

A National Guardian for the NHS – your say

Care Quality Commission

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Introduction

This report summarises the responses to the consultation carried out by the Care Quality Commission (CQC) on their proposals for the National Guardian as described in the document *A National Guardian for the NHS – your say*. This document can be found in appendix 1.

From the 17th September 2015 to 9th December 2015 a consultation was held to inform CQC on how it should establish the role of National Guardian. This consultation consisted of 11 questions which respondents could answer via an online response website, email or letter. The consultation also included a Whistleblowers Forum and an Online Community Q and A.

Background to the consultation

In response to concerns about culture in the NHS, the Secretary of State for Health commissioned Sir Robert Francis to carry out an independent review: Freedom to Speak Up. The review recommended the creation of a National Guardian.

The National Guardian is intended to fill a gap in the system for staff who have raised concerns and feel that those concerns have been poorly handled by their employer or other bodies. The role will provide high profile national leadership. The National Guardian will support the Local Freedom to Speak Up Guardians and help create a culture of openness within the NHS, where staff are encouraged to raise concerns, lessons are learnt and care improves as a result.

In March 2015 The Department of Health consulted on whether CQC was an appropriate host for the National Guardian. Overall, the consultation received 106 responses with 75 commenting on the National Guardian. The majority of these (56) were in full support of the role being hosted by CQC, and among those who disagreed there was no consensus on a better host. As a result of this the Department of Health asked CQC to host the National Guardian.

Responses

There were 78 responses to the consultation. A total of 53 responses were submitted using the online form; another 25 consisted of email responses.

The table below provides an overview of the categories of respondents. The online questionnaire asked the respondents to identify themselves in the introductory section of the form; CQC assigned respondent types to the email responses.

Respondents by type	Count
Commissioner of services	2
CQC staff	1
Health care professional	22
Member of the public	8
Provider of services	13

Stakeholder ¹	26
Voluntary and community sector representative	6
Total	78

A summary of the issues raised in the Whistleblowers Forum and in the Online Community Q&A discussing the National Guardian are also presented in this report. These are discussed in chapters 7 and 8.

Reading the report

The purpose of this report is to provide an overview of respondents' comments on CQC's proposals for the National Guardian, allowing the reader to obtain an idea of their views. The report does not aim to cover all the detail contained in the consultation responses and should be seen as a guide to their content rather than an alternative to reading them.

As with any consultation of this kind, it is important to remember that findings from responses are not representative of the views held by a wider population, chiefly because the respondents do not constitute a representative sample. Rather, the consultation was open to anyone who chose to participate.

All responses were received by CQC and securely transferred to the OPM Group for analysis. Upon receipt the responses were imported into OPM Group's analysis database and prepared for coding. Analysts applied codes to (parts of) responses to each question, using a coding framework to ensure consistency between questions where possible. The summary report draws on this analysis.

The structure of the summary report mirrors the consultation questionnaire, discussing comments to each consultation question in turn. A narrative summary of comments is interspersed with quotations from responses to further illustrate the issues highlighted. Tables are included to provide an overview of responses to the closed consultation questions – questions 1, 2a, 2b, 3, 5a, 6a, 7a, 8a, 9, 10, 11a.

Where a specific theme or point was raised by a relatively large number of respondents, the report includes an indication of how many respondents made similar comments. Because of the qualitative nature of the data and variations in respondents' use of the consultation questionnaire, these numbers are indicative. Where themes are analysed and divided out into subthemes the phrase 'a few respondents' is used instead of small numbers. The focus of the analysis is on issues raised by respondents, and opinions are usually shared across respondent types. However, where appropriate the report specifies where views were expressed by a specific group of respondents.

¹ An individual, group of individuals, or organisation with a professional interest in the work of CQC and/or the work of the office of the National Guardian.

Summary of issues raised

Respondents to the consultation were generally supportive of the proposals for creating a National Guardian, and recognised the need to create a culture of openness within NHS. Many respondents felt that the proposals for the National Guardian would enable this.

A majority of respondents agreed with the proposed scope for the National Guardian, however participants had mixed opinions about the phased implementation into Primary care. Also of interest to respondents was the National Guardian's relationship with independent providers; many respondents indicated support for the scope being extended to include independent providers in the future.

On the question of the principles for the National Guardian, most respondents agreed that the proposed principles were the right ones. This question did however generate the most discussion from respondents. The level of intervention into individual cases, and the National Guardian's discretion to intervene were common concerns. Many respondents suggested that direct intervention in individual cases would be the best way of identifying areas for improvement. Another common suggestion was that there should be clear criteria to guide the National Guardian on intervention and reviewing historic cases, to ensure transparency and consistent treatment of cases. A notable minority of respondents however, felt that the creation of the National Guardian could create unnecessary additional bureaucracy for practitioners.

Another frequent theme was a perceived lack of statutory powers for the National Guardian, which participants argued may hinder the National Guardian's ability to ensure best practice. They also questioned the independence of the National Guardian if the role was to lack statutory powers, as the National Guardian would have to rely too heavily on other arm's length bodies to implement change.

While there was a mixture of views on whether the proposed arrangements for the National Guardian would ensure independence and effective governance, most respondents recognised the importance of independence. They questioned whether the National Guardian could be truly independent if hosted by CQC, citing the examples of financing and line management as impediments to independence. However respondents also supported the proposed working relationship with CQC, and suggested that the details of this working relationship would be important in determining whether the National Guardian is perceived as independent or not.

On the question of branding, most respondents supported independent branding; suggesting that it should have a new logo to reflect its independence. However there was also a view from others that the branding should reflect all four of the arm's length bodies to maintain transparency regarding the National Guardian's relationship with these bodies.

Respondents expressed strong support for the Local Freedom to Speak Up Guardians. They felt that local appointments would be best placed to deliver cultural change within organisations. Participants also believed that local knowledge and proximity to cases would make Local Guardians more effective than a national body. An important concern raised by respondents regarding the appointment of Local Guardians was the level of seniority of the role: they raised

the issue that while too senior an appointment may introduce conflicts of interest, a too junior appointment may lack the authority to implement change.

There was agreement that the National Guardian should review how concerns have been handled in individual cases, where serious issues appear to exist. There were two main reasons given for this support. The first was that this would encourage learning from individual cases. Many respondents also felt that there was a lot to be learnt from positive stories, and that these should also be highlighted. The second view was that protection is needed for those who speak up, and that the best way of achieving this would be to review individual cases and hold those responsible to account. Respondents also raised concern for capacity in reviewing individual cases, with many stressing that a quick turnaround time would be important for those involved, and that a clear timescale for a review to be completed should be given.

Respondents generally agreed that one of the functions of the National Guardian should be to support and advise providers; many respondents also emphasised the importance of collaboration in achieving positive change. Respondents also agreed that the National Guardian should *provide challenge and support to the system*. Respondents often felt that this would improve the monitoring of bad practice and encourage good practice. Overall most respondents agreed that the four functions described in the Freedom to Speak Up Review were the right ones to enable the National Guardian to discharge its role, however many were keen to review these at a later date, especially as the scope of the National Guardian is expanded to cover Primary Care.

Chapter 1: The Scope of the National Guardian

1.1. Responses to question 1

Question 1 asked respondents “Do you agree with the proposed scope for the National Guardian? Please explain your answer.” The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	0	2	0
CQC staff	1	0	0
Health care professional	14	8	0
Member of the public	3	3	2
Provider of services	11	1	1
Stakeholder	10	2	14
Voluntary and community sector representative	5	1	0
TOTAL	44	17	17

The majority of the respondents (44) who chose to answer Q1 agreed with the proposed scope for the National Guardian while 17 respondents disagreed.

When asked to explain their answer to question 1, a total of 64 respondents made comments about the scope for the National Guardian, though this chapter may include relevant comments on the scope of the National Guardian raised in answer to other questions, and from respondents who chose not to answer specific questions.

Some of the main points discussed in this section include whether to extend the scope of the role to primary care as soon as possible or with phased implementation. This section also covers whether the National Guardian’s scope should cover independent providers or whether the proposed scope is appropriate as written in the consultation document. Further detail can be found below.

1.1.1. Primary care

A total of 28 respondents commented on the extension of the scope for the National Guardian to primary care. These comments focused on the timescale of this extension with opinion ranging from as soon as possible to after the National Guardian has been in position for some

time. Some respondents agreed that the proposed method of phased implementation was sensible to allow a better understanding of the role:

“We fully understand the rationale for staging the extended scope of the service to primary care given that it will be easier to expand the function once there is a greater understanding about what the issues might be and the level of support required.” OR20

Among these respondents, some commented that while they agreed with phased implementation, they asked for a clear timeline to inspire confidence and clarity that the scope would be extended.

In contrast, other respondents commented that the extension to primary care should be implemented from the outset or as soon as possible:

“Given the external changes set out in the Five Year Forward View and the drive for integrated care, any new initiative would be better designed from the outset within that context, rather than follow the usual process of implementation within the acute sector and adaptation for other sectors at a later date.” OR27

In addition to comments about timescale, respondents gave several different reasons for the extension of the scope to primary care. One such reason was the perceived recent problems of overburdened staff in the sector, thus necessitating a need for staff to safely raise concerns. Another reason they gave was the large size and continuing growth of the primary care sector.

One respondent suggested that community pharmacies should be included in the scope of the National Guardian. They argued that pharmacies were the most frequently used point of access to the NHS, that their importance should not be underestimated and they should therefore be included in the scope from the outset.

1.1.2. Independent providers

A total of 16 respondents commented on how the National Guardian’s scope would relate to independent providers. A few of these respondents stated their general support for extending the scope to independent providers. These comments were often alongside calls for the scope to include primary care (see 1.1.1 above). One respondent suggested that, as with primary care, the extension to independent providers should be a phased implementation.

On the other hand, a few respondents stated that the extension to independent healthcare would be inappropriate due to this sector’s perceived focus on profit. One respondent appeared to misunderstand that the proposed scope for the National Guardian already included independent providers. Another respondent pointed out potential confusion by providers about the National Guardian’s scope.

1.1.3. Areas of concern - support

Sixteen respondents stated their support for the proposed scope for the National Guardian and agreed that it covers the areas of concern. Most of these respondents provided general support for the scope and did not go into further detail. Some respondents specifically agreed with the scope's restriction to the NHS and NHS trusts, cautioning that the National Guardian's purpose and scope should not become distorted as it is extended to cover primary care.

One respondent agreed that the National Guardian should not have a role in dealing with concerns raised by the public as there are separate systems available. Another respondent commented that the scope is sufficient and should not be extended further.

1.1.4. Public needs - concern

Five respondents stated their concern that the scope of the National Guardian does not address public needs. A few of these respondents were concerned that those who speak up, including patients and members of the public would not have the opportunity to contact the National Guardian. A few respondents also challenged the power of the role given these perceived limitations.

1.1.5. Other regulatory bodies

Two respondents suggested that the scope of the National Guardian should be extended to include other regulatory bodies in order to ensure good practice is always followed. These respondents did not specify whether they were referring to the arm's length bodies (CQC, Monitor, TDA, and NHS England) which are already covered by the National Guardian's remit or to other regulatory bodies outside of their remit.

1.1.6. Additional ideas and suggestions

Respondents suggested additional ideas and suggestions regarding the scope of the National Guardian. These were:

- Extending the National Guardian's scope to include central NHS bodies where suppression of speaking up may have serious consequences.
- A communication strategy with the purpose of valuing those who speak up.
- Liaising with similar roles in other sectors.
- Ensuring visibility of the National Guardian to all staff within organisations.
- Considering financial impact on those who speak up.

