THE INDUSTRIAL TRIBUNALS

CASE REF: 780/13

CLAIMANT: **Christian Holscher**

RESPONDENT: **University of Ulster**

DECISION

The unanimous decision of the tribunal is that the claimant's claim is out of time and the tribunal has no jurisdiction in the matter. In any event the claim must be dismissed for the further reasons as set out in the conclusions at paragraph 8 of this decision.

Constitution of Tribunal:

Chairman: **Mr S A Crothers**

Members: **Mr M Grant**
Mrs M Torrans

Appearances:

The claimant was present and represented himself. Ward Hadaway, Solicitors, represented him until a short time before the hearing.

The respondent was represented by Mr B Mulqueen, Barrister-at-Law, instructed by Arthur Cox Solicitors.

The Claim

1. The claimant claimed that he had been subjected to detriments on the ground of making a protected disclosure under Part VA of the Employment Rights (Northern Ireland) Order 1996 ("the Order"). He claimed that the protected disclosure was a qualifying disclosure by virtue of Article 67B(1)(a) of the Order and further relied on Article 70B of the Order, which is also reproduced in paragraph 4 of this decision. The respondent denied the claimant's allegations in their entirety and relied on Article 71 of the Order to contend that his claim was out of time.

Issues before the tribunal

2. The agreed legal and factual issues before the tribunal were as follows:-

Legal Issues

(1) Whether the claimant made a 'qualifying disclosure' for the purposes of Article 67A & Article 67B (a) and (b) of the Employment Rights (Northern Ireland) Order 1996 ("the Order") when he:

1.1 Informed Professor Tony Bjourson, Director of Biomedical Science Research Institute, and Professor Hugh McKenna, Dean of the Faculty of Life and Health Services, that Professor Howard had inserted additional experiments on the FP7 grant application in February 2010 using the claimant's name and project licence in making the application;

1.2 Informed Professor Norman Black, Pro-Vice Chancellor of Research, of the same facts in May 2010;

1.3 Informed Mr Magee, Head of HR, and Professor Adair, Pro-Vice Chancellor of Communications in June 2010;

1.4 Informed Professor Barnett, the Vice Chancellor, of the same facts in August 2010;

1.5 Raised a formal complaint against Professor Howard in August 2010 in relation to scientific misconduct.

(2) Whether the claimant reasonably believed that the facts or allegations disclosed were true.

(3) Whether the claimant made the disclosures in good faith.

(4) Whether the claimant was subjected to detriments on the grounds of making a protected disclosure. The detriments the claimant complains of are:-

4.1 Being subjected to disciplinary action in August 2011 and July 2012;

4.2 Being demoted from Professor to Senior Lecturer;

4.3 Loss of salary following demotion;

4.4 Loss of career prospects including the Faculty Executive Committee's decision not to support the claimant's application for promotion in 2011;

4.5 Threatening the claimant;

4.6 Punishing the claimant;

4.7 Damage to the claimant's reputation;

4.8 Sidelining; and

4.9 Harassment.

(5) Is the claimant's claim or aspects of same within time; if not was it reasonably practicable for the claimant to bring his claim within time?

Factual Issues

(6) What did the claimant's licence cover?

(7) Were additional experiments added to the FP7 scheme application which fell outside the scope of the claimant's licence?

(8) Was the claimant's name and project licence used in the application for a grant to carry out particular scientific experiments without the claimant's consent?

(9) Did the claimant raise his concerns about these matters to Professor Tony Bjourson, Professor Hugh McKenna, Professor Norman Black, Mr Magee, Professor Adair and Professor Barnett?

(10) Did the respondent take the allegations raised by the claimant seriously in June 2010 or otherwise deal with them appropriately?

(11) Did the respondent take any of the allegations raised by the claimant seriously or otherwise deal with them appropriately?

(12) Did the respondent thoroughly investigate the matters raised by the claimant?

(13) Did the report following the investigations of the claimant's complaint address any of the claimant's concerns? If not, why not?

(14) Was a decision taken to confiscate the mouse brains from Professor Howard in around November 2010?

(15) Was Professor Howard named in the Alder Hay Children's Hospital scandal report?

(16) Was the claimant instructed not to pursue matters any further?

(17) Was the conduct of the disciplinary proceedings to which the claimant was subjected fair and reasonable?

(18) Was the outcome of the disciplinary proceedings in 2012 predetermined?

(19) Was there unreasonable delay in dealing with the disciplinary matter raised in June 2012?

(20) What was the reason for instigating disciplinary proceedings against the claimant in or about January 2012 and January 2013?

Sources of Evidence

3. The tribunal heard evidence from the claimant and, on the respondent's behalf, from Professors Tony Bjourson, Hugh McKenna, Alastair Adair, Bryan Scotney, Neville McClenaghan, Pol O'Dochartaigh, Marie McHugh, Anne Moran,

Robert Hutchinson, Richard Miller, Ian Montgomery, and Ronald Magee Director of Human Resources. The tribunal was also assisted by bundles of documentation. The parties could not agree a chronology of events, and produced separate chronologies.

Statutory Provisions

4. (1) At this stage the tribunal considers it appropriate to set out the relevant statutory provisions relating to protected disclosures and the appropriate time limits for presenting an application to the tribunal.

(2) The relevant statutory provisions contained in Part VA of the Order, are as follows:-

"Meaning of "protected disclosure"

67A. In this Order "protected disclosure" means a qualifying disclosure (as defined by Article 67B) which is made by a worker in accordance with any of Articles 67C to 67H.

67B. –(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following –

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding sub-paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of paragraph (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the

information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within sub-paragraphs (a) to (f) of paragraph (1).

Disclosure to employer or other responsible person

67C. - (1) A qualifying disclosure is made in accordance with this Article if the worker makes the disclosure in good faith –

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to –

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer."

(3) Part VA of the Order also provides as follows:-

"**Protected disclosures**

70B. –(1) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure."

(4) The relevant provision in relation to the out of time issue is contained in Article 71 as follows:-

"(3) An industrial tribunal shall not consider a complaint under this Article unless it is presented -

(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(4) For the purposes of paragraph (3) -

(a) where an act extends over a period, the "date of the act" means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on;

and, in the absence of evidence establishing the contrary, an employer shall be taken to decide on a failure to act when he does an act inconsistent with doing the failed act or, if he has done no such inconsistent act, when the period expires within which he might reasonably have been expected to do the failed act if it was to be done."

Findings of Fact

5. Having carefully considered the evidence insofar as same relates to the issues before it, the tribunal made the following findings of fact, on the balance of probabilities:-

(i) The claimant was employed by the University of Ulster ("the University"), from 1 May 2004 until 31 August 2013. He was employed initially as a lecturer and scientist and was promoted to Professor in the School of Biomedical Sciences in October/November 2011. He is currently employed by the University of Lancaster as Professor of Neuroscience as from 1 September 2013, following his resignation from the University effective on 31 August 2013. The claimant was clearly an extremely competent scientist during his time with the University, and presented himself before the tribunal as being intelligent and articulate.

(ii) Professor Vyvyan Howard was also employed by the University as Professor of Histology and Imaging in 2006.

(iii) The protected disclosure relied on by the claimant is contained in correspondence to Professor Alastair Adair dated 4 August 2010. The claimant accepted, under cross-examination, that his correspondence represented all of his stated concerns. The tribunal therefore considers it necessary to set out the contents of the correspondence as follows:-

"4 August 2010

Dear Prof. Adair,

In accordance with the regulations at UU, I am officially asking you to investigate several incidences of misconduct by Prof. Howard.

I would like to focus on the main points as outlined below. I ask you to please conduct an independent inquiry in the matter and to inform the management of the university of your results. If you have any questions or require additional information on the issues raised I am happy to help.

With best wishes,

1. **Unethical and false statement on a EU FP7 grant document**

Clearly unethical and illegal practice has been conducted in the planning and executing the FP7 grant. Without my knowledge, additional experiments have been added to the FP7 grant application. These include two major projects that involve *in vivo* animal work and require a project licence by the Home Office. They are described on pages 43-46 in the work package 3, and on pages 29, 34, 35 on the list of deliverables (Version 4, final version of the FP7 grant, on the CD). There is no project licence for these experiments, and the authors of the experimental descriptions (Vyvyan Howard and Ken Dawson) simply used my current project licence to create the impression that the work has ethical approval. However, my licence does not cover the experiments. My licence is the only one that is associated with this FP7 grant. This is shown on page 98 of the FP7 grant documents (on the CD), where the authors have to confirm that all experiments are covered by licences. Four Licences are mentioned, one is mine, the others are in Germany and the US. Those other licences are not valid in the UK.

At previous discussions, Prof. V Howard claimed that he knew nothing about this, and that the FP7 grant leader Prof. K Dawson from UCD added all of these experiments. He also supplied me with a version of the grant that he claimed was the last version he saw (Version 3, dated 30 Dec 2007, supplied as a hard copy). He claimed not to have seen the final version until after signing the contract, and gave me a copy of an email from the research office which has the date of the delivery of the final version on it (copy attached). However, as you can see on page 29, point 3.8 of the deliverables (described in detail on page 39 of Work package 4), and also deliverable 3.9 on page 30 already state the same experiments. Furthermore, the FP7 EU manager Mr. Nicolas Segebath confirmed to me that Prof. Howard (the authorised representative of UU) was fully informed of the deliverables of work (DoW) (see e-mail attached). It is therefore clear that Prof. Howard knew about these experiments and never informed me or discussed them with me, even though they were supposed to be covered by my licence.

Doing the experimental work would be breaking the law. Claiming that there is ethical approval and a valid licence when there is none is unethical. Since my licence was cited in the grant, I am personally responsible for any work that is done under my licence, and any complaints or breaches of the law would be my responsibility. If the work had been done and the Home office inspector investigated whether the experiments are covered by the mentioned licence, he would have realised that they are not covered by the licence and current UK law had been broken. I then would have been personally responsible for the breach.

2. **Misappropriation of staff funds**

A research assistant (Andreas Elsaesser) has been hired on the FP7 grant even though he does not work on any of the projects described in the grant. This is clear misappropriation of funds from the FP7 grant. Mr. Elsaesser is a Physicist who also does cell culture work

and electron microscopy work. He does not do any in vivo work and does not have a licence for it. All projects in the FP7 grant are exclusively in vivo projects, with some light microscopy histology that is covered by the post-doc Dr. Staats. Prof Howard claimed that electron microscopy was needed for this grant, however, nowhere does it state in the description of deliverables that electron microscopy will be performed. I have repeated complained and tried to stop the hiring of Mr. Elsaesser, but was ignored.

3. **Attempt to misappropriate staff time from the FP7 grant**

There was also an attempt by Prof. Howard to use current staff (Ashley Taylor) whose salary is paid by the FP7 to conduct experiments described in the grant, to conduct other experiments that are not linked in any way to the FP7 project. This is a clear attempt to misappropriate staff time from the FP7 grant.

I have supplied you with copies of the work plan that was given to Ashley Taylor to prove [...] this point. It clearly states that it involves pesticide dosing, a project that is completely different from the nanoparticle studies and is not related to the FP7 grant. Dr. Ashley Taylor is also witness for this. Even though I was the line manager of Dr. Taylor, Prof Howard ordered Dr. Taylor to do these experiments without ever consulting me.

4. **Unethical and illegal use of brain tissue**

I have given mouse brain tissue from a transgenic colony to Prof. Vyvyan Howard who has not returned them to me. These mice are from a transgenic colony that I have established at UU, and for which I hold the Material Transfer Agreements from the company that holds the IP. The mice were injected by me with nanoparticles to investigate how they affect protein aggregation. After I have withdrawn from the FP7 project I requested that the tissue is returned to me as I no longer want to be involved in the project or associated with the work. Since the MTA is issued to me and I have withdrawn my consent, there is no valid MTA in place. As a matter of fact, the research office is of the opinion that the MTA that I signed is not valid as it has not been signed by the university officials, therefore there is no valid MTA in place for these mice. I have informed the IP owners of this and they made it very clear that they will take legal action against anyone who works with these mice without MTA, and they will not issue a new MTA to anyone on the use of nanoparticles (I have enclosed a copy of the email). I have brought this to the attention of the Dean and the Director of the Research Institute and have not heard anything now for three months.

