



Education & Skills
Funding Agency

Investigation Report

Queen Elizabeth Grammar School
Penrith

October 2022

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Executive summary

1. The Education and Skills Funding Agency received allegations on 1 November 2019 about Queen Elizabeth Grammar School Penrith (*hereafter referred to as the trust*). The allegations relate to the application for, and implementation of, 4 Condition Improvement Fund projects during the financial years ending 31 March 2016/17 and 2017/18. This included a specific allegation that the trust did not return £360,000 surplus funding to the Department for Education (DfE) and spent this funding on other projects.

2. A joint Education and Skills Funding Agency (ESFA) and DfE visit was undertaken on 21 January 2020, at which time the trust was informed of the allegations.

3. The trust was notified on 12 March 2020 of ESFA's intention to investigate the 4 Condition Improvement Fund (CIF) projects funded during 2016/17 and 2017/18. The investigation established the following issues:

- 3.1. procurement - by directly awarding the project management work for all 4 CIF projects to the same project management company the trust breached the OJEU¹ regulations, the requirements of the Academy Financial Handbook (AFH) 2015, 2016 and 2017 s3.1.3 and the trust's own Financial Procedures Manual (report paragraphs 17 to 23)
- 3.2. boiler and heating – the investigation identified works to parts of the school that were not in the scope of the CIF application, including additional replacement boilers. The trust has overclaimed and been paid **£269,193.56** (report paragraphs 26 to 33)
- 3.3. replacement of timber mobiles – the trust has been unable to demonstrate that the original accommodation contained 6 teaching spaces as described in the trust's bid and the ESFA has concluded the bid was misrepresented. Where a bid is found to be misrepresented or materially inaccurate, it would be deemed invalid and rejected. This maintains the impartiality of the CIF assessment process, and fairness for other bidders of those finite funds. On this basis the trust has overclaimed and been paid **£1,204,779.04** (report paragraphs 34 to 57)
- 3.4. life safety and statutory compliance - assessment of the invoices identified security works, including controlled access doors which did not form part of

¹ Official Journal of the European Union (OJEU) rules regulate public sector purchasing of contracts for goods, works, services or supplies.

the scope of the CIF application. The trust has overclaimed and been paid **£28,420.80** (report paragraphs 58 to 61)

- 3.5. overall, the investigation has found that the trust has overclaimed and been paid a total of **£1,502,393.40** in relation to 3 of the 4 CIF bids where work was undertaken without approval or where information submitted within the bid is deemed to be misrepresented
- 3.6. the trust has stated reliance on the project management company for advice on the 4 CIF projects, including where scope changes were made without DfE approval and non-compliant with the applicable CIF terms and conditions. This is a breach of the AFH 2016 and 2017 s2.3.3 (s2.2.1 for 2018) that “The academy trust must establish a robust control framework that includes planning and oversight of any capital projects.” Accordingly, the trust has breached this requirement by failing to ensure appropriate planning and oversight was in place to meet the terms and conditions of CIF grant and placing reliance upon a third party to manage the projects
- 3.7. trust Full Governing Body and Finance and Pay Sub-Committee meetings confirms the trust knowingly took decisions to utilise funding on works beyond the scope of the approved bids when they were aware it should have been returned to the DfE in accordance with the CIF terms and conditions. This contradicts their assertion that they relied upon the advice of the project management company. This is a breach of s1.5.11 of the Academies Financial Handbook 2016 (s1.5.13: AFH 2017). This is also a breach of s1.5.20 of the Academies Financial Handbook 2016 (s1.5.22: AFH 2017) by the Accounting Officer in respect of assuring Parliament, and the public, of high standards of probity in the management of public funds
- 3.8. the AO, on behalf of the trust, submitted false completion returns to the DfE, as projects had not been completed in accordance with the respective bids and funds remaining should have been returned to the DfE. This is a breach of s1.5.20 of the Academies Financial Handbook 2016 (s1.5.22: AFH 2017) in respect of assuring Parliament, and the public, of high standards of probity in the management of public funds

Background

4. Queen Elizabeth Grammar School Penrith (hereafter referred to as the trust) is a mixed secondary, single academy trust, which converted in March 2011. At September 2021, the trust had 953 pupils on roll, including its sixth form, despite an 840-pupil capacity.

5. The trust has not been inspected by Ofsted since conversion. The rating for the school pre-conversion was Outstanding, at its inspection reported in May 2009.

6. ESFA received allegations on 1 November 2019. The allegations relate to the application of capital CIF during 2016/17 and 2017/18, including an allegation that the trust did not return £360,000 surplus funding to the DfE and spent this funding on other projects.

