

James Luchte & Trinity Saint David *a casework study in university ineptitude and union inertia*

Trinity Saint David ('TSD') is a new Welsh university resulting, as is the fashion, from the amalgamation of two colleges that are about twenty-five miles apart, one in Carmarthen, the other in Lampeter. James Luchte is a philosophy lecturer on the Lampeter campus.

When Dr Luchte contacted CAFAS just before Christmas 2011, the proceedings against him were already at a very advanced stage. He had been suspended since October, and a Tribunal to consider charges against him was timetabled to convene in January. I concluded from what he told me that he was on course for almost certain dismissal.

The moves to sack Luchte had been initiated by a relatively trivial complaint from one of his students alleging that he had used bad language in a lecture and made disrespectful remarks about religious belief. It was also stated that he had advanced his 'personal philosophical opinions' in his classes, though the precise

origins of this complaint were unclear to me. Even more unclear was why a university supposedly committed to academic freedom regarded advocating his own opinions in philosophy as ground for complaint against a lecturer in the subject.

The allegation that Luchte had made irreligious comments was also particularly significant with regard to the principle of academic freedom. TSD is a 'faith' institution whose objectives, as stated in its Charter, include propagating the 'Anglican Christian tradition'. There may well be difficulties in reconciling a religious mission of this sort with the right that academic staff have 'to

question and test received wisdom and to put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs', the principle enshrined in TSD's constitution, as it is in the constitutions of all British universities.

The overwhelming majority of Luchte's students had, it emerged, disassociated themselves from this complaint, some forty-three of them signing a petition which praised in quite fulsome terms his talent for inspiring them.

The normal way of dealing with a complaint from a student is of course to refer it to the student complaint procedure. The fact that this one had instead been referred to the dismissal procedure raised the suspicion that there was some antipathy towards Luchte higher up the pecking order.

When I saw the papers in the case, it was immediately apparent that TSD's conduct of the case against Luchte had been disfigured by the most serious irregularities throughout.

The statutory procedure leading to dismissal in TSD is exactly the same as that in all the 'traditional' (pre-1992) universities. The process is launched when a complaint is lodged with the Clerk to the Council (the Registrar in many institutions) asking the university to charge a named individual with offences to be heard by a Tribunal. So far as I could tell, TSD had never received a complaint in any way resembling this definition. (I would subsequently ask the university to supply me with a copy of the required complaint, but none was forthcoming.)

In all cases where the prospect of dismissal arises, it must be remembered that no member of the academic staff of a chartered university may lawfully be removed from office except for 'good

cause' as defined by the statutes.

The offences leading to the possible dismissal of an academic must, therefore, fall under the heading of one or more of the four kinds of good cause for dismissal defined in the statutes, namely: (i) conviction for what is deemed to be a relevant criminal offence, (ii) immoral, scandalous or disgraceful behaviour of a sort affecting academic work, (iii) persistent failure or refusal to perform designated duties, and (iv) physical or mental incapacity.

Luchte rejected the allegations against him but, even if they were true, it seemed far-fetched to interpret them as falling under any of the 'good cause' headings. TSD had in any case never actually mentioned the statutory provisions and appeared to be unaware of the fact that they were required to cast any offences with which they wished to charge Luchte in this form.

A statutory Tribunal of the kind Luchte was asked to attend is called upon to examine a set of charges framed by a university against a member of its academic staff. A charge is a proposition stating that an accused person has committed such-and-such an offence. The so-called charges in Luchte's case were nothing of the sort; they were merely a jumble of descriptive statements about what various people had said on various occasions. (When I later raised this objection with TSD some attempt was made to improve the charges, but with no great success.)

Luchte had, as I say, been suspended in October, well before the university began the statutory procedure for dismissal in December. The statutes gave the university the power to suspend Luchte, but only as part of that procedure and after a number of other steps had been taken. According to the university's own account of the matter, they did not launch the procedure until early December, some six weeks after they had suspended him. It was

plain, in short, that the suspension had been *ultra vires*.

Even more important than the timing of the decision to suspend Luchte, however, was how this decision had been made. The statutes of British universities are quite explicit on this point: with the exception of the Tribunal and its hearings, the Vice Chancellor is personally responsible for implementing the entire dismissal procedure. No one but the Vice Chancellor had the statutory authority to suspend Luchte: the suspension was therefore *ultra vires* on this second ground also.

The emphasis on the personal role of the Vice Chancellor is by no means a casual feature of the statutes: it reflects what was perceived by those who drafted them to be the gravity of dismissal proceedings against an academic.

