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# Information paper

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# Raising Concerns

reference	PD106
issuing directorate	Practice and Development
date of issue	January 2020

## Background

Whether you are a physiotherapist, associate or a physiotherapy student, it is important that you understand your professional duty to raise concerns, along with how this links to other aspects of professionalism such as confidentiality, data protection and safeguarding.

The duty of care you have to your patients, colleagues and other people with whom you come into contact means you have a professional duty to report specific incidents and to raise concerns when a situation has caused harm or distress, or is likely to cause harm or distress if it continues.

Your duty to report specific incidents and to raise concerns may be to your employer, the Health and Care Professions Council (HCPC), or another body e.g. a university.

Taking action when you have a concern is an important part of professional practice but sometimes it is difficult to know how to raise concerns appropriately. **The CSP can provide advice and support to members needing to raise a concern.**

If you have a concern that you want to raise, it must be based on a reasonable belief that you can justify, but you do not need hard evidence that wrongdoing is happening or something has taken place or is likely to happen in the future.

## Your duty to report yourself

You have a duty to report yourself in certain scenarios including:

- Criminal convictions or cautions – you have an obligation to tell the HCPC if you are charged with a criminal offence, accept a caution or are convicted.
- Regulatory complaints – it is advisable to notify your employer of any HCPC investigation.

- Disciplinary matters – you must notify the HCPC if you are suspended, or placed under practice restrictions by your employer because of concerns about your conduct or competence.
- Health concerns – you must notify the HCPC if health concerns impact on your fitness to practice.
- Potential indemnity claims – failure to notify the insurance brokers as soon as you become aware of any circumstance that may lead to a claim, may invalidate your cover.
- Fitness to practise – you must notify HCPC if you have been found guilty of academic misconduct at your university/place of study, e.g. cheating; plagiarism; ghostwriting.

### **Your responsibility to raise concerns and report other people or organisations**

You have a responsibility to report other people where a situation has caused harm or distress, or is likely to result in harm or distress if it continues. Scenarios include:

- Fellow health professionals – if you suspect misconduct or lack of competence that leads you to doubt their fitness to practise.
- Patients – if presenting as a ‘real and immediate’ danger to themselves or others or showing signs of female genital mutilation.
- Safeguarding – if you believe that someone is suffering, or is at risk of harm, at home or in an organisation that cares for them.
- Your employer – if you believe patient safety or the standard of care is being compromised.

### **The duty of other people to report you**

Sometimes other people or agencies have a duty to report you to the HCPC or your employer. These include:

- Police forces – if you are cautioned or convicted of any offence.
- Your colleagues – if they have an honestly held concern about your health or competence which they believe is affecting your fitness to practice, or that your behaviour may be inappropriate.
- Patients and the public – may raise concerns about you to several agencies depending on the nature and severity of your complaint. Ensure you have complaint handling processes in place so a patient has the opportunity to resolve any complaints with you first.
- The HCPC must inform other healthcare regulators in EU member states if you are suspended or struck off the HCPC register.
- Your employer is obliged to inform the HCPC if you are dismissed from your employment on grounds of capability or misconduct.
- Your university/place of study – if you are found guilty of academic misconduct, e.g. cheating; plagiarism; ghostwriting.

If you have a concern in the workplace, you should use your organisation’s “Raising concerns” policy, and follow the procedure within it. Some organisations may call their

policy something else or not have a policy in place. Members can also contact the CSP or your CSP senior negotiating officer should you wish to have a confidential discussion.

## **Raising concerns at work and whistleblowing**

Raising concerns in the workplace is also referred to as “whistleblowing”. Whistleblowing is the act of reporting a concern about a risk, wrongdoing or illegality at work, in the public interest. Whistleblowing is a complex area of law and if you are thinking about whistleblowing, you should seek advice from a senior negotiating officer at the CSP.

There is some legal protection for you as a worker or employee (including as an employee shareholder) if you blow the whistle in certain circumstances.

