IN THE WATFORD EMPLOYMENT TRIBUNAL

Case No: 3307960/2023 & Ors.

BETWEEN:

PROFESSOR NEIL WYN EVANS

Claimant

and

(1) THE CHANCELLOR MASTERS AND SCHOLARS OF THE UNIVERSITY OF CAMBRIDGE
(2) PROFESSOR RICHARD McMAHON
(3) EMMA RAMPTON
(4) PROFESSOR DEBORAH PRENTICE

Respondents

CLAIMANT'S CLOSING: PART B

WHISTLEBLOWING DETRIMENT

To assist the ET in its deliberations, these submissions quote from the key documents and witness evidence. References to quotes from witness oral evidence are expressly not verbatim, but reflect the gist of the evidence provided.

1. On the premise that C is found to have made one or more disclosures qualifying for protection, pursuant to s. 48(2) ERA 1996 it is for the employer to show the ground on which any act, or deliberate failure to act was done. Therefore, it is for the Respondents to establish (not C) that each alleged detriment was not on the grounds that he had made any protected disclosure(s): see Opening paras. 28 - 29. It is necessary to consider whether the protected disclosure(s) had a material influence (in the sense of being more than a trivial influence) on the employer's treatment of C: ***Fecitt v NHS Manchester (Public Concern at Work intervening)*** [2012] ICR 372, per Elias LJ (at [45]).

The Institutional mindset towards C

2. In an appropriate case, it is relevant to consider the institutional mindset towards a whistleblower which may shed light on the detriments: see the analysis of Kerr J in

First Great Western Ltd v Moussa [2024] IRLR 697 where the ET upheld the claim of whistleblowing detriment under s 47B, holding that M had been subjected to a detriment by the employer. Its conclusion was that (at [41]):

> 72. In relation to the first respondent, we find that there is a "collective memory" within the first respondent, which is prejudicial to the claimant and which has permeated the approach of HR (in particular Klaudia Czechowicz) and, in turn, those advised by HR… there is a general negative view of the claimant within the management "lore", which we find is connected with the history of the claimant's employment with the respondent …
>
> 77. … we find that the [employer] did subject the claimant to detriments on the grounds of the protected disclosures and protected acts. We do not suggest that there was a conspiracy among the protagonists but we find that the myriad examples of unfairness and less favourable treatment cannot simply be explained by a string of unfortunate errors. In our view, they show the existence of an underlying negative attitude towards the claimant shared and understood by management… including in particular Klaudia Czechowicz [an HR representative].

3. Kerr J found that the ET had provided sufficient reasons in that regard, referring to the institutional mindset at [103](g),[119] – [120], and at [122] described it as "an organisational culture case".

4. That analysis resonates here, manifested as "institutional group-think". The institutional enmity towards C is evident from the various challenges to C's credibility during cross-examination (for the avoidance of <u>any</u> doubt, it is not suggested that the case was improperly put, but rather reflects the intense institutional dislike of C).

5. In the alternative, C relies upon the motivation of each individual decision maker or person responsible for each detriment.

6. The group-think analysis has particular salience here in light of the rather surprising evidence given by a number of the University's witnesses as to who drafted each of the correspondence and outcome letters to C. The evidence consistently confirmed that these were either drafted by HR and/or Legal.

   (1) Ms Rampton confirmed that others were responsible for producing first draft decision letters (although she checked them).

   (2) Dr Glover accepted that all correspondence sent to C was "likely" to have been drafted by someone else, including his decision letters.

   (3) Prof Prentice also confirmed that all correspondence was drafted by either HR or Legal (evidence in chief).

   (4) Ms Akroyd's evidence was clearer still. At w/s 28 she explained:

> Further delays are attributed to the level of input required from various members of the University when drafting correspondence. Any correspondence from the senior members of the University, for example, the Academic Secretary, the Registrary or Vice-Chancellor, would not be drafted by themselves in isolation, and would instead be drafted with input from HR, and sometimes Legal Services as well. This is standard practice. In all, this means that multiple members of HR, Legal Services, and the direct recipient were required to consider the correspondence, draft replies, and consider next steps…

(5) There is a good example of Ms Akroyd drafting an outcome letter for Prof Munir in relation to an appeal submitted by Prof Gilmore (at **[9094](8 pdf 235)**(bottom email). Ms Akroyd confirmed that this was "fairly typical" and more or less standard practice.

7. The ET has not seen the various draft iterations of the decisions which feature in these proceedings. The opacity of the decision-making process also gives rise to another concern. As demonstrated in the questions put to Prof Prentice, it is not possible to ascertain whether the person who drafted the various decisions appealed against also drafted the responses sent out in the Vice Chancellor's name. That of course would be manifestly inappropriate, but the ET cannot be satisfied that this never happened.

8. It is of course accepted that it is often appropriate for HR to provide advice and assistance in drafting correspondence. However, the University's *modus operandi* goes much further than this. The evidence demonstrates that a small group of personnel were responsible for determining the outcomes of the various decisions which feature in these proceedings. They provided the first draft outcome letters (in some instances with in-house legal advice), and guided or steered the desired outcome in respect of each decision.

9. In that regard, there is a fundamental distinction between a Responsible Person meeting with HR or Legal and explaining their decision and basis for it, and then for HR to draft up the decision for approval (which is largely permissible), *versus* HR providing the first draft outcome (without prior discussion) and providing a steer for adoption. This approach does call into question *who* is the decision-maker? Is it notionally the person who signs off the letter, or the author, or both?

10. The practice adopted by the University ill-accords with best modern HR practice and, leaves it open to criticism that the independence of the Responsible Person has been (or may have been) compromised.

11. It is also clear that whoever drafted the correspondence was driven by a cultural imperative to protect the reputation of the University at all costs and to minimise any scope for criticism (addressed further below).

12. This institutional imperative to protect the University is reflected in some of the evidence given in these proceedings. By way of example:

(1) Prof Peake's evidence in relation to the End of Contract process: at w/s para. 12 Prof Peake describes the EoC letter sent to Dr Pebody on 22 June 2021 as a "routine letter" (EoC **[1274](2 pdf 432)**). That evidence was intentionally partial, and if not probed, would be prone to mislead. See the exchange between Prof Peake and Ms Akroyd on 24 June 2021 where Prof Peake states that the EoC had "come as a surprise to me", Ms Akroyd expressing concern that she had "no idea why" it was sent when funding was available, and Prof Peake emphatically commenting that it was "absolutely inexplicable!" **[1281] (2 pdf 439)**.

(2) Prof Peake was asked a series of questions as to why he omitted to mention these documents in his w/s, suggesting that he was seeking to protect the Institution and minimise the potential for criticism. He was unable to provide an adequate answer as to why he gave a partial (and misleading account): (gist) "I have not got an explanation other than I missed it. It was not deliberate".

(3) Prof Peake's account of his meeting with the Deputy Directors on 26 July 2021 is a matter of concern. This was an important meeting where serious issues were discussed. Yet at w/s para. 23 Prof Peake provides no detail as to what was discussed at this important meeting. The only point of detail referred to is a suggestion that the Deputy Directors expressed concerns about the "atmosphere" in the Department and that pressure was being applied to Prof McMahon. This is far from a balanced account of the meeting. The likely explanation for Prof Peake's minimalist account is a desire to avoid mentioning anything critical of Prof McMahon.

(4) Prof Ferran had to be asked 4 times to confirm that at the time she made her decision there was no evidence as to what allegations in the Delays Document were false or unsubstantiated or why. In circumstances where Prof McMahon had not provided this basic information to JSJ, the answer should have been obvious, yet Prof Ferran was reluctant to give an answer which may be perceived to be adverse to the University's defence.

(5) Another clear example is the evidence of both Ms Rampton and Prof Ferran in relation to C's email dated 27 July 2021 **[1788](2 pdf 944)**. This was an email where it was clear that (i) C had reported concerns to Prof Peake; (ii) the only "matter" of substance referred to in the email was C's assertion that Prof McMahon's treatment of Dr Pebody had been "exceptionally cruel"; and (iii) the last sentence refers to an investigation. Both witnesses demonstrated a marked reluctance to even countenance the possibility that the email *could* be interpreted as informing Prof McMahon that there was likely to be an investigation into his treatment of Dr Pebody.

(6) Prof McMahon's evidence in relation to **[1788]** also lacked credibility. He sought to (i) deflect by reference to the formatting of the email; (ii) suggested that it did not make any sense to him; and (iii) suggested that it was an unimportant email. Yet, he devoted 9 lines to this in his witness statement (presumably because it was

important) and even refers to the last line of that email in his witness statement referencing an investigation (w/s para. 19). He makes no reference to having any difficulty understanding it.

Structure of Submissions

13. It is appropriate to address each of the Detriments in a different order as they appear in the List of Issues, addressing them either in chronological or thematic sequence.

4.3 Detriment 3 – R2 submitting the 29 July 2021 complaint against C.

14. This allegation falls to be considered in its proper context. C relies upon a number of "building blocks" in advancing his case:

    (1) Prof McMahon's unhealthy focus on Prof Gilmore and Dr Pebody (and his persistent attempts to undermine them and interfere with their grants without their knowledge).

    (2) Prof McMahon's propensity to engage in retaliatory conduct as demonstrated by his response to the conclusion of the Whiting Investigation.

    (3) Against that backdrop, the evidence of Professors Reynolds and Challinor overwhelmingly demonstrates that Prof McMahon was informed that C had complained about him, and that he had a fair idea of what complaints were raised. Not only had Prof McMahon seen the "Delays Document", but the contemporaneous documentation suggests that he was informed of other complaints of alleged bullying behaviour.

    (4) Less than 48 hours before he submitted his grievance, Prof McMahon was aware that there was likely to be an investigation into his "exceptionally cruel" treatment of Dr Pebody: see C's email dated 27 July 2021 **[1778] (2 pdf 944)**.

    (5) The nature and content of the grievance makes a concerted effort to invert the true situation – he attacked C in order to deflect criticism away from him. This raises the rhetorical question: why would he do this? It only makes sense if he was aware that C (and Prof Haehnelt) had accused him of mistreating Dr Pebody and occasioning harm to her health.

    (6) The fact that Prof McMahon (even now, more than 5 years later) is still unable to provide evidence of what aspects of the Delays Document were "false" or "unsubstantiated" attests to the fact that the submission of the grievance was retaliatory.

Evidence of Prof McMahon's unhealthy fixation on Prof Gilmore and Dr Pebody

15. Although there is evidence of strained working relationships between Profs McMahon and Gilmore, there is also clear evidence of Prof McMahon's obsessive focus on both Prof Gilmore and Dr Pebody.

16. Prof McMahon engaged in intrusive surveillance of them both during the pandemic. He inappropriately used the University wireless access logs (which were only to be used to provide IT support and troubleshooting assistance) for an altogether different and sinister purpose, namely, to covertly monitor their whereabouts **[9691](8 pdf 832)**. It is beside the point that the surveillance did not identify any misconduct, it demonstrates that he was fixated with them. Prof Peake readily agreed that his actions in this regard were "inappropriate".

17. There is an abundance of evidence that he also sought to interfere with Prof Gilmore's grants, with the presumed purpose of undermining him in relation to grants where he was named Principal Investigator. A few (of numerous other) examples include:

    (1) On 7 June 2021 Prof McMahon told C that **[1185](2 pdf 348)**: "And OPTICON I want to zero out [emphatically]. Because, you know OK. It is not a research project. It is an administration project ... And I really …. let me just explain … Gudrun's ….if Gudrun is not careful, there will be a disciplinary". The reference to "zero out" conveyed an intention to delete or eliminate the grant altogether. Indeed, it is in that context that Prof McMahon used the identical phrase in the meeting with the Deputy Directors on 27 June 2021 where he referred to "… declining ("zeroing out") the other parts of the grant … on the basis that it is of no scientific benefit to the Institute" **[9766](8 pdf 907)**.

