Meg Hillier  
Chair of the Public Accounts Committee  
House of Commons  
London  
SW1A 0AA  

29 March 2019  

Dear Meg  

Seventy Third Report of the Session 2017-19: Academy Accounts and Performance  

As you will be aware, the formal Treasury Minute response to the Committee’s report is due to be published shortly on 01 April 2019. Your report recommended that the Department write to you by the end of March, setting out the progress of our work in meeting individual recommendations. In line with that recommendation, I have provided an update on our work in meeting each recommendation below.  

Recommendation 2.1: The Department should write to us by March 2019 setting out the work it has done to understand better who the users of the academy sector annual report and accounts are and what information they need.  

The Department is keen to ensure that the varied user groups with an interest in the SARA are provided with information that is relevant to them. Our work has identified a broad range of user groups including: Parliament; academies; parents; the specialist press; local communities; and policy and operational teams within the Department. Our initial analysis of users’ needs, conducted through projects such as the Better Financial Reporting Project, has identified that these needs vary considerably and are unlikely to be effectively met in a single publication/data tool.  

We consider that the SARA operates best as a sector-level analysis, combining information relating to the performance of Academies in accordance with the Academies Act 2010, with financial information from Academy Trusts’ accounts, and Parliamentary requirements relating to the production of government accounts. Our intention is to improve the sector level analysis contained in the SARA, balancing it with the needs of Parliamentary accounting, and combining that analysis with more effective signposting to other DfE data and information
that meets the particular needs of the different user groups.

**Recommendation 3.2: The Department should, by March 2019, make clear and easily accessible the name and contact details of whom in the Department parents should turn to if their concerns are not addressed adequately by the academy trust.**

The Department has a published online contact point for members of the public, including parents, to get in touch with the Department with any questions, comments or concerns (including whistleblowing). This includes situations where a parent is not satisfied with an academy trust’s handling of their complaint. This form is available at the following link: [https://www.gov.uk/government/publications/complain-about-an-academy/complain-about-an-academy](https://www.gov.uk/government/publications/complain-about-an-academy/complain-about-an-academy)

We do not provide a single named contact at the point of a parent’s initial contact, because the individual that handles the parent’s case might differ in accordance with the availability and expertise of staff. Once a staff member has commenced an investigation, they will remain the point of contact for that complaint except in unforeseen circumstances.

**Recommendation 4: The Department should write to us by March 2019 to set out what sanctions it has imposed to date, and explain how it plans to strengthen the sanctions regime to deter, punish and prevent malpractice. In strengthening the sanctions regime, the Department should work with the Charity Commission, Companies House and the Insolvency Service.**

With reference to the Committee’s fourth recommendation, as the Principal Regulator of academy trusts, the Department has an objective under section 26 of the Charities Act 2011 to do all it reasonably can to promote compliance by the trustees of those charities with their legal obligations in exercising control and management of the administration of their charity. This includes the use of its regulatory powers in cases where charity law has been breached. The Department may invite the Charity Commission to use its powers of investigation and intervention under the Charities Act 2011 if it believes that it does not have sufficient powers at its disposal.

Where we identify potentially serious concerns about the administration of a relevant charity, we will notify the Charity Commission in writing as soon as possible, setting out any charity law issues we have identified. A notification from the Department to the Charity Commission may invite it to use any of its regulatory powers or indicate that those powers may be required at some stage during the conduct of the case.

In such cases, the Department will supply the Charity Commission with all the information that is relevant and appropriate in the circumstances. Where we request that the Charity Commission open a Statutory Inquiry, or use any of its available powers, permission to disclose some or all of the information supplied in support of the invitation must be included.
The Charity Commission is not obliged to accept the invitation and, in such cases, will explain to Department in writing, why it has decided not to open a Statutory Inquiry or use its powers, and if it proposes to take any other action (e.g. issuing regulatory advice, disqualification of individuals as trustees). The Department has made four such referrals to the Charity Commission. In the course of its regulatory activity, the Charity Commission may identity serious concerns about the administration of a relevant charity, which it will notify Department of in writing, to aid its role as Principal Regulator.

A memorandum of understanding is in place, which sets out how the Department and the Charity Commission work together, including principles for managing referrals. It is available to view at the following link: https://www.gov.uk/government/publications/memorandum-of-understanding-charity-commission-and-the-department-for-education.

Likewise, the Department may also refer cases involving misconduct on the part of trustees and/or directors to the Insolvency Service for consideration under the Company Directors Disqualification Act 1986.

We have made no such formal referrals of potentially unfit directors of academy trusts to the Insolvency Service (IS) seeking disqualification under the Company Directors Disqualification Act 1986. We are currently working with the Insolvency Service to formalise the arrangements for making such referrals, via a Memorandum of Understanding.

