Durand Education Trust

Report on the commercial arrangements between London Horizons Ltd and the GMG companies

prepared by

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Executive Summary

- MM&K have been asked by the Trustees of the Durand Education Trust (DET) to report on the reasonableness of past and possible future arrangements for the recompense of Sir Greg Martin ("GM") in leading the commercial business activities of London Horizons Ltd ("LHL") that contribute to the educational programmes of the Durand Academy.
- The two sequential Agreements for Services (dated 2001 and 2012) between LHL and GM's personal service companies represented a commercial deal entered into willingly by both parties (and by those charged with responsibility for the school assets). In our view this type of deal was entirely appropriate for the enterprise involved.
- This commercial deal has resulted in cash benefits to the schools and the Trusts amounting to £3.6m since the first contract in 2001 (up to FY14), plus substantial additional benefit to the school and community in free or discounted use of enhanced facilities. The principal revenue-earning assets are student accommodation and a sports and leisure complex, including a swimming pool, on the school sites. A summary of these benefits and the payments made to GM is shown in Exhibit S below. We have been told this scale of commercial activity and consequent benefit to the school(s) is unique in the UK education sector.
- A singular feature of this achievement is that any public money used has been repaid by the private income generated. There was an original legacy grant of £100,000 from the GLC in 1991, which was then invested in an all-weather sports pitch and the original swimming pool. The Durand primary school provided the land for the sport centre and free space within the Victorian school building for the original student accommodation. Commercial revenues from the first developments were re-invested to build the business. GM can fairly be said to have pulled the business up by its boot-straps.
- The business proposition has more the character of a "partnership" than an engagement to provide services. This proposition was originally brought to the Governing Body (GB) of Durand Primary School (DPS) by GM and was carried through by his own endeavours. It seems to us most unlikely

that the benefits to the schools and community would ever have happened without his abilities and enterprise. The Trustees themselves are certain that they would not have happened.

- This is quite a different proposition from running a pre-existing leisure centre or accommodation block. The Trustees recognise that in the medium term the contract to run these facilities can be handed over to a normal service contract.
- Durand's dependence on GM's talents and energies was thrown into greater relief at the time of the second agreement in 2012. It was becoming evident that Durand could not rely on EFA funding to complete the free boarding project at St Cuthman's in West Sussex, a project instigated by GM as Executive Head. The Trusts needed to find an additional £600,000 of annual cash to secure the future and the Trustees believed that GM's further enterprise would be essential to generating this income. He has now put in place the business projects to achieve this: they will more than double the current accommodation income of £610,000.
- We consider that a fair test for the reasonableness of the payments made to GM is normal commercial practice. Our benchmarking suggests that a reasonable share of the returns provided to the GB and DET through LHL would be 20% (returns comprise the profits gifted and the increase in the value of the business).
- An accurate assessment of the cost/benefit is complicated by the fact that LHL provided some benefits to the community at no charge or a reduced charge – so the value of this does not show up in the sums gifted to the GB or DET. Furthermore, GM has provided additional value in property acquisition and development which is entirely outside the remit of LHL. An estimate of these additional benefits and value is included in Exhibit S. Whilst the Agreements for Service place no obligation on GM to provide these other benefits nor on the Trusts to remunerate him additionally, it is evident that the Trustees had these in mind when agreeing the two deals and judging whether Durand was getting a fair deal. Since the only mechanism to reward GM is through the LHL contract, and given these additional benefits, we consider that a range of 20%-25% of the returns provided through LHL would not be excessive.
- The 2012 Agreement for Services contains an entitlement to a Special Payment which is payable on termination of the current Agreement and which is designed to reward GM for his contribution to the increased value of the LHL business and the associated assets. (This value payment subsumes any

value payment from the 2001 Agreement for Services.) Since the date of the 2012 Agreement, but before the current Inquiry was instigated, GM made a proposal to halve his entitlement under the Agreement and this has been accepted by the DET Trustees. Under the modified formula in the Agreement, GM would currently be entitled to 20% of our estimated value of the business (or 13% when the value of the new accommodation is included). This at the bottom end (or lower than) our benchmark range of 20%-25%.

- Taking the Basic and Special Payments together, **we consider that the overall level of payment he has received and the terms of future payments are reasonable.**
- There is a technical improvement that could be made to the structuring of payments, by calculating payments as a share of profits rather than of revenue. This would provide a better incentive to control costs. There is no evidence that GM has maximised sales revenue at the expense of profits – the profit margin is currently around 50%. But we do recommend that this change is made in any future new contract.

Exhibit S: Summary of benefits to Durand and its community and recompense to GM

Nature of benefit and contract	Benefit to Durand and the Community		Recompense to GM		
	Item	Financial value £000	Item	Amount paid or accrued £000	Percentage of benefit
Covered by contracts between LHL and GM					
LHL business activities up to FY14	Profits generated before GM fees paid (Page 19)	5,237	Basic payments from retainer and percentage of sales revenue Page 19)	1,526	29%
Value created in the assets used by/business of LHL at end of FY14	Value of the business/assets created (MM&K estimate - Page 30)	4,500	Accrued Special Payment under second contract (subsumes "waived" entitlement from first contract) (Page 19)	893	20%
Projected value of additional accommodation	Value of the business/assets created (MM&K estimate - Page 30)	2,500	No further accrual of Special Payment as new accommodation sales revenue is unlikely to show before Special Payment is due	0	0%
Total of LHL items		12,237		2,419	20%
Costs not shown in LHL accounts	Notional charge for depreciation of assets, 7% of sales (Page 20)	(566)		0	0%
Day to day management service	Saving on employment of operational manager (Page 32)	185	No explicit payment for these services	0	0%
"Community dividend" Free or reduced facilities provided by LHL directly (rather than from DET charitable receipts)	Estimated apportionment of cost in providing these facilities - 8% of sales over the period (Page 22)	681	No explicit payment for these services	0	0%
Saving to families on the commercial price of these facilities and those paid for out of DET funds	Estimated saving on commercial cost of services provided (Page 15)	4,392	No explicit payment for these services	0	0%
Total of "community dividend"		4,691		0	0%
Acquisition and development Accommodation and leisure centre projects; purchase of St Cuthman's; development of St Cuthman's including planning consent	"Free" project management of acquisition and development projects (Page 32).	320	No explicit payment for these services	0	0%
Total value provided to Durand and its community		17,248		2,419	14%

Section 1: The MM&K brief and the content of this report

Our brief

MM&K Limited ("MM&K") is a remuneration consultancy located in the City of London. We advise a wide range of listed, private equity and private equity owned, family owned and not-for profit companies and organisations on all matters to do with the remuneration of their directors and other executives.

We have been commissioned by the Directors (referred to generally in this report as the "Trustees") of Durand Education Trust ("DET"), a registered charity, to report on the reasonableness of past and possible future arrangements for the recompense of Sir Greg Martin ("GM") in leading the commercial business activities of London Horizons Ltd ("LHL") that contribute to the educational programmes of the Durand Academy.

