

HEE Supporting Protected Disclosure

1. Background

1.1 Freedom to Speak up Guardians

Sir Robert Francis QC carried out a review into the failings at Mid-Staffordshire and his conclusion was that there is a serious issue in the NHS with whistleblowing that “requires urgent attention if staff are to play their full part in maintaining a safe and effective service for patients”. His review recommended that there should be appointed both a national Guardian as well as local Guardians in all Trusts. These are appointed by the Chief Executive, would be genuinely independent and have responsibility for promoting a culture of safety and speaking up in NHS Trusts.

‘The Freedom to Speak Up Guardian (FTSUG) acts as an independent and impartial source of advice to staff at any stage of raising a concern, with access to anyone in the organisation, including the chief executive, or if necessary, outside the organisation.’ Sir Robert Francis.

2. HEE and Escalating Concerns Current Process

2.1 HEE Quality Framework

As part of our statutory duties, HEE is responsible for securing continuous improvement in the quality of education and training provided for healthcare workers. The HEE Quality Strategy sets out our national and local priorities and overarching processes, including the escalating concerns pathway. The strategy is underpinned by the HEE Quality Framework, which makes clear the quality standards we expect of the clinical learning environment.

HEE expects that ‘all staff, including learners, are able to speak up if they have any concerns, without fear of negative consequences.’ (Domain 1, Standard 1.7). Learners are expected to be made aware of and encouraged to use (through induction and on-going support) the processes for raising concerns about patient safety, standards of care and education and training, including sign posting to the Freedom to Speak Up Guardian (FTSUG) within the organisation. As part of the quality cycle, data and intelligence are collated and analysed to enable oversight of the quality of the learning environment.

2.2 HEE and Speaking Up

HEE developed the Supporting and Escalating Concerns Pathway for learners to raise, and where appropriate, escalate concerns. The pathway encourages learners to utilise local mechanisms (one of which is the FTSUG) within their clinical learning environment

initially. Further escalations are prescribed if learners continue to feel concerned or they feel the initial pathway is inappropriate for their individual concern.

This pathway was amended and promoted during Covid-19 (Fig.1) through published guidance to enable and encourage learners to continue to raise concerns if they needed to during this unprecedented and particularly challenging time (again, with specific mention of the FTSUG).

HEE promotes Freedom to Speak Up as essential to creating a positive culture where people feel they can speak up, that their voices will be heard, and their feedback will be acted upon.

HEE has created an animated film, which can be used for NHS Trust inductions, to inform new starters and other staff about their local Freedom to Speak Up Guardian: [Freedom to speak up guardians](#) .

3. Freedom to Speak up

The National Guardian's Office is hosted by the Care Quality Commission and reports annually to Parliament. It provides training, support and requires quarterly annual reporting.

The remit of HEE Freedom to Speak up Guardians is limited to the work of HEE and its employees. Learners (students and trainees) will normally be employees or workers of other organisations and will fall under their local NHS provider guardian system, although HEE seeks to support this through advocacy of the FTSUG role. However, there are incidences when those other than employees may make disclosures to HEE as the body corporate or to its employees or representatives. It is important that there is clarity of routes to ensure that any employee or worker (or other individual) making a disclosure can do so in a manner that ensures that disclosure is protected.

4. Protected Disclosure

As part of the Escalating Concerns process learners may make a protected disclosure. A protected disclosure is a qualifying disclosure that is made by an employee or worker that they reasonably believe shows serious wrongdoing within the workplace. This may relate to patient harm, malpractice or other dangerous or illegal activity. Such a disclosure may be made to the employer or an appropriate regulatory body. Subject to the disclosure satisfying all the relevant statutory requirements under the Employment Rights Act 1996, the individual making the disclosure will be protected by law from any form of detriment or unfair treatment at work, including dismissal, as a result of them having reported past, present or even potential wrongdoing.

For a whistleblowing disclosure to be considered as a protected disclosure, the following requirements must be satisfied:

1. There needs to be a “disclosure” within the meaning of the Act;
2. It must be a “qualifying disclosure”; and
3. It must be made in a manner that accords with the scheme set out in the Act.