    (2) 30 June 2021 Prof Peake and the Deputy Directors had agreed that Prof Gilmore would continue as Principal Investigator on the CU9 grant. Prof McMahon contacted the research coordinator to force through a change to Dr Walton (without any consultation)**[1310](2 pdf 466)** (unredacted email at **[9017](8 pdf 158)**.

    (3) 11 July 2021 Prof McMahon's email to Prof Cuby (ORP research coordinator) about a "sensitive and confidential topic". The explanation that he had been asked by the University to review the grant on the basis that it did not believe it could meet the commitments is inaccurate. However, the request "Please do not contact Gerry Gilmore or Gudrun Pebody about this topic" puts beyond doubt that this was interference, and done without any consultation **[1432](2 pdf 590)**.

Response to the Whiting investigation

18. The clearest evidence of Prof McMahon's propensity to engage in retaliatory behaviour is demonstrated by his reaction to the Whiting Investigation. It is unnecessary to get into the "weeds" of the Whiting investigation which exculpated Prof McMahon. However, the outcome does reveal his propensity to seek reprisal against anyone who sleights him.

19. Materially, Prof Peake was aware that Dr Pebody feared reprisals: see meeting dated 6 April 2021 **[1050](2 pdf 205)**. At **[1055]** (paras. 28 – 29) Dr Pebody told Prof Peake that she feared reprisals for having raised concerns about Prof McMahon. Dr Pebody had good reason to do so.

20. Prof Peake provided the outcome on 1 June 2021 (this is proximate to the submission of Prof McMahon's grievance on 29 July 2021) **[1147](2 pdf page 302)**. Materially:

    (1) Prof McMahon made demands of Prof Peake, "That Professor Gilmore be suspended from his role as Chair of the Faculty Board" **[1149]** (para. 1). Prof Peake confirmed in oral evidence that Prof McMahon had not raised concerns about Prof Gilmore relating to the alleged falsification of minutes at any point prior to Prof Gilmore submitting a complaint.

    (2) In relation to Dr Pebody **[1149 – 50]**:

> That Dr Pebody be **suspended** from the 10% work that she currently does in the Department You stated that you would like Dr Pebody to be suspended from the work she currently does and that in your view, to continue would mean a serious risk to the Departmental Administrator and others Dr Pebody works with. **You felt that something visible must be done as she had undermined your position as Head of Department to a number of colleagues**.

    (3) Prof Peake was asked a number of times in cross-examination whether he considered that Prof McMahon was seeking retribution. Although he professed not to know what was in Prof McMahon's mind, or suggested that he could not remember, it is obvious that he did believe that Prof McMahon was seeking retribution by reference to the next paragraph of the letter.

> As discussed, it is important that those who have a right to make a complaint are not punished as a consequence of doing so, provided that there is scope to act if found that a complaint was vexatious or malicious…

    That paragraph makes little sense otherwise.

    (4) Prof Peake did however accept that the "potential for retaliation" was clearly on his "radar" as at 1 June 2021. Prof Peake's response to this question was "that's fair".

    This is clear evidence of Prof McMahon seeking retribution. This is probative evidence as to why Prof McMahon later submitted a grievance against C.

Other evidence of retaliatory conduct

21. There is other evidence to suggest that Prof McMahon was targeting Dr Pebody. By way of illustration:

    (1) Within a week of receiving the outcome of the Whiting investigation, on 7 June 2021 Prof McMahon criticised Dr Pebody **[1147](2 pdf 304)**. He described her grant work as "not great" and was at the level of a Grade 5 employee, rather than Grade 7 **[1183]**, her behaviour as "unacceptable" **[1184]**, raised doubts as to whether she should be a Grade 7 **[1184]**, labelled her a bully, warned she could face disciplinary action **[1185]**. He also undermined her Opticon work, dismissing it as "administrative" rather than research **[1185]**. He also queried her job description and raised doubts about her Grade **[1187]**.

    (2) Although Prof McMahon may not be responsible for issuing the End of Contract letter to Dr Pebody, he insisted that she remain at risk of redundancy in circumstances where the Department Administrator confirmed that funding was "certain": see **[1276](2 pdf 434)**(top email). The Departmental Administrator stated on 25 June: "I would like to ask for my mental wellbeing and conscience to be removed from this specific matter [Gudrun Pebody's termination of employment] as I believe you [Richard McMahon] have the pertinent information and accountability…" **[5577] (5 pdf 621)**. Prof McMahon rejected HR advice in his email dated 25 June 2021 and maintained her "at risk" status **[1288](2 pdf 446)**. In oral evidence, Prof McMahon said this: Q Do you accept that it was always the case that funding was available for her role? A: Yes. Here, the funds were available wef 1 March 2021".

    (3) Examiner Meeting Minutes dated 13 July 2021 **[1445](2 pdf 600)**. Prof McMahon confirmed that he wanted to make a "confidential correction" to the draft minutes to delete the following sentence (at **[1447]**): "Within the Institute of Astronomy, the superlative efforts of Dr Gudrun Pebody have been vital in allowing the examination process to run successfully". That was petty, and somewhat vindictive.

    (4) Prof Challinor also gave clear and unprompted evidence that he was concerned at Prof McMahon's over-zealous scrutiny around the purchase of an iPad for Dr Pebody: "it seemed a little bit strange that this item of expenditure, a little expenditure, was being given that level of detailed [attention]. It was mission critical [and should] not have been questioned".

Interference with Prof Gilmore's grants

22. The barometer of Prof McMahon's attitude is reflected in the fact that he was uncontrollable. The Deputy Directors interceded to put in place safeguards to avoid

the obvious conflict of interest given the relationship difficulties between Profs McMahon and Gilmore. The evidence demonstrates that:

(1) Prof Peake and the Deputy Directors had agreed that Prof Gilmore continue to be the Principal Investigator for the CU9 Grant. Prof McMahon meddled and effectively overrode this decision without consulting Prof Gilmore **[1310] (2 pdf 466)**.

(2) Prof Reynolds confirmed that Prof McMahon could not force a change of PI or make an extension of a grant contingent upon the selection of a specific PI. That would amount to an unacceptable incursion into academic freedom **[5127] (5 pdf 171)**; **[5181] (2 pdf 735)**.

(3) Indeed so serious were the consequences of Prof McMahon's proposed course of conduct, that Prof Reynolds told him (in advance of the Delays Document being produced) that his actions risked making his position "untenable" **[1612 – 13] (2 pdf 766-67)**. In oral evidence, Prof Reynolds explained that he was "concerned that his actions exceeded his authority".

(4) It is quite obvious that he sought to influence others to oppose Prof Gilmore's retirement extension. He threatened to resign as Head of Department if this were granted. He was using that threat as leverage to influence colleagues **[9017] (8 pdf 158)**.

Meeting Prof McMahon and Deputy Directors 27 July 2021

23. Prof McMahon addresses this at w/s para. 18, but it is conspicuous for its lack of detail as to what was said *to him* by the Deputy Directors. Prof McMahon readily accepted that this was "an important meeting". It remains unclear why he considered it appropriate to provide a partial account.

24. After close questioning as to whether the Deputy Directors had expressed concern at what Prof McMahon had done *or was proposing to do* in relation to the ORP grant, he accepted (gist):

> They felt strongly that my proposal (although I do not accept this) was wrong.
> They said my position was wrong.

25. With that admission in mind, what Prof McMahon has done is to "invert" the situation to deflect responsibility away from himself. At w/s para 19 he refers to academic malpractice in relation to C and Prof Haehnelt. However, the notes at **[9766](8 pdf 907)** do not record any criticism of C, instead they record the Deputy Directors' criticism of Prof McMahon in relation to *his* interference with academic freedom. He adopted a similar inversion/deflection strategy in relation to his later grievance.

Evidence that Prof McMahon was aware of C's disclosures

26. Prof Evans shared his email of 20 July 2021 with Prof Peake, Ms Birrell, and both of the Deputy Directors **[1670] (2 pdf 826)**.

27. At the meeting between C and the Deputy Directors on 26 July 2021 Prof Reynolds accepted that C (and Prof Haehnelt) raised three issues concerning: (i) Allegations of bullying (he described this as "inappropriate behaviour"); (ii) Dr Pebody's health and safety/wellbeing; and (iii) the delays to signing off the grant. Each of these concerns were communicated to Prof McMahon.

28. Although Prof Peake provides a minimalist account about what he discussed with Prof McMahon on 27 July 2021, the ET is invited to approach his evidence with a large measure of circumspection. His witness statement conspicuously provides no detail about what was discussed with the Deputy Directors, other than a comment that they discussed the "atmosphere" within the Institute and the pressure that was being placed upon Prof McMahon (w/s para. 23). Given all of the other contemporaneous documents, and the seriousness of the concerns raised, it is improbable that he never touched upon the concerns raised by C as to the mistreatment of Dr Pebody.

29. The fact that Prof McMahon was aware that C had complained that he had bullied or mistreated Dr Pebody is put beyond doubt by the evidence of Professors Reynolds and Challinor, combined with the contemporaneous documents. Note: it is clear that most of these documents were not analysed in the main body of the JSJ report. Neither was Prof McMahon ever questioned about their contents.

    (1) **[1776] (2 pdf 932)** message from Prof Challinor to Ms Macharia:

> Following our meeting with Wyn and Martin yesterday, it is very clear that we cannot avoid talking about Gudrun in today's meeting with Richard. As we suspected, the ORP concerns are really a proxy. **The core of the complaint concerns Richard's behaviour towards Gudrun in recent months, and the urgency of the complaint is fuelled by reports of Gudrun's deteriorating well-being**.

    (2) **[1696] (2 pdf 854)** Zoom meeting notes dated 27 July 2021:

> Zoom meeting with Angela, Anthony and CSR 9.45am, Monday 26th July 2021
> Reviewed circumstances surrounding ORP X5 delays and Gudrun's end-of-contract letter. AC and CSR express opinion that there are issues of academic freedom at play and should guide RGM's actions with regards to this grant.
> AC and CSR expressed the view that **the real substance of Wyn's allegations were not the details of the grant but instead were the wider claims of bullying**.
> AM agreed to compile full timeline and document set related to the ORP X5; she expressed the opinion that the Gudrun issue must be separated off and cannot be the subject of a Staff meeting discussion.
> **We discussed Gudrun's well-being.**

Prof Reynolds provided some important context to this. He agreed that these notes foreshadowed what the Deputy Directors were going to later discuss with Prof McMahon: "[the notes] provided the main agenda for the meeting with Richard".

It is inconceivable that these matters were only raised with Ms Macharia and not discussed with Prof McMahon.

(3) **[9766] (8 pdf 907)** Zoom meeting 27 July 2021 between the Deputy Directors and Prof McMahon:

> … AC and CSR strongly expressed the view that the current situation with regards to **Wyn's complaints** [was] risked causing a serious rupture, and that immediate action was warranted to defuse tension…

Prof Reynolds clarified in evidence that the reference to the "serious complaints" raised by C which were discussed at the meeting were not confined to the issue of delays to signing the grant but also the treatment of Dr Pebody: "correct". Q: Were they discussed at the meeting? A: Yes, with the caveat, I believe it was discussed".

Prof Challinor gave consistent evidence. When questioned about his written answers to Mr Scott-Joynt at **[5139](5 pdf 183)**:

> Regarding discussion of GP, I don't recall much beyond what is in CR's notes. I think there was general regret expressed by RM over the timing of the end-of-contract letter and the stress that this may have caused. I don't remember RM offering any explanation of why he was willing to reverse his position, but an eventual appreciation of the severity of the situation (e.g., **the allegations being made by WE and MH**) and the very strong steer from CR and I were surely a large part of this.

He confirmed that the reference to "the allegations" included both the concerns about Dr Pebody's wellbeing and her alleged mistreatment by Prof McMahon.

