Public Accounts Committee

Oral evidence: Recall on EFA and DfE financial statements/Durand Academy investigation, HC 924

Monday 26 January 2015

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Members present: Margaret Hodge (Chair); Guto Bebb; Dame Anne McGuire; Austin Mitchell; Stephen Phillips; Nick Smith

Sir Amyas Morse, Comptroller and Auditor General, National Audit Office, Sue Higgins, Executive Leader, National Audit Office, Jacqui Smillie, Director, National Audit Office, and Richard Brown, Treasury Officer of Accounts, were in attendance.

Witnesses: Peter Lauener, Chief Executive, Education Funding Agency, Sir Greg Martin, Executive Head Teacher and Accounting Officer, Durand Academy, Simon Parkes, Chief Financial Officer, Education Funding Agency, and Chris Wormald, Permanent Secretary, Department for Education, gave evidence.

Q1 Chair: Welcome to one of your regular appearances. Let's hope that this appearance is slightly less tetchy than the last one. We will try to keep our questions short and sweet, and if you can make your answers direct, the usual rules apply. I am going to start with Sir Greg Martin. Can I start by saying, for the avoidance of any doubt, that you ran an excellent primary school in Lambeth? We are always pleased to see excellence. It is a bit disappointing to see that it was downgraded in the latest Ofsted inspection. You also have plans to build a boarding school for Lambeth children in—

Sir Greg Martin: In Midhurst.

Q2 Chair: That is a really brilliant idea. For the avoidance of any doubt, we are not here to challenge any of your educational aspirations. We are here to follow the taxpayer pound and make sure that money is being properly spent. The reason we are a bit late is that we had to spend a bit of time understanding the structure, and it might be most sensible to go to figure 2 of the Report. Can I ask you first about the Durand Education Trust? Why did you set that up?

Sir Greg Martin: It was set up in 2010 prior to the school becoming an academy. It was set up by the foundation school. One of a few mistakes in this document is the suggestion that it was set up by the Durand Academy Trust. That is not true; it was set up by the foundation before the school became an academy. The reason we set it up was that we had worked quite hard over the intervening years before the change of Government, and we had concerns about the assets we had built, which had significant private equity in them. We wanted to make certain that they were safe going forward for our boarding school project, because crucial to the boarding school was the amount of private income generated which would support it.

As you are probably aware, it was highly unlikely that any Government would give us boarding costs in the state sector. The only way we could achieve such a thing would be to generate those costs ourselves. That is a little bit of a task, and we had managed to get the assets to quite a significant point. Those assets were paid for by significant non-public money. The money coming off the assets was non-public, and that was the money that was going to support the boarding project. In order to make certain that we were going to be fine with that and that it was secure, we wanted a trust to be formed in which those assets would be placed, so that the children would be safe now and into the future. That was the motivation and the reason we did it.

Q3 Chair: Jacqui, do you want to come in on that?

Jacqui Smillie: I just want to come back to the factual accuracy. It is important that we clarify that the factual accuracy of the Report, which is on the oversight of the Education Funding Agency, was cleared with Peter Lauener and in discussions with Chris Wormald as well. We cleared the Report with Durand Academy Trust. I spoke to Victoria Robinson, the chair of governors at that time, and we made appropriate adjustments to the Report to recognise that. Subsequent to the publishing of our Report, an issue with the transfer of the land is now subject to legal discussion and advice.

Q4 Chair: I was going to come to the transfer of land. I have to say that I am somewhat bewildered by that. Perhaps either Peter Lauener or Chris Wormald can swiftly answer this question. Once you are an academy trust, how you use your assets and income is down to you; nobody else interferes. The same was probably true when you had foundation trust status.

Peter Lauener: Basically, that is correct. Obviously, there is—

Q5 Chair: So there is no advantage in setting up a separate organisation.

Peter Lauener: There is regulation through the funding agreement and the "Academies financial handbook", but the use of the land is a matter for the Durand—

Q6 Chair: And any income would stay with the organisation?

Peter Lauener: Yes.

Q7 Chair: There is no way Lambeth council or the DFE could take the money away from you.

Peter Lauener: Basically, that is right. That is not to say that we would not take account of other income in reaching agreement, as we did when we discussed the boarding project, because we were expecting a contribution, which is rather as Greg says.

Q8 Chair: So we are slightly bewildered, Sir Greg, that your justification does not appear to be sound. Is it right that the school gifted to the education trust the land on which accommodation and leisure facilities exist? Am I right about that?

Sir Greg Martin: Yes, the—

Q9 Chair: So who owns that land and the leisure facilities and accommodation?

Sir Greg Martin: At the moment? Who owns it?

Q10 Chair: Who owns it?

Sir Greg Martin: The Durand Academy—the Durand Education Trust owns the land.

Q11 Chair: But this is public land and these are buildings built on school land—

Sir Greg Martin: Yes.

Q12 Chair: But they are owned by a charitable trust that is not regulated by the Charity Commission.

Sir Greg Martin: It is regulated by the Charity Commission.

Peter Lauener: There was some uncertainty over that point earlier in the year, when we carried out our investigation of Durand. We spoke to the Charity Commission. They said that the Durand Education Trust had been deregistered at the same time as the Durand Academy Trust had been deregistered, after the passing of the Act that made all academy trusts exempt charities regulated by the Secretary of State.

The Charity Commission then took a different view, having had further advice last autumn from the Durand Education Trust, that the Charity Commission decision to deregister had been wrong, and the Charity Commission therefore decided to register it. This became apparent to us in November last year.

It is fair to say that the Report that the National Audit Office has done, which I think is a very fair Report, a very good Report and, as Jacqui Smillie said, was the report of our investigation—the National Audit Office did not carry out new investigation work—the Report was concluded while there was a set of agreements in place. At that point, the Durand Academy Trust and the Durand Education Trust said, "Well, because of this development, we can't go forward with the agreements that we've put in place." So I think it is fair to say—I'll look across to Jacqui—that the National Audit

Office Report, although, I repeat, I think it is a very good Report, is not 100% up to date, because of developments since it was published.

Jacqui Smillie: There have been developments since the Report was published, yes.

Q13 Chair: Well, if anything in figure 2 has changed, let us know. *[Interruption.]* I don't want us to get off the issue. Come in as you think appropriate. I am going to take us through the figure. Where we are at the moment is that Durand set up the Durand Education Trust. There is no agreement, and I can see no reason why it needed to set that up to safeguard the income. And you were in and out of charitable status. You are now in charitable status, and presumably the Charity Commission are, as we speak, undertaking an investigation.

Peter Lauener: They are reviewing the registration that the Durand Education Trust have made. I will not speak for the Charity Commission, but—

Chair: No. We are seeing them later this week, so we'll ask them.

Q14 Stephen Phillips: I want to go back to the Durand Education Trust. What is it that that can do with the land that the Durand Academy Trust couldn't do?

Sir Greg Martin: There are a number of things. For example, we couldn't have bought the Midhurst property in the way we bought it without using non-public income, because we were able to secure an interest-free loan of £2 million five years ago—

Q15 Stephen Phillips: So what you say is the justification for the setting up of the education trust is that the academy trust couldn't do things that needed to be done to raise money to run the boarding school that you had in mind. Correct?

Sir Greg Martin: That is one of the reasons.

Q16 Stephen Phillips: Right, so the specific question that I am asking is: what powers was the academy trust lacking that required transferring—without, incidentally, the consent of the Department for Education—all the land and buildings that the academy owned to a different trust, of which you are one of the directors? What was it that the education trust could do? What powers was the academy trust lacking?

Sir Greg Martin: Can I just say I am not one of the directors? I resigned from that a while ago.

Q17 Stephen Phillips: All right—you were a director at the relevant time. Let's not mince words here.

Sir Greg Martin: Well, no, no—you said I was a director and I'm not. I was at the relevant time, but I'm not now. That is just a matter of fact; I was just pointing that out.

Q18 Dame Anne McGuire: Can I ask when you ceased to be a director?

Sir Greg Martin: I ceased to be a director when we discussed the whole of this situation, because of course the school developed as the EFA had recognised, historically over time. And when we set up the Durand Academy Trust, I was asked to be a director and I said yes, I would be a director. Later, when it was all looked at by the EFA, in the first instance when we believed the EFA to be the regulator, it said, "Look, it wouldn't be wise. You need to rationalise the bodies that you are on, so you need to leave."

Q19 Dame Anne McGuire: Right. So, a simple date would do. When did you cease to be a director of DET?

Sir Greg Martin: Probably about three months ago—four months ago.

Q20 Dame Anne McGuire: What? Three or four months ago, approximately?

Sir Greg Martin: Yes. But I will find the exact date for you.

Jacqui Smillie: September 2014.

Dame Anne McGuire: September 2014? Thanks, Jacqui.

Q21 Stephen Phillips: Because it was inappropriate, or thought to be inappropriate, and you recognised this, if you should be a director of both bodies. Is that right?

Sir Greg Martin: That is right.

Q22 Stephen Phillips: Right. And you had not appreciated that previously?

Sir Greg Martin: Absolutely not, no.

Stephen Phillips: Right. So, let me come back to my question, then. You set up DET and you transfer all the land and buildings to DET; we will come back to that in a moment. What is it that DET can do that the academy trust couldn't do?

Sir Greg Martin: There are two things. One is that DET shelters the assets from changes of Government, and of course the income generation is non-public and goes into a trust for the use of the children. That is hugely important to us going forward because we want to be able to say, and we are saying to the parents, that boarding costs will be free for you going forward. Now, if everything was owned or run by a public body like a school, that is subject to changes of financial regulation and direction, which we could not know about. By doing it this way, we protect the assets going forward, for the sole and complete benefit of delivering the free education, in terms of boarding, for the children going forward. So, that is the first thing.

Secondly, as I said earlier, there is the ability to buy land in the way we did, which simply would not have been possible through an academies trust, or any other form of school.

Stephen Phillips: I will take your word for that—

Q23 Chair: Can we get the other view on that? Can we get the view from Chris Wormald and Peter Lauener?

Peter Lauener: There are two points I would like to make, which I hope will be helpful to the Committee in understanding this.

First, there are a range of models of land ownership by academy trusts. There are a number of academy trusts that own their own land. There are other academy trusts, and probably the most common mode is where the local authority owns the land and it is leased on a 125-year peppercorn lease to the academy. There are a number of other cases, and Church schools can be like this, where the trust is held in a separate body, for historical Church-ownership reasons. So there are a number of different models, and it is certainly not that unusual to have the ownership in a separate trust.

Q24 Stephen Phillips: What is unusual in this case is that this model created a separation of the land.

Peter Lauener: Well, indeed, and there is one tactical benefit. It is, as Sir Greg said, that it is possible for a separate charity to borrow money, which we don't permit for academy trusts, except by permission; in some cases, we will give permission, but generally it would be easier for a separate charity to borrow money.

