

Memorandum of Understanding between the National Guardian, Freedom to Speak Up and the Care Quality Commission, NHS England and NHS Improvement

Introduction

1. The parties to this memorandum of understanding (MOU) are the National Guardian, Freedom to Speak Up ('the National Guardian'), the Care Quality Commission (CQC), NHS England and NHS Improvement (exercising the powers of Monitor and the NHS Trust Development Authority), together referred to as 'the parties'.
2. The MOU does not affect the statutory responsibilities or functions of CQC, NHS England or NHS Improvement, or the functions of the National Guardian (but does confirm the operational independence of the National Guardian in carrying out her functions). The parties agree to deal with each other in line with this MOU, though noting that the MOU is not legally binding and will not be enforceable through the Courts in England and Wales.

Purpose

3. This MOU provides a common understanding between the parties of the support required by the National Guardian.
4. It sets out how the arrangements between the parties will operate on a day-to-day basis.

Background

5. The need for an independent National Guardian for the NHS was highlighted in Sir Robert Francis's *Freedom to Speak Up* review in February 2015, which found that patients could be put at risk of harm because vital information about mistakes and concerns was not being raised by NHS staff routinely. The creation of the National Guardian was one of the key recommendations from the review, an arrangement confirmed by the Secretary of State for Health in July 2015.

The parties

6. The National Guardian and the Office of the National Guardian became functional from April 2016. The National Guardian's role will be to encourage, advise and support a network of individuals, initially in NHS

trusts and foundation trusts, appointed as ‘freedom to speak up guardians’ and responsible for developing a culture of openness at NHS trust and foundation trust level. The National Guardian will share good practice, report on national or common themes, and identify any barriers preventing the NHS from having a safe and genuinely open culture.

7. The National Guardian will be able to make independent recommendations about changes needed in NHS trusts and foundation trusts. The National Guardian will have discretion to review the handling of whistleblowing/speak up cases where these may have been inadequately handled at local level by NHS trusts and foundation trusts. Such reviews may result in recommendations for improved local procedures, as well as to the relevant system regulator to make a direction for improvement.
8. While the National Guardian will work in partnership with CQC, NHS England and NHS Improvement to reinforce good practice, where required she will act independently to report on any matters of concern affecting these bodies.
9. The National Guardian will consider and promote good practice across the whole of the NHS, although initially will focus on processes and cases in NHS trusts and foundation trusts. Identified good practice is expected to be adapted to primary care and clinical commissioning groups (CCGs) in the future. The National Guardian’s role will not extend to adult social care or independent healthcare providers, although there may be benefits in sharing what she learns with these sectors.
10. Further details regarding roles and responsibilities of CQC, NHS England and NHS Improvement are set out in Appendix 1.

General principles for collaborative working

11. The parties share the common starting point of a:
 - commitment to creating a culture of openness, trust and transparency across the NHS where all NHS staff can speak up without fear of recrimination
 - shared goal of safe, high-quality healthcare delivery.
12. The parties’ working relationship will be characterised by the following principles:
 - respect for the independence of the National Guardian and the distinct positions of CQC, NHS England and NHS Improvement

- the need to maintain public confidence in all parties
- a pragmatic approach to effective communication
- the need to work together to ensure clarity about roles, avoid duplication, and ensure the efficient and effective use of resources
- the need to make timely decisions that promote patient, staff and public safety and quality of care
- working within agreed information governance and data-sharing arrangements.

Arrangements for collaboration and co-operation

Appointment

13. The National Guardian is appointed by the Chief Executive of CQC on behalf of all the parties to this Agreement. The National Guardian will not be a member of the CQC Executive Team, thereby allowing her to operate independently of the executive function of CQC.
14. On the basis of an agreed budget, the National Guardian and the Office of the National Guardian will be funded equally by CQC, NHS England and NHS Improvement.

Recommendations of the National Guardian

15. In the first instance, CQC and NHS Improvement will consider any recommendations of the National Guardian to NHS trusts and foundation trust, including, where appropriate, what action they may need to take as part of their individual roles. Once arrangements regarding primary care and CCGs are agreed, this will also involve NHS England. CQC, NHS England and NHS Improvement will each bring to the attention of the National Guardian any changes to their powers.

