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 A

PROTECTED DISCLOSURES

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1. The Claimant's submissions (hereafter "C") are provided in two parts. Part A analyses the 8 disclosures relied upon. Part B addresses each of the detriments.

2. The legal framework is set out in the Opening and is not repeated.

3. In relation to PDs#1-7 there is a large measure of overlap in the matters relied upon in respect of the various components of s. 43B ERA 1996 that need to be satisfied, particularly in relation to the reasonableness of C's belief in the information disclosed, and in respect of the public interest component.

PD#1 and PD#2

On 20 July 2021, C emailed Prof Peake raising concerns about the health and safety of Dr Pebody as a result of her treatment by R2, and about academic malpractice by R2's failure to take action on the ORP grant (C alleges this is a protected disclosure under s. 43B(1)(b) and (d)).

On 21 July 2021, C sent Ms Birrell, in her capacity as a member of R1's HR team, the same email he had sent Professor Peake on 20 July 2021.

4. These are addressed at C w/s paras. 79 – 82 (and are located at **[1553](2 pdf 709)** and **[1574](2 pdf 730)**).

5. Both PDs involve the same email. C relies upon the emails as tending to show (i) a breach of a legal obligation; and/or (ii) that the health and safety of "any" individual has been, or is likely to be endangered.

6. Health & Safety: s. 43B(1)(d). The emails clearly convey information tending to show that the health of Dr Pebody was endangered or likely to be endangered to satisfy s. 43B(1)(d). The email demonstrates that C is "very concerned" for Dr Pebody. It provides information based upon his perception of what he had seen: "She seems to me to be in a fragile state of mind. (We have been interacting a lot over the examinations and the ORP grant)". It also refers to the University owing her a "duty of care". The reference to Employee A conveys the seriousness of the situation. As C explained in evidence, he saw a parallel in both Employee A and Dr Pebody suffering distress in their personal and professional lives.

7. Reasonable belief. C held a reasonable belief in relation to this for the detailed reasons set out in his w/s at para. 75. This is corroborated by his witnesses: Prof Belokurov describes his observations on Dr Pebody's state of health at w/s paras. 27 – 28, 32, and what C discussed with him about this subject at w/s paras. 34 – 35. Prof Haehnelt's account is set out in the transcript of the meeting with the Deputy Directors on 26 July 2021 (below). At w/s para. 9 he refers to the fact that Dr Pebody "became increasingly distressed by the handling of her contract extension…". Dr Pebody also confirms that C had witnessed her distress: w/s para. 130. Further, Prof Clarke also acknowledged in response to what C reported that "Gudrun is in a very bad place and could be in need of urgent help" **[1551](2 pdf 705)**.

8. Public interest: As regards the public interest, it matters not that C made a disclosure in respect of one person (Dr Pebody). A close reading of s. 43B(1)(d) confirms that it is capable of being engaged in circumstances where the information disclosed concerns the health and safety "of any *individual*" (in the singular).There is no requirement for a plurality of concerns to be communicated in respect of more than one individual. Indeed, it would rather undermine the protections if raising concerns about the health of an individual did not fall within s. 43B(1)(d).

9. As Prof Peake confirmed, the University approaches the issue of health and wellbeing as a matter of considerable importance to it. Although the ET has not seen all of the University's policies and procedures regarding wellbeing, Prof Peake confirmed that they do exist. C's email references the University owing a duty of care to Dr Pebody. That duty of care extends to all staff and students.

10. Prof Peake readily agreed that this was an "exceptionally serious email" to receive, and one that "would warrant immediate action". This attests to the public interest nature of the disclosure.

11. It has to be in the public interest for *any* employer to take proactive steps to safeguard the health and wellbeing of staff, whether on an individual or a collective basis.

12. In addition, C adopts the reasoning of Mr Scott-Joynt: "encouraging staff to speak up where a threatened colleague feels unable to do so appears to me to be a foundational aim of any reasonable whistleblowing policy" **[4962](5 pdf 6)**(para. 9 (last 2 lines). C's actions align with this public interest dimension. Although this is a matter for the ET, it is notable that Mr Scott-Joynt considered that this would qualify as a protected disclosure **[5038](5 pdf 82)**(para. 324).

