

# The FEFC Ombudsman

## **REPORT ON A COMPLAINT BY THE FORMER BOARD OF WIRRAL METROPOLITAN COLLEGE AGAINST THE FEFC**

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## REPORT ON A COMPLAINT BY THE FORMER BOARD OF WIRRAL METROPOLITAN COLLEGE

February 2000

### Introduction

1. This report concerns a complaint made by the majority of the members of the former Board of Wirral Metropolitan College. The complaint is about the conduct of senior Funding Council officers, and about the Funding Council's consideration of the former Board's original complaint about that conduct: and is, in effect, that both involve maladministration.

2. The complainant is concerned about "the significance of the alleged misconduct, and the serious consequences of that alleged misconduct for the public purse, the integrity of public life, and the standing of former Board members." The complainant seeks to have it acknowledged

- a) that, through the actions of the Chief Executive and the Regional Officer for the North West in particular, the Funding Council's management of the affairs of Wirral Metropolitan College fell below the standards required of a public body;
- b) that the Report of the Funding Council Inspectorate dated March 1999 was published without due regard to objectivity and the rights of the former Board;
- c) that the former Board of Wirral Metropolitan College unfailingly met the standards of commitment and integrity required in respect of the governance of colleges.

3. In summary, the former Board's original complaint to the Council, made on 30 March 1999, was that the Chief Executive of the Funding Council contrived the conditions in which the College could be subjected to a hostile take-over, and that he did so by

- i) exercising covert influence and control over the College and its circumstances;
- ii) denigrating the College and displaying contempt for the commitment and endeavours of the former Board;
- iii) obstructing and negating the College's efforts at recovery both directly and in an underhand manner;
- iv) forming alliances with selected local political interests.

4. The complainant went on to allege that in consequence the Chief Executive had breached both his duty to ensure adequate and sufficient educational provision for the people of Wirral, and also [the] commonly expected standards of conduct for a public servant.

### The Complainant: Admissibility

5. Following an enquiry from the Chairman of the former Board about the process to be adopted, I received the complaint on 27 August 1999.

6. The complainant – referred to as the former Board of the college – is not, and was not at the time of making the original complaint to the Council, a body corporate. It is a group of individuals consisting of all the nine non-staff governors of the college who were in office (*i.e.* were members of the then Board) during the greater part of the sequence of events that forms the basis of the complaint, but who then resigned under pressure from the Council.

7. On a strict construction of the procedures set out in FEFC Circular 99/03, the complainant is not, therefore, a corporation, or person, entitled to make use of the procedures set out in the Circular. However, the original complaint to the Council followed on a very considerable amount of relevant correspondence between the college (*i.e.* the then Board) and the Council: and throughout its consideration of that complaint the Council had made it clear that all the procedures set out in the Circular were available to the complainant.

8. There is no doubt (a) that a substantive matter of concern existed; and (b) that the Council's own internal procedures had been properly used, and had been exhausted. I therefore accepted the complaint for consideration.

### **The Context of the Complaint**

9. At the time of the events giving rise to the complaint, Wirral Metropolitan College [Wirral College, the college] was in considerable difficulty. Among other matters, it was in debt to the Funding Council to the tune of over £4M, and to its bankers for some £2M; it was not producing accurate records of student numbers and progress; it could not agree its forward strategic plan with the Council; and it was seeking to manage what it believed to be an inappropriate building stock in a locally hostile political environment.

10. Although opinions differ strongly as to the precise extent of the difficulties, and as to the merits of the then Board's work in trying to deal with them, the existence of a serious state of affairs is not contested.

11. The Council became more and more concerned about what it saw as the state of affairs at the College. It believed that the college was not in a position to repay its debt to the Council over any reasonable period of time; it placed little or no confidence in the student data which it did receive from the college; and it could not accept or agree the draft strategic and accommodation plans that were put before it.

12. The Board, for its part, believed that the combination of improved forward planning with an appropriate property disposal would put it well on the road to recovery; and could not understand why the Council would not support (or, as the Board saw it at certain points, withdrew its support from) the Board in its admittedly difficult task.

