

ACADEMY ACCOUNTS AND PERFORMANCE – 21 NOVEMBER 2018

Written Evidence from the Department for Education and the Education and Skills Funding Agency

Questions 238-240 (Chair): The impact on a typical secondary school of the increase in the employers contribution to the Teachers Pensions' Scheme

Based on current information, the estimated employer contribution rate from September 2019 will be 23.6%, up from 16.4%, an increase of 7.2 percentage points. The exact amount will not be known in full until spring 2019 (once the Government Actuary's Department has completed its calculations and HM Treasury's directions are finalised).

The size of the increase in employer pension contribution rate will affect different schools in different ways depending on a range of factors including: the number of teaching staff, the position on the pay range at which they are currently paid, and the number of teachers in leadership positions. The individual circumstances, budget pressures and spending patterns of each school will therefore be different.

Due to the flexibilities in staffing structures and the variety across the school sector, it is therefore not possible to define a 'typical secondary school'.

However, as an illustrative example, taking the national classroom teacher mean salary of £35,400, the cash impact from September 2019 to March 2020 of the increase in employer contribution rate by 7.2 percentage points would be £1,486.80.

Subject to consultation, we propose to fund fully the pressure resulting from the increase in employer pension contribution rate for all maintained schools and academies.

Question 272-273 (Anne Marie Morris): What information on performance and financial information is publicly available outside the Annual Report? What plans do you have to improve it for next year?

Performance information on academies is publically available from a range of sources. This includes the information published by Ofsted about the educational standards of academies, as well as school educational performance tables and wider Multi-Academy Trust performance measures.

Financial information about every trust is available in their published annual accounts. These can be found online on Companies House and trusts' individual website.

Financial benchmarking, setting out breakdowns of each individual schools' (academy and maintained) income, expenditure and workforce is available at <https://schools-financial-benchmarking.service.gov.uk/>. This service provides schools, parents and other interested parties with the ability to compare their spending in various categories with that of similar schools.

General information about schools is available at <https://get-information-schools.service.gov.uk/>

In terms of the Sector Annual Report and Accounts (SARA) itself, we are actively considering how we can best integrate further data into it. In doing so we need to balance the strategic focus that the Annual Report brings against providing greater transparency to users of the document.

Our intention is to achieve this in two ways; first, by greater use of signposting to online information, and secondly by providing additional analysis where appropriate. Areas we are looking to potentially include are as follows:

- disclosure of further information on the academies with non-staff related party transactions;
- further analysis of trustee remuneration, particularly with respect to high pay;
- additional geographic analysis, for instance an analysis of MAT size / academy trust by Regional Commissioner;
- other measures of financial stability of the sector, potentially including a list of the trusts which are in cumulative deficit;
- further analysis of qualified audit opinions by cause; and
- links to those schools who have failed to submit financial information required of them on more than one occasion.

Question 274 (Anne Marie Morris): What information is available on the performance, financial success and viability of virtual schools for looked after children

The Children Act 1989 (as amended by the Children and Families Act 2014) requires councils in England to appoint a Virtual School Headteacher (VSH) to discharge the local authority's duty to promote the educational achievement of its children in care. The Children and Social Work Act 2017 extended the role to children adopted from care, and those who leave care through a Special Guardianship or Child Arrangements Order (previously looked-after children).

The VSH role for children in care was piloted by eleven authorities. The University of Bristol evaluated the pilot and found that local authorities (LAs) saw an approximately 8 percentage points improvement in the number achieving both 1 and 5 A*-G GCSEs over and above the increase seen for all looked after children during the pilot. They found that the role can make a real difference, especially when they have a strategic role and sufficient seniority to influence practice and the use of resources across the authority ¹.

The performance of Virtual School Heads is a matter for Ofsted and LAs. Ofsted's framework requires inspectors to ask VSHs for an annual report, including details of how the VSH has managed the Pupil Premium, and evidence of how this has

¹ Berridge et al, Looked After and Learning Evaluation of the Virtual School Head Pilot (2009).

supported the achievement of children looked after by the LA. Ofsted evaluated the impact of the VSH in 2012, and found evidence of improving educational outcomes for looked-after children in all of the LAs visited. Improvement was not limited to attainment; there was also good evidence of increased levels of attendance and reduced numbers of exclusions².

The Ofsted social care annual report 2016 highlighted that, in a significant majority of the LAs inspected that year, inspectors commented positively on the contribution of virtual school headteachers. Ofsted found that, where practice is strong, virtual headteachers play an important role in improving attendance, preventing exclusions and improving the educational progress and attainment of children looked after.

