

## Review of Investigation into Allegations of Wrongdoing

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### Introduction

The University of Sydney has engaged me to conduct an independent review of the preliminary assessment and findings made by its Internal Audit office in response to allegations of wrongdoing made by Professor Manuel Graeber.

The purpose of my review is to consider and determine whether the findings made by the Internal Audit office were supported by the available information.

### Summary of conclusions

For the reasons set out below, and based on the background material provided to me, I am satisfied that Internal Audit's findings were sound and supported by the available information and documentation. I am also satisfied that Internal Audit adopted a fair process for considering the allegations, and appropriately assessed and weighed up the relevant written and verbal information in reaching its conclusions.

### Background

Professor Manuel Graeber holds the Barnet-Cropper Chair of Brain Tumour Research and is part of the Brain Tumour Research Group at the University's Brain and Mind Centre. He is also the President of the University of Sydney Association of Professors and President of the Australian Association of University Professors.

In March 2021, Professor Graeber made a number of complaints and allegations of wrongdoing against senior staff in the University of Sydney's School of Medical Sciences and the Faculty of Medicine and Health. In June 2021, Professor Graeber extended his allegations to include senior officers of the University. His allegations are:

#### **Allegation 1:**

Professor John Hunt, the former Head of School, attempted to bribe and blackmail a vulnerable young colleague in order to go after their supervisor

#### **Allegation 2:**

When the current Head of School, Professor Sarah Young, learned that Professor Graeber's office had a security camera, she used her position to try and find out whether there could be potentially incriminating material either on the camera or stored elsewhere. As proven by the camera recording, Professor Young and Mr Matthew Storey were executing the Executive Dean Professor Robyn Ward's long-standing and completely unreasonable plan to move Professor Graeber out of his dedicated (Commonwealth contract) research environment, the true reason for their visits to his office on 11 and 12 February 2021

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### **Allegation 3:**

The persons of interest in the alleged wrongdoing include the Chancellor, Belinda Hutchinson, Professor Garton (then Vice-Chancellor and Principal), Dr Michael Spence (former Vice-Chancellor and Principal), and Professor Robert Vandenberg (Head of School of Pharmacology).

### **Allegation 4:**

Professor Garton signed a letter of alleged misconduct against Professor Graeber, including charges that were fabricated after and in response to his wrongdoing submission to Internal Audit.

Between May and September 2021, the University's Internal Audit office conducted a preliminary assessment of Professor Graeber's allegations. On 27 September 2021, Internal Audit sent an email to Professor Graeber advising that it was satisfied on the balance of probabilities that all of the allegations were unsubstantiated. Specifically, Internal Audit found that:

- in relation to Allegation 1, whilst it was established that Professor Hunt did give the junior academic \$300, it could not be substantiated that it was for an improper or corrupt purpose
- in relation to Allegations 2 and 4, there was a lack of evidence to support these allegations
- in relation to Allegation 3, no evidence supported Professor Graeber's claim that the Chancellor, Professor Garton, Dr Spence or Professor Vandenberg had committed any wrongdoing.

Later on 27 September 2021, Professor Graeber wrote to the Vice-Chancellor, as follows:

*I regret to inform you that the University's internal audit process is not working.*

*We disagree completely with the conclusions drawn by McLoughlin/Dai below as they effectively amount to a cover-up.*

*Key evidence could not yet be presented because of COVID as audit are fully aware.*

*We recommend either reopening the process immediately but under the supervision of a truly independent and objective investigator or by passing the matter on to the police. The latter would have the distinct advantage that the necessary procedures would be simplified.*

Professor Graeber copied his email to Mr Simon Kempton, a Division Industrial Officer with the NTEU.

Relevantly, on 24 May 2021, the Senior Deputy Vice-Chancellor, Professor Stephen Garton, had sent Professor Graeber a letter advising him of alleged conduct that may constitute misconduct or serious misconduct under the *University of Sydney Enterprise Agreement 2018-2021*. The alleged conduct concerned the installation by Professor Graeber of a security camera in his office in the Brain and Mind Centre without permission, and the recording of conversations and images of other University employees without their knowledge or consent, including Professor Young and Mr Storey. This conduct is referred to in Allegation 2 above.

Following investigation under the Enterprise Agreement, the allegations against Professor Graeber were substantiated. On 28 September 2021, Professor Garton advised Professor Graeber that the University had decided to issue a warning in response to the finding of misconduct.

