

REPORT

to

THE PRINCIPAL OF THE UNIVERSITY OF STRATHCLYDE

by

C.R.K. SANDISON, Q.C.

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ISSUES ARISING FROM THE CONDUCT OF KEVIN
O'GORMAN

OCTOBER 2020

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Section A – Background

1. In summer 2017, two members of staff at Heriot-Watt University contacted first the Head of the School of Social Sciences there, and then the HR department, in order to make serious allegations about the conduct of Professor Kevin O’Gorman, the Professor of Management. The University suspended O’Gorman and contacted its local police inspector, who in turn contacted Police Scotland’s Public Protection Unit. That Unit took statements from the two complainers and others whom the complainers identified as potential victims. It transpired that the conduct of O’Gorman which was giving rise to concern might not have been restricted to his period at Heriot-Watt, but might also have extended to his earlier career at the University of Strathclyde.
2. A search warrant was obtained, and O’Gorman’s house was searched and computer equipment seized. A story about the investigation appeared in the press, and further potential victims and witnesses contacted the Unit. O’Gorman was formally interviewed in December 2017, when he made no comment in relation to the matters put to him, and he was charged and released. Further information was received and further charges added. Ultimately he was reported to the Crown Office and Procurator Fiscal Service in relation to 47 alleged offences.
3. O’Gorman appeared in Edinburgh Sheriff Court on petition on 4 January 2018 and was released on bail. He stood trial on 27 charges, being four charges of indecent assault, nine charges of sexual assault under the Sexual Offences (Scotland) Act 2009, twelve charges of communicating indecently under the 2009 Act, one charge of breach of the peace, and one charge of coercing a person

to be present during sexual activity under the 2009 Act. Ten charges were dropped by the Crown during O’Gorman’s trial. Of the 17 remaining charges, he was convicted of 14 and the remaining three were found not proven. Nineteen of the 27 charges on which O’Gorman went to trial concerned a total of 9 victims who at the time been students at the University of Strathclyde. No further complainers came forward either during the trial or after its conclusion.

4. O’Gorman was sentenced on 26 September 2019 to 240 hours community service and was subject to a tagging order for six months, a supervision order for three years, and a requirement that he sign the Sex Offenders Register for five years. He had in the meantime been dismissed from his position at Heriot-Watt.
5. I have been asked by the Principal of Strathclyde University, Sir Jim McDonald, to carry out a thorough investigation in order to ascertain the true facts pertaining to O’Gorman’s recruitment to and promotion within the University, his activities there, the disciplinary processes to which he was subjected, and his exit therefrom, all in relation to specific Terms of Reference, to report my findings to him, and to make such associated recommendations as I might see fit. I have no previous connection, personal or professional, with either the University of Strathclyde or any person whose conduct was subject to the scrutiny of the inquiry.

Section B – Nature and Incidents of the Inquiry

6. I was assisted in the conduct of the inquiry by PBW Law, Solicitors, although all decisions as to what should be done, when and how, were mine alone, as

was the treatment of all material received by the inquiry. I was afforded full and unhesitating co-operation by the University in anything I wished to know or to have done. Certain persons known to have been affected by O’Gorman’s conduct were approached directly, but in order to seek to capture all information which might be relevant to the inquiry, further efforts were made to contact (directly where possible, indirectly where not) all students and members of staff who might have had material contact with O’Gorman during his tenure at the University of Strathclyde. That amounted to approximately 30,000 people, and involved much effort, time and dedication on the part of the inquiry team. The inquiry accordingly proceeded as quickly as it reasonably could, but as slowly as it needed to in order to be effective. I am most grateful to the very many individuals who took the time to respond – many in very considerable detail – to the inquiry. Their efforts made it possible for the story of O’Gorman’s time at the University to be told in a much more accurate, full and rounded way than would otherwise have been possible.

7. The vast majority of those whom I wished the inquiry to question were entirely co-operative. Every current member of staff of the University who was approached unequivocally fell into that category. Other potential witnesses were less co-operative, either declining to engage at all with the inquiry, providing only pre-prepared written statements, or else requiring to see written questions in advance, and occasionally answering those questions with notably varying degrees of enthusiasm. I do not criticise, nor do I propose (with one exception, O’Gorman himself) to name or to hint at the identities of those who chose to behave in that way. A number of reasons exist as to why any particular individual might not wish voluntarily to subject him or herself to involvement, in whatever degree, with the inquiry. It became very clear that for many who had come into contact with O’Gorman, re-living the events of that period would be a painful journey upon which they simply did not wish

to embark. Some were evidently wary that the purpose of the inquiry was to find someone to blame for what happened, and feared that they might be one of the candidates for such blame. In fact, the purpose of the inquiry is to ascertain facts, understand their pattern, comment on them and recommend ways forward from where matters now stand, but the apprehensions of those who may have thought otherwise are not difficult to understand. The reasons for other types of potential witness not wishing to co-operate fully were less clear, but may have been equally as valid. Ultimately, two points require to be made in this connection: firstly, I have drawn no adverse inference from the fact that any particular individual did not participate, either fully or at all, in the inquiry, in forming the views which I have as to its subject-matter. Secondly, as is often the case where very many people speak fully to various matters of fact under examination, the absence of some other accounts which could have been given, but were not, did not materially affect the outcome of the exercise – in other words, I am confident that the content of this Report has not been adversely affected by those who could have spoken, but chose to remain silent or taciturn.

8. A particularly noticeable and moving theme which emerged from the evidence given to the inquiry came from those who had been subject to abuse at the hands of O’Gorman but had not spoken out about it at the time. That theme was deep regret, not that O’Gorman had not been held to account more quickly for what had happened to them, but that their silence had provided the opportunity for others then to be abused by him. That feeling, though entirely understandable, is wholly misplaced. If any reader of this Report takes but one point away from it, that point should be this: no victim of O’Gorman was in any way responsible for what happened to him; no victim of O’Gorman was in any way responsible for what happened to anyone else. The University has set up, and maintains, a specialist counselling service for those affected by

O’Gorman’s conduct while he was its employee. I would urge anyone who continues to suffer from the adverse consequences of that conduct, whether that manifests itself in unfounded feelings of guilt or otherwise, to consider using that service.

9. A final notable feature of the inquiry was the need to ensure that the identities of those who were victims of O’Gorman are protected. That has necessitated the presentation of some of the facts established by the inquiry in circumspect terms within this Report. In some instances this inevitably prevents a full understanding of the precise circumstances of a situation being conveyed to the reader, although such instances are limited in number. Further, some witnesses would only speak on condition of anonymity, and that has been respected. While some witnesses made no request for anonymity, rather than provide a patchwork of named and anonymous witness accounts from which withheld names could be correctly or incorrectly guessed, I have taken the decision to identify by name only the relevant members of the department and University management teams, together with the members of the University HR department, in this Report. Any adequate account of the functions which those individuals discharged would in any event disclose their identity to those with even a rudimentary knowledge of the operation of the University at the relevant time.

Section C – The Facts

10. It seems to me that a basic function of this Report must be to establish and succinctly set out the facts relevant to the subject-matter of the inquiry. It rapidly became apparent that very few witnesses had an accurate overview of what had actually happened in relation to O’Gorman at the University. This

Report examines the reasons for that where it is relevant to any matter that requires to be discussed. Many witnesses had formed views based on supposition, rumour, or press reports which might most kindly be described as inaccurate. There can be little prospect of those interested in the content of the Report being satisfied with its terms unless the true facts are set out as the basis for subsequent discussion.

11. This section, accordingly, contains the facts which the inquiry established as true and relevant to its remit. For the most part, there can in my view be no room for dispute as to the account given when the evidence before the inquiry is considered objectively. In the few instances where there may be room for doubt, the existence of that possibility and the reasons for it are stated.

O’Gorman’s Employment History at the University of Strathclyde

12. Although engaged casually as a tutor from 28 September 2004 to 21 January 2005, O’Gorman’s first formal post with the University was as a Graduate Teaching Assistant, to which he was appointed initially on 13 May 2005 for the period of one year from 1 August 2005. This was a new post designed to support the Director of the Scottish Hotel School’s Director of Teaching and Learning while the latter was taking on additional responsibilities in the School’s Iran Programme. O’Gorman, a Ph.D. student at the time, had already been identified as appropriate for the post, and no advertisement of its availability took place. A CV and research schedule for O’Gorman were provided. His performance of the role was deemed diligent and useful, and he was continued in post for the year from 1 August 2006 and again for the year from 1 August 2007.

13. In or around October 2007 the new position of Lecturer (Hospitality and Heritage) within the Department of Hospitality and Tourism Management was created and advertised for a fixed term until the end of 2008. O’Gorman applied for the post and provided academic and social references, which were taken up and were favourable in their terms. He and another candidate were interviewed by a committee on 15 November 2007 and he was offered the position by letter on the same day, subject *inter alia* to an Enhanced Disclosure Scotland Check being carried out.

14. In March 2008 O’Gorman was subject to an annual review process (his first, no such reviews having been carried out in respect of his tenure as a Graduate Teaching Assistant). His performance was very favourably rated by his Head of Department, Professor Richard Prentice, who recommended him for accelerated salary grade increment on retention grounds. O’Gorman was deemed to have satisfied the requirements of his probationary period on 23 June 2008 and five days later his contract was extended to 31 December 2009. At this time O’Gorman raised informally his concern about “subtle sniping attacks” which were supposedly being made about him by another member of staff.

15. A further annual review took place in February 2009 and O’Gorman’s performance was deemed highly satisfactory by the new Head of Department, Tom Baum, who recommended him for promotion from Lecturer A to Lecturer B grade. By this point O’Gorman was a member of the University Senate and its Business Committee, and was representing his department on the Faculty of Law, Arts and Social Science Board. As part of a departmental restructuring exercise, O’Gorman was interviewed for a Lecturer A post in the restructured department and was confirmed in it with effect from 1 June 2009. During the period April 2009 to 30 November 2010 he was also undertaking additional

duties as a part-time Education Liaison Adviser with the University's Schools and Colleges Liaison Service.

16. On 24 June 2009 O'Gorman was promoted to Lecturer B grade with retrospective effect from 1 April 2009. A further annual review in March 2010 attracted more very favourable comments from another new Head of Department, Chris Huxham, and a recommendation for promotion to Senior Lecturer, to which post O'Gorman was appointed on 22 June 2010.

17. In addition to his employment by the University, O'Gorman was in 2008 nominated to serve a three-year term on the University Senate as one of the three representatives of Strathclyde Business School thereon. He became a member of the Senate Business Committee in the same year. In 2010 he was appointed by the Senate to serve on the University Court for the three academic years 2010/11 to 2012/13. He did not serve on any committees of the Court. He was re-nominated to a second term on the Senate in 2011. He demitted office from both Senate and Court on ceasing to be employed by the University in February 2012.

Events of May/June 2011

18. In the latter half of May 2011 a member of staff in the Department of Management sent a round robin email to Ph.D. students in the Department drawing the existence of the University's "Dignity and Respect" policy to their attention, and left a number of hard copies of the policy in the Department's research studio. He reported to the Head of Department (Professor Sharon Bolton) that he had done this because certain postgraduate students and a member of staff had raised concerns about "inappropriate behaviour" on the

part of O’Gorman. The Head of Department asked that those raising the matter should be requested to contact her.

19. In the event, four postgraduate students and one member of staff contacted the Head of Department in this connection. A female student reported that, while she had not herself been subjected to anything untoward, others were very uncomfortable about O’Gorman’s behaviour and presence on Facebook, but feared repercussions if they were to raise the matter. She did not wish to make a complaint, but felt that it would be appropriate for O’Gorman to be spoken to so that he might understand the effect of his behaviour.
20. A male student reported that he had been slapped playfully on the head by O’Gorman in a humiliating manner, that he would confront O’Gorman if something similar happened again, but did not wish to make a formal complaint, wished to remain anonymous, and would prefer the matter dealt with informally.
21. A further female student reported that O’Gorman was known to have his favourites amongst the students, and that some of those favourites felt unhappy about the situation but felt unable to do anything about it because O’Gorman presented himself as very powerful or influential in the University. She also wished the matter to be dealt with informally.
22. A further male student reported that O’Gorman had massaged his shoulders, stroked his arms and back, and had tapped his bottom playfully in farewell on two occasions. He also mentioned O’Gorman’s presence on Facebook and Skype interacting with students in a way that was not always welcome. He indicated that students were unwilling to speak out due to O’Gorman’s self-declared power in the University, said to be evidenced by his rapid rise within

the Department and University. Again, he did not wish the matter to be treated as a formal complaint, but did want it dealt with seriously and to be made known to O’Gorman as unacceptable behaviour on his part.

23. The staff member who spoke to the Head of Department indicated that he was aware of O’Gorman having slapped a student’s head and having approached others from behind in order to massage their shoulders. He indicated that the students were reluctant to complain about O’Gorman because of their perception of his power within the Department and University and potential influence on their future careers.

24. In consequence of these reports, the University’s Human Resources Department was engaged and a meeting between O’Gorman, Professor Bolton and a Human Resources Manager (Ms Auld) took place on 6 June 2011 in order to draw to O’Gorman’s attention, in terms of section 3.1 of the Dignity and Respect policy, the discontent that had been manifested about his behaviour, in particular physical contact with students (examples of which, as set out above, were given) and his mode of working and communicating with students.

25. O’Gorman agreed at the meeting not to engage in further physical contact with students. He was warned about social media contact with students and about the manner in which he had been perceived to present his position in the Department and University to students. It was acknowledged that no one had previously brought to O’Gorman’s attention any concerns on these points.

26. It was, finally, made clear to O’Gorman that the behaviour complained about was unacceptable and must stop, that a review of his behaviour would take place in late October 2011, that any repetition of those behaviours would result

in formal proceedings being taken by the University, and that a letter dated 27 June 2011 recording the meeting and its outcome would be kept on his file for 12 months.