The funding for VSH is through the local government settlement as this a statutory local authority role, integral to care planning for looked after children. The extension of VSH role to previously-looked after children is funded by a direct grant to local authorities until 2020; funding following this will be considered as part of the spending review.

As the duty for VSH to support previously looked-after children only came into force in September 2018, we do not have evidence of the impact of this yet. We are providing new burdens funding to LAs for the extension of the role, and are working with the National Association of Virtual School Heads and the Chair of the Adoption and Special Guardianship Board, to understand the impact on the outcomes of previously looked-after children.

Question 279 (Layla Moran): On high salary levels how many academies has the Department been concerned about?

We discussed the work the Department, and particularly ESFA, have been doing to challenge academy trusts paying high salaries. This has included challenging 213 trusts across four tranches of activity, including:

- 4 December 2017 – writing to 29 trusts with a single academy paying salaries of £150,000 as reported in 2015/16 academies accounts return;
- 23 February 2018 – writing to 88 MATs paying salaries of £150,000 as reported in 2016/17 academies accounts return;
- 10 April 2018 – writing to 43 trusts paying two or more salaries between £100,000 and £150,000 as reported in 2015/16 academies accounts return; and
- 5 July 2018 – writing to 53 academy trusts paying salaries of either £150,000 or above or two or more salaries between £100,000 and £150,000 using 2016/17 academies accounts return (those trusts not already contacted through previous letters).

Our aim throughout this work is for the sector to get better at identifying and challenging total leadership team costs. It is important, however, to recognise that

² The impact of virtual schools on the educational progress of looked after children, Ofsted (2012)=)

trusts are free to set their own salaries for staff, and so our primary focus has been on whether a robust process has been followed in setting these salaries.

As a result of this work, at the end of November 2018:

- 52 trusts have been taken out of scope of the work (either closed or already reduced salaries);
- 131 trusts demonstrated that their processes for setting executive salaries were compliant with the challenge set out in the 2017 Academies Financial Handbook;
- 43 trusts have committed to reviewing and strengthening their pay policy and processes to ensure that levels of pay accurately reflect the level of educational and financial challenge faced by the trust, and the responsibilities of the individual being paid;
- 11 trusts have made a commitment to reduce salaries in the future; and
- 2 trusts have implemented an immediate significant reduction in salaries following negotiations with the ESFA.

These numbers do not total the 213 trusts challenged as some trusts feature in more than one category.

Eileen Milner said in the hearing that “between 2015-16 and 2016-17 about half those trusts ceased paying salaries at the level that came into scope”. In fact this is more like a quarter.

Questions 291-292 (Gareth Snell): The proportion of academies and multi-academy trusts (MATs) who have been engaged in the ambassador programme.

Although we do not hold this information centrally in the Department, data provided by New Schools Network, providers of the Academy Ambassador service, shows that they have helped place 1,118 Non-Executive Directors (NEDs) on MAT boards since the inception of the programme in 2013 up to the end of October 2018. These figures could include more than one NED being placed on the same MAT board, so do not show the exact number of trusts who have been engaged with the programme.

Question 327-330 (Layla Moran): When will the plans for the inspection of multi-academy trusts be announced?

In June 2018, the Secretary of State set out an intention to consider further the transparency and fairness of our assessments of multi-academy trusts. Over the course of the autumn 2018 term, we have engaged widely with the Trust sector, as well as meeting unions and other representative bodies, to develop areas of focus to strengthen the system of MAT accountability.

As one part of this, we have been working with Ofsted as it develops improvements to its existing approach to scrutinising MATs through batched inspections of schools. As set out in Ofsted’s annual report, the changes follow

Ofsted's targeted piloting and inspector training, and include increasing the length of time over which batched inspections take place, from one week to up to two terms. We expect further information about improvements for this year to be available later in December 2018. We will continue to work with Ofsted to evaluate whether these changes meet the intended aims and, as we consider more widely how the system for MAT accountability may be strengthened.

Question 361 (Chair): How many school governors have been banned?

The Department has barred a chair of governors and the chair of a board of trustees from being in a management position in an independent school (including academies and free schools) under section 128 of the Education and Skills Act 2008.

The Secretary of State can make directions under section 128 of the Education and Skills Act 2008 prohibiting individuals from taking part in the management of an independent school (including academies and free schools).

The circumstances include:

- where the individual is subject to a caution or conviction of a relevant offence;
- is subject to a relevant finding in respect of a relevant offence; or
- has engaged in inappropriate conduct,

and the Secretary of State considers that because of that caution, conviction, finding or conduct that individual is unsuitable to take part in the management of a school. We will always consider using the power where there is evidence to suggest that an individual has behaved so inappropriately that they are unsuitable to be involved in the management of schools.

