



Education  
Funding  
Agency

# **Financial management and governance review**

**Bright Tribe Trust**

**Adventure Learning Academies Trust**

**November 2016**

# Contents

- Executive summary 3
- Background 4
- Part one 5
  - Key findings of 2015 MAT review 5
    - Governance 5
    - Procurement model 5
    - Conflicts of interest and related party transactions 5
    - Trustee payments and benefits 6
  - Actions agreed with BTT and ALAT 6
- Part two 7
  - Follow-up review in 2016 7
  - Procurement model 7
  - 2014/15 financial statements 7
  - Action plan 8
    - Governance 8
    - Conflicts of interest and related party transactions 8
    - Trustee payments and benefits 9
  - Next steps 9
- Annex A – Timeline 10
- Annex B – Update on recommendations 11

## Executive summary

1. The Education Funding Agency (EFA) planned to carry out a multi-academy trust (MAT) review of the financial management and governance at Bright Tribe Trust (BTT) to assess compliance with the Academies Financial Handbook (AFH) and the Funding Agreement. In July 2015, the EFA received allegations concerning non-compliance with the AFH at BTT. The allegations centred on procurement practices and related party transactions. The MAT review was subsequently expanded to include Adventure Learning Academies Trust (ALAT) as both trusts are managed by the same governance and control framework.
2. Part one of this report sets out the findings of the initial MAT review in 2015 which highlighted a number of breaches of the AFH. Part 2 details the follow up review in September 2016 and action taken by the trusts to address EFA concerns. Annex A sets out the timeline of EFA engagement with the trusts.
3. The trusts were required to take a number of immediate actions in response to the findings of the 2015 MAT review including strengthening financial management and governance in certain key areas to ensure that they fully met the requirements of the AFH and Charity Commission and complied with their articles of association and funding agreement. In particular, the trusts needed to manage and address real and perceived conflicts of interest through improved guidance, enhanced transparency and submission of a new procurement model to the EFA.
4. Thirteen recommendations were made in the original review: 10 have now been implemented to at least a minimum level and 3 have not but, are in progress. The recommendations from the initial MAT review of the trusts is at Annex B.
5. The AFH states that a financial notice to improve (FNtI) may be issued where there is a financial health concern (eg a deficit), inadequate financial management or other financial concerns such as irregular use of funds. The issues identified at the trusts in 2015 – on which they have continued to engage and develop – did not merit an FNtI.
6. The EFA acknowledge that the trusts and the sponsors have been helpful and supportive during the reviews and co-operated with requests we have made. They have provided helpful additional information on request to assist our reviews. The EFA also note the sponsors support for the academy programme.

## Background

7. BTT was established in 2012 and has 7 academies. ALAT was established in 2013 and has 5 academies. Both trusts are managed by a joint governance and control framework which includes a trust board, executive sub-committee, operations board, finance committee and audit committee. Both trusts have a dedicated central finance function along with regional finance resources. Each individual academy also has a governing body to provide local oversight and input. BTT also has a wholly owned operating subsidiary called Bright Tribe Education Services Limited (BTESL).

8. BTT is sponsored by Helping Hands and My World, and ALAT is sponsored by Helping Hands and Adventure Learning Schools. All three sponsors are charities and at the time of the MAT review were also corporate members and corporate directors of their respective trusts.

9. Both trusts charge their academies for the provision of a range of central services (examples below):

- Financial services
- Marketing
- HR & legal
- Governor training
- Central education support

10. The MAT review commenced in August 2015 and included visits to the trusts' head office, as well as to 4 BTT academies. The MAT review concluded in December 2015 and a draft report was issued to the trusts on 21 December 2015 for comment. The trusts responded to the draft report on 3 February 2016 and the final report was issued to the trusts on 8 March 2016.

## Part one

### Key findings of 2015 MAT review

11. The review in 2015 reported a number of breaches of the AFH and the trusts' Articles of Association.

### Governance

12. The trusts have a governance framework in place, however our initial review covering primarily 2013/14 and 2014/15 found:

- the internal assurance function was not sufficiently independent
- the nominal audit committee was not providing the required oversight of financial controls and risks
- board and committee minutes, a public record, lacked transparency of detail and did not record key decisions, for example:
  - the decisions relating to the procurement of 18 contracts were not clearly minuted although the contracts were procured following the model in place at that time
  - no finance committee minutes between January and September 2015

### Procurement model

13. The procurement model operated by the trusts did not demonstrate fair and open competition in accordance with the AFH, for example, tendering procedures were not undertaken. Goods and services were outsourced directly to preferred service providers connected to the sponsors' representatives (and/or other trust directors). In such novel and contentious circumstances the EFA expects trusts to request prior authorisation before entering in to such an arrangement. No request for prior authorisation was received by the EFA from the trusts.