There are two points to be observed:

- The use of the mice without a valid MTA is illegal and will get the university into serious legal problems.

- It is unethical to keep tissue that a research college has given to another colleague, and to attempt to use the information for

publications without involving the researcher who has conducted the experiment and who holds the ethical approval for the experiments at the time. This violates the basic ethics of scientific work, and no journal will ever publish such work. Should Prof Howard still attempt to publish work without ethical consent (as he has done in the past during his work at the Alder Hey hospital in Liverpool) I will take legal action against him."

(iv) In April 2009 the claimant and Professor Howard were awarded a collaborative EU research grant for the EU FP7 Neuronano project ("the FP7 project") to study the role, if any, of nanoparticles in Alzheimer's disease. On 24 August 2009 there was a press release on the University of Ulster's website announcing the award of the FP7 project to the claimant and Professor Howard. The press release stated that their research was to be part of a worldwide project called "Neuronano" including European academic partners of various Universities. This press release generated international publicity. The claimant claimed in his evidence that he had not seen or approved this press release. However, he did not contest the evidence of Professor Bjourson which was that the claimant had seen and approved the stated press release. The tribunal accepts Professor Bjourson's evidence on this issue and is also satisfied that what later became a fixation with Professor Howard had its genesis in or around this time. The FP7 project involved experiments on mice developed by a German company, Koesler GmbH, which also owned the commercial rights to the mice. It was therefore necessary for a Material Transfer Agreement ("MTA") to be signed between Koesler and the University. There was some doubt expressed in the respondent's evidence before the tribunal as to whether the MTA agreement was valid in the first place as it was signed by the claimant and not by the appropriate person on behalf of the University.

(v) E-mails forwarded by the claimant to Professors McKenna and Bjourson on 17 December 2009 and 20 December 2009 revealed the deteriorating relationship between the claimant and Professor Howard culminating in the claimant contacting the relevant EU Manager on 3 February 2010 regarding the FP7 project. In his e-mail of 17 December 2009, the claimant had stated that unless Professor Howard was removed from the project he would have no other option but to remove himself. Following his e-mail to the EU Manager on 3 February 2010, Professor Bjourson, as Director of the Biomedical Sciences Research Institute, wrote to the claimant (on 5 February 2010), in the following terms:-

"Dear Christian

I really do see little point in you continuing to pursue this matter and indeed I suggest that it [merely] serves to prolong the difficulties, wastes all our time and will hinder the actual deliverables relating to this project. I assumed, perhaps incorrectly, that after our last meeting with the Dean that the matter was settled and that all parties had agreed to strive to make the project work - are your actions consistent with that agreement? Can I request that the agreement arrived with the Dean is followed in the interest of the project and all concerned.

Regards,
Tony"

(vi) On 26 February 2010 Professor McKenna directed that the claimant should not be allowed to attend an EU Project meeting in Sicily as he had concerns that the ongoing dispute between the claimant and Professor Howard would be played out in front of all the members of the project and potentially undermine the standing and reputation of the University. The claimant did not contest the evidence of Professor McKenna that he was unaware at the time that the claimant was to present data to the conference. He chose Professor Howard to attend as the principal investigator in the FP7 project.

(vii) Again, on 15 March 2010, the claimant indicated to Professor McKenna his desire to remove himself from the FP7 project, and ultimately resigned from the project on 23 April 2010. The claimant claimed that in March 2010 he came across the Alder Hay Children's Hospital scandal in which Professor Howard had been named, although there is evidence that he was aware of it some time earlier. The claimant focused on Professor Howard and the Alder Hay issue together with the Redfern Report emanating from it particularly after he resigned from the FP7 project. He also made persistent attempts to do so in his evidence before the tribunal. The tribunal however ruled that the issues before it concerned the FP7 project as reflected in the correspondence reproduced above dated 4 August 2010 from the claimant to Professor Adair. The claimant also agreed that the issues before the tribunal did relate to the FP7 project alone.

(viii) Having perused copious e-mails and correspondence referred to it both before and after 4 August 2010, the tribunal is fortified in its finding that the claimant developed a fixation with Professor Howard, and was prepared to step outside the parameters of the University's procedures and exchange information involving Professor Howard on both the FP7 project and Alder Hay issue with third parties outside the University.

(ix) At a meeting held on 8 June 2010, Ronald Magee, the Director of Human Resources, attempted to mediate between the claimant and Professor Howard. Professors Adair and Bjourson were also in attendance. Ronald Magee then wrote to the claimant on 10 June 2010 in the following terms:-

> "STRICTLY PRIVATE & CONFIDENTIAL …
>
> Dear Christian
>
> MEETING (8/6/10) ON YOUR CONCERNS RE RESEARCH PROJECT
>
> Thank you for agreeing to meet with us to discuss your concerns re the above. As you know the purpose of this meeting was to listen to your concerns and to ascertain if there was a way forward on this matter to the mutual benefit of all concerned.
>
> It is not my intention to rehearse the detail of our discussions, suffice to say that we all identified and agreed the areas of the project which you believe to be additional and as being the responsibility of Professor Dawson (UCD) in his capacity as

> Principal P1. Also in respect of Ulster's responsibilities for the project work we identified and agreed that Dr Kim will be able to complete these under a valid relevant licence as confirmed 7/6/10 by Dr Collins (Home Office). And other Ulster colleagues will be able to complete the remaining elements which do not need a licence.
>
> You have confirmed to us that you have formally withdrawn from the project. That is regrettable to all of the parties involved, however your decision to do so is respected and accepted and it is recognised by all of the parties that you have other equally important research projects to complete.
>
> You indicated towards the end of the meeting that you had some remaining issues about which you are unhappy and you are considering how you would deal with those issues. The other participants at the meeting, myself included, have offered advice and counselled that this whole matter should end now and that our wish is for you to fulfil the promise and obvious talents you possess as a researcher and to do so here at Ulster.
>
> For your part you acknowledged that we have listened to your points and that you have no desire or inclination to pursue this matter further through emails, letters, visits or any other form of contact with anyone else outside of Ulster. We accept this commitment from you."

(x) The claimant denied having entered into any such commitment/agreement in the terms outlined by the University, and maintained that the meeting did not prevent him from pursuing the Alder Hay issue involving Professor Howard. However, the claimant did not respond to the above correspondence or to similar correspondence sent to him by Ronald Magee on 10 August 2010 and 7 February 2011, referring to the commitment/agreement reached with the claimant, which, according to the University, was that he would essentially desist from contacting third parties, whether relating to the FP7 project or Alder Hay, and Professor Howard's alleged involvement in both. The tribunal is satisfied that such a commitment/agreement, as understood by the University, was entered into by the claimant. His failure to reply to or qualify the above correspondence from Mr Magee and further correspondence from Mrs Irene Aston sent during Mr Magee's absence on leave, dated 24 August 2010, (in which she reiterates the position emanating from the meeting on 8 June 2010), fortifies the tribunal's finding of fact. Despite the meeting on 8 June 2010 and the subsequent correspondence, on 26 September 2010 the claimant made contact by e-mail with academics in the USA associated with the FP7 project. This correspondence further demonstrates his ongoing campaign against Professor Howard, by referring to Professor Howard's involvement in the press release referred to in paragraph 5 (iv) of this decision, and in the FP7 Project as well as Alder Hay.

(xi) Following the claimant's correspondence of 4 August 2010 (supra), Professor Bryan Scotney conducted a detailed and painstaking investigation into the allegations made by the claimant. None of the allegations was upheld. On 3 November 2010 the claimant met with Professor Adair,

Professor McKenna, and Ronald Magee, with Mr N Curry in attendance, to present the claimant with the findings of Professor Scotney's investigation.

(xii) A further meeting was held on 22 November 2010 at which the claimant and his UCU representative (Professor Pierscionek) were present together with Professor Adair, Professor McKenna, Professor Scotney and Ronald Magee. The claimant's concerns were discussed and, following assurances by the respondent, the claimant agreed that the matter would be considered closed. At this point, it was also clear to the tribunal that the proposed experiments would not proceed either under the claimant's licence or using the material referred to and that Professor Howard had no intention of publishing any report based on any work carried out using the disputed material. It was also indicated by Professor McKenna during the meeting that the relevant material would be held in secure storage and that it could be returned to the supplier or destroyed subject to the supplier's agreement. It was therefore apparent that no illegal or criminal activity had taken place or was likely to take place and that no agreement or licence had been breached. This is consistent with part of the recommendations section in Professor Scotney's investigation report that:-

> "In relation to current possession of the mouse brain tissue, Professor Howard has indicated that future experiments associated with Deliverables 3.8 and 3.9 will be conducted using a new mouse strain, with a new MTA in place with the (new) supplier. Any further work to complete research already started is suspended until the matters above in relation to the MTAs are resolved. In this situation, it would be helpful if the mouse brain material were to remain in secure storage and under the control of an independent person until such resolution is achieved."

(xiii) Professor Scotney had also stated in his report that:-

> "…It is not possible to conclude that Prof. Howard deliberately inserted new experiments into WP3 without Doctor Holscher's knowledge.
>
> Regarding project licences (animal), it seems not to be in dispute that Dr. Holscher's project licence cannot be used for experiments associated with Deliverables 3.8 and 3.9."

It was accepted by the claimant in cross examination that no criminal offence had been or was being committed as at 22 November 2010, when both parties considered the matter closed.

(xiv) On the balance of probabilities, and taking into account Professor Scotney's evidence before it, the tribunal is satisfied that the claimant knew about the two additional experiments in advance of his formal grievance dated 4 August 2010. The tribunal also accepts the respondent's evidence that no such experiments would have taken place without a valid licence and therefore no illegal work had or would have taken place without the necessary authority. The uncontradicted evidence of Professor Bjourson in relation to the press release issue and the foregoing finding in relation to

knowledge of the experiments, led the tribunal to doubt the claimant's credibility in parts of his evidence. It was also clear that he had taken steps to ensure media coverage involving Professor Howard both before and during the tribunal hearing.

(xv) Under cross-examination, the claimant stated that he had been harassed, threatened and punished as a consequence of raising the alleged protected disclosure. He further alleged that Professors Adair, McKenna, Bjourson, Scotney, McHugh, Moran, O'Dochartaigh and McClenaghan, together with Ronald Magee, conspired to punish him because he had made a protected disclosure. The claimant did not make any specific reference in his witness statement to any such allegation that he was harassed or threatened or that there was a conspiracy against him. Moreover, there was no mention of any conspiracy in his claim to the tribunal which was prepared and submitted by experienced employment lawyers pursuant to the claimant's instructions. The claimant did not put any direct allegations of harassment and/or threatening behaviour to the respondent's witnesses during cross-examination nor did he make any reference directly or indirectly to any conspiracy relating to nine senior members of the University. He also accepted under cross-examination that there was no direct evidence linking his alleged protected disclosure to the disciplinary sanctions imposed on him in January 2012 and January 2013.

(xvi) On 29 December 2010 the claimant forwarded an e-mail to all members of the Royal Microscopical Society who were attending a conference in Belfast which again refers to the integrity of Professor Howard. This led to an e-mail from Tony Wilson, the President of the Royal Microscopical Society to the Vice-Chancellor of the University on 8 March 2011 indicating their significant concerns as to the conduct of the claimant. Tony Wilson refers to the claimant's e-mail which had caused the Society a great deal of anxiety forcing them to take legal advice to ensure that the meeting went ahead without disruption. Ronald Magee also wrote to the claimant on 7 February 2011 concerning his "personal vendetta" against Professor Howard.

(xvii) On 14 April 2011, the Faculty Executive Committee ("FEC") met to discuss applications for promotion including the claimant's application for promotion to the position of Professor. The FEC did not support the claimant's application. They were concerned about the incorrect inclusion of Nanogrant income in his application form, in light of the claimant's withdrawal from the project on 23 April 2010, and had concerns about his conduct. The tribunal is satisfied that there was nothing untoward in the FEC arriving at its conclusion, as the factors taken into account were within the parameters of the guidelines laid down by the University. The claimant lodged a grievance on 5 July 2011 pertaining to the FEC's recommendations. He claimed in his evidence before the tribunal that the FEC's conduct at this time amounted to harassment. However, he withdrew his grievance on 5 September 2011. The claimant nevertheless proceeded with his application before the Professoriate Committee. On 8 June 2011 that committee approved his prima facie case for promotion to the position of Professor, which he assumed in October/November 2011.

