

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI  
TĀMAKI MAKĀURAU ROHE**

[2019] NZERA 275  
3045071

BETWEEN

DAVINIA CADDY  
Applicant

AND

VICE CHANCELLOR,  
UNIVERSITY OF  
AUCKLAND  
Respondent

Member of Authority: Vicki Campbell

Representatives: Helen White for Applicant  
Philippa Muir for Respondent

Investigation Meeting: 4 and 5 March 2019

Submissions Received: 13 and 29 March 2019 from Applicant  
27 March 2019 from Respondent

Determination: 8 May 2019

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**DETERMINATION OF THE AUTHORITY**

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- A. Dr Caddy's dismissal by reason of redundancy was justified.**
  
- B. One or more conditions of Dr Caddy's employment were not affected to her disadvantage by the unjustified actions of the Vice Chancellor, University of Auckland.**
  
- C. Costs are reserved.**

## **Employment relationship problem**

[1] Dr Davinia Caddy was employed by the Vice Chancellor of the University of Auckland as a Senior Lecturer in Musicology in the School of Music. The School is part of the Faculty of Creative Arts and Industries. The term “musicology” refers to the academic study of music from an historical, critical, theoretical, analytical and socio-cultural perspective. Musicology is one discipline within the School. All other disciplines are inherently practical in nature and include Classical Performance, Composition, Jazz Studies and Popular Music. Musicology is a compulsory component of every undergraduate and postgraduate degree.

[2] During her employment Dr Caddy also acted as an Associate Dean in the Faculty. This is a discretionary appointment made each year by the Dean. Associate Deans participate as part of the senior leadership team in the Faculty.

[3] Dr Caddy’s terms and conditions of employment were set out in the Academic Staff Collective Agreement between the University and the Tertiary Education Union dated 1 September 2017 – 31 August 2019.

[4] On 6 June 2018 Dr Caddy’s position was disestablished as a result of a restructuring within the School. Dr Caddy’s employment terminated on 6 January 2019.

[5] Dr Caddy challenges the process used to disestablish her position and the termination of her employment which she says were unjustified actions on the part of the University. In addition Dr Caddy says the disestablishment of her role and the failure to redeploy her were the result of bias.

[6] The University denies the claims.

## **Issues**

[7] In order to resolve Dr Caddy’s employment relationship problems I must determine the following issues:

- a) Was Dr Caddy unjustifiably dismissed by reason of redundancy and if so what if any remedies should be awarded?

- b) Were one or more conditions of Dr Caddy's employment affected to her disadvantage by the unjustified actions of the University and if so what if any remedies should be awarded?

[8] As permitted by s 174E of the Act this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. It has not recorded all evidence and submissions received.

### **Head of the Music School Appointment**

[9] In or about July 2016 Associate Professor Martin Rummel was appointed by the Dean of the Faculty of Creative Arts and Industries as the Head of the School of Music. Associate Professor Rummel had filled the post in an acting capacity since January 2016.

[10] Dr Caddy was critical of the University in making this appointment which she says was done in breach of the requirements to consult staff in accordance with the University's policy on the appointment of academic heads. The University acknowledged at the investigation meeting that at the time of Associate Professor Rummel's appointment, the University was inconsistent in following its own policies and that consultation of staff did not take place as required.

[11] On 26 April 2017 concerns were raised in a letter (April letter) signed by a number of staff including Dr Caddy, about Associate Professor Rummel's leadership style. The staff wrote to the Dean and Deputy Vice Chancellor seeking a review of Associate Professor Rummel's conduct as Head of School. At the time, Dr Caddy was a member of the senior leadership team in her capacity as an Associate Dean.

[12] On 19 June 2017 (June letter) the Dean wrote to Dr Caddy setting out her disappointment that a senior member of the faculty executive team had been involved in the April letter. The Dean was critical of Dr Caddy's involvement in the complaint and advised her she no longer had trust and confidence in her. The Dean's expectation was that if there were serious concerns about the performance or conduct of a Head of School that the members of the senior leadership team would discuss them with her before formalising any complaints to the Deputy Vice Chancellor.

[13] The Dean advised Dr Caddy that she was seriously considering releasing her from her Associate Dean duties on the basis that she could no longer work with someone who did not communicate with her, did not work in the interests of the wider organisation and who had seriously undermined the Dean in her position. The Dean repeated her advice set out in the June letter to three other Associate Dean's within the Faculty who were also signatories to the April letter.

