



House of Commons
Committee of Public Accounts

The monitoring, inspection and funding of Learndirect Ltd.

Twenty-Second Report of Session 2017–19

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 26 February 2018*

The Committee of Public Accounts

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Publication

Committee reports are published on the [Committee’s website](#) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry publications page](#) of the Committee’s website.

Committee staff

The current staff of the Committee are Richard Cooke (Clerk), Dominic Stockbridge (Second Clerk), Hannah Wentworth (Chair Support), Ruby Radley (Senior Committee Assistant), Kutumya Kibedi (Committee Assistant), and Tim Bowden (Media Officer).

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Summary

With the collapse of Carillion, questions are rightly being asked about how Government manages companies who deliver our public services. The failure of Learndirect in delivering quality training to apprentices whilst receiving millions of pounds of taxpayers' money, £121 million in the 2016–17 academic year alone, is another stark example of a poorly performing contractor and poor oversight by Government and its regulators. And another contractor with contracts across several Government Departments.

Learndirect Ltd's performance on apprenticeships has been in steep decline since 2013. Learndirect failed to address its under-performance, and has failed to act in the best interests of learners. Ofsted had concerns about Learndirect Ltd in spring 2015, but despite the company's 75,000 learners making it the UK's largest commercial further education provider, Ofsted decided not to inspect until November 2016.

Even then, Ofsted accepted the potential sale of part of the company as a reason to postpone its inspection, and only finally inspected in March 2017. When Learndirect Ltd found that it had been rated as 'inadequate', it launched a legal challenge which delayed publication of the inspection report. The judge ruled fully in Ofsted's favour, and the report was finally published in August 2017.

The Department for Education would normally cancel an 'inadequate' provider's contract and withdraw its funding almost immediately. But Learndirect Ltd threatened that such a course of action would harm its learners and jeopardise its ability to deliver other key government contracts. The company continues to function, and expects to receive over £105 million of funding from its main government contracts in 2017–18. This apparent special treatment clearly begs the question of whether Learndirect Ltd was too big, and too important to government, to be allowed to fail.

The Government needs to learn lessons from the failure of its contractors and, particularly where a company holds contracts across several Departments, ensure it has a grip on how these companies are performing.

Introduction

Learndirect Ltd is the UK's largest commercial further education provider, engaging with around 75,000 learners each year. Most of its funding comes from the Education and Skills Funding Agency (ESFA), but it also has contracts with several other government bodies, for which it is sometimes the sole supplier. In the 2016–17 academic year, the company received £121 million from all of its central government contracts, of which £106 million (88%) was from ESFA. Ofsted planned to inspect Learndirect Ltd in November 2016, but agreed to defer the inspection because the company was negotiating the sale of its apprenticeships business, a sale which did not ultimately take place, despite there being widespread concern about Learndirect Ltd's performance. Ofsted finally carried out its inspection in March 2017, the same time that ESFA issued the company with a notice of serious breach of contract for falling below expected levels of service, and rated the company's overall effectiveness as 'inadequate'. Learndirect Ltd made a formal complaint about the timing and conduct of the inspection, followed by a legal challenge. These steps were unsuccessful, but they delayed the publication of Ofsted's report until mid-August 2017. The government bodies contracting with Learndirect Ltd have since had to make decisions about their ongoing dealings with the company. ESFA decided to continue funding Learndirect Ltd through to July 2018, and it is possible that the company may retain some government contracts beyond that date.

Conclusions and recommendations

1. **Learndirect Ltd has received hundreds of millions of pounds of public money, while neglecting its learners in pursuit of profit and frustrating the Ofsted inspection regime with delaying tactics and spurious legal action.** ESFA and its predecessor the Skills Funding Agency (SFA) gave Learndirect Ltd almost £500 million in the academic years from 2013–14 to 2016–17. The quality of Learndirect Ltd’s apprenticeships provision was in decline from 2012–13, and in 2015–16 it failed to achieve ESFA’s minimum standard for apprenticeships. Yet, despite this downward trend, the company waited until September 2016 to develop an improvement plan. In March 2013, Ofsted rated Learndirect Ltd as ‘good’ for overall effectiveness, but by March 2017 Ofsted considered the company’s performance to be ‘inadequate’. Learndirect Ltd launched a legal challenge, claiming that: Ofsted should not have inspected its apprenticeships provision, because it was about to be moved to another company in the Group; and Ofsted had not gathered enough evidence to reach reliable conclusions on its apprenticeships training. The judge ruled fully in Ofsted’s favour, but the legal action meant that the report could not be published until August 2017, five months after the original inspection. This prevented valuable information on Learndirect Ltd’s performance from being in the public domain, and stopped government from intervening sooner.

Recommendation: *Government should learn the lessons from the failure of Learndirect Ltd, in particular concerning the need to understand how many government contracts a company holds at a given time and how well it is performing against each of those contracts.*

2. **Having awarded Learndirect Ltd several vital contracts for a variety of public services, government was then restricted in its ability to take decisive action when the company’s apprenticeships provision began to fail.** Learndirect Ltd is England’s largest commercial further education provider, and in the 2016–17 academic year around 88% of the £121 million it received for carrying out work for central government came from ESFA. It is also the single supplier on the government’s framework contract for testing services. Under this framework, the company delivers UK citizenship tests for the Home Office and initial teacher training tests for the Standards and Testing Agency (STA). From May 2017, following the 2017 Ofsted inspection, ESFA began work to establish the full extent of government’s involvement with Learndirect Ltd, and to develop a coordinated plan for the future of those contracts. ESFA had to consider whether to withdraw the company’s funding for further education activities within three months, in line with normal practice. Learndirect Ltd stated that unless it received £48 million in the 2017–18 academic year from its main source of ESFA funding, the Adult Education Budget (AEB), it would likely enter administration or become insolvent. This would affect large numbers of learners, and jeopardise the company’s ability to deliver against its other government contracts. ESFA decided that the size of Learndirect Ltd made it an unusual case, to which special considerations should apply. It awarded Learndirect Ltd £45 million of AEB funding for 2017–18 and extended the company’s contract to July 2018, the end of the academic year.

Recommendation: *The Department for Education and other government bodies should develop a framework for identifying any risk that a commercial provider becomes so large and essential to the delivery of public services that it cannot be allowed to fail, or requires special treatment if it begins to do so. The Cabinet Office should report back to us on progress with developing that framework by the end of December 2018, and the Department for Education should do so separately by the start of the next academic year.*

3. **Learndirect Ltd charges unusually high management fees to its subcontractors, which means that a large amount of funding is not available to be spent on teaching and learning.** Learndirect Ltd subcontracts some of its work to smaller providers, and charges them a management fee. This fee ranges from around 15% to 40%, depending on the level of support offered. The company has said that around 30 of its subcontracted providers pay the full 40% management fee. ESFA requires all providers who subcontract their provision to be transparent about the level of management fee that will be charged. But ESFA provides no guidance on the support that providers should offer their subcontractors or the levels of support that might be merited by different levels of management fee.

Recommendation: *ESFA should formally publish, in time for the next academic year, its expectations about the services that should be offered to subcontractors, and the associated management fees that are reasonable.*

4. **In assessing when to re-inspect Learndirect Ltd, Ofsted did not take full account of the company's size and the consequences for learners of its declining performance.** Learndirect Ltd was training over 20,000 apprentices each year, many of whom were affected by the declining quality of its training and support. Yet it was nearly two years after first expressing concerns about Learndirect Ltd's declining performance that Ofsted finally, in March 2017, conducted another inspection. A full inspection of Learndirect Ltd requires Ofsted to commit around 15% of its total inspection capacity for the further education sector. Given the resources involved, Ofsted decided that the rate of Learndirect Ltd's performance decline did not justify an early inspection as a matter of immediate priority. Ofsted is likely to face these prioritisation challenges more often in the future, as the profile of further education providers changes in response to the apprenticeship levy, with new providers entering the market and some providers growing significantly or merging.

Recommendation: *Ofsted needs urgently to re-visit how it plans and prioritises its use of resources and the different type of risk attached to a private sector failure, in a way that takes account of risks to high numbers of learners and the changing provider-base in the further education sector.*

5. **Ofsted's policy for when it is prepared to defer an inspection risks putting providers' business interests ahead of learners' interests.** Ofsted originally planned to re-inspect Learndirect Ltd at the start of November 2016, but agreed to defer its inspection when Learndirect Ltd claimed it was negotiating the sale of its apprenticeships business. Ofsted's policy states that an inspection may be deferred if "the provision is due to merge, close or move, and it is decided that no useful purpose will be served in inspecting it." The sale of part of Learndirect Ltd's business did not ultimately take place, and Ofsted did not carry out the inspection until March 2017,

over four months later. Learndirect requested a deferral in March 2017, on the same grounds as those that prompted Ofsted to defer its planned inspection on November 2016, but this time Ofsted did not defer the inspection. Given Learndirect Ltd's importance to the sector and the number of learners affected, Ofsted should not have been so easily put off in November 2016, and should have resolved to conduct its inspection earlier. Ofsted needs to develop a clear and consistent approach which takes better account of potential gaming by commercial providers.

Recommendation: By June 2018, Ofsted should develop a specific deferral policy for commercial providers, to ensure that learners' interests always take priority over the pursuit of profit.

