



**Baroness Barran**

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Lord Knight of Weymouth  
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London  
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Dear Jim,

I promised to write to you in response to a number of specific questions you raised during Day 2 of Lords Committee on the Schools Bill (Hansard, column 1421, 13 June 2022). I hope my earlier letter covering our discussion on Day 1 was helpful to you.

I will start by clarifying some important terminology in the Bill, then work through the questions as they were raised in the debate on Day 2 chronologically.

Under clause 7(2), the Secretary of State may direct the proprietor either to appoint (or secure the appointment of) a person specified by the Secretary of State as a director with effect from a specified date, or to use best endeavours to identify and appoint (or secure the appointment of) a new director by a specified time or date who has such skills or experience as the Secretary of State may specify.

**You questioned who is meant by the ‘academy proprietor’ in the Schools Bill, with reference to clause 7(2). (Hansard, column 1411, 13 June 2022).**

The term ‘academy proprietor’ in the Bill refers not to individuals within the academy trust, but to the academy trust itself. The Bill also refers to directors of Academy trusts (because it is concerned with academies that are companies), which this letter will now refer to as trustees in line with the practice in the Academy Trust Handbook (ATH). In this specific context, the Secretary of State would direct the academy trust to, for example, appoint a specified trustee. As you identified, within an academy trust it is normally the role of the members to appoint trustees, in line with the trust’s articles of association. Therefore, the department would expect that in practice it would be the members of the academy trust who appointed these additional trustees. The direction will be issued to the

proprietor and members. When an interim trust board is appointed, no action is required from the members because the appointments will take place automatically from the date specified in the notice. The members' rights to appoint and remove trustees will be suspended. Crucially, the interim trustees will be required to act only in the interests of the trust, not of the Secretary of State.

**You asked how the representations process provided for under Clause 6(4), would function (Hansard, column 1411, 13 June 2022).**

The process of submitting representations to the Secretary of State before certain decisions are taken is not new. For example, existing funding agreements provide for trusts to make representations before the Secretary of State decides whether to terminate a funding agreement if an academy is judged to be Inadequate by Ofsted. In practice, as is the case now, these representations would be made to the Regional Director. This power is intended for intervention at trust level where a trust is not meeting a legal obligation or there are serious weaknesses in governance or management. The Regional Director would, of course, take account of trusts' representations before exercising this power.

**You asked whether regulations made under clause 6(5) of the Bill would be made on a school-by-school basis, and questioned what role remains for a Trust Board under these conditions (Hansard, column 1411, 13 June 2022).**

As I explained in my response (Column 1419), the Secretary of State already has the power to issue a Notice to Improve (Ntl) to an academy proprietor. This power is provided for in the ATH, which is an annex to the Funding Agreements.

The ATH also provides that delegated freedoms are suspended when the academy is placed under an Ntl. Section 6.21 of the ATH lists the delegated freedoms which are suspended. In practice this means that academy trusts are required to obtain approval from the Education and Skills Funding Agency prior to entering into transactions on that list. We envisage that regulations made under clause 6 would provide for comparable freedoms to be suspended. Regulations made under this section would specify the types of transactions and decisions which would automatically require the department's consent whilst an Ntl is in force. They would apply equally to any trust issued with an Ntl and would not be trust-specific. Clause 6 would, however, allow the Secretary of State to apply additional, trust-specific restrictions where necessary to protect public funds as considered necessary and appropriate for the particular facts of the case. For example, if there were concerns about particular related-party transactions, the Secretary of State could specify in the Ntl that the trust must seek permission before entering into transactions with that particular person. These kind of trust-specific requirements are often included as conditions in NTIs under the existing regime. It is important to note that these restrictions would not prevent the trust from entering into any particular transactions or arrangements - they would only require the trust to seek the department's permission before doing so and the department would not withhold such consent unreasonably.

Under the current system, whilst an Ntl is in place, the trust board continues to be responsible for running the trust and is responsible for complying with any conditions set out in the Ntl. We would not expect this to change under the new statutory Ntl process. The department would specify the weakness the trust must remedy, but not specify the action the trust should take to remedy those weaknesses. This will give the trust board the freedom to decide how best to remedy the weaknesses. The regulations under clause 6(5) will help ensure public funds are safeguarded whilst the trust secures these improvements.

