DECISION OF THE SEPTEMVIRI

22nd JUNE 2012

IN THE MATTER OF AN APPEAL BY MR OWEN HOLLAND FROM A DECISION OF THE COURT OF DISCIPLINE DATED 20th MARCH 2012

The Septemviri have heard an appeal today by Mr Owen Holland against a decision by the Court of Discipline given on 20th March 2012.

The appeal is about freedom of expression within the University, the freedom of Mr David Willetts, the Minister of State for Universities and Science, to deliver a lecture on 22nd November 2011 in a series entitled, "The Idea of the University", and Mr Holland's freedom to protest on that occasion.

Mr Holland is a PhD student in English at St Catharine's College. The charge against him was that he had intentionally or recklessly impeded freedom of speech within the precincts of the University. The stated particulars of the offence were:

"that on Tuesday 22nd November 2011 Mr Holland impeded freedom of speech in that he caused or significantly contributed to the disruption of the lecture scheduled to be delivered by Mr David Willetts at 6pm in the Lady Mitchell Hall at the invitation of the University's Centre for Research in the Arts, Social Sciences and Humanities (CRASSH) by leading a pre-planned chanted protest which was liable to prevent, and which had the effect of preventing, the lecture from taking place".

The offence as charged was said to be contrary to Regulation 2 of the General Regulations for Discipline, Statutes and Ordinances, 2011. This provides:

"no member of the University shall intentionally or reckless impede freedom of speech or lawful assembly within the precincts of the University".

The offence as charged is therefore of 'impeding', not 'preventing', freedom of speech. The Court of Discipline correctly observed that "this Regulation is one of a series of measures designed to implement ... section 43 of the Education (No. 2) Act 1986, which places a duty upon universities "to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers".

In opening the proceedings before the Court of Discipline, Dr Thornton, the University Advocate, made clear the nature of the case against Mr Holland. It was that Mr Holland had led a pre-planned chanted protest by reading a letter entitled 'Go Home David: an epistle to David Willetts', which other of the protesters also chanted. Dr Thornton said it was "the leading role that Mr Holland took in that first initiating stage of the protest" on which she would be focusing, maintaining that that amounted to the" impeding of freedom of speech, of Mr Willetts' right of freedom of speech within the University". She then confirmed in terms that "the offence is impeding freedom of speech, not preventing it". The letter, the reading of which Mr Holland had led, declared at the outset to Mr Willetts: "We do not respect your right to occupy the platform this evening. Your name is anathema to us. You are not a welcome guest. That is why we interrupt your performance tonight". The letter ended: "Go home, David. And learn your gods anew".

We have concluded that, by reading these statements in the epistle, Mr Holland evinced an intention to incite within the lecture theatre a mood of hostility to the exercise by Mr Willetts of his right of freedom of speech from the platform.

Mr Willetts took the lectern with a view to commencing his speech at about 6:05pm. He had been preceded by Professor Simon Goldhill , the Director of CRASSH, the host of the event. In his short introduction, Professor Goldhill emphasised the desirability of free speech and the exchange of ideas.

The audience consisted of something in excess of 200 members of the University and others. The intention had been that, after Mr Willetts speech of about 30 minutes, there would be a question and answer session of about 40 minutes, during which Mr Willetts' views could be questioned and challenged. However, the chanted protest, led by Mr Holland, and involving about 30 people, prevented Mr Willetts from commencing his address for periods variously estimated at 10, 12 or 15 minutes, although the parties have now agreed 12 minutes. In our view, its precise duration matters not. An intrusion of 10, 12 (it is agreed that it was 12), or 15 minutes into a 30 minute lecture is substantial.

The chant was followed by the occupation of the platform by about 20 protesters. At this point, Mr Willetts and Professor Goldhill left the stage with the immediate security staff. The occupation was not led by Mr Holland but it is common ground that he joined it after it began.

