

Guidance for Pharmacists on Raising Concerns

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Status of this document

The purpose of this guidance is:

- to help pharmacists confidently report concerns or 'whistleblow' about possible dangerous, illegal or unprofessional behaviour in the workplace; and,
- advise on the legal protection and support available.

The public places significant trust in the knowledge, skills and professional judgement of the pharmacy profession. It is every pharmacist's duty to:

- put patients' interests first,
- act to protect patients, and
- raise justifiable concerns in an appropriate manner, overriding any personal or professional loyalty.

Failure by a pharmacist to report concerns may constitute a breach of the Code of Ethics and may form the basis of a complaint of professional misconduct. The pharmacist's fitness to practise may be brought into question. This may lead to referral to the Pharmaceutical Society of Northern Ireland (hereinafter named the Society) and to the invoking of its disciplinary process. The pharmacist will be expected to justify any decision to act outside its terms.

About this document

The Code of Ethics sets out the eight mandatory principles of ethical practice that a pharmacist must follow. It provides a framework to aid professional decision making and it is the pharmacist's responsibility to apply the principles to daily work situations, using his professional judgement. The guidance is not meant to be exhaustive, nor can it be.

Principle 8.11 of the Code of Ethics for pharmacist requires that concerns about a colleague or other health professional's competence, conduct or health be acted on stating that the pharmacist must:

"Make known to relevant persons/bodies any concerns about policies, systems, working conditions, or the actions, professional performance or health of others that are likely to compromise patient care or public safety or are already doing so."

A pharmacist may become aware of dangerous, illegal or unprofessional activity or conduct that might not otherwise be identified until serious harm occurred. It is essential that where a concern exists steps are undertaken to ensure that the matter is reported and a thorough investigation is conducted without delay.

Employees who raise concerns in good faith should not be victimised or disciplined if the concerns prove unfounded.

It should be noted that the Shipman Inquiry Fifth Report (Safeguarding Patients: Lessons from the Past- Proposals for the Future) makes a number of recommendations about dealing with concerns and complaints about a health professional's performance or fitness to practise. The response of the Northern Ireland Government to the recommendations of this report may have implications for the way in which concerns are reported and the appropriate way of dealing with them. However, in the interim period the Society is keen to ensure that pharmacists are advised of current procedures.

1 Definition: What is Whistleblowing?

There is no single legal definition of whistleblowing. Lord Borrie's definition: **"The disclosure by an employee (or professional) of confidential information which relates to some danger, fraud or other illegal or unethical conduct connected with the workplace, be it of the employer or of his fellow employees."** (Lord Borrie QC **"Business Ethics and Accountability"** 1995).

The aim of a whistleblowing procedure is to enable staff to raise concerns internally in a confidential fashion about matters referred to in section 2.2. It allows potentially damaging, dangerous or embarrassing matters to be dealt with and resolved internally. It is a safe and accessible procedure, whereby concerns can be raised in a confidential manner, knowing that management will investigate those concerns. It also includes a process for taking concerns outside the 'organisation' once internal procedures have been exhausted. Through this procedure, employees are expected to raise concerns internally in the first instance.

2 The difference between 'making a complaint' and 'raising a concern'

It is important to recognise the difference between raising concerns and making a complaint.

The Department of Health Social Services and Public Safety in Complaints in Health and Social Care¹, defines a **complaint** as “*an expression of dissatisfaction that requires a response.*” It adds, “Complainants may not always use the word “complaint”.....It is important to recognise those comments that are really complaints and need to be handled as such.”

Complaints can involve a breach of employment rights, bullying or personal harm.

A complainant believes that he/she or someone he/she represents (e.g. a family member) has been poorly treated and is seeking redress or justice. Complainants have a vested interest in the outcome of the complaint and are expected to be able to prove their case. Complainants must, where appropriate, have the support they need to articulate their concerns and successfully navigate the system.

A pharmacist², when handling/dealing with complaints, should address these through an appropriate complaints procedure. Refer to section 9 of this document.

All complaints/concerns received should be treated with equal importance regardless of how they are submitted. Complainants should be:

- encouraged to speak openly and freely about their concerns
- reassured that whatever they may say will be treated with appropriate confidence and sensitivity
- treated courteously and sympathetically and where possible involved in decisions about how the complaint is handled and considered.

When handling complaints/concerns staff must ensure that the patient's immediate care needs are being met: urgent action may be required before the complaint/concern is addressed.

Information about the Society's complaints procedure can be found at <http://psni.org.uk/pdfs/complaintspharmproc.pdf> (*pending*) or by telephoning 028 9032 6927.

¹ Complaints in HSC: Standards and Guidelines for Resolution and Learning. Department of Health Social Services and Public Safety, December 2008.