13. Legal obligation: s. 43B(1)(b). The legal obligation relied upon concerns the University's contractual obligations owed to Dr Pebody as Employer, commonly understood as the implied term of trust and confidence. It is to be borne in mind that there is no requirement that C has to spell out what legal obligation is engaged: ***Twist DX*** (at [87], [103]). The email conveys information that Prof McMahon was "trying to make her unemployed", and that this was part of a "personal vendetta".

14. Reasonable belief: Although C was not aware that the End of Contract letter had been sent to Dr Pebody at this point, he had a reasonable belief in the information disclosed.

    (1) On 7 June 2021 Prof McMahon had told him that 90% of the funding for Dr Pebody's employment came via the Opticon grant. In the context of that conversation he said "We don't have a role for her, it's not the money. She does not have an IoA role. Because her role, her contract … Her position is Opticon" **[1185](2 pdf 348)**.

    (2) Prof McMahon was critical of Dr Pebody: "her behaviour is unacceptable. She is a bully. She bullies David. Basically".

    (3) Prof McMahon stated: "We do not have a job for Gudrun. If she was a postdoc, or lecturer, we'd be telling them … or senior research fellow, we'd be encouraging them to apply for other jobs in the University. That is the thing to do".

    (4) C stated: "I suspect she has probably got that message and she is probably doing that because she can see that…". Prof McMahon responded: "I hope so. I hope so. Because there has to be a consistent message…".

    (5) Prof McMahon stated: "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".

15. C reasonably understood the phrase "zero out" to mean that Prof McMahon wanted to cancel or eliminate the grant altogether. The context supports this, because he went on to provide substantive reasons for not wanting to continue with that grant – he (wrongly) did not view it as a research project. Indeed, 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)**. The context of the conversation was clear – Prof McMahon did not want Dr Pebody doing any work for the Department, and she should find work elsewhere.

16. The obvious point is this: if Opticon was terminated, this would result in the termination of Dr Pebody's employment as it funded 90% of her salary (and there was no money available from Departmental funds to employ her). Prof McMahon was at the same time intent on removing the examination work (the remaining 10%).

17. Public interest. As Underhill LJ acknowledged in ***Chesterton*** (at [28]), "… there may be more than one reasonable view as to whether a particular disclosure was in the public interest…". It is also important not to lose sight of the fact that much of the guidance provided by Underhill LJ was tailored to a specific scenario, namely "… where the disclosure relates to a breach of the worker's own contract of employment … where the interest in question is personal…" (at [37]). It is in *that* specific context that the consideration of the "fourfold classification of relevant factors" comes into play. In no sense was C disclosing something of a personal nature to him, but rather to protect another.

18. The fact that Parliament has legislated to confer unfair dismissal protections on employees attests to the fact that there is a public interest in safeguarding employee rights. C's disclosure has to be seen in that wider context.

19. Alternatively, to the extent that the email does not satisfy the requirements of s. 43B in isolation, C contends that it is appropriate to link or aggregate it with further disclosures: ***Norbrook Laboratories (GB) Ltd v Shaw*** [2014] ICR 540 (at [22])(Opening, paras. 10 – 11).

PD#3 and PD#4

PD#3 On 25 July 2021 C emailed a document he had written detailing the delays in obtaining the benefits of the ORP grant caused by R2 and its impact on Dr Pebody to Professors Challinor and Reynolds, the Deputy Directors of the Institute of Astronomy. (C alleges this is a protected disclosure under s. 43B(1)(b) and (d)).

PD#4 On 26 July 2021 C emailed his document detailing the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact of Dr Pebody (same document as in Protected Disclosure 3) to Ms Macharia who was in charge of Departmental Administration.

20. The "Delays Document" is addressed at C w/s paras. 87 – 97 **[4375](4 pdf 510)**. It was written jointly with Prof Haehnelt.

