HOUSE OF COMMONS

Public Accounts Committee

Oral evidence: Education Funding Agency and the Department for Education Accounts, HC 1063

Wednesday 5 March 2014

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Members present: Margaret Hodge (Chair); Mr Richard Bacon; Stephen Barclay, Chris Heaton-Harris, Meg Hillier, Stewart Jackson, Fiona Mactaggart, Austin Mitchell, Justin Tomlinson.

Amyas Morse, Comptroller and Auditor General, Jacqui Smillie, Director, National Audit Office, Linda Mills, Audit Manager, National Audit Office, and Marius Gallaher, Alternate Treasury Officer of Accounts, were in attendance.

Witnesses: Chris Wormald, Permanent Secretary, Department for Education, Peter Lauener, Chief Executive Officer, Education Funding Agency, and Simon Parkes, Chief Financial Officer, Education Funding Agency, gave evidence.

Q1 Chair: Welcome. This is a regular occurrence. Let us hope that we do not have to ask you back because you do not agree with our recommendations, but we look forward to it if that happens. We are here talking about the Education Funding Agency and seeing how effective it is. I do not know whether you want to answer this, Chris, or you, Peter, but one of the purposes of setting up the agency was to improve efficiency, accountability and transparency. Can you demonstrate to us that you have done that and how it has been achieved? Will you start on that general question?

Peter Lauener: Efficiency, transparency and accountability. If I can start with efficiency, the story is a pretty good one. If I look at the starting point, going back to the Young People's Learning Agency, which was two years before the Education Funding Agency, we had about 520 staff allocated to work on young people funding.

Q2 Chair: Apologies for this, I am going to rudely stop you and say to you—

Peter Lauener: You don't want me to go back to the YPLA?

Q3 Chair: In asking the question I wasn't really thinking about the agency itself but about the money you dispense, which is now £51 billion, and how the efficiency, accountability and transparency in the use of that money has been improved. I accept that you have had agency cutbacks, and we will come to those later to see whether they have worked. I am more interested in how the changes have helped us improve efficiency, accountability and transparency in the way that £51 billion of taxpayers' money is used.

Peter Lauener: Okay. If you will allow me one sentence further on efficiency, as I think it is important, we saved two thirds of that number of staff, which means that more money can go to the front line. We have managed the expansion of academies, which is a twentyfold increase over four years.

Q4 Chair: I promise you I am going to come back to that, Peter.

Peter Lauener: But that is money that is going to the front line.

Q5 Chair: We are talking about the £51 billion here.

Peter Lauener: Yes. More money is going to the front line because we are taking less out of it. Our overall expense ratio is about 0.1%.

Q6 Chair: Talk to me about the £51 billion.

Peter Lauener: Let me talk to you about some of the other aspects of the funding. One of the major areas where I think we have seen very significant improvements in efficiency is on the capital building side of the Education Funding Agency. Here, Members will recall that in the aftermath of the Sebastian James review of capital, there was a proposition for a much more streamlined and efficient system of capital allocation. That has brought savings in the costs of producing school buildings of about 40%. These are very real, significant, immediate savings.

We have achieved them by all kinds of things. Obviously we have been helped by getting keen prices in the construction industry over the past few years, but we have significantly improved the front end of the process. We have used standardised contracts and call-off national frameworks. We have gone for standardised designs, so we have batched the new schools that are being rebuilt—261 of them—and we only get one design up front, which is the basis of the tender. All that saves money in the system and the standardised design means that we are getting the builders on site quicker and out quicker. In fact, the original Priority School Building programme was designed to finish by 2019 but because of these things we have been able to bring that forward and it will finish in 2017.

Q7 Chair: I want you to keep to the general. Again, we will come back to capital. It is a good story—it is a bit apples and pears, I would argue, but it is a good story. What I am really interested in is that there is a lot of money now going to a growing number of what you call customers and I call educational institutions. If you want what is behind this question, I think there are some concerns about transparency, accountability and efficiency. I am trying to give you the opportunity to tell me about when you give the money to an academy trust or to another institution. I do not know how much of the £51 billion comes out on capital, but most of the money we are talking about goes on the revenue funding of children and young people in education, so what have you done with your new structure—particularly as academies are growing and are going to double or treble under this Government—to improve efficiency, accountability and transparency? I accept that capital has changed.

Peter Lauener: Let me describe some of the changes in the way that we fund academies and the things that we have put in place—

Q8 Chair: Just answer the question. I know you have changed the way you fund them. How has that improved accountability, transparency and efficiency?

Peter Lauener: There are three things that I can draw out here. First, the reform of the basic school funding system has improved transparency and accountability, because we have replaced the system of 152 separate funding systems that, frankly, no one understood.

Q9 Chair: Let me interrupt you. I am really sorry about this, but, when reading this Report, let me tell you what comes out to me: you are really quite good at getting money out of the door. On the various things, the money is going out of the door—it could be better. What we are interested in here is whether when it gets out of the door into the institutions it is used properly, and that requires accountability and transparency. Okay, the formula for getting the money out of the door has been revised, the formula for spending capital money has been revised, but all those are money out. I am interested in how you know the taxpayer's pound is being best spent.

Peter Lauener: If you will forgive me, I would like to complete one sentence on getting the money out. I personally think that the additional transparency and clarity of the funding formula means that there is much more accountability, because people can see and understand where the money goes. Let me come to the main issue you are addressing, which is what system of accountability for academies have we put in place.

Q10 Chair: And transparency.

Peter Lauener: And transparency.

Q11 Chair: And therefore efficiency.

Peter Lauener: The system is based on the independence and autonomy of local academy trusts, which are established as charities, so they are bound by Charity Commission regulation.

Q12 Fiona Mactaggart: We are not very impressed by that.

Peter Lauener: By Charity Commission regulation?

Fiona Mactaggart: Yes. As a Committee, when we have looked at it, it has not been impressive.

Peter Lauener: I understand that that has been a recent topic of focus.

Q13 Mr Bacon: Not only recently—we looked at them in October. The NAO did a Report in October 2001, and it was dreadful then. The problem is it is still dreadful now. It is not a recent concern. Saying that it is autonomous and run by a charity so the Charity Commission have an eye over it gives us no reassurance whatsoever, to be honest.

Peter Lauener: Without making any comments on the Committee's views on the Charity Commission and the Reports produced on that, the principles set out in Charity Commission legislation are very sound and the Secretary of State is actually the regulator of academies as charities, as well as the funder with public funding of charities. One of our jobs is to be the regulator on behalf of the Secretary of State against charity legislation as well. That is quite important.

Q14 Chair: I am going back to this main question. I am going to get you to answer it, Peter.

Peter Lauener: I will try.

Q15 Chair: You are saying that you have improved efficiency, accountability and transparency by giving it to the Charity Commission. Is that the answer?

Peter Lauener: No, I did not say that. We have not given it to the Charity Commission.

Chris Wormald: Let us be absolutely clear. We apply charity law. We, as in the Department, act as the regulator, not the Charity Commission. It has devolved that responsibility to us. We take the charity framework, which we believe is a strong one.

Q16 Chair: How have we improved? That was a purpose of the programme.

Peter Lauener: The biggest thing we have done in terms of the accountability and transparency arrangements is require that every academy trust produces an annual financial statement. Annual, externally audited financial accounts are submitted to the Department four months after the end of the academy year. They are published on the academy trust's website and on our website. That is a degree of information about what is happening at individual academy trust level that we have never seen before.

Following a point made by the Committee at a previous hearing, in the 2012-13 set of financial statements, which came in in December, we increased disclosures so that academy trusts also have to set out information at individual academy level. Madam Chair, you will remember that that point was made very strongly by the Committee. I think that was at the November 2012 hearing. We have implemented that and the fruits of it are that, at individual academy trust level, people can see how the money is being spent. We have that information and of course we have used that information to put together the national accounts, which include those consolidated accounts, including all the information about academies aggregated up to national level, again, for the first time. That puts into the public domain a lot of information about the number of staff, balances, assets and liabilities and the value of the estate.

All those things are in the public domain, essentially for the first time. They have been done to a clear, consistent national set of reporting standards, all of which are set out in the Academies Financial Handbook. I think that is a very big step forward in transparency and accountability. That is reinforced by the obligations that we have put on academies, not just to report to us, but to identify any problems. We look for problems when we get the academies' accounts in. We sift all the information that we get on budget forecasts and whatever else we pick up locally. We identify sources of concern at individual academy trust level and individual academy level and we have a process within the EFA for sifting, assembling and managing that information, so that we are focused on areas where there are causes of concern which need prompt action.

That whole system has been put in place, in particular over the past two years, and has been clarified quite considerably and consistently over the past two years since the Education Funding Agency was established.

Q17 Chair: Okay. Let us leave aside the fact that one of the documents we have today is the NAO document and the Comptroller and Auditor General's qualification of your accounts because the academy returns were either missing or they were inaccurate and the quality of the data was poor. You are on a journey, and I half accept that, but do not tell us that you are in a good position. The NAO in their briefing to me said that it is very difficult to find two bits of your Department that can share the same bit of data; it is very difficult to find comparative data across academy trusts; and it is very difficult to find complete information. I accept that it is a journey.

Chris Wormald: I think that your use of the word "journey" is exactly the correct one. What is undoubtedly true is that we have put more and clearer externally audited financial information about the school sector into the public domain than ever before. That has got to be a good thing from all points of view.

Q18 Chair: Not than ever before, Chris. We have always known what each school spent.

Chris Wormald: We have never had externally audited school accounts.

Q19 Chair: Well, you have had local authority accounts. Local authority accounts are audited.

Chris Wormald: Yes, but you could not identify individual schools within a local authority's accounts. This is the first time we have had individual school audited accounts that we can compare.

Chair: You can, we have always had accounts at school level.

Q20 Mr Bacon: We are having a private argument here about whether it has all been available. I remember having a discussion during the period when Jeff Jones was still the value for money director at the NAO, so some years ago, about the amount of money being handed over to a local authority and then passported through to schools and whether it was more or less than the schools received. When I tried to pin down what the facts were so that we could have a discussion about the facts, Mr Jones told me of your then Department that the truth was that they were in meltdown, so getting really accurate figures that everyone could agree about and then have an argument about was quite difficult. Schools were saying a completely different thing as to how much they were getting than what the Department and local authority were saying. So plainly it has not always been the case that you have had accurate information available at school level. But since you have a qualified opinion against your accounts, you still do not.

Chris Wormald: As I say, I think the Chair used the correct word that we are on a journey. We have some quite specific qualifications which mean we agree with the National Audit Office on these points. Some aspects of the information are not as good as we want them to be. We will seek to have them better in future.

Q21 Mr Bacon: If you were working for a large private sector company, you would have been sacked for this.

Chris Wormald: I do not accept that.

Q22 Mr Bacon: I am not saying you should be sacked by the way.

Chris Wormald: That is very nice to hear.

