

Case number 401128/2002
Dr D. Quigley v University of St Andrews

Objections by the Applicant (Dr Declan Quigley)
to the Respondents' Final Submissions 20 April 2004

It is submitted that the final submissions of the Respondents are, again and again, mendacious and misleading. Evidence has been distorted and taken out of context; new claims which were never presented in the Tribunal have been inserted as evidence; interpretations which clearly do not flow from the evidence have been put forward as if they were themselves matters of fact; attempts have frequently been made to bolster these interpretations with unsupported speculation; false inferences have been made from case law; and, when all this has appeared weak, the Respondents have resorted to innuendo and crass gratuitous and personal abuse of the Applicant. Some of this is relatively trivial, some is not; but what it demonstrates is that the Respondents are incapable of relying on the evidence alone, whether the detail or the broad strokes, to present their case. Instead they repeatedly resort to any underhand device they can think of to 'support' their argument.

The Applicant has anticipated a number of objections to the Respondents' final submissions to the Employment Tribunal in his own final submissions and these will, of course, be dealt with separately by the Tribunal members. The objections listed below follow the order of the Respondents' submissions.

I. THE PROPOSED FINDINGS IN FACT

The Respondents have put forward a number of 'proposed findings in fact' which were not discussed during the proceedings of the Employment Tribunal. They refer to documents that were lodged as the agreed bundle of productions but very often what is presented as 'findings in fact' refers to statements or paraphrases that have been taken out of context and presented in a disingenuous manner. The Applicant therefore asks that every time the Respondents refer to a lodged document as supporting a proposed finding in fact, the Tribunal members read that document in full to ascertain whether the claim that is being made by the Respondents is a fair and accurate representation of what is in the document.

Below the Applicant has listed only those of the Respondents' proposed findings in fact which can be contradicted in a line or two, or which are particularly pernicious. Disagreements with all of the disingenuous paraphrasing of what has been written would require a very long document indeed, and the Applicant proposes that the Panel members are perfectly able to see for themselves which of the Respondents' statements are misleading by referring to the original documents.

3. The Applicant *was* encouraged to take up employment with the Respondents. No witness on the Respondents' side has presented any evidence to the contrary.

The Applicant was the only witness who presented evidence regarding the appointments interview for his post at St Andrews.

9. The Applicant did not refer to the e-mail of Mr Platt's referred to here as a 'spat'. This was the University's barrister's word.
30. The e-mail at [111] does *not* indicate 'that the applicant thought Professor Skorupski was supporting Mr Platt'.
31. The e-mail of 26 March 200 [111-113] does *not* state that Professor Rapport 'abused his position'.
39. The words 'hypocritical shit' have been taken out of the context of the rest of the e-mail [131].
41. The Respondents' statement here is disingenuous. The e-mails in question [133, 135] do *not* indicate that '[t]he applicant has difficulties with this suggestion' - i.e. of working together. They point out that there are certain difficulties which need to be resolved.
55. Mr Platt did not want the iBook to 'type up some research'. He wanted it to transfer files from his desk computer. If he had only wanted to type something up, he could have done this on any other computer.
56. The Applicant did not shout 'its [*sic*] war' in front of students. There was *one* student present at this exchange between the Applicant and Mr Platt. The Applicant said to Mr Platt that if he wanted war, then that's what he would get.
57. The issue of the laptop was raised at the very beginning of the Applicant's meeting with Professor Skorupski, not at the end. Professor Skorupski told the Applicant that if he had resolved the issue by putting the laptop in his car, then that would have to be how the issue was resolved.
58. Professor Overing's laptop used software which the Applicant was unfamiliar with and which was incompatible with the Applicant's desktop computer — as the Applicant explained to Professor Overing at the time.
59. The option of buying another laptop at the time, assuming one was available within the next 24 hours before the Applicant left Scotland, did not mean that it would come with the appropriate software. This option was also against University purchasing regulations, however much Professor Skorupski professed that he could do what he liked.
71. The Applicant did *not* agree in evidence that his promotion application 'was not a rational way to seek promotion'. He stated that it was not a *conventional* way to seek promotion, but that this was because he was not in a conventional position following his resignation of the Chairmanship of the Department and the displeasure this had invoked in his Head of School.
75. The word 'students' should be 'student'.

90. This paragraph excludes the Applicant's oral testimony to the Tribunal that Mr Beaton had advised the Applicant that the Dean of the Faculty was unlikely to accept a promotion application which included the e-mails from Mr Platt.
100. Both Dr Dilley and Dr Riches denied that Professor Skorupski had consulted them in relation to the Applicant's teaching — see the Applicant's witness statement and the transcript of the Promotion Appeal Hearing, p.119 and p.167.
102. Professor Skorupski's report to the Promotions Committee also included a number of negative comments about the Applicant.
104. There seems to be some kind of insinuation in this paragraph with the underlining of the word 'now'. In his oral evidence the Applicant stated that he did not believe he had an absolute right to promotion but that he did have an absolute right to have his promotion application considered fairly.
106. The e-mail referred to makes clear that all of the Applicant's colleagues also shared the same concern about Mrs Christie's failure to be promoted.
107. This paragraph simply paraphrases an e-mail from Ms Grainger and omits the considerable evidence that was brought out on this issue in the cross-examination of the Applicant and Professor Vincent. It is very misleading.
118. What is claimed in this paragraph was disputed by the Applicant in his witness statement and in oral testimony. It is a claim, not 'a fact'.
131. At the time this e-mail of 25 September 2001 was sent, the Applicant had been allocated six new honours students and it appeared that only one of these was female.
132. This paragraph makes no reference to the fact that there was not a shred of evidence to support these claims. At no point in the Respondents' barrister's 'proposed findings in fact' does he point out that these claims were baseless.
141. While the e-mail referred to here is not marked confidential, it is clearly addressed to Professor Skorupski 'and other members of the Social Anthropology professorial search committee'.
151. The statement here was contradicted by the Principal of the University, Dr Lang, when he gave evidence to the Tribunal.
155. The representation in this paragraph ignores the contrary evidence presented by Dr Riches and the Applicant.
157. The representation in this paragraph ignores the contrary evidence presented by the Applicant.
159. The representation in this paragraph ignores the contrary evidence presented by Dr Riches and the Applicant.
163. The statement in this paragraph is garbled.

169. The e-mail referred to here is much more extensive than is implied. Among other things, in this e-mail the Applicant also asked the Principal whether Personnel could 'clarify whether members of staff have a right to see any notes held on file which could be used against them in any future disciplinary action'.
177. The response referred to here points out that Mr Beaton has written to the Applicant saying that 'The Promotion Appeal Panel will take as its starting point the findings of the Corner/Esler review'. No reference is made to the Applicant's letter to Mr Beaton of 10 December 2001 [407] where he states that he has no intention of re-running the Corner/Esler review.
181. The statement in this paragraph is completely false and is not supported by the page references to the productions [407-409] given.
187. The statement here is misleading in that it does not point out that the 'reference to raising a claim in an employment tribunal' is hypothetical: 'I would be amazed that *if* this matter ever comes before an Employment Tribunal...' (emphasis added).
196. It is stated here that: 'The Applicant did not exhaust all internal mechanisms'. This does not sit easily with the testimony of Dr Lang (the Principal) that the Applicant's letter to him of 17 December 2001, which was clearly attempting to pursue matters further internally, required no response because, as Dr Lang said:
I did not believe there was any gain to be made from pursuing these issues further. I regarded the matter as closed and was looking forward.... I (Dr Lang)'d had enough. You (the Applicant)'d had your chance. I'd done my bit and moved on.