13. On 27 January 1999 the full Council received a substantial confidential report from its Chief Executive on the position of the college, and on his view as to the mismanagement of the college by the then Board. The Council decided to recommend to the Secretary of State [for Education and Employment] that he should use his powers under section 57(1)(a) of the *Further and Higher Education Act 1992* to remove the governors of the college and appoint a new Board in their place.

14. The implementation of this resolution was suspended for a short period to allow the governors to resign their positions (which a majority had, under pressure, offered to do). All those who are party to the making of this complaint resigned, but the elected staff governor remained in office (the Principal had already left the college on agreed terms). On consideration of the Council's recommendation, the Secretary of State determined that the elected staff governor should not be removed: and an otherwise new Board of governors (including the then acting Principal) was appointed.

15. A full inspection of the college had been scheduled for the Spring of 1999. In the event, it took place in the month following the resignation of the Board. The report of the inspection was published in April 1999.

### **Consideration of the Complaint**

16. In referring its complaint to me, the Board provided me with much of the paperwork relating to the making of its original complaint to the Council, and to the Council's handling and consideration of that complaint.

17. In addition to considering that material, and copies of other correspondence provided to me between the college and the Council's officers, together with a considerable volume of supporting documentation, and reviewing all the correspondence relating to the college's use of the Council's internal complaints machinery, I have:-

- a) received further specified documentation from the college;
- b) asked for, and received, copies of further specified documentation from the Council;
- c) visited the Council's offices to review the relevant files;
- d) visited Wirral to interview the previous Chairman of the Board;
- e) interviewed Council officers, including the Chief Executive and the Director of Finance and Corporate Services;
- f) interviewed the Chairman of the Council;
- g) asked specific questions in writing of, and received replies from, the Chief Inspector;
- h) asked specific questions separately in writing of, and received separate replies from, two partners of the firm then acting as the college's auditors; and
- i) disclosed this report at draft stage (*i.e.* including my draft findings, but not my recommendations) to the complainant and to the Council, and received and considered their further representations.

18. I am empowered to try to resolve a complaint by agreement. At a certain stage in my investigation of this complaint, this outcome seemed to me to be a possibility, and I explored it with the complainant and with the Council. After consideration, the complainant was not minded to accept the possible resolution of the matter in the way that I suggested, and I therefore continued with my enquiries.

### **The Key Issues**

19. This complaint (and the correspondence leading up to it) has at all stages of its consideration been very well documented. The January 1999 report to the full meeting of the Council identified and summarised well over 200 relevant documents and meetings originating or taking place during the period 22 July 1997 to 15 January 1999. The main elements of the complaint are set out in paragraphs 2 and 3 above. However, and with the exception of that aspect of the complaint bearing on the inspection of the college (which occurred after the complainants had resigned, and to which I turn later), all the key issues which arise are encapsulated in the handling by those concerned of three matters:-

- a) the proposed sale of the college premises at Carlett Park;
- b) the release of documentation to third parties (which resulted in the contents of some of that material appearing in the local press); and
- c) the search by the Regional Director of the Council for possible additional/new college governors, and her briefing of the college's auditor on that and other matters.

20. I therefore address these matters in the following paragraphs, before turning to the individual elements of the complaint. It is important to note that in doing so I am seeking simply to summarise the actions of the parties, with a view to establishing whether any of the actions taken by the Council's officers (or, as may be the case, their failure to act) should be regarded as amounting to maladministration (whether individually or taken as a whole). While I am not ignoring other aspects of the transactions between the college and the Council (*e.g.* the management of the college's overdraft with its bank; the exchanges between the college and the Council about the accuracy, and the use made of, the college's examination statistics – which the college regards as a particularly significant matter; or the role of the Council in affecting the college's relationship with CEWTEC), all of which I have considered, I am deliberately concentrating on what I have identified as the key issues.

21. I must emphasise, too, that it is not for me to seek to substitute my own judgment on the merits of a particular matter for that of the Council. In accordance with my terms of reference, I am explicitly barred from considering the merits of a decision properly reached by the Council, including its policies or judgments. Only if it becomes apparent that the making of a decision was tainted by maladministration does the substance of an issue (as opposed to matters of due process) become potentially my concern.