Q23 Mr Bacon: No, you can stay. Not that I have the power anyway. Some people might say that is a very good thing. It is certainly true; I remember it happening in Shell years ago that the accountants produced a qualified opinion of the accounts of Shell, a major international company. All hell broke loose and heads rolled. You are operating in a slightly different space and part of the problem is that you are shoving the money out of the door very quickly. You are trying to make this policy happen on the ground very quickly, both for academies and now for free schools. Shoving the money out of the door very quickly may have its own consequences and may throw up its own problems. But would I be right to characterise haste in getting this done—getting the money out of the door—as part of the policy of the Department? That is what you are trying to do, so it would not be surprising if there were a few dents along the way as you were trying to get there, because you were trying to get there very quickly. I am not trying to put you on the spot; I am just making sure that I have understood this properly.

Chris Wormald: We would not characterise it like that. We wish to pursue our policies at pace and we have run the academies programme as a demand-led programme, so people are converting to academy status when they want to, at least on the converter side—it is a bit different for sponsored academies. That has undoubtedly thrown up some challenges for us in managing and accounting for that process, which has led to some of the qualifications to which you referred. However, I come back to the point that we are moving from a position where schools' accounts were not externally audited at all to a position where, for the first time, we have a large number of properly audited accounts. Nobody is arguing that they are perfect.

Q24 Chair: Let us get this clear, because what Richard was referring to was that when the money was transferred directly into schools, there was a hiatus. You are right about that, but with schools' accounts you can go in and get all the information about what a school's funding is and a local authority is audited by auditors appointed, currently, by the Audit Commission. So it is audited.

Chris Wormald: It is audited at local authority level and you could identify what funding was given to schools, but I don't think—Amyas may correct me—that we have ever had audited accounts of school expenditure, which is what you were getting at previously.

Chair: If you are a school governor, you see it. A local authority will fund the whole of the budget, in which will be individual schools.

Q25 Mr Jackson: This question is for Mr Wormald. Are you satisfied that there are sufficient safeguards in place, both in financial management and governance, in first-wave academies such that the interests of the taxpayer are protected? I have personal experience of a school in my constituency—a first-wave academy which I won't name—which had at least two years of very poor performance, behaviour, discipline, et cetera. It is true to say, is it not, that the Department, the agency and the LEA are very restricted in the powers they can exercise with first-wave academies, other than, in extremis, to take over the running of the school directly.

Chris Wormald: May I ask what you mean by first-wave academies?

Q26 Mr Jackson: Well, this one was opened in 2007 under the previous Government's first iteration of academies, which were admittedly governed by different legislation from the bulk of academies now.

Chris Wormald: I will say something general and then something specific. In general, I think we have an appropriate system of governance and intervention for the academies system. I think it has got better every year. I don't think it is perfect yet, and some of the recommendations that the Comptroller has made about how we should operate it, both in our accounts and in his review of the EFA, are ways in which we could develop it further, but I think we have a system that is based on sound principles; the question is how we operate it better.

For individual academies, the important thing to say is that they are schools in very different places. The process for the type of academy you are referring to—what we now call sponsored academies, although we didn't at the time—was that we took over schools, normally those that were in failure, and sought to turn them around. That does take time, but results have actually been pretty impressive in terms of turning those schools around. However, I wouldn't claim it was an instantaneous solution, so the story you describe doesn't surprise me.

On our intervention powers, I will ask Peter to say a bit about what we do in cases where we find financial irregularity. In terms of intervention around standards, what we do is roughly the same as what we do in the local authority sector. Ofsted is the monitor of standards. Where things are not progressing as we would like, the Department uses its intervention powers—that is, first, a discussion with the school about how it might improve, and support. In the last resort, it is changing the people who are running those schools. In the case of sponsored academies, where we are taking over a school that has normally failed, or frequently failed, we do necessarily give it a bit of time to improve; so it doesn't surprise me that in the case you were referring to there were, or may have been, two years or so where it was improving. If it went beyond that, then we would be looking at whether we had the right people running that school.

Q27 Mr Jackson: In your experience, is there, perhaps not a causation, but a correlation? If you find fiddling or financial impropriety, does that link to poor standards because of issues around leadership, or does the educational attainment underachievement lead you to look more closely to uncover financial impropriety?

Chris Wormald: I have not looked at whether there is an exact correlation. It is true, from my experience, that where there is weak governance, as in most organisations, that manifests itself in a number of ways. Certainly where we see financial irregularity—Peter will say a bit more about this—more often than not it is lax controls and poor governance as opposed to fiddling, fraud or deliberate misuse of money. In those cases, I would say that if you have weak governance in one area, there is frequently weak governance in another area.

Peter Lauener: Let me talk a little about the financial management and intervention regime. In the EFA, we operate in three territories, and each of these territory directors—who are at deputy director level in terms of the civil service structure—is responsible for pulling together all the information we have on the academies in their region and, in particular, for watching out for causes of concern. Sources of that include the annual published financial statements. We are very busy at the moment assessing all the financial statements that have come in for the 2012-13 academic year, looking for anything untoward in those and looking for any auditors' comments. That is part of the regime that I talked about earlier.

We have also been looking at, and are well aware of, academies that are in or at risk of being in financial deficit, because of the information we get on pupil numbers and the budget forecasts that academies provide. Then we would also be picking up soft intelligence. All of that is put together into an assessment within each of the three territories. Any academies of concern are fed upwards to national level. We have a national monthly monitoring list of academies of concern. We discuss that within the Department and with Ministers.

We then go to the stage of asking what the appropriate next steps are. Obviously that will vary depending on the circumstances. If there is a financial deficit, we need to get serious with the academy about drawing up a financial recovery plan. There will be support and challenge with that. If there are issues that need investigation, we would commission an investigation. Sometimes these are prompted by whistleblowers, as we have talked about in this Committee; sometimes it might be prompted by information that we pick up in the audited accounts. We always publish these investigations—we have published, I think, six.

We have also published financial notices to improve. That is where we set out what needs to be done as a result of what we have found. There is a clear time scale. If these things are not done, there is the possible need for further escalation. This ultimately could end in the cessation of the funding agreement or might lead to appointing additional governors. Obviously we try and work in co-operation with academy trusts, but we are very clear—to come back to the point I made at the start—that we have a regulatory role. We are clear that at times we will need to take firm action to ensure that governance is on a sound basis, because—to answer one of the questions you asked—very often poor governance and poor standards run together, as Chris said. Certainly one cause of financial deficits and problems would be not getting pupils in. You will not get pupils in if you are not perceived as offering a good education.

Q28 Chris Heaton-Harris: One theme that comes out of the Report is that your data sets are not strong enough or are not used enough. I will bring that out in an anecdote. In my constituency, there were two E-ACT academies. The E-ACT academy chain seemed like it was going ahead full steam. It had a small difficulty with its principal, as it were, and then all of a sudden it has gone to a full stop. That does not suggest to me that the kind of streamlined process that you have just outlined is working.

To rub salt into the wound, I also have a group of parents who were desperately trying to get a free school together. They worked with E-ACT for one year, but you stopped E-ACT doing anything. They then started work with the David Ross Education Trust, but you say that is now at capacity because you have given it extra work to do. Again, that looks to me like you are getting data coming in fits and starts, and you are making abrupt decisions. It does not fit in with the picture you have just painted.

Peter Lauener: E-ACT has been in the news in the last few days. We began to have serious discussions with E-ACT a year ago—again on the back of the audited accounts for 2011-12—because issues were identified by the auditors. There were issues about regularity and governance arrangements. One aspect of accountability that we put in place is that where issues of regularity are identified by the external auditors, we are the customer for those issues as much as the governors of the trust. That is set out in the accounts direction that is published each year. Those issues were identified and led to a financial investigation.

Q29 Chair: When?

Peter Lauener: Just about this time a year ago. That led to a financial investigation.

Q30 Chris Heaton-Harris: Was that when the chairman of E-ACT resigned?

Peter Lauener: The chief executive resigned at some point during that process.

Q31 Chair: That was in 2010-11, was it?

Peter Lauener: No, it was about a year ago; sorry, the work started about a year ago and it led to very significant changes in governance, which were the right things to happen. The more recent events reported in the news arose as a result of a series of Ofsted inspections that identified a number of E-ACT academies that were providing inadequate education.

As a result, our colleagues in the Department had a further discussion with E-ACT about whether—not least after all the changes to rectify governance—they had the capacity to take forward progress for the whole suite of 34 academies that they sponsored. I think they were possibly over-stretched. E-ACT suggested that 10 of those might be re-brokered. They had ended up with a distribution of academies—some here, some there—and they felt it was time to regroup. We were happy to support them in that work. Those discussions are going on, and we look to reach agreement as soon as possible.

Amyas Morse: This has been going on for quite some time. That is not a new issue, is it?

Peter Lauener: The issues of governance?

Amyas Morse: You have known about the E-ACT issues for quite some time. Either that is true or it is not. I will couple it with another question: you need to move up to being able to anticipate rather than relying on sets of published accounts.

Peter Lauener: That is a very good point.

Amyas Morse: Could we start with E-ACT's then?

Peter Lauener: If I could comment on that, one reason I drew out that it came out of the 2011-12 accounts is that it showed that we were learning important information from that. We do want to rely more on pooling all the information that we have, because there is a lot of information in the EFA and the Department. I can't remember who made the point; I think it was—

Q32 Chair: You want to use information; the problem on E-ACT, if you look at it, is this. Bruce Lidington, who was the chief executive there, paid himself over £280,000 in 2010. That is twice what Michael Gove gets a year. In both 2010-11 and 2011-12, he claimed expenses that were very dubious. It was nearly £17,000 in the first year and just over £12,000 in the second year—two nights in a posh Birmingham hotel, chauffeur-driven limousines and a lot of booze when Prince Philip came to see them. This you knew about, going back; you knew about this. I can give you another example, and this is where your theory and the practice—

Peter Lauener: We also took action.

Q33 Chair: Let me just give you this example. There is another trust I came across this morning, when I was looking at this: the Academies Enterprise Trust, another of your biggest trusts. There, the chief executive, Ian Comfort, paid himself—you can tell me whether this is wrong or right—£232,960, in addition to an undisclosed salary, for doing project management for the Academies Enterprise Trust. In that particular trust, they paid out, it is said, almost half a million pounds to private businesses owned by trustees and by executives of the trust. So one was Ian Comfort.

Frank Butler Human Resources, owned by a trustee, got £21,000. Another trustee, a man called Steve Leverett, got, it is alleged, £36,878 in 2010 and £12,504 in 2011. David Triggs, who was at the time the chief executive of AET, was paid £214,535. I don't know whether that was a salary, but the trust also paid a company called Synarbor, which was a recruitment firm used to hire teachers, and David Triggs was a director in that company.

So both in E-ACT and in this—I have more examples for later on—we see the lack, going back to the very beginning, of transparency and accountability. It seems that people are using taxpayers' money meant for the education of children to—to some extent, it looks like they are lining their own pockets, rather than improving the quality of education for the children, and it doesn't feel good.

Peter Lauener: I do think it is transparent. If you take E-ACT, prompted by the 2011-12 accounts, we undertook an investigation. We published that investigation, so a lot of the material you've referred to is on the public record as a result of that. That led to the changes in governance in E-ACT.

In relation to AET, one of the issues that we always look at with audited accounts is where there are related party transactions of the kind that you are identifying. We are planning a little bit of follow-up work on related party transactions, but we have already had discussions with about 12 academy trusts where we picked up issues that we thought we needed to know a bit more about. As we have clarified, tightened and made more accountable all the guidance and the arrangements over the last two or three years, one of the things that we have put into the "Academies Financial Handbook" is very clear requirements that any related party transactions of that kind not only should be declared, but should be at cost, not at profit. That is very clearly set out and gives us a new standard for audit to be conducted against.

