

Conflicts of interest in academy sponsorship arrangements

A report for the Education Select Committee

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Executive Summary

1. Areas where conflicts of interest exist

This study was commissioned by the Education Select Committee to assess conflicts of interest in academy trusts and sponsorship arrangements. A conflict of interest is a set of circumstances that creates a risk that an individual's ability to exercise judgement or act in one role is, or could be, impaired or influenced by a secondary interest (National Audit Office - NAO).

Conflicts of interest are common in academy trusts. This is not surprising given the design of academies as independent organisations spending public money. In a small number of cases, conflicts of interest have not been appropriately managed and academy trusts and/or individuals have been found in breach of the guidelines, sometimes leading to a Financial Notice to Improve or even criminal proceedings.

This review identified four broad areas where real or perceived conflicts of interest might occur for academy trusts:

1. Connected-party (or related-party) transactions: for example where individuals on trust Boards benefit personally or via their companies from their position.
2. Sponsors providing paid services (such as school improvement or back office services), through licensing arrangements which prevent schools using any other similar services. This is currently permitted so long as the services are provided 'at cost' (ie not for profit – see Annex 6 for definition of At Cost).
3. More intangible conflicts that do not directly involve money. Examples range from the inappropriate control exerted in the Trojan Horse schools, to a trust being involved in decision making in relation to a school that they then sponsor, to an FE College deciding in its own interest to close the 6th form of a school which it sponsors.
4. Conflicts that arise in the wider system: for example if a contracted Department for Education (DfE) Academy Broker is also working for an academy trust and this influences their decisions on which trusts are invited to pitch for a new school.

2. Overall findings:

The national framework and systems for guiding and regulating how academy trusts manage conflicts of interest were weak in the period after the election in 2010, but have improved significantly over the past two years. The view of one well-placed national observer was that: "This is an enquiry after the stable door has been shut". In their view, the more pressing issue now is the number of academies that are getting into financial difficulties.

The widespread view is that the vast majority of academy trusts are staffed by honourable people working hard to address educational underperformance, often in challenging circumstances. Cases of deliberate fraud are rare and many of the instances where real or perceived conflicts have arisen are the result of people being asked to work too fast with too few controls.

Nevertheless, the general sense from the literature and the evidence collected for this study is that the checks and balances on academy trusts in relation to conflicts of interest are still too weak. In

the course of the research we came across a significant number of real or potential conflicts of interest that we found concerning (See Section 2.3 and Annex C for examples).

The weaknesses in the system are at several levels:

- I. The skills and capacity of bodies charged with auditing trusts may be weak or insufficient to 'get under the skin' of what is going on (and in any case are not designed to be preventative).
- II. Some trust boards are not adhering to national guidance and/or are not doing enough to mitigate the risks. This appears particularly likely in the younger, fast growing trusts.
- III. The rules governing conflicts of interest – in particular the 'at cost' requirement – may be insufficiently robust.
- IV. Mechanisms to identify and address the more intangible conflicts (bullet 3 above) and conflicts in the wider system are almost non-existent.

Further findings:

The (mostly large) trusts surveyed for this research are generally adhering to the revised DfE regulations, although a significant minority have not published their accounts or met other aspects of the requirements. The finance, audit and governance systems in smaller, emerging trusts are generally much weaker. Indeed, the governance of many trusts remains problematic, with too much executive influence and an inappropriate focus on small governing bodies.

There is a requirement in the Financial Handbook for academies to undertake competitive tendering but it is hard to find evidence that this is happening or that it is being monitored by auditors or the Education Funding Agency (EFA).

There is a requirement for trusts to report on the extent to which they provide Value for Money, but the survey of annual reports suggests that these statements are largely meaningless.

There is nothing in the Financial Handbook to stop academy trustees from contracting out operations and services to profit making companies and there are examples where this is happening.

Many trusts report paid services activity (ie the second bullet point above) in their annual accounts that, we believe, falls within the NAO definition of a conflict of interest. These arrangements are being signed off by auditors and the Education Funding Agency (EFA) because they are legitimate within the existing framework. Tripartite Agreements allow sponsors to provide academy trusts with goods and services as long as they are provided on an 'at cost' basis. We could not find evidence of whether or how the 'at cost' rule is assessed (see Annex 6 for definition), but it is clear that very large sums of public money are being paid to trust Board members and their companies as well as the trading arms of academy chains via this route.

Previous reports have questioned whether the Education Funding Agency (EFA) has the skills or capacity required to fulfil its role as the funder and financial regulator of academies. Several interviewees argued that neither the EFA nor Ofsted is fit for purpose with respect to guarding against conflicts of interest.

The ability of the system to pick up on intangible conflicts that do not involve money seems almost non-existent. Hopes that the new Regional Commissioners will address these issues are low. There are almost certainly issues that will need to be addressed in relation to the new Head Teacher Boards. There is a broader sense that the academy system lacks transparency and is overly politicised, from the top down.

Recommendations:

The benefits and impact of academies and academy sponsorship overall remain contested, but there is a strong argument that academy sponsors are working to address underperformance in schools that face real challenges and where the previous Local Authority model has not proved effective. It seems reasonable that such trusts need powers to intervene and make decisions in the interest of pupils and to secure improvement, often at speed. Academy leaders in larger trusts told us that they already feel highly regulated and that they are developing robust systems over time: they would not want to see a knee-jerk policy response that risks a return to the heavily bureaucratic systems of the past.

Nevertheless, the Financial Handbook states that academies must be able to show that public funds have been used as Parliament intended. At present, it seems that the interpretation of what this means in practice is largely left to individual academy boards and leaders to decide. Most worryingly, it seems that some questionable practices are being signed off within the existing rules.

Our recommendations to the Education Select Committee are as follows:

1. Firstly, **we endorse the three recent Public Accounts Committee (PAC) recommendations:**
 - The Department and Agency need to implement an effective joined up strategy for enforcing compliance with funding agreements and consider appropriate incentives and sanctions.
 - The Agency should reconsider its policy which permits related-party transactions. At the very least it must be able to extract and analyse complete information on related-party transactions and then must use that analysis to determine risk based interventions.
 - The Department should introduce, at individual academy and academy trust level, a fit-and-proper persons test.
2. The Committee should **review the current arrangements which permit paid for services being sold to schools on a 'at cost' basis.** This should include a detailed analysis of whether existing examples of payments are indeed 'non-profit' and, if not, how the stipulation could be policed in practice. Our view is that any such services should be procured through a transparent process since this is likely to be the most effective way of ensuring probity and value for money.
3. The Committee should consider **whether further steps are required to strengthen the regulations for governance in trusts.** For example, we understand why newly formed trusts often have to rely heavily on paid staff to shape and staff the governance structure, but we believe it should be impossible for Head teachers and other staff to be Members. Ideally, no Members should be trustees. Finally, we believe that larger trusts should be required to

appoint a part-time Company Secretary to ensure probity in decisions around the constitution and powers of Boards and governing bodies.

4. The Committee should conduct an enquiry session to understand **whether the regulatory powers of the EFA should be split from its funding role**. An alternative might be to require that the EFA becomes a Non-Departmental Public Body rather than an Executive Agency, thereby giving it greater independence from ministers as it conducts its regulatory work.
5. The Committee should **review the arrangements for the new Regional Commissioners and Head Teacher Boards** to assess whether there are sufficient controls in place to monitor and prevent conflicts of interest from occurring.

Chapter 1: Context and outline of the research approach

1.1 Background

In July 2014 the Education Select Committee commissioned Professor Toby Greany and Jean Scott, from the London Centre for Leadership in Learning, Institute of Education, University of London, to undertake research into potential and actual conflicts of interest in academy sponsorship arrangements. The research was intended to inform the Committee's inquiry into academies and free schools.¹

The research was small scale and rapid (it was conducted between mid-July and mid-August 2014) and was intended to inform a 'think piece' which would address four areas:

- What conflicts of issues either do arise, or could arise, under the current academy sponsorship model?
- How effective is the current model of scrutiny and oversight of academy sponsors in terms of how it identifies and addresses conflicts of interest?
- What are the implications of the above for policy and practice?
- What further lines of enquiry might the Select Committee consider in future?

The definition for a conflict of interest used in the research came from the National Audit Office, as follows:

5. In general terms, a conflict of interest is a set of circumstances that creates a risk that an individual's ability to exercise judgement or act in one role is, or could be, impaired or influenced by a secondary interest.
6. Conflicts might occur due to the possibility of individuals having:
 - a. direct or indirect financial interests;
 - b. non-financial or personal interests; or
 - c. conflicts of loyalty where decision-makers may have competing loyalties between the organisation to which they owe a primary duty and some other person or entity.
7. Conflicts of interest cannot be eliminated but need to be identified and managed appropriately.

