

From: minh alexander <REDACTED>

Subject: Will your Office audit its whistleblower case files, using the same case record standards that you expect of NHS Trust Freedom To Speak Up Guardians?

Date: 9 December 2022 at 06:29:13 GMT

To: Jayne Chidgey-Clark REDACTED, " REDACTED " < REDACTED >

Cc: REDACTED

BY EMAIL

Jayne Chidgey-Clark
NHS National Freedom To Speak Up Guardian

Dear Dr Chidgey-Clark

Will your Office audit its whistleblower case files, using the same case record standards that you expect of NHS Trust Freedom To Speak Up Guardians?

I wrote to you on 28 November 2022, as forwarded below, with great concern because it appeared that your Office had given me misleading and conflicting information about whether:

- it audits its whistleblower case record keeping
- its handling of whistleblower confidentiality.

I asked for an explanation of why this had happened.

Today's reply from your Office, forwarded below, has not acknowledged that I was given conflicting information nor explained how that happened.

Instead, your Office now claims:

"As our office's remit does not extend to investigating individual cases, we would not undertake audits on case record handling."

This appears to be a tacit admission that your Office's previous claim to me that two audits had been carried out on case records handling was untrue.

Moreover, this claim that you do not need to audit your own case files is at variance to the fact that NHS trust Freedom To Speak Up Guardians also have no remit to investigate individual cases, and you still require them to keep case files and to audit their processes.

I set out in the appendix below your requirements of local Freedom To Speak Up Guardians and their trusts.

Your Office handles requests from NHS staff who contact you for help, and this in theory may lead to case reviews by your Office, or interventions short of a case review.

For example, the previous National Guardian met with managers from a mental health trust directly in response to a whistleblower's report of suppression and reprisal.

Therefore your Office's claim below that you merely operate an "enquiries system" is not sustainable.

It is your Office's policy that all requests for case review should be recorded in the following manner:

"All referrals received by the NGO for cases to be reviewed should be recorded, including a brief summary of the concern, when it was received, contact details of the referrer and the initial response of the NGO."

[National Guardian guidance: A Case Review Process for NHS Trusts and Foundation Trusts](#)

It is also your Office's policy to accept requests for case review from whistleblowers:

"Who can refer a case to the NGO for review?"

Anybody can submit a case, including whistle-blowers, as long as the person raising the concern has been employed by the NHS within the last two years"

[National Guardian guidance: Case Reviews Frequently asked questions](#)

NHS workers usually contact you after encountering difficulties with internal processes, and will usually have experienced suppression of their concerns and reprisal for speaking up

Your Office therefore creates highly sensitive whistleblower case records.

It is astonishing therefore that your Office now claims that it has no reason to audit these case records on NHS whistleblowers who seek your help.

This is especially so as [poor record keeping by your Office most likely contributed to a previous breach of whistleblower confidentiality in the case of Dr Julian Campbell at Harrogate](#) (Your former Case Review and Governance Manager failed to record Dr Campbell's communications properly and overlooked important confidentiality requirements).

In my previous letter of 28 November 2022 I asked you to put in place an audit cycle regarding the quality of your case records.

The reply below did not answer this request clearly, but it implied that you will only be adhering to CQC's routine privacy audits of your records.

I have two concerns arising from this.

- 1) Will CQC personnel have access to your highly sensitive whistleblower case records for the purposes of conducting CQC audits?
- 2) Other case record standards besides privacy are not audited.

Request to implement an audit cycle

Please may I have your clear answer on whether your Office will from hereon fully audit its whistleblower case records, to ensure that your own team are living up to all of the case records standards that you expect of NHS trust Freedom To Speak Up Guardians.

This includes your requirement that FTSU Guardians collect structured data on the nature of presenting concerns and whether workers has reported detriment after Speaking Up, which your Office admitted on 5 December that it was NOT collecting::

[NGO FOI response 5 December 2022](#)

Please note I asked your predecessor over a year ago to commence such audit after NHS Improvement's investigation into Dr Camobell's case uncovered the fact that your case records were incomplete.

My FOI request for the purported audits on your record keeping.

