



NHS Improvement
NHS England

Freedom to speak up: raising concerns (whistleblowing) policy for the NHS

Consultation response April 2016



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Summary

In November 2015 we ran a consultation on a national whistleblowing policy for the NHS in England. It set out the draft policy created by Monitor, the NHS Trust Development Authority (TDA) (together now NHS Improvement) and NHS England and the consultation questions.

Thank you to everyone who responded to the consultation. We have now taken account of the consultation responses and published the final policy. The main changes to the document, having taken account of those responses, are:

- we have now incorporated both ‘whistleblowing’ and ‘raising concerns’ into the title
- we have retained the process of escalation but have made it clear that it is not compulsory
- we have added a requirement for a review/audit of the policy (and accompanying process) at local level
- we have included a reference to the role of the new Office of the National Freedom to Speak Up Guardian, which sits in the Care Quality Commission (CQC)
- we have extended the coverage of the policy to clarify the inclusion of governors.

We expect that the national policy will be adopted by all NHS organisations by 31 March 2017 as a minimum standard to ensure a level of consistency nationally, while recognising the need for flexibility locally in terms of process.

Introduction

The [Freedom to Speak Up review](#) by Sir Robert Francis QC¹ 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.

¹ <http://webarchive.nationalarchives.gov.uk/20150218150343/http://freedomtospeakup.org.uk/the-report/>

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 listened to organisations representing whistleblowers and employers, in producing the draft policy. It drew on the model policies and guidance produced by [Public Concern at Work](#)² and the Whistleblowing Helpline for the NHS and social care.

The consultation process

The consultation ran from 16 November 2015 to 8 January 2016. The consultation document was publicly available on the GOV.UK website and was sent to all NHS trusts, foundation trusts and clinical commissioning groups (CCGs). It was also shared with whistleblowing organisations, regulators and trade unions.

We received 165 responses to the consultation. The majority were from individuals who were either current or previous NHS staff members. We also received responses from whistleblowing organisations, trade unions, trusts, foundation trusts and CCGs.

Consultation responses and key themes

Overview

There was strong support for the overall proposal of a national whistleblowing policy to be adopted by all NHS organisations to ensure some consistency. However, this support was qualified in some cases around whether local process should be allowed at all, or whether local process should sit beneath the policy or be integrated into it, or whether the policy should simply be the minimum requirement.

Most respondents were in favour of an alternative name for the policy that focused on raising concerns, although there was significant acknowledgement that whistleblowing was a widely recognised term.

Opinion was fairly evenly divided as to whether the proposed escalation process was helpful. And most respondents were unsure whether or not the policy would make it easier for people in vulnerable groups to raise their concern.

Consultation questions

Question: 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?

² www.pcaw.org.uk/

The vast majority of responses supported the overall proposal for the national whistleblowing policy to be adopted by all NHS organisations.

One NHS foundation trust said:

“It is important for NHS organisations to provide consistency in the way they approach this area. Having a policy developed and agreed at a national level will enable this and ensure that those wishing to raise a concern have a greater level of confidence in the way it will be addressed.”

The Carers Federation said:

“An overarching national policy will create more accountability within trusts to ensure that local processes are transparent and fair – it will also provide reassurances to would-be 'whistleblowers' that there is a higher framework in place.”

There were some qualifications around whether local process should sit beneath the policy, or be integrated into it. There were also those who felt the policy should be the minimum requirement, and if a local policy met those requirements there would be no need to change locally.

NHS Employers said:

“While employers are supportive and can see great value in setting a national minimum standard, many would have concerns about adopting a new policy which may have unintended consequences of diluting local learning and good practice put in place so far.”

However, others felt that a national policy with local process beneath it struck an appropriate balance. The Royal College of Midwives commented:

“Having a national policy, which all NHS organisations are required to adopt, should ensure greater consistency across the NHS in how staff are supported to raise concerns. The policy is framed in such a way as to allow for local flexibility and for organisations to develop their own best practice which builds on the requirements within the national policy.”

The national Whistleblowing Helpline for the NHS and social care said:

“We agree with the approach that there should be an overarching national policy to guide all NHS organisations.

“Since the size and complexity of each NHS organisation is different it is very difficult to produce a single policy that will successfully cover all organisations. However, it is important that workers in the NHS have a common standard that their organisation is required to adhere to. This will simplify the process for staff and support those workers who move between NHS organisations. A 'blended' approach, such as the one suggested in this consultation paper offers a clearer

national direction than at present, but with the opportunity locally to identify those who are responsible for the support and implementation of their policy.”

Conclusion

To deliver the recommendation from Freedom to Speak Up and ensure consistency, we expect that this national policy will be adopted by all NHS organisations as a minimum standard by 31 March 2017. However, we realise that for culture change to happen at a local level there is a need for some flexibility, so detailed local process can sit beneath the policy or be incorporated into it. As part of assessing an organisation’s leadership, CQC inspections will look at the processes in place to handle staff concerns and will consider whether there is a need to update its key lines of enquiry or guidance to reflect this new national policy. When looking at how trusts are run, NHS Improvement will consider whether there are general concerns with how a trust is dealing with issues raised by its staff, including those which stem from the trust either not adopting this policy or otherwise falling short of the minimum standards.

Question: 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?*

The majority of respondents were in favour of an alternative name for the policy that focused on raising concerns, although there was significant acknowledgement that whistleblowing was a widely recognised term.

NHS Employers commented:

“Employers are supportive of having a recognised term which is clearly defined to provide absolute clarity for staff and managers around the intention and scope of the policy. However, there was some wariness about using the term ‘whistleblowing’, which continues to have negative connotations.”