A more detailed outline of what constitutes a conflict of interest was supplied by the NAO to the Select Committee and is included at Annex 1.

Based on our analysis, we see conflicts of interest in academy trusts and the academy system falling into the following four areas, although the first and second often overlap:

¹ See: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/education-committee/inquiries/parliament-2010/academies-and-free-schools/> accessed 12/8/14

1. Connected (or related)-party transactions – where individuals with connections to both academy trusts and private companies benefit personally or their companies benefit from their position when providing the trust with goods and services.
2. Sponsors providing paid services, such as school improvement and back office services, through licensing arrangements which prevent schools using any other similar services. In the Funding Agreement this is often enabled through a tripartite agreement, between the Trust, the DfE and the service provider (which might be a charity, a company or a Teaching School for example, and might be either in-house or external to the trust).
3. More intangible conflicts that do not directly involve money (although they often could lead to financial benefits at a later stage). Some of these might be seen as abuses of power, rather than conflicts of interest per se. Examples include the Trojan Horse schools, where Peter Clarke's report (2014) is clear that some academy trusts were taken over by a religious group who then used their powers inappropriately, for example in how they appointed and performance managed staff and in their control of the curriculum. Whilst this also happened in Local Authority maintained schools it appears that academy freedoms made it easier. Other, less public, examples of intangible conflicts of interest would include where a trust is asked to undertake a due diligence exercise to assess whether a school should become a forced academy and that trust then becomes the sponsor, or where an FE College decides in its own interest to close the 6th form of a school which it sponsors.
4. Conflicts that arise in the wider system, for example if a contracted DfE Academy Broker is also working for an academy trust and this influences their decisions on which trusts are invited to pitch for a new school.

1.2 Research approach

The research involved two overlapping strands:

i) Desk research to review key literature and examples of conflicts of interest. This involves three strands to:

- review recent reports and literature on academy sponsorship and conflicts of interest,
- identify specific examples from media reports where conflicts of interest, or instances of potential conflicts of interest, have arisen in academy trusts, and
- review funding agreements and annual reports for a sample of academy sponsors.

In the third strand the funding agreements and annual reports were analysed to identify actual and potential areas for conflicts of interest as well as the extent to which the agreements are designed to address such conflicts. Funding agreements and annual reports were sought and reviewed for 17 academy trusts in total (see Annex 4). The sample for these was skewed towards larger, more established trusts, since many smaller trusts have not yet published their first annual report.

ii) Interviews:

14 interviews were undertaken with individuals undertaking the following roles².

- 1 senior official from a national organisation representing school governors
- 3 senior officials in trade unions
- 1 Lead Councillor for Education in a Metropolitan Borough Council
- 1 Head of School Improvement in a shire county
- 2 Chief Executives of large academy chains (ie 15 schools plus)
- 1 Senior Leader in a large academy chain (ie 15 schools plus)
- 1 Executive Headteacher of a medium sized academy chain (5-15 schools)
- 1 Headteacher of a stand alone academy (Special school)
- 1 Board Member of a large academy chain (ie 15 schools plus)
- 1 Board member of a medium sized academy chain (5-15 schools)
- 1 Finance Director in a small primary academy chain (2-5 schools)
- 1 Project manager in a small primary academy chain (2-5 schools)

All interviewees were promised anonymity and the opportunity to review the written notes of their interview. The interviews were semi-structured using a broad set of questions which are included at Annex 2. In one case the interview was recorded, but in all others handwritten notes were taken and then transcribed. The interviews were undertaken face to face or by telephone and took between half an hour to an hour.

1.3 About the researchers

Toby Greany is Professor of Leadership and Innovation and Head of the London Centre for Leadership in Learning at the Institute for Education. His interests include system reform and system leadership, school leadership and improvement and the nature and impact of evidence based practice. Before joining the IOE in summer 2013, Toby was Director of Research and Policy and later Executive Director – Leadership Development at the National College for School Leadership for seven years. During his time at the College Toby commissioned several studies on leadership in academies and academy chains, including two from Robert Hill. Before NCSL Toby worked at the Design Council, the Campaign for Learning and the Cabinet Office. From 2005-2006 he was Special Advisor to the Education and Skills Select Committee. He has a Masters in Adult Education from Manchester University, has authored a number of books on schools and education and has taught in Brazil, China and the UK.

Jean Scott is an associate of the London Centre for Leadership in Learning at the IOE. In the past she was Head of Policy at NCSL, where she worked closely with Robert Hill on his studies of academy chains. Before NCSL Jean was an adviser at the Department for Education and also worked in a number of government agencies, including the Countryside Agency where she was the senior policy adviser on education, children and families, rural disadvantage and access to services. She is chair of governors at her local primary school and vice chair of governors at a residential special needs school. She is also a trustee and board member of the Radius Special Education Trust. Before its closure in 2012 she was a council member of the General Teaching Council of England and chaired

² Interviewees were promised complete anonymity in order to give them greater freedom to talk about existing or potential conflicts of interest; thus only their generic role descriptions are given here.

professional regulatory hearings. Most recently she has authored two publications for NCTL on the Governance of Federations and Leading Governors : The Role of Chairs of Governors in maintained schools and academies.

2. Findings

2.1 Key themes from the literature

A brief review of recent reports from official bodies indicates a number of ongoing concerns around:

- the extent to which the legal and financial framework and guidance for academies is sufficient in guarding against conflicts of interest;
- whether the national agency charged with monitoring the financial performance and probity of academies, the Education Funding Agency, has the skills and capacity required to fulfil its functions, and
- the extent to which academies themselves have sufficiently robust governance and financial controls.

In 2010 the National Audit Office (NAO, 2010) recognised a potential conflict of interest between sponsors and academies. They noted (p40):

Sponsors have a strong influence on the running of academies, which brings both benefits and risks to value for money. A conflict of interest may arise where they provide paid services to the academy: a quarter of academies responding to our survey said their sponsor provided paid services and 44% said they could potentially provide good or services in the future.

The NAO noted other potential areas for conflict of interest, including:

- in almost one fifth of academies that responded to the NAO survey the chair of the governing body (usually a representative of the sponsor) also chaired the finance committee.
- almost two thirds of academies responding to the survey did not have an audit committee, regarded as good practice for charitable trusts.
- Sixteen per cent of survey respondents stated that their Responsible Officer also chaired the governing body, even though the Department's *Academies Financial Handbook* explicitly states that these roles should be separate. One in ten Responsible Officers also chaired the finance committee, against departmental guidance.

Clearly, the framework for academy funding has evolved since the NAO report in 2010 and a number of areas where guidance was initially weak have since been addressed. In his advice to the Select Committee on 2nd July 2014 Theodore Agnew described 9 iterations of the Funding Agreement as it has evolved. The most recent update to the Handbook was published in August 2014, with strengthened guidance on transparency and dealing with conflicts of interest as well as governance more generally (see Annex 5).

In January 2013, the independent Academies Commission (Gilbert et al, 2013) noted that 'it is vital that academies demonstrate probity in using public funds' but expressed concern about the EFA's capacity to provide thorough oversight and secure accountability for academies and academy chains. They expressed doubt that the EFA had sufficient capacity and skilled staff to monitor funding agreements and hold academies to account for breaches in the use of public funds. They recommended that:

Using the EFA, the DfE should continue to tighten systems of financial accountability and transparency, ensuring there is capacity for a proportion of routine visits to schools to be undertaken and for investigation of compliance in order to deter bad practice.

Nevertheless, the Education Funding Agency's Annual Report and Financial Statements for April 2012 – March 2013 noted that:

As the number of academies continues to grow rapidly, from 1664 academies in March 2012 to 2823 at March 2013, there will continue to be a challenge to the EFA to deliver robust, yet proportional assurance over the regularity of academies expenditure. The EFA may not have sufficient capability and capacity to meet their objectives in an expanding academy sector.

In June 2014 the Public Accounts Committee published its report on the Education Funding Agency. It concluded that:

The EFA's work has expanded rapidly and, while it has succeeded in getting money out to schools on time, it has not yet got to grips with effective oversight of how that money is spent... It needs to do more to address potential conflicts of interest in academies. The Agency does not know enough about conflicts of interest in academies and the risk they pose to the proper use of public money.

We were concerned that individuals with connections to both academy trusts and private companies may have benefitted personally or their companies may have benefitted from their position when providing the trust with goods and services... In line with accounting standards, academy trusts are required to disclose related-party transactions in audited accounts, but the Agency does not log such transactions and is unaware of how many disclosures have been made. The Agency now insists that goods or services provided by individuals or organisations connected to academy trusts, such as trustees, or relatives of trustees, are provided at no more than cost, but it introduced this rule in November 2013. The DfE takes the view that related-party transactions are acceptable. We feel that related-party transactions are always open to accusations of conflicts of interest, even when supposedly on a no profit basis.