Q34 Chair: The truth is that it is happening, and it is happening because they think they can get away with it. That says something about all your accountability and transparency systems: they are not working. You may discover it. You may have discovered it—you may know about this thing at AET. I had never heard about it before. You may know about all the things in E-ACT, which Chris has questions about; but you are coming in after the event. Clearly—we will go through the other examples—you are coming in too late and therefore the systems are not right to start with.

Peter Lauener: That does come back to Amyas's point. One of the things we are trying to develop is better predictive tools. One of the very important aspects of the systems development that we have planned—which will see some very significant change in our capacity and capability over the next year—is the development of data analytics, which is pulling all this information together so we can interrogate it. We have done some very interesting exploratory work on that already. It is actually the way that commercial organisations are going. This has probably happened to most of us in the room, when we get a call from the bank saying, "We have had this unusual transaction." They do that by very sophisticated data mining techniques.

Q35 Chair: But not in 2014 about 2010, I have to say.

Chris Wormald: We discussed with this Committee before that there is no regulatory regime that I am aware of anywhere that prevents all problems—I am certainly not aware of one anywhere in the public sector or in the private sector. The issues are whether we have an appropriate regime to deter people from acting in that way, and then whether we spot it and take action—

Q36 Chair: I am going to interrupt you. It is your duty: you are the accounting officer and it is your duty to put in place the most fail-safe system that you can, to ensure that people use the money in the way they should, and not just say, "Oh, there's a bit of a risk, here. I'm not going to take this as a risk." Your job is actually to put in the systems.

Chris Wormald: I am sorry, Madam Chair; those are not the words I used. I said that there was no regulatory regime of which I was aware that could completely prevent the kind of things that you were describing. That is not to say that we in any way take them lightly. As I say, the crucial thing is whether we have an ever-tighter regime that dissuades people from undertaking such actions in the first place and then, when such actions do take place, that we act decisively to deal with them. Particularly in the case of E-ACT, that is a very clear example of where the EFA did take action and a lot of changes were made in the way that this particular academy chain was run. I do not see that particular one as a failure of the response that we made.

Q37 Chris Heaton-Harris: That is fair, but have you learned from it?

Chris Wormald: That is what I was coming on to, which I think is the second part of your question, Chair. As our level of data increases, as it does every year, what we need—again, this comes out of Amyas's Report—is to be better at spotting the warning signs of all these things going to happen. I think Amyas Morse described it as our ability to horizon scan. That is certainly something that we will be looking to improve in future years.

Q38 Chris Heaton-Harris: I am really wary of this. I have more than two schools—one school has three schools in a mini-federation, so I have four schools directly affected by what has gone on with E-ACT. You have given the David Ross Education Trust a number of projects to look after; therefore they are at capacity all of a sudden, so things have ground to a halt with the natural expansion they were going through. I am concerned about your capacity, actually—the capacity both to get and mine the data. Paragraph 2.8 in the Report says you are having trouble recruiting the right people into the agency. It states: "The Agency has had difficulties in filling vacancies due to its changing demand for skills and the fact that the skills it now requires, such as in construction and IT, are in short supply".

I honestly have genuine concerns that other schools are going to end up in the position of the E-ACT Parker academy and the Danetre learning village in my constituency. You are in an academy trust that you think is going places and moving forward; the teachers are all working to improve the standards of the kids' education and everything; then the whole governance structure changes on top of you and you wonder what the blooming hell has just gone on.

Chris Wormald: We will come on to EFA capacity—Peter will want to set this out. I think it is important to keep these cases in perspective. I think we currently have 37 academies on our watch list, where we have concerns about their financial governance.

Q39 Chair: Is Academies Enterprise Trust on your list, with £500,000 paid to private businesses owned by trustees and executives? Is that on your list?

Peter Lauener: It is not on the list, but we have carried out some significant work with AET over the last year.

Q40 Chair: Have you got the money back, if it is true that it has gone?

Peter Lauener: I do not know the details of the individual cases you mentioned, but I am aware that they were related-party transactions. We did a review of the financial structures and governance of AET, but they are not currently on the list, because we do not have immediate financial concerns about them.

Q41 Fiona Mactaggart: I assume this is the list that is referred to in paragraph 1.25, which says that in December 2013 there were 30 schools. I want to know how many schools have ever been on this list.

Peter Lauener: We monitor the list month by month and it does go up and down.

Q42 Fiona Mactaggart: I want the total.

Peter Lauener: This time last spring it reached about 50, because we were looking at a lot of issues around late returns. It then came down to about 27.

Q43 Fiona Mactaggart: I am not actually asking that—clearly there are some now on the list that were not on the list in April. I am asking for the cumulative total.

Peter Lauener: The cumulative total that has ever been on it?

Fiona Mactaggart: Yes.

Peter Lauener: That is one figure that I do not have. I see exactly what you are asking—some come on for a short time and then go off, but I understand the question you are asking. We will write about that.

Q44 Fiona Mactaggart: It seems to me quite relevant. I would like to follow up this issue about, for example, the capacity to spot related-parties transactions from the centre with this many institutions being dealt with. I am really anxious that, even with the most sophisticated banking arrangements and so on, you will not be able to know in the way that a local arrangement could know about the extent of related-party transactions. I have had reports of such things happening in schools in my constituency. I do not know if they are true or not, but in a situation where the trustees are chums appointed by the academy and by the trust, there is a serious risk that you will not know about related parties transactions. Frankly, when it comes to a risk to public money, that is a very significant risk in these hundreds—thousands—of schools.

Peter Lauener: I do now have the answer passed from my colleagues at the back.

Q45 Fiona Mactaggart: Thank you. How many?

Peter Lauener: Between 90 and 100 academy trusts have ever been on the list.

Chris Wormald: We have to be careful about the categories. Those are the numbers of schools about which we have had a financial concern. That is not the same as either fraud or related-parties transactions.

Q46 Chair: But it is about 5%.

Chris Wormald: At any one point, it is about—

Chair: But over time—you are just getting new ones in.

Q47 Mr Bacon: Is that 90 to 100 individual schools or 90 to 100 academy trusts?

Peter Lauener: The concerns could be at trust level or at school level.

Q48 Chair: So it is both?

Chris Wormald: The point is that you could be on that list because you have returned your accounts late. There might be nothing wrong with your accounts.

Q49 Fiona Mactaggart: Well, that is quite serious.

Chris Wormald: That is why they are on the list. What I am saying is that we should not equate the numbers there. It is simply not the case that the local authority-managed system prevented these sorts of things. A number we quoted to this Committee before is that in the last financial year for which we have information there were 191 instances of fraud identified in 2012-13.

Q50 Chair: Out of how many thousand—22,000?

Chris Wormald: That is cases of actual fraud.

Q51 Fiona Mactaggart: Mr Wormald, I was not saying that local authorities were perfect in dealing with this. I know that they are not. I was saying that one of the advantages of having a local accountability system and some local representative nominated governors and things like that meant that there were some other ways of looking at accountability than a single road.

I was reassured by Mr Lauener saying that we are using modern technology, but I am still anxious that you do not have the advantage of locality, and you do not have the advantage of, as it were, troublesome governors who might be coming from a different perspective. There is therefore a need for some robust mechanisms to deal with this. One of the things that the Chair raised at the beginning was the issue of transparency. One of my concerns is that when these things are found, they do not become public knowledge quickly enough. I looked back at the reports about Kings science academy in Bradford. It seemed clear that the EFA had sent in forensic accountants and started doing things months before it became public. Indeed, it only became public knowledge when the BBC did a programme about it. That seems wrong, when it comes to public money. I want to know how you are going to deliver transparency at an early stage, rather than saying, "Oh, we can fix this; we will do it all behind our hands," which is what I think I am hearing.

Chris Wormald: I do not agree with that. We do not give a running commentary on every investigation that we do, for reasonably obvious reasons.

Q52 Fiona Mactaggart: Kings science academy was not just any old investigation.

Chris Wormald: As I said, we do not give a running commentary whenever we send somebody in to see if there is a problem. We publish, as Peter said earlier, the results of all the inquiries when we find that there is a problem. I completely take your point about timing. We publish everything—the question of when is the right time to make these things public is one we might think about. Do you want to talk through that system, Peter?

Peter Lauener: You make a very fair point about timing. One of the things we are trying to do is to improve all our processes, including the running of these quite complex financial investigations. To take a recent case, I was pleased that we were able to conclude the Barnfield college investigation much more quickly than previous ones. It was published at the end of last week. That was quite complex because it was a joint investigation with the Skills Funding Agency, who are the sponsor of the college and we had the responsibility for the academy trust. That whole process was managed to very tight timetables. We need to make sure that we are always driving these investigations as quickly as possible. It does get tricky to decide when to publish, particularly when matters have been referred to the police. There have been occasions when the police have asked us to delay publication.

Q53 Fiona Mactaggart: How often has that happened?

Peter Lauener: We have referred five cases to the police out of the ones we have investigated in the last two years.

Q54 Fiona Mactaggart: In how many of those cases have the police asked you to defer publication?

Peter Lauener: I will be happy to do a note on that. It is certainly a couple. I will do a note on that. There are five cases. Then there was the Barnfield one, which was slightly different, and at the start of all this, just before the EFA, there was the Priory one.

Q55 Chair: Let us try and keep it brief. I am going to go to Amyas, then Austin, Meg and Steve.

Amyas Morse: Very quickly, as we are having this hearing and it would look a bit odd if I did not mention it, I think I am forced to mention that the NAO is doing some investigation work which I think you know about. It is looking at EFA controls over compliance, particularly in related-party transaction situations and the ability of auditors to pick up on those. I know you know about that. I did not want to let that pass without mentioning it.

Peter Lauener: That’s fine.

Chris Wormald: That is a very fair point. I did want to come back on the point that the Chair made earlier. A lot of the responsibility for spotting things like related-party transactions falls on the independent auditors. One of the strengths of the system is that we have independent auditors, as any business would have, whose job it is to be spotting those things. We are doing quite a lot of work with the audit companies to ensure that their standards meet the standards that we want to see. In terms of how we spot those things, it is that bit that is the absolute core of the system.

Q56 Mr Bacon: On the issue of how you spot it, one obvious way you might spot it is to require a declaration.

Chris Wormald: Yes. We do.

Q57 Mr Bacon: You do. So it is merely a question of whether they have fulfilled the requirement to make the declaration or not. Is that the case?

Chris Wormald: Yes. It is just like in most businesses. You have to declare your interests and then the internal auditor needs to assure themselves that declarations have been made.

Q58 Chair: Let me give you another example to whet your appetite. It is alleged—it may be false—that the School Partnership Trust Academies paid £424,850 over two years to Wrigleys solicitors, where the trust director Christopher Billington is a partner.

Chris Wormald: I do not know the individual case. The important thing for us is that we set clear rules on things such as related-party transactions.

Q59 Chair: That just struck me. That is a case where it is an adviser using his own firm to provide advice to the school.

Chris Wormald: It comes to the point that Peter made earlier. The question is whether profit was being made out of that related-party transaction.

