



Information paper

Duty to Report (2nd edition)

reference **PD106**

issuing function **Practice and Development**

date of issue **November 2015**

Duty to Report

Duty to Report.....	3
Introduction	3
What is Duty to Report?.....	4
Your obligations and ‘Duty to Report’	4
1. Your duty to self-report.....	5
Criminal convictions.....	5
Regulatory complaints	5
Disciplinary matters	6
Health matters	6
Indemnity matters	6
2. Your duty to report others	6
Misconduct	6
Fitness to practise concerns	7
Inappropriate sexual behaviour involving patients.....	7
Real and immediate danger to self and/or others.....	8
Alleged criminal activity	8
3. Your duty to report specific concerns to protect patients and others.....	8
Female Genital Mutilation	8
Safeguarding concerns.....	8
Standards of Care	10
Driver safety	10
4. When others might have a duty to report you	11
Police Forces.....	11
The HCPC	11
Your employer	11
Professional colleagues.....	12
Patients and the public	12
5. Duty to Report and Duty of Confidentiality.....	12
References	13

Duty to Report

Introduction

Note: *This document was updated on 5th November 2015 to include in Section 3 the legal requirement to notify the police of Female Genital Mutilation (FGM).*

Physiotherapists and other health professionals owe duty of care to their patients, colleagues and to others. Exercising this duty of care may include taking action to report certain circumstances to others.

The ethos of professionalism is underlined by the Society's Code of Members' Values and Behaviours⁽¹⁾ and the supporting Quality Assurance Standards of Physiotherapy Practice.⁽²⁾

This paper covers 'duty to report' obligations from the perspective of the *person* rather than the *duty*, and the paper is divided into the following sections:

- Your duty to self-report
- Your duty to report others
- Your duty to report specific concerns to protect others
- Where others may have a duty to report you.

This paper describes, in general, the types of 'event' you may have an obligation to report. Such 'events' may occur in any aspect of practice, in any clinical setting and in relation to both adults and children both with and without capacity. It is impossible to give an exhaustive list of the types of event that should be reported, but by understanding the principles and content of this paper, you should be able to make an informed decision as an autonomous health professional, based on proper understanding of your obligations.

Being alert to circumstances that require positive action is a fundamental aspect of professional practice, and also relates to your own individual professional practice with a patient.

This paper is of relevance to the following:

- CSP members working in all sectors and contexts, including students and associates
- Those who manage and/or employ/engage CSP members (who may not themselves be physiotherapists) and who need to understand 'duty to report' in the context of physiotherapy practice.

What is Duty to Report?

'Duty to report' can be a legal, moral or professional obligation (either individually or in some combination) to make a statement about a given matter to another person or organisation in a position of authority.

Unlike 'duty of care', 'duty to report' is not an absolute duty. There may be circumstances where another duty overrides the duty to report. In healthcare, the most common duty that 'duty to report' aligns with is the 'duty of confidentiality'.

Your obligations and 'Duty to Report'

Frequently a health professional is under a **professional** 'duty to report'; i.e. where it can be reasonably expected that an individual understands that their position as a registered professional puts particular responsibilities upon them.

When considering whether you have a professional duty to report a matter, you must weigh up and balance the need to report, against the harm of possible over-reporting, or unnecessary reporting, and the damage that can be done to professional relationships or relationships with patients. However, professional and personal loyalties must not get in the way of reporting matters, when it is clearly appropriate to do so.

You must always have an honestly held belief in your concern, and you should have some form of evidence to support your concerns. This evidence may be what someone tells you, what you observe, discover and record during examination and treatment, or other form of documentary evidence such as documents, e-mails, letters, etc. You should take a reasonable and proportionate approach to escalating your concern through appropriate channels.

Some circumstances, such as alleged benefit fraud by patients, raise the question as to whether there is a **moral** duty to report activities that are

generally perceived to be against the public interest as a whole. Moral obligations are beyond the scope of this paper. However, a moral obligation does not outweigh a professional duty, where one exists.

1. Your duty to self-report

Criminal convictions

The HCPC places an obligation on registrants to make self-declarations of good character. You must declare criminal convictions and/or cautions to the HCPC either before you apply to join the HCPC register, or as soon as you receive the penalty if you are currently on the register.⁽³⁾ You must also notify the HCPC if you are barred from working with any group of individuals under a relevant Disclosure and Barring scheme*.

