

IN THE COUNTY COURT (SURREY)

CASE NO.

B E T W E E N

DR HOWARD FREDRICS

Claimant

-and-

**KINGSTON UNIVERSITY
and
SIR GEORGE PETER SCOTT**

Defendants

PARTICULARS OF CLAIM

BACKGROUND

1. The Defendant(s) are engaged in the provision of higher education services to the general public. These services are subject to oversight by the Higher Education Funding Council of England (HEFCE) and the Quality Assurance Agency (QAA). The Defendant, Sir George Peter Scott is employed as Vice-Chancellor of the Defendant, Kingston University, where he maintains responsibility for the day-to-day operations of the University, including authorizing public statements to the press.
2. The Claimant was employed between 2002-2006 as a Senior Lecturer at the Defendant Kingston University. During the course of his employment, he became privy to email correspondence among the Defendant's staff members and discussions held during meetings within his department, the now former School of Music.
3. On or about 29 June 2004, the then School of Music held a meeting known as a Module Assessment Board (MAB), which included the attendance and participation of staff members and the School's External Examiner, Dr Nicky Losseff, Professor of Music at York University. Following the MAB meeting, in approximately early July 2004, Dr Losseff issued her report on the School's Assessment Regulations, Procedures and Standards covering the Academic Year of 2003-04. Dr Losseff's report, which was circulated to School of Music academic

staff, was based on her genuine observations and assessments conducted during the academic year of the quality of student work, and of the processes and procedures used by the School to set forth and assess that work. Her report judged these standards and procedures relative to national standards within the field.

CONTENTS OF THE REPORT AND RESPONSE BY SCHOOL MANAGEMENT

4. In her report, Dr Losseff answers “NO” to the statement/question on the report, “*The standards of student performance are comparable with similar programmes or subjects in other UK institutions with which you are familiar;*” Dr Losseff goes on to explain in some detail, the basis for her response by stating in relation to the marking of work that the School has “*too often over-rewarded by national standards*” and that “*Some of these students, producing not just barely acceptable but sometimes unacceptable work, are attaining passes at Honours level.*”

5. On 14 July 2004, MA Course Director, Michael Searby wrote an e-mail to Music academic staff. He states, “*I feel that Nicky’s report is both unfair and very damaging – especially the part which is to be published publicly. Can we ask her to amend that so it is less damning? It could really hit our recruitment badly and probably mean the quality of students coming would sing further. I think her comments are out of step with other externals we have had – probably because of her background. We must avoid externals with these attitudes in future – we cannot afford this type of bad publicity.*”

6. Similarly, on 5 July 2004, Acting Head of School, Dr Carol Gartrell sent an e-mail to BMus Course Director, Gloria Toplis, copied to Music staff, in which she states, “*I think that it is important that the Examiner is sympathetic to and familiar with the challenges we face with regard to WP [Widening Participation], Retention etc. and would be constructive in their feedback.*”

7. In approximately September or October 2004 during a Music staff meeting, the matter of Dr Losseff’s report was raised and discussed among staff members present. The purpose of this discussion was to formulate a unified written School response to the report. At that meeting, which the Claimant attended, a number of staff members, including Mr Searby, Ms Toplis and Dr Gartrell, expressed their reinforced their concerns about the potential damage that Dr Losseff’s report would cause to the reputation of the School. Conversely, the Claimant expressed the view that Dr Losseff’s report was, in fact, balanced and fair and that the

School ought to set forth its plan to address Dr Losseff's legitimate criticisms of academic standards.

8. Sometime after the Music staff meeting, on 25 October 2004, Ms Toplis sent an e-mail to Music staff members with an attached revised report by Dr Losseff. Ms Toplis states, "*Colleagues will probably know that the last section of Nicky's report, the part which is made public, has been changed to our favour.*"

SURREY COMET ARTICLE

9. In approximately mid-late June 2008, sometime after the Claimant had in good faith raised his concerns internally to no avail, after he had ceased his employment at the Defendant in July 2006, and after he had secured the posting of the aforementioned emails on a well-known academic-related public interest website during 2007, the Claimant provided copies of the aforementioned emails to Ms Alita Howe, Staff Reporter at The Surrey Comet newspaper in connection with an article she was writing. The context of this article was the emerging national press reports surrounding allegations of erosion of national academic standards and related matters within the arena of British Higher Education, subjects that form the basis of an ongoing Parliamentary Select Committee Inquiry.
10. On 2 July 2008, the Surrey Comet published an article by Ms Howe in which she described the contents of the aforementioned emails. The second paragraph of the article begins as follows: "*Kingston University categorically denied the authenticity of the emails.*" A subsequent paragraph begins as follows: "*The university strenuously denied that pressure was placed on the examiner and further emails seemingly asking for a more favourable examiner to be appointed are bogus, according to the university.*"
11. Ms Howe informed the Claimant of the Defendants' denials before the article appeared so that he could make a statement for publication. The Claimant's statement, which appeared in the article was, "*It seems that rather than make positive changes to the programme, the university would rather just shoot the messenger.*"
11. On 25 June 2008, the Claimant provided Ms Howe with Dr Losseff's contact details. Prior to publication of the article, Ms Howe obtained confirmation from Dr Losseff that she was, indeed, approached by the Acting Head of School, Dr

Gartrell, and that she had felt pressurized into changing her report to be more favourable.

