

## Response to the Care Quality Commission consultation: A National Guardian for the NHS – your say: Improvement through openness.

December 2015

### 1. Introduction

- 1.1 The Professional Standards Authority for Health and Social Care promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament. More information about our work and the approach we take is available at [www.professionalstandards.org.uk](http://www.professionalstandards.org.uk).
- 1.2 As part of our work we:
- Oversee nine health and care professional regulators and report annually to Parliament on their performance
  - Conduct research and advise the four UK governments on improvements in regulation
  - Promote right-touch regulation and publish papers on regulatory policy and practice.
- 1.3 We responded to the consultation on similar aspirations regarding issues of openness in Sir Robert Francis' *Freedom to Speak Up Review* of 2014. Our response, which made many of the same points as we do here, is available online.<sup>1</sup>
- 1.4 We welcome the opportunity to respond to this Care Quality Commission consultation about the role of the National Guardian for the NHS. We offer a number of general comments, but have not responded to the consultation questions.

### 2. General comments

- 2.1 We agree that there are immense benefits for patients, service users and the wider public if the health and care system is open, transparent and honest. We support Don Berwick's conclusion in *A promise to learn – a commitment to act* that patient safety depends upon a learning culture, where near misses and errors are openly discussed and learnt from. We also consider the healthcare system should develop what Carl Macrae calls a '*shared accountability*' culture whereby all staff see patient safety as part of their role and responsibility.<sup>2</sup> Macrae explains how this trait has been developed within the aviation sector in

<sup>1</sup> Available at: <http://www.professionalstandards.org.uk/docs/default-source/psa-library/140909-letter-from-psa-to-the-freedom-to-speak-up-review-final.pdf?sfvrsn=0>

<sup>2</sup> Learning from patient safety incidents: Creating participative risk regulation in healthcare, Carl Macrae <http://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=1944289c-f22b-44aa-b624-6273e1404354%40sessionmgr4001&vid=1&hid=4214>

response to avoidable aviation disasters. Pilots, air traffic control, mechanics and so on all give each other permission to constructively challenge and check each other's decisions.

- 2.2 We are mindful that there have been several attempts to improve openness over the last fourteen years since the publication of *An organisation with a memory* (2000), including the *Being Open* work by the National Patient Safety Agency (NPSA)<sup>3</sup>. In the light of recent research, we think it essential that attempts to change culture are rooted in a better understanding of the human and organisational behaviour factors that underpin it, if it is to succeed.
- 2.3 We note that the roles of the National Guardian set out in the Department of Health's consultation response, *Learning not blaming*, include providing advice to NHS organisations, advising system regulators to take action, offering guidance, delivering support to guardians in trusts, and providing national leadership.

### Clarifying boundaries

- 2.4 We recognise that the majority of responders to an earlier consultation supported locating the role of the National Guardian within CQC and that CQC's current consultation seeks to determine the principles within which the National Guardian should operate and its governance arrangements. We comment only that the position of the National Guardian could be an uneasy fit with the role of the regulator. There is a risk of duplication and blurring of responsibilities, which will need to be carefully navigated, if this function is to bring about positive cultural change.
- 2.5 We caution against inspectors becoming responsible for providers' improvement and the need to keep those roles and responsibilities distinct.<sup>4</sup> Whilst we understand why the National Guardian has been compared to a Chief Inspector position, we think it is a distinctly different role that would benefit from being independent both of providers and CQC.
- 2.6 We would have welcomed more information about the role of the Local Guardians and their relationship with their national counterpart. Local Guardians will need to inspire the confidence of staff and boards alike, and avoid conflicts of interest. If they are to retain their current jobs in the local organisations, they will be acting both as a representative of the local provider and of the National Guardian. Local Guardians will need to be clear about their remit and responsibilities. In addition, it might be helpful to provide clear guidance to both employers and employees on what the Local Guardian can and cannot do.
- 2.7 We note the reference in the CQC consultation to its role in relation to staff concerns and encouraging NHS staff to report concerns to it in its capacity as a regulator. While this could be positive for patient safety on the one hand, the Local Guardian will need to be aware of the importance of building trusting relationships with different stakeholders (commissioners, employees and senior

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<sup>3</sup> See <http://www.nrls.npsa.nhs.uk/resources/?entryid45=59792>