To amount to a qualifying disclosure, there must be disclosure of “information”, as ordinarily understood (that is conveying facts). It is not sufficient that the individual has simply made allegations about the wrongdoer or expressed an opinion about something the employer has done. An individual is only protected from detriment or dismissal because of the act of disclosure. A qualifying disclosure includes: a disclosure made after the employment is terminated and a disclosure made by an individual when they were not employed by that employer (such as previous employment).

Disclosures can be made in relation to acts or failures by a third party, other than the employer. It is, therefore, important that there is clarity and transparency of HEE’s role in receiving and acting on disclosures.

5. Routes for Disclosure

5.1 HEE Employees

Employees of HEE can make protected disclosures under the Employment Rights Act 1996. This may be to an employee’s line manager, to Human Resources colleagues, via the FTSUGs or as a whistle blower.

5.2 Learners and educators

We recognise the need for all healthcare learners and educators to be able to raise and then escalate concerns if they feel either their own or patient safety is at risk.

Each organisation will have policies that enable its staff to raise and escalate concerns and HEE would encourage healthcare learners to raise any concerns in this way in the first instance. The following process is advised:

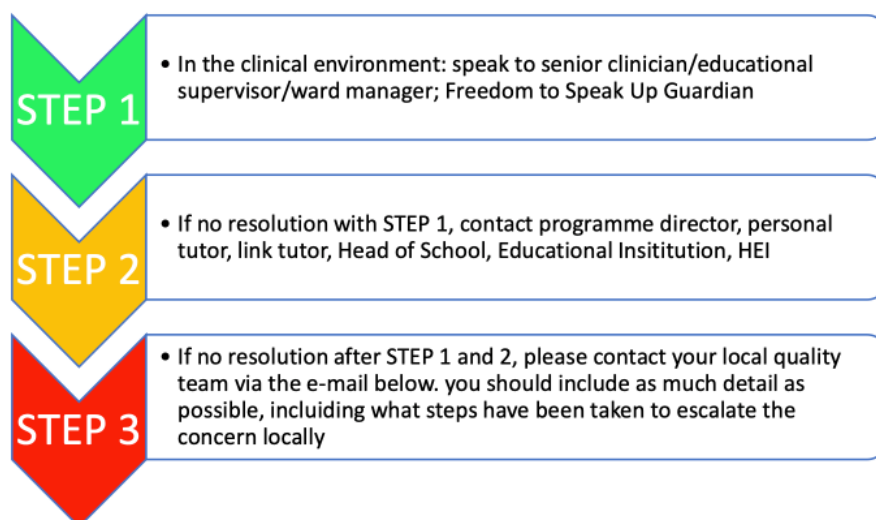


Fig. 1

All learners should be satisfied that they have received an adequate response to their concern from their local office.

This process does not replace Serious Incident Reporting procedure in trusts and local processes should be followed for serious incidents.

5.3 Doctors in HEE training programmes

HEE is a prescribed person for the purposes of whistleblowing legislation. This means that workers (including junior doctors) at other organisations or companies who wish to raise concerns relating to the education, training, and sufficient supply of health care workers at their employing organisation or company can do so directly to HEE. Prescribed persons enable workers to make public interest disclosures to an independent body where the worker would prefer not to disclose to their employer directly and the body may be able to take action on the disclosure.

Educational and clinical supervisors are provider employees not employees of HEE. They should normally direct concerns within the employer’s safety and disclosure pathways but may also wish to make recourse to Steps 2 and 3 as outlined above, where those concerns relate to education, training and sufficient supply of health care workers at their employing organisation.

5.4 Third party disclosure

All workers gain protection from protected disclosures made to HEE so long as the disclosures relate to education, training, and/or the sufficient supply of health care

workers at their employing organisation.

If disclosures are made to HEE by those other than HEE employees or doctors in training, these may be via HEE central contact routes or to HEE staff. Disclosing possible serious wrongdoing or safety concerns takes courage and may be distressing. The recipient of any such disclosure should receive the information compassionately. They should clarify for the individual raising concerns that HEE is not a regulator and cannot conduct independent investigations into separate NHS organisations. HEE can signpost individuals to ensure the concern is received by the relevant body. This can be achieved by facilitating a connection to the relevant FTSUG. For a directory of these please go to the FTSUG website. There should therefore be a 'warm handover' from HEE to the appropriate body supported by the HEE FTSUG. No individual raising concerns should be turned away without safe and effective handover.