1 Learndirect Ltd.'s funding, performance, and contracting arrangements

1. On the basis of a report by the Comptroller and Auditor General, we took evidence from the Department for Education (the Department), Ofsted, the Education and Skills Funding Agency (ESFA), and Learndirect Ltd, on the monitoring, inspection and funding of Learndirect Ltd.¹

2. Learndirect Ltd is the UK's largest commercial further education provider, engaging with around 75,000 learners each year. Its core business is skills, training, and employment services. Most of its funding comes from the ESFA, an executive agency of the Department for Education, but Learndirect Ltd also has contracts with other government bodies.²

Learndirect Ltd's declining performance

3. Learndirect Ltd received around £488 million in total from ESFA in the academic years 2013–14 to 2016–17. The company's income from all its central government contracts in 2016–17 was around £121 million, of which £106 million (88%) was from ESFA.³ Learndirect Ltd's performance in apprenticeships was in decline after the 2012–13 academic year, and in 2015–16 the percentage of apprentices achieving their qualification stood at 58%, which was below ESFA's minimum standards threshold of 62%.⁴ However, the company told us that it did not put an improvement plan in place until autumn 2016, after the end of the 2015–16 academic year.⁵ It was during the same year that Learndirect Ltd set up Learndirect Apprenticeships Ltd as a separate entity within the Group, as part of a long-term plan to sell off the apprenticeships element of the Group's business. Learndirect Ltd entered negotiations to sell Learndirect Apprenticeships Ltd to another education provider in mid-2016, seeking a large cash injection into the Group.⁶

4. Learndirect Ltd explained that, in September 2016, it contacted Ofsted to ask whether, if an inspection happened to be planned, the ongoing sale negotiations regarding Learndirect Apprenticeships Ltd might prompt Ofsted to defer the inspection until after the sale was complete. Ofsted further explained its conclusion that, if Learndirect Ltd were to apply for a deferral, it would most likely be granted under Ofsted's deferral policy. Ofsted therefore decided to delay a planned inspection of Learndirect Ltd until the sale had concluded.⁷

5. Ofsted decided to re-schedule its inspection for March 2017.⁸ When Learndirect Ltd was informed of the inspection, a few days before it was due to take place, the company again sought a deferral, on the grounds that it was about to move all of its apprenticeships activity into Learndirect Apprenticeships Ltd. The inspection went ahead, and Ofsted

1 Report by the Comptroller and Auditor General, [Investigation into the monitoring, inspection, and funding of Learndirect Ltd](#), Session 2017–19, HC 646, 14 December 2017

2 [C&AG's Report](#), para 1

3 [C&AG's Report](#), paras 1, 1.6, Figure 3

4 [C&AG's Report](#), para 2.5, Figure 5

5 Qq 48–51

6 Qq 27, 66, 96; [C&AG's Report](#), para 1.8

7 Q 45

8 Q 45

concluded that the company's overall effectiveness should be rated as 'inadequate', based on outcomes for learners and apprenticeships provision being 'inadequate'. All other elements of the inspection produced a 'requires improvement' rating.⁹

6. Ofsted told us that conducting the March 2017 inspection was a more challenging task than usual. It had difficulty in accessing information, and logging on to systems which held data on how learners' progress was being tracked. Ofsted believed that there was a poor level of co-operation from Learndirect Ltd, which culminated in the company declining to attend the normal inspection feedback meeting at which findings are discussed.¹⁰

7. Four days after the inspection, knowing that Ofsted intended to rate it as 'inadequate' for overall effectiveness, Learndirect Ltd made a complaint to Ofsted about the inspection and asked for publication of the report to be withheld until the complaint had been resolved. The company claimed that Ofsted had not taken account of the process to separate its activities into two distinct businesses. It also believed that Ofsted had not taken a large enough sample size of learners to reach reliable conclusions.¹¹

8. Having been informed that its complaint was not upheld, Learndirect Ltd began legal proceedings against Ofsted on 2 June.¹² This action included an injunction, which prevented Ofsted from publishing the report. Ofsted told us that it understood this injunction also prevented it from discussing the case with any other parties, including government bodies. The judge ruled fully in Ofsted's favour, and the report was published on 17 August 2017.¹³

Government's ability to take action

9. Learndirect Ltd is ESFA's largest provider, receiving £106 million of funding from ESFA in the 2016–17 academic year. It also received almost £15 million from its other central government contracts in 2016–17.¹⁴ It is the sole supplier of the UK citizenship tests for the Home Office, and the initial teacher training tests for the Standards and Testing Agency (STA). The company also provides employment related services for the Department for Work & Pensions.¹⁵

10. In May 2017, following the March Ofsted inspection, ESFA set up a team in preparation for terminating Learndirect Ltd's funding, in line with its policy on providers whose overall effectiveness is rated as 'inadequate' by Ofsted. As part of this process, ESFA entered into discussions with other government bodies and Learndirect Ltd about their contracts with the company.¹⁶ Learndirect Ltd told ESFA that unless it received £48 million of funding from the Adult Education Budget (AEB) in the 2017–18 academic year, the company might enter into insolvency or administration. Learndirect Ltd also stated that these circumstances would pose a significant threat to its work for the Home Office and STA, and to provision funded by ESFA's European Social Fund projects.¹⁷

9 [C&AG's Report](#), paras 3.7–3.8, Figure 7

10 Qq 45–46

11 Qq 68–72; [C&AG's Report](#), para 3.10

12 [C&AG's Report](#), para 3.11

13 Q 72; [Correspondence with Ofsted, dated 18 January](#), para 3.11

14 Q 36; [C&AG's Report](#), paras 1.6–1.7

15 Q 63; [C&AG's Report](#), paras 4.17–4.19, 4.22

16 Qq 36, 63; [C&AG's Report](#), paras 4.2–4.3

17 [C&AG's Report](#), paras 4.10–4.11

11. ESFA said it concluded that, given Learndirect Ltd's size and reach across government, withdrawing funding from the company would have a disruptive impact on large numbers of learners and risk the continued delivery of services for several government bodies. Accordingly, it decided to take a different approach from its published policy, and to fund the company through the whole 2017–18 academic year. ESFA awarded Learndirect Ltd £45 million of AEB funding for the year. Total ESFA funding for the company in 2017–18, which additionally covers pre-existing apprenticeships, advanced learner loans and European Social Fund activity, is likely to be around £95 million. In total, Learndirect Ltd expects to receive around £105 million from all of its main government contracts in 2017–18.¹⁸

Subcontracting arrangements

12. We asked Learndirect Ltd to justify the seemingly high management fees it charges its subcontractors. The company explained that, in its adult education business, the standard management fee is 20%. This amount covers its administration of the funding and audit compliance activities. Learndirect Ltd charges for additional items such as: access to training content; marketing material; IT systems; and quality assurance. The full suite of additional services takes the management fee up to 40%. Learndirect Ltd told us that around 30 of its subcontractors are paying the full management fee of 40%. We were also told that subcontractors working on Learndirect Ltd's European Social Fund contracts pay a 20% fee, and those working on apprenticeships pay between 15% and 20%.¹⁹

13. ESFA explained that Learndirect Ltd charges a higher management fee than the great majority of providers in the market. ESFA does not give specific guidance on the level of subcontractor fees that it deems appropriate. However, in an effort to encourage greater transparency, ESFA requires all lead providers to disclose the level of management fee that they intend to charge.²⁰

18 Qq 16, 64–65; [C&AG's Report](#), para 4.3, Figure 8

19 Qq 4, 7

20 Q 4

2 Inspection

Planning and prioritising inspections

14. We asked Ofsted about its risk assessment process, and how this influences the timing of inspections. Ofsted told us that it carries out a risk assessment of providers each year. The assessment is based on outcome data typically made available around six months after the end of the academic year to which they refer, along with any other intelligence received.²¹

15. Ofsted inspected Learndirect Ltd in March 2013, and rated the company's overall effectiveness as 'good'. This meant that, unless subsequent risk assessments gave cause for concern, Ofsted would next conduct a short (rather than a 'full') inspection in 2018. Ofsted did not carry out a risk assessment of the company in 2014, because it took assurance from the outcome of its 2013 inspection.²²

16. Ofsted explained that it first saw the decline in Learndirect Ltd's apprenticeships outcomes in early 2015, which reflected results from the 2013–14 academic year, during which the company engaged with over 20,000 apprentices. It therefore gave Learndirect Ltd an amber risk rating in spring 2015, based on a 'poor' score for apprenticeships and a 'fail' for some small elements of provision. However, at that point the company's performance was still above the benchmark average, so Ofsted "did not see it as an urgent case for inspection".²³

17. Ofsted explained how, in early 2016, it saw that Learndirect Ltd's performance on apprenticeships in the 2014–15 academic year placed it below the sector average for comparable provision. In March 2016, Ofsted changed its assessment of Learndirect Ltd's risk rating to red, due to poor performance in a number of areas including apprenticeships. In July 2016, Ofsted concluded that, based on this risk assessment, it should amend its plan to conduct a short inspection by August 2018 and instead schedule a full inspection for November 2016.²⁴

18. We asked why Ofsted did not schedule a short inspection in spring 2015, given the company's decline in performance and the large number of apprentices involved. Ofsted told us that even a short inspection, when conducted on a provider as large as Learndirect Ltd, requires a substantial team and would have entailed postponing other planned inspections. Ofsted further explained that a full inspection of Learndirect Ltd requires the organisation to commit around 15% of its total capacity to inspect further education and skills providers.²⁵

19. Ofsted also stated that the introduction of the apprenticeship levy in April 2017 may lead to significant growth in the provider-base in the further education sector, which will present Ofsted with a resourcing challenge. Ofsted told us that it is conducting particularly careful risk assessments of new providers, and is using data about the use of subcontractors to give it additional perspectives on provider risk.²⁶

21 Qq 40, 53

22 Q 40; [C&AG's Report](#), paras 3.1–3.3

23 Qq 40–41, 44; [C&AG's Report](#), paras 1.5, 3.3

24 Q 40; [C&AG's Report](#), para 3.4

25 Qq 42, 45

26 Qq 53–56

Deferring inspections

20. We also asked about Ofsted’s approach to deferring planned inspections. Ofsted explained that it has a formal deferral policy, which it applied in the case of Learndirect Ltd.²⁷ Ofsted told us that, in September 2016, Learndirect Ltd asked some hypothetical questions about whether the sale of its apprenticeships business would trigger the deferral of any planned inspection. Ofsted explained that, in October 2016, around a month before it had planned to inspect Learndirect Ltd, ESFA provided notification that negotiations for the sale were in progress. Ofsted said it had examined its deferral policy, which states that an inspection may be deferred if “the provision is due to merge, close or move, and it is decided that no useful purpose will be served in inspecting it.” Ofsted concluded that, if it were to notify Learndirect Ltd of an imminent inspection and the company formally applied for a deferral, a deferral was likely to be granted under the policy as it stood.²⁸

21. Ofsted told us that, in December 2016, it heard that the proposed sale of Learndirect Ltd’s apprenticeships business had fallen through. It therefore initially re-scheduled its inspection for February 2017. However, a subsequent delay in the production of final performance data for the 2015–16 academic year, which was important for the inspection, prompted Ofsted to put the date back to 20–23 March.²⁹

22. On 16 March 2017, Ofsted notified Learndirect Ltd about its planned inspection. The company immediately asked Ofsted to defer the inspection, because it was in the process of transferring its apprenticeships activity to another company in the Group, Learndirect Apprenticeships Ltd. The transfer meant that Learndirect Ltd would not be delivering any more apprenticeships training after 1 May 2017. Ofsted rejected the request, based on: uncertainty about the timing of the transfer; the large number of learners involved; and the apparent decline in performance. It carried out a full inspection on 20–23 March, as planned.³⁰

27 Q 45

28 Qq 27, 45, 51; [C&AG’s Report](#), para 3.5

29 Q 45; [C&AG’s Report](#), paras 3.6–3.7

30 Q 14; [C&AG’s Report](#), paras 3.7–3.8

Formal minutes

Monday 26 February 2018

Members present:

Meg Hillier, in the Chair

Sir Geoffrey Clifton-Brown	Anne Marie Morris
Martyn Day	Lee Rowley
Luke Graham	Gareth Snell

Draft Report (*The monitoring, inspection and funding of Learndirect Ltd.*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 22 read and agreed to.