7. The 4 trust CIF applications were prepared on behalf of the trust by [REDACTED]*, [REDACTED]. The total amount awarded by the DfE was £2,676,498.

8. The 4 applications comprised the following:

- 2016/17-136732-1: Health and safety works to renew defective timber framed windows and cast-iron rainwater goods (approved CIF allocation of £510,681, comprising £502,281 grant funding plus £8,400 SALIX² loan)
- 2016/17-136732-2: Boiler and Heating Upgrade Programme (approved CIF allocation of £528,234 comprising £519,305 grant funding plus £8,928 SALIX² loan)+
- 2017/18 -136732-1: Replacement of 1950's temporary timber mobiles in defective condition (approved CIF allocation £1,241,894 comprising £1,171,894 grant funding plus £70,000 CIF loan)
- 2017/18 - 136732-2: Urgent life safety and statutory compliance works (approved CIF allocation of £395,689)

* [REDACTED].

²SALIX Finance Ltd delivers government funding to the public sector, including central government, to improve energy efficiency, reduce carbon emissions and lower energy bills.

9. The allegations preceded a letter sent from the trust accounting officer (AO) to the DfE, sent 20 November 2019, requesting retrospective approval for 3 of the 4 CIF projects. A joint ESFA and DfE visit to the trust was undertaken on 21 January 2020. During the opening meeting with the AO, the CIF projects were discussed and ESFA also raised the receipt of allegations relating to this funding.

10. The site visit allowed officials to review project files and documentation and undertake a walk around of the capital projects. This established several concerns regarding the projects and potential breaches of terms and conditions of funding.

Objectives and scope

11. The objective of this investigation was to establish whether the concerns received by the ESFA were evidence based and in doing so, identify whether any non-compliance or irregularity had occurred regarding the use of public funds. The scope of the investigation work included the following areas:

- review of relevant trust documentation, including but not limited to governing body minutes, policy documents
- review of trust CIF documentation, including bids, progress reports and completion returns
- review of DfE guidance, including CIF terms and conditions and supporting documents
- review of financial information, specifically in relation to the CIF projects

12. In accordance with ESFA investigation publishing policy (September 2020) the relevant contents of this report have been reviewed for factual accuracy by the trust, along with provision of representations by the trust.

Investigation methodology

13. Following the visit of 21 January 2020, and a review of information provided at that time and subsequently, the trust was notified on 12 March 2020 of ESFA's intention to investigate concerns and the plan for a further visit. A letter was issued on 19 March 2020 confirming the details of the investigation team and a terms of reference was issued.

Findings

Procurement

14. Allegations received by the ESFA stated that [REDACTED] were introduced to the school by the AO and [REDACTED], [REDACTED].

15. The ESFA is in receipt of a copy of the trusts Full Governing Body minutes for 2 July 2015 which substantiates the above allegation. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. The minutes reference his “exploring a company [REDACTED] ([REDACTED]), who manage bids on behalf of schools” and “They were successful at [REDACTED] [REDACTED]...” The trust also confirmed in correspondence (10 November 2021) that [REDACTED] were recommended by [REDACTED].

16. A letter to the trust, dated 24 June 2015, states [REDACTED] service proposals to provide support and advice to the trust to access “EFA capital maintenance funding”. [REDACTED] offer included development of a strategy for the next 2 EFA funding rounds spanning 2016/17 and 2017/18. The [REDACTED] terms and conditions provided for a no fee cost to the trust for the bid preparations, dependent upon [REDACTED] being appointed to provide all necessary professional services to deliver the successful bids in line with the professional fees and survey costs detailed in the bids.

17. The proposal letter confirming the appointment of [REDACTED] is signed by the Chair of Finance & Premises Committee and the former Headteacher, on 25 June 2015. The 4 CIF applications were subsequently submitted and [REDACTED] project managed the successful bids on behalf of the trust. The total estimated project fees from the bid applications were £336,377.

18. To demonstrate proper and regular use of public funds the Academy Financial Handbook for 2015, 2016 and 2017 confirms at s3.1.3 that trusts must ensure a competitive tendering policy is in place and applied, and that OJEU procurement thresholds are observed. The total expected fees in the bid applications are beyond those thresholds.

19. There is no evidence to confirm that the trust invited any other bidders in respect of the project management service and the trust has confirmed no tendering process was used. When the service proposal was signed there was no certainty regarding the success of the bids. However, at the point the bids were confirmed as successful the trust is required to demonstrate open and fair competition through appropriate tendering procedures. As a result of directly awarding all 4 projects to [REDACTED] without any tendering the trust breached the OJEU regulations, the requirements of the Academy

Financial Handbook 2015/16, 2016/17 and 2017/18 para 3.1.3 and their own Financial Procedures Manual (as provided by the AO on 27 April 2020) at 9.2.3 which stipulates:

“Any contract exceeding £10,000 shall be subject to formal tender procedures, and must be authorised by the Governors. The Headteacher or Head of Finance & Facilities will invite at least three persons or firms or companies to tender in writing”.