At this point it would therefore appear that the only outstanding matter from the Principal's perspective was the promotion appeal which the Applicant duly proceeded with.

II. SYNOPSIS OF THE EVIDENCE (pp. 24-41)

The Respondents have made little attempt to order the witnesses' evidence thematically, normally preferring instead to relate it more or less in the order in which it was presented. The reader might sometimes have the impression that *all* of the witnesses' evidence is being presented when, in fact, what is presented is selective.

p.24, para 2: It is claimed that Dr Lang (the Principal of the University of St Andrews) was called by the Respondents. He was, in fact, called by the Applicant, though he made two attempts through the University's lawyers to resist being called.

pp 25-41 contain lengthy extracts from the Applicant's witness statement. The justification for this is:

to try and identify with some clarity the specific breaches upon which he relies, free from the clutter of extraneous or evidential matter, which on occasions simply obfuscates or gives the impression that the applicant is introducing yet another new breach, rather than setting out the factual content of the breach being identified.

Given the Respondents' tendency to misrepresent the Applicant (this becomes much more manifest in their 'Conclusions' below where an extraordinary number of mendacious statements are made), the Applicant respectfully requests the members of the Employment Tribunal to rely on his original witness statement rather than the Respondents' excerpts from it.

The Applicant's Parole Evidence (pp.42ff)

p.43: It is stated that:

The applicant said that he "befriended" [Mr Platt] and his daughter throughout the three years he was at St Andrews.

This is not what the Applicant said. He said that when he and his girlfriend arrived in St Andrews they had befriended Mr Platt and his daughter. No time period was specified for the duration of this friendship. The Applicant did not say that the friendship lasted 'throughout' his stay at the University.

p.44: It is stated that:

He said that he had met her at a University function where she looked at him strangely and then said that the applicant reminded her of her brother who had drowned at the age of 23 therefore, he said, there was "*a certain intimacy to the relationship*".

The Applicant did not state that Ms Grainger had looked at him strangely at a University function. She looked at him strangely when they met for a coffee some time later. The Applicant did not say that there was 'a certain intimacy to the relationship', but that the relationship had 'a peculiar honesty'. The Respondents appear to be trying to imply something. They should be clear about what they are implying.

p.49, para 3: It is stated that the Applicant did not want to do fieldwork in South East Asia because of a previous illness he had contracted there. The Applicant in fact said

he had become ill in South Asia. He also said that he had translated for three French academics, not one as reported in this paragraph (though why this kind of information needs to be included in final submissions is not at all clear to the Applicant).

p.49, para 5: What is stated here is not what the Applicant stated in oral evidence. What he stated was that he only had one PhD student. At any time, like any other member of staff, he might acquire more PhD students so the lack of ESRC funding was relevant to him since graduate students might be put off applying to St Andrews.

p.49, para 6: The Applicant did not use the word 'spat'. This was the University's barrister's word.

p.50, para 2: It is stated:

It was put to the applicant that it was not that unusual for somebody so junior to become the Chair. The applicant disagreed and said that this was highly unusual in his experience although he did agree that it would depend on the circumstances. When it was re-iterated that it was not unusual, the applicant agreed that it did happen.

This leaves out of the account that the Applicant stated that it was highly unusual to be made Chairman of a University department that one had been in for less than a year and extremely unusual for the *most* junior member of a department to be made its Chairman.

p.51, para 1: It is stated:

The applicant advised, "*he did not agree with intellectual superiority*" therefore the fact that Professor Rapport was a Professor was irrelevant.

This does not make any sense. It is not clear who the 'he' in the quoted words is. If it is supposed to be the Applicant, the Applicant did not say any such thing, not least because obviously he would not use the word 'he' about himself. The Applicant clearly does believe that some people are intellectually much more powerful than others; this is precisely what lies behind his criticism of Professor Rapport.

p.51, para 3: It is stated:

It was also suggested to the applicant that his attitude was one which was not suited to any form of hierarchy.

The document at [84], a reference from a Cambridge University lecturer, is used to support this assertion. The reference nowhere says anything of the kind. It asserts an opinion that the Applicant is 'more interested in the discipline and challenge of anthropology than about its institutional trappings'. The context of this statement makes it clear that the Applicant was prepared to move from a readership to a lectureship in order to advance his interest in the discipline. It does not say anything at all about his attitude to hierarchy. The rest of this paragraph is very sloppy and has little to do with the case. The final sentence of this paragraph is very garbled. The Applicant at no point said he tried to order Mr Platt's life as he wanted to be constructive. This is pure fantasy on the part of the Respondents' barrister.

pp.53-54 para, straddling these pages. It is stated:

The applicant advised that he believed his research to be equally good to that of Nigel Rapport and therefore there was no reason why he should be Chair and not Rapport.

The Applicant did not make this statement. Clearly the Applicant does not hold the view attributed to him in the first half of this sentence since he has a very critical view of Professor Rapport's output. The words in the second half of the sentence are a complete *non sequitur* from the idea expressed in the first half of the sentence.

p.55, para 3: The Applicant did not say that his promotion application was 'irrational'. The Respondents' barrister suggested it was irrational and the Applicant said it was very unusual. 'Unusual' is not the same as 'irrational': the inference made by the Respondents here is tendentious. In the same paragraph it is stated:

When the applicant was questioned by the Chair about whether he was more motivated by the opportunity of promotion or by justice being done, the applicant replied that he would not say he was motivated by one over the other, stating that it was equally as important to bring management to book.

The Applicant did not state this. He said that he wanted promotion and also wanted to show that failures in management had affected his promotion chances. The sentence in the following paragraph beginning 'The contents...' is garbled.

p.55, last para: The expression, 'what Donald Beaton might have said was the Dean would not allow...' is not what the Applicant said. The Applicant said that Mr Beaton *did* say that the Dean would not allow the appeal to go forward with the e-mails attached.

p.56, para 4: It is stated:

The applicant stated that the situation in the department was very much 'three against three'.

The Applicant did not state this. This is a fabrication by the University's barrister.

p.58, para 3: The Applicant could not possibly have said the words that are attributed to him in quotes at the end of this paragraph. He would not have used the word 'he' about himself.

p.58, para 5: It is stated:

The applicant accepted the logic of it perhaps being more prudent to keep quiet rather than attacking the Principal, who would be the one person who would be able to review the Corner/Esler report...

