

## Response to consultation

The National Guardian for the NHS –  
Improvement through openness

May 2016

# The National Guardian – Freedom to Speak Up

The need for an independent National Guardian for the National Health Service (NHS) was highlighted in Sir Robert Francis's *Freedom to Speak Up* review in February 2015. It found that patients could be put at risk of harm because vital information about mistakes and concerns was not being raised routinely by NHS staff.

The creation of the National Guardian was one of the key recommendations from the review for which the Secretary of State for Health confirmed his support in July 2015.

Once appointed, the National Guardian will advise and support a network of individuals within NHS trusts, appointed as 'Freedom to Speak Up Guardians', who will be responsible for developing a culture of openness in NHS Trusts and NHS Foundations Trusts in England.

The National Guardian will also share good practice, report on national or common themes and identify any barriers that are preventing the NHS from having a truly safe and open culture.

The National Guardian will be independent in their ability to make recommendations and highly visible, speaking freely and honestly about where changes are needed. While the National Guardian will work alongside the Care Quality Commission, NHS England and NHS Improvement to reinforce good practice, they will also take an independent stand to report on any matters of concern regarding these national bodies, where required.

# **Foreword: David Behan and Sir Robert Francis QC**

No service can be effective without listening to and acting on the concerns raised by its staff, let alone one which employs such skilled and dedicated people as the NHS. They are the lifeblood of the service, and the lifeline for their patients – freedom to speak up is that important.

The evidence clearly shows that many people who work in the NHS are fearful of speaking up. It is important that every part of the NHS develops a culture in which it is entirely normal to raise issues about safety, quality and effectiveness of the service.

Those issues must be addressed and the people who raise them must be protected from any adverse consequences arising out of their disclosures. So it is essential that there are a variety of communication channels available to anyone with a concern, and support and advice to enable them to take necessary but challenging action.

The appointment of Freedom to Speak Up Guardians in NHS Trusts (by October 2016) and the establishment of the National Guardian's Office to support them in their role and reinforce good practice, are vital steps towards developing the right culture and environment for speaking up, one of openness and transparency. The National Guardian will have an important role in helping to deliver the significant cultural change in which speaking up safely becomes an integral part of the way that healthcare workers provide high quality care. It is a role which should not increase regulatory or bureaucratic burdens but facilitate the more effective use of existing cultural and regulatory levers.

The National Guardian's Office was established in April 2016, marking an important milestone towards embedding a more honest and open reporting culture in the NHS in which all staff can speak up safely. The office is hosted within the CQC but has its own identity and mandate to act independently in support of system wide changes that will lead to the effective handling of staff concerns.

Between September and December 2015 the CQC conducted a consultation to inform how the National Guardian's Office should be established. We are very grateful to all those who took time to comment. This document sets out the main feedback and how some of the issues raised have been addressed by the office in its set-up phase. The recruitment of the National Guardian is underway and when appointed they too may wish to reflect on the consultation findings and make some further proposals on their future role and priorities. In the short term, the continuing development of the office and engagement with stakeholders will provide a starting point for the work of the National Guardian in promoting an open culture and ensuring those who speak up are supported.



David Behan  
Chief Executive



Sir Robert Francis QC  
Non-executive Director

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# Section 1: Our consultation

From 17 September to 9 December 2015, a public consultation was held to inform how the National Guardian and the National Guardian's Office should be established.

## Introduction

The office has been established with a small set-up team, with oversight by Sir Robert Francis QC and David Behan, its Accounting Officer. The response has been drafted by the set-up team and reflects the immediate priorities and functions of the office, during this establishment phase.

### Background

In response to concerns about culture for raising concerns 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 an Independent National Officer for Freedom to Speak Up – The National Guardian.

The National Guardian is intended to provide high profile national leadership, and 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 National Guardian will support Freedom to Speak Up Guardians in NHS Trusts and NHS Foundation Trust, to 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.