Please note that I am not pursuing this FOI request now that your Office has admitted that no such audits were actually undertaken.

For Ian Trenholm's attention

I maintain my request that the CQC investigates why and how the National Guardian's Office misled me by claiming that its whistleblower case record keeping had been audited in 2017/18 and 2020/21, when this was not true.

Yours sincerely,

Dr Minh Alexander

APPENDIX

Your requirements of local Freedom to Speak Up Guardians

Your guidance to NHS trusts requires that local Freedom To Speak Up arrangements are audited:

"Ensuring that a sample of speaking up cases have been quality assured."

"The handling of speaking up issues is routinely audited to ensure that the FTSU policy is being implemented"

https://minhalexander.files.wordpress.com/2018/11/national-guardian-self-review-tools-for-nhs-trusts-20180423-fts_u_self_review_tool_may2018-1.docx

Your guidance to local Speak Up Guardians, "Recording cases and reporting data" Feb 2022 version is full of standards.

This guidance emphasises that good records are important because:

"Records:

- help you keep track of cases*
- promote consistent case handling*
- provide a measure of the speaking up culture and use of the Freedom to Speak Up Guardian route in the organisation/s you support*
- are a source of information to identify trends and barriers to speaking up."*

<https://minhalexander.files.wordpress.com/2022/12/ngo-guidance-feb-2022-recording-cases-and-reporting-data-guidance-2022.pdf>

Your website tells Freedom To Speak Up Guardians that they "must" record "all" cases, formal and informal:

<https://nationalguardian.org.uk/for-guardians/guidance/>

You require Freedom To Speak Up Guardians to collect the following case data and to report to you about this on a quarterly basis:

"You should record the following information, which you are expected to report quarterly to the National Guardian's Office:

- *The number of cases:*
 - *received or raised anonymously with an element* of:*
 - *patient safety/quality*
 - *worker safety or wellbeing*
 - *bullying or harassment -*
other inappropriate attitudes or behaviours
 - *where people indicate that they are suffering disadvantageous and/or demeaning treatment as a result of speaking up*
 - *brought by professional/worker groups*
 - *where there was a response to the feedback question (and the answer)*
- *Themes from feedback and learning points."*

<https://minhalexander.files.wordpress.com/2022/12/ngo-guidance-feb-2022-recording-cases-and-reporting-data-guidance-2022.pdf>

-----Original Message-----

From: National Guardian's Office <REDACTED>

To: Minh Alexander <REDACTED>

Sent: Thu, 8 Dec 2022 17:37

Subject: RE: Apparently misleading information provided by your Office and apparent lack of audit of case record keeping and confidentiality by your Office

Dear Dr Alexander,

Thank you for your emails of 17th November and 28th November 2022.

In your email of 28th November 2022, you have asked about claims that our office has undertaken audits on 'case record handling and whistleblowers' confidentiality'. You are correct that in our email of 4th October 2022, we responded, on a question regarding audits:

"Our office has had two audits since its inception in 2016, one in 2017/18 and one in 2020/21. We are due to undertake a further audit in the next financial year. Parts of these audits looked at risk management, including secure record management and confidentiality."

As our office's remit does not extend to investigating individual cases, we would not undertake audits on case record handling. However, the office does manage an enquiries system and we adhere to CQC's privacy policies (a link to which can be found [here](#)) and are subject to internal audit when scheduled. The lack of a formal risk management policy highlighted in the 2017/18 audit highlighted the need to ensure secure record management and confidentiality, which is now included in the risk register.

Please disclose the NGO risk register that was audited in 2017/18 as part of your reply, given your Office's contention that the risk areas managed included record keeping and confidentiality.

This request is being treated as an FOI request and we will therefore come back to you with a response on this by **21st December 2022** at the latest.

In the email of 17th November 2022, part of your request asked for:

1) The 2021 audit that has so far been withheld

We considered this as an internal review to our FOI response of 15th November 2022. We have upheld our decision to apply exemptions to the request of the 2021 audit of the our office.

Section 31 exemption

The exemption under section 31(1)(g) of FOIA is engaged where disclosure would, or would be likely to, prejudice the exercise of a function designed to serve one or more of the purposes set out in section 31(2).

