

A review of the  
handling of speaking  
up cases

November 2018

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# Executive summary

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The National Guardian's Office (NGO) has conducted a review of the handling of speaking up cases at Nottinghamshire Healthcare NHS Foundation Trust after receiving information that the trust may not have responded to one of its workers speaking up in accordance with good practice.

Once announcing the review of this case other trust workers contacted us to describe their experiences of speaking up.

Where we have identified learning in these cases in relation to improving the handling of speaking up we have made recommendations to this effect.

We have also commended examples of good speaking up practice that we found during our review.

Our review took place from May to July 2018 and reviewed the handling of speaking up in two different services of the trust.

In those services, we found that some of those responsible for responding to issues raised by workers did not follow the trust's speaking up policy, or understand when it should be used. As a result, workers who spoke up did not always receive appropriate support.

In one case, the trust's response to a worker who spoke up about patient safety was not in accordance with its stated values to treat individuals with care and respect.

We also found the working culture in one of the services was poor, with significant evidence that many staff in that service did not feel free to speak up about their work, or matters relating to patient safety.

More positively, senior leaders demonstrated insight into the need to improve the trust's support for its workers. In respect of one of the services we visited they agreed to consider reviewing the bullying culture. In another, they were putting plans in place at the time of our review to improve the speaking up culture.

The trust also demonstrated a clear commitment to support the work of the Freedom to Speak Up Guardian,<sup>1</sup> providing resources for them to work on a full-time basis, as well as regular managerial and clinical oversight to help them manage the challenges of the role. This oversight reflected the trust's appreciation, as a leading provider of mental health services, of the needs of their Guardian.

At the time of our review, the Freedom to Speak up Guardian had received requests from workers for support to speak up in over 200 separate cases.<sup>2</sup>

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<sup>1</sup> Freedom to Speak Up Guardians provide independent and impartial support to workers to speak up, to ensure those with responsibility for responding to the matters they raise do so in accordance with the policies and procedures of the organisation, as well as with good practice. As part of their role, Guardians promote learning and improve the speaking up culture where they work. Most, but not all Guardians are employees of the organisation that appoint them. They receive training, advice and guidance from the National Guardian's Office.

<sup>2</sup> This number includes those cases raised by workers with the Freedom to Speak Up Guardian before the Guardian commenced providing the National Guardian's Office in 2017 with quarterly data relating to the number and type of cases they had received.

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Our review makes 13 recommendations for the trust on how it can improve its support for its workers to speak up.

With each recommendation, we have indicated the time frame within which we expect the organisation in question to implement the necessary actions.

## Acknowledgements and thanks

The National Guardian's Office can only deliver its remit of leading a positive culture change across NHS trusts in England with the help and support of the trusts themselves, their workers, and the arm's length bodies tasked with supporting the NHS.

We would, therefore, like to thank all individuals and organisations with whom we engaged and who provided their support to assist us in completing this review.

Our special thanks go to the individual trust workers who demonstrated considerable courage in speaking up to our review and in doing so showed a commitment to improving the quality of services in which they worked for patients and workers alike.

We would also like to thank the trust for its active collaboration in providing all the necessary information and making staff freely available to permit the completion of our review.

Finally, we would like to thank the individuals and bodies listed below for their support, input and guidance:

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- Trust workers who told us about their experiences of speaking up
  - The trust's Freedom to Speak Up Guardian
  - Senior trust leaders
  - NHS Improvement

# Introduction

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## The National Guardian's Office

The National Guardian's Office (NGO) provides leadership, support and guidance on speaking up in the NHS. It was set up in 2016 in response to recommendations made in Sir Robert Francis' Freedom to Speak Up review, which considered how the speaking up culture in the NHS should be improved.

The NGO's work is divided into two principal areas. Firstly, it provides training, guidance and support to a network of Freedom to Speak Up Guardians, whose role is to provide independent support for workers to speak in the services where they operate.<sup>3</sup> Secondly, the NGO reviews cases where the response of an NHS trust or foundation trust to instances of its workers speaking up may not have met with good practice.

The National Guardian's Office is an independent body, funded by NHS Improvement, NHS England and the Care Quality Commission.

The NGO is not a regulator. Instead, it carries out all aspects of its work in collaboration with relevant bodies and individuals, including trusts and their workers.

Further information about the NGO is available [here](#).

The full Francis Freedom to Speak Up report can be found [here](#).

## Case reviews

The National Guardian's Office (NGO) reviews how NHS trusts and foundation trusts have supported their workers to speak up. The primary focus of a case review is on identifying learning and improvement to bring about a positive culture change in speaking up in NHS trusts and foundation trusts and the bodies that support them.

The standards of good practice against which we assess the actions of trusts are found in a range of sources, including the Francis Freedom to Speak Up review, NHS Improvement's national speaking up policy and the speaking up guidance for NHS trust boards, co-produced by NHS Improvement and the NGO.

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<sup>3</sup> Organisations that provide services for the NHS are obliged under the NHS Standard Contract to appoint one or more Freedom to Speak Up Guardians to support their workers to speak up: <https://www.england.nhs.uk/wp-content/uploads/2018/05/3-nhs-standard-contract-2017-19-particulars-general-conditions-may-2018.pdf>

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To conduct a case review the NGO works with the trust in question to identify relevant information and to feedback learning as it arises.

Where we find evidence during a case review that a trust's support for speaking up has not met with good practice, we make recommendations about how the trust should improve this. We also highlight examples of good practice and commend innovation.

We publish our case review reports on [our web pages](#).

The NGO works closely with the regulators that fund it and shares the findings of its case reviews with them to help ensure NHS trusts and foundation trusts receive all appropriate support to improve their speaking up culture, processes and policies.