The PAC report made a number of recommendations that are relevant for the Select Committee to consider in relation to conflicts of interest, in particular:

- The Department and Agency need to implement an effective joined up strategy for enforcing compliance with funding agreements and consider appropriate incentives and sanctions.
- The Agency should reconsider its policy which permits related-party transactions. At the very least it must be able to extract and analyse complete information on related-party transactions and then must use that analysis to determine risk based interventions.
- The Department should introduce, at individual academy and academy trust level, a fit-and-proper persons test.

Turning to the quality and rigour of academy governance, this has been raised consistently as an issue, including by ministers. Clearly, in an autonomous system of academies and academy chains school governors and trustees play a pivotal role. In respect of financial matters they are responsible for ensuring transparency and probity and holding fellow trustees and senior leaders to

account. However the Academies Commission noted that for many governors and trustees their lack of understanding of their roles and responsibilities raises specific risks around accountability and potential conflicts of interest. For example, some academies have a very small numbers of board trustees (the minimum allowed is three) who all know each other well and may be related.

The Clarke report on the Birmingham Trojan Horse affair noted that:

The evidence base is too small for me to reach a conclusion on the financial probity of the schools under investigation in Birmingham, but there appears to be sufficient indication of poor financial management to warrant further investigation and audit of academies and schools by the Education Funding Agency and Birmingham City Council. Para 10.10 p92

I would not want to generalise about the governance of academies but this enquiry has highlighted that there are potentially serious problems in some academies. The Department's systems need to be more sensitive to detecting changes in governance and more effective in responding to warning signs to ensure that academies deliver the provision for which they are contracted. Para 9.2, p87

Finally, it is beyond the scope of this research to assess international practice in this area, but the two examples in Boxes 1 and 2 are illustrative of the issues that have arisen in the US, where Charter Schools have been established over a longer period, and a potential alternative model for authorising and building capacity in academies, as used for the Independent Public Schools in Western Australia.

Box 1: Charter Schools, USA

In the USA, Charter Schools have been seen as the answer to failures in the public school system. A number of issues have arisen with charter chains being involved in unsavoury real estate deals, charter principals indicted for embezzlement and charter school principals who are paid large salaries to oversee very small numbers of schools. Of the approx. 5000 charter schools nationally, only 17% were superior to a matched public school on student progress in maths, 37% were worse and 46% were no different to a similar public school according to the CREDO study by the Stanford economist Margaret Raymond.

Box 2: Independent public schools in WA

Since 2010, 255 schools in Western Australia have become Independent Public Schools (IPS). They receive greater autonomy over staffing, human and financial resources and various administrative and management responsibilities. The program follows an opt-in autonomy model whereby schools choose to apply to the program. Schools need to demonstrate they have the capacity to effectively use greater autonomy, and that this will be of benefit to their local area. The community, including staff, need to support the school's effort to become an IPS. Only once they have demonstrated their capacity can schools actually join the program.

There is substantial capacity-building for schools selected for IPS status. This includes identification of school improvement programs that must be detailed in a three-year business plan. In addition,

the Government provides training for school principals, staff and board members as they move to IPS status.

The program is relatively new. The recent evaluation found that “in general, the initiative has had a neutral or positive effect on the classroom” and that the foundations were in place for improvement in student learning. School principals have found the ability to select staff the most important aspect of the program, allowing them to select teachers that fit the schools’ students and ethos.

Source: Jensen et al, 2013

2.2 Key themes from the review of actual examples of conflict of interest and the analysis of Funding Agreements and Annual Reports

The Academies Financial Handbook makes the responsibilities of trust boards clear in relation to conflicts of interest and connected party transactions and sets out the systems and processes that must be in place to manage this (‘the musts’). For example, para 3.1.13 states:

*The board of trustees **must** ensure that the requirements for managing connected party transactions are applied across the trust. The chair of the board of trustees and the accounting officer **must** ensure that their capacity to control and influence does not conflict with these requirements. They **must** manage personal relationships with connected parties to avoid both real and perceived conflicts of interest, promoting integrity and openness in accordance with the seven principles of public life.*

Despite these controls, a sample of cases where conflicts of interest either have occurred or might be seen to have occurred is included at Annex 3 (a further set of examples identified from the interviewees is included in section 2.3). The list of trusts for which Funding Agreements and annual reports were reviewed or sought together with an assessment of the extent to which they fulfil ‘the musts’, as set out in Annex C of the Academies Financial Handbook, is included at Annex 4.

What these two annexes appear to show is that:

Four years on from the NAO finding that many academy trusts were not adhering to the minimum requirements for financial monitoring and reporting within trusts, this small survey indicates that practice in the larger trusts surveyed has improved, although a significant minority have not published their accounts or met other aspects of the requirements.

Conflicts of interest are common in academy trusts. This is not surprising given the design of academies as independent organisations spending public money, generally under intense pressure and in challenging circumstances, so whilst a focus on how conflicts could be minimised or eliminated is important, an equal focus is needed on how conflicts are monitored and managed.

In a small number of cases these conflicts have not been appropriately managed and the trusts have been found in breach of the existing guidelines, sometimes leading to criminal proceedings.

More often, it appears that trusts are reporting activity that would fall within the NAO definition of a conflict of interest in their annual accounts, but these are then being signed off by auditors and the EFA. The existing framework appears to legitimise such activities through the following mechanisms:

- The accounts all contain the following statement, which has presumably been supplied by the EFA: *Owing to the nature of the Academy's operations and the composition of the Board of Governors being drawn from local public and private sector organisations, it is inevitable that transactions will take place with organisations in which a member of the Board of Governors may have an interest. All transactions involving such organisations are conducted at arm's length and in accordance with the Academy's financial regulations and normal procurement procedures.*
- The Tripartite Agreement is key because it allows the sponsors to provide academy trusts with goods and services as long as they are provided on an 'at cost' basis. Some trusts are sponsored by a company that has an interest in education and sells its services or products to the trust. Equally, several trusts have one or more separate trading companies of their own. This might be a Teaching School but might equally cover activities such as building programmes for construction work for new schools or extended schools activities and programmes. The accounts for these trading arms do not appear to be included in the main annual financial statements for the core trusts, so it is not possible to see whether they secure profits or how these are shared.

It was not possible to establish whether the trust auditors or EFA monitor whether the services provided by internal trading companies or external companies with links to trust boards are indeed 'at cost', or even whether this would be possible at scale. There is a requirement in the Handbook for competitive tendering but it is hard to find evidence that this is happening or that it is being monitored by auditors or the EFA. There is a requirement for trusts to report on the extent to which they provide Value for Money, but the survey of annual reports suggests that these statements are largely meaningless.

Day rates for educational consultancy generally range from £200-300 per day for more standardised work, to well over £1000 a day for more specialised support. If a trust pays an individual or company for a service at £1000 a day, who is to say that it is 'at cost'?

There is nothing in the Financial Handbook to stop academy trustees from contracting out operations and services to profit making companies. For example, AET's ongoing procurement of all back office and other services³.

Finally, the more intangible conflicts of interest (see section 1.1, p5 for examples) that do not involve direct financial payments are not reported or monitored in any way.

³ <http://news.tes.co.uk/b/news/2014/01/31/england-39-s-biggest-academy-chain-to-bring-in-private-sector-to-run-schools.aspx> accessed 5.9.14

2.3 Key findings from the interviews

2.3.1 Examples of conflicts of interest

A number of the interviewees were keen to impress that the examples of malpractice that have been broadcast are not widespread. The same issues arise in maintained schools. In the words of one chain CEO “most chains are honourable and are taking on tough schools for the right reasons”.

Nevertheless, the interviewees gave a number of examples of practices that they saw as reflecting conflicts of interest. Some came from direct experience of working in or with trusts, while others were second hand:

- One interviewee described an academy they knew where the Head teacher had spent £50,000 on a one day training course run by their friend. The decision had not been run past the governors.
- In two of the smaller trusts we interviewed, the Executive Head of the lead school was also a Member and trustee of the trust, meaning that they could in theory appoint the board that would then undertake their own performance management and decide on their remuneration (the most recent version of the Academies Financial Handbook states that “Structures in which members are also employees are not considered by DfE to be an effective model of governance for an academy trust”, p8).
- One interviewee gave an example of a chair of a Multi-Academy Trust (MAT) who is also a lawyer specialising in education matters and who uses his company to provide all the legal services for the MAT.
- One interviewee cited an example where a head teacher was being coached by a National Leader of Education (NLE), which led to the Head being coached out of their role. The NLE is now in line to become the Executive Head and sponsor of the school.
- Several interviewees gave examples of secondary academies being sponsored by an FE College and being pressurised to close their 6th form, though some argued the reasons for this could be legitimate (eg due to quality concerns or insufficient pupil numbers).
- In one trust, the Head teacher’s husband has applied for a role within the trust. There was no advert. The husband does appear to fit the requirements for the role, which are quite specific, but not completely since he has never done this exact role before. The interviewee feels it will be difficult for them to turn the applicant down.
- One interviewee cited an example of a chain operating both primary and secondary schools in an area that does not let other local secondary schools make transition visits to the primary schools controlled by the trust (in order to prevent them recruiting students).
- One interviewee had seen the legal advice on admissions broken in several instances. For example, where an academy Head had turned up at appeal meeting on the Published Admission Number (PAN) for the academy with a group of selected parents in tow to support them. The Head had announced at the appeal that they could now take 30 extra students and this was then approved, despite the fact that it goes against the advice that the Local Authority should be given due notice and appears to reflect parental selection.
- In one academy, we were told that the Chair of Governors had told all staff that if they discussed with students or used text books referencing abortion or contraception they would be dismissed.