In accordance with [ICO guidance](#), prejudice can be understood to mean any harm to an interest.

The NGO was established by the Secretary of State for Health and Social Care in pursuance of his duty under section 1A of the National Health Act 2006 ("the 2006 Act") to secure continuous improvement in the quality of health services provided to individuals. Section 2 of the 2006 Act permits the Secretary of State to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the Secretary of State.

The section 31 exemption does not require that the function must be one that engages statutory powers.

In performing its role the NGO is engaged in delivery of the function under section 1A of the 2006 Act. The NGO's role is delivered for the overall purpose of protecting the welfare of persons who speak up about the health and social care services where they work, and ultimately to protect the health, safety and welfare of people who use those services by ensuring that health and social care professionals are enabled to raise concerns and have them addressed.

Inhibiting the ability to undertake internal audit activities would prejudice the NGO's ability to deliver this function effectively and efficiently.

Section 36 exemption

Further to our original response, the CQC Chief Executive, as 'qualified person' for CQC/NGO, has expressed the opinion that disclosure of the audit report would

prejudice the effective conduct of public affairs by compromising the implicit safe space for colleagues to be frank and open with auditors in future.

We are therefore further applying the exemption under section 36 of FOIA (prejudice to effective conduct of public affairs) to the requested report.

Public interest test

For both the section 31 and 36 exemptions, we consider that the public interest considerations are the same.

We recognise the public interest in transparency regarding the operation and effectiveness of the NGO's governance processes. However, we consider that there is a stronger public interest in protecting the mechanism of internal audit by which the NGO can robustly undertake and act upon an internal analysis of those processes so as to identify and action any areas for improvement.

If you remain unsatisfied with the response to your FOIA request, you now have the right to refer the matter to the Information Commissioner's office (ICO) for their independent review. You can find contact details and further information on your rights at www.ico.org.uk.

As before, your SAR request of 17th November 2022 is currently being processed per our policy on Subject Access Requests and you should receive a full response on this by **19th December 2022** at the latest.

Kind regards,

Ellie Staite (She/her)
Correspondence, Accountability and Governance Manager
National Guardian's Office
REDACTED
0191 249 4400 (between 10am – 2pm)
<https://www.nationalguardian.org.uk/>

Please find our Privacy Statement [here](#)

From: Minh Alexander <REDACTED>

Sent: 28 November 2022 12:28

To: Jayne Chidgey-Clark <REDACTED>; National Guardian's Office <REDACTED>

Cc: REDACTED

Subject: Apparently misleading information provided by your Office and apparent lack of audit of case record keeping and confidentiality by your Office

BY EMAIL

Jayne Chidgey-Clarke
National Freedom To Speak Up Guardian
Care Quality Commission

28 November 2022

Dear Dr Chidgey-Clarke

Apparently misleading information provided by your Office and apparent lack of audit of case record keeping and confidentiality by your Office

I have received a response from your Office which suggests that it previously misled me by claiming that there had been two audits of the National Guardian's case record handling and protection of whistleblowers' confidentiality. It now appear these audits may not have taken place.

Time line of relevant events

On 13 September 2022, because of a number of events of concern, I asked you if your Office held data on audits undertaken about case record handling by your Office.

On 4 October your Office replied:

"Our office has had two audits since its inception in 2016, one in 2017/18 and one in 2020/21. We are due to undertake a further audit in the next financial year. Parts of these audits looked at risk management, including secure record management and confidentiality."

On 7 October 2022 I asked you for copies of these two audits.

On 7 November your Office said it might not disclose the audit reports, and it was considering whether to apply Section 31 FOIA exemption (prejudice to law enforcement processes) on these grounds:

[“We have determined that the exemption under section 31\(1\)\(g\) of FOIA applies as disclosure of the requested information would be likely to prejudice the exercise of the NGO's statutory functions.”](#)

[FOI response by National Guardian's Office 7 November 2022](#)

I was puzzled as your Office has no powers and only one statutory function as far as I am aware. I asked you to clarify which Section 31 categories of law enforcement you claimed applied.