Care Quality Commission inspectors review evidence relating to speaking up cultures and arrangements as part of their assessment of how well a trust is led.

## Evaluation of our case reviews

The NGO completed a 12-month pilot of its case review programme in June 2018. The office commissioned an independent evaluation of the process to identify how it can be improved.

The evaluation considered feedback from those involved in the process, including those who have referred cases to us, as well as the individuals and organisations with whom we have worked to complete them.

More information about the NGO case review process is available [here](#).

## Learning for all NHS trusts and foundation trusts

We expect all NHS trusts and foundation trusts to look at our case review reports to identify whether they can adopt the recommendations within to help improve their speaking up culture.

We also expect trust boards to follow the guidance for boards on freedom to speak up in NHS trusts and foundation trusts, jointly produced by NHS Improvement and the National Guardian's Office, published in April 2018. A link to this guidance is available [here](#).

## Why we conducted a case review at Nottinghamshire Healthcare NHS Foundation Trust

When selecting cases for review, the NGO seeks to identify those where the referral evidence suggests that important learning may be obtained from looking at how a trust responded to its workers who spoke up.

In the case of the referral regarding Nottinghamshire Healthcare NHS Foundation Trust, the initial information we received suggested that the trust may not have handled a case of one of its workers speaking up about significant patient safety issues in accordance with good practice. This information also suggested that the speaking up culture in one of the trust's services was poor.

As a mental health trust, the organisation provides care and treatment for many individuals who are particularly vulnerable. In such services, positive speaking up cultures and processes are essential in supporting the wellbeing of patients and workers alike. Therefore, we decided to review the case to identify whether important learning was available to improve this support.

Following the announcement of our review, we received information relating to further examples of potential poor handling of speaking up in a different service of the trust, which we then also reviewed and have commented upon in this report.

## Working with the trust to undertake our review

We worked jointly with the trust to undertake the review, including collaborating on joint communications. We want to thank the trust for its positive and supportive response to the review process at every stage.

## How we conducted our review

We looked at a range of documents relating to the specific cases we were reviewing, as well as other documents concerning speaking up in the trust as a whole. These included trust policies and procedures, reports from the Freedom to Speak Up Guardian and staff survey results.

We visited the trust between May and June 2018 to carry out a series of interviews with workers, trust leaders, the Freedom to Speak Up Guardian and those responsible for handling the cases we have reviewed in our report.

In both the case studies we describe below, we first obtained the consent of the workers involved to discuss their case with the trust.

Where we found issues that needed to be addressed promptly, we immediately raised them with trust leaders.

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## Recommendations and actions

In response to the learning we identified in both case studies, we have made 13 recommendations for the trust relating to the actions they need to take to improve the support for their workers to speak up.

Each of our recommendations carries a time frame by which we expect the trust to take actions to implement them.

NHS Improvement, which is the regulating body responsible for NHS trusts and foundation trusts, will ask trust leaders to provide them with a plan summarising these actions within 28 days of the publication of this report.

These actions will in all cases include measures to determine their effectiveness.

Representatives from NHS Improvement will meet with the trust at regular intervals to review the trust's implementation of its action plan.

## The good practice we found – based on the principles from the 2017 Freedom to Speak Up Guardian Survey

We identified examples of good speaking up practice across the whole trust, relating to the principles of good practice that we set out in our survey of Freedom to Speak Up Guardians in 2017.

A link to this survey can be found [here](#).

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- **Fairness** - The Freedom to Speak Up Guardian was appointed through an open recruitment process
  - **Reach** - The appointment of a full-time Freedom to Speak Up Guardian and 16 Freedom to Speak Up champions helped enable workers to receive support to speak up across the wide geography of the trust and its multiple locations and services
  - **Leadership** - Staff working as part of the trust's freedom to speak up arrangements demonstrated an absolute commitment to supporting workers to speak up and undertook this work with courage, energy and a willingness to learn and improve
  - **Openness** - The Freedom to Speak Up Guardian presented regular reports to the trust board in person that gave a detailed commentary on their work in supporting workers to speak up, including data summaries, analysis and recommendations for action
  - **Feedback** - The Guardian regularly sought feedback from the workers they had supported to speak up to help identify how they could continually develop and improve their performance
  - **Time** - The full-time employment of the Guardian helped ensure that their time to support workers was protected

## The structure of this report

This report consists of 2 case studies relating to separate instances of workers speaking up in two different services at the trust.

We have not described the identities of those services and have taken all reasonable steps to remove any information in this report that could identify individuals, save where we have discussed the work of the Freedom to Speak up Guardian.

This is because the NGO's purpose in completing this review is to highlight learning, rather than to describe the actions or attitudes of specific staff members.

We have discussed the learning we have identified about those services with the trust's leaders. Wherever they have committed to act to address that learning we have reported this.

## About the trust

Nottinghamshire Healthcare NHS Foundation Trust is a major provider of mental health, intellectual disability and community healthcare services for the people of Nottinghamshire.

In addition, it provides services across the county for people with mental health needs, those requiring support relating to drug or alcohol dependency, mental and physical health services for people with intellectual disabilities and community physical healthcare. It also provides secure mental health services.

The trust employs 9,000 staff, who provide services to approximately 190,000 people each year.

Nottinghamshire Healthcare became a foundation trust in 2015. As such it has the freedom to decide how to meet its obligations to deliver its services and is accountable to local people, who can become members and governors of the trust.

## Published information about speaking up in the trust

Although this review was concerned with how the trust responded to its workers speaking up in two of its services, we refer below to the published information regarding the overall speaking up culture in the trust to provide context for our findings.