(4) The email sent by the Deputy Directors to C following their meeting with Prof McMahon puts beyond doubt that Prof McMahon was aware of the concerns he had raised. This was sent immediately following the meeting when matters would have been fresh in their minds **[1805] (2 pdf 961)**:

> …
>
> (iii) **Richard expressed regret** that Gudrun had been issued with the end-of-contract letter, and invitation to a consultation, and **the impact this may have had on her well-being**. As we discussed yesterday, there is nothing extraordinary about the issuing of such letters. However, the Department does, generally, try to deal with those approaching end of contract on a case-by-case basis and this includes consultation with the relevant PI. It is not clear to us (Anthony and Chris) that sufficient recent oversight was given to this process in Gudrun's case. Richard told us

> that he had already instructed Joy to write last week to Gudrun apologising for the end-of-contract letter being sent and informing her that the "process was paused". However, **he expressed willingness to write a further letter of apology himself although there may be a delay in doing so while he seeks guidance from HR given the <u>other serious allegations</u> that you are making**.
>
> …
>
> **We are fully aware that resolving issues on the ORP grant is only a minor part of your concerns. On the <u>more serious allegations</u> that you have raised about Richard's behaviour to Gudrun, we await instruction from the School on how they would like to proceed.** In the meantime, we will take every opportunity to ensure that Gudrun has the support she needs.

30. Prof Reynolds' evidence in relation to this was clear and forthright. The reference to the "other" or "more serious allegations" was to the other serious allegations of alleged bullying. It is clear that Prof McMahon needed advice from HR before deciding how to respond.

C's email dated 27 July 2021 to Prof McMahon

31. The email at **[1788](2 pdf 944)** was sent to Prof McMahon and copied to Profs Haehnelt, Challinor, Reynolds and Peake. The timing is of critical importance – it was sent 48 hours before the submission of Prof McMahon's grievance.

32. Prof Peake gave straightforward evidence when questioned about this email. He accepted that it was clear from this that C wanted there to be an investigation into Prof McMahon's treatment of Dr Pebody. It was clear that there had been discussion between C and Prof Peake about this, and the only subject matter referred to in the body of the email was that he believed Prof McMahon's treatment of Dr Pebody had been "exceptionally cruel".

33. Prof Peake confirmed that he did not respond to this email. In fact, none of the recipients did. The fact that no one responded to C's email to suggest that he was mistaken or in error, would have amplified the very real likelihood that Prof McMahon knew that he was about to face a disciplinary investigation into his conduct. Materially, Prof Peake accepted (gist):

> Q: Do you accept that if none of the recipients respond to disabuse C of the situation, it would have been clear to Prof McMahon that there would be a disciplinary investigation?
> A: Yes, he would infer this, yes.

34. Prof Challinor paid close attention to the timing of the email at **[1788]**, and the meeting with Prof McMahon. It was sent 1 minute after the meeting began. Prof Challinor confirmed (last answer in cross-examination) that the email was received and was specifically discussed at the beginning of the meeting with Prof McMahon. Prof

McMahon had no recollection of this, but was clearly not saying that Prof Challinor's evidence was incorrect on this issue.

35. JSJ interviewed Prof McMahon on 29 April 2022 **[4057](4 pdf 192 ff)**. He was never asked about this email (or any of the documents around 26 – 27 July 2021 considered above). He was not even issued with written questions about these documents.

36. The ET is invited to accept that this vitiates this aspect of the investigation. It is axiomatic that in order to determine whether Prof McMahon's grievance was retaliatory, it was essential to consider what he knew about the complaints that had been made. He was never asked about this. The University cannot offload all responsibility onto JSJ. The email at **[1788]** was later considered and featured in decisions produced by Ms Rampton and Prof Ferran (see further below).

37. The most obvious course for both Ms Rampton and Prof Ferran to take was to ask Prof McMahon about this. Neither did so. Prof Ferran asked JSJ what he thought Prof McMahon might have understood the email to convey. That is hardly satisfactory. This is not a retrospective "lawyer's point", it is an obvious one. Prof Ferran did (eventually) accept that "with the benefit of hindsight, he [Prof McMahon] should have been asked about this email".

38. Professor McMahon's oral evidence in relation to **[1788]** is summarised below:

    (1) "Yes it was an important meeting. Yes, an issue was raised regarding the wellbeing of Pebody" (gist). He later confirmed in response to a question as to whether bullying was mentioned, "I have no recollection of discussions about Pebody. There was a concern around anxiety and End of Contract process. Cannot remember the details".

    (2) Upon close questioning, he accepted that when he read it he was aware that C had reported "something" to Prof Peake.

    (3) Although Prof McMahon initially disputed that the "something" reported to Prof Peake concerned how he was alleged to have treated Dr Pebody, he answered the following question (gist):

        > Q: Last sentence refers to an investigation. The only issue of substance refers to the treatment of Dr Pebody)?
        >
        > A: I agree that there is an allegation that I have treated Dr Pebody cruelly, and that this needs to be investigated…

    (4) Prof McMahon sought to distance himself from his understanding of this email on the basis that it did "not make sense to me. The language is hard to understand". This does not withstand any scrutiny because:

(i) Prof McMahon is a distinguished academic who is used to forensically examining academic papers and interrogating documents – he agreed with that proposition.

(ii) If he had genuinely not understood the email, one would have expected some follow up questions to C, or a request for clarification. There was none.

(iii) He addressed this issue at para. 19 of his statement. He devoted between 8-9 lines to both describing and analysing this email. He suggested that the email was "not significant" and "not important", and that it was simply part of the chronology of events. This explanation was unconvincing. Conspicuously, no mention is made of him not understanding what C was alleging in the email. He was unable to provide any explanation for this inconsistency.

(iv) When pressed upon this issue (in (ii)), Prof McMahon after referring to the return from lockdown restrictions for staff referred to this email as "nonsense". This reflects his true emotion over a very significant matter. .

39. Drawing upon the above analysis of the contemporaneous documents and witness evidence in relation to the period spanning 26 – 27 July 2021, it is clear that Prof McMahon had received the Delays Document, and also had knowledge that C had raised concerns about his treatment of Dr Pebody, as well as concerns as to how he had harmed her health.

Prof McMahon's grievance dated 29 July 2021

40. The DaW complaint is at **[1889] (2 pdf 1045)**.

41. Prof McMahon was likely to have been furious at the time he submitted it. The minutes of the meeting with Prof Ferran on 2 May 2023 **[8956] (8 pdf 97)** (para. 2.11) record: "RGM explained that when he became emotional it could take me a week to calm down and that it was not anger…". In oral evidence, Prof McMahon volunteered that he usually had a "3 day rule".

42. The grievance has echoes of Prof McMahon's response to the Whiting investigation. It is not happenstance that in his grievance against Prof Gilmore, he devotes a lengthy paragraph criticising the behaviour and conduct of Dr Pebody **[1890]**(3rd para).

43. In relation to the grievance against C:

(1) The reference to "false, unsubstantiated accusations" has never been explained. It remains unclear (i) what accusations are said to be false; or (ii) why. This information was never provided to JSJ when specifically requested on a number of

occasions: see JSJ email to Prof McMahon dated 12 October 2022 **[4394](3 pdf 529)**. Even now, more than 5 years later, Prof McMahon does not explain in his witness statement what accusations are false, or upon what basis he asserts this (the statement just repeats the mantra without any evidential basis).

(2) The complaint that C failed to request that the Department underwrite Dr Pebody's contract is incapable of rational explanation. Prof Evans was not the PI on the grant. It would normally be the responsibility of "the PI of the grant or the Director" to propose an underwrite **[4013](4 pdf 148)** (JSJ, para. 183). Prof McMahon knew that this is precisely what C sought in the Delays Document **[4377](4 pdf 512)**. Further, the agreed evidence is that funds were available from 1 March 2021. There was no need to underwrite her contract. In any event, the request in the Delays Document for her contract to be underwritten was never needed, or even implemented.

(3) The assertion that C "… instead used the stress and anxiety caused to Pebody to claim that I had behaved inappropriately" is baseless. Prof McMahon knew that there was no evidential basis to suggest that C had weaponised Dr Pebody in order to bully him. Properly analysed, the only explanation for making such a serious accusation is to deflect responsibility away from him. He did this by attempting to invert the analysis. It is no coincidence that this serious allegation is the mirror opposite of the concerns C was reporting, suggesting that Prof McMahon knew what concerns C was raising, and is powerful evidence of retaliation. Prof McMahon's oral evidence demonstrates that he knew this aspect of his grievance was untrue and indicates that this was raised in bad faith:

> Q: Assume that Prof Haehnelt had known Dr Pebody for a long time, do you accept that it would be wholly understandable why he would intervene?
>
> A: Yes, to protect her if she needed protecting. Of course, to intervene is totally appropriate, of course.
>
> Q: If Prof Evans was genuinely concerned for Dr Pebody, do you accept that it is only natural to try to intervene to protect her?
>
> A: Yes.
>
> Q: You advanced the most wicked allegation with no evidence in support?
>
> A: No, that's not correct.

(4) At **[1891]**(2nd para), Prof McMahon refers to disrespectful emails sent by C. However, these date back to 2019. Further, they didn't involve bullying him, but his treatment of a third party. This should have found no place in his grievance. However, it demonstrates that Prof McMahon was searching for any evidence, in this case dating back more than 2 years, to prosecute a grievance against C.

(5) The final paragraph of the grievance accuses 3 professors of causing harm to Dr Pebody. Again, this was without any evidential basis.

(6) The final sentence demonstrates the vindictive nature of the grievance. He wanted to ruin their careers: "I would also draw your attention to the fact that UKRI now has a Bullying and Harassment condition in the terms and conditions of its grants". Profs Reynolds and Peake confirmed that if upheld, this would have serious repercussions for the future careers of the three professors (and their ability to receive grant income).

44. Even making allowances, Prof McMahon's evidence in relation to the meaning and effect of the accusations made in this grievance is unsatisfactory. His repeated references to "this is not a legal letter", or to his GCSE English grade B result are not understood. They amount to an abrogation of responsibility for his own words. There is no evidence to suggest that Prof McMahon did not understand what he had written on 29 July 2021.

45. On 24 April 2023, Mr Justice Linden found the following statements to be defamatory **[6011] (5 pdf 1052)**. In relation to the imputations (i.e. interpretation of the meaning of the words used)(at [11]):

> 11. Taking into account the arguments of counsel, I have concluded that the meaning of the two imputations is that:
>
> i) The Claimant and Professor Haehnelt had engaged in bullying behaviour towards the Defendant by proposing to share, with all academic staff, allegations against the Claimant in relation to the acceptance of the Opticon-Radionet Pilot grant which the Claimant and Professor Haehnelt **knew to be false**. As part of this behaviour they had already shared the allegations with Angela Macharia, Professor Reynolds and Professor Challinor. The Claimant and Professor Haehnelt had acted together and Professor Gilmore had collaborated with them for these purposes;
>
> ii) The Claimant and Professor Haehnelt had chosen not to request that the contract of Dr Gudrun Pebody be underwritten when they could have done so and, instead, **chose to use the stress and anxiety which her situation caused her for their own purposes by claiming that the Defendant had behaved inappropriately**.

46. Linden J recorded that it was conceded that the first imputation was defamatory (at [31]). In relation to the second, he described this as an allegation that C had acted cynically (at [32]) **[6015]**:

> As regards the second imputation, **fundamentally this is an allegation of failing to act with integrity and, instead, cynically causing or permitting a more junior colleague to be distressed in order to exploit her suffering for the Claimant's own ends**. This statement would clearly tend to lower the Claimant in

> the estimation of right-thinking people generally. In my view, it also crosses the threshold of seriousness. In this connection I note that the Defendant presented the second imputation as being "just as serious" as the first imputation which he accepts was defamatory. In his e-mail he also pointed to serious consequences for Dr Pebody and potentially serious consequences for himself, and he did so in the context of a formal procedure which concluded with his suggesting that there could be consequences for the funding of the department. Clearly, if this second allegation were upheld it would amount to serious misconduct and potentially have disciplinary consequences for the Claimant.

47. Although Prof McMahon sought to disagree with the analysis of Mr Justice Linden, he knew from the inception of his grievance that these serious allegations were baseless. He never had any evidence to support these potentially career ending allegations.

