

# *CAFAS Update No 44*

*22 October 2004*

*Council for Academic Freedom & Academic Standards*

*<http://www.cafas.org.uk>*

*Next Meeting:*

*Saturday 6 November 2004 2.00-4.30pm*

*Room 253.*

*Birkbeck College*

*Malet Street*

*London WC1*

*Underground: Goodge Street, Euston Square, Euston, Russell Square, Holborn*

## **The latest on the Swansea petition to the Visitor**

The Swansea petition, published under the title *The Mission Betrayed*, was submitted on 19 April 2004 to the Visitor by 295 individual members of the university and various organisations including the AUT, AMICUS and the Students Union.

On 25 June the management submitted a response to the petition which relied heavily on the report of what they described as an 'independent investigation' by Mr Colin Decker, the manager of the university's Internal Audit Unit.

On 2 August the petitioners published a commentary on these documents under the title *The Tangled Web*.

The management submitted a response to *The Tangled Web* on 16 September.

The petitioners responded to this on 28 September with what is almost certainly the final submission in the case. The Visitor's determination is expected at any time.

What follows is the preface to *The Tangled Web*.

I doubt not but if it had been a thing contrary to the interest of men that have dominion *that the three angles of a triangle should be equal to two angles of a square*, that doctrine should have been, if not disputed, yet by the burning of all books of geometry, suppressed.

**Thomas Hobbes**

On April 19 2004, 295 members of the University of Wales Swansea petitioned the university's Visitor, Her Majesty the Queen, on a variety of matters relating to the decision to close five academic subject areas, anthropology, chemistry, development studies, philosophy and sociology. Their petition, published on 1 May by the Council for Academic Freedom and Academic Standards under the title *The Mission Betrayed*, stated that the university's Vice-Chancellor had 'in the pursuit of [his] strategy [shown] a systematic disregard for proper procedure, and that in this process every

kind of law in the university has been trampled on: the Charter, the Statutes, the Regulations, an Agreement, a Code, various Guidelines, and the rules of Natural Justice’.

On 25 June, the university’s Senior Management Team provided the Visitor with a response to the petition which is cited in what follows as *Management Response*, or simply *Response*. Attached to this is the report of what purported to be an ‘independent investigation’ by Mr Colin Decker on behalf of the university’s Internal Audit Unit, which will be cited as *Decker*.

What the respondents describe as ‘a robust legal justification of [the] University’s position’ often fails to address the questions that ought to be of primary concern. Lord Ackner said that ‘the visitor’s jurisdiction is the supervision of the internal rules of the foundation so that it is governed in accordance with those private laws which the founder has laid down to regulate the objects of his benefaction.’ [*Thomas v University of Bradford*, 1987] The petition sets out what the petitioners contend are several breaches of the university’s ‘internal rules’, its Charter and Statutes, its Regulations, and its Codes. In some instances, the *Management Response* does not attempt to challenge what is said in the petition but opts instead for not mentioning the question at all.

Consider a crucial example. The petition points out that one of the most decisive ways in which the Vice-Chancellor circumvented the customary processes of consultation was by not revealing his closure plans until during the course of the meeting of Council which approved them, by which time he had already announced them (as ‘decisions’) in the press. The university has regulations on the notice that must be given of proposals, how they must be put and seconded, and on the release of information about Council proceedings. These regulations were breached, and this caused intense and much-publicised discontent. The respondents’ ‘robust justification’ is to avoid mentioning the question as to whether the relevant regulations were breached.

The respondents rely heavily on Mr Decker’s report. But *Decker* is far from ‘robust’; it is an essay in systematic obfuscation. Its prose is a nightmare, its disregard for logical exposition awesome. The only thing that is completely clear about it is that it is not in the least ‘independent’.

The *Response* itself is not as impenetrable as *Decker*, but it too is far from robust. As a guide to the facts, it is very often unreliable, and there are several instances where this can hardly be accidental. Events are frequently described in ways that require the reader to believe what it is difficult, or even impossible, to believe. It often makes assertions which contradict earlier assertions, or even assertions elsewhere in the same document. It virtually specialises in the irrelevant; its forte is misdirection on a grand scale. Anyone who reads the *Response* and *Decker* will not be surprised that Swansea is a university in which the teaching of logic is to be abolished.