### *Some context*

There are two particular stressors that seem to have complicated the situation with regard to the events the allegations refer to. These are:

- the impact of COVID-19 in forcing most of the University's activities to be conducted online for large parts of 2021 with the consequent challenges associated with holding sensitive meetings relating to allegations of wrongdoing over phone or videoconference
- seeming unhappiness by at least some staff with recent structural and office and laboratory allocation changes in the Faculty of Medicine and Health, the Faculty the complainant and the witnesses in this investigation are associated with.

### Review process

As requested by the University, I:

- conducted a desktop review of the preliminary assessment and findings made by the University's Internal Audit office in response to Professor Graeber's allegations, including all information considered by Internal Audit for the purposes of its preliminary assessment. This included a large volume of email and other written correspondence, records of meetings and University policies and procedures. I note that there are references in the material provided to conversations and other investigations indirectly related to the Internal Audit investigation, details of which were not provided, nor seemingly necessary to make conclusions in this review
- requested a meeting with Professor Graeber (accompanied, if he wished, by a support person or representative), to enable me to consider any new written or verbal information he could provide relevant to the allegations or the names of any new witnesses to the alleged conduct, and the names of any other members of staff who wish to report wrongdoing in the Faculty of Medicine and Health. Professor Graeber declined the invitation to meet
- weighed up all of the relevant information that was provided to me and now provide this report to the University
- note that no new allegations of wrongdoing (including fraud, corruption, maladministration, or serious and substantial waste of public funds) or bullying that require assessment by the Internal Audit office in accordance with the University's *Reporting Wrongdoing Policy 2012*, or by Workplace Relations in accordance with the *Bullying, Harassment and Discrimination Resolution Policy 2015* have been brought to my attention.

### Observations and conclusions

#### *Internal Audit's Approach*

Internal Audit received a referral from Workplace Relations on 20 May 2021 relating to a report of alleged wrongdoing by Professor Manuel Graeber.

Internal Audit decided to carry out a Preliminary Assessment to assess whether there was substantive evidence indicating wrongdoing. This assessment was carried out in accordance with the University's *Reporting Wrongdoing Policy 2012*.

Internal Audit finalised its Preliminary Assessment Report in August 2021.

For its investigation, Internal Audit drew on:

- statements and documentation from the complainant and two other 'witnesses' whose names he provided. (As the witnesses did not give Internal Audit consent to use their names, I have not named them here.) This material was quite limited as the complainant did not, or felt he could not, respond to several requests for further

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information to support his allegations, and he and the witnesses elected not to name the 'young colleague' or 'supervisor' referred to in Allegation 1

- extensive relevant information available on University databases. This included emails and related material from other historical investigations and inquiries that had been carried out by Internal Audit and other units in the University.

### *Comments on Internal Audit's Approach*

The matter was very complex as the investigations of Allegations 1 and 2 raised further serious matters relating to possible abuse of the University's *Affiliates Policy*, and a potential breach of the *Surveillance Devices Act 2007*, respectively.

I note that in carrying out its investigation, Internal Audit:

- was thorough in following through on all the various issues raised as the investigation proceeded. This was evident in, for example, the careful documentation trail that was provided to me
- was careful to stay within its remit, noting that access to some extra material, whilst potentially helpful, could have been illegal (such as viewing audio and video recordings made without the knowledge or consent of the parties recorded) or beyond Internal Audit's scope (such as matters relating to alleged bullying and harassment).

At the conclusion of the investigation Internal Audit provided in its Preliminary Assessment Report a detailed and clearly articulated record (much of it usefully ordered chronologically) of its investigations of the complex matters that came up in the investigation and of its conclusions. I have cross checked the Report against all the source material provided to me and note it is consistent and used reasonably to draw conclusions.

### *Comments on the conclusion that the allegations were unsubstantiated*

As noted above, on 27 September 2021, Internal Audit advised Professor Graeber by email that the preliminary assessment had been concluded and that Internal Audit was satisfied on the balance of probabilities that all of the allegations were unsubstantiated.

### *Allegation 1*

As previously noted, neither Professor Graeber nor the witnesses named the 'young colleague' or the 'supervisor' referred to in this allegation. Further, none of them had witnessed the events in question, or had had any contact with the 'young colleague' alleged to have been bribed and blackmailed. Professor Graeber did not provide any documentation to support the allegation.