[14] Following the Dean's letter, Dr Caddy and the Dean met and discussed the Dean's expectations of staff in leadership roles within the Faculty.

[15] In October 2017 the Dean approved a grant of over \$1,000 in support of a research trip to New York for Dr Caddy and in 2018 Dr Caddy was reappointed into the Associate Dean role.

[16] I have concluded these actions signified that any discord over the April letter and the Dean's letter in June were behind them and trust and confidence had been restored.

### **External Review of the Music School**

[17] In 2017, the University carried out an external review of the School pursuant to the External Review of Academic Units Review Policy (2017 Review). This policy sets out the principles to be applied in any Review including ensuring maximising the placement of existing employees into available positions.

[18] The purpose of a review is to inform the direction of a unit, by drawing upon experts. A review is required to set out strategies and activities that can be used to further improve the academic unit and its performance.

[19] The 2017 Review recommended strengthening the potential growth areas of music education, jazz, pop, composition and music technology within the School. It was recommended that any increase in anticipated areas of growth be balanced with a corresponding decrease in other areas.

[20] The review also recommended substantive, broad-based changes to the curriculum, including development of a new Bachelor of Music degree. It was

recommended the new degree provide greater interdisciplinarity, expose students to a more diverse range of the School's offerings and cater to the musical interests of a growing Maori and Pacific demographic.

[21] The recommendations in the 2017 Review led to the establishment of a Curriculum Development Committee in May 2017. The Committee included representatives from across the School, including Dr Caddy. The Committee developed a comprehensive proposal for the new Bachelor of Music degree. This proposal was approved by the University and the new Bachelor of Music degree started in March 2019.

### **The restructuring**

[22] In August and September 2017 the Vice Chancellor communicated with all staff about the need to address financial issues faced by the University. The School itself had not met its budget by a significant margin for many years. All staff were invited to a number of meetings in which the Vice Chancellor made a presentation on the issues faced by the University and signalled his intention to commence restructuring.

[23] The issues faced by the School were not isolated. The issues were the same across the University. There had been an extended period of significant budget shortfalls and falling student enrolment numbers. Restructuring of other Faculties including Education, Social Work and Arts were also undertaken. Special libraries were closed and other departments such as the Finance Service Division and Student Services were also under review. In addition a freeze on hiring was implemented in an effort to manage staff numbers and costs.

[24] Following receipt of the 2017 Review report and approval of the new Bachelor of Music degree the Vice Chancellor directed the Dean to address the financial shortfalls at the School, support the delivery of the new curriculum and allow for further growth.

[25] The Dean charged Associate Professor Rummel with formulating a proposal that met the objectives set by the Vice Chancellor. Associate Professor Rummel

developed a restructuring document (the proposal document) for the approval of the Dean and Vice-Chancellor for the purposes of consultation with affected staff.

[26] Dr Caddy was critical of the Dean putting the Dean's name to the proposal document when she had not written the document. At the investigation meeting the Dean told me she had edited the document and had put her name to the document to signal to the Vice Chancellor that she was happy with the proposals contained within the proposal document. The Dean told me she had queried some aspects of the draft proposals with Associate Professor Rummel and had given him some direction on what should be included in the proposal document including how to do the benchmarking and debating, at some length, the positions to be retained within the structure of the School. The Dean explained that the reputation of the School was important and that to maintain its international reputation it was necessary to retain the leadership roles of Associate Professor and Professor.

[27] The final draft of the proposal document was comprehensive. The stated objectives of the proposed restructure included:

- a) Addressing action areas identified in the 2017 Review;
- b) Align the staffing of the School with the re-designed Bachelor of Music curriculum;
- c) Support areas of growth, including popular music, jazz and composition;
- d) Increase enrolments;
- e) Consolidate the School's budgetary situation and achieve financial sustainability;
- f) Reduce the need for casual and fixed-term appointments.

[28] In summary the proposed changes included:

- a) Creating two new academic disciplinary areas – Music Education and Music Technology;
- b) Realigning the current full time equivalent staff by:
  - i. Creating 11 new positions (9.5 FTE) to support agreed priorities for the School;
  - ii. Maintaining 23 roles (21.3 FTE);
  - iii. Disestablishing 7 roles (of which two were vacant).