² The pharmacist may be taken to mean one of the following: the employer, manager, superintendent pharmacist or chief pharmacist.

Complaints provide the Society with a rich source of information and are considered a vital part of the performance management strategy. Learning from handling complaints is embedded in the Society's governance and risk management arrangements.

On the other hand, a pharmacist who raises a **concern** about dangers or illegalities that affect others, for example, the public, patient or employers, is not usually directly affected by the misconduct. Consequently, he should not be expected to prove that the concern is true, although he may be required to act as a witness.

3 Protection for a pharmacist who raises concerns - Public Interest Disclosure Act 1998 (PIDA)

The Society seeks to promote an environment which enables pharmacists everywhere to feel able to raise concerns in good faith without fear of victimisation or harassment.

The **Public Interest Disclosure Act 1998 (PIDA)** provides strong protection to employees who raise concerns about malpractice. The Act:

- sets out a framework for public interest whistle-blowing,
- promotes responsible reporting of concerns,
- protects employees from reprisal,
- aims to deter and facilitate the early detection of malpractice,
- makes it clear that organisations should not deter or discourage staff from raising concerns about wrongdoing,
- is part of employment legislation and requires the attention of every employer in the UK,
- improves the governance and accountability arrangements within organisations.

3.1 Application of the PIDA

The PIDA protects all employees within the Health Service and all self-employed Health Service pharmacists contracted to provide professional pharmacy services.

The PIDA protects any of the fore-mentioned who raise genuine concerns about:

- crimes;

- civil offences (including negligence, breach of contract, breach of administrative law)
- miscarriages of justice;
- dangers to health and safety or the environment, and the
- cover up of any of the above.

An employee pharmacist is not required to prove his/her concerns, provided that these are expressed in good faith. The Act applies whether or not the disclosed information is confidential and extends to malpractice occurring in the UK or in another jurisdiction. A contractual provision in employment contracts (e.g. a confidentiality clause) and other agreements that clash with the provisions of the Act are void.

The PIDA encourages an employee pharmacist to raise concerns with his/her employer in the first instance. Disclosure of genuine concerns to regulatory bodies, the police and the media may also be protected by the Act. If an employee pharmacist or worker is victimised or sacked as a result of raising a genuine concern he/she can bring a claim to an employment tribunal. Any awards made will be uncapped and based on the loss suffered.

3.2 Protection for pharmacists

An employee pharmacist who reports genuine concerns to his employer needs only to have reasonable suspicion that malpractice has occurred, or is likely to occur in order to be protected by the Act.

Concerns raised with the Society, other professional regulators (e.g. General Medical Council, Nurse and Midwifery Council etc) or the police will be protected by the Act provided a pharmacist:

- is acting in good faith;
- honestly and reasonably believes that the information and any allegation contained in it are substantially true;
- is not raising concerns principally for the purpose of personal gain;
- is not acting maliciously or making false allegations;
- has taken appropriate steps to raise concerns with the employing authority (unless he reasonably believes:
 - he would be victimised if he did so;

- a cover-up is likely; or,
- the matter was extremely grave).

4 Types of concerns a pharmacist should raise

A pharmacist should report any genuine concerns he may have about the practices or behaviour of persons with whom he comes into contact during the course of his work, including another pharmacist, pharmacy owner, manager/employer, other healthcare professional or person responsible for the care of a patient (e.g. carers, care home staff or key workers).

Concerns should be raised about issues such as:

- threat to patient safety (e.g. irresponsible/illegal prescribing, patient abuse, a professional whose health or competence is impairing his/her fitness to practise);
- breach of a professional code of conduct (e.g. the Code of Ethics for pharmacists);
- criminal offence (e.g. fraud, theft, illegal diversion of drugs);
- breach of legal duty;
- inappropriate behaviour on the part of another employee or employees;
- danger to health and safety of the public or staff;
- danger to the environment;
- cover up of any of the above.

A pharmacist not only has a responsibility to report practices that are blatantly illegal or unprofessional and pose an immediate threat to public safety, but also has a duty to identify instances of poor practice in order that these can be addressed before there is a risk to patient safety. Instances of poor practice that should not be ignored include, for example, lack of safe systems or potential fraudulent endorsing of prescriptions. A pharmacist should raise concerns if he reasonably believes that malpractice has occurred or is likely to occur.

When deciding whether to raise a concern a pharmacist should consider the following questions:

- *What would be the consequences, in the short- or longer- term, of not raising the concern?*
- *What justification can be given for not raising the concern?*

It is preferred that all genuine concerns are raised even though the subsequent investigation may result in proving the issue unfounded. In as far as possible, both the 'whistleblower' and the 'accused' will be protected from victimisation and supported prior to, during and after the period of investigation. Any disclosure will be treated with the utmost confidentiality.