The University's barrister suggested this but the Applicant did not say this, or agree to it. There is no reason why the Principal would be 'the one person who would be able to review the Corner/Esler report'. Anyone could have reviewed it. By this point in the Respondents' final submissions it seems to be emerging that the University's barrister has a habit of convincing himself that something which he would have liked the Applicant to say is what the Applicant did say, even though the Applicant did not.

pp.58-59, para straddling these pages: There is a reference to page 50 of the transcript of the promotion appeal hearing here. Page 50 does not make the point, as it is implied here, that the Applicant would resign if he was not successful in his promotion appeal. The point made about matters possibly coming to the attention of an employment tribunal is quite different from this.

pp.59-60, para straddling these pages: It is stated:

The applicant stated that the reason why he missed the end of June date in his contract, in respect of his resignation, was that he was examinations officer at the time and did not want to put the burden of this on a person like David Riches; he confirmed that he submitted his resignation, with notice, upon legal advice.

The Applicant did not state this. He stated that since he submitted his resignation at the end of May 2002, he could not have resigned at the end of June and observed the requisite three-month notice period. He also stated that to have left without notice would have caused exam-related problems and that the legal advice he was given was that to have left with notice was not an impediment to claiming constructive dismissal.

p.61, last para: It is stated:

It is submitted by the respondents that the answer to this question was telling - that Dr Quigley simply could not answer what impact, if any, the alleged treatment had had on him.

It is difficult to fathom this remark. The Applicant's witness statement makes it very clear what impact the 'alleged treatment' had on him.

The evidence of Professor Overing (p.63)

p.64, para 1: It is stated:

Professor Overing stated that she had an incredible number of duties but had asked the applicant to come to see her and had made a number of appointments with the applicant — which he didn't keep — as he didn't turn up.

No documentary evidence, such as e-mail requests, was provided by Professor Overing to support this false statement.

p.67, para 5: It is stated:

Professor Overing said that the applicant would cold shoulder her in the corridor and if a guest came in, would ignore her. Professor Overing also stated that he used very subtle forms of ignoring her but she was aware of it and, in essence, the applicant ignored her when it was inappropriate to do so.

No corroborating evidence was provided by the Respondents to support this false statement. Dr Riches gave evidence that the Applicant was always extremely civil to everyone in departmental gatherings.

pp.69-70, para straddling these two pages: It is stated:

Professor Overing then gave evidence on the laptop incident. She stated that that [*sic*] Roy Dilley had the departmental laptop booked for about six months (and not a few weeks as averred by the applicant).

The Respondents have failed to state here that Dr Riches confirmed the Applicant's version of this.

The evidence of Dr Riches (p.71)

p.73, para 5: It is stated:

When Dr. Quigley became chairman there was quite a cultural change; they had staff meetings virtually once a week (but *cf* Anne Christie's evidence that this lasted all of about three weeks).

Dr Riches made clear that there were still many more frequent meetings than previously, even if not every week.

p.74, last para: It is stated:

Further, Dr. Riches said that Professor Skorupski's main concern was ranking Tristan Platt against Dr. Quigley (notwithstanding Dr Platt had been promoted to Reader the previous year).

The Respondents' parenthetical comment is false. Mr (not Dr) Platt had *not* been promoted to a readership the previous year. He was promoted the same year that the Applicant's promotion to a senior lectureship was turned down.

p.74, last para: It is stated:

[Dr Riches] further stated that all members of staff were required to submit four good quality publications for the RAE and that Dr. Riches felt personally that it was difficult to know whether Dr. Quigley was as good a researcher as Tristan Platt.

The Respondents have elided from Dr Riches' evidence that he said that Mr Platt's publications were mostly in Spanish in unknown South American presses while the Applicant had published two books with Oxford University Press.

p.77, para 4: It is stated:

However, [Dr Riches] did admit that there was a strong disagreement with Professor Rapport and that Dr. Quigley had initiated it.

Dr Riches did *not* say that the Applicant had initiated disagreement with Professor Rapport. The disagreement between the Applicant and Professor Rapport was over the nature of social anthropology. No-one can be said to have 'initiated' it. They had held different academic views long before they ever came into contact with each other.

p.78, paras 2&3: these paragraphs, which are allegedly summarising Dr Riches' evidence, are contradictory. Obviously Dr Riches did not say that the Applicant's intention to resign 'had nothing to do with the general background...' and then contradict this immediately by saying that the exchange with the Principal had 'put a greater determination' on the Applicant to resign. It could only have produced a 'greater determination' if there was a preceding background.

Conclusion on the evidence of the applicant and the witnesses for the applicant (p.78)

p.79, para 1: It is stated:

the essence of their evidence was that the applicant was a good administrator; no one is denying that (notwithstanding he had a confrontational style)...

The parenthetical statement is tendentious since there is clear evidence from nearly all of the witnesses, including most of the University's witnesses, that the Applicant did

not have a confrontational style with them. The confrontations were only with a small number of individuals who, the Applicant believed, were behaving dishonestly.

The evidence of the witnesses for the respondents (p.81)

The Respondents' lawyers have again presented summaries of evidence. Given their frequent tendency to make tendentious selections of evidence, the members of the Tribunal are referred to the full witness statements of the Respondents' witnesses.

p.81, para 1: It is stated:

The respondents called eight witnesses.

The respondents have included Dr Lang, the Principal of the University of St Andrews, as one of the witnesses they called. This is false. Dr Lang was called by the Applicant and had to be ordered to attend. Dr Lang made representations through the University's lawyers to avoid being called.

p.87, para 1: It is stated:

Mr Beaton said it was unusual, in fact, unique, in his experience, that someone intimates a resignation but still wants his promotion to be considered.

The issue was a promotion *appeal* which, if granted, would be backdated, as Mr MacIntyre, the Convener of the Promotion Appeals Panel, confirmed.

p.94, last para: It is stated that:

Dr Clark stated that he did not agree that the Corner/Esler Report led to [the Applicant's] resignation.

This omits to point out that the disagreement was with an assertion by Professor Skorupski, Head of School and Dr Clark's line manager at the time of the Corner/Esler investigation and during most of the Applicant's employment.

p.95, para 3: It is stated:

At the meeting on the 2nd November 2001, Dr Clark said he could not remember what the interruption from Dr Quigley was but remembered that he thought he would have to ask him to stop as it was going to drag up things, relating to individuals, that had happened in the past and it was not appropriate at that time.

This makes nonsense of what is said a few lines later — 'Dr Clark did not think it was right to bring up remarks made by Professor Skorupski in that way' — and also contradicts what Dr Clark's witness statement is reported to have said at p.91, para 3:

He stated that during the course of that meeting, the applicant began a tirade concerning his colleague, David Riches; the tirade was about Dr Riches' application for a Professorship and that the applicant was attempting to bring into the discussion matters which had previously been discussed.

In fact Dr Clark's witness statement does not mention Dr Riches' application for a professorship but instead refers to Dr Riches' alleged 'past actions' — see para 15 of Dr Clark's witness statement. There have been deliberate distortions here by the Respondents' barrister.

p.96, para 2: It is stated:

The content of the discussion was Dr Clark believed Dr Quigley was going to make a disastrous decision for himself and the University to resign in January and then possibly in August and he maintained that the discussion at 6.45pm was friendly but tense.