### **Financial shortfalls**

[29] The proposal document suggested the introduction of target limits on classical student numbers to increase student to staff ratios and to reduce fixed-term staffing costs while still allowing more varied ensemble performance opportunities for students and the opportunity to form a full orchestra as required.

[30] The traditional classical performance “conservatory” style of teaching often involves one-to-one or small group instruction which makes tuition of these students more expensive for the University. The proposal set out approximate target student numbers for each classical area to which the staffing proposal was aligned.

[31] In the classical performance disciplinary area it was proposed to disestablish three full-time roles (one of which was vacant) and to introduce six new part-time roles. The introduction of six new part-time roles was to give sufficient flexibility to enable delivery of the new curriculum without the need for such a large number of fixed-term/instrumental teacher appointments.

[32] Three of the proposed new roles were professional teaching fellow roles without a research component, allowing for 1,440 teaching hours each per annum (full-time equivalent) compared with the disestablished research active roles which allowed for only 720 teaching hours each per annum on a full-time equivalent basis due to the 40% research weighting on their contracts.

[33] During the consultation process a number of staff submitted feedback that supervision of postgraduate students’ written work was a key element of the seven musicology roles which had been overlooked in the restructure proposal. However, a

key premise of the proposal was that all academic staff specialising in music performance who have postgraduate qualifications would be able to supervise the written work of postgraduate students.

[34] The proposed restructure aimed to address the School's financial shortfall primarily by reducing the School's reliance on fixed-term and casual appointments. The proposal aimed to reduce costs by realigning the staff profile so that most teaching could be provided by permanent staff. The estimated annual budget for fixed-term and casual staff is anticipated to be approximately \$255,000 once the new degree is fully implemented, which equates to a saving of approximately \$265,000 per annum.

### **Delivery of the curriculum**

[35] The restructure proposal was designed to support delivery of the new Bachelor of Music curriculum introduced in 2019. The School's Curriculum Development Committee formulated a new outcome statement for the re-designed Bachelor of Music degree:

Graduates of the Bachelor of Music will have developed high level skills knowledge and understandings and a critical mix of practical and theoretical areas of study related to the specialisation and electives. They will be well trained practitioners in their areas of specialisation and will be well equipped to pursue their professional careers and post graduate study. They will be critical, reflective practitioners able to pursue personal professional goals and higher post graduate study.

[36] The restructuring would support the work of the Curriculum Development Committee by strengthening several areas of the curriculum such as music education, music technology, jazz, popular music and composition.

[37] The proposal document acknowledged that the School had to develop innovative, critical thinkers who would be the educators of future musicians and audiences in New Zealand. In order to achieve that it was proposed that all staff be able to contribute to both creative and academic offerings at undergraduate and postgraduate level. It also proposed that the School consider introducing innovative teaching methods and technology that allowed students to collaborate across geographical and linguistic boundaries.

[38] The 2017 Review report discussed how the staffing profile could influence these outcomes for students and recommended that a team teaching approach could be advantageous for many courses such as the vertical core courses in the new curriculum. Also the proposed limits on classical student numbers would allow for a wider variety of ensemble opportunities for performance students, significantly enhancing the quality of the student experience.

### **Enabling future growth**

[39] The growth area of music education and music technology identified in the 2017 Review report were curriculum areas that accommodated larger class sizes, making it financially more sustainable for the University and supporting higher student to staff ratios.

### **Consultation process**

[40] The proposal document was approved by the Vice-Chancellor in February 2018. At that same time he appointed Professor John Morrow as the Chair of the Restructuring Review Committee.

[41] Prior to commencing consultation with the employees of the School, the Tertiary Education Union was notified of the proposal and provided with an opportunity to ask questions and have input as part of a pre-consultation process.

[42] The Dean notified all School employees by email on 15 March 2018 that a consultation process would commence the following week. Individual consultation meetings with the potentially directly affected employees were set up and a group staff meeting was scheduled for 19 March 2018.

[43] Associate Professor Rummel and Ms Stephanie Boyer, HR Manager for the Faculty, met with Dr Caddy on 19 March 2018 to discuss the proposed changes and the potential impact on her role. Dr Caddy was supported in this meeting by a representative from the Tertiary Education Union.

