

Report to Standards committee
2 November 2016
Report of Democratic services manager
Subject Whistleblowing guardians

Item

5

Purpose

To consider whether the appointment of whistleblowing guardians is necessary in the council's procedures for making complaints under the code of conduct.

Recommendation

To agree that appointing whistleblowing guardians does not need to be included in the code of conduct.

Corporate and service priorities

The report improves the council's corporate governance framework and helps to protect the interests of the council.

Financial implications

There are no direct financial consequences of this report.

Contact officers

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Background documents

None

Report

Introduction and background

1. At the last meeting of the standards committee on 8 July 2016, members asked for a report on whistleblowing and the possible appointment of whistleblowing guardians.
2. Attached at appendix A is a copy of the NHS whistleblowing policy which refers to 'Freedom to Speak up' guardians.
3. A revised draft whistleblowing policy for Norwich City Council employees is being prepared. The latest version contains this paragraph:

2.3 There are existing procedures in place to enable employees to lodge a grievance relating to their own employment, customers to complain about the service they receive, and report if councillors have breached the Member Code of Conduct. This policy should not be used for such concerns; however, advice can be obtained from the contacts on the front cover of this policy if you have any doubts.

4. The draft whistleblowing policy has been considered by the monitoring officer, the corporate leadership team, the corporate governance group, the employment lawyer, head of HR and the auditors. No change has been suggested to the above paragraph. The policy will also go to audit committee in November to be reviewed before being considered by cabinet in December.
5. Also attached is the complaint form for members of the public to complete if they wish to complain about a Councillor. At this stage, a request can be made to the monitoring officer for anonymity. However, in the interest of fairness and natural justice, this will only be granted if there are reasonable grounds.
6. The monitoring officer considers that incorporating guardians into the code of conduct would be confusing and is not needed.



NHS Improvement
NHS England

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

April 2016



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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. In accordance with our duty of candour, our senior leaders and entire board are committed to an open and honest culture. We will look into what you say and you will always have access to the support you need.

This policy

This 'standard integrated policy' was one of a number of recommendations of the review by Sir Robert Francis into whistleblowing in the NHS, aimed at improving the experience of whistleblowing in the NHS. It is expected that this policy (produced by NHS Improvement and NHS England) will be adopted by all NHS organisations in England as a minimum standard to help to normalise the raising of concerns for the benefit of all patients.

Our local process has been integrated into the policy/adheres to the principles of this policy and provides more detail about how we will look into a concern *[insert link]*.

What concerns can I raise?

You can raise a concern about **risk, malpractice or wrongdoing** you think is harming the service we *deliver/commission* [delete as appropriate]. Just a few examples of this might include (but are by no means restricted to):

- unsafe patient care
- unsafe working conditions
- inadequate induction or training for staff
- lack of, or poor, response to a reported patient safety incident
- suspicions of fraud (which can also be reported to our local counter-fraud team *[insert contact details]*)
- a bullying culture (across a team or organisation rather than individual instances of bullying).

For further examples, please see the [Health Education England video](#).

Remember that if you are a healthcare professional you may have a professional duty to report a concern. **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.

This policy is not for people with concerns about their employment that affect only them – that type of concern is better suited to 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 honestly, it does not matter if you are mistaken or if there is an innocent explanation for your concerns.

Confidentiality

We hope you will feel comfortable raising your concern openly, but we also appreciate that you may want to raise it confidentially. This means that while you are willing for your identity to be known to the person you report your concern to, you do not want anyone else to know your identity. 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, without giving anyone your name, 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 can raise concerns. This includes agency workers, temporary workers, students, volunteers and governors.

Who should I raise my concern with?

In many circumstances the easiest way to get your concern resolved will be to raise it formally or informally with your line manager (or lead clinician or tutor).¹ But where you don't think it is appropriate to do this, you can use any of the options set out below in the first instance.

If raising it with your line manager (or lead clinician or tutor) does not resolve matters, or you do not feel able to raise it with them, you can contact one of the following people:²

- our Freedom to Speak Up Guardian (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
- our risk management team *[insert contact details]*.

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

- our executive director with responsibility for whistleblowing *[insert name and contact details]*
- our non-executive director with responsibility for whistleblowing *[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 raise concerns with external bodies, listed on page 8.

¹ The difference between raising your concern formally and informally is explained in our local process. In due course NHS England and NHS Improvement will consider how recording could be consistent nationally, with a view to a national reporting system.

² Annex A sets out an example of how a local process might demonstrate how a concern might be escalated.