Chair: It is just wrong. I had years as a Minister. When working with one body, such as a school governing body or a trust—I have been on everything—I would never have used a position as a non-executive person responsible for managing a particular public sector organisation to hand money to an organisation where I had financial interest. It is wrong.

Q60 Mr Bacon: I must add something. Mr Lauener mentioned this earlier. You have tweaked the rules so that you can't make a profit, as Mr Wormald was explaining to us a few minutes ago. A few years ago, the Revenue and Customs prosecutions office had a chief operating officer who was appointed by the director to do all the running of the organisation: the finance, the HR, the IT and so on. Almost his first act was to appoint his wife to do £100,000-worth of HR consultancy. As it happens, his wife was an HR consultant, but it looked pretty odd. Indeed, the National Audit Office in its audit of the resource accounts drew attention to it. On the basis of what you are saying, that would have been okay as long as the HR consultancy had not made a profit.

Chris Wormald: No.

Q61 Mr Bacon: As I said a minute ago to Mr Tomlinson, who has just left, when Mr Lauener mentioned this business about doing it at cost rather at a profit, plainly the obvious thing to do—and there are many ways to do it—is just bump up your costs. Wouldn't you?

Chris Wormald: I am not saying that is the only test.

Q62 Chair: Why don't you just say that they can't do it? There are plenty of solicitors, accountants, builders and project managers. They don't have to go to either family or companies where they have a financial interest. It is just wrong. I can't think of anything to say that would put it right.

Chris Wormald: Simon, do you want to say something?

Simon Parkes: I cannot answer the specific case because I do not have the information in front of me.

Q63 Chair: Well, I hope you will answer on School Partnership and on Academies Enterprise Trust and E-ACT. We have raised three so far.

Simon Parkes: We have reviewed, and we do review, the related-party transactions. Until recently we did not have the no-profit requirement—that was introduced last year. One main test we look at is whether there is a competitive process and whether the individual with the interest was excluded from the procurement process. There are good reasons, particularly in local schools, where people who have an interest in the school or in education more generally want to get involved, but are also involved in business.

Q64 Chair: I think that is just a rubbish argument. Sorry, Simon, but I am going to stop you. Let's move on. It is a rubbish argument. It is not a justification. The problem we have got now is that the academy and free school system is by its nature devolved so there are going to be many more allegations and noise in the system. You ought to be putting in accountability and transparency structures that do not ever allow that allegation even to surface. It does not matter whether they are good or bad; it is wrong.

Simon Parkes: I was going to say that where they can demonstrate that that is the best value for money—

Chair: Nonsense. I just think that is a nonsense argument. I know what your argument is; I just think it is a nonsense one. I will go to Austin, Meg and then Steve.

Q65 Austin Mitchell: We come across two weaknesses here. The Chair's point is, can we trust the trusts? If they are paying themselves that kind of inflated salary, I have my doubts. Fiona's point is, can we trust the schools? I wonder whether they are ruled better than the old control by local authorities. The Education Funding Agency is committed to a soft-touch regulatory regime, because these are independent schools and you do not want to frighten them. In fact, the Government want to encourage them. You have a lot more coming forward so there is a lot more work ahead, and yet you are cutting your costs, and your staff presumably, by 15% to do that extra work.

Of its nature, corruption, where it exists—it could be petty, it could be substantial—is local, intimate and concealed. It is a question of me as chairman of an academy or whatever giving my premises to the academy at three times the market rent. It is a question of me appointing my friends as auditors, who are supposed to keep a true, fair and accurate view of the accounts. It is about kickbacks on contracts and building and using school staff to do jobs round the headmaster's house.

It is all that kind of stuff. It is all petty, it is all corrupt and it is all local. Of its nature, you are not going to get to hear of all that, unless you have a very elaborate system of protecting and encouraging whistleblowers or some effective co-ordination with the local education authority. It is doomed.

Chris Wormald: I am sorry; we do not start from the principle that all head teachers and people who run schools are corrupt.

Chair: Neither do we.

Q66 Austin Mitchell: You seem to be condoning all sorts of nefarious practices.

Chris Wormald: Do I get to finish my answer? We start from the principle that there is very strong evidence that an autonomous school system is associated with higher standards, which is why we are doing it in the first place, but you have to balance that school autonomy—going back to your first question—with transparency and accountability. I do not think that is in dispute between us.

The last leg of what we do is that where issues are identified and things go wrong, we need to be able to take swift action on them. I do not really accept that it is that different whether you manage a system in the way that we do, via a system of independent audit overseen by the EFA, or whether it is a local authority-run system. It is the same principles, basically.

Q67 Mr Jackson: But forgive me, and I know it is not an exact analogy, but you can see the discrepancy here. When local councillors are about to make a decision on a planning committee, if they have made any public comment in their own ward about a planning application, they are deemed to have predetermined it and have to come off the committee and cannot even consider the issue at a full council meeting. They are not even spending any money. The idea that in a position of influence with an autonomous body you can award a contract to family members or people for whom you have had or will have a commercial interest causes concern to people. It is not a party political issue; it is an issue of good practice and governance.

Chris Wormald: On that particular issue, it is clear that the Committee feels very strongly on that point, so we ought to go away and consider the points that you have made.

Q68 Chair: Thank you.

Chris Wormald: As Simon was saying, there are a number of issues. I know you don't agree with me on that, but we will need to go away. Given the strength of the Committee's feeling on that issue, I feel that it is one that we should take away, consider and come back to you on, given that we clearly have not convinced you.

Q69 Austin Mitchell: You need effective provision for whistleblowers. If I'm a whistleblower and I find some nefarious practice going on, who do I blow the whistle to? If I go to the school and they tell me to go forth and multiply and I go to the group and I do not know where it is, I do not know whether to go to you or if you'd take it up. What happens? How do you get whistleblowers to provide the information that you need to make reasonable judgments?

Peter Lauener: We publicise our arrangements for whistleblowers. It is on the website. We insist that all academies have whistleblowing arrangements in place and all our staff who deal with academies or any other training organisations have a little card to make sure that they know exactly what to do, or what not to do, if a concerned person contacts them.

We take whistleblowing extremely seriously. We have had some very important information from whistleblowers, which has resulted in investigations. But by no means do we always get that information from whistleblowers. I referred earlier to information from audited accounts and so on. I want to make the point again that this is a very small proportion of the overall number of academies.

The other thing that we are doing to build and strengthen accountability in the system is to work very closely with the academy associations, the finance directors and National Association of School Business Management. We want to make sure that this document, the "Academies Financial Handbook", which is a very good statement of responsibilities—I am sure that all Committee members would agree with the things set out here—means that it is not the EFA telling organisations what they should do, but that it comes from within as well. We are building the system, but we are also making sure that we have strong regulatory powers and the ability to react quickly when we get information that things need addressing.

Q70 Meg Hillier: I want to touch on transparency of school funding, particularly for the free schools. I notice in the Report that you had a number of deferred free schools. My first question is: why are budgets not publicly available when free schools are being built? It is not until after they open that we as MPs—and anyone else—can get access to the information.

Peter Lauener: We covered this a little at the free schools hearing. The point I made then, which I will repeat, is that the budgets change quite a lot as time goes on. We think the right time to set out what has been spent is once the building project is finished and finalised, and then it is all published on the website. In a note to the Committee, we provided some information on one or two particular cases that we were asked about.

Q71 Meg Hillier: I know we are slightly going over old ground, but it is not really old ground. The point is that we might have an issue about planning, land use or using land that is perhaps gifted by the local authority or another public body. There is often legitimate public concern about how deep the pockets are of, say, the free school versus some other important local use. It is only after the event, when the money is gone, that anyone gets to see it.

Peter Lauener: Very often there is quite an intense local debate, as there has been in one or two examples, including ones that we talked about last time, where local people have different views. There is a consultation process, so it is very rare that people do not get the chance to express their views.

Q72 Meg Hillier: It is not about the expression of views. The point is that there are vast ranges in the capital sum that go to building some of the new schools, partly because of the constraints of the sites, converting buildings, temporary conversions then closing them to move into permanent buildings. There is real worry on the ground.

Whatever people's views about free schools, one way or the other, the biggest concern that I get played back to me is that this is very expensive, for the reasons that I have just outlined. Yet there is no ability for anybody to look at and question that money, except for you. I think you are very good at your job in many respects, from what I see of you, but you are a long way away from what is happening on the ground in any of our constituencies.

Chris Wormald: Some of this is not correct, that free schools are very expensive, as we covered at the previous hearing.

Meg Hillier: But some are.

Chris Wormald: But the bit that is very difficult and is often why the costs are different, is the site purchase, where we are frequently in a commercial negotiation. The last thing we would do is set out what our budget is while we are in that negotiation. I can completely see the challenge which that causes for the kind of local discussion that you are talking about. That is a genuinely difficult challenge. If you are in that sort of negotiation, we are never going to announce the maximum we can spend on that site, or that would then become the price. I appreciate the problem, but I do not see an easy way through it.

Q73 Meg Hillier: Okay. The Chair has said that I should move on from this, but even when the free school wants to share with you as an MP, they are not allowed to. Another issue related to this is that pupils can chose a free school, a new school, as a seventh school on their list of six secondary schools. They can chose six secondary schools and one that is about to open as a seventh.

If a child is offered a place at an existing school and then the free school opens and the child takes a place there, are you planning to give any recompense to existing schools for the fall in pupil numbers? They legitimately thought they might get someone in September then—boom!

Chair: That is another cheeky question, so a quick answer.

Peter Lauener: The answer is that funding for a school is based on the number of pupils they had the previous October.

Q74 Meg Hillier: My Chair has ruled me out. I have a small but important point on admissions. The Report says that of the appeals issues raised with you on admissions, you asked for 15 cases of fresh appeals panels. What was behind those appeals and what circumstances called for fresh panels?

Fiona Mactaggart: I was struck by that paragraph as well. Do you really have the capacity to deal with the passion that parents feel about unfair admissions?

Linda Mills: It is paragraph 1.22.

Peter Lauener: You are absolutely right. When we took on this responsibility, I looked at some of the cases myself. You have described the absolute drive and passion perfectly. Because of the process, I ended up talking to one or two of the parents concerned, so I absolutely know what you are talking about.

I will set out the process that we are talking about for clarity. A parent cannot get their child into an academy; parent appeals; academy sets up an appeal board; turns the parent down; and the complaint to us has to be about maladministration. We are not there to second-guess the decision. We are there to say, "Was it a fair process?" I think we are quite good at that.

Q75 Fiona Mactaggart: Why can't the ombudsman deal with them like they do with the other one?

Peter Lauener: The local government ombudsman acts in respect of local authority appeals.

Fiona Mactaggart: And foundation schools in my experience. I had exactly that kind of a case in a foundation school.

Q76 Meg Hillier: Why are you handling appeals?

Peter Lauener: There could be different ways of doing it. All I can say is that we have made sure that we do this as well as possible.

Chair: Maybe with your diminished resources you could look at an alternative.

Fiona Mactaggart: I think you should divert it to the ombudsman.

Peter Lauener: Year by year we have looked at how to do that better: how to triage the work; how to sift out the cases that really need to be looked at; and how to feed back to the academies to make sure that they do better in future.

