Freedom to Speak Up Guardians Annual Report

Public Board

27th July 2017

Presented for: Information and Assurance

Presented by:
Joe Cohen and Julia Roper, Trust Freedom to Speak Up Guardians
Dean Royles, Director of Human Resources and Organisational Development

Authors:
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Anna Edgren-Davies, Senior HR Manager

Previous Committees:
Annual Whistleblowing Report to Trust Board, July 2016 and Whistleblowing paper to Audit Committee, March 2017.

Trust Goals

| The best for patient safety, quality and experience | ✓ |
| The best place to work | ✓ |
| A centre for excellence for research, education and innovation | |
| Seamless integrated care across organisational boundaries | |
| Financial sustainability | |

Key points

This report gives an annual update from the Trust’s Freedom to Speak Up Guardians on progress and on-going plans for strengthening arrangements for staff to raise concerns.

For information and assurance
1. **Summary**

The purpose of this paper is to provide an annual report to the Trust Board in respect of our Freedom to Speak Up arrangements.

This paper is supported by Appendix 1, an independent review of our arrangements undertaken by Public Concern At Work, the Whistleblowing Charity.

2. **Background**

Since October 2013 the Trust has taken a number of actions to assure and review whistleblowing arrangements, which are summarised in Appendix 2. A Whistleblowing Policy has been in place, supported by Whistleblowing Leads across the organisation.

The NHS Contract for 2016/17 required every NHS Trust to have a Local Freedom to Speak Up Guardian (LFTSUG) from 1 October 2016. Guidance for the appointment of a LFTSUG was published in March 2016 and advised that they would:

- Work with the chief executive and the Board to help create an open culture.
- Develop a range of mechanisms which empower and encourage staff to speak up.
- Be entirely independent of the Executive Team.
- Be a highly visible individual who spends the majority of their time with “front line” staff.
- Act in an independent and impartial capacity.
- Independently review any complaints from members of staff.

Trusts were also required to have a Non-Executive Director Lead for Freedom to Speak Up.

3. **Appointment of Freedom to Speak Up Guardians and Leads**

In October 2016 LTHT appointed Joe Cohen and Julia Roper as Trust Freedom to Speak Up Guardians. The role specification set by the National Guardian’s Office includes:

- Developing an open culture.
- Ensuring processes are in place to empower and encourage staff to speak up safely.
- Delivering education on how to raise concerns and on how to respond when concerns are raised.
- Working with the Executive Team and the Board in an independent capacity; providing challenge where appropriate.
- Being an additional individual(s) to whom staff can raise concerns.
- Investigate concerns and ensure staff who raise concerns are treated fairly.
- Reporting on concerns raised to the Chief Executive and to the Board.

We currently also have 19 specially trained Freedom to Speak Up Leads in the Trust (renamed from the previous whistleblowing leads), who are available to listen to
concerns raised by staff, and ensure appropriate action is taken to address concerns and implement any learning arising from any concerns raised. The Trust Guardians have a more developed role and are also responsible for providing assurance to the Board and embedding an open and transparent culture.

In addition to the Trust Freedom to Speak Up Guardians and Leads, Mark Chamberlain is the Non-Executive Director with responsibility and oversight for Raising Concerns. He works with the HR team and the Trust Guardians to ensure robust arrangements are in place, supported by an up to date policy.

4. Policy Framework

The Trust’s Whistleblowing Policy has been rewritten in line with the new national policy, and renamed as the Freedom to Speak Up Policy. Our new policy, and Freedom to Speak Up Guardians were launched at Team Brief by the Chief Executive on 7th June 2017.

5. Concerns Raised through the Policy Framework April 2016 - March 2017

During the period April 2016 to March 2017 a total of 19 concerns were raised in the organisation compared with 34 in the previous 12 months.

The tables below show who the concerns were raised with and the broad theme they covered.

<table>
<thead>
<tr>
<th>Theme</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Behaviour</td>
<td>9</td>
</tr>
<tr>
<td>Process</td>
<td>4</td>
</tr>
<tr>
<td>Patient Safety / Quality</td>
<td>3</td>
</tr>
<tr>
<td>Leadership</td>
<td>2</td>
</tr>
<tr>
<td>Audit</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Raised with</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief Executive</td>
<td>8</td>
</tr>
<tr>
<td>Line Manager</td>
<td>6</td>
</tr>
<tr>
<td>PALS</td>
<td>2</td>
</tr>
<tr>
<td>Executive Team Member</td>
<td>1</td>
</tr>
<tr>
<td>Local Freedom to Speak Up Guardian</td>
<td>1</td>
</tr>
<tr>
<td>CSU Management Team</td>
<td>1</td>
</tr>
</tbody>
</table>

Please note - the activity as detailed above reflects only cases reported centrally. Concerns raised with local managers are not logged centrally.

