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Reports

LAW

Challenging promotion procedures can prove costly, says John Griffith

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Promoting the university way

Gill Evans is well known at the University of Cambridge. For many years, as a lecturer in the history faculty, she has been challenging the procedures for promotion. This has gained much support but also aroused opposition from those who run the university.

Her successes include the winning of leave from the High Court enabling her to seek judicial review of one part of the procedures. The judge urged the parties to seek a solution as an alternative to further litigation. After this, Sir Brian Neill was appointed by the university as a mediator. He proposed that an independent panel should be set up to consider the cases of

those aggrieved. Dr Evans accepted this but the Council of the University rejected it.

Acting as a litigant-in-person and bearing the costs, Dr Evans had further resort to the courts. She had argued that the history faculty committee which was to hear her promotion application could be biased against her. She said that it should make a "declaration of interest" and decline to hear her application. When the university authorities refused her request for a differently constituted committee, she sought an injunction from the county court to prevent the committee from hearing her application in June last year.

The case was heard on June 23, 1999, and was scheduled to last an hour. It took two and a half hours, at the end of which Judge Ludlow dismissed her application. It was agreed that she would give the reasons for her decision on June 25, and the judge told the university that she would be happy if they were represented on that day by a solicitor only. The judge ordered Dr Evans to pay the university's costs.

When the case was expected to be completed within the first half-day, the university had estimated its costs at £5,308.09. It had employed Clifford Chance, perhaps the largest firm of solicitors in London, which had instructed a barrister to appear in court. His fee was £1,950. Also included were charges for travelling time and attendance at £140 an hour for the solicitor and a trainee solicitor. Dr Evans appealed against these costs in October and the Court of Appeal expressed surprise both at the brief fee of

£1,950 and at the other charges.

Despite the judge's suggestion that the barrister representing the university need not attend on June 25, he did so. He received a further fee of £950 and asked for costs at the highest possible level: that of indemnity. One of the judges in the Court of Appeal, Lord Justice Waller, observed: "Perhaps one raises an eyebrow, to say the least."

The total costs rose by a further £3,493.97, to £9,302.06. Not bad for the work involved in preparing for and attending one day's hearing in the county court.

In the event, and thanks to the Court of Appeal, Dr Evans was granted leave to appeal against the costs. The court criticised the district judge for making a summary assessment of costs, saying that she was obviously "unfamiliar" with the new procedure and the relevant practice direction.

As for the University of Cambridge, the judge in the Court of Appeal said: "As already indicated, the costs for a one-day hearing seem high. The question seems to me to arise as to whether it was appropriate, on what ultimately turned out to be a hopeless application by Dr Evans, that it should have attracted London solicitors of the size that the university chose to instruct or expensive counsel of the sort they chose to instruct, or whether that was a luxury which, to some extent, they should fund themselves."

The Court of Appeal suggested that the parties should seek to reach "a reasonable compromise" or, failing that, use the mediation system, the alternative dispute resolution.

The saga leaves questions to be answered. Why did the district judge embark on the summary assessments of costs - a decision that put immediate and severe pressure on Dr Evans? Why did the university's barrister appear on the second day? Why did the university instruct expensive London solicitors and barrister?

It seems arguable from the appeal judge's comments that this was at the very least a waste of public money. If such a charge is sustained, why should not the individual university officials and academics responsible be personally surcharged?

It is to be hoped that the Chancellor of the University and the Privy Council will institute an inquiry.

This was published in *The Times*, December 7 1999

Reproduced in CAFAS Update 26

Dr Evans said the committee would be biased against her



LEICESTER UNIVERSITY VERSUS

ANDREW COLMAN

Leicester University has begun a process of "discipline, dismissal and removal from office" against Dr Andrew Colman, a Reader in Psychology who has worked for the university for almost 30 years. Dr Colman has been in dispute with the university over issues of promotion for some time. He invoked the internal Grievance Procedure on 16 July 1999, following the advice of the University's Visitor, the President of the Privy Council acting on behalf of the Queen. If he is removed from office quickly, the university may avoid having to respond to his complaints.

Dr Colman was appointed as a lecturer in 1970 and promoted to a readership in 1984. He claims that he has been treated unfairly by the university, as regards promotion and discretionary salary increments, and repeatedly denied the right of appeal to which he was legally entitled. He petitioned the Visitor on 10 June 1998, but the university failed to submit an answer until more than 10 months later (21 April 1999). The Visitor ruled on 12 July 1999 that Dr Colman should first invoke the internal Grievance Procedure and then go back to the Visitor if he was not satisfied with the outcome. He was told that "the major cause of delay was the university's failure to provide an Answer to your petition in a reasonable time" and that the Visitor strongly deprecates the University's delay, which she regards as a failure to give due regard to her role under the Charter, and a discourtesy to her."