“Student X” Complaint

27. During the afternoon of 12 October 2011 the father of an undergraduate student in the Department of Management (“Student X”) complained to Professor David Hillier, the Vice-Dean of the Business School (whom he knew professionally and socially) that O’Gorman had engaged in an inappropriate Facebook Messenger conversation with his son on 10 October, and provided screenshots of the conversation. The screenshots disclosed that the conversation had begun on 6 October in connection with the timing of an assignment which Student X was supposed to hand in the next day. By 10 October, O’Gorman was asking “How much do I need to kick your ass to get you moving?” and “So when do you want the ass whipping you are so long overdue?” O’Gorman told Student X that the latter was withholding the whole truth about the situation he was in, and that confession was good for the soul. Having secured a confession about the matter, O’Gorman said that “some sort of punishment is due”. He had pressed for further confessions and had said that Student X should contact him if ever he felt stressed.

28. The matter was immediately referred to Professor Susan Hart, the Dean of the Business School and thence to Ms Sandra Heidinger, the University’s Director of Human Resources, to Hugh Hall, the University’s Chief Operating Officer and ultimately (in the absence abroad of the Principal) to Professor Kenneth Millar, the Vice-Principal, and the decision was taken by the latter that evening that O’Gorman should be suspended on full pay pending a formal investigation in terms of paragraph 2.2 of the University’s (academic staff) Discipline, Dismissal and Removal from Office Procedure.

29. A meeting was held on 13 October 2011 between O’Gorman, Ms Heidinger and Professor Millar at which O’Gorman was informed of the details of the complaint, that an investigation would be commenced while he was suspended, and that he should during that suspension stay away from University premises and not contact any student in person or via social media. He was then escorted off campus without being permitted to return to his office. A letter of the same date confirming these matters was sent to him. Ms Heidinger agreed to O’Gorman’s request to be permitted to continue to be in contact with one student who was said to be a personal friend as well as a student.

Investigation into Student X Complaint

30. An investigation into the complaint commenced on 14 October 2011. It was initially conducted by Professor Bolton and an officer from the University’s Human Resources department, Claire Williamson.

31. The background to the Facebook communication between O’Gorman and Student X was that circumstances had arisen in which Student X faced academic suspension unless particular arrangements could be made for him. Professor Hillier had asked O’Gorman as Director of the International Business course to look into whether such arrangements could be made, but the proposed arrangements did not particularly suit Student X, who was accordingly concerned about his ability to progress with his course at the University. Meetings and email correspondence between Student X and O’Gorman had taken place in that connection, most of which were

unremarkable in nature, save that at one such meeting O’Gorman had put his arm around Student X upon the latter getting up to leave.

32. Student X was interviewed by the investigatory team on 17 October and provided further information about his Facebook contact with O’Gorman, which had commenced by way of an unsolicited approach by O’Gorman one evening around a week before the messages forming the basis of the complaint, to which approach Student X had responded out of fear of otherwise appearing unfriendly at a time when he thought (in fact wrongly) that O’Gorman would be marking the assignment he had been required to do. He had been made to feel uncomfortable by the Facebook messages from O’Gorman. Professor Hillier was interviewed on the same day, and confirmed the matters already mentioned relating to him.

33. O’Gorman was interviewed on 19 October, in the presence of a union representative for the first part of the meeting. He claimed to have modified considerably his use of Facebook to contact students since June. He acknowledged having put his arm round Student X on one occasion when he perceived the latter was upset at the academic difficulties he was facing. He claimed to have contacted Student X on Facebook because he was worried about him, and wanted to see if he could help. He claimed that he thought that he had been told to “look after” Student X by Professor Hillier (a suggestion which the latter denied when it was put to him) and was doing so. He accepted that in hindsight the messages could be perceived as inappropriate, and indicated that he would not act in the same way again. Notes of the meeting were taken and sent to O’Gorman for approval, which he provided on 21 October.

34. On 21 October O’Gorman also sent a letter to Professor Hart and Mrs Heidinger. In it, he maintained that he had not fully understood the terms of the letter of 27 June mentioned above, and would have challenged it had he fully understood it, since he considered that he required to use social media to deliver course materials successfully to students. He did not draw any distinction in the letter between a class Facebook site (where all posts and messages could be seen by all members) and his personal Facebook Messenger account, which he had used to contact Student X by way of messages which only the two of them could read. He apologised for having caused Student X distress and re-iterated that that had never been his intention. He stated that he had now created a “clear divide” between his academic and personal life and would be prepared to give a nominated HR representative full access to his professional social media accounts. He proposed that the complaint be disposed of on that basis and with the letter of 27 June being kept on his file for a year from 21 October 2011.

35. In the meantime, Professor Bolton had been re-contacting the postgraduate students and the staff member who had come forward with concerns about O’Gorman’s behaviour in June. The general view amongst those individuals was that O’Gorman had changed his behaviour for a while but was again rubbing male students’ shoulders and touching their knees. He was further said to be again stressing his importance in the University and his ability to provide benefits for favoured students, with the implication being that benefits could be withheld or withdrawn from others. He was dismissive and rude in front of students about other members of staff. It was perceived that O’Gorman’s attentions had moved from postgraduate to undergraduate students. One student (“Student Y”) provided Professor Bolton with a record of Skype exchanges between himself and O’Gorman, together with an unsigned “to whom it may concern” letter making these points and also

mentioning that he and other students had (before the events of May/June 2011) been contacted on social media by O’Gorman, who had engaged in talk about belting, spanking and punishment in what had been perceived as being a sexual context.

36. Professor Bolton reported the result of her enquiries with the postgraduate students to Professor Hart and to the HR personnel involved with the investigation. She noted that the Student X Facebook contact no longer appeared to be isolated in character, and expressed concern that O’Gorman’s behaviour might amount to the abuse of a power dynamic equivalent to grooming (directed at both his students and superiors in the University context), though she disavowed any detailed knowledge on the subject and suggested that suitable expertise be engaged. She stressed that, while she wished to see O’Gorman return to work if possible, a change in his behaviour required to be assured rather than merely promised. She also suggested that the content of his (personal) Facebook account for a short period should be examined by a suitable IT expert to determine whether it contained further content capable of giving rise to concern.

37. A meeting between the investigatory committee and Student Y took place on 28 October 2011. He said that prior to May/June 2011 he had been contacted regularly by O’Gorman on Skype and Facebook, and that he had been given shoulder and neck massages, been hugged regularly and had his bottom tapped on two occasions. He had been able to ascertain from other male students that the massages and hugging had also happened to them, and that they had for the most part felt obliged in the circumstances to let such behaviour continue. He gave examples of the sort of punishment talk in which O’Gorman had engaged online, which involved talk of the use of a ruler, a belt or spanking as punishment for academic shortcomings, and a hug as a reward.

He also alleged that O’Gorman was getting students to write or at least contribute substantially to his research output without acknowledging that contribution.

38. However, on 30 October Student Y indicated that he had serious doubts as to whether he continued to wish to stand behind his statement. He explained that O’Gorman had been in touch with two students in the Department, had said that he knew who was behind the complaint that had led to his suspension (naming Student Y as one of them), and was going to be returning to the University soon. The perceived implication was that revenge would then be taken. A further student (Student Z) who had been asked if he wished to provide a formal statement in connection with O’Gorman’s behaviour had, in consequence of that contact with students, declined to do so, and had asked Student Y not to do so either.

39. Student X’s father also provided an email setting out his concerns in brief terms on 30 October.

40. O’Gorman attended a further meeting with the investigating committee on 3 November, again accompanied for some of the meeting by a union representative. The results of Professor Bolton’s further enquiries were put to him in considerable detail. He accepted that his communications with students on social media had blurred professional and personal boundaries, but denied that those communications had a sexual aspect to them or that he had enjoyed talking about confession and punishment issues. He denied having used students’ work without crediting them for it. He accepted having contacted two students during his suspension, but indicated (correctly) that he had permission from Ms Heidinger to contact one of them. He indicated that he had not fully considered how his behaviour, on social media and otherwise,

might be perceived by students given the power imbalance between him and them. He indicated that he wished to discuss his future at the University informally with Professor Bolton, but was told by Ms Williamson that that would be inappropriate due to Professor Bolton's involvement in the investigation process, and that if he wished he could talk to Ms. Heidinger instead. A note of the meeting was sent to O'Gorman for his approval of its accuracy; he reverted through solicitors on 18 November to make various observations, none of which is relevant to the matters narrated here.

41. On 4 October O'Gorman indicated that Ms Williamson could look through his Facebook and email accounts for the two-week period immediately prior to his suspension (that being the period which the investigation had asked to see) in order to look for any communications with students, so long as that was in his presence. That examination took place on 7 November and disclosed no communications with students other than Student X. The examination was not set up in such a way that communications or contacts which had in the meantime been deleted from the account in question could be detected.

42. On 9 November 2011 O'Gorman applied for the University's Voluntary Early Release Scheme (VERS) which was in effect a general redundancy programme that carried with it a severance payment determined by final salary and length of service. Professor Bolton and Professor Hart supported his application (as the Scheme required if the application was to be considered at University level) on the ground that O'Gorman's role could be dispersed amongst other staff. On 11 November the University's Redundancy Committee deferred consideration of the application on the ground that it would be inappropriate to consider it during the subsistence of the disciplinary process.

43. On 11 November Professor Bolton provided Ms Heidinger with the draft investigation report as compiled by herself and Ms Williamson, before departing abroad on business. She also requested that, in light of its deferral by the Redundancy Committee and the fact that her Department had on the previous day been formally assessed as overstretched, O’Gorman’s VERS application be treated as having been withdrawn. The draft report found in short that, in relation to his Facebook contact with Student X, his Skype contact with Student Y, and the other issues highlighted by Student Y and the other Ph.D. students, O’Gorman had engaged in serious professional misconduct with potentially serious reputational issues for the University, and that the matter should proceed to a formal disciplinary hearing.
44. On 15 November O’Gorman’s solicitors, Campbell Smith WS, wrote to Ms Heidinger querying the contractual basis of O’Gorman’s suspension, and the format of the investigation. They indicated that they had advised O’Gorman not to approve the note of the meeting on 3 November and stated that certain (unspecified) comments made privately by Professor Bolton to O’Gorman suggested that she should not partake further in the investigation. Ms Heidinger replied the next day, setting out the background to and current status of the investigation, and how it was anticipated it would proceed.
45. On 17 November Campbell Smith responded, claiming on behalf of O’Gorman that Professor Bolton might have her own agenda in the investigation. They claimed that after the investigatory meeting on 3 November, she had met O’Gorman informally (as he had requested but which Ms Williamson had advised all at the meeting was inadvisable), had told him that she wanted him to return to work but thought that this would be difficult, and had expressed the view that his sexuality was “screwed up” and that he needed psychological counselling. Campbell Smith expressed the view that those comments were

sexual harassment in the sense of being sexually derogatory comments, in terms of the University's Dignity and Respect policy. It was also claimed that Professor Bolton had separately claimed to O'Gorman that Ms Williamson did not understand academics and wanted O'Gorman removed from his post. Observations were made about the fairness or otherwise of the relationship of the current investigation to the events of June 2011, and ultimately Campbell Smith suggested that the current process be brought to an end and O'Gorman reinstated, while also raising the prospect of him ending his relationship with the University provided he was "appropriately compensated and exonerated".

46. On 18 November Ms Heidinger sought the assistance of external solicitors, MacRoberts LLP, in considering how the matters raised in the Campbell Smith correspondence should be dealt with. She also discussed those matters with Professor Bolton, who accepted that she had met privately with O'Gorman contrary to Ms Williamson's advice, but denied having ascribed to Ms Williamson the views set out in the correspondence, and maintained that much of the rest of what had been attributed to her had been taken out of context. An initial view was provided by MacRoberts on 21 November. Ms Heidinger decided that matters would best be dealt with by replacing Professor Bolton on the investigatory committee, and Professor David Littlejohn, Associate Deputy Principal, was appointed to review the material so far gathered by the investigation in place of Professor Bolton. Campbell Smith were informed of this by letter dated 22 November 2011.

47. On 25 November, Campbell Smith reverted to Ms Heidinger to express the view that the investigation was flawed fundamentally and that Professor Littlejohn's appointment would not resolve that. They said that they were now to take the matter to a higher authority within the University. On 30 November they contacted the University's Chief Operating Officer, Hugh Hall, in essence

repeating the concerns previously expressed, widening their criticisms to include Ms Williamson and Ms Heidinger as well as Professor Bolton, and calling for the end of the disciplinary process, the reinstatement of O’Gorman, and payment of his legal expenses. It was indicated that O’Gorman was determined to return to post, albeit not subject to Professor Bolton’s sphere of influence. MacRoberts were further consulted, and a response refusing to accede to those demands was sent to Campbell Smith by Mr Hall on 9 December.

48. On 30 November Professor Littlejohn completed his initial review of the investigatory materials then available, and further lines of enquiry which he and Ms Williamson considered appropriate were identified. One such was a further approach to Students Y and Z, the other was an approach to the staff member who had spoken to Professor Bolton in the context of the events of June, in each case to ascertain more fully their evidence and views in relation to O’Gorman’s conduct. Student Y was approached by Ms Williamson by email on 13 December. Neither Student Y nor Student Z wished in the event to contribute further to the investigation. The staff member provided a brief written statement on 14 December, in which he expressed concerns about O’Gorman’s behaviour towards students and his comments about his own power.

49. This staff member was interviewed by Professor Littlejohn and Ms Williamson on 15 December, when he went through an extensive list of 19 points of concern about O’Gorman. These included O’Gorman rubbing the shoulders of male students in the research studio in a manner which appeared to him to have sexual overtones. He was aware through male students of O’Gorman contacting them on Facebook and talking of physical punishment, and of him having hit one student (Student Z) on the head. He considered that students

felt unable to rebuff or complain about these things because of O’Gorman’s perceived position of power over them. Various instances of O’Gorman having portrayed himself as someone of power and influence in the University, including affecting to enjoy close personal relationships with the Principal of the University and the Dean and Vice-Dean of the Business School, were gone through, as were instances of nimious criticism made by him of professional colleagues. Written notes of the points raised were provided by the staff member, and the note of the meeting of 15 December was also signed as accurate by him.