**You asked how the remuneration of additional Interim Trustees/Directors under clause 7 and schedule 2 would work in practice. You questioned of fairness of these appointed Trustees being paid, whilst hardworking voluntary Trustees remain unpaid. You also questioned whether this may impact on the motivation of unpaid Trustees, and possibly create financial pressure to remunerate all Trustees. You also raised the possibility of one individual sitting on multiple Interim Trust Boards. (Hansard, columns 1411 - 1412, 13 June 2022).**

The proposal for Interim Trust Boards under clause 7 of the Schools Bill has characteristics in common with the Interim Executive Board (IEB) model for maintained schools. Sections 65 and 69 of the Education and Inspections Act 2006 allow local authorities and the Secretary of State, respectively, to replace the governing body of a maintained school with an IEB if the school is eligible for intervention. Since the introduction of IEBs in 2002, they have proved to be an effective measure in addressing governance failures.

Schedule 6 to 2006 Act makes provision for the constitution of IEBs. This includes provision for the remuneration of IEB members. Paragraph 9 of Schedule 6 states that *“the appropriate authority (i.e. the local authority or Secretary of State) may pay to any interim executive member such remuneration and allowances as the appropriate authority may determine”*.

Whilst the government expects voluntary service to remain normal practice for trustees, the IEB and ITB models allow for remuneration for a time-limited period, in circumstances where bringing in highly-skilled individuals would help to turnaround an underperforming school or trust.

In academy trusts, the Secretary of State will agree terms of reference with the ITB members before the ITB takes effect and will be responsible for their remuneration. The ITB trustees will be subject to exactly the same duties and have the same powers as any other trustee of an academy trust. This includes a fiduciary duty to act in the best interests of the academy trust at all times and to further the academy trust's charitable objects.

We would expect any additional trustees and members of ITBs to be drawn from our strongest trusts, in line with our aspiration for a trust-led system. When appointing members of an ITB, the department would be mindful of their capacity to manage their role alongside existing commitments, including other trustee roles.

**You also asked me to reflect on the interplay between master agreements and individual academy agreements. You expressed concern about these powers being disproportionate (Hansard, column 1142, 13 June 2022).**

As you are aware, a multi-academy trust has a single Master agreement with the Secretary of State and separate Academy agreements for each of the academies within the trust.

The Bill distinguishes between individual Academy agreements and Master agreements, and there are some termination provisions that apply only in relation to one type of agreement, and others that apply in relation to both types of agreement. In particular, the Bill provides for termination of an Academy agreement in the event of poor performance at academy level; and where there are failings in governance or safeguarding that impact only on a particular academy. This reflects the current contractual position. The Bill also provides for termination of the Master agreement in the event of trust-wide governance or safeguarding failings or if the trust has failed to address issues identified in earlier interventions, allowing for intervention at the appropriate level in light of the particular circumstances of the case.

The Bill also provides for termination of a Master agreement or an Academy agreement if the trust breaches the terms of either. However, it is important to note that the Bill does not allow for immediate termination of either agreement under any circumstances, save for insolvency or where there has been a change of control.

Rather, clauses 14 and 15 require the Secretary of State to issue a Termination Warning Notice if a trust has breached a Master agreement or Academy agreement. A Termination Warning Notice must set out the steps the trust is required to take to remedy the breach and invites representations from the trust. Clause 12 allows the Secretary of State to terminate a Master agreement or an Academy agreement if the trust has failed to comply with an earlier direction or Ntl and requires the trust to have an opportunity to make representations before termination can take place. Therefore, under both powers, in all circumstances, the trust will have an opportunity to address the Secretary of State's concerns and make representations before termination takes effect.

You are correct in saying that a failure or breach in relation to the trust's management of one academy could potentially lead to the termination of a trust's Master agreement. As outlined above, however, this would only be used as a last resort and could only occur if the trust had failed to address weaknesses or breaches identified by the Secretary of State's earlier interventions. We do, of course, recognise that this would not necessarily be an appropriate step to take and much would depend on the individual circumstances of the case – for example, the nature of the failure or breach and the size and overall strength of the trust.

The Secretary of State is, of course, subject to public law requirements to exercise any powers reasonably and proportionately. In the context of termination, this

means he must take all relevant considerations into account, including the seriousness of the breach or weaknesses, the steps the trust has taken to address them and the particular circumstances of the academy or academy trust in question.

I hope this clarifies the questions you raised during the debate. I am placing a copy of this letter in the library of the House.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Diana Barran".

**BARONESS BARRAN**  
**PARLIAMENTARY UNDER-SECRETARY OF STATE**