The Applicant could not possibly have said he was going to resign in January *and* August. Further, Dr Clark did not say that the discussion was at 6.45pm. With some help from the Applicant he was reminded that the discussion was at about 5.45pm, contrary to an assertion he had made that the applicant was determined to resign that day by 5.00pm — i.e. before Dr Clark had even spoken with the Applicant.

p.96, para 3: It is stated:

[Dr Clark] said he glanced at this one, thought 'talking rubbish' and simply tried to get on with his work.

Dr Clark did not say this in his parole evidence. This is an embellishment added by the Respondents' barrister. Dr Clark said he did not know why he had not responded to the e-mail in question from the Applicant except that he got 'hundreds' of e-mails a day and couldn't possibly reply to them all.

p.100, para 1: The allegation made here was not brought up in the course of the Tribunal and is nowhere referred to in any document submitted to the Tribunal. In any case there is not an element of truth regarding 'immature judgement' in this episode. The matter in question was referred to the external examiner and he ruled on it so the final authority in this matter did not lie with the Applicant. This is simply another cheap attempt by the Respondents' barrister to smear the Applicant's reputation and has nothing whatsoever to do with the Applicant's constructive dismissal claim.

p.100, para 2: It is stated, with reference to Mr Corner's evidence:

[Mr Corner] stated that Dr Riches had asked if there were any papers filed regarding the whole episode and that they agreed that that [*sic*] they would scrap all papers relating to this episode apart from the final report and to do this as part of the amnesty in order that it would be a fresh start for everyone. He said this led to the Director of Personnel Services, Mairi Stewart, writing to those involved on 24 January 2002 informing them that only the final report would be retained on file (see page 430).

This omits to say that Dr Riches testified that he had never asked for any papers to be destroyed and that Mr Corner had not agreed with him that papers would be destroyed. Note that the letter from Mairi Stewart referred to here [430] was not sent to Dr Riches and indeed the information in it was never subsequently conveyed to Dr Riches by any other University official, including Mr Corner.

p.102, para 4: It is stated:

[Mr Corner] stated that he had interviewed Professors Overing and Skorupski and the promotions committee and did not find any *prima facie* evidence that the Professors or the Promotions Committee had acted against Dr Quigley or that it had been detrimental to him in any way.

It is untrue that Mr Corner said he had spoken to the Promotions Committee about this matter. Mr Corner said only that he had spoken to Professor Skorupski and Professor Vincent about it — as is summarised from his witness statement at the bottom of p. 99 in the Respondents' conclusions.

p.102, last para: It is stated:

Professor Overing could not have influenced the promotion application when Professor Skorupski's end view was positive.

There were a number of negative comments by Professor Skorupski which could well have been based on comments by Professor Overing to him; Professor Skorupski testified that he had consulted Professor Overing and she agreed about that.

p.103, para 1: It is stated:

Mr Corner stated that he wondered why Dr Quigley chose an academic dispute with Professor Rapport at a time when the department needed to go forward.

The comments cited above are misguided since they omit to point out that the Applicant's academic differences with Professor Rapport had been evident (from their respective publications) before the Applicant was even appointed to his position at the University of St Andrews. It is quite false to imply that the Applicant chose to criticise the work of Professor Rapport around the time of the Corner/Esler report since he had published two articles criticising Professor Rapport's work in international journals of anthropology well before this. These articles were lodged with the Tribunal so that any reader could see that the criticisms contained therein relate to the nature of anthropology and are not personal. In any case, Professor Vincent stated that he thought robust academic exchanges of this kind were a good thing.

p.110, para 4: It is stated that the Principal said he came to a meeting on 2 November 2001 'armed with extracts from the Corner/Esler Report'. The Principal did not say this, not least because only one page of the two page report was relevant for the meeting in question. The Principal had that page with him, not 'extracts'.

pp. 110-111, para straddling these two pages: It is stated:

The Principal confirmed that by the stage of the applicant's promotion appeal (and by reference to **434**) he had had enough. Dr Quigley had his chance to make comment and had sent long emails. By this point the Principal stated that he had done his bit and moved on taking the view that Dr Quigley had taken plenty of opportunities to express himself.

It is false that the Principal said that he had had enough with reference to the Applicant's promotion appeal or **[434]**. He said this in reference to the Applicant's e-mail to him of 17 December 2001 **[421-423]** and his response to this **[424]**.

p.118, para 2: It is stated:

[Professor Skorupski] further denied any vindictiveness in awarding the applicant a rating of 2 for administration, stating that simply because he thought that the applicant thought he was biased, he consulted four Professors of Social Anthropology on his own behalf..

The requests to these four academics (one was not a professor, and one was not an anthropologist) mistakenly refer to the Applicant applying for promotion to a readership which is based on 'the applicant's standing in the field of national and/or international scholarship' — i.e. on his research. There is nothing in these requests for references asking for information about the Applicant's contribution to administration.

p.121, para 5: It is stated:

Professor Skorupski had lost faith in [the Applicant's] abilities as Chairman and gave the example of Dr. Quigley wanting to write to Nigel Rapport while he was on research leave in Copenhagen.

This omits from the account that Professor Skorupski asked the Applicant to stay on as Chairman right up until the day that the Applicant resigned this position. On the next page (p.122, para 3) it is stated that 'Professor Skorupski said he tried to persuade Dr. Quigley to stay on as Chairman'.

p.122, para 4: It is stated:

Professor Skorupski suggested Professor Overing bought a new one but Dr. Quigley resisted this as he viewed it as against University rules.

The Applicant did point out to Professor Overing that the purchase of computers by individuals instead of by the University's purchasing department was against University regulations and that he had an e-mail from the purchasing department to this effect. However, the Applicant did not resist the buying of a new computer because it was 'against University rules'. He was against the purchase of a new laptop both because it wasn't necessary and because it wasn't feasible to purchase a computer with the correct software in the available time (less than 24 hours).

p.129, para 3: It is stated:

Professor Vincent thought that the teaching component of the reference presented a positive view.

This is not what Professor Vincent said about the teaching component of the reference. He said it showed some positive aspects and some negative aspects.

p.130, para 4: It is stated:

[Professor Vincent said] Dr Quigley could go to appeal at any stage and they were not putting any appeal in jeopardy.

Professor Vincent did not say this. This has been added in by the University's barrister to create a false impression. It is clear from the testimony of Professor Vincent, Mr Beaton and the Applicant that the Applicant could not go to appeal 'at any stage' if he had agreed with Professor Vincent that the appeal should be 'on ice' until after the Corner/Esler report was published.

p.131, last para: It is stated:

...if that involved the destruction of the department, that appeared to [the Applicant] to be acceptable as indeed did the self destruction of his career by taking a quite unnecessary step of resigning (albeit at a time convenient to him)...

1. At no point did the Applicant ever intimate that he regarded the destruction of the Department as 'acceptable'. Note the words 'that appeared to be' which indicate the Respondents' barrister's unwarranted speculation on this point.
2. The evidence presented by witnesses called by the Respondents was that the Department might well have fallen apart had the Corner/Esler review not taken place and that it only took place because of the representations made by the Applicant.
3. No evidence of any kind was presented that the time of the Applicant's resignation was 'convenient to him'. The Applicant's own evidence was that it was extremely inconvenient since he had no job to go to and was obliged to sell his flat to make ends meet.