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**Copies of *The Mission Betrayed* are available from the authors for £3 (including postage) and of *The Tangled Web* (including the petitioners’ final submission) for £2 (including postage).**

**Mike Cohen, Colwyn Williamson**

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## **Nadeem Ahmed vs. Governing Body of the University of Oxford & Anr.**

Since the December 2002 Court of Appeal judgment dismissing Nadeem Ahmed's application to overturn the earlier County Court judgment, dramatic new evidence has come to light concerning the conduct of His Honourable Judge (HHJ) Jonathan Playford QC in the original Oxford County Court proceedings.

This new evidence, in the form of affidavits signed by Mr. Ahmed's counsel, Miss K. Monaghan, comes from two Assessors who sat alongside HHJ Playford QC during a 7 day trial in March 2002. In his judgment, HHJ Playford QC had determined that while Mr. Ahmed had suffered a detriment by not being allowed to progress to the second year of his Master's degree course following two unlawful ‘informal tests’ set by the course tutor, Dr. Fritz

Zimmermann, there was no evidence of racial discrimination and that the claim was 'mischievous'. However, it now emerges that both Assessors have confirmed that each had drawn the inference that the University of Oxford had racially discriminated against Mr. Ahmed under the specific terms of the Race Relations Act 1976. Furthermore, both Assessors (court experts chosen to draw inferences of racial discrimination) complained that HHJ Playford QC expressed strong hostility to them as experts and, contrary to the specific requirements of the Race relations Act, did not record their disagreements with his finding that there had been 'no evidence' of racial discrimination. The views of the Assessors are required to be set out in the judgment, under the terms of the Race Relations Act, but this was altogether absent from HHJ Playford's written judgment. Additionally, further evidence has emerged concerning HHJ Playford's attempts to have Mr. Ahmed's Counsel "struck off" as a member of the Bar Counsel. The Bar Counsel rejected HHJ Playford's complaint and issued a strong condemnation of his conduct and his "intemperate use of language" against Mr. Ahmed's Counsel. This evidence was submitted as further additional evidence about the conduct of a judge in a case of racial discrimination but Lord Justice Waller at the appeal refused to comment on it. According to legal experts the Court of Appeal's refusal to comment on the fresh evidence obtained by the Bar Council about HHJ Playford can itself be viewed as discriminatory.

The University of Oxford's defence against Mr. Ahmed's claim of racial discrimination collapsed during the trial and although it was rejected by HHJ Playford QC the reason for not judging in favour of Mr. Ahmed, was not given as part of the University's own pleadings in the case. In light of the new evidence therefore, there is not merely new evidence to doubt the credibility of HHJ Playford's conclusion but actual proof from the Assessors that the judgment is false and was made against the background of hostility shown by HHJ Playford QC towards the Race Relations Act itself.

In April 2004, this new evidence was presented to the Court of Appeal in a bid to get HHJ Playford's judgment over-turned. This application was dismissed by Lord Justice Waller. Mr. Ahmed's solicitors issued a strongly worded response arguing that the dismissal of Mr. Ahmed's application would result in a "significant injustice": "We are concerned that the Order of Lord Justice Waller is improperly reasoned in confusing the issue of evidence obtained from Assessors, which could overturn the original judgment of HHJ Playford and the Assessor's own rights to bring their complaint before an 'appropriate authority' and

"we do not consider a proper balancing exercise has taken place between the issues raised in the application for leave to re-open the appeal, the prejudice and injustice caused to Mr Ahmed should the appeal not be allowed and the limited prejudice to the opposing parties as a result of the delay". (Letter from Russell Jones and Walker to the Court of Appeal, 19th April 2004)

In response to this highly unusual development in his case, Mr. Ahmed said, "this situation casts fresh doubts over the objectivity of certain sections of the judiciary who do not wish to draw an inference of racial discrimination when the experts have already done so". Mr. Ahmed has still not been assigned an academic supervisor and has not been able to progress to the second year of his degree course in Philosophy.

*Further information on Nadeem Ahmed's case can be found on the internet.*

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## London Metropolitan University Dispute

London Metropolitan University is a new university formed on 1st August 2002 as a result of the merger of London Guildhall University (LGU) and the University of North London (UNL). It is currently the largest unitary university in London comprising roughly 25,000 undergraduate and postgraduate students.

On April 1st 2004 Brian Roper (ex Vice Chancellor of UNL) became Vice Chancellor for London Metropolitan University.

