

**Royal College of Nursing response to the CQC's Consultation:
A National Guardian for the NHS – your say: Improvement through openness**

Introduction

With a membership of over 430,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

Background

The RCN welcomed the Freedom to Speak Up review and noted that it was a timely and realistic review of how many staff feel about raising concerns and had borne out many RCN members' experiences. We continue to support the recommendations set out in the report and welcome the Government's commitment to implementing them in full.

Responses to specific questions

Question 1: Do you agree with the proposed scope for the National Guardian?

The RCN agrees with the scope of the National Freedom to Speak Up Guardian at present. However, once the role is implemented and further consultation by NHS England is undertaken in 2015 regarding how the proposals may work in primary care, it is understood that this scope may be extended and altered to ensure it is fit for purpose. While we welcome further consultation regarding this extension, we propose that the role, responsibilities and level of authority of National Guardians in regard to their relation to NHS trusts should remain consistent and not become distorted by scope extension. This will ensure processes surrounding the National Guardian remain clear and undisrupted as their scope is considered further.

Question 2: Do you agree that these principles are the right ones? Are any missing?

The RCN agrees with the principles in theory; however, they each require further clarity:

- a) Given the high level of national interest in the NHS in England, it is important not only that the National Guardian's decisions are independent of NHS providers and national bodies, but that their decisions are made without pressure or influence from external stakeholders.
- b) While we agree that the National Guardian should maintain independent discretion regarding the level of involvement he or she has in individual cases, this discretion must be executed within a designated framework to protect openness, transparency and role consistency. This framework would not only support whistle-blowers, NHS providers and arms-length bodies by offering a clear way by which to understand the reasons an action has or has not been taken, but it would also support the National Guardian to more consistently exert their discretion.
- c) To ensure the smooth implementation of this principle, clear differentiation between the roles and responsibilities of National and Local Guardians is required. The RCN proposes that once clarity has been achieved, jurisdiction is agreed upon between National and Local Guardians, to ensure role clarity for all parties involved, including staff and providers.
- d) We agree that the National Guardian should not act in such a way or be called upon to act in such a way that circumvents established complaints processes and legal remedies. Further clarity regarding how and when National Guardians can provide challenge is needed, and consideration as to how this will affect their agility and influence is welcomed.
- e) More clarity is required as to the how recommendations will be implemented as well as the level of power the National Guardian has to raise concerns if or when national bodies are not considered to fully carry out their responsibilities. In addition, more information is needed about who will ensure recommendations are taken seriously and acted upon when those recommendations are relevant to one of the nominated national bodies.
- f) Further clarity is needed in regard to how the National Guardian will maintain this arms-length distance from investigations and who they will advise on appropriate actions. If investigations are to be carried out by Local Guardians, clear and consistent jurisdiction is required.
- g) While the RCN agrees that the National Guardian should not be utilised to review historical cases, clear and concise definitions are needed as to what constitutes a historical, current or ongoing case, to ensure only appropriate concerns are raised through this channel.

In addition to the above comments, the RCN would like to again stress the importance of staff engagement (both individual and collective via trade unions), and we are disappointed that there is no mention of partnerships between the National Guardian and employee representatives and representative groups within the outlined principles.

Question 3: Do you agree that the proposed arrangements will be enough to effectively ensure the National Guardian's independence and provide effective governance?

We continue to support the hosting of the National Guardian by the CQC. However, further reassurance is required to establish confidence that the National Guardian will be supported to maintain its independence. This is particularly relevant when considering elements such as information sharing with the CQC and financial management as well as circumstances which might arise leading to the National Guardian supporting the CQC or identified national bodies.

Additional queries are raised here, including who, if anyone, will quality assure reports and communications from the National Guardian if this responsibility is not held by the CQC or supporting arms-length bodies.

Question 4: How should communications from the National Guardian be branded?

