

## Trust Board Meeting

01 October 2015

<b>Title of Paper:</b>	<b>The Freedom to Speak Up Report</b>	
<b>Agenda Item:</b>	<b>15/30</b>	
<b>Lead Executive:</b>	<b>Paul Da Gama, Director of Human Resources and Organisational Development</b>	
<b>Author:</b>	<b>Caroline Lankshear, Human Resources Manager</b>	
<b>Trust Objective:</b>	Tick as appropriate: <input checked="" type="checkbox"/> Achieving continuous improvement in the quality of patient care that we provide and the delivery of service performance across all areas; <input type="checkbox"/> Setting out our future clinical strategy through clinical leadership in partnership and with whole system working; <input type="checkbox"/> Creating a clear and credible long term financial strategy.	
<b>Purpose:</b>	To review The Freedom to Speak Up Review conducted by Sir Robert Francis and to consider its implications for the Trust and to review the recommendations proposed with the paper.	
<b>Please add which panel and/group that the paper has been previously discussed:</b>		
	<b>Panel</b>	<b>Group</b>
<b>Name:</b>		Executive Leadership Committee – 26 August 2015
		Workforce Committee – 22 September 2015
<b>Benefits to patients and patient safety implications</b>		
Assisting in ensuring that we have an open and transparent culture where issues concerning patient safety are raised and managed.		
<b>Risk implications for the Trust</b>		<b>Mitigations actions (controls)</b>
<b>Links to Board Assurance Framework, CQC outcomes, statutory requirements</b>		
CQC Regulation 17: Good Governance		
<b>Legal implications (if applicable)</b>		
Failure to comply with Regulatory Framework		
<b>Financial implications (if applicable)</b>		
An open culture, underpinned by the ability to escalate issues underpins the processes in place to manage the Finances of the Trust and any potential exposure to financial risk.		
<b>Recommendations</b>		
1. To note the outcome of the Freedom to Speak Up review and approve the associated action plan. 2. To approve the principles for appointing an Advocate and Champion, and, if agreed, to determine which of the NEDs might appropriately be assigned the Champion function.		



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**Freedom to Speak Up Report**

**Presented by: Paul da Gama, Director of Workforce**

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## **1. INTRODUCTION**

The Freedom to Speak Up Review by Sir Robert Francis was commissioned in June 2014 in response to continued disquiet about the way NHS organisations deal with concerns raised by NHS staff and the treatment of some of those who have spoken up. In recent years there have been exposures of substandard, and sometimes unsafe patient care and treatment with a lack of awareness by the organisations leadership team to the scale of the problem known by frontline staff. In many cases staff felt unable to speak up, or were not listened to when they did. The 2013 NHS staff survey showed that only 72% of respondents were confident that it is safe to raise a concern.

The aim of the review was to provide advice and recommendations to ensure that NHS staff feel it is safe to raise concerns, confident that they will be listened to and the concerns will be acted upon. During the review whistleblowers provided convincing evidence that they raised serious concerns which were not only rejected but were met with a response which focused on disciplinary action against them rather than any effective attempt to address the issue they raised.

In recent years there has been a range of measures which may encourage, or impose a responsibility on staff to speak up. These include the introduction of a new Statutory Duty of Candour, the Fit and Proper Person Test and the Care Quality Commissions new inspection and ratings regime.

The review, which was published in February 2015 concluded that there is a culture within many parts of the NHS which deters staff from raising serious and sensitive concerns and which has negative consequences for those brave enough to raise them.

The review makes a number of recommendations under 5 overarching themes with actions for NHS organisations to help foster a culture of safety and learning in which all staff feel safe to raise a concern. The 5 themes are:

- Culture change
- Improved handling of cases
- Measures to support good practice
- Particular measures for vulnerable groups
- Extending the legal protection

### **1.1 Culture**

The report emphasised a need for a culture of safety and learning in which all staff feel safe to raise a concern and for these conversations to take place as part of everyday practice, without fear of blame or reprisal.

Out of all the evidence gathered in regard to experiences of staff who had reported concerns, the issue of bullying featured highly. He identified the need for a system-wide approach when assessing this issue along with honest and direct feedback to staff about the impact of actions and behaviour.

**Action for employers:** a good safety culture needs time and effort to embed – this is most successful in organisations where responsibility and accountability for local policy and procedures for raising concerns sit with the Executive team, as opposed to Human Resources.