All concerns have been followed up and feedback provided to the individual staff members. Of the concerns raised in 2016/17, four remain open, with investigations in progress.

One of these cases is a cluster of concerns raised by one department on which we commissioned a hearing exercise by Public Concern at Work. The themes from that
exercise have been discussed and the team and actions are being put in place by the CSU triumvirate.

Concerns are addressed either via an investigation by a Freedom to Speak Up Lead or the counter fraud team, or by following the appropriate HR process e.g. grievance or bullying and harassment.

6. **Staff Feedback in Respect of our Whistleblowing/Freedom to Speak Up Arrangements**

The results of the Staff Survey questions in respect of raising concerns (across the period 2012-2016) are detailed below:

<table>
<thead>
<tr>
<th>Question</th>
<th>National Average 2016 (from Trusts using Picker as staff survey provider)</th>
<th>LTHT 2016</th>
<th>LTHT 2015</th>
<th>LTHT 2014</th>
<th>LTHT 2013</th>
<th>LTHT 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>I would know how to raise a concern at work</td>
<td>94.7%</td>
<td>93.5%</td>
<td>82%</td>
<td>81%</td>
<td>81%</td>
<td>84%</td>
</tr>
<tr>
<td>I would feel secure raising a concern</td>
<td>70.1%</td>
<td>72.4%</td>
<td>68%</td>
<td>66%</td>
<td>70%</td>
<td>66%</td>
</tr>
<tr>
<td>I would feel confident that the Trust would address the concern</td>
<td>57.7%</td>
<td>62.1%</td>
<td>56%</td>
<td>56%</td>
<td>52%</td>
<td>46%</td>
</tr>
</tbody>
</table>

7. **Next Steps - Actions for 2017-18**

Our actions over the last 12 months have focused on the bringing our Raising Concerns arrangements in line with national policy and appointing Trust Freedom to Speak Up Guardians. The next phase of work is focused on cultural shift, making sure all staff are aware of the new policy and arrangements, and increasing visibility of the Trust Freedom to Speak Up Guardian. Work over the next year will focus on:

- The embedding of the Local FTSUG role.
- Communication of the new Freedom to Speak Up Policy and arrangements.
- Organisational culture.
- Education and awareness raising.

8. **Working with Public Concern At Work (PCAW)**

The Trust has been working with Public Concern At Work (the Whistleblowing Charity) since October 2013 to support the independent review, development and monitoring of our arrangements. PCAW are the leading authority in this field and have a role in:
advising individuals with whistleblowing dilemmas at work
supporting organisations with their whistleblowing arrangements
informing public policy and seek legislative change

PCAW has been central to the development of our on-going arrangements, training for staff and our self-assessment/actions against the Francis recommendations. In November 2015, following support from PCAW, we signed up to the “First 100” Campaign - a campaign to encourage enlightened organisations to be signatories to the Whistleblowing Commissions Code of Practice. The Campaign recognises our current arrangements and our commitment to best practice in this field.

Our staff can contact PCAW either through the generic contact arrangements or via our bespoke Freephone number and contact email “speakoutleeds@pcaw.co.uk”.

The Chief Executive of PCAW has provided an independent review of our arrangements and proposals for next steps in Appendix 1.

The Trust has appointed two Trust Freedom to Speak Up Guardians, who will review arrangements against national best practice, with support from the National Guardian’s Office. Our future arrangements with PCAW will maintain access for our staff to their phone line, and their advice service.

9. Financial Implications and Risk

The cost of staff time and potential litigation costs.

10. Communication and Involvement

This work programme continues to involve significant engagement, communications and feedback with staff across the organisation

11. Equality Analysis

Equality considerations have been reviewed as part of the policy framework and arrangements. The policy is monitored in terms of usage and nature of issues raised.

12. Recommendations

The Trust Board is asked to note progress in respect of the strengthening our Freedom to Speak Up (Whistleblowing) arrangements and plans for on-going development of this work.

13. Supporting Documents

Appendix 1 presents an independent review of our arrangements undertaken by Public Concern At Work, the Whistleblowing Charity, and Appendix 2 is a summary of actions taken by the Trust.

Joe Cohen and Julia Roper,  
Trust Freedom to Speak Up Guardians  
Anna Edgren-Davies,  
Senior HR Manager

July, 2017
Dear Anna

**Leeds Teaching Hospitals NHS Trust Advice Line report 1 March 2016 to 28 February 2017**

We are pleased to provide Leeds Teaching Hospitals NHS Trust (‘LTHT’) with this annual report as part of your Bespoke Subscription to Public Concern at Work. This report is prepared with a view to providing details of the way the advice line is being used as well as the context of recent legal and policy changes in whistleblowing in the Health Sector in England and more broadly.