2.3.2 The national framework

The view of one well-placed national observer was that: “This is an enquiry after the stable door has been shut, the EFA processes have been tightened up and the worst examples are mostly from 2 or 3 years ago”. In their view, the more pressing issue now is the number of academies that are getting into financial difficulties, generally because the board and head teacher are not prepared to make hard decisions on staffing in the face of tightening budgets.

This interviewee acknowledged that the early funding agreements and Financial Handbooks were weak, but felt that they have improved over time and that the EFA has been learning from its mistakes. This view was endorsed by other interviewees, who also acknowledged that the DfE has generally tightened up its focus on due diligence and quality assurance in terms of how they award schools to sponsors since Lord Nash came in to post in 2013.

The interviewee quoted above argued that the current framework is not as prescriptive as that for a Local Authority school and deliberately leaves it to individual trusts to determine their own approaches, but it does address key issues, for example on borrowing and disposal of assets. They acknowledged that the framework does not spell out the ways in which sponsors can and can't be involved in delivery and the issue of related-party transactions as clearly as it might, and that this created risks.

Other national observers were less relaxed. For example, one senior trade union official argued that:

The current systems for governing and scrutinising academies are not effective. The Trojan Horse reports on Birmingham schools show clear conflicts of interest as well as mismanagement at Park View and other schools, yet the government has not been able to use the Funding Agreement to manage this... The issue is not autonomy per se, but lack of scrutiny and controls. The Funding Agreements have proven more varied and tenuous than expected, particularly the early ones which were weak. The government has not thought through Funding Agreements as individual contracts and they are not governed sufficiently by a legal framework.

This view that the checks and balances are too weak for an academised system was common across several interviewees, mostly those with a national or locality perspective. A common view was that the Secretary of State now has many more schools to oversee than any Local Authority.

Several interviewees argued that neither the EFA nor Ofsted is fit for purpose with respect to guarding against conflicts of interest. The EFA's interest in schools is mainly financial, but neither it nor the accounting firms that undertake external audits have the skills or capacity to get below the surface to understand the relationships that are key to understanding conflicts of interest (“will they get below the skin?”). At best an auditor might detect issues after the event when the aim should be to have preventative systems: this relies too much on whistleblowers at present, as at the Kings Science Academy in Bradford⁴. Ofsted is looking at a snapshot of the school and is not a financial

⁴ <http://www.theguardian.com/education/2014/apr/01/kings-science-academy-questions-over-free-schools-policy> accessed 5.9.14

auditor. As a result there is the potential for large scale fraud to go unnoticed for years, as seen at Haberdashers' Aske's⁵.

The view that neither the EFA nor Ofsted is really holding trusts to account on conflicts of interest was generally supported by our interviews with leaders working within trusts.

The processes seem to change day to day, so there is a sense that DfE is making it up as it goes along.

We seem to lead with the EFA rather than follow, we're telling them things, including about conflicts of interest.

My experience is that you can drive a coach and horses through the funding agreements. I experienced major software packages aimed at monitoring student behaviour and progress – vast amounts of money spent – it would be very easy, in the development of that work, for there to be conflicts. The schools were obliged to use the packages. I advised heads not to use them... my beef was that heads and leaders were spending so much time playing with the technology and presenting data in different formats, so they were being distracted by software solutions and taking their eye off the ball.

Interestingly, one chain CEO argued that the EFA “shouldn't be combining the functions of both funder and regulator”. In their view the EFA is effective in the role of funder and getting money out to schools but “rubbish at the regulatory function”. This is not because of lack of resources but because “they don't know what they're looking for. They don't know what represents good value for money and can't define a good outcome”. We heard that there is a 10% chance of a trust being audited by the EFA but have not been able to verify if this is true.

2.3.3 Head Teacher Boards and Regional Commissioners

Two interviewees argued that the new model of Regional Commissioners advised by elected Head Teacher Boards will be an improvement on the Secretary of State trying to oversee everything from the centre, however one academy chain CEO disagreed: in their view the new Regional Commissioners will be

Just another unnecessary layer of bureaucracy and a shield to protect ministers and EFA officials... Their areas of operation are too large to be effective.

In general the issues for Regional Commissioners seem less acute, since they are civil servants, although one interviewee understood that the new Regional Commissioner for the West Midlands will retain his role as an executive head of a school. However, even here the wider sense – which we return to below - that the academy system lacks transparency and is prone to favouritism came through. For example, the Project Manager of a small primary chain stated that:

It already feels as if there are favoured trusts to whom school improvement activity is directed. We get the sense there are one or two trusts locally that DfE goes to to take new schools.

⁵ <http://www.theguardian.com/education/2014/jul/12/academy-letter-parents-2m-fraud> accessed 5.9.14

The issues were more acute in relation to the Head Teacher Boards, where it was seen that the successful academy Heads and CEOs who make up the members will inevitably face conflicts of interest. Often this is simply because the HTBs will know the schools and leaders involved, with a common view that they will 'go to the people they know'. In other cases the conflicts will be more direct, with the potential for a chain CEO to benefit from the decisions they are making, for example if they are giving advice on a Free School application in an area where they themselves might want to open a new school. At almost every level the system was seen as fraught with difficulties:

It is possible for them to recuse themselves from decisions, but many of the conflicts will be more low level than that – for example if you are a head from one large chain, making a decision on another chain that is your competitor, you may be conflicted even if your own chain is not directly involved.

As a result one national commentator felt that stronger safeguards need to be put in place to protect the HTB members themselves. In general there was little clarity about whether such safeguards exist or how the work of the Regional Commissioners and HTBs will be scrutinised.

2.3.4 The experience on the ground

Several academy leaders we interviewed argued that academies are already heavily regulated and scrutinised. This oversight comes from a variety of sources: the Charity Commission, company law, the EFA/Financial Handbook, Ofsted, Local Authorities, their own boards (including Finance and General Purposes and Audit committees) and internal and external auditors. These frameworks set clear rules which their staff (eg Chief Operating Officer, Senior Financial Accountant, Finance Director, School Business Manager etc) adhere to when supporting and challenging schools within a trust.

So the sense is that the larger, more established trusts are working hard to firm up their processes as they go along, generally after a rapid early expansion which meant they were not as robust early on. One CEO of a large academy chain said it was 'horrific' when they arrived. There were no financial controls or operating processes and no agreed procedures for procurement. Money 'was spent freely' without any controls or accountability. Some trustees were being paid 'large amounts' for consultancy and other services. One trustee was also a DfE broker responsible for allocating schools to academy chains⁶. The CEO removed most trustees and created a new Board and new school governors through an open recruitment process. None of the current Directors, or any companies they are associated with, benefit financially from their association with the trust. The CEO has put in place clear standard operating procedures and a tightened scheme of financial delegation and control.

The current DfE preference is to award schools to the smaller emerging chains run by a local outstanding school, following the decision to pause expansion in many of the larger trusts earlier this year. One CEO in a large chain argued that the level of infrastructure and capacity in these emerging chains is likely to be weak. Certainly, the smaller chains we spoke to acknowledged that financial capacity has been a challenge:

⁶ We heard from another interviewee about a Regional Associate for the National College for School Leadership who is also commissioned by an academy trust that has a Teaching School. The associate has used their NCTL role to promote the trust and TSA as a preferred provider to schools across the region.

It's been the most problematic issue we've faced because the demands are much greater than for a School Business Manager in a maintained small primary school.

If we'd been audited last term we would have been hung drawn and quartered.

One academy CEO hinted at some of the more structural issues to consider. Chains operate different financial models in terms of the amount they toplice and the degree of local autonomy they grant to schools over expenditure. All chains are supposed to publish their level of toplice but they have done this in different ways so it is hard to compare. In this CEO's view, chains which give greater autonomy to schools on expenditure and which have a lower toplice might be less prone to conflicts of interest because decision making is more distributed, although the trust retains oversight and accountability for overall financial probity.