On 15 November 2022 your Office wrote to:

1. Disclose what it claimed was the 2017/18 audit which included case records and confidentiality

What it disclosed was in fact a fragment from a document. The fragment contained no information about case record handling or confidentiality.

[Fragment of document disclosed by National Guardian's Office 15 November 2022](#)

2. Refuse disclosure of the 2020/21 audit.

Your Office claimed that this was because Section 31 FOIA law enforcement, category “Health and Safety” applied:

“Internal audits are a way for organisations to test and improve their processes and improve their effectiveness and efficiency in performing their roles. A disclosure that would prejudice the effectiveness of future internal audits would therefore prejudice the future effectiveness and efficiency of the NGO in delivering on its purposes.

These prejudices would be likely to arise where disclosure of internal audit reports resulted in concern about the likely impact of disclosure of similar reports in the future. This would be likely to have the effect of prejudicing the candid and open approach of colleagues in their future interactions with auditors, and prejudicing the candid and open reporting of auditors findings in future reports. These prejudices to the effectiveness of the internal audit process would therefore be likely to prejudice the overall effectiveness and efficiency of the NGO in supporting Guardians in their work for the ultimate purpose of protecting the health and safety of people who speak up and patients.”

Your Office indicated that it had been your decision to apply Section 31 FOIA.

My reading of this is that your Office is implausibly claiming that the publication of audits will lead to your staff not contributing candidly to future audits, and you claim that this will threaten the health and safety of staff who speak up, and of patients.

I rejected this argument in my response to you of 17 November 2022:

[Letter to Jane Chidgey-Clark 17 November 2022 re FOI issues](#)

Not least because your Office has issued written advice to NHS trusts, which urges them to regularly audit their Freedom To Speak Up arrangements, and that their audits should be ["shared externally to support improvement elsewhere."](#)

I did not accept therefore that you genuinely believed there would be prejudice under Section 31 FOAI, as had been claimed.

On 25 November 2022 your Office wrote to say that the 2020/21 audit of record keeping and confidentiality practices which it claimed took place, did NOT take place.

It stated that the 2020/21 audit was about something else:

"However, please note that the 2021 audit was not around case handling and the handling of whistleblower confidentiality. The title of the audit is 'Freedom to Speak Up Guardian role in arms-length bodies and regulators'.

It would therefore appear that your Office made an incorrect claim in its response of 4 October 2022, stating that there had been two audits of its case record keeping and handling of confidentiality, in 2017/18 and 2020/21.

1. I would very much appreciate an explanation of why I have been given conflicting information about whether your Office's core processes, of case record keeping and handling of whistleblower confidentiality, have been audited. Please clarify if any such audits have ever been undertaken.

Please disclose the NGO risk register that was audited in 2017/18 as part of your reply, given your Office's contention that the risk areas managed included record keeping and confidentiality.

I copy this correspondence to Ian Trenholm with respect to the regular accountability meetings that I believe he holds with you, and to Andrew Morris and Robert Francis as members of the National Guardian's Accountability and Liaison Board.

You will be aware that as result of the recent responses by your Office, I wrote to Andrew asking if the Accountability and Liaison Board should review the National Guardian's published values and mission, and its operations, to ensure better adherence to Nolan Principles of Accountability and Transparency.

I understand that Andrew gave you a copy of my letter and has forwarded it to Ian Trenholm for investigation of the specific issues.

2. I ask that the apparent inaccuracy of the 4 October 2022 response by your Office, claiming audits of case records and confidentiality had been undertaken - where none now appear to exist - be added as a matter for investigation.

3. If it is the case that your Office has NEVER undertaken any audit of its case record keeping and protection of whistleblowers' confidentiality, despite Dr Campbell's case and despite the other concerns raised, please advise if you will put this right and put in place an ongoing audit cycle.

Yours sincerely,

Dr Minh Alexander

Cc

Ian Trenholm CEO CQC

Andrew Morris Deputy Chair NHS England and Chair of National Guardian's Accountability and Liaison Board

Robert Francis CQC NED and member of National Guardian's Accountability and Liaison Board

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