

EDUCATION AND TRAINING Freedom to speak up – the role of freedom to speak up guardians and the National Guardian's Office in England

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ABSTRACT

Following the events at Mid Staffordshire NHS Foundation Trust, Sir Robert Francis was commissioned to undertake a public inquiry. During this process, from speaking to NHS workers and from the evidence submitted to the inquiry, he found that staff had tried to speak up about their concerns, but that they had been ignored, or victimised as a result. This experience was not confined to Mid Staffordshire and a further report, *Freedom to speak up*, was commissioned.

Freedom to speak up made two recommendations, which were accepted by all NHS organisations and the Department of Health. The report included principles and actions about the culture and practice in the NHS, the appointment of freedom to speak up guardians in NHS trusts and foundation trusts and a national guardian to lead this network, undertake case reviews and provide support and challenge to the system.

In this article, I will describe the work of freedom to speak up guardians and the National Guardian's Office, the impact of these on workers in NHS trusts and other organisations, and the next steps in the journey to make speaking up business as usual.

KEYWORDS: Culture, speaking up, bullying, harassment, patient safety

Background

Following the events at Mid Staffordshire NHS Foundation Trust, Sir Robert Francis was commissioned to undertake a public inquiry.¹ During this process, from speaking to NHS workers and from the evidence submitted to the inquiry, he found that staff had tried to speak up about their concerns, but that they had been ignored or victimised as a result. This experience was not confined to Mid Staffordshire and a further report, *Freedom to speak up*, was commissioned.²

Freedom to speak up made two recommendations, which were accepted by all NHS organisations and the Department of Health. The report included principles and actions about the culture and

practice in the NHS, the appointment of freedom to speak up guardians in NHS trusts and foundation trusts and a national guardian to lead this network, undertake case reviews and provide support and challenge to the system.

Introduction

Speaking up is a relational exercise and is only effective if 'listening up' occurs. The NHS in England has a poor record of supporting workers who speak up against the perceived wisdom of the department or organisation. There are many examples where individuals have been suspended and had retaliatory complaints or clinical concerns raised against them. They may have been referred to professional regulators or left the organisation under a settlement agreement containing a confidentiality clause, had future careers blighted by blacklisting and had a severe impact on their health and family life. Sir Robert Francis noted in his report that particular groups of staff are less likely to speak up, such as trainees, agency workers and those with protected characteristics. In my role as national guardian, I have met and listened to so many similar examples from unconnected individuals that it is clear to me that changes still need to be made to many systems and processes across the NHS and surrounding organisations.

Freedom to speak up guardians

Over 1,000 freedom to speak up guardians and others in a speaking up role have been appointed in NHS trusts and foundation trusts, national organisations and arm's-length bodies such as NHS England, NHS Improvement, the Care Quality Commission (CQC), the General Medical Council (GMC), the Parliamentary and Health Services Ombudsman (PHSO) and independent sector providers. Guardians are helping to lead changes in the systems, processes and policies in their organisations to ensure that when workers speak up they are heard and the right actions are taken.

Freedom to speak up guardians are an alternative route to speaking to a line manager or other supervisor for workers; including staff, volunteers, learners, contractors, leaders and others. Guardians come from a wide range of professional backgrounds and seniorities. Their role is independent and impartial and they work reactively and proactively. Guardians preserve confidentiality and ask about detriment. They thank

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Fig 1. Expectations of the freedom to speak up guardian role (informed by 2018 survey).⁴

workers for speaking up and listen to their concerns. These concerns are then escalated to the right person in the organisation and guardians ensure that the outcome of investigations is shared with the person who has spoken up. They can also play an active role in ensuring that organisational learning from investigations is identified and implemented. In 2017/18, the first year that data was collected, over 7,000 cases were brought to guardians.³ Forty-five per cent of these cases had an element of bullying and harassment, which fits with the experience of NHS staff in the annual NHS staff survey where many staff describe being bullied or harassed. Nearly a third of the cases brought to guardians had an element of patient safety. There is also an overlap eg a case about an unsafe roster includes a patient safety element and potentially an HR matter. Previously when this type of matter was raised, individuals were told to take out a grievance – an HR process about unfair treatment – however, the patient safety issue may have been lost in this process. Guardians reported that 87% of workers who gave feedback said that they would speak up again. Worryingly 5% of cases describe detriment. Every trust is expected to use the standard national freedom to speak up: raising concerns (whistleblowing) policy containing a paragraph about victimisation, yet no organisation has provided me with a credible process about how they manage detriment.