Q77 Stephen Barclay: How long does an average audit visit last?

Peter Lauener: How long? I am not sure. By one of the EFA people? Could I ask Simon Parkes to respond?

Stephen Barclay: On average, how long did the 236 audit visits last?

Simon Parkes: Sorry, I am trying to find the 236 audit visits.

Stephen Barclay: The report says that there were 236 audit visits.

Simon Parkes: It depends on the nature of the audit.

Stephen Barclay: Obviously.

Simon Parkes: A fairly straightforward financial governance self-assessment visit will take between two and three days. If it is a complex investigation, we might be on the ground for two weeks, but probably not in a solid block. It would be a two to three-day stint, then we would go away to see what we have got and then go back and follow up with subsequent visits.

Stephen Barclay: But you will list all those accordingly, so what is the average visit time?

Simon Parkes: I could not tell you what the average is, but the vast majority of those would be of two to three days' duration.

Q78 Stephen Barclay: The majority are two to three days. How many years will it be before each academy trust has an on-site audit visit?

Simon Parkes: We aim to visit most academy trusts in the first year of conversion, at least once, but that will not be for a full audit visit; it will be more the case that we will go along and see them and explain some of the processes to them. Of course, their external auditors will be visiting every academy.

Q79 Stephen Barclay: Sure, but in the first year there will not be much to audit. Once a school is up and running, how many years will it be before you can be confident that each school has had an on-site audit visit?

Simon Parkes: We may not visit an academy trust. It depends whether we identify a particular risk that warrants visiting, so we may not visit every academy trust.

Q80 Stephen Barclay: So it may be a decade or so. If you are doing 236 and there are more than 2,000 of them, it could well be a decade or so without any on-site audit visit.

Simon Parkes: Well, no, because they will have had an on-site audit visit from their external independent auditors, which they have every year.

Q81 Stephen Barclay: I will come on to that. I am trying to establish is how reactive and proactive your auditing is. You are saying that it may be 10 years or longer without any on-site visits. Is it reasonable to assume, therefore, that you are placing considerable reliance on reactive regulation—that is, assurance from external auditors and from the data, the desktop review that you will be doing?

Simon Parkes: It is certainly true that we place considerable reliance on external auditors. The C&AG makes that clear in his Report. We are clear that we will probably be increasing the reliance on external auditors.

Q82 Stephen Barclay: Sure. There are 200 different ones of those and their data are inconsistent. The Report also says that the academy data are full of "errors and uncertainties" and, in some cases, over nine months late. If you are having a reactive, in essence desk-based, regulatory approach, but your data are late, inconsistent and flawed, does that not carry significant risk?

Simon Parkes: The timeliness of the data is improving year on year. In 2010-11 we started with 83% of academy trusts submitting their accounts on time. It was 91% this year.

Q83 Stephen Barclay: But going from bad to not so bad still carries risk, doesn't it?

Simon Parkes: We are not happy with 91%. It is very difficult in the first year for academies often to get all the figures they need for their first year's accounts, and that does contribute to that figure. We are not happy with that. I am not happy that 91% is good enough in terms of timeliness, but it is improving, as is the timeliness of the electronic accounts return, which is the real key for us. The electronic accounts return is the usable source of data. The printed accounts are quite difficult to deal with.

Q84 Stephen Barclay: But if you rely on data-mining but the data have inconsistencies and flaws, obviously there is a pretty big snag in your data-mining.

Simon Parkes: They are inconsistent in one respect, in the way we use them for the accounts. The inconsistency is problematic when we are producing a set of consolidated accounts. It is not necessarily such a problem when using data for regulatory purposes.

Q85 Stephen Barclay: But the time scale for the consolidated accounts is out of step with the time scale for the DfE's annual return.

Simon Parkes: Sorry. In what respect?

Q86 Stephen Barclay: The time scale is the consolidation, which creates unnecessary duplication and error, doesn't it? You have not harmonised the time scales.

Chris Wormald: I do not think it is unnecessary. It makes perfect sense for a school to produce its own accounts on an academic-year basis. They budget, recruit their staff and get their money on an academic-year basis. Therefore, for the annual accounts to be useful at a local level it makes perfect sense for them to have a reporting year that runs from September to August, which is what most of them do. That does cause us, as the Comptroller's Report points out, a lot of problems when we come to consolidate it into a financial year account with a different year end.

The view we have taken—and it is debated—is that it is better that the accounts are of maximum use as they can be at local level. If that causes us some pain at departmental level, then we will take the pain. It is, as you said, a debated point, but that is the decision we took.

Q87 Stephen Barclay: How many fines has the regulator imposed over the past 12 months?

Peter Lauener: There is a reference to fines. I think it is better to regard that as recovery of funds, rather than issuing a parking fine.

Q88 Chair: There was a question there. Have you imposed any fines?

Peter Lauener: No, not as such. I suppose I could say it is penalties rather than fines. If we issue a financial notice to improve, we take away a lot of the financial freedoms that an academy has.

Q89 Stephen Barclay: But taking away freedoms is not a fine. I am driving at the fact that you have a regulatory power to impose a fine. The Chair has alluded to a catalogue of questionable financial transactions. I am just trying to clarify if there is any case in which you, as the regulator, have fined.

Peter Lauener: I think the term "fine"—

Q90 Stephen Barclay: Is the answer no?

Peter Lauener: I think the term "fine" is a little misleading because it refers to where we would recover funds, and we have recovered funds—

Chair: We would expect you to recover funds, but we would expect there to be a penalty, as there is in the legislation, for misuse of funds.

Q91 Stephen Barclay: Paragraph 1.22 says: "Failure to comply with a funding agreement can lead to fines". This is in the same paragraph after it says that a lot of academies have failed to comply with their funding agreements. That is one aspect of the fine regime. There is a second one: whether you have the power to fine individuals, which was one of the failures within the banking sector.

Peter Lauener: Let me offer a note on that issue. I was looking at that this morning as I was re-reading this; it may be a point that we have failed to clarify sufficiently. We will write to explain this system. We do not have a system of fines that we are not using; what we do have is a system of penalties, which we do use. We also recover funds where—

Q92 Chair: How do you define a penalty?

Peter Lauener: The penalty would be, first, that we would issue a financial notice to improve. We are about to write at the beginning of next week to all academies that are still late with their accounts. About 22 will get a letter saying that we are minded to issue a financial notice to improve[1]. The penalty is that some of the financial freedoms and flexibilities that academies have will be withdrawn while the financial notice to improve is still in force.

Q93 Stephen Barclay: So you can withdraw freedoms, but what you are saying is that there is an error in the Report, in that fines cannot be imposed against trusts.

Peter Lauener: It is probably something that we failed to clarify. I will write to the Committee to clarify that.

Q94 Stephen Barclay: What are the sanctions that can be imposed against individuals, outside of the criminal sanctions?

Peter Lauener: The sanctions against individuals are those that would apply to charity trustees. If we thought that there was a case for disqualification, we would have to take that up with the Charity Commission.

Q95 Stephen Barclay: On how many occasions have you done so?

Peter Lauener: We have not taken any such cases up.

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[1] Note by witness: Following the hearing and before the letters were issued, a number of further sets of audited accounts were received, so the number of warning letters issued was reduced to 11.

Q96 Stephen Barclay: So not one of the cases referred to by the Chair, or referred to in the media, passed the threshold for you to take action through the Charity Commission. Is that the case?

Peter Lauener: We have referred cases to the police. We would consider, once police investigations are through and cases are completed, whether that is appropriate.

Q97 Stephen Barclay: There is a higher standard of proof required, and it is more expensive to enforce. My question was about outside of criminal sanctions. Of course, if someone is guilty of fraud, then that can be prosecuted.

Peter Lauener: There are two sanctions that could be taken. One is referral to the conduct council at the National College of Teaching and Leadership.

Q98 Stephen Barclay: How many referrals have you made?

Peter Lauener: I can think of at least one—

Q99 Stephen Barclay: One?

Peter Lauener: But I would need to check if there had been others. Let me take that away and offer a note.

Chair: Steve, can I give some context to this? This is quite an important point. According to the Report, there have been 411 breaches of funding agreements. That is a lot—this is on page 23, paragraph 1.22. You appear not to have taken action. The other thing that is really worrying is on page 24, paragraph 1.27. It says that 29 accounts have been qualified, in that salaries of teachers were not disclosed and these teachers were also charity trustees, and 35 accounts had unauthorised ex gratia and severance payments. We talked to you about that last time—again, Chris, we have a very strong view that these things have to be out in the open and should not be beyond statutory entitlement.

So there are three areas: 411 breaches where your answer to Steve is to say, "Not a lot has happened"; then these things where accounts have been qualified where salaries are not disclosed; and unauthorised ex gratia and severance payments. I think it is important to put the size of this on the record. It is not tiny.

Q100 Stephen Barclay: And your evidence is that you relied on the Charity Commission, but you are not referring to the Charity Commission.

Peter Lauener: Sorry—we rely on charity law.

Q101 Stephen Barclay: Indeed, but it is not your role to enforce charity law, is it?

Peter Lauener: It is, in respect of academies. The bit that we cannot do is take regulatory action against individuals.

Q102 Stephen Barclay: No, for which you need to refer it to the Charity Commission.

Peter Lauener: That is the kind of thing we would have to refer to the Charity Commission.

Q103 Stephen Barclay: But you have not done so.

Peter Lauener: I will follow up with a note about that.

Q104 Mr Bacon: Why did you get to the point where you had the powers of the Charity Commission for operating this devolved to you, but not all of them, so that you could not take action against individuals? Why not do the whole thing? Which brilliant brain in Whitehall thought, "I know: we'll split it up. We'll do a bit over here and a bit over there"?

Peter Lauener: May I cover that in the note that I will write? I am sure there is a precise legal reason—

Q105 Mr Bacon: The whole point of having an Act, presumably, was that if you needed to change the law, you could do so. We do it all the time.

Chris Wormald: Where there is a breach of the funding agreement, it does not necessarily follow that that means there is an individual who should be punished in some way.

Q106 Stephen Barclay: Of course it doesn't; that is a straw man. No one is suggesting that.

Chris Wormald: No, but it was the use of the—

Q107 Stephen Barclay: No one is suggesting that; all we are saying is that you have a catalogue of cases that raise serious questions, and you have a regulatory regime that is very reactive and that relies on data that is inconsistent; but even when data is presented to you that should trigger regulatory enforcement action, you are not referring it to the body that is there to enforce. That is the issue.

Building on an earlier point about the related party transactions, how many of those transactions were there last year, whose job is it to review them and how many were reviewed?

Peter Lauener: We are still compiling the data. I think we have reviewed about a dozen—was that right, Simon?—in the piece of work that we carried out.

Q108 Chair: Have you got Grace Academy?

Simon Parkes: We have got Grace Academy in that list.

Chair: Where Lord Edmiston—I've never heard of him—paid a million pounds, either directly or through the companies owned and controlled, to himself, trustees' relatives or members of the board of trustees.