But of course, as the NAO Report set out, we thought that the resulting governance of all the arrangements, as set out in figure 2, was far too complicated and untransparent. We proposed, and thought we had agreement to, a different model. When Durand Education Trust considered this further, it felt that was not what it should do, and we are in disagreement at the moment about the way ahead with Durand—actually, with the Durand Academy Trust and Durand Education Trust.

Q25 Chair: Now, if Durand Education Trust decides to sell the leisure facilities—?

Peter Lauener: It is under control of the Secretary of State through the Academies Act 2010 and the Secretary of State could—

Q26 Chair: There is disagreement on that.

Sir Greg Martin: There is disagreement on that.

Q27 Nick Smith: Why?

Sir Greg Martin: The disagreement is that it is a charity that owns the land, and the charity which makes those decisions is not under the control of the Secretary of State. It is simply under the control of the Charity Commission. So you are quite right that in the future, where the charity so wished, they could sell that, but of course that would defeat the whole project and prevent the boarding.

Q28 Chair: That is your view at present, but over time, in the same way as politicians and Administrations change, so do charities.

Sir Greg Martin: However, if a politician changed they could come in and sell the assets that belong to the state, and they may or may not distribute the money to the school. That would not be necessarily—

Q29 Chair: Well, a charity may or may not distribute.

Sir Greg Martin: No, the money would go into a charity which is held for the benefit of the children of Durand school. So it always—say we were very successful, or more successful than we are now, and we sold it for several million pounds. That would go into the charity. That would then support the boarding. But it would be foolish—

Chair: We will come on to that, because the lack of transparency, which I completely take—

Q30 Dame Anne McGuire: Sorry, I want to understand what is happening between Sir Greg and the Department in terms of this doubt about the ownership of the assets.

Chris Wormald: That is one of the issues where we and Durand are in disagreement. Our very clear legal advice is that this land is covered by the 2010 Act. Now, I know that you do not agree with that, but that is the legal advice that we have.

Sir Amyas Morse: May I ask another question on the same subject, which might be useful, just to be sure that I have understood it? I listened to your answers and I am taking them absolutely at face value, but I want to make sure that I understand them. The transfer into the Durand Education Trust—the primary motivation for putting it in there was to put it out of the reach of the Secretary of State and so on. It was transferred, and whether or not it was ultra vires that you transferred it—whether or not you had power to transfer it is an interesting question—anyway, you transferred it, you are telling us, expressly to put it out of the reach of the normal ambit of the Secretary of State in these matters. Is that right?

Sir Greg Martin: The Secretary of State and possibly local authorities. When we were building our project in Lambeth, we were subject to quite a lot of interest from Lambeth, and that resulted in a lot of argument. One of the things was that they claimed that they owned what we had built. So what could end up happening is that we could build this rather tremendous activity, have the money for our children and then it could be taken away from us, although we have got children boarding. We wanted to ensure—

Sir Amyas Morse: I am not disagreeing with your explanation; I just want to make sure that I have understood all the points. So the idea was not just to put it beyond the reach of the Secretary of State, but also to put it beyond the reach of the local authority.

Sir Greg Martin: Correct.

Q31 Chair: Given that the right permissions were never sought when the land was transferred—

Sir Greg Martin: May I just challenge that, Chair? That is just wrong. It was done under the authority of paragraph A1(2) of schedule 22 to the School Standards and Framework Act 1998. It was done entirely correctly. There was no requirement for the Secretary of State to give permission on this. The statute existed, and I believe still exists, for that to happen. So it is quite wrong when we are told that we did it without asking permission, as if we snuck it under the radar somehow and put it in trust. That is not true. This was done entirely correctly before the Academies Act 2010 came into being.

Peter Lauener: It is true that the Secretary of State's agreement is not required for the transfer of land in particular circumstances, but there is a due process laid down including consultation and the like, and we have not seen evidence that that process was followed.

Q32 Chair: This was not your land at the time. It was local authority land, wasn't it?

Peter Lauener: Well, no, it was held by the school. It was a foundation school that had its own land.

Q33 Chair: Right. So the foundation school was answerable to the Department or the local authority?

Chris Wormald: It was a maintained school at the time.

Q34 Chair: I just cannot remember the structure. Would that have been to the Department or to the local authority?

Peter Lauener: It was to the local authority before conversion. It had been a grant maintained school, of course.

Sir Greg Martin: It became a grant maintained school in '95.

Peter Lauener: And then it became a foundation school.

Sir Greg Martin: In 2000.

Q35 Chair: So who is taking action? Who is looking at the legitimacy and whether it was ultra vires or not to gift the land? Who is looking at that?

Peter Lauener: We are certainly looking at that issue. We have taken legal advice on the proposals that—

Q36 Chair: What are you doing about it? Will you come back to us and tell us that you have resolved it?

Peter Lauener: We have only had the legal advice for a short time. Absolute clarity about the land is obviously important, but the thing that we are most concerned about is the appropriate governance arrangements—

Chair: Let us go on to that, but I think we have an issue.

Chris Wormald: Before we go on, just to be absolutely clear, we are in disagreement with Durand about these issues, and they are not yet resolved. It is perfectly reasonable, of course, for Durand to be making its case; we do not agree with it and clearly that needs to be resolved. We are very clear about what our legal advice says—

Q37 Chair: From the point of view of Parliament, you need to come back to us, Chris—

Chris Wormald: Delighted—

Chair:—with an unequivocal answer as to who owns and therefore benefits from the growing asset value of the land.

Chris Wormald: We completely agree with you. The story of this, as the Report sets out, is that in May last year we believed that we and Durand had an agreement on a way forward that would meet all concerns. Durand, as is its right, then concluded that it did not want to sign up to that agreement—that happened at the end of October—so from that period to now has been the period of disagreement. That has not yet resolved itself.

Q38 Chair: I know, I understand that. We want to know whether the deal was intra vires/ultra vires. We also need to know, to protect the taxpayer's pound, that if anyone were to benefit from an increase in value of the land or of the properties on the land, who it is that is benefiting and is therefore the taxpayer's pound protected? We need to have answers to those questions.

Peter Lauener: We will write as soon as those matters are resolved.

Q39 Stephen Phillips: If this has been going on since last October—a massive disagreement, with on the one hand Durand and both trusts saying, "No, this is not right. This transfer was not ultra vires and the land is plainly owned by the education trust" and, on the other hand, the Department saying, "Actually, you didn't follow the appropriate processes, so it was ultra vires"—when is it going to be resolved?

Chris Wormald: I certainly agree that this should be resolved as soon as possible. It is difficult in this situation to give a very hard and fast timetable—

Stephen Phillips: Try!

Chris Wormald: I take it from the Committee that you would like us to resolve this as soon as possible—

Q40 Stephen Phillips: I am not your boss. I am responsible, along with the Committee, for looking after taxpayers' money. If the matter is not resolved quickly, it is quite plain to me that taxpayers' money is not being looked after, so I want an estimate from one of you as to when you are going to resolve the issue—

Peter Lauener: I would hope that we can resolve this satisfactorily within two months, but as Chris said, we are in disagreement about the way forward, so—

Chair: Okay. Well, let's go for two months.

Stephen Phillips: Conveniently in the middle of purdah, but never mind—

Chair: But we can still know, can't we?

Peter Lauener: Two months will take us to just before the pre-election period—*[Interruption.]*

Chair: Right, it will be the middle of purdah—

Chris Wormald: No, two months will be before purdah—the week before purdah.

Q41 Chair: The week before, thank you.

Now let us go back to figure 2. Why on earth did you set up London Horizons Limited, Sir Greg?

Sir Greg Martin: We set up London Horizons Limited back in the late '90s on advice of accountants, because by that time I was generating significant income for the school through my work. We were told that if we were not careful we would be subject to corporation tax, therefore we needed to have the money donated to the school, because donations were free of that, otherwise we would be losing significant income for the benefit of the children.

Q42 Chair: You were avoiding corporation tax, were you?

Sir Greg Martin: We were making certain that the corporation tax was used much more efficiently—rather than going to the Government and then back to us, it could go straight to the children.

Q43 Chair: But that is not your choice. That is a democratic choice. You were setting up a deliberate structure to avoid paying proper tax on your earnings. It is up to us to decide how much money should go; it is not up to you to avoid the intent of Parliament that you should pay tax. Are you actually telling the Committee that this was a deliberate tax avoidance mechanism?

Simon Parkes: May I offer some help? This is actually in line with HMRC and Charity Commission guidance on how charities should run subsidiary trading companies, so this is not simply a tax avoidance scheme that Durand just dreamt up. This is what HMRC advises charities to do when they have trading companies, to

get the charitable donations broadly in the right place. This is entirely in line with that.

Sir Amyas Morse: This isn't just a subsidiary, is it?

Chair: I'm sorry, explain that to me.

Dame Anne McGuire: I did not quite pick up what the Comptroller and Auditor-General said.

Sir Amyas Morse: This is not a subsidiary, in fact.

Jacqui Smillie: It is a private company. It is not a subsidiary of DET, the charity.

Simon Parkes: The principle—the point I'm making—is that it is in line with HMRC advice to have a separate trading entity.

Chair: I don't understand the disagreement between you two. Can you come back?

Stephen Phillips: It is not a subsidiary of either the academy trust or the education trust. It is a private company. I don't know who the directors are, but—

Chair: Alan Davies and Tom Cornwall. That changed.

Q44 Stephen Phillips: Whether that has changed or not, they are all people linked with Durand again—is that right?

Sir Greg Martin: Can I just point out that Mr Parkes is exactly correct? This is advice we were given. It is a structure that is apparently quite normal in the private sector.

Q45 Chair: I am trying to find out why.

Jacqui Smillie: It is quite standard in the charity sector for a trading subsidiary to set up for a part of it.

Q46 Dame Anne McGuire: This was not a subsidiary. I understand the issue of setting up what are effectively holding companies for charities to do the trading—the trading arm of charities—but this is a separate private company that, according to the timeline, was established when?

Sir Greg Martin: 1997.

Q47 Stephen Phillips: If it was a subsidiary the shares would have been owned by the academy trust.

Sir Greg Martin: No, it is limited by guarantee. There were no shares, because it was simply set up—

Q48 Stephen Phillips: All right then, the guarantor would presumably have been the academy trust, would it?

Sir Greg Martin: The guarantor was LHL. At the time there wasn't an academy trust, because this was a grant-maintained school, which was a different entity from the one we are talking about now.

Q49 Dame Anne McGuire: It is a private company limited by guarantee, not a charitable company?

Sir Greg Martin: No, this isn't a charitable company. What it agreed to do is hand money by donating, gift aided, to the school.