Mr Holland agreed before the Court of Discipline:

1) that he had led the call and response chant, which was a joint composition by him and others;
2) that he had typed it up;
3) that he led the reading of the chant; and
4) that, after the occupation of the platform "was quite established", he joined it.

He did, however, seek to maintain that "the prime intention" of the chant "was to delay the lecture that would have gone ahead and an intention also was ... to express a legitimate right to protest". The Court of Discipline held that "by his conduct the defendant intentionally impeded the freedom of speech of Mr Willetts and others within the precincts of the University". By "others", the court was referring to those in the lecture room who wished to hear Mr Willetts speak and to participate in the planned questions and answer session with Mr Willetts.

We hold it to be plain beyond any reasonable doubt from the express terms of the epistle that Mr Holland did not merely intend Mr Willets to delay the commencement of his lecture but to abandon it and "go home". Nor do we conclude that there is anything in the point made on Mr Holland's behalf in the Court of Discipline, but not taken before us by Mr Beloff, that it was the occupation of the platform, not the chant, which led to the abandonment of the lecture. The offence as charged in our judgement is fully made out by his joint authorship of the epistle, which in terms, when read out, was an incitement to foment within the lecture room an atmosphere of hostility to Mr Willetts delivering his lecture at all. By the terms of the charge, the University did not assume any burden of proving Mr Holland's conduct was the cause, or the <u>effective</u> cause, of Mr Willetts' abandonment of

the lecture. In upholding the decision of the Court of Discipline, we have had regard only to his leading of the chant and the statements in the epistle.

The written submissions for Mr Holland in support of his appeal accept that, putting aside his rights under Article 10 of the European Convention on Human Rights (ECHR), the Court of Discipline was entitled as a matter of fact to conclude that Mr Holland's conduct was in breach of Regulation 2.

We accept the submissions of the appellant:

1) that freedom of expression is a fundamental right, recognised at common law for very many years;
2) that political speech is to be accorded a high value in the context of political protest;
3) that section 43 of the Education (No. 2) Act 1986 does not oblige the University to sanction Mr Holland; and
4) that section 43(1) extends both to freedom of speech by students and by visiting speakers.

Section 6(1) of the Human Rights Act 1998 (HRA) provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Article 10(1) provides that everyone has the right to freedom of expression. Under Article 10(2), this right is not absolute. It is qualified by Article 10(2), which provides that its exercise "may be subject to such restriction or penalties as are prescribed by law and are necessary in a democratic society for the protection of ... the rights of others". In this context, "others" are Mr Willetts and the members of the audience who wished to hear him and/or to participate in the question and answer session which would have followed his lecture.

The University does not concede that it is a public authority in terms of section 6(1). It is not, however, necessary for us to express any view on that because the University accepts that its Statutes and Ordinances constitute a species of subordinate legislation and therefore are subject to section 3 of the 1998 Act, requiring them to be read and given effect to in a way which is compatible with Convention rights.

The basic questions on this appeal are therefore whether the prosecution of Mr Holland and/or the sanction imposed on him by the Court of Discipline were proportionate and justified under article 10(2).

All this was well recognised before the Court of Discipline by Dr Thornton, the University Advocate, in opening the proceedings. She said "free speech and the guaranteeing of free speech plays a very special part within the life of the University ... universities hold a very special place in relation to free speech, and ... we are very much in the business in the University of listening to the views of others, allowing other people to listen to those views as they are expressed and then with questioning and engaging and debating and contesting, and not in the business of shouting down. And that is really fundamental to what a University is about".

We could not better express one of the prime purposes of a University.

Dr Thornton proceeded to refer to Article 10 of the ECHR and to assert (correctly) that Mr Holland's right to freedom of expression is not absolute. She maintained (again correctly in our view) that "Mr Holland has many indeed lawful and legitimate ways in which he can express himself and exercise

his right to freedom of expression, but those ways do not include ways which impede the human rights and freedom of expression of another person within the precincts of the University".

