



## VISITATORIAL JURISDICTION

RUSSEL OGDEN

v

UNIVERSITY OF EXETER

**[NOTE: Ogden's comments regarding this ruling are inserted in bold at 9, 11, 14-16, and 19].**

1. This is the second determination in relation to a petition by Mr Russel Ogden to the Visitor of the University of Exeter. On 7 January, 2003, in the first determination, Lord Irvine found that Mr Ogden's complaint that his PhD research at Exeter University was damaged by the University's actions to the point where it could not be completed, whether at Exeter or any other University was made out. The approval of his submission to the University Ethics Committees (including the information sheet which set out the assurances he intended to give to his data subjects) together with the assurances contained in the minutes he was given gave him a legitimate expectation that he would be supported by the University if a challenge to the confidentiality he was guaranteeing to his subjects arose. The University have subsequently made it clear that they are not prepared to recognise this obligation to Mr Ogden (not least in failing to take any positive action towards Mr Ogden to implement the findings of its own Grievance Committee in favour of him). Lord Irvine found that Mr Ogden was entitled to a remedy from the University. He suggested two possible courses of actions, and invited the parties to make further submissions on what relief might be granted to Mr Ogden. It now falls to me, as the Lord Chancellor, to make the final determination on this matter.
2. I have subsequently carefully considered a number of written submissions and supporting documents presented by Mr Ogden, and by Michelmores, the solicitors to the University. Mr Ogden addressed further submissions to me on 8 February 2003, 3 March 2003 and 1 May 2003. Michelmores responded on behalf of the University on 6 February 2003, 4 March 2003, and 29 April 2003.
3. Both parties rejected the first remedy proposed by Lord Irvine, which would have obliged the University to pay any legal costs incurred by Mr Ogden in challenging any legal process which sought the disclosure of material gathered as part of the research of his PhD, and to give further assistance and assurances at Mr Ogden's request. This proposal reflected the support which Mr Ogden believed he had obtained from the University, which was also reflected in his guarantees to his data subjects. However, I am informed that it would not now be feasible for Mr Ogden to restore the integrity of his

previous research. Both parties agree that Mr Ogden should instead receive compensation. I have however received very different submissions as to the appropriate level of compensation.

#### **THE PETITIONER'S ASSESSMENT OF COMPENSATION**

4. The Petitioner seeks compensation on the following basis:

(1)	<u>Relocation and Living Expenses</u>	
	Costs of moving to London	£6,750
	Return trip to Canada	£2,200
	Estimate of Additional Living Expenses	£10,000
	 Total Cost of Living Expenses Claimed	 <b>£18,950</b>
(2)	<u>Withdrawal of Monies from Canadian Pension Fund</u>	<b>£7,000</b>
	Monies withdrawn from the Petitioner's Pension Fund to support living expenses	
(3)	<u>Estimated Cost of Completion of PhD studies</u>	<b>£16,970</b>
(4)	<u>Loss of Earnings of both Mr and Mrs Ogden</u>	<b>£20,000</b>
	This figure represents an estimate of the income lost by Mr & Mrs Ogden over a period of 3.5 years	
(5)	<u>Loss of Income Arising from Inability to complete PhD</u>	<b>£80,000</b>
	The Petitioner claims that he would have reached assistant professor level and would have been entitled to annual increments and to income from grants and scholarships	
(6)	<u>Loss of Research Grants and Cost of New Research</u>	<b>£45,000</b>
	The Petitioner estimates that he would need this sum to finance a further attempt to gain a PhD degree.	
(7)	<u>Loss of Reputation</u>	<b>£30,000</b>
(8)	<u>Cost of Further Legal Action arising from Research at Exeter</u>	<b>£15,000</b>
	Estimated costs of safeguarding his subjects' confidentiality	
(9)	<u>Costs</u>	<b>£2928.65</b>
	This includes costs allowed by University for the Petitioner's attendance at the Committee of Academic Enquiry and Petitioners costs payable to his personal Legal Advisors	
	 Grand Total of Claim	 <b>£235,848.65</b>

5. The Petitioner's solicitors acknowledge that there is overlap between some of the heads of damage and that there is some uncertainty about the occurrence of future losses. They have therefore indicated that the petitioner would be prepared to accept £125,000 as full compensation for his losses.

