



Education
Funding
Agency

Phoenix Family of Schools Academy Trust

**Financial management and governance
review**

August 2014

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Summary

Executive summary and conclusions

1. This report sets out the conclusions of the work completed by the Education Funding Agency (EFA) External Assurance Division. A team from the External Assurance Division visited the Phoenix Family of Schools Academy Trust (the trust) from 12 to 13 February 2014.
2. There are areas of weaknesses within the trust's systems and controls. The trust is not compliant with a small proportion of the mandatory requirements of the mandatory requirements of the Academies Financial Handbook (AFH)
3. The trust failed to seek EFA approval before making a novel and contentious payment.
4. An irregular payment was made to a consultant for attending a governing body meeting, where the consultant was then elected as a director.
5. Due to difficulties recruiting and maintaining governors to the board, the trust has breached its Articles of Association by exceeding the limit of employees who can be directors on the trust board.
6. The trust should strengthen the systems and controls across financial management and governance in to ensure compliance with the AFH.

Background to the review

7. The Department for Education's Internal Audit Investigations Team (IAIT) recently completed a review in relation to possible governance issues and alleged financial irregularity at the trust. In addition, the Chair of the trust commissioned a separate review from Mouchel into concerns about how forecast pupil numbers were derived in relation to a new free school, Inspirar Bilingual Free School Academy, which the trust initially hoped would open in September 2014.
8. This purpose of this review was to take a wider look at the financial management and governance arrangements at the Phoenix Family of Schools Academy Trust. The scope of the review is set out below. This report should be read in conjunction with the reports of the IAIT and Mouchel reviews referred to above, however it should be acknowledged that the scope of each review was different.
9. The former Chief Executive Officer (CEO) was suspended on 22 January 2014. An Interim CEO and Accounting Officer has been appointed and an interim management structure is in place.

Scope of the review

10. As set out in a letter, dated 30 January 2014, to the Chair of the Phoenix Family of Schools Academy Trust and governing body, the plan for the visit was to review evidence held by the trust in order to complete a Financial Management and Governance Self-assessment (FMGS) return. A list of the evidence that we would like to see was provided in the appendix to this letter. The scope of the review did not include any further work in respect of the specific allegations under investigation by IAIT or Mouchel.

11. The External Assurance Division gave oral feedback to a meeting of the Chair of Governors, the Interim CEO, and Chief Finance Officer (CFO) on 13 February. This report builds upon that feedback. Our recommendations are set out in paragraph 27. The trust has prepared an action plan in response to these recommendations which satisfies us that appropriate action has been / is being taken to address all issues raised.

Findings

Governance

12. The trust has many governance weaknesses in the areas of board membership, composition and governance processes. These impact how decisions are made within the trust.

13. The trust has been faced with difficulties in recruiting and maintaining sufficient numbers of appropriate directors to the trust's governing body. This has resulted in the trust breaching its Articles of Association, which states that the number of employees on the board cannot exceed a third.

14. The board minutes of the trust record people who were not directors of the trust as "present" at some meetings which implies that they were involved in the decisions made at those meeting. Whilst acceptable for non-directors to attend board meetings where appropriate, all formal decision making should involve the directors only. This should be clear within the minutes.

15. There was no evidence of the CEO/Accounting Officer, or the Interim CEO/Accounting Officer being formally appointed to the trust. The roles and responsibilities of the Accounting Officer are not stated in the trust's finance handbook.

16. The CFO who is a member of the board, is also a member of the finance committee, and audit committee. Such board and committee membership can lead to conflicts of interests as the audit committee should hold to account and scrutinise the work of the finance committee.

17. The AFH states that novel and contentious transactions must always be referred to the EFA for explicit prior authorisation. Our review identified one payment made by the trust that would be classed as novel and contentious. The trust's governing body endorsed an honorarium payment of two thousand pounds to a member of the senior leadership team. The EFA was not contacted in advance of the payment.

18. Our review also identified that an irregular payment was made to a consultant for attending a directors' meeting in which the consultant was appointed as a director. The payment for attendance at this meeting formed part of a wider payment of £375 to the consultant, which included other work, which is considered irregular. The split between the different elements is not clear from the documentation seen.

19. The IAIT report identified further irregularities in respect of payments made by the trust, however further investigation of the issues identified by IAIT is outside the scope of this review, accordingly we do not conclude on compliance with these particular requirements.

20. The trust has not followed its own competitive tendering and procurement policies when awarding the HR administration and payroll contract, and the Internal Audit services contract.

