indefinitely, by withdrawing membership.

Suspension may be appropriate even where the member does not present a risk to public safety, but where this action is necessary to maintain public confidence in the profession. Suspension of membership is a deterrent and may be used to send a message not just to the member but to the public and the profession about what is expected of our members.

A panel may consider suspending membership, where it does not consider that the alternative sanctions are sufficient to protect the public and are unlikely to address the

breach of professional standards, but where withdrawal of membership would be disproportionate.

Where it is apparent that a member is not currently safe to practise, a panel may wish to suspend membership until the member has met other conditions, such as a requirement to complete additional training.

A suspension from membership will not take effect until the 28-day appeal period has passed.

Withdrawal of membership

Withdrawal of membership from BACP means that a member's name is removed from the BACP membership, and consequently, a member's registration. This means they are not permitted to practise counselling or psychotherapy under the auspices of BACP.

Withdrawal of membership is the most serious sanction and it will usually be appropriate where a panel has upheld allegations of serious professional misconduct. This might include conduct which was of a dishonest and/or exploitive nature.

A panel must withdraw membership where it considers the other sanctions available are not sufficient to protect the public.

Withdrawal may also be appropriate even where the practitioner does not present a risk to public safety, but where this action is necessary to maintain public confidence in the profession. Withdrawal of membership may be used to send a message not just to the member but to the public and the profession about what is expected of our members and the profession.

The following factors and behaviours may indicate that withdrawal of membership is an appropriate sanction:

- where the member has knowingly and deliberately behaved in a way to cause harm to the Complainant or other members of the public
- where the member has been dishonest or lacked integrity
- where the complaint involves sexual misconduct
- where the member has shown a blatant disregard for professional standards
- where the member has abused their position or another's trust
- where the harm to the complainant is particularly severe
- where the member has shown a complete lack of insight into, or remorse for, their behaviour
- where the member has demonstrated an unwillingness to comply with BACP's policies and procedures
- any other factors which the panel consider warrant withdrawal of membership or registration

Panels must state clearly the reasons for its decision to withdraw membership, where there are public protection issues.

Withdrawal from membership will not take effect until the 28-day appeal period has passed.

Where a sanction of withdrawal of membership is imposed, any reapplication for membership will not be considered until a five-year period has passed from the date of withdrawal of membership.

The Sanction Panel

Once a sanction has been imposed, it will be for the Sanction Panel to monitor the progress of any sanctions requiring action from the member, for example the provision of a written report. Where a panel does not consider a sanction has been met, they may consider whether to provide more time to the member for a second submission or whether any further sanction may be required, including suspension or withdrawal of membership.

Publication and notification

BACP acts in the public interest to uphold standards of professional conduct and practice to protect the public and maintain public confidence in the counselling and psychotherapy professions.

We publish findings of the Professional Conduct panel and sanction panels unless there are compelling reasons why they should not be published. Please refer to the [Professional Conduct Publication Policy](#) for further details.

BACP may also notify such third parties as deemed appropriate, which might include other professional bodies, agencies or organisations.

“A profession’s most valuable asset is its collective reputation and the confidence which that inspires”

Sir Thomas Bingham MR
Bolton v the Law Society Ca 8 Dec 1993