Introduction agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Twenty-second 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.

[Adjourned till Wednesday 28 February 2018 at 2.00pm]

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the [inquiry publications page](#) of the Committee's website.

Monday 15 January 2018

Question number

Jonathan Slater, Permanent Secretary, Department for Education, **Peter Lauener**, former Chief Executive, Education and Skills Funding Agency, **Amanda Spielman**, Chief Inspector, Ofsted, and **Andy Palmer**, Chief Executive, Learndirect Ltd.

[Q1-113](#)

Published written evidence

The following written evidence was received and can be viewed on the [inquiry publications page](#) of the Committee's website.

LDL numbers are generated by the evidence processing system and so may not be complete.

- 1 Mr James Golfar ([LDL0004](#))
- 2 The Sign Maker ([LDL0003](#))
- 3 Windows of Distinction ([LDL0001](#))

Published correspondence

The following correspondence was also published as part of this inquiry:

- 1 [Correspondence with Ofsted](#)
- 2 [Correspondence with Ofsted, dated 9 February](#)
- 3 [Correspondence with Andy Palmer, Chief Executive, Learndirect Ltd.](#)
- 4 [Further correspondence with Ofsted](#)

List of Reports from the Committee during the current session

All publications from the Committee are available on the [publications page](#) of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Tackling online VAT fraud and error	HC 312 (Cm 9549)
Second Report	Brexit and the future of Customs	HC 401 (Cm 9565)
Third Report	Hinkley Point C	HC 393 (Cm 9565)
Fourth Report	Clinical correspondence handling at NHS Shared Business Services	HC 396
Fifth Report	Managing the costs of clinical negligence in hospital trusts	HC 397
Sixth Report	The growing threat of online fraud	HC 399
Seventh Report	Brexit and the UK border	HC 558
Eighth Report	Mental health in prisons	HC 400
Ninth Report	Sheffield to Rotherham tram-trains	HC 453
Tenth Report	High Speed 2 Annual Report and Accounts	HC 454
Eleventh Report	Homeless households	HC 462
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Fourteenth Report	Delivering Carrier Strike	HC 394
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Eighteenth Report	Exiting the European Union	HC 467
Nineteenth Report	Excess Votes 2016–17	HC 806
Twentieth Report	Update on the Thameslink Programme	HC 466
Twenty-First Report	The Nuclear Decommissioning Authority's Magnox	HC 461
First Special Report	Chair of the Public Accounts Committee's Second Annual Report	HC 347



Public Accounts Committee

The Monitoring, Inspection and Funding of Learndirect Ltd, HC 646

Monday 15 Jan 2018

Ordered by the House of Commons to be published on 15 Jan 2018.

Watch the meeting

Members present: Meg Hillier (Chair); Bim Afolami; Heidi Allen; Martyn Day; Bridget Phillipson; Gillian Keegan; Nigel Mills; Layla Moran.

Sir Amyas Morse, Comptroller and Auditor General, Adrian Jenner, Director of Parliamentary Relations, National Audit Office, Sian Jones, Director, NAO, Simon Helps, Director, NAO, Lee Summerfield, Director Investigations, NAO, and Marius Gallaher, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-113

Examination of witnesses

Witnesses: Peter Lauener, Andy Palmer, Jonathan Slater and Amanda Spielman.

Q1 **Chair:** Welcome back to the Public Accounts Committee on Monday 15 January 2018. We are now here to look into issues around Learndirect, on the back of an investigation by the National Audit Office after Learndirect failed an Ofsted inspection last year, and to look at what has happened since. Basically, the Government continued to fund Learndirect—I will not go into detail on that, because we have covered that quite a lot, as has our sister Committee, with which we are working very closely on this. Our hashtag for today is #Learndirect.

First, I will introduce the panel, and then I will ask you, Mr Palmer, about a particular issue before we go into the main session. From my left to right, we have Andy Palmer, the chief executive officer of the Learndirect group. Can I just be clear: does the Learndirect group include Learndirect Apprenticeships?

Andy Palmer: It does, yes.

Q2 **Chair:** What are the names of the other companies in the Learndirect



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group, just to be clear?

Andy Palmer: There is Learndirect Limited, Learndirect Apprenticeships and a group that isn't trading called Ettain.

Chair: That's a new one on me. We will no doubt be looking into that. We always like something new to look into.

Mr Jonathan Slater is the permanent secretary at the Department for Education and needs no introduction. Mr Lauener, who really should get frequent flyer points, is now here with his hat on as the former chief executive of the Education and Skills Funding Agency. Amanda Spielman is Her Majesty's chief inspector for Ofsted. A very warm welcome to you, Ms Spielman. I think it is the first time you have been in front of this Committee.

Amanda Spielman: It is, yes.

Q3 **Chair:** I am sure you are regularly in front of our sister Committee. Thank you very much. We are aiming to spend no more than about an hour on this, so if you could bear that in mind, short answers—I am looking at no one in particular—would go down well and will mean that you will get home sooner rather than later.

First, I just want to ask Mr Palmer about Learndirect allegedly increasing its margins on subcontractors from 15% to 40%, despite ESFA guidance that management fees should not exceed 15%. By taking those higher margins, did that not mean there was less money available for the provision of apprenticeships?

Andy Palmer: The management fees for subcontractors have remained relatively stable for a number of years now.

Q4 **Chair:** At what level?

Andy Palmer: The standard management fee in adult education—the adult skills side of the business—is 20%. There are then services that are purchased by the subcontractors that take that up to 40%. The 20% covers the funding coming through to them and audit compliance. In addition to that, they get access to content that we have produced, our marketing material, our systems, to quality assurance and so on. There are different fees. Within Learndirect Apprenticeships, management fees are typically in the 15%-20% range as well.

Chair: The ESFA—perhaps Mr Lauener ought to come in here—says in its guidance that it should not exceed 15%. How come you were at 20%?

Peter Lauener: Can I come in on that? We do not give that specific guidance; what we insist on is transparency. We oblige all lead providers to report their intentions and then we secure the outcomes at the end of the year concerned. It is very difficult to alight on a particular percentage, because it depends on the services that are offered by the lead provider.

Q5 **Chair:** So it is more what you might call a franchise arrangement.



Peter Lauener: Yes. It is for Andy Palmer to defend what they offer, but the long history of Learndirect is that it was developed as a platform in the adult education business with investment to put in place systems that other people used.

Q6 **Chair:** Were other organisations charging similar rates for subcontractors? Is there anything comparable?

Peter Lauener: There are one or two at that level. Again, it depends on the services they offer, I think. There is nothing quite like Learndirect, because its history goes back to 1997 and the development of the University for Industry, which was designed as a major intervention in the adult learning system to promote lifelong learning. It was set up with a set of subcontractors. Lots of changes and 20 years later, Learndirect became a mainstream provider that still operates in that kind of way. Again, I am not here to defend any particular level. Over four or five years, the ESFA has gradually ratcheted up the degree of controls that we put in the system on sub-providers. We put in a much higher level of assurance and a lot of weight on transparency.

Q7 **Chair:** We think transparency is good, but these seem quite high figures. I wonder if the Comptroller and Auditor General wants to say anything about that?

Sir Amyas Morse: I want to follow up on Mr Palmer's answer—thank you very much for that. Roughly, how many of the institutions that you have contracted with pay only 20%?

Andy Palmer: All the supply chain that are currently working on our European social fund contracts pay at 20%, and all those that are working with us on apprenticeships pay lower than 20%—15% to 20%. I do not have the absolute numbers with me now but I can supply those to the Committee.

Sir Amyas Morse: Sorry, but what does that actually mean? I am not sure I understand that answer. You have given me a couple of examples that pay at 20% or less. What proportion are they of the whole?

Andy Palmer: In our apprenticeships base, we currently have 15 of our supply chain paying at 20% or less. A greater number are paying at 40%. Off the top of my head, I think it is about 30.

Sir Amyas Morse: So about 30 are paying at 40%?

Andy Palmer: Yes.

Q8 **Chair:** That gives us a rough idea, but we would like a full breakdown, if you could provide that in writing. My final question to you, before we get into the main session: is it true that Learndirect sponsored the Marussia F1 team?

Andy Palmer: Going back to 2011, there was an investment in that year in Formula 1. At that point, as I understand, the organisation was looking to attract more employers and potential apprentices to the apprenticeship



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market. The view was—the sponsorship of sports teams is a common model—that sponsoring the Formula 1 team would be an opportunity to attract employers who may not have thought about taking on apprentices from the apprenticeship market. It goes back to 2011.

Q9 **Chair:** How much did you sponsor the F1 team for?

Andy Palmer: I understand that it was around £0.5 million.

Q10 **Chair:** Did you do any analysis of whether you actually got any more employers from that sector taking on apprentices as a result of that expenditure?

Andy Palmer: Unfortunately, I am not aware that any analysis has taken place at the moment. Once again, I can go back and have a look to see if any was.

Q11 **Chair:** It's just that normally, if you pay advertising for a page in a newspaper—that is a bit old-fashioned now, isn't it?—or a pop-up ad, you would want to see some analysis. I appreciate that it is not always completely quantitative, but there must be some analysis, otherwise you would not be able to justify spending the money.

Andy Palmer: I understand that. It was investment that was made when the organisation was much larger than it is now and when the marketing budget was significantly more.

Q12 **Chair:** How much did it compare with other forms of advertising that you were undertaking at the time?

Andy Palmer: It was part of a marketing budget that, at that time, was £26 million. This was half a million of that.

Q13 **Chair:** Phew! Was it linked at all to the fact that you were taken over by a subsidiary of Lloyds Banking Group, LDC, which had some involvement with F1? Did that influence the decision to sponsor an F1 team?

Andy Palmer: Within a portfolio of companies that you would get such as LDC, there is often the opportunity for companies to work with each other. For example, with the advent of the levy, Learndirect Apprenticeships has obviously talked to some of the employers within that portfolio about taking on apprentices. It was an opportunity that was put to the portfolio to invest at that time, and Learndirect Ltd chose to invest.

Chair: We might want to come back to that advertising figure a little later, but Ms Moran is going to kick off the main session.

Q14 **Layla Moran:** To put it into the context of 75,000 learners, my first question to all of you, but starting with Ms Spielman, is how well do you think that the learners have been protected through this story?