### **Annual NHS Staff Survey**

All NHS trusts and foundation trusts are required to participate in the annual NHS staff survey. Its purpose is to collect staff views about working in their NHS organisation to help trusts improve working conditions for staff and patient care.

Forty-seven per cent of the trust's workers responded to the 2017 survey. The full results of the survey can be found [here](#).

Two key findings in the survey particularly relate to staff responses concerning a trust's speaking up culture. The first of these relates to whether staff thought the trust's procedures for reporting near

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misses, errors and incidents were 'fair and effective'. When compared with NHS trusts and foundation trusts providing similar services to Nottinghamshire Healthcare the key finding was worse than the average. The 2017 survey results on this point were also not as good as those from the same survey in 2016.

The second key finding in respect of speaking up related to whether staff felt 'confidence and security' when reporting unsafe clinical practice. Again, when compared to like NHS trusts and foundation trusts the results were worse than the average. The survey score on this point was also one of the five lowest scores in the trust and, again, showed a deterioration from the results in the 2016 staff survey.

## **Care Quality Commission (CQC) Inspection**

Inspectors from the CQC last assessed the trust in October and November 2017. As part of their evaluation of how well a trust is led, inspectors looked at the trust's culture, including its processes to support speaking up.

Inspectors gave a rating of 'good' for how well led the trust was. However, they also commented that 'not all staff were aware of the Freedom to Speak Up Guardian and not all staff felt able to raise concerns.'

In response, the trust has taken action, through a range of communication and engagement activities.

The full CQC inspection report can be found [here](#).

# Our report

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## 1. The case studies

We looked at how the trust handled two separate cases of speaking up by its workers that occurred in two different services in the trust.

In both cases, the workers concerned gave us consent to discuss their cases with the trust. This allowed us to ask those responsible for handling those cases about the decisions they took. We also discussed the cases with trust leaders in relation to the lessons they highlighted and how the trust intended to respond to those lessons.

We have set out our findings below, along with our recommendations on what steps the trust should take to improve the handling of its workers' speaking up.

### Case study 1

#### A: Background summary

Worker A was employed in one of the services in the trust, with many years' experience in their specialist field. They spoke up to managers and some senior staff about their belief that the trust had not appropriately supported a patient's care or safety needs.

The trust told us they had taken steps to ensure patient safety in respect of the matters raised by Worker A, although, at the time of writing this report, the trust agreed to formally look at them again, as Worker A had continued to raise the same concerns.

Worker A explained to us that they first raised this issue with senior staff, as well as with service managers, because they believed that local managers had not always handled issues they had previously raised in an appropriate way.

After initially acknowledging Worker A's email, a manager contacted them to question why they had also raised the matter with senior trust staff. This was despite the fact the trust's speaking up policy advises workers that they can raise matters this way if they 'feel they cannot discuss it' with their line managers.

Worker A responded to the manager, seeking a meeting with them to discuss the patient concerns they had raised, but the manager responded saying they were too busy to meet them. This was the last communication Worker A had with them in relation to this case, despite the fact the same individual was then asked to undertake a fact-finding investigation into the issues Worker A had raised.

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Worker A was only told that an investigation had been undertaken over two months later, once it was already complete. Worker A was not interviewed as part of this investigation, even though they had spoken up about important patient safety matters.

We asked the manager in question about how they responded to Worker A's case. They explained they did not think the speaking up policy applied to Worker A's case because they said they thought that it only applied to cases raised through the trust Freedom to Speak Up Guardian.

They added that they would have met with Worker A as part of their fact-finding investigation had they been told to by their superiors, but were not.

The view that the trust speaking up policy did not apply to Worker A's case because it was not first raised via the Guardian was also expressed to our review by a trust senior manager.

Shortly after speaking up, Worker A was informed that their previously agreed study leave had been withdrawn and that an additional role they had asked to take on was to be given to a colleague instead. Worker A perceived these actions as deliberate for having spoken up, although the managers of their service repeatedly denied this when asked about it.

Worker A then contacted the trust Freedom to Speak Up Guardian, asking for their support to raise their concerns about patient safety and the detriment they believed they had suffered for speaking up.

For several weeks after first speaking up, Worker A, as well as the Freedom to Speak Up Guardian, made repeated requests to senior trust managers for information on how they intended to investigate the issues raised by Worker A.

However, no information was provided, even though the trust's speaking up policy directed that workers who spoke up should receive feedback about how the trust planned to respond to the matters they raise.

After seven weeks had passed without any feedback Worker A raised a formal grievance about the trust's handling of their case, as well as the detriment they believed they had suffered. However, Worker A also told our review: 'I did not want to bring a grievance, I just wanted to be listened to.'

The day after raising their grievance, Worker A was signed off sick from work by a doctor who diagnosed them to be suffering from work-related stress. Worker A told us their sickness was caused by the stress they felt from how the trust had handled their speaking up case.

Worker A went back to work almost four weeks later and attended a meeting, the purpose of which, according to the trust's policy, was to discuss the 'nature and causes' for Worker A's absence and whether they needed any support upon returning to work.

The trust produced a detailed list for managers regarding what should be covered at such meetings. However, many areas on this list were not discussed, including the reasons for Worker A's absence and any 'necessary actions to reduce the likelihood of the same situation of further sickness absence occurring.'

We asked a senior staff member in Worker A's service about how it ensured that staff returning from sickness were given appropriate support. In response, they replied that the trust 'were not great at supporting managers' to do this and they needed 'more training' to help staff return from sickness absence.

The senior staff member said this was especially the case in respect of those absences defined as 'long-term' under trust policies, which applied to Worker A's situation.