Q50 Dame Anne McGuire: I understand that bit. It is not a subsidiary of DAT; it is a private company limited by guarantee. It then has total jurisdiction over where it donates money. It does not necessarily need to donate it to the school—it could make other decisions.

Sir Greg Martin: That is right.

Q51 Stephen Phillips: Who are the people who own the company? It has no shares and is limited by guarantee, so who are the people who incorporated it—who are the members?

Sir Greg Martin: The members who incorporated it were Alan Davies and others in the past, going back 12 or 15 years.

Q52 Stephen Phillips: Who are the people who control and manage it now?

Sir Greg Martin: There is a licence for it to operate whereby it agrees to hand the money over. That is what happened for 17 years. What we are doing now, with the Charity Commission's advice, is making it a wholly owned company of DET.

Stephen Phillips: Which is what it should have been in the first place.

Q53 Chair: Can I just note this? It employs absolutely no staff.

Sir Greg Martin: That is correct. It subcontracted that obligation to me.

Q54 Chair: Why do you have this interim company? I have to say, Simon, that I don't think you are right. Anne will know more about this, but if you set up a charity and have a trading arm, it is a subsidiary of the charity. All of us have worked with that. That is not the structure that is here.

Sir Greg Martin: To help you, there wasn't a charity set up then. This was back in 1997.

Q55 Chair: It doesn't matter. I was working in the charity sector—

Sir Greg Martin: Well, it does matter in the sense that it wasn't set up.

Q56 Dame Anne McGuire: Can I take us back to when you established the company? What were the objectives of the company? They weren't charitable objectives at that time. It was a company limited by guarantee, so you would fully expect to trade, but not as a charitable company. What were the objectives in the establishment of the company when it was initially established and registered?

Sir Greg Martin: As my colleague Mr Parkes says, it was to ensure that the maximum amount of non-public money would get to the school in the most effective and efficient way.

Q57 Chair: Have you looked at the accounts of this company?

Simon Parkes: Yes, we have seen the accounts.

Q58 Chair: What do they tell you? What went in there? How much money went in in a year?

Simon Parkes: I haven't got the figures in front of me, but from what I remember they showed the relatively modest amount of income being donated to the Durand—

Q59 Chair: How much?

Simon Parkes: About £370,000 a year.

Q60 Stephen Phillips: It was £367,000 for 2012. Does that sound about right?

Simon Parkes: About £360,000 a year is the right sort of number.

Q61 Chair: That the company?

Simon Parkes: I do not have figures for that. London Horizons does not actually do any of the trading, of course; it generates its income through GMG Educational Support and acts as a conduit.

Sir Greg Martin: Can I just bring you up to date on the figures? Last year we turned over £1 million, and about £630,000 was handed over to the trust because we—

Q62 Chair: Who is "we" in this context, Sir Greg?

Sir Greg Martin: Well, LHL and GMG made the money.

Q63 Chair: LHL or GMG?

Sir Greg Martin: GMG does the work and is the business really.

Q64 Chair: Who gets the money?

Sir Greg Martin: I get a fee from GMG—from LHL—which we will come to, no doubt. There is £1 million turnover, which is brought in by the business activity, and £630,000 of that is handed over to the trust. Over the past five years, we have been paying for the St Cuthman's site, where we are doing our boarding. About half of the money goes to redeem that loan, which will be finished in about five months' time. That asset, which is now valued at about £5 million is wholly paid for and, as we speak, 48 children in year 9 are being boarded free there.

Q65 Chair: If you were to sell that asset, where would the money—

Sir Greg Martin: The Charity Commission.

Q66 Chair: The Charity Commission?

Sir Greg Martin: DET could sell the asset. The money would then go into the DET trust for the support and use for the children in their free boarding.

Q67 Chair: Well, that is what you say but it could go—

Peter Lauener: Chair, that is one of the areas where we have a disagreement about legal fact. We do not think that DET could sell the land without the permission of the Secretary of State.

Q68 Stephen Phillips: Including the land in Sussex? Which land are we talking about? Are we now talking about the boarding land?

Peter Lauener: No, I am talking about the land on which Durand Primary School sits.

Q69 Chair: We are talking about the boarding land.

Sir Greg Martin: The boarding land certainly—

Q70 Stephen Phillips: Who owns that?

Sir Greg Martin: DET.

Q71 Stephen Phillips: Can that be sold without the consent of the Secretary of State?

Sir Greg Martin: Yes, it can.

Q72 Stephen Phillips: Is that agreed by the Department? As a result of these complex structures, money that was controlled, public money in the hands of the Secretary of State, has now become uncontrolled public money.

Sir Greg Martin: With respect, St Cuthman's was never in the Secretary of State's gift. The school bought it. LHL bought it entirely from non-public money. It was never owned by the state.

Chair: With respect, Sir Greg, there is a clearly a question to be answered as to whether money made from a school should be public money. I am anxious to get an answer from Peter Lauener or Chris Wormald. Who, if they sold the boarding—

Q73 Stephen Phillips: The £5 million boarding site in Sussex—whose money is that?

Peter Lauener: Actually, I cannot give you a 100% sure answer on that because we have been concentrating on the legal issues around the south London site for the primary school. I think that there is a difference in type between the St Cuthman's site, which was bought with income generated from the operations of the leisure facilities in south London, and the original Hackford road site, which was clearly publicly funded land in its origins. The point is that, to the best of my knowledge, there was no private risk capital put into the ventures, but it was created—hats off—from an entrepreneurial approach.

Q74 Stephen Phillips: Which we understand, but it was created entirely out of public money so one's anticipation would be that the end product—the £5 million site in Sussex—would belong to the taxpayer. Now you are basically telling us that you do not know, but you do not think that that is right.

Peter Lauener: I am not saying that. I am very certain, having taken specific legal advice on the Hackford road site in Stockwell, about the position on that. We ought to ask the question more specifically.

Q75 Chair: You ought to ask the question. It is £5 million of public money.

Peter Lauener: About that asset. Can I just make one other point? I do not want to delay the Committee.

Dame Anne McGuire: It is okay. We have plenty of time.

Peter Lauener: I have been admonished in the past for giving long answers. The fundamental issue here is the governance and getting that right for the whole set of operations. That was what we were very focused on in the review that we did in February, March and April, in the meeting Chris and I had in May and in the letter that we took to be an agreed letter in May. Looking at something very like this document, we said, "This is too complicated. It needs to be simplified. It is not sufficiently transparent and it ought to be wrapped up together, with all the land brought under one set of arrangements." As Chris has said, we had an initial agreement on that.

Q76 Stephen Phillips: Mr Lauener, you are preaching to the converted. No one here thinks that poor governance is a good idea. We all support you on good governance. From the perspective of your job, good governance is your primary focus. Our focus is not only on good governance, but on the appropriate and proper use of taxpayer funds. I am concerned as a result of your answers and those I have had from Sir Greg that there will now be, when the loan is paid off, a £5 million site sitting in West Sussex that belongs to the Durand Education Trust, which the Durand Education Trust can do with as it will, without that money being regarded as taxpayer money.

Peter Lauener: I do not think that that is the case, but I—

Q77 Stephen Phillips: You cannot tell me. Let us assume that your legal advice says that that is not the case. I am damn sure that Sir Greg's legal advice will say that it is the case.

Peter Lauener: I think we need to reach a resolution on that.

Q78 Stephen Phillips: You must agree that one thing all this discussion is demonstrating is that you are not acting speedily enough to resolve these issues.

Peter Lauener: This has been an extraordinarily complex case. It is the most complex case that we have had to deal with in the two and three-quarter years of the Education Funding Agency. I expected to be challenged on the question of whether we are taking too long to deal with this. I thought we had a resolution last May, and I was very disappointed when that fell away. I made the comment earlier that we—

Q79 Chair: But a resolution on governance would not have answered the question on ownership.

Simon Parkes: The resolution on governance would have answered that, because it would have meant that DET became part of DAT. It would have resolved that. That was the proposition that we thought was agreed.

Q80 Guto Bebb: To clarify the situation with the boarding school, my understanding is that the public asset was taken into DET and whether that was acceptable or not is the subject of dispute between you and the Department for Education. Once that money had been transferred to DET, a loan was taken against the asset, which was previously a public asset and is now in dispute. Is that correct so far?

Greg Martin: No, that is not correct. When we purchased the St Cuthman's site, the chap who sold it to us took no charge against any of the assets, except that if we did not pay for the site, he would take that site back. The St Cuthman's site—

Q81 Chair: The security was provided from the site itself.

Sir Greg Martin: And we have now got to the point where we have got four or five more payments to make of £30,000 a year, paid from non-public money. Your issue about this being taxpayers' own property, I take issue with, on the basis that it has been paid for entirely—that is not absolutely true; about 60% of it has been paid by non-public income.

Q82 Stephen Phillips: It has been paid for from income generated from the sports and leisure facilities on the school site. Correct? How do you think, Sir Greg, that that is not money derived from public funds?

Sir Greg Martin: Well, I can think that because it is not, and I will explain to you why it is not. In the same way as if someone sold a playing field—as has sadly happened—and developers build properties on it and sell them, the money that derives from those sales is not public money—

Stephen Phillips: No, Sir Greg, it is a completely different situation when a school has sold a playing field to an arm's length third party who has then paid what that playing field is worth, developed it and sold those assets. In this case, that is not what has happened. The school transferred, without consideration and without receiving any money, its assets to another trust, set up for reasons that continue to escape me, of which you and all the other little Durand pixies were also directors.

Sir Greg Martin: That is a very colourful way of putting it. Can I put it another way, which might be helpful to you? The actual assets on the Durand site, which we have transferred and which we are talking about, have been entirely paid for from the income generation, so no public money has gone into those assets. Those assets that were paid for by public money—or rent, if you like, paid for the land as it would be an arm's-length developer—have been transferred over to—

Sir Amyas Morse: The fruit comes from the tree and the character of the tree is what determines the character of the fruit. There is quite a lot of legal argument on that.

Chair: The income is generated from a public asset. You do not think it is a public asset. I think we do, and this is what has to be agreed. Guto, were you going to ask something?

Q83 Guto Bebb: I need to clarify the issue of the £2 million loan, because I am certain I heard you stating initially that one of the advantages was to enable the borrowing of money against the assets. Is that clearly a misconception that I have?

Sir Greg Martin: No. One of the benefits of the possible ways of going forward would be that opportunity.

Q84 Guto Bebb: You mention that as an opportunity. It is not what actually happened.

Sir Greg Martin: Well, it is what actually happened, because that is how we got St Cuthman's and that is why the children are boarding—

Q85 Guto Bebb: This is the point I was making. Therefore, the £2 million loan was initially secured against the public asset you have just transferred.

Sir Greg Martin: Well, it wasn't; it was issued against—the point being that had we not had London Horizons to pay that, we could not have bought the land.