## THE UNIVERSITY'S ASSESSMENT OF THE PETITIONER'S COMPENSATION

6. The University has recommended resolution of the Petitioner's claim for compensation on the following basis:

(1)	<u>Repayment of monies paid to the University under the Overseas Research Student Award Scheme</u> The difference between the UK student fees and the International student fees	<b>£11,740</b>
(2)	<u>The Full amount paid to the Petitioner from his Canadian Scholarship</u>	<b>£25,660</b>
(3)	<u>Costs of the Petitioner's Attendance at the Committee of Academic Enquiry</u>	<b>£928.65</b>
	Grand Total	<b>£38,328.65</b>

The University propose that Mr Ogden should only receive £26,588.65 of this sum himself. £11,740 should be reimbursed to the Overseas Research Student Award Scheme.

## MR OGDEN'S LOSSES

7. I take as my starting point the fact that Mr Ogden is entitled to compensation for all the losses he has suffered as a result of the university's negligent action towards him. The main consequence of that negligence was that he could not use the research he undertaken in reliance on the university's assurances towards his PhD degree. In practice therefore he was denied the opportunity to obtain a PhD at Exeter University.
8. However, quantifying the compensation this entitles Mr Ogden to is not easy. As Lord Irvine noted in paragraph 54 of his determination, the Petitioner's claim for compensation is unrealistic. Lord Irvine stated that several heads of compensation claimed in the original petition would not be recoverable in any event owing to lack of causation.
9. In addition, though the Petitioner was considered to be a student of high ability, who had undertaken previous research in his chosen field of study and had several publications that were recognised as being of a high academic standard, there is no certainty that he would have received a PhD at the end of his studies at Exeter University had the university not under mined his research. His relationship with his Department and his supervisor was deteriorating in 1997 for a number of reasons, not all of which can be attributed to the university's actions. In particular, he was under severe personal strain as a result of his wife's illness, and the demands placed on him by the need to care for two small children. **He had not completed any part of his thesis, but was demanding "writing up" status. [Ogden: This is an error. Two chapters of the thesis were been submitted, but the university never returned them].** At the same time he was seeking to pursue additional research not immediately required for his PhD, resisting his

supervisor's attempts to persuade him to focus on work for his PhD. **When the Department sought to make alternative supervision arrangements for him, he did not co-operate. [Ogden: Not correct. The alternative proposed by the Department was that my 1<sup>st</sup> supervisor withdraw and my 2<sup>nd</sup> supervisor would take over. I disagreed with the proposal because the 2<sup>nd</sup> supervisor had no experience in my topic area and he had been inert with respect to my research and submitted work].**

10. Bearing in mind these factors, I will now consider each item of compensation sought by the petitioner.
11. **Item A:** The Relocation and living expenses of **£18,950** are not recoverable as these are expenses that the Petitioner would have incurred in any event on relocating to the UK to undertake further studies regardless of his dispute with the University. There is no causal connection between these “losses” and the University’s actions . **[Ogden: Where is the logic? The relocation was solely to attend Exeter, resulting in a 40% increased cost of living. None of these expenses would have been spent had Exeter told me in advance that it would not support my research program. This is three years spent with no purpose].**
12. **Item B** “*Withdrawal of monies from Canadian Pension Fund*” of **£7,000** following the Petitioner’s return to Canada. There is no evidence that this loss relates directly to the University’s action, or indeed that Mr Ogden would not have been obliged to incur a similar loss had he been successful in obtaining a PhD and then returned to Canada. Accordingly, I do not think that this loss can be recovered.
13. **Item C** (£16,970) represents the tuition fees Mr Ogden expects to pay in studying for a PhD. In **item F**, Mr Ogden also claims £45,000 for the loss of research grants and cost of designing a new research project. The two claims overlap, in part, and the quantum claimed is to some extent speculative. However, I consider that Mr Ogden is entitled to receive compensation under this head. The fact that he would have to incur further fees and expenses in studying for a PhD is a clearly foreseeable consequence of the fact that the data he gathered for a PhD at Exeter University was unusable. However, I think that this loss should be quantified by reference to the fees paid to Exeter University (including the sums received from scholarship funds): a total of £37,400.00. In recognition of the time that Mr Ogden has been required to wait for any remedy from the University of Exeter, and the increase in costs which can be anticipated since the period when these sums were paid in respect of Mr Ogden’s PhD at Exeter University, **I propose to award Mr Ogden interest on this sum from the date the report of the University Grievance Committee was accepted by the Senate to the end of July this year,** at the standard rate on judgment debts of 8%. This will add £11,025.32 to this head of compensation. **[Ogden: This decision was handed down 1<sup>st</sup> September 2003. The interest is arbitrarily calculated to 31<sup>st</sup> July, giving a discount to Exeter].**

