

Chartered Society of Physiotherapy

Consultation response to the proposed changes to the HCPC Standards of conduct, performance and ethics and Guidance on social media

The Health and Care Professions Council
Park House 184-186 Kennington Park Road
London SE11 4BU

By email only: consultation@hcpc-uk.org

15th June 2023

Dear Sir or Madam

Re: CSP response to 'Consultation on proposed changes to the HCPC standards of conduct, performance and ethics and the HCPC Guidance on social media (SM)'

The Chartered Society of Physiotherapy ('CSP') is the professional, educational and trade union body for the UK's 63,000 chartered physiotherapists, physiotherapy students and support workers. We are responding in our role as the voice of physiotherapy and as the professional body that represents physiotherapists.

Standards of conduct, performance and ethics consultation response

1. Do the revised Standards make it clear what the appropriate boundaries are between a registrant and service users or carers?

The revised standards do make it clear what the appropriate boundaries are between a registrant and service users or carers. However, the Chartered Society of Physiotherapy (CSP) would like to raise the following points in relation to this section:

1.9 Appropriate boundaries between registrants and service users and/or their carers are different to the acceptable boundaries with colleagues. For example, it would be acceptable for colleagues to form appropriate personal relationships outside of the work environment- this would not be acceptable with service users.

Therefore, the CSP propose separating out boundaries between service users and/or their carers and appropriate boundaries between colleagues into two differentiated parts of the standard to help highlight the differences.

1.10 This standard requires registrants to use appropriate methods of communication to provide care and other services relating to practice.

Whilst the CSP agrees with this in principle; in practice this may not be achievable for reasons outside of the control of the registrant. For example, in a busy NHS setting where registrants are restricted by organisationally designated appointment times or in a private setting where registrants may not reasonably be able to cover the costs of an interpreter (the CSP is aware of instances where the fee for an interpreter is greater than the fee for the physiotherapy session).

Therefore, the CSP propose that the word 'practicable' (as included in standard 2.4- Communicate with service users and carers) is inserted to ensure that individual registrants are not held accountable for factors outside of their control.

Proposed wording:

*You must use appropriate **and practicable** methods of communication to provide care and other services relating to your practice.*

2. Do the revised Standards support registrants in maintaining their own well-being? [OBJ]

The CSP propose the requirement for registrants to be proactive could be further illustrated by including a reference/link to the updated HCPC standards of proficiency 3.2 and 3.4 which uses more supportive language and guidance.

3. Do the revised Standards ensure that registrants maintain a practice that promotes equal, fair and inclusive treatment?

The revised standards support registrants to maintain a practice that promotes equal, fair and inclusive treatment.

To give greater clarity and gravitas to the requirements of the standards, the CSP propose that the Equality Act 2010 is referenced either directly in the standard **1.5** or in the supporting information.

The CSP note that removing "challenge" in favour of raising concerns about discrimination (from the current 1.6 to the proposed 1.7) may be a retrospective step in requiring registrants to be proactive in responding to discrimination. There are many ways that registrants can challenge discrimination without putting themselves at risk of harm (as referenced in the commentary of proposed standard 1.7) including the steps defined in 1.7, examples of which could be provided in illustrative and supporting resources to help registrants feel confident to challenge discrimination appropriately and effectively.

4. Are the revised Standards clear about what registrants must do when things go wrong?

The standards are clear about what registrants must do when things go wrong. However, the CSP are aware from discussions with members and colleagues that apologising can feel daunting. Despite guidance advising otherwise, physiotherapists are often concerned that apologising could be viewed as an admission of guilt or liability creating a barrier to them confidently carrying out their professional duty of candour.

Therefore, the CSP would like to propose that clear reference to the pertinent UK legislation is included to improve registrant confidence and understanding that apologising is not an admission of guilt or liability. It is proposed that this is included in the supporting resources for standard **8.1** and that it references [UK Section 2 of the Compensation Act 2006](#) and [the Apologies \(Scotland\) Act 2016](#).

