



Education
Funding
Agency

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Sir Greg Martin
Chair of Governors
Durand Academy Trust
Durand Academy
Hackford Rd
London
SW9 0RD

11 October 2016

Dear Sir Greg,

Notice of termination of the Funding Agreement made between the Secretary of State and Durand Academy Trust

This letter is by way of notice pursuant to clause 92 of the Funding Agreement dated 10 September 2012 (“the Funding Agreement”) made between the Secretary of State and Durand Academy Trust (“DAT”) in respect of the Durand Academy (“the Academy”). In sending this letter I am acting for and on behalf of the Secretary of State.

By letter dated 4 July 2016 I sent to you a notice of provisional intention to terminate the Funding Agreement (“the Notice”). The Notice set out the reasons why I considered that DAT had failed to comply with condition 15(a) of the Funding Agreement, and was in material breach of the provisions of the Funding Agreement. The Notice also specified the steps that I required DAT to take in order to remedy those breaches.

DAT was required, by 1 August 2016, to provide its written response and its written confirmation that it would comply with all the requirements set out in the Notice.

On 1 August 2016 DAT’s solicitors, Lee Bolton Monier-Williams (“LBMW”), sent a lengthy response to the Notice (“the Response”), which stated that it was only an interim response. In order to put it beyond doubt that DAT had a full opportunity to respond, I instructed the Government Legal Department to write stating that I would be prepared to consider any further response DAT wished to make by 22 August 2016, an extension of time of a further three weeks. That letter was sent on 5 August 2016. LBMW wrote further on 16 August, 22 August, 25 August and 30 September 2016. Sir Greg Martin, the Chairman of Governors of DAT, also wrote to the Secretary of State on 1 August 2016.

I have considered the contents of all those letters. As the Response refers to the draft report of the Charity Commission into Durand Education Trust (“DET”) dated 27 April 2016 (“the CC draft report”), I have also considered that, although I am informed that it is only a draft and has yet to be finalised by the Charity Commission.

I do not consider that it is necessary, or proportionate, for me to address each of the factual and legal assertions made by LBMW in their lengthy letter of 1 August 2016, many of which

have already been canvassed previously in correspondence, and have only limited relevance to the proposed reasons for termination set out in the Notice. The fact that I have not responded here to a particular factual or legal assertion should not be taken as meaning that I agree with it.

DAT has failed or refused to comply fully with six of the eight Requirements set out in the Notice. Having carefully considered the Response provided I have decided, subject to the provisions of clause 93 of the Funding Agreement, to proceed to terminate the agreement. My reasons are explained below.

I believe that there have been significant breaches of the terms of the Funding Agreement. I consider that these are primarily attributable to the arrangements for the governance of DAT and, specifically, the fact that directors of DAT are or have also been directors of DET, London Horizons Limited (“LH”) and/or GMG Management Resource (UK) Limited. The way in which the present arrangements evolved is summarised in the draft CC report, as are the arrangements in place between DAT, DET, LH and GMG.

The overlap in governance has resulted in confusion so far as concerns DAT’s role in arrangements between the different entities, and has resulted in decisions that are not in DAT’s interests:

- (1) The first relevant matter is the failure to secure the repayment of £1.8 million transferred to DET in breach of the terms of the Funding Agreement.
- (2) As you know, clause 15(a) of the Funding Agreement requires DAT to comply with the provisions of its Articles, and clause 65 requires DAT to comply with the requirements in the AFH. DAT’s Articles prohibit the transfer of the income or property of DAT to any member of the academy trust (article 6.2). The AFH requires (at §3.3.1) that an academy trust refer any novel or contentious transactions to the EFA for explicit prior authorisation, and that an academy’s board of trustees ensure good financial management and effective internal controls (at §§2.2.4, 2.3.2 and 2.2.3). The original sum of £2 million was transferred to DET in breach of these requirements.