48. In November 2023, the meaning and effect of the Tomlin Order was to effectively withdraw any allegations of bullying **[7757] (7 pdf 2)**: see especially **[7758]** (para. 3(a).

49. In light of the above analysis, and the conspicuous lack of evidence to support it, the ET is invited to accept that Prof McMahon's grievance was retaliatory. He sought to undermine the veracity of the concerns that C had reported by submitting a pre-emptive strike in circumstances where he was aware that an investigation was going to take place in relation to his conduct.

Other considerations

50. **Manner of disclosure**: It is clear that this is not a case where the "separability principle" applies: ***Kong v Gulf International Bank UK Ltd*** [2022] ICR 1513 (per Simler LJ (as was) at [56] – [60]). It cannot be said that Prof McMahon **only** submitted his grievance because of the *manner* in which C proposed to raise the concerns at a Staff Meeting under Reserved Business.

51. Although Ms Akroyd's witness statement devotes a number of paragraphs as to Prof McMahon's supposed motivation, this is speculation. In any event, as she readily accepted in evidence, it conflicts with the direct evidence provided by Prof McMahon in relation to this: see Prof McMahon w/s paras. 16, 17, 24 (first reason) – she accepted that part of his rationale was concerned with the *content* of the Delays Document.

52. It was in any event appropriate and legitimate within the context of the Institute for these concerns about academic freedom (as set out in the Delays Document) to be raised as Reserved Business at a Staff Meeting (where only the Professoriate would be in attendance and not more junior staff):

    (1) Prof Reynolds: "Do they have the right to raise it? Absolutely. Is it wise, that is a different matter".

(2) Prof Challinor: "… Many academics do regard the principle of academic freedom as sacrosanct. It would be inappropriate for a Director to interfere e.g. demand a change of PI unless they had good reasons. In the context of what we know about Opticon, the information did not suggest there were sufficient grounds to do that", He was clear: "It would be appropriate" to raise such concerns at a Staff Committee meeting.

(3) Prof Clarke **[1714](2 pdf 870)** emailed C on 26 July 2021 to confirm that this "is a very legitimate topic for debate in Reserved Business…".

Once Dr Pebody's contract was secured, C and Prof Haehnelt withdrew the Delays document. It never went before the Staff Meeting.

53. **Limitation:** The Respondent contends that the ET lacks jurisdiction on the basis that this claim has been presented out of time: ET3#1, para. 4(c)**[52]**. C contends that the submission of a grievance is not necessarily a one-off act. A grievance (in the same way as the raising of a disciplinary issue) subsists unless and until it is either withdrawn, or determined. By analogy, it is the initial step which engages the DaW policy and the process that follows such that it cannot sensibly be extracted from it. That would be artificial. For the purposes of s. 48(4)(a) ERA 1996 the submission of a grievance should be analysed as an act extending over a period. Accordingly, for the purposes of s. 48(3)(a), "the date of the act" means the last day of that period". Alternatively, this complaint is within time as it forms "part of a series of similar acts or failures" for the purposes of s. 48(3)(a).

54. C contends that a grievance is capable of being analysed as an act which extends over a period. By analogy, just as in the case of a disciplinary suspension, the last date on which the act of suspension is deemed to take place is the day on which the employee receives notification that the suspension has ceased: ***Tait v Redcar and Cleveland Borough Council*** UKEAT/0896/08 (a whistleblowing case where the complaint related to a disciplinary suspension, which was alleged to amount to a discriminatory detriment short of dismissal). Underhill (P) reasoned (at [8]):

> … it seems to us that a disciplinary suspension is clearly "an act extending over a period" within the meaning of the statute. Although there is no doubt an initial "act" of suspension, the state of affairs thereafter in which the employee remains suspended pending the outcome of the disciplinary proceedings can quite naturally be described not simply as a consequence of that act but as a continuation of it.

55. Note: on the facts in ***Tait***, suspension actually came to an end and this was communicated to the claimant (at [10] – [11]). The same principle ought to apply to the decision to submit a grievance which is the first step in the DaW process. That "state of affairs" continues until the grievance is either determined or withdrawn.

56. The importance of not segmenting various aspects of a disciplinary process was recognised in ***Hale v Brighton & Sussex University Hospitals NHS Trust***

UKEAT/0342/16. C contends that the same analysis ought to apply to the instigation of a grievance and any resultant process. Choudhury J held that a disciplinary procedure – in that case, a process under the 'Maintaining High Professional Standards' procedure applicable to doctors – is an act extending over a period, albeit that there may, as in this case, be several stages. Choudhury J observed (at [42] – [44]):

> 42. **By taking the decision to instigate disciplinary procedures, it seems to me that the Respondent created a state of affairs that would continue until the conclusion of the disciplinary process. This is not merely a one-off act with continuing consequences**. That much is evident from the fact that once the process is initiated, the Respondent would subject the Claimant to further steps under it from time to time…
>
> 43. In my judgment, the Tribunal erred in treating the first stage of the process as a one-off act. Mr Kibling submits that this is a clear finding of fact and notes that the decision is not challenged on the basis of perversity. However, the Tribunal here, for reasons already set out, lost sight of the substance of the complaint as defined by the agreed issue. Having done so, it then incorrectly treated the subdivided issue as a one-off, when **it undoubtedly formed part of an ongoing state of affairs created by the initial decision**.
>
> 44. **That outcome avoids a multiplicity of claims. If an employee is not permitted to rely upon an ongoing state of affairs in situations such as this, then time would begin to run as soon as each step is taken under the procedure.** Disciplinary procedures in some employment contexts - including the medical profession - can take many months, if not years, to complete. In such contexts, in order to avoid losing the right to claim in respect of an act of discrimination at an earlier stage, the employee would have to lodge a claim after each stage unless he could be confident that time would be extended on just and equitable grounds. **It seems to me that that would impose an unnecessary burden on claimants when they could rely upon the act extending over a period provision. It seems to me that that provision can encompass situations such as the one in question**.

57. By parity of reasoning, it is clear that Prof McMahon issued a formal grievance under the DaW procedure. That was a decision to "instigate" a grievance under that process (***Hale*** (at [42]). That was the first "step" taken under the procedure: ***Hale*** (at [44]). That set in train the DaW procedure. Properly analysed, the complaint is not out of time.

4.2 Detriment 1 – R1 investigating and continuing to investigate R2's complaint when it was clear that it was malicious and/or vexatious, including conducting the investigation in breach of R1's Dignity at Work Policy.

58. It appears that Prof Peake (in conjunction with advice from HR) decided to initiate a formal investigation into Prof McMahon's grievance. There are a number of legitimate concerns about how this decision was made.

59. **Limitation.** C relies upon the same points as set out in ***Tait*** and ***Hale*** (above). Time does not begin to run for limitation purposes until the conclusion of that process

under s. 48(4)(a) ERA 1996. Alternatively, this complaint is within time as it forms "part of a series of similar acts or failures" for the purposes of s. 48(3)(a) ERA 1996.

Dignity at Work Policy

60. There are a number of material departures from the DaW Policy which have not been adequately explained.

61. Provision of evidence: The Policy is at **[4039] (4 pdf 174)**. At **[4041]** para. 5.13 sets out a foundational principle underpinning the policy:

> 5.1.1 Natural justice
> Any person against whom a complaint has been made has the right to know the nature and sufficient details of the complaint in order to respond. It is important that no decision is taken until the complaint has been investigated and the person against who the complaint has been made has had the opportunity to respond.

62. Para 5.6.1 describes what information should be provided **[4043]**:

> 5.6.1 A formal complaint should be in writing in a timely fashion (normally immediately after the incident or at the latest within three months of the most recent incident or occurrence of the behaviour). If there is good reason, this timeframe could be extended for example where a complainant does not feel able to make a complaint without initial support or counselling. Complaints should contain enough detail to allow an investigation to be initiated. The **written complaint** should include the following information:
> - Details of any informal resolution that has been attempted;
> - Any evidence supporting the allegations made, e.g. emails;
> - Names of any employees who may be approached to provide evidence of the alleged unacceptable behaviour.

63. The "written complaint" is the initial complaint (i.e. grievance). Although the provision suggests that all of this information "should" be provided (not "must"), it is obvious what purpose para. 5.6.1 is intended to serve – it is an important gateway provision designed to ensure that there is a sufficient evidential basis in support of a grievance to warrant the institution of a formal investigation. Indeed, it is intended to avoid precisely the situation that arose in this case.

64. Materially:

(1) There was no evidence of (i) what allegations in the Delays Document were said to be false and unsubstantiated; or for that matter (ii) why and on what basis this was alleged. Prof Peake agreed that the grievance did not provide any clarification of these matters.

(2) It is perplexing why the allegations regarding the tone of C's emails (sent in 2019) were ever permitted to proceed to a formal investigation. These emails were not directed to Prof McMahon and there was never any suggestion that he was bullied.

65. Furthermore, there was ample evidence before Prof Peake to alert him to the fact that key aspects of the grievance were misconceived from the inception:

(1) Prof Peake was aware that the potential for retaliation by Prof McMahon was on his "radar" as at 1 June 2021.

(2) C had even informed him on 26 July 2021 that he feared retribution **[1770](2 pdf 926)**(2nd para): "… I don't trust him. I suspect he will go after me next…".

(3) The suggestion that C was weaponising Dr Pebody for the cynical purpose of undermining Prof McMahon was an incredible allegation without any evidential basis. Prof Peake had met with C on 26 July 2021 and was unequivocally clear that C had appropriately escalated serious concerns to him, that he had "no reason to doubt" C's genuineness and sincerity in expressing his concerns for Dr Pebody. He never thought for an instant that C was weaponising Dr Pebody's situation for some ulterior purpose.

(4) The ET is invited to recall Prof Peake's evidence when pressed about this. He was asked whether, if at this meeting or shortly afterwards, someone had suggested that C was weaponising Dr Pebody whether he would find this "incredulous" or "astonishing"? As to whether such a suggestion was "unreal or absurd?", Prof Peake responded: "I would want to know what evidence there was". That is a tacit agreement with the questions put. Conspicuously, there was **no evidence** submitted before him to even faintly substantiate such a serious and cynical allegation. This particular allegation was palpably improbable and Prof Peake was on clear notice of this.

(5) Prof Peake would have known that the suggestion that C should have approached the Deputy Directors should have not formed any basis for the foundation of a grievance. He knew that this allegation was factually incorrect. C had done precisely that (as Prof Peake knew – this was mentioned by the Deputy Directors at their meeting where, according to Prof Challinor, Prof Peake offered "no specific advice": Challinor w/s para. 8).

(6) In relation to the suggestion that C should have sought the Department to underwrite Dr Pebody's position, that too does not withstand scrutiny for the following reasons: (i) Prof Peake agreed that funds were available with effect from 1 March 2021 – there was nothing to underwrite and funding was certain; and (ii) C had in fact asked for her contract to be underwritten – that was one of the action points in the Delays Document **[4377](4 pdf 512)**.

66. In light of the above, it is perplexing that Prof Peake waived through the grievance in circumstances where he knew (or was at least on notice) that either there was no evidence to support these serious allegations, and/or in circumstances where he knew them to be without foundation.

67. Informal Resolution. The Policy recommends a tiered approach to escalation including informal direct conversation between the individual and the other party. If that is not viable, the emphasis is on informal resolution **[4043]**:

> 5.4.2 The Manager (or other individual from whom help has been requested) may meet separately with the complainant and the person about whom the complaint has been made to discuss the situation. The Manager will establish the circumstances, the impact that the complainant considers the situation has had on him/her, any steps already taken to address it, and the response of the person about whom the complaint has been made. The complainant is encouraged to keep a record of any examples of the unacceptable behaviour that can support their complaint during the course of these discussions.
>
> 5.4.3 The Manager will then seek to agree a course of action with the complainant. **Wherever possible, resolution will be sought through informal means**. This will usually involve a meeting between the complainant and the person about whom the complaint has been made, which may be facilitated by the complainant's Manager and, if appropriate, the HR Business Manager/Adviser. The spirit of such a meeting should not be one of accusation, but of attempting to raise awareness, increase understanding of and demonstrate why distress may have occurred as well as exploring how such incidents might be avoided in the future. If a successful resolution is achieved, the HR Business Manager/Adviser assigned to the institution may keep a confidential record and inform the Head of Institution if s/he considers this appropriate. The complainant and person complained about will be advised of such an eventuality.

