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The Rt. Hon. the Lord Blunkett
House of Lords
London, SW1A 0PW

Dear David,

16A July 2019

Re: Academy Governance

Yours was the most useful follow on question in my OPQ on academy governance last week and I thought it might be worth summarising the huge amount of work that has gone on since we both attended that Education Select Committee three or more years ago.

You are quite right: at the time, the system was too laissez faire and was at risk of being taken advantage of. Since then we have addressed a whole range of areas:

1. Oversight

- a. Starting from last year, we now require trusts to submit three-year budget forecasts. This gives us a medium-term view of where trusts see themselves. Most importantly, where they are predicting deficits that are at risk of exhausting their reserves we can, and do, proactively engage with them to challenge their operating parameters. Where governance is considered weak and trusts think they can simply balance their books by taking an excessively optimistic view on future pupil numbers we interrogate the pupil number census and going forward will be able to cross-reference it to their previous July return which asks for their pupil number predictions.

We will also now be able to see a year on year trend. In other words, are trusts overestimating pupil numbers several years running? If so, they will be running organisations with more overheads than their actual number of pupils justifies.

- b. The Permanent Secretary wrote to the Chair of the Public Accounts Committee last November setting out the steps we have taken to strengthen our oversight of academies. I have included a copy of that letter with my response for your information. This letter reinforced that in its scrutiny of trusts, the Department considers three key functions: educational performance, financial management and governance. The starting point for this scrutiny is the systematic collection of a range of information about trusts and the schools within them. We use this information to identify where there may be issues, which is increasingly

happening on a predictive basis, for example by looking at the 3-year budget forecast returns. This in turn informs our discussions with trusts about areas of potential concern, as well as allowing us to test evidence of strong performance. These discussions involve the chair, or other trustee, not just the CEO. This gives us the opportunity to properly eyeball board representatives and challenge some of their assumptions where needed.

- c. If we are worried about the quality of governance, we can organise board observations. The Academy Ambassador scheme has generated a cadre of over 1,000 commercially minded individuals who have joined boards in the last three years to dramatically increase the level of challenge. We offer governor/trustee training courses through a number of specialist external organisations.
- d. Starting last year we now publish, each autumn, a list of trusts who are late with two or more submissions of their annual financial returns in the preceding academic year (<https://www.gov.uk/government/publications/academy-trusts-late-financial-returns-2017-to-2018/academy-trusts-late-financial-returns-2017-to-2018>). Since doing this we have seen the rates of on-time submissions improve considerably. We also consider this as part of our broader risk management approach alongside other factors which, taken together, might indicate wider issues.

2. Accountability and oversight

- i. The key lever is the Academies Financial Handbook. Any material breach allows for intervention on our part. Our follow-up action can ultimately lead to issuing a formal Financial Notice to Improve, stipulating the action we require the academy trust to take. These letters are published on gov.uk: (<https://www.gov.uk/government/collections/academies-financial-notice-to-improve>).

In my first year, I removed over 2,000 words from this booklet making it tighter and clearer. We continued to improve it this year: latest version just out- a cracking read- I recommend it! Here is a sample of the elements we have tightened up:

- a. Related Party Transactions: From 1st April 2019, any potential transaction over £20,000 needs pre-clearance by ESFA.
- b. More rigour in the production of management accounts and ensuring that they are regularly reviewed by the board
- c. More board scrutiny on the findings of auditors through their management letters (too often issues raised in one year were still outstanding in the following year - we have now put a more robust structure in place to monitor this failing).
- d. From academic year 2019/20, submission to the ESFA of the internal scrutiny reports that trusts are required to commission each year.
- e. Tighter governance around setting levels of pay for executive leaders. We have also published additional guidance for academy

trusts on this: (<https://www.gov.uk/government/publications/setting-executive-salaries-guidance-for-academy-trusts>)

- ii. We share our regulatory responsibilities with the Charity Commission. I have met the chief executive and chair to reinforce the importance of their role. I have met senior staff from the Insolvency Service, Action Fraud and the Serious Fraud Office to ensure we are properly joined up in any extreme cases of wrongdoing.

3. External Auditors

I have written three times to all auditors in our sector since taking on my role. We have a tripartite relationship with them (ESFA/Trust/Auditor) giving us an important stake in the discussions. I have stressed

- a. Our reliance on their work and reminding them of the tripartite relationship
- b. The value of the management letters that they produce and that we scrutinise them carefully.
- c. The importance of their regularity reports and the tests that they use in preparing them
- d. Feedback on, and sharing of, best practice across the sector.

