

From: Manuel Graeber <manuel.graeber@sydney.edu.au>
Date: Monday, 14 February 2022 at 19:17
To: Annamarie Jagose <annamarie.jagose@sydney.edu.au>, John Hearn <john.hearn@sydney.edu.au>
Cc: Hope Warner <hope.warner@sydney.edu.au>, University of Sydney Association of Professors <usap@sydney.edu.au>
Subject: Re: Update on independent review

Dear Annamarie,

Thank you for your email of February 4 concerning an independent review of staff concerns, which have been raised over the last couple of years. As you know, I was approached in my role as USAP President by one of the affected members of staff.

After consultation with USAP Council, I am pleased to express Council's appreciation for your suggestions, and I would also like to convey several concerns Council has.

First, at the risk of stating the obvious, we note that procedures are as important for independence as people. We have the following procedural concerns:

- A. We note that the management of the University is identifying the Reviewer without consulting us, which is rather 'take it or leave it'. This is not compatible – procedurally – with independence.
- B. Our concern here might be relieved by terms of reference, but they have yet to be mentioned and outlined. The terms of reference should be drawn up collaboratively with USAP's Academic Freedom & Integrity (AFI) Committee. Professor John Hearn is copied in therefore. This may facilitate identification of the most suitable Reviewer (please see below).
- C. We understand that the Reviewer needs administrative support, but if that support comes from the University's Office of General Counsel, which works under management's control alone, then again, the Reviewer's independence is prejudiced, in our view, fatally.
- D. There is another asymmetry in the procedures you propose: the management of the University has available laid-on legal advice; those of us seeking justice for our colleagues have to dip into our private pockets to have the same ready availability of advice. We are prepared to do that but, even so, we feel the same marked disadvantage, the same vulnerability that we have felt since the wrongdoing began to affect us.

- E. Will the Reviewer(s) receive remuneration from the University for the proposed service? While it would be reasonable for whoever it is to receive remuneration, if the remuneration comes from the University of Sydney, the Reviewer's independence would be prejudiced, also, in our view fatally. However, we are happy to discuss this point.
- F. Finally (and your letter is silent on this point) the Reviewer must be instructed openly to report symmetrically and transparently to the management of the University and to the complainants or their representative which could be USAP's AFI committee. Neither should receive unshared reports.

Second, in putting this together, the thought has occurred on our side that, at an early stage, we need to resolve an underlying question:

Is this process to be cooperative? Something like a truth and conciliation commission? In this situation, the two sides work to resolve both the claims of unjust treatment and the problems of morale that have ensued. In this way, University management and staff work together for the long term good of the institution and staff.

Or is the process to be more adversarial? With one or both sides making claims and mounting arguments? In this case, the staff complainants would be risking much, but would they have protection under relevant whistleblower norms? In this case, the procedural concerns we have listed above become critical.

None of the present complainants have ever previously had occasion, over careers decades long, to make a complaint at the University of Sydney; but then they have never been treated like this before. And since we all distinguish between the University and its management under the previous Vice-Chancellor, none of us seeks to damage the University. That is why we have all hesitated to litigate or go externally with our concerns. But we do seek remedy for the many colleagues who have been treated unjustly.

Third, Council believes that it would be appropriate to start the investigation with the case I brought forward to observe the methods of the investigation and its independence so that all affected staff members are encouraged to come forward as requested. Perhaps a retired senior judge and an academic with expertise in the field would be most appropriate as Reviewers to lead this investigation.

Emeritus Professor O'Kane has an impressive record of service to the community. However, we have obtained information that her interactions with the professoriate at another university were fraught with problems so we think the independent review should be led by someone or a team without such background and that is mutually agreed by management and USAP.

We ask you to understand these aspects of our intent and take seriously our procedural concerns.

Best regards

Manuel

On behalf of USAP Council

Cc: USAP Council and Academic Freedom & Integrity Committee

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