The senior manager then explained that a fact-finding investigation had been completed into the issues that Worker A had raised and that another manager would share the report and its findings with them. However, Worker A did not receive the fact-finding report into their speaking up case for another seven weeks.

Worker A also met with a senior staff member to discuss the detriment they believed they had suffered for speaking up. During this meeting, the senior staff member reinstated Worker A's study leave and agreed to provide Worker A with a new additional role to compensate them for the one they had lost. The senior manager, however, did not believe that the removal of study leave or the additional role were taken in response to speaking up.

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# Our findings

## 1. Speaking up culture

### Policies and procedures

As part of our review of the handling of the cases described in this report, we looked at the trust's 'Raising Concerns (Whistleblowing)' policy to identify how well it supported trust workers to speak up. This policy was operating at the time of the events in the case studies in this review.

At the time of our review, the trust had recently updated it to align it with the speaking up policy for the NHS published by NHS Improvement. This policy can be found [here](#).

We asked NHS Improvement to review the updated policy and below is a summary of its comments:

#### Positive feedback

- The policy is largely 'written in clear language, and has a good tone'

#### Areas needing improvement

##### 1. References to the Public Interest Disclosure Act:

- The examples given of what concerns the trust will support workers to raise under the policy are those matters that a worker may seek protection to raise under the Public Interest Disclosure Act (PIDA). However, NHSI 'does not see why those examples are used in the light of the national raising concerns (whistleblowing) policy, which attempts to cover a broader range of issues than those set out in PIDA.'

##### 2. Accessing support from the trust Non-Executive Director

- The policy states that workers wishing to access support from the trust's Non-Executive Director responsible for speaking up should do so by going through the office of the trust CEO, but NHSI comment that 'this misses the point. There needs to be direct access if the speaking up Non-Executive Director is to be accessible.'

### 3. Lack of clarity about the speaking up process

- The policy's description of what happens next after a worker has spoken 'needs clarifying because it doesn't seem to align with the process laid out [earlier in the policy.] It is unclear if it is a stage by stage process, or whether the stages set out at [later in the policy] only apply when your concern is about a director. The policy also does not make clear that individuals can go to an external body at any time.'

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### 4. Unclear language

- Some of the terminology in the policy is unclear, referring to workers' right of 'representation', without saying why this would be necessary when speaking up; stating that responses to speaking up can include 'informal review', 'an internal investigation' and 'an investigation', without describing the difference between these actions;
- NHSI also observe that the policy suggests the trust might share confidential information with counter fraud services, 'but it does not explain the circumstances when this will or will not be necessary.'

Because of this feedback from NHS Improvement, we make the following recommendations concerning the trust's speaking up policy:

#### **Recommendation 1**

**Within 3 months the trust should revise its new speaking up policy, to ensure it is in line with the NHS Improvement national speaking up policy.**

#### **Recommendation 2**

**Within 6 months the trust should take steps to ensure all existing and new workers are aware of the contents and meaning of its revised freedom to speak up policy.**

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## Culture and leadership

Four members of staff from the service spoke to our review, describing the challenges they felt they faced when speaking up and the negative culture that existed in the service.

One said that workers in the service were 'too terrified to speak up'. Another said a culture of bullying in the service was 'ingrained', while another described how workers who spoke up were 'aggressively marginalised'.

Three of the four members of staff who talked to our review asked not to be identified, as they feared the consequences if this occurred.

The leadership of the trust was already aware that workers were concerned about the overall speaking up culture in Worker A's service, because of feedback the trust Freedom to Speak Up Guardian had given them about the issues they had supported workers in that service to raise.

Over a period of 18 months prior to our review, the Guardian provided support to staff in Worker A's service in 13 separate cases. Nine of the 13 workers involved asked for the Guardian not to reveal their identity.

Staff in the service also commented to us that the existence of close relationships between some senior staff presented an obstacle to speaking up because workers believed that if they raised issues to a senior member staff about a person with whom they had such a relationship it would not be treated fairly.

We comment further on these concerns later in our report.

We raised these concerns with several senior managers and trust leaders, most of whom conceded that the speaking up culture in Worker A's service required significant improvement.

One senior trust leader said that the trust would consider undertaking a review in the service to identify the possible causes of cultural problems and how they might be addressed.

Another senior leader agreed that throughout the speaking up process there had been 'a lack of engagement' with Worker A, as well as insufficient support for them.

Because of the evidence of a poor speaking up culture in the service in question the National Guardian's Office recommends that the trust undertakes a formal review of that service's speaking up culture.

## Recommendation 3

**Within 6 months the trust should undertake a suitably independent review of the speaking up culture in the service relating to Worker A's case and take all necessary steps to implement the review's findings without undue delay. Given the evidence of fear of speaking up in this service, the review should take all reasonable steps to protect individuals' confidentiality.**

## 2. Handling concerns

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### Investigations

As described above, the trust had a policy in place, entitled 'Raising Concerns (Whistleblowing)' that set out how the trust should respond in the event of one of its workers speaking up.

The policy's stated purpose was 'to identify how [workers] can raise concerns about anything [they] believe is harming the service the trust delivers ...' and, therefore, as with all cases of workers speaking up, it was the policy that should have been followed in response to Worker A's case.

The policy made the following commitments to how such a case should be handled, stating to trust workers: 'We will tell you who is handling this matter, how you can contact them, how long an investigation is likely to take and whether your further assistance is needed. We will keep you up to date with the progress of any investigation.' It also stated that: 'Managers are expected to deal the matter positively and reasonably...'

However, Worker A did not receive the support detailed in the policy. Upon speaking up they were not told how the serious patient safety concerns they had raised were to be responded to, or who might take any action. Moreover, although there was a fact-finding investigation into the matters they had raised, Worker A was not informed of its existence until weeks after its completion.