Chapter 2: Principles for the National Guardian

2.1. Responses to questions 2a and 2b

Question 2a asked respondents *“Do you agree that these principles are the right ones? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	2	0	0
CQC staff	1	0	0
Health care professional	15	7	0
Member of the public	6	1	1
Provider of services	11	0	2
Stakeholder	7	1	18
Voluntary and community sector representative	5	1	0
TOTAL	47	10	21

The majority of the respondents (47) who chose to answer Q2a agreed with the proposed principles for the National Guardian while 10 respondents disagreed. Over half of those who disagreed identified as health care professionals (7).

Question 2b asked respondents *“Are there any missing? Please explain your answer.”* The following table provides an overview of answers to the closed question.

Question 2B	Yes	No	No answer given
Commissioner of services	0	2	0
CQC staff	1	0	0
Health care professional	11	11	0
Member of the public	4	1	3
Provider of services	3	7	3
Stakeholder	1	1	24

Voluntary and community sector representative	2	4	0
TOTAL	22	26	30

A small majority of the respondents (26) who chose to answer Q2b marked that there were no principles missing for the National Guardian, while 22 respondents thought that there were missing principles. Half of those who said that there were missing principles identified as health care professionals, though as many health care professionals marked the contrary.

When asked to explain their answers to questions 2a and 2b, a total of 55 respondents made comments about the principles for the National Guardian, though this chapter may include relevant comments on the principles of the National Guardian raised in other questions, and from respondents who chose not to answer specific questions.

Asked what they thought about the principles for the National Guardian, 11 respondents made general comments of agreement with the proposals. Eleven respondents made similar comments of support but with added further caveats and suggestions. On the contrary, 11 respondents made comments noting their general concerns or disagreement with the principles.

Some of the central points raised in this section include the division of responsibility between the National and Local Guardians, as well as between the National Guardian and CQC. Other points included whether intervening in individual cases, statutory powers and reviewing historical cases would be essential to the role's functions or an excess of power. Further detail can be found below.

2.1.1. Clarification of the National Guardian Role

A total of 20 respondents stated their desire for more clarification on the role of National Guardian with many making general requests. Half of these respondents identified as stakeholders.

Of the respondents who went into further detail, some questioned the division of responsibility between the National and Local Guardians, and suggested that there should be clear guidelines on which to go to:

“It may not be so easy to distinguish when and why the National Guardian may become involved. It needs to be very clear to everyone when the National Guardian will be the relevant “person” for resolving issues and when local processes should instead be engaged”
OR18

A few respondents also requested a clear delimitation between the responsibilities of the National Guardian and CQC. Chapter 3 below, ‘Independence of the National Guardian (question 3)’ covers this further.

One stakeholder questioned the National Guardian’s remit, as the job advertising and interview took place while the consultation process was still running.

Another stakeholder was concerned by the potential confusion between the National Guardian and the existing National Data Guardian due to their similar names. They suggested that the National Guardian changes its title before launching.

2.1.2. Intervention in individual cases

Fourteen respondents commented that the National Guardian should intervene in individual cases. Many respondents challenged the power and effectiveness of the role without intervening in individual cases. They also questioned how the role would work in practice:

“Unless this person works on individual cases, the organisations in difficulty will struggle to recognise the behaviours that cause the problems.” ID21700336

In contrast, six respondents opposed the intervention of the National Guardian in individual cases. The main concerns were the duplication with the work of existing regulators, the potential increased cost of intervening in individual cases or that the work would be too complex and could risk overloading the National Guardian.

“I think the remit should be kept to advising and strengthening systems. Getting involved in individual cases, which are often incredibly complex, would not be productive or practical, and would take the responsibility away from Trusts.” ID21737768

A small number of respondents argued a third position that the National Guardian should intervene in special circumstances, such as when local arrangements have failed.

2.1.3. Statutory powers

A total of 18 respondents argued that the National Guardian should have statutory powers. They stated their concern that the National Guardian would not have enough power without statutory powers. Some respondents went on to say that statutory powers could help improve care:

“I feel strongly that where evidence is found that good practice has not been followed and where there is reluctance to learn from this that the National Guardian should possess some statutory power to enforce a move to good practice.” ID21703039

Respondents also linked the lack of statutory powers to perceived issues of independence, arguing that they will depend on the powers of the arm’s length bodies (CQC, Monitor, TDA, and NHS England):

“The National Guardian must have their own independent powers, and not rely on borrowed powers from bodies that the National Guardian must hold to account. There can be no

credibility in an office that cannot wield any powers or bind organisations to certain actions and outcomes” ID21877681

In contrast, two respondents commented that the National Guardian should not have statutory powers.

2.1.4. Additional bureaucracy

Eighteen respondents stated their concern that the National Guardian may add more bureaucracy to the healthcare system. They made general comments about the perceived complexity of instating the National Guardian:

“Various bodies call for investigations and often investigators then investigate findings of other investigators. It feels a never-ending process which rarely gets to the heart of the issues and causes all involved to be legalistic and defensive” ID21682250

Respondents stated their concern that increased bureaucracy would have an adverse impact on clinicians, adding extra administration tasks to their existing responsibilities.

A few respondents also argued that the role would duplicate the responsibilities of the arm’s length bodies (CQC, Monitor, TDA, and NHS England) and that the issue lies in the National Guardian’s perceived lack of independence.

2.1.5. Reviewing historical cases

Seventeen respondents commented on the National Guardian’s reviewing of historical cases. Over half of these respondents identified as health care professionals.

Many of these respondents argued that the National Guardian should consider historical cases as part of its remit as they perceive there may be continuing risk to those who have spoken up, as well as opportunities for learning which should not be missed:

“If their ill-treatment is not properly considered and appropriate action taken to remedy the situation and hold to account those responsible for this ill-treatment, opportunities to learn from such experiences will have been lost and justice will not have been served.” ID21880669

A few respondents stated that there is no need for the National Guardian to review historical cases. Respondents gave reasons such as the inability to examine past cases and the perceived ‘covering up’ by staff.

Respondents also challenged and queried the definition of historical:

“What are the timescales for something being regarded as ‘historic’ (there is a reference to ‘current’ or ‘ongoing issue’ being regarding as from April 2016 onwards on page15)? Also the nature of the concerns likely to warrant consideration will probably relate to issues that are not isolated incidents so there would need to be flexibility over the timescales.” OR2

They argued that if a person who speaks up is still at risk then it is not historic. A few other respondents suggested using historical cases for training purposes to learn from past mistakes.

2.1.6. Discretion to get involved

Fourteen respondents commented on the National Guardian's principle of discretion to get involved in cases. A few respondents supported the principle, arguing that this will be an essential part of the role. On the other hand, 11 respondents stated their concerns about this principle. One concern was a perceived lack of clarity on the criteria for discretion to get involved and a need for transparency on this issue:

“While we agree that the National Guardian should maintain independent discretion regarding the level of involvement he or she has in individual cases, this discretion must be executed within a designated framework to protect openness, transparency and role consistency.” OR16

Another concern was that allowing the National Guardian discretion to intervene in individual cases could lead to an inconsistent approach, which could affect the fair treatment of those who speak up.

“If the individual is given wide discretion there could be [a] wide range of experiences dependent solely on who was in post” ID21682290

2.1.7. Review of the role in future

Respondents suggested that the National Guardian should review its role in the future; for example regular reviews at intervals such as six months and trialling the role in one area first before extending across the country.

2.1.8. Suggested additional principles

Respondents suggested new principles or alterations to the existing principles for the National Guardian. A few of these respondents requested a new principle of transparent criteria for getting involved in cases. Other suggestions included:

- Extending principle F (challenging others to look again at cases, and advise on appropriate actions rather than undertaking investigations directly) to include Local Guardians where there is a need to review a particular case.
- Providing quarterly reports detailing what type of reviews have been successfully concluded or otherwise.

2.1.9. **National Guardian appointment**

A few respondents made comments about the considerations for appointing the National Guardian. They expressed concerns about the appointment of an individual at a high paygrade or with the presence of vested political interests. Other respondents suggested focusing on leadership and made a general request to appoint the right individual.

Chapter 3: Independence of the National Guardian

3.1. Responses to question 3

Question 3 asked respondents *“Do you agree that the proposed arrangements will be enough to effectively ensure the National Guardian’s independence, and provide effective governance? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	1	1	0
CQC staff	1	0	0
Health care professional	10	11	1
Member of the public	4	4	0
Provider of services	8	3	2
Stakeholder	5	1	20
Voluntary and community sector representative	4	2	0
TOTAL	33	22	23

The majority of the respondents (33) who chose to answer Q3 agreed with the arrangements to ensure the National Guardian’s independence, while 22 respondents disagreed. Half of those who disagreed identified as health care professionals, though a similar number of health care professionals noted their support.

When asked to explain their answer to question 3, a total of 53 respondents made comments about the independence of the National Guardian, though this chapter may include comments on independence raised in other questions, and from respondents who chose not to answer specific questions.

A total of 39 respondents made general comments about the importance of independence for the National Guardian in order for the role to function effectively.

Some of the foremost points discussed in this section include whether the National Guardian’s working relationship with CQC would be a help or hindrance on the role’s independence, as well as similar issues surrounding the arm’s length bodies (CQC, Monitor, TDA and NHS England). Other points raised include building relationships with other bodies through

memorandums of understanding and the importance of accountability for the National Guardian. Further detail can be found below.

3.1.1. Relationship with CQC

A total of 36 respondents commented on the National Guardian's working relationship with, and independence from, CQC. Over a third of these respondents identified as stakeholders.

Opinion on this issue was divergent across the respondents. On the one hand, respondents could not see the National Guardian being independent if hosted by the CQC, due to financial and line management reasons:

"A NG under the line management of the DH, funded by central NHS bodies, appointed by CQC and under CQC's line management and budgetary control cannot be said in any way to be independent." OR6

On the other hand, respondents supported the proposed working relationship with CQC. The majority of respondents could be found between these two positions, requesting the clarification of the working relationship and registering their concern of the independence from CQC but not suggesting complete separation. They suggested the independence of judgment lies within the National Guardian:

"The role of National Guardian should be a genuinely independent role, which is simply hosted by the CQC as opposed to working within or for the CQC. We agree that the independence of judgment of the National Guardian is paramount." OR13

Branding was another point mentioned by respondents regarding the independence from CQC. This is covered in the section below (question 4).

One respondent suggested that the National Guardian should not be based in the same office as CQC.

3.1.2. Relationships with other regulators

A total of 23 respondents commented on the National Guardian's working relationship with, and independence from, other regulators. Over half of these respondents identified as stakeholders.

The most common regulators referred to were Monitor, TDA and NHS England, which, with CQC, make up the National Guardian's four arm's length bodies. A total of 10 respondents supported the National Guardian's collaboration with these bodies in order to use their regulatory authority:

"...it is crucial that robust and accountable mechanisms are in place to ensure, that whilst the [National Guardian] has no statutory powers of its own, the relevant regulatory body is engaged where appropriate." OR26

Conversely, nine respondents expressed concerns that the National Guardian's perceived reliance on the arm's length bodies may adversely affect its independence. These comments were often combined with statements about The National Guardian's relationship with and independence from CQC (see above).

Respondents requested more clarity about how the arm's length bodies' relationship with the National Guardian would work in practice.

3.1.3. Memoranda of understanding

Respondents commented on MoUs (Memoranda of Understanding) for the National Guardian. Those who support this proposal, considered the MoUs logical and useful. Other suggested further clarity or improvements to the MoUs.

Outside of the arm's length bodies, two stakeholder regulators, The General Pharmaceutical Council and The General Medical Council, stated their interest in collaboration and the potential for MoUs between them and the National Guardian.