### Conflicts of interest and related party transactions

14. BTT and ALAT have transacted with companies connected through corporate member representatives and provided assurance that they had undertaken an exercise to ensure that services provided achieved value for money and were within industry norms. The trusts' external auditors are responsible for obtaining assurance that services are provided at cost prior to giving their opinion on the financial statements. The trusts' auditors gave a true and fair opinion on the 2013/14 and 2014/15 financial statements. In their independent report on regularity they concluded that, in all material respects, nothing had come to their attention that would indicate funds had not been applied to purposes intended by Parliament.

15. The trusts had obtained professional advice with regard to the disclosure of transactions related to the sponsors through corporate directorships. The EFA review concluded that this advice was not compliant with the AFH and Charity Commission requirements and as a result not all relevant interests were being recorded in registers of interest, or disclosed in financial statements in accordance with the AFH and Charity Commission requirements. Specifically:

- no evidence was provided to demonstrate directors of the trusts removed themselves from discussions and decisions to award contracts to companies when they were the related/connected party
- certain related party transactions were not disclosed, in the annual financial statements, for example sub contracted expenditure to connected parties

### **Trustee payments and benefits**

16. The review noted at least 78% of BTT and ALAT board members received a payment or benefit in 2014/15. The trusts' Articles of Association state a director may only receive a benefit where a majority of directors then in office have received no such payment or benefit. The trusts had been advised that the Corporate Director Companies would not be classed as receiving benefits or having any connected party status. However, following discussions with the Charity Commission, the EFA concluded that the advice received by the trusts was incorrect. Charity Commission guidance confirms charities must not allow payments or other benefits to half or more than half of the board; the number of trustees receiving any payment or benefit must be in the minority.

### **Actions agreed with BTT and ALAT**

17. The trusts were required to take a number of immediate actions in response to the findings of the MAT review in 2015:

- to submit details of the new procurement model being proposed by the trusts for implementation in 2016
- to submit 2014/15 financial statements for both trusts to the EFA by 31 December 2015 with the required related party disclosures
- to provide an action plan demonstrating how and to what timescales the remaining 13 recommendations from the review would be implemented (see Annex B)

18. In line with the Memorandum of Understanding between the Department for Education and the Charity Commission the EFA shared the MAT review findings with the Charity Commission. The Charity Commission continue to have an interest in monitoring the progress of the trusts and ensuring their compliance with regulations.

## Part two

### Follow-up review in 2016

19. The EFA has engaged regularly with BTT and ALAT to ensure implementation of the agreed actions. The most recent visit to BTT occurred on the 29 September 2016. Progress against the immediate actions agreed with the trusts is set out below.

### Procurement model

20. The trusts submitted their plans for a revised procurement model on 24 March 2016. The new model proposed the provision of in-house services via Bright Tribe Facilities Management Ltd (BTFM), a new facilities management subsidiary.

21. The EFA reviewed the plans and a copy was also provided to the Charity Commission for their consideration. The plan was very brief, high level thinking and lacked sufficient detail for the EFA to form a view as to its adequacy and how it addressed concerns regarding the duty of the trusts to avoid and manage conflicts of interest.

22. The trusts submitted a further improved iteration of the new procurement model on 30 August 2016 which it intends to operate from 1 October 2016. If this model is successfully implemented as described it should address the connected / related party issues.

23. Discussions with the trusts are ongoing to ascertain that appropriate documented agreements are put in place between the trusts and BTFM Ltd. The EFA is working with the trusts to gain assurance that:

- the arrangement with BTFM Ltd complies with procurement rules and regulations relating to the trusts awarding contracts to companies under their control
- all procurement for capital projects is undertaken via a competitive tender process that demonstrates value for money

### 2014/15 financial statements

24. Audited 2014/15 financial statements for both trusts were submitted to the EFA by the deadline of 31 December 2015. Related party transactions were disclosed in line with the professional advice the trusts had obtained. The EFA MAT review however identified that additional disclosures were required to fully meet the AFH and Charity Commission requirements.