Simon Parkes: Yes. I do not have the note in front of me, so forgive me—I may not go into all of specifics. However, in the case of Lord Edmiston, there was certainly some misreporting of that case. One of the figures that was quoted involved Lord Edmiston's company providing space free of charge and what was reported as a related party transaction was the value of that space being provided free of charge, which was correctly disclosed in the accounts as the value of that transaction, but no money passed to him as a result. That was a relatively small proportion of that—

Q109 Stephen Barclay: But with respect, it beggars belief that there are only a dozen related party transactions.

Peter Lauener: I didn't say that—

Q110 Stephen Barclay: That is how many you have looked at. You are giving these bodies the money, so either they are not filing the data to show related party transactions or you have that data and you are not bothering to review it. Which is it?

Simon Parkes: No, we review it.

Q111 Stephen Barclay: So how many did you get notification on?

Simon Parkes: The 12 cases that we have talked about are the 12 largest and most significant ones that we have started with, in terms of looking into them. However, we don't automatically look in detail at every single related party transaction that is notified to us and we don't keep a log of exactly how many there are, so I couldn't tell you the exact number of related party transactions that were disclosed in the 1,400 sets of accounts that were received last year. However, they were disclosed—

Q112 Stephen Barclay: So it is reasonable to assume that there were hundreds?

Simon Parkes: I couldn't tell you.

Q113 Stephen Barclay: All at cost, not at profit?

Simon Parkes: The at-cost rule was not introduced until November 2013, so I certainly cannot give you an assurance that they were all at cost for 2011-12.

Q114 Stephen Barclay: But even before that rule came in, and even if there wasn't a rule there, the fact that people were making those sorts of transactions would surely push them up your risk register, wouldn't it?

Simon Parkes: It depends on the size and scale of transactions, and the nature of transactions, but they are generally disclosed. The transactions that you—

Q115 Stephen Barclay: You seem remarkably relaxed about it.

Simon Parkes: I have to enforce the processes and policies that are put in front of us. The arrangements for related party transactions for academies are more or less identical to the arrangements for charities more generally. So, there must be proper disclosure and competed procurement, and the trustee involved is out of the room when the decision is made.

Q116 Mr Jackson: But this is public money. It is not a charity, and it is not a chess club. It is routinely the case that when you are elected to public office, whether as a local borough councillor or an MP, for instance, you are required to complete something—in the case of an MP, the Register of Members' Financial Interests. Similarly, under the Local Government Act 1972 and subsequent legislation, a local councillor has to do the same, even though you do not have direct executive responsibility for expenditure as a local councillor, because you are scrutinising policy. Why is it not possible to bring forward regulations saying that if you are on the board of an academy or holding an executive position in an academy trust, you sign an annual or even a triennial document that says, "These are my financial interests"?

Simon Parkes: They do.

Q117 Mr Jackson: I suppose the point Mr Barclay was making is that there is no point in having a level of scrutiny if there isn't anyone overseeing the administration and governance of these academies or free schools or joining the dots—we have established that the Charity Commission is useless; I think that is the consensual view—and that there is significant risk to public funds. Probably what is coming out of this is that you may need to revisit this issue to reassure the Committee that it is being looked at and taken on board.

Chris Wormald: That is what we said we would do earlier in the conversation.

Q118 Mr Jackson: No, on the specific issue that we have raised.

Chris Wormald: Just to be clear, we do require the disclosure of related-party transactions. The issue we were debating before—

Q119 Mr Jackson: No, if I could come in there, I don't want you to inadvertently mislead the Committee. You are using very specific words: related-party transactions. That is not what I suggested. I suggested a register of financial interests.

Chris Wormald: They do that as well.

Q120 Mr Jackson: Can we clarify for the Committee that that is exactly what you are talking about? The former is only going to be triggered in terms of any formal or informal audit, if there is a transaction.

Simon Parkes: They have to disclose their interests in the same way that you would have in—

Stephen Barclay: But you have massive gaps in your data. It is likely that there is a higher preponderance of gaps around the areas where there is financial impropriety.

Meg Hillier: There is an opportunity here for a real change to sweep through the accountability of governing bodies generally. Being a school governor or the chair of governors, there is a lack of understanding that it is public money. It has to be transparent, and it should all be published. Parents should be able to access it, and they cannot. We have a system where you could be a trustee of an academy or a free school, and you could be running an academy chain, and if there was a problem at some point, you could take that over. There is nothing to stop you doing that.

Q121 Chair: I want to ask you some generic questions, because we have expressed our view pretty clearly to you. Do you do a fit and proper person test on those who run academy trusts?

Peter Lauener: There is a process to check free school promoters.

Q122 Chair: That is a different thing. Can I ask the question again? Is it a yes or no? Do you do a fit and proper person test on the people responsible?

Peter Lauener: We don't have a system for vetting individual trustees who will be appointed to academy trustee boards.

Q123 Chair: Or for the chief executive of academy trusts? The reason I am raising it is pretty obvious really. If you are going to have a very devolved system, and you are going to put a lot of trust in these organisations, it would not seem un-sensible to have a check on the people responsible for public money. A fit and proper person test is one simple mechanism.

Peter Lauener: That is not part of the system we have either for trustees or for academy chief executives.

Q124 Chair: I would ask you to do that.

Can I ask something else about the auditors? You have 200 auditors working at the moment. Do you have a role in choosing who the auditors are?

Simon Parkes: No, we don't.

Q125 Chair: Why not? Why do you choose not to have a role in that? That is another way in which you could secure for yourself greater assurance that public money is being properly spent.

Simon Parkes: We do not have a role in choosing auditors, but auditors have a duty to the EFA and the NAO in terms of provision of information.

Q126 Chair: But you don't know what they are like. You haven't run a check on them.

Chris Wormald: These are all professionally qualified auditors—

Q127 Chair: Who may have relatives on the trust.

Simon Parkes: Auditing is a regulated profession, so it is not that this is—

Chair: Yes, but they may have relatives on the trust.

Simon Parkes: They may have relatives on the trust, and they would have to declare that in the normal way. In the case of auditors—I will need to confirm this and get back to you—it would be very unusual for an audit partner to be allowed to have any form of personal or professional relationship with a trustee and be able to do that audit.

Q128 Mr Bacon: But it's okay if it's legal advice?

Simon Parkes: I—

Mr Bacon: I agree with you: I would not expect an audit partner to do that sort of work. I would expect an audit partner—a professionally qualified person in an audit firm—to say, "I can't do that." However, what you have just said is true and applies if you are an auditor, but it does not apply if you are a legal adviser. That is what you are saying.

Simon Parkes: I would have to check.

Mr Bacon: We had the case earlier—I think it was £400,000 of legal fees in two years.

Chair: School Partnership Trust Academies: £424,850.

Q129 Mr Bacon: I just want to be clear about the policy. "Auditors: no you cannot"; "Legal advisers: yes you can." Is that the policy?

Simon Parkes: From our perspective, but I think that the audit profession is governed more particularly by the regulations that apply to it. The legal profession will have its own set of procedures and rules that will require some separation of duties—

Mr Bacon: Apparently not—or not that they observe.

Simon Parkes: Certainly for the audit profession, which is what the original question was about.

Q130 Mr Bacon: While I am speaking to you, Mr Parkes, I am looking at your CV. You are ex-armed forces, which is obviously a good start. Are you financially qualified?

Simon Parkes: I am. I qualified as an accountant in the Army.

Q131 Mr Bacon: That's marvellous. Is that a special military accountant qualification, or is it the normal Institute of Chartered Accountants one?

Simon Parkes: It is from the Chartered Institute of Management Accountants. Around about 70 people in the Army are similarly qualified.

Q132 Mr Bacon: Thank you. I just thought I would check because years ago, many were not qualified. It has improved a lot.

Peter Lauener: I can assure the Committee that I would definitely not have appointed someone to the post had they not been financially qualified.

Q133 Mr Bacon: That is good, but it used not to be the case.

Chris Wormald: This is an area in which we have made big changes. Simon is in fact the previous finance director of the Department—he served as the Department's head accountant. One thing we did two years ago was decide that we needed—

Mr Bacon: People who can count.

Chris Wormald—two directors of accounts, effectively: one for the Department and one specifically for the EFA. That is when Simon moved across to do that job. That was part of our enhancement of the EFA's capacity in this area.

Mr Jackson: I just want to make a point, for the avoidance of doubt. Personally, I think that this is a reasonably good Report. We are insistent on this subject because we want to protect the integrity of what is being done. We are not trying to criticise or attack gratuitously—not that this Committee does that anyway—but we feel that it is a potential Achilles heel that you should look at. I do not want to be overly negative—believe it or not, I am trying to be helpful.

Q134 Chair: In that context, Chris, just to bring it together, we have basically been talking about accountability and transparency, and one reason your accounts were qualified is that you have incomplete data and you are pretty reactive, and we are putting out the dangers of that. The rules are there to deal with the exceptions as much as anything else.

I want out of you a realistic timetable for us as to how long it is going to take you to sort out your systems, whether it is doing fit and proper persons procedures, getting data of a good enough quality or getting all accounts in on time—all those things. Honestly and realistically, how long is it going to take you to get this right?

Peter Lauener: Could I comment on that? I have referred a couple of times to the systems development, which again, as it happens, we talked about at a previous appearance before the Committee. That development is essential, not just in order for us to be more efficient, but to improve our effectiveness and raise the bar for ourselves in our work.

The next calendar year, and the few months after that, are the critical period for implementing those systems. I am very confident that they will be implemented on time and to standard. We have appointed a very good person as interim chief information officer—someone with retail and commercial experience of implementing exactly the kind of systems we need in the EFA in similar environments. The systems are absolutely industry standard. There is nothing technically complex about that work. It is not innovative and is not bespoke design.

Q135 Mr Bacon: When you say "retail", do you mean retail financial services or retailers? Are you going to be using a system that has been used by Marks & Spencer? Can you be a bit clearer?

This happens with Government IT, with somebody trying to ascribe value to some useless piece of IT in the accounts. Perhaps it was previously used by the Department for Environment, Food and Rural Affairs for counting apples and somebody says, "The Education Funding Agency will be able to use this. Look, it has a field and you can put some information in." And before you know it, some accountant is giving this useless piece of software some value. What are you actually talking about?

Peter Lauener: We have not bought some second hand software from a major retailer.

Q136 Mr Bacon: I am just checking. What is the thing you are talking about?

Peter Lauener: The individual has commercial and retail experience; the systems are designed. They are off-the-shelf, industry standard systems for holding and managing data and using data and analytical models for managing contacts with customers. Madam Chair, you said you did not like the term.

Q137 Mr Bacon: It is CRM software—customer relationship management software.

Peter Lauener: It is a CRM software, and there is software for managing the exchange of information, so that we can send information out and academies and colleges and other people we deal with can send their information to us on self-correcting software—all the kind of forms we all use.

Q138 Chair: So you will be in a better position—15 months.

Peter Lauener: That will all improve the accuracy of the information that we have got; it will improve the reliability of the information we have got; and it will improve our ability to manipulate and interpret the data.

There are two big qualifications. First, just putting this software on our desktops will not do anything, if we do not do all the other things that we are planning to do, which are referenced in the NAO Report, which I have not yet had the opportunity to say, but we think it is a helpful Report for us. A big one for us is skills development of our staff. We are planning a lot on that over the next year.

