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CQC made wrong call on nepotism trust chief, says watchdog

By Ben Clover Health Service Journal 19 December 2018

- Watchdog questions ability of CQC to oversee fit and proper persons rules for boards
- Parliamentary and Health Service Ombudsman investigation said there were “fundamental” mistakes by CQC senior managers in Paula Vasco-Knight case
- The failings of the Care Quality Commission in applying the fit and proper person test to a disgraced trust chief executive were so severe the Parliamentary health watchdog has fears of “systemic injustice”.

A report today by the Parliamentary and Health Service Ombudsman said the CQC’s mistakes in the case of Paula Vasco-Knight were so “fundamental” that it raised the possibility of wider failings and “questions the ability of the CQC to provide robust and appropriate” application of the FPPR rules.

Ms Vasco-Knight was in 2014 heavily criticised by an employment tribunal for the dismissal of two whistleblowers who complained about her helping to appoint her daughter’s boyfriend to a role at Torbay and South Devon Healthcare Trust, which she led.

Despite the criticism, Ms Vasco-Knight was appointed in 2015 as interim chief operating officer at St George’s University Hospitals Foundation Trust in London, and then briefly as its chief executive before being dismissed when separate allegations of fraud were made to police.

The PHSO’s investigation was triggered by one of the Devon whistleblowers who felt it was unfair that they had been excluded

from working in the NHS, while Ms Vasco-Knight had been given a new job at a senior level.

The PHSO found there was a fundamental problem with the fit and proper person rules because the public thought of them as a barring service with a register of individuals, when in fact it merely requires the CQC to assess appointment decisions made by individual NHS bodies.

The rules were introduced in the wake of the Francis Inquiry into the care scandal at Mid Staffordshire Foundation Trust.

The report said the FPPR panel of the CQC – which at the time consisted of chief inspector of hospitals Sir Mike Richards, his deputy Ellen Armistead, and the regulator’s head of governance and legal services Rebecca Lloyd-Jones – made errors in balancing the evidence presented to them on the case.

The PHSO found that the appointing team at St George’s, and subsequently the CQC FPPR panel, had put too much emphasis on the supportive references Ms Vasco-Knight had received from four other NHS chief executives, and her reputation. They had put insufficient weight on an employment tribunal judgement that found she likely would have been guilty of gross misconduct had her trust taken her through that process.

The PHSO report itself does not identify Ms Vasco-Knight, because of its policy about identifying individuals.

One CQC panel member also mistakenly believed a professional regulatory body investigation had found Ms Vasco-Knight, a former nurse, had done nothing wrong – when in fact they had found two issues of concern.

The ombudsman report says the failings indicated “a risk of a systemic injustice as it questions the ability of the CQC to provide robust and appropriate regulation of FPPR”.

HSJ asked the CQC what confidence the public should have in its oversight of the FPPR process given the PHSO’s conclusion. Its chief executive Ian Trenholm said in a statement: “This was a challenging case which provides a clear demonstration of the limitations in the FPPR process, and the difficulties faced by

individual NHS bodies who are required to operate the FPPR system. It also illustrates the challenges for us as their regulator.”

He highlighted that an independent review of FPPR, commissioned by government, was underway, and said the “difficulties” with the regime “have been acknowledged for some time”.

“We hope that the independent review will recommend changes to the regulatory framework that will help strengthen the regulation, increase confidence in the system, and provide NHS staff members, registered providers and the public with a common understanding of the way in which individual directors are regulated, as well as how the FPPR system is expected to work and what it can achieve.”

However, he added: “We do have concerns about the approach adopted by the PHSO which led to some of the findings of maladministration. There was a considerable amount of contradictory evidence for the trust to assess.

“This included an employment tribunal decision, which was not consistent with other pieces of evidence. Under existing FPPR regulation our role is to consider whether the trust acted reasonably in coming to their conclusions about the weight that should be attached to various pieces of evidence, rather than whether we would have reached the same conclusions.

“We judged the trust had performed its obligations reasonably when faced with this difficult situation. We are disappointed that the PHSO came to a different conclusion. We have made these concerns clear in our response to the report.”

Ms Vasco-Knight was given a suspended jail sentence in 2017 for fraud – after her time working at St George’s – following the hiring of her husband’s printing firm for trust business.

PHSO chief executive Rob Behrens said: “This case shows that CQC’s approach to making sure NHS trusts are employing the right people at director level needs reviewing.

“The public and NHS staff must have confidence that NHS leaders are fit and proper to do the job and that whistleblowers will not be

penalised for raising concerns.

“We need fair, transparent and proportionate oversight that stops leaders who have committed serious misconduct from moving around the NHS, and makes them accountable for their actions.”

One of the whistleblowers in Devon, Clare Sardari, subsequently received £230,000 in compensation from an employment tribunal.

In a statement released by the PHSO, Ms Sardari said: “The reprisals against me and the inadequate investigation into my concerns by my former NHS trust and the chief executive were devastating for me and my family. The CQC acted dishonourably by trivialising whistleblower retaliation in its handling of my case.

“Accountability is vital to protect the public interest. The government must ensure that serious reprisal against a whistleblower is a red line in the fit and proper person test for NHS directors, no ifs or buts.”