**Advice line overview**

It should be noted that the information provided in this annual report is presented so as not to breach the duty of confidence that PCaW owes the client – in this instance the individual caller – under legal professional privilege. LTHT should also bear in mind that providing the name of the employer is not a prerequisite to seeking and obtaining independent confidential advice from PCaW. On our advice line we focus on the public risk and how the issue can be raised responsibly. This means that when contacting us, staff may:

Provide their name only

- Identify themselves as working for LTHT – with or without their name
- Not provide any information as to their identity or their employer

LTHT staff can contact us in one of the following ways:

- Via the details given in the Employer’s policy (freephone number: 0800 008 6718/
  speakoutleeds@pcaw.org.uk)
- Independent web search or other source of information – PCaW helpline number 020 7404 6609/
  helpline@pcaw.co.uk
Between 1 March 2016 and 28 February 2017 we received 4 self-identified calls to the PCaW advice line. Of those, 3 were classified as of a public interest nature, however given the number of self-identified calls received and the duty of confidentiality we owe to callers to the advice line, we are unable to provide more information about the specific nature of the call(s).

During the same time period we received 9 calls to the freephone number, a number unique to LTHT staff which allows us to report on volumes of calls we receive to the advice line without the caller having to identify their employer. We are unable to provide details about these calls as we do not specifically track the freephone calls made to our advice line, again to protect confidentiality and to allow callers to remain anonymous if they so wish.

For your additional information, between 1 March 2017 and 30 June 2017 we received between 1 and 3 self-identified calls and between 1 and 3 calls to the Freephone line.

**Internal Reporting**

When interpreting the Advice Line data it is important to consider it in the context of the number of concerns being reported via internal channels, as this is the real measure of success in relation to the trust and confidence workers have in your whistleblowing arrangements.

We have not had sight of your internal statistics for the reporting period this year, however we note that last year the numbers of concerns raised internally to LTHT were slightly higher than the numbers of concerns raised to our advice line. It is worth bearing in mind that there may be some duplication of cases between your numbers and ours, as our advisers will often encourage callers to raise concerns using your internal whistleblowing arrangements where possible.

**LTHT Whistleblowing arrangements**

LTHT have undertaken considerable steps since the FTSU Report was published in February 2015 to ensure that it is meeting the goals set out in the recommendations. Closely following the recommendations, LTHT has introduced two new Freedom to Speak Up Guardians (FTSUGs) and has maintained the appointed Non-Executive Director with overall responsibility for whistleblowing. These roles are in addition to the Trust’s Designated Leads (DWLs) who already have well-established roles under the policy. During this reporting cycle LTHT has built upon all of its good work over previous years and has amended its policy and overall arrangements and language in line with the National FTSU Policy and terminology.

In January 2017 PCaW was commissioned to undertake a specific listening exercise in the Audiology department of LTHT involving interviews with 23 members and ex-members of staff, across a 3 week period. We were on site conducting face to face interviews on 20 and 30 January 2017. Many members of staff also supplied supporting documents to assist in highlighting their concerns. All conversations were confidential and a number of themes were highlighted in the report which have since been discussed with staff in the Department and action plans instigated to deal with the issues that arose.

**The Freedom to Speak-Up Agenda: Where are we now?**

Dr Henrietta Hughes was appointed the NHS National Guardian in October 2016 and the National Guardian’s Office was established to provide advice on the FTSU Guardian role and provide support to the network of Guardians. A national conference was held on 8 March 2017 for FTSU Guardians to attend with the aim of networking and sharing experiences about embedding a good FTSU culture.

The National Guardian’s Office has now begun a 12 month Case Review pilot scheme whereby individual NHS whistleblowers can refer their cases to the NGO where they feel the handling of their concerns has fallen below expected good practice. A limited number of cases will be selected for review and recommendations will be made to organisations where room for improvement is identified.
Law and Policy changes to Public Interest Disclosure Act for the NHS

The Small Business, Enterprise and Employment Act 2015 (SBEEA) granted the Secretary of State the power to prohibit NHS employers from discriminating against a job applicant because that applicant had or is suspected to have blown the whistle.

A consultation around the implementation of such a provision via the (NHS Recruitment - Protected Disclosure) Regulations ran from 20 March 2017 to 9 May 2017. We await publication of the findings of the consultation and further information on when and how these Regulations will take effect.

The Public Interest Test

Since the introduction of the ‘public interest test’ into PIDA in June 2013 we have been monitoring case law closely for guidance on what this test means and how it will be applied. The case of Chesterton Global v Nurmoahmed held on 8 June 2017 was the first at Court of Appeal level to challenge the legal interpretation of the new public interest test. PCaW applied to be official interveners in the case to offer a perspective that considers the daily realities of workplace whistleblowing to the Court’s deliberations. Our position was that the law should be applied as broadly as possible so that a concern can be deemed to be ‘in the public interest’ if the wrongdoing affects more than just the individual making the disclosure.