21. The document conveys sufficient information, namely that:

(1) Prof McMahon had not approved the ORP grant. This was factually correct.

(2) The grant application had been approved by the Department and the University at the point of submission (quoting extracts from the Research Operations Office).

(3) "The Director does not have the authority to embark upon the redistribution of resources of an awarded grant of which he is neither PI nor Co-I".

(4) "Prof McMahon has embarked on a major re-writing of a number of grants, most recently the ORP grant…".

(5) C provides information in the form of a statement of fact that this goes "… beyond the actual powers of the Director…".

(6) It states that the Director had "produced still further conditions, including multiple budgetary and personnel changes. Of course, these cannot now be changed without the permission of all European partners – clearly not feasible at this very late stage".

(7) The delays had "very serious consequences" for Dr Pebody.

(8) That Dr Pebody had been issued with an End of Contract letter in circumstances where "funding is in place".

(9) That the Department has "routinely underwritten grants" and that Dr Pebody's contract had not been underwritten.

(10) It asserts that "it is discriminatory to treat one employee in a completely different way to all the others…" and that "the way Gudrun has been treated raises extremely serious concerns…" (in evidence C clarified that he was not referring to a protected characteristic here, but rather "victimisation" (in a non-EqA sense) was a "better word".

22. It is important to consider that this information was communicated within an academic context, namely the recipients would be presumed to have knowledge of grants and related processes. C was not required to spell this out by reference to terms of any particular contract. In any event, there is no requirement to do so ***Twist DX*** (above).

23. Legal obligation: s. 43B(1)(b). In terms of the legal obligations referred to, (i) C relies upon the Declaration of Honour; and (ii) the obligations of the University in its capacity as Employer to Dr Pebody.

24. Declaration of Honour. In relation to the Declaration of Honour, Prof Clarke confirmed that it is a "legally binding" agreement.

25. C confirmed that the relevant breach was in relation to the following certified declaration made by the University **[Supp, p.1]**:

> 1. The information provided for project 101004719 — ORP is correct and complete.

26. Paragraph 1 is shorthand for each component of the grant that the University had signed up to. Any attempt to renege on this declaration (as to the various components of the grant) would place the University in breach of it.

27. In addition, in re-examination, C confirmed that any attempt to modify the grant as proposed by Prof McMahon would also place the University in breach of a declaration in paragraph 4:

> I/my organisation:
> - …
> - have or will have the necessary resources needed to implement the action

28. Obligations owed to Dr Pebody. The document suggested that the preparatory steps taken to terminate Dr Pebody's employment were unwarranted and could amount to a breach of her contract of employment. This was being done without justification because (i) funding was available; and (ii) she was being treated inconsistently because her contract was not underwritten (when it had been for others). In oral evidence, C described the contents of the Delays Document as revealing a "breach of employment law".

29. Reasonable belief. The information contained within the Delays Document was accurate, and the opinions that Prof McMahon was exceeding his authority as Director was also supported by Professors Reynolds and Challinor in relation to this issue of academic freedom. In oral evidence, Prof Challinor described this as "sacrosanct". At the meeting on 27 July 2021 between the Deputy Directors and Prof McMahon, the notes of this meeting record the Deputy Directors as saying that they: "… strongly expressed the view that the principles of academic freedom apply here and that we didn't see the basis on which the IoA can refuse any part of this grant…" **[9766](8 pdf 907)**.

30. It was also factually correct that Prof McMahon had sought to make significant amendments to the grant terms **[5039](5 pdf 353)**.

31. C is not legally trained. Even if he were to be mistaken about the fine detail or the consequences of non-compliance with the Declaration of Honour, that doesn't alter the position. Provided that C's belief is objectively reasonable, C does not need to be correct as to the existence of the legal obligation or the consequences: see ***Babula***

(at [75]); Opening para. 13. Indeed, if Prof Clarke reasonably believed the DoH to be legally binding, then C's belief is also reasonable.