Another structural issue this CEO raised was with the trading arm of chains (discussed above in relation to tri-partite agreements). Many chains have these, often via the Teaching School. Some grant fund the profits back to the charity, but most seem to be set up to generate income, often by selling services to schools within the chain. This seems to be the greatest area of risk for conflicts if it is seen as a closed shop.

2.3.5 Governance

The quality of governance in trusts was raised as an issue by several interviewees:

Conflict of interest is not well understood in the schools sector. In the voluntary sector it is poor practice for the CEO to be a board member whereas in academy chains it is routine for the CEO and the Executive Head to be board members. This results in a situation where there are poor checks and balances.

One national observer was concerned about the differing layers of governance in trusts: arguing that there is confusion about the respective powers of governors and directors in some Multi-Academy Trusts (MATs):

Lots of MATs haven't written down their scheme of delegation which clarifies the powers of the Trust Board and the local governing body... The local governing body is usually at arms-length from the trust board... there is no public debate over this removal of local governance and local accountability. Strong governing bodies can act as a challenge to trust boards but once schools join a MAT the board can change the scheme of delegation and remove their powers.

The same interviewee expressed concern about the trend towards smaller trust boards when there is no evidence that smaller boards are any more effective:

Smaller boards can lack transparency and have a tendency to be composed of a group of friends or colleagues.. (whereas) what you really need is the diversity and challenge that a larger board can bring.

Several interviewees highlighted the danger that because trust boards are self-perpetuating, they could become introverted ('cabals and cliques'), with the example of the Trojan Horse schools as a warning:

There is a noticeable theme of like-minded people coming together to form boards but without the necessary checks and balances.

We are seeing examples where the CEO has fallen out with their trust – for example on expansion – and there is then pressure exerted on the trust to get board members who agree with that view.

Finally, we heard examples of where the governance of trusts has evolved in arcane ways due to a pragmatic need to move quickly and take on schools. For example, one trust we interviewed has an Outstanding church school at its core, but the diocese wouldn't support the formation of a MAT as they were concerned about the risk it posed to the religious ethos of the school. The school therefore formed a Teaching School company, with members and directors drawn from the school, which is then the sponsor of the MAT. The Finance Director is aware of the risks this poses and is currently working with the diocese to agree a more transparent and sustainable model.

2.3.6 General reflections from interviewees

One chain CEO was concerned that the Select Committee should take a proportionate view on conflicts of interest: "we must avoid a hysterical response based on isolated issues". In their view academy chains are heavily accountable and scrutinised, but are often publicly vilified. One risk of adding further scrutiny would be that chains might not want to take on the toughest schools or might not have the powers they need to intervene and address under-performance quickly.

This chimed with a wider view that most academy chains are made up of honourable people working under intense pressure in challenging schools. In many cases the issues that have arisen have been more due to the pace of expansion than calculated greed. The sense of urgency for schools to improve has accelerated in recent years, which puts huge pressure on leaders: as a result a busy CEO might understandably turn to a trusted friend to become the Headteacher of a school they are responsible for, rather than wait for the outcome of a protracted interview process. The government can sometimes give confusing signals in this area, by encouraging risk taking and entrepreneurialism on the one hand whilst wanting complete probity and adherence to process on the other.

The result of this can be that academy principals sometimes drop the boundaries between their personal and public lives. They can think that if they are working 80 hour weeks then it is OK to pay for flowers for their partner with the school budget. These people are feted and feel they can do no wrong, so they lose their sense of perspective under pressure – as the Jo Shuter case showed.

Equally, the pace of change can create practical challenges. For example, in one high profile chain there was no permanent Finance Director in post over a sustained period, making it hard to institute and police standard procedures.

There was a sense that the strengths of the academy sponsor model may also be weaknesses. Sponsors are explicitly empowered to intervene and make decisions quickly in order to address underperformance, but this can mitigate against them following due process or considering alternatives to their existing network of trusted friends and colleagues. As one Board member put it:

We are extraordinarily well networked, and we play that network for what it's worth. People have been very generous, but we are moving beyond the point where grace and favour will win the day.

Regulating this requires finding a subtle balance between freedom and regulation. One interviewee asked: if a sponsor's business provides in-kind support to schools in a trust but also benefits from that same trust buying their services, where should the cut-off point be? If the in-kind support is worth £150,000 and school buys £50,000 of services, is that legitimate? What about if the schools increase their purchasing of the services to half a million pounds? Similarly, if a chain invests in growing its own leaders, but then never appoints anyone from beyond the chain would that be a conflict as well as risk inbreeding?

Overall, a number of interviewees suggested that: "education seems more prone to nepotism than other sectors". This view wasn't seen as specific to academies. Similarly, the level of skills and the regulating processes were seen as weaker in schools than elsewhere:

The skills of SBMs in schools we have taken on are often low, even around basic bookkeeping. They haven't been forced to do the SBM module or have basic accountancy qualifications, and even that is very low level. They don't have a holistic understanding of the processes and controls required.

Perhaps the strongest message of all from the interviews was that the checks and balances that we are used to in the public sector are not yet there for academies:

Human nature being what it is, there need to be reasonable, non-bureaucratic checks and balances. We need it because this is not a perfect world.

Linked to this was a more intangible sense that the academy system lacks transparency, is heavily politicised and prone to favouritism:

Civil servants in the EFA have become very politicised.

Transparency needs to go right to the top; ministers and senior figures at DfE are still associated with or on boards of trusts. Although they have tried to build Chinese walls and avoid accusations of impropriety this involvement could still contribute to a wider culture in which it seems that some Heads are favoured by ministers. Human behaviour is such that civil servants and Ofsted might give these schools preferential treatment, even if they haven't been asked to.

3. Conclusions and recommendations

The benefits and impact of academies and academy sponsorship overall remain contested, but there is a strong argument that academy sponsors are mostly working to address underperformance in schools that face real challenges and where the previous Local Authority model has not proved effective. It seems reasonable that such trusts need powers to intervene and make decisions in the interest of pupils and to secure improvement. Equally, there is a universal recognition that conflicts of interest are not restricted to academies: there are numerous examples of inappropriate activity in maintained schools. Any consideration of ways to enhance regulation in academies must aim for an appropriate balance which does not inadvertently prevent sponsors from fulfilling their role, or from being incentivised to do so.

Nevertheless, the Financial Handbook states that academies must be able to show that public funds have been used as Parliament intended. At present, it seems that the interpretation of what this means in practice is largely left to individual academy boards and leaders to decide. The systems for guiding and regulating how they do that are stronger than they were a few years ago, but the general sense both from the literature and the evidence collected for this study is that the checks and balances are still too weak. This is partly because the capacity and skills of the EFA and Ofsted are insufficient to deal with the sheer number of academies in place. But the analysis of annual reports suggests that many questionable practices are being signed off within the existing rules.

Meanwhile, the governance of many trusts remains problematic, with too much executive influence and an inappropriate focus on small governing bodies. Over time, we may be able to discern more structural issues with the way different chains operate, for example whether more distributed financial decision-making across member schools reduces the risk of fraud.

Hopes that the new Regional Commissioners will address these issues are low. There are almost certainly issues that will need to be addressed in relation to the new Head Teacher Boards. There is a broader sense that the academy system lacks transparency and is overly politicised, from the top down.

Our recommendations to the Select Committee clearly sit within the wider debates taking place in the light of the Trojan Horse reports and the political consideration of what might constitute an appropriate middle tier in an academised, self-improving system. We focus here on the more specific issue of how to minimise conflicts of interest:

1. Firstly, **we endorse the three PAC recommendations** listed above:
 - The Department and Agency need to implement an effective joined up strategy for enforcing compliance with funding agreements and consider appropriate incentives and sanctions.
 - The Agency should reconsider its policy which permits related-party transactions. At the very least it must be able to extract and analyse complete information on related-party transactions and then must use that analysis to determine risk based interventions.
 - The Department should introduce, at individual academy and academy trust level, a fit-and-proper persons test.
2. The Committee should **review the current arrangements which permit paid for services being sold to schools on a 'at cost' basis**. This should include a detailed analysis of whether existing examples of payments are indeed 'non-profit' and, if not, how the stipulation could be policed in practice. Our view is that any such services should be

procured through a transparent process since this is likely to be the most effective way of ensuring probity and value for money.

3. The Committee should consider **whether further steps are required to strengthen the regulations for governance in trusts**. For example, we understand that newly formed trusts often need to rely heavily on paid staff to shape and populate the governance structure but we believe it should be impossible for Head teachers and other staff to be Members. Ideally, no Members should be trustees. Finally, we believe that larger trusts should be required to appoint a part-time Company Secretary to ensure probity in decisions around the constitution and powers of Boards and governing bodies.
4. The Committee should conduct an enquiry session to understand **whether the regulatory powers of the EFA should be split from its funding role**. An alternative might be to require that the EFA becomes a Non-Departmental Public Body rather than an Executive Agency, thereby giving it greater independence from ministers as it conducts its regulatory work.
5. The Committee should **review the arrangements for the new Regional Commissioners and Head Teacher Boards** to assess whether there are sufficient controls in place to monitor and prevent conflicts of interest from occurring.