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, your professional body or trade 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 quickly (usually within a few days) with your line manager, we will carry out a proportionate investigation – 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). Wherever possible we will carry out a single investigation (so, for example, where a concern is raised about a patient safety incident, we will usually undertake a single investigation that looks at your concern and the wider circumstances of the incident³). The investigation will be objective and evidence-based, and will produce a report that focuses on identifying and rectifying any issues, and 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.

³ If your concern suggests a Serious Incident has occurred, an investigation will be carried out in accordance with the [Serious Incident Framework](#).

Any employment issues (that affect only you and not others) identified during the investigation will be considered separately.

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 given high level information about all concerns raised by our staff through this policy and what we are doing to address any problems. We will include similar high level information in our annual report. The board supports staff raising concerns and wants you to feel free to speak up.

Review

We will review the effectiveness of this policy and local process at least annually, with the outcome published and changes made as appropriate.

Raising your concern with an outside body

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

- [NHS Improvement](#) for concerns about:
 - how NHS trusts and foundation trusts are being run
 - other [providers with an NHS provider licence](#)
 - NHS procurement, choice and competition
 - the national tariff
- [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
- [NHS Protect](#) for concerns about fraud and corruption.

Making a ‘protected disclosure’

There are very specific criteria that need to be met for an individual to be covered by whistleblowing law when they raise a concern (to be able to claim the protection that accompanies it). There is also a defined list of ‘[prescribed persons](#)’, similar to the list of outside bodies on page 8, who you can make a protected disclosure to. To help you consider whether you might meet these criteria, please seek independent advice from the [Whistleblowing Helpline](#) for the NHS and social care, [Public Concern at Work](#) or a legal representative.

National Guardian Freedom to Speak Up

The new National Guardian (once fully operational) can independently review how staff have been treated having raised concerns where NHS trusts and foundation trusts may have failed to follow good practice, working with some of the bodies listed above to take action where needed.

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, lead clinician or tutor (for students). This may be done orally or in writing.

Step two

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

[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, nominated non-executive 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*.



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NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change Team and the Intensive Support Teams.

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NORWICH
City Council

COUNCILLORS CODE OF CONDUCT

Complaint Form

Your details

1. Please provide us with your name and contact details

Title:	
First name:	
Last name:	
Address:	
Daytime telephone:	
Evening telephone:	
Mobile telephone:	
Email address:	

Your address and contact details will not usually be released unless necessary or to deal with your complaint.

However, we will tell the following people that you have made this complaint:

- the councillor(s) you are complaining about
- the monitoring officer of the Council

We will tell them your name and give them a summary of your complaint. We will give them full details of your complaint where necessary or appropriate to be able to deal with it. If you have serious concerns about your name and a summary, or details of your complaint being released, please complete section 5 of this form.

2. Please tell us which complainant type best describes you:

- ☐ Member of the public
- ☐ An elected or co-opted member of an authority
- ☐ An independent member of the standards committee
- ☐ Member of Parliament
- ☐ Local authority monitoring officer
- ☐ Other council officer or authority employee
- ☐ Other

3. Please provide us with the name of the councillor (s) you believe have breached the Code of Conduct.

First Name	Last Name

4. Please explain in this section (or on separate sheets) what the councillor has done that you believe breaches the Code of Conduct. If you are complaining about more than one councillor you should clearly explain what each individual person has done that you believe breaches the Code of Conduct.

It is important that you provide all the information you wish to have taken into account by the Monitoring Officer when he/she decides whether to take any action on your complaint. For example:

- You should be specific, wherever possible, about exactly what you are alleging the councillor said or did. For instance, instead of writing that the member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.

Please provide us with the details of your complaint. Use a separate sheet if there is not enough space on this form.

Only complete this next section if you are requesting that your identity is kept confidential.

5. In the interests of fairness and natural justice, we believe councillors who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or the summary of your complaint unless you have good reason to believe that:

- (1) There are reasonable grounds for believing that the complainant will be at risk of physical harm if identity is disclosed.
- (2) The complainant is an officer who works closely with the member and is afraid of the consequences to employment or of losing job if identity is disclosed.
- (3) The complainant suffers from a serious health condition and there are medical risks associated with identity being disclosed. In such circumstances, medical evidence of the condition may be required.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer will consider the request alongside the substance of your complaint. He/she will then contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional Help

6. Complaints must be submitted in writing. This includes email and fax. However, in line with the requirements of the Disability Discrimination Act 2000 we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

We can also help if English is not your first language.

If you need any support in completing this form, please let us know as soon as possible, through contact details below.

Return the Form to:-

Andy Emms
Democratic Services Manager
Norwich City Council
City Hall
NORWICH
NR2 1NH

Please mark envelope confidential

Enquiries: Tel: 01603 212459 Email: andyemms@norwich.gov.uk