### ***The proposed sale of Carlett Park***

22. As part of its attempt to manage what it regarded as an inappropriate building stock, the college was minded to cease the provision of further education in its premises at Carlett Park; largely to dispose of its interest in the land and buildings there; and to use the capital proceeds principally – and substantially - to reduce its indebtedness. To do this it required the approval of the Council.

23. The Council was not, in principle, opposed to this approach: but irrespective of the possible reduction in the college's indebtedness, it wished to see the cessation of the provision of further education at Carlett Park in the context of a plan (dealing with both accommodation and staffing issues – and which it could approve) for the effective provision of courses for all those actual and potential students for whom it regarded the college as being duty bound to provide.

24. The college believed that it was making and had made all the necessary material available to the Council, and, indeed, that the Council had at least tacitly given its approval to the disposal. It proceeded to advertise the asset for sale, and moved towards the consideration of tenders for the property.

25. The Council, for its part, while remaining willing in principle to consider the disposal (and on occasion offering relevant technical advice), was of the view that it could not responsibly authorise the sale until it had received, considered, and approved the appropriate supporting documentation; that it had at no stage received all that it had asked for; and that it had at no stage, implicitly or otherwise, actually agreed to the sale of Carlett Park.

26. The allegation of maladministration in respect of the actions of the Council's officers with regard to the proposed sale is, effectively, that they sought by one means or another improperly to block the sale. I can find no evidence to support this allegation.

### ***The release of documentation to third parties***

27. The college's plan to sell Carlett Park was opposed by a number of local interests, and in particular by one of the local Members of Parliament, Ben Chapman. He was also critical of certain other aspects of the college's operations. At various times he asked for information from the Council. The Council provided the information for which he asked. That information included, on some occasions, copies of letters which the Council had written to the college – though not of any letters which the college had written to the Council. These copies were provided without any limitation on their use. On more than one occasion similar material was provided to other local MPs.

28. It is a fact that some material derived from this documentation, and critical of the college, appeared in the local press. The college believes that this material was provided to the press by Ben Chapman, or by persons close to him, although there is little direct evidence on this point. The college also believes that since the nature of the local political environment was well known to the Council (a fact which is not contested), the Council should have been much more selective in its release of material to hostile interests. To seek to redress the balance somewhat, the college itself subsequently released some documentation publicly.

29. The Council believes that it did no more than it was reasonably and properly obliged to do, and that the matters on which it was commenting were of entirely legitimate public interest. The Chief Executive, in writing to the college, said that "*The Council is responsible to Parliament and has an obligation to respond to such requests from MPs*"; and the Director of Finance and Corporate Services, in reviewing the college's complaint at a later stage, and dealing with this issue, said "*It was not possible for the Funding Council to refuse the MP's request, neither was it possible to attach any conditions on the use of such information*".

30. The situation is, of course, more complex than either of those statements suggests. While it is undoubtedly good practice for the Council, as a public body, to respond fully and openly to enquiries made of it by individual local Members of Parliament (among others), it is not, in fact, under any formal obligation to do so. Indeed, it is properly entitled (and possibly required) to consider the nature and circumstances of any such response; and, if it considers it appropriate, to refrain from releasing material – or to provide it on terms as to its use. Obvious examples of matters which might give rise to such considerations are a commercially sensitive transaction (especially if it were to be known that the MP in question had a material interest in the transaction), the position of a named individual, or the active consideration of a matter before the courts.

31. The Chief Executive has confirmed to me that he believes that if [Council] documentation is requested by an MP, he is under an obligation to release it to the MP without restrictions; although he has also acknowledged that he might feel obliged to seek to restrict its use in circumstances affecting the personal circumstances of a named individual, or where a college's financial position might be adversely affected. He has stressed, however, that in his view none of these considerations arose in this case.

32. I have set this issue out in some detail because of the college's clear perception that in the known circumstances the Council should have considered the requests for information on their merits. In general terms, I think that there is a procedural matter for the Council to address.

