



Education
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E-ACT

Investigation report

July 2014

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Background to the review

1. The Risk Analysis Division (RAD) was commissioned to carry out an investigation following information received by the EFA. The investigation took place on 8-10 July at the E-ACT head office. We are grateful to the relevant staff and board members of E-ACT who took part in the review.

Approach

2. The review involved an investigation into the matters raised as listed below:

- Academy level balance sheet and cash postings
- Capital budgets production, use of capital and postings
- Awarding work without tenders
- Excessive use of consultants
- Head office financial position
- Cash in hand balances
- School improvement budgets
- Lack of challenge and oversight
- VAT query

3. The review involved testing, reviewing files and documents, and informal interviews with:

- Dr Ann Limb E-ACT Chair
- David Moran E-ACT CEO
- James Nicholson E-ACT Director of Finance and Resources (Principal Finance officer)
- E-ACT head office staff
- KPMG auditors

Conclusion

4. There was no evidence of fraud or loss of funds uncovered during the review and the allegations received were not substantiated, although the issue relating to the previous widespread use of consultants is acknowledged.

5. There were some concerns regarding the capacity to deal with the past and on-going financial issues at E-ACT and its academies, noticeably regarding procurement matters, including the staffing restructure. The Trust is addressing these issues.

Original allegation	Summary
Inadequate academy level balance sheet and cash postings	<p>The accounting system is fully automated and used throughout the charity at both academies and head office. The current process of monthly accounting is dependent on returns from the academies being complete, accurate and timely and this had not been happening systematically. This had been reported to the board.</p> <p>During the review on site, recent bank reconciliations were tested with no material adverse findings.</p>
Lack of control over capital budgets production, use of capital and postings	<p>The allegation regarding the use of capital monies against future allocations was not evident when officers were questioned.</p> <p>During the visit the various capital strands were outlined and presented in the annex on capital. A request was made for a summary breakdown of capital commitments and this was being developed. It was noted that no further funding from the Academies Capital Maintenance Fund (ACMF) would be made available until the prior year's position was clear and that there was proof of expenditure following prior year's concerns.</p>
Awarding work without tenders	<p>On the specific issue raised of a contract at one of the academies, it was ascertained that the urgency procedure had been followed and there was a transparent process. The results of the tests do not demonstrate that full and accurate records are being kept. It was acknowledged that the contracts register was still work in progress but the interim staffing arrangements had clearly played a part in this matter not being fully resolved. This was despite the improvements in policies and transparency dating back to the issue of the Financial Notice to Improve (FNTI) in March 2013. It was not always apparent from the contract register when contracts started or ended, and it should be noted that, on examination, some of the sample of contracts were awarded prior to the FNTI.</p>

Excessive use of consultants	One of the issues previously raised about E-ACT was the excessive use of consultants. This had been highlighted in the previous EFA report as a matter of concern. The CEO has highlighted that part of the head office deficit is a result of substantial interim management costs resulting from recruitment issues and the additional work required for the FNTI. The re-organised structure is now in place and therefore should mean less interim cover required. The CEO has said that he will review his resource requirement having significantly downsized the staffing complement by over two-thirds from the beginning of the year.
Head office financial position	Cash at bank at 31 March 2014 totalled £11,795,996. The budget forecast report submitted to Trustees identified that average cash balances are usually around £10m. However, there were a number of grants received before the end of March that were programmed to be spent in the period between the 1st April 2014 and 31st August 2014, such as pupil premium which inflated the balance at the end of March 2014. The CEO stated that the cash advance, which was granted to cover the one off costs related to transferring academies including loss of top slice, school improvement costs, legal and restructuring costs, was based on the projected position in January 2014 where the whole Group's budget position was showing a cumulative reserve of £109k. It had not been determined how to show the EFA advance of funds in the accounts at the time of the EFA's visit.
Cash in hand balances relating to a Virgin Account	The analysis undertaken by the review team confirmed that the signatories for the Virgin money account are no longer employed at E-ACT. There was also evidence to suggest there was a lack of control over this account, demonstrated by an email trail in March relating to the interest payments and the subsequent posting of the interest, as above, in period six of 13/14. The signatories have not yet been changed. A paper was presented to the Audit, Risk & Finance Committee Meeting of 30th June 2014 concerning bank reconciliations and the position regarding the signatories' situation. This highlighted variances at May 2014, one of which was that the Virgin money account was not part of the routine bank reconciliation routine as it is a deposit account. However, £2m was confirmed as held in the passbook and was confirmed by KPMG as constituting part of the cash balance within E-ACT's books and records for the 2012/13 audited accounts.
School improvement	The school improvement budget was produced and reviewed. It was reported to the Board. There were no apparent issues arising