Suggestions included a MoU between the National Guardian and the Police to improve investigations, and an accountability mechanism for those breaching their MoUs.

3.1.4. Accountability

A small number of respondents stressed the importance of accountability of the National Guardian. Specific comments raised in relation to accountability were:

- Request that the National Guardian's accountability should be clarified in more detail.
- Suggestion of the concept of shared accountability used by the aviation sector by which all staff constructively challenge each other's decisions to avoid mistakes.
- Concern that principle (b), that the National Guardian should not be hindered by bureaucratic purposes, may be used as an excuse for unaccountability.

3.1.5. Relationships with other groups

In terms of relationship with, and independence from other groups, a few respondents made general requests for the National Guardian to be independent from providers of services and to build constructive working relationships with commissioners.

There was also a request that the appointments to the steering group for the National Guardian should be fair and balanced.

3.2. Branding of the National Guardian (question 4)

Question 4 asked respondents "How should communications from the National Guardian be branded?" A total of 61 respondents made comments about the branding of the National Guardian, though this chapter may include relevant comments from other questions and from respondents who chose not to answer specific questions.

Key points raised in this section include: independent branding to represent the independence of the National Guardian; using the arm’s length bodies (CQC, Monitor, TDA and NHS England) to give the role solidarity; and using CQC branding to ensure transparency. Further detail can be found below.

3.2.1. Independent branding

A total of 21 respondents suggested that the National Guardian should be branded independently of other bodies. Over a third of these respondents identified as stakeholders.

While some comments were general requests for independent branding, the majority of comments argued that if the National Guardian is to be seen as independent, its branding must be unique enough to reflect its independence without the confusion of using logos from other bodies:

“I would recommend the National Guardian has their own, distinctive branding (perhaps drawing on the FTSU branding) to demonstrate their independence. Using the branding of all four arm’s length bodies would be confusing and visually unattractive.” ID21821238

3.2.2. Arm’s length bodies branding

A total of 10 respondents suggested that the National Guardian should be branded with all four arm’s length bodies (CQC, Monitor, TDA, and NHS England).

A few respondents suggested that the arm’s length bodies should be added to an independent logo as a footer or tagline. Respondents argued that by adding the arm’s length bodies, they would give authority and solidarity to the National Guardian. One respondent commented that including the arm’s length bodies would remove any confusion about their relationship to the National Guardian.

3.2.3. CQC branding

Six respondents argued that branding the National Guardian as part of CQC would be preferable for the sake of transparency. In relation to public perception, respondents also argued that the addition of CQC to the National Guardian’s branding could add a feeling of authority:

“I think it would give the communications more clout if they were branded as coming from the CQC with the emphasis on reporting good practice so others could copy ideas but also highlighting poor practice in specific areas.” ID21794661

One respondent marked their preference for CQC branding if it were not possible for the National Guardian to have independent branding.

3.2.4. Branding concerns

Some respondents were concerned that the branding of the National Guardian may be superficial and affect the transparency of the role.

3.2.5. Additional ideas and suggestions

Respondents made additional suggestions for the branding of the National Guardian. Many of these comments were suggestions of slogans or taglines for the role highlighting the National Guardian's potential to achieve positive culture change:

“National Guardian supporting the workers to provide high quality care with honesty, transparency and openness” ID21889388

Other suggestions included:

- Combining the National Guardian with the Whistleblowing Helpline to create a unified brand.
- Changing the title of the National Guardian to focus on those who speak up.
- Including the NHS lozenge to the branding.

Chapter 4: Functions of the National Guardian

4.1. Local Freedom to Speak Up Guardians (questions 5a and 5b)

Question 5a asked respondents *“Do you agree with our proposal that the National Guardian should build a strong network of local FTSU Guardians? Please explain your answer”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	2	0	0
CQC staff	1	0	0
Health care professional	18	4	0
Member of the public	6	2	0
Provider of services	10	0	3
Stakeholder	13	0	13
Voluntary and community sector representative	6	0	0
TOTAL	56	6	16

The large majority of the respondents (56) who chose to answer Q5a agreed with the proposal to build a network of Local Guardians while six respondents disagreed. Over half of those who disagreed identified as health care professionals

Question 5b asked respondents *“Do you have additional ideas for how this should be delivered?”*

A total of 65 respondents made comments when asked to explain their answer to question 5a and in response to question 5b, though this chapter may include relevant comments from other questions and from respondents who chose not to answer specific questions.

Some of the main points raised in this section include the importance of Local Guardians in promoting positive culture change, as well as concerns about the Local Guardians’ potential independence and isolation. Other points include the need for networking for Local Guardians in order to share feedback, as well as standard training opportunities and person specifications to create consistency across the country. Further detail can be found below.

4.1.1. Importance of Local Guardians

A total of 36 respondents commented on the importance of Local Guardians. They made general supportive comments, suggesting that this proposal would have a positive effect in terms of driving culture change and learning at a local level. A few respondents went further to argue that the Local Guardian's may be more effective at dealing with those who speak up than the National Guardian as they would have the local knowledge and closer proximity to those speaking up:

“Local [trusts] can evaluate more easily the concern raised they would be able to understand any local issues and be able to initially talk to the person(s) raising the concerns.”
ID21681201

Similarly, respondents pointed out the potential benefit of increased capacity with the addition of Local Guardians to the National Guardian and of being able to contact Local Guardians more easily than the National Guardian. On the reverse side, one respondent suggested that the Local Guardians eliminate the need for a National Guardian completely.

4.1.2. Concerns

A total of 37 respondents expressed concerns regarding the Local Guardians. Over a third of these respondents identified as stakeholders.

A common concern was issues of independence and conflicts of interest that may arise when Local Guardians are appointed by NHS trusts. They argued that the power of someone in a higher position may act as a conflict of interest while a more junior individual may not have enough authority to bring effective changes:

“We have appointed our own [local] Freedom to Speak Up Guardian however have concerns about how independent such a role can be when the person is employed by the Trust. Any very senior person will be unlikely to have capacity to do the job justice, however anyone in a more junior position may not have the appropriate authority / feel constrained to make the right decisions.” ID21895741

In relation to the influence of providers, respondents suggested that Local Guardians may need protection from the organisations which they are attached to. This is due to the perceived issues of isolation Local Guardians may face through fulfilling their role and how this may affect their future career prospects.

On the other hand, respondents also suggested mechanisms to raise concerns against Local Guardians and impeach them if necessary.

Respondents noted concerns that the Local Guardians may add an extra layer of bureaucracy to the system. On the other hand, one respondent was concerned that the authority of the Local Guardian may be undermined by staff's ability to report directly to the National Guardian

instead of using local processes. On a similar note, some respondents were concerned about the dividing line between the remits of the National and Local Guardians.

Some respondents were concerned about the cost-effectiveness of the Local Guardians.

4.1.3. **Networking and training opportunities**

A total of 22 respondents commented on the potential networking and training opportunities for the Local Guardians. Most of these respondents noted general support for networking and training. Some respondents went into more detail suggesting networks for sharing information arranged by geography or type of healthcare organisation:

“Learning Sets: up to six [Local] Guardians per Set to compare and develop confident practice. These can be defined by geography and type of organisation. Learning Sets could be an opportunity for sharing information, development and discussion.” ID21932708

The existing networks of Local Guardians within organisations by NHS Employers, “the NHS guardian map”, were also mentioned by respondents. They suggested that by building on existing structures instead of starting anew, the National Guardian could save resources.

Opinion regarding the use of technology for Local Guardian networking was split. Some supported the ease of using of technology for long-distance while others marked a preference for face-to-face meetings to build trust and affinity. One respondent suggested the combination of approaches, social media and traditional communication.

Other ideas included:

- Learning from case studies of best practice.
- Employing mentors to train and advise Local Guardians.
- Networking at annual conferences.

4.1.4. **Appointment of Local Guardians**

Respondents also commented on the appointment of Local Guardians by calling for consistent job descriptions and person specifications to aid the appointment of Local Guardians. They also stressed the importance of independent selection processes without interference from providers.

Other points included:

- General support for the proposed appointment process.
- Suggestion for locally elected Local Guardians.
- Concern that the Local Guardian role will be added to existing employees’ responsibilities.

- Concern that directors may be appointed as Local Guardians who the respondent believed are responsible for suppressing those who speak up.

4.1.5. Additional ideas and suggestions

Respondents commented with additional ideas and suggestions:

- Importance of media and communication to improve the visibility and access of Local Guardians to staff.
- Anonymised case studies and regular reports to detail the impact of the Local Guardian role.
- Reflective spaces where Local Guardians and all members of staff can challenge each other's performance.

4.2. Reviewing how staff concerns have been handled (questions 6a and 6b)

Question 6a asked respondents *“Do you agree with our proposals that the National Guardian should review how concerns have been handled in individual cases, where serious issues appear to exist? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	2	0	0
CQC staff	1	0	0
Health care professional	16	6	0
Member of the public	7	0	1
Provider of services	11	1	1
Stakeholder	10	0	16
Voluntary and community sector representative	5	1	0
TOTAL	52	8	18

The large majority of the respondents (52) who chose to answer Q6a agreed with the proposal to review how staff concerns have been handled while eight respondents disagreed. Over half of those who disagreed identified as health care professionals.

Question 6b asked respondents *“Do you have additional ideas for how this should be delivered?”*

A total of 52 respondents made comments when asked to explain their answer to question 6a and in response to question 6b, though this chapter may include relevant comments from other questions and from respondents who chose not to answer specific questions.

A total of eight respondents noted their general support for the proposals while six respondents made comments of concern or disagreement with the proposals.

Some of the frequently made points in this section include a need for the National Guardian to protect those who speak up, challenge those accountable, and facilitate learning from best practice to encourage improvements. Other points include specific response timescales for the National Guardian, and sharing information to improve transparency. Further detail can be found below.

4.2.1. Protection for those who speak up

A total of 30 respondents commented on the protection for those who speak up. More than half of these respondents identified as health care professionals.

Respondents identified a lack of current protection, some relating this to personal experience, and suggested further protection is needed. One respondent went further to state that the National Guardian, as currently proposed, would be unable to protect those who speak up.

Some respondents stated that the best way for the National Guardian to protect those who speak up is to hold those who are responsible to account. Other respondents argued that confidential communications between those who speak up and the National and Local Guardians would help achieve this. Others suggested that the rights of appeal should be clearly set out for those who speak up.

4.2.2. Learning from best practice

A total of 23 respondents commented on the National Guardian learning from success stories and best practice. They registered their support of this concept, arguing that in order to promote change, highlighting positive examples is as important as criticising poor practice:

“Many challenges lie ahead and this journey will be a significant learning process for all the providers involved. To ease this process and build trust and confidence across the network of providers, we suggest that the National Guardian must take care to encourage, nurture and champion good practice as well as highlight and criticise poor practice.” ID21712127

Respondents supported learning from best practice in order to improve transparency but requested clarity on what intelligence gathering methods would be used to collect best practice. Another request for clarity was a clear definition of best practice as a benchmark to compare poor practice against:

“Establish an effective assurance process whereby good practice as well as poor practice is identified, possibly through a national audit or the establishment of smart key performance indicators for organisations to return on a quarterly/annual basis.” ID21930703

An additional point raised was the use of guidance issued by trade unions and professional organisations to broaden the National Guardian’s knowledge.

4.2.3. Capacity and response timescale

A total of 21 respondents commented on the National Guardian’s capacity and response timescale. Over a third of these respondents identified as stakeholders.