In 2018/19, over 11,000 cases were brought to guardians – we will publish detailed analysis of these later in the year.

Freedom to speak up guardians identify and tackle barriers to speaking up. They work proactively in partnership with other parts of their organisation eg complaints and incidents, HR and organisational development, staffside, the Workforce Race Equality Standard team, diversity and inclusion groups, occupational health, and the guardian of safe working hours. This enables triangulation of concerns and for guardians to be able to visit sites to hear from workers where concerns are raised.

A survey in 2018 of freedom to speak up guardians showed that time is the limiting factor.⁴ Guardians without ring-fenced time are less likely to attend regional meetings, present reports to the board, gather feedback on their performance or feel confident in meeting the needs of their workforce. Our expectations about the guardian role are set out in Fig 1.

Guardians were also asked about their perceptions of the culture in their organisation and the results are shown in Fig 2.

The perceptions of guardians in organisations rated 'outstanding' by the CQC were more positive than in 'good', 'requires improvement' and 'inadequate' rated organisations. This

mirrors findings from the previous year's survey. Freedom to speak up guardians from national bodies, which are not rated by CQC, are shown by the blue bars. In 'outstanding' rated organisations, freedom to speak up guardians perceive that there are fewer barriers to speaking up. However, even in the highest rated organisations less than half of the guardians believe that 'people in my organisation do not suffer detriment as a result of speaking up' and this falls to less than 30% of guardians in the national bodies. Workers are protected from detriment in the national freedom to speak up: raising concerns (whistleblowing) policy and the experience of detriment acts as a chilling effect on other workers speaking up.

Guardians have described to me the impact of speaking up and listening well in their organisations, eg reduction in staff sickness absence, fewer grievances, improved staff survey results and better engagement of senior leaders (personal communications). We have published case studies where examples of speaking up have led to changes such as a review of recruitment practices, a review of junior doctor rota arrangements when a single junior doctor was covering hundreds of acutely unwell patients overnight, a trust-wide review of infection control procedures, the identification of a modern slavery and human trafficking ring and the removal of a leaking sewerage pipe which had repeatedly contaminated a laboratory.^{5,6}

From other stakeholders, examples include partnership working between a union representative and a freedom to speak up guardian to resolve a situation where a worker was on sick leave and planning an employment tribunal after speaking up. The intervention of the guardian ensured that an independent investigation was commissioned, an alternative location was found for the worker and an employment tribunal was avoided (personal communication).

National Guardian's Office

The National Guardian's Office is non-statutory, relying on the powers of our funders, NHS England, NHS Improvement and the CQC. The office provides training, advice and guidance to freedom to speak up guardians, conducts case reviews and works in partnership with organisations within and outside the NHS. Freedom to speak up is part of the NHS Standard Contract and the CQC well-led inspection. We have published six case review reports which reviewed the way that NHS trusts responded to speaking up cases raised by their workers.⁷ These look in detail at individuals'