However, the whistleblowing charity Public Concern at Work said:

“A particular issue that has arisen out of trusts using a variety of terms is that an artificial distinction is created between raising a concern internally as ‘speaking up’ and whistleblowing as something extraordinary, negative and/or going outside of the trust. This can result in confused messaging where staff may feel more confident to do one but not the other, when in fact they are the same thing.

“We see the national policy as an opportunity for NHS England, NHS TDA and Monitor to provide a consistent approach for all trusts to adopt around what is meant by all of the terms used to describe the whistleblowing process and we would suggest that this should feature in the national policy to help to normalise

whistleblowing as highlighted in the Freedom to Speak Up Review. The local processes that sit below the policy (and in particular local trust training and e-learning, for example) could then include trusts educating their staff about the true nature of whistleblowing and that in reality this occurs frequently and is part of everyday practice.”

HFMA commented:

“In our view, the term ‘whistleblowing’ is now well understood and widely used so it makes sense to use it in the policy’s main title.”

Conclusion

We have now incorporated both terms into the title. We hope this will strike an appropriate balance between the raising of concerns being normalised and the need for individuals to identify and locate the policy easily (through the reference to a commonly recognised single term – whistleblowing).

Question: The policy (and example process in Annex A) encourages staff to raise concerns with their line manager first 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?

There was a fairly even split of opinion as to whether the proposed escalation process was helpful or whether it should be open to the individual to decide at what level and with whom they raise their concern. This is perhaps not surprising given the understandable desire for people to be able to raise their concern with whomever they feel most appropriate (and not be put off from doing so), combined with the general preference for local resolution through a line manager wherever possible because it often provides the most effective and efficient resolution.

One NHS trust summarised the position very well:

“Such a potentially sensitive disclosure requires a degree of bravery and this may be made easier if choice is available. Flexibility means that the individual with concerns can, if necessary, approach whoever they feel most comfortable with, regardless of place in the ‘hierarchy’, which may encourage more openness. Individuals should have a range of ways open to them to raise their concern but they should be advised that their line manager is there to support them and is often best placed to action things, so only if the line manager is not approachable, not available or involved in the problem, should they go elsewhere.”

Conclusion

We have retained the process of escalation because it can often be the most effective way of resolving matters. However, we have made it clear that it is not compulsory. We fully appreciate that some individuals will not want to raise a concern with their line manager and we are confident that the policy provides reasonable alternative options in these circumstances. We are also mindful of the need to focus on aspiring to a culture where staff are happy to raise concerns with their line manager in the first instance, who will usually then be able to resolve them.

Question: 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?

It is very important that vulnerable groups³ feel able to raise their concerns easily, and we believe that the national policy will make it easier for everyone to raise concerns. However, we appreciate it is difficult at this stage to determine with any certainty whether the national policy will enable that. We also recognise that local process can play a key role in ensuring this, and so we recommend that all organisations consider carrying out an equalities impact assessment to this end.

However, the national policy is just one of a series of steps being taken across the NHS to improve the culture regarding raising concerns. The presence of at least one local guardian in each NHS organisation and a national guardian will make the system easier to navigate and give individuals more confidence that there are support and alternative avenues available to them if they are concerned about suffering detriment.

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

We received a number of suggestions for what else could be included. We have incorporated some of these into the final policy. There was a particular call for the inclusion of an audit or review mechanism for the effectiveness of the policy. We had originally considered this to be an important part of local process – the ability to reflect each organisation’s own quality assurance practices. We have now made brief reference to a generic requirement while still leaving plenty of scope for local flexibility.

We have also signposted future consideration for consistent data collection by NHS organisations which can be reported nationally. This will enable benchmarking between NHS organisations, regulators and improvement bodies to identify possible areas of best practice and places to focus their work.

³ Freedom to Speak Up identified these as locums, agency and bank staff, students and staff from black and minority ethnic backgrounds.

We have also included a clear reference to the role of the new National Freedom to Speak Up Guardian.

We have extended the coverage of the policy to clarify the inclusion of governors, and tried to provide more clarity around the difference between a grievance and a whistleblowing concern.

We reduced the reference to making a 'protected disclosure', since we received a fair amount of feedback that indicated that it risked causing unnecessary confusion given that the national policy is designed to cover circumstances and individuals wider than the more limited scope of the Public Interest Disclosure Act.

There was some concern about the use of the term 'investigation' and the difference from a patient safety incident investigation. However, we have kept this the same, since the term is intended to have an ordinary and natural meaning. We appreciate that some whistleblowing concerns may identify patient safety incidents that need reporting and, equally, that some incidents may result in whistleblowing concerns. However, there are many types of investigations in the health service, including regulatory investigations, incident investigations and complaint investigations, and so we see no need to make a more specific distinction here.

We do, though, appreciate the link (in some cases) between a staff concern and patient safety incident reporting, and have tried to make reference to that. However, they are different systems. Whistleblowing covers a much wider range of concerns than patient safety (as set out in this policy).

A number of trade unions have said that the national policy should apply equally to independent providers of NHS healthcare services. NHS Improvement and NHS England would encourage them to adopt the national whistleblowing policy to ensure consistency across NHS healthcare services. However, we are unable to monitor compliance because many of these organisations are outside our regulatory remit. Clearly, most of these organisations will be registered with CQC and therefore be subject to the same inspections which look at the adequacy of whistleblowing arrangements.

Overall conclusion

We are grateful for all the responses we have received to this consultation and believe the policy will help to normalise staff raising concerns in the NHS. However, we appreciate that its success relies on the right culture at a local level, which sees staff raising concerns as normal and positive behaviour that is valued. NHS Improvement and NHS England will continue to work with all NHS organisations to help deliver this, alongside local guardians and the Office of the National Freedom to Speak Up Guardian.



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