68. Prof Peake confirmed that he did not explore informal resolution in relation to Prof McMahon's grievance against C: "No I didn't" (although for completeness, he offered his opinion that this would not have been successful). C had no previous history of disputes with Prof McMahon and so there was every reason to explore this avenue. Ms Akroyd also confirmed that upon receipt of the grievance, there was no discussion about this in relation to the allegations made against C.

69. Note: the ET is invited to pause to reflect on this – this is not an abstract criticism, but is one of substance. The ET will recall Prof McMahon's evidence (repeated on at least two occasions) that all it would have taken is for C to have apologised and all of this would have been avoided. *If* that evidence is to be accepted, the decision to bypass the informal stage precluded any opportunity for this to happen. Everyone was chained to the conveyor belt of a formal process.

70. The various shortcomings, whether considered separately or cumulatively, require a cogent explanation. C suggests that none has been provided. It falls to be considered why Prof Peake failed to even engage in a basic interrogation of the grievance in the

light of what he knew (or pause to reflect on the lack of evidence in support). The ET is invited to accept that Prof Peake wasn't appreciative of C raising serious concerns about the Director, and viewed this as disruptive. It is *precisely* for that reason that Prof Peake provides contextual evidence as to previous difficulties within the Institute: see w/s para. 4 referencing a "culture" within the Institute "where it seemed common to undermine the Director…". He viewed the concerns raised by C about Prof McMahon as undermining behaviour. That is entwined with the substance of the concerns raised by C.

4.5 Detriment 5 – R2 informing C's colleagues and peers about R2's 29 July 2021 complaint against C, risking damage to C's reputation.

71. This allegation of detriment has to be analysed in the context of para. 5.1.3 of the DaW policy which provides **[4042]**:

> 5.1.3 Confidentiality
> **In order to safeguard individuals, confidentiality must be very strictly respected and information limited to those who have a need to know (and only to the extent necessary) for the purposes of the operation of these procedures** and for maintenance of good order in the University. The University reserves the right to seek advice from or involve appropriate external authorities if it believes that it is under an obligation to do so. **Any breach of confidentiality may result in disciplinary action being instigated.**

72. It remains unclear how many people Prof McMahon discussed his grievance with (verbally). However, there are 3 documented examples of him doing so (none of which are addressed in his witness statement):

(1) Prof Reynolds **[1910] (2 pdf 1066)** 29 July 2021:

> Hi Chris, Lucky you having time to research! I have submitted a Grievance against Gerry, Martin and Wyn to Nigel. **I have played a very very long game on this** and hopefully honesty and integrity will win the day. I finished with:
>
> I, therefore, want to make it clear that I am submitting this Grievance just as much because of the direct effects on myself and how it affects my ability to lead the Department but also because of the impact of the behaviour of the three individuals, Gilmore, Haehnelt and Evans on other members of staff including Gudrun Pebody. I would also draw your attention to the fact that UKRI now has a Bullying and Harassment condition in the terms and conditions of its grants.

There is no discernible reason or justification as to why Prof McMahon shared the extract of his grievance, or sought to justify his strategy of playing a "very very long game" with Prof Reynolds.

The last paragraph appears to convey some satisfaction as to the consequences that would flow for the three Professors who were the subject of the grievance.

(2) Dr Walton **[1897] (2 pdf 1053)** 29 July 2021:

> Hi Nic, I just put in a Grievance against GG, Martin Haehnelt and Wyn Evans. Gerry convinced Wyn and Martin to go after me over Gudrun and **they are amateurs compared with Gerry**. It is quite a mess but I feel this should sort things out.

This is framed in pejorative terms. Although Prof McMahon sought to dispute this, it is hardly complimentary. The documents show that a Zoom or Teams meeting was scheduled to take place between them shortly after this message was sent. There was no justifiable basis for sharing this with Dr Walton, who was a colleague and scientific collaborator of Prof Evans.

(3) Ms Macharia **[1912] (2 pdf 1068)** 30 July 2021 – Prof McMahon shared the entirety of the grievance "mostly for information" and because she was likely to be a witness.

73. The sharing of this information was a transgression of para. 5.1.3 of the DaW Policy. Prof McMahon had no cogent basis for sharing as he did. The ineluctable inference is that he was seeking to garner support from others, diminish the standing of C, and to pitch others against him. In relation to Dr Walton and Ms Macharia, there was also no instruction to keep the information confidential.

4.2. Detriment 2 – R1 delaying the conclusion of the investigations into (a) C's protected disclosures and (b) or R2's complaint about C dated 29 July 2021, despite it being clear that the latter was unfounded, without merit, C alleges, vexatious and/or malicious.

74. It is clear that the investigations were done at a leisurely pace. Although some of the delays can be explained (e.g. the bereavements suffered by JSJ), it is clear that there was no effective oversight and matters were allowed to unacceptably drift.

75. The University's witnesses seek to place blame onto C for some of these delays. Such criticism is unwarranted. Dr Glover (and others) blame C for the initial delays in insisting that the investigation be conducted under the whistleblowing policy. The University insisted on the investigation being conducted under the DaW policy. However, C's point was that he was not complaining about how he had been treated by Prof McMahon. It was only on 21 December 2023 that Dr Glover agreed to use the whistleblowing policy **[2498 – 99](2 pdf 1654)**. JSJ also confirmed that C was correct to insist on the investigation being conducted under the whistleblowing policy **[5039](5 pdf 83)**(para. 326):

> 326… In my opinion, there was a *prima facie* case to consider the Disclosure as a whistleblowing matter at the point when it was made; and it was therefore right, in my opinion, that Prof Evans' Disclosure was handled – as he requested – under the WB Policy.

76. Prof McMahon's refusal to provide evidence in support of his grievance was not effectively managed. On 11 August 2022, Ms Hudson observed **[3432](3 pdf 920)**(final para):

> I also understand that part of the delay in concluding the current investigation is due to Richard McMahon not supplying certain documents requested by the Investigator, despite being chased on more than one occasion. While I appreciate this is a stressful process for Richard, **I do not think it reasonable that he continues to delay matters. I therefore think we need to give him a hard deadline** and explain that if he fails to meet that deadline then the Investigator will conclude matters based on the information he has to hand.

77. Correspondence on the delays caused by Prof McMahon in the period 10 May – 13 December 2022 is set out at Appendix 26 to the JSJ report **[4378 – 4443](4 pdf 513)**. The ET was referred to some illustrative examples of the various deadlines that came and went (**[4385**], **[4338]**, **[4394]**, **[4395]**, **[4402]**).

78. There has been no adequate explanation for this lack of oversight. Rather, notwithstanding the clear directive issued by Ms Hudson on 11 August 2022, the University has tolerated and acquiesced to Prof McMahon's persistent inaction. This reflects institutional support for him in the face of the serious concerns raised by C. It is difficult to discern any reason for this other than a desire to enable him to produce evidence to support his grievance against C which was never forthcoming, and/or a lack of interest in progressing the investigation into C's whistleblowing concerns without delay.

79. **Limitation.** The suggestion that this claim is out of time is not understood **[52]**, para. 4(b). It amounts to an "act extending over a period" for the purposes of s. 48(4)(a) ERA 1996.

4.4 Detriment 4 – R2 failing to withdraw his complaint against C following the findings of the investigation.

80. C relies upon and repeats the submissions and analysis of Prof McMahon's grievance (above), as well as the analysis of the High Court proceedings: see paras. 40 - 49 (above).

81. C's case is advanced on the following bases:

    (1) Prof McMahon knew that his grievance was untrue and/or without foundation from its inception. It was a pre-emptive and retaliatory strike to deflect criticism away from his own behaviour. It is for that reason that he was unable to provide any evidence in support of his grievance against C. Even if Prof McMahon had acted in the heat of the moment when submitting his grievance, on his evidence, he settles

down within a week. It should have been withdrawn shortly afterwards when he had time to reflect on matters.

(2) At the very latest, Prof McMahon should have taken stock when Mr Justice Linden handed down judgment on 24 April 2023. At that point he knew he had no evidence to support it and it should have been withdrawn.

On either basis, the operative reason why he did not do so, was part and parcel of the continuation of an act of retaliation arising from the complaints that C had made about him.

82. There is a factual dispute as to whether or not Prof McMahon positively sought to withdraw his grievance during the meeting with Prof Ferran on 2 May 2023 **[8958] (8 pdf 99)**. Prof McMahon suggested that he was merely seeking to identify various potential options open to him. However, the minutes do not naturally convey that interpretation (para. 2.25):

> 2.25 PH asked what was to happen next. LC explained that following on from the meeting they would meet with the other individuals involved next week. **RGM asked if he could withdraw his complaint**. LC explained that this may not be possible as the outcome would still need to be given to the others involved. **RGM said that he thought he could withdraw his complaint at any point.** LC said it would be unusual to withdraw at this late stage as the investigation had concluded and had been written up. **EF said that they would take this away**.

83. There would be nothing to "take … away" if it was not received as an active proposal. However, even if the Tribunal accepts Prof McMahon's oral evidence, it nevertheless demonstrates that he knew he could withdraw his complaint. That was in no sense contingent upon reading the JSJ investigation report or appendices. He ought to have known that he had zero evidence to support his serious allegations against C when he submitted it. Alternatively, he was already on notice that the allegations were defamatory as at 24 April 2023. He later withdrew the allegations of bullying in the High Court proceedings (at least that is the consequence of the Tomlin Order).

4.7 Detriment 7 (second claim para 27) – R1's failure to address the grievance of 30 August 2022 in a timely way and to provide any outcome by 10 April 2024.

4.10. Detriment 10 (third claim para 24) – R1's failure to investigate properly the allegations against R1's Human Resources department in C's grievance of 30 August 2022 evidenced in the grievance outcome of 16 May 2024 from Professor Harper.

84. It is convenient to address Detriments 7 and 10 together.

85. On 30 August 2022 C submitted a grievance regarding the handling of the whistleblowing policy and DaW complaint against Ms Hudson (HR Director) **[3483 - 90]**.

86. On any view, there was appreciable and unacceptable delay.

    (1) Prof Harper was appointed Responsible Person on 5 February 2023 (nearly 6 months later). That delay has not been adequately explained.

    (2) C was first interviewed on 9 May 2023 (just short of 9 months after he submitted his grievance).

    (3) The outcome was provided on 15 May 2024 **[7963] (7 pdf 208)**(21 months later).

87. The University is a vast organisation with lots of resources. By any modern standard of industrial relations, this period of delay is unjustified. C was left languishing in the intervening period, and there is no evidence of any effective scrutiny or oversight. It was allowed to drift. The inference is that this state of affairs was allowed to persist because of the institutional attitude towards C – he was viewed as a troublemaker and perceived to be undeserving of any expedient process.

88. Prof Harper's suggestion that he had no real knowledge of C's disclosures (w/s 8) is without foundation. C actually provided him with some documents (e.g. **[6057] (5 pdf 1101)**). They were also discussed in his two meetings with Prof Harper (e.g. **[6079] (5 pdf 1123)** especially at **[6081]** (paras. 29 – 34).

89. The asymmetrical approach to carrying out the investigation is a matter of some concern. Although Prof Harper met with C twice, he only put written questions to Ms Hudson, Ms Akroyd and Prof Peake. This minimised the opportunity for scrutiny or asking follow-up questions.

90. **Quality of decision-making**. Of particular salience is Prof Harper's repeated references to the fact that he took both HR and legal advice (w/s 19 and 39). He anticipated a legal challenge which "put a lot of pressure on me" (w/s 40; line 4). It is clear that Prof Harper went to some effort and energy to deflect and minimise any scope for legitimate criticism of the Institution, and to avoid reputational damage.