The Trustees themselves are responding to criticisms of the arrangements and, in particular, a Statutory Inquiry initiated by the Charity Commission this year. The purpose of an inquiry[1] is to investigate and establish the facts of the case, so that the Commission can:

- identify the extent of any misconduct and mismanagement
- assess the risks to the charity, its work, assets, beneficiaries and reputation, and
- decide what action needs to be taken to resolve the concerns and ensure this takes place.

The inquiry will be concerned with higher risk issues such as whether there has been a significant financial loss to the registered charity (DET) from the arrangement or whether the charity has been used for significant private advantage. It will need to be satisfied that the charity has received *value for money* and is likely to do so in the future.

These are broad issues involving judgment about the information and motives of the Trustees (and, previously, the Durand school GB) at the time decisions were made and what the outcome for the

[1] https://www.gov.uk/government/publications/statutory-inquiries-into-charities-guidance-for-charities-cc46

beneficiaries would have been if a different course had been taken. In this report, MM&K's contribution, in contrast, is specific and narrow. We have been asked to concern ourselves with providing a professional opinion on whether the level of recompense to GM has been fair and reasonable and what changes to any future contract might be needed to ensure it is so in the future.

In offering this opinion, we have found the NCVO *Principles for Setting Charity Remuneration*[2] to be instructive (although they are not directly applicable in this case). In particular (and inter alia):

1. The overall goal of pay is to offer fair pay to attract and keep appropriately-qualified staff to lead, manage, support and/or deliver the charity's aims;
2. The responsibility of setting senior staff pay lies with the Trustees and the exercise of this responsibility requiring judgment as well as following governance and constitutional arrangements;
3. There is a requirement to consider, in setting senior staff pay:
    a. The charity's aims and needs of its beneficiaries
    b. Whether a discount is appropriate (comparing with similar roles in other sectors) because of the public benefit and personal fulfilment
    c. Sustainability of the level of pay in the context of the charity as measured against the needs of beneficiaries
    d. The charity's and the senior staffs' performance against expectations
    e. Appropriate available information on pay policies and practices in other organisations that can help make the decision whether a level of pay is fair and reasonable.

Whilst we have limited our professional opinion to the question of what is fair and reasonable, we hope that our summary of the corporate entities, the role and achievements of GM for Durand and the financial summary will prove helpful in the wider aspects of the Inquiry.

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[2] *Report of the Inquiry into Charity Senior Executive Pay* (National Council for Voluntary Organisations, London, April 2014)

Project process

In the course of preparing this report the consultants have:

- Interviewed Messrs Mark McLaughlin and David Buckley (Members and Trustees/Directors of both DET and LHL), along with Mr Philip Sergeant of Lee, Bolton, Monier-Williams (LBMW), to be briefed on the Trustees' requirements, to learn the history and development of the LHL business, to understand the legal structure of the various companies and to learn about the recent involvement of the Education Funding Agency, Public Accounts Committee, National Audit Office and Charity Commission;
- Toured the assets used by LHL to generate income for DET – the sports centre and the student accommodation;
- Interviewed GM;
- Interviewed Mr David Whittington of LBMW to understand in more detail the history of the incorporation, relationships and asset ownership of the various entities;
- Studied the financial accounts of DET and LHL and the management accounts of LHL to understand the commercial outcomes of the LHL business and the management fees paid to GM's services companies and spoken to the GMG accountant to understand the extent to which these fees can be considered "pay" for his services;
- Investigated, from MM&K survey resources, benchmark remuneration arrangements.

Our report

Sections 2 to 4 are devoted to a factual description of the circumstances:

Section 2: the history, nature and relationships of the various legal entities involved

Section 3: the role and contribution of GM and LHL

Section 4: the financial outcomes for the Durand Primary School ("DPS"), DET and the Durand Academy Trust ("DAT") and the recompense for GM paid through GMG companies.

Sections 5 to 6 contain MM&K's opinion on the fairness and reasonableness of past and future arrangements:

Section 5: Our principal conclusions on the reasonability of the arrangements and actual payments

Section 6: Our observations on the question of whether the GB, and later the Trustees, acted reasonably.

We hope our report will be helpful in resolving any doubts about the appropriateness of the current arrangement and in planning for any future contract with GM.

Section 2: The history, nature and legal relationships of the various entities

Durand schools have been generating private income since 1990 through the enterprise of GM, who was originally appointed headteacher in 1986. This income has come, essentially, from the commercial exploitation of school buildings, space and facilities at times when they were not needed by the school. Some of this income has been spent directly on educational facilities and other benefits to pupils. The remainder has been reinvested in creating or enhancing assets to generate further private income.

It began with letting out the newly-built all-weather pitch and swimming pool which were created partly with a £100,000 grant from the GLC legacy fund. Income from this enterprise and from rent of the infants' building was then re-invested in developing the first 15 rooms of students' and teachers' accommodation in the upper floors of the school building, generating more income. Any public money used has since been repaid by the private income generated.

In 1997, LHL was set up, on legal advice, because of the level of commercial earnings expected. It covenanted its profit to the DPS Governors to avoid, legally, the payment of corporation tax. Since then, under GM's management, LHL has been providing a private income/charitable donations to DPS, and more lately to DET and DAT.

For the first 11 years of the commercial activities, GM received no remuneration over and above his salary as a headteacher, although this work was outside his normal accountabilities as a headteacher and involved a high commitment of time outside school hours during the week and during weekends and school holidays.

In 2001, the LHL directors agreed a commercial contract (Agreement for Services) with GM which, for the first time, provided him with some recompense for the work with LHL. The contract was between LHL and GM's own service company and had a ten-year period. A replacement contract was agreed in 2012, terminable by either party after five years.

In 2001, GM also gave up a 26% commercial interest in a foreign language school in Covent Garden to focus his commercial activities on Durand (The Cambridge School of English – "CSE"). He also turned down the offer of lucrative employment in the Middle East. By the 2001 Agreement, the GB was able to secure his services for the commercial activities and, indirectly, created a lock-in for his services as headteacher.

From 1997 to 2014 some £3.7m in private funds was raised and covenanted or gifted to the DPS Governors or to the two Trusts (£3.6m since the 2001 Agreement).

The timeline of the legal entities is shown in Exhibit A, following; the relationship of the entities is shown in Exhibit B.

