

CAFAS Update No. 52

5 October 2006

Council for Academic Freedom & Academic Standards

<http://www.cafas.org.uk>

Next Meeting:

***Saturday 21 October 2006
Room 252
Birkbeck College
Malet Street
London WC1***

Underground: Goodge Street, Euston Square, Euston, Russell Square, Holborn

Manchester Employment Tribunal Finding Condemns Institutional Racist Culture at Manchester Metropolitan University

Institutionalised racial discrimination is defined in the Stephen Lawrence report in a variety of ways one being as follows:

"The term institutional racism should be understood to refer to the way institutions may systematically treat or tend to treat people differently in respect of race. The addition of the word 'institutional' therefore identifies the source of the differential treatment; this lies in some sense within the organisation rather than simply with the individuals who represent it. The production of differential treatment is 'institutionalised' in the way the organisation operates". (Para 2.2).

On the 24th April 2005 the *Times Higher Education Supplement* in an article titled "MMU denies Racism claim" reported on Manchester Metropolitan's University's continuing abuse of its ethnic minority members, and the view of the union UNISON that it was institutionally racist and its race policies lip service. The Vice

Chancellor, Dame Sandra Burslem, the following week, in a letter to the *THES* editor strongly rebuked the Union for its comments.

However on the 6th June 2005, the Manchester Employment Tribunal gave a decision in the case of Dr. Claudius D'Silva vs Manchester Metropolitan University (Case no: 2409906/03-2404779/04) and found the Vice-Chancellor Dame Sandra Burslem, Professor Barry Plumb Deputy Vice-Chancellor, Professor Maureen O'Neal Pro-Vice Chancellor, Professor Leach Head of Chemistry & Materials, Mr Bill Hallam Human Resources Director, Mr. Peter Gibb Employee Relations Manager and Dr. Julia Dickinson Principal Lecturer in Chemistry guilty of racial discrimination in the absence of Dr D'Silva or his witnesses giving evidence to shift the burden of proof. The claimant at this time was on extended psychiatric leave due to his harassment by the University's management prior to and after his case. On his return to work later in 2005, Dr D'Silva was again forced to file two new claims in the Employment Tribunal. These are to be heard after the extended reasons of his judgement are provided by the Manchester Tribunal.

The Background

The claimant, Dr D'Silva, joined MMU as a senior lecturer in the academic year 1993-4, bringing with him a generous research grant from the Engineering and Physical Science Research Council (EPSRC). He was led to believe by the head of department, Professor John Leach, that he would be provided time for research and facilities consistent with an established University Department. Nonetheless, Prof. Leach gave Dr D'Silva a heavy teaching timetable of 18 hours per week and laboratory classes of up to 30 students rather than the pre-requisite maximum of 15 students per member of staff due to the health and safety implications and stress. His own facilities for research were negligible and the post doc that he was supervising was allocated half a bench in the laboratory, unlike the more generous space and facilities allocated by Professor Leach to his jointly supervised, University-funded undergraduate students.

The Response

Professor Leach refused to address Dr D'Silva's above issues and those of discrimination raised in his Performance Development Review (PDR) but bullied him, trying to undermine his self-esteem by using uninvestigated comments from students

and hearsay from other members of staff. In April 2001 Dr D'Silva raised again his ongoing issues with his Head of Department and his then racial harassment by the Research Coordinator of the 2001 Research Assessment Exercise (RAE) who informed him he was going to end his research career unless he worked for him ('shined his shoes'). The Head of Department refused to investigate Dr D'Silva's complaint of harassment and informed him he would 'teach him a lesson' for requesting he do his duty in regard to this matter, which was seen by the ET to be an act of racial incitement.

A month later in August 2001, Dr D'Silva found himself the subject of a performance investigation initiated by Professor Leach supported by Personnel for failing to accept a joint studentship with the then Research Coordinator, his racial harasser. This was the University's first attempt to undermine his claim of racial discrimination and harassment.

Then, Professor Leach and Human Resources canvassed two sets of teaching complaints against him and withheld documents about his Ministry of Defence (MOD) grant to create further performance issues to discredit him. In a meeting with Professor Leach, Human Resources, and a NATHFE representative, Dr D'Silva was informed that he had been removed from the RAE 2001 exercise which he saw at that time to be a deliberate attempt to undermine his career and chances of promotion to Reader or Professor as publications submitted to the RAE 2001 exercise were part of the promotion criteria.