50. A further member of staff was interviewed by Professor Littlejohn and Ms Williamson on 19 December. She spoke to various examples of O’Gorman’s self-aggrandising behaviour when communicating or dealing with members of staff in the Department of Management.

51. A revised investigative report was produced on 19 December and commented upon by MacRoberts. It concluded that O’Gorman’s Facebook contact with Student X, his Skype contact with Student Y, and the other issues raised by Student Y and the Ph.D. students and staff members would, if made out, represent serious professional misconduct and present potentially serious reputational issues for the University, and should be considered in a formal disciplinary hearing. The particular issues recommended for consideration at such a hearing were (a) inappropriate conversations; (b) physical contact; (c) breaches of confidentiality and derogatory comments about colleagues; (d) portrayal of power; (e) use of bad language and (f) breach of suspension conditions. Further allegations about promises of advantages and research publishing were not regarded as requiring to proceed to consideration at a disciplinary hearing.

Disposal of the "Student X" Complaint

52. The report was sent to O’Gorman by Professor Jim McDonald, Principal of the University, on 21 December and his comments on it were invited within 28 days in terms of section 2.5 of the Discipline, Dismissal and Removal from Office protocol. O’Gorman acknowledged receipt of the report on 22 December.
53. Campbell Smith responded to the report on behalf of O’Gorman on 17 January 2012. They alleged that O’Gorman’s reputation had been undermined and tarnished by a small cabal who, at the instance of Professor Bolton, had been determined to have him removed from office. They repeated previous criticism about the propriety of the events of June 2011 and suggested that Professor Bolton had been motivated by professional jealousy of O’Gorman to instigate and orchestrate a “witch hunt” against him. A 42-page appendix composed by O’Gorman (the report itself was 14 pages long), setting out detailed responses to the factual issues that had arisen in the course of the investigation, was provided, variously denying or seeking to put a very different interpretation on events than that which had been provisionally arrived at by the investigatory committee.
54. On 20 January 2012 the Principal wrote to O’Gorman stating that he had decided to refer the matter to Professor Hart for consideration under section 1.2 of the Discipline, Dismissal and Removal from Office protocol, and indicating that she would be in touch with him to arrange a Disciplinary Hearing to determine whether a formal warning was appropriate and, if so, at what level. O’Gorman’s suspension was formally lifted but he was asked to

remain away from the University and not to contact students until arrangements for his return could be made.

55. At this point Campbell Smith engaged with MacRoberts in order to seek to negotiate an agreed outcome to the situation. The University's preference (in arriving at which the Principal, Vice-Principal, COO, CFO and Ms Heidinger were all to varying degrees involved) had come to be for the disciplinary process to be concluded and for O'Gorman then to exit via VERS (his earlier application to that scheme not having been withdrawn or otherwise lapsed). O'Gorman's initial preference was to return to the University, working from a different site and with different colleagues than previously.

56. Campbell Smith were provided with a draft warning letter which the University proposed to issue to O'Gorman in the last week of January 2012, which stated that the University considered O'Gorman to be guilty of serious misconduct in respect of inappropriate conversations with students, physical contact with others, disrespectful comments about colleagues, portrayal of power and breach of suspension conditions, and was issuing him with a Written Warning which would be retained on file for two years. The draft letter required him in future to refrain from social media contact with students, to refrain from unreasonable physical contact with students and to treat others with dignity and respect. It relieved him of his position as Associate Dean in the Business School and encouraged him to consider his position on the University Senate and Court.

57. Campbell Smith indicated on 27 January that the terms of the draft warning letter had caused O'Gorman to conclude that there was no prospect of him returning to the University. Ms Heidinger remained of the view that the disciplinary process should reach a conclusion before VERS could properly be

engaged, but a query arose as to what sensible use could be made of a warning letter should O’Gorman exit the University in terms of a standard VERS compromise agreement, which would normally include extensive confidentiality obligations on the parties thereto. Campbell Smith proposed that the disciplinary proceedings be dismissed as part of O’Gorman’s negotiated exit. Ms Heidinger then proposed internally that a letter from the Principal explaining that the disciplinary process had given rise to a case to answer and would ordinarily have proceeded to a disciplinary hearing, but that it had been unnecessary to so proceed given O’Gorman’s exit from the University’s employment, should be executed and held on the University’s files – a suggestion which the Principal thought acceptable. That was intimated to Campbell Smith on 16 February. In the event, a file note was made by Ms Heidinger upon O’Gorman’s departure in the following terms: “Following a formal investigation into allegations of misconduct, the Principal reviewed the investigatory report and determined that there was a case to answer. However, given the individual’s successful application to leave the University under the terms of the Voluntary Early Release Scheme, the hearing of evidence was not possible and, therefore, the matter could not be finally decided”.

58. Although it would not be appropriate to recount in any detail the incidents of the negotiation which subsequently took place, given that I have been asked to address specifically the issue of the reference provided by the University to O’Gorman, it is appropriate to note that the provision of a reference in agreed terms was a condition of the arrangements by which O’Gorman left the University. A draft reference in decidedly neutral terms was drawn up by Ms Heidinger (albeit to be signed by Professor Hart) and passed to O’Gorman for comment. He revised the draft into one in glowing terms, referring to himself *inter alia* as a “first class teacher”, “industrious and a team player” and as having a “multiplicity of talents”. The University declined to accept the

majority of the revisals, and ultimately the reference provided by the University was factual rather than evaluative in nature. It recorded in notably laconic terms that O’Gorman had “left the University during academic session 2011 – 12”.

59. I understand from the Report commissioned by Heriot-Watt University from Morag Ross, Q.C., into certain aspects of O’Gorman’s career there (the “Ross Report”) that the reference provided for O’Gorman by the University of Strathclyde was never in fact presented to Heriot-Watt (Ross Report, para. 7.2). Ms Ross reports (ibid., para. 7.3) that she understands that O’Gorman told Heriot-Watt when he was discussing his prospective employment there that he was on sabbatical from Strathclyde. If O’Gorman did say that to Heriot-Watt, it was untrue. The Strathclyde reference obviously contained no reference to O’Gorman being or having been on sabbatical, but whether that, or that alone, was the reason for O’Gorman not presenting it to Heriot-Watt is best known by him.

60. A Compromise Agreement in agreed terms was executed by O’Gorman on 29 February 2012. All students and staff who had provided evidence to the disciplinary process were informed first, and then Professor Hart emailed all staff in the Department of Management on 2 March stating “I am e-mailing to let you know that Dr Kevin O’Gorman, who has been with the University since 2005, has elected to leave us under the Voluntary Early Release Scheme with effect from 29th February 2012”, all as had been agreed in terms of the Compromise Agreement. It was a standard provision of VERS that every employee of the University exiting in accordance with its terms should enter into a compromise agreement with the University.

61. Again, given that the question of sums paid to O’Gorman in connection with his exit from the University has been the subject of comment, it is appropriate that I record that what was paid to him in terms of the Compromise Agreement were the following sums: (a) £29,813, being his entitlement under the standard terms of VERS; (b) £12,062 (less appropriate deductions for income tax and NI contributions) as three months’ pay in lieu of notice; and (c) the normal £300 plus VAT contribution to the legal expenses of a successful VERS applicant. There was also agreement to pay smaller sums, representing 8.5 days’ unused holiday entitlement, again less income tax and NI, and the net credit balance (amounting to £5,000 or so) on O’Gorman’s University research account.
62. It is further appropriate to note that, as part of the Compromise Agreement, after some to-ing and fro-ing on the subject, O’Gorman agreed to, and did, warrant that as at 29 February 2012, he was “not in possession of any written offer of employment or engagement and he has not received or accepted any offer or does not have any expectation of any offer of employment or of a contract of services or of any consultancy from any person, firm or company.” O’Gorman commenced employment with Heriot-Watt University very shortly after leaving Strathclyde, and – at the very least in relation to the “expectation” element of that warranty – I do not believe on the basis of information provided to the inquiry that it was true when given by him.
63. Consistently with evidence given to the inquiry, the Ross Report records (para. 7.4) that an informal communication, couched as a warning about O’Gorman, was received by the then Head of School at Heriot-Watt when it became apparent that he was probably going to be employed there. Ms Ross records that the communication was referred to a more senior level at Heriot-Watt, but was deemed too vague to prevent his employment there. Neither Ms Ross nor I was able to determine exactly what the communication in question said. I

have formed a view as to the probable identity of the person at Strathclyde University who sent it. If that view is correct, then I consider it likely that the communication contained reference at least to the fact that O’Gorman had latterly been suspended from that University. However, since at least a degree of speculation surrounds these matters, I do not feel able to make any firm finding in fact about them.

Section D - Witness Evidence

64. This section of the Report sets out the burden of the evidence given by those witnesses whose experience or views were particularly pertinent to the subject-matter of the inquiry.

Students Directly Affected by O’Gorman’s Actions

65. Student A was an undergraduate student at Strathclyde and had initially had innocuous dealings with O’Gorman. Subsequently O’Gorman’s behaviour was overly tactile, touching A’s shoulders and legs. It was well-known in his student group that this was how O’Gorman behaved, not just to A, but towards others. O’Gorman had added A on social media and frequently engaged him in conversations about personal (but not sexual) matters. O’Gorman had impressed upon A his power and influence within the University. A common phrase of O’Gorman’s, used when discussing someone who had made a mistake or fallen behind, was that the person “needed an ass-whipping”. On one occasion, when upset about a personal matter, A had been invited to O’Gorman’s house, where the latter had attempted to touch and cuddle him, again not in an overtly sexual way. After an academic setback in 2008, A contacted O’Gorman for advice and was told that he had messed up and needed to be punished, specifically belted. O’Gorman said that he would help

A out of the situation he found himself in, but that first punishment would be needed. O’Gorman came to A’s home, took off his belt, and belted A’s bare buttocks with it harshly and repeatedly. A’s academic problem was subsequently resolved. A made no complaint to the University about what had happened, because (a) he “did not want to rock the boat” (i.e. he felt that he owed O’Gorman for apparently fixing his academic problem); (b) he did not think anything would come of a complaint; and (c) he did not think people would believe him. He contacted the police after O’Gorman’s arrest in 2017 was publicised.

66. Student B had met O’Gorman as an undergraduate, and had been contacted by him on Facebook after the initial meeting. Regular communication followed on Facebook. O’Gorman had become his supervisor, and that led to regular meetings, which featured shoulder rubs and thigh touching, as well as head slaps for perceived shortcomings. There was talk of “ass kicking” or whipping as punishment from time to time. O’Gorman implied that he could control B’s grades and academic future. On one occasion B was late for a meeting with O’Gorman and the latter said that he should be punished by having his bare buttocks belted. When B demurred from that suggestion, O’Gorman took off his belt and struck B’s hands with it. B said nothing about this as he regarded O’Gorman as influential in the University, and did not think that he would be believed. After B graduated, he had met O’Gorman again while undertaking postgraduate study at Heriot-Watt. Similar behaviour (i.e. regular Facebook communication and inappropriate touching) had continued there. B had not complained about that either. He was contacted by police after O’Gorman’s eventual arrest.

67. Student C’s experience was very similar to B’s. As an undergraduate, he had met O’Gorman and been contacted by him on Facebook, with regular

communication on personal matters then following. He had been supervised by O’Gorman, and during meetings had had his shoulders and legs touched. Academic shortcomings resulted in questioning about whether C should be belted, and O’Gorman would during this questioning often grab C’s own trouser belt. C did not think that any complaint he made would be believed. O’Gorman frequently talked of his own importance in the University and suggested that he could get funding for C to continue his studies. O’Gorman suddenly left Strathclyde. A range of rumours as to why circulated in the student body, the general theme of which was his inappropriate behaviour towards male students. C also subsequently undertook postgraduate studies at Heriot-Watt where he dealt with O’Gorman, but by then O’Gorman’s inappropriate behaviour towards him had ceased.

68. Student D had been known to O’Gorman before coming to the University as an undergraduate. Like many students coming into a University for the first time, he had been unaware of just how the institution operated, and O’Gorman had given him to understand that he was very influential and would help him. Academic help had been given, but perceived faults in his work, or failure to meet difficult targets, led to talk of punishment and quickly to the actuality of stripping and being beaten with belt or hand, then to apparent forgiveness and the restarting of the cycle again and again. The abuse happened at D’s home, his parents’ home, and at O’Gorman’s home. D had found himself entirely in O’Gorman’s thrall, working as a research slave for him. D had been lunching with O’Gorman when the latter was summoned by the Vice-Principal to be suspended. O’Gorman had, immediately after his suspension, told D that he was being victimised and that D, as someone known to be close to him, should also be careful. D could see now that he was being manipulated into silence. He felt that Professor Bolton was too close to O’Gorman to have been part of the investigatory team, and that the outcome of the disciplinary process had

been what it was because O’Gorman had proved himself so troublesome that the easiest thing was to get rid of him quietly. D had moved to Heriot-Watt, where he had eventually met someone who had had a very similar experience at O’Gorman’s hands; together, they had decided to denounce him.

69. Student E was a first-year undergraduate when he got a friend request on Facebook from O’Gorman. In subsequent communications O’Gorman would stress his own importance in the University. He would say that he could help E’s academic performance, but that there would have to be “ground rules”. Ultimately he would ask for the disclosure of secrets and talk of things like “arse-whipping”. O’Gorman became his supervisor, and contacted E via Skype. He told E that the ground rules had been broken and that he needed to be punished. He told E to get a belt and whip himself with it while he watched. E declined. He told his parents what was happening, but did not feel that he would be believed should he complain to the University. He felt ashamed, anxious and humiliated, but also that O’Gorman could influence his academic career decisively for good or ill. At meetings in O’Gorman’s office, his thigh would be grabbed and a hand put behind his head to pull him closer. On a further Skype call O’Gorman again told him to belt himself. When he declined, he was told to, and did, stand fully clothed with his back to the camera for several minutes. He could hear O’Gorman making sexual noises while he did so. E again told his parents, and was encouraged to go to the University, but did not feel able to do so. Shortly thereafter, O’Gorman was suspended and contact ended. He felt that O’Gorman’s behaviour was an “open secret” amongst the student body. He had subsequently seen reports of O’Gorman’s arrest and come forward to the police.