[44] At the meeting, Associate Professor Rummel explained the aims of the proposed restructuring including the proposal to disestablish Dr Caddy's role. It was

explained that the University would engage in a comprehensive consultation process and that feedback would be taken into consideration before any decisions were made.

[45] Dr Caddy became upset during the meeting and was offered information about the University's Employee Assistance Programme (EAP). Dr Caddy was invited to take the proposal document away with her and to provide feedback which would be considered by a Restructuring Review Committee, yet to be established.

[46] Two full staff meetings were scheduled to discuss the proposal and answer questions, the first on 19 March and the second on 29 March. At the first meeting Ms Boyer and Associate Professor Rummel intended to work through the proposal document highlighting the background to the proposal, summarising the proposed changes, outlining the consultation process and answering any initial questions. The meeting was adjourned before it could be completed due to employees becoming upset and some becoming verbally abusive.

[47] Following the meeting a request to widen the consultation catchment group to include part-time artist and instrumental teachers was approved by the Vice-Chancellor and the consultation period was extended by a further two weeks.

[48] Following a further meeting on 29 March a frequently asked questions (FAQ) document was developed and shared with employees with answers to questions that had been raised during the consultation period.

[49] Employees were then invited to provide feedback on the make-up of the Restructure Review Committee. After consideration of the feedback the composition of the Review Committee was extended.

[50] In total 22 submissions were received from employees of the School during the consultation period. This included 8 group submissions, 13 individual submissions and one submission from the Tertiary Education Union. Dr Caddy made a substantial submission amounting to 165 pages.

## **Restructure Review Committee**

[51] In May 2018, a Restructure Review Committee was set up to receive and review the feedback received from staff during the consultation period. The Review Committee was also responsible for making recommendations to the Vice-Chancellor, including any recommended changes to the original proposal.

[52] Professor John Morrow was appointed to Chair the Review Committee. He is the Deputy Vice-Chancellor and a Professor of Political Studies at the University. Prior to this he was the Dean of the Faculty of Arts.

[53] Initially the Review Committee comprised Professor Morrow, the Dean, Associate Professor Rummel and Ms Boyer. As a result of feedback from staff the membership of the Review Committee was widened to include the Dean of Graduate Studies (this appointment was recommended by the Tertiary Education Union) and an external appointee from Victoria University of Wellington (in response to feedback from musicology staff that the Review Committee should include individuals who had little or nothing at stake in the outcome).

[54] After reviewing the 2017 Review report, the Curriculum Review Committee Report and the proposal document the Review Committee members reviewed the feedback received during the consultation period, first individually, and then again in full committee sessions.

[55] Prominent feedback themes were identified and discussed and the Committee considered what changes might be recommended as a result of the feedback. During this process further information about the restructuring proposal and its potential impacts was sought by the Review Committee.

[56] Once the review of the feedback was complete, the Review Committee worked collaboratively on its recommendations to the Vice-Chancellor. The Review Committee's recommendations related to changes that ought to be made to the proposal.

[57] The Review Committee acknowledged that many individuals and groups had considered the proposed restructure carefully and had offered constructive suggestions or useful solutions to perceived issues. The Committee recommended a number of

significant changes to the original proposal. In total the Committee made 15 recommendations to the Vice Chancellor. All 15 of the recommendations made by the Review Committee were accepted by the Vice-Chancellor and he decided to proceed with the restructuring at the School.

### **Changes to the Proposal**

[58] The Review Committee recommended 15 changes to the proposal.

[59] A number of recommended changes reflected the direct feedback provided by Dr Caddy. Overall recommendations included:

- (a) The introduction of two broad disciplinary groupings into:
  - (i) one creative practice incorporating classical composition, theory, jazz and popular music; and
  - (ii) music studies incorporating music education, music studies and music technology.
- (b) The requirement for a doctoral degree to be removed from the professional teaching fellow position descriptions.
- (c) Flexibility to be incorporated in the appointment of professional teaching fellow roles.
- (d) Equity development to be added as an area of accountability in position descriptions.
- (e) Clarification that all permanent academic staff have the responsibility for community engagement.

[60] There were other recommendations which included changes to specific disciplinary areas including classical performance, composition, music education, musicology and music studies.

### **Musicology changes**

[61] The proposal document suggested the number of positions in the musicology disciplinary area be reduced from seven to four because the number of musicology undergraduate and postgraduate students had decreased in recent years and the

delivery of theory teaching was proposed to move to the composition/theory disciplinary area.