Having a champion, or guardian who has lead responsibility for dealing with concerns raised, will be key to ensuring policies and practices are robust, staff are appropriately supported, listened to, and issues are resolved quickly and professionally. The guardian should have authority and autonomy to report directly to the chief executive on the issue of concerns.

The reports also recommends a zero tolerance approach to bullying, and for regulators to consider this as a factor when assessing whether an organisation is well-led.

## 1.2 Handling Cases

The report provides clear evidence that in many of the cases presented, much of the pain and expense could have been more easily avoided if concerns had been handled effectively early on. It is important that organisations investigate concerns raised to identify the facts, and appropriate feedback is given to the individual(s) raising the concern. This is critical in building staff confidence and in encouraging others to speak up.

**Actions for employers:** facilitate informal and formal resolution of concerns raised e.g. through staff briefings, 1:1's, team meeting etc to foster an open and transparent approach to dealing with some of the issues raised.

The report recommends that chief executives, or other designated officer should be involved and have responsibility for regularly reviewing all concerns that have been formally recorded, to ensure local procedures are effective, and to identify areas for improvement.

## 1.3 Measures to Support Good Practice

While creating the right culture and enabling effective reporting and handling of concerns is essential, the report highlights some major gaps in training for all staff so that they understand the importance of raising concerns and how to raise a concern, and for managers so that they are appropriately equipped and supported to deal with concerns raised with them efficiently and effectively.

**Action for employers:** giving staff access to mediation, mentoring, advice and counselling can vastly improve the managers ability to nip any issues in the bud, and ensure that the individual raising a concern can return to their original position, or be supported to find alternative employment in the NHS where appropriate. The correct handling of concerns can vastly reduce time, resources and expense where issues are left unresolved and need to go through an employment tribunal.

## 1.4 Measures for Vulnerable Groups

The review found that certain staff groups were particularly vulnerable when raising concerns because of the nature of their employment which means that they are less likely to be a fully integrated member of a team, and they may miss out on the same level of

induction, training, and communications that permanent members of staff may have around raising concerns.

**Actions for employers:** the report specifically makes reference to locums, agency and bank workers being more vulnerable but it is essential that employers consider how they engage, communicate and support all workers in their organisation on issues relating to raising concerns.

Boards should also be aware of any black and minority ethnic (BME) issues and consider whether they need to take action over and above what is recommended in the Freedom to Speak Up report as it highlighted that a large number of minority groups felt more vulnerable and excluded, with difficulties quite often being exacerbated by cultural misunderstanding.

## 1.5 Extending the Legal Protection

The report highlights that while fostering the right kind of culture in the NHS to enable staff to raise concerns has to be the key priority, legal protections for whistleblowers (in the NHS, and across all other sectors) is not considered to be adequate and should be reviewed.

## 2. The Trust and Freedom to Speak UP

Principle	Recommendation from the FTSU Review	What is already in place at WHHT	Further action / next steps
<b>Culture</b>			
1. Culture of safety	Every organisation involved in providing NHS healthcare should actively foster a culture of safety and learning in which all staff feel safe to raise concerns	<ul style="list-style-type: none"> <li>Risk summits undertaken</li> <li>Onion</li> <li>Listening into Action</li> <li>Risk register</li> </ul>	<ul style="list-style-type: none"> <li>Implement Bullying &amp; Harassment strategy</li> <li>Introduce a 'Freedom to Speak Up' Guardian</li> </ul>
2. Culture of raising concerns	Raising concerns should be part of the normal routine business of any well-led NHS organisation	<ul style="list-style-type: none"> <li>Revised Raising Concerns policy (whistle blowing)</li> <li>Onion</li> <li>Listening into Action</li> </ul>	<ul style="list-style-type: none"> <li>Progress through Listening into Action</li> <li>Ensure departmental onions take place throughout the organisation</li> </ul>
3. Culture free from bullying	Freedom to speak up about concerns depends on staff being able to work in a culture which is free from bullying and other oppressive behaviours	<ul style="list-style-type: none"> <li>Harassment Advisers</li> <li>Dignity &amp; Respect at Work Policy</li> </ul>	<ul style="list-style-type: none"> <li>Implement the new Bullying &amp; Harassment strategy – further details below</li> <li>Publication of a new B&amp;H pathway and resolution guide for staff and managers</li> </ul>
4. Culture of visible leadership	All NHS employers should demonstrate through visible leadership at all levels in the organisation that they welcome and encourage the raising of concerns by staff	<ul style="list-style-type: none"> <li>Who's who publicised</li> <li>Meet the CEO</li> <li>Listening into Action</li> <li>Whole site onion meetings</li> </ul>	<ul style="list-style-type: none"> <li>Progress Listening into Action</li> <li>Continue with Meet the CEO sessions</li> </ul>
5. Culture of valuing staff	Employers should show that they value staff who raise concerns, and celebrate the benefits for patients and the public from the	<ul style="list-style-type: none"> <li>Datix system</li> </ul>	<ul style="list-style-type: none"> <li>Publicising a summary of action taken following concerns that have been raised to instill confidence that the Trust is open and</li> </ul>

