



Education & Skills
Funding Agency

Education and Skills Funding Agency
Cheylesmore House
Quinton Road
Coventry CV1 2WT
www.gov.uk/esfa

28 June 2017

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

Dear Sir Greg,

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

This letter is notice of termination of DAT's Funding Agreement ("FA") in accordance with clause 93 of the FA. In sending this letter I am acting for and on behalf of the Secretary of State.

This notice of termination follows:

1. A Financial Notice to Improve ("FNtI") issued on 6 March 2015.
2. A Notice of Provisional Intention to Terminate the FA issued on 4 July 2016 ("the PTN"). The PTN detailed eight requirements DAT was required to comply with in order to remedy the repeated and significant breaches of the FA detailed in the Appendix to the PTN.
3. A Notice of Intention to Terminate issued on 11 October 2016 ("the October Notice"), which set out the reasons why I proposed to terminate DAT's Funding Agreement in accordance with clause 92(c) of the Funding Agreement, and noted that six of the eight requirements in the PTN had still not been complied with.

In response to the October Notice, DAT exercised its right under the Funding Agreement to request a meeting at which a deputation including representatives from the Governing Body could discuss the Secretary of State's concerns. On 5 January 2017 DAT's solicitors sent on behalf of DAT written proposals, which they explained further at the meeting. The meeting took place on 10 January 2017.

I responded to DAT's proposals by letter of 7 March 2017, and explained that DAT's proposals did not satisfactorily address the concerns about DAT's governance and furthermore would entail a breach Article 18 of DAT's articles. However I explained that I was willing to consider the repopulation of DAT's membership as a possible means of achieving the required improvement in governance and avoiding the need to terminate under clause 93 of the Funding Agreement. My letter set out the terms upon which the

ESFA would accept the repopulation of DAT's membership as a means of avoiding termination ("the counter-proposals"), and invited DAT's agreement to take the steps proposed within a fortnight. DAT sought an extension of time to respond to the counterproposals, but ultimately rejected them by letter dated 31 March 2017.

It is now nearly twelve months since the PTN was issued, and DAT has still not complied with the requirements set out in the PTN. Taking each of these in turn:

A – DAT was required, by 1 August 2016, to secure that no director of DAT was also a director of DET, London Horizons Limited or GMG Management Resource (UK) Ltd. That was not done; and as of the date of writing this letter, it has not been done.

B – DAT was required, by 1 August 2016, to secure that Mr Mark McLaughlin either resigned from any position with DET, London Horizons Limited or any company of which Sir Greg Martin was a director or had a shareholding of over 5%; or resigned from his position as Executive Head Teacher of DAT. That too was not done; and as of the date of writing this letter, it has not been done.

C – DAT was required, by 30 August 2016, to appoint two directors/trustees with appropriate experience and skills to assist DAT to deliver excellent education, governance and financial management, who had no previous connection with DAT or the Durand school. DAT has provided no evidence that it has complied with this requirement, and the information available on DAT's website (which is significantly out of date, see further below) suggests that none of the directors appointed since the PTN was issued fulfils the criterion of having no previous connection with DAT or the Durand school. Further, whilst the records available from Companies House indicate that DAT appointed two new governors in January 2017, their names do not appear on the declaration of business interests published on DAT's website and, it is therefore not clear that they fulfil requirement C.

D – DAT was required, by 1 August 2016, to secure that £1.8m being the balance of funds that were transferred to DET by DAT in 2013/2014 was repaid to DAT. This was not done until November 2016.

E – DAT was required, by 1 August 2016, to secure that Sir Greg Martin resigned as Chair of Governors of DAT and ceased to be a director/trustee of DAT and from any other position within DAT. That was not done, and by the date of writing this letter, it has not been done and Sir Greg Martin remains a director of DAT.

F – DAT was required, by 30 August 2016, to publish on its website a list of the relevant and pecuniary interests of members, trustees and local governors, in accordance with §§2.5.2 and 3.1.20 of the Academies Financial Handbook 2015. DAT has not fully complied with this requirement. There is now published a document dated November 2016 on DAT's website, which provides some detail in relation to governors, but does not provide detail in relation to DAT's members, and does not, in any event, comply with the requirements of §2.5.2 of the Academies Financial Handbook.

G – DAT was required, by 30 August 2016, to confirm that DAT had taken appropriate steps to ensure that trustees understood their statutory duties as company directors to avoid conflicts of interest, not to accept benefits from third parties, and to declare interest in proposed transactions or arrangements, and that DAT had suitable arrangements in place to ensure that trustees comply with these obligations. As noted in Mr Cromie’s letter to you of 22 March 2017, I have yet to see evidence that this has been complied with.