33. However, in relation specifically to this complaint, I agree with the Council that the matter was properly in the public domain; and I do not consider that any of the considerations which I have identified should have led the Council to refusing to disclose its letters to the college about the proposed sale of Carlett Park, or seeking to place any limitations on their use. This is essentially because the sale, although being carried forward by the college, had not in fact been approved by the Council, and its position in respect of the making of the necessary decision had been made quite clear to the college.

34. Accordingly, and notwithstanding the statements made by the Council to the college in respect of the release of the material to the local MPs (and others), I cannot find that the release of the documentation – which was, at least in the key instance, signalled in advance to the college – was wrong, still less that it amounted to maladministration.

### ***The actions of the Regional Director***

35. There are two matters in relation to which the actions of the Regional Director are questioned: her search for possible additional/new college governors, and her briefing of the college's auditor on that and other matters.

36. In October 1998, when both parties agreed that the Board would benefit from some strengthening, the Council offered to assist the college in the identification of one or more new governors. This offer was accepted, and the task was undertaken on behalf of the Council by its Regional Director. In the event, she was unable to identify anyone who was willing to serve. It is common ground that among those approached to serve was Ben Chapman.

37. The college believes that the Regional Director's failure had its origin in a 'hollow' offer of assistance; or in a decision not to assist the college; or in an intention to demonstrate that the Board lacked support from potential members. The Council considers that reasonable efforts were made to honour the Council's commitment; and that the fact that it was not possible to find people who were willing to serve should not be seen as a lack of willingness to help.

38. Given the prevailing circumstances, it is entirely understandable that the college should regard an approach to Ben Chapman to consider serving on the Board as inappropriate, and as being indicative of a particular attitude towards the college. Moreover, there is no satisfactory evidence that more than a very few individuals were approached. However, it must be remembered that the college was generally acknowledged to be in some difficulty, and it would not have been at all surprising if suitable senior members of the local community had proved to be reluctant to serve on the Board. I also note that although the Council had offered to assist the college in this matter, it was under no obligation to do so: and – although the college was looking for help from the Council – there was nothing to stop the Board from actively conducting its own search for new members, although I note that it had decided not to do so while awaiting the Council's suggestions.

39. My task is not to comment on the wisdom of the Regional Director's actions (or lack of action) in this regard, but to consider whether they amounted to, or contributed to, maladministration. I do not consider that to be the case.

40. On 14 January 1999 the college's external auditor (a partner with KPMG) met the Regional Director to discuss the difficulties at the college. He subsequently spoke to the then college Principal to brief her on the content of the meeting. She wrote a note summarising her understanding of that briefing, which was circulated to the chairman and the vice-chair of the Board. The vice-chair wrote to the chairman of the Council expressing serious concerns about what appeared from the note to be improper actions that had already been taken by the Regional Director and/or by the Council.

41. The complainant believes '*that the terms in which the Regional Director spoke indicated that she was no longer operating within the bounds of . . . acceptable conduct for . . . a public servant*', while the Council '*accepts that there was a misunderstanding between the auditor and the [Regional Director] of the status of that conversation*', and asserts that the Regional Director was, as part of an informal and open discussion with the auditor, setting out possible scenarios which might follow on possible decisions of the Board. There is no doubt at all that the Regional Director went into some detail with the auditor as to the possible future actions of the Council.

42. At no stage in the making, or the Council's consideration, of the college's complaint was the auditor concerned shown the note made by the Principal, or invited to confirm – or otherwise – its accuracy. In evidence to me he has said (eleven months after the event) that much of the factual matter in the note accords with his recollection (his own notes having been destroyed), but that the references made by the Regional Director to local political figures, and to action under Section 57 of the Act, did not strike him as being anything more than an explanation of the Council's position. In addition he has made the point that the Principal's note does not in his view accurately reflect the tone of the meeting.

43. I note that at the time of the discussion, the meeting of the full Council to receive the Chief Executive's report on the matter was only two weeks away: and the Board itself was already aware that the possible use of Section 57 was in contemplation.