In 2001 Dr D'Silva & Dr Waquar Ahmed (Asian) from the same Department both applied for Readership and/or Professorship. On surprisingly finding that both he and Dr Ahmed with more than 60 refereed papers and a greater number of conference papers did not obtain a Readership or Professorship, Dr D'Silva realised that he had been discriminated against. The benchmark for Readership and Professorship was about a dozen papers and it had been accepted that they were in low impact Journals.

The Union and the CRE

On contacting his local NATFHE branch for assistance on all his matters Dr D'Silva was directed to the Commission for Racial Equality (CRE) for assistance. The CRE helped him file a Tribunal claim in September 2002 against MMU which was to be heard in September 2003 in regard

to all the above issues. NATFHE's senior solicitor advised him to file a grievance against Professor Leach with the Head of Human Resources, Mr Bill Hallam. But Mr Hallam denied him a grievance in breach of the Race Amendment Act 2002. However NATFHE's senior solicitor cited irrelevant case law and thus defended the University's position to deny him merits for his claim and legal assistance in breach of the Unions duty of care.

The Employment Tribunal 2003

In desperation Dr D'Silva engaged a race discrimination barrister to pursue his case due to the University's threats of costs against him if he were to seek an adjournment. The Case was part-heard. The Pro-Vice Chancellor's conduct was commented on two occasions by the Chairman that (a) he had breached the Race Relations Act 1976 and (b) the Race Amendment Act 2002 in regard to harassment of Dr D'Silva.

Withdrawal Agreement

The respondents knew they were to find themselves in difficulty when they took the stand. During lunch, the University's barrister and Dr D'Silva's own barrister colluded and used the unfounded threat of costs to compel Dr D'Silva to withdraw his case. Dr D'Silva, on reassurances that he was being given sound legal advice, was reasonable and signed a 'no recriminations' withdrawal agreement and withdrew his case giving the University the opportunity to save face and address his complaints informally via their own grievance procedure.

Withdrawal Terms Broken ... and the Glass Ceiling

Less than eight days after withdrawal of the tribunal claim, the University broke the terms of the withdrawal. They tried to remove Dr D'Silva from lecturing on the core timetable and pursued the withdrawn complaints to discredit him. They refused to address his grievances impartially. The Vice Chancellor refused to accept the involvement of ACAS on a grievance panel and again discriminated against him in regard to promotion so he had to file four new employment tribunal claims between 2003-2004. In 2004 the University in view of the revelations in Dr D'Silva's 2003 case finally broke the glass ceiling and appointed an Asian lecturer to Principal Lecturer and Dr. Ahmed (Asian) and Dr Bander (Iraqi) to Reader in 2004. Dr Ahmed was denied a Professorship by the Head of Department so in

2005 he accepted a Professorship at a five star university and left the Department.

Employment Tribunal 2005

A month before the hearing of his case in April 2005 as a result of further harassment by the University's management, Dr D'Silva became ill and went on three months psychiatric sick leave. The Tribunal refused him an adjournment of his month long case and it proceeded in his absence without him or his four witnesses giving evidence or a referenced witness statement being used. All four of his witnesses had suffered detriment by the University and three had ongoing cases of racial discrimination against the University. A third member of the same Department, had also received less favourable treatment. On the 6th June 2005, the Manchester Tribunal (see above), found the Senior members of the University guilty of race discrimination.

The above judgement was some vindication in regard to the University's treatment of Dr. D'Silva and all its ethnic minorities in the Chemistry & Materials Department. However this was little compensation for the significant expenditure of his own professional time, damage to health, research, self-esteem and his personal life, and the financial resources that he spent to obtain justice. However, the University via further legal actions delayed the publication of his Judgement until April 2006 to punish him financially. Due to the harassment suffered by Dr D'Silva in 2005 prior to his case, Dr D'Silva filed a new claim on his return to work in late 2005 in regard to discrimination, harassment and victimisation.

Change in the Attitude of Senior Management?

That year Professor Leach, the Vice Chancellor, Sandra Burslem, and Tom Booth the Head of the Board of Governors all retired. Dr. Julia Dickinson and the Research Coordinator were moved out of the Department of Chemistry & Materials.

The new Chairman of the Board of Governors and Vice Chancellor appointed in 2005/2006, despite not being involved in any of the acts of discrimination refused to hear Dr D'Silva's grievances in breach of the statutory grievance procedure against those who racially discriminated and harassed him so he has had to file a new case against the University in 2006.