A further pertinent factor that the standards cover regarding what registrants must do when things go wrong is how and when to self-report.

Important information about your conduct and competence 9.5 *You must tell us as soon as possible if:*

- *you accept a caution from the police or you have been charged with, or found guilty of, a criminal offence;*
- *another organisation responsible for regulating a health or social care profession has taken action or made a finding against you; or*

- *you have had any restriction placed on your practice, or been suspended or dismissed by an employer, because of concerns about your conduct or competence.*

We have concerns regarding the blanket requirement that you must tell the HCPC if “*you have had any restriction placed on your practice or been suspended*”. There are instances where registrants are put on a neutral, without prejudice restriction of practice which is immediately imposed when a serious incident occurs, or a safeguarding complaint is received. This is done to allow for initial information gathering and risk assessment purposes and does not necessarily indicate that the registrant is at fault. The standards currently require all instances to be reported to the HCPC potentially triggering an unnecessary fitness to practice case and thus causing undue strain on registrants' mental health and well-being.

It is therefore suggested that the third point be reconsidered to reflect that this does not include without prejudice restrictions until it has been concluded that the registrant is at fault.

5. Is the language used in the revised Standards accessible and clear?

The CSP is often asked by members how phrase such as ‘*reasonable checks*’ and ‘*where appropriate*’ translate into practice.

The CSP welcome the HCPC plans to provide a suite of resources to underpin registrants understanding of how the standards should be applied in practice and the planned further period of engagement with registrants and the public to gain feedback on the content and accessibility of any resources produced.

As part of this package of supportive resources the CSP suggests that a commentary be created to sit alongside the new standards on the website which link directly to supporting information, illustrative resources and demonstrate how standards interlink to support their effective integration into practice.

With regards to optimising accessibility the CSP requests that the standards be produced in various versions. For example:

- versions compatible with virtual readers
- in different languages to support overseas Allied Health Professionals preparing for registration
- student versions to support pre-registration readiness for practice

6. Does the structure of the revised Standards promote understanding and easy reading?

Currently, there is little cross-referencing between the standards. We feel it would facilitate members to understand the relationship between the standards in practice and would suggest this is explicit within the standards themselves and further discussed in supporting materials

For example, in standard 8.2, referencing standard 5.2 to support registrants to consider what information would be appropriate to share, taking into consideration confidentiality, if it is appropriate to apologise to a service user's carer.

7. Are the revised Standards clear about the appropriate use of social media and how this relates to registrants practice?

The guidance states, “*when using their personal accounts, registrants should be mindful of the impact their posts may have on their professional practice and their profession.*” While this does reflect to some extent the proposed wording for the new 2.8 this is a little vague and examples of

this particular would be very helpful, and also for the Conduct standard to be clear on what is meant by “professional manner”.

8. Should improving sustainability in health and care practice be a part of the Standards? If so, what ought to be included in the Standards?

The CSP Corporate Strategy 2023-27 includes objectives pertaining to sustainability and acknowledges the importance of sustainability in the delivery of modern healthcare systems to both mitigate negative environmental impacts and also as a driver of innovation to improve the quality of patient care.

However, the health systems and their workforces face unprecedented pressures and challenges due to multiple complex factors compounded by the Covid recovery.

At this point, decisions regarding sustainability sit at a strategic level and how steps to drive sustainability will translate into individual registrants practice remains to be seen. For these reasons, the CSP’s position is that it would be premature to place responsibility for actions on sustainability on individual registrants.

We therefore advise against the inclusion of a sustainability focused standard at this time, but continued attention should be paid and this should be a priority for review in the future.

9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation – as defined by the Equality Act 2010?

Standard 6.3 requires registrants to take responsibility for assessing how health changes impact on their ability to practise safely and effectively. This may penalise those who are unable, for health reasons, to do so.

10. Do you have additional comments about any of the proposed changes to the Standards, or regarding the Standards of conduct performance and ethics in general?