Following the Government's acceptance of the recommendation the Department of Health consulted on whether the Care Quality Commission (CQC), on behalf of NHS Improvement and NHS England, was an appropriate host for the National Guardian<sup>1</sup>. The majority of responses to the consultation were fully supportive of this. Amongst those who disagreed there was no consensus about a better host.

The National Guardian's work is consistent with the purpose of the CQC and is consistent with and complementary to existing work done by the CQC in relation to raising and handling concerns. This arrangement does not require new legislation and would, therefore, avoid generating additional set-up costs.

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<sup>1</sup> 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>

## How we engaged and who we heard from

The consultation consisted of 11 questions which respondents could answer via an online response website, email or letter.

- A total of 78 responses were received and these included: 53 responses submitted using the online form and 25 email responses.
- Feedback from the Whistleblowers' Forum (27 November 2015).
- A question and answer session held with an online community.

## How we analysed feedback from the consultation

We commissioned the Office of Public Management (OPM) to support the consultation process. OPM have reviewed, analysed and reported on the feedback collected from the consultation. Their full report has been published [here on the CQC website](#).

In response, we set out the current work and priorities of the office as they relate to the delivery of its core functions:

- To build a strong network of Freedom to Speak Up Guardians.
- To review how staff concerns have been handled.
- To support and advise providers on good practice in responding to staff concerns.
- To provide challenge and support for the system.

## Section 2: Summary of responses

Respondents to the consultation were generally supportive of the proposals for creating the role of the National Guardian and the National Guardian's Office, and recognised the need to create a culture of openness within the NHS. The majority of respondents felt that the proposals for the National Guardian would support and enable this.

In the main, they agreed with the proposed scope for the National Guardian. However, there were mixed views about the timing of the implementation of the principles and approach into primary care. The National Guardian's relationship with independent providers was also of interest, with many respondents indicating support for the scope being extended to include independent providers in the future.

Most agreed that the proposed principles for the National Guardian were the right ones. The level of intervention and review into individual cases, and the National Guardian's discretion to intervene were the most common concerns.

A frequently expressed concern was a perceived lack of statutory powers for the National Guardian. Respondents said it might hinder the National Guardian's ability to ensure best practice. They also questioned the independence of the National Guardian, if the role lacked statutory powers, as it would have to rely too heavily on the powers of the CQC, NHS England and NHS Improvement to implement change.

Most recognised the importance of independence, although there was a mix of views as to whether the proposed arrangements for the National Guardian would ensure independence and effective governance. Some questioned whether the National Guardian could be truly independent if hosted by the CQC, citing the examples of its financial and management accountability that may hinder its independence.

Some supported the proposed working relationship with the CQC, suggesting that the details of this working relationship would be important in determining whether the National Guardian is perceived as independent or not.

In regard to branding, most supported independent branding, suggesting the National Guardian's Office should have a new logo to reflect its independence. Others said the branding should reflect the involvement of the CQC, NHS England and NHS Improvement, to maintain transparency regarding the National Guardian's relationship with these national bodies.

There was a strong expression of support for Freedom to Speak Up Guardians. Respondents felt that locally appointed post holders would be best placed to deliver cultural change within organisations. They suggested that local knowledge and proximity to cases would make Freedom to Speak Up Guardians particularly effective. They also highlighted concerns regarding the level of seniority in regard to the appointment of Freedom to Speak Up Guardians. Some respondents thought that too senior an appointment may introduce conflicts of interest, whilst someone too junior might lack the authority to implement change.

There was general 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 said there was a lot to be learnt from positive stories, and that these should also be highlighted.

The second was the need to protect people who speak up, and that the best way of achieving this would be to review the process by which individual cases are handled and to hold to account the organisations who failed to respond effectively to concerns raised.

Respondents said an efficient review of individual cases was needed. They suggested a quick turnaround time was very important for people involved in such cases, and that the office should work to clearly defined timescales. It was generally agreed that the National Guardian should support and advise providers, with an emphasis on collaboration to achieve positive change. Respondents agreed that the National Guardian should provide challenge and support to the system leading to greater visibility of bad practice and encouraging good practice.

