



Baroness Barran

Parliamentary Under-Secretary of State for the School System
Sanctuary Buildings Great Smith Street Westminster London SW1P 3BT
tel: 0370 000 2288 www.education.gov.uk/contactus/dfe

17 June 2022

Baroness Berridge
House of Lords
London
SW1A 0PW

Dear Elizabeth,

I promised to write to you in response to the questions you raised on the first day of the Committee on the Schools Bill during the debate on clause 1 (Hansard, column 1195, 8 June 2022). I am grateful for your thoughtful and constructive contribution to the debate. You referred to the issues again in the debate on clauses 5-18 of the Bill on the second day of Committee (Hansard, column 1367, 13 June 2022).

You asked whether some of the issues that the Bill is attempting to address arise from the legal status of academy trusts as charitable companies for which, you say, there is a high bar for intervening on governance grounds. Overall, the government is satisfied that trusts' legal status is not an impediment to effective intervention. The bar for intervention is currently set by academy funding agreements which, when read together with the Academy Trust Handbook, provide for the Secretary of State to intervene in a range of circumstances. There is no fundamental incompatibility between these intervention powers and trusts' status.

I do, however, agree that the current powers to intervene are not sufficient because they ultimately rely on termination in the event of a serious breakdown in governance or failure to comply with a Notice to Improve. Whilst the option of termination is still needed, we also need to have the ability to take decisive action where the weaknesses fall short of a serious breakdown to ensure problems can be resolved before a breakdown occurs. That is why the Bill incorporates these existing intervention powers into legislation and provides for a range of additional powers.

In particular, it includes new powers for the Secretary of State to strengthen governance. It enables the Secretary of State to direct a trust to appoint additional trustees, for example to address gaps in capacity or expertise, or where appropriate, to appoint an Interim Trustee Board. These and other measures in the Bill provide a framework for addressing failure within trusts while respecting their current legal status. As I explained in the debate on

clauses 5-18 (Hansard, column 1370, 13 June 2022), we have engaged with the Charity Commission about the new intervention powers, including the termination provisions, and will continue to work with them. There are presently no concerns about the interaction of these powers with the independence of charities.

In addition, while the legal status of academies is not a barrier to intervention, I do think that the fact that many of trusts' legal obligations and the Secretary of State's powers are set out in individual funding agreements, and that those obligations and powers can vary between and even within trusts, is problematic. In May 2022 there were 2,518 trusts in England, 220 of which included more than 10 academy schools. Multi-academy trusts may include several academy schools operating on different supplemental funding agreements; and some have more than one master funding agreement with the Secretary of State. This leads to incoherence and inconsistency in terms both of the requirements that apply to trusts and academies. It means that the process of intervention can be slow and complex, particularly where there are weaknesses at trust level within a multi-academy trust.

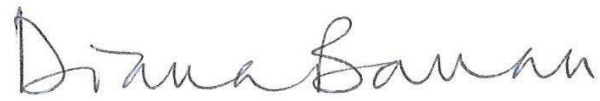
You asked for my views on whether trusts could be persuaded to adopt the current model of the funding agreement. As the figures I have referred to above illustrate, this would be a huge bureaucratic undertaking. I know from the department's current experience of encouraging trusts to adopt the latest model of the funding agreement, for example when they grow to take on new academies, that this process can be lengthy and costly for both parties (whether financially or in terms of opportunity cost). It is highly unlikely that all trusts would agree to adopt a common model. Even if trusts could be persuaded to do so, any subsequent changes to the model would not apply to existing agreements, so we would quickly arrive at a situation where there was an inconsistent set of requirements on trusts. Moreover, it would continue to be the case that the requirements on trusts were dispersed around various pieces of legislation and the funding agreement.

I know that during your time in the department you sought to develop a more coherent regulatory framework for trusts and oversaw the development of the Academies Financial Handbook, which is an annex to the funding agreement, into the Academy Trust Handbook. I understand that there was some push-back from trusts to this approach, as they were concerned that it enabled the Secretary of State to place obligations on trusts unilaterally. The Handbook is an important part of the current regulatory framework governing aspects of trusts' conduct and it is understood by trusts. I do not think, however, it can serve as the basis for a comprehensive common rulebook for trusts.

While of course I recognise strength of feeling in the House about clauses 1- 4 of the Bill, I do believe that in principle, introducing a statutory set of academy standards is the most effective way of putting a common rulebook for academies in place, in a way which allows for proper scrutiny. As Baroness Penn and I made clear to the House last week, we will however be carefully reflecting upon the concerns expressed.

I intend to place a copy of this letter in the library of the House.

Yours sincerely,

A handwritten signature in cursive script, reading "Diana Barran". The ink is dark and the handwriting is fluid and legible.

BARONESS BARRAN

PARLIAMENTARY UNDER-SECRETARY OF STATE