The CSP have the following comments in relation to standards not covered by the consultation questions thus far:

- A) **Keep within your scope of practice, 3.3** *You must refer a service user to an appropriate practitioner if the care, treatment or other services they need are beyond your scope of practice. This person must hold the appropriate knowledge, skills and experience to meet the needs of the service user safely and effectively.*

The CSP is concerned that the second sentence in this standard could result in registrants being held accountable if the person they refer onto has not been clear about their knowledge, skills and experience and are therefore unable to meet the needs of the referred service user safely and effectively.

Where members operate solely within NHS settings, there is likely sufficient assurance of integrated governance checks for colleagues, teams and services, even out of a local area. where there are integrated governance checks for all colleagues, registrants are not able to fully assess the above. Even within the NHS, registrants will often refer onto teams or pathways and not individuals.

However, as health and social is evolving with a greater focus on using a wider workforce, often non-registered and provision outside the NHS for example from the third sector, the expectations can only be for registrants to refer with the best held belief that they are referring to services or individuals.

Including the above requirement in 3.3 has potential to result in registrants taking the most assured pathway, such as referring to the GP opposed to referring to the services that would most benefit the service user, potentially driving up demand in already over-utilised, more expensive parts of care pathways and potentially undermining personalised care.

Therefore, we propose that this second sentence is removed and referral into appropriate services is included as follows:

Keep within your scope of practice: 3.3 *You must refer a service user to an appropriate practitioner or service if the care, treatment or other services they need are beyond your scope of practice. You should only refer to people or services who you believe hold the appropriate knowledge, skills and experience to meet the needs of the service user safely and effectively.*

B) **Identify and minimise risk: 6.1.** *You must take all reasonable steps to reduce the risk of harm to service users, carers and colleagues as far as possible.*

In order to add clarity and support registrants to not take pervasive risk avoidance steps that could be detrimental to patient care or limit the progress of the profession, the CSP would like to propose a change in the wording of 6.1. to directly reflect the wording of Health and Safety legislation; “*You must take steps, as far as reasonably practicable, to reduce the risk of harm to service users, carers and colleagues*”.

C) **Report concerns about safety: 7.5** *You must raise concerns about colleagues if you witness bullying, harassment or intimidation of a service user, their carer or another colleague. This should be done following the relevant procedures within your practice and maintaining the safety of all involved.*

The CSP is concerned that there may be instances when registrants struggle to decisively fulfil this Standard if they too are the subject of the aforementioned behaviours from the same source.

D) **Keep accurate records- 10.1** *You must keep full, clear, and accurate records for everyone you care for, treat, or provide other services to.*

The CSP is aware of a number of cases where registrants have been held to account for treatment that they have given to friends and family. Legislation around Duty of Care makes it clear that registrants must extend a reasonable standard of care (including adequate record keeping) to all care given, including friends and family. Therefore, the CSP request that friends and family are referenced in either the standard or the supporting information to help registrants understand this more clearly and avoid this error.

HCPC guidance on social media (SM) consultation response

1. Do the proposed updates to the HCPC social media guidance provide sufficient advice regarding the application of Standard 2.7 in practice?

The CSP suggests that the definition of media sharing networks and social networking sites misses out on a range of things including commenting on website articles. Therefore, the CSP propose this definition be re-worded to include **all on-line communication** more explicitly.

2. Do the proposed updates make it clear the circumstances that could lead to a registrant's social media posts to be considered by HCPC?

Please refer to the CSP's responses to q.3 and q.5 which highlight areas that it is felt require further clarification.

3. Do the proposed updates make clear the circumstances in which a registrant's social media posts may call into question their fitness to practice?

The proposed updates do make clear the circumstances in which a registrant's social media posts may call into question their fitness to practice with the exception of the reference to the historical social media activity. This has created some discussion around the parameters of this guidance point, especially for incoming generations of registrants who will have far more extensive social media histories, including when they were minors.

