

A summary of
speaking up learning
and actions in
response

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Summary:

1. The National Guardian's Office (NGO) reviewed the handling of two speaking up cases referred to it by workers from Northwest Ambulance Service NHS Trust ('the trust,') as the workers' referral information indicated that the trust's response to their speaking up had not been in accordance with good practice.
2. The office decided to review the cases referred to it because of the potential important learning that could be obtained.
3. The NGO visited the trust to gather information for its review in January and February 2019. It then held discussions with the trust about aspects of that information, before returning in May 2019 with colleagues from NHS Improvement¹ to discuss the provisional findings of the review with trust leaders and to agree actions in response.
4. The trust supported the review process by providing all requested information and by participating fully in the engagement process to discuss the review's findings.
5. As part of the review, NGO staff interviewed the workers who had referred their cases to the office and those in the trust responsible for responding to the matters they had originally raised. In addition, we met with senior leaders responsible for the trust's speaking up arrangements. The review also looked at relevant speaking up policies and procedures and how the trust had implemented the Freedom to Speak Up Guardian role.
6. At the time of the review the Trust had two full time Freedom to Speak Up Guardians, supported by a number of champions across the Trust, a lead Executive Director and a lead Non-Executive Director of Speaking Up. There were a range of policies and procedures in place to support the speaking up culture and evidence of both training and effective Board reporting.
7. The review found areas where the trust's response to the issues raised by the workers could be improved, including in relation to providing feedback on the progress of the trust's investigation into their concerns.
8. The review also found that there was lack of clarity among workers about the scope of the Freedom to Speak Up Guardian role and what matters they could support workers to raise.
9. In response to the potential lack of clarity, the NGO recommended that the trust developed a single policy to describe the available support and procedures in relation to speaking up.

¹ From 1st April 2019 NHS England and NHS Improvement are working together as a single organisation; see - <https://improvement.nhs.uk/>

10. A central feature of the review was an engagement process, involving the NGO, the trust's leaders and NHS Improvement, to discuss the review's findings and agree actions in response to its findings.
11. The review's findings and agreed actions are set out in a table below. Additional information from the NGO about the role of Freedom to Speak Up Guardians is also set out in Annex A.

The National Guardian's Office case review engagement process

12. The NGO trialled the engagement process described at paragraph 10 above as part of its revision of how it responds to the case review referrals it receives. Information on the NGO's revised case review process will be available on its webpages later in 2019.
13. The principal objective of the engagement process was to work in partnership with the referrers, the trust and NHS Improvement to ensure that a helpful outcome was achieved, which provided learning for the trust and the rest of the system.

Acknowledgements and thanks

14. We would like to thank the following individuals and organisations for their help and assistance in the completion of the report:
 - Trust workers who have shared their experiences of speaking up in the organisation
 - The trust's Freedom to Speak Up Guardians
 - The leaders of the trust
 - NHS Improvement

Findings and agreed actions

15. A summary of the review's findings is set out below, with the trust's actions in response to those findings. Additional information is provided in Annex A in relation to the findings in part 1.
16. In addition to those actions, the National Guardian's Office will also be revising its guidance on the recording of Guardians' cases, following issues raised during the review about the confidentiality of such records and access to them.
17. NHS Improvement will oversee the delivery of the trust's agreed actions and provide updates to the NGO as to the progress of their implementation.
18. Consistent with other NGO review reports, the office expects other NHS trusts to identify where the findings of this review apply to their own circumstances and take appropriate action to apply the learning described. For clarity, when making this decision, other trusts should refer to the report's findings, rather than the actions of the trust in response, as they apply to that trust's particular circumstances in this case.

What will happen next

19. The National Guardian's Office will continue to provide ongoing support to the trust, through its training and guidance for those delivering Freedom to Speak Up in the organisation.