44. Again, my task is simply to consider whether the Regional Director's discussions with the auditor amounted to, contributed to, or were part of, maladministration by the Council's officers. In the light of the evidence, I do not consider that to be the case.

## **The original Complaint**

45. I turn now to the specific elements of the original complaint.

*that the Chief Executive of the Funding Council contrived the conditions in which the College could be subjected to a hostile take-over*

46. Although the Council has firmly rejected any notion that the college has been subjected to a 'take-over', I accept (solely for the purpose of dealing with it) the complainant's allegation, which is set out in more detailed form in the documentation, that the eventual setting up of an almost entirely new college governing body, composed as it now is, is the effective equivalent of such a take-over.

47. In order to deal properly with the main complaint, it is necessary to look at the elements which are said to comprise it.

*[that he did so by] exercising covert influence and control over the College and its circumstances*

48. There is no doubt that in the exercise of the Council's responsibilities, the Chief Executive did seek to exercise some influence and control over the college's circumstances. He (and his fellow officers) could not properly have discharged the Council's functions if they did not. However, I can find no evidence that he did so (or sought to do so) covertly, nor that he did so (or sought to do so) improperly.



*[that he did so by] denigrating the College and displaying contempt for the commitment and endeavours of the former Board*

49. There is no doubt that on several occasions, the Chief Executive criticised the Board sharply and explicitly. It was his considered view that the Board had failed, and was failing, effectively to discharge its responsibilities. I do not accept, however, that in doing so he was denigrating (*i.e.* in its primary sense, defaming) the college or the Board.

50. However, I can find no evidence at all that the Chief Executive displayed contempt for the commitment and endeavours of the Board. On the contrary, his view was (and is) that *despite* the commitment and endeavours of the members of the Board, they were failing. Because this point is so important to the complainants, it is worth emphasising here that it is possible to be wholly committed to a human endeavour and yet to fail in it. I have no doubt at all that it both was, and is, the view of the Chief Executive and of the Council **‘that the former Board of Wirral Metropolitan College unfailingly met the standards of commitment and integrity required in respect of the governance of colleges’**.

*[that he did so by] obstructing and negating the College’s efforts at recovery both directly and in an underhand manner*

51. The evidence for this allegation relates primarily to the matter of the proposed disposal of Carlett Park, with which I have already dealt. I have found no evidence to support an allegation of improper behaviour.

*[that he did so by] forming alliances with selected local political interests*

52. The evidence for this allegation relates primarily to the Chief Executive’s contacts and communications with MPs and others, who were known to be hostile to the Board. I have already dealt with that aspect of the matter which concerns the release to MPs of some of the Council’s letters to the college.

53. It is accepted by all parties that the college was operating in a relatively hostile local political environment. The chairman of the Board had been, and was, active in local party politics; the local council (Wirral Borough Council) had never accepted the incorporation of ‘its’ further education college; and the proposed sale of Carlett Park (as had been the case with other actions to consolidate the college’s accommodation) was the subject of much local criticism.

54. The Council’s over-riding duty is to secure sufficient and adequate facilities for further education. It does this primarily through the distribution of public funds to further education institutions. In consequence, its relationships with those institutions is of a special character which properly involves a degree of trust and responsibility on both sides. Because these relationships are unequal ones, in that the Council has the power to determine the funding of colleges, there is a particular responsibility on the Council for the effective maintenance of good relationships. In this case, however, the relationship had broken down. Towards the latter part of the former Board’s time in office, the Council – through its officers – was exploring the possible make-up of an alternative Board, with a view to advising the Secretary of State on the possible use of his powers under Section 57. It was also briefing local interests, notably local MPs.

55. To that extent, therefore, it can be said that the Council, through its officers under the leadership of the Chief Executive, was indeed “forming alliances with selected local political interests”. From the complainants’ point of view, this could be seen – and was seen – as a breach in the working relationship which should properly have existed between the Council and the college, and which should have been the more supportive because of the Council’s admitted knowledge of the local political circumstances.