Q86 Guto Bebb: In other words, the asset, which is now worth £5 million, would not have been possible if it were not for the public money in the first instance.

Sir Greg Martin: That is absolutely correct.

Chair: I want to get on, because we have loads to cover, so very quickly on this point, Austin.

Q87 Austin Mitchell: I have only two points. First, it appears that in the rush to tarmacadamise the country, we have created a messy situation in terms of ownership of the land. Now that Sir Greg has created this precedent, and it works, perhaps Mr Lauener can tell us what is to stop other academies from doing the same thing.

Peter Lauener: This is a particularly unusual situation, as I explained.

Q88 Austin Mitchell: But what is to stop them?

Peter Lauener: Academies would have to get our permission, on behalf of the Secretary of State, to use the land, because—

Austin Mitchell: Would you give permission here—

Peter Lauener:—because of the circumstances under which it happened, and this has developed over 20 years. I think there have been some very positive things about that, and then I think the governance has not been in place to support the ongoing management of the assets. I would just like to make the point clear—

Q89 Chair: Just answer the question very directly: what is to stop somebody else from doing it?

Peter Lauener: The academy funding agreement in the academies financial handbook requires every academy trust to gain permission from the Secretary of State for any—

Q90 Chair: Disposal.

Peter Lauener: Sorry—for any disposal of land?

Austin Mitchell: It isn't a disposal; it's a transfer.

Peter Lauener: For any activities that might be novel or contentious. That is clearly specified.

Q91 Chair: Transfer of land?

Peter Lauener: That comes back to the issue of whether due process was followed in the transfer of land.

Q92 Chair: Would it stop transfer of land?

Chris Wormald: The straight answer to Mr Mitchell's question is that these transactions happened before the school was an academy. So I think we are clear that an existing academy could not do any of these things without our permission. I make no comment about whether—

Q93 Austin Mitchell: If I was running an academy, I would be tempted to do the same thing and not to let doubts get in the way. I want to ask a question to Sir Greg; I am a bit confused by what is happening here. I do not mind you playing top entrepreneur as a head teacher—you probably have a lot of fun with it—but I would like your assurance that none of the money made by these organisations goes into private pockets, and that it all goes into education or the boarding school, or into improving the lot of the kids. I would like your assurance on that.

Sir Greg Martin: I get paid. At the beginning of this business agreement back in '98, the governing body and I, when I had other alternatives ahead of me and I could have left, saw the potential for the future of our children, and I will explain about education in a little while. We decided when we set up a trading company—and I would run that trading company—that the assets would always belong to, and be under the control of, one of the trusts, or the school at the time, and I would get 15% of the business going forward.

Q94 Chair: You personally?

Sir Greg Martin: My company, personally. It has been in the public domain for—

Q95 Stephen Phillips: Plus an annual fixed payment of £32,000. Don't leave that out.

Sir Greg Martin: Yes. There was no income for the first nine years of working on producing this. If I had come to you and said, "I've got a reasonable idea that might be very effective at the end of 10 years' work, with no risk to the taxpayer because all the money that would be paid will come from non-taxpayers' money—from earned income. At the end of it, I'll be able to hand you £10 million to £12 million-worth of assets and £600,000 to £700,000 a year income, and in return I would like 15% of what I make"—

Q96 Chair: Sir Greg, just to get this clear, in '11-'12 you got £265,000, in '12-'13 you personally got £256,000 and in '13-'14 you got £269,000, on top of your salary as a head teacher.

Sir Greg Martin: Not quite, because of course some of that money went on the staffing costs.

Q97 Chair: How much did you get?

Sir Greg Martin: You can see, because it is written down there. Was it £98,000?

Q98 Chair: No, it isn't. In '11-'12 you were being paid at the highest rate for any head teacher in the land.

Sir Greg Martin: Are we talking about my public salary now?

Q99 Chair: Hang on. In 2011-12, GMG, of which you are the sole director, got £265,000. How much did you get?

Sir Greg Martin: I would think about £140,000 or £150,000 of that.

Q100 Chair: That is £140,000 on top of the salary that you were getting. In '12-'13, GMG got £256,000. How much did you get?

Sir Greg Martin: Same again.

Peter Lauener: I have figures that might help. The amounts in the document were £172,000 in 2011-12 plus the £93,000 salary recharge.

Q101 Chair: So £172,000 into Sir Greg's pocket?

Peter Lauener: That is my understanding. In '12-'13 the figure was £161,000, and in '13-'14 the figure was £175,000.

Q102 Dame Anne McGuire: The recharge of the staffing costs during those three years—just so we are all clear—was £93,000. Is that right?

Peter Lauener: It was £93,000 and £95,000.

Q103 Dame Anne McGuire: It was £93,000 in 2011, £95,000 in 2012 and £94,000, so they haven't really varied all that much throughout that three-year period. Those are the staffing costs of GMG.

Peter Lauener: That is my understanding.

Q104 Dame Anne McGuire: Where does the management fee go? What is it for?

Sir Greg Martin: It is for my company, for me.

Q105 Dame Anne McGuire: That is for you as the sole director of GMG?

Sir Greg Martin: Correct.

Dame Anne McGuire: So that's the management fee, which is nearly double the staffing costs.

Q106 Chair: This is pretty gobsmacking stuff. In '11-'12 you were getting £172,000 in your pocket. At that time, you were earning some £250,000.

Sir Greg Martin: From the public purse.

Q107 Chair: I would say that you, as one person, were earning that much to run—how many children in your school?

Sir Greg Martin: There are 1,200 at the moment.

Q108 Chair: In your primary school or your secondary school?

Sir Greg Martin: In the whole school.

Q109 Chair: You were running a primary school and developing a secondary school.

Sir Greg Martin: Correct.

Q110 Chair: For doing those two things you were paying yourself £200,000, £300,000, £426,000.

Sir Greg Martin: That is quite wrong.

Q111 Chair: It is £250,000 as head teacher.

Sir Greg Martin: No, £200,000 as head teacher.

Q112 Chair: The figure I have is £250,000.

Sir Greg Martin: Why is it £250,000?

Q113 Chair: There was a point at which you gave yourself a 56% salary increase, according to the books.

Peter Lauener: May I clarify the salary figures? I believe Greg's salary was £128,322 in 2011-12, and on top of that there was an £18,000 pension contribution.

Q114 Chair: Say that again slowly.

Peter Lauener: I will give salary then pension, and Greg will correct me if I get this wrong.

Chair: In '11-'12.

Peter Lauener: In '11-'12 it was £128,322 plus £18,093, which gives £146,415. In '12-'13 it went up to £200,822 plus a pension contribution of £28,316.

Q115 Chair: And in '13-'14?

Peter Lauener: I believe it is the same as '12-'13.

Q116 Stephen Phillips: Let us put it slightly differently. If we look at 2012-13, your basic salary for being head teacher was a little over £200,000—correct? Then you got a £28,000 pension contribution. You are the sole director, and presumably sole shareholder, of GMG—correct?

Sir Greg Martin: Yes.

Q117 Stephen Phillips: GMG operates the sports and leisure facilities at the school at which you are a head teacher—correct?

Sir Greg Martin: It operates on private land and it is a private company, but yes, it is in the school site.

Q118 Stephen Phillips: Let me ask my question again and you can tell me whether I am wrong. It was a very simple question: GMG operates the sports and leisure facilities at the school at which you are a head teacher—correct?

Sir Greg Martin: Well, you are sort of correct. It is in the school site, but it is not at the school, because it is a private company.

Q119 Stephen Phillips: If the kids go swimming in the day, it is the pool they use—correct?

Sir Greg Martin: It is a pool that we allow them to use, and they go for free, yes.

Q120 Stephen Phillips: Oh, you allow them to use it.

Sir Greg Martin: Yes.

Q121 Stephen Phillips: How very nice of you.

Sir Greg Martin: Yes, it is very nice.

Q122 Stephen Phillips: Right, let's move on. For operating those leisure facilities, in the 2012-13 year, a further £161,000 ends up in the pocket of Sir Greg Martin—in your pocket—correct?

Sir Greg Martin: Correct.

Q123 Stephen Phillips: So in the 2012-13 year you get, let's say, £228,822 basic salary and pension, and then for having this other little company that is using the facilities at the school, which the school children use during the day and are then used by the community and others who pay for them in the evening, you get another £161,000 in your pocket.

Sir Greg Martin: Correct.

Q124 Stephen Phillips: Do you not regard that as a crass, obvious profit arising from a conflict of interests, Sir Greg?

Sir Greg Martin: Absolutely not. This is a fantastically good thing, and I would say to you that this should be replicated throughout the whole country. What has happened, which I have not explained properly and so will try to again, is that when I started off in the late ’90s and early part of this century, there was nothing—nothing—and now we have a multimillion-pound business, two swimming pools and a boarding school that is being paid for.

We subsidise every child’s lunch by about 50p a day. We subsidise child care at about £1.50 per night, as opposed to £6 or £7. We give free boarding, free swimming to hundreds of children and key worker homes. All that came because of my work in building this company. At the beginning, when there was nothing and I could have done many other things, I was offered 15% of the company if I was successful. Now you say, after I have been successful, that this is crass. Surely this crassness should go around the whole country, do you not think?

Q125 Stephen Phillips: Let us take that year, shall we, Sir Greg? There is £161,000, which has ended up in your pocket, of assets that formerly belonged to the school and were then transferred to DET.

Sir Greg Martin: No, no.

Q126 Stephen Phillips: Those assets never belonged to the school?

Sir Greg Martin: Those assets were built by the company that I formed. There were no assets belonging to the school.

Q127 Chair: They were built on public land. I have to say to you that I think there are so many shocking aspects. You are supposed to be a full-time head teacher—that is how you get your money. You pay yourself way above any other head teacher in the land, and I look forward to seeing—

Sir Greg Martin: I don’t think that’s true.

Q128 Chair: Well, that is what the Report tells me. Is it true or not?

Simon Parkes: He is in the top nine head teacher salaries.

Q129 Dame Anne McGuire: Of both primary and secondary schools?

Simon Parkes: Of primaries, secondaries and multi-academy trusts, yes.

Q130 Dame Anne McGuire: Right, so he is in the top nine out of all the schools from five to 18 in the country.

Simon Parkes: Yes, including multi-academy trusts, where there are chief executives.

Q131 Chair: Including multi-academy trusts, so somebody who runs more than one school.

Sir Greg Martin: Yes, but we run three sites, and I am running a boarding school and the middle school, and we built the middle school. There is no money coming in from the state for the middle school—we built it. We built the boarding school—we bought the land—and then you are telling me that this is not good.

Q132 Chair: I am telling you that it is wrong to take the £161,000 that you made in a entrepreneurial way because it could also have been used to benefit the education of children. You are getting a perfectly good salary—in the top nine, at £200,000.

