Summary: In 2014, an ET found that I had been victimised as a whistleblower by Paula Vasco Knight who was then CE of South Devon NHS Foundation Trust. In December 2018, in response to my complaint about the recycling of Vasco-Knight in 2016 to the position of COO and then CE at St Georges NHS Trust, and CQC’s handling of FPPR matters in relation to these appointments, the PHSO investigated and produced a report finding that the CQC’s consideration of the evidence put before them in this case was incomplete. The PHSO found that relevant considerations were discounted without good reason and irrelevant factors were given weight which amounted to maladministration.


The CQC were subsequently ordered to remedy the injustice caused by the CQC’s maladministration and:

- Apologise to me for their actions
- Offer me £500 in recognition of the injustice
- Review their learning from this case and report back about improvements they have made to demonstrate rigour in their FPPR considerations in future.

My reason for submitting this evidence is to share some aspects of my experience from the perspective of a complainant of the FPPR process as administered by the CQC, which was omitted from the Kark report. Apart from acknowledging that a few whistleblowers contributed their time and experience to Tom Kark, there is no specific mention in the report, of the impact and effects of their involvement in challenging FPPR. I believe this to be a serious omission.

1. As explained above, I have lived experience of being a NHS whistleblower whose experience of detriment was found under PIDA at ET. As a result of this experience I have directly faced all the negative side-effects of whistleblowing which sadly, I believe will follow me through to the end of my life.

2. I have watched the nemeses of my whistleblowing be recycled and welcomed back into the bosom of the NHS family and in the case of Vasco-Knight it was only her subsequent fraud that ended her NHS employment. The other person, Adrienne Murphy, who shared in ruining my life alongside Vasco-Knight has made her recycling work for her, safe in the knowledge that despite a challenge to Cornwall Partnership Trust on her appointment as Director of OD and HR, a referral to the CQC re FPPR was also thrown out.
3. I am disappointed that having met Tom Kark QC on two separate occasions in order to contribute to the FPPR report, that there is no mention whatsoever of the PHSO report on FPPR in the Kark Review document. I believe that Rob Behrens and/or his team members met Tom Kark to discuss the fit and proper persons process and as the PHSO Report was published on 19 December 2018, there was plenty of time to include it and to cross reference the issues raised by the PHSO. This was the first investigation of its kind by the PHSO and it directly related to the terms of reference of the Kark Review.

4. In my introductory comments above, I listed the remedies ordered by the PHSO to the CQC for the injustice I experienced. Below, I have cut and paste the ‘apology’ letter I received from Professor Edward Baker – Chief Inspector of Hospitals. I was most disappointed and distressed by the tokenistic and very grudging apology given to me by Ted Baker on behalf of the CQC. It was the height of condescension and certainly did not reassure me that the CQC meant to learn anything from this process. I am in complete agreement with the Ombudsman’s Principles of Good Administration but cannot identify the part in Professor Baker’s letter which adheres to the general principle of ‘Putting things right...’ What he does successfully is he puts the words in the right order but there is no sincerity, thus he is not putting things right! He is doing the bare minimum that has been asked of him and he makes that very clear.

Dear Ms Sardari,

14 December 2018

I write further to the Parliamentary and Health Service Ombudsman (PHSO) investigation of your complaint regarding the Care Quality Commission’s (CQC) application of the Fit and Proper Persons Requirement (FPPR) in relation to the appointment of a Chief Executive to Trust P in 2016. I understand that a copy of the final PHSO report has been shared you.

The PHSO has partially upheld your complaint overall and set out a number of recommendations for CQC.

We are sympathetic to your experience, and are sorry for the frustration and distress caused to you through CQC’s application of the FPPR process. In recognition of this, the PHSO has asked us to offer you a consolatory payment of £500. Please can you email your relevant bank details including the sort code and bank account details to Alexandra.Gakopoulou@cqc.org.uk, upon receipt we will make arrangements to make a BACS transfer to you.

In respect of the final recommendation outlined by the PHSO, CQC will undertake a review on how to make improvement to the current FPPR process and will update the PHSO in due course.

Yours sincerely,
5. As a result of the ‘apology’ letter I decided to complain to Peter Wyman – see below:

Dear Mr Wyman,

Complaint about Ian Trenholm’s actions in response to PHSO report on the Paula Vasco-knight FPPR

It is with regret that I would like to make a complaint about the actions of Ian Trenholm, CEO of CQC.

His press release statement following the publishing of the PHSO’s Blowing the Whistle: an investigation into the Care Quality Commission’s regulation of the Fit and Proper Persons Requirement, is insulting, distressing and patronising. He does not accept responsibility for CQC’s errors and he continues to promote the strong message that those who victimise whistleblowers should escape accountability.

I don’t want him to recognise that CQC did not meet my expectations, I want him to recognise that accountability is vital in protecting the public interest.