Exhibit A: Timeline

Date	Event
to 1995	DPS under local authority control (ILEA then Lambeth LEA))
1986	GM appointed as headteacher
1990s	Built all weather pitch and swimming pool
1995	Successful DPS application for grant maintained status. Governors now owned assets in law
1995	First expenditure on accommodation development
1996	Started student accommodation business
20/8/97	London Horizons Ltd incorporated to operate assets for commercial return
1998	Grant maintained schools became Foundation Schools (DPS was "a Foundation without a foundation").
1998	First contract between DPS Governors and GM to build trading business (no pay at this stage)
1999	DPS took over management of Mostyn Gardens Primary School
1/9/01	Commencement of 10 year agreement for services between LHL and GMG
2004	Development of sports centre and swimming pool
18/5/10	DET incorporated as a Foundation Trust; statutory transfer of assets to DET. DET empowered to appoint the majority of school Governors
28/5/10	St Cuthman's site acquired by DET
13/8/10	Durand Academy Trust established under EFA. DET a member of DAT
1/9/10	Transfer of Mostyn Gardens assets from LB Lambeth to DAT
10/9/12	Funding agreement for DAT signed by Secretary of State
1/12/12	New 5 year plus agreement for services between LHL and GMG
2013	Greg Martin knighted
Sep 2014	St Cuthman's middle school opened
Late 2014	Resolution of confusion of regulation of DET. Charity Commission confirmed as the regulator
Late 2014	Members of governing bodies/boards changed to resolve potential conflicts of interest. Trustees (directors) of DET now identical with directors of LHL. No overlap with DAT trustees

Exhibit B: structure of entities

Durand Education Trust
Company limited by guarantee
Registered charity
Incorporated 18/5/10
Owns all property assets (statutory transfer from DPS Governors)
Members & Directors:
Mark McLaughlin
David Buckley
Phil Blair

Control of LHR. Allows use of assets

Gifts profits

Durand Academy Trust
Company limited by guarantee
Exempt charity
Incorporated 13/8/10
Free use of DET assets
Members:
DET
Greg Martin
Kevin Craig
Alan Davies

London Horizons Ltd
Company limited by guarantee
Incorporated 20/8/97
Develops and operates assets for commercial income
Members & Directors:
Mark McLaughlin
David Buckley
Phil Blair

Provides staff resources to LHL for reimbursement of employment costs

Provides management of LHL for a fee

GMG Management Resource UK Ltd
Incorporated 7/9/12
Member & Director:
Sir Greg Martin

GMG Educational Support (UK) Ltd
Incorporated 9/11/01
Members and Directors:
Sir Greg Martin; S. Smith (Sec)

The 2001 contract for services was between LHL and GM's service company, GMG Educational Support (UK) Ltd. It was renewed in 2012 with GM's new services company GMG Management Resource UK Ltd. The old service company continued to be used to employ LHL staff on a basis of full reimbursement of employment costs by LHL.

On 18 May 2010, the Durand Foundation School acquired a foundation, which became DET. Under statute at the time, the school assets were transferred to this trust as was any remaining interest of the local authority. The school applied for Academy status and Durand Academy Trust (DAT) was incorporated in August 2010. There followed a period of confusion about the legal status of the trusts, the regulator and ownership of the assets, which has now been clarified. DET owns the assets and is regulated by the Charity Commission. It is not an Exempt Charity, but an Excepted Charity (as an educational trust).

The Mostyn Garden school property was transferred to Durand in September 2009, on a 120 year lease, by the London Borough of Lambeth. The transfer was wrongly made to DAT – this has yet to be resolved. LHL is developing accommodation on this site and in the caretakers' house at the Hackford Road site, which will more than double the number of student beds and result in further income to DET.

To resolve Charity Commission concerns about conflicts of interest amongst members and directors, the members and directors of DET and LHL were changed in the autumn of 2014 and the same group of people are members and directors of both companies. This gives DET control of LHL. GM is not a member or director of either company, but he is a Member of DAT, and a Governor by virtue of his office as Executive Head of the Durand Academy.

Section 3: The role and contribution of GM and LHL

The achievements and contributions described below lie outside, and are additional to, his achievements as headteacher of DPS and subsequently Executive Head of DAT. A summary is shown in Exhibit S on Page 4. He is remunerated separately for the school management role and this remuneration is outside the scope of this report, except in so far as to note that his teaching salary was not reviewed between 2001 and 2012 when it was brought into line with the extra responsibility in that year of leading a secondary and boarding school.

His achievements and contributions fall into two main categories:

Type A. Those covered by the Agreements for Services. These are remunerated, or rather subject to, 'payments', under the terms of the two Agreements for Services between LHL and the GMG companies. These services comprise:

- Conceiving and evaluating the business ideas as an entrepreneur
- Applying for planning consent and leading the design and construction of buildings and equipment
- Setting up the business organisation including compliance aspects
- Operational management of the businesses to deliver a service to customers and generate a profit.

The main LHL business milestones have been:

1. Continuing developments to the accommodation facilities over time (total expenditure about £1.5m), resulting in a total of 100 beds. Marketing and managing accommodation to achieve an 86% occupancy rate. GM's links with the CSE language school provided a good source of student guests. Accommodation with a further 104 beds is under construction.
2. Construction and equipping of the leisure centre in 2004, comprising a swimming pool, fully-equipped gym, changing rooms and showers and restaurant leisure area. The initial capital cost was £1.7m. Marketing and managing the leisure centre to achieve membership at an optimum capacity of 800 members.

The Type A contributions, in turn, fall in to two sub-categories:

Type A.1 LHL services which are priced at a full commercial rate. These comprise leisure club membership and student accommodation to open-market customers paying commercial prices. They generate a full management fee to GMG.

The contribution of Type A.1 services is best measured, for our purpose, by the financial value of the charitable donations made to DET. These contributions are applied by DET (previously by the DPS Governing Body ("GB")) to provide benefits to the beneficiaries of the Trust. They include:

- child care and extra education at a highly discounted rate
- subsidised dinners for those who would normally pay
- tea for after-school children
- free uniform
- free music tuition
- free boarding at St Cuthman's.

Over the whole period from 1997, the total sum of charitable donations has amounted to £3.7m. The benefit to the families, in terms of the saving on the full market price of buying these services, is probably double this figure (given the current profit margins in the commercial fully commercial business). In some cases, the saving is much higher – for example, the boarding at St Cuthman's is currently costing DET £3,500 a year, whereas a full commercial charge might be as much as £20,000.

Type A.2 LHL services which are free or are priced at a discount. These include the free use of facilities (such as the swimming pool) by the school, subsidised leisure club subscriptions to the families of pupils and reduced accommodation rental for teaching staff. The discount represents a *hidden* benefit to the beneficiaries of DET, and forms part of what might be called the "community dividend" (shown in Exhibit S). As the GMG variable fee is based on gross turnover of LHL, the discounted services result in no fee to GMG or a reduced fee.

In Section 4 we estimate the hidden benefit from Type A.2 services as being about 8% of Type A1 sales – ie £0.7m over the whole period. This is calculated at cost. Again, the saving to the families is probably twice this figure (ie and additional £0.7m). Using the at-cost figure, this makes the total Type A contribution about £4m over the 17 years since LHL was formed.

Type B. These are contributions made by GM which fall outside the remit of both the LHL contracts for services and the normal contractual expectations of a headteacher. No attributable remuneration is paid over and above the Type A payments and his salary as Executive Head. Type B contributions involve leading the acquisition, development and construction of new or improved educational assets (site, buildings and facilities). The key Type B projects have been:

To date: Total project cost to date about £6.7m

1. The original development of the all-weather pitch and swimming pool paid for by a GLC legacy grant sourced by GM – cost £100k.
2. The first 15 student rooms - £190k, 30% from funds generated by GM and 70% from new business surpluses.