The Court of Appeal are yet to release their judgment, but we hope it will provide clarity and certainty so that the public interest test can be easily understood by workers and their advisers.

Benchmarking Project

Since summer 2016 PCaW and a small financial services working group have been developing a ‘benchmark’ for whistleblowing arrangements, the first of its kind. The benchmark examines arrangements in ten categories across three broad areas: Governance, Engagement and Operations. The group has made a great deal of progress in drafting an assessment tool that in time could be used by organisations to score their arrangements to measure themselves against other participants and to measure their own improvement over time. The benchmark has been tested by the working group and final drafting is now under way. We believe such a tool will help to improve whistleblowing practice across all organisations and by 2018 we hope to have product that can be used across all industries. We envisage it being of particular use in the NHS with all the recent developments since the FTSU Review and we will keep you updated on progress.

Summary

In this report we have set out the work undertaken in recent months by LTHT to improve the whistleblowing arrangements and embed a good FTSU culture. Good progress has been made in relation to the issue and the ongoing work undertaken by you, including the appointment of two FTSU Guardians and an NED contact, will continue to ensure you meet best practice in this area.

We would be pleased to continue to support your work on this important issue.

I hope this report is useful and look forward to further discussions with key members of staff over the course of the coming year.

Kind regards

Yours sincerely

Cathy James
Chief Executive

cj@pcaw.org.uk
## Appendix 2

### Summary of Actions the Trust has Taken Since 2013 to Review and Strengthen Whistleblowing Arrangements

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
<th>Activity</th>
<th>Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review of raising concerns arrangements</td>
<td>December 2013</td>
<td>Listening exercise with Non-Executive Director, Executive Directors, managers, staff side colleagues and volunteers. Survey to all staff on our current arrangements in respect of raising concerns, review of existing policy format and arrangements.</td>
<td>New policy. 3-step process. Introduction of designated whistleblowing leads. Lead Non-Executive Director. Strengthened monitoring, reporting and oversight.</td>
</tr>
<tr>
<td>Phase 2 review</td>
<td>December 2014</td>
<td>Reviewed concerns raised to date. Reviewed feedback from individuals who had used the policy framework.</td>
<td>Additional communications on how to raise concerns.</td>
</tr>
<tr>
<td>Phase 2 review</td>
<td>April 2015</td>
<td>Reviewed the outcomes of the Sir Robert Francis “Freedom to Speak Up” Review (published in February 2015) and reviewed the Trust’s self-assessment against the key recommendations.</td>
<td>Re-launch of the role of the Designated Whistleblowing Leads. Organisational awareness plan including sessions at Senior Leaders and the Nursing Patient Care &amp; Safety Day. Implement guidance to support DWLs when investigating concerns. Self-assessment against NHS Employers Draw the Line Campaign.</td>
</tr>
<tr>
<td>PCAW annual review of effectiveness</td>
<td>April 2015</td>
<td>Public Concern at Work reviewed the Trust’s whistleblowing activity and arrangements.</td>
<td>Further embedding of DWL role. Procedural guidance for DWLs. Staff communications.</td>
</tr>
<tr>
<td>Name</td>
<td>Date</td>
<td>Activity</td>
<td>Outcomes</td>
</tr>
<tr>
<td>-------------------------------------------</td>
<td>----------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Senior Leaders event</td>
<td>November 2015</td>
<td>Refresh of whistleblowing arrangements with senior leaders led by PCAW.</td>
<td>Local action plans to embed whistleblowing in CSUs. Corporate action plan based on feedback from senior leaders.</td>
</tr>
<tr>
<td>PCAW annual review of effectiveness</td>
<td>June 2016</td>
<td>PCAW reviewed our whistleblowing arrangements in light of new national policy and requirement to have LFTSUG in post.</td>
<td>Review of whistleblowing arrangements. Recommendation to recruit LFTSUG.</td>
</tr>
<tr>
<td>Appointment of Trust Freedom to Speak Up Guardians</td>
<td>October 2016</td>
<td>Two Trust Freedom to Speak Up Guardians appointed, in line with requirements in national contract and recommendations of the National Guardian’s office</td>
<td>Guardians in place with responsibility for providing assurance to the Board, listening to concerns and effecting culture change.</td>
</tr>
<tr>
<td>Rewrite of Policy</td>
<td>May 2017</td>
<td>Update of policy to bring it in line with the national best practice policy and to reflect the appointment of the Freedom to Speak Up Guardians</td>
<td>Robust arrangements in place for staff to raise concerns.</td>
</tr>
</tbody>
</table>