

**Revised process for responding to
requests to review speaking up culture
in NHS trusts**

A Summary

National Guardian's Office revised process for responding to requests to review speaking up culture NHS trusts

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1. Introduction

As part of its remit to deliver positive culture change in speaking up across the NHS, the National Guardian's Office (NGO) reviews how NHS and Foundation trusts respond to workers who raise issues, to identify learning and to recommend improvement.

Following its establishment in April 2016, the office piloted a 12-month case review process beginning in June 2017. At the end of that pilot the office reviewed the effectiveness of the process in terms of whether it met its aims and objectives.

The post-pilot assessment comprised a formal evaluation by an independent, external body, which included a survey of individuals who had submitted referrals to the office, and feedback on the process from the office's Accountability and Liaison Board, Advisory Working Group and Freedom to Speak Up Guardians.

In response to the evaluation and the feedback received, the NGO has made significant changes to how it responds to requests to review a trust's speaking up culture.

The changes also take account of the Government's response to the report of the Gosport Independent Panel.¹ The response set out key actions for a variety of organisations that support the NHS to address failings in NHS care identified by the panel. As part of those actions the NGO will 'take a more active approach in looking at how organisations handle concerns raised by staff who speak up'.

The processes described below set out how the office will respond to review referrals and replaces the 'case review' pilot process.

The main elements of the processes are set out in Annex 1 below.

2. Learning obtained from the pilot process

The evaluation of the NGO's pilot process and the feedback obtained, identified some important learning, which included:

- A need to ensure the office keeps all relevant parties and individuals up-to-date with the progress of reviews, including timely acknowledgement of referrals

1

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/758062/government-response-to-gosport-independent-panel-report.pdf

- A need to more clearly describe the nature, scope and purpose of the review process in all communications to interested parties to avoid possible misunderstanding and confusion
- A need for a case management system within the office to better manage the administration of the review process
- Clearer timetabling of the delivery of review reports to help providers prepare their actions in response to findings.

3. How we have changed our process for responding to case review referrals

To reflect the learning identified from the evaluation of the NGO's pilot process and the feedback obtained, the NGO has amended its process for responding to case review referrals.

The office will no longer only respond to a referral by undertaking a 'case review', dependent on whether the information received meets specific criteria

Instead, it will respond to a referral by using one of three different options:

1. supporting the referrer to access support to speak up where they work
2. undertaking engagement with the trust concerned to support them to improve their speaking up processes and culture, where required
3. undertaking a trust-wide review of the speaking up culture, policies and procedures to identify learning and improvement.

Option 3 mirrors the process employed by the NGO in several of its published reviews during the pilot process, described as 'case reviews'.

The details of these different response options are set out below.

4. The aims of the new process for responding to case review referrals

The main aim of the revised process for responding to referrals is to offer more options for responding to individuals who refer case reviews. It will ensure that workers in trusts who require assistance from within their trust to speak up, will receive support from the NGO to do this.

This will also be achieved by the NGO working with trusts more effectively to address the speaking up issues highlighted in the referrals it receives.

5. How the NGO's responses to speaking up referrals will work

We have set out a flow chart at the end of this summary to show how the NGO will respond to referrals it receives to review speaking up.

5.1 Referrals

Individuals who work for NHS trusts, or ceased doing so within the past two years, can submit referrals to the NGO to review a speaking up issue in their organisation. This issue may relate to their personal circumstances, including how their trust handled an instance where they spoke up, or broader concerns about their trust's speaking up culture.

As well as receiving referrals from workers the office will continue to exercise discretion to accept review referrals from other sources.

5.2 Response times

The office will acknowledge the referrals it receives within two working days. It will then triage each referral and communicate its decision to the referrer on how it will respond within 20 working days, though this may take longer where the matters in question are more complex.

In any event, the office will endeavour to keep referrers updated as appropriate.

6. The triaging process

The office will triage each referral to decide how best to respond to it, giving consideration to the following:

- what outcomes the individual referrer is seeking
- how best to support the needs of the referrer
- how best to identify learning and improvement relating to the issues raised and how to effectively support the trust in question to address those issues
- the scale of the speaking up issues relating to the referral and whether they principally relate to the circumstances of the individual referrer, or potentially affect workers more widely in the organisation.

7. The National Guardian's response to review referrals

Once the triaging process is complete, the office will respond to the referral using one of the three options described below.

The focus of all responses is to support workers to speak up and to identify learning and improvement for trusts and other relevant bodies and organisations

The NGO's response will not involve investigating incidents, intervention in the cases of individuals, or providing remedies to workers involved in speaking up.