H – DAT was required, by 1 August 2016, to ensure that DAT retained all records as required by the Funding Agreement and the Academies Financial Handbook for 6 years. As noted in Mr Cromie’s letter to you of 22 March 2017, I have yet to see evidence that this has been complied with.

DAT has – both in its 5 January 2017 letter and at the meeting on 10 January 2017 – professed a willingness to implement some of the PTN requirements in the future. Yet these indications have been caveated, expressed in conditional terms, or are said to be subject to a “secure agreement as to DAT’s future”. This is wholly unsatisfactory. DAT was required under the terms of the PTN to comply with all of the requirements by – at the latest – 30 August 2016. It failed to do so, and I consider this to be further evidence of DAT’s inability (or unwillingness) to work cooperatively with the ESFA to address the serious concerns that have arisen over the financial management and governance of DAT.

I have considered whether DAT’s proposals – as set out in its letter of 31 March 2017 – amount to a satisfactory response to the concerns set out in the PTN and the October Notice, such that I should accept them in lieu of terminating the Funding Agreement. I have concluded that they do not.

DAT has indicated that it “will renew its members and directors” but: (1) the only means of achieving that renewal that has been put forward by DAT would entail a breach of DAT’s Articles; (2) DAT’s proposal to “consult” with the ESFA on persons proposed as new members and directors, provided such persons “share the Durand vision”, is not sufficient to allay my concerns over the governance of DAT; and (3) DAT has unreasonably rejected the proposals put forward in my letter of 7 March 2017 that would, had they been agreed, both have been compliant with DAT’s Articles and have addressed the governance concerns. The suggestion that the Secretary of State’s exercise of its power under DAT’s Articles to appoint a member would be a “conflict of interest” is misconceived, as is the contention that such a member would be “deemed to be [a] nominee... subject to the direction and control of the Secretary of State”.

By their letter of 6 June 2017, GLD invited DAT to inform me of any material developments in relation to governance since the letter of 31 March 2017, and of any information arising since then which DAT considered relevant to the exercise by the Secretary of State of her power under clause 93. DAT’s reply of 15 June 2017 did not disclose any new developments or information. Rather:

(1) DAT asserted that the PTN had “now expired by effluxion of time”. There is no legal or factual foundation for that assertion. The time that has elapsed between the issue of the PTN and this Notice is a reflection both of the efforts made to accommodate DAT’s

requests for extensions of time, and the consideration given to means of avoiding termination. DAT did not send its full response to the PTN issued in July 2016 until 30 September 2016. Once the October Notice was issued, DAT waited until 4 November 2016 to request a meeting. The meeting was originally proposed to take place on 30 November or 1 December 2016, but was delayed until January 2017 at DAT's request so that Kate Hoey MP could attend. DAT did not respond to the proposals set out in my letter of 7 March 2017 until 31 March 2017 and, as explained in GLD's letter of 6 June 2017, there then followed the local election and general election purdah which lasted from 13 April until this month.

- (2) DAT has rehearsed its position in response to the Appendix to the PTN, and provided no evidence of any progress in compliance with the requirements of the PTN. This is despite the fact that the GLD wrote to DAT on 22 March 2017 to make clear the Secretary of State's position that requirements A, B, C and E of the PTN had not been met, D was complied with three months late and we had seen no evidence that F to H had been met.
- (3) DAT has asserted that its "proposals" which included the prospect of Sir Greg and Mr McLaughlin retiring from DAT in August 2017 have been "ignored" by the Secretary of State. DAT's proposals in its letters of 5 January 2017 and 31 March 2017 have not been ignored, but rejected for the reasons set out above. Further, DAT were under a requirement to secure Sir Greg's retirement, and Mr McLaughlin's retirement from holding roles in both DET and DAT, by 1 August 2016 and this has not been done.

Accordingly, I remain of the view, for the reasons set out in the October Notice, that there have been repeated and significant breaches of the Funding Agreement, which have not and will not be remedied to my satisfaction. DAT has not implemented the governance reforms required by the PTN, and the proposals that DAT has made are not sufficient to allay my fundamental concerns about the governance of DAT. Further, DAT has not agreed to take the steps put forward in my letter of 7 March 2017 as a means of avoiding termination.

Accordingly, in accordance with clause 93 of the Funding Agreement, I hereby give DAT twelve months' notice that the Funding Agreement will terminate on **29 June 2018**.

Officials will be in contact with the Academy in due course to discuss arrangements for a handover on or before that date so as to cause the minimum possible disruption to pupils.

Yours sincerely



Peter Lauener
Chief Executive
Education and Skills Funding Agency