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 their role; however many were keen to review these at a later date, especially if the scope of the National Guardian is expanded to cover primary care.

# Section 3: What you told us and our response

## Consultation question 1

**Do you agree with the proposed scope for the National Guardian? Please explain your answers.**

## What you said

Of the 61 respondents who answered question 1, 44 agreed with the proposed scope for the National Guardian, while 17 disagreed.

When asked to explain their answer, there were diverse opinions about whether the scope of the National Guardian should be extended to primary care as soon as possible or with a phased approach. Queries were raised as to whether the role should cover independent providers, with a few respondents suggesting that the role should also cover 'central' NHS bodies. Five respondents were concerned that the scope did not address public needs.

The Whistleblowers' Forum was concerned about the proposed scope of the role and in particular the exclusion of adult social care. They cited changes to structures for health and social care provision, for example devolution in Greater Manchester, and asked how the role would evolve to meet future structures of healthcare.

Participants from the online community discussion expressed support for extending the National Guardian's remit to primary care. They proposed it should be phased in after the National Guardian's methodology had been proven to be effective. They also suggested extending the scope to include independent healthcare and adult social care.

## Response from the National Guardian's Office

We are encouraged that the majority of respondents supported the initial scope, set out in the consultation document.

### Primary care

However, we recognise this may be seen as a disadvantage to staff working in primary care and non-NHS Trust settings, who will not initially have access to the National Guardian.

The National Guardian's Office is a new function. During their first year the National Guardian may be expected to continue the work begun by the office in setting out how it works, engages with stakeholders and delivers its core functions.

The *Freedom to Speak Up* review recommended a National Guardian for NHS Trusts, NHS Foundation Trusts and their contracted services, in the first instance. It also proposed that the principles might be appropriately adapted and then applied to primary care. In April 2016, NHS England consulted on extending the principles to primary care<sup>2</sup>

### **Good practice**

Initially the focus will be on concerns raised by staff in NHS Trusts and NHS Foundation Trusts, and supporting providers and Freedom to Speak Up Guardians in implementing best practice. This approach will enable the National Guardian and their team to gain a better understanding of the resources required, before taking decisions about extending the scope of the office's responsibilities to additional healthcare settings.

In the meantime, we will ensure examples of good practice are shared more widely across health care sectors. We will focus on the evolving structures for healthcare delivery and providers, assess them and change the scope of the National Guardian accordingly. We are starting with the NHS Trusts and Foundation Trusts and that experience will inform how these principles may best be implemented in the independent sector.

Adult social care providers and independent healthcare providers may wish to follow the principles recommended in the *Freedom to Speak Up* review, and guidance published by the National Guardian's Office.

### **Areas of concern**

We understand the concerns raised by the five respondents who felt the scope of the National Guardian did not meet the needs of patients and the public. However the role of the National Guardian does not replace the legislative functions that other organisations have to protect the public. The role of the National Guardian will be to provide independent, national leadership, influencing the creation of the right environment for NHS staff to speak up safely.

We have assumed the respondents questioning the role being extended to 'Central NHS Bodies' are referring to the national bodies, namely the CQC, NHS England and NHS Improvement. Each of these organisations will appoint its own Freedom to Speak Up Guardian.

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<sup>2</sup> <https://www.england.nhs.uk/ourwork/whistleblowing/>

## Consultation question 2

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

### What you said

Of the 57 respondents who answered question 2, 47 agreed with the proposed principles for the National Guardian while 10 disagreed.

A common response to this question was about the need to clarify the division of responsibility between the National Guardian and Freedom to Speak Up Guardians, as well as between the National Guardian and the CQC. Other respondents asked if the National Guardian should become involved in the resolution of individual cases, including the review of historical cases and have statutory powers.

Respondents suggested the National Guardian should review its role in the future, for example at six monthly intervals, or trial the role in one area before extending it across the country.