Amanda Spielman: Certainly, as far as we are concerned, we put the learners absolutely at the forefront of our thinking and acted to protect learners, which is why we declined to defer the second inspection when we had the ability to look at it in the light of our policy and say no, and why



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we defended the challenge to our inspection outcome rigorously in the face of some significant challenges from Learndirect.

Q15 Layla Moran: We will come back to some of that. Mr Lauener, how about you? Do you feel that the learners were protected?

Peter Lauener: We have taken a lot of steps to protect learners, and in the quite complicated decisions that we were faced with over the last 18 months on Learndirect, we have always, in my view, put learners and other service users—Learndirect is involved in administering tests that are important for Government as well—at the top of our list of priorities. That is why we have taken quite a differentiated approach. For example, as soon as the inspection report became available, even though Learndirect were disputing it, we agreed with Learndirect that they would not recruit any more apprentices to non-levy apprenticeships from 1 May.

Q16 Chair: This is protecting future students. Ms Moran is thinking about the students who were in the system when the—

Peter Lauener: We also made arrangements so that employers that employed the apprentices could move their apprentices to other providers if they wished. There was very little take-up of that, but we thought it important to make the offer. In regard to the adult education budget, it was quite fundamental to the decision not to terminate immediately. It was graded as “requires improvement”. Although that is hardly a glowing award, we thought it was acceptable.

Q17 Layla Moran: We will come back to this, Mr Lauener. “Top of the list” was the headline. Mr Slater, was it top of the list for you too?

Jonathan Slater: Yes, I agree with Peter.

Q18 Layla Moran: Finally, Mr Palmer?

Andy Palmer: I think that the learners have been protected as much as possible in this situation. Obviously, since Ofsted inspected in March 2017, and in advance of that, we have been following an improvement plan. That was acknowledged by Ofsted in March 2017 and was once again acknowledged in October-November. Therefore, the improvement in the business has been continuing during that time.

Q19 Layla Moran: Mr Palmer, I struggle to believe that you did put learners at the top of the list, and given that the vast majority of your funding comes from the taxpayer, I do not find that acceptable. I put it to you: did you forget about the learners in pursuit of profit?

Andy Palmer: There was a period in 2013 and 2014 when there were some clear problems in the organisation. I am very, very sorry for the apprentices and the learners who were affected by those problems.

Q20 Layla Moran: Can you expand on those problems? How would you describe them?

Andy Palmer: They were problems identified by Ofsted, occurring primarily in the apprenticeship part of the business that was delivering



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apprenticeships for small and medium-size companies. At that time, the business decided to follow a model whereby assessors were travelling large distances across the country in order to see apprentices. Therefore the amount of time they were able to spend with apprentices and ensuring the progression was probably not as great as it should have been. At the same time, there was relatively poor visibility of data about the progress that the apprentices were making at that time. The board identified that a couple of years ago and have looked to make changes since then.

Q21 Layla Moran: A couple of years ago? The trend has been downward for some time. It started off at 74% in 2011 and then went to 58%, which is below the threshold, in 2015-16. Why did you not act much sooner? A couple of years ago is well after the decline started to happen.

Andy Palmer: As I say, the data that was available to the board at the time and the visibility of that on a monthly basis were not as they should have been. The change was exacerbated by the movement from QSR to QAR—the calculation of rates. That exacerbated the issue a couple of years ago.

Q22 Layla Moran: The calculation of rates—forgive me, I do not understand.

Andy Palmer: The way that success was calculated changed a couple of years ago, and that exacerbated the issue.

Q23 Layla Moran: It may well have done, but you were bobbing along the bottom when you had been much better earlier on. Are you saying that the change of model was the issue, not the pursuit of profits or the fact that you raised the management fees on your subcontractors and they were squeezed—nothing like that?

Andy Palmer: No, I believe it was operational issues during that period and the monthly availability of quality data that were the—

Q24 Chair: Can we just be clear though? You did make a number of staff redundant in 2015 and 2016.

Andy Palmer: Yes. What we see here is a coming together of two different things. In those years, relatively close to the start of the funding year, there were significant reductions in the adult skills budget with quite short notice. As a result of those, the company had to make a number of people redundant. Predominantly that was within central services. It is an organisation that has quite a large infrastructure that was put in place a number of years ago when there was significantly more funding available. A number of people were made redundant in those years as a response to those cuts.

Q25 Chair: Did that have an effect on the quality of service you were providing?

Andy Palmer: Although that was on the adult skills part of the business because the businesses were pretty interlinked at that point, it ultimately meant that some people who worked in quality and assurance left the



business, and that may well have had an impact on our ability to see the impact of the model changes and so on.

- Q26 **Layla Moran:** Going back to the impact on the learner, we had some evidence from Jake Price from The Sign Maker. He did a course with you. He ended by saying: "From my thoughts on the course and discussing with my tutor it somewhat feels that 'short-termism' has entered Learndirect upper management to get as much funding as possible and then strangle their IT departments, course writers and tutors of resources to maximise profits." He went on to say that if he now saw Learndirect on someone's CV, he would not think much about employing them. Is that acceptable to you?

Andy Palmer: I am always disappointed when I see poor feedback. Having looked at that the other day, I accept that there were some issues with IT. When I looked at the feedback, what I saw were some concerns with the content of the course. I am not trying to pass blame here, but the content of the course is the responsibility of the awarding organisation, and we are then responsible for delivering that.

The IT issues that are there—a number of those are about the way that we can give assurance that the course is being properly undertaken. For example, it is about not being able to use just any technology to write on a PDF and so on. There are some considerations there. I obviously realise that he had a problem with the pedagogy—the teaching style that we were following—and once again I take the feedback from him. I look at the pedagogy of our courses time and time again. We have experts who are constantly looking at our course design and development, and we would take that feedback into account in the future.

- Q27 **Chair:** You say that you are looking at it, but as Ms Moran has highlighted, the situation deteriorated very rapidly. At the same time as it was deteriorating, you were trying to fend Ofsted off from coming to do their routine inspection, first by talking about the merger that did not actually happen and then later by talking about the move to Learndirect, and we will come back to Ms Spielman on how Ofsted dealt with that. Does that not just demonstrate that you were trying to shove away the regulators while you shored up the business and in the meantime learners were suffering?

Andy Palmer: The decision at the back end of 2016 to ask for a deferral was because we were deep into a sales process for part of the business and it felt appropriate at that time to let Ofsted know that that process was taking place.

- Q28 **Layla Moran:** Mr Palmer, we will come back to that process, because it is important and it involves a number of actors. I just want to carry on a little bit about the apprenticeship programme. Ofsted concluded that around a third of all apprentices did not receive their entitlement to off-the-job learning. That is a huge number, and given how important off-the-job learning is to those learners, and that later on we saw that teaching and learning was pretty poor across your organisation, I ask you



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again, why did it take so long in 2016? I do not buy that you are not at all responsible for the quality of the courses that you are delivering.

Andy Palmer: Sorry, I think we are mixing things up here. The courses that were referred to in the feedback from the gentleman earlier on were adult skills courses—short courses—as opposed to the apprenticeship programme.

Layla Moran: Yes, but we are moving on to the apprenticeship programme.

Andy Palmer: Sorry, can you just repeat the question?

Q29 **Layla Moran:** On the apprenticeship programme a third of students did not get the off-the-job learning, and given how important that is, again, why did it take you so long to start addressing those issues?

Andy Palmer: The report noted that a third of apprentices did not receive the full entitlement to learning, rather than did not receive learning. What occurred there was that the way in which Learndirect Ltd. was measuring the amount of time off the job and the amount of learning people were getting did not fall into a simple system, in which Ofsted were able to come in and just look at it and say, "Yes, we can see that." Since that time, we have implemented a process that is much simpler. It is a paper-based system with apprentices, to see the amount of time they are getting off the job and also to see that they are getting their full entitlement to learning. As Ofsted noted in November, when it came in, as a result of that there is much greater visibility of that time.

Q30 **Layla Moran:** Over time, one of the big things on the political agenda is to raise the profile of apprenticeships to ensure they have parity with academic subjects, but can you not accept that if you are not allowing all students to get their entitlement, you are essentially just supplying cheap labour?

Andy Palmer: I fully agree with the drive to increase the parity and I am confident now that when I look at the apprenticeships that are being delivered by Learndirect apprenticeships, people are getting their entitlement to their training and the time off the job, and are getting a good experience.

Q31 **Layla Moran:** Can you talk me through the decision to focus on large employer apprenticeships? What led to that decision? Was it just profit and numbers, or something else?

Andy Palmer: No, it was clear that there was a change coming in the apprenticeship market and the drive towards levy-based apprenticeships with large employers was a significant focus. We looked at our performance, we looked at the outcome of the inspections, etc. and we believed as an organisation that we were better at delivering apprenticeships to large employers than to small employers. Ofsted had noticed in its inspection in March 2017 that the preparation for the levy was very good, that performance with Learndirect Ltd. working with large



employers was good, and therefore we made a decision to focus on the levy market.

- Q32 **Layla Moran:** But is that just because it is inherently harder to work with smaller and medium-sized businesses, because they are less corporate, so it has to be bespoke? Did you just ignore them completely because going after the big companies was the easier thing to do?

Andy Palmer: No, we believed that with our model of national geographical spread we were better suited—our specialisms were better—to work with large employers than with small employers.

- Q33 **Layla Moran:** What do you mean by that?

Andy Palmer: The retail frameworks that we were offering at the time, the investment that we were making in content, and our model of having coaches around the country meant that we knew we could deliver very well to large employers. We could manage the coaches from a distance. If you have coaches working up in the north-west, there are a number of Tesco or Sainsbury's stores nearby for them to work with. We believed that we were better at delivering that model with large employers rather than delivering to smaller employers on a local basis.

- Q34 **Layla Moran:** In hindsight, do you think that was a good model?

Andy Palmer: Working with large employers?

Layla Moran: No, the coaches model.

Andy Palmer: I think the model we are now following, that is being followed in Learndirect apprenticeships—working with large employers—is the right model. The model that was previously delivered, where coaches or assessors were travelling all over the country, was not the right model.

- Q35 **Layla Moran:** Moving on to Mr Slater, how will you ensure that in future the training provided to all sizes of companies is not dependent on just one provider?

Jonathan Slater: We are running a procurement, as you know, designed to meet the needs of small and medium-sized companies. In setting that procurement on its way, we were very clear about the need to get really good coverage of provision around the country and sector by sector, and to get the right balance between good provision already in place and new provision to fill gaps where they exist. We need to manage that contract really closely over the next 18 months. We can talk to you more about this in detail, if you like, to make sure that the benefits of that procurement are secured.

