



House of Commons  
Committee of Public Accounts

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# Establishing free schools

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## Fifty-sixth Report of Session 2013–14

*Report, together with formal minutes, oral and written evidence*

*Ordered by the House of Commons  
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### Committee staff

The current staff of the Committee is Sarah Petit (Clerk), Claire Cozens (Committee Specialist), James McQuade (Senior Committee Assistant), Ian Blair and Sue Alexander (Committee Assistants) and Janet Coull Trisic (Media Officer).

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# Contents

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<b>Report</b>	<i>Page</i>
Introduction	<b>3</b>
Conclusions and recommendations	<b>5</b>
<b>1 Assessment and Approval</b>	<b>9</b>
<b>2 Oversight</b>	<b>13</b>
Formal Minutes	<b>16</b>
Witnesses	<b>17</b>
List of printed written evidence	<b>17</b>
List of Reports from the Committee during the current Parliament	<b>18</b>

## Introduction

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Free schools are “all-ability state-funded schools set up in response to what people say they want and need in their community to improve education for local children.”<sup>1</sup> The Department has made clear progress on implementing a policy priority by opening new free schools quickly. The Department has strengthened aspects of the way it selects which applications to approve. However, we are concerned that applications for new free schools are not emerging from areas of greatest forecast need for more and better school places. Around 87% of projected primary places in the free schools opened so far were in districts that had forecast a high or severe need for extra places, but only 19% of secondary places in the free schools opened so far were in such areas. We also have concerns over standards of governance in some free schools. Recent cases of poor financial management and governance in a small number of free schools highlight the need for improvements to the Department’s and the Education Funding Agency’s monitoring arrangements.

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1 Department for Education website, [www.gov.uk](http://www.gov.uk)

## Conclusions and recommendations

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1. Free schools operate independently of local authorities and have freedoms over their curriculum, school day and term time, staffing, and budgets. The Department invited the first applications to set up free schools in June 2010 and the first 24 free schools opened in September 2011. By September 2013, there were 174 free schools open with a further 116 in the pipeline to open from September 2014 onwards. The Department estimates that it will have spent £1.1 billion on free schools by March 2014, of which £0.7 billion will be capital expenditure on buildings and land. The Department implements free school policy, assesses and approves applications, and has overall responsibility for value for money. The Education Funding Agency (the Agency) is responsible for acquiring premises, and for the funding and oversight of financial management and governance in open free schools.
2. **The Department could do more to draw on the experience of the early tranches of free schools to understand the take-up of places.** The Department intends that applications to open free schools respond to local demand to improve education. The programme is demand-led and, as part of the selection process, applicants must provide evidence of the parental demand for places. The Department considers 'demand' in broad terms to include a need for places, a demand for better quality provision or for a type of school that offers a distinctive approach. At the early stages of an application, there is bound to be less certainty about eventual demand and there are different expectations about how quickly schools will recruit pupils depending on the different rationale for the school. For example, a school responding to a need for places may fill faster than a school responding to a demand in quality, as it takes time for schools to establish a reputation for quality with parents. The NAO report showed that, in their opening year, free schools attracted three-quarters of their planned numbers of pupils, but many free schools admitted fewer pupils than planned admission numbers. Sometimes this was a consequence of schools opening in temporary accommodation; sometimes it was due to a lack of accurate forecasts of demand.

**Recommendation:** *The Department should reflect on what it has learned about demand using the evidence base from free schools it has already opened, and review its guidance to free school applicants, as well as its assessment criteria, accordingly.*

3. **The Department should be more open about the reasons for making decisions in favour of opening free schools.** The Secretary of State is ultimately responsible to Parliament for decisions about opening schools. Nonetheless, there is an argument for much more transparency about how these decisions are made. By opening free schools, the Department is allowing a wider range of providers to establish schools and there is understandable public interest in the way the Department makes decisions about which schools it approves. Applications are initially scored against published criteria, however the Department then considers several other factors to varying degrees when making decisions, including practical factors such as whether applications are competing for the same parental demand or the same site, and other local factors, such as an area's level of deprivation and the need for extra pupil places.

The Department was unable to give us a consistent explanation of how its decision-making process leads to certain applications' approval and others' rejection, and how this represents value for money. Greater transparency would strengthen public confidence in the Department's process to approve the very best free school applications.

**Recommendation:** *The Department should be more open about publishing the reasons for determining that a free school application be progressed.*

4. **The Committee is concerned about the escalating capital costs of the programme.** The Department's capital budget for free schools is £1.5 billion to March 2015, of which it estimates that it will have spent over £740 million by March 2014 since the launch of the programme in June 2010. The most recent round of approved free schools had a greater proportion of more expensive types, such as secondaries, special and alternative provision, located in more expensive regions such as London, the South East and South West. If this mix of approved free schools continues, there is a risk of costs exceeding available funding. The Department's cost estimates when approving individual schools have so far proved to be inaccurate. The Department acknowledged that publicity surrounding free school applications can inflate the market value of the proposed site, particularly in London, where sites are subject to competing demands. It also faces the risks of additional costs arising from the use of temporary accommodation on the initial opening of some free schools, from the need to provide off-site facilities such as playing fields, and from securing planning permission for permanent accommodation. We are further concerned about the potential for these pressures to be exacerbated if local authorities do not factor the need for new school building into local plans. This would be mitigated if local planning authorities allocated sites for schools when developing the local plan.

**Recommendation:** *The Department needs to apply tighter management of the capital costs of the programme and to work with LEAs to identify sites for schools so that land costs are not inflated.*

5. **One of our primary concerns in relation to the implementation of this policy is that arrangements for the audit and governance of free schools are not yet effective.** While we recognise the progress made in establishing free schools quickly, opening new kinds of schools at speed also gives rise to risks. Recent high profile failures in governance and poor financial stewardship at a few free schools indicate that the oversight arrangements are not yet working effectively enough to make sure public money is used properly. The Department and the Agency have set up a light-touch governance model which requires high levels of compliance by schools, yet fewer than half of free schools submitted their required financial returns for 2011-12 to the Agency on time. The Department and the Agency also seem overly reliant on whistleblowers when problems should have been identified through their own audit and review processes. We have reported separately on the use of confidentiality clauses in public sector employment contracts to constrain staff from speaking freely about concerns of public interest. We are therefore disappointed to learn that the Agency does not specifically prohibit schools from including confidentiality clauses in employment contracts.

**Recommendation:** *The Department and Agency should evaluate whether their arrangements for audit and accountability fully address the risks in the programme. The Agency must address poor levels of compliance by free schools with its governance and financial reporting requirements. It should also update its financial management guidance to forbid the use of confidentiality clauses in school's staff contracts.*

- 6.** **There has been no demand to open free schools in some areas with significant forecast need for additional school places.** The need for additional school places can be met by either expanding existing schools or opening new ones – effectively the only way to open a new school being to establish a free school or an academy. However, the Department has received no applications to open primary free schools from half of districts with a high or severe forecast need for extra school places.

**Recommendation:** *The Department should set out how, and by when, it will encourage applications from areas with a high or severe forecast need for extra schools places, working with local authorities where appropriate.*





# 1 Assessment and Approval

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1. On the basis of a Report by the Comptroller and Auditor General, we took evidence from the Department for Education (the Department) and the Education Funding Agency (the Agency) on the progress in establishing free schools.<sup>2</sup> The Department's main aim for free schools is to open high quality schools. Free schools are set up following applications from a range of different groups including parents, teachers and existing academies. The Department intends that applications to open schools respond to local demands to improve education. It expects free schools to raise educational standards across the school system through increasing parental choice, injecting competition between schools, tackling educational inequality and encouraging innovation. In June 2010, the Department invited the first applications to set up free schools and it opened the first 24 free schools in September 2011. By September 2013, it had opened 174 free schools, providing education for an estimated 24,000 pupils. If full, these schools could provide a total of almost 82,000 places. The Department has since approved a further 116 free schools, which it expects will open from September 2014 onwards. If full, the open and approved free schools could provide an estimated 144,000 pupil places. By March 2014, the Department estimates it will have spent £1.1 billion on free schools, including £0.7 billion capital expenditure on buildings and land.<sup>3</sup>

2. The Department is responsible for considering applications to open free schools and for providing advice to ministers on which applications to approve. The Department described the programme as being “demand-led” and expected applicants to provide evidence of parental demand for the proposed schools.<sup>4</sup>

3. Estimates of the number of pupils a new school will attract will inherently fluctuate between its initial approval and eventual opening. Free schools set their planned number of pupils in the months immediately prior to their opening. Overall, free schools attracted three-quarters of their planned numbers of pupils in their opening year. A quarter of free schools that opened in September 2011 had at least 20% fewer pupils than planned, as did 47% of free schools that opened in September 2012 and 38% of free schools that opened in September 2013.<sup>5</sup> The Department told us that free schools open with no track record of examination results, or Ofsted inspections, which prospective parents could review. It recognised that schools established on the basis of parental demand for better quality places may take longer to attract planned pupil numbers than a school set up in an area with a need for new school places.<sup>6</sup> It considered that it would take time for schools to establish themselves, and that pupil numbers would grow as the new schools built up a reputation.<sup>7</sup> For schools that opened in September 2012, 40% remained more than 20% below their planned pupil numbers in their second year after opening.<sup>8</sup> However, the

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2 C&AG's Report, *Establishing Free Schools*, Session 2013-14, HC 881, 11 December 2013

3 C&AG's Report, paragraphs 1, 4, 6, 1.5, 2.1

4 Qq 14, 151

5 Qq 6, 10; C&AG's Report, paragraph 3.10

6 Q 34

7 Qq 21, 34, 69

8 Qq 6, 10

Department told us that its fundamental consideration for a free school was not whether the school would meet its planned number of pupils on opening, but whether the school would be viable in the long-term on the basis of the number of pupils it eventually attracted. It told us that it did not set each free school an enrolment target, and that it did not apply sanctions to schools that recruited fewer pupils than planned.<sup>9</sup>

4. The Department told us that in the period following approval and before the free school opened, it looked very carefully at the number of pupils applying to the school, as it regarded this as the ultimate test of whether there was demand. The Department accepted that something was wrong if a free school opened with lower than planned pupil numbers. However, it considered this was “inherent in a programme of this type” and was consistent with its experience in the previous academies programme and city technology colleges.<sup>10</sup>

5. We asked the Department about the link between schools it had approved and areas with a projected shortage of places. The Department told us that it had a very specific policy to support local authorities—which have a statutory duty to ensure there are sufficient school places—to meet the need for extra places in their local areas.<sup>11</sup> Around 87% of projected primary places in the free schools opened so far were in districts that had forecast a high or severe need for extra places, but only 19% of secondary places in the free schools opened so far were in such areas. The Department told us that it had looked at the need for extra places, but that this was not the only aspect of need that it had considered.<sup>12</sup> It justified opening free schools on the basis of a wider definition of need which included, for instance, the need for new quality places in areas where education standards had historically been low, the need to introduce new providers, and the need in areas of deprivation. The Department acknowledged that it had received no applications to open primary free schools in half of districts with a high or severe forecast need for school places by the academic year 2015/16.<sup>13</sup>

6. We were concerned about other factors which could have had an impact on demand, for instance the quality of schools in nearby local authorities.<sup>14</sup> We asked whether a drop-off in demand could occur when the Agency had been unable to find a suitable site for a free school close to where demand had originally been identified to support the application.<sup>15</sup> Up to a half of free schools are likely to occupy a different site from that originally identified by applicants, which may have the knock on effect of reducing parental demand.<sup>16</sup> The Agency told us that where it had not been possible to identify a suitable site at reasonable cost it had deferred school openings, and that seven projects had been

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9 Qq 69, 71,73

10 Qq 5, 21-23

11 Q 1

12 Qq 13-15; C&AG's Report paragraph 1.6

13 Qq 14-15, 151

14 Qq 98, 99

15 Qq 23-25

16 C&AG's Report, paragraph 1.17 and Figure 7

deferred for this reason. With 174 free schools now open, the Department had a growing evidence base of how successful free schools were in practice at attracting pupils.<sup>17</sup>

7. The Department has so far received 1,103 applications to open free schools, and its selection process has resulted in 174 free schools opening. It has approved a further 116 applications that are planned to open from September 2014 onwards.<sup>18</sup> The Department assesses applications against its published criteria, but ministers make the final decisions. It told us its scoring of applications against the criteria guided it on which schools were suitable, and that a high score against the criteria was not the sole determinant of whether it approved an application.<sup>19</sup> We asked why some higher scoring applications were rejected. The Department explained that it considered each application on its merits against a list of wider contextual factors, which included an area's level of deprivation and the need for extra school places. It also considered practical factors, which included any recent investment in other sponsored academies or other proposals that competed for the same parental demand or the same site.<sup>20</sup> Officials exercised judgement on a case-by-case basis about the relative merits of proposals when they made recommendations to ministers.<sup>21</sup>

8. The Department's forecast capital spending on free schools to March 2015 is £1.5 billion.<sup>22</sup> The Department confirmed that it had not set a limit on how much it was willing to spend on a school's premises, nor had it cancelled setting up of a free school on the basis that the only available premises were too expensive. Where it had been difficult to secure suitable permanent premises, the Agency's preferred approach had been to locate schools in temporary accommodation.<sup>23</sup> Approximately 60% of free schools opened in temporary accommodation and, of those that have subsequently moved into permanent accommodation, the Agency reported to us that it had paid over its valuations for 63% of these freeholds. This compared to it having paid over its valuations for 30% of freeholds purchased for free schools that had not required temporary accommodation.<sup>24</sup> We challenged the Agency to explain whether the use of temporary accommodation was a more costly approach and a result of its haste to open schools. It explained that temporary costs had made up 2.7% of the programme's capital costs, and that it had taken a wider view of costs across the programme. The Agency acknowledged that it could ultimately be unable to find suitable premises at a reasonable cost for some schools.<sup>25</sup>

9. The Department had used new build for 34% of free schools, existing schools buildings for 31% of schools and properties not traditionally used for schools, such as office and commercial buildings, for the remaining 35%.<sup>26</sup> We were concerned that schools sited in

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17 C&AG's Report, paragraph 3.16

18 C&AG's Report, paragraphs 1, 4, 6, 1.5

19 Q 168

20 Qq 15, 98, 153, 168

21 C&AG Report, paragraph 1.13

22 C&AG's Report, paragraph 2.3

23 Qq 112, 158

24 Q 158; C&AG's Report, paragraph 2.7

25 Qq 110, 159

26 C&AG's Report, Figure 13

non-traditional buildings with limited or no provision of outdoor space could incur additional costs to deliver a full curriculum that included physical education and sport. The Agency acknowledged that, while its preference had been for sites to have outdoor space nearby, this could prove particularly difficult in inner-city areas. In these instances, the Department told us that it had sought alternative arrangements, such as sharing facilities with other schools or making use of local playing fields. In addition, it faced the risk of extra costs where it sought to use temporary accommodation or to change the use of a property, where it could incur costs associated with planning applications.<sup>27</sup>

10. The average total capital cost per free school place has risen by 35% over the first three rounds of approvals from £11,300 to £15,200.<sup>28</sup> The Agency acknowledged that there were cost pressures in the system which it needed to manage carefully, and identified the significant increase in the number of schools which were more expensive per pupil as a cause. These schools included secondaries; all-through schools, catering for primary through to secondary age pupils; and alternative provision and special schools. In the third round of approvals, there had been more secondary schools located in London, the South East and the South West, where property prices were higher than elsewhere in the country.<sup>29</sup> The Department also acknowledged that publicity surrounding free school applications can inflate the market value of the proposed site, particularly in London, where sites are subject to competing demands.<sup>30</sup>

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27 Qq 64, 160-163

28 Q 153; C&AG's Report, Figure 10

29 C&AG's Report, paragraph 2.5

30 Q 174

## 2 Oversight

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11. The Department and Agency have set up an approach to oversight which emphasises schools' autonomy and responsibility for financial management and governance. The Agency, an executive agency of the Department, is responsible for overseeing financial management and governance in the 174 open free schools. Its approach is based on that used for all academies and it aims to be light touch and proportionate. Expectations and obligations for free schools about financial management and governance are set out in each school's funding agreement and in the Agency's *Academies Financial Handbook*. The Agency's monitoring of compliance with these documents lies at the core of its oversight activity. The funding agreement sets out, for example, a school's obligations to provide the Agency with audited accounts by a set deadline and to notify the Agency of any changes to the membership of its governing trust. The *Academies Financial Handbook* describes a school's responsibilities and requirements for managing and controlling its finances. Ofsted inspects the educational performance of open schools within two years of their opening. The Department is responsible for the overall value for money of the free schools programme.<sup>31</sup>

12. By implementing the free schools programme at pace, the Department has achieved clear progress on a policy priority.<sup>32</sup> The approach it has taken has been a relatively quick way to get new schools open. However, it accepted that in a programme of this type, that had established 174 new institutions, there would be some schools that did not perform initially as well as it would have liked.<sup>33</sup> The failings highlighted at Al-Madinah School, Discovery New School and Kings Science Academy suggest that the Department's and the Agency's oversight arrangements are not yet working effectively to ensure that public money is used for the proper purpose.<sup>34</sup> The Agency told us that its assessment of risk in these three schools prior to opening had not given it sufficient cause for concern to either defer or cancel these projects. More broadly, we were concerned that the Department and Agency were missing signals of risks—either at the application stage or in the run up to opening—that could materialise once a school was open. The Department told us that while it believed it had a robust process to assess applications, this did not guarantee that every single school would perform as well as it had wished.<sup>35</sup>

13. The Agency's approach emphasises a school's responsibility to have the right arrangements in place to manage public money and to report in accordance with the terms of its funding agreement with the Department. Each free school appoints its own external auditors to prepare audited accounts, to be submitted by the school's trust to the Agency. For the latest year available, 2011-12, 56% failed to submit the required financial accounts by the Agency's deadline.<sup>36</sup>

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31 Qq 137, 215-217, C&AG Report, paragraphs 16, 3.6, Figure 1

32 C&AG's Report, paragraph 6

33 Qq 21, 35

34 C&AG's Report, paragraph 3.9

35 Qq 115-121, 170

36 C&AG's Report, paragraphs 3.6, 3.8

14. We asked the Agency if it had adequate visibility of whether free schools have used public money appropriately; how it handled allegations of fraud; how it checked who held key positions in schools' governing trusts; and whether schools were procuring services via genuine competition that ensured related parties did not profit. The Agency told us that it had extended its requirements for financial reporting. The Department also noted that it had become more transparent when things went wrong and identified lessons that needed to be learnt.<sup>37</sup> In the case of Kings Science Academy, the Agency acknowledged that arrangements in place for reporting fraud had not been wholly satisfactory, and that it had since reviewed them. The Agency was in the process of recovering improperly claimed funds from King Science Academy, totalling some £77,000. The Agency accepted that uncertainty over who held key positions at Kings Science Academy indicated that there had been clear defects in governance arrangements. It strongly agreed with us that related parties should not profit from procurement transactions.<sup>38</sup>

15. Whistleblowers play an important role in bringing instances of serious and systematic failure to the public's attention, particularly in a fragmented system of autonomous institutions. The Agency had received concerns from whistleblowers about possible financial irregularities in both Al-Madinah School and Kings Science Academy.<sup>39</sup> We have reported separately on how confidentiality clauses in public sector employment contracts have been used inappropriately to deter former employees from speaking freely about issues of public interest.<sup>40</sup> We asked the Agency whether it permitted confidentiality clauses in the contracts of people employed by free schools. The Agency told us that it did not have a specific requirement about the use of confidentiality clauses in its *Academies Financial Handbook*.<sup>41</sup>

16. The Department retains overall responsibility for the free schools programme delivering value for money.<sup>42</sup> It told us that it tested the value for money of the programme against its *Academies and free schools programmes: Framework for assessing value for money*, published in November 2013.<sup>43</sup> The Department's framework does not capture how well its investment in individual schools, and the programme as a whole, has advanced each of the programme's objectives, which are to: raise educational standards through increasing parental choice; inject competition between schools; tackle educational inequality; and encourage innovation.<sup>44</sup> The Department and Agency described to us how they aimed to ensure free schools delivered value for money by reducing average costs below the average costs in previous programmes. For example, the average construction costs of free schools have been approximately 45% lower than costs in other school building programmes. It explained that it had achieved this reduction, in part, by reducing

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37 Qq 215-217, 219

38 Qq 97, 215; C&AG's Report, paragraph 3.9

39 Q133; C&AG's Report, paragraph 3.9

40 Public Accounts Committee, *Confidentiality Clauses and Special Severance Payments*, Thirty-sixth Report of Session 2013-14, HC 477, 24 January 2014, paragraph 4

41 Q 131

42 C&AG's Report, Figure 1

43 Q 83; Department for Education, *Academies and free schools programmes: Framework for assessing value for money*, November 2013

44 C&AG's Report, paragraphs 2, 3.18

space standards and by applying more modest architectural standards to the design of schools and classrooms. The Department noted, however, that it considered the value for money of free schools to rest ultimately on the level of educational outcomes that investment delivered. The Department's main indicators of educational outcomes are Ofsted inspections, which take place for every free school within two years of the school's opening, and examination results.<sup>45</sup>

17. The Government has stated that its overriding priority for capital investment is to ensure every child has a place at school.<sup>46</sup> We questioned the Department whether there was any tension between simultaneously pursuing its objective for free schools to increase local choice and its wider objective to meet growing demand for school places. It recognised that its resources were constrained, but considered that it had been able to fund both objectives. The Department told us that free schools could help contribute to meeting basic need when established in basic need areas, but they were not the Department's main mechanism for supporting basic need. Forty-two free schools had opened in districts that had no forecast need for extra places, at an estimated total capital cost of at least £241 million for mainstream schools. As we mentioned earlier in this report, the Department acknowledged that it had received no applications to open primary free schools in half of districts with a high or severe forecast need for school places by the academic year 2015/16. However, it told us that it would like to see free school proposals coming forward from all parts of the country where there was a need and that it had been working with the New Schools Network on how to promote proposals from those areas.<sup>47</sup>

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45 Qq 29, 83, 224; C&AG's Report, paragraphs 2.8, 3.2

46 Department for Education press release "*Announcement of over £2 billion for more school places*", 18 December 2014

47 Qq 1-2, 83-84, 151; C&AG's Report, paragraph 1.7

# Formal Minutes

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**30 April 2014**

Members present:

Mrs Margaret Hodge, in the Chair

Mr Richard Bacon  
Stephen Barclay  
Guto Bebb  
Jackie Doyle-Price  
Chris Heaton-Harris  
Meg Hillier

Stewart Jackson  
Mrs Anne McGuire  
Austin Mitchell  
Nick Smith  
Justin Tomlinson

Draft Report (*Establishing Free Schools*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 17 read and agreed to.