A flow chart showing how the NGO will respond to the review referrals it receives is set out in Annex 3 below. Scenarios are available in Annex 2 that give examples of how the NGO's response process works.

7.1 Helping workers to access speaking up support

Option 1 – helping workers to access support from their trust to speak up, or other appropriate body

This option will be appropriate where the issues contained in the referral largely relate to the working circumstances of the individual referrer, including any obstacles to speaking up that they may face in their trust.

The office will first consider whether Option 1 is an appropriate response to a referral it receives before considering any alternative responses.

It will also be appropriate where the referrer is seeking information that can best be provided by their trust.

This response will involve the NGO supporting the referrer to access assistance to speak up where they work, for example from:

- the Freedom to Speak Up Guardian at the worker's trust
- speak up champions/ambassadors
- trust leaders responsible for speaking up in the organisation.

The aim of this option is to help individuals access support to speak up promptly and from the most appropriate source.

The types of issues to which Option 1 will be the most appropriate response include:

- an individual's employment rights
- disputes about an individual's conduct
- questions about an organisation's policies or procedures.

In some circumstances, this option can also involve the office providing information about external sources of support to help referrers speak up, such as organisations providing free legal advice.

This option does not involve the NGO reviewing the handling of speaking up in a trust, or that trust's culture, policies or procedures. However, it can still support learning and improvement with an organisation by helping to bring issues to the attention of those, such as Freedom to Speak Up Guardians, whose responsibility includes leading positive culture change.

7.2 Reviewing how a trust supports its workers to speak up

Where the office considers that option 1 is not an appropriate response, it will then consider whether the issues raised in the referral are best responded to by either engaging with the trust concerned to resolve them (Option 2,) or undertaking a trust-wide review of the speaking up arrangements and culture of the organisation concerned (Option 3.)

To help decide the best review option the office will consider available data about the trust's speaking up culture, including:

- Reports from the trust Freedom to Speak Up Guardian
- Care Quality Commission inspection reports
- NHS staff surveys of the trust concerned

Option 2 – reviewing speaking up through trust engagement

The NGO will respond to the referral it receives using this option where the available information, from both the referral and data about the trust, shows that the nature and scale of the speaking up issues are best resolved by engaging with the trust concerned to resolve them.

By 'scale' we mean the number of workers potentially affected by the speaking up issues identified.

Such issues will include:

- trust speaking up policies and procedures that do not meet with best practice
- evidence of a culture in a part of a trust that is not supportive of speaking up
- poor handling of an instance of speaking up affecting many workers
- evidence that trust workers who have spoken up have suffered detriment for doing so.

Engagement will include discussing the handling of individual issues, where the workers involved have given their consent for this to happen.

Depending on the nature of the issues raised by the referral, the engagement process will also involve NHS Improvement, which will work with the NGO and the trust concerned to identify and agree improvement actions.

The NGO will publish a summary of the learning it identifies during the engagement process, which include the agreed actions to be taken by the trust concerned.

Option 3 – reviewing speaking up processes and culture across a whole trust

The NGO will undertake a speaking up review where the referral information and other available data indicates a need to conduct a trust-wide review of the organisation's speaking up culture, policies and procedures.

Option 3 is the same process that the NGO used in its pilot case review process.

Examples of where a trust-wide review will be necessary include:

- evidence that many workers across the organisation face multiple obstacles to speaking up, causing risks to patient safety
- evidence that the leadership of a trust is not supportive of a speaking up culture
- evidence that previous engagement with the trust by the NGO and NHS Improvement to help the trust improve its speaking up culture has not succeeded.

7.2.1 Exclusion criteria

Before the office can consider whether Option 3 is an appropriate response to a referral, it will first confirm whether any exclusion criteria apply. These criteria are the same as those used in the pilot review process.

The NGO will not consider undertaking a trust-wide speaking up review where:

- the matters concerned in the referral are subject to an investigation by the police or the NHS Counter-Fraud Authority²
- there is an outstanding decision to be made in relation to the substantive issues in the referral, such as a pending employment tribunal decision
- it is not practicable for the office to review the matters referred

² <https://cfa.nhs.uk/>

If none of the above criteria apply, the office will then consider whether Option 3 is a suitable response to the referral.

Where it decides that this is an appropriate response the NGO will follow the same review procedures used in the pilot case review process, including –

- visiting the trust concerned
- holding staff forums to learn about workers' experiences of speaking up in their organisation
- interviewing trust leaders and those responsible for supporting workers to speak up
- reviewing policies and procedures

The focus of this response remains the same as Option 2, namely to identify learning and improvement.

The NGO will publish its findings and recommendations following a trust-wide speaking up review and the trust concerned will be expected to draw up an action plan, with support from NHS Improvement, to implement those recommendations.

