



Education & Skills
Funding Agency

Education and Skills Funding Agency
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Tel: 0370 000 2288
[ESFA-enquiry-form](#)

26 October 2018

Mr C Darlington
Acting Chair of Trustees
Education for the 21st Century
Hayes Lane
Bromley, Kent
BR2 9EH

By email: ChrisDarlington@e21c.co.uk

Dear Mr Darlington

Financial notice to improve: Education for the 21st Century

I am writing to you in your capacity as the Chair of Education for the 21st Century (“the Trust” Company Number: 7559170).

As you are aware, the Trust has failed to declare related party transactions, meet employee tax liabilities and seek prior approval from the Education and Skills Funding Agency (ESFA) of a novel, contentious and repercussive transaction. These are formal requirements of the Trust’s Funding Agreement (FA) as set out in the Academies Financial Handbook (AFH) 2017.

Paragraph 1.4.3 of the AFH states:

As charities, academy trusts must maintain accounting records and provide publicly accessible accounts in line with the Statement of Recommended Practice (SORP) for charities.

Paragraph 3.1.22 of the AFH states:

*Academy trusts **must** ensure that their senior employees’ payroll arrangements fully meet their tax obligations and comply with HM Treasury’s guidance about the employment and contract arrangements of individuals on the avoidance of tax, as set out in HM Treasury’s Review of the Tax Arrangements of Public Sector Appointees. Failure to comply with these requirements can result in a fine by HM Treasury.*

Paragraph 3.3.1 of the AFH states:

Novel, contentious and/or repercussive transactions must always be referred to ESFA for explicit prior authorisation.

Novel payments or other transactions are those of which the academy trust has no experience, or are outside the range of normal business activity for the trust.

Contentious transactions are those which might give rise to criticism of the trust by Parliament, and/or the public, and/or the media.

Repercussive transactions are those which are likely to cause pressure on other trusts to take a similar approach and hence have wider financial implications.

ESFA may also need to refer such transactions to HM Treasury for approval and so trusts should allow sufficient time for proposals to be considered.

Failure to declare related party transactions, meet employee tax liabilities and seek prior ESFA approval of a novel, contentious or repercussive transaction is a breach of the AFH and the FA. The ESFA has been working with the Trust since May 2018 to address the matters arising from the fact-finding review. I recognise the cooperation and discussions that have taken place between the Trust and officials, however, my concerns remain in relation to governance and financial oversight at the Trust and we need a framework in place to monitor and secure further improvements.

This letter and its annex serve as a written notice to improve financial management, control and governance at the Trust. It reflects the continued concerns of weak financial controls and the governance and oversight of financial management by the board.

The Trust is required, pursuant to the provisions of the AFH and the FA, to comply with the terms of this financial notice to improve ("the Notice"). These terms are set out in Annex A.

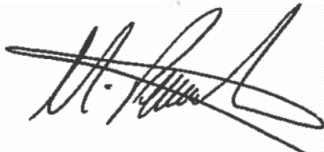
Upon receipt of this Notice, all of the delegated authorities as identified in the AFH (sections 3.3 - 3.7) will be revoked, and all transactions by the Trust previously covered by these delegations (regardless of size) must come to the ESFA for approval. These delegated authorities shall be returned to the Trust providing that the terms set out in the Notice have been complied with and continue to be complied with, to the satisfaction of the Secretary of State.

We will monitor progress made towards meeting the Notice requirements. We will lift the Notice when the requirements set out in the annex have been met. In the event that the Trust fails to meet the requirements of this Notice, to the satisfaction of the Secretary of State, the Trust will be considered to have failed to comply with the terms of the AFH. As a result of this breach of the AFH, and therefore also of the FA, the termination process in the FA may be triggered. Depending upon the severity of the breach, this may be considered a material breach of the terms of the FA and lead to termination.

Please acknowledge this letter by email within three working days of receipt to Lyndsay Kenney at lyndsay.kenney@education.gov.uk. Please also submit the trust's action plan to Lyndsay by 12 November 2018. I am copying this letter to Cathy Whiting, Acting Chief Officer and Dominic Herrington, Regional Schools Commissioner for South-East England and South London.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Pettifer', written over a light grey rectangular background.

Mike Pettifer
Director, Academies and Maintained Schools Directorate

CC. Cathy Whiting, Acting Chief Executive Officer
Dominic Herrington, Regional Schools Commissioner for South-East England and South London

Financial notice to improve

1. The Education and Skills Funding Agency (ESFA) has decided to issue a Financial Notice to Improve (“Notice”) as a consequence of Education for the 21st Century (‘the Trust’):

- Failing to fully declare related party transactions, meet employee tax liabilities and seek prior ESFA approval of a novel, contentious and repurcussive transaction as required in the Academies Financial Handbook (AFH) paragraphs 1.4.3, 3.1.22 and 3.3.1.

