

Freedom to speak up: whistleblowing policy for the NHS Draft for consultation

Issued on 16 November 2015

Deadline for responses: 8 January 2016

Monitor publication code: IRG 34/15

NHS England Publications Gateway Reference: 04270

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Introduction

This consultation seeks your views on the proposed single national whistleblowing policy for the NHS in England. It sets out the draft policy created by Monitor, the NHS Trust Development Authority (TDA) and NHS England with contributions from stakeholders and then the consultation questions.

The *Freedom to Speak Up* review by Sir Robert Francis QC reviewed the experience of whistleblowing in the NHS. His conclusion was that there is a serious issue in the NHS with whistleblowing 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. The Department of Health and its arm’s-length bodies have accepted the recommendations in principle.

One of the recommendations was for a single national integrated whistleblowing policy to help normalise the raising of concerns. Sir Robert also set out a vision for what it should feel like for individuals when they raise a concern. We fully support this and having listened to organisations representing whistleblowers and employers, we believe this policy expresses the spirit and intent of the *Freedom to Speak Up* vision. It draws on the model policies and guidance produced by [Public Concern at Work](#)¹ and the [Whistleblowing Helpline for the NHS and social care](#).²

The purpose of the policy

Our intention is that the policy should be adopted by all NHS organisations in England except for primary care providers.³ We hope it will also be adopted by independent providers of NHS healthcare.

We recognise that some NHS organisations already have good policies supporting staff to raise concerns, but overall the standard is variable. The aim of a single national policy is to ensure a level of consistency across the NHS. Our intention is that NHS organisations will have their own local process that sits beneath the national policy, and reflects their own size and set up. Provided the local process adheres to the requirements set out in the national policy, there is room for flexibility locally. We appreciate, for example, that some organisations already go beyond good practice and this national policy should not inhibit that.

It is important that all staff, including those who may be more vulnerable, feel able to raise concerns. Therefore, we strongly encourage all NHS organisations to conduct

¹ Public Concern at Work: www.pcaw.org.uk/

² Whistleblowing helpline: <http://wbhelpline.org.uk/>

³ We will publish a more tailored version for primary care providers in due course. NHS England will consult on this shortly.

an equalities impact assessment when developing or reviewing their local process in the light of this national policy.

How to respond

We would like to hear from former and current NHS staff, particularly those with experience of raising concerns at work, providers, service users and patients, commissioners and other interested parties in response to this draft version of the policy. We will use your responses to inform the final policy.

On page 12 we have set out some specific areas we would appreciate comments on. Please submit your suggestions and comments by **5pm on 8 January 2016** online [here](#), or by email to: enquiries@monitor.gov.uk.

Confidentiality

We will publish a summary of the responses we receive on the GOV.UK website. You can request to keep your name and/or organisation confidential and excluded from the published summary of responses. If you would like any part of the content of your response (instead of or as well as your identity) to be kept confidential, please let us know and make it obvious by marking in your response which parts we should keep confidential.

We will do our best to meet your request, and will process your personal data in accordance with the Data Protection Act. In most circumstances this will mean that your personal data will not be disclosed to third parties. However, because we are a public body subject to Freedom of Information legislation we cannot guarantee that we will not be obliged to release your response even if you say it is confidential.

Next steps

We will consider the responses and publish a summary of the responses before or alongside the published final version of the policy, and it will be placed on the GOV.UK website.

Thank you for completing this consultation. If you have queries or concerns relating to the process please contact enquiries@monitor.gov.uk.

Freedom to speak up: whistleblowing policy for the NHS: draft policy

Speak up – we will listen

Speaking up about any concern you have at work is really important. In fact, it's vital because it will help us to keep improving our services for all patients and the working environment for our staff.

You may feel worried about raising a concern, and we understand this. But please don't be put off. Our chairman, chief executive and the entire board of directors are committed to an open and honest culture. We will investigate what you say and you will always have access to the support you need.

This policy

This 'standard integrated policy' was a recommendation of the review by Sir Robert Francis into whistleblowing in the NHS, which identified awful experiences of people being met with obstruction, defensiveness and hostility when they tried to raise concerns at work. This policy (produced by Monitor, the NHS Trust Development Authority and NHS England) is being adopted by all NHS organisations in England to help normalise the raising of concerns for the benefit of all patients.

Our local process *[include hyperlink]* adheres to the principles of this policy and provides more detail about how we will look into a concern.

