

BY EMAIL

Rob Behrens

Parliamentary and Health Service Ombudsman

8 May 2017

Dear Mr Behrens,

Complaints and accountability arrangements for the National Freedom To Speak Up Guardian

The National Freedom to Speak Up Guardian office was established explicitly to provide both support and **challenge** to the system on whistleblowing governance. [1](#) [1b](#) [2](#)

The office was expected to identify any barriers in the system to 'Freedom To Speak Up' in the NHS, and it was recognised that this would require, where appropriate, a challenge to the system. [2](#)

In theory, the National Freedom To Speak Up Guardian was supposed to be established as an independent office to give it the freedom to challenge any part of the system. This was acknowledged by the CQC:

"The FTSU review states that the National Guardian must be independent of both providers and national bodies so it is able to review their practices and make recommendations without fear of interference." [3](#)

However, controversially, the National Guardian office was located within CQC with a clear statement by the CQC that CQC would "manage" the office, and an indication that the National Guardian would report to the CQC's Chief Executive [4](#). The latest National Guardian has confirmed that this is so. [5](#)

Nevertheless, the CQC claims that the National Guardian is operationally independent. [6](#)

A serious concern arises in this regard because the CQC has indicated that complaints about the National Guardian will be handled by senior officers from

some of the central bodies that the National Guardian is supposed to hold to account: CQC, NHS England and NHS Improvement.

This is because complaints against the National Guardian will, according to the CQC, be handled by the National Guardian's Accountability and Liaison committee.[7](#)

This Committee according to the National Guardian, comprises Sir Robert Francis CQC NED (Committee Chair), Dame Moira Gibb NHS England NED and Helen Buckingham NHS Improvement Director of Corporate Affairs. [5](#)

This seems to be a key example of poor complaints handling about a critical public office, with inappropriate circularity and glaring conflicts of interest that have the potential to subvert the public office's core purpose.

I would be grateful to hear from you on this issue, and to know if you consider that this arrangement for complaints about the National Guardian - an office that is supposed to defend the public interest and promote probity, transparency and accountability - is tolerable.

I should also mention that the National Guardian's Office does not appear to have published any complaints policy and procedure.

Yours sincerely,

Dr Minh Alexander

cc

Lord Bew Chair Committee on Standards in Public life

PHSO The Facts

Health Committee

Public Accounts Committee

Public Administration and Constitutional Affairs Committee

REFERENCES

[1](#) Report of the Freedom To Speak Up Review, 11 February 2015

Page 27:

"...provide national leadership on issues relating to raising concerns by NHS workers"

Page 168:

"7.6.12 The INO should be authorised by these bodies to use his/her discretion to:

- review the handling of concerns raised by NHS workers where there is cause for concern in order to identify failures to follow good practice, in particular failing to address dangers to patient safety and to the integrity of the NHS, or causing injustice to staff*
- to advise the relevant NHS organisation, where any failure to follow good practice has been found, to take appropriate and proportionate action, or to recommend to the relevant systems regulator or oversight body that it make a direction requiring such action."*

Page 169:

"The INO would in essence fulfil a role at a national level similar to the role played by effective Freedom to Speak Up Guardians locally. They would not take on cases themselves, but could challenge or invite others to look into cases which did not appear to have been handled in line with good practice or where it appeared that a person raising a concern had experienced detriment as a result of raising the concern. The INO could also provide a resource for the system as a whole by supporting Freedom to Speak Up Guardians and by offering guidance on good practice informed by developing experience from the cases considered."

Page 196

"...the new post of the Independent National Officer, is a key component in keeping watch over the way concerns are handled, providing support to those who need it, and ensuring the patient safety issue is always addressed. The climate

that can be generated by these measures will be one in which injustice to whistleblowers should become very rare indeed, but is redressed when it does occur.”

http://webarchive.nationalarchives.gov.uk/20150218150343/https://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf

1b Learning not Blaming. Government response to the Freedom To Speak Up Review:

“The Independent National Officer is an important role and underpins the implementation of the principles and actions in the Freedom To Speak Up report. It will establish good practice across the NHS and provide a consistent independent person that staff in the NHS can turn to.”

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445640/Learning_not_blaming_acc.pdf

2 CQC Position Specification for the National Guardian September 2015

“The National Guardian will have a key role to play in creating a more open and honest reporting culture in the NHS.”

“The National Guardian will challenge others (locally and nationally) to look again at cases”

“To provide support and challenge for the system: *The National Guardian will have a highly visible role in providing support to the system. This will include the sharing of good practice, reporting on common themes in concerns raised and actions taken, identifying barriers to improvement and how these might be overcome, and reporting on progress towards the creation of a safe and open culture.”*

<https://minhalexander.files.wordpress.com/2016/10/cqc-national-guardian-specification-final-760085.pdf>

http://webarchive.nationalarchives.gov.uk/20150218150343/https://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf

3 CQC Board paper on establishment of the National Guardian’s office, 29 July 2015

https://minhalexander.files.wordpress.com/2017/05/cqc-board-paper-on-ng-july-2015-cm071506_item_6_freedom_to_speak_up_national_guardian.pdf

4 CQC Position Specification for the National Guardian September 2015

“The National Guardian will be an appointment by the Chief Executive of CQC on behalf of the Board. The appointee will be managed by the Chief Executive...”

<https://minhalexander.files.wordpress.com/2016/10/cqc-national-guardian-specification-final-760085.pdf>

5 Agreed record of meetings x 2 with National Guardian on 23 January 2017 and 2 February 2017

“MA Issue of independence?”

HH If you are paid for by government it’s really difficult to say you’re independent – we are as independent as we can be. I feel independent

MA CQC bangs on about you being operationally independent. What does that mean?

HH Everything. Different information system. Meetings with David Behan. That’s not about being dependent, not objective-setting, but being accountable [about what’s happening].

MA How often are the meetings?

HH Varies MA How many times since you started?

HH 5 times (without checking diary)

MA What gets discussed?

HH Lots of things. I’m not being told what to do – not objective setting – being accountable.”

<https://minhalexander.files.wordpress.com/2017/02/hh-meeting-records-23-01-2017-and-2-02-2017.pdf>

6 National Guardian Independence: CQC denies some more.... Minh Alexander 19 January 2017

<https://minhalexander.com/2017/01/19/national-guardian-independence-the-cqc-denies-some-more/>

7 Email from CQC Deputy National Complaints Manager 24 January 2017

"Dear Dr Alexander

Thank you your email below and I think it would be helpful to confirm that the CQC National Complaints Team (NCT) does not handle concerns raised regarding the National Guardian's Office (NGO) and neither do we have a copy of their complaint procedure.

Complaints about the NGO are handled under their own governance structure with the NGO Accountability and Liaison Board (ALB) acting as an independent reviewer of complaints made against the NGO.

You may therefore wish to contact the NGO directly to raise or discuss your concerns.

Kind regards

Caroline Dale

Deputy National Complaints Manager - Corporate Complaints Team

Governance and Legal Services Directorate

Care Quality Commission

Tel: 0300 061 61 61

Email: complaints@cqc.org.uk"