70. Student F had known O’Gorman while an undergraduate, and regarded him as overly tactile with male students. O’Gorman had touched him 20 – 30 times

or so in total, and he had once asked him to take his hand off his thigh. He had, infrequently, seen O’Gorman touch female students in a similar way, and had seen him rebuked for it by a female student on one occasion. He did not complain because he felt that O’Gorman was influential in the department and University. After graduating, he had seen O’Gorman dining regularly with students at a restaurant in Glasgow. They had chatted on Facebook and in 2012 O’Gorman had lent him a small sum of money when he was short of cash. Talk on Facebook had become suggestive at the instance of O’Gorman as to how the loan could be treated as repaid, and the expression “arse-whipping” had been used. He had heard various (inaccurate) stories about why O’Gorman had left Strathclyde.

71. Student G had met O’Gorman while a first-year undergraduate and had been contacted by him on Facebook. The conversations had initially been quite proper, but changed to become more personal, intrusive, and sexual in nature. Meetings in O’Gorman’s office resulted in touching and hugging, which were not then perceived by G as overtly sexual. One prolonged hug had been interrupted by the sudden appearance of another student at the door of the office. G formed the impression that the arriving student was not surprised to come upon the situation. He was confused as to whether or not his experience was normal in a University scenario, but did not feel able to raise the matter with family or friends. He felt trapped and without an obvious way to raise the matter with the University that might not impact on his course of studies. He got into serious academic trouble at the end of his first year, which O’Gorman was able to make go away by some unknown means. After O’Gorman left Strathclyde, he continued to be in contact with G. He felt that the University should have been pro-active in seeking out further victims when the Student X complaint was made to it. He would have come forward at that point had he been aware that a complaint of that nature had been made. All he

had in fact heard were rumours, which did not sufficiently encourage him to make his own complaint at that stage.

72. Student H had encountered O’Gorman as an undergraduate. He had been added as a friend of O’Gorman on Facebook and initially the conversations that took place there were work-related and routine. However, after H lost his part-time job he turned to O’Gorman for assistance and their relationship became closer. He began to attend O’Gorman’s office regularly, where O’Gorman would touch his leg in a strange but not obviously sexual way. He tried not to attend meetings with O’Gorman alone. He was aware that O’Gorman was known to have his favourites amongst the student body, and that he was regarded by that body as one such. When he anticipated difficulty with an upcoming exam, he was provided with the questions in advance by O’Gorman, and prepared answers which he read out for O’Gorman to listen to in his office. Some other students, knowing his “favourite” status, would ask him what the exam questions were going to be. H also had a scholarship which he needed certain marks to retain. O’Gorman had said to him on Facebook that he would have to “kick his ass” or “take his money” (i.e. his scholarship) if he did not get those marks. Later, “belt or cane?” was asked by O’Gorman. He narrowly failed to get the mark, and O’Gorman then said that H would have to have a stroke of the belt for each mark by which he was short of the required grade, or else he could do a “private deal”, telling no one, whereby he would stand in a cold shower for a minute for every such mark, a punishment which O’Gorman said he would supervise personally. There was also talk of O’Gorman being “very fond” of H, “looking after” him, and always being ready to give him “hugs”. O’Gorman had said that he had the ability to change any grade that had been given, or even give H a degree “tomorrow” if he chose. H was summoned to O’Gorman’s office, where O’Gorman had prevailed upon him to be beaten with a belt. He had been shocked and humiliated by that experience,

and thereafter ceased to take courses with which O’Gorman was involved, and not long afterwards O’Gorman had been suspended. H had contacted police after a friend had seen press coverage of his arrest.

73. Student I had difficulties with a dissertation supervisor while an undergraduate. He was advised to speak to O’Gorman about the problem. At a meeting with O’Gorman, the discussion had been initially unremarkable, but then O’Gorman moved to the same side of the desk as I and patted his knee. I was left with the impression from the ensuing conversation, albeit no express suggestion of impropriety was made, that help could be made available to him, but that something would be demanded in return. I did not respond to an invitation to a second meeting. His ultimate grades for the year were disappointing, but he was unable to say whether or not that had anything to do with the fact that he had cold-shouldered O’Gorman.

74. Student J was an undergraduate when he was lectured by O’Gorman and found him an engaging character. He had approached O’Gorman for academic advice and had gone to a meeting in his office, where O’Gorman had a chair on castors that he used to move closer to J until their knees were touching. He put his hands on J’s knees and rubbed his thigh. J had felt confused by that behaviour. O’Gorman had then contacted J on social media and had initiated conversations about personal matters. The student body regarded O’Gorman as having his favourites amongst the (male) students, and J came to be regarded as one of them. The common theme amongst the favourites appeared to be that they all needed or wanted something from O’Gorman (or at least had been persuaded that they did). It was not easy as an undergraduate even to consider complaining about someone as apparently powerful and influential as O’Gorman.

75. Student K had been lectured by O’Gorman as an undergraduate and became a favourite, being given additional tutoring and contact outwith the norm. Social media communications had become frequent and slightly risqué in character. Meetings in O’Gorman’s office had involved his hands being placed on K’s thighs, long full-body hugs, the occasional tap on the bottom when leaving, and some (apparently jovial) talk about K needing to be spanked for academic failings. K thought O’Gorman’s behaviour odd and rather embarrassing but not threatening.

76. Student L had encountered certain difficulties with his undergraduate course and had been required to meet O’Gorman to discuss means of resolving them. The situation was stressing him, and he was visibly upset when he attended the meeting, which was held on a one-to-one basis in O’Gorman’s office. O’Gorman was sympathetic, at first in appropriate ways, but had then come to the same side of the desk as L and had put his hand on his knee, moving it up to his inner thigh, then on the back of his neck, and had massaged his back. L felt this was inappropriate and an abuse of the position of power held by O’Gorman, but was more upset by his academic problems than by O’Gorman’s behaviour at the time. The academic difficulties were resolved, but then O’Gorman contacted L on Facebook and the conversation ultimately became more personal and “it became very clear what his motivations were”. L stopped responding and contact ceased. L had at no point heard any rumours about O’Gorman’s conduct in the student community; he had mentioned what had happened to some of his own group of student friends, but none had had similar experiences with O’Gorman or had heard of anyone who had.

77. Student M had come across O’Gorman as an undergraduate in a small class and had been invited to his office to discuss an assignment that he had handed in. The meeting was unremarkable, but then O’Gorman started contacting M

on social media, offering more feedback on the assignment. The conversation turned to bad marks deserving punishment, and talk of belting, resulting in M blocking O’Gorman from further social media contact. He did not want any favours from O’Gorman. Although he did not particularly want to report O’Gorman, it would not have been clear to him at the time how he might do so. He had mentioned what had happened casually to his student peer group, but no one had said that anything similar had happened to them.

78. Student N had been lectured by O’Gorman as an undergraduate and was required on one occasion to pick up a scholarship cheque from his office. He had been warned that O’Gorman would sit very close to him, which he did. N indicated he was in a hurry, but O’Gorman had tried to draw out the conversation. Nothing inappropriate occurred. O’Gorman had been contacting him on Facebook, initially about course choices. O’Gorman then started requesting Skype calls with N, sometimes late in the evening. On the second occasion that N agreed to a Skype call, he was late in handing in an assignment, and O’Gorman turned the talk to punishment for that, suggesting that N should go and stand in the corner of the room with his back to the camera while stripped to his boxer shorts. N terminated the call and ignored O’Gorman’s attempts to contact him on social media for the next couple of weeks, until he stopped. Shortly thereafter O’Gorman was suspended. N had mentioned the Skype call to his girlfriend, who told some of her friends, and reports came back to her that O’Gorman was known for excessive contact with students on social media. After O’Gorman left Strathclyde, rumours circulated as to the circumstances of his departure, but nothing concrete.

79. Student X spoke to being directed by Professor Hillier to O’Gorman in connection with a specific academic problem which had eventuated. O’Gorman was helpful, and after adding him on Facebook talked via that

medium about the problem and how it might be solved. One evening the discussion had changed in nature, with O’Gorman prying for personal information and confessions of wrongdoing, and leading to him saying ultimately that X needed an “ass-whipping” as punishment. X, after discussing matters with his girlfriend as a sort of sense check as to whether what had been said was appropriate, reported the matter to his parents, resulting in O’Gorman ceasing to teach at the University. X continued successfully with his course. He contacted the police after O’Gorman’s arrest in 2017.

80. Student Z first met O’Gorman while an undergraduate. He was invited to O’Gorman’s house in order to sit at a desk to write an essay. O’Gorman also visited him from time to time in his own accommodation. He was frequently in contact with J on social media and the narrative often turned to academic performance and physical punishment or beltings for failings in that context. Once J became a postgraduate, he was subjected to shoulder rubs and to O’Gorman’s hands being placed on J’s knees in private meetings. O’Gorman struck him on the head on one occasion, and may have slapped his bottom once too. Social media conversations had sometimes included talk of “ass kicking”. O’Gorman had told him that he would be fine so long as he had O’Gorman’s support. He considered that O’Gorman had given him good and well-intended advice and assistance and was not unidimensional in character - “he did obviously have some really good values and morals but it was just wrapped up in some very poor behaviour”. He felt that, although O’Gorman was manipulative, that could be a hallmark of academic life and he did not consider that he had been manipulated into doing anything he didn’t want to do. Some students and staff members had seen him as a bully, and he was perceived as powerful at University level because of his position on Senate. The postgraduate students in particular felt that he could exercise a great deal of

influence, one way or another, on their careers within and without the University.

81. I record here that the inquiry was made aware of the existence of some other students who seemed likely also to have been directly affected by O’Gorman’s behaviour, but who for a variety of reasons did not wish to give evidence to the inquiry in any format. The accounts set out above do, however, represent a very substantial proportion (at least 85%) of what I consider to be the whole possible evidence falling into this category.

Other Students

82. Student 1 had attended undergraduate lectures given by O’Gorman. She had heard a lot of gossip about male students being taken for dinner and drinks by him, but no direct accounts from any such student. She considered more generally that, although there were counselling and support services available to students, the appropriate mechanism for raising complaints about staff was unclear.

83. Student 2 met O’Gorman at the start of his fourth year as an undergraduate. He had had a minor academic issue which O’Gorman was able to fix for him. A relationship developed whereby he could obtain O’Gorman’s input on draft coursework and essays before they were formally submitted. He trusted O’Gorman, in part because he believed him to hold a high position in the University hierarchy. He had been invited out to dinner with O’Gorman and a few other students one evening, but nothing untoward had occurred. O’Gorman had put his hand on his knee in his office on one occasion, but he saw that as motivational rather than anything else. He was in touch with O’Gorman on Skype, but again nothing unusual had been said or done.

84. Student 3 had been lectured as an undergraduate by O’Gorman. Although she did not witness anything specific, she had heard rumours that he had approached male students and offered higher grades for sexual favours. He was generally perceived in the student body as creepy.
85. Student 4 had also been lectured as an undergraduate by O’Gorman. She initially found him friendly, but by 2013 she had heard from student H of his experiences and had in consequence altered her views of O’Gorman. She had not herself seen anything inappropriate, nor had she heard any particular rumours about O’Gorman, although she was aware of a general feeling amongst students that he was creepy.
86. Student 5 had been an undergraduate student when he dealt with O’Gorman. He had found his behaviour in private meetings extremely inappropriate and had told him so, resulting in the cessation of such behaviour. O’Gorman had hinted that certain favours would result in academic benefits, but the idea of him assaulting students had never been in 5’s contemplation. O’Gorman had evinced no interest in female students.
87. Student 6 had been lectured by O’Gorman as an undergraduate. He came across as eccentric and maybe a bit creepy. She was aware of rumours circulating in the student body that he was known for touching male students’ legs, and had threatened to use a belt on the bottom of one such student.
88. I observe at this stage that many more accounts from students who had experienced O’Gorman than are set out above were received by the inquiry. Those further accounts are either already represented by the content of those

recounted above, or else narrate that their authors had no material concerns or observations to make about O’Gorman.

O’Gorman

89. I record that O’Gorman himself declined to engage with the inquiry, despite the opportunity for him to do so having been afforded to him.

Present or Former University Staff

90. A senior colleague of O’Gorman had supervised certain postgraduate students along with him. She noticed nothing unusual about O’Gorman’s relationship with those students, nor did the students themselves suggest that anything was amiss. When O’Gorman was suspended, she was told merely that the matter related to inappropriate communications with a student on Facebook, nothing further. She was in due course informed that O’Gorman’s suspension had been lifted, and assumed that the matter had been resolved in one way or another. O’Gorman did not, however, return to work, and shortly afterwards she was asked if she would be a referee for a proposed move by him to Heriot-Watt. She agreed to provide an academic reference and did so on 15 February 2012. The reference was provided on a “colleague to colleague” basis, not as an employer or line manager reference. She did not inform the University authorities of the provision of the reference, seeing no need to do so. She became aware of O’Gorman’s activities only years later when reading of them in the newspapers, and was shocked by what she read. The reference she provided was much more supportive of O’Gorman than that which the University had provided, referring to him as a “first class researcher and educator” and a “leading international scholar” in his field, who “interacts well” with his colleagues. It talked of his warm personality, his excellent

interpersonal skills and his immense modesty. I observe for the avoidance of doubt that this was one of the two references actually used by O’Gorman in seeking employment at Heriot-Watt.