(xviii) On 16 August 2011, 'Nature' magazine, as a consequence of having been contacted by the claimant, published an article naming the University of

Ulster and Professor Howard in relation to the Alder Hay issue. This article again illustrates the claimant's fixation with Professor Howard and his ongoing campaign against him.

(xix) The claimant was branch secretary of the UCU for the entire University between April 2011 and April 2012. The tribunal is satisfied that, at least in this capacity, the claimant was aware of the University's policies including its whistle blowing policy. He also had access to sources of information and had the benefit of resources such as Lynn Fawcett, Chair of UCU, and Doctor Bob Mason, Vice-Chair of the UCU, who subsequently assisted the claimant during the disciplinary processes. The claimant was certainly aware, at least from November/December 2012 when he obtained advice from Worthingtons, Solicitors in Belfast, of the time limitation requirements. He also specifically refers to a public interest disclosure in correspondence forwarded to Ronald Magee on 2 January 2013. He had previously claimed that his trade union and its advisors were too busy to see him from in or around May 2010. No evidence was called by the claimant to substantiate this claim. Again, the tribunal has reservations about the claimant's credibility on this point.

(xx) The claimant had alleged that he was subjected to a series of detriments pursuant to the alleged protected disclosure. In his written submissions to the tribunal he claimed that the final detrimental act in the series of detrimental acts was the University's failure to uphold his appeal against his demotion, held on 14 March 2013. However, this contention is not specifically reflected in his claim to the tribunal or in his evidence before the tribunal. The tribunal is satisfied, for the purposes of Article 71(3) of the Order, that the date from which the time period runs is 17 January 2013 when the disciplinary panel's decision to impose a final written warning and demotion to the post of Senior Lecturer, to become effective on 1 February 2013, was communicated to the claimant. He claimed that he received this correspondence on 24 January 2013.

(xxi) Following an investigation report by Professor McClenaghan on 16 November 2011, the claimant was invited to attend a disciplinary hearing on 16 January 2012, to address the following disciplinary charges:-

> "1) Despite your verbal undertaking in June 2010 not to pursue a personal campaign against your colleague Professor V Howard and not to do so through external third parties/media you have continued to do so.
>
> 2) You have ignored the repeated formal advices from the Director of Human Resources not to pursue your personal vendetta against Professor Howard.
>
> 3) By virtue of your actions and behaviours against Professor Howard you have subjected him to an unacceptable level of harassment within and without the University.
>
> 4) By virtue of your actions and behaviours against Professor Howard you have sought to impugn his professional integrity/reputation and in so doing you

> have also exposed the University's reputation to unnecessary and unacceptable scrutiny by external media and/or groups."

(xxii) The disciplinary hearing was chaired by Professor O'Dochartaigh. The claimant was represented by Dr Bob Mason of UCU. The disciplinary outcome letter, signed by Professor O'Dochartaigh, and dated 26 January 2012 includes the following:-

> "In considering this matter, I was presented with the findings of a very comprehensive and extremely rigorous investigation which had been undertaken by Professor McClenaghan. Evidence was presented that despite a commitment given by you in June 2010 not to continue to raise complaints concerning Professor Howard's, research conduct with individuals and groups outside the University, and a number of clear warnings not to do so from senior officers of the University, including the Director of Human Resources, the Director of Corporate Planning and Governance (on behalf of the Vice-Chancellor) and the Dean, you repeatedly chose to ignore these warnings and in the course of doing so, made very serious allegations in regard to your colleague.
>
> In your defence, you claimed that the internal meeting/discussions in which you had been involved in relation to Professor Howard had all been in relation to the FP7 EU grant and whilst you admitted to having given an undertaking, this related solely to this grant and that no such commitment had ever been given by you in relation to the Alder Hey Enquiry. You further claimed that there had been a deliberate attempt on the part of University management to mis-represent the situation and to mix-up the two issues."

(xxiii) It is also clear from the disciplinary outcome letter that dismissal was being considered as a sanction at this hearing and was prevented only by Professor McClenaghan's reference relating to the excellent work undertaken by the claimant within the University. A final warning was issued to remain on the claimant's personnel file for a period of 12 months following which it would be removed.

(xxiv) The disciplinary hearing also found the claimant guilty of engaging in a personal campaign against Professor Howard and subjecting him to an unacceptable level of harassment both within and without the University and, in doing so, impugning his professional integrity/reputation and exposing the University's reputation to unnecessary and unacceptable scrutiny.

(xxv) The claimant chose not to appeal the final written warning. He claimed in his evidence that this was because he had been wrongly advised by the Chair of the Union that the final written warning would only remain in his file for 12 months and would then disappear. He also claimed that he did not want to create more trouble by appealing. He did however state in his evidence to the tribunal that, in retrospect, he should have appealed the decision. The tribunal is not convinced by the claimant's explanation. Moreover he did not

provide any independent evidence to support the reason he gave for not appealing the disciplinary sanction.

(xxvi) Following another investigation by Professor McClenaghan the claimant was invited to attend a further disciplinary hearing, initially scheduled for 29 November 2012 but eventually held on 8 January 2013. The claimant acknowledged in paragraph 53 of his witness statement that, what he described as a 'range of accusations' in the second disciplinary investigation were unconnected to Professor Howard. Ronald Magee wrote to the claimant on 20 November 2012 in the following terms:-

> "Strictly Private and Confidential …
>
> Dear Professor Holscher
>
> **Re: <u>Disciplinary Hearing - Statute V Part III and Ordinance XXXVI</u>**
>
> Following investigatory meetings into allegations concerning your conduct undertaken by Professor Neville McClenaghan, I am writing to inform you that in accordance with the University's Disciplinary Procedures (Statute V Part III and Ordinance XXXVI, copies enclosed) a Disciplinary Hearing will be held at 2.00 pm on Thursday 29 November 2012 in Room J602 at Coleraine Campus, to address the disciplinary charge outlined below.
>
> You received a final written warning on 26 January 2012 as an outcome of a previous disciplinary hearing. Specific reference was made in that warning to the consequences of failing 'to abide by the assurance you had given and engage in further activity of this nature either within or without the University against Professor Howard, or any other colleague or indeed the University itself'.
>
> **Disciplinary Charge**
>
> You have failed to abide by the assurance previously given and have failed to adhere to the outcome of the final written warning in that you have continued by your actions to engage in further activity of the same or similar nature by making derogatory comments about colleagues and the University generally.
>
> Specifically, the above charge derives from the following allegations:
>
> a) Your derogatory comments in regard to the University and your colleague, Professor J McCormack as an outcome of your error in relation to the examination script for the undergraduate final year module BMS509.

b) Your insulting, derogatory and inaccurate comments about various colleagues and the University generally in relation to a recruitment exercise which had to be aborted.

c) Your derogatory and inaccurate comments to an HR colleague and your threat to return research grant income to the Funding Body thereby potentially bringing the University into disrepute with an external organisation.

I enclose for your information, copies of documents which will be referred to at the disciplinary hearing by the University as part of Professor Neville McClenaghan's presentation of the report of his investigation into your conduct.

In accordance with the University's Disciplinary Procedures (Statute V Part III and Ordinance XXXVI), I wish to inform you that Professor Marie McHugh will be the Disciplinary Chair and will conduct the Disciplinary Hearing and she will be authorised to administer disciplinary sanctions up to and including dismissal taking into account that you have already received a final warning for misconduct of a same or similar nature and given the very serious nature of the allegations above. You are entitled to be accompanied at the Disciplinary Hearing by a recognised trade union representative or a fellow work colleague.

If there is any documentation upon which you wish to rely and/or any witnesses you wish to call, then I would ask you to forward the relevant documentation to me by Monday 26 November 2012 at the latest together with the names of any witnesses.

Yours sincerely

R MAGEE
Director of Human Resources

Encs"

(xxvii) As stated previously in this decision, the claimant consulted with Worthingtons Solicitors in November/December 2012 and subsequently sent a detailed letter dated 2 January 2013, to Ronald Magee, which includes the following:-

"As I am sure UU will appreciate, this situation is causing me immeasurable stress and anxiety and I wish for matter to be resolved as swiftly as possible, with the outcome being satisfactory to all. However, should this matter not be satisfactorily resolved, and I am dismissed, or indeed subjected to any other disciplinary sanction, I believe that I will have no other alternative but to consider appropriate legal action,

including the submission of a claim to the Industrial Tribunal for detrimental treatment and/or unfair dismissal arising from my having made a Public Interest Disclosure.

I hope such action will not be necessary and that the disciplinary panel appointed take into account this submission and any further comments I wish to make at the Disciplinary Hearing."

(xxviii) The disciplinary outcome letter to the claimant dated 17 January 2013 includes the following:-

"In light of the above, I find the charge against you proven. As indicated above, you had previously been issued with a Final Written Warning, and advised of the consequences of failing to 'abide by the assurances you have given and engage in further activity of this nature either within or without the University'. In the circumstances, I consider dismissal as being justified. However, having considered the evidence in the round, and taking into consideration the conciliatory tone of your comments to the disciplinary hearing, and the representations made on your behalf by Dr Mason, including an indication of your willingness to apologise to any individual who may have been offended by your comments, I am minded to give you one final opportunity to learn from a further disciplinary penalty and to modify your behaviour. Whilst you are clearly passionate about research and it is acknowledged that you have met with much success in relation to same, this cannot excuse your behaviour towards colleagues and at the same time, you must realise that the University will take all necessary steps to protect its reputation.

Therefore, as an alternative to dismissal, as provided for by the Statutes and Ordinances of the University, I am issuing you with a further Final Written Warning effective for 12 months from the date of this correspondence and demoting you to the grade of Senior Lecturer with effect from 01 February 2013. As a consequence of this demotion, you will be remunerated on the top point of the Senior Lecturer grade, however I would strongly recommend that you do not come forward for promotion to Personal Professorship under the Annual Review process for at least a period of one year. I would also recommend that you follow through on your offer and issue unreserved written apologies to your colleagues Professor J McCormack (Biomedical Sciences), and to Mrs D Gordon and Mrs E Wallace (Human Resources Department), for the offence caused in the e-mail exchanges in which you were involved.

As advised in the previous Final Written Warning, I must warn you that if during the period of this further final written warning, you engage in further activity of this nature either within or without the University against any colleague or indeed the University itself, then a further disciplinary hearing will be

> convened under the Ordinance which may result in your dismissal. I sincerely hope that you pay heed to this warning and that on this final occasion you modify your behaviour towards your work colleagues and the University as your employer accordingly.
>
> Should you wish to appeal this decision, you have the right under the University's Disciplinary Procedure (Statute V Part III and Ordinance XXXVI) to do so. Appeals should be made in writing, setting out the grounds for your appeal, to Mr A Caldwell, Head of Employee Relations within 10 working days of the date on which you were informed of this decision."

(xxix) As the previous final written warning had not expired, it was clearly open to the disciplinary hearing to dismiss the claimant. He obviously felt aggrieved by his demotion to Senior Lecturer and appealed against the entire disciplinary sanction in a letter to Ronald Magee dated 29 January 2013. The demotion was enacted on 1 February and an appeal hearing was eventually held on 14 March 2013 before Professor Moran. This was followed by an outcome letter on 25 March 2013 turning down the claimant's appeal.

(xxx) Running in parallel with this disciplinary process was the claimant's contact with Lancaster University in relation to obtaining employment at that University. On 20 March 2013 Professor McClenaghan completed an investigation into a third set of disciplinary issues relating to the claimant and concluded that a disciplinary panel should be established to consider charges relating to the circumventing of normal recruitment procedures in relation to the engagement of Ms Jalewa and in relation to the use of the subsidiary payroll for other engagements. However, in late March/early April 2013, the claimant was offered a professorial position at Lancaster University. He e-mailed Professor Bjourson on 15 April 2013 indicating that he would be leaving the University. Thereafter, on 23 April 2013, he presented his claim to the tribunal office and subsequently forwarded his letter of resignation to Ronald Magee on 27 May 2013. He did not provide any reasons in that letter for leaving the University. He eventually resigned with effect from 31 August 2013.