4.1 What information should be included?

A concern/complaint need not be long or detailed, but it should include the following information:

- contact details,
- who or what is being reported,
- where and when the events of the concern happened; and
- where possible, what remedy is being sought, for example, an apology or an explanation or other remedial action.

5 With whom should concerns be raised?

Where possible, a pharmacist should raise concerns at local level with an employer, manager, superintendent pharmacist or chief pharmacist.

If it is not appropriate or possible to raise concerns with an employer, manager, superintendent pharmacist or chief pharmacist - for example, if the employer is the source of concern or if the employer fails to act on concerns raised, or if the pharmacist is self-employed, the pharmacist should contact the Health and Social Care Board or Health and Social Care Trust. There should be designated persons within these organisations with whom concerns may be raised. The individual raising the concern should be kept informed of the action taken.

Concerns about a pharmacist should be referred to the Society without delay if any of any of the following apply:

- internal procedures for handling concerns/complaints are not appropriate;
- no local complaints systems are in place;
- concerns are not addressed to the complainant's satisfaction;
- the problem is so severe that the Society clearly needs to be involved e.g. threat to patient safety, drug/alcohol dependency, mental health illness, persistent poor performance etc. or

- if there is a genuine fear of victimisation or a 'cover-up'.

See section 10 for a range of additional sources of help and advice. Concerns about other healthcare professionals should be reported to the relevant regulatory body or in appropriate circumstances refer to the police.

6 How to raise concerns

Concerns can be raised either verbally or in writing or via other methods, for example, the telephone or electronically. All concerns received will be treated with equal importance regardless of how they are submitted. The pharmacist raising the concern should:

- put the concern in writing or be assisted to do so;
- speak openly and freely;
- be reassured that whatever he may say will be treated in total confidence and in a sensitive way; and
- where possible, be involved in decisions about how his concern is handled and dealt with.

A pharmacist raising the concern is advised to keep records of important facts and details of correspondence. It is important to let the facts speak for themselves and not to make ill-considered allegations. A pharmacist should be satisfied that any concerns raised are being dealt with in a fashion which is proportionate, timely, consistent and transparent. The body or authority investigating the concern should have procedures in place to keep the pharmacist informed of the outcome. It is advisable to ask about these procedures and about the time scales for feedback.

If the pharmacist remains dissatisfied with the outcome of the local-based complaints procedure he must be advised of his right to refer his concern further, for example, the HSS Board's Complaints Manager and contact details are on the HSS Board's website.

6.1 Anonymous concerns

While every situation is different, it is generally not recommended that concerns be raised anonymously. This is because:

- it is difficult to investigate concerns that are not raised openly. This may be problematic where there is a need for follow-up questions; and

- those who raise concerns anonymously may not be afforded the same protection under Public Interest Disclosure Act.

A pharmacist who is concerned about revealing his identity could consider raising his concern(s) in confidence, requesting that his name is not revealed without consent.

6.2 Concerns that prove to be unfounded

A pharmacist who raises a concern with the Society, other regulatory body or the police and it is proved unfounded will be protected by the PIDA if he has acted in 'good faith' and is not motivated, for example, by personal antagonism.

But a pharmacist who maliciously raises false concerns could face allegations of professional misconduct and/or be subject to disciplinary proceedings (either through the regulator's fitness to practice process or in an employment tribunal).

6.3 PSNI complaints process

The Pharmaceutical Society of Northern Ireland has a complaints process published on the Society's website, www.psni.org.uk (**pending**). This means that any pharmacist wishing to raise a concern or make a complaint is aware of:

- his right to raise a concern or make a complaint;
- all possible options for raising a concern or making a complaint, and the types of help available; and
- the support mechanisms that are in place.

7 Locum pharmacists

There is anecdotal evidence of a reluctance to report concerns about locums. Contrary to principle 1 of the Code of Ethics, "***Make the safety and welfare of patients your prime concern***", it is not acceptable for an employer to simply decide not to employ the locum again as any problems will remain unresolved and the locum pharmacist may pose a threat to patient safety elsewhere.

Similarly, a locum pharmacist also has a duty to report any concerns about practices that he witnesses, rather than ignoring the problem and deciding not to return to the pharmacy.

8 Raising concerns where a duty of confidence exists

During the course of professional practice, or when undertaking volunteer work, a pharmacist may have a patient/client who is a healthcare professional and may acquire confidential information relating to the healthcare professional's health, conduct or competence. The pharmacist has a legal and ethical duty to protect the confidentiality of information obtained in the course of his professional activities. The legal requirements are set out in the Data Protection Act 1998 and the Human Rights Act 1998. The common law duty of confidence must also be observed. Ethical guidance for pharmacists is provided in the Society's *Professional Guidance and Standards on Patient Confidentiality*.