91. A former senior colleague of O’Gorman’s formed the impression – he believed in common with others – that he would “suck up” to those in a position of power who allowed him to. He was fast-tracked because of that and because he was meeting the metric-based targets (such as for publications) that the Department was looking for. He had subsequently become aware that O’Gorman had been saying things about his own competence, and those of other senior members of staff with whom he did not get on, behind their backs. These remarks had been brought to the attention of the Department managers, but nothing had been done about them. He had observed O’Gorman placing his hand on the shoulder of a postgraduate student on one occasion, and had organised a meeting of the research students which involved enquiring in general terms whether there were any concerns amongst the group. Shortly thereafter O’Gorman had been suspended, but the reasons for that having occurred were never made known.

92. An early academic acquaintance of O’Gorman at Strathclyde formed the view that his approach to senior colleagues was to “court, ingratiate, use and then cast aside and move on to the next person”, an approach which she and others had experienced directly. He identified those who could be useful to him and “groomed” them for what they might be worth to him, then dropped them when their usefulness expired. There were innuendos about the “posse” of male students with which he liked to surround himself, and a feeling that something was unusual about the situation, but nothing more.

93. The member of staff who had participated in both investigations of O’Gorman saw him as a dominant character in the Department, and as investing a good deal of time in manipulating others, not only students, but colleagues and superiors. He made himself useful to the University management by being willing to do rather dull administrative jobs that others would try their best to avoid. He would regularly talk down colleagues behind their backs in crude and cruel ways. The staff member was aware of male postgraduate students being sent social media messages by O’Gorman relating to “ass-whipping” and was shocked by it. He was aware of male postgraduate students being touched on their shoulders and chests as they sat at their desks, resenting it, but being too afraid of O’Gorman’s influence in the University to do anything about it. O’Gorman had once hit him on the bottom when he was standing at a printer, which left him feeling humiliated but powerless. He had mentioned his concerns about O’Gorman’s behaviour towards the postgraduate students to a senior colleague, which had resulted in the events of May/June 2011. He felt that that episode had resulted in O’Gorman moderating his physical interaction with the students, but otherwise had not achieved much. He was disappointed that the incident (which he had not witnessed) of a student being hit on the head had not been escalated by the University to the police (Unbeknown to him, the victim of that assault, Student Z, had refused to complain or make a statement to the investigation about it.) He had been informed by Ms Heidinger that O’Gorman was leaving the University, without further explanation. He believed that Heriot-Watt had been told informally at the highest level about the circumstances in which O’Gorman had left Strathclyde, but believed that O’Gorman had appeared too good a prospect for Heriot-Watt to turn down.

94. A colleague who had worked closely with O’Gorman throughout his time at Strathclyde considered that he had manipulated upwards and bullied

downwards. He presented himself as very well-connected and in the know on University business. He had witnessed O’Gorman putting his arms round the shoulders of male students, and had heard unspecific gossip, but nothing more. He was not entirely surprised when O’Gorman was suspended, and regarded him as having manipulated the events of the disciplinary process to his own advantage too. He believed that Heriot-Watt had been told before they engaged O’Gorman what he was suspected of having done at Strathclyde. By the time the matter had come to the attention of the police, he had become aware of what O’Gorman had been doing at Heriot-Watt also.

95. Another staff member who had worked alongside O’Gorman during his whole period at Strathclyde had observed him networking and courting those in authority from the start. Other staff members were used and dropped when they had outlived their usefulness. She was aware he had his favourites amongst students, but neither saw nor suspected anything untoward in a sexual sense in those relationships, and would certainly have taken action had she done so. When O’Gorman left Strathclyde, the rumours she had heard concerned him coaching his favourites for exams, and providing exam answers to them.

96. A former staff member regarded O’Gorman as bullying and manipulative towards colleagues, in a way tolerated by senior Faculty members in the Business School. O’Gorman’s *modus operandi* in this context was to ingratiate himself, use, and then drop if not destroy others. He made himself indispensable to senior colleagues. She had resigned her position because she no longer wished to work or be in what she regarded as a toxic environment. O’Gorman had had “suspicious relationships” with male students, concentrating on those who were failing. Because of her knowledge of the

individuals concerned, she believed that Heriot-Watt would have been informally informed of the circumstances of his leaving Strathclyde.

97. The UCU representative who accompanied O’Gorman to the initial investigatory meetings regarding the Student X complaint explained that the Union encouraged University staff not to contact students via social media, but was aware that some did. Having viewed the messages sent to Student X, he was of the view that they were inappropriate, but that the matter could properly be dealt with by an apology from O’Gorman, a warning, and some training in proper social media use. He considered that the messages did not compromise academic integrity, in that no promises of advantage had been made in return for anything, that there did not appear to be any intention to put the talk about punishment into practice, and that it was a conversation which had taken place over the course of an evening, a time of day when people were sometimes apt for one reason or another to say silly things that they did not really mean.

98. A retired member of staff considered that O’Gorman had from the outset of his involvement with Strathclyde pushed himself forward as someone who was academically and socially superior to most staff members. He networked relentlessly around the University, and disparaged those of whom he had no need.

99. A former senior member of staff in Strathclyde Business School was not aware of O’Gorman while the staff member was working at Strathclyde, but had got to know him later through some research collaboration they had undertaken together, and occasional meetings at academic presentations. He had been asked to provide, and had provided, an academic reference for O’Gorman to Heriot-Watt (the second reference actually used by O’Gorman in that

connection). O’Gorman had told him that things had “turned sour” at Strathclyde, that he had received a “large” payment from the University, and that a non-disclosure agreement had been signed which prevented further details being talked about. He was not aware of any of the background to O’Gorman’s leaving Strathclyde and was shocked when details of his conduct later emerged. It may be observed that certain other members of staff at Strathclyde were under the impression that O’Gorman’s relationship with this former member of staff was rather closer in nature than the latter was prepared to acknowledge, but given O’Gorman’s established tendency to overstate the closeness of his relationships with persons he considered important, it is not possible to form an objective and accurate view on this matter.

100. A former senior official in the University had been a family friend of O’Gorman and had provided a reference for him when he was first appointed a lecturer in the University. He was not aware of anything giving cause for concern in O’Gorman’s life prior to that point. O’Gorman had kept in touch sporadically while working at Strathclyde until about 2009. He was surprised to hear of O’Gorman’s move to Heriot-Watt, but was entirely unaware of the circumstances of that move. The subsequent denouement had likewise come as a complete shock to him.

101. An administration manager in the Strathclyde Business School had worked with O’Gorman. He was constantly referring to his relationships with senior management, the Senate and the Principal. He would manage such of his colleagues as let him do it. He was dismissive of colleagues he didn’t like, implying in conversation that they wouldn’t last long in the University. He had slapped one male colleague on the bottom. She had noticed that he tended to surround himself with a group of male students. One regularly picked him up and drove him home at the end of late evening events. She had heard the

postgraduate students talking about O’Gorman touching or massaging their shoulders and generally making them uncomfortable, but he had so much apparent power that they did not want to raise the issue formally. She had been interviewed by those investigating the Student X complaint and had been told when O’Gorman left the University that he had stipulated she was not to try to contact him, which she had in any event no intention of doing.

102. A student lifecycle manager described her role during O’Gorman’s presence at Strathclyde as having been the first point of contact for students in the Business School experiencing any difficulties of whatever nature, in order to steer them towards the people best able to deal with the particular problem. She had referred one fourth-year male undergraduate to O’Gorman, who had, in her presence, put his hands round the student’s shoulders. She felt that that had been inappropriate, and resolved never to refer students to O’Gorman for assistance again. O’Gorman had attempted to persuade her to assist in the admission to the University as students of two male members of a scout group with which he was associated and who did not have the requisite qualifications. She had refused. She was aware of O’Gorman having openly criticised the competence of colleagues (including herself) and the utility of parts of the curriculum, making it difficult to persuade students to engage with those parts. O’Gorman was full of his own importance, as by saying that he was off to meet the Principal when in fact he was going to a Senate meeting at which the Principal and forty or fifty other people would be present. She had heard students talking about social media chat groups in which O’Gorman was participating. Some said that he was creepy and strange. She was informed by office gossip that O’Gorman had left because of inappropriate contact with a student on social media.

103. The University Principal, Sir Jim McDonald, was vaguely aware of O’Gorman through his membership of Senate and Court. He had been informed on returning to the University from a business trip in October 2011 that O’Gorman had been suspended by the Vice-Principal in his absence because of the Student X complaint, the gist of which he was informed of. He had been updated at one point about the progress of the investigation, but had no recollection of being told at the time that there was any problem arising out of Professor Bolton’s actions. After O’Gorman’s response to the investigatory report had been received, the views of a group composed of the Principal, Vice-Principal, COO, CFO, Ms Heidinger and the Dean of the Business School had been considered. Some members of that group were closer to the facts, or had greater knowledge of O’Gorman, than others. The consensus was that there had been a single complaint, a lack of evidence of other misconduct, and an opportunity for O’Gorman to depart the University under the early severance scheme. Had he thought that there was anything truly sinister, as opposed to merely ill-conceived, about O’Gorman’s behaviour, then matters would have been escalated, to the police if need be, but there was nothing pointing in that direction. O’Gorman had shown himself, through the actions of his solicitors on his behalf, to be vexatious and aggressive to a degree that he would no longer be welcome at the University. He understood that MacRoberts had decided that O’Gorman did qualify for VERS, but in any event it provided a convenient mechanism for his inevitable exit. A formal record of the disciplinary process and its outcome was left to rest on O’Gorman’s file.
104. The former Vice-Principal of the University, Kenneth Millar, had worked with O’Gorman through the periods of their membership of Senate and Court, and regarded him as a constructive and helpful member of those bodies.

He recalled having made the decision to suspend O’Gorman pending investigation when the allegations concerning his inappropriate Facebook conversation with Student X had come to light. He wished (because of the matters which the investigation had thrown up as to his behaviour) to see O’Gorman leave the University’s employment, but was concerned that the way in which the investigation had been carried out (i.e. the issue of Professor Bolton’s private conversations with O’Gorman) might cause problems were the matter to proceed to an Employment Tribunal, and thus wished to find a way to secure O’Gorman’s exit in a way that would not potentially engage a legal process in which the University might encounter difficulties that could leave it having to continue to employ him. He was of the view that O’Gorman did not actually qualify for VERS, since his post was not truly redundant, but was prepared to see that used as the mechanism for his exit given that it would be quick and consensual.

105. The former Chief Operating Officer of the University, Hugh Hall, had no real recollection of events (although he had been part of the management group involved in discussing the terms of O’Gorman’s exit from the University) and considered that the decisions as to the terms of that exit would have been made by Ms Heidinger and the University Vice-Principal.

106. The former Chief Financial Officer of the University, David Coyle, recalled being informed by the Director of HR that O’Gorman had been suspended pending a disciplinary investigation into allegations that he had made inappropriate comments to students. He did not recall any subsequent involvement in anything concerning O’Gorman (although the documentary evidence shows that he did have some limited input into the discussion of the terms of O’Gorman’s departure).

107. The then Dean of the Business School, Professor Susan Hart, had become more aware of O’Gorman when he became an Associate Dean in the School, reporting to the Vice-Dean, Professor Hillier. She regarded him as hard-working and talented, and a good team player. She was aware of the events of June 2011, and was immediately informed when the Student X complaint materialised. Students concerned about O’Gorman’s behaviour could have complained to their course co-ordinator, to Professor Bolton as his Head of Department, or to Professor Hillier as Vice-Dean. She had not been content that the investigation into the Student X complaint had involved Professor Bolton, and would have preferred an investigation not involving anyone from the Business School, but was informed that the Head of Department was the appropriate person to involve in accordance with the University’s HR policy at the time. She had become aware that O’Gorman was interested in exiting via VERS, and that the HR department supported that. She had adjusted the terms of a proposed reference for O’Gorman, and was unaware of any other reference being requested from or provided by Strathclyde University. She had heard informally that O’Gorman was going to Heriot-Watt. She was not aware of any allegations being made against O’Gorman other than those which had been the subject of the disciplinary processes.

108. Professor David Hillier, Vice-Dean of the Business School at the relevant time, did not know O’Gorman particularly well and had previously heard nothing said about him regarding his relationship with students. He knew the father of Student X socially and from the business world, and was approached by him in connection with the messages O’Gorman had sent to Student X. Professor Hillier was shocked by the content of those messages, especially the references to “ass whipping”. He had discussed with Student X’s father the prospect of referring the matter directly to the police, but it was agreed to deal with the matter internally at the University, at least initially. (All the details

given by Professor Hillier concerning his contact with Student X's father were confirmed independently by the latter.) Professor Hillier had then referred the matter to HR and had personally escorted O'Gorman directly off the University premises after the meeting at which he was suspended.

109. Sandra Heidinger, HR Director at the University at the time in question, recalled having noticed that O'Gorman, while still a Graduate Teaching Assistant (i.e. a person undertaking limited teaching duties while pursuing Ph.D. studies) was undertaking significant teaching responsibilities, including for the University's Scottish Hotel School in Iran. She was concerned that that was happening without the normal recruitment process, including its safeguards, having been gone through. She recalled that, in response to her concerns, a fixed-term lecturer post was advertised which went through the standard recruitment procedures and to which O'Gorman was appointed. O'Gorman's rise through the ranks had then been rapid and remarkable. He had joined the University's Senate and Court, where he had been helpful to the University's senior management in re-organisation of the Business School functions. She recalled him being adept at "courting" people to engage with him on a social as well as professional level. She recalled the events of the summer of 2011 and the events of the investigation following the Student X complaint. Following the conclusion of the investigation, the decision was taken (led by the Principal, but to which she and other senior members of the management team had contributed) that O'Gorman should be subject to disciplinary proceedings led by Professor Hart as the Dean of the Business School, and which had as their potential outcome a formal warning, rather than to proceedings led by the COO, which could have led to his dismissal. She considered that VERS was capable of properly comprehending O'Gorman's situation upon conclusion of the disciplinary proceedings, but not before. Respective solicitors then began a negotiation which caused O'Gorman to

appreciate that he was unlikely to be welcomed back to the University, leading to him being accepted for VERS with a note going on his file that the University believed he had a case to answer, but had not completed the disciplinary process because he was leaving its employ. She was under the impression that, once it emerged that O’Gorman was to be employed by Heriot-Watt, senior individuals there had been told informally exactly what the circumstances of his leaving Strathclyde had been, and had pronounced themselves unworried by it, but she was not personally involved in any such communications.

