



# Freedom to Speak Up in Primary Care

Consultation Response

Choose an item.

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# **Freedom to speak up in Primary Care**

## **Consultation Response**

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## **Equality and Health Inequalities statement**

Promoting equality and addressing health inequalities are at the heart of NHS England's values. Throughout the development of the policies and processes cited in this document, we have:

- Given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it; and
- Given regard to the need to reduce inequalities between patients in access to, and outcomes from healthcare services and to ensure services are provided in an integrated way where this might reduce health inequalities

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## 1 Executive summary

In spring 2016 we ran a consultation on guidance for the implementation of Freedom to Speak Up within primary care. It set out draft principals and actions to apply to all providers of NHS primary care services (GP practices, dentists, opticians and community pharmacists) to support the raising of concerns by staff about the delivery of services to patients.

Thank you to everyone who responded to the consultation. We have now taken account of all the consultation responses and have developed final guidance that is published alongside this response. The consultation showed that many of the principles of Freedom to Speak Up complement existing practices within primary care, and are also aligned with the requirements of professional bodies and regulators.

We expect that all primary care providers will have reviewed and updated their local policies to take account of this guidance by 1 September 2017 to ensure a level of consistency nationally, whilst recognising the need for flexibility locally in terms of process.

## 2 Introduction

The [Freedom to Speak Up review](#) by Sir Robert Francis QC<sup>1</sup> reviewed the experience of whistleblowers in the NHS, concluding that there is a serious issue that “requires urgent attention if staff are to play their full part in maintaining a safe and effective service for patients”. Sir Robert made a number of recommendations to deliver a more consistent approach to whistleblowing across the NHS and a co-ordinated drive to create the right culture. These recommendations have been accepted by the Department of Health and its arms-length bodies in principle. The guidance being developed for primary care also takes into account the [system wide whistleblowing policy](#) that was consulted on and agreed by NHS Improvement and NHS England early in 2016.

In consulting upon this guidance, NHS England is aware that many primary care providers already have well established procedures in place. The best providers seek to ensure there are opportunities for their staff to raise any concern they may have routinely and early. Managing concerns early means there is little risk of escalation which risk directly impacting patients and the public. Problems raised in primary care can include:

- Poor clinical practice or other malpractice which may harm patients;
- Failure to safeguard patients;
- Maladministration of medications;
- Untrained or poorly trained staff;
- Lack of policies creating a risk of harm.

Freedom to Speak Up recognised that many such concerns are raised and managed appropriately everyday but there are too many that are not and action is needed to improve matters.

The report highlighted some of the unique challenges that exist in primary care and how some individuals can feel particularly isolated because:

- Many work in small independent units and it is harder for them to raise concerns confidentially or anonymously
- there is a sense of greater risk to their employment if they are raising concerns about someone who may be their direct employer
- working in ancillary and non-clinical roles, there are likely to be fewer options for raising concerns externally because they may not have access to a professional body or union.

This potential sense of isolation means it is important everyone working in primary care has access to someone outside of their line management chain to raise a concern with, or to seek advice and support from, particularly if their concern is about someone senior or their direct employer.

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<sup>1</sup> <https://www.gov.uk/government/publications/sir-robert-francis-freedom-to-speak-up-review>

### 3 The Consultation Process

The consultation ran from 1<sup>st</sup> April 2016 to 6<sup>th</sup> May 2016. The consultation document was publicly available on the NHS England website and was shared with the organisations, whistleblowers and GP partners and other primary care professional bodies who attended roundtable discussions or met with NHS England in spring 2016.

We received 54 responses to the consultation from a wide range of individuals including current and former NHS staff members and organisations including, trade unions, CCGs, local HealthWatch bodies, whistleblowing organisations and primary care providers.

As a part of the consultation NHS England requested specific feedback on a number of areas in order to shape the final guidance, and responses to these questions are covered below.

