

September 2020



## The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 - Annual Report

1 April 2019 – 31 March 2020

### 1. Introduction

The National Guardian's Office (NGO)<sup>1</sup> leads, trains and supports Freedom to Speak Up Guardians, who support workers to speak up and to effect culture change so speaking up becomes business as usual.

The NGO challenges and supports the health system in England on all matters related to speaking up.

The NGO makes this report in accordance with the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017.<sup>2</sup>

The NGO is a 'prescribed person'.<sup>3</sup> As such, under the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017, the office has a duty to annually report on the 'qualifying disclosures' workers have made to it.

These disclosures are defined by section 43B of the Employment Rights Act 1996.<sup>4</sup> The meaning of 'qualifying disclosures' is described further below.

The report summarises the number of disclosures the NGO has received. It also states how the NGO has responded to them and how they have affected the NGO's ability to perform its functions and meet its objectives.

This report relates to the disclosures the NGO received between 1 April 2019 to 31 March 2020.

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<sup>1</sup> National Guardian's Office, <https://www.nationalguardian.org.uk/>

<sup>2</sup> The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017. Available at: [legislation.gov.uk/ukdsi/2017/9780111154359/contents](https://legislation.gov.uk/ukdsi/2017/9780111154359/contents) (Accessed: September 24<sup>th</sup>, 2020)

<sup>3</sup> Whistleblowing: list of prescribed people and bodies, Department of Business, Energy and Industrial Strategy. Available at: [gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies](https://gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--2/whistleblowing-list-of-prescribed-people-and-bodies) (Accessed: September 24<sup>th</sup>, 2020)

<sup>4</sup> Employment Rights Act 1996, c.18. Available at: [legislation.gov.uk/ukpga/1996/18/section/43B](https://legislation.gov.uk/ukpga/1996/18/section/43B) (Accessed: September 24<sup>th</sup>, 2020)

September 2020

This is the third report the office has published in accordance with this regulation.

The information provided in this report is in accordance with guidelines and advice provided by the Department of Business, Energy and Industrial Strategy.<sup>5</sup>

The guidance sets out the purpose of the prescribed person's duty to report:

*"The aim of this duty is to increase transparency in the way that whistleblowing disclosures are dealt with and to raise confidence among whistle-blowers that their disclosures are taken seriously.*

*Producing reports highlighting the number of qualifying disclosures received and how they were taken forward will go some way to assure individuals who blow the whistle that action is taken in respect of their disclosures."*

## 2. Definitions

### Qualifying disclosures

A 'qualifying disclosure' is defined under the Employment Rights Act.<sup>6</sup> It describes the circumstances where a worker, reasonably believing they are acting in the public interest, discloses information about a relevant failure.

Such 'relevant failures' include a breach of a legal obligation or a criminal offence.

A worker may make a disclosure using various communication methods. The number of disclosures reported below includes those the NGO has received by email, phone and directly to its staff in person.

The office determines a qualifying disclosure to be where the person speaking up is a worker and their disclosure relates to the office's work.

### Prescribed Persons

Prescribed persons provide workers with a mechanism to make their public interest disclosure to an external body, rather than directly to their employer.<sup>7</sup>

A worker making a disclosure to a prescribed person will potentially qualify for the same employment rights as if they had reported the matter to their employer.

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<sup>5</sup> Whistleblowing: prescribed persons guidance, Department of Business, Energy and Industrial Strategy. Available at: [assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604935/whistleblowing-prescribed-persons-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/604935/whistleblowing-prescribed-persons-guidance.pdf) (Accessed: September 24<sup>th</sup>, 2020)

<sup>6</sup> Ibid., 4.

<sup>7</sup> Employment Rights Act 1996, c.18. Available at: [legislation.gov.uk/ukpga/1996/18/section/43F](https://legislation.gov.uk/ukpga/1996/18/section/43F) (Accessed: September 24<sup>th</sup>, 2020)

## Workers

When deciding whether someone is a ‘worker’, the NGO takes account of the statutory definition.<sup>8</sup> It also takes the meaning further, to ensure it supports as many individuals as possible working in an organisation to speak up.

The NGO definition of a ‘worker’ includes:

- An individual who has entered into, or works under a contract of employment
- An agency worker
- A non-employee undertaking training, or working experience
- Student healthcare workers
- Self-employed persons
- Volunteers

### **3. Functions and Objectives of the National Guardian’s Office**

This report summarises how workers’ disclosures received by the NGO have affected the office’s ability to perform its functions and meet its objectives.

The NGO is an independent, non-statutory body responsible for:

- leading, training and supporting a network of Freedom to Speak Up Guardians
- reviewing speaking up to identify learning and improvement
- challenging and supporting the health system in England on all matters related to speaking up.

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<sup>8</sup> Employment Rights Act 1996 Section 230, Available at: [legislation.gov.uk/ukpga/1996/18/section/230](https://legislation.gov.uk/ukpga/1996/18/section/230) (Accessed: September 24th, 2020)

#### 4. Number of qualifying disclosures received, and actions taken

##### 4.1 Number of qualifying disclosures received

The NGO received 58 qualifying disclosures between 1 April 2019 and 31 March 2020. The NGO acted in response to each of them. The types of action taken are summarised below.

Where the NGO received multiple communications from the same individual about the same disclosure of information, it has counted that as one disclosure.

##### 4.2 Actions taken in response to disclosures received

The NGO took a range of actions in response to the qualifying disclosures it received. The frequency of those actions is listed below. In some cases, the NGO took more than one action in response to a single disclosure:

Action in response to a referral	Frequency of action
Signposted a worker to the Freedom to Speak Up Guardian at their organisation, so that the worker could contact them for support to raise matters relating to their disclosure	23
Provided information or guidance to a Freedom to Speak Up Guardian in an NHS trust to help them to support workers to speak up	4
Initiated a case review, providing information on how a referral for a case review could be made, or explaining the case review process	24
Contacted the enquirer to obtain further information	3
Signposted the worker to other sources of advice or guidance, or to an appropriate regulator, authority or body	29
Contacted a trust to seek clarification and assurance about their speaking up arrangements	1
Raised a safeguarding alert with the relevant authorities and bodies	2

## **5. How disclosures have affected the National Guardian's Office's ability to perform its functions and meet its objectives**

The disclosures referred to in this report have been used to:

- improve the NGO's understanding of the freedom to speak up culture, and matters affecting it, across the health sector in England
- inform and develop the guidance, training and support the NGO provides for Freedom to Speak Up Guardians
- form the basis of case reviews carried out by the NGO