32. Public interest. It is obviously in the public interest that institutions comply with their obligations and commitments that they had signed up to (particularly in the context of a large value grant) in order to avoid frustrating the objectives of the grant, as well as negative implications for other partners. It should also be borne in mind that grant income is public money.

33. In relation to the treatment of Dr Pebody, C relies upon and adopts the same submissions in respect of PD#1 and 2 (above).

34. Health & Safety: s. 43B(1)(d). The delays were cited as having "very serious consequences" for Dr Pebody. The EoC letter was mentioned as "effectively announcing the termination of her employment", while she was "fully engaged" in providing examination support "under nearly impossible circumstances" **[4376]**. It is in that context that a specific apology is sought.

35. Although it does not explicitly refer to her health being endangered, it is clear that this has had serious implications for her and her wellbeing.

36. C repeats the matters set out in support of PD#1 and 2 in relation to C's reasonable belief and the public interest component.

PD#5 On 26 July 2021 C met Professor Peake and discussed in further detail the concerns raised within the 20 July 2021 disclosure and the document in which he had described the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact on Dr Pebody in further detail. (C alleges this is a protected disclosure under s. 43B(1)(b) and (d)).

37. This is addressed at C w/s paras. 98 – 103 **[1762](2 pdf 916)**.

38. In relation to the information disclosed:

(1) C provided further information as to Dr Pebody's health at **[1763]**:

> "… When I sent the email, it was directly after the 17th and 18th of July, and Gudrun was not sleeping. She was repeatedly emailing me, trying to comprehend what had happened to me, to her. She was tearful and withdrawn and depressed, in Zooms. There are many other staff members to whom she had been tearful and withdrawn and depressed, including [5 named individuals]. I think she has been treated – and choosing my words of care – I think she's been treated with unconscionable cruelty by the director".

(2) There is mention of "bullying".

(3) **[1764]** refers to C saying, "there is a particularly damaging section where he tells me that it's his intention never to sign the OPTICON contract, so Gudrun will become redundant…".

(4) **[1765]** (2nd para): "Well, I mean, the university is now in serious difficulty, because there would seem to be grounds for – at the minimum – constructive dismissal".

(5) **[1765]** (8th entry): "But that is why I'm particularly concerned, the difficulties in her personal life and her treatment by the director. I mean, when I sent the email, I was seriously worried she might self-harm. That is how serious and depressed, and withdrawn she had become".

(6) **[1766]** (2nd entry): "… Richard simply sent me further conditions, which are impossible to satisfy at this late stage of personnel changes and budgetary changes".

(7) "… What is consistent with what is in the earlier recordings, is that Richard doesn't want to accept this grant; he wants it delayed and delayed until Gudrun is made redundant".

39. Health & Safety: s. 43B(1)(d). The extracts above amply demonstrate that C disclosed serious information concerning Dr Pebody's health and safety. He provided an explanation as to the basis for holding such a belief.

40. C relies upon and repeats the submissions in respect of PD#1 and 2 in respect of "reasonable belief" and the public interest element.

41. Legal obligation: s. 43B(1)(b). C makes explicit reference to "constructive dismissal" and the fact that Dr Pebody is being bullied. He also provides his reasons for this. In oral evidence, C confirmed that the legal obligation he was referring to was "the treatment of Dr Pebody as viewed from the perspective of employment law". He confirmed that in relation to the reference to constructive dismissal: "It's true, that was one of the things in my mind".

42. The analysis in respect of the public interest and reasonable belief is set out above. However, when questioned about the public interest issue in relation to these minutes, C confirmed: "It is a valuable grant. It is obvious in the public interest. Dr Pebody is part of a sequence, it's not confined to one individual".

PD#6 On 26 July 2021 C met Professors Challinor and Reynolds and discussed in further detail the concerns raised within the 20 July 2021 disclosure and the document in which he had described the delays in obtaining the benefits of the ORP Grant caused by R2 and its impact on Dr Pebody in further detail. (C alleges this is a protected disclosure under s. 43B(1)(b) and (d)).