### 4 Response to Consultation Questions

#### 4.1 Policies within Primary Care

**Question:** *Our intention is that this guidance should be used by all primary care organisations in order to review and revise their own policies to support staff in raising concerns. Do you agree with this approach and do you feel the guidance is compatible with existing processes in different sectors of primary care, like general practice, dentistry, ophthalmology and community pharmacy?*

Respondents to the survey overwhelmingly felt that the guidance was compatible not only with existing practices in primary care providers, but also with the requirements of professional bodies and regulators. The Royal College of General Practitioners said that:

*“Many primary care providers already have well-established whistleblowing policies and procedures in place. Additionally, it is already the case that when a person in the NHS is aware that care is threatened, sub-standard or dangerous they have a duty to make these concerns known and for those in charge to assess and, if necessary, act. This process is called raising a concern and the duty of a doctor to do so is stipulated by the General Medical Council (GMC) in its guidance on Raising and acting on concerns about patient safety and in its Good Medical Practice Guide... Freedom to speak up in Primary Care usefully extends this work and is consistent with the RCGP’s 2013 position paper on Whistle Blowing in the NHS. It is a comprehensive, clear and broadly actionable document.”*

The GMC highlighted the fact that there is already an obligation on doctors to promote a positive culture, stating:

*“Our guidance, Good Medical Practice requires doctors to promote and encourage a culture that allows all staff to raise concerns openly and safely (paragraph 24). Also, doctors responsible for clinical governance or who have wider management responsibilities have a duty to help people report concerns and ensure that there are systems and policies in place to allow for full investigation of the concerns”*



Choose an item.

Other professional bodies confirmed that the proposals were in keeping with their arrangements including the General Pharmaceutical Council, the Optical Confederation and Local Optical Committee Support Unit (LOCSU) and the College of Optometrists (who confirmed the standard was in keeping with the [General Optical Council's whistleblowing policy](#) and also with the [College of Optometrists' Guidance for professional practice](#)).

The Royal College of Nursing (RCN) and the British Dental Association (BDA) stressed the importance of ensuring the guidance includes both flexibility and transparency in order to ensure compliance with all codes of conduct. From a regulatory perspective, the Care Quality Commission confirmed that:

*“The guidance and approach that is set out is compatible with the CQC’s regulatory approach as our inspection teams ask about the mechanisms in place for whistleblowing within practices.”*

## Conclusion

The responses received indicate that the guidance is inclusive and aligned with both current practice within primary care providers, and responsibilities professionals have under respective codes of conduct. It is vital that once implemented, monitoring continues to ensure that the guidance is flexible enough to remain consistent with all relevant codes of conduct.

## 4.2 Role of Freedom to Speak Up Guardians

**Question:** *The guidance suggests that primary care organisations should appoint Freedom to Speak Up Guardians to encourage and support staff in raising concerns and ensure that organisations are meeting the principles of Freedom to Speak Up. With the various structures of primary care, we have suggested different ways in which this could be achieved. Do you agree that primary care organisations should be asked to appoint Freedom to Speak Up Guardians?*

The draft guidance summarised both the proposed role of the Freedom to Speak Up Guardians and reporting arrangements for the role. The guidance proposed a flexible approach to the role of the Guardian, identifying a number of potential individuals who may be in a position to accept the role. Responses received to the consultation were generally supportive of this approach, with NHS Clinical Commissioners stating that:

*“The development and flexibility of having a Freedom to Speak Up Guardians is welcome in the guidance.”*

Pharmacy Voice agreed, stating that:

*“We agree that no one model can be universally applied to establish a Freedom to Speak Up Guardian, and welcome the range of options NHS England has put forward to support this function in primary care.”*

The RCN said that:



## Choose an item.

*"We welcome the identification of a range of external bodies with whom staff can raise concerns. Offering staff members a choice in bodies with whom they can raise concerns may allow them greater confidence and security that their concerns will be acknowledged and addressed."*

However, responses received also suggested that the need for flexibility needed to be balanced with the need for clear reporting arrangements for employees wishing to raise concerns. The CQC said that:

*"We are concerned with the multiple models suggested in the consultation document could be confusing for employees. To help achieve a common standard we would suggest that the role should be underpinned by a common framework, including person specifications, as well the opportunity to participate in a standard training programme. This would be a similar approach to how the Freedom to Speak up Guardians are being established in NHS Trusts."*

The need for a common standard was echoed by Patients First, who said that:

*"The role of the Guardian was not as fully developed as it should be within the guidance. The Guardian should have a role where he/she should monitor every case where a concern has been raised in order to perform the role envisaged by the Francis report"*

Some of the responses suggested that finding appropriate and truly independent individuals in small and potentially isolated practices would be difficult. Regarding the appointment of internal Guardians, the Local Medical Committee's in Wessex said that:

*"Not all organisations will be large enough to do this, e.g. small general practices"*

This opinion was echoed by (amongst others) The College of Optometrists, UNITE and the BDA who suggested Local Dental Committee's (LDCs) as an appropriate location for the Guardian.