4. The expression 'the self destruction of [the Applicant's] career' omits to point out that the Applicant is now a research associate at Oxford University and is in the process of publishing a book with a major anthropology publisher as well as continuing his research and working on another publication.

5. The words 'quite unnecessary' imply a subjective judgement on the part of the Respondents' barrister. Clearly one can only put up with so much deceit in any relationship, and in the Applicant's relationship with the University, the final deceits contained in the running and report of the Promotion Appeals Panel were, for him, a bridge too far. That said, it is not the subjective judgement of either the Applicant or the Respondents' barrister of what is necessary which is at issue in the law on constructive dismissal. Whether the implicit term of trust and confidence has been breached is a question of fact: the test is objective (Lord Steyn in *Malik and another v Bank of Credit and Commerce International SA* {1997} IRLR 462).

III LAW (p.131)

p.136, para 2: It is stated:

In the present case, could Dr Quigley, standing back and viewing events objectively reach the conclusion that the University and its senior officers were repudiating his contract? It is submit [*sic*] that he could not; indeed the University seemed to be doing all it could to try to ensure that he stayed.

However, in Professor Skorupski's evidence to the Tribunal, as reported by the Respondents at p.122, last para in their final submissions:

[Professor Skorupski said] that ... others thought the best thing to do was to encourage [the Applicant] to leave and he himself wondered whether the situation could go for much longer without [the Applicant] being disciplined.

This is clearly not compatible with the Respondent's barrister's conclusions that 'the University seemed to be doing all it could to try and ensure that he stayed'. There is also the Applicant's evidence that a deal was suggested to him by Dr Clark whereby he would receive seven months' salary in exchange for leaving the University.

pp. 136-7, para straddling these two pages: It is stated:

[the Applicant] whilst stating in evidence that he was bullied by Tristan Platt states unequivocally at paragraph 4 on page 2 of his written statement that he wants "*to make it unambiguously clear that my claim for constructive dismissal is not because of antagonistic relationships among my colleagues in the Department of Social Anthropology at St Andrews*". He may therefore not rely on any averments made in evidence that bullying caused him or constituted a contributory factor in his resignation, since to do so would be in effect to simultaneously approbate and reprobate the contract.

This argument is clearly untenable.

1. The Applicant made clear that a central issue was what management did about bullying and harassment. Bullying and harassment were therefore, of course, contributory factors since if there had been no bullying and harassment, there would have been no need for managers to take action in relation to it.

2. The statement in the Applicant's witness statement that his claim for constructive dismissal was not because of the behaviour of his colleagues is, of course, qualified by his statements about the behaviour of Professor Overing while she was in a managerial position as Chairperson of the Department and was thus both a colleague and a manager. In so far as she was a manager, acting on behalf of the University,

who was engaging in breaches of trust and confidence, then naturally her behaviour is pertinent to the Applicant's claim for constructive dismissal.

p.141, last para: It is stated:

it is submitted that the evidence is insufficient to infer that the reason for his departure arose because of any 'last straw' incident occurring on or about the 28th March 2002 when the applicant learned that he had been unsuccessful in his appeal (cf **P512-514**). Indeed the applicant did not write and inform Mari [*sic*] Stewart that he was resigning until 29th May 2001 (cf **P13**) and then determined that his effective date of termination would be 31st August 2002, thereby effectively ensuring that his notice period would largely occur at the time of the long summer vacation.

There are two strands here:

1. The Applicant gave evidence that he went to his union (the Association of University Teachers) within days of the 'last straw' incident of 28 March 2002 and that it took some time for an appointment to be arranged with their solicitors in Edinburgh. The Applicant resigned within days of meeting the AUT solicitor and ascertaining what he was required to do by law.
2. Because the Applicant resigned on 29 May 2002, the first effective date he could leave if he observed the correct notice of three months was 31 August 2002. The Applicant was at this time the Department's Examinations Officer and since there are repeat examinations in August, the 'long summer vacation' is, in fact, rather short for those involved in examinations. The implication that the Applicant was conveniently taking advantage of a long vacation is thus not supported by the facts of the Applicant's employment.

pp.142-143, para straddling these two pages: It is stated:

It is submitted that this (in addition to what might be called the applicant's tendency to relatively frequently announce his imminent departure) clearly shows that he had formed the intention to go, picked his time to go, delaying it to suit his convenience (admitted in his e-mail of 1st November 2001 [**P395**] insofar as he states that “[*F*]or practical reasons, I would not expect to be able to leave the University before the end of August 2002” and that the operative cause of his going was not any breach by the employer as he now seeks to try and establish by *a posteriori* reasoning – that is from effect to cause, but because he had determined to leave anyway, largely it is submitted because he was not getting his own way and was becoming increasingly frustrated by that; that it is submitted was the operative cause of the applicant's resignation.

1. There is no evidence that the Applicant had a 'tendency to relatively frequently announce his imminent departure'. He announced once — on 1 November 2001 — that he intended to resign before he did actually resign. This was in response to the breach of trust and confidence by the Principal of the University who had attempted to require him to withdraw his professional academic opinion of a colleague. The evidence of the then University's Director of Personnel Services as well as that of Dr Clark, Dr Riches and the Applicant himself make clear that the Applicant, having taken advice, rescinded this threat to resign and decided at that point to stay on and explore further internal procedures.
2. The Applicant's statement on 1 November 2001 that he would not be able to leave the University before 31 August 2002 for practical reasons was for the obvious reason that he needed to sort out things such as mortgage, future employment etc. When he decided not to resign at that point, so that he could explore internal procedures further, the need to make any such arrangements fell away. When he did resign in

May 2002 in response to a further breach of trust and confidence, he had not made any practical arrangements of any kind for the future precisely because he had rescinded his earlier threat to resign. The Respondents have not provided a shred of evidence that the Applicant had many any practical arrangements of any kind regarding his future at the time of his resignation. The Applicant testified that it was extremely inconvenient for him to lose his employment without having any alternative employment to fall back on and, as a consequence of this, was obliged to sell his flat to support himself. If, as the Respondents are stating, the Applicant was taking some kind of measures to 'suit his convenience', then they have not illustrated how his resignation in May 2002 was convenient for him. The Applicant, by contrast, has demonstrated that it was, remains, and is likely to be for the foreseeable future, extremely inconvenient for him. The Respondents appear to want it both ways. In the last para of p.131 in their final submissions they refer to the Applicant's 'self destruction of his career by taking a quite unnecessary step of resigning (albeit at a time convenient to him)' Quite how the self-destruction of one's career can be convenient is not obvious.

p.145, para 4: It is stated:

The innocent party may decide that it is better to continue in the contractual relationship and either sue for damages or choose to do nothing. However, once that party has behaved in a way that is inconsistent with an intention to treat the contract as at an end, it will no longer be possible to accept the repudiation. The party will have affirmed the contract, and continues to be bound by its terms. This principle applies equally to the law of constructive dismissal. An employee who affirms the contract of employment following the employer's repudiatory breach is not entitled to terminate the contract without notice and, therefore, cannot claim constructive dismissal.