Governance

16. The working relationship between the parties will involve regular contact and open dialogue. An accountability board will be established, involving a representative of each party, and meet on a quarterly basis. This board will be a forum for information sharing and strategic oversight. Appropriate governance arrangements to support the board will be separately determined.

Reporting

17. The National Guardian will produce an annual report for the boards of CQC, NHS England and NHS Improvement, detailing the progress she has made, performance of the Office of the National Guardian and a statement of its finances. No reporting by the National Guardian will be subject to approval by CQC, NHS England or NHS Improvement. If local systems are not operating correctly to resolve a concern reporting will be as follows:

Referral of safeguarding concerns by the National Guardian

18. If the National Guardian receives a safeguarding concern, she will refer this to CQC as soon as practicably possible (via the contact set out in Appendix 2) if it involves a CQC registered person.

Referral of concerns by the National Guardian about the fitness of those engaged in carrying out regulated activities under the Health and Social Care Act 2008

19. If the National Guardian receives a concern from staff about the fitness of directors or others (described in regulations 4 to 7 of the Health and Social Act 2008 (Regulated Activities) Regulations 2014), she will follow agreed mechanisms to refer this to CQC (via the contact given in Appendix 2) if it involves a CQC registered person.

Referral of concerns by the National Guardian about compliance with the duty of candour (regulation 20 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014)

20. If the National Guardian receives a concern from staff relating to the duty of candour, she will follow agreed mechanisms to refer this to CQC (via the contact given in Appendix 2) if it involves a CQC registered person.

Referral of concerns to NHS Improvement about performance of NHS trusts or foundation trusts

21. If the National Guardian receives any concerns about the performance of NHS trusts or foundation trusts, she will refer these concerns to NHS Improvement (via the Executive Lead given in Appendix 2), if appropriate.

Public discussions

The parties will involve each other as appropriate in meetings, conferences and other public discussions relating to issues within the remit of the National Guardian.

Press releases

22. Where it is in the interests of the parties, press releases or public statements agreed between some or all of the parties to this MOU may be issued.

Access for the National Guardian to chief executives

23. The National Guardian will have appropriate access to the chief executives and chairs of each of CQC, NHS England and NHS Improvement. Regular communication will be through operational leads (see Appendix 2).

Information governance

24. Any sharing of personal data will be in accordance with the Data Protection Act 1998. The parties will have regard to data protection protocols in their organisation and comply with any data-sharing agreements between the parties.
25. CQC hosts the Office of the National Guardian but the Office has access to separate facilities to manage confidential matters. Any information received or generated by the National Guardian, including from staff raising concerns, will be handled confidentially. The Office will be covered by 'restricted access' protection, with access restricted to 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'. Information held by the National Guardian will not be accessible by or shared with CQC, NHS England or NHS Improvement unless the National Guardian decides this is appropriate.
26. The parties to this MOU agree to liaise and consult on requests for information received under the Freedom of Information Act 2000 as appropriate.

Freedom of information Act

27. Where the National Guardian receives a request for information under the Freedom of Information Act she will follow agreed mechanisms to refer this to CQC for advice guidance and support, where, in accordance with this agreement, she deems such a referral appropriate.
28. Where the CQC receives a request for information under the Freedom of Information Act that relates to the work of the National Guardian the CQC will follow the agreed mechanisms to consult the National Guardian regarding an appropriate response.

29. Details regarding roles and responsibilities of CQC and the National Guardian in respect of FOI requests are set out in Appendix 3.

Resolution of disputes

30. Any dispute between the parties will be resolved informally in the first instance, if possible.
31. If it is not possible to resolve the dispute informally, the dispute will be notified to the contacts set out in Appendix 2, who will use their best endeavours to resolve the dispute.
32. If the dispute remains unresolved, the contacts set out in Appendix 2 notify their respective chief executives who, together with the National Guardian, will resolve the dispute.