- Q36 **Layla Moran:** At the time, when we started to see the decline in about 2013-14, did you not recognise the risk of having so many learners associated with one huge provider? Did Learndirect basically become too big to fail?



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Peter Lauener: May I come in on that? I guess the reason I am here is that this was very much on my personal agenda for my last two years as chief executive of the ESFA.

Learndirect was our largest provider. We were extremely concerned about its financial position, which had become increasingly precarious, but we were also concerned about the quality. I won't repeat what I said earlier, but we were absolutely clear when we saw the Ofsted inspection because it confirmed our underlying concerns about the quality of apprenticeships in small employers—you have talked a lot about that. That conformed exactly with what we were picking up, and that is why we took the immediate action.

The interesting question that comes out of it gets summed up as "too big to fail". The glib answer—then I will give a slightly less glib answer—is, well, obviously it wasn't too big to fail, because it failed.

Layla Moran: Well, it failed very slowly, if I may say so.

Peter Lauener: But we were increasingly concerned about the size of Learndirect in our portfolio. If you look at the figures, partly because of the reductions in national budgets but partly because of other factors, the budget share that Learndirect had fell over two or three years quite substantially—from 2012-13, it just about halved on mainstream ESFA budgets through to 2017-18.

So there is a significant change there, and we were managing that change, but look back at 2013—when Ofsted was almost at its peak in terms of budget—and Learndirect was delivering a very good service. It got a good inspection. It had merged with JHP apprenticeships and it looked initially to be doing very well. My paraphrase of what Andy Palmer was describing is that, unfortunately, Learndirect took its eye off the ball and all these problems came along.

Layla Moran: We will come back to that in a moment.

Peter Lauener: There was a very significant management problem for us in managing our way through that—if I may add just one more sentence. Our starting point, when there was the overall Ofsted "inadequate", was that we should terminate the whole contract. I stood up a team ready to act and do that, but then it became much more long and drawn out for all kinds of reasons. As we looked more closely at that, we thought, first, we needed to take action right away on apprenticeships, which we did, in advance of the Ofsted report being published; and, secondly, there was a case for a less immediate approach on adult education, because the quality of that provision was higher. We thought, and I still think, it was the right thing to do to have a more considered managing out of that business than leaving the levy apprenticeships—to run in the market on the basis of the decisions by the levy-paying employers. You might want to ask questions about that. But these questions about the range of providers will persist as the market is developed. As Jonathan said, we have run significant procurements, both for adult education and for non-



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levy apprenticeships, which has brought a lot of new providers into the market. We will need to manage that actively and ensure that—

Chair: I think Ms Moran's point was about how this got so big in the first place.

Layla Moran: I am hearing the word "managed" a lot—

Chair: It shouldn't have got to that point in the first place.

Q37 **Layla Moran:** Yes, indeed. Mr Slater, can you describe how we got to this stage. How did it get to the point where it was so bad?

Jonathan Slater: Building on what Peter said, the organisation was delivering well, profitably, and providing a high quality of service.

Q38 **Layla Moran:** In 2013?

Jonathan Slater: Yes, absolutely—2013.

Chair: We are not saying it was all rotten from the beginning.

Q39 **Layla Moran:** No, it got bad.

Jonathan Slater: How did it get to that place? It started from a good place and it has gone down, hasn't it? Ofsted were identifying, as were we, that the performance on apprenticeships was dropping. It was still above target but dropping, as set out in the NAO Report, which led to Ofsted deciding to carry out a further inspection in 2016.

Q40 **Layla Moran:** Well, it was dropping pretty rapidly. I have one very specific question, which might be for Ms Spielman. Why was the risk assessment not done in 2014, given how big Learndirect was already getting? Surely the size of a provider like that suggests that the risks to the learners and to the Government increase. Did we just assume that it was going to be okay?

Amanda Spielman: The risk assessment is done every year. The information comes to us typically a bit less than six months after the end of the academic year, so the 2012-13 information came to us in very early 2014. That was the year in which we had inspected, and that data was good. The 2013-14 data came to us in early 2015. That was the first year that we saw a decline in the apprenticeship outcomes, but it was still above the benchmark average. That was when we switched it to amber, but we did not see it as an urgent case for inspection. A year later, in early 2016, we saw the 2014-15 data, and we saw a further decline, this time to just below the average for the comparable provision, and that was what led us to conclude that we should schedule an inspection earlier than the maximum period that we could have pushed it to. We had to inspect by August 2018; we decided to inspect in 2016-17, so we brought it forward, and we also made it a full inspection rather than a short inspection. So what we saw led us to conclude that there was reason to do significantly more work and to bring it forward by at least a full year from when we would otherwise have looked at it.



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Q41 **Layla Moran:** Can I push you on the spring 2015 numbers? We were already seeing quite a sharp decline from the heyday of 2013. I understand that one of the reasons why it wasn't alerting so much was that the proportion that was poor or declining was not as bad as the whole, but given how huge Learndirect is, even a small proportion of a big thing is a large number of students who are affected, isn't it?

Amanda Spielman: It is a large number, but it was still above the sector average. We run a highly risk-focused model of inspection: providers below the sector average would move up the risk assessment much faster than providers that are still above average. It was only one year of results and there was still a certain amount of noise. It had gone up the previous year. This was the first year of decline. There is a certain amount of noise that is inevitable with people going up and down—

Q42 **Layla Moran:** Then why didn't you just go in and do a short inspection at that point and check?

Amanda Spielman: Because even a short inspection of something the size of Learndirect takes a very substantial team and requires taking something else out of the schedule.

Q43 **Layla Moran:** But that's my point—it's too big.

Amanda Spielman: No.

Q44 **Layla Moran:** If it was a small provider, would you have been able to do it?

Amanda Spielman: Any time we have an urgent inspection, we can make space to do that, but we have to take other things out. Our risk assessment of Learndirect relative to other providers at that time was that Learndirect was not of sufficient concern at that stage to justify moving ahead of other people we did have in the schedule.

Q45 **Layla Moran:** Moving on to the November 2016 inspection, can you talk us through the justification for postponing, from your perspective?

Amanda Spielman: I think in September, or thereabouts, my COO Matthew Coffey had a phone call from Mr Palmer, asking us essentially hypothetical questions about whether the Learndirect apprenticeship business being sold would affect our deferral policy—that is, if an inspection were to be notified and an application were made under a deferral policy, was it likely to be notified. My COO Matthew Coffey explained how the deferral policy worked. We were notified by ESFA in October that negotiations were in progress for the sale of Learndirect. In the light of that information we looked at our deferral policy, and said that if an inspection were notified and Learndirect were to apply to us for a deferral, it would likely be granted under the deferral policy as it stands. Given it would take a very large team for us—a full inspection of Learndirect uses about 15% of our further education and skills inspection capacity—we decided to take it out of the schedule pending the sale.



As soon as we heard in early January—no, I think it was in December, I beg your pardon—that the sale had fallen through, we immediately put it back into the schedule, and that time we scheduled it more urgently for February, when we expected to have next year’s worth of data. In fact, there was a delay in the data—I do not know the exact reasons—of a few weeks. We rescheduled the inspection, delaying it by three or four weeks from February to March to have the benefit of a full year’s worth of data. It seemed worth holding off for a few weeks to do that. Then we carried out the full inspection, which was one of the more difficult ones that we have done, in various ways. It was not made easy for us to do it, and we had difficulty getting log-ons to get into systems that we needed for information about tracking learners. We had difficulties with other aspects as well. There were various ways in which carrying out the inspection was made harder than it often is. We had difficulty getting the full addresses for the learners whom we wanted to visit as part of it.

Q46 **Chair:** Was that direct obfuscation on the part of Learndirect, or sloppy systems? What is your interpretation?

Amanda Spielman: I wasn’t present myself. The cumulative impression was of a poor level of co-operation, and the culmination of the week of inspection was that Learndirect declined to have the normal inspection feedback meeting at which the findings are discussed and the path forward is considered. Normally, ESFA would have been present at that feedback meeting. That feedback meeting did not happen. That is very unusual, in my experience.

Q47 **Chair:** You were urged to delay the inspection, because you have criteria that allow you to do that in the event of the sale of a company. Do you think that those criteria are right, or do you think that that puts too much emphasis on the owner’s interests—the company’s interests—over those of the learners?

Amanda Spielman: I don’t think so. I think it gives us the proper ability to look and ask whether it is in the interests of learners and a good use of public money to inspect at the moment. To take a parallel in the schools sector, if a school is being academised an inspection would normally be deferred if a transfer has been lined up to a credible operator. We would not normally see it as a good use of public money to go in and inspect just before somebody competent is taking a school on.

In this case, we took all the considerations into account. We looked at it and could not see that it was in the learners’ interests to defer, so we decided not to defer when the application was made. The inspection was notified, and we were asked to defer. We said no, and went ahead and did the full inspection as planned.

Q48 **Layla Moran:** Coming back to Mr Palmer, and to the November 2016 period, you had an improvement plan in place by late 2016. When did you start creating that improvement plan?

Andy Palmer: I joined the organisation in 2016.



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Q49 **Layla Moran:** When did the organisation start creating that improvement plan?

Andy Palmer: Well, it was in the latter part of 2016.

Q50 **Layla Moran:** But when? I think that's quite important.

Andy Palmer: September, October.

Layla Moran: I see. So in September, October, you noticed—

Q51 **Chair:** Sorry—did you say 2 October or September, October?

Andy Palmer: September, October.

Layla Moran: September, October 2016. So then we have got a phone call to Ofsted saying, "Can we defer if we do this?", and you decide to do that. Is that not gaming the system, Mr Palmer?

Andy Palmer: At the time, we were deep into the process of the sale of Learndirect Apprenticeships. I believed an inspection taking place during that period would not be the right thing for the organisation, when it had people separating and moving, so I simply asked at that point who I should make aware of the fact that the sale was taking place, because I didn't want an inspection to take place during that sale process.

Q52 **Layla Moran:** And had an inspection taken place and had it been found as lacking as it eventually was, do you think that would have affected the price you could have sold that arm for?

Andy Palmer: I wouldn't want to speculate about what would have happened in consequence, but people must draw their conclusions.

Jonathan Slater: Chair, we could talk you through the Department's engagement with Learndirect about the sale, which obviously pre-dated Ofsted's understanding of it, because that was our job, not theirs.

Q53 **Chair:** That is what I was coming to. I have one quick question for Ms Spielman. You are very candid about the lack of co-operation by Learndirect. Given what has happened, do you plan to inspect any of the other providers that fall below the SFA's minimum standards now? Will you look at how to do this differently in future as a result of this experience?