Outcomes of other Racial Discrimination Cases at MMU

J. Reika & C. Williams' race discrimination cases, the latter containing overt racial discrimination and victimisation like Dr D'Silva's still remain ongoing with the University refusing to deal with their grievances impartially and both have been forced to seek re-dress via the tribunal system.

Dr D'Silva continues to seek justice whilst he sees the University continuing to discriminate against him and his research students. The UCU's senior officials continue to deny him access to any legal assistance for exposing their conduct in how they undermine their members' cases.

ACADEMIC FREEDOM AND THE LAW

I have just started doing some research on the legal protection of academic freedom with a view to writing a book on the subject in the next two to three years. There is very little law on academic freedom in Britain, but there is a lot of case law in the United States where the traditional understanding of the freedom is underpinned by the First Amendment guarantee of freedom of speech. So I will be looking at the law in the US, and also the position in some Commonwealth countries and in Germany where there have been important court decisions.

Despite the relative shortage of legal material, I intend to devote at least one chapter to the state of academic freedom in British universities. The chapter might chronicle a few important episodes where the freedom of individual members of

academic staff has been infringed by departmental heads or university administrators. That would include, I think, instances where a lecturer's freedom to teach a course as s/he thought appropriate was significantly circumscribed, or where research and publication plans were dictated by the head of department or university administration. I would also like to examine the dangers posed to academic freedom by the various constraints imposed under the terms of government or private research contracts.

I outlined my work at the CAFAS meeting of July 15; a few people at the meeting have since been in touch with me to share their experiences and thoughts. I would be very interested in hearing from other members of CAFAS, particularly those who consider that their own academic freedom has been infringed or endangered in any way. You could contact me either by e mail: e.barendt@ucl.ac.uk, or by writing to me at UCL Faculty of Laws, Bentham House, Endsleigh Gardens, London WC1H 0EG.

Eric Barendt, Faculty of Laws, UCL
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ECC Current Numbers

Latest information (15 September 2006) reveals that Essex County Council List 98 has been replaced by three new lists according to Essex County Council Information Sharing and Information Security Consultant Mrs Sarah Streetley. Here they are:

| Category | Description | Numbers |
|----------------------|---|---------|
| Appendix 1 | List of persons considered unsuitable for working with children or vulnerable people | 128 |
| Appendix 2 - Index A | Individuals where ECC has been notified by another employer to contact them before employing the individual | 1211 |
| Appendix 3 - Index B | Former employees whose previous employment history may give cause for concern | 534 |

Appendix 2 Index A implies that other employers and may be other local authorities hold similar lists. So far, Southend Borough Council revealed that it has been given a copy of Essex County Council List 98 when it became a unitary authority on 01 April 1998 and has kept it ever since. However, it claims that it has not been used.

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Book Review

John Scott's *Power* (Key Concepts)

I have written a book review on a timely topic for students, academics, and affiliates of universities, and would like to bring it to the attention of CAFAS members. Especially in an organisation such as this, we often hear of incidents and situations where power has been misused, and I believe that when resources are

scarce – when the economy is not in good shape – there may be even more conflict and hostility. I'm not sure if understanding more about the concept of power helps, unless there is some thought given to prevention of misuse (thus an ethical approach) as well as the aim of CAFAS to resolve situations when they occur. The review can be viewed on my website on the *Essays and Other Writing* web page: <http://samcpherson.homestead.com/EssaysandOtherWriting.html>.

Sue McPherson

John Scott, *Power (Key Concepts)*. Polity Press, 2001. Cambridge, UK. 184 pages, 8.5 x 5.4 in. Paperback, ISBN 0745624170. The author, John Scott, is Professor of Sociology at the University of Essex.

CORRECTIONS FOR CAFAS UPDATE 51

Page 4

In the paragraph at left side of page 4 starting "Things are no better" - both references to ref (10) should in fact be ref (6). The correct version is:

‘Things are no better across the Atlantic (6). While lawmakers search for ways to ensure that companies do not hide adverse data, the Bush administration continues to act to help drug companies escape accountability for corporate scientific crimes. Two weeks ago the FDA (Food and Drug administration) announced an astonishing preemption rule that would disallow lawsuits against drug makers if a drug has been approved by the FDA – even in the case of scientific fraud or withholding of information by a company (6). Never in recent history has there been such a flagrant attempt by government to shield private enterprise against litigation for corporate criminality.’