budgets	except that, in the budget deficit for the head office, the EFA review team were of the opinion that it would be more transparent to have this shown at academy level committed against each benefitting academy.
Lack of challenge and oversight	<p>At an operation level this is probably the case due to the lack of a continuous permanent Finance Director (FD) for the period running from the issue of the FNTI in March 2013, up until the recent appointment in July 2014 of a permanent FD with a good track record.</p> <p>At Trust level a review of minutes and discussion with the Chair and the CEO confirmed that there was an enhanced level of scrutiny and that the papers going to the various oversight boards were comprehensive and subject to scrutiny, which was minuted.</p>
VAT query	This was an historic issue and now in hand, but is symptomatic of the overall poor control over financial returns in the past.

Table 1: Summary of Findings

Academy level balance sheet and cash postings

6. Using the previously supplied information on school balances and the latest school level information it was apparent that there was not a shared understanding with transferee trusts, or agreement for all the figures that were being used by E-ACT head office, for a number of the transferring academies.

7. These issues were being highlighted as part of the disaggregation of the accounts for the purpose of separating the transferring academies' balances for the new and prospective sponsors and were being used as part of the due diligence process.

8. The presentation to EFA of recent management accounts emphasised the transferring academies' positions, with the remaining ones shown only in summary. This was the information being relayed to the EFA. However, once more detailed information was requested by the EFA it was supplied, and it was clear that the E-ACT board had been regularly presented with the management accounts for the group. These reports were available but due to the process of finalising them this currently takes a month to complete.

9. The PS Financials (PSF) system (E-ACT accounting package) is an online system held at academy level as well as head office. The recently acquired charity-wide budget package has, this year, replaced a previous budget system. The current process involves Head Office downloading electronic sets of management accounts from PSF and then sending them to the individual academies for their review and comment on the projected year end position. This process is dependent on returns from the academies being

complete, accurate and timely and this had not always happened systematically. This has been reported to the board.

10. As an example, for the 'hard close' exercise in February 2014, 28 academies out of 34 returned their workbooks. This reflected the incomplete information available but was also undoubtedly due to the transition process. The process was, however, completed, with a review undertaken by head office of the actual figures within PSF that related to the other six academies.

11. In discussion with the external auditor, KPMG confirmed that, due to there being one central ledger account along with the main bank account used for transactions, the cash postings would not be made at the academy level in these circumstances. KPMG relied on an adequate bank reconciliation process at the centre which has been undertaken throughout the current academic year.

12. During the review on site, recent bank reconciliations were tested with no material adverse findings.

Capital budgets production, use of capital and postings not clear

13. The allegation regarding the use of capital monies against future allocations was not evident when officers were questioned.

14. There had been issues in determining the spend previously and this was supported by the concerns expressed last year when the interim FD had qualified the capital outturn statement. This was subsequently resolved in conjunction with the EFA capital team. E-ACT head office now has the processes in place to estimate free capital closing reserves as reported in their period 9 management accounts

15. The capital position as at 30 April 2014 was established for each academy. The capital outturn statement was being prepared for the end of July 2014 and was due to be signed by the incoming Finance Director. During the visit, the various capital strands were outlined and a summary financial position is presented in Annex 2. A request was made for a summary breakdown of capital commitments and this was being worked up at the time of the visit, subsequently provided. It was noted that no more ACMF funding would be made available until the prior year's position was clear and that there was proof of expenditure following prior year concerns. Subsequently the ACMF return has been submitted to the EFA capital team.