Physiotherapy is one of a list of occupations covered under the Home Office Notifiable Occupations Scheme ⁽⁴⁾, whereby the police are required to make a disclosure to the relevant Regulator if a conviction or caution is given to a registrant of a notifiable profession. For employment in the health care professions, convictions do not become 'spent'⁽⁵⁾, and you must notify the HCPC of all convictions you have, even if these are juvenile offences and/or occurred many years ago.

You should also provide a full disclosure of convictions and cautions to any employer, or prospective employer.

Physiotherapy Students: If you acquire a conviction during your pre-registration physiotherapy programme, you should raise this with your HEI and discuss any implications that this may have for continuing your studies. You must declare your conviction when you apply to join the HCPC register.

Regulatory complaints

You must notify your employer, or any prospective employer, of any HCPC investigation with regard to your practice and its outcome. If you undertake work for private medical insurance companies, you must also inform them of any regulatory investigation against you.

* Disclosure and Barring Scheme for England and Wales, and the Protection of Vulnerable Groups Scheme (PVGS) in Scotland.

Disciplinary matters

You must notify the HCPC if you are suspended or placed under a practice restriction by your employer because of a conduct and/or competence concern raised against you.

Health matters

The HCPC places an obligation on registrants to make self-declarations of good-health.⁽³⁾ You must notify the HCPC if you have any physical or mental health concern that affects your fitness to practise. You should consult your own doctor with regard to your health and whether any adjustments to your practice, including stopping practicing, are required.

Indemnity matters

You must notify the CSP insurance brokers if you are aware of any actual or potential circumstance that may lead to a claim being made against your individual CSP Professional Liability Insurance (PLI). 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.

2. Your duty to report others

Standard 1 of the Health and Care Professions Council (HCPC) Standards of Conduct, Performance and Ethics⁽³⁾, requires registrants to act in the best interests of service users, including protecting them from any danger that may arise from the conduct, performance or health of a colleague. Safety of patients comes before professional and personal loyalties at all times.

Misconduct

You have a duty to report if you have concerns about another health professional's practice or activity that may be considered misconduct.⁽³⁾

Professional misconduct is:

“...a word of general affect, involving some act or omission which falls short of what would be proper in the circumstance. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances ⁽⁶⁾.”

Misconduct requires a 'significant' breach of expected behaviours. Professional misconduct can occur during practice and is different from a lack of competence. Misconduct can also occur as part of personal and/or private activities that are not part of professional practice and is

'morally culpable or otherwise disgraceful behaviour such that it brings disgrace upon the individual and thus brings their profession into disrepute too.'⁽⁷⁾

Regulatory fitness to practise proceedings can arise from conduct undertaken in a private, as well as a professional capacity⁽³⁾, and for registered health professionals there is no separation of personal and professional activities when considering misconduct.⁽⁶⁻⁸⁾

Fitness to practise concerns

Patients have the right to be treated with a professional standard of care⁽⁹⁾, by appropriately qualified and experienced staff.⁽¹⁰⁾ You have a duty to report your concerns if you believe that the safety of a patient may be compromised by the competence or health of a colleague. Lack of competence relates to the related HCPC standards of proficiency that are required for that profession in general⁽¹¹⁾, and specified sub-sets of the profession.⁽¹²⁾

Inappropriate sexual behaviour involving patients.

You have a duty to report your concerns if you become aware that a colleague may be having an inappropriate sexual relationship with a patient, or a patient tells you that s/he believes a health professional has behaved in an inappropriate sexual manner toward them. Detailed guidance of what is considered inappropriate sexualised behaviour, and reporting steps, can be found in publications from the Professional Standards Authority.^(13, 14) You may have a **legal** duty (Scotland only), to report sexual activity involving children. Sexualised behaviour towards children, or sexual relationships by children, is always inappropriate.

You should follow the guidance from the CSP⁽¹⁵⁾ with regard to chaperoning, to avoid unfounded claims of inappropriate sexual behaviour within clinical settings. If a patient tells you s/he believes s/he has received inappropriate sexual behaviour during treatment then you should treat this complaint seriously. The nature of the complaint may determine how the concern should be acted upon.