20. In their letter of 10 November 2021, the trust acknowledged errors in the appointment of [REDACTED] and have confirmed their Financial Procedure Handbook is being updated to reflect best practice.

CIF Projects

Renewal of defective timber framed windows and cast-iron rainwater goods

21. CIF funding of £510,681 (£502,281 grant plus £8,400 SALIX loan) which included fees of 10% was provided to renew windows and cast-iron rainwater goods. Analysis of the invoices presented to the DfE for the works total £605,298.85. In addition, professional fees of £62,555 (approx. 10.3%) provide a total cost of £667,853.85 for the project.

22. The net cost of the works included within the approved scope of works for this project is £503,737.06 (£605,298.85 - £101,561.79). With allowable fees of 10% (£50,373.71) as per the application the total approved works is £554,110.77 (£503,737.06 + £50,373.71). As the cost of the approved costs exceed the CIF funding granted no recovery is required for this project.

Boiler and Heating

23. The investigation identified discrepancies between the amount of CIF funding allocated and the amount spent on the work for which the grant was allocated.

24. CIF funding of £528,234 (£519,305 grant plus £8,928 SALIX loan) which included project management fees of 10%, was provided to the trust to replace the boilers in the main building and gym boiler houses. However, invoices presented by the trust for the works undertaken total £244,543.95. A further £56,773.02 (approx. 23%) covering the fees provided a total cost of £301,316.97.

25. Analysis of the invoices totalling £244,543.95 identified works to parts of the school that were not in the scope of the CIF application, including additional replacement boilers. Invoices confirm the out of scope works total £55,550.82, excluding fees. This work has been undertaken without DfE approval as required by the CIF terms and conditions 2016/17 which specifies at paragraph 14.7, “Any underspend or surplus funds after the completion of the projects should be notified and returned to the Department

immediately and should not be used to extend the scope of projects or to deliver other projects without prior written approval from the Department.”

26. The DfE considered the AO's letter of 20 November 2019 and specifically whether, had it been submitted as a scope change at the time, it would have been approved. The DfE determined that it would not have been approved because the proposed works were out of scope of the original bid. Savings made on the approved funding would have been required to be returned to the DfE in accordance with the CIF terms and conditions.

27. Specifically, additional work including replacement boilers to the science block, sports hall and offices costing £55,550.82 did not fall within scope of this project. The net value of works calculated during this investigation are therefore £188,993.13 (£244,543.95 - £55,550.82). As the project fees were specified in the bid as 10% this provides a further calculated cost of £18,899.31 as opposed to the £56,773.02 charged. The 2016/17 CIF information for applicants guidance (October 2015) confirms DfE expectations regarding professional fees charged for CIF projects. In particular, *“The majority of CIF projects are straightforward, single issue, lower value projects. Percentage fees are not necessarily appropriate for this type of work, if used, we do not expect these to be above 10%. If the fees are disproportionate to the work involved, the application will be rejected. We expect applicants to challenge technical advisors on fees where appropriate.”*

28. The total value of approved works as calculated by the investigation team is therefore £207,892.44 (£188,993.13 + £18,899.31). Payments from the DfE to the trust to date in respect of CIF grant and SALIX loan are £528,234, showing a disparity of £320,341.56 (£528,234 - £207,892.44).

29. After the AO, on behalf of the trust, submitted a completion return as at 14 March 2017, confirming all CIF funding of £528,234 had been spent in full. A revised return was subsequently issued by the trust on 6 December 2018. The AO confirmed a £42,220 underspend had occurred as funds had been applied in error to the replacement of timber mobiles project to cover the bid management fees. This underspend was recovered by the DfE.

30. Taking account of the repayment of £42,220 and the terms and conditions of grant which allow loans to be settled before recovery is calculated the outstanding balanced owed to the DfE is £320,341.56, less £42,220 already repaid, less SALIX loan of £8,928. The calculated spend deemed for recovery by the DfE is **£269,193.56** (£320,341.56 - £42,220 - £8,928).

Replacement of Timber Mobiles

31. CIF funding of £1,241,894 (£1,171,894 plus £70,000 loan) which included project management fees of 12.4%, was provided to the trust to demolish 2 1950's timber mobile blocks (357m²) and replace them with a new build teaching block (392m²). The covering

application (November 2016) presented the 2 1950's timber mobile blocks (hereafter referred to as timber mobiles) as "core" and "basic need teaching" accommodation whilst also describing them as "condemned" and having urgent health and safety issues. The timber mobiles were independently assessed by a structural engineer who concluded they were in an "extremely poor condition", with significant condition and health and safety / statutory non-compliance issues and potentially endangered life.