110. Claire Williamson, former HR Manager at the University, recalled being asked to support academic leaders to conduct a thorough, reasonable and impartial investigation into the Student X complaint. The investigation was complex, sensitive and challenging, but ultimately she and Professor Littlejohn had produced a report concluding that O’Gorman had a case to answer in respect of several instances of potential professional misconduct. She had presented that report with Professor Littlejohn in December 2011 and both had attended a meeting of a committee of senior University officials to speak to the report and respond to any questions which might arise. She was not informed of what decision the committee had then made.

111. Professor David Littlejohn was an Associate Deputy Principal for Research and Knowledge Exchange when he was asked to get involved in the investigation into O’Gorman. He had been asked to support Ms Williamson, provide his own assessment of the material gathered to that point, and suggest what else ought to be done. He was aware of O’Gorman by sight from Senate and at graduations, but not otherwise. He understood that he was being asked to get involved as an independent senior person at some remove from the department where the complaint had arisen because of the serious nature of the material that had come to light, not specifically because Professor Bolton

was perceived not to be in a position to continue as an investigator. He had gone through the existing investigatory materials and noted various comments and queries. He met with Ms Williamson and some further enquiries were initiated. He had interviewed the staff member who had provided information in May/June, but was perceived to be too senior a figure himself to interview students further. He was aware that students might be reluctant to provide material criticising O’Gorman because of his perceived position of power and influence in the University. It was apparent to him that O’Gorman was someone who was going beyond the bounds of acceptability on various levels. He and Ms Williamson finalised their report and it was presented to a committee which included the Principal, Vice-Principal, Ms Heidinger, the COO and Professor Hart. He felt that the report painted a picture of a personality which wasn’t going to “turn off” on its own. He expected that the matter would be progressed to a disciplinary hearing but was not informed (and had no expectation of being informed) about what the committee decided to do. He became aware in due course that O’Gorman had left the University and appeared in a promoted post elsewhere, but otherwise heard nothing more until he read in the press about the charges and trial.

Section E – Terms of Reference and my Conclusions

112. In this section I set out, under reference to the Terms of Reference of the inquiry and the account of the facts which I have already set out, my views on the various matters in respect of which concern has been raised.

1. *The Recruitment and Employment of Professor Kevin O’Gorman*

A review of the recruitment of Professor Kevin O’Gorman and the circumstances under which he was employed by the University. In particular:

(a) The circumstances surrounding the recruitment of Professor O’Gorman and the role(s) in which he was employed to include an assessment of where he worked, with whom he worked, details of the students or range of students to whom he was exposed and/or had contact with, and details of any and all personal reviews and/or performance assessments which were undertaken throughout his employment at the University;

113. The circumstances of O’Gorman’s initial recruitment are set out in Section C above, and in particular at paragraph 12. He worked in the Scottish Hotel School, including in the Iran programme which it operated, then in the Department of Hospitality and Tourism and its later iterations within the Strathclyde Business School. He obtained the career progressions and promotion set out in paragraphs 14 – 16, after being subject to the personal reviews and performance assessments set out in those paragraphs. He lectured undergraduates, supervised some fourth-year undergraduates in their dissertations, and had close connections with most of the postgraduates in the School, especially those undertaking doctoral research.

(b) In relation to the employment of Professor O’Gorman, whether the University conducted pre-employment background checks in a manner which was inappropriate or inconsistent with accepted practice at the time;

114. As noted in paragraph 12 within Section C, no pre-employment background checks were undertaken in connection with O’Gorman’s recruitment as a Graduate Teaching Assistant. While that may have been a

reasonable course of action for most GTA recruitments (because of the relatively limited degree of contact with students normally inherent in the post), it appears that O’Gorman was recruited with a view to his undertaking a greater degree of teaching responsibility than would otherwise have been the norm, or at least that that became the fact of the matter. When this was picked up by Ms. Heidinger (see para. 109), the fixed-term lecturer post to which he was appointed was in effect created as a post for which he could apply and which he was expected to get. The standard recruitment procedures for a lecturer post, including an Enhanced Disclosure Scotland Check, were undertaken at that stage.

(c) To carry out an assessment of Professor O’Gorman’s personnel file, Human Resources file and any and all other information and documentation available with a view to determining whether the decision to employ Professor O’Gorman was inappropriate and/or contrary to the information available to the decision-makers at the time;

115. The files in question do not disclose any matter that would call into question the propriety or reasonableness of the decision to employ O’Gorman. It is true that his route to academia was not a conventional one, he having spent some time previously working in the hospitality industry and, in particular, in training for the Roman Catholic priesthood. Some of those who gave evidence to the inquiry had heard rumours about the reasons for his having left that training and also having ceased a former association with the Scout movement, but there was nothing in the material before the inquiry which substantiated any such rumours. The Archdiocese of Glasgow responded to questions asked of it quickly and helpfully, and made no suggestion that O’Gorman’s association with it had given rise to any cause for concern. The disclosure check eventually carried out on O’Gorman was passed. I therefore conclude not only

that there was no matter known to the University which ought to have caused it to pause before employing O’Gorman, but also that had the disclosure check on him been carried out earlier than it was, no such material would have been brought to light.

(d) To identify the current best practice for the appropriate handling of pre-employment checks of prospective staff members at the University and in light of the findings reached in respect of (b) and (c) above, make any recommendations deemed appropriate for the future handling of pre-employment checks;

116. I consider that best practice (including current best practice) was followed in relation to the recruitment of O’Gorman save in two respects. Firstly, he was accorded, in his position as a Graduate Teaching Assistant, a degree of access to students without any pre-employment checks having been carried out, albeit without any of the apparent power or influence which he was later able to exploit. Secondly, he was recruited to his first lecturer post in circumstances where that post was in effect created for him to take, although there was at least one other person who applied for it. Although there may be circumstances in which a post is properly created with one particular person in mind, or where a post is filled without its availability being made known to a wider pool of persons suitable for it, such an exercise inevitably risks the appointment of a sub-optimal candidate.

117. I accordingly recommend that full pre-employment checks, including full disclosure checks, are undertaken and passed in any case where it is proposed to appoint any person to an academic post in the University in circumstances where that post does or may involve more than a *de minimis* connection with students.

118. I further recommend that in any case where it is proposed to appoint any person to an academic post in the University without there having been a competitive recruitment process (that is to say, a process which has not been advertised within and outwith the University, or where only one candidate has applied for the post), the fact of that proposed appointment having been the result of such a process is notified to the University HR department along with a brief explanation of the circumstances, that the proposed appointment does not proceed without the HR department being satisfied by that explanation, and that a record of the fact that the appointment was the result of such a process and the explanation therefor be recorded in the personnel file of the person appointed and in any other records of the University pertaining specifically to the post.

(e) To carry out an assessment of Professor O’Gorman’s employment history within the University to determine whether decisions made regarding his retention, promotion and contract extension were inappropriate and/or contrary to the information available to the decision-makers at the time;

119. The basis for the retention, promotion and contract extension decisions taken in relation to O’Gorman was recorded in the results of the various personal reviews and performance assessments already mentioned. While I acknowledge that strong views were expressed to the inquiry as to O’Gorman’s facility in influencing malignly those with authority over him, and to use the work of others so as to boost, without acknowledgment, his own apparent output, I am unable to conclude that the results of those reviews and assessments was affected by any such considerations. The reasons given for his positive assessments are stated at length in reports made by several successive Heads of Department and neither I nor, I think, anyone else, is now in a position to seek to look behind them. I therefore cannot conclude that any

retention, promotion or contract extension decision made in relation to O’Gorman was inappropriate or contrary to the information available to the decision-makers at the time.

(f) To identify the current best practice for appropriate decision-making in relation to existing staff members at the University, to include decisions relating to retention, promotion and contract extension, and in light of the findings reached in respect of (e) above, make any recommendations deemed appropriate for future decision-making in respect of existing staff members; and

120. In my view, current best practice is, at least in the vast majority of cases, being followed in relation to such decisions by the University, and accordingly I have no recommendations to make in this connection.

(g) Compare and contrast the position at the University with that of other Scottish Universities of a similar standing and ranking, both contemporaneously and at the time of the Report, in respect of pre-employment checks of staff and decision-making regarding retention, promotion and contract extension, and make any recommendations deemed appropriate for the future.

121. I do not consider that the practice at other comparable universities in Scotland differed then or differs now materially in substance from the corresponding practice at the University of Strathclyde, although historical issues relating to certain posts and local idiosyncrasy may have led to immaterial differences in form. I am confident that the University of Strathclyde’s practices suffer from no material deficiency when viewed comparatively in that manner, and accordingly I have no recommendations to make in this regard.

2. The Complaint by Student X in October 2011

A review of the manner in which this complaint was investigated, handled and concluded. In particular:

(a) To examine the origins and history of the complaint which initiated the disciplinary process in 2011 including the details of how the complaint was made, by whom and to whom, how it was handled, and to identify the procedures and protocols for complaint investigation and handling which were in place at that time;

122. The origins and history of the Student X complaint, and how it was handled, are set out in detail in paragraphs 27 – 54 in Section C above. The internal regulatory framework (and I observe that I think “framework” is the appropriate word to describe the applicable regulations at the time) was contained in University Statute XXIII, Part III and Ordinance 17. That framework did not set down detailed procedures for complaint investigation and handling; it permitted “minor faults” to be dealt with informally, and in other cases permitted the Principal or his duly-authorized substitute to “institute such investigations or enquiries (if any) as appear to be necessary”. Other aspects of the framework appeared (though there was ample room for construction) to relate to the stage after any investigation which had been ordered had reported back to the Principal.

(b) To determine whether the University followed and complied with the procedures and protocols for complaint investigation and handling which were in place at the time;

123. Given the lack of any very prescriptive provisions as to complaint investigation and handling in the relevant Statute and Ordinance, it would

have been difficult for the University to have acted outwith those provisions, and it did not.

(c) In relation to the investigation and handling of the complaint from the initial reporting up to and including the point of conclusion, whether the University conducted the investigation in a manner which was inappropriate or inconsistent with accepted practice at the time, including an in-depth assessment of the nature and extent of the enquiries carried out;

124. The nature and extent of the enquiries carried out are set out in detail in paragraphs 30 to 51 of Section C above. O’Gorman criticised those enquiries as having gone too far, in particular in that Professor Bolton had returned to seek further input from those students who had expressed concerns in May and June 2011 rather than concentrating exclusively on what had been complained about by Student X. I do not consider that that criticism is remotely well-founded. At the time of the Student X complaint, it had been made apparent to O’Gorman that there would in due course be a check that he was complying with the assurances he had given in June. It would have been entirely remiss of the investigation into the Student X complaint not to make that check, which was in any event due to be carried out at around the same time. Having made it, it would have been impossible for the investigatory team to deem the feedback received irrelevant to the question of the propriety of O’Gorman’s behaviour as an employee of the University which the Student X complaint had raised for investigation.

125. An alternative possible criticism of the investigation is that it did not go far enough, in particular that little or no attempt was made to enquire amongst the undergraduate body of students in contact with O’Gorman whether they

entertained any concerns about his behaviour, and that the IT examination of his email and social media accounts could not reasonably have been expected to bear fruit after he had been given more than enough time to purge those accounts of any compromising content. While I understand those possible criticisms, I also have to bear in mind that the intelligence which had come into existence as a result of the events of May/June concerned those postgraduate students with whom O’Gorman was in close and routine contact, not undergraduates with whom his interactions were typically more public and sporadic. While Student X was an undergraduate, he was an undergraduate in a specific situation not obviously pertinent to others. It is only with the benefit of hindsight that it is now known that the worst of O’Gorman’s behaviour was directed at undergraduates. Further, it would have been difficult in the extreme to make effective enquiries with the undergraduate body against the background of O’Gorman having suddenly disappeared from the University, and in a manner that was fair to him, without starting a rumour mill that would rapidly have started consuming its own product. In the result, whether any undergraduate who had been abused by O’Gorman would indeed have come forward in response to any enquiries that could properly have been made is a question that cannot now be answered. It was an opportunity which was missed by the investigation, but not one for which I think those in charge can justly be criticised. As to the examination of the social media accounts, the ultimate fact of the matter is that the University had no power to examine those accounts other than with the consent of O’Gorman and at a time of his choosing.

126. As to the manner in which the investigation was carried out, it was an exercise committed initially to Ms Williamson and Professor Bolton, under the ultimate supervision of Ms Heidinger. I have no hesitation in finding that the criticisms which were made by O’Gorman of Ms Williamson (in essence, that

Professor Bolton had supposedly said to him that Ms Williamson “had it in for him” for some unknown reason) were without foundation. Ms Williamson was an independent, thorough and careful HR professional who manifested all of those qualities in her participation in the investigation. I believe that Professor Bolton probably said to O’Gorman that Ms Williamson was not as familiar as she was with the ways of academics, but that no particular criticism was intended thereby, and that nothing further adverse to Ms Williamson was actually said. I can, similarly, see no basis for rational criticism of any decision or action taken by Ms Heidinger at any stage in proceedings.