Conclusions and recommendations agreed to.

Introduction agreed to.

*Resolved*, That the Report be the Fifty-sixth Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Wednesday 7 May at 2.00 pm]



## Witnesses

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**Monday 13 January 2014**

*Page*

**Peter Lauener**, CEO, Education Funding Agency, and **Chris Wormald**,  
Permanent Secretary, Department for Education

Ev 1

## List of printed written evidence

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1 Department for Education and Education Funding Agency

Ev 28

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2013–14

First Report	Ministry of Defence: Equipment Plan 2012–2022 and Major Projects Report 2012	HC 53
Second Report	Early Action: landscape review	HC 133
Third Report	Department for Communities and Local Government: Financial sustainability of local authorities	HC 134
Fourth Report	HM Revenue & Customs: tax credits error and fraud	HC 135
Fifth Report	Department for Work and Pensions: Responding to change in jobcentres	HC 136
Sixth Report	Cabinet Office: Improving government procurement and the impact of government's ICT savings initiative	HC 137
Seventh Report	Charity Commission: the Cup Trust and tax avoidance	HC 138
Eighth Report	Regulating Consumer Credit	HC 165
Ninth Report	Tax Avoidance—Google	HC 112
Tenth Report	Serious Fraud Office—redundancy and severance arrangements	HC 360
Eleventh Report	Department of Health: managing hospital consultants	HC 358
Twelfth Report	Department for Education: Capital funding for new school places	HC 359
Thirteenth Report	Civil Service Reform	HC 473
Fourteenth Report	Integration across government and Whole-Place Community Budgets	HC 472
Fifteenth Report	The provision of the out-of-hours GP service in Cornwall	HC 471
Sixteenth Report	FiRe Control	HC 110
Seventeenth Report	Administering the Equitable Life Payment Scheme	HC 111
Eighteenth Report	Carrier Strike: the 2012 reversion decision	HC 113
Nineteenth Report	The dismantled National Programme for IT in the NHS	HC 294
Twentieth Report	The BBC's move to Salford	HC 293
Twenty-first Report	Police Procurement	HC 115
Twenty-second Report	High Speed 2: a review of early programme preparation	HC 478
Twenty-third Report	HM Revenue & Customs: Progress in tackling tobacco smuggling	HC 297
Twenty-fourth Report	The rural broadband programme	HC 474
Twenty-fifth Report	The Duchy of Cornwall	HC 475
Twenty-sixth Report	Progress in delivering the Thameslink programme	HC 296
Twenty-seventh Report	Charges for customer telephone lines	HC 617
Twenty-eighth Report	The fight against Malaria	HC 618

Twenty-ninth Report	The New Homes Bonus	HC 114
Thirtieth Report	Universal Credit: early progress	HC 619
Thirty-first Report	The Border Force: securing the border	HC 663
Thirty-second Report	Whole of Government Accounts 2011–12	HC 667
Thirty-third Report	BBC severance packages	HC 476
Thirty-fourth Report	HMRC Tax Collection: Annual Report & Accounts 2012–13	HC 666
Thirty-fifth Report	Access to clinical trial information and the Stockpiling of Tamiflu	HC 295
Thirty-six Report	Confidentiality clauses and special severance payments	HC 477
Thirty-seventh Report	Supporting UK exporters overseas	HC 709
Thirty-eighth Report	Improving access to finance from small and medium-sized enterprises	HC 775
Thirty-ninth Report	The Sovereign Grant	HC 665
Fortieth Report	Maternity Services in England	HC 776
Forty-first Report	Gift Aid and other reliefs on charitable donations	HC 835
Forty-second Report	The Charity Commission	HC 792
Forty-third Report	Progress at Sellafield	HC 708
Forty-fourth Report	Student loan repayments	HC 886
Forty-fifth Report	Excess votes 2012–13	HC 1068
Forty-sixth Report	Emergency admissions to hospital	HC 885
Forty-seventh Report	Contracting out public services to the private sector	HC 777
Forty-eighth Report	Department for Communities and Local Government: Council Tax support	HC 943
Forty-ninth Report	Confiscation Orders	HC 942
Fiftieth Report	The rural broadband programme	HC 834
Fifty-first Report	Programmes to help families facing multiple challenges	HC 668
Fifty-second Report	BBC Digital Media Initiative	HC 985
Fifty-third Report	Ministry of Justice and National Offender Management Service: Managing the prison estate	HC 1001
Fifty-fourth Report	COMPASS: Provision of asylum accommodation	HC 1000
Fifty-fifth Report	NHS waiting times for elective care in England	HC 1002

# Oral evidence

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## Taken before the Committee of Public Accounts on Monday 13 January 2014

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon  
Guto Bebb  
Jackie Doyle-Price  
Meg Hillier

Mr Stewart Jackson  
Austin Mitchell  
Ian Swales  
Justin Tomlinson

**Amyas Morse**, Comptroller and Auditor General, and **Aileen Murphie**, Director, National Audit Office, gave evidence. **Gabrielle Cohen**, Assistant Auditor General, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, were in attendance.

### REPORT BY THE COMPTROLLER AND AUDITOR GENERAL Establishing Free Schools (HC 881)

#### Examination of Witnesses

*Witnesses:* **Peter Lauener**, CEO, Education Funding Agency, and **Chris Wormald**, Permanent Secretary, Department for Education, gave evidence.

**Q1 Chair:** Welcome. Happy new year. This is our first session of the new year. Chris, do you think it is fair to accept that there is a tension between the objective of the free school programme, which is there to increase local choice, and the wider objective of meeting growing demand for school places?

**Chris Wormald:** No, I do not really accept that there is a tension between the two. The Government has twin objectives in this area. As we discussed when we last met, in Barking town hall, when we looked at basic need, the Government have a very specific policy on supporting local authorities in meeting basic need in local areas and commit considerable resource to doing so. They also have, as set out very clearly in the Report that we are here to discuss today, a programme of establishing free schools, which is not primarily about meeting basic need. It is primarily about improving standards, increasing choice and all the things set out in the National Audit Office Report. Free schools clearly can help to contribute to meeting basic need where they are established in basic need areas, but they are not the Government's main mechanism for supporting basic need.

**Q2 Chair:** But at a time when resources are constrained, although I can appreciate that there are twin objectives, is not the reality, rather than the theory, that there is bound to be a tension? If resources were more freely available, your argument would probably be valid, but where resources are constrained, isn't there bound to be a tension?

**Chris Wormald:** Of course the Government have to make choices about their resource allocation. As we discussed at the last hearing, on all the evidence we have seen we have put enough money into the system to meet basic need across the country. It is a considerable proportion of the Department's capital budgets. On the spending review 2013 proposals, approximately 28% of our money this Parliament is

due to be spent on basic need whereas about 8% of it is due to be spent on free schools. We have been in the position where we could find resources to fund both those objectives. Clearly, resources are constrained, so that is an issue that we continually look at, but up until now we have been able to fund both those objectives.

**Q3 Chair:** So you are perfectly satisfied, are you, that it is proper that, as the Report suggests in two or three places, you do not undertake an independent validation of demand before you accept that a new free school should open and that you do not routinely gather information on level of demand from local authorities? You think that that is okay, do you?

**Chris Wormald:** In terms of basic need—

**Q4 Chair:** No, I am not talking about basic need; this is about when you establish a free school. The Report says this in a couple of places—for example, on page 19 it says that there is no independent validation of demand and on page 24 that you do not “routinely gather information on levels of demand from the local authority” before you accept a proposal for a free school. You think that is okay, do you—as the accounting officer responsible, at a time of constrained resources, for the dispensing of public money you think it is okay not to look at demand?

**Chris Wormald:** Given the policy purposes set out, which we are there to deliver, the systems the Department has in place are appropriate.

**Chair:** You think it is all right not to look at potential demand?

**Chris Wormald:** We do ask as part of the application process—I can talk about the application process—

**Q5 Chair:** But you don't independently validate it?

**Chris Wormald:** Not at application stage. We do of course look at the data the Department already holds

around basic need in areas, and other sources, but of course the ultimate test of whether there is demand for the school is how many people apply to go to that school at the point of opening. Certainly, during the pre-opening phase, whether there is a healthy supply of applicants to the school, which is the ultimate test of whether there is demand, is something we look at very carefully. As I am sure we will come on to later in the hearing, with some of the projects that have either not gone forward or that we have delayed going forward, it has been on that issue. Given the policy priorities that we were set to deliver, the Department has appropriate systems in place.

**Chair:** Parliament or the Department?

**Chris Wormald:** The Department.

**Q6 Chair:** If that is the case, why is it that paragraph 3.10 on page 41 of the Report states that a quarter of the free schools opening in 2011 had at least 20% below the planned admission number—I assume that the planned admission number was realistic? Of the ones that opened in 2012, 47% opened when numbers were more than 20% lower than their planned admission number; a year later, that was still at 40%. Of the 2013 openings, only 30% achieved their planned admission numbers. This is their numbers, not full numbers.

**Chris Wormald:** When you are beginning a new institution it takes time for it to build up.

**Chair:** I accept that. That is why I was very careful to say it was their planned admission numbers.

**Chris Wormald:** I will say a couple of things. One is that—again, as we discussed at the last hearing—we do not aim for every school in the country to be full. We normally operate—certainly at area level—a 5% margin on school places.

**Q7 Chair:** Pull the other one as far as Barking and Dagenham is concerned.

**Chris Wormald:** I thought we would come on to that. If you look at the overall numbers, as of September 2013, approximately 86% of planned admissions were filled in free schools, compared with a national average of about 89%, so it is very similar to the national rate.

**Q8 Chair:** I hate to tell you on that one, Chris—I do not mind, but do not abuse the statistics, because you haven't looked there. I can tell you, from my own authority, that the pressures on primary places has not yet come through to secondary places. I cannot believe, if you did a proper analysis, looking at primary and five-year-old intake, that that would be a valid stat—it is an abuse of statistics.

**Chris Wormald:** No, I do not accept that that is an abuse of statistics at all. They are simply the national numbers.

**Q9 Chair:** But it is abuse of statistics. The real pressure is on primary intake at the moment.

**Chris Wormald:** What we see is exactly the pattern that you would expect: as free schools establish their reputation in an area, more and more people apply to them. I will try to find—

**Q10 Chair:** Let me just hold you on that one, because one of the stats in the report, on page 41, is looking at the 2012 phase—wave 2—of the free schools. Again, I was very careful to say this. When they opened, they have a planned admission number, which I assume is well below the total number that they can take, so they have regard to the fact that they are opening and will become more popular. In 2012, 47% were at least 20% below planned admission number. A year later, for those 2012 schools in 2013, 40% were at least below. There is something wrong with your planning framework and monitoring framework if that much is going—

**Chris Wormald:** No. You set the admission numbers; if it is a two-form-entry primary school, you set your admission number at whatever it is, such as 60. You do not account, in setting your admission number, for lower applications, so that number is how many people you could take in for the first year of your school. If you look at the 2011 openers, by 2013—using the National Audit Office's definition of "full", which I think was 97.5% of places filled—then 75% of those free schools are full. So over two years it builds up quite quickly.

I am not going to dispute with you, because it is obvious in the numbers you quote, that the numbers are frequently lower in year one—

**Chair:** And year two on the 2012.

**Chris Wormald:** Then they build up very quickly, and by the third year—

**Chair:** And year two on the 2012.

**Chris Wormald:** Well, they grow in year two and then they grow quite a lot in—

**Chair:** Well, they don't—47% to 40%.

**Chris Wormald:** Yes. Then—

**Chair:** Yes—you agree with that.

**Chris Wormald:** Then in year three, 75% of the 2011 openers were full, so the numbers do build up quite quickly.

**Chair:** I don't agree.

**Q11 Ian Swales:** On this issue of places, I would like to expand it a little and refer to figures 5 and 6 in the Report—figure 6, in particular. In secondary education, it looks like most of the country has at least 5% of projected surplus according to this map—the areas in grey—and I would like to exemplify this issue by talking about a particular school in Durham, which I think is the brown dot on here. This is a school that has opened in a building that was deemed surplus by the local authority and therefore, almost by definition, was not needed. Durham has good secondary schools, with good all-round standing. This school, so far as I know, has attracted only 34 pupils, and I think that it was very predictable that it would be undersubscribed. How do you justify the use of public money in a situation like that?

**Chris Wormald:** The thing I would like to say about figure 6 is that, of course, it is taking a snapshot in that particular year. As we know, the increase in the school population is building up from primary level and will eventually reach secondary level, so we do not simply take all-out basic-need programmes, including free schools, but just at the situation right

now. I will not debate the individual case with you, because I need to go away and—

**Q12 Ian Swales:** The evidence that you are giving, though, is that you are not really looking at this at all. That is what I took from your initial exchange with the Chair, that you do not actually look at a map such as this, whether it is 2015–16 or 2020—you are not actually looking at that in whether you approve a free school or not.

**Chris Wormald:** It is not correct that we do not look at it. On the NAO's own numbers, 70% of free schools have been established in basic need areas, and some 90% of primary schools have been under the free schools programme.

**Aileen Murphie:** But only 19% of secondaries.

**Q13 Ian Swales:** Excluding London, most of the secondary schools are in areas that are simply light grey on those maps. Based on that analysis, it seems as though you are allowing free schools to be established—as in the example that I gave—in a building deemed surplus by the local authority. It is a school that was not needed in that area. I am questioning whether you bring need in an area into your calculations.

**Chris Wormald:** I will be very clear: we look at need, but we do not look at need only in terms of basic need; we look at the need for new quality places in that area. That might be to enhance parental choice; it might be because that is historically an area of low performance where a new provider is needed; or it might be an area, as is the case in the vast majority of primary school applications that we agree, where there is a basic need for school places. So we look at need, but we do not take basic need as in an absolute shortage of places as being the definer of the programme.

**Q14 Ian Swales:** So you assess it based on the quality of alternative provision. Is that what you are saying?

**Chris Wormald:** This is a programme that is bottom up and demand-led, so we look at the strength of the case coming forward. In doing that, we look at the needs of the area. There might be a basic need for new places, as in some of the constituencies represented around the table, or there might be a wider need for new providers to come in for the sorts of reasons that I have described.

**Q15 Chair:** How do you define that?

**Chris Wormald:** We look at need in terms of whether there is evidence of parental demand; whether there is basic need; whether there are low standards in the area; or whether it is an area of deprivation that requires further intervention. So we take a wide definition of need, which does include looking at basic need, but that is not the definer of the programme.

**Q16 Ian Swales:** We can understand the frustration of some of the current providers, whether they are other academies or local authorities, that see significant amounts of money being spent in their areas. They might be short of money and not have

enough to bring up the standards of their buildings or their teaching or whatever, because you have chosen to spend money on something new. I am particularly thinking about secondary. It is not obvious to them why that is the case. In the example I gave earlier, all the secondary schools in that city are good or outstanding. There is no parent saying, "We desperately need a different provider." They are not choosing this new provider, either, so it was quite predictable that only 34 children would turn up.

**Chris Wormald:** I cannot comment on the individual case, but I can come back to you—

**Q17 Chair:** Perhaps you could write to the Committee about that particular case, because we will be talking about a number of individual cases.

**Chris Wormald:** Yes.

**Ian Swales:** That one has been raised at the Education Select Committee. I am not here to talk about the education; we are on value for money, and that story concerns value for money.

**Q18 Chair:** Will you write to us on that one?

**Chris Wormald:** Yes, I will write to you on that specific case, but I will make the general point that it comes back to the purposes of the programme. We have quite strong evidence—drawn from abroad and from this country—that bringing in new providers, even in areas where there is not basic need, can lead to a rise in overall standards in terms of establishing excellent new institutions and the wider effect on the system as a whole of new thinking, innovation and choice. Existing providers in an area not particularly wanting some competition would not be a reason why we would not go forward with a project. We look at the project on its own merits.

**Q19 Jackie Doyle-Price:** There is something wrong, isn't there, if having gone through the process of putting together a bid for a school and, as part of that, evidencing demand, which includes getting parents to sign up to say they will send their child to that school, the outcome is only 34 pupils?

**Chris Wormald:** Yes.

**Q20 Jackie Doyle-Price:** There is something wrong with the scrutiny process, isn't there, if that is the outcome?

**Chris Wormald:** I am sure we will debate the application process as we go through this hearing, but I will not comment on that individual case because I am not—

**Q21 Chair:** Can Peter Lauener help on that individual case? Do you know about it?

**Peter Lauener:** No. I think it is best if we write about the individual case afterwards.

**Chris Wormald:** In establishing a large programme of currently 174 new institutions, it is clear both from this Report and some of the things that have happened that not every single one of them goes as well as we would like. I am sure I will be questioned about that. However, I do not draw from that conclusion that it means that something is necessarily wrong with the approvals process. I think it is inherent in a

programme of this type—this has been our experience in previous similar programmes—that not every single one will go as well as we want right from the off. That was the experience of the city technology colleges programme in the late 1980s and early '90s, and also the previous academies programme under which we started about 20 new schools. In both those programmes we saw the same sort of pattern: that it takes some schools time to establish themselves.

**Q22 Chair:** To be fair, Chris, I don't mind you making the argument, but the previous academies programme was taking over failing schools to improve them.

**Chris Wormald:** No. Approximately 20 of those schools were started from scratch. For example, Mossbourne academy was started from scratch and, as far as I remember, there were 19 others.

**Q23 Justin Tomlinson:** I have four questions on projected admissions numbers. I am passionate about this. In my constituency, we are applying for free schools so I have a reasonable amount of experience of that now. Prior to being the MP for the area, I was a councillor for 10 years on a new-build housing estate. I saw first hand the problems of schools coming after the demand, so I take a particular interest in this area.

My first question—I want you to comment on each one—is about projected admissions numbers. I think they are reasonably good—I disagree with the Chair—and I think they are all about where you would probably expect. However, there seems to be a bit of an issue when parents or whoever get together, identify a provisional site and sail through the application process but then discover that the site is not available and it starts to be moved away. There then seems to be quite a fall-off, understandably, in demand. How vigorous are we in then re-looking at the application when the school is ultimately built nowhere near where it was initially planned?

**Chris Wormald:** I might ask Mr Lauener to comment on sites because finding sites is an EFA responsibility, but one thing I want to emphasise at these hearings is that it is not the case that you make an application, are interviewed, get approval and then sail through the rest of the process. There is a very rigorous process in the pre-opening phase when we look at sites and application numbers, and we defer or in some cases cancel projects that are not proceeding in the way we want. The National Audit Office Report sets that out. It is not the case that we simply assess and then don't look again. Those are two key issues.

**Q24 Justin Tomlinson:** But you would come back again. Sometimes parents are doing it for choice in the standards of alternative schools and sometimes it is purely demand driven. If the parents in a particular area realise they have a problem getting their children into a school because there are no places, they go through the process but ultimately the site is not where, in an ideal world, it would have been, for various reasons. Do you then revisit the merit of that, because it seems that there is evidence in the Report that the numbers do not then match expectations?

**Chris Wormald:** When it will affect the viability of the school, yes. In certain areas of the country, as we know—Barking and Dagenham were referred to earlier as one of those cases—sites are very difficult to find and we have an intensive process, run by the EFA, to find appropriate sites that meet the parents' criteria, but sometimes that is not possible and we then look again at the project.

Do you want to say anything about sites, Peter?

**Peter Lauener:** Only to repeat the point that we work very closely with free school promoters to find a suitable site. It is actually a very demanding task, because sometimes the area that the free school promoter is looking for is quite narrowly defined. We have had quite a lot of success in finding sites in the right area, but sometimes projects have been deferred to happen down the line; in other cases, we have not been able to find a suitable site at the right cost and the promoters decided that it would not work and withdrew, but we do our best to find a suitable site at good cost.

**Q25 Chair:** Justin, I have a question on that particular point. I have had several representations about a school that was supposed to be in Fiona's constituency—she is not here today—Slough, but it has ended up in Stoke Poges. A number of Members around the table have probably had representations, but I understand that the MP is against it, certainly the local people in Stoke Poges are completely up in arms and the local authority has turned down the application. So you are ending up with a school—this is Justin's point—not on the site where it was needed and wanted, but miles away and nobody wants it. Why on earth are you pursuing it if everybody is agin it—except, it looks like, the DfE?

**Peter Lauener:** I do not think it is just the DfE, or the EFA. There are lots of different views about that particular school. I think it is the Khalsa school you are referring to, is it?

**Q26 Chair:** It is a Stoke Poges school, where I am told Dominic Grieve is against it, South Bucks District Council is against it and we have probably all had representations from a number of local people on it. Nobody wants it. You paid £4.5 million for a building, which is £700,000 more than the market price. It is an office building, not a school. You appear to be the only people in favour of it.

**Peter Lauener:** I am certainly aware of the case and I know that there are lots of different views about it and not everyone supports the sites.