Despite continued requests for updates and information from Worker A and the trust Freedom to Speak Up Guardian the trust only informed Worker A that a fact-finding investigation had taken place 10 weeks after they had first spoken up. Furthermore, Worker A only received feedback, by being shown a copy of the fact-finding report into the matters they had raised, months after the investigation had been completed.

These omissions were in breach of trust policy and equally failed to ensure that Worker A was treated 'positively and reasonably'.

Subsequently, Worker A had a period of sickness absence diagnosed as work-related by their doctor. Worker A maintained this sickness related to the stress they said they experienced because of how their speaking up was handled by the trust.

Worker A brought a grievance application against the trust arguing that the handling of their speaking up was not in accordance with trust policy and procedure.

The managers responsible for handling Worker A's case stated that they believed the trust speaking up policy only applied to matters raised by Workers through the trust Guardian. This was despite the clear application of the policy and the fact that the trust had taken considerable steps to ensure that all staff were aware of its contents.

The response from managers was not in accordance with the values of the trust, which include a stated commitment to 'listen and learn' from its staff, with an emphasis on 'value, compassion and respect'.

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Worker A told our review that they believed the final fact-finding report focussed on criticising them, partly because they had spoken up in the first place. A senior trust leader also told us that they regarded the report as 'biased' against Worker A, for this reason.

Quite properly, the trust's speaking up policy states that those who speak up 'should always be given the assurance that they will not suffer recrimination or disadvantage of any sort'. However, not only did Worker A not receive such an assurance, they also believed that they suffered detriment for doing so.

Because the handling of this case was neither in accordance with the trust's own policies nor good speaking up practice, we have made a recommendation on how this should improve.

Our recommendations in terms of improving workers' understanding and awareness of freedom to speak up are set out below case study 2 below, where we also found evidence that this needed to be done.

## **Recommendation 4**

**Within 6 months the trust should take steps to ensure that its handling of all workers' cases of speaking up in the service relating to Worker A's case strictly in accordance with the trust's revised speaking up policy and procedure, including informing workers how their case will be handled, what support they will receive and providing regular feedback on the progress and the outcome of any investigations.**

**These measures should also include specific and meaningful steps to ensure, in accordance with trust policy, that workers who speak up do not suffer recrimination or disadvantage of any sort for speaking up.**

### **A culture of valuing workers**

As described above, the trust provides a statement of its values, expressed in a range of trust documents, policies, as well as on its website, which includes a commitment to 'to listen [to] and learn' from its staff and treat them with 'openness, care, compassion and respect.'

However, there was clear evidence that the treatment of Worker A was not in accordance with these values.

As described above, they neither received the support owed to them when speaking up or when returning to work after suffering 'work-related stress' after speaking up. This was even though the trust provided comprehensive guidance for those responsible for handling workers' returning to work from sickness absence that was clearly intended to ensure that workers also received necessary support and understanding upon their return.

A senior trust member of staff also commented to our review that managers with responsibility for conducting return-to-work interviews received too little training in carrying out this important task.

Worker A, therefore, did not receive the care, support, compassion and respect that the trust's own policies properly determined they should.

All trusts must practice the values they advocate. At the same time, they must appreciate that many workers who speak up often perceive that they are doing so at great personal risk. Failing to provide those workers with the support that their own policies provide for is a breach of those policies, as well as the values that underpin them.

### **Recommendation 5**

**Within 3 months the trust should take appropriate steps to ensure that workers who speak up in the service relating to Worker A's case, as well as across the trust, are treated in accordance with the trust's stated values, including with openness, care, compassion and respect.**

### **Recommendation 6**

**Within 3 months the trust should take appropriate steps to follow their policies, ensuring that workers who take periods of sickness leave, including in relation to their speaking up, are provided with support upon returning from that leave that is in strict accordance with the values, policies, and guidance of the trust.**

### **Recommendation 7**

**Within 3 months the trust should take appropriate steps to ensure that all staff in Worker A's service with responsibility for supporting workers to return to work from sickness absence are properly capable of implementing the relevant policies and guidance to manage this process.**

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### 3. Supporting good practice

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#### **Freedom to Speak Up Guardian**

The trust provided resources to employ a full-time Freedom to Speak Up Guardian. Additionally, 16 speaking up champions volunteered to support workers across the trust to raise issues.

While the trust took considerable steps to ensure the role of the Guardian was widely advertised and explained to workers across all parts of the trust, there was evidence that some senior workers did not understand the Guardian's role, or how it operated in relation to the trust's speaking up policy.

Because we found similar evidence in relation to case study 2, we have set out below our observations concerning this aspect of the trust's speaking up arrangements.

## Case study 2

### A: Background Summary

Following the announcement of the National Guardian Office case review at the trust, workers employed in a different trust service to that described in case study 1 approached us about their experiences of speaking up in the trust. They said they were concerned about two issues in their workplace.

Firstly, they were concerned about the conduct of a manager of their service, whom they regarded as bullying them and their colleagues. Their second was in respect of the recruitment processes at their service, which they often regarded as unfair.

The workers first raised the bullying issue with their line manager, but asked not to be identified in any investigation for fear of reprisals for speaking up. The workers' line manager discussed their concerns with a senior manager, but no further action was taken.

The workers then contacted the trust Freedom to Speak Up Guardian for help, again asking not to be identified, because they continued to fear the consequences of speaking up openly in their service.

The Guardian raised the matter with senior managers and the workers' allegations were then investigated.