Confidentiality will be a significant enabler of the National Guardian's success and clear communication channels are needed to support this. We would therefore propose that communications from the National Guardian are clearly branded in a manner that prevents confusion for NHS providers, staff and Local Guardians as to which organisation communications are coming from and to whom it is appropriate to respond. Such clarity is essential to ensuring that confidential information is not misdirected – particularly in relation to communication regarding recommendations and their implementation as well as in-house communications with the CQC. For this reason, we do not agree that communications should carry either the CQC branding or the branding of the bodies that will support the National Guardian: TDA, Monitor and NHS England.

Instead, the RCN proposes that communications from the National Guardian should be independently branded but include clear caveats around the National Guardian's association with the CQC.

Question 5: Do you agree with our proposal that the National Guardian should build a strong network of Local Freedom to Speak Up Guardians, and do you have any additional ideas for how this should be delivered?

As noted in previous consultation responses, the RCN agrees that the National Freedom to Speak Up Guardian should be supported by a network of Local Freedom to Speak Up Guardians to ensure local context and knowledge is considered when providing support and advice. We would like to use this opportunity to reiterate our support for the proposal that Local Guardians also operate in an independent capacity within their local context and hold positions of seniority, protecting their ability to challenge and escalate where necessary. While the RCN supports the proposal that Local Guardians should report directly to their Chief Executive, we believe that further reassurance is required as to how Local Guardians will maintain their independence in this reporting model.

Question 6: Do you agree with our proposal that the National Guardian should review how concerns have been handled in individual cases, where serious issues appear to exist, and do you have additional ideas for how this should be delivered?

The RCN supports this proposal; however, clear definitions of what activities constitute “reviewing” and “investigating” must be provided to establish clarity of purpose for both the National Guardian and other parties included in this process. In light of the proposed level of discretion National Guardians will maintain, we would also suggest that clear boundaries must be developed as to what constitutes a serious issue in order to ensure transparency and equity nationally.

Clear and transparent processes in regard to raising and escalating concerns must be made available to ensure equitable treatment of concerns. This includes clear guidelines for how and when providers and staff members should raise concerns and which channels they should utilise.

Question 7: Do you agree with our proposal that the National Guardian should support and advise providers, and do you have additional ideas for how this should be delivered?

The RCN agrees with this proposal. Again, however, we ask for clarity as to what will constitute support, advice or challenge. Clear definitions between these different functions of the National Guardian will ensure that providers are certain when and how action is required to be taken and when they are instead able to consider advice and receive support in a discretionary manner.

This clarity will also provide a better understanding of who within the bodies involved in the Freedom to Speak Up process (National Guardian, Local Guardians and national bodies) will work with providers in each instance.

Question 8: Do you agree with our proposal that the National Guardian should provide support and challenge to the system, and do you have additional ideas for how this should be delivered?

We agree that the National Guardian should provide support and challenge to the system. While it is expected that the level to which this provision is realised will be determined by the National Guardian on a case-by-case basis, as previously iterated, we would propose that this discretion is exercised within a designated framework to ensure clarity of purpose, transparency and, subsequently, the legitimacy of the National Guardian and their authority. We recognise that openness of process and transparent decision-making are essential to ensuring confidence in the ability and fairness of the National Guardian and their function and, furthermore, that implementation is unlikely to be successful without it.

Question 9: Do you agree that the four functions described are the right ones to enable the National Guardian to discharge its role, as described in the Freedom to Speak Up review?

The RCN agrees with the proposed functions. It must be made explicit, however, which types of whistle-blowing cases can be taken to the National Guardian. For example: should it just be cases relating to patient care and safety? Or should cases of fraud, bribery, bullying etc. be included as well?

Question 10: Do you have any further views on how the National Guardian should discharge its role?

We would like to take this opportunity to again propose that liaison and frequent communication with staff representatives, staff representative groups and independent agencies is considered.

Question 11: Do you agree with the assessment of drivers of costs and benefits of the National Guardian and its functions? Can you provide further drivers of costs and benefits?

While we agree with the assessment of drivers of cost, we would like to reiterate our support for an independent funding stream to support both National Guardians and Local Guardians as well as our belief that a truly independent National Guardian will provide significant cultural benefits across the system.

Royal College of Nursing, 7 December 2015