Crucially, the subject matter of the disclosure must relate to one of six types of “relevant failure”:

- Criminal offences.
- Breach of any legal obligation.
- Miscarriages of justice.
- Danger to the health and safety of any individual.
- Damage to the environment.
- The deliberate concealing of information about any of the above.

Whether protection is available depends on factors including:

- Whether you have made a disclosure that qualifies for protection.
- How and when the disclosure was made and to who.
- Whether the disclosure was made in the public interest.

Normally courts would expect you to have raised a concern with your employer before making any wider disclosure.

## **Duty of confidentiality vs. duty to report**

As a health professional, you may have serious concerns about the behaviour or alleged future actions of a patient. For example, a patient may threaten to kill or harm himself or herself, or harm a named individual.

There is an absolute duty of care created between a patient and their health professional, and that duty is assumed to exist and does not have to be proved.

The Human Rights Act and Data Protection Act highlight that patients also have a right to confidentiality during healthcare treatment. This right is fundamental to the principle of trust that must be established during treatment, in order to allow proper disclosure

of information. This right however, is not absolute and in rare and exceptional circumstances, confidentiality may be breached.

As highlighted in Dame Fiona Caldicott's 2013 Information Governance Review 'the duty to share information can be as important as the duty to protect patient confidentiality'. The balance between the duty to report and the duty of confidentiality is not set, and the individual circumstances will determine a course of action.

You must remember that a duty of confidentiality does not stop you from sharing information with other health professionals ordinarily involved in the care of your patient. You have a duty to share information when others are appropriately involved in care, or should be involved in care, or it is beyond your scope of professional practice to make a decision about the action you may need to take.

### **Find out more:**

[CSP Code of Member's Professional Values and Behaviour 2019](https://www.csp.org.uk/publications/code-members-professional-values-behaviour)

(<https://www.csp.org.uk/publications/code-members-professional-values-behaviour>)

[Duty of Care, Information Governance Alliance](https://www.igt.hscic.gov.uk/Resources/The%20Duty%20of%20Care.pdf)

(<https://www.igt.hscic.gov.uk/Resources/The%20Duty%20of%20Care.pdf>)

[HCPC on Fitness to Practise](https://www.hcpc-uk.org/concerns/what-we-investigate/fitness-to-practise) (<https://www.hcpc-uk.org/concerns/what-we-investigate/fitness-to-practise>)

[HCPC on Raising Concerns](https://www.hcpc-uk.org/concerns/raising-concerns/public/) (<https://www.hcpc-uk.org/concerns/raising-concerns/public/>)

[HCPC on Whistleblowing](https://www.hcpc-uk.org/resources/policy/whistleblowing-policy/) (<https://www.hcpc-uk.org/resources/policy/whistleblowing-policy/>)

[HCPC Self Referral Guidance – website](https://www.hcpc-uk.org/concerns/raising-concerns/self-referral/) (<https://www.hcpc-uk.org/concerns/raising-concerns/self-referral/>)

[HCPC Standards of Conduct, Performance and Ethics \(updated January 2016\)](https://www.hcpc-uk.org/standards/standards-of-conduct-performance-and-ethics)  
(<https://www.hcpc-uk.org/standards/standards-of-conduct-performance-and-ethics>)

[NHS whistleblowing guidance:](https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/) (<https://improvement.nhs.uk/resources/freedom-to-speak-up-whistleblowing-policy-for-the-nhs/>)

[Protect whistleblowing charity:](https://www.pcaw.org.uk/) (<https://www.pcaw.org.uk/>)

[NHS – Safeguarding](https://www.england.nhs.uk/safeguarding/) (<https://www.england.nhs.uk/safeguarding/>)

[NHS - A guide to the Whistleblowers' Support Scheme](https://improvement.nhs.uk/resources/whistleblowers-support-scheme/)  
(<https://improvement.nhs.uk/resources/whistleblowers-support-scheme/>)