12. The Claimant felt very upset by the Defendants' denials of the authenticity of the emails, which he knew to be genuine. He fully believed at the time and still does believe that the Defendants deliberately and knowingly endeavoured to mislead the public into forming the view that the allegations suggested by the emails and confirmed by Dr Losseff were based on fraudulent evidence, and that the Claimant was, by clear inference, guilty of having manufactured such evidence of wrongdoing by the Defendants' staff members.
13. The Claimant believes that the Defendants did this, both to divert public attention away from the apparent acts of gross misconduct by staff members, as well as in order to gain material advantage in an ongoing claim of unfair dismissal, disability discrimination and victimization lodged by the Claimant against the Defendant, Kingston University in October 2006 before the Employment Tribunal.

CAUSE FOR CONCERN INQUIRY

14. On 8 July 2008, following the publication of the aforementioned article in the Surrey Comet, the Claimant decided to bring forth a formal complaint to HEFCE under the auspices of its Public Interest Disclosure procedure in order to mitigate the damage done to his reputation by the Defendants' public denials and accusations regarding the authenticity of the Claimant's evidence.
15. Some months later, on or about 7 March 2009, the Claimant, after hearing nothing by way of an outcome of his disclosure to HEFCE, came upon an internet copy of a letter of October 2008 written by Mr Peter Williams, Chief Executive of the Quality Assurance Agency (QAA) to the DIUS Parliamentary Select Committee on Standards in Higher Education. The letter indicated that following a referral from HEFCE, QAA had decided to conduct a formal investigation under its Cause For Concern procedure of allegations of wrongdoing by the Defendants in connection with the School of Music's External Examiner procedures, as described above. Mr Williams' letter indicated that a preliminary finding by QAA had upheld the allegations in full and that it had asked the Defendants to publish a report of the investigation, with the case continuing.
16. On 24 March, the Claimant received an email with attachments from Dr Stephen Jackson, Director of Reviews for QAA. The attachments were of a detailed

report by QAA on the outcome of its investigation, and a summary report for public dissemination via the QAA website. The conclusions of the report were unequivocal in support of the upholding of allegations brought by the Claimant, in direct contradiction of the public statements by the Defendants to the press.

17. Paragraph 3.2 of the detailed report states, “*QAA also wrote to the external examiner involved and had a telephone conversation with her on 2 October 2008. The external examiner provided a copy of an email exchange with a BBC journalist in June 2008.*”

18. Key conclusions of the report support the allegations put forth by the Claimant, which the Defendants denied, buttressed by their assertion in knowingly false public statements that the relevant evidence was inauthentic. On the contrary, QAA found through its own investigative efforts that the evidence presented by the Claimant was entirely credible.

Paragraphs 6.2- 6.4 of the detailed report, therefore state that:

6.2 *There is, however, little dispute about what happened in the reported case. On the simple facts, an external examiner was asked by an acting Head of School to make changes to her report to prevent information being published on a public website that might have an adverse impact on the reputation of the School. The report was subsequently changed and the amended version published. Also there is clear evidence that staff in the School were asked by one of the course leaders, to identify potential external examiners who would be sympathetic to the type of students recruited to the BMus (Hons) programme.*

6.3. *The allegations reported to HEFCE in the initial public interest disclosure made reference to ‘pressure’ being exerted on the external examiner to change her report. This was an issue that the BBC also highlighted in its report. The University denied that any pressure had been applied. The external examiner told the BBC that ‘the kind of pressure that was applied was that it would have dire consequences for the music school if I didn’t change the report’. This was confirmed in the discussions between Dr Jackson and the external examiner. Although she indicated that she was persuaded by the arguments put to her by the acting Head of School, she also felt that she was left in no doubt that she was expected to change her report.*

6.4 *The other allegation that staff in the School were encouraged to nominate candidates for a new BMus external examiner who would be sensitive to the*

challenges faced by the School, is supported by the redacted emails provided as supporting evidence to the public interest disclosure. In one email the acting Head of School suggested ‘...it is important that the Examiner is sympathetic to and familiar with the challenges we face with regard to WP, Retention etc. and would be constructive in their feedback.’ The external examiner subsequently appointed was from a university with a strong tradition of widening participation. This does not, in itself, represent inappropriate action by the School or the University. The QAA Code of Practice states that ‘...It is important that external examiners are chosen who have an understanding of the types of programmes or parts of programmes they are asked to consider. This means that it can be most appropriate for institutions to recruit external examiners from other institutions similar to themselves.’ However, the implication in this case is that the School set out to find an external, that they could recommend for appointment, who would be less critical of their practices.

