

In Confidence

Dr Sarah Wollaston MP
Chair of the Health and Social Care Select Committee
Cc Sir Bernard Jenkin, Chair of PACAC
Sent by email

17 July 2019

Re: Second PHSO investigation into the Care Quality Commission's (CQC) regulation of the Fit and Proper Persons Requirement (FPPR).

Dear Dr Wollaston,

I am writing to follow up on our letter dated 17 December 2018 about our first investigation into CQC's regulation of FPPR, of which you were the referring MP for the complaint. In that case, we found that evidence was not reasonably weighed up in the CQC's regulation of the FPPR. In addition, the CQC lacked openness and accountability as they did not maintain records as evidence of their decision.

I welcome the steps taken so far to improve the effectiveness of the FPPR including the independent review by Tom Kark QC and the subsequent Health and Social Care Select Committee scrutiny of it. Following our investigations into the regulation of the FPPR, I am keen to see concrete progress in relation to the findings and recommendations of the review.

We have recently completed our second investigation concerning a complaint about the regulation of the FPPR by the CQC. Given your inquiry has now concluded I have not formally laid our investigation report, but I have attached an anonymised copy of the investigation report and provide a brief overview of the main findings below. I have done so to highlight the learning given the interest your committee has taken in these issues and so you can use our findings in any future scrutiny you conduct in this area.

I have partly upheld the complaint. Our investigation found that the CQC failed to follow their procedures when handling the complainant's concerns about the FPPR. In particular, the CQC failed to:

- pass on the complainant's concerns about FPPR to the relevant provider,
- record or explain clearly how they reached their decision that the Trust was compliant with FPPR,
- direct the complainant back to the Trust in order to progress their concerns about the draft investigation report commissioned by the Trust into FPPR.



Millbank Tower
Millbank
London SW1P 4QP

Telephone: 0300 061 4308

Email: Rob.Behrens@ombudsman.org.uk

www.ombudsman.org.uk

I found that the CQC's failure to properly communicate with the complainant resulted in injustice. The complainant was unaware that they would need to raise their concerns about a draft FPPR report directly with the NHS Trust, which meant that the complainant was disadvantaged in taking steps to prevent publication of a report which was critical of them.

The complainant therefore lost the opportunity to attempt to achieve a different outcome and they will never know how successful their attempts may have been. I cannot say if the outcome in this case would have been different if there had been adequate record-keeping, and therefore I cannot fully uphold the complaint. I do, however, make clear in my report that the CQC's poor communication with the complainant caused the complainant significant distress, as well as making them lose confidence in the CQC's ability to regulate the FPPR effectively.

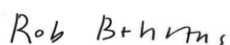
In addition to the provision of a formal apology from the CQC to the complainant for the distress and loss of opportunity caused, I have recommended that the CQC review the learning from this case and report back on the improvements made to their policies and procedures about communication on FPPR. This should include being clear about what individuals and third parties can expect from the CQC when raising concerns. We made no recommendation about record keeping as this was addressed through our earlier report on FPPR from December 2018.

I believe this case exemplifies the damaging impact that poor handling of allegations can have on people's faith in the ability of the CQC to identify and act on misconduct when whistle-blowers come forward. This underlines the need for reform to the FPPR system and the recommendations from the Kark review to be swiftly implemented.

I am copying this letter to Sir Bernard Jenkin, Chair of the Public Administration and Constitutional Affairs Committee, and have written to the Secretary of State for Health and Social Care in similar terms. I will also be placing a copy of this letter and the anonymised report on our website.

I would be more than happy to meet with you if it would be helpful to discuss the report and our work. Please liaise with Maria.Mansfeld@Ombudsman.org.uk if this is of interest.

Kind Regards,



Rob Behrens CBE
Ombudsman and Chair
Parliamentary and Health Service Ombudsman



Millbank Tower
Millbank
London SW1P 4QP

Telephone: 0300 061 4308

Email: Rob.Behrens@ombudsman.org.uk

www.ombudsman.org.uk