Awarding work without tenders

16. On the specific issue of a contract award without due process at one of the academies it was ascertained that the urgency procedure had been followed and there was a transparent process.

17. It was not, however, possible to find out whether the contract was awarded to somebody who was in the office coincidentally on the day as alleged. The broader issue concerns the urgency of individual jobs, which are sometimes presented as urgent but may have been avoided with more forethought and planning. This was not tested.

18. As part of the testing on site, a number of contracts were selected to understand if due process had been followed (see Annex 1 on procurement testing). The results of these tests are attached to this and these do not demonstrate that full and accurate records are being kept. It was acknowledged that the contracts register was still work in progress but the interim arrangements had clearly played a part in this matter not being fully resolved. This was despite the improvements in policies and transparency dating back to the issue of the FNTI in March 2013 under the previous management. It was not always apparent from the contract register when contracts started or ended, and it should be noted that, on examination, some of the sample of contracts were awarded prior to the FNTI.

Excessive use of consultants/interim staff

19. The excessive use of consultants had been highlighted in the previous EFA reports as a matter of concern. The CEO has highlighted that part of the head office deficit was as a result of substantial interim management costs resulting from recruitment issues and the additional work required for the FNTI. The reorganised structure is now in place and therefore should mean less interim cover required. The CEO said that he will review his resource requirement, having significantly downsized the staffing complement by over two-thirds from the beginning of the year.

20. It was noted that the draft budget for next year did not include provision for interim cover although how realistic this is will be determined by the stability of the organization following the reorganization and the ability to recruit to the full establishment figure of circa 25 full time equivalents. It was envisaged that the cost of interim staff will be covered by vacancies in the employment budget.

21. There was a concern that there was a long-term contract for the [REDACTED]. Further testing revealed that there is one framework agreement with [REDACTED] for project leads and capital building advisors from 1st September 2012 to the 31st August 2016. This was recorded on the contract register with a value of £170k. However the framework document indicates that the total value of the framework could be £360k. There was some limited evidence to suggest that this may have been subject to competitive tendering, but this was not certain and further information has been requested. The contract register records three call-off contracts from this framework: one appears to have no end date and is for £600 per day up to a maximum of £50k per annum; the second has a value of £43k; and the third for £10k. The supplier spend list shows spend of £140k in 13/14 with the consultant suggesting that there are other contracts that haven't been recorded. E-ACT subsequently confirmed that payments are made to [REDACTED] for the services of an

Operations Advisor and that there is no contract for this. The CEO was alerted to the possibility of a related party transacting with E-ACT however it was ascertained that [REDACTED] which is owned by [REDACTED] partner had not traded with E-ACT previously.

Head office financial position

22. From review of the 2014/5 budget forecast and three year financial plan (not approved by Trustees at time of review) the following was identified:

- Cash at bank at 31 March 2014 was £11,795,996. The budget forecast report submitted to Trustees identified that average cash balances are usually around £10m
- Projected cumulative surplus *for the group* of £1.1m as at 31 August 2014
- The projected in year group surplus for 2014/15 is £210,265
- The projected in year group surplus for 2015/16 is £993,171
- The projected in year group surplus for 2016/17 is £1,120,313

23. All of the figures above include the academies' general reserves. It was noted that the head office 2013/14 budget was set at a deficit of £1,443,683, but the outturn at period 8 shows a deficit of £2,428,894. The in-year overspend is predominantly due to increased school improvement expenditure and internal restructure costs. From a review of budgetary documents and discussion with the Head of Academy Finance, it was established that remedial action is in process to reduce this deficit position. It was also noted that in 2013/14 the Trust was transferring nine academies to other sponsors; undergoing a staffing restructure; and that there was a significant school improvement plan in process.

