



National Audit Office

Report

by the Comptroller
and Auditor General

Education Funding Agency

Investigation into the Education Funding Agency's oversight of related party transactions at Durand Academy

Summary

Background

1 In response to correspondence addressed to the Comptroller and Auditor General and the Chair of the Committee of Public Accounts, the National Audit Office has investigated the Education Funding Agency's oversight of the Durand Academy Trust's compliance with guidance on conflicts of interest and related party transactions. The Academies Financial Handbook (the Handbook)¹ details the rules and guidance with which academies are expected to comply to ensure regular use of public funds.

2 Part One of this report sets out background detail on academy trusts and guidance relating to conflicts of interest and related party transactions. Part Two sets out our findings on related party transactions at Durand Academy Trust, and Part Three our findings on the Education Funding Agency's oversight of Durand Academy Trust.

Scope of the investigation

3 Our investigation focuses on the Education Funding Agency's (the Agency) oversight of Durand Academy Trust. The investigation reviews the Agency's own work, and examines the nature of the conflicts of interest, the control framework for related party transactions and the Agency's response to issues identified at Durand Academy Trust. We have recently published a report on the wider oversight of schools performance.²

4 As part of this investigation we reviewed:

- the nature of the conflicts of interest and related party transactions at Durand Academy Trust;
- the role of the Agency in identifying the risks of related party transactions occurring at Durand Academy Trust; and
- the actions taken by Durand and the Agency to address concerns that have been raised.

1 Available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/255052/Academies_Financial_Handbook_Oct_2013_FINAL_041113.pdf

2 Available at: www.nao.org.uk/report/academies-and-maintained-schools-oversight-and-intervention/

Key findings

Durand Academy Trust

5 The structure of Durand Academy Trust and the associations between related organisations were complex. Durand Academy Trust includes a well-established and successful primary school with strong results and new secondary provision from September 2012. The Trust had a large number of conflicts of interests in the way that it managed its academy and its assets. Some of these were established before the school became an academy and had grown up over time. There were several individuals that were involved in two or more of the associated public entities or trading companies. There were also individuals that sat on the board of the Academy Trust that were directors or staff at companies that the Academy Trust had contracted or purchased services from, and other transactions between individual connected parties. Some contracts had been awarded without competition. Complex structures and governance arrangements are not always transparent, which can increase the perception of any wrongdoing.

6 The Agency identified undisclosed conflicts of interest at Durand Academy Trust. After a review of the academy's financial statements for 2012-13 and further follow-up work, in April 2014 the Agency identified an undisclosed related party transaction for the purchase of legal services from a company, Judicium Consulting Limited, where a Durand governor was the Company Secretary. The Agency also found that the Academy Trust had become a party to the contract between London Horizons Limited and GMG in 2012, incurring additional obligations and contingent liabilities.

7 The Agency has now taken action to address the related party transactions at Durand Academy. In May 2014, the Agency agreed a series of actions with the Academy Trust to address the problems identified. These actions included re-tendering of contracts on their expiry and the immediate cancellation of the obligations incurred by the Academy Trust when it became a party to the contract between London Horizons Limited and GMG.

The Agency's wider management of related party transactions in the academy sector

8 The Agency has a systematic and consistent process for reviewing disclosed related party transactions which is initially desk-based and light-touch. The Agency reviews related party transactions as part of an overall review of disclosures in academies' financial statements. The Agency's judgement on whether the disclosed related party transactions present a risk to public funds is often founded on other sources of information, such as whistleblowing reports or the Agency's own register of academies of national concern. The Agency does not routinely follow-up with academies to ensure that related party transactions have been disclosed nor do they have the capacity to be able to carry out these checks. It does carry out a more detailed review at academy trusts where there is a cause for concern.

9 The Agency has changed its guidance on related party transactions in response to concerns, but it has done so incrementally at different stages of its investigation into related party transactions. The Agency introduced an 'at cost' policy for related party transactions at academies, which applies for new and renewed contracts for goods and services agreed on or after 7 November 2013. The Committee of Public Accounts has recommended that the Agency reconsider its policy on academy trusts' related party transactions.³ The Committee's report on the Agency raised concerns that related party transactions are always open to accusations of conflicts of interest, even when on a 'no-profit' basis. This view is contrary to the Agency's view that related party transactions are acceptable under some circumstances where value for money and compliance with relevant accounting standards can be demonstrated.

10 Compliance with the new guidance on related party transactions will be difficult to evidence. The measurement of 'cost' or 'no profit' is subjective and will be difficult to evidence and audit. For example, different suppliers will absorb their overheads at different rates, making it difficult for an academy to demonstrate whether goods and services it has obtained from a related party were provided 'at cost'. This will become especially difficult when accounting for the purchase of professional services, where the academy is effectively buying-in an expert's time and knowledge rather than goods with an historic cost. The Department has provided additional guidance on auditing this requirement but auditors remain concerned that this will be difficult to apply; and there remains a challenge for the Agency to ensure that academy auditors are able to provide an unmodified opinion on the financial statements.

³ Available at: www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/publication-of-report-education-funding-agency/