56. But that working relationship had already broken down. The Council, as it had repeatedly made very clear to the Board, believed that the management of the college was failing; and in pursuit of its over-riding duty, it was taking steps, as it saw it, to rectify the situation. In my view, the Council and its officers would have more fully respected the special character of the relationship which should have existed with the college if they had at all stages informed the Board about the actions they were taking, unpalatable though that would have been, instead of leaving the Board to find out for itself. The fact remains, however, that those actions were not, in the circumstances, improper. I cannot find that they involved any element of maladministration.

57. In summary, therefore, I have found no evidence that the Chief Executive either covertly, or improperly, exercised influence and control over the College and its circumstances; I have found no evidence that the Chief Executive denigrated the College, or displayed contempt for the commitment and endeavours of the Board; I have found no evidence that the Chief Executive obstructed or negated the College's efforts at recovery either directly or in an underhand manner; and I have found that insofar as the Chief Executive was "forming alliances with selected local political interests" there was no element of maladministration.

58. In consequence, while accepting for consideration the thrust of the original complaint as it was made by the former Board, I do not uphold it.

## **The Inspection**

59. The complainant believes that the Report of the Funding Council Inspectorate dated March 1999 (*it was actually dated April 1999*) was published without due regard to objectivity and the rights of the former Board.

60. In inspecting the college in March 1999 – notwithstanding that the timing of the inspection was in accord with an established programme – the Inspectorate faced an extremely difficult task. Although much of the preparatory work had been carried out before the complainants actually resigned from the Board, the difficulties facing the college were well known to the Inspectorate. Quite apart from the routine awareness within Council circles of the problems in Wirral, the Inspectorate had itself contributed to the text of the January 1999 report to the full Council. This alone should have alerted the Inspectorate to the challenges facing it in conducting the inspection fairly and properly.

61. Moreover, the Board had written to the Inspectorate in February 1999 challenging the timing of the inspection (as being inappropriate); alleging that, in respect of governance, its purpose could only be to provide a judgment on the old Board which retrospectively supported the Council's decisions; and suggesting that the approach of the Inspectorate must be seen as having been influenced by recent events. The Inspectorate was therefore very much 'on notice' as to the high level of the duty incumbent on it to retain its objectivity, and to observe due process throughout its inspection of the college.

62. I should therefore say straight away that I have studied all the documentation and evidence submitted to me on this matter with extreme care, because of what I judge to be its very considerable sensitivity, and that I have found no evidence of a failure in professional objectivity on the part of the Inspectorate.

63. From the point of view of the complainant, a key aspect of the inspection necessarily related to the Inspectorate's assessment of the governance of the college. As part of the standard preparation for the inspection, the college had submitted its own self-assessment report, in which it identified governance as justifying a grade 4 standard. In support of its own self-assessment, though subsequent to the submission of its report to the Council, the Board commissioned an external study of governance and management at the college, which was undertaken for it by KPMG (the firm which also acted as the college's external auditors, though the study on governance and management was undertaken by a different partner from a different office). That study also awarded governance a grade 4. In the event, the Inspectorate awarded governance at the college a grade 5. I should add that such a difference between a college's self-assessment grade and that subsequently awarded by the Inspectorate is not particularly unusual.

64. In its report, the Inspectorate referred directly, and critically, to the former Board; and, by clear inference, compared its members unfavourably with those of the new Board. I have no doubt that if those were the findings of the inspection, the Inspectorate was duty bound to report them.

65. However, those references to the former Board were made in a public document: and at no time did the Inspectorate attempt to inform the former Board of their findings. In evidence to me, the Chief Inspector quite properly pointed out that the inspection team did brief the (then) existing governing body of the college as to their findings; that once governors have been removed from a Board their role within the college ceases; and that the former Board had neither asked to meet the inspection team, nor explicitly asked for an opportunity to comment on the draft inspection report. He emphasised, quite correctly, that the inspectors concerned had very fully complied with normal procedures.

66. I do not find this satisfactory. The quite exceptional circumstances at Wirral had placed a very high level of duty on the Inspectorate to observe due process, of which they had had ample opportunity to be fully aware. In publishing findings clearly and explicitly critical of the former members of the Board without any attempt to inform them of those findings, and to give them an opportunity to comment – whether they had directly asked for it or not – the Inspectorate fell well short of the duty lying on it in this particular case. Their actions did not accord with the principles of natural justice.