91. For some reason (which remains unexplained) the responses provided by Prof Peake were not shared with C to comment upon (w/s para. 31). C assiduously commented on all of the other written responses received, yet no one sought to confirm whether or not he had anything to say in response to Prof Peake.

92. C is mindful of the fact that this is not an opportunity to invite the ET to effectively conduct a re-hearing of his grievance. However, there are a number of troubling aspects to the decision reached.

93. Complaint 1: In relation to section 5.13 of the Dignity at Work Policy, "there has been no effective attempt to discipline by Prof McMahon, despite overwhelming email and recorded evidence of repeated and extremely serious breaches of HR confidentiality that have exposed the University to legal action" **[7963] (7 pdf 208)**.

94. Prof Harper concluded:

> I can find no evidence of any repeated and extremely serious breaches of HR Confidentiality.
>
> This complaint is **not** upheld.

This was an absolute statement (i.e. without any qualification).

95. The evidence before Prof Harper was as follows:

(1) Meeting 9 May 2023 **[6085]** (para. 94) C referred to the leaking of confidential information. At **[6086]** (paras. 95 – 98) he gives examples of breaches of confidentiality. At **[6087]** (paras. 117 – 119) he made it clear that his complaint was not that Ms Hudson had breached confidentiality.

(2) Meeting 6 September 2023 **[7175] (6 pdf 668)** at **[7812]** (para. 53) C stated:

> WE said that **he had given eight examples of breaches by RM** and that he believed it was part of RM's modus operandi to breach confidentiality and smear and disparage his colleagues. WE said he was aware that RM had accused him of breaches of confidentiality, but he had not been made aware of what these were. WE said that in relation to this grievance he had pointed this out to AH, and she had responded by saying it should be investigated by JSJ, but JSJ had replied to say that it was not in the terms of reference. WE said that there was no way to get the matter looked into, and he believes there were further allegations against RM in relation to breaches by RM regarding the Clarke Report and in the Whiting Report, in order to imply that GP was mentally unstable, which were very damaging breaches.

(3) C was effectively saying that he tried to raise these issues. Ms Hudson advised him to raise them as part of the JSJ investigation. JSJ refused to address them.

(4) (Prof Harper did not dispute that C had provided 8 examples, but these were specifically detailed by C at **[7707 – 8]**).

(5) Prof Harper's oral evidence was troubling. The gist is set out below:

> Q: You did not investigate the 8 examples (of breaches of confidentiality) provided by C?
>
> A: I drew a line under the JSJ investigation rather than interview Prof McMahon. No part of the Terms of Reference.

> Q: You did not investigate the 8 examples of breaches then?
> A: No, for the reasons given. I did raise it with Ms Hudson and JSJ.
> …
>
> Q: Do you accept that JSJ was not tasked with investigating the 8 breaches of confidentiality?
>
> A: From this evidence, no.
>
> Q: So no one investigated the 8 breaches of confidentiality? (question had to be repeated twice).
>
> A: That appears to be the case.
>
> …

96. Against those exchanges, it was put to Prof Harper (with some justification), how conceivably he could have reached the unequivocal and unambiguous conclusion that there was "no evidence" of any breaches of confidentiality in circumstances where (i) he simply hadn't investigated this; and (ii) his acceptance that no one else had investigated this. His protestation that this had been investigated cannot hold true. This is indicative of someone who did not approach C's grievance in a measured or balanced manner, but who was prepared to ignore evidence provided by C.

97. Complaint 2 (delays). Prof Harper accepted that there could have been better communication. However, his response is calculated to absolve the Institution of any responsibility for the delays. He concluded **[7964]**:

> In conclusion, the investigation process took a long time, and the reports detail why this was so. But, in my view this does not indicate fault on the part of Ms Hudson or her team.
> I do consider, however, that it would have been helpful, at points, if the parties could have been better informed of progress.
> This complaint is partially upheld, in so far as communication at all stages of this process could have been improved, but there were legitimate reasons for the delays.

98. This analysis seeks to minimise and deflect and criticism. It misses the fundamental point that there was no effective oversight by HR of the process. The reasoning provided obscures the fact that there was a delay of around 7 months in Prof McMahon providing any evidence (10 May – December 2022). Prof Harper never probed the reasons for this delay, or why there was no effective oversight in order to allow matters to drift.

99. Complaint 3 (informal action). Although the decision quotes extensively from the DaW policy, and confirms that Prof Peake had authority to commence a formal investigation **[7965]**, the outcome does not engage with the core of the complaint, namely why the informal stage was bypassed.

100. Complaint 4 **[7966]** In relation to section 5.5 'Formal Procedure', of the Dignity at Work Policy, "this did not happen. Prof McMahon's written complaint contains none of this information. There is no evidence presented in his email of 29 July 2021, just opinion and assertion. Where, for example, are the emails or other communications that show evidence of the alleged conspiracy?".

101. Prof Harper's decision was:

> Section 5.5. 'Formal Procedure' relates to the decision to proceed to a formal investigation. I have discussed this under Complaint 3. Once the decision to begin a formal investigation was taken, it was for that investigation to seek to obtain and to evaluate the evidence. Whilst it is helpful if a complainant provides documentary evidence at the outset this is not a prerequisite of bringing a complaint. (I note here that the Policy uses the terminology 'should' not 'must'.) It is beyond my remit to review the investigation of Mr Scott-Joynt.
> This complaint is not upheld.

102. This singularly refuses to engage with the essence of C's complaint. By now, it was abundantly clear that Prof McMahon's grievance was allowed to proceed in the absence of any supporting evidence. JSJ had to ask him time and time again what allegations in the Delays Paper were false and unsubstantiated. There was no evidence or any basis upon which to suggest that C had weaponised Dr Pebody to undermine Prof McMahon, and simply no evidence of a conspiracy at the behest of Prof Gilmore.

103. Rather than acknowledge these fundamental points, Prof Harper's decision deflects and fails to engage with the core complaint.

104. Complaint 6 (concerned the delay in C being notified of Prof McMahon's grievance). It is addressed at **[7968]**. Prof Harper responded as follows:

> … The delay in you being provided with details of the Dignity at Work complaint (which he was on 21 October 2021), appears to me to be a consequence of the difficulty in resolving this complexity, rather than any failure of responsibility on the part of the Director of HR…

105. That is a non-response, and one which hardly illuminates the reasons for the delay between receipt of the grievance on 29 July 2021 and him being provided with a copy of it on 21 October 2021 (nearly 3 months later).

106. **Analysis:** Each or any of the above examples demonstrate that Prof Harper's primary concern was to minimise any criticism of the University by either (i) intentionally refusing to investigate the concerns (e.g. confidentiality breaches); (ii) failing to engage with the core or essence of the complaint; and/or (iii) seeking to deflect. Although it is not suggested that each element of the grievance should have been upheld, Prof Harper's analysis is far from balanced or even-handed. Rather, it is partisan.

107. Prof Harper is a distinguished academic. There is nothing to suggest that he lacks competence in analysing evidence or understanding C's complaint. In circumstances where he was repeatedly seeking HR and Legal advice, the inference is that these flaws are the product of Institutional dislike and enmity towards C – he was viewed as a bothersome, undeserving troublemaker.

108. If the ET is in any doubt about this, it is invited to consider this alongside Detriment 11 (failure to hear appeal).

4.11. Detriment 11 (third claim para 25) – R1's failure to hear C's appeal of the grievance outcome from Professor Harper of 20 May 2024.

109. On 20 May 2024, C appealed against Prof Harper's decision **[8005 – 7] (7 pdf 250)**. Charlotte Goodman (Barrister, Cloisters) was appointed to investigate this.

110. In respect of the alleged breach of confidentiality (Complaint 1), in her report dated 26 January 2026, Ms Goodman identified that there was a flaw in how this had been addressed by Prof Harper. Her report is at **[9802] (8 pdf 943)**. She concluded **[9804]** (para. 1):

> I recommend upholding Ground 1 of the appeal in part, in that insufficient investigation was carried out into the complaint that AH had failed to discipline RMM for any "repeated and extremely serious" breaches of HR confidentiality. I do not make any findings as to whether that complaint ought to have been upheld but do recommend further investigation into the complaint. This finding does not undermine the grievance outcome in any broader sense.

111. The reasoning underpinning this conclusion is set out at **[9812 – 19]** (paras. 48 – 67) (the key reasoning is at paras. 64 – 68).

112. The appeal outcome is dated 20 May 2026 (just short of 4 years after the grievance was submitted) **[10049] (9 pdf 131)**. Ms Goodman's recommendations were rejected. This time the reasoning shifts focus onto Prof Peake and extinguishes the substantive point in C's initial grievance that Prof McMahon was allowed to breach confidentiality. The particular flaw in Prof Harper's investigation is altogether eliminated from the analysis **[10050]** (last para):

> 2.1. The investigation by Professor Harper did not ignore evidence that the Director of HR failed to discipline Professor McMahon for alleged repeated and serious breaches of HR confidentiality as it was not the responsibility of the Director of HR, against whom the grievance is made, to discipline Professor McMahon. This responsibility rested with Professor Peake as Head of School.

113. The above analysis shields Prof Harper from criticism, and like his decision, deflects away from C's initial grievance. It conspicuously offers no solutions or redress

to the points that C had raised. This is clear evidence of a "closing of ranks" to protect the institution rather than give a balanced and conscientious consideration of the substance of the point raised. Presumably, as with the other outcomes in this case, this response was drafted on behalf of the decision maker.

4.8 Detriment 8 (second claim para 32) – R4's rejection on 6 November 2023 of C's complaint of 15 June 2023.

114. Although the List of Issues names R4 as being responsible, the decision was in fact made by Emma Rampton. There is no prejudice because R1 is vicariously liable, and in any event, Ms Rampton has given evidence on this w/s paras. 11 et seq.

115. On 15 June 2023 C submitted a complaint about Dr Glover's operation of the whistleblowing process **[6386 – 92](5 pdf 1430)**. The subject matter included: (i) terms of reference; (ii) involvement of conflicted individuals; and (iii) the length of time taken to investigate.

116. Ms Rampton met with C on 9 August 2023 (w/s para. 13). She had initially informed C that she would respond w/c 7 August. However, that was pushed back to November 2023 (w/s para. 15). This is indicative of a fairly leisurely approach to the complaint.

117. At w/s para. 20 Ms Rampton refers to 4 pieces of correspondence received from C and describes this as "new material". She confirmed in evidence that she relied upon these 4 emails as an explanation for the delay in producing a decision. The correspondence is at **[7210] (6 pdf 703)** (about defamation proceedings); **[7218]** (bottom – insurance); **[7592] (6 pdf 1085)** (defamation proceedings and insurance); and **[7607] (6 pdf 1100)**. At w/s para. 20 (line 4), Ms Rampton suggests that she ensured that these "serious matters were considered thoroughly…". None of these matters are even addressed in her decision. These short emails could not have contributed to any delay.

118. On 6 November 2023 Ms Rampton produced her decision rejecting C's grievance **[7630] (6 pdf 1123)**. Again, although noting that this is not an opportunity for the ET to re-investigate the complaint, the decision and its reasoning highlights serious shortcomings. To take a few examples:

(1) Terms of Reference **[7631]** (2nd para). Ms Rampton reasoned:

> Whilst it is true, as Dr Glover notes, that you sought to add to the scope of the investigation, I do not accept that this rendered the production of the originating Terms of Reference as being in any way deficient. On that basis I am satisfied that there was no failure of process in respect of the Terms of Reference.

(2) This response does not engage with the substantive point that C was raising, namely that the ToR did not include concerns C had about conduct of Prof Peake or HR.

(3) This is demonstrated by C's response to the decision at **[7639](6 pdf 1132)**(5th para):

> The final sentence is illogical as I didn't intend my "own" words to become the Terms of Reference. The problem with the Terms of Reference is their narrowness and their lack of soundness. They were purposefully constructed to ensure there was no investigation of the behaviour of conflicted individuals in the School of Physical Sciences (including Prof Peake, Ms Akroyd and Ms Birrell).

