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| **Report to:** | Humber and North Yorkshire Integrated Care Board |
| **Date of Meeting:** | 12 February 2025 |
| **Subject:** | **Freedom to Speak Up in the ICB** |
| **Director Sponsor:** | Dr Nigel Wells, Executive Director of Clinical and Care Professionals |
| **Author:** | Abigail Combes, Deputy Director of Governance, Legal and Regulatory |

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| **Agenda Item No:** | **15** |



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| **STATUS OF THE REPORT:**  Approve  Discuss  Assurance  Information  A Regulatory Requirement |

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| **SUMMARY OF REPORT:**  The ICB Board requested a detailed update in respect of the internal Freedom to Speak Up arrangements for the organisation. This paper therefore is intended to provide that and will cover the following matters:   1. Differences between Whistleblowing/Freedom to Speak Up and Protected Disclosure 2. Current roles and responsibilities 3. Freedom to Speak Up Champions 4. Any themes and trends currently identified 5. Models of function learning from outside the ICB 6. Internal audit update 7. Role of the Board   Dr Nigel Wells is the ICB Freedom to Speak Up Guardian for the ICB and Mark Chamberlain is the Non-Executive Lead for Freedom to Speak Up.  The Freedom to Speak Up Guardian is required to be trained and registered with the National Freedom to Speak Up Guardian Office by no later than November 2024. This should be done within a month of appointment as the Freedom to Speak Up Guardian however due to an administrative issue this was delayed for NHS Humber and North Yorkshire ICB. The training has now been booked in and correspondence has been exchanged with the National Office explaining the issues.  There have been a number of FTSU concerns raised with the ICB primarily related to provider organisations where there has been a relationship breakdown or a fear that reporting directly to the organisation may reflect on the individual relationships. The ICB Freedom to Speak Up Guardian is keen to maintain a level of independence from partner organisation Guardians in order to ensure that there is an option for staff to report to the ICB where they have concerns that cannot easily be raised within their own organisation. Likewise, the ICB would expect that ICB staff could raise concerns about the ICB either with NHS England or with system partners and expect this to be treated with independent scrutiny.  There has been one concern relating directly to issues within the ICB however upon triage this was determined to be more appropriately managed through the HR route and this remains ongoing at the time of reporting.  The ICB continues to plan for developing relationships across organisations through networks of Freedom to Speak Up champions and links to the Medical Examiner services.  The ICB has noted that the current FTSU network does not necessarily reflect the diversity of the system workforce or the population and seeks to improve this through engagement with staff and networks.  The ICB is currently navigating the Freedom to Speak Up role within primary care and understanding the possible options for delivery of a Freedom to Speak Up service within that sector and the resource required.  **RECOMMENDATIONS:**  Members are asked to:   1. Receive the details regarding Whistleblowing/Freedom to Speak Up arrangements which have been received by the ICB since November 2023 and assurance that they have been managed or are being managed with appropriate process. |

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| **ICB STRATEGIC OBJECTIVE** |

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| Leading for Excellence |  |
| Leading for Prevention |  |
| Leading for Sustainability |  |
| Voice at the Heart |  |

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| **IMPLICATIONS** | |
| 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. |

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| **ASSESSED RISK:** |

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| **MONITORING AND ASSURANCE:**  Regular updates on Freedom to Speak Up will be presented to the Board. There is ongoing monitoring and assurance of other actions through Clinical and Professional Executive Committee and the Quality Committee. |

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| **ENGAGEMENT:**  The ICB have completed the policy through the use of a working group and are now in the process of establishing a cross organisation working group for the establishment of Freedom to Speak Up champions from a diverse set of backgrounds.  Part of this work will also be understanding how to ensure that information and intelligence received from concerns and complaints raised to the ICB feeds into the Freedom to Speak Up arrangements and informs the Board on any quality and safety concerns. |

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| **REPORT EXEMPT FROM PUBLIC DISCLOSURE** No  Yes |
| If yes, please detail the specific grounds for exemption. |

**FREEDOM TO SPEAK UP IN THE ICB**

1. **INTRODUCTION**

Upon inception, NHS Humber and North Yorkshire ICB adopted a Freedom to Speak Up policy which was updated to reflect the changing NHSE guidance. The ICB is compliant with its responsibility to have a policy to manage whistleblowing concerns and protected disclosures raised with it.

The ICB, in its system role, also links to Freedom to Speak Up concerns for provider organisations and primary care. Responsibility for the Freedom to Speak Up Guardian arrangements for primary care officially becomes the responsibility of NHS Humber and North Yorkshire ICB in January 2026 and we are required to identify a Guardian for primary care organisations and have a process in place for managing concerns by this date.

1. **DEFINITIONS**

***Freedom to Speak Up/Whistleblowing***

Freedom to Speak Up and Whistleblowing are terms which are often used interchangeably.

Whistleblowing is the activity of a person, often an employee, revealing information about activity within a private or public organization that is deemed illegal, immoral, illicit, unsafe or fraudulent.

Freedom to Speak Up is about fostering a culture where people feel able to speak up about the concerns they have about the practices of an organisation or the way they or others have been treated by an organisation.