Sir Greg Martin: That, may I say, is a naive argument, because of course without the £160,000 you would not have the multi-million pound business, would you? If you don't pay me, you don't get the business. How could you say—okay, why would you not say—

Q133 Chair: Sir Greg, there are plenty of entrepreneurial heads around—public servants who do not look for private benefit from their public service. That is what you have looked for; you have made private profit out of public service.

Sir Greg Martin: No, no. Mrs Hodge, how many of these people do you know that have built a multimillion-pound business that allows the children to swim for nothing, that has a free boarding school and built a middle school? How many do you know?

Q134 Stephen Phillips: That is great, and you deserve to be really complimented on that, because you've done fantastic things for these kids. But the concern is, if you look at the 2012-13 year—and I can understand your argument—there is £161,000 there that has gone into your pocket, but that could have gone back into the school.

Sir Greg Martin: But if you have an agreement—

Stephen Phillips: I know there is an agreement, Sir Greg.

Sir Greg Martin: If you have a contract, do you say, "I'll tell you what'll happen. When you're successful, we'll keep the assets, we'll keep the £700,000—you can go. Your bit of the contract can go now"? Is that what you are suggesting? What message?

Q135 Chair: That is called public service. Public service means you create excellent public services.

Sir Greg Martin: Let me start again. There are swimming pools they wouldn't have, there are boarding schools they don't have, there are middle schools they wouldn't have, there's subsidised food, there's after-school care, there are small classes—and we've got standards which are a significant plus. Are you saying that's wrong?

Q136 Dame Anne McGuire: At the opening, the Chair very fairly said the Committee wanted to recognise some of the achievements there have been over the last number of years, and Mr Phillips echoed that. What we are concerned about, though, is how all this fits into your role as the executive head of the school. At the same time, you are managing this entrepreneurial exercise you are so proud of, and with some justification, I'm sure. On the £95,000 recharge on staffing costs, though, how many staff are engaged in the work of GMG that is recharged?

Sir Greg Martin: There are five staff, of whom some are part-time.

Q137 Dame Anne McGuire: So five staff get £95,000 between them. I suppose the question for someone who is entrepreneurial, from a social conscience point of view, is, does that seem like a reasonable balance, with five staff sharing £95,000 while you accumulate—I will not use the other terms that have been used—£165,000 working, effectively, in a situation based on the transfer of a public asset to the Durand trust? Let's look at the equity issue: £165,000, compared with five staff earning £95,000 between them.

Sir Greg Martin: It is a slightly more complicated issue than that. We are moving those staff towards a London living wage, and 40% have been moved. The transfer in terms of the cost is just that. I would pay them more—absolutely. I would have to get the permission and the agreement of London Horizons, and we would transfer it across—absolutely.

Q138 Chair: Your London Horizons, Sir Greg. Sir—sorry, Chris. You are not a Sir yet. Are you happy with this?

Chris Wormald: No. As I said, we are in disagreement with the trust, and I'll leave Peter to explain the basis of that.

Q139 Chair: Are you happy with the money he pays himself?

Chris Wormald: We take a view on the financial management of the trust and the overall governance; we don't take a view on individual sums of money. The question we ask ourselves is, is the trust, overall, governed and financially managed well?

Q140 Chair: I've got to ask you this: are you happy with the money that he pays himself?

Chris Wormald: We have a lot of concerns about the GMG contract, which Peter will explain, but, as I say, we don't take a view on the issues.

Q141 Chair: Do you take a view, Peter? I can't believe you don't. Does the Department take a view on the amount of money the individual gets?

Chris Wormald: Sorry, we do have concerns about the GMG contract.

Q142 Stephen Phillips: Let's hear the concerns about the GMG position, please.

Peter Lauener: This goes back to the review we did. The review was prompted by related party transactions that we had identified in the 2012-13 accounts—we identified one or two other things when we looked at them. We looked in great detail at the GMG contract, and our conclusion from that review—as I have said, we thought we had got agreement to it—was that the GMG contract should be terminated and retendered, and that we did not think it was appropriate that GMG should re-bid for the contract.

Q143 Stephen Phillips: The reason for that being that in the view of you, the Education Funding Agency and the Department, there was a clear conflict of interest in the GMG contract essentially being awarded to the head teacher of the school. Is that right, Peter?

Peter Lauener: We thought that there was a clear conflict of interest, and we did not think that the conflict of interest had been managed properly. Conflicts of interest come up in every walk of life, as we have talked about and as the National Audit Office Report has said.

Q144 Stephen Phillips: Why did you say that GMG could not retender for the contract if you thought that it was appropriate? Was it just because the conflict had not been dealt with properly in the past?

Peter Lauener: No, because we thought that the conflict of interest in that situation was so great.

Q145 Stephen Phillips: It is so acute, isn't it, that GMG, at least while Sir Greg is its director, should not be tendering for that contract, in the view of the Department? Correct?

Peter Lauener: That was the view that we had reached, and, as I say, we thought that we had got agreement to that view.

Q146 Stephen Phillips: So you thought that you had agreement, and this was part of the agreement last May, was it?

Peter Lauener: That was the agreement last May, which is referred to in the National Audit Office Report.

Q147 Stephen Phillips: So here we are nine months later, or however many months it is, and what have you done about managing what you regarded as an acute conflict of interest?

Peter Lauener: We did the review, and we published correspondence. My letter of, I think, 23 May is published on the website, because there has been a lot of public interest in the situation.

Q148 Stephen Phillips: Right, now answer my question. That was May, and now it is the end of January the following year. What have you done in the meantime to manage what you and the Department regard as an acute conflict of interest?

Peter Lauener: We were under the very strong impression that we had got a managed end to the conflict of interest and to other conflicts of interest that we had identified, and that we had agreement that that would all be sorted by 31 October 2014.

Q149 Chair: And when it wasn't?

Peter Lauener: When it wasn't, we learned about—

Chair: That was three months ago.

Peter Lauener: We were very surprised to hear about the developments—

Chair: What have you done?

Peter Lauener: We have had a very long, detailed legal proposition put to us by lawyers acting on behalf of Durand Education Trust. We have had to take our own legal advice from counsel, and we got that legal advice comparatively recently. We have had two or three meetings with Durand Academy Trust and Durand Education Trust, but we have not been able to get agreement. I cannot say that any other way.

Q150 Chair: So what is next?

Peter Lauener: What next? I think after this hearing we need to—

Chair: The hearing is irrelevant to what you are doing.

Peter Lauener: It is, but it is important, nevertheless, to—

Q151 Stephen Phillips: It is not irrelevant, is it, because it shines a light on the fact that you have not actually done anything?

Peter Lauener: The hearing is irrelevant, if you will forgive me, to the decision that we had reached, because we reached the decision back in May. We still want to implement the decision that we reached, or something like it. There may be a case for treating DET slightly differently, but we want to get the governance of the whole arrangements sorted, and we do not think that they are.

Chair: I think that there is more than governance at stake here.

Peter Lauener: The very specific point that I set out in my letter to the Committee last Friday is that if we cannot reach a satisfactory resolution, we will move quickly to issue a financial notice to improve.

Q152 Chair: What is quickly? When? We are always after time frames here.

Peter Lauener: I understand that. I said earlier that I hope to get the whole matter resolved within two months. We would not wait that long before issuing a financial notice to improve.

Q153 Chair: Can I move on a little bit, because we have got lots more to dig out? Sir Greg, just to reiterate, this is not a criticism of the educational standards, although I have to say I am disappointed to see that the school is no longer regarded as excellent by Ofsted, and I wonder whether that is down to you taking your eye off the ball a bit. You have said that you have got a hugely demanding role, and that is why you feel you are entitled to the extra £161,000 on top of your very generous head teacher pay package. How, with your hugely demanding role, have you got time to launch a new dating business, which operated out of the school premises until the end of last year?

Sir Greg Martin: Can I just say how disappointed I am that this been brought up? This is my private life, and has nothing to do with this. A few friends and I decided to start a small business, in which I have a minor share. I am not even the director now, to move the focus from me. It was already registered at the business address, where I pick up the mail. The suggestion—

Q154 Chair: Let us get it absolutely on the record. Until the end of last year, the dating company was registered at the school premises.

Sir Greg Martin: No, let us get it absolutely on the record—

Q155 Chair: At the premises, which are on the school site.

Sir Greg Martin: Yes, but can we be absolutely clear? London Horizons Ltd is registered at a completely different address and is a completely different entity. London Horizons Ltd is registered there, as is GMG. Because I live on that site doing my job five days a week, the mail comes there. That was it. It is no big deal. I would like to talk about education, not about a private business.

Q156 Chair: You may want to talk about education; we want to talk about how you are using public money.

Sir Greg Martin: But this is not public money; this is private money.

Q157 Chair: No, you are being paid a lot of money as a head teacher. You take yourself a generous slug of money, which we believe to be public money. You then find time—with your school having been seen as excellent but now only being rated as good by Ofsted—to set up a dating agency. When I looked, somebody called Saffron, who works on the Twitter account, was semi-nude with all sorts of black underwear all over the place. It seems deeply inappropriate for a head teacher to do that on premises where you are also conducting educational business.

Sir Greg Martin: What you are doing is going into someone's private life. That Twitter account is a private account, is it not? That is a private person and a private account. You have decided that that person, who is a private individual—

Q158 Chair: This is someone who is employed by your dating agency.

Sir Greg Martin: That is a private account. When did the Public Accounts Committee start talking about private accounts and private lives? Do you not believe in private lives?

Q159 Stephen Phillips: Sir Greg, you are not doing yourself any favours. It is not a private account if it is on Twitter, is it? It is in the public domain. I do not want to go into this, as it happens, but—

Sir Greg Martin: Why is it being discussed at the Public Accounts Committee?

Q160 Stephen Phillips: I will tell you what, this is Parliament. We will discuss what we want to discuss. I do not want to discuss this, but I will ask you one question. If you are running a dating agency—

Sir Greg Martin: I am not running a dating agency.

Q161 Stephen Phillips: Whatever you were doing last year, were you running it from the premises at which the school is located?

Sir Greg Martin: No, I was not.

Stephen Phillips: Well, let's move on then.

Q162 Chair: I want to get this right on the record, Stephen. You were running it from the premises where both London Horizons Ltd and GMG Ltd are registered.

Sir Greg Martin: Yes, that is right, but I was not running it from there. I was not running it at all.

Q163 Chair: You had it registered at the same premises where you were running educational businesses.

Sir Greg Martin: Registered, yes. I was picking up the mail there, but that is very different. This is a private company in my private time registered as a private company on private land.

Q164 Dame Anne McGuire: Are other private companies registered at that site?

Sir Greg Martin: Yes.

Q165 Dame Anne McGuire: What other private companies?

Sir Greg Martin: LHL and GMG.