25. Between January 2016 and April 2016 the EFA worked with the trusts to agree the level of disclosure that was required in relation to the transactions with companies connected/related to the sponsors. The Charity Commission was also consulted on the disclosures.

26. The trusts submitted revised 2014/15 financial statements to the EFA on 3 May 2016 which included enhanced connected/related party disclosures, meeting the minimum expected requirements.

## **Action plan**

27. The trusts submitted an action plan on 17 February 2016.

28. A follow-up visit was made to BTT on 29 September 2016 to review implementation of the 13 recommendations in the action plan. Ten recommendations have now been implemented to at least a minimum level and 3 have not but, are in progress.

29. The follow-up review identified positive progress in a number of areas. Action has been taken to address the operational issues raised in the original review.

## **Governance**

30. The trusts have taken steps to increase the level of independent challenge and scrutiny on its boards and committees through the recruitment of two independent trustees, the establishment of an audit committee in accordance with EFA guidance and the introduction of independent assurance arrangements.

31. The trusts now produce detailed board minutes which record board decisions. The review however identified an instance where a decision taken by the board to appoint an interim chair were not accurately recorded in minutes. The decision to make this appointment as recorded in the minutes, is also non-compliant with the requirements of the Articles of Association.

## **Conflicts of interest and related party transactions**

32. Registers of interest were not up to date and lacked detail on interests of directors or representatives of the corporate members and corporate directors. Subsequent to the follow up review, interests have now been disclosed on the BTT website.

33. Transactions with companies connected and related to the sponsors have continued throughout 2016 and will again result in high value related party transactions. However, the trusts are committed to including full disclosure of all transactions in the 2015/16 financial statements. The financial statements are due to



be submitted to the EFA by 31 December 2016 and we will review these on submission for completeness. Going forward the trusts have stated that the majority of transactions with connected parties will cease as a result of the introduction of the revised procurement model from 1 October 2016.

34. The Board director details and register of interests for 2016 are now on the BTT and ALAT websites to increase transparency.

## **Trustee payments and benefits**

35. Further action is required by the trusts to ensure full compliance with the Articles of Association and Charity Commission regulations in respect of trustee payments and benefits. In particular, they continue to breach the benefit rule that requires the number of directors in receipt of a benefit to be in the minority.

## **Next steps**

36. The EFA will continue to work with the trusts to address the outstanding issues and monitor the implementation of the procurement model to ensure that all required agreements are put in place and that the model fully complies with the requirements of the AFH. Any failure to implement a compliant model or implement the outstanding recommendations may result in the EFA taking formal action in line with its regulatory powers.

37. One of the actions the EFA can take is to issue an FNtl, but this is not always the right approach. The AFH states that an FNtl may be issued where there is a financial health concern (e.g. a deficit), inadequate financial management or other financial concerns such as irregular use of funds. In practice EFA's approach to financial intervention recognises that some trusts need support and challenge whilst in other cases there may be serious mismanagement or irregularity on the academy's own watch.

38. EFA apply local intelligence to decide whether and how to intervene depending on:

- level of engagement of the trust
- severity of the issues and whether systematic in nature
- value of the funds involved.

EFA work with Regional Schools Commissioners to take a holistic approach to intervention – this may include sponsorship solutions where this would achieve the right outcome for the academy.

## Annex A – Timeline

Date	Key activity
August to December 2015	MAT review undertaken
21 December 2015	Draft MAT review report issued
23 December 2015	Trusts submitted 2014/15 financial statements
03 February 2016	Trusts response to draft report
08 March 2016	Final MAT review report issued
24 March 2016	BTT provide proposed procurement model Version 1
24 March 2016	BTT provide revised 2014/15 financial statements. EFA requested additional disclosures be included
03 May 2016	Final BTT / ALAT revised financial statements received
05 May 2016	Revised financial statements and procurement narrative shared with the Charity Commission
22 June 2016	EFA met with the Charity Commission to discuss the findings from the BTT / ALAT review
30 August 2016	Trusts provide proposed procurement model Version 2
30 August 2016	EFA meet with BTT to discuss procurement issues and 2016/17 capital allocations
29 September 2016	Follow up visit of MAT review action plan undertaken

## Annex B – Update on recommendations

This table assesses the progress of the recommendations made in the 2015 review. Thirteen recommendations were made and 10 have now been implemented to at least a minimum level and 3 have not but, are in progress.

