

BY EMAIL
Dr Henrietta Hughes
National Freedom To Speak Up Guardian
25 November 2019

Dear Henrietta,

National Guardian's approach to reprisal against Freedom To Speak Up Guardians

My apologies for an error regarding my correspondence below. I missed the section on the previous, 2018 Speak Up Guardian survey report which relates to the two questions about your Office:

1. "On a scale of 0 to 10 where 0 is 'not at all' and 10 is 'fully supported' please indicate your response to the following statement: I am sufficiently supported by the National Guardian's Office"

2. "What further support from the National Guardian's office would you find helpful?"

I note that the average score for question 1 last year was 7.1 and that the themes from question 2 were reported thus:

"There were three clear themes to the feedback respondents gave: tardiness in response times to queries, a desire for more guidance accompanied by a more directive approach to certain issues, and a request for more training."

Obviously, please disregard the request in my previous email for information about questions in the survey questionnaire about your Office.

Instead can your Office please disclose a more detailed breakdown on of the qualitative responses received to question 2 above, including the number of any requests by Speak Up Guardians for support from your Office, in relation to any difficulties with their employers. For example, if employers are, or are perceived to be, hostile, unsupportive, difficult, obstructive or punitive.

I copy this to your head of Office in your absence.

Many thanks.

Dr Minh Alexander

Cc Dido Harding Chair NHS Improvement
Ted Baker CQC Chief Inspector of Hospitals
Simon Stevens CEO NHS England
Russell Parkinson Head of Office NGO

From: minh alexander <REDACTED>

Subject: National Guardian's approach to reprisal against Freedom To Speak Up Guardians

Date: 25 November 2019 at 08:47:36 GMT

To: Henrietta Hughes <REDACTED>

Cc: REDACTED

BY EMAIL

Dr Henrietta Hughes
National Freedom To Speak Up Guardian
25 November 2019

Dear Henrietta,

National Guardian's approach to reprisal against Freedom To Speak Up Guardians

Thank you for the reply from your Office of 14 November to my letter of 18 October 2019. Given the centrality of this issue, I was disappointed not to receive a reply from you, and to receive a cursory answer from your Office on such a critical subject.

The system response to the victimisation of NHS trust Speak Up Guardians by their employers is a key determinant of whether the very badly designed Freedom To Speak Up project can be made to work at all.

Protection would need to be swift and decisive, because when a Speak Up Guardian is victimised, this represents not only a serious risk to an individual but a serious risk to all the staff and patients whom they are supposed to protect.

1. The reply from your Office on your behalf proposes a response of bureaucratic inertia which is not equal to the task, and which does not appreciate the urgency of the situation or the human needs of a whistleblower in extremis.

It is unrealistic to imagine that an organisation that is prepared to victimise a Speak Up Guardian will be amenable to voluntary solutions. An emphasis on internal mechanisms, as your Office proposes, only gives employers time and opportunity to further harm the Speak Up Guardians in question.

Your Office also washes its hands and does not even take responsibility for escalating victimisation of Speak Up Guardians - a grave governance matter - to regulators. It only proposes to "encourage" Speak Up Guardians who are being victimised to go to regulators. This is against the spirit of the Freedom To Speak Up Review which explicitly recommended that the National Guardian's Office should escalate matters and ask regulators to make directions where appropriate.

I would be grateful if you would review your approach to supporting Speak Up Guardians who experience reprisal, and put in place a much more robust protective mechanism which recognises that the victimisation of a Speak Up Guardian is an 'aggravated' offence. A parallel is the victimisation of a trade union representative. This would need coordination with regulators and other central bodies.

2. I am very confused by your Office's claim that your annual survey of Speak Up Guardians covers their experience of how your Office supports Speak Up Guardians:

"Our primary measure of the experience of Freedom to Speak Up Guardians is our annual survey of guardians and others in a speaking up role. This includes questions related to the perceptions and experience of guardians related to the National Guardian's Office."

As far as I am aware, there are no such questions in your survey. According to your published report on the survey, last year's 2018 survey questions were as follows:

Do you gather feedback on your performance?

Do you have direct access to your CEO (or equivalent)?

Do you have direct access to the NonExecutive Director who has speaking up as part of their portfolio?

Do you present reports to Board meetings in person?
Have you received training in relation to your Freedom to Speak Up role?
Do you regularly attend regional FTSUG network meetings?
I have sufficient time to carry out my Freedom to Speak Up responsibilities
I am confident that I am meeting the needs of staff in my trust
The Freedom to Speak Up Guardian role is making a difference
Which of these statements best describes how Freedom to Speak Up culture in your organisation has changed in the last 12 months?
Which of these statements best describes how you think Freedom to Speak Up culture in the NHS has changed in the last 12 months?
The Freedom to Speak Up Guardian role is making a difference
My organisation has a positive culture of speaking up
Speaking up is taken seriously in my organisation
There are significant barriers to speaking up in my organisation
My organisation is actively tackling barriers to speaking up
People in my organisation do not suffer detriment as a result of speaking up
Managers support staff to speak up
Senior leaders support staff to speak up

https://minhalexander.files.wordpress.com/2018/12/national-guardians-survey-of-freedom-to-speak-up-guardians-2018-20181101_ngo_survey2018.pdf

As above, there are no published questions about how Speak Up Guardians feel regarding the support provided by your Office.