Financial management

21. The trust has internal financial regulations in place in the form of a financial handbook.

22. The trust's finance handbook is generally compliant with the AFH. There are several requirements of the AFH which are not explicitly referred to within the finance handbook, for example the limits on leases and liabilities. This could potentially lead to breaches of the AFH in future, however evidence from the governing body minutes suggests that current governors are aware of the key requirements of the AFH, as they have been discussed.

23. The trust's handbook does not mention that approval will be required from the EFA before making any payments that might be considered novel and contentious. The board has not been formally informed of this requirement.

24. Whilst management accounts are produced by the trust, these are on a termly basis and are presented to the finance committee only. The format of the management accounts is basic, including just a budget to date with variances. We would expect information to be presented to governors in more detail and more frequently than at present.

Internal control

25. The trust has produced a draft critical incident plan however this has never been finalised and approved by the board. The draft plan is a high level document rather than a detailed plan; it is not comprehensive and does not cover the wider elements/risks of a contingency and business continuity plan such as ICT disaster and recovery or mass staff absence.

26. The trust has developed a risk management strategy and a risk register; however this is still draft and is currently under developed. There is no evidence that the risks have been properly and thoroughly considered. The risk register has not been presented to the board or discussed at any of its committees. Receiving and discussing the risk register is not currently included in the terms of reference of any of the trust committees.

Recommendations

27. Recommendations arising from our review are listed below. Annex 1 maps these recommendations against the relevant requirements from AFH, where appropriate.

- The trust's governing body must formally approve the appointment of the Interim CEO/Accounting Officer. This should be minuted at the next governing body meeting. The roles and responsibilities of the Accounting Officer should be set out in the finance handbook.
- Governors should consider amending the format of the management accounts to include KPIs, a narrative commentary, a year-end forecast, capital budget, rolling 12 month cash flow forecast etc. Management accounts should be produced on a monthly basis and made available to all directors. Any director level discussions should be minuted at governing body meetings.
- The trust needs to seek legal advice on the breach of the Articles of Association and act accordingly. The breach may invalidate any decisions made.
- The board must review the governance processes at the trust to ensure that only formally elected directors are involved in the decision making process.
- The trust's finance handbook should be updated to refer to current AFH requirements in respect of leases and liabilities. .
- The trust must update its internal finance handbook to refer to occasions when EFA notification or approval is required, including for any payments that might be considered novel and contentious. In addition, the trust must seek retrospective approval where appropriate.
- The trust's revised finance handbook should be approved by the governing body.
- The trust's business continuity plan should be finalised and should sufficiently cover all contingency and business risks such as ICT disaster and recovery, loss of premises, and mass staff absence. The business continuity plan must then be approved by the governing body.
- The trust must assess the risks arising from its operations (e.g. financial loss). The trust should maintain a register of these risks showing how they are being managed or mitigated, and this should be reviewed regularly.
- The trust must ensure that appropriate procurement and competitive tendering processes are followed in respect of all decisions in order to ensure value for money is achieved.
- The CFO should not be a member of both the finance and audit committees, as this could cause a conflict of interest. The CFO should instead be an attendee of the audit committee.

28. The trust has prepared an action plan in response to these recommendations which satisfies us that appropriate action has been / is being taken to address all issues raised.

Annex – Areas of compliance and non-compliance with the requirements of the Academies Financial Handbook

| FMGS question number | Question | EFA assessment of compliance | Comments |
|----------------------|--|------------------------------|---|
| 1 | Has the board appointed a principal or chief executive who acts as an ex-officio trustee? (AFH 2.1.1) | Not fully compliant | The current (suspended) CEO was not formally ratified as the CEO/Accounting officer by the MAT's Governing Body. There is also no record of the interim CEO/accounting officer being formally appointed. |
| 2 | Has a named individual been designated as the accounting officer? (AFH 1.5.12 and 2.1.2) | Not fully compliant | See Q1 above. |
| 3 | Does the accounting officer, under the guidance of the board, ensure appropriate oversight of financial transactions? (AFH 2.1.2) | Not fully compliant | <p>Whilst management accounts are produced by the MAT, these are on a termly basis and presented to the finance committee only. The format of the management accounts is basic.</p> <p>Consideration should be given to adopting best practice such as KPIs, commentary, revised out turns, capital budget, rolling 12 month cash flow forecast etc. Management accounts should be produced on a monthly basis and made available to all directors. Any director level discussions should be minuted at the governing body meeting.</p> |
| 4 | Does the board and appropriate | Not fully compliant | Paragraph 50a of the articles of association makes clear |