(xxxi) The claimant also lodged a grievance on 1 March 2013 relating to the alleged failure of the University to provide minutes of the disciplinary hearing and complaining about the delay in organising the appeal and the disciplinary sanctions. The grievance was heard by Professor Hutchinson on 6 March 2013. He did not uphold the claimant's complaints. The claimant then appealed. An appeal hearing, conducted on 17 April 2013 by Professor Millar and Professor Gillespie did not uphold the claimant's appeal.

(xxxii) The claimant lodged a further grievance on 18 March 2013 relating to the FEC decision not to promote him to the position of Professor within the University. A grievance hearing was chaired by Professor Montgomery. Again, the outcome letter of 8 July 2013 shows that his grievance was not upheld. A third grievance lodged on 9 April 2013 relating to a recruitment exercise for a three month research assistant post was chaired by Professor Montgomery on 21 May 2013. Correspondence dated 8 July 2013 confirms that it was not upheld. The claimant appealed his second and third

grievances on 9 August 2013 before finally resigning with effect from 31 August 2013.

(xxxiii) The claimant claimed in cross-examination that his second final written warning and demotion represented an act of harassment and was a significant detriment. He sought to link the January 2012 disciplinary sanction with the sanction imposed in January 2013 as the unexpired final written warning from the January 2012 hearing was actively considered by the disciplinary panel in the January 2013 hearing. However, the claimant did not cross-examine Professor McHugh to any degree or Professor Moran, who dealt with the appeal hearing, in relation to any alleged harassment and detriment, or disciplinary sanctions, except, in so far as Professor Moran was concerned, that there was a link between his demotion and the unexpired final written warning from the first disciplinary hearing. Furthermore, the claimant did not cross-examine Professor Hutchinson in relation to the first grievance hearing, or Professor Millar in relation to the subsequent grievance appeal heard on 17 April 2013.

(xxxiv) The claimant did not challenge the evidence of Professor O'Dochartaigh, Professor McHugh and Professor Moran relating to the factual basis for imposing the disciplinary sanctions in January 2012 and January 2013, or Professor Moran in upholding the second disciplinary sanction on 14 March 2013.

(xxxv) The tribunal was not satisfied, on the evidence, that there was any form of conspiracy against the claimant involving the nine senior members of the University staff, or that he had been harassed, threatened or punished. The evidence indicates that the respondent sought diligently and repeatedly to defuse the ongoing and deteriorating situation between the claimant and Professor Howard and that they conducted the various meetings and investigations reasonably and thoroughly. It was clearly open to the respondent to dismiss the claimant, particularly on the occasion of the second disciplinary hearing. However, in recognition of the claimant's ability as a scientist, it was also in the University's interests to retain him. The tribunal is satisfied that this explains, in part at least, why he was treated with leniency during both disciplinary processes.

The Law

6. (1) The relevant legislative provisions have been set out in paragraph 4 of this decision.

(2) In relation to the out-of-time issue the meaning of the words "reasonably practicable" lies somewhere between reasonable on the one hand and reasonably physically capable of being done on the other. The best approach is to read "practicable" as the equivalent of "feasible" and to ask "was it reasonably feasible to present the complaint to the Employment Tribunal within the relevant three months?" Whether it was reasonably practicable for the complaint to be presented in time is an issue of fact for the tribunal taking all the circumstances of the case into account (**Palmer and Saunders v Southend-on-Sea Borough Council [1984] IRLR 119 CA)**.

(3) Where the statutory dismissal and disciplinary procedures apply, and the claimant delays presenting a claim until an internal appeal procedure is

resolved, this may make it not reasonably practicable to commence proceedings within the primary three month time-limit, and may justify an extension of time to present the claim (**Ashcroft v Haberdashers' Aske's Boys' School [2008] IRLR 375 EAT**). However the circumstances in this case involved dispute resolution procedures which were plainly predicated on the assumption that the claimant would not have to present a claim to the Employment Tribunal before the expiry of an internal appeal.

(4) The burden of proving that it was not reasonably practicable for the claimant to present his claim on time rests with the claimant. It is reasonably practicable for a claimant to present an unfair dismissal claim not only if he knows of his right to do so but also if he was put on enquiry or ought to have known of that right. (**Porter v Bandridge Ltd [1978] ICR 943, CA**).

(5) (i) A disclosure must be a "qualifying disclosure" within the meaning of Article 67B of the Order. Secondly it must also be a protected disclosure within the meaning of Articles 67C to 67H of the Order.

(ii) A "qualifying disclosure" is "any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following -

(a) that a criminal offence has been committed, is being committed or is likely to be committed …" (Article 67B(1)(a)).

(iii) The principles governing "reasonable belief" are articulated in the cases of **Darnton v University of Surrey (2003) ICR 615 ("Darnton"**) and **Babula v Waltham Forest College (2007) ICR 1026 ("Babula"**). The worker must subjectively hold the relevant belief, but the question of reasonableness is to be determined objectively in the context of the facts known to the worker at the relevant time. The worker may in fact hold the belief reasonably even if it ultimately turns out to be wrong. Although reasonableness should be assessed from the perspective of the person making the disclosure at the time it was made, the truth or falsity of the information disclosed and whether or not the relevant failure in fact did occur, may be relevant to the assessment of whether a belief was reasonable. The **Darnton** decision points out that the more the worker claims to have direct knowledge of the matters which are the subject of the disclosure, the more relevant will be his belief in the truth of what he says in determining whether he holds that belief reasonably.

(iv) The standard to be applied should take into account that Article 67B requires that the information "tends to show", in the case before this tribunal, "that a criminal offence has been committed, is being committed, or is likely to be committed." Article 67(B)(1)(a). It need not positively establish that failure. **Darnton** also establishes that there is no requirement under Article 67C that the worker must believe that the factual basis of the disclosure and what it tends to show are "substantially true". The test of reasonable belief applies also to the existence of a relevant legal obligation or criminal offence. **Babula** held that the fact that the information disclosed does not in law actually amount to a criminal offence will not in itself prevent the disclosure being protected.

(v) The burden lies on the worker to establish reasonable belief. (**Babula**).

(vi) The case of **Kraus v Penna plc (2004) IRLR 260** held that the information disclosed should, in the reasonable belief of the worker at the time it is disclosed, at least tend to show that "it is probable or more probable than not that the employer will fail to comply with the relevant legal obligation". As against this, the earlier case of **Darnton** held that there is no requirement under Article 67C for the worker to believe that both the factual basis of the disclosure and what it tends to show are "substantially true". These two cases are difficult to reconcile on this point.

(vii) Once a "qualified disclosure" has been established the claimant must also show that the disclosure falls within one or more of the grounds specified in Articles 67C to 67H. In relation to a disclosure to an employer or other responsible person Article 67C states that the disclosure must be "in good faith". The burden of proving that a disclosure was not made in good faith lies on the employer (**Lucas v Chichester Diocesan Housing Association Ltd (UKEAT/0713/04/DA, 7 February 2005)** and **Bachnak v Emerging Markets Partnership (Europe) Ltd (EAT/0288/05, 27 January 2006)**.

(viii) The case of **Street v Derbyshire Unemployed Workers' Centre (2004) ICR** establishes the following principles:-

(a) good faith requires more than a reasonable belief in the truth of the allegations made;

(b) the absence of reasonable belief may be capable of indicating bad faith;

(c) a motive of personal gain may negate good faith, but will not necessarily do so in every case. Good faith may be negated by an ulterior motive, whether of personal gain or otherwise. It follows that a person who acts with honest belief in the truth of their disclosure will not necessarily also be acting in good faith;

(d) a tribunal should find that a disclosure was not made in good faith only "when they are of the view that the dominant or predominant purpose of making it was for some ulterior motive", rather than for the public interest purpose underlying legislation.

(viii) In the **Street** case, the claimant's dominant purpose in making disclosures was held to be her personal antagonism towards her manager. It therefore followed that she did not have the protection of the legislation. In the case of **Ezsias v North Glenmorgan NHS Trust (2001) IRLR 550**, the EAT upheld the tribunal's finding that the claimant's disclosures were in reality part of his sustained campaign against certain colleagues.

(ix) The tribunal must decide whether the disclosure was made in good faith or for another motive and need not make an express finding in every case as to what the predominant motive was, (**Meares v Medway Primary Care Trust (UKEAT/0065/10, 7 December 2010)**.

(x) Article 70B of the Order provides that:-

"A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure".

In the case of **NHS Manchester v Fecitt and Others (2011) IRLR111** and **(2012) IRLR 64,** both the EAT and the Court of Appeal considered the correct test to be applied in relation to causation. The EAT held that in determining whether a claimant has been subjected to a detriment "on the ground that he has made a protected disclosure", the test to be applied was the same as that for victimisation. The effect of this is that once a detriment has been suffered following a protected act, the burden is on the employer to prove that the treatment complained of was in no sense whatsoever on the ground of the protected disclosure.

(xi) The tribunal also considered Mr Justice Langstaff's judgement in the case of **Abertawe Bro Morgannwg University Health Board v Ferguson (2014) IRLR 14**, in relation to the word "subjected" in Article 70B of the Order, (Section 47B in the Employment Rights Act 1996). He states at paragraph 19 of his judgement that:-

"We think, therefore, that the word has the force of causation and is adopted as a Parliamentary alternative suitable to a context where it has to cover both positive acts and omissions to act. We do not see that it has within it any connotation of wilfulness, not least because the statute provides specifically that any act which is done by the employer has to be done for a particular reason – that is that the worker has made a protected disclosure. A failure to act for its part has to be deliberate. "Wilfulness" is therefore successfully accommodated by the rest of the subsection: it does not need any further and separate reflection in the word "subjected".

Mr Justice Landstaff continues, at paragraph 20 of his judgement, to state:-

"Section 47B contains the expression "a worker has the right not to be subjected to". As observed by Mr Gammon in the course of argument, the right is couched in terms of protecting the victim: "subjected to" is passive. The words which follow – ('by *any* act or *any* deliberate failure to act' (emphasis added) – are, as Mr John submits and we accept, broad".

Again, at paragraphs 26 and 28 of the judgement it is stated that:-

"Our conclusion is that a deliberate failure to act must be seen in context … the questions of causation and of the "reason why" to which those words give rise will not be easy questions to answer but the answers are, as we see it, heavily dependant upon the particular facts which emerge before the tribunal".

Submissions

7. The tribunal carefully considered the helpful written submissions submitted by both parties, and attached to this decision, together with the brief oral submissions heard on 19 December 2013. In his written submissions the claimant outlined the alleged detriments as a result of making the alleged protected disclosure as follows:-

- "disciplinary action;
- demotion and reduction of salary;
- impairment of career prospects including the Faculty Executive Committee's decision not to support my original application for professorship in October 2011 which contained derogatory claims against my person;
- threatening behaviour towards me to drop my allegations;
- punishment in being prevented from attending the FP7 conference in Sicily in March 2010, continuing with the FP7 programme and in being demoted;
- sidelining and having to make the decision to leave the FP7 project due to Prof. Howard's conduct;
- damage to my reputation by not continuing with the FP7 programme and with being demoted and seen to be so on the Respondent's website prior to my appeal being heard; and
- harassment by being made to feel like I was the one causing problems, when really I just wanted my complaint to be dealt with appropriately (ie to protect my reputation, that of the University and that of all those connected with the University). I also take very seriously the concept of scientific integrity, which I maintain was at significant risk here."

Conclusions

8. The tribunal, having carefully considered the evidence together with the submissions from both parties, and having applied the principles of law to the findings of fact, concludes as follows:-

(1) The out of time/jurisdictional issue.

(i) The claimant was aware of the University's whistleblowing policy together with his rights under the relevant legislation, including time limits, certainly at least from November/December 2012. The detailed letter he sent to Ronald Magee on 2 January 2013 also clearly indicates his awareness of his rights and specifically refers to the possibility of legal action, including the submission of a claim to the industrial tribunal, for detrimental treatment and/or unfair dismissal arising from "my having made a Public Interest Disclosure". The appeal letter dated 29 January 2013 forwarded by the claimant to the respondent following the disciplinary outcome letter dated 17 January 2013, conveys his strong desire to avoid demotion and a reduction in salary, even to the extent of

stating that he was 'prepared to accept some warning for my misjudged e-mails, and I am prepared to apologise'.

