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Dame Jennifer Eady,
President Employment Appeal Tribunal

Dear Judge Eady

EA 2022 001347 and 2023 000545 NLD Dr C Day v Lewisham and Greenwich NHS Trust

I write to you as a doctor 10 years into whistleblowing litigation now on my third appeal to the EAT.

The decision of the EAT in first my appeal in 2015 ended up undermining whistleblowing protection for the nation's 54,000 doctors below consultant grade.[1] This was mainly as a result of the ET, then EAT being badly misled factually by NHS lawyers on how junior doctors are employed. However, the EAT also took an irrational and illogical interpretation of Section 43K of the Employment Rights Act (ERA) that wasn't even submitted in the ET by my opponents. This was robustly criticised in the Court of Appeal. The earlier flawed EAT interpretation of ERA s43k in my case was also completely at odds with the clear guidance on ERA s43k you gave in Keppel Seghers v Hinds in the EAT in 2014. The havoc the 2015 EAT appeal in my case has caused in the NHS has been considerable. It also wasted public money and caused a 4 year delay to my case being heard. It fell to me to litigate to correct the law whilst being threatened for costs. I have asked the EAT to put before you my recent update on my wasted cost application proceedings in both the EAT and ET which will add context to this letter.

It may come as no surprise that I and large numbers of doctors feel deeply let down by the way the EAT has handled my case over the last 10 years. I believe its decisions have not been logical and have ignored evidence, pleadings and important appeal points. I believe the most likely explanation for this is the EAT's failure to manage properly the conflicts of interests and human factors that have come into play when Judges have dealt with certain issues in my case affecting their legal colleagues.

The main purpose of me writing to you, is to formally put to the President of the Employment Appeal Tribunal my most recent example of the pattern set out above. This is a series of orders made by Deputy High Court Judge Andrew Burns when dealing with the above appeals and a Rule 33 Application. The destruction, concealment and ignoring of large amounts of evidence at the June 2022 ET hearing of my case and the obstruction of 2 of our proposed cross examinations was widely reported and shocked people. Many were expecting these obvious issues to be dealt with decisively by the appeal tribunal. Instead, I have had to get into an argument with the EAT about whether such extraordinary conduct is enough for me to advance procedural unfairness as a ground of appeal or

[1] See email from Claimant to EAT dated 25 March 2024 at 1016am updating on the progress of the ET wasted cost application (following request from EAT Registrar). In particular see the words of Justin Madders MP in paragraph 2 and the GMC paragraph 3 of the Claimant' skeleton argument for 21 March 2024 'Day v HD C Skeleton PH 30/1/24'. This email was marked for the attention of the President.

whether there is a need for a finding on deliberate concealment (which are arguments I have apparently lost outside of a main appeal hearing for no clear reasons see Rule 33 Application).

I am supporting the work of an All Party Parliamentary Group on whistleblowing. This APPG is seeking a new law and system for dealing with whistleblowing cases in this country. I plan to use my case and in particular this letter and your response to it to assist in this work.

Attached is a briefing that I have used for MPs and my 5,000 crowdfunders about Judge Burns' recent orders which is structured as 5 issues.

Issue 1,3 and 4 are straightforward appeal points that have just been removed from my appeal whilst the substance of the points have either been ignored or re-invented to unarguable points. Issue 5 describes a potentially significant conflict of interest in so far as it shows the EAT Judge dealing with my case, at the time of making decisions on my appeal, had social media connections to 3 lawyers to which the pleaded position in my whistleblowing case makes serious allegations against.[2]

I have effectively been told by Judge Burns in his recent order that Issues 1-4 are hopeless points from a Litigant in Person but that is not right. 3 of the issues are the same appeal points that were brought on my behalf by leading counsel Andrew Allen KC with support from the British Medical Association. They cannot be sensibly dismissed as hopeless points from a Litigant in Person. Issue 5 is a serious point about conflict of interests and issue 2 concerns a significant misunderstanding that Judge Burns accepts he made but then refuses to consider my points about its effect on his decision.

Please can I ask you to consider the attached briefing and whether Issues 1-5 require you on my request or of your own accord to instigate your own Rule 33 Review or any other action.

I am seriously considering whether I can proceed with an appeal in this court whilst the EAT refuses to answer the above points. I am not asking the EAT to agree with me on every point but just for clear explanation on why issues 1-5 are points that can be reasonably described as hopeless and unarguable. I do not think that is too much to ask given the issues at stake in this case.

It seems to me that NHS whistleblowing cases and the current law leaves Judges (as well as Claimants) in very difficult situations. For example, the EAT could not have meant in 2015 to remove the careers of 54,000 junior doctors from whistleblowing protection. With this in mind, I would appreciate clarity on your position on the 5 issues in the enclosure so I can be sure misunderstanding is not the reason for where we find ourselves.

Yours sincerely,

Dr Chris Day

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[2] Mr Donavan KC, the Head of Chambers of my former barrister Chris Milsom commented, "*the Settlement Allegations raised issues of professional conduct and/or professional negligence*" that were *"too serious"* to be handled under an internal chambers complaint policy. **[see paragraph 186 Page 71 Rule 33 Application bundle]**