The argument that the Respondents' barrister is trying to make here is only valid if a few words are added to the last sentence so that it is amended to read:

An employee who affirms the contract of employment following the employer's repudiatory breach is not entitled to terminate the contract without notice and, therefore, cannot claim constructive dismissal *in relation to that breach alone at a later date.*

The Applicant has discussed this point in his Final Submissions, p.3 of 'Conclusions to be drawn from legal precedent', para beginning:

In 'last straw' cases it is not relevant that the employee has waived an earlier incident that in itself constitutes a repudiatory breach (*Abbey National plc v Robinson* 20.11.2000 EAT 743/99).

p.146, para 2: It is stated:

In the circumstances described, the employee will be deemed to have waived the breach. Thereafter the prior conduct of the employer does not constitute a breach at all.

This argument is clearly spurious. The fact that one party does not accept a repudiation of a contract (has waived a breach) does not mean that a breach has not occurred and cannot be invoked if there are further breaches. At one point in the proceedings the Tribunal Chairman used the analogy of divorce proceedings and this is a very good analogy. Imagine one party to a marriage (contract) repeatedly behaves unacceptably, say in terms of violent conduct, but the other party puts up with this again and again, at the same time averring that he or she will not put up with it forever. Such a scenario is very common. The injured party is, of course, waiving

the breaches of contract and affirming the contract by not walking away from it at the time of any particular breach by his or her partner. But then some 'final straw' occurs. This may not indeed be as serious a breach as some of the earlier events, but it is enough to push the injured party over the edge, and he or she says, 'enough is enough'. He or she could, of course, only say, 'enough is enough' by invoking the earlier events. And the divorce court would, of course, take these events into account.

p.147, last para: It is stated:

If however the tribunal determines that the applicant was unfairly constructively dismissed then it is submitted that the applicant contributed to his dismissal by his actions...

1. The University had every opportunity to bring disciplinary proceedings against the Applicant if he was behaving in a manner which merited this. The fact that they did not would appear to indicate that the University did not believe that they had grounds for bringing proceedings. In the course of a four-week employment tribunal the Respondents have not produced any such grounds so one may confidently assume that there were none. For the Respondents to suggest that 'the applicant contributed to his dismissal by his actions' and that any compensation should be reduced by 100% is thus the most amazing post-hoc rationalisation.
2. The University's own witnesses accepted that the 'pathologies' which were brought out by the Corner/Esler investigation would not have come to light but for the Applicant's representations. The Applicant would hardly have pressed for an internal investigation such as the Corner/Esler review if it was likely to lead to a rebuke of his own actions serious enough to warrant his dismissal — as the 100% request implies.
3. What were the Applicant's 'actions'? The Applicant has shown that he consistently stood up to abusive behaviour and refused to be bullied into silence or acquiescence. If, as appears to be the case, the Respondents' barrister is suggesting that standing up to abusive behaviour is as reprehensible as the abusive behaviour itself, this would indeed be on a par with the attitude of certain University officials. This attitude is epitomised in Professor Skorupski's notorious phrase that the Applicant was '*the problem*'. One wonders how the Respondents' barrister would treat a partner in a marriage contract who is repeatedly subject to violent behaviour and who repeatedly says, 'I don't like that; please stop doing that'. Are both partners to the contract equally at fault? The idea is absurd.

IV. CONCLUSIONS (p.150)

p.150, para 2: It is stated:

Further, it is submitted that the applicant demonstrates an extraordinary facility for reinterpreting events subjectively according to his often distorted version of what must have happened, rather than what actually might have, or did happen, and by, in effect, holding out that he was never wrong, exhibiting what surely is either an extraordinary level of self-conceit or simply self-delusion.

1. This is simply an abusive statement for which no evidence is given. As the Respondents' barrister nears the end of his final submissions it will be seen that he becomes ever more abusive as a substitute for reasoned argument in what appears to be an increasingly desperate attempt to win the case at the cost of any respect for the evidence as to what actually happened. There is considerable irony in the statement

quoted above given the very large number of misrepresentations and distortions in the Respondents' final submissions and the continual attempts to turn blatant wrongs into perfectly sensible managerial decisions. It is submitted that the characterisation in the words quoted above more aptly applies to the Respondents' barrister and those he is attempting to exculpate.

2. The Applicant did not maintain that he was 'never wrong'. For example, he apologised for his outburst to Mr Platt in front of a student.

p.151, para 2: It is stated:

It is submitted that this remark [that the department could not be guaranteed to still exist in five years time] has been accorded a completely disproportionate gravamen by the applicant.

It was also accorded significant weight by Dr Riches who testified that he had been extremely embarrassed that the words were spoken by Professor Haldane in front of the Applicant at his very first staff meeting.

p.152, para 2: a reference is made to the Applicant's:

position as Chairman with a managerial role in the department...

The Chairman (or Chairwoman) of the Department does indeed have a managerial role (i.e. represents the University) and this made Professor Overing's defamation of the Applicant, her allocation of students on the basis of that defamation, and the failure of more senior managers to act immediately to rectify this to be a contractual matter, and not simply some personal idiosyncratic behaviour on the part of a malicious individual.

p.152, para 2: It is stated that the Applicant sought to use his position as Departmental chairman:

to secure action against those members of staff who the applicant did not rate – whether personally or as regards their capabilities or intellectual or theoretical orientation.

The evidence is clear that the Applicant, while Chairman, sought to get everyone in the Department to do their job. His concern was not based on personal issues or on intellectual differences. As both Dr Riches and the Applicant agreed, they had major intellectual differences with each other yet still worked together harmoniously and co-operatively.

p.152, para 3: It is stated:

It is submitted that if, on the evidence, the managerial decision at the centre of the alleged breach, [*sic*] appears to be reasonable in all the circumstances, that may be persuasive insofar as it cannot bear the meaning ascribed to it by the applicant.

Note the Respondents' barrister's rather hopeful words, 'may be persuasive'. This is clearly wrong in law. Since Lord Denning's famous ruling in *Western Excavators* which the Respondents' barrister alludes to more than once, the issue of 'reasonableness' has been superseded by the question of contract. Whether the implicit term of trust and confidence has been breached is a question of fact: the test is objective, the employer's motive and intention being wholly irrelevant (Lord Steyn in *Malik and another v Bank of Credit and Commerce International SA* {1997} IRLR 462).

p.153, para 2: It is stated:

The first such incident concerned the matter of the 'threats' he made to the University Press Officer, Claire Grainger, which she thought were serious enough to transmit to the Deputy Principal.

This should of course read, 'the threats which Ms Grainger *alleged* were made'. The Respondents were invited by the Applicant to produce Ms Grainger as a witness for cross examining and they declined to do so. The Applicant gave a different version of what he had said to Ms Grainger. The Respondents' barrister then goes on in this paragraph to suggest that if the remarks made by the Applicant to Ms Grainger were misinterpreted, this was the Applicant's fault!

p.153, last para: It is stated:

By a process of *ex post facto* rationalisation, because the Corner/Esler Inquiry failed to recommend 'naming and blaming', the applicant draws the conclusion that the inquiry was a sham. There is no evidence to support such a conclusion. In order to reach that conclusion, it is submitted that the evidence of Mr Corner and Professor Esler would have to be discounted in its entirety and the tribunal would require to find them neither credible nor reliable.