On 2 April, with no prior warning management wrote to 387 members of academic staff who were formerly employed by London Guildhall University, giving them notice of dismissal on 31 August. The letters were sent out to staff the day after Brian Roper took up the Vice Chancellorship of the University. They were told that their silence would be treated as acceptance of the ex-UNL contract. Anyone who objected would be dismissed. These are extraordinary and unprecedented tactics for a university management to adopt. They indicate a management style alien to the culture of higher education. They show a total lack of respect for the rights of staff. Resolutions passed by NATFHE at both City and North campuses describe the collective anger felt by members. They say "we believe that management by imposition is the antithesis of the true function

and nature of a university where respect for rights, informed discussion, transparency and management by consent are essential if academic life is to prosper. Management by intimidation and bullying is even more unacceptable and represents an attack upon the basic rights and independence of staff that will be of concern to all within higher education at large.”

NATFHE’s objectives are the withdrawal of notice to our members and a negotiated harmonised contract of employment for all academic staff at London Met NATFHE, the sole recognised union for academic staff in both previous universities, and in London Metropolitan University, regards the notice of dismissal as a quite inappropriate means for any Vice Chancellor to use to impose a new contract on his academic work force and a violation of all good employment practices. The Director of Human Resources has written to 387 academic staff stating that "anyone who advises their line-manager that they are working to the ex-LGU contract will not receive any remuneration and steps will be taken to process their termination".

On the day that management are claiming that we are being transferred to this so-called "preferred" contract, we staged a demonstration to show that we are still resisting their outrageous imposition and that we are not frightened by their continuing threats of dismissal. A strike was planned for induction week, but, the day before it was scheduled to take place, management obtained a high injunction forbidding the strike on a couple of minor legal technicalities. The High Court injunction is yet another example of the institutional bullying that lies at the bottom of the dispute. Mr Roper's claim not to be anti-union made in his letter of August 21st is now exposed as palpable nonsense by his use of some arcane points in the anti-trade union legislation which has cost the union tens of thousands of pounds.

The injunction is a setback but in no way undermines the legitimacy of the dispute. The ballot for industrial action will be rerun as soon as possible. We will be circulating a staff satisfaction survey asking academic staff, amongst other things, their views on the organisation and management of the university. There will be a national rally or demonstration around the whole question of university governance and institutional bullying. This will be used to highlight our case and that of our AUT colleagues at Nottingham University. Details are yet to be finalised, but we have the support of NATFHE's national office for this project. Finally, the International Academic Boycott is not affected by the court injunction and we will welcome any efforts to extend and harden the boycott because, despite management denials, it has been very successful up to now.

NATFHE believes the new contract for the University should:

- Ensure appropriate and equitably distributed workloads
- Provide appropriate limits on excessive evening and weekend working
- Ensure holiday entitlements are safeguarded
- Provide an appropriate and fair reward system for lecturers reflecting good national practice
- Ensure lecturers are enabled to use their professional judgement in organising their scholarly activity

It was the hope and expectation of NATFHE that a new contract for the new university could be negotiated with the university to the mutual benefit of staff, students and management. That would require NATFHE and the University to agree to move away from both the UNL and LGU contracts. We have done that. We still believe that a negotiated settlement is entirely possible and must happen. However, for that to happen the University needs to accept that the UNL contract is not the start and finish of the negotiations.

**Steve Cushion**

*for the NATFHE co-ordinating committee at London Metropolitan University*

If you support us but have not yet got in touch or written to our management, could we ask you to do so; we would very much like to hear from you and so, we are sure, would Brian Roper. s.cushion@londonmet.ac.uk. Further details from <http://www.natfhe.org.uk/says/lonmetun.html>  
Brian Roper,  
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### ***Editorial Foot note***

The injunction against Natfhe was allowed because it was judged that

1. Natfhe failed to inform the employers of the sites on which those taking strike action worked. Natfhe responded that the information they had on this was inaccurate. The judge ruled that the union should have provided the information even if it were inaccurate.
2. Natfhe received the result of the ballot on a Friday afternoon but did not inform the university until the following Tuesday morning when the Natfhe official returned to work.

London Metropolitan was allowed to delay more than four months before seeking an injunction. It had accepted industrial action short of a strike and strike action during that time.