(ii) The fact that the claimant appealed the disciplinary sanction and that it took longer for the appeal to be heard than specified in the University's procedures, does not explain why it was not reasonably practicable in the sense of being reasonably feasible to have presented a claim to the tribunal within the relevant three month period.

(iii) The burden of proving that it was not reasonably practicable to present the claim in time rests with the claimant. Whether it was reasonably practicable (for the complaint to be presented in time) is an issue of fact for the tribunal taking all the circumstances of the case into account. The tribunal is satisfied that the relevant time period commences on 17 January 2013 being the date of the disciplinary outcome letter containing the act complained of. The claimant did not make the case in his evidence before the tribunal that his unsuccessful appeal was a detriment under the relevant provisions of the Order even though he had ample opportunity to do so. In any event it is difficult for the tribunal to envisage how this would make any difference to the date of the act complained of, which was implemented pending appeal. The tribunal is therefore satisfied that the claim is out of time and that there is no reason why the 3 month period should be extended.

(2) (i) Apart from the jurisdictional issue, the tribunal has reservations as to whether there was a qualifying disclosure for the purposes of the Order. Paragraph 26 of the claim to the tribunal asserts that the claimant had made a qualifying disclosure "tending to show that a criminal offence was likely to be committed, that offence being the conductance of experimental procedures on vertebrate animals in the UK without a valid Home Office project licence". The tribunal also has reservations as to whether, in any event, the claimant had a reasonable belief that the information tended to show that a criminal offence was likely to be committed. Even allowing the claimant the benefit of any doubt on the foregoing, the tribunal is satisfied that any such disclosure of information was not made in good faith as its dominant or predominant purpose was for the ulterior motive of undermining Professor Howard. The claimant attempted to do this at almost every opportunity, particularly following his resignation from the project on 23 April 2010, some months prior to his alleged protected disclosure on 4 August 2010. Following Professor Scotney's investigation and the subsequent meeting on 22 November 2010, the FP7 project issues were effectively resolved. However, the claimant did not rest in his endeavour to continue his ongoing campaign against Professor Howard leading to the first disciplinary hearing in January 2012.

(ii) The tribunal has reflected carefully not only on the onus of proof on an employer in relation to a disclosure not being in good faith but also on the burden on the employer to prove, once a detriment has been suffered following a protected act, that the treatment complained of was in no sense whatsoever on the ground of a protected disclosure. The tribunal is not satisfied that there was a causative link between the correspondence of 4 August 2010 and events thereafter including the two disciplinary processes in January 2012 and January 2013 which

came about as a result of the claimant's own misconduct. It is therefore satisfied that the disciplinary processes are also not detriments within the meaning of Article 70B of the Order and concludes, based on the foregoing reasons, that the claimant was not subjected to any detriment by any act or any deliberate failure to act by the University done on the ground that he had made a protected disclosure.

(3) The claimant's claim is therefore dismissed.

Chairman:

Date and place of hearing: 9-13 and 16-19 December 2013, Belfast.

Date decision recorded in register and issued to parties:

CASE NUMBER: 780/13

IN THE INDUSTRIAL TRIBUNAL AND FAIR EMPLOYMENT TRIBUNAL

B E T W E E N:

CHRISTIAN HOLSCHER

Claimant

and

UNIVERSITY OF ULSTER

Respondent

THE CLAIMANT'S WRITTEN SUBMISSIONS

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1. Background

1.1. I issued an ET1 on 23 April 2013, bringing a claim for detriment as a result of making a protected disclosure.

1.2. The Respondent responded to this claim on 27 May 2013, denying that I made a protected disclosure and denying that I suffered any detriment as alleged or at all.

1.3. The Respondent accepts that I made a complaint about Prof. Howard in August 2010 and relies on the fact that this complaint was fully investigated by Prof Bryan Scotney and was found to be without substance.

1.4. The Respondent asserts that I pursued a "personal vendetta" against Prof. Howard (which I deny) and as a result, was subject to a disciplinary investigation resulting in a final written warning in January 2012.

1.5. Following a disciplinary hearing in January 2013, I received a second written warning and I was demoted from professor to senior lecturer.

The Respondent asserts that this second disciplinary process was a result of my derogatory comments to colleagues and staff.

1.6. I submit that the above disciplinary sanctions were levelled, certainly in terms of severity; as a result of my protected disclosure.

1.7. The Respondent disputes whether I have brought this claim in time. I submit that the final detrimental act in the series of detrimental acts was the Respondent's failure to uphold my appeal against my demotion. I was made aware of my demotion on 24 January 2013 which I appealed immediately. I was informed of the outcome of the appeal on 25 March 2013 (two months later!). The Claim Form was submitted on 23 April 2013 and was therefore in time in accordance with section 71(3) of the Employment Rights (Northern Ireland) Order 1996 **("ERO")** which states that a claim must be presented *"before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or where that act or failure is part of a series of similar acts or failures, the last of them".*

1.8. I would like it noting that the Respondent:

1.8.1. made it very difficult for me to prepare for this hearing by delivering almost 1500 pages of documents on 29 November and 2 December 2013. The documents sent to me on 2nd Dec should have been disclosed to me by 31 July 2013 in accordance with the Tribunal's order; and

1.8.2. should have provided me with many of these documents as part of my two Data Subject Access Requests of 4 and 27 March 2013. The Respondent maintains that all or substantially all of these documents have been provided previously, but this is not true.

1.8.3. I noticed that all the critically important emails were in the bundles sent on 2 December, which suggests that they were deliberately sent late in 3 poorly organised bundles of 970 pages to impair my ability to prepare for the case.

1.8.4. Furthermore, the 13 witness statements were sent late even though my solicitor rejected a request for an extension, and I only had less than two weeks to prepare while the respondent had 6 weeks.

This has caused me further detriment in this case.

Protected Disclosure

1.9. I disclosed information relating to a potential illegal act to Profs. Bjourson and McKenna in February 2010; Prof. Black in May 2010 (p75, bundle 4); Mr Magee and Prof. Adair on the 8th June 2010; and Prof. Barnett in August 2010 (p73-74 in bundle 1). Mr Magee agreed during his cross examination that I had raised these issues at that meeting on 8th of June 2010.

1.10. I raised a formal complaint against Prof. Howard in August 2010. This protected disclosure dealt with the fact that Prof. Howard had inserted two additional experiments on the FP7 grant application using my name and Project Licence. These experiments would have been illegal (contrary to the Animal (Scientific Procedures) Act 1986) to conduct in the circumstances. This disclosure also dealt with the unethical and illegal use of brain tissue and lack of a valid Material Transfer Agreement in respect of the transgenic mice that belonged to the company Koesler. Working without such an agreement would be a breach of contract. This would have had brought the university into disrepute and presented great danger to my personal career, as I was the holder of the project licence in question. The university failed to address these issues and simply left the FP7 grant and the brain tissue with Prof Howard, despite his history in working in research.

Detriment

1.11. I submit that I have suffered the following detriments as a result of making the protected disclosure:

1.11.1. disciplinary action;

1.11.2. demotion and reduction of salary;

1.11.3. impairment of career prospects including the Faculty Executive Committee's decision not to support my original application for professorship in October 2011 which contained derogatory claims against my person;

1.11.4. threatening behaviour towards me to drop my allegations;

1.11.5. punishment in being prevented from attending the FP7 conference in Sicily in March 2010, continuing with the FP7 programme and in being demoted;

1.11.6. sidelining and having to make the decision to leave the FP7 project due to Prof. Howard's conduct;

1.11.7. damage to my reputation by not continuing with the FP7 programme and with being demoted and seen to be so on the Respondent's website prior to my appeal being heard; and

1.11.8. harassment by being made to feel like I was the one causing problems, when really I just wanted my complaint to be dealt with appropriately (i.e. to protect my reputation, that of the University and that of all those connected with the University). I also take very seriously the concept of scientific integrity, which I maintain was at significant risk here.

2. The Legal Issues and the Law

2.1. Public Interest Disclosure (Northern Ireland) Order1998 ("PIDO")

PIDO protects workers from being subjected to any detriment on the grounds that they have made a protected disclosure.

2.2. Have I made a qualifying disclosure?

Section 67B ERO:

Qualifying disclosure means disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show that the following types of malpractice has taken place, is taking place, or is likely to take place:

- criminal offences (s.67B(1)(a) ERO)
- failure to comply with a legal obligation (s.67B(1)(b) ERO)
- miscarriage of justice (s.67B(1)(c) ERO)
- danger to the health or safety of any individual (s.67B(1)(d) ERO)
- damage to the environment (s.67B(1)(e) ERO)
- deliberate concealing of any of the above (s.67B(1)(f) ERO)

2.2.1. I am relying on s.67B(1)(a)ERO. The complaint against Prof. Howard related to illegal activity.

2.2.2. I disclosed this information to:

- Profs. Bjourson and McKenna in February 2010;
- Prof. Black in May 2010 (p75 in bundle 4)
- Mr Magee and Prof. Adair on 8th of June 2010
- Prof. Barnett on 3 August 2010 (p73-74, bundle 1); and
- made an official complaint to Prof. Adair on 4 August 2010 for Prof. Howard's conduct to be investigated.

2.2.3. I believed that a criminal offence was likely to occur. In order to succeed with my claim, the Tribunal must find my belief to be objectively reasonable.

2.3. <u>Is it also a protected disclosure?</u>

Section 70(B)(1) ERO:

A worker has the right not to be subjected to any detriment on the ground that they have made a protected disclosure.

Section 67C ERA:

The qualifying disclosure was made:

2.3.1. in good faith; and

2.3.2. to my employer or to an authorised third party.

A disclosure that turns out to be false can still have been made in good faith (*Trustees of Mama East African Women's Group v Dobson*).

Good faith is described as acting with honest motives (*Street v Derbyshire Unemployed Workers' Centre 2004*)

2.4. Have I suffered detriment as a result of making a protected disclosure?

2.4.1. I dispute the Respondent's assertion that the detriment suffered was not as a result of the protected disclosure, but as a result of my alleged vendetta against Prof. Howard and my negative treatment of colleagues and staff.

3. Burden of proof

3.1.1. I have the burden of proving that the disclosure was protected. If the Respondent says that it is not protected as it was not made in good faith, the burden of proof on this issue falls on the Respondent.

3.1.2. The Respondent bears the burden of proof in respect of causation. The Respondent must show a positive case as to why I suffered the detrimental acts listed at 1.10 above.

4. My Submissions

4.1. Protected Disclosure

4.1.1. I made a protected disclosure on 4 August 2010. Prior to this, I had raised my concerns informally and formally to the Respondent. The Respondent failed to deal with my concerns when raised informally and formally.

4.1.2. I made the disclosure to my employer.

4.1.3. My disclosure was made in good faith. The Respondent has the burden of proof if it wishes to suggest that I made the disclosure in bad faith. I understand that if there was bad faith, which there was not, that this does not defeat the fact that I made a protected disclosure. This would simply reduce any compensation by 25%.

4.2. Detriment

4.2.1. I submit that, on the balance of probabilities, I made a protected disclosure and that there was detrimental treatment.

4.2.2. The Respondent denies that the detrimental treatment was as a result of my protected disclosure, and must therefore prove the reason for the detrimental treatment.

4.2.3. The Tribunal must be satisfied that the detriment was "on the ground that the worker made a protected disclosure" (section 70B(1) ERO).

4.2.4. Whether detriment is "on the ground" that the worker has made a protected disclosure involves an analysis of the mental processes (conscious or unconscious) of the employer acting as it did it.

4.2.5. The EAT held in *Aspinall v MSI Mech Forge Limited* and in *London Borough of Harrow v Knight [2003]* that there must be a causative link between the protected disclosure and the reason for the treatment.

4.2.6. However, in *NHS Manchester v Fecitt and others [2012]* the Court of Appeal held that the test in detriment cases

is whether the protected disclosure materially influences (being more than a trivial influence) the employer's treatment of the whistleblower.

4.2.7. The Respondent has failed to show that the protected disclosure did not "materially influence" my detrimental treatment.

4.2.8. I submit that my protected disclosure materially influenced the detrimental treatment which I was subsequently subject to.

4.2.9. I submit that the Respondent did not appropriately or adequately deal with the protected disclosure. Prof. Howard should have been disciplined, my continued involvement in FP7 should have been properly supported and Prof. Howard's publications, as recorded on the Respondent's website, should have been removed.