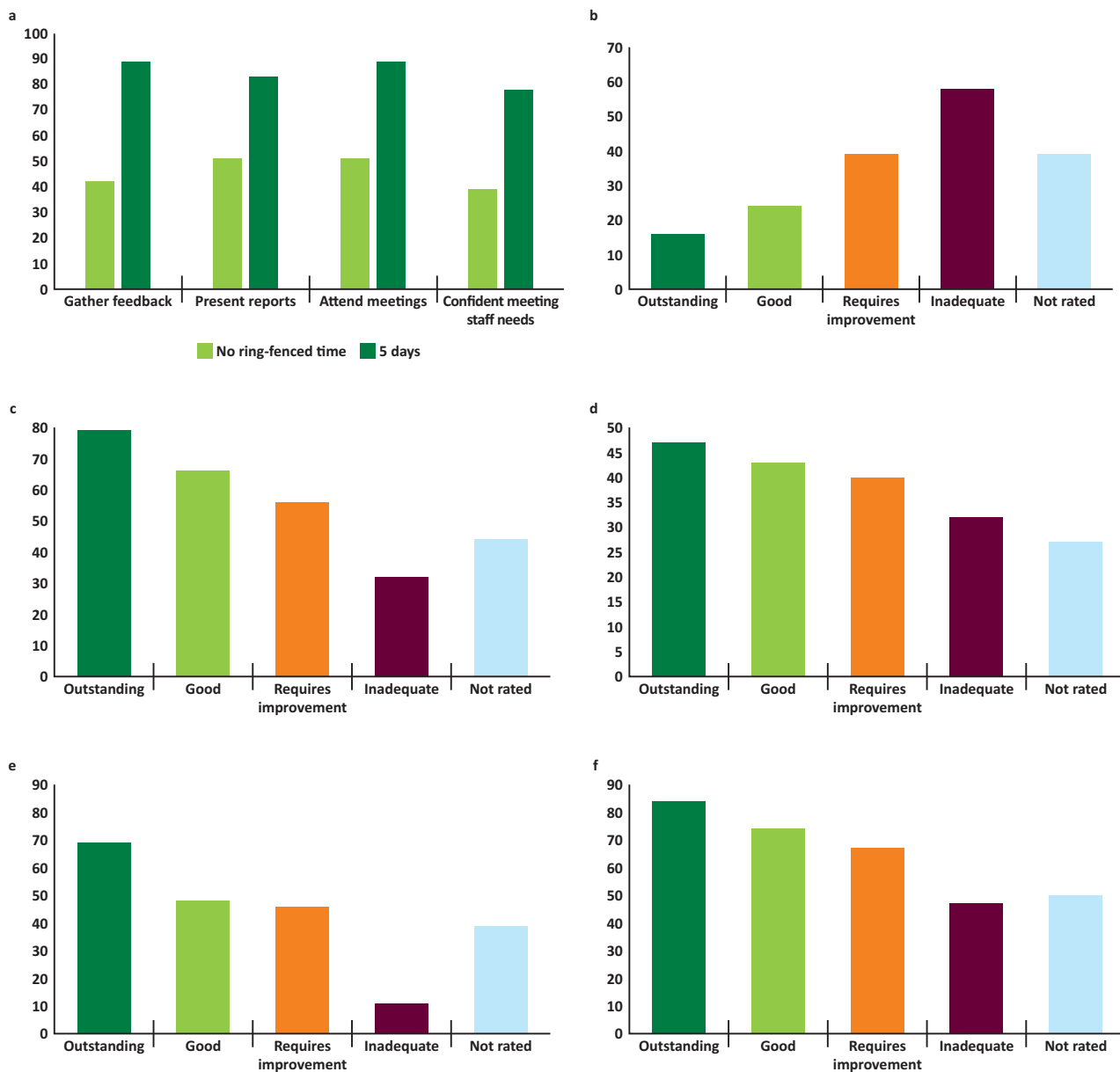


Fig 2. Freedom to speak up guardians' perceptions of their organisation culture (informed by 2018 survey).⁴ a) Ring-fenced time comparison. b) Proportion of respondents agreeing or strongly agreeing with the statement 'There are signification barriers to speaking up in my organisation.' c) Proportion of respondents agreeing or strongly agreeing with the statement 'Managers support staff to speak up.' d) Proportion of respondents agreeing or strongly agreeing with the statement 'People in my organisation do not suffer detriment as a result of speaking up.' e) Proportion of respondents agreeing or strongly agreeing with the statement 'My organisation has a positive culture of speaking up.' e) Proportion of respondents agreeing or strongly agreeing with the statement 'Senior leaders support staff to speak up.'

cases, systems and processes in place and learning that can be achieved for these and other organisations across England. We have commended good practice and made recommendations to trusts, the CQC, the Department of Health and Social Care (DHSC), a law firm and to ourselves.