	improvements made in response to issues identified		transparent
6. Culture of reflective practice	There should be opportunities for all staff to engage in regular reflection of concerns in their work	<ul style="list-style-type: none"> <li>• Reflective practice is already an integral part of revalidation for registered healthcare professionals</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure all staff have the opportunity to contribute in reflective discussions and take forward learning into future practice</li> </ul>

Of the 20 principles detailed in the report, 13 relate specifically to the Trust. The remaining 7 principles apply at national level so have not been considered as part of this review. Table 1 below details each of the principles, where we are against the principle, a RAG rating and indications of what are our next steps. For information, Table 2 contains the 7 national principles.

**Table 1**

Handling Cases			
7. Raising and reporting concerns	All NHS organisations should have structures to facilitate both informal and formal raising and resolution of concerns	<ul style="list-style-type: none"> <li>• Raising concerns policy</li> <li>• Onion</li> <li>• Listening into Action</li> <li>• Meet the CEO</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure the CEO reviews all concerns that have been formally logged to ensure they are being dealt with appropriately and swiftly</li> </ul>
8. Investigations	When a formal concern has been raised, there should be prompt, swift, proportionate, fair and blame-free investigations to establish the facts	<ul style="list-style-type: none"> <li>• Investigation procedure is set out in the Raising Concerns policy</li> <li>• Deliver master class training in conducting investigations</li> </ul>	<ul style="list-style-type: none"> <li>• Ensure internal investigations are undertaken promptly and swiftly. Feedback should be to the employee who raised the concern</li> </ul>
9. Mediation and dispute resolution	Consideration should be given at an early stage to the use of expert interventions to resolve conflicts, rebuild trust or support staff who have raised concerns	<ul style="list-style-type: none"> <li>• Use of mediation through EAP Programme (£1250 + VAT each time)</li> <li>• HRBP is already trained as a mediator</li> </ul>	<ul style="list-style-type: none"> <li>• In accordance with B&amp;H strategy, consider training more internal staff in mediation</li> </ul>
Measures to support good practice			
10. Training	Every member of staff should receive training in their organisation's approach to raising concerns and in receiving and acting on them	<ul style="list-style-type: none"> <li>• All staff receive training on raising concerns as part of the induction process</li> <li>• Core management skills training offered in conducting investigation and resolving conflict</li> </ul>	<ul style="list-style-type: none"> <li>• Continue in roll out of core management skills sessions</li> <li>• Review raising concerns section of induction</li> </ul>
11. Support	All NHS organisations should ensure there is a range of persons to whom concerns can be reported easily and without formality. They should also provide staff who raise concerns with ready access to mentoring, advocacy, advice and counselling	<ul style="list-style-type: none"> <li>• The Trust's whistle blowing policy already identifies a number of individuals with whom they can raise concerns and has a confidential email address but it is not used</li> </ul>	<ul style="list-style-type: none"> <li>• Identify a suitable Freedom to Speak Up Guardian - NED</li> <li>• Republish details of who staff can contact when raising a concern</li> <li>• Have a schematic identifying contacts to issue to all staff</li> <li>• Issue the NHS Employers Drawing the Line guide for managers</li> </ul>

12. Transparency	All NHS organisations should be transparent in the way they exercise their responsibilities in relation to the raising of concerns, including the use of settlement agreements	<ul style="list-style-type: none"> <li>Trust values include openness and transparency</li> </ul>	<ul style="list-style-type: none"> <li>Ensure the Trust publish in its Quality Accounts quantitative and qualitative data about formally reported concerns</li> <li>Review the confidentiality clause in settlement agreement so it is only included when genuinely in the public interest</li> </ul>
13. Accountability	Everyone should expect to be held accountable for adopting fair, honest and open behaviours and practices when raising or receiving and handling concerns.	<ul style="list-style-type: none"> <li>Implemented Fit &amp; Proper Persons Test</li> </ul>	<ul style="list-style-type: none"> <li>Embedding values into all employment processes</li> </ul>

## 2.1 Principles Not Covered By This Report

The table below details the remaining principles from the FTSU report that require action at a national level.