4.2.10. As a result of the Respondent's failure to address the protected disclosure and the potential for a criminal offence to be committed, I raised my complaint to more people than would have been necessary had the Respondent dealt adequately with the protected disclosure.

4.2.11. The Respondent's actions (or lack of them) undermined the trust and confidence that I, as an employee, was entitled to believe existed.

4.2.12. For example, an email from Prof. McKenna to Mr Magee, he requested information on best practice how to discipline me (p79, bundle 4). In another email to Prof. Barnett dated 23 August 2010 at **page 100 of Bundle 4** shows firstly that Prof McKenna wanted to suspend me for raising my concerns about Prof. Howard. This shows Prof McKenna's negative attitude towards me as a result of making my protected disclosure. This email shows secondly that the Respondent accepted that I had made

a protected disclosure, as in this email Prof. McKenna explains that HR had told him that he could not suspend me as it could be seen as them dismissing a whistleblower. I submit that, as Prof. McKenna was unable to dismiss me for fear of being seen to dismiss a whistleblower, that he both caused me detriment himself and contributed to the conspiracy against me.

4.3. The Respondent's failure to deal with my Protected Disclosure

4.3.1. I submit that the Respondent failed to deal with my protected disclosure. Prof. Black's email of 8 May 2010 at **page 75 of bundle 4** in response to my email, shows that Prof. Black accepted the serious nature of my concerns, but that he failed to deal with them. In this email Prof. Black states that he will convene a meeting soon, which never happened.

4.3.2. I raised my concerns about the potential illegal experiments to Profs. Bjourson and McKenna in February 2010; Prof. Black in May 2010; Mr Magee and Prof. Adair in June 2010; Prof. Barnett in August 2010; and I made an official complaint to Prof. Adair on 4 August 2010 for Prof. Howard's conduct to be investigated.

4.3.3. The Respondent was more concerned in keeping me quiet (as demonstrated by me being prevented from going to the Sicily meeting, and the continuous warnings not to contact external people), than it was with dealing with the problems I had raised.

4.4. Personal Vendetta

4.4.1. The Respondent submits that my entire motivation for bringing these proceedings, and for my actions over the last three years, is that I have a personal vendetta against Prof. Howard. I absolutely dispute this. I have never had any personal problems with Prof. Howard.

Indeed, had I subjected him to the bullying and harassment alleged by the Respondent, I submit that Prof. Howard would have raised a formal grievance against me. The Respondent has not provided any evidence to suggest that Prof. Howard ever felt bullied or harassed by me, or that he ever considered himself the subject of my alleged "vendetta". This is a line of argument used by the Respondent to hide the fact that they ignored the root of my concerns and instead, wrongly focused their attention on me and my actions. The information about Howard that I have communicated to other people is based on facts and cites a government report and a verdict of the General Medical Council. The findings are incompatible with scientific integrity and had the potential to damage the reputation of the university. Instead of dealing with these potential detrimental effects, the respondent chose to order me to stop communicating. For a period of over 3 years, nobody at the university ever responded to me about the information that I have repeatedly supplied to them.

4.4.2. My disclosure and subsequent actions were only ever carried out in the interest of protecting my reputation and that of the Respondent. Had the Respondent dealt immediately and effectively with my protected disclosure, I would have had no further involvement in this matter.

4.5. Prof Bryan Scotney's investigation

4.5.1. Bryan Scotney was not qualified to investigate my protected disclosure. He is a computer scientist and has not conducted animals experiments before. His witness evidence confirmed that he did not fully understand the concept of either a Personal Licence or a Project Licence or the legal ramifications of a Material Transfer Agreement, nor did he have detailed knowledge of the FP7 grant. Prof. Scotney admitted that the Additional Experiments were not covered by my Licence, yet did not

see a problem with that experiment being added to the UU work package of the FP7 grant. Also, my licence would **not** have been valid in Dublin, contrary to what Prof Howard stated to him. It was furthermore clear from Prof. Scotney's evidence that he did not understand that my Licence was the only UK Licence available to the project. He seemed confused about this and admitted that he had presumed when conducting his investigation that Prof. Howard would be relying on another Licence when completing the Additional Experiment. This was not the case.

4.5.2. The Respondent was therefore wrong to rely on Prof. Scotney's investigation in this regard. In addition, judging by the pressure that the FP7 grant project had come under, as evidenced by an email from Prof Dawson to Prof McKenna, (see p101-102, bundle 4), it is very likely that Prof McKenna and others have influenced Prof Scotney to ensure that there will be no negative findings in his report. Had the Respondent adequately dealt with my protected disclosure, I would not have had any further involvement in this matter and would not have needed to contact anyone else outside of the University. I would therefore not have been subjected to the first disciplinary action which resulted in a final written warning. Without this final written warning, I would not have suffered the demotion in January 2013.

4.6. <u>The 8 June 2010 alleged "Agreement"</u>

4.6.1. It is the Respondent's case that I entered into an agreement at a meeting on 8 June 2010. I allegedly agreed not to pursue the serious issue of Prof. Howard adding illegal experiments to FP7, or any other issues relating to him. No evidence of this agreement has been provided to me or to the Tribunal. There are no minutes of this meeting and in Prof. Adair's witness evidence, who chaired the meeting on 8 June 2010, he admitted

that he could not recall such an important agreement ever having been made. It is my submission that this agreement never was made. I further submit that Mr Magee has tried to suggest that I did make such an agreement in order to justify the first disciplinary hearing against me in January 2012. He has done this by creating a paper trail of this alleged agreement in the letters of 10 June 2010, 10 August 2010, and an email on 7 Feb 2011 (page 222, bundle 1). Mr Magee's allegation also motivated the stern letter sent to me by Mrs Aston on behalf of the Vice Chancellor on 24 August 2010. The first disciplinary hearing against me relied heavily on this non-existent agreement. Prof. O'Dochartaigh reported when giving his witness evidence that he had relied on Mr Magee's personal witness statement given at the disciplinary hearing and also on the paper trail created by Mr Magee detailing the non-existent agreement when issuing me with a final written warning in January 2012.

4.7. Further evidence against me

4.7.1 Additional evidence used against me included a letter that I had written to Prof Black to inform him of 4 papers on the university repository that were deemed flawed by a government report. I supplied the same information to the journal 'nature' to add to their discussion of a serious issue in science that there are scientific publications in the public domain that should be retracted. My information was based on facts, and I believe I had done my duty as a scientist to point out these errors. However, this was interpreted by the respondent as part of a vandetta against Prof Howard. Other evidence used against me were communications to colleagues about Prof Howard's past, which as described above, were based entirely on facts. Again, these communications were interpreted by the respondent as part of a vandetta against Prof Howard. I believe that this was a deliberate misinterpretation in order to gather more evidence against me.

4.8. Failure to support my application for promotion by the FEC

4.7.1 At the FEC meeting to evaluate my promotion, it was decided not to support my application, even though I had excelled in the academic areas as described by Profs Bjourson, McKenna and McClanaghan and Mr Magee in their witness statements. Despite this, it was decided that I should not be supported, stating that the reputation of the research institute had been tarnished by me contacting external stakeholders. However, Mr Magee, the head of HR disagreed with this assessment, and cited that only academic merit can be chosen as criteria for promotion. In addition, I requested several times to be given the precise reasons for the rather derogatory statements that were made against me. However, no reasons were ever given. Prof McKenna stated in his examination that it was the role of the Head of School to supply me with these reasons, but even after contacting Prof McClenaghan in a detailed email I did not receive any information. Even after raising a grievance, Prof Ian Montgomery who dealt with the grievance failed to supply me with any details at all.

I believe the block of support by the FEC was a punishment because of my protected disclosure, and that the respondent refused to supply me with any detailed information as I may be able to use these in a court case against the university.

4.9. Disciplinary hearing Jan 2012 I was found guilty of all charges and received a final written warning. I protested against the presentations at the hearing in my letter on 18 Jan 2012 to the chair Prof O'Dougherty and clearly detailed my disagreement on the presentation of the facts. However, I was wrongly advised to not appeal this decision, as it would be added to my files for only 12 months and would have no further consequences. This proved to be wrong and I should have appealed the decision. My failure to appeal does not constitute and agreement with the decision made.

4.10. Conspiracy

4.10.1. The Respondent denies that all 9 of the individuals were involved in what the Respondent has referred to throughout these proceedings as a conspiracy, a term

which I would not have put forward, but which I have accepted.

4.10.2. I submit that the 9 individuals each caused me detriment as a result of my protected disclosure. The emails listed on **page 79 and 79.1**, as well as **page 99-101 of bundle 4** lists those involved in the organisation of disciplining me due to my protected disclosure. They are: Prof McKenna, Prof Bjourson, Mr Magee, as well as Prof Black and Prof Adair who had been informed about this. (Other people that are likely to have been informed at least in part include Prof McClanaghan, Prof Scotney, Prof O'Dougherty and Prof Montgomery).

4.10.3. I believe that there is clear evidence in the emails at pages **page 79 and 79.1**, as well as **page 99-101 of bundle 4** to show that Mr. Magee, Prof McKenna and Prof Bjourson, were conspiring against me to cause me detriment as a result of the protected disclosure that I had made. I submit that others must have been at least in partial knowledge of the facts, yet these people chose not to speak out but followed the official line and did as they were told. For example, I emailed Prof Black on the 8 May 2013 to inform him about the major issues of the FP7 project (p75, bundle4), and he agreed to look into the matter in his response, but never did. Prof Adair was present at the meeting on June 8 2010 where the major issues of the FP7 grant were discussed, as supported by Mr Magee in his statements made in his cross examination. Prof O'Dochartaigh also had been briefed on the serious nature of my findings, yet failed to draw conclusions and supported the respondent's line of argument. Prof Montgomery failed to provide me with details information in relation to the FEC decision.

4.10.4. I repeatedly highlighted to the Respondent the clear findings of the government report, which dealt with Prof Howard's scientific misconduct. This misconduct is

incompatible with research ethics and nobody at the Respondent ever gave an official response to my concerns. They did, however, choose to attack me as the person who allegedly conducted a vendetta against Prof. Howard. I submit that this underlines the fact that there is a tradition of secrecy and denial, which very much facilitated the detriment that I was subjected to.

5. Compensation

I am claiming:

- loss of salary as a result of my demotion at £1037.75;
- £18,000 for injury to feelings. This is the top of the middle Vento band as a result of the series of detrimental acts which ultimately led to me finding alternative employment at another university;
- legal costs incurred in Northern Ireland of £345,60 (inc. VAT) (Worthingtons Solicitors);
- A&L Goodbody, £1770 inc VAT
- legal costs incurred up to and including 7 August 2013 at £8256 (inc. VAT); (Ward Hadaway)
- legal costs incurred between 7 August 2013 and 6 December 2013 at £7680 (inc. VAT); (Ward Hadaway)
- my costs of and associated with attending this hearing, including travel, accommodation and meals;
- the cost of my holiday time which I have been forced to take to prepare for and attend this hearing at £150 per day for all 10 days;
- the cost of having a note taker (trainee) here, at £450 per day + VAT for 4 days and disbursements; and
- the cost of having a note taker (secretary) here at £150 per day + VAT for 3 days and disbursements.

Conclusion

After I have alerted the university several time to no avail, I submitted my protected disclosure in good faith to protect the university and to ensure scientific integrity and the law is kept. For the reasons set out above I have suffered detriment as a result of making this protected disclosure. If I had not made this disclosure, or if the Respondent had dealt with my protected disclosure, I would not have been subjected to the first disciplinary in January 2012. As Profs McKenna and McClanaghan and Mr Magee pointed out in the witness statement, I was a rising star in research at UU. However, after submitting the protected disclosure, I was exposed to a never ending series of attacks. I was disciplined twice, and a third disciplinary hearing against me was already in progress. Had I not received a final written warning in the first disciplinary in January 2012, I would not have been demoted in January 2013. The Respondent's evidence was confused and weak and failed to show that the Respondent ever dealt adequately with my protected disclosure. As a result of the detriment that I have suffered as a result of making my protected disclosure, I believe that I should be compensated.