7.3 Referrals requiring multiple options in response

There will be some circumstances where it will be appropriate for the NGO to respond to the referral information by utilising more than one option. This will occur where:

- the information contained in the referral relates to multiple issues that are best responded to in different ways, e.g. they relate to matters that only affect the individual (Option 1) and additional issues potentially affecting many workers (Option 2 or 3.)
- the examination of the relevant data about the organisation, in a referral where it is decided to best respond to the worker utilising Option 1, also highlights additional issues about the organisation's speaking up culture not identified in the referral, for which Option 2 or 3 should also be used to address.

8. Escalating its responses where cultures do not improve

The response options described above do not represent a single, fixed response to a referral and the office may seek to escalate its actions where appropriate.

For example, where the office receives evidence that obstacles to speaking up in a trust persist for many of its workers, despite previous engagement work to address this, then it may decide to undertake a full trust wide speaking up review to identify further learning and improvement.

Annex 1: Summary of the response options to case review referrals

Option 1	Option 2	Option 3
<ul style="list-style-type: none"> • Not a case review • NGO will support referrer to access assistance to speak up from within their current/former NHS trust and/or from external organisation • Suitable where the referrer has not yet sought support from their trust to resolve the matters they are raising • Suitable where the referrer has not fully explored all the available support to speak up from within or outside their trust 	<ul style="list-style-type: none"> • NGO reviews an aspect of a trust's speaking up culture via a process of engagement • Suitable where issues referred to the NGO relate to a limited part of a trust and its workforce • NGO will engage with a trust to discuss the issues raised regarding speaking up and identify actions the organisation will take to remedy them • Engagement may be done in collaboration with NHS Improvement, depending on the circumstances • NGO may undertake fieldwork to gather evidence • NGO will publish a summary of the learning from the review, including the trust's actions in response 	<ul style="list-style-type: none"> • NGO reviews a trust's speaking up culture, processes and policies • Suitable where the matters referred to the NGO potentially affect a significant portion of its workforce and speaking up culture • NGO will publicly announce the review • NGO will interview and meet with a wide range of trust staff to learn about the culture in the organisation • NGO will publish its findings, including recommendations on what improvements are necessary to the trust's speaking up culture • NHS Improvement will support the trust to deliver an action plan in response and oversee its implementation

Annex 2 – Example scenarios

Scenario 1

Outline

Worker A spoke up several times in the trust where they work about a matter relating to their employment. They were not happy with their employer's response and believed they were ignored. They then referred their case to the National Guardian's Office to review. The worker did not access support to speak up from within their trust.

Likely referral response

The likely response here is Option 1 – NGO support for the worker to access help where they work to raise their issues. This is because the worker had not previously accessed this type of support. The trust's speaking up policy will set out who can help workers to raise matters. This will include from the organisation's Freedom to Speak up Guardian.

Scenario 2

Outline

Worker B spoke at work about bullying. They sought support from their Freedom to Speak Up Guardian to do this. Although the NHS trust in question investigated the matters raised, some in the organisation told the worker that it was not an appropriate matter for the Guardian to support them to speak up about as it was not about patient safety.

Likely referral response

The likely response here is Option 2 – NGO engagement with the trust concerned to help address the issues raised. This is because, although the matter only affected one worker, the views expressed about the role of the Freedom to Speak Up Guardian were not in accordance with good practice and contrary to the trust's own policy.

Discussion between the NGO and the trust could help identify the best ways for the organisation to address the matters, including staff awareness training about the Guardian's role.

Scenario 3

Outline

Several workers refer cases to the NGO highlighting that they have spoken up in their organisation about patient safety matters, including with support from their Guardian and others to do so, but believe that the organisation has not properly investigated the issues or learned from them. They fear that the risks to patients have not been addressed.