The Whistleblowers' Forum highlighted a number of principles that should underpin the establishment of a National Guardian, which in general related to the scope of its role. They said the role would need to demonstrate effectiveness and be reviewed regularly. They were concerned that it should conform to equality and diversity legislation and that it did not have statutory powers of its own.

The forum disagreed with the National Guardian's discretionary approach to the review of cases. It said that people who speak up should have the right for self-referral, and that the National Guardian's criteria for accepting or rejecting cases should be more clear.

Participants from the online community discussion stressed the importance of appointing a National Guardian, independent, competent and trusted to hold sufficient authority to make changes to the system. They suggested that the National Guardian should have statutory powers, and expressed concerns that they would be ineffective without them.

### Response from the National Guardian's Office

We agree with the concerns raised in the consultation about the need for clarity on the role of the National Guardian and Freedom to Speak Up Guardians.

Work to establish the the role and functions of the National Guardian's Office is underway. Clarity between its role and that of the Freedom to Speak Up Guardians will be set out in a clear set of principles. These will evolve over time as the roles become embedded.

## **Intervention in individual cases**

Some respondents proposed that the National Guardian should become involved in the resolution of individual cases, whilst others felt this should not happen given the role and responsibilities of other organisations, including those who are designated as prescribed persons.

We understand that some individuals feel that where the ‘system’ has failed them, they would like the ability to escalate their case for independent investigation and resolution based on the merits of the case. However, this proposal exceeds the role of the National Guardian’s Office as currently defined.

What it will do is create a very clear process under which the National Guardian will be able to undertake independent reviews of how cases have been handled, where there is evidence that local processes may have failed to follow good practice. This will include feeding back the findings of reviews to local providers and providing clear recommendations for improvement, as well as holding these providers to account, through the relevant national regulators.

## **Statutory powers**

We understand the concerns of those respondents who said that without relevant statutory powers, the National Guardian will have limited impact. Although the National Guardian will not have discrete statutory powers, they will agree a Memorandum of Understanding (MoU) with the CQC, NHS England and NHS Improvement, in order that they can leverage their powers to ensure any recommendations they make are taken seriously and acted upon quickly.

It is expected that the National Guardian will have free access to NHS Trusts, NHS Foundation Trusts and relevant provider organisations. Through these relationships and MoUs, the National Guardian will have sufficient authority to hold the CQC, NHS England and NHS Improvement to account in supporting any key recommendations they make.

## **Additional bureaucracy**

The role of the National Guardian and the National Guardian’s Office is not to add complexity or an unnecessary burden on individuals or organisations, but to provide independent national leadership that influences the creation of the right environment for all NHS staff to speak up safely.

## **Reviewing historical cases**

As the National Guardian’s Office will not be investigating cases, but reviewing the processes by which they are handled, it will not duplicate the work of other national bodies..

It will not be within the remit of the National Guardian to review historical cases. However, in collaboration with the national bodies, the National Guardian’s Office will signpost individuals to other sources of advice and support, such as the NHS Whistleblowing helpline and the independent whistleblowing charity Public Concern at Work.

The National Guardian and the National Guardian's Office will maintain a focus on equality and diversity and ensure that these principles are enshrined in how it approaches its responsibilities. In doing so, we will collaborate with expert bodies to help ensure equality of access to advice and support, and to help shape best practice in supporting all staff to speak up safely.

## Consultation question 3

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

### What you said

Of the 55 respondents who chose to answer question 3, 33 agreed with the arrangements to ensure the National Guardian's independence, while 22 disagreed.

A commonly expressed concern was whether the National Guardian's working relationship with the CQC would be a help or a hindrance to the office's independence. Similar concerns were expressed regarding its relationship with the national bodies (NHS England and NHS Improvement). Other concerns raised included the building of relationships with other organisations through MoUs. The importance of accountability for the National Guardian was also highlighted.