32. The accompanying bid documents again use the term basic need teaching accommodation, but state using a list of rooms and meterage, that the timber mobiles have 6 teaching spaces. This equated to 71% of the space within the timber mobiles for basic teaching. The trust proposed plans for a new building which would provide "like for like" basic need teaching space with 6 teaching spaces. The successful bid was based on the information provided by the trust at the time and DfE provided funding for the new building block and demolition, on this basis.

33. Among the allegations received was that the timber mobiles were not used for teaching, but as a snack bar/dining area and as storage and an art display area,

[REDACTED]
[REDACTED]
"[REDACTED]."

34. This investigation reviewed evidence sources to determine the trust's usage of the timber mobiles at the time of the bid. This included floor plans of the timber mobiles, curriculum timetables, usage testimony from former staff, an ESFA / DfE site visit in January 2020 and detailed responses provided by the trust around the use of the timber mobiles.

35. The trust confirmed during the investigation that the bid mistakenly referred to the timber mobiles as basic teaching and should have referred to the smaller block (mobile B) in particular as key support space instead. This difference would have reduced the basic teaching space to 42%, from the quoted 71% figure (per bid).

36. Floor plans for the timber mobiles, provided by the trust, dated 2000, describe mobile one as an art and general store (6 rooms), with an art classroom, an art studio, a dark room, wet room and two store rooms. Mobile two is shown with two snack bars, two small storage cupboards and a small office. Trust response dated March 2021 includes a table highlighting usage of individual rooms within the timber mobiles for years 2007 and 2016. The usage is comparable with the floor plans (dated 2000) and illustrate only one room labelled as a classroom.

37. The investigation requested evidence to demonstrate how the timber mobiles were being used at the time of the CIF application (November 2016). The trust provided 2 sets of timetables, one labelled "A3" and one labelled as "timetable 1". The trust advised A3 related to mobile A and timetable 1 for mobile B.

38. The timetable labelled A3 illustrates a significantly diminishing use up to October 2014. However, it is unclear whether this timetable corresponds to mobile A or an individual room within the mobile, as A3 does not correlate with floor plans provided. Details on the timetable do correlate to art and to other information provided by the trust for mobile A. By 2013 and 2014, the timetable confirms 2 periods used out of the available 45 each week.

39. Timetable 1 illustrates a more regular use by members of staff. The trust advised it relates to timetabled private study lessons. It is unclear whether this timetable corresponds to mobile B or an individual room within the mobile, as it does not correlate with floor plans provided. The trust has stated in their March 2021 and May 2022 response that mobile B should have been classed as a key support area, rather than teaching space.

40. The trust also provided redacted testimony from 2 former staff [REDACTED] as to the use of the timber mobiles. He was unable to confirm the level of timetabled teaching that took place within the timber mobiles and part of his response has been redacted. He does recall non timetabled usage including peripatetic music lessons, sixth form quiet study and break out area for drama lessons and he confirms the timber mobiles were the only free available space at certain times of the week.

41. The other former member of staff when asked about historic use of the “former snack bar” confirms usage as storage for Special Educational Needs (SEN) information.

42. At the time of our visit to the school in January 2020, the timber mobiles had not been demolished and were still in use. Our observations during a walk around identified one was an art storage / coursework display and general storage area, and the other was a snack bar facility.

43. The use of basic timetabled teaching space within the mobiles per trust responses was calculated as 42%. Timetable A3 highlights this 42% teaching space was only used for 2 periods a week. Usage statements also do not confirm regular timetabled usage.

44. Based on the information gathered during the investigation, the trust has been unable to evidence that the timber mobiles were used for teaching (with 6 teaching spaces) as detailed in the trust’s “like for like” CIF bid. Furthermore, based on the evidence provided by the trust, the investigation has concluded that the trust was aware of the actual usage at the time of the bid. Consequently the bid is deemed to be misrepresented.

Where a bid is found to be misrepresented or materially inaccurate, it would be deemed invalid and rejected. This maintains the impartiality of the CIF assessment process, and fairness for other bidders of those finite funds. On this basis the trust has overclaimed and been paid **£1,204,779.04** for this bid.

