

**Response issued under the Freedom of Information Act 2000**

**National Guardian's Office Reference:** NGO/IAR/0218  
**Care Quality Commission Reference:** CQC/IAR/1718/0872

**Date of Response:** 4<sup>th</sup> April 2018

**A. Our responses to the information you have requested**

Thank you for your request for information. As this request concerns the National Guardian Office this response has been produced jointly by Care Quality Commission and the National Guardian's Office

In accordance with section 1(1) of the Freedom of Information Act the National Guardian's Office can confirm that it holds recorded information in relation to your request. To answer your request we have addressed each of your questions in turn.

Question 1

Please advise in relation to the requests for specific types of help received by the NGO:

*"Requests –*

- *for protection from reprisal: 3*
- *for redress: 7*
- *for help to ensure proper investigation of protected disclosures: 1*
- *for help to ensure that protected disclosures are acted upon: 0*
- *to hold wrongdoers to account: 0"*

a. Did the NGO take any direct action to protect whistleblowers from reprisal in response to the three requests for protection from reprisal?

For example, did the NGO contact the employers and ask that any reprisal should cease?

b. Did the NGO take any direct action to facilitate redress for whistleblowers in response to the seven requests for redress?

For example, did the NGO contact the employers to request that redress be provided?

Has the NGO asked any NHS regulators to issue a direction to employers to ensure that detriment to whistleblowers was remedied?

c. Did the NGO take any direct action to ensure that whistleblowers' concerns were properly investigated, in response to the request for such help?

For example, did the NGO contact the employer to request proper investigation of the concerns?

### Our Answer

In response we refer you to the answer that we gave to question 3 of your previous Freedom of Information Act request to which this request relates. In that answer we explained that 'In response to requests for assistance the NGO has ... responded in accordance with our remit'.

Principle 15 of the Francis Freedom to Speak Up report, published in 2015, which states, sets out the role of the National Guardian.

#### 'Principle 15 External Review

There should be an Independent National Officer resourced jointly by national systems regulators and oversight bodies and authorised by them to carry out the functions described in this report, namely

- review the handling of concerns raised by NHS workers, and/or the treatment of the person or people who spoke up where there is cause for believing that this has not been in accordance with good practice
- advise NHS organisations to take appropriate action where they have failed to follow good practice, or advise the relevant systems regulator to make a direction to that effect
- act as a support for Freedom to Speak Up Guardians
- provide national leadership on issues relating to raising concerns by NHS workers
- offer guidance on good practice about handling concerns
- publish reports on the activities of this office

In principle 15, Sir Robert Francis also made clear that the remit of the National Guardian's Office should not include intervention in the cases of individuals:

‘Paragraph 77

‘I want to emphasise I am not proposing an office to take over the investigation of concerns, nor is this a means by which a whistleblower can circumvent existing authorised processes for raising and addressing concerns. It is also not intended to replace existing legal remedies. I do not suggest that the INO should review, still less investigate historic cases.’

The department of Health published its formal response to the Francis report in July 2015 its own report entitled ‘Learning not Blaming.’ In that report it stated:

‘Paragraph 21

The Government have accepted in principle the recommendations made by Sir Robert Francis QC in his Freedom to Speak Up report.’

Links to the Francis Review and the Learning not Blaming report can be found in the annex below, for your reference.

Therefore, you will see from our remit, as described by the Francis review and endorsed by the government does not include intervention in the cases of individuals.

We have interpreted each of your questions (a), (b) and (c) above as asking about different types of intervention that the National Guardian’s Office may have taken in response to requests of help we have received. As explained, as it is not in our remit to intervene in cases, whether in the manner you have described, or in any other fashion, our answer to each of your questions is no.

## Question 2

In your reply [to my previous request under the Freedom of Information Act] you stated:

*“The requests for review and assistance were from the following sources:*

- Current NHS workers*
- Former NHS workers*
- Staff from NHS Improvement*
- Staff from Care Quality Commission*
- Staff from Healthwatch*
- Members of the public”*

Please give the numbers of requests from each of these sources.

## Our Answer

The number of requests received for review from each of the sources is as follows:

<b>Sources of requests</b>	<b>Number of requests</b>
Current NHS workers	16
Former NHS workers	14
Staff from NHS Improvement	1
Staff from Care Quality Commission	2
Staff from Healthwatch	2
Members of the public	2
<b>Total</b>	<b>37</b>

<b>Sources of request</b>	<b>Number of requests</b>
Current NHS workers	7
Former NHS workers	4
<b>Total</b>	<b>11</b>

The National Guardian's Office defines workers who seek support from us as individuals who have 'spoken up' to us, rather than as 'whistleblowers' We use this term because it encompasses the widest possible range of workers in secondary care who want support to speak up. Therefore all the workers who have contacted us for support have spoken up to us.

### Question 3

In your reply you stated that twelve requests for case review have been declined:

*"We have so far declined 12 cases."*

Please advise of the source of these requests for review of these 12 cases and how many of these requests came from whistleblowers.

Please also advise of the NGO's grounds for rejecting these 12 requests for case review.

Please also clarify an apparent anomaly. The NGO has so far only announced three case reviews, two now completed (Southport and Ormskirk and Northern Lincolnshire and Goole) and a third pending (Derbyshire Community Health Services NHS Trust). However, the NGO has disclosed that it received 37 requests for case review, and declined to review 12 cases. How is it that 25 requests for case review were accepted, but the National Guardian has announced only three case reviews?