[62] The proposal document noted that in some cases staff had been teaching and supervising students outside of their areas of specialisation. It was proposed that research active performance staff could supervise the written aspects of the performance of students' postgraduate work, a role which had been heavily supported by musicology staff.

[63] The Review Committee recommended that an additional music studies role be added to the final structure. The Review Committee's recommendation responded to concerns raised by staff feedback that there were not enough musicology roles in the proposed structure to deliver the new Bachelor of Music curriculum and that an additional role would strengthen the School's ability to provide robust supervision of postgraduate students' written work.

[64] The Review Committee acknowledged that in the future, Bachelor of Music students would be able to access musicology through the new vertical core and electives. The Review Committee supported the proposed increase in team teaching which would provide greater flexibility for cover during periods of leave and reduce reliance on any particular staff member.

[65] The Review Committee took into account that despite falling student numbers, staff numbers had remained static. This meant that staff numbers in musicology were out of proportion to student enrolments. This was not considered sustainable.

[66] During the consultation a number of staff provided feedback that the supervision of postgraduate students' written work was a key element of the musicology roles that had been overlooked by the proposal. However, the University's expectation was that all academic staff specialising in music performance with postgraduate qualifications would supervise postgraduate students' written work.

[67] Three new research active roles were confirmed in classical performance, jazz and popular music following the consultation process and the University believed

those roles would significantly reduce the need for musicology staff to supervise the written work of postgraduate students.

[68] The Vice Chancellor met with the Review Committee on 28 May 2018 to discuss its recommendations. The Vice Chancellor had a number of questions about the recommendations which he raised with the Review Committee. A final written report was then produced and after consideration the recommendations were accepted.

[69] A confirmation document was then drafted for the Vice Chancellor's review. On 2 June the Vice Chancellor approved the restructuring of the School as set out in the confirmation document which included the disestablishment of the musicology role undertaken by Dr Caddy.

[70] The outcomes from the consultation process were communicated to individuals and groups at meetings held on 6 June 2018. Associate Professor Rummel, Ms Boyer, and the University's Employment Relations Manager met with Dr Caddy individually prior to the group meeting. Dr Caddy was supported by her husband and Associate Professor Allan Badley during that meeting.

[71] The decision to disestablish Dr Caddy's role was confirmed by Associate Professor Rummel and Dr Caddy was advised about the new Music Studies/Jazz role and that it would be contestable. At her request Associate Professor Rummel outlined for Dr Caddy, the changes that had been made to the original proposal.

### **Appointment of Music Studies role**

[72] The proposal document had set out the process for appointment into any newly created positions, noting that roles would be open for expressions of interest from employees in roles that had been disestablished. The proposal document recorded that the selection criteria to be used for appointment to newly established positions would be in line with expectations of teaching, supervision, research and service as outlined in the University's Academic Standards. The proposal document also recorded that any selection process would take into consideration the knowledge, skills, experience and capabilities of any proposed position descriptions.

[73] Two affected employees (including Dr Caddy) indicated an interest in the new Music Studies/Jazz role. Accordingly they went through a formal appointment process in accordance with the University's policy.

[74] The confirmation document presented to Dr Caddy on 6 June contained copies of the positions descriptions for the new roles including the Music/Jazz role.

[75] Dr Caddy is critical of the University for including the jazz studies component in the job description for the new role and says that the design of the role was to justify the appointment of Dr Camp. The University denies this and says it was a legitimate requirement of the role which was proposed to work across both the music studies and jazz performance disciplinary areas. I find on balance that the creation of the role and the form it took was a direct result of staff feedback including the feedback given by Dr Caddy.

[76] Dr Caddy was critical of the University for not appointing Dr Camp to a second newly established role in Music Education. Dr Caddy said that if the University had taken that course it would have left her open to be appointed to the Music Studies/Jazz role.

[77] The University had carefully considered whether Dr Camp was capable of undertaking the music education position and concluded that he was not sufficiently qualified to take on the role. A significant issue was that the role required a prerequisite of a doctorate in music education, as well as a preferred Ministry of Education teaching certification and/or experience as a music educator at the primary/secondary level. Dr Camp does not hold either a doctoral degree in music education or a Ministry of Education teaching certification, and neither did he have appropriate experience.