45. The CIF application was also heavily evidenced that work was needed to remove unfit teaching accommodation and, rectify health and safety issues if the timber mobiles were not replaced. A description of “urgent immediate health and safety and condition needs” was included within the Project Needs document completed by [REDACTED], dated November 2016. Specific reference at paragraph 1.2 states: “The works have been prioritised and targeted by the School’s Senior Leadership Team and Board of Governors, to remove unfit teaching accommodation, addressing urgent health and safety, statutory non-compliance and significant building Condition Category D1 issues, which are now impacting on the Health, Safety and Welfare of the School’s pupils, staff and visitors”

46. The Project Needs 2016 document also references that “Following a structural survey of the buildings, it has been confirmed that the buildings are unsuitable for refurbishment, due to foundation movement, structural timber decay and the extensive temporary supporting works / strengthening works that would be required as a result of the complete failure of buildings external weathering elements.” The supporting Structural Engineer’s report is attached as an appendix to that document.

47. At the time of our visit to the school in January 2020, the timber mobiles had not been demolished and were still in use. Our observations during a walk around identified one was an art storage and general storage area, and the other was snack bar facility. The use of mobile B as a snack bar in 2007 and 2016 was also confirmed by the trust in their letter to us of 5 March 2021. Whilst the letter confirms an intention to demolish both timber mobiles it also states “We would welcome however a discussion with you first as to whether we can retain Building A and Building B for storage.” A scope change request to retain these buildings has not been submitted to the DfE. Had a request been received, it would have been declined because of the overwhelming evidence already submitted that these buildings were not safe.

48. On 4 October 2018, a completion certificate for the timber mobiles project was provided to the DfE signed by the AO. The signed declaration on the certificate confirms “As the designated Accounting Officer for the above named academy / college, I certify that the project has been completed, and that the grant provided for the project above has been spent in accordance with the requirements and conditions of grant. I understand that unless agreed previously, any underspend is likely to be reclaimed by DfE to support future CIF projects.” On 6 December 2018 the AO (on behalf of the trust) issued a revised completion return to the DfE confirming an underspend of £35,900 had occurred owing to an accounting error. An underspend of the boiler funding had been incorrectly used to fund the management fees for the replacement of timber mobiles causing a corresponding underspend on this project.

49. A request was made to utilise the underspend on “furnishing and equipping the new block”. However, as the proposed use was not in the scope of the bid the identified underspend was recovered by the DfE.

50. The AO signed off 2 completion certificates, on behalf of the trust, the latter correcting the original submission. On each occasion he signed the required declaration to confirm funds had been spent in accordance with the requirements and conditions of grant. This was a false declaration because the timber mobiles had not been demolished in line with the application for which grant funding had been provided. Furthermore, funding of approximately £20,704, which was provided within the bid specifically for demolition works, associated costs and fees, was not used for the purposes intended.

51. In response to our ongoing enquiries to clarify the outstanding matters regarding the timber mobiles, the trust wrote to us on 12 August 2021. The trust advised that:

- they were advised by [REDACTED] that the timber mobiles could remain in place and be used for storage
- one timber mobile is now demolished, and one is in the process of being demolished and should be down by the end of summer
- no funding was used to make good any repairs to the timber mobiles whilst they remained in situ

52. To clarify a number of these points and seek any additional evidence from the trust we wrote to them on 13 September 2021. Specifically, further information is required to understand the failure to demolish the timber mobiles, as specified in the 2017 bid, particularly regarding the urgent health and safety requirements.

53. The trust response received 10 November 2021, whilst stating the trust Board relied upon advice from [REDACTED] that it was unnecessary to demolish the timber mobiles, acknowledges their ultimate responsibility for ensuring this action was taken. The trust Board also accepts that the timber mobiles should have been demolished prior to the completion certificate being signed and submitted to DfE. The trust has also confirmed that no works were undertaken to make the timber mobiles safe, following the bid.

Life Safety and Statutory Compliance

54. CIF funding of £395,689 which included costs for the project management fees was provided for fire alarm, fire doors and fire precautions work. Analysis of the invoices presented to the DfE for the works totalled £365,853.60. Further costs of £58,600 (approximately 16%) for project management fees provide a total of £424,453.60.

55. Assessment of the invoices identified security works by [REDACTED] for items, including controlled access doors. These did not form part of the scope of the CIF application. Invoices for these works total £39,392.98 excluding fees and have been undertaken without DfE approval.

56. Following the AO's retrospective scope change request on 20 November 2019, the DfE has considered whether a scope change request, submitted at the time might have been approved and has determined that it would not. The CIF terms and conditions 2017/18 specifies at paragraph 14.7, "Any underspend or surplus funds after the completion of the projects should be notified and returned to the Department immediately and should not be used to extend the scope of projects or to deliver other projects without prior written approval from the Department."