What concerns can I raise?

You can raise a concern about **anything** you think is harming the service we deliver. Just a few examples of this might include (but are by no means restricted to):

- concerns about unsafe patient care
- unsafe working conditions
- inadequate induction or training for staff
- a bullying culture.

If in doubt, please raise it.

Don't wait for proof. We would like you to raise the matter while it is still a concern. It doesn't matter if you turn out to be mistaken as long as you are genuinely troubled.

If your concern is a personal complaint about your employment that affects only you, rather than a concern about something that affects others, then you may wish to raise a grievance using our grievance policy *[insert link]*.

Feel safe to raise your concern

If you raise a genuine concern under this policy, you will not be at risk of losing your job or suffering any form of reprisal as a result. We will not tolerate the harassment or victimisation of anyone raising a concern. Nor will we tolerate any attempt to bully you into not raising any such concern. Any such behaviour is a breach of our values as an organisation and, if upheld following investigation, could result in disciplinary action.

Provided you are acting in good faith (effectively this means honestly), it does not matter if you are mistaken or if there is an innocent explanation for your concerns. Of course, we do not extend this assurance to someone who may maliciously raise a matter they know is untrue.

Confidentiality

We hope you will feel comfortable raising your concern openly, but we also appreciate that you may want to raise it confidentially. Therefore, we will keep your identity confidential, if that is what you want, unless required to disclose it by law (for example, by the police). You can choose to raise your concern anonymously, but that may make it more difficult for us to investigate thoroughly and give you feedback on the outcome.

Who can raise concerns?

Anyone who works (or has worked) in the NHS, or for an independent organisation that provides NHS services, including agency workers, temporary workers, students and volunteers, can raise concerns.

Who should I raise my concern with?

In the first instance, you may feel comfortable raising your concern informally with your line manager (or lead clinician), who we hope will be able to resolve it for you.

If this does not resolve matters, you can raise it formally by contacting one of the following people:⁴

- our local Freedom to Speak Up Guardian(s) (or equivalent designated person) *[insert name(s) and contacts details]* – this is an important role identified in the Freedom to Speak Up review to act as an independent and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation, including the chief executive, or if necessary, outside the organisation

⁴ Annex A sets out an example of how a local process might work to show how the concern might be escalated.

- our risk management team [*insert contact details*].

If you still remain concerned after this, you can contact:

- our chief executive [*insert name and contact details*]
- nominated non-executive director [*insert name and contact details*].

All these people have been trained in receiving concerns and will give you information about where you can go for more support.

If for any reason you do not feel comfortable raising your concern internally, you can also raise concerns formally with external bodies, listed on page 8.

Advice and support

Details on the local support available to you can be found here [*link to organisation intranet*]. However, you can also contact the [Whistleblowing Helpline](#) for the NHS and social care or your union representative.

How should I raise my concern?

You can raise your concerns with any of the people listed above in person, by phone or in writing (including email).

Whichever route you choose, please be ready to explain as fully as you can the information and circumstances that gave rise to your concern.

What will we do?

We are committed to the principles of the Freedom to Speak Up review and its vision for raising concerns, and will respond in line with them (see Annex B).

We are committed to listening to our staff, learning lessons and improving patient care. On receipt the concern will be recorded and you will receive an acknowledgement within two working days. The central record will record the date the concern was received, whether you have requested confidentiality, a summary of the concerns and dates when we have given you updates or feedback.

Investigation

Where you have been unable to resolve the matter with your line manager, we will investigate – using someone suitably independent (usually from a different part of the organisation) and properly trained – and we will reach a conclusion within a reasonable timescale (which we will notify you of). The investigation will be objective and evidence based, and will produce a report that focuses on learning lessons to prevent problems recurring.

We may decide that your concern would be better looked at under another process; for example, our process for dealing with bullying and harassment. If so, we will discuss that with you. Reports of fraud should be made to our local counter-fraud team [*insert contact details*].

Any employment issues identified during the investigation will be kept separate.

Communicating with you

We will treat you with respect at all times, and will thank you for raising your concerns. We will discuss your concerns with you – to ensure we understand exactly what you are worried about. We will tell you how long we expect the investigation to take and keep you up to date with its progress. Wherever possible, we will share the full investigation report with you (while respecting the confidentiality of others).

How will we learn from your concern?

The focus of the investigation will be on improving the service we provide for patients. Where it identifies improvements that can be made, we will track them to ensure necessary changes are made, and are working effectively. Lessons will be shared with teams across the organisation, or more widely, as appropriate.

