



14 Bedford Row, London WC1R 4ED
Tel +44 (0)20 7306 6666
Web www.csp.org.uk

Information paper

Complaints Briefing

What to do if a complaint is made against you

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Complaints Briefing

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Complaints Briefing

Introduction

As a health care professional there are a number of ways in which a complaint can be made against you. Whilst a complaint can be very stressful and upsetting it is important to be clear what form the complaint has taken and where it will be resolved in order to gain timely and appropriate support from the CSP.

This short information paper aims to explain the four most common complaint pathways:

- A complaint about you to your **employer**
- A complaint about you regarding **clinical negligence**
- A complaint about you to the **Health and Care Professions Council**
- A complaint about you to the **police**

There are a number of further resources available on the CSP website www.csp.org.uk and you will be directed to these as appropriate. It is important to remember that several of these complaint pathways can run concurrently and the support from the CSP may be variable depending on this.

It is also important to note that in order to access advice and representation from the CSP you must be a practicing member at the time of the incident to which the complaint relates.

A complaint is made about you to your employer

Most healthcare employers will have a formal complaints procedure through which patients, or their relatives can express their dissatisfaction with health care professionals. This may be regarding their diagnosis, treatment or the behavior of an individual.

Where will the complaint be heard and resolved?

If a complaint is received by an employer it will be investigated in accordance with the local complaints policy and procedure. This will involve speaking to you, looking at relevant documents and patient notes and may involve interviewing witnesses. Following this process, the employer will decide if the complaint is valid or not.

If the complaint is upheld then your employer may begin disciplinary proceedings against you. Most employers will have a Disciplinary Policy which should be available on the staff intranet, in your staff handbook or from HR. This will detail the procedure and your rights at each stage.

Depending on the nature of the complaint the process may begin in an informal manner (a chat with your manager) or more formally. The formal process will normally begin with an invitation to an investigatory meeting. This should be in writing and outline the nature of the concern.

What should I do?

If you are invited to an investigatory meeting your first port of call should be the CSP steward at your workplace. They have received extensive training from the CSP, have knowledge and access to local policies/procedures and will be able to support and guide you. For example, if you are invited straight to a disciplinary hearing or have not received details of the concern they may be able to challenge the process if appropriate.

If you do not know who your steward is or if you do not have a steward you should call the CSP Enquiry Handling Unit on 020 7306 6666 with your membership number. They will give you contact details for your CSP steward or, if you do not have one, they will notify the Senior Negotiating Officer (SNO) for your region.

Your steward or SNO will assist you to prepare your case and will come with you to the investigation/hearing if necessary. **Remember that you have a statutory (legal) right to be accompanied during a disciplinary hearing.**

A complaint is made about you...regarding clinical negligence

As a health care professional, you have a duty of care to the clients that you treat. If a patient feels that you have caused them harm through your treatment or through other acts or omissions by you they may pursue a claim against you using solicitors. This is commonly called “suing for negligence”. The person making the claim is known as the “claimant”.

Where will the complaint be heard and resolved?

A claim for clinical negligence will be heard in the **civil** court – either the County Court or the High Court. The role of the civil courts is to settle disputes between individuals or companies.

What should I do...if I am employed?

Since 2014 it is an HCPC requirement that all registrants have appropriate professional indemnity cover. The CSP PLI scheme covers eligible members with appropriate levels of cover to meet these requirements. However, if you have a contract of employment, the organisation that you work for will usually be liable for negligent acts of its employees committed during the course of their employment. This is called “vicarious liability”.

If you receive notification of legal action you should immediately inform your manager. Your role will be to assist your employer in preparing a defence and to co-operate fully with the employer’s solicitors.

You may wish to review your clinical notes and spend some time thinking about the incident in order to prepare your initial statement.

What should I do...if I am self employed?

If you are a self employed or you are not covered by an employer’s vicarious liability insurance then the clinical negligence claim may be against you as an individual. Membership of the CSP, in a category which provides PLI cover, includes professional liability indemnity up to £7.5 million per claim and up to £10 million in any one period of insurance per member.

Public Liability – £10 million in any one claim. £10 million in the annual aggregate for product liability claims.

If you receive notification of legal action you should acknowledge the letter and state that you are putting the matter into the hands of your insurers. You



must not attempt to contact the patient or admit liability in the first instance but immediately contact the CSP's insurance brokers at:

James Hallam
Saxon House
Duke Street
Chelmsford
Essex
CM1 1HT
Tel: 01245 321185
Email: promedschemes@jameshallam.co.uk

James Hallam website: <https://jameshallam.co.uk/promed/physiotherapy-members/>

You may wish to review your clinical notes and spend some time thinking about the incident in order to prepare your initial statement.

Further reading....

The information paper "Insurance and Physiotherapy Practice" (PD027) is available free from the CSP website. This gives more detail on the terms of the policy and the process for making a claim.

A complaint is made about you...to the Health and Care Professions Council (HCPC)

All people who wish to use the title “physiotherapist” must be registered with the HCPC, as the statutory regulatory body. The purpose of the HCPC is to protect the health and wellbeing of people who use the services of the health professionals it registers.

