



# The Pharmacists' Defence Association's Response to the Pharmaceutical Society of Northern Ireland's Consultation on Guidance on Raising Concerns

February 2019

## About the Pharmacists' Defence Association

The Pharmacists' Defence Association (PDA) is a not-for-profit organisation which aims to act upon and support the needs of individual pharmacists and, when necessary, defend their reputation. It currently has more than 28,000 members. The PDA Union was inaugurated in May 2008 and achieved independent certification in 2011.

The PDA is the largest pharmacist membership organisation and the PDA Union is the only independent Trade Union exclusively for Pharmacists, in the UK.

The primary aims of the PDA are to:

- Support pharmacists in their legal, practice and employment needs
- Represent the individual or collective concerns of pharmacists in the most appropriate manner
- Proactively seek to influence the professional, practice and employment agenda to support members
- Lead and support initiatives designed to improve the knowledge and skills of pharmacists in managing risk and safe practices, so improving patient care
- Work with like-minded organisations to further improve the membership benefits to individual pharmacists
- Arrange insurance cover for individual pharmacists to safeguard and defend their reputation.

## Summary

The Pharmaceutical Society of Northern Ireland is consulting on changes to its 'Guidance on raising concerns'. The PSNI Council has recommended that only minor changes be made to the guidance and has taken the view that the core content of it is correct. It is therefore not undertaking a public consultation and instead is consulting only with certain stakeholders, including the PDA.

The consultation runs from 29 January 2019 to 11 February 2019.

## Questions

**1. Is the structure of the document helpful?**

No

**2. Is the document clearly written?**

Yes

**3. Does the updated Raising Concerns Guidance focus on the right areas?**

No

**4. Is there any issue/content that is missing from the document?**

Yes

**5. Do you have any additional comments?**

Yes

We were pleased that the PSNI recognizes the importance of whistleblowing, but we are concerned with the overarching focus of this document. Our view is that the guidance needs a substantial review; we have addressed our concerns with it through the following recommendations.

### Recommendation

The PSNI's Guidance for Raising Concerns needs substantial changes and should be subject to a public consultation.

### Recommendation

The stated purpose of the PSNI's Guidance for Raising Concerns ought to be changed; its current stated purpose is *"to assist pharmacists in meeting their obligations on raising concerns set out in the Professional standards of conduct, ethics and performance for pharmacists in Northern Ireland (2016) (the Code)."* Our view is that a broader purpose would be more effective at improving the frequency and ease with which concerns are raised and addressed. We would suggest *"to improve patient safety and care by advising pharmacists about raising concerns, ensuring that they can do so without reprisal or fear and that the issues raised are properly investigated and any identified issues are addressed."* The focus of the document should follow on from and be aligned to that.

The guidance is heavily focused on imposing *"an ethical duty"*, an *"ethical obligation"* and a *"responsibility"* on pharmacists. Among its stated aims is *"reinforce to pharmacists the importance of raising a concern in the appropriate way"*. It also states *"Failure by pharmacists to report their concerns... may constitute a breach of the code and may form the basis of a complaint to the Pharmaceutical Society NI of professional misconduct and a pharmacist's fitness to practise may be brought into question"* and *"Failing to raise a concern and doing nothing is unacceptable and may bring a pharmacist's fitness to practice into question."* The remonstrative, punitive approach to *not* whistleblowing, apparent in the document, is unlikely to be effective in improving whistleblowing culture and ultimately in protecting patients. There are many factors which make whistleblowing difficult for individuals and limit the success of attempts to do it – such as the state of the current law, which needs reform.

### Recommendation

If it is to be effective at supporting and enabling whistleblowing, the PSNI must also impose a duty on employers and pharmacy owners to create the systemic conditions which enable pharmacists to raise concerns without fear or reprisal. It must also place a duty on employers and pharmacy owners not only to investigate concerns within a reasonable timescale, but to rectify any identified wrongdoing. This duty must apply whether or not the employer / pharmacy owner is a pharmacist; if the PSNI does not believe it has the powers to impose such a responsibility on a non-pharmacist, then it must seek to acquire them.

### Recommendation

The name of the guidance ought to be changed to “Guidance on Whistleblowing”. The name “Guidance on Raising Concerns” keeps the focus on the act of raising concerns, but by its nature says nothing about the duty of those to whom the concerns are raised to address them. This inappropriate focus is in our view part of the reason that the whistleblowing culture within the NHS and within certain employers still leaves much to be desired.

“Whistleblowing” is a well-recognised term and is used by those who have done it in reference to themselves. As a more abstract term, it is more capable of being used in reference collectively to the act of raising concerns, the duty to investigate and address them as appropriate and the applicable law, for example, than simply “raising concerns”.

As such, “whistleblowing” has developed to become a broader concept.

The document acknowledges that *“In this Guidance, we use the term raising a concern. Other organisations and the law on occasion refer to this as whistleblowing.”* The two concepts are linked, but “raising concerns” is more limited in scope.

### Recommendation

The document refers to Standard 1.2 of the Code *“Uphold the duty of candour and raise concerns”*. The guidance states *“Pharmacists must be open and honest with patients and service users when something goes wrong...”*.

The guidance is conflating two fundamentally different concepts: the duty of candour (i.e. the duty to hold your hand up and admit when you or your organization has got it wrong) and whistleblowing. This conflation is unhelpful to furthering the benefits to patients of either concept, but may be welcomed by some employers because it keeps the focus on the “duty” of the individual and not their own responsibilities to act.

References to the duty of candour must be removed from the guidance.

A further reason to do so is that many pharmacists are line-managed by non-pharmacists. For non-registered individuals, a duty of candour is not effective.

#### Recommendation

The guidance states *“However, the adoption of good work practices, based on pharmacists’ ethical obligation to speak openly and freely about their concerns, underpinned by supportive workplace policies (Section 5 below) and the legislative protection available, **should ensure that pharmacists suffer no detriment for raising a concern** and will help ensure the continued protection of patients and the public.”*

(Emphasis added). This mindset fails to recognise the shortcomings within the law (which is reflected in the fact that the EU is developing a whistleblowing directive) and the fact that pharmacists and other healthcare professionals do continue to suffer detriment for raising concerns; the wording ought to be changed in recognition of those things. It appears that the reference to Section 5 ought to be a reference to Section 4.

#### Recommendation

Section 4.1.2 of the document includes a reference to “pharmacy professionals”. This should be changed to “pharmacists”.

#### Recommendation

We ask that the Pharmacists’ Defence Association be listed in Section 6 as a source of help and advice for pharmacists, alongside the other organisations that are already listed.