Providing evidence as a whistleblower can entitle you to certain protections and this is what is covered by the term Protected Disclosures. Effectively making a protected disclosure means that there is a requirement to ensure that you do not suffer a detriment in your employment terms or status as a result of that.

There is however a distinction between Freedom to Speak Up and Whistleblowing and HR processes such as discipline and grievance processes which deal with individual issues related to that person’s employment contract.

#### ROLES AND RESPONSIBILITIES

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**Current Position**

The ICB does have named individuals and roles involved in the Freedom to Speak Up process for the ICB.

Dr Nigel Wells, Executive Director of Clinical and Care Professionals is the ICB Freedom to Speak Up Guardian.

Mark Chamberlain, Non Executive Director is the ICB Freedom to Speak up Non Executive Lead and Sponsor

Abigail Combes, Deputy Director for Governance, Legal and Regulatory Functions is the first point of contact for most Freedom to Speak Up queries and is supported by Gemma Mazingham, Head of Regulatory Functions.

Following the NHSE letter to ICBs and Providers relating to the conviction of Lucy Letby, the ICB reflected on whether the ICB had in post the right skill set and seniority level to allow people to feel able to speak up and also had sufficient autonomy to try to influence culture across the ICB and the system. As the Board will be aware, one of the big focuses of the initial aftermath of the Lucy Letby case, and likely to be an outcome of the Public Inquiry, is the requirement for NHS managers to be Regulated and registered. The ICB felt in a good position given that both the Freedom to Speak Up Guardian and the first point of contact are Regulated professionals.

Further reflection however has resulted in a position where there is a recognition that those identified to hold specific roles within the FTSU process thus far have been selected either as a consequence of their role or the circumstances of the organisation (for example, the Non Executive Director appointments started with 2, one was required to be the Freedom to Speak Up champion and the other was the conflict of interests champion and as a result there was a natural alignment to the committees and skill sets of the non executive directors).

The ICB has committed to the transparent and open recruitment of Freedom to Speak Up champions within the ICB and should there be a point in time at which the ICB wishes to reconsider the individual roles involved as the Freedom to Speak Up Guardian, the operational lead and the Non Executive Director, the ICB would need to follow relevant HR processes but should also then consider an open recruitment process for those posts.

1. **CHAMPION DEVELOPMENT**

It is recognised that Freedom to Speak Up Guardians cannot be effective in isolation. Many organisations have developed internal Freedom to Speak Up networks to raise awareness and promote the value of speaking up, listening up and following up. Many guardians rely on these networks to address challenges posed by organisation size, geography and the nature of their work and to help them support workers, especially those who may face barriers to speaking up.

Within the ICB, the current arrangements will be further enhanced by recruiting a number of FTSU Champions who will fulfil the role by supporting the following:

* + Awareness raising
  + Signposting and support
  + Feedback
  + Learning

As part of the establishment of this important role, an organisational ‘Champion Network’ meeting will be implemented to not only provide peer support to the successful colleagues but to also discuss themes from the feedback being received and furthermore what opportunities there are for organisational learning.

The role of the FTSU Champion will not only support the FTSU agenda, process and policy but is an enabler to the values of the ICB: **We care. We connect. We innovate.**

It is intended that the Freedom to Speak Up Champions will be recruited in June 2025.

1. **THEMES AND TRENDS**

Previously the ICB have been advised that the majority of concerns raised to the ICB, including those which have been raised and triaged into an HR process, have come from those from a BAME background or with another protected characteristic such as gender.

As a result of this information the Board asked for the ICB to obtain information about whether or not there was a similar trend within provider organisations or elsewhere. As a result of this contact was made with Freedom to Speak Up Guardians across the system and it is clear that the collection of this information is variable.

A requirement of collecting information from those wishing to raise concerns is that a 'satisfaction' questionnaire is sent out following the closure of the query. The ICB has not yet developed the questionnaire which we will return to in section 7 of this paper. In other organisations this questionnaire is the primary means by which demographic information is collected by the organisation receiving the concern. The common position was that the questionnaire was not returned or this section was not completed by those raising concerns.

Of the provider organisations within the ICB footprint none could confidently confirm that they had identified themes and trends which related to the demographic of those raising concerns. There were some that did not respond to the request at all, other who said the number of responses they had had to questionnaires did not allow them to confidently confirm either way and others had not had responses to questionnaires so were unable to provide the information.

The ICB gather this information up front in the initial conversation that individuals have with the ICB. It is also worth noting that the ICB tends to have fewer staff than provider organisations and as a result already have relationships with those involved in the processes making it easier to gather and obtain the information.

It is of note that the majority of the concerns raised by ICB staff resulted in a triage process into routine HR processes. The fact that staff felt able to approach the Freedom to Speak Up Guardian to raise concerns suggests that staff within the ICB are aware of the option and feel confident to use it.

It is also of note that both the Freedom to Speak Up Guardian and the operational lead have been approached by individuals from provider organisations and even from outside of the ICB to support with matters related to their own organisation. This again suggests that the process for our ICB is understood externally as well as internally. That is not to say that there should not be further training and communications as we recognise there is always more which can and should be done to raise the profile of this important function.

