

## DURAND EDUCATION TRUST WELCOMES THE CHARITY COMMISSION'S REPORT

The Durand Education Trust has been under investigation by the Charity Commission since February 11th 2015. Prior to that it had itself been seeking guidance from the Commission following an attempt by the Education Funding Agency in early 2014 to require DET to transfer its land and its charitable assets to the Durand Academy Trust as a condition of receiving capital grant from the Secretary of State; something which DET believes it cannot lawfully do.

DET is pleased to note that the Commission's report supports DET's understanding of the position. Specifically:

1. All three Durand sites are indeed the charitable property of DET. The EFA advised the National Audit Office in late 2014 that these site did not belong to DET or had been improperly acquired by them. The Commission confirms DET's lawful ownership. Many of the accusations leveled at DET and the other Durand entities by the Parliamentary Accounts Committee are consequently shown to be incorrect. DET will be looking for an apology. The NAO was informed of the errors shortly before the publication of its report and, notwithstanding this, it did not correct them.

2. The Report shows that the trustees of DET acted within their powers in using the Hackford Rd site to generate charitable funds and in spending those funds on buying the St Cuthman's site, developing the Durand boarding project and generally supporting the first rate education provided by Durand to Lambeth children. The EFA had sought to have those funds transferred to DAT and treated as public rather than private income.

3. DET is confirmed as a separate charitable trust entered on the Register of Charities and regulated directly by the Charity Commission. The EFA had argued from 2011 to 2014 that DET was an "exempt charity" and regulated by the Secretary of State. The Charity Commission itself accepts that it fell into the same error for a period and corrected the matter in mid-2014. The EFA has never to date formally acknowledged that it was wrong. There is no recognition in the body of the report that the EFA's actions were pivotal in creating the issues and problems it has taken so long to investigate. The EFA were the prime movers in instigating the new contract in 2012, they wrongly advised Sir Greg and other trustees that both trusts were one and the same and advised Sir Greg they had no concerns about him being present on both trusts. It was the EFA who advised that DAT, as the administrative centre of both trusts, should run the procurement exercise of running the business. DAT trustees followed all the procurement advice given by the EFA at that time, sought appropriate legal advice and advised the EFA of the outcome who accepted it. The trustees, past and present, find it difficult to understand how they could be accused of not fully discharging their duties and responsibilities as charity trustees given they faithfully followed the regulators advice and legal advice. The trustees wonder what more they could possibly have done. It would be fairer to say that the trustees of DET were denied the opportunity to run the procurement exercise

because of the wrong and misleading advice given by the EFA. Given that both regulators failed to give proper advice and misled the trustees over a period of years, the trustees cannot understand why they were blamed for the problems this misdirection and poor advice created.

4. The Report accepts that this general confusion led to a crucial decision to re-award the commercial development contract to Sir Greg Martin's company in 2012 being made by DAT when it should have been made by DET. The Commission criticises the then trustees for this error (for which the Commission accepts that it was itself in part responsible) but imposes no penalties and accepts that the trustees have worked consistently with the Commission to put matters right as soon as they were advised of the true position. The EFA does not publicly acknowledge that it too was in error in respect of DET's independent charitable existence.

5. The Commission also accepts that the trustees acted throughout in what they judged to be the best interests of their charity and that the result was a very major benefit to the young people of Lambeth. In its recommendations the Commission looks to enabling DET to continue developing this benefit and to strengthen various of the technical aspects of the relationship between the various Durand entities. The trustees have agreed to put the recommendations into place.

6. The Commission explicitly states that there is nothing wrong or inappropriate in trustees of a site trust also being directors of the academy company for which they hold the land. They also accepted during the inquiry period that it was helpful for the trustees of DET also to be directors of the trading company in order to make its true ownership clear. DET, DAT and the trading company all accept that they have to take possible conflicts of interest into account and have agreed to appoint extra DET and trading company directors to further facilitate this.

7. The Commission sets out at length the position of Sir Greg Martin. Following offers made by Sir Greg himself to DET before trustees even knew that DET was regulated by the Charity Commission, DET re-negotiated the final payment to be made at the end of Sir Greg's current contract in 2017. The Commission has not required any monies to be repaid or recovered by the trustees and accepts that the contribution that Sir Greg made to the Durand and to the education of its pupils was of extraordinary value. Presumably Michael Gove thought much the same when Sir Greg was knighted for his services to education.

8. The rationale leading up to the Commission's acceptance of the payments to Sir Greg as they now stand is set out in the Report. However it took into consideration a report from distinguished experts on the matter which the Commission itself required DET to commission. [This report (the executive summary of this report) is appended because it is naturally much more detailed in its handling of the relevant evidence and the payments to Sir Greg which have been a particular matter of public interest.] The expert report defends the payments strongly and argues that they are well within a reasonable range appropriate to the entrepreneurial partnership created between DET (and before that by the Durand school) and Sir Greg. While the Commission criticised some aspects of the accounting practices on the grounds that they allegedly enhanced the profit level and thus the payments to Sir Greg, they have accepted the fundamental propriety and reasonableness of what was done. A

uniquely creative individual created a vision and put it into practice in a way few could ever have achieved. DET is proud of this and of what has been done for Durand's pupils. It regrets very greatly that the EFA still seeks to remove Sir Greg and effectively destroy the Durand public/private partnership model.

9. The past two years have been a most stressful time for the trustees of DET, for Sir Greg both professionally and personally and for all who have sought to support the Durand enterprise. Individuals have been attacked and denigrated by public bodies on the basis of what can now be seen to be factual inaccuracies. The Report notes that the process has not been easy for the Commission. The response of the trustees has been cooperative but robust. DET has been fighting for its life and (even more importantly) for the continued existence of the Durand family as a whole and for the enhanced future which it is the Durand vision to provide for its pupils. The Report enables life to continue and the future to be strengthened. DET will implement all the Charity Commission's requirements and will continue to be creative and innovative in providing the best for its pupils and its community.

10. Trustees would like to state, we were directed by the Charity Commission not to take any action relating to contracts until the investigation was over. Therefore, trustees find it hard to understand why we are being criticised for not being proactive in finding a successor to Sir Greg when his contract ends.