



Agenda Item No:

14

<b>Report to:</b>	Humber and North Yorkshire Integrated Care Board
<b>Date of Meeting:</b>	8 November 2023
<b>Subject:</b>	Freedom to Speak Up in the ICB
<b>Director Sponsor:</b>	Dr Nigel Wells (Executive Director of Clinical and Care Professionals) Karina Ellis (Executive Director of Corporate Affairs)
<b>Author:</b>	Abigail Combes, Deputy Director of Legal and Regulatory

**STATUS OF THE REPORT:**

Approve  Discuss  Assurance  Information  A Regulatory Requirement

**SUMMARY OF REPORT:**

On 13 September 2023 the Board received a paper following the verdict in the Lucy Letby case. This paper included a description of the actions which the ICB was considering in respect of this case and an update on the ICBs whistleblowing or Freedom to Speak Up arrangements.

Members of the Board requested a paper detailing the number of cases which have been reported into the ICB Freedom to Speak Up Guardian and the outcomes of those reports.

The ICB Freedom to Speak Up arrangements were established on 1 July 2022 with the inception of the Board and the Freedom to Speak Up Guardian is Dr Nigel Wells. The delivery of this function is supported through the corporate affairs directorate.

The ICB adopted the Freedom to Speak Up policy on 1 July 2022, in line with new NHS England (NHSE) guidance this is currently being reviewed and refreshed and this will be completed by January 2024. There are some documents in the further reading that support this report and include draft NHSE documents which we are required to adopt. We have summarised in a table in this report the differences between the ICB existing policy and the attached documents.

The ICB has established a working group chaired by the Deputy Director of Legal and Regulatory Functions to oversee the amendments to the policy.

**RECOMMENDATIONS:**

Members are asked to:

- i) Receive the details regarding Whistleblowing/Freedom to Speak Up arrangements which have been received by the ICB since 1 July 2022 and assurance that they have been managed or are being managed with appropriate process.
- ii) Note the impending amendments to the Freedom To Speak Up Policy

<b>ICB STRATEGIC OBJECTIVE</b>	
Managing Today	<input checked="" type="checkbox"/>
Managing Tomorrow	<input checked="" type="checkbox"/>
Enabling the Effective Operation of the Organisation	<input checked="" type="checkbox"/>

<b>IMPLICATIONS</b>	
Finance	There are no financial implications arising directly from this report.
Quality	There are clear links between closed cultures and patient harm. Where open cultures are supported there is often more learning and candour from events leading to better outcomes for patients.
HR	There are clear links between Freedom to Speak Up and HR processes with a risk that there is a disproportionate focus on utilising pure HR processes when concerns are raised.
Legal / Regulatory	There are specific legal and regulatory provisions relating to Freedom to Speak Up and particularly around the nature of 'Protected Disclosures'
Data Protection / IG	There are specific legal and regulatory provisions particularly around Data Protection and Information Governance linked with Freedom to Speak Up and other areas highlighted in this report
Health inequality / equality	There are clear links between Freedom to Speak up and ensuring equitable approach for all those who wish to raise concerns.
Conflict of Interest Aspects	There have been no conflicts of interest identified specifically for this report.
Sustainability	There are no sustainability implications arising directly from this report.

**ASSESSED RISK:**

**MONITORING AND ASSURANCE:**

Regular updates on Freedom to Speak Up will be presented to the Board. There will be ongoing monitoring and assurance of other actions through Clinical and Professional Executive Committee and the Quality Committee.

**ENGAGEMENT:**

The ICB have established a Freedom to Speak Up working group for the work on the policy. The ICB is also utilising this group to establish a pool of Freedom to Speak Up champions who can support individuals to raise concerns to the appropriate department and act as support to that individual during the course of any investigation.

**REPORT EXEMPT FROM PUBLIC DISCLOSURE** No  Yes

If yes, please detail the specific grounds for exemption.

# ICB RESPONSE TO THE LETTER FROM NHS ENGLAND TO THE NHS FOLLOWING VERDICT IN THE TRIAL OF LUCY LETBY

## 1. INTRODUCTION

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The ICB has established a working group chaired by the Abigail Combes, Deputy Director of Legal and Regulatory Functions to oversee the amendments to the policy.

## 2. BACKGROUND

### *Freedom to Speak Up*

Freedom to Speak Up processes were introduced into the NHS in 2016. This was as a result of a number of investigations and concerns raised relating to culture, particularly in NHS Trusts and the way in which those raising concerns were supported and listened to during proceeding inquiries.

CCGs were required to appoint a Freedom to Speak Up Guardian which must be someone at Board Level of an organisation and there was also a requirement for there to be a Non-Executive sponsor for the Freedom to Speak Up process. NHS Trusts were required to implement similar processes.

When the ICB was established on 1 July 2022 there was a requirement for the ICB to appoint a Freedom to Speak Up Guardian and implement a policy and process for managing concerns which were raised. NHS Humber and North Yorkshire ICB adopted a Freedom to Speak Up Policy on 1 July 2022 board meeting and since that time have had established arrangements in place for the raising of concerns.

NHSE have now mandated the adoption of the National Freedom to Speak Up Policy by January 2024 and the ICB regulatory team in the corporate affairs directorate are in the process of producing the Policy and associated Standard operating procedures for consideration by the Board, initially through approval from the ICB Executive Committee.