(4) As Ms Rampton accepted in evidence, some of C's serious/genuine concerns were simply never investigated or considered. She did not provide any explanation as to *why* these matters were never investigated or included as part of any investigation.

(5) Delay **[7631]**(bottom). Ms Rampton lists the various causes for the delay. Dealing with some of these:

(i) C's insistence on the complaint being dealt with in line with the whistleblowing policy. However, that seeks to attribute blame to C and conceals that this was an HR error (see the reference to "…you had refused this course of action and had insisted that the matter be investigated under the Whistleblowing Policy…"). JSJ confirmed that C was correct to insist upon his complaint being dealt with under that policy (for which there has never been any acknowledgment by Ms Rampton) **[5039](5 pdf 83)**(para 326).

(ii) **[7632]**(2nd para, line 5) Ms Rampton refers to delays "in acquiring **some further information** from Professor McMahon". This narrative is seriously misleading. There was a wholesale failure by Prof McMahon to provide any evidence against C over the period between 10 May – December 2022. The author of this decision has conveyed a slanted and misleading narrative.

(iii) The outcome does not engage with the basic fact that no one appears to have had any effective oversight of the processes to prevent drift. Ms Rampton admitted as much in cross-examination. When asked who had oversight of the process (when Prof McMahon was not providing the requested information) her response was "I wasn't involved" and that she was "not the appropriate person to comment" on this. Those answers were difficult to reconcile with her later answer that she did investigate this.

(6) Prof McMahon's (lack of) knowledge of disclosure(s) **[7636]**. Ms Rampton simply adopted JSJ's analysis without conducting any further investigation – on the basis that this was convenient to the University.

(7) Ms Rampton then considered C's email dated 27 July 2021 **[1788] (2 pdf 944)**(analysed above):

> I have considered whether the email you rely on dated 27 July 2021 is evidence that Professor McMahon was aware that you had blown the whistle. That email was considered by Mr Scott-Joynt as part of the D@W complaint and appears in Appendix 27 to his report into that issue. It is therefore incorrect to state that Mr Scott-Joynt did not consider this email in making his findings. **Looking at the content of the 27 July 2021 email it does not state, either expressly or by implication, that you have made a whistleblowing disclosure.** The email does not notify Professor McMahon of the July disclosure and I do not accept that its content put Professor McMahon on notice of its existence, its content, and/or the fact that there would be an investigation into the issues raised in the July disclosure.

A number of points fall to be made:

(i) The 27 July 2021 email is not referred to or considered in the body of the JSJ investigation report. It is included in Appendix 27.

(ii) Prof McMahon was never questioned about this email by JSJ: see interview notes dated 29 April 2022 **[4057](4 pdf 192 ff)**.

(iii) Prof McMahon was never questioned about this email by anyone in the University. Ms Rampton provided no explanation as to why she did not take this step. She did concede the following: "Q: You were not in a position to know what he [Prof McMahon] thought when he received the email? A: I accept".

(iv) The reasoning provided by Ms Rampton demonstrates an unduly narrow analysis of an email (in isolation). At the very least, it omits to even acknowledge that it is amenable to a competing interpretation. Instead, it is peculiar why she steadfastly clung to a partial and somewhat strained analysis of the 27 July email in her oral evidence. Ms Rampton's reticence to even countenance that the email was open to another interpretation is possibly explained by her reluctance to give evidence which may be unhelpful to the University,

(v) Worse still, the analysis focuses on the email in isolation, and fails to consider the email in its proper context.

119. The ET is invited to conclude that these are significant flaws in the analysis. They are obvious ones. The only viable explanation for this is that there was a

concerted Institutional objective to protect the University and to minimise and deflect from anything that could cause reputational damage. There was a marked reluctance to make findings in C's favour because he was viewed as disruptive.

120. Further, by this point the Institutional "tone" now was noticeably different to the initial correspondence sent by Ms Rampton on **[5852] (5 pdf 896)** (last para) which expresses a measure of empathy at the frustration caused at the delays. The tone had since hardened. Now, the entirety of **[7637]** is nothing more than an attack on C. He was chastised for making "inaccurate statements", but those did not in fact "elongate" the decision-making process.

121. In addition, the final 3 bullet points are entirely unrelated to his appeal. The last few bullet points implicitly threaten C with future disciplinary action, suggesting that his behaviour had transgressed the DaW policy. This evidences an Institutional hardening of views - the Institutional view was to discredit C who was by now clearly viewed as a troublemaker (or alternatively, was viewed as such by Ms Rampton).

4.6 Detriment 6 (second claim para 25) – R1, R3 and R4's rejection by letter dated 19 January 2024 of C's grievance dated 12 December 2023.

122. On 12 December 2023 C raised a grievance concerning the decision to allow Prof McMahon's defence to the High Court proceedings to be funded by the University's insurance policy. It is at **[7770] (7 pdf 15)**. It is clear that the scope of the grievance was limited to two closely-related matters:

> This is a Grievance against (i) unknown individuals in HR/Legal, who "sometime in August 2022" allowed Prof Richard McMahon to make inappropriate use of the University insurance policy for lawyer's fees, and against (ii) both the Academic Secretary and the Registrary who allowed this situation to persist, despite being legally responsible for the protection of Whistleblowers.

123. This grievance was <u>not</u> against Prof McMahon, but the University.

124. On 19 January 2024 Ms Rampton rejected the grievance **[7793] (7 pdf 38)**. Prof Prentice confirmed that she was a joint decision-maker. Although the decision was sent out in Ms Rampton's name, she accepted ownership and accountability for it: see Prof Prentice w/s para. 11.

125. Ms Rampton's analysis (or rather that of its author) and reasons for rejecting it do not withstand even modest scrutiny.

(1) The first reason given was that this was about a "private legal dispute". That was *precisely* C's point – why was it considered appropriate to fund Prof McMahon's defence in what was a private legal dispute? The response fails to engage with that basic point, inverts it, and turns this as a point against C.

(2) It was not a historical matter – the University insurance policy continued to support Prof McMahon's legal fees in November 2023.

(3) The third bullet point refers to the JSJ investigation. This is irrelevant – it was not part of his ToR to consider the availability of insurance.

(4) See too Ms Rampton w/s para. 32 (4 lines down) C was "trying to resurrect historical issues that had *already* been the subject of extensive investigation". That is conspicuously wrong. The two issues had never been investigated.

(5) The fourth bullet suggests that C had failed to raise the issues in this grievance informally. Ms Rampton's witness statement refers to countless earlier examples where C had tried to raise this informally: see e.g. w/s paras. 17, 20, 21. This response was disingenuous (or at least arguably so).

(6) Note: conspicuously, none of the answers provide an explanation as to why cover was made available to Prof McMahon. It would have been straightforward for the University to have provided a brief explanation. The substance of the grievance was intentionally ignored.

126. The evidence given by Prof Prentice in relation to this decision is also troubling in a number of respects. Prof Prentice suggests that she took steps to "understand the history" (w/s para. 11). However, when pressed, she accepted that the only documents that she was likely to have seen were C's grievance and the draft response which Ms Rampton had provided to her at 11:19 on the day that the decision was communicated to C (at 14:36)**[7792]**. See email from Ms Rampton to Prof Prentice **[7769](7 pdf 14)**.

127. Of greater concern is the positive assertions made by Prof Prentice at w/s paras. 12(d) and 13 to the effect that:

> d. **the issues complained of had already been thoroughly considered** via Professor McMahon's Dignity at Work complaint and Professor Evans' complaint investigated under the University's Whistleblowing Procedure, both of which had been concluded …
>
> … I do not accept that my actions were motivated by anything other than following the appropriate University procedures and the need for finality and closure in proceedings that **had already been intrinsically and thoroughly investigated**…

128. The ET will recall the short sequence of questions that Prof Prentice was unable to answer as to: (i) who had investigated the subject matter of C's grievance? ; (ii) when such an investigation was undertaken?; or (iii) whether she had seen a written outcome into the matters C was raising in respect of insurance?

129. It is of course no accident that each of the reasons are relatively easy to deconstruct. This again demonstrates an Institutional (or each of Ms Rampton's and/or

Prof Prentice's individual) desire to avoid addressing key (and inconvenient) issues raised by C. The reasons are unconvincing.

130. (In that regard, Ms Rampton's approach has parallels with the correspondence from Dr Glover to C in relation to the insurance issue. See (i) email dated 26 October 2022 **[3720] (3 pdf 1208)** "I am advised that I am not able to respond to your questions as this is information which you are not entitled, for example because information of this nature constitutes Professor McMahon's personal data". (ii) email dated 21 July 2023 **[6169] (5 pdf 1213)** where Dr Glover says he is not involved in the legal proceedings and that he is "not prepared to engage further on the subject…". These indicate a concerted plan to deflect, stifle and ignore the issues raised by C).

131. The previous point is aptly demonstrated by Ms Rampton's oral evidence (towards the end of her cross-examination). She confirmed that she had in fact investigated why insurance cover was made available to Prof McMahon as part of the terms of cover and by reason of his status as an employee. The ET is invited to contrast the two approaches open to her: (i) provide a short and succinct explanation to C reassuring him that Prof McMahon was entitled to cover with brief reasons why; or (ii) to expend time and energy devising unconvincing reasons why his grievance should not be heard. Ms Rampton was unable to explain why approach (ii) was taken in respect of the infinitely more constructive approach in (i) (she provided no explanation for this). The reasons why, C suggests, are clear. It was a marked effort by Ms Rampton (and the author of the decision) to close ranks, shut down, silence and discredit C. That analysis is consistent with the critical tone of the correspondence.

4.12. Detriment 12 (third claim para 28) – R1's refusal to address C's grievance of 2 September 2024 which, inter alia, constitutes a breach of Statute C, Special Ordinance C(xii) of R1's Statutes and Ordinances.

132. On 2 September 2024 C submitted a grievance against Prof Peake and Ms Akroyd **[8491] (7 pdf 736)**.

133. In summary, C raised the following issues: (i) that Prof Peake knew that bullying was taking place and creating a health & safety emergency at the IoA, yet he failed to intervene; (ii) that Prof Peake was cognisant of an illegitimate process to dismiss Dr Pebody and failed to act to prevent this; and (iii) Prof Peake authorised an investigation of a complaint despite no evidence being presented and despite his knowledge of the true situation was that Prof McMahon had bullied Dr Pebody.

134. In relation to Ms Akroyd, C alleged that (i) Ms Akroyd failed to discharge her duties competently; (ii) Ms Akroyd allowed Prof McMahon to misuse an unlawful redundancy process to coerce and psychologically harm another member of staff; and (iii) Ms Akroyd (& other senior members of the HR & Legal teams) permitted Prof McMahon to make use of the University insurance policy to pay his legal costs.

135. On 1 October 2024, Prof Munir informed C that his grievance would not be progressed **[7155] (6 pdf 648)** on the basis that "… these issues had previously been considered and dealt with following his initial complaint of 2 August 2021 …" which had been investigated by JSJ and then considered by the Academic Secretary: w/s para. 16.

136. Prof Munir's assertions at w/s para 16 are not correct. The Terms of Reference for the JSJ investigation did not include any of the matters forming the subject matter of C's grievance **[4963] (5 pdf 7)**(para. 17). Indeed, by email dated 3 April 2022, JSJ informed C that it was important not to allow "mission creep" in relation to expanding the ToR **[2916] (3 pdf 404)**.

137. There is little to suggest that the subject matter of C's concerns was specifically investigated or addressed. C was never interviewed about these matters, and there are no clear findings.

138. Prof Munir candidly accepted that his outcome letter was drafted for him by HR. By this stage in the chronology, it is inescapably clear that C was perceived to be a disruptor. The decision to reject his grievance by advancing this narrative is symptomatic of an institutional desire to close ranks and silence C.

4.13. Detriment 13 (third claim para 35) – R3's refusal and failure to take any action in relation to the matters brought to her attention in C's complaint to her of 6 October 2024 (about failure refusal to hear his grievance in breach of C's legal rights and R1's Statutes and Ordinances). Her most recent refusal was on 15 October 2024.