Amanda Spielman: We risk-assess all providers every year in the light of the outcome data and any other intelligence we receive, so this is a continuing process. For example, we are looking particularly carefully at new providers who have come on to the register. We are also now using the data we started receiving last year about subcontractors to give us information from even more perspectives. This is a continuing and—

Q54 **Chair:** It is quite a big change for Ofsted. You are dealing with schools which are mostly stable—there are a few new ones, but basically, you have quite well-established organisations, maybe with different leadership—but in this sector, you are dealing with quite a lot of new



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arrivals and companies that have come into the picture quite quickly. Does that make your job harder, and does Ofsted have the resources it needs? You talk about 15% of your total inspection regime being with one provider. Do you think you need more resources?

Amanda Spielman: No, 15% of my FE and skills capacity, not of our total capacity.

Q55 **Chair:** Oh, FE and skills, forgive me. Still, that is quite a significant chunk.

Amanda Spielman: The merger of the schools side of Ofsted with the Adult Learning Inspectorate happened more than a decade ago, so it is a pretty stable organisation. Yes, it is the case that providers come and go more regularly. The introduction of the levy has brought in a significant number of new providers. This is something that I raised last year with Jonathan Slater: "If the levy policy is a success, a lot of these providers are going to come on-stream and start having learners, and we expect to have more work and need more resource to do that." He acknowledged that expectation of more work to do and greater resource requirement.

Q56 **Chair:** Does the resource increase match the work increase?

Amanda Spielman: We haven't got a specific resource increase, because we don't know how many of these will come on-stream with what volume of learners, but we have the acknowledgment in principle that this will be required.

Chair: Good, and now you've got it on the record at the Public Accounts Committee, which is always a good thing to do, especially when Mr Slater is paying attention.

Q57 **Heidi Allen:** Amanda, from the point when the inspection concluded with an inadequate finding—this is possibly a question more for Peter than you but I will be interested in your views and how you reacted. Peter, isn't it normally the case that three months after a provider is deemed inadequate, the funding goes? Why didn't that happen?

Peter Lauener: That is the thing that we have done most often. Indeed, as I mentioned earlier, we saw that as a likely outcome. I had stood up a team, because this would have been the biggest termination of a provider that we had ever done. We actually had a team ready to go if the inspection results came out the way we expected. We also issued our own notice of concern to Learndirect about this at the beginning of March. We knew what the data showed and we knew what Ofsted would be looking at, so we were not surprised by the outcome of the inspection report.

We then went into this very uncertain period when Learndirect decided to challenge the Ofsted judgment. They appealed against it first, and then they took the JR. This became a very difficult situation to manage at the same time as we were looking in more and more detail at the impact of an early termination. We thought, well, maybe we should take a different approach. There have been cases where we have taken an extended period to terminate, and there have been two cases that I could tell you about where we decided not to terminate the contract at all.



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Q58 **Heidi Allen:** In summary, what were the reasons why you did not, then? Why did Learndirect, it seems to me, limp on?

Peter Lauener: Because we judged that it would be, as I said right at the start, in the best interests of learners and other service users, looking across the whole range of—

Q59 **Heidi Allen:** Even learners who are being delivered a really poor standard of service and are not getting the study expectations that they would have? How is that better? How is that fair?

Peter Lauener: That is why we took a differentiated approach; instantly, even before the inspection report was published, but because we were aware of what it said, we said you can't recruit new apprentices to your non-levy apprenticeships; that was agreed with Learndirect. We said the same about traineeships, by the way.

Chair: Mr Lauener, you keep talking about not recruiting new people; both my colleagues have been raising issues about the quality of learning for existing students. Not recruiting new people would, you would think, be the minimum you would do when an organisation is failing to deliver; so perhaps you could answer Ms Allen's question about the support for the existing students. You thought it was better, you are saying, to keep them in what, as Ms Allen has highlighted, was a very poor provider.

Q60 **Heidi Allen:** It just does not seem a very active decision, when there are thousands of students already wedded to an organisation that is failing them. I understand shutting the door to any more. Amanda, it might be an unfair question, so forgive me if it is. Are you allowed to have an opinion or a view on how the situation was handled? Did you expect this to happen?

Amanda Spielman: I think this is a question for Peter Lauener and Jonathan Slater. I don't think it is for me to have an opinion on how DfE handles post-inspection.

Chair: I think the office's job is to deliver the report.

Heidi Allen: Hence a slightly unfair question, perhaps.

Peter Lauener: For existing apprentices we were very clear that employers, who actually employ the apprentices, of course, should have the choice to move their apprentices to another provider if they wished.

Q61 **Chair:** Did you give them advice or support about finding other providers?

Peter Lauener: One or two did, and we would certainly have given that advice to anyone that asked. I do not think there was any doubt that it was widely understood that there were quality problems in apprenticeships, as the trade press geared up; so I don't think this was a sort of secret garden that people were not aware of. We published the information about success rates in apprenticeships. It was there for everyone to see.



Amanda Spielman: If I may make a comment, one other thing that complicated it was that when the application for judicial review was made before the publication, we had this unfortunate position where the complaint was made with the threat of judicial review if the report was published ahead of resolution of the complaint; we decided not to publish until resolution. We had a snap election and the election guidance effectively gave us no choice but to leave it unpublished through that period. We had a number of reports held up about a number of other providers. Then an application was made for an injunction before the election period was up, and the court, slightly bizarrely, and without reference to us, granted a super-injunction, which made it impossible for any discussion whatever to happen, even between us and the ESFA.

Q62 **Chair:** Even between you and the ESFA? Wow.

Amanda Spielman: Even between us sitting at this table, we could not discuss, through that period. Why a super-injunction was granted is baffling, but it was given on the sole basis of Learndirect's application, with no reference to Ofsted or anyone else.

Q63 **Chair:** And did you know what was in that application from Learndirect?

Amanda Spielman: I believe our lawyers saw what was in the application, but we were given no opportunity to respond to it; so for the period from that application, which was before the election, through until the judgment was handed down, no part of government could talk to any other part of government about the situation. Nor would they have been able to discuss with third parties the handling, because it was not possible to discuss this pending judgment.

Chair: It is staggering that we did not know that. Thank you for sharing that with us.

Heidi Allen: So Peter, just so I have it clear in my head: in your view it was sufficient to shut down any new apprenticeships coming into the organisation, because it was too big—too many existing students. You felt there was too much risk for them, if the whole thing collapsed. Did you also know that Learndirect had been bidding and successfully winning other contracts? For example, it won a £6.4 million contract with the Home Office to administer the Life in the UK citizenship test, £3.8 million from the DWP for employment-related services and £3.2 million for a contract with the Standards and Testing Agency. Did you know that Learndirect was meanwhile bidding and receiving more contracts and funding for other pieces of work? Did that influence your decision at all?

Peter Lauener: We were certainly aware of those contracts, and we were having discussions across Government about the position with Learndirect, as you would expect. It is right and proper for the Government to take a view across all its contractual dealings, and certainly that was a factor that weighed with us. The performance of the teacher skills and citizenship tests were extremely important for people who wanted to take them. It was really important for those service users that they had the opportunity.



Q64 **Heidi Allen:** To an organisation that had been proven to be failing? No flag went up anywhere to say, "Should we really be giving more contracts to this organisation?"

Jonathan Slater: The question for us for apprenticeships at this point is, "Which is the greater risk?" First, there was the risk of tight contract management of Learndirect's existing apprenticeships through the remainder of their time with Learndirect, combined, as Peter said, with an opportunity for individual employers to go their own way with our support if they want to. That is choice one, with implications for other contracts, which were succeeding, unlike that one. Secondly, there was the risk of trying to find new homes for a whole load of existing apprentices, who would no longer be able to—

Q65 **Heidi Allen:** That is huge; I understand that that is huge.

Jonathan Slater: That was the choice that Peter was grappling with. In the first instance, his plan was to stand up a team to do a lot of transfers of people from Learndirect to a whole load of new providers. That would have been very disruptive indeed. There is no great answer, but that has to be compared with what you can do through tighter monitoring of Learndirect's existing apprenticeships for the remainder of its contract. That was the choice Peter was making. He can talk you through the pros and cons and why he reached that conclusion, but it was not as though there was a simple answer and it would have been obviously better to find new employers and new training providers.

Q66 **Heidi Allen:** I understand that. I suppose, from the outside looking in, as a taxpayer all I am seeing is a sequence of events in Government bodies that, between them, managed to prop up an organisation that was clearly not functioning properly and, for various individual reasons—silo reasons—there was no bigger picture. It seems to me that the writing was on the wall that things were going badly wrong at Learndirect for an awfully long time, and it was not dealt with. Is it policy that needs to change, such as the policy that Amanda had on whether we choose to defer inspection or not? Are there things we need to change in the system so something like this does not happen again?

Jonathan Slater: There were clearly two things going wrong in 2016. One of them was that the performance of Learndirect's apprenticeship business had dropped below standards, triggering the need for an inspection. There was a quality problem and a financial problem. It was clear from the as yet unaudited accounts that Learndirect was moving into a loss. When it came to us with its proposals for a sale of the business to secure a large cash injection, you can see why we would be interested. We were dealing with both those issues in 2016. The choice we subsequently had to make was whether to find new apprenticeships when it became clear that the performance—

Q67 **Heidi Allen:** It is the lesser of two evils. I can understand that, but from a public taxpayer's point of view it was badly handled from start to finish, and we have ended up having to rescue an organisation that we have failed to manage. I am not pointing the finger at any single person or



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Department, but collectively we have failed the taxpayer.

Peter Lauener: I disagree. I do not think it is a rescue of Learndirect. It is a managed exit from programmes it was not running well, in a way that has put learners and other service users first. I thought a lot about it as we were going through the different stages. There were stages to it. In 2016 we focused in particular on the financial position, aware that the apprenticeship performance was dipping but, as Amanda said, had not quite reached critical point. We then got the 2015-16 results, which confirmed that and were there when the inspection was done. We were acting at the beginning of 2017. Back in 2016, when we were having a discussion about a possible sale, this seemed quite an attractive option. A new provider and new investment, with a big focus on quality, seemed to offer some real opportunities for apprenticeships and the restructuring of the business that we thought was needed. We spent quite a few months in discussion with the potential suitors. It was not our job to find a suitor, but we were doing due diligence on whether this would be a good thing, which included—

Heidi Allen: It is still a pretty sad end to what was a performing organisation at some point, perhaps when it had £26 million to spend on marketing. I want to finish with one last question.