Conditions

2. The Trust must:

- Provide the ESFA with full minutes and notes of all board meetings held during 2017/18 by end of November 2018.
- Commission a fully independent review of current governance arrangements in November 2018. The terms of reference must be agreed with the ESFA, and the report findings must be shared with the ESFA by the end of December 2018.
- Prepare an action plan in response to the recommendations from the review of governance, and this must be agreed with the ESFA by the end January 2019. This plan must demonstrate the timings when all the recommendations will be implemented.
- Arrange an independent review of financial management and internal controls to be undertaken in November 2018. The terms of reference and party undertaking the review must be agreed with the ESFA, and the report findings must be shared with the ESFA by the end of December 2018.
- Prepare an action plan in response to recommendations from the review of financial management and internal controls, and this must be agreed with the ESFA by the end of January 2019. This plan must demonstrate the timings when all the recommendations will be implemented.
- Engage with a Schools Resource Management Advisor (SRMA) to visit the trust and review implementation of Integrated Curriculum Financial Planning (ICFP) in January 2019.
- Prepare an action plan in response to the recommendations from the SRMA, and this must be agreed with the ESFA by the end of February 2019. This plan must demonstrate the timings when all the recommendations will be implemented.
- Immediately strengthen the trust board and consider the introduction of a minimum of four RSC nominated academy trustees to support the current trust – new trustees should begin to be introduced no later than 1 December 2018 with all in place by 31 January 2019.
- Increase the regularity of all board and sub-committee meetings to twice a term, all minutes and notes to be shared with the ESFA at the earliest opportunity after each meeting throughout the 2018/19 academic year.

- Ensure that immediate arrangements are put in place to secure a formal written repayment agreement in respect of monies paid to HMRC on behalf of the former CEO and provide a copy of this agreement to the ESFA by 30 November 2018.
- Ensure all trustees are aware of their responsibilities as directors under the companies Act, Academies Financial Handbook and as trustees under Charity Commission guidance – the trust should confirm refresher training for trustees and arrange for this to be completed by March 2019.
- Ensure that proper arrangements are put in place whereby there is sufficient independence to offer robust challenge and hold the CEO and current Accounting Officer to account for the management of the budget/finances and general operation of the trust – the ESFA will consider a further financial management review visit in February 2019 to assess the trust’s progress.
- Ensure that there are robust measures in place to acknowledge and manage related party transactions and that these are reflected appropriately in the management accounts by December 2018.
- Ensure that all related party transactions are fully accounted for and regularised, that there are robust measures in place to notify and seek approval from the ESFA of any potential novel, contentious and repercussive transactions, and that levels of executive pay follow a robust evidence based process which is subject to challenge and scrutiny by trustees – the ESFA will assess progress in these areas as part of the financial management review visit in February 2019.

Financial management requirements

3. The Trust is responsible for its own financial management, control and governance and is expected to take appropriate action to strengthen the weaknesses identified.
4. The Trust should take all appropriate actions to ensure an action plan is fully implemented.
5. The ESFA must be satisfied that the Trust is doing everything it can to rectify the weaknesses identified.

Timescales

6. The Trust must adhere to deadlines associated with conditions, monitoring and progress actions and compliance set out in this notice.

Monitoring and progress

7. Provide the ESFA with monthly management accounts and cash flow reports on the 12th of each month, commencing in November 2018, initially for the first twelve months of the Notice. The frequency of the reports thereafter will be determined by the ESFA, based on progress against the conditions listed above.
8. The Trust is required to submit an action plan by 12 November 2018 to meet the

specific conditions outlined above and to enable the ESFA to monitor compliance and progress.

9. Should it become evident that the Trust is unlikely to fulfil the conditions and / or requirements set out in this Notice and / or within the above timescales, the ESFA will consider and explore the contractual intervention options available.
10. The ESFA reserves the right to amend and add further specific conditions to this Notice should they be required.

Compliance and the end of the notice period

11. Compliance with this Notice will be demonstrated when:

- The independent governance review has been completed and all recommended actions have been taken.
- The independent review of financial management and internal controls has been completed and all recommended actions have been taken.
- The SRMA review of ICFP has been completed and all recommended actions have been taken.
- The Trust board has been stabilised with the appointment of at least four independent academy trustees.
- The Trust board is providing the right balance of challenge and has the skills necessary to carry out its duties effectively.
- The formal written repayment agreement in respect of monies paid to HMRC is in place.
- The ESFA receives minutes of all board and committee meetings to demonstrate evidence of robust challenge to hold the CEO and accounting officer to account for the management of the budget/finances and general operation of the trust.
- Senior leadership pay adequately reflects an individual's role and responsibilities.
- The Trust requests approval from the ESFA for any actions under the revoked freedoms in Part 3 and Annex B of the AFH. These requests should be sent us using the [ESFA-enquiry-form](#).
- The ESFA receives the Budget Forecast Return by 31 July each year.
- The ESFA receives audited financial statements with an unqualified audit opinion every year by 31 December.
- The ESFA receives yearly auditors' management letters which do not raise concerns every year by 31 December.

12. When the Trust meets the conditions outlined in this annex, the ESFA will write to the Trust to confirm that the Notice has been lifted.