Please advise how many requests for case review the NGO received in relation to:

- a. Southport and Ormskirk Hospital NHS Trust
- b. Northern Lincolnshire and Goole NHS Foundation Trust
- c. Derbyshire Community Health Services NHS Trust

prior to announcing the case reviews at these three trusts.

### Our Answer

#### Number of cases declined

The sources of the 12 declined requests are as follows:

<b>Source of referrals</b>	<b>Number of referrals</b>
Current NHS or foundation trust worker (secondary care)	1
Former NHS or foundation trust worker (secondary care)	9
Current or former other NHS workers	1
Regulators and other agencies	1
<b>Total</b>	<b>12</b>

In terms of the number of those referrals that came from whistleblowers, we refer you to the answer in Question 2 above regarding terminology. Therefore the number of referrals we declined that were from trust workers or former trust workers is 10.

The criteria we use to select cases are set out in the attached case review summary document, a link to which is in the annex below. In addition, we currently do not accept cases where there is an outstanding decision to be made in respect of the individual's case, for example where the matter is subject of an employment tribunal. This is to help ensure that the outcome of that tribunal is not prejudiced by a simultaneous case review of the same matter.

Of the 12 cases that we have declined to review the grounds were as follows:

<b>Reason for declining</b>	<b>Number of referrals declined</b>
Referrer ceased working for the NHS longer than 2 years ago	2
Insufficient learning to be obtained from a review	6
The existence of an outstanding decision to be made	3
Referral does not relate to a NHS trust	1
<b>Total</b>	<b>12</b>

### Referral number anomaly

Total case referrals	37
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Status of referrals:

Referrals accepted	25
Referrals declined	12
Total	37

Status of referrals that have been accepted:

Completed	8
Proceeding	1
Pending	16
Declined	12
<b>Total</b>	<b>37</b>

We complete reviews as we have the capacity to do so. Therefore some reviews are pending.

Once we announce our reviews we usually have individuals approach us to also share their experiences of speaking up at the trust where we are carrying out our review. These are counted as separate and additional referrals to the initial referral to review the trust. This is because we regard the individual experience of each individual worker who has referred their case to us as equally important as the referral to review the whole trust.

Therefore, the case review report relating to Southport and Ormskirk NHS Trust, for example, encompasses three referrals in total: one to review the whole trust and two for each subsequent referral from individuals.

### Referrals received prior to announcement

Southport and Ormskirk NHS Trust	1
Northern Lincolnshire and Goole NHS Foundation Trust	1
Derbyshire Community Health Service Foundation Trust	1

In respect of Southport and Ormskirk NHS Trust and Northern Lincolnshire and Goole NHS Foundation Trust selection to review these trusts was also on the basis of corroborating information, including staff surveys in the respective trusts, to indicate that staff did not always feel supported to speak up.

#### Question 4

Please disclose a copy of the National Guardian's feedback form.

Please advise how many feedback forms has the NGO received.

Please advise why the NGO is not sending feedback forms to all whistleblowers who have sought help from the Office, but whose cases were not accepted for review?

This seems an unwarranted exclusion which will skew the results in the NGO's favour and will give a more positive impression of the Office than is the case.

#### Our Answer

A link to the feedback form you have requested is attached in the annex below.

To date the NGO has not received any forms returned. We will continue to look at how we obtain feedback from individuals who have participated in reviews to help ensure we receive as much information as possible.

We seek feedback to refine the case review programme. Therefore, we do not send feedback forms to individuals whose cases will not going to be reviewed.

However, as described in our answer to question 5 in your previous Freedom of information Act request, a formal evaluation of the 12 month pilot process will take place, following its completion in June this year. Its purpose is to identify how effectively the process has operated and whether any improvements are required. As part of this process the views of individuals whose referrals we did not accept will be sought.

#### **B. NGO Complaints and Internal Review procedure**

If you are not satisfied with our handling of your request, then you may request an internal review.

Please clearly indicate that you wish for a review to be conducted and state the reason(s) for requesting the review.

Please be aware that the review process will focus upon our handling of your request and whether the National Guardian's Office has complied with the requirements of the Freedom of Information Act 2000. The internal review process should not be used to raise concerns about the internal processes of other NGO functions.

To request an internal review you can contact via the email or postal addresses below. Where requesting a review please quote the reference number at the top of this letter.

Care Quality Commission  
Freedom of Information Act Reviews  
151 Buckingham Palace Road  
SW1W 9SZ

[enquiries@nationalguardianoffice.org.uk](mailto:enquiries@nationalguardianoffice.org.uk)

Further rights of appeal exist to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000 once the NGO's internal appeals process has been exhausted.

The contact details are:  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF  
Telephone Helpline: 01625 545 745

Website: [www.ico.org.uk](http://www.ico.org.uk)

## **Annex**

Below are web links to the documents referred to above:

1. Francis Freedom to Speak Up review

[http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU\\_web.pdf](http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf)

2. Government response to the Freedom to Speak Up review

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445640/Learning\\_not\\_blaming\\_acc.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445640/Learning_not_blaming_acc.pdf)

3. National Guardian Office case review summary (including acceptance criteria)

<http://www.cqc.org.uk/national-guardians-office/content/case-reviews>