We accept that. In our view, it is the nub of the case. We agree with the University's submission that Mr Holland failed to act responsibly in exercising his freedom of speech in the circumstances and manner he did. We also agree, however, with the submissions from Mr Holland, that Mr Willetts, as a professional politician carrying forward controversial policies, must have broad shoulders when faced with protest at a public meeting, not least within a University affected by his policies. In fact he demonstrated those by not following his initial instinct to leave during the chant, but rather sitting it out. He left only when the platform was invaded, although that invasion as such is no part of the charge against Mr Holland.

We therefore conclude that the restriction on Mr Holland's rights under article 10(1) of the ECHR, consisting both in his prosecution and the finding of guilt by the Court of Discipline were proportionate and justified under article 10(2). They were "prescribed by law" consistently with section 43 of the Education (No. 2) Act 1986 and Regulation 2 of the University's General Regulations of Discipline; and they were "necessary in a democratic society" since otherwise orderly debate on matters of controversy could not be secured by the University. The programme for the evening respected Mr Holland's right to express disagreement with Mr Willetts' views. He and others could have participated vigorously in the question and answer session which was scheduled for 40 minutes, 10 minutes longer than the time allocated for Mr Willetts' lecture. By leading the chant throughout its course, he made a substantial inroad into Mr Willetts' allotted time and as a result interfered with his freedom of speech.

Now, as I have said earlier, we have been much assisted by the parties' detailed and considered written submissions and their citation of case law. In the event, we have not seen the need to refer expressly to the detail of the case law because essentially we regard this case as straightforward. We therefore dismiss Mr Holland's appeal against the finding of guilt by the Court of Discipline.

The only difficulty we have experienced in dealing with these appeals has been in deciding whether the sentence imposed by the Court of Discipline is disproportionate to the gravity of the offence proved, and/or not one that we would wish to endorse under our powers on appeal. These, as set out in the University's Statute B, Chapter VI, paragraph 6, are 'to quash a finding or vary any sentence within the limits of the power of the Court of Discipline'. The question, as expressed by the appellant, is whether the sentence imposed is "an unlawful interference to Mr Holland's right of freedom of expression". We have, of course, given full consideration to the HRA in considering our decision, both generally and in relation to sentence. We have read and considered with care Mr Holland's witness statement, explaining the impact that the sentence would have on his future education and intended career, and likewise the six character references which we have admitted and considered. They are strong and persuasive testimonials.

We make no criticism of the Court of Discipline which conducted its proceedings with care and came to a decision imposing a seven-term suspension. We agree with the Court of Discipline that this is undoubtedly a serious case. The Court of Discipline held that the sentence it imposed, a seven-term suspension, should "play a part in deterring others who might be tempted to act in a similar way in the future". In our discretion, however, we have concluded, departing from the Court of Discipline, that Mr Holland's conduct does not call for a deterrent sentence. It does not follow that in any

future case we will necessarily take that generous view. We do consider, however, that Mr Holland, by impeding Mr Willetts' commencement of his lecture by means of the chant, brought his current misfortune on himself. He did not assist himself by his evidence before the Court of Discipline, given in the face of the express language of the epistle, that he intended merely to delay Mr Willetts commencing the lecture. Nonetheless, we recognise the hotness of feelings generated by the issues that Mr Willetts proposed to address. We accept that Mr Holland's ambition is to become an academic and that his prospects may well be good. A seven-term suspension could well in practice bring that ambition to an end: he has no independent financial means. Mr Holland has had a seven-term suspension hanging over his head since the Court of Discipline announced its decision in March. Inevitably this must have caused him the pain of contemplating that his life ambitions might for all practical purposes be over. We have therefore decided, but in this case only, to follow a merciful course.

We allow his appeal against sentence and substitute a sentence of one term's suspension in place of the sentence imposed by the Court of Discipline. This means that he should be rusticated for one Full Term, being the Michaelmas Term 2012, and that his right to use the University's premises and facilities should be suspended for the same period. We impose no restriction as part of the sentence as to when he may be admitted to the degree of Doctor of Philosophy.

THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG, P.C., Q.C.