However, if what you are saying is that the survey has included questions about Speak Up Guardian's experience of your Office but that this data has been gathered but withheld from the public, I would be grateful if you would disclose:

- 1) What questions are asked in your survey about local Freedom To Speak Up Guardian's experience of your Office
- 2) All raw data gathered to date from these survey questions
- 3) All reports compiled from this raw data
- 4) All action taken in response to these analyses

Yours sincerely,

Dr Minh Alexander

Cc Dido Harding Chair NHS Improvement
Ted Baker CQC Chief Inspector of Hospitals
Simon Stevens CEO NHS England

From: National Guardian's Office <REDACTED >
Subject: RE: National Guardian's approach to reprisal against Freedom To Speak Up Guardians
Date: 14 November 2019 at 17:19:43 GMT
To: "'Minh Alexander <REDACTED>

Dear Dr Alexander,

Thank you for your email to Dr Hughes. She has asked me to respond on her behalf.

When anyone speaks up to the National Guardian's Office, including Freedom to Speak Up Guardians, we encourage local resolution as far as possible. Using your example, if a Freedom

to Speak Up Guardian speaks up about a matter that they feel that they are being victimised for, we would encourage them to raise that matter internally. An organisation's speaking up policy should accommodate that eventuality by allowing for a number of routes by which a speaking up matter can be raised. As with other individuals who feel unable to raise a matter internally, we would offer to do so on their behalf, with appropriate permissions. If internal resolution is not possible, we would encourage the individual to raise the matter with regulators such as CQC or NHS E/I, and suggest other sources of advice and support.

You also ask for 'any mechanism for measuring the experience of Speak Up Guardians who whistleblow to your Office'. Our primary measure of the experience of Freedom to Speak Up Guardians is our annual survey of guardians and others in a speaking up role. This includes questions related to the perceptions and experience of guardians related to the National Guardian's Office.

Kind regards,

Ellie Staite
Correspondence Officer
National Guardian's Office
151 Buckingham Palace Road
London
SW1W 9SZ

From: minh alexander <REDACTED>
Sent: 18 October 2019 16:04
To: Hughes, Henrietta <REDACTED>
Subject: National Guardian's approach to reprisal against Freedom To Speak Up Guardians

BY EMAIL

Dr Henrietta Hughes
National Freedom To Speak Up Guardian

18 October 2019

Dear Henrietta,

National Guardian's approach to reprisal against Freedom To Speak Up Guardians

In November 2018 your Office informed me that it did not measure and track the experience of Freedom To Speak Up Guardians who whistleblow to your Office:

"We do not collect specific feedback from Guardians or their equivalents of their experiences of making potential disclosures to us"

<https://minhalexander.files.wordpress.com/2018/11/national-guardian-foi-response-on-qualifying-disclosures-received-20181123-ng-858-dr-minh-alexander-cqc-iat-1819-0562.doc>

I write today on a related matter, following a social media interaction with the NGO twitter account which invited me to get in touch by post.

My question is as follows.

If a Freedom To Speak Up Guardian discloses to you or your Office that their employing NHS trust is victimising them for speaking up, or challenging misconduct and cover ups relevant to

their role as Freedom To Speak Up Guardians, what would be the National Guardian's approach?

The compact between your Office and NHS Trust Freedom To Speak Up Guardians does not clearly and explicitly cover this eventuality:

"As the National Guardian's Office, we will:

- Promote Freedom to Speak Up across the NHS
- Communicate regularly with you
- Attend regional meetings and provide guidance on their running
- Be there for advice and support
- Put you in touch with each other
- Share what works
- Promote your successes
- Ensure quality education and training is available
- Set standards where they are needed for data collection
- Listen and act on your feedback"

<https://minhalexander.files.wordpress.com/2018/09/national-guardian-compact-2016-final.pdf>

Nevertheless, the original Freedom To Speak Up Review principles recommended that:

1) Local Speak Up Guardians should "raise concerns with outside organisations if appropriate action is not taken by their employer" (page 150)

2) The National Officer should be available as an independent source of support for local Speak Up Guardians: "act as a support for Freedom to Speak Up Guardians" (page 170).

http://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_web.pdf

I would be grateful to know if your Office would see any appeals for help from local Speak Up Guardians, reporting experiences of employer reprisal and suppression, as a matter for active intervention, to help correct serious systemic risk to both staff and patients.

I ask as the approach that has been applied to other whistleblowers seeking help from your Office is that it will not get involved, or carry out a case review if there are any outstanding processes. Indeed, your Office has previously indicated that the definition of outstanding processes includes any ongoing claims in the Employment Tribunal.

To give a practical example, if a Speak Up Guardian disclosed to your Office that they were about to experience serious detriment, which they believed was direct reprisal for Speaking Up related activities, what policy or policies would govern your Office's response to such a situation?

If no specific policy is in place for this type of contingency, I would be grateful for a broad sketch of either your policy intentions or a broad summary of how such situations have been handled previously.

I would also be grateful to know if as a PIDA Prescribed Person, your Office has made any changes over the last year, and whether it has now introduced any mechanism for measuring the experience of Speak Up Guardians who whistleblow to your Office.

Many thanks,

Minh

Dr Minh Alexander