Respondents called for specified and clearly stated timescales for responding to cases in order to give confidence to those who speak up. They believed that responding rapidly would ensure the National Guardian to be effective.

Respondents also expressed concerns:

- That costs would be higher if the National Guardian wanted a faster response time.
- That an initial inundation, or backlog, of responses would limit the fast treatment of the responses.

To safeguard the fast response timescale of the National Guardian and avoid the role becoming overburdened, respondents stressed a need for clearly defined criteria on which cases the National Guardian may review:

“Proper investigation can be very complex and time-consuming, with a continuing stream of new issues being raised as existing ones are closed off. There would need to be a bar set at a very high level for access to the National Guardian so as to avoid swamping the post with investigations at the expense of other aspects of the role.” ID21793835

4.2.4. Information sharing

Respondents commented on information sharing by the National Guardian with some supporting it as means to ensure transparency, while others requested clarification on how information would be shared.

There was one suggestion to enlist the help of the Health & Social Care Information Centre for data collection and distribution.

4.2.5. Additional ideas and suggestions

Respondents added suggestions on reviewing how staff concerns have been handled. These comments covered manifold topics:

- Importance of National Guardian keeping information confidential.
- Authority to report to the House of Commons’ Health Committee.
- Collaboration between National Guardian and union representatives.
- Support from an expert on the Public Interest Disclosure Act 1998.

- Potential risks of those speaking up with more damaging motivations and suggestions for mechanisms to protect against such individuals.

4.3. Supporting and advising providers (questions 7a and 7b)

Question 7a asked respondents *“Do you agree with our proposal that the National Guardian should support and advise providers? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	2	0	0
CQC staff	1	0	0
Health care professional	17	5	0
Member of the public	6	0	2
Provider of services	10	1	2
Stakeholder	9	0	17
Voluntary and community sector representative	6	0	0
TOTAL	51	6	21

The large majority of the respondents (51) who chose to answer Q7a agreed with the proposal for the National Guardian to support and advise providers while six respondents disagreed. All except one of those who disagreed identified as health care professionals.

Question 7b asked respondents *“Do you have additional ideas for how this should be delivered?”*

A total of 54 respondents made comments when asked to explain their answer to question 7a and in response to question 7b, though this chapter may include relevant comments from other questions and from respondents who chose not to answer specific questions.

Some of the frequent issues raised in this section include the potential improvements from collaboration between the National Guardian and providers, and clear guidance for providers in order to encourage these improvements. Further detail can be found below.

4.3.1. Support

A total of 27 respondents made comments marking their agreement for supporting and advising providers. Over a third of these respondents identified as health care professionals. Many of these comments were general statements of support for this proposal.

Respondents suggested that a team spirit and collaboration is a more effective means of achieving positive culture change. Others went further to suggest that the National Guardian should listen to providers and have empathy for their attempts to carry out good practice instead of focusing on criticism:

“Too often support and advise means, make judgements on part of the information only and produce a report telling us what we've done wrong. Genuine support would be fantastic - we are trying to do the right thing.” ID21682250

A total of nine respondents agreed with the proposals that the National Guardian should give providers clear guidance on best practice. They explained that in doing so providers would make improvements before inspections and thus potentially reduce the number of cases the National Guardian would have to review:

“Guidance should be provided as to what the National Guardian will expect of investigations, to ensure that we can try to ensure that we get it right first time, thus limiting the number of cases for the National Guardian to review.” ID21772424

For the similar reason of informing providers on concern trends, a few respondents marked their general support for the National Guardian’s annual report.

4.3.2. Concern

A total of six respondents expressed concerns about the National Guardian supporting and advising providers. They believed that this would be hard to achieve due to perceived embedded problems and that robust monitoring would need to be in place to ensure poor practice is identified. Respondents also questioned whether, where poor practice is found, the senior leaders of providers could be removed if necessary.

4.3.3. Additional ideas and suggestions

Respondents commented with additional ideas and suggestions. They included:

- Training services to providers from the National Guardian, possibly with an accredited course.
- A national summit for providers, Local Guardians, staff champions and the National Guardian.
- The collection of those who speak up’s personal details by the National Guardian.
- Updates for providers with timescales for implementation of the Local Guardians to encourage progress.

4.4. Challenge and support for the system (questions 8a and 8b)

Question 8a asked respondents *“Do you agree with our proposal that the National Guardian provide should support and challenge to the system? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	2	0	0
CQC staff	1	0	0
Health care professional	19	3	0
Member of the public	7	0	1
Provider of services	12	0	1
Stakeholder	10	1	15
Voluntary and community sector representative	6	0	0
TOTAL	57	4	17

The large majority of the respondents (57) who chose to answer Q8a agreed with the proposal for the National Guardian to support and challenge the system while four respondents disagreed.

Question 8b asked respondents *“Do you have additional ideas for how this should be delivered?”*

A total of 54 respondents made comments when asked to explain their answer to question 8a and in response to question 8b, though this chapter may include relevant comments from other questions and from respondents who chose not to answer specific questions.

Some of the recurrent points raised in this section include the potential improvements to providers as a result of supporting and challenging the system, and concerns with the feasibility of this proposal. Further detail can be found below.

4.4.1. Support

A total of 29 respondents made comments of general support for the National Guardian challenging and supporting the system. Over a third of these respondents identified as health care professionals. Most respondents made general comments supporting the proposals without more details.

Of the respondents who went into further detail, some argued that by supporting and challenging the system the National Guardian would be able to improve the monitoring of poor practice and encourage good practice:

“It is important as leaders we challenge and support to ensure the ambition of reduction of avoidable harm and lessons learnt are implemented and seen across the health care system”
ID21680618

Another potential improvement that respondents pointed out was the creation of a safer environment for those who speak up to voice their concerns without fear.

4.4.2. Concern

A few respondents expressed concern about the National Guardian challenging and supporting the system, either not believing that the proposals would be achievable or arguing that this would not be enough to protect those who speak up.

4.4.3. Additional ideas and suggestions

Respondents commented with additional ideas and suggestions. They included:

- Authority for the National Guardian to deliver challenges to the system.
- A need for consultation with a range of stakeholders.
- Introduction of speaking up from the point of inducting health care employees.
- A central secure online site for raising concerns.
- The importance of the Fit and Proper Persons Requirement (FPPR) to ensure provider staff are trustworthy and capable.

4.5. The four functions of the National Guardian (question 9)

Question 9 asked respondents *“Do agree that the four functions described are the right ones to enable the National Guardian to discharge its role, as described in the Freedom to Speak Up review? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	2	0	0
CQC staff	1	0	0
Health care professional	15	7	0
Member of the public	6	1	1

Provider of services	12	0	1
Stakeholder	12	1	13
Voluntary and community sector representative	5	0	1
TOTAL	53	9	16

The majority of the respondents (53) who chose to answer Q9 agreed with the four functions for the National Guardian while nine respondents disagreed. Over half of those who disagreed identified as health care professionals.

When asked to explain their answer to question 9, a total of 40 respondents made comments about the National Guardian’s four functions, though this chapter may include relevant comments made in answer to other questions, and from respondents who chose not to answer specific questions.

Most respondents who qualified their response offered general comments of support for the functions, and recognised that given the challenges involved these should not go further. Some respondents also suggested reviewing and amending the role in future after determining its strengths.

4.5.1. Support

Of the 53 respondents who agreed with the four functions of the National Guardian, 13 added general comments of support, and suggested that they were wide ranging and well written. One respondent went into more detail to explain that, as the role will be demanding, the National Guardian’s remit should not be any wider, to ensure the best chance of success.

“We agree. It is already a wide remit and will be a demanding and challenging role implemented in a changing policy and regulatory landscape for the NHS, and so we would wish to see the role given the best chances of succeeding by not asking more than is reasonable at early stages of its implementation.” OR23

4.5.2. Amend and revisit

A total of seven respondents suggested that the four functions would need to be amended or revisited in the future once the effectiveness of the role has been assessed. All of these comments were general requests.

4.5.3. Additional ideas and suggestions

One stakeholder suggested the addition of a fifth function on sharing insights into the subject of allegations where common themes exist, to demonstrate that issues are being discussed at the highest level. They also suggested publishing advice publically on how to manage those

who speak up and how to manage their concerns. They argued that this is vital to ensure a culture of openness and to encourage speaking up.

One respondent suggested that in terms of providing support, advice on techniques for measuring change and monitoring progress would be beneficial to providers. Another respondent echoed this sentiment by noting that measuring culture change would be particularly challenging.

One respondent felt that it should be made as clear as possible that the main purpose of the role is to create a safer environment for patients, their families and carers. One respondent noted that ex-staff are not covered by the National Guardian’s remit, however may have valuable insights to share.

4.6. Further views on how the National Guardian should discharge its role (question 10)

Question 10 asked respondents “Do you have any further views on how the National Guardian should discharge its role? Please explain your answer.” The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	0	2	0
CQC staff	1	0	0
Health care professional	8	14	0
Member of the public	2	3	3
Provider of services	4	8	1
Stakeholder	3	0	23
Voluntary and community sector representative	1	2	3
TOTAL	19	29	30

The majority of the respondents (29) who chose to answer Q10 marked that they did not have any further views on how the National Guardian should discharge its role while 19 respondents noted that they had further views.

When asked to explain their answer to question 10, a total of 37 respondents provided qualitative comments

Many of these respondents took the opportunity to reiterate concerns that they had raised in answer to previous questions, for example that the National Guardian should be given statutory powers or that the role duplicates responsibilities elsewhere.

Some respondents again raised the issue of independence, and suggested that the role would not be independent if positioned within CQC. In addition to this one respondent noted that Local Guardian's may face a challenge in remaining neutral when working with both the National Guardian and the local trust that appointed them. Another respondent asked how the National Guardian would work in relation to CQC's National Customer Service Centre, as this may reduce the independence of the National Guardian. One respondent suggested that a publicly available Annual Report from the National Guardian would be beneficial in generating trust in the role.

A few respondents suggested that the National Guardian needs legal support, either through creating its own team or through using the legal teams of arm's length bodies.

Two respondents raised concerns over the motivation of a small minority of people who speak up, and suggested that in some cases this may be of a malicious nature. They suggested that the National Guardian must be prepared to identify and deter unsubstantiated claims.

Some respondents made general suggestions for the National Guardian, for example: continued and frequent liaison with stakeholder organisations throughout the development and operation of the role, minimise the burden on providers with regard to reporting requirements, and that the National Guardian should focus on enabling change rather than apportioning blame.

One respondent suggested that the National Guardian should support the establishment of a truth and reconciliation commission to examine previous cases, in order to facilitate a climate of openness where concerns can be raised openly.

One respondent advised that more consideration should be given to private care, especially where a patient had received both private and NHS care during the same course of treatment.

Other suggestions included updating employers on the timescale for implementation, carrying out a detailed cost benefit analysis of the role, producing toolkits and training packages, taking account of existing guidance provided by the Royal College of Surgeons, and providing guidance to trusts on developing and standardising the Local Guardian role.

Chapter 5: Assessment of costs and benefits

5.1. Responses to questions 11a and 11b

Question 11a asked respondents *“Do you agree with the assessment of drivers of costs and benefits of the National Guardian and its functions? Please explain your answer.”* The following table provides an overview of answers to the closed question.

	Yes	No	No answer given
Commissioner of services	1	1	0
CQC staff	1	0	0
Health care professional	15	6	1
Member of the public	5	2	1
Provider of services	9	0	4
Stakeholder	5	1	20
Voluntary and community sector representative	4	1	1
TOTAL	40	11	27

The large majority of the respondents (40) who chose to answer Q11a agreed with the assessment of drivers of costs and benefits of the National Guardian and its functions while 11 respondents disagreed. Over half of those who disagreed identified as health care professionals.