Q166 Dame Anne McGuire: Are there any private companies registered there that are not associated with either yourself or with this whole chart that we have here? It was only companies associated with yourself that were registered there, so it is not as though there was a little nest of addresses.

Sir Greg Martin: No. It was not run and it has not been run; it is dormant. We have not even started it. Nothing has been run and I have a minor part in it. It is my private life. I am entitled to a private life.

Chair: I think we all have to be careful to draw a dividing line between our private and public lives. I want to move on to the PR.

Q167 Dame Anne McGuire: That is what I was going to ask about. According to figure 2—I would be interested in the education officials' view on this, as well—DAT pays Political Lobbying and Media Relations Ltd for a number of services. I suppose this would be in your role as the executive head. What sort of services does the school require from Political Lobbying and Media Relations Ltd?

Sir Greg Martin: As you might have seen in the newspapers, on the television and in the media over the past three years, in starting a boarding school where we want to start it, we have come under tremendous opposition from people who have very privileged lives and who do not want us there. They have waged a relentless campaign against us to stop these children having that opportunity. We are a private school, and we do not have the skills necessary to counter this endless attack. I am certain that most people in this room will have received letters from these people making all sorts of complaints. PLMR has managed to position us in such a way that we have managed to get children boarding there and we have managed to fight off the relentless attacks, many of which have no value whatever and had the vile intention of preventing the children who most need this education from getting it. I think their job has been remarkable and worth every penny.

Q168 Dame Anne McGuire: Again, the interesting thing about this is not your explanation as to why you might need political lobbying, but that, according to our figure 2, the director of PLMR, Kevin Craig, is also a director of Durand Academy Trust and one of the governors of the primary school. I want to come back to the issue about potential—let us put it no stronger than that—conflicts of interest. Only one director is identified, so I am interested to know who the money for the contracts is paid to. In 2010-11, it was £153,000. In 2012-13, it was £244,000. Again, are you not uncomfortable with the closeness of the relationships between DAT, DPS and your political lobbying organisation? Does Chris Wormald find it uncomfortable?

Chris Wormald: This was another issue that we raised with the academy trusts, and action has been taken, which Peter will describe.

Peter Lauener: This was part of the review and investigation that we did in the early part of last year. Again, there was a conflict of interest. The contract was due to expire on 31 August 2014, and we required it to be re-tendered or stopped altogether, but that is a matter for the governing body. If PLMR was to take part in the tendering, it would have to be at cost because of the new arrangements in the academies financial handbook, which came in in November 2013. Our requirement was: either stop it altogether or re-tender without PLMR, or with PLMR, in which case it would have to be at cost, unless the director of PLMR, Kevin Craig, were to stand down from the governing body.

Q169 Dame Anne McGuire: Would Mr Parkes or Sir Greg like to pick up the story and tell us where we are now?

Sir Greg Martin: May I? We have complied entirely with what we were required to do. At the moment, PLMR are working on an ad hoc basis and just for cost, which is monitored and looked at by our auditors. They are going to do a report to demonstrate that very shortly.

Q170 Dame Anne McGuire: The auditors will only say that the money has been spent and properly invoiced and all the rest of it.

Sir Greg Martin: No, we have asked them to—

Q171 Dame Anne McGuire: Will they do a value for money appraisal?

Sir Greg Martin: Yes.

Q172 Chair: How much have you paid PLMR since the contract expired last October?

Sir Greg Martin: It was £17,600 in September and £16,095 in October, down to £15,000-ish in December. So we are winding down. Can I make a point that the EFA might find helpful here? The demands of putting together the case for a boarding school and ensuring that we got the planning right, along with the unbelievable amount of media relations and meetings and things that have to take place in order that we had every opportunity of achieving that, were extraordinary. Plus there was an extraordinary amount of work to make sure that we could demonstrate this was a viable concern. We did a lot of the work that the EFA asked us to do, and they therefore increased the amount of work that we needed to do using PLMR. Now that that has gone and it is winding up, they are on an ad hoc not-for-profit basis.

On the Kevin Craig thing, I was quite insistent he join the governing body. I want a governing body full of highly motivated, very interested people who—

Q173 Chair: Who make money out of it.

Sir Greg Martin: No, he makes less money out of it. In fact, he has remained when he gets no money out of it.

Q174 Chair: Over half a million pounds.

Sir Greg Martin: To suggest that he did it for money is outrageous. What happens in schools is not that we get people coming along to get on to governing bodies in order to get themselves a contract. What happens is a proper competition is run. We then appoint somebody properly, through all the necessary procedures that are open to scrutiny, then I would say to somebody—like somebody from catering or cleaning—"Will you please join our governing body with your expertise?". That must be a good thing for the—

Q175 Dame Anne McGuire: You are a very intelligent, highly motivated, very professional entrepreneur. Did you not, at one point, regardless of whether there were academy guidelines or anything else, look at the situation and say, "I am the executive head of this wonderful school that I take great pride in", and look at the number of times the same individuals pop up in some of the other elements around your school? At one point over the last number of years, did you not say, "Actually, maybe this doesn't look right."? Even if it is right and even if everything is above board, you might say, "Looking at it, maybe we should think again about the close number of people who are all involved."

Sir Greg Martin: That is a fantastically good point, but this is also, in some way, a vital point, if I may explain it to you. What Peter Lauener's report did about it was recognise that we had all acted in good faith. So no impropriety took place; it was historical growth—a school that grew and expanded. We expanded by a year group every year and we started middle schools and secondary schools, so what you need around you is highly able, very experienced and very committed people who are willing to give their time and—

Q176 Dame Anne McGuire: But they did not all need to be directors and governors of all the individual parts of the jigsaw, did they?

Sir Greg Martin: In a way, yes. If you started like the Durand trust—

Q177 Dame Anne McGuire: And be remunerated at various points.

Sir Greg Martin: But if you start the Durand Education Trust, and you say to somebody, "Would anybody like to serve on it?" and you have nine people, and people say, "Yeah, I'll do it", they do it because they want to help. They don't do it for gain, and it also means that you are getting a family—

Q178 Chair: All of us around this table have, I am sure, sat as governors in a school.

Sir Greg Martin: Then you know how hard it is.

Q179 Chair: Yes, it is really hard work. You have to have a real commitment to public service.

Sir Greg Martin: How hard it is to get really good governors who are committed to it.

Q180 Chair: But what I also know is that I would never, ever—I don't think any of us round the table would—have tried to get personal gain for a company that I worked for, or for myself individually, from any business connected with the school in which I was on the governing body. I would have seen that as wrong. You clearly don't—I do. I have a couple of questions on the issue of PR that I want to come back to. Are you on PR still, Stephen?

Q181 Stephen Phillips: Yes. I understand why you said the PR was necessary; I am worried about the amounts paid for it. Take the original figure. Presumably the PR battle was at its greatest at the outset, when you were thinking about going down the boarding-school route, so that would have been back in 2009-10—is that right?

Sir Greg Martin: No, I think it built to a crescendo when we were involved in planning, which was a long process, and we had to do three lots of plans.

Q182 Stephen Phillips: When was that?

Sir Greg Martin: I suppose it was about a year ago since we were refused planning. That was between about 2010, 2011, 2012—something like that.

Q183Stephen Phillips: A very significant amount of money was being paid to this PR company—by a school. Originally it was about £8,700 a month. Are you not concerned by the size of that figure? That is excluding VAT, by the way.

Sir Greg Martin: That represents the size of the task facing us, and the challenge and the fight we had. We were fighting, and still are, extraordinarily well connected, very wealthy, very difficult and quite unpleasant people who have said the most extraordinary things about our children. For us to counter that, in any way possible—

Q184 Stephen Phillips: Sir Greg, forgive me, but we are back to where we were again—and I speak as a boy who had an assisted place, so I know the benefits of boarding school as well as the next person.

Sir Greg Martin: Then you know.

Q185 Stephen Phillips: What worries me about this is that Mr Craig then joins the governing body—

Sir Greg Martin: I asked him to.

Q186 Stephen Phillips: And I quite understand the point about needing the right skill sets, and you want the people who are—

Sir Greg Martin: Committed to it.

Q187 Stephen Phillips: Absolutely; I was the chair of governors at the Frank Barnes School for Deaf Children—the only remaining sign-bilingual school for the deaf in London, and I saved that school with a number of other people. I understand that point, too. What I do not understand is why the remuneration for PLMR, whence Mr Craig has joined the governing body, shoots up from £8,700, excluding VAT, a month, to £20,000, excluding VAT, a month.

Sir Greg Martin: As I said, he joined the board because we were hard pressed to be able to fight off and deliver what we did. And we have—there are now children boarding free of charge, which would not have happened otherwise.

Q188 Stephen Phillips: He joins the governing body—

Sir Greg Martin: Because I asked him to.

Q189 Stephen Phillips: Then the money goes from £8,700, now he is a governor, to—

Sir Greg Martin: No, that is not right. What happened: he joined the governing body because of the amount of work. You are linking it as if the—

Q190 Stephen Phillips: It is cause and effect.

Sir Greg Martin: It is not cause and effect.

Q191 Stephen Phillips: The fact that it might be linked in the mind of an objective observer just demonstrates that there is an acute conflict of interest.

Sir Greg Martin: Which is why the EFA said to us, “Can you do that?” and why we have done it.

Q192 Stephen Phillips: But why didn’t that occur to you in the first place?

Sir Greg Martin: Because when you are involved—looking back with 20:20 is really easy. We were involved in a pitched battle, in warfare; we were fighting to get what we think was right. It was relentless. Looking back now, we see how much work he did, and it is very easy to sit there and say, “Well, why didn’t you just see it? You must have been very foolish.”

Q193 Stephen Phillips: Final question. You have got rid of PLMR, because you have recognised the conflict of interest. You complied with what the Education Funding Agency wanted you to do. They are just being paid, now, as I understand it, on a cost basis. You have still got them. You have recognised that conflict of interest. Now, what is the principal distinction between the conflict of interest with PLMR and Mr Craig, and the conflict of interest with Sir Greg Martin and GMG?

Sir Greg Martin: The principal difference: because we started a company, which we agreed, as governors and myself, 14, 15 years ago, to deliver an asset paid out of non-public money—this is not public service—and to deliver this asset in order to achieve what we achieved; and I have done that. I say to you again, would you say to me—if I said "I will deliver you a multi-million pound business, which will make you £600,000 or £700,000 a year, going forward; provide free boarding. You keep all the assets, you get four times what I make, I have 15%." Now, that is not a conflict of interest. This is nothing to do with public service. This is a private business.

Q194 Chair: Oh, dear. We have been there before. Can I bring Chris in? I have given you the opportunity to make that point dozens of times. You have not answered actually why standards have gone down at the primary schools.

Sir Greg Martin: May I answer that, please?

Chair: Let's get Chris in first. We will come back to it, because I have some other questions on the PR as well.