The second is a different kind of qualification. I would not like to mislead the Committee and say this will get us to 100%. Simon referred earlier to the fact that we are doing much better on getting the returns in on time and to quality. Academies are doing much better at understanding what they need to send and at doing the task. That is because of a lot of hard work on both sides.

Q139 Chair: Okay, things are going to get better. I accept that. But when are we going to feel secure that you have got a transparency and accountability system for the use of these billions of money, which will give us satisfaction you are in control?

Chris Wormald: It is difficult for me to judge when the Committee will be satisfied, because that is, of course, on your side of the table.

Q140 Chair: Systems. I talked about systems, Chris!

Chris Wormald: I will be specific on the qualifications that there were to our accounts. Essentially, there are two of those qualifications that we expect to have rectified by next year. There are two which are much more difficult, one of which is the issue we were discussing earlier about the year ends. We are in discussion with both the Treasury and the NAO about what we do about that, because there will always be a risk of qualification, if we are consolidating a September-to-September account into a March-to-March account.

The question of whether that is the most helpful way of presenting that information to Parliament and others is one that we will want to talk about, in line with the recommendation that the Comptroller and Auditor General made.

Q141 Stephen Barclay: Would not the Treasury have some of these data that are being consolidated at different times?

Chris Wormald: No. The data that we have created for the first time for this consolidation is that actual academy expenditure. We have lots of information about the money we give to academies. To create a properly consolidated account, we have to account for how they then spend it and then consolidate that into our accounts, while making an adjustment for the two different year ends.

There is inevitably a level of risk, as the Comptroller has pointed to, in the making of that adjustment. So the question of whether we should go on doing that or whether we should simply present the consolidated academy account, September to September, and whether that is a more useful thing for this Committee is something that we will need to discuss within Government, within the NAO and then with the Committee. So there is that qualification.

Amyas Morse: I do not think that this is an unreasonable issue for us to be talking about; nor do I think that the Department's position on it is unreasonable. They have just got to work out how to solve it.

Chris Wormald: The second qualification that will be very difficult to remove is the one around land and buildings. We have a clear picture of the land and buildings in use by academies, but, particularly for ex-voluntary-aided schools, we do not always have a clear picture of the title of those buildings, many of which are highly historical. The cost of getting such a clear picture would be in the region of, I think £30 million plus £8 million a year.

Peter Lauener: It would be a very large figure.

Q142 Mr Bacon: Sorry, the cost of getting a complete picture would be how much?

Chris Wormald: £30 million plus £8 million a year, because we would have to go around—

Q143 Mr Bacon: Each year?

Chris Wormald: Yes.

Q144 Mr Bacon: The cost of getting a clear understanding of title—who owns it.

Chris Wormald: To keep it up, yes.

Q145 Mr Bacon: £38 million per year?

Chris Wormald: No. It is £30 million through a one-off and then £8 million to keep it up to date. It would be a large sum of money. Given that it is not intrinsically useful information unless you are selling one of those assets, there is a question about whether it is value for money to spend those sorts of sums.

Q146 Mr Bacon: You remind me a little bit of the Ministry of Defence, who said that it had no idea how much its assets were worth—

Chris Wormald: I will be very clear about these assets. We are talking about historical Church assets that have come into the education system and no one has ever done that.

Q147 Mr Bacon: Yes, I realise that it is slightly different, but it is surprising that you do not have clear information. If they are voluntary-aided, plainly there is going to be a Church connection and, in many cases, the freehold will be held by the Church. But I find it very surprising that it should cost millions of pounds to figure out who owns it and to keep that information up to date.

Chris Wormald: It is an exact replication of the types of searches that everybody does when they sell their house—on what trust deed was placed where in what century. As I said, we are talking about historical assets.

Q148 Mr Bacon: The local education authorities—

Chris Wormald: Do not have that information.

Mr Bacon: Are likely to have that information.

Chris Wormald: No, they don't have that information.

Mr Bacon: Or the school itself is likely to have that information

Chris Wormald: No, they don't.

Q149 Stephen Barclay: Just a quick clarification point. The Report says over £50 million on administration costs. Is that all admin costs? Does that—

Chris Wormald: No, that is the running cost of the EFA, I think you are referring to.

Peter Lauener: That is the administration costs of the EFA—

Q150 Stephen Barclay: For the agency, 2012-13—

Chris Wormald: Yes. So that includes what they do on capital and what they do to distribute money to local authorities.

Peter Lauener: It includes the administration costs of capital. What it does not include is the costs of running the procurement programmes for our schools rebuilding or free schools, because we capitalise those costs; those are programmed costs rather than administrative costs.

Q151 Stephen Barclay: So consultancy from project costs will be outside that admin figure.

Peter Lauener: We employ a number of contractors rather than consultants, so we are employing people to run a number of contracts, rather than to give us advice about how to run—

Q152 Stephen Barclay: Sure. So what is the real admin figure?

Peter Lauener: I think it is about another £15 million on top.

Q153 Stephen Barclay: So it is £65 million rather than £50 million.

Peter Lauener: I am sorry, but I think there is quite an important distinction, because I do not regard the programme costs as administrative costs. We have agreed the—

Q154 Stephen Barclay: But you would be paying consultants outside that £50 million. There would be consultants—

Chris Wormald: It is people like project managers.

Simon Parkes: Part of any construction of any building will have surveyors and other project managers on site involved in oversight. That is particularly in free schools, where we are now directly out there on the ground, overseeing those construction projects. Those costs are capitalised as part of the cost of bringing assets into use, so they are not administration costs. The definition of administration costs in this Report is the tightly-defined definition that the Treasury and Parliament use when allocating money. That is correct, but it is not the totality of the operating cost—

Q155 Stephen Barclay: That was the point. I was not suggesting that it was not correct, but that there were other admin costs in addition.

Simon Parkes: There are other operating costs in addition.

Chris Wormald: They are not admin costs.

Q156 Stephen Barclay: The other point I want to clarify is that the Report says that there are skills gaps in construction and IT. To what extent does that constrain your potential savings from property? It is good that there is a projection for an admin saving, but the big-ticket saving is much more likely to be on property and IT procurement.

Peter Lauener: Right at the start of the hearing I referred to the big-ticket savings that we are making on school building and free schools. The National Audit Office Report that we looked at during our last hearing concluded that the savings were about 45%, so we are making very significant savings for the taxpayer through different, better, smarter procurements and better specification of what we are trying to get. We are taking a lot of process out of it. We are securing significant savings.

It has been an enormous challenge, but I would like to think that we have largely met that challenge. The Committee has focused on some tension points at this hearing, but we have delivered a lot of cost-effective programmes for the taxpayer. We have run with vacancies, and we were under cadre for the year of the study. We are not in a bad position now on the two skills that are identified there. We brought in some IT contractors as we do not want to staff up for that because it is a short-term project. We are in a fairly happy position on that.

On the building skills, on which we have more than 100 people doing project management and procurement, we have done quite well recently, but we are having to watch it closely in case we start to lose people as the construction market picks up. I am afraid that it is never-ending vigilance.

Q157 Chair: Okay. I want to ask one general question, and then there are a few specific issues to pick up. The Report says that, at March 2013, the balances sat at nearly £2 billion—£1.9 billion—which, crudely, averages at about £673,000 a school. That is a heck of a lot at a time when resources are extremely tight and we want the money out on the front line paying teachers and supporting pupils. Do you want to comment on how you are tackling that?

Chris Wormald: Yes, I welcome that. The most important thing is that that is the cash snapshot on that date, so it is not the same as the amount that those academies have in their reserves. We made the figure as £660,000 per academy.

Chair: Mine was on the back of an envelope.

Chris Wormald: We can also tell from the consolidated accounts that the average academy carries, I think, £373,000-worth of liabilities. The actual net figure—in which you net off how much cash each academy is holding against the liabilities that they hold—comes to a bit under £1 billion, rather than £2 billion. We expect academies to want to hold a cash balance. They do not have access to overdrafts and borrowing, so they need to hold working capital. Although we do not set a limit on what academies can hold, we look at what the cash balance is and investigate where there appears to be a very high balance. When we have done that, as Peter's people have been doing, we have received satisfactory explanations as to why there was a particularly large cash balance.

I will give you an example. There was one school that was holding a cash balance of £4.8 million because it was about to embark on the refurbishment and rebuilding of its science block at the cost of £5 million and had been saving up the resource to do so, which appeared as a cash balance. That seems to us to be a perfectly reasonable way of managing money. We have a framework for looking at balances. We do not set a limit, as previous Governments did, but we look at any level of balance that is high.

Q158 Chair: Have you taken action?

Chris Wormald: We have not, as yet, found one where there has not been a satisfactory explanation for a high balance. Were we to find an academy that had a balance for which it had no explanation—in other words, the academy was not using it for the purposes that we had given—that would be evidence that the school might not be complying with our financial management regime, at which point we would be into financial notices to improve, and all the things we described earlier. We are trying to create autonomous institutions. One of the freedoms that they have is on how they manage their own cash. We have stayed away—

Q159 Chair: Of course, but we have a responsibility.

Chris Wormald: Absolutely, which is why we have taken the approach of having a clear framework for managing it. We look at what look like high balances, but do not set a hard-and-fast rule about what the level of balances should be.

Amyas Morse: It is good that you are making progress in understanding the purpose of holding these balances, because my understanding was that until recently, you weren't very clear why they were being held by the Secretary of State. I do not really want to make a lot out of that. I would just say, however, that it would be a good idea to commit to getting more insight into that and actually manage those cash balances a little bit more tightly, perhaps, than they have been.

Peter Lauener: I was about to make a comment in precisely that territory. We have done some work looking at high cash balances, coming out of the set of accounts that we have just had. What we now need to do is build that into our ongoing monitoring so that we can go back in a year's time and say: "Is it still high, is it rising, have you done the thing that you said you were going to do?" We could do that for those at that particularly high end, then pick up any new high ones. We are just developing the framework for doing that.

Amyas Morse: Have you the intention that the overall level of cash balances will be somewhat lower than they seem to be at present?

Chris Wormald: No, we are not setting hard-and-fast rules. I do not think that the level of cash balance is of itself that interesting a number. The real comparison is cash versus liabilities.

Amyas Morse: Depending on whether they are short or long term.

Chris Wormald: Exactly.

Q160 Chair: Okay. I am finally going to ask you a few questions arising out of the last hearing, which have a relevance to the value for money side. First, on the Kings Academy, I find it rather odd that Mr Lewis has been described as a benefactor, because he is actually a beneficiary, in that his company will make close to £6 million from it. You have written to the Committee about this. Can you explicitly give an assurance to the Committee that Mr Lewis's firm is taking less overall income for the site than he was before he left it to the academy school that he was chair of?

Peter Lauener: The assurance that I can give is that we commissioned an independent valuation from DTZ, which conducted the valuation to the normal standards laid down by the Royal Institution of Chartered Surveyors, and they said that the rent for the site was on market value.

Q161 Chair: No, what they said was the rent per square foot. I had a briefing from the NAO and it was the rent per square foot. What I am asking you is whether the overall income for the site is less. The claim arising out of that was that the rent per square foot was lowered from previously. What I understand from local people there is that hardly any of the site was let, which is why I am asking you about the overall income. Is the overall income that Mr Lewis, who was chair of the Kings Academy, less than it was when it was let to previous tenants prior to the academy taking it over?

