



COMMENT

Grim diagnosis for doctors in court

Independent scrutiny panels needed to prevent unfair proceedings

Arun Bakshi, Parag Singhal | Thursday March 24 2022, 12.01am, The Times

No doctor wants to take a hospital to court. But some are forced to challenge adverse treatment -- often in the wake of biased and discriminatory disciplinary proceedings or after blowing the whistle over poor practice and patient safety.

For those brave enough to take on NHS hospital trusts and their teams of taxpayer-funded lawyers before an employment tribunal, the odds are stacked against them.

When employment tribunals were first set up they were intended to be a speedy, informal and inexpensive way of resolving disputes. They were intended to be simple enough that legal representation was not required.



Dr Chris Day, with wife Melissa, outside the High Court where he claimed his career was “wrecked by lack of protection for whistleblowers”

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But the complexity of the law, the fact that defendant hospitals are represented by expensive lawyers, who employ tactics to prolong and complicate cases, means that doctors who do not have legal representation are at a huge disadvantage.

To protect themselves against the consequences of disciplinary investigations, doctors pay increasingly high annual fees to trade unions and medical defence societies – which are akin to insurance policies. Often, this support is not available.

The widely reported case of Dr Chris Day, a junior doctor, who raised concerns about understaffing and safety in the intensive care unit at a London hospital, demonstrates the iniquitous position.

After blowing the whistle, he went to an employment tribunal to argue that his concerns had not been treated seriously and that he had suffered a detriment, including loss of earning, as a result of raising them.

The doctor was forced to settle his eight-year battle after being priced out of justice. His case was beset by disclosure failures, financial threats and other actions by the trust's lawyers, who racked up almost £1 million in costs.

Raising his case in parliament in 2019, the Liberal MP Norman Lamb said: "The NHS spent £700,000 of public money on defending the claim and, in large part, on attempting to deny protection to junior doctors who blow the whistle..."

Contrary to their initial design, employment tribunals are neither speedy nor inexpensive and do not provide justice to many who appear before them.

When doctors represent themselves they are often criticised by judges for inadequate preparation. But lawyers would not be expected to carry out their own medical procedures, so why should doctors be expected to present their own cases?

In the interest of fairness and justice, there should be a cap on the amount of money that hospital trusts can spend to defend themselves, and doctors should have their reasonable legal expenses paid from the same source of funds.

To prevent the unfair proceedings against doctors that often lead to employment tribunals, the government should create independent scrutiny panels at NHS trusts.

Management would have to seek permission from a panel of elected senior doctors, nurses and non-executive trust board members before any formal investigatory process.

Dr Arun Baksi is an emeritus consultant physician on the Isle of Wight and Prof Parag Singhal is a consultant endocrinologist in Weston-super-Mare