43. This is addressed at C w/s paras. 104 – 118. A transcript of this meeting is at **[1743](2 pdf 899)**.

44. C disclosed the following information:

(1) **[1744]** (8th entry) "So you accept the point that there has been an inconsistency, in the way the department approached this? Obviously, we must have employment practices that are consistent".

(2) C provided an example of where checks had been made to see whether funding was available before the End of Contract letter was sent out (**[1745]** refers to Sim Yong [in fact the correct name is Dr Semyeong Oh]).

(3) At **[1746]** (5th entry) Prof Haehnelt – in the context of discussing his "extreme concern about the wellbeing of Gudrun" states: "This has become so acute, that every single day matters …". Although these words were not said by C, he did confirm "I agree entirely" and thereby adopted them.

(4) **[1746]** (3rd entry from bottom) C stated: "We've said that she's in a very bad way…"

(5) At the bottom of **[1747]** C raised concerns as to how Dr Pebody had been treated by Prof McMahon during the examinations process and read out from the addendum to the minutes that he and Prof Sijacki had prepared which referred to the fact that: "… During the examination process, the director was openly unsupportive of Gudrun. The director undermined her, and expressed a lack of confidence in her work. As a specific example, he sent emails to all the examiners, explicitly questioning Gudrun's work in transcription and checking of the marks. After circulation of the original minutes … the director objected to thanking Gudrun Pebody in the minutes, and asked for the removal of the sentence: …".

(6) **[1751]** (8th entry): "He said that verbally. He said, specifically, I want to zero Gudrun".

(7) **[1751]** (2nd last entry): "It was completely obvious from the context of the conversation, that he loathed Gudrun and wanted to make her redundant".

(8) **[1752]** (5th entry): "There was one occasion when she didn't sleep for two days, and she was sending me repeatedly [sic] emails through the night, trying to process what had happened to her".

(9) **[1753]** (1st entry) "… I would imagine if I was Gudrun, I would be talking to my lawyers, but we'll have to see".

(10) **[1754]** (5th entry) C said "… I was more worried about Gudrun's mental stability, so I was alerting …".

(11) **[1756]** (8th entry) C stated: "… the deputy directors have been presented with serious allegations of bullying, very serious allegations that have taken someone to the very edge of mental health…".

45. Health & Safety: s. 43B(1)(d). The analysis in relation to PD#1 and 2 is also applicable here in relation to reasonableness of belief and the public interest elements.

46. Legal obligation: s. 43B(1)(b). The analysis in relation to PD#1 and 2 is also germane here in respect of each statutory component.

47. Reasonable belief. The only error in the information disclosed was that C stated that Prof McMahon had said that he wanted to "zero Gudrun". He in fact said that he wanted to zero out Opticon. C explained that he had not listened to the recording before this meeting and admitted his error in evidence. However, it is a point without difference – if Opticon was terminated, then Dr Pebody would have no substantive employment wef 30 September 2021.

48. Public interest: It was suggested to C that he raised nothing in the meeting which was in the public interest, and that this was just all about internal politics. C disputed this (gist): "the improper sending of the End of Contract, the breach of Declaration of Honour by changing the requirements of the grant, and those obligations, and the health and safety of Dr Pebody are all inter-connected".

49. The evidence of both Professors Reynolds and Challinor support C's intervention as being in the public interest. Prof Reynolds confirmed that the Deputy Directors were going to have "very, very frank conversations with him, and impress on his just how serious this is, and how immediate action is needed…" **[1752]**(6th entry from bottom). Prof Reynolds also acknowledged that the situation had to be "just solved out of a moral imperative … it's just a moral imperative to help Gudrun, and protect her mental health here" **[1753]**(2nd entry). At the top of **[1754]** Prof Challinor refers to the "extremely serious allegations" C was raising, and that the University owed a "duty of care for [Dr Pebody] who is in an incredibly fragile state…".