While the investigation was taking place, the workers described that at different staff meetings held within their service they and their colleagues were repeatedly told that individuals should not speak to the trust Guardian unless the issue specifically related to a clinical matter. Such statements were not accurate descriptions of the role of the Guardian and presented a potential barrier to workers speaking up about any matter that might affect the delivery of a quality service.

The workers explained to our review that they found such comments 'threatening' and feared that their speaking up would be exposed.

The workers also described further obstacles to speaking up freely that they believed they faced, in addition to the bullying culture in their service. They said they believed that close relationships existed between some senior managers in the service and therefore the workers had little confidence that their concerns would be responded to fairly, where they concerned those managers. After the workers were told that an investigation was taking place they then received no feedback as to its progress. This information was only provided several weeks after the conclusion of the investigation.

The same workers also asked the Guardian to support them to raise a second issue in relation to recruitment practices within their service that they regarded as not in accordance with trust policy and procedure. Again, they asked for their identities not to be revealed for fear of the consequences of openly speaking up because of the bullying culture in their service.

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Requests for feedback from senior managers regarding the trust's response from the Guardian were met with little information, other than indications that the matter was being considered and many months after first speaking up the workers had still not received feedback on the outcome.

At the time of our review, the workers concerned asked us to raise the case with a trust senior leader and gave their consent for us to identify them, having received no feedback at that point.

When we discussed the case with a trust senior leader responsible for the service concerned they acknowledged that the workers should have received feedback about the investigation into improper recruitment and they provided this to them during our review.

At this meeting, the senior leader thanked the workers for speaking up and apologised for the length of time it had taken for the trust to provide them with feedback. The leader made a commitment to support them to speak up in the future and said they were always welcome to raise any issues.

This response was welcomed by the workers who had spoken up.

We commend these actions as an example of leader's support for workers that can help improve the speaking up culture, as well as a demonstration of trust values.

The senior leader observed to our review that there was more the service needed to do in relation to supporting its workers to speak up. They then outlined a series of measures that they were planning to help address the speaking up culture in the service that at the time of our review were confidential, but which they would announce to workers in the weeks following our visit to the trust.

The senior leader added that it had been challenging to properly respond to concerns raised confidentially to the Guardian, both in relation to alleged bullying, as well as recruitment processes. This was because, without the opportunity to discuss the issues directly with the workers themselves, there was 'no hard evidence' that could be looked into.

However, the senior leader also acknowledged that a more positive speaking up culture needed to be created in the service so that workers did not feel compelled to withhold their identity when speaking up and hoped that the measures they planned to take would address this.

We also raised with them the issue of workers being told they were only entitled to support to speak up from the trust Guardian in relation to clinical matters, contrary to the trust's policy, as well as the description of the Guardian role stated nationally by the National Guardian's Office. In response, the senior leader said that they had looked into this matter and while not able to be certain that workers were dissuaded from approaching the Guardian accepted that their perception that they were told not to was enough.

# Our findings

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## 1. Speaking up culture

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### Leadership and culture

As described above, there was evidence that the speaking up culture in the service relating to the workers in case study 2 was not fully supportive of the needs of workers. This was acknowledged by the senior leader with whom we discussed this case, who undertook to put in place actions to address this within that service.

We, therefore, ask the trust to ensure that it completes the implementation of its these actions.

As part of this process, the trust should consider the value of fully engaging with the staff in that service, to obtain their views and input on how the culture can be improved.

As also described above, there was evidence that the trust did little to initially respond to matters raised by workers where the identities of those workers were not known. While we acknowledge that it can be difficult to look into matters raised in such circumstances, this should never be a reason not to act.

In an ideal speaking up culture, workers will feel free to speak up openly, and, in doing so, assist the prompt response to the matters they raise by providing all necessary information to those responsible for handling them.

However, it is not uncommon for workers to wish to speak up without revealing their identity and often to do so through a third party such as a Freedom to Speak Up Guardian or champion. In such circumstances, the information made available may still provide a sufficient basis for (at least an initial) investigation into those matters, where appropriate.

Further, should more 'hard evidence' be required, those responsible for responding to the issues raised can let it be known (via the individual the workers originally spoke up to) that the staff concerned can speak to them directly, in full accordance with their rights under the trust's policies and procedures.

### Recommendation 8

**Within 6 months the trust should ensure that, according to the revised speaking up policy, where workers speak up in confidence, all reasonable steps are taken to respond to the issues raised and that matters are investigated as fully as possible, even where the identities of those speaking up are unknown.**

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## 2. Handling concerns

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### Investigations

In common with case study one, the workers who spoke up did not receive timely feedback. This was neither in accordance with good practice nor with the relevant trust policy which informs workers who speak up: 'We will keep you up to date with any investigation'.

As the workers spoke up in confidence to the Freedom to Speak Up Guardian any feedback regarding the trust's response should have been given to them, but despite continued requests by the Guardian for information on the workers' behalf little was given, other than that the trust was looking into their concerns, but with no explanation of why more detailed feedback could not be given.

Providing feedback within reasonable timescales to workers who raise issues is a key element in positive speaking up cultures. As staff inevitably speak up about matters that are, for whatever reason, important to them, failure to provide feedback can create the impression that those matters have not been taken sufficiently seriously.

Just as importantly, where workers speak up about important issues such as patient safety, prompt feedback to them is essential in providing assurance that all necessary steps have been taken to address those matters.

However, in some circumstances, the amount and content of feedback may be limited to protect a third party.

Because we found evidence in both the services we visited that workers who spoke up did not receive feedback about the issues they raised in accordance with the trust's policy and procedures our recommendation in this regard relates to the whole trust.