However, following consideration of the information provided by the witnesses and information held on the University's databases, Internal Audit was able to deduce, on the balance of probabilities, the identities of the relevant parties. Having done so, Internal Audit was able to access a great deal of information on the matter from confidential internal sources, which informed its determination that the allegation was not substantiated. Its reasoning on this matter, drawing on its internal, confidential sources appears reasonable.

It is important to note that the complainant and witnesses are unlikely to have had access to the confidential material and therefore might be surprised that the allegation was not substantiated. Nonetheless, as the information on which Internal Audit based its conclusions is the sensitive personal information of third parties, it would be unlawful for the University to share this information with Professor Graeber.

### *Allegation 2*

With regard to Allegation 2, Internal Audit identified in its Preliminary Assessment Report that Professor Graeber's allegation indicated that: he had a security camera installed and operating in his office; he had recorded both conversations and images of other staff members without their knowledge or permission when they were in attendance in the office; and he possessed and had listened to the recording of a conversation without their knowledge or permission. If proven, Professor Graeber's actions were potentially in breach of the *Surveillance Devices Act 2007 (NSW)*. Accordingly, Internal Audit formed the view that it would be illegal for it to review any sound and images recorded by Professor Graeber's camera.

Internal Audit considered the information provided by Professor Graeber in support of this allegation, and assessed that there was a lack of evidence to support the allegation of wrongdoing against Professor Young, Mr Storey and Professor Ward.

It is important to note that, as the Head of the School of Medical Sciences, Professor Young, once she knew that Professor Graeber had a 'security camera' installed in his office for which there was no recorded formal University permission, had a duty as a senior manager in the University to investigate and regularise the situation expeditiously to ensure the University was not breaching the *Surveillance Devices Act 2007 (NSW)*.

Furthermore, it is legitimate and not uncommon for a Head of School or the Head of Operations in a Faculty to inspect staff offices assigned to that School for various purposes at any time. There is no evidence provided that indicates that Professor Young or Mr Storey entered Professor Graeber's office for any improper purpose.

Allegation 2 suggests that Professor Graeber has a right under a contract with the Commonwealth Government to designated research facilities. In response to my inquiries, the Office of the General Counsel provided a copy of a 2007 Commonwealth Funding Deed, which expired on 30 September 2009. Relevantly, the Deed required the University to use parts of the Ken Parker Brain Research Laboratories at Level 6 and Level 7 in the Brain and Mind Research Institute, which were refurbished using funding provided under the Deed, for "the purposes of conducting medical research in the amelioration of pain, including migraine, neuroinflammatory and neuropathic pain and elimination of brain tumours". I understand that, as the Deed has now expired and the project period has concluded, the University has no ongoing obligation to use the facilities for these purposes

### *Allegation 3*

On 4 June 2021, Professor Graeber widened his initial allegations to suggest that the persons of interest in the wrongdoing included the Chancellor, Belinda Hutchinson, Professor Stephen Garton (then Vice-Chancellor and Principal), Dr Michael Spence (former Vice-Chancellor and Principal) and Professor Robert Vandenberg (Head of the School of Pharmacology).

On 22 July 2022, Professor Graeber clarified that his allegation against Professor Garton was that he had signed a letter of allegation including charges against Professor Graeber that were fabricated after, and in response to, his complaint of wrongdoing to Internal Audit. This is addressed in Allegation 4.

Regarding Allegation 3, there was no relevant or substantive evidence provided by Professor Graeber or from the witnesses indicating why or how the Chancellor, Dr Spence or Professor Vandenberg were involved in the alleged wrongdoing. Accordingly, Internal Audit properly formed the view that the allegation was not substantiated.

*Allegation 4*

Regarding Allegation 4 (and his purported part in Allegation 3), Professor Garton appears to have acted properly in all the steps under the Enterprise Agreement that led to him approving and signing a letter of alleged misconduct by Professor Graeber.

Internal Audit found that the letter signed by Professor Garton on 24 May 2021 was part of a normal staff disciplinary process, in respect of which he was the appropriate delegate and decision maker. The misconduct allegation against Professor Graeber and the allegations of wrongdoing made by him were handled separately by two different units of the University, and there was no evidence to support the suggestion that the allegations against him were fabricated. As such, the letter signed by Professor Garton was not evidence of wrongdoing by him.

In summary, I am satisfied that Internal Audit's findings were sound and supported by the available information and documentation.

Mary O'Kane  
14 May 2022