139. This issue also concerns C's grievance in respect of Prof Peake and Ms Akroyd. The List of Issues contains a typographical error. This allegation concerns R4. There is no prejudice because Prof Prentice gave evidence in relation to this specific detriment and specifically addresses it in her witness statement.

140. Following Prof Munir's rejection of C's grievance (Detriment 12), on 6 October 2024 C sought to escalate the matter to the Vice Chancellor **[8303] (7 pdf 548)**.

141. On 15 October 2024, Prof Prentice rejected C's grievance **[8301] (7 pdf 546)** on the basis that these matters "had been considered sufficiently by the University": w/s para 23. Prof Prentice confirmed that this decision had been drafted by someone else. However, it is <u>not</u> clear whether the same person drafted the outcome letters for both Professors Munir and Prentice.

142. Although Prof Prentice refers to having undertaken a "full review" of the papers (w/s para. 24), and gave oral evidence as to the papers she had considered, it is possible that she is genuinely mistaken about this. The papers date back to 2021 and

would have been voluminous. It is unlikely that the Vice Chancellor's extremely busy schedule would have afforded her capacity for an in-depth interrogation of the papers.

143. Even if Prof Prentice had undertaken a review of the documents, it is likely to have been nothing more than a "light touch" review. One rhetorically asks why would Prof Prentice have any inclination to conduct a deep dive into the papers in circumstances where someone had already drafted a response for her rejecting the grievance? That does not make sense, and would be a waste of her valuable time.

144. The outcome letter at **[8301]** also does not convey any "full review" having taken place – it merely adopts Prof Munir's analysis (without anything more). To avoid the risk of repetition, C repeats the case theory that he was viewed as a disruptor and this was another attempt to silence him.

4.9 Detriment 9 (second claim para 35) – R1's failure to safeguard C by moving Professor McMahon's office close to C at the Institute of Astronomy so that C is now rarely able to use his Office.

145. Prof Clarke confirmed that when Prof McMahon stepped down as Director he chose to relocate his office to the same corridor as C's office was situated, and this was also close to Prof Gilmore and Dr Pebody. In fact, Prof McMahon's office was situated 3 doors away from C: Prof Clarke, w/s para. 8.

146. Somewhat surprisingly, Prof Clarke sought to justify this move as a "natural choice": w/s 8. It wasn't. It was wholly inappropriate in circumstances where Prof McMahon was (i) embroiled in internal grievance processes against both C and Prof Gilmore; (ii) embroiled in High Court defamation proceedings; and (iii) the specific recommendation following the Whiting investigation was that there should be geographical separation between Dr Pebody and Prof McMahon (which he would have known)**[1202](2 pdf 360)**(para. 2). His previous office was located in the Kavli Institute.

147. The inference at w/s para. 10 that C only raised concerns about the office move some 13 months after Prof McMahon had relocated omitted a significant contextual fact: as Prof Clarke accepted, C was on sabbatical and suffering ill health from 1 October 2022 – 30 September 2023.

148. It is clear that C raised his concerns on 28 October 2023, and again on 22 December 2023. Prof Clarke confirmed that HR advice was sought in relation to this. C's email dated 7 January 2024 provides a useful summary of the background **[7762 - 63] (7 pdf 7)**:

> … I am repeating my request of 28 October 2023. I am unable to go into the Institute of Astronomy regularly or use my office after the individual who has done me so much harm was moved to an office just three doors down from me. As you know, I have been in my present office in the Corfield Wing (H50) for over 20 years.

…

[7763] One detriment that I have suffered as a consequence of whistleblowing is the failure of the Department to provide me with a safe space to work or to safeguard me from Richard McMahon. In the final day of his Directorship on 30 September 2022, Richard moved himself (or was allowed to move by others) to an office three doors down from me in the Corfield Wing.

…

So, I think it is reasonable to ask you to re-locate Richard McMahon from his present office, to which he moved just over a year ago. I am of course not suggesting that Richard McMahon be given an inferior office. He could simply exchange offices with individuals in the corridor below in the Corfield Wing, for example.

149. Prof Clarke was a Wellbeing Advocate. This should have been a concern to her, particularly in circumstances where C had recently returned to work following prolonged absence. No active steps were taken to address the situation at this time.

150. Prof Clarke responded on 13 February 2024 **[7819 – 20](7 pdf 64)**:

> Your email of January 26 suggested that this was a matter that had been left unattended since you first raised it while on sick leave in October, but in fact we met with you on your return to work in December and explained that **the bar for forcibly rehousing somebody within the Institute is a high one and that any such actions would of course need to be applied <u>equitably</u>**. Our provisional view was that this bar had not been met but we encouraged you to supply further information in support of your case, which you did on January 7.

151. The ET is invited to accept that the suggestion that the "bar to forcibly rehousing somebody … is a high one" hardly engages with the serious concerns that C was raising. Prof Clarke confirmed that at this point she had not discussed with Prof McMahon whether he was willing to consider relocation on a voluntary basis. Prof Clarke did not provide any explanation as to why she did not at least attempt to have this discussion with Prof McMahon at this point in time.

152. There is however an important clue as to the rationale for refusing to engage with C's concerns – the need to treat everyone "equitably". That is inexorably bound up with C's complaints against Prof McMahon, and the need to adopt a line that she was not seeking to penalise him by requiring him to relocate in the context of the complaints raised by C. She did not wish to be seen to reward C for having raised the complaints.

153. C's response at **[7819](7 pdf 64)**(top email) was a plea for intervention:

> It can hardly have escaped your notice that I have not been in my office these last 2 years. I am not in my office now. I am hardly ever in my office. You have failed to supply me with a safe space for my work.

That plea went unanswered.

154. Prof Clarke was provided with an OH report dated 20 February 2024 prepared by Dr Martell (Consultant Occupational Physician) **[7821](7 pdf 66)**. In so far as is material, OH recommended that adjustments be made to reduce C's exposure to workplace stressors:

> **[7821]** (last para)
> I consider he is fit for work but **there do need to be some workplace adjustments to support him and to address the work stressors**.
>
> (**[7822]** para. 6.1 (top) refers to stress related symptoms and symptoms of depression).
>
> Para 6.2
> There is evidence the work environment is contributing to his sickness absence/ill health problem. His respiratory condition is not work related but **the stress related ill-health appears to be work related**. He tells me he has raised dignity and work concerns and safeguarding concerns. He describes depressive symptoms secondary to work stress.
> …
> He describes some **geographical factors in the department with where staff are allocated workspace that could be improved to reduce stress**. He tells me there is close proximity of the offices of both the individual who made a dignity at work claim against him and also a person who he felt was being bullied by this individual. It would be helpful if room allocation could be reviewed to see if there could be more distance between these individuals to minimise contact when they are working in the building.
>
> **[7823]** With regard to modifications or restrictions to his role I recommend the following:
> o **Measures implemented to address the work stressors**. As detailed above I have recommended he complete an individual stress identification tool and measures are implemented to reduce the work stressors.
> …

155. Although Prof Clarke sought to suggest that the adjustments recommended by OH were "mildly expressed" (w/s para. 13), that does not reflect the reality of the situation. Prof Clarke accepted that the report clearly set out what adjustments were needed: "indeed" (oral evidence). The recommendations were hardly gratuitous – they were specifically tailored to reduce C's stress related symptoms. Prof Clarke did not ask for any clarification from OH. The likely reason for this is that the report was sufficiently clear.

156. Prof Clarke had to acknowledge that by failing to intercede, the University had done nothing to reduce C's stress caused by his office being situated close to Prof McMahon.

157. C continued to raise this issue. See correspondence dated 11 April 2024 **[7827](7 pdf 72)**(bottom email). He chased again on 4 August 2024 **[7826]**(bottom email). He raised it again on 14 September 2022 **[7826]**(2nd email).

158. Prof Clarke accepted that Prof McMahon eventually moved office on 24 February 2025 **[8404](7 pdf 649)**.

159. **Analysis**: It is not a necessary ingredient in a whistleblowing detriment claim that there was any malice towards the worker: ***Croydon Health Services NHS Trust v Beatt*** [2017] ICR 1240 CA (per Underhill LJ at [111]): *"… It is not of course necessary as a matter of law that any detriment should be maliciously motivated…"*. Here, C raised important wellbeing concerns in relation to the proximity of his office. In the period 28 October 2023 – 24 February 2025 (approximately 16 months), no sufficient steps were taken to safeguard C's wellbeing in respect of this matter. It is not suggested that the concerns raised by C were anything other than genuine.

160. The suggestion that it was necessary for Prof McMahon's relocation to be tied up in a sequence of room reallocations is unevidenced. He was not asked to consider moving voluntarily. Prof Clarke confirmed that she never explored the issue of a room swap (and never investigated this).

161. It is necessary to ascertain the reasons for this inaction over an extended period. The fact that C had made one or more disclosures (or raised complaints about Prof McMahon) was clearly a factor in all of this. The need to treat both C and Prof McMahon "equitably" is an acknowledgment of not wishing to appear to take sides in the departmental conflict – one which arises in the context of disclosures raised by C **[7819]**.

162. Prof Clarke's oral evidence put the matter beyond doubt. She confirmed that there were two reasons for relocating Prof McMahon: (i) the need to accommodate staff/new hires; and (ii) the wellbeing/pastoral concerns raised by C. She never mentioned (ii) to Prof McMahon. One has to ask why she was not transparent? The answer is obvious – she knew that this would inflame the situation. That explains why Prof Clarke was keen to emphasise that the decision to relocate "… was certainly not an expression of who we thought was at fault…" (w/s para. 17). Again, the reference to "fault" admits the nexus with his disclosures.

163. It is difficult to discern any real justification for not at least attempting to take active steps to address C's concerns in the period spanning 28 October 2023 – 24 February 2025 other than (at least in part) a perception that he was perceived to some extent to have brought this on himself by raising complaints about Prof McMahon, and a reticence to do anything which might be deemed to give credence to the concerns that he had raised, or be seen to confer a benefit on him for doing so.

Detriment 14 - The First Respondent failure to investigate, and it's facilitation of, the improper use of the First Respondent's insurance policy to support the Second Respondent in the defamation proceedings brought by the Claimant.

164. The failure to investigate is dealt with above in relation to Detriment 6. It is acknowledged that Mr Halls' witness statement provides an explanation as to why Prof McMahon was entitled to the benefit of legal expenses insurance in his defence of the High Court proceedings by reference to the Policy terms. The meaning and effect of those terms is not disputed.

165. However, there is a troubling aspect of this process: both the University and Prof McMahon were (as Mr Halls describes) each bound by the duty to act in the utmost good faith in connection with the Policy terms. Each were bound by a duty of candour, and to provide full and frank disclosure.

166. It is clear that (i) the University requested the insurer to provide cover; (ii) the University remained at all times the insured: Halls w/s para. 22.

167. Although the operation of legal advice or litigation privilege precludes an in-depth analysis, there are troubling aspects of this, namely: (i) the University knew that Prof McMahon had not provided evidence in support of his grievance against C (see email from Ms Hudson dated 11 August 2022 **[3432](3 pdf 920)**); and (ii) Prof McMahon had no evidential basis to support his grievance against C.

168. As Mr Halls explained, if the University suspected that Prof McMahon's grievance had been submitted in bad faith, it would have discretion not to request cover for any employee. Likewise, if it had grounds to suspect that Prof McMahon had submitted his grievance in bad faith, then it could put a halt to the continuation of such cover as it remained the insured.

169. C is understandably concerned whether full disclosure was provided to the insurer about such matters by either the University or Prof McMahon. Either Prof McMahon should have provided full and candid disclosure to the insurers. Alternatively, the University should have reflected on whether Prof McMahon's grievance was submitted in bad faith as a retaliatory measure.

170. However, it is clear that the University was concerned to protect its reputation: see email from Prof Ferran to HR dated 1 June 2023 **[6323](5 pdf 1367)**.

STUART BRITTENDEN KC

OLD SQUARE CHAMBERS

25 June 2026