Question 11b asked respondents *“Can you provide further examples of likely drivers of costs and benefits?”*

A total of 48 respondents made comments when asked to explain their answer to question 11a and in response to question 11b, though this chapter may include relevant comments from other questions and from respondents who chose not to answer specific questions.

Some of the commonly made points in this section include a need for additional assessment to better inform the drivers of costs and benefits, and further examples of costs not mentioned in the consultation document. This section also covers concerns with how the office of the National Guardian will be funded and the potential benefits to staff, providers and patients.

5.1.1. Support for the assessment

A total of eight respondents made general comments of support for the assessment of drivers of costs and benefits of the National Guardian and did not go into further detail.

5.1.2. Concern for the assessment

A few respondents made comments of concern on the assessment of drivers of costs and benefits of the National Guardian, mostly in general terms.

One respondent argued that there is not enough emphasis on financial savings and cost-effectiveness when dealing with public money, whilst another recognised the difficulty in assessing costs and benefits of the proposals. One respondent suggested that the proposed benefits for service users, staff and provider organisations already exist, and that the creation of the National Guardian would not improve things further.

5.1.3. More assessment required

A total of nine respondents suggested that more assessment of National and Local Guardian processes would be required in order to fully analyse the drivers of costs and benefits of the National Guardian:

“Obviously analysis of the relative weight of these costs and benefits is impossible without considerably greater detail about how the National and Local Guardians will operate and about the volume of work that they will handle.” ID21877733

Some respondents made suggestions for further research using staff surveys to determine the potential benefits, as well as future studies to establish whether those benefits are being realised. In terms of who should carry out the assessment, one respondent argued that this should be the central government, and not providers.

“The use of indicators in the staff survey results will help measure the potential benefits that accrue from having a [National Guardian] as a vocal and visible spokesperson and advocate for Freedom to Speak Up.” ID21930703

5.1.4. Costs – further examples

Respondents suggested further examples of costs for the National Guardian. A few of these respondents commented on overheads associated with the running of the National Guardian, the Local Guardians and their supporting team. In relation to Local Guardians, one respondent identified the cost of their training.

Additional costs were identified by respondents:

- Marketing to raise awareness of the National and Local Guardians.

- Infrastructure and administration costs from the office for the National Guardian.
- Costs resulting from poor care as a result of not addressing concerns raised by staff.

5.1.5. **Costs - concern**

A total of seven respondents stated their concerns about the costs of the National Guardian. Almost all of these respondents identified as stakeholders. They stated concerns about how the National Guardian would finance what they perceive as the high level of resources needed to carry out its role adequately, and the risk that it would not perform effectively without appropriate levels of funding. Respondents opposed the potential for these costs to be passed onto providers.

“We have some concerns over the funding of the role, which would presumably come out of the CQC’s budget, and its effect on the fees for those registered. In particular, while there is no role for the National Guardian in primary care, we would not expect fees for providers in primary care to be affected.” OR13

5.1.6. **Costs - CQC**

Opinion was split across a few respondents on how costs for the National Guardian would relate to CQC. On the one hand, a few respondents were concerned that funding from CQC could take resources away from CQC and so reduce their effectiveness. On the other hand, one respondent suggested that using CQC funds to get the National Guardian started would be beneficial. They perceive that the role would need additional help at the beginning in order to function effectively.

5.1.7. **Benefits**

Respondents highlighted the potential benefits to providers following the implementation of the National Guardian. A few respondents talked generally about improvements to staff culture and morale. With improved morale, respondents argued that this could reduce the costs incurred from litigation cases.

Potential benefits to patients following the implementation of the National Guardian were also mentioned by respondents. These focused on improvements to patient care and safety.

A few respondents suggested further examples of benefits resulting from the National Guardian. These included greater awareness for healthcare regulators and job creation.

Chapter 6: General comments

6.1. Responses to all questions

This chapter consists of themes which were brought up by respondents across the consultation questions with no direct relevance to any of the questions.

6.1.1. Ensure a culture of openness and respect

A total of 61 respondents commented that the National Guardian must ensure a culture of openness and respect in order to encourage improvements and reduce the need for issues to be raised or cases to be reviewed:

“The National Guardian's office should be proactive in engaging with providers and focussing on supporting them to create a culture of openness and transparency/learning so that issues don't need to be raised to the National Guardian in the first place.” ID21758656

6.1.2. Consultation process

A total of 14 respondents commented on the consultation process for the National Guardian. Many of these respondents requested more detail and clarity on numerous points while a few respondents argued that the language was too verbose. Additional comments included:

- Suggestion of a separate consultation by National Guardian with providers.
- Criticism of a consultation event being unrepresentative.
- Criticism of consultation question phrasing leading to acquiescence bias.

6.1.3. Support, disagreement and improvement

General comments of support for the National Guardian were marked by a few respondents while others argued that the success of the role would not be known until after it has been implemented.

On the contrary, a small number of respondents marked their general disagreement with the proposed National Guardian. Some respondents specified in their disagreement that existing regulations should be better enforced instead of implementing the National Guardian.

A few respondents suggested that the proposed role of National Guardian needs to be generally improved, in terms of strength and effectiveness without going into further detail.

6.1.4. Other comments

Other respondents highlighted the importance of responding to concerns raised by members of the public and suggested signposting them to the appropriate processes.

Chapter 7: Whistleblowers Forum

This chapter covers notes from a Whistleblowers Forum which met to discuss the role of the National Guardian on 27th November 2015. The minutes follow Chatham House Rules and as such do not attribute comments to individuals. For the same reason, exact numbers cannot be provided.

High level themes that emerged are:

- Clarification of the National Guardian's role
- The need for statutory powers
- The need for reviewing historic cases
- Appointment of a National Guardian with personal experience of speaking up
- The importance of independence from CQC
- The need for additional resources to deal with the initial backlog of cases requiring review
- The need for taking statements of fact from those who speak up
- An escalation route beyond CQC to the Secretary of State or Health Select Committee
- The need to demonstrate effectiveness

These themes and additional points are analysed in more detail below.

The Scope of the National Guardian

Concerns about the National Guardian's scope focused on specific areas being excluded. In particular, attendees expressed concern that adult social care will not be included initially. They also cited health and social care devolution and gave the example of Greater Manchester. They suggested that the role of the National Guardian could address the needs of evolving structures for healthcare delivery.

Some suggested that there should be a separate mental health guardian role.

Principles for the National Guardian

Attendees highlighted a number of principles they felt should underpin the establishment of a National Guardian. Most generally in relation to the role, they stated that the National Guardian's role would need to demonstrate effectiveness and be reviewed regularly. They also expressed a concern that the role should conform to equality and diversity legislation.

Some of these considerations and suggestions related to the way this role would relate to other bodies. For example, they stressed the importance of addressing issues at organisational not at individual levels. They also stated the need for clear delineation of responsibilities between the National Guardian and the arm's length bodies (CQC, Monitor, TDA, and NHS England).

A related concern was that the National Guardian may be an additional layer of bureaucracy. Attendees' comments emphasised the need to move away from a system which they perceived shuffles cases between different regulatory bodies.

The attendees agreed the National Guardian should have statutory powers in order to ensure they could operate effectively. They also suggested that criminal charges would act as an effective deterrent of poor practice.

Other specific suggestions raised included:

- The need for clarity on how the National Guardian would treat individual cases. Attendees noted the lack of capacity for case management and expressed concern that the National Guardian will not investigate concerns, only review how they have been handled.
- The National Guardian should not be hindered by bureaucratic processes in order to ensure patient safety.

Attendees marked their disagreement with the National Guardian's discretionary approach to agreeing to review cases, arguing that those who speak up should have the right for self-referral, and that the National Guardian's criteria for accepting or rejecting cases should be clear.

Finally, in relation to the appointment of the National Guardian, attendees stressed the importance of appointing a National Guardian with experience of speaking up, emphasising that this was necessary in order for them to be able to empathise with those who speak up. Specific appointment criteria suggested included a background in investigation, provision of legal advice or an understanding of mental health issues.

Attendees questioned how far back the appointment panel would need to look for potential conflicts of interest before appointing a candidate to the role of National Guardian.

Independence and Branding of the National Guardian

Attendees noted concerns about the impact of funding from CQC on the independence of the National Guardian, in particular that that information would not be kept confidential from CQC. They suggested that funding should come from an outside source.

Attendees expressed support for the proposed steering group and for the advisory panel.

Some specific suggestions and considerations were raised in relation to the independence and branding of the role:

- The National Guardian's memoranda of understanding with the arm's length bodies (CQC, Monitor, TDA, and NHS England) need to be clear about the powers on which they can draw.
- The National Guardian should report to the Health Select Committee annually on their progress for the sake of accountability and transparency.
- The National Guardian should have its own branding and not use CQC branding.

Functions of the National Guardian

Attendees noted concerns that NHS trusts may assign the Local Guardian role to board members, executives or managers and that this may affect their independence. They also stated that providers should not be in charge of employing Local Guardians.

Some of the concerns raised focused on the relationship between the Local and National Guardians. These included the potential for communication breakdowns with the National Guardian. They stressed the importance of frequent meetings for the Local Guardians with the National Guardian, so that Local Guardians don't become isolated.

The possibility that Local Guardians could find their careers at risk was also highlighted as a concern.

Attendees also raised concerns in relation to the effectiveness of the National Guardian: in particular their capacity to respond to requests for support and advice, and the review of cases within an acceptable timescale. They suggested hiring additional staff for the first months to deal with a potential backlog of cases.

They also suggested that one National Guardian to around 250 providers is ineffective and that the role should be divided regionally such as: London, North, South, East and West.

Other suggestions put forward in order to ensure the functions of the National Guardian should be carried out most effectively included:

- Appointment of an academic body to create a programme setting out common standards of training for the role.
- Provision made for an escalation route beyond CQC to the Secretary of State or Health Select Committee. Attendees argued that this would act as an effective deterrent of poor practice.
- Reporting from the Local Guardian should go directly to the National Guardian and not to the Chief Executive of their organisation. A related suggestion was that the trust Chief Executives should not be able to bypass their Local Guardian straight to the National Guardian.
- There should be no cap on the number of cases per year.

Among other considerations raised, attendees stressed the importance of protecting those who speak up. Their concerns related to those who spoke up being victimised or finding it hard to seek reemployment.

They also highlighted the potential mental health issues deriving from speaking up and suggested that there was a need for clear guidance and advice for those who speak up.

Finally, two areas were highlighted where clarification was felt to be needed:

- How many Local Guardians would be assigned to each trust and whether there would be a ratio of Local Guardians to number of staff members they are covering.

- Whether any recommendations by the National Guardian would be made public, and whether NHS trusts would have to publish evidence that they have responded to recommendations.

Assessment of costs and benefits

Attendees argued that local providers should not be in charge of paying the Local Guardian.

They highlighted potential benefits to providers included:

- Reduced litigation costs
- Lower incidence of staff absences
- Fewer instigators of poor practice promoted to senior positions
- Improved staff morale

General and other comments

Attendees stressed the importance of creating a culture of openness and respect. They also questioned whether a provider that was privatised would remain within the scope of the National Guardian's duties and responsibilities.

Chapter 8: Online Community Q&A

This section covers notes from an Online Community Q&A. The issues raised by participants are grouped into themes and are presented below.

The Scope of the National Guardian

In relation to the scope of the National Guardian, participants expressed support for extending their remit to primary care and agreed that this could be phased after the National Guardian's methodology has been proven to be effective. They also suggested extending the National Guardian's scope to independent healthcare and adult social care.