My complaint also lies with his and CQC’s ability to determine the importance and weighting of evidence. It is not a question of numbers of pieces of evidence it is about the weight of each individual piece. The ET decision was the weightiest piece of evidence in this assessment of FPPR, because, in law, it evidenced several aspects of discrimination and reprisal against me.

The fact is that neither St Georges nor CQC acted reasonably in coming to any of their conclusions, and such governance failure is putting Trusts, their staff and patients at serious risk of harm.

I am seriously concerned that Mr Ian Trenholm’s press statement and comments in the Health Service Journal today contradicted and totally undermined the apology that I received from the CQC via Prof Ted Baker CQC Chief Inspector of Hospitals.

I had been disappointed by the limited concessions made in Prof Baker’s letter of ‘apology’. I was amazed and very distressed when even that was effectively taken away by Mr Trenholm’s defiant comments and denials that CQC had erred.

It makes a farce out of the PHSO process, which itself has been prolonged and stressful for me, and forced me to re-live unpleasant experiences.
Mr Trenholm’s actions disrespected me and they disrespected the basic principles of justice which underlie the PHSO process.

He should not have cocked a snoot at a long, significant investigation nor brushed aside my concerns about injustice in such a manner. To me, that is just more maladministration.

Rather, he should be reflecting much more seriously on how CQC got it so wrong.

Justice demands that such frailties having been exposed in CQC’s processes, the regulator should now ensure that there is meaningful review of all the FPPR referrals that CQC has rejected.

The likelihood is that CQC has allowed unfit directors to continue working in the NHS, and this is a serious patient safety and Safeguarding issue.

I await your earliest response.

Yours sincerely,

Clare

Clare Sardari

Cc Matt Hancock Secretary of State

**Ian Trenholm’s press release:**

“We recognise that the handling of this case – both by CQC and by wider NHS organisations – did not meet Ms Sardari’s expectations of how the Fit Proper Persons Requirement (FPPR) should operate, and acknowledge her frustration and distress. We take the treatment of whistleblowers very seriously and are wholly committed to the Speak Up agenda.

“This was a challenging case which clearly demonstrates the difficulties faced by NHS bodies who are required to operate the FPPR system and for CQC operating under the current regulatory framework. The current framework needs reform if it is to meet the needs of people, providers and regulators.

“Those difficulties have been acknowledged for some time and they are the subject of an independent Review by Tom Kark QC, who is due to report to the Department of Health and Social Care shortly.

“We do have concerns about the approach adopted by the Parliamentary and Health Service Ombudsman (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.”

6. Please find below a copy of the reply I received from Peter Wyman:

January 2019

Ms Sardar

I am writing in response to your email of 19 December 2018.

I fully acknowledge and accept that this has been a distressing experience for
you. In light of your concerns regarding our approach towards whistleblowers, let
me start by saying that we welcome information from whistleblowers and take
their treatment seriously.

We place great importance on the Speak Up Agenda and support the National
Guardian’s Office in its work. Our current guidance sets out how we work with,
and support, whistleblowers under the Public Interest Disclosure Act 1998. Our
latest annual report provides details of the whistleblowing enquiries (pages 28-
29), which we have received in recent years and how we have used that
information. Our report can be found at

Turning to the Parliamentary and Health Service Ombudsman’s (PHSO)
investigation, we participated fully in this, providing support and assistance to the
PHSO investigators, and Professor Edward Baker has written to you to offer an
apology, in line with the recommendations in the PHSO’s final report.

We do have concerns with aspects of how the PHSO conducted its investigation
and we have raised these with the PHSO directly and it is right that we were
open about our concerns in our response to the report. These concerns do not
mean that your own experience has not been taken seriously, and our
expression of them was not intended to be disrespectful to you.

The Kark Review of Fit and Proper Person Requirement (FPPR) referrals,
established by the Department of Health and Social Care, is due to report shortly
and we hope its ultimate outcome will be an improved system for the regulation
of NHS Directors, which meets the expectations of NHS staff, providers and the
public.
7. The third and final recommendation the PHSO report made was that the CQC:

- Review their learning from this case and report back about improvements they have made to demonstrate rigour in their FPPR considerations in future.

From this statement, I was under the impression that I would receive details of CQC’s learning and improvements. I have asked for this information from the PHSO but have yet to receive a final response. Apparently, this information is not generally provided as a matter of course to the complainant. I find this obscure as the main reason for complaining is to bring about change. I also need to see the evidence that the changes have actually occurred or will be made.

8. Finally, I am aware that the Kark report was reviewed by a range of bodies and individuals prior to publication, but not one of the whistleblowers who contributed were afforded the same opportunity to review and comment on the contents. I am regularly advised that as a whistleblower my views, information, concerns, experiences etc are valued and respected (see communications above) but still the disrespect, and disregard continues and remains a consistent part in the way that power responds to me – a much harmed whistleblower that the system purports to want to protect!