Peter Lauener: We took action, as I have said, on stopping new apprenticeships. We took action to allow employers to transfer their apprentices if they wanted. We also took action to put in place quality improvement plans on existing apprenticeships and very close monitoring. We did all of that to do the best we could for learners already in the system.

Jonathan Slater: The data so far, not yet audited, suggests that they are well above minimum standards now. The decision to manage very tightly in light of the Ofsted judgment and dropping below the standards appears to have led, from the data we are seeing, to a significant improvement in performance for existing apprenticeships, well above minimum standards. One would definitely not want to be in this position—

Q68 **Heidi Allen:** It is amazing what happens when you put control in place, isn't it? It is just like managing a contract.

I have a question for Andy. Why did the organisation pursue a judicial review when all the evidence suggested that the findings were absolutely right? Was that a good use of public money? Why did you pull out of the refunding bid and then receive the funding anyway? What was your rationale for pulling out?

Andy Palmer: When I looked at the inspection, I believed there were some issues with it, which have been played out in the press since that time. I was particularly concerned that a sample size of 0.6% of available learners was not a true reflection of the organisation. I believed at that time that it was worth pursuing, to see whether the judicial review—

Q69 **Chair:** How many people are in that pool of 0.6%?



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Andy Palmer: At the time, we had 76,000 learners and 23,000 apprentices, so it was only a very small group of people who were looked at and spoken to.

Layla Moran: But 0.6% of 76,000 is a pretty—

Andy Palmer: Of the 23,000 apprentices who were available at the time, only 0.6% were spoken to.

Heidi Allen: That is about 200.

Andy Palmer: There or thereabouts.

Chair: Probably more than the pupils in a school. Carry on, Mr Palmer.

Andy Palmer: I did not believe that, and therefore I decided to pursue a judicial review. My view was that until I was confident about the outcome of the inspection and other people agreed that that was either a satisfactory or unsatisfactory sample size, for the report to be published would be inappropriate at that time, because of the impact it would have on the organisation.

Q70 **Chair:** Did you think that someone at Ofsted would come back and just increase the sample size that it was going to inspect, realistically? Were you just stalling for time?

Andy Palmer: I hoped they would come back and have a look at the organisation and increase the sample size. We provided Ofsted with evidence. When we had undertaken a larger sample after the inspection event, we were better able to show them evidence that people were progressing and achieving the time off the job and so on. They chose not to look at that evidence that we supplied them, but I was confident—

Chair: I want to be really clear. Ofsted is established to be an independent inspector. It can hardly take evidence provided by—it does, in the early stages of an inspection, but when it makes its report, it is an independent report. You don't get this happening in schools. They don't see all their classes and lessons inspected. Ms Moran has probably been at the sharp end of an Ofsted inspection. It might be that the weaker teachers in a school get inspected.

Q71 **Layla Moran:** The point is, don't all learners deserve the best possible quality of product? It should not matter if it was 1,000 or 10. If there is a sizeable number within any sample that is as poor as what came out in that report, does that not concern you?

Andy Palmer: I agree that everyone deserves a better opportunity. I believe that by doing a larger sample, the findings of the report would not have been as poor as they were.

Q72 **Layla Moran:** Are you claiming that the sample was biased? One thousand-odd out of 23,000 is not a bad confidence interval—perhaps the NAO will tell me.

Andy Palmer: It was about 200 out of 23,000.



Layla Moran: That's not terrible.

Amanda Spielman: Our sample was properly chosen across a wide range of the provision. You only have to look at the court's conclusions: the judge concluded that our evidence supported three propositions; that the inspectors repeatedly invited Learndirect to provide further evidence; that our inspectors offered Learndirect opportunities to choose learners for us to review, and that we provided a further opportunity to provide evidence on the final days. I do not think that any of this stacks up at all; the judgment was absolutely clear.

Q73 **Heidi Allen:** Following on from that, at some point, Andy, you must have accepted that the Ofsted inspection was right, because you withdrew from the tendering process for more funding. Why did you do that?

Andy Palmer: At the time, we were involved in the procurement for the adult education budget, which had been going on since the earlier part of the year. When we originally put in the judicial review, the judicial review judgment was suddenly brought forward. At that point, I knew that there would be a finding in advance of the allocation of funds—the conclusion of the procurement. Having looked at the specification, I was aware that if we had a grade 4 at that time, we would not receive any funding. I was also aware that if we withdrew from the procurement round, there would be an amount of funding for providers who had withdrawn. I did not know what that would be, but thinking about the learners and the apprentices that we had on programme—particularly the learners, because this was adult education—I discussed with the board and we decided to withdraw, with the view that something—

Q74 **Heidi Allen:** Were you surprised when you got the funding in pretty much the amount that you were hoping for?

Andy Palmer: I was surprised by the volume of funding. As Peter said, early on in the process after the report was shown to them, as it hadn't been published at that point, we had a conversation about the consequence for the sector—we've talked about the Home Office and the STA—and we discussed the funding that the organisation would need to keep it running for a period of time, for the best interest of learners, apprentices, the Home Office and the STA.

Heidi Allen: I find that weak, but I understand the rationale.

Sir Amyas Morse: You could see it as a hard-nosed use of lawyers and quite hostile tactics to delay something for the purpose of improving, as you said, your cash flow. You decided to give the regulator a pretty rough time; you used legal interventions by corporate lawyers as a way of slowing things down and, ultimately, you profited from it. That's another way of looking at it. That fits with the circumstances just as well as your slightly smoother explanation.

Andy Palmer: Ms Spielman talked earlier about us trying to game the system and not allow access. To put some context to that, that was an inspector, at 11 o'clock at night, trying to get on to a system; the system



did not work, but at 6.30 the next morning it did. That was the issue, but apparently that was us trying to hold up the inspection. I believe that the inspection had some flaws. I believed and I understood that it was right to go through an appeal.

Q75 **Chair:** You had the opportunity of a meeting but you declined that.

Andy Palmer: We had the opportunity of the grading meeting, and my nominee at the time went to the grading meeting, which is where feedback is given to the nominee. She found that such an emotionally draining situation that she had to leave twice, due to the manner in which it was conducted, she felt. I felt, at that point, that putting her through a further meeting wasn't—

Q76 **Chair:** What salary was this individual on? Just give us an idea of seniority; I am not asking for the salary particularly.

Andy Palmer: She was a quality director and she was paid commensurate with that role.¹

Q77 **Chair:** I don't know what you pay people in Learndirect. The same as an MP? The same as Mr Slater? Lower than that?

Andy Palmer: I believe it is lower than Mr Slater.

Q78 **Chair:** It is quite easy to be lower than Mr Slater, with all respect to Mr Slater. That probably covers about 98% of the population.

Andy Palmer: In effect, we had the feedback—

Q79 **Chair:** No, sorry—you said it's lower than Mr Slater. Is it more than an MP? MPs are on £76,000 a year, and that is a generous salary.

Andy Palmer: Within the range of £95,000 to £105,000.²

Q80 **Chair:** So this person was not robust enough to manage with one of the terribly wicked inspectors from Ms Spielman's organisation. Ms Spielman, would you like to comment on that?

Amanda Spielman: Our inspectors are very well accustomed to giving difficult feedback in a careful and sensitive way, and to steering those meetings in which the inspection outcome is a disappointment towards a constructive discussion about the way forward. I find it very surprising that a senior management team would be unable to listen to and discuss the feedback.

Q81 **Chair:** I have to say, Mr Palmer, that if I was paying somebody that rate to do that job, I would expect them to go in and manage to cope. It is laudable that you wanted to protect them so much, but they shouldn't need that level of protection.

¹ Witness correction: the individual referred to was the Director of Learning, Policy and Strategy

² Witness correction: the salary range was between £110,000 and £120,000



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Amanda Spielman: One other thing is that the way inspections are conducted gives a lot of involvement to the entities being inspected, so the final judgment meeting should never come as a surprise. It should be something that has been built up to over the course of the inspection.

Q82 **Layla Moran:** Ms Spielman, you had your own internal complaints process that was followed. Was any part of that upheld?

Amanda Spielman: No.

Q83 **Chair:** Mr Palmer, I think we segued you into the issue of the meeting, but you were answering Sir Amyas Morse's point.

Sir Amyas Morse: I want to make clear that I have listened to your testimony, and you are clearly a thoughtful individual giving clear answers. However, you have given an explanation of the pressure on profitability, and you have asserted that profitability didn't play a part in the pressure that came through your group and the performance collapse that happened. You have also told us that you did not make use of legal means to try to put pressure on the regulator and postpone negative findings.

In either case, an alternative explanation suggests itself: that your group did actually try to push up profitability and you found that it had deleterious results that you couldn't reverse, and, equally, that you actually have tried to use legal means to put a lot of pressure on the regulator. Frankly, I don't find that a very edifying sight at all, and I don't approve of it, personally speaking; in fact, I strongly disapprove of it.

In both cases, your version of events could be true, or it could be that, in both cases, there has been aggressive and quite greedy behaviour. Are you denying that? Is it your testimony that you did not have profit objectives set for you and that you were not expected to push hard on profitability, and that the explanation of the problems is not that? And also that it is just that you were a bit miffed with the way the regulator was behaving and you wanted a judicial review? What are you saying to us?

Andy Palmer: I can speak to the second one, because it was my decision, along with the board; the previous one was the previous incumbent. With respect to the decision around the judicial review, I believed at that time that the report was incorrect and that the process that had been followed was incorrect. I am very happy to accept now that the judge came to a different conclusion on that.

Q84 **Chair:** I am sorry, but Ms Spielman, can you tell us how many judicial reviews of its inspections Ofsted has ever had?

Amanda Spielman: A number, especially in the nursery sector, where there are a number of smaller commercial providers and where there is a very substantial economic impact in the event of an adverse outcome.

Q85 **Chair:** It is mostly private companies?



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Amanda Spielman: Yes, but not exclusively. Durand Academy made a judicial review last year, which has not yet—

Q86 **Chair:** When we mention them we get a letter from their lawyers; maybe I shall mention the Durand Academy again just so I get a letter. They seem to spend a lot of public money on lawyers, as does Mr Palmer.

Andy Palmer: Given the precedent and the legal advice we took, I believe we had a legitimate position with the judicial review.

Q87 **Chair:** But that just stalled the outcome and the publication of the Ofsted report, which kept you ticking along and kept public money coming into your coffers. In fact, as it happened—perhaps it was not by your design, though a number of us would not be surprised if you had managed to achieve this—a general election then happened, which kicked it into the next funding round. It just does not stack up. It is not believable that you did this because you were a bit miffed about the report. It seems that, as the Comptroller and Auditor General concluded, there was a distinct and direct opportunity for you to continue to profit if you made sure you didn't have this Ofsted report—first you delay it, and then you try to delay it again through judicial means.