Christian Holscher

wh8076623v3

IN THE INDUSTRIAL TRIBUNAL AND FAIR EMPLOYMENT TRIBUNAL
CASE REFERENCE NUMBER 115/13

BETWEEN:

CHRISTIAN HOLSCHER

CLAIMANT

-AND-

UNIVERSITY OF ULSTER

RESPONDENT

WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT

Hearing Dates 9th – 19th December 2013

Witnesses:

Claimant – Professor Holscher
Respondent – Professor Bjourson, Professor McKenna, Professor Adair, Professor Scotney, Professor McClenaghan, Professor O'Dochartaigh, Professor McHugh, Professor Moran, Mr Magee, Professor Millar, Professor Hutchinson and Professor Montgomery.

Introduction

1. The Claimant is Dr Christian Holscher and the Respondent is the University of Ulster. Between June 2004 and August 2013 the Claimant was employed by the Respondent latterly in the position of Senior Lecturer in the School of Biomedical Sciences in Coleraine.

2. In April 2009 the Claimant and Professor Vyvyan Howard were awarded a collaborative EU Research grant for the EU FP7 NeuroNano Project to study the role, if any, of nano-particles in Alzheimer's disease.
3. In 2010 the Claimant stated that he made a number of representations to the Respondent regarding the EU funded FP7 NeuroNano Project in that when preparing a report in relation to same he noticed that his colleague Professor Howard had added two additional experiments without his knowledge and that Professor Howard had intended to carry out scientific experiments without the necessary project license.
4. On 23rd April 2010 the Claimant resigned from his involvement in the FP7 project (See pages 52.19 & 52.20 Bundle 1 Section 2).
5. By way of correspondence dated 4th August 2010 the Claimant formally requested the Respondent to investigate the alleged conduct of Professor Howard under its Research Misconduct Policy (See pages 131-133 Bundle 1 Section 2). The Claimant states that the 4th August 2010 represents the date of his protected disclosure.
6. On 3rd November 2010 the Claimant met with Professor Adair, Professor McKenna, Mr Magee and Mr Curry and was presented with the findings of the investigation under taken by Professor Bryan Scotney (See notes of this meeting at page 184 Bundle 1 Section 2).
7. The Scotney report (See pages 97 – 130 Bundle 1 Section 2) did not uphold any of the allegations made by the Claimant.
8. A further meeting took place on 22nd November 2010 between the Claimant and his UCU representative (Professor Pierscionek) and Professor Adair, Professor McKenna, Professor Scotney and Mr Magee. At this meeting concerns raised by the Claimant were discussed and following assurances given by the Respondent in relation to same the Claimant accepted that the matter was now closed (See pages 191 & 192 Bundle 1 Section 2).
9. On 8th June 2011 the Professoriate Committee approved the Claimant as a prima facie case for promotion to the position of Professor, a position taken up by the said Claimant in November 2011.
10. By way of correspondence dated 26th January 2012 the Claimant was informed that he had been found guilty of misconduct in that he had pursued a personal vendetta against Professor Howard both inside and outside the University and that by virtue of such actions had subjected Professor Howard to harassment and impugned his integrity and reputation. The Claimant was issued with a final written warning to stay on his file for a period of 12 months (See pages 391-393 Bundle 2).
11. The Claimant choose not to appeal the findings and sanction relating to the acts of gross misconduct found against him in January 2012.
12. In November/December 2012 the Claimant obtained legal advice from Worthingtons Solicitors who are specialist employment law practitioners.

13. On 2nd January 2013 the Claimant wrote to Mr Magee (Director of Human Resources) and stated to him that if he was subjected to any further disciplinary sanction that he would have no choice but to commence proceedings against the Respondent for detrimental treatment as a result of having made a protected disclosure (See pages 541-546 Bundle 2).
14. On 17th January 2013 the Claimant was informed that he had been found guilty of further misconduct relating to derogatory comments made to Professor McCormack, insulting, derogatory and inaccurate comments made about various colleagues and the University generally and finally making derogatory and inaccurate comments to a HR colleague (See pages 558-562 Bundle 2). The Respondent imposed the disciplinary sanctions of a further final written warning to stay on the Claimants file for a further 12 months and demoted him from the position of Professor to Senior Lecturer.
15. In January 2013 the Claimant entered into contact with Lancaster University in relation to attaining employment at this educational establishment.
16. On 20th March 2013 Professor McClenaghan completed his investigation into a third set of disciplinary issues relating to the Claimant (See pages 644 – 652 Bundle 3) and concluded that a disciplinary panel be set up to consider charges relating to circumventing of normal recruitment procedures in relation to the engagement of a Ms Jalewa and in relation to the use of the subsidiary payroll for other engagements (See Pages 644 - 652 Bundle 3).
17. The Claimant unsuccessfully appealed the sanctions imposed in January 2013 and was informed of the appeal outcome on 25th March 2013 (See pages 724-727 Bundle 3).
18. In late March/early April the Claimant was offered a Professorial position at Lancaster University, a position he holds to the date hereof.
19. On 15th April 2013 the Claimant e-mailed Professor Bjourson to indicate that he was leaving the University of Ulster for a better position (See page 745 Bundle 3).
20. On 23rd April 2013 the Claimant presented his application to the Office of the Industrial Tribunal (Pages 1 – 13.1 Bundle 1 Section 1)
21. On 27th May 2013 the Claimant sent a formal letter of resignation to Mr Magee. The Claimant did not provide any reason in this correspondence as to why he was leaving the University (See page 797 Bundle 3).
22. The Claimants last day of employment with the Respondent was 31st August 2013.

23. On 4th December 2013, five days before the commencement of this Tribunal hearing, the Belfast Telegraph published an article by Mr Eamonn McCann relating to the issues highlighted by the Claimant during the course of evidence.

The Claimant's Case

24. The Claimant has stated that he was harassed, threatened and finally punished as a consequence of raising a protected disclosure relating to the FP7 project in 2010 (See paragraph 28 page 13 Bundle 1 Section 1 and further confirmed by the Claimant under cross-examination).
25. It was further alleged under cross-examination by the Claimant that Professors Adair, McKenna, Bjourson, Scotney, McHugh, Moran, O'Dochartaigh and McClenaghan and Mr Magee conspired to punish him on foot of making the suggested protected disclosure.
26. This Tribunal is respectfully requested to reject these assertions given that the Claimant did not make specific reference to any allegation of harassment and/or threatening behaviour and/or in relation to his conspiracy theory in his witness statement. Further, the "conspiracy theory" is not alleged in the Claimant's application to the Industrial Tribunal. This Tribunal is respectfully reminded that the Claimant's witness statement was prepared by employment lawyers working to their client's instructions.
27. Further, and/or in the alternative the Claimant did not make any direct allegation of harassment and/or threatening behaviour in the cross-examination of the Respondent witnesses. In addition, the Claimant failed to make any reference directly or indirectly to any conspiracy relating to the nine senior members of the Respondent organisation.
28. The Claimant accepted under cross-examination that there was no direct evidence linking his protected disclosure to the disciplinary sanctions imposed on him in January 2012 and 2013. In essence, the Claimant failed to make any evidential link between his purported protected disclosure and any suggested detriment.
29. The Claimant failed to appeal the first disciplinary sanction imposed on him by the Respondent in January 2012 for harassing Professor Howard and carrying out a personal vendetta against same. This Tribunal is therefore respectfully requested to conclude that the failure by the Claimant to appeal this disciplinary sanction must confirm his acceptance of this outcome and penalty as imposed.
30. Despite suggesting in cross-examination that his demotion/second final written warning imposed in January 2013 was an act of harassment and a significant detriment the Respondent highlights the failure of the Claimant to question Professor Marie McHugh who took

the decision in relation to same and/or question to any degree Professor Anne Moran who dismissed the Claimant's appeal of such disciplinary sanctions. In such circumstances this Tribunal must accept the unchallenged evidence of both Professor McHugh and Professor Moran.

31. At all times relevant to these proceedings the Claimant was aware of the Respondent grievance, harassment, whistleblowing and other relevant policies and procedures. Despite same, the Claimant failed to make any complaint of harassment, threatening behaviour, that he was punished for making a protected disclosure and/or that a conspiracy existed at the highest levels of the Respondent organisation to disadvantage him. The Respondent respectfully suggests that the failure of the Claimant to make any such complaints is clearly not supportive or consistent with the allegations presently before this Tribunal.

Jurisdiction

32. In the alternative, the Respondent respectfully suggests that the Claimant's claim is out of time. Under **Article 71(3) of the Employment Rights (NI) Order 1996 (as amended)** it states *"an industrial tribunal shall not consider a complaint under this Article unless it is presented—(a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.*

33. The Respondent notes that the final act of alleged detriment suffered by the Claimant was the decision taken to demote him and place a further final written warning on his file for a period of 12 months. The Claimant was made aware of the Respondent's decision in relation to same by way of correspondence dated 17th January 2013 (Pages 558 – 562 Bundle 2).

34. As the Claimant presented his application to the Office of the Industrial Tribunal on 23rd April 2013 the Respondent say that the Claimant's claim is some 5 days out of time and as such this Tribunal does not have jurisdiction to determine this action.

35. This Tribunal can of course extend time for the presentation of this claim if they feel it was not reasonably practicable for the Claimant to present it within the required timeframe.

36. In order to extend time in these present circumstances the Tribunal must be satisfied firstly that it was not reasonably practicable for the

Claimant to present his claim in time and secondly that the time within which the claim was in fact presented was reasonable.

37. The burden of proving that it was not reasonably practicable for the Claimant to present his claim in time rests clearly rests with the Claimant in this instance **[Porter –v- Bandridge Limited [1978] ICR 943,CA]**.

38. The Respondent respectfully suggests that the Claimant was aware or should have been aware of the time limits required for the presentation of any claim to this Tribunal.

39. The Claimant's evidence under cross-examination was that he was aware, at all relevant times to these proceedings, of the Respondent's whistleblowing policy (Pages 5-12 Bundle 4). Contained within this whistleblowing policy are links to all relevant legislation and the Department for Employment and Learning Guidance (See page 12 Bundle 4)

40. Further, it was accepted by the Claimant that between April 2011 and April 2012 he was Branch Secretary of the UCU for the entire University of Ulster. The Respondent therefore respectfully suggests that the Claimant would have had knowledge and/or easy access to sources of information relating to when and how one should present an application to an Industrial Tribunal. Such sources of information would include Lynn Fawcett (Chair of the UCU) and Dr Bob Mason (Vice Chair of the UCU), who assisted the Claimant in his disputes with the Respondent and with whom the Claimant had regular contact and/or other UCU members and/or the UCU Solicitors (Thompson McClure, Solicitors).

41. Under cross-examination the Claimant initially accepted that he was aware of Public Interest Disclosure legislation and the necessity to bring a claim to Tribunal within the required timeframe at or about the period relating to his first disciplinary process in January 2012. The Claimant however sought to suggest later in his evidence that it was November/December 2012 when he visited Worthingtons Solicitors that he became aware of such time requirements. This Tribunal is asked to conclude that the Claimant's efforts to change his evidence on this crucial issue reflects on his overall credibility.

42. The Claimant met with Worthington Solicitors in November/December 2012 and discussed the legal options open to him at that stage. The Claimant then sent what can only be deemed a threatening letter to the Respondent citing the matter of Public Interest Disclosure and the fact that he would have no option but to bring Tribunal proceedings *..."should the outcome of this disciplinary investigation be an adverse conclusion"*.. (See pages 541,545 & 546 Bundle 2).

43. The only explanation presented by the Claimant during the hearing of this action in relation to why he did not present his claim in time was

that his Trade Union Solicitors were *"too busy"* to see him. This Tribunal is respectfully requested to reject this explanation given that the Claimant failed to adduce additional witness evidence from Dr Bob Mason and/or Mr Lynn Facwett in support of such an assertion. Further, it is simply not believable that Thompson McClure, Solicitors, who are experts in the area of employment law would be so busy to see the Secretary of the UCU branch at the University of Ulster in relation to such serious alleged complaints.

44. Even if this Tribunal were mindful to conclude that it was not reasonably practicable for the Claimant to present his claim in time the Respondent respectfully suggests that the Claimant delayed unreasonably thereafter in presenting his claim.