24. The CEO stated that the cash advance, which was granted to cover the one-off costs related to transferring academies, including loss of top slice, school improvement costs, legal and restructuring costs, was based on the projected position in January 2014 where the budget position was showing a cumulative reserve of £109k. It had not been determined how to show the EFA advance of funds in the accounts at the time of the visit. (The summary financial position at period 9 is in Annex 2).

Cash in hand balances and query over a Virgin account

25. The specific concern related to the Virgin account for which a passbook was kept in the safe but nobody seemed to have the detail behind it and a concern that it was correctly accounted for.

26. KPMG were contacted and confirmed that this balance did form part of the accounts that were audited in 2012/13 and so the conclusion was that this bank account had been properly accounted for within E-ACT's records.

27. Work on site established that there was a file containing the bank reconciliations for each bank account held and this was reviewed. There are eight bank accounts, the balances of which were recorded on the reconciliations as:

Number	Bank	Type of account	Account name	Account number	Balance at period 8
1	HSBC	Current a/c	E-ACT	██████████	██████████
2	HSBC	Sundry Income a/c	E-ACT	██████████	██████████
3	HSBC	Money Market Deposit a/c	E-ACT	██████████	██████████
4	HSBC	Current a/c	Free Schools Trust (E-ACT)	██████████	██████████
5	HSBC	Sundry Income a/c	Free Schools Trust	██████████	██████████
6	HSBC	Current a/c	E-ACT Enterprises	██████████	██████████
7	HSBC	Deposit a/c		██████████	██████████
8	Virgin	Savings Account	Not identified	██████████	██████████

Table 1: E-ACT Bank Accounts

28. For accounts three, four and five, only the period 8 reconciliation had the full month's bank statement attached; the others had an internet print of the closing balance at a particular point. The debit and credit balances listed in the nominal ledger print-out

indicated that there were a significant number/value of transactions each month, as expected. All reconciliations are balanced.

29. The analysis undertaken by the review team confirmed that the signatories for the Virgin money account are no longer at E-ACT. The file contained photocopies of a paying in book, listing payments in of £1,000,000 on 21/12/12 and £1,000,000 on 24/12/12. The paying in book also contains a list of signatories, for which two are required from:

- [REDACTED] – [REDACTED]
- [REDACTED] – resigned 12/07/13
- [REDACTED] – resigned 12/07/13

30. These signatories are listed as trustees of the charity deposit account. The book has an issue date of 18/12/12 and states that interest will be paid on 31st May and 30th November each year.

31. There was also evidence to suggest there was a lack of control over this account, demonstrated by an email trail in March relating to the interest payments and the subsequent posting of the interest as above in period six of 13/14. The signatories have not yet been changed. A paper was presented to the Audit, Risk & Finance Committee Meeting of 30th June 2014 concerning bank reconciliations and the signatories' position. This highlighted variances at May 2014, one of which was that the Virgin money account was not part of the PSF bank reconciliation routine as it is a deposit account.

School improvement budgets

32. The school improvement budget was produced and reviewed. It was reported to the Board. There were no apparent issues arising except that in the budget deficit for the head office the EFA review team were of the opinion that it would be more transparent to have this shown at academy level committed against each benefitting academy.

Lack of challenge and oversight over finance

33. One of the concerns received was that there was insufficient management challenge and that the CEO had too much power over the finance without proper checks and balances.

34. At an operation level this is probably the case due to the lack of a continuous permanent Finance Director (FD) for the period running from the issue of the FNTI in March 2013 up until the recent appointment in July 2014 of a permanent FD with a good track record.

35. At Trust level a review of minutes and discussion with the Chair and the CEO confirmed that there was an enhanced level of scrutiny and that the papers going to the various oversight boards were comprehensive and subject to scrutiny which was minuted.