Annex 1: Definition of conflicts of interest, information provided to Select Committee by NAO

1. The following is a summary of publicly-available information about conflicts of interest, some of it directly related to education, some of it more general. There is no single definition in law of a conflict of interest but limited guidance, contained in a range of different sources, described how such conflicts can occur and how to handle them.
2. In general terms, a conflict of interest is a set of circumstances that creates a risk that an individual's ability to exercise judgement or act in one role is, or could be, impaired or influenced by a secondary interest.
3. Conflicts might occur due to the possibility of individuals having:
 - a. direct or indirect financial interests;
 - b. non-financial or personal interests; or
 - c. conflicts of loyalty where decision-makers may have competing loyalties between the organisation to which they owe a primary duty and some other person or entity.
4. Conflicts of interest cannot be eliminated but need to be identified and managed appropriately.

Guidance directly relevant to educational establishments

5. The **Academies Financial Handbook** is the key guidance, published by the Education Funding Agency, and contains information about handling conflicts of interest:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255052/Academies_Financial_Handbook_Oct_2013_FINAL_041113.pdf.

General guidance

6. The Handbook contains a link to the sections of the **Companies Act 2006** that cover conflicts of interest: <http://www.legislation.gov.uk/ukpga/2006/46/part/10/chapter/2>.
7. The Handbook also contains a link to the **Charity Commission's Statement of Recommended Practice**, which states: "Any decision by a charity to enter into a transaction ought to be influenced only by the consideration of the charity's own interests. This requirement is reinforced by legal rules which, in certain circumstances, can invalidate transactions where the charity trustees have a conflict of interest. This does not necessarily mean that all transactions with related persons are influenced by the consideration of interests other than the charity's nor that they are liable to invalidation."
<http://www.charitycommission.gov.uk/detailed-guidance/money-and-accounts/charity-reporting-and-accounting-the-essentials-2009-cc15b/sorp-documents/>
8. The **Committee on Standards in Public Life** has set out seven principles, many of which would apply in the context of conflicts of interest: selflessness; integrity; objectivity; accountability; openness; honesty; and leadership. More information about them is available here: <http://www.public-standards.gov.uk/>

9. Although not directly relevant to schools (whose employees are not usually civil servants), the **Civil Service Code** also includes information about integrity:
<http://www.civilservice.gov.uk/wp-content/uploads/2011/09/civil-service-code-2010.pdf>

Specifically, the code states, “You must not:

- misuse your official position, for example by using information acquired in the course of your official duties to further your private interests or those of others;
- accept gifts or hospitality or receive other benefits from anyone which might reasonably be seen to compromise your personal judgement or integrity.”

10. The **Civil Service Management Code** goes into greater detail about conflicts of interest:
<https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>.

11. **Managing Public Money**, written by HM Treasury, also has guidance:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf.

12. Finally, guidance on **Corporate Governance in Central Government**, from 2011, is helpful about how boards should demonstrate their management of conflicts:
<https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments>. This includes the following:

“The board should agree and document an appropriate system to record and manage conflicts and potential conflicts of interest of board members. The board should publish, in its governance statement, how any identified conflicts, and potential conflicts, of interest of board members have been managed.”

Annex 2: Protocol and question framework for interviews

In advance, once interview confirmed:

Write to explain purpose of research for Select Committee. The focus is on conflicts of interest for sponsors, but we are interested in both real and potential conflicts of interest for executive leaders as well. We are not aiming to capture specific real examples in the report – we are interested in the general issues that such examples might illustrate – so if they give any examples in the interview these would only be reported anonymously in the report.

Handwritten notes will be kept from the interview – these will only be used for the purposes of the research and will be kept securely and then destroyed at the end of the project. Their comments will be anonymised and their names will not be included in the report, although we will include a description of their role 'ie 'Academy trust CEO'. Make clear they can withdraw at any time by letting Toby Greany know t.greany@ioe.ac.uk

Introduction - Explain purpose of research and anonymity as per above. Repeat the definition of a conflict of interest and that we are interested in all types of sponsorship and issues, not just financial. Also that we are not just interested in their own experience – we are interested in what they have observed in other trusts.

1. About you/your role:

Can you tell me about your involvement in establishing/leading/overseeing academy or multi-academy trusts? What is your relationship to the sponsor in these arrangements?

Probe: timeline, how involved in developments, current situation and future plans etc

2. How effective do you think academy funding agreements are in guarding against conflicts of interest for sponsors? Probe any issues and examples.

3. Have you/your trust reported any conflicts of interest in your annual accounts at any stage? What were they and how have they been mitigated?

4. How effective do you think the EFA audit/scrutiny arrangements and/or Ofsted inspection arrangements are for identifying and addressing conflicts of interest in academy trusts?

5. Are you aware of any issues or potential conflicts of interest in relation to any of the following:

The role of the new Regional Commissioners and Head teacher Boards, for example in how they make decisions to intervene in schools or to open a free school or close an under-subscribed school?

The governance of academy trusts, for example in how Members, Directors and Executive leaders are appointed and their roles/responsibilities? Probe: Have they heard examples of Head teachers acting as Members?

The delivery of school improvement within or between academy trusts? Probe: have they heard of trusts requiring schools to use the sponsor's improvement services or IT equipment?

The arrangements for school organisation and choice in an area? Probe: for example an FE College closing a school 6th form that it sponsors or an HEI establishing preferential entrance requirements for students from sponsored schools. Or a chain that adopts anti-competitive practices in relation to student recruitment?

Provision within an academy, for example of the curriculum.

6. Are there any other areas or issues you think we should explore in relation to conflicts of interest for sponsors.

Annex 3: Examples from desk research where real or potential conflicts of interest have occurred in academy trusts

Aurora Academies Trust

The Trust runs four primary schools in East Sussex. Under a licensing deal the trust pays its US parent company, Mosaica Education Inc., about £100,000 a year to use its patented global curriculum (called Paragon). An Aurora spokesperson said: "The licence is on an 'at-cost' basis in accordance with a Tripartite Agreement between the Trust, Mosaica and the DfE."

Three Aurora directors have a direct or indirect interest in Mosaica Education.

The curriculum has been criticised by Ofsted for lacking a local focus.

All the four schools have been Ofsted inspected this year – two are good and two are Requires Improvement.

The NUT have criticised the arrangement questioning the transparency of the agreement and the lack of any form of quality assurance.

Tim McCarthy, CEO of Aurora, said that Aurora was now tailoring its curriculum to include local history and that "all of the money from the schools is put into running the schools".¹⁷

Academy Enterprise Trust

Formed in 2008 AET runs 80 schools (the largest of any academy chain) but has been barred from taking on more schools because of concerns that its rapid expansion was adversely affecting standards.

Over the past three years the Trust has paid nearly £500,000 into the private business interests of its trustees and executives. The payments are for services ranging from project management to HR consultancy. They include a payment of £232,960 to the company secretary in addition to his salary for project management services, £180,000 to a company owned by the chairman for project and leadership development and £21,500 to a company owned by a trustee for HR services. In all the cases the services had not been put out to competitive tender.

Schools are encouraged to use the recruitment firm Synarbor when hiring teachers – the CEO was a director of this firm until recently. A spokesman said that Triggs was paid a fee for his work at Synarbor but that it was used "to support children and young people in our academies".

Two companies - PricewaterhouseCoopers and Mouchel – are competing to win an outsourcing contract to run AET's support services, worth up to £400m, that the chain advertised through full EU procurement channels in January 2014.

AETs most recent accounts state that it has a serious budget deficit, although one that is not an immediate threat to its viability.

At the time the payments to AET trustees were reported in the media (July 2013) a spokesman said there was evidence that the academy chain was among the better performers in the sector. He said

⁷ <http://www.theguardian.com/education/2013/may/18/academy-pays-for-us-curriculum> and <http://www.theguardian.com/education/2014/jan/12/taxpayer-funded-academy-paying-millions-private-firms-schools-education-revealed-education> accessed 11/9/14

that while services provided by trustees and staff had not been put out to competitive tender, AET had followed all the correct procedures.