The role of the ICB in the wider system Freedom to Speak Up arrangements is primarily ensuring that there are appropriate arrangements in place within those organisations and to support in cases where there are significant concerns about the care and support of patients to assure ourselves of the quality of the services our providers deliver.

Members of the Board need to be aware that it is likely to have a significant role in primary care Freedom to Speak Up in 2024 and beyond. It is not yet clear from NHSE what this role will be but

the most recent discussion with NHSE suggest that the ICB will need to provide the Guardian and lead any investigations that result from those reports.

### 3. ASSESSMENT

#### Current Position

Since the inception of the ICB on 1 July 2022 the ICB have received seven concerns raised through the Freedom to Speak Up process.

Two of those matters remain outstanding due to ongoing investigations and the remaining 5 have been triaged and / or investigated or in stages of investigation.

Of the seven, four are whistleblowing/Freedom to Speak Up concerns relating to the safety of services delivered to our population however none of those relate to the ICB or conduct of ICB staff. Three were identified as relating to HR matters following conversations with the individuals who had raised the concerns. Those individuals were triaged through to HR and line managers for appropriate support. All of those matters have been resolved and there are no outstanding actions. The themes of those concerns were in relation to difficulties with relationships with line managers.

In respect of the remaining four whistleblowing/Freedom to Speak Up concerns,

- One related to primary care and was investigated thoroughly within 2 weeks of the allegation being received. The concerns about were financial management and patient safety in respect of IPC and drug storage. However, for assurance for Board there were no outstanding concerns at the end of the investigation.
- Two relate to acute providers and the safety of services delivered within those providers. The investigation has concluded for one to the satisfaction of the complainant; the other the investigation is ongoing and is being overseen by NHS England.
- One relates to another provider which is currently being investigated. The time frame for this investigation is for conclusion of phase one by 8 December 2023. This will then enable further exploration of the issues and next steps.

#### Policy Changes

In respect of the changes to the policy; the recommended NHSE documentation is provided in the further information however the main differences from our existing policy are set out below:-

Existing Policy	National Policy	Recommendation
<p>Suggests mainly about: patient care or patient services, professional practice, unlawful conduct, dishonesty, financial malpractice, or a danger to health, safety or the environment, or a cover up of any of these</p> <p>Also reiterated in Procedure on page 11, “any service the ICB commissions” or “any</p>	<p>“anything that gets in the way of patient care or affects your working life”:</p> <p>That could be something which doesn’t feel right to you: for example, a way of working or a process that isn’t being followed; you feel you are being discriminated against; or you feel the behaviours of others is affecting your wellbeing, or that of your</p>	<p>Broaden the scope of existing policy</p>

<p>concerns at any of our partner organisations that are believed to be causing harm to patients”.</p> <p>What about concerns within the ICB?</p>	<p>colleagues or patients</p>	
<p>If, aggrieved about personal position then seek advice from your line manager or the Workforce Team. You may wish to speak to HR about whether the Grievance Policy is more appropriate to manage your concerns.</p>	<p>States: Speaking up, therefore, captures a range of issues, some of which may be appropriate for other existing processes (for example, HR or patient safety/quality). That’s fine. As an organisation, we will listen and work with you to identify the most appropriate way of responding to the issue you raise.</p>	<p>Review and revise the ICB policy. The national policy suggests that any concern can be raised and the organisation will help direct to the most relevant policy – intention is to show more compassion.</p>
<p>States: “will ensure that employees are not discriminated against or suffer a detriment as a result of making such a disclosure, as laid down by the Public Interest Disclosure Act 1998 (PIDA)”</p>	<p>Has a section about “Making a ‘protected disclosure’”:</p> <p>A protected disclosure is defined in the Public Interest Disclosure Act 1998. This legislation allows certain categories of worker to lodge a claim for compensation with an employment tribunal if they suffer as a result of speaking up. The legislation is complex and to qualify for protection under it, very specific criteria must be met in relation to who is speaking up, about what and to whom. To help you consider whether you might meet these criteria, please seek independent advice from Protect or a legal representative.</p>	<p>Review and revise the ICB policy.</p>
<p>Suggests identity of individual raising concern is provided.</p>	<p>Given a choice how to speak up:</p>	<p>Review and revise to potentially include more</p>

	<ul style="list-style-type: none"> <li>• Openly</li> <li>• Confidentially</li> <li>• Anonymously</li> </ul>	options in ICB policy or adopt national policy.
	Includes more information on advice and support from external organisations. i.e. charities etc.	Review and include in ICB policy
Mentions 'genuine' concerns	<p>We want to hear about any concerns you have.</p> <p>Encourages people to speak up and mentions thanking people for speaking up.</p>	Revise ICB policy
Suggests concerns usually raised with managers, and that Head of Legal and Regulatory will monitor and triage concerns via mailbox.	<p>Focuses on being inclusive and designed to support resolution by managers wherever possible and states will support managers.</p> <p>Illustrates clear expectations of what to expect.</p>	Revise ICB policy

#### 4. RECOMMENDATIONS

##### 4.1. Members are asked to:

- iii) Receive the details regarding Whistleblowing/Freedom to Speak Up arrangements which have been received by the ICB since 1 July 2022 and assurance that they have been managed or are being managed with appropriate process.
- iv) Note the impending amendments to the Freedom To Speak Up Policy