The EFA has been requesting the repayment to DAT of the sum transferred since February 2015; despite this, only £200,000 has been repaid. DAT does not now dispute that DET is liable to DAT for the balance of the £2 million transferred to DET, nor does DAT dispute that *“the trustees/directors could demand that amount to be repaid at any time and the directors of DET would have complied.”*

DAT’s continuing failure to secure repayment leaves the sum at risk of being used to meet liabilities of DET rather than for the benefit of DAT, and is not consistent either with good financial management or effective internal controls. Nor does it seem to me that there is any justifiable reason why DAT has not to date requested the return of the funds.

- (3) The second relevant matter is the contract entered into with GMG Resource Management UK Ltd (“GMG”) in 2012, a company of which Sir Greg is a director

and sole shareholder. The contract was entered into at a time when Sir Greg was the Executive Head Teacher of DAT, and a trustee of both DAT and DET.

The terms of the 2012 GMG contract were not market-tested or put out to tender (despite advice from the EFA that they should be), but were substantially those proposed by Sir Greg Martin.

The 2012 GMG contract provided that DAT should guarantee LH's obligations. Given that DET has consistently contended that it holds the land, there is no obvious reason why DAT should be the guarantor (assuming any guarantee was appropriate at all). This suggests a lack of clear thinking about the respective roles of each of the entities; something that would be improved if DAT directors were not also directors of any of DET, LH or GMG.

The Response asserts that notwithstanding the clear provisions of the 2012 GMG contract, LH does not use its gross turnover to calculate payments due to GMG, but instead discounts payments made by DAT to LH. Even assuming that to be true, the fact that this arrangement was never recorded in a contract is in itself a significant cause of concern, and emblematic of the lack of transparency that has arisen because of the overlap in roles across the different entities.

- (4) The third relevant matter is the failure to ensure that services obtained by DAT from LH were obtained at cost. The AFH requires that an academy trust pay no more than cost for goods or services provided by "connected parties" (at §3.2.2), and also requires (amongst other things) that any agreement with a connected party for the provision of goods or services must be supported by a statement of assurance from the connected party confirming that their charges do not exceed the cost of the goods or services (at §3.2.14). In the financial year ending 31 August 2014, LH invoiced DAT for £157,926 in pupil swimming costs, staff accommodation costs and the costs of subsidised parent and staff memberships. The services do not appear to have been provided at cost, and no statement of assurance appears to have been provided to DAT. No explanation for this is offered in the Response.
- (5) The fourth relevant matter concerns LH's charging of DAT for the use of the leisure facilities by students at the Hackford Road site. DAT should not have been required to pay LH for its students' educational use of the leisure facilities. LH's licence to manage and receive income from the leisure facilities extends only "*during the hours when they are not required for educational purposes*". DAT's payment of these sums to LH was in breach of clause 67(a) of the Funding Agreement (which requires DAT to apply financial and other controls that conform to the requirements of propriety and of good financial management), and §2.2.4 of the AFH (which requires that an academy ensure good financial management and effective internal controls).

While DAT's Articles contain provisions intended to manage conflicts of interest (articles 98 and 99), the issues outlined above, and in particular the 2012 GMG contract, indicated that these provisions were failing to deal adequately with the issue. Accordingly, I required DAT

to conduct a governance review. Despite DAT agreeing on three separate occasions to conduct such a review, it has not done so.

The Requirements of the Notice are directed towards untangling the overlap in roles between DAT, DET, LH and GMG, so that DAT's directors can fulfil their responsibilities properly, and in accordance with the provisions of the Academies Financial Handbook, and the Funding Agreement. I do not regard the arrangements summarised in LBMW's letter of 30 September 2016 as sufficient to achieve this, given that such an arrangement in relation to Sir Greg Martin at the time when DAT decided whether to enter into the 2012 GMG contract did not prevent the matters of concern that I have referred to above from arising.

