



# DETRIMENT GUIDANCE FOR GUARDIANS

January 2025



**National  
Guardian**

Freedom to Speak Up

## Introduction

Many people who speak up fear nothing will be done or that they will suffer retaliation for having spoken up. Individual barriers to speaking up may vary from person to person, depending on factors including their status in their organisation, their background, and personal characteristics.

Recent high-profile cases of workers suffering detriment for speaking up are troubling reminders that it is not always easy to speak up in the health or care sectors. Workers speaking up can find themselves bullied or threatened – there is a worrying trend of being reported for misconduct to their professional body.<sup>1</sup>

Freedom to Speak Up guardians are required to report anonymised speaking up data on a quarterly basis to the National Guardian's Office. The number of people sharing concerns relating to perceived disadvantageous/demeaning treatment as a result of speaking up is included in this data.

In 23/24 data submitted by Freedom to Speak Up guardians, 4% (1,285) of cases indicated workers believed they experienced some form of disadvantageous and/or demeaning treatment as a result of speaking up.

This guidance has been designed, in collaboration with the Freedom to Speak Up networks. It aims to support Freedom to Speak Up guardians, their organisations, and their leadership, to make speaking up business as usual by ensuring those who have spoken up are supported and to remove the barrier of fear of detriment that may prevent speaking up.

## Responsibilities

The National Guardian's Office appreciates that speaking up can, at times, feel challenging, particularly when colleagues are involved in the issues being raised. However, we rely on each other to do the right thing, and we all share a responsibility to speak up when we see something that doesn't feel right. By working together and supporting everyone affected by speaking up, we can prevent colleagues experiencing poor treatment.

### As individuals we share a responsibility to:

- Create a psychologically safe environment where speaking, listening and following up is business as usual
- Treat our colleagues well when they speak up
- Speak up and be an ally when we witness detriment, disadvantageous and/or demeaning treatment
- Take action and listen up, follow up and learn from speaking up.

### An organisation has a responsibility to:

- Protect workers who speak up from detriment, disadvantageous or demeaning treatment
- Ensure the working environment is a safe one

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<sup>1</sup> [Doctors are under attack financially, professionally and morally, and calling election doesn't get Government off the hook, BMA leader warns - BMA media centre - BMA](#)

- Respond to concerns of disadvantageous or demeaning treatment by examining the facts, reviewing outcomes, providing feedback, and reflecting and learning
- Act – and be seen to act - when detriment, disadvantageous or demeaning treatment does occur
- Communicate that detriment from speaking up will not be tolerated
- Include any reports of detriment following speaking up in regular reporting and review as a whole and not just on an individual basis.

These principles are transferable across different organisations and responsibilities for each of these should be agreed locally.

### **Detriment at work**

Under the Public Interest Disclosure Act 1998 (PIDA) it is unlawful to treat a worker who has spoken up detrimentally or dismiss them.

Additionally, vicarious liability means an employer can be liable for the actions of their workers if they fail to act on reports of detrimental treatment of those that have spoken up. If a worker faces detrimental treatment from colleagues after making a protected disclosure and the employer fails to address or prevent this behaviour, the employer could be vicariously liable for the harm caused to the worker who has spoken up.

### **The role of leaders and organisations**

The joint [NHS England/National Guardian's Office Freedom to Speak Up: A guide for leaders in the NHS and organisations delivering NHS services](#) states: "You (leaders) and your senior colleagues need to communicate that detriment will not be tolerated. When it does occur, it is important that you act – and are seen to act."

The National Guardian's Office recognises that most people speak up in the first instance to their line manager. Therefore, training line managers to listen well and respond to often difficult to hear matters is vital. Poor responses from managers or fear of your manager or colleagues blaming or punishing you for speaking up is a real barrier to raising concerns.

A positive tone from the most senior managers and leaders in an organisation is crucial for creating a positive speaking up culture. This requires leaders to ensure they are clear about the speaking up arrangements in place and any role they have in receiving or responding to concerns. The behaviours of leaders should exemplify the behaviour they want to see from all workers. Part of this should include communicating how the organisation will protect and support those who do speak up, and demonstrating the positive impact speaking up has on the organisation.

## Guiding principles for organisations

- Workers can expect to be thanked and treated with dignity and respect when they speak up
- Organisations expect all colleagues to ensure a psychologically safe environment where speaking up is business as usual
- Organisations will not tolerate mistreatment or poor behaviour towards colleagues who speak up
- Organisations appreciate speaking up can affect people in different ways and will do all they can to support everyone involved fairly and with compassion
- Organisations focus of speaking up will be on learning and improving
- Organisations encourage colleagues to report any concerns about disadvantageous and/or demeaning treatment
- Organisations will ensure any such concerns are fully explored and any necessary steps taken
- Case handlers will keep workers who have spoken up informed and updated throughout the process.

## Defining detriment, disadvantageous or demeaning treatment

This guidance refers to detriment, disadvantageous or demeaning treatment by colleagues, line managers or leaders towards a worker as a result of the act of speaking up, rather than the specifics of the matter raised by speaking up. This can be a deliberate act or a failure to act or omission. Sometimes detriment can be subtle and not always easy to recognise. While these behaviours might not be intentional, the impact can still be significant if a person believes they are being treated poorly or differently.