14. **Item D**, the loss of earnings of £20,000 for Petitioner and his wife during the period of his studies, is not recoverable as these are “losses” that the Petitioner would have incurred in any event on relocating to the UK to undertake further studies regardless of his dispute with the University. They have not been caused by the University’s actions. **[Ogden: These losses were incurred because Exeter said it would support my research program. Had we known the truth, we would not have spent three years in Exeter for no purpose].**
15. **Item E** includes a claim for income loss from the anticipated award date of Mr Ogden’s PhD (September 1999) to 31 December 2002, and further loss for the 3 or 4 years Mr Ogden would need to take to complete a PhD. The first element of the claim is not unreasonable. Mr Ogden claims £40,000 for his income loss from September 1999 to 31 Dec 2002. This is based on the difference between what he believes he could have earned as an Associate Professor (with a PhD) and what he has actually earned in a lower grade academic post, with adjustments for tax deductions. The Petitioner’s solicitors have provided income tables, which appear to verify the income levels of academics of the Petitioner’s standing and substantiate his arithmetic claim. However, I consider that this sum should be discounted by 50% to reflect the possibility that Mr Ogden might in any event have failed to obtain a PhD from Exeter University had he completed his studies there. Even if Mr Ogden had obtained a PhD, it cannot be certain that he would have obtained a post as Associate Professor immediately. I propose to award Mr Ogden compensation for loss of income for no more than two of the three years for which he claims. This would give Mr Ogden £13,200. **[Ogden: The 50% discount is empirically unsound. The visitor is calculating 50/50 odds for successfully defending a thesis. The success rate at oral defense is probably much closer to 99%. Further, the award for 2 rather than 3 years appears arbitrary].**
16. The second element seems unduly speculative, and would represent an element of double recovery when considered with Mr Ogden’s claim under C and F. I do not think that this is recoverable. **[Ogden: This is the rejection for a claim of loss of future research grants. The argument I raised was that many research grants are only available to PhD applicants].**
17. **Item G**, “*Loss of Reputation and damage to career*” £30,000 is a head of damage which to some extent is covered by Mr Ogden’s claim for future losses resulting from the loss of the opportunity to take a higher academic posting than he currently holds. (see Item E). He has not provided any specific evidence of loss of reputation or the basis on which any such award should be made. I do not propose to award any further compensation for this head of damage.
18. **Item H** “*Costs of further legal actions arising from Exeter University Research*”, **£15000.**
19. The Petitioner has claimed the sum of £15,000 for anticipated legal costs on the basis that he is a “person of interest” to the Canadian government and may

be called upon to give evidence in third party proceedings associated with his research. However, he has not provided any evidence to substantiate his quantification of this claim. Nor is it possible to determine whether the costs arise specifically in relation to research he undertook for his PhD, as opposed to research he undertook for other projects at Exeter University. **[Ogden: I could not provide evidence regarding the data being sought by the Crown. I had asked the Crown to specify what it wanted, but it would not tell me. Until the court asks me specific questions about my research, I cannot know if they pertain to Exeter-approved research. To wait until I'm in the witness box and being ordered to answer questions seems a little irresponsible].**

20. **Item I:** Legal costs of £2,928.65. This sum includes the amount of £928.65 being the costs of the Petitioners attendance at the Committee of Academic Enquiry convened by the University of Exeter. The University has acknowledged that it will reimburse the Petitioner for these costs. Again I propose to award Mr Ogden interest of 8% on this sum. I do not propose to make any award to Mr Ogden in relation to the legal costs he has incurred in pursuing his petition.

## CONCLUSION

21. In summary, I recommend that the Petitioner should be awarded the following compensation:

a) Costs of undertaking a further PhD, calculated by reference to sums paid to the University of Exeter £37,400.00

Interest at 8% £11,025.32

b) General compensation for the loss of an opportunity to earn a higher income £13,200.00

c) Cost of Mr Ogden's attendance at Committee of Enquiry £928.65

Interest at 8% £273.76

**Total £62,827.73**

THE RIGHT HONOURABLE THE LORD FALCONER OF THOROTON  
LORD CHANCELLOR