**Q27 Chair:** Who does support it, apart from you?

**Peter Lauener:** I think the free school promoter is happy with the site.

**Chair:** Obviously the promoter—I take that for granted.

**Peter Lauener:** And, presumably, they think that they can make the school work in their application.

**Q28 Chair:** But the local people do not.

**Jackie Doyle-Price:** You do not know that that is true of all of them.

**Chair:** Okay.

**Peter Lauener:** You referred to it being an office building. I would say that we have converted a number of office buildings to make for very—

**Q29 Chair:** And you have paid £700,000 over the market price—is that true?

**Peter Lauener:** I need to check that particular one, but, as the NAO Report records, we have had to pay over “red book” value. I do not think that always means the same as market price—I am happy to talk about that in a bit more detail—but we have paid, in some cases, under the red book value and, in other cases, we have had to pay over red book value. Overall, the construction costs are about 45% lower, as the NAO refers to, so I think we are getting good-value schools out of the programme.

**Q30 Chair:** Has this particular building got playing fields and outside space, if it is an office?

**Peter Lauener:** I do not know that much detail about this, but I do know that there have been a lot of local views about it.

**Chair:** Indeed—hostile.

**Q31 Austin Mitchell:** It would be useful if you could give us a note on this Stoke Poges school, because the letter that we have had, which comes from Andrea Rose, says that they were notified only when it appeared in the paper—there was no consultation in advance—and that is true of a local primary school. Five thousand people signed a petition, which went to Downing street, against it and they submitted 850 objections to the planning application, yet the Department went ahead and purchased the building at £700,000 over the market price, and the South Bucks District Council planning committee refused to give approval for the school, as it is a totally inappropriate site for an 850-pupil school. This is a school in the green belt for 850 kids who do not live there and will have to be bussed in. This is extraordinary. Can you give us a note on why this school was approved?

**Peter Lauener:** I would be happy to write in more detail about the particular case, but again it is a site that the free school promoter thinks will work. It is very often the case, with any local development, that people take different views about the site and whether there is a need for the places. Not everyone is going to be pleased with the outcome.

**Q32 Austin Mitchell:** But you don’t normally establish schools in areas where the population is up in arms and the local MP is against it.

**Mr Jackson:** It depends who the local MP is.

**Chair:** It is Dominic Grieve.

**Jackie Doyle-Price:** Exactly. And the kids are from Slough. That is why they don’t want them, let us be honest. We are being hijacked by a NIMBY who lives in Stoke Poges. I do not think this is adding to any scrutiny.

**Q33 Chair:** To be honest, it is a lot of people. It is a big petition.

**Meg Hillier:** The question is how you get them from Slough to Stoke Poges.

**Chair:** Justin, I rudely interrupted you. I am really sorry.

**Q34 Justin Tomlinson:** To wrap up that comment, as I said, from my 10 years as a councillor and now as an MP in a new-build area, I recognise that generally, parents are supportive of building the school, full stop, and those without children are normally less inclined to have the school, the traffic and so on. It is not surprising. We have a planning meeting tomorrow night where there will be two divided views, both completely understandable.

Secondly, I want to concentrate on projected admissions numbers and try not to discuss specific cases that nobody else in the Committee knows anything about. It is a broader point. First, I think they broadly stack up compared with schools that have opened in the past. The second thing is that I suspect that because you have the twin approach, one is about demand. If it is purely about there simply being not enough numbers and you build the school late enough, it will fill up immediately, but if it is because some parents think that the standard of the local schools is not sufficient and they are doing this through choice, which is the second part of your twin track, obviously you would expect there to be a bit of time for them to prove to all the parents that it is worth deviating their school journey to do that. Am I right in thinking that would help reflect some of your slightly lower figures for projected admissions?

**Chris Wormald:** Yes, I think that is very fair. When you are starting at a brand-new school, particularly if you are applying to it in the first year, you are clearly applying to a school that does not have a track record. It will not, at that point, have Ofsted reports you can read and so on. The longer the school is open, the more it has a reputation and the more you can see what it is like. You would expect to see exactly the pattern you are describing.

**Q35 Justin Tomlinson:** Yes, because where the school is open simply because of demand, parents have almost no choice, regardless of whether it has a reputation or not, because it is there or nowhere. Some of these are helpful, and some are less so.

The next point, which should be helpful, is that this programme is a relatively quick way to get a school built. What generally happened when I was a councillor was that there would be a massive demand that was not being met, the local authority/government would release the money many years after it should have done and, by default, the school was full because there was so much pent-up demand.

This actually allows forward planning. For the sort of application that we are looking at, we know that it will not fill up immediately, but boy, it will fill up very quickly. It is a very fast way compared with Building Schools for the Future, which was unbelievably complicated. Local authorities were not necessarily being financed sufficiently by the Government to build school places, especially in new housing developments.

**Chris Wormald:** What we have certainly done with the programme—Peter can comment some more—is that we have been much more innovative about where



we look to establish schools. The example of converting office blocks was given. That is clearly a lot quicker than building from scratch. We think that in this programme, we have been light on our feet.

**Q36 Justin Tomlinson:** But it is also about releasing the capital more quickly than in previous programmes.  
**Chris Wormald:** Yes.

**Q37 Justin Tomlinson:** My final question is about you might have slightly lower projected admissions numbers—faith schools. While the policy states that you must offer them on the same basis as ordinary school admissions—in theory, it is 50% on distance and so on, and siblings, special educational needs and the rest can then be allocated based on specific reasons—I think, and I have experience of this, that some faith schools apply and the general public and the community will not take up those places. Therefore, by default, the school will not fill, which will have an impact. Again, the Government's decision is to promote faith schools, and so be it, but in terms of the projected admissions numbers, that will have an impact.

**Chris Wormald:** I have not seen any evidence to support that. I will go away and look, but I have not seen anything that suggests that faith schools are less full than other types of school.

**Q38 Justin Tomlinson:** I had an example in an area that had pent-up demand; the minute the school opened, it would be full. Yet there was a faith school application where 0.5 children were expected to apply based on faith. Therefore, that school simply would not have attracted the numbers, whereas the bog standard community school was immediately full. It was a successful applicant. Surely that could still happen today.

**Chris Wormald:** You have to look at these things on a case-by-case basis. To state the obvious, faith schools are a well-established part of the UK education system. I think that 32% of schools are faith schools. We allow applications for new faith schools within the free school programme, and about 26% of free schools are faith schools, which is slightly less than the national average. However, we do not allow schools to open on exactly the same basis as existing faith schools. You are referring to over-subscription criteria. In new free schools we allow no more than 50% of the over-subscription criteria to be faith-related. As part of their funding agreement we require all free schools, whether faith schools or not, to be inclusive towards people of all faiths and none.

**Q39 Ian Swales:** Will you go back and check that?  
**Chris Wormald:** Yes, I will.

**Q40 Ian Swales:** You can't really expect us to believe that when you look at, for example, the case of the Muslim school in Derby. It beggars belief that you can say that.

**Chris Wormald:** We have been intervening in that school for a number of reasons—not specifically on inclusivity, except in one aspect. If you look at the vast majority of successful schools that we have

opened, whether they are faith schools or not, we expect them to be inclusive.

**Q41 Ian Swales:** Can you just answer the question? Do you go back and check that faith schools are abiding by the admissions criteria that were set out?  
**Chris Wormald:** I cannot say that we specifically go and look at the admissions.

**Q42 Ian Swales:** So that's a no, then. You don't go back.  
**Chris Wormald:** No.

**Q43 Chair:** Actually, is it Peter Lauener who would monitor it?  
**Peter Lauener:** The education advisers visit all free schools.  
**Chris Wormald:** Shall I describe what we do in terms of monitoring schools once they are open?

**Q44 Ian Swales:** I don't know how broad you want to get. This is specifically about faith schools, given that some of the new free schools are faiths that have a specific view about how to educate children, and therefore may not be attractive to people of other faiths or no faith. That is all I am asking.  
**Chris Wormald:** During the first two years of the free school's operation, we go in and look at all aspects of how the school is operating.

**Q45 Chair:** Including admissions?  
**Chris Wormald:** Which would include admissions. I didn't answer yes to your question because I can't say that we specifically look at that. What happens is that in the first and fourth terms of operation education advisers from the Department visit the school.

**Q46 Ian Swales:** This is incredibly woolly. Presumably they have some kind of checklist, which includes admissions criteria. If they just go for a cup of tea and a chat, that is one thing, but surely they have something they walk through.  
**Chris Wormald:** No, it is not that at all. What I am saying is that they look at all aspects of how the school is working, which of course includes admissions. If there are complaints about admissions and inclusivity we do something separately.

**Q47 Chair:** It is different to say that you respond to complaints.  
**Chris Wormald:** That is what I am saying; we do both. We have a monitoring system based around education adviser visits, and then a full Ofsted inspection within the first two years, where we look at all aspects of how the school is operating. I didn't answer yes to your question because we don't look specifically at that particular aspect as a separate activity; we monitor how the school is getting on in its first two years across the board.

**Q48 Chair:** May I ask one final question on faith? It is interesting that historically we have a large number—I can't remember the proportion of schools that are Church of England or Catholic.  
**Chris Wormald:** It is 32%.

**Q49 Chair:** But what is interesting about the free schools is the diversity of faiths that are emerging. You are saying about a quarter of faith schools but out of those, presumably there is a greater diversity of them than has been traditional historically.

**Chris Wormald:** Yes.

**Q50 Chair:** Will you let us have a note describing that change of faith? Somebody has just said to me that the school we were talking about in Stoke Poges is a Sikh school. Is that right?

**Chris Wormald:** I don't know off the top of my head.

**Mr Bacon:** Mr Lauener, do you know?

**Peter Lauener:** That is correct.

**Q51 Mr Bacon:** It is a Sikh academy—is that right?

**Peter Lauener:** I believe that is correct.

**Q52 Mr Bacon:** Is it correct that it opened in September 2013?

**Peter Lauener:** Yes, that is correct.

**Q53 Mr Bacon:** Is it correct that it had seven pupils when it opened?

**Peter Lauener:** I don't know that.

**Q54 Mr Bacon:** Is it correct that the application for planning permission was withdrawn by the Department for Education shortly before it was due to be considered?

**Peter Lauener:** Sorry, could you repeat that question?

**Mr Bacon:** Is it correct that the application for planning permission for this school was withdrawn by the Department for Education—the applicant—shortly before the application for planning permission was due to be considered?

**Peter Lauener:** The arrangement with this planning case was that it was done under permitted development rights.

**Q55 Mr Bacon:** No, that was not my question. My question was not: "Was it done under permitted development rights?" I know that that is so, because I have read it. My question is: was the application for planning permission withdrawn shortly before it was due to be considered?

**Peter Lauener:** I believe that the permitted development rights—

**Q56 Mr Bacon:** I am not talking about permitted development rights. That came later. Before the decision to go ahead under permitted development rights, which excluded the local council from having any say over the matter, happened, there was a prior process, wasn't there? Yes?

**Peter Lauener:** I do not know the detail of the whole process. We would have to write to you about that.

**Q57 Mr Bacon:** You are funding this thing, aren't you?

**Peter Lauener:** Yes, we are.

**Q58 Mr Bacon:** I would have hoped you would know something about it—particularly because it was so controversial. The process that allowed the school

to go ahead was one that was, as you say, under permitted development rights. That is to say that it was given permission under permitted development rights for a temporary use for 12 months. That is correct, isn't it?

**Peter Lauener:** That is correct.

**Q59 Mr Bacon:** Right. Prior to that, a planning application went in. The applicant was the Department for Education. Shortly before the application was due to be considered by the local authority, the applicant—the DFE—withdrew its application and then latterly submitted an application under the permitted development rights, which basically does not give the local authority any say over the matter under the new law. That is right, isn't it?

**Peter Lauener:** I have no reason to doubt what you say, but I think I ought just to check before actually confirming, because what you have described would be consistent with permitted development rights. We would then, of course, still have to negotiate the planning permission to take beyond the first year.

**Q60 Mr Bacon:** Beyond the 12 months, yes. I am only going on what I read in the *Bucks Free Press*, a well-known local newspaper—a famous title even.

**Peter Lauener:** I have not checked that source.

**Q61 Mr Bacon:** I should not imagine that anything that appears in a local paper such as that would be inaccurate, unlike some of our larger, more national newspapers, but I would still like to know what the total cost is so far that has been expended on this—on anything?

**Peter Lauener:** The purchase price was £4 million.

**Chair:** That is capital.

**Peter Lauener:** That is capital.

**Q62 Chair:** And then beyond that? You will have had setting-up costs and all that sort of stuff.

**Peter Lauener:** There would be the pre-opening grant, a post-opening grant—

**Q63 Chair:** How much is all that?

**Mr Bacon:** I am looking at an e-mail that says it is £4.5 million. You have just said £4 million. That is a difference of £500,000.

**Peter Lauener:** Four million pounds is the figure I have in front of me, but I can check and write to you afterwards.

**Q64 Mr Bacon:** Could you send us a schedule including all the costs? I would particularly like to know the cost of the planning application, because in order to put forward a planning application for a £4.5 million building, you have to spend quite a lot of money, with architects, drawings, consultants, and that kind of thing. Could you send us a complete schedule of all the costs that have been incurred on this project, in total?

**Peter Lauener:** I am happy to do that, yes.

**Q65 Justin Tomlinson:** Just to wrap up my final point, you said that there was a twin approach—one is parental choice and one is meeting demand.

Specifically on the point of demand, is it an aspiration that you meet that demand early rather than late? In the time that I was a councillor, we always built the schools, because of hopeless Government funding and stupid PFI schemes, when there was an absolute demand, whereas is the aspiration now that you get that school built and ready for the year that the school places are required?

**Chris Wormald:** As I said a few minutes ago, we respond to bottom-up proposals, as opposed to us taking a top-down view of where schools should be. Where promoters are coming forward on the basis that you are describing, we would look at that in the application.

**Q66 Justin Tomlinson:** And you take account of the forward-planning numbers for school numbers.

**Chris Wormald:** Yes. What we look at is whether there is the potential to establish a long-term, successful school that will meet the wider definition of need that I was describing and contribute to a better education system.

**Chair:** I call Austin, then Stewart and then Meg.

**Chris Wormald:** Chair, have you finished your question on faith in school?

**Q67 Chair:** Do you know the answer?

**Chris Wormald:** Not the breakdown by denomination. Would you like me to write to you?

**Chair:** It's just an interest thing really. There have been concerns. I did not realise until I was told that the school in Stoke Poges was also a faith school and has only six or seven pupils.

**Mr Bacon:** I believe it was seven in September 2013, but perhaps you can include—

**Q68 Chair:** There was certainly an issue in the Derby school, so it would be interesting, as we look at the effectiveness of this policy, to get an understanding of that.

**Chris Wormald:** Yes.

**Q69 Austin Mitchell:** The Chair asked about the number of free schools that have opened with a lower recruitment than their target, and some had not achieved that target in their second year of operation. How long are free schools going to be allowed to go on at below-target figures? When do they have to prove the case?

**Chris Wormald:** As I said earlier, we do not define “full” as being what we are aiming for, just as we do not with any maintained school. We expect schools to build up their numbers as they are open for longer, but the fundamental question we ask ourselves is whether there is a viable, successful school for the long term.

**Q70 Austin Mitchell:** Not whether they achieve the target?

**Chris Wormald:** Not whether they achieve a particular target.

**Q71 Austin Mitchell:** So it is not about whether they lied or exaggerated; it is about whether it is a successful school.

**Chris Wormald:** We do not set a target that they have to meet.

**Q72 Austin Mitchell:** But the value for money surely comes in them achieving the target. If they do not achieve the target, you are wasting money.

**Chris Wormald:** No, I do not think that that follows at all, because, as I say, we do not predicate any of the schools system on the idea that all schools will be full all the time. I am sure that we will come on to value for money—

**Q73 Austin Mitchell:** So there are no sanctions if they never achieve their target.

**Chris Wormald:** Well, if you are defining your target as being full, then no, we do not sanction the schools because they are not completely full. The question is whether they are—

**Q74 Chair:** Can I just ask a supplementary question on that? In Sweden, which is where this model is taken from, quite a number of the schools that do not achieve their target have started doing things like giving pupils free iPads and other gadgets if they decide to attend the school. Are you thinking of similar measures?

**Chris Wormald:** No.

**Q75 Chair:** Are you ruling them out?

**Chris Wormald:** I do not think that we have said anything one way or the other in the financial handbook. I am not aware of any schools that are doing that.

**Q76 Chair:** But are you ruling it out?

**Peter Lauener:** There are no national plans, but we would be perfectly—

**Q77 Chair:** Would you be completely relaxed if public money was used to entice students by offering them a free iPad?

**Peter Lauener:** If the school could afford it and there was an educational justification—

**Q78 Chair:** No, it is public money.

**Chris Wormald:** The school would have to have a value-for-money reason for however it uses its public money. This is entirely hypothetical, but I can imagine circumstances in which a school would see educational value in every member of its school having a particular piece of equipment. That is very different from doing something purely—

**Q79 Chair:** So would you expect to vet it?

**Chris Wormald:** No, we would not. The primary responsibility for securing value for money, as with the academies programme that we have previously discussed, is with the leadership of the school.

**Q80 Chair:** They do it in Sweden, and you would not have an objection to seeing it here.

**Chris Wormald:** We would have an objection if we thought that a school was not fulfilling its requirements to secure value for money. The EFA looks at a school as whole—

**Chair:** Sorry, I interrupted you.

**Q81 Austin Mitchell:** The assessment of whether people have reached the target—

**Chris Wormald:** We haven't set a target.

**Q82 Austin Mitchell:** It's a question of the need for another local school. Why don't you consult the local authority, which surely knows what the needs of its local area are, what the prospects are, what the birth rate is and what population is coming up from schools? Why aren't local authorities consulted before these schools are established?

**Chris Wormald:** As I said, we do not purely look at basic need. The purpose of the programme is to bring new and in some cases challenging providers into the system. What we look at is the strength of the proposal and the needs of the areas. Now, of course, local authorities have views on that, but we don't build in a specific consultation with local authorities—

**Q83 Austin Mitchell:** But the basic requirement of value for money is not whether you are providing some airy-fairy new system of education, but whether there is a real need for it. The Report says at the bottom of page 15: "42 schools have opened in districts with no forecast need, with estimated total capital costs of at least £241 million out of a projected total of £950 million for mainstream Schools." Those are secondary free schools—in other words, these schools are, in terms of value for money, a waste of money.

**Chris Wormald:** I do not accept the premise of your question, I am afraid. The purposes of the programme, as I explained before, are not primarily to meet basic need. We test value for money in line with the framework that we published in November for the whole academies programme, including free schools—for the investments that we make, what are the educational outcomes that we get? If you took a school that was not in a basic need area but that was successfully educating more children to a higher level, that could very easily show value for money. I don't accept that what you described is the sole arbiter of value for money.

**Q84 Austin Mitchell:** If there isn't one reason for it, there is another—you can produce another. This indicates to me that we are embarking on a big programme with unknown results, because we have not yet had the schools long enough to prove whether they are a success or a failure to get any real result. An untested theory that free schools will stimulate and benefit education, and on that you are spending large sums of money that are subtracted from the education money that would be given to other schools if the free schools did not exist. We are spending large sums of money, because of a new enthusiasm. I know that the Labour Government had their own paroxysms and enthusiasms for all sorts of strange educational procedures, but this is the latest one and it is likely to waste money unless you have a consultation about need, surely?

**Chris Wormald:** No. I will say a couple of things. We come back to the—

**Q85 Austin Mitchell:** You are going ahead gung-ho for free schools at a time when Sweden, which is the example that was held out to us in the first place, is losing faith in free schools, because they aren't working.

**Chris Wormald:** I don't agree with a lot of that, I am afraid. We have a solid evidence base that both establishing new providers and autonomous schools can raise standards, not just from Sweden. We have got it from charter schools in the US and, as I described earlier, from the city technology colleges programme here and the schools that were established under the academies programme; there is long literature on that. The biggest study of Swedish free schools that I have seen shows positive results, both for those schools and for the system as a whole, although the model that we have is not the same as the Swedish free schools model, and we hope that we have avoided some of the problems to which you refer.

It is clearly the case that these are early days for the programme and it will be a while before we have exam results that we can look at for the free schools that we have established, but of course we have had quite a number of Ofsted inspections and when you look at the Ofsted inspections for the wave 1 schools—the ones that have been open the longest—you see that 75% of those inspections were "good" or "outstanding". As I am sure you know, Ofsted is a rigorous test; it is not something that is soft at all. We have good early indications that the programme has the potential to deliver excellent education and therefore value for money. I accept that we are in the early stages of the programme and therefore we cannot be definitive; I think that is what the National Audit Office found as well.

**Q86 Chair:** It would help, as the National Audit Office said, if you were collecting the data properly. Do you accept the criticism that the National Audit Office makes?

**Chris Wormald:** I do not think that that was related to educational standards in schools, where we collect exactly the same data as we do for any other school. It is predicated, eventually, on exam results, and before exam results—

**Q87 Chair:** So you do not accept the criticism on data that the NAO—

**Chris Wormald:** I think the NAO was making a wider point about contextual data in the area, which we will go away and look at, but on educational standards—

**Q88 Chair:** Clearly, one of the things it says in the Report is that the intake of free schools has fewer free school-meal pupils than neighbouring schools, which will have an impact on your results, so you need proper data to be able to test whether the thesis is valid. That is all that is being said.

**Chris Wormald:** What the NAO reported on free school rates was based on quite a small subsection of schools.

**Q89 Ian Swales:** Can you tell the Committee what methods you use to assess achievement in these

schools? Any school that requires parents to choose to go to it is going to have a skewed intake, because you will have a quarter or so of parents who will not choose their child's school. You already have a skewed intake. The Report rightly says, as Chair says, that the number of free school meals is much lower and the number speakers of English as a second language is much lower. It is clear that the average intake of one of these schools is not going to be the same as the average in the neighbouring maintained schools, and indeed will affect the average intake in those schools, because it is skewed. What correction methods do you use to assess the success of the schools, given the intake?