Review findings and comments	Actions in response to findings
<p>1. Speaking up policies</p> <p>The trust had two policies covering speaking up:</p> <ul style="list-style-type: none"> (i) 'Raising Concerns at Work (Whistle Blowing) Policy and Procedure', based on the Public Interest Disclosure Act.² (ii) 'Freedom to Speak Up Policy', based on the 'Raising Concerns Policy for the NHS' produced by NHS Improvement.³ <p>The trust had developed the second policy as part of improvement work to respond to staff who raise issues.</p> <p>The purpose of a speaking up policy is to set out how workers can speak up and the support they can expect when they do so. Such policies include options for workers about who they can speak up to, including their line manager, supervisor, Freedom to Speak Up Guardian or others.</p> <p>They should be written in a way that is accessible, easily understood, and that encourages workers to speak up.</p> <p>The existence of multiple policies in the trust does not promote these objectives.</p> <p>The policies seen in the review included a focus on The Public Interest Disclosure Act. This has only limited relevance to speaking up culture and, therefore, this emphasis does not add to the clarity of the policies.</p>	<p>The trust's actions in response are:</p> <ul style="list-style-type: none"> 1.1 Merge the two policies based around the current 'Freedom to Speak Up Policy' in relation to all matters raised by its workers. 1.2 Revise its Freedom to Speak Up Policy to reflect the content of the updated national policy, once NHS Improvement has completed its revision of the policy. 1.3 Advise all its workers of any revisions made to its policies which support its workers to speak up.

² <https://www.legislation.gov.uk/ukpga/1998/23/contents>

³ https://improvement.nhs.uk/documents/27/whistleblowing_policy_final.pdf

<p>A review by NHS Improvement of the national speaking up policy is expected to take place later in 2020.</p> <p>In addition, the NGO has produced a policy review framework to help organisations ensure that their speaking up policies clearly set out how their workers can speak up, to who and the support they will receive. This framework will be available soon on the NGO's webpages.</p> <p>We acknowledge the trust's recent attempts to identify learning from the speaking up cases at the centre of the NGO review and to improve processes to support speaking up.</p>	
<p>2. The scope of support from Freedom to Speak Up Guardians</p> <p>There was a lack of clarity regarding the scope of the role of the Freedom to Speak Up Guardians in the trust and whether there were certain types of issues that it was not within the Guardian's remit to support workers to raise.</p> <p>The remit of Freedom to Speak Up Guardians, as set out in guidance from the National Guardian's Office⁴, is to provide support for workers to speak up, regardless of the type of matter involved.</p> <p>Further information about the scope of the Guardian role is set out in Annex A below.</p> <p>In response the trust told our review that they acknowledge that there had been a lack of clarity about the arrangements for managing cases raised through FTSU which are then investigated through HR processes, but it has always supported FTSU as a route to raise any type of concern.</p>	<p>The trust action in response is:</p> <p>2.1 The trust's new speaking up policy will make it clear that all workers can seek support from the trust Freedom to Speak Up Guardian about any issue.</p> <p>2.2 FTSU awareness has been delivered through mandatory training and is included at induction, and the Trust will continue to look for positive opportunities to train and promote FTSU.</p>

⁴ https://www.cqc.org.uk/sites/default/files/20180213_ngo_freedom_to_speak_up_guardian_id_march2018_v5.pdf

<p>The trust also said it had identified learning from recent speaking up cases and had developed agreed protocols for ensuring that cases raised through the Freedom to Speak Up Guardian continue to be supported by them, regardless of the process through which the investigation was managed.</p> <p>Changes have already been made to the disciplinary policy and associated standard letters, to ensure that the right of access to the FTSU guardian is clear and other policies will be reviewed.</p>	
<p>3. Thanking workers for speaking up</p> <p>Two trust workers, who spoke up about serious issues concerning staff safety, reported that they had not been thanked for speaking up.</p> <p>The trust view on this point was different but acknowledged the workers' perceptions on the matter.</p> <p>This was not managed as well as it could have been in accordance with good practice, or the Freedom to Speak Up policy for the NHS.</p>	<p>The trust action in response is:</p> <p>3.1 The trust's new speaking up policy will include a reference to thanking all workers who speak up.</p> <p>3.2 The trust is continuing to train managers in investigation training to address this issue.</p>
<p>4. The independence of investigators into speaking up matters</p> <p>An investigation into the issues raised by the two workers was undertaken by an individual who both workers regarded as potentially conflicted and therefore not suitably independent.</p>	<p>The trust's actions in response are:</p> <p>The trust will review its relevant policies in relation to investigations to ensure that –</p> <p>4.1 they take proper and reasonable account of workers' objections relating to the perceived independence of investigators, and that a clear rationale for any decisions regarding investigators is given to workers in response to such objections.</p>

The trust told our review that it was aware of the potential conflict of interest. It explained it had assessed the risk associated with this and determined that it was not a conflict. This decision was made in line with its policies.

It added that its investigation processes include an independent, senior review which looks at the quality of investigation, the outcome and recommendations and provides an extra layer of scrutiny and assurance as to fairness and objectivity.