Chris Wormald: The PMR issue is one where, as Sir Greg says, Durand is complying with the EFA's requirement. It has not finished doing so.

Q195 Chair: When did you say that? During May?

Chris Wormald: This was all done in May. This is one of the areas where, I think, we are not in disagreement, although the unwinding is not yet complete.

What I wanted to say was, in terms of the Department and the EFA's approach, we do accept what Sir Greg says, that these things have grown up piecemeal since 1997—so we accept that nobody sat down and planned these structures, so what we are dealing with is the evolution of different decisions.

Now, we had a series of specific issues that we raised in May that we wanted resolved, but our other concern, which we made repeatedly, and I think goes to the heart of some of the Committee's questions here, is not only do we have to deal with the individual cases—not only did things have to be done in compliance with propriety, but they had to be demonstrably in line with propriety.

I think this is one of the things that has come out in the conversation so far— that the sheer complexity of this arrangement is one of the problems, because even in areas where Durand has been compliant, it is very difficult to demonstrate the fact. So I think it is very important in this to keep those two things simultaneously—what we are looking for: a resolution of the individual issue and, as Peter said a couple of times, ending up with an overall governance requirement that is clearly understandable and therefore meets that demonstrability test.

Sir Amyas Morse: Just to be clear, I am listening, and you are clearly sincere in what you say, Sir Greg, but the fundamental point for the Department is whether or not it accepts the argument that Sir Greg is making, which is that he is entitled to receive what amounts to dividend in respect of what he is asserting to be private sector income and assets built up over the years.

Do you accept that, or do you consider that those assets are, at least in part, if not in whole, derived from public ownership? Which is it? Everything he is saying is based on an assumption that you may or may not share, but we really must get to the bottom of that question—it is the bottom of this whole debate, really.

Peter Lauener: In effect, we do not accept that. We do regard the activities as generated from publicly-funded assets. I do think that there is a proper question about reward for excellence and endeavour, but I made the point earlier and will repeat it: one of the requirements that we set out in May, which we thought was agreed, was that the contract for GMG would be re-tendered and GMG would not bid. We thought that that was the right way ahead for that.

Q196 Chair: We must get on, because we are probably going to have to vote in about half an hour. I have two questions. You were asked to re-tender in May—why haven't you appointed an alternative PR agency?

Sir Greg Martin: Let me give you the information that I have on that. We put out a tender announcement on the public framework and received one response from a company that then pulled out. We have then gone to a multi-agency bid and gone out further and further, and 20 agencies have now come forward. We expect to finish that in the next two or three weeks.

Q197 Chair: Is it right that the tender specification was set by a member of staff from PLMR? I can't quite read it, but I think the name is Antonio Dorileo. He is employed by PLMR and set the tender specification—is that correct?

Sir Greg Martin: No, no, what we asked them to do—

Q198 Chair: Is that true or not true?

Sir Greg Martin: It is not true. What we asked them to do is note down all the areas in which they have worked for us, which we might need to know for the future, so that we could build that into a tender document so that we knew that it was like for like. That was passed to the governing body and our chair of governors—

Q199 Chair: That is playing a little bit with words. They provided you with the basis for the tender specification. They did not write it, but they provided you with the basis.

Sir Greg Martin: Correct—it was what they did, so that it is like for like.

Q200 Chair: So there is still quite a close relationship. It does seem to me that, quite honestly, from May until January, which is seven or eight months, you should have sorted it out and got them off your books. Have you also got Judicium Consulting Ltd off your books?

Sir Greg Martin: Yes.

Q201 Chair: So they no longer provide legal services for you.

Sir Greg Martin: That is correct.

Q202 Chair: Nothing pro tem or anything like that?

Sir Greg Martin: No, nothing.

Q203 Chair: Okay. Can you answer the question on the standards? It is very disappointing to see that the quality of the education has gone down.

Sir Greg Martin: Let me disabuse you of that, because it is not true. What's happened is that—

Q204 Chair: Is it true or not that Ofsted's rating went from excellent to good?

Sir Greg Martin: That is true, but they—

Q205 Chair: That is a standards issue.

Sir Greg Martin: Yes, but it is not true, what you have just said—that standards have gone down.

Q206 Chair: Sorry, Ofsted is the arbiter of quality in our schools. Can I just hear from one of you guys: did Ofsted reclassify Durand school?

Chris Wormald: Yes; it went from outstanding to good.

Q207 Chair: Sorry, it went from outstanding to good.

Sir Greg Martin: And may I say what you said? You said that standards have gone down.

Q208 Chair: I am just reflecting what Ofsted said.

Sir Greg Martin: No, what you said was that the standards of the education have gone down, and I am telling you that they haven't. What Ofsted said was that the school—

Q209 Chair: You can't do that.

Sir Greg Martin: You may smile, but I'll tell you—

Q210 Chair: Do you think Ofsted is a waste of space, Sir Greg?

Sir Greg Martin: Well, I think that there is an element of that, too, but may I tell you why later? I can tell you if you want to hear. What you said was incorrect. The standards have not gone down; in fact, they have gone up. Let me explain to you something that is quite straightforward. There is something called significant plus—I can give it to you, if you like; it is a matter of public record—which shows that the children's performance is way above the national average.

When Ofsted came in, I said, "I can well understand my management style may not be what you like and might just be rated as good. I can well understand, when something like a third of our staff have under three years' teaching experience, that some of them need to improve. That is unquestionably true. What I can't understand is why you judge our children—children who have worked so hard—and deny them the recognition you have given other schools for exactly the same numbers." That is what I am saying.

Q211 Chair: Sir Greg, I am going to stop you. Some really good schools in my constituency have had their assessments changed from outstanding to good, but none of them have challenged it in this way. They are very disappointed. I should have thought that you would be humble and disappointed, and that you would give the Committee an assurance that you would seek to restore the outstanding status you previously had. The concern I have, just looking at the whole thing, is that your eye got off the educational standards ball.

Jacqui Smillie: Just to clarify the change—why it is not outstanding in January 2014—the comment from Ofsted was: "Not all teaching is consistently good and outstanding. Pupils, particularly the youngest and the most able, are not always provided with enough challenging work."

Q212 Chair: I want to move on now. We have a number of things to ask Chris Wormald and Peter Lauener about a bit more. This is in part about related party transactions. You depend on their being disclosed. In this instance, one of the findings in the Report—presumably, these were the findings when you did your work—was that the auditor, Citroen Wells, failed to disclose a relationship between Judicium Consulting and Alex Mehta. How can you give the Committee an assurance, on an issue you know we feel strongly about, that the auditors are doing what is required of them?

Peter Lauener: I will bring Simon in as well, but you are absolutely right: we are reliant on auditors identifying related party transactions. We do a lot of work with academy finance directors and the audit firms to make absolutely sure they understand what our expectations are and that their assessment of regularity is to the EFA as well as to the academy trust.

We think that this is getting smarter and sharper and that we are getting a much better understanding about what our expectations are. When we introduced "at cost", there was a little concern. We still need to review this as we look at the 2013-14 accounts to see how it has worked out in practice. But we produced a model pro forma agreement, and that is the kind of thing that we do to try and smooth the way—to make it easier for people to do what we expect.

You can never quite get 100% on that, and I was disappointed that Judicium was not identified. I have looked at the 2013-14 accounts, and it has been identified—not surprising, given that we had blown the whistle and said, "Why is that one not there?" But I read the accounts and thought that it was a more comprehensive audit than the previous year. So we have quite a lot of confidence that the underlying capacity of auditors is working.

Chair: The only thing I would say to you, Peter, is that, as I recall, this probably came to us from the people who drive Sir Greg mad, and for the wrong reasons—this came to light only after we had all started investigating it on the back of that. We haven't a clue how many other instances there are, have we? This goes back to your task of ensuring probity, certainly on top of this issue of related party transactions, which concerns us. You don't really know; you are dependent all the time on whistleblowing or external auditors, who may not actually do what you want them to do.

Q213 Dame Anne McGuire: What work is the Department doing with the various professional accountancy organisations? This is going to be a niche, growing market. As the charitable sector grew, accountants started to have specific niche training on charity law. So is work being done between the Department and the professional bodies?

Simon Parkes: Yes, there is. We work very closely with the Institute of Chartered Accountants in England and Wales, which is the principal regulator for most of the audit firms involved. We also work with the Chartered Institute of Public Finance and Accountancy to make sure that we cover the public sector accountancy angle, too. And we work with auditors themselves.

We run a number of seminars with audit firms at which we, the NAO and others set out the difference and the unique aspects of what it is to audit a public sector body. What we are seeing—you are absolutely right—is the evolution of a new area of activity. This is a fast growing area of audit activity. We are slightly disappointed with some of the audit activity that has been undertaken, and we have made that clear. We have made it clear that we expect there to be a higher standard when auditing public bodies. The default setting should be to disclose, rather than to apply, in a relatively benevolent way, the financial reporting standards.

In this case—why didn't they pick up Judicium?—actually they did. The auditors noted that Judicium was a potential related party, and they considered that against the relevant reporting standards and decided that they didn't meet the relevant reporting standards for disclosure. The auditors are probably correct, but the line we would take is that it doesn't matter. You should err on the side of disclosure, which is the point we have been making to auditors over the past 12 months. I am very confident that we are now going to see more focus on that, and I think we have seen that in the results of the accounts this year.

Q214 Dame Anne McGuire: Thank you very much for that helpful answer. The fact is that four and a half years ago when the educational landscape was changing, and indeed when the health landscape was changing, with more independent entities out there, this Committee flagged up the real difficulty in tracking the taxpayer's pound. What we have seen today is an exposition of what happens when the policy is perhaps ahead of the structures needed to be put in place to ensure that the taxpayer's pound is not only safeguarded but spent transparently.

Peter Lauener: May I mention one other thing we have done that I think is very important? We have prepared and published a thematic report on related-party transactions across the whole sector for the '12-'13 year. That was published back in November, and giving that kind of exposure and overview makes it much easier for people to see some of the pitfalls that have occurred and therefore the kind of thing that trustees and auditors should be looking out for.

In that report, we gave what we regarded as good examples of conflicts of interest that have been recognised, managed properly and are delivering a benefit for the school—in, for example, school improvement—and other related-party transactions of which we have been quite critical. We have published investigation reports in quite a number of cases where we have been critical. You will have noted that we had concerns about 17 related-party transactions, and quite a number of those cases led to investigation reports. We published separate reports setting out our concerns in seven of those cases.

Q215 Guto Bebb: On that specific point, when the Committee previously recommended that you look again at your policy on related-party transactions, you responded quite robustly and highlighted the fact that 43% of audits highlighted a related-party transaction, of which 98% were in order—the other 2% is roughly the 17 that you just mentioned.