**Chris Wormald:** The free school meal rate in the schools we have established is, I think, 16%, as opposed to a national average of, I think, 17%, so it is roughly the same. It is lower—

**Q90 Ian Swales:** Well, it is 25% in—

**Chris Wormald:** It is 25% in the surrounding area.

**Chair:** Do you want to quote from the Report, Ian?

**Q91 Ian Swales:** It says that free school meal rate is 16% in the free school compared with 25% in neighbouring schools.

**Chris Wormald:** And it is 17% nationally.

**Chair:** It is the neighbouring schools.

**Q92 Ian Swales:** And less likely to have English as an additional language—18% of free school pupils compared with 36% in neighbouring schools.

**Chris Wormald:** As I said, it is a relatively small snapshot of some early schools, and we expect those numbers to move. We are not aiming for any particular target on free schools meals or EAL.

**Q93 Chair:** Can you answer the question?

**Ian Swales:** The question was about how you assess success.

**Chris Wormald:** In exactly the same way as we do for every other school. Ofsted, which is our main source of data at the moment, because we do not have exam results, looks at the quality of the teaching of the pupils who are there. It has long experience of measuring and assessing schools with all sorts of different types of intake, and that is the cornerstone of our entire school accountability system. It does it by physically going and looking at the quality of what is being done with the pupils who are there. Crucially, it looks in particular at the progress pupils are making rather than their starting point. As we get to the point where we have exam results to look at, we have long experience of comparing schools with different intakes and looking at value-added measures and progress measures that correct for the kinds of issue you are raising.

**Q94 Ian Swales:** You do not publish that do you?

**Chris Wormald:** Oh yes; if you go on a school's website at the moment, you will find its value-added score and you will be able to tell whether it is above or below the national average, which corrects for the prior attainment of those pupils.

**Q95 Ian Swales:** You have stopped putting value-added in league tables.

**Chris Wormald:** I do not think we have as yet. We are changing secondary school accountability in particular, so that it is a much wider set of measures that measures all pupils rather than just those who cross the D/C borderline. It is a system we are changing but, as I say, there is long experience of doing that. I do not think that any different issues about judging performance are raised by free schools than by any other sort of school that might have a different intake from the school next door to it.

**Q96 Ian Swales:** I have one more quick question. There is a secondary school in my constituency that has only 250 pupils. According to a lot of judgments, those pupils cannot possibly get the breadth and quality of education that they should because the school is too small. Do you have any size criteria, particularly for secondary schools, given the breadth of curriculum that their pupils should follow?

**Chris Wormald:** As I said before, we look at whether a school is financially and educationally viable at the size that it is. The right size for a school is a much debated topic. We do not set hard and fast rules. In large portions of the United States, as I am sure you know, they go for much bigger secondary schools than ours, and we see some very successful schools that are extremely small. Of course, we also see lots of examples, not just of free schools but across the maintained sector, of small schools getting around their size by sharing resources with neighbouring schools and so on, so I don't think it depends on size.

**Chair:** Ian, that was cheeky. We will hear one more question from Austin, then from Stewart, Meg and Amyas.

**Q97 Austin Mitchell:** It is legitimate to be wary of the enthusiasm to establish these schools. I do not mind experimenting with the education system, provided that it does not become an obsession, which this has. In the rush to establish these schools—and it has been a rush—the scrutiny of their targets, financial position and the kind of education they are going to offer has not been adequate.

The classic example is Kings science academy in Bradford, about which I have been reading avidly in the Bradford *Telegraph and Argus*. It was accepted by the Department, and David Cameron, the Prime Minister, praised it when he went there in March 2012. Suddenly, along comes a whistleblower making allegations about the governors. The Department for Education investigates and finds that £80,000 of public money has not been used for the purpose for which it was intended and calls in the police. Friday's *Telegraph and Argus* tells me that the head teacher has been arrested. That indicates to me that the scrutiny of that school when it was accepted was inadequate. You did not do enough checking on the character and background of the people, and on the need for it.

**Chair:** Austin, I suggest that we keep going for a bit and then come to individual cases towards the end, because there are a number that we need to raise. I do not want to stop you, so I will bring you in at that point, but there are a number of individual cases. Let

us keep the generality going and come to that in a moment, otherwise we will never get on. There are a lot of questions on Kings.

**Chris Wormald:** Would you like me to answer the general point?

**Chair:** No. Let us come on to Kings later, because there are a lot of questions that we need to address. I promise that I will come back to you, Austin.

**Q98 Mr Jackson:** I think that some of my colleagues seem to be looking down the wrong end of the telescope if we consider the thousands of LEA schools and look at the PISA results in literacy and numeracy, which were pretty lamentable. It is worth putting on the record that inappropriate conduct, corruption and very poor results did not start with the free schools programme. We have all heard of examples over the years.

I am quite disappointed with one aspect of the Report. It is slightly difficult to make a reasonable judgment on the basis of about 60 schools, which is on page 41. Given that Mr Wormald has already said that planned admission numbers are not a target, I am surprised that we are being invited to cast aspersions on these schools on the basis of 47%, which turns out to be 20-odd schools, when there are thousands of secondary schools in the country.

A separate point is that you have admirably distinguished between basic needs—that is, the need to fill numbers and respond to pressures relating to PAN—and more generic quality issues, and I accept that. However, can I ask you to consider a more—I hate to use the word—holistic approach, particularly to out-of-LEA allocations? You do not seem to have mentioned that, and it might help you to assuage some of the concerns of people who say, “Why are you putting free schools in areas where there isn’t the need?” I think that there is a corollary with parents moving their children out of LEAs with poor performance into others. By the logic of some of my colleagues, you can never build a free school anywhere in those areas again.

Taking the examples of Surrey and Hertfordshire, very few of the districts have problems with numbers, yet there clearly is a problem, because the outer London boroughs of Sutton, Kingston and Barnet all have pressures on their secondary school places because of grammar schools. People from Hertfordshire and Surrey are moving their children there. Surely the argument can be turned on its head: you need free schools to compete with out-of-LEA schools and keep those children in borough. You could talk about Bexley and Dartford or Bexley and Kent and so on. It is nonsensical to argue that just because you do not have a need for provision in a borough, district or county, you should never build a free school there. There is a reason to build that free school. I wonder what your view is on that.

**Chris Wormald:** I agree with a lot of that. What we have not done—this comes out clearly in the NAO Report—in running the programme is set hard and fast rules on the sorts of proposal that come forward. We look at the strength of the case from below. Local promoters could come forward with exactly the argument that you just outlined. We treat each

individual case on its merits. That is a fundamental building block of the programme. We do not try to define from the top where free schools should be or what type of need they should meet. We look to people in local places to come forward with exactly the sort of case that you are outlining. I cannot say that I have looked at that specific issue.

**Q99 Mr Jackson:** But perhaps you should do that.

**Chris Wormald:** I am happy to go away and think about that.

**Q100 Mr Jackson:** There seems to be a discrepancy with saying something to local authorities, which the previous Government did in very large numbers. Incredibly, in my own city, where there are massive and acute problems with primary school provision, the previous Government in their wisdom ordered the LEA to close down hundreds of primary school places in 2008, without thinking it through. We now have a crisis in the provision of places. The point is that it would help the case to say to people, “Although you are being asked on the one hand to fill spaces or shut schools”—that was the point that Mr Swales was making on Redcar—“free schools could provide an alternative in your area, without going out of borough or out of county.” You are missing a trick there. In other words, all you need is a more holistic approach in dealing with the issues that we had, for instance, in Stoke Poges, South Bucks and Slough.

**Chris Wormald:** I will certainly go away and reflect on those points.

**Q101 Mr Jackson:** What about Mr Lauener? What is your view on that? Do you agree with that? You are more at the cutting edge.

**Peter Lauener:** I think there have been some interesting cases where promoters have said, “We want this in this area, because parents are having to send their children out of borough.” I have read about quite a few cases of that kind. As Mr Wormald has said, the idea is not that there is a hard and fast set of rules. We respond to individual cases that come in, and if there is a good educational vision, good evidence that it is something that parents want and a good financial case, it can pass muster.

**Q102 Mr Jackson:** It slightly worries me, as a supporter of the free schools, that you have not given more strategic thought to making the case for free schools in certain areas. It does not seem to be sensible to have a completely localist, ground-up, laissez-faire approach, because, at the end of the day, the Department for Education and the Secretary of State are responsible for the criticism that is engendered when these decisions are felt to be wrong. **Chris Wormald:** That is certainly something that we will go away and reflect on. The programme is designed exactly as you have just described. The aim of the programme was to release local potential; not to start with a central Government view of where and on what basis free schools should be established. There are, of course, particularly in the early stages of a programme, considerable advantages in doing it that way, as I am sure you know. As soon as you set a set

of rules from Whitehall, or start with a map of where you expect those things to be, you immediately begin to crush local innovation, which the Government was extremely keen not to do. That is why the programme was designed in the bottom-up way that it was. That does, of course, leave you open to the sorts of arguments and criticisms that you were alluding to. We will reflect on what you have said, but it was designed in that way specifically to avoid what has been seen as a criticism of a whole range of Government programmes—namely, that because Government has started with the answer, we have then got the answer that it was expecting. This programme was not designed like that.

**Q103 Mr Jackson:** I understand that, and I know that you have lived through the whole bureaucratic nightmare of Building Schools for the Future, which obviously this Government got rid of quite quickly. But you do not want to go to the other extreme where you just hope that a thousand flowers will bloom and you have got no direct input into that. There has to be a middle way.

**Chris Wormald:** We will go away and reflect on those points.

**Q104 Meg Hillier:** I want to touch on the transparency of costs. When I was trying to find out about my own free school, the Secretary of State was very clear that budgets for free schools are not published prior to them opening. Will there be any change in the Department's view, or can you explain why that is, given that it is public money that it is being spent?

**Peter Lauener:** We publish on the website all the capital costs.

**Q105 Meg Hillier:** But not until they are opened.

**Peter Lauener:** Once the school is open and the costs have been confirmed. There are quite a number of schools with those costs identified. We also publish on the website the pre-opening grants, and we publish on the website the individual free school information on calculated revenue budgets. There is a lot of transparency of information. The reason for not publishing some of the capital costs until they are confirmed is that they do move around quite a lot until the school is actually opened.

**Q106 Meg Hillier:** Okay, but if you look at page 35, figure 14, it gives a range of the financial support to newly opened free schools in terms of pre-opening support, averages and so on. I hear what you are saying that, obviously, capital budgets shift. If it is local authority expenditure or any other public body, I could go and do a freedom of information request or I could just ask—in fact, I have done with other schools; we have got an academy opening in my constituency—and I can have at least a ballpark figure of what is being spent on that school. It does make a difference in terms of value for money. A lot of these schools are being opened in not very brilliant buildings, which might require quite a lot of capital expenditure, but we are all guessing. It is a bit finger in the wind. It does not seem to me to be good value

for money not to have some idea of the capital expenditure out of taxpayers' money at an earlier stage.

To take a corollary, when I was responsible for passports, we were looking at new passport offices. The best way of determining what was available locally was usually to ask the local MP, rather than relying on distant officials or a consultancy employed by the Government to look at that. Often, that local knowledge can make a difference, and it is not there if we have not got the figures to look at in the first place.

**Peter Lauener:** The reason for publishing once the costs are confirmed is that the capital costs do chop and change quite a bit during the construction phase, as the National Audit Office draws attention to.

**Q107 Meg Hillier:** Sorry to interrupt, but let us just get to the point. The Department has a sum of money in mind or an upper limit on what is possible, presumably. Some of these sites are going to be very complex to convert—they are old office buildings, or whatever—so there will be differences in cost. There were differences under the old academies programme, from which my borough benefited enormously. There were some brand new buildings and architect design. It is important that we see that, as taxpayers, and are able to question it. There is a point at which a school might just be too expensive to open in a particular building, and that might be something that we would want to question locally. Without that data, we cannot do that.

**Peter Lauener:** As I mentioned earlier, there are quite a number of cases where we have deferred the opening of a school because we just could not find suitable premises at reasonable cost. There have been a number of other cases where the promoter decided to withdraw because there were not suitable premises.

**Q108 Meg Hillier:** Mr Lauener, I think I have quite a lot of trust in you—dare I say it, a politician who trusts an official—and I am sure that you are doing a good job of looking at that and deferring and so on. However, we locally just do not know. It just feels a bit ludicrous, really. This is taxpayers' money that we as taxpayers are spending to educate our children for the future, yet we don't have the data. Are there no plans to give a ballpark figure? Do you have a little more transparency? It is not all confidential, although most of it is.

**Peter Lauener:** No, we do publish a lot of information: the pre-opening grant, the post-opening grant, the revenue costs for the school and the capital costs, once they are confirmed. They are all published and available on the website. The difficulty in publishing the capital costs earlier is that they move around a lot. There is a lot of helpful information in this Report, too, which shows some of the past variations.

**Q109 Meg Hillier:** Absolutely, and the range is quite wide.

**Peter Lauener:** The range is very high, which reflects all kinds of things. Again, special schools are obviously higher than other schools.

**Q110 Meg Hillier:** You have obviously refused some schools for being too expensive. Is that your judgment? Who in the Department ultimately makes that decision about whether a school is too expensive?

**Peter Lauener:** As the Report makes clear, we have not actually given an ultimatum and said, “We are going to stop this school because of the high costs,” but we have deferred openings. It may be that, ultimately, we do not find suitable premises at reasonable cost for some schools.

**Q111 Meg Hillier:** So there is a step beyond which the Department will not fund a school, but you cannot tell me what that is?

**Peter Lauener:** The reason is that there isn’t an absolute bar. It will depend on each individual case. If there is a very good value-for-money proposition with a very innovative proposal that has a good chance of delivering very good results, there would be a good case for buying more expensive premises. We don’t operate with firm limits, but we control the costs very carefully to deliver value for money to the taxpayer, such as by reusing a lot of premises and by successfully driving down contracting costs.

**Q112 Chair:** Have you turned down any proposal on the grounds of high capital costs—just yes or no? I think that is what Meg is getting at.

**Peter Lauener:** We have deferred seven cases.

**Q113 Chair:** Have you reduced the costs in those cases?

**Peter Lauener:** The hope is that we will still find suitable premises for those seven cases.

**Q114 Meg Hillier:** But some of those seven might never go ahead because of the potential capital costs.

**Peter Lauener:** We are still working to find suitable premises for those seven cases.

**Q115 Meg Hillier:** I will move on to revenue, if the Chair will indulge me. If you look at waves 2 and 3, three schools were allowed to open with an overall red rating for risk. Who makes that decision?

**Peter Lauener:** I think you are referring to the “readiness to open” meeting.

**Meg Hillier:** Yes.

**Peter Lauener:** This is the point at which my officers gear up for their monitoring role. A red rating does not mean the same as a red rating on financial risk. We apply those risks later on, when we monitor every free school monthly. It might be red because something has not yet been done. There might still be an issue with the premises that needs sorting before opening. That issue has to be sorted before the school opens, but it does not mean that the school is very vulnerable at that stage.

**Meg Hillier:** Right. So if it does not get sorted, the school would not open.

**Q116 Chair:** Hang on a minute. On page 21 of the Report, paragraph 1.21 states: “Three Free Schools from Waves 2 and 3 were opened”—there was no delay—“having been assessed with an overall ‘red’ rating...at this point.” So it wasn’t that you delayed

their opening. What were the risks that you decided that you could take in opening the schools?

**Peter Lauener:** At the “readiness to open” meeting, at which we make those judgments, we assess whether the financial plans and the governance are in place and whether the site is ready. In some cases, they will not quite be ready at that point, but we expect action to be taken.

**Q117 Chair:** So the finance and governance might not have been in place?

**Peter Lauener:** Let’s say that we get to the “readiness to open” meeting and—

**Q118 Chair:** Sorry to stop you, Peter, but these are schools that opened with a red or red-amber rating. You took that decision; you took a greater risk. I think that is the point Meg is getting at.

**Peter Lauener:** But the point I am making is that the rating is given at the readiness-to-open meeting. If the issue that was rated red, which might be a premises issue, has not been sorted, that does not mean that it cannot open at that point. It means it still needs sorting, and we are monitoring all those things and ticking them off as they happen.

**Q119 Chair:** Were any of the schools where things have gone wrong ones that were given a red or red-amber rating?

**Peter Lauener:** If they were issues that made it impossible for the school to open, of course we would defer—

**Q120 Chair:** No, you opened these schools. Were any of these schools that later had trouble, such as Kings academy, which Austin raised? Are you taking a risk that then leads to problems?

**Peter Lauener:** No, because what we are doing is identifying things that still need to be sorted and then gradually ticking them off.

**Q121 Chair:** None of those schools had any problems later.

**Peter Lauener:** The schools from waves 2 and 3—

**Chair:** Which had a red rating and which opened.

**Peter Lauener:** This is not about those schools—Kings science academy, Al-Madinah and Discovery—

**Chair:** The one in Sussex.

**Peter Lauener:** That there have been particular problems with.

**Q122 Meg Hillier:** I want to ask what role Ministers have in this as well. Officials—you—make decisions. Do Ministers then decide?

**Chris Wormald:** Yes.

**Q123 Meg Hillier:** So they take the ultimate decision. Have they ever gone against an official decision? Have they ever taken a different view from the recommendation of officials?

**Chris Wormald:** I will say a couple of things. Civil servants, as I am sure you know, do not discuss the advice we give to Ministers and whether Ministers go with that advice or not. We defend, as it were, the safe space for free and frank discussions between officials



and Ministers, so I will not answer your question directly. It is of course right in principle that Ministers should get the final say. The job of a Minister is not simply to sign off advice given to them by their civil servants. Ministers do on occasion go against official recommendations, and that is part of their job.

The way the free schools application works, which is common among a lot of Government programmes, is that decisions of that type—whether to go ahead with a school or not—are frequently iterative between Ministers and officials. Officials will give some advice. Ministers will come back with questions and challenge various parts of that advice. Officials will come back with further advice. And out of that process a decision will finally be taken by the Minister, so this is not a black-box process, in which advice from a civil servant goes forward and comes back with a set of ticks and crosses. I am not going to go into the details of individual cases, for the reason—

**Q124 Chair:** Have you ever used your accounting officer powers to ensure that money is properly spent and there is value for money?

**Chris Wormald:** Neither I nor my predecessors as permanent secretary—

**Chair:** In this context.

**Chris Wormald:** Have ever needed to seek a direction, which I think is what you are referring to, in relation to free schools. Were we to do so, we would be informing this Committee in the normal way.

**Q125 Chair:** Can I just raise this issue, because I think it is floating around in the ether on this one? The Minister charged with these decisions—I understand that that is not for you—also owns and runs three free schools. What arrangements do you have in place to ensure that there is no conflict of interest?

**Chris Wormald:** We put in place a series of robust arrangements upon that Minister's appointment of exactly the type you would expect. He is not engaged in any decisions that would affect either a school that is part of the group that he is involved with or any neighbouring schools to that. We deal with it in exactly the same way as we would if a Minister had a constituency interest. They absolve themselves from any decisions relating to that case, and it is passed to another Minister to determine.

**Q126 Chair:** And you are completely happy with that arrangement.

**Chris Wormald:** Yes.

**Q127 Chair:** And that another Minister in the Department takes decisions in relation to any schools that he wishes to open under his company.

**Chris Wormald:** Yes.

**Q128 Chair:** The interesting thing in relation to what we saw in *The Guardian* this morning was that, in a number of those schools, the staff had had to sign confidentiality clauses, which this Committee has taken quite a strong view on. Have you overseen that, to ensure that that is appropriately used, before you vetted?

**Chris Wormald:** I don't remember seeing that in *The Guardian* story—

**Q129 Chair:** Well, I have seen it in one of *The Guardian* stories over the past day or two. That is the case: there are a considerable number of confidentiality clauses on people employed in that trust, which is totally against our view. Also, some—the head of one of the schools—left within six or nine months, subject to a confidentiality clause. We take quite a strong view on that.

**Chris Wormald:** I am not aware of any allegations—

**Q130 Chair:** Is it the sort of issue that you would look at, generally?

**Peter Lauener:** With the cases raised in *The Guardian* this morning—

**Q131 Chair:** I am talking specifically about the issue of whether or not, with staff employed in free schools with public money, you have a policy on whether confidentiality clauses are appropriate for people employed in those instances. We take a strong view on that, in relation to hospital trusts and how such clauses have been abused there. I think that we would take a similar view in relation to free schools—

**Peter Lauener:** This is confidentiality clauses when people leave.

**Chair:** Yes, well, obviously, they come into effect when they leave. But if they are signed, and in particular in relation to Lord Nash's—this was in relation to the head teacher who only survived a few months.

**Peter Lauener:** We do not have specific requirements about that in the "Academies Financial Handbook", but we lay down quite a lot about severance arrangements and about the tax arrangements of employees—

**Q132 Chair:** Do you lay down specifically around confidentiality, which we have a strong view on?

**Peter Lauener:** I don't think we have got a particular requirement on that.

**Q133 Chair:** It is very important, particularly with the fragmentation and independence, that people should feel free to talk about anything that they think is an issue of public interest.

**Chris Wormald:** Any academy employee is covered by the whistleblowing legislation anyway.

**Chair:** So what do you do in these instances?

**Q134 Mr Bacon:** Regardless of the whistleblowing legislation, you would agree, would you not, with David Nicholson that confidentiality clauses in severance agreements have a chilling effect? You would agree with that, would you?

**Chris Wormald:** The only reason why I am not saying yes is that that is clearly what we now do in government—as the Committee has discussed before—but we are talking about autonomous institutions.