Real and immediate danger to self and/or others

You do not have to resolve the matter yourself, indeed you may not be in an appropriate position to do so, but you should take professional steps to raise your concern / take action as far as you are reasonable able such as:

- You should try and get the patient to seek their own help
- You may contact the patient's GP / psychiatrist, even without the patient's consent, and raise your concerns
- You should document your concerns clearly in your records
- You should note your concern with a senior colleague.

Alleged criminal activity

You have **no** legal or professional 'duty to report' a patient to the police or other authorities if you believe them to be committing criminal activity. Your professional duty of confidentiality overrides any moral duty to report.

3. Your duty to report specific concerns to protect patients and others.

Standard 1 of the Health and Care Professions Council (HCPC) Standards of Conduct, Performance and Ethics⁽³⁾, makes particular reference to your obligations to protect the rights of children and vulnerable adults.

Female Genital Mutilation

From 31st October 2015, you have a **legal** duty to report, orally or in writing, to the police if you either observe physical signs suggesting female genital mutilation (FGM) in girls under the age of 18, or if a girl discloses to you they have had FGM.

<http://www.hcpc-uk.org.uk/mediaandevents/news/index.asp?id=727>

Safeguarding concerns

You have a **professional** duty to report your concerns if you have an honestly held belief that a person (adult or child), is suffering, or is at risk of harm. Harm may encompass many aspects including physical, psychological, emotional, sexual and financial abuse and/or neglect. In Scotland, you have a **legal** duty to report safeguarding concerns.

A person may be at risk in his/her own home, or in the organisation that cares for him/her such as hospitals, care homes, residential care or schools. A

person may be at risk from family members, others around him/her, or from those caring for him/her. There may be cases where the individual does not want to raise concerns, because s/he may be afraid of the consequences, or because s/he does not see the activity as inappropriate.

There are variations in statutory provision for the safeguarding of adults and children in each of the Home Countries. All four countries have statutory provision requiring that appropriate bodies are in place to manage safeguarding concerns. You must abide by the law in force in the Country that you work in.

You have a duty to challenge unexpected behaviours displayed by parents, children, carers and/or family members and should raise concerns if you note any unexpected or unexplained patterns of illness and/or injury or behaviour.

If you work in private practice, or undertake visits to a person's home you may be in a position to identify unexpected situations before other health professionals. Wherever you work, you should know who your safeguarding point of contact is for raising concerns with regard to adults and/or children.

You have a duty to share information with other agencies and professionals involved in safe-guarding adults and/or children, particularly where sharing information, or seeking second opinion, may help with early identification and intervention in safe-guarding matters. Concerns over inappropriate information sharing cannot hinder the need to effectively protect the safety of children.

Children

Raising concerns over child safe-guarding can be particularly sensitive, especially where the concern may be over the parental behaviour toward the child, and the child may not themselves wish to draw attention to the matter, or even realise a pattern of activity and/or behaviour is unacceptable.

The UK Government produces statutory guidance for organisations and individuals in the UK to help them safeguard children and raise concerns appropriately. You must follow this guidance as the law⁽¹⁶⁾ requires that safeguarding concerns are handled in accordance with standardised guidance:

Working Together to Safeguard Children: A guide to inter-agency working to safeguard and promote the welfare of children (2013). HM Government.
<http://media.education.gov.uk/assets/files/pdf/w/working%20together.pdf>

Adults

Any adult may be at risk of neglect or abuse, but the frail, elderly, those with learning disabilities, and those with complex care needs may be particularly vulnerable. Raising concerns over adult safe-guarding can be particularly sensitive, especially where an adult's cognitive ability may be impaired by a physical disorder, such as stroke.

Standards of Care

You have a **professional** duty to report a concern if you believe that patient safety or the safe standard of care may be compromised by the systems, policies and procedures of the organisation or practice you work for.⁽³⁾

Concerns regarding an individual's standard of care towards patients should first be addressed through supervision and /or mentoring processes, which may feed into the appraisal and performance review cycle. Concerns may also be managed by the employer's capability procedures.