Whilst these routes of redress are valuable, the Department also has its own powers, under section 128 of the Education and Skills Act 2008, to sanction individuals engaged in misconduct by barring them from involvement in the management of education institutions. We will always first consider using these powers where there is evidence to suggest that individuals have engaged in misconduct and are unsuitable to be involved in the management of schools.

We have used these powers three times to bar individuals and have strengthened our internal processes so that we can better identify and investigate alleged misconduct and ensure that appropriate action is taken against individuals. We are currently investigating a number of potential cases under section 128.

Focussing next on teacher regulation, since April 2012, the Secretary of State has also had powers under section 141A-E and Schedule 11A of the Education Act 2002 (amended by the Education Act 2011) that allow him to regulate the teaching profession and decide whether to prohibit individuals from carrying out teaching work as a consequence of them committing serious misconduct.

Those powers are delegated to the Teaching Regulation Agency (TRA), formally part of the National College for Teaching and Leadership, which acts on behalf of the Secretary of State to consider allegations made against teachers, including head teachers and those teachers who also form part of the senior leadership team in academies.
Where the Secretary of State imposes a prohibition order, it prevents the individual concerned from carrying out unsupervised teaching work. Teaching work is defined in legislation as: planning, preparing lessons and courses for pupils; delivering lessons to pupils; assessing the development, progress and attainment of pupils; reporting on the development, progress and attainment of pupils, in any school, sixth form college, relevant youth accommodation or children’s home in England.

All decisions to impose a prohibition order are published on GOV.UK, along with all cases where there are findings of unacceptable professional conduct (UPC), conduct that may bring the profession into disrepute (disrepute), or a conviction (conviction) of a relevant offence but where it was not considered to be in the public interest to prohibit the teacher. These decisions are available at the following link:
https://www.gov.uk/government/publications?keywords=teacher+misconduct&publication_filter_option=decisions&topics%5B%5D=all&departments%5B%5D=all&official_document_status=all&world_locations%5B%5D=all&from_date=&to_date=

Since its establishment in 2012, the TRA has imposed 93 prohibition orders on headteachers. The TRA has also published 34 decisions where there were findings of UPC, disrepute or conviction, but no prohibition order was imposed.

Finally, in terms of work with the police, it should be noted that a decision to notify the police is taken at a point when we have sufficient evidence of potential fraud and/or criminality. This enables early advice to be taken on progressing the investigation, including, where appropriate, for the police to take over the investigation. We continue to liaise with the police throughout their investigation through to resolution, whilst undertaking any additional necessary actions to improve control and prevent any further loss to public funds.

**Recommendation 5.2: On Bright Tribe specifically, the ESFA should write to us by March 2019 with the results of the investigations that the ESFA and the trust were undertaking when we took evidence.**

The ESFA and the trust have completed the initial phases of the review work to establish the facts surrounding the existing concerns about Bright Tribe Trust, including those aired in the BBC Panorama programme of 10 September 2018. The results of the investigations are highly sensitive and cannot be shared at this time.

Our response to Recommendation 5.1 in the Treasury Minute for the Seventy-Third Report of Session 2017-19 confirms the ESFA’s commitment to transparency and publishing the outcome of its investigations. However, the timing of publication will need to take account of the risk that we jeopardise or prejudice any potential action taken against those deemed to be responsible for the loss of public funds. Investigations are, by nature, complex and can take time to achieve the desired outcome. The ESFA are pursuing all possible avenues to ensure the matters are resolved in the public interest and will inform the Committee as soon as it is practically possible of the results.
Recommendation 7: In March 2019, the Department should name and shame those schools which did not meet the February 2019 deadline and which have therefore repeatedly failed to respond to its asbestos management survey.

The Department will publish information about the responses to the Asbestos Management Assurance Process (AMAP) at responsible body and school-level. We expect to publish, as soon as the analysis is complete, in the next few months. That information will make it clear which bodies and schools have responded.

We established the Asbestos Management Assurance Process (AMAP) to help improve our understanding of asbestos management in schools. This is so we and the Health and Safety Executive (HSE) can help responsible bodies (local authorities, governing bodies and academy trusts) to deal with this issue as effectively as possible.

It is the responsible body (local authority, governing bodies or academy trusts) that is responsible for ensuring asbestos in schools is managed in a manner that is compliant with the Control of Asbestos Regulations 2012. It is not the direct responsibility of the school.

This is why the AMAP requires the responsible body to provide an assurance declaration that their respective schools are compliant with the Control of Asbestos Regulations 2012. So irrespective of whether a school has replied or not, accountability rests with the responsible body.

Although the AMAP is a voluntary data collection, the Department has made it clear that all responsible bodies and their respective schools are expected to participate in the AMAP.

I hope this update is useful for the Committee. I am copying this letter to Sir Amyas Morse, Comptroller and Auditor General and Richard Brown, Treasury Officer of Accounts.

JONATHAN SLATER
PERMANENT SECRETARY