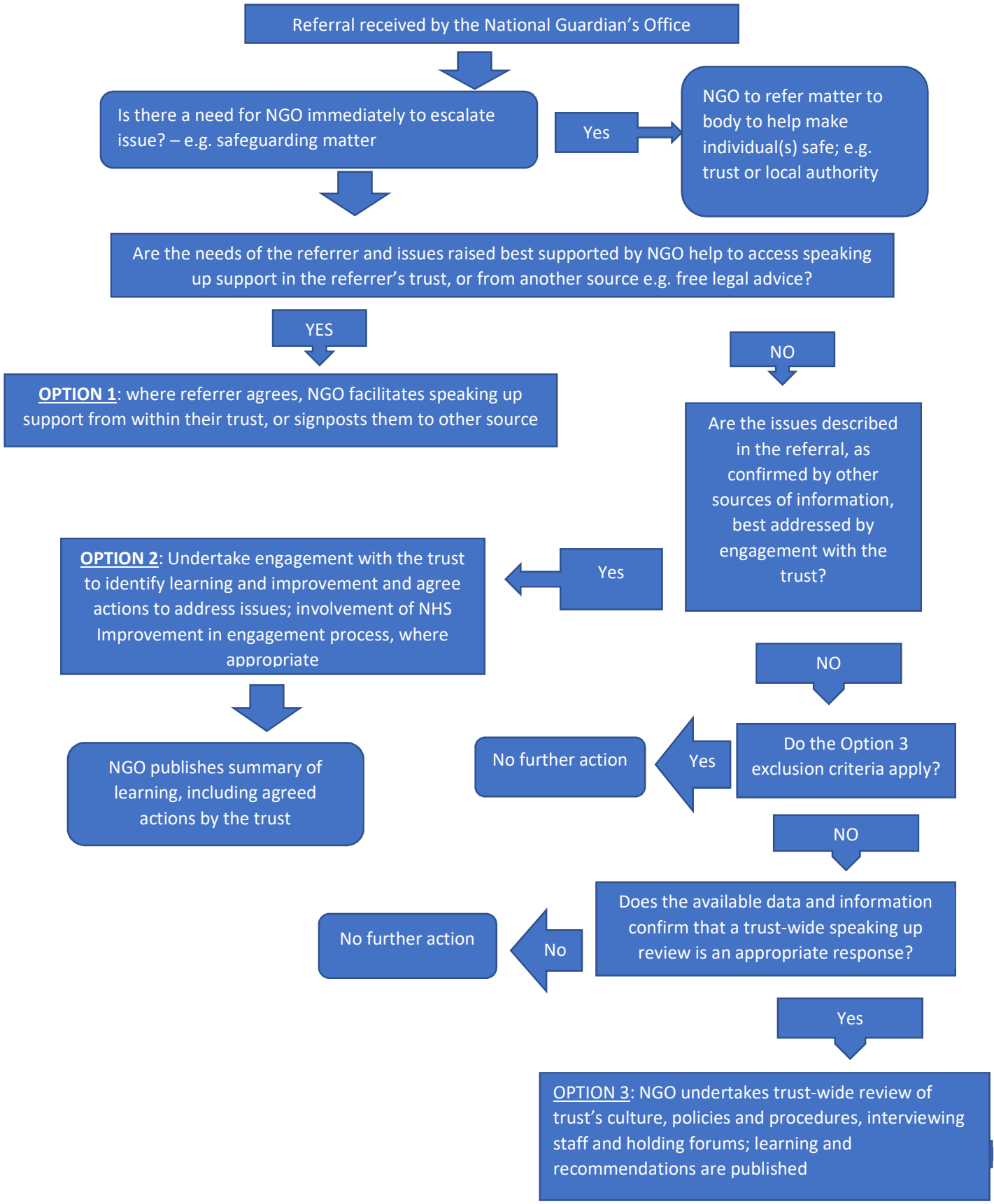
They also allege they are experiencing bullying from some colleagues for speaking up. Published information about the organisation, including staff survey data and

inspection reports highlight many concerns and issues with the speaking up culture across different parts of the trust.

Likely referral response

The likely response here from the NGO is Option 3 – a review of the trust’s speaking up culture, policies and procedures. This is because there is evidence to suggest that there are trust-wide problems with the organisation’s speaking up culture and that a review could yield important learning for the trust and beyond.

Annex 3 – Speak Up Review Flowchart



Referral received by the National Guardian's Office

Is there a need for NGO immediately to escalate issue? – e.g. safeguarding matter

Yes

NGO to refer matter to body to help make individual(s) safe; e.g. trust or local authority

Are the needs of the referrer and issues raised best supported by NGO help to access speaking up support in the referrer's trust, or from another source e.g. free legal advice?

YES

OPTION 1: where referrer agrees, NGO facilitates speaking up support from within their trust, or signposts them to other source

NO

Are the issues described in the referral, as confirmed by other sources of information, best addressed by engagement with the trust?

Yes

OPTION 2: Undertake engagement with the trust to identify learning and improvement and agree actions to address issues; involvement of NHS Improvement in engagement process, where appropriate

NO

NGO publishes summary of learning, including agreed actions by the trust

Do the Option 3 exclusion criteria apply?

No further action

Yes

NO

No further action

Does the available data and information confirm that a trust-wide speaking up review is an appropriate response?

No

Yes

OPTION 3: NGO undertakes trust-wide review of trust's culture, policies and procedures, interviewing staff and holding forums; learning and recommendations are published