### Recommendation 9

**Within 6 months the trust should ensure that, where investigations are undertaken in response to speaking up issues raised by its workers, the trust provides those individuals with feedback regarding the progress of those investigations in accordance with its revised speaking up policy.**

## 3. Supporting good practice

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### Speaking up awareness

The trust had taken several steps to ensure its workers were aware of its speaking up policy.

The policy was first launched on the trust's internal communications network (intranet) with additional articles about the policy in the staff magazine. It was also formally shared with senior staff at the trust leadership council.

With regards to the role of the Guardian, the trust had taken a series of steps to make sure all staff were aware of their role, including:

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- Introducing the role of Guardian and the speaking up policy to new staff members during their induction
  - Regular updates on the Guardian's role on the trust intranet
  - Regular updates in the staff magazine
  - A dedicated speaking up page on the staff internal communications system, with information on the Guardian's role and on how to contact them
  - Regular visits by the Guardian to all trust services so that staff could speak up to them
  - Regular presentations given by the Guardian to staff in all trust services (including those we reviewed) at team meetings, away days and summits about their work
  - Posters about the Guardian in every clinical and non-clinical area of the trust
  - Details of speaking up support sent to all staff in their payslips

In addition to these measures, the Guardian was also a member of a range of staff networks and committees, including those to support the needs of workers in minority groups.

These actions represented a clear commitment by the trust to ensure that all its workers were made aware of the speaking up arrangements to support them and we commend them for the range of measures it employed.

However, despite these detailed measures, there was clear evidence that there was a significant lack of awareness and understanding across the two services we reviewed about the purpose of the trust speaking up policy and the role of the Freedom to Speak Up Guardian.

We therefore recommend that the trust provides effective communication about speaking up for all the staff in those services.

In addition, we also recommend that the trust devises a dedicated speaking up communications strategy to ensure that it takes all reasonable and appropriate steps to embed messages across the trust relating to the Guardian's role and the purpose and application of its speaking up policy.

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This strategy should include measures of the effectiveness of the strategy. Where the results show a reasonable need to raise this awareness further we recommend that the trust take the appropriate steps to achieve this.

## **Recommendation 10**

**Within 6 months the trust should ensure that all workers in the two services to which the case studies relate receive effective communication in respect of the trust's revised speaking up policy and the role of the trust Freedom to Speak Up Guardian.**

## **Recommendation 11**

**Within 12 months the trust should review its communication activities to date and devise and implement a strategy that addresses any gaps identified, accompanied by measures to demonstrate its effectiveness.**

## **Freedom to Speak Up Guardian**

The trust employed a Freedom to Speak Up Guardian full time, supported by a network of champions, to help ensure that its large workforce, geographically spread over a wide area, were supported to speak up.

Since their appointment in 2016, the Guardian had supported workers to speak up in over 200 separate cases.

In addition to their work within the trust, the Guardian also played an important regional role by acting as a lead for regional Guardians, helping provide mutual support and learning among that group.

To ensure that the Guardian received the necessary help to discharge their role, the trust provided them with regular managerial oversight to assist them with their caseload and with regular clinical supervision (psychological and emotional support to ensure the wellbeing of the worker) to help them manage the frequent stresses and pressures of the job.

This assistance was a clear demonstration of the trust's values of care and compassion for individuals. We commend this support and recommend that all trusts consider how best to support their Guardian's needs in light of the example set by Nottinghamshire Healthcare.

## **Recommendation 12**

**The trust continues with its commitment to developing a positive speaking up culture among its workforce by maintaining the support it provides for its Freedom to Speak Up Guardian, including appropriate managerial and emotional support.**

## Conflicts of interest

Several trust workers perceived a significant obstacle to speaking up in the close relationships they believe existed between some members of staff.

Workers told our review that such relationships occurred in the trust and described different instances where they believed this happened, including involving senior staff with responsibilities for decision making.

The trust had a policy to regulate conflicts of interest, including those relating to loyalty interests. It stated that 'loyalty interests should be declared by staff involved in decision making where they [ ...] are, or could be involved in the [ ...] management of [ ...] close friends and associates.'

Where staff declared such conflicts, these were recorded on a central trust register. Nine thousand staff are employed by the trust. At the time of our review, only one signed declaration of loyalty interest was recorded on the central trust register.

The trust's policy closely followed national guidance from NHS England on managing conflicts of interest, which can be found [here](#).

The workers explained to us that they regarded such relationships as a potential obstacle to speaking up because they believed they might not be treated fairly if they needed to speak up to a manager about the actions of another staff member they managed, where a close relationship existed between them. They believed that the manager faced a conflict of loyalty in such circumstances and would not act impartially.

It is accepted by the NGO that positive speaking up cultures should provide workers with a variety of options to raise issues, partly to ensure that where an obstacle to doing so is perceived a worker remains free to speak up via other routes. It is also accepted that the principal purpose of the trust's policy and the national guidance is to ensure 'that decisions are taken transparently, in relation to 'providing best value for taxpayers.'

However, transparent decision-making, supported by the declaration of any conflicts of interest that potentially affect those decisions, is directly linked to open and honest working cultures, which are a key element in working environments where staff are free to speak up. The introduction to the trust policy states '... ensuring decisions are taken transparently and clearly are both key principles in the NHS Constitution.'

Therefore, a policy that supports open decision making also helps support a positive speaking up culture.

The extent to which a trust's culture is open and honest is also a focal point for regulatory inspectors when they assess the governance of that organisation.

The NGO makes no comment on whether such loyalty conflicts existed in Nottinghamshire Healthcare. But, given evidence that some workers believed the trust's speaking up culture was undermined by the fact that they existed, we asked the trust how it implemented its conflict of interest policy.

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A senior staff member acknowledged the need to ensure that all staff were properly informed of the existence and purpose of the policy, including decision makers who had a responsibility to declare any relevant interests.