127. As to Professor Bolton herself, her appointment as part of the investigatory team was not sought by her and was in accordance with the procedures which were in use at the University at the time, but which have since been altered so as to ensure that an investigation now is conducted without even the possibility of personal involvement with the persons or events under investigation being used as a ground of criticism of the process. Professor Bolton certainly acted somewhat imprudently, and against Ms Williamson’s advice, when she spoke to O’Gorman informally outwith the investigatory process in the terms in which she did, but I do not believe that she did so other than in the hope and expectation that she could make some useful contribution towards as amicable a resolution of the situation as was possible in the circumstances. Her insight into what might actually be going on (recorded at paragraph 36 in Section C above) can be seen with the benefit of hindsight to have been worthy of greater attention than it seems in fact to have received. I also believe that her involvement resulted in the postgraduate students providing more information to the investigation than they were likely to have provided to an enquiry being made by a stranger. Further, I reject O’Gorman’s suggestion that the investigation was or became a witch-hunt carried out by Professor Bolton for oblique reasons. Rather, that suggestion

was part of the aggressive counterattack mounted by O’Gorman when it became clear that the investigation was, from his point of view, coming perilously close to uncovering the whole truth of his behaviour towards students. On the whole, then, I consider Professor Bolton’s involvement to have made a net positive contribution to the investigation of O’Gorman, and that any criticism of her motivations for doing what she did has no basis in fact.

128. Professor Littlejohn’s introduction to the investigation in place of Professor Bolton seems to me to have been the correct response by the University (and in particular by Ms Heidinger) when O’Gorman started making allegations about Professor Bolton’s independence and integrity. Professor Littlejohn’s contribution to the investigation was exactly what one would expect from a person with his extensive experience of University life; it was objective, reasoned and effective, and ensured that the report of the investigation shared those characteristics.

(d) To determine which procedures and policies were in place at the time to govern the formal disciplinary process after the conclusion of the investigation of the complaint by the University and to ascertain whether the University followed and complied with the disciplinary process in place at the time;

129. I have already identified the disciplinary framework which was in place at the relevant time. In essence, upon receipt of the report of the investigation, the Principal could have decided to take no further action, or, if minded to take further action, was required to provide O’Gorman with an opportunity to comment on the report. Thereafter, a decision was required from the Principal as to whether to set in motion a disciplinary process that could have led to O’Gorman’s dismissal, or alternatively to commence a process that could lead to a warning of one of various degrees of severity. In the present case, the

Principal decided upon receipt of the investigatory report to take further action, and invited and received O’Gorman’s comments on the report. He then (with the advice and concurrence of the other senior members of the University staff mentioned above) decided that the matter should proceed towards a disciplinary process that would not lead to dismissal, but rather could result in a written warning. All of that was in complete compliance with the relevant disciplinary processes in force at the time.

(e) Whether there was any aspect of the outcome of the disciplinary process which was inappropriate and/or contrary to the findings of the investigation and/or the information available at the time;

130. The disciplinary process, as noted above, proceeded to the stage where the decision was made to institute against O’Gorman proceedings which could lead only to a warning, rather than to his dismissal. I appreciate that there will be those who will consider that that decision was wrong, and that the allegations against O’Gorman ought to have been treated as much more serious than was apparently the case. However, one has to bear in mind that what ultimately was presented to the Principal for that decision to be made was an amalgam of three things.

131. Firstly, there was the Student X complaint itself. While I have not reproduced or given a detailed account of the Facebook conversation at the heart of the Student X complaint, so as to avoid the risk of features of that conversation being used to identify Student X, an entirely plausible description of that fairly lengthy conversation as whole (and that which O’Gorman was claiming was the accurate description) is that it was an expression of care and concern by O’Gorman towards Student X and the situation in which he found

himself, which gave rise to questions only because (a) it was taking place in an inappropriate forum (a private social media messaging application, as opposed, for example, to a professional email account capable of being monitored or audited by the University) and (b) on a couple of occasions used entirely inappropriate language. No one supposed at the time that that language was anything other than figurative. No one was aware that, had the conversation continued over time, the figurative might well have become literal.

132. Secondly, the Principal had before him allegations of behaviour towards students on the part of O’Gorman which, although certainly objectionable, was capable of being regarded as falling towards the lower end of a scale of seriousness, and which was not obviously sexual in nature. It is important to recall that Student Y, who had given the most detailed and concerning account of O’Gorman’s behaviour available to the investigation, could not be counted upon to stand behind his statement. There would have been little point in proceeding to a disciplinary process on allegations of only moderate seriousness which depended on the highly uncertain co-operation of a single individual. Again, O’Gorman was claiming in detail, and not in an entirely incredible way, that his actions towards students which the investigation had brought to light had been misinterpreted and were essentially innocuous. Ascertaining the truth would have involved an exercise in nuance and impression which probably would to some extent in its outcome have moderated the severity of what was being said against him in this context.

133. Thirdly, the Principal had accounts of O’Gorman’s behaviour in a wider context which made it tolerably clear that he would be a difficult person to accommodate in an academic department which was to remain happy and functional. O’Gorman’s response to the investigation report, which was in

large measure directed at making allegations about others which could at best constitute only an oblique defence against the allegations made about him, had in effect demonstrated that point conclusively. I consider that the decision to send O’Gorman down the path towards a written warning was combined with a tacit intention to make it quite clear to him one way or another that his days in the sun at Strathclyde were over. Since he was a man who could only thrive in the sun, that amounted to seeing him leave the University in early course whatever the outcome of the disciplinary process might be – which is exactly what happened.

134. Overall, I find it difficult to hold that the decision to send O’Gorman into a process which could only have resulted in a written warning, as opposed to dismissal, was one which was clearly wrong. Rather, I consider that it is best characterised as one which fell comfortably within the range of responses properly available to the Principal on the basis of the information available to him at the time.

(f) Whether the University carried out a risk assessment in relation to Professor O’Gorman at the outset, during and/or at the conclusion of proceedings with regards to the welfare and safety of students including Student X, and whether that risk assessment was insufficient or erroneous;

135. Evidently a risk assessment of some variety must have been carried out upon receipt by the Vice-Principal of the Student X complaint, as an immediate decision to suspend O’Gorman was made and implemented. Whether that was intended to prevent him interfering with the investigation by speaking to and influencing students, rather than to protect student welfare *per se* remains unclear, since no record of the rationale for the decision was kept, or at least survives. No obvious action was taken in response to the expressed concerns

of Professor Bolton set out in paragraph 36 above, but it must be appreciated that nothing of the sort of psychological assessment that she suggested could have been carried out without O’Gorman’s consent and co-operation, which would almost certainly not have been forthcoming. Once the decision to send O’Gorman down the written warning disciplinary route had been taken, his suspension was formally lifted, but he was told not to return to campus or contact students, and a process was begun which was intended to, and did, result in his exit from the University in short order without ever coming into further contact with students. It seems to me in these circumstances that a risk assessment was made when it needed to be made, i.e. upon the Student X complaint arising, and that at no latter stage of proceedings was the point reached where any further risk assessment needed to be considered.

(g) Whether the University carried out an assessment in relation to Professor O’Gorman at the outset, during and/or at the conclusion of proceedings with regards to whether or not the nature of the complaint or the information available at the time merited a report of criminal conduct to police and if so whether decision-making by the University in respect of this was incorrect, inappropriate or inconsistent with the information available to it at the time;

136. I can detect nothing in the records or in the other evidence before the inquiry which suggests that any active consideration was given at any point to reporting O’Gorman to the police. However, I do not find that surprising, since it is not apparent to me that any of the material known to the University at any relevant time suggested that criminal conduct might have occurred.

(h) The legal advice obtained at the time, if any, the scope of that advice, whether it covered welfare issues, reputational risks, the veracity of the investigation and subsequent disciplinary process and the process itself;

137. External legal advice was sought from MacRoberts by Ms Heidinger at appropriate points in the process, as narrated in Section C above. The advice provided covered the legal aspects of all of the matters listed. The nature of the advice rendered was entirely careful and competent.

(i) To identify the current best practice for handling of such complaints of sexual misconduct and in light of the findings reached in respect of (a) to (h) above, make any recommendations deemed appropriate for the future handling of such allegations both at the stage of investigation and at any subsequent disciplinary proceedings.

138. In my view, the salient features of best practice for handling complaints of sexual misconduct or of conduct which could amount to sexual misconduct (and it will be recalled that the Student X complaint was not explicitly couched as such) are to be found in the Equality and Human Rights Commission's technical guidance document "Sexual Harassment and Harassment at Work" (January 2020), and in particular paras. 5.33 – 5.72 thereof. Although that document is couched specifically in the context of workplace harassment, the principles it works through are in my view equally applicable, *mutatis mutandis*, to the University context.

139. The University's current policies and procedures applicable to complaints of sexual misconduct are contained in (a) the Dignity and Respect Policy (2013), (b) the Model Complaints Handling Procedure (2017) and (c) the Policy and Procedures on Student Complaints document revised to 2011. My own comparison of those extensive, updated and comprehensive documents with the EHRC's technical guidance discloses no significant discrepancy, subject to the following two observations.

140. The University's complaints procedures suppose as a matter of generality that a complaint by a student about a staff member should be made within six months of the events being complained about. I have no doubt that that indicative period by which complaints ought normally to be made would not in practice be applied to complaints of sexual misconduct, which by their nature result in a situation where the complainer may need a considerable period before feeling ready to raise the matter with others. It would be better, and I accordingly recommend, that specific provision is made in the University's procedures for complaints of or concerning sexual misconduct not to be subject to any indicative time limit. While I entirely understand that complaints made long after the events complained of may be very difficult to investigate appropriately, no victim of sexual misconduct ought to be dissuaded from complaining about it by reading in the University's policies and procedures documents about any presumptive time limit for making a complaint of that nature.

141. Further, although there are extensive procedures in place for recording complaints, their outcomes and any resulting action taken, the University's procedures do not explicitly require the recording of the reasons for decisions taken in the processing and disposal of complaints. I recommend that those procedures should in future require the recording of reasons for the disposal of complaints and should encourage, so far as proportionate, the recording of reasons for significant decisions made in the course of processing complaints. While that will serve the interests of transparency in the event that decisions are subsequently criticised or require to be reviewed, my primary reason for making this recommendation is that a requirement to record the rationale of any particular decision entails the decision-maker positively thinking about

that rationale and ensuring that it is expressed in a manner that can withstand scrutiny.

3. *The Departure of Professor Kevin O’Gorman from the University in March 2012*

A review of the circumstances in which Professor Kevin O’Gorman ceased to be employed by the University and the terms of his departure therefrom. In particular:

(a) To assess the circumstances in which Professor O’Gorman left the employ of the University on 29 February 2019;

142. O’Gorman left the University in the circumstances already described (Section C, paras. 55ff) in terms of VERS; in other words, he took a voluntary severance deal which was available generally to academic staff wishing to leave the University’s employment without having other work lined up. The University was keen for him to leave, because he had shown himself to be a person who could not be accommodated within his department without causing trouble and stress to other employees. It was no part of the University’s desire to see him leave that he was perceived to be a threat to student welfare. The essential criterion for eligibility to apply for VERS severance was whether the exit in question would result in recurrent financial saving to the University. O’Gorman’s application had been certified as meeting that criterion upon initially having been made before the outcome of the disciplinary investigation, and indeed when he did leave he was not replaced. To that extent he was eligible for the Scheme. As had already been noted, however, I believe that the (standard) warranty he was required to give about having no expectation of immediate further employment was not true. Had he disclosed the expectation which I believe he had when he gave that warranty, he would not have been

regarded as a suitable candidate for an exit under VERS or for the receipt of the severance benefits which it confers.

(b) The legal advice obtained by the University at the time regarding the advisability of a compromise agreement in respect of Professor O’Gorman’s departure in the circumstances of the alleged conduct;

143. The execution of a compromise agreement was a standard term of any exit under VERS. The purpose of such an agreement was simply to draw a line under the relationship between the exiting employee and the University, thus avoiding so far as possible the prospect of any future litigation about, or concerning the nature of, that relationship or its end. I do not believe that MacRoberts were specifically asked to advise on the advisability of such an agreement in O’Gorman’s case; it appears to have been taken for granted by all concerned that such an agreement would be required, and that does not surprise me, since it would be utterly routine, and correct, for the University’s interests to be perceived as requiring the protection of such an agreement in the context of an exiting employee known to be troublesome and aggressive. Some negotiation between solicitors about the specific terms of the agreement with O’Gorman took place, which would not normally have been the case – usually, a compromise agreement under VERS would be issued on standard terms on a “take it or leave it” basis. That such negotiation took place was a reflection of the fact that the University was keen for O’Gorman to go. However, the terms of the agreement as ultimately negotiated did not take it out of the ordinary run of such agreements and in particular there is nothing about its terms which suggests to me that in settling them the University was motivated by any consideration other than the entirely proper ones to which I have already adverted.

(c) Whether the execution of a compromise agreement with Professor O’Gorman, or any aspect of it, was inappropriate in the circumstances of the alleged conduct and the investigation and disciplinary proceedings which preceded, in line with the information available and best practice at the time;

144. Firstly, I have already stated my view that the Principal’s decision to send O’Gorman’s case for treatment under the disciplinary process which could lead at most to a written warning being issued to him was a decision which it was reasonably open to the Principal to take. Secondly, my view is that it was prudent for the University to insist upon a compromise agreement in the circumstances of O’Gorman’s departure (by which I mean the departure of an employee who could no longer be accommodated within his department without risk of serious disruption to the smooth functioning of that department). Thirdly, I have seen no evidence at all that the use of a compromise agreement was intended to draw a veil over the outcome of the disciplinary investigation or was, indeed, in any way related to that outcome. As already noted, the use of compromise agreements was a standard feature of VERS exits, and the fact of the disciplinary process having been stopped because of O’Gorman’s exit from the University was specifically noted on his file. Fourthly, the terms of the compromise agreement were essentially routine and not tailored to the specific situation in which he found himself relative to the disciplinary process. In my view the combination of these factors rendered the compromise agreement which was entered into a reasonable and appropriate expedient. Had any of these factors not been present, I would have reached another view.