The Whistleblowers' Forum was concerned about the impact of funding from the CQC and how this would affect the independence of the National Guardian, and in particular, whether information would be kept confidential from the CQC.

Participants from the online community discussion believed that independence was fundamental to the National Guardian's success, as well as its positive public perception. Participants supported the proposals for the National Guardian to have the authority to sign-off reports independently.

### Response from the National Guardian's Office

We understand respondents' concerns regarding the independence of the National Guardian, and that this will be paramount for its success. The role of the National Guardian and the National Guardian's Office has been established as independent functions from the outset.

#### Relationship with CQC

The National Guardian's Office will be hosted by the CQC, reporting to the CQC's Chief Executive as its Accounting Officer. The office will draw on support services provided by the CQC, through service level agreements, to ensure a cost-effective use of resources. However, the National Guardian's Office will be operationally separate with secure information and data management systems. Information received or generated by the National Guardian, involving staff raising concerns, will be handled sensitively and confidentially.

The National Guardian's Office will be covered by 'restricted access protection', with access only for the National Guardian and those approved by the National Guardian,

in accordance with the requirements of the Data Protection Act 1998, the Security Policy Framework and the Government's 'Mandatory Minimum Measures'<sup>3</sup>.

This means that information will not be accessible or shared with the CQC, national bodies, or other organisations unless the National Guardian decides it is lawful and appropriate.

The National Guardian is an appointment by the Chief Executive of the CQC, in consultation with NHS England and NHS Improvement. The National Guardian will report to the CQC's Chief Executive, who is the Accounting Officer.

To support its independence, the National Guardian will not be a member of the CQC's Executive Team. This will allow the role to operate independently of the CQC's executive function. The National Guardian will have half-yearly meetings with Ministers and senior Department of Health officials, to report on plans and progress.

### **Relationships with other regulators**

Although the role is independent, the National Guardian will act with the combined authority of the CQC, NHS England and NHS Improvement. They will have sufficient authority to ensure their reviews and recommendations are taken seriously and acted upon quickly.

The National Guardian will set their own priorities, have their own budget and identity and speak independently of the sponsoring national bodies. The relationship with the other appointing national bodies (NHS England and NHS Improvement) will be governed through a common MoU, a steering group, and an annual report from the National Guardian, that will be presented to the boards of each national body.

When in office the National Guardian will agree ways of working with other national bodies, including the professional regulators. The National Guardian will also determine how best to incorporate different stakeholders' perspectives into the governance and oversight framework for the National Guardian's Office. This work will help shape the overall governance arrangements to which the National Guardian will confirm.

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<sup>3</sup> Cabinet Office (April 2014), Security Policy Framework, London.  
<https://www.gov.uk/government/publications/security-policy-framework>

## Consultation question 4

### How should communications from the National Guardian be branded?

#### What you said

61 respondents made comments about the branding of the National Guardian. 21 respondents suggested that the National Guardian should be branded independently of its sponsor bodies; 10 suggested that the National Guardian should incorporate the branding of the sponsor bodies; and 6 suggested it should use the CQC's branding, to reflect the relationship with its host.

The Whistleblowers' Forum suggested that the National Guardian should have its own branding, distinct from the CQC.

Participants from the online community discussion suggested the National Guardian should have its own branding. They proposed that the sponsor bodies (the CQC, NHS England and NHS Improvement) could be mentioned in a tagline, if it would benefit the public perception of the office.

Some respondents expressed the view that the office should not expend significant resources on developing independent branding.

#### Response from the National Guardian's Office

Given the importance placed on independence, we can confirm that the National Guardian's Office will not adopt the branding of any other organisation.

##### Independent branding

The National Guardian and the National Guardian's Office will use a simple typeface to describe its name and role.

In the future, should the lack of identifiable branding be highlighted as an issue, in terms of NHS staff not knowing how to contact the National Guardian's Office, this approach will be reviewed.