50. It is difficult to countenance how raising these matters was not in the public interest in light of these statements. In no sense was this trivial "tittle-tattle" or gossip. The concerns raised were extremely serious.

PD#7 On 2 August 2021 C submitted a document titled "The Behaviour of Richard McMahon to Gudrun Pebody" to Professor Peake, Ms Birrell and Louise Akroyd, R1's HR Business Manager. The document detailed historical issues at the Institute involving R2, R2's behaviour concerning the ORP grant and the Astrophysics examinations process, and the impact on Dr Pebody. (C alleges this is a protected disclosure under s. 43B(1)(b) and (d)).

51. This is addressed at C w/s paras. 140 – 43. The "Behaviours Document" is at **[1872](2 pdf 1028)**.

52. It is not proposed to recite passages from this lengthy document for it speaks for itself. Properly analysed, it is a collation of all of the earlier disclosures relied upon (above), but a more comprehensive and evidence based document. PD1 is quoted in full at **[1878]**. It contains detailed allegations of bullying behaviour, provides evidence and transcripts in support. It also details the fragility of Dr Pebody's mental health and the changes that Prof McMahon sought to implement to the grant. All of these matters are summarised in the Conclusions section at **[1882]**.

PD#8 On 12 December 2023 C raised a grievance addressed to R3 (C alleges this is a protected disclosure under s. 43B(1)(b) and (f)).

53. C addresses this at w/s paras. 268 – 73. C's grievance is at **[7770] (7 pdf 15)**.

54. He provides detailed information to the effect that Prof McMahon did not provide evidence in support of his grievance, and expresses concern that the University had provided legal expenses insurance in a private legal dispute. At the bottom of **[7771]** he explains that the provision of such support was "both inappropriate and retaliatory against a whistleblower and therefore contrary to [PIDA]. In employment terms, it represented detriment…".

55. Legal obligation: s. 43B(1)(b). The legal obligation relied upon is a "possible failure to comply with legal obligations, namely the terms of the insurance contract": w/s para. 271.

56. On the limited information available to C, the ET is invited to find that C had reasonable grounds upon which to believe this. He was aware that the terms of the insurance policy were subject to an obligation of utmost good faith. He was also aware that Prof McMahon had provided no evidence in support of his grievance against C. Against the detailed background which was carefully set out in his grievance, he was entitled to raise the concern that Prof McMahon was "allowed … to make inappropriate use of the University insurance policy …" **[7770]**(1st para).

57. C believed that Prof McMahon had submitted his grievance in bad faith as a retaliatory measure. The disclosure has to be seen from the perspective of *his* genuine belief. At the time, C had no knowledge as to why or upon what basis Prof McMahon was entitled to the benefit of the University's legal expenses insurance, more so in circumstances where he had provided no evidence in support of his grievance against C. It is understandable how he might reasonably believe to have been subjected to a detriment in circumstances where his employer was effectively underwriting Prof McMahon's legal costs in what he thought was a private legal dispute. Even if C was mistaken in his belief as to whether this amounted to an inappropriate misuse of the

insurance policy, that is immaterial. He had reasonable grounds to believe that this was the case: see ***Babula***.

58. It is important to bear in mind that the first time that C had received any explanation in relation to the circumstances in which Prof McMahon was indemnified was in the provision of Harry Hall's witness statement (which was received on the Friday before the commencement of the hearing – no criticism is made of the timing of receipt, but it weighs into the balance as to the reasonableness of his belief at the material time he made this disclosure).

59. Public interest: The obligation of utmost good faith is fundamentally important to the operation of all insurance contracts. The fact that the University is in receipt of public funds, in C's mind, fortified the need to ensure that the decision to extend legal cover to Prof McMahon was properly made.

60. Concealment: s. 43B(1)(f): It is accepted that the disclosure does not expressly refer to concealment of a potential criminal offence, namely fraud as referred to in w/s para. 271. C withdraws reliance upon s. 43B(1)(f) in relation to this disclosure.

STUART BRITTENDEN KC

OLD SQUARE CHAMBERS

25 June 2026