<sup>4</sup> Available at: <http://www.professionalstandards.org.uk/library/document-detail?id=f32e5b9e-2ce2-6f4b-9ceb-ff0000b2236b>

- organisational staff), particularly as whistleblowing can put a strain on relationships. In addition, research suggests overlapping roles and divided loyalties can create cognitive dissonance and prevent people from speaking up<sup>5</sup> – the Local Guardian will need to be prepared for these challenges.
- 2.8 Boards of Trusts and CCGs are currently accountable and responsible for their own policies on openness and whistleblowing. It might be helpful if the National Guardian made clear what scope, mandate, or authority the Local Guardian would have to influence local policy, and how the National and Local Guardians would work together to achieve this.
- 2.9 In the *Freedom to Speak Up Review* (the foundation for the creation of the National Guardian), the Local Guardian or '*Freedom to Speak Up Guardian*' (term used in the document) would be '*appointed by the organisation's chief executive to act in a genuinely independent capacity*'.<sup>6</sup> Perhaps the National Guardian could issue guidance or advice on how the process of appointing Local Guardians could be made as independent as possible.
- 2.10 Finally, whilst we understand the operational constraints, we encourage CQC to think again about implementing this only within the acute NHS sector. The majority of patient interactions happen in primary care and still more within social care. Given the external changes set out in the Five Year Forward View and the drive for integrated care, any new initiative would be better designed from the outset within that context, rather than follow the usual process of implementation within the acute sector and adaptation for other sectors at a later date.
- 2.11 We also note there will be no National Guardian for the Adult Social Care sector as no similar review to *Freedom Speak Up* has been conducted by the Department of Health in that sphere. This is a large and growing sector (1.5 million people working in adult care in 2012<sup>7</sup>). In the light of the integration agenda in health and social care, the Government may wish to establish whether similar whistleblowing issues exist in this sector, and what could be done to address them.

### Supporting cultural change

- 2.12 It might be advantageous to recognise that the creation of a culture open to new ideas and criticism is the responsibility of all members of the healthcare workforce. We discussed this in our advice to the Department of Health on best modes of performance management in the NHS. We mentioned the need to 'normalise conversations' about performance management and 'facilitate constructive challenge'.<sup>8</sup> In the long term this would mitigate the likelihood of

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<sup>5</sup> Available at: <http://www.professionalstandards.org.uk/docs/default-source/psa-library/candour-research-paper---final.pdf?sfvrsn=0>

<sup>6</sup> Freedom to Speak Up review, p.26,

[http://webarchive.nationalarchives.gov.uk/20150218150343/https://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU\\_Executive-summary.pdf](http://webarchive.nationalarchives.gov.uk/20150218150343/https://freedomtospeakup.org.uk/wp-content/uploads/2014/07/F2SU_Executive-summary.pdf)

<sup>7</sup> <https://www.nao.org.uk/wp-content/uploads/2015/03/Adult-social-care-in-England-overview.pdf>

<sup>8</sup> Improving employee performance management in the health and social care sector, p. 6,

<http://www.professionalstandards.org.uk/docs/default-source/psa-library/performance-management-advice-to-the-secretary-of-state.pdf?sfvrsn=0>

poor care and create the optimum conditions for staff to speak out to improve care.

- 2.13 Local Guardians will work to ‘ensure local ownership’ of the pathway towards fostering ‘a culture of safety and learning’ – this will link up to the National Guardian’s overarching policy directions. Perhaps Local Guardians could focus on the formation of formative or ‘reflective’ spaces where staff can challenge colleagues’ performance and their own<sup>9</sup>. The National Guardian could work in tandem with these groups and encourage professionals and Trusts to use them. An open culture shared by all staff of an organisation is more likely to encourage an employee to flag a problem earlier.
- 2.14 The Authority recognises that working towards an open culture shared by all healthcare professionals is a long-term and not immediately attainable objective. If clearly defined and well implemented, the role of the National Guardian could aid the transition to a more open NHS culture. To do so however, it needs to take careful account of the growing body of research on influences on individual and organisation behaviour and design its processes around it.

### **3. Further information**

- 3.1 Please get in touch if you would like to discuss any aspect of this response in further detail. You can contact us at:

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<sup>9</sup> Dynamics of Effective Regulation, 2015, p.140, <http://www.osteopathy.org.uk/news-and-resources/document-library/research-and-surveys/dynamics-of-effective-regulation-final-report/>