Board oversight

The board will be informed of all concerns raised by our staff and what we are doing to address any problems. The board supports staff raising concerns and wants you to feel free to speak up.

Raising your concern with an outside body

Alternatively, you can raise your concern outside the organisation with:

- [Monitor](#) for concerns about:
 - NHS foundation trusts
 - other [providers licensed by Monitor](#)
 - NHS procurement, choice and competition
 - the national tariff
- [NHS Trust Development Authority](#) for concerns about non-foundation NHS trusts
- [Care Quality Commission](#) for quality and safety concerns
- [NHS England](#) for concerns about:
 - primary medical services (general practice)
 - primary dental services
 - primary ophthalmic services
 - local pharmaceutical services
- [Health Education England](#) for education and training in the NHS
- any other relevant prescribed person – you can find a list [here](#).

Making a ‘protected disclosure’

To be covered by whistleblowing law when you raise your concern (to be able to claim the protection that accompanies it) you must reasonably believe two things:

- i. you are acting in the public interest (so your concern needs to be more than a personal grievance)
- ii. your disclosure tends to show past, present or future wrongdoing that falls into one or more of the following categories:
 - criminal offence
 - failure to comply with a legal obligation
 - miscarriage of justice
 - danger to the health or safety of any individual
 - damage to the environment and/or
 - covering up the wrongdoing in the above categories.

You can find more information on the law on whistleblowing and the associated legal protection [here](#).

Annex A: Example process for raising and escalating a concern

Step one

If you have a concern about a risk, malpractice or wrongdoing at work, we hope you will feel able to raise it first with your line manager or lead clinician. This may be done verbally or in writing or by using systems such as Datix.

Step two

If you feel unable to raise the matter with your line manager or lead clinician, for whatever reason, please raise the matter with our local Freedom to Speak Up Guardian:

[Name]

[Contact details]

This person has been given special responsibility and training in dealing with whistleblowing concerns. They will:

- treat your concern confidentially unless otherwise agreed
- ensure you receive timely support to progress your concern
- escalate to the board any indications that you are being subjected to detriment for raising your concern
- remind the organisation of the need to give you timely feedback on how your concern is being dealt with
- ensure you have access to personal support since raising your concern may be stressful.

If you want to raise the matter in confidence, please say so at the outset so that appropriate arrangements can be made.

Step three

If these channels have been followed and you still have concerns, or if you feel that the matter is so serious that you cannot discuss it with any of the above, please contact *[chief executive, medical director, responsible officer, nursing director]*.

Step four

You can raise concerns formally with external bodies *[relevant list of prescribed bodies to be provided, similar to that on page 8]*.

Annex B: A vision for raising concerns in the NHS



Source: Sir Robert Francis QC (2015) *Freedom to Speak Up: an independent report into creating an open and honest reporting culture in the NHS. Report.*

Consultation questions

***1. Please provide your contact information (optional):**

Name:

Job title:

Name of organisation you work for:

Are you responding on behalf of an organisation or as an individual?

Email address:

Are you, or have you been, a whistleblower?

*** 2. Our intention is that this policy should be adopted by all NHS organisations, with the local process sitting beneath it. Do you agree with this approach and do you feel the national policy is compatible with existing local processes?**

Please give reasons for your answer.

*** 3. We have used the term whistleblowing in the title of the policy to reflect the conclusion of *Freedom to Speak Up* that it is widely used to cover many different contexts. What do you think about this term? Would something else be more effective in normalising the raising of staff concerns? For example, 'The national policy for staff raising concerns in the NHS'?**

***4. The policy (and example process in Annex A) encourages staff to first raise concerns with their line manager, before escalating to their local whistleblowing guardian and then a board member. What are your views on this system of 'escalation': is it helpful or should it be open to the individual to decide at what level and with whom he/she raises his/her concern with?**

Please give reasons for your answer.

***5. The *Freedom to Speak Up* review looked at the experiences of vulnerable staff groups when raising concerns. We believe that this national policy 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?**

- Yes, it makes it easier for all staff to raise concerns, including more vulnerable staff.
- No, it does not do enough for vulnerable staff to help them raise concerns.
- Undecided.

Please say what more could be included to help vulnerable staff raise concerns.

***6. What else could be included in the policy that would add value?**

*** 7. Would you like to keep any information confidential?**