Where there is a concern the Department may refer cases to the Charity Commission, reflecting the Commission's interest in addressing non-compliance, mismanagement or misconduct in the administration of any charity, and in ensuring that individuals acting in the administration of the charity (in particular, but not limited to, charity trustees) do so in compliance with their legal duties as stipulated under the Charity Act 2016.

Likewise, the Department may also refer cases involving misconduct on the part of trustees to the Insolvency Service for consideration under the Company Directors Disqualification Act 1986. In cases where there is evidence that a company director is unfit to act in the management of companies the Secretary of State for Business, Energy and Industrial Strategy can apply for a disqualification order against them.

Where there is evidence of criminality the Department would always refer to the police.

Question 433 (Chair): Examples of the types of information on academies that it would be difficult for the Department to release

The Department is committed to meeting its responsibilities and duties, as set out in the Data Protection (DP) and Freedom of Information (FOI) Acts. When

information on academies is requested, the Department always processes requests on a case-by-case basis in compliance with the Act, with our initial position being that information should be released unless there are good reasons under the Act for it to be withheld. As part of our process of deliberation, we pay particular attention to the balance of public interest, but also in such cases the interests of key stakeholders involved, including the children, parents and employees at the relevant academies.

As outlined by Mike Pettifer in the hearing, it is important to note that ESFA produces a lot of documentation to support our work. These documents are intended for internal use and are not produced with the intention of publication. The Wakefield City Academies Trust (WCAT) reports were not official investigation reports which are always published in line with our transparency arrangements. Rather these were internal reports, carried out as part of ESFA's routine business into trusts and their finances. They were produced for internal purposes and with the aim of having a free and frank discussion with the trust about some of the issues and, importantly, recommendations for improvement.

We had previously withheld the reports under the exemption covered in Section 36(2)(c) of the Freedom of Information Act 2000, as we considered release at the time of request would, or would have been likely to, prejudice the effective conduct of public affairs. In making this decision a full public interest test considering arguments for both releasing and withholding the reports was conducted. On balance, we decided to withhold the reports to allow us to continue to work effectively with WCAT to resolve the issues and not to distract from the business of re-brokerage with incoming trusts, thus finding a positive outcome for the children at the schools involved.

We believed, and continue to believe, that this approach was in the interests of all concerned, particularly the children at the schools in question. Our decision to withhold the reports was twice escalated to the Information Commissioner's Office. On each occasion the Information Commissioner agreed that our application of the exemptions used to withhold the requested information were fair and appropriate at the time of the requests, with the public interest being in favour of this information being withheld.

Given the interest in the reports, we committed to publishing them after all 21 schools in WCAT had transferred to new trusts. This information has now been released to the FOI requester and is therefore now in the public domain.

Points of Clarification

Questions 306-307 (Chair): Clarification on the skill set of the new related party transactions team

To clarify the answer given in the hearing, the new team in the Department responsible for approving Related Party Transactions (RPTs) will not be using "forensic accounting", as this is a particular skill set associated with legal action. The compliance team will be responsible for a range of duties in terms of ensuring compliance with the approval process, and we are offering appropriate

professional training/qualifications to the team. As is the case now, if issues are flagged with RPTs – either through the approval process or through audit – the Department will be able to investigate fully, including drawing on forensic accounting techniques as appropriate.

Question 401 – Clarification of why Responsible Bodies have not responded to the Asbestos Management Assurance Process

The data collection in 2016 was targeted at schools. The Asbestos Management Assurance Process (AMAP) is targeted at Responsible Bodies (local authorities for maintained schools; trusts for academies; and governing bodies for voluntary aided schools). The process requires Responsible Bodies to invite their schools to participate.

In some cases that has not happened. We have written to the non-participating Responsible Bodies and reminded them that they are expected to participate. We are also providing the AMAP portal access codes to schools that request them, to enable them to complete the school information. To complete the process the Responsible Body must also provide a declaration confirming and assuring that the responses provided by the school are correct.

Question 410 – Clarification about the Department’s receipt of professional advice on asbestos

As part of the Asbestos Management Assurance Process, schools were asked to confirm if professional advice had been taken in the management of their asbestos. We do not ask to see the professional advice but schools are required to have an up to date Asbestos Management Plan and Asbestos Location Register; and the Department seeks an assurance from the Responsible Body that they do.

Question 411 – Further information on requirements around school asbestos management

Schools are required to have an up to date Asbestos Management Plan and Asbestos Location Register, which are reviewed regularly, and available to any contractor who plans to work on the school site. This is a requirement under the Control of Asbestos Regulations 2012.

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