[78] I have accepted Ms Boyer's evidence that the successful candidate for the Music Education role was expected to have a significant body of research specifically in the area of music pedagogy and education which would inform research-led teaching of students. Appointing a person with a PhD in musicology (such as Dr Camp) would not have been sufficient for the role because it would not acknowledge the status, specificity or importance of music education as a separate disciplinary area.

[79] Dr Caddy referred to an email that Dr David Lines sent to the Head of School on 8 June regarding the music education role where Dr Lines suggested that the role did not require a degree in music education. The University rejected Dr Lines view on the basis that the suggestion would have put the role at odds with its intended purpose.

[80] Interviews for the Music Studies/Jazz role were conducted by a panel which included Associate Professor Rummel, the Head of the School of Architecture, and representatives from musicology and Jazz which included Professor Badley who had supported Dr Caddy in her meeting with Associate Professor Rummel on 6 June.

[81] Dr Camp was the successful candidate. The interview panel noted that both Dr Caddy and Dr Camp were exceptional candidates and it was a very difficult decision. Both candidates were considered very capable of all aspects of the role however the panel agreed that Dr Camp had performed better at the interview than Dr Caddy.

### **The dismissal**

[82] On 6 July 2018 Dr Caddy was given notice that her employment would terminate by reason of redundancy at the end of a six month notice period as a result of the disestablishment of her role.

[83] In order for a redundancy to be justified the University must demonstrate that the dismissal was what a fair and reasonable employer could have done in all the circumstances at the time the dismissal occurred. I must consider whether the University met the minimum standards of procedural fairness outlined in s 103A of the Act and whether it made a decision to terminate the employment relationship on substantively justified grounds.

[84] The Court of Appeal considered the application of section 103A in a redundancy setting in *Grace Team Accounting Limited v Brake*.<sup>1</sup> That decision upheld the earlier Employment Court decision where the Court confirmed employers must show that a decision to make an employee redundant is genuine and based on

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<sup>1</sup> [2014] NZCA 541.

business requirements.<sup>2</sup> This requires the Authority to scrutinise the reasons relied on by the employer in making its decision to dismiss.

***Was the redundancy for genuine commercial reasons?***

[85] I find Dr Caddy's redundancy was based on genuine commercial reasons. The School had been in deficit to the tune of between \$200,000 and \$300,000 for each of the previous seven years. The restructuring was necessary to address those financial losses which were not sustainable, to address the need for the future growth of the School and to ensure the success of the new Bachelor of Music degree.

***Procedure***

[86] Section 4 of the Act requires parties to an employment relationship to deal with each other in good faith when restructuring. Parties are to be active and constructive in establishing and maintaining a productive employment relationship in which they are responsive and communicative. The statutory obligations of good faith require employers to provide affected employees with access to information relevant to the continuation of the employee's employment and an opportunity to comment on the information before the decision is made.

[87] Dr Caddy claims the restructuring was not carried out in accordance with policy and was unreasonable because:

- a) The author of the initial proposal was biased;
- b) The action areas in the 2017 Review were not consistent with the restructure;
- c) The proposal made inaccurate claims about staff to student ratios.

***Bias***

[88] Dr Caddy says having Associate Professor Rummel author the proposal document, be involved as a member of the Review Committee and then as a member of the Interview Panel was a breach of the University's Impartial Employment Decisions Policy.

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<sup>2</sup> [2013] NZEmpC 81.

[89] The stated purpose of this policy is to aim for equitable outcomes in employment and decision making. The aim being employment decisions based on merit. The policy requires the Academic Standards Policy to be used in academic appointments, continuation and other employment processes.

[90] Impartial decision making is defined in the policy as:

- Avoidance of bias
- Appropriate resolution of actual and perceived conflicts of interest
- Evidence-based decision making
- Accurate application of legislation, policy and guidelines
- Transparent and fair criteria, standards and processes
- Decisions based on merit and in accordance with the highest ethical standards
- Accountability
- As appropriate, disclosure of information to applicants on why a decision was made.

[91] Dr Caddy says the policy was breached because Associate Professor Rummel was not impartial, and the breach allowed Associate Professor Rummel to influence and assess her future employment at the initial design, selection, disestablishment and redeployment phases.

[92] Dr Caddy says the University was of such a size and had adequate resources to ensure the process of restructuring was not influenced by those who ran the risk of bias.

