



Permanent Secretary

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Rt Hon Margaret Hodge MP
Chair of the Public Accounts Committee
House of Commons
7 Millbank
London SW1P 3JA

25 March 2015

Dear Ms Hodge

In my letter to you of 19 February 2015 (in response to your letter dated 12 February 2015) I promised to respond to the points you make about Durand Academy following the discussion at the PAC hearing on 26 January 2015. I respond to the questions in your letter of 12 February 2015 below:

1. Who owns the land and buildings occupied by Durand, and who would benefit over any increase in its value?

Durand Academy operates from three sites: one in Stockwell, London at Hackford Road ("the Hackford Road site") and another at St Cuthman's, Stedham, in West Sussex ("the St Cuthman's site"). The academy also operates on a site at Mostyn Gardens. The Mostyn Gardens site is owned by Lambeth Council and leased to Durand Academy Trust (DAT).

(a) Hackford Road site

In August 2010, Durand Education Trust ("DET") became the foundation for what was then Durand Primary School ("the school"). When DET became the foundation for the school, paragraph 2A of Schedule 6 of the School Organisation (prescribed Alterations to Maintained Schools) (England) Regulations 2007 applied with the consequence that legal title in the land and buildings on the Hackford Road site transferred from the governing body of the school to be held on trust by DET for the purposes of the school – a "School Trust". When the school converted to an academy, DET retained the land and the buildings at the Hackford Road site on the terms of the School Trust. Thus at all times since August 2010 DET has held (and continues to hold) the Hackford Road site on trust for the purposes of the school, as it was before conversion to an academy.

As DET holds the Hackford Road site on the terms of the School Trust, the proceeds derived from exploitation of the land are also subject to the terms of that trust. They cannot be used for any purposes other than for the purposes of the school without the permission of the Court or the Charity Commission. Any

increase in the value of the land must also be used for the purposes of the school.

The Hackford Road site is also “publicly funded land” for the purposes of Schedule 1 of the Academies Act 2010. This means that should DET want to dispose of the land it would need first to notify the Secretary of State. On receipt of such notice, the Secretary of State has certain powers of direction under the 2010 Act. These include the power to direct that the land be transferred to a local authority or another person running an academy (subject to any payment the Secretary of State determines is appropriate), or to direct that DET pay the Secretary of State the value of the whole or part of the land.

(b) St Cuthman's site

The Department understands that legal title of the St Cuthman's site is held by DET. DET and DAT (“Durand Academy”) has not yet provided sufficient evidence as to how (i.e. using what funds) the St Cuthman's site was purchased. The Department's understanding is that the purchase of the St Cuthman's site will be considered by the Charity Commission as part of the inquiry that it is conducting. The Department's opinion is that to the extent that the St Cuthbert's site was purchased using funds derived from exploitation of the Hackford Road site, then the St Cuthman's site is held by DET on the terms of the School Trust (i.e. for the purposes of the school as it was in 2010 prior to conversion to an academy). The Charity Commission inquiry should establish the extent to which the St Cuthman's site is held on the terms of the School Trust.

2. Governance arrangements at Durand Academy, action being taken in respect of Durand Academy, and the Department's expectations of governance for academies generally.

You ask for an assurance that the governance arrangements at Durand Academy are in line with acceptable practice for academies and charity law. As we made clear at the hearing the Department has significant concerns about the governance structure and financial management at Durand. The Department has made clear that it was considering whether to issue a Financial Notice to Improve (FNtI) to Durand Academy, if the changes agreed with Durand Academy in 2014 were not made.

While some new appointments were made to the governing body in December 2014, the changes made did not address the Department's substantive concerns. Accordingly, on 6 March 2015 the Education Funding Agency (“EFA”) issued an FNtI to Durand Academy. The Academy is required to respond to the FNtI with an action plan by 31 March 2015.

The FNtI requires Durand Academy, in consultation with the EFA, to commission an independent review of its governance structure and to prepare and share an action plan on implementation of the recommendations of that review by 15 May 2015. The FNtI also requires: (a) the appointment of a new accounting officer following Sir Greg Martin's agreement to stand down from that role; (b) the establishment of a finance committee; and (c) the recruitment of a qualified and permanent business manager or Chief Financial Officer as required by the

Academies Financial Handbook. Under the terms of the FNTi these will be subject to EFA approval. The Notice also sets out requirements in terms of managing conflicts of interest and securing the income generated from activities on the academy's sites for the school. The FNTi can be found at: <https://www.gov.uk/government/publications/financial-notice-to-improve-durand-academy-trust>

Under the terms of the FNTi all delegations under the Academies Financial Handbook are revoked and Durand Academy is required to seek the Secretary of State's consent for any new payments (not covered by existing contracts) or before agreeing new contracts.

The key requirements of proper governance in an academy are set out in the Articles of Association, the funding agreement and the Academies Financial Handbook. All trusts are required to review their governance arrangements annually and report on this in their annual accounts. This should include consideration of the composition of the board in terms of skills, effectiveness, leadership and impact.