VAT query demonstrating poor financial management

36. The issue raised in this respect was that in the financial accounts, under Debtors note, VAT is stated at £2.6 million (£2.8 million Group figure), and nobody had picked this up in a timely manner. The finance assistant dealing with the returns had left leaving this item unattended and accumulating.

37. The EFA review team discussed the balance owed to E-ACT in relation to VAT with [REDACTED] Interim Group Financial Controller and James Nicholson, Finance & Resources Director. The issue has not yet been resolved; the money owed has been claimed but not yet paid. [REDACTED] stated that he was in dialogue with HMRC and would provide written documentation to support this. A copy of the relevant documentation was emailed and reviewed by the EFA team. This was regarded as a historic issue, for which steps have been taken to resolve the matter, and was properly recorded in the accounts. Subsequently HMRC has agreed to repay the amount owing.

Annex 1

Procurement Testing

It is clear that a considerable amount of work has been done to compile a contract register; however, it is not yet complete or accurate. From the sample of contracts that we selected a number of things were clear: the contract register does not always accurately record the details of the contracts, including the start and end dates and the contract value; and the contract value does not always reconcile with the value of spend from the general ledger. Where the value of spend on the general ledger exceeds the value of the contract, we asked to see copies of invoices, who approved the invoices, and the rationale for approving them. We have not received this information. Whilst some information was provided, it was apparent in the sample that there are no clear audit trails to demonstrate that contracts have been awarded in accordance with EU rules and E-ACT's procurement policy.

The board has now approved a Procurement Strategy and Procurement Policy and has identified a list of Value for Money projects that will be led centrally on behalf of all their academies. We reviewed one: the procurement for Payroll Services. It was originally intended that this contract be awarded at the end of June, however it is expected that this will be awarded in January 2015.

Issues related to specific samples taken from the contract register:

██████████

To support two entries on the contract register entry we were provided with one set of contract documentation for Crest Boys Academy. There is no start and end date in the contract. The contract value is unclear but appears to be £224k per annum. An email on the 15th June 2012 appears to suggest that the contract will run for 3 years. This does not agree with any of the dates in the contract register. This procurement was managed by ██████████, a catering and facilities management consultancy. There is no evidence to suggest that this was subject to a full EU compliant procurement. The supplier spend list records payments of £138k for 13/14.

██████████

Contract documents show that this contract was for the services of a consultant principal at the Trent Valley E-ACT Academy. The contract document suggests this contract began on the 1st Feb 2013 however in the conditions of agreement the term is shown as 31st May 2013 to the 24th July 2014. There is no value noted in the contract although the contract register suggests that the contract(s) are valued at £314k. There is no entry on the supplier spend list. There is no evidence to suggest that this was competitively tendered.

██████████

There are two entries on the contract register amounting to £202k, however, we were provided with one set of contract documents showing that this is a maintenance contract for 3 years at a value of £27,482 per annum. There is no evidence to suggest that this was competitively tendered. The supplier spend list records payments of £47,429 for 13/14.

██████████

There are two entries on the contract register amounting to £651k, however we were provided with one set of contract documents showing that this was a contract for ICT Infrastructure. The total value of the contract is £7.25million. There was evidence to suggest that the contract was a call-off from a DfE Framework Agreement and we requested evidence to support this assumption. The supplier spend list shows a value of £121,423 for 13/14

Sample from Supplier Spend:

██████████

This was identified from the list of supplier spend rather than the contract register. The contract is for refurbishment work at Willenhall E-ACT Academy. The contract was awarded on the 29th May 2013 for work to be carried out from the 24th July 2013 to the 2nd September 2013. We received some evidence to suggest that this contract had been awarded following a competition.

Payroll Services

This has been identified as one of E-ACT's Value for Money Projects and the procurement is being managed by E-ACT head office on behalf of all of the academies. We were provided with a project plan for this procurement, however it is evident that there are now significant delays to the project, the original intention was to award a new contract in June 2014. It is now intended that this will be December 2014.

Annex 2

Period 9 Summary Position

Commentary	£
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Table 3: Period 9 Summary Position



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