Andy Palmer: What I was concerned about was that if a report was published that was subsequently found to be incorrect, that genie cannot go back in the bottle. Therefore, the grade 4 would be out there and the employers we work with, the people who come for training and so on, would be aware of that. That would have been very damaging for the business. Unless I was absolutely certain that the report was correct, that the right processes had been followed—as I said, we took legal advice that said that there was a position to go for a judicial review—the risk to the business of that report being published was great.

Q88 **Chair:** The risk to the business—to the profits of the business.

Andy Palmer: The risk to the learners and to the apprentices. The risk to the employers who were working with the business was great, because an ill-informed view of the business could have been published.

Q89 **Heidi Allen:** Does that mean that the results of the Ofsted inspection were a complete surprise to you? You thought everything was absolutely hunky-dory.

Andy Palmer: When I joined the business, having looked at it, I was aware that the apprenticeship division did have problems. I hoped that the plan I put in place to turn that around would have had the impact by the time that Ofsted came in. I was confident that the adult education provision was not inadequate.

Heidi Allen: You knew it was doing badly and you had to put an improvement plan in place. It sounds to me like you had your fingers crossed that the Ofsted inspection would have been fine. When it was not, to JR it adds weight to Sir Amyas's argument that you did it to stall for time. You knew there was a problem, so you tried to put a plan in place. You hoped it was going to be enough in time. In comes the Ofsted

inspection and no, it isn't. Then you try to defend that. That has blown your argument wide apart.

Q90 **Layla Moran:** I want to come back to the Government's propping up of Learndirect. Figure 3 shows the expected income for 2017-18. In particular I am looking at the line referring to the European Social Fund projects, which reads £2 million for 2013-14, then £5 million, then £0.2 million, then £5 million and then expected income of £31 million for this year going into this failing organisation. Mr Lauener, can you tell us what is going on there?

Peter Lauener: These were contracts which were won in, I think, from memory, the end of 2015. They were two-year contracts—

Q91 **Layla Moran:** So 2015—before or after the red flag had been raised?

Peter Lauener: I cannot quite recall the exact timing of the procurements, but these were ESF procurements that we were running on behalf of local enterprise partnerships, and actually Learndirect have done well on those contracts.

Q92 **Layla Moran:** They have done well on those contracts?

Chair: They have done very well financially.

Layla Moran: Financially, yes. But the expected income, though, is not trickling in until this year. I do not understand. So they were awarded in 2015 and then they were started, but they are only getting paid now?

Peter Lauener: They ran from April 2016 to July 2018, so they are still running now. We have not taken decisions about what will follow on from July 2018. These decisions will have to be taken imminently.

Q93 **Layla Moran:** Has there been an inspection of those programmes?

Peter Lauener: There hasn't.

Q94 **Layla Moran:** Do you think there should be?

Peter Lauener: We would certainly seek assurances if there is a question to consider about extending those—

Q95 **Layla Moran:** Like this entire hearing? Sorry, but the whole hearing has been about Learndirect hiding things and not doing things as well as it should have done. Are you really that confident that these contracts are being delivered in the way you expected, after hearing all the evidence about the other parts of their business?

Peter Lauener: We have had very strong feedback from the LEPs, who feel that they are delivering for local residents. But if it gets into a case of extending, we would have to look for hard evidence and we would need to look at that vigorously.

Andy Palmer: Those contracts currently have a 94% success rate, so 94% of the people who start those programmes achieve their qualification at the end.



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Q96 **Layla Moran:** Moving on to Learndirect Apprenticeships Ltd, I am looking at the make-up of the board, which is on page 14 of the NAO Report. Perhaps this is a question for Mr Slater. Off the back of everything we have heard, are you really comfortable continuing to fund Learndirect Apprenticeships Ltd, given the make-up of its board, which contains so many of the people who were involved in this debacle?

Jonathan Slater: Peter has talked about the due diligence we were doing on Learndirect's plan to sell its apprenticeships business. In October 2016, we thought that that proposal was a good one, so we advised Ofsted accordingly. Subsequently, as you have heard, the sale fell through. This provider is entitled, whatever the make-up of its board, to be considered alongside others for applications for the non-levy procurement. We were not in a position to treat it any differently than we did. Obviously, it is very important that its services are inspected, and we will need to keep a very close watch on it.

Peter Lauener: Any decision to fund is not an ESFA decision; it is a decision by a levy-paying employer to invest their funds. Again, as I said earlier, there cannot be any doubt that—

Q97 **Chair:** Mr Slater has certainly sounded a warning shot. I am aware of the time—we need to move on. Mr Palmer, what justification did you have for the super-injunction—the second bit of legal action you took—to make sure that nothing could be discussed about the Ofsted report? A super-injunction is a very unusual thing to go and ask for, especially for a company like yours. Why did you do that?

Andy Palmer: We initially appealed through Ofsted, and then we moved into the judicial review. What we asked for was that the report was not published. I would have to go back and look at this, but I do not recall asking for an injunction such that Departments could not talk to one another about the report.

Q98 **Chair:** Perhaps you do not recall asking for it, but that is what a super-injunction does. You can hide behind words, but unless you are telling us that Ms Spielman is not telling us the truth—and I don't think you are—a super-injunction stops people talking to each other. It cannot be discussed.

Andy Palmer: The injunction that we asked for was primarily focused on ensuring that the report was not published in advance and that there was no discussion of the report or the judicial review in the press in advance of the report being finalised and agreed, having gone through the judicial review process.

Q99 **Chair:** And you thought that was justified.

Andy Palmer: I believe that it was.

Q100 **Chair:** Why? We are not going back to the sample size, because the sample size was partly because—

Andy Palmer: Because I was aware that any publication of a report—



Q101 **Chair:** Would damage your company.

Andy Palmer: —would damage the company and damage the opportunities for the apprentices and the learners working with us.

Q102 **Chair:** Which goes back to your takeover by Lloyds Development Capital. Wasn't profit then the main driver of the business? Dividends to shareholders had to drive your day-to-day business more than what the learners got.

Andy Palmer: Obviously, there is a degree to which the owners are looking to make profit, but at the same time they are very focused on the outcomes for the apprentices and the learners. Actually, in the period since the Ofsted report was published, the owners and the banks have invested money in the organisation to ensure that it is in a position to continue to—

Q103 **Chair:** Yes, because the reputational damage might actually have some impact, one would hope. As an organisation that is trying to make profit, it is going to go down the pan unless you start improving quality. Having come to the conclusion, as you said to us earlier, that the report is correct—you now agree with the judge—have you advised all your learners what was in your Ofsted report? I think it is required to be published and made available to all learners. Have you done that?

Andy Palmer: Yes, at the next opportunity after the report was published, all our assessors discussed it when they met apprentices and apprentices' employers, and we have written so that people are aware of the findings of the report. They were given the opportunity to move to another provider or to continue working with us, under the conditions—

Q104 **Chair:** So, in short, you have advised every learner individually about the contents of the Ofsted report.

Andy Palmer: Yes.

Q105 **Chair:** Ms Spielman, I want to give the final word to you. I have never heard of a regulator—certainly not Ofsted—trashed so much. I have to say, we get interesting feedback from some individual staff members in schools and from schools. Not everyone loves you. In your experience, is this normal behaviour by a body you inspect? Have you got anything to say as a final word?

Amanda Spielman: It is very unusual behaviour. I felt that my team persisted in the face of considerable difficulties and came through with a strong report based on very solid work. I am very pleased that we held our line about deferral, and that we have followed through. We also received opposition to our monitoring visit, and an attempt was made to set conditions—for example, about who was in the team for our monitoring visit more recently. We will do our job properly going forward. Whichever entity these apprenticeships or any other provisions sit in, we have the ability to inspect them at any time and use the information we have. We will make sure we look out for these learners going forward.



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Q106 **Chair:** Thank you. The legal eagle to my left has reminded me that a super-injunction does not preclude any discussion in Parliament, so you might want to bear that in mind if ever anyone has the audacity to do the same thing again. You have gathered from our tone, Mr Palmer, that we are unimpressed by your evidence today.

Mr Slater, you sit there as the Permanent Secretary of a Department that colluded in the non-publication of this report. Have you got a final word? You were happy enough for the report not to be published, as I understand it.

Jonathan Slater: I'm sorry, but I don't understand what you are saying at all.

Chair: Forgive me, maybe I missed—

Q107 **Layla Moran:** I understand that the communications team did not include the report's initial findings.

Jonathan Slater: The point at which the data showed that the apprenticeship business minimum standards were falling below benchmark, we issued a notice of them being breached, requiring improvement activity to be taken. That is one process happening at the same time as the Ofsted inspection. The NAO Report identifies that the communications team didn't immediately put up on the website the fact that that notice of breach had been issued. We had breached Learndirect on the basis of their standards having dropped below benchmark, and the communications team, in the light of the fact that this legal battle was going on between Learndirect and Ofsted—

Q108 **Layla Moran:** But why couldn't they have published it with a star next to it saying "under investigation"?

Jonathan Slater: They should have.

Q109 **Chair:** Remind us how long it was delayed.

Jonathan Slater: Two months.

Chair: That's a long time.

Jonathan Slater: There was a legal battle going on, there was a general election campaign going on, and the team took a risk-averse approach. If they had raised it with Peter or me, we would have said, "No, no. We can understand why you are doing that, but actually it would be better to get it in the public domain."

Peter Lauener: It was published two months before the inspection report was published. It was a mistake.

Q110 **Chair:** Can I ask, Mr Palmer whether anyone who was at Learndirect is not working there now as a direct result of what has happened—this fiasco—over the last couple of years?

Andy Palmer: Yes. There have been a number of changes within the management team.

Q111 **Chair:** Were they sacked or were they made redundant?

Andy Palmer: They were sacked, and also people have chosen to leave the business.

Q112 **Chair:** Can I ask what you are paid, Mr Palmer?

Andy Palmer: I am paid commensurate with the role.

Q113 **Chair:** Just give us a number. We can probably look it up.

Andy Palmer: £200,000.

Chair: Thank you very much.

Thank you very much for your evidence. It has been a long session, but I really think we have got some useful things out. I thank Ms Spielman. We don't see you very often, but it is always a pleasure to have a regulator. We like regulators on this Committee. Thank you to the other witnesses. Our evidence will be up on the website in the next couple of days, uncorrected, so please have a look at that. Especially with this session, it will be good to read it through closely and advise us of any changes—no factual changes, but have a look closely. Our report will be out as soon as possible. This is something we want to get into the public domain as quickly as is practicable.