

Professional Standards Authority: Call for information about encouraging candour
Chartered Society of Physiotherapy response

To: Professional Standards Authority

By email: policy@professionalstandards.org.uk

The Chartered Society of Physiotherapy (CSP) is the professional, educational and trade union body for the UK's 51,000 chartered physiotherapists, physiotherapy students and support workers.

The CSP welcomes the opportunity to respond to the Professional Standards Authority's (PSA) call for information on encouraging candour.

Our response is focused on the areas in which we feel we can most effectively contribute to the debate. We have some broad comments to make, in addition to responses to some of the specific questions raised.

We would be pleased to supply additional information on any of the points raised in our response at a later stage.

The contribution of physiotherapy

Physiotherapy enables people to move and function as well as they can, maximising quality of life, physical and mental health and well-being. With a focus on quality and productivity, it puts meeting patient and population needs, and optimising clinical outcomes and the patient experience, at the centre of all it does.

As an adaptable, engaged workforce, physiotherapists have the skills to address healthcare priorities, meet individual needs, and to develop and deliver integrated services in clinically and cost-effective ways.

Physiotherapists use manual therapy, therapeutic exercise and rehabilitative approaches to restore, maintain and improve movement and activity. Physiotherapists work with children, those of working age and older people; across sectors; and in hospital, community and workplace settings. Physiotherapists facilitate early intervention, support self management and promote independence, and help prevent episodes of ill health and disability developing into chronic conditions. Physiotherapy supports people across a wide range of areas including musculoskeletal disorders (MSD); many long-term conditions, such as stroke, MS and Parkinson's disease; cardiac and respiratory rehabilitation; children's disabilities; cancer; women's health; continence; mental health; falls prevention.

Physiotherapy delivers high-quality, innovative services in accessible, responsive, timely ways. It is founded on an increasingly strong evidence base, an evolving scope of practice, clinical leadership and person-centred professionalism.

i. Introductory comments

- i.i The CSP supports the renewed focus, following the Mid-Staffordshire public inquiry, on candour as a key, underpinning value of professionalism in health and social care. We recognise the importance of this both in relation to the corporate responsibility held by organisations that provide health and care services to patients, and the professional responsibility that individual health and care professionals hold in their day-to-day practice. We welcome the stress placed on candour, in both senses, within the NHS Constitution.
- i.ii We remain concerned, however, that an appropriate balance is achieved. An overly punitive approach to candour, particularly in relation to individual practitioners, risks inhibiting the exercise of openness and transparency with patients and their families and carers. Of prime importance is to nurture a genuine culture of learning, in which patients' needs are put at the centre, and in which staff feel supported in fulfilling their roles. This needs to include due recognition of their professionalism and their need for development opportunities, quality employment, a strong voice, and opportunities to take and receive clinical leadership and to engage in peer review.
- i.iii Creating a culture of learning and openness seems the most important, overriding factor in achieving positive change. This seems the most promising way of seeking to ensure that all patients receive high-quality, compassionate care, and that individual practitioners and teams are enabled, supported and confident about learning from mistakes, reflecting on less-good practice, and providing peer-to-peer feedback when they observe poor practice. Such an approach is likely to have a more fundamental impact than the escalation of more stringent, punitive measures.
- i.iv At the same time, we recognise the need for appropriately robust regulatory arrangements, and the value of ensuring that existing standards and processes are sufficiently explicit about, and inclusive of, all health and care professionals' candour responsibilities.
- i.v We also believe that professional bodies/member organisations have a prime role to play in supporting the exercise of candour. This can be achieved through their provision of resources (including codes of professionalism and standards of practice) and support (including peer-to-peer review and networking). In this way, they have a prime role to play in nurturing professionalism and professional development, including to promote openness, high standards of practice, and the consistent delivery of compassionate, patient-centred care.
- i.vi In line with our response to the CQC's consultation on developing its regulatory role and processes, should a duty of candour be introduced, we believe this would be most effective as a corporate requirement of service providers, such that organisations would be required to ensure all their staff are open with patients and their families/carers when failings in care occur. We support this being introduced in such a way that a lapse in this corporate responsibility can be pursued via prosecution, as an ultimate sanction, against service providers.

- i.vii Again, however, we have some concerns about how service providers' duty of candour would be implemented to uphold patient interests and welfare (in terms of how they receive information, and how this is done in caring ways) and to ensure that the well-being of staff (both individually and as teams) is not compromised inappropriately. To mitigate these risk factors, we see the following as being of key importance:
- There is an overriding need to ensure that organisational cultures are nurtured, such that constructive lessons are learned from failings, staff feel comfortable in highlighting where things could be done better, and that the focus within each service provider is on ensuring continuous improvement in all aspects of patient care (in the interests of current and future service users)
 - That it becomes an integral part of the CQC's exercising of its regulatory role to seek information from providers about how they have implemented their duty of candour responsibilities, including through developing a supportive, learning culture (inclusive of staff in all roles and all levels) and through enacting robust mechanisms for identifying, implementing and evaluating changed approaches to service delivery and patient care
 - That strong links are made between the CQC's regulation of providers and professional regulators' oversight of registrants' practice
 - That the particular risks attached to progressing duty of candour are mitigated; this needs to include avoiding the generation of a culture in which failings are repeatedly shared with patients so that all members of a team can feel confident that they have fulfilled their individual/professional and contributed appropriately to the fulfilment of corporate responsibility; to avoid this, sharing of information in line with organisations' duty of candour needs to be co-ordinated carefully, such that the interests and well-being of patients and their families/carers are always preserved
 - That careful consideration is given to how staff need to be supported, including through access to development opportunities, to ensure clarity about their responsibilities (relative to corporate/systems and individual/professional regulatory responsibilities) and that the enactment of candour processes avoids unnecessary duplication of effort and disjointed data collection and usage, and achieves an overarching focus on creating and enacting a culture of learning when things go wrong
 - That all staff can be confident that they will be supported in contributing to fulfilment of service providers' duty of candour responsibilities, including – in scenarios in which all earlier stages of appropriate action have failed to trigger appropriate organisational responses – if individual staff members are obliged to act as a 'whistle-blower'.