(d) Whether references were provided to or on behalf of, or in respect of, Professor O’Gorman upon his departure from the University and if so by whom, to whom,

and to establish whether the provision of references was inappropriate in the circumstances of the alleged conduct;

145. As I have described, the terms of an employment reference to be provided to O’Gorman and in essence addressed “To whom it may concern” were settled as part of the general negotiation that led to his exit. The reference ultimately approved by the University and signed off by Professor Hart was in essentially neutral terms, recording the posts held by O’Gorman and the projects with which he had been involved without much, if anything, in the way of either praise or criticism. It recorded the fact of his departure from the University during the course of the academic year. It would have raised questions if presented to any reasonably inquisitive prospective employer. In the event, it was not presented to Heriot-Watt by O’Gorman; he preferred to rely on two academic references, one from a then current employee of the University of Strathclyde and one from a former such employee, both at a very senior level. Each of those references was written by its author in a private capacity. The University of Strathclyde was unaware that a reference had been provided by its current employee (and equally by its former employee). The only reference, then, which was issued on behalf of the University of Strathclyde was one which was appropriate in its terms. It would not have been usual or appropriate to note on that reference the existence of unresolved disciplinary proceedings which could at the most have resulted in the issue of a written warning to O’Gorman, as opposed to proceedings which could have resulted in his dismissal if pursued to a conclusion before his voluntary departure.

(e) To make any recommendations deemed appropriate regarding best practice for the provision of references in such circumstances;

146. The notions (a) that O’Gorman was provided with a favourable reference by the University of Strathclyde and (b) that he used that reference in order to obtain employment at Heriot-Watt, are both without foundation. However, it seems clear that there is at least the possibility (although I do not believe it occurred in this case) of a reference given by an employee of the University signing it off as such being mistaken for a reference from the University. In these circumstances I recommend that any academic employee of the University who proposes in that capacity to give an academic reference for another current or former employee of the University should inform the University HR department of that intention and provide that department with a copy of the intended reference, and should be permitted to provide that reference as an employee of the University only if the HR department are content with its terms. For the avoidance of doubt, this recommendation does not extend either to references being provided for persons who are or have been students, as opposed to employees, at the University, or to any reference which is not to be given by any person in his or her capacity as, and which does not mention his or her status as, an employee of the University.

(f) To identify the current best practice in respect of the provision of compromise agreements and/or references in circumstances where staff members cease to be employed following allegations of sexual and/or inappropriate misconduct whilst in the employ of the University.

147. In relation to compromise agreements, in my view their use is appropriate only when the University has carefully and in good faith formed the view (preferably having clearly recorded the substantive reasons for that view) that any disciplinary matter, whether complete or ongoing, does not infer on the part of the departing employee any behaviour which poses or has posed a serious risk to the welfare or wellbeing of students or other members of staff.

Where such a risk is perceived, a compromise agreement in effect represents the trading-off of that risk in return for some benefit to the interests of the University as an institution, which does not in my view represent best practice. In other circumstances, what is at stake is essentially only the interests of the University itself and the interests of the departing employee, and they should be free to make whatever arrangement they consider suits their own respective interests.

148. In relation to references, the core of the best practice here is that what is said in any reference should not be capable of misleading a future reader either by the way in which the reference is expressed or by what it omits to say. In most cases, as with O’Gorman, an employee departing before the conclusion of disciplinary proceedings and the University will be able to agree on suitably neutral terms of a reference which will meet those criteria. If that does not prove possible, then the legal issues which arise are sufficiently complex and fact-sensitive to render the prudent course to be to seek specific legal advice on the terms of any reference which is to be given. An employee dismissed for misconduct is perhaps unlikely to seek a reference, but the same principles apply.

4. *The University’s Response to Allegations Against Professor Kevin O’Gorman*

A review of any and all alleged or established inappropriate conduct towards students, abuse of power or exploitation by Professor O’Gorman arising out of his employment by or association with the University. In particular:

(a) Whether alleged or established incidents of inappropriate misconduct whether constituting a criminal offence or not were known or ought to have been known by

the University at either the time of the conduct or at any point in time subsequently prior to the circumstances giving rise to this Reference, namely the conviction of Professor O’Gorman at Edinburgh Sheriff Court on Wednesday 7 August 2019 for such criminal offences;

149. I have reviewed the material informing the answer to this question in Sections C and D above. The University was made aware of concerns of inappropriate behaviour on the part of O’Gorman in May/June 2011 (Section C, paras. 18 -23). As part of the investigation into the Student X complaint (Section C, para. 27) it became aware of the further concerns described in Section C, paras. 35, 37 and 49. As to whether it ought to have been aware of anything more, some students who gave evidence to the enquiry referred in general terms to O’Gorman’s favouritism towards certain male students being an “open secret” and others described him as having a “creepy” reputation, but many others knew and suspected nothing of the sort, and it is difficult to construct on that base a reasonable suggestion that there was anything further of a concrete nature by way of inappropriate misconduct of which the University ought to have been aware. There was also some suggestion that O’Gorman’s disparagement of other staff was reported on at least one occasion to departmental managers, but it remains unclear whether the concern in this regard was clearly expressed as a complaint or might reasonably have been construed as merely being a critical observation. The facility for making a formal complaint existed, but apparently was not used.

(b) The response of the University to any reports received of alleged or established inappropriate conduct falling within the ambit of paragraph (a) above and whether or not any such response was appropriate or contrary to accepted practice at the time;

150. The response to the concerns expressed in May/June 2011 is as described in paragraphs 24 to 26 of Section C above (i.e. a meeting amongst O’Gorman, Professor Bolton and an HR manager at which the concerns that had been expressed were discussed, explanations and assurances secured from O’Gorman, and a review date scheduled). I consider that that response to the type of concern that was being expressed at that stage was entirely appropriate. The response to the Student X complaint and the other concerns which emerged in consequence of the investigation into it are set out at paragraphs 28 to 54 of Section C. My views about the features of that response, positive and negative, have already been set out in some detail. There appears to have been no formal response to the concerns expressed about O’Gorman’s disparagement of staff, but short of a formal complaint having been made it is difficult to see that much could have been done by way of specific and formal response in that regard. There was some suggestion to the inquiry that informal advice may have been given to O’Gorman to “tone it down” in relation to his behaviour in this regard, but recollections were somewhat vague on the point.

(c) Whether alleged or established incidents of abuse of power by Professor O’Gorman were known to or ought to have been known by the University at either the time of the conduct or at any point in time subsequently prior to the circumstances giving rise to this Reference;

151. Although O’Gorman frequently claimed to have power which he could wield for better or worse, actual instances of his abuse of such power as he did have are relatively hard to find. He did provide some students with special and on occasion impermissible academic coaching and similar assistance, but these instances were not brought to the attention of the University and it is difficult to see how it ought otherwise to have known about them. Whether he

was able to misuse influence (as opposed to power) which he actually had is also difficult to ascertain, since by definition influence operates in a more protean way and leaves fewer traces, and it is not at all easy at this remove safely to assess any, let alone every, instance of the use of influence by O’Gorman as an abuse of that influence.

(d) The response of the University to any reports received of alleged or established abuse of power falling within the ambit of paragraph (c) above and whether or not any such response was appropriate or contrary to accepted practice at the time;

152. As already set out, no such reports were made.

(e) Where alleged or established incidents of inappropriate conduct or abuse of power were not reported formally to the University, whether there was any reasonable scope for the University to have been aware of, suspected, or investigated inappropriate conduct in relation to Professor O’Gorman in the absence of a formal complaint;

153. Since the worst of O’Gorman’s misconduct towards students happened in private and the students concerned did not feel able to report it because of his perceived power and influence in the University, there was little or no reasonable scope for the University becoming aware of it. There were two occasions when staff members became sufficiently concerned (and, to be clear, those concerns certainly did not comprehend suspicions of anything like what is now known to have been occurring) in general terms about what was happening between O’Gorman and the postgraduate students to set discreet enquiries in progress. The first such incident was the distribution of the “Dignity and Respect” policy amongst the postgraduates in May 2011 (described in paragraph 18 of Section C), resulting in the events already

described. The second was the meeting described in para. 91 of that Section, which was superseded by O’Gorman’s suspension and the subsequent formal investigation which turned up the evidence from postgraduate students already referred to on several occasions. There may, by contrast, be some scope for criticism that concerns about O’Gorman’s treatment of other staff members expressed to line managers do not appear to have found their way further up that line, but the available evidence on the subject does not permit any clear conclusion on this point safely to be drawn.

(f) Whether alleged or established incidents of the nature described above in paragraphs (a) to (e) were informally reported and, if so, to establish in each case to whom reports were made, what the response to such reports was, and whether such response was inappropriate or contrary to accepted practice at the time;

154. Other than the concern expressed to line management about O’Gorman’s treatment of other staff, which it may be possible to characterise as an informal reporting of misconduct, the existence of no informal complaints was brought to the attention of the inquiry.

(g) To identify best practice in this area and in light of the formal findings reached in relation to (a) to (f) above to make recommendations for the future.

155. In relation to the serious misconduct affecting students, the overriding reason why those instances were not brought to the attention of the University was that the conduct was occurring in private and the students in question felt that, whatever facilities and processes were notionally in place to receive their complaints or concerns, O’Gorman’s power and influence were such that no such complaint or expression of concern was likely to result in anything but an adverse outcome for the student. The University’s current complaints handling

procedure document makes it clear, as its predecessors at all material times did, that a complainer will not suffer any disadvantage as a result of making a complaint; the problem lies in convincing potential complainers that that is indeed true.

156. It seems to me that certain recommendations can be made which will at least improve the prospect of students (and staff) coming forward with relevant concerns, as follows.

157. Firstly, hard copies of the University's Dignity and Respect policy document should be distributed as a matter of routine to all students and staff as part of their induction to the University and should be available to any enquirer on demand at any University administrative office; the policy should remain easily accessible and signposted on the University website and its existence should be mentioned at least once a year in "round-robin" emails to staff and students (for the avoidance of doubt, such communications need not relate solely or mainly to the policy; it may be mentioned incidentally to more general messages).

158. Secondly, the existing somewhat terse assurance in the University's Complaints Handling Procedure that no complainer will be disadvantaged as a result of making a complaint should be expanded so as specifically to alert the reader that complaint handlers are aware that staff members who have behaved unacceptably may have expressly or impliedly represented, by words or conduct, and directly or indirectly, that they have power to influence the academic career of a student or other staff member who complains about their behaviour, that the making of such representations is in itself behaviour meriting disciplinary sanction quite apart from the subject-matter of any substantive complaint, and that all possible steps will be taken at University,

Faculty and department level to ensure that no such threats can in fact be carried out. The training of complaint handlers should encompass sensitivity to the likely power dynamic underlying any complaint coming to their attention and how that dynamic may inform the proper handling of the complaint.

159. Thirdly, the making to a student of a claim of power to influence any student's academic career for better or worse (whether such claim is true or false) should be mentioned in the University's Dignity and Respect policy as a specific example of behaviour which may fall to be regarded as bullying for the purposes of that policy, with all that that entails.

5. *To assess the safeguarding provisions which were available to students at the time of the initial complaint by Student X in 2011, throughout the duration of Professor O'Gorman's employment, and as they presently stand at the time of the Report. This will include the availability of anonymous reporting of sexual misconduct by Professor O'Gorman to the University, in person or via alternative means, and whether or not there was a culture of reporting and a culture which promoted welfare and wellbeing for both students and staff at the University.*

160. The basic principles of the Dignity and Respect policy of the University have not changed over time; they were, and remain, designed to promote a culture of community in which every member is treated with dignity and respect, free from discrimination, harassment, bullying or victimisation. A number of channels through which students, in particular, may raise complaints, or simply seek support and advice, are made available. It offers routes to resolution through personal action (supported, if desired), the option of mediation, or formal complaint.

161. The University's Complaints Handling Procedure permitted and permits complaints to be made by third parties authorised in writing by the person affected by the conduct complained of. The Dignity and Respect policy places an obligation on staff at managerial level to address any incidents of bullying, harassment or victimisation that they observe or witness even though no complaint may have been made by the subject. It seems to me that, as another strand of the policy of bringing unacceptable behaviour to light, all members of the University staff should be strongly encouraged (albeit not in every instance obliged) to report to their own line manager any such incidents, and I so recommend.

162. In relation to the acceptance of anonymous complaints, the policy at all material times has been that such complaints will be considered if there is enough information in the complaint to enable the University to make further enquiries. The decision not to take an anonymous complaint further is required to be made by a suitably senior officer of the University, and such complaints, even if not taken forward, may be recorded in the University's SharePoint recording system lest there be any institutional learning points that may be taken from them. That policy seems to me to be entirely in line with existing best practice, and I have no further recommendations to be made in this regard.

163. Whether there was and is at the University a culture of reporting issues and promoting the welfare and wellbeing of students and staff, it seems to me that that is a matter of impression on which the opinions of individuals is likely reasonably to differ. That the institutional infrastructure necessary to enable such a culture to flourish was and is present, seems to me to be quite clear. Whether that infrastructure has always been used to best advantage in every Faculty and department over the years is, unsurprisingly given the varying attitudes and personalities involved, a rather different question. For all the

reasons already set out, however, and although improvements can and should be made, I certainly do not consider that the incidents of the O’Gorman affair demonstrate in any way serious institutional failings on the part of the University in relation to the welfare and wellbeing of its staff and students.

Section F - Endnote

164. The very nature of a university as an institution for education and research requires the intensive interaction of individuals in such a way that those of ill intent will almost certainly be able to exploit for their own ends the relationships which come into existence as necessary incidents of the greater endeavour. To seek to remove entirely the opportunities for such exploitation would not only be a fool’s errand, it would also change the nature of the institution in a wholly undesirable, indeed unviable way. Rather, seeking to learn from the experience of the institution itself, of others similarly placed, and from the broader wisdom of society, the effort must be to identify and where possible to reduce risks, to encourage the shining of light into places that some would prefer to remain obscure, and to recognise and deal effectively with wrongdoing. In presenting this Report to the Principal of the University, I very much hope that its contents may contribute in some degree to that effort.

C.R.K. Sandison, Q.C.,
Edinburgh

31 October 2020