The above items predate the LHL contracts with GM

3. Mostyn Garden refurbishment and swimming pool, 2010 – cost £3.5m.
4. Hackford Road building conversion to create new classrooms, 2012/13 –cost £585k.
5. St Cuthman's - cost to date (2014), £2.3m – acquisition of site including negotiating an interest-free staged deferral of the purchase payments and a reduction of £250,000 in the asking price; first phase improvements.

Future projects: St Cuthman's – projected costs over next 5 years - £17m.

Section 4: The financial results of LHL and payments to GMG companies

Type A contributions

Up to 2001, GM received no additional remuneration for the work he was doing generating additional income for the school. In 2001, partly because he was being asked to focus on Durand commercial activities and to forgo his personal business interests elsewhere (see Page 9), he asked for and was given a contract for services (through a GMG company) for developing and managing the school assets at times they were not needed for the school, so as to generate commercial income. These were not "services" in the normal sense of the word. The contract had the nature of a business partnership in which the GB provided the physical assets and GM provided the enterprise and energy to build the business.

First contract 4/12/2001 (commencement date for fees 1/9/2001).

This was a ten year contract. It provided three elements of financial consideration for the services provided:

1. An annual fixed "retainer" of £25,000 per annum, escalating each year with RPI;
2. 15% of gross sales by LHL;
3. 3% of total gross profits over the 10 year period to be paid after the end of the period (the "Special Payment").

The contract stipulated the frequency of payment and what would happen in the event of GM's death.

The third item was intended to provide a reward for the value that his endeavours had created over the 10 years both through the enhancement of the physical assets and in the creation of the business.

The contract formally expired at the end of August 2011, but continued to be applied, de facto, until the commencement date of the second contract, 1/12/2012. GM did not exercise his right to the Item 3 payment at the end of the first contract, but the value payment has been "rolled forward" into the new contract.

Second contract 1/12/2012

The new contract follows, broadly, the concept of the first, but there are a number of important differences:

1. An annual "retainer" of £32,362.08 per annum, escalating each year with RPI. The increase in the starting point continues the previous RPI adjustments;
2. 15% of gross sales by LHL (as before);
3. A "Special Payment" of 50% of 3.5 times (ie 1.75 times) the average of the previous 3 years' gross turnover, to be paid on termination of the agreement. Between ¼ and ½ of this amount is payable in the year following termination. The balance is paid in 10 equal annual instalments starting two months following the first instalment. GM has since agreed to halve his entitlement under this item (see Page 31);
4. The previous contract had a fixed 10-year period. This new contract allowed for either party to terminate the contract on 18 months' notice expiring no less than 5 years from commencement.

Again, item 3 is intended to reward GM for value creation. The spread of payments over 10 years was designed to make them affordable in cash terms.

Financial outcomes

The Appendix shows, in detail, the income and expenditure of LHL and the fee payments made to GMG companies. The employment cost reimbursement is included in the general LHL costs. A summary of LHL profit, charitable donations and GMG earnings is shown in Exhibits C and D on the following page. These tables do not include any values for the "community dividend" attributable to LHL. These are discussed on Page 21.

The figures in Exhibit C are taken from the LHL management accounts, a summary version of which, for each year, is audited and filed. In earlier years, the PBT was covenanted to the Governors of DPS. Since 2012 the donation to DET has been made under gift aid and is shown as an expense, leaving no profit. The figures in the table are adjusted to show profit before gift aid.

Exhibit C

Accumulated profit since start of income in 1997

£000

	Sales income	Expenditure			Profit		
	Total revenue plus interest earned	Expenses excl GMG	GMG fees	Total expenses	PBT before donation and fees	PBT before donation	Gifted to school, DET or DAT
Total since LHL formed	8,092.1	2,855.5	1,525.9	4,381.4	5,236.5	3,710.7	3,697.0
Contract 1	5,905.2	2,186.0	1,189.5	3,375.5	3,719.2	2,529.7	2,516.3
Contract 2	2,042.1	644.9	336.4	981.3	1,397.2	1,060.8	1,060.6

Exhibit D

Analysis of GM recompense since start of income in 1997

NB: GM earnings started from 2001 (LHL year ended 2002).

Overall	£000
No. of years	17
Total retainer fee	377.1
Total sales related fees	1,148.7
Total fee paid	1,525.9
Average gross rem	89.8
Average retainer	22.2
Average sales related	67.6
Total fees vs profit before fees	29%
Total sales related fees vs profit before sales related fees	24%
Average profit margin	
Before GMG	65%
After GMG	46%
Projected termination payment	893.4

First Contract	£000
No. of years	11
Total retainer fee	310.2
Total sales related fees	879.3
Total fee paid	1,189.5
Average gross rem	108.1
Average retainer	28.2
Average sales related	79.9
Total fees/profit before fees	32%
Total sales related fees vs profit before sales related fees	26%
Average profit margin	
Before GMG	63%
After GMG	43%
Termination payment (waived)	75.9

Second contract	£000
No. of years	2
Total retainer fee	66.9
Total sales related fees	269.4
Total fee paid	336.4
Average gross rem	168.2
Average retainer	33.5
Average sales related	134.7
Total fees/profit before fees	24%
Total sales related fees vs profit before sales related fees	20%
Average profit margin	
Before GMG	68%
After GMG	52%
Projected termination payment	893.4

1. *Figures are taken from LHL accounts. Split of recorded basic fee between retainer and sales related payments is based on MM&K calculation of inflation of the retainer using RPI figures from ONS*
2. *Projected termination payment is calculated on the agreed reduced Special Payment formula (50% of the original formula)*

The net profit figures (before donation to DET) are important to allow benchmarking of the level of fees as a percentage of profit, which is one test of reasonableness (see Section 5). But it is important to point out that the LHL accounts and profit figures are incomplete as they do not capture two major profit and loss items that would be included if accounts were prepared on a fully-costed basis.

1. There is no charge made to LHL for the use of DET assets. The LHL accounts report the profits from the "marginal" business;
2. No account is taken for the benefit that is delivered to the school and the community through providing free or subsidised use of the all-weather pitch, pool, other leisure centre facilities and accommodation (the Type A2 contribution referred to in Section 3).

The current method is a simple and sensible way of accounting for the benefit delivered to DET by LHL, but we need to adjust the figures when considering the fairness of the fee, or at least bear the impact of these items in mind.

Use of assets

These assets comprise the land and buildings plus capital equipment. The original DPS assets have been enhanced by the work of LHL (eg construction of the leisure centre and conversion of school buildings into accommodation). The enhanced value of the assets is shown on the DET balance sheet and depreciation is charged to the DET profit and loss.