However, trust leaders acknowledged it could have done more to address the workers' concerns.

The National Guardian's Office, in a previous case review report,⁵ has recommended that the Department of Health and Social Care commissions guidance on investigations for NHS trusts.

This should include guidance on selecting suitably independent investigators.

The national speaking up policy for the NHS makes clear that investigations into matters raised by workers should be conducted by a 'suitably independent' person.

Published guidance on conducting investigations from the Advisory, Conciliation and Arbitration Service⁶ (ACAS) emphasises the need for processes to be conducted in 'fair' and 'reasonable' manner. It states that the perceptions of bias 'should be avoided wherever possible.'

4.2 they provide more transparency about the way in which the trust will manage potential conflicts of interest relating to investigations.

⁵ https://www.cqc.org.uk/sites/default/files/20180620_ngo_derbyshirecommunityhealthservices_nhsft-case_review_speaking_up_processes_policies_culture.pdf

⁶ https://www.acas.org.uk/media/4483/Conducting-workplaceinvestigations/pdf/Conducting_Workplace_Investigations.pdf

<p>It also sets out questions to be considered when choosing an investigator, which include considering whether the appointment would raise any concerns regarding conflicts of interest.</p> <p>ACAS provides training based on that guidance. Training for investigations specifically into clinical practice is also available from NHS Resolution.⁷</p>	
<p>5. Timeliness and handling of investigations</p> <p>In respect of the above investigation, the workers concerned felt they received insufficient feedback during the investigation, including as to its progress and how long it might take.</p> <p>The workers received formal feedback on the outcome of the investigation six months after first speaking up.</p> <p>The workers concerned were not told under which policy or procedure the trust was investigating their concerns.</p> <p>There was also evidence that staff involved in the investigation were unclear about this.</p> <p>The national speaking up policy for the NHS makes clear that workers should be kept updated with the progress of investigations.</p>	<p>The trust's actions in response are:</p> <p>5.1 Ensure its revised speaking up policy includes the commitment to investigations being completed within reasonable timescales and for workers to be kept regularly informed of progress, particularly in circumstances where timescales become extended.</p> <p>5.2 Continue the work it has commenced to improve tracking of HR-related investigations and that this is used proactively to provide oversight of investigation process.</p> <p>5.3 Ensure that workers who speak up are clear on the policies under which their complaints are being investigated.</p> <p>5.4 Review the trusts own protocols setting out the working arrangements between FTSUGs and HR to ensure that these principles are embedded.</p>

⁷ <https://resolution.nhs.uk/ppa-training/>

<p>The trust's disciplinary processes already include a commitment to delivering investigations within a reasonable timeframe, taking account of the complexity of the case and its oversight and visibility of this is being improved through the implementation of a new HR case management system.</p>	
<p>6. Perceived attitudes towards female workers</p> <p>Some who spoke to our review expressed the belief that there were examples of poor attitudes demonstrated towards female workers who spoke up.</p> <p>In response, the trust provided evidence to demonstrate that it took the issue of equality, diversity and inclusion seriously and that, overall, its staff survey results show an improving picture in respect of the experience of women in the workplace.</p>	<p>The trust will continue its work to improve the experience of women in the workplace, including:</p> <p>6.1 delivering 'women into leadership' programmes, that support the progression for women leaders in operational roles.</p> <p>6.2 drawing up a gender action plan focused on improving the gender pay gap and the experience of women in the workplace.</p> <p>6.3 rolling-out a range of training including Dignity at Work Training, Managing Healthy Workplace training, the Trusts 'BE Think Do' leadership training and a new course designed to tackle the issues of inappropriate banter in the workplace.</p> <p>6.4 creating a joint management and staff side working group reviewing the trust's approach to tackling conflict in the workplace.</p> <p>6.5 rolling-out bespoke leadership and management training within the service line where these workers worked to help enable the management team to support employees effectively.</p> <p>6.6 utilizing a range of support interventions as part of its Health and Wellbeing Strategy.</p>