The last sentence of this quote is a nonsensical non-sequitur. That Mr Corner and Professor Esler were, for the most part, credible witnesses does not take away from the fact that by failing to hold anyone responsible for what they themselves termed 'pathologies' and then destroying all the evidence so that no-one would have to worry about possible disciplinary or legal proceedings, *did*, it is submitted, render the Corner/Esler investigation a sham.

p.154, para 1: It is stated:

... the logic behind the suggestion (which he agreed to at the meeting on 2nd August). His complaint appears to be founded on the notion that his promotion appeal was in some way subsumed in the Inquiry...

The Applicant's complaint was based precisely on an agreement made between him and the Deputy Principal (Professor Vincent) on 2 August 2001 to separate the investigation into malpractice from the question of the promotion appeal. It was not part of the agreement made between Professor Vincent and the Applicant that Mr Corner and Professor Esler would examine the promotion appeal issue *at all*. This was a subsequent instruction made by the Principal which broke the agreement made by Professor Vincent with the Applicant on 2 August 2001 that they (i.e. Professor Vincent and the Applicant) would come back to the question of how to proceed with the promotion appeal once the investigation into alleged malpractice was complete.

p.154, para 1: It is stated that there was:

detailed and independent scrutiny of the very matter of bias that the applicant complained of.

By Mr Corner's own admission, there was not 'detailed' scrutiny of anything. This paragraph also repeats the earlier lie that Mr Corner interviewed 'members of the promotions committee'. He did not.

p.154, para 2: It is stated:

It is submitted that the applicant fails to follow any logical reasoning and presents everything in an irrational, incomplete and partial manner.

This characterisation precisely fits the Respondents' barrister's line of attack in his final submissions. This is made clear by the number of corrections that the Applicant has had to be made to these submissions. It would appear that when the Respondents' barrister cannot win his argument on the basis of the evidence or the law, he resorts to deliberate distortions of the evidence, invention of evidence, and gratuitous abuse.

p.155, para 1: It is stated:

...the applicant in an e-mail (not marked 'confidential') circulated to everyone in the department except Professor Rapport...

At this time there were seven members of the Department. The e-mail in question was sent to two of them who were members of the search committee for a new professor. The e-mail is clearly addressed to Professor Skorupski (the committee chairman) and other members of the search committee.

p.155, para 1: It is stated:

[Professor Rapport] would not engage in an academic debate with the applicant even in the pages of academic journals, which would have been appropriate had it been conducted in a professional and measured manner that did not generate into a personal attack; something which it is submitted that the applicant finds difficulty with.

The Applicant submitted copies of the academic articles concerned to the Employment Tribunal so that their professionalism could be scrutinised. The articles were in major international journals. For the Respondents' barrister to suggest that the editors of major international academic journals would countenance personal, rather than academic, criticism is an unacceptable slur on their reputations as much as on the reputation of the Applicant. This is simply another example of gratuitous abuse on the part of the Respondents' barrister.

p.155, para 2: It is stated:

an apology would have been sought and required by Professor Skorupski had he, rather than Dr Lang become involved.

This is pure speculation on the part of the Respondents' barrister since Professor Skorupski averred no such thing.

p.156, para 1: It is stated:

It is undoubtedly unfortunate that as the professorial staff were, it had been decided, to be spoken to separately and hence were not in attendance...

According to the testimony of the Principal himself, he had *not* decided to have a separate meeting with the professors.

p.156, para 1: It is stated:

[The Applicant] did not receive the support of his colleagues, Dr Riches and Dr Dilley, who whilst they may have been unhappy about the tenor of the Corner/Esler Inquiry, with its recommendation to move on, rather than attribute blame, perhaps had a more appropriate and balanced view that this was not the occasion to nit-pick over who was to blame for what misdemeanour.

It is misleading to suggest that Dr Riches and Dr Dilley 'may have been unhappy about the tenor of the Corner/Esler Inquiry' since they were prevented by the Principal from knowing what was in the Corner/Esler report at this time. Furthermore, the

Applicant's colleagues were given no opportunity to support or not support the Applicant since the latter was prevented from speaking. The 'perhaps' in the sentence quoted shows that the speculations contained in it are the pure fantasy of the Respondents' barrister. Dr Riches made it abundantly clear, both in his oral testimony and in a letter he sent to the Principal, that he was outraged and intimidated by the Principal's behaviour on this occasion. He said he found it offensive and humiliating. Moreover, he made it very clear that he *did* want blame attributed for the various pathologies. Dr Dilley did not appear as a witness at the Employment Tribunal and no evidence from him relating to this or any other episode was presented by the Respondents.

p.156, para 2: It is stated:

...and in effect bolster his own grievances by, it is submitted, the cynical tactic of taking it upon himself to recount those of his colleagues...

It is not obvious how it is a 'cynical tactic' to bring to the attention of the Principal instances of serious defamation affecting members of the University for whom, as the Principal said in his own oral testimony, he had a 'duty of care'. Clearly attacks on the Applicant's colleagues, and on their integrity, had a marked effect on the Applicant.

p.152, para 2: It is stated:

It is not difficult to see that had the applicant been permitted to continue in his allegations ... that members of the opposing faction would have justifiable grounds for complaining that they had not had a chance to air their complaints about who was to blame for what directly to the Principal.

This statement beggars belief.

1. At the point when the applicant was prevented from speaking by Dr Clark and the Principal, he was not speaking about his colleagues in the Department of Social Anthropology, but about comments made by Professor Skorupski about Dr Riches.
2. The members of the Department who had had the courtesy to turn up to hear the Principal were *invited* by Dr Clark to air their concerns to the Principal. That other members of the Department did not have the courtesy to turn up to hear the Principal is hardly justifiable grounds for their feeling aggrieved if others voiced their concerns.
3. That these other members of the Department are seen as a 'faction' is the creation of the Respondents' barrister, not of the Applicant, who consistently denied that there were factions.

p.156, para 3: It is stated:

...what, it is submitted was [the Applicant's] underlying aim – namely to remove or at least reduce very radically the power base of members of the opposing faction...

There is no evidence whatsoever that this was the Applicant's aim. This is simply another speculative fabrication by the University's barrister. The Applicant's aim was to get everyone to do their job and to seek some measure of accountability when this did not obtain. The question of 'power base' did not arise; or did the issue of 'faction'.

p.157, para 1: It is stated:

It is submitted that the first response was in fact the true reason – and that could only be achieved if 'naming and blaming' was undertaken and the University kept on file any damaging evidence it had accrued on various individuals in the department. Instead of realising that that particular battle had been lost, the applicant inappropriately attempted to keep the matter fomenting, presumably in an attempt to cause the Principal to change his mind.

At this point (2 November 2001) the Applicant did not know what was in the Corner/Esler report, and so did not know if the authors of the report had 'damaging evidence' in relation to particular individuals. Nor had any decision been taken to destroy 'damaging evidence' at this point. This did not happen until the following January. So the whole thrust of what is stated here is misconceived.

p.157, para 1: It is stated:

...thus he again re-characterises events...