Any registrant who breaches the HCPC standards at any time may be reported or subject to a complaint. Complaints can be made to the HCPC by anyone but most commonly it is likely to be a fellow professional, an employer, or a patient and/or their family. In addition, the police service will notify the HCPC of any convictions and often police cautions as well.

Where will the complaint be heard and resolved?

When a complaint is received by the HCPC it will be dealt with under their ‘Fitness to Practice’ procedures. This consists of two stages: a preliminary investigatory stage and a fitness to practice hearing which will be held at a venue chosen by the Health and Care Professions Council.

In some cases, you may receive a prior letter, putting you on notice that the HPC has been contacted about a complaint but that it has not yet been formalised. When the HCPC has decided to go ahead you will receive a letter from the HCPC notifying you of the preliminary stage. This may not contain full details of the allegations and you will be invited to make an initial response. You should then receive written details of the complaint along with copies of any other documentation they have that relates to the complaint. You will be invited to make a written submission in response to the complaint for the Investigatory Panel’s consideration. The HCPC should give you at least 28 days to respond and should specify the deadline in their letter. If this does not give you enough time you can ask for an extension.

What should I do?

As soon as you know that a complaint has been made and will be considered by the Investigating Panel, you should **contact the Employment Relations and Union Services Directorate of the CSP** via the Enquiry Handling Unit on 020 7306 6666.



If you work in the NHS, you should also make your steward aware of the position. Your steward may make the first contact with us for you, however, if your steward is unavailable, please do not wait for them to come back but contact us yourself without delay.

The CSP provides support and representation to the majority of members facing proceedings at the HCPC. Your case will be allocated to the Senior Negotiating Officer (SNO) who covers your area. You should send them copies of all the papers you have received from the HCPC, along with copies of any additional relevant information, such as physiotherapy records. You should also prepare a draft statement in response to the complaint and send that to us, preferably by email.

Do not make any direct contact with the HCPC other than to acknowledge receipt of the letter.

If the HCPC removes you from the register you will be removed from CSP membership. If you are suspended you can continue membership in the non practising category and still receive ERUS services relating to past full membership and some professional services.

Further reading...

“HCPC Investigations: A Member Guide” (IP40) is available free from the CSP website www.csp.org.uk and provides detailed guidance on the process as well as guidance on preparing your statement to the Investigating Committee.

A complaint is made about you...to the POLICE

If a patient feels that you have broken the law in your interaction with them they may make a complaint about you directly to the police. The most common complaints about physiotherapists to the police are allegations of sexual assault.

Where will the complaint be heard and resolved?

Initially you will be asked to attend the police station for an interview. You may be arrested and your DNA, photograph and fingerprints taken. The interview will be conducted under caution. This means that anything you say during the interview can be used in evidence if the matter proceeds to court. At the police station you are entitled to free legal advice and assistance.

Following the interview you may be released without charge, you may be bailed and asked to return at a later date for further questioning or you may be offered a caution. You will only be eligible for a caution if you admit that you have done something wrong. You do not have to accept a caution – bear in mind that it will be present on an enhanced CRB check in the future.

Alternatively, if the police feel that they have enough evidence, they will charge you with a criminal offence. The case will be referred for a preliminary hearing in the **Magistrates Court**. The Magistrates Court deals with more minor offences and has more limited sentencing powers. The majority of criminal cases that the CSP deal with pass briefly through the Magistrates Court and are heard in the **Crown Court**.

If you accept a caution or are convicted of a criminal offence, the police are obliged to notify the HCPC. The HCPC will then instigate their own investigation under their “fitness-to-practice” powers as described above.

In Scotland more serious charges are heard in the Sherriff Court or the High Court of Justiciary.

What should I do?

All CSP members are entitled to legal advice and representation from Thompsons solicitors at police station interviews. Please call **0800 587 7530** with your membership number.



For members in Scotland and Northern Ireland this support also extends to some representation in the criminal courts for work related allegations. Thompsons will liaise with the CSP directly and will advise and support you in your ongoing case.

Members in England and Wales have the option of purchasing an insurance policy to cover them in the event of a criminal allegation both related to inside or outside of work. This is provided by:

Philip Williams & Company
35 Walton Road,
Stockton Heath,
Warrington,
Cheshire,
WA4 6NW
Tel: 01925 604421
Email: enquiries@philipwilliams.co.uk

<https://www.csp.org.uk/news/2022-09-26-csp-offers-new-optional-criminal-defence-insurance-policy>

Being Called as a Witness

Occasionally physiotherapists are asked to give evidence as witnesses in other settings for example the coroner's court or the family courts. If you are unsure what course of action to take regarding this please call the CSP Enquiry Handling Unit where your enquiry will be directed to the most appropriate member of staff to advise you.

Summary

A complaint about you as a physiotherapist can take a number of forms and it is important to be absolutely clear who has made the complaint, who is dealing with it and how it will be resolved in order to access the correct support.