Where a duty of confidence exists, the principles of confidentiality require that patient/client specific information is not disclosed without consent, other than in exceptional circumstances. More detailed information can be found in the HSC guidance entitled *Code of Practice on Protecting Confidentiality of Service User Information*³. An example of such exceptional circumstances is where disclosure is necessary to prevent serious injury or damage to the health of a patient, a third party or to the public.

At times a pharmacist may be required to balance his duty to respect and protect confidentiality with his duty to protect patients and the public from risk, if there is good reason to believe that the healthcare professional may not be fit to practise. In these circumstances the pharmacist will be required to use his professional judgement to determine whether, based on the information he has, he believes that the health professional may pose a serious risk to the safety of himself, other patients or the public. If so, a pharmacist must act quickly to inform an appropriate person, authority or regulatory body.

In circumstances where the healthcare professional's health, conduct or competence is not considered to pose an immediate danger to patient or public safety, confidentiality should be respected. The pharmacist should however endeavour to encourage the healthcare professional to seek appropriate help or support to try to prevent his/her problems escalating to a point where fitness to practise may be compromised.

³ <http://www.dhsspsni.gov.uk/confidentiality-consultation-cop.pdf>

Good practice recommends that a timely record be made of any referral(s)/ interventions(s).

9 Dealing with concerns

A pharmacist⁴ may be the person to whom a concern about an employee, colleague or other health professional is raised. A pharmacist has a duty to act on any concerns that are brought to his attention and take steps to ensure appropriate investigation by either him, the employing organisation, a regulatory body or by the police. Failure to take appropriate action could result in professional and/or internal disciplinary proceedings and potential civil action.

When dealing with concerns, the best course of action will depend on the type and severity of concern. For example, local clinical governance arrangements or schemes to raise poor performance could help support a pharmacist or other health professional whose performance does not pose a direct risk to public safety. But, a health professional whose conduct or fitness to practise may present an immediate danger to public safety should immediately be brought to the attention of the Society (PSNI) or other relevant regulatory body in the first instance and in appropriate circumstances the police.

10 Additional sources of help and advice

- Pharmaceutical Society of Northern Ireland;
- an impartial colleague;
- superintendent pharmacist/ chief pharmacist;
- indemnity insurance provider/defence organisation;
- a professional association (such as the Ulster Chemist Association (UCA), National Pharmacy Association, the Guild of Healthcare Pharmacists);
- Public Concern at Work⁵ (PCaW);
- National Clinical Advisory Services [NCAS] for pharmacists.

⁴The pharmacist may be taken to mean one of the following: the employer, manager, superintendent pharmacist or chief pharmacist.

⁵ Public Concern at Work is an independent authority who provides free confidential advice to people who are unsure of whether, or how, to raise concern about practices that they have witnessed at work. The helpline can be contacted on 020 7404 6609 or by emailing helpline@pcaw.co.uk.

11 Recommended actions

A pharmacist should know who to refer to if he has a concern and the mechanism for doing so. There must be no delay in taking action if problems come to light.

- A *self-employed pharmacist* providing professional pharmacy services is advised to enquire and be aware of local policies for raising concerns.
- An *employed or contracted pharmacist* should investigate any procedure or policies that his employer has in place.
- A *pharmacy owner, superintendent pharmacist and a pharmacist manager* should ensure all staff, including temporary staff and locums, are aware of the importance of raising concerns and are clear how to do so.

PCaW provides support to pharmacy owners and employers wishing to develop procedures to encourage staff to raise concerns. Further guidance on developing these procedures can be obtained from Public Concern at Work (www.pcaw.co.uk)

12 The wider workforce

No attempt has been made within this guidance to identify the issues of raising concerns by support staff (or other healthcare professionals). It is strongly recommended that all employers provide corresponding guidance to their staff.

13 Useful contact numbers and sources of information

Further guidance can also be obtained by contacting

i. **Pharmaceutical Society of Northern Ireland**

73 University Street
Belfast, BT7 1HL
Tel: 028 9032 6927
Website: <http://psni.org.uk>

ii. **Public Concern at Work**

Suite 306
16 Baldwins Gardens, London, EC1N 7RN
Tel: 020 7404 6609
Email enquiries whistle@pcaw.co.uk
Email helpline helpline@pcaw.co.uk

iii. HSC Complaints in Health and Social Care: Standards & Guidelines for Resolution and Learning (December 2008)

Available to download from www.dhsspsni.gov.uk.

P63, Annex 3: Professional Regulatory Bodies (names and contact details).

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