In Luchte's case, however, the proceedings had been handled by Human Resources, and the decision to suspend him made, or perhaps merely ratified, by a Pro Vice Chancellor. There was no sign of the Vice Chancellor having been involved at all, not even in the decision to frame charges and constitute a Tribunal.

I have been involved in dismissal proceedings on about twenty previous occasions. A certain contempt for the proprieties has become a commonplace manifestation of the new managerialism in British universities. But I have never before encountered a university which so comprehensively ignored its statutes.

With regard to its Vice Chancellor, TSD is currently in a very peculiar position. It would be a distraction to discuss here the troubled history of the University of Wales, whose previous Vice Chancellor was recently obliged to resign. Suffice it to say that this history has led to his successor acting simultaneously both as Vice Chancellor for Wales and for TSD. Since each of these roles

is normally regarded as a full-time job, it has, not unexpectedly, been difficult for him to combine them. To cope with this problem, TSD introduced a 'Scheme of Delegation' assigning several of his powers and duties to others.

The expediency of this delegation appears to have blinded TSD to the legal obstacles. It is a well-known principle of higher education law that it is an offence at common law for university officers to delegate their statutory duties unless the power to do so is expressly conferred on them by the statutes themselves. It was clear on this basis that, not only Luchte's suspension, but the entire process so far had been conducted unlawfully.

Given the magnitude of these irregularities, it appeared a relatively simple task (in so far as this is ever entirely simple) to derail the process of sacking him.

And since he was by this stage very close to being required to appear before a Tribunal, this was clearly a matter of great urgency.

CAFAS policy is to join forces with trade unions in 'challenging arbitrary, unjust, unreasonable or biased decisions in H.E. and F.E.' The UCU is committed to defending academic freedom, and a national conference decision of the AUT, presumably inherited by the UCU, pledged to support CAFAS. The theory, in short, is that CAFAS and the UCU work hand-in-hand when this will strengthen the defence of academic freedom and protect staff against victimisation; and it would surely be in the best interests of academics in trouble for this to be the practice too.

Luchte is a member of the UCU. I asked him what the union was doing about his case and he told me that TSD has no functioning UCU branch and no elected officers. To the best of his knowledge, the UCU officials responsible for Wales hadn't introduced any

special measures to cope with the onerous position in which this left union members in TSD, or even visited the campus to discuss the problem with them.

Luchte told me that he had drawn his problems to the attention of two regional officials, Phil Markham and Bethan Thomas, both 'regional support officials' based in the UCU office in Bridgend, and they had assisted with a minor problem at a much earlier stage; but they hadn't challenged the legality of his suspension, and he wasn't aware of any action they were taking on his behalf now.

I advised Luchte that the priority was to get the UCU to intervene straight away. A letter from the union tackling TSD about its irregular and illegal conduct was very likely, I said, to delay the process of sacking him, and possibly halt it entirely. There being no local UCU branch to help, I urged him to contact his regional officials straight away, to convey to them the irregularities I had itemised, to stress that time was running out, and to ask them to intervene on his behalf immediately.

Luchte readily agreed that the union should help, but asked me to write to the UCU regional office explaining how they could usefully intervene, with a covering message from him endorsing the course of action I recommended.

On 8 January I wrote to Phil Markham in Bridgend stressing that Luchte was more than likely to be sacked unless something was done quickly. I listed some of the main objections to TSD's procedure and advised him that if these were raised with the university, they might well cause the management to reconsider. 'It is a matter of urgency', I wrote, 'to derail the process of sacking James now, before it gathers more momentum....it is always easier to obstruct the process of sacking people than it is to reverse the decision to sack them once it has been made.'

I added that, if it was difficult for the regional office to handle the case, the Swansea UCU, as had happened in a previous instance in Lampeter, would be willing to help.

Despite the plea for very prompt action, neither Luchte nor I received any response at all from Markham. Some four days later, however, the other regional officer, Bethan Thomas wrote to Luchte. She made no comment whatsoever on the itemised irregularities that the regional office had been asked to raise with TSD, and categorically ruled out the suggestion that the Swansea UCU could help. This, she said, was 'not a possible course of action'. (She did not explain why.) She was willing to help him, she said, but only if Luchte provided 'all of the paper work...outlined in the attached correspondence'.