Case reviews have shown that trusts are still not consistent in using the standard national policy, with some trusts having separate 'whistleblowing' and 'speaking up' policies and leads. Trusts have not considered conflicts of interest eg when appointing investigating officers. Staff are not routinely asked to declare conflicts of interest.

Investigations are not done in a timely way and individuals do not routinely receive the outcome. Phase two of our case review process was launched in September 2019 and will continue to provide learning to trusts. We are following up on the recommendations already made in partnership with NHS Improvement.

We work in partnership with our funders and others. Building on the results of our guardian surveys, we are working with NHS England to develop the Freedom to Speak Up Index, using a subset of questions from the NHS Staff Survey to produce an aggregated score to create a single measure from a subset of

questions from the NHS Staff Survey that can be tracked over time, which will be published later in 2019. The Freedom to Speak Up Index was calculated as an average of responses to four questions. There were four survey questions that have been used to make up the Freedom to Speak Up Index.

- > Question 17a. Percentage of staff 'agreeing' or 'strongly agreeing' that their organisation treats staff who are involved in an error, near miss or incident fairly.
- > Question 17b. Percentage of staff 'agreeing' or 'strongly agreeing' that their organisation encourages them to report errors, near misses or incidents.
- > Question 18a. Percentage of staff 'agreeing' or 'strongly agreeing' that if they were concerned about unsafe clinical practice, they would know how to report it.
- > Question 18b. Percentage of staff 'agreeing' or 'strongly agreeing' that they would feel secure raising concerns about unsafe clinical practice.

With NHS Improvement, we have contributed to the standard national freedom to speak up policy and NHS trust and foundation trust board guidance, detailing the requirements for each board member.^{8,9} We provide guidance to CQC inspectors on the freedom to speak up for the well-led domain and guardians are routinely interviewed as part of the inspection. Following our recommendation to the CQC on the fit and proper person test, I gave evidence to the Kark review.¹⁰ From our findings on settlement agreements in a case review and after giving evidence to the Women and Equalities Select Committee we worked in partnership with NHS Employers, NHS Improvement and the DHSC. We co-produced a fact sheet and plain English guidance on settlement agreements.¹¹ My experience as a general practitioner (GP) is that people can often feel very vulnerable when they are offered a settlement agreement and that's why it's vital they can access support at that difficult time. The guidance assures workers they can still speak up and talk to their GP, even if they are being offered a settlement agreement. We are founder members of the anti-bullying alliance, a four-nation group of organisations with resources, case studies and campaigns to address this issue which affects NHS staff.¹²

As well as providing training to freedom to speak up guardians we have created a regional network where guardians can buddy, share learning and meet to discuss complex cases. National networks of ambulance trusts and community, mental health and learning disability trusts were formed, recognising that these organisations share features of multiple sites spread over wide geography and small teams. We run a network of guardians from national organisations who come together to learn and share. The regional networks of freedom to speak up guardians have aligned with the NHS England / NHS Improvement footprint, each with a regional liaison lead. We are developing regional integration plans to bring freedom to speak up into primary care including GP, dental, optical and pharmacy. We are working with national guardian vanguards in primary care including Defence Medical Services, GP practices and others.

We established a pan sector network with representatives including aviation, banking, finance, retail, law, sport and military to learn from the best in each sector and share this learning with others. My office holds advice clinics for guardians and provides regular communications with a new website, social media, bulletins, newsletters, the HSJ Award for Freedom to Speak Up Organisation of the Year and 'Speak Up Month' in October. During Speak Up Month last year, over 100 events were held across England and a thousand additional cases were brought

to freedom to speak up guardians that quarter compared to the previous quarter. We launched the '100 Voices' campaign to share best practice case studies where speaking up has led to learning and improvement, which will be published alongside our annual report to be laid before parliament.

Next steps

Freedom to speak up guardians are established in many organisations, however this is still in its infancy and significant change needs to continue until speaking up becomes business as usual. Leaders with insight who genuinely care about the views of their patients, families and workforce lead the way in listening up and thousands of NHS workers have been heard and their concerns addressed. Until this is consistent across England, guardians, supported by my office, will be there to provide the confidential space and time to listen, act and provide support, hence creating the freedom to speak up. ■

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