

# Committee of Public Accounts

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Chris Wormald  
Permanent Secretary  
Department for Education  
Sanctuary Buildings,  
20 Great Smith Street,  
London  
SW1P 3BT

12 February 2015

Dear Chris,

## **Education Funding Agency and Department for Education Financial Statements – recall**

I am writing following our evidence session on Monday 26 January to set out the Committee's serious concerns about the governance and oversight of Durand Academy and the wider lessons for oversight of the sector as a whole. The Committee has throughout this Parliament, repeatedly sought assurance that the risks to public money which arise in the academy model of governance would be managed. We have not questioned the policy but have been concerned that the oversight arrangements would not properly identify or address these risks. The evidence we heard about the Durand Academy illustrates that we were right to be concerned both about the scope for unacceptable behaviour and about the ability of the Department and Agency to identify and address it.

The Committee expects anyone involved in delivering public services to abide by the Nolan principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. We believe it is essential that Departments not only make these expectations clear as a condition of providing funding to public bodies (as is done in the appointment letters to academy accounting officers) but also have in place arrangements which detect and address instances when individual performance falls short of these expectations. While this Committee will not hesitate to call any head teacher or accounting officer of an academy trust to account for the integrity of their actions, we will also continue to hold the Department and the Agency to account for the way your responsibilities are discharged.

As we are approaching the end of the Parliament and because of the need for an urgent response, we will not be issuing a report in our normal way. We have set out our concerns below, agreed formally by the Committee, and expect you to respond fully on each point before Parliament is dissolved.

## **There is an unacceptable lack of clarity over who ultimately owns assets currently held by Durand Education Trust.**

We are dismayed by the on-going disagreement between Durand Education Trust and the Agency over the ownership of land currently held by Durand Education Trust, with Sir Greg Martin openly challenging the Department's interpretation of the law. Suggestions that due process was not followed in its transfer are of serious concern. The establishment of Durand Education Trust appears to be a deliberate attempt to prevent either the local authority or central government from retaining any interest in or control over publicly-funded assets,

effectively transferring state property into private hands for free. Although grateful for the Department's assurance that it now aims to bring its dispute with the Academy to a swift conclusion and for the wider assurance that Academies are now required to secure approval from the Secretary of State for any similar arrangements in the future, we remain concerned that this leaves open the possibility that others could be tempted to follow the example set by Durand Academy. This is not what the Academy system was designed to promote. It should not have been allowed to happen and, when the issue was raised, it should have been addressed immediately.

More widely, we are also concerned that the Comptroller & Auditor General provided an adverse opinion on the Department's 2013-14 financial statements in part because, aside from Durand, the Department does not have complete and accurate data on who owns the land and buildings of academy trusts.

*We expect an unequivocal answer over who owns the land and buildings occupied by Durand and who would benefit over any increase in its value before Parliament is dissolved in March. The Department should work with other stakeholders to get a better understanding of the ownership of land and buildings within the Academy sector and ensure that taxpayers' money is better protected.*

**Governance arrangements and operating structures of Durand Academy Trust and related organisations are overly complex and opaque.**

We heard that Durand Education Trust also owns a health club, swimming pool and residential property. London Horizons Limited was established in 1997 as the most tax-efficient way of covenanting profits from the running of the leisure facilities to Durand Education Trust to support investment in the school and boarding school. We are concerned that Sir Greg Martin openly acknowledged that London Horizons Limited has been set up deliberately to avoid paying corporation tax and, as it is not a subsidiary of either Durand Academy Trust or Durand Education Trust, there is a risk that its profits may not be gift-aided to either Trust in future. Indeed Sir Greg Martin admitted that there is no requirement for London Horizons to donate any of its profits to the school. Governance arrangements of Durand Academy Trust and related organisations are also an area where your Department, Agency and Durand Academy are in dispute and appear unable to reach a swift resolution. We have since heard evidence from the Charity Commission about its investigation into these issues and welcome the fact you are working together to resolve these concerns. However this should have happened sooner. It should not have needed an evidence session with the Public Accounts Committee to trigger action from the Charity Commission and a new sense of urgency from the Department for Education.