**Table 2**

Principle	Recommendation
<b>Principle 12</b> - Support to find alternative employment in the NHS	Where an NHS worker who has raised a concern cannot, as a result, continue in their current employment, the NHS should fulfil its moral obligation to offer support in finding alternative work
<b>Principle 15</b> – External Review	There should be an Independent National Officer resourced jointly by nation system regulators and oversight bodies to review the handling of concerns raised by NHS workers, and or the treatment of the person who spoke up where there is cause for believing that this has not been in accordance with good practice, advise NHS organisations to take appropriate action where they have failed to follow good practice, act as a support for Freedom to Speak up Guardians and provide national leadership on issues relating to raising concerns by NHS workers
<b>Principle 16</b> - Co-ordinated Regulatory Action	There should be co-ordinated action by national systems and professional regulators to enhance the protection of NHS workers making protected disclosures and of the public interest in the proper handling of concerns
<b>Principle 17</b> - Recognition of Organisations	CQC should recognise NHS organisations which show they have adopted and apply good practice in the support and protection of workers who raise concerns
<b>Principle 18</b> - Students and Trainees	All principles in the report should be applied with the necessary adaptations to education and training settings for students and trainees working towards a career in healthcare
<b>Principle 19</b> - Primary Care	All principles in the report should apply with necessary adaptation in primary care
<b>Principle 20</b> - Legal Protection Should be Enhanced	The Government should consider reviewing legislation on discrimination to extend the protection to include discrimination by employers in the NHS either under the Employment Rights Act 1996 or Equalities Act 2010

### 3. ACTION PLAN TO IMPLEMENT KEY PRIORITIES AT WHHT

The following action plan has been devised to support the work already underway at the Trust

Action	Who	Deadline
Implement the Bullying & Harassment strategy	Paul da Gama	See B&H strategy for timelines
In relation to the local 'Freedom to Speak Up' Guardian role, the Trust will need to determine a model that will work locally. NHS Employers suggest creating a local guardian who can advise, support and have the tenacity to challenge and push to get a fair resolution.	Paul da Gama	31/10/15
Promotion and communication around how to raise concerns to be distributed to all staff.	Caroline Lankshear in conjunction with Comms	30 /9/15
CEO to review all formally logged concerns and publish actions taken to ensure staff that concerns are being taken seriously and dealt with	CEO / HR	Ongoing
Monitor progress of internal investigations to ensure they are completed swiftly	Caroline Lankshear	Ongoing

The Trust Executive team have considered the principles for appointment of a 'Freedom to Speak Up' Guardian and concluded that this function would most appropriately be served by identifying two appropriate individuals to act as key advocates and champions for the agenda as follows:

- An opportunity for a member of staff to put themselves forward as the Trust's **Freedom to Speak Up Advocate**. This person would act as a point of contact for staff and access to the Trust's Executive team to ensure staff and managers are held to account for upholding the Trust's transparency value. He/she would meet regularly with the Trust's Freedom to Speak Up Board Champion (see below) to raise any concerns regarding staffs' freedom to raise concerns regarding staff's ability, and willingness, to raise concerns.
- That one of the Trust's Non Executive Directors be assigned as **Freedom to Speak Up Board Champion**. The assigned NED would hold the Trust's officers to account for ensuring agreed actions are being driven forward and for ensuring that the Trust continues to develop an increasingly open and supportive working environment.

### 4. RECOMMENDATIONS

- 4.1 To note the outcome of the Freedom to Speak Up review and approve the associated action plan.
- 4.2 To approve the principles for appointing an Advocate and Champion, and, if agreed, to determine which of the NEDs might appropriately be assigned the Champion function.

**Paul da Gama**  
**Director of Workforce**

24 September 2015