The most recent batch inspection of schools within AET by Ofsted (in June 2014) found that 6 were Good, 5 were Requires Improvement and 1 was inadequate.^{8 9}

Collaborative Academies Trust

The trust runs seven schools in Somerset and Northampton, six primaries and one large secondary school. The trust was created and is sponsored by Edison Learning Ltd, which is a subsidiary of Edison Learning Inc. Edison Learning Inc. works across 25 states in the USA as well as in the UK and Abu Dhabi. All intellectual property, including school improvement and curriculum services used by the schools are provided by Edison Learning.¹⁰

⁸ <http://www.theguardian.com/education/2013/jul/20/education-school-academies-michael-gove> accessed 11.9.14

⁹ <http://www.theguardian.com/education/2014/jan/12/taxpayer-funded-academy-paying-millions-private-firms-schools-education-revealed-education> and <http://www.independent.co.uk/news/education/education-news/not-good-enough-ofsted-attacks-academy-chain-9704784.html> accessed 11.9.14

¹⁰ <http://collaborativeacademiestrust.org/> accessed 11/9/14

Grace Academy Trust

The Trust runs three schools in the Midlands. It was set up by Lord Edmiston, a Tory party donor. The trust has paid more than £1m either directly to, or via companies owned or controlled by, Lord Edmiston or members of the board of trustees and their relatives. Payments include £533,789 to International Motors Ltd, a company owned by Lord Edmiston, and £4,000 to Subaru UK Ltd, where he is the ultimate controlling party.

The Trust also employs Gary Spicer, the brother of Lady Edmiston, as its executive director. Spicer's company has received more than £360,000 from the trust over the last six year for consultancy work. This is in addition to his director's salary.

Judi Wood, the director of corporate development at the trust, said the total net contribution to the academy from related parties amounted to more than £4.5m, while the amount paid by the academy's sponsor, which was founded by Edmiston, was £5m. Christian Vision has provided offices worth £57,000 a year, she said, while International Motors financed the academy's development, which were reimbursed at cost.¹¹

The Elliot Foundation

The Foundation runs primary academies in the west Midlands, East Anglia and London. It was set up with donations and 'pro bono' work by the two founders, one of whom was the director of education at the London Borough of Ealing.

Since 2011 it has paid £452, 373 to its founding directors for their (unspecified) work as consultants and for travel and subsistence expenses. TEF's managing director has taken the unusual step of calling for greater scrutiny of academies finances to protect the public pound.¹²

Education Fellowship Trust

The trust was set up in 2013 by Sir Ewan Harper, and runs 16 schools in Northamptonshire and Wiltshire. During the year 2012 -13 expenses in respect of travel and subsistence, educational supplies, professional services, fundraising costs and communications totalling over £45,000 were paid to two trustees. The EFA has queried these expenses together with a 'fact finding' trip to New York costing £20,000 and unadvertised jobs for family members, including a director of communications post on £70,000 pa.

Other spending concerns include a payment of £90,000 to the chairman Sir Ewan Harper and £28,000 to his wife for rent for cottages which the Trust uses as an office.

The Trust, with a turnover of £10m, has been found to have committed 'significant breaches of the Companies Act 2006, Charity Commission regulations and the Academies Financial Handbook' (BBC website news report - 1st May 2014).¹³

The Priory Federation of Academies Trust

The Trust runs four academies in and around Lincoln and was investigated by the DfE in 2012. The investigation found that the former CEO had been spending inappropriately including providing high-

¹¹ <http://www.theguardian.com/education/2014/jan/12/taxpayer-funded-academy-paying-millions-private-firms-schools-education-revealed-education> accessed 11/9/14

¹² <http://www.theguardian.com/education/2014/jan/12/taxpayer-funded-academy-paying-millions-private-firms-schools-education-revealed-education> accessed 11/9/14

¹³ <http://www.bbc.co.uk/news/education-27238265#> accessed 11/9/14

paid jobs within the Trust for members of his family and renovating a building for his own personal use. The CEO resigned and a new board of trustees has been appointed ¹⁴

Northern Education Trust

The Trust runs 15 schools in the north east of England. It was formed by Northern education Associates which is a school improvement company and a legal entity. In the year 2012 – 13 NET purchased school improvement services to the value of £782,147 from Northern education Associates. Two directors of NEA are also board members of NET. The Trust also paid £30,00 to two other directors of NEA for specialist project management services. These directors are the wife of the trust chair and the managing director of NEA. ¹⁵

Durand Academy Trust

The trust runs two schools. The salary of its CEO Sir Gregory Martin increased from just over £146,000 in 2012 to almost £230,000 in 2013. The trust has five directors including the CEO, two of whom have benefitted from their association with the Trust. A company PMLR Ltd owned by one director was paid £247,537 for marketing and promotion services in 2013, and another company LHL Ltd owned by a separate director was paid £143,417 for the use of sports centre facilities and accommodation.

Peter Lauener, CEO of the EFA, wrote to the Chair of Governors at Durand in May 2014 stating that the “current contract is clearly not sustainable given the requirement in the 2013 Academies Financial Handbook that all related party contracts must be on a not for profit basis”. He confirmed that the contracts with PMLR Ltd and other companies must be terminated and that a review of governance and organisational structure be undertaken at the trust. ¹⁶

¹⁴ <http://thelincolnite.co.uk/2012/04/lincoln-academy-group-investigation-found-ceos-inappropriate-spending/> accessed 11/9/14

¹⁵ <http://www.northerneducationtrust.org/> and http://www.northerneducationtrust.org/media/display/2012-13_Accounts.pdf (see note 32) accessed 11/9/14

¹⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/313937/Durand_Boarding_School_letter_from_Peter_Lauener_to_the_Chair_of_Governors.pdf accessed 11/9/14

Annex 4: Analysis of funding agreements and annual accounts from a sample of trusts

The trusts for which financial information was analysed or sought were as follows. This sample is skewed towards larger more established trusts, since many of the newer trusts have not yet published their first set of annual accounts.

- Academy Transformation Trust
- Active Learning Trust
- AET
- Ark
- Aurora Academies Trust
- Cabot Learning Federation
- Collaborative Academies Trust
- Durand Academy Trust
- E-ACT
- Education Fellowship Trust
- Grace Academy
- Harris
- Learning Schools Trust
- Leigh Academies Trust
- Schools Partnership Trust Academies
- The Elliot Foundation
- Northern Education Trust

The financial information on trust websites was assessed against ‘the musts’ as set out in Annexe C of the Academies Financial Handbook. The findings are as follows:

- i) As charities, academies are required to adhere to accounting standards as set out in the Academies Financial Handbook. These require full disclosure of related –party transactions and auditors check these disclosures.

All the academies surveyed did this and all the related party transactions were signed off by auditors.

The accounts all contain the following statement, which has presumably been supplied by the EFA:

Owing to the nature of the Academy’s operations and the composition of the Board of Governors being drawn from local public and private sector organisations, it is inevitable that transactions will take place with organisations in which a member of the Board of Governors may have an interest. All transactions involving such organisations are conducted at arm’s length and in accordance with the Academy’s financial regulations and normal procurement procedures.

- ii) The Financial Handbook requires academies to publish their accounts and provide a copy to anyone who requests it.

All of the chains surveyed do post their annual reports and end of year financial statement on their website apart from Harris and Aurora. Both of these have no financial information on their websites. Harris has so far failed to respond to our request for a copy of their accounts.

In addition we couldn't find the accounts for CAT or the Learning Schools Trust. CAT publish everything else – their funding Agreement, VFM statement, Tripartite agreement and Memorandum and Articles. LST publish their funding agreement and Articles of Association but no end of year accounts.

- iii) The Financial Handbook requires trustees and managers to have 'skills knowledge and experience to run the academy trust'.

Approximately half of those analysed posted biographies of their board members on their website, highlighting their skills, experience and suitability for the job. The remainder listed their board members in their financial statements but with no biographies included.

- iv) The Financial Handbook requires that academies 'must be able to show that public funds have been used as Parliament intended' and there are measures in place to manage any conflict of interest

The majority of annual reports do include statements about related party transactions, with a number of examples below. In general these statements appear to reflect a reasonable level of transparency and to demonstrate that existing reporting requirements are being adhered to. Only one of the examples that follow indicates that normal EU procurement processes have been followed.

- Cabot Learning Federation lists all related party transactions, including salary payments to the CEO's wife. In 2012/13 it paid £9000 for training courses to a company where a trustee was also a director. Subsequently the trustee stood down from the board because her role as a trainer according to the CEO David Carter 'may have produced a conflict of interest'.
- The Academy Transformation Trust includes a note about 'Connected organisations including related party relationships'. This refers to one of the trustees who is also managing director of an IT firm with which the trust has a contract. The note states 'The Trust has undertaken a full OJEU compliant public procurement exercise and has taken advice from legal experts with regard to making appropriate provisions with regard to conflicts of interest.(the trustee) played absolutely no part in the decision making process and the Trust has followed requirements of the Academies Financial handbook with regard to ensuring that the terms of the Articles of association have been followed. We have sought views from officials at DfE and EFA throughout the procurement process'.
- The Active Learning trust has a lengthy note about related party transactions and details all payments to trustees or relatives of trustees which totalled nearly £200,00 in 2013
- The Durand Academy trust has a note about 'Connected Organisations, including related party relationships'. This includes a company PMLR Ltd owned by one director which was paid £247,537 for marketing and promotion services in 2013, and another company LHL Ltd owned by a separate director which was paid £143,417 for the use of sports centre facilities and accommodation.