[93] As an example of Associate Professor Rummel's apparent bias, Dr Caddy told me that before Associate Professor Rummel joined the School in 2016 she was part of the School's Postgraduate Committee which discussed and debated the supervisory options for incoming postgraduate students. When Associate Professor Rummel joined the School he disestablished the committee and took over the assignment of all supervisors of all postgraduate students.

[94] As a result of the change in decision making Dr Caddy says she was removed as the second supervisor of an incoming graduate student because Associate Professor Rummel preferred the candidate be given a different second supervisor despite Dr Caddy being recommended. When that second supervisor was ruled out of contention

due to a lack of a PhD, Associate Professor Rummel decided that the candidate should have one sole supervisor.

[95] Dr Caddy says that the number of postgraduates being supervised by the members of the musicology team was a factor taken into account in determining the redundancies. Dr Caddy says this was unfair because Associate Professor Rummel made the decisions about who would supervise postgraduate students. He then failed to assign any students for her to supervise and that was then taken into account to determine her redundancy.

[96] Associate Professor Rummel told me he did not take sole responsibility for assigning supervisors for post-graduate students. In most cases he followed the recommendations of the Director of Postgraduate Studies. Associate Professor Rummel's uncontested evidence is that he tried to ensure equal opportunities for colleagues who had done little or no supervision when he took over his role.

[97] Associate Professor Rummel explained that the student Dr Caddy refers to in her evidence was enrolled in a PhD with a Creative Practice Component, researching a topic related to historical performance. This required an advisor from that area rather than an academic supervisor. His view was that Associate Professor Tibble was the logical choice and this had been discussed with the Director of Postgraduate Studies.

[98] In response to Dr Caddy's claim that her supervision quota would have exceeded that of another staff member had she been given the supervision of this student, Associate Professor Rummel told me that according to the University's records, the difference between the number of supervisions undertaken by Dr Caddy and the other member of staff was 4 to 9. I find on balance that Dr Caddy not being approved to supervise this one student would not have made any difference to the outcome when assessing supervision quotas.

[99] On 27 April a concerned group of Alumni wrote to the Vice Chancellor raising concerns about the restructuring and Associate Professor Rummel's involvement in it. The letter set out serious concerns about areas of his management and decision making and claiming the Associate Professor was conflicted.

[100] The Vice Chancellor told me the concerns raised with him were reviewed by himself, the Deputy Vice Chancellor (Academic) and the Director of HR. The three concluded that no conflict of interest existed because Associate Professor Rummel did not determine the recommendations of the Review Committee (he was one of five members) and it was the Vice Chancellor and not the Review Committee who made the final decision.

[101] The proposal document was drafted by Associate Professor Rummel but he was not the only person to have input into it. The Dean, Ms Boyer and the Vice Chancellor all discussed the content of the proposal document before it was finalised and approved.

[102] A Confirmation Document was provided to employees following the decision of the Vice Chancellor to proceed with the restructuring. That document addresses the concerns raised about potential conflicts of interest and alleged lack of impartiality in the Review Committee membership as well as concerns raised about Associate Professor Rummel and a possible conflict of interest in respect of the engagement of his partner at the School.

[103] I find that the concerns raised by Dr Caddy had been investigated during the consultation process and found to have no substance.

[104] Dr Caddy was critical of the absence of a Musicology representative on the Review Committee. Musicology employees wrote twice to Ms Boyer requesting an external specialist professional music academic be included in the panel. The request was declined.

[105] Professor Morrow told me it was not the role of the Review Committee to make recommendations on the School's academic programs and there was no requirement for the Review Committee to include subject specialists such as a musicologist.

[106] I have accepted Professor Morrow's uncontested evidence that including a musicology expert on the Review Committee would have created a risk of bias to

other subject areas which would not have had specialist representation. Professor Morrow told me, and I have accepted, that he was satisfied the members that had been assigned to the Review Committee all possessed the necessary expertise to assist the Review Committee in carrying out its role.

[107] Dr Caddy places significant weight on the Dean's role as a decision-maker in the restructuring process. However, this ignores the fact that the final decision-maker was the Vice Chancellor.

***Inconsistencies with the Action Areas identified in the 2017 Review***

[108] Dr Caddy claims the restructuring did not align with the action areas identified in the 2017 Review. Associate Professor Rummel has documented the action areas identified in the 2017 Review and how these were addressed as a result of the restructuring. The majority of action areas were addressed through the curriculum development and redesign of some courses while others are on track to be addressed with actions continuing.