The enhancements have generally been paid for by the donations to DET generated by the LHL profits. The enhancements in turn lead to higher sales revenue and, hopefully, to higher profits and future donations. But a true LHL profit would require the deduction of a commercial rental for use of the assets. Alternatively, DET and LHL could be viewed as a single commercial unit in relation to the trading business. In the combined accounts the 'payment for assets' would be a charge for depreciation of the LHL dedicated assets including enhancements and a time-use apportionment of the depreciation on the existing buildings. It would also include interest on any loans used to finance the assets.

We would not expect this apportionment to have been calculated and it would be unhelpful to be too precise in this. We note that in the DET accounts for year ending 31 August 2013 there was a depreciation charge for freehold land and buildings of £250,000 and for fixtures, fittings and equipment of

£12,525. This will, of course, include depreciation of the existing buildings. The St Cuthman's loan is interest-free and DET does not appear to be paying interest on any other loans.

In order to establish the general order of "payment for assets" amount, we have made an estimate of what proportion of the total depreciation of assets in the DET accounts might be attributable to their use by LHL. (See Exhibit H in the Appendix). We reached a proportion of 29% ie £76,132, as a meaningful charge to LHL profits in year ending March 2014. This is 7% of sales revenue.

As a generalisation, we will assume 7% of sales revenue over time to be a fair charge for use of assets.

Community 'dividend'

The primary school pupils and their families benefit from free or subsidised use of the pool and leisure centre facilities and the school benefits by being able to offer subsidised accommodation to members of the teaching staff. There is, therefore, a benefit or 'dividend' to the community from both the use of the DET assets and the associated operating costs of LHL. No sales revenue is taken by LHL for the provision of this service.

A fully-costed business would need to take this provision into account. There are two treatments possible:

1. Increase the accounting sales revenue figure to include the amount of the discount against the full commercial charge;
2. Reduce the expenses by an amount attributable to the free or discounted use of the services. We think this is the more satisfactory approach as it does not assume a commercial profit margin on the community service.

Again, in order to establish the general order of the value involved, we will assume a time apportionment of the total use of the assets, representing the free and discounted proportions of use provided as a 'community dividend'. We are assuming, for 2014:

Exhibit E: 2014 'Community Dividend'

Activity	Sales revenue	Apportionment of costs	Free time*	Community dividend	Percentage of sales
Accommodation	£607,237	£296,591	10%	£29,659	
Use of centre	£397,030	£193,920	30%	£58,176	
Other income	£89,259	£43,596	10%	£4,360	
Total (excl interest)	£1,093,526	£534,107		£92,195	8%

* *Representing the proportion of time the facilities are used for free, plus the proportion of time the facilities are used at a discount times the discount on normal commercial rates*

By coincidence, the two adjustments approximately cancel each other out, and, unless our assumptions are wrong, the figures in Exhibit D can be used fairly for benchmarking against fully-costed businesses.

As explained on Page 15, the community dividend, which is shown as the cost of the services provided, does not represent fully the benefit *received* by the families, in that they make a saving on the full commercial rates they would normally pay. Given that the overall profit margin of LHL is about 50%, it is reasonable to value this full benefit at twice this cost.

Type B contributions

GM has led projects to the value of about £6.7m to date. He has received no attributable remuneration for this work.

Section 5: Our conclusions about the commercial arrangements and past payments

The question we have been asked to answer is whether the payments from LHL to GM are reasonable both historically and going forward as a fair price for the value provided. Our perspective on what is reasonable is *common commercial practice*.

The total payments are shown in Exhibit S on Page 4

Before answering this question, we need to begin by considering the nature of the services provided and the deal involved. Unfavourable comments may have arisen, in part, from a misunderstanding about the essence of the agreement.

Employment vs a commercial "deal"

There is no doubt in our view the services provided by GM through the GMG service companies form part of a commercial deal:

- This was the clear intention of both parties
- The role is essentially entrepreneurial and as such requires partnership. Whilst it might be possible to isolate aspects of the role as a definable "job" (eg the day-to-day accommodation management service provided by GM at times) the overall role has no limiting definition except to maximise the commercial exploitation of the assets
- Payment is linked almost entirely to results and is not time-related (such as a payment for the hours committed or a fixed payment specifying an expected number of hours of commitment). This is essential in the circumstances that GM already has a full-time contract as Executive Head. The level of work and reward is self-regulating.[3]

[3] ie GM is able to determine himself how much time he can devote to LHL and other extra-headship activities benefitting the schools, taking into account his commitments as Executive Head of DAT.

Purchasing services vs a business partnership

There is also an important distinction to be made between the "services" provided by GMG to LHL (and through LHL to the GB or DET) and the normal provision of goods or technical services by a third party. Arguably, the word "service" itself is not appropriate – this is an agreement between two parties in which one party provides assets, the other the entrepreneurship and management skills and they divide up the financial profits between them. There are many examples in the commercial world – a common one is seen in the contracts between oil companies where one owns the oil assets or license and the other provides the drilling and extraction. The latter is not providing a service to the former – they share the profits according to a contract.

We also note that GM went to the GB with a business proposition. This is quite different from a situation where the GB identified a service that is needed and then went out to procure it. Indeed, had they identified such a service, it is doubtful that they could have found a single person with the right set of skills to perform the role or that they could have created the operating environment in which the role was do-able. The option of going out to tender for this full entrepreneurial service was not (and is still not) a practicable possibility, although day to day management of the leisure centre could now be contracted out.

Given the nature of this agreement as a deal, any benchmarking has to concern itself with the fair division of profits, not with remuneration levels for apparently similar jobs. We would argue that the structure and level of payments also fall outside the scope of "charity senior executive pay" as covered by the NCVO Inquiry of April 2014, even though the guidance provided is helpful (see Page 6).

Was the deal reasonable?

Our starting criterion for what is reasonable is normal commercial practice. In looking at commercial practice we will be considering two questions:

- Was the deal *structured* in such a way as to produce a sound and fair outcome?
- However it was structured, was the level of payment to GM similar to that that would have been earned from a soundly structured deal?

(There is a further question as to whether the GB acted reasonably given the information they had at the time of the first and second contracts. The answer to the second is largely a matter of judgment – we will consider this question in Section 6.)

Basic Payments: structure

The retainer

When the first contract was agreed it included a fixed (ie not performance-related) element of £25,000, increasing annually in line with inflation. This "retainer" ensured GM received a fair payment for his efforts in the event that the turnover proved insufficient to generate a fair payment from the 15% share of turnover which formed the second part of the Basic Payment. DPS, through LHL and the GB, was, in effect, accepting a limited risk in the arrangement and reducing the risk to GM.

If the aim was to accept some of GM's risk, the payment could have been structured as a guarantee of income, so that the amount was recovered from turnover-related payments once they exceeded the basic figure. This would have been more in keeping with an arrangement that was a commercial deal and not an employment contract.

However, in the event, the level of returns has been such that the retainer was easily covered, so what matters is the total level of earnings received from the Basic Payments.