**Q135 Mr Bacon:** We are talking about autonomous institutions, which use public money to make these

severance payments. That, surely, is the issue. It is public money that is used to make the severance payments, isn't it?

**Chris Wormald:** Yes, and we—

**Q136 Mr Bacon:** Isn't it?

**Chris Wormald:** Yes.

**Mr Bacon:** Thank you. Just checking.

**Q137 Chair:** And, therefore, the issue of whether or not confidentiality clauses inhibit people from talking about issues when they part company with a particular academy trust matters, doesn't it? And it should. You ought to, in the arrangements that you make with trusts, ensure that there is no inhibition caused by the use of confidentiality agreements in people's contracts.

**Peter Lauener:** We have set out a lot in the "Academies Financial Handbook" about what we expect around severance arrangements and tax arrangements, but we have not, I think, covered this particular point.

**Q138 Chair:** Will you please look at it, because this Committee takes a strong view? It is going to be a growing issue in the education service, as it is in health. It has had a very bad effect in health on our ability to find out what has been happening in particular hospital trusts.

**Chris Wormald:** We will certainly go away and reflect on that point.

I wanted to add that I am not aware—you may have read things different from what I read—that there were any particular accusations about Lord Nash in this. I would not want to leave those on the record without going away and checking.

**Chair:** It may well be that it is a clause in the contracts that he provides to his staff in his trust.

**Q139 Mr Bacon:** If you could send us a note, we would like to know. Before we leave the subject of paragraph 1.21, may I ask you to confirm a couple of things. It says at the bottom there, that there were three free schools from waves 2 and 3. Which three free schools were they?

**Chris Wormald:** I'm sorry, but for reasons I described earlier, we don't reveal our individual assessments on schools or discussions with Ministers.

**Peter Lauener:** Can I add a point on those three free schools. I don't think I explained this very well, but the issues that were rated red at the readiness-to-open meeting for those three free schools were sorted before they opened.

**Q140 Mr Bacon:** So they were opened having been assessed with an overall red rating, and before the opening took place—

**Peter Lauener:** They were assessed at the readiness-to-open meeting and there were three issues that needed to be sorted.

**Q141 Mr Bacon:** And then they were sorted before the opening took place. Obviously there is a criterion on which one can be judged red, amber or green, and there were several such criteria, such as governance,

financial management, whether you have any staff, and that sort of thing. How many criteria are there on which you are assessed that contribute to your overall red rating or not, as the case may be?

**Peter Lauener:** It would probably be helpful if I wrote with details of the criteria.

**Q142 Mr Bacon:** How many are there?

**Peter Lauener:** About six.

**Mr Bacon:** Just list them.

**Peter Lauener:** One is about the site and whether it is ready or work still needs to be done. One is about staffing and whether it is complete and ready for what is needed. One must be about the governing body and whether all members of it are in place.

**Mr Bacon:** Finance.

**Peter Lauener:** The finance one would be—

**Mr Bacon:** I am asking whether there is a finance one.

**Peter Lauener:** There must be something about the financial plans of the trust.

**Mr Bacon:** One would hope so. I am just asking if that is the case.

**Peter Lauener:** I think it would be helpful if I wrote and gave the details. They are the kind of things I have talked about.

**Q143 Chair:** What are the others? You can't remember.

**Mr Bacon:** You've got four out of six.

**Peter Lauener:** I can't remember.

**Chair:** You can't remember. Okay.

**Q144 Mr Bacon:** On the three free schools from waves 2 and 3, I know you don't want to say which schools they were, but what were the criteria that were assessed as red? I think you mentioned that the site was one in one case. Presumably to get an overall red rating, at least 51% of the problems must be unsolved. Is that right?

**Peter Lauener:** All I can say is that the issue that led to them being rated red was sorted before opening. I do not have details in front of me.

**Mr Bacon:** When you send us the list—

**Q145 Ian Swales:** Can we run this, because it is in English in the report, which says that the schools "were opened having been assessed with an overall 'red' rating...at this point."

**Mr Bacon:** Does "at this point" mean at the point when they were opened or—

**Chris Wormald:** No. It means at the point of the readiness-to-open meeting. There is a formal readiness-to-open meeting when the red, amber, green system is used. That is then an historical thing. It is what it was rated at at that meeting. As Peter has described, what you get out of the meeting is a list of things that need to be sorted before it is opened.

**Q146 Chair:** Do you want to clarify the NAO Report, because it says "were opened".

**Mr Bacon:** And it does say "at this point".

**Aileen Murphie:** "At this point" refers to the readiness-to-open meeting, which can vary, but it is

about four to six weeks before the school is due to open. It is quite close.

**Q147 Mr Bacon:** Mr Lauener, when you write to us with the six or seven criteria, however many there are, will you also say for each of those three schools which of the criteria at the readiness-to-open meeting had been met and which were red?

**Peter Lauener:** I am happy to do that. Can I make a further point on that? The criteria they are assessed on don't just stop at the opening point. The free school check list is used for ongoing monitoring through the early months of the free school's life. We don't just stop at that point. We monitor anything that might still need action afterwards.

**Mr Bacon:** I should hope so.

**Chris Wormald:** Can I add for completeness on the pre-opening check that the other half of the check is the Ofsted pre-registration inspection, which is exactly the same as the inspection it does for any school that is opening before it is prepared to register it. That is what they do for independent schools as well. So there is an Ofsted part to the pre-opening checks, as well as what the Department does.

**Q148 Meg Hillier:** I just want to touch on revenue funding. Earlier, Mr Wormald, you talked about pupil numbers not being the single critical issue in free schools. However, figure 7.3—"Sound financial plan to underpin delivery of education plan"—talks about "Pre-opening (post-approval to opening)...Financial viability explicitly tied to pupil recruitment." It fleshes out how the Department is improving its approach. There is a point at which a school will not be viable. When would you step in if it didn't have enough numbers?

**Chris Wormald:** What I am saying is that we don't set a target for numbers, which is the question that Mr Mitchell asked me. There are two elements to whether a school is financially viable: its income, which is directly pupil-related, and its operating costs. When schools are in deficit, the Education Funding Agency goes in and works with the school so that it is not in deficit. Peter can explain how they do that. Were a school to be long-term financially unviable—i.e. there is no way that it can meet its operating costs from its income—we would look at the future of that school. What we don't do—this is the question I was answering from Mr Mitchell—is have a pupil number target. We look at whether the school is viable. It would be helpful if Peter talks about what they do.

**Q149 Meg Hillier:** Further to that point, how long do you give a school to become viable? You talked earlier about demand, and in London that is a bit of a red herring, because there are six school choices for every secondary pupil, and a brand new free school is the seventh choice. Demand is therefore a bit of a red herring.

**Chris Wormald:** Yes. The question we ask ourselves is, is there a long-term viable school here? We don't set a cut-off point.

**Meg Hillier:** So how many years do you give?

**Chris Wormald:** Peter, do you want to talk about how we deal with deficits?

**Meg Hillier:** I just want to know how many years.

**Chris Wormald:** It varies from case to case.

**Q150 Meg Hillier:** Could you close a school within a year if you really felt that it was bad?

**Chris Wormald:** We certainly never have. As I say, the pre-opening checks should prevent us from getting into those circumstances. Peter, do you want to talk about what you do when a school is in deficit?

**Peter Lauener:** Perhaps I can give a general answer about academies, which applies to free schools as well. We would look for a recovery plan, and we would not give any financial support unless there was a recovery plan. We would expect, in normal circumstances, that a recovery plan would last for two or three years, and would not go on and on forever. Any school in that situation would have to make significant changes to its structure if it had too large a teaching or non-teaching staff. We would want a strong assurance that future pupil projections are reliably based, because, of course, that is the main future income generator. We take a fairly hard-nosed view of that, but, as was said in the earlier discussion, it is not a hard and fast decision based on an algorithm. Quite a bit of judgment is required about what a deliverable and manageable recovery plan is for any particular school or free school.

**Q151 Meg Hillier:** So pupil projections, as in the Durham case, might come into it. One final point, Chair. The maps in figures 5 and 6 demonstrate graphically that nearly as many free schools were opened in London as in the rest of the country put together, which is unsurprising. Does that not suggest that the policy is focused on an area that has very good educational attainment—and, indeed, population growth, so we do need more schools? Is that what the policy was set out to do? Did you have a vision in mind when the policy was set out that it would provide more schools in London than elsewhere?

**Chris Wormald:** No, we did not. As I was discussing with Mr Jackson earlier, it is a demand-led programme. Undoubtedly—for a variety of reasons, including, as we discussed, basic need—there is a lot of demand in London.

**Meg Hillier:** Even though London outperforms the rest of the country?

**Chris Wormald:** But there is, particularly in east London, a big demand for new school places, so you would expect those areas to come forward. However, we would want to see free school proposals coming forward from all parts of the country where there is need. One of the things the National Audit Office does report is that there are areas of the country where proposals have not been coming forward. We have been working with the New Schools Network on how we would promote proposals from those areas.

But as I was discussing with Mr Jackson earlier, we did not start with a national map of where we wanted them. We wanted to respond to the applications we got, so we had no view on what the correct distribution was.

**Q152 Meg Hillier:** Would there be a saturation point? East London does not have that many

compared with west London, but would there be a saturation point where you would say, “No more”?

**Chris Wormald:** Again, we would not want to make a hard and fast rule, but we undoubtedly will and do want to look at whether we are meeting the needs of the area. We have had cases that—

**Q153 Chair:** How are you defining need?

**Chris Wormald:** That is my wider definition of need. We have had cases such as one in north London, which was a higher scoring proposal that did not go forward because it was very similar to another free school application in that area; in fact, I think they were actually after the same site. We look at those sorts of practical issue, but as I said, we did not start with a map of how many free schools we wanted in any particular place.

**Amyas Morse:** I want to go back to something that Ian Swales asked quite a long time ago now. What would happen if you had a school which apparently did not get off the ground with any level of viable pupil numbers, and that continued into the longer term? But in fact, that is specifically covered in your funding review, isn't it?

**Chris Wormald:** Yes.

**Amyas Morse:** So the answer to that is that, allowing for all the flexibilities that you have discussed, if it was clear that you were not going to get anywhere near the pupil levels that you were expecting and you did not see any way of getting them, then you would probably agree to close the school in those circumstances?

**Chris Wormald:** Well, I do not really want to answer hypotheticals.

**Amyas Morse:** I am only reading the rule that you have got.

**Chris Wormald:** That is the procedure set out, but I want to stress that what we look at is whether this is going to be a viable school, rather than a particular target number.

**Amyas Morse:** I can see that. The other very quick comment on finance is that we observed as we were doing our work that the average academy cost is going up quite sharply. What reason do you associate with that, or is it of concern to you at all? It is trending up by about 30% at the moment. How do you see that? Does it matter?

**Peter Lauener:** There are cost pressures in the system. One difficulty in terms of managing the overall budget is that the idea of an average cost per free school does not have a lot of traction when the mix might change between secondaries and primaries, and all-throughs and special schools.

**Amyas Morse:** So you don't think it is a significant trend, or you just don't think you should worry about it?

**Peter Lauener:** If you look at the figures in the Report, there is a significant increase in the number of secondaries, all-throughs, special schools and alternative provision schools, which are all quite expensive per pupil. It is also the case that, as everyone will be aware, property prices in London have been rising, and it has been more difficult for us to get peppercorn rents, which is always our starting point with any capital site where we need a new

building. It is not just property prices; the construction market is also getting rather more buoyant than it has been for the last few years, so there are cost pressures in the system which we need to manage carefully.

**Q154 Chair:** What is worrying about that is that on page 31, it says that where you purchased freeholds, you paid over your own valuation on 63% of them.

**Peter Lauener:** If I could pick that up, first of all, I draw the Committee's attention to figure 12, which shows—

**Q155 Chair:** What page is figure 12?

**Peter Lauener:** It is on the bottom of the same page. It shows the number of peppercorn leases over the first three waves: 46% of new premises were peppercorn leases. That is obviously the best value that we can get. We then need to buy quite a number. Of those cases, as the Report draws attention to, half were over what is called Red Book value and half were at or below Red Book value, but if you put the peppercorns in place, only 22% of all the sites that we found were—

**Q156 Chair:** You can always say that the average is all right. I am asking you specifically about the issue that—

**Peter Lauener:** Why did we pay over—

**Chair:** You obviously get the peppercorn where you can, but there is still a value-for-money issue if you are paying more than your own valuation suggested in 63% of your freeholds. That is £27 million of public money.

**Peter Lauener:** There is quite an important point in footnote 6: “The valuations were commissioned from chartered surveyors and provide an indication of a property's market value. They are based on past deals for similar premises and on the property's existing use. They may not therefore equal the true market value.” I view it a little like a mortgage valuation, which are usually quite conservative. Whoever provides the market valuation wants to ensure that they are not later accused of over-valuing the premises. To be in a position where half of these purchases are over, in a rising market, and half are under is not bad.

**Q157 Chair:** But 63% are over. It says so on page 31—63% of premises where you bought the freehold are over. That is two thirds.

**Peter Lauener:** I think that that is where we have bought temporary premises. The overall freehold figure is 50% above and 50% below. Where we are in temporary premises, the figures are those that you have just quoted.

**Aileen Murphie:** No, the 63% refers to ones that did not need temporary accommodation.

**Q158 Chair:** Paragraph 2.7 on page 31 states that “it paid over its valuations for 63 per cent of these freeholds”.

**Chris Wormald:** No, it is 63% of freeholds compared with 30% when purchasing the freeholds that do not need temporary accommodation. The point that the National Audit Office is making is that—

**Chair:** So when you rush at something, you pay more.  
**Peter Lauener:** I do not necessarily think that it is where we rush, but we are more likely to be using temporary accommodation where it is more difficult to secure premises.

**Q159 Chair:** I accept that you are using temporary accommodation. You almost make the point yourself. If in other freeholds where you are not in temporary accommodation you are managing to pay less, why are you paying more for those ones where—

**Chris Wormald:** You would only go into temporary accommodation where it is more difficult to get a site.

**Chair:** I understand that, of course.

**Chris Wormald:** It is not a directly comparable situation.

**Chair:** But you are not buying that temporary accommodation; you are buying something else.

**Chris Wormald:** Yes.

**Peter Lauener:** Let me give you an example of a case when we paid over market valuation. We bought an office block in east London, where property is obviously very hard to come by. By buying that and then converting it, we were still able to deliver the new school at a cost per place in line with averages. It is therefore not just a case of looking at the capital cost; we need to look at the overall deal. Obviously, if we had been able to buy at or below Red Book value, it would have been even better value for the taxpayer, but we look across the piece at the overall cost of the programme.

To pick up the point about the cost of temporary accommodation, which is also referenced in the Report, it is quite a small proportion of the overall cost at about 2.7% of the capital cost. We are saving 45% on the construction costs. So looking at the programme as a whole, it is a pretty good deal for the taxpayer.

**Q160 Chair:** How many free schools do not have playgrounds or outside play space? I cannot imagine that that office space will have much playground. It might have a garage.

**Peter Lauener:** Again, it is quite difficult to answer that and I do not have a figure, but I can give you two examples. There are a couple of free schools where we have put an outdoor play area on the roof. We have done that with other buildings.

**Chair:** Blimey.

**Peter Lauener:** With appropriate safety arrangements—

**Chair:** The two mums here are looking on in horror.

**Peter Lauener:** Equally, some free schools have made arrangements with—

**Chair:** The only way that it will work is if it looks like a prison.

**Peter Lauener:** I have been on the roof of an academy where I thought it was actually quite a good arrangement. Other free schools have made arrangements with local parks or local—

**Q161 Chair:** You are avoiding the question. How many have not got playgrounds or outdoor spaces?

**Peter Lauener:** I do not have a figure.

**Q162 Chair:** Why not? Can you get me the figure?

**Peter Lauener:** By giving these examples I am illustrating it is not a straightforward answer. Again, I was at a free school in Birmingham, which was a converted office block. Actually, they do have a small playground but they are just down the road from—

**Q163 Chair:** Have you got the figure? I know of schools, even with their playgrounds, who share playing fields. That is always a really good thing, and I am a particular advocate that private schools should share their playgrounds in inner London, where there is a huge need; but how many schools don't have playgrounds or play spaces?

**Peter Lauener:** We will take that away and see if we can provide some more accurate information, but it is quite a difficult thing to specify, and what all free schools, and, indeed, all schools, will need is access to outdoor play areas.

**Q164 Chair:** Well, as I said to you, I am very keen that that should happen. Very often in inner London, private schools have wonderful playgrounds. My children went to a school which was close to one and we couldn't access the private school playing fields, and they had to go miles out to Barnet or somewhere to get their playing fields.

**Q165 Ian Swales:** The early years national curriculum says that young children should spend a lot of time outside; so, again—is your free school programme offering the freedom to not give that kind of provision to young children?

**Chris Wormald:** No. As Peter says, they have to be able to deliver the full curriculum, which includes PE and sport. Now, clearly it is ideal if we can always find sites where play space is just outside the building, in the way that it is in many traditional schools. In a number of the places that we are building, particularly in inner city areas, you simply cannot find sites that have that, in which case—

**Q166 Chair:** All we are asking for is the information.

**Chris Wormald:** We can certainly give you more information; but in those cases you do have to do the kinds of things that Peter is describing about making other arrangements, whether that is sharing facilities with other schools or other things.

**Q167 Jackie Doyle-Price:** Much of this afternoon's discussion with regard to value for money has focused on the ratio of pupil places that would be generated with free schools, but that ignores the other aspect of value for money, which is the outcomes that we are achieving through the money spent. I attack this very much through a prism of being in that circle where there is rather higher demand than perhaps for Mr Swales, who reflects a community where there is more provision per head.

I represent an area which has one of the worst performing local education authorities in the country. I think over decades that authority has basically managed its pupil demand by effectively supporting failing schools because there was not enough leeway in the system to really satisfy and give parents and

pupils the education that they deserve. That has failed the children for decades.

The one thing that this policy has done is give me and parents in my constituency the opportunity to finally address that. We have got two free schools approved already; two more coming this year; and I really hope that this will achieve the step change in performance that the community needs. If we are looking at it in the long term would you expect the amount of competition that free schools are bringing into the system to raise outcomes and therefore achieve better value for money?

**Chris Wormald:** Yes, and the research evidence I pointed to earlier from both Sweden and the USA does suggest that if you run these programmes well—and of course you have to run them well—you can not only establish new, excellent schools that are a good thing in their own right, which are achieving better outcomes than were previously available to those children and parents, but you can also begin to have a more system-wide effect in which standards in other schools are raised by the increased choice and competition that is on offer. That is certainly our objective for the programme.

**Q168 Jackie Doyle-Price:** Coming back to the Report, in the summary we have a series of recommendations. Paragraph 22 (b) states: “Some higher-scoring applications were rejected by the Department, mostly on practical grounds.” Can you give me a bit more information as to why you might have rejected applications that scored highly?

**Chris Wormald:** The first thing to say about the scoring mechanism is that it is a guide, not a formula. This is not a programme where the scoring system determines the outcome. It is part of the advice that is put to Ministers, who make the ultimate decision. As I said, I am not going to discuss individual cases, for the reasons that I have set out, but I have already given one of the examples of where you might have a high-scoring application that does not go forward, which was the example I gave in north London, where you had two high-scoring applications that wanted to open on basically the same site. Obviously, we were not going to go forward with both of them.

There is another example—again, I will do it in an anonymised way—where there were low standards in the area, which was the base case for the free school, but we were also pursuing, in those local schools and at a cost to the taxpayer, a number of sponsored academy solutions to try and raise the standards of those schools. It was considered, despite the fact that the application had strengths of its own, that we should not be duplicating effort in that area both by spending money on sponsored academies and by spending money on free schools. Again, you had one that was high-performing, in score terms that did not go forward.

**Q169 Jackie Doyle-Price:** Whose job is it to fix a solution in that context? What I can see—I have witnessed it locally as well—is that you can see areas of need and interested parties will think, “I’ve got a solution to that.” If they are all working in their silos and coming up with applications, is it your job to

enable and get people together, or is it the local authority’s, or is it “Suck it and see”?

**Chris Wormald:** I have said before that it is a bottom-up programme, which, as a matter of policy, we are not trying to micro-manage from desks in Whitehall. We are looking at what local solutions are coming forward to the kinds of challenges you are describing. We do not attempt to manage the market in the way that you are describing. What we do is make sure that when we are taking decisions and advising Ministers that we are not putting forward contradictory advice, which would have been the case in the two examples that I have given you.

**Q170 Jackie Doyle-Price:** So it is a dynamic process. It is liberating. People can show initiative and bring their own imagination to it. They then have to demonstrate the need. Having been through this a number of times, it is quite a robust process to demonstrate demand, so I am still puzzled as to how the school got through, as Ian described—

**Chris Wormald:** As I say, I am not going to—we will write on the individual case. I should say two things about the application process. One—I think the National Audit Office Report tells the story extremely well—is that we have evolved our processes from wave to wave. We have learned from the experience and we have enhanced our processes as we have gone. There was a very big difference in how we did applications for wave 1 from wave 2 and onwards, when we introduced an application date and an interview stage into the process—we have adapted our processes as we have gone along. We have not and have never claimed, although we think that we have a rigorous application process, that that would guarantee that every single school would go as we wanted. There were some cases that I think the Chair wishes to come on to at the end of the hearing, where it has not gone as well. The view we have taken is that you have to have as rigorous a process as you can, which nevertheless does not crush all innovation out of the system. If you are opening 174 new institutions, unfortunately some of them will not go as planned. That is true of free schools and it is also true of maintained schools, where we have more schools in special measures than we would like in completely traditional schools. We never expected to be able to have a pre-opening process that would mean that every single school succeeded.