Such treatment may include (these are examples and not limited to):

- Experiencing poor behaviours not in line with the organisational values such as being ostracised, gaslighting, gossiping, incivility
- Being given unfavourable shifts; repeated denial of overtime/bank shifts; being denied shifts in a certain area/department without good reason; changes to shifts at short notice with no apparent reason
- Being repeatedly denied annual leave; failure on a regular basis to approve leave in reasonable time; or leave cancelled without good reason
- Micro-managing; excessive scrutiny
- Sudden and unexplained changes to work responsibilities, or not being given adequate support
- Being moved from a team or inexplicable management of change without clear rationale
- Being denied access to development opportunities, training or study leave without good reason
- Being overlooked for promotion
- Receiving a negative performance appraisal or disciplinary action

- Being moved to less desirable duties or locations, or being demoted or suspended
- Being denied the information or resources to do the job properly
- Being criticised for speaking up
- Being refused support to manage the stress associated with speaking up
- Being bullied, excluded or treated negatively
- Being dismissed, a contract not being renewed or being made redundant
- Being treated as a troublemaker.

## Preventing detriment

An organisation's Freedom to Speak Up policy should clearly state that speaking up is welcomed and outline the different routes available for workers. All organisations should adopt the [Freedom to Speak Up policy for the NHS](#). The executive lead for Freedom to Speak Up in your organisation should take responsibility for completing the Freedom to Speak Up self-reflection and planning tool, at least every two years. This improvement tool is designed to help you identify strengths or improvement areas in your organisation's Freedom to Speak Up arrangements.

## Management training

Managers should undertake the [Listen Up training](#) to ensure they listen well and foster an environment that encourages and supports speaking up. Managers should be trained to understand what detriment can look like, how best to respond to it and ensure people receive the appropriate support.

Leaders should complete Speak Up, Listen Up and Follow Up training. Follow up is aimed to help clarify the leader's role in setting the tone around speaking up culture and behaviours, and how speaking up can promote organisational learning and improvement.

## Confidentiality

Where requested by a worker, confidentiality is protected wherever possible, and information will be kept strictly confidential, only shared on a need-to-know basis. If it is not possible to investigate without the person's identity being known, this should be clearly communicated with the person speaking up.

In the [Recording Cases and Reporting Data](#) guidance for Freedom to Speak Up guardians, it states: "... confidentiality may need to be broken in exceptional circumstances, such as an immediate risk of harm to a patient, worker or member of the public or required by law". However, there may be ways to protect confidentiality even when further action is needed. Decisions on the extent of information that needs to be disclosed to allow appropriate action to be taken will need to be made

on a case-by-case basis. In all cases where confidentiality may be affected, this should be discussed with the person who spoke up and the information governance lead in your organisation.

### **Support for a worker speaking up**

Organisations and Freedom to Speak Up guardians should consider completing a risk assessment when a worker speaks up and voices fear of perceived detriment. This will assess the likelihood of detriment and propose measures to reduce this risk. This is an effective tool in keeping workers safe after speaking up. The risk assessment should identify detriment risk by exploring:

- History of individual speaking up
- Nature of issue being spoken up about
- Vulnerability of individual
- Risk of identification
- Risks relating to origin of individual's concerns
- Previous raising of issue
- Perspective of individual
- Suggestions from the individual to help support or protect them
- Action to take.

### **Responding to detriment**

Organisations should clearly communicate the following if a worker feels they have or are experiencing detriment, demeaning or disadvantageous treatment for speaking up:

- Your concern will be taken seriously
- You will be supported while your concern is reviewed
- You will be kept informed and provided with feedback
- You will be signposted to wellbeing support if needed
- The matter should be investigated by a manager or someone more independent, or through your formal grievance procedure.

### **Checklist when detriment has been reported to line manager or Freedom to Speak Up Guardian, who will:**

- Clarify matters of confidentiality, what information will be shared and with whom.
- Undertake a detriment risk assessment if not already done
- Consider if any immediate action is required to protect the worker from disadvantageous or demeaning treatment (particularly important in the case of perceived bullying and/or harassment). If the worker has spoken up to the guardian, the guardian will to speak with the appropriate line manager if consent is given
- Consider any potential patient safety issues and immediate action required

- Receive assurance that line management arrangements are in place to support anyone who might be affected. The guardian will speak with the appropriate line manager if consent is given. If consent is not given, the guardian should discuss alternative support such as union or a more senior manager
- Identify independent lead for any review/investigation. Freedom to Speak Up Guardian should seek assurance this has happened
- Agree arrangements for monitoring and feedback
- Share and record key actions, outcomes, learning and recommendations
- Share wider learning across the organisation respecting confidentiality of all involved
- Consider signposting the worker to NHS England's Speaking Up Support Scheme (if working within an NHS organisation) [NHS England » Speaking Up Support Scheme](#)
- Line managers or Freedom to Speak Up Guardian will inform Freedom to Speak Up NED/CEO/Exec lead/equivalent of reports of disadvantageous or demeaning treatment that has been reported to them for organisational learning. The worker should be offered additional support from Freedom to Speak Up NED/CEO/Exec lead/equivalent if consent is given.