57. As such, the net value of the works is £326,460.62 (£365,853.60 - £39,392.98). Allowing for project fees of £40,807.58 (12.5% as specified in the application) the total value of approved works by the DfE is £367,268.20 (£326,460.62 + £40,807.58). As funding of £395,689 was provided to the trust the calculated spend deemed for recovery by the DfE is **£28,420.80**.

Board Oversight

58. On 20 November 2019 the trust, via its AO issued a letter to the DfE to request changes of scope for 3 out of 4 of the CIF projects. The letter references reliance on [REDACTED] for advice and guidance, "I, as Headteacher and the governors relied completely on their advice and guidance during the complete process from initial visits to the site to establish priorities for application to the sign off and submission of all final completion of paperwork on the projects". The letter further states "I was reliant on the advice from the site manager and management team of [REDACTED] for all decisions."

59. The Academy Financial Handbooks for 2015, 2016, 2017 and 2018 specifies at s2.3.3 (s2.2.1 for 2018) that "The academy trust must establish a robust control framework that includes planning and oversight of any capital projects." Accordingly, the trust has breached this requirement by failing to assure appropriate planning and oversight and placing reliance upon a third party to manage the projects. Additionally, whilst there is reference to [REDACTED] submitting final paperwork on the projects, the AO signed the final completion certificates, including the 2 revised certificates for the Boiler and timber mobiles projects. This is particularly relevant to the timber mobiles which were not demolished in line with the application when the completion certificates were submitted and with no declaration to this fact. In their response of 10 November 2021, the trust Board acknowledges their ultimate responsibility, including the submission of the completion certificate without ensuring the timber mobiles were demolished.

60. As part of the evidence submitted by the trust a copy of the Full Governing Body minutes for 30 June 2016 was presented. The minutes confirm [REDACTED], [REDACTED], [REDACTED], attended the meeting as a guest speaker. The discussion focused on the need for a fit for purpose Sixth Form Centre with the only realistic option being to submit a CIF bid to replace the mobile buildings. Following a number of comments and questions by trustees it was concluded by the then trust Chair, [REDACTED] that irrespective of the Sixth Form block

the process of making the CIF bid should begin for a 6 room block. The trust Board voted on this proposal with 10 votes for, one against and one abstention.

61. During the discussions the matter of the cost of putting this bid together was raised with an estimated cost of between £35,000 and £40,000, which was stated to be “money ring fenced from the current CIF award.” A concern was raised by trustee, [REDACTED] that “this money would have been better placed in the current CIF work”. An alternative view was put forward by trustee, [REDACTED] that “if this money is ring fenced in the current CIF award, it is a risk worth taking due to the potential.” This demonstrates that the trust Board considered moving funds from one CIF project to another despite concerns being raised. This contradicts the explanation provided by the AO that this was an error.

62. The minutes of the Finance and Pay Sub-Committee 10 October 2016 meeting provide reference to trustee discussions on the 2 current CIF projects (Windows and Boilers). Comments reflect on an existing underspend of £59,000 with potential for that to increase if contingencies are not required. A list of potential ideas of how to spend the outstanding money with estimated costs is then presented in the minutes, including:

- Replacement of pipe running under library (£10,000)
- Replacement boilers in the DT department (£15,000)
- Sixth Form toilets (£16,000)
- Hot water supply to Sixth Form Centre
- Refurbishment of parts of the gym, particularly the boys’ changing rooms
- Replacement of Sixth Form doors (£3,000)

63. The minutes confirm that [REDACTED] “welcomed these ideas to utilise as much of the award as possible but asked if these proposals could be worked into the conditions of the CIF award. As the ideas raised all have links with heating, they are viable.” There is no reference to [REDACTED] advice being sought within the minutes or clarification from the DfE that this is allowable under terms and conditions of CIF grant.

64. The subsequent Full Governing Body minutes of 13 October 2016 includes an item on the Finance and Pay Sub-Committee meeting with [REDACTED] highlighting concerns regarding the CIF underspend and to “make Governors aware that these outstanding monies must be spent on projects directly relating to windows and boilers.” It is clear from the minutes that trustees were aware monies could be reclaimed by the DfE if not deemed to be used appropriately. At this point the AO confirms that [REDACTED] have indicated they are confident that the “add-ons” listed in the minutes fit the criteria of the project. Despite the concerns raised the trust Board does not consider whether they should confirm their understanding within the guidance provided by the DfE or with the DfE itself.