# Essex County Council Index B

## Appendix 3 – Index B – Former employees whose previous employment history may give cause for concern

CAFAS members may recall the details given about Essex County Council List 98 in Update 37 in October 2002 and previously in Update 35. That list has been in existence since the 1970s but only came to light in February 2002 as a result of the introduction of the European Convention of Human Rights into the British Domestic Legal System and the adoption of the 1998 Data Protection Act.

Recently I have come across Essex County Council Index B through contact with an Essex County Councillor and prolonged correspondence with ECC Corporate ISIS Manager.

My name was placed on ECC List 98 in March 1995 and I was informed about that in February 2002. In July 2003 some auditing was done behind the scenes and my name was transferred from List 98 to Index B. I was told about that action formally in September 2004.

The Council responded to my enquiries thus:

Your case was considered against Index B criteria on 03/07/2003. It was referred to the Disclosure Unit on 03/07/2003 and they placed you on Index B. It is not their practice to write to individuals in these circumstances advising them that their name has been transferred.

### Criteria

1. Where an individual has been dismissed or resigned whilst the subject of disciplinary investigation from the council.
2. Where an individual is the subject of criminal investigation or has a criminal conviction (unspent or spent if covered by the Rehabilitation of Offenders Act 1974 Exceptions Orders), which does not justify inclusion on the list.
3. Where an individual has provided false information e.g. false qualifications or failure to disclose a previous conviction.
4. Where an individual has been retired or resigned due to exceptional ill health.
5. Where an individual was in breach of their contract of employment.
6. Where an individual has resigned or left the employ of the council due to reasons of poor performance.
7. Any other reason where a person has left the employ of the council where there are grounds for concern if the person were to seek re-employment with the council in the future.

**NB** This index is for use where a person on the index reapplies for a job with Essex County Council ONLY.

<b>Index B – Referred from List 98</b>			
Surname	xxxx	Brief Details of Case	Mr A was subject to capability proceedings, which developed into allegations of inappropriate behaviour on his part towards colleagues in the school. Following investigation & formal hearing Mr A was dismissed.
First Name	xxxx		
Title	xx		
Other Name(s) Used			
Date of Birth	xxxx		
DfES Ref	xxxx		
Nat Ins No			
Last known address	xxxx	Referred to DfES	
Formerly employed as	Teacher	DfES Decision	
Formerly employed at	Cecil Jones High School	Code	B
Last Day of Service	01/01/1995	Source Documents	RE2/96 Box 1

**03/07/03 Referred to Index B**

I am now waiting for ECC to address the following:

1. How is Index B different from ECC List 98?
2. Why was my case considered against Index B on 03/07/2003?

3. Why was I transferred from List 98?
4. Who considered it?
5. How would individuals know whether their names are on Index B?
6. How do you ensure that the information on Index B is complete and accurate?
7. What does Code B mean?
8. When was Index B established

What I have found so far.

### Essex County Council Issues

ECC Issue	Source	Established in	Known to me on
ECC Index B	Mr X	~	July 2004
ECC List 98	Mrs Y	1970s	February 2002
ECC Closed File Policy	Mr Z	~	~ September 1994

I wonder whether other Local Authorities are adopting a similar system to that of Essex.

Majzoub B Ali  
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 Gunfleet, Shoeburyness  
 SOUTHEND-ON-SEA, Essex SS3 9PT  
 Phone: 01702 587 995; email: MajzoubBAli@hotmail.com

## OBITUARY

### Peter Goulden

Eva Link writes:

It is with great regret I let you know that one of our CAFAS colleagues, Peter Goulden, a retired Senior Lecturer in Business, passed away in Edinburgh on his 64th birthday on 6th September 2004.

It was only two days earlier that he sent me a letter asking me to change a number of his bank account from which he wished to make a direct debit of his CAFAS membership fee.

Peter suffered from cancer.

## Royal Society Report

Readers may be wondering, as was I, what has happened to my submission to the Royal Society's "Best Practice Committee". I inquired about the progress of that committee and I can advise members that, so far, the committee has not reported on its findings. Bob Ward, of the Royal Society, informs me that it is hoped that the committee will produce a report some time about the end of the year. I guess we will have to wait until then to see what, if anything, the committee may say about my concerns.

I am sure the committee will express its commitment to the very highest possible standards but I have doubts about the extent to which they will enact the standards to which they express their commitment. My experience is that the way scientific institutions approach standards is rather Machiavellian and, on that basis, I suspect the

committee will say nothing at all about the matters I have raised.