1. In your view are all the regulators we oversee effective at encouraging the professionals they regulate to be candid when something goes wrong?

- 1.1 Very little credit seems to be given to registrants who are open and honest in identifying issues or errors. Registrants often perceive that they are punished for openness. The Regulators (in this case the HCPC) do not by and large seem to have any systems for supporting registrants to improve or to help them access the means to improve.

2. What could the regulators do differently to encourage the professionals they regulate to be more candid/open/honest about treatment or care that has gone wrong, or incidents that may, or actually have, caused harm to patients?

- 2.1 There are a number of steps that could be taken to improve matters. For example:
- Regulators could aid registrants by taking more active steps to promote their codes of conduct to employers
 - This should include the way in which such codes might impact on; for example, workloads or caseloads and the duties employees are asked to undertake (when dealing with issues in the workplace there is often very little understanding of registrants' obligations and this can lead to undue pressure being applied to employees when they try to meet those obligations)
 - Regulators should give credit to registrants who self-report incidents and this fact should be publicised and then taken into account at all stages of the process
 - For example, where registrants have self-reported and a sanction is later imposed, a similar system could apply as in the criminal courts, where a sanction can be reduced as a result of the registrant's honesty in self-reporting
 - Where registrants have self-reported in their own workplace and this has resulted in an investigation and potential disciplinary process or sanction this should also be taken into account in any future regulatory proceedings.
- 2.2 In addition, it is essential that regulators' approach to candour is co-ordinated and appropriately consistent. There is also a strong need for appropriately co-ordinated activity in pursuing cases, when these arise, to ensure that registrants of different regulators are treated with fairness and consistency, and can develop confidence that this is the case.

3. Are there any improvements that could be made to the regulator's codes of practice to encourage and support professionals to be open?

- 3.1 It would be helpful for the HCPC to review particularly its Standards of Conduct, Performance and Ethics and include explicit reference to its expectations around candour.
- 3.2 It would also be helpful for the HCPC and other professional regulators to develop their guidance for registrants on duty of candour, and to ensure that their respective standards and guidance are complementary (recognising the growing importance of inter-professional collaboration and team-working for delivering effective, integrated services to patients, including across sectors and settings).

4. Are there any improvements that could be made to the regulator's fitness to practise and adjudication processes?

- 4.1 A number of improvements could usefully be made. These include the following:
- **Acknowledgement of the real pressures registrants are under in many workplaces.** Regulators should have processes and guidance in place that facilitate the discussion of pressures in the workplace that may contribute to untoward incidents, without this being seen as either the registrant having a

lack of insight into their own responsibilities under the relevant code of conduct/standards of proficiency or as an 'excuse'. While a pressured work environment cannot be an 'excuse' for any form of poor practice, severe workload and other pressures are real and significant causes and contributing factors

- **Greater use of informal means of resolution.** Regulators should make greater provision for and use of informal means of discussing issues and incidents including preliminary hearings or meetings where possible and mediation and other forms of alternative resolution of issues
- **Long waiting times should be eliminated.** There are long waiting times for hearings in many cases; this is exceptionally stressful for registrants and it is possible that in that period of time they will have lost their livelihood, either because they are suspended on an interim basis and cannot practise or because a pending hearing makes it effectively impossible for them to continue to eg. run their own practice. It is also ineffective in terms of the primary regulatory function of protecting public safety. These long waits are another factor that militates against openness in reporting/self-reporting.

5. How can the regulators' education standards and processes encourage education providers to satisfactorily prepare new professionals to be candid?

- 5.1 We see it as essential that regulators' standards of education are sufficiently explicit about duty of candour, with this being implemented through their programme approval processes. This should be an integral part of ensuring that pre-registration programmes have the development of professionalism and the development of understanding and engagement with the expectations of being a health care professional firmly embedded within their learning, teaching and assessment (including in relation to practice-based learning).
- 5.2 It should also be recognised that professional bodies have a key role to play, including through their support and promotion of professionalism to their student, qualified (and support worker) members, and through their quality assurance and enhancement role in relation to education programmes. Clearly education providers (including higher education institutions and service providers contributing to students' practice education) similarly have a fundamental role to play in developing students' understanding and engagement with candour.
- 5.3 There is an important role for regulators, HEIs, service providers and member organisations to play in supporting students in feeling confident to feed back where they have seen less than good instances of patient care in practice settings. This includes through there being clear routes and processes through which they can do this without fear of the repercussions for their performance in student assessments and/or future employment prospects.

6. Can improvements be made to regulator's registration and renewals processes to encourage candour?

- 6.1 In line with our earlier comments, it is essential that regulators use registration and renewals processes to remind registrants of their responsibilities around candour as a key component of their on-going professionalism. Processes that are based on

self-declaration (as used by the HCPC) should lend themselves to development to bring the importance of candour to the fore.

For further information on anything contained in this response or any aspect of the Chartered Society of Physiotherapy's work, please contact:

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