65. CIF terms and conditions 2016/17 and 2017/18 at paragraphs 3 and 4.1 confirms that grant paid is subject to compliance with terms and conditions and will be paid “only in

respect of approved expenditure incurred by the organisation for the purpose of delivering the project(s) as set out in their Condition Improvement Fund Payment Schedule(s)". Additionally, 2016/17 CIF Post Approval Guidance (April 2016) and 2017/18 CIF Post Approval Guidance (April 2017) section 9 clarifies that if a change is needed to a project, a scope change request must be submitted and includes circumstances when that may apply. As the trust is the recipient of funding and responsible for assuring compliance with terms and conditions there is sufficient evidence to confirm the trust did not take appropriate action to address the concerns raised, placing reliance on a third party for decisions that were the trust's responsibility.

66. The Finance and Pay Sub-Committee meeting of 5 December 2016 records a further update on the CIF underspend for the boiler project with the AO confirming a projected underspend of £52,000. The minutes reference the AO as stating "This could be handed back to the EFA. However, [REDACTED] feels that this would be a real shame and the money should be used to improve the fabric of the building for the benefit of the students." A unanimous vote by the Committee agrees to use some of the unspent monies to improve the gym changing rooms with the AO stating, "the money could be legitimately used in this area, as the gym has had the old boilers fitted into it." Whilst acknowledging the potential to return unspent funds in line with the guidance the Committee makes a conscious decision to use the funding.

67. At the following Full Governing Body meeting on 8 December 2016 an update is provided by the AO confirming "it was decided by the Finance Committee that the closest proposal to tie in with the CIF project is to re-furbish the gym changing rooms." The reference to "closest proposal" further demonstrates the trust has not properly considered the use of monies in accordance with the terms and conditions of the grant. Had they reviewed guidance the discussion should have updated the trust Board on the need for a scope change request.

68. At the Finance and Pay Sub-Committee meeting of 27 February 2017, the AO provides an update on expenditure of both the Boiler and Windows projects confirming spend of £231,796 and £667,081 ("inclusive of toilets and gym work authorised by Governors in a previous meeting") respectively. The allocated costs of the toilets and gym changing rooms contradicts the earlier agreements that spend could be "legitimately used in this area" as it is has not been linked to the Boiler work. However, the Committee agrees that identified underspend of around £25,000 should be returned to the DfE "in the spirit of honesty."

69. At the following Full Governing Body meeting on 9 March 2017 the decision to return unspent funds is reversed by the trust Board following an update by the AO. [REDACTED] confirms "lockable key fobs on all external doors would be at a cost of circa £20,000. Given that many of these doors are new due to the CIF bid, he feels that this is a legitimate use of the unspent CIF funds." The AO also states that he has email confirmation from [REDACTED] that "he should sign off the project putting down that the full amount was spent and to keep it simple." A challenge is raised by

██████████ on this point with an explicit request to convey an email she issued earlier that day to the AO and the Chair of Governors. The email states “Whilst it is an obvious necessary spend, we are still sailing close to the wind again in my opinion as security has nothing to do with replacing windows or boilers. I go back to my original argument in that the risk is with us and not ██████████ and this clearly uses up the underspend of the budget. If you have already given the go ahead then so be it however we must be prepared to cover this cost from our own funds if ultimately audited and clawed back.”

70. Following discussion between trustees and the AO and being aware that a scope change should be submitted to request DfE approval to utilise the surplus funds, a unanimous decision is taken by the trust Board to authorise the spend on items that do not comply with the bid. As such, the AO has made a false declaration on the completion certificate which requires the following confirmation “As the designated Accounting Officer for the above named academy / college, I certify that the project has been completed, and that the grant provided for the project above has been spent in accordance with the requirements and conditions of grant. I understand that unless agreed previously, any underspend is likely to be reclaimed by DfE to support future CIF projects.”

71. During the Finance and Pay Sub-Committee meeting of 2 May 2017 the AO provides an update on the key jobs confirming all locks on external doors are fitted at a cost of £17,000. He confirms use of “1617 CIF money” to do this with “around £12,000 still remaining which will be used towards the new fences.” The matter is also raised at the 19 June 2017 meeting where a report on CIF expenditure is reviewed page by page. The AO confirms the remaining £12,014 will go towards the cost of the new front gate. When this is queried in respect of being allowable under the terms of the project by a trustee, ██████████, the AO states that “the bid had been closed and locked down.” Discussion continues to revolve around CIF funding and whether there are any concerns surrounding an audit. The Head of Finance highlights a line which relates to spend on the next bid with “worst case scenario there would be £42,000 to pay back.” At this point ██████████ stated that “there has never been a case where money has been claimed back.” The minutes of the meeting, which were provided to the Full Governing Board on 26 June 2017, provide further evidence that conscious decisions are made by the trust to use monies knowing that the purposes are not within the scope of the original CIF bid.