In his Discourses, Machiavelli said of people in great positions  
"The whole truth about olden times is often not grasped, since what rebounds to their discredit is often passed over in silence, whereas what is likely to make them appear glorious is pompously recounted in all its details."

I find that to be pretty much what happens in science.

In the meantime, my paper on the evolutionary origins of humour and its role as an IFF finally came back from the journal - after seven and a half months! One referee talked sense and the other didn't, which is probably better than average. Neither commented that this paper wasn't from an institution. Anyway, I have made some changes, as requested, and sent it back, so we will now see what happens.

**John Hewitt**

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## NOTICES

### MEETING

**6 November 2004 at 2.00 p.m.**

#### Agenda

1. Minutes
2. Matters arising
3. Case reports
4. AOB

**There will be an officers' meeting in Room 253 at 1.00 pm**

**Informal lunch and chat from 12 noon in the Junior Common Room, 4<sup>th</sup> floor, extension wing, Birkbeck College, Malet Street. All welcome.**

## NEAR

**Cafas has linked to the Network for Education and Academic Rights (NEAR).**

Information is on the website  
<http://www.nearinternational.org/>

### **Has your CAFAS subscription lapsed?**

**As always, we are dependent upon your financial support. Unfortunately, a number of members have fallen into arrears.**

**Your address label shows the date we last received any money from you. A red asterisk tells you that your subscription urgently requires renewal; two red asterisks indicate your subscription has seriously lapsed and needs your urgent attention.**

**If you have any query/ies, please get in touch! [Subscriptions are £10.00 per annum for waged, £5.00 for unwaged individuals; £25.00 for T.U affiliation.**

**Correspondence to  
Dr Eva Link**

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### *Next Update*

Please send letters, news items and articles to:  
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7 Benn Street  
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e-mail: [g.thorpe@londonmet.ac.uk](mailto:g.thorpe@londonmet.ac.uk)  
Tel/Fax: 0181 986 3004  
Disks & email are best. Disks will be returned.

## CONSTITUTION

CAFAS' aims are outlined on the membership form. The full constitution can be obtained from the Secretary or [www.cafas.org.uk](http://www.cafas.org.uk). CAFAS was founded in February 1994. It depends on subscriptions and an active membership. It meets in January, April and October.

## Committee

### Chair:

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### Secretary:

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### Founding Member:

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### Auditor:

#### Majzoub Ali

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### David Regan Appeal

#### Coordinator: Dr Janet Collett

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01273 473 717  
j.i.collett@sussex.ac.uk

### Health & Safety Spokesperson:

#### Dr David Heathcote

Dept of Applied Psychology, Bournemouth University  
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### Students' Complaints:

#### Dr Harold Hillman

3 Merrow Dene, 76 Epsom Road, Guildford GU1 2BX  
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### Website

#### Dr John Hewitt

33 Hillyfields, Dunstable, Beds LU6 3NS  
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## Comment

Readers who have followed Majzoub Ali's case will be impressed by his determination to unearth all the facts relating to his case. This is matched by a perceptible reluctance on the part of many involved to release them, including union officials, the local education authority, councillors, the Department for Education and Skills and MPs. Nadeem Ahmed, who was forced to question the conduct of the University of Oxford, shows equal commitment to obtaining justice. Both cases bear the hallmarks of racism, compounding injustice.

The disputes at Swansea and London Metropolitan reflect a more aggressive management in both old and new universities. The Swansea directorate are attempting to bypass the university's mission and statutes. In doing this, they are revealing an unprecedented disregard for the authority of the university, its democracy, standards and academic freedom. In breach of natural justice and fairness, they are attempting to place themselves above the law. It seems that Swansea is seeking to follow the pattern of new universities like London Met. The latter's mission is scarcely two years old but is really at the centre of the dispute. It is a Mission Impossible, committed one, to market competition; two, to the implementation of government policy and three, is founded on 'the principles of academic freedom'. The only way the university can see itself managing the contradictions is to have absolute control over the work of academic staff. The current attempt to impose a new contract is driven by the need to control academics 'body and soul'. If they were to succeed such a demoralised workforce would be no good to students and the institution could not claim to be a university.

Education policy is formed in a process of struggle. It is clear where the management of Swansea and London Met stand in this. They must not succeed in the destruction of their universities.

***Cafas Update provides a forum for discussion and debate. Items do not necessarily reflect the views of the Council.***