The proposal contains options for Guardians to be independent (based outside of practices) and this was generally well received. HealthWatch Lincolnshire said that:

*"We particularly like the suggestions of possible peer to peer (or independent) Freedom to speak Guardians. This might work well for many small primary care providers where it is obvious who has spoken out (within a very small team), resulting in few employees feeling confident in doing so."*

Thurrock CCG agreed:

*"It should be made clear that where the organisation is small there needs to be an independent voice. Otherwise Guardians appointed with such a small organisation will just be paying lip service to the guidance rather than implementing something robust."*

This option was supported in the response received from the Department of Health, who also felt that Guardians should be based within prescribed bodies. However, some respondents identified the challenges that may exist when appointing Guardians outside of a practice. One GP practice responding to the consultation stated that:

*"I feel that staff would less trust someone outside their own organisation and not all staff might "agree" or "have faith" in the appointed Freedom to Speak Up Guardian"*

Choose an item.

East Leicestershire and Rutland CCG felt that if using Guardians based outside practices, a change in culture may be required, stating that:

*“Therefore, practices may use their local CCG Freedom to Speak Up Guardian. However, when implementing this policy, we need to be mindful that if the F2SU Guardian is someone outside of the organisation; this may mean a culture change for primary care organisations, which are not used to this level of external scrutiny.”*

A number of the responses received referred specifically to proposal that Guardians could be based within Clinical Commissioning Groups (CCGs). The CQC felt that:

*“There may also be merit in making the appointment at CCG level. The role could then interface with all primary care services ensuring there is a consistent approach across the country. This could help with the establishment of a network where Guardians are working in a similar way, and avoid confusion for staff in primary care”*

## Conclusion

The responses received to the consultation suggested that clarification was needed about the role that prescribed organisations and Freedom to Speak Up Guardians will play in the whistleblowing process in primary care.

On 1st April 2016, NHS England became a [‘prescribed person’](#) under the Public Interest Disclosure Order 1999, meaning primary care service staff working at GP surgeries, opticians, pharmacies and dental practices, can raise concerns about inappropriate activity directly. Details of how to raise concerns can be found [here](#). There are a number of other prescribed organisations within primary care, a current list along with contact details can be found [here](#). It is envisioned that in many cases, the role of local Freedom to Speak Up Guardians will be to ensure that organisations have clear policies for raising concerns in place and that individuals working in these practices know who to contact should they wish to raise concerns. In some larger practices we foresee that some Guardians may wish to go beyond this remit and investigate some concerns, however in many cases we suspect they will wish to signpost workers to the relevant prescribed organisation.

The proposal to take a flexible approach for who can act as a Freedom to Speak Up Guardian was generally well received and therefore it is proposed that this flexibility is included within the final guidance for primary care, given the strengthened national arrangements for reporting concerns described above.

A number of respondents identified the need for clarity on which individuals and organisations would be suitable for the Guardian (indeed, many responses identified individuals they felt suitable) and therefore further work will be undertaken by NHS England to provide clarity, building on the work underway within the National Guardian’s Office to support NHS Trusts.

## 4.3 Adoption of the guidance

**Question:** *The guidance suggests using existing mechanisms and duties rather than the use of national contracts to encourage the adoption of new policies in primary care. Do you agree with this approach?*

Choose an item.

Responses to this question were mixed. Some respondents felt that use of the contract would be overly bureaucratic and therefore unlikely to encourage the cultural change most regarded as necessary to embed the principles of 'Freedom to Speak Up' in primary care, whereas others stressed the importance of using all the mechanisms available.

HealthWatch Lincolnshire said that:

*"This approach is far more effective, peer to peer support is much cheaper, utilising existing systems can only be a good thing."*

Others however, felt that using national contracts was an effective mechanism for ensuring compliance. The RCN said that:

*"We remain in favour of a more immediate integration into national contracts to encourage policy adoption. Using existing mechanisms (such as the NHS Constitution) and duties could avoid duplication, but it is essential to ensure that the enforcement mechanisms developed are robust and realistic."*

The National Guardians Office also favoured using national contracts, stating that:

*"The National Guardian's Office agrees that culture change is best achieved through stakeholder buy-in and voluntary cooperation in pursuit of a shared vision for supporting staff in speaking up. Yet it is also clear that providers have multiple priorities to action and there is a risk that this initiative may not be implemented, particularly when resources are limited."*

Whilst Thurrock CCG said that:

*"PCOs are such busy organisations, I'm unsure that implementing the guidance would be successful if it was only 'encouraged' rather than enforced through contractual means."*

Across many of the responses received there was a concern about placing an additional burden on small primary care providers. The Optical Confederation and Local Optical Committee Support Unit (LOCSU) said that:

*"The guidance still represents an unfunded additional burden on the optical front-line which will be ill-received by practices at a time when cost pressures are mounting and General Ophthalmic Service fees (which account for two thirds of sight tests) have been frozen"*

## **Conclusion**

The responses received to this question were mixed, with practices and primary care providers generally favouring non-contractual measures to establish the principles of the report and regulators feeling that use of the contract would ensure that the report's findings were prioritised.