Page 6

The second sentence in the extract below is factually incorrect.

Dr Aubrey Blumsohn is one academic whose integrity cost him his job by whistleblowing on the misconduct of Procter & Gamble in a drugs trial. The AUT failed to provide him with legal advice. Blumsohn having raised the issue with his management found himself suspended.

The correct version is:

Dr Aubrey Blumsohn is one academic whose integrity cost him his job by whistleblowing on the misconduct of Procter & Gamble in a drugs trial. The AUT failed to provide him with relevant legal advice or any support in

relation to the issues of academic freedom that were raised.

Page 8

Some of the information below was out of date or inaccurate at the time of publication.

'In fact there were 15 claims. Three by Farhard Sharokni (Lecturer Feb 2000) of which two were settled, 2 claims by Halikiopolous both settled, Titterington (withdrawn), Verma (settled), Deman (not heard), D'Silva (not heard), Vogler (withdrawn) and Proctor (lost at hearing). However despite these convictions the Union failed to implement the CRE code of conduct in regard to the monitoring of legal aid to its members or keeping statistics in regard to this matter but expects employers to do what they as guardians of their members rights fail to do.'

This should have been:

'In fact there were 15 claims. Five by Farhard Sharokni (Lecturer Feb 2000) of which two were settled, two won. Two claims by Halikiopolous both settled, Titterington (withdrawn), Verma (settled), Deman (subject of an EAT appeal), two cases by D'Silva (heard, decision pending), Vogler (withdrawn) and Proctor (lost at hearing). However despite these convictions the Union failed to implement the CRE code of conduct in regard to the monitoring of legal aid to its members or keeping statistics in regard to this matter but expects employers to do what they as guardians of their members rights fail to do.'

NOTICES

NEXT MEETING

21 October 2.00pm Room 252

Agenda

1. Minutes; 2. Matters arising; 3. Academic Freedom; 4. Cases; 5. AOB

There will be an officers' meeting in Room 252 at 1.30 pm

Informal lunch and chat from 12.00 in the Junior Common Room, 4th floor. All welcome.

Dates of Meetings

2006-07

| | |
|------------------|----------|
| 21 October 2006: | room 252 |
| 20 January 2007: | room 253 |
| 21 April 2007: | room 252 |
| 14 July 2007: | room 252 |

CAFAS - ISBN Publisher

Cafas is now a certificated holder of the ISBN Publisher Prefix 0-9550782

We have been allocated 10 numbers two of which are now assigned to:

Michael Cohen & Colwyn Williamson, 2004, *The Mission Betrayed, Cafas.*

ISBN: 0-9550782-0-2

Michael Cohen & Colwyn Williamson, 2004, *The Tangled Web, Cafas*

ISBN: 0-9550782-1-0

Copies of *The Mission Betrayed* can be obtained from Cafas Membership Secretary for £3 (including postage) and of *The Tangled Web* (including the petitioners' final submission) for £2 (including postage).

Further details are on www.cafas.org.uk

Defending-Academic-Freedom JISCMail List

You can join by going to the Cafas website <http://www.cafas.org.uk> and opening the link.

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CONSTITUTION

CAFAS' aims are outlined on the membership form. The full constitution can be obtained from the Secretary or www.cafas.org.uk.

CAFAS was founded in February 1994. It depends on subscriptions and an active membership. It meets in January, April, July and October.

NEAR

Cafas has linked to the Network for Education and Academic Rights (NEAR).

Information is on the website

<http://www.nearinternational.org/>

'NEAR's purpose is to facilitate the rapid global transfer of accurate information in response to breaches of academic freedom and human rights in education.'

Next Cafas Update

Please send letters, news items and articles to:

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Deadline: 30 November 2006

Cafas Update Deadlines 2007

30 March 2007

25 June 2007

CAFAS Update seeks to provide an open forum for opinion and discussion.

Items do not necessarily reflect the views of the Council.

SUBSCRIPTION

Dear Members!

Some of you have forgotten to pay your membership fee.

Could you please be kind enough to check the date of your last payment on the address label? If you should find there "**" or "****!!!" could you please send a cheque without further delay as your contribution is absolutely crucial to the well being of CAFAS.**

Many thanks for your contribution.

Your Treasurer and Membership Secretary

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