Principles for the National Guardian

Participants stressed the importance of appointing a National Guardian who is independent, competent and trusted to hold sufficient authority to make changes to the system. In terms of competence they argued that experience of speaking up was more important than knowledge of the NHS.

Participants felt that the National Guardian should have statutory powers, with corresponding concern that they would be powerless without these.

Other principles suggested to ensure the effectiveness of the National Guardian role included that:

- The National Guardian should be the sole investigations body in order to offer a co-ordinated and standard response to concerns.
- The National Guardian role should be reviewed every three years to assess its effectiveness.

The review of historical cases was another area highlighted as important. Participants believed greater clarity was needed as to why this was not proposed, questioning whether this was due to the perceived magnitude of the task and the desire to start the process anew.

They argued that not reviewing historical cases would put the National Guardian's aim to create a culture of openness and respect at risk. They also commented that it would be difficult to assess a current situation without regard to how it initially arose.

Independence and Branding of the National Guardian

Participants believed that independence was fundamental to the National Guardian's success as well as its positive public perception. While they supported the consultation document's statement on the importance of the National Guardian's independence, they requested visible results of this statement and voiced concern that the National Guardian may not be as independent as the Independent Officer role described in the Freedom To Speak Up Review.

Participants supported the proposals to have the National Guardian sign off reports under their own signature only, as well as the proposed memoranda of understanding and steering

groups (but with the caveat that they do not restrict the National Guardian’s ability to perform their role). They also agreed that hosting the National Guardian within CQC would give the role credibility but they felt that further safeguards were necessary to maintain its independence.

Measures suggested included:

- A balanced authority between the National Guardian and the arm’s length bodies (CQC, Monitor, TDA, NHS England), which would include the National Guardian’s ability to ask difficult questions of senior management in these arm’s length bodies.
- The National Guardian should have unrestricted access to the Chief Executives and Chairs of each of the arm’s length bodies as well as the General Medical Council and the Nursing and Midwifery Council, the Whistleblowing Helpline (administered by Mencap), and the Parliamentary Health Service Ombudsman.
- Situating the National Guardian’s office in Leeds, instead of London, could provide a clear statement of independence.
- Accountability and transparency in demonstrating how effectively the National Guardian role is being performed, how it is delivering changes and how it deserves public trust.
- The National Guardian should have its own brand. Participants suggested that the arm’s length bodies (CQC, Monitor, TDA, and NHS England) could be mentioned in a tagline if this would benefit its perception. They also suggested their own ideas for a logo involving mythological iconography:



or



DRAGOART.COM

or



Functions of the National Guardian

The importance of the National Guardian role to protect those who speak up was stressed by participants. They argued that providers must take responsibility for creating an environment where staff feel safe to raise concerns.

They also suggested quarterly regional meetings and annual national meetings for the Local Guardians to discuss recurrent problems, have training, give feedback and share best practice. In addition to these, they suggested a series of initial regional meet and greet meetings to commence the network.

Suggestions were put forward by participants in order to ensure the National Guardian would perform its role most effectively:

- The National Guardian should provide clear guidance of best practice to providers. More specifically it should look at what is working well in the system and spread the lessons learnt as examples of good practice.
- The National Guardian should support and advise providers. To this end, participants noted that that culture change is most easily initiated when there is cooperation instead of a 'threat-based' approach.
- An effective PR and media communications capability would be vital in highlighting best practice.
- Budget providing, that there could an implementation of regional coordinators or liaison officers in response to the concern that liaising with every NHS Trust across the country could take up a great deal of time.
- The National Guardian should cooperate with the Independent Patients Investigations Service (IPIS) or potentially form a single operation in order to have a coordinated approach to advice.
- In order to improve response timescales, efficient systems are needed for information input, analysis, as well as processing and dissemination of lessons learned.
- Implementation of a staff rehabilitation scheme.

A number of comments focused on Local Guardians and the relationship between these and the National Guardian. For example, participants stressed the importance of Local Guardians, arguing that these would help improve standards across the NHS and how they would allow staff to speak to someone they can trust.

They also argued that Local Guardians, as part of the local work environment, could have more impact than the remote National Guardian. The proposals for standard training and person specifications for the Local Guardians was supported as necessary to ensure the right individuals are appointed to these roles.

However, a concern raised in relation to the Local Guardians was that these could be influenced by their organisations' Chief Executives and that this may damage their public perception.

Participants questioned the purpose of having Local Guardians if they are overridden by their trust executives. They argued that the Local Guardians must have a right of redress and a clear communication pathway to the National Guardian.

Participants argued that trust Chief Executives should welcome the creation of the National and Local Guardians as a way to improve standards across the NHS.

Assessment of costs and benefits

Participants argued that the National Guardian should have budgetary control in order to have sufficient resources to perform its role without depending on other organisations. They believed that staff morale at providers would improve and as a result of this, improve productivity and lead to reduced legal fees.

A number of potential costs in relation to people, information and resources were listed:

- People:
 - Office of the National Guardian, Local Guardians, trainers, CQC legal team
- Information
 - CQC intelligence team, data storage, data analysis, marketing and PR
- Resources
 - website, email and telephone response

General and other comments

Participants stressed the importance of creating a culture of openness and respect. They also noted that ongoing trust in the National Guardian will be founded on recognition that they have made a difference.

Appendix 1 Consultation Document



A National Guardian for the NHS – **your say**

Improvement through
openness

September 2015

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Improvement through openness

A new culture of openness is needed in the NHS. To improve safety and make the health service a better place to work, we need leadership and a culture that places less emphasis on blame when things go wrong and more importance on transparency and learning from mistakes in the NHS.

The creation of the new National Guardian for the NHS can help transform the way people think about and respond to staff concerns. Working with local guardians at NHS trusts, a new National Guardian can play a pivotal role in cultural improvement within the health service.

Since the February 2013 publication of the Public Inquiry report about Mid Staffordshire NHS Foundation trust, significant progress has been made to ensure that everyone using the NHS receives safe, effective, respectful and compassionate care.

In some places, however, there is still a culture of institutional defensiveness, where mistakes are denied and the opportunity to learn and improve care is missed. The evidence in Sir Robert Francis QC's *Freedom to Speak Up* review detailed the price paid by too many NHS staff who spoke up with their concerns about the quality of care. People who should have listened to those concerns, and acted upon them, responded instead with evasiveness and hostility.

The National Guardian is a stage in the journey towards openness in the NHS, and this consultation sets out how we believe they can contribute to culture change, working together with Local Guardians. We want to hear people's views, including staff who have raised concerns, and those who have experience of listening, investigating and responding to concerns that are raised. This is an opportunity to continue the national conversation started by Sir Robert Francis about the importance of raising concerns in a safe and open culture.

David Behan
Chief Executive

1. Introduction

In response to concerns about culture in the NHS, the Secretary of State for Health commissioned Sir Robert Francis to carry out an independent review: *Freedom to Speak Up*. The review recommended the creation of a National Guardian. This consultation asks how CQC should establish this role.

The National Guardian is intended to fill a gap in the system for staff who have raised concerns and feel that those concerns have been poorly handled by their employer or other bodies. The role will provide high profile national leadership. The National Guardian will support the Local Freedom to Speak Up Guardians and help create a culture of openness within the NHS, where staff are encouraged to raise concerns, lessons are learnt and care improves as a result.

The Department of Health consulted on whether CQC was an appropriate host for the National Guardian. Overall, the consultation received 106 responses with 75 commenting on the National Guardian. The majority of these (56) were in full support of the role being hosted by CQC, and among those who disagreed there was no consensus on a better host.

CQC has been asked to host the National Guardian because the work of the Guardian is consistent with our purpose. Hosting the National Guardian, on behalf of Monitor, the Trust Development Authority and NHS England, has advantages over creating a new body that would require new legislation and incur greater costs. Placing the National Guardian with CQC is consistent with and complementary to existing work that we do with staff who raise concerns, as well as work we do in assessing providers' handling of staff concerns.

We welcome the opportunity to host the National Guardian and to contribute to the culture change that is needed throughout the system to make speaking up a normal part of working in the NHS. Establishing the National Guardian should support the NHS to make it safe for people to speak up and ensure a system is developed where quality and safety issues are always addressed.

The Department of Health's consultation response, 'Learning not blaming',¹ identified that the National Guardian will:

- Advise NHS organisations to take appropriate action where they have failed to follow good practice, or advise the relevant system regulator to take action.
- Deliver guidance on the Freedom to Speak Up Guardian roles and provide support to the Freedom to Speak Up Guardians when in place across trusts in England.
- Provide national leadership on issues relating to raising concerns by NHS workers.
- Offer guidance on good practice and handling concerns.
- Publish reports on the findings of the Office of the Independent National Officer (National Guardian).

The National Guardian will provide an external review of how cases are handled locally, where there is a cause for concern. The National Guardian will review the process that has been followed, but will not investigate the concern or form a judgement on the outcome of any existing investigations. The National Guardian will not remove responsibility for handling concerns from local organisations.

CQC is currently running an open recruitment for an individual to take up the post of National Guardian. We hope to appoint by the end of 2015 and for the Office to be fully operational from April 2016. The appointee will be responsible for deciding how the Office should operate and so we are not consulting on detailed proposals. Instead, this consultation sets out the principles we propose should govern how we establish the new role, the scope of the role, the four functions we believe the National Guardian should undertake, and the possible costs and benefits of introducing the National Guardian role.

2. CQC's role in relation to staff concerns

CQC's purpose is to make sure health and social care services provide people with safe, effective, compassionate, high-quality care and to encourage services to improve. CQC's role is to monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety and to publish what we find, including performance ratings, to help people choose care.

Concerns raised by care staff are a vital source of information which help us to decide when, where and what we inspect, and we assess how well providers we regulate handle and respond to staff concerns to inform our judgement and rating. An open culture towards concerns is a core component of good leadership. The National Guardian role supports CQC's purpose and role with regard to staff concerns, culture and leadership and their impact on good quality care.

The creation of the National Guardian should complement and not undermine existing effective systems around staff concerns. The role must work closely with systems regulators and professional bodies and their existing mechanisms around issues like fitness to practice, the duty of candour, and the fit and proper person requirement (FPPR). Further detail on the operation of these mechanisms within CQC, and how the National Guardian will operate alongside them, is set out below.

Assessing providers' handling of concerns

Since October 2014 we have been able to look at the processes in place to handle staff concerns as part of our comprehensive inspections. Through our new approach we assess the leadership and culture of each organisation in more depth than before. Staff confidence about raising concerns is an indicator of openness in an organisation and how it wants to learn and improve.

As Sir Robert Francis's review highlights, while there are some services that are reporting and acting on concerns about poor care as a matter of routine, this does not happen all of the time. We have found services that support staff in raising concerns about poor care, confident in the knowledge that they will be listened to and that action will be taken to address any issues that exist – but we have also found many that do not support staff. It is important that services learn from those that do this well, so that this can become a reality across the system. Every organisation needs to create and nurture an open and transparent culture of safety and learning. The National Guardian will help to create such a culture.

Fit and proper persons requirement

CQC checks that all registered providers have appropriate processes for ensuring their directors meet the fit and proper persons requirement (FPPR). Introducing this requirement for directors is an important step towards ensuring an open, honest and transparent culture.

We consider the FPPR when assessing applications for registration, and applications from existing providers to vary registration, as well as when we inspect NHS trusts and NHS foundation trusts. Using the well-led key question, we confirm that the provider has undertaken appropriate checks and is satisfied that, on appointment and subsequently, all new and existing directors are of good character and have the necessary qualifications, skills and experience to perform their work. This may involve checking personnel files and records about appraisal rates for directors. The inspection team will check providers' awareness of the various guidelines and that they have implemented approaches in line with good practice.