Whilst the guidance makes clear the mitigating steps that registrants should take to make private or delete social media content that could call their registration into question- should there be more specific parameters defining from when historical social media activity could call into question a registrant's fitness to practice?

The CSP suggest a cut-off point of 21 years old as, for most, this is likely the earliest point they apply to join the Register.

4. Do the proposed updates make it clear how a registrant must use social media in a way that protects a service user's privacy?

In the section "respect confidentiality", the wording requires Registrant's to ask permission to share patient's stories in SM. The CSP propose referring to gaining consent instead of asking for permission to give a clearer steer to registrants.

Due to the nature of how SM posts are broadcast they can rapidly be shared more widely than originally intended; control of a post can quickly be lost by the registrant. Therefore, the CSP questions how the principles of GDPR can be applied, for example, if the service user requests erasure. What responsibility does the registrant hold to advise service users of the potential risks? It is recommended that further clarification on this be included in the HCPC guidance on SM.

Furthermore, would the HCPC hold that registrants have a responsibility to highlight that personal devices are not necessarily secure when service users choose to record their sessions and therefore that using a personal device could result in the confidentiality of the session being adversely affected? Advice, including your position on this point should be included in the guidance.

5. Do the proposed updates make it clear how a registrant must use social media in a way that protects a service user's protected characteristics

To give greater clarity and gravitas to the requirements and ensure that registrants have a good point of reference to understand protected characteristics the CSP propose that the Equality Act 2010 is referenced in the guidance (as proposed in the CSP HCPC Standards of conduct, performance and ethics consultation response for standard 1.5).

6. Do the proposed updates make it clear how a registrant must use social media in a way that does not lead to the unfair treatment of service users or their carers?

The guidance includes clear signposting to the pertinent standards. As expressed in the CSP consultation response for the proposed standards of conduct, performance and ethics, the CSP has expressed practical concerns around the application of standard 1.10 (which is referred to in this section of the guidance) and consequently has suggested a change in wording as follows:

Proposed changes to 1.10:

*You must use appropriate **and practicable** methods of communication to provide care and other services relating to your practice.*

7. Do the proposed updates make it clear that HCPC supports a registrant's right to freedom of expression?

The CSP has become aware of concerns that the supporting information for 2.11 in the HCPC Guidance for social media could be interpreted as problematic with regards to supporting registrant's right to freedom of expression as enshrined in Article 10 of the Human Rights Act, <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression>, Article 10 upholds your right to express and share your opinion.

The proposed HCPC guidance on social media states:

*When using social media, think about the accuracy and truth of the content that you share or circulate. Check that the information originates from people and/or organisations that are trustworthy and **does not contradict government public health messages**.*

The CSP recommends that in order to support registrant's right to freedom of expression this is reworded as follows:-

*When using social media, think about the accuracy and truth of the content that you share or circulate. Check that the information originates from people and/or organisations that are trustworthy and ~~does not contradict~~ takes into consideration **government public health messages** and the potential negative impact contradicting this messaging could have on people's health and wellbeing, especially vulnerable populations.*

8. Do the proposed updates clearly distinguish between the use of social media in a professional and non-professional capacity?

The CSP advises that this is clearly distinguished, however, proposes that a third category of social media be included; *registrants using social media on behalf of organisations or networks*. Therefore, making registrants aware it's their responsibilities to use SM within the parameters of the Standards and the guidance even when they are not doing so in their own name.

9. Do you consider there are any aspects of our proposals that could result in equality and diversity implications for groups or individuals based on one or more of the following protected characteristics – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation – as defined by the Equality Act 2010?

The CSP has identified no concerns in relation to this.

10. Do you have additional comments about any of the proposed changes to the Standards, or regarding the Standards of conduct performance and ethics in general?

The CSP advises that supporting illustrative examples- would be useful to assist registrants to take the guidance into practice. For example, how a registrant might in practice fulfil the requirement to make **reasonable checks to ensure that information is true and accurate.**



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15/06/2023

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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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