As already identified, many of the practices and professions covered by the guidance have existing duties and codes of conduct which are aligned. It is also worth noting that for GP practices providing services that go beyond the scope of the GP contract, whistleblowing arrangements are already mentioned in the standard contracts used by Clinical Commissioning Groups. In addition, the national position is being strengthened with first NHS England and then Clinical Commissioning Groups becoming prescribed persons. Given the concern around placing an additional burden upon practices it is proposed that at this stage non-contractual measures are

used to help introduce the principles set out in the guidance into primary care organisations.

It is however important that NHS England continues to monitor implementation and reviews how effective the use of non-contractual measures has been. Furthermore, it is essential that NHS England works with primary care organisations to help embed the culture change that will be essential to the success of embedding the freedom to speak up in primary care.

#### 4.4 Support for primary care organisations

**Question:** *What support will primary care organisations need from NHS England in implementing this new guidance? In particular, how might NHS England support local Freedom to Speak Up Guardians?*

Respondents to the consultation felt the NHS could support the implementation of 'Freedom to Speak Up' in three ways, namely through guidance, through training and through the creation of a network for local Guardians.

The General Medical Council (GMC) agreed with the suggested support outlined in the draft guidance, stating that:

*"As suggested in the draft policy, development of case studies and scenarios to help staff understand what to do if they wish to raise a concern will be necessary to ensure that staff in primary care understand the mechanisms for raising and acting on concerns and how to use them. NHS England could support this by working collaboratively with primary care organisations to develop case studies and deliver a training package for staff. Continued engagement with primary care organisations will also be essential to ensure that the policy is being implemented effectively and that organisations are supporting the development of local freedom to speak up networks."*

The RCN agreed that training and support would be essential, stating that:

*"In particular, there will need to be sufficient training and support to allow the Freedom to Speak Up Guardians to act with authority and objectivity. This may include robust debriefing and supervision, dependent upon the complexity of the cases that are encountered. Peer support may be a useful tool in strengthening capacity and reducing feelings of isolation"*

Many respondents including LOCSU, the GMC and the RCGP highlighted the importance of establishing local networks to support Guardians.

#### Conclusion

To aid the implementation of 'Freedom to Speak Up' in primary care, NHS England is committed to supporting Guardians. This will take the form of training, guidance and resources, facilitating peer support and the sharing of best practice, to enhance the consistency in how the role of the Guardians is delivered.

It is anticipated that Clinical Commissioning Groups (CCGs) will become prescribed organisations in 2017, and NHS England will work with CCGs to produce a toolkit to help facilitate them taking on this role.

#### 4.5 Vulnerable groups

Choose an item.

**Question:** *The Freedom to Speak Up review looked at the experiences of vulnerable staff groups (e.g. locums and agency staff, students and trainees, BME groups and staff working in primary care) when raising concerns. We believe that this guidance will make it easier for all staff to raise concerns, including those who may be more vulnerable. Do you think it achieves this and, if not, what else could be included?*

Most of the responses received indicated that whilst having a framework in place for the raising of concerns in primary care would be beneficial to everyone, more could be done to assist vulnerable groups.

The CQC said that:

*“It would be useful if the guidance included a more explicit recommendation on the need to make it easier for more vulnerable groups to speak up, and some of the practical ways to achieve this based on existing good practice.”*

The GMC agreed, feeling that measures needed to be put in place to protect groups specifically identified in the Freedom to Speak Up report, stating:

*“No, it does not do enough for vulnerable staff to help them raise concerns. Although the draft policy goes a long way in providing a framework for staff within primary care to raise concerns and encourages leaders to support staff in raising concerns, further guidance could be provided for vulnerable groups such as locums and agency staff. These groups typically work ad-hoc and inconsistent hours across a number of primary care sites, which makes it difficult for them to establish a network of support to discuss potential areas of concern. Enhanced guidance could be provided about who these groups can speak to and the support networks available and we envisage that appointment of Freedom to Speak Up Guardians will ensure that groups such as locums and agency staff have access to a named contact who they can seek advice and guidance from.”*