DAT has not complied with Requirements A, B and E of the Notice. DAT did not comply with Requirement C by the date specified in the Notice. In relation to that Requirement, LBMW's letter of 30 September stated that DAT has appointed a new director and is in the process of appointing another, but no details have been provided as to whether either meets the qualifications specified in the Notice.

I am not satisfied with the reasons given for refusing to comply with the Requirements, nor am I satisfied that the, limited, steps DAT has agreed to take in the Response will address the problems that I have identified.

I do not consider that DAT's offer (made on p. 10 of the Response) that Mr McLaughlin should stand down as Accounting Officer of DAT is sufficient to allay my concerns. The effect would be that Mr McLaughlin remained, contrary to Requirement A, a director of DAT as well as a director of LH, and a trustee of DET. I accept that DAT's articles require the Executive Head Teacher to be a trustee of DAT and, in light of that, I considered whether requiring (with the Secretary of State's consent) an amendment of DAT's Articles to enable Mr McLaughlin to resign as a director without resigning from his role as Executive Head Teacher would be sufficient. While any step that would reduce the overlap in governance between DET and DAT would be welcome, I do not consider that this alone would be sufficient to allay the concerns I have identified above, not least because Sir Greg would retain significant influence over both DAT (in his capacity as Chair of Governors) and DET.

So far as the repayment of the £1.8 million in accordance with Requirement D is concerned, DAT has not complied. In the Response DAT seeks to impose a further condition before it will ask for repayment of the money (see page 18 of the Response). I do not consider that any further assurances from the EFA are necessary or appropriate. The position is further confused by what is said in the letter dated 1 August 2016 to the Secretary of State from Sir Greg Martin. In that letter Sir Greg appears to state that DET would retain the £1.8 million until a planning application on 19 September 2016 (notwithstanding the clear terms of Requirement D which required repayment by 1 August 2016 at the latest) unless the Secretary of State were to direct that the sum be transferred earlier. In LBMW's letter of 30 September 2016, it is now suggested that DET will repay the sum only on direction by the Secretary of State. Requirement D was such a direction, directing repayment by 1 August 2016. In addition to Requirement D, DAT has been directed on three separate occasions to secure the repayment of £1.8 million, and the sum has not been repaid. DAT can be under no doubt as to what is required. In these

circumstances, I have no confidence that DAT's existing management will ensure that DAT recovers the full amount due to it.

So far as Requirement F is concerned, DAT agreed to comply with this requirement (which was that DAT would by 30 August 2016 publish on its website a list of the relevant pecuniary interests of members, trustees and local governors, in accordance with §§2.5.2 and 3.1.20 of the AFH). It is now over a month after the date set for compliance, and DAT has not, to my knowledge, yet complied with this requirement.

DAT has agreed to comply with Requirement H, as well as Requirement G, but so far as Requirement G is concerned, other than referring to sending out "[a]ll relevant information", DAT has not identified what steps DAT has taken or proposes to take, or what arrangements are or will be in place.

Decision under Clause 92

In the light of the points made by DAT in the Response, I no longer attach weight to dealing with the payments to GMG. However, I remain of the view that there have been repeated and significant breaches of the Funding Agreement and the AFH, as detailed above including the history of non-compliance with DAT's obligations. The reforms in DAT's governance which were required by the Notice were intended to satisfy me that such breaches will not recur.

In the circumstances and in light of DAT's failure to comply with the requirements of the Notice, I do not consider that I can be reasonably satisfied that DAT will take appropriate action to remedy the breaches identified in the Notice. I propose to proceed to terminate the Funding Agreement in accordance with clause 92(c) of the Funding Agreement.

Please let me know whether DAT wishes to exercise its right under clause 93 of the Funding Agreement to request that I and/or another representative of the Secretary of State meet with representatives of its Governing Body to discuss these concerns. Any such request must be made within thirty days of the date of this notice.

Please acknowledge receipt of this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Peter Lauener", with a long, sweeping flourish at the end.

Peter Lauener

Chief Executive, Education Funding Agency