We issue an annual Academy Account Direction that includes guidance for auditors. In March 2019, we drew attention to the tests auditors could use to provide evidence for regularity, including:

- a. Ensuring new trusts have reviewed and developed their governance structure and composition of their board.
- b. That a scheme of delegation exists that maintains robust internal controls.
- c. Management accounts to be shared with the chair of trustees monthly and other trustees no less than 6 times a year, with the requirement that these management accounts are considered by the board each time it meets.
- d. Board oversight of capital expenditure and funding.
- e. The annual internal scrutiny report is independent and objective (as per 2 i d above).
- f. The audit committee or equivalent has received reports on the effectiveness of the internal controls.

From academic year 2019/20, we begin trialling a common chart of accounts. This means that we will have commonality between trust accounting systems and the ESFA's data collection system. This will enable them to submit their financial data on a real time basis much more quickly and cheaply than is currently the position. It will also, in time, give us unprecedented transparency over the financial position of the whole sector.

In March 2019, we published common themes from ESFAs assurance work, including main weaknesses identified in audits to help trusts on areas for improvement (<https://www.gov.uk/government/publications/academy-trusts-themes-arising-from-esfas-assurance-work>).

We are in discussions with the Institute of Chartered Accountants in England and Wales (ICAEW) to clarify their oversight of external auditors working in our sector. They already carry out quality assurance of their members on an annual basis, including trust auditors.

4. Enforcement action

When the worst happens, and wrongdoing is uncovered there are several avenues.

- a. Where concerns are raised by members of the public or other organisations that allege serious misconduct has been committed by a teacher, we can explain that they can make a referral to the Teaching Regulation Agency (TRA). The TRA investigates allegations of serious teacher misconduct and, where an independent panel finds the allegations proven and that those proven facts amount to unacceptable professional conduct and/or conduct that may bring the profession into disrepute and/or conviction of a relevant offence, the TRA will consider whether to prohibit the teacher. A prohibition order is for life although a review period may be given where the teacher may apply for the order to be set aside.
- b. The DfE may also consider and, where appropriate, issue a Section 128 direction, which prohibits an individual from participating in the management of an independent school (including academies and free schools), or to do so only in specified circumstances or subject to specified conditions. This could prevent an individual from acting as a member, trustee or executive leader of a trust. We have now issued four Section 128 direction orders with several more under consideration. We have strengthened our internal processes so that we can better identify and investigate alleged misconduct and ensure that appropriate action is taken against individuals.
- c. Beyond that, we can make a referral to the Charity Commission to ban an individual from being a charity trustee, or the Insolvency Service to ban an individual from being a company director. This is work in progress, but our recent publication of a Memorandum of Understanding with the Insolvency Service has put us in a good position to ensure that information is shared appropriately. We must balance that issue against the reality that being an academy trustee is a voluntary activity. But, to assure you I will draw upon the full arsenal at our disposal if the evidence supports it and will always ensure that we have used our own powers before referring cases onwards.

One of the challenges we face is around the most complex, but rare, cases where we need to work with the police to ensure the ultimate sanction of criminal charges is brought against those abusing public trust and money. However, we recognise this takes time and can mean a delay to any civil action we may want or plan to take.

The number of bad apples is extremely small. Occurrences in academies get more publicity than in Local Authority (LA) schools for two reasons: firstly

because of an ongoing political objection to them by a noisy minority of dogmatic people and secondly because the transparency of the system makes it easy to see what's going on compared to LA schools.

In relation to the last point I am about to issue a consultation to level upwards the playing field of transparency between LA schools and academies because I'm fed up with the asymmetric debate. Without putting additional burdens on LAs, I will be asking for information that they should already have to be made publicly available, in a similar way to those of academies.

To sum up: the level of transgression in academies is very low. In the next few days, we publish the latest SARA report, which shows a pretty stable position in financial and governance terms over the last three years. I will send you a copy when it's published. But key metrics such as trusts with an unqualified audit opinion, with no regularity exceptions, average cash balances, value of net current assets and percentage in cumulative deficit have held up well.

The position in LA schools is less good, and this is because they are not being subjected to the same level of scrutiny. I accept there is the ongoing row over levels of funding, but I want to see the sector operating efficiently so that when extra funding does arrive it is used properly.

I will never make myself a hostage to fortune by saying we will eliminate all wrongdoing. In any organisation, there are bad people (look at the behaviour of a few individuals in the House of Lords, abusing expenses and attendance allowances). My job has been to create a structure that allows us to be satisfied that very considerable sums of taxpayers' money are being well spent without ensnaring good people in a cat's cradle of regulation. That's why I get excited about the potential of a common chart of accounts for the sector- it is a win win (you can feel sorry for me in being such a nerd!).

I very much respect the huge role you had in the birth of the academies programme and if I can ever provide you with any additional contextual information do let me know.

With my best wishes


THEODORE AGNEW