| FMGS question number | Question | EFA assessment of compliance | Comments |
|----------------------|--|------------------------------|--|
| | committees meet at least once a term and conduct business only when meetings are quorate? (AFH 2.1.3) | | <p>that the number of employees who are directors must not exceed one third of the total number of directors. Due to the timing of resignations from the board of directors, this article has been breached.</p> <p>In addition, the recent meetings of the board (31 January 2014 and 4 February 2014) record two people being present at the board meetings and partaking in decision making when there is no formal ratification of their election to the board.</p> <p>The trust should seek legal advice on the breach of the articles and act accordingly as this may invalidate decisions made.</p> |
| 5 | Has a principal finance officer, with appropriate qualifications and/or experience, been appointed by the board? (AFH 2.1.6, 2.1.7 and 2.1.8) | Compliant | The CFO has experience and is qualified as a school business manager (NABSM). The CFO is considering undertaking AAT. |
| 6 | Has the board approved a balanced budget for the financial year and the approval been minuted? (AFH 2.1.10 and 2.2.1) | Compliant | Ratified by the governing body on 8 July 2013. |

| FMGS question number | Question | EFA assessment of compliance | Comments |
|----------------------|---|------------------------------|---|
| 7 | Has the budget forecast been submitted to the EFA by the relevant deadline? (AFH 2.2.2) | Compliant | Budget Forecast Return received before the deadline. |
| 8 | Has the board been made aware of the requirement to obtain approval from the EFA where it is considering borrowing funds or entering into liabilities such as leases or tenancies beyond delegated limits? If any payments have been made beyond delegated limits, full details must be provided in the commentary section below. (AFH 2.2.4 and 2.2.5) | Not fully compliant | <p>Minutes indicate that the governing body is not aware of leases and liabilities as there is evidence of premise lease discussion, however to date no breach has taken place.</p> <p>The MAT's finance handbook should be updated to include current AFH requirements in respect of leases and liabilities.</p> |
| 9 | Has an appropriate internal control framework been established? (AFH 2.3.3) | Compliant | The internal control framework includes Internal Audit (RO role) and External Audit. The MAT's handbook includes a scheme of delegation, whistle blowing and corruption policies, and procurement and tendering policies. |
| 10 | Has a contingency and business continuity plan been prepared? (AFH 2.3.5) | Not fully compliant | The MAT has a critical incident plan however this has not been finalised and approved by the board. It is currently a high level document rather than a detailed plan; it is not comprehensive and does not cover the wider elements/risks of a contingency and business continuity plan such as ICT disaster and recovery (loss of data, |

| FMGS question number | Question | EFA assessment of compliance | Comments |
|----------------------|--|------------------------------|---|
| | | | mass staff absence). |
| 11 | Have the risks arising from your operations been assessed? (AFH 2.3.6) | Not fully compliant | The AT has developed a risk management strategy and a risk register, however this is still draft and is currently under developed. There is no evidence that the risks have been properly considered. The risks/risk register has not been reported to the board or discussed at any of its committees. Currently the reporting and discussion of the risk register has not been included in the terms of reference of any of the MAT's committees. |
| 12 | Has adequate insurance cover been obtained? (AFH 2.3.7) | Compliant | Insurance certificates viewed. The cover includes property and public liability. |
| 13 | Has the board been informed of the delegated authority limits for the categories of transactions set out in the Handbook? If any payments have been made beyond delegated limits, full details must be provided in the commentary section below. (AFH 2.4.6 and 2.4.12) | Compliant | Delegated authority limits are included as part of the MAT's finance handbook, approved by the governing body. |
| 14 | Has the board been informed of the requirement to act prudently in ways that command broad public support and the | Not fully compliant | It was confirmed by the CFO that some brought in services have not been formally market tested e.g. Internal Audit (Audit Lincolnshire), HR, Payroll financial services |

