

Failure of Care Quality Commission to make sure NHS employs ‘fit and proper’ directors

A [Parliamentary and Health Service Ombudsman report](#) published today reveals significant weaknesses in the way the Care Quality Commission (CQC) used the NHS ‘fit and proper’ person test.

The Ombudsman carried out an independent investigation into a whistle-blower’s complaint about the CQC’s oversight of the appointment of a Chief Executive to an NHS trust. Despite being criticised by an Employment Tribunal, the Chief Executive was employed by another NHS trust, while the whistle-blower, Clare Sardari, was unable to return to her job as a result of raising the alarm.

The Employment Tribunal found that the NHS trust prevented Ms Sardari from returning to her job after she raised a genuine concern about the Chief Executive’s misconduct. The Chief Executive also breached the NHS code of conduct for managers as well as the Trust’s recruitment and selection policy. This important evidence was disregarded by the CQC in their assessment of whether the second NHS trust made a reasonable decision about whether the Chief Executive was a ‘fit and proper’ person.

The Ombudsman found that, in this case, the CQC’s record-keeping was poor and it did not adequately weigh up the evidence, instead relying on the Chief Executive’s apology, their references, and a Professional Regulator’s report which did not address the main issue of serious misconduct.

The Ombudsman’s report concluded that the CQC lacked rigour in its regulation of the appointment of NHS directors and had failed to take a transparent and proportionate approach.^[1]

Rob Behrens, the Parliamentary and Health Service Ombudsman, 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 whistle-blowers 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.’

Ms Sardari brought the case to the Ombudsman after the CQC failed to fully consider the Employment Tribunal judgement from 2014, which found she was unfairly penalised due to whistle-blower suppression. She felt the CQC’s application of the Fit and Proper Persons Requirement (FPPR) diminished the seriousness of the Chief Executive’s conduct and sent a strong message that those who victimise whistle-blowers will escape accountability.

Clare Sardari, the whistle-blower, 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 whistle-blower retaliation in its handling of my case.

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

The Ombudsman recommended that the CQC formally apologise to Ms Sardari and offers £500 to her in recognition of the injustice and distress that their actions have caused her.

The Ombudsman has asked the CQC to review the learning from this case and report back on the improvements made to demonstrate rigour in future FPPR considerations.

The ‘Fit and Proper Persons Requirement’ requires NHS providers to ensure that their directors are fit and proper to carry out their duties. One of its aims is to make sure that directors who have committed serious misconduct cannot move around the NHS.

-Ends-

Notes to Editors:

1. The [Parliamentary and Health Service Ombudsman](#) (PHSO) provides an independent and impartial complaint handling service for complaints that have not been resolved by the NHS in England and UK government departments. We look into complaints where someone believes there has been injustice or hardship because an organisation has not acted properly or has given a poor service and not put things right. We share findings from our casework to help Parliament scrutinise public service providers and to help drive improvements in public services and complaint handling.
2. The CQC regulates NHS trusts’ handling of the FPPR and can issue requirement and enforcement notices but is unable to prosecute NHS trusts.