Recommendation	Minimum level of implementation achieved	Further work required to implement recommendation
<p><b>Board skills audit</b> A skills audits for trusts' members/directors (and all their corporate representatives) and trusts' senior management should be carried out.</p>	Yes	Yes
<p><b>Transparency of board decision-making</b> The trusts must ensure that all key decisions (in line with a detailed scheme of delegation) are recorded within board minutes. Specifically, the trusts must ensure that where decisions involve contracting with directors, the requirements of the articles of association, the AFH and the Charity Commission, are demonstrably adhered to.</p>	No	Yes
<p><b>Independent assurance</b> The Audit Committee functions should be established in such a way as to achieve internal scrutiny which delivers objective and independent assurance. The trusts must agree a programme of work as part of achieving internal scrutiny. This programme should be documented and approved, and any work conducted based on this programme should also be formally reported to the audit committee, and where appropriate to the trusts' board.</p>	Yes	Yes
<p><b>Audit committee membership and minutes</b></p> <ul style="list-style-type: none"> <li>• membership should be changed to achieve independence</li> <li>• employed staff should not be members</li> <li>• minutes should adequately record all relevant details and decisions taken</li> </ul>	Yes	Yes
<p><b>Frequency of Audit Committee meetings</b> The Audit Committee should meet on a regular basis in line with the AFH.</p>	Yes	No

Recommendation	Minimum level of implementation achieved	Further work required to implement recommendation
<p><b>Finance Manuals</b></p> <p>The trusts should conduct a review to determine all policies and guidance needed at a trust level. The relevant policies and guidance should be incorporated into an approved trust level finance manual.</p>	Yes	Yes
<p><b>Procurement model</b></p> <p>The trusts will provide EFA with narrative summarising their procurement arrangements with connected / related parties since January 2016. The EFA can then engage with the trusts, around this specific area, going forward. This narrative should include the use of all suppliers where open market procurement has not been used previously or will not be used going forward.</p>	Yes	Yes
<p><b>Approval to use preferred suppliers</b></p> <p>The trusts must ensure that all key decisions in relation to procurement via preferred suppliers are recorded within minutes. Where work is sub contracted back to connected companies, the trusts must make adequate disclosure in their financial statements.</p>	No	Yes
<p><b>Trustee benefits</b></p> <p>The trusts must ensure compliance with the articles of association and Charity Commission guidance on trustee benefits. This must be done by ensuring fifty percent or more of the board is composed of independent trustees who receive no payment or benefit.</p>	No	Yes
<p><b>Declarations of interest</b></p> <p>The trusts must ensure when completing declarations of interests, that interests of directors or representatives of the corporate members and corporate directors are also included. As a minimum this must include all interests where there is a real or perceived conflict.</p>	Yes	No
<p><b>Related Party Transactions</b></p> <p>The trusts must fully comply with the spirit and letter of the AFH and Charity Commission guidance around disclosure of connected and/ or related party transactions in their financial statements. Specifically this must include full disclosure of transactions with companies</p>	Yes	No

Recommendation	Minimum level of implementation achieved	Further work required to implement recommendation
connected to corporate member representatives within the 2014/15 BTT and ALAT financial statements. This disclosure must also include comparatives for 2013/14.		
<p><b>Business continuity</b> A trust-level contingency and business continuity plan should be produced and approved by the Board.</p>	Yes	No
<p><b>Staff training</b> Training plans and skills audits should be carried out for key local academy staff.</p>	Yes	No



Education  
Funding  
Agency

© Crown copyright 2016

You may re-use this document/publication (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence v2.0. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

To view this licence:

visit [www.nationalarchives.gov.uk/doc/open-government-licence/version/2](http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2)

email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

About this publication:

enquiries [www.education.gov.uk/contactus](http://www.education.gov.uk/contactus)

download [www.gov.uk/government/publications](http://www.gov.uk/government/publications)



Follow us on Twitter:  
[@educationgovuk](https://twitter.com/educationgovuk)



Like us on Facebook:  
[facebook.com/educationgovuk](https://facebook.com/educationgovuk)