When we look across the results even of wave 1, which followed a rather different process, the overall Ofsted scores for free schools are encouraging. That is not to say that we do not do anything about the ones that have not been going well. We take the view that we allow people to take some well-managed risks, and when things go wrong we have to take decisive action to put it right again, which we have done in the three cases that have been of most public concern.

**Q171 Jackie Doyle-Price:** It is worth putting on the record that as free schools come on track and get ready to open, those schools locally that feel threatened are very vocal in articulating their opposition. Quite often the heads of these schools are community leaders in their own right. There is a need

to recognise the various stages in the process where the journey gets difficult.

**Chris Wormald:** Yes, and what we see is very different in different parts of the country. I visited a free school in London recently which had the full support of the local authority. It was meeting basic need, and they provided the building. When you went to visit the school, the local authority helps to show you around. I would not want to leave the impression that every single free school application is controversial.

**Q172 Chair:** They don't have much option, Mr Wormald. If you have got a need and you have not got money in your local authority budget, you have to go for a free school. There is no other way, unless you are prepared to fund it locally.

**Chris Wormald:** I think you are doing local government a disservice. The authority I am thinking of—I will not name it—has a long track record in promoting choice and diversity and this sort of programme. What I am trying to say is that we see lots of different reactions locally to free schools. Because we tend to focus on the controversial ones, that can leave the impression that every single one is controversial, which is not the case at all.

**Q173 Jackie Doyle-Price:** And you find different attitudes within the same local authority, depending on the bid.

**Chris Wormald:** Exactly.

**Q174 Jackie Doyle-Price:** One final thing about capital costs. There is a challenge, isn't there? Landowners are not stupid, and the bid for a free school is usually accompanied by quite a high-profile campaign. You have to identify a potential site as part of the bid, and they soon work out whether it is attractive or not. Presumably, that is giving quite an inflated value to the site, just by the sheer fact of approval, especially in areas that are densely populated.

**Chris Wormald:** That comes back to something that Ms Hillier, who has left, raised earlier. It is not a secret that we are seeking sites not just for free schools but to expand education provision more generally. Particularly in London, where there are lots of calls on the same sites, that undoubtedly affects the negotiating position. It is sometimes better not to publish exactly what the Department's budget is for a particular project early, because that gives a lot of information to people whom you are potentially negotiating with. EFA has got very good at negotiating sites and overall capital costs despite all those pressures.

What you raise is undoubtedly an issue. The more pressure there is on land prices as the economy grows, and the more school places we need—particularly in certain parts of England, including London—those pressures will get worse. In answer to Amyas's earlier point about whether we were concerned about rising capital costs, we always have to be concerned with those things, because every extra pound we spend on one site is something we cannot spend on a free school in another part of the country.

**Q175 Chair:** I just want to move us on a little bit. We all know that there are schools in the local authority sector that raise concerns and have problems, but we are focusing today on the free school programme. How many schools, of the existing 140, do you have real concerns about? How many do you have on your danger list?

**Peter Lauener:** The system that I described earlier—can I say a little more on how that system works?

**Q176 Chair:** It would be lovely to have an answer to the question, Peter. How many?

**Peter Lauener:** There are four on our concerns list. Three are those that are very much in the news: the Al-Madinah school, Kings science academy—

**Q177 Chair:** I have six on page 36.

**Peter Lauener:** That is a different measure. Again, what I am talking about is the current financial and governance concerns list. Four are on the list, out of 27 academies nationally. I mentioned three that are very much in the news, and the fourth I will not mention. It is not a governance issue—there is no impropriety—but a financial deficit issue, which we are working through with the free school concerned.

**Q178 Justin Tomlinson:** As a percentage, how does this compare with standard schools? Presumably there are problems in some of those schools as well.

**Peter Lauener:** It is a slightly higher proportion with free schools, but that is not surprising, given that they are new. If I look at the broader academy picture, it is 27 out of well over 3,000. It is less than 1%, which is not a bad figure at all. I expect the position with free schools to settle down.

**Q179 Chair:** That is an apple and pears thing, is it not? Many of those academies were set up specifically because the schools were failing and academy status was a way to try to turn them around. You were deliberately inheriting schools that were trouble.

**Chris Wormald:** I think that the six number—

**Q180 Chair:** Where is the six number from? Page 36 of our report is where I got it from.

**Aileen Murphie:** That is about educational standards.

**Chris Wormald:** I think that that is the number where our education advisers, when they go in for either the first term visit or the fourth term visit, have raised some concerns. I will not name the individual places, for reasons discussed earlier. The purpose of those visits, as we have discussed, is to see how that school is getting on, to see what needs to be done differently and to intervene where necessary. Then, when you get to the ultimate test, which is the full Ofsted inspection that happens within the first two years, that school is hopefully in a good place. As I said, wave 1 schools have been inspected so far and that is true in 75% of cases. We have two schools that, following an Ofsted inspection, have been in special measures. Those schools are Discovery and Al-Madinah.

**Peter Lauener:** Can I just confirm that of those six, three of the four—apart from Discovery and Al-Madinah—are no longer of concern? The fourth is expected to move out of the concern list shortly.

**Q181 Chair:** What I do not understand about Discovery is why you did not listen to the Montessori Association, which told you that it would not work. It is about learning for the future. You set up a Montessori school and the Montessori Schools Association, which presumably is expert in the Montessori methods and things, told you that it was worried about the school's viability. Why did you not listen to that?

**Chris Wormald:** Well, we will have to look at the lessons learned from all these cases.

**Q182 Chair:** So that might have been a mistake.

**Chris Wormald:** We will look into those matters.

**Q183 Chair:** Let's go to the Kings science academy, where there are a number of issues. The first is that you did your own internal report on it and you sent it to the fraud authorities.

**Peter Lauener:** Yes. Could I correct myself? We did not send the report to the fraud authorities.

**Q184 Chair:** You sent the concerns.

**Peter Lauener:** We used the system that was established, with a bit of the fraud system called Action Fraud, and we notified them, in the way that we were asked to notify them, giving them all the information about the details of the fraud. They had all the information, and they have said that they had all the information that they needed.

**Q185 Chair:** Did you give them all of the invoices that were potentially fraudulent?

**Peter Lauener:** We explained our concerns and that we thought that there was a case of fraud to look at.

**Q186 Chair:** Did you give them all the invoices that you thought were potentially fraudulent?

**Peter Lauener:** We did not give them the documentary evidence, because we were making the notification of the incident, and we would have expected that then to be followed up—

**Q187 Chair:** And when it was not, why did you not do anything about it? In the first instance, clearly, if you did not give them the evidence, they would come back and say, "We are noting this", which is what they did. So I cannot understand why you did not give them the evidence in the first instance. But then—

**Peter Lauener:** We were following the system that was laid down. When Action Fraud came back, when the story broke on "Newsnight" back in October—

**Chair:** That is what is so stupid about it; you should not have had to wait for public disclosure for you and everyone to act. I am all for public disclosure of things going wrong, but it is not appropriate to wait for that to get people to take action.

**Q188 Austin Mitchell:** And you acted only after a whistleblower had drawn attention to what was going on to you.

**Peter Lauener:** That is not quite the case.

**Q189 Austin Mitchell:** It was a whistleblower who unearthed the information, not you.

**Peter Lauener:** No, in the case of Kings science academy, we had done our own assessment of its financial management and governance. This is on the Department's website; we have published that report. Our findings were that these things were inadequate. We told Kings science academy that.

**Q190 Chair:** You thought that there were 20 fraudulent invoices, didn't you?

**Peter Lauener:** This was further back, when we did our assessment of their financial management and governance. We decided that it was inadequate, so we decided that we would do a review. Just at that time, a whistleblower also indicated concern, so the two things came together, which led to the investigation, which led to the referral to Action Fraud.

**Q191 Chair:** But when you referred, you knew that there were invoices that were fraudulent.

**Peter Lauener:** Yes, we did. Well—

**Q192 Chair:** Why on earth did you not give them to the fraud authority? When the fraud authority came back and said, "We are noting this", why on earth did you not pursue it? Why did you have to wait for a "Newsnight" programme before action was taken?

**Peter Lauener:** Before the "Newsnight" programme, we had actually checked out with Action Fraud whether they were pursuing this and whether they needed more information—we phoned them. Action Fraud said that they had decided not to take any further action, and we had to take them at their word.

**Q193 Chair:** But you had not given them the information. You cannot have it all ways. Either they had the information of the fraudulent invoices, in which case—

**Peter Lauener:** They had the information. We set it out for them in the notification that we made.

**Q194 Chair:** What, that there were 20 potentially fraudulent invoices?

**Peter Lauener:** We have not got a full record of the conversation, but we set out for them that we had concerns about fraudulent invoices. We then followed it up subsequently to be told that Action Fraud had decided that—

**Q195 Chair:** So it takes a "Newsnight" programme to get them to take action. It is not satisfactory.

**Peter Lauener:** It is difficult for me to comment on that. Action Fraud apologised to us afterwards that they had made the incorrect adjudication.

**Q196 Chair:** But maybe you should have given them the actual detailed information. You cannot decide whether or not to pursue something unless you have got the evidence, and you did not—it sounds to me—give them the evidence that they needed.

**Peter Lauener:** I think we gave them plenty of evidence in the notification that we made.

**Q197 Chair:** But it is a telephone conversation that you—



**Peter Lauener:** This was the system that we were asked to follow, the national system that is in place. What we have done since this is review with Action Fraud the protocols that we follow. We have suggested that we agree a way forward on these cases, which will lead to rather more proactive checking and reports back from Action Fraud. So I think you are right, Chair, that the outcome was not wholly satisfactory, but we would make the point very strongly that we did everything that we were asked to do and that Action Fraud subsequently apologised to us that they had made the wrong decision.

**Q198 Chair:** I just cannot accept that—as the responsible accounting officer for this if you knew that there were 20 potentially fraudulent invoices you had a duty to pursue that, even if you get a knock-back first time by Action Fraud.

**Peter Lauener:** We have made it clear that we will always refer items to the police. It is up to the police to decide whether to follow through on an investigation.

**Q199 Chair:** They need the proper information, which they didn't have.

**Peter Lauener:** I do think they had that proper information from the notification that we made. They also made it quite clear in the apology that they did not take the earlier action, but they did feel that we had given them the proper notification.

**Q200 Austin Mitchell:** Can we have a chronology of this? It is opened in September 2011. The Prime Minister visits it in March 2012 and praises it—a special visit. Why wasn't he warned? Then a whistleblower drew your attention to the fact that money was being spent not for the purposes for which it was allocated. You then told the fraud squad, presumably. They said, "Oh, nothing to bother about," and you left it at that.

**Peter Lauener:** Well, we didn't leave it at that, and to summarise the time line our concerns first came to the fore in August 2012 when we did this review of financial management and governance—

**Q201 Austin Mitchell:** So it was after the Prime Minister's visit.

**Peter Lauener:** I have not got the date of the Prime Minister's visit here, but our concerns were highlighted in August 2012.

**Austin Mitchell:** It was March 2012.

**Peter Lauener:** The whistleblower contacted us in October 2012. The investigation report—we got the first result of that in March. It was finalised in the middle of May and we then notified Action Fraud of our concerns. Then we chased them at the beginning of September to ask for an update, but even though at that point we thought "Well, the police have decided not to investigate," that was not the end of it from our point of view. We were still concerned with the standards of financial management and governance.

**Q202 Chair:** You left the head in place, though, until last week.

**Peter Lauener:** I think it would be wrong for me to comment on the position of the head, given the police investigation.

**Q203 Chair:** He hasn't been charged. He has just been arrested.

**Austin Mitchell:** Bailed in connection with suspected fraud.

**Peter Lauener:** It wasn't our responsibility to take the decision about the head. It was our responsibility to tackle the failings in financial management and governance.

**Q204 Chair:** It is your responsibility to ensure that public money is used for a proper public purpose. You are the accounting officer, between you.

**Peter Lauener:** That is absolutely correct.

**Q205 Chair:** And in this instance the allegation is that it wasn't.

**Peter Lauener:** We were pursuing that with a lot of effort and a lot of meetings with the chair of governors. I actually met the chair of governors last Friday.

**Q206 Chair:** Let me deal with the chair of governors issue, because the chair of governors was Alan Lewis—that is what you believed to be the case, isn't it?

**Peter Lauener:** We believed at the time that he was the chair of governors. We were notified that he was the chair of governors by the school. He was listed in the prospectus.

**Q207 Chair:** And this is the same Alan Lewis who then did a land deal for the school which is costing £295,000 per annum over a 20-year period, to lease the land, which he gets. It is my understanding from local valuations that the valuation suggests that at going rates in the Bradford area he could expect to get under £100,000. He is in fact getting nearly £300,000. This is the man who you were told was chair of governors. I understand there is an issue about "Was he or wasn't he?" How on earth did that ever happen? How can you explain that? So there is £300,000 a year; a 20-year deal for: work it out—

**Peter Lauener:** About £6 million.

**Q208 Chair:** To a person who was chair, and even if he now says he wasn't the chair, he calls himself the executive patron—which I don't quite understand as a term. According to local valuation, it should have been under £100,000 per annum and it is actually almost £300,000 per annum. How can you explain that? It is a complete, it seems to me, misuse of public resources.

**Peter Lauener:** Can I explain what we did to secure premises for Kings science academy? We did what we always do in that situation: we conducted a property search to see if we could find property in public ownership, because that is always the cheapest way, if we can find properties. We couldn't. The property advisers that we had then found nine sets of premises that were in the right area and feasible for the site. We

carried out a full assessment of those nine sites. The site that the Kings science academy is on—

**Q209 Chair:** Did you realise that it was owned by the person you then thought was the chairman?

**Peter Lauener:** Yes, we did.

**Q210 Chair:** You did? And you didn't think there was a conflict there?

**Peter Lauener:** As a result, we took extra steps in the process, because there is clearly a conflict of interest there. In accountancy jargon, it is a related-party transaction—although it was clear afterwards that it was not the chair of the body—but we got a market valuation which confirmed that the valuation was in line with the market rent. It was independent property consultants who procured that valuation.

**Q211 Ian Swales:** Today I have seen photographs of the site. It beggars belief that of nine possible sites, this had to be the one that was the best site. What would have happened if you had said to Mr Lewis, "Actually, you know what? Your site's not the one; it's that one over there"? What would have happened?

**Peter Lauener:** If we had concluded that another site was the better site, then obviously we would have said that.

**Q212 Ian Swales:** Would he still have been around?

**Peter Lauener:** I cannot speak for that, but we would have judged it entirely on what we thought was the right site. Because of the issue of this being a related-party transaction, we took the case to the Treasury and presented all the evidence on the market valuation. We explained that it was a related-party transaction, and the Treasury agreed the proposal.

**Q213 Chair:** What is shocking about that is that unless the person who has written to me—as you know, I get quite a lot of people writing to me directly—is telling a porky, and I don't see why he should be, he is alleging that the actual market value of property in this area—the current commercial rent for fit-for-purpose warehousing in Bradford—is £5 per square foot. If you calculate that out, even if he had leased the whole site, which prompts the question of whether he needed it, it is under £100,000. Then I am left wondering who on earth the advisers were who suggested to you that paying just under £300,000 was appropriate when this guy is telling me it is only worth under £100,000.

**Ian Swales:** And part of the site was derelict, if you look at it.

**Austin Mitchell:** That was the playground.

**Peter Lauener:** All I can say is that we got an independent market valuation—

**Q214 Chair:** Well, what does that teach you for the future?

**Chris Wormald:** I'm sorry, but it does depend who wrote it. Are they a property expert?

**Q215 Chair:** It is somebody who has some experience—an RIBA and RSA-qualified person. That is all I can tell you.

**Ian Swales:** I think you are about to get a whistleblow from the architects involved in this, by the way. I have seen some material today. I think you will find there is more to come on the building.

Chair, can I move on a little bit to the systemic issue? Mr Lauener, I have worked with you on another case. On your EFA report, which I have read in detail, if you can think of anything that could go wrong, it pretty much has. It is not just fake invoices; there are things to do with governance, employment and procurement. It is procurement I want to pick up. One of the things that is emerging from these investigations is that one of the best ways people are finding to take money out of these establishments is not to have competitive procurement and to have related companies, or companies controlled by friends, relatives and so on, that do not have to tender to get work. It is a feature of the case that you and I are familiar with from the past.

There are a whole load of procurement things mentioned here on which I would like your comment. It is not just about this establishment; it is about how to ensure that when these establishments are set up—they are not just public servants; usually, you have commercial people somewhere at the back of this. How do you put a system in place that keeps the money targeted at what it is supposed to be targeted at?

**Peter Lauener:** First of all, can I say that I strongly agree with your two points about the importance of competitive procurement and ensuring that related parties do not benefit from the business that is going on? We set out those things clearly in the academies financial handbook, which sets out for the first time the arrangements that make it clear that any transactions with related parties have to be at cost, not profit. Those arrangements apply as much to free schools as to academies. I strongly agree with those two principles.

There were clearly defects in the Kings science academy. The uncertainty about the chair indicates that the governance arrangements were not working. However, we are in the process of recovering all the funds that were improperly claimed, and they will be back in the public purse, where they should be. We have done a lot of work with the governing body of the Kings science academy to strengthen the governance.

**Q216 Chair:** If "Newsnight" hadn't covered it, it feels to me as though you would have just let things lie.

**Peter Lauener:** I can absolutely say that that is not the case. It is ironic, but we were just about to publish our investigation report. We made it very clear in the academies financial handbook that we will always publish our investigation reports. The question, which can be quite difficult to consider, is when is the right time to publish the report? If I can make an up-to-date comment about governance, we have just had the audited accounts for Kings science academy for 2012–13—they were due in at the end of December, and they came in on time. They were unqualified by the auditors, who said that they were very clear that there had been significant strengthening—

**Q217 Ian Swales:** That was going to be my next question. As I understand it, the way that you set these establishments up means that you place a lot of reliance on the local auditors of free schools and academies. I don't know who fixes the fees and the amount of work, but if it is the free school or the academy then clearly there is the potential for quick jobs done by small, local firms. What does it tell you about the quality of the audit that all the issues at the academy were not, as I understand it, uncovered by the auditors? Are they not trying to implement your own guidelines when they look at academies?

**Peter Lauener:** We work very closely with the Institute of Chartered Accountants in England and Wales to develop the understanding of our requirements among the audit profession. We have extended our requirements. In the last accounts direction that was sent out, which was referenced in the academies financial handbook and which underlay the 2012–13 accounts, what we get is a regularity of opinion from the auditors. We also see the management letters from the auditors. Actually, there were issues identified in the 11–12 accounts for KSA, which led to our work on financial management and governance and our conclusion that standards—

**Q218 Chair:** Amyas wants to come in, in defence of auditors.

**Amyas Morse:** Thank you. What an attractive opportunity. I want to ask you something more general, reflecting on the conversation that I have been listening to. I am not being critical of the way that you are operating, but is there an inherent difficulty in demonstrating that you have applied criteria and made judgments even-handedly, consistently and fairly, when your approach seems to rely heavily on individual circumstances and individual judgments in response to those circumstances? I am not saying that it is unreasonable to be doing that, but do you recognise that there may be a long and winding road of different discussions about particular issues simply because the answer to so many points is, "Well, we made a judgment on the balance of probability"? I am not saying that that is wrong, but is it fair to comment that it just opens up the prospect of people looking into it and wanting to challenge it? Whether they are ill informed or well informed, I do not know, but is there something inherent in this method of operation that means that, although it has its advantages—I can see them—if you look for the long-range weather forecast, it is not terribly difficult to work out what it may say.

**Chris Wormald:** I will comment on the general and then on the specific issue of financial regularity. In general, our approach is exactly as you describe. It brings some very big advantages and it also brings some risk to manage, so I think that is a fair point. In the creation of policy, the easiest thing in the world to do is to create hard-and-fast rules that are very easy to apply and monitor from Whitehall and that do not then suit local circumstances. I am sure we have all looked at Government programmes that were applied with very hard and fast, set national rules where what local MPs, local councils and local schools said was, "But that makes no sense in my local circumstance,"

and of course we have to balance those things up. In some cases, as in the financial regime, we do make some hard-and-fast rules and we expect people to comply with the financial handbook regardless of where they are.

On financial regularity in general, I will make a couple of general points. I think Peter has explained the position on Kings science academy specifically. As we have discussed with this Committee before, academies and free schools are the only schools in the country that have full audited—and externally audited—accounts, which are then published. They are considerably more transparent than maintained schools and they have that external audit element. That has been very important.

That said, there is no regularity system I am aware of—I am sure you would agree with me—in either the public or the private sector that completely prevents fraud. I am not aware of one anywhere in the public or private sectors. Now—

**Amyas Morse:** No, but it might help to exclude non-arm's length transactions. Even though I am not asking you to have a whole book of ponderous central Government rules, you might think about that one, don't you think?

**Chris Wormald:** Yes; you have not let me finish.

**Amyas Morse:** I'm so sorry.

**Chris Wormald:** When we compare it to maintained schools—the Audit Commission's latest report, for 2012–13, found, I think, 191 cases of fraud in maintained schools, so it is not the case, as some people somehow imply, that when these things were local authority-run, none of these sorts of things happened. That does not diminish the seriousness of their happening when they do or the fact that you need to take the kind of decisive action that Peter has described.

**Q219 Chair:** The important thing, if you want the free school movement to spread, is to get your systems right to prevent it from happening. The concern here was this. I think there were a lot of signposts that, for one reason or another, were ignored. That is the problem.