[109] I find the restructuring largely aligned with the recommendations arising from the 2017 Review and as noted, other recommendations are under action.

***Inaccurate claims about staff to student ratios***

[110] Dr Caddy says the calculations set out in the proposal document relating to staff:student ratios was incorrect and failed to take into account that musicology staff teach all music students, not just those in musicology and the staff:student ratios are much higher.

[111] Dr Caddy says information about the calculations was requested but was not supplied. I am satisfied Dr Caddy was provided with information regarding the University's workload and workload calculations. It was not feasible to provide more information during the consultation process because forecasts for enrolment numbers are only finalised in the second week after the start of each semester.

***Failure to consult further following changes to the proposal***

[112] Dr Caddy was given a copy of the confirmation document on 6 June 2018. This document contained changes to the restructuring proposal set out in the proposal

document. The most significant change for Dr Caddy was the addition of a new Music Studies/Jazz role.

[113] Dr Caddy says the failure to consult on the changes before a decision was made is a fatal flaw in the process used by the University. I do not agree.

[114] The change was made after a number of submitters suggested the additional role, including Dr Caddy. If I am wrong and this was a defect in the University's process I am satisfied the defect was minor and did not result in Dr Caddy being treated unfairly.

### ***Redeployment***

[115] The University is committed to maximising the placement of existing employees into available positions. Dr Caddy says she could have been redeployed into either one of the two newly established roles (the Music Studies/Jazz position or the Music Education position).

[116] I am not satisfied Dr Caddy has established that she had the requisite qualifications to fulfil the Music Education position. Dr Caddy had the opportunity to put an expression of interest in for the Music Education role but chose not to.

[117] I am satisfied the Music Studies/Jazz role was filled following a contestable process which I have found was fair and reasonable.

[118] During Dr Caddy's six month notice period attempts were made to meet with her to discuss redeployment and outplacement support. Dr Caddy declined to meet and did not engage regarding any redeployment opportunities after 20 June.

[119] Ms Boyer told me that while there were no musicology roles available at the University during the notice period, there were other potential opportunities within the University which Dr Caddy could have explored.

[120] For example there was a major review of the Libraries and Learning Services Service Division which led to several new roles being created, some of which were at a similar salary level to Dr Caddy's. Additionally there were newly created Research

Programme Manager roles created within Faculties that may have presented redeployment options if Dr Caddy had wished to remain at the University.

[121] At the investigation meeting Dr Caddy told me she was aware of the opportunities but as they were not academic jobs in teaching and research she was not interested.

### ***Conclusion***

[122] Taking all of the circumstances of this case into account I am satisfied the decision to dismiss Dr Caddy by reason of redundancy was a decision the University could make. Dr Caddy's dismissal by reason of redundancy was justified and I am unable to be of further assistance to her.

### **Unjustified disadvantage**

[123] Dr Caddy claims one or more conditions of her employment were affected to her disadvantage by the unjustified actions of the University when it disestablished her position on 6 June 2018.

[124] The disestablishment of a position constitutes a disadvantage because it means Dr Caddy had no future in the role. The question then is whether the disadvantage arose from unjustified actions of the University.

[125] For all of the reasons already set out in this determination I find the action by the University in disestablishing Dr Caddy's position was an action an employer acting fairly and reasonably could take and accordingly, was justified. Dr Caddy continued to work in her role until 6 January 2019. During that six month period she took no steps to mitigate her situation even though there may have been suitable options available to her.

[126] One or more conditions of Dr Caddy's employment were not affected to her disadvantage by the unjustified actions of the Vice Chancellor of Auckland University.

## **Costs**

[127] Costs are reserved. The parties are invited to resolve the matter. If they are unable to do so the University shall have 28 days from the date of this determination in which to file and serve a memorandum on the matter. Dr Caddy shall have a further 14 days in which to file and serve a memorandum in reply. All submissions must include a breakdown of how and when the costs were incurred and be accompanied by supporting evidence.

[128] The parties could expect the Authority to determine costs, if asked to do so, on its usual “daily tariff” basis unless particular circumstances or factors require an adjustment upwards or downwards.

Vicki Campbell  
Member of the Employment Relations Authority