This was supported by East Leicestershire and Rutland CCG:

*“The policy doesn’t really make explicit the duty regarding locums and agency staff. These are a vulnerable group of people in primary care, the policy also needs to be clear that vulnerable staff may wish to raise issues anonymously, and how they could do this.”*

The RCN felt that more needed to be done to support BME groups:

*“The protections established clearly benefit everyone working in primary care but do little to address the specific disadvantages that are faced by vulnerable groups including agency staff, students and BME groups. We are supportive of integrating mechanisms in the organisational policy review process to specifically engage with the appropriate networks and staff to determine what additional and specific steps need to be taken to ensure that the policy does in fact facilitate the ability of all staff to confidently and securely raise concerns.”*

## **Conclusion**

Responses received to the consultation suggested that whilst more needs to be done to support vulnerable staff groups, especially trainee doctors, temporary and locum staff and staff from a BME background. At present there is a shortage of evidence and good practice as to how this support is best provided. NHS England will therefore actively seek out learning from within the NHS and other sectors, and disseminate this learning in future guidance and in support materials issued to Freedom to Speak Up Guardians.

## 4.6 Added value

**Question:** *What else could be included in the guidance that would add value?*

Through the responses received, a number of areas were identified where further clarity was required. These included:

- **More detail around how concerns raised would be recorded:** Reporting requirements are included in the prescribed person regulations, which already apply to NHS England and are expected to apply to CCGs from 2017. Once regulations are published, NHS England will work closely with CCGs to ensure that they are clear about reporting requirements and other responsibilities.
- **Anonymous Whistleblowing:** In their response the RCN questioned how NHS England will work to ensure that the option of raising concerns anonymously is offered to individuals wishing to raise concerns. As a prescribed organisation NHS England will receive anonymous disclosures (as will all prescribed organisations), however it is worth noting that it is often more effective for disclosures to be made confidentially rather than anonymously. Raising a concern confidentially makes it easier for the organisation receiving the disclosure to follow it up. Where concerns are raised confidentially the identity of the individual raising concerns will not be disclosed without consent, unless there are legal reasons forcing the organisation to do so.

## 5 Culture

Outside of the areas where feedback on specific issues was requested, the overriding theme in the responses received was the importance of creating an open and honest culture which allowed individuals to feel comfortable raising concerns. The General Pharmaceutical Council said that:

*“Cultural change is also an important driver for confidence in raising concerns. This guidance should provide important leadership in playing a key role in driving, and reinforcing, the necessary cultural changes and is another important step in embedding a culture of openness and making it the everyday norm. We believe that no one organisation or individual can drive cultural change. It will take a joint effort from all involved; professionals and their leadership bodies, employers, education providers, regulators and governments.”*

Creating this culture is a cross-system challenge, and therefore NHS England will continue to work with the National Guardian, partner organisations and Arm’s Length Bodies to promote this culture across the whole National Health Service.

Choose an item.

## **6 Conclusion**

We are grateful for all the responses we have received to this consultation and believe the guidance will help to normalise staff raising concerns in primary care in the NHS.

Final guidance for the implementation of Freedom to Speak Up in Primary Care can be found [here](#).



Choose an item.

## Annex A: Respondents to the consultation

The respondents to the consultation in spring 2016 were as follows:

- Allyson Beerstecher
- Amanda Bickle
- Anne Rothery
- BLM
- Dr Blythe Wilkinson
- Brendon Jiang
- The British Dental Association
- The British Medical Association
- The Care Quality Commission
- Catherine Leonard
- The College of Optometrists
- Cyan McCann
- The Department of Health
- East Leicestershire and Rutland Clinical Commissioning Group
- Dr Gareth Bryant
- The General Medical Council
- The General Pharmaceutical Council
- HealthWatch Lincolnshire
- Hillary Cullen
- Joan Pons Laplana
- Julie Fleckney-Jones
- Kit Byatt
- Laura Davis- ID Associates Ltd
- Mandy Neville
- Dr Mark Houghton
- Medical Defence Union
- NHS Clinical Commissioners
- NHS Sheffield CCG
- Parkinsons UK
- Patients First
- Pharmacy Voice
- Primary Care Optical Confederation & LOSCU
- Sandra Geddes
- The Royal College of General Practitioners
- The Royal College of Nursing
- Thurrock CCG
- UNITE the Union
- Wrightington, Wigan and Leigh NHS Foundation Trust

Many anonymous responses to the consultation were also received.