On 28 July 1998 Dr Colman made a subject access request under the Data Protection Act of 1984 to see all files relating to him held by the university. After several months he complained to the Data Protection Registrar about the handling of his request and his Head of Department's instruction to colleagues to disclose all files on him, including sensitive and confidential files, to her. The Registrar ruled on 24 May 1999 that "it is quite clear that the University has not responded to your subject access request within the terms laid down in Section 21 of the Data Protection Act 1984" and that it was "certainly a matter of concern" that staff were obliged to pass private and personal data on Dr Colman to his Head of Department.

Dr Colman invoked the university's internal Grievance Procedure on 16 July 1999, but by mid October 1999 the university had not yet set up the Grievance Committee and hearings were not expected to be held before November at the earliest. Meanwhile, on 17 September 1999 his Head of Department, Professor Ann Colley, one of the individuals against whom his grievance is chiefly directed, began a disciplinary procedure against him. On 23 September 1999 he was called to a formal meeting in her office at which she issued an oral warning, the first in a three-step procedure that can lead to a member of staff being removed from office. He was given only three working days to prepare his defence, and his Head of Department declined his request to show him the evidence against him before the meeting.

His alleged offence is failing to set a multiple-choice resit examination in a "timely and appropriate manner". Dr Colman concedes that the examination questions were indeed delivered late but points out that this was because he was not asked for the questions until after the deadline.

Members of staff are not expected to set examination questions until they are asked for them by the departmental Examinations Officer, who forgot to include these resit questions in his request. The official deadline was 29 July 1999, but Dr Colman was not asked for questions until 18 August 1999, long after the deadline had passed. Dr Colman has a copy of the relevant e-mail from the departmental Examinations Officer, copied to the Head of Department, apologising for the late request. By then, Dr Colman, who is an Admissions Tutor, was in the midst of the busiest period of admissions, A level results having been issued the previous day, and he was unable to respond immediately. After he had finished with admissions and other urgent work, he delivered his questions on 2 September, in good time for the

examination that was scheduled for 6 September.

It was unreasonable, Dr Colman argues, to expect him to have stopped working on admissions and other urgent jobs to set the questions immediately, without any prior warning. He claims that he set the questions in good time and that there was no disruption to the examination. He has none the less been issued with an oral warning under the University Statutes and Ordinances governing "discipline, dismissal and removal from office". He was refused permission to tape-record the meeting at which the oral warning was issued, and his Head of Department has refused to give him copies of any of the documents that she has used as evidence against him and that he requested in order to prepare an appeal.

Dr Colman's publications since 1990 include 34 articles in refereed journals, eight chapters in edited books, 16 books, including successful second and third editions but excluding foreign language editions (translations), and 26 other publications. During the same period, he has attracted four research grants from external bodies, including a large award in 1994-97 from the Economic and Social Research Council (ESRC) in collaboration with two colleagues at Oxford University. The output from the ESRC grant was rated "outstanding" (the highest rating possible) by both independent rapporteurs in the ESRC's formal research quality evaluation dated 19 February 1998.

Since reaching the top of the Reader/Senior Lecturer scale in 1989 he has been turned down for promotion four times and has never received a discretionary salary increment. In recent years his name has not even been put forward for an increment by his Head of Department.

In April 1999 Professor John Sloboda, Pro-Vice-Chancellor of the University of Keele and Chair of the British Psychological Society's Division of Teachers and Researchers, wrote an open letter about promotion practices at Leicester University, based on his experiences as an External Assessor for a different candidate in the same department:

"I am a stringent judge, and frequently recommend that an individual has not yet demonstrated the required level of achievement. In the case of the colleague at Leicester, there was no shred of doubt in my mind that professorial status was not only appropriate, but that it was overdue. I was, therefore, amazed when I heard from the colleague concerned that his case for promotion had been turned down. I immediately wrote to the Vice-Chancellor, expressing my concern that the criteria operating at Leicester seemed to be out of line with national and international comparators. I asked him to clarify the reasons for the decision taken. ... In his brief reply to my letter, the Vice-Chancellor indicated that as the colleague concerned was now leaving Leicester, the matter was, in his view, satisfactorily resolved, and required no further action on his part. I found this reply profoundly unsatisfactory. ... In the light of the issues brought to light by the Andrew Colman case, I now feel duty bound to take up my concerns once again."

Dr Colman has commented: "I have done nothing wrong, and I think it is pretty obvious to everyone that the charge against me has been trumped up. Even if I had done something wrong, it would have been a gross violation of natural justice for my Head of Department to act as prosecutor, judge and jury in this disciplinary case. Something needs to be done to curb the untrammelled power that university officers have over ordinary members of staff. As far as promotions and discretionary increments are concerned, people are entitled to be judged objectively on their records. In my opinion, the time has come to sweep aside cronyism, patronage and prejudice which linger on at Leicester and in some other universities."

CAFAS Update 26, 11 January 2000



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