You comment that a lack of timely intervention by the Department and the EFA, has allowed substantial private profit to be made out of public money and created serious conflicts of interest.

I do not accept that the Department delayed intervention with Durand Academy in respect of the GMG contract. The Department first learned that Durand Academy had become a party to the London Horizons contract with GMG Ltd in April 2014. Following an investigation undertaken by the Department, Durand Academy and DET agreed to release Durand Academy from that contract, and did so in June 2014. Durand also agreed to a number of other changes including the transfer of the freehold of the Hackford Road site from DET to Durand Academy and the re-tendering of the GMG contract.

However, Durand Academy and DET failed to deliver on this agreement. Sir Greg Martin has refused to give up the GMG contract which Durand Academy is no longer party to, and DET have so far not confirmed that they will re-tender it. This is now a matter under investigation by the Charity Commission as part of its inquiry under the Charities Act 2011. For the Department's part, the FNTi has required Durand Academy to manage the clear conflicts of interest of Sir Greg Martin and the primary school head teacher Mark McLaughlin who is both director of DET, and London Horizons. As London Horizons is now effectively a subsidiary of DET it therefore holds the GMG contract.

3. Improving personal accountability within the academies sector as a whole.

As company directors, academy trustees have statutory duties to avoid conflicts of interest. The chief executive or principal (Accounting Officer) must also ensure regularity and propriety. The Department has strengthened its advice to academies to ensure that they remain even-handed in business. The Academies Financial Handbook also applies an 'at cost' requirement when buying goods or services from related parties worth more than £2500. Academies must make

these payments known to the public in their accounts. The Department now also advise academies to publish the relevant business interests of their members and trustees.

4. Revisiting the approach to fit and proper behaviour.

You ask the Department and EFA to revisit their approach to what constitutes fit and proper behaviour. The Department does not mandate a specific 'fit and proper person' test, and there are no plans to introduce one. We remain of the view that it would be disproportionate for us to conduct a "fit and proper persons test" in relation to all academy members and trustees. What is important is that there is robust governance in place at all academies.

However, the Governors' Handbook and the Academies Financial Handbook (section 1.5.11) set out the expectations in respect of academy trustees. Section 1.5.19 of the Academies Financial Handbook specifies the role of an academy's Accounting Officer in relation to specific responsibilities for financial matters. It includes a personal responsibility to Parliament, and to the EFA's accounting officer, for the financial resources under the trust's control. Accounting Officers must be able to assure Parliament, and the public, of high standards of probity in the management of public funds, particularly: regularity, propriety and value for money.

The prime responsibility for determining the suitability of individuals joining academy trusts must rest with trusts themselves. It would be inconsistent with our policy of giving trusts autonomy, and would create unreasonable bureaucracy, if government were to carry out checks itself on individuals joining established trusts.

For free schools, new provision academies and those applying to be academy sponsors for the first time we undertake appropriate due diligence checks on all those that are proposed to be involved in the governance as either members or trustees.

For approving academy converters, our project leads carry out simple checks on governors in converter schools projects on a risk basis, where there is any reason for concern.

The current academies model funding agreement gives the Secretary of State the power to direct the academy trust to remove members and trustees we find to be unsuitable. Barring powers came into place on 1 September 2014 to ensure those whose conduct is unsuitable are prevented from being involved in the management of independent schools. The provisions apply to anyone involved in the management of an academy or free school.

Unsuitable behaviour can include being convicted of an offence, being given a caution in respect of an offence, being subject to a relevant finding in respect of an offence, or having engaged in 'relevant conduct'. Relevant conduct includes undermining the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs, or conduct in breach of professional standards by a professional body, or conduct so inappropriate that, in the opinion of the Secretary of State, it makes that Charity Trustee or member unsuitable to take part in the management

of the academy.

5. The EFA's risk assessment tool (RAT).

The risk assessment tool supports the EFA in monitoring all trusts using a range of financial, governance and education performance indicators, helping to identify those where further investigation is appropriate. These indicators include:

- Levels of current and predicted deficit
- Variation in pupil numbers
- Timeliness of submission of financial statements
- Whether the trust's accounts have been qualified by external auditors
- Ofsted rating

The risk assessment tool has supported the EFA to become more efficient in its assessment of risk; more data-driven in using the wide range of information available to them; and far better placed to spot patterns and trends of behaviour that may warrant further investigation.

The tool is currently being developed to include an even greater range of data that will help support a more sophisticated understanding of risk. The selection of this additional data is being driven by analysis of common causal factors in existing academies of concern. For example, the tool will be expanded to include more data on compliance with the funding agreement, and the level of turnover in the trust's governing body. These improvements will ensure the risk assessment tool will exploit the full range of available data to increasingly predict academies of concern, supporting the EFA to intervene more quickly where appropriate.

I am copying this letter to Sir Amyas Morse.

Yours sincerely

Chris Wormald

**CHRIS WORMALD
PERMANENT SECRETARY**