- v) The Financial Handbook states there should be no payments to any trustees/governor unless such payment is permitted by the Articles of association.

The majority of those surveyed included payments to trustees, including the chair of the board or companies in which trustees has an interest. Payments to businesses in which the academy's trustees have a beneficial interest are allowed if the trust has fully complied with its procedures and conditions set out in the trust's articles of association. Examples include:

- o Leigh Academies Trust is run by Schools Commissioner Frank Green. The Trust paid £111,469 in consultancy fees to Shoreline a private company founded by Green. Green states the payments were approved by the board and included in the financial accounts.
- o The Elliot Foundation lists the payments to trustees totalling £370,000 in 2013. The note on related party transactions indicates they were paid in their capacity as consultants.
- o Northern Education Trust has a note on related party transactions which includes school improvement services to the value of £782,147 purchased from Northern Education Associates. Two directors of NEA are also board members of NET. The Trust also paid £30,000 to two other directors of NEA for specialist project management services. These directors are the wife of the Trust chair and the Managing director of NEA.
- o Other trusts making payments to trustees or businesses in which trustees have an interest include Grace Academy, Active Learning Trust, SPTA, AET, Durand Academy Trust, Academy Transformation Trust, E-ACT.

- vi) The Financial Handbook states academy trusts must ensure a competitive tendering process is in place

Very few of the financial statements included a reference to competitive tendering.

- o Academy Transformation Trust has a note about procurement (see above) and also a note about competitive tendering in relation to a contract with Timemarque International which is a company owned by the CEO's daughter. The accounts state that all work procured with Timemarque was on the basis of three quotes being obtained in accordance with the Trust's financial regulations.
- o SPTA on the other hand, includes in its accounts payments of £424,850 for academy conversion work to Wrigleys Solicitors for legal services where a trust director is a partner and to Elmet Education for education consultancy, where another trust director is a director. SPTA claims it is inevitable that transactions would take place with organisations in which someone may have an interest because of the nature of the trust and that all transactions were conducted 'at arms length'. There is no indication in the financial accounts that these contracts were put out to competitive tender.

- vii) The Financial Handbook states that trusts must complete an annual statement explaining how the academy trust has secured value for money.

SPTA, Collaborative Academies Trust, AET, Northern Education Trust and Durand Academy Trust publish a separate VFM statement.

Within their annual financial statements all trusts publish school performance data and work the trust has been undertaking, together with statements about financial governance and oversight – which seems to equate to a VFM statement. Most have a statement about their aims and objectives and Public Benefit.

- viii) The Financial Handbook states that trusts must ensure that that goods or services provided by individuals or organisations connected to the trust are provided at no more than cost in accordance with non-profit principles.

None of the financial statements did this specifically.

Aurora Academies Trust, which pays Mosaica Education for education services and the Parragon curriculum resource, claim the licence is on at 'at – cost' basis in accordance with the Tri-partite agreement between the Trust, Mosaica and the DfE.

The tripartite agreement for the Collaborative Academies Trust is between the DfE, CAT and Edison Learning Ltd. The agreement states that services and goods provided by the sponsor – Edison - must be provided at an 'at cost basis' (without profit).

- ix) The Financial Handbook requires that academies must appoint a statutory auditor and produce an audited set of accounts and publish the accounts.

Four trusts in the sample did not do this.

- x) The Financial handbook requires academies to establish an audit committee

All did this – or something similar.

- xi) The Financial Handbook requires academies to include a statement on regularity, propriety and compliance signed by the academy trust's accounting officer and the external auditor.

All did this.

Annex 5: Section of August 2014 Academies Financial Handbook covering Trading with connected parties

3.2 Trading with connected parties

This part of the handbook deals with goods or services provided by individuals or organisations connected to the academy trust

3.2.1 Subject to sections 3.2.3 to 3.2.6, a trust **must** pay no more than ‘cost’ for goods or services provided to it by the following persons (‘services’ do not include services provided under a contract of employment):

- any member or trustee of the academy trust;
- any individual or organisation connected to a member or trustee of the academy trust. For these purposes the following persons are connected to a member, or trustee:
- a relative of the member or trustee. A relative is defined as: a close member of the family, or member of the same household, who may be expected to influence, or be influenced by, the person. This includes, but is not limited to, a child, parent, spouse or civil partner;
- an individual or organisation carrying on business in partnership with the member, trustee or a relative of the member or trustee;
- a company in which a member or the relative of a member (taken separately or together), and/or a trustee or the relative of a trustee (taken separately or together), holds more than 20% of the share capital or is entitled to exercise more than 20% of the voting power at any general meeting of that company;
- an organisation which is controlled by a member or the relative of a member (acting separately or together), and/or a trustee or the relative of a trustee (acting separately or together). For these purposes an organisation is controlled by an individual or organisation if that individual or organisation is able to secure that the affairs of the body are conducted in accordance with the individual’s or organisation’s wishes;
- any individual or organisation that is given the right under the trust’s articles of association to appoint a member or trustee of the academy trust; or any body related to such individual or organisation;
- any individual or organisation recognised by the Secretary of State as a sponsor of the academy trust; or any body related to such individual or organisation.

3.2.2 A body is related to another individual or organisation if it: is controlled by the individual or organisation; or controls the organisation; or is under common control with the individual or organisation. For these purposes control means:

- holding more than 20% of the share capital (or equivalent interest); or
- having the equivalent right to control management decisions of the body; or
- having the right to appoint or remove a majority of the board or governing body.

3.2.3 The ‘at cost’ requirement applies to contracts for goods and services from a connected party:

- agreed by the academy trust on or after 7 November 2013; and
- exceeding £2,500, cumulatively, in any one financial year of the trust.

3.2.4 For these purposes, where a contract takes the trust’s cumulative annual total with the connected party beyond £2,500, the element above £2,500 must be at no more than cost.

3.2.5 In relation to organisations supplying legal advice or audit services to the academy trust, the ‘at cost’ requirement applies where the organisation’s partner directly managing the service is a member or trustee of the trust, but not in other cases for those organisations. The Companies Act

2006 and the ethical standards of some professions also contain requirements which may prevent certain professionals from acting as a trustee of the trust.

3.2.6 The 'at cost' requirements does not apply to the trust's employees unless they are also one of the parties described in section 3.2.1.

3.2.7 Academy trusts **must** ensure that any agreement with an individual or organisation referred to in section 3.2.1 to supply goods or services to the trust is properly procured through an open and fair process and is:

- supported by a statement of assurance from that individual or organisation to the trust confirming that their charges do not exceed the cost of the goods or services; and
- on the basis of an open book agreement including a requirement for the supplier to demonstrate clearly, if requested, that their charges do not exceed the cost of supply.

3.2.8 For these purposes the cost will be the 'full cost' of all the resources used in supplying the goods or services. Full cost includes:

- all direct costs (the costs of any materials and labour used directly in producing the goods or services); and
- indirect costs (comprising a proportionate and reasonable share of fixed and variable overheads).

3.2.9 Full cost **must not** include an element of profit.

3.2.10 Should any staff/personnel of an individual or organisation referred to in section 3.2.1 be based in, or work from the premises of, the academy trust, that individual / organisation and the trust **must** agree an appropriate sum to be paid to the trust for such use/occupation of the premises, save to the extent that they are carrying out work for the trust.

3.2.11 Whilst these provisions do not apply to contracts of employment, the same principles of securing value for money and using public money properly, including managing conflicts of interest, will still apply. Salaries paid should be appropriate to the individual's skills and experience and the salary rates paid in the wider market.

Annex 6: Wording from sample Tri-partite agreement on definition for 'At Cost'

“At Cost” means without charging any element of profit on the goods and/or services provided. For people based resources this will be based on a day rate calculated by dividing the salary of the person plus employment related taxes borne by the employer (for example, in the UK national insurance), pension, essential training and other directly employee related costs, by 210 working days a year pro rata as appropriate. Reasonable incidental travel expenses and (if required) reasonable accommodation and essential subsistence will be billed at cost. Other services will require a methodology mutually agreed by all the Parties to this Agreement within the no profit principle. Fixed overheads will not be recoverable but if additional overheads or costs are incurred for the purposes of providing the services then these would be allowable within the no profit principle subject to mutual agreement between the Parties to this Agreement. All such calculations will be subject to open book and audit.

<http://collaborativeacademiestrust.org/wordpress/wp-content/uploads/2013/08/CAT-Tripartite-signed-March-20132.pdf> accessed 11/9/14

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