**Chris Wormald:** Yes. As Amyas said, the fact that there is no system that can completely prevent fraud in any walk of life does not mean that you give up. When it does occur, you have to do two things. You have to intervene decisively to deal with the problem and get the school back into, in this case—

**Chair:** Which means don't ignore invoices.

**Chris Wormald:** Yes. Peter has been very clear: the Department took correct actions in this case. The second thing you have to do is to learn the lessons, regardless of where the fraud occurred—whether it occurred in a maintained school, a free school or some other aspect of public life. It is very important that we look at these cases and learn lessons, and that is why Peter referred to the fact that we always publish our fraud reports on our website, so that not only can we learn the lessons but everybody else can. I do not think that happens regularly—routinely—in the maintained sector, so we would say that not only do we have a much tougher financial regime than operates in the maintained sector, but we are also

much more transparent about when things go wrong and therefore what lessons need to be learned.

**Q220 Austin Mitchell:** And you are going to do all this effective invigilation with one third less staff in the Department for Education. Is that right? That should increase your effectiveness.

**Chris Wormald:** Along with the whole of Government, we are reducing our costs. It does not play out evenly, and one of the things we specifically looked at was the resources, including the IT resources, that the EFA needed to do its job properly.

**Q221 Chair:** Don't tell me anything about the IT system. We will be looking at it as a disaster in two years' time.

**Peter Lauener:** May I make one comment on the staffing resource? I am sure you will be pleased to know that we have significantly increased the resource that we are applying to the free school group by making savings in grant calculation. We now have much more streamlined, efficient systems, and we have been able to halve the staff for that and deploy them to work on free schools.

**Q222 Justin Tomlinson:** I have two points. One of the biggest problems with Building Schools for the Future was the huge amount of money that was spent reinventing the wheel each time. I see in paragraph 2.8 that, generally, the building costs for free schools are 45% lower. What are you doing to ensure that you are replicating that? Private sector retail companies deliver such things a lot cheaper and a lot quicker than public sector bodies. What lessons have we learned to contribute towards that 45%?

**Peter Lauener:** The comparator is important for free schools, but one of the difficulties is that free schools have a lot of one-off projects. The area on which we have done a lot of systematising is the Priority School Building programme. We have made a lot of changes that we have been able to roll out across a procurement programme for 261 schools, managed in a number of batches. Again, we are getting savings of 45%.

**Q223 Chair:** But you are reducing space standards, for example, aren't you?

**Peter Lauener:** Yes, we are reducing space standards, but we are also cutting out "grand statement" buildings, so it is not just about reducing the space standards.

**Q224 Chair:** What does that mean?

**Peter Lauener:** We operate against what we call "baseline designs," which are fit-for-purpose, well designed buildings that will give a perfectly good school but will not be like some of the iconic buildings that were built under Building Schools for the Future.

**Q225 Justin Tomlinson:** So we are not spending £5 million a school on design before even putting a brick in the ground?

**Peter Lauener:** Exactly. Because we are building in batches of eight or nine schools under the Priority

School Building programme, we are not getting every single school designed with fly-through presentations. We tender with one school being designed by the contractor against the baseline designs, and with that we are getting really good cost savings for the public purse.

**Q226 Justin Tomlinson:** Earlier, Jackie Doyle-Price raised the important point that, although there may be demand, sometimes existing local schools do everything they can to resist that demand because it is not in their interest as it creates competition. The local authority has its forward planning numbers, so it can prove that there is demand, but one of the tests is that you need 300 parents to sign up to express an interest that, in theory, they would send their children to that school. If the alternative schools are not keen to open their doors for that group to sign up those parents, how do you get around that? I thought it was through New Schools Network roadshows, but apparently that is not the case. From the application with which I have been involved, the biggest barrier—even though, on paper, the school would definitely be full as soon as it opens—is getting into the alternative schools to say, "Can we sign up your potential customers to come to us instead?" How do you get around that?

**Chris Wormald:** That is a challenge. The Department does not do that. We look to local promoters to demonstrate demand. The Department does not do anything in that space. We leave it to local promoters. I visit a lot of free schools, and the vast majority say that relations with local schools can be quite tense pre-opening but that relations improve very fast afterwards.

**Q227 Justin Tomlinson:** The problem is the specific part about the 300 parents, because without those 300 parents you are going to fall at one of the first hurdles. I am not surprised that, as Jackie identified, some schools will not exactly roll out the bunting for competition to come into their area. What support is there? The whole free school ethos is that it is parental demand, but parental demand may be suppressed if you cannot get at the parents.

**Chris Wormald:** Support for promoters is provided by the New Schools Network. The Department does not operate in that space, and we do not want it to be a top-down programme, so the New Schools Network is the source of support for promoters. As I say, the Department does not do anything in terms of itself signing people up.

**Q228 Justin Tomlinson:** Some of the promotion you might do might be, say, in the local paper or on the local radio, or things like that. If this was a leasehold managed series of flats, by law the tenant—while you cannot hand over the names and addresses, you can contact them if you are doing a "right to manage your own" thing. In this case, if I was leading a bid, the biggest challenge would be getting to those parents, short of standing at the school gate—where you would probably not be welcome—with a clipboard and signing them up. It seems that there could perhaps be a system that would make that a little easier.

**Chris Wormald:** It is certainly an issue I am happy to go away and reflect on. We have not taken the same sorts of powers as you describe in housing.

**Q229 Jackie Doyle-Price:** What I have found is that in the schools that probably will suffer when the new school emerges, it is the teaching unions who are lobbying the local authority to oppose it. I think that that, over time, will become a much more significant issue.

**Chris Wormald:** Yes. Obviously, some people oppose this programme, and of course they have every right to. Those things are debated in public. My experience of going around open free schools across the country is that quite quickly, schools start dealing with each other in a highly professional manner and just get on with it for the good of pupils. You may call me over-optimistic, but I think the vast majority of teachers and heads start from what is good for the child. Once the school is open, a lot of those issues begin to go away.

**Jackie Doyle-Price:** Yes, once the nervousness has gone. I think that local authorities have a very important role here, and they can either choose to enable or choose to play politics. I am seeing evidence of a lot of playing politics on this.

**Chris Wormald:** I will not comment on that.

**Q230 Ian Swales:** I have got one last question about Kings science academy, but I want to use it to exemplify a bigger issue. The Department funded the building to the tune of £10 million, I understand. Who owns the building?

**Peter Lauener:** The building is owned by the trust, I think. Gosh, I wonder if I ought to check that point.

**Q231 Ian Swales:** Is it owned by the academy?

**Peter Lauener:** I think it is owned by the free school trust.

**Q232 Ian Swales:** The EFA report says that it is owned by Hartley Property Trust Ltd on land leased from Hartley Property Trust Ltd, which sounds very close to Mr Lewis.

**Peter Lauener:** I think I had better check the details on that.

**Q233 Ian Swales:** This is what the report—I believe that it is an EFA document—says. That would appear to have been the transfer of £10 million of public money to a private company owned by one of the key proprietors. I just wonder what happens, because that is a large transfer of value. What does the EFA do? As I say, I want to make this a general point. How are we protecting public money in the event, for example, that the academy folds?

**Chris Wormald:** It is set out in the funding agreement. The normal procedure—as I say, we will check this for the specific one—is where a trust has bought a freehold, for example, using public money, if that school closes the site reverts to the Secretary of State. Where we are leasing sites, it is of course different.

**Q234 Chair:** This sounds even more worrying, to be honest. The lease is owned by a private company, so

presumably the school trust will be paying rent to the company.

**Chris Wormald:** I was answering Mr Swales's general question, which is that we set it out in the funding agreement.

**Q235 Ian Swales:** The document says that the school is paying £295,960 a year for the land. It does not say whether it is paying anything for the building, which is owned by the same company as the land.

**Peter Lauener:** I will write to the Committee on those specific points. I think the lease would revert, if the school closed, to the Secretary of State. A point that I have checked is that at the end of 20 years it is perfectly possible to continue the lease, so I do not regard the public investment as significantly at risk.

**Chris Wormald:** I want to make it clear, because we put it in all funding agreements, that the capital public investment is protected for education.

**Q236 Ian Swales:** Using this as an example, can you make it clear how the public money is protected in a case like this in your response?

**Chris Wormald:** Yes. It is something we look very carefully at.

**Chair:** We will publish that response.

**Peter Lauener:** Straightforward capital reverts to the Secretary of State. I will need to check the lease position.

**Chris Wormald:** The land itself is one of the things we look at most closely.

**Q237 Austin Mitchell:** We need that information, but we would also like the costs to public money of the opening and closure of the Discovery new school, which I gather has now been closed or is about to be closed.

**Chris Wormald:** No, it has not been closed yet. We have announced that it will be.

**Q238 Austin Mitchell:** Can we have an indication of costs?

I have one final question. Paragraph 1.11 says “Ministers retain final decisions over which proposers to interview and approve”. Paragraph 1.13 says “Officials exercise judgement”, but the Ministers take the final selection decisions, which is a bit different. Have there been occasions, and can you tell us how many, on which the advice of the Department to open a school, is rejected by Ministers, or on which they have added ones which you have not approved?

**Chris Wormald:** This is a question we answered earlier. As civil servants we do not discuss that.

**Q239 Austin Mitchell:** How can you guarantee that decisions taken by Ministers, whether on the advice of the Department and the accounting officer or not, are giving us value for money?

**Chris Wormald:** What I can say is that if, as in all cases, I or my predecessor as accounting officer believed that value for money was not being met, we would ask for a direction in the usual way.

**Q240 Chair:** My final question is around the New Schools Network. I am completely supportive of

funding of non-statutory organisations and I can see the purpose of having such an organisation in this field. What I feel uncomfortable with, and I want you as accounting officer to answer, is why you allowed this organisation to be funded without there being a proper tender process in the first year, particularly because the organisation is run by ex-advisers to the Secretary of State?

**Chris Wormald:** I think I have answered this question before, and I think I shared with the Committee the letters published explaining this by both David Bell and Gus O'Donnell. I think I did that after the previous hearing. I am quite happy to do so again.

**Chair:** I cannot recall that. My apologies if we asked before.

**Chris Wormald:** You are, of course, correct in that initially they were awarded the contract without competition. Subsequently, when we let that contract, there has been competition.

**Q241 Chair:** Did you feel comfortable as the accounting officer in the first year giving half a million pounds of public money to an organisation? I am not questioning the validity of what that organisation was doing or the importance of an organisation in this field doing that, but this was an organisation that got half a million pounds of public money and was staffed by people who had worked for the Secretary of State.

**Chris Wormald:** This is exactly the conversation we had before. I was not the accounting officer at that point, which is why I shared the explanation that David Bell had made public and the Cabinet Secretary had made public about why that was done. I think Mr Bell was comfortable with the decisions that were made and that he set out in his letter.

**Q242 Chair:** There was a competition in the second year with one other—

**Chris Wormald:** Yes. There was a proper competition.

**Chair:**—with one other. Who was the other?

**Chris Wormald:** I do not know, off the top of my head.

**Chair:** Will you let us know please?

**Chris Wormald:** I would have to check what the terms of the competition were, as to whether I let you know publicly or privately.

**Chair:** It is public money, even though it is a non-statutory organisation that gets the money.

**Chris Wormald:** The normal practice is that these things are competed and that is what was done, in full compliance with the usual rules.

**Q243 Chair:** The final question is why you are challenging the FOI High Court judgment on information about applications. The Information Commissioner has said that you should share that with the researcher who is trying to do some work around this.

**Chris Wormald:** I will send you the full details, but basically we do not agree with the Information Commissioner on where the public interest lies in this case.

**Q244 Chair:** Is it right to spend public money challenging the commissioner's judgment?

**Chris Wormald:** In that there is a procedure set out in the FOI Act for how you act when a Department and the ICO do not agree, I do not see that there is any controversy in using—

**Chair:** I will leave with you this thought: we did a very good session with four of the main private providers that are providing public services before Christmas, and they were all very content to be subject to FOI provisions.

**Chris Wormald:** We will of course comply with the FOI Act, but the Act itself sets out a whole series of appeals for when Departments and the ICO do not agree. Given that that is a procedure that was set out in the Act and approved by Parliament, I do not see that there is any controversy in Parliament using the procedure that Parliament set out.

**Q245 Chair:** The view of this Committee is that where any private provider, whether a school organisation or a health body or G4S running a prison, is using public money, their dealings with Government ought to be open to the public, so that we can properly follow the taxpayer's pound. It is a very boring mantra of this Committee.

**Chris Wormald:** We will of course reflect on those views. We do think about such things quite a lot, but, as I say, the FOI Act sets out a whole series of exemptions and what happens when the ICO and Departments do not agree, so we are following the Act.

**Q246 Ian Swales:** The Chair is not arguing about the process; she is arguing about whether trying to hide transparency in this case is the right decision. That is the key.

**Chris Wormald:** I hear the Committee's view and will reflect on it, as with all things.

**Q247 Chair:** What was so interesting about the session we had with the admittedly big private providers was that they were unanimous. I was surprised, but they were unanimous.

**Chris Wormald:** It is difficult when you have some small promoters who are not big providers and who believe that they were providing something that was not for public consumption. That is different, but I will reflect on that.

**Chair:** It shouldn't make a difference.

**Q248 Ian Swales:** To be fair, I am not sure whether they said they would be transparent about their commercial bidding processes. We ought to be fair. That might be more of a parallel.

**Chris Wormald:** I am of course aware of the Committee's strong views on this and will reflect on them.

**Q249 Jackie Doyle-Price:** We find that the default position of Whitehall is to have secrecy, but providers are actually quite comfortable with transparency by comparison. Given that we are moving into more and more space where things are being delivered, that is

really a challenge to the culture of Whitehall. That challenge needs to take place in every Department.

**Chris Wormald:** Yes.

**Chair:** Hear, hear. There is universal agreement on that.

**Chris Wormald:** Those are all fair points.

**Chair:** Thank you. It has been quite a long session, but thank you for answering the questions so directly.

### Written evidence from the Department for Education and Education Funding Agency

#### QUESTIONS 11 AND 16–17 (IAN SWALES): DETAILS OF THE EVIDENCE OF NEED FOR THE FREE SCHOOL IN DURHAM

Evidence of parental demand is a key determining factor in the free school assessment process and pupil recruitment is closely monitored prior to opening. The vision behind Durham Free School is to serve the communities to the South East of Durham city. The majority of secondary schools in Durham are concentrated around Durham city centre. There is a lack of secondary schools within easy travelling distance from communities living in the south east of the city. At application stage, the free school trust showed strong parental demand for a school from these communities.

The Department regularly monitored parental demand during the pre-opening stage and following the closing date for applications (March 2013), the school had received 67 applications for the 60 places available in September 2013. At the same time, the school announced that it would open on the site of a former local authority (LA) maintained school in Gilesgate, less than two miles east of the city centre. This followed difficulty securing a suitable permanent site inside the school's catchment area and led to a significant number of pupils choosing not to take up the place they had been offered at the free school. The site in Gilesgate was secured on a peppercorn rate from the LA and if the Department is unable to secure a suitable permanent site inside the school's initial catchment area, will become the permanent site of the free school.

The Department carefully considered whether or not the school should be allowed to open. The school was asked to submit revised financial and educational plans at the reduced pupil numbers and these were closely scrutinised. The Department concluded that the school would be both financially and educationally viable in the first year and set the school clear pupil recruitment targets for future years. As noted in the NAO report, there is a general trend that pupil recruitment against planned admissions has improved after the first year and we believe this will be the case for the Durham Free School even in its current location. We are continuing to monitor the school closely and indicative numbers from the local authority suggest that around 77 pupils have applied for a place at the free school for September 2014 entry. This is against a published admissions number of 60 places.

#### QUESTION 25–31 AND 50–64 (CHAIR, AUSTIN MITCHELL AND MR BACON): DETAILS ON THE STOKE POGES CASE, PARTICULARLY ON ITS APPROVAL AND A SCHEDULE OF THE COSTS INCURRED

*Why was the application for the school approved?*

Khalsa Secondary Academy, a Sikh faith school, was approved in July 2012 to work towards opening in September 2013. As part of the assessment we considered the strength of the group's vision for the school, the proposed education plan, as well as the capacity and capability in the group to see the plans through. We also considered the financial viability of the proposed school and looked at the available evidence of parental demand for a school of that type in the area. The Khalsa proposal was overall a strong plan for a potentially high quality co-educational Sikh faith school in the Slough area.

In addition, available information about a severe basic need for secondary school places in Slough further strengthened the case for a new school. There is a projected basic need for secondary school places in Slough of 38 forms of entry by 2021 and the demand in the secondary phase will become acute in 2015. The new places created by Khalsa Secondary Academy should offer greater choice of good school places for parents in the area and contribute to addressing the pressure for new places. Some of the people involved in setting up Khalsa secondary Academy are responsible for running the Khalsa Voluntary Aided primary school in Slough which was rated as outstanding in its most recent (2011) Ofsted inspection report.

#### *Consultation*

Under Section 10 of the Academies Act 2010, the trustees of a proposed free school have to consult appropriate persons on whether they should enter into an academy arrangement with the Secretary of State. The proposers of the school (Slough Sikh Education Trust) undertook the statutory public consultation which included online and direct engagement with local people and organisations through websites and public meetings. The full report of the consultation was published by the Trust on the school's website available at <http://www.khalsasecondaryacademy.com/pdf/consultation-report.pdf>.

Under section 9 of the Academies Act 2010, the Secretary of State considers the impact of establishing the free school on other schools. This happens before a funding agreement is signed. As part of this, the Department

writes to LAs to invite their views. In this case, the Department separately consulted Slough Borough Council and Buckinghamshire County Council. Both LAs responded supporting the idea of opening the free school but Buckinghamshire raised concerns about its proposed location in Pioneer House. In addition, we received petitions for and against the location of the school.

At the committee hearing, it was explained that the Department does not undertake a specific consultation with the directly relevant and/or neighbouring LAs. However, in addition to the two consultations above, we speak to LAs before groups are interviewed and before they are approved. The Department also encourages proposer groups to speak to the relevant LA so that local intelligence about school places in the area they want to set up a new school can inform their application.

We also aim to speak to the relevant local planning authority as soon as a potential site for a school is identified and gather the views of local residents to inform planning application. In the case of Pioneer House, officials discussed the site with relevant officers at South Buckinghamshire District Council and held open consultations meetings on 1 and 2 February 2013 before submitting a full planning application.

#### *Pupil numbers*

It is not the case that the school had only seven pupils on roll at the point of opening.

The Department makes a careful assessment of the financial viability of a school before the Secretary of State signs a Funding Agreement with its Trustees. The number of pupils a school has recruited is part of that assessment.

The October school census recorded 79 pupils enrolled at the school at the time of opening.

#### *Location of the school*

In line with our established process for identifying viable potential locations for new free schools, we conducted an extensive site search to identify the most suitable location for the school. Working with the proposer group and our property agents, the search covered both public and commercial properties, including office buildings within Slough and neighbouring boroughs. Pioneer House on Hollybush Lane, Stoke Poges, Buckinghamshire was among the potential viable properties identified and assessed for suitability for the school. It is three miles from the centre of Slough and two miles from the Khalsa primary school, which is well within the average distance of about five miles travelled by secondary school children

All the properties were assessed against the aspirations of the school in terms of location and suitability. From this long list, a shortlist of two permanent sites was formed based on the suitability of buildings for conversion, availability, location, affordability including value for money and planning appraisal. As usual when the Department has identified a site which is potentially suitable for a free school, we held several pre-planning discussions with the local planning authority (South Buckinghamshire District Council) officers. Although Pioneer House is located in a designated green-belt area, the council indicated that as a built site, it offered fewer planning challenges than the other identified site which would have required building on virgin green-belt land. It was also not possible to reach agreement on the other identified site about its cost owing to the landowner's unrealistic expectation of its value.

#### *Site costs*

The land owner, Pioneer UK, advised us that it would only consider a sale contract conditional on planning and change of use at £4 million. It advised through our agents that it had previously rejected unconditional offers of £3.5 million—£3.75 million.

As is our normal practice, we referred the proposed acquisition to HM Treasury for review as the total purchase price for the property excluding VAT, stamp duty and fees at £4 million was higher than the Red Book Valuation (RBV) of £2.5 million. HMT reviewed and approved the proposal as securing value for money, taking into account the factors above outlined under *Location of the school*.

In February 2013 the landowner received an unconditional offer from a third party of £3.8 million, so it was clear that anything other than an unconditional offer from the Department would be rejected. The Department operates in a commercial environment when looking for sites. We negotiate prices in light of the prevailing market and our judgement about securing overall value for money for the taxpayer. We believe that we achieved both objectives in this case.

The final acquisition cost of **£5,145,664** is broken down as follows:

<i>Item</i>	<i>£</i>
Purchase price	4,000,000
Legal Fees	13,600
Stamp duty	280,000
VAT	810,944



<i>Item</i>	<i>£</i>
Property agent fees (incl. VAT)	41,120
<b>Total</b>	<b>5,145,664</b>

#### *Total indicative cost of the project*

The building was brought into use as a school under permitted development rights and initial works were undertaken for the school to open in September 2013.

The full and individual cost of each stage/element of the project is as follows:

<i>Item</i>	<i>£</i>
Acquisition cost (including fees, VAT and Stamp duty)	5,145,664
Planning Application (withdrawn), design and surveys	183,211
Phase 1 works (for September 2013)	195,400
Future proposed costs (post planning approval)	7,951,523
ICT	586,982
Fittings, Furniture and Equipment	710,100
<b>Estimated Total</b>	<b>14,772,880</b>

#### *Planning permission*

We applied for full planning permission in January 2013, informed by the pre-application planning discussions we had with the local planning authority, South Buckinghamshire District Council (SBDC). The application was based on the following:

- the need for the school to be open and operational by September 2013;
- the requirement for substantial areas of new build to meet the needs of the school; and
- encouraging feedback from pre-application meetings with local planning authority officers.

The full planning application additionally sought a change of use from the current permitted “employment” development (Use Class B1a) to “educational” use for a secondary school (Use Class D1).