Organisations have a number of statutory duties with which they must comply to ensure patient safety including a duty of candour. Concerns regarding alleged failings in an organisation's systems, policies and procedures, which may be affecting standards of care, can be raised directly with the relevant manager or through the workplace CSP steward network.

Driver safety

You have **no** legal or professional 'duty to report' a patient to the DVLA if they continue to drive against your advice.

A driver is legally responsible for informing the Driver Vehicle Licensing Agency (DVLA) of any health or medical condition that may affect their ability to drive. It is the responsibility of the patient to notify the DVLA if they experience one or more of a number of defined conditions that are likely to affect fitness to drive.⁽¹⁷⁾ If a patient fails to make a health notification they may be subject to a substantial fine. The DVLA publishes clear guidance that states that a doctor may breach patient confidentiality to inform the DVLA if a patient is still driving when it is unsafe to do so.⁽¹⁷⁾ There is no duty on any other health professional to report a driver to the DVLA if they fail to self-notify.

If you believe your patient is continuing to drive when it is not safe to do so, you should seek to ensure the patient understands your opinion, and makes a self-notification. If s/he will not do this, you may highlight your concerns to

the Consultant or GP involved in the patient's care for the doctor to decide if a medical DVLA notification is required.

If your patient has self-notified the DVLA and you have a copy of his/her DVLA reference number, you may speak directly to the DVLA medical adviser to raise any concerns you have with regard to your patient's fitness to drive.⁽¹⁷⁾

4. When others might have a duty to report you

There may be circumstances and events whereby another individual and/or agency has a duty to report **you**, either with or without your consent.

Any person making a report about you must have an honestly held belief in their concerns, and you may have cause for redress for malicious or vexatious complaints about you. However you must be aware that reports about your practice or other activities may be necessary to protect patient safety and/or public interest, and that each report must be investigated properly.

Police Forces

The police have a statutory duty to report you to the HCPC if you are cautioned or convicted of any offence.⁽⁴⁾ The police also have a duty to make proper investigations if any alleged crime is reported to them.

The HCPC

The HCPC must inform other healthcare regulators in EU Member States if you are suspended or struck off from the HCPC register.

Your employer

If you are dismissed from your employment on grounds of lack of competence or misconduct, your employer is obliged to inform the HCPC. If you are a registered physiotherapist and your employer down-bands you below a non-registered professional grade[†] (Band 4 or below), it should also inform the HCPC. Down-banding below professional grade may occur if, for example, you fail to maintain your HCPC registration or, in exceptional circumstances, if you are not deemed competent to practise.

[†] It is noted and accepted that support worker grades go up to and include Band 5, but these are non-registered roles.

Some employer disciplinary procedure outcomes may also require notification to the HCPC, particularly if they relate to convictions or conduct or health matters that may affect your honesty, integrity or fitness to practice.

An employer, or potential employer, may also refer you to the HCPC if it has a concern about your competence to practise. A current employer would usually be expected to have completed an internal competence and capability procedure, and only notify the regulator if you have been down-graded below a registered professional grade.

Professional colleagues

A co-worker may have a duty to report you if they have an honestly held concern about either your health or competence which they believe is affecting your fitness to practise⁽³⁾, or that your behaviour may be inappropriate. Ordinarily, that concern should first be raised through line management, with your employer and managed through appropriate capability and/or occupational health procedures.

Patients and the public

A patient may raise a concern about you to a range of agencies, depending on the nature and severity of their complaint. You should ensure that you have proper complaint handling processes in place, so that a patient may raise their concerns and have the opportunity to resolve them with you first.

5. Duty to Report and Duty of Confidentiality

A health professional may have serious concerns about the behaviour or alleged future actions of a **patient**. For example, a patient may threaten to kill or harm themselves, 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.⁽¹⁸⁾ Patients also have a right to confidentiality during healthcare treatment⁽¹⁹⁻²¹⁾ which is fundamental to the principle of trust that must be established during treatment in order to allow proper disclosure of information, but this right is not absolute and in rare and exceptional circumstances, confidentiality may be breached.