	<p>The Trust is also intending to implement a Working Towards an Outstanding Culture survey/audit. The work will be carried out and analysed by an independent organisation who are leaders in this field.</p> <p>The work will be designed through engagement with staff and will aim to focus on the cultural and leadership changes required to improved employee experience and well-being.</p>
<p>7. Mediation</p> <p>Following the investigation process described above, the trust offered mediation to the workers involved in the investigation.</p> <p>The trust explained that they did this entirely in accordance with their policies and procedures and that the process was entirely voluntary.</p> <p>The workers whose speaking up had triggered the investigation said that they did not want mediation.</p> <p>A staff member involved in the handling of the matter of mediation commented that the trust could have better communicated the proposed use of mediation to the workers concerned.</p>	<p>The trust's actions in response are:</p> <p>7.1 Taking appropriate steps to ensure that managers and HR staff are up to date with existing guidance on explaining the value of mediation to workers.</p>
<p>8. Freedom to Speak Up and 'advocacy'</p> <p>The trust had appointed 12 volunteer FTSU 'champions' to support the work of the trust FTSU Guardians.</p> <p>They were described by some of the staff we spoke to as 'advocates.'</p> <p>It was clarified that the champions did not act as advocates or representatives for workers.</p>	<p>The trust's actions in response are:</p> <p>8.1 The trust will ensure that the role of 'champion' is properly reflected in the policy review referred to in point 1 above.</p> <p>8.2 The trust will also engage with the existing champions to ensure that their roles and responsibilities are clear, especially when individuals hold more than one voluntary role which may create conflict or create</p>

<p>Other than the name, the job roles' description was consistent with the function of champions and ambassadors as seen in other trusts.</p> <p>Concern was also expressed in some parts of the organisation that individuals with responsibility for supporting speaking up in the trust acted, at times, more as an 'advocate' for workers, where they appeared to take the side of a member of staff.</p> <p>The NGO is clear in its training⁸ and published guidance⁹ that those with responsibility for supporting workers to speak up must act impartially, ensuring that they 'remain objective and unbiased.'</p> <p>Where individuals responsible for supporting speaking up act or are perceived as acting as advocates for the views of individuals, they risk undermining the purpose and integrity of their speaking up position.</p> <p>At the same time, where those responsible for supporting workers to speak up do so in accordance with published training and guidance, in a robust and impartial way, trusts must ensure that they respond effectively to this support in accordance with good practice.</p> <p>The NGO will offer additional support to those with a speaking up role in the trust to address these matters.</p>	<p>confusion for those workers seeking support, such as peer supporter roles.</p> <hr/>
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⁸ https://www.cqc.org.uk/sites/default/files/20180419_ngo_education_training_guide.pdf

⁹ https://www.cqc.org.uk/sites/default/files/20180213_ngo_freedom_to_speak_up_guardian_id_march2018_v5.pdf

Annex A:

The scope of the role of Freedom to Speak Up Guardians

The purpose of the Freedom to Speak Up Guardian role is set out in a job description, issued by the National Guardian's Office, issued in March 2018,¹⁰ which states:

Freedom to Speak Up Guardians help:

- Protect patient safety and the quality of care
- Improve the experience of workers
- Promote learning and improvement

By ensuring that:

- Workers are supported to speak up
- Barriers to speaking up are addressed
- A positive speaking up culture is fostered
- Issues raised are used as opportunities for learning and improvement

As implied by this summary, the range of issues that a Freedom to Speak Up Guardian can support a worker to raise is not restricted to any particular type and instead covers a wide range of matters, including, but not limited to:

- concerns about unsafe clinical practice
- staffing and resource levels
- cultural concerns
- bullying and harassment
- training and improvement ideas
- personal employment issues
- dignity at work issues

The NGO has observed in its case reviews that a barrier to speaking up has been created where workers are told by their employer that the matters they wish to speak up about are not within the scope of the Guardian to support.¹¹

Many of the matters a Guardian can support a worker to raise will carry their own set of policies and procedures. In such circumstances, the Guardian can help a worker explore the best way to speak up under those processes, including helping them to understand their rights and obligations under that policy.

As stated in the job description, Guardians also promote learning and improvement within their organisation, helping to ensure that lessons learned from the issues raised by workers are actioned appropriately to deliver lasting improvement.

¹⁰ https://www.cqc.org.uk/sites/default/files/20180213_ngo_freedom_to_speak_up_guardian_jd_march2018_v5.pdf

¹¹ <https://www.cqc.org.uk/sites/default/files/201801107-Nottinghamshire%20Healthcare%20NHS%20Foundation%20Trust%20A%20review%20of%20the%20handling%20of%20speaking%20up%20cases.pdf>

The job description also makes it clear that Freedom to Speak Up Guardians should act '*independently, impartially and objectively.*' They should therefore neither act, nor be seen to act, as either the representative of an individual worker, or for an organisation, but instead be an independent arbiter for their organisation's speaking up processes, helping to lead cultural change and improvement.