## Consultation question 5

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

### What you said

Of the 62 respondents who answered question 5, 56 agreed with the arrangements to ensure the National Guardian's proposal to build a network of Freedom to Speak Up Guardians, while 6 disagreed.

Common responses to this question included the importance of Freedom to Speak Up Guardians in promoting positive culture change, as well as concerns about their potential independence and isolation. Other responses included the need for networking opportunities, to share feedback, as well as standard training opportunities and draft person specifications, to create consistency across the country. There were concerns from 37 respondents that issues of independence and conflicts of interest could arise when Freedom to Speak Up Guardians were appointed by NHS Trusts.

The Whistleblowers' Forum was concerned that NHS Trusts and NHS Foundation Trusts may assign the Freedom to Speak Up Guardian role to board members, executives or managers and that this could affect the role holder's independence. The possibility that Freedom to Speak Up Guardians could find their careers at risk was also highlighted as a concern.

Participants from the online community discussion suggested quarterly regional meetings and annual national meetings for Freedom to Speak Up Guardians, to discuss recurrent problems, have training, give feedback and share best practice.

They also felt that Freedom to Speak Up Guardians, as part of the local working environment, could have more impact on their organisations than the remote National Guardian. The proposals for standard training and person specifications for the Freedom to Speak Up Guardians were described as necessary to ensure the right individuals were appointed to the roles.

### Response from the National Guardian's Office

#### **Freedom to Speak Up Guardians**

We are pleased that there is strong support for the role of Freedom to Speak Up Guardians and developing a network for them.

We recognise that there is a need for consistency in the role of Freedom to Speak Up Guardians and to have a person specification for the role. In collaboration, we

developed a set of principles for the role of Freedom to Speak Up Guardians, which were made available online in early March 2016<sup>4</sup>. These include the requirement for NHS Trusts and NHS Foundation Trusts to nominate a Freedom to Speak Up Guardian by 1 October 2016, which is included in the NHS Contract 2016/17 . These principles can be tailored to the needs of different organisations, but will help encourage a more consistent approach to the role. They will reinforce the importance of Freedom to Speak Up Guardians being fully supported in their role within provider organisations as well as having access to independent sources of support including the National Guardian's Office.

The guidance suggests Freedom to Speak Up Guardians should also have direct access to trust chairs and chief executives, with the authority to speak independently of their trust's board. They should also have clear communication pathways with the National Guardian to seek advice and support in their role.

### **Networking and training opportunities**

The National Guardian's Office will, as a priority, seek to establish a network of Freedom to Speak Up Guardians at a national and a regional level, to whom they will provide advice and support on developing good practice. These networks will provide a supportive and reflective environment for Freedom to Speak Up Guardians to meet, discuss issues and share good practice.

We also recognise the need for training for the Freedom to Speak Up Guardians, to support a consistent approach across NHS providers. The importance of this was highlighted in the *Freedom to Speak Up* review. We have therefore started working closely with Health Education England to develop a national training programme for Freedom to Speak Up Guardians.

This will focus on key skills to support and promote positive culture change. A programme of bespoke workshops for Freedom to Speak Up Guardians will start in the summer of 2016. These workshops will be run at different venues across the country, ensuring ease of access for all Freedom to Speak Up Guardians. Working with Health Education England, the National Guardian's Office will also be coordinating a national conference for all appointed Freedom to Speak Up Guardians, which will take place in March 2017.

Going forward, we have recommended that the role is referred to consistently as 'Freedom to Speak Up Guardians', so that it is understood and recognised across the NHS. This assumes it will not be combined with similarly named roles such as the 'Guardian of Safe Working' role, which has been designed by NHS Employers to address the safety concerns of junior doctors.

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<sup>4</sup> <http://www.cqc.org.uk/content/national-guardians-office>

## Consultation 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?**

### What you said

Of the 60 respondents who answered question 6, 52 agreed with the proposal to review how staff concerns have been handled while 8 disagreed.