You have also mentioned the fact that this is a new field and that there is a lot of work to be done in terms of advising people how to audit it properly, but do you undertake any work to verify the accuracy of the 57% figure for academy trusts that did not report any related-party transactions? Are you happy that the systems that you utilise can be depended upon? Does the Department just accept it when a set of accounts come back saying, "No related-party transactions," or do you make inquiries?

Simon Parkes: We require a positive statement that there are no related-party transactions, so it is not just the absence of disclosure. If there is an absence of disclosure, we will follow it up by saying, "You haven't actually said anything about related-party transactions. Did you have any?" There is a positive affirmation, and the auditors are signing that off. Ultimately, we aren't able to visit and audit every single academy trust ourselves. If other matters come to our attention that raise concerns about governance—it is not always through the related-party transaction position—and we visit an academy trust, we will always look at related-party transactions and will always seek to go further. But we rely on the external auditors; that is absolutely right. However, I have to say that this is a positive statement.

Q216 Guto Bebb: Just out of interest, of the 57% recorded in your related-party transactions, were there any that were investigated in any way?

Simon Parkes: I don't actually know whether we investigated any, but we didn't investigate any specifically to look at related-party transactions. Some of them may have been investigated for other reasons; I would have to look at that and come back to you.

Peter Lauener: We will also do another thematic review, based on the 2013-14 accounts, which have just come in—

Q217 Chair: We disagree with you: we think nearly 1,000 in 2012-13 is a huge number. You say the transactions can only take place at cost. How on earth you assess "cost" fairly—? You say that they have to be value for money; I haven't a clue how you assess "value for money".

Peter Lauener: By competitive tender.

Q218 Chair: You’re much better just saying, “Don’t do it.”

Chris Wormald: To quote the NAO Report on Durand, at paragraph 1.10: “Conflicts of interest are a common and unavoidable part of management which can arise in a range of situations…They can result from policy decisions or systems or can occur naturally…It is therefore not reasonable or desirable to completely eliminate the risk of conflicts of interest.” We agree completely with the NAO’s view: that it is a question of how they arise. They arise in all sectors and we have not found any sectors where they are banned. However, with that—I think this goes with some of the Committee’s concerns—we have to be vigilant that they are being managed properly. So we completely agree with what the NAO said on this. We don’t think a blanket ban would work, and as I say, it doesn’t happen in any other sectors that we can find—

Q219 Chair: But you thought it did happen, didn’t you?

Chris Wormald: No, it doesn’t. We checked the position with the Charity Commission. We believe we have one of the most stringent sets of rules around related-party transactions, particularly the “at cost” rule, which is brand new and—as you said—raises some questions about how you audit it. So we are very clear that we have a very robust set of systems; and as Simon has set out, our focus now is making sure that those systems are operated appropriately by both trusts and, crucially, the auditors.

Now, there isn’t any system we can envisage that doesn’t have, at its cornerstone, independent audit by professionally qualified people, so we are clear that that has to be the basics. It is the system, of course, on which the NAO audits us. Nevertheless, as Simon set out, we need to do more and more to ensure that all those auditors are meeting the standards, but we don’t agree there should be a blanket ban.

Q220 Chair: Okay. Two final issues. One is in relation to the fact that you have, for the first time ever, had an adverse opinion on your financial statement. You will know that this Committee has said, time after time, that there are problems with the growing number of academies and free schools on how you assure them in your financial systems. The level of error this time round is higher than it was last time round, and you are spending an arm and a leg—£12 million—on trying to keep hold. We—actually, the NAO—said that with your methodology you will never manage it.

Chris Wormald: Yes, that is what the NAO has now concluded, and we agree.

Q221 Chair: You agree? Good. That’s a change.

Chris Wormald: No, I said to Amyas before this hearing that almost everything in this hearing we are completely four-square in agreement with the NAO on. I am sure the Committee will be delighted to know that.

Sir Amyas Morse: Very delighted.

Chris Wormald: Yes. Obviously having the adverse opinion—which, as I say, we agree with—is a matter of big concern to us. It's become clear, by the process of doing the accounts this year, that the system we are operating is not sustainable going forward and we will have to find a new way forward.

It is not straightforward what that new way is. There are broadly two things we could do, both of which have significant downsides. We could force every academy to account on a financial-year basis rather than an academic-year basis. That would make my life considerably easier, and the Committee's life and the NAO's life easier, but in terms of school management it makes perfect sense to do it on the academic year—it fits with school planning and makes it a much more appropriate document for local transparency and local accountability. There is a downside of doing it that way.

The other option we will need to consider is whether what we need is a different way of accounting for academies nationally. For example, we could produce a whole academies account on an academic-year basis and not attempt to consolidate it into the EFA accounts and the Department's accounts. That raises questions of parliamentary accountability. We and the Treasury—I think I am speaking for both of us—

Richard Brown: So far**.**

Chris Wormald: So far. We have agreed that we will have to find a different way that gives Parliament the reassurances that it rightly expects in this area.

We will develop a proposition that is going to be in one of those two areas. We will need to consult on that with Parliament, which in practice means consulting with this Committee, the Education Committee and the Liaison Committee. We will have to agree that approach and implement it, and we will have to make some trade-offs between what we need for national accountability and for local accountability.

Now, that process—I know you are very keen on timings—takes some time. It will be 2016 before we can implement the new arrangement, assuming that Parliament is happy with what we are proposing. We take it very seriously. It is a genuinely difficult public policy question, but we are clear that to give Parliament the reassurances that it needs we have to find a different way forward in future.

Q222 Chair: We are at one with that. That is very helpful. The final thing I want to deal with goes back to your appearance before us last time. We were suddenly told—no, we weren't told; we discovered—that you have suddenly changed your accountability system without any consultation with Parliament.

Chris Wormald: We don't normally consult with Parliament on the accountability statements.

Q223 Chair: Isn't that an accepted norm?

Chris Wormald: No, it is the Department's opinion, which you are of course free to challenge. I do not think it has any parliamentary approvals.

Q224 Chair: I was told that there is parliamentary oversight. Down the years, we have had you here to talk about the accountability system.

Sir Amyas Morse: I think there is an expectation of that.

Chris Wormald: If I have made a mistake, I apologise. We would be delighted to take the Committee's comments on board.

Q225 Chair: I will just read you this: "The most appropriate forum for routinely publishing accountability system statements will be as part of departmental governance statements within department's annual reports. Where major changes are being proposed Parliament is likely to want an explanation of how the accountability systems will work and a draft system statement may fulfil that role."

Chris Wormald: If I have failed to do something I should have done, I apologise. I will go away and look at that issue.

Q226 Chair: Have you finalised this thing?

Chris Wormald: We can amend it. As I say, it is a statement of the Department's opinion and we can amend it whenever we like.

Q227 Chair: Okay. We would feel more comfortable if you consulted this Committee.

May I just ask you one other thing? It makes quite radical changes to your responsibilities—it takes out reference to responsibly managing local authority performance and removes your oversight. It was pertinent to children's services. I do not know whether you knew about it when you were giving us that evidence.

Chris Wormald: I did consider whether I should publish the new version before or after that hearing. At one level, of course, what we say about our role going forward is completely irrelevant to that hearing, because you were rightly holding me to account for what we said in the 2012 accountability statement, which was the personal one. So for the purposes of that hearing, what we say going forward is largely irrelevant. Even had I published, I suspect we would have had exactly the same disagreements about what the right role of the Department was. I do not think that we have made radical changes to the social care—the children's services—part. We made very radical changes to the academies part, updating it since 2012. The list of activities that the Department says it carries out is—I looked at my checklist this morning—identical, pretty much, to the one in 2012.

Q228 Chair: Let us have a proper consultation on it because, frankly, things I have been given suggest that your oversight of local authorities, which are in turn responsible for children services, has altered.

Chris Wormald: That was certainly not our intention, so if it reads like that, we will look at it; and as I said, if I have missed out a part of the process that I should have conducted, then I apologise.

Q229 Chair: Let's have one final question and then we are there. Did you consult Ofsted? When Ofsted gave its evidence on children services, it was quite clear that it wanted quick, earlier intervention from the Department on the basis of data.

Chris Wormald: I don't think we did; I don't think we consult Ofsted about that. As was clear at that hearing, Ofsted has a different view of what we should do from the one that the Government hold, but that of course is its right as an independent inspectorate to comment from its evidence.

Q230 Chair: Didn't you consult Ofsted given the concerns expressed at the hearing?

Chris Wormald: No.

Q231 Austin Mitchell: Isn't it ludicrous and unfair that sixth-form colleges, which deliver outcomes at a lower cost than either schools with sixth forms or academies, do not get VAT repaid? They get equal funding in other respects, but not on VAT. That costs the average sixth-form college £335,000 a year. Why are they penalised in that unfair way?

Chris Wormald: I think it is because sixth-form colleges are classified to the private sector, which gives them a number of other freedoms, including borrowing. I think that is the answer, Peter, but you are the expert.

Q232 Austin Mitchell: Aren't academies in the private sector?

Chris Wormald: No, academies are classified to the public sector, which in fact—Amyas is smiling, but—

Austin Mitchell: This is ludicrous!

Chris Wormald: We do not control who is classified to which sector. That is a statistical—

Q233 Austin Mitchell: You can argue with the people who do.

Chris Wormald: We can, but it is not in the end—rightly—the Government's decision who is classified where. We have the consolidation challenge in academies because they are classified to the public sector; therefore we account for them. Sixth-form colleges are classified in the same way as universities, which is to the private sector, so we do not have to consolidate their accounts. That brings a number of other changes, which I think is also the VAT issue—Mr Lauener?

Peter Lauener: It was partly to do with that. It was part of the settlement that was reached in 1992 when all the further and higher education corporations—

Q234 Austin Mitchell: Should the Department of Education not be challenging that ruling?

Peter Lauener: I believe Nick Boles—

Chair: We all think it is mad. The Treasury—

Chris Wormald: No, sorry, to be clear, it is an independent evaluation, I think overseen by the Office for National Statistics.

Richard Brown: I do wonder whether it would be better to have HMRC answering the question about the detail—

Q235 Chair: I am getting away from it. I will draw this to a close. May I stress that we would like the answer on Durand before purdah?

Chris Wormald: We are as keen to resolve this as anyone. It is right that Durand is allowed to make its case, but this does need to be resolved to everyone's satisfaction.

Peter Lauener: On Nick Boles, he mentioned the issue of VAT on sixth-form colleges at the last Education oral questions and said that he was looking at and considering it.[1]

Chair: Thank you.

[1] HM Treasury have noted the following, in order to clarify this exchange: "Many public services are expected to cover their VAT costs from their funding allocations – this is not unique to colleges, and this funding model is applied to many bodies delivering public services, including non-departmental public bodies. The Government takes account of the range of costs which providers incur (including VAT) to ensure allocations are sufficient."