Peter Lauener: There are two points here. The rent per square foot—

Q162 Chair: I understand about the rent per square foot. I am asking about the overall income to Mr Lewis.

Peter Lauener: We would expect a lower price per square foot, because we were leasing the whole site.

Q163 Chair: Overall income? That is what I am asking.

Peter Lauener: The important point about the overall income is that the cost of the lease was validated by DTZ.

Q164 Chair: Yes. Was the overall income that Mr Lewis, who was also chair of the Kings Academy, less or more? Is he a beneficiary or a benefactor?

Peter Lauener: The question is he is a beneficiary or a benefactor—

Chair: Maybe you need to write to me about it.

Peter Lauener: We have got the independent valuation from DTZ, which confirmed that it was on market rates.

Q165 Mr Bacon: Once again, you have not answered my or the Chair's question. Is this man, Mr Lewis, making money out of this and is he making more than he was before?

Peter Lauener: His company has an income from the lease at market rent.

Q166 Mr Bacon: And is it bigger than it was before?

Chris Wormald: We had better go and check. As you know, buildings are normally priced by the square foot. That is why it is the information that we have. We had better go and check.

Q167 Chair: I would be grateful if you can send that. Can you then answer something else? This is a generic question—we are going from a particular to a generic. I cannot remember whether you said this in the letter you wrote after you gave evidence, but you said last time that you did not know that Mr Lewis had stood down as chair.

You thought he was chair and you obviously didn't know that Mr Raza, who was the head teacher, was paying his relatives. My question is why? Why didn't you know? What was wrong with the systems that meant that you didn't know that Mr Lewis, as he now claims, had stood down from the chair and you didn't know that Mr Raza was paying his relatives? Why? What was wrong with the accountability and the transparency, which is taking us in a circle?

Peter Lauener: Let me deal with the issue of the chair first. I cannot remember the precise words or terms that I used at the Committee, but the position is that we were led to conclude that he was the chair for a time, because we had a letter from the school saying he was the chair.

Q168 Chair: Peter, do you know, I would almost be happier if you said: "I don't know why I didn't know."? I am asking a generic question. I understand that you didn't know. What I am after is getting from that particular to the generic, why didn't you know?.

Peter Lauener: The reason we believed that he was the chair for a time, until we learned that he wasn't the chair, was that we were told that he was the chair. So it seemed a perfectly reasonable conclusion for us to draw that he was the chair. It then became apparent, as we conducted the investigation, that we were told that he had not actually been the chair. I think I made this point at the last hearing: the only conclusion I can draw from that is that it is symptomatic of the fact that the governance arrangements were in a very poor position at the time.

Q169 Chair: What does it tell you about your accountability, and did you know about Mr Raza employing his relatives? Why didn't you know? I am really trying to say: "Here we are; we have got an extreme example," as Chris would say—I accept it is an extreme example—but it tells you something about your systems of being able to intervene and have the knowledge at an appropriate time before you get a programme on telly, which is not the best way of running these things.

Peter Lauener: These issues that you refer to came out during the investigation. That is where we learned about it.

Q170 Chair: Investigation after the telly programme?

Peter Lauener: No, no. The investigation was long before the television programme.

Q171 Fiona Mactaggart: The television programme was in October, and the public didn't know about it till then.

Chris Wormald: We were investigating before that. There were a number of concerns about that, which triggered the investigation, which threw up the various things that we had not been clearly informed about.

Q172 Chair: Tell us about the generic. You didn't know because they didn't tell you. That is what you are telling us. So why aren't the systems in place for you to check something as basic as the chair of an academy trust? You ought to know that. It shouldn't come as a surprise.

Chris Wormald: As Peter says, my understanding of the situation was that we were informed by the academy that the individual was the chair of the trust, who turned out not to be. It is actually quite difficult to check physically who is the chair of the trust when you have informed of that.

Q173 Chair: You would have the minutes, for example. Just thinking off the top of my head, you would have the minutes of the meetings, which would show whether or not he was in the chair. You would have something.

Chris Wormald: This is what was looked at when we did the investigation. It comes back to the generic point we were discussing earlier about our systems for spotting these things in advance, which I accept need to be quicker and smarter.

Q174 Chair: And Mr Raza employing his relatives?

Peter Lauener: I will write and confirm exactly when we found that out. I think it was as part of the investigation. One of the lessons which we have implemented from a number of cases is that we have put in place a much stronger readiness to open process, which, again, as we discussed at the free schools hearing, happens some time in advance of the proposed start date. We have also strengthened our assessment processes. So quite a lot of lessons have been learned from early cases and have been implemented to improve things in future.

Chris Wormald: I very much take the point that you are making and, as the Comptroller pointed out, our horizon scanning needs to be better around these things. However, we get into a slight Catch-22 in that our mechanism for checking the various things you are asking about is to do an investigation, which is exactly what happened in this case. This throws up the question, why did you not know that before you did the investigation. Our mechanism for finding out is to do the kind of investigation that we did in this case. I think it is a fair challenge to ask if we are good enough at spotting those things which are going to turn into something that needs an investigation in future. That is a fair challenge for us to take away. But I do think that, once we have got to the investigation, that is how we identify the various problems that you are putting back to us.

Q175 Chair: Just explain to me, why did it take six weeks to tell Ministers? You finished your investigation on 5 September. When there was so much worry about fraud around this academy, why did it take you so long to report up to your Ministers? It was 21 October when you finally told them that there had been fraud.

Peter Lauener: I have not got details about that precise six-week period. I strongly suspect it was to do with finalising and refining and checking the words in the report.

Q176 Chair: That shocks me a bit, if I am honest. If there are serious allegations, you clearly want to ensure that Ministers are informed as quickly as possible. I cannot for the life of me see why there was a six-week wait.

Peter Lauener: I am sure it must be to do with finalising, checking and validating all the facts in the report and the conclusions it reached. I don’t think I quite recognise the times that you refer to.

Linda Mills: Is this in relation to the Action Fraud—5 September 2013?

Peter Lauener: The investigation work on site happened in January 2013. The timeline on this was sent by the Secretary of State to the Education Select Committee.

Q177 Chair: Okay. Perhaps you can write on that. Just two more and then Fiona wants one. At Glendene Arts Academy, where I gather about £162,000 has been misspent, a private company was set up alongside a state-funded academy, for which four members of the school staff worked, including both the former chair of the governors—named, not stated, as the police investigation is ongoing—and the principal, Eric Baker. Why was that never spotted? It seems so obvious. The school is in Durham.

Peter Lauener: As you have said yourself, the police are investigating that case. We have recovered £81,000 of the amount that was improperly used, and we are recovering the second tranche of that on 1 April. On the question why did we not spot it sooner, I can only give the generic answer that Chris has already given. The mechanism for finding out what has happened is to do the investigation, once we pick up that something is awry. I absolutely accept that we need to get better at putting the information and data together, and we are doing a lot of work on that. I referred earlier to data analytics work, so that we can make those assessments more quickly. We have developed a predictive reporting tool, which is nearly ready to run. We think it will put up a lot more flags more quickly for us to follow up with inquiries.

Q178 Chair: Let me ask you a final question. Discovery New School must be the first school you closed. I don't know if that is right, but Discovery New School is closing, isn't it?

Peter Lauener: Yes, it is.

Q179 Chair: Two issues arise there—again, learning from the particular to the general. One is probably the most important: what happens to the children? The other thing is that the building was leased for £2.5 million, not an insubstantial amount. What are you doing about that?

Chris Wormald: We are in discussion with the local authority about where the children should go.

Q180 Chair: How old are these kids? I think they are primary.

Chris Wormald: I think they are primary, yes. I will check the exact position as of today and come back to you on the £2.5 million.

Peter Lauener: We will seek to find alternative use for the building or, if not, dispose of it and seek to recover as much as possible of the capital funds involved. There is not a definite plan yet. The school is still in use, teaching until, I think, Easter.

Amyas Morse: Chair, I am sorry to intervene. For the record, I am going to suggest that it might be a good idea for the Department to give us a letter or a note on the sequencing of events with Kings Science Academy. On the investigations, may I suggest—I hope helpfully—that it would be a better idea to go off and write a letter about who knew what when and submit it back to the Committee. I think that would be better, rather than trying to answer it now. I feel we are at risk of being in error.

Peter Lauener: Some Committee members might have seen the timeline that was put on our website and sent to the Education Committee. We can send this right away. It identifies clearly the key points in this, which are slightly different from the ones you picked up, Madam Chairman.

Q181 Fiona Mactaggart: You will be aware I was not at the last meeting where the subject of the Khalsa Secondary School in Stoke Poges was raised by some of my colleagues on the Committee. What had the Department done following the decision of South Bucks to seek counsel on 9 January to refuse it continuing permission to open?

Peter Lauener: We are looking at the basis of that; it refers to traffic problems. We are looking to discuss that with the—

Q182 Fiona Mactaggart: Are you planning to appeal that decision?

Peter Lauener: It is highly likely that we will appeal that decision. We do not believe it is well-founded, but obviously we need to check the basis on which it was made.

Q183 Fiona Mactaggart: When is the deadline for the appeal, if the decision was on 9 January?

Peter Lauener: We will be taking a decision very soon on that. I have not got a precise date.

Q184 Austin Mitchell: How is co-ordination maintained with local education authorities? They have responsibility for the overall adequacy and sufficiency of local education provision. I cannot see that they could do that without consulting you about what is happening. I mean, you can pop in a free school here—there is a superfluity of education—but how do you maintain value for money? I will give you one instance. In north-east Lincolnshire, we have a marvellous sixth-form college, and yet the academies—many of them without sixth forms—now want to establish sixth forms, because complete schools have sixth forms, so the academies want them. That means we will have a surplus of sixth-form places—small, inadequate sixth forms—in addition to the sixth-form college. What is the role of the local authority in that? How do you stop the waste of money involved? How do you give us value for money in respect of surplus places?

Chris Wormald: Post-16, we have had a system of choice for quite some time. If people choose to go to a school sixth form, rather than a sixth-form college, that is their choice, and the sixth-form college will have been outside local authority control for quite some time now—since 1992. So that has been the situation post-16 for some time. When I go on visits to academies—I normally see the local authority as well—I see that there is usually a very good dialogue between local schools of all types and the local authority about the local authority's overall duty to provide sufficient school places. In the vast majority of cases, that is settled locally and satisfactorily. I have discussed this with the Committee before, but I do think that that is the right way. We take an overview of how ready local authorities are for increasing pupil numbers.

Q185 Austin Mitchell: But you cannot stop academies establishing sixth forms if they want to.

Chris Wormald: As I said, post-16, there has always been choice, and new providers could come into the market. If you have an excellent sixth-form college, I am sure it will continue to attract students, as it always did. That situation is not changed by academies. Post-16 and sixth-form college incorporation happened in 1992, when providers became autonomous.

Q186 Austin Mitchell: So, to maintain choice, you sacrificed value for money.

Chris Wormald: We are about to get into a slightly political philosophy debate. Successive Governments have argued that competition and choice, particularly post-16, drive quality and therefore value for money. I do not want to have that debate with you—it is not my place to—but that has been the policy of successive Governments.

Chair: Okay. Thank you very much indeed. We need a detailed note on some of the issues raised. Thank you.