The Applicant has not re-characterised anything, unlike the repeated attempts by the University's barrister to re-draw evidence and insert evidence which did not exist.

p.157, para 2: It is stated:

...whether Professor Overing resigned from the Chairmanship of the department or was removed does not affect him in any way. That she was not the Chairman would of course have some effect on him, but the manner of her going is irrelevant.

Clearly deception by the Department Chairperson and two members of the University executive where there is already an atmosphere of distrust, and in the context of a report which lists pathological behaviour and is allegedly designed to foster better behaviour, can only further undermine trust and confidence. Clearly the Applicant's trust and confidence in the senior management *was* undermined by this deception.

p157, para 3: It is stated:

For someone so apparently sensitive to his own feelings being hurt, the applicant demonstrates an extraordinary level of insensitivity towards others.

In cross examination most of the University's witnesses testified that the Applicant was uniformly courteous and civil to them. Furthermore, the Applicant has not pleaded any special sensitivity in relation to his own feelings and indeed showed considerable resilience in the face of certain very personal attacks, particularly the defamation by his Department Chairperson, Professor Overing.

p.157, para 3. It is stated:

He demanded, in an intrusive manner, to know specific details of why she went and the manner of her going...

The fact is that the Applicant never demanded this because the documentary proof that Professor Overing had been removed only became available to him after his former solicitor had requested documents from the Respondents' solicitors following his departure from the University. While the Applicant was employed at the University, he was not 'intrusive' about this matter in spite of the rumours that were circulating at the time of Professor Overing's removal. What is stated here is, again, pure fantasy on the part of the Respondents' barrister.

p.158, para 1: It is stated:

[The Applicant] complains that the destruction of the notes on the orders of David Corner means that the information is unavailable for evidential purposes in any subsequent disciplinary proceedings. On this basis, the applicant avers that the whole exercise of the Corner/Esler investigation constitutes a serious breach of trust. It is submitted that this indicates that he has never understood the purpose of the report, its status or the management response.

1. The memo from Mr Corner to the Applicant and others setting out the terms of the Corner/Esler investigation [295] says that it is to advise the Principal *inter alia*:

whether there are grounds for considering disciplinary proceedings against any member of staff (including [the Applicant]).

2. The Corner/Esler report [377] states clearly:

...we have thought it best not to mention individuals *at this stage*, but to keep the matters documented and on file in the event that the action we recommend below does not produce the desired effect and further action is taken against a member or members of the unit (emphasis added).

It would appear, therefore, that it is the Respondents' barrister who has not understood the purpose of the report, its status or the management response. Clearly the destruction of documents by Mr Corner, allegedly (and unbelievably) without any consultation with anyone else, contradicted what he and Mr Esler had reported to the Principal and everyone else involved. If matters were documented and on file in order that they could be used should 'further action' be taken, then obviously it would not be possible to produce them if one member of the University single-handedly decided to destroy them.

p.159, para 1: It is stated:

The applicant plainly wanted disciplinary investigation and punishment of persons whom he saw as the offenders, coincidentally or otherwise, all in the opposing camp.

The Applicant repeatedly stated, both in his own evidence and when cross examining witnesses, that he did not believe there were 'factions' or 'camps'. Dr Riches also stated categorically that he did not believe there were factions. This concept is the invention of the Respondents' barrister.

p.159, para 1: It is stated:

For the reasons given earlier, it is conceivable that the applicant believed that engaging in such a destructive process would have delivered 'regime change'....

The words 'it is conceivable' and 'believed' show clearly the speculative, fantasy world into which the University's barrister has again descended to invent his conclusions.

p.159, para 1: It is stated:

Further, in relation to the destruction of the notes of the Corner/Esler Inquiry, in evidence Dr Clark agreed with David Corner that it was [*sic*] very sensible step to avoid worry by colleagues that the notes could be used to initiate disciplinary proceedings.

If the destruction of notes was 'very sensible', this would imply that Mr Corner and Professor Esler were not very sensible in 'worrying' colleagues by saying in the report which they sent to the Principal and later circulated to Social Anthropology staff that matters were:

documented and on file in the event that the action we recommend below does not produce the desired effect and further action is taken against a member or members of the unit [377].

p.159, para 2: It is stated:

The entire logic of the management decision taken by the University was to move forward, to look to the future and to get members of the department to put the

acrimony and dissent of the past behind them; taking no disciplinary action against anyone and destroying the notes so nothing could be used in any future disciplinary proceedings.

The trouble with this is that it was not a 'management decision' according to the University managers themselves. It was, according to Mr Corner, a decision that he took by himself and with no consultation with anyone else. Until Mr Corner took his decision every University manager, including the Principal, was under the impression that notes were documented and on file so that they could be used in the event of future disciplinary proceedings. This does not give the impression that these other University managers were 'looking forward' in the way implied by the Respondents' barrister.

p.160, para 1: It is stated:

the University would have had to go through the proper disciplinary process *ab initio* and not rake over the unhappy past.

If this was the case, the Corner/Esler investigation would appear to have been pointless. What purpose did it serve if the University would have to start all over again in the event of further disciplinary problems? What was the point of the Corner/Esler report in stating that persuasive evidence relating to pathological behaviour was documented and on file, followed by two meetings presided over first by the Principal and secondly by Mr Corner and Professor Esler all of whom said that there *was* evidence documented and on file to back up any future disciplinary proceedings?

p.162, para 1: It is stated:

The applicant had crafted his appeal application competently alleging a procedural defect; he was permitted a Hearing.

The Applicant was only permitted a Hearing after repeated challenges to the Director of Personnel Services' statements that the Convener of the Promotion Appeals Panel would not countenance an appeal. This is documented in the Applicant's witness statement and final submissions.

p.162, para 2: It is stated:

It is further submitted that the applicant has failed properly to understand the difference between an appeal on a substantive point and a procedural point, the former being *ultra vires* the Promotion Appeal Committee.

As the Applicant has pointed out in his final submissions, this failure was shared by every University official who had a role in the promotion appeal hearing, and there were quite a few, including the Convener of the Promotion Appeals Panel.

p.162, para 3: It is stated:

That the University had the foresight to enlist the services of a firm of reputable Court Shorthand Writers means that the whole appeal proceedings are capable of scrutiny in the kind of minute detail so frequently relied upon by the applicant.

The statement here is false. The Applicant insisted that the promotion appeal proceedings be audio recorded (copies of the tapes were lodged with the Tribunal) in case there should be further proceedings. The University did not 'have the foresight to enlist' shorthand writers. They were obliged to do so since the Applicant was able

to produce copies of tapes of the Promotion Appeal Hearing to show exactly what had been said at that Hearing.

Footnotes in respondents' final submissions

ⁱ In cross examination on 5th June 2003 the applicant stated that he subsequently decided, over the weekend, not to resign in response to this meeting but see his promotion appeal procedure through. It is therefore submitted that he cannot now claim constructive dismissal on the basis of this event and that his concession in cross- examination was rightly made.

The argument in relation to last straw cases and reliance about prior breaches of contract is spelled out in the Applicant's final submissions.