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| | <p>requirement to report on how the academy has secured value for money? (AFH 2.4.33 and 2.5.5)</p> | | <p>(Mouchel).</p> <p>To ensure value for money, the MAT should ensure that appropriate procurement and tendering processes are followed.</p> |
| 15 | <p>Has the board been informed of the requirement to obtain approval from EFA before making any novel or contentious payments? If any payments have been made beyond delegated limits, full details must be provided in the commentary section below. (AFH 2.4.41)</p> | Not compliant | <p>Our review of the governing body minutes show that a member of the senior leadership team was paid an honorarium of £2,000 in recognition of his hard work and dedication. As an ex-gratia payment, this would count as novel and contentious and require EFA approval, however approval was not sought. The board has not been formally informed of the requirement to obtain approval from the EFA before making novel and contentious payments. The requirement for approval has also not been included in the MAT's finance handbook.</p> <p>An invoice from January 2013 suggests that [REDACTED], a consultant, charged for attendance at the directors meeting at which he was appointed to be a director. This is irregular as trustees should not benefit personally from their services as trustee. [REDACTED] joined the meeting partway through.</p> |
| 16 | <p>Have all trustees completed the register of business interests?</p> | Compliant | <p>Registers of business interests have been completed by all staff and board members. Any business declarations</p> |

| FMGS question number | Question | EFA assessment of compliance | Comments |
|----------------------|---|------------------------------|---|
| | (AFH 2.5.2) | | are recorded at the start of each of the meetings, this includes: the governing body, audit, and finance, and advisory body. |
| 17 | Are there measures in place to manage any conflicts of interest? (AFH 2.5.2) | Not fully compliant | Processes and procedures are in place to manage conflicts of interest such as register of business interests. Declarations are made and noted in the minutes of meetings. There is evidence of directors leaving meetings when conflicts arise. The CFO, who is a director, is a member of both the finance and audit committees. This can cause conflicts of interests to arise requiring the CFO to withdraw from the meeting which could lead to cause the meeting to become inquorate. |
| 18 | Has the board approved a competitive tendering policy? (AFH 2.5.2) | Not fully compliant | The competitive tendering policy is detailed in the finance handbook however there are issues with the application of the policy highlighted in the IAIT report. |
| 19 | Do senior officers' payroll arrangements meet tax obligations fully? (AFH 2.5.7) | Not fully compliant | Refer to IAIT report and action plan regarding [REDACTED]. |
| 20 | Has a set of accounting policies been approved? (AFH 2.3.7) | Compliant | Accounting policies have been included within the MAT's finance handbook. |

| FMGS question number | Question | EFA assessment of compliance | Comments |
|----------------------|--|------------------------------|---|
| 21 | Has an external auditor been appointed? (AFH 3.1.1 to 3.1.4) | Compliant | The appointment of the External Auditors was minuted at the GB meeting on 28 January 2013. Streets Auditors were appointed, a signed letter of engagement is in place dated 16 January 2013 which covers audit of financial statements, assurance on regularity, and accounts return and all elements of the handbook. |
| 22 | Has an audit committee or a committee that fulfils the functions of an audit committee been established? (AFH 3.5.3) | Compliant | The MAT has established an audit committee, which acts in accordance with its terms of reference, included in the finance handbook. |
| 23 | Has a process for independent checking of financial controls been implemented? (AFH 3.5.1) | Compliant | A contract is in place for delivery of Internal Audit Services by Audit Lincolnshire - Lincolnshire County Council. This was approved by the governing body on 28 January 2013. This is for 3 visits per annum at a cost of £3,300 (increased to £4,400 - decision taken by audit committee). The contract outlines a programme of regular checks over financial systems, control, transactions, and risks. Testing is based on, but not limited to, guidance within the 2006 academies financial handbook. |
| 24 | Has an appropriate committee agreed a programme to address the risks to financial control? (AFH 3.5.5) | Compliant | The Internal Audit (IA) reports (produced by Audit Lincolnshire) dated May 2013 and September 2013 found high risk issues across budgeting, payroll, purchasing, and bank accounts. Some of these issues were covered by |

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|----------------------|--|------------------------------|---|
| | | | <p>IAIT report testing.</p> <p>The audit committee minutes from 8 July 2013 noted the May 2013 report. It was noted that most of the significant points were either due to recent change to academy status or were not recognised as being a requirement at the time.</p> <p>The next audit committee was to ensure that these points are dealt with. Audit Committee minutes dated 15 October 2013 address the points from the September 2013 IA report. It was noted that the report was in a new format which included more detail and rigorous advice. The audit committee addressed all parts of the report, and agreed actions to mitigate the risks.</p> |
| Other | <p>New not for profit requirements in connection with related party transactions. (AFH 2.6.1 to 2.6.8)</p> | Not fully compliant | <p>Through discussion, it was established that no related party transactions have occurred this year so far. No evidence in the minutes to suggest otherwise, however should there be related party transactions, as yet the MAT has no process in place as yet for ensuring services are provided at cost.</p> |
| Other | IAIT Action plan. | Some progress | <p>Progress against the actions from the IAIT report is taking place, however there has been some slippage with target dates.</p> |



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