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 those 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 certain decision.⁽²²⁾

It may be possible to obtain the patient's consent to inform their GP or psychiatrist about the patient's alleged thoughts and behaviours. If you can obtain the patient's consent, you may contact their GP or psychiatrist to inform them of your concerns. If you do not have the patient's consent, you may still contact other professionals directly involved in the patients care if it is absolutely necessary. ^(22, 23)

References

1. The Chartered Society of Physiotherapy. Code of members' professional values and behaviours. London: The Chartered Society of Physiotherapy; 2011.
URL: <http://www.csp.org.uk/professional-union/professionalism/csp-expectations-members/code-professional-values-behaviour>
2. The Chartered Society of Physiotherapy. Quality assurance standards for physiotherapy service delivery. London: The Chartered Society of Physiotherapy; 2012.
URL: <http://www.csp.org.uk/professional-union/professionalism/csp-expectations-members/quality-assurance-standards>
3. Health and Care Professions Council. Standards of conduct, performance and ethics. London: Health and Care Professions Council; 2012.
URL: <http://www.hcpc-uk.org/publications/standards/>
4. Home Office Circular 6/2006: The Notifiable Occupations Scheme: Revised Guidance for Police Forces. London: The Home Office; 2006.
URL: <https://www.gov.uk/government/organisations/home-office>
5. The Rehabilitation of Offenders Act 1974 (Exceptions) Order. 1975.
URL: <http://www.legislation.gov.uk>
6. Roylance v General Medical Council (No 2): 1 AC 311 [2001]
URL: <http://www.bailli.org>

7. R (ex parte Remedy UK Ltd) v General Medical Council EWHC 1245 (Admin) [2010]
URL: <http://www.bailli.org>
8. A County Court v W (Disclosure) 1 FLR 574. [1997]
URL: <http://www.bailli.org>
9. Bolam v Friern Hospital Management Committee: 1 WLR 582 [1957]
URL: <http://www.bailli.org>
10. Department of Health. The NHS Constitution. The NHS belongs to us all. London: Department of Health; 2013.
URL:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/170656/NHS_Constitution.pdf
11. Health and Care Professions Council. Standards of proficiency: Physiotherapists. London: Health and Care Professions Council; 2013.
URL: <http://www.hcpc-uk.org.uk/publications/standards/index.asp?id=49>
12. Health and Care Professions Council. Standards for Prescribing. London: Health and Care Professions Council; 2013.
URL: <http://www.hcpc-uk.org.uk/publications/standards/index.asp?id=692>
13. Council for Healthcare Regulatory Excellence. Clear sexual boundaries between healthcare professionals and patients: Responsibilities of healthcare professionals. London: Council for Healthcare Regulatory Excellence; 2008.
URL: <http://www.professionalstandards.org.uk/docs/psa-library/responsibilities-of-healthcare-professionals---clear-sexual-boundaries.pdf?sfvrsn=0>
14. Clear sexual boundaries between healthcare professionals and patients. Information for patients and carers. London: Council for Healthcare Regulatory Excellence; 2008.
URL: <http://www.professionalstandards.org.uk/docs/psa-library/guidance-for-patients---clear-sexual-boundaries-with-health-professionals.pdf?sfvrsn=0>
15. The Chartered Society of Physiotherapy. PD104 - Chaperoning and Related Issues. London: The Chartered Society of Physiotherapy; 2013.
URL: <http://www.csp.org.uk/publications/chaperoning-related-issues>

16. The Children Act. 2004.
URL: <http://www.legislation.gov.uk>
17. For medical practitioners: At a glance guide to the current medical standards for fitness to drive. Swansea: Driver's Medical Group, DVLA; 2013.
URL:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/232964/At_a_glance.pdf
18. Pippin v Sheppard (1822) [1822]
URL: <http://www.bailli.org>
19. AG v Guardian Newspapers (No 2) [1990] AC 109 [1990]
URL: <http://www.bailli.org>
20. The Human Rights Act Article 8. 1998.
URL:
<http://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/7>
21. The Data Protection Act. 1998.
URL: <http://www.legislation.gov.uk>
22. Department of Health. Confidentiality: NHS code of practice. London: Department of Health; 2003.
URL: <https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>
23. The Chartered Society of Physiotherapy. PD078: Consent and Physiotherapy Practice. London: The Chartered Society of Physiotherapy; 2012.
URL: <http://www.csp.org.uk/publications/consent>

Publication Date: November 2015

Review Date: November 2017