They explained that the trust was planning a series of measures to achieve this. These included messages to all staff regarding the policy and specific communications to senior decision makers to remind them of their obligations to make any appropriate declarations.

They added that the trust would closely monitor leaders' compliance with completing their annual declarations of interests.

Because of the need to remove all obstacles to speaking up, we recommend that the trust completes all planned actions in this regard.

### **Recommendation 13**

**Within 12 months the trust should complete its planned actions regarding the implementation of its conflicts of interest policy, to ensure all staff are aware of its purpose and all relevant staff make appropriate declarations, including those relating to conflicting loyalty interests.**

### **What will happen next**

#### **An action plan from the trust to implement our recommendations**

Following the publication of this report, NHS Improvement, which is the regulator in England for NHS trusts and foundation trusts, will ask the trust to produce an action plan to implement our recommendations, within the timescales we have set.

It is the NGO's expectation that NHS Improvement will ask trusts to publish their action plans.

Once the trust puts their plan into effect NHS Improvement will monitor the trust's implementation of that action plan and will provide the NGO with updates regarding its progress.

Where there is evidence that the trust has not taken effective actions to implement our recommendations we will expect NHS Improvement, as well as Care Quality Commission inspectors, to take appropriate steps to address this.

#### **Our response to individual contributors to our review**

The National Guardian's Office will contact those individuals who have spoken up to our review, thanking them and providing feedback to them on how their experiences have been reflected in this report. We will also ask them for feedback on their experience of how we have conducted this review.

In addition, we will contact staff who spoke to us individually during the review to confirm whether they have subsequently experienced any detriment for speaking up. Where they tell us this has

taken place we will refer any such cases to the trust and, if necessary, regulators to take appropriate action.

## **Other NHS trusts' responsibilities to implement our recommendations**

As described on page four of this report, we expect all other NHS trust boards in England, in accordance with the guidance we have co-produced for them in collaboration with NHS Improvement, to implement this report's recommendations in their own services, where it is appropriate to do so.

## **Feedback to help improve our case review process**

To help us improve our process we welcome feedback from all readers of this report. Please send your comments to: [casereviews@nationalguardianoffice.org.uk](mailto:casereviews@nationalguardianoffice.org.uk)

# Annex – summary of recommendations

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The recommendations arising from the case review for the trust are listed below.

They are grouped according to when we recommend the work is completed by the body in question to implement each recommendation.

## To be continued

### **Recommendation 12**

The trust continues with its commitment to developing a positive speaking up culture among its workforce by maintaining the support it provides for its Freedom to Speak Up Guardian, including appropriate managerial and emotional support.

## Recommendations to be completed within three months

### **Recommendation 1**

Within 3 months the trust should revise its new speaking up policy, to ensure it is in line with the NHS Improvement national speaking up policy.

### **Recommendation 5**

Within 3 months the trust should take appropriate steps to ensure that workers who speak up in the service relating to Worker A's case, as well as across the trust as a whole, are treated in accordance with the trust's stated values, including with openness, care, compassion and respect.

### **Recommendation 6**

Within 3 months the trust should take appropriate steps to follow their policies, ensuring that workers who take periods of sickness leave, including in relation to their speaking up, are provided with support upon returning from that leave that is in strict accordance with the values, policies, and guidance of the trust.

### **Recommendation 7**

Within 3 months the trust should take appropriate steps to ensure that all staff in Worker A's service with responsibility for supporting workers to return to work from sickness absence are properly capable of implementing the relevant policies and guidance to manage this process.

## Recommendations to be completed within six months

### **Recommendation 2**

Within 6 months the trust should take steps to ensure all existing and new workers are aware of the contents and meaning of its revised freedom to speak up policy.

### **Recommendation 3**

Within 6 months the trust should undertake a suitably independent review of the speaking up culture in the service relating to Worker A's case and take all necessary steps to implement the review's findings without undue delay. Given the evidence of fear of speaking up in this service, the review should take all reasonable steps to protect individuals' confidentiality.

### **Recommendation 4**

Within 6 months the trust should take steps to ensure that its handling of all workers' cases of speaking up in the service relating to Worker A's case strictly in accordance with the trust's revised speaking up policy and procedure, including informing workers how their case will be handled, what support they will receive and providing regular feedback on the progress and the outcome of any investigations.

These measures should also include specific and meaningful steps to ensure, in accordance with trust policy, that workers who speak up do not suffer recrimination or disadvantage of any sort for speaking up.

### **Recommendation 8**

Within 6 months the trust should ensure that, according to the revised speaking up policy, where workers speak up in confidence, all reasonable steps are taken to respond to the issues raised and that matters are investigated as fully as possible, even where the identities of those speaking up are unknown.

### **Recommendation 9**

Within 6 months the trust should ensure that, where investigations are undertaken in response to speaking up issues raised by its workers, the trust provides those individuals with feedback regarding the progress of those investigations in accordance with its revised speaking up policy.

### **Recommendation 10**

Within 6 months the trust should ensure that all workers in the two services to which the case studies relate receive effective communication in respect of the trust's revised speaking up policy and the role of the trust Freedom to Speak Up Guardian.

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## Recommendations to be completed within twelve months

### **Recommendation 11**

Within 12 months the trust should review its communication activities to date and devise and implement a strategy that addresses any gaps identified, accompanied by measures to demonstrate its effectiveness.

### **Recommendation 13**

Within 12 months the trust should complete its planned actions regarding the implementation of its conflicts of interest policy, to ensure all staff are aware of its purpose and all relevant staff make appropriate declarations, including those relating to conflicting loyalty interests.

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