*We expect a clear articulation of the governance arrangements at Durand Academy and assurance that these are in line with acceptable practice for academies and charity law. The Department should specify its expectations of what governance within individual Academies should look like and ensure it has a proper understanding of how this operates in practice.*

**A lack of effective timely intervention by the Department and the Agency, combined with inadequate governance arrangements within Durand Academy, has allowed substantial private profit to be made out of public money and created serious conflicts of interest.**

We commend the educational aspirations of Sir Greg Martin, but we are sure you will agree that this does not entitle him to make a substantial personal profit out of assets funded from the public purse. We were dismayed to hear that, despite already earning over £200,000 as the head of a primary school and being in the top nine headteachers in the country in terms of his pay, Sir Greg Martin has received in excess of £160,000 per year in management fees

from a Charitable Trust which could otherwise have been spent for the benefit of children within the Academy.

We appreciate that the Department has similar concerns, and has previously recommended that the Academy's contract with the private company should be terminated and retendered due to the failure to properly manage a clear conflict of interest. It is not acceptable for us to find that despite having reached agreement with the Academy over this issue in May 2014, this has still not been resolved.

We heard in the hearing that Durand Academy Trust has also paid substantial sums of money to a political lobby and media relations company, the Director of which, Kevin Craig, is also a Director of Durand Academy Trust and Governor of the primary school. The remuneration provided to the company increased substantially *after* the Director joined the school's governing body, with the fixed monthly fee rising from £8,700 to £20,000 plus expenses. Since 2010/11 Mr Craig's company has received over £500,000 from the Trust. This clearly represents an acute conflict of interest which should have been obvious to those involved. We are reassured that the Department and the Agency recognise this issue and that work is in progress to rectify it. We are concerned, however, that action appears to have been taken to address the potential conflict of interest with the political lobbying group, but not yet with the private company from which Sir Greg Martin derives personal financial benefit.

*The Department must take urgent action to ensure that the Academy complies with the agreement it reached in respect of Sir Greg Martin's conflict of interest arrangements and, should the combined investigation with the Charity Commission conclude that the arrangements had been improper, to recover the sums in question.*

*The Department should also outline how it proposes to use the lessons from Durand Academy to improve personal accountability within the Academies sector as a whole.*

### **The lack of an appropriate fit and proper persons test has allowed Directors of academy trusts to develop inappropriate business interests**

We were astonished that Sir Greg Martin had registered a dating agency at a leisure centre on the school site. Sir Greg Martin told us this was a private matter but we disagree since such activities risk undermining the reputation of the Academy and are wholly inappropriate if there is any connection with a school environment.

*The Department and the Agency must revisit their approach to determining what constitutes fit and proper behaviour for those in positions of responsibility in the Academy sector.*

### **The Agency's ability to spot risks in individual academies and address them properly has been wholly inadequate**

We have been concerned that the Department and the Agency depend on external auditors to identify risks. The Auditors might not always have been clear about what was expected of them. For example, in the case of Durand Academy, the auditor had identified a related party transaction, but Durand Academy Trust had failed to disclose it. The Agency has acknowledged the need to improve its own approach to risk assessment. We are pleased to hear that the Agency is seeking to improve its approach and is now working closely with audit bodies and firms, including running seminars for them, so that they fully understood the high standards expected when auditing public bodies.

*The Agency should tell us how its risk assessment tool will help it to act more quickly in similar cases.*

There were two other important issues which we discussed in the hearing. The first was on the Department's financial statements where we remain concerned at the lack of progress in agreeing a revised methodology for consolidating academy trusts and we look forward to hearing the outcome of your discussions with Treasury. The second was on the changes you had made to your Accountability Statement without following proper procedure and consulting with Parliament. We have some serious concerns about the changes which seem to have the effect of reducing the Department's role in the oversight of the bodies and activities it funds and we will be pursuing this point separately in our imminent report on Children in Care.

As I mention above, this letter is in place of our normal report given the importance and urgency of the issues raised and the time in the Parliamentary calendar. I hope that you will be able to meet the commitment you gave to us in the hearing that you would respond before Parliament is dissolved on the specific points in relation to the Durand Academy and further that this response will set out your action in response to the wider learning that must be taken from this case.

I am copying this letter to Peter Lauener, Chief Executive, Education Funding Agency, Sir Greg Martin, Executive Head Teacher and Accounting Officer, Durand Academy, Richard Brown, Treasury Officer of Accounts, Paula Sussex, Chief Executive, Charity Commission, Graham Stuart MP, Chair of the Education Committee and Sir Amyas Morse, Comptroller and Auditor General, National Audit Office.

Best wishes



**RT HON MARGARET HODGE MP**  
**Chair of the Committee of Public Accounts**