67. In further representations to me, the Council has argued that *“The ability of the FEFC inspectorate to continue to execute its statutory duty . . . would be very severely undermined if it were to be obliged to inform former post holders of its judgments in advance of publication and provide them with an opportunity to comment”*; and that *“Special procedures could not be introduced for one inspection alone”*. The Council also states that *“The inspectorate makes judgments on the performance of colleges and the effective execution of functions within them. It does not make judgments about individuals”* and (in that context) that *“It is not accepted that natural justice in the context of inspection would require individuals to be given an opportunity to comment”*.

68. In relation to a routine inspection these statements and arguments might be regarded as being acceptable. However, this inspection was very far from being a routine one. It was the only full inspection that has ever been carried out in the immediate aftermath of the Council-enforced resignation of all the non-staff governors of the college concerned. In this situation, special regard for due process and the requirements of natural justice was required. The procedures that were necessary to ensure that regard should have been introduced. Moreover, the published inspection report says explicitly that *“The new corporation members (n.b. the members, not ‘the corporation’) have already demonstrated a commitment to address the issues facing the college”*. In the context of the whole of the section of the inspection report dealing with governance, an adverse inference about the individuals who made up the previous board is inescapable.

69. It is important to note that what is at issue here is a matter of due process in a unique situation. The reliance by the Inspectorate on compliance with its normal procedures was not, in this case, sufficient. In this respect, I find that there was maladministration on the part of the Council.

### **The Council’s handling of the original complaint**

70. For completeness, I should note here my consideration of the Council’s handling of the original complaint. I have already mentioned that no approach was made to the college’s auditor in respect of the then Principal’s note of the auditor’s meeting with the Regional Director. With that possible exception, I have found no failing in the care given to, or the processes adopted for, the Council’s handling of the original complaint.

## Findings

71. I do not uphold the original complaint, or any part of it. Explicitly, I find that the Chief Executive did not contrive the conditions in which the College could be subjected to a hostile take-over.

72. In addition, I find that the Chief Executive did not breach his duty to ensure adequate and sufficient educational provision for the people of Wirral, or fall short of the commonly expected standards of conduct for a public servant.

73. In relation to the additional matters which the former Board of the college identified in referring the original complaint to me:-

- a) I do not uphold the allegation that, through the actions of the Chief Executive and the Regional Officer for the North West in particular, the Funding Council's management of the affairs of Wirral Metropolitan College fell below the standards required of a public body;
- b) I do not uphold the allegation that the Report of the Funding Council Inspectorate dated [April] 1999 was published without due regard to objectivity;
- c) I find that the Report of the Funding Council Inspectorate dated [April] 1999 was published without due regard to the rights of the former Board, and in this respect I find that there was maladministration by the Inspectorate acting on behalf of the Council.

## Recommendations

74. I have not upheld any part of the original complaint. There are therefore no relevant recommendations.

75. I have found that the Report of the Funding Council Inspectorate dated [April] 1999 was published without due regard to the rights of the former Board (§§59-69). In this respect I have found that there was maladministration by the Inspectorate acting on behalf of the Council. This is not a case where financial recompense is either called for or appropriate. I therefore recommend:

**A: that the Council openly accepts my finding and offers the former Board an unqualified written apology. The Council should also confirm that it was and is its considered view that the former Board of Wirral Metropolitan College unfailingly met the standards of commitment and integrity required in respect of the governance of colleges.**

76. There are two more general matters to which I should refer: the release of Council documentation to third parties, and the need for the Council to keep colleges fully informed about action which it is taking. In the former case, I have already said that in my view there is a procedural matter for the Council to address (§32); and in the latter that the Council would have more fully respected the special character of the relationship which should have existed with the college if it had at all stages informed the Board about the actions it was taking, unpalatable though that would have been, instead of leaving the Board to find out for itself (§56). I therefore recommend:

**B: that the Council asks its Chief Executive to address these matters, with a view to appropriate changes in Council procedures.**

John Bevan

**February 2000**