45. As detailed above the Claimant was aware in January 2012 and/or November/December 2012 in relation to the time limits required to bring a claim concerning Protected Interest Disclosure but then waited until 23rd April 2013 before doing so. The Claimant has failed to present any evidence as to why he did not present a claim following the first disciplinary sanction in January 2012 and/or following the second disciplinary sanction imposed on 17th January 2013.

46. In such circumstances the Tribunal is invited to conclude that the Claimant's claim is statute barred and that he has failed to present any or adequate evidence to allow the said Tribunal to grant an extension of time on the grounds that it was *not reasonably practicable to present the claim in time.*

Public Interest Disclosure

47. In order to satisfy the statutory requirements in relation to any claim concerning Protected Interest Disclosure the Claimant must satisfy a number of conditions.

48. The Claimant must firstly satisfy a Tribunal that he has made a disclosure qualifying for protection. In this instance the Claimant is relying on **Article 67B(1)(a) of the Employment Rights (NI) Order 1996 (as amended)**. This is confirmed in the Claimant's reply to the Respondent's notice for additional information (See Question 3 of the Respondent's notice Page 24 Bundle 1 Section 1 and reply by the Claimant at reply 3 Page 28 Bundle 1 Section). This provision states that a qualifying disclosure can be the disclosure of information which tends to show that ....*"that a criminal offence has been committed, is being committed or is likely to be committed"*.... .

49. It was accepted by the Claimant under cross-examination that no criminal offence had been or was being committed by the Respondent at the time that both parties considered the matter closed on 22nd

November 2011. Further, and/or in the alternative the Respondent relies on the content of the Scotney report in support of this assertion.

50. The Respondent further respectfully suggests that no evidence has been presented by the Claimant to allow a Tribunal to conclude that a criminal offence was *"likely to be committed"*.

51. The two elements to the purported disclosure were that Professor Howard had added two additional experiments to the FP7 project without the knowledge of the Claimant and that he planned to carry out such experiments without a valid license.

52. The Respondent highlights the fact that the Claimant's formal grievance dated 4th August 2010 under the Research Misconduct policy was completely rejected by Professor Scotney in his report dated 18th October 2010. The Tribunal is respectfully reminded that the Claimant under cross-examination accepted that his complaint document represented all of his stated concerns.

53. The Scotney report concluded that the Claimant was or should have been aware of the existence of the two additional experiments as identified. The Respondent is respectfully reminded of the unchallenged evidence of Professor Scotney (See paragraph 14.1 Page 70 of the Witness Statements Bundle) when he stated ... *"it was my reasonable belief that two additional experiments had not been added by Professor Howard without Professor Holscher's knowledge. Professor Holscher had only looked at an earlier version of the proposal. Had he looked at the later ones (which were sent to him on 30th December 2007, 8th January 2008 and 17th January 2007) he would have seen full details of the experiments in question, namely Deliverables 3.8 and 3.9 of WP3 which appear in Appendix III of the Stage 3 report page 139 Bundle 1)"*... .

54. In addition, no evidence was presented by the Claimant to the Respondent or at the hearing of this action that Professor Howard was intending to carry out the additional experiments without a valid project license. While the Respondent gave assurances to the Claimant that no such experiments would take place without a valid license it is the position of the Respondent that no illegal work had or would have taken place without the necessary authority.

55. It is necessary for the Claimant to show that the relevant information establishes that it was probable or more probable than not that Professor Howard would have carried out illegal experiments **(Kraus – v- Penna plc [2004] IRLR 260)**. The Respondent respectfully suggests that the Claimant has failed in this regard and as such this Tribunal should conclude that he has not made a protected disclsoure in all the circumstances.

56. A qualifying disclosure by an employee to an employer can only have legal significance if it is made in good faith (**Article 67C & 67G(1)(a) of the Employment Rights (NI) Order 1996 (as amended)**.

57. The Tribunal respectfully suggests that this Tribunal must conclude on the balance of probabilities that the Claimant was fixated or obsessed with his on-going vendetta with Professor Howard when making the purported disclosure on 4th August 2010.

58. The Respondent accepts that the burden of proof rests with them in establishing that the Claimant did not act in good faith.

59. The Claimant made the allegation in August 2009 against Professor Howard that he had not seen or approved a press release made by same. The uncontested evidence given by Professor Bjourson was that the Claimant was incorrect in relation to his allegation and had in fact both seen and approved the stated press release (See pages 24.4 and 24.5 Bundle 1 Section 2; Further, see paragraphs 4 – 12 of Professor Bjourson's witness statement at pages 18-20 of the Witness Statement Bundle).

60. On 17th December 2009 the Claimant sent an e-mail to Professor Mc Kenna and Professor Bjourson complaining about Professor Howard and indicating that he no longer wished to be involved in the FP7 grant. In this correspondence the Claimant stated that unless Professor Howard was removed from the project he would have no other option but to remove himself (See pages 48 and 49 Bundle 1 Section 2).

61. By way of e-mail dated 20th December 2009, again sent to Professor Howard and Professor Bjourson, the Claimant referred to an alleged attempt by Professor Howard to influence their opinions as *"pathetic"* and he indicated that he wished not to engage in any discussion on the matter anymore (See page 50 Bundle 1 Section 2).

62. On 3rd February 2010 the Claimant confirmed that he had contacted the EU manager about the FP7 Project. In a response Professor Bjourson stressed the need for the Claimant to work for the good of the project as previously agreed with the Dean of the Faculty (Professor McKenna) (See pages 52.1 – 52.3 Bundle 1 Section 2).

63. On 26th February 2010 Professor McKenna directed that the Claimant not be allowed to attend an EU Project meeting in Sicily (See pages 52.4 & 52.5 Bundle 1 Section 2). The evidence given at hearing by Professor McKenna was that he was concerned that the on-going dispute between the Claimant and Professor Howard would be played out in front of other members of the project and that this could undermine the standing and reputation of the University. The uncontested evidence of Professor McKenna was that he was unaware at the time that the Claimant was to present data to the

conference and he simply chose Professor Howard to attend as Principle Investigator.

64. On the 15th March 2010 the Claimant again indicated his desire to remove himself from the FP7 Project; Professor McKenna replied that he viewed that the relationship between the Claimant and Professor Howard had broken down and was *"not reconcilable"* (See pages 52.13 & 52.14 Bundle 1 Section 2).

65. On 22nd May 2010 the Claimant sent an e-mail to David Collins (Home Office) and Professor McKeown with the subject title *"Unethical Conduct at the BBRU"* (Page 54 Bundle 1 Section 2). In this e-mail the Claimant sought to clearly undermine Professor Howard.

66. On 27th May 2010 the Claimant e-mailed Professor McKenna again making further allegations against Professor Howard (Pages 56 & 57 Bundle 1 Section 2). The Claimant indicated in this e-mail that he would not communicate with Professor McKenna any further about the matter until he obtained legal advice. In an effort to clarify matters Professor McKenna wrote a detailed request for information from the Claimant on 28th May 2010 (Page 58.2 – 58.4 bundle 1 Section 2).

67. On 8th June 2010 Mr Magee attempted to mediate between the parties. Following this meeting Mr Magee wrote to the Claimant setting out the facts of the meeting and the agreement reached with the Claimant that he would not continue with his complaints against Professor Howard (Pages 64 & 65 Bundle 1 Section 2). In his evidence the Claimant did not accept that any such agreement had taken place. This Tribunal is respectfully asked to reject this assertion given that the Claimant did not respond to this correspondence or indeed to similar correspondences sent by Mr Magee on 10th August 2010 (Pages 75 & 76 Bundle 1 Section 2) and 7th February 2011 (page 222 bundle 1 Section) in relation to same. In addition, the Claimant did not reply to Mrs Irene Aston (Director of Corporate Planning and Governance) when she wrote to him making reference to correspondence from Mr Magee (Page 86 bundle 1 Section 2). Put quite simply if the Claimant had held the position that no such agreement had been made he would have recorded his position in written form.

68. On 26th September 2010 the Claimant contacted by e-mail academics in a number of different countries associated with the FP7 Project. The content of the e-mail (Pages 93-95 Bundle 1 Section 2) can only be described as a direct and personal attack on Professor Howard.

69. Following the conclusions reached in the Scotney report and the agreement reached at the meeting on 22nd November 2010 that the matter was now closed the Respondent held the view that there would be no further representations made by the Claimant against Professor Howard.

70. On 29th December 2010 the Claimant sent an e-mail to all members of the Royal Microscopical Society (RMS) who were attending a conference in Belfast (See pages 209.4 & 209.5 bundle 1 Section 2). Again the content of same represents a further attack on the integrity of Professor Howard. This resulted in an e-mail from the President of the RMS Tony Wilson to the Vice Chancellor of the University of Ulster on 8th March 2011 indicating their significant concerns as to the conduct of the Claimant (see page 223 Bundle 1 Section 2).

71. On 14th April 2011 the Faculty Executive Committee (FEC) met to discuss all applications for promotion. Included in their list of candidates was the Claimant's application for promotion to the position of Professor. The FEC did not support the Claimant's application for promotion (See pages 640 – 643 Bundle 3) given the incorrect inclusion of Nano grant income on his application form and the manner and effect of his conduct in relation to Professor Howard.

72. On 5th July 2011 the Claimant raised a formal grievance relating to the recommendations of the FEC (See pages 293-298 Bundle 2). Despite alleging at Tribunal that the conduct of FEC at this time amounted to harassment the Claimant withdrew his grievance on 5th September 2011 (See page 327 Bundle 2).

73. On 16th August 2011 Nature magazine published an article naming Professor Howard and the University of Ulster (See pages 362 & 363 Bundle 2). This article came about as a consequences of the Claimant contacting this and indeed other scientific journals. The Respondent respectfully suggest that the motive for making such contact with these journals amounted yet again to a further personal attack on Professor Howard.

74. The Respondent respectfully rely on the findings of the disciplinary hearing which are detailed in correspondence dated 26th January 2012 (See pages 391 – 393 Bundle 3). The Claimant chose not to appeal this decision which found him guilty of harassing and carrying out a personal vendetta against Professor Howard and having sought to impugn the professional integrity and reputation of same. In such circumstances the Claimant clearly accepted his guilt in relation to such unacceptable and appalling conduct.

75. The Respondent rely on the conduct of the Claimant in contacting Mr Eamonn McCann prior to this hearing and providing him with information which is the subject of these proceedings. This represents further evidence of the vendetta against Professor Howard.

76. This Tribunal will be aware that anyone who holds a personal grudge against another cannot seek the protection of the Public interest Disclosure legislation **[Street v Derbyshire Unemployed Workers Centre [2005] ICR 97 CA].**

77. For the reasons as noted above this Tribunal is further respectfully requested to conclude on balance that the Claimant could not have believed that the purported protected disclosure and allegations contained therein were substantially true (**Article 67G(b) of the Employment Rights (NI) Order 2006 (as amended)**. The purported disclosure to the Respondent was clearly factually incorrect and the Claimant was only involved in his determined campaign to undermine Professor Howard.
78. Finally, given that the Claimant did not challenge the evidence of Professor O'Dochartaigh, Professor McHugh and/or Professor Moran as to the factual basis for imposing/upholding disciplinary sanctions against the Claimant in 2012 and 2013 then this Tribunal must conclude that the reason, and only reason, for same was because of the conduct of the Claimant and not because of his protected disclosure made on 4th August 2010; the Respondents evidence remains unchallenged. The claimant has therefore not established any basis to support his assertion that his protected disclosure resulted in any detriment **(Article 67G (2)(a) of the Employment Rights (NI) Order 1996 (as amended)**.

Conclusion

79. The Claimant has alleged that having raised a protected disclosure on 4th August 2010 he was then harassed, threatened and ultimately punished by his employer. It is the Respondent's respectful submission that the Claimant has not provided any or adequate evidence to support such assertions. In addition, the Claimant has not made a qualifying protected disclosure, has not made such a disclosure in good faith, did not hold a reasonable belief as to the truth of same and was not subjected to any detriment by his employer.
80. The true position is that the Claimant has presented this misconceived case to this Tribunal in an effort to undermine his former colleague Professor Howard. Such use of the Tribunal forum to continue with this personal vendetta is clear evidence of the vexatious, abusive and unreasonable conduct and behaviour of the Claimant.

Barry Mulqueen
Barrister-at-Law

Bar Library
19th December 2013