19. In response to the Defendants’ commissioned, ‘independent’ investigation, conducted by Goldsmith’s College, University of London, which found no evidence of pressure being applied to the External Examiner by the Defendants’ staff members, QAA’s report is highly critical. In Paragraph 6.7 of the QAA report, the findings are that *“The review concluded that there was no evidence of failure in the external examining system at Kingston. However, the reviewer had not been asked by the University to contact any of the external examiners who had identified concerns regarding academic standards. The statements in the review report that there was no evidence that any pressure had been brought to bear on the examiners to change their reports were based solely on the narrative in the reports and central data. As a consequence it is our view that on this issue only limited reliance can be placed on the findings of the review”*. Here, it is clear that QAA viewed the Defendants’ report with much scepticism, given that it did not take into account the testimony of External Examiners.

20. In light of the facts in evidence, including the findings of QAA, which are based on first hand witness verification of the allegations made by the Claimant concerning the External Examiner matter, and in light of the lack of demonstrable evidence put forth by the Defendants to the contrary, the Claimant submits that the statements made by the Defendants to the Surrey Comet, as well as to the QAA are demonstrably false and by reasonable inference, are defamatory respecting the Claimant.

21. The Defendants made representations to the press and to QAA that the evidence was brought forth by a former employee of the Defendant, who is well known to the public as

having been in dispute with the Defendant, and for whom there would be few if any other individuals about whom the Defendant was referring in its communications and statements.

DAMAGES TO THE CLAIMANT

22. As a result of the publication of the Surrey Comet article described above, which contained the Defendants' false and malicious allegations concerning the authenticity of the evidence supplied to the press by the Claimant, the Claimant has suffered considerable damages to his personal and professional reputation and to his legal position respecting his ongoing case before the Employment Tribunal.

23. The Comet and its affiliated publications have a substantial readership, not only within Surrey, but in the surrounding areas, including the Greater London region. With publication both in print and online, the impact of the article upon the Claimant is both far reaching and long lasting.

24. The Claimant, who holds a Doctorate in Music, avers that his opportunities for obtaining employment as an academic staff member (i.e. Senior Lecturer) at another institution in the UK and, quite possibly, internationally, have been irrevocably damaged to the extent that he will henceforth be unable to locate suitable employment in his chosen field of music composition/music technology.

25. The Claimant also avers that his opportunities for engaging in collaborative academic and creative scholarship, including but not limited to research, non-commercial, and commercial composition and audio production projects have been irrevocably damaged, as such activities require a strong degree of mutual trust in the integrity of participants. The Claimant's trustworthiness has, by virtue of the Defendants' public statements, been unduly and severely damaged, since many individuals in the Claimant's field have long been aware (i.e. prior to the publication of the July 2008 Surrey Comet article) of the website containing the aforementioned email evidence and its direct link to the Claimant.

26. The Claimant also avers that but for the statements of the Defendants, he would have been able to proceed with his case before the Employment Tribunal in a more timely fashion, and with an improved prospect for success, given the fact that his case involves allegations of victimization for having made protected disclosures.

27. The Claimant avers that the Defendants have issued a complaint before the World Intellectual Property Organisation (WIPO) alleging that the Claimant made defamatory

statements on a website which he controls, allegations which the Claimant denies. Given the content of the site, which refers directly to the allegations surrounding the External Examiner, the Claimant believes that the Defendant denied the authenticity of the Claimant's evidence in order to damage the Claimant's credibility and to thereby gain advantage in an anticipated and ongoing complaint before WIPO.

28. Given the wide readership in his community of Hampton Wick of the Surrey Comet, the Claimant believes that his personal relationships with members of his community have been damaged.

29. The Claimant has suffered considerable personal distress as a result of the ongoing and uncorrected nature of the Defendants' statements, which have caused a worsening of his pre-existing medical conditions of Reactive Depression and Gastro-Oesophageal Reflux Disorder.

30. The Defendants have done nothing to mitigate the Claimant's losses by way of a public apology nor have they offered to compensate the Claimant for his losses arising from the Defendants' public statements.

REQUEST FOR REMEDY

31. The Claimant respectfully requests that the Court:

a) declares that the allegations: "*Kingston University categorically denied the authenticity of the emails*" and "*further emails seemingly asking for a more favourable examiner to be appointed are bogus*" by Sir George Peter Scott and Kingston University are defamatory;

b) order the Defendants to publish in three press articles, the following text : "*Sir Peter Scott and Kingston University sincerely apologize for their inaccurate statements regarding the authenticity of email evidence provided by Dr Howard Fredrics in connection with his allegation that the School of Music's External Examiner was pressurized to change her report. Sir Peter Scott and Kingston University now fully accept that the aforementioned emails were, indeed, genuine*" under a penalty of £1000 per late day, two days after the order of the Court has been rendered;

c) order the Defendants to pay unspecified damages, as shall be determined by the Court;

d) order the Defendants to bear the legal costs of these proceedings.

31 March 2009