A number of respondents to this question referred to the need for a National Guardian to protect those who speak up and challenge those accountable for responding to their concerns, as well as learning from best practice to encourage improvements. Other points included specific response timescales for the National Guardian and sharing information, to improve transparency.

The Whistleblowers' Forum was concerned about the National Guardian's capacity to respond to the volume of enquiries that may be referred to the office but felt that there should be no cap on the number of cases reviewed.

The forum also stressed the importance of protecting those who speak up. They were concerned about them being victimised or finding it hard to seek subsequent employment. They highlighted potential mental health issues, that could arise from speaking up and said there was a need for clear guidance and advice for those who did.

### Response from the National Guardian's Office

It is positive that the majority of respondents agreed with the role of the National Guardian in reviewing how individual cases have been handled.

The National Guardian's Office is establishing a framework over the coming months, to set out a review process and criteria for case review, and we will be working collaboratively to develop them. The purpose of the review process will be to identify ways in which greater protection and support can be provided for people who speak up, with recommendations to local trusts as well as to Government and regulators to make necessary changes and take action where required.

#### Learning from best practice

Once appointed, the National Guardian will consider the options and publish their proposed approach. In reviewing cases, the National Guardian will make clear recommendations for improvements where needed, but also highlight and seek to reinforce examples good practice by NHS Trusts and NHS Foundation Trusts.

The National Guardian's Office will develop online resources to guide the work of Freedom to Speak Up Guardians, to share best practice developed across trusts as well as other organisations and sectors where staff are encouraged to speak up safely.

## Consultation 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?**

### What you said

Of the 57 respondents who answered this question 7, 51 agreed with the proposal for the National Guardian to support and advise providers, while 6 disagreed.

The most frequent response to this question highlighted the potential for improvements that could result from collaboration between the National Guardian and providers, and clear guidance for providers in order to encourage these improvements.

### Response from the National Guardian's Office

We are pleased that the majority of respondents supported the view that the National Guardian should support and advise providers.

We plan to develop our approach through an engagement programme with our stakeholders.

Our approach to providing guidance and sharing best practice will include the development of training programmes for providers and Freedom to Speak Up Guardians. These will be delivered by the National Guardian's Office and partner organisations.

We will also deliver a programme of regional networking events to share best practice and encourage peer support and learning, and an annual national conference for Freedom to Speak Up Guardians.

## Consultation 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?**

### What you said

Of the 61 respondents who answered question 8, 57 agreed with the proposal for the National Guardian to support and challenge the system, while 4 disagreed.

Many respondents thought that by challenging the system, the National Guardian would be able to improve the monitoring of poor practice and encourage improvements.

A number of respondents were concerned that without the necessary authority, the National Guardian's influence would not be enough to help protect individuals who speak up.

Other respondents suggested a number of interventions that could result in system wide improvements to enable staff to speak up. These included:

- Reinforcing the importance of the Fit and Proper Person Requirement (FPPR) to ensure provider staff are trustworthy and capable; and
- Raising awareness about the importance of speaking up, at the point of induction for all employees across NHS Trusts and NHS Foundation Trusts.

### Response from the National Guardian's Office

We recognise the concerns expressed about the National Guardian's ability to support and challenge the system without powers to enforce local action.

Although support and challenge of the system will be difficult, we believe that steps can be taken by the National Guardian to act as a catalyst for culture change.

Where needed, the National Guardian will work with the CQC, NHS England and NHS Improvement, to leverage their powers to reinforce changes in the system.

## Consultation 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?**

### What you said

Of the 62 respondents who answered question 9, 53 agreed with the four functions of the National Guardian's Office, while 9 disagreed. These four functions are:

- To build a strong network of Freedom to Speak Up Guardians.
- To review how staff concerns have been handled.
- To support and advise providers on good practice in responding to staff concerns.
- To provide challenge and support for the system.

Most respondents recognised the need to limit the remit of the National Guardian's Office in its first year of operation, whilst it develops its functions and learns from its initial work with Freedom to Speak Up Guardians in NHS Trusts and NHS Foundation Trusts.