Implementation/application of this MOU

33. All parties commit themselves to working in accordance with the principles and approaches set out in this MOU.
34. This MOU is:
- intended to be the main point of reference in respect of the agreed arrangements
 - for the benefit of the parties detailed and is not intended to benefit or be enforceable by any third party.
35. The agreement will begin on the date of signature by all parties.
36. The MOU will be reviewed annually and any changes will need to be agreed by all parties.



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Appendix 1: Roles and responsibilities

Care Quality Commission

The responsibilities of CQC are set out primarily in the Health and Social Care Act 2008 and the associated Regulations.

CQC's role is to protect and promote the health, safety and welfare of people who use health and social care services. It does this by encouraging the:

- improvement of health and social care services
- provision of services that focus on the needs and experiences of people who use those services
- efficient and effective use of resources.

CQC's purpose is to drive improvements in the quality of care through the unique function of measuring whether services meet national standards of quality and safety.

To do these things, CQC:

- registers providers under the Health and Social Care Act 2008 against national standards of quality and safety. These are the standards providers have a legal responsibility to meet and that people have a right to expect whenever or wherever they receive care
- regulates, monitors and inspects providers against those standards. This may include carrying out inspections at any time and in response to concerns, themed inspections and specialist investigations based on particular aspects of care
- takes action if it finds that a service is not meeting the fundamental standards, using a range of powers: issuing a warning notice, restricting admissions, fining a provider or manager, prosecuting a registered manager or provider or, if necessary, cancelling either or both a provider's or manager's registration
- involves people in its work. This may include local groups, national organisations, other registered health and social care providers, and the public to make sure that the views and experiences of people are at the centre of what it does

- publishes information about whether or not health and social care services are meeting the standards. This includes national reports.

NHS England

NHS England was formally established as the NHS Commissioning Board in October 2012. It is an independent organisation, which is at 'arm's length' to the government. Its main aim is to improve health outcomes and deliver high-quality care for people in England by:

- providing national leadership for improving outcomes and driving up the quality of care
- overseeing the operation of CCGs
- allocating resources to CCGs
- commissioning primary care and directly commissioned services (specialised services, offender healthcare and military healthcare).

NHS Improvement

NHS Improvement is responsible for overseeing NHS foundation trusts, NHS trusts and independent providers. It offers the support these providers need to give patients consistently safe, high-quality, compassionate care within local health systems that are financially sustainable. By holding providers to account and, where necessary, intervening, it helps the NHS to meet its short-term challenges and secure its future.

NHS Improvement is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, the National Reporting and Learning System, the Advancing Change team and the Intensive Support Teams. NHS Improvement is a combination of the continuing statutory functions and legal powers vested in these bodies.

Appendix 2: Contacts

Care Quality Commission

151 Buckingham Palace Road
London SW1W 9SZ
Telephone: 03000 616161

Office of the National Guardian

151 Buckingham Palace Road
London SW1W 9SZ

NHS England

Skipton House
80 London Road
London SE1 6LH

NHS Improvement

Wellington House
133–155 Waterloo Road
London SE1 8UG
Telephone 020 3747 0000

Contacts	
CQC	Rebecca Lloyd-Jones Director of Governance and Legal Services
NHS England	Dr Neil Churchill Director for Patient Experience
NHS Improvement	Executive Lead: Ruth May Executive Director of Nursing Operational Lead: Tom Grimes Head of Enquiries, Complaints and Whistleblowing

Appendix 3

Roles and responsibilities re requests for information under the Freedom of Information Act

The agreed respective roles and responsibilities of the National Guardian and the CQC in respect of requests for information under the Freedom of Information Act are as follows:

- Where a FOI request is received by the National Guardian regarding her work she will either respond directly to this request, or first seek advice guidance and support from the CQC before responding to the request
- All support given for this purpose by the CQC will be in accordance with those resources and time frames agreed between the parties in respect of

governance, legal services and information sharing, as set out in the service level agreement between the parties

- FOI requests is received by the CQC in respect of the work of the National Guardian the CQC will first liaise with the National Guardian regarding the form and content of the response to that request before it is formally given