72. The Full Governing Body minutes 11 May 2017 evidences the trust Board requesting a more proactive and hand-on approach toward the replacement of timber mobiles project. The Chair of the trust Board states in the meeting that “this item was put on the agenda in order to try and establish Governor involvement in any meetings about the new build due to concerns over expenditure in the previous window and boiler projects.” A request is also made to see similar information as presented to the Finance Committee, including money awarded, agreed spend and the running total of the project spend. It is notable that subsequent Full Governing Body minutes following this request

provide limited information on the CIF projects contrary to expectations especially with a new building project.

73. On 23 November 2018 the AO emailed the DfE to highlight that the management fees for the timber mobiles project have been used from “the wrong pot” in error leading to an apparent underspend of £44,220. Whilst confirming this could be repaid, if necessary, the email states that this (underspend) is not the case and requests that the boiler project be closed down again with full spend as previously indicated.

74. The Finance and Pay Sub-Committee meeting of 25 February 2019 acknowledges this issue with the auditor in relation to CIF funds with [REDACTED] emailing their “version of events” that would hopefully resolve matters with the DfE. The 29 April 2019 minutes provide further reference to the “difficult conversations with the ESFA” with the possibility of £42,000 to repay. When asked if [REDACTED] were potentially liable for some of the funds as the trust acted upon their advice the AO confirms that “unfortunately nothing had been written down.”

75. The Full Governing Body minutes of 9 May 2019 evidence an update to the trust board regarding the decision by the DfE that the trust should repay £78,120 of CIF funds. The minutes also reflect “a note of caution for future reference that even though the school acted upon advice from [REDACTED] that should ensure they put it in writing and if they are not willing to it then should probably not take the advice.” This demonstrates the trust is not aware of its responsibilities in relation to the proper use of CIF funds. The DfE expects trusts to assure funds are used in accordance with the funding conditions and the wider regulatory framework, including the Academy Financial Handbook (Academy Trust Handbook from September 2021).

76. It is notable that whilst there remains ongoing discussion within the Finance and Pay Sub-Committee and Full Governing Body minutes relating to the 2017/18 projects, including invitation to trustees to visit the new block there are no observations or comments in respect of the timber mobiles that remained in place despite the application clearly stating that these were to be demolished owing to Health and Safety risks.

Conclusion

77. The investigation has focused on the trust management and oversight of the 4 CIF bids and subsequent delivery of those projects, including the procurement of the project management company engaged to deliver those projects. The examples highlighted below demonstrate the trust board has failed in its duties to ensure the regularity and propriety of public funds. This is a breach of s1.5.11 of the Academies Financial Handbook 2015, 2016 (s1.5.13: AFH 2017). This is also a breach of s1.5.20 of the Academies Financial Handbook 2016 (s1.5.22: AFH 2017) by the AO in respect of assuring Parliament, and the public, of high standards of probity in the management of public funds.

78. The trust has confirmed a tendering process was not undertaken to engage the project management company and therefore has breached the Academy Financial Handbook for 2015, 2016 and 2017, specifically s3.1.3 that requires that trusts must ensure “a competitive tendering policy is in place and applied, and Official Journal of the European Union (OJEU) procurement thresholds are observed.” The trust has acknowledged the error in appointing [REDACTED].

79. The CIF terms and conditions, which the trust signed for the respective projects, clearly set out that a scope change request must be submitted for approval by the DfE before varying the previously approved scope of works. The trust did not submit any requests to alter the scope of works in advance of making those changes. The evidence confirms that having considered this at trustee board meetings they have proceeded with various changes knowing that this was in breach of the terms and conditions of funding. The AO only submitted retrospective scope change requests for 3 of the 4 projects in November 2019. However, assessment confirms these would not have been approved at the time.

80. The trust has stated in their responses to the DfE that their decisions leading to breaches of CIF terms and conditions and misuse of funds were based on the professional advice from [REDACTED]. However, the evidence contained within the minutes of the Full Governing Body and Finance and Pay Sub-Committee meetings contradicts this assertion. It is clear from the 9 March 2017 Full Governing Body meeting that the Board understood that the unspent funds should have been returned to the DfE but voted to use them on purposes out of scope of the bid.

81. The evidence in relation to the replacement of the timber mobiles provides serious concerns regarding the actions of the trust Board. The investigation has concluded that the evidence submitted with the bid misrepresented the use of those buildings having 6 teaching spaces.

82. The trust Board acknowledge in their response of 10 November 2021 that it was ultimately their responsibility to ensure the timber mobiles were demolished and that the completion certificate should not have been issued until this action was complete.

83. The investigation has therefore concluded that the trust overclaimed by, and was paid, £1,502,393.40 (£269,193.56 + £1,204,779.04 + £28,420.80) for the boiler and heating, timber mobiles and life safety and statutory compliance projects.



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