When we receive concerns about the fitness of directors to perform their work we will usually request a response from the provider. The response will either satisfy us that due process has been followed or will lead to a request for further dialogue with the provider, a follow-up inspection, or regulatory action. If the National Guardian receives a concern about the fitness of directors from staff there will need to be clear mechanisms to refer this, where appropriate, so it can be considered by CQC under the FPPR.

Duty of candour

The intent behind the statutory duty of candour is to ensure that providers are open, honest and transparent with people who use services and other 'relevant persons' (people acting lawfully on their behalf) in general in relation to care and treatment. It also sets out specific requirements that providers must follow when things go wrong with care and treatment, including informing people about the incident, providing reasonable support, providing truthful information and an apology when things go wrong.

CQC's inspection approach reflects the duty of candour under its safe and well-led key questions. Inspectors look at the processes and systems a provider has in place that demonstrate how they are meeting the requirement. They will talk to staff and

people who use services and their representatives to find out whether a provider has a culture of openness, transparency and candour in line with the regulation.

As with the FPPR, if the National Guardian receives a concern relating to the duty of candour there need to be clear mechanisms to refer this, where appropriate, so it can be properly considered by CQC.

Responding to concerns raised with CQC

We want to encourage staff in provider organisations to bring us information about poor care they have experienced or witnessed. People who work within services are CQC's eyes and ears on the ground. We use their information to help us to determine who to inspect, and when and how we will carry out our inspections. Concerns raised by staff are often an attempt to prevent poor care in the future and provide vital information about potential risks of poor quality care or potential harm.

CQC, Monitor and the NHS Trust Development Authority (TDA) are prescribed bodies under the Public Interest Disclosure Act (PIDA). This means that staff can report incidents of malpractice to these bodies which they can refer to later, for example at a potential future employment tribunal.

We understand that it takes great courage for healthcare professionals to raise concerns about poor care and so we want to make it as simple and easy as possible to report concerns about poor care to us.

3. The scope of the National Guardian

The National Guardian is being established to lead culture change in the NHS where the *Freedom to Speak Up* review has identified issues of concern and where improvements are needed.

The Freedom to Speak Up review looked just at NHS trusts and NHS Foundation trusts, but Sir Robert Francis recommended that the principles be appropriately adapted and then applied to primary care. NHS England will be consulting later in 2015 on how this might work in practice. Until we know how Freedom to Speak Up will be applied in primary care, and in particular, how Local Guardians might operate, we do not believe the National Guardian role should be extended. To do otherwise would risk shifting ownership of the problem away from frontline providers and would not support the creation of a learning culture. The potential resources required for the office of the National Guardian is hard to predict accurately until it is operational. Starting with concerns raised by staff in NHS trusts and NHS foundation trusts only will allow the National Guardian to gain a better understanding of the resources needed.

For these reasons, we do not propose that the National Guardian should initially review cases of staff raising concerns in primary care, although over time we would expect the remit to be extended. We would also expect that the National Guardian's other functions around providing leadership and good practice guidance to the system could also be applied to primary care in the future.

No similar review has been undertaken in adult social care or the independent healthcare sector, and whether such reviews should be commissioned is a matter for the Department of Health. Without the same level of understanding provided by an in-depth national review, we would not presume that the National Guardian is the right solution and so we propose that the National Guardian does not cover adult social care or independent healthcare. Adult social care providers and independent healthcare providers may wish to follow the principles recommended in the *Freedom to Speak Up* review.

However we do propose to include in the scope independent healthcare providers who deliver NHS services covered by the standard contract; social enterprises; and trusts put out to franchise or where contracts have been put out to tender for large services, for example community services.

The National Guardian will not have a role in dealing with concerns raised by the public as there are separate systems which should be followed for these to be raised.

Question 1

Do you agree with the proposed scope for the National Guardian?

4. Principles for the National Guardian

We know historically that many people who have raised concerns in the NHS have been poorly treated and we know that a culture of openness and learning does not yet exist everywhere. We want the National Guardian to help change this by creating a strong network of Local Guardians; by reviewing cases where concerns appear to have been handled poorly; by advising providers on best practice; and by supporting and challenging the wider system to change (the next section on 'Functions of the National Guardian' sets out further detail.)

This is a big and challenging task, and expectations of what the National Guardian can achieve will be high. The principles below are intended to set clear parameters for how the National Guardian role will work in practice, and we would welcome views on whether these are the right principles:

- a) The National Guardian will be independent of NHS providers, and the National Guardian's decisions will be free from any interference, including from national bodies. The proposed methods of safeguarding this independence are set out in the next section.
- b) The National Guardian will have wide discretion on whether or not to get involved in specific cases. The National Guardian must be able to act swiftly, and not be hindered by bureaucratic processes.
- c) NHS providers will continue to be responsible for the effective handling of staff concerns. Culture change and learning that ultimately improve care must happen at the local level, and the National Guardian will work with Local Guardians to support this, not undermine it.
- d) The National Guardian will not circumvent existing authorised processes for raising concerns or replace existing legal remedies. The National Guardian will not second-guess or interfere with ongoing processes locally or nationally. They will challenge and support the system to change culture, including where they believe processes could be improved.
- e) The National Guardian, whilst not having specific statutory powers, will have sufficient authority from four arm's length bodies – CQC, Monitor, TDA and NHS England – to ensure recommendations are taken seriously and acted upon, where necessary by ensuring that the powers of the relevant regulator are engaged. The National Guardian recommendations on improving the handling of concerns, both locally and nationally, will have no statutory force. It is anticipated that the credibility of the National Guardian and their backing from national bodies will ensure action.

- f) The National Guardian will challenge others (locally and nationally) to look again at cases, and advise on appropriate actions rather than undertaking investigations directly. The National Guardian may consider how a case was handled, including any negative impact on individuals concerned, focusing on the process and whether this followed good practice. They will not investigate the concern, or pass judgement on the outcome of any investigation.
- g) The National Guardian will not review historic events, but may consider cases where the original concern was raised with a provider in the past but ill-treatment of the staff member currently employed by the same provider remains an issue. They would not review events in the past (such as the original raising of the concern or employment tribunal issues), but they would consider the current situation and whether the individual was being treated in line with good practice, suggesting appropriate actions if not.

In addition to these principles, the National Guardian will be observant of the relevant provisions of the Health and Social Care Act 2012, the Public Sector Equality Duty under the Equality Act 2010 and the Human Rights Act 1998.

Question 2

Do you agree that these principles are the rights ones? Are there any missing?

Independence of the National Guardian

The independence of the National Guardian is critical for the role's credibility and impact, and we would welcome views on the proposals set out below.

The *Freedom to Speak Up* review states that the National Guardian must be independent of both providers and national bodies so it is able to review their practices and make recommendations without fear of interference. As CQC is itself an independent regulator, locating the role within CQC gives the necessary

independence from providers. CQC must also ensure that the function is established in a way that safeguards its independence from CQC and the other arm's-length bodies. In doing so, there are certain accountability requirements that CQC needs to consider:

- The Chief Executive is Accounting Officer for CQC and is responsible for ensuring appropriate stewardship of public funds. Therefore expenditure that relates to the National Guardian's role and activity must be appropriately managed and bound by relevant financial controls, and be subject to the Chief Executive's ultimate oversight.
- CQC consists of the Board (including committees), Chief Executive and employees. The Board will require some oversight of the National Guardian role, given its own accountability for CQC to Ministers and Parliament.

It is the independence of judgement of the National Guardian that is critical. In a similar way to the operation of CQC's Chief Inspectors, the National Guardian's decisions over which cases to review, and their recommendations regarding those cases must be entirely free from interference from other CQC executive staff or other national bodies. They remain accountable to the Chief Executive of CQC for the overall delivery of their role and functions, just like the Chief Inspectors.

The National Guardian will be an appointment by the Chief Executive of CQC on behalf of the Board. They will not be a member of the Executive Team, thereby allowing the role to operate independently of the executive function of CQC. The National Guardian appointment will be reviewed periodically (eg every three years).

The Office of the National Guardian will be hosted in CQC's premises with access to separate and private facilities to manage confidential matters. Any information received or generated by the National Guardian, including from staff raising concerns, will be handled sensitively and confidentially. It will be covered by a restricted access protection, with access only for the National Guardian and those approved by the National Guardian and in accordance with the requirements of the Data Protection Act 1998, the Security Policy Framework and the Government's 'Mandatory Minimum Measures'.² This means that information would not be accessible or shared with CQC or other organisations unless the National Guardian decides that this is appropriate. To ensure independence, reports from the National Guardian will not be signed off by CQC or other arm's length bodies. This means that the National Guardian would be free to point out where any arm's length body, including CQC, had not followed good practice. We are interested in hearing views about how the National Guardian's reports and communications should be branded. Options include using CQC branding or the branding of all four arm's length bodies.

The National Guardian will not have any statutory powers, and so will need sufficient authority from CQC, Monitor, TDA and NHS England to ensure that reviews and recommendations made by the National Guardian are taken seriously and acted upon quickly. We propose that the relationship between the National Guardian and the

appointing arm's length bodies (Monitor, TDA and NHS England) would be governed through memorandums of understanding (MoU), an annual steering group, and an annual report from the National Guardian presented to each arm's length body's Board. It is expected that the National Guardian will have unrestricted access to the Chief Executives and Chairs of each of these bodies.

In addition to governance arrangements, the MoUs would need to cover information-sharing protocols and operational agreements. Similar agreements would be needed with other national bodies, including professional regulators such as the General Medical Council and the Nursing and Midwifery Council, the Whistleblowing Helpline (administered by Mencap), and the Parliamentary Health Service Ombudsman. We would also envisage a steering group of national bodies to ensure that the recommendations of the National Guardian can be shared and acted upon swiftly.

Furthermore we propose that an advisory group is established including organisations that work closely with NHS staff.

Question 3

Do you agree that the proposed arrangements will be enough to effectively ensure the National Guardian's independence, and provide effective governance?

Question 4

How should communications from the National Guardian be branded?

5. Functions of the National Guardian

The National Guardian will be charged with leading culture change in the NHS when it comes to raising concerns safely, handling concerns effectively, reporting transparently and sharing the learning from concerns. It is a challenging remit, and expectations will be high. We believe it is important to set out as clearly as possible what functions the National Guardian will undertake to discharge its duty. We propose four functions, which are described below:

a) To build a strong network of Freedom to Speak Up Guardians

CQC believes that the Local Freedom to Speak Up Guardians within every NHS trust will make a key difference to staff being able to raise concerns. A culture of safety and learning can only be developed if providers take prime responsibility for encouraging staff to raise concerns, and handling them in an open and transparent way. The Local Guardians can help to ensure local ownership of this issue, and their effective functioning will be critical to the success of the national role.

In the spirit of these appointments, CQC will be appointing its own Freedom to Speak Up Guardian to support our staff in raising concerns and responding to these in a way that helps us to learn and improve.

Local Guardians will report to the Chief Executive of their organisation to ensure local ownership, but we believe there is a key role for the National Guardian in providing professional support and advice, and nurturing a strong network of individuals who can lead culture change in the NHS. This may include convening regular meetings, sharing learning, supporting networking, and enabling local Guardians to stay in touch with each other and the National Guardian.