Some respondents suggested a fifth function for the office, to advise NHS organisations on the processes that they should put in place to enable people to speak up safely.

### Response from the National Guardian's Office

The National Guardian's Office will work to develop these four functions, whilst accepting that they will need to evolve in the light of experience and feedback.

We agree the remit should initially focus on NHS Trusts and NHS Foundation Trusts to ensure the best chance of success in supporting the evolving work of the Freedom to Speak Up Guardians.

We considered the suggestion of a fifth function, to publish advice nationally on how to manage those who speak up and how to manage their concerns. This advice has specifically been addressed by NHS Improvement's publication of a National Whistleblowing Policy in April 2016. In addition, through its coordination of the Freedom to Speak Up Guardian network, the National Guardian's Office will facilitate the sharing of best practice and ensure that training for Freedom to Speak Up guardians also incorporates sources of information on developing processes to respond to and manage staff concerns.

## Consultation question 10

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

### What you said

A total of 19 of the 48 respondents had further comments on how the Guardian should discharge their role.

Many took the opportunity to reiterate points they had raised in previous answers, such as the need for the National Guardian to be given statutory powers. Another common theme was the need for the National Guardian to have its own legal support, or access to the legal teams of its sponsor bodies.

Some respondents proposed that the National Guardian should have regular contact with partner organisations throughout the development of the role. Others suggested that the National Guardian should minimise the burden on providers in regard to reporting requirements.

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.

### Response from the National Guardian’s Office

We agree the National Guardian’s Office should have access to appropriate legal advice. Until it has become fully operational, it is unclear what the scope of this should be. However during its set-up phase, confidential legal advice will be provided by the CQC, as part of a service level agreement.

During the set-up phase, meetings have taken place with a range of stakeholders, informing them of the work of the office. Further engagement events are planned for 2016.

We understand the significant demands on providers to supply data and that any data requests from the National Guardian’s Office should be proportionate and add value. Building on this principle, when in post the National Guardian will determine the data requirements that best demonstrate whether Freedom to Speak Up Guardians are successfully encouraging all staff, including those from vulnerable groups, to speak up safely.

Historic cases do not fall within the remit of the National Guardian. However, we will work across the system to direct people to the appropriate sources of help and support. We will continue to learn lessons from individual cases, to drive progress and change.

## Consultation 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?**

### What you said

Of the 51 respondents who answered question 11, 40 agreed with the proposal for the National Guardian to support and advise providers, while 11 disagreed.

A number of responses referred to 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.

Other respondents asked how the National Guardian's Office will be funded and what would be the potential benefits for NHS staff, providers and patients.

Participants from the online community discussion thought that the National Guardian should be independently funded and have the discretion to determine the resources it needs to perform its role, without depending on other organisations.

They also said that effective delivery of the National Guardian's Office functions should contribute to an increase in staff morale, improvements in productivity and a reduction in legal fees spent on whistleblowing cases.

### Response from the National Guardian's Office

We understand the responsibility of the National Guardian's Office in delivering tangible benefits and recognise the need to demonstrate value for money.

The performance and impact of the office will be reported through the Annual Report to the Boards of the CQC, NHS England, NHS Improvement and the Department of Health. This information will also be published on the National Guardian's website.

The key success measures and performance indicators will be determined by the National Guardian, when they come in to post

It is the responsibility of NHS Trusts and NHS Foundation Trusts to review the performance and impact of Freedom to Speak Up Guardians, in helping staff to speak up safely. Through the establishment of and support for a network of Freedom to Speak Up Guardians, the office will highlight the different approaches and consider the feasibility of developing a common set of measures.

# Appendix

## Organisations that submitted responses

- 23 Healthcare professionals
- 20 Stakeholders
- 13 Providers of services
- 9 Members of the public
- 6 Voluntary and community sector representatives
- 2 Commissioners of services
- 1 CQC member of staff