The 'attached correspondence' proved to be a lengthy letter from Karen Williams, Wales Administrator for the UCU, describing the complicated process of applying for the union to fund legal assistance. The required 'paper work' included completing a form, supplying a narrative of events, compiling a bundle of documentation in duplicate, and sending a list of witnesses. A lawyer would not be involved, the letter stated, 'until a full assessment of [the] case has been made by a UCU Official'. There was no indication as to how long it might take such an official to assess the case fully.

In the meantime, Luchte himself would 'remain solely responsible for the progress of [his] case'.

Luchte quite naturally regarded this as a brush off. He had not asked for his case to be referred to a lawyer; he had simply asked the officials themselves to help; and with days to go before his Tribunal he had been summoned to attend, he regarded the

substantial body of documentation he was asked to compile as a distracting obstacle to any effective action.

I would add from my personal experience as the President of a local AUT and as a union caseworker for some thirty years that I have never before encountered the suggestion that a regional official can assist members only by requiring them to apply for legal aid. Having worked on cases with AUT regional officials many times, often to very good effect, I believe this to be completely false. It is my considered judgement that Thomas misinformed Luchte about his rights, and that the delay entailed if he had followed her advice would almost certainly have cost him his job.

I also consider it a serious failing that the regional officials failed to pounce on TSD about Luchte's suspension as soon as they heard of it. It is hard to believe that they were unaware of the legal position: it is well-known and cited in a great many commentaries and textbooks on higher education law. If they were strangers to the issue, this reflected on their competence; if they were familiar with it and did nothing, this reflected on their diligence.

And telling a union member who is on the very edge of being sacked that he is solely responsible for the progress of his own defence is a disgraceful negation of everything a trade union stands for.

It is a pity that Ms Thomas didn't explain the basis on which she asserted that it simply wasn't possible for the Swansea UCU to help, since this is precisely what happened on a previous occasion when the Lampeter branch felt unable to cope. Rejecting this suggestion would, though, have been understandable had the regional officials been prepared to show some enthusiasm for

Luchte's case; rejecting outside help while remaining inactive themselves was to leave him stranded and alone.

These were the circumstances in which there seemed no realistic alternative to taking on Luchte's case myself. Time was of the essence in his situation, and the UCU regional office was in effect simply leaving him to his fate.

The rest of the story can be told quite shortly. Correspondence between CAFAS and TSD led, first to a postponement of the proposed Tribunal hearing, then to the offer of a personal meeting with the Vice Chancellor. The meeting took place on 14 March. The Vice Chancellor's main concern at this meeting was to stress that TSD is unequivocally committed to the principle of academic freedom. The proceedings were cordial and agreement was quickly reached: Luchte returned to work on the 19th and received a promotion a couple of weeks later.

It is of course gratifying that Dr Luchte's job was saved. I have mixed feelings, though, about the letter from the university thanking me for the 'professionalism' with which I had handled his case. It reminded me there are actually professionals, officials paid to do the job, whose neglect in this instance obliged me to do their work for them.

Colwyn Williamson
CAFAS Coordinator
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Note

The Wales UCU regional officers were shown the text of this report prior to publication and invited to correct any inaccuracies but did not respond.

COUNCIL FOR ACADEMIC FREEDOM & ACADEMIC STANDARDS

CAFAS is a group dedicated to maintaining standards of integrity and practice in academia, to exposing breaches of those standards and to supporting the victims of those breaches.

CAFAS welcomes widened access to further and higher education. But expansion in the absence of a corresponding increase in funding and the attempt to run education on commercial principles have led to standards being undermined and to staff who protest being victimised. Many are too demoralised, or too pressured by the provision of inadequate resources to challenge the decline; others are fearful of redundancy or are intimidated by the threat of victimisation and some respond to job insecurity by themselves becoming victimisers of the vulnerable.

CAFAS faces the fact that the British educational system is decaying. The Council will not collaborate with the pretence that this is not happening nor will it compromise on the right to say so. The principle of academic freedom enshrined in the Education Reform Act (1988) - that "academic staff have freedom within the law to question and test received wisdom and put forward new ideas and controversial or unpopular opinions without placing themselves in jeopardy of losing their jobs" - is increasingly under attack, particularly when staff expose instances of corruption and shoddy standards.

CAFAS is committed to campaigning against the formal or informal abuse of power and influence by persons at all levels in universities and colleges of further education. As such CAFAS provides a means of challenging arbitrary, unjust, unreasonable or biased decisions in H.E. and F.E.

CAFAS

- **Campaigns against the decline in academic standards**
- **Defends individuals against victimisation**
- **Gives moral support and informal legal advice**
- **Investigates malpractice and publishes findings**
- **Seeks to develop a support network with unions and other organisations.**

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