Local ownership will mean a degree of local flexibility is needed in how the roles operate. However, we believe that they should be underpinned by a consistent framework, including person specifications, and that post holders should receive standard training. The National Guardian will have a key role in designing this framework and in advising Health Education England on the training they receive. Once appointed the National Guardian will produce advice on implementation of the Local Guardian role, building on the good practice already taking place in those trusts who have already taken this role forward. It is recognised that some trusts have already appointed Freedom to Speak Up Guardians and we are not discouraging trusts from taking this step before the framework is developed.

The Local Guardians will be appointed by the Chief Executive of their organisation to act in a genuinely independent capacity. They should be the first point of call for individuals who do not feel that their concerns are being dealt with appropriately through the usual systems (for example, having raised with their line manager they do not believe the issue has been considered). They will provide advice and support to staff about raising and handling concerns, and also to the trust's Chief Executive and Board. They will also, however, be able to raise concerns with the National Guardian if

they have lost confidence in their trust’s leadership, or consider good practice has not been followed in the handling of concerns.

The National Guardian will publish reports on numbers, themes and trends in concern handling, and may request information and analysis from Local Guardians to support this reporting function.

Question 5

Do you agree with our proposal that the National Guardian should build a strong network of Local Freedom to Speak Up Guardians, and do you have additional ideas for how this should be delivered?

b) To review how staff concerns have been handled

The National Guardian will have wide discretion over whether or not to review how individual concerns have been handled. This will be in situations where it appears good practice has not been followed locally and the individual has suffered detriment and/or safety and quality issues raised have not been investigated and resolved.

As the National Guardian will not have any statutory powers, this would not be a system of case management, would not involve specific investigation, and would not be a means of appeal. Staff looking for advice on how to raise a concern or what to expect should continue to contact the Whistleblowing Helpline, or their Local Freedom to Speak Up Guardian.

The National Guardian will have wide discretion as to which cases they consider. Where the National Guardian decides to review an individual case, they will focus on the process that has been followed, and consider whether or not it represents good practice. They will not come to their own separate judgement about the merit of the concern raised or the outcome of investigations. They may however make recommendations to NHS trusts and NHS foundation trusts, arm’s length bodies or other national bodies to look again at how they handled an individual case, and suggest actions they should take to ensure good practice is followed.

These recommendations will have no statutory force. Where the National Guardian feels regulatory action is needed, they should be able to refer issues to CQC, Monitor, TDA and NHS England (those raising a concern may be signposted to other relevant organisations outside system regulators such as professional regulators or

ombudsmen). It will then be for these bodies to decide what action they consider appropriate in the light of the National Guardian's recommendations.

Staff members will be able to contact the National Guardian through a confidential web form either directly or by phoning a call handler who will complete the form for them. Before contacting the National Guardian, individuals should:

- Go through relevant NHS trust processes for raising and managing a concern.
- Contact the Whistleblowing Helpline if they need advice.
- Contact the Freedom to Speak up Guardian at the trust if one exists.
- Understand that the National Guardian does not manage cases or investigate, but will provide independent advice.
- Be clear that their concern is about a current or ongoing issue (from April 2016 onwards).

The Office of the National Guardian, or a member of their team, will review the initial information and then contact the person raising the concern. The length of time taken to go through formal processes is often a source of major frustration to staff who feel a concern they raised has been handled poorly. The National Guardian will want to avoid adding to this frustration and as such will need to establish mechanisms for responding within reasonable timeframes and sharing these publicly.

All information shared with the National Guardian following the initial contact will be stored confidentially and will not be shared outside the Office of the National Guardian. As previously stated this means that information would not be accessible or shared with CQC or other organisations unless the National Guardian decides that this is appropriate.

The National Guardian may use the information to help compile reports on numbers, themes and trends in concern handling, but this would never disclose confidential information.

Question 6

Do you agree with our proposal that the National Guardian should review how concerns have been handled in individual cases, where serious issues appear to exist, and do you have additional ideas for how this should be delivered?

c) To support and advise providers

The National Guardian will advise providers on good practice in responding to staff concerns and will set out how providers can implement good practice based on existing guidance. In addition to the provision of general information, this will also include responding to direct requests from providers.

Where a specific case is raised with the National Guardian (either by a provider or staff member), the National Guardian can provide advice on processes, including identifying where good practice has not been followed and suggesting actions to correct this. However, the National Guardian will not actively intervene in ongoing provider processes or employment disputes. For example, the National Guardian may recommend to an employing provider that it arrange for an independent investigation into a concern. In another case they may suggest that some form of mediation is attempted.

Monitor, TDA and NHS England are considering how to implement the *Freedom to Speak Up* review recommendation around supporting staff who have raised concerns to find employment in the NHS. The National Guardian will advise on the creation of any scheme, and will also be well-placed to advise providers on its implementation.

The National Guardian will act with the authority of CQC, Monitor, TDA and NHS England rather than having any statutory powers itself. Where the National Guardian finds that a provider has not followed good practice, it will be able to refer issues to these national bodies.

The National Guardian will capture information on the type and volume of concerns being addressed coming from providers so that this data can be monitored, trends identified and used to inform the National Guardian's annual report.

Question 7

Do you agree with our proposal that the National Guardian should support and advise providers, and do you have additional ideas for how this should be delivered?

d) To provide challenge and support for the system

The National Guardian will have a highly visible role in providing challenge and support to the system, including sharing good practice, reporting on common themes in concerns raised and actions taken, identifying barriers to improvement and how these might be overcome, and reporting on progress towards the creation of a safe and open culture. Recommendations from the National Guardian will have no statutory force alone and so the National Guardian will work with other national bodies to influence a change in culture throughout the NHS.

The National Guardian will ensure that there is a coordinated approach to advice which is offered across the system to avoid duplication and potential confusion. It will be important to ensure that those speaking up can differentiate between the National Guardian and other initiatives to support the system such as the FPPR requirement and duty of candour. The Office of the National Guardian will also work alongside and in communication with the Whistleblowing Helpline.

Question 8

Do you agree with our proposal that the National Guardian should provide support and challenge to the system, and do you have additional ideas for how this should be delivered?

Question 9

Do you agree that the four functions described are the right ones to enable the National Guardian to discharge its role, as described in the Freedom to Speak Up review?

Question 10

Do you have any further views on how the National Guardian should discharge its role?

6. Assessment of costs and benefits

We are developing the National Guardian role alongside considering its likely costs and benefits. We outline below what we think the impact will be for all those affected. We would welcome views on this assessment, and further examples of likely costs and benefits to you or to your organisation.

Costs

The Office of the National Guardian

We will aim to appoint the National Guardian by December 2015 and they will be supported by a small transition team. These in-year costs are being absorbed by CQC within our 2015/16 budget. The permanent team will be established from April 2016/17, and the National Guardian will determine what staff will support him or her in this role. As such, we are not yet able to set out what the ongoing cost of the permanent team will be. We will include this information when we publish our final assessment of the costs of the team when the final policy is announced in April 2016.

CQC supporting the National Guardian

Although the National Guardian will operate independently of CQC, only reporting to our Chief Executive, there will still be costs to CQC. For example, CQC's intelligence team could provide analysis to support themed reviews carried out by the National Guardian. The CQC legal team will provide advice to the National Guardian. The CQC engagement team will receive Parliamentary questions and freedom of information requests which would then be forwarded to the National Guardian. Costs will also be incurred in developing web forms and other information technology requirements.

Contact with the National Guardian is designed to be digital in the first instance, in order to represent maximum value for money for tax-payers. However the online

service would need to have telephone support ('assisted digital') for those people who cannot or do not want to use the web form. It is likely that our contact centre, the National Customer Service Centre, will require operational changes, for example setting up a new phone number. Selected National Customer Service Centre staff will also have to be trained to deal with the different types of confidential calls they will receive.

Provider organisations

Once the National Guardian has made its recommendations, provider organisations might choose to make changes to their approach. Making these changes might impose costs on providers in terms of staff time spent delivering the changes or any other non-staff expenditures relating to the changes. We cannot predict what these costs might be, however in making these changes providers will be following best practice so we do not consider them a cost of the National Guardian. Instead we consider these costs to be those that a provider should incur in order to deliver safe, effective, compassionate and high quality care.

Monitor, TDA, NHS England, CQC

The National Guardian may make recommendations directed at the four arm's length bodies (CQC, Monitor, TDA and NHS England), which could require staff time to make changes and improvements. Some of these organisations will also support trusts in making improvements, which is likely to require time from their staff.

Benefits

People who use services

Ultimately it should be people who use services and those close to them who benefit from the National Guardian. Lives should be saved and harm to patients reduced from improvement in practices following a more open and honest culture in the NHS.

Staff

Staff working for provider organisations should also benefit from the existence of the National Guardian. They will feel safe to speak up, no longer fearing that their jobs could be at risk, and feel confident that their concerns will be acted on. This means the worries they might have felt in speaking up previously should be alleviated.

Provider organisations

Provider organisations should benefit as a result of National Guardian recommendations. Following best practice in handling concerns should help to establish a culture of learning and sharing of lessons. Managers should encourage staff to speak up and human resources staff should be trained to handle concerns. As a result, staff should be happier, which could lead to a reduction in staff absence and reduced recruitment and retention costs. Providers could also make savings on legal costs if cases are handled more effectively.

Question 11

Do you agree with the assessment of drivers of costs and benefits of the National Guardian and its functions? Can you provide further examples of likely drivers of costs and benefits?

7. Responding to this consultation

You can respond to our consultation in the following ways. Please send us your views and comments by 9 December 2015.

Online – use the web form at: www.cqc.org.uk/nationalguardian

By email – send your response to: nationalguardianconsultation@cqc.org.uk

By post – write to us at:

CQC Consultation: Independent National Officer

CQC National Customer Service Centre

Citygate

Gallowgate

Newcastle upon Tyne

NE1 4PA

We will consider all comments received during the consultation and will amend the guidance accordingly. We will produce a document that summarises all the responses and changes that we have made. We will provide general comments about suggested changes and amendments that we have not made.

Our consultation response will be published in February 2016.

8. Consultation questions summary

Question 1: Do you agree with the proposed scope for the National Guardian?

Question 2: Do you agree that these principles are the rights ones? Are there any missing?

Question 3: Do you agree that the proposed arrangements will be enough to effectively ensure the National Guardian’s independence, and provide effective governance?

Question 4: How should communications from the National Guardian be branded?

Question 5: Do you agree with our proposal that the National Guardian should build a strong network of Local Freedom to Speak Up Guardians, and do you have additional ideas for how this should be delivered?

Question 6: Do you agree with our proposal that the National Guardian should review how concerns have been handled in individual cases, where serious issues appear to exist, and do you have additional ideas for how this should be delivered?

Question 7: Do you agree with our proposal that the National Guardian should support and advise providers, and do you have additional ideas for how this should be delivered?

Question 8: Do you agree with our proposal that the National Guardian should provide support and challenge to the system, and do you have additional ideas for how this should be delivered?

Question 9: Do agree that the four functions described are the right ones to enable the National Guardian to discharge its role, as described in the *Freedom to Speak Up* review?

Question 10: Do you have any further views on how the National Guardian should discharge its role?

Question 11: Do you agree with the assessment of drivers of costs and benefits of the National Guardian and its functions? Can you provide further examples of likely drivers of costs and benefits?

¹ Department of Health (July 2015), *Learning not Blaming: The Government response to the Freedom to Speak Up consultation, the Public Administration Select Committee report 'Investigating Clinical Incidents in the NHS', and the Morecambe Bay Investigation*, London. <https://www.gov.uk/government/publications/learning-not-blaming-response-to-3-reports-on-patient-safety>

² Cabinet Office (April 2014), *Security Policy Framework*, London. <https://www.gov.uk/government/publications/security-policy-framework>