The percentage of turnover

Both contracts provide for 15% of gross turnover of LHL to be paid to a GMG company. Common commercial practice would structure this as a percentage of profits. Most commonly, this would be profits before tax, but different payment plans choose different levels of profit depending on the degree of control the executive or management company has on various aspects of cost (such as taxation, debt interest, investment and depreciation and amortisation of goodwill).

Whichever definition of profit is used, operating costs are normally charged against turnover before the performance-related payment is calculated. There are several reasons for this:

- It ensures that the variable payments are self-financing
- In the end, it is the level of profits that determines the charitable donations that are returned to the schools through DPS, DET or DAT

- It encourages the manager or agent to control costs to maximise profits
- It avoids perverse incentives, for example, to incur costs to maximise sales, by excessive promotional activity.

We understand that GM asked for the contract to be structured in this way because he was concerned that, with a profit-sharing arrangement, the LHL board might decide to incur some large additional costs which could effectively wipe out most of the profits in a year and with it his percentage payment.

However, as for the retainer, what matters is the total level of earnings received from the Basic Payments. We would also add that our comments on sound structure of the variable element are in no way a comment on the motives and priorities of GM, who no doubt was totally concerned with maximising charitable returns to DPS or DET. The profit margin (currently around 50%) indicates that GM has focussed strongly on cost control. But we do suggest that the basis of payment should be changed in a future contract.

Basic Payments: level of payment

Here, we consider if the total level of payment generated by the combined retainer and percentage of turnover is equivalent to the amount that would be generated by a fair and reasonable share of the profits[4]. There is no "right" level of profit-sharing for either a purely commercial partnership (or for an executive remuneration deal). It depends entirely on the relative contribution of the two parties. Exhibit F shows the nature of this contribution for different types of business and the typical percentage of profits (before total payment).

[4] In every case, we will be considering profits before charitable donations and before GMG fee payments but after charging the staff employment cost which are incurred by a GMG company and reimbursed by LHL.

Exhibit F: Typical share of profits to the "active" partner in a deal

Business situation	Contribution of the investing or employing party	Contribution of the executive team/agent	Total percentage of profit to team/agent
Business partnership	Funds and assets; varying level of strategy input and management time; business contacts; selling time	Funds and assets; varying level of strategy input and management time; business contacts; selling time	Varies entirely by relative contribution. May be 50% or more.
Private equity	Cash investment and future commitment of cash from investing "limited partners"	Investment strategy; source and negotiate deals; manage portfolio companies to maximise value; identify and negotiate sale of assets	20% of total cash returns paid to the PE firm (the general partner and its team)
Corporate finance (banking)	Minimal statutory capital provision; reputation and brand; client access	Develop and sell products and services; deliver service; no fee for no deal completed	40%-50%
Industrial management - travel and leisure. Turnover < £500m	Corporate fixed assets and finance; reputation and brand	Business and brand strategy; management of assets and staff resources to sell and deliver products and services	2.4% (plus up to 10% share of value through equity-based incentives)

Sources: MM&K Private Equity and Venture Capital Survey 2014; FSA banking research; Manifest Executive remuneration database 2015.

The LHL/GMG arrangement is unusual; we have been told it is unique in the education sector. In our view, the financial services examples above, although they may at first seem to be unconnected, provide a good comparator where one partner is providing the assets and the other the drive to generate and carry through the business – particularly the private equity model. Whilst private equity would seem to be a very different business in terms of the levels of earnings sometimes seen and its complex tax structuring, the parallel with LHL in the nature of the contribution is close. An investor brings assets (cash) to the private equity firm to use this in an enterprising way to create wealth. In return, the private equity firm (typically a partnership) will receive a performance-related total fee, which is most commonly 20% of the cash-on-cash returns to the investor (provided a hurdle rate of return has been achieved).

GM, through GMG companies:

- conceived and evaluated the business ideas as an entrepreneur
- applied for/negotiated planning consents and led the design and construction of buildings and equipment
- set up the business organisation including compliance aspects
- managed the businesses to deliver a service to customers and generate a profit.

Consequently we feel that 20% of total returns to LHL is a fair benchmark. Given the additional benefits provided by GM, we consider that a range of reasonability is 20%-25%.

The figures in Exhibit C on Page 19 show that combined fixed and variable payments to GMG companies from the first contract were 32% of profits before payments; in the second contract the payments, so far, represent 24%, a reflection of the increasing profit margin in the LHL business. Overall the figure is 29%.

This Basic Payment percentage, historically, was above our range of 20%-25%. We must emphasise that this analysis only considers the services provided to and outcomes achieved by LHL. It does not take into account the additional value provided by GM for services before the establishment of LHL and those provided directly to the schools (Type B contributions described on Page 22). These are considered later in this section. The full range of benefits and payments is shown in Exhibit S on Page 4.

One difficulty, in considering what is reasonable, is the almost certain (but untestable) truth that without GM's enterprise and energies none of the benefit to the school (£3.7m excluding "community dividend") would have happened. As far as the GB of DPS were concerned, this was free money (not, of course, entirely free, given the small risk exposure of the retainer and the LHL cost base). But this does not mean any percentage share to GM would be reasonable – a 90% share, for example, would be manifestly inequitable, even though Durand would still be receiving “free” money. We feel that the range we have suggested is fair.

Special Payments

The Special Payments were introduced into the two contracts to reward GM with a share of the value he creates. They were included as there was no possibility of offering him shares in the business.

There are three ways in which a business can be valued:

- The book value of the assets – effectively the cash sunk in the business
- Net asset value – where the assets of the business are valued at current market price. This relevant, for example, to property businesses
- Market value of the business as a going concern. This is effectively the present value of future cash income to the business less costs and less any debt.

It is important to note that these are alternative approaches – the values derived from each approach cannot be added together. For example, the book or market value of the assets cannot be added to the market value of the business as a revenue generating operation.

Given the nature of the LHL business, we believe the third method is the correct approach.

By providing GM with the opportunity for a Special Payment he is effectively being given an opportunity to share future profits (note that he waived receipt of the Special Payment under the first contract, so any discussion of this is purely academic – the value sharing he could receive is controlled by the second contract, which subsumes any entitlement to payment related to the value created during the first contract).

There are four questions to be answered:

- Was it reasonable to provide GM with a share of the value in addition to his Basic Payments?
- What was/is the amount of value created?
- What would be a reasonable share of the value to GM?
- Did/does the formula generate this share?

Should a value based payment be provided to GM?
Companies and investors provide a share of value to their executives or agents as an incentive to create value, to create alignment of interest and because executives demand this in circumstances when they can be seen to be, or feel they are, the principal motive force in creating extra value. GM has clearly been adding to the value of the assets through his enterprise and so some participation in value creation is fair.

Amount of value created
Looked over the whole period of LHL, the turnover and profits have increase from zero to £1 million and £561,000 respectively. Businesses are usually valued as a multiple of earnings. We would expect the LHL valuation to be discounted compared to that for a business for which there is a ready, liquid market. A buyer of either or both of the leisure business and the accommodation business is likely to be specialised and would take into account possible restrictions on the use of the fixed assets, in particular due to their proximity to the school. Any purchaser would further need to pay DET a rental on the fixed assets and might face a requirement to provide discounted services to families.