Concerns raised in 2024 data:

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| **Date raised** | **Organisation concerned** | **Confirmed Protected disclosure** | **Open or concluded** | **Learning** |
| 19/02/2024 | Private provider | Yes | Concluded | Concerns raised about the practices of a private provider of healthcare services no longer commissioned in ICB footprint.  This was sent to NHSE to ensure that the concerns were raised with other commissioning organisations where appropriate. |
| 13/03/2024 | Private provider | Yes | Referred on | Referred to the relevant commissioning organisation as the ICB were not the commissioner of any services from this provider. |
| 06/04/202 | GP Practice | No | Concluded | Quality visits and supportive intervention |
| 21/03/2024 | ICB | No | Concluded | Signposted to HR processes |
| 05/06/2024 | GP Practice | No | Concluded | Quality visits and contracting follow up |
| 18/06/2024 | GP Practice | No | Concluded | Quality visits and contracting follow up |
| 28/08/2024 | ICB | No | Concluded | HR processes |
| 23/09/2024 | ICB | No | Concluded | Mistaken identity |
| 08/11/2024 | ICB | Yes | Ongoing | Investigation ongoing |
| 19/11/2024 | CCG | No | Withdrawn | Related to CCG rather than ICB therefore withdrawn by complainant. |

1. **MODELS OF FUNCTIONAL LEARNING FROM OUTSIDE THE ICB**

The Freedom to Speak Up Guardian has been engaged in a number of discussions with other ICB Guardians and also the National Guardian's Office to understand the models adopted by those organisations for Freedom to Speak Up. It is fair to say that there is significant variation and part of this is as a result of their being no mandated model for assessment and recording of concerns.

ICBs are currently focussing on the arrangements for primary care which are required to be established from January 2026. The requirement is for primary care organisations to be provided with a registered and trained Guardian and a process to support investigations and learning.

NHS Humber and North Yorkshire ICB have asked primary care commissioners to establish the current arrangements in GP organisations which appear to be a mix of PCN arrangements and Federation arrangements, to there being nothing currently in place. The ICB intend to offer primary care the option of the Registered and trained Guardian being the ICB guardian and the process of investigation and learning being supported by those working with Freedom to Speak Up processes in the ICB. This however will require a commitment from the ICB for ringfenced time for those currently involved (which should already be in place but has not yet been possible) and for a commitment that where independent investigations are required, there will be funding available for these.

Alternative models of delivery have been through exploration with the LMCs providing the function but this comes with both a cost and a risk of conflict or the ICB commissioning a third party organisation to provide the function, however this again comes with a cost to the ICB which is not currently planned for.

The one discussion that is consistently inconsistent and without a clear steer at this time is what role the ICB has in freedom to speak up across the system. It is unclear how far reaching the ICB role ought to be when concerns are raised to the ICB about partner organisations or whether this ought to simply be an assurance function. One might suggest that the flexibility allowed and a lack of a mandated process is helpful and allows systems to develop their own models of delivery. In a mature system it may be the case that all partners are so clear that support should be provided to those raising concerns and the culture of all of the organisations is such that there is a sense of continuous development and improvement which factors in concerns raised by staff and those speaking up are encouraged to do so by Boards and Executive teams. In that sense it should not matter whether someone speaks up to the ICB or to the provider, as the response they receive and the way in which their concerns are handled ought to be the same regardless. However, it is unlikely that this is the position in any system yet. It may be that the NHS Humber and North Yorkshire ICB would wish to explore Board to Board conversations with providers about how close and how quickly this could be achieved within our system; accepting that this would mean concerns raised by ICB staff to a partner organisation may be scrutinised by that organisation.

1. **INTERNAL AUDIT UPDATE**

Internal audit are currently reviewing the ICB arrangements for FTSU. This has required the provision of a number of documents including the policy and the self reflection tool. These are appended to this report for completeness.

The internal audit so far has highlighted some areas of progress which are required for the ICB and these are welcome findings:-

1. The need for Freedom to Speak Up Champions to be recruited with support from the Board for ring fenced time for these individuals
2. The need for a Freedom to Speak Up strategy to be developed
3. A feedback questionnaire or process to be provided for the ICB to provide to those raising concerns
4. A plan for the open recruitment of Freedom to Speak Up Champions and a commitment that should there be a point at which the Guardian and the Operational Lead leave their roles, there will be an open recruitment process for the post/s.
5. Training for Senior Leaders and Managers to encourage their staff to feel confident to speak up and to welcome this feedback
6. **ROLE OF THE BOARD**

The ICB Board has a key role in promoting Freedom to Speak Up and the culture required to encourage this. The Board might wish to consider an objective of fostering a culture which promotes and encourages speaking up. This would then offer an opportunity to promote this with the senior leaders and managers, underlining that this is an approach which the Board endorses and supports.

1. **RECOMMENDATIONS**
   1. Members are asked to:
2. Receive the report for information
3. Confirm an intention to support an objective of fostering a culture encouraging speaking up