

Arpita Dutt's success for Whistleblowing Surgeon who wins his Unfair Dismissal and Disability Discrimination Claim

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Claim

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An employment tribunal has ruled that a respected surgeon was unfairly dismissed after whistleblowing on poor standards of care at a hospital. The case has been reported in The Sunday Times, The Independent, Health Service Journal and Hospital Doctor. Arpita Dutt and her client, Mr Weerasinghe were also featured on BBC London News on 14 July 2014.

Arjuna Weerasinghe is now in the process of preparing for a further hearing to determine compensation after winning his claim against Basildon and Thurrock University Hospitals NHS Foundation Trust (BTUHT).

BTUHT was one of 25 Trusts highlighted by the Care Quality Commission (CQC) as requiring urgent investigation over high mortality rates in 2010. It has recently come out of 'special measures'.

Mr Weerasinghe, a cardiothoracic surgeon raised concerns in 2010 over poor patient care and filthy operating theatre conditions at Basildon Hospital in Essex.

The matter came to a head when vital theatre equipment was unavailable when he performed an operation on a patient who

subsequently died three days later. Mr Weerasinghe reported the incident and subsequently wrote a detailed report for the Coroner however, in breach of National Patient Safety Association Guidelines, the death was never reported by the Trust as a serious untoward incident (SUI).

It then took BTUHT 14 months to respond to a Coroner's request for information about the case and its initial investigation internal report was altered to remove a sentence exonerating Mr Weerasinghe from any blame. The tribunal found that the altered report sent to the Coroner played down the patient incident.

The original author had also been asked by a senior manager to provide "a 'quick and dirty' response" which the tribunal said was a request to "get rid of the matter quickly and quietly" and was motivated by the Trust being "concerned about ... potential exposure to litigation". The tribunal determined that BTUHT continued to be primarily concerned about criticism of the hospital if it were found that faulty or inadequate equipment had possibly contributed to the patient's death.

Mr Weerasinghe went on sick leave due to a chronic chest condition brought on by pneumonia, which was believed to have been contracted in a dirty operating theatre at the hospital. During his sick leave, without any financial gain or loss to BTUHT, he attended CPD courses and a job interview in Cork. None of these matters were found to be against BTUHT policy. Mr Weerasinghe was dismissed in November 2012 after a protracted disciplinary process.

BTUHT were unable to establish that the decision to subject Mr Weerasinghe to a disciplinary investigation was on grounds of genuine concern about his conduct. The tribunal found that his whistleblowing disclosures about the patient incident were a material influence in the decisions to subject him to a disciplinary investigation from November 2011 onwards and also requiring him to attend a disciplinary hearing in November 2012. The tribunal found that he had been subjected to the entire disciplinary process because he had raised whistleblowing concerns.

The tribunal heard the dismissing manager, who was also a fellow Trust Consultant, had refused to read a three page report from Mr Weerasinghe's GP prior to the disciplinary hearing, arguing it would have taken 30 minutes to do so.

This was rejected by the tribunal as "so illogical as to lack any credibility" and it was added that the dismissing manager's evidence had "changed regularly and in many cases was simply not credible". The dismissal was found to be unjustifiable discrimination arising from Mr Weerasinghe's ill health.

Mr Weerasinghe said: "I believe my public interest disclosures regarding the unavailability of appropriate equipment and material in this case were a major influence in the decision to investigate and then dismiss me.

It has been a very difficult time for me and my family. The extreme efforts made by senior individuals at Basildon Hospital over the past four years have worked towards tarnishing my credibility, reputation and professional career and have had crippling effects."

Arpita Dutt, Partner added: "The judgment exposes a catalogue of failures by senior individuals in this Trust. In my opinion, it also exposes a lack of credibility, arrogance and manipulation of processes that have led to unanswered questions around the death of a patient and the loss of a 20 year career for a dedicated surgeon who was seeking to protect patients and carry out his job to the best of his abilities. It is the worst dismissal I have seen in 17 years".

Mr Weerasinghe was represented by barrister, Lydia Seymour of Outer Temple Chambers.

To read more about the case see:

[The Independent](#)

[The Sunday Times](#)

[Hospital Doctor](#)

To read more about progress towards further protection for whistleblowers click [here](#) and [here](#).

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