For the purpose of this report, we will offer an approximation. An average current price earnings multiple for a listed company in the travel and leisure sector is 12 times. A multiple of 8 times would seem a fair discount and would value the current business at about £4.5m enterprise value. If the projected value being created through the additional accommodation were included, this figure would approach £7m.

Share of value to GM

GM has contributed to this value through his time and enterprise. He did not invest personal cash as there were no shares available for him to invest in. We suggest that the share of value to GM should be the same as the fair share of current profits, a figure we have put at 20%-25%. This would suggest a reasonable Special Payment figure would be £900k to £1.12m, (£1.4m to £1.75m if the new accommodation were included in the value).

First contract Special Payment

The first contract provided for a Special Payment of 3% of the gross profits over the 10 years of the contract. As shown in Exhibit E, this would have amounted to £75k at the end of the first contract. This is about 2% of the increased value over the first contract using our 8 time price earnings multiple. This is well within any commercial norm.

GM waived this payment. This waiver does not mean that he has forgone the potential payment. The new contract includes a Special Payment which is measured on total turnover, not just the increase in turnover from the beginning of the second contract. Any payment, therefore, includes the value generated in the first contract. The first payment in common parlance has been “rolled over”.

Current Special Payment

The second contract provides an entitlement for a Special Payment of 50% of 3.5 times annual sales (gross turnover) averaged over the three years before termination. As noted above, this sales figure includes the sales build-up since the beginning of the first contract and so provides a payment for the total value increase.

However, we understand that early in 2013, GM approached the Vice-Chairman of the DAT Trustees (at that time believed to be the relevant controlling Trust) offering to reduce this entitlement. He has since agreed with the DET Trustees that the entitlement should be halved to 25% of 3.5 times sales. This current produces a projected Special Payment of about £900k, at the bottom of our suggested range above.

It should be noted that this payment still represents a significant cash sum. Since LHL is unable to offer shares the value payment needs to be paid in cash. LHL has no immediate equivalent value-based cash income to offset this. This was recognised when the contract was drawn up. There is a significant cash payment in the first year following termination: no less than 25% of this amount (£225k) is payable in this year against a current cash profit of, perhaps, £600k. However, the remainder would then be spread over 10 years.

Additional roles performed within LHL

The Trustees of DET have asked us to take into account the fact that, as well as acting as General Manager for LHL, GM carried out, personally, many staff functions within LHL rather than employ extra staff to do this work. This work was carried out in his "own time" which might otherwise have been evening, weekend breaks or holidays. This included, for example, security and day-to-day accommodation management activities. By doing this work he was able to save costs and increase profits; he was also able to make sure of the level of security needed given the proximity to the school and its pupils.

Whilst we can see the very considerable benefit to DPS and DET from having GM carry out these roles, we cannot find a precise way of identifying the savings. Since a lot of this work was comparatively menial, we can envisage a possible saving of one part-time member of staff on, say, 50% of £25,000 p.a. – a saving of £12,500 a year or £185,000 (including NICs) over the 13 years since the beginning of the contracts. This at least gives a potential order of savings. But, we would suppose, GM or the directors would want to put the whole saving here into the "financial pot" for calculating the fairness of his payments, and we have included this figure in Exhibit S on Page 4.

Type B contributions from GM

The Directors of DET have also asked us to take into account the work carried out by GM which falls outside the remit of LHL and the GMG contracts but also falls outside his normal remit as a headteacher. In Section 3, we identified the total expenditure to date that he has led as £6.7m. An architect or building survey managing the design and supervision of project of this sort would, on average charge about 5%[5] commercial project manager looking after work of this sort would, on average, charge 5% of the project costs. This suggests a commercial payment to GM for his work on this front would amount to about £320k excluding any work before the creation of LHL when there was no contract to pay him any amount outside his contract as a headteacher. This figure is also included in Exhibit S.

[5] *Architect fees survey 2013,* www.feesbureau.co.uk

Overall conclusions

We have found that, considering only the profit of £3.7m earned by LHL and remitted to DPS, DET and DAT as charitable donations for use by the schools, the historical Basic Payments to GM are at the top end at £1.53m. Our own view is that £1m to £1.3m would have been reasonable.

The original Special Payment was reasonable and conservative, providing 3% of the gross profits over the 10 years of the first contract. This has now been rolled over into the second contract Special Payment. With the agreement to halve the formula, the new Special Payment is in line with or less than our benchmark norm and we consider it reasonable.

Combining the Basic Payment and Special Payment we consider the overall level of accrued remuneration is within our range of what is reasonable (see Exhibit S on Page 4).

We recommend that any future contract structures the basic payment and any value payment as a multiple of profits rather than a multiple of sales.

Section 6: Did the Governors act reasonably?

We have limited our formal conclusions and recommendations in this report to answering the questions "were the arrangements in place for payment of GM (through GMG) reasonable in the light of common commercial practice? What should a future arrangement be?" However, there are further questions that DET will be required to answer:

- Did the school governors and LHL directors act reasonably in agreeing the first contract?
- Did the equivalent responsible trustees and directors act reasonably in agreeing the second contract?
- Have the various trusts and their beneficiaries received value for money?

Answers to these questions require judgement and MM&K has no claim to special expertise in these matters. However, we are offering series of reflections on these questions that may be useful.

First contract

- Whilst the contract was legally between LHL Ltd and GM's service company, the decision-making parties were the GB and GM.
- In 2001, GM brought a proposition to the GB to build a revenue-earning business on top of the existing commercial income stream in return for a 15% share of turnover plus a £25,000 retainer and 3% of 10 year profits.
- The GB recognised that this was a largely self-funding arrangement that would provide money to the school which it would otherwise not receive. In addition, it provided some lock-in for GM as headteacher and was an inducement for him to focus on school commercial activities in the time outside his contractual school hours and to give up his private commercial venture (the language school) and the alternative option of an expatriate appointment abroad.
- At the time of the contract, commercial activities were bringing in about £60,000 per annum in sales turnover. The GB had no expectation that they would reach the current figure of £1m. Turnover of £60,000 would have yielded a sales-related payment of only £9,000 per annum.

- The GB and LHL directors took legal advice on drafting the contract. This presumably included advice on the soundness of the commercial arrangement and financial calculation.
- In the event the school received over £2.5m of additional funds under the first contract that it would not have received had the contract not been in place. GM received just under £1.2m plus an entitlement to £76k for building future value in the business – an amount that was effectively rolled forward into the second contract.
- Our view is that the amount paid to GM for the LHL work as a percentage of profit (and therefore gift aid) was at the high end of common commercial practice although the accrued amount for value was modest. But at the same time GM was providing (and had already provided) a range of other services to the school outside either his LHL contract or his headteacher contract. We understand, also, that his salary as a headteacher was held back when the Governors felt he was being well rewarded from the LHL contract. In total, the amount he received would appear to have been fair for the work done.