Subsequently, the local planning authority officers’ advice to the planning committee was published on 19 May and recommended refusal of the full planning application. That recommendation was in clear contrast to the feedback we had received from the officers in the pre-application period. As we were not informed of any objections or concerns before that recommendation and we did not have sufficient time to address them prior to the planning committee meeting in May 2013. We therefore decided to withdraw the application before the decision had been taken by the planning committee, and instead use the new permitted development rights (PDR) to secure the opening of the school by September 2013.

Having opened the school under Class C PDR which allows a temporary change of use for one year, we subsequently applied to SBDC for a permanent change of use on the site under Class K PDR. The Council has recently refused this application and we will be appealing this decision.

#### *Playing field*

Pioneer House is situated in about six acres of mixed hard and soft landscaped grounds. Within them there is a field that could be used as a formal sports playing field but there are no plans to do this in light of the concerns raised by SBDC about green belt development. However, the school has confirmed that it could operate from Pioneer House on a long-term basis by providing PE and sports off-site.

#### QUESTION 37 AND 39 (JUSTIN TOMLINSON AND IAN SWALES): ARE FAITH SCHOOLS LESS FULL THAN OTHERS?

The table below shows the number of places available and number of pupils in both faith designated and non-faith free schools. The third column demonstrates that the percentage of places filled is the same in both faith and non-faith free schools.

	<i>Number of places</i>	<i>Number of pupils</i>	<i>Percentage of places filled</i>
Faith free schools	5736	4833	84%
Non faith free schools	20402	17193	84%

The data is taken from the Autumn Census 2013, and excludes pupils in nursery years and

Alternative Provision schools. . This data has only recently become available and supersedes the data on school occupancy contained in the NAO report and referred to at the PAC hearing.

## QUESTION 48–50, 66–68 (CHAIR): INFORMATION ON THE DIVERSITY OF FAITH SCHOOLS

## NUMBER OF OPEN AND PIPELINE FAITH DESIGNATED FREE SCHOOLS

<i>Faith Designation</i>	<i>All open schools</i>	<i>September 2013 openers</i>	<i>2012/2013 openers</i>	<i>September 2011 openers</i>	<i>Pipeline projects*</i>	<i>All open and live projects</i>
Christian	19	9	8	2	10	29
Jewish	6	3	1	2	0	6
Sikh	5	3	1	1	2	8
Muslim	5	3	2	0	6	11
Hindu	2	0	1	1	0	2
Total	37	18	13	6	16	56

*\*Column includes the number of projects in the pre-opening phase up to and including wave 5*

Faith free schools do not become legally faith designated until after the funding agreement is signed. The table below shows the designation of each open free school and any particular denominations.

<i>School</i>	<i>City</i>	<i>Designation</i>	<i>Specific Denomination</i>	<i>Phase</i>
St Luke's	London	Christian	Church of England	Primary
Krishna Avanti	Leicester	Hindu	N/A	Primary
Eden Primary	London	Jewish	N/A	Primary
Etz Chaim Primary	London	Jewish	Modern Orthodox	Primary
Canary Wharf College	London	Christian	N/A	Primary
Nishkam School	Birmingham	Sikh	N/A	Primary
Atherton FS	Wigan	Christian	N/A	Primary
Barrow 1618	Shropshire	Church of England	N/A	Primary
Becket Keys Church School	Essex	Church of England	N/A	Secondary
Emmanuel Community School	London	Christian	N/A	Primary
Grindon Hall FS	Sunderland	Christian	N/A	Primary
St Michael's Catholic Secondary School	Cornwall	Roman Catholic	N/A	Secondary
Avanti House	London	Hindu	N/A	All Through
Rimon Jewish Primary school	London	Jewish	N/A	Primary
Al Madinah	Derby	Muslim	N/A	All Through
Tauheedul Islam Boys' High School	Blackburn	Muslim	N/A	Secondary
Nishkam School Trust	Birmingham	Sikh	N/A	Primary
Enfield Heights	Middlesex	Christian	N/A	Primary
William Perkin Church of England High School	London	Church of England	N/A	Secondary
St Mary's Hampton Church of England	London	Church of England	N/A	Primary
Hope Community School	London	Christian	N/A	Primary
St Andrew the Apostle Greek Orthodox	London	Greek Orthodox	N/A	Secondary
Tyndale Community School	Oxfordshire	Christian	N/A	Primary
King's School	Hove	Christian	N/A	Secondary
Trinity School (Sevenoaks Christian School)	Kent	Christian	N/A	Secondary
University Cathedral School	Chester	Church of England	N/A	Primary
St Anthony's School	Gloucestershire	Roman Catholic	N/A	Primary
St Mary's CE Primary School	Herefordshire	Church of England	N/A	Primary
Alma Primary (AKA The New Jewish Primary School)	London	Jewish	N/A	Primary
Mosaic Jewish Primary School	London	Jewish	N/A	Primary
Leeds Jewish Free School	Leeds	Jewish	Orthodox Jewish	Secondary
The Olive School	Blackburn	Muslim	N/A	Primary

<i>School</i>	<i>City</i>	<i>Designation</i>	<i>Specific Denomination</i>	<i>Phase</i>
The Olive School	London	Muslim	N/A	Primary
The Olive Tree Primary School	Bolton	Muslim	Deobandi Hana	Primary
Nanaksar Primary School	London	Sikh	N/A	Primary
Nishkam School West London	London	Sikh	N/A	All Through
Khalsa Secondary school	London, Slough	Sikh	N/A	Secondary

QUESTION 98–103 (MR JACKSON): THE STRATEGIC CASE FOR WHERE FREE SCHOOLS SHOULD BE SITUATED AND WHY

We were asked to consider whether we could do more to define more clearly where free schools should be situated geographically or what type of need they should meet, with a view to encouraging free school applications from areas where there may be no basic need but where the poor quality of local schools leads to many local parents seeking school places in other better performing LAs, adding to need pressures there. The current assessment criteria deliver what Mr Jackson is seeking. Under these criteria we assess “need” not only in terms of the demographic need for more school places but also the quality of the existing local schools. Therefore, we already score highly applications to establish a school in an area of low standards but no basic need, provided the applicants are able to evidence strong demand from parents. That is clear from the application materials on our website.

Specifically, the criteria booklet for applicants says:

“You will need to be able to demonstrate that you have interest from parents of a number of pupils that is close to the school’s capacity—for each of the school’s first two years of operation and either that there is:

- no significant surplus of school places in the relevant phase in the area; or
- that the number of places in underperforming existing schools in the school’s proposed vicinity comprises a total number of pupil places greater than your proposed school’s capacity at scale. (Underperforming schools will usually be classed as schools rated as “requires improvement” or “inadequate” by Ofsted. However, we will also take into account pupil attainment and progression data.)”

We already have a number of projects that are providing high quality new provision in areas with no basic need but a high proportion of low quality places.

The Department publishes data on its website about the location of open free schools and the performance of all schools so it is already possible for potential applicants to identify areas of poor school standards where no free schools have been established. As experience of the programme so far shows, dissatisfaction with existing schools is often a motivating factor for parents supporting, or initiating the development of, a proposed free school.

We will continue to keep this under review as the programme develops.

QUESTION 128–139 (CHAIR AND MR BACON): ARE THERE CONFIDENTIALITY CLAUSES IN EMPLOYMENT CONTRACTS WHICH ARE USED WHEN CONTRACTS ARE TERMINATED?

Academy trusts may include confidentiality clauses when using compromise agreements to sever employment relationships with staff. Under the Employment Rights Act 1996, confidentiality clauses cannot be used to prevent someone from making a protected disclosure under whistleblowing arrangements, meaning they cannot be used to suppress information such as that relating to pupil safety.

When making special staff severance payments, all academy trusts are bound by the Academies Financial Handbook. It sets out that trusts must disclose aggregate figures for special staff severance payments as a note to their annual accounts. In addition, separate disclosure is required in the annual accounts for any payment over £5,000. Where a trust is considering making a special staff severance payment exceeding the statutory/contractual entitlement by £50,000 or more, prior approval must be sought from HM Treasury, via the Education Funding Agency, for the non-statutory/non-contractual element.

We are aware that the Committee published a report on confidentiality clauses and special severance payments on 24 January. We will consider the Committee’s report, and any resulting guidance issued by the Treasury and the Cabinet Office, to see if any changes in the requirements upon academy trusts should be made in response to the Committee’s concerns.

QUESTION 141–147 (CHAIR AND MR BACON): THE CRITERIA USED TO MEASURE READINESS TO OPEN, AND THE ISSUES “FOR EACH OF THE THREE SCHOOLS MENTIONED IN PARAGRAPH 1.21 OF THE NAO REPORT WHICH CAUSED THEM TO BE RATED RED AT THE “READINESS TO OPEN” MEETING

*The criteria*

Readiness to Open (ROM) meetings have been held for free schools since the programme began, with criteria remaining broadly unchanged over that period.

The 2011 (wave 1) and 2012 (wave 2) ROMs tested progress and readiness across eight themes, with schools rated Green/Amber-Green/Amber-Red/Red according to defined criteria against each theme and an overall judgment is also made. The themes were:

1. Finance, including Pupil Recruitment.
2. Governance.
3. Leadership and Staffing.
4. Strategic Planning.
5. Education Planning, Standards and Progress Tracking including “Curriculum, teaching and learning”.
6. Safeguarding.
7. Student Care, Guidance, Support and Behaviour.
8. Buildings.

For the wave 3 ROMs (schools opening in September 2013) we revised the process, assessing schools against six themes. We retained the Green/Amber-Green/Amber-Red/Red rating system. The wave 3 themes were:

1. Education Planning, Standards and Progress Tracking.
2. Curriculum, Teaching and Learning.
3. Student Care, Guidance, Support and Safeguarding.
4. Strategic planning, including Governance, Leadership and Staffing.
5. Finance, including Pupil Recruitment.
6. Buildings.

*Awarding “Red” ratings.*

An overall Red rating is usually applied where significant problems arise across several ROM themes, at least one of which could cause the project to fail to open successfully or have problems on opening, without urgent action by the proposers and/or the Department.

We use discretion in deciding the overall ROM rating and take into account evidence of the trust’s capacity to improve between the meeting, opening and into the first year of operation, before deciding to rate a project as Red. This flexibility allows officials to highlight a serious risk presented by one ROM theme, even if progress in other areas is acceptable. This was the case for one of the three projects referenced by the Committee, rated Red overall despite only “Buildings” rated Red during the meeting. These ratings are the basis on which EFA undertakes its initial risk rating and resource allocation once schools are open.

*Free schools opening following an overall red rating.*

A Red rating means there is an issue to be resolved before schools can open. Of the three schools referred to by the Committee, two opened in 2012 and one in 2013. The Red ratings for these were as follows:

School 1 was a 2012 opener (wave 2) rated Red for:

- Finance, including pupil recruitment;
- Strategic Planning;
- Curriculum, teaching and learning; and
- Buildings.

The resolutions before opening were:

- *Finance*, including pupil recruitment—revised financial plans were submitted following the ROM, which demonstrated the school’s viability at estimated levels of pupil recruitment, with the group providing weekly updates on pupil numbers to assure officials that pupil recruitment was on track.

As an additional protection, officials included an additional termination clause within the funding agreement should pupil numbers not reach or subsequently dip below the financially viable number. The pupil number termination clause is now included as standard in free school funding agreements.

- *Strategic planning AND curriculum, teaching and learning*—both sets of plans were incomplete at the time of the ROM due to the late appointment of the principal designate. Shortly before the ROM the proposers appointed an experienced head from an independent school on a temporary contract. The interim principal attended the ROM and was able to work on and finalise the school's three-year improvement plan and curriculum plan, following the meeting.
- *Buildings*—at the time of the ROM a permanent site had been identified but not secured and was known to require major refurbishment. A temporary site had been identified but required planning permission. The necessary permissions (change of use) were secured after the ROM, enabling the school to open.

School 2 was also a 2012 opener (wave 2) rated Red for:

- Curriculum, teaching and learning;
- Strategic planning;
- Staffing; and
- Buildings.

The resolutions before opening were:

- *Curriculum, teaching and learning AND Strategic planning AND Staffing*—the substantive issue for the trust was the unexpected loss to illness of their principal designate, before the ROM. This affected work on curriculum, strategic and staffing plans. We had also raised related concerns about a lack of clarity in the proposers' initial plans about support that could be secured on education planning from a partner school. The proposers acted quickly to recruit an interim principal, who was able to complete the plans to our satisfaction.
- *Buildings*—At the time of the ROM the proposed permanent site had not been secured and the lease on the required temporary site had not been signed. Both issues were resolved by 20 July, inside a deadline set by officials at the meeting.

School 3 was a 2013 opener (wave 3) and was rated Red for:

- *Buildings*.

The resolution before opening was:

The issue was a delay in signing a lease for the temporary site required by the school. The temporary site lease was signed 19 July, enabling the school to open.

#### QUESTION 160–166 (CHAIR): THE NUMBER OF SCHOOLS WITHOUT PLAYGROUNDS OR OUTSIDE PLAY SPACE

All schools must provide access to suitable outdoor space. For independent schools, including free schools, this requirement is set out in the Independent School Standards. Free schools must ensure pupils have access to a broad and balanced curriculum which will include physical education. Our preference is to secure sites which allow for such outdoor space to be provided on the same site as the school building. This, however, is not always possible. Some schools—including some free schools—will be on restricted sites and will not have sufficient outdoor space on site. In these situations pupils will need to be provided with access to suitable provision. Schools and their governors are finding creative ways to achieve this. This is not new for example the Chelsea Academy which opened in 2009 and the All Souls Church of England primary school in Westminster both have rooftop playgrounds.

#### QUESTION 183—193: NOTIFICATION OF FRAUD TO ACTION FRAUD

We have checked the details of contact with Action Fraud when there was a follow-up to check progress. It was by email on 5 September 2013, not by phone. And the email did not ask if Action Fraud needed more information. The reply from Action Fraud, also on 5 September, confirmed that they had decided to treat this as an information report. Subsequently Action Fraud apologised, stating that they had wrongly categorised the call as an information report when it should have been recorded as a crime report and referred on to West Yorkshire Police.

#### QUESTION 207–208 AND 230–235 (CHAIR AND IAN SWALES): DETAILS ABOUT THE OWNERSHIP OF KINGS SCIENCE ACADEMY

The site of Kings Science Academy is secured on a 20 year lease due to expire in 2032. Under this arrangement, as with other lease arrangements for academies, the Trust owns the leasehold interest in the site for the duration of the lease. The freehold remains in the ownership of the landlord, in this case Hartley Property Trust Limited.

The Department's capital investment in that site is protected through provisions in the Secretary of State's funding agreement with Kings Science Academy and through the terms of the lease that were negotiated with the landlord.

Those provisions and terms include, but are not limited to the following protections:

- the landlord cannot terminate the lease for tenant default without giving the Secretary of State notice and an opportunity to remedy the default;
- the lease can be transferred to the Secretary of State or to a local authority or another school trust without landlord's consent being required in the event that the funding agreement is terminated; and
- no assets can be disposed of without the Secretary of State's approval (this is protected by way of a restriction registered against the title).

Under the terms of the Landlord and Tenant Act 1954, the tenant has a statutory right to renew the lease at the end of the 20 year term. This ensures that the capital investment in the site can continue to benefit the local community for the lifespan of the building.

Relatively few free schools are located permanently on land or in buildings secured under commercial leases. For the vast majority of free schools:

- the Trusts own the land and buildings outright as freeholders (where the Education Funding Agency has facilitated the purchase of the land specifically for the purposes of establishing a school); or
- the land and buildings are secured on long term peppercorn leases (these are typically 125 years where the freeholder is a local authority and often the site was previously used for educational purposes).

In these cases there are a number of clauses that can be inserted into the funding agreement to further protect the public investment in acquiring and developing the land for the free school. These clauses are drawn on and adapted as necessary to suit the specific circumstances of the land deal.

Clauses which could be used include:

- enabling the Secretary of State to take ownership of the land or requiring the Trust to assign it to another academy if the funding agreement is terminated;
- ensuring that the Trust cannot dispose of any land without the Secretary of State's consent; and
- requiring the Trust to enter into a legal charge where consideration has been paid for a property. The legal charge creates a mortgage over the school site in favour of the Secretary of State, giving him certain powers over the property (eg to take possession and to sell) if the Trust defaults and which also protects the property from the Trust's creditors if the Trust becomes insolvent.

In addition the Education Funding Agency has developed model heads of terms and model leases which are used to ensure that as far as possible the property contracts protect the capital investment.

There are also statutory protections primarily now contained in Schedule 1 to the Academies Act 2010 protecting land used by an academy that has been subject to public capital investment. However this does not apply to leases unless acquired from a local authority.

#### QUESTION 226–228 (JUSTIN TOMLINSON): SHOULD THERE BE ENHANCED LOCAL PROMOTION OF FREE SCHOOL?

We agreed to reflect on the requirement for parental signatures and to consider where there is more we could do to prevent it becoming a barrier (because of uncooperative local schools). The Committee asked specifically whether there is a requirement to secure 300 parental signatures.

#### *Clarification of the position on parental demand*

The requirement around parental demand at the application stage is set out in the *Free School applications: criteria for assessment* which is published on the DfE website. Proposer groups need to demonstrate at the application stage that they have interest from parents of a number of pupils that is at least close to the school's capacity for each of the school's first two years of operation. There is no requirement to secure 300 signatures. The number will depend on the size of the cohort. For example if a primary school is proposing to have 420 pupils with year groups of 60, we would expect the group to show interest from parents of at least 60 pupils for each of the first and second year of operation. During pre-opening we then monitor closely the number of applications for places in the year groups with which the school is opening. We require schools to receive sufficient applications to enable the school to be financially and educationally viable.

#### *Advice and guidance*

The Department funds the New School Network (NSN) to provide help and support to groups seeking to apply to establish a free school. As part of that, NSN provides advice to groups on how to secure sufficient demand from parents.

During pre-opening the Department provides groups with advice about how they can market their school as part of the pre-opening guidance also published on the DfE website. This includes ideas for identifying the audience, engaging with local schools and the local authority (so that schools are included in their online prospectus) as a way of reaching all parents who might wish to apply for a place, as well ideas for selecting the right range of media. Whilst there is no single right way to market a school, we look for opportunities to

share hints and tips provided by open free schools. We also hold sessions on pupil recruitment as part of our regular schedule of events for groups.

#### *Evidence of need*

Parental demand is just one part of the evidence of need that we take into account in the assessment phase. In addition the guidance makes it clear that proposer groups also have to demonstrate that either there is: no significant surplus of school places in the relevant phase in the area; or that the number of places in underperforming existing schools in the school's proposed vicinity comprises a total number of pupil places greater than the proposed school's capacity at scale.

#### QUESTION 237–238 (AUSTIN MITCHELL: DETAILS OF THE COSTS INCURRED ON DISCOVERY NEW SCHOOL

Pre-opening revenue expenditure to help establish Discovery New School (DNS) totalled £299,085.42. Pre-opening funding is provided to cover costs in the run up to opening a free school (the pre-opening stage). The Department expects all expenditure to be essential to the project and be based on what represents the best value for money for the school. All new schools receive pre-opening funding when they are set up, including LA schools and free schools.

All free schools receive a post-opening grant in addition to their per-pupil funding. This funding is essential to meet the additional costs associated with starting a brand new school and is paid whilst the school builds up its pupil numbers. Similar support has always been provided to new academies. Post opening grant received by DNS in 2011–12 totalled £63,000 and in 2012–13 totalled £52,514.

The Department spent £2.485 million to secure the building for DNS on a long-term lease from Crawley Borough Council and to undertake building work necessary for it to be used as a school. The funding agreement provides for the Department to take ownership of the building following the school's closure ensuring the capital investment made will not be lost.

#### QUESTION 240–242 (CHAIR): TO PROVIDE THE COMMITTEE WITH THE SAME INFORMATION WE PROVIDED PREVIOUSLY ON THE FIRST YEAR NSN GRANT AND TO CONFIRM, ONLY IF ALLOWED, WHO ELSE BID FOR THE CONTRACT WHEN IT WAS OPEN TO TENDER.

Following the December 2012 hearing on Managing the expansion of the Academies Programme we provided information to the Committee on the grant awarded to New Schools Network in 2010. The details, including the November 2010 letter from David Bell, Permanent Secretary at the time, and the September 2011 letter from Sir Gus O'Donnell, Cabinet Secretary at the time, were reproduced on pages Ev 28–Ev 30 of the Committee's 41st Report, Session 2012–13, published on 23 April 2013 which is available online: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/787/787we02.htm>. For convenience the two letters are attached.

In September 2011 there was a grant competition and it is correct that there were two bidders. The first was the New Schools Network. The second was submitted by "leading schools from CWB Education Ltd". CWB Education changed its name to Leading Education Ltd and according to Companies House that company was dissolved on 23 April 2013.

#### QUESTION 243–248 (CHAIR): DETAILS OF THE INFORMATION COMMISSIONER'S DECISION ABOUT RELEASING INFORMATION ABOUT APPLICATIONS

In October 2012, the Department for Education received a request from Laura McInerney for the outcome letters relating to 840 free school applications relating to waves 1, 2 and 3, and about 600 proposals and applications submitted in waves 1 and 2. The proposals received in wave 1 were generally between 12 and 20 pages in length, with the full applications required from wave 2 onwards being between 50 and 200 pages long.

In November, the Information Commissioner ruled that this information—some 40,000 pages—should be released by the Department. While he accepted that we correctly applied the exemptions available to us, he did not agree with us that the balance of public interest was in withholding the information. We still do not agree, and we are now making use of the appeals process allowed for in the Act. The Department's grounds for appeal have been submitted in advance of the tribunal which is due to take place in early June, but the tribunal will of course publish a summary of proceedings after the event which will detail our grounds.

*Chris Wormald*  
Permanent Secretary  
Department for Education

*Peter Lauener*  
Chief Executive  
Education Funding Agency

4 February 2014