

## NHS England Consultation: supporting whistleblowers in primary care

**2Our intention is that this guidance should be used by all primary care organisations in order to review and revise their own policies to support staff in raising concerns.**

Do you agree with this approach and do you feel the guidance is compatible with existing processes in different sectors of primary care, like general practice, dentistry, ophthalmology and community pharmacy?

- Yes
- No

Please give reasons for your answer:

The Optical Confederation and Local Optical Committee Support Unit (LOCSU) fully support the principle of whistle blowing, when appropriate, and always welcomes guidance that is clear, proportionate and flexible enough to support the variety of settings where primary care is delivered. There are already well established mechanisms for whistle-blowing in what is an acknowledged low risk sector and we are pleased to see those reflected in this guidance, together with many of the suggestions we made at scoping stage. Nevertheless the guidance still represents an unfunded additional burden on the optical front-line which will be ill-received by practices at a time when cost pressures are mounting and General Ophthalmic Service fees (which account for two thirds of sight tests) have been frozen. In particular, we have concerns about how local and national networks of both Freedom to Speak Up guardians and investigators will be kept informed on an ongoing basis without investment by NHS England.

Moreover, operating as we do in an open market-driven system where every patient has value and providers compete vigorously for each and every patient on quality, access and value, very few problems which require whistleblowing are likely to arise and those that do are dealt with effectively by our regulator, the General Optical Council. We therefore have reservations about the proportionality as well as the feasibility of this guidance for all primary care settings.

Against that background we make the following specific comments:

- Although elements of the current guidance are repetitive and in some cases introduce bureaucratic processes which are not proportionate for small providers, the key points and principles are sound and broadly compatible with the existing approach in the community optical sector.
- The proposed March 2017 date for full compliance gives adequate time to ensure that all sectoral guidance on Whistleblowing is in alignment and to produce template materials for community optical services. However, NHS England will need to provide leadership and support for the training and time needed to provide Freedom to Speak Up guardian and investigation functions according to the timelines set out in the draft policy.
- The current draft guidance does not make sufficiently clear that Speaking Up to either the Regulator or NHS England are steps with grave implications and should be used only in cases of serious harm or where these local processes have been exhausted.
- Clear, harmonised processes for Speaking Up will be essential to instil confidence in local resolution mechanisms, particularly given the range of options that exist for raising concerns to different prescribed persons, including CCGs in due course.
- We fully agree that this approach must be reflected in local policies and procedures. This can be done most effectively by integrating this guidance into Quality in Optometry, which aims to support a culture of learning by walking providers through a manageable step by step process in line with current thinking on user experience design.

A few detailed notes on the text:

- The new draft of the guidance has not made clear that an accused party has a right of response and does not include information on how they should respond. This must be included in the final version of the guidance.
- Ophthalmology is a hospital-based specialism and not part of primary care eye health. This should be replaced with the term 'community ophthalmic services'.
- The guidance refers to the Federation of Opticians (section 5, p.17 and annex, p.21). Kindly replace this with the correct name of the organisation: Federation of (Ophthalmic and Dispensing) Opticians.

- On page 7 the statement, “It was also not clear where primary care staff should now go for advice...” is not applicable to the optical sector, which has robust sector-wide complaints processes and very strong statistics which demonstrate positive resolution of disputes. Unless there is clear evidence for this statement, it should be changed to “It was not always clear...”

**3The guidance suggests that primary care organisations should appoint Freedom to Speak Up Guardians to encourage and support staff in raising concerns and ensure that organisations are meeting the principles of Freedom to Speak Up.**

With the various structures of primary care, we have suggested different ways in which this could be achieved. Do you agree that primary care organisations should be asked to appoint Freedom to Speak Up Guardians?

- Yes
- No

Please give reasons for your answer:

Nominating a guardian “who is independent of the line management chain and is not the direct employer” will be possible in some provider structures but is not feasible in the majority of small practices. The text of the policy recognises that the Freedom to Speak Up Guardian role cannot be implemented as a one-size-fits-all across primary care and that in reality it may not be possible in all primary care settings to identify a suitable member of staff and this should be made clearer in the key points. The inclusion of alternative options for filling this role, e.g. arrangements between practices or within networks and particularly a nominated person within a representative body or Local Optical Committee (LOC), will enable small providers to comply with this guidance in cases where staff resource, time and range of competencies are limited. It should be made more explicit in section 4.3 that LOCs and similar bodies may be able to provide local investigation leads in much the same way.

**4The guidance suggests using existing mechanisms and duties rather than the use of national contracts to encourage the adoption of new policies in primary care. Do you agree with this approach?**

- Yes
- No

Please give reasons for your answer:

We fully agree with NHS England's decision to address Speaking Up through guidance rather than contractual mechanisms, which would be unduly bureaucratic and prescriptive, and would be unlikely to effectively promote the desired culture change within a community of professionals. Clear, pragmatic and proportionate guidance for primary care enables the wide variety of providers of NHS-funded services to meet NHS England's goals without introducing excessive bureaucracy or imposing unnecessary burdens on independent businesses, which would not benefit patients as intended. The Optical Confederation and Local Optical Committee Support Unit (LOCSU) therefore welcomes NHS England's recognition of the need to adapt its guidance to reflect the way that primary care is provided in the community and the consultative approach that has been taken in developing this guidance in particular.

**5What support will primary care organisations need from NHS England in implementing this new guidance? In particular, how might NHS England or eventually the National Freedom to Speak Up Guardian support local Freedom to Speak Up guardians?**

A major concern arising from this guidance is how local networks of guardians and investigators will be funded and maintained in terms of training, provision of up to date information and their time.

All optical providers regardless of their size operate outside Trust and wider NHS development networks and have less business across which to spread costs. In particular, many staff in the community optical sector, as elsewhere in primary care, are employed by small and medium sized independent providers of NHS-funded services. NHS England must therefore ensure appropriate and proportionate training is made available for all primary care staff.

Small and medium sized providers may struggle to allocate staff with sufficient time and expertise to investigate disclosures according to the timescales set out in this guidance. As suggested above, LOCs and

representative bodies could provide assistance with investigating disclosures. However, where dedicated investigators are required as part of the LOC structure – or indeed within larger providers – this will represent an additional cost burden on these organisations. This will undoubtedly be an issue for other primary care providers, and we would be keen to know NHS England’s thoughts on how these costs might be mitigated so that the duties of Freedom to Speak Up are met without imposing unreasonable burdens on independent businesses.

**6The Freedom to Speak Up review looked at the experiences of vulnerable staff groups (e.g. locums and agency staff, students and trainees, BME groups and staff working in primary care) when raising concerns. We believe that this guidance will make it easier for all staff to raise concerns, including those who may be more vulnerable. Do you think it achieves this and, if not, what else could be included?**

- Yes, it makes it easier for all staff to raise concerns, including more vulnerable staff.
- No, it does not do enough for vulnerable staff to help them raise concerns.
- Undecided

Please say what more could be included to help vulnerable staff raise concerns.

The range of options for raising a concern internally and externally as well as the obligation on providers to make their policies and processes for raising and investigating concerns clear should make it easier for all staff to speak up in primary care. We agree that staff groups who currently experience additional difficulty in raising concerns or are more vulnerable to unfair treatment after raising a concern will be better supported and protected under this policy.

**7What else could be included in the policy that would add value?**

**8Confidentiality**

Tick here if you would like to keep your response or parts of it confidential

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