Second contract

- The contracting parties are GM and the directors of LHL. At the time of the confusion about the relative status and regulation of DET and DAT, DAT was also party to the contract. Now the directors of LHL are the directors/trustees of DET, which has full control of LHL.
- The second contract largely follows the structure of the first. The notable difference is in the provisions for termination and the calculation of the Special Payment to reward value creation. The contract is effectively a five-year contract requiring notice either way compared with a fixed 10 years for the first. The Special Payment includes a payment for value created during the first contract and the share of value is several times higher than under the first plan. It is calculated as a multiple of sales turnover rather than profit (which was used in the first contract).
- At the time of the second contract, sales turnover was over £900,000 per annum. The directors/trustees were therefore aware of the level of payments likely to be made to GM.
- Again the LHL directors and DAT trustees took legal advice on the design of this payment as well as the wording of the contract.
- The Basic Payment under the second contract is similar to that under the first, and represents a slightly lower proportion of profits as margins are increasing. The overall level of payment as a percentage of profits is now within the range of commercial practice.

- However, the directors/trustees acted in good faith on the basis of the technical advice they received. They also recognised at the time of the second contract the critical need to retain the services of GM to create and deliver the additional revenues needed to secure the St Cuthman's boarding project.
- Subsequently, in view of the projected costs of the boarding provision and the fact that the promised funding from the EFA had not materialised, GM volunteered to cap his entitlement at 50% of the contractual figure so that more money would be retained for the Trust beneficiaries. The Trustees accepted this offer.
- Our view is that the reduced formula delivers an amount of between 13% and 20% of value, depending on whether the new accommodation is included in the value. We consider this a reasonable proportion.

Value for money

- There remains the question whether DPS, and more recently DET, has received "value for money" (VFM). The Academies Financial Handbook 2014 defines VFM as "achieving the best possible educational and wider societal outcomes through the economic, efficient and effective use of all the resources in the Trust's charge, the avoidance of waste and extravagance, and prudent and economical administration." There is an elaboration of this concept in the Higher Education Funding Council for England's website: "VFM is a term used to assess whether or not an organisation has obtained the maximum benefit from the goods and services it both acquires and provides, within the resources available to it. Some elements may be subjective, difficult to measure, intangible and misunderstood. Judgement is therefore required when considering whether VFM has been satisfactorily achieved or not. It not only measures the cost of goods and services, but also takes account of the mix of quality, cost, resource use, fitness for purpose, timeliness, and convenience to judge whether or not, together, they constitute good value."
- Under this definition of VFM, DPS and DET have set an exceptional standard for effective use of resources in the trust's charge which will not be possible for other academies to match unless they have access to the particular set of talents that GM was able to bring.
- But VFM is not an appropriate concept to apply to the "procurement" of the "service" provided by GM. The real value provided is not in the day-to-day management of the leisure facilities and accommodation but in the entrepreneurship provided by GM in creating the business in the first

place. This is not a situation of the GB spending money and getting value for it, but of the GB earning money that would not otherwise have been received.

Appendix: detailed financial record of LHL and payments to GMG companies

Exhibit G: Profit and Loss summary for financial years since LHL incorporated

LHL Year ended Mar	Membership	Student Accommodation	Other income	Interest income	Tot revenue plus interest earned	Expenses excl GMG	GMG fees actual	Total expenses	PBT before donation	Gifted
1998					£9,876	£9,756		£9,756	£120	£0
1999					£31,908	£3,365		£3,365	£28,543	£28,543
2000					£41,541	£6,248		£6,248	£35,293	£35,423
2001					£61,444	£5,232		£5,232	£56,212	£56,218
2002					£90,060	£6,410	£22,600	£29,010	£61,050	£61,050
2003			£185,951	£2,266	£188,217	£14,448	£53,912	£68,360	£119,857	£106,434
2004			£200,684	£989	£201,672	£698	£43,964	£44,662	£157,010	£157,010
2005	£77,258	£229,913	£37,931	£251	£345,353	£186,411	£73,248	£259,659	£85,693	£85,693
2006	£163,272	£282,917	£92,618	£1,209	£540,016	£248,719	£102,273	£350,992	£189,023	£189,023
2007	£267,316	£254,431	£90,833	£1,788	£614,368	£229,729	£146,268	£375,997	£238,371	£238,371
2008	£303,483	£304,144	£79,002	£2,988	£689,617	£271,615	£135,980	£407,595	£282,022	£282,022
2009	£334,605	£341,846	£87,819	£1,632	£765,902	£321,441	£139,496	£460,937	£304,965	£304,965
2010	£345,947	£300,679	£81,590	£102	£728,318	£330,162	£142,999	£473,161	£255,157	£255,157
2011	£334,685	£387,358	£84,277	£1,121	£807,441	£300,422	£156,899	£457,321	£350,120	£350,120
2012	£356,861	£498,187	£78,419	£730	£934,197	£275,932	£171,846	£447,778	£486,419	£486,419
2013	£338,943	£521,759	£85,997	£668	£947,367	£286,175	£161,034	£447,209	£500,158	£499,888
2014	£397,030	£607,237	£89,259	£1,251	£1,094,777	£358,766	£175,341	£534,107	£560,670	£560,670
Total since LHL formed	**£2,919,400**	**£3,728,471**	**£1,194,380**	**£14,995**	**£8,092,074**	**£2,855,529**	**£1,525,860**	**£4,381,389**	**£3,710,683**	**£3,697,006**
Total first contract	£2,183,427	£2,599,475	£1,019,124	£13,076	£5,905,161	£2,185,987	£1,189,485	£3,375,472	£2,529,687	£2,516,264
Total second contract	£735,973	£1,128,996	£175,256	£1,919	£2,042,144	£644,941	£336,375	£981,316	£1,060,828	£1,060,558

Exhibit H: Project expenditure and fixed assets

Year ended Mar	Project	Cost of Projects
1995	Teachers' accommodation block, Hackford Road	£201,612
1996		
1997	Linking main and accommodation block, Hackford Road: Ph 1	£165,297
1998	Linking main and accommodation block, Hackford Road: Ph 2	£125,403
1999		
2000		
2001	Accommodation block Hackford Road	£961,763
2002		
2003		
2004	Swimming pool and sports centre, Hackford Road	£1,678,966
2005		
2006		
2007		
2008		
2009		
2010	Refurbish Mostyn, including swimming pool	£3,527,437
2011		
2012	Hackford Road conversion to create new classrooms	£308,000
2013	Hackford Road conversion to create new classrooms (cont'd)	£277,000
2014	Part purchase of St Cuthman's (to Feb 15) and refurbishment	£2,280,000
Total		**£9,525,478**
Total project expense attributable to current LHL income earning facilities		£3,133,041
Total book value of DET fixed assets including equipment (31/8/13)